IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH
[Through Physical hearing/ VC Mode (Hybrid)]

ITEM No.09
IA. Nos. 186, 188, 190, 193, 194,197/2021, 250/2023, 253/2021, 275/2021, 298/2021, 570/2022, 502, 638/2024, 645/2025, 414/2026 in C.P.(IB) No. 167/BB/2018

IN THE MATTER OF:

M/s Phoenix Arc Pvt Ltd … Petitioner

Vs.

M/s Soverign Developers & Infrastructure Ltd … Respondent

Petition under Section 7 of IBC, 2016

Order delivered on: 25.06.2026

CORAM:

SHRI. SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)

SHRI. RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the RP	: Shri Sushanth Belvet
For the Applicant in IA.638/24	: Ms. Aditi Gurjer
For the SRA	: Shri Varun S
For R-3 to R-7 in IA 186/2021	: Shri Akshay J Simha
For Applicant (Phoenix ARC) in IA 502/2024	: Shri Amit Singh Chadha, Sr. Adv. with Shikhar Kumar

ORDER

1. IA Nos. 250/2023, 275/2021, and 298/2021 have been **dismissed vide separate orders.**

2. **List the case on 23.07.2026 for orders on IA.No.638/2024** and hearing on other pending I.As. except PUFE Applications.

-Sd-	**-Sd-**
RADHAKRISHNA SREEPADA	**SUNIL KUMAR AGGARWAL**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

BL

IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

(*Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)*
(Hearing conducted through Hybrid mode)

I.A. No.250 OF 2023
in
C.P (IB) No. 167/BB/2018
Under Section 60 (5) of I & B Code, 2016 read with I & B Rules, 2016
And applicable Rules of NCLT Rules, 2016

IN THE MATTER OF:

1. **SHRI K.M KALAPPA**
2. **SHRI K.M MUDDAPPA**
3. **SHRI K.M KRISHNA MURTHY**
4. **SHRI K.M VASUDEVA MURTHY**
5. **SHRI K.M PATALAPPA**
6. **SHRI K.M KANAKARAJ**

All residents of Kalkere village,
Banaswadi Post, K.R Puram Hobli,
Bangalore East Taluk,
Bengaluru -560043 … Applicants

Versus

M/S. SOVEREIGN DEVELOPERS & INFRASTRUCTURE LIMITED,
Represented by Resolution Professional,
Shri Balakrishnan Venkatachalam,
GF 02, Ittina Parma-1
Apartments, Ramamurthy Nagar,
Bengaluru - 560016 … Respondent

Order delivered on: 25.06.2026

CORAM: **1. Shri Sunil Kumar Aggarwal, Hon'ble Member (Judicial)**
2. Shri Radhakrishna Sreepada, Hon'ble Member (Technical)

COUNSELS PRESENT:

For the Applicants	:	Shri Ajit
For Respondent/RP	:	Shri Chintana Chinnapa, Ms. Dibyangana, Mr. Chirag & Shri Balakrishna V

O R D E R

1. This Company Application was filed on 02.02.2023 by **Shri K.M. Kalappa, and 5 others** (hereinafter referred as "Applicants") under Section 60 (5) and other applicable provisions of I & B Code, 2016 read with I & B (Application to Adjudicating Authority) Rules, 2016 and applicable NCLT Rules, 2016 against **M/s. Sovereign Developers and Infrastructure Limited** (hereinafter referred as "Respondent") for the following reliefs:

   i. *Direct the Resolution Professional to include in the process Memorandum/Resolution Plan the claim of the applicants to the tune of Rs.47,41,79,760/- as damages as on 23.01.2023*

   ii. *Pass any such other order, issue any such other direction that this Hon'ble Tribunal deems it fit, in the interest of justice and equity.*

