Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH
(through web-based video conferencing platform)

Item No. 203
IA No. 481/JPR/2024
IA No. 219/JPR/2026
CP No. (IB)- 7/7/JPR/2024
Under Section 7 of IBC, 2016

In the matter of:

Union Bank of India (E-Andhra Bank) .... Financial Creditor/Applicant
Versus
SNG Realestate Pvt. Ltd. ...Corporate Debtor/Respondent

Coram: HON'BLE MS. REETA KOHLI, JUDICIAL MEMBER
HON'BLE MS. KAVITA BHATNAGAR, TECHNICAL MEMBER

PRESENT: -

For the Applicant : Abhishek Devgan, Adv.
Rachit Mittal, Adv.
Mohit Khandelwal, Adv.

For the Corporate Debtor : Amarjit Singh Chadhiok, Adv.
Naresh Kumar Sejvani, Adv.
Tanpreet Gulati, Adv.
Muchelle Julka, Adv.

ORDER

IA No. 219/JPR2026:-

Ld. Counsel for the applicant and also of the bank have concluded the arguments. For argument of the Corporate Debtor, posted to 05.10.2026.

Sd-
(Kavita Bhatnagar)
Technical Member

Sd-
(Reeta Kohli)
Judicial Member

September 15, 2026

SA

Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: MS. REETA KOHLI,
HON'BLE JUDICIAL MEMBER

MS. KAVITA BHATNAGAR
HON'BLE TECHNICAL MEMBER

IA (IBC) No. 516/JPR/2025
CP No. (IB)- 7/7/JPR/2024

IN THE MATTER OF:
Union Bank of India (E-Andhra Bank)

...Financial Creditor/Applicant

VERSUS

SNG Real Estate Private Limited

...Corporate Debtor/Applicant

MEMO OF PARTIES

IA (IBC) No. 516/JPR/2025:
SNG Real Estate Private Limited
R/o- 707, Paris Point,
Bani Park, Jaipur-302016 (Raj.)
Email: snggroup141@gmail.com

...Applicant/Corporate Debtor

VERSUS

Union Bank of India (Erstwhile: Andhra Bank)
R/o Union Bank Bhawan - 239, Vidhan Bhawan Marg, Nariman Point, Mumbai – 400021 (Maharastra)
Branch Office:
Asset Recover Management Branch CB-CH/38 Near Dwarika Das Garden, B2 Byepass, Mansrovar Jaipur-302020 (Raj.)
Email: - arbjaipur@unionbankofindia.bank; devganabhishek9@gamil.com

...Respondent/ Financial Creditor

For the Applicant : Amarjit Singh Chandhiok, Sr. Adv.
Tanpreet Gulati, Adv.
Naresh Kumar Sejvani, Adv.

Sd-

Sd-

Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

For the Respondent : Abhishek Devgan, Adv.
Gaurav Mitra, Adv.

Order Pronounced On: 15.09.2026

ORDER

Per: Ms. Reeta Kohli, Judicial Member

1. This Application bearing no. *IA (IBC) No. 516/JPR/2025* in *CP No. (IB) 7/7/JPR/2024* has been filed by *SNG REAL ESTATE PRIVATE LIMITED* ('Applicant'/ 'Corporate Debtor') under Section 65 of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') read with Rule 11 and 32 of The National Company Law Tribunal Rules, 2016 against the *Union Bank of India* ('Respondents'), *inter-alia* seeking the following reliefs:

   i) *"Take on record the subsequent events including the order dated 25.03.2025 passed by the Learned Real Estate Appellate Tribunal in Appeal Nos. 4 – 14 of 2022 and 32-42 of 2022; the order dated 03.07.2025 in S.B. Civil Miscellaneous Appeal No. 1723/ 2025, filed by the Non-Applicant Bank, by the Hon'ble High Court of Rajasthan, Jaipur Bench; and the disbursement requests, office notes prepared by the Petitioner Bank and the Certificates issued by the empanelled Chartered Accountant.;*

