

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 312 & 313 of 2025

[Arising out of order dated 03.12.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, New Delhi Bench, Court – IV) in I.A. No.
459/2024 in Company Petition IB – 67 (ND)/2022]

IN THE MATTER OF:

Anuj Gaur & Ors.

...Appellants

Versus

Rabindra Kumar Mintri

RP of Som Resorts Pvt. Ltd. & Anr.

...Respondents

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Arjun Mahajan, Mr. Sumit R. Sharma, Mr. Piyush Gautam, Mr. Sagar Agarwal and Mr. Harshit Kapoor, Advocates.

For Respondents : Mr. Arvind Nayyar, Sr. Advocate with Mr. Akshay Joshi and Mr. Akash Srivastava, Advocates for R-1.

Mr. Alok Dhir, Ms. Varsha Banerjee and Ms. Udit Singh, Advocates for R-2.

J U D G M E N T

ASHOK BHUSHAN, J.

These appeals by a suspended director of the corporate debtor, Som Resorts Pvt. Ltd. has been filed challenging the order dated 03.12.2024 passed in I.A. No. 459/2024 filed by the appellant as well as the order dated 03.12.2024 passed by the adjudicating authority (National Company Law Tribunal, New Delhi Bench, Court IV) in I.A. No. 2552/2023 filed by the Resolution Professional (RP) for approval of the resolution plan. By two separate order dated 03.12.2024, I.A. No. 459/2024 has been rejected and

I.A. No.2552/2023 has been allowed and the resolution plan submitted by Respondent No. 2 – Casa Italia Social Welfare Association has been approved. Appellant aggrieved by the above orders have come up in the appeal.

2. Brief facts of the case necessary to be noticed for deciding the appeal are:

- i. The corporate debtor, Som Resorts Pvt Ltd. is engaged in the business of development of Real Estate Project. The corporate debtor started a Project at ML – 1/9, Sector 9, Vasundhara Ghaziabad. Land of said Project has been allotted by UP Housing and Development Board (Uttar Pradesh Awas Evam Vikas Parishad).
- ii. The promoters carried out constructions in violation of approved building plan and the UP Awas Evam Vikas Parshad (hereinafter referred to as 'Board'), sealed the Project.
- iii. 26 homebuyers, namely Yadubir Singh Sajwan & Ors. filed a Section 7 application against the corporate debtor for initiating the insolvency resolution process on which Company Petition No. (IB) 67/ND/2022 was registered and vide order dated 02.08.2022, the adjudicating authority admitted Section 7 application and appointed one Mr. Sumit Shukla as the IRP.
- iv. The Committee of Creditors (CoC) and third CoC meeting discussed the expression of interest for submission of the resolution plan. In fourth CoC meeting, Mr. Sumit Shukla was replaced by Mr. Rabindra Kumar Mintri by adjudicating Authority on 20.11.2022. 'Form – G' was

published on 28.10.2022. In the fifth CoC meeting held on 23.12.2022, CoC decided to publish fresh 'Form – G'.

- v. A fresh invitation of Expression of Interest (EoI) was issued on 24.12.2022, along with the eligibility criteria under Section 25(2)(h), which was published on 29.12.2022.
- vi. In pursuance of 'Form – G', resolution plans were received, including the resolution plan submitted by Respondent No. 2 – Casa Italia Social Welfare Association, which is the association of the homebuyers of the Project in question.
- vii. In ninth CoC meeting, the resolution plans were opened and deliberated, including the resolution plan of Respondent No. 2, the notice of ninth CoC meeting was also shared with the appellant. In the tenth CoC meeting the revised resolution plan received from resolution applicants were put to vote. Notice of tenth CoC meeting was also sent to the appellant, the suspended director.
- viii. On the basis of e-voting held between the 12.04.2023 and 14.04.2023, the resolution plan submitted by Casa Italia Social Welfare Association was approved by the 100% vote shares of the CoC.
- ix. The RP filed application for approval of the resolution plan on 19.04.2023 being I.A. No.2552/2023. The application filed by the RP was heard by the adjudicating authority on 04.01.2024. The appellant after more than 8 months of filing the application for approval of the resolution plan filed the I.A. No.459/2024, raising objection to the resolution plan. The adjudicating authority heard the I.A. filed by the

appellant in I.A. No.459/2024, as well as the application for approval of the resolution plan filed by the RP and by order dated 03.08.2024, rejected I.A.459/2024 and by a separate order of the same date allowed the I.A.2552/2023, approving the resolution plan submitted by Respondent No. 2.

