



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT - IV**

IA 438/2025 IN CP: IB 284/ND/2021

In the matter of:

M/s VIVEK KHANNA & ORS.

.... Operational Creditor

Versus

M/s SPAZE TOWERS PRIVATE LIMITED

.... Corporate Debtor

And in the matter of IA 438/2025:

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

Mr. ISHAN SINGH

... Applicant

Versus

Mr. GAURAV KATIYAR

**RESOLUTION PROFESSIONAL OF SPAZE TOWERS PRIVATE
LIMITED**

.... Respondent

Pronounced on: 10.07.2025

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE
MEMBER (JUDICIAL)**

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

Present:



For the Applicant : Mr. Saurabh Kalia, Mr. Guneet
Sindhu, Advs.
For the RP : Mr. Karan Gandhi, Mr. Sikhar Tiwari,
Advs.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. This Application has been filed by Mr. Ishan Singh (“Applicant”) against Mr. Gaurav Katiyar (“Resolution Professional”) Resolution professional of M/s Spaze Towers Private Limited (“Corporate Debtor”). The prayer sought for by the Applicant is as extracted below:

“A. Direct the Respondent / Resolution Professional to exclude the unsold inventory in the Project, Spaze Arrow from the valuation of the Corporate Debtor and the Information Memorandum;

B. Direct the Respondent / Resolution Professional to exclude the Subject Property (as defined hereinabove) from the valuation of the Corporate Debtor of the Information Memorandum;

C. Pass any such other order(s) as it may deem fit and proper in the interests of justice.”

2. The brief background of the Corporate Debtor, *M/s Spaze Towers Private Limited*, is that it was admitted into Corporate Insolvency Resolution Process (CIRP) by this Adjudicating Authority vide order dated **21.10.2024** and Mr. Gaurav Katiyar was appointed as the Interim Resolution Professional of the Corporate Debtor.



3. The brief submissions of the Learned Counsel for the Applicant is as stated below:

- a. The present Application is maintainable on the ground that the Corporate Debtor has, as reflected in the minutes of the Committee of Creditors (CoC), called for a valuation of the “unsold inventory” when, in fact, the appropriate course of action would have been to consider the salvage value of the structure which is required to be demolished.
- b. The contents of the Application clearly establish that the Corporate Debtor has no rights or ownership whatsoever in relation to the Subject Property, the Project, or the unsold inventory therein. Consequently, there arises no question of any valuation being undertaken in respect of the Subject Property, the Project, or the unsold inventory therein, as the same are not assets of the Corporate Debtor and cannot be included in the Information Memorandum being prepared by the Respondent / Interim Resolution Professional (IRP). This is particularly so since the Corporate Debtor has already been non-suited from the Subject Property and the Project by virtue of judicial orders passed prior to the commencement of the Corporate Insolvency Resolution Process (CIRP) in the present matter. The termination of the collaboration agreement, the passing of the arbitral award, the upholding of the cancellation of the said agreement, and the dismissal of the Corporate Debtor’s challenge under Section 34 of the Arbitration and Conciliation Act, 1996, all predate the admission of CIRP.



- c. The only link between the Corporate Debtor and the Subject Property was the Collaboration Agreement and the Powers of Attorney executed by the Applicant in favour of the Corporate Debtor. The said relationship was terminated by the Applicant on 13.12.2018, and such termination was ultimately upheld in the Arbitral Award dated 14.09.2022, wherein the specific performance of the Collaboration Agreement sought by the Corporate Debtor was categorically denied.

- d. It is also a matter of record that the Corporate Debtor did not raise any alternate claim either for damages or for refund of the monies expended towards construction on the Subject Property, nor for any third-party dues. Any such plea now sought to be raised by any person stepping into the shoes of the Corporate Debtor is barred by the principle of constructive res judicata. It is a settled proposition that any successor or representative of the Corporate Debtor cannot claim a better right or title over the Subject Property than what the Corporate Debtor itself possessed at the commencement of CIRP. Accordingly, in light of the severance of the sole link between the Corporate Debtor and the Subject Property—severance which has attained finality in arbitral proceedings—it is wholly unjustified and surprising that the IRP continues to treat the Subject Property and the development rights therein as assets of the Corporate Debtor.