   ii) *Dismiss/ Reject the Company Petition filed by the Non-Applicant Bank seeking the Corporate Insolvency Resolution Process (CIRP) against the Applicant- Corporate Debtor;*

   iii) *Invoke the Section 65 of the Insolvency and Bankruptcy Code, 2016 and hold the initiation of the present proceedings under Section 7 of the Code is malicious and oppressive and that the Non-Applicant Bank has filed the petition with an intent to frustrate the ongoing judicial orders passed by the Learned Rajasthan Real Estate Appellate Tribunal (REAT), the Hon'ble High Court and the Hon'ble Supreme Court of India;*

Sd/-

Sd/-

Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

iv) Declare that the recovery of dues, if any, of the Non-Applicant Bank shall be affected only through the statutory authority, i.e., the Learned Real Estate Regulatory Authority (RERA) from the proceeds of the project and not directly from the Applicant-Corporate Debtor;

v) Declare that the liability of the Non-Applicant Bank has not been crystalized against the Applicant-CD and that no default has been occurred warranting the initiation of Corporate Insolvency Resolution Process (CIRP);

vi) In case, it is contended and held by this Hon'ble Adjudicating Authority that the present application under section 7 of IBC can be maintained by the Non-applicant Bank, then, in facts and circumstances of the case, the present proceedings be stayed pending implementation of the orders passed by the RERA Authority and affirmed in the first appeal by the Appellate Tribunal;

vii) Award the cost of litigation and impose the exemplary and deterrent cost on to the Non-Applicant Bank for suppressing, concealing the facts regarding the pending proceedings and misleading the Hon'ble Adjudicating Authority; and

viii) Pass any other orders as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the case."

2. The submissions made by the Applicant are as follows:-

2.1 The Applicant is engaged in the business of real estate development and it entered into a Revenue Sharing Development Agreement dated 25.04.2014 with the owners of land situated at *Ashok Marg, C-Scheme, Jaipur* for development of the residential project namely "Sunrise".

2.2 Pursuant thereto, the Directors of the Applicant approached the erstwhile Andhra Bank, now merged with *Union Bank of India* ('Respondent'), for financial assistance. On 17.06.2016, the

Sd/-

Sd/-

Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

Respondent sanctioned a Term Loan of ₹15 Crores, out of which ₹13.03 Crores was disbursed, repayable in twelve quarterly instalments. The loan was secured by creation of security interest over the immovable properties of the Applicant along with personal guarantees executed by its promoters.

2.3 The Applicant submitted the fact that the project had attained 80% completion stands duly recorded, both in the report of the empanelled Chartered Accountant and in the Bank's own averments. By that stage, an expenditure of ₹24.53 crores had already been incurred against the estimated project cost of ₹30.20 crores.

2.4 On 31.05.2018, the account of the Applicant was classified as NPA and the Respondent had invoked the proceedings under the SARFAESI Act and took the possession of the project on 03.10.2018. Thereafter, on 05.09.2020, Respondent issued an allegedly collusive auction notice and put to auction 19-flats only belonging to the Applicant against an outstanding amount of Rs. 19.09 crores.

2.5 The Applicant submitted that prior to the project financing extended by the Bank, rights and interests in several apartments had already vested in the respective allottees, along with their individual lending banks from whom such allottees had availed loan facilities. In contrary to this, the Respondent excluded 18 unencumbered flats belonging to the Landowners from the auction process.

Sdr

Sdr

Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

2.6 It is the case of the Applicant that as a consequence of the allegedly collusive auction conducted by the Respondent, multiple disputes arose, leading to invocation of jurisdiction before various *fora* including Ld. DRT, Hon'ble DRAT, Ld. RERA, Ld. Real Estate Appellate Tribunal ('REAT'), the Hon'ble High Court of Rajasthan at Jaipur, and the Hon'ble Supreme Court of India.

2.7 The Applicant submitted that despite pursuing the jurisdiction of the RERA Appellate Tribunal, the Respondent nevertheless chose to initiate proceedings by filing an Application under Section 7 of the Code, which remains pending adjudication before this Adjudicating Authority.

