

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

C.P.(IB) No. 285/KB/2021

And

IVN.P (IBC)/27(KB)2024

And

IVN.P (IBC)/25(KB)2024

And

IVN.P (IBC)/24(KB)2024

And

IVN.P (IBC)/26(KB)2024

And

IA(I.B.C)/932(KB)2023

And

IA(I.B.C)/936(KB)2025

And

IA(I.B.C)/1257(KB)/2026

*An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016,
and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016.*

IN THE MATTER OF:

Evania Eco Nest Home Buyers Association

... Financial Creditor/ Petitioner.

Versus

Evania Infrastructure Private Limited

... Corporate Debtor/ Respondent.

And

*An application under Section 60(5) of The Insolvency & Bankruptcy Code,
2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016;*

IN THE MATTER OF:

Amit Kumar Mukhopadhyay

....Intervener/Petitioner

Versus

EVANIE INFRASTRUCTURE PRIVATE LIMITED

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...Corporate Debtor/Respondent

And

An application under Section 60(5) of The Insolvency & Bankruptcy Code, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016;
IN THE MATTER OF:
Debabrata Dey

....Intervener/Petitioner

Versus

EVANIE INFRASTRUCTURE PRIVATE LIMITED

...Corporate Debtor/Respondent

And

An application under Section 60(5) of The Insolvency & Bankruptcy Code, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016;
IN THE MATTER OF:
Siddhartha Bose & Anr.

.... Intervener/Petitioner

Versus

EVANIE INFRASTRUCTURE PRIVATE LIMITED

.... Corporate Debtor/Respondent

And

An application under Section 60(5) of The Insolvency & Bankruptcy Code, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016;
IN THE MATTER OF:
Susmita Dey

.... Intervener/Petitioner

Versus

EVANIE INFRASTRUCTURE PRIVATE LIMITED

.... Corporate Debtor/Respondent

And

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*An application under Section 60(5) of The Insolvency & Bankruptcy Code,
2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016;*

IN THE MATTER OF:

Evanie Eco Nest Home Buyers Association

... Financial Creditor/ Petitioner

Versus

Evanie Infrastructure Private Limited

... Corporate Debtor/ Respondent

And

*An application under Section 60(5) of The Insolvency & Bankruptcy Code,
2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016;*

IN THE MATTER OF:

Evanie Infrastructure Private Limited

... Corporate Debtor/ Respondent

Versus

Evanie Eco Nest Home Buyers Association

... Financial Creditor/ Petitioner

And

*An application under Rule 11 of the National Company Law Tribunal Rules,
2016 read with Rule 9 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016, for change/ substitution of the name of
the Proposed Interim Resolution Professional named in the above Company
Petition*

IN THE MATTER OF:

Evanie Eco Nest Home Buyers Association

... Financial Creditor/ Petitioner

Versus

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Evania Infrastructure Private Limited

...Corporate Debtor/ Respondent

Date of Pronouncement: 9th October 2026.

Coram:

Smt. Bidisha Banerjee, Hon'ble Member (Judicial)

Ms. Rekha Kantilal Shah, Hon'ble Member (Technical)

Appearance:

For the Intervenor:

Mr. Ritzu Ghosal, Sr. Adv

Ms. Debleena Sanyal, Adv.

Mr. Anirban Ghosh, Adv

For the Petitioners:

Mr. Anubhav Singha, Adv.

Ms. Meenakshi Manot, Adv.

Mr. Subhasis Dey, Adv.

ORDER

Per: Smt. Bidisha Banerjee, Member (Judicial)

1. The Court congregated through Hybrid mode.
2. The Learned Counsels for both the parties were heard at length.

3. C.P.(IB) No. 285/KB/ 2021

- 3.1. This is a petition preferred by Evania Eco Nest Home Buyers Association which is an association of Homebuyers, through its authorised representative Rakesh Singh, under section 7 of the Insolvency and Bankruptcy Code, 2016 for initiating Corporate

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Insolvency Resolution Process against Evanie Infrastructure Private Limited the Corporate Debtor.

Submissions on Behalf of the Applicant:

- 3.2. The Financial Creditors contend that they advanced monies in the project "Evanie Eco Nest" for the construction/buying of different flats and bungalows proposed to be constructed by the Corporate Debtor, the developer of the project.
- 3.3. The Financial Creditors contend that they have received all documents such as agreement for sale, receipts, bank statements to indicate their purchase/booking of the said flats and bungalows.
- 3.4. They further contend that the Corporate Debtor had to commence construction and begin the demarcation of apartments and bungalows which were proposed to be constructed on the piece of land.
- 3.5. It is further submitted that till this date the Corporate Debtor has not demarcated or worked upon the construction of flats and bungalows substantially and has failed to adhere to the terms of the agreements or oral assurances made to the Financial Creditors.
- 3.6. Furthermore, the Financial Creditors contend that they are entitled to get back the advance monies paid to the Corporate Debtor.
- 3.7. Under such circumstances, the Financial Creditors have approached this Tribunal to commence insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor.

Additional Affidavit

- 3.8. It is submitted that the Respondent Corporate Debtor made various plans before different authorities to make the concerned building project.
- 3.9. It is further submitted that the Corporate Debtor represented to the various home buyers that it had obtained permission for over 540 units, the respondent Corporate Debtor, further, filed for registration with the relevant authorities for the project. However, in such application, it had applied for only 80 units. This application was rejected on 21st February 2020 and as such, no project could be initiated.

