

**C.P. (IB) No.176/KB/2024**

**IN THE NATIONAL COMPANY LAW TRIBUNAL KOLKATA BENCH-II  
KOLKATA**

**C.P. (IB) No.176/KB/2024**

**with**

**IA(IBC) No.1928/KB/2025**

**&**

**IVN No.440/KB/2026**

**Date of Order:22.6.2026**

**In the Matter of:**

YES BANK LIMITED,

A Public Company incorporated under  
the Companies Act,1956 and Banking  
Company within the meaning of Section 5(C)  
of the Banking Regulation Act, 1949,  
having its Head Office:

Yes Bank House, Prabhat Nagar,  
Off Western Express Highway,  
Santacruz East, Mumbai - 400 005  
and its Northern Regional Corporate Office:

Plot No. C, Max towers, Ground Floor,  
4th, 5th, 14th (A)Floor, 001A/1,  
Sector 16B, Noida, Uttar Pradesh - 201 301  
and also at Dalhousie Kolkata Branch,  
56A, Hemanta Basu Sarani,  
Stephen House, Kolkata - 700 001.

**APPLICANT/FINANCIAL CREDITOR**

Versus

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M/s. Ideal Unique Realtor Pvt. Ltd.,  
a company incorporated under the  
provisions of the Companies Act,2013  
and having its registered office at  
50, Jawaharlal Nehru Road, 11th Floor,  
Kolkata - 700 071.

**CORPORATE DEBTOR**

**Coram: Labh Singh Hon'ble Member(Judicial)  
Rekha K Shah Hon'ble Member(Technical)**

**Present:**

**For the applicant(s): Mr. Ratnanko Banerji Ld. Sr. Advocate  
Mr. Prasun Ghosh, Ld. Advocate  
Mr. Siddhartha Chatterjee, Ld. Advocate  
Mr. Soumya Kanjilal, Ld. Advocate**

**For the respondent/: Mr. Jishnu Saha Ld. Sr. Advocate  
Corporate Debtor Mr. Souryajit Dasgupta, Ld. Advocate  
Mr. Ishaan Saha, Ld. Advocate  
Ms. Sweta Mohanty, Ld. Advocate  
Mr. Kanishk Kumar, Ld. Advocate**

**For Applicant in  
IVN 1928/2025 Mr. D.N. Sharma, Ld. Sr. Advocate  
Mr. S.K. Ray, Ld. Advocate  
Ms. Ashmita Lohia Ld. Advocate**

**ORDER**

**Labh Singh Member(Judicial)**

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1. The applicant, Yes Bank Limited has filed the present application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short “IBC Code”) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity ‘the Rules’) with a prayer to trigger Corporate Insolvency Resolution Process(‘CIRP’) in respect of respondent Company M/s Ideal Unique Realtor Private Limited.
2. It is appropriate to mention that the applicant Bank, is a public Company incorporated under the Companies Act, 1956 and Banking Company within the meaning of Section 5(C) of the Banking Regulation Act, 1949, having its Registered Office at Yes Bank House, Prabhat Nagar, Off Western Express Highway, Santacruz East, Mumbai - 400 055. Northern Regional Corporate Office: Plot No. C, Max towers, Ground Floor, 4th, 5th, 14th (A) Floor, 001A/1, Sector 16B, Noida, Uttar Pradesh- 201 301.
3. Mr. Ankit Tulshan, Executive Vice President, duly authorized on behalf of applicant, has preferred the present application on behalf of the applicant for initiation of insolvency resolution process against the respondent under the IBC Code. A copy of the Power of Attorney dated 01.12.2023 has been placed on record as Annexure-I.

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4. The Respondent Company, M/s Ideal Unique Realtor Private Limited against whom initiation of CIRP process has been prayed for, was incorporated on 14.10.2006 having its registered office situated at 50, Jawaharlal Nehru Road, 11<sup>th</sup> Floor, Kolkata-700071. Since the registered office of the respondent corporate debtor is situated at Kolkata, and hence, this Adjudicating Authority having territorial jurisdiction over the State of West Bengal is the Adjudicating Authority in relation to the prayer for initiation of CIRP process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
5. Briefly stated the case of the applicant is that the Corporate Debtor has been a Constituent of the Financial Creditor and the relationship of Banker and constituent had been maintained; and as a result thereof, the Corporate Debtor approached the Financial Creditor for availing loan facilities. One Srawan Kumar Himatsingka was the livewire of the Corporate Debtor and other group of companies and had all alone represented the Corporate Debtor and other group of companies with the Financial Creditor. He has executed various documents to avail loan facilities.
  - 5.1 The Corporate Debtor, in consonance with Memorandum and Articles of Association, approached the Financial Creditor

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with a request to avail facilities for which a Board Resolution dated 09.08.2018 was passed by the Corporate Debtor. The Financial Creditor, after considering request made by the Corporate Debtor and relevant documents submitted, issued facility letters bearing no. YBL/DEL/FL/0768/2018-19 and Facility Letter No. UBL/DEL/FL/0768A/2018-19 both dated 09.08.2018 inter alia sanctioned Term Loan facilities of Rs.160,00,00,000, Term Loan-2 of Rs. 100,00,00,000/-(along with sublimit of NR Loan of Rs. 100,00,00,000/-), over draft limit aggregating to Rs. 15,00,00,000/-, Financial/Performance Bank Guarantee aggregating to Rs. 10,00,00,000/-, Treasury Limit of Rs. 20,00,00,000/-(with an overall limit of Rs. 160,00,00,000/-)

5.2 The Corporate Debtor, in consideration of the Financial Creditor having agreed to grant the aforesaid credit facility, executed Master Facility Agreement, Loan Agreement, Deed of Personal Guarantee, Declaration, Mortgage Deed and provided securities and guarantees of its movable and immovable properties by way of charge/mortgage/hypothecation/pledge. The Corporate Debtor also executed Deed of Hypothecation and Mortgage Deeds in between 18.02.2019 to 10.06.2019.