2.8 Further, the Ld. RERA, by a detailed order dated 20.09.2021, issued various directions and, *inter alia*, held that the action of the Respondent-Bank in auctioning the apartments was ex facie illegal. In doing so, the Authority categorically observed that the provisions of the Real Estate (Regulation and Development) Act, 2016 override the provisions of the SARFAESI Act, 2002, relying upon and applying the settled law as laid down by the Hon'ble Supreme Court of India.

2.9 The order dated 20.09.2021 was challenged by the Respondent Bank through *Writ Petitions No. 13658 to 13867 of 2021*, wherein it reiterated its contention that RERA lacked jurisdiction and could not override proceedings under the SARFAESI Act, 2002. The Hon'ble

Solr

Solr

Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

High Court of Rajasthan, by its order dated 14.12.2021, dismissed the said writ petitions and, inter alia, held that the Ld. RERA was vested with jurisdiction to entertain the complaint and pass orders notwithstanding the provisions of the SARFAESI Act, 2002. The Hon'ble High Court, however, granted liberty to the Respondent Bank to invoke the jurisdiction of the Ld. REAT under the provisions of the Real Estate (Regulation and Development) Act, 2016, if it had any grievance.

2.10 Being dissatisfied with the order of the Hon'ble High Court dated 14.12.2021, the Respondent Bank preferred *Special Leave Petitions (Civil) No. 1861–1871 of 2022* before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court, by its order dated 14.02.2022, disposed of the said petitions, affirming the order of the Hon'ble High Court dated 14.12.2021 as well as the order of the Ld. RERA dated 20.09.2021, thereby upholding the jurisdiction of RERA.

2.11 The Respondent and the Landowners accepting that the Ld. RERA was vested with jurisdiction had filed 22 separate appeals bearing *Appeal Nos. 4-14/2022* and *32-42/2022* before the Ld. REAT in which by the interim order dated 23.05.2022 the Respondent Bank was directed to comply with the directions issued by the Ld. RERA in the order dated 20.9.2021 and handover possession of project to the Registrar of the

Sdr

Sdr

Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

RER Authority. Thus, as of today, the RERA, is in possession of the project.

2.12 The Ld. Appellate Tribunal, REAT by its order dated 23.03.2025 had dismissed all 22-appeals filed by the landowners as well as the Respondent and upheld the order passed by the Ld. RERA dated 20.09.2021, against which the Respondent had filed the 11-appeals bearing (*S.B. Civil Miscellaneous Appeal Nos. 1723-1728 of 2025 & 1808- 1811 of 2025*) under Section 58 of the RERA Act, before the Hon'ble High Court of Rajasthan, Jaipur Bench, which incorporates the Section 100 of the CPC. It is pertinent to add that the order of the Ld. RERA affirmed by the Appellate Tribunal has attained finality.

2.13 It is the case of the Applicant that the Respondent, having elected to invoke and submit itself to the jurisdiction of the Appellate Tribunal under the provisions of the Real Estate (Regulation and Development) Act, 2016, is barred from simultaneously invoking the jurisdiction of this Hon'ble Adjudicating Authority.

2.14 The Applicant submitted that the Respondent, acting *malafidely* and illegally, filed an Application under Section 7 of the Code on 31.12.2023. On the said date, the first appeal was also filed by the Respondent which was pending and *sub judice* before the Ld. Appellate Tribunal (REAT). The Respondent, being conscious of the likely outcome of its appeals before the Ld. Appellate Tribunal (REAT) and

Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

with the intent to overreach the same, invoked the jurisdiction of this Adjudicating Authority. All such appeals were subsequently dismissed by the Ld. Appellate Tribunal vide order dated 25.03.2025.

