

**BEFORE THE NATIONAL COMPANY LAW APPELLATE  
TRIBUNAL, AT NEW DELHI  
(APPELLATE JURISDICTION)  
I.A. NO. 919 OF 2026  
IN  
COMPANY APPEAL AT (INSOLVENCY) NO. 791 OF 2023  
IN THE MATTER OF:**

Devendra Singh ...Appellant

Versus

Homebuyers of Sidhartha  
Buildhome Private Limited & Ors. ...Respondents

**AND IN THE MATTER OF:**

Sidharth Chauhan  
Director (Powers Suspended)  
Sidhartha Buildhome Private Limited ...Applicant

Versus

Punjab & Sind Bank and Ors. ...Respondents

**INDEX**

**NDOH: 25.02.2026**

<b>SL. NO.</b>	<b>PARTICULARS</b>	<b>PAGE NO</b>
<b>1.</b>	Objections on behalf of the Respondent No.14, Alpha Corp Development Limited, the Successful Resolution Applicant, to the proposal dated 30.10.2025 and 30.11.2025 submitted by the applicant/director with Powers Suspended of the Corporate Debtor	<b>1-35</b>
<b>2.</b>	<b>ANNEXURE - 1</b> True Copy of the Order dated 05.02.2026	<b>36-38</b>

<b>3.</b>	<b>ANNEXURE – 2</b> True Copy of the Board Resolution dated 24.07.2025 authorizing Mr. Santosh Singh Mehra to act on behalf of Alpha Corp Development Limited	<b>39</b>
<b>4.</b>	<b>ANNEXURE -3 (COLLY)</b> True copies of the Orders dated 24.05.2023 and 16.02.2024	<b>40-90</b>
<b>5.</b>	<b>ANNEXURE – 4</b> Copy of the Order dated 22.07.2024	<b>91-93</b>
<b>6.</b>	<b>ANNEXURE – 5</b> Copy of the Order dated 02.05.2025	<b>94-97</b>
<b>7.</b>	<b>ANNEXURE – 6</b> Copy of the Order dated 09.09.2025	<b>98-104</b>
<b>8.</b>	<b>ANNEXURE – 7</b> Copy of the Press Release dated 31.03.2025	<b>105</b>
<b>9.</b>	<b>ANNEXURE – 8</b> Copy of the Order dated 22.12.2025 of the Hon’ble High Court of Punjab and Haryana	<b>106-117</b>
<b>10.</b>	<b>ANNEXURE – 9</b> True copy of the Order dated 13.11.2019	<b>118-210</b>
<b>11.</b>	<b>ANNEXURE – 10</b> True copy of the Order dated 13.12.2021	<b>211-232</b>
<b>12.</b>	<b>ANNEXURE – 11</b> True copy of the Order dated 06.01.2026 in SLP (CrI) No.37/2026 by the Hon’ble Supreme Court.	<b>233-234</b>
<b>13.</b>	<b>ANNEXURE – 12</b> True copy of the Order dated 13.02.2026 in Miscellaneous Application No. 297/2026 in SLP(CrI) No.36/2026 by the Hon’ble Supreme Court	<b>235</b>

<b>14.</b>	<b>ANNEXURE – 13</b> True Copy of the Agreements dated 05.07.2023	<b>236-251</b>
<b>15.</b>	Vakalatnama	<b>252</b>
<b>16.</b>	Proof of Service	<b>253</b>

**THROUGH**

*Vais*

**(SANDEEP BHURARIA) (VAISHNAVI PRAKASH)**  
**(V ATSALA PANDEY)**

Counsel for the Respondent No.14  
2, Palam Marg, Vasant Vihar, New Delhi-110057  
Mobile No. 8102228837

E-MAIL: [vaishnavi.prakash@zeus.firm.in](mailto:vaishnavi.prakash@zeus.firm.in)

Place: New Delhi  
Date: 24.02.2026

**BEFORE THE NATIONAL COMPANY LAW APPELLATE  
TRIBUNAL, AT NEW DELHI  
(APPELLATE JURISDICTION)  
I.A. NO. 919 OF 2026  
IN  
COMPANY APPEAL AT (INSOLVENCY) NO. 791 OF 2023**

**IN THE MATTER OF:**

Devendra Singh ...Appellant

Versus

Homebuyers of Sidhartha  
Buildhome Private Limited & Ors. ...Respondents

**AND IN THE MATTER OF:**

Sidharth Chauhan  
Director (Powers Suspended)  
Sidhartha Buildhome Private Limited ...Applicant

Versus

Punjab & Sind Bank and Ors. ...Respondents

**OBJECTIONS ON BEHALF OF THE RESPONDENT NO.14,  
ALPHA CORP DEVELOPMENT LIMITED, THE SUCCESSFUL  
RESOLUTION APPLICANT, TO THE PROPOSAL DATED  
30.10.2025 AND 30.11.2025 SUBMITTED BY THE  
APPLICANT/DIRECTOR WITH POWERS SUSPENDED OF THE  
CORPORATE DEBTOR**

**MOST RESPECTFULLY SHOWETH:**

1. That the present Objections are being filed on behalf of the Respondent No. 14, Alpha Corp Development Limited, the Successful Resolution Applicant (“SRA”) to the proposal dated 30.10.2025 and 30.11.2025

(Collectively referred to as “**Proposal**”), submitted by Mr. Sidharth Chauhan, the ex-director/promoter (“**Ex-Promoter/Applicant**”) of the Sidharth BuildHome Private Limited (“**Corporate Debtor**”), in compliance with the directions given by this Hon’ble Appellate Tribunal vide order dated 05.02.2026 in the captioned Application. A True Copy of the Order dated 05.02.2026 is annexed and marked herewith as **Annexure-1**

2. That the present Objections are being filed by Alpha Corp Development Limited/SRA, through its Authorized Signatory, Mr. Santosh Singh Mehra, who has been authorized vide Board Resolution dated 24.07.2025 to represent and defend the SRA in all legal proceedings related to it before this Hon'ble Appellate Tribunal. True Copy of the Board Resolution dated 24.07.2025 authorizing Mr. Santosh Singh Mehra to act on behalf of Alpha Corp Development Limited is annexed herewith and marked as **Annexure-2**
3. That the Ex-Promoter/Applicant impleaded the SRA as a party to the captioned Application on 09.02.2026 in compliance of the aforementioned Order dated 05.02.2026 of this Hon’ble Appellate Tribunal and served a copy of the captioned Application onto the SRA i.e. Respondent No.14 herein.
4. That the Proposal dated 30.10.2025 and 30.11.2025 submitted by the Ex-Promoter/Applicant vide the captioned Application is wholly untenable in the light facts and circumstances surrounding the

Corporate Insolvency Resolution Process (“CIRP”) of the Corporate Debtor.

5. The Ex-Promoter/Applicant has filed the captioned Application in *suppressio veri and suggestio falsi*, by deliberately suppressing material facts and making false and misleading representations before this Hon’ble Appellate Tribunal. The Proposal has been submitted in disregard of the Applicant’s statutory ineligibility under Section 29A of the Code, and in violation of the principles governing insolvency resolution process. Without prejudice to one another, and without admitting any of the averments contained in the Application, the grounds rendering the proposal of the Ex-Promoter/Applicant liable to be rejected are set out in detail below:

**THE RESOLUTION PLAN OF THE SRA STANDS DULY APPROVED BY THE COMMITTEE OF CREDITORS OF THE CORPORATE DEBTOR:**

6. Briefly stated, the CIRP of the Corporate Debtor was initiated pursuant to the Order dated 04.03.2021 passed by the Hon’ble National Company Law Tribunal, New Delhi (“NCLT”) in C.P. (IB) No. 717(ND)/2019, on an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“Code”) by Oriental Bank of Commerce (now Punjab National Bank). Subsequently, vide Order dated 24.05.2023, the Hon’ble NCLT approved a withdrawal plan under Section 12A of the Code based on a proposal by the Ex-

Promoter/Applicant. The homebuyers/allottees of the Corporate Debtor, aggrieved by the said order dated 24.05.2023, questioned the same before the Hon'ble Appellate Tribunal. This Hon'ble Appellate Tribunal vide Order dated 16.02.2024 passed in CA (AT) (Ins) No. 791 of 2023, was pleased to set aside the said withdrawal order on the ground that the withdrawal proposal did not obtain the requisite majority as mandated under Section 12A of the Code. This Hon'ble Appellate Tribunal directed revival of the CIRP in respect of Project Estella, Sector 103, Gurugram, and issuance of a fresh Form 'G' for completion of the CIRP within a period of 90 days. Further, this Hon'ble Appellate Tribunal, basis the statement of the Ex-Promoter, allowed the Project 'NCR Green' to be kept out of CIRP and directed that the Ex-Promoter/Applicant shall be solely responsible for the completion of the said project and failure to do so would entitle the financial creditors to revive the CIRP qua the Project NCR Green. True copies of the Orders dated 24.05.2023 and 16.02.2024 are annexed herewith and marked as **Annexure- 3(Colly)**.

7. That subsequent to the Order dated 16.02.2024 passed by this Hon'ble Appellate Tribunal, Punjab National Bank filed I.A. No. 3557 of 2024 seeking clarification of the said order, wherein it was stated that, in addition to Punjab National Bank, Punjab and Sindh Bank was also a financial creditor in respect of Project Estella. This Hon'ble Appellate Tribunal, vide Order dated 22.07.2024, clarified that only Punjab National Bank is a member of the CoC of Project Estella. A copy of the Order dated 22.07.2024 is annexed herewith and marked as **Annexure-4**.

8. That thereafter, the Resolution Professional filed another application, being I.A. No. 7577 of 2024, seeking further clarification of the Order dated 16.02.2024. This Hon'ble Appellate Tribunal, vide Order dated 02.05.2025, decided the said application and held that upon setting aside the Order dated 24.05.2023 passed by the NCLT allowing the application under Section 12A, the natural consequence was the revival of the CIRP of the Corporate Debtor as a whole, and not merely in respect of Project Estella. A copy of the Order dated 02.05.2025 is annexed herewith and marked as **Annexure-5**
  
9. That pursuant to the aforesaid directions, the Committee of Creditors (“CoC”), in its 35th Meeting held on 10.09.2024 (e-voting concluded on 16.09.2024), approved the Resolution Plan submitted by Alpha Corp Development Limited, i.e. Answering Respondent No.14/SRA, by **a voting share of 79.96%**, which is notably substantially higher than the statutory threshold of 66% prescribed under the Code. The said Resolution Plan is presently pending approval before the Hon'ble NCLT vide IA No. 57/2024 of CP(IB) No. 717/2021 and, therefore, deserves priority consideration over any subsequent or parallel proposal. It may be noted that the SRA i.e. Respondent No. 14 herein has successfully completed multiple projects in a past and has a stellar record of completing projects on time even through the Resolution Plan process. Therefore, the CoC in its *commercial wisdom* has preferred the Resolution Plan by the SRA/Respondent No.14 herein.

10. That the Hon'ble Supreme Court in a catena of judgments has held that commercial wisdom of the COC is paramount and that safeguarding the Corporate Debtor from being liquidated and providing it a chance of revival are of extreme importance. That it is reiterated that the commercial wisdom of the COC is paramount and cannot be overlooked in the matters of resolution of insolvency. In the present case, once a resolution plan has already been duly approved by the CoC in exercise of its commercial wisdom, any re-consideration of an alternate proposal at such a belated stage would run contrary to the scheme of the Code, its statement of objects and reasons, and the time-bound resolution framework envisaged under the Code.
  
11. The approved Resolution Plan of the SRA, being a product of the collective commercial wisdom of the financial creditors, cannot be subordinated and /or supplanted by any proposal of the Ex-Promoter/Applicant. Permitting such intervention at this stage would frustrate the CIRP and undermine the sanctity of the resolution process. It is within the commercial wisdom of the CoC to choose the successful resolution applicant, and it may prefer a proposal in comparison to others if it considers the same to be more achievable, realistic, viable, and reasonable. The decision of the CoC is not based solely on the terms of the proposal but also the conduct and past experience of the resolution applicant, which are very imperative factors in determining the capability of the resolution applicant.

12. That the Ex-promoter/Applicant does not have the right to submit the Proposal, when the Resolution Plan of the SRA has already been approved by the CoC of the Corporate Debtor. The Hon'ble Supreme Court in *Ebix Singapore Pvt. Ltd. v. Committee of Creditors of Educomp Solutions Limited - Civil Appeal No. 3224 of 2020*, has clearly held that the approval of a resolution plan by CoC binds the SRA as well as the CoC and the CoC cannot be permitted to take any different stand.

It is stated that when the present matter and the Proposals by the Ex-Promoter/Applicant were being considered before the Hon'ble Supreme Court in Civil Appeal No. 12980 of 2025, the Authorized Representative of the homebuyers, representing the majority homebuyers of Project Estella, filed I.A. No. 285357/2025 before the Hon'ble Supreme Court clearly opposing the Proposal of the Ex-Promoter/Applicant, thereby re-affirming the collective will of the stakeholders in favour of implementation of the duly approved Resolution Plan of the SRA. Hence, it is stated that the present proposal by the Ex-Promoter/Applicant is nothing but another attempt to de-rail and delay the CIRP process to the detriment of the creditors and especially the allottees/homebuyers, who have been waiting for their units for years and years on account of the failure of the Ex-Promoter/Applicant to complete the projects.

13. This Hon'ble NCLAT, in *Hem Singh Bharana v. Pawan Doot Estate, (2023) 238 Comp Cas 239*, has held that once the CoC approves a

resolution plan in its commercial wisdom, it is prevented from changing its position or considering a withdrawal proposal by the ex-promoter under Section 12A of the Code. This view has been reaffirmed by the Hon'ble Supreme Court in *Hem Singh Bharana v. Pawan Doot Estate (P) Ltd.*, 2023 SCC OnLine SC 769. The relevant extract of the said judgment passed by this Hon'ble Appellate Tribunal is reproduced below:

*“22. The Hon'ble Supreme Court in Ebix Singapore P. Ltd. v. Committee of Creditors of Educomp Solutions Ltd. [2022] 231 Comp Cas 110 (SC) itself has laid down timelines provided in the Code have to be adhered to. In event, the submission of the appellant is accepted that even after the approval of the plan by the CoC, the CoC be given power to entertain a settlement proposal by the ex-promoter, the timelines for the different process and its finality shall be breached. Approval by the CoC of a resolution plan has to be in accordance with its commercial wisdom and when the CoC approves a plan and the resolution applicant is prohibited to modify or withdraw from the plan, same embargo has to be accepted on the CoC also from changing its stand. The judgment of the hon'ble Supreme Court in Ebix Singapore P. Ltd. v. Committee of Creditors of Educomp Solutions Ltd. [2022] 231 Comp Cas 110 (SC) lays down that after approval by the CoC of a resolution plan, the CoC itself is bound by its decision and cannot be allowed to go back from its decision and pass any other resolution. This has to be accepted to give*

*finality on different steps of the IBC and for timely conclusion of the resolution process.”*

**WITHDRAWAL PROPOSAL OF THE EX-PROMOTER/APPLICANT HAS BEEN REJECTED BY THE COC MULTIPLE TIMES:**

14. That, the Ex-Promoter/Applicant has made multiple attempts for the withdrawal of the CIRP of the Corporate Debtor and all of them have been previously rejected by the CoC, demonstrating a clear lack of confidence of the creditors, particularly homebuyers, in the Ex-Promoter/Applicant. It may further be noted that it is the homebuyer who form the majority of the creditors of the Corporate Debtor and have suffered tremendously due to the past conduct of the Ex-Promoter/Applicant.

15. That the multiple withdrawal proposals submitted by the Ex-Promoter/Applicant and its result are summarized hereunder:

SR. No	Details of Proposal	Decision of COC/ Tribunal
1.	<i>Mr. Sidhartha Chauhan (“Ex-Promoter”) submitted his withdrawal proposal under</i>	The proposal was consider by the CoC and thereafter, the COC <b>rejected</b> the said

	<p><i>Section 12A of the Code in the 7<sup>th</sup> CoC meeting dated 06.08.2021.</i></p> <p>Mr. Sidhartha Chauhan even filed an application dated 11.08.2021 bearing IA 3541/2021 before the NCLT for placing his Settlement Plan dated 07.08.2021 under Section 12A of the Code before the CoC. The Hon'ble NCLT vide Order dated 13.08.2021 noted that the erstwhile RP had already acknowledged the receipt of the same and asked the Ex-Promoter to submit a formal proposal in compliance of the Code. According, the IA 3541/2021 was disposed off.</p>	<p>proposal in the 9th CoC meeting held on 18.09.2021</p>
2.	<p>The Ex-Promoter submitted another proposal on 01.12.2021 and simultaneously filed another application bearing IA No. 5638/2021 before the Hon'ble NCLT seeking directions to the erstwhile RP to place his second withdrawal proposal before the</p>	<p>In the 18th Meeting of the CoC dated 15.02.2022, the second withdrawal proposal of the Ex-Promoter was put to vote. That through e-voting concluded on 22.02.2022, <b>the same was rejected by the CoC.</b></p>

	CoC. The said application was allowed vide Order 07.12.2021 of the Hon'ble NCLT	
3.	The Ex-Promoter submitted a Resolution Plan dated 20.04.2022 for the resolution of the Corporate Debtor.	The same was challenged by the financial creditors and homebuyers before the Hon'ble NCLT in I.A. No. 3024/2022. The NCLT vide its Final Order in IA No.3024/2022 dated 25.11.2022, declared that the Ex-Promoter was in-eligible under Section 29A(g) in view of Application pending under Section 43, 45 and 66 of the Code. <i>The said order has not been challenged by the Ex-Promoter and hence reached finality.</i>
4.	The Ex-Promoter submitted a third withdrawal plan on 26.12.2022 for consideration before the CoC.	The third withdrawal plan by the Ex-Promoter was considered and voted upon by the CoC in the 27 <sup>th</sup> CoC meeting dated 10.01.2023. <u>This Hon'ble Appellate Tribunal vide its Order dated 16.02.2024</u>

		<p><u>in CA(AT)(Ins) No. 791 of 2023 held that the said withdrawal plan was <b>rejected</b> by the CoC due to lack of requisite majority.</u></p>
5.	<p>The Ex-Promoter submitted an incomplete EOI vide e-mail dated 20.05.2024 requesting permission to submit a resolution plan in spite of the Order dated 25.11.2022 in IA no. 3024/2022. After communication with the RP, a complete EOI was submitted only on 24.05.2024.</p>	<p>In the 30<sup>th</sup> CoC meeting dated 27.05.2024, <b>the CoC decided that the Ex-Promoter should not be allowed to participate in the CIRP of the Corporate Debtor and rejected the EOI</b> submitted, as it was not only incomplete and time-barred but also in contravention to the Order 25.11.2022 in IA No. 3024/2022.</p>
6.	<p>The Ex-Promoter approached the Hon'ble NCLT by way of I. A. No. 3576 of 2024 filed on 14.06.2024 seeking directions to consider and accept the EoI of the Ex-Promoter.</p>	<p>The IA No. 3576 of 2024 was <b>dismissed</b> by the NCLT vide Order dated 18.09.2024.</p>

7.	The Ex-Promoter submitted another withdrawal proposal on 13.09.2024.	The Respondent No. 1 through email dated 14.09.2024 pointed out that there were several discrepancies in the proposal dated 13.09.2024 and the same was not in the form prescribed under Regulation 30A(2) of the CIRP Regulations and hence, the same was <b>rejected</b> for non-compliance.
----	--	--

16. It may further be noted that any proposal for withdrawal would require approval of 90% of the CoC in terms of Section 12A of the Code. However, the Ex-Promoter/Applicant clearly lacks this majority as 79.96% of the CoC has already voted in favour of the Resolution Plan by the SRA i.e. Respondent No.14 herein and hence, the COC is now bound by the same.

17. That the aforesaid factual matrix demonstrates that the Ex-Promoter/Applicant has, on multiple occasions, sought to re-enter and de-rail the CIRP of the Corporate Debtor by repeatedly submitting withdrawal proposals/settlement plans, all of which have been duly considered and consistently rejected by the CoC and/or the NCLT in accordance with law. It is submitted that the present Proposal, like the

previous attempts made by the Ex-Promoter/Applicant is intended solely to de-rail and obstruct the CIRP of the Corporate Debtor.

**EX- PROMOTER BARRED UNDER SECTION 29A OF THE CODE FROM SUBMITTING A RESOLUTION PLAN**

18. It is pertinent to note that, as per public records, the Ex-Promoter/Applicant has been declared a “**willful defaulter**” by Punjab and Sindh Bank/ Respondent No. 1 in December 2024 as per the guidelines of the Reserve Bank of India and hence as per Section 29A(b) the Applicant herein is ineligible to be a resolution applicant of the Corporate Debtor.

19. Further, it is pertinent to submit here that the “Project NCR Green” was excluded from the CIRP of the Corporate Debtor by virtue of the Order dated 16.02.2024 and the Ex-Promoter/Applicant was given an opportunity to complete the Project NCR Green. For ease of reference, the relevant extract of the Order 16.02.2024 is reproduced below:

*“In view of the foregoing discussions and our conclusion, we decide all these appeals in following manner: -*

- (i) Company Appeal (AT) (Insolvency) Nos. 791 and 982 of 2023 are allowed. The order dated 24.05.2023 passed by the Adjudicating Authority in IA No. 753 of 2023 is set aside. I.A. No.753 of 2023 is dismissed.*

- (ii) *(ii) CIRP of the Corporate Debtor- Siddhartha Buildhome Pvt Ltd. is revived which proceeding shall confine to Project Estella.*
- (iii) *The Project NCR Green be kept out of the CIRP which henceforth commences. The promoter/director is solely responsible to complete and handover all units of the Project NCR Green to the unit holders and in event there is any failure on the part of the Respondent No.4 to handover the units to all unit holders, it shall be open for the Financial Creditors in class to make an application before the Adjudicating Authority for appropriate relief including relief of revival of CIRP with regard to NCR Green Project also.”*

However, the Ex-Promoter/Applicant failed to complete the Project NCR Greens and fulfil its obligation to the creditors of the said project. As a result, the Punjab and Sindh Bank was compelled to file an application for initiation of CIRP in respect of “Project NCR Green” of the Corporate Debtor owing to the failure of the Ex-Promoter/Applicant to complete the said project. This Hon’ble Appellate Tribunal, vide Order dated 09.09.2025 passed in I.A. No. 3206 of 2025 in C.A. No. 1041 of 2025, directed the Resolution Professional to proceed with the CIRP in relation to Project NCR Green. Copy of the Order dated 09.09.2025 is marked and annexed herewith as **Annexure-6**.

20. It is further pertinent to mention that Ex-Promoter/Applicant has been misleading various judicial forum and making false statements regarding the status of the Project NCR Greens. It may be noted that in the Order dated 16.02.2024 in CA(AT) (Ins) 791/2023, the Hon'ble NCLAT had specifically given the Ex-Promoter/Applicant herein the sole responsibility to complete the Project NCR Green and handover the units to the homebuyer, failure of which would entitle the creditors to revive of CIRP of Project NCR Green. The Ex-Promoter/Applicant has falsely maintained before various forums that the Project NCR Green has been completed and handed over to the allottees, however, it is pertinent to note that the Occupancy Certificate has not been granted by the Competent Authority for the complete project nor have the units been handed over which had prompted Respondent No. 1 to file a Section 7 application under the Code for Project NCR Green.

21. That it is submitted that Section 29A(b) of the Code 2016 expressly disqualifies a willful defaulter from submitting a resolution plan or acting as a resolution applicant. The legislative intent behind this provision is to ensure that persons responsible for the financial distress of a corporate debtor, or those lacking financial integrity and creditworthiness, are not permitted to regain control of the corporate debtor through the resolution process. In the present case, the Ex-Promoter/Applicant falls within the ambit of the disqualifications contemplated under Section 29A and is statutorily barred from participating as a Resolution Applicant, being a willful defaulter. Any

proposal, plan, or condition emanating from an ineligible person, therefore, raises serious concerns about its bonafide and its alignment with the objective of the insolvency framework. The proposal, in effect, is a proposal for withdrawal of the CIRP under Section 12A of the Code and is structured in manner to safeguard the Promoter from any future liabilities rather than giving effective resolution to the creditors.

22. It is further pertinent to mention that the Resolution Professional of the Corporate Debtor has filed an application bearing IA No. 4290/2021 in CP(IB) No. 717/2021 under Section 25(2)(j) read with Section 43 and Section 66 against the Ex-Promoter/Applicant for carrying out preferential and fraudulent transactions against the Corporate Debtor. Hence, the Ex-Promoter/Applicant is a party to the applications filed by the Resolution Professional for preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction and would also be barred under Section 29A(g) of the Code.
23. That the Hon'ble Supreme Court in *Chitra Sharma vs. Union of India, (2018) 18 SCC 575*, has held that Section 29A of the Code is intended to prevent persons who are actually in control of the Corporate Debtor, and who are responsible for its defaults, misconduct, and insolvency, from participating in the resolution process to regain or retain control. Further, in *Bank of Baroda vs MBL Infrastructure Ltd (2022) 5 SCC 661*, the Hon'ble Supreme Court while discussing the Section 29A, observed as follows:

*“45. As stated, Section 29-A is a facet of the Code, and therefore, this provision has to be read with the main objective enshrined thereunder. The objective behind Section 29-A of the Code is to avoid unwarranted and unscrupulous elements to get into the resolution process while preventing their personal interests to step in. Secondly, it consciously seeks to prevent certain categories of persons who may not be in a position to lend credence to the resolution process by virtue of their disqualification.”*

24. Further, the Hon’ble Supreme Court in *Arcelormittal India Private Limited v. Satish Kumar Gupta & Ors. (2019) 2 SCC 1*, placing reliance on the Statement of Object and Reasons behind the introduction of the Insolvency and Bankruptcy Code (amendment) Bill, 2017 noted the following:

*“28. The Statement of Objects and Reasons of the aforesaid Bill lays down:*

*“2. The provisions for insolvency resolution and liquidation of a corporate person in the Code did not restrict or bar any person from submitting a resolution plan or participating in the acquisition process of the assets of the company at the time of liquidation. Concerns have been raised that persons who, with their misconduct contributed to defaults of companies or are otherwise undesirable, may misuse this situation due to lack of prohibition or restrictions to participate in the resolution or liquidation process, and gain or regain control of the corporate debtor. This may undermine the processes laid down in the Code*

*as the unscrupulous person would be seen to be rewarded at the expense of the creditors.*

25. Considering that Ex-Promoter/Applicant has been declared a willful defaulter and is directly responsible for the financial mismanagement of the Corporate Debtor, he squarely falls within the mischief sought to be remedied under Section 29A. Consequently, any attempt by the Ex-Promoter to re-enter the resolution process, whether directly or indirectly, is contrary to the letter and spirit of the Code and deserves to be rejected at the threshold.

**ONGOING CRIMINAL PROCEEDINGS AGAINST THE EX-PROMOTER BEFORE VARIOUS FORUMS INCLUDING ENFORCEMENT DIRECTORATE AND SFIO:**

26. That the Ex-Promoter/Applicant is facing multiple criminal prosecutions and investigations in relation to serious financial irregularities, fraud, diversion and siphoning of funds, and offences under the Prevention of Money Laundering Act, 2002, BNSS and Companies Act, 2013 before various courts.

27. That, as per the Press Release dated 31.03.2025 issued by the Enforcement Directorate, properties belonging to the Ex-Promoter/Applicant worth approximately ₹95 crores have been provisionally attached for cheating homebuyers. The Press Release records that the Enforcement Directorate initiated investigation on the

basis of FIRs registered by the Economic Offences Wing, New Delhi, pursuant to complaints filed by various homebuyers of Project Estella against the Corporate Debtor for failure to deliver the promised homes. It is further recorded that the Corporate Debtor collected approximately ₹520 crores from more than 950 homebuyers of Project Estella and Project NCR One, which amounts were diverted by the Ex-Promoter, Mr. Sidharth Chauhan, to group companies as unsecured loans/advances for unrelated investments instead of being utilized for project completion. A copy of the Press Release dated 31.03.2025 is annexed herewith and marked as **Annexure-7**.

28. That the Ex-Promoter/Applicant is a “***Proclaimed Offender***” as per the Order dated 22.07.2025 of the Learned Special Court, Gurugram passed in Criminal Complaint No. 5 of 2019 titled “***SFIO vs. Adarsh Build Estate Ltd.***” filed under Sections 120-B, 417, 418 and 420 of the Indian Penal Code and Section 447 of the Companies Act, 2013, wherein the Ex-Promoter/Applicant and his companies were arrayed as accused. The Ex-Promoter/Applicant had preferred a petition bearing No.CRM-M-45417-2025(O&M) seeking quashing of the Order dated 22.07.2025 passed by the Special Court, Gurugram before the Hon’ble High Court of Punjab and Haryana. However, the said Petition was dismissed by the Hon’ble High Court vide Order dated 22.12.2025. Consequently, the Ex-Promoter/Applicant continues to be a Proclaimed Offender as on date. A copy of the Order dated 22.12.2025 of the Hon’ble High Court of Punjab and Haryana is annexed herewith and marked as **Annexure-8**.

29. Pertinently, the Ex-Promoter had previously in the aforesaid criminal complaint titled “*SFIO vs. Adarsh Build Estate Ltd. & Ors.*”, sought anticipatory bail before the Hon’ble High Court of Punjab and Haryana, which was dismissed vide order dated 13.11.2019. In the said order, the Hon’ble High Court had observed that the vocation of the Ex-Promoter and his companies appeared to be to commit offences for unlawful monetary gain. A true copy of the Order dated 13.11.2019 is annexed herewith and marked as **Annexure-9**.
30. That multiple FIRs have been lodged against the Ex-Promoter by homebuyers of “Project “Estella and “Project-NCR One”, which were investigated by the Serious Fraud Investigation Office. The Ex-Promoter had, infact, filed Bail Applications before the Hon’ble Delhi High Court in relation to the said FIR’s, however, the same were rejected the by Hon’ble High Court vide Order dated 13.12.2021. While rejecting the said applications, the Hon’ble High Court observed that, prima facie, Mr. Sidharth Chauhan, being the sole promoter and holding 97% shareholding in the Corporate Debtor, had misappropriated and siphoned off funds collected from homebuyers and banks. A true copy of the Order dated 13.12.2021 is annexed herewith and marked as **Annexure- 10**.
31. Most notably the Ex-Promoter/Applicant had approached the Hon’ble Supreme Court vide SLP(Crl) No. 37/2026 challenging the aforementioned order dated 22.12.2025 of Punjab & Haryana High Court wherein he was upheld as “*Proclaimed Offender*” in offences being investigated by SFIO. The Hon’ble Supreme Court vide its Order

dated 06.01.2026 in SLP (CrI) No.37/2026 dismissed the said SLP thereby granting the Applicant 10 days' time to surrender. A true copy of the Order dated 06.01.2026 in SLP (CrI) No.37/2026 by the Hon'ble Supreme Court is annexed herewith and marked as **Annexure-11**.

32. Further, the Hon'ble Supreme Court vide Order dated 13.02.2026 in Miscellaneous Application No. 297/2026 in SLP(CrI) No.36/2026, has directed the ex-Promoter/Applicant to surrender before the appropriate law enforcement agency by 20.02.2026 and noted that this would be the final extension granted to the ex-Promoter/Applicant for surrender. A true copy of the Order dated 13.02.2026 in Miscellaneous Application No. 297/2026 in SLP(CrI) No.36/2026 by the Hon'ble Supreme Court is annexed herewith and marked as **Annexure-12**.

33. Given the above, it is clearly evident the Ex-Promoter/Applicant cannot be entrusted with resolution of the Corporate Debtor.

**FRAUDULENT TRANSACTIONS CARRIED OUT BY THE EX-PROMOTER DURING THE PERIOD 24.05.2023 to 16.02.2024 WHEN THE CIRP OF THE CORPORATE DEBTOR WAS WITHDRAWN:**

34. As specified above, the Hon'ble NCLT vide Order dated 24.05.2023 in IA No. 753 of 2023 in CP(IB) No. 717/2019 approved a withdrawal plan proposed under Section 12A of the Code by the ex-

director/promoter of the Corporate Debtor, Mr. Siddhartha Chauhan. That the said order of the NCLT, was set aside by this Hon'ble Tribunal vide Order dated 16.02.2024 in CA(AT)(Ins) No. 791 of 2023. The Hon'ble NCLAT held that the withdrawal plan proposed by Ex-Promoter did not have the appropriate majority in terms of the Section 12A of the Code. The order dated 16.02.2024 is already annexed herein above.

35. That it may be noted that during this period between 24.05.2023 to 16.02.2024, when the CIRP of the Corporate Debtor stood withdrawn and the Corporate Debtor was in the control of the Ex-Promoter/Applicant, 37 units in the Project Estella were sold by the Ex-Promoter to a related party of the Corporate Debtor, namely, Go Greens Veggies Private Limited ("**Go Greens**"), vide agreements, both dated 05.07.2023. The said agreement has been executed between the Corporate Debtor, Applicant herein and Go Greens Veggies Private Limited. It is to be noted that the address of the Corporate Office of both the Corporate Debtor and Go Greens is evidently the same as per the agreement dated 05.07.2023. Further, the director and authorized signatory of Go Greens is Mr. Luckey Chauhan, a relative of the Applicant herein. The said transactions appear to be grossly undervalued, collusive, and fraudulent in nature, and were undertaken with the intent to defeat and defraud the legitimate interests of creditors and homebuyers. A bare perusal of the said agreements make it exceedingly clear that the parties are clearly related and the units have been sold to further deplete the assets of the Corporate Debtor and adversely effect the rights of the Creditors. True Copy of the

Agreements dated 05.07.2023 is annexed herewith and marked as **Annexure -13.**

36. That additionally the Resolution Professional has filed an application bearing I.A. No. 4290/2021 before the Hon'ble NCLT under Section 25(2)(j) read with Section 43, 45, 49 and Section 66 against the Applicant herein basis the Transaction Audit Report dated 02.08.2021 by AKG & Associates, Chartered Accountants for the period from 01.04.2008 to 04.03.2021. The finding in the said forensic audit report point out a misappropriation of an amount of around Rs. 400 Crore by the ex-directors, including the Ex-Promoter/Applicant through related parties. Further, the Ex-Promoter/Applicant had sold a parcel of land belonging to the Corporate Debtor details of which are unavailable with the Resolution Professional, for an amount of Rs. 18.60 crore. It is unknown to the Resolution Professional as to where the amount has also been kept. Further, in the aforesaid application, the Resolution Professional has also averred that an amount of Rs. 6,50,00,000/- was received from TATA. Further, it is also averred that TATA would pay another 33.5 crore, amounting to a total of Rs. 40 crores to the Corporate Debtor. The whereabouts of the said money is also unknown to the Resolution professional.
37. That, the aforesaid fraudulent, undervalued, and preferential transactions undertaken by the Ex-Promoter indicate the Ex-Promoters mala fide intent and dishonest conduct and demonstrate a deliberate attempt to defeat the rights of creditors and undermine the resolution framework. Consequently, the Ex-Promoter/Applicant Proposal lacks

bona fides and legitimacy and is merely a device to delay and derail the CIRP and to unlawfully regain control over the affairs and assets of the Corporate Debtor. Further, these attempts by the Ex-Promoter/Applicant are in contravention of the Order dated 16.02.2024 of this Hon'ble Tribunal for early resolution of the Corporate Debtor but also against the interest of the homebuyers who have been waiting for years for their homes.

**FALSE ASSERTIONS IN THE PROPOSAL REGARDING THE ALLEGED COMMUNICATION BETWEEN THE EX-PROMOTER AND THE SRA:**

38. That the Ex-Promoter/Applicant has made outrightly false and incorrect statements in its Proposal regarding the SRA.

39. That the Promoter filed IA No. 309981 of 2025 before the Hon'ble Supreme Court with the Proposal. The said proposal falsely states that there have been deliberation between the Ex-Promoter and SRA to bring about an overall solution to the matter. It has been falsely stated that the Ex-Promoter has had extensive discussions with the SRA and that the Proposal by the Ex-Promoter is agreeable to them. The relevant clause is reproduced hereunder:

*"4. Deliberations with Alpha Corp Development Pvt. Ltd., Resolution Applicant in case of Estella Project In order to bring about an overall solution to the matter and particularly in the interest homebuyers, the promoter of the corporate debtor also had extensive discussions with Alpha Corp (Resolution Applicant in respect of Estella project). After several rounds of discussion, it so understood by the Respondent No.4 herein that subject to the proposals made by the Respondent No.4 being accepted by the banks and by this Hon'ble Court, AlphaCorp Pvt. Ltd., may also be aggregable to a solution."*

40. That it is categorically stated that there has been no meeting, deliberations, discussion or any form of communication between the Ex-Promoter and the SRA with respect to any proposal by the Ex-Promoter as falsely alleged in the Proposal. It is outrightly and vehemently denied that the SRA, subject to the proposals made by the Ex-Promoter being accepted by the banks and by this Hon 'ble Court, may also be aggregable to a solution. The statement by the Ex-Promoter is not only outrightly false but also mischievous. It is a deliberate attempt to mislead this Hon'ble Tribunal, and the captioned application is liable to be dismissed on this ground alone. It is stated that the SRA herein has also filed an Affidavit before the Hon'ble Supreme Court in reply to IA No. 309981 of 2025 in C.A. No. 12980 of 2025 specifically refuting and denying this false statement of the Applicant.

41. That Respondent herein is the Successful Resolution Applicant for one of the projects (Project Estella) of the Corporate Debtor and the Resolution Plan proposed by the SRA herein has been approved by the Committee of Creditors of the Corporate Debtor in its 35th meeting dated 10.09.2024 und the Application for the approval of the said Resolution Plan under Section 30(6) read with Section 31 of the Insolvency and Bankruptcy Code, 2016 bearing I.A No. 57/ 2025 in CP(IB) No. 717/2019 is pending consideration before the Ld. NCLT. The SRA shall pursue the same in accordance with law. There is no scope of any discussion or deliberation between the SRA and the suspended management of the Corporate Debtor.

**THAT THE PROPOSAL SUBMITTED BY THE ERSTWHILE PROMOTER IS NOT FINANCIALLY UNVIABLE AND LACKS CREDIBILITY**

42. That the Proposal submitted by the Ex-Promoter/Applicant is wholly unreliable. The Ex-Promoter lacks financial capacity and has failed to place on record any documentary evidence demonstrating availability of funds for completion of the projects. The vague references to entities such as NBCC or L&T are unsupported and do not establish financial backing.

43. That the proposed payments to Punjab and Sindh Bank and Punjab National Bank are mere assertions, without any approval or commitment from the said banks, and are highly susceptible to default

in view of the pending criminal proceedings and established financial misconduct of the Ex-Promoter.

44. That although the Ex-Promoter/Applicant claims in the Proposal to complete the projects within 3.5 years, he failed to utilize the opportunity available during the period from 24.05.2023 to 16.02.2024, when the CIRP stood withdrawn, and instead engaged in fraudulent and related-party transactions, thereby depleting the assets of the Corporate Debtor. This conduct clearly demonstrates his inability and unwillingness to complete the projects.

45. That the Ex-Promoter is facing multiple criminal proceedings, including actions by the Enforcement Directorate, SFIO and other authorities as detailed in the preceding paragraphs. In view of the ongoing criminal proceedings and the imminent risk of incarceration, the Ex-Promoter lacks credibility and his Proposal raises serious doubts as to his capacity to revive the Corporate Debtor.

