

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 2171 of 2024 & I.A. No. 8108 of 2024

(Arising out of the Order dated 21.10.2024 passed by the National Company Law Tribunal, New Delhi, Bench IV in Company Petition (IB) No. 196 of 2023)

IN THE MATTER OF:

1. Mr. Satyabrata Mitra

R/o C-16-2205 Prateek Grand City, Siddhartha
Vihar, Ghaziabad, Uttar Pradesh-201009

...Appellant No. 1

2. Mrs. Sri Devi

R/o 14 Kaumach Kiran, Near Tala Factory, Phase-
II Shankar Vihar, Quarsi, Koli, Aligarh, Uttar
Pradesh-202001

...Appellant No. 2

3. Mr. Jaswant Singh Rawat

R/o 53-D, Pocket B-7, Mayur Vihar, Phase-III New
Delhi-110096

...Appellant No. 3

4. Mr. Atul Kumar

R/o P-492, Jal Vayu Vihar, Greater Noida, Gautam
Buddha Nagar, Uttar Pradesh-201308

...Appellant No. 4

5. Mr. Rakesh Kumar Tyagi

R/o N-22, Chittaranjan Park, New Delhi-10019

...Appellant No. 5

6. Mr. Kshitij Gupta

R/o 46, Anekant Apartment, Vasundhra Enclave,
Delhi-110096

...Appellant No. 6

7. Mrs. Bindu Sharma

R/o A-3/123, 1st Floor, Janka Puri,
New Delhi-110058

...Appellant No. 7

8. Mr. Manoj Malik

R/o K-226, Lane W-12, Western Avenue, Sainik
Farms, New Delhi-110062

...Appellant No. 8

9. Dr. Swasti Singh

R/o Heerapatti, Azamgarh, U.P. – 276001

...Appellant No. 9

10. Mrs. Kusa Fithu

R/o Yisisotha Village, P.O Meluri Nagaland-797114

...Appellant No. 10

11. Mr. Nitin Khanna

R/o IA-305, Rangrasayan Apartment, Sector-13,
Rohini, Delhi-110085

...Appellant No. 11

12. Mr. Neeraj Singh

R/o N-245, Jalavayu Vihar, Sector-25, Noida,
Gautam Buddha Nagar, U.P-201301

...Appellant No. 12

13. Mr. Kuldeep Kumar Zutshi

R/o H No 85, Lane No 4, Green avenue, East Extn,
Sec-1-A, Trikuta Nagar, Jammu-180012.

...Appellant No. 13

14. Mr. Om Prakash Sharma

R/o B-60, Sector-41, Noida, UP-201303

...Appellant No. 14

15. Mr. Nilam Gupta

R/o L-1/31, S.K. Puri, Boring Road, Patna,
Bihar-800001

...Appellant No. 15

16. Mr. Sandhya Maheswari

R/o Flat No 305, Shri Shyam Complex, Samad
Road, Aligarh, UP-20200

...Appellant No. 16

17. Mr. Nivesh Bhardwaj

R/o 241, City View Apartment, Sector-35,
Noida-201301

...Appellant No. 17

18. Mr. Aayush Prakhar

R/o Rajhata, NIDAN, Binodpur Katihar,
Bihar-854105

...Appellant No. 18

19. Mr. Sahdev Malik

R/o A1-264 SF, Janakpuri, New Delhi-110058

...Appellant No. 19

20. Mr. Virendra Bahadur Singh

R/o D63/6V-99, Shivaji Nagar, Mehwoorgang,
Varanasi, UP-221010

...Appellant No. 20

21. Mr. Navin Jain

R/o A/650 New Ashok Nagar, Delhi-110096

...Appellant No. 21

22. Mr. Brijendra Chansoliya

R/o 2804, Mahendra Puram, Patel Nagar, Churkhi
Road, Orai, Jalaun, UP-285001

...Appellant No. 22

23. Mr. Chandrakant Singh

R/o B-152, Shiv Vihar, Vikas Nagar, Uttam Nagar,
New Delhi-110059

...Appellant No. 23

24. Mr. Ghanshyam Prasad Gupta

R/o H No-106, Manjahri Nikunj, Hazipur Road,
Amgola, Ramna, Muzzafarpur, Bihar-842002

...Appellant No. 24

25. Mrs. Rajendri

R/o A-38, R K Puram, Govindpuram, Ghaziabad,
UP-201001

...Appellant No. 25

26. Mr. Balmohan Kaur Bindra

R/o 32B, St No-5, East Azad Nagar, Delhi-110051

...Appellant No. 26

27. Mr. Neeraj Bhadouria

R/o B-173, Jawahar Park, Devli road, Khanpur,
New Delhi-110062

...Appellant No. 27

28. Mrs. Ratna Kumari

R/o Srigun Niwas, Phuliya Tola, Phulwarishariff,
near AIIMS, Phulwari, Patna,Bihar-801505 ...Appellant No. 28

29. Mrs. Usha Mahajan
R/o 28/76,Street No.15,Vishwas Nagar, Shahdra,
Delhi-110032. ...Appellant No. 29

30. Mrs. Sunita Nim
R/o Maple-1/109, Gulmohar Enclave, Nehru Nagar,
Ghaziabad,UP-201001. ...Appellant No. 30

31. Mr. Mithlesh Sharma
R/o Mig 49, Awas Vikas Colony, Lakhimpur-Kheri,
UP-262701. ...Appellant No. 31

32. Mr. Shri Krishna Prasad
R/o C-1/366, Sector 55, Noida,
Uttar Pradesh-201301. ...Appellant No. 32

33. Mr. Milan Kanti Basuray
R/o 128-C, Pocket-I, MIG Flat, Opp. Gauri Shankar
Temple, Dilshad Garden, Delhi-110095. ...Appellant No. 33

34. Mr. Ashok Kumar
R/o Flat No 104, Manoranjan Apartment, Kadru
Main Road, Kadru, Ranchi, Jharkhand-834002. ...Appellant No. 34

35. Mr. Yograj Singh Gautam
R/o M-113, Sector-12, Pratap Vihar, Ghaziabad, UP-
201012. ...Appellant No. 35

36. Mrs. Kavita Ray
R/o G-302, Paramount Emotions, Sector-1, GNW,
Gautam Budh Nagar, UP-201306. ...Appellant No. 36

37. Mr. Pradeep Kumar

R/o C301/A1701, Migsun Green Mansion, Greater Noida, UP-201306. **...Appellant No. 37**