2.15 Further, the Respondent has preferred 11-Second Appeals before the Hon'ble High Court of Rajasthan at Jaipur, being *S.B. Civil Miscellaneous Appeals Nos. 1723-1728 of 2025* and *1808- 1811 of 2025*, under Section 58 of the Real Estate (Regular & Development) Act, 2016. During the pendency of above appeals, by the Order dated 03.07.2025, the Hon'ble High Court of Rajasthan was pleased to refer the parties to mediation. However, the mediation proceedings did not result in any settlement.

2.16 Further, the Hon'ble High Court in the second appeal has not stayed the operation of the order passed by the Ld. Appellate Tribunal (REAT). However, the parties have been directed to maintain *status quo*.

2.17 It is contended that the Respondent was obligated to frame substantive questions of law in its second appeals, however, bare perusal of the second appeal would make it apparent that no substantive questions of law have been raised. The appeals filed by the Respondent, being contrary to the mandate of Section 100 of the CPC, are liable to be rejected on this short ground, be that as it may, pending the framing and determination of substantive questions of law that actually arise in the second appeals the matter is sub judice on identical facts as contended

Sd-

Sd-

Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

by the Respondent. The orders passed by the Ld. RERA, as well as those affirmed by the Ld. Appellate Tribunal, on facts and jurisdiction have attained finality.

2.18 Furthermore, it is contended that from the bare perusal of the Rejoinder to the main Petition under Section 7 of the Code, it is clear and evident that the Respondent had invoked the jurisdiction of this Hon'ble Adjudicating Authority just to exert the undue pressure on the Applicant. The present proceedings are thus motivated and run contrary to the principles and policy of the IBC.

2.19 Furthermore, the Section 79 of the RERA Act, 2016 specifically bars the jurisdiction of any other Court and/or Tribunal to entertain any proceedings in respect of any matter which falls with the said Act and the said bar is absolute and equally applies to the present proceedings before this Adjudicating Authority. Admittedly, the part of RERA Act, 2016 became operative on 25.03.2016 and the Code became operative w.e.f. 28.5.2016. However, the Section 79 of RERA, came into force on 01.05.2017, which is subsequent to IBC coming into force. Therefore, it has the overriding effect over the provisions of the Code.

2.20 It is the case of the Applicant that despite both the statutes being special Acts, the Section 79 of RERA, which has come into force lately, on 01.05.2017, would operate. The later provision, namely Section 79 of

Sd-

Sd-

Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

the RERA, in any event, would prevail over any inconsistent provisions contained in the Code of 2016.

2.21 It is contended that the loan facility was a Project finance confined to the project detailed in para 1 of the instant application. Other projects and business activities carried out by the Applicant are neither nor can be the subject matter before this Adjudicating Authority. Any order passed by this Adjudicating Authority will seriously prejudice and effect other projects and activities being carried out by the Applicant. The interests of other projects and their associated clauses cannot be prejudiced or adversely affected.

2.22 It is contended that the present initiation of the CIRP by the Respondent is barred by the admissions made in its own application invoking CIRP. Such initiation is contrary to the very object and scheme of the Code, which is intended to provide for reorganization and insolvency resolution of corporate persons, with the objective of maximization of assets and promotion of entrepreneurship. The Code does not contemplate or permit the use of its processes merely for recovery of money by a creditor, whether secured or operational.

3. The Respondent chose not to file any reply to the instant Application and the same has been recorded vide Order dated 04.11.2025. For ease of reference, the order dated 04.11.2025 is reproduced hereunder:-

Sd/-

Sd/-

Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

"Adv. Abhishek Devgan, accepts notice o behalf of Respondent and states that he does not wish to file reply to the present application. The counsel for the Applicant has concluded the arguments. To come up on 28.11.2025 for arguments on behalf of the Respondent-Bank."

4. The written submissions as tendered by the Respondent are as follows:-

4.1 Upon persistent default in repayment, the loan account of the Applicant was classified as a Non-Performing Asset (NPA) on 31.05.2018, with an outstanding amount of ₹14,06,00,456.33. Consequently, the Respondent issued a demand notice under Section 13(2) of the SARFAESI Act, 2002 on 01.06.2018.