- x. Aggrieved by the above order dated 03.12.2024, these two appeals have been filed by the appellant.

3. We have heard learned sr. counsel, Mr. Abhijit Sinha appearing for the appellant. Learned sr. counsel, Mr. Arvind Nayyar has appeared for the RP and learned counsel, Mr. Alok Dhir has appeared for the Successful Resolution Applicant (SRA).

4. Learned counsel for the appellant challenging the impugned order passed by the adjudicating authority submitted that entire Corporate Insolvency Resolution (CIRP) process have been conducted against the provisions of the Insolvency and Bankruptcy Code, 2016 (for short the 'Code' or the 'IBC') and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (for short 'CIRP, Regulations, 2016). The CoC who represent the homebuyers itself has filed the resolution plan which has been approved by the CoC, which is not in accordance with the law. It is submitted that there were other resolution plans which were more viable resolution plan but resolution plan submitted by the association of the homebuyers was approved. It is submitted that CoC consist of only 100% creditors in class who are also the SRA. It is submitted that eligibility criteria for Homebuyers Association has been subsequently

reduced. Adjudicating authority failed its duty to examine the resolution plan in terms of the mandatory requirement of the Code. It is submitted that resolution plan submitted by Respondent No. 2 is a contingent plan which depends on four contingencies mentioned in the plan. The plan submitted by the Respondent No. 2 was not a resolution plan but a plan giving four different options. The resolution plan submitted by SRA structured around four different contingencies, each with further contingencies. The SRA under the guise of single resolution plan has submitted effectively multiple as more than four alternative plans. Adjudicating authority proceeded to approve the plan which fails to offer any effective resolution. The plan submitted was highly improper and impractical and against the purpose of the Code. Learned counsel for the appellant submitted that minimum eligibility criteria was fixed for ₹2 crore for Homebuyers Association, whereas, the total net worth of Respondent No. 2 is only ₹93 lakhs, hence Respondent No. 2 is not eligible to submit a resolution plan.

5. Learned counsel for the RP referring the submissions of the appellant submits that appellant as a suspended director of the corporate debtor who has no locus to challenge the resolution plan which is approved by the CoC. Learned counsel for the RP submitted that in view of the decision of the CoC taken on 23.12.2022 fresh 'Form – G' was published with modified eligibility criteria under which association of homebuyers were given eligibility with net worth of ₹90 lakhs. Respondent No. 2 was fully eligible to submit a resolution plan. It is further submitted that it was on account of the illegal construction carried out by the suspended management that Board has sealed the Project.

The net worth requirement for the resolution was revised in the fifth CoC meeting held on 31.12.2022 thereafter a fresh 'Form – G' and revised process documents was issued on 24.12.2022. It is submitted that the homebuyers themselves was desirous to complete Project, which was stalled due to sealing of the Code. The association of homebuyers was fully eligible to submit a resolution plan to revive the Project. There being illegal construction, the SRA has indicated four different options for purposes of carrying out construction after obtaining approval from the Board. Four different options provided in the plan were nothing but mechanism to complete the construction. Learned counsel for the RP submits that appellant did not participate in any of the meeting of the CoC and has never raised any objection to the eligibility criteria of the resolution applicant. It was after more than 8 months approval of the resolution plan, and I.A. was filed by the appellant being I.A.459/2024 before the adjudicating authority, which is nothing, but an afterthought, and steps by the suspended director to delay the insolvency resolution of the corporate debtor.