38. Mr. Mukesh Solanki
R/o 62,3rd Floor, Vijay Block, Laxmi Nagar, Delhi-110092 **...Appellant No. 38**

39. Mr. PM Bhatnagar
R/o B027 Ansal Colony, Shastri Nagar, Meerut, UP-250001 **...Appellant No. 39**

40. Mr. Chirag Gupta
R/o 183 Chaturyana Bada Bazar, Jhansi UP-284002 **...Appellant No. 40**

41. Mrs. Kavita Ray
R/o G-302, Paramount Emotions, Sector-1, GNW, Gautam Budh Nagar, UP-201306 **...Appellant No. 41**

42. Mr. Hari Singh
R/o 81-Shakti Apartments, Ashok Vihar Phase-III, Delhi-110052 **...Appellant No. 42**

43. Mr. Kulbhushan Yadav
R/o wz-228, Shakurpur Village, Delhi-110034 **...Appellant No. 43**

44. Mr. Santosh Kumar Srivastava
R/o SG Home, D-915, Sector-3, Vasundhra, Ghaziabad, UP-201012 **...Appellant No. 44**

45. Mrs. Reetika Mittal
R/o F-527, Rashtrapati Bhavan Apartments, Plot No-3, Sector-10, Dwarka, New Delhi-110075 **...Appellant No. 45**

46. Mr. Satendra Kumar
R/o SKA-108, Shipra Krishna Vista, Indirapuram, Ghaziabad, Uttar Pradesh-201014 **...Appellant No. 46**

- 47. Amar Kali** ...Appellant No. 47
R/o G-4A, East Vinod Nagar, Delhi-110091
- 48. Mr Vinod Kumar Gupta** ...Appellant No. 48
R/o Radhey Mohan Vinod Kumar, Main Bazar,
Meham, Rohtak-124112
- 49. Mrs. Satinder Kaur** ...Appellant No. 49
R/o B-104, Ashiyana Apartment, Noida Extn., GBN,
UP-201301
- 50. Mrs. Vinita Chauhan** ...Appellant No. 50
R/o B-38A, Gali no 5, Chander Vihar, Mandawali,
Delhi-110092
- 51. Mr. Sanjay Kumar** ...Appellant No. 51
R/o F-907B Ace Platinum, Zeta-I, Greater Noida,
UP-201310
- 52. Mr. Krishna Kumar Pandey** ...Appellant No. 52
R/o 1379, ELDECO, UDYAN-2, Raebareli Road,
Lucknow, UP-226025
- 53. Mr. Arun Kumar Verma** ...Appellant No. 53
R/o 7443, South Memphis ST, Aurora, Colorado,
USA-80016
- 54. Mr. Surendra Pal Sharma** ...Appellant No. 54
R/o H. No-542, First Floor Back side, Ashoka
Enclave Part-III, Kanishka Residency, Sector-35,
Faridabad, Haryana-121003
- 55. Mr. Jagdish Chandra** ...Appellant No. 55
R/o R-73, East Vinod Nagar, Delhi-110091
- 56. Mr. Virender Kumar**

R/o B-67(GF)Line No 9, Gagan Enclave, Ghaziabad, ...Appellant No. 56
UP-201001

57. Mr. Janardan Baruah

R/o Flat No 131, Shri Vinayak Apartment, Plot 5C, ...Appellant No. 57
Sector 22, Dwarka, New Delhi-110077

58. Mrs. Brinda Basu (Roy)

R/o FD 76 Saltlake City, Sector 3,Kolkata, West ...Appellant No. 58
Bengal-700106

59. Mr. Taranjot Kaur Saini

R/o Flat C-1,Plot C-7,Aparna Apartment-II, ...Appellant No. 59
Shalimar Garden-Extn-II, Sahibabad, Ghaziabad,
UP-201005

60. Mr. Ravinder Singh Saini

R/o Flat C-1, Plot C-7, Aparna Apartment-II, ...Appellant No. 60
Shalimar Garden-Extn-II, Sahibabad, Ghaziabad,
UP-201005

61. Mrs. Monika Kaur Chamdal

R/o C-249, Second Floor, Hari Nagar Clock Tower, ...Appellant No. 61
New Delhi-110064

62. Mr. Hemant Mirchandani

R/o 127 Ras Vihar Apartments, Plot No 99, I P ...Appellant No. 62
Extension, Patparganj, Delhi-110092

63. Mr. Mohd. Istiyaq Siddiqui

R/o T-15 New Mig Flats, Block-T, Prasad Nagar, ...Appellant No. 63
New Delhi-110005

64. Mr. Sunil Kumar Pandey

R/o H NO. 845, Arun Vihar,Sector-37, Noida, ...Appellant No. 64
UP-201303

- 65. Mr. Zahid Hussain Mir**
R/o C75, Noorabad Colony, Hyderpora, Srinagar,
J&K-190014. **...Appellant No. 65**
- 66. Dr. Abdul Majeed Dar**
Dar House-Gulshan Nagar Nowgam, Bye-Pass
Srinagar, Kashmir-190019 **...Appellant No. 66**
- 67. Mr. Ravi Shankar Prasad Sinha**
R/o 11/36,3A, Laha Colony, Kolkata-700028 **...Appellant No. 67**
- 68. Mr. Dharam Prakash**
R/o Village Indergarhi, Dasna Dehat, Ghaziabad,
UP-201015 **...Appellant No. 68**
- 69. Mr. Hemendra Swaroop**
R/o E-502, Satisar Apartment, Plot No 6, Sector 107,
Dwarka, New Delhi-110075. **...Appellant No. 69**
- 70. Mrs. Rajvanti Kaushik**
R/o D-209, B-2, Jai Ambica Apartment, Shyam Park
Extension, Sahibabad, Ghaziabad, UP-201005. **...Appellant No. 70**
- 71. Mr. Bikram Singh Negi**
R/o 3/382, Khicripur, Delhi-110091. **...Appellant No. 71**
- 72. Mr. Sujit Kumar Singh**
R/o B-10 Ekankikunj 24 Muir Road, Rajapur,
Prayagraj, UP-211002 **...Appellant No. 72**
- 73. Mr. Arvind Sharma**
R/o H-1/116, Second Floor, Sector-16, Rohini,
Delhi-110089 **...Appellant No. 73**
- 74. Mr. Veena Gupta**
R/o E-112 Gali No-4, East Vinod Nagar,
Delhi-110091 **...Appellant No. 74**

