

## Supertech not the only developer against whom insolvency proceedings have been initiated by NCLT

Noida-based real estate developer Supertech Limited, which went into insolvency on March 25 after the Delhi bench of the National Company Law Tribunal (NCLT) admitted a petition filed by the Union Bank of India for non-payment of dues worth Rs 431 crore, is not the only firm against which insolvency proceedings have been initiated by the tribunal.

According to an analysis by ICRA, only 457 cases have been closed through the approval of a resolution plan against 1,514 cases admitted for liquidation. In the real estate category, 244 have been admitted and 116 closed.

On March 25, the NCLT appointed Hitesh Goel as the insolvency resolution professional (IRP) for Supertech under the Insolvency and Bankruptcy Code (IBC).

The tribunal had reserved its order in the case on March 17, 2022, after the one-time settlement proposed by Supertech was rejected by the bank and arguments were heard. Supertech said that the NCLT order will not impact the construction of all ongoing projects or operation of the company and "we are committed to giving delivery of units to allottees."

### **Moratorium bars institution of any suits against Supertech Limited; buyers must file their claims**

Legal experts told Moneycontrol that once a company is admitted to the corporate insolvency resolution process there is a moratorium on all pending civil, consumer, RERA cases, including executions till a resolution is achieved and that buyers will have to file their claims with the Interim Resolution Professional/Resolution Professional within the statutory prescribed timeline under the IBC

"In light of the fact that the Corporate Insolvency Resolution Process (CIRP) has been initiated against Supertech Limited vide an Order dated 25.03.2022, passed by the Hon'ble NCLT in the case of Union Bank of India Vs. M/s Supertech Limited (CP (IB)- 204/ND/2021), the moratorium declared under Section 13 read with Section 14 of the Insolvency & Bankruptcy Code, 2016 (IBC) shall also become effective from the date of the said Order, i.e., 25.03.2022," explains Sandeep Bhuraria, Senior Partner, Zeus Law Associates.

The said moratorium bars institution of any suits or continuation of suits against the Corporate Debtor, i.e., Supertech Limited. "The homebuyers of the projects of Supertech Limited who have initiated proceedings against the Corporate Debtor seeking refund of their money shall be adjourned *sine die* until CIRP is concluded, considering the moratorium declared by the Tribunal. This shall essentially also apply in cases wherein a homebuyer has an undischarged decree of refund in their favour, as no execution proceedings can be initiated or continued against Supertech Limited for payment of the decretal amount," he said.

"The legal recourse available to such decree holders would be to file their respective claims with the Interim Resolution Professional/Resolution Professional within the statutory prescribed timeline under the IBC," he adds.

He also points out that although the recourse available under RERA or the Consumer Protection would have been beneficial for the homebuyers for initiating legal proceedings against Supertech Limited and obtaining decrees of refund/possession in their favour had the company been able to discharge its liabilities, however, when corporate debtor is insolvent, IBC is an effective means of redressal.

Here's a look at other insolvency cases involving real estate companies.

### **The Jaypee Infratech matter**

Jaypee Infratech went into the insolvency process in August 2017 after the NCLT admitted an application by an IDBI Bank-led consortium. After a lengthy resolution process that saw many twists and turns Mumbai-based Suraksha group received the approval of financial creditors and homebuyers to take over the company in June 2021, raising hopes for around 20,000 homebuyers of getting possession of their dream flats.

In the first round of insolvency proceedings, the Rs 7,350-crore bid of Lakshadweep, part of Suraksha Group, was rejected by lenders. The CoC had rejected the bids of Suraksha Realty and NBCC in the second round held in May-June 2019. The matter then reached the National Company Law Appellate Tribunal (NCLAT) and later the apex court.

On November 6, 2019, the Supreme Court directed completion of JIL's insolvency process within 90 days and ordered that the revised resolution plan be invited only from NBCC and Suraksha Realty. In June last year, Mumbai-based Suraksha group received the approval of financial creditors and homebuyers to take over the JIL, raising hopes for around 20,000 homebuyers of getting possession of their dream flats.

The [National Company Law Tribunal](#) (NCLT) heard the matter on March 14. The hearing is now listed on March 28.

### **The Three C Homes case**

In February last year, the New Delhi bench of NCLT had rejected the resolution plan of Ace Infracity Developers for Three C Homes, another NCR-based firm, and directed its resolution professional (RP) Gaurav Katiyar to initiate the liquidation process by filing an application before it.

