

(2025) 03 DEL CK 1105

In the Delhi High Court

Case No : Writ Petition (C) No. 1567 Of 2024, Civil Miscellaneous Application
Nos. 6518, 6519, 11517, 11518, 14152, 19454, 41270, 43619,
54584 Of 2024, 10556 Of 2025

Suresh Kumari

APPELLANT

Vs

Registrar Of Companies & Ors

RESPONDENT

Date of Decision : 25-03-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 151
Insolvency and Bankruptcy Code, 2016 — Section 18, 18(l)(vi), 20(1), 25, 25(1),
25(2)(b), 60(5)

Citation : (2025) 03 DEL CK 1105

Hon'ble Judges : Dharmesh Sharma, J

Bench : Single Bench

Advocate : Ripudaman Bhardwaj, Kushagra Kumar, Abhinav Bhardwaj, Amit Kumar Rana, Puneet Kumar Saxena, Rajeev Baisoya, Rahul Mehra, Harshit Sethi & Mr. Chaitanaya Gosain, Gopal Sankaranarayanan, Venket Rao, Pankaj, Vishal Sinha, Smruthi Gangadhar, Raj Kamal, Aseem Atwal, Aprajita Tyagi, Stuti, D N Chaturvedi, Deepak Somani, Subham Kumar, Vipul Kumar, Maninder Singh, Jyoti Taneja, Prabhas Bajaj, Prakash Srivastava, Santha Smruthi, Jayant Bhushan, Ravi Shankar Nanda, Madhurima Sarangi, Varun Kumar, Nalin Kohli, Shruti Aggarwal, Kanika Singhal, Vijeta Singh

Final Decision : ,Allowed,,No,No??5129165,Delhi Transport Corporation (Dtc) Through Its Chairman Vs Manohar Lai (Driver) Batch No. 26775 Token No. 68780,LPA No.13 Of 2021

Judgement

Dharmesh Sharma, J

CM APPL. 9251/2025

1. This application under Section 151 of the Code of Civil Procedure, 1908 ["CPC"], is moved at the behest of respondent No.4/ Greenopolis Welfare Confederation ["GWC"] seeking the following reliefs:

"a. Pass necessary directions to the authorities / investigating agencies to act in

conformity of the binding judicial orders of the Hon'ble Supreme Court and the other judicial forums (Ld. NCLT / this Hon'ble Court) in relation to Greenopolis project and shall not entertain any complaint / case which seeks to reagitate issues which have already been conclusively decided by the judicial forums by rejection of similar issues / allegations in other proceedings;

b. Pass necessary directions / orders to Orris Infrastructure Pvt Ltd to immediately and forthwith handover the possession of flats /units in Phase-I of the Greenopolis Project to the persons who paid monies to Orris and a local commissioner be appointed to monitor the process of tendering of units by Orris Infrastructure Pvt. Ltd.;

c. Pass any other order/s which this Hon'ble Court may deem fit in facts and circumstances of the present case."

2. In a nutshell, GWC claims to be an Association of Members/Homebuyers who have invested their monies in the Greenopolis Project. It is submitted that the homebuyers fall into two distinct categories: those who have made payments to respondent No.11/Orris Infrastructure Private Limited ["Orris"], and those who have paid monies to respondent No.3/Three C Shelters Private Limited ["TCSPL"], under the Apartment Buyer Agreement ['ABA'] for the construction and allotment of residential flats/units. It is stated that due to dubious methods employed by the promoters of TCSPL and their proxies, including respondent No.5/Greenopolis Welfare Association ["GWA"], homebuyers who had paid their monies to Orris are being deprived of possession of their flats. Furthermore, as a result of clandestine dealings of the promoters/ex-directors, these members/homebuyers have been entangled in unwarranted long and complicated legal proceedings.

3. It is pointed out that multifaceted disputes surrounding the Greenopolis Project ultimately reached the Supreme Court. Recognizing the need for a comprehensive resolution, the Supreme Court, in SLP (C) 7712/2021 vide order dated 01.07.2021, issued the following directions:

"After having heard learned counsel for the parties, we find that the root-cause of the issue before us is that respondent No.1, Orris Infrastructures Pvt. Ltd. (OIPL), was not heard by the National Company Law Tribunal (NCLT) before passing the order dated 15th April, 2021. As a result, OIPL had to file writ petition before the High Court being Writ Petition No.5666 of 2021 to assail the said order.