- 75. Mr. Deepak Grover**
R/o 369-F, Pocket-2, Mayur Vihar, Ph-I,
Delhi-110091 **...Appellant No. 75**
- 76. Mr. Jagdish Singh**
R/o RV-73C Rock View Enclave, 3 Wing, Air Force
Station Palam, Delhi Cantt, New Delhi-110010 **...Appellant No. 76**
- 77. Mr. Saroj Kumar Mishra**
R/o 400-B, Railway Officers Colony, Near Jai
Narayan Chouraha, Station Road, Bargaon,
Gonda(UP)-271002 **...Appellant No. 77**
- 78. Mrs. Hemlata Shukla**
R/o A24 Shalimar Enclave, Kamla Nagar,
Agra, UP-282001 **...Appellant No. 78**
- 79. Mrs. Malavika Choudhury**
R/o Flat No. 2 AI, Disha Enclave, Arunodoi Path,
Christian Basti, GS Road, Guwahati-781005 **...Appellant No. 79**
- 80. Mr. Surat Singh Chauhan**
R/o Type 5/97, Anutara Colony, Rawatbhata,
Chittorgarh, Rajasthan-323307 **...Appellant No. 80**
- 81. Mr. Subhash Chand**
R/o H No. 46/8, Burv Colony, Behind Sector-8,
Karnal, Haryana-132001 **...Appellant No. 81**
- 82. Mr. Mohd Sayeed**
R/o E-12/9, 2nd Floor, Hauz Rani, Malviya Nagar,
New Delhi-110017 **...Appellant No. 82**
- 83. Mrs. Poonam**
R/o H No. 351, Block-A, Street No. 2, Rama
Garden, Karawal Nagar, Delhi-110094 **...Appellant No. 83**

- 84. Mr. Shobha Kumari** ...Appellant No. 84
R/o B/38, Sachivalaya Colony, Patna, Bihar-800020
- 85. Mr. Prashant Singh** ...Appellant No. 85
R/o C-281, Sec-37, Greater Noida, UP-201303
- 86. Mr. Ghulam Mohd Wadoo** ...Appellant No. 86
R/o Jeelanabad Lane No.2 Habbak Batapora,
Hazratbal, Srinagar, J&K-190006
- 87. Dr. Bhabani Prasad Khound** ...Appellant No. 87
R/o H No. 411, Express Highway, Sixmile, P.O.-
Panjabari, Kamrup, Assam-781037
- 88. Mr. Kuldeep Kumar Zalpuri** ...Appellant No. 88
R/o 240, Sec-2, Panchkula, Haryana-134112
- 89. Mr. Kuldeep Kumar Zalpuri** ...Appellant No. 89
R/o 240, Sec-2, Panchkula, Haryana-134112
- 90. Mrs. Qurisha Ayub Shah** ...Appellant No. 90
R/o Shamasabad Bemina, Srinagar J&K-190018
- 91. Mr. Inderpal Singh** ...Appellant No. 91
R/o 506, KM 20, Jaypee Green Kosmos, Sec-134,
Noida, UP-201304
- 92. Mr. Shripal Yadav** ...Appellant No. 92
R/o Q-36, Naveen Shahdra, Delhi-110032
- 93. Mr. Mohd. Arif Masood Naqash** ...Appellant No. 93
R/o Lane No. 5, Umer Colony B, Lal Bazar,
Srinagar, J&K-190023
- 94. Mr. Swaroop Saha** ...Appellant No. 94
R/o A-32, Siddhartha Kunj Apartments, Plot No. 17,
Sector-7, Dwarka, New Delhi-110075

95. Mr. Sunil Pandey

R/o L-1-1840-D, Gali No-4, Sangam Vihar,
New Delhi-110062

...Appellant No. 95

96. Mr. Chetan Singhal

R/o A1603, Pioneer Park, Gurugram,
Haryana-122103

...Appellant No. 96

97. Mr. Gaurav Malik

R/o Lane No. 10, Shiv Colony, Dewru Road,
Sonapat, Haryana-131001

...Appellant No. 97

98. Mr. Janki Devi

R/o D-7/15, Rail Vihar, Indirapuram,
Ghaziabad, UP-201001

...Appellant No. 98

99. Mr. Sanchit Saxena

R/o C-2/32 Mansoraver Colony, Delhi-110032

...Appellant No. 99

100. Mr. Varun Sharma

R/o 72, New Rajdhani Enclave, Delhi-110092

...Appellant No. 100

101. Mr. Nitin Kr. Mishra

R/o 99/2, Block-10, Govind Nagar,
Kanpur, UP-208006

...Appellant No. 101

102. Mrs. Baby Sultana

R/o H No. 136, Mohalla Swarajya Puri, Nagmatya
Road, Gaya, Bihar-823001

...Appellant No. 102

103. Mr. Rajinder Kumar

R/o A-231, MIG Flats, Brij Vihar,
Ghaziabad, UP-201011

...Appellant No. 103

104. Mr. Deepak Rawat

R/o 56 2nd Floor, E-Block, Sector-22,
Noida, UP-201301

...Appellant No. 104

- 105. Mr. Manisha Manchanda** ...Appellant No. 105
R/o G-7/11, Malviya Nagar, Delhi-110017
- 106. Mr. Lalit Joshi** ...Appellant No. 106
R/o 342-H, Pocket-2, Mayur Vihar, Phase-I,
New Delhi-110091
- 107. Mrs. Pinky Rawat** ...Appellant No. 107
R/o B-179, Sector-22, Noida, UP-201301
- 108. Mr Vijay Luxmi Bisht** ...Appellant No. 108
R/o C-22, Sector-22, Noida, UP-201301
- 109. Mr. Vipul Sharma** ...Appellant No. 109
R/o 1/3-HA-2, Street No 6, East Azad Nagar,
Delhi-110051
- 110. Mrs. Neelam Bakshi** ...Appellant No. 110
R/o A6/183, Westend Heights, Akshayanagar,
Bengaluru-560068
- 111. Mr. Neeraj Kakkar** ...Appellant No. 111
R/o 197, Sector-4, Urban Estate, Gurgaon,
Haryana-122001
- 112. Mr. Manish Kakkar** ...Appellant No. 112
R/o 197, Sector-4, Urban Estate, Gurgaon,
Haryana-122001
- 113. Mrs. Manju Sinha** ...Appellant No. 113
R/o Sec-29, Park View Apartment, Noida, GB
Nagar, UP-201301
- 114. Mr. Mohan Tripathi** ...Appellant No. 114
R/o Flat No 202, C/229, Nirala Nagar, Lucknow,
UP-226020

115. Mrs. Sushmita Goswami

R/o Old fire brigade lane, Satribari (Barulaya),
Guwahati, Kamrup (M) Assam

...Appellant No. 115

Versus

Earth Towne Infrastructure Pvt. Ltd

Having its registered office at
B-100, Second Floor, Nariana Industrial Area,
Phase-1, New Delhi - 110028

...Respondent

Present

For Appellants: Ms. Vatsala Kak & Mr. Shaurya Shyam, Advocates.