But NCLAT later set aside the NCLT order and directed it to consider the plan afresh, giving a new ray of hope to home buyers.

### **Insolvency case against MGF Developments settled**

In another case in [December](#) last year, insolvency proceedings against MGF Developments were withdrawn following a settlement between the company and the homebuyers. The matter was settled on December 6. The builder had paid the entire Interest Bearing Maintenance Security (IBMS) amount with interest.

On [November 30, 2021](#), the NCLT had ordered that insolvency proceedings against MGF Developments be initiated and appointed Gaurav Katiyar as an interim resolution professional after suspending the board of the real estate company.

A two-member Delhi-based bench of NCLT had allowed a plea filed by the residents association of The Vilas Condominium, a project in Gurgaon, for breach of clauses of the agreement between them, terming it as default.

The application under Section 7 of the IBC Code, 2016 was filed by The Vilas Condominium Association consisting of homebuyers having 327 units who had alleged that the amount of Interest-Bearing Maintenance Security (IBMS) collected from them has not been refunded to them.

### **Insolvency case against Spaze Tower Pvt Ltd settled**

In November 2021, the NCLT had appointed Gaurav Katiyar as interim resolution professional (IRP) for [Spaze](#) Tower Private Limited in a case involving 40 buyers of commercial space in Gurgaon in which the builder had promised to repay the investment at either Rs 55 or Rs 65 per sq ft per month till the office units were leased out. This was one of the first matters to be admitted for a real estate company after the 10% or 100 allottees ordinance came into effect. This was later settled and the company came out of insolvency.

Section 7 (1) of the IBC was amended by the government in 2020 and a minimum threshold limit of [100 or 10% of homebuyers](#) whichever is lower was introduced to initiate proceedings against a defaulting developer under IBC. Earlier, even a single [homebuyer](#) could approach the NCLT against the defaulting developer.

### **The Lavasa matter – Relief after almost a decade**

In December 2021, Darwin Platform Infrastructure Limited (DPIL) won the ₹1,864 crore bid to acquire [Lavasa](#) Corporation that was to construct the Lavasa Hill City through the insolvency process which was approved by the debt-ridden firm's lenders.

In August 2021, two new bids were received by creditors of the debt-ridden Lavasa township, which was earlier under the control of Hindustan Construction Company (HCC). The outstanding loans amounted to Rs 6,000 crore. The lenders to the project, which include Bank of India, Axis Bank, L&T Finance, and asset reconstruction companies Arcil, Edelweiss, and Acre, had met on August 11, 2021.

The case went to the NCLT in 2018. In August that year, the NCLT had accepted an application by HCC that sought the commencement of insolvency proceedings against its real estate arm, Lavasa Corporation, under the Insolvency and Bankruptcy Code (IBC).

The project has received several bids. In 2019, bids were received from Pune-based realty developer Anirudh Deshpande and a Dubai-based fund. Before that, Haldiram Snacks had also put in a bid. In 2020, bids were received from Oberoi Realty and US-based fund Interrups. In 2020, Haldiram Snacks Pvt Ltd and Oberoi Realty quit the race citing falling realty prices and environmental clearance was also the main deterrent for the project.

The company was set up in 2000 by the Ajit Gulabchand-led Hindustan Construction Company (HCC). His idea was to develop the country's first privately developed city, spread over 20,000 acres in the Mulshi and Velhe areas in Maharashtra's Pune district.

Lavasa City by Lavasa Corporation is a joint venture between HCC (68.7 percent), Avantha Group (17.18 percent), Venkateshwara Hatcheries (7.81 percent) and Vithal Maniar (6.29 percent). The township was planned for a population of three lakh people. The project was to include apartments, villas and hotels. It defaulted on bank loans after the environment ministry issued a stop-work order to the project in 2010. The promoter had agreed to hand over possession before October 4, 2016, but when Lavasa registered the township project with MahaRERA, it revised the date to December 31, 2020.

### **The Ariisto Developers case**

Last year in June, Bengaluru-based Prestige Estates Projects acquired bankrupt Ariisto Developers Pvt Ltd under the IBC process. It made an upfront payment of Rs 370 crore to the lenders. Under the approved plan, Prestige was to develop 800,000 square feet (sq ft) of commercial space which is part of a mixed use project with a potential saleable area of approximately 7.5 million sq ft.