#### **SALIENT FEATURES OF THE RESOLUTION PLAN SUBMITTED BY THE SRA**

46. That the SRA is one of the leading real estate developer companies in India with over 21 (Twenty-One) years of experience in construction-development projects (which would include development of townships, construction of residential/commercial projects), etc. Since its inception, the SRA has built an unparalleled legacy as a developer

having created landmark projects across key cities of India. That the SRA has a diversified business portfolio of asset classes including integrated townships, condominiums, corporate offices, retail city centers and industrial parks across the National Capital Region, Punjab, Uttar Pradesh and Gujarat.

47. That the landmark developments of the SRA are a testimony to the company's reputation as a developer who cares for all its Stakeholders and most importantly, the end-user. Given the SRA's immense experience in construction-development projects (which would include development of townships, construction of residential / commercial project), the SRA is best placed to drive the revival of the Corporate Debtor.
48. That some of the key projects which have been successfully completed and delivered by the SRA include:
- i. Gurgaon One, Sector 22
  - ii. Golf View Corporate Towers, Gurgaon
  - iii. Gurgaon One, Sector 84
  - iv. One, Modipuram
  - v. Alphaone, Amritsar
  - vi. Alphaone, Ahmedabad
  - vii. Alpha International City, Karnal
  - viii. Alpha International City, Fatehabad
  - ix. Alpha International City, Amritsar
  - x. Alpha Atulyam, Karnal
  - xi. Alpha Vedant, Karnal

xii. Avenue 29, Karnal

49. That the SRA has the capabilities to successfully complete the Project Estella. The Resolution Plan has been devised in such a manner so as to optimize the strength of the SRA's own funds and/or its members and receivables from the financial creditors and other receivables or recovery which may arise in the future.

50. That the SRA thus has the capability and the expertise to deliver the Project and add value and revive the Corporate Debtor while protecting the interests of all its stakeholders, creditors and Government and Statutory Authorities. Hence, the Resolution Plan shall be beneficial to all concerned and is in the spirit of the IBC.

51. That the SRA is also well versed with the Corporate Insolvency Resolution Process provided under the IBC and has past experience of reviving similar projects. The SRA is presently undertaking resolution of 3 (three) projects of Earth Infrastructure Limited, which was undergoing Corporate Insolvency Resolution Process under the IBC. The particulars of the aforesaid 3 (three) projects are provided herein below:

(a) Earth Copia, Sector-112, Gurugram, near Fazilpur Village,  
Haryana;

(b) Earth Tech One, TZ-01, Sector Tech Zone, Greater Noida, Gautam Budh Nagar, Yamuna Expressway, Uttar Pradesh; and

(c) Earth Sapphire Court, Plot No. 48, Sector Knowledge Park-5, Greater Noida, Sector 3, Uttar Pradesh.

52. That further, the SRA has also undertaken the following projects which are under stress and taken over under different agreement as specified hereinbelow:

(d) Spire Wood, Sector 103, Gurugram, Haryana

(e) Vallard View, Mumbai

53. That the Resolution Plan submitted of the SRA is in strict compliance with the provisions of the Code and the CIRP Regulations, and adequately safeguards the interests of all stakeholders.

a. That under the Resolution Plan, the SRA has proposed an upfront payment of ₹5 crores to the secured financial creditor, Punjab National Bank. That, in order to enhance the recovery of secured financial creditors, the SRA has further proposed that the realizations from Preferential, Undervalued, Fraudulent and Extortionate (PUFE) transactions shall be distributed to them, thereby increasing the overall recovery percentage.

b. That the SRA has undertaken to complete Project Estella within a period of 60 months from the Effective Date, in a phased and time-bound manner. That the SRA has proposed to apply for additional FAR/TDR utilization and, upon grant thereof, demolish the existing

towers and develop new towers in accordance with approved plans. That the SRA has categorically undertaken not to levy any additional charges upon existing allottees whose claims have been duly admitted under the CIRP.

- c. That in the event additional FAR/TDR is not granted, the SRA has proposed to conduct a structural audit and, based on the audit report, refurbish and complete the existing towers. That the Resolution Plan has been structured to ensure financial viability without imposing undue burden on any stakeholder, and the additional charges @2700 per square foot on the saleable area proposed to be collected from homebuyers are solely for ensuring timely completion and sustainability of the project.

In view of the facts and submissions as stated above, it is, most respectfully submitted that the Ex-Promoter by this route is making an attempt to terminate the CIRP of the Corporate Debtor without following the procedure and process detailed in Section 12-A of the IBC. It is also submitted that earlier attempts by the Ex-Promoter to gain control of the Corporate Debtor have not been accepted by the COC/Home Buyers and hence, this application deserves rejections.


#### **Prayer**

In view of the facts and circumstances, it is humbly prayed that this Hon'ble Tribunal may be pleased to:


- (a) Dismiss the captioned application IA 919 of 2026 filed by Mr. Sidharth Chauhan, the Ex-Promoter/Director of the Corporate Debtor.

Pass any such further order(s) as may be deemed just and expedient in the facts and circumstances of the present case.

For Alpha Corp Development Limited

  
RESPONDENT NO. 14  
Authorised Signatory

**THROUGH**

  
(SANDEEP BHURARIA) (VAISHNAVI PRAKASH)  
(VATSALA PANDEY)  
ZEUS LAW ASSOCIATES  
2, Palam Marg, Vasant Vihar, New Delhi-110057  
Mobile No. 8102228837  
Email ID: [Vaishnavi.prakash@zeus.firm.in](mailto:Vaishnavi.prakash@zeus.firm.in)

Place: New Delhi

Date: 24.02.2026

**BEFORE THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
AT NEW DELHI  
(APPELLATE JURISDICTION)**

**I.A. NO. 919 OF 2026**

**IN**

**COMPANY APPEAL AT (INSOLVENCY) NO. 791 OF 2023**

**IN THE MATTER OF:**

DEVENDRA SINGH

...APPELLANT

VERSUS

HOME BUYERS OF SIDHARTHA  
BUILDHOME PRIVATE LIMITED & ORS.

...RESPONDENTS

**IN THE MATTER OF:**

SIDHARTH CHAUHAN  
DIRECTOR (POWERS SUSPENDED)  
SIDHARTHA BUILDHOME PRIVATE LIMITED

...APPLICANT

VERSUS

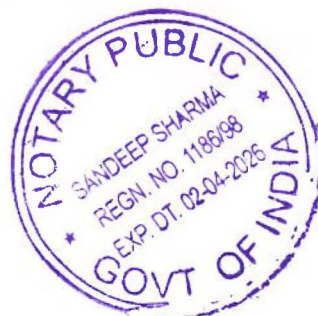
PUNJAB & SIND BANK AND ORS.

...RESPONDENTS

**AFFIDAVIT**

I, Santosh Singh Mehra, S/o Badri Singh Mehra, aged around 37 years, R/o Rampur Road, Shyam Vihar/Manpur Paschim, Haldwani, Nainital, Uttarakhand - 263139, presently in New Delhi, do solemnly affirm and say as follows:

1. That, I am the Authorised Signatory of Alpha Corp Development Limited, the Respondents No. 14 in the instant Application, *vide* Board Resolution dated 24.07.2025, and as such I am well acquainted with the facts and circumstances of this case.



- 2. That, I have read and understood the accompanying Reply/Objections and having understood the contents thereof, I say that the facts stated therein are true and correct to the best of my knowledge.
- 3. That, the facts stated in the affidavit are true and correct to the best of my knowledge. No part of the same is false and nothing material has been concealed therefrom.
- 4. That the annexures attached in the accompanying Reply/Objections are true copy of the originals.

For Alpha Corp Development Limited

*[Handwritten Signature]*  
DEPONENT

Authorized Signatory

**VERIFICATION**

I, the above-named deponent, do hereby verify that the facts stated in the above affidavit are true to the best of my knowledge and belief. No part of the same is false and nothing material has been concealed therefrom.

Verified at New Delhi on this 24 FEB 2026 day of February, 2026.

For Alpha Corp Development Limited

*[Handwritten Signature]*  
DEPONENT

Authorized Signatory

*Vais*  
**IDENTIFIED BY**



**ATTESTED**  
NOTARY PUBLIC  
DELHI (INDIA)

**24 FEB 2026**

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**I.A. No. 919 of 2026**  
**in**  
**Comp App. (AT) (Ins) No. 791 of 2023**

**IN THE MATTER OF:**

**Devendra Singh**

**...Appellant(s)**

**Versus**

**Homebuyers of Sidhartha Buildhome Pvt. Ltd. & Ors. ...Respondent(s)**

**Present:**

**For Appellant(s)** : Mr. Sumant Batra, Mr. Shiv Mangal Sharma, Mr. Saurabh Rajpal and Mr. Abhishek Sharma, Advocates.

**For Respondent(s)** : Mr. Deepak Kumar, Adv. Parmatma Singh and Ms. Nishita Jagetia, Advocates for RP.

Ms. Ekta Choudhary and Mr. Ankur Anand, Advocates for PNB.

Mr. Sanjay Bajaj and Mr. Shivam Thakkar, Advocates for Punjab and Sind Bank.

**ORDER**  
**(Hybrid Mode)**

**05.02.2026** Ld. Counsel for the Appellant seeks liberty to file amended memo in I.A. No. 919 of 2026 for impleading the SRA to the Estella Project as well as Homebuyers of 'Sidhartha Buildhome Pvt. Ltd.' who had filed an Appeal before the Hon'ble Supreme Court being Civil Appeal No. 1298 of 2025, where the Hon'ble Supreme Court has issued direction on 02.12.2025. The applicant to take steps to serve the newly impleaded homebuyers personally within a week. We notice that although the order was passed by the Hon'ble Supreme Court on 02.12.2025 and this I.A. No. 919 of 2026 was filed on 11.12.2025 but the application was kept in defect and has been listed first time today.

Ld. Counsel for the Promoters submitted that promoters were facing various difficulties during the period including SIFO investigation and they could obtain interim order from the Hon'ble Supreme Court only on 02.02.2026, thereafter steps are being taken.

Be as it may. The Hon'ble Supreme Court in its order dated 02.12.2025 has noted the proposals given by promoters with respect to both the projects 'Estella' and 'NCR'.

Ld. Counsel for the Punjab National Bank and Punjab & Sind Bank appear and accept notice of the application.

It is submitted by Ld. Counsel for the Promoters that proposals have been submitted before the Hon'ble Supreme Court and also given to both the Banks. We are of the view that proposals which are submitted by the Appellant with regard to both the projects 'Estella' and 'NCR' to be put on the website of the Corporate Debtor so that they can be accessed by all the Homebuyers. The promoters to put their proposals on the website and communicate to the AR of both the projects so that it should come in the notice of all the Homebuyers.

We permit the AR of the Homebuyers of both projects to file objections. We also permit both the Banks as well as SRA to file their objections to the proposals. We allow all the parties to file their objections within two weeks from today.

Ld. Counsel for the RP is also given liberty to file objection to both the proposals. The proposals shall be handed over to the RP, who shall put them on the website within three days from today.

Shri Palash S. Singhai, Ld. Counsel seeks liberty to file objection within two weeks from today.

List this Application/Appeal on **25.02.2026**.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Barun Mitra]**  
**Member (Technical)**

*Abhishek/Ravi*

# ALPHACORP

**CERTIFIED TRUE EXTRACT OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF ALPHA CORP DEVELOPMENT LIMITED AT THE MEETING HELD ON THURSDAY THE 24<sup>TH</sup> DAY OF JULY, 2025 COMMENCED AT 16:00 P.M. AND CONCLUDED AT 18:07 P.M. AT THE CORPORATE OFFICE OF THE COMPANY AT J 602, 6TH FLOOR, TOWER J, WORLD TRADE CENTRE, NAUROJI NAGAR, NEW DELHI, 110029.**

WHEREAS the Board of Directors of the company were informed about the requirements for filling or defending the company interest with respect to any kind of cases, in the form of petitions, applications, complaints, writs etc. filed against the company and with respect to all projects of the company namely Gurgaon One84 in Gurgaon, Alpha International City Karnal in Karnal, Alpha International City Fatehabad in Fatehabad, MeerutOne in Meerut, Ananta, Sector 112, Ananda, Sector 103, Gurugram, Model Industrial Park, Amritsar or any other Projects. The Board was then informed about the requirements to authorize some of the company's officers for the above said purpose. The Board after some more discussion passed the following resolution:

**"RESOLVED THAT** in supersession to all the earlier resolutions passed in this regard the consent of the Board of Directors of the Company be and is hereby accorded to file or defend the company's interest with respect to any kind of cases, in the form of petitions, applications, complaints, writs etc. filed against the company with respect to all projects of company namely Gurgaon One84 in Gurgaon, Alpha International City Karnal in Karnal, Alpha International City Fatehabad in Fatehabad, MeerutOne in Meerut, Ananta, Sector 112, Ananda, Sector 103, Gurugram, Model Industrial Park, Amritsar or any other projects.

**RESOLVED FURTHER THAT** Mr. Akhilesh Mishra, Mr. Vikas Sood, Mr. Santosh Singh Mehra, Mr. Jajati Keshari Samal, Mr. Deepak Kumar and Mr. Avi Rana Authorized Signatories of the Company be and are hereby severally authorized to do the following acts for and on behalf of the Company for the above purpose:

1. to represent the Company and to make, sign, verify and file any reply(s), applications, written statements, evidence, petition, as may be necessary or deemed proper in the said matter and as well as in any proceedings arising from the said matter before District Court, High Court, Supreme Court, Permanent Lok Adalat, Real Estate Regulatory Authority, District or State or National consumer disputes Redressal Forum, National Company Law Tribunal, National Company Law Appellate Tribunal, Sub Registrar or any other competent court/any other judicial/Quasi-judicial Authority(ies) or any other competent authority;
2. to sign, swear, affirm, declare, deliver, execute, make – pleadings, affidavits, evidences, bonds, declarations, appeals, indemnities and undertakings in relation to aforesaid cases in the said court/any other judicial/Quasi-judicial Authority(ies);
3. to file, institute, prosecute, defend, oppose, conduct, settle, abandon any proceedings, submit to judgement, proceed to judgement and have the execution of judgement as may be deemed fit;
4. to retain, employ – advocates, attorneys, vakils and pleaders and as well as to sign Vakalatnama(s) for and on behalf of the Company;
5. to depose, make – statements, affidavits on behalf of the Company before any court, judicial or quasi-judicial authority in relation to the said legal proceedings;
6. to apply and procure copies / certified copies of documents, papers, orders and as well as to carry out the inspection of the records of any Court(s), Judicial or Quasi-Judicial Authority(ies);
7. to receive judgement / order for and on behalf of the Company in connection with the above matter and give the valid receipt thereof; and as well as
8. to generally do all other acts, deeds and things as may be required or considered necessary or incidental thereto.

**CERTIFIED TRUE COPY**

For Alpha Corp Development Limited

**SANTOSH SINGH MEHRA**  
Company Secretary  
**COMPANY SECRETARY**

Alpha Corp Development Limited  
(Formerly known as Alpha Corp Development Private Limited)  
CIN: U45201PB2003PLC045680  
602, 6th Floor, Tower - J, World Trade Centre,  
Ring Road, Nauroji Nagar, New Delhi - 110029

T + 011 483 11111

E info@alphacorp.in, W www.alphacorp.in

**Registered Office:** Model Industrial Park,  
Opp. New Focal Point, VPO Vallah Mehta Road,  
Amritsar - 143501 (Punjab)

FREE OF COST COPY

IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI (COURT NO. III)

Annexure A-1 31  
43

(Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

IA-753/2023  
in  
IB-717(ND)/2019

**IN THE MATTER:-**

M/s. Oriental Bank of Commerce (Marge with PNB) ..... Applicant

Versus

M/s. Sidhartha Buildhome Pvt. Ltd. ....Respondent

And

**IN THE MATTER:-**

Homebuyers of Sidhartha Buildhome Private Limited ..... Applicant

Versus

Devendra Singh .....Respondent No. 1

&

Punjab National Bank .....Respondent No. 2

&

Sidharth Chauhan .....Respondent No. 3

&

Punjab And Sind Bank .....Respondent No. 4

**Pronounced on 24.05.2023**

IA-753/2023  
in  
IB-717(ND)/2019  
Date of order 24.05.2023

Page | 1



**CORAM:-**

**SHRI BACHU VENKAT BALARAM DAS,**  
**HON'BLE MEMBER (JUDICIAL)**

32

**SHRI ATUL CHATURVEDI,**  
**HON'BLE MEMBER (TECHNICAL)**

44

**PRESENT:-**

For the Applicant : Adv. Sandeep Bajaj along with Adv. Deransh Jain,  
Adv. Namrata Sharma.

For the Respondent : Mr. Santosh Kumar Raut,  
Mr. Abhishek Chahraborty,  
Advocates for R-2 in IA-753/2023.  
Mr. Arvind Nayyar, Sr. Adv, Adv. Lalit Mohan,  
Adv. Akanksha, Adv. Videh Vaish, Adv. Abhay  
Gupta, Adv. Shubham Pandey, Adv. Akshay Joshi.  
Adv. Deep Bisht for R-3 in IA-779/2023.  
Adv. Shiv Mangal Sharma, Adv. Saurabh Rajpal for  
R-3 in IA-753/2023.

For the RP : Mr. Alok Dhir, Ms. Varsha Banerjee,  
Mr. Kanishk Khetan, Advocates.

**ORDER**

**Per: Bachu Venkat Balaram Das, Member (Judicial)**

1. The present application has been filed on behalf of the Homebuyers who are Financial Creditor in a class of the Corporate Debtor (M/s. Sidhartha Buildhome Pvt. Ltd.), through their Authorized Representative, Mr. Dharmendra Kumar with the following prayers:

- a. Allow the present Application and "Approve" the Withdrawal Proposal under Section 12A of the Code having 92.85% votes in its favour thereby, setting aside/quashing the finding/decision of Respondent No. 1 qua the Item No. B-2 of the 27<sup>th</sup> CoC meeting and/or;
- b. Pass appropriate orders for the revival of the corporate debtor and quash and set-aside the subsequent action/decision



taken by the Respondent No. 1 after the 27<sup>th</sup> CoC meeting dated 22.01.2023 and/or;

- c. Pass any other order as this Hon'ble Tribunal may deem fit in the interest of justice.

**Factual background of the case:**

2. In the instant case, the Corporate Insolvency Resolution Process (CIRP) was initiated vide an order dated 04.03.2021 passed by this Tribunal in an application filed under Section 7 of the Code, 2016 by the Oriental Bank of Commerce (Now Punjab National Bank-PNB). One Mr. Devender Singh was appointed as IRP. The IRP made a public announcement on 11.03.2021 in two newspapers namely Times of India (English Edition) and Nav Bharat Times (Hindi Edition) in the Delhi NCR Region, intimating the public about the commencement of CIRP of the Corporate Debtor.

3. Mr. Dharmendra Kumar, the Applicant herein, was chosen to be the Authorized Representative for the Financial Creditors in a class which was recorded in the minutes of the 1<sup>st</sup> COC meeting dated 09.04.2021. Thereafter, IA No. 1719/2021 was filed under Section 21(6A) (b) of the Code, 2016 seeking appointment of Mr. Dharmendra Kumar as the Authorized Representative of the class of Financial Creditors. This Tribunal vide order dated 27.09.2021 appointed Mr. Dharmendra Kumar, the Applicant herein as the Authorized Representative of the class of Financial Creditors.

4. The Ld. Resolution Professional published a Form G on 07.05.2021, thereby inviting the Expression of Interest (EoI) from the Prospective Resolution Applicants. The last date for submission of EoI was 22.05.2021. Pursuant to the same, the Resolution Professional received 11 EoI from Prospective Resolution Applicants (PRA's).



5. The Ex-Director/promoter of Corporate Debtor Mr. Siddharth Chauhan, Respondent No.3 herein submitted a withdrawal proposal under Section 12A of the Code before the 7<sup>th</sup> COC meeting dated 06.08.2021 which was rejected. Mr. Siddharth Chauhan (Ex-Director) filed an application bearing IA No. 5638/2021 before this Tribunal seeking directions to consider the Resolution Plan/withdrawal proposal under Section 12A of the Code for voting. This Tribunal vide order dated 07.12.2021 allowed the said application.

6. Pursuant to the said order passed by this Tribunal, the Resolution Professional/Respondent No. 1 placed two Resolution Plans and also the withdrawal proposal under Section 12A of the Code for voting in the 18<sup>th</sup> CoC meeting dated 15.02.2022. The e-voting was concluded on 22.02.2022, and the Resolution Plans as well as the proposal for withdrawal under Section 12A were rejected by the CoC.

7. Thereafter, the Respondent No. 1 published another Form G on 23.02.2022 inviting EoIs and PRAs. Thereafter, one Resolution Plan was submitted by one of the Prospective Resolution Applicant namely M/s Alpha Corp Development Private Limited.

8. Mr. Siddharth Chauhan, Respondent No. 3 (Ex-Promoter of the Corporate Debtor) again submitted another withdrawal proposal under Section 12A of the Code, 2016 with better terms and conditions for the revival of the Corporate Debtor on 26.12.2022.

9. The Resolution Plan of M/s Alpha Corp Private Limited and the second withdrawal proposal were put for e-voting under Item No. B1 and B2 in the 27<sup>th</sup> CoC meeting held on 10.01.2023.

10. Even though, the Resolution Plan of M/s. Alpha Corp Private Limited was legally non-compliant but still the Resolution Professional



placed the said plan for e-voting. M/s Alpha Corp was given a couple of opportunities to modify its plan and finally it was sent on 09.01.2023 just a day before the 27<sup>th</sup> CoC meeting. The said plan was put to voting in the CoC and the Homebuyers and other members were given the timeline to cast their e-vote from 14.01.2023 to 18.01.2023.

11. Item No. B2 of the 27<sup>th</sup> CoC meeting dated 10.01.2023, was “To consider, deliberate, decide and approve the revised proposal under Section 12A of the IBC, 2016 submitted by Mr. Siddharth Chauhan, Director of Corporate Debtor.”

**Voting Analysis & Result:-**

The voting analysis and result as recorded in the summary record of e-voting with respect to Item No. B-2 for consideration of proposal under Section 12A of IBC is reproduced below:

Agenda Item No.	Resolution Voted upon	Yes (%)	No (%)	Abstain/No t voted (%)	Total (%)
B2	Voting by Financial Creditors in a class (Homebuyers) as per Section 25A (3) of IBC, 2016	40.15%	29.20%	11.08%	80.43%
	Voting by	12.42%	-	-	12.42



48

36

	Punjab National Bank				%
	Voting by Punjab & Sind Bank	-	7.15%	-	7.15%
	<b>TOTAL</b>	<b>52.57</b>	<b>36.35</b>	<b>11.08%</b>	<b>100%</b>
		%	%		

*However, as per the analysis and computation on votes casted in compliance with the provisions of Section 25A(3A) of IBC, 2016, the members of CoC representing 92.85% voting share voted in favour of the Agenda Item No. B2 and 7.15% voting share voted against the Agenda Item No. B2. But the same is not in compliance with the proviso of Section 35A(3A) of IBC, 2016.*

*Whereas, as per the analysis and computation on votes casted in compliance with the provisions of Section 25A(3) of IBC, 2016, the votes casted in favour of Agenda Item No. B2 is 52.57% which is less than the requisite 90% of the voting share of CoC. The same is deemed to be in compliance with the proviso of Section 25A(3A) of IBC, 2016.*

*Hence in compliance with the provisions of Section 25A(3) of IBC, 2016 on the instant resolution, the agenda Item B2 is taken as "NOT APPROVED" by the CoC."*

12. The Applicants have contended that the Resolution Professional adopted different voting patterns during e-voting in the 18<sup>th</sup> CoC meeting and during the 27<sup>th</sup> CoC meeting. The Resolution Professional did not apply his mind properly while doing the computation of the e-voting results. The Applicant has submitted that the majority of Homebuyers to

Page | 6



37 49

the tune of voting share 40.15% who participated in the voting process “present and voted” casted their vote in favour of the Item No. B2 and only 29.20% casted against the item No. B2.

**13.** It is contended that the majority share of the Homebuyers ought to have been treated as a whole i.e., 80.43%, since, the Homebuyers are treated as “**Financial Creditors in a class**”. However, the Resolution Professional while computing the total voting share in favour of the Item B2, considered homebuyers share as only 40.15% and added the same with the voting share of Punjab National Bank having voting share 12.42% (i.e who also voted in favour of Item B2), and computed total voting share as 52.57% (40.15% of homebuyers + 12.42% of Punjab National Bank) in favour of the Item B2 thereby “Not Approving” the withdrawal proposal under Section 12A of Suspended Director on its own whims and fancies.

**15.** Mr. Arvind Nayyar, Learned Senior Counsel appearing for the Applicant has relied upon the judgment passed by Hon'ble Supreme Court of India in the matter of **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Versus NBCC (India) Ltd & Ors., Civil Appeal No. 3395 of 2020**, wherein, a three-judge bench of the Hon'ble Supreme Court of India has held that homebuyers of JIL falls in a "class of Financial Creditors" and accordingly any decision of that class taken by more than 50% of the voting share would bind all homebuyers/creditors in such class.

The relevant extract of the judgment of the Hon'ble Supreme Court is reproduced below for ready reference: -

*"164.5. To put it in more clear terms qua the homebuyers, the operation of sub-section (3A) of Section 25A of the Code is that their authorized representative is required to vote on the resolution plan in*

Page | 7



38 50

accordance with the decision taken by a vote of more than 50% of the voting share of the homebuyers; and this 50% is counted with reference to the voting share of such homebuyers who choose to cast their vote for arriving at the particular decision. Once this process is carried out and the authorized representative has been handed down a particular decision by the requisite majority of voting share, he shall vote accordingly and his vote shall bind all the homebuyers, being of the single class he represents."

164. The expression 'voting share' has been precisely defined in clause (28) of Section 5 to mean the voting rights of a single financial creditor in the Committee of Creditors, which is based on the proportion of the financial debt owed to such a financial creditor vis-a-vis the financial debt owed by the corporate debtor. In the scheme of the Code with Explanation to Section 5(8)(f), the debt owed by the corporate debtor towards allottees of the real estate project is considered to be a financial debt but for that matter, every individual allottee does not become an independent financial creditor of the corporate debtor, if the number of allottees are 10 or more, in terms of the meaning assigned to the expression "class of creditors" in CIRP regulations. The allottees, like the homebuyers of JIL, falling within clause (f) of sub-section (8) of Section 5, do carry the status of financial creditors but they would be falling in a class collectively; and the voting share of that class would be in terms of the financial debt owed to that class as a whole.

16. He also relied upon the Judgment passed by Hon'ble NCLAT in the case of "**John Varghese Vs Value Design build Private Limited & Ors.**" wherein it has been stated that, "We are of the opinion that in the interest of 'Home Buyers', if majority of the 'Home Buyers' ('Allottees') decide to vote in favour of Section 12A to return the 'Corporate Debtor' to



39 51

original 'Promoter' for completion of the project, at the instance of one person normally it should not be stopped."

**17.** On the contrary, the Resolution Professional has contended that he adopted the correct method of computation as provided under the Code. He submitted that the computation of the votes has been done in accordance with the provisions of sub-section 3 of Section 25A of the Code.

**17.1.** It is also contended that in case of 12A proposal, the vote of each creditor in a class will have to be considered for the purpose of calculating the voting percentage. The results of the voting agenda of Section 12A proposal were calculated and declared in terms of the provisions of Section 25A(3)(A) read with Section 25(A)(3) of the Code. The RP has further stated that the 12A proposal of the promoter was rejected by the Corporate Debtor in the 27<sup>th</sup> meeting of the COC and as a consequence of the rejection of 12A proposal as well as the Resolution Plan, the Corporate Debtor may go into the liquidation by operation of law.

**17.2.** It is therefore contended that the Resolution Professional has considered the votes in respect of each Financial Creditor individually instead of considering it as the class of creditors as a single vote in proportion to their voting share percentage.

**18.** Keeping in view the facts of the present case, the question that is required to be decided by this Tribunal is as to whether the voting done by the Financial Creditors in class "Homebuyers" in a withdrawal proposal under Section 12A of the Code, 2016 shall be counted "Individually" or "in a class" on the basis of majority votes received in the said class" and whether the method adopted by Resolution Professional is correct in law.



**Analysis and findings:-**

40 52

19. In order to determine the above issue, it is pertinent to refer to the relevant provisions of Insolvency and Bankruptcy Code, 2016 which deal with the provisions which prescribe the procedure to be followed in case of withdrawal of an application filed under Section 7, Section 9 or Section 10 of the Code, the provisions of the Code concerning the role of the Authorized Representative and the provisions with respect to the rights and duties of the Authorized Representative of the Financial Creditors etc.

**Procedure for withdrawal:-**

Provisions dealing with the **Rule 8** of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 permits withdrawal of an application on a request made by the Applicant before its admission.

**Section 12A** of the Code which was inserted by the Insolvency and Bankruptcy Code “Second Amendment Act 2018” and which came into effect 01.06.2018.

**Regulation 30A (1)**

Pursuant to the insertion of Section 12A in the Code, Regulation 30A of the 2016 Regulations came to be inserted vide notification dated 3<sup>rd</sup> July, 2018. The same came to be substituted vide notification dated 25<sup>th</sup> July 2019.

The **Regulation 30A (1)**, as amended provides that:

*“an application for withdrawal under Section 12A may be made to the Adjudicating Authority-*



41 53

- a. Before the constitution of committee, by the applicant through the interim resolution professional;
- b. After the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be.”

### **Authorized Representative:-**

Section 21 sub-section 6(A) deals with the appointment of Authorized Representative of the Financial Creditors.

We will now examine the provisions which deal with rights and duties of Authorized Representative of the Financial Creditor.

Section 25A reads as under: -

### **Section 25A: Rights and duties of authorized representative of financial creditors.**

<sup>1</sup>[25A. (1) The authorised representative under sub-section (6) or sub-section (6A) of section 21 or sub-section (5) of section 24 shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.

(2) It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.

(3) The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial



42 59  
creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:

*Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.*

From a conspectus of the abovementioned provisions, it is seen that Section 25A deals with rights and duties of Authorized Representative of the Financial Creditors. Section 25A authorizes or empowers, the Authorized Representative to participate and vote in the meetings of the Committee of Creditors on behalf of the Financial Creditors he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.

Sub-section 2 of Section 25A casts a duty on the Authorized Representative to circulate the agenda and minutes of the meeting of the Committee of Creditors to the Financial Creditor he represents.

Sub-section 3 of Section 25A says that the Authorized Representative shall not act against the interest of the Financial Creditor he represents and shall always act in accordance with their prior instructions.

**First proviso to sub-section 3** envisages that if the authorized representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share”

**Second proviso to sub-section 3** stipulates that the Authorized Representative shall abstain from voting on behalf of such creditor who



43 55

has not given prior instructions either through physical or electronic means.

**Sub-section 3A of Section 25A** starts with a non-obstante clause. Under this provision, the Authorized Representative can cast his vote on behalf of all the Financial Creditors, he represents in accordance with the decision taken by a vote of more than 50% of the voting share of the Financial Creditors he represents, who have cast their vote.

**20.** From a reading of the above provisions, it is clear that these provisions have been enacted in order to give power to an Authorized Representative of the Financial Creditors to cast his vote in the manner prescribed thereunder in all the CoC meetings in which he is required to cast his vote on behalf of Financial Creditors he represents, which includes Resolution Plan approval as well.

**21.** The only provision which has been carved out in respect of an application filed under Section 12A, which has been provided in the proviso to sub-section 2 of Section 25A, which says that the Authorized Representative shall cast his vote in accordance with the provisions of sub-section 3.

**22.** At this stage, it is pertinent to refer to the judgment rendered by the Hon'ble Supreme Court, in the case of *Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Versus NBCC (India) Ltd & Ors. (2022) 1 SCC 401 dated 24.03.2021*, wherein it has been clearly laid down that sub-section 3A deals with Resolution Plan approval. Further the Hon'ble Supreme Court has clearly held that the home buyers shall be treated as a class.

**23.** Since, the Hon'ble Supreme Court has categorically held that the Home Buyers are treated as a class, we are of the considered view that



44 56

the provisions contained in Section 25A including that of the proviso to sub-section 3A would have to be read together and in conjunction with each other and the Home Buyers would have to be treated as a class for all purposes in so far as Section 25A sub-section 1, 2, 3 (including proviso) and sub-section 3A (including proviso) are concerned. In our considered view the Home Buyers cannot be treated differently for different purposes i.e. in one particular way in the case of approval of Resolution Plan and in a different way in the case of dealing with Section 12A application. Therefore, we are of the view that the Resolution Professional ought to have followed the method prescribed under sub-section 3A of Section 25A and come to a conclusion that since more than 50% of the voting has been done in favour of 12A proposal, he should have taken it as 100% since the Financial Creditor have to be treated as a class.

**24.** From the facts of the present case, we find that the total number of homebuyers who participated in the voting was 651. The number of homebuyers who casted their vote in favour of the Section 12A proposal were 390 and the number of homebuyers who casted their vote against the 12A proposal were 260. One homebuyers chose for abstain from voting which means that 57.82% voting share of Homebuyers was in favour of Section 12A proposal. Further, the 12A proposal was approved by the COC in the 27<sup>th</sup> meeting held on 10.01.2023 with a majority of votes of 92.85% comprising of 80.43% share of homebuyers (class of creditors) + 12.42% voting share of Punjab and Sind Bank.

**25.** However, the Resolution Professional has submitted that he has counted the votes of each Home Buyers separately instead of treating them as a class of Financial Creditors. According to the Resolution Professional, the voting share of the Home Buyers is only 40.15 and the voting share of Punjab and Sind Bank is 12.42% and therefore, the

Page | 14



45 57

Resolution Professional has come to a conclusion that 52.57% voting (40.15% voting share of Home Buyers and 12.42% voting share of Punjab and Sind Bank) has been received in favour of 12A proposal.

**26.** Since, we have come to a conclusion that Home Buyers have to be treated as a class for all purposes, be it for the approval of Resolution Plan or for passing a resolution under Section 12A, we are of the considered opinion that the RP has followed a wrong method in calculating the voting shares of Home Buyers.

**27.** Mr. Arvind Nayar, Learned Senior Counsel has also submitted that the expression "several Financial Creditors" used in the proviso of sub-section 3 of Section 12A should be as "Several class of Financial Creditors" in view of the law laid down by the Hon'ble Supreme Court in Jaypee's case (supra). He further submitted that the purpose for appointment of Authorized Representative shall be defeated if he had to cast his vote in respect of each homebuyers individually because in that case the homebuyers could have casted their votes directly without appointing the Authorized Representative. We are in agreement with the submissions made by Mr. Arvind Nayar, Learned Senior Counsel.

**28.** We may also note that the Punjab National Bank (Respondent No. 2) has filed a reply supporting the contentions raised by the Applicant herein and submitted that the procedure followed by RP is contrary to the provisions and procedure established by Law.

**Conclusion:**

From an analysis of the relevant provision and the case laws cited by the Applicant, we are of the considered view that the Resolution Professional has committed an error and followed an incorrect method in counting the votes. Therefore, we approve the withdrawal proposal under



55  
58  
46  
FREE OF COST COPY

Section 12A of the Code and permit the Applicant to withdraw the present Petition.

We further set aside all the subsequent actions taken by Respondent No. 1 pursuant to the after 27th CoC meeting held on 21.02.2023.

We direct that the Corporate Debtor Company be revived and restored to its original position. The RP shall handover all assets, documents, records pertaining to the Corporate Debtor Company forth with and file a compliance report within two weeks.

Sd/-

(ATUL CHATURVEDI)  
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)



*Bachu*  
30/03/2023

सहायक पंजीयक  
ASSISTANT REGISTRAR  
राष्ट्रीय कम्पनी विधि अधिकरण  
NATIONAL COMPANY LAW TRIBUNAL  
C.G.O. COMPLEX, NEW DELHI-110003

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**Comp. App. (AT) (Ins.) No. 1194 of 2023  
& I.A. No. 4200 of 2023**

[Arising out of Order dated 13.07.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-III in IA- 779/2023 in IB-717(ND)/2019]

**In the matter of:**

**Vijay Saini**

**....Appellant**

**Vs.**

**Shri Devender Singh & Ors.**

**...Respondents**

**For Appellants: Mr. Sandeep Bajaj, Mr. Devansh Jain, Ms. Vasudha Chadha, Mr. Shashwat Duggal, Advocates.**

**For Respondents:**

**WITH**

**Comp. App. (AT) (Ins.) No. 791 of 2023**

[Arising out of Order dated 24.05.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi (Court No.III) in IA- 753/2023 in IB-717(ND)/2019]

**In the matter of:**

**Devendra Singh**

**....Appellant**

**Vs.**

**Homebuyers of Sidhartha Buildhome Pvt. Ltd. & Ors.**

**...Respondent**

**For Appellants: Mr. Alok Dhir, Ms. Varsha Banerjee, Mr. Kanishk Khetan, Advocates.**

**For Respondent: Mr. Sumant Batra, Ms. Nidhi Yadav, Mr. Sarthak Bhandari, Mr. Shiv Mangal Sharma, Mr. Saurabh Rajpal, Mr. Abhishek Sharma, Mr. Aman Kalra, Mr. Abhinav Mathur, Advocates for R-4. Mr. Abhijeet Sinha, Sr. Advocate, Mr. Lalit Mohan, Mr. Videh Vaish, Advocates for R-1,2.**

WITH

**Comp. App. (AT) (Ins.) No. 982 of 2023  
& I.A. No. 3346 of 2023**

[Arising out of Order dated 24.05.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi (Court No.III) in IA- 753/2023 in IB- 717(ND)/2019]

**In the matter of:**

**Vijay Saini**

**....Appellant**

**Vs.**

**Homebuyers of Sidhartha Buildhome Pvt. Ltd. & Ors.**

**...Respondents**

**For Appellant:**

**Dr. Menaka Guruswamy, Sr. Advocate, Mr. Sandeep Bajaj, Mr. Devansh Jain, Ms. Vasudha Chadha, Mr. Shashwat Duggal, Mr. Utkarsh Pratap, Mr. Harshwardhan Thakur, Mr. Lavkesh Bhambhani, Advocates.**

**For Respondents:**

**Mr. Abhijeet Sinha, Mr. Lalit Mohan, Mr. Videh Vaish, Ms. Aakansha, Advocates.  
Mr. Abhinav Mathur, Advocate for R-1,2.  
Mr. Sumant Batra, Mr. Shiv Mangal Sharma, Mr. Saurabh Rajpal, Mr. Abhishek Sharma, Advocates for R-4.**

**JUDGMENT**

**(16<sup>th</sup> February, 2024)**

**Ashok Bhushan, J.**

These three Appeals arising out of Corporate Insolvency Resolution Process of 'Sidhartha Buildhome Pvt. Ltd.' have been heard together and are being decided by this common judgment.

2. Company Appeal (AT) (Insolvency) No. 791 of 2023 has been filed by Mr. Devendra Singh who was Resolution Professional of the Corporate

Debtor challenging the order dated 24.05.2023 by which IA No.753 of 2023 filed by the Respondent No.1- Homebuyers of Sidhartha Buildhome Pvt. Ltd. has been allowed by the Adjudicating Authority (National Company Law Tribunal), accepting the proposal under Section 12A of the Code permitting withdrawal of the CIRP.

3. Company Appeal (AT) (Insolvency) No. 982 of 2023 filed by a Homebuyer challenging the same order dated 24.05.2023 passed in IA No.753 of 2023.

4. Company Appeal (AT) (Insolvency) No. 1194 of 2023 has been filed by a homebuyer challenging the order dated 13.07.2023 by which IA No.779 of 2023 filed by Vijay Saini and other homebuyers have been dismissed as infructuous in view of the order dated 24.05.2023 passed in IA No.753 of 2023.

