

Om Kara Assets Reconstruction Private ... vs M/S. Halwasiya Developments Private ... on 25 May, 2026

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No.164 - 166 of 2025

(Arising out of Order dated 17.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court III in I.A. No.3739 of 2023, I.A. No. 5252 of 2023 and I.A. No.6314 of 2023 in CP IB No. 317/(ND)/2022)

IN THE MATTER OF:

Phoenix ARC Pvt. Ltd. Acting as Trustee of Phoenix Trust-Fy25- 1 Member of Committee of Creditors of Andes Town Planners Pvt. Ltd.

...Appellant

Versus

Halwasiya Developments Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellant: Mr. Amit Chadha Sr. Adv. along with Mr. Suresh Dobhal & Mr. Shikhar Kumar, Advocates.

For Respondents: Mr. Gopal Jain Sr. Adv. along with Mr. Satendra Rai, Ms. Ruchika Darira, Advocates for RP.
Mr. Vivek Kohli Sr. Adv. with Mr. Sandeep Bhuraria, Ms. Vatsala Pandey & Ms. Vasudha Chadha, Advocates.

With

Company Appeal (AT) (Insolvency) No.266 - 268 of 2025

(Arising out of Order dated 17.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court III in I.A. No.3739 of 2023, I.A. No. 5252 of 2023 and I.A. No.6314 of 2023 in CP IB No. 317/(ND)/2022)

IN THE MATTER OF:

CIS Infrastructure LLP & Anr.

...Appellant

Versus

Ashok Kumar Gupta,
RP of Andes Town Planners Pvt. Ltd. & Anr.

...Respondents

Present:

For Appellant: Mr. Dhruv Dewan, Mr. Utkarsh Srivastava, Advocates.

For Respondents: Mr. Gopal Jain Sr. Adv. along with Mr. Satendra Rai, Ms. Ruchika Darira, Advocates for RP.

Mr. Vivek Kohli Sr. Adv. with Mr. Sandeep Bhuraria, Ms.
Vatsala Pandey & Ms. Vasudha Chadha, Advocates.
Mr. Suresh Dobhal, Advocate for Intervener.

With

Company Appeal (AT) (Insolvency) No.295 of 2025
& I.A. No. 1128 of 2025

(Arising out of Order dated 17.12.2024 passed by the Adjudicating Authority
(National Company Law Tribunal), New Delhi, Court III in II.A. No. 5252 of
2023 in CP IB No. 317/(ND)/2022)

IN THE MATTER OF:

Dr. Shравan Kumar Vishnoi,
Authorised Representative of the
Financial Creditors (Homebuyers)

...Appellant

Versus

Halwasiya Developments Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellant: Mr. Aditya Madaan, Mr. Parth Bhatia, Advocates.
For Respondents: Mr. Gopal Jain Sr. Adv. along with Mr. Satendra Rai, Ms.
Ruchika Darira, Advocates for RP.
Mr. Vivek Kohli Sr. Adv. with Mr. Sandeep Bhuraria, Ms.
Vatsala Pandey & Ms. Vasudha Chadha, Advocates.
Mr. Suresh Dobhal, Advocate for Intervener.

With

Company Appeal (AT) (Insolvency) No. 365 of 2025
& I.A. No. 1371, 1373 of 2025

(Arising out of Order dated 17.12.2024 passed by the Adjudicating Authority
(National Company Law Tribunal), New Delhi, Court III in I.A. No.3739 of 2023
in CP IB No. 317/(ND)/2022)

IN THE MATTER OF:

Ashok Kumar Gupta,
RP of Andes Town Planners Pvt. Ltd

...Appellant

Versus

Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025

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Present:

For Appellant: Mr. Gopal Jain Sr. Adv. along with Mr. Satendra Rai, Ms. Ruchika Darira, Advocates

For Respondent: Mr. Vivek Kohli Sr. Adv. with Mr. Sandeep Bhuraria, Ms. Vatsala Pandey & Ms. Vasudha Chadha, Advocates.
Mr. Suresh Dobhal, Advocate for Intervener.

JUDGMENT

ASHOK BHUSHAN, J.

These appeals have been filed challenging the common order dated 17.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court III in I.A. No.3739 of 2023, I.A. No. 5252 of 2023 and I.A. No.6314 of 2023 in CP IB No. 317/(ND)/2022. By the impugned order the Adjudicating Authority has rejected I.A. No.3739 of 2023, allowed I.A. No.5252 of 2023 and dismissed I.A. No.6314 of 2023. Aggrieved by the aforesaid order these appeals have been filed.

2. Company Appeal (AT) (Insolvency) No.164-166 of 2025 has been filed by the Phoenix ARC Pvt. Ltd., the Financial Creditor of the Corporate Debtor M/s Andes Town Planners Pvt. Ltd. challenging the order dated 17.12.2024 passed in I.A. No.3739 of 2023, I.A. No. 5252 of 2023 and I.A. No.6314 of 2023. Appellant in the appeal has prayed to set aside the order dated 17.12.2024 passed in the aforesaid I.As.

3. Company Appeal (AT) (Insolvency) No.266-268 of 2025 has been filed by M/s CIS Infrastructure LLP & Anr. challenging the order dated 17.12.2024 passed in I.A. No.3739 of 2023, I.A. No. 5252 of 2023 and I.A. No.6314 of 2023. Appellant prays to set aside the impugned order and further sought a Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 declaration that 16 residential units owned by the Appellant are not assets of Halwasiya Developments Pvt. Ltd.

4. Company Appeal (AT) (Insolvency) No.295 of 2025 has been filed by Dr. Shravan Kumar Vishnoi, Authorised Representative of the Financial Creditors (Homebuyers) challenging the order dated 17.12.2024 passed in I.A. No. 5252 of 2023 in CP IB No. 317/(ND)/2022.

5. Company Appeal (AT) (Insolvency) No.365 of 2025 has been filed by Ashok Kumar Gupta, RP of the Corporate Debtor challenging the order dated 17.12.2024 rejecting I.A. No. 3739 of 2023 filed by

the Appellant. In the appeal in addition to setting aside order dated 17.12.2024 on I.A. No.3739 of 2023 further direction has been sought including to stop the construction and handover the possession of the building Ananta/New Tower/Stylus Tower immediately to the Appellant.

6. All appeals having been filed challenging the common order, it is relevant to notice the brief background facts of the for deciding these appeals:

(i) Lucknow Development Authority by Sale Deed dated 30.08.2006 allotted Plot No. TCG-3/3 admeasuring 73,018.74 sq. mtrs. situated at Vibhuti Khand, Gomti Nagar, Lucknow to UP Township Private Limited, the holding company of the Corporate Debtor. UP Township Private Limited by Registered Transfer Deed dated 24.07.2008 transferred the above plot to the Corporate Debtor - M/ s Andes Town Planners Private Limited.

Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025

(ii) On 29.09.2014, a Loan Agreement was executed between the Corporate Debtor and Dewan Housing Financial Corporation Limited for facility of Rs.90 Crores. To secure the above financial facility a Registered Mortgage Deed dated 01.10.2014 was executed by Promoters of the Corporate Debtor and Corporate Debtor in favour of the Financial Creditor mortgaging entire land of 73,018.74 sq. mtrs with unsold units and receivables of the project including project Ananta Residencies.

(iii) The Corporate Debtor entered into a Development Management Agreement (DMA) dated 19.01.2018 with Halwasiya Developments Pvt. Ltd. The Corporate Debtor has proposed to develop residential cum commercial tower in the land referring to New Town Project on part of the land admeasuring 4623.92 sq. mtrs. The Corporate Debtor had allotted certain units in the New Tower Project. Details of existing allottees and booked units has been provided in Schedule 3 of the Development Agreement. Balance receivables from allottees were detailed in Schedule IV of the Agreement. M/s Halwasiya Developments Pvt. Ltd. was appointed as Development Manager for construction and implementation of project related work with respect to New Tower Project. The agreement contained various terms and conditions including rights and obligations of Development Manager.

(iv) An Unregistered Power of Attorney was executed on 19.01.2018 by the Corporate Debtor in favour of M/s Halwasiya Developments Pvt. Ltd. A Consortium Agreement dated 05.09.2020 was also entered Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 between the Corporate Debtor and M/s Halwasiya Developments Pvt. Ltd.

(v) On an application filed under Section 7 by the Financial Creditor -

Piramal Capital and Housing Finance Limited, successor in interest to Dewan Housing Financial Corporation Limited alleging debt and default on the part of the Corporate Debtor.

(vi) The Adjudicating Authority vide order dated 02.03.2023 admitted Section 7 application and appointed Mr. Ashok Kumar Gupta as Interim Resolution Professional who was subsequently confirmed as Resolution Professional. After initiation of the CIRP, a claim was filed by the Piramal Capital and Housing Finance Ltd., Financial Creditor in the CIRP of the Corporate Debtor which claim was admitted totalling to Rs. 2,25,04,42,092/-.

(vii) The Resolution Professional after initiation of the CIRP come to know that M/s Halwasiya Developments Pvt. Ltd. is in possession of the project Ananta Residencies, which is part of the land belonging to the Corporate Debtor. The Resolution Professional sent a letter to M/s Halwasiya Developments Pvt. Ltd. asking it to give possession of the project Ananta Residencies and detailed information pertaining to the project. The letter of the Resolution Professional was subsequently replied by M/s Halwasiya Developments Pvt. Ltd. claiming right to carry out construction as per Development Agreement dated 19.01.2018.

Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025

(viii) The Resolution Professional filed an I.A. No.3739 of 2023 on 20.06.2023 praying for direction to M/s Halwasiya Developments Pvt. Ltd. (hereinafter referred to as Halwasiya) to stop construction and hand over the possession of project Ananta Residencies to the Appellant and further, direct the Halwasiya to provide all relevant details and documents to the Resolution Professional to carry out the CIRP process.

(ix) Another I.A. No.5252 of 2023 was filed by the Halwasiya seeking a direction to the Resolution Professional to withdraw letter dated 21.06.2023 sent to the Lucknow Development Authority requesting the Lucknow Development Authority to not sanction and approve any further plans in reference to land of the Corporate Debtor. Certain other prayers were made by Halwasiya in its application.

(x) Third application, I.A. No.6314 of 2023 came to be filed by Mrs. Nivedita Singhal and 4 other buyers of project Ananta Residencies seeking direction to stay the CIRP proceeding and further direct the Resolution Professional to withdraw letter dated 21.06.2023 addressed to Lucknow Development Authority. Further prayer was made to exclude Ananta Residencies from the CIRP of the Corporate Debtor.

(xi) I.A. No.3739 of 2023 was replied by Halwasiya objecting to the prayers made in the application. The Adjudicating Authority heard all three applications and by order dated 17.12.2024 dismissed I.A. No.3739 of 2023 filed by the Resolution Professional. Allowed I.A. Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 No.5252 of 2023 filed by Halwasiya and rejected I.A. No.6314 of 2023 filed by Mrs. Nivedita Singhal and other homebuyers of project Ananta Residencies. All these appeals have been filed challenging above order dated 17.12.2024. Details of the appeals we have already noticed above.

7. The appeals were heard by this Tribunal on 28.02.2025, on which date following order was passed:

"O R D E R (Hybrid Mode) 28.02.2025: All these Appeals have been filed against an Order dated 17.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Court - III), by which I.A. No. 3739/2023 filed by the Resolution Professional (RP), I.A. No. 6314/2023 filed by the Homebuyer and I.A. No. 5252/2023 filed by Halwasiya Developments Pvt. Ltd has been decided. I.A. No. 3739/2023 filed by RP has been rejected and I.A. No. 5252/2023 filed by Halwasiya Developments Pvt. Ltd. has been allowed and it was held that no Orders are required in I.A. No. 6314/2023.

2. Learned Counsel for the Appellants in these Appeals have raised various submissions questioning the Order impugned. It is submitted that rejection of the RP's Application I.A. 3739/2023 which was under Section 19(2) was not correct and the Prayer (c) made in the Application has not been even adverted to. It is further submitted that with the Financial Creditor having 57% vote shares the assets were mortgaged and no NoC Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 was taken from Financial Creditor for entering into a Development Agreement with Halwasiya Developments Pvt. Ltd.

3. Learned Counsel appearing on behalf of Halwasiya Developments Pvt. Ltd. submits that there was a Development Agreement in favour of the Halwasiya Developments Pvt. Ltd. on 19.01.2018, under which the Developer was entitled to construct and sell the units as per the Development Agreement of unsold areas. It is submitted that certain permission was obtained from Lucknow Development Authority (LDA) of Additional FSI by the Developer. It is submitted that the constructions have been carried out by the Developer only with regard to ANANTA Residences, with regard to which the Development Agreement was there. The Developer has nothing to do with other part of the Corporate Debtor's land or project.

4. It is further submitted that the Adjudicating Authority committed an error in holding that it had no jurisdiction to take a decision with regard to Development Agreement 19.01.2018 in the proceeding and, however, thereafter proceeded and allowed the Application filed on basis of the Development Agreement dated 19.01.2018.

5. Submissions raised by Counsel for the Parties need consideration.

6. Issue Notice in all the Appeals.

7. Let Reply be filed by concerned Parties within two weeks. Rejoinder may be filed within one week thereafter.

Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 List all the Appeals 'For Admission/Disposal' on 01st April, 2025 at 02:00 PM.

In the meanwhile, Developer shall carry on the construction and in event, any unit is sold, the said amount shall be deposited in the separate Escrow Account by creating an Escrow Account in a nationalised Bank which shall not be utilised without the leave of the Court."

8. Notices were issues in the appeals. Reply and rejoinder affidavits have been filed. We have heard Shri Amit Singh Chadha, Senior Advocate for Phoenix ARC Pvt. Ltd., Shri Gopal Jain, Senior Advocate for Resolution Professional, Shri Vivek Kohli, Senior Advocate has appeared for Halwasiya and Shri Dhruv Dewan and Shri Utkarsh Srivastava, Advocates have appeared for Appellant - CIS Infrastructure LLP and Anr. and Shri Aditya Madaan, Advocate has appeared for Appellant - Dr. Shraavan Kumar Vishnoi.

9. Shri Amit Chadha, learned senior counsel appearing for the Financial Creditor - Phoenix ARC Pvt. Ltd. submitted that the Corporate Debtor has entered into registered Mortgage Deed dated 01.10.2014 with Dewan Housing Financial Corporation Limited, who was predecessor in interest of the Appellant, to secure the loan facility of Rs.90 Crore granted to the Corporate Debtor. The mortgage was for entire land admeasuring 73,018.74 sq. mtrs along with unsold units, receivables of the project including project Ananta Residencies. It is submitted that the Corporate Debtor could not have entered into any Development Agreement with Halwasiya without obtaining a NOC from the Financial Creditor. The land and the entire project being charged Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 with the Financial Creditor; no further encumbrances could have been created by the Corporate Debtor. The Development Agreement dated 19.01.2018 is unregistered document which was executed without obtaining NOC from the Appellant, hence, it could not have any effect on the rights of Financial Creditor to whom the land and project was charged. Challenging the order passed by the Adjudicating Authority dated 17.12.2024 rejecting the I.A. filed by the Resolution Professional, it is submitted that the project Ananta Residencies was also project of the Corporate Debtor and after initiation of CIRP, the Resolution Professional was fully entitled to take possession of all assets of the Corporate Debtor. It is submitted that under Section 19 of the I&B Code, the Resolution Professional had every jurisdiction to ask for any information/document from Halwasiya. The Adjudicating Authority committed error in rejecting the application filed by the Resolution Professional. It is submitted that the Halwasiya has no ownership right with respect to project Ananta Residencies. The Developer has no right to sell unsold units. The mortgage right of the Financial Creditor has to be protected. The unsold units are under mortgage. The Development Agreement was devised to deceive the rights of the Financial Creditor. Learned counsel submitted that the Financial Creditor was not even made party to any of the applications and order impugned has been passed without Financial Creditor before the Court. Learned counsel for the Appellant submitted that observation in the impugned order by the Adjudicating Authority that property becomes an asset of the Halwasiya within meaning of Sub-section 27 of Section 3 of the code is wholly erroneous. Halwasiya has no Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 ownership right to the project Ananta Residencies or nay unsold units. By an unregistered Development Agreement dated 19.01.2018, no rights can be created by Halwasiya in the immovable property. Halwasiya is not entitled to sell any unsold units in the project Ananta Residencies.

10. Learned counsel appearing for M/s CIS Infrastructure LLP and another in support of the Appeal submitted that Appellant was allotted 16 units in project Ananta Residencies, which allotment were made after obtaining no objection certificate form then Financial Creditor. Appellant was not granted any opportunity before the Adjudicating Authority nor Appellant was party to any of the applications which have been decided by the Adjudicating Authority. In Para 22 of the impugned order, the submission advanced by Halwasiya has been noted where it has been submitted that the Corporate Debtor has no right to execute sale deed pertaining to units of the project in favour of M/s CIS Infrastructure LLP whereas the Appellant M/s CIS Infrastructure LLP was not even impleaded as party in any of the applications. No submission with regard to claim of the Appellant could have been entertained, Appellant being not a party to the proceeding. It is submitted that even the Development Agreement which is claimed to be executed by Halwasiya on 19.01.2018 there is reference of units of the Appellant. Learned counsel for the Appellant submits that the Appellant having been allotted 16 units with regard to Ananta Residencies, the Corporate Debtor has also executed Sale Deed for 16 residential units to the Appellant. Appellant after coming to know that application has been made to change the nature of Ananta Tower from residential to commercial, raised objection to the Lucknow Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 Development Authority in the year 2021. No response having been received from Lucknow Development Authority, the Appellant also filed a Writ Petition being Writ- C No. 7104 of 2022 before Allahabad High Court, Lucknow Bench, which was disposed of directing the Lucknow Development Authority to hear and decide the objection of the Appellant. The Appellant filed representation and highlighted its objection. Halwasiya filed a Suit against Appellant No.2, the Corporate Debtor and Mr. Gurcharan Singh before the Court of Civil Judge (Senior Division), Lucknow bearing Civil Suit No. 224 of 2023 seeking cancellation of the registered sale deed dated 22.05.2021 for Residential Unit No. 904. Against order admitting Section 7 application Halwasiya has filed an appeal being Company Appeal (AT) (Ins.) No.551 of 2023 seeking exclusion of Ananta Tower from CIRP of the Corporate Debtor, which appeal was withdrawn on 23.05.2023. Appellant also filed a Suit before Court of Civil Judge (Senior Division), Lucknow against Halwasiya and Corporate Debtor. It is submitted that an application under Section 66 of the I&B Code has been filed against the Appellants and others where only allegation is that allotment is undervalued. The Appellant shall be defending the said proceeding before the Adjudicating Authority. It is submitted that no consent was ever granted by the Appellant with regard to change of nature of Tower from residential cum commercial to commercial. The Appellant has also filed objection before the Lucknow Development Authority with respect to change of use of Tower and shall be taking up proceeding, in the above regard. The Adjudicating Authority has taken contradictory stand in the impugned order, where in one hand it has held that dispute relate to contractual right of the parties hence Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 the application filed by Resolution Professional is not maintainable whereas has issued direction on the application filed by the Halwasiya. No right in subject property is created of Halwasiya on the basis of unregistered Agreement. Property can only be transferred by Registered Deed of Conveyance. Registered Conveyance Deed cannot be negated by any order passed by the Adjudicating Authority.