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3.10. It is asserted that till date, the Corporate Debtor has neither started construction nor applied for any fresh application before the new RERA Authorities, as such the project has defaulted from its very start.

Additional Application

3.11. It is submitted that, subsequent to the filing of the CP, the applicant has been approached by 49 nos. of homebuyers after becoming aware of the Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 for initiating corporate insolvency resolution process in respect of Evanie Infrastructure Private Limited which has been filed.

3.12. The Applicant submits that the other homebuyers, on recently becoming aware of the said petition, are coming forward to join issues with the Financial Creditor in the said Company Petition as the applicants are also homebuyers and that impleading of the applicants in the said Company Petition would lead to effective adjudication of the said Company Petition.

3.13. Thus, the applicant association prays that this Tribunal may pass an order impleading the applicants in the said Company Petition.

Submissions of the Respondent Corporate Debtor in its Reply

3.14. Per Contra, the Respondent would contend that the Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 is not maintainable in law and/or facts.

3.15. It is contended that the Application is barred by the principles of estoppels, waiver and acquiescence and by the principals of law analogous thereto.

3.16. It is further contended that this Hon'ble Tribunal, does not have the territorial jurisdiction to try and entertain this application.

3.17. It is submitted that the Applicant/petitioner have not filed any Board Resolution from which it transpires that the locus standi of the alleged representative of the said applicant/petitioners are highly questionable and therefore the said applicant/petitioners is not entitled to file any proceedings herein, further it is contended that the instant application

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suffers from gross suppression of material facts and the same should not be entertained by this Tribunal.

3.18. It is submitted that the Financial creditor has approached the Tribunal with unclean hands and therefore the instant application should not be entertained by this Tribunal.

3.19. It is further averred that the dispute is civil in nature and the dispute in question does not come under the purview of section 5(8) nor does the applicant fall under the purview of Section 5(9) of the Insolvency and Bankruptcy Code, 2016.

3.20. It is contended that the dispute in question is purely a consumer dispute falling under provision of Section 2(7) of the Consumer Protection Act, 2019, for the applicant/petitioner are consumers as defined in Section 35 of the said act.

3.21. The further submission is that there is no disbursement of money “against consideration for time value of money by the Applicants/Petitioner to the Evanie Infrastructure, for that reason, there exist no Financial Debt”.

3.22. It is also submitted that the applicants are not entitled to any ‘assured return’ under the purchase agreement and the applicants had only praying for a refund on account of delay in delivering possession of the unit by Evanie Infrastructure, as a matter of fact the claim in these cases could not be termed to be a “Financial Debt”

4. IVN.P (IBC)/27(KB)2024, IVN.P(IBC)/25(KB)2024, IVN.P(IBC)/24(KB)2024,
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4.1. These Applications seeking intervention in the petition have been preferred by intending homebuyers to support the cause.

4.2. The applicants across all four intervention applications are intending homebuyers/allottees who had approached the Corporate Debtor to purchase residential flats in its housing project under the name and style of “Evanie Econest”, located in Kolkata, with the intent of settling down or investing for post-retirement.

4.3. The proposed intervenors/applicants submit that The Corporate Debtor had represented that it was fully responsible for the project and assured all applicants that it would take all necessary steps to expedite construction and ensure timely delivery of the flats within a period of

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40 months from the effective date (signing of the agreement for sale) or from obtaining sanctioned building plans, whichever was later.

4.4. It is submitted that based on these representations, the Corporate Debtor collected substantial advance amounts towards application money, earnest money, and part consideration from each of the applicant as detailed below:

- i) **IVN.P(IBC)/27(KB)2024:** The applicant paid an advance/part consideration of **₹5,00,000/-** on or about December 9, 2017, out of a total flat price of ₹14,19,419/-. An application form and receipt voucher were issued, followed by an unregistered agreement for sale around July 2018 (Stamp No. 23AB611644) and a confirmation letter dated April 16, 2019.
- ii) **IVN.P(IBC)/25(KB)2024:** The applicant (an NRI) paid **₹10,00,000/-** as application/earnest money/part consideration. An unregistered agreement for sale under cover of Indian Non-Judicial Stamp paper (Stamp No. 23AB611640) was provided in July 2018, followed by a written confirmation receipt.
- iii) **IVN.P(IBC)/24(KB)2024:** The applicants paid part consideration for multiple flats. Four separate unregistered agreements for sale dated February 25, 2018 (Stamp Nos. 20AB446060, 20AB549981, 20AB549982, 20AB608702) were issued alongside confirmation receipts, accounting for an initial sum of ₹3,88,849/-. In total, across 6 flats (4 with agreements and 2 with payment receipts only), the applicants paid **₹33,26,860/-** to the Corporate Debtor.
- iv) **IVN.P(IBC)/26(KB)2024:** The applicant (an NRI) paid **₹8,21,248/-** as application/earnest money/part consideration. An unregistered agreement for sale under cover of Indian Non-Judicial Stamp paper (Stamp No. 23AB611643) was made over in July 2018, followed by a confirmation receipt.