- e. The Respondent, in his written submissions, has rightly pointed out that development rights claimed by a corporate



debtor do fall within the definition of “property” under Section 3(27) of the Insolvency and Bankruptcy Code, 2016 (IBC). However, it is equally well-settled that while the Hon’ble NCLT has jurisdiction to adjudicate disputes arising from or relating to insolvency, it does not have jurisdiction over contractual disputes or disputes which are unrelated to insolvency.

- f. A competent forum, namely the Arbitral Tribunal, has already adjudicated the inter se dispute between the Applicant and the Corporate Debtor, and the matter stands concluded. It has been held therein that the Corporate Debtor does not possess development rights in respect of the Subject Property. Therefore, treating the Subject Property as an asset of the Corporate Debtor would amount to a manifest misrepresentation of facts to any prospective resolution applicant. That said, the erroneous inclusion of the Subject Property and Project in the Information Memorandum is a dispute arising in relation to insolvency and, under the explanation to Section 18(f) and (g) of the IBC, the Resolution Professional is barred from including third-party property in the CIRP. Thus, the submissions of the Respondent regarding the non-maintainability of the Application are devoid of merit and liable to be rejected.
- g. In support of the above, the Learned Counsel for the Applicant has relied upon the following judicial precedents:

A.1. *SICOM Ltd. vs. Kitply Industries Ltd.* – Company Appeal (AT) (Insolvency) No. 849 of 2021 – Judgment dated 10.04.2023:



- The appeal arose against the direction to transfer a unit to the RP of the Corporate Debtor (Pg. 4);
- The agreement in question had a termination clause, and possession was taken back (Pgs. 12, 28, 52-53);
- Termination was never challenged by the Corporate Debtor (Pg. 55);
- The Corporate Debtor was admittedly not the title holder (Pg. 57);
- In case of disputes existing prior to the CIRP, the NCLT/NCLAT does not have jurisdiction to direct transfer of property or interpret agreements (Pg. 58, 64, 69-70);
- Cited judgments include *Tata Consultancy Services Ltd.* and *Embassy Property* to emphasize the jurisdictional limitations of the NCLT.

A.2. *Embassy Property Developments Pvt. Ltd. vs. State of Karnataka & Ors.* – (2020) 13 SCC 308 (Para 38-41 @ Pg. 272 & 296):

- It was held that the RP cannot bypass other legal forums and seek remedies under the NCLT when the matter falls outside the purview of the IBC.

A.3. *Gujarat Urja Vikas Nigam Ltd. vs. Amit Gupta & Ors.* – (2021) 7 SCC 209 (Paras 69, 73, 74):

- The NCLT has jurisdiction over disputes arising solely from or relating to insolvency; however, it must not usurp the jurisdiction of other competent forums where the dispute does not so arise.



A.4. *Tata Consultancy Services Ltd. vs. SK Wheels Pvt. Ltd.* – (2022) 2 SCC 583 (Paras 26-28):

- Reiterated that NCLT does not have jurisdiction to adjudicate contractual disputes.

h. The present Application is not academic in nature. The agenda circulated by the IRP on 13.12.2024 (Annexure-O @ Agenda 4 @ Pg. 430) inter alia records that valuation of the Project is proposed to be undertaken. Furthermore, the Minutes of the 2nd Meeting of the CoC (Annexure-Q @ Pg. 451) reveal that the IRP had provided a list of ‘unsold inventory’ in the Project to the CoC. These Minutes (Pg. 479) also note the Applicant’s objections regarding inclusion of such inventory in the CRM data. Subsequently, the Applicant submitted detailed objections vide email dated 20.12.2024 (Annexure-P @ Pg. 441) against the illegal valuation of the Project and the unsold inventory therein.