For Respondent: None.

J U D G E M E N T

(04 .09.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellant i.e. Mr. Satyabrata Mitra and 114 others under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('Code') against the Impugned Order dated 21.10.2024 passed by the National Company Law Tribunal, New Delhi, Bench IV ('Adjudicating Authority'), in C.P.(IB) No. 196 of 2023.
2. M/s Earth Towne Infrastructure Pvt. Ltd. ('ETIPL') who is the Corporate Debtor, is the Respondent herein.
3. The Appellant submitted that, ETIPL is the landowner and developer company for the project initiated by Earth Infrastructure Ltd. ("EIL"), which is the holding company of ETIPL. The Appellant contends that EIL was admitted

into CIRP vide order dated 06.06.2018, and the Resolution Plan was approved by the Committee of Creditors ("CoC") on 28.06.2019 and thereafter by the Adjudicating Authority on 05.04.2021. However, on 30.01.2023, the said approved Resolution Plan was set aside by this Appellate Authority, and it is currently pending adjudication before the Hon'ble Supreme Court.

4. The Appellants submitted that in 2010, the Greater Noida Industrial Development Authority ('GNIDA') allotted Plot No. GH-04, Sector-01, Greater Noida, measuring 73,942 sq. mtrs., to a consortium led by Earth Infrastructure Limited (EIL) (78% share) along with Raus Infrass Limited (11%) and Shalini Holdings Limited (11%), via Reservation/Acceptance Letter No. PROP/BRS/2010/2226 dated 04.03.2010 and Allotment Letter No. PROP/BRS/2010/1423 dated 19.03.2010, pursuant to Scheme Code No. BRS-01/2010 (I).

5. The Appellants contended that the consortium members entered into a Memorandum of Understanding ('MoU') dated 12.01.2010, defining roles: EIL for finance, sale, marketing, and some construction; Raus Infrass Limited for construction; and Shalini Holdings Limited for administration.

6. The Appellants submitted that ETIPL was incorporated as a Special Purpose Company on 21.07.2010, approved by GNIDA on 20.08.2010, and a registered Lease Deed dated 01.09.2010 was executed in favour of ETIPL for the subject property.

7. The Appellants contended that a Development Agreement dated 09.09.2010 was executed between ETIPL and EIL, granting EIL development rights on the land while ETIPL retained leasehold rights, with built-up area sharing at 18% for ETIPL and 82% for EIL and GNIDA sanctioned the building plan for ETIPL.

8. The Appellants submitted that the total units in "Earth Towne" are 3400, with ETIPL's 18% share being 612 units, of which ETIPL sold 220 units to allottees, including the Appellants. Thus, the threshold under the second proviso to Section 7(1) of the Code requires a minimum of 22 allottees (10% of 220) for filing against ETIPL.

9. The Appellants contended that the Adjudicating Authority wrongly applied the threshold based on the entire project's ignoring ETIPL's distinct share and sales, and failed to note that even the remaining 66 Appellants exceed the required 22.

10. The Appellants submitted that from 2015, the Appellants entered into Buyers' Agreements with ETIPL (landowner) and EIL (developer) or with EIL, for apartments in "Earth Towne", disbursing collectively INR 28,64,48,786/-, with payments to EIL transferred to ETIPL, as reflected in EIL's financial statements.

11. The Appellants contended that the agreements stipulated possession upon obtaining Completion Certificate, without a specific date, but EIL committed to completion by 31.12.2021 during UPRERA registration, relying on GNIDA's

Sanction Letter dated 30.09.2014 issued to ETIPL. The Appellants submitted that EIL halted construction in 2017, and ETIPL abandoned the project, failing to complete it by 31.12.2021 or offer possession, constituting default under the Code.

12. The Appellants contended that EIL was admitted into CIRP vide order dated 06.06.2018 in CP No. IB-401/ND/2017, with Akash Singhal as Resolution Professional. Some Appellants filed their claims in EIL's CIRP, categorized as claims for EIL or ETIPL, but this does not preclude claims against ETIPL, as ETIPL benefited from payments and is jointly liable for delivery.

13. The Appellants submitted that a Resolution Plan for EIL by Roma Unicorn Desinex Consortium was approved on 05.04.2021 but set aside by this Appellate Tribunal on 30.01.2023 in Company Appeal (AT)(Ins.) 180 of 2022, remanding for fresh plans, due to unlawful inclusion of ETIPL's assets. Appeals are pending before the Hon'ble Supreme Court, with status quo orders dated 13.04.2023 and 11.07.2023 and ETIPL is not a party.

14. The Appellants contended that in a similar scheme for EIL's "Earth Iconic" project with Celestial Estates Private Limited (landowner), the Adjudicating Authority admitted Celestial into CIRP on 11.03.2019 in CP (IB) 1768/ND/2018, directed acceptance of claims from allottees who filed in EIL's CIRP (order dated 07.08.2019 in CA 1004/2019), and ordered transfer of constructed structure from EIL to Celestial (order dated 15.03.2021 in CA 1237/2019). The Resolution Plan was approved through the landowner. The Appellants submitted that,

analogously, the Appellants are allottees of ETIPL, as the project is on ETIPL's land, payments were transferred to ETIPL, and ETIPL is party to agreements, rendering CP (IB) 196/2023 maintainable.

15. The Appellants contended that the cause of action arose on 31.12.2021 due to non-completion, leading to filing CP (IB) 196/2023 with 146 allottees. Notice was issued on 12.04.2023; ETIPL was set ex-parte on 19.07.2023. Orders were reserved on 21.08.2023 but de-reserved on 31.10.2023 due to ETIPL's struck-off status. The Appellants submitted that ETIPL's name was restored vide order dated 01.04.2024 in Company Appeal No. 302/2023 under Section 252 of the Companies Act, 2013.

16. The Appellants contended that intervening applications IA No. 1741/2024 and IA No. 1989/2024 by Earth Towne Welfare Association seeking dismissal were considered, but the Impugned Order dismissed IA No. 1989/2024 while erroneously dismissing the main petition.