4.2 Thereafter, the Respondent issued auction notices dated 02.03.2019 and 21.06.2019 for sale of the entire project. However, both auctions failed due to absence of bidders.

4.3 During the course of recovery proceedings in 2019, the Respondent came to know that several flats in the "Sunrise" project had been financed by third-party financial institutions including ICICI Bank despite the project being exclusively charged in favour of the Respondent.

4.4 Accordingly, the Respondent addressed an e-mail dated 18.03.2019 to ICICI Bank seeking details of such transactions. In response, ICICI Bank, vide its communication dated 02.04.2019, informed the Respondent that it had extended housing finance in respect of Flat *Nos.*

Sd/-

Sd/-

Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

501, 502, 503, 504, 603, 902, 903, 401, 402 and 404 on the basis of Builder Buyer Agreements, Tripartite Agreements and Permissions to Mortgage. Annexed in as Annexure A-20, Pg 35-36, rejoinder of UBI in CP(IB) 7/2024.

4.5 Likewise, PNB Housing Finance Limited, vide its communication dated 30.03.2019, informed the Respondent that it had financed Flat No. 901 and sought necessary information pertaining to the project. Annexed in as Annexure A-21, Pg 37-38, rejoinder of UBI in CP(IB) 7/2024.

4.6 Upon further inquiry, the Respondent discovered that the promoters/directors of the Applicant had alienated and sold a substantial portion of the project inventory to various homebuyers without informing the Respondent or obtaining its prior No Objection Certificate, despite the project being mortgaged in favour of the Respondent.

4.7 It was further revealed that, contrary to *Clause 7* of the Sanction Letter dated 17.06.2016, the Applicant had failed to route the project receivables through the designated Escrow Account and had diverted the sale proceeds and loan funds in breach of the agreed terms.

4.8 In view of the aforesaid discoveries, the Respondent initiated an internal investigation, culminating in an Internal Investigation Report dated 09.08.2019, which revealed large-scale diversion and siphoning

Sd-

Sd-

Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

of loan proceeds and project receivables to sister concerns, related parties and personal accounts.

4.9 Consequently, the loan account of the Applicant was classified as "Fraud" on 19.03.2020 and reported to the Reserve Bank of India on 23.03.2020. Annexed in as Annexure A-22, Pg 39-43, rejoinder of UBI in CP(IB) 7/2024.

4.10 Thereafter, pursuant to a written complaint dated 08.03.2022 lodged by *Mr. Harimohan Meena*, Deputy Regional Manager, Union Bank of India, Jaipur, the Central Bureau of Investigation, Bank Securities and Fraud Branch, New Delhi, registered an FIR against the promoters/directors of the Applicant, unknown public servants and other persons, including officials of the Bank, for offences punishable under Sections 120B, 403, 406, 409 and 420 of the Indian Penal Code, 1860 Annexed in as Annexure -17, Pg 283-291, reply in CP(IB) 7/2024.

4.11 In the meantime, owing to the multiple failures of auction and considering the commercial viability and marketability of the assets, the Respondent proceeded with phased recovery by issuing third auction notice dated 05.09.2020 for auction of 19 flats belonging to the Corporate Debtor.

4.12 The auction notice dated 05.09.2020 was challenged by various homebuyers before the Debts Recovery Tribunal by filing Securitisation Applications, including SA Nos. 213, 221 to 226 and 236

Sdr

Sdr

Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

of 2020, which came to be dismissed by the learned DRT vide order dated 26.11.2020. The appeals against the said order are presently pending before the Hon'ble DRAT. The Applicant also challenged the said auction notice by filing SA No. 291 of 2020, which was dismissed vide order dated 20.11.2021, and the appeal thereagainst was rejected for non-compliance with the statutory pre-deposit requirement.