5.3 However, the facilities (being overdraft limit aggregating to Rs. 15,00,00,000, Term Loan 2 of Rs. 100,00,00,000,

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(along with sublimit of FCNR Loan of Rs. 100,00,00,000/-), Treasury Limit of Rs. 20,00,00,000/-) as sanctioned vide the above Facility letters were not availed by the Corporate Debtor and were subsequently cancelled by the Financial Creditor vide Facility Letter dated July 13, 2020 bearing No. YBL/DEL/FL/0240/2020-21.

5.4 Thereafter, the Financial Creditor issued Facility Letter No. YBL/DEL/FK/0747/2020-2021 dated 29.10.2020 stipulating additional terms and conditions for further disbursement of the term loan facilities and change in debt equity ratio. On request of the Corporate Debtor, the Financial Creditor vide Facility letter No. YBL/DEL/FK/1049/2020-2021 dated 24.12.2020 granted Working Capital Term Loan facility of Rs. 99,900,000/-

5.5 The Corporate Debtor, in view of prevailing Covid 19 situation had availed of the moratorium benefits in terms of RBI Circulars and expressed its inability to make payment of the accrued interest obligation on due date and on the basis of the request made by the Corporate Debtor, the Financial Creditor agreed to provide facilities in the nature of funded interest term loan which would comprise of the accrued interest obligation of the Corporate Debtor as on September 2, 2020. In relation to the same, the Corporate Debtor letter agreements.

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- 5.6 The Financial Creditor, in pursuance thereof vide Facility Letters dated May 5, 2021, January 13, 2022 and January 19, 2022 modified certain terms and conditions of the facility including change in security perfection timelines, changes in pricing benchmark, stipulation of additional security including creation of security over immovable properties of the Corporate Debtors and its group companies. Accordingly, Amended and Restated Loan Agreement was executed by the Corporate Debtor on 28.01.2022.
- 5.7 The group of companies of the Corporate Debtor created equitable mortgaged their immovable properties. In view of the same, equitable mortgage was recorded by way of execution of Directors Declaration and Memorandum of Entry on 28.01.2022. The group of companies of the Corporate Debtor created hypothecation on their share of consideration from sale of immovable properties. The hypothecation was recorded by way of execution of Deed of Hypothecation along with Power of attorney dated 29.01.2022.
- 5.8 It is further submitted that the said facilities were reduced to an amount of Rs. 9,90,00,000 vide facility letter bearing No. YBL/KOL/FL/001/2022-23 dated 01.04.2022. Since the above additional facilities were sanctioned to Corporate Debtor, mortgage on group companies of the Corporate Debtor were extended by way of execution of supplemental mortgage

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deeds all dated August 18, 2021. There were also certain rectifications required to be recorded in these Supplemental Mortgage Deeds, the respective mortgagees executed Deeds of Rectification all dated 17<sup>th</sup> May, 2022 in favour of the Financial Creditor.

5.9 Thereafter, vide facility letter ref. YBL/KOL/FL/723/2022-23 dated 30.03.2023, the Financial Creditor changed the mechanism of pricing and also ratified the security created for securing the dues of the Corporate Debtor.

5.10 The Corporate Debtor failed to operate the said accounts in terms of the agreement and/or arrangement and the Corporate Debtor started defaulting in the servicing of interest as well as the principal amount. Thus, the account became irregular and declared as Non-Performing Asset on 18.06.2023. Consequent upon failure on the part of the Corporate Debtor to repay the loans outstanding in conformity with the terms and conditions on the basis of which such loans were granted and to liquidate the dues of the Financial Creditor in spite of repeated requests and/or reminders, the Financial Creditor was compelled to call up the advance and issued Loan Recall Notice on 08.08.2023.

5.11 The said Srawan Kumar Himatsingka died on 02.11.2023 and left behind his legal heirs Ekta Sodhani, Nakul Himatsingka and Kanak Himatsingka. The said legal heirs are bound to

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discharge legal obligation of late Sh. Srawan Kumar Himatsingka.

5.12 The Corporate Debtor after availing the aforesaid credit facility failed to operate the said account in conformity with the terms and conditions on the basis of which it was granted and started defaulting in liquidating the outstanding/dues and/or to regularise the account there became due from and owing by the Financial Creditor to the Corporate Debtor an aggregate sum of Rs. 876,233,554.33 (Rupees Eighty Seven Crore Sixty Two Lakh Thirty Three Thousands Five Hundred Fifty Four and Paisa Thirty Three Only) outstanding as on 19.03.2024.

5.13 Sub-section (3)(b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Ram Ratan Kanoongo, for appointment as Interim Resolution Professional having registration number IBBI/IPA-001/IP/P00070/2017-18/10156 resident of 708, Raheja Centre, 7<sup>th</sup> Floor, Nariman Point, Mumbai with email ID [ram@headwayip.com](mailto:ram@headwayip.com). Mr. Ram Ratan Kanoongo has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There

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is a declaration made by him that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Ram Ratan Kanoongo as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7(3)(b) of the Code has been satisfied.