17. The Appellants submitted that in clarification affidavit dated 23.07.2024, it was affirmed that about 130 of 146 Appellants filed claims in EIL's CIRP, but this does not bar proceedings against ETIPL, as affirmed in *Anjani Kumar Prashar v. Manab Datta & Ors.*, Company Appeal (AT)(Ins.) 1366/2023, allowing simultaneous claims against developer and landowner for the same project.

18. The Appellants contended that the Adjudicating Authority overlooked the settled law in the matter of *Manish Kumar [(2021) 5 SCC 1]*, requiring threshold

at filing, but misapplied it by subtracting claimants without considering ETIPL's separate liability and threshold.

19. The Appellants submitted that ETIPL diverted funds, failed to deposit in escrow under RERA, and its directors are untraceable since 2017, establishing undisputed debt and default.

20. The Appellants contended that the Impugned Order is erroneous, as the Appellants meet the 10% threshold ($66 > 22$), filing in EIL does not preclude action against ETIPL, and parallels with Celestial Estates support admission of CP (IB) 196/2023.

21. Concluding his arguments, the Appellant requested this Appellate Tribunal to allow this appeal.

Findings

22. At the outset, we note that the Corporate Debtor has never appeared before us and therefore, he was proceeded as ex-parte on 07.03.2025. In this connection, we note that the Corporate Debtor never appeared even before the Adjudicating Authority who also proceeded ex-parte against the Corporate Debtor.

23. During pleading, it was brought to our notice that the Respondent is not interested in the proceeding and have not appearing to avoid the liabilities. We find merits in the same. We also note that the Corporate Debtor name was stuck down and was later restored back by the order of the Adjudicating Authority and

therefore, the Corporate Debtor is necessary and relevant party who has been proceed ex-parte herein.

24. The short issue involved in the present appeal is whether the Appellant as a class of creditors (Homebuyers) were eligible to initiate Section 7 application against the Corporate Debtor before the Adjudicating Authority based on the threshold. The Adjudicating Authority has held that the Appellants were not meeting the eligibility of threshold and therefore rejected their Section 7 petition.

25. At this stage, we would like to take into consideration the relevant portion of the Impugned Order dated 21.10.2024 passed by the Adjudicating Authority which reads as under :-

“18. It is pertinent to note that in the present matter, as per the Submission of the Applicant, the total number of Allottees in Project are around 1800, whereas the present Application has been files by 146 Homebuyers/ Allottees.

25. This Adjudicating Authority vide order dated 09.07.2024 asked for a clarification pertaining to claims admitted of Homebuyers of Corporate Debtor i.e. Earth Towne Infrastructure Pvt. Ltd. in the Resolution Plan of EIL. The Applicant/homebuyer submitted that around 130 homebuyers of 146 present applicants had filed their claims before EIL. The Resolution Professional of EIL in its Affidavit has submitted that it has accepted claims of around 1818 Allottees/Homebuyers of the Earth Towne Infra and annexed copy of list of admitted claims of creditors/homebuyers under

the CIRP which has been marked as Annexure-C in reply filed by in IA/ 1989 /2024.

26. On perusal of the Affidavit of Admitted claim of Claimants of Earth Towne Project this Adjudicating Authority finds that more than 80 applicants out of 146 Applicants/ Homebuyers in present application have their claims admitted in the CIRP of EIL.

27. The Adjudicating Authority observes that the majority of home buyers of the corporate debtors are the same individuals listed as creditors in the CIRP of EIL. It is pertinent to note that around 80 out of 146 Applicants in the current company petition are already beneficiaries of the Resolution Plan approved during the CIRP of EIL of the same project i.e. Earth Towne Infrastructure Pvt. Ltd. Consequently, the remaining number of applicants are approximately 66, which does not meet the threshold of one hundred applicants as specified in the Code.

(Emphasis Supplied)

26. From above, it emerges that total number of allottees in the project were 1800, whereas the application filed by the Appellant before the Adjudicating Authority consisting of 146 Homebuyers. It is also noted that out of 146 Homebuyers, 130 Homebuyers had filed their claim before Resolution Professional of the EIL which is the holding company of the Corporate Debtor. The Adjudicating Authority has mentioned that claims of more than 80 Applicants out of 146 Applicants/ Homebuyers in the petition filed before the

Adjudicating Authority in CIRP of EIL have been admitted. The Adjudicating Authority concluded it, since 80 Applicants out of 146 are already beneficiaries of the Resolution Plan under consideration, the remaining 66 Applicants do not meet the threshold of 100 Applicant as specified in the Code.

27. In this connection, we take into consideration the relevant portion of Section 7 of the Code, which reads as under:

“Section 7: Initiation of corporate insolvency resolution process by financial creditor.

7. (1) A financial creditor either by itself or jointly with [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

[Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project

or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:.....]

(Emphasis Supplied)

From above, it is clear that the threshold is 100 allottees or 10% of the total number of such allottees, whichever is less.