It is not necessary for us to dilate on the question whether such writ petition is maintainable or ought to be entertained by the High Court when statutory remedy of appeal against the order passed by the NCLT has been provided for under the statute.

To bring quietus to the controversy, the arrangement that we propose may be the most useful way of resolving the grievances and also facilitate early disposal of the proceedings filed under Insolvency and Bankruptcy Code (IBC) so as to

adhere to the statutory timeline specified therefor.

We permit the writ-petitioner (OIPL) to move the NCLT by way of a formal application, to be filed within one week, for reconsideration of order dated 15.04.2021 and, in particular, the grievance that it would not be open to the Interim Resolution Professional (IRP) to deal with the escrow account created by the High Court.

The NCLT would also decide all other issues including as to whether the proceedings under Real Estate (Regulation and Development) Act (RERA Act) and orders passed therein will have any bearing on the proceedings initiated before the NCLT under IBC.

All contentions in that regard can be considered by the NCLT on its own merits and in accordance with law.

We direct the NCLT to ensure that the proposed application to be filed by the writ petitioner-OIPL is decided expeditiously, preferably within two weeks from the date of presentation/filing, and until such time status quo with regard to the escrow account, referred to above, be maintained subject to above. However, the NCLT may for reasons to be recorded issue specific directions as considered necessary, even when the application is pending.

In view of the above arrangement, nothing remains for consideration in the writ petition filed by the writ petitioner-OIPL, which is deemed to have been disposed of in terms of this order. The High Court of Delhi be informed accordingly. Ordered accordingly.

We, however, make it clear that the order passed by the NCLT will be open to challenge by way of appropriate proceedings as may be permissible in law.

We again clarify that all contentions available to both sides are left open to be decided by the NCLT on its own merits.

Further, this arrangement is not an expression of opinion either way on the order passed by the NCLT dated 15.04.2021.

Counsel appearing for the concerned parties have assured this Court that full cooperation will be given to the NCLT for early disposal of the proposed application by OIPL.

The special leave petition and pending applications are disposed of accordingly."

4. It is pointed out that following the issuance of the aforesaid order, GWA filed IA No. 297/2021 in the Corporate Insolvency Resolution Process ["CIRP"] of TCSPL, seeking intervention in the matter. However, the National Company Law Tribunal ["NCLT"] vide order dated 16.07.2021, dismissed the said application, and the order attained finality. Subsequently, in compliance with the direction of the Supreme Court dated 01.07.2021, the NCLT, vide order dated 29.03.2022 in CP IB No. 2721/2019, conclusively adjudicated upon all factual issues concerning

the Greenopolis Project, which order has been upheld by the Supreme Court vide its order dated 19.11.2024 in Civil Appeal No. 6792/2023.

5. To cut the long story short, reference is invited to collusion between TCSPL and its proxy organizations. Notably, acknowledging that Orris is a necessary party, attention of this Court is invited to the observations made in the following paragraphs of the order dated 29.03.2022, passed by the NCLT, which go as under:

"74. As deciphered from above said policy, the Corporate Debtor was required to obtain the Statutory License for development of the project which is not admittedly done. Therefore, there is a clear violation of the said policy. Although, on behalf of the Corporate Debtor, an attempt was made to get its status changed to a "Developer", but the said application was withdrawn without assigning any reason. Unless the compliance of this above said policy is not made, the status of the Corporate Debtor was merely of that of a "Contractor" and not that of a "Developer or Promoter" as defined under the definition of promoter. Thus, the Corporate Debtor has got no right, title & interest in the said project and also has no right to dispose of the property or sell any of the units as well. Although, Ld. Counsel for the RP of the Corporate Debtor relied upon citation *Rajendra K Bhutta V. MHADA* (2020) 13 SCC 208, but the said citation is not helpful to the present RP because of the fact that the Corporate Debtor was license developer of land belonging to the Authority MHADA and Corporate Debtor was in occupation of land in the capacity of the "license developer" of the land owned by State Authority, whereas in the present matter, the Corporate Debtor though entered into development agreement with the Orris Infrastructure Pvt. Ltd., but the statutory compliances under the Act, 1975 were not meted out and never got changed the statutory license in its favour accordingly, it vests with no consequential rights in the project.