11. Learned counsel appearing for Dr. Shravan Kumar Vishnoi, Authorised Representative of the Financial Creditors - Homebuyers challenging the order dated 17.12.2025 passed in I.A. No.5252 of 2023 submits that the Adjudicating Authority has erroneously rejected I.A. No.3739 of 2023 filed by

the Resolution Professional and committed error in allowing I.A. No.5252 of 2023 filed by Halwasiya. Several homebuyers have already invested in residential units that were later converted to commercial usage without required approvals or consents. Adjudicating Authority disregarded vested rights of the homebuyers. Appellant's prayer is to restore unified CIRP for all creditors of the Corporate Debtor.

12. Learned counsel appearing for the Resolution Professional challenging the order passed by the Adjudicating Authority rejecting I.A. No.3739 of 2023 submits that the Resolution Professional have every jurisdiction to file application under Section 60(5) and 19(2). The Adjudicating Authority committed error in rejecting application filed by the Resolution Professional as not maintainable whereas after commencement of the CIRP, the Resolution Professional is entitled to take possession of assets of the Corporate Debtor under Section 25 r/w Section 19(1)(f). It is submitted that the Halwasiya Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 cannot claim to be no covered by Section 19. It at best has a Development Agreement with the Corporate Debtor, hence, was obliged to provide possession of the project Ananta Residencies and provide all relevant information and documents to the Resolution Professional. It is the Resolution Professional who has to conduct entire CIRP including the project Ananta Residency. The mere fact that there was a Development Agreement dated 19.01.2018 cannot be ground to exclude the project from the CIRP. The prayer of Halwasiya to exclude project Ananta Residencies form CIRP has not been granted by the Adjudicating Authority. Appeal was also filed against the admission order by Halwasiya, which appeal has been withdrawn on 23.05.2023. The Development Agreement did not come into operation on account of not obtaining NOC from the Financial Creditor. Learned Counsel for the Appellant has referred to Clause 4 of the Development Management Agreement (DMA). Application filed by the Resolution Professional was fully maintainable under Section 19(2) r/w 60(5) of the IBC. The Halwasiya has no right to sell unsold units by unregistered Development Management Agreement and Power of Attorney. Halwasiya cannot claim any right in the unsold units. The veracity of clauses of Board Resolution dated 20.01.2018 is questioned. It is submitted that the Adjudicating Authority committed error in rejecting the application filed by the Appellant - Resolution Professional.

13. Shri Vivek Kohli, learned senior counsel appearing for Halwasiya refuting the submission of the Appellant(s) submits that initiation of CIRP does not nullify the existing contract. Referring to Section 20(2)(b) of the IBC, it is submitted that contract earlier entered continues and power has been Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 given to the Resolution Professional to amend and modify the contract. It is obligation of the Resolution Professional to run the Corporate Debtor as a going concern. Construction of project which is already undertaken by Halwasiya cannot be interfered by the Resolution Professional, the contract with the Corporate Debtor being still continuing, which is binding on the Corporate Debtor. Section 25(1) of the IBC again contemplate continued business operation of the Corporate Debtor by the Resolution Professional. Halwasiya which has entered into Development Agreement dated 19.01.2018 has acquired development rights and development rights of Halwasiya are not in entire piece of land rather it is only on portion of land admeasuring 4623.92 sq. mts.; the project known as project Ananta Residency. Learned counsel for Halwasiya submits that Halwasiya has right on unsold units. Halwasiya has carried on construction which was left incomplete by the Corporate

Debtor and Halwasiya has spent an amount of more than Rs.32 Crore in carrying out the construction. It is submitted that the Adjudicating Authority itself has noticed that more than 96% of the work is complete in the project. It is submitted that the change of project from residential cum commercial to commercial is with the consent of 92% allottees who had agreed for the change. There were 56 allottees in the residential units and now there are 126 commercial allotment. Shri Vivek Kohli, learned counsel appearing for Halwasiya conceded that Halwasiya is not claiming ownership rights in the existing units which were allotted in favour of different allottees and the Halwasiya under take to complete the construction regarding all existing allottees to handover the possession to the existing allottees after allottees Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 comply their obligation to pay balance amount. It is submitted that Halwasiya is claiming right only in the unsold units which is the scheme as provided in the Development Agreement dated 19.01.2018. It is submitted by Shri Kohli that all rights which are given under the Development Agreement to the Halwasiya have to be realised. It is submitted that NCLT never gave any ownership right to Halwasiya and they are only claiming development rights. It is submitted that Halwasiya has undertaken construction and completed the project to the extent of 96% and ready to honour the existing allottees. Halwasiya having spent more than Rs.32 Crores, it is clearly entitled to receive the amount realized from sale of unsold units. The Development Agreement dated 19.01.2018 having continuing, the Resolution Professional is also obliged to honour the obligation of the Corporate Debtor under the Development Agreement.

14. Learned counsel for the parties have placed reliance on various judgment of this Tribunal and Hon'ble Supreme Court which we shall notice hereinafter while considering the submissions of the parties.

15. From the submissions of the parties and the materials on record following questions arise for consideration in these appeals:

1. Whether application filed by the Resolution Professional under Section 19 r/w Section 60(5) being I.A. No.3739 of 2023 is maintainable against M/s Halwasiya Developments Pvt. Ltd.?
2. Whether on the basis of Development Agreement dated 19.01.2018 entered with the Corporate Debtor along with Power of Attorney Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 dated 19.01.2018 and Consortium Agreement dated 05.09.2020, Halwasiya can claim any ownership right in the project Ananta Residency with respect to allotted units and unsold units?
3. Whether Resolution Professional had made out any case in I.A. No.3739 of 2023 for grant of prayers made?
4. Whether mortgage created in favour of the Financial Creditor dated 01.10.2014 with respect to project land along with unsold units and receivables of the project continues with respect to project Ananta Residency despite Development Agreement dated 19.01.2018 Power of Attorney dated 19.01.2018 and Consortium Agreement

dated 05.09.2020?

5. Whether Halwasiya was entitled to complete the construction of project Ananta Residency?

6. Whether conversion of Ananta Residency from residential cum commercial to commercial is in accordance with law?

7. To what relief the Appellants are entitled in these appeals?

Question No.1, 2 and 3

16. The statutory scheme as delineated by IBC is that after commencement of the CIRP, IRP/RP is entitled to take custody and control of the assets of the Corporate Debtor. Section 18(1)(f) of the I&B Code is as follows:

Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 "18(1)
The interim resolution professional shall perform the following duties, namely:--

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including--

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;"

17. Further Section 25 of the I&B Code also obligate the Resolution Professional to preserve and protect the assets of the Corporate Debtor and take custody and control of the assets of the Corporate Debtor, including business records of the Corporate Debtor. Section 25 (1) and (2) are as follows:

Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 "Section 25: Duties of resolution professional - (1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely:--

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-

judicial or arbitration proceedings;

(c) raise interim finances subject to the approval of the committee of creditors under section 28;

(d) appoint accountants, legal or other professionals in the manner as specified by Board;

(e) maintain an updated list of claims;

(f) convene and attend all meetings of the committee of creditors;

(g) prepare the information memorandum in accordance with section 29;

1[(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.]

(i) present all resolution plans at the meetings of the committee of creditors;

(j) file application for avoidance of transactions in accordance with Chapter III, if any; and

(k) such other actions as may be specified by the Board."

18. The CIRP in the present case commenced by order of the Adjudicating Authority dated 02.03.2023 on an application filed under Section 7 by Piramal Capital and Housing Finance Limited. We have noted above that after securing loan of Rs.90 Crores extended by Piramal Capital and Housing Finance Limited, the Corporate Debtor has executed a registered mortgage with respect to entire land of 73,018.74 sq. mtrs. as well as unsold units, receivables of the project

including project New Tower/ Ananta Residencies. There is no dispute between the parties that the Corporate Debtor is owner of the entire 73,018.74 sq. mtrs. land, hence, is also owner of the land admeasuring 4623.92 sq. mtrs. on which project Ananta Residencies is being constructed. The prayers made in I.A. No.3739 of 2023 has been noticed in Para 1A of the impugned order, which are as follows:

"A. IA-3739 /2023 has been filed by Mr. Ashok Kumar Gupta, the Applicant/RP, under Section 60(5) read with Section 19(2) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 Law Tribunal Rules, 2016 before this Adjudicating Authority. The Applicant seeks the fallowing reliefs:

"a. Allow the present application;

b. Direct the Respondent to stop the construction and handover the possession of the project Ananta Residence immediately to the applicant;

c. Direct the Respondent to provide all details/ documents/ information of the project to the RP for carrying out Corporate Insolvency Resolution Process;

d. Pass such other further order/ order(s) as may be deemed fit and proper in the facts and circumstances of the case."

