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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 1097/2024 & CM APPL. 64724/2024, CM APPL. 64727/2024,
CM APPL. 1601/2025, CM APPL. 1602/2025

M/S LAVENDER INFRAPROJECTS PVT. LTD.Appellant
Through: Mr.Sandeep Sethi, Sr.Adv. with
Mr.Amit Sharma, Mr.Harneet Singh, Advs.

versus

NISHIT BADOLA & ORS.Respondents
Through: Mr.Suhesh Dhawan with Mr.Raghav
Dehbla, Ms.Kholi Rakuzhuro, Advs for GWA.
Mr.Jagdish Chandar, CGSC with Mr.Shubham
Kumar Mishra, Adv for UOI.
Mr.Gaurav Mitra with Ms.Kanika Singhal,
Ms.Vijeta Singh, Mr.Shivam Singh, Advs for
M/s Three C Shelters Pvt. Ltd.
Mr. Tanmaya Mehta with Mr.Jai Sikand, Advs
for R/Suresh Kumari.
Mr.J Sai Deepak, Sr.Adv. with Mr.Luv Virmani,
AOR, Mr.Jai Sikand, Mr.Harshit Sethi, Advs for
R-4.
Mr.Raj Kamal with Mr.Aseem Atwal, Ms.Stuti,
Ms.Aprajita Tyagi, Advs for applicant/Mr.Vidur
Bharadwaj.

+ LPA 1098/2024 & CM APPL. 64731/2024, CM APPL. 64732/2024
BRIGHT BUILDTECH PVT. LTD.Appellant
Through: Mr.Jayant Bhusan, Sr.Adv. with
Mr.Ravi Shankar Nanda, Ms.Madhurima
Sarangi, Mr.Amartya Bhushan, Mr.Varun
Sharma, Advs.

versus

NISHIT BADOLA AND ORSRespondents



Through: Mr.Jagdish Chandar, CGSC with Mr.Shubham Kumar Mishra, Adv for UOI.
Mr.Gaurav Mitra with Ms.Kanika Singhal, Ms.Vijeta Singh, Mr.Shivam Singh, Advs for M/s Three C Shelters Pvt. Ltd.
Mr.Tanmaya Mehta with Mr.Jai Sikand, Advs for R/Suresh Kumari.
Mr.J Sai Deepak, Sr.Adv. with Mr.Luv Virmani, AOR, Mr.Jai Sikand, Mr.Harshit Sethi, Advs for R-4.

+ LPA 1133/2024 & CM APPL. 67375/2024, CM APPL. 67376/2024
GREENOPOLIS WELFARE ASSOCIATIONAppellant
Through: Mr.Sumesh Dhawan with Mr.Raghav Dembla, Ms.Kholi Rakuzhuro, Advs.

versus

NITISH BADOLA & ORS.Respondents
Through: Mr.Mukul Singh, CGSC with Mr.Tarveen Singh Nanda, GP, Ms.Ira Singh, Adv for UOI.
Mr.Gaurav Mitra with Ms.Kanika Singhal, Ms.Vijeta Singh, Mr.Shivam Singh, Advs for M/s Three C Shelters Pvt. Ltd.
Mr.Tanmaya Mehta with Mr.Jai Sikand, Advs for R/Suresh Kumari.
Mr.J Sai Deepak, Sr.Adv. with Mr.Luv Virmani, AOR, Mr.Jai Sikand, Mr.Harshit Sethi, Advs for R-4.

+ LPA 1136/2024 & CM APPL. 67400/2024, CM APPL. 67401/2024
DELHI BRASS AND METAL WORKS PRIVATE LIMITED
AND ORS.
.....Appellants
Through: Mr.Siddharth Nath with Mr.Anunay Chawdhary, Mr.Asjad Hussain, Advs.



versus

NISHIT BADOLA AND ORS.

.....Respondents

Through: Mr.Gaurav Mitra with Ms.Kanika Singhal, Ms.Vijeta Singh, Mr.Shivam Singh, Advs for M/s Three C Shelters Pvt. Ltd.