4.13 Thereafter, several allottees instituted complaints under Section 31 of the Real Estate (Regulation and Development) Act, 2016 before the learned RERA Authority. Vide common order dated 20.09.2021, while holding that the auction notice could not extend to allotted units, the learned RERA Authority expressly observed that the Respondent was at liberty to recover its dues by, inter alia, enforcing personal guarantees, auctioning unallocated flats, restructuring the loan, initiating insolvency proceedings under the Insolvency and Bankruptcy Code, 2016, or pursuing liquidation proceedings.

4.14 Aggrieved by the order dated 20.09.2021, the Respondent preferred Writ Petition Nos. *13688 to 13867 of 2021* before the Hon'ble Rajasthan High Court, contending, inter alia, that the RERA Authority lacked jurisdiction to interfere with proceedings under the SARFAESI Act. The writ petitions were dismissed on 14.12.2021, while granting liberty to avail the statutory appellate remedy before the Real Estate Appellate Tribunal. The said order was challenged before the Hon'ble

Sd/-

Sd/-

Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

Supreme Court in *SLP (Civil) Nos. 1861– 1871* of 2022, which came to be disposed of on 14.02.2022.

4.15 Pursuant thereto, the Respondent preferred Appeal Nos. *4-14 of 2022 and 32-42 of 2022* before the learned Real Estate Appellate Tribunal against the RERA order dated 20.09.2021.

4.16 In the interregnum, after exhausting its remedies under the SARFAESI Act and with a view to safeguarding the interests of all stakeholders and ensuring value maximisation of the assets of the Applicant, the Respondent instituted the present application under Section 7 of the IB Code, 2016 on 30.12.2023 seeking initiation of CIRP Process against the Corporate Debtor.

4.17 During the pendency of Section 7 petition, the learned REAT, vide judgment dated 25.03.2025, upheld the order dated 20.09.2021 passed by the RERA Authority.

4.18 Consequently, certain homebuyers submitted a scheme/proposal before the Ld. RERA authority for completion of the project in terms with the order dated 20.09.2021.

4.19 Aggrieved thereby, the Respondent preferred S.B. Civil Miscellaneous Appeal Nos. *1723-1728 of 2025* and *1808-1811 of 2025* before the Hon'ble Rajasthan High Court under Section 58 of the Real Estate (Regulation and Development) Act, 2016. Vide order dated 03.07.2025, the Hon'ble High Court directed the parties to maintain *status quo* while

Sol

Sol

Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

also observing that such order would not be allowed to used or misused for any other litigation before any other forum and the said appeals are presently pending adjudication.

4.20 During the pendency of the aforesaid proceedings, the Applicant has filed the present application under Section 65 of the Code seeking dismissal of the Financial Creditor's Section 7 petition on allegations of fraudulent and malicious initiation of insolvency proceedings after almost two years of filing Section 7 petition.

5. We have heard the Ld. Counsels for the parties and perused all the documents placed on record including the written submissions tendered by the Respondent-Bank.

6. The instant Application has been filed by the Applicant (i.e., the Corporate Debtor) under Section 65 of the Code alleging the initiation of the proceedings initiated by the Respondent (i.e., the Financial Creditor/ Bank) under Section 7 of the Code as malicious and oppressive. It is the case of the Applicant that the Respondent has filed the main petition with an intent to frustrate the ongoing judicial orders passed by Ld. REAT, the Hon'ble High Court and the Hon'ble Supreme Court of India. On the other hand, the Respondent has argued that the pendency of proceedings under RERA, REAT, SARFAESI or other forums does not render the present Section 7 petition malicious or non-maintainable.

Sd-

Sd-

Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

7. At this juncture, this Adjudicating Authority considers it appropriate to look into the Section 65 of the Code. The same is reproduced hereunder:-

> *"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."*

8. From a bare pursual of the Section 65, the key ingredients of the same can be enumerated as follows:

i. Fraudulent or Malicious Initiation: The provision applies when insolvency proceedings are initiated with fraudulent or malicious intent rather than for resolving genuine financial distress.

ii. Fraud means Wrongful Gain or Wrongful Loss: The Petitioner initiating must have done so with the intention of securing an undue advantage (wrongful gain) or causing harm to another party (wrongful loss).