x x x

76. From the bare perusal of Explanation to Section 18, it is apparent that even if the property is in the possession of the Corporate Debtor, but the same belongs to third party, such like property does not come under the purview of "assets" of which the IRP is entitled to take the possession. In the present matter, although collaboration agreement dated 02nd November, 2011 was entered into between the Orris Infrastructure Pvt. Ltd. & Three C Shelters Pvt. Ltd. by virtue of which, the arrangement was made between them to share FSI to the extent 35% as well as 65% respectively, but the "statutory license" remained exist in the name of Orris Infrastructure Pvt. Ltd. and the same was not got changed by the Three C Shelters Pvt. Ltd. in its name. Therefore, the status of the Three C Shelters Pvt. Ltd. was merely that of "contractor" and it was holding the land in that capacity only for raising the building under the said agreement and except that it has no right, title & interest in the said property. Accordingly, the said property remains that of Orris Infrastructure Pvt. Ltd. In this regard, the reference can be made to *Embassy Property Development Pvt. Ltd. Vs. State of Karnataka & Ors.* -

(2020) 13 SCC 308 which lays down as under:

"40. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor. Section 18(l)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other Authority. In fact, an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term "assets" under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word "assets", while Section 20(1) uses the word "property together with the word "value" Sections 18 and 25 do not use the expression "property". Another important aspect is that under Section 25(2)(b) of the IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings.

Sections 25(1) and 25(2)(b) reads as follows This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5)

a) Therefore in the light of the story scheme as culled out from various provisions of the IBC 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purviews of the IBC 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.

b) In fact the resolution professional in this case appears to have understood this legal position correctly, in the initial stages. This is why when the Government of Karnataka did not grant the benefit of deemed extension, even after the expiry of the lease on 25-5-2018, the resolution professional moved the High Court by way of a writ petition in WP No. 23075 of 2018. The prayer made in WP No. 23075 of 2018 was for a declaration that the mining lease should be deemed to be valid up to 31-3-2020. If NCLT was omnipotent, the resolution professional would have moved the NCLT itself for such a declaration. But he did not as he understood the legal position correctly. Therefore, in fine, our answer to the first question would be that NCLT did not have jurisdiction to entertain an application against the Government of Karnataka for a direction to execute supplemental lease deeds for the extension of the mining lease. Since NCLT chose to exercise a jurisdiction not vested in it in law, the High Court of Karnataka was justified in entertaining the writ petition, on the basis that NCLT was *coram non iudice*."

6. Suffice to state that in the teeth of the aforesaid observations, an immediate relief is sought, that Orris may be directed to hand over the possession of the constructed flats/units in Phase-I of the Greenopolis Project to the persons who had paid monies directly to the said concern.

7. On issuance of notice, a reply has been filed by Orris, and Mr. Maninder Singh, learned Senior Counsel, submitted that Orris was the owner of the entire land mass, which was handed over to TCSPL for the constructions of 1,862 flats, out of which 652 flats were to be constructed for the Orris, while the remaining 1,210 were under the control of TCSPL as an independent contractor. It was urged that ex-promoters/directors of TCSPL collected about Rs. 950 crores directly from the homebuyers and then abandoned the project. It was further pointed out that while were executed between homebuyers and TCSPL, a separate category of buyers had paid directly to Orris. The learned Senior counsel referred to order dated 01.07.2021 passed by the Supreme Court and reiterated that the entire Greenopolis Project belongs to Orris, as affirmed vide orders dated 16.07.2021 and 29.03.2022 passed by the NCLT in CP IB No. 2721/2019.