5. We need to notice the brief facts of the case giving rise to these Appeals:-

5.1. On an application filed under Section 7 by Oriental Bank of Commerce (now merge with Punjab National Bank), the CIRP against Sidhartha Buildhome Pvt. Ltd. commenced by order dated 04.03.2021. The Resolution Professional twice issued Form-G. In response to Form-G issued, two Resolution Plans were received as well as one proposal under Section 12A for withdrawal submitted by Mr. Sidharth Chauhan, Promoter/Director. In the 18<sup>th</sup> meeting dated 15.02.2022, both the Resolution Plans as well as proposal submitted by promoter/director was rejected and decision was

taken to issue fresh Form G. In response to Form G published on 23.02.2022, two Resolution Plans were received one from the promoter/director i.e. Mr. Sidharth Chauhan and another from Alpha Corp Development Pvt. Ltd. The Adjudicating Authority passed an order on 22.08.2022 that the Resolution Plan of the promoter shall not be placed. Mr. Sidharth Chauhan thereafter submitted a proposal under Section 12A on 06.12.2022. In the 27<sup>th</sup> meeting of the CoC held on 10.01.2023, the Resolution Plan of Alpha Corp Development Pvt. Ltd. as well as withdrawal proposal of Mr. Sidharth Chauhan, Promoter/Director was put for discussion and voting. E-voting was conducted from 14.01.2023 to 18.01.2023. The Resolution Plan of Alpha Corp Development Pvt. Ltd. was not approved. After analysing voting result, the Resolution Professional found that with regard to Item No.B2 i.e. revised proposal under Section 12A submitted by Mr. Sidharth Chauhan, 40.15% votes by Financial Creditors in a class voted 'Yes' whereas 29.20% voted 'No' and 11.08% was abstained. Punjab National Bank having 12.42% voted for the plan and Punjab & Sind Bank having 7.15% voted against the plan. The Resolution Professional opined that the total votes in favour of plan is 52.57% which is less than the requisite 90% of the voting share of the CoC. The resolution was not approved.

5.2. The Authorised Representative of the homebuyers filed an IA No. 753 of 2023 questioning the minutes recorded by the Resolution Professional where proposal Item No. B2 was held not approved. In the application, following prayers were made:-

*“a) Allow the present Application and "Approve the Withdrawal Proposal under Section 12A of the Code having 92.85% votes in its favour thereby, setting aside/quashing the finding/decision of Respondent No.1 qua the Item No. B-2 of the 27<sup>th</sup> CoC meeting and/or;*

*b) Pass appropriate orders for the revival of the corporate debtor and quash and set-aside the subsequent action/decision taken by the Respondent No.1 after the 27<sup>th</sup> CoC meeting dated 22.01.2023 and/or;*

*c) Pass any other order as this Hon'ble Tribunal may deem fit in the interest of justice.”*

5.3. In IA No.753 of 2023, reply was filed by the Resolution Professional opposing the application. It was pleaded that for application under Section 12A, 90% vote share of CoC was required and withdrawal plan under Section 12A having received only 52.57%, the proposal was not approved. Adjudicating Authority after hearing the parties on IA No.753 of 2023 allowed the application. Adjudicating Authority held that the Resolution Professional ought to have followed the method prescribed under sub-section 3A of Section 25A and come to a conclusion that since more than 50% of the voting has been done in favour of 12A proposal, he should have taken it as 100% since the Financial Creditor have to be treated as a class. On the aforesaid conclusion, the Adjudicating Authority allowed the application and approved the withdrawal proposal under Section 12A. Company Appeal (AT) (Insolvency) No.791 of 2023 has been filed by the

Resolution Professional- Devendra Singh challenging the order whereas Company Appeal (AT) (Insolvency) No. 982 of 2023 has been filed by Vijay Saini, homebuyer challenging the order dated 24.05.2023. After filing of IA No.753 of 2023, an IA No.779 of 2023 was filed by Vijay Saini and 127 other homebuyers in which application following prayers have been made:-

*“(i) Extend time period for completion of CIRP by 90 days from the date of order passed by this Ld. Tribunal, as the CIRP ended on 27,01,2023,*

*(ii) Replace the Respondent No. 1 as Resolution Professional with another Resolution Professional as deem fit by the Ld. Adjudicating Authority in present CIRP,*

*(iii) Replace Respondent No. 2 as Authorized Representative with another Authorized Representative as deemed fit by the Ld. Adjudicating Authority in present CIRP and*

*(iv) to direct newly appointed Resolution professional to place only viable resolution plan of Respondent No. 3 before the Committee of Creditors (CoC) for re-consideration and re-voting and under relevant provisions of the Code along with Regulations, 2016.*

*(v) Any other relief/direction/order which this Learned Adjudicating Authority may deem fit in the facts and circumstances of the present case.”*

5.4. Applicant in IA No. 779 of 2023 opposed the withdrawal plan submitted under Section 12A. Application IA No.779 of 2023 came to be rejected by order dated 13.07.2023. Paragraph 2 of the order is as follows:-

*“2. In view of the order dated 24.05.2023 passed in IA-753/2023 whereby this Adjudicating Authority allowed Section 12A application and permitted the Applicant to*

*withdraw the main matter. Hence, the present IA-779/2023 **dismissed as infructuous.***”

5.5. Mr. Vijay Saini, aggrieved by the order, has filed Company Appeal (AT) (Insolvency) No.1194 of 2023.

6. We have heard Shri Alok Dhir, Learned Counsel appearing for Appellant in Company Appeal (AT) (Insolvency) No.791 of 2023, Dr. Menaka Guruswamy, Learned Senior Counsel appearing for Appellant in Company Appeal (AT) (Insolvency) No.982 of 2023 and Shri Sandeep Bajaj, Learned Counsel appears for the Appellant in Company Appeal (AT) (Insolvency) No.1194 of 2023. Shri Sumant Batra, Learned Counsel has appeared for Siddharth Chauhan, Director/Promoter- Respondent No.4 in Company Appeal (AT) (Insolvency) No.1194 of 2023. Shri Abhijeet Sinha, Learned Senior Counsel for the homebuyers of Sidharth Buildhome Pvt. Ltd. as well as Shri Dharmendra Kumar, Authorised Representative of homebuyers.

7. Shri Alok Dhir, Learned Counsel for the Appellant in Company Appeal (AT) (Insolvency) No.791 of 2023 submits that the Adjudicating Authority committed error in approving withdrawal proposal under Section 12A whereas said proposal had not received 90% votes of the CoC. It is submitted that the Adjudicating Authority has misconstrued the provision of Section 25A and Section 12A for withdrawal approval. Section 12A mandates approval of proposal by CoC with 90% voting share of the CoC. The Adjudicating Authority erred in taking the view that the vote of the homebuyers who are the Financial Creditor in class has to be computed as

per majority of their votes as per Section 25A (3A) whereas present is not a case where decision of the homebuyers by majority was sufficient to approve an application under Section 12A. Resolution Professional has rightly taken the view that the proposal under Section 12A submitted by the Respondent No.4 was not approved. On the e-voting held in pursuance of the meeting of the CoC held on 10.01.2023, Resolution Professional has rightly computed the result of the e-voting and had taken the view that in favour of the proposal under Section 12A only 52.57% votes were cast which was insufficient to approve the proposal under Section 12A. The Adjudicating Authority by misinterpreting the provision of Section 25A r/w Section 12A has allowed the application. Respondent No.4 has earlier also made attempts to withdraw the CIRP in which he failed. CoC on 15.02.2022 has earlier rejected the proposal under Section 12A. It is submitted that the Adjudicating Authority has incorrectly allowed Section 12A application and directed the Resolution Professional to handover assets and records to Respondent No.4- promoter/director which was contrary to the scheme of the IBC.

8. Dr. Menaka Guruswamy, Learned Senior Counsel appearing for Appellant in Company Appeal (AT) (Insolvency) No.982 of 2023 submits that the homebuyers have been cheated by the promoter/director. A huge amount was collected from the homebuyers and they have not been provided their units in spite of lapse of several years. It is submitted that both the projects of the Corporate Debtor namely— NCR One Project and Estella Project are incomplete. It is also contended that the Adjudicating

Authority committed error in holding that the proposal under Section 12A stood withdrawn on the basis of e-voting consequent to 27<sup>th</sup> CoC meeting held on 10.01.2023. It was submitted that 90% threshold for withdrawal of Resolution Plan by the CoC has been kept for purpose and object. The voting on the application under Section 12A is not voting on a Resolution Plan or voting where majority of votes of homebuyers have to be looked into. It is true that the homebuyers are creditor in class and majority votes of the creditor in class has to be treated as the views of the homebuyers on a particular subject but majority decision of homebuyers as a creditor in class is not sufficient for Section 12A proposal. The Resolution Professional has rightly opined that the proposal under Section 12A was not passed.

9. In Company Appeal (AT) (Insolvency) No.1194 of 2023, Learned Counsel for the Appellant submits that the IA No.779 of 2023 which was filed by 128 homebuyers with Vijay Saini, Authorised Representative of homebuyers was although heard together with IA No.753 of 2023 but judgment was not delivered in IA No.779 of 2023 and it was IA No.753 of 2023 which was decided on 24.05.2023. IA No.779 of 2023 has been subsequently rejected on 13.07.2023 holding that the IA has become infructuous in view of the order dated 24.05.2023. Both applications have been heard together and were required to be decided together. The order dated 13.07.2023 does not advert to the merits of the application and has simply dismissed the application, which order is unsustainable.

10. Shri Abhijeet Sinha, Learned Senior Counsel appearing for the homebuyers of Sidhartha Buildhome Pvt. Ltd. as well as Authorised

Representative has supported the impugned order. It is submitted that the decision of the homebuyers as a class is binding on each homebuyer and majority of homebuyers have decided to approve Section 12A proposal. Other homebuyers are bound by the same. It is submitted that the proposal under Section 12A contains detailed plan as to how the Corporate Debtor shall be revived and the promoter/director has given details in the plan for completing the construction of both the projects i.e. NCR Greens Project and Estella Project. It is submitted that the promoter has also in the plan provided for infusing funds and funds have been infused by proposal of Section 12A application due to which projects have progressed. Putting the Corporate Debtor in insolvency shall not be in the interest of the homebuyers. Promoter/director having undertaken to complete the construction without charging any extra amount from the homebuyers, homebuyers are getting the units long awaited. Subsequent events after the order dated 24.05.2023 have to be taken into notice while taking any decision in the appeal. In both the projects construction is going on and homebuyers will get their flats timely as per the approved withdrawal proposal. As of now, 145 flats are at completion stage in NCR Greens Project. Monitoring Committee has been constituted for overseeing the construction of NCR Greens and Estella. It is submitted that in event the order dated 24.05.2023 is reversed, company is likely to go into liquidation. Construction of both the projects has already been resumed.

11. Shri Sumant Batra, Learned Counsel for the Respondent No.4 promoter/director supported the impugned order and submits that the

interpretation put by the Adjudicating Authority on Section 25A is in accord with the statutory scheme. It is submitted that as per proposal under Section 12A, NCR Greens Project and Estella Project were to be completed within six months and one year respectively. A Monitoring Committee has been constituted comprising of a Retd. Chief Justice of High Court and there are other members. Several meetings have been held by Monitoring Committee and substantial progress has been made. The project NCR Greens is almost complete. The possession shall also be handed over till the end of February of 135 semi furnished units which shall be completed by then. Out of 653 units in project NCR Green, 415 units have already been handed over. It is submitted that Company Appeal (AT) (Insolvency) No.791 of 2023 filed by the Resolution Professional is not maintainable since Resolution Professional cannot be said to be an aggrieved person. On 23.11.2023, possession has issued of 103 units. As far as the Estella Project is concerned, upon direction of Monitoring Committee, the structural audit to ensure the future safety of the families who will reside is going on. It is submitted that the homebuyers of NCR Greens are satisfied with the progress and that is why application IA No.753 of 2023 was filed by homebuyers of Sidhartha Buildhome Pvt. Ltd. praying that the proposal under Section 12A should be approved. Shri Batra further submits that the Resolution Professional has counted the votes of each homebuyer individually, instead of considering the decision by the majority of class of creditors as a single vote in proportion to their voting share percentage. Calculation of votes individually is unsustainable. Plain reading of proviso of Section 25A(3), it is clear that by referring to the term 'several Financial

Creditors' the legislature has simply referred to 'several classes of Financial Creditors' or else, the purpose for the appointment of the Authorised Representative would be defeated if he had to cast his vote in respect of each homebuyer individually, because in that case, homebuyers could have directly casted their votes without appointing the Authorised Representative. It is submitted that the purpose of formation of 'class' would be defeated if the votes are to be counted individually. It is submitted that in view of the substantial progress towards construction in both the projects and the fact that Project NCR Greens is almost complete, in event it is necessary to revive the CIRP, reverse CIRP be directed for NCR Greens Project and Project Estella be taken under CIRP.

12. Counsel for the parties in support of their submissions have relied on several judgments of the Hon'ble Supreme Court and this Tribunal which shall be referred to while considering the submissions in detail.

13. We have considered the submissions of the Counsel for the parties and perused the record.

14. The principal issue which has come for consideration before us in these appeals is regarding manner of computation of voting with regard to application under Section 12A. Section 12A application submitted by promoter/director- Respondent No.4 was considered in 27<sup>th</sup> CoC meeting held on 10.01.2023. E-voting which was conducted between 14.01.2023 to 18.01.2023 and result of voting Resolution Professional has recorded in the minutes that two proposals have not been approved. In IA No.753 of 2023,

voting result as recorded by Resolution Professional on 12A application was challenged and it was pleaded in the application IA No.753 of 2023 that the proposal under Section 12A stood approved.

15. Before we proceed further, we may notice necessary statutory provisions governing withdrawal of insolvency application. Insolvency and Bankruptcy Code 2016 as initially enacted did not contain any provision for withdrawal of application. Section 12A was inserted in the Code by Act 26 of 2018 w.e.f. 06.06.2018. Section 12A as inserted w.e.f. 06.06.2018 is as follows:-

**“12A. Withdrawal of application admitted under section 7, 9 or 10.** – *The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified.*”

16. By the same amendment i.e. Act 26 of 2018, Section 25A was also inserted in IBC Code. Section 25A which is as follows:-

**“25A. Rights and duties of authorised representative of financial creditors.** – *(1) The authorised representative under sub-section (6) or sub-section (6A) of section 21 or sub-section (5) of section 24 shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of*

*such creditors obtained through physical or electronic means.*

*(2) It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.*

*(3) The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:*

*Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:*

*Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.”*

17. Section 21 of the Code provides for CoC. As per Section 21, CoC comprised of all Financial Creditors of the Corporate Debtor. The scheme of IBC indicate that the various provisions/ statute provides for decision by the CoC. For example, under Section 28(3), action under sub-section (1) of Section 28 requires approval by the CoC by 66% of the voting shares. Section 28(3) is as follows:-

**“28. Approval of committee of creditors for certain actions.** – (3) *No action under sub-section (1) shall be approved by the committee of creditors*

*unless approved by a vote of [sixty-six] per cent. of the voting shares.”*

18. Section 30 provides for ‘submission of Resolution Plan’ and Section 30(4) provides for approval of the Resolution Plan by vote of not less than 66% of the voting share. Section 30(4) provides as follows:-

**“30. Submission of resolution plan.** - (4) *The committee of creditors may approve a resolution plan by a vote of not less than [sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, [the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor] and such other requirements as may be specified by the Board:*

*Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:*

*Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:*

*Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that subsection]:*

*[Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.]”*

19. It is to be noted that earlier under Section 30(4) prior to amendment by Act 26 of 2018 vote share for approval of the plan was 75% which was reduced to 66% by Act 26 of 2018 w.e.f. 06.06.2018. It is also relevant to note that Section 12A which also came on statutory scheme by same amendment Act 26 of 2018 w.e.f. 06.06.2018 voting share of the CoC was provided 90%. The statutory scheme as delineated by aforesaid provision makes it clear that the voting share for proposal under Section 12A has been kept as a very high threshold. The Hon’ble Supreme Court in **“Swiss Ribbons Private Limited and Anr. vs. Union of India and Ors.- (2019) 4 SCC 17”** had occasion to consider challenge to Section 12A and threshold of 90% as provided. The Hon’ble Supreme Court repelled the challenge and held that Section 12A is constitutionally valid. In Paragraph 83 of the judgment, following has been held:-

*“83. The main thrust against the provision of Section 12-A is the fact that ninety per cent of the Committee of Creditors has to allow withdrawal. This high threshold has been explained in the ILC Report as all financial creditors have to put their heads together to allow such withdrawal as, ordinarily, an omnibus settlement involving all creditors ought, ideally, to be entered into. This explains why ninety per cent, which is substantially all the financial creditors, have to grant their approval to an individual withdrawal or settlement. In any case, the figure of ninety per cent, in the absence of anything further to show that it is arbitrary, must pertain to the domain of legislative policy, which has been explained by the Report (supra). Also, it is clear, that under Section 60 of the Code, the Committee of Creditors do not have the last word on the subject. If the Committee of Creditors arbitrarily rejects a just settlement and/or withdrawal claim, NCLT, and thereafter, NCLAT can always set aside such decision under Section 60 of the Code. For all these reasons, we are of the view that Section 12-A also passes constitutional muster.”*

20. We may also notice the relevant voting result of 27<sup>th</sup> CoC meeting held on 10.01.2023 which had come for consideration before the Adjudicating Authority in IA No.753 of 2023. Item No. B2 which came for consideration before the 27<sup>th</sup> CoC meeting was with regard to Section 12A proposal submitted by Mr. Sidharth Chauhan, Suspended Director of the Corporate Debtor. After receiving the voting result, summary record of the decision

taken on the relevant agenda item regarding the 27<sup>th</sup> CoC meeting has been minuted. We, in the present case, are concerned with Item No.B2. On Item No.B2, Resolution Professional has recorded following:-

**"ITEM NO. B2**

**TO CONSIDER, DELIBERATE, DECIDE AND APPROVE THE REVISED PROPOSAL UNDER SECTION 12A OF THE IBC, 2016 SUBMITTED BY MR. SIDHARTH CHAUHAN, DIRECTOR (POWER SUSPENDED) OF CORPORATE DEBTOR**

**The Following Resolution was proposed for e-voting.**

***"RESOLVED THAT*** the revised proposal submitted under Section 12A of IBC, 2016 by Mr. Sidharth Chauhan, Director (Power Suspended) be and is hereby approved."

***RESOLVED FURTHER THAT*** the Committee of Creditors authorized the Resolution Professional to submit the Proposal as approved herein to the Hon'ble Adjudicating Authority for approval in terms of Section 12A of the Insolvency and Bankruptcy Code, 2016 read with Regulation 30A(5) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other applicable, provisions, if any, of the Insolvency and Bankruptcy Code, 2016 and in accordance with rules and regulations made there under."

**Analysis & Result**

The Resolution Professional is providing the analysis on voting result on Agenda Item No. 82 in compliance with Section 25A (3) of IBC, 2016 as mandated under the Proviso of Section 25A (3A) of IBC 2016.

<b>Agenda Item No.</b>	<b>Resolution Voted Upon</b>	<b>Yes(%)</b>	<b>No (%)</b>	<b>Abstain/Not Voted (%)</b>	<b>Total(%)</b>
	• Voting by Financial Creditors in a Class(Homebuyers) as per Section 25A(3) of IBC, 2016	40.15%	29.20%	11.08%	80.43
	• Voting by Punjab National Bank	12.42%	-	-	12.42
	• Voting by Punjab & Sind Bank	-	7.15%	-	7.15
	<b>Total</b>	<b>52.57%</b>	<b>36.35%</b>	<b>11.08%</b>	<b>100%</b>

However, as per the analysis and computation on votes casted in compliance with the provisions of Section 25A(3A) of IBC, 2016, the members of CoC representing 92.85% voting share voted in favour of the Agenda Item No. B2 and 7.15% voting share voted against the Agenda Item No. 82. But the same is not in compliance with the proviso of Section 25A(3A) of IBC, 2016.

Whereas, as per the analysis and computation on votes casted in compliance with the provisions of Section 25A(3) of IBC, 2016, the votes casted in favour of Agenda Item No. B2 is 52.57% which is less than the requisite 90% of the voting share of CoC. The same is deemed to be in compliance with the proviso of Section 25A(3A) of IBC, 2016.

Hence, in compliance with the provisions of Section 25A(3) of IBC, 2016 on the instant resolution, the agenda item B2 is taken as "NOT APPROVED" by the CoC."

21. As observed above, the Resolution Professional after noticing the aforesaid voting result has recorded that the Agenda Item No.B2 is not approved by the CoC.

22. We may also notice analysis and conclusion of the Adjudicating Authority as recorded in the impugned order. Adjudicating Authority has relied on judgment of the Hon'ble Supreme Court in **“Jaypee Kensington Boulevard Apartments Welfare Association & Ors. vs. NBCC (India) Ltd. & Ors.- (2022) 1 SCC 401”** and after referring to the said judgment has concluded that the Resolution Professional ought to have followed the method prescribed under sub-section 3A of Section 25A and come to the conclusion that since more than 50% of the voting has been done in favour of Section 12A proposal, he should have taken it as 100% since the Financial Creditor have to be treated as a class. In paragraphs 22, 23 and 26, Adjudicating Authority has held:-

*“22. At this stage, it is pertinent to refer to the judgment rendered by the Hon'ble Supreme Court, in the case of Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Versus NBCC (India) Ltd & Ors. (2022) 1 SCC 401 dated 24.03.2021, wherein it has been clearly laid down that sub-section 3A deals with Resolution Plan approval. Further the Hon'ble Supreme Court has clearly held that the home buyers shall be treated as a class.*

23. Since, the Hon'ble Supreme Court has categorically held that the Home Buyers are treated as a class, we are of the considered view that the provisions contained in Section 25A including that of the proviso to sub-section 3A would have to be read together and in conjunction with each other and the Home Buyers would have to be treated as a class for all purposes in so far as Section 25A sub-section 1, 2, 3 (including proviso) and sub-section 3A (including proviso) are concerned. In our considered view the Home Buyers cannot be treated differently for different purposes i.e. in one particular way in the case of approval of Resolution Plan and in a different way in the case of dealing with Section 12A application. Therefore, we are of the view that the Resolution Professional ought to have followed the method prescribed under sub-section 3A of Section 25A and come to a conclusion that since more than 50% of the voting has been done in favour of 12A proposal, he should have taken it as 100% since the Financial Creditor have to be treated as a class.

26. Since, we have come to a conclusion that Home Buyers have to be treated as a class for all purposes, be it for the approval of Resolution Plan or for passing a resolution under Section 12A, we are of the considered opinion that the RP has followed a wrong method in calculating the voting shares of Home Buyers.”

23. After the aforesaid discussions, Adjudicating Authority recorded his conclusion in following words:-

**“Conclusion:**

*From an analysis of the relevant provision and the case laws cited by the Applicant, we are of the considered view that the Resolution Professional has committed an error and followed an incorrect method in counting the votes. Therefore, we approve the withdrawal proposal under Section 12A of the Code and permit the Applicant to withdraw the present Petition.*

*We further set aside all the subsequent actions taken by Respondent No. 1 pursuant to the after 27th CoC meeting held on 21.02.2023.*

*We direct that the Corporate Debtor Company be revived and restored to its original position. The RP shall handover all assets, documents, records pertaining to the Corporate Debtor Company forth with and file a compliance report within two weeks.”*

24. The Adjudicating Authority, thus, has held that with regard to application under Section 12A the voting ought to have been computed by the Resolution Professional in accordance with Section 25A (3A) i.e. Authorised Representative shall cast his vote on behalf of all Financial Creditors since decision taken by more than 50% of the voting share of the Financial Creditors. In coming to the above conclusion, Adjudicating Authority has failed to notice the proviso to sub-section (3A) of Section 25A. Proviso to sub-section (3A) is as follows:-

**“25A. Rights and duties of authorised representative of financial creditors. – (3A)**

*Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote: Provided that for a vote to be cast in respect of an application under section 12A, the authorised representative shall cast his vote in accordance with the provisions of subsection (3).”*

25. We again notice sub-section (3) of Section 25A which is to the following effect:-

**“25A. Rights and duties of authorised representative of financial creditors. – (3)** *The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:*

*Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:*

*Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.”*

26. Thus, the voting under sub-section (3A) which is to be cast by Authorised Representative is to be on the basis of vote of more than 50% of

the voting share of the Financial Creditor in a class but the said provision of sub-section (3A) was subject to the proviso which proviso created a different voting pattern for 12A. Thus, for computing voting with regard to 12A proposal, the voting has to be computed as per Section 25A (3A) proviso r/w Section 25A(3). As per Section 25A(3), if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share. When the statute i.e. Section 12A provides 90% voting for approval of Section 12A proposal, 90% of the voting share of the creditor in class have to be taken into consideration. Since voting by each homebuyers who represented creditor in class has to be computed as per his voting share and adding all vote shares of the creditor in class with any other Financial Creditor if it is at least up to 90% only then 12A proposal is held to be passed.

27. Submission of Shri Sumant Batra that when there are more than one Financial Creditors and one of them is a creditor in class i.e. homebuyer, the decision of the homebuyers should be taken as majority decision of homebuyers i.e. vote of more than 50% of the voting share, cannot be accepted in view of the proviso to sub-section (3A). Proviso to sub-section (3A) clearly indicate that the decision of creditor of class by vote of more than 50% of the voting share as contemplated by sub-section (3A) is not applicable with regard to voting on a 12A application. The Adjudicating Authority has committed error in coming to the conclusion that vote share of creditor in class i.e. homebuyers have to be accepted as the majority vote

i.e. 50% of the voting share, hence, it has to be held that 100% of homebuyers have voted for the 12A proposal. The Adjudicating Authority has followed this logic and held that 100% of homebuyers i.e. 80.43% should be treated to have voted in favour of the proposal, hence, the 12A proposal has to be treated to be approved since 12.42% was also voted by Punjab National Bank in favour of the plan.

28. We are of the view that the interpretation put by the Adjudicating Authority on provision of 12A is not in accord with the statutory scheme. This can be demonstrated by taking a simple example; in a case where homebuyers i.e. creditor in class have 100% vote share in the CoC. Whether if majority of homebuyers i.e. 50% of the homebuyers take a decision to approve 12A proposal, can it be held that the proposal of 12A stand approved. Answer is a clear no. Since statute provides a rigorous threshold i.e. 90% of vote share, hence, when 90% vote share of the creditor of class approves the application under Section 12A only then CIRP can be withdrawn. The rigorous vote share has been provided with an object and purpose.

29. Learned Counsel for the Respondent has also relied on the judgment of the Hon'ble Supreme Court in **“Jaypee Kensington Boulevard Apartments Welfare Association & Ors.”** (supra). **“Jaypee Kensington Boulevard Apartments Welfare Association & Ors.”** was a case where a Resolution Plan was approved by the CoC in a class. In the above context, it was held that when homebuyers casts their votes of more than 50%, their votes shall be treated to be votes of a creditor in class since the Authorised

Representative is required to vote on the Resolution Plan in accordance with the decision taken by a vote of more than 50% of the voting share of the homebuyers as is required by Section 25A(3A). It is useful to extract paragraphs 164.5, 165.1 and 166 of the judgment, which is as follows:-

*“164.5. To put it in more clear terms qua the homebuyers, the operation of Sub-section (3A) of Section 25A of the Code is that their authorised representative is required to vote on the resolution plan in accordance with the decision taken by a vote of more than 50% of the voting share of the homebuyers; and this 50% is counted with reference to the voting share of such homebuyers who choose to cast their vote for arriving at the particular decision. Once this process is carried out and the authorised representative has been handed down a particular decision by the requisite majority of voting share, he shall vote accordingly and his vote shall bind all the homebuyers, being of the single class he represents.*

xxx

xxx

xxx

*165.1. A rather overambitious attempt has been made by the homebuyers who have filed separate appeal (T.C. No. 242 of 2020) to refer to the percentage of voting share of homebuyers and it has been suggested that out of the total voting share of homebuyers i.e., 57.66%, the assenting voting share was only 34.10%, whereas 22.51% abstained and 1.05% dissented. It is submitted that roughly, for every 3 homebuyers who voted for NBCC, 2 had dissented/abstained. Even assuming the percentage as stated by these Appellants to be*

*correct, we are at a loss to find any logic in the submissions so made. A re-look at Sub-section (3A) of Section 25A would make it clear that '50%' for the purpose of the said provision is of those homebuyers who cast their vote. On the percentage figures as given before us, out of the total voting share of homebuyers at 57.66%, the persons carrying 22.51% voting share simply abstained and of the persons casting their votes, ayes were having the voting share of 34.10% whereas nays were having the voting share of 1.05%. Obviously, 50% would be counted, only of the persons who chose to vote where, much higher than 50% of the homebuyers who cast their vote, stood for approval of the resolution plan of NBCC86. Such a voting cannot be set at naught for the purported dissatisfaction of a miniscule minority, which was about 3.69% in terms of the number of persons voting; and about 1.05% in terms of the voting share. They have to sail along with the overwhelming majority. That is the purport and effect of 'drag along' or 'sail along' provisions in the scheme of the Code.*

*166. For what has been discussed hereinabove, the suggestions that there was no cent percent approval of the resolution plan, or that there was no consensus amongst homebuyers, or that the plan of Suraksha Realty was considered better, are required to be rejected. It is not the case that the AR of homebuyers has not voted in accordance with the decision taken by a vote of more than 50% of the voting share of homebuyers who did cast their vote.*

*In the given set of facts, we have no hesitation in thoroughly disapproving the unnecessary imputations made by one set of homebuyers against the AR that he made any incorrect statement before the CoC. That being the position, and the authorised representative having voted in accordance with the instructions given to him from the class of financial creditors i.e., homebuyers, every individual falling in this class remains bound by his vote and any association or homebuyer of JIL cannot be acceded the locus to stand differently and to project its/his own viewpoint or grievance by way of objections or by way of appeal. All such objections and appeals are required to be rejected on this ground alone.”*

30. The above judgment of the Hon'ble Supreme Court was considering a voting by Authorised Representative in accordance with decision taken of vote of more than 50% of the voting share as required by sub-section (3A) of Section 25A but the present is a case which is covered by proviso to sub-section (3A) of Section 25A. Proviso of sub-section (3A) makes a clear intention that voting as contemplated in Section 25A (3A) is not to be applied when an application under Section 12A is to be considered which requires 90% vote shares of the CoC. Thus, the judgment of the Hon'ble Supreme Court in **“Jaypee Kensington Boulevard Apartments Welfare Association & Ors.”** (supra) was not applicable with regard to voting on 12A application. The Adjudicating Authority fell in error in holding that the homebuyers in a creditor in class i.e. homebuyers who have voted 40.15% as 'yes' should be treated as 100% of vote shares of the homebuyers i.e. vote should be treated as 80.43% i.e. creditor in class. It was by adding vote of

creditors in class of 80.43% + 12.42% of Punjab National Bank. Adjudicating Authority has come to the conclusion that 12A proposal was approved by more than 90%, which is clearly fallacious and incorrect. We, thus, are of the considered opinion that the Adjudicating Authority committed error in holding that the proposal under Section 12A was approved by 90% whereas proposal had received only 52.57% of vote share as recorded by Resolution Professional on Item No. B2 as extracted above. Proposal submitted by Respondent No.4 not having been approved, Adjudicating Authority committed error in passing the impugned order by closing the CIRP and directing the Resolution Professional to handover the assets and documents to the promoter of the Corporate Debtor. Order dated 24.05.2023 is clearly unsustainable.

31. Shri Sumant Batra contended that Company Appeal (AT) (Ins.) No.719 of 2023 filed by the Resolution Professional is not maintainable since the Resolution Professional could not be held to be aggrieved person against order passed by the Adjudicating Authority dated 24.05.2023. Learned counsel for the Appellant has relied on judgment of Hon'ble Supreme Court in ***“Regen Powertech Private Limited vs. Giriraj Enterprises & Anr., Civil Appeal Nos.5985-6001 of 2023”***.

32. We have considered the submission of learned counsel for the Respondent No.4. The present is a case where the Resolution Professional has challenged the order of the Adjudicating Authority dated 24.05.2023 by which order the Adjudicating Authority has rejected the voting summary and opinion minuted by the Resolution Professional holding that 12A

proposal is not approved since it was not approved by 90% votes. The Appellant, Resolution Professional whose summary of voting holding that 12A application was not approved has been set aside by the Adjudicating Authority. The Resolution Professional is duty bound to ensure that the CIRP process is conducted in accordance with provisions of IBC and Regulations. In the facts of the present case where opinion of the Resolution Professional, who was Chairman of the CoC holding that 12A proposal is not approved has been overturned by the Adjudicating Authority, we are of the view that the Resolution Professional is an aggrieved person from the said decision since the decision of the Adjudicating Authority directly overturns the decision of the Resolution Professional. In so far as judgement of the Hon'ble Supreme Court in "**Regen Powertech Private Limited vs. Giriraj Enterprises & Anr.**" relied by the Respondent No.4, the judgment of the Hon'ble Supreme Court dated 25.09.2023 is as follows:

**ORDER**

*We are of the opinion that in view of the facts and circumstances, the Resolution Professional should not have filed the present appeals. The Resolution Professional should have maintained a neutral stand. It is for the aggrieved parties, including the Committee of Creditors of Regen Powertech Private Limited (RPPL) and Regen Infrastructure and Services Private Limited (RISPL), to take appropriate proceedings or file an appeal before this Court.*

*Recording the aforesaid, the present appeals preferred by the Resolution Professional are dismissed as not entertained.*

*If required and necessary, the Court can take assistance and ascertain the facts from the Resolution Professional, in case an appeal(s) is preferred by the Committee of Creditors or a third party.*

*Pending application(s), if any, shall stand disposed of.”*

33. When we look into the above judgment, it is clear that the said judgment was in the facts and circumstances of that case where the Supreme Court held that the Resolution Professional should have maintained a neutral stand and could not have filed an appeal. The present is a case where the Resolution Professional is required to conduct the proceeding of the CoC according to the IBC and take a decision on the result of voting. There can be no question of Resolution Professional taking, in the present case, any sides. In so far as computation of votes is concerned, the Resolution Professional is required to compute the votes as per the statute. Hence, the judgment of the Hon'ble Supreme Court in **“Regen Powertech Private Limited vs. Giriraj Enterprises & Anr.”** which was in the facts of the said case cannot be said to be applicable in the present set of facts. We, thus, are of the view that the appeal could not be held to be not maintainable, at the instance of the Resolution Professional. It is relevant to the notice that the said order has also been challenged by Homebuyer – Mr. Vijay Saini in Company Appeal (AT) (Ins.) No.982 of 2023 with regard to which there is no issue of maintainability.

34. Now we proceed to examine the submission advanced on behalf of the promoter/director as well as homebuyers of Sidhartha Buildhomes Pvt. Ltd. that the proposal submitted by Respondent No.4- promoter/director for withdrawal under Section 12A contain a detailed plan and mechanism for completion of both the projects and handing over the possession of units to the homebuyers. In Company Appeal (AT) (Insolvency) No.791 of 2023, we had permitted Respondent No.4 to file an Additional Affidavit which Affidavit dated 29.11.2023 has been filed by the Respondent No.4. In the Additional Affidavit, details of subsequent developments of the projects in question have been brought on record. Affidavit contains the detail of an amount infused by Respondent No.4 after the order dated 24.05.2023 it also mention about the payment of Rs.5.50 Crore to the Financial Creditors i.e. Punjab National Bank and Punjab & Sind Bank. Construction detail of NCR Greens Project and Estella Project has also been detailed. Affidavit indicated that the Monitoring Committee has been constituted headed by a Retd. Chief Justice of High Court.

35. Counsel for Respondent No.4 in his submission has submitted that in Project NCR Greens, all units shall be handed over till end of February 2024 and possession has been issued on 23.11.2023 to 103 units in Project NCR Greens. With regard to project Estella, it has been stated that several steps have been taken. Structural audit and other steps have been taken with regard to Estella Project. Affidavit further details that after order dated 24.05.2023 renewal of the licenses of the Project NCR Green have also been obtained on 09.11.2023 and with regard to Estella Project, an amount of

Rs.3,87,81,500/- has also been paid to the Department of Town & Country Planning as the fee for renewal of licenses for the Project Estella which license has not been issued till the date Affidavit was filed. Affidavit further states that company namely— 'Unique Consulting Engineers' for 'structural audit and health check' for the project Estella was engaged. Certain amounts have also spent by Respondent No.4 for an amount of Rs.8,30,000/- is also claim to be spent for Project Estella for structural audit and health check. Certain other steps with regard to Estella Project has been initiated.

36. From the facts which have been brought on the record, it is clear that after the order dated 24.05.2023 was passed by the Adjudicating Authority allowing 12A proposal, the Respondent No.4 proceeded as per the proposal under 12A and has carried out certain works as detailed in Additional Affidavit. It has further been submitted that all units pertaining to Project NCR Green shall be ready and shall be handed over by end of February. We are of the view that the Project NCR Green being almost complete, the said project need to be kept out of CIRP. However, Respondent No.4 shall be entirely responsible for handing over units to each and every unit holder of NCR Green Project.

37. We having already held that the order dated 24.05.2023 is unsustainable. The proposal under Section 12A having not been approved by 90% vote share of the CoC, the order dated 24.05.2023 has to be set aside reviving the CIRP of the Corporate Debtor.

38. Learned Counsel for the Respondent has relied on judgment of this Tribunal in Company Appeal (AT) (Insolvency) No. 926 of 2019- ***“Flat Buyers Association Winter Hills vs. Umang Realtech Private Limited through IRP & Ors.”*** where this Tribunal has directed for reverse CIRP in facts and circumstances of the said case. We are also of the view that in the present case, the CIRP of the Corporate Debtor be revived and be confined to the Estella Project. Let the Resolution Professional constitute the CoC for the Estella Project. Taking in the CoC the homebuyers of Estella Project, the Financial Creditors- Punjab National Bank and Punjab & Sind Bank shall also be part of the CoC. We permit the Resolution Professional to issue fresh Form-G with regard to Estella Project and complete the CIRP process within a period of 90 days from the date of issuance of Form G.

39. Coming to the Company Appeal (AT) (Insolvency) No.1194 of 2023, we having taken the view that the order dated 24.05.2023 is unsustainable, the order passed by the Adjudicating Authority in IA No.779 of 2023 deserves to be set aside reviving the IA No.779 of 2023 to be heard and decided afresh.

40. In view of the foregoing discussions and our conclusion, we decide all these appeals in following manner:-

(i) Company Appeal (AT) (Insolvency) Nos. 791 and 982 of 2023 are allowed. The order dated 24.05.2023 passed by the Adjudicating Authority in IA No. 753 of 2023 is set aside. I.A. No.753 of 2023 is dismissed.

(ii) CIRP of the Corporate Debtor- Sidhartha Buildhome Pvt. Ltd. is revived which proceeding shall confine to Project Estella.

(iii) The Project NCR Green be kept out of the CIRP which henceforth commences. The promoter/director is solely responsible to complete and handover all units of the Project NCR Green to the unit holders and in event there is any failure on the part of the Respondent No.4 to handover the units to all unit holders, it shall be open for the Financial Creditors in class to make an application before the Adjudicating Authority for appropriate relief including relief of revival of CIRP with regard to NCR Green Project also.

(iv) The Resolution Professional shall issue fresh Form G with regard to Estella Project and complete the CIRP within a period of 90 days from the date of issuance of Form G. Resolution Professional before issuing Form G with regard to Estella Project shall constitute the CoC for the Project Estella and proceed further as per decision of the CoC so constituted.