4.5. It is submitted that in all four instances, after the applicants signed and returned the original agreements/documentation while retaining photocopies, the Corporate Debtor completely stopped all communications. Upon visiting the project site, the applicants discovered that construction work had never commenced. Visits to the

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registered and corporate offices of the Corporate Debtor resulted only in unfulfilled oral representations that construction would be completed and flats handed over forthwith.

- 4.6. It is submitted that sometime in or around 2023, the applicants learned that a Homebuyers Association named **“EVANIE ECONEST HOMEBUYERS ASSOCIATION”** had been formed and had initiated an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**C.P. (IB) No. 285/KB/2021**) against the Corporate Debtor.
- 4.7. Further it is submitted that, all four applicants propose to join the existing class of homebuyers represented in the Section 7 proceedings against the Corporate Debtor.
- 4.8. Given the facts, circumstances, and core grievances across all four intervention applications are identical, the applicants pray for common relief from this Hon’ble Tribunal:
- a) *To allow petitioner to intervene in C.P. (IB) No.285/KB/2021 and be added in the class of homebuyers represented by Rakesh Singh representative of Evanie Econest Homebuyers Association;*
 - b) *Interim orders in terms of prayers as above;*
 - c) *Such further order or orders.*

5. IA(I.B.C)/932(KB)2023

- 5.1. This is an application filed by the applicant/petitioner in CP contends that it has been approached 49 nos. of homebuyers after becoming aware of the petition under Section 7 of the INSOLVENCY AND BANKRUPTCY CODE, 2016 initiating corporate insolvency resolution process in respect of M/S. EVANIE INFRASTRUCTURE PRIVATE LIMITED which has been filed. The above petition had been filed by M/s. Evanie Eco Nest Home Buyers Association against the Corporate Debtor in respect of the claim as homebuyers.
- 5.2. The applicant submits that the other homebuyers, on recently becoming aware of the said petition, are coming forward to join issues with the Financial Creditor in the said Company Petition as the applicants are also homebuyers and that impleading of the applicants in the said Company Petition would lead to effective adjudication of the said Company petition.

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- 5.3. It is submitted that the impleadment of applicant as a party respondent in the above petition has become imperative for the just decision of the case.
- 5.4. Considering the aforesaid facts and circumstances, the applicant has prayed for the following: -
- a) Leave be granted to the 49 nos. of homebuyers to be added as party in the C.P.(IB) No. 285(KB) Of 2021;*
 - b) Documents in respect of the 49 nos. of homebuyers be taken on record and considered;*
 - c) Alternatively, the 49 nos. of homebuyers be allowed to intervene;*
 - d) Ad- Interim Orders in terms of Prayers above;*
 - e) Such further or other orders and/or direction or directions be made as this Hon'ble Tribunal may deem fit and proper.*

Reply of the Corporate Debtor to IA(I.B.C)/932(KB)2023

- 5.5. It is submitted that that the purported application for addition of parties/impleadment of 49 alleged home buyers in the said petition is completely misconceived and not maintainable in law as well as on facts. This application is made in gross abuse of process of law and are liable to be dismissed in limine with exemplary costs.
- 5.6. It is alleged that the said petition is not maintainable, nor is the subject matter of the purported application under the jurisdiction of this Hon'ble Tribunal and also submits that the application is not made within the prescribed period of limitation, as alleged or at all.
- 5.7. The Corporate Debtor disputes the fact that any person can be impleaded to the present proceeding or that any home buyer has approached the applicant or that they were not aware of the present proceeding, as alleged or at all. It is submitted that further people cannot be added as parties in the present proceeding, as alleged or at all.
- 5.8. It is further submitted that in the pleading of the said application, the applicant claims that 49 home buyers have approached the applicant, however in the chart given at Annexure "A" only contains 48 persons.

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5.9. The Corporate Debtor submits that the applicant is not entitled to any order as sought for in the said application or that any case is made out for passing of any orders as sought for.

Supplementary Affidavit on behalf of the Respondent

5.10. By way of a supplementary affidavit the respondent has further alleged that application is not maintainable in law as well as on facts, the statements and contents of the said application are untrue, incorrect and false and hence, are denied and disputed.

5.11. It is submitted that it is not clear as to who is filing the said application. From the cause title of the said application, it appears that the petitioner has filed the intervention application seeking intervention or addition of 49 alleged allottees in its own proceeding which cannot be allowed nor the same is sustainable in the eye of law.

5.12. It is submitted that the petition is pending since August 31, 2021. However, 2 years after filing of the said petition wherein issues are already framed and the matter is specifically fixed for arguments to be advanced by the petitioner, the present application is filed for intervention and/or impleadment or for addition of parties belatedly and as an afterthought. Such attempt is made as the petitioners have realized that the said petition is not maintainable under section 7(1) second proviso of the Insolvency and Bankruptcy Code, 2016.

5.13. It is submitted that the present supplementary affidavit is necessitated as the respondent has by mistake and due to inadvertence and oversight did not annex the orders passed by this Hon'ble Tribunal on August 23, 2022, December 1, 2022 and January 2, 2023. It is submitted that though appropriate pleadings are made in the said reply affidavit with regard to the said orders dated August 23, 2022, December 1, 2022 and January 2, 2023 but copies thereof are not annexed due and owing to bona fide and unintentional mistake on the part of the respondent.