8. It was further submitted that promoters/ex-directors of TCSPL managed to stall CIRP proceedings against TCSPL through a collusive proceeding before the NCLT, resulting in the order dated 28.08.2023, which was subsequently assailed before the Supreme Court and stayed vide order dated 13.10.2023.

9. In summary, the plea advanced by Mr. Maninder Singh, learned Senior Counsel for Orris, is that the claims of homebuyers who made payments directly to TCSPL must be verified by the IRP and adjudicated upon by the NCLT. It is stated that out of 652 flats, which were to be constructed in three phases, approximately 512 flats are ready for possession and occupation by homebuyers. Orris has expressed its readiness and willingness to offer about 350 flats to homebuyers who have made direct payments to it. It was vehemently contended that no homebuyer who paid TCSPL is entitled to any share in the flats which have been constructed by Orris.

10. Mr. Maninder Singh, learned Senior Counsel for Orris, submitted that the order dated 03.10.2023 was passed by HRERA while the order of National Company Law Appellate Tribunal ["NCLAT"] was still in operation. It was thus urged that only admitted list of allottees pertains to Orris, and the homebuyers who paid directly to TCSPL must pursue their claims before the NCLT. It was vehemently urged that the Orris is obligated to offer possession of fully constructed flats in Phase-I of the project exclusively to its allottees.

11. Opposing the instant application, Mr. Gopal Sankaranarayanan, learned Senior Counsel appearing for GWA, urged that the scope and ambit of the present petition are limited to the reliefs sought by the petitioner concerning action against the erring Builders/Contractors under Chapter XIV of the Companies Act, 2013. He argued that the reliefs which are claimed in the present

application by GWC cannot be entertained for the same being beyond the scope of the instant writ. It was further submitted that if 65% of the constructed flats are allotted to homebuyers of TCSPL and 35% to Orris, they are agreeable to the proposal of handing over possession of the constructed flats/units to about 350 homebuyers. It was vehemently urged that the Supreme Court in Civil Appeal No. 36252/2023 vide order dated 13.10.2023 has passed status quo with regard to all properties not only pertaining to the TCSPL but also to Orris. Additionally, it was pointed out that the NCLT, vide order dated 20.01.2025, explicitly stated that the moratorium remains in effect concerning all properties pertaining to TCSPL.

12. It was vehemently contended that the order dated 07.10.2020 is not effected by the order dated 29.03.2022 passed by the NCLT and both co-exist. Furthermore, it was urged that the HRERA, vide orders dated 03.10.2023 as well as 09.10.2023, took note of violations committed by Orris and directed Orris to not alter the status of any allotment.

ANALYSIS AND DECISION

13. Having given my thoughtful consideration to the submissions advanced by the learned counsels for the parties and upon perusal of the record, the elementary issue is that home buyers who have made investment and made payments to Orris under their respective ABA are merely seeking a direction for the possession of the residential flats/units, which have already been constructed, in accordance with their agreements with Orris.

14. It is but also evident that the homebuyers represented by GWA, who are opposing the present application, had made their investments and payments to TCSPL. Consequently, they cannot insist or compel Orris to allot residential flats/units in their favor. It goes without saying that they must pursue their claims in the CIRP proceedings concerning TCSPL, which remain pending before the NCLT. The order dated 01.07.2021 passed by the Supreme Court and the subsequent order dated 29.03.2022 passed by the NCLT categorically lay down that the TCSPL has no right, title or interest in the 'Greenopolis Project' and they have no right to dispose of the property or sale of any units in the same. In essence, the Greenopolis Project is not an asset of TCSPL and, therefore, does not fall within the scope of CIRP Proceedings concerning TCSPL.

15. Additionally, the attempt by GWA to put breaks on reliefs which are sought by the applicant/GWC in the instant application cannot be countenanced in law for the fact that apparently it is Orris that has completed the construction of 512 flats in Phase-1, which has nothing to do with TCSPL. Moreover, in light of the order dated 19.11.2024 passed by the Supreme Court, the order dated 29.03.2022 passed by the NCLT stands revived. Resultantly, the constructed flats constitute the property/assets of Orris, not TCSPL. Accordingly, with respect to the application of GWC, it would be just, proper, and logical that the interest of the 512 home buyers, who stand to benefit from the allotment and possession of

completed units by Orris, should be the paramount consideration at this stage.