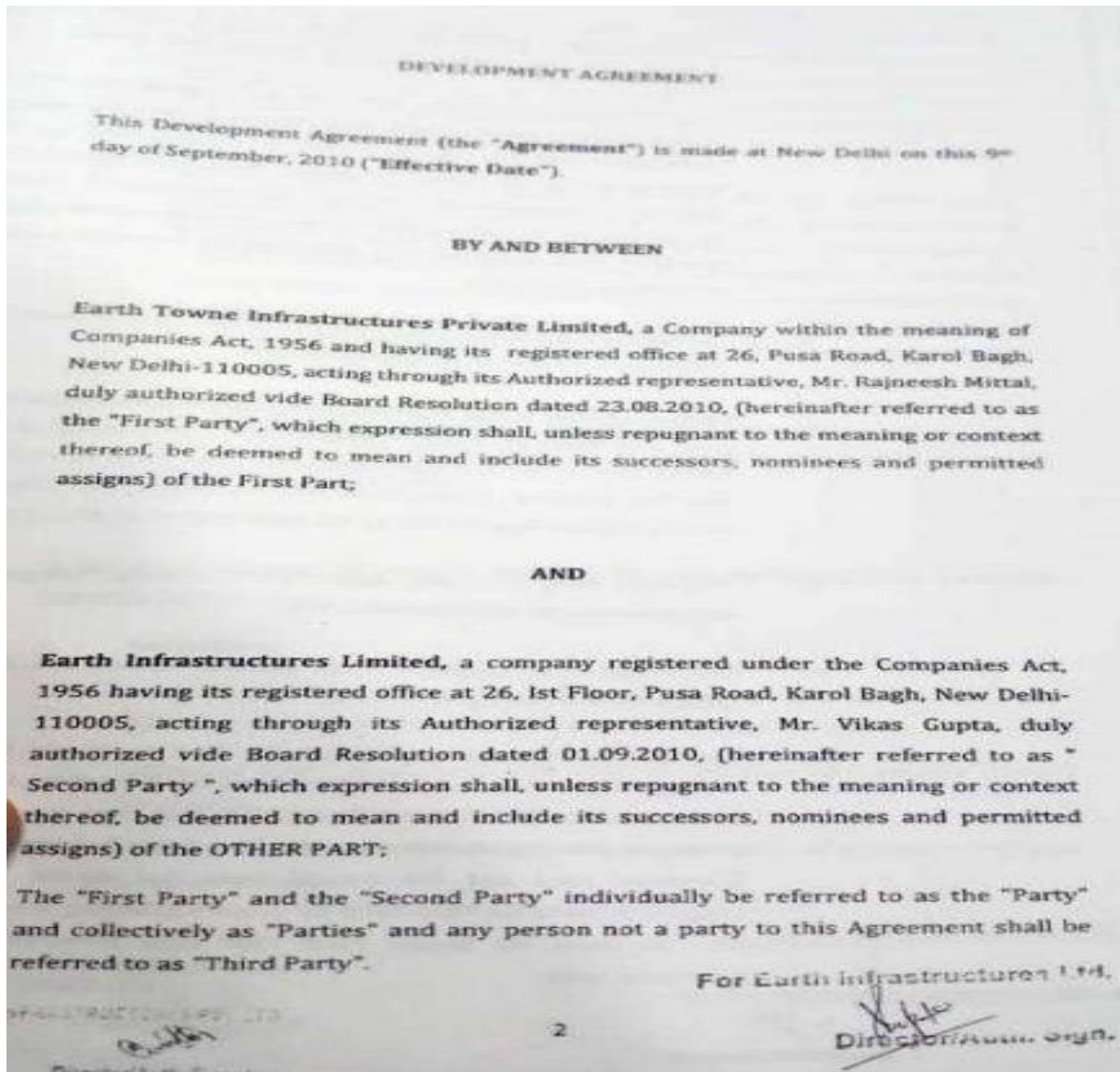
On the other hand, the Adjudicating Authority has recorder that “the remaining number of applicants are approximately 66, which does not meet the threshold of one hundred applicants as specified in the Code.”

Thus, we find that the Adjudicating Authority clearly erred in evaluating the threshold. We hold that Impugned Order contains apparent legal error.

28. We further note that the Corporate Debtor is the land owner and developer for the project initiated by EIL which is holding company of the Corporate Debtor. We further note that the GNIDA allotted Plot No. GH-04, Sector-01, Greater Noida, measuring 73,942 sq. mtrs., to consortium led by EIL (78% share) along with two other companies, namely, Raus Infrass Limited (11%) and Shalini Holdings Limited (11%) and subsequently MoU was signed amongst all these three entities on 12.01.2010. It is significant to note that after signing of the said MoU, the Corporate Debtor was incorporated as Special Purpose Vehicle (SPV) on 21.07.2010 which was approved by GNIDA on 20.08.2010 and Registered Deed was executed in favour of the Corporate Debtor on 01.09.2010.

29. This sequence clearly indicate that the Corporate Debtor indeed was created for the purpose of holding land as well as development of the project. This sequence further indicates the intricate relationship between the Corporate Debtor and EIL. The Appellants, being Homebuyers, were made party to both the entities.

30. We also take into consideration the development agreement signed between the Corporate Debtor and EIL dated 09.09.2010. The relevant portion of the said agreement reads as under :-



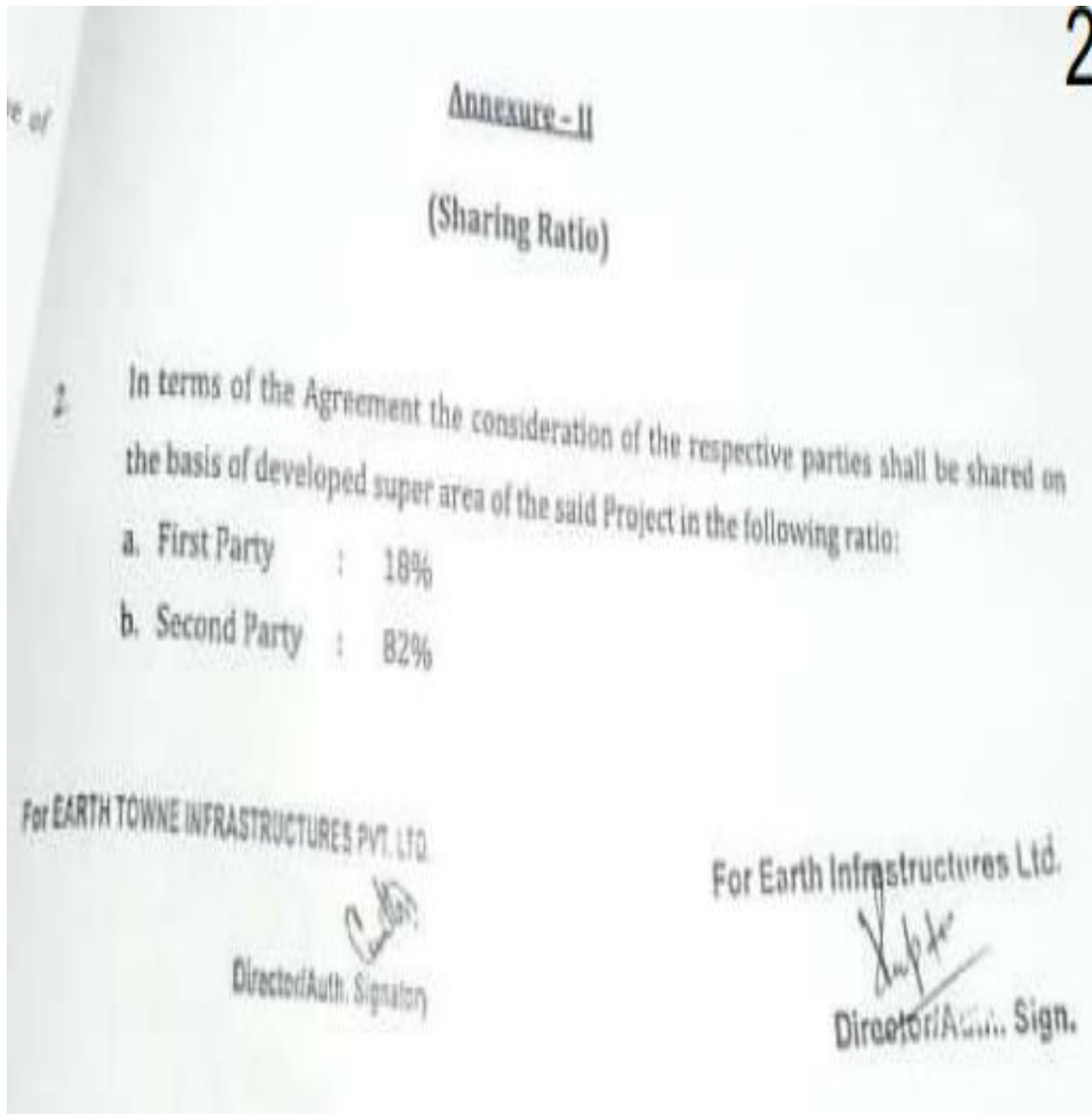
D. The First Party is suitably authorized to develop, construct market and sale/sub-lease the said Scheduled Land.