6. Learned counsel for the SRA refuting the submissions of the appellant submitted that appellant suspended director has no locus to challenge the approval of the resolution plan. It is submitted that both the grounds which has been raised by the appellant during the course of the hearing has no legs to stand. The submission of the appellant is that Respondent No. 2 was not eligible since it has net worth of only ₹93 crore and net worth was required to be fulfilled of ₹2 crore. It is submitted that CoC in its fifth meeting held on 23.12.2022 has decided to amend the criteria by providing net worth of ₹90

lakhs for association of the homebuyers. RP issued revised criteria by letter dated 24.12.2022, which was also published in the newspaper on 29.12.2024. The Respondent No. 2 was fully eligible to submit the resolution plan. The submission of the appellant that the resolution plan is contingent and dependent on four different options which could not have been approved by the adjudicating authority need to be rejected. It was appellant who carried out the illegal construction in the Project due to which the Board has sealed the Project. The adjudicating authority in the proceeding had directed the Board to file affidavit, indicating their decisions regarding four options raised before them by the SRA. Affidavit was filed by Board where Board was agreeable to one of the options given by the SRA. Board filed an affidavit before the adjudicating authority in I.A. 5225/2022 and adjudicating Authority being satisfied that the resolution plan satisfies all requirement of Section 30(2) has approved the resolution plan.

7. We have considered the submissions of the counsel for the parties and perused the records.

8. The respondents have raised objections with regard to locus of the appellant to challenge the order, approving the resolution plan and order passed by the adjudicating authority rejecting I.A.459/2024. Learned counsel for the respondents in support of their submissions submits that appellant has no locus to file the appeal. Appellant has relied on a recent judgement of the Hon'ble Supreme Court in the matter of '**Kalyani Transco**' **Vs. 'M/s. Bhushan Power and Steel Ltd. & Ors.'** reported in **Civil Appeal No. 1808/2020** decided on 02.05.2025. In paragraph 10 of the judgement,

Hon'ble Supreme Court has categorically held that ex directors are also stakeholders, hence they have right to file an appeal. Paragraph 10 of the judgement is as follows:

“10. Thus, the use of the phrase “any person aggrieved” indicates that there is no rigid locus requirement to institute an Appeal challenging the order of NCLT before the NCLAT, or an order of NCLAT before this Court. Any person who is aggrieved by the order may institute an Appeal. Once the Corporate Insolvency Resolution Process is initiated, the proceedings are no longer restricted to any individual Applicant Creditor or to the Corporate Debtor, but rather they become collective proceedings in rem, where all the creditors and the ExDirectors would be necessary stakeholders. Therefore, the Appellants who are the operational creditors, and the erstwhile Promoters, being important stakeholders, and whose Company Appeals have been dismissed by the NCLAT vide the impugned judgment, would certainly be the persons aggrieved entitled to file Appeals before this Court under Section 62 of the IBC. Moreover, they have also raised number of questions of law in the instant appeals, which although will be considered in the later part of this judgment, nonetheless, they being the persons aggrieved, the Appeals at their instance are certainly maintainable.”

9. In view of the above judgement of the Hon'ble Supreme Court, we do not find any lack of locus in the appellant to challenge the order dated 03.12.2024. More so, when I.A. filed by the appellant being I.A. 459/2024 has been rejected by the adjudicating authority, appellant has every right to challenge the said order by filing an appeal. We, thus reject the objection of the respondent that appellant has no locus to file the present appeal.

10. The first submission which has been advanced by the counsel for the appellant is that Respondent No. 2 association of homebuyers, who has net worth only ₹93 lakhs was not eligible to submit a resolution plan.

11. The respondents refuting the submission of the appellant has submitted that the Respondent No. 2 was fully eligible to submit a resolution plan. An affidavit has been filed by the RP as well as the SRA. RP in its affidavit in the appeal had pleaded that in the CoC meeting dated 23.12.2022,

revised process document was approved. Copy of the fifth CoC meeting dated 23.12.2022 has been brought on the record along with the affidavit of the SRA as Annexure R-9. The CoC decided to issue fresh round of invitation for EoI. Earlier 'Form – G', approved by the CoC was withdrawn and draft 'Form – G' and invitation of EoI was approved with the eligibility criteria. Agenda No. 6 of minutes, which resolution was approved by the CoC, is as follows:

“Agenda 6: Fresh round of Invitation for Expression of Interest (EOI) and Publication of Form G

The Chairman apprised to the members of CoC that the erstwhile Resolution Professional had published Expression of Interest in Form-G in two Newspaper i.e. Financial Express (English Language) and in Jansatta (Hindi Language) on October 28, 2022. Thereafter, upon the request made by the Homebuyers through their Authorized Representative to the erstwhile RP to withdraw the above Form-G and the said matter was placed in the 4th CoC Meeting held on 12th November, 2022, wherein the resolution with respect to the withdrawal of Form-G was approved by the members of CoC. The same was withdrawn by the erstwhile Resolution Professional vide publication in two Newspaper i.e. Financial Express (English Language) and in Jansatta (Hindi Language) on November 20, 2022. Accordingly, to comply with the legal requirements, the Resolution Professional had prepared draft Form G and Invitation for Expression of Interest and placed before the CoC for further discussion/deliberations and apprised about the approximate cost of publication of Form G in Financial Express (English) and Jansatta (Hindi) in Delhi NCR is INR 20,000 (Indian National Rupees Twenty Thousand Only) exclusive of applicable taxes. After detailed deliberations, certain modifications in the draft Expression of Interest and in the Eligibility Criteria were suggested by the members of CoC. The same has been incorporated and shall be shared with the members of CoC along with the minutes of this meeting.”

12. In the eligibility criteria under Section 25(2)(h) as approved in the fifth CoC meeting, categorically, the minimum net worth of the association of Casa Italia Social Welfare Association was fixed as ₹90 lakhs. In pursuance of the minutes of the meeting dated 23.12.2022, RP issued invitation of EoI and eligibility criteria which was published on 29.12.2022. Net worth of Respondent No. 2, admittedly is ₹93 lakhs, hence it fulfils the eligibility, hence

there is no substance in the submission of the appellant that Respondent No. 2 does not fulfil the eligibility.

13. The second argument which has been raised by the appellant is that the plan submitted by the RP is contingent plan which contains four contingencies with sub-contingencies, which plan is neither practical nor viable. It is submitted that CoC committed an error in approving the resolution plan.

14. Learned counsel for the RP has submitted and has also stated in its affidavit that appellant who is suspended director of the corporate debtor did not participate in any meeting of the CoC and at no point raised any objection. Notice of the CoC meetings were sent to the appellant, but he never participated. Appellant has filed the I.A. 459/2024 objecting the resolution plan after 8 months of the approval of the resolution plan by the CoC. The objection to the plan which has been advanced by the appellant is with respect to Contingency No. I, Contingency No. II, Contingency No. III and Contingency no. IV as is part of the resolution plan, which is also been extracted by the adjudicating authority in the impugned order. It is on the record that the Project was sealed by the Board, construction of which was being carried out by the appellant contrary to the sanctioned plan. RP as well as the SRA has stated that said contingencies of four possible options to obtain fresh sanction from the UP Awas Evam Vikas Parishad to carry out the Project. It has been pleaded in the affidavit filed by the SRA that erstwhile management has been granted permission to construct and sold seven residential units, 15,540 sq. feet by the Board, however, utter disregard of the permission the erstwhile

directors including the appellant had constructed 107 units and sold 54 units in an unauthorised manner. The Board due to persistent illegal construction have directed for demolition of the structure of the corporate debtor vide letter dated 14.07.2016, from which date, the Project has been sealed and no construction could be carried out. The erstwhile RP has filed an application before the adjudicating authority seeking de-sealing of the Project. In the above background, the SRA who has given the plan to commence the construction and complete the Project has given four options so as to obtain permission of the Board as per any option acceptable by the Board. It is relevant to notice paragraphs 11.1 to 11.4 of the affidavit filed by the SRA, which are as follows”

“11.1. The Corporate Debtor, under the erstwhile management, had been granted the permission to construct one hall and 7 residential units (15540 sq. ft) by UPAVP.

11.2. However, in utter disregard of the permission granted, the erstwhile directors, including the Appellant herein, had constructed 107 units and sold 54 Units in an unauthorised manner.

