

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-III
INTERLOCUTORY APPLICATION NO. 2694 OF 2023
(IN C.P. NO. 3794 OF 2019)

Central Bank of India **... Applicant**
Verus
Mr. Bijendra Kumar Jha & Ors. **... Respondents**

WRITTEN SUBMISSIONS OF APPLICANT BANK (CENTRAL BANK OF INDIA)

1. "Central Bank of India" filed Application u/s 7 of the **Bankruptcy Code** which was admitted vide Order dated **16.07.2021** passed by this Hon'ble Tribunal. Corporate Debtor (**Neptune Developers Ltd.**) is engaged in real estate development. The following is the key projects of the **CD** which was under development:-

Name of the Project	Location	Project Type	Area in Million Sq. Ft.
<i>Colorscape</i>	<i>Mulund</i>	<i>Residential</i>	<i>0.25</i>
<i>Neptune Uptown</i>	<i>Mulund</i>	<i>Commercial</i>	<i>0.06</i>
<i>Flying Colors</i>	<i>Mulund</i>	<i>Commercial</i>	<i>0.11</i>
<i>Harmony</i>	<i>Mulund</i>	<i>Residential</i>	<i>0.09</i>
<i>Solitaire</i>	<i>Thane</i>	<i>Residential</i>	<i>0.12</i>
<i>Neptune Living Point</i>	<i>Bhandup</i>	<i>Residential</i>	<i>1.09</i>
<i>Magnet Mall</i>	<i>Bhandup</i>	<i>Commercial</i>	<i>1.20</i>
<i>Neptune Element</i>	<i>Thane</i>	<i>IT / IT es</i>	<i>0.38</i>
Neptune Swarajya	Kalyan	Residential	1.11
		Total	4.41

2. The claim of Applicant have been admitted for an amount of **Rs.251,99,29,090**. The following is the details of claim admitted by **RP**:-

(in Rs.)		
Sr. No.	Particulars	Amount admitted
1.	Secured Financial Creditor	15,77,41,33,547/-
2.	Unsecured Financial Creditors	4,23,64,43,635/-
3.	Operational Creditors	37,41,09,974/-
4.	Others	17,06,689/-

3. Construction finance of **Rs. 100 Crores** sanctioned vide sanction letter dated 18.02.2013 to **CD** for development of their project by name "**Neptune Swarajya**" at Ambivali, Kalyan with a condition that NOC will be issued by Bank on sale of each unit by **CD**. The following is the details of extensive land of **26.05 Acres** mortgaged with Bank:-

	Acres	Sq. Mts.	Sq. Ft.
	1	4046.86	43560
Total	26	105218.36	1132560

The total saleable area (as of in the year 2013) in the project is as below:-

	Acres	Plots (60 sq. ft. x 40 sq. ft.)
	1	18 Plots
Total	26	468 Plots

Sector 1	484787 Sq. Ft.
Sector 2	692244 Sq. Ft.
Sector 2C	144685 Sq. Ft.
Total	1321716 Sq. Ft.

(Out of which **5,93,604 sq. ft.** is already sold and **7,28,112 sq. ft.** remained unsold which was valued **Rs.269,40,14,400/-**).

4. During CIRP process two Valuers have been appointed by name **Mr. Kunal Kantilal Vikamsey and M/s Adroit Appraisers and Research Pvt. Ltd.** and the serious infirmities in their valuation is summarized below:-

Sr. No.	Valuation of Mr. Kunal Kantilal Vikamsey	Valuation of M/s Adroit Appraisers and Research Private Limited
1	The value of Survey No. 76/5 have been given (as only vacant land in Project "Swarajya")	Value of land at Swarajya project have never dealt with
2	Barter flats (65 in numbers) have been valued (Rs. 7.99 Crores as fair market value Rs. 5.59 Crores as liquidation value)	Barter flats have never been valued at
3	Total liquidation value arrived at for entire project is Rs. 8.39 Crores (on valuation of KDMC flats + barter flats)(Rs. 2.80 Crores + Rs. 5.59 Crores)	Total liquidation value arrived at project is only on valuation of KDMC flats (Rs. 2.21 Crores)
4	Both have failed to value Vacant Land of 14.60 Acres on the pretext that said land have been earmarked as amenities. (Out of 26 Acres it's shown only 11 Acres as developed)	

During the CIRP period, the Resolution Plan of **M/s Naman Developers Ltd.** was approved by COC with voting of **85.35%**. Applicant holding **11.83%** of voting share abstained from voting held on 20.03.2023 to 31.03.2023.