5.14. It is submitted that the present supplementary affidavit should be treated as part and parcel of the reply affidavit filed by the respondent.

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6. IA(I.B.C)/936(KB)2025

- 6.1. This application being IA No. 936 of 2025 has been filed by the Corporate Debtor in the instant company petition as a demurrer to bring on record facts that the said company petition is not maintainable in eyes of law as the same does not satisfy the minimum threshold prescribed under the Insolvency and Bankruptcy Code, 2016.
- 6.2. It has been submitted that the total number of allottees in the project under reference is 966 and as such the main company petition has been filed on behalf of 59 allottees which is short of the 10% threshold as prescribed under the code, thus rendering the main CP(IB) NO. 285/KB/2021 misconceived, not maintainable in law or in the facts of the case and is liable to be dismissed.
- 6.3. It is further submitted that this Tribunal by its order dated 27th October, 2025, further clarified by an order dated 20th November, 2025, had directed the Corporate Debtor to bring on record various facts and documents in order to prove that there exists 966 allottees in the said real estate project.

Affidavit In Opposition by the Financial Creditor

- 6.4. It is submitted that the Financial Creditor filed an affidavit on 18th January 2023, in which a map was provided and further it was clearly asserted that the Corporate Debtor has indicated that there were 540 units in the said project, this affidavit was never controverted and no challenge was made by the Corporate Debtor regarding the figure of 540 units. It is further submitted that the Corporate Debtor has, in fact, used the number of i.e 540, even in its arguments. It is further submitted that a perusal of order dated 26th April, would indicate that the counsel for the Corporate Debtor has in fact argued against the Financial Creditor based on the total units being 540.
- 6.5. It is submitted that Corporate Debtor has filed multiple affidavits in the past 4 years and has also completed the final hearing of the matter

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on two Separate occasions without ever referring to the total no. of units being 966. It is further submitted that the Corporate Debtor has filed an application before HIRA authority which was dismissed, this fact was also placed before this Tribunal, the Corporate Debtor, however, failed to indicate in the past 4 years, with respect to the details of the said application. The Corporate Debtor, thereafter, has not preferred any appeal nor has it proceeded to get any registration and/or authorization under RERA guidelines.

- 6.6. It is submitted that the list of 966 persons provided is also without any basis. The Corporate Debtor has made a list on its own without any particulars. The Corporate Debtor has neither provided the agreements entered into with several persons named in the list neither have they indicated the banking transactions which have resulted from such arrangements/agreements.
- 6.7. It is submitted that the said list has been made only to raise an issue regarding maintainability after 4 years and further submits that the suspicious nature of the documents is made out due to:
- i. Names of various persons appear at multiple times;
 - ii. Some of the homebuyers who are presently before this Tribunal have not been shown in the list;
 - iii. No details with regard to bank transactions or agreements have been provided;
 - iv. The said list has not been referred to the Corporate Debtor in the past 4 years and in any of their affidavits or final arguments;
 - v. The dates on which the Corporate Debtor entered the transactions with various persons in the list have also not been disclosed. The relevant date for the calculation of the threshold has to be the date on which the petition was filed.
 - vi. The Corporate Debtor has also not filed the appropriate annual returns which would show that the said 966 allottees has in fact transferred money to the Corporate Debtor.
- 6.8. It is submitted that under law of pleadings, a completely new pleading and/or argument cannot be raised after 4 years and after the opportunity of the pleadings has been closed and final arguments have been concluded in two different instances, further it is stated that the

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opportunity to controvert the assertion that there were 540 units was not exercised by the Corporate Debtor and by way of the instant application, they want to reopen the entire pleadings.

- 6.9. It is submitted that the instant application has been filed with the malicious intent of delaying the instant proceeding and further with a vain attempt to reopen pleadings by producing of concocted list of 966 allottees.

Rejoinder by the Corporate Debtor

- 6.10. It is submitted that the instant company petition being CP(IB) NO. 285/KB/2021 is not maintainable in eyes of law as the same does not satisfy the minimum threshold prescribed under the Code, 2016.
- 6.11. The Corporate Debtor submits that they have not made any assertion regarding only 540 units in the said project as alleged. The Corporate Debtor also denies that the affidavit under reference was never controverted or challenged as alleged, it is further submitted that there are 966 allottees in the said project and as such the minimum threshold of 10% in terms of the Code, 2016 would only be satisfied in the event more than 96 allottees approach this Learned Tribunal, further it is submitted that the Applicant has even received payments from the 966 allottees as against the demands raised and this has been annexed in the Rejoinder.
- 6.12. The Corporate Debtor denies the allegation that the Corporate Debtor has completed final hearing or has never referred to the total number of units being 966 as alleged or at all.
- 6.13. It is submitted that the applications filed before the HIRA Authority has no bearing to the instant application.
- 6.14. It is submitted that no new pleading or argument has been raised or that pleadings stood closed or that final arguments were concluded as alleged or at all.
- 6.15. The Corporate Debtor denies that the challenge with regard to Power of Attorney has no basis as alleged or at all.
- 6.16. It is submitted that acts committed prior to date of signing the power of attorney cannot be ratified under settled principles of law. It is further submitted that such a statement is exfacie admission that the

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said Rakesh Singh filed this instant petition before this Learned Tribunal without any valid Power of Attorney before and as such on this ground alone the instant petition being CP(IB) NO. 285/KB/2021 should be dismissed.