4. In reply to the submissions made by the Applicant, the Resolution Professional of the Corporate Debtor has furnished the following explanation:

- a. The Applicant cannot seek exclusion of the properties of the Corporate Debtor from the purview of this Hon’ble Adjudicating Authority, as the Collaboration Agreement entered into between the Applicant and the Corporate Debtor was never cancelled.
- b. The Respondent submits that it is a common ground that the Applicant claims ownership of land bearing Rect. No. 6, 11/5, 11/4, 11/3, 11/2, 12/2, 20, 21/1, 21/2; Rect No. 7 -



Kila No. 1/2, 1/1; Rect. No. 8 - 5/2/2 admeasuring 27 Kanal 3 Marlas (equivalent to 3.4 acres) situated at Village Nauranagpur, District Gurugram, which now falls within Sector 78, Gurugram, Haryana ("Land"), and further that the Applicant and the Corporate Debtor had executed a Collaboration Agreement, along with General Power of Attorney (GPA) and Special Power of Attorney (SPA).

- c. Pursuant to the said Collaboration Agreement, GPA, and SPA, the Corporate Debtor commenced construction on the Land. Due to certain disputes, the Applicant subsequently revoked the GPA and SPA, following which the Corporate Debtor invoked the arbitration clause, as provided under Clause 55 of the Collaboration Agreement.
- d. Arbitration proceedings commenced, and the Arbitral Tribunal passed an award on 14.09.2022. The Applicant, in the present Application, has not challenged the arbitral award dated 14.09.2022, wherein certain reliefs were granted in favour of the Applicant. A brief summary of such reliefs is reflected at Page 5 and Page 133 of the Application.
- e. It is pertinent to note that during the pendency of the arbitration proceedings, the Applicant had also raised counterclaims, some of which were granted by the Arbitral Tribunal. However, for reasons best known to the Applicant, there is a deliberate omission to disclose the complete list of prayers/reliefs sought before the Arbitral Tribunal. Notably, some reliefs were denied, including the prayer for vesting the project and related documents/licenses in the Applicant's favour.



- f. Relevant extracts from the Arbitral Award dated 14.09.2022 are reproduced for the ready reference:

“Discussion on Issue No.

(xii) Whether the Respondent is entitled to the reliefs claimed in the Counter Claim?

...The third set of reliefs prayed for by Ishan Singh in Part I of the Counter Claim is for mandatory injunctions giving the project land and indeed the project to him and for transfer of the project and all related documents, licenses etc. in his favour. This relief cannot be granted to Ishan Singh for a variety of reasons. Firstly, proceedings instituted by some allottees are pending before the RERA authorities and the Punjab and Haryana High Court, and any substantive order might adversely affect their interests and that cannot be done without hearing them. Secondly, since the revised building plans are under challenge in the Punjab and Haryana High Court in CWP No. 18553 of 2020, handing over the project to Ishan Singh would be inappropriate during the pendency of the writ petition.”

- g. The above award clarifies that the Applicant has raised similar grounds before both the Arbitral Tribunal and HRERA, Gurugram. In both forums, the Applicant did not succeed in securing the reliefs now being sought. The present prayers are, therefore, in clear contravention of the decisions already rendered by the Ld. Arbitral Tribunal and HRERA, and are also inconsistent with the provisions of the Code, particularly Sections 18, 25 and 238.



- h. The Respondent submits that through the present Application, the Applicant is seeking to achieve indirectly what he could not obtain directly from other forums. This amounts to an abuse of process and is hit by the doctrine of colourable legislation.
- i. It is further submitted that Section 60(5) of the Code, by virtue of its non-obstante clause, confers jurisdiction exclusively on the NCLT in relation to any application or proceeding by or against the Corporate Debtor. The residuary jurisdiction under Section 60(5)(c) is broad and includes determination of questions of law or fact that arise from or relate to the insolvency resolution proceedings.
- j. However, this residuary jurisdiction must be interpreted in consonance with the broader legislative intent of the Code. The NCLT cannot exercise powers that the IBC consciously did not confer.
- k. The Hon'ble Appellate Tribunal in the matter of KH Khan and Another vs Art Constructions Private Ltd and Others, decided on 14.11.2024, has held that development rights claimed by the Corporate Debtor constitute "property" within the meaning of Section 3(27) of the IBC, and that the Resolution Professional is required to include such assets in which the Corporate Debtor has development rights.
- l. In terms of Regulation 3A of the CIRP Regulations, 2016, the Resolution Professional is duty-bound to take custody of records related to the assets, finances, and operations of the



Corporate Debtor, including assets recorded in the balance sheet or as per Section 18(f) of the Code.