F. The Second Party has approached the First Party and has expressed its willingness to develop the said Scheduled Land. Further, A Memorandum Of Understanding (MOU) dated 22.07.2010, had been executed between the parties in this regard. Whereby, the First Party has agreed to acquire/buy Scheduled Land and the Second Party has agreed to give "financial support"/loan to the First Party for acquiring/buying Scheduled Land and in lieu, the same the Second Party shall have Development Right on the Scheduled Land.

*(f) In consideration of the First Party contributing the Scheduled Land and the Second Party carrying out the development and construction of the Project on the said Scheduled Land, at its own cost, the **developed / constructed Area/units in the Project shall be shared between the Parties, in the manner described in Annexure II,** and any loss suffered on account of no construction/development on Schedule Land by the Second Party due to a) change in Govt. policy, b) dispute by previous land owners/farmers/GNIDA, then First Party shall compensate the Second Party, such loss, in proportion to its share as in Annexure II.*

(g) In case the First Party decides to get its area book through the Second Party, then the First Party will inform the Second Party in writing and the marketing and broking expenses shall be borne by the First Party of the area falling

to their share as in Annexure II and allocated for marketing and broking. Further the proceeds from booking of the Units will be transferred to the First Party by the Second Party after deduction of charges as stipulated in this Agreement.



From above development agreement dated 09.09.2010, it becomes very clear that there was a clear understanding between the Corporate Debtor and the EIL, who were declared as first party and second party, respectively. The first

party was authorised to develop construct, market and sale/ sub-lease of project. We further note that second party i.e., EIL approached first party/ Corporate Debtor and signed MoU dated 22.07.2010. We also note that the rights and obligations including financial arrangements between the Corporate Debtor and EIL were elaborated in development agreement. There was a clear agreement for sharing consideration between both the parties i.e., Corporate Debtor getting 18% and EIL getting 82% of consideration based on developed super area of the said project.

31. We find that taking into consideration the above development agreement, if total unit of project “Earth Towne” which is stated to be 3400 as per the Appellants, the 18% share of the Corporate Debtor works out to 612 units/ apartments. The Adjudicating Authority has recorded that number of allottees are 1800 and taking 18% share of Corporate Debtor, this work out 324 units/apartments.

32. It has been brought out that the Corporate Debtor sold 220 units to the allottees including the Appellants herein and if 220 units are taken into consideration, the 10 % of the same shall be only 22 allottees in terms of Section 7(1) of the Code, as noted earlier. Even if the Corporate Debtor’s entitlement based on 18% shares of total 3400 units is considered, the threshold is 62 being wherein the present appeal has been filed by 115 Appellants, which is clearly above the required threshold in terms of Section 7 the Code.

33. Here again, the Adjudicating Authority committed an error holding that since 80 out of 146 applicants have filed their claims and admitted by Resolution Professional of EIL, remaining allottees do not meet threshold. This is completely in contrast to judgement of Hon'ble of Supreme Court of India, held in case of *Manish Kumar v. Union of India*, (2021) 5 SCC 1.

Thus, the threshold criteria is applicable at the time of filing Section 7 application and not subsequently. We find clear error in the Impugned Order on this ground.

34. It has been brought to our notice by the Appellant that even on present date, the claims of the Appellants are still pending and therefore, the claims remain unsatisfied. We find merit in the logic that the Appellant cannot be rendered remedy less.

35. It will also be worthwhile to understand the relationship between the Appellant vis-à-vis the Corporate Debtor and EIL. This become clear if we take into account the Builder Buyers Agreement/ Apartment Agreement which has been attached in the present appeal. One of the samples of such Builder Buyer Agreement is taken into consideration and the relevant portion reads as under :-

APARTMENT BUYER'S AGREEMENT

For Residential Apartment in the Project "Earth Towne"

(AT GH-04, SECTOR-1 GREATER NOIDA (WEST) UP)

This Apartment Buyer's Agreement (herein after referred to as the "Agreement") made at New Delhi on this Sep 04, 2015.

BY AND BETWEEN:

M/s Earth Infrastructures Ltd., a company incorporated as per provisions of Companies Act, 1956 having Registered Office at 26, First Floor, Pusa Road, Karol Bagh, New Delhi-110005 (herein after referred to as the "Company") represented through its authorized signatory Mr. Naveen Goel duly authorized vide board resolution (The expression 'Company' shall, unless repugnant to the meaning or context herein, be deemed to mean and include its authorized representatives, nominees, administrators, successors-in-interest, executors and assigns) of the ONE PART.

AND

M/s Earth Towne Infrastructures (P) Ltd., a company incorporated as per provisions of Companies Act, 1956 having its registered office at 26, First Floor, Pusa Road, Karol Bagh, New Delhi-110005, (hereinafter referred to as the "Land Owning Company" or "ETIPL") represented through its authorized signatory Mr. Sanjeev Khawasia duly authorized vide board resolution (The expression "Land Owning Company" or "ETIPL" shall, unless repugnant to the meaning or context herein, be deemed to mean and include its authorized representatives, nominees, administrators, successors-in-interest, executors and assigns) of the SECOND PART.

AND

Name	Relationship	Relative Name	R/o / (Address)
Mr. Jagvir Singh	S/o	Chob Singh	14 Kaumaach Kiran, Near Taala Factory, Phase- 2, Shankar Vihar, Quarsi Koli, Aligarh-202001, Uttar Pradesh, India
Mrs. Sri Devi	W/o	Jagvir Singh	14 Kaumaach Kiran, Near Taala Factory, Phase- 2, Shankar Vihar, Quarsi Koli Aligarh Uttar Pradesh 202001 India

For Earth Infrastructures Ltd.
For Earth Infrastructures Ltd.