5. Various grievances were raised by Applicant Bank during CIRP period as also at voting time the details of which as below:

Date	Particulars	Comments
28.09.2022	Issued to RP by Applicant Bank	Entire land was mortgaged to Bank and any transfer shall have to be done only with consent / NOC of Bank where the Allotment letters / Possession was issued without the NOC of the Bank it is not a valid claim. Further the issue regarding the amount of sale proceeds not received in the ESCROW account since 30.03.2013 have also been raised. Copy of the Letter dated 28.09.2022 is filed hereto as Exhibit "O"
11.10.2022	Reply of RP	Please refer para no. J(6), already filed as Exhibit "O" .
28.03.2023	Issued to RP by Bank	Please refer para no. H(6), already filed as Exhibit "K" .
29.03.2023	Reply of RP	Please refer para no. H(6), already filed as Exhibit "L" .
29.03.2023	Reply of RP	Please refer para no. H(6), already filed as Exhibit "M" .
31.03.2023	Letter issued to RP	Please refer para no. H(7), already filed as Exhibit "N" .

(In the COC meeting also the Applicant Bank have raised their concern particularly in the 2nd and 3rd COC meetings held on 27.07.2022 and 30.08.2022. Please refer page no. 29 to 30 of I.A. in this regard).

6. ABOUT PROJECT "SWARAJYA" IN THE RESOLUTION PLAN OF SUCCESSFUL RESOLUTION APPLICANT (SHREE NAMAN DEVELOPERS PVT. LTD.)

Project location	Swarajya
Land area	~26 Acres
Total Built-up area approved	82,966 sq.mt.
Total saleable area	Sector 1 : 4,46,355 sq.ft. Sector 2 : 5,84,694 sq.ft.
Project configuration	Sector 1 : 1,160 Residential, 55 shops

	Sector 2 : 1,530 Residential, 14 shops
Unit configuration (Saleable Area)	1 BHK : 315 sq.ft. 2 BHK : 523 sq.ft.
Approvals status	Full occupation certificate for Sector 1 received. Occupation Certificate for 151 residential units in Sector 2 pending.
Construction status	RCC work for all towers completed Minor finishing work for towers pending
Area sold	100% area sold *

* Thus RA considered the asset value of project "Swarajya" as NIL.

7. THE DETAILED GROUNDS ON WHICH RESOLUTION PLAN OPPOSED IS AS UNDER:-

(a) That on perusal of the **IM** along with **Annexure J**, the details that emerge are completely contra to the stand of the RP. The glaring infirmities/anomalies in the **IM** as also in the Valuation Report is furnished in the tables herein below:-

Table 1: Details of Flats Sold and Unsold in Project Swarajya

	Details of Flats	According to Information Memorandum	According to Annexure J to Information Memorandum	According to Valuation
A	Total No. of Flats	3028		Only KDMC Flats of 23 numbers are valued in the valuation of M/s Adroit whereas Barter Flats of 65 numbers also KDMC flats of 23 are valued by Mr. Kunal
B	Shops	69		
C	A-B	2959		
	Sector 1 Flats	1160	1134	
	Sector 2 Flats	1468	1469	
D	Total	2628	2603	
	Unsold Flats (C-D)	331	356	

Table 2: Details of Flats Sold / Registered in Sector I in Project Swarajya

Sr. No.	Details	No. of Flats	Amount Received	Outstanding Amount
1	Flats Sold / Registered after 30.03.2013 (Date of Mortgage)	141	10,42,30,048.28	15,92,866.00
2	Flats Sold / Registered after 22.09.2017 (Date of SARFAESI Notice)	73	6,56,61,580.57	1,95,32,325.78
	Total	214	16,98,91,628.85	2,11,25,191.78

Table 3: Details of Flats Sold / Registered in Sector II in Project Swarajya

Sr. No.	Details	No. of Flats	Amount Received	Outstanding Amount
1	Flats Sold / Registered after 30.03.2013 (Date of Mortgage)	188	15,65,58,133.31	34,78,499.31
2	Flats Sold / Registered after 22.09.2017 (Date of SARFAESI Notice)	92	8,00,22,164.62	1,17,08,729.71
3	Flats Sold / Registered after 30.03.2013 (Date of Mortgage) But Registration Date Not Given - only Year (2016)	1	6,58,349.00	0.00
4	Flats Sold / Registered after 22.09.2017 (Date of SARFAESI Notice) But Registration Date Not Given - only Year (2018)	6	5,22,744.00	13,37,494.84

5	Flats Sold after 22.09.2017 (Date of SARFAESI Notice) But not registered			
		20	83,58,750.00	1,01,05,537.57
	Total	307	24,61,20,140.93	2,66,30,261.43

Table 4: Summary of Flats Sold / Registered in Sector I and Sector II of Project Swarajya

Sr. No.	Details	No. of Flats	Amount Received	Outstanding Amount	Total Amount
1	Sector 1	214	16,98,91,628.85	2,11,25,191.78	19,10,16,820.63
2	Sector 2	307	24,61,20,140.93	2,66,30,261.43	27,27,50,402.36
		521	41,60,11,769.78	4,77,55,453.21	46,37,67,222.99