5.14 The applicant, in order to prove its case, has relied upon Power of Attorney dated 01.12.2023 Annexure-‘A’, certificate of incorporation and Master Data of Corporate Debtor Annexure-‘B’, Balance Sheet for the Financial Year 2021-22 Annexure-‘C’, Written Communication of IRP page No. Annexure-‘D’, Memorandum and Article of Association of Corporate Debtor Annexure-‘E’, Board Resolution of Corporate Debtor Annexure-‘F’, Facility Letters dated 09.08.2018 Annexure-‘G’ & ‘H’, Facility Agreement dated 10.09.2018 Annexure-‘I’, Master Facility Agreement dated 10.09.2018 Annexure-‘J’, Loan Agreement dated 10.09.2018 Annexure-‘K’, Schedule Containing Charged/Mortgage Properties Annexure-‘L’ & ‘M’, Registered Mortgage Deed for Developers Share in Ideal Unique dated 10.05.2019 Annexure-‘N’, Registered Mortgage Deed pertaining to project Ideal Royal dated 04.12.2018 Annexure-‘O’, Registered Mortgage Deed pertaining to project Ideal Grand dated 14.12.2018 Annexure-‘P’,

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Registered Mortgage Deed pertaining to project Ideal Exotica dated 10.06.2019 Annexure-‘Q’, Registered Mortgage Deed pertaining to project Ideal Aurum dated 23.02.2019 Annexure-‘R’, Deed of Hypothecation dated 18.02.2019 Annexure-‘S’, Deed of Personal Guarantee by Nakula Himatsingka and Late Sarwan Kumar Himatsingka dated 10.09.2018 Annexure-‘T’ & ‘U’, Non Disposal Undertaking by Nakula Himatsingka, and Gokula Chand Agarwal and Vikash Agarwal dated 10.09.2018 Annexure-‘V’, Corporate Guarantee Deed executed by Ideal Estate Ltd and Ideal Aurum Nirman LLP dated 10.09.2018 Annexure-‘W’, Cheques with declaration Annexure-‘X’, Facility Letter dated 29.10.2020 Annexure-‘Z’, Facility Agreement dated 01.04.2022 Annexure-‘AA’, Loan Agreement dated 02.03.2021 Annexure-‘BB’, Facility Letters and Amended and Restated Loan Agreement dated 28.01.2022 Annexure-‘CC’, Letter Agreement dated 20.01.2021 Annexure-DD, Supplemental Mortgage Deeds and Deeds of Rectification Annexure-‘EE’, Director Declaration and Memorandum of Entry both dated 28.01.2022 Annexure-‘FF’, Director Declaration dated January 28.01.2022 Annexure-‘GG’, Director Declaration and Memorandum of Entry both dated 28.01.2022 Annexure-‘HH’, Deed of Hypothecation and Power of Attorney dated 29.01.2022 Annexure-‘II’, Facility Letter dated 30.03.2023 Annexure-JJ, Statement of Account

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Annexure-‘KK’, Loan Recall Notice dated 08.08.2023  
Annexure-‘LL’, Certificate of Registration of Charge ‘MM’,  
NeSL Report Annexure-‘NN’, and RICLC Report Annexure-‘OO’.

5.15 The applicant has also placed on record a copy of record of default Annexure-‘NN’ filed with NeSL (information utility) in respect of default on the part of the Corporate Debtor in its repayment owed to the Financial Creditor.

5.16 Therefore, as per part IV of the application, it is claimed that as on 19.03.2024 a sum of Rs. 348,62,37,862.78 /- Rs. 876,233,554.33 (Rupees Eighty Seven Crore Sixty Two Lakh Thirty Three Thousands Five Hundred Fifty Four and Paisa Thirty Three Only) is due and payable by the respondent company. The applicant has prayed for allowing the present application and admit the Corporate Debtor in the CIRP process.

6. Respondent appeared in pursuance of notice issued by this Tribunal and filed its reply raising preliminary objection that the present application is not maintainable at law either on facts or law. There is no relationship of creditor and debtor between the applicant and respondent. The respondent being Real Estate Company could not be termed as Corporate Debtor. There is no debt as defined in IBC Code and accordingly, there is no default on the part of the Corporate Debtor.

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- 6.1 On merits, it has been replied that the Corporate Debtor and the Financial Creditor floated diverse real estate projects as is evident from the present application. The Financial Creditor acted as promoter and represented to the prospective homebuyers that the projects have been prepared, vetted and developed by the Financial Creditor along with Corporate Debtor. The Corporate Debtor deployed its men and machinery for the purpose of developing the said project. The Financial Creditor played a role of financier and promoter of the said real estate projects. Therefore, no amount was disbursed by the Financial Creditor for the time value.
- 6.2 The Corporate Debtor, upon various offers made by the Financial Creditor in the year 2018, approached the Financial Creditor for availing credit facilities. The Financial Creditor sanctioned diverse credit facilities in favour of the Corporate Debtor which were modified later on from time to time upon agreed terms and conditions as evident from sanction letters and addendum issued by the Financial Creditor.
- 6.3 The Financial Creditor, vide sanction letter dated 29.06.2018, sanctioned a non-revolving term loan of Rs. 320,00,00,000/- (Rupees Three hundred Twenty Crores Only) in favour of the Corporate Debtor for the purpose of refinance

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the existing secured and unsecured debt along with part finance of the construction cost for the projects for a tenure of 96 months with moratorium of twelve (12) months from the date of first disbursement. After a moratorium period of twelve (12) months, the principal loan amount was to be repaid in twenty eight (28) structured quarterly installments with interest at the rate of 4.55% per annum over and above Banks yearly MCLR.

6.4 The scheduled date for commercial operation of the projects being ideal Royale and Ideal Exotica was 31.08.2022. The Financial Creditor, in order to complete the project by the scheduled date and for repayment of existing debts, was obliged to disburse the sanctioned amount in term of sanction letter dated 09.08.2018. The loan amount was duly secured by creation of mortgage of various units and flats contained in diverse real projects of the Corporate Debtor and its sister concerns, such as Ideal Real Estate, Ideal Grand, Ideal Legacy, Ideal Royal, Ideal Exotica and Ideal Aurum and mortgage deed with supplemental mortgage deeds were executed.