6.17. The Corporate Debtor submits that the allegation that the affidavit under reference was never controverted or that no challenge was made to the figure of 540 units is false, the Corporate Debtor also denies that the Corporate Debtor has used the number of 540 units in arguments as alleged.

6.18. The Corporate Debtor denies that the list under reference is without any basis or that the list does not disclose any particulars as alleged or at all. It is submitted that the Corporate Debtor is ready and willing to disclose such documents before the Learned Tribunal in a sealed envelope and without any copy to the financial creditor, if so desired by the Learned Tribunal. It is further submitted that the Corporate Debtor has strong apprehensions and reservations against making over copies of such vital documents to the Financial Creditor more specifically in light of the malafide conduct of Rakesh Singh since filing of this instant petition being CP (IB) No. 285/KB/2021.

7. IA (I.B.C)/1257(KB)2026

7.1. The Applicant is the Financial Creditor and Petitioner in C.P.(IB)/285(KB)/2021, filed under Section 7 of the Code against Evanie Infrastructure Private Limited, the Corporate Debtor. The home buyers/flat buyers comprising the Applicant Association collectively advanced a sum of Rs. 3,43,39,345/- towards the purchase of flats and bungalows in the project, and the Company Petition remains pending consideration before this Tribunal.

7.2. In Part the Company Petition, the Applicant had proposed CA Sonu Jain (IBBI Registration No. IBBI/IPA-001/IP-P00575/2017-2018/11016) as the Interim Resolution Professional (IRP), and her Form 2 was annexed to the Company Petition.

7.3. It is submitted that a considerable period has elapsed since the filing of the Company Petition. Despite repeated efforts by the Applicant to

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contact the said IRP by telephone, e-mail and correspondence to her last known address, the Applicant has been unable to establish any contact with her. It is stated that, on information and belief, she has become untraceable and has not responded.

- 7.4. It is further submitted that the Applicant has learnt of disciplinary proceedings against Ms. Sonu Jain in other CIRP assignments. A copy of the Disciplinary Committee order of the Insolvency and Bankruptcy Board of India (IBBI) dated 10th November, 2022 (Order No. IBBI/DC/139/2022) is annexed as Annexure "A". By that order, a monetary penalty of Rs. 5,00,000/- was imposed on her and her Authorisation for Assignment was kept in suspended animation for four months, during which she was to work as a probationer under another experienced Insolvency Professional. The Applicant has also been unable to ascertain her current registration status.
- 7.5. In these circumstances, it is submitted that it has become necessary, for effective and expeditious adjudication of the Company Petition, that the name of the proposed IRP be substituted. The Applicant therefore proposes Mr. Sanjit Kumar Nayak, IBBI Registration No. IBBI/IPA-003/IP-N00079/2017-18/10702, in her place.
- 7.6. It is submitted that the Form 2 dated 19th August, 2026 of Mr. Sanjit Kumar Nayak, his IBBI Registration Certificate (valid from 27th July, 2017) and his Authorisation for Assignment (AFA) No. AA3/10702/02/311226/301422, valid upto 27th October, 2026, are annexed as Annexure "B". In Form 2, he has consented to act as IRP, has disclosed his existing assignments (2 as Resolution Professional and 3 as Liquidator, and none as IRP) and has certified that no disciplinary proceedings are pending against him.
- 7.7. The Applicant has prayed for the following:
- (a) *allow the present application;*
 - (b) *permit the Applicant to change/ substitute the name of the previously proposed IRP, CA Sonu Jain, with Mr. Sanjit Kumar Nayak, IBBI Registration No. IBBI/IPA-003/IP-N00079/2017-18/10702, in Part III of the Company Petition;*
 - (c) *take on record the Form 2 of the newly proposed IRP annexed as Annexure "B"; and*

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(d) pass such other order(s) as this Tribunal may deem fit and proper.

Analysis and Findings

8. We have heard the Learned Counsels for both the parties and have perused the documents and evidence placed on record.
9. After such perusal we have come to the opinion that the arguments and differences boil down to one single question of fact, whether the Applicants meet the threshold to file an application under Section 7 of IBC, 2016. The petitioner claims that he has the requisite number of signatures and crosses the required 10% threshold, while the respondents claim that the threshold is not met.
10. At this juncture we find it pertinent to look into section 7 of the IBC, 2016, as extracted hereunder for clarity:

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

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

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

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

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less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

11. Generally, when a party comes to court, they rely on a specific law or legal precedent to claim a right or hold the other side liable. However, that legal rule only applies if certain underlying facts exist. The initiating party must therefore assert that these facts are true, while the opposing party denies them to show they are not subject to any duty or liability. In this specific case, the Applicant claims they meet the required threshold under Section 7 of the IBC, 2016. The Respondent, on the other hand, denies this fact, arguing that because the Applicant falls short of the threshold, the application is legally impermissible and lacks merit.
12. Now that we understand the crux of the issue we can move forward to discuss whether the Petitioners meet the 10% threshold as enshrined in Section 7 of the Insolvency and Bankruptcy Code, 2016. The petitioners have asserted that when the Company Petition was filed originally by 59 allottees, they had met the threshold as proposed units/flats to be constructed was 540.
The Respondents on the other hand, in their reply filed to the Company petition are conspicuous by their silence on the number of proposed units.
13. We believe it is now pertinent to look into some relevant sections of the Bhartiya Sakshya Adhiniyam, 2023, which are extracted hereunder for clarity:

105. On whom burden of proof lies. —*The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.*

109. Burden of proving fact especially within knowledge. —*When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.*

- a. That the applicant has stated an oath that the number of flats proposed to be constructed from the start was 540, the Burden of Proof lies with the applicant but, they have failed to discharge the burden.