- m. The issues pertaining to whether an asset is to be included in the Information Memorandum and whether it belongs to the Corporate Debtor are squarely covered under the jurisdiction of Section 60(5)(c) of the Code.
- n. In the case at hand, prior to the Arbitral Award, the Corporate Debtor had already constructed buildings/towers and allotted units to third-party allottees whose rights are intertwined. Under Section 5(8) of the Code, such allottees are recognised as financial creditors. The Company is now under CIRP, and the Resolution Professional is bound to perform duties as per the Code, which does not permit exclusion of assets erected by the Corporate Debtor prior to the Award or CIRP. Moreover, the Award dated 14.09.2022 cannot nullify the vested rights of allottees in favour of the Applicant.
- o. The Application is also misconceived as it overlooks Regulation 35 of the CIRP Regulations, which mandates inclusion of all material litigation and ongoing proceedings in the Information Memorandum. The RP is under a legal obligation to disclose all such litigation and prior decisions pertaining to the “Spaze Arrow” project.
- p. The Applicant, having relied upon the Award dated 14.09.2022 to assert that the Collaboration Agreement is inoperative, cannot now claim any right over the unsold



inventory. It is not open to the Applicant to seek its exclusion from the Information Memorandum or valuation exercise.

- q. The unsold inventory will necessarily form part of the Information Memorandum, with all necessary disclosures, in accordance with the Code and applicable Regulations. The provisions of the Insolvency and Bankruptcy Code, 2016 have an overriding effect. Section 238 of the Code provides.

Analysis and Conclusion:

5. We have heard the submissions advanced by both the Applicant and the Resolution Professional, coupled with an independent analysis of the material on record. We observe that the Applicant's case lies the contention that the Corporate Debtor has no subsisting rights in the Subject Property or the unsold inventory in the Project "Spaze Arrow", on account of the prior termination of the Collaboration Agreement and the arbitral award dated 14.09.2022. The Applicant, therefore, seeks directions to exclude the said assets from the valuation process and the Information Memorandum under the ongoing CIRP of the Corporate Debtor. To address these contentions, it is necessary to determine:

- (i) whether the Corporate Debtor retained any right, title or interest in the Project and/or Subject Property that can qualify as "property" under Section 3(27) of the Code;
- (ii) whether such rights, despite potential disputes, can be included by the Resolution Professional in the Information Memorandum; and



(iii) whether this Adjudicating Authority possesses jurisdiction to decide the nature and extent of such rights in the context of CIR proceedings.

6. We rely upon the judgment passed by the Hon'ble National Company Law Appellate Tribunal (NCLAT) in the matter of **"K.H. Khan & Anr. v/s Art Constructions Pvt. Ltd. & Ors."**, Company Appeal (AT) (Insolvency) No. 1116 of 2024 dated 14.11.2024, which is factually very similar to the present case at hand. The relevant paragraphs of the judgment are extracted below:

"29. The question as to whether the assets which are included in the Information Memorandum are the assets of the corporate debtor is foundation of entire CIRP process. When the inclusion of the said asset is questioned before the NCLT by the Appellant, Adjudicating Authority does not lack jurisdiction in entering into question and deciding as to whether assets are part of the CIRP or it should be excluded. We, thus, are of the view that the above question could be determined by the Adjudicating Authority and parties need not have to be relegated to the Civil Court having jurisdiction, the view of the NCLT to the contrary cannot be approved. Judgment of the Hon'ble Supreme Court in Victory Iron, as noticed above, clearly has held that the NCLT and NCLAT can exercise jurisdiction in the above facts. We, thus, answer Question No.(I) in following manner: The Adjudicating Authority had jurisdiction to enter into as to whether the subject land is asset of the corporate debtor and for decision of the question, the parties were not required to be relegated to the Competent Civil Court having jurisdiction."