(Authorized Signatory)
Authorized Signatory

Earth Towne Infrastructure Pvt. Ltd.
For Earth Towne Infrastructure Pvt. Ltd.

(Authorized Signatory)
Authorized Signatory

Attestee (E)

DETAIL OF PAYMENTS RECEIVED

Booking No :- ETRS-0010
 Client Name :- Mr. Jagvir Singh
 Area (Sq.ft.) :- 1,395.00
 Unit No :- Q1-0302
 Unit Type :- 3BHK+2T
 Floor :- 3

Mode of Payment	Instrument No.	Instrument Date	Bank Name	Receipt Amount	Break-up of Receipt Amount		
					Basic Sales Amount	Other Charges	Service Tax
Direct-Cheque Local	000004	Jul 01, 2015	BANK OF BARODA	5,38,200.00	5,38,200.00	0	16,200
Cheque Local	000009	Aug 15, 2015	BANK OF BARODA	0,77,817.00	0,44,750	0	33,067
			(- Refund)	0.00			
Total				15,16,017.00	14,84,750	0	\$1,267
Total Receipt Amount in Words				Rupees: Fifteen Lakh Sixteen Thousand Seventeen Only:-			

Break-up of Other Charges (If Paid)			
Instrument Date	Instrument No.	Charge Name	Amount
Total			0.00

For Earth Infrastructures Ltd.

 (Authorized Signatory)

Earth Towne Infrastructures Pvt. Ltd.

 (Authorized Signatory)


 Allottee(S)

36. From above, it becomes clear that there was a joint Builder Buyer Agreement between the Appellants with the Corporate Debtor as well as under EIL and therefore, it goes also in the favour of the Appellants that they have independent remedies against both Corporate Debtor as well as the EIL.

37. It will be desirable to take into consideration one judgment delivered by this Appellate Tribunal earlier in the matter of ***Jitendra Arora, Resolution Professional of M/s Premia Projects Ltd. (Developer) vs. Tek Chand*** passed in Company Appeal (AT) (Ins.) No. 1069 of 2020, wherein it was held that of providing effective resolution to the Homebuyers in Real Estate Project both the company involved in the same company being land owning and other being developer can be clubbed together.

38. As far as, the present appeal is concerned, one judgement has been delivered by this Appellate Tribunal in the matter of ***Mist Avenue Pvt. Ltd. vs. Nitin Batra*** passed in Company Appeal (AT) (Ins.) No. 127 of 2023 and this becomes relevant, wherein it was held that filing of applications against two or more Corporate Debtor who were part of the same project are maintainable. The relevant para of the said judgment reads as under :-

“24. From the Judgments delivered by this Tribunal as noted above, it is clear that with regard to Real Estate Projects, this Tribunal has accepted the filing of Application against two or more corporate debtors who were part of the project and the said applications were held maintainable. In the present case, the Adjudicating Authority after noticing the terms and

conditions in the collaboration agreement had made following observations in paragraph 14-15 of the Judgment:

“14. Therefore, it is clear that the subsequent to the cancellation of the first collaboration agreement between the Respondent No. 1 and Respondent No. 2 Company, Respondent No. 3 Company had stepped into the shoes of the Respondent No. 2 Company. The Respondent No. 3 Company vide its communication dated 02.12.2017 to the financial creditors, had acknowledged its arrangement with the Respondent No. 1 Company and also informed that it has taken over the charge of the inventories already sold by the Respondent No. 2 Company and have received all the papers together with the account of money paid by the financial creditors. However, it is pertinent to mention here that allotment letter was issued in the letterhead of Respondent No. 2 and payments were made in the account of Respondent No. 2. 15. Further, we are of the considered view that Respondent No. 1 Company and Respondent No. 3 Company are being controlled and managed by the same group of promoters. Mere change in the shareholding of the Respondent No. 3 Company will not save the Respondent No. 1 Company since the conspectus of facts it is evident that Respondent No. 3 Company was created by the Respondent No. 1 Company only as a face for the project Festival City, whereas

the ultimate beneficiary is the Respondent No. 1 Company only as in the Second Collaboration Agreement, the Respondent No. 3 Company was authorized to take all appropriate actions as well as it was made obliged to incur costs in relation to the project and also responsible for developing strategy of marketing and such other decisions regarding the marketing, branding, pricing, sales and all other decisions stated to be decided with mutual consent. However, Respondent No. 3 company has not been given any power to sell units under the project to any third party without the consent of Respondent No. 1 Company, which clearly established the relation of the principal and agent between the parties.”

25. We are in agreement with the view expressed by the Adjudicating Authority that Section 7 Application filed against all the three appellants together is maintainable. The three appellants being part of one Common Real Estate Project and the Applicants of Section 7 Application being part of the said project they had every right to initiate Section 7 Application against all the three appellants together. We thus uphold the decision of the Adjudicating Authority holding that application under Section 7 is maintainable.”

(Emphasis Supplied)

We find above ratio is squarely applicable in present case.

39. It has further been brought out before us by the Appellants that even in the present case, CIRP was initiated against another subsidiary of EIL, which owned land for another project i.e. “Earth Iconic”. It is stated that the Adjudicating Authority admitted the landowner company namely Celestial Estates Pvt. Ltd. when the CIRP of EIL i.e. the developer company was already underway and claims of the same Allottees admitted in the CIRP of EIL. We find that the Adjudicating Authority should have considered application of the Appellants in similar manner.

40. Coupled with the aforesaid facts, the non-appearance of the Corporate Debtor before this Appellate Tribunal as well before the Tribunal (and at both courts the Corporate Debtor was proceeded ex-parte) would also indicate that the Corporate Debtor had scant respect for the judicial process. We also find that the Appellants have clear case in their favour to initiate Section 7 application before the Adjudicating Authority.

41. At this stage, we will like to record that we are not expressing anything on the merit of the case and we have restricted only on issue of the threshold, based on which the Adjudicating Authority dismissed Section 7 petition filed by the Appellants.

42. Thus, looking from any angle, the present appeal has been found meritorious and the decision of the Adjudicating Authority to be erroneous, hence the present appeal is hereby allowed and the Impugned order is set aside and

remanded back to the Adjudicating Authority. Both the parties are directed to appear before the Adjudicating Authority on **26.09.2025**.

43. No cost. I.As., if any pending are closed

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

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