19. The application filed by the Resolution Professional was under Section 60(5) r/w Section 19(2). The Resolution Professional after commencement of the CIRP has sent information to Halwasiya Developments Pvt. Ltd. and several emails and written letter dated 10.05.2023 for handing over possession of the project Ananta Residencies along with all relevant information and documents pertaining to the project as well as to stop all construction related activities. After letter dated 10.05.2023, the Resolution Professional has sent various communications to the Halwasiya. Halwasiya claim to have sent reply to said letter dated 10.05.2023 by letter dated 15.05.2023. Several correspondences took place between the Resolution Professional and Halwasiya. In the letter dated 15.05.2023, Halwasiya informed that it has filed an appeal being Company Appeal (AT) (Ins.) No.551 of 2023 in the Appellate Tribunal. It was stated by Halwasiya that under the Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 Development Agreement and Consortium Agreement it has expended substantial sum till date in the project. It is useful to notice last para of letter dated 15.05.2023 of the Halwasiya.

"HDPL under the Development Management Agreement and the Consortium Agreement, has duly performed its obligations and has expended a substantial sum till date in the project. Furthermore, you are under an obligation to continue the operations of the Corporate Debtor as a going concern. In the present case in terms of the right and obligations envisaged under the agreements executed in favour of HDPL, by continuing the construction of the project, HDPL is assisting you in effectively running the business of the Corporate Debtor as a going concern. Disruption in the ongoing work will lead to erosion in value for potential recoveries for the COC."

20. The Company Appeal which was filed by Halwasiya came to be dismissed as withdrawn on 23.05.2023, hence, the CIRP process had to continue in accordance with law. The Adjudicating Authority while considering I.A. No.3739 of 2023 has dealt with Section 19(1) and 19(2) and noted the submission of learned counsel for Halwasiya in Para 28 to 31 of the impugned judgment. The maintainability of the application filed by the Resolution Professional was decided against the Appellant. It is useful to notice following observations in Para 35, which is as follows:

"35. The aforesaid position of law as laid down by the Hon'ble Supreme Court of India in Tata Consultancy Services Ltd. (supra) and by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 Sumit Binani (supra) and in M/ s. SI COM Ltd. (supra) leaves no iota of doubt that the disputes in the present case arise out of contractual rights of the parties emanating from the Development Management Agreement dated 19.01.2018 which was entered into way before initiation of CIRP proceedings dated 02.03.2023. We therefore, agree with the submissions made by the Mr. Vivek Kohli, Ld. Senior Counsel appearing for Respondent and answer this issue in favour of the Respondent and hold that the issues raised in this application by the Applicant relate to Contractual disputes not arising out of the CIRP and therefore the instant application filed under Section 60(5) is misconceived and cannot be entertained."

21. In Para 39 and 40 of the impugned order, following further has been observed:

"39. A perusal of the definition of the word 'consideration' as defined under Section 2(d) of the Indian Contract Act, 1872 and the law laid down by the Hon'ble Supreme Court in Regional Provident Fund Commissioner (supra) and in Shiv Kumar Joshi and Sonia Bhatia (supra), makes it clear that in the present case, the Respondent i.e. M/s. Halwasiya Developments Private Limited has established that consideration was paid in terms of the Development Management Agreement dated 19.01.2018, Power of Attorney dated 19.01.2018 and Consortium Agreement dated 05.09.2020 and therefore, the argument advanced by the Applicant that there was no consideration involved cannot be accepted. Therefore, we are of the view that the Respondent i.e. M/s.

Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 Halwasiya Developments Private Limited has acquired the rights of development for developing the project i.e. "Ananta Residencies" by virtue of the Development Management Agreement dated 19.01.2018, Power of Attorney dated 19.01.2018 and Consortium Agreement dated 05.09.2020 and as such the said property becomes an asset of the Respondent/Developer within the meaning of Sub- Section 27 of Section 3 of the Code as held by the Hon'ble NCLAT in K.H. Khan and Anr. Vs. Art Constructions Pvt. Ltd. and Ors. Company Appeal (AT) (Insolvency) No. 1116 of 2024 judgment dated 14.11.2024.

40. To give more strength to the conclusion arrived at by us that the Respondent/M/s. Halwasiya Developments Private Limited has acquired the Development Rights by virtue of a set of documents, it is pertinent to note the ratio of the judgment passed by the Hon'ble Supreme Court of India in the case of Victory Iron Works Ltd. vs Jitendra Lohia and Anr. reported in (2023) 7 SCC 227 wherein the Hon'ble Supreme Court of India has held that:

"35. From the sequence of events narrated above and the terms and conditions contained in the Agreements entered into by the parties, it is more clear than a crystal that a bundle of rights and Interests were created in favour of the Corporate Debtor, over the immovable property in question. The creation of these bundle of rights and interests was actually for a valid consideration. But for the payment of such consideration, Energy Properties would not even have become the owner of the property in dispute. Therefore, the development rights created in favour of the Corporate Debtor constitute "property" within the meaning of the expression under Section 3(27) of IBC. At the cost of Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 repetition, it must be recapitulated that the definition of the expression "property" under Section 3(27) includes "every description of interest, including present or future or vested or contingent interest arising out of or incidental to property". Since the expression "asset" in common parlance denotes "property of any kind", the bundle of rights that the Corporate Debtor has over the property in question would constitute "asset" within the meaning of Section 1 B(f) and Section 25(2)(a) of IBC."

Therefore, the Respondent has right to develop the project in question."

22. Application filed by the Resolution Professional was under Section 60(5) and 19(2). We need to first notice Section 19. Section 19(1) and (2) provides as follows:

"19. (1) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall extend all assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor.

(2) Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions."

23. Section 19(2) is in very wide term, which oblige any personnel of the Corporate Debtor, its promoter or any other person required to assist or cooperated with the Interim Resolution Professional. The claim of Halwasiya is on the basis of Development Agreement dated 19.01.2018 which was an Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 agreement entered by the Corporate Debtor with Halwasiya. We have already noticed provision of

Section 25 which deals with duties of Resolution Professional where Resolution Professional is obliged to preserve and protect the assets of the Corporate Debtor including the continued business operations. The Corporate Debtor was engaged in business of real estate development by Development Agreement it has appointed Halwasiya as Development Manager to complete the construction of project Ananta Residencies. Halwasiya is very well covered by the expression used in Section 19(2); "any other person required to assist or cooperate with the interim resolution professional". If the Resolution Professional has to carry on business of the Corporate Debtor, it has to interact with all those who have agreement and contract with the Corporate Debtor. Halwasiya itself in its reply dated 15.05.2023, as noted above, stated that Resolution Professional has to permit continuance of construction. Thus, the application under Section 19(2) was fully maintainable.

24. Shri Vivek Kohli, learned Senior Counsel appearing for Halwasiya Developments Pvt. Ltd. ("Halwasiya") has referred to various provisions of Development Management Agreement ("Development Agreement") and Consortium Agreement to support his right of carrying on the development and the sale of unsold units. We need to first notice certain provisions of Mortgage Deed, which was executed by the CD in favour of Dewan Housing Finance Corporation Ltd. ("DHFL"), certain clauses of Development Management Agreement dated 19.01.2018 and the Consortium Agreement dated 05.09.2020.

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25. As noted above, the area of 73,018.74 sq. meters was transferred to the CD on 24.07.2008. The CD has started development of various Towers in the transferred land. A Loan Agreement was entered into by the CD with Dewan Housing Finance Corporation Ltd. on 29.09.2014 and for security of loan a Mortgage Deed dated 01.10.2014 was executed by the CD in favour of DHFL, creating exclusive mortgage of entire land along with unsold units, receivables of the project. The Mortgage Deed is part of the record of the Company Appeal (AT) (Ins.) No.164-166 of 2025, which has been filed at Annexure A-3. Clause 2 of the Mortgage Deed under which Mortgagors/ Borrowers have granted transfer and assigned the Mortgagee exclusive mortgage/ charge of the property as mentioned in Schedule 1 to 3. Clause 2 of the Mortgage Deed provides as follows:

"2. In consideration of the said loan lent and advanced/agreed to be lent and advanced or continued by the Mortgagee to the Borrower, the Mortgagors/Borrower do hereby grant, transfer, assign and assure unto the Mortgagee, as and by way of SIMPLE MORTGAGE but without possession as first and exclusive mortgage/charge, the property as mentioned in the Schedule I to III hereunder written TOGETHER WITH ALL AND SINGULAR the construction present and future, wells, waters, water courses, ways paths, passages, lights, liberties, privileges easements, advantages and appurtenances whatsoever to the said lands, hereditaments and premises appertaining to or with the same or any part thereof, now or heretofore belonging or occupied or enjoyed or reputed or known as part and parcel and Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 member thereof or appurtenant thereto AND ALL THE estate, rights, title, interest, property, claimed and demands of the Mortgagors into and upon the said property hereby

granted, transferred and assured as aforesaid or intended so to be AND all the documents, deeds, writings and other evidences of title in any way relating thereto in the possession of the Mortgagors or which they can without suit procure AND all the Receivables of the said Schedule I to III property including the receivables by way of sale/lease/leave and license of units etc. including the receivables from the units/Parking Spaces etc. already sold/agreed to be sold AND ALSO all the rights and benefits of the Development Agreements/Lease/Leave & License agreement and all the Licenses and Approvals/Permissions of the Mortgagors/Borrower in respect of Schedule 1 to III property and all other claims (including insurance claims) of the Mortgagors/Borrower relating thereto (all which land, building and development and other rights etc. hereby granted, transferred, assigned and assured or intended so to be are hereinafter for brevity's sake collectively referred to as "the Mortgaged: Premises as particularly mentioned in the Schedule I to III hereunder written") as securities for repayment of the said loan together with interest, costs, charges and expenses and payment of all monies for the time being due and payable to the Lender on the security of these presents."