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- b. The Respondents could have disproved the number by placing evidence, but they miserably failed, the Burden of Proof lies with the applicant but, they have failed to discharge the burden.
 - c. Under Section 105, if neither side introduced any more evidence from this point on, the respondent's defence would fail against the claims the applicants have put forward.
 - d. The implication of Section 109 of the Bharatiya Sakshya Adhiniyam, 2023, is loud and clear that the respondents carry the burden of proving the fact, since the Number of units proposed to be constructed from the start would be specifically within their knowledge.
 - e. Furthermore, Section 109 indicates that because the specific facts supporting the respondent's defence are within their own unique knowledge, they bear the responsibility to prove them. Therefore, the legal duty to substantiate these facts and disprove the applicant's case rests entirely on the respondents, which the respondents have miserably failed to discharge.
 - f. Also, Under Section 109 of Bhartiya Sakshya Adhiniyam, 2023, when any fact is especially within the knowledge of a person, the burden of proving that fact rests entirely on them. Because these detailed construction metrics, land records, and financial accounts belong to the respondents' own operations, they constitute facts uniquely within their own knowledge. Consequently, Section 109 places the legal responsibility to produce this information and substantiate these figures squarely on the respondents.
14. Interestingly the difference between onus of proof and burden of proof was clearly brought out by the Hon'ble Supreme Court **R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple** reported in, **(2003) 8 SCC 752: 2003 SCC OnLine SC 1117 at page 768**
29. *In a suit for recovery of possession based on title it is for the plaintiff to prove his title and satisfy the court that he, in law, is entitled to dispossess the defendant from his possession over the suit property and for the possession to be restored to him. However, as held in A. Raghavamma v. A. Chenchamma [AIR 1964 SC 136] there is an essential distinction between burden of proof and onus of proof: burden of proof*

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lies upon a person who has to prove the fact and which never shifts. Onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence. In our opinion, in a suit for possession based on title once the plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant it is for the defendant to discharge his onus and in the absence thereof the burden of proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiff's title.

Based on the principles laid down in *R.V.E. Venkatachala Gounder*, that there is a clear difference between the permanent burden of proof and the shifting onus of proof, in this matter, we discern that the applicants have successfully established a high degree of probability to support their case, which consequently shifts the onus over to the respondents. Under this legal precedent, the respondents must now actively bring forward evidence to clear themselves of this shifted onus. If they fail to do so, the applicant's primary burden of proof is legally considered met. Therefore, the responsibility to disprove the claims and present counter evidence rests squarely on the respondents.

15. In **Manish Kumar v. Union of India and Anr., (2021) ibclaw.in 16 SC**, a case where Hon'ble Supreme Court observed absence of published data and information asymmetry, the Hon'ble Apex Court held as follows:

"109. There is an information asymmetry. There is no published data available of status of allotted units. **No builder shares the information. It is impossible for the buyers to obtain the information. Ten per cent of allotted units, even it is assumed to be qua letter of allotment, is a dynamic figure** and keeps changing. A buyer may calculate ten per cent of the hundred units allotted by morning and it may become 110 by night rendering the filing impossible.

110. Further, it is complained that it is not clear as to whether in determining allottees, in a real estate project, whether it is a tower? the entire colonization? Or a SPV? Ten per cent of a real estate allottees could mean ten per cent of the allotted units or ten per cent of the total legal

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persons, who have bought into the project, particularly, in cases of multiple ownership of the same property. The provision, in fact, renders group members prone to corruption by cash settlement by the builder. The coram will be disrupted, if one or two members are bought of or even legally settled. This will necessitate fresh filing.”

123. We have noticed Section 11 (1) (b) of RERA. It contemplates details of booking qua apartments and plots. This is sufficient to reject the argument that it could be based on a total number of the units promised. What is required is allotment and not promised flats as per a brochure. It is also not the total constructed units. This is as what is relevant under the impugned provisos read with Section 5(8)(f) explanation and section 2 (d) of RERA read with Section 11(1)(b) and the rules made thereunder is the ‘booking’ of apartments or plots. What is allotted or booked may be more than what is constructed if there is a mismatch at any given point of time. It is the number of units allotted. Now, the allotment and the agreement to sell are not irreconcilable with each other and may signify the same.”