Sdr

Sdr

Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

9. The Hon'ble Supreme Court in *West Bengal State Electricity Board Vs. Dilip Kumar Ray*, Civil Appeal 5188 of 2006 dated 24th November 2006, defined the term 'malicious'. The extracts of the Judgement are reproduced below:

> *"Malice means in law wrongful intention. It includes any intent which the law deems wrongful, and which therefore serves as a ground of liability. Any act done with such an intent is, in the language of the law, malicious, and this legal usage has etymology in its favour. The Latin militia means badness, physical or moral – wickedness in disposition or in conduct – not specifically or exclusively ill-will or malevolence; hance the malice of English law, including all forms of evil purpose, design, intent, or motive. But intent is of two kinds, being either immediate or ulterior, the ulterior intent being commonly distinguished as the motive. The term malice is applied in law to both these forms of intent, and the result is a somewhat puzzling ambiguity which requires careful notice. when we say that an act is done maliciously, we mean one of the two distinct things. We mean either that it is done intentionally, or that it is done with some wrongful motive."*

10. Further, the Hon'ble NCLAT in *Monotrone Leasing Pvt. Ltd. Vs. PM Cold Storage Pvt. Ltd., [2020] ibclaw.in 21 NCLAT,* reaffirmed this principle, holding that a petition under Sections 7, 9, or 10 of the IBC cannot be rejected solely on the ground of lack of intent for resolution, unless there is explicit documentary proof of fraudulent or malicious intent.

> *"**34**. Section 65 of the Code provides for penal action for initiating Insolvency Resolution Process with a fraudulent or malicious intent or for any purpose other than the resolution. However, the same cannot be construed to mean that if a petition is filed under Section 7, 9, or 10 of the Code without any malicious or fraudulent intent, then also such a petition can be rejected by the Adjudicating Authority on the ground that the intent of the Applicant/Petitioner was not resolution for Corporate Insolvency Resolution Process. As the proceedings under IBC are summary in nature, it is difficult to determine the intent of the*

Sd-

Sd-

Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

Applicant filing an application under Section 7, 9, or 10 of the Code unless shown explicitly by way of documentary evidence. This situation may arise in specific instances where a petition is filed under IBC specifically with a fraudulent or malicious intent."

11. Hence, it can be concluded that merely filing an application under Sections 7, 9 or 10, or alleging forum shopping or recovery motive, does not suffice the requirements for establishing a case under Section 65 of the Code. Unless cogent documentary evidence establishes both the factual foundation and the requisite intent, Section 65 is not made out. The burden of proof lies squarely on the applicant invoking Section 65, and bald or unsubstantiated allegations cannot meet the rigorous standard required under law.

12. The instant Application has been filed by the Applicant under Section 65 of the Code solely on the ground that pendency of proceedings under RERA, REAT, SARFAESI and other forums render the Section 7 proceedings malicious and are not maintainable.

13. With respect to RERA proceedings, it is pertinent to refer to the judgment of the Hon'ble Apex Court in *Pioneer Urban Land and Infrastructure Ltd. and Anr. v. Union of India and Ors*., (2019) ibclaw.in 13 SC wherein it held that the RERA is to be read harmoniously with the Code and the Code will prevail over the RERA only in the event of conflict. The relevant para of the aforementioned judgment is reproduced hereunder:-





Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

"89. ....

Conclusion

i. The Amendment Act to the Code does not infringe Articles 14, 19(1)(g) read with Article 19(6), or 300-A of the Constitution of India.

ii. The RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over the RERA. Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.

iii. Section 5(8)(f) as it originally appeared in the Code being a residuary provision, always subsumed within it allottees of flats/apartments. The explanation together with the deeming fiction added by the Amendment Act is only clarificatory of this position in law."