6.5 It has further been replied that despite sanction of loan amount as per sanction letter dated 09.08.2018, no disbursement in term of sanction letter were made. The Financial Creditor has only disbursed an amount of Rs.

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341.28 crores against total sanctioned amount of Rs. 343.50 crores. The disbursement was crucial for implementation and completion of the projects and subsequent sale of the flats and units. Consequently, the Corporate Debtor suffered loss and damage and therefore, the Financial Creditor is estopped from taking coercive steps against the Corporate Debtor.

6.6 It has further been replied that during Covid-19 period, the Financial Creditor cancelled the overdraft facility of Rs. 30 crore and term loan of Rs. 20 crore along with PBG of Rs. 20 crore and swap facility of Rs. 40 crores. The said letter dated 13.07.2020 has been suppressed by the Financial Creditor which is filed as annexure-A with a reply affidavit. Thus, a total facility aggregating to Rs. 110 crore was taken away from the Corporate Debtor without any reason in arbitrary manner though funds were required at that stage due to prevailing covid. The Financial Creditor has failed to adhere to terms and condition of sanction letters. The Financial Creditor was bound firstly to disburse the loan amount and then claim recovery for the same.

6.7 The Financial Creditor, vide letter dated 03.07.2021, requested for various details from the Corporate Debtor with regard to various projects of the Corporate Debtor and the same were provided vide email dated 06.07.2021. The

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Financial Creditor was aware of dealing with the Corporate Debtor and its sister concerns with other Banks and Financial Institutions including ICICI Bank. The Financial Creditor, vide email dated 12.09.2021, alleged diversion of funds on account of sale proceeds not being routed through escrow account in entirety; however, escrow account was opened and maintained for the purpose of receipt of consideration from flat buyers. The flat buyers directly deposited the amount in an escrow account without involvement of the Corporate Debtor. The Financial Creditor was fully monitoring the sale of flats and receipt of consideration by the flat buyers in escrow account and despite this, the Financial Creditor levelled false allegation of diversion of funds against the Corporate Debtor.

- 6.8 It has further been replied that the Financial Creditor committed fundamental breaches of the contract entered between the parties which includes negligent act on the part of the Financial Creditor to make necessary disbursement of loan amount in favour of the Corporate Debtor which resulted in shortage of funds and delay in completion of projects and pressuring the Corporate Debtor to create collateral security in respect of Reckjoani and Tehoria Land despite no such obligation.

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- 6.9 The Corporate Debtor has always bonafide intention to discharge legitimate dues of the Financial Creditor and accordingly, proposed to liquidate the immovable asset which was contemplated at the time of disbursement of credit facilities. The Financial Creditor, in order to release security interest in the Joka property, imposed a condition of deposit of Rs. 30 Crore. The Financial Creditor was bound to release Joka property on receipt of environment clearance without any condition; however, due to non-release of security interest, the Corporate Debtor suffered immense loss and damage which resulted in failure of repayment of debt towards the Financial Creditor.
- 6.10 The Corporate Debtor, due to illegal practices adopted by the Financial Creditor, suffered shortage of funds. The creditors of the Corporate Debtor started approaching it with their claims; however, the Corporate Debtor could not satisfy them due to shortage of funds. The Corporate Debtor faced various legal proceedings under the provision of IBC 2016 where the Corporate Debtor was forced to settle by relinquishing its right in valuable properties. This further resulted in immense financial distress of the Corporate Debtor.
- 6.11 The Corporate Debtor could not complete the sale of units in various projects due to non-issuance of 'No Objection

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Certificate' (NOC) by the Financial Creditor. This resulted in seeking a refund of the entire sale consideration paid by the flat buyers. Though Financial Creditor issued NOC for two units in Ideal Unique Centre; however, by another letter dated 22.06.2023 sought to cancel the NOC in respect of the said tow units. The cancellation resulted in the demand for refund of the entire sale consideration paid by the flat buyers.

6.12 The Financial Creditor by issuing public advertisement/notification informed the public at large to exercise caution while purchasing flats constructed by the Corporate Debtor. This resulted in loss to the Corporate Debtor both financially and in its reputation to goodwill in the market.

6.13 The Financial Creditor recalled loan facility by issuing letter dated 30.06.2023; however, on the same day, renewed the loan facility to the extent of Rs. 299,00,90,701.45/- (Rupees Two Hundred Ninety Nine Crore Ninety Thousands Seven Hundred One and Paise Forty Five Only). Thus, the Financial Creditor acquiesced to all the alleged default of the Corporate Debtor and waived its right to take any step in respect thereof by granting further credit facilities. Therefore, the Financial Creditor cannot

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be permitted to proceed further with the present application.

6.14 The Financial Creditor issued demand notice dated 12.09.2023 under Section 13(2) of the SARFAESI Act 2002 to Ideal Real Estate Pvt Limited, notice dated 11.10.2023 to Ideal Aurum Nirman LLP and notice dated 11.01.2024 to Corporate Debtor which were duly responded. The account classified as non performing asset(NPA) by the Financial Creditor is contrary to guidelines issued by Reserve Bank of India. The Financial Creditor also issued show cause notice upon the Corporate Debtor to declare the account as 'Fraud Account' vide email dated 15.09.2023 which is illegal and arbitrary. The Financial Creditor also proceeded to take symbolic possession of secured assets under Section 13(4) of the SARFAESI Act 2002 which is illegal and void. The Financial Creditor also proceeded to declare the Corporate Debtor as wilful defaulter by issuing notice dated 12.06.2024. The Corporate Debtor was constrained to challenge the said action taken by the Financial Creditor by filing application under Section 17 of SARFAESI Act 2002 by filing SA No. 115 of 2024 before Ld. DRT.