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26. There was restriction on the Mortgagors to deal with or dispose of or to enter into any lease or arrangement during the continuance of the mortgage security. Clause 3.c. is as follows:

"3.c. That the Mortgagors/Borrower will not at any time during the continuance of this security deal with or dispose off, nor enter into any lease or arrangements nor shall create in favour of any other party any mortgage lien, charge or third party rights or interest howsoever nor create any encumbrances of any kind whatsoever on the Mortgaged Premises or any part thereof or any interest in or over the same to the intent and purposes that the Mortgaged Property shall remain and continue to remain free from encumbrances of any nature whatsoever other than those in favour of the Mortgagee."

27. In Schedule 3 of the Mortgage Deed, there were two Annexures. Annexure-1 which was "List of unsold Units to the mortgaged" and another category was "List of booked Units to be mortgaged with DHFCL (charge to the extent of balance receivables)". Annexure-2 contains "List of Units not to be mortgaged". Thus, there was also specific exclusion of various Units, which were not to be mortgaged.

28. Certain clauses of Development Agreement dated 19.01.2018, which have been referred to and relied by the parties need to be noticed. The Development Agreement was entered between the CD and Halwasiya with respect to New Tower/ New Tower Project. Recitals (A) (a) to (e) mention that Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 New Tower Project to be developed on the identified and demarcated portion of land admeasuring 4,623.92 square meters, sub-clause (e) is as follows:

"e) Thereafter, ATPPL also started the construction of a new tower comprising of multistoried residential cum commercial tower under the name and style of stylus tower as per the sanctioned building plans (hereinafter referred to as "New Tower"/ "New Tower Project") on a part of the said Land and being developed on the identified and demarcated portion of land admeasuring 4,623.92 square meters approximately as more clearly depicted in yellow color in Schedule I attached hereto (hereinafter referred to as "Portion 'B' Land"). The permissible Floor Area Ratio (FAR)/ FSI already approved/ sanctioned and additional FAR/FSI available as per currently applicable norms is as more particularly detailed in Schedule II."

29. Clause (f) also clearly mentions that CD has already allotted/ booked certain units of the New Tower to the various allottees. Following was stated in sub-clause (f):

"f) ATPPL has already allotted/ booked certain units of the New Tower (hereinafter referred to as "Booked Units") to the various allottees (hereinafter referred to as "Existing Allottees") as more particularly detailed in Schedule III. As on Effective Date, the remaining area in the New Tower, other than already allotted against Booked Units, which as per currently sanctioned building plans is to the tune of at least 30,000 (Thirty Thousand) square feet approximately remains Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 unsold/allotted apart from any additional area that may be available or compoundable."

30. With regard to Development Manager, i.e. Halwasiya in Recitals-D, following was stated:

"D. AND Whereas ATPPL has approached the Development Manager and expressed its desire to engage the Development Manager to facilitate and assist in construction, implementation and completion of the New Tower Project including though not limited to planning, re-designing, construction and completion of New Tower, consultancy and coordination of the marketing and selling, in customer handling and collection management and such other services as may be required for execution, completion and implementation of the New Tower Project. For the services and responsibilities to be undertaken by the Development Manager in respect of the New Tower Project, ATPPL has offered to pay to Development Manager consideration as more particularly detailed in this Agreement."

31. The Definition Clause also defined various terms including "Booked Units", "Existing Allottees", "Encumbrance(s)", "Development Services" etc. "Receivables" and "Unsold Areas" are also defined. "Unsold Areas" as defined in Definition clause (aa) is as follows:

"aa) "Unsold Areas" shall mean the entire unsold area of the New Tower Project which includes the areas in the New Tower remaining unsold (which as per the currently sanctioned building plans is estimated and Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 conveyed by ATPPL to be approximately 30,000 sq. ft.

of FSI) as well as such additional / enhanced area as may be available for further sale pursuant to future revisions in sanctioned building plans / enhancement of FSI of the New Tower Project including but not limited to additional area as more particularly reflected in Schedule II."

32. Clause 4 dealt with "Conditions Precedent". One of the condition precedent under Clause 4.1.4 is to obtain NOC from DHFL. Clause 4.1.4 is as follows:

"4.1.4 ATPPL shall have applied for obtaining a letter/ NOC from DHFL in form as required and to the satisfaction of the Development Manager keeping Development Manager in loop in all communication/ correspondence with DHFL, for confirming that (i) the mortgage and charge on Unsold Area and on any additional FAR/FSI for the New Tower has been released, and (ii) that DHFL has no charge, mortgage, lien or other encumbrance on the Unsold Area;"

33. A New Tower Collection Account was to be opened and was to be operated by Development Manager. Clause 2 deal with "Development Management Fee and Payments". Clause-7 of the Development Agreement had acknowledged the simple mortgage dated 01.10.2014. Clause-8 dealt with 'Obligation of ATPPL (CD)'. Clause 8.1.3 provided that title to New Tower Project shall be marketable to the CD. Clause 8.1.3 is as follows:

"8.1.3 Keep its title to New Tower Project and Portion 'B' Land clear and marketable during the continuance of this Agreement."

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34. Clause 9.1.7 referred to charge of the DHFL and bookings and allotments in favour of existing allottees. Clause 9.1.7 is as follows:

"9.1.7 Except for the charge created in favour of DHFL and bookings and allotments in favour of Existing Allottees, no other Person has any right, title or interest in respect of Portion 'B' Land and/or New Tower Project or any part thereof."

35. Clause-10 dealt with "Rights and Obligations of Development Manager". Clause 10.5 to 10.6, which gave right to Development Manager to have exclusive right to market, sell, lease, license and manage, provides as follows:

"10.5 The New Tower Project would be branded as a project managed and marketed by the Development Manager. The Development Manager shall handle the allotment and manage the prospective allottees/ customers of Unsold Areas.

10.6 The Development Manager shall have the exclusive right to market, sell, lease, license and manage / otherwise deal with the Unsold Areas and other saleable/revenue generating areas comprised in the New Tower Project. The Development Manager will provide personnel for the purposes of marketing and to

manage site sales."

36. Clause 10.11 empowered the Development Manager to transfer unsold areas. Clause 10.11 is as follows:

"10.11 On the sale of units of the Unsold Areas, title and ownership will pass on to the buyer of the relevant units in the New Tower Project on the terms and conditions negotiated by the Development Manager Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 (acting on behalf of ATPPL) with such buyer. The Development Manager has the sole discretion and is entitled to transfer the entire or any part of Unsold Areas and handover possession, ownership, use and/or occupation of any part or whole of the Unsold Areas to such third party allottee(s) as per Applicable Laws. ATPPL agrees that such allocation of the Unsold Areas and/ or part thereof by the Development Manager is to be treated as direct allotment by ATPPL in favour of such prospective buyer(s), allottees/ third person(s). ATPPL agrees that as and when required by the Development Manager, it shall sign, execute and endorse the booking, sale and transfer related documents in favour of such prospective buyer(s), allottees/ third person(s) as may be advised, recommended and required by the Development Manager."

37. The Development Agreement in Schedule-III contained the details of existing allottees and booked units. Schedule-IV deals with "Balance receivables from existing allottees against basic sale price of booked units". Schedule-V dealt with "Development services by the Development Manager".

38. We also need to notice certain Clauses of Consortium Agreement dated 05.09.2020, which was a registered Agreement entered between the CD and Halwasiya. Halwasiya was referred to as Lead Developer and CD was referred to as Consortium Member. Clause 2 dealt with "Aim and Scope of Consortium Agreement". Clause 2.2 provides as follows:

"2.2 The Lead Member shall solely by its signature prepare and submit a proposal and map for the Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 sanction/ approval for development of project and shall design, develop, finance, construct, sell, operate and maintain the said project, correspond and deal with UP RERA Authority, allottees / buyer (old as well as new), resident welfare association and other competent authorities/ departments, etc."

39. Shri Vivek Kohli, learned Senior Counsel for the Halwasiya has relied on various judgments to support the development rights of Halwasiya. Learned Counsel has referred to judgment of the Hon'ble Supreme Court in Sushil Kumar Agarwal v. Meenakshi Sadhu & Ors. - (2019) 2 SCC 241. The said Appeal arose out of a suit filed by the Appellant for specific performance of a Development Agreement, which came to be dismissed. In the above case, the Hon'ble Supreme Court had occasion to explain the various kinds of Development Agreements. In Paragraph 17.1 to 17.5 various categories of Development Agreements were noticed and explained. Paragraphs 17.1 to 17.5 are as follows:

"17. The expression "development agreement" has not been defined statutorily. In a sense, it is a catch-all nomenclature which is used to describe a wide range of agreements which an owner of a property may enter into for development of immovable property. As real estate transactions have grown in complexity, the nature of these agreements has become increasingly intricate. Broadly speaking, (without intending to be exhaustive), development agreements may be of various kinds:

17.1. An agreement may envisage that the owner of the immovable property engages someone to carry out Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 the work of construction on the property for monetary consideration. This is a pure construction contract;

17.2. An agreement by which the owner or a person holding other rights in an immovable property grants rights to a third party to carry on development for a monetary consideration payable by the developer to the other. In such a situation, the owner or right holder may in effect create an interest in the property in favour of the developer for a monetary consideration;

17.3. An agreement where the owner or a person holding any other rights in an immovable property grants rights to another person to carry out development. In consideration, the developer has to hand over a part of the constructed area to the owner.