A. **<u>Facts stated in the application are as under:</u>**

   i. The applicants are the sons of Late. Sri. K.S. Munihanumaiah @ Munihanumiah. During his lifetime he had entered into a Supplemental Deed of Joint Development Agreement dated 02.09.2009 registered in the Office of the Sub-Registrar, Banasawadi as Document No. BNS-1-01845-2009-10, Book-1, stored in CD No. BNSD37 with the corporate debtor and subjected land bearing Survey No. 511 admeasuring ***5 acres and 16 guntas including the Kharab of 24 guntas***, and bounded on the East by: 60' Road formed in Sy. No. 511 of Kalkere Village; West by: Lands in Sy. No. 512, 513 and 520 of Kalkere Village; North by: Sy. Nos. 586 & 521 of Kalkere Village and on the South by: Sy. No. 502, 509 and 510 of Kalkere Village. Apart from the land bearing Survey No. 511 of Kalkere Village, he had also subjected his land bearing Survey No. 586, situated at Kalkere Village, K.R. Puram Hobli, Bangalore East Taluk, admeasuring ***5 acres and 39 guntas (along with 23 guntas of Kharab)*** and bounded on the East by: Kalkere Village Gramatana and Properties sold to Sri. K.

Shankaramurthy and Sri. M. Muniyappa @ Muniraju in same Survey Number; West by: Land bearing Survey numbers 523, 521, 524, 525 and 585 of Kalkere Village; North by: Lands belonging to Sri. Dodda Kempanna and sons and Sri. Muniyappa and sons and South by: Land bearing Survey No. 511 of Kalkere Village and Property sold to Sri. K. Shankar Murthy and Sri. K. Muniappa @ Muniraju in same Survey number and Survey number 500, 501 and 502 of Kalkere Village, for Joint Development with the corporate debtor under the Joint Development Agreement dated 31.08.2009 Registered in the Office of the Sub-Registrar, Banasawadi as Document No. BNS-1-01791-2009-10, Book-1, stored in CD No. BNSD37. For the purpose of brevity, the properties that are subject matter of joint development are hereinafter cumulatively referred to as 'Properties under joint development. The applicants being the sons of Sri. K.S. Munihanumaiah had signed the said joint development agreements as consenting witnesses.

ii. The applicants submit that their father Sri. K.S. Munihanumaiah had detailed distribution of apartments in favour of the applicants and also retained various apartment units for his benefit, in the said Registered Joint Development Agreements. It was agreed between the landowners and developer that the Developer shall execute necessary sale agreements/deeds with a condition that the consideration received from such sales require to be paid to the landowners. The applicants were required to join the sale agreements so that they could receive consideration from the intending purchasers. On the Corporate Debtor achieving additional FAR on account of the increased Road Width, the developer had put up additional constructions both residential and commercial. By passing necessary Board resolution dated 13.05.2010, the corporate debtor had additionally allotted 36 apartment units and 5,250 Square Feet of Super Built up Area of Commercial Space along with proportionate undivided right, title and interest in the land as Additional

Owner's Constructed Area in favour of Sri. K.S. Munihanumaiah and the said allotments were made in favour of Sri. K.M. Muddappa, the second applicant at the instance and instructions of his father. The said allotment is reaffirmed and confirmed by the corporate debtor vide the letter of authorization dated 06.06.2018. At an undisputed point of time, the Corporate Debtor had informed the income tax authorities regarding allotment of additional shares as could be seen from the letter dated 30.04.2013. The said document was secured from the concerned Income Tax authorities by the applicants by filing an application under RTI as could be seen from the letter dated 18.12.2013, produced as Document-6. The additional apartment units are dealt by Sri. K.M. Muddappa for the benefit of their entire family and various apartments are allotted/distributed/alienated as per the wishes of Sri. K.S. Munihanumaiah. In fact, out of the said 36 apartments, Sri. K.S. Munihanumaiah during his lifetime had allotted 3 apartments to Sri. K.M. Kalappa, the first applicant; 4 apartments to Sri. K.M. Muddappa, the Second applicant; 2 apartments to Sri. K.M. Krishnamurhty, the third applicant; 2 apartments to Sri. K.M. Vasudeva Murthy, the fourth applicant; 4 apartment units in favour of K.M. Patalappa, the fifth applicant and 4 apartment units to Sri. K.M Kanakaraju the sixth applicant. At the instance and instructions of Sri. K.S. Muniahanumaiah, Sri. K.M. Muddappa, the Second Applicant had agreed to sell 11 apartment units and all the proceeds realized out of the sale of the aforesaid 11 apartments are utilized for meeting out the family and other legal necessities of the applicants. Sri. K.S. Munihanumiah expired on 11.02.2017 whereafter the applicants are enjoying their respective apartment units as their absolute owners. The remaining 6 apartment units are held by all the applicants jointly along with the Commercial Space measuring 5250 Square Feet with proportionate undivided share in the land to be allotted in favour of Sri. K.M. Muddappa in terms of the Board Resolution dated 13.05.2010 as affirmed by the resolution of the Corporate Debtor dated 06.06.2018, in terms of the Registered Partition deed dated 25.01.2019.