6.15 The Financial Creditor has insisted upon the Corporate Debtor to submit a one time settlement proposal. The Corporate Debtor, in order to resolve the dispute, submitted

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a settlement offer vide letter dated 26.08.2024 and 06.11.2024. The said offers were accepted by the Financial Creditor for which the settlement agreement dated 13.12.2024 was executed between the parties. The Corporate Debtor had paid an amount of Rs. 25 crores which was unconditionally accepted by the Financial Creditor.

6.16 Thus, the Financial Creditor is well aware that the Corporate Debtor is a solvent company and did not commit any default at all. Therefore, the Financial Creditor has no cause of action to proceed under provision of IBC 2016. The present application has been filed to pressurise the Corporate Debtor for collateral purpose.

6.17 The diverse proceedings have been instituted by the various parties interested in the real estate projects of the Corporate Debtor and in view of pendency of the same, the present application deserves to be dismissed. The admission of the present petition would amount to interference with the lawful right of the respective parties including homebuyers. Therefore, the present company petition requires to be dismissed with cost.

6.18 The applicant Company filed its rejoinder denying the averment made in the reply and reiterating the facts as pleaded in the present petition which are not reproduced here for sake of brevity.

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- 6.19 The present application has been filed by the Corporate Debtor for dismissal of the Company Petition No. 176/KB/2024.
- 6.20 It has been submitted that after filing of the present Company Petition, the Financial Creditor has pursued its recovery proceedings by filing IA No. 176 of 2026 in pending OA No. 02 of 2024 seeking judgment on admission before Ld. DRT Kolkata. Thus the Financial Creditor has elected to pursue recovery proceedings and has no bonafide intention to resolve the alleged insolvency of the Corporate Debtor.
- 6.21 It has been submitted that the respondent is estopped from pursuing parallel and inconsistent remedies. Therefore, continuation of the present Company Petition amounts to abuse of process of law and hence the present petition deserves to be dismissed.
- 6.22 Based on pleading of the parties and the rival contentions raised by the Ld. Counsels for both the parties, the following points have arisen for determination:
- i. Whether pendency of application under Section 19 of the RDDBFI Act 1993 before DRT and initiation of SARFESI proceedings by the applicant affects hearing of the present company petition?

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- ii. Whether there is debt and default to trigger the CIRP process against the Corporate Debtor?
  - iii. Whether present Company Petition requires to be admitted for initiation of CIRP process of the Corporate Debtor?
  - iv. Relief, to which the applicant is entitled?
7. We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by the parties and heard the arguments put forth by learned Counsels for the parties; and after hearing the learned counsels for the parties, we shall now proceed to consider the present petition on its merits, specifically within the ambit of points involved in the instant application.

**Issue No. (i)**

8. Mr. Jishnu Saha Learned Senior Counsel argued that the Financial Creditor has filed IA No. 176 of 2026 for judgment on admission before Ld. DRT in OA NO. 02 OF 2024 filed under Section 19 of the RDDBFI Act 1993. The Corporate Debtor has also taken action under the provision of SARFAESI Act 2002. The Corporate Debtor has challenged the action taken under the provision of SARFAESI Act 2002 before Ld. Debt Recovery Tribunal by filing Securitisation Application No.115 of 2024 under Section 17 of the SARFAESI Act 2002. Thus, the

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Financial Creditor is seeking to use the IBC Code as a recovery mechanism and not as a resolution process.

9. He further argued that once an order of admission is passed and moratorium under Section 14 of the IBC Code, 2016 comes into operation, the Financial Creditor would be precluded from continuing proceedings before the Learned Debt Recovery Tribunal and under the provision of SARFAESI Act, 2002. The Financial Creditor has elected to pursue remedies under the RDBFI Act, 1993 and is consequently estopped from prosecuting the present Company Petition under Section 7 of the IBC Code, 2016.

10. Mr. Jishnu Shah, Learned Sr. Counsel relied upon the judgment pronounced by the Hon'ble Supreme Court in *Transcore us. Union of India & Anr. (2008) 1 SCC 125*, wherein Hon'ble Supreme Court held that the doctrine of election applies where two or more co-existent remedies are available to a litigant and such remedies are inconsistent with each other. It is pertinent to refer relevant observation of Hon'ble Supreme Court which is as follow:

*“In the light of the above discussion, we now examine the doctrine of election. There are three elements of election, namely, existence of two or more remedies; inconsistencies between such remedies and a choice of one of them. If any one of*

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*the three elements is not there, the doctrine will not apply. According to American Jurisprudence, 2d, Vol. 25, page 652, if in truth there is only one remedy, then the doctrine of election does not apply. In the present case, as stated above, the NPA Act is an additional remedy to the DRT Act. Together they constitute one remedy and, therefore, the doctrine of election does not apply. Even according to Snell's Equity (Thirty-first Edition, page 119), the doctrine of election of remedies is applicable only when there are two or more co-existent remedies available to the litigants at the time of election which are repugnant and inconsistent. In any event, there is no repugnancy nor inconsistency between the two remedies, therefore, the doctrine of election has no application".*

11. Hon'ble Supreme Court in case of **Trascore (Supra)** laid down the proposition of law that the proceedings under the RDDBFI Act, 1993 and the SARFAESI Act, 2002 are not mutually exclusive and may proceed simultaneously. The same analogy applies in a case where the proceedings under Section 7 have been initiated by the Financial Creditor as recognised in judgments passed by the Hon'ble Supreme Court in Kotak

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Mahindra Bank Ltd. vs. A . Balakrishnan, Tottempudi Salalith vs. State Bank of India and Elegna Cooperative Housing and Commercial Society Limited Us. Edelweiss Asset Reconstruction Company Limited & Anr., wherein it has been categorically held that pendency of recovery proceedings and/or enforcement proceedings does not create any bar to initiation of CIRP and that the doctrine of election cannot be invoked to prevent a Financial Creditor from approaching the Adjudicating Authority under Section 7 of the Insolvency and Bankruptcy Code, 2016.