The developer is entitled to deal with the balance of the constructed area. In some situations, a society or similar other association is formed and the land is conveyed or leased to the society or association;

17.4. A development agreement may be entered into in a situation where the immovable property is occupied by tenants or other right holders. In some cases, the property may be encroached upon. The developer may take on the entire responsibility to settle with the occupants and to thereafter carry out construction; and 17.5. An owner may negotiate with a developer to develop a plot of land which is occupied by slum dwellers and which has been declared as a slum.

Alternately, there may be old and dilapidated buildings which are occupied by a number of Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 occupants or tenants. The developer may undertake to rehabilitate the occupants or, as the case may be, the slum dwellers and thereafter share the saleable constructed area with the owner."

40. It was held by the Hon'ble Supreme Court that when a pure construction contract is entered, the contractor has no interest in either the land or the construction, which is carried out. But in various other categories of Development Agreements, the Developer may have acquired a valuable right either in the property or in the constructed area. In Paragraphs 18-19 of the judgment, the Hon'ble Supreme Court has laid down following:

"18. When a pure construction contract is entered into, the contractor has no interest in either the land or the construction which is carried out. But in various other categories of development agreements, the developer may have acquired a valuable right either in the property or in the constructed area. The terms of the agreement are crucial in determining whether any interest has been created in the land or in respect of rights in the land in favour of the developer and if so, the nature and extent of the rights.

19. In a construction contract, the contractor has no interest in either the land or the construction carried out on the land. But, in other species of development agreements, the developer may have acquired a valuable right either in the property or the constructed area. There are various incidents of ownership in respect of an immovable property. Primarily, ownership imports the right of exclusive possession and the enjoyment of the thing owned. The owner in Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 possession of the thing has the right to exclude all others from its possession and enjoyment. The right to ownership of a property carries with it the right to its enjoyment, right to its access and to other beneficial enjoyments incidental to it. (B. Gangadhar v. B.G. Rajalingam [B. Gangadhar v. B.G. Rajalingam, (1995) 5 SCC 238, para 6] .) Ownership denotes the relationship between a person and an object forming the subject-matter of the ownership. It consists of a complex of rights, all of which are rights in rem, being good against the world and not merely against specific persons. There are various rights or incidents of ownership all of which need not necessarily be present in every case. They may include a right to possess, use and enjoy the thing owned; and a right to consume, destroy or alienate it. (Swadesh Ranjan Sinha v. Haradeb Banerjee [Swadesh Ranjan Sinha v. Haradeb Banerjee, (1991) 4 SCC 572] .) An essential incident of ownership of land is the right to exploit the development, potential to construct and to deal with the constructed area. In some situations, under a development agreement, an owner may part with such rights to a developer. This in essence is a parting of some of the incidents of ownership of the immovable property. There could be situations where pursuant to the grant of such rights, the developer has incurred a substantial investment, altered the state of the property and even created third-party rights in the property or the construction to be carried out. There could be situations where it is the developer who by his efforts has rendered a property developable by taking steps in law. In development agreements of this Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 nature, where an interest is created in the land or in the development in favour of the developer, it may be difficult to hold that the agreement is not capable of being specifically performed. For example, the developer may have evicted or settled with occupants, got land which was agricultural converted into non- agricultural use, carried out a partial development of the property and pursuant to the rights conferred under the agreement, created third-party rights in favour of flat purchasers in the proposed building. In such a situation, if for no fault of the developer, the owner seeks to resile from the agreement and terminates the development

agreement, it may be difficult to hold that the developer is not entitled to enforce his rights. This of course is dependent on the terms of the agreement in each case. There cannot be a uniform formula for determining whether an agreement granting development rights can be specifically enforced and it would depend on the nature of the agreement in each case and the rights created under it."

41. When we look into the Development Agreement dated 19.01.2018 entered between the CD and Halwasiya, the consideration for execution of Development Agreement is duly reflected in the Agreement. The CD started the construction of the New Tower/ Ananta Residency, where the various allotments were made and units were booked, but the CD could not carry on the construction, hence it appointed the Development Manager, who was to bear the cost of construction and complete the project. We have already noticed the relevant Clauses of the Development Agreement, which clearly Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 indicate that Development Agreement granted various rights and obligations in the project to the Halwasiya.

42. Learned Senior Counsel Shri Vivek Kohli further relied on judgment of the Hon'ble Supreme Court in Victory Iron Works Ltd. vs. Jitendra Lohia and Anr. - (2023) SCC OnLine SC 260, where the Hon'ble Supreme Court has occasion to examine the nature of development rights. In the above case also a Development Agreement dated 16.06.2018 was executed in favour of the CD - Avani Towers Pvt. Ltd. After noticing the various Agreements, the Hon'ble Supreme Court in Paragraph 38 held that bundle of rights and interests created in favour of the CD, are the interest in favour of the CD. In Paragraphs 38, 39 and 40, following were laid down:

"38. From the sequence of events narrated above and the terms and conditions contained in the agreements entered into by the parties, it is more clear than a crystal that a bundle of rights and interests were created in favour of the corporate debtor, over the immovable property in question. The creation of these bundle of rights and interests was actually for a valid consideration. But for the payment of such consideration, Energy Properties would not even have become the owner of the property in dispute. Therefore, the development rights created in favour of the corporate debtor constitute "property" within the meaning of the expression under Section 3(27) IBC. At the cost of repetition, it must be recapitulated that the definition of the expression "property" under Section 3(27) includes "every description of interest, including present or future or vested or contingent interest Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 arising out of or incidental to property". Since the expression "asset" in common parlance denotes "property of any kind", the bundle of rights that the corporate debtor has over the property in question would constitute "asset" within the meaning of Section 18(1)(f) and Section 25(2)(a) IBC.

39. In Sushil Kumar Agarwal [Sushil Kumar Agarwal v. Meenakshi Sadhu, (2019) 2 SCC 241 :

(2019) 1 SCC (Civ) 590] , this Court brought out the distinction between different types of development agreements, with particular reference to Section 14(3)(c) of the Specific Relief Act, 1963. After summarising the different types of development agreements in para 17 of the decision, this Court held in para 19 as follows : (SCC p. 251) "19. ... An essential incident of ownership of land is the right to exploit the development potential to construct and to deal with the constructed area. In some situations, under a development agreement, an owner may part with such rights to a developer. This in essence is a parting of some of the incidents of ownership of the immovable property."

40. Therefore, it is not very difficult to conclude, that a bundle of rights and interests were created in favour of the corporate debtor, by a series of documents such as

(i) the MoU dated 24-1-2008;

(ii) the shareholders' agreement dated 24-1-2008;

(iii) the flow of the consideration from the corporate debtor to the UCO Bank and to Energy Properties;

(iv) the development agreement dated 16-6-2008;

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(v) the memorandum recording possession dated 2- 3-2010 executed by the original shareholders of Energy Properties;

(vi) the memorandum recording possession dated 24-6-2010 executed by Energy Properties in favour of the corporate debtor; and

(vii) the leave and licence agreement primarily executed by the corporate debtor in favour of Victory, which was merely confirmed by Energy Properties as a confirming party.

Some of these bundle of rights and interests, partake the character and shade of ownership rights.

Therefore, these rights and interests in the immovable property are definitely liable to be included by the resolution professional in the information memorandum and the resolution professional is duty bound under Section 25(2)(a) to take custody and control of the same."

43. There cannot be any dispute to the proposition that development rights is a right which can be claimed by the CD and is recognized as right to be protected under the IBC and RP was fully entitled to protect such development rights. We at this juncture need to remind that in the present case, the CIRP has not commenced against the Halwasiya, rather the CIRP has commenced against the CD. The Development Agreement was entered between the Halwasiya and the CD, which Agreement was

continuing when the CIRP commenced against the CD.

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44. Another judgment which is relied by learned Counsel for the Halwasiya is A A Estates Pvt. Ltd. vs. Kher Nagar Sukhsadan Co-operative Housing Society Ltd. & Ors. - Civil Appeal No.____ of 2025 [Arising out of SLP (C) No.10758 of 2025] decided on 28.11.2025. In the said case also, the Hon'ble Supreme Court framed Question No.2 whether the Development Agreement and the Supplementary Agreement constitute "assets" or "property". Question No.2 was framed by the Hon'ble Supreme Court to the following effect:

"Whether the Development Agreement and the Supplementary Agreements constitute "assets" or "property" of the corporate debtor so as to attract the protection of moratorium under Section 14 of the IBC."

45. The said question was answered by the Hon'ble Supreme Court in Paragraph 16.4, where following was laid down:

"16.4. The above exposition clarifies that whether a development agreement constitutes an "asset" of the corporate debtor depends on whether it creates a proprietary, possessory or enforceable right in its favour at the relevant time. Not every executory or conditional contract amounts to an asset. The protection of Section 14 is confined to existing, subsisting and enforceable rights as on the date of commencement of the CIRP."