16. Undoubtedly, this category of homebuyers has invested their hard-earned money in the Greenopolis Project by making payments to Orris. Many of them may be residing on lease, while others may have borrowed home loans and are paying interest on them. Therefore, it is essential that, for the sake of these legitimate homebuyers, there should be no delay due to flimsy objections raised by TCPSL and/or the objector, GWA.

17. Considering the entire gamut of the case and its larger ramifications, where TCPSL and its sister concerns are under investigation by the Serious Fraud Investigation Unit, and Orris and other companies are facing inquiries by the Registrar under Chapter XIV of the Companies Act, 2013, the issue in question are undoubtedly interwoven. Nevertheless, the lengthy and excruciating litigation process involved should not impede the applicant, GWC, from seeking appropriate relief for its members.

18. Unhesitatingly, the sheer audacity of the objector, namely rival GWA, is apparent. Repeated attempts have been made to deflect attention from TCSPL and its sister concerns, which have allegedly defrauded numerous homebuyers. Instead, with ulterior motives, the objector seeks to divert focus to a separate set of homebuyers who are rightfully entitled to possession of constructed residential flats/units from Orris.

19. It is difficult to comprehend how the HRERA orders dated 03.10.2023 and 09.10.2023 can remain legally sustainable in light of the directions passed by the Supreme Court on 19.11.2024. Notably, the Supreme Court has previously dismissed several petitions filed by certain individual members of the objector/GWA, who sought to claim allottee status and possession of flats from Orris. In CA. 4032/2023 titled as "Anju Kanwar Gulati v. Rakesh Kumar Gupta & Ors.", the Supreme Court dismissed the petition vide order dated 11.03.2024. Likewise, CA No. 7704/2023, wherein the erstwhile promoters of TCSPL claimed to be allottees of Orris, was dismissed on the same date. Additionally, W.P. No. 240/2024, filed by another set of TCSPL creditors seeking attachment of Orris's unrelated assets pursuant to HRERA's directions, was also dismissed by the Supreme Court vide order dated 22.04.2024.

20. In fact, the objector/GWA, also filed an application I.A. No. 54790/2025 before the Supreme Court, seeking that the Phase-1 flats be allotted to Three-C allottees. However, the said application was eventually dismissed as withdrawn on 04.03.2025. What is also unconscionable is that HRERA, despite being aware that the issue of allotment to allottees of Orris is pending in this Court —and even recording the fact of the pendency of the present IA —proceeded to pass an order dated 24.02.2025, reiterating its previous orders dated 07.12.2022 and 03.10.2023. These orders, however, do not survive after the revival of the NCLT proceedings, pursuant to the directions of the Supreme Court dated 19.11.2024, wherein HRERA was also a party. Consequently the order of the Supreme Court

effectively revives the previous NCLT order dated 29.03.2022.

21. As brought to the fore, the learned NCLT has already passed a detailed order dated 17.12.2024 and has not extended the status quo concerning the allotment of any completed residential flats/units to the home buyers whose cause is being espoused by the present applicant/GWC.

22. The sum result of the aforesaid discussion is that there is no legal impediment in allowing handing over of possession of 512 completed flats in terms of occupancy certificate issued on 01.10.2024 by Orris to its allottees, who are members of the applicant/GWC.

23. Accordingly, the present application is allowed. M/s. Orris Infrastructure Pvt. Ltd. is hereby directed to hand over the possession of the flats/residential units in Phase-1 of the Greenopolis Project to the eligible home buyers who have made payments towards the sale consideration to Orris. A detailed list of the home buyers to whom the possession shall be handed over be filed within a month from today, accompanied by an affidavit of a competent official. Lastly, it is imperative that all judicial forums refrain from allowing any party to re-agitate issues, that have already been conclusively decided by the highest Court of the country. The application stands disposed of accordingly.

REVIEW PET. 143/2025

24. Re-notify on the date already fixed i.e. 09.04.2025.