12. Mr. Jishnu Saha, Learned Sr. Counsel further placed reliance on the case of *Anita Jindal vs. Jindal Buildtech Pvt. Ltd. & Anr. 2022 SCC OnLine NCLAT 3748* wherein the debt itself was disputed and there were allegations of malicious initiation of CIRP process under Section 65 of the IBC Code. The facts of the present case are entirely different for the above cited case. In the present case, there exists no dispute with regard to debt and default as the Corporate Debtor have admitted the existence of debt and default in the reply affidavit and Settlement Agreement dated 13th December, 2024.
13. Mr. Jishnu Saha Learned Sr. Counsel further placed reliance on the case of *Anjani Technoplast Limited vs. Shubh Gautam, reported in 2026 SCC OnLine 668* wherein core issue was

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whether insolvency proceedings could be resorted to as a substitute for execution of a Civil Court decree; however, no such issue is involved in the present case. The Financial Creditor is not having any such decree of Civil Court for which execution proceedings might have been instituted.

14. It is settled principle of law that in an application filed under Section 7 of IBC Code, if debt and default is established and there is no other impediment to admit the application, the initiation of CIRP process is but inevitable.

15. On this aspect, Hon'ble Supreme Court in case of *Elegna Cooperative Housing and Commercial Society Limited Vs. Edelweiss Asset Reconstruction Company Limited & Anrs.* 2026 SCC OnLine SC 882 recognised the proposition of law laid down in case of *Innoventive Industries Limited Vs. ICCI Bank (2018) 1 SCC 407* and observed that:

*12.3. The legal position is now well settled. In Innoventive Industries, this Court held that once the Adjudicating Authority is satisfied that a financial debt exists and a default has occurred, it must admit the application unless it is incomplete. The inquiry under Section 7(5)(a) is confined strictly to the determination of debt and*

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*default, leaving no scope for equitable or discretionary considerations."*

16. Hon'ble Supreme Court while considering the issue of parallel proceedings and allegations of misuse of the Insolvency and Bankruptcy Code, 2016 as a recovery mechanism, in *Elegna Cooperative Housing and Commercial Society Limited* (supra) further observed in para no. **12.11** and **12.13** that:

*"12.11. The contention that EARCL misused the Code as a recovery toll is equally untenable. The Code does not prohibit a financial creditor from invoking CIRP merely because recovery proceedings under the SARFAESI Act or before the DRT are pending or have been initiated. Section 238 accords overriding effect to the Code, and upon admission, the moratorium under Section 14 stays all such proceedings."*

*12.13. In Kotak Mahindra Bank Ltd. v. A. Balakrishnan and another, this Court held that the trigger point for CIRP is default, and that even a recovery certificate constitutes a fresh cause of action for initiation of insolvency proceedings. The mere pendency of parallel recovery proceedings*

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*does not establish mala fides unless abuse under Section 65 is demonstrated”.*

17. Thus, even if a recovery certificate might have been issued by the Debt Recovery Tribunal in favour of the Financial Creditor, it would not disentitle the Financial Creditor from maintaining proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016. Consequently, the initiation of SARFAESI proceeding under SARFAESI Act 2002 and challenge of the same before Ld. DRT under Section 17 of the SARFAESI Act 2002 and pendency of recovery proceedings filed under Section 19 of RDDBFI Act 1993 wherein application for admission on judgment has been filed cannot attract the doctrine of election or estoppel.

18. Hon’ble Supreme Court in case of *Tottempudi Salalith us. State Bank of India, (2024) 1 SCC 24*, which has been relied upon by the Hon’ble Supreme Court in case of *Elegna Cooperative Society Case(Supra)*, observed as follows:-

*“20. On behalf of the appellant, submissions have been made that the banks having approached the DRT, were barred under the doctrine of election from approaching NCLT for recovery of same set of debts. This is a doctrine embodied in the law of evidence, which bars prosecution of the same right in two different fora based on the same cause of action.*

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*But so far as the present appeal is concerned, the recovery proceedings before the DRT had commenced in the year 2014. At that point of time, IBC had not come into existence. Moreover, it has been held by this Court in Kotak Mahindra-1 [Kotak Mahindra Bank Ltd. v. A. Balakrishnan, (2022) 9 SCC 186 : (2022) 4 SCC (Civ) 548] that the recovery certificate itself would give rise to a fresh cause of action entitling a financial creditor to initiate Corporate Insolvency Resolution Process (CIRP). By this judgment, the right of the financial creditor to invoke the mechanism under IBC after issue of recovery certificate stood acknowledged as a valid legal course. This Court, in that case also dealt with the question of instituting a CIRP on the strength of recovery certificate. Needless to add, such recovery certificate arose out of a proceeding from the DRT. The enforcement mechanism for a recovery certificate is an independent course, which a financial creditor may opt for realisation of its dues crystallised under the 1993 Act, instead of chasing the mechanism under the 1993 Act.*

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21. IBC itself is not really a debt recovery mechanism but a mechanism for revival of a company fallen in debt, but the procedure envisaged in IBC substantially relates to ensuring recovery of debts in the process of applying such mechanism. The question of election between the fora for enforcement of debt under the 1993 Act and initiation of CIRP under IBC arises only after a recovery certificate is issued. The reliefs under the two statutes are different and once CIRP results in declaration of moratorium, the enforcement mechanism under the 1993 Act or the SARFAESI Act gets suspended. In such circumstances, after issue of recovery certificate, the financial creditor ought to have option for enforcing recovery through a new forum instead of sticking on to the mechanism through which recovery certificate was issued. In *Transcore v. Union of India* [*Transcore v. Union of India*, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116], application of SARFAESI mechanism was held permissible even though the subject-proceeding was instituted under the 1993 Act.