46. Thus, the proposition laid down by the Hon'ble Supreme Court is well settled that development rights also constitute an asset of the Developer. In the present case, the right which is claimed by the Halwasiya is the right Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 flowing from the contract and MoU between the CD and the Halwasiya. The ownership rights of the CD on the project Ananta Residency is not even disputed. Even in the Development Agreement dated 19.01.2018, the mortgage/ charge of the DHFL has been noticed. Schedule-II of the Development Agreement contains details of existing allottees. The project Ananta Residency, thus was charged with the Lender and there were existing allottees, which was even noticed in the Development Agreement. Learned Counsel for the Financial Creditor has submitted that it is a fact that Development Agreement contemplated obtaining NOC from the Lender, which was never obtained by the CD. The impact of not obtaining NOC from the Lender clearly means that charge of the Lender continues on the project Ananta Residency and the Halwasiya cannot claim to acquire any ownership rights on the project. As noted above, learned Senior Counsel for the Halwasiya has conceded that Halwasiya is not claiming any ownership rights in the project Ananta Residency, but it is claiming its right to unsold Units and Halwasiya undertakes to discharge its obligation towards all booked Units.

47. The Resolution Professional in the application has asked the Halwasiya to stop construction and provide necessary information and documents. From the facts as noted above, it is on the record

that in the project Ananta Residencies itself there were large number of allotment made by the Corporate Debtor. In a real estate project, the interest of the homebuyers is of paramount importance. In this context we may refer to recent judgment of Hon'ble Supreme Court dated 05.02.2026 in "Civil Appeal No.2626 of Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 2025, Apex Heights Pvt. Ltd. v. Ram Kishor Arora & Anr.". It was an appeal arising out of CIRP of a real estate company. The Hon'ble Supreme Court has observed that Primary consideration before the NCLAT and Supreme Court is to protect the interests of homebuyers. In Para 15 of the judgment following has been observed:

"15. The primary consideration before the NCLAT and this Court is to protect the interests of home buyers and ensure they can secure a modicum of shelter comprising the residential unit for which they have been eagerly waiting for more than two decades."

48. The construction of the project and continuance of the construction so that project is completed has to be given paramount importance. When Halwasiya was carrying out construction as per Development Agreement dated 19.01.2018 and the Adjudicating Authority has noted the submission of Respondent that as per Architect's Certificate and the Engineer's Certificate 96.50% of the work of the project have been completed, we are of the view that stopping of the construction, as requested by the Resolution Professional was not in the interest of any of the stakeholder. As far as information from Halwasiya and receipt of information, demand for relevant documents was fully within the power of the Resolution Professional as provided in Section 19(1) and 19(2) of the I&B Code. The Adjudicating Authority has further committed error in Para 39 of the judgment, where it has observed that "property becomes an asset of the Respondent/Developer within the meaning of Sub-Section 27 of Section 3 of the Code".

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49. The Development Management Agreement dated 19.01.2018 and Power of Attorney dated 19.01.2018 were both unregistered documents and by the above two documents no right in immovable property can be created. It is well settled that rights in immovable property can be created only by registered document under Section 17 of the Registration Act. Learned counsel for the Financial Creditor has relied on judgment of Hon'ble Supreme Court in "(2023) 20 SCC 655, Shakeel Ahmed vs. Syed Akhlaq Hussain"

where in Para 11, 12, 13 and 14 following was held:

"11. Having considered the submissions at the outset, it is to be emphasised that irrespective of what was decided in Suraj Lamp & Industries the fact remains that no title could be transferred with respect to immovable properties on the basis of an unregistered agreement to sell or on the basis of an unregistered general power of attorney.

12. The Registration Act, 1908 clearly provides that a document which requires compulsory registration under the Act, would not confer any right, much less a legally enforceable right to approach a court of law on its basis. Even if these documents i.e. the agreement to sell and the power of attorney were registered, still it could not be said that the respondent would have acquired title over the property in question. At best, on the basis of the registered agreement to sell, he could have claimed relief of specific performance in appropriate proceedings. In this regard, reference may be made to Sections 17 and 49 of the Registration Act and Section 54 of the Transfer of Property Act, 1882.

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13. Law is well settled that no right, title or interest in immovable property can be conferred without a registered document. Even the judgment of this Court in Suraj Lamp & Industries² lays down the same proposition. Reference may also be made to the following judgments of this Court:

(i) Ameer Minhaj v. Dierdre Elizabeth (Wright) Issar³

(ii) Balram Singh v. Kelo Devi

(iii) Paul Rubber Industries (P) Ltd. v. Amit Chand Mitra

14. The embargo put on registration of documents would not override the statutory provision so as to confer title on the basis of unregistered documents with respect to immovable property. Once this is the settled position, the respondent could not have maintained the suit for possession and mesne profits against the appellant, who was admittedly in possession of the property in question whether as an owner or a licensee."

50. The Consortium Agreement dated 05.09.2020 although was registered documents but that document in no manner create any interest/title in favour of Halwasiya. Shri Vivek Kohli, learned counsel appearing for Halwasiya during his submission has clearly conceded that Halwasiya is not claiming any title or ownership right in the Ananta Residencies except right in the unsold units as per Development Agreement. The Adjudicating Authority in Para 39 has made observation that by virtue of the Development Management Agreement, Power of Attorney and Consortium Agreement, the property Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 becomes an asset of the Respondent/Developer, which observation is unsustainable. The Adjudicating Authority has referred to judgment of this Tribunal in "K.H. Khan and Anr. Vs. Art Constructions Pvt. Ltd. and Ors. Company Appeal (AT) (Insolvency) No. 1116 of 2024 judgment dated 14.11.2024". In the above case the CIRP has commenced against the Corporate Debtor who had development rights and land owners of the assets had entered into collaboration agreement. In the above case, following observations were made by this Tribunal in Para 64:

"64. While answering the Question No. (I) as above, we have already held that the development rights claimed by the corporate debtor is a property within the meaning of Section 3(27) and the RP has to include the assets in which the corporate debtor has development rights."

51. In the above case, the development rights were covered within definition under Section 3 Sub-section 27, hence, the Resolution Professional has included assets in which Corporate Debtor has development rights. In the present case, CIRP has not commenced against Halwasiya rather CIRP has commenced against the Corporate Debtor. Corporate Debtor admittedly has ownership right in the entire land and projects including project Ananta Residency. We, thus, are unable to uphold that observation made by Adjudicating Authority in para 39 that property has become asset of the Developer. The Adjudicating Authority in the impugned order has also referred to the judgment of Hon'ble Supreme Court in (2022) 2 SCC 583 Tata Consultancy Services Ltd Vs. Vishal Ghisulal Jain by making observation Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 that disputes in the present case arise out of contractual rights of the parties and the issues being related to contractual rights not arising out of CIRP, application filed under Section 60(5) is misconceived and cannot be entertained. The above observation also cannot be sustained since application was filed by the Resolution Professional and Resolution Profession was entitled to take possession of the assets by virtue of Section 25 r/w Section 19(1)(f). Ownership rights of the Corporate Debtor is undisputed and the mere fact that development right as obtained by Development Agreement dated 19.01.2018, the assets cannot go out of the CIRP process. We, thus, are of the view that the view taken by the Adjudicating Authority that I.A. No.3739 of 2023 is not maintainable cannot be upheld. The application filed by the Resolution Professional, I.A. No.3739 of 2023 was fully maintainable and the Adjudicating Authority erred in rejecting said application.

52. We have extracted the prayers made in the application I.A. No.3739 of 2023 in preceding paras of this judgment. One of the prayer which was made by the Resolution Professional was that to direct Respondent to stop the construction and handover possession of the project to the Appellant. We are of the view that prayer for stopping the construction cannot be granted since the completion of the construction is in interest of all stakeholders including homebuyers. We, however, observe that the Resolution Professional was entitled to fully supervise the construction and seek all information and records with respect to construction. The Development Agreement dated 19.01.2018 is still continuing and the Resolution Professiona and Halwasiya both had to ensure that the Corporate Debtor runs as a going concern and Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 construction is completed. In so far as prayer for taking possession of the project, the Respondent - Halwasiya is obliged to permit access of the Resolution Professional to the project for all purposes including inspection, noticing the details in the process of carrying out the CIRP in accordance with law. In so far as prayer (c) is concerned, Respondent is obliged to provide all details of the project, documents and information to the Resolution Professional. We, thus, are of the view that in view of the above discussion, the order of the Adjudicating Authority rejecting I.A. No.3739 of 2023 cannot be sustained and the application I.A. No.3739 of 2023 deserves to be allowed in the manner as indicated above.

53. In view of the foregoing discussions, we answer Question Nos.1, 2 and 3 in following manner:

Answer to : Application filed by RP under Section 19 Question No.1. sub-section (2) and 60(5) being IA No.3739 of 2023 was maintainable against M/s Halwasiya Developments Pvt. Ltd.

Answer to : On the basis of Development Agreement Question No.2. dated 19.01.2018, Power of Attorney dated 19.01.2018 and Consortium Agreement dated 05.09.2020, M/s Halwasiya Developments Pvt. Ltd. cannot claim any ownership rights in the project - Ananta Residencies with respect to allotted Units and unsold Units.

Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 Answer to : RP had made out a case in IA No.3739 of Question No.3. 2023 for grant of prayers as indicated in preceding paragraphs of this judgment.