iii. The corporate debtor had failed to discharge its obligations in terms of the registered joint development agreements referred to hereinabove and violated various terms of the contract including the timeline fixed for completion of the project. All along the applicants have expressed their deep concern as to the inaction of the corporate debtor and requested the corporate debtor to discharge its obligation in terms of the agreement and strictly adhere to the timeline fixed under the agreements. The corporate debtor had kept the applicants under an impression that it would complete the project without exposing the applicants or their share in the joint developments to any peril, loss or liabilities whatsoever as they have requisite skill, ability and resources to complete the project of such high magnitude. Under the joint development agreements, it is the responsibility of the corporate debtor to put up necessary constructions on the properties i.e., land bearing Survey Nos. 511 and 586 of Kalkere Village that are subject matter of development at its cost and expenses. In order to enable the Corporate Debtor to secure plans and licences and for other developmental activities the applicants along with their father Late. Sri. K.S. Munihanumaiah had also executed irrevocable power of attorneys in favour of the corporate debtor as could be seen from Document-9 and 10 respectively, which would subsist till the completion of the project.

iv. As per the joint development agreement dated 31.08.2009, the development of land bearing Survey No. 586 of Kalkere Village was to be completed within three years from the date of plan sanctioning with grace period of one year. The plan was sanctioned on 30.12.2010. The development by all means ought to have been completed on or before **30.12.2014.** With respect to land bearing Survey No. 511, the development was to be completed within three years from the date of plan sanctioning, with an additional grace period of one year. The plan for development was sanctioned on 19.03.2010 and the development should have been completed on or before **18.03.2014**. Till date, however, the project is not completed by the Corporate Debtor.

v. Under the joint development Agreement dated 02.09.2009, with respect to land bearing Survey No. 511 of Kalkere Village, the landowners got ***112 two bed room apartments*** while under the other Joint Development Agreement in respect of land bearing Survey No. 586 Kalkere Village, they got ***168 two bed room of apartments***. Further vide Resolution dated 13.05.2010 reaffirmed by letter of authorization dated 06.06.2018, the landowners were to get additional share of 36 apartments out of which ***12 two bed room apartments and 24 three bed room apartments besides 5250 Square Feet of Commercial space***.

vi. On account of the non-completion of the project in time, the landowners have suffered heavily. They were unable to answer the claims of purchasers claiming rights under the Landowners constructed area. On account of the default of the corporate debtor, the landowners have not only lost the opportunity of optimum utilization of their valuable lands but have also suffered financially and mentally due to the inordinate delay in completion of the project. As per the calculation of the impleading applicants, substantial sums were required to be invested by the Corporate Debtor. Had the project been completed in all respects, the landowners would have reaped the benefit of the developed areas of their share either by leasing or selling. They could have further invested their money in other properties for higher yield and benefit. The corporate debtor is liable to compensate the losses suffered by the landowners on account of delay in construction apart from compensating the opportunity and investment losses suffered by the landowners.