Parties shall bear their own costs.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

***Anjali/nn***

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**  
**I.A. No. 3557 of 2024**  
**In**  
**Company Appeal (AT)(Insolvency) No. 791 of 2023**

**IN THE MATTER OF:**

**Devendra Singh**

**...Appellant**

**Versus**

**Homebuyers of Sidhartha Buildhome Pvt. Ltd. & Ors.**

**...Respondents**

**Present:**

**For Appellant** : Mr. Iswn Mohapatra and Mr. Santosh Rout, Advocates for Applicant.

**For Respondents** : Mr. Sanjay Bajan, Advocate for R-2  
Mr. Shiv Mangal Sharma, Mr. Saurabh Rajpal, Mr. Abhishek Sharma, Advocates for R-3  
Mr. Kanishk Khetan, Advocate for R-4

**O R D E R**  
**(Hybrid Mode)**

**22.07.2024:**

**I.A. No. 3557 of 2024**

This application has been filed on behalf of Punjab National Bank praying for correction of inadvertent error in paragraph-38 of the judgment dated 16.02.2024 in Company Appeal (AT) (Insolvency) No. 1194 of 2023 with two other appeals. It is submitted that in paragraph-38, this Tribunal made following observations:

..

*“38. Learned Counsel for the Respondent has relied on judgment of this Tribunal in Company Appeal (AT) (Insolvency) No. 926 of 2019- “Flat Buyers Association Winter Hills vs. Umang Realtech Private Limited through IRP & Ors.” where*

*this Tribunal has directed for reverse CIRP in facts and circumstances of the said case. We are also of the view that in the present case, the CIRP of the Corporate Debtor be revived and be confined to the Estella Project. Let the Resolution Professional constitute the CoC for the Estella Project. Taking in the CoC the homebuyers of Estella Project, the Financial Creditors- Punjab National Bank and Punjab & Sind Bank shall also be part of the CoC. We permit the Resolution Professional to issue fresh Form-G with regard to Estella Project and complete the CIRP process within a period of 90 days from the date of issuance of Form G.”*

..

With regard to constitution of CoC of Estella Project, it is submitted that in the CoC of Estella Project only Punjab National Bank is member of CoC and Punjab & Sind Bank was not a part of CoC of Estella Project, hence the said observation need to be deleted from paragraph-38.

Learned Counsel for Punjab & Sind Bank does not dispute that Punjab & Sind Bank is not part of CoC of Estella Project. However, it is submitted that Punjab & Sind Bank is part of another Project- NCR Green.

In view of the aforesaid, in the last but one sentence of the judgment is corrected as follows:

“Taking in the CoC, the homebuyers of Estella Project, the Financial Creditor- Punjab National Bank shall also be part of CoC.”

The judgment is corrected accordingly.

We make it clear that any decision by CoC prior to this order shall not be affected by this Order.

Application I.A. No. 3557 of 2024 is disposed of.

**[Justice Ashok Bhushan]  
Chairperson**

**[Mr. Barun Mitra]  
Member (Technical)**

*akc/Nn*

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**I.A. No. 7577 of 2024**

**in**

**Comp App. (AT) (Ins) No. 791 of 2023**

**IN THE MATTER OF:**

**Devendra Singh**

**...Appellant(s)**

**Versus**

**Homebuyers of Sidhartha Buildhome  
Pvt. Ltd. & Ors.**

**...Respondent(s)**

**Present:**

**For Appellant** : Mr. Alok Dhir, Mr. Kanishk Khetan, Advocates.

**For Respondents** : Mr. Monish Surendran, Advocate for R-1.  
Mr. Sanjay Bajaj, Mr. Shivam Takkar and Mr. Rajat  
Prakash, Advocates for R-3.  
Mr. Sumant Batra, Mr. Sarthak Bhandari, Mr. Shiv  
Mangal Sharma, Mr. Saurabh Rajpal, Mr. Abhishek  
Sharma, Advocates for R-4.

**With**

**Contempt Case (AT) No. 8 of 2024**

**in**

**Comp. App. (AT) (Ins) No. 791 of 2023**

**IN THE MATTER OF:**

**Deepak Kumar Goyal**

**...Applicant(s)**

**Versus**

**Sidharth Chauhan &Anr.**

**...Contemnor(s)/Respondent(s)**

**Present:**

**For Applicant** : Mr. Alok Dhir, Mr. Kanishk Khetan, Advocates  
Mr. Deepak Kumar Goyal, RP in person.

**For  
Contemnor/Respondents** : Mr. Sumant Batra, Mr. Sarthak Bhandari, Mr.  
Shiv Mangal Sharma, Mr. Saurabh Rajpal, Mr.  
Abhishek Sharma, Advocates for contemnors.

**ORDER**  
**(Hybrid Mode)**

**02.05.2025:**      **I.A. No. 7577 of 2024-** This is an application filed for clarification by Resolution Professional of Judgment dated 16.02.2024 passed in CA (AT) (Ins) No. 1194 of 2023 with CA (AT) (Ins) No. 791 of 2023 with CA (AT) (Ins) No. 982 of 2023.

2.        Ld. Counsel for the Applicant submits that this Tribunal by Judgment dated 16.02.2024 has set aside the order dated 24.05.2023 passed by Adjudicating Authority allowing Section 12A application which directions have been issued in paragraph 37.

3.        It is further submitted that this Tribunal noticed that one of the project namely project NCR Green is almost complete hence direction was issued to keep the project out of CIRP.

4.        It is submitted that some directions issued in paragraph 37, 38, 40 requires certain clarification with regard to revival of the CIRP of the CD.

5.        It is submitted that the Respondents to the appeal i.e. Suspended Directors have taken stand that CIRP is confined only to the one project i.e. Estella Project which is not correct and the RP was entitled to carry out the CIRP of the CD.

6.        Shri Sumant Batra Ld. Counsel appearing for Suspended Director submits that Suspended Director has never taken any stand that the CIRP of the entire CD has not been revived only stand was that the project NCR Green has been kept out of the CIRP. The Suspended Directors are entitled to retain the documents and material with the said project.

7. We have also heard the Ld. Counsel for Respondent No. 3/Punjab & Sind Bank. Shri Bajaj has appeared for Respondent-3.

8. We have heard the submissions of Ld. Counsel for the parties and perused the record.

9. Paragraph 37, 38 of the Judgment following has been held:

*“37. We having already held that the order dated 24.05.2023 is unsustainable. The proposal under Section 12A having not been approved by 90% vote share of the CoC, the order dated 24.05.2023 has to be set aside reviving the CIRP of the Corporate Debtor”.*

*38. Learned Counsel for the Respondent has relied on judgment of this Tribunal in Company Appeal (AT) (Insolvency) No. 926 of 2019- **“Flat Buyers Association Winter Hills vs. Umang Realtech Private Limited through IRP & Ors.”** where this Tribunal has directed for reverse CIRP in facts and circumstances of the said case. We are also of the view that in the present case, the CIRP of the Corporate Debtor be revived and be confined to the Estella Project. Let the Resolution Professional constitute the CoC for the Estella Project. Taking in the CoC the homebuyers of Estella Project, the Financial Creditors- Punjab National Bank and Punjab & Sind Bank shall also be part of the CoC. We permit the Resolution Professional to issue fresh Form-G with regard to Estella Project and complete the CIRP process within a period of 90 days from the date of issuance of Form G”.*

10. When the order passed by adjudicating authority (24.05.2023) allowing 12A application has been set aside, the natural consequence of setting aside the order is that to revive the CIRP as have been directed in paragraph 37. We however clarify that CIRP is revived with regard to CD as a whole and is not confined to Estella Project only as was observed in paragraph 38 of the Judgment.

11. In view of the fact that project NCR Green was kept out of the CIRP that was only for the purpose of completion and handing over of the project by promoters.

12. We are of the view that application need to be disposed of with the above clarification.

**Contempt Case (AT) No. 8 of 2024**

This contempt application has been filed alleging contempt of orders dated 16.02.2024 passed in CA (AT) (Ins) No. 1194 of 2023 with CA (AT) (Ins) No. 791 of 2023 with CA (AT) (Ins) No. 982 of 2023.

2. By an order of date 02.05.2025 IA No. 7577 of 2024 have clarified our Judgment dated 16.02.2024.

3. Ld. Counsel appearing for Respondent has submitted that Respondent has never given any impression that CIRP does not relate to the entire CD.

4. In view of the aforesaid, we see no reason to continue the contempt application.

5. Contempt application closed.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

*sr/md*

## ANNEXURE-6

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**I.A. No. 3206 of 2025 in**  
**Company Appeal (AT) (Insolvency) No. 791 of 2023**

**IN THE MATTER OF:**

**Devendra Singh** **...Appellant**

**Versus**

**Homebuyers of Sidhartha Buildhome Pvt. Ltd. &  
Ors.** **...Respondents**

**Present:**

**For Applicant** : **Mr. Sanjay Bajaj, Mr. Shivam Takkar, Advocates  
for Applicant in IA No.3206 of 2025.**

**For Respondents** : **Mr. Kanishk Khetan, Advocate for R-1.**  
**Ms. Ekta Choudhay, Ms. Rushali, Mr. Ayush  
Kumar, Mr. Rajat Singh, Advocates for R-2 (PNB).**  
**Mr. Sumant Batra, M Mr. Sarthak Bhandari, Ms.  
Riya Kaur Arora, Mr. Saurav Rajpal, Mr. Shiv  
Mangal Sharma, Mr. Abhishek Sharma, Advocates  
for R-3.**  
**Mr. Sandeep Bhuraria, Ms. Vaishnavi Prakash,  
Advocates for Applicant in I.A. Nos.5449, 5450 of  
2025 (SRA).**

**With**

**Company Appeal (AT) (Insolvency) No. 1041 of 2025**

**IN THE MATTER OF:**

**Punjab & Sind Bank** **...Appellant**

**Versus**

**Sidhartha Buildhome Pvt. Ltd.** **...Respondents**

**Present:**

**For Appellant** : **Mr. Sanjay Bajaj, Mr. Shivam Takkar, Advocates.**

**For Respondents** :

**ORDER**  
**(Hybrid Mode)**

**09.09.2025:** Application I.A. No.3206 of 2025 has been filed by the Punjab and Sind Bank in Company Appeal (AT) (Ins.) No.791 of 2023 which was decided by our judgment and order dated 16.02.2024 as subsequently corrected on 22.07.2024 and clarified on 02.05.2025. The Corporate Debtor - Sidhartha Buildhome Pvt. Ltd. was put into CIRP by order of the Adjudicating Authority dated 04.03.2021. Subsequently, a 12A application was allowed on 24.05.2023, against which Company Appeal (AT) (Ins.) Nos.1194 of 2023, 291 of 2023 and 982 of 2023 were filed. This Tribunal vide judgment dated 16.02.2024 allowed the Company Appeal and issued following directions in Para 40:

*“40. In view of the foregoing discussions and our conclusion, we decide all these appeals in following manner:-*

- (i) Company Appeal (AT) (Insolvency) Nos. 791 and 982 of 2023 are allowed. The order dated 24.05.2023 passed by the Adjudicating Authority in IA No. 753 of 2023 is set aside. I.A. No.753 of 2023 is dismissed.*
- (ii) CIRP of the Corporate Debtor- Sidhartha Buildhome Pvt. Ltd. is revived which proceeding shall confine to Project Estella.*
- (iii) The Project NCR Green be kept out of the CIRP which henceforth commences. The promoter/director is solely responsible to complete and handover all units of the Project*

*NCR Green to the unit holders and in event there is any failure on the part of the Respondent No.4 to handover the units to all unit holders, it shall be open for the Financial Creditors in class to make an application before the Adjudicating Authority for appropriate relief including relief of revival of CIRP with regard to NCR Green Project also.*

*(iv) The Resolution Professional shall issue fresh Form G with regard to Estella Project and complete the CIRP within a period of 90 days from the date of issuance of Form G. Resolution Professional before issuing Form G with regard to Estella Project shall constitute the CoC for the Project Estella and proceed further as per decision of the CoC so constituted.”*

2. In the judgment dated 16.02.2024, this Tribunal noticing the submissions of the parties including those of Promoters in Paras 36, 37 and 38 observed following:

*“36. From the facts which have been brought on the record, it is clear that after the order dated 24.05.2023 was passed by the Adjudicating Authority allowing 12A proposal, the Respondent No.4 proceeded as per the proposal under 12A and has carried out certain works as detailed in Additional Affidavit. It has further been submitted that all units pertaining to Project NCR Green shall be ready and shall be handed over by end of February. We are of the view that the Project NCR Green being almost complete, the said project need to be kept out of CIRP. However, Respondent No.4 shall*

*be entirely responsible for handing over units to each and every unit holder of NCR Green Project.*

*37. We having already held that the order dated 24.05.2023 is unsustainable. The proposal under Section 12A having not been approved by 90% vote share of the CoC, the order dated 24.05.2023 has to be set aside reviving the CIRP of the Corporate Debtor.*

*38. Learned Counsel for the Respondent has relied on judgment of this Tribunal in Company Appeal (AT) (Insolvency) No. 926 of 2019- “Flat Buyers Association Winter Hills vs. Umang Realtech Private Limited through IRP & Ors.” where this Tribunal has directed for reverse CIRP in facts and circumstances of the said case. We are also of the view that in the present case, the CIRP of the Corporate Debtor be revived and be confined to the Estella Project. Let the Resolution Professional constitute the CoC for the Estella Project. Taking in the CoC the homebuyers of Estella Project, the Financial Creditors- Punjab National Bank and Punjab & Sind Bank shall also be part of the CoC. We permit the Resolution Professional to issue fresh Form-G with regard to Estella Project and complete the CIRP process within a period of 90 days from the date of issuance of Form G.”*

3. The effect of the order of this Tribunal was that CIRP of the Corporate Debtor was revived and was confined to project Estella. By subsequent correction on 22.07.2024, in the Estella project Financial Creditor – Punjab National Bank was held to be part of the CoC and Punjab and Sind Bank was not part of the CoC.

4. Company Appeal (AT) (Ins.) No.1041 of 2025 was filed by the Punjab and Sind Bank challenging the order dated 22.05.2022 passed by the Adjudicating Authority in Section 7 application being C.P. (IB) 647/ND/2024. The Adjudicating Authority disposed of the Section 7 application noticing the CIRP against the Corporate Debtor has already commenced, against which order the appeals have been decided by this Tribunal, as noted above. Aggrieved by the order refusing to admit Section 7 application appeal has been filed by Punjab and Sind Bank.

5. Learned counsel for the Applicant- Punjab and Sind Bank submits that Applicant is not part of the CoC of Project Estella with regard to which CIRP, direction was issued to proceed, in which CIRP, Resolution Plan has already been approved by the CoC and pending for consideration before the Adjudicating Authority with regard to project Estella, for which CIRP was directed to continue. Learned counsel for the Applicant submits that the Applicant is Financial Creditor of the Corporate Debtor which finance was used for project NCR Green and Applicant is sole Financial Creditor of project NCR Green apart from creditors in class and there is no Occupancy Certificate issued in NCR Green project.

6. Learned counsel for the Resolution Professional also submits that there is no Occupancy Certificate with regard to NCR Green.

7. Shri Sumant Batra, learned counsel has appeared for the Promoter and submits that Promoter has also infused substantial funds in NCR Green which has been noticed by this Tribunal in earlier orders.

8. After having heard learned counsel for the parties, in so far as appeal filed by Punjab and Sind Bank, we are of the view that CIRP having already commenced against the Corporate Debtor, which CIRP is still in process, the Adjudicating Authority did not commit any error in not admitting another CIRP application filed by the Punjab and Sind Bank claiming to be the Financial Creditor of one of the projects of the Corporate Debtor. We, thus, do not find any error in the order warranting any interference in the order of the Adjudicating Authority on appeal filed by the Punjab and Sind Bank. However, we are of the view that Applicant is entitled to seek directions as prayed in I.A. No.3206 of 2025.

9. The project-wise CIRP with respect to a real estate company has already been noticed by this Tribunal in Para 38 of the judgment dated 16.02.2024, as noted above. The CIRP Regulations, 2016 as amended also envisages project-wise resolution in a real estate company. As per earlier order, we have directed resolution of one project Estella. Project NCR Green in which Punjab and Sind Bank claims to be Financial Creditor is still unfinished. We, thus are of the view that Resolution Professional is free to proceed with the CIRP of Project NCR Green and issue Information Memorandum and Form G and proceed further in accordance with I&B Code and CIRP Regulations, 2016.

10. Learned counsel for the Promoter submits that they having infused substantial funds in the project NCR Green, the said amount in question shall need to be considered by the CoC to be treated as interim finance or not.

11. Learned counsel for the Resolution Professional submits that in so far as project Estella is concerned, Resolution Plan has already pending for consideration before the Adjudicating Authority. We are of the view that in these Application or appeal we are not required to consider any issues arising of the Resolution Plan, which is pending before the Adjudicating Authority. It is for the Adjudicating Authority to consider all objections and take a decision.

12. In view of the aforesaid, we dispose of I.A. No.3206 of 2025, as above in Para 9 and Company Appeal (AT) (Ins.) 1041 of 2025 is dismissed.

13. We further clarify that with regard to Resolution Plan, it shall be open for all concerned to file their objections. The Adjudicating Authority shall consider as to whether Form G was issued with regard to one project (Estella) or entire Corporate Debtor.

14. We having already passed orders deciding the Appeals including correction and clarification, no further orders are required.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Barun Mitra]**  
**Member (Technical)**

*Archana/nn*



**Press Release**  
**31.03.2025**

Directorate of Enforcement (ED), Gurugram Zonal Office has provisionally attached immovable assets worth Rs. 94.82 Crore belonging to Sidharth Chauhan, Promoter of M/s Sidhartha Buildhome Pvt. Ltd. (M/s SBPL), his companies and other individuals under the provisions of the Prevention of Money Laundering Act (PMLA), 2002 in a case of cheating various homebuyers. The attached properties include land parcels, residential house and commercial building situated in Gurugram, Haryana.

ED initiated investigation on the basis of FIRs registered by Economic Offences Wing (EOW), New Delhi. The FIRs were registered by EOW on the basis of complaints of various homebuyers of Projects Estella and NCR One, Gurugram against the M/s SBPL & others for failing to deliver the promised homes within the promised timeframes.

ED investigation revealed that M/s SBPL collected approximately Rs. 520 Crore from more than 950 homebuyers for its projects in Gurugram, Haryana. Sidharth Chauhan through M/s SBPL diverted funds collected from homebuyers to its group companies as unsecured loans / advances, for investments in other avenues instead of using the same for completion of promised homes.

Further investigation is under progress.

CRM-M-45417-2025 (O&amp;M)

-1-

2025:PHHC:177539



**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

CRM-M-45417-2025 (O&amp;M)

Date of decision: 22<sup>nd</sup> December, 2025

Siddharth Chauhan

...Petitioner

Versus

Serious Fraud Investigation Officer (SFIO)

...Respondent

**CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Prateek Gupta, Advocate and  
Mr. Vikram Sheoran, Advocate for the petitioner.

Ms. Puneeta Sethi, Senior Panel counsel and  
Mr. Y.S. Thakur, Advocate for the respondent-SFIO.

\*\*\*

**MANISHA BATRA, J (ORAL):-****CRM-51613-2025**

This application has been filed by the applicant for placing on record the judgment dated 09.04.2025 passed by Hon'ble Supreme Court as Annexure P-23.

For the reasons mentioned in the application, the same is allowed, subject to all just exceptions. Annexure P-23 is ordered to be taken on record.

**Main case**

The instant petition has been filed under Section 528 of BNSS seeking quashing of the order dated 22.07.2025 passed by the learned Special Court under the Companies Act, Gurugram, in Criminal Complaint No. 05 of

CRM-M-45417-2025 (O&amp;M)

-2-

2025:PHHC:177539



2019 titled as *Serious Fraud Investigation office vs. Adarsh Build Estate Ltd. and others*, whereby the petitioner had been declared a proclaimed person.

2. The aforementioned complaint has arisen out of order dated 20.06.2018 passed by the Central Government through Ministry of Corporate Affairs (**hereinafter referred to as 'MCA'**) whereby MCA in exercise of the powers conferred under Section 212(1)(c) of the Companies Act, 2013 (**For short, 'Companies Act'**) and Section 43(2) and (3)(c)(i) of the Limited Liability Partnership Act, 2008 (for short, '*LLP Act*'), ordered investigation into the affairs of Adarsh Group of Companies and its 125 Limited Liability Partnership Companies (hereinafter referred to as '*companies under investigation*' '*CUIs*') by Serious Fraud Investigation Office (for short '*SFIO*') on the allegations of siphoning off funds of Adarsh Credit Cooperative Society Limited (for short, '*ACCSL*'). As per the investigation conducted, funds of the ACCSL, which actually belonged to 22 lakhs depositors and were of amount of several crores of rupees, were received by the CUIs on unsubstantiated and questionable projected balance sheets and financial statements. Both CUIs as well as the ACCSL, were controlled by Mukesh Modi, who was the founder of ACCSL, and who along with his family members and associates, was found involved. In the complaint submitted by the complainant, the petitioner was arraigned as accused No. 135, and his eight companies were arraigned as accused Nos. 71 to 78. This complaint has to be considered as a report presented under Section 173 of the Cr.P.C. in terms of the provisions of Section 212(15) of the Companies Act.

CRM-M-45417-2025 (O&M)

-3-

2025:PHHC:177539



3. After issuance of process by the Court of learned Special Judge, the petitioner moved an application for grant of pre-arrest bail which was dismissed vide order dated 01.08.2019 by learned Special Judge. He filed an application for pre-arrest bail before this Court which was dismissed vide order dated 13.11.2019. Even a special leave petition challenging the order dated 13.11.2019, as filed by the petitioner was dismissed as withdrawn before Hon'ble Apex Court on 16.09.2022. In the meanwhile, proceedings under Section 82 of Cr.P.C. were initiated by the learned Special Judge, since the petitioner had not appeared before it despite the fact that even non-bailable warrants were issued against him for 11 times and he was fully aware of the proceedings. On 25.03.2022, order was passed by the special judge for issuance of proclamation against the petitioner for 02.07.2022. The proclamation so issued on 07.05.2022 had been received back duly published. However, the petitioner filed a petition bearing CRM-M-27904-2022 before this Court and vide order dated 01.07.2022, the matter was ordered to be listed with CRM-M-20279-2020 filed by the petitioner wherein vide order dated 24.05.2022, the trial Court was directed to adjourn the proclamation proceedings beyond the date fixed by this Court. The aforementioned petition was ultimately dismissed as withdrawn on 09.01.2025.

4. As further revealed from the material placed on record, on 14.01.2025, the respondent-SFIO moved an application for declaring the petitioner as a proclaimed person. The petitioner was thereafter granted several opportunities to appear before the trial Court but failed to appear thereby compelling the learned Special Judge to declare him as a proclaimed person on 22.07.2025 by making following observations: -

CRM-M-45417-2025 (O&amp;M)

-4-

2025:PHHC:177539



*“Learned Senior Prosecutor pointed out that pursuant to dismissal of the anticipatory bail application of accused No.135/ Siddharth Chauhan up to the Hon’ble Supreme Court and on account of non-appearance before the Court, vide order dated 25.03.2022, proclamation proceedings against said accused were initiated by learned Predecessor of this Court and proclamation was ordered to be published against the accused and Executing official was directed to come present on 07.05.2022 to suffer statement regarding due publication against the accused and then on 07.05.2022 concerned Executing Official suffered statement regarding due publication of proclamation qua this accused, as so reflected vide order dated 07.05.2022 passed by learned Predecessor and thereafter matter was adjourned to 02.07.2022 for presence of the accused, but in the meanwhile said accused preferred petition bearing No. CRM-M-27904-2022 before Hon’ble High Court and Hon’ble High Court directed to adjourn the proclamation proceedings qua said accused in terms of order dated 04.08.2022, however the said petition has ultimately been dismissed by Hon’ble High Court vide order dated 09.01.2025 and accordingly, made a prayer that said accused be declared proclaimed offender, as he is not coming present before the Court despite specific direction(s) passed by this Court to come present before this Court, as so recorded vide order dated 27.02.2025. The afore-noted aspects of the matter are not in dispute. The proclamation has been duly published qua accused No.135/ Siddharth Chauhan and accused was granted enough time i.e. much more than 30 days time to appear before the Court, pursuant to publication of proclamation. Case called several times since morning, but accused No. 135/Siddharath Chauhan has not come present. It is already 4:00 PM. Therefore, accused No. 135/Siddharth Chauhan is declared as proclaimed person/officer in this case.”*

5. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law, as while passing the same, the learned Special Court ignored the fact that the petitioner, through his counsel, had been appearing before the said Court in a routine manner and had never tried to escape from the proceedings pending before it. The impugned

CRM-M-45417-2025 (O&amp;M)

-5-

2025:PHHC:177539



order has completely failed to justify the proclamation. The proper procedure for declaring him as a proclaimed person has not been followed at all. The fact that an application for grant of pre-arrest bail bearing CRM-M-13646 of 2025 was pending at that time before this Court, had also been ignored. After dismissal of the petition bearing CRM-M-27904 of 2022, he could not appear before the Special Court in person as he was undergoing treatment in a hospital and had moved applications seeking exemption on medical grounds.

6. It is further argued that no proper satisfaction was recorded by the trial court after withdrawal of the earlier quashing petition. No new proclamation notice was published. His non-appearance on the dates fixed before the learned trial court was neither intentional nor deliberate, but due to *bonafide* reasons. He had been continuously participating in the legal proceedings through his counsel and was neither absconding nor concealing himself so as to prevent execution of warrants. There is no evidence of any proper publication, affixation or minimum 30 days' notice has been produced on record as required by law. The learned Special Judge, while declaring the petitioner as a proclaimed offender/ person, did not apply his judicious mind. The impugned order is vitiated by fundamental legal inconsistencies and illegalities. The petitioner had showed his *bonafide* and intention to appear before the Court time and again. With these broad submissions, it is urged that the impugned order dated 22.07.2025 is not sustainable in the eyes of law and is liable to be set aside.

7. The respondent has filed reply. Learned Senior Panel counsel for

CRM-M-45417-2025 (O&amp;M)

-6-

2025:PHHC:177539



the respondent has vehemently argued that the impugned order does not suffer from any illegality or infirmity, as the petitioner had been summoned as an accused for commission of offences punishable under Section 447 of the Companies Act, 2013, read with Sections 417, 418, and 420 read with Section 120-B of the IPC. Processes were issued against him at the address provided by him during investigation on account of his non-appearance, initially bailable warrants and thereafter non-bailable warrants were issued. The application for grant of anticipatory bail as filed by the petitioner had been dismissed by the Special Court on 01.08.2019 and thereafter, by this Court vide order dated 13.11.2019. The petitioner had also filed a Special Leave Petition on 08.09.2022 before the Hon'ble Supreme Court challenging the order dated 13.11.2019, but the same was dismissed as withdrawn on 16.09.2022. He was fully aware of the proceedings pending before the trial court but did not surrender. Warrants were issued against him eleven times, but he avoided the execution of the same, thereby compelling the Special Court to initiate proceedings under Section 82(1) of the Cr.P.C. vide order dated 25.03.2022. The proclamation issued for 02.07.2022 had been received back duly effected on 07.05.2022, and the statement of the executing police official was also recorded. However, the petitioner could not be declared a proclaimed person in view of the orders dated 24.05.2022 passed in CRM-M-27904 of 2022 by this Court as mentioned in order dated 01.07.2022, which was subsequently withdrawn by the petitioner on 09.01.2025. The learned trial court had rightly declared him as a proclaimed person on 02.07.2025. No fresh

CRM-M-45417-2025 (O&amp;M)

-7-

2025:PHHC:177539



proceedings were required to be initiated. It is, thus, urged that there is no merit in the present petition and the same is liable to be dismissed. To fortify her arguments, the learned Senior Panel Counsel for the respondent has placed reliance upon the judgments cited in case of *Serious Fraud Investigation Office vs. Aditya Sharda and others, 2025 INSC 477*, wherein while dealing with the plea of another accused of this very case, for grant of anticipatory bail, the Hon'ble Apex Court had observed that when summons or warrants are issued to an accused, he is bound to submit himself to the authority of law. If he creates hinderances in execution of warrants and conceals himself and does not submit to the authority of law, he must not be granted of privilege of anticipatory bail. Reliance has also been placed upon *Srikant Upadhyay and others vs. State of Bihar and another (2024) SCC Online SC 282*, wherein similar observations were made when an accused against whom proclamation proceedings had been initiated, prayed for grant of anticipatory bail.

8. The petitioner is challenging the order dated 22.07.2025 passed by the learned Special Court, whereby he was declared a proclaimed person. Section 82 of the Cr.P.C., Code of Criminal Procedure, which is *pari materia* with Section 84 of the BNSS, is relevant for the purpose and the same is reproduced as under:-

**“82. Proclamation for person absconding.-**

(1) If any Court has reason to believe that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

CRM-M-45417-2025 (O&amp;M)

-8-

2025:PHHC:177539



(2) The proclamation shall be published as follows:-

(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; and

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house.

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of Sub-Section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

[(4) Where a proclamation published under Sub-Section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860) and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.]

[(5) The provisions of Sub-Sections (2) and (3) shall apply to a declaration made by the Court under Sub-Section (4) as they apply to the proclamation published under Sub-Section (1)].”

9. On a bare perusal of the contents of the above-mentioned provision, it is apparent that the Court is competent to initiate proceedings for declaring an accused as a proclaimed person if it has reason to believe that such accused has absconded or is concealing himself so that the warrant issued against him cannot be executed and so as to avoid his appearance before the Court. The very purpose of this section is to secure the presence of an accused who is avoiding his appearance/arrest before the trial Court.

10. Admittedly and evidently, the petitioner has been well aware of the fact that he has been summoned as an accused for commission of offences punishable under Section 447 of the Companies Act, 2013 and under the provisions of the Indian Penal Code. He moved an application seeking grant

CRM-M-45417-2025 (O&amp;M)

-9-

2025:PHHC:177539



of anticipatory bail way back in the year 2019, which was dismissed on 13.11.2019. Even an SLP filed by him against the order of dismissal by this Court had been dismissed as withdrawn on 16.09.2022. Since a counsel engaged by the petitioner has been appearing before the Special Court, therefore, it is obvious that he is having knowledge about each, and every proceeding conducted before the learned Special Court. The proceedings under Section 82 of Cr.P.C. were initiated vide order dated 25.03.2022 and proclamation was ordered to be issued for 02.07.2022, which was duly published, but since in the meanwhile the petitioner filed a petition before this Court and as an interim order was passed in his favour, he could not be formally declared a proclaimed person by the learned Special Court. On withdrawal of the said petition by the petitioner on 09.01.2025, the learned trial Court had started proceeding further against him.

11. The copies of orders passed by the learned trial Court are part of the record. A perusal of Annexure P-15, which is a copy of order dated 18.01.2025, has revealed that the respondent filed an application on 13.01.2025 for declaring the petitioner as a proclaimed person since there was no restraining order. Annexure P-16 is a copy of the order dated 27.02.2025, showing that an application for exempting the presence of the petitioner had been moved by his counsel, which was dismissed, and by taking a lenient view, the learned Special Court still granted another opportunity to the petitioner to appear before it on 07.04.2025. However, neither on 07.04.2025 nor on subsequent dates till 22.07.2025, the petitioner caused his appearance

CRM-M-45417-2025 (O&amp;M)

-10-

2025:PHHC:177539



before the learned Trial Court, thereby compelling the learned Trial Court to declare him as a proclaimed person after waiting till 4:00 p.m.

12. The petitioner, in the meanwhile, had filed an application for grant of anticipatory bail before this Court, which was dismissed as withdrawn on 25.02.2025, and another petition was filed on 19.03.2025. As already discussed, his first petition had been dismissed by the Special Court as well as this Court, and the order of dismissal was upheld by the Hon'ble Apex Court. The third petition for grant of anticipatory bail bearing CRM-M-13646 of 2025 has also been dismissed today by passing a separate order.

13. Undoubtedly, the issuance of process under Section 82 of Cr.P.C. and pronouncing a person as a 'proclaimed person or proclaimed offender' entails serious consequences, including not only deprivation of personal liberty of a person but also attachment of his properties and thus, any order to that effect must reflect satisfaction of the Court that the person concerned has absconded or is concealing himself to avoid the process of law. However, in this case, the petitioner is trying to take advantage of technicalities of law for the purpose of quashing of the impugned order, as, it is apparent that even after being well aware about the pendency of the complaint against him, he is taking the courts for a ride, since the year 2019, by initiating one proceeding or the other for the purpose of avoiding his surrender/appearance before the learned trial Court. The very purpose of Section 82 of Cr.P.C. is to inform an accused of the fact that some criminal proceedings are pending against him and to give him reasonable time to appear before the Court, even while having

CRM-M-45417-2025 (O&amp;M)

-11-

2025:PHHC:177539



reason to believe that he has absconded or is concealing himself so that the warrant issued against him cannot be executed. The petitioner has stepped much further, as he has avoided his surrender/appearance and execution of warrants issued against him, while being fully aware of the fact that even proceedings for declaring him as a proclaimed person had been initiated. The challenge to the impugned order, as such, is nothing but a device by the petitioner to misuse the process of law under the pretext that proper procedure for declaring him as a proclaimed person has not been followed.

14. Learned counsel for the petitioner has placed on record Annexure P-23, a copy of order dated 21.11.2025 passed by Hon'ble Supreme Court showing that a petition has been filed for review of the order dated 09.04.2025 passed in *Aditya Sarda's case (supra)*, who is a co-accused, whereby his prayer for grant of anticipatory bail was rejected and the Hon'ble Apex Court has restrained the trial Court from taking any coercive action against the abovesaid accused. In the opinion of this Court, the petitioner, however, cannot draw any assistance from this fact.

15. On an overview of the orders passed by learned trial Court and in view of discussion made above, this Court is of the opinion that it does not lie in the mouth of the petitioner to say that his non-appearance on the date fixed before the learned trial Court was not intentional or deliberate or was due to bona fide reasons, or that the impugned order is not sustainable in the eyes of law. As such, the petition does not deserve to be allowed. The same is accordingly dismissed.

CRM-M-45417-2025 (O&amp;M)

-12-

2025:PHHC:177539



16. Since the main petition has already been decided, pending application, if any, is rendered infructuous.

**[MANISHA BATRA]**  
**JUDGE**

**22<sup>nd</sup> December, 2025**

*Parveen Sharma*

<i>1. Whether speaking/ reasoned</i>	:	<i>Yes / No</i>
<i>2. Whether reportable</i>	:	<i>Yes / No</i>

CRM-M-38926-2019

1

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.**

CRM-M-38926-2019

Date of decision: 13.11.2019

**SIDDHARTH CHAUHAN ... PETITIONER****VERSUS****SERIOUS FRAUD INVESTIGATION OFFICE****... RESPONDENT****CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present: Mr. J. S. Bedi, Senior Advocate with  
Mr. Lovekirat S. Chahal, Advocate for the petitioner.  
Mr. Chetan Mittal, Assistant S.G.I. with  
Mr. Alok Kumar Jain, Senior Panel Counsel  
Mr. Mayank Aggarwal, Advocate and  
Mr. Himanshu Gupta, Advocate for SFIO.  
Mr. Parshant Baliyan, Investigating Officer in person.

**RAJBIR SEHRAWAT, J.**

This petition under Section 438 of the Code of Criminal Procedure has been filed by the petitioner for grant of Anticipatory Bail in Criminal Complaint No.3 of 18.05.2019 **CIS No.COMA/05/2019** **CNR NO. HRGR01-007022-2019** titled as **SFIO V/S. ADARSH BUILD ESTATE ETC.** under Sections 120-B, 417, 418, 420, of Indian Penal Code ( for short 'the IPC') and Section 447 of Companies Act, 2013, pending before the Special Court, Gurugram.

It deserves to be pointed out at the outset that this case is one of the cases in a bunch; which were heard together. However, for making the things more distinct these cases are being decided vide separate judgments. However, since several aspects of the matter are common to all the cases and have even been argued on similar lines and even jointly, therefore, some aspects of the matter would form part of all the judgments.

The brief facts constituting allegations in this case are that one Multilevel Co-operative Society was got registered by one Mukesh Modi and family in the name of Adarsh Credit Co-operative Society Ltd. (hereinafter referred to as the Co-operative Society or (ACCSL). That Co-operative Society collected deposits from about 22 lakh investors. In the process about Rs.5000Crores were collected from investors from general public; which remained unreturned to the investors and, accordingly an amount of approximately Rs.9253Crores, including interest, is reflected in the accounts of the Society ACCSL, as payable to the investors. After collecting this money from the public, Mukesh Modi and family created a large number of Companies under the aegis of Adarsh Group of Companies Ltd. (AGCL), with their associates and relatives as the Directors. Subsequently these companies were shown having been advanced the loans of about Rs.1700 Crores by the Co-operative Society

ACCSL. Loans were required to be returned to the Co-operative Society by these Companies with interest, as per the alleged agreements of advancement of money. However, the same were not returned by the Companies. Therefore, the money of the Co-operative Society was allegedly, being siphoned off through the Companies created by Adarsh Group of Companies Limited. When the matter came to knowledge of the Central Government, the Central Government, through Ministry of Corporate Affairs, vide the order dated 28/06/2018, passed in exercise of powers conferred under section 212 (1)(c) of Companies Act 2013 and section 43(2) & (3)(c)(i) of LLP Act 2008, ordered an investigation into the affairs of the said companies, through the Serious Fraud Investigation Office (hereinafter referred to as SFIO), which is an instrumentality created under the new Companies Act for investigation into the affairs of the companies. During investigation it came out that 70 Companies of the Adarsh Group of Companies Ltd. had shown Rs.4140Crores approximately as payable to the said Co-operative Society; as the loan yet to be repaid. Still further, during investigation some companies out-side the Adarsh Group of Companies were also found to be the alleged collaborators of the Adarsh Group and those companies were also taken under investigation. Accordingly, a total of about 125 Companies (hereinafter referred to as CUIs), and some individuals, including the

petitioner and his Companies as conspirators; were taken under investigation. After completion of the investigation and taking necessary permissions from the Central Government, SFIO presented the investigation report in the form of a statutory Complaint before the Special Court at Gurugram on 18.5.2019. In this Complaint / report the petitioner and his 8 Companies are arrayed as Accused No.135 and at Sr. No. 71 to 78 in the list of accused. Under the provisions of section 212 (15) of Companies Act 2013, such a report be taken as a report presented under section 173 of Cr.PC, 2013. After receipt of the report from the SFIO, the Special Court summoned various accused including the CUIs and other individuals, under different sections of the Old Companies Act and the New Companies Act.

The petitioner and his Companies were summoned by the Special Court under Section 447 of Companies Act, 2013, and sections 417, 418, 420, of IPC, read with 120-B IPC, some of which are cognizable and non-bailable even as per the provisions of the New Companies Act, 2013; and which are punishable with upto 10 years of imprisonment. Although, during investigation, the petitioner had joined the investigation, however, the investigating officer had not arrested him. But since the petitioner was also summoned for non-bailable offences, inviting severe punishments, therefore apprehending his being taken into

custody on appearing before the Special Court, the petitioner applied anticipatory bail before the Sessions judge Gurugram. The said application for anticipatory bail was dismissed by the Sessions Judge vide order dated 01-08-2019. Thereafter, the Special Court has issued non-bailable warrants against the petitioner vide the orders dated 04-09-2019 and 16-09-2019. Hence, the present petition has been filed by the petitioner on 09-09-2019, though praying for grant of anticipatory bail, however, in fact, seeking protection against his being taken into custody by the Trial Court; on his appearance or being produced before that court.