(Emphasis Added)

16. The principles laid down by the Hon’ble Supreme Court in **Manish Kumar v. Union of India** (*Supra*) make it clear that for the purpose of calculating the threshold, what legally matters is the actual, concrete “booking” or “allotment” of an apartment, rather than mere applications, promises or speculative figures. Applying this standard to the present record, although the Corporate Debtor has placed reliance on a Supplementary Affidavit claiming 966 flat bookings, a closer examination of these documents reveal serious deficiencies. A significant number of these entries are not even valid agreements for sale or definitive allotments but are merely preliminary application forms. In many instances, these forms vaguely note only a tower number and floor, omitting any specific flat number altogether meaning a single unit could easily have been provisionally assigned to multiple applicants simultaneously. Even more glaringly, in several cases, these application forms contain nothing more than the applicant’s name and the date of booking, completely omitting any mention of a tower number, floor, or flat. Such completely

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unidentifiable records, which remain subject to withdrawal at any given moment, are entirely fluid and tentative. Considering the ruling in *Manish Kumar*, these incomplete and ambiguous application forms cannot be treated as valid “allotments” or genuine “bookings.” Consequently, the Corporate Debtor cannot rely on them to artificially inflate the number of allotted units to 966, that too long 4 years after filing of the petition.

Again, in ***Manish Kumar v. Union of India and Anr.***, (*Supra*) the Honble Supreme Court while emphasising that threshold must be fulfilled as on the date of filing of application has held as follows:

“141. The question, then arises, as to the alleged lack of clarity about the point of time, at which the requirements of the impugned provisos, are to be met. Is it sufficient, if the required number of allottees join together and file an application under Section 7 and fulfil the requirements, at the time of presentation? Or, is it necessary that the application must conform the numerical strength, under the new proviso, even after filing of the application, and till the date, the application is admitted under Section 7(5)? There can be no doubt that the requirement of a threshold under the impugned proviso, in Section 7(1), must be fulfilled as on the date of the filing of the application. In this regard, we find support from an early judgment of this Court, which was rendered under Section 153-C of the Companies Act, 1913. Section 153-C is the predecessor to Sections 397 and 398 read with Section 399 of the Companies Act, 1956. Its most recent avatar is contained in Sections 241 and 242 of the Companies Act, 2013 read with Section 244. In fact, Section 399 (3) of the Companies Act, 1956, read as follows:

“399 (3) Where any members of a company are entitled to make an application in virtue of sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.”

142. *In the decision of this Court in Rajahmundry Electric Supply Corporation Ltd. v. A. Nageshwara Rao and others⁴⁷, the provision in question, viz., Section 153-C of Companies Act, 1913 dealt with the*

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power of the Court to Act, when the Company acts in a prejudicial manner or oppresses any part of its members. It, inter alia, provided that no application could be made by any member, in the case of a company having a share capital unless the member has obtained consent, in writing, of not less than one hundred in number of the members of the company or not less than one-tenth in number of the members, whichever is less. There was also an alternate requirement, to which, resort could be made in regard to company, not having share capital. There was another mode of fulfilling the threshold requirement. In the facts of the said case, the number of the members of the company were 603. Sixty-five members consented to the application. The problem, however, arose as it was contended that 13 of the members who had consented, had, subsequent to the presentation of the application, withdrawn their consent. This Court went on to hold as follows:

“5 xxx xxx xxx

We have no hesitation in rejecting this contention. The validity of a petition must be judged on the facts as they were at the time of its presentation, and a petition which was valid when presented cannot, in the absence of a provision to that effect in the statute, cease to be maintainable by reason of events subsequent to its presentation. In our opinion, the withdrawal of consent by 13 of the members, even if true, cannot affect either the right of the applicant to proceed with the application or the jurisdiction of the court to dispose of it on its own merits.”

143. *In the matter of presentation of an application under Section 7, if the threshold requirement, under the impugned provisos, stands fulfilled, the requirement of the law must be treated as fulfilled. The contention, relating to the ambiguity and consequent unworkability and the resultant arbitrariness, is clearly untenable and does not appeal to us. If an allottee is able to, in other words, satisfy the requirements, as on the date of the presentation, the requirement of the impugned law is fulfilled.”*

(emphasis added)

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17. It is thus evident that the Hon'ble Supreme Court in **Manish Kumar v. Union of India and Anr.**, has made the rule on timing straightforward, whether an application meets the statutory threshold must be judged strictly as of the date it was filed. Drawing on its earlier ruling in **Rajahmundry Electric Supply Corporation Ltd. v. A. Nageshwara Rao and others**, the Hon'ble Court affirmed that a petition validly presented on day one does not lose its maintainability because of later events. Even if individual allottees withdraw their consent after filing, that withdrawal cannot take away the Tribunal's jurisdiction or stop the case from moving forward. Applying that principle here, we must evaluate the Applicants' numbers strictly as they stood on the date this petition was presented. Any subsequent cancellations, withdrawals, additions or post-filing changes cannot defeat the Applicants' right to proceed, nor can they affect this Tribunal's jurisdiction to decide the matter on its merits.
18. Applying this principle to the present record, it is evident that a number of allottees were included by the Respondent after the filing of this petition. Under the law laid down in **Manish Kumar v. Union of India and Anr.**, , such post-filing additions cannot be permitted or taken into account to alter the baseline. This post-petition expansion of the allottee list is nothing more than a deliberate attempt to artificially inflate the total pool of allottees, designed specifically to ensure the Petitioners fail to hit the mandatory 10% threshold. Since the maintainability of the petition and the total count of allottees must be judged strictly as they stood on the date of filing, these post-filing additions must be completely disregarded.
19. At the same time having noted that the respondents have miserably failed to discharge their burden of disproving the figures indicated by the Petitioner about number of units proposed to be allotted/constructed, the version of Petitioner is found to be acceptable. Hence the Petition cannot be thrown away on the ground of failure to meet the threshold.
20. **Inference**
In the aforesaid backdrop we infer as follows:
A. The Status of Petitioners

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The Respondent Corporate Debtor has failed to challenge the status of the Petitioners as allottees/Homebuyers. Therefore, the status of the Petitioners as Allottees/Homebuyers stand confirmed.