7. This authoritative pronouncement puts to rest any challenge to the jurisdiction of this Adjudicating Authority under Section 60(5)(c) of the Code. The Applicant's argument that this Adjudicating Authority cannot adjudicate disputes relating to the interpretation or termination of the Collaboration Agreement must be viewed in the context of what is actually being decided. This Adjudicating Authority is not venturing into the merits of the arbitral award or contract law, but merely determining whether the Corporate Debtor's recorded development activity and rights in the Project amount to an "asset" under the Code.
8. Indeed, as the NCLAT held, such issues "form the foundation of the entire CIRP process," and it is well within the remit of the Adjudicating Authority to decide whether such property should form part of the Information Memorandum.
9. Furthermore, the NCLAT in *K.H. Khan* relied upon another instructive decision in *Nilesh Sharma, RP of Today Homes v. Mordhwaj Singh & Ors.* The factual similarities with the present case are striking—landowners sought to exclude project assets developed under a development agreement, following the termination of a Power of Attorney and after arbitral proceedings. The NCLAT rejected the prayer for exclusion, upholding the Resolution Professional's inclusion of the subject assets. The relevant paragraph of the quoted judgment is as follows:

"70. We may also refer to the judgment of this Tribunal in "Nilesh Sharma, Resolution Professional- Today Homes and Infrastructure Pvt. Ltd. vs. Mordhwaj Singh & Ors.- Company Appeal (AT) (Ins.) No. 1691 of 2023" which was also a case where owners of the land have filed an application for excluding the assets which was owned by the owners. There



was development agreement between the developers and the owners with respective shares to the parties. License was obtained by developers and group housing colony was constructed. There was also a consent award dated 05.09.2009 between the parties and award by the Sole Arbitrator dated 09.12.2017 where certain directions were issued to claimant as well as to the owners. Owners, after the consent award, by notice have revoked the Power of Attorney. The CIRP commenced on 31.10.2019. Resolution Professional took possession of the project who was dispossessed subsequently by the owners an IA was filed by the Resolution Professional in which under interim order Resolution Professional was again put back in possession. Owners filed an IA seeking direction to the Resolution Professional to exclude the project from the CIRP. In the above judgment, the application filed by the owners was rejected by the Adjudicating Authority. Adjudicating Authority refused the prayers made by the owners. Appeals were filed by the owners before this Tribunal where one of the questions which came for considering was as to whether Adjudicating Authority has jurisdiction to decide the question of possession of the Resolution Professional of the assets. In the above case also, there was no dispute to the ownership rights of the owners and claim raised by the corporate debtor was on the basis of development agreement. This Tribunal after referring to the provisions of Section 25, Section 3(27) had noticed the ratio of the judgment of the Supreme Court in Victory Iron (supra) at paragraph 50 and ultimately held that the corporate debtor has development rights in assets. In paragraph 51, following was held:-



51. From the above, it is clear that Corporate Debtor had Development Rights in the asset, area of 10.81 acres of land on which Project Canary Green was constructed by the Corporate Debtor. In the Project, allotments were also made to the 500 Homebuyers.

*“71. In view of the foregoing discussions, we answer Question Nos. (III) and (IV) in following manner:-
(III) IRP/RP has rightly included the subject land in the Information Memorandum/ CIRP and he was not precluded by virtue of Section 18(1)(f) explanation from asserting development rights in the subject land.
(IV) Adjudicating Authority did not commit any error in not allowing IA No.4648 of 2020 which prayed for exclusion of subject land from the Resolution Plan/ CIRP of the corporate debtor.”*

- 10.** This finding directly resonates with the present facts. The record in this matter confirms that the Corporate Debtor had commenced and completed significant construction on the Subject Property prior to the arbitral award, and that multiple allotments had been made to third-party homebuyers. These homebuyers qualify as financial creditors under Section 5(8)(f) of the Code. Their rights are protected under the CIRP framework and cannot be defeated by unilateral assertions of title by the Applicant.
- 11.** Applying the above principles, it becomes abundantly clear that the Resolution Professional in the present case acted well within his statutory mandate under Sections 18 and 25 of the IBC in including the Subject Property and the unsold inventory in the Information Memorandum. The Applicant's assertion that the Collaboration Agreement was terminated and upheld by the Arbitral Tribunal,



though not denied, does not in itself extinguish the bundle of development rights which had already crystallised prior to the termination, and which were exercised by the Corporate Debtor to construct the real estate project in question.