Question No.4

54. We have noted the relevant clauses of Mortgage Deed created in favour of DHFL dated 01.10.2014. The mortgage was created with entire land of 73,018.74 Sq. Meters along with all receivables by sale of lease, leave and license of units. The Mortgagor has also clearly agreed during the continuance of the security not to deal with security, deal or dispose off, nor enter into any lease or arrangements, nor shall create any third party lien, charge or third party rights or interest. The rights of Lenders have been assigned to Omkara and thereafter to Phoenix as noted above. The Development Agreement dated 19.01.2018 itself acknowledged the Mortgage Deed dated 01.10.2014 in Clause 7.1 and further in Clause 4.1.4 as extracted above, required the CD to obtain an NOC from DHFL. It is not the case of any of the parties that NOC was ever obtained from Lenders before entering into Development Agreement dated 19.01.2018. Charge of Lenders, thus, continues in the project Ananta Residency, which project was also constructed on part of the land measuring 4,623.92 square meters.

55. We, thus, hold that charge of Lenders continues on the project Ananta Residency and Halwasiya cannot claim to have acquired any exclusive rights to sell any unsold Units.

Question No.5 Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025

56. M/s Halwasiya Developments Pvt. Ltd. has also filed an application IA No.5252 of 2023. The Adjudicating Authority in Paragraph 1.C has noticed the prayers made in the application filed by M/s Halwasiya Developments Pvt. Ltd., which is are follows:

"a) Direct the Respondent to forthwith withdraw the letter dated 21.06.2023 sent to the Lucknow Development Authority requesting the Lucknow Development Authority to not sanction or approve any further plans in respect of the Projects or land of the Corporate Debtor;

- b) Direct the Respondent to continue the business of the Corporate Debtor as a going concern;
- c) Restrain the Respondent from impeding or creating hinderances in completion of the construction of the project Ananta Residencies by the Applicant;
- d) Direct the Insolvency and Bankruptcy Board of India to initiate disciplinary proceedings against the Respondent;
- e) Pass any such further order(s) as may be deemed just and expedient in the facts and circumstances of the present case."

57. The Adjudicating Authority has dealt with the application IA No.5252 of 2023 in Paragraph 42 and has allowed the application to the extent as indicated in Paragraph 42. It is useful to notice Paragraph 42 of the order, which is as follows:

"42. IA-5252/2023:

Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 i. In this application, the Applicant has prayed to:

(a) direct the Respondent to withdraw the letter dated 21.06.2023 sent to Lucknow Development Authority (LDA), (b) to direct the Respondent to continue the business of the Corporate Debtor as a going concern, (c) restrain the Respondent from creating hindrances in completion of the Construction of the project and (d) to direct the IBBI to initiate the disciplinary proceedings against the Respondent.

ii. In IA-3739/2023, we have held that the Applicant/M/s. Halwasiya Developments

Private Limited (Respondent in IA-3739/2023) has the development rights by virtue of the Development Management Agreement dated 19.01.2018, Power of Attorney dated 19.01.2018 and Consortium Agreement dated 05.09.2020 and further in view of the law laid down by the Hon'ble NCLAT in the case of K.H. Khan and Anr. (supra) and the Hon'ble Supreme Court in Victory Iron Works Ltd. (supra) the Applicant has a right to develop the property in question.

iii. Therefore, we direct Respondent/Resolution the Professional not to create any hindrance in the completion of the construction of the project i.e. "ANANTA Residences" by the Applicant/M/s.

Halwasiya Developments Private Limited.

iv. Accordingly, the prayer to the above extent is allowed in IA-5252/2023."

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58. We have noticed above that the CD started construction of Towers, which was named New Towers/ Ananta Residences/ Stylus, but could not complete and it entered into a Development Agreement with Halwasiya for completing the construction. As per the Development Agreement the entire expenses of construction was to be made by Consortium of Developers, which consisted Halwasiya as Lead Members and CD as Member of the Consortium. The Agreement which was entered on 19.01.2018 between the CD and Halwasiya is shown to have been continuing on the date when CIRP commenced against the CD and under the statutory scheme of the IBC, the RP is obliged to continue the business of the CD. Thus, when the construction was continuing as per the Development Agreement and completion of construction is in interest of allottees and all stakeholders, we are of the view that Adjudicating Authority had not committed any error in permitting the Halwasiya to complete the construction. The direction in Paragraph 42(iii) is only to the effect that RP was directed not to create any hinderance in the completion of the construction of the project. But as we have already decided Question Nos.1, 2 and 3 that RP's application under Section 19 (2) and 60(5) was maintainable and RP was entitled for relief in the application, we observe that direction in Paragraph 42 (iii) does not militate against right of the RP to call information and details of the project Ananta Residency and ask for relevant records from the Halwasiya for carrying out the CIRP.

59. We, thus, answer Question No.5 in following manner:

M/s Halwasiya Developments Pvt. Ltd. was entitled to complete the construction of the Project Ananta Residency in view of the Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 Development Agreement dated 19.01.2018 and Consortium Agreement dated 05.09.2020.

Question No.6

60. The CD has started the construction of the project Ananta Residency, which was residential-cum commercial building having basement + ground floor for club/ commercial + 14 floors residential. As per the original approved Plan, 56 residential units were there in the project. After the Development Agreement, Halwasiya applied before the LDA for conversion of residential- cum commercial building into purely commercial building. The LDA has issued public notice, where existing structure was to be converted into two basement + ground + 12 floors for commercial units. The Appellant in Company Appeal (AT) (Ins.) No.266-268 of 2025 had filed the objections and also filed the Writ Petition No.7104-7105 of 2022 before the Allahabad High Court seeking time bound resolution of its objection. The High Court vide order dated 11.10.2022 directed that representation must be looked into and decided. The CIRP having commenced in the meantime, learned Counsel for the LDA had made a submission before the High Court that in view of commencement of CIRP, no decision can be taken. It is submitted by learned Counsel for the Appellant in Company Appeal (AT) (Ins.) No.266-268 of 2025 that revised Plan was released to Halwasiya only after impugned order is passed. The LDA vide order dated 08.07.2025 has disposed of the objection, which order of LDA is again being challenged by M/s CIS Infrastructure LLP and Anr. in the High Court being Writ Petition No.7740 of 2025, which is pending on the date.

Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025

61. Learned Counsel for the Appellant appearing in Company Appeal (AT) (Ins.) No.266-268 of 2025 submits that consent of the allottees as required under Uttar Pradesh Apartment (Promotion of Construction, Ownership, and Maintenance) Act, 2010, has not been obtained. The CIS Infrastructure LLP, who has been allotted 16 units has never given its consent. Shri Vivek Kohli, learned Senior Counsel on the other hand contend that conversion of Towers from residential-cum commercial to commercial has been obtained after consent of 92% of the allottees. It is submitted that the allottees have agreed to accept commercial units, since it is economically more beneficial to the allottees. Shri Kohli further submits that the allotment made in favour of CIS Infrastructure LLP and others is already under question in an application filed under Section 66 of the IBC, which is pending consideration.

62. All these Appeal(s) arise out of impugned order passed by Adjudicating Authority dated 17.12.2024 in three IAs as noted above. No issue pertaining to conversion of Towers from residential-cum commercial to commercial was raised in any of the application, nor any relief was asked for in the application. The Adjudicating Authority in the impugned order has also not adverted to or considered the said issue. As submitted by learned Counsel, the challenge to the revised Plan converting the Towers into commercial is pending consideration before the High Court in a Writ Petition filed by M/s CIS Infrastructure LLP and Anr. as stated by learned Counsel for the Appellant appearing in Company Appeal (AT) (Ins.) No.266-268 of 2025. We, thus, are of the view that in these Appeal(s), we need not enter into the said issue, nor Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 express any opinion on the submissions raised by the parties as noted above. We, thus answer Question No.6 in following manner:

Conversion of Towers from residential-cum commercial to commercial need no decision in these Appeal(s).

Question No.7

63. In view of our foregoing discussions and conclusions, all these Appeal(s) are partly allowed in following manner:

(I) The order dated 17.12.2024 passed by Adjudicating Authority in IA No.3739 of 2023 is set aside.

IA No.3739 of 2023 is held to be maintainable and it is disposed of directing the Respondent Halwasiya Developments Pvt. Ltd. to provide all details, documents and information of the project to the RP for carrying out CIRP.

The Halwasiya Developments Pvt. Ltd. is to complete the project, however, it has to give access to the RP.

IA No.3739 of 2023 is allowed to the above extent.

(II) Findings returned by the Adjudicating Authority while deciding IA No.3739 of 2023 that asset (project Ananta Residency) becomes the asset of Halwasiya Developments Pvt. Ltd. is also set aside. It is held that the project Ananta Residency continues to be owned by the CD.

Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025 (III) It is further held that Lenders charge created by Mortgage Deed dated 01.10.2014 still continues on the project Ananta Residency.

(IV) The order of Adjudicating Authority passed in IA No.5252 of 2023 to the extent it allowed the application, is affirmed, subject to direction that the order passed in Paragraph 42(iii) of the impugned order shall not preclude the RP to obtain all details, documents and information of the project from Halwasiya Developments Pvt. Ltd.

(V) Order passed in IA No.6314 of 2023 by which the IA was dismissed, is upheld.

Parties to bear their own costs.

[Justice Ashok Bhushan] Chairperson [Barun Mitra] Member (Technical) NEW DELHI 25th May, 2026 Archana/ Ashwani Company Appeal (AT) (Insolvency) No. 164-166, 266-268, 295, 365 of 2025