B. Meeting of Threshold

This Court therefore holds that on the basis of assertion of the Petitioners that the proposed units/flats to be constructed at the initial stage were 540, this Petition filed by Evanie Eco Nest Home Buyers Association who are the Homebuyers/Allottees is squarely maintainable, the threshold in terms of Section 7 of the Insolvency and Bankruptcy Code, 2016 being satisfactorily met.

Order

21. In terms of the foregoing discussion:
- i. We **dismiss** all the Applications for Intervention in **C.P.(IB) No. 285/KB/2021.**
 - ii. **IA(I.B.C)/932(KB)2023**, seeking addition of 49 nos. of homebuyers as party in the in **C.P.(IB) No. 285/KB/2021 is dismissed.**
 - iii. **IA(I.B.C)/936(KB)2025** seeking dismissal of **C.P.(IB) No. 285/KB/2021 is dismissed.**
 - iv. **IA(I.B.C)/1257(KB)/2026** is **allowed and disposed of.**
 - v. We **ALLOW** the application bearing **Company Petition (IB) No. 285/KB/2021** filed under **Section 7 of the I&B Code**, and accordingly, we order the initiation of Corporate Insolvency Resolution Process (CIR Process) in respect of the Corporate Debtor by the following Orders:
 - a) The Application filed by Evanie Eco Nest Home Buyers Association (Financial Creditor), under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the Corporate Insolvency Resolution Process in respect of Evanie Infrastructure Private Limited (Corporate Debtor).
 - b) As a consequence of this Application being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in

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relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

- c) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following:
- a) The institution of suits or continuation of pending suits or
 - i. proceedings against the Corporate Debtor including execution
 - ii. of any judgment decree or order in any court of law, Tribunal,
 - iii. arbitration panel or other authority;
 - b) Transferring, encumbering, alienating or disposing of by the
 - i. Corporate Debtor any of its asset or any legal right or beneficial
 - ii. interest therein;
 - d) Any action to foreclose, recover or enforce any security interest
 - i. created by the Corporate Debtor in respect of its property
 - ii. including any action under the Securitization and
 - iii. Reconstruction of Financial Assets and Enforcement of Security
 - iv. Interest Act, 2002 (54 of 2002);
 - e) The recovery of any property by an owner or lessor where such
 - i. property is occupied by or in possession of the Corporate Debtor.
 - ii. [Explanation. --For the purposes of this sub-section, it is hereby
 - iii. clarified that notwithstanding anything contained in any other
 - iv. law for the time being in force, a license, permit, registration,

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- v. quota, concession, clearances or a similar grant or right given
 - vi. by the Central Government, State Government, local authority,
 - vii. sectoral regulator or any other authority constituted under any
 - viii. other law for the time being in force, shall not be suspended or
 - ix. terminated on the grounds of insolvency, subject to the
 - x. condition that there is no default in payment of current dues
 - xi. arising for the use or continuation of the license, permit,
 - xii. registration, quota, concession, clearances or a similar grant or
 - xiii. right during the moratorium period;]
- f) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- g) The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- h) The Applicant has proposed the name of **Mr. Sanjit Kumar Nayak**, Address: Sanjit Kumar Nayak & Co. 30 E, Haramohan Ghosh Lane Flat -2B, Suryadeep Beliaghata ,Kolkata,West Bengal ,700085 IBBI Registration No. IBBI/IPA-003/IP-N00079/2017-18/10702,Email : sknayak3@gmail.com as the “IRP”. We have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, annexed in IA (IBC) No. 1257/KB/2026, as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him

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IVN.P (IBC)/24(KB)2024,
IVN.P (IBC)/26(KB)2024,
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that there are no disciplinary proceedings pending against him with the Board or Insolvency professional Agency of ICAI. In addition, further necessary disclosures have been made by **“Mr. Sanjit Kumar Nayak”** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint **“Mr. Sanjit Kumar Nayak” as the Interim Resolution Professional (IRP)** of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

- i) In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- j) During the CIR Process period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the I&B Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which

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coercive steps will follow. There shall be no future opportunities in this regard.

- k) The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned Police Authorities and/or the Officer-in-Charge of Local Police Station(s) to render all assistance as maybe required by the Interim Resolution Professional in this regard.
- l) The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIR Process in respect of the Corporate Debtor.
- m) The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/- (Rupees Three Lakh Only)** as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- n) In terms of sections 7(5) and 7(7) of the Code, **the Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- o) Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (RoC), to whom the company is registered with, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

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- p) The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
 - q) The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIR Process in respect of the Corporate Debtor to this Adjudicating Authority from time to time.
 - r) The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
22. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.
23. Post the Company Petition on 26th November, 2026 for filing the Periodical Progress Report by the IRP/RP as appointed herein.

Rekha Kantilal Shah
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 9th day of October, 2026.

RKM(LRA)