- 12.** The IBC, through Section 3(27), defines “property” extensively, including both tangible and intangible rights and interests. The Hon’ble Supreme Court in *Victory Iron Works Ltd.* has unequivocally held that development rights created under valid contracts constitute “property” for the purposes of CIRP.
- 13.** Moreover, Section 238 of the Code grants IBC, an overriding effect over all other laws. Even assuming the argument of the Applicant that the arbitral award created some tension with the inclusion of the Subject Property in the Information Memorandum, the statutory objectives and mechanisms of the IBC must prevail.
- 14.** This Adjudicating Authority is also mindful of Regulation 35 of the CIRP Regulations, which obliges the Resolution Professional to include all material litigation and ongoing disputes in the Information Memorandum. Hence, even assuming the ownership of land is disputed or that there are competing claims, there is no bar in law preventing its inclusion, with due disclosure.
- 15.** Finally, this Adjudicating Authority finds no merit in the Applicant’s attempt to recast claims previously rejected by the Arbitral Tribunal and HRERA as insolvency-related disputes. The doctrine of constructive res judicata prohibits such collateral attacks. The present application is, in substance, an indirect effort to obtain the very reliefs denied to the Applicant in earlier proceedings.
- 16.** For the reasons elaborated above, this Adjudicating Authority holds that the Applicant has failed to establish any legal right to seek



exclusion of the Subject Property or the unsold inventory from the Information Memorandum and the Resolution Professional has discharged his statutory duties in consonance with Sections 18, 25, and 3(27) of the IBC and is entitled and obligated to include such assets in the CIR process. The judgments of the Hon'ble Supreme Court in *Victory Iron Works Ltd.* and of the Hon'ble NCLAT in *K.H. Khan* and *Nilesh Sharma* directly apply and conclusively settle the legal issues raised herein.

In light of the foregoing, the Application, **IA 438/2025** IN **CP: IB 284/ND/2021** is dismissed as devoid of merit.

Sd/-

(ATUL CHATURVEDI)

MEMBER (TECHNICAL)

Sd/-

(MANNI SANKARIAH SHANMUGA SUNDARAM)

MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT-IV

ITEM No. 411

New IA/3253/ND/2025 IA/843/ND/2025 IA/844/ND/2025
IA/1351/ND/2025 IA/440/ND/2025 in IB/284/(PB)/2021

IN THE MATTER OF:

Vivek Khanna &Ors.		Applicant
Vs.		
Spaze Towers Pvt Ltd.		Respondent

Under Section 7 Of IBC 2016

Order delivered on 10.07.2025

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM
HON'BLE MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

HYBRID HEARING (PHYSICAL & VC)

PRESENT:

For the Applicant : Ms. Eshna Kumar, Mr. Harshvardhan Upadhyay
Advocates in IA 843 & 844/2025, Mr. Guneet
Sidhu, Advocate for Applicant in IA 440 of 2025,
Adv. Vivek Kumar, Adv. Raveena Paniker in IA-
1351/2025, Mr. Rajat Juneja, Mr. Anikesh
Brahma, Advs., in IA-3253/2025

For the Respondent :

ORDER

New IA/3253/ND/2025:-

Ld. Counsel for the Applicant is present. Ld. Counsel for the RP is present and submitted that they have received the copy of the application and seeks some time to file an affidavit on maintainability. Let affidavit be filed within one week on maintainability. List this application on **25.07.2025.**

IA/843/ND/2025 & IA/844/ND/2025 & IA/440/ND/2025:-

As per the order dated 05.06.2025, the written submissions filed on behalf of both the parties are on board. List for further orders on **25.07.2025.**



IA/1351/ND/2025:-

Heard the arguments on behalf of the Applicant. Both the parties are directed to file short note within one week. List this application on **25.07.2025.**

**Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

**Sd/-
(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (JUDICIAL)**