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*22. Thus, the doctrine of election cannot be applied to prevent the financial creditors from approaching NCLT for initiation of CIRP.”*

19. Therefore, in view of our aforesaid observation and law applicable thereon, we are of the view that pendency of proceeding under the provision of RDDBFI Act 1993 and initiation of SARFAESI proceeding by the Financial Creditor does not affect the proceeding of the present company petition for initiation of CIRP process against the Corporate Debtor.

**Issue No.(ii), (iii) & (iv)**

20. It is settled principle of law that an application filed under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence or existence of default. What is material is that the default is for at least Rs. 1,00,00,000/-. In view of the Section 4 of the Code, the moment default is of Rupees one crore or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable.

21. In the facts of the present case, it is seen that the applicant clearly comes within the definition of Financial Creditor. The material placed on record further confirms that the applicant financial creditor had sanctioned and

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disbursed loan above three hundred crores in favour of the Corporate Debtor.

22. The Financial Creditor has proved on record that a Term Loan of Rs. 160 crore was sanctioned in favour of the Corporate Debtor, Ideal Unique Realtor Pvt Limited. The Loan Facility Agreement dated 09.08.2018 was executed by the Corporate Debtor wherein the terms and condition of loan, the details security, event of default and repayment schedule has clearly been mentioned and agreed by the Corporate Debtor. The Corporate Debtor further executed the Master Facility Agreement dated 10.09.2018 wherein clause no. 2.7(i) provides details of repayment, clause no. 7.1 Provides for event of default, and clause 7.4 provides for consequence of default. The clause 2.6(i) of Loan Agreement dated 10.09.2018 also provides repayment schedule and clause 7 provides for events of default. Thereafter, an addendum to the Facility letter dated 09.08.2018 was executed on 29.10.2020.

23. The Corporate Debtor further availed Working Capital Term Loan of Rs. 99,990,000/- on 24.12.2020 and loan agreement dated 02.03.2021 was executed with full details of security ,event and consequences of default. Thereafter, an addendum Facility Letter dated 01.04.2022 was executed with revised terms and conditions by replacing the existing facility

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conditions. The Financial Creditor issued another Addendum Facility Letter amending the Facility letter dated 24.12.2020 and 01.04.2022 stipulating that the annexures thereto shall replace and be in addition to the earlier terms and conditions.

24. The Corporate Debtor had failed to regularise the loan accounts in terms of loan agreement and addendum issued thereto and accordingly, defaulted in repayment of loan amount. The Financial Creditor recalled the loan amount and classified the loan accounts as non-performing assets as per guidelines issued by the Reserve Bank of India.

25. It is also an admitted fact on the part of the Corporate Debtor that due to illegal practices adopted by the Financial Creditor, the Corporate Debtor suffered shortage of fund. Consequently, the creditors of the Corporate Debtor started approaching it with their claims; however, the Corporate Debtor could not satisfy them due to shortage of funds. It has further been admitted that due to various legal proceedings under IBC 2016, the Corporate Debtor faced immense financial distress. Thus, the corporate debtor has failed to show that there is no debt or default in existence so as to avoid the provisions of the Code.

26. The Corporate Debtor itself relied upon the settlement agreement dated 13.12.2024. It has been categorically stated

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therein that the Corporate Debtor, in order to resolve the dispute, submitted settlement offer vide letter dated 26.08.2024 and 06.11.2024 and said offers were accepted by the Financial Creditor. The parties entered into a settlement agreement dated 13.12.2024 and the Corporate Debtor paid an amount of Rs. 25 crores. As per Schedule-I of the Settlement Agreement, an aggregate amount of Rs. 390,26,71,834.42 (Rupees Three Ninety Crore Twenty Six Lakh Seventy One Thousand Eight Hundred Thirty Four and Paisa Forty Two Only) is outstanding as on 01.12.2024 which comprises principal amount, interest, default interest, penal charges and other charges.

27. Thereafter, the Corporate Debtor entered in settlement agreement dated 13.12.2024 wherein it has specifically been admitted that the Corporate Debtor is indebted to the Financial Creditor for outstanding amount of Rs. 97,47,03,205.35 as on 01.12.2024 detailed in Schedule-I of the Settlement Agreement. The said amount includes principal, interest, default interest, penal charges and other charges. It has also been recorded there that the Corporate Debtor has failed to repay the amount due and committed persistent breach and default. The relevant clause of the Settlement Agreement read as under:

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*“The Obligor/s failed and neglected to repay the amount due and payable under the Facilities to the Bank and committed persistent breach and defaults of the Transaction Documents.”*

28. It has further been recorded therein that the loan accounts of the borrowers were classified as non performing asset. The relevant clause read as under:

*“As a result, the loan accounts of Borrower 1, Borrower 2, Borrower 3 were classified and reported as non performing asset(‘NPAs’) on May 30, 2023, June 18, 2023 and August 2023 respectively.”*

The borrower-wise admitted outstanding dues has been mentioned in Schedule-1 of the Settlement Agreement. The admitted total outstanding dues in respect of the Corporate Debtor, Ideal Unique Realtor Pvt. Ltd is Rs. 97,47,03,205.35 as on 01.12.2024, comprising principal, interest, default interest, penal charges, and other charges and the principal outstanding being Rs. 91,75,24,976.1.