Mr.Tanmaya Mehta with Mr.Jai Sikand, Advs for R/Suresh Kumari.

Mr.J Sai Deepak, Sr.Adv. with Mr.Luv Virmani, AOR, Mr.Jai Sikand, Mr.Harshit Sethi, Advs for R-4.

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Date of Decision: 17.03.2025

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J: (ORAL)

1. The present Letters Patent Appeals bearing LPA No.1097/2024, LPA No.1098/2024 and LPA No.1136/2024 have been filed against the common *ex parte* order dated 22.10.2024 passed in the underlying writ petition bearing W.P.(C) 174/2024 whereby the learned Single Judge has allowed the proposal filed by respondent no.3 – Mr. Pradeep Kumar Kaushik, the *functus officio* ex-Interim Resolution Professional (IRP) in Corporate Insolvency Liquidation Process (CIRP) of M/s. Three C Shelters Pvt. Ltd. to take over the property located at Hotel Plot bearing no.A-3a, Phase II, Distt. Central, Nehru Place, New Delhi (which is otherwise claimed to be owned and in exclusively possession of the appellant in LPA No.1097/2024 – M/s. Lavender Infraprojects Pvt. Ltd.) and Units in the Project Ace Palms Floors, Sector-89, Gurgaon (claimed to be owned and in possession of the appellant in LPA No.1098/2024 –



Bright Buildtech Pvt. Ltd.), to respondent no.3 without issuing notice or granting opportunity of being heard to any of the stakeholders.

2. It is the case of the appellants that the learned Single Judge upon being misled by the *non-est* status report filed by respondent no.3, had wrongly deemed the Hotel Plot at Nehru Place and Units in the Project Ace Palms Floors, Gurgaon to be the assets of M/s. Three C Shelters and even allowed liquidation of said properties to infuse funds in a group housing project, namely 'Greenopolis', having no nexus with the appellants herein. It is further stated that the CIRP *qua* M/s. Three C Shelters Pvt. Ltd. stood quashed by learned National Company Law Appellate Tribunal (NCLAT) *vide* order dated 28.08.2023, and the office of IRP was rendered *functus officio*, however, the respondent no.3/ex-IRP, who had admittedly demitted office, continued to pursue matters regarding a CIRP which is *non est* as on date.

3. Mr. Jayant Bhushan, learned senior counsel for the appellant in LPA No.1098/2024, leading the batch of matters, contends that though the learned Single Judge was aware that the appellants were not parties in the underlying writ petition, yet without necessarily impleading them or at the least, issuing notice to the appellants or hearing them, has passed the *ex parte* impugned order containing drastic and detrimental civil action of not only taking over of possession of properties admittedly not belonging to the M/s. Three C Shelters Pvt. Ltd., but has also simultaneously allowed sale of such properties. Moreover, contrary to the judgement of the Supreme Court in ***Embassy Property Developments Private Limited vs. State of Karnataka & Ors., (2020) 13 SCC 308***, the IRP, who had become a *functus officio*, is brazenly attempting to take possession of the



properties belonging to the appellants (M/s. Bright Buildcon Pvt. Ltd. and M/s. Lavender Infraprojects Pvt. Ltd.) without following any procedure prescribed under the Insolvency and Bankruptcy Code, 2016. The Supreme Court while examining the provisions of Section 20(1) of IBC, and as to whether an asset owned by a third party but which is in the possession of Corporate Debtor under contractual arrangements, has observed that such asset is specifically kept out of the definition of term “asset” under Explanation 2 of Section 18 of IBC. Learned senior counsel thus states that the assets of the appellants are not even in the possession of the M/s. Three C Shelter Pvt. Ltd. under any contractual arrangement and is therefore beyond the purview and jurisdiction of the IRP. He contends that the impugned order to that extent is contrary to law. According to learned senior counsel, by mere affixation of Chaspa notice of taking possession of the flats, the IRP cannot take possession of such properties which do not belong to the Corporate Debtor i.e. M/s Three C Shelter. He vociferously contends that the impugned *ex parte* order, being completely violative of the aforesaid procedure and also being bereft of any reasons as to why such drastic order was passed without as much as impleading the affected parties or even hearing such appellants, ought to be set aside.