Further elaboration of the allegations of the prosecution, specific to the petitioner is; that Sidharth Group of Companies is controlled by the applicant petitioner as Chairman-cum-Managing Director. There are over a dozen of companies in his group in which he has 97% equity. His Companies are based in Gurugram and engaged in business of real estate. Still further; it came out during investigation that 5 named Companies of Adarsh Group (AGCL) advanced an amount of about Rs.24.10Crores as Loans and advances to 8 named companies of the petitioner. These loan amounts were transferred to the companies of the petitioner without any supporting agreements, deeds, resolutions or the requisite paperwork in this regard. Further, in the reverse transaction the Companies of petitioner repaid an amount of Rs.9.4 to CUIs of AGCL

as advance. Even these advance payments were not supported by any agreements, deeds, resolutions or the supporting documents; qua any purpose for the same. Therefore, the minimum balance amount outstanding towards the companies of the petitioner was about Rs.14.70Crore. As per the last balance-sheet filed by the CUIs of the Adarsh Group (AGCL) the amount of capitalized interest, shown on the above said amount was an amount of Rs.58.12Crore. Therefore total amount of Rs.73.12Crores was shown as outstanding in the accounts of the CUIs of the Adarsh Group (AGCL); as payable by the companies of the petitioner. During investigation the petitioner claimed that the amounts of these Rs.24.10Crores were transferred to the companies of the petitioner by 5 CUIs of Adarsh Group, controlled by Vivek Harivyasi, for consolidation of land in and around Delhi. However no such agreements or document, executed between the companies of the petitioner and the CUIs of the Adarsh Group, supporting this assertion of the petitioner was found with or produced by the petitioner. It was also found in the records of the companies of the petitioner that an amount of Rs.1Crores was transferred to the personal account of Vivek Harvyasi, who had earlier transferred the money of the CUIs of Adarsh Group to the companies of the petitioner. Therefore this amount of Rs.1Crores was straightway siphoned off by the petitioner and his co-accused Vivek

Harivyasi. Still further, in collusion with the co-accused Vivek Harivyasi, the petitioner had inducted 2 persons of Vivek Harivyasi as equity holders in his own companies, to the extent of 33% of equity each. This was despite the fact that they had not paid even a single penny for acquiring the equity in the companies of the petitioners having business of hundreds of Crores of rupees. Hence it is alleged that the abovesaid arrangement was made by the petitioner in lieu of the money received by him from the 5 CUIs of Adarsh Group. This entire fraudulent exercise was undertaken by the petitioner in collusion and in conspiracy with his co-accused Vivek Harivyasi to siphon off the above-mentioned money which had come from the CUIs of Adarsh Group.

Arguing the case learned counsel for the petitioner submitted that starting with the year 2018, the petitioner had joined the investigation by appearing before the investigating officer of the case, as and when he was called. Earlier the petitioner had not even applied for anticipatory bail. Despite that the petitioner was not taken into custody by the investigating officer. On completion of collection of the alleged evidence, when the complaint was filed by the investigating officer, then the Special Court had taken cognizance of the offence on 03-06-2019, that is, after a long time of the petitioner last joining the investigation. The petitioner was summoned by the special court. The petitioner

intended to appear before the Trial Court. However, then the petitioner found that the other persons who had been summoned by the Special Court in this case; and pursuant thereto who had appeared before the special court, were taken into custody. Therefore, the petitioner had applied for the anticipatory bail. But that application for anticipatory bail was wrongly dismissed on 01-08-2019. Continuing his argument, learned Counsel for the petitioner submitted that section 4 of Cr.P.C. provides that except as otherwise provided in some special statute, the trial of criminal cases shall be conducted as per the provisions of Cr.P.C. No special provisions have been made under the new Companies Act for conduct of the trial of the offences under the Companies Act. Hence the proceedings of the trial would be governed by the provisions of Cr.P.C. As per the provisions of the Cr.P.C., whether complaint is filed as a private complaint or the proceedings are initiated as on the police report, the court takes cognizance under section 190 of Cr.P.C. and the process is to be issued against the accused under section 204 of Cr.P.C. The provision of section 204(5) of Cr.P.C. makes the issuance of the summons or warrants of process subject to the provision of section 87 of Cr.P.C. which contains the rules regarding process. Section 87 empowers the court to issue summons or warrant, as the case may be. But section 87 is followed by section 88 of Cr.P.C. which prescribes that when a

CRM-M-38926-2019

9

person against whom the court is empowered to issue summons or warrant; is present in the court the court may require him to execute a bond with or without sureties for his appearance. Hence it is argued that when an accused is ready to be present before the court then the court is not empowered to issue warrant for taking a person in custody. Such a person is entitled to be released on bail or on bonds or sureties. Therefore, once the petitioner is himself ready to appear before the trial court, pursuant to the summons issued by that court, then the petitioner had got an un-defeatable right to get bail as per the provisions contained in section 88 of Cr.P.C. Ld. Counsel has relied upon the judgment of the Supreme Court in case of **Data Ram Singh V/s State of Uttar Pradesh and another, 2018 SCC Online SC 88** and a judgment of this court in case of **CRM-M-28490 of 2015, decided on 01-10-2015 Dalip Singh Mann and another V/s Niranjana Singh, Assistant Director, Directorate of Enforcement, Govt. of India**. Therefore, it is contended that the petitioner should be granted protection against his arrest and he should be granted anticipatory bail. Carrying forward the arguments, Ld. Counsel for the petitioner submitted that under the provisions of section 212(8) the investigating officer has been given power to arrest a person, if on the basis of the material in his possession; he has reasons to believe, and such reasons are to be recorded in writing, that the said person is

guilty of an offence punishable; being covered under section 447 of the new Companies Act. Still further under section 217 (4) the investigating officer of the case has been conferred power to examine a person on oath and under section 217(5) the investigation officer has been given enormous powers of the civil court as well; for summoning the witnesses and for enforcing their presence. Therefore the investigating officer had the trappings of the court also, besides being an investigating officer who could have arrested the petitioner; if he had some material in his possession. Under the provisions of the section 439 Cr.P.C. the bail pending trial is to be considered by the trial court by applying the criteria as prescribed in section 439 Cr.P.C. The requirements prescribed for arresting a person during investigation under section 212(8); by the investigating officer; for the offences under new Companies Act, stand at much higher pedestal than the conditions required to be considered by the trial court for releasing such an accused on bail pending trial by exercising powers under section 439 Cr.P.C. Hence, if the investigating officer himself had not arrested the petitioner during the investigation; that shows he did not have the requisite material in his possession to justify the arrest of the petitioner, as required under the Act. The complaint has also been filed by him on the basis of the same material. Therefore there was no reason for the trial court to issue warrant of arrest

against the petitioner and to insist upon sending the petitioner to the judicial custody by getting him arrested. Hence the court below has wrongly dismissed the anticipatory bail plea of the petitioner.

Still further, it is argued by the Counsel for the petitioner that the trial court has wrongly taken into consideration the twin conditions, as prescribed under section 212(6) of the new Companies Act for declining anticipatory bail to the petitioner. Referring to the judgment of the Hon'ble Supreme Court, in case of **Nikesh Tara Chand Shah V/s Union of India and another (2018) 11 SCC 1**, learned Counsel for the petitioner has submitted that the Language of section 212 (6) of the new Companies Act is *pari- materia* with the languages of section 45 of the Prevention of Money Laundering Act. However the Supreme Court has already declared the language of the twin conditions used in the Prevention of Money Laundering Act, as *ultra vires*. Hence the twin conditions, as contained in section 212(6) of the new Companies Act, has also to be treated as *ultra vires* the Constitution of India and as infringing upon the rights of the individual. Hence the trial court could not have invoked the twin conditions, as prescribed under section 212(6) of the new Companies Act, for declining bail to the petitioner. Referring to the same judgment, and Counsel for the petitioner has submitted that even if those twin conditions are to be applied, those would have been

applicable only in case the petitioner would have been arrested during the investigation by the investigating officer and then produced before the trial court in custody. However, in the present case the investigating officer himself had not found a case against the petitioner sufficient to justify the arrest of the petitioner, therefore, the twin conditions prescribed under section 212(6) of the new Companies Act have no application in case of the petitioner. Still further it has been argued by the Counsel for the petitioner that even if the twin conditions are taken to be existing on the statute book, still the same cannot be pleaded by the state authorities for opposing the anticipatory bail application of the petitioner; because, if applied, these conditions would infringe not only the right to life and liberty of the petitioner guaranteed by Article 21 of the Constitution, rather, would also result in violation of the provisions of Article 14, being irrational, illogical and requiring the court to record something which is impossible by any means. The learned Counsel for the petitioner has relied upon the judgment of this court rendered in **Ankush Kumar @ Sonu V/s State of Punjab, 2018 SCC Online P&H 1259** to support his argument. Again referring to the judgment of the Supreme Court rendered in case of **Nikesh Tara Chand Shah (Supra)** the learned Counsel for the petitioner has further argued that even if the applicability of twin conditions, as prescribed under section 212(6) of the

new Companies Act; is to be invited to the case of the petitioner, then interpretation of these conditions has to be toned down to see only the probability of conviction of the petitioner; and the probability of conviction under the new Companies Act only. However, the evidence, allegedly collected by the prosecution, against the petitioner is not sufficient to bring out the any probability of conviction of the petitioner for the offences under the Companies Act, nor is there any material on record; to show that the petitioner is likely to commit the offence under new Companies Act, if he is granted concession of anticipatory bail.

Coming to the facts of the case Id. counsel has submitted that, in fact, it is the petitioner who has been cheated by the co-accused Vivek Harivyasi and the companies of Adarsh Group of Companies. The said Vivek Harivyasi was controlling the concerned CUIs of the Adarsh Group at the relevant time. He had shown a proposal for consolidating land in and around Gurugram for development projects of the Adarsh Group (AGCL). The petitioner being a prudent businessman, and being in the business of real estate, accepted the proposal from the Adarsh Group of Companies to consolidate the land on behalf of the CUIs of the Adarsh Group. Accordingly an amount of approximately Rs.22.20crores was transferred by the CUIs of Adarsh Group in the accounts of the companies of the petitioner. With the money so received, the petitioner

entered into agreements with the owners of the land around Gurugram and one commercial property in Delhi. The earnest money required for these transactions was approximately Rs.42Crores. Therefore, in this process, the petitioner had to spend on not only the amount of Rs.22.20 Crores, which he had received from the Adarsh Group of companies, rather, he had to spend approximately Rs.20Crores extra for making payments to the owners of the land as earnest money. Since the CUIs of Adarsh Group had not advanced any money after the initial advancement of Rs.22.20Crores; and the payments made by the petitioner to the owners of the land were put to risk, therefore, the petitioner had to arrange the remaining amounts of earnest money from other resources. Accordingly the petitioner had raised a loan of Rs. 40 Crores from the Birla Group of Companies. It is from this amount, that the petitioner had to pay as earnest money to the land owners, over and above the money received from the CUIs of the Adarsh Group. However, after the initial payment of Rs.22.20 Crores the companies of the Adarsh Group have not made any payment. Therefore the petitioner had been put under unnecessary financial obligations. It is further contended by the Counsel for the petitioner that the agreements with the owners of the land are in the name of the petitioner or his companies, only as per the tradition in the business of real estate. This indirect way of consolidating the land

through the companies of the petitioner was adopted by the Adarsh Group of companies to ensure that the land owners do not demand any higher price by artificially increasing the price to exploit the companies of the Adarsh Group. Therefore the CUIs of the Adarsh Group were in the background and the agreements were executed in favour of the companies of the petitioners. Regarding the payment of an amount of Rs.9.4 Crores back to the CUIs of Adarsh Group, out of which Rs.1Crore was paid in the personal account of the co-accused Vivek Harivyasi, it is submitted by the counsel for the petitioner that this money was the money of the companies of the petitioner. The money has no colour. Therefore, there is no ground to allege that this money was the same money which had come from the CUIs of the Adarsh Group. It is submitted by the Counsel that this money was paid to the companies of the Adarsh Group, as an investment in the projects, which were proposed to be developed by the companies of the Adarsh Group. Regarding the induction of the Directors, Deepak Shrimali and Akshat Singh, it is submitted by the counsel for the petitioner that out of these persons, Deepak Shrimali was nominated by the Adarsh Group of companies as Director in the companies of the petitioner; to oversee their interest in purchase of the above said properties during consolidation of the land. It is further submitted by the Counsel that thereafter, although the petitioner

was ready to get the sale deed executed in favour of the CUIs of the Adarsh Group from the original owners, however, another fact had intervened in the interregnum. Some of the land, qua which the petitioner had got agreements in the favour of his companies, was acquired by the state of Haryana. Therefore, the companies of the Adarsh Group had lost interest in consolidation of the land. Since the total amount of full consideration, required to be paid to the landowners, was about Rs.255 Crores, and the petitioner was not having this much money with him, therefore, the sale deeds qua those properties could not be got executed even in favour of the companies of the petitioner. However, it is pointed out by the Counsel that, the companies of the petitioner are staking their claim for the money coming from the process of the acquisition of the said land. It is also pointed out by the counsel for the petitioner that the companies of the petitioner and the CUIs of the Adarsh Group are already in fierce civil litigation qua that very money which had come to his companies from the CUIs of the Adarsh Group. Accordingly, the CUIs of the Adarsh Group had filed 6 civil suits for recovery against the petitioner and his companies. Those suits were decreed by the trial court. However the companies of the petitioner are in their further remedy of appeal etc. Likewise even the companies of the petitioner had filed suits against the CUIs of the Adarsh Group regarding those amounts. Hence, it

is submitted that there is no question of the petitioner being involved in any fraudulent transactions with CUIs of the Adarsh Group for the purpose of assisting those CUIs or their controllers, in siphoning off the money of the CUIs of the Adarsh Group.

Taking the argument further the counsel for the petitioner has submitted that the alleged payments were received by the companies of the petitioner in the year 2011 and 2012. At that time, the new Companies Act 2013 was not even in existence. Since the offence prescribed under section 447 of the new Companies Act was not in existence on the date of the transaction of receipt of the money by the companies of the petitioner, therefore, the petitioner cannot be prosecuted for the newly created offence under section 447 of the new Companies Act 2013. The provision regarding offence cannot be given the retrospective effect. The offence under section 447 of the Companies Act is not even a continuing offence. The counsel has relied upon the judgment of the Supreme Court in case of **2013(2) RCR (Cr.) 503, Uday Shankar Awasthi V/s State of U P and another** to support his argument in this regard.

Referring to the alleged evidence collected by the prosecution, learned Counsel for the petitioner submitted that there is no evidence whatsoever against the petitioner. The transaction between the

CUIs of Adarsh Group and the companies of the petitioner are through Bank transactions, duly reflected in their balance sheets. The prosecution is relying upon the alleged disclosure statement of the petitioner. As argued above, since the investigating officer of the case also had the power of recording the statement on oath and also very wide power to arrest a person during the investigation, therefore he had the potential to pressurize the accused, and hence any inculpatory statement, allegedly recorded by him during the investigation; cannot be relied upon against the petitioner. Besides the disclosure of the statement of the petitioner, there are the statement of the co-accused, which again, are not admissible in evidence against the petitioner, Still further it is submitted by the Counsel for the petitioner that the petitioner is not involved in directly dealing with the public money, which was allegedly in the hands of the Company of Adarsh Group of Companies. The embezzlement of the money, even as per the case of the prosecution, has been committed by the controllers of the Adarsh Group of Companies Limited, through their subsidiary entities. Petitioner was not connected with those companies, as such, either through equity or through managerial positions.

Learned Counsel for the petitioner has further submitted that the petitioner and his companies were not even part of the sanction initially granted by the Central Government for investigation of the

Companies. Subsequently 20 more companies were also involved in the investigation with the prior sanction of the central government. However, the companies of the petitioner were not involved even at this stage. The Companies of the petitioner were conducting the business only through legitimate business transactions and through legitimate means. Hence it is clear that petitioner is an innocent person and he is a law abiding gentleman and legitimate businessman. He has not committed any crime as alleged against him. Hence he deserves to be released on bail during the pendency of the trial.

On the other hand, learned Assistant Solicitor General of India, appearing for SFIO, has argued that the fact that the investigating officer had not arrested the petitioner during the investigation is totally inconsequential. Referring to the provision of section 212(8) of the new Companies Act, learned counsel appearing for SFIO has submitted that the provision itself speaks of the words investigating officer 'may arrest' such a person. Hence it is clear that it is the discretion of the investigating officer, whether to arrest the person or not; of course he has to satisfy the statutory condition; if he so desire to effect the arrest. However, even if there are reasons to believe that such a person is guilty of the offence under the Companies Act and even if the investigating officer had the necessary material to support the allegations against such person,

investigating officer may not arrest such a person, keeping in view various other factors, including the co-operation during the investigation and any undertaking by such a person that he would be appearing before him or before the court, as and when he is required. However, that does not mean that such a person has got a right to be released on bail, in case the charge-sheet is filed against such person and he is produced or appears before the court. Once a person facing the charge-sheet appears before the trial court or he is brought before the court, thereafter it is for the Court to take a call on custody of the accused. If the court finds it appropriate to release such a person on bail, keeping in view the facts and circumstances of the case, then he may be released on bail. However, if the court comes to the conclusion otherwise, then court may send the person to the custody during the pendency of the trial. Just for example, learned Counsel for the SFIO has submitted that even section 437 Cr.P.C. contemplate such a situation; where a person appears before a Magistrate and such a person is accused of the offences specified therein, then there is a prohibition in that provision that such a person is to be released on bail, unless the Magistrate had some special reasons for granting bail. Elaborating further it is submitted that even where there is prohibition against the grant of the bail, law contemplates situations where the court can grant bail if there are some special reasons for doing so. Hence it is submitted that; by no

means; the right to be released on bail can be a right of the accused, rather, the mandate of the law is clear that whether an accused is arrested during investigation or not, the question of granting the bail to a person accused of an offence is to be finally decided only by the Court. In the present case, the petitioner has not even appeared before the court pursuant to the summons issued by the Special Court. Despite that the Sessions Judge has considered all the aspects and has declined the anticipatory bail to the petitioner. The court below has exercised its statutory discretion. The petitioner has not been able to find fault with this exercise of discretion by the court below. Relying upon the judgment of the Supreme Court in **Serious Frauds Investigation Office V/s Nitin Johari 2019 SCC Online 1178**; and drawing parallel therewith, learned Counsel for SFIO has submitted that merely because the petitioner may himself intend to appear before the court after the charge-sheet was filed against him, does not mean that the anticipatory bail cannot be denied to the petitioner or that such person cannot be taken into custody. Although for denying anticipatory bail mere prima facie case against the petitioner would have been sufficient, however, even the question of bail has to be considered and decided by the court as per the relevant and applicable factors. It is, accordingly, submitted by the Counsel that in case of **Nitin Johari (Supra)** also, though the charge-sheet had been filed and the High Court

had granted bail, yet the Supreme Court set aside the order of the High Court and remanded the matter to the High Court for fresh consideration, by considering the relevant factors. Had this been the valid proposition of law; that when the charge-sheet stands filed and accused appear before the court; then the petitioner cannot be taken into custody, then the Supreme Court would not have sent the matter back to the High Court for reconsideration; which could have very well; led to denial of bail in that case.

Still further, relying upon the judgment of the Supreme Court rendered in **Pankaj Jain V/s Union of India and another, 2018 (5) SCC 743** and another judgment of Delhi High Court in case of **Court on its own Motion V/s State, 2018 SCC Online Del 12306**, counsel for the SFIO has submitted that section 88, Cr.P. C. itself gives discretion to the court. That section itself uses the word 'may'. Hence there is no question of an accused getting automatic right to bail if he appears before the court pursuant to the summons issued by a court. As submitted above, and as clarified by the judgments of the Supreme Court mentioned herein above, it is the discretion of the court whether to grant bail to the accused or not. In case of **Pankaj Jain (Supra)** even the judgment in case of **Dalip Singh (Supra)**, being relied upon by the petitioner, has been considered by the Supreme Court. Therefore, while considering the question of bail or the

anticipatory bail to the accused, the court has to take into consideration the relevant factors; meant for consideration of the bail with reference to the provision under which the accused is sought to be prosecuted, besides the other factors, as has been specified by the judicial pronouncements from time to time.

Coming to the factors required to be taken into consideration in case of the petitioner; for granting bail, the Counsel for the SFIO has submitted that the petitioner has been charge-sheeted under section 447 of the new Companies Act. Section 212(6) of the new Companies Act provides that in case of charge-sheet being filed for the offences covered by section 447 no court shall grant bail to the accused unless the twin conditions prescribed under section 212(6) are fulfilled. This section applies to all kinds of bail whether anticipatory or regular bail. Hence before granting bail to the petitioner, the court was required to consider the objection of the public prosecutor. Since bail to the petitioner was objected to by the public prosecutor, therefore, finding no grounds to fulfill the twin conditions, the court below has rightly declined anticipatory bail to the petitioner. It is further submitted that even if this court is to consider the case of the petitioner for anticipatory bail, the same condition would be required to be considered by this court as well. Referring to the reliance of the counsel for petitioner upon the case of **Nikesh Tarachand Shah**

(supra) case, qua *vires* of the twin conditions, Id. Counsel for the SFIO has submitted that after that judgment of the Supreme Court, the Parliament has amended the Prevention of Money Laundering Act and has removed the inconsistency qua the offences punishable under the Prevention of Money Laundering Act, and therefore, has rectified the aspect which had earlier led to declaration of the twin conditions under that Act as *ultr-vires*. Still further it is submitted by the Id. Counsel that although constitutional validity of the twin conditions, as prescribed under section 212(6) of the Companies Act is under challenge before the Supreme Court in case of **Serious Frauds Investigation Office V/s Neeraj Singhal 2018 SCC Online SC 1573** and other cases, however, the Supreme Court has again reiterated the applicability of the twin conditions for the purpose of consideration for bail, in case of **Nitin Johari (supra)**. So far as the reliance of the Counsel for the petitioner upon the judgment of this Court in case of **Ankush Kumar (Supra)** is concerned, it is submitted by the Counsel for the SFIO that when this court had considered the applicability of the twin conditions in the above said case, this court had specifically observed that the *vires* of the twin conditions would be considered by the appropriate Court / Bench in some appropriate matter. But now the validity of the twin conditions is very much under challenge before the Supreme Court. However, despite pendency of the challenge to

the *vires* of the twin conditions, the Supreme Court has set aside the order of the High Court granting bail in case of **Nitin Johari (Supra)** and has remanded the matter to the High Court for reconsideration; with a direction to consider the scope and effect of the twin conditions as prescribed under section 212 (6) of the new Companies Act; as well as by taking into consideration the other relevant factors; which were spelt out in case of **Y.S. Jagan Mohan Reddy V/s Central Bureau of Investigation, (2013) 7 SCC 439**, and which have been reiterated in case of **Nitin Johari (supra)**. Hence this court should also take into consideration the scope and effect of the twin conditions as prescribed under section 212(6) of the Companies Act.

On the point of role of and the evidence against the petitioner, the counsel for the SFIO has submitted that the Sidharth Group of Companies is controlled by the petitioner as Chairman-cum-Managing Director. During investigation it has been established that 5 named CUIs of Adarsh Group (AGCL) advanced an amount of about Rs.24.10 Crores as Loans and advances to 8 named companies of the petitioner. These loan amounts were transferred to the companies of the petitioner without any supporting agreements, deeds or the requisite paperwork in this regard. The companies of the petitioner would have kept proper books of account; had these transactions been the genuine business transactions between the

companies. Further, the Companies of petitioner repaid an amount of ₹9.4 to CUIs of AGCL; although shown as advance. It was also found in the records of the companies of the petitioner, produced by the petitioner; that an amount of Rs.1Crores was transferred to the personal account of Vivek Harvyasi, who had earlier transferred the money of the CUIs of the Adarsh Group to the companies of the petitioner. Therefore this amount of Rs.1 Crores was straightway siphoned off by the petitioner and his co-accused Vivek Harivyasi. Still further, in collusion with the co-accused Vivek Harivyasi, the petitioner had inducted 2 persons of Vivek Harivyasi as equity holders in his own companies, to the extent of 33% of equity each. This was despite the fact that they had not paid even a single penny for acquiring the equity in the companies of the petitioners having business of Crores of rupees. Hence it is clear the entire fraudulent exercise was undertaken by the petitioner in collusion and in conspiracy with his co-accused Vivek Harivyasi; to siphons off the above-mentioned money which had come from the CUIs of Adarsh Group (AGCL). In the process a total amount of Rs.73.12 Crores; as was shown as outstanding in the latest statement of accounts of the CUIs of the Adarsh Group (AGCL), as payable by the companies of the petitioner, including the interest; has been siphoned off.

Counsel for the SFIO has also submitted that the definition

of fraud as given in the New Companies Act is all inclusive. It includes any act or omission which is damaging to the interest of the CUIs. Hence, by definition itself the offence prescribed under section 447 of the new Companies Act encompasses ingredients meant for a continuing offence. The petitioner and his companies have been manipulating the accounts and documents continuously and every year which were meant to damage the interest of the CUIs of Adarsh Group. The petitioner has conducted transaction even in the year 2014 by transferring the money to the personal account of co-accused Vivek Harivyasi, and as a part of continuation of the fraudulent exercise, the petitioner repaid some money to the CUIs of Adarsh Group but instead of showing it as repayment of money of CUIs of Adarsh Group the petitioner has shown the same as advance to the CUIs of Adarsh Group so as to claim another liability against those CUIs. It is also submitted that the counsel for the petitioner is not right in argument that the CUIs of Adarsh Group had nominated Deepak Shrimali as their nominee in the BOD of the companies of the petitioner. There is no such nomination record in the records of CUIs of Adarsh group. Still further, even after the said person was not part of CUIs of Adarsh Group, he continued as equity holder and Director in the companies of the petitioner.

It is further argued on behalf of the SFIO that the petitioner

has made admissions in the statement made on oath regarding the entire process through which the money of the CUIs of Adarsh Group was siphoned off. There are also similar statements of the co-accused. Beside this there are documents seized during the investigation which prove the offence against the petitioner. Therefore if the entire material on record against the petitioner is taken into consideration, by any means; it cannot be said that petitioner is not guilty of the offences under the Companies Act. Still further since the petitioner is given to manipulations, therefore, by nature the petitioner is manipulative. Hence if the petitioner is granted anticipatory bail, he is most likely to influence the witnesses of the case and also to destroy the evidence against him. The argument of the learned Counsel for the petitioner that the petitioner had been joining the investigation and that during that duration he had not made any attempt to influence the witnesses or to destroy the evidence, is totally irrelevant. At that time the petitioner was not sure of him being made an accused in the case. Therefore he might not have resorted to that exercise. But now, when the petitioner knows that his crime has been detected, no straightforward conduct is expected from the petitioner, who is manipulative by disposition. In the same vein, the counsel for the SFIO has also submitted that since the vocation of the petitioner and his Companies is only to indulge in unaccounted transaction of real estate and

only to earn the money by business manipulations, therefore, by any means, it cannot be said that if the petitioner is granted anticipatory bail and left free during the trial, he would not commit any offence again.

In the end it has been argued by the learned counsel for the SFIO that even if the conditions, as prescribed under section 212(6) of the new Companies Act, 2013 are not to be taken into consideration, at least the factors which has been laid down by the Supreme Court in case of **Y. S. Jagan Mohan Reddy(supra)** and which has been reiterated by the Supreme Court in case of **Nitin Johari (supra)**, for the economic offences, has to be considered by the court while considering grant of anticipatory bail to the petitioner. However, the charge-sheet against the petitioner is under section 447 of the Companies Act, which is a serious offence, inviting punishment of imprisonment up to 10 years. Still further, petitioner is directly involved in embezzlement of the money of the companies of the Adarsh Group by way of participating in a continuing fraud, as defined under the new Companies Act. He is the direct beneficiary of the entire exercise of this fraud, although the definition of fraud under section 447 does not require even any gain by one person and the loss to another person or to a company. Participation of the petitioner in the crime of embezzlement of the money, per se, is sufficient for conviction of the petitioner. The participation of the petitioner has duly

been established as per the record. Conduct of the petitioner has also not been exemplary in the past. Appreciating it from the disposition of the petitioner, it cannot be ruled out that the petitioner is likely to influence the witnesses and to destroy the evidence against him. Hence the petitioner does not deserve to be granted anticipatory bail. The court below has rightly dismissed the anticipatory bail application filed by the petitioner. Hence the present petition be also dismissed.

Replying to the argument of the counsel for the SFIO, Ld. Counsel for the petitioner submitted that there is absolutely no evidence against the petitioner. So far as the evidence in the form of the statements and the witnesses is concerned, it is submitted by the Counsel for the petitioner that since the investigating officer has the power akin to the police, therefore, any self-incriminating statement of the petitioner recorded by the investigating officer cannot be relied upon against him. For the same reason the confession of the co-accused cannot be relied against the petitioner. It has also been submitted by the Counsel for the petitioner that even the Supreme Court has granted bail in case of **Sanjay Chandra V/s Central Bureau of investigation, (2012) 1 SCC 40** despite the fact that the offences in that case involved economic offences. The Supreme Court has granted bail even by observing in para No.46 of that judgment that it was conscious of the fact that the offences involved were

the economic offences of huge magnitude, and if proved, may even jeopardize the economy of the country. Still the accused in that case were released on bail. The para relied upon by the petitioner reads as under:-

“46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.”

This judgment was followed even by this Court in case

**CRM-M 46946 of 2017 decided on 24-09-2018, D.K. Sethi V/s**

**Central Bureau of Investigation.** It is also vehemently argued by

learned Counsel for the petitioner that since the question of bail relates to

the life and liberty of the petitioner, therefore, the court has to be liberal

in granting the bail and the anticipatory bail, because bail is the rule and

the jail is only an exception.

This court has heard the learned Counsel for the parties at

length and has perused the record. Of course, the accused, as an

individual, has a right to life and liberty, however, that right to life and

liberty can be curtailed according to liberty, however, that right to life

and liberty can be curtailed according to the procedure prescribed by the

law. In case of criminal investigation, the ordinary prescribed procedure is that the Investigating Officer can arrest the accused even without warrant. But; to ensure that an innocent person is not unduly harassed by the Police Officers by misusing their authority, special and extraordinary power has been conferred upon the courts to protect the individual from unnecessary harassment. However; this power is so extraordinary that this is not even available in some parts of the country; and qua some offences under special statutes; it is not available even in the entire country. Therefore, availing anticipatory bail is not a fundamental right of an accused. Thus, being a special power, the power under Section 438 Cr.P.C has to be exercised only in cases, where there are circumstances leading, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that if the accused is protected from the arrest, then the investigation of the case shall not be unduly hampered. In the present case there are direct allegations against the petitioner. He has not even denied having received money from the CUIs of the Adarsh Group. He is not even claiming that the said amounts have been repaid by him or by his companies. Even the amounts of which have come back from the petitioner or his companies to the CUIs of the Adarsh Group is not claimed by the petitioner as any repayment, rather the same is claimed to be investment with the CUIs of the Adarsh Group, creating further

liability upon the CUIs of the Adarsh Group by using the money of those CUIs only. Although the petitioner has tried to put up a different story but there are no books of account of his companies or of the CUIs of the Adarsh Group to support his claim. All the claims put up by the petitioner appear to be only after thought. On the top of it all these things are admitted by the petitioner and his co-accused in the statements made on oath. Therefore, although, the facts would be finally determined by the Trial Court, at this stage, there do not appear to be any mitigating circumstances to show, ex-facie innocence of the petitioner; vis-a-vis the allegation leveled against him. Hence, this Court does not find any ground to exercise its extra-ordinary powers to grant anticipatory bail to the petitioners.

Although the preceding para above would have been sufficient to decide the matter in the present petition, leaving all other thing to be considered in appropriate proceedings at appropriate stage, however, in this fiercely contested case the counsel for the parties have raised the arguments in extensive details; concerning all the aspects of the matter, including those of the facts and the questions of law, including the ones touching upon the constitutional validity of certain provisions involved in this case and have insisted upon the same. Although; this court is of the opinion that it may not be appropriate to deal with and

decide all the arguments in the same extensive details; in the present proceedings, lest the case of either side should be prejudiced at this stage itself, however, since the parties have pressed the arguments; taking it to be a case for more than just the anticipatory bail and taking it; more; in the nature of seeking protection against being taken into custody by the trial court, therefore, this court is, obviously, expected to deal with the same, at least, in skeletal manner. Accordingly, the arguments are being considered by this court.

First of all, although it is much stressed by the counsel for the petitioner that since he was not arrested during the investigation by the investigating officer and he himself is ready to appear before the trial court on receipt of summons from that court, therefore, he is entitled to bail during the trial, as a matter of right under Section 88 of Cr.P.C., however, this court does not find any substance in the arguments raised by the Counsel for the petitioner. Chapter VI of Cr.P.C. wherein the section 88 is contained; itself speaks that it deals with 'Processes to compel appearance'. Even a co- joint reading of the provisions contained in this chapter shows that it is restricted to the aspect of bringing a person to the door of the court; and nothing more. The provisions of this chapter do not have anything to do with release of a person on bail as such. Rather; the provisions of this chapter are neutral to the status of a person

as an 'accused', as a 'witness', or simply as only a 'person present in the court'; without any legal capacity qua trial as such. The sections included in this chapter do not even use the word 'accused', except in some sections relating to a person, who has already avoided ordinary process of the summons or warrant and therefore; is to be dealt with through the proceedings for proclamation. Hence; this chapter is prescribing simply the procedure for ensuring the presence of a person before the court, whether as an accused or as a witness. Once a person is brought to or appears before the court; it is for the court to deal with the person in accordance with the procedure prescribed under the Cr.P.C. If the person is called by the court through the above prescribed procedure as a witness; then he shall be dealt with the procedure meant for a witness. But if such a person is called by the court through the above prescribed procedure as an accused, then he shall be dealt with under the provisions relating to the 'bail', prescribed elsewhere in Cr.P.C.. Nothing much can be read in section 88 Cr.P.C. to argue that if a person is present before the court then he has can be required only to execute bonds or furnish surety only, and that he cannot be taken into custody. Needless to say; that this section is included in part 'D' of the Chapter and relates to 'Other rules regarding processes'. The sections contained in parts preceding this part, contemplate a graded exercise of power and

discretion by the court for compelling appearance of the person before it, by issuing summons, bailable warrant and preferably only thereafter the issuance of the non- bailable warrant. However, section 87 of the Cr.P.C. creates an exception to this general procedure and empowers the court to issue warrant of arrest in the first instance itself; if it is of the opinion of the existence of the factors mentioned in this section. Likewise, Section 88 contemplates a general provision for making sure that a person whom the court has already called through the summons or warrant or whom the court considered appropriate to remain present in subsequent dates; can be bound down for such appearance. In fact, this section is more in the nature of inclusive power of the criminal court to seek presence of any person connected with the case, in any manner whatsoever, even if such person may not be mentioned in the case; either as an accused or as a witness. This provision is intended to include even those persons who may be present before the court by chance or who might be watching the proceedings as such. Even if a person is otherwise present before the court, the court may ask such a person to execute the bonds or the securities for his appearance in future. The only requirement is that court requiring such bonds and sureties must, otherwise, have a power to issue summons or warrant against that person. That means that even the ‘chance presence’ of a person before a criminal court can lead to his

being bound down for appearance in future, if the court considers his presence as relevant to the case, either as an accused or as witness or otherwise. This strand of general power of the court, qua 'chance presence' is not restricted only to Section 88 of the Cr.P.C. This power is available to the criminal court throughout the proceedings of the trial and at all stages thereof. Besides power of asking to furnish the bonds or sureties for appearance; under section 88, similar power is found in section 311 Cr.P.C.; where the court can require the deposition as witness from any person in attendance of the court, though such a witness may not have been cited as a witness by either side. Not only this, section 319 Cr.P.C. also empower the court to add any person in attendance of the court as an additional accused in the trial, if in the opinion of the court such person is required to be added as an accused as per the standards prescribed for such addition. Hence, under Cr.P.C.; a criminal court always have a power to deal with a person, who is otherwise present in the court; maybe even by chance. Section 88 is only one manifestation of such power of the criminal court; at the stage of compelling appearance of such a person before the court. Although the counsel for the petitioner have relied upon the judgment of the Supreme Court rendered in case of **Data Ram (Supra)**, however, this court finds the said judgments to be totally distinguishable on the particular facts of those cases vis-à-vis the

facts of the present case and was not followed in the subsequent case of **Pankaj Jain (Supra)** case. The section 88 Cr.P.C itself uses the word ‘may’, with no further duty cast upon the court to necessarily grant bail to the accused person. Hence there is no question of an accused getting automatic right to bail if he appears before the court pursuant to the summons issued by a court. As observed above, and as clarified by the judgments of the Supreme Court mentioned relied upon by the counsel for the SFIO, it is the discretion of the court whether to grant bail to the accused or not. In case of **Pankaj Jain (Supra)** even the judgment of this court in case of **Dalip Singh (Supra)**, being relied upon by the petitioner, has been considered by the Supreme Court and it has been held that question of grant of bail is primarily a matter of judicial discretion of the court and not any right of the accused.

Although learned Counsel for the petitioner has also raised an allied argument on the same lines, by submitting that question of ‘Bail’ would arise only if a person is first arrested by the investigating officer and then he is brought before the court, and further that if a person himself has appeared before the court; pursuant to the summons issued by the court, then he is not to be sent to the custody, rather, he should be released on bail by asking him to furnish the bonds/sureties under section 88 of Cr.P.C. However, this court does not find any substance even in

this allied argument. As observed above, Chapter VI; which contains section 88, is relating only to ensure the presence of a person before the court. If a person is summoned by the court as an accused, then the question of bail to him is to be decided by the court as per the provisions contained in Chapter XXXIII of Cr.P.C. This is so made clear by the bare language of sections 436 and 437 and the Section 439 of the Cr.P.C. The Relevant Sections in this regard are as reproduced hereinbelow :-

436. In what cases bail to be taken :- When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail :

Provided that such officer or Court, if he or it thinks fit, [may, and shall, if such person is indigent and is unable to furnish surety, instead of taking bail] from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided :

Provided further that nothing in this section shall be deemed to affect the provisions of sub-section (3) of section 116 [or section 446A

[Explanation. - Where a person is unable to give bail within a week of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person for the purposes of this proviso.]

(2) Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a

subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under section 446.

**437. When bail may be taken in case of non bailable offence:-**

[(1) When any person accused of, or suspected of, the commission of any non-bailable offence, is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but -

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but not less than seven years.

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm :

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason : Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he

shall comply with such directions as may be given by the Court] :

[Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.]

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are no reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, subject to the provisions of section 446A and pending such inquiry, be released on bail, or, at the discretion of such officer or Court on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI, or Chapter XVII or more or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1) the Court shall impose the condition , -

(a ) that such person shall attend in accordance with the conditions of the bond executed under this chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused or suspected, of the commission of which he is suspected, and

(c ) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or to any police officer or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary or otherwise in the interests of justice.

(4) An officer or a Court releasing any person on bail under sub-section (1), or sub-section (2), shall record in writing his or its reasons or special reasons for so doing. Any Court which has released a person on bail under sub-section (1), or sub-section

(2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(5) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(6) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

**SECTION 439 : SPECIAL POWERS OF HIGH COURT OR SESSIONS COURT REGARDING BAIL:-**

(1) A High Court or Court of Session may direct -

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of Section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section.

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified :

Provided that the High Court or the Court of Session shall before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the public prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and

commit him to custody.