29. The Settlement Agreement further records that the borrowers themselves approached the Financial Creditor for One Time Settlement through letters dated 26.08.2024, 09.10.2024, 12.11.2024 and 25.11.2024. The relevant recital of the settlement agreement is reproduced verbatim as under:

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*"The Borrowers vide its Letters dated August 26, 2024, October 09, 2024, November 12, 2024 and November 25, 2024 ('OTS Proposal') approached the Bank to amicably settle their Outstanding Dues..."*

30. Therefore, the contention of the Corporate Debtor in its reply affidavit that the Corporate Debtor was constrained to enter into settlement agreement is beyond truth and imagination. The Corporate Debtor itself approached the Financial Creditor for amicable settlement of its outstanding dues. The Corporate Debtor along with Ideal Real Estate Pvt Limited, and Ideal Aurum Nirman LLP jointly and severally agreed to pay Rs. 270 crores as settlement amount. The settlement agreement further records that upfront amount of Rs. 25 crores payment be made in demand draft and balance amount of Rs. 245 crores shall be paid within 90 days from the date of execution of the agreement.

31. The Settlement Agreement expressly conferred upon the Financial Creditor the absolute right to terminate the Agreement upon failure of the obligors to pay the settlement amount or any part thereof within the stipulated timelines, or upon breach of any covenant. Upon failure to abide by the terms of the settlement agreement, the said agreement was terminated by the Financial Creditor and communicated vide

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email dated March 15, 2025, letter dated March 17, 2025 and letter dated March 18, 2026.

32. Thus, it has been established from pleading and documentary evidence available on record coupled with admission of the Corporate Debtor that there is debt above the threshold limit as statutorily fixed by Section 4 of IBC 2016 and there is default in payment of debt on the part of the Corporate Debtor.

33. On a bare perusal of Form - I filed under Section 7 of the Code read with Rule 4 of the Rules coupled with admission of the Corporate Debtor in its reply affidavit and settlement agreement dated 13.12.2024 proves that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional.

34. We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt of Rs. 876,233,554.33 (Rupees Eighty Seven Crore Sixty Two Lakh Thirty Three Thousands Five Hundred Fifty Four and Paisa Thirty Three Only) from the corporate debtor and that there has been default in payment of the financial debt on 19.03.2024.

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35. As a sequel to the above discussion and in terms of Section 7(5)(a) of the Code, the present application is admitted.
36. Mr. Ram Ratan Kanoongo, having registration number IBBI/IPA-001/IP/P00070/2017-18/10156 resident of 708, Raheja Centre, 7<sup>th</sup> Floor, Nariman Point, Mumbai with email ID [ram@headwayip.com](mailto:ram@headwayip.com). is appointed as an Interim Resolution Professional for the corporate debtor.
37. In pursuance of Section 13(2) of the Code, We direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency and Bankruptcy Code, 2016.
38. We direct the applicant Financial Creditor to deposit a sum of Rupees three Lakhs with the Interim Resolution Professional namely Mr. Ram Ratan Kanoongo to meet out the expenses to perform the functions/duties assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount however be subject to adjustment towards Resolution Process cost as per applicable rules.

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39. The moratorium is declared in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.”

40. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be

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terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.

41. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall

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be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

42. The Registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, West Bengal the earliest possible but not later than three days from today.

**I.A(IBC) No. 1928/KB/2025**

43. The present application has been filed by homebuyers and landowners seeking intervention in the present Company Petition and praying for impleading them as a party to the present application on the ground that the applicant claims interest in the project and subject property either in capacity of homebuyers or landowners and seek participation in the adjudication of the present proceeding filed under Section 7 of IBC 2016.

44. The present Company Petition is at the pre-admission stage, and the scope of enquiry remains confined to determination of existence of financial debt and occurrence of default.

45. Hon'ble Supreme Court in case *Elegna Cooperative Housing and Commercial Society Limited vs. Edelweiss Asset*

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has categorically held that proceedings under Section 7 of the IBC 2016 at the admission stage remain essentially bipartite in nature between the Financial Creditor and the Corporate Debtor and that unrelated third parties do not possess any independent right of audience at such stage. The relevant observation of the Hon'ble Apex Court is as follow that:

*"13.11.Proceedings under Section 7 are essentially bipartite at the admission stage, involving only the financial creditor and the corporate debtor. Unrelated third parties including other creditors, have no independent right of audience at this stage."*

Hon'ble Supreme Court further observed as follows:-

*"Accordingly, in the instant case, in the absence of any foundational right to participate in the proceedings before NCT or NCLAT, the appellant society cannot claim a vested right to be heard at the appellate stage, for such right flows from the statute and is not a matter of right."*

46.Hon'ble Supreme Court in Elegna Co-operative Society case(Supra) has also recognised that the Insolvency and

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Bankruptcy Code, 2016 itself contains a complete statutory mechanism safeguarding the interests of homebuyers and other stakeholders. The Hon'ble Supreme Court observed in para no. 13.21 as follows:-

*"Even Otherwise, no prejudice is demonstrated:*

*Homebuyers already in possession stand outside the insolvency estate. Pending allottees are recognised financial creditors who are entitled to file claims and participate in the CoC through authorised representatives. Regulation 4E protects possession subject to 66% CoC approval. Any approved resolution plan binds all stakeholders and ensures equitable treatment. RERA rights stand harmonized with the IBC as held by this Court in **Pioneer Urban Lan and Mansi Brar Fernandez.**"*

47. Consequently, permitting such intervention at this stage would enlarge and complicate the limited enquiry contemplated under Section 7 and convert the present proceedings into a forum for adjudication of collateral and inter-se disputes wholly outside the scope of admission proceedings.

48. Accordingly, the rights and interests of stakeholders, including homebuyers, are adequately protected under the

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statutory framework of the Insolvency and Bankruptcy Code, 2016 at appropriate stage.

49. In view of the above and law applicable thereon, the present applications seeking intervention and impleadment is dismissed being not maintainable at this stage.

50. Consequently, the present Company Petition (IB) No. 176/KB/2024 with IA (IBC) No. 440/KB/2026 and I.A (IBC) No. 1928/KB/2025 stands disposed of.

**Rekha Kantilal Shah**  
**Member(Technical)**

**Labh Singh**  
**Member(Judicial)**