vii. The landowners have calculated their losses by keeping in mind the prevailing rental value of apartments in the locality. The loss of revenue for a two bedroom apartment therefore has been calculated @ Rs. 12,000/- per month and for a 3 bedroom apartment @ Rs. 15,000/- per month. The rental for commercial spaces is calculated @ Rs. 30/- per Square Feet.

viii. While calculating the loss of revenue, the landowners have taken into consideration the security deposits they ought to have collected out of rentals and calculated the interest @ 12% per annum. As per commercial practice, a minimum 10 months advance would be collected by the landlords and the same are taken into consideration while calculating the damages suffered by the landowners. It is pertinent to state that as per prevailing commercial practice rent is enhanced @ minimum of 5% annually and 10% with respect to commercial spaces. The same is taken into consideration in calculating the damages, which is quantified at **Rs. 12,35,75,600/-** with respect to land bearing Survey No. 511 of Kalkere Village and a sum of **Rs. 16,03,71,120/-** with respect to land in Survey No. 586 of Kalkere Village and a sum of **Rs. 1,20,45,670/-** with respect to commercial areas. In all, the applicants have claimed damages to the tune of Rs. 29,59,92,390/- (Rupees twenty-nine crores fifty-nine lakhs ninety-two thousand three hundred and ninety only) towards the losses suffered by them as aforesaid.

ix. The applicants have earlier filed the memo dated 21.09.2019 disclosing the damages suffered by them till then. The Tribunal by its Order dated 22.12.2020 on IA No. 24/2020 had directed the respondent to consider the claim of the applicants. However, till date the respondent has neither considered nor rejected the said claim for the reasons best known to him. To the shock and surprise of the applicants the Process Memorandum published by Respondent No.1 does not even make a mention of the said claim. As the applicants have quantified their **damages at Rs.29,59,92,390/-** (Rupees twenty nine crores fifty nine lakhs ninety two thousand three hundred and ninety only) **as on 21.09.2019**, the transaction being commercial in nature, the respondent is liable to pay the said amount along with interest @ 18% per annum. By taking the said amount into consideration, the applicants have calculated their claim of **interest as on 23.01.2023 at Rs. 17,81,87,370/-** (Rupees Seventeen Crores Eighty-One Lakhs Eighty-Seven Thousand Three Hundred and Seventy only) (i.e. for a period of 3 years, 4 months and 2 days on Rs. 29,59,92,390/-). In all the claim of the applicants as on 23.01.2013 is at Rs. 47,41,79,760/- (Rupees forty-seven crores forty-one lakhs seventy-nine thousand six hundred and sixty only). In the circumstances, having no other alternative, the landowners have filed this application to notify and consider the claim of the applicants/landowners to the tune of Rs. 47,41,79,760/- (Rupees forty-seven crores forty-one lakhs seventy-nine thousand six hundred and sixty only) as damages by including the same in their Process Memorandum/Resolution Plan.

B. **REPLY BY THE RESPONDENT/RP:**

2. The Respondent/RP has filed reply to the application vide Dy.No.2959 dated 06.06.2023 contending as under:

   a) The CIRP of Corporate Debtor (CD) commenced on 16.07.2019 and Interim Resolution Professional ('IRP') issued a public notice whereby claimants were directed to file their claims by 30.07.2019. The claimants had a right to file claims with IRP/RP till ninetieth day of insolvency commencement date which was over by 14.10.2019. Based on the order dated 22.12.2020, RP had given an opportunity to all the claimants to file/refile their claims, and also published a public notice on 02.01.2021 for maximum coverage. Based on the public notice, 96 new claims were submitted, verified and accepted/rejected. Thus, more than 1000 claims were verified/re-verified in total. In spite of all these opportunities, the Applicants till date have not submitted any claim with him.
   b) The Hon'ble National Company Law Appellate Tribunal ('NCLAT'), Principal Bench, in "***Madhya Pradesh Paschim Kshetra Vidyut Vitaran***

Co. Ltd. Vs. Jagdish Kumar RP for Madhya Bharat Phosphate Pvt Ltd *(Company Appeal (AT) (Ins) No. 1113 of 2020 & I.A. No. 443 of 2022)*" has held the following:

> *"42….. As regard the averments of the 'Appellant' about ratio of Essar Steels (Supra) it is noted that the payment of electricity dues are required to be suitably claimed in response to public announcement of the 'IRP/RP'. It is significant to note that in 2019, an amendment was carried out in Regulation of IBBI (Resolution Process for Corporate Persons) Regulation, 2016 wherein the word has been prescribed 'claim with proof' in place of earlier stipulated word 'proof of claim'. As per Regulation 12(1) of the IBBI (Resolution Process for Corporate Persons) Regulation, 2016, a creditor has to submit claims with proof on or before the last date mentioned in the public announcement and further Regulation 12(2) stipulates that a creditor, who fails to submit claim with proof within the time stipulated in public announcement, may submit claim with proof to IRP/RP on or before 90th days of the insolvency commencement date."*

Hon'ble NCLAT in the said order has also observed the following:

> *"38. This 'Appellate Tribunal' observes that the claim of the 'Appellant' is of pre-CIRP period and moreover the 'Appellant' has not even filed any claim with the IRP/RP and this 'Appellate Tribunal' has held in several judgments that pre-CIRP dues cannot be recovered unless the creditor files a claim with the IRP/RP…."*

Hence it is clear that the Applicants who have not filed a claim with the IRP/RP do not have any stake in the CIR process and have filed this application with malafide intention only to delay and derail the process.

c) The Applicants have claimed ownership of 316 flats including 36 Flats which are disputed and an application under section 66 of Insolvency and Bankruptcy Code, 2016 has been filed for the same. The Applicants are claiming notional rent and security deposit on the flats, which are not even completed and not ready for occupation, from 19.03.2014 onwards, based on assumptions. Till before the date of initiation of CIRP, however, they do not claim to have raised such demand with the Corporate Debtor. They have also not raised the issue before any court or forum for such notional amounts from the Corporate Debtor prior to CIRP. The amount in any case, pertains to the year 2014 and claim is barred by limitation.

d) The Applicants have calculated the amount by taking Rs.12000 as rent for 2BHK flats and Rs.15000 as rent for 3BHK flats which is baseless. They have also claimed interest on notional security deposit (taken from the imaginary tenants) but provided no basis for such calculation.

e) Over and above the notional rent + security deposit, the Applicants have claimed interest thereon @ 18% amounting to Rs. 17,81,87,3170/- from 21.09.2019 to 23.01.2023 i.e. the date of filing of this application. It is submitted that Corporate Insolvency Resolution Process ('CIRP') of CD commenced on 16.07.2019 and by virtue of Section 14 of the Code, Moratorium had triggered due to which such claim for interest on notional amounts after the initiation of CIRP cannot be accepted.

f) Moreover, the Applicants had filed I.A. 24 of 2020 with following prayer:

> *"Direct the Resolution Professional to notify the claim of the applicants/landowners at Rs. 29,59,92,390/- which had occurred due to the delay in completion of the project in time by the Corporate Debtor in addition to other rights of the applicants and order for the payment of the same on priority basis over the claim of other creditors of the Corporate Debtor."*

g) They had not filed any claim before the RP before filing of said IA 24 of 2020 and claim verification is one among the primary duties of the RP. Considering the same, the Tribunal directed RP to look into the merits of the claim vide its order dated 22.12.2020 as follows:

> *"10. We further direct the Resolution Professional to verify the claim of Rs. 29,59,92,390/- as per the JDA, attributable to the delay in the completion of the project, as claimed by the*

> *Applicant, and make good the due amounts as per the JDA from the existing assets of the Corporate Debtor to the maximum possible extent, in terms of the provisions of the Code."*

h) The RP having taken into consideration the documents submitted by the Applicants with IA 24 of 2020, communicated his decision vide addendum to report dated 12.08.2020 as follows:

> *"At the outset the aforementioned claim of the Applicant is rejected in toto as the Applicants being the landowners of Unnathi Project don't fall within the definition of Creditors in accordance with Section 2(10) of the Code which states that 'creditor' means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder. The Corporate Debtor does not owe any debts towards the Applicants. The reliefs sought by the Applicant arises out of the breach of contractual obligations alleged to have been committed by the Corporate Debtor under the Joint Development Documents. In our view, the competent jurisdiction related to the subject matter can only be a matter of civil rights as between the Parties and before the appropriate civil courts and/or the appropriate dispute resolution forum as is governed by the JDA. The rights of the Applicant would arise in the year 2014, and as such, those claims would be out of limitation."*

i) In compliance of order dated 22.12.2020, further details were sought from the Applicants vide email dated 19.02.2021 to their Counsel but no reply has been received till date. In the absence of further documents, the decision of RP as stated in addendum to report dated 12.08.2020 regarding the said claims remains valid and was intimated to the Tribunal vide Interim report dated 26.03.2021.

3. We have heard the Learned Counsels for Applicant and Respondent and gone through the material available on records.

4. The principal grievance of the Applicants is that despite the order dated 22.12.2020 in I.A. No.24/2020, their damages claim has not been included in the Process Memorandum or Resolution Plan and by the time of this application, the claim has grown to **Rs.47,41,79,760/-**.

5. Bare perusal of order dated 22.12.2020 would show that the Resolution Professional had been directed to verify the claim for damages of Rs.29,59,92,390/- of the Applicants attributable to the delay in completion of the project and to make good the due amounts as per the JDA from the existing assets of the Corporate Debtor to the maximum possible extent in accordance with the provisions of the Code. It would be sheer exaggeration to construe it as a direction to the RP to straightaway admit the claim of the Applicants. He had, in fact, been asked to verify and consider the claim in the background of the terms of JDAs and the applicable provisions of IBC.

6. From the material placed on record, it is evident that the Resolution Professional had considered the claim raised by the Applicants and recorded reasons for its rejection. The Resolution Professional has specifically stated that the claim arose out of alleged breach of contractual obligations under the Joint Development Agreements, and was in the nature of unadjudicated damages. The contractual rights asserted by the Applicants would require determination before an appropriate forum and until then the claim was not liable to be admitted in the CIRP process. Further information sought by the Resolution Professional was not provided to him.

7. The Applicants have not placed any material to establish that the Resolution Professional has not considered their claim or acted in disregard of the directions issued by this Authority of law. On the contrary, the documents relied upon by the Respondent indicate that the claim was examined and a reasoned decision was taken thereon and conveyed to the Applicants.

8. We also record that the amounts claimed by the Applicants are based on estimation/assumptions relating to prospective rental income, security deposits, escalation in rentals and other opportunity costs without any foundation. The entire quantification is based on notional calculations that has not been adjudicated by any competent judicial or arbitral forum. In the absence of any crystallised determination of liability and material demonstrating that the Resolution Professional has acted arbitrarily or contrary to the provisions of the Code, any direction mandating inclusion of the claimed amount in the Process Memorandum or Resolution Plan cannot be issued.

9. The jurisdiction of this Adjudicating Authority under Section 60(5) of the Code cannot be invoked to compel admission of a disputed and un-adjudicated claim merely because such claim has been asserted by a party. The scope of the present proceedings is limited to examining whether the Resolution Professional complied with the earlier directions of this Tribunal. On the basis of the material available on record, we are satisfied that the Resolution Professional has duly considered the Applicants' claim and has taken an appropriately reasoned decision thereon

10. Accordingly, we find no ground to interfere with the action of the Resolution Professional or to issue the directions sought for by the Applicants.

11. The Applicants have further independently failed to establish any legal basis for issuance of a direction compelling inclusion of the sum of Rs.47,41,79,760/- in the Process Memorandum or Resolution Plan.

12. Accordingly, I.A. No.250 of 2023 is hereby **dismissed**.

-Sd-	**-Sd-**
RADHAKRISHNA SREEPADA	**SUNIL KUMAR AGGARWAL**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**