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Bulletin on Landmark Judgments under IBC, 2016



MONITORING COMMITTEE OF EARTH TOWNE PROJECT, EARTH INFRASTRUCTURES LIMITED VS. EARTH TOWNE INFRASTRUCTURE PRIVATE LIMITED & ORS.

Brief Facts

The Greater Noida Industrial Development Authority (GNIDA), vide allotment letter dated 19.03.2010, allotted Plot No. GH-04, Sector-01, Greater Noida, measuring approximately 73,942 sq. metres, to a consortium comprising Earth Infrastructures Limited (EIL), Raus Infras Limited and Shalini Holdings Limited. In accordance with the Builders Scheme, Earth Towne Infrastructure Private Limited (ETIPL) was incorporated on 21.07.2010 as the Special Purpose Company, and GNIDA executed a 90-year lease deed in its favour on 01.09.2010. ETIPL thereafter conferred development rights over the land upon EIL under a Development Agreement dated 09.09.2010. EIL developed and marketed the residential project known as “Earth Towne”; its shareholding in ETIPL, initially 78%, was subsequently increased to 98%.

CIRP against EIL commenced on 06.06.2018. The resolution plan submitted by Roma Unicon Designex Consortium (Roma) for the Earth Towne project was approved by the Committee of Creditors (CoC) on 26.08.2019 and by the Adjudicating Authority on 05.04.2021. A Monitoring Committee was constituted to

supervise and facilitate implementation of the plan. However, this Appellate Tribunal set aside the plan approval on 30.01.2023. Meanwhile, homebuyers of Earth Towne had filed a Section 7 application against ETIPL. The application was initially dismissed for want of the prescribed threshold; this Appellate Tribunal restored it by judgment dated 04.09.2025, while expressly confining its decision to the threshold requirement and leaving the merits open.

On 05.05.2026, the Hon'ble Supreme Court, in Alpha Corp Development Private Limited v. Greater Noida Industrial Development Authority & Ors., 2026 INSC 449, set aside the NCLAT judgment dated 30.01.2023, lifted the corporate veil between EIL and its land-holding subsidiaries (including ETIPL), restored the resolution plans of Roma and Alpha, and directed that the timelines for completion of the projects would commence from 01.06.2026. On that very date, the Adjudicating Authority admitted the restored Section 7 petition against ETIPL, filed by Mr. Satyabrata Mitra and 145 other homebuyers, alleging default of Rs. 28,64,48,786/-, and initiated CIRP against ETIPL. The Monitoring Committee challenged the admission order before the NCLAT.

The Monitoring Committee contended that ETIPL's leasehold land was the very substratum of the Earth Towne project and had already been brought within the restored resolution plan of EIL by the Supreme Court. A separate CIRP and moratorium against ETIPL would place the same land under a competing insolvency process, frustrate implementation of the restored plan and prejudice the homebuyers. The Interim Resolution Professional (IRP) did not oppose the appeal and had also placed the Supreme Court judgment before the Adjudicating Authority through a separate application.

Decision

The NCLAT, Principal Bench, New Delhi, allowed the appeal and set aside the Adjudicating Authority's order dated 01.06.2026. It held that the Monitoring Committee was a "person aggrieved" within the meaning of Section 61(1) of the IBC, since the admission order directly impeded the implementation of the resolution plan which it was constituted to supervise. The fact that the Monitoring Committee was not a party before the Adjudicating Authority did not defeat its right of appeal. The Appellate Tribunal further held that it could take notice of the Supreme Court judgment dated 05.05.2026, which was binding under Articles 141 and 144 of the Constitution and concerned the very project in question.

On the effect of the Supreme Court judgment, the NCLAT held that the corporate veil between EIL and ETIPL had been lifted and, for the purpose of resolving the Earth Towne project, the two entities were to be treated as one economic entity. ETIPL's leasehold land, being its only asset, and the project standing upon it were therefore comprehended within the restored resolution plan of Roma in the CIRP of EIL. The plan provided for completion of the project and delivery of units to the allottees, with the implementation timelines commencing on 01.06.2026.

The Tribunal held that, on the date of admission i.e. 01.06.2026, no separate debt of ETIPL, distinct from the claims resolved under the restored plan, was due and payable to the homebuyers so as to constitute a "default" under Section 3(12) of the Code. The claims arose from the same allotments in the same project and stood addressed by the restored resolution plan. The earlier NCLAT judgment dated 04.09.2025 had decided only the threshold for filing the Section 7 application; it had not determined the existence of default on merits. The Tribunal also observed that insolvency resolution of a single real-estate project involving a landowner and developer should proceed on a consolidated basis, and that a separate CIRP against ETIPL after the Supreme Court had already consolidated the project within EIL's resolution would fragment, rather than facilitate, resolution.

The NCLAT further held that continuation of ETIPL's CIRP would directly conflict with the Supreme Court's directions: the Section 14 moratorium and control of ETIPL's assets by the IRP would obstruct the successful resolution applicant from completing Earth Towne on the same land. The homebuyers' remedy, in the event of non-performance, would lie in enforcement of the restored plan before the Adjudicating Authority in EIL's CIRP, including through the Monitoring Committee, and not in a parallel insolvency process against ETIPL. Accordingly, the appeal was allowed, the impugned order was set aside, and the parties were directed to appear before the Adjudicating Authority on 15.10.2026 for further action in accordance with law. There was no order as to costs; pending interlocutory applications, if any, stood closed.

Link of the Order

https://ibbi.gov.in//uploads/order/11f3af0870b7704e94a3e4cd1dc1c7c6.pdf