A bare reading of the language of sections 436 and 437 of the Cr.P.C. show that these sections provide for dealing with bail not only of those persons who are arrested by the investigating officer during the investigation, but also provide for dealing with bail to that person who 'appears or is brought before the court'. It is a different matter whether such a person would get the concession of bail or not, depending upon the facts and circumstances of the case. But mere fact that the investigating officer had not arrested the accused during the investigation is, *ipso facto*, no ground to exclude the discretion of the court in the matter of grant of bail. Such an argument not only tends to make discretion of the court subservient to the discretion of the Investigation Officer in the matter of bail to the accused, but also is in direct negation of language of section 436 and 437 of the Cr.P.C. Only section 439 contemplates a person being arrested and being in custody for being considered for grant of bail by a Sessions Court or High Court. However, even this section provides that even if such a person is released on bail, these courts can order such a person to be taken into custody again, depending upon the facts and circumstances of the case. Hence mere fact that a person was not arrested during the investigation, in itself, is totally irrelevant so far as a claim of the accused to get bail in a particular case, as a matter of right, is concerned, although this fact may have some

relevance qua some other factors which may be relevant for exercise of discretion by the court for granting bail to such a person. However, such indirect relevance in the facts of the present case would be assessed by this court in succeeding paras, at another place.

Having considered general arguments regarding grant of bail to the accused, the stage is now set for consideration of a direction for grant of bail/anticipatory bail, particularly, to the petitioner, and with the reference to the provisions and the offences under the New Companies Act 2013. However, before proceeding further, it would be appropriate to have a reference to the relevant provisions of the new Companies Act 2013, which are as reproduced hereinbelow:-

**SECTION 210: Investigation into affairs of company.-** (1)

Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company,—

- (a) on the receipt of a report of the Registrar or inspector under section 208;
- (b) on intimation of a special resolution passed by a company that the affairs of the company ought to be investigated; or
- (c) in public interest,

it may order an investigation into the affairs of the company.

(2) Where an order is passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that company.

(3) For the purposes of this section, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct.”

**Section 212: Investigation into affairs of Company by Serious Fraud Investigation Office.**-(1) Without prejudice to the provisions of Section 210, where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office—

- (a) on receipt of a report of the Registrar or inspector under section 208;
- (b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;
- (c) in the public interest; or

- (d) on request from any Department of the Central Government or a State Government,

the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

(2) Where any case has been assigned by the central government to the serious fraud investigation office for investigation under this act, no other investigating agency of central government or any state government shall proceed with investigation in such case in respect of any offence under this act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this act to serious fraud investigation office.

(3) Where the investigation into the affairs of a company has been assigned by the Central Government to Serious Fraud Investigation Office, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter; and submit its report to the Central Government within such period as may be specified in the order.

(4) The Director, Serious Fraud Investigation Office shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217.

(5) The company and its officers and employees, who are or have been in employment of the company shall be responsible to

provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation.

6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974) (offences covered under section 447) of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless -

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs :

Provided further that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by —

(i) the Director, Serious Fraud Investigation Office; or

(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

(7) The limitation on granting of bail specified in sub-section (6) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

(8) If the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(9) The Director, Additional Director or Assistant Director of Serious Fraud Investigation Office shall, immediately after arrest of such person under sub-section (8), forward a copy of the

order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed.

(10) Every person arrested under sub-section (8) shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's court.

(11) The Central Government if so directs, the Serious Fraud Investigation Office shall submit an interim report to the Central Government.

(12) On completion of the investigation, the Serious Fraud Investigation Office shall submit the investigation report to the Central Government.

(13) Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.

(14) On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company.

(15) Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973.

(16) Notwithstanding anything contained in this Act, any investigation or other action taken or initiated by Serious Fraud Investigation Office under the provisions of the Companies Act, 1956 shall continue to be proceeded with under that Act as if this Act had not been passed.

17. (a) In case Serious Fraud Investigation Office has

been investigating any offence under this Act, any other investigating agency, State Government, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents available with it to the Serious Fraud Investigation Office;

(b) The Serious Fraud Investigation Office shall share any information or documents available with it, with any investigating agency, State Government, police authority or income tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law.”

**Section 217: Procedure, powers etc., of inspectors.-** (1) It shall be the duty of all officers and other employees and agents including the former officers, employees and agents of a company which is under investigation in accordance with the provisions contained in this Chapter, and where the affairs of any other body corporate or a person are investigated under section 219, of all officers and other employees and agents including former officers, employees and agents of such body corporate or a person—

(a) to preserve and to produce to an inspector or any person authorised by him in this behalf all books and papers of, or relating to, the company or, as the case may be, relating to the other body corporate or the person, which are in their custody or power; and

(b) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

(2) The inspector may require any body corporate, other than a body corporate referred to in sub-section (1), to furnish such information to, or produce such books and papers before him or any person authorised by him in this behalf as he may consider necessary, if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.

(3) The inspector shall not keep in his custody any books and papers produced under sub-section (1) or sub-section (2) for more than one hundred and eighty days and return the same to the

company, body

corporate, firm or individual by whom or on whose behalf the books and papers were produced:

Provided that the books and papers may be called for by the inspector if they are needed again for a further period of one hundred and eighty days by an order in writing.

(4) An inspector may examine on oath—

(a) any of the persons referred to in sub-section (1); and

(b) with the prior approval of the Central Government, any other person, in relation to the affairs of the company, or other body corporate or person, as the case may be, and for that purpose may require any of those persons to appear before him personally:

Provided that in case of an investigation under section 212, the prior approval of Director, Serious Fraud Investigation Office shall be sufficient under clause (b).

(5) Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the inspector, being an officer of the Central Government, making an investigation under this Chapter shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:—

(a) the discovery and production of books of account and other documents, at such place and time as may be specified by such person;

(b) summoning and enforcing the attendance of persons and examining them on oath; and

(c) inspection of any books, registers and other documents of the company at any place.

6. (i) If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

(ii) If a director or an officer of the company has been

convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.

(7) The notes of any examination under sub-section (4) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(8) If any person fails without reasonable cause or refuses—

(a) to produce to an inspector or any person authorised by him in this behalf any book or paper which is his duty under sub-section (1) or sub-section (2) to produce;

(b) to furnish any information which is his duty under sub-section (2) to furnish;

(c) to appear before the inspector personally when required to do so under sub-section (4) or to answer any question which is put to him by the inspector in pursuance of that sub-section; or

(d) to sign the notes of any examination referred to in sub-section (7), he shall be punishable with imprisonment for a term which may extend to six months and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, and also with a further fine which may extend to two thousand rupees for every day after the first during which the failure or refusal continues.

(9) The officers of the Central Government, State Government, police or statutory authority shall provide assistance to the inspector for the purpose of inspection, inquiry or investigation, which the inspector may, with the prior approval of the Central Government, require.

(10) The Central Government may enter into an agreement with the Government of a foreign State for reciprocal arrangements to assist in any inspection, inquiry or investigation under this Act or under the corresponding law in force in that State and may, by notification, render the application of this Chapter in relation to a foreign State with which reciprocal arrangements have been made subject to such modifications, exceptions, conditions and qualifications as may be deemed expedient for implementing the agreement with that State.

(11) Notwithstanding anything contained in this Act or in the Code

of Criminal Procedure, 1973 (2 of 1974) if, in the course of an investigation into the affairs of the company, an application is made to the competent court in India by the inspector stating that evidence is, or may be, available in a country or place outside India, such court may issue a letter of request to a court or an authority in such country or place, competent to deal with such request, to examine orally, or otherwise, any person, supposed to be acquainted with the facts and circumstances of the case, to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing, which may be in his possession pertaining to the case, and to forward all the evidence so taken or collected or the authenticated copies thereof or the things so collected to the court in India which had issued such letter of request:

Provided that the letter of request shall be transmitted in such manner as the Central Government may specify in this behalf:

Provided further that every statement recorded or document or thing received under this sub-section shall be deemed to be the evidence collected during the course of investigation.

(12) Upon receipt of a letter of request from a court or an authority in a country or place outside India, competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to affairs of a company under investigation in that country or place, the Central Government may, if it thinks fit, forward such letter of request to the court concerned, which shall thereupon summon the person before it and record his statement or cause any document or thing to be produced, or send the letter to any inspector for investigation, who shall thereupon investigate into the affairs of company in the same manner as the affairs of a company are investigated under this Act and the inspector shall submit the report to such court within thirty days or such extended time as the court may allow for further action:

Provided that the evidence taken or collected under this sub-section or authenticated copies thereof or the things so collected shall be forwarded by the court, to the Central Government for transmission, in such manner as the Central Government may deem fit, to the court or the authority in country or place outside India which had issued the letter of request.”

**Section 219: Power of inspector to conduct investigation into affairs of related companies, etc. - If an inspector appointed**

under section 210 or section 212 or section 213 to investigate into the affairs of a company considers it necessary for the purposes of the investigation, to investigate also the affairs of—

( c ) any other body corporate which is, or has at any relevant time been the company's subsidiary company or holding company, or a subsidiary company of its holding company;

(d) any other body corporate which is, or has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company;

(e) any other body corporate whose Board of Directors comprises nominees of the company or is accustomed to act in accordance with the directions or instructions of the company or any of its directors; or

(f) any person who is or has at any relevant time been the company's managing director or manager or employee, he shall, subject to the prior approval of the Central Government, investigate into and report on the affairs of the other body corporate or of the managing director or manager, in so far as he considers that the results of his investigation are relevant to the investigation of the affairs of the company for which he is appointed.”

**Section 229: Penalty for furnishing false statement, mutilation, destruction of documents-**

Where a person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation,

(a) destroys, mutilates or falsifies, or conceals or tampers or unauthorisedly removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorised removal of, documents relating to the property, assets or affairs of the company or the body corporate;

(b) makes, or is a party to the making of, a false entry in any document concerning the company or body corporate; or

(c) provides an explanation which is false or which he knows to be false, he shall be punishable for fraud in the manner as provided in section 447.”

**SECTION 436: OFFENCES TRIABLE BY  
SPECIAL COURTS: -**

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) all offences specified under sub-section (1) of section 435 shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned;

(b) where a person accused of, or suspected of the commission of, an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that where such Magistrate considers that the detention of such person upon or before the expiry of the period of detention is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) in relation to an accused person who has been forwarded to him under that section; and

(d) a Special Court may, upon perusal of the police report of the facts constituting an offence under this Act or upon a complaint in that behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974) be charged at the same trial.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Special Court may, if it thinks fit,

try in a summary way any offence under this Act which is punishable with imprisonment for a term not exceeding three years:

Provided that in the case of any conviction in a summary trial, no sentence of imprisonment for a term exceeding one year shall be passed:

Provided further that when at the commencement of, or in the course of, a summary trial, it appears to the Special Court that the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Special Court shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or rehear the case in accordance with the procedure for the regular trial.”

**Section 438: Application of Code to proceedings before Special Court.-** Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure 1973 (2 of 1974), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.”

**Section 446-A: Factors for determining level of punishment:**

The Court or the Special Court while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely:-

- (a) Size of the company ;
- (b) nature of business carried on by the company ;
- (c) injury to public interest ;
- (d) nature of the default ; and
- (e) repetition of the default.

**Section 447: Punishment for fraud:-** Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the

term of imprisonment shall not be less than three years.

Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both.”

*Explanation.-* For the purposes of this section -

- (i) “fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;
- (ii) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;
- (iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled;”

Referring to the provision of the section 212 the counsel for the petitioner has laid stress on the above-mentioned argument that the Investigating Officer has vast powers to arrest the accused if he had the valid reasons and material with him to justify the arrest. If during the investigation he had the material and he did not find the arrest of the petitioner to be justified then there is no reason for the court to take the petitioner into custody on the basis of the same material which the investigation officer had placed on record before the Court. In effect, the argument of the counsel is that the same material cannot be interpreted in two different manners, one by the

Investigating Officer and the other by the Trial Court. However, this court does not find any substance in this argument as well. The provision regarding arrest of a person during investigation under the new Companies Act is contained in section 212(8). The perusal of this provision shows that under the new Companies Act, the investigating officer does not have unbridled or as much liberal powers to arrest a person, as are available under Cr.P.C. Under the new Companies Act, 2013; before arresting a person, investigating officer is required to have material in his possession and on the basis of that material, is required to record reasons in writing that a person 'has been guilty' of offence punishable under sections, which are mentioned in section 212 (6) of this Act. Therefore despite having the material in his possession justifying the arrest of a person, the investigating officer under the Companies Act may not choose to arrest a person, so as to avoid onerous duty of recording reasons. The section itself confers discretion upon the investigating officer; to arrest or not to arrest an accused. This again; is clear from the fact that the section is using the word 'may' and it is not casting any mandatory duty upon the Investigating Officer to arrest the accused. On the other hand, after the investigation report is filed before the court, which is given a deeming fiction of being a charge-sheet filed under Section 173 of Cr.P.C. under section 212(15) of the Companies Act, the Special Court would have that entire material before it on the basis of which such a person is sought to be

prosecuted. The trial court is under a mandatory duty to appreciate the said material in the manner a judicially trained minds should appreciate, while considering the matter for grant of bail to such an accused. Otherwise also, provision of section 212(6), if read as it is, requires consideration for grant of bail by much higher standards as compared to the standards prescribed for consideration for arrest by the investigating officer. Therefore in a given case, investigating officer may think that despite the availability of the material with him, since the accused has been cooperating during the investigation, therefore, he need not arrest such a person and that this job would be better left to be done by the court. In another given situation, the investigating officer of the case might be even colluding with the accused, and therefore, he may not arrest such an accused despite the availability of material sufficient to arrest such an accused. Hence; the fact that the accused was not arrested by the investigating officer under Section 212(8) during the investigation, does not show either the non-existence of the material sufficient to arrest such an accused nor does such a non-arrest, necessarily, has any reference to any application of mind by the Investigating Officer; to the material available with him; qua the guilt of the accused. Needless to say, that under section 212(8) the investigating officer of the case is required to consider the material and record reasons only when he decides to arrest a person and not otherwise. But when the matter comes to the court, it becomes otherwise. While considering

the question of bail to the accused, who has appeared or been produced before the court, the court would be, necessarily, required to apply its judicial mind before arriving at the conclusion, whether to grant bail to such a person, on merits, or not. Therefore there is a whole lot of difference in the requirements for and actual consideration, quantitatively as well as qualitatively; and in nature and scope thereof, qua the same material, by the investigating officer on the one hand and by the Special Court on the other hand. There can't be any comparison between the two appreciations of the material available on record. The appreciation of the material on record by the court has to be independent of any such appreciation or non-appreciation of the material by the investigating officer. Therefore despite the fact that the investigating officer may have arrested a person during the investigation, the court may grant him the bail during the pendency of the trial; on its appreciation of the evidence filed in the charge-sheet. On the contrary; the trial court may not grant any bail to the accused, on the appreciation of the material placed before it in the form of the charge-sheet, despite the fact that the accused was not arrested by the investigating officer even in the face of the availability of the same material before him. However, whether there is any material available against the petitioner in this case, is separately argued by the Counsel for the petitioner and, therefore, would be dealt with in the coming paragraph separately.

This Court does not find any force in the other argument of the

counsel for the petitioner as well, that since the investigating officer had not obtained prior approval from Central Government for investigating the petitioner or his companies separately, therefore, the investigation qua him is unauthorized and, hence, even the cognizance by the Court taken upon such investigation stands vitiated. To understand this argument one need to read the Chapter XIV of the Companies Act relating to Inspection, Inquiry and Investigation, as a whole. Rather the entire Act has to be gone through. There are lot many provisions in the Companies Act which make various Acts, omissions, non-filing, non-disclosure, not keeping proper records and other defaults and defects qua affairs of a Company as punishable, although with smaller quantum of punishments of imprisonment and/or fine. These provisions are strewn with throughout the body of the Act. To inspect the records of Companies and to investigate these minor offences, the Central Government is to appoint 'Inspectors' of Companies, who shall work as the ordinary Inspectors to investigate the said firms. The investigation, under the Companies Act can be initiated in three different manners and for different reasons, which might come to the knowledge of the Central Government. If during routine inspection something criminal comes to the knowledge of Inspectors, on that the investigation can be started under Section 208 of the Companies Act. If certain other misconduct or fraud in the affairs of a Company comes to the knowledge of the Central Government, and for the

reasons mentioned therein, the Central Government can order investigation under Section 210 of the Companies Act. Still further, if during some proceedings some default or even fraudulent affairs in relation to the conduct of affairs of the company comes to the knowledge of the Company Tribunal then under Section 213, the Tribunal can require the investigation. However, all these investigations, ordered by the Government under Sections 208 or 210 or ordered by the Tribunal under Section 213, are to be conducted by ordinary Inspector of Companies. But 'serious frauds' in relation to affairs of companies have been carved out as separate and distinct category for their investigation and punishment. For investigating serious frauds a separate investigating agency, called 'Serious Fraud Investigation Office' has been provided under Section 211 of the Companies Act. The investigation in serious frauds is to be ordered by Central Government under Section 212 of the Companies Act and is to be carried out by SFIO. This investigation is not to be carried out by ordinary Inspectors of Companies, but is to be carried out by the Director, Additional Director or other Officers of SFIO, authorized by the Director SFIO. However, the person carrying out the investigation under SFIO is also given a deeming fiction of being an 'Inspector' for the purpose of powers of Investigating Officer; defined under Section 217 of the Companies Act. Hence all the Investigating Officers, whether investigating at the instance of Central Government under Section 208 or Section 210 or acting at the instance of

Tribunal under Section 213 or acting at the instance of SFIO under Section 212, are to be known as 'Inspector' and are to conduct investigation as per procedure prescribed under Section 217. But Officer of SFIO, authorised to conduct investigation under Section 212; is further bound by the restrictions and prohibitions as prescribed under Section 212 of Companies Act as well. One more fact which comes out is that if an investigation is ordered by the Central Government, whether under Sections 208, 210, 213 or 212, and in the process the affairs of some other subsidiary or controlled company of the company under investigation are also found worth investigation, then even for the investigation of the affairs of subsidiary or controlled company; a separate approval from the Central Government is required and the same is to be granted by the Government, as required under Section 219 of the Companies Act. Again, whether it is the investigation originally initiated under Section 208, 210, 212 or 213 or approved additionally under Section 219, all have to be conducted under the procedure given under Section 217 of Companies Act; additionally controlled by restrictive provisions of Section 212 for officers of SFIO.

Under Section 217, when an investigation Officer feels the need to join any person or other body corporate in investigation qua the affairs of the company which he is already authorised to investigate, then under Section 217(2) he can seek record from such any other person or body corporate, as he

considers relevant for the purpose of his investigation. Under Section 217(4) he can also record the statement on Oath, of the Officers and employees etc of the Company under investigation. Additionally he can also record statement on Oath of any other person or body corporate, which is not directly connected with, or controlled by the Company under investigation. At this stage of investigation, the provisions of Section 217(4) make a distinction between the ordinary Inspector of Companies, investigating as per the mandate of Sections 208, 210 and 213 on the one hand; and the Officer of SFIO investigating the serious fraud as per the mandate of Section 212 on the other hand. If a statement on Oath is to be recorded, of a person who is officer or employee etc., of the Company under investigation, then Ordinary Inspector and Officer of SFIO, both are authorised to record the same under provision of Section 217(4)(a), being a person already covered by Section 217(1). But if the statement of any other person, who is not the employee or Officer etc. of the Company under investigation, is to be recorded on Oath then under provisions of Section 217 (4) (b) the ordinary Inspector of Companies shall be required to obtain prior approval from the Central Government. However, if the Officer of the SFIO, investigating the case under approval granted under Section 212 is to record statement on Oath; of a person who is not connected with the management and control of the affairs of the Company under investigation as employee or officer etc., then as per the proviso to Section 217(4)(b) he shall

require approval only from the Director SFIO, instead of the Central Govt. This distinction has been made by the statute keeping in view the specialized function of SFIO and nature of the offences; which SFIO is required to investigate. Reason for prescribing condition of requiring approval only from Director, SFIO is because, originally, the investigation is entrusted by the Central Government under Section 212 to SFIO only and not to any Inspector. The Inspector is specified, further, only by the SFIO. Hence, being delegate of Director, SFIO, the Inspector requires prior approval only from the Director, SFIO under Section 217(4)(b) proviso. In the present case the approval from the Director SFIO has been obtained by the investigation officer. Therefore, there is nothing wrong with joining the petitioner also qua the investigation of affairs of the Companies of the Adarsh Group. Since, as per the provisions of Section 212 (14), on receipt of investigation report the Central Government can order initiation of prosecution; not only against the officers and employees etc. of the Company under investigation; but also against 'any person' directly or indirectly connected with affairs of the company under investigation as well, therefore, if a person, not otherwise the employee or officer etc. of the Company under investigation, is also found colluding or conspiring in perpetuation of serious fraud; in relation to the affairs of the Company under investigation, then prosecution can be initiated against such person as well, despite the fact that the affairs of his own company were not directly under

investigation for serious fraud in relation to their own affairs. A person can, very well, be prosecuted as a person abetting or as a conspirator or perpetrator of fraud in relation to a company not owned or controlled by him. Had his own companies been under investigation then the petitioner and his companies would also have faced prosecution under other relevant provisions regarding non-maintenance of books of accounts and defaults in filing or destruction of documents etc., which are separately punishable under different other provisions, like section 128, 129 448 and other sections. But here the petitioner and his companies are sought to be prosecuted only as conspirators and as the persons/entities who have committed frauds qua the funds of the CUIs of the Adarsh Group. Absence/concealment of the deeds, agreements or the documents resolutions and decisions supporting the transactions claimed by the petitioner, in the records of the companies of the petitioner, is being taken only to show his deceitful intention qua the transfer and squandering the funds of CUIs of the Adarsh Group. Hence, this Court finds that the investigation, the complaint or the cognizance of the offences against the petitioner are not vitiated in any manner.

At the same time this court does not find any substance in the argument of the learned Counsel for the SFIO has that the twin conditions prescribed under section 212(6) of the New Companies Act, 2013 start with negation of bail to the accused and the court could grant bail to such an

accused only if the court records a satisfaction qua the accused being 'not guilty' of the alleged offence and also a satisfaction that if released on bail the accused is not likely to commit any similar offence again. Also this court does not find substance in the insistence of the learned counsel for the SFIO that the application of the twin conditions, as prescribed under Section 212 (6), are mandatory and have to be applied to all the considerations of grant of bail to the accused facing charge covered by section 447 of the New Companies Act. No doubt the statutory language of section 212(6) has prescribed the twin conditions to be considered by the court, in case the prosecutor raises his objection to the grant of bail, however a similar language existing in the Prevention of Money Laundering Act, which was *para materia* to the language of the twin conditions contained in section 212(6) of the new Companies Act, had earlier come-up for consideration of the Supreme Courts in case of **Nikesh Tarachand Shah (Supra)** case and such language has already been declared to be *ultra vires* by the Supreme Court in that case. Not only this, even this court had an occasion of considering the nature and scope and the operational functionality of the language of these twin conditions, as contained in the Narcotic Drugs and Psychotropic Substances Act, in case of **Ankush Kumar (supra)**. After threadbare analyzing the operational functionality of the language of the twin conditions, as used in the statute, this court had come to conclusion that the

language of the twin conditions requires impossibility from the court, besides defying the human logic in its operational functionality. This language, if made operational in a case, even by adopting the semi-cooked concept of 'reading down' the language - and thereby ignoring the celebrated 'Doctrine of Severability' and the touchstone of Articles 14 & 21; both, qua test of constitutional validity, then also it turns on their head some well established principles of criminal jurisprudence as well as, goes in negation of the provisions of Cr.P.C. dealing with the further progress of the trial in a criminal case, besides requiring prophesy from the court, which by no means, is a job of a criminal court. Hence this court had held in case of **Ankush Kumar(supra)**, that since the operational functionality of the language of twin conditions is based upon totally indeterminate criteria which are required for exercise of this power by the court; and also expects the impossible from the court, therefore, the language of these twin conditions is in direct conflict with the rights of an individual guaranteed by Article 14, which protects him from irrationality and arbitrariness in application of law against him, as well, his right to life and liberty protected by Article 21 of the Constitution of India. In case of conflict between the rights guaranteed by the Articles 14 & 21 of the Constitution on one hand and the language in a statute on the other hand, the latter has to give in to the former. This has also been so held by the Supreme Court in another case

where the Supreme Court has held that despite prohibition of suspension of sentence under NDPS Act, the Courts can suspend the sentence. Hence it was held by this court that, despite the fact that the constitutional *vires* of the language of the twin conditions might be considered by some other court in some other appropriate proceedings, the state could not be permitted to take the twin conditions as an objection to the grant of the bail to the accused. This court does not find any reason to take a different view now. This judgment of this court was even challenged before the Hon'ble Supreme Court in case of **SLP(Criminal) Diary No. 42609 of 2018, State of Punjab V/s Ankush Kumar @ Sonu**. However, the Hon'ble Supreme Court had not found any reason to interfere with that judgment of this court; and SLP was, accordingly, dismissed by the Supreme Court. It would not be appropriate to reproduce only some part of that judgment of this court in a mutilated form, lest the essence of the matter should be lost in the process. Rather to truly appreciate the matter of the operational functionality of the twin conditions; the said judgment has to be read as an organic whole. Since the said judgment is reported one, thus, the reasoning given in that judgment can be taken as a supplement to the decision of the present case as well.

Although the learned Counsel for the SFIO has, additionally, referred to the language used in Section 437 of Cr.P.C to argue that a similar language is already used in the said provision of bail; and has also relied upon

the judgment of the Supreme Court rendered in **Kartar Singh V/s State of Punjab, 1994 (3) SCC 569**, wherein referring to the language of section 437 Cr.P.C. the *para materia* language of twin conditions used in Terrorist and Disruptive Activities Act was upheld. However, although this court has no competence to comment upon this judgment of the Supreme Court, yet it has to be noted that the same judgment was cited even before the Supreme Court in **Nikesh Tarachand Shah (Supra)** case and the Hon'ble Supreme Court had not found it worth reliance to the extent of being sufficient for upholding the *para-materia* language of twin conditions used in the Prevention of Money Laundering Act. Beyond that; this court can only observe that any further relevance of this judgment can be assessed only by the Hon'ble Supreme Court in the case which is now stated to be pending before the Supreme Court itself and in which the constitutional validity of twin conditions as prescribed under section 212(6) is directly under challenge. However, so far as the language of section 437 Cr.P.C. is concerned, although in itself that cannot be a ground for pleading constitutional validity of the section 212(6) of the Companies Act, yet otherwise also; that language is drastically different than the language used in section 212(6) of Companies Act. A bare perusal of this section shows that the section 437 Cr.P.C. uses two different phrases, qua satisfaction of the court for releasing an accused on bail, at two drastically different stages of the trial. Section 437(1)(i) is dealing with a stage when an

accused appears or brought before the trial court for the first time to start proceedings against him. This provision, for declining bail to such a person; requires the satisfaction and belief of the court that the said person 'has been guilty' of the offence mentioned in that provision. On the other hand Section 437(7) deals with a situation where the trial stands concluded but the decision is not yet pronounced. In this Situation; this provision provides that the accused need not be unnecessarily incarcerated and he can be released on bail if the court has a satisfaction and belief; on the basis of the evidence of the prosecution; that the accused 'is not guilty' of the offence.

Both these provisions are perfectly in tandem with the other provisions of Cr.P.C. relating to the stages and progress of trial, like framing of charge, discharge and acquittal of an accused as per the progress of trial and availability of evidence on record. On the other hand, section 212(6) of the Companies Act requires from the court; at the start of the trial itself; what section 437(7) requires from the court at the end of the trial. Even if, by hook or crook, the court manages to record, while granting bail to an accused, as is required under section 212(6), that the accused 'is not guilty', then it negates the entire process of further trial of that accused. It goes against framing of the charge by the same court and it may require even discharge of such an accused; because by recording a satisfaction that a person 'is not guilty' the court surpasses the level of satisfaction required for framing charge itself; and

goes near to recording the satisfaction required for his discharge.

Similarly, holding the twin conditions to be mandatorily followed in all situations for release of an accused on bail; can lead the court to hit against the wall in a given situation. This can be clear from another inconvenient question, which has not been shown by the learned Counsel for the SFIO to have been answered by any court so far, including the Hon'ble Supreme Court. The question is - for how long an accused can be kept in custody on the basis of non-fulfillment of the requirement prescribed under section 212(6)? This question was specifically referred to Delhi High Court by way of reference by a judicial officer, in case of **Court on its Own Motion (Supra)** case. However, even there the question does not find any answer. Unless this question is categorically answered to say that till the conclusion of the trial such a person cannot be released on bail without satisfying the conditions mentioned in section 212(6), the twin condition cannot be held to be mandatory. This is so because if a person can be released on bail without satisfying the twin conditions of the section 212(6), say, after 3 years, then there is no reason why he cannot be released without complying the said twin condition today itself. But this court has come across the unfortunate situations where a court may not even find the moral courage or the legal sanctity to tell to the accused that he shall have to wait in custody till conclusion of the trial, despite and in face of the legislative policy contained in provisions of section

436A of the Cr.P.C. If an accused is in custody for years together without his fault and without any effective proceedings being conducted against him, this may turn into a totally unfair procedure, which cannot be used to curtail the liberty of an accused in violation of Article 21 of the Constitution of India. And in our system of criminal adjudication these situations are not uncommon. In fact, this court has come across the cases where this court had to order taking the police officers into custody and keeping them in custody till their examination and cross-examination before the trial court, as prosecution witnesses, was completed, because in those cases only the police persons were the witnesses and they were not appearing before the trial court, for 19 dates in one case and for 41 dates in another case; despite the fact that the accused was in continuous custody or was regularly appearing before the trial court. Such kind of cases does galore. In such a situation the court would do substantial justice; or would stick to the conditions; like the ones prescribed under section 212(6); to deny even the bail to such an accused? Even if the courts are to stick to such condition; then how much injustice to the accused would be sufficient to off-set or to balance with the rigor of the twin condition? This court finds the answer to these inconvenient questions to be in negative and, therefore, constrained to observe that in humble view of this court; the twin conditions mentioned in section 212(6) are not mandatory in their compliance.

Although learned Counsel for the SFIO has submitted that in the

case of **Nitin Johari (Supra)** the Hon'ble court has remanded the matter to the Delhi High Court for reconsideration on bail by considering the scope and effect of the twin conditions, as laid down in the section 212(6) of the Companies Act, however, this court finds that; in that case, the Hon'ble Supreme Court has also observed that even if conditions prescribed under section 212(6) are not to be followed, still the criteria meant for bail in cases of economic offences was required to be considered by the High Court of Delhi. Hence, the primary reason for remand in that case was that the High Court of Delhi had not considered the material on record of the case and had granted bail even without advertng to the factors considered relevant by the Supreme Court for economic offences. Additionally, the Supreme Court had also directed the Delhi High Court to consider the 'scope and effect' of the twin conditions prescribed under section 212(6) of the Companies Act. However, in the present case, as mentioned above, this court has already considered the 'scope and effect' of the operational functionality of the language *para materia* to the one contained in the twin conditions, as prescribed under section 212(6) of the Companies Act and has found in the case of **Ankush Kumar (Supra)** that the languages is in conflict with the right of the accused guaranteed under Article 14 and Article 21 of the Constitution and thus has to give way to the fundamental rights of the accused; qua his consideration for grant of bail. That judgment of this court was even

challenged before the Hon'ble Supreme Court in case of **SLP(Criminal) Diary No. 42609 of 2018, State of Punjab V/s Ankush Kumar @ Sonu.**

However, the Hon'ble Supreme Court had not found any reason to interfere with that judgment of this court; and SLP was, accordingly, dismissed by the Supreme Court. Hence this court is of the view that bail to the petitioners cannot be denied only on the strength of insistence by the public prosecutor upon twin conditions, as prescribed under section 212(6) of the Companies Act.

However, this court finds substance in the argument of the learned Counsel for the SFIO that the offences involved in this case are the economic offences and therefore, the factors and the criteria laid down by the Supreme Court for consideration for granting bail in economic offences have to be considered by this court. The said criteria have found elucidation in several judgments of the Supreme Court. Even in case of **Nitin Johari (Supra)** the Supreme Court had emphasized the fact that in case of consideration of bail to the accused in case of economic offences, the factors and criteria mentioned by the Supreme Court in case of **Y.S. Jagan Mohan Reddy (Supra)** are to be followed. Observation of the Hon'ble Supreme Court, as approvingly quoted in the case of **Nitin Johari (Supra)**, are as under:-

“**34.** Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously

and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.”

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/state and other similar considerations.”

Therefore, this court is under obligation to consider the nature of offence and the material placed on record before the special court, by way of charge-sheet against the petitioner, for consideration of question of granting anticipatory bail to petitioner.

To discredit the concept of economic offences being a class apart; learned Counsel for the petitioner has submitted that concept of economic offences constituting a class apart has not been carried forward consistently even by the Supreme Court. He has also submitted that the Supreme Court has granted bail to the accused in cases involving economic offences. Not only this, the Supreme Court has granted bail to such accused even by writing that it was conscious of the fact that the offences involved in those cases were economic offences and that offences would have an adverse effect upon the economy as such. The counsel has relied upon the judgment in case of **Sanjay Chandra (Supra)** and in case of **D. K. Sethi (Supra)**. Therefore, it is submitted that applying the concept of economic offences selectively would tantamount to

discrimination in application of law. Hence it is submitted by the Counsel for the petitioner and the distinction between 'economic offences' and the other offences; qua the consideration of bail to the accused; no more holds good. Saying otherwise would give an impression that the courts are adopting a different approach in case of rich and high-ups and a different approach qua ordinary mortals. However, for the purpose of this case this court finds the argument to be not relevant. This court finds that in a case relating to the same offences under the new Companies Act 2013 only, the Supreme Court of India, in case of **Nitin Johari (supra)** has specifically directed the High Court of Delhi to take into consideration the factors which are required to be considered for economic offences; for the purpose of consideration of bail to an accused. This court is under duty to adopt the same approach while considering the question of the bail to the petitioner. Any perceived inconsistency, if any, in the approach and in the judgments of the Supreme Court in this regard, can only be raised before and can be clarified only by the Hon'ble Supreme Court. So far as this court is concerned, it finds a clear-cut guidance in the judgment of the Supreme Court rendered in **Nitin Johari's (supra)** case in this regard. Otherwise also the fact that the offences under the new Companies Act are the 'economic offences' and have to be treated a 'class apart' is clear from the provision of section 446A of the Companies Act itself. This section creates an extraordinary provision to bind-down the

discretion of the Special Court even in the matter of award of punishment to the convict. This section has specifically made the nature, the scale and machinations of the offence and the fraud, size of the Company, Nature of the Business of the Company and the Injury to the Public Interest; to be the guiding factor to grade the quantum of the punishment to be awarded accused by the Court. Hence there is no doubt that the offences under the Companies Act constitute a class apart and these offences are prescribed by the Companies Act itself as to be treated as the serious economic offences.

So far as the seriousness of the offences and the material against the petitioner is concerned, this court finds weight in the arguments of the learned Assistant Solicitor General representing SFIO that there are serious allegations against the petitioner and there is enough material inculcating the petitioner in the offence. As per the allegations the petitioner and his companies have been instrumental in swindling of an amount of about Rs.70Crores (including interest) out of total swindled amount of Rs.1700Crore (Rs4140Crores including interest); which was, allegedly, swindled by the Adarsh Group of Companies through their subsidiaries and co-conspirators. The petitioner or his companies are alleged to have conspired with Vivek Harivyasi to defraud the CUIs of Adarsh Group. As mentioned above, the petitioner is not even denying the facts alleged against him qua the money but has taken a stand regarding nature and purpose of transactions. But there is no

record qua such nature and purpose in the of books of account of his companies or of the CUIs of the Adarsh Group; to substantiate his stand, despite the fact that maintaining and keeping such records was mandatory; as discussed below.

The charge-sheet against the petitioner is under section 447 of the Companies Act, which is a serious offence, inviting punishment of imprisonment up to 10 years. Although a Counsel for the petitioner had submitted that the petitioner is not directly involved in embezzlement of the cash-in-hand of the companies of the Adarsh Group, however, the fraud, as defined under the new Companies Act, 2013 does not contemplate any gain by one person and the loss by another person or a company. Participation of the petitioner in the crime of embezzlement of the money, per se, is sufficient for conviction of the petitioner, if otherwise proved. In the present case the petitioner is alleged to have even directly received the funds from the CUIs of the Adarsh Group, which are not even traceable after having been received by the petitioner. Although the petitioner claims to have appropriated the same on behalf of the CUIs of Adarsh Group for a particular purpose, however, there are no supporting documents, deeds, decisions or resolutions in the records of; either the CUIs of the Adarsh Group; or in the companies of the petitioner; to show that the CUIs of Adarsh Group ever authorized the petitioner or his companies to carry-out the purpose claimed by the petitioner or that the

purpose was actually carried out by the petitioner or his companies for and on behalf of the CUIs of the Adarsh Group. There are no records or resolutions or decisions even qua the appointment of Deepak Shrimali as nominee of the CUIs in the companies of the petitioner. All these records were to be mandatorily maintained by the CUIs of the Adarsh Group; as well as; by the companies of the petitioner; qua the actions, the purpose or the transaction, as claimed by the petitioner, if these were true. The relevant provisions of the new companies Act in this regard are as under:-

**“Definitions Section 2**

(12) "book and paper" and "book or paper" include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;

(13) "books of account" includes records maintained in respect of-

(i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;

(ii) all sales and purchases of goods and services by the company;

(iii) the assets and liabilities of the company; and

(iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;

**Books of Account**

**Section 128:-** Books of account, etc., to be kept by company. –

(1) Every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double

entry system of accounting:

Provided that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place:

Provided further that the company may keep such books of account or other relevant papers in electronic mode in such manner as may be prescribed.

(2) Where a company has a branch office in India or outside India, it shall be deemed to have complied with the provisions of sub-section (1), if proper books of account relating to the transactions effected at the branch office are kept at that office and proper summarised returns periodically are sent by the branch office to the company at its registered office or the other place referred to in sub-section (1).

(3) The books of account and other books and papers maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours, and in the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director subject to such conditions as may be prescribed:

Provided that the inspection in respect of any subsidiary of the company shall be done only by the person authorised in this behalf by a resolution of the Board of Directors.

(4) Where an inspection is made under sub-section (3), the officers and other employees of the company shall give to the person making such inspection all assistance in connection with the inspection which the company may reasonably be expected to give.

(5) The books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year, or where the company had been in existence for a period less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order:

Provided that where an investigation has been ordered in respect of the company under Chapter XIV, the Central Government may

direct that the books of account may be kept for such longer period as it may deem fit.

(6) If the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions, such managing director, whole-time director in charge of finance, Chief Financial officer or such other person of the company shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.”

Therefore, it is clear that if the money was received by the petitioner or his companies for the purpose of consolidation of land than the companies of petitioner were required to maintain all the deeds, vouchers, writings, documents, minutes, resolutions and registers regarding all the sums of money received and expended by his companies and matters in relation to which the receipts and expenditure had taken place and also qua all the sales and purchases of the assets and of the liabilities of the companies. Similarly, all records were to be maintained qua appointment of any nominee by the CUIs of the Adarsh Group in the companies of the petitioner, if any, as claimed by the petitioner, and also regarding the alleged investment by the companies of the petitioner into the CUIs of the Adarsh Group. Not keeping of these records itself is punishable under section 128 above. Similar corresponding records were required to be maintained in the CUIs of the Adarsh Group. Not only this, all such records, for the past 8 years; were

to be kept safe and ready for inspection of the authorities. However, no such records are available or even claimed to have been maintained in this regard; either in the companies of the petitioner or in the CUIs of the Adarsh Group. Not only this; under section 448 of the Companies Act, even any omission of facts or false claim or making wrong representation in any return or records or any document; required by provisions of this Act, in itself is an offence which is punishable under section 447 only.