Table 5: Summary of Flats Sold/Registered and Unsold in Project Swarajya

Total No. of Flats Sold / Registered	521
Total No. of Flats Unsold	356
Total	877

- (b) That on compilation of the information provided by the **RP** it is clear that an amount of **Rs.4,77,55,453.21** is balance to be received on sale of **521 flats** in Sector I & Sector II of Project Swarajya (**which has never been accounted/considered in the IM as also in the Resolution Plan -Refer Table No. 4).**
- (c) The unsold flats of **356 Units** (which are partially constructed in Sector II) has never been dealt in the **IM/Valuation Report/ Resolution Plan** (Refer Table No. 5).
- (d) Even information provided in the **IM** and its Annexures are not tallying.[In the **IM**, the unsold flats/Units is shown as **331** whereas in Annexure J of **IM** the unsold flats shown as **356 (Refer Table No. 1)]**.
- (e) Though **RP** and his Counsel (in their legal opinion) have taken up a stand that many of the flats have been sold prior to date of mortgage (**30.03.2013**), the details shown in the **IM** is contra to the stand taken by the **RP/their Advocate. Annexure J** to the **IM** substantiates that **521** flats have been sold/registered after the date of mortgage (**Refer Table Nos. 2, 3 and 4**).
- (f) That **191 flats** have been sold/registered after the issuance of SARFAESI Notice dt. **22.09.2017 by Bank**. The said sale itself is invalid for the reason that the flats remain under attachment from the said date (**Table 2 and 3**).
- (g) That in fact for 7 flats shown in **IM** exact registration date not known and for 20 flats registration is not done.
- (h) That **IM** was not prepared with full and correct details of assets/liabilities of the (which was done by **RP** without complete assessment of records of **CD**).
- (i) That as the market value as also the liquidation value have not been properly arrived at by the CIRP Valuers, the Resolution Plans submitted based on the said evaluations suffered from serious infirmities / limitations prejudicing the interest of all stakeholders. **Applicant as Dissenting / Abstaining Financial Creditor will get nothing. Refer Addendum Resolution Plan (Exhibit R to IA) at page no. 432.**
- (j) That no proper valuation have been made and further **RP** has failed to address the serious issues raised by the Applicant time and again. **RP refused to defer voting as requested by Applicant Bank which caused serious prejudice to the CIRP process.**
- (k) That if proper valuation would have been made by both the CIRP Valuers, the market price/liquidation value arrived at for "**Swarajya**" project would have been very huge to the benefit of all stakeholders inter alia Applicant Bank herein.

- (l) **IM**, Valuation Reports of CIRP Valuers and the Resolution Plan failed to address the following serious issues:

(a)	Amount yet to be received in Sector 1 and Sector 2 to the extent of Rs.46,37,67,222.99 in the Project "Swarajya" and the proper treatment of the same in Resolution Plan.
(b)	The actual vacant land in the Project "Swarajya" (excluding the land already used for construction / under construction) which remains for further exploitation for the benefit of Resolution Applicant.
(c)	The actual no. of flats to be completed / under construction in Sector 2 and the valuation of the same.

- (m) That different approach have been adopted by both CIRP Valuers with regard to the Barter flats as also KDMC flats. Thus when there is no common method of valuation on the same assets as also when there is no uniform approach adopted by both Valuers. The valuation arrived at is completely devoid of merits.
- (n) That CIRP Valuers utterly failed in their duties as they have not valued the following vacant land in the project "**Swarajya**" which ultimately prejudiced all stakeholders inter alia Applicant Bank herein :-

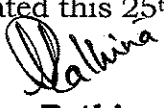
Sr. No.	Survey No.	Area	
		Area in Ares	Area in Sq. Mtrs
1	1/3	82.70	8270
2	2/3	97.20	9720
3	4/7	2.30	230
4	4/9	2.00	200
5	4/10	3.50	350
6	74/9	2.30	230
7	74/11	4.50	450
8	74/12	5.60	560
9	76/12	11.10	1110
10	76/24	11.00	1100
11	76/28	8.00	800
	Total	230.20	* 23020

Copy of the Google Map on Project "**Swarajya**" is filed as **Exhibit "W"** at **Page No. 469 of IA** which clearly shows the extensive area remaining vacant. The said lands are lying vacant as on date. Bank have identified the said vacant land after duly deducting the land meant for Road, MSEB reservation, recreational ground, amenity area etc. from total land area from the plan filed as **Exhibit "V"** at **Page No. 468 of IA**.

- (o) In the valuation report of Mr. Kunal the vacant land bearing Survey No. 76/5 was valued at **Rs.28.37 Lacs** and the same have not even been added in the final figure of **Rs.11,99,88,000** arrived at.
- (p) That **RP** has also explicitly recorded in **IM** that Occupancy Certificate for **151 Units** has not been issued for certain Units. This was undealt with in the valuation reports, **IM** as also Resolution Plan.

In the said circumstances, the said **I.A.** filed by Applicant be allowed and thus justice be rendered.

Dated this 25th August, 2023.


Mrs. Rathina Maravarman
Advocate for Applicant Bank