4. The learned senior counsel also refers to the order dated 20.02.2025 passed in *Suresh Kumari vs. Registrar of Companies & Ors*, in W.P.(C) 1567/2024, particularly para 71 to submit that the learned Single Judge has now observed that the parties therein have failed to establish any direct link or connection of the appellant in LPA No.1098/2024 to the ex-promoters and director of M/s Three C Shelters Pvt. Ltd., and further that



none of the companies of ACE Group have acquired land in Gurugram that is part of the 'Greenpolis Project'. He thus contends that the learned Single Judge, in **Suresh Kumari** (*supra*) has given a contrary observation to the one given in the impugned *ex parte* order.

5. Mr. J. Sai Deepak, learned senior counsel appearing for a group of homebuyers contends that none of these issues have been adverted to before the learned Single Judge by the appellants. He contends that none of the appellants have filed any application seeking impleadment nor have they filed any application seeking recall or review of the impugned order. In the absence of placing foundational facts before the learned Single Judge, this Court may not be in a position to appropriately appreciate any of the contentions raised by the appellants. Moreover, he submits that assuming there is contradiction in the order passed by the learned Single Judge in **Suresh Kumari** (*supra*), it would be appropriate for the appellant to bring it to the notice of the same learned Single Judge. He thus urges that the present appeals are bereft of any merits and ought to be dismissed. He reserves his right to address on merits of the matter, if called upon.

6. Having heard learned senior counsel for the parties as also other learned counsel, and after examining the impugned order, we are of the opinion that the matter needs consideration by the learned Single Judge of the pertinent issues raised by the appellants.

7. It is not disputed by any of the parties that the appellants in LPA No.1097/2024, LPA No.1098/2024 and LPA No.1136/2024 were not arrayed in the memo of parties nor were they ever called upon to answer the issues raised in the underlying writ petition. Without having heard the appellants, orders affecting the valuable and substantial rights of the



appellants were passed *ex parte*. So much so that the properties claimed to be belonging to the appellants were not only allowed to be attached but also to be sold. Such direction ought to have been passed after considering or hearing the appellants too.

8. While issuing notice in the present appeals, we had passed the following interim directions *vide* order dated 11.11.2024, particularly para 4, which reads thus:-

“4. We, accordingly, dispose of the applications by directing that all the parties will stand restrained from taking any further steps in terms of the impugned order qua the suit properties. Consequently, the appellants would also stand restrained from creating any third party right(s) or parting with the possession of the suit properties, which they claim, are in their possession. Further, they will not enter into any agreement(s) with any third party in respect of the suit properties till the next date.”

9. Having considered the aforesaid facts and the arguments addressed, we are of the considered opinion that it would be appropriate to direct the appellants to approach the learned Single Judge seeking their impleadment in the underlying writ petition and simultaneously file an appropriate application seeking recall/clarification/modification or review of the impugned order dated 22.10.2024 so as to enable the learned Single Judge to re-consider the grievances raised by the appellants after giving due opportunity to them.

10. Accordingly, we grant 10 days time for the appellants to file their impleadment applications and any other appropriate application, if so advised, in the underlying writ petition pending before the learned Single Judge. We request the learned Single Judge to take up the applications, if so filed, and dispose of the same with due expedition, preferably within a period of 30 days thereafter.



11. The aforesaid directions are also made available to the appellants/homebuyers in LPA No.1133/2024 who may also avail the benefit of the same.

12. All rights and contentions of the parties are kept open.

13. No observations made herein shall tantamount to expression on merits of the case and the learned Single Judge shall consider the matter uninfluenced.

14. In order to maintain equities between the parties, we deem it appropriate to also direct the appellants as also the respondents to maintain *status quo* in respect of the properties which are subject matter of the underlying writ petition as also the impugned *ex parte* order, till the learned Single Judge disposes of the aforesaid applications, if filed within the timeline prescribed.

15. The present appeals stand disposed of in above terms.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

MARCH 17, 2025

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