In the present case the petitioner is even alleged to have directly received the money from the CUIs of the Adarsh Group. Although the petitioner claimed to have got this money for a particular purpose, however, he could not produce even the Books of Account of his company to even prima facie show that purpose. Nor is that purpose reflected from the records of the CUIs of the Adarsh Group. Not keeping the books and records qua the dealings between the CUIs of the Adarsh Group and the companies of the petitioner, in their respective offices; despite impending legal threat of severe punishment prescribed above provisions itself creates initiation of deceitful intention. Rather, even as per the case put up by the petitioner himself the CUIs of the Adarsh Group filed civil suits disclosing therein; a purpose for the advancement of the said money, which is altogether different than the purposed claimed by the petitioner. There is nothing on record to even remotely

suggest that the said money was given to the petitioner for consolidation of the land for and on behalf of the CUIs of the Adarsh Group. Although the petitioner has relied upon some financial entries in his ledger and bank accounts, however, these are only the financial statements of his companies as defined under section 129 of the Companies Act; and which can be compiled at any time by matching the bank account entries; and these are not the books of account as required under section 128 of the Companies Act; which comprise of the original records. Obviously, Books of Account and Financial Statement; are not the same things, nor have the same probative value qua the actual existence or happening of a transaction or an event at a particular date. Financial Statement shows the movement of finance, whereas the Books of Account show the actual happening of the events or the transactions date-wise and are the original records of the same. Hence it apparent that the version put up by the petitioner is far from the truth. Therefore, at this stage, the allegation of the prosecution that it can be a ploy to buy properties by the petitioner and his co-accused Vivek Harivyasi by squandering the money of the CUIs of the Adarsh Group, cannot be easily brushed aside.

Qua the availability of evidence against the petitioner, although the learned Counsel for the petitioner has submitted that the since the statement of the petitioner was recorded by the investigating

officer who has powers akin to the police powers, therefore, the alleged admission by the petitioner has to be treated as a confession, which is not admissible under section 25 of the Evidence Act, however, this court does not find any substance in this argument. The Companies Act 2013 is a special statute. As per the provision contained in section 212(3) the investigation of the offences by the authorities under this Act has to be carried out only as per the provisions of this Act. Still further, under sections 435, 436 and section 439 the trial of an offender under this Act is to be conducted by the Special Court in accordance with Cr.P.C. and the procedure as modified under this Act. Section 217(7) specifically provides that the statement made by a person before the investigating officer shall be admissible against such person and can be used against him. The Companies Act is a special statute; therefore any provision specifically enacted under this Act shall have overriding effect over any other provision in any other general law, like Cr.P.C. and the Evidence Act, dealing with the same aspect. Otherwise also, to repose confidence in and to provide due protection to the corporate world, unlike the free-hand powers of the police qua arrest, search and seizure, the powers of the investigating officers under the Companies Act are far more controlled and circumscribed by the conditions, restrictions and even the prohibitions under the relevant provisions of the Companies Act. Accordingly, under

the Companies Act the investigating officer has also been conferred commensurate sanctity and his work has been conferred more authenticity as compared to that of the ordinary police officers. Therefore, under the provisions of the section 217(4) and section 217(5) Companies Act the investigating Officers has been given the power to record even the statements on oath and to summon person as the civil court does. The statement recorded by an authority having powers to record the statement on oath can never be put at par with the one recorded by an ordinary police officer. Such a statement recorded by the investigating officer under Companies Act, even if it is of 'admission' of certain fact; though could not be taken as sufficient for conviction on its own, however, the same would not be discarded as a 'confession' hit by section 25 of the evidence Act. As per the mandate of the section 217(7) of the Companies Act, this can certainly be relied upon as evidence against the petitioner. Therefore, the same can be considered for the purpose of bail as well. For the same reasons, even the statement of a co-accused would be relevant under section 10 of the Evidence Act, and the same can be relied upon under section 30 of the Evidence Act. Although, the question of reliance upon such statement as 'evidence' would come-up during the trial only after the same is 'proved', however, for the purpose of bail its 'relevance' as 'material' against the petitioner cannot be excluded at this stage. There

is nothing on record that the prosecution shall not prove this statement during the trial or that it would be prohibited from proving the same during the trial. Although in the first blush it can occur to the mind that such provision; which makes the statement made before the investigating officers as admissible in evidence; is in negation of fair trial due to inbuilt possibility of pressure and coercion in making such statement, however, it deserves to be noted that the trial of an accused is only a mean to achieve the end i.e. to do substantial justice. The end-product of the criminal trial can very well be the total deprivation of the liberty of the accused. Therefore, some element of coercion is bound to creep-in in all the procedures of criminal trial. Although, even the means also have to be such which are not in conflict with the fundamental rights of the accused, however, all kinds of coercion and all the degrees of the same cannot be pleaded to be in conflict with the fundamental rights of the accused. Under the provisions of the section 212 and section 217 of the Companies Act a person, when joined into investigation, is bound to state only the truth. There are punishments and the penalties provided for making incorrect statements or for furnishing wrong information or false records. At the same time, although the investigating officer is bound by several conditions and restriction prescribed under the Companies Act; but at the same time, he has also been conferred the power to record the statement

on oath and certain powers of Civil Court for enforcing attendance and seeking documents etc. So whatever coercion is inbuilt in this procedure; is the coercion of law and not of the individual investigating officer. Legal coercion to speak the truth; accompanied by the legal protection against unjust harassment; cannot be branded as unfair process. If at all the individual investigating officers is alleged to have exercised actual coercion as of fact or the pressure in some case, the accused would be at liberty to expose such aspect by getting an opportunity to cross-examine such an investigating officer and by leading other evidence to this effect. Hence this court finds no ground to discard the statement of the petitioner and his co-accused; even for the purpose of consideration of anticipatory bail.

This court also does not find force in the argument of the Id. Counsel for the petitioner that the offence under section 447 was not on the statute book on the date when the alleged money of CUIs of Adarsh Group was transferred to his companies, and therefore; he cannot be prosecuted by giving retrospective effect to this offence. As is clear from the reading of the definition of the fraud; as given in section 447 of the new Companies Act, it is not an offence which stands completed on the date of transfer of money of a company to other company or to any other person. Rather, the money has reference only for the purpose of quantum

of punishment. Only to that extent; the transfer of money is the ingredient of the offence under section 447. Another and more important ingredient is the act, omission or concealment of fact or abuse of position with an intention to deceive the company, the shareholders or any other person. Even connivance of another person in these ingredients is an offence. This definition specifically clarifies that the actual loss or gain by any company or a person is not the ingredient of this offence. Any damage to the interest of a company or other person is sufficient. So; the deceitful intention, which makes the transaction a fraud, need not be present at the time of transfer of funds or at the time of use of the said money. This intention can be developed at any time even after the money was transferred or used. Even if the money was initially transferred or used as per some legal agreement, still any subsequent act done or omission or concealment made; qua that money or qua the transaction made with or regarding that money; which intends to cause any damage to the interest of the CUIs or to any other person, can convert the otherwise legal transaction into a fraud punishable under section 447 directly; and also or indirectly by virtue of section 448. This is quite clear from the opening words of section 447, which start with clarifying that the offence under section 447 is punishable without prejudice to any liability to make the repayment, which the person committing fraud may incur on account of

such transaction which was; or turns at any time into a fraud. Hence the offence under section 447 is not a stand-alone-act offence arising from sole act of transfer of money or completed on the date of such transfer. It can arise at any subsequent time or from other subsequent transaction or act, omission or concealment. In that sense it is a continuing offence, which can have its origin on the date of transfer of money or can be relatable to the use of that money but which shall be completed when any act, or omission or concealment with fraudulent intention is made. Since the company offences are usually shrouded with the cloak of legal procedures, therefore, the deceitful intention may not be easily gatherable from one transaction or even a series of transaction. Therefore even the continued omission to make repayment or part repayment of the money which is the subject matter of the offence; can be one of the ingredients of the offence, if otherwise so reflected from the record. Hence the offence under section 447 has to be taken as a continuing offence till the repayment of the punishable quantum of amounts contemplated under section 447 is complete. In the present case, as observed above, to show any non-deceitful intention qua the transactions involving the CUIs of Adarsh Group, the petitioner does not have any books of accounts, required to be maintained as per the Companies Act; despite the risk of being punished for the same only. Hence; the deceit can very well be

inferred as having started creeping into the transaction. Still further, the amounts are; not only not repaid to CUIs of Adarsh Group even so far; but also are alleged to have been transferred; partly; personally to Vivek Harivyasi in the year 2014, i.e. after the coming into force the new Companies Act. Furthermore; even two persons inducted by the petitioner into his companies as *quid pro quo* for the transferred money; were continuing even at the time when the new Companies Act had come into operation and even after those persons had severed connections from the CUIs of the Adarsh Group. Hence, the petitioner cannot avoid prosecution under section 447 on the plea that the new Companies Act had not been enacted on the date of transfer of funds from CUIs of Adarsh Group to his companies. Although the counsel for the petitioner has relied upon the judgment of the Supreme Court rendered in case of **Udai Shankar Awasthi (Supra)**, however, that judgment is not only distinguishable on the facts, rather; goes against the petitioner in its enunciation of scope of a continuing offence.

Lastly, this court also does not find any substance in the argument of the counsel for the petitioner that since the petitioner had joined investigation, was never arrested by the arresting officer and has never made any effort to run away from the process of the law, therefore there is no material with the prosecution that either the petitioner would

influence the witnesses or he shall flee from country if he is granted protection against being taken into custody. Although the learned Counsel has heavily relied upon the judgment of Supreme Court in case of **P. Chidambaram V/s CBI, 2019 SCC Online SC 1380** to argue that unless there is independent material to show the effort of the accused to flee from country or to influence the witnesses, he should not be denied bail, however, this court finds that even in that case the Hon'ble Supreme Court has observed that no straight-jacket formula can be devised in this regard. Otherwise also, no such universal rule is possible or even desirable. At the best this argument can be raised when the court had initially granted bail on merits of the case and thereafter the prosecution moves the court for cancellation of such bail. What is meant, essentially, to be a criterion to be used for cancellation of bail, cannot, legitimately, be used for consideration of grant of bail in the first instance. Otherwise also; insisting upon independent material from the investigating officer; to show that the accused is likely to flee from country or to influence the witnesses or to destroy the evidence, is again, asking impossible from him, besides extending a dangerous inbuilt suggestion to him that he should always go beyond his brief of investigation and should try to find out or even to create some evidence or material to ensure that the accused could be denied bail. Unfortunately, if he succeeds in bringing some such material

before the court and the court believes the same for denying bail to the accused, would not the same create a totally uncalled for bias against the accused during the trial? Only a mind which thinks of human thought process to be a compartmentalized aspect and in distinct water-tight segments, instead of being a rational and interdependent continual process, can deny this logical conclusion. Conspiracies and the designed intentions; being those aspects of human psychology which are concealed deep within the grey matter; normally do not have easy external direct material to manifest. Even the Social or the political status of a person; or his economic clout; are no more easy indicators of moral moorings of a person; when it comes to crime, particularly the economic crime. After all, no investigating officer could have any material or anticipation that a Member of Parliament would flee from the country after committing alleged huge economic crime and the country would be forced to contest his extradition proceeding in a foreign land for years together; just to bring him to the justice, or that the business tycoons owning hundreds of companies and business of hundreds of billions of rupees would flee from the country after committing the alleged crime and would even start denying their Indian Citizenship. Although, one can say that a few individuals cannot be made example to deny bail in deserving cases, but then, there is no pressing necessity for the courts to create concepts which

neither withstands test of logic nor are contemplated by the statutory law. Grant or not to grant bail is discretion of the court. This discretion is better left to be guided by the material on record qua the crime and the attending possible conclusion which can be drawn therefrom than to be pushed to frontiers unchartered for the investigating agency. Therefore in view of this court; the possibility of the petitioner influencing the witnesses, fleeing from the process of the law or destroying the evidence, if at all required to be considered at this stage, has to be seen with reference to the material forming part of charge-sheet against him. In view of the above, this court finds substance in the argument of the learned Counsel for the SFIO that since, as per the charge-sheet the petitioner is given to manipulations, for earning money even through fraudulent transaction, therefore, it cannot be denied that by nature, the petitioner could be manipulative. Hence, this court has no reason to believe that if the petitioner is kept out of custody, he is not likely to influence the witnesses of the case and also not likely to destroy the evidence against him. The past conduct of the petitioner has also not been exemplary. The argument of the learned Counsel for the petitioner that the petitioner had been joining the investigation and that during that duration he had not made any attempt to influence the witnesses or to destroy the evidence also does not find favour with this court. Rather; this court finds force in the argument

of the counsel for the SFIO that at that time the petitioner was not sure of him being made an accused in the case. Therefore he might not have resorted to that exercise. But now, when **the petitioner is fully aware that his alleged crime has been detected**, it may not be in the fitness of the things to expect the same straightforward conduct from the **petitioner, who is alleged to be manipulative by disposition**. Also the argument of the counsel for the SFIO, that since **the vocation of the petitioner and his Companies is only to commit crimes to earn money**, therefore, by any means, it cannot be said that if the petitioner is released on bail, he would not commit any offence again, also finds favour with this court.

In view of the above, this Court does not find any merit in the petition and the same is dismissed.

सत्यमेव जयते

(RAJBIR SEHRAWAT)  
JUDGE

13.11.2019

sv

Whether speaking/reasoned : Yes

Whether Reportable : Yes

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ BAIL APPLN. 2722/2021 & CRL.M.(BAIL) 986/2021,  
CRL.M.As. 13268/2021, 13269/2021, 13545/2021, 14956/2021,  
14957/2021, 15515/2021, 15516/2021

Reserved on : 26.10.2021

Date of Decision : 13.12.2021

IN THE MATTER OF:

SIDHARTH CHAUHAN

..... Petitioner

Through: Mr. Maninder Singh, Senior Advocate with Mr. R.K Handoo, Mr. Niranjana Singh, Mr. Shiv Mangal Sharma, Mr. Saurabh Rajpal and Mr. Rajiv Singh Pilania, Advocates.

Versus

STATE (GOVT. OF NCT OF DELHI) THROUGH SHO

..... Respondent

Through: Ms. Neelam Sharma, APP for State.

Mr. Ajay Laroia, Mr. Tarun Gupta, Ms. Madhu Laroia, Ms. Jainika Mohan, Mr. Rajinder Kumar and Mr. Sandesh Kumar, Advocates for complainants.

AND

BAIL APPLN. 2746/2021 & CRL.M.(BAIL) 995/2021

SIDHARTH CHAUHAN

..... Petitioner

Through: Mr. Maninder Singh, Senior Advocate with Mr. R.K Handoo, Mr. Niranjana Singh, Mr. Shiv Mangal Sharma, Mr. Saurabh Rajpal and Mr. Rajiv Singh Pilonia, Advocates.

Versus

STATE (GOVT. OF NCT OF DELHI) THROUGH

SHO

..... Respondent

Through: Ms. Neelam Sharma, APP for State.  
Mr. Ajay Laroia, Mr. Tarun Gupta, Ms. Madhu Laroia, Ms. Jainika Mohan, Mr. Rajinder Kumar and Mr. Sandesh Kumar, Advocates for complainants.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**JUDGMENT**

1. The above-noted bail applications have been filed under Section 438 Cr.P.C. on behalf of the applicant seeking anticipatory bail in FIR Nos. 97/2018 and 118/2018 both registered under Sections 406/420/409/120B IPC at Police Station Economic Offences Wing, Mandir Marg, New Delhi.

2. Since the applicant and respective counsels in both the bail applications are same and common arguments have been advanced in

both the cases, the above-noted applications shall be disposed of vide a common judgment.

3. While BAIL APPLN. 2722/2021 pertains to FIR No. 97/2018 which was registered with respect to project “*Estella*”, measuring 15.74 acres, housing 850 residential units in 16 towers, located in *Sector-103, Gurugram, Haryana*, the BAIL APPLN. 2746/2021 pertains to FIR No. 118/2018 registered with respect to project “*NCR One*”, measuring 10.712 acres, housing total of 552 residential units in 10 towers and 5 executive floors, located in *Sector-95, Gurugram, Haryana*.

As per the allegations levelled in the FIR, while project “*Estella*” is being jointly developed by *M/s Sidhartha Buildhome Pvt. Ltd.* (hereinafter referred to as ‘the accused Company’) and *Ansal Housing & Construction Ltd.*, project “*NCR One*” is being developed by *M/s Sidhartha Buildhome Pvt. Ltd.*

The applicant is stated to be the Managing Director of the accused Company, holding 97% shareholding in the share capital thereof.

4. Mr. Maninder Singh, learned Senior Counsel for the applicant, contended that no criminality is involved in the present cases, and rather, the dispute relates to delay in construction of flats. He submitted that both the FIRs pertain to the year 2018 and upon issuance of notices under Sections 91 and 41A Cr.P.C. by the Investigating Officer, the applicant has joined the investigation on more than 20 occasions and furnished all the documents sought by the Investigating Officer. He further submitted that the entire record relating to the construction of the projects is with the Investigating Officer and no custodial interrogation of the applicant is required.

5. Learned Senior Counsel, while challenging the conclusions of the Forensic Audit conducted by the Interim Resolution Professional (IRP), submitted that as per the Status Reports filed before the Sessions Court the total proceeds obtained by the accused Company from the homebuyers as well as the Banks, combined for both the projects, amount to approx. Rs.557 crores, whereas the valuation of both the projects is to the extent of Rs.566.33 crores. Thus, the conclusion in the Forensic Audit Report of the IRP, that funds to the tune of Rs.408 crores were diverted by the accused Company, is ill-founded. It was further submitted that the said Forensic Audit is also at variance from the audit conducted by the Oriental Bank of Commerce (now merged with PNB and hereinafter referred to as OBC) inasmuch as, the Forensic Audit conducted by OBC shows that an amount of Rs.62 crores out of the sanctioned loan amount was utilized in the construction of project “*Estella*”, but the Forensic Audit conducted by the IRP shows that an amount of Rs.22.90 crores, out of the sanctioned loan of Rs.75 crores (the disbursed amount being Rs.65.42 crores) from PNB, was mis-utilized.

6. Learned Senior Counsel further submitted that the action of the Investigating Officer in not filing the charge sheets even after a lapse of more than three years since registration of the FIRs shows *mala fides* as according to the Status Report placed on record, entire documentary record has been collected. He also submitted that the reasons stated in the Status Report for seeking custodial interrogation of the applicant are misconceived.

7. It was next contended on behalf of the applicant that the ingredients of the offence of cheating are not made out in the present cases, as the applicant is still desirous of completing the projects and is ready to raise funds through sale of personal assets and assets of related entities. It was also contended that the projects could not be completed in time as the homebuyers had not paid the remaining balance amount.

8. In support of his submissions, learned Senior Counsel placed reliance on the decisions in Siddharth v. State of Uttar Pradesh and Another reported as **2021 SCC OnLine SC 615** and Aman Preet Singh v. C.B.I. Through Director reported as **2021 SCC OnLine SC 941**.

9. Ms. Neelam Sharma, learned APP for the State, duly assisted by learned counsel for the complainant, vehemently opposed the bail applications. She stated that in the year 2010-11, the Directors of the accused Company placed advertisements in newspapers offering booking of the apartments in the aforesaid projects. It was promised that the possession of the apartments would be handed over within 3 years with a further grace period of six months. Learned APP further submitted that the Flat Buyer Agreements pertain to the year 2012, when payments were also received by the accused Company. She also submitted that the initial promise to deliver the possession of flats within a maximum period of 42 months from the date of Flat Buyer Agreements (i.e., 31.01.2012 in “*NCR One*” and 04.09.2012 in “*Estella*”), was an intentional false promise, which induced the homebuyers to part with their money. The applicant collected 95% of the total consideration amount under the aforesaid Agreements from the buyers and further got loans sanctioned from Banks, and yet failed to hand over the possession

of the flats in due time. It was further submitted that the present cases relate not only to delay in handing over of the possession of flats, but also to the fraudulent diversion of funds by the applicant through the accused Company to its other sister/group concerns. It was also contended that many homebuyers took loans from various Banks to make payment to the accused Company and were constrained as a result to pay heavy installments, without receiving the possession of the promised flats.

10. It was further submitted that the loans of the accused Company have been declared as NPA. So far, 80 victims have approached the Investigating Officer with respect to project “*Estella*”, having invested approx. Rs.48.30 crores, while 60 victims have approached the Investigating Officer in respect of project “*NCR One*”, having invested approx. Rs.26.59 crores.

11. It was also stated that on an application filed by the financial creditor/*Punjab National Bank* under Section 7 of the IBC, 2016, Corporate Insolvency Resolution Process (CIRP) was initiated against the accused Company and an IRP, namely *Mr. Devendra Singh*, was appointed vide order dated 04.03.2021 passed by the NCLT. Upon issuance of notice under Section 91 Cr.P.C. by the Investigating Officer, *Mr. Devendra Singh*, IRP had furnished his Report relating to the total flats booked and total funds collected by the accused Company under both the projects. In the said Report, it was stated that under project “*Estella*”, the accused Company had booked 468 flats out of a total of 510 flats and collected Rs.276.06 crores from the homebuyers, whereas

under project “*NCR Green, Phase-2*”, 365 flats out of a total of 399 flats were booked and Rs.170.59 crores collected.

12. Learned APP also contended that the Forensic Audit conducted by the IRP would not only show that the proceeds collected from homebuyers were not invested in the projects, but also that the funds received from Banks were also misappropriated and illegally diverted to accounts of entities related to the accused Company and its Directors. She further submitted that the difference as to the siphoned-off amount in the audit report filed by the IRP and the audit conducted by OBC is on account of the fact that all relevant materials were not available at the time of Bank audit. The audit conducted by the IRP is much more comprehensive, in view of the additional materials which have come on record since then.

13. Lastly, she submitted that the present applicant has shown no regard for the Court-appointed IRP, as he not only threatened the employees and Key Managerial Personnel of the accused Company to not cooperate with the IRP, but also threatened the IRP himself, for which an application was filed by the IRP before the NCLT, besides a police complaint which was filed on 21.09.2021 with the SHO, Police Station Sushant Lok, Gurugram, Haryana.

14. In addition, learned counsels for the complainants submitted that the applicant has duped about 833 homebuyers and despite having surplus funds since the last 7-8 years, he has not invested any money in either of the projects since 2016. It was further submitted that only 40-50% construction has been completed in project “*Estella*”, even though some of the homebuyers have paid almost 95% of the sale consideration

amount. It was also submitted that despite collecting excess amount from the homebuyers, the applicant further took loans from the Banks and the total outstanding liability of the applicant as on date is Rs.390.25 crores, against which he had given proposal to Committee of Creditors (COC) to infuse a paltry sum of Rs.30 crores, that too, in three instalments, over a long period of time, which has been rejected by the COC in its meeting held on 28.07.2021.

Reference was also made to the order dated 13.11.2019 passed by the Punjab and Haryana High Court in **CRM-M-38926/2019** titled as Siddharth Chauhan v. Serious Fraud Investigation Office, to submit that while deciding the applicant's anticipatory bail application, it was observed that he is a manipulator and cannot be trusted. The said bail application was filed by the applicant in proceedings arising out of investigation conducted by the Serious Fraud Investigation Office (SFIO), in connection with which proceedings are pending before the Special Court, Gurugram.

Lastly, it was submitted that out of total area of 15.74 acres falling under project "*Estella*", the applicant fraudulently sold about 6 acres to *Ansal Housing and Construction Ltd.* and the accused Company collected payments towards External Development Charges (EDC) and Infrastructure Development Charges (IDC) from the homebuyers but did not deposit the same with concerned authorities, resulting in non-renewal of licenses.

15. In rebuttal, learned Senior Counsel submitted that a One-Time Settlement (OTS) proposal dated 05.04.2021 is pending consideration with OBC. To disprove the allegation of diversion of funds, reliance was

placed on Government Approved Valuer Reports dated 16.06.2021 and CA certificates dated 19.06.2021. It was submitted that as per these documents, surplus amount received under project “*Estella*” is Rs.18.67 crores and that received under project “*NCR Greens, Phase-II*” is Rs.22 crores. Therefore, a total surplus amount of Rs.40.67 crores was received under the two projects, which is nowhere close to the amount estimated in the report of the IRP. Insofar as status of construction is concerned, it was submitted that PNB had got conducted a project valuation and as per the Report, more than 55% of the construction was complete in 2018, and the same is now about 70-75% complete.

It was also submitted that the selling of 6 acres of land to *Ansal Housing and Construction Ltd.* was in terms of the conditions of license, as also reflected in the Builder-Buyer Agreements.

With respect to the complaint filed by the IRP, learned Senior Counsel submitted that the same was a counterblast, filed in order to prejudice the NCLT.

16. I have heard learned counsels for the parties and have also perused the entire material placed on record.

17. At the cost of repetition, this Court notes that under project “*Estella*”, the accused Company sold about 468 units/flats and received an amount of Rs.276.06 crores from the homebuyers. It further got sanctioned a loan of Rs.75 crores from OBC. For project “*NCR One*”, an amount of Rs.170.59 crores was received by the accused Company towards 365 units/flats sold and further, a loan of Rs.54 crores was got sanctioned from the Punjab & Sind Bank. The applicant along with another Director, namely *Randhir Singh Chauhan* (i.e., father of the

applicant), stood as personal guarantors. Eventually, both the term loans were declared as NPA in the year 2017.

18. It is apparent that total funds of Rs.338.06 crores were collected for infusion into project “*Estella*”, even though the cost of the project was initially projected as Rs.248 crores and later revised to Rs.273 crores. Thus, the accused Company had surplus funds to the tune of Rs.65.06 crores under project “*Estella*”.

Similarly, for project “*NCR Green, Phase-2*”, a total sum of Rs.224.59 crores was collected for infusion in the project, while the estimated cost of construction was Rs.192.78 crores. In view of the same, it is discernible that excess amount to the tune of Rs.31.81 crores was secured under project “*NCR Green, Phase-2*”.

From the aforesaid, it is deducible that the surplus funds collected by the accused Company, when combined for both the projects, amount to Rs.96.86 crores.

19. Initially, on 21.08.2017, joint complaints were received against the accused Company and its Directors from 28-30 complainants in respect of project “*Estella*” and from 24 complainants regarding project “*NCR One*”. Subsequently, a total of 80 complainants have approached the Investigating Officer with respect to project “*Estella*” and 60 complainants have approached in connection with project “*NCR One*”. The record of proceedings before the NCLAT in its order dated 31.03.2021 passed in Company Appeal (AT) (Insolvency) No. 270/2021 shows that as many as 550 claims of homebuyers had been received by the IRP, besides one claim of financial creditor/*Punjab & Sind Bank*, till that date.

20. After the term loan advanced by OBC turned NPA, an Auditor was appointed by the Bank for conducting the Forensic Audit of the accounts of the accused Company. On 16.07.2018, the auditor submitted its Report, where it was noted that Rs.152 crores were collected by the accused Company from homebuyers and Rs.203.9 crores were projected to be realized from the sale of about 244 flats which were unsold. In this backdrop, it was opined that funds were not infused by promoters for the completion of the projects, and that resulted in the projects remaining incomplete.

21. It has also come in the investigation that the accused Company did not deposit renewal fee with the Director, Town & Country Planning (DTCP), Haryana and consequently, the licenses for the two projects lapsed on 07.03.2015 and 18.03.2016 respectively. As the licenses were not got renewed from the DTCP, Haryana, neither of the projects are registered with the Haryana Real Estate Regulatory Authority. It has also come on record that as on 23.06.2021, the DTCP had issued notice to the accused Company with respect to default in payment of Rs.36.10 crores against EDC and Rs.4.29 crores against IDC, which are stated to be outstanding for project "*Estella*".

22. The Auditor appointed under the IBC proceedings had submitted a detailed transaction report of the accused Company, as per which, the applicant along with other Directors of the accused Company, has misappropriated an amount of Rs.408.74 crores out of the funds received for the aforesaid two projects. The observations made in the said Report were placed before the Court vide an Additional Status Report dated 17.09.2021. The observations are discussed below:-

i) Repayment of Overdraft Facility of Karnataka Bank – The accused Company had obtained an overdraft facility of Rs.20 crores from Karnataka Bank in the year 2016. Subsequently, the Company made a payment of Rs.15.15 crores to the Bank through another company i.e., M/s Millennium Diplomats Private Ltd. Considering that neither the Bank nor M/s Millennium Diplomats Private Ltd. has filed any claim before the IRP since initiation of the CIRP, it is suspected that the aforesaid amount of Rs.15.15 crores was utilized for releasing of properties of the applicant and two associate companies, rather than being used for construction of the projects.

In this regard, learned Senior Counsel referred to a No-Objection Certificate from Karnataka Bank and submitted that an amount of Rs.20 crores has been paid back to the Bank by the accused Company through M/s Millennium Diplomats Private Ltd., for which payment, shares in the land of village *Fazilpur* were given to M/s Millennium Diplomats Pvt. Ltd.

ii) Introduction of Fictitious Share Capital in FY 2014-15 – At the time of sanctioning of term loan by Oriental Bank of Commerce (now PNB), the promotor/applicant contribution was to be increased from Rs.30 crores to Rs.50 crores. To this end, the applicant was allotted 2 crore shares of Rs.10/- each on 26.02.2015. However, the balance receivable from the applicant was transferred to six related parties, from which no money was received during the said period. It is thus suspected that the applicant gave false certificate of introduction of capital to the Bank by way of book entries while there was no actual inflow of money into the Company, so that the loan could be obtained from the Bank.

iii) Mis-utilization of the Term Loans disbursed by PNB and PSB – The accused Company had got sanctioned term loans of Rs.75 crores and Rs.54 crores respectively, for its two projects namely “*Estella*” and “*NCR Green, Phase-2*”. It has been found in the audit that the loan amounts were utilized for purposes other than for which they were got sanctioned. In case of term loan obtained from PSB, Rs.1.50 crores were paid to associates/sister concerns, Rs.3.29 crores were paid towards interest on the loan and Rs.5.98 crores were utilized towards the other project i.e., “*Estella*”. Likewise, in case of term loan obtained from PNB, Rs.22.90 crores were mis-utilized, insofar as Rs.18.02 crores were paid to associates/sister concerns, Rs.2.85 crores were paid towards interest on the loan and Rs.2.03 crores were utilized towards the other project i.e., NCR, Sector-95.

iv) Transferring/Selling of Vehicles at an undervalued consideration – Since the initiation of CIRP, the company has transferred eight vehicles to related parties/others at throwaway prices. Apparently, the money was received in cash to hide the name of the beneficiary. For example, a Fortuner was sold in cash only for Rs.80,829/-. Out of the aforesaid eight vehicles, six were transferred on a single day.

v) Huge Balance Receivable - As per the documents analyzed, the accused Company had a balance of Rs.151.28 crores receivable from 289 parties on the date of initiation of CIRP. Out of the aforesaid balance receivables, Rs.109.32 crores were receivable from 10 related parties. To confirm the genuineness of the receivables shown in the books of accounts of the accused company, the auditor had sent balance confirmation letters however, no reply was received from any of the

related parties. Letters were also sent to other parties, but most of them were returned undelivered.

vi) Fraudulent Excess Recovery of EDC and IDC from the Homebuyers - The accused Company had collected an excess of Rs.2.37 crores as excess money from the homebuyers in lieu of EDC and IDC.

vii) Falsification of Books of Accounts – The accused Company had recorded various journal entries resulting in setting off balances of debtors and creditors without routing the transaction through banking channels. It is opined by the IRP that transactions do not appear to be in ordinary course of business and the method adopted by the accused company has not been disclosed in financial statements or notes to accounts.

viii) Receipt of Material at Project Sites through Vehicles not fit for Transportation – On verification of purchase invoices, it came to the notice that material i.e., cement, steel etc. was received through motorcycle, scooter, motor car, bus, E-rickshaw etc. Almost 20% of the verified transactions took place in the aforesaid manner. Resultantly, the purchase transactions recorded in the books of accounts appear to be bogus.

ix) Investment in Subsidiary Companies – The accused Company had made investment in three subsidiary companies for a total of Rs.15.98 crores. The funds are opined to have been misused by the accused Company for the benefit of suspended Directors, promoters etc., as there is no record/documentary evidence of any return on the investment made or of the reasons for such investment.

x) Issuance of Receipts to Homebuyers without realization of money of Rs. 18.44 crores and discovered profile funding of Rs. 46.50 crores –The Auditor came across 51 instances where the accused Company had issued receipts (for booking and instalments), but against the same, no money was ever realized. The receipts were for Rs.18.44 crores and on the basis thereof various Banks had sanctioned loans in the name of homebuyers, to the tune of Rs.46.50 crores in total, and disbursed the amount directly to the accused Company.

xi) Payment for Personal Expenses of Suspended Board of Directors – It is stated that the accused Company paid huge amount of money towards expenses of directors such as lease rent of car owned by them, lease rent of their residential apartment, fixed assets for their home etc. It is further stated that this led to deterioration in the financial health of the company and amounts to diversion of funds.

xii) Other Miscellaneous Observations leading to Outflow of Funds – The Auditor noted various instances which resulted in outflow of money to the tune of Rs.13.01 crores approximately and the same have been opined as appearing to be fictitious.

23. A plain reading of the above Forensic Audit report would show that the applicant not only collected surplus amounts from the homebuyers, but also obtained loans from Banks over and above. Out of the total funds accumulated, interest-free advances were given to associates/sister concerns of the accused Company, instead of investing them in the projects.

24. It is borne out from the material placed on the record that an application was filed before the NCLT on behalf of the IRP, in which it

was stated that one *Harish Gupta*, Head Projects of the accused Company, had sent him an E-mail dated 26.08.2021, wherein he stated that he had received WhatsApp voice calls from the applicant forcing him to create complications and hurdles at both the sites, besides threatening him. Excerpt from the relevant email is reproduced hereunder:

*“...I am informing you that I have received whatsapp voice calls on 23.08.2021 (Monday) in the day time one around 12:00 noon and another at 02:30 PM. As you are aware that I am working as Head - Projects for both the project sites of the company NCR & Estella situated at Sector 95 and Sector 103, Gurugram respectively. In the whatsapp voice conversation Mr. Sidharth Chauhan forcing me to create complications and hurdles at both the sites in which IRP has initiated the construction work for completion of the projects and also threatened me that if I do not work as per his order then he can use the other means to stop the work by sending his number of persons there.”*

25. Similarly, one *Ravi Kumar Singh*, who has been working in the CRM department of the accused Company, had also informed the IRP through email dated 28.08.2021 that he was extended life threats by the applicant. It was further informed that he was abused by the applicant and directed not to provide any information to IRP’s team/Auditor. The email sent by *Ravi Kumar Singh* reads as follows:

*“...On 23.08.2021 when I was coming out from accounts department, the room which is adjacent to Mr. Sidharth Chauhan, CMD's Room, Mr. Dharam Chand Yadav who is Director in the Company asked me to come to CMD's Room then from his phone he called Mr. Sidharth Chauhan through whatsapp voice call and handover the phone to me.*

*Over the phone call the CMD was asking how dare you have given confidential information of CRM Data to IRP Team and to the Auditor and provided data of profile funding without my directions*

*and listening to me with shouting and abusive tone. I replied that my reporting is to Mr. Devendra Singh, IRP and whatever information he sought and is available in company record I provided. Further he told me that don't try to be over smart and asked from which route you are coming to office I replied that I travel metro to my residence, he straightly threatened me that "main tere andar itna peetal utaar dunga tu kisi layak nhi rahega" and he continuously abused and threatened me and directed me not to provide any information."*

26. Further, the IRP himself had received a threatening call from the applicant on 18.09.2021 at 01:08 pm on his mobile. In the said conversation, the applicant is stated to have used threatening words to the following effect:-

*"If you visit the Gurgaon Office of SBPL, then your children will be regretful of the fact that their father is no more".*

27. In this backdrop, a police complaint dated 21.09.2021 was filed by the IRP with the SHO, Police Station Sushant Lok, Gurugram, Haryana, a copy of which has been placed on record. In the said complaint, it was further stated that one *Mr. Birpal*, alongwith two other persons, was sent by the applicant to the office of SBPL, Gurugram to intimidate the IRP as well as the Project Head, CRM Manager.

28. With respect to the application filed by the IRP before the NCLT under Section 19(2) read with Section 70 read with Section 60(5) of the IBC, in which details of the events that had transpired were mentioned, it has been informed that on 24.09.2021, the NCLT has passed orders restraining the present applicant from engaging in direct conversation by any means with any of the employees of the accused Company without prior consent of the IRP. The applicant has further been restrained from taking any action or posing any danger to the life of the IRP.

29. In the Status Reports placed on record and during the course of submissions, it has been repeatedly stated that though sufficient documents have come on record which implicate the applicant, investigation is still pending in order to unearth the details of funds diverted by him, for which custodial interrogation is required.

30. In the facts of the case, reliance placed by the applicant on the decisions in Siddharth (Supra) and Aman Preet Singh (Supra) is of no consequence as in those cases, investigation was complete and the issue was whether the accused was required to be arrested before or after filing of the charge sheet.

31. Before proceeding further, I deem it apposite to reproduce a noteworthy observation made by the Supreme Court in State Rep. by the C.B.I. v. Anil Sharma reported as (1997) 7 SCC 187:-

*“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he is interrogated.”*

*(emphasis added)*

32. A subsequent observation in Nimmagadda Prasad v. Central Bureau of Investigation reported as (2013) 7 SCC 466 is also referred to, before adverting to the facts of the present case:

*“25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and*

*involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.”*

33. The present case involves allegations of inducement of about 833 homebuyers to invest in housing projects, on a promise of time-bound delivery of possession, and subsequent misappropriation and diversion of money collected from them and funds obtained from Banks. The case is not simpliciter of delay in construction. The homebuyers had paid money out of their life savings and/or obtained loans from Banks, subsequent to which possession of the promised flats was not delivered. The investigation/audits conducted by various authorities further reveal that the money collected from the homebuyers as well as the loans taken from the Banks were not utilized appropriately in the construction of the two projects.

34. It is noted that the RERA, Haryana had appointed a Local Commissioner to ascertain the status of construction of project “*Estella*”, whose report dated 12.04.2019 shows that the project as of 2019 was not likely to be completed soon. It is relevant to reproduce the conclusion arrived at by the Local Commissioner, which was as under:-

*“The project to be developed by Sidhartha Buildhome is physically inspected, it is observed that around 40-50 labour were working on site and the work progress is based upon actual construction at site and it is submitted that the overall progress of the project is 45-50 per cent only. The work progress in tower A is 50-50 per cent only. The work progress of complainant unit is approximately 55-60 per cent only.*

*Sd/-12.04.2019  
Engineer Executive”*

35. An audit was conducted by OBC as well, which found non-utilization of term loan advanced in the construction of the project. Later, a detailed Forensic Audit was conducted by the IRP, which found **misappropriation and diversion of funds to the tune of Rs. 408.74 crores.** Though it was stated that there is variance in the two reports as to the amounts alleged to have been diverted, **I find force in the submission of learned APP for the State** that at the time when the audit was carried out by the Bank, entire material was not available, which has **subsequently been collected during investigation and was available at the time of Forensic Audit conducted by the IRP.**

36. Even though the applicant's case is that an OTS is pending before PNB (earlier OBC), it is noted that as per Minutes of Meeting of 8<sup>th</sup> COC meeting dated 17.08.2021, the IRP was apprised by the representative of PNB that even though the applicant had met the competent authority regarding settlement, no settlement proposal on his behalf was pending with the Bank.