14. It is well settled that the IBC is a special and overriding statute, and by virtue of Section 238 of the Code, its provisions shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force. A similar view has been taken by the Hon'ble NCLAT in the matter of *The Directorate of Enforcement v. Sh. Manoj Kumar Agarwal*, Company Appeal (AT) (Insolvency) No. 575/2019 in para 41 of the Judgement. The relevant para of the aforementioned judgment is reproduced hereunder:-

"41.....Although it is argued that PMLA is a special statute and has an overriding effect still Section 238 of IBC is also a special statute and which is subsequent statute. IBC has specific object, which is to consolidate and amend laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximization of value of assets of such persons and to promote entrepreneurship.

Sd-

Sd-

Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

availability of credit and balance the interest of all stakeholders including alteration in the order of priority of payment of Government dues."

15. Further, it is also well settled position that the proceedings under the Code are different and independent from the proceedings under SARFEASI Act, 2002. The Hon'ble NCLAT in *Punjab National Bank v. M/s Vindhya Cereals Pvt. Ltd.,* (2020) ibclaw.in 239 NCLAT observed that parallel proceedings under the IBC and SARFAESI Act can exist. The relevant paragraphs of the said judgement is reproduced as follows:-

*"8.This Tribunal in the case of Company Appeal (AT) (Ins) No. 323/2019 (**Neeraj Jain Vs. Yes Bank Ltd. & Anr.**) decided on 10.04.2019 held that Section 7 being an independent proceedings is nothing to do with the pendency of Criminal Case relating to misappropriation of funds. This Tribunal in the case of App. (AT) (Ins) No. 1021/2019 (**Karan Goeal Vs. M/s Pashupati Jewellers & Ors.**) decided on 01.10.2019 held that merely because suit has been filed by the Financial Creditor and pending, cannot be ground to reject the application under Section 7 of the I&B Code.*

9. In the light of above pronouncement, we are of the considered view that the Financial Creditor can proceed simultaneously under SARFAESI Act, 2002 as well as under I&B Code. Section 238 of I&B Code provides that the provisions of this code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by the virtue of any such law. Thus, the non-obstante clause of the I&B Code will prevail over any other law for the time being in force."

16. Further, by virtue of the non-obstante clause in Section 238 of the Code, the provisions of the Code will override any claim for priority under any other

Sd-

Sd-

Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

law. Hence, the jurisdiction of this Adjudicating Authority is therefore not ousted merely because an alternative remedy exists under another statute.

17. It is to be noted that the remedies available under the SARFAESI Act, the RERA Act, and the Code are distinct in their scope, purpose, and statutory framework, yet they operate concurrently and complement one another. Each enactment addresses different legal rights and obligations. The SARFAESI Act facilitates the enforcement of security interests by secured creditors, whereas RERA protects the interests of homebuyers and regulates the real estate sector, and the Code provides a collective insolvency resolution mechanism for financially distressed corporate entities. The availability of parallel remedy or pendency of proceedings under one statute does not exclude or diminish the remedy available under the others unless there is an express statutory bar. Consequently, the mere initiation or continuation of proceedings under the SARFAESI Act or RERA cannot, by itself, render an application under the Code mala fide or legally untenable. As long as the statutory requirements under the Code are satisfied, a creditor is entitled to invoke its remedies independently, and the simultaneous pursuit of remedies under different statutes is consistent with the legislative scheme and settled judicial principles. The mere pendency of proceedings under one statute neither bars nor renders the remedy under the Code *mala fide*.

Solr

Solr

Case Citation: (2026) ibclaw.in 3562 NCLT

IBC Laws | www.ibclaw.in

18. Based on the above findings and discussions, the Corporate Debtor has failed to produce any explicit documentary proof of fraudulent or malicious intent on the part of the Respondent/Financial Creditor. None of the elements under Section 65 of the Code have been established by the Corporate Debtor against the Financial Creditor. Hence, the instant IA is devoid of merit.

19. Accordingly, the *IA (IBC) No. 516/JPR/2025* stands *dismissed* and *disposed of*.

REETA KOHLI
JUDICIAL MEMBER

KAVITA BHATNAGAR
TECHNICAL MEMBER

LRA/EV