37. It is further noted that as per the complainants, estimated cost of completion of both the projects as on date is approx. Rs.157.61 crores. Per contra, estimated cost of completion of both the projects, in terms of the preliminary proposal given by the applicant to the IRP vide email dated 27.07.2021, is approx. Rs.135 crores. Without commenting on the propriety of either claim, it is noted that in addition to his estimation of the cost of completion of the projects, the applicant has admitted that the amount payable to Banks is Rs.97.50 crores plus unapplied interest after March, 2018. Yet, he is stated to have proposed before the Committee of Creditors to infuse only about Rs.30 crores, which offer has reportedly

been rejected. Suffice it to say that the applicant, by not making a reasonable offer of settlement, has not only misled this Court and merely bought time, but has further abused the concession of interim protection granted to him vide order dated 05.08.2021 by threatening and intimidating the witnesses. He has gone a step further by threatening the Court-appointed IRP *Mr. Devendra Singh* who was constrained to file an application before NCLT as well as a complaint with the police. The observations made against the applicant in the order dated 13.11.2019 by the Punjab and Haryana High Court that he is a manipulator and cannot be trusted, assume great significance in the facts noted hereinabove.

38. This Court appreciates that there is a qualitative difference between interrogation of the accused while in custody and while he is enjoying protection against arrest. In the present case, it appears that the applicant has been attempting to mislead the Court in the name of efforts at settlement, instead of making any serious effort at addressing claims of the aggrieved homebuyers, while also tampering with the evidence and threatening the witnesses. Under these circumstances, his custodial interrogation is deemed necessary.

39. Notably, the grant of anticipatory bail in a case of such large magnitude is further likely to have an adverse impact not only in the progress of the case, but also on the trust reposed by the society in the criminal justice system. This Court also cannot discount the fact that in case the applicant is granted the concession of anticipatory bail, he may again tamper with the evidence/witnesses and/or threaten them, as has been the case in the past.

40. After due consideration of the material placed on record and the submissions of the counsels for the parties, this Court is of the firm opinion that *prima facie*, the applicant, being the only promoter and having 97% shareholding of the accused Company, has misappropriated and siphoned-off funds collected from the homebuyers as well as the Banks. The magnitude of misappropriation and gravity of the offence also necessitate his custodial interrogation, to unearth the money trail of the siphoned-off amounts and to prevent him from attempting to tamper with the evidence and threaten the witnesses. He already has shown scant regard for the Court orders by threatening the witnesses while on interim protection.

41. Consequently, the interim protection granted to the applicant is withdrawn forthwith and the bail applications are dismissed, alongwith the pending applications.

**MANOJ KUMAR OHRI, J**

**DECEMBER 13, 2021**

*ga*

*Click here to check corrigendum, if any*

ITEM NO.42+43

COURT NO.8

SECTION II-B

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s).37/2026

[Arising out of impugned final judgment and order dated 22-12-2025 in CRM-M No.45417/2025 passed by the High Court of Punjab & Haryana at Chandigarh]

SIDDHARTH CHAUHAN

Petitioner

VERSUS

SERIOUS FRAUD INVESTIGATION OFFICE (SFIO)

Respondent

I.A. No.1517/2026-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

WITH

SLP (CrI.) No. 36/2026

I.A. No.1518/2026-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

Date : 06-01-2026 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPANKAR DATTA  
HON'BLE MR. JUSTICE SATISH CHANDRA SHARMAFor Petitioner(s) : Mr. Siddharth Luthra, Sr. Adv.  
Mr. Siddharth Agarwal, Sr. Adv.  
Mr. Shiv Mangal Sharma, Adv.  
Mr. Saurabh Rajpal, Adv.  
Mr. Abhishek Sharma, Adv.  
M/s Aura & Co., AORFor Respondent(s) : Mr. S.D. Sanjay, ASG  
Mr. Akshat Agrawal, Adv.  
Mr. Pushkar Sharma, Adv.  
Mr. Rahul Arya, Adv.  
Mr. Akshit Chauhan, Adv.  
Mr. Subham Prakash Mishra, Adv.

**UPON hearing the counsel the Court made the following  
O R D E R**

1. We are not inclined to interfere with the impugned judgment(s) and order(s) of the High Court; hence, the special leave petitions are dismissed.
2. However, the petitioner is granted ten days' time to surrender failing which law shall take its own course.
3. If an application for bail is filed by the petitioner upon surrender, the same shall be decided on its own merits expeditiously.
4. Pending application(s), if any, shall stand disposed of.

**(HARPREET KAUR)  
COURT MASTER (SH)**

**(SUDHIR KUMAR SHARMA)  
COURT MASTER (NSH)**

ITEM NO.62

COURT NO.8

SECTION II-B

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Miscellaneous Application No.297/2026 in SLP(Crl) No.36/2026

[Arising out of impugned final judgment and order dated 06-01-2026  
in SLP(Crl) No.36/2026 passed by the Supreme Court of India]

SIDDHARTH CHAUHAN

Petitioner

VERSUS

SERIOUS FRAUD INVESTIGATION OFFICE (SFIO)

Respondent

I.A. No.49038/2026-EXTENSION OF TIME FROM SURRENDERING

Date : 13-02-2026 This matter was called on for hearing today.

CORAM :


HON'BLE MR. JUSTICE DIPANKAR DATTA

HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA

For Petitioner(s) : Mr. Siddharth Dave, Sr. Adv.,  
Mr. Ishaan George, AORFor Respondent(s) : Mr. S. D. Sanjay, ASG  
Mr. Rahul Arya, Adv.  
Mr. Raj Bahadur Yadav, AOR  
Mr. Akshat Aggarwal, Adv.  
Mr. Pushkar Sharma, Adv.  
Mr. Shubham Prakash Mishra, Adv.UPON hearing the counsel the Court made the following  
O R D E R

1. The miscellaneous application is disposed of by granting final extension of time to the petitioner to surrender by 20<sup>th</sup> February, 2026, failing which the law enforcement agency shall take steps in accordance with law.
2. Pending application(s), if any, shall stand disposed of.

Signature Not Verified

  
Digitally signed by  
Rashmi Dhyani Pant  
Date: 2026.02.13  
12:58:06 IST  
Reason: I am the author of this  
document.RASHMI DHYANI PANT)  
ASST. REGISTRAR-cum-PS(AVGV RAMU)  
COURT MASTER (NSH)



हरियाणा HARYANA

H 899163

AGREEMENT

This Agreement is made and executed at Gurugram on this 05<sup>th</sup> day of July, 2023.

BETWEEN

M/s Sidhartha Buildhome Private Limited, (CIN U7489DL1995PTC074013) a company incorporated under the provisions of the companies act, 1956 and validly existing under the companies act, 2013 having its Corporate office at Plot no. 6, Sector 44, Gurugram – 122003, Haryana, acting through its Director, Mr. Sidharth Chauhan hereinafter referred to as the "FIRST PARTY" which expression shall unless opposed to the context hereof include its successors, administrators, executors, and permitted assignees of the FIRST PART;

AND

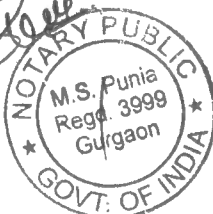
Mr. Sidharth Chauhan S/o Late Sh. Randhir Singh (Aadhaar No.371616865659 and PAN No.AFBPC2737G) R/o House No.1673, Sector-10, Gurgaon hereinafter referred to as the "SECOND PARTY" which expression shall unless opposed to the context hereof include its successors, executors and assigns of the SECOND PART;

vt. L d.

Goq

Page 1 of 7

*Antistay*  
  
 Director/ Auth. Signatory



Gogreen SBR Sidhardh Chauhan 237  
aj

109A

Sr. No.	50+50 2/W
Amount	
Purpose	aj
29 JUN 2023	
Ravinder Kumar Stamp Vendo Gurugram (Harvans)	

AND

**M/s Gogreen Veggies Private Limited**, (CIN U70100DL2018PTC337547) a company incorporated under the provisions of the companies act, 1956 and validly existing under the companies act, 2013 having its Corporate office at Plot no. 6, Sector 44, Gurugram – 122003, Haryana, acting through its Director, Mr. Luckey Chauhan hereinafter referred to as the **"THIRD PARTY"** which expression shall unless opposed to the context hereof include its successors, administrators, executors, and permitted assignees of the **THIRD PART**;

**WHEREAS** vide Order dated 04.03.2021 the Hon'ble NCLT, New Delhi was pleased admit a Petition under Section 7 IBC and to initiate the CIRP of the First Party. Subsequently, the Second Party had held various negotiations with all the stake holders and had given firm commitments and proposal to the Home Buyers and had assured them to infuse funds in order get their approval to a 'Withdrawal Proposal' under Section 12A of IBC in respect of the First Party. Accordingly, the Second Party was simultaneously exploring all possibilities to raise funds so that as and when the said 'Withdrawal Proposal' gets approved, the Second Party could infuse sufficient funds as committed to Home Buyers and the construction activity of Company's projects could resume without any delay. And the 'Withdrawal Proposal' was approved by the NCLT, New Delhi on 24.05.2023.

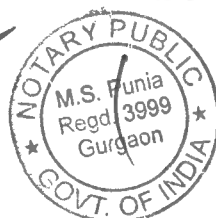
**AND WHEREAS** for discharging the above-mentioned expected obligation, the Second Party was in urgent need of funds, as such the Second Party approached the Third Party to lend the funds to it, but the Third Party expressed its reservation to lend the large sum of money. However, the Third Party showed its willingness to infuse the funds against purchase of some property.

**AND WHEREAS** in one of the residential projects namely 'Estella' being developed by First Party at Sector-103, Gurgaon, an inventory approximately 72208 Sq. Ft. of residential area lies unsold comprising of 37 Units.

**AND WHEREAS** to procure the funding from the Third Party, the Second Party has proposed to cause the sale of 11 Units from the above said inventory against 100% payment in favour of the Third Party. The details of the said 11 Units is as per Schedule-1 (herein after referred to as the 'Unsold Units').

  
Director / Auth. Signatory







**AND WHEREAS** to procure the funding from the Third Party, the Second Party has agreed to cause the sale of the above said 'Unsold Units' in favour of the Third Party as per Schedule-1, which has been agreed and accepted by the Third Party.


**AND WHEREAS** in terms of the above arrangement the Third Party has agreed to transfer a sum of INR 10 crores (Rupees Ten Crores Only) to Second Party which in turn has agreed to transfer the said amount to First Party against 100% payment towards the sale of the above said 'Unsold Units' in favour of the Third Party.

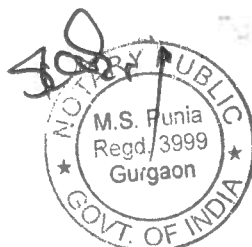
**NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY MUTUALLY AGREED, DECLARED, CONFIRMED AND RECORDED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

1. That the Third Party has transferred a sum of INR 15,00,00,000 (Rupees Fifteen crores only) to the Second Party vide Cheque No. 787354 dated 05.06.2023 drawn on IndusInd Bank, which the Second Party acknowledges.
2. That the Second Party has already transferred the said sum of INR 15,00,00,000/- (Rupees Fifteen Crores only) to the First Party same day i.e. 05.06.2023 in the IndusInd Bank account of the First Party towards fulfillment and discharge of its obligation undertaken under the said 'Withdrawal Proposal', which the First Party acknowledges.
3. That out of the above said INR 15 Crores transferred to the First Party, the First Party has agreed to apportion and adjust a sum of INR 10 Crores towards the sale residential Units, accordingly in consideration of the said INR 10 Crores received by the First Party the Second Party has caused the sale of the Unsold Units against 100% payment as per Schedule-1 in favor of the Third Party, which the Third Party acknowledges and is confirmed by First Party.
4. That the Third Party shall be obliged to diligently adhere with all the stipulations of the Buyer's Agreement executed between First Party and the Third Party.
5. That the Third Party hereby confirms that out of the above said INR 15 Crores transferred to the Second Party it has set off the INR 10 crores against the said purchase of Unsold Units and there is only INR 5 Crores due in its Books.
6. That the First Party confirms that it has not created by third party rights or any encumbrances of any nature whatsoever over the said 'Unsold Units' in any manner. In case it is discovered to the contrary at a later stage the First Party

101

... Pvt. Ltd.

  
Director/ Auth. Signatory



... Green Veggie Pvt. Ltd.

Page 3 of 7



hereby undertakes, assures and confirms to keep the all Parties fully harmless and indemnified in all respects.

7. That all the parties have represented to each other that they are duly authorized and competent to enter into this Agreement and this Agreement has been entered and executed between them of their free will and free consent after fully understanding the same.

**8. BINDING EFFECT**

This Agreement is binding on the Parties and their respective successors, assigns, legal representative with regards to interest and assigns.

**9. NOTICE**

Notices, demands or other communication required or permitted to be given or made under the Agreement shall be in writing and delivered personally or sent by prepaid post with recorded delivery, or by legible tele fax and confirmed by registered mail/ courier addressed to the intended recipient at the address as mentioned in this Agreement. Either Party may from time to time duly notify to the other Party, change of address, if any.

**10. COSTS AND EXPENSES**

The Parties agree that they shall bear their respective costs and expenses in relation to the preparation and execution of this Agreement and the transactions contemplated hereunder.

**11. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which taken together will constitute one and the same Agreement and any Party may enter into this Agreement by executing a counterpart.

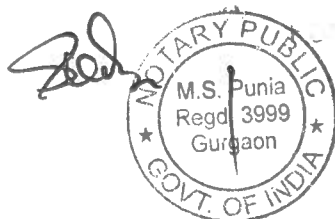
**12. DISPUTE RESOLUTION**

Any disputes, differences of opinion, claims and controversy arising out of, relating to, or in connection with this Agreement, or any related agreement between the Parties, or the construction, breach, enforcement or termination or invalidity of this Agreement, or any related agreement, if not resolved amicably, shall be settled by arbitration by Sole Arbitrator to be appointed with mutual consent of all the Parties, in accordance with the Arbitration and Conciliation Act, 1996. The Arbitration shall be held in Gurgaon and the award passed by such arbitrator shall be conclusive, final and binding on all parties.

For Sidharth ... me Pvt. Ltd.



Director/ Auth. Signatory




The Courts at Gurgaon shall have exclusive jurisdiction in the matter.

**13. AMENDMENT**

No purported alteration or amendment of the Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly executed by each of the Parties to this Agreement.

**14 CONFIDENTIALITY**

14.1 Each Party accepts to treat with strict confidentiality and therefore to maintain in absolute secrecy all the information, know-how, documents or knowledge, techniques, equipment and product details, business, and research information, including but not limited to all processes, business plans, market information, distribution information, and marketing plans and any other information, disclosed in writing, orally, electronically or visually to it under this Agreement by the other Party and/or which it is aware of prior to the execution of this Agreement or during its validity (hereinafter referred to as "Confidential Information"). Confidential Information will strictly be used by Parties to achieve the purposes and the objects of the present Agreement;

14.2 All the Confidential Information that is accessed by either Party will be conscientiously guarded by itself and such Party shall be responsible for all the damages caused by any breach of obligation thereof, and it will be returned as soon as it is required and at latest on termination of the present Agreement.

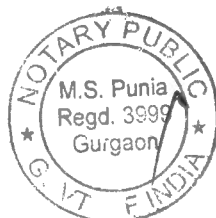
14.3 Access to the Confidential Information will only be given to the Parties' staff strictly on 'need to know' basis that require such Confidential Information for the achievement of the object of the Agreement.

14.4 Each Party shall ensure to procure that its officers, staff, employees and agents having access to Confidential Information observes a corresponding obligation of confidence in respect of the Confidential Information on terms similar to the contents of this Clause.

For

, vt. Ltd.

Director/ Auth. Signatory



14.5 Confidential Information shall not be used for any purpose different from its object, nor will it be provided to third parties or copied, except with the express and written consent of the disclosing Party.

14.6 The Confidential Information communication or possible delivery of documents by any of the Parties will not give the receiving Party any right on patents, know-how or intellectual property rights thereof.

14.7 Parties will be exempted from this confidentiality obligation in the following cases: (i) if the Law so requires, (ii) by a court or administrative order, (iii) to inform their respective advisors and auditors, provided they observe the abovementioned confidentiality obligations, by an express agreement or by the application of their respective professional regulations.

## 15 GOVERNING LAWS & JURISDICTION

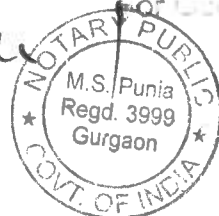
This Agreement shall be governed by the laws of India which are in force or which may be enacted by the Government of India from time to time. That subject to the provisions mentioned hereinbefore, competent courts in the Gurgaon shall have exclusive jurisdiction to adjudicate over matters relating to or arising out of the present Agreement.

### SCHEDULE-1

Sr. No.	Tower No.	Unit No.	Unit Description	Saleable Area	Per Sq. Ft. Rate	Total Sale Value
1	Tower E	E-1403	3 BHK	1640	3325	54,53,000
2	Tower F	G-2	4 BHK + S	2550	3300	84,15,000
3	Tower G	G-1	4 BHK + S	2550	3300	84,15,000
4	Tower G	G-2	4 BHK + S	2550	3300	84,15,000
5	Tower H	G-3	2 BHK	1245	3610	44,93,200
6	Tower G	G-102	4 BHK + S	2550	3300	84,15,000
7	Tower G	G-201	4 BHK + S	2550	3300	84,15,000
8	Tower G	G-302	4 BHK + S	2550	3300	84,15,000
9	Tower G	G-602	4 BHK + S	2550	3300	84,15,000

For Sign \_\_\_\_\_ Pvt. Ltd.

Director/ Auth. Signatory



For Sign \_\_\_\_\_

Page 6 of 7

10	Tower G	G-1101	PENT HOUSE	4867		
11	Tower G	G-1102	PENT HOUSE	4867	3200	1,55,74,400
					3200	1,55,74,400
<b>Total Saleable Area in Sq. Ft.</b>				<b>30,469</b>		<b>10,00,00,000</b>

**IN WITNESS WHEREOF** Parties hereinabove named have set their respective hands and signed this Agreement at Gurugram on the day, month and year first above written in the presence of following witnesses:

**WITNESSES:**

1.

For Signature Home Pvt. Ltd.

**For Sidhartha Buildhome Pvt. Ltd.**

**(First Party)** Signatory

2.

**Sidharth Chauhan**

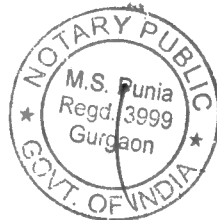
**(Second Party)**

For Gogreen Veggies Pvt. Ltd.

**For Gogreen Veggies Private Limited.**

**(Third Party)**

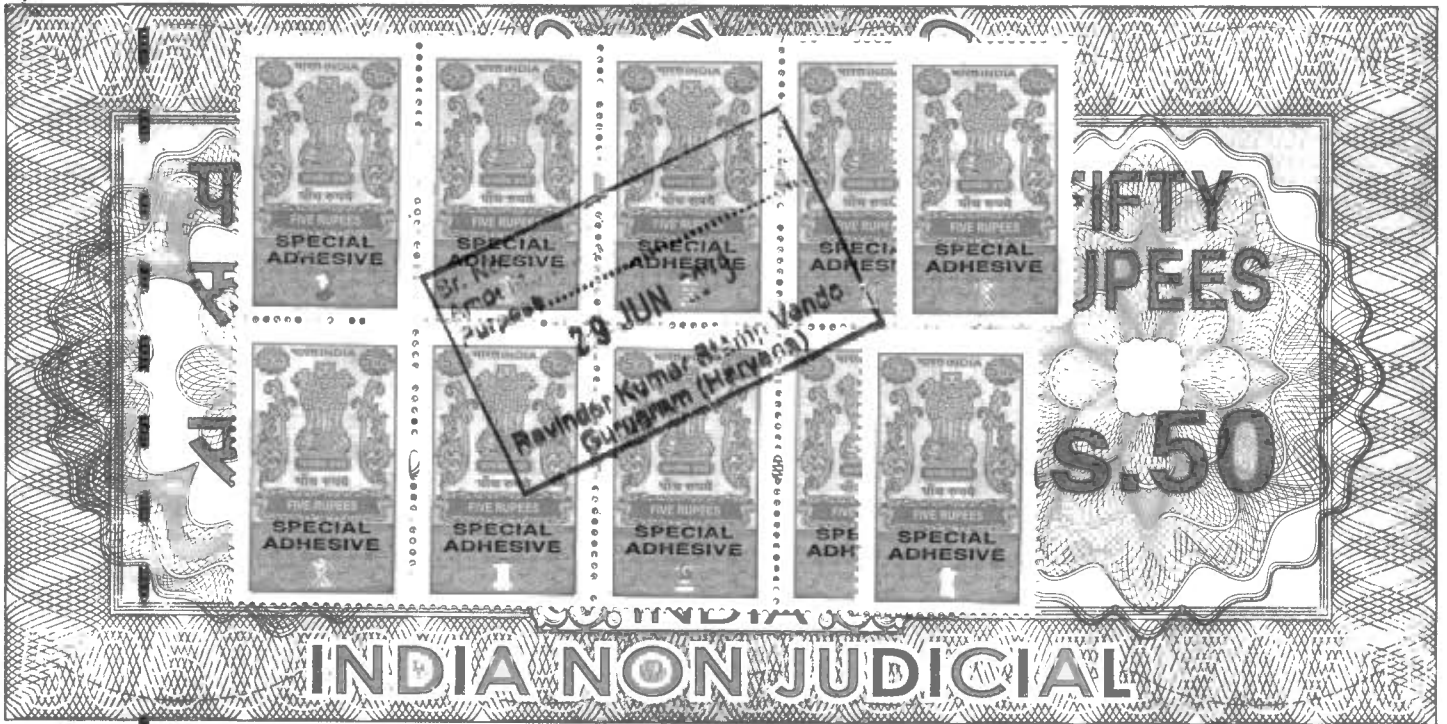
*Amrit Singh*



ATTESTED

Mohinder S. Punia  
Advocate & Notary  
Gurgaon (Hry.)

05 JUL 2023



हरियाणा HARYANA

H 899164

AGREEMENT

This Agreement is made and executed at Gurugram on this 05<sup>th</sup> day of July, 2023.

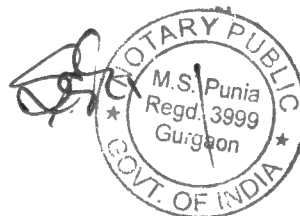
BETWEEN

**M/s Sidhartha Buildhome Private Limited**, (CIN U7489DL1995PTC074013) a company incorporated under the provisions of the companies act, 1956 and validly existing under the companies act, 2013 having its Corporate office at Plot no. 6, Sector 44, Gurugram – 122003, Haryana, acting through its Director, Mr. Sidharth Chauhan hereinafter referred to as the **"FIRST PARTY"** which expression shall unless opposed to the context hereof include its successors, administrators, executors, and permitted assignees of the FIRST PART;

AND

**Mr. Sidharth Chauhan** S/o Late Sh. Randhir Singh (Aadhaar No.371616865659 and PAN No.AFBPC2737G) R/o House No.1673, Sector-10, Gurgaon hereinafter referred to as the **"SECOND PARTY"** which expression shall unless opposed to the context hereof include its successors, executors and assigns of the SECOND PART;

For Sidhartha Buildhome Pvt. Ltd.

  
 Director/ Auth. Signatory


Page 1 of 8



Gogreen SBPL Sidharth Chauhan  
my

1098

NO.	504502110
DATE	29 JUN 2023
PURPOSE	APR
Ravinder Kumar Stamp Vendo Gurugram (Haryana)	

AND

**M/s Gogreen Veggies Private Limited**, (CIN U70100DL2018PTC337547) a company incorporated under the provisions of the companies act, 1956 and validly existing under the companies act, 2013 having its Corporate office at Plot no. 6, Sector 44, Gurugram – 122003, Haryana, acting through its Director, Mr. Luckey Chauhan hereinafter referred to as the “**THIRD PARTY**” which expression shall unless opposed to the context hereof include its successors, administrators, executors, and permitted assignees of the **THIRD PART**;

**WHEREAS** vide Order dated 04.03.2021 the Hon'ble NCLT, New Delhi was pleased admit a Petition under Section 7 IBC and to initiate the CIRP of the First Party. Subsequently, the Second Party had held various negotiations with all the stake holders and had given firm commitments and proposal to the Home Buyers and had assured them to infuse funds in order get their approval to a 'Withdrawal Proposal' under Section 12A of IBC in respect of the First Party. Accordingly, the Second Party was simultaneously exploring all possibilities to raise funds so that as and when the said 'Withdrawal Proposal' gets approved, the Second Party could infuse sufficient funds as committed to Home Buyers and the construction activity of Company's projects could resume without any delay. And the 'Withdrawal Proposal' was approved by the NCLT, New Delhi on 24.05.2023.

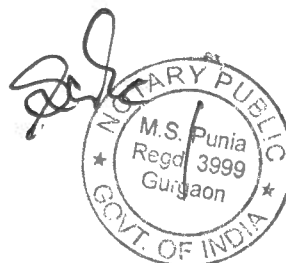
**AND WHEREAS** for discharging the above-mentioned expected obligation, the Second Party was in urgent need of funds, as such the Second Party approached the Third Party to lend the funds to it, but the Third Party expressed its reservation to lend the large sum of money. However, the Third Party showed its willingness to infuse the funds against purchase/allotment of some property.

**AND WHEREAS** in one of the residential projects namely '**Estella**' being developed by First Party at Sector-103, Gurgaon, an inventory approximately 41,739 Sq. Ft. of residential area lies unsold comprising of 26 Units.

**AND WHEREAS** to procure the funding from the Third Party, the Second Party has proposed to cause the allotment of 26 Units of the above said inventory in favour of the Third Party. The details of the said 26 Units is as per Schedule-1 (herein after referred to as the 'Unsold Units').

For Sidha Home Pvt. Ltd.

  
Director/ Auth. Signatory



Page 2 of 8

  
Sig

**AND WHEREAS** in terms of the above arrangement the Third Party has transferred a sum of INR 15 crores (Rupees Fifteen Crores Only) to Second Party which in turn has transferred the said amount to First Party. That out of the said INR 15 Crores, the First Party has already adjusted a sum of INR 10 Crores against 100% payment towards the sale of 11 Units in favour of the Third Party and there remains a balance of INR 5 Crores only.

**AND WHEREAS** in order secure the above said INR 5 Crores the Second Party has caused the allotment of the 'Unsold Units' in favour of the Third Party against the said INR 5 Crore.

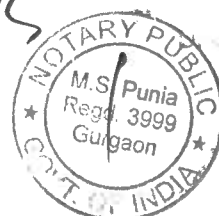
**NOW THIS AGREEMENT WITNESSETH AND IT IS HEREBY MUTUALLY AGREED, DECLARED, CONFIRMED AND RECORDED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**

1. That the Third Party has transferred a sum of INR 15,00,00,000 (Rupees Fifteen crores only) to the Second Party vide Cheque No. 787354 dated 05.06.2023 drawn on IndusInd Bank, which the Second Party acknowledges.
2. That the Second Party has already transferred the said sum of INR 15,00,00,000/- (Rupees Fifteen Crores only) to the First Party same day i.e. 05.06.2023 in the IndusInd Bank account of the First Party towards fulfillment and discharge of its obligation undertaken under the said 'Withdrawal Proposal', which the First Party acknowledges.
3. That out of the said sum of INR 15 Crores the First Party has already adjusted a sum of INR 10 Crores against the sale of 11 Units against 100% payment vide Agreement of even date and there remains a balance of INR 5 Crores only.
4. That accordingly in consideration of the said INR 5 Crores remaining unadjusted by the First Party the Second Party has caused the allotment of the Unsold Units as per Schedule-1 in favor of the Third Party, which the Third Party acknowledges and is confirmed by First Party.
5. That the Third Party shall be obliged to diligently adhere with all the stipulations of the Buyer's Agreement executed between First Party and the Third Party. Further the Third Party shall make the payment of the balance sale consideration in favor of the First Party at the time or before the execution and registration of Conveyance Deed.

For Sidhartha Bu...ome Pvt. Ltd.

  
Director/ Auth. Signatory







6. That the Third Party hereby confirms that it has set off the balance of INR 5 crores against the said allotment of Unsold Units and there is nothing due in its Books.
7. That the First Party confirms that it has not created by third party rights or any encumbrances of any nature whatsoever over the said 'Unsold Units' in any manner. In case it is discovered to the contrary at a later stage the First Party hereby undertakes, assures and confirms to keep the all Parties fully harmless and indemnified in all respects.
8. That all the parties have represented to each other that they are duly authorized and competent to enter into this Agreement and this Agreement has been entered and executed between them of their free will and free consent after fully understanding the same.
9. **BINDING EFFECT**

This Agreement is binding on the Parties and their respective successors, assigns, legal representative with regards to interest and assigns.

#### 10. NOTICE

Notices, demands or other communication required or permitted to be given or made under the Agreement shall be in writing and delivered personally or sent by prepaid post with recorded delivery, or by legible tele fax and confirmed by registered mail/ courier addressed to the intended recipient at the address as mentioned in this Agreement. Either Party may from time to time duly notify to the other Party, change of address, if any.

#### 11. COSTS AND EXPENSES

The Parties agree that they shall bear their respective costs and expenses in relation to the preparation and execution of this Agreement and the transactions contemplated hereunder.

#### 12. COUNTERPARTS

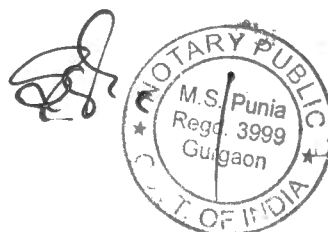
This Agreement may be executed in any number of counterparts, all of which taken together will constitute one and the same Agreement and any Party may enter into this Agreement by executing a counterpart.


#### 13. DISPUTE RESOLUTION

Any disputes, differences of opinion, claims and controversy arising out of, relating to, or in connection with this Agreement, or any related agreement

For Sidhartha B. Home Pvt. Ltd

  
Director/ Auth. Signatory



  
Notary Public

between the Parties, or the construction, breach, enforcement or termination or invalidity of this Agreement, or any related agreement, if not resolved amicably, shall be settled by arbitration by Sole Arbitrator to be appointed with mutual consent of all the Parties, in accordance with the Arbitration and Conciliation Act, 1996. The Arbitration shall be held in Gurgaon and the award passed by such arbitrator shall be conclusive, final and binding on all parties.

The Courts at Gurgaon shall have exclusive jurisdiction in the matter.

#### 14. AMENDMENT

No purported alteration or amendment of the Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly executed by each of the Parties to this Agreement.

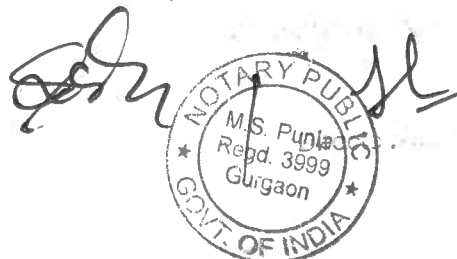
#### 15 CONFIDENTIALITY

- 15.1 Each Party accepts to treat with strict confidentiality and therefore to maintain in absolute secrecy all the information, know-how, documents or knowledge, techniques, equipment and product details, business, and research information, including but not limited to all processes, business plans, market information, distribution information, and marketing plans and any other information, disclosed in writing, orally, electronically or visually to it under this Agreement by the other Party and/or which it is aware of prior to the execution of this Agreement or during its validity (hereinafter referred to as "Confidential Information"). Confidential Information will strictly be used by Parties to achieve the purposes and the objects of the present Agreement;
- 15.2 All the Confidential Information that is accessed by either Party will be conscientiously guarded by itself and such Party shall be responsible for all the damages caused by any breach of obligation thereof, and it will be returned as soon as it is required and at latest on termination of the present Agreement.
- 15.3 Access to the Confidential Information will only be given to the Parties' staff strictly on 'need to know' basis that require such Confidential Information for the achievement of the object of the Agreement.
- 15.4 Each Party shall ensure to procure that its officers, staff, employees and agents having access to Confidential Information observes a corresponding obligation of confidence in respect of the Confidential Information on terms similar to the contents of this Clause.
- 15.5 Confidential Information shall not be used for any purpose different from its object, nor will it be provided to third parties or copied, except with the express and written consent of the disclosing Party.

Page 5 of 8

For Sidhartha Bhome Pvt. Ltd.

  
Director/ Auth. Signatory



Signatory

15.6 The Confidential Information communication or possible delivery of documents by any of the Parties will not give the receiving Party any right on patents, know-how or intellectual property rights thereof.

15.7 Parties will be exempted from this confidentiality obligation in the following cases: (i) if the Law so requires, (ii) by a court or administrative order, (iii) to inform their respective advisors and auditors, provided they observe the abovementioned confidentiality obligations, by an express agreement or by the application of their respective professional regulations.

## 16 GOVERNING LAWS & JURISDICTION

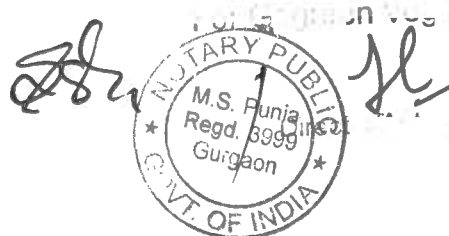
This Agreement shall be governed by the laws of India which are in force or which may be enacted by the Government of India from time to time. That subject to the provisions mentioned hereinbefore, competent courts in the Gurgaon shall have exclusive jurisdiction to adjudicate over matters relating to or arising out of the present Agreement.

### SCHEDULE-1

Sr. No.	Tower No.	Unit No.	Unit Description	Saleable Area	Per Sq. Ft. Rate	Total Sale Value	Booking Amount
1	Tower A	A-103	3 BHK + S	1910	3300	63,03,000	22,32,523
2	Tower A	A-12-A04	3 BHK + S	1910	3300	63,03,000	22,32,523
3	Tower A	A-1401	3 BHK + S	1910	3300	63,03,000	22,32,523
4	Tower A	A-1502	3 BHK	1725	3300	56,92,500	20,16,284
5	Tower A	A-1503	3 BHK	1725	3300	56,92,500	20,16,284
6	Tower B	B-1002	3 BHK	1725	3300	56,92,500	20,16,284
7	Tower B	B-1603	3 BHK	1725	3300	56,92,500	20,16,284
8	Tower B	B-1802	3 BHK	1725	3300	56,92,500	20,16,284
9	Tower B	B-1803	3 BHK	1725	3300	56,92,500	20,16,284
10	Tower C	C-12-A02	3 BHK	1725	3300	56,92,500	20,16,284
11	Tower C	C-1703	3 BHK	1725	3300	56,92,500	20,16,284
12	Tower C	C-1801	3 BHK + S	1910	3300	63,03,000	22,32,523
13	Tower C	C-1802	3 BHK	1725	3300	56,92,500	20,16,284

For Sidhartha B... Pvt. Ltd.

Director, Auth. Signatory



14	Tower C	C-1803	3 BHK	1725	3300	56,92,500	20,16,284
15	Tower C	C-1804	3 BHK + S	1910	3300	63,03,000	22,32,523
16	Tower D	D-1501	3 BHK + S	1910	3300	63,03,000	22,32,523
17	Tower E	G-1	3 BHK	1640	3300	54,12,000	19,19,687
18	Tower H	H-505	2 BHK	1255	3600	45,18,000	16,00,276
19	Tower H	H-12-A05	2 BHK	1255	3600	45,18,000	16,00,276
20	Tower H	H-1401	2 BHK	1322	3600	47,59,200	16,85,709
21	Tower H	H-1402	2 BHK	1245	3600	44,82,000	15,87,524
22	Tower H	H-1403	2 BHK	1245	3600	44,82,000	15,87,524
23	Tower H	H-1404	2 BHK	1255	3600	45,18,000	16,00,276
24	Tower H	H-1406	2 BHK	1245	3600	44,82,000	15,87,524
25	Tower H	H-1407	2 BHK	1245	3600	44,82,000	15,87,524
26	Tower H	H-1408	2 BHK	1322	3600	47,59,200	16,85,709
<b>Total Saleable Area in Sq. Ft.</b>				<b>41,739</b>		<b>14,11,55,400</b>	<b>5,00,00,000</b>

**IN WITNESS WHEREOF** Parties hereinabove named have set their respective hands and signed this Agreement at Gurugram on the day, month and year first above written in the presence of following witnesses:

**WITNESSES:**

1.

**For Sidhartha Buildhome Pvt. Ltd.**

(First Party)

Director/ Auth. Signatory

2.

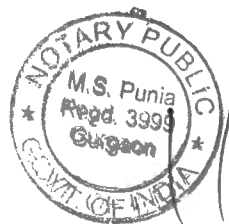
**Sidharth Chauhan**

(Second Party)

**For Gogreen Veggies Private Limited.**

(Third Party)

Director/ Auth. Signatory



ATTESTED

Mohinder S. Punia  
Advocate & Notary  
Gurgaon (Hry.)

Page 7 of 8

05 JUL 2023



BEFORE THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
AT NEW DELHI  
(APPELLATE JURISDICTION)

I.A. NO. 919 OF 2026

IN

COMPANY APPEAL AT (INSOLVENCY) NO. 791 OF 2023

IN THE MATTER OF:

Devendra singh

...Appellant

Versus

Home buyers of Sidhartha  
Buildhome Private Limited & Ors.

...Respondents

IN

IN THE MATTER OF:

Sidharth Chauhan  
Director (Powers Suspended)  
Sidhartha Buildhome Private Limited

...Applicant

Versus

Punjab & Sind Bank and Ors.

...Respondents

VAKALATNAMA

KNOW ALL to whom these presents shall come that I, Santosh Singh Mehra, Authorised Representative of Alpha Corp Development Limited, Applicant herein, having its registered office at Model Industrial Park, Opposite Focal Point, VPO Vallah, Mehta Road, Amritsar, Punjab - 143001, do hereby appoint, **Mr. Sandeep Bhuraria, Mr. Sunil Tyagi, Mrs. Prerna Kohli, Ms. Vatsala Pandey and Ms. Vaishnavi Prakash** at ZEUS LAW, 2 Palam Marg, Vasant Vihar, New Delhi-110057 to be our Advocates in the above noted case and authorize them: -

To act, appear and plead in the above-noted case in this Court or in any other Court in which the same may be tried or heard and also in the Appellate Court including High Court subject to payment of fees separately for each Court by me/us.

To sign, file, verify and present pleadings, appeals, cross-objections or petitions for executions review, revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages subject to payment of fees for each stage.

To file and take back documents, to admit and/or deny the documents of the opposite party.

To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.

To take execution proceedings.

To deposit, draw and receive monies, cheques, cash and grant receipts thereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint and instruct any other legal practitioner or person authorising him to exercise the power and authority hereby conferred upon the Advocate whenever he may think fit to do so and sign the power of attorney on our behalf.

And I/We the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and purposes.

And I/We undertake that I/We or my/our duly authorised agents would appear in Court on all hearings and will inform the Advocate for appearance when the case is called.

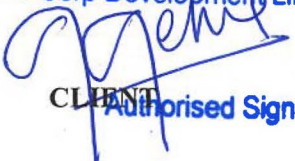
And I/We the undersigned do hereby agree not to hold the Advocate or his substitute responsible for the result of the said case. The adjournment costs whenever ordered by the Court shall be of the Advocate which he shall receive and retain for himself.

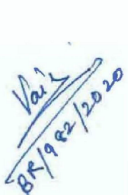
And I/We the undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us to paid to the Advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I/We hereby agree that once the fee is paid I/We will not be entitled for the refund of the same in any case whatsoever.

IN WITNESS WHEREOF I/WE do hereunto set my/our hand to these presents the contents of which have been understood by me/us on this 24 day of February, 2026.

Accepted subject to the terms of fees.

For Alpha Corp Development Limited

  
CLIENT  
Authorised Signatory

  
24/02/2026

  
ADVOCATE  
24/02/2026

  
2/11/2021