11.3. Due to persistent illegal construction being carried on by the erstwhile management, UPAVP had sealed the Project and also directed demolition of the existing structure of the Corporate Debtor, vide letter dated 14.07.2016.

11.4. Therefore, since 14.07.2016, the Project (consisting of illegal structure) has been sealed and no construction activity could have been carried out in the said Project, as on Insolvency Commencement Date (02.08.2022).”

15. With regard to four contingencies in paragraph 12 to 15, SRA has made following pleadings:

“12. Accordingly, in light of the aforesaid factual background, the rights and interests of 54 Allottees, who had invested their hard-earned monies in the Project, were left in a lurch, as UPAVP had granted permission for construction and sale of only 7 units, as opposed to sale of 54 units in the Project. Accordingly, SRA, being the Welfare Association of the Allottees, proposed 4 possibilities to revive the Corporate Debtor, in terms of applicable Rules and Regulations.

13. That it is most respectfully submitted that each possibility has been provided in such a manner that priority 1 (Contingency 1) aims at maximising the value of the Corporate Debtor and ensure that maximum area is available to existing Allottees, and the last priority (Contingency 4) provides for lowest permissible area to the Allottees. In fact, the SRA has duly undertaken that if the fresh/renewed Approval is not granted by UPAVP, the SRA shall construct the project as per existing approval and allot proportionate virtual space to the Allottees. Therefore, the Resolution Plan is neither contingent nor conditional on receipt of permission from UPAVP. That considering the aforesaid background, the CoC has, in its commercial wisdom, approved the Resolution Plan.

14. That it is most respectfully submitted that the SRA has provided for detailed treatment to be accorded in each possible outcome and also provided complete details of estimated revenue and expenditure. In fact, it is pertinent to note that neither UPAVP nor any Allottee/ member of the CoC has challenged the approved Resolution Plan, which clearly demonstrates that the Resolution Plan is capable of being fully implemented.

15. That it is pertinent to note that in response to the 4 possible options, UPAVP had filed its Affidavit, making certain observations with respect to each Option. In fact, the UPAVP had clearly acknowledged that the Resolution Plan is implementable in terms of Contingency/ Option 2, after demolition of existing structure and obtaining land use change from "mixed" to "commercial." Pertinently, pursuant to approval of the Resolution Plan by the Ld. AA, the SRA has applied for land use change and UPAVP, vide its letter dated 03.04.2025, duly acknowledged that pursuant to demolition of the existing structure, an application for land use change can be made by the SRA. Copy of the letter dated 03.04.2025 along with its translated version, as addressed by UPAVP is annexed herewith and marked as **ANNEXURE R-7**. Copy of the Affidavit filed by UPAVP before the Ld. Adjudicating Authority is annexed herewith and marked as **ANNEXURE R-8.**"

16. The adjudicating authority has directed the UP Awas Evam Vikas Parishad, who had sealed the Project to file an affidavit and indicating their decision with regard to 4 options raised before them by SRA. In compliance of the direction of the adjudicating authority dated 27.09.2023 an affidavit was filed on behalf of the Board. Copy of the affidavit has been brought on the record along with the affidavit of the SRA as Annexure A-8. In the affidavit of Board, all contingencies have been noticed and the Board's decision was

also mentioned. It is useful to notice paragraph 4 of the affidavit filed by the Board, which is as follows:

“4. That as per the aforesaid discussion it has been found by the U.P. Awas Evam Vikas Parishad that if the Contingency No.4 is applied and unauthorized construction is demolished and construction is made as per the approved map, the same will be as per Rules and the Parishad would not have any objection on the same. As far as the first three options are concerned, the same cannot be accepted by the Parishad as those options are not permissible as per law.”

17. The affidavit filed by the Board is a clear indication that one of the contingencies which was part of the resolution plan i.e., one of the options suggested is acceptable and the SRA, since has expressed his willingness to carry/complete the construction of any of the contingencies as accepted in the plan, which contingencies are for purposes of carrying out the construction in accordance with the approval of the Board. We do not find any substance in the submission of the appellant that the plan is contingent and not viable or not workable. Contingencies are alternate options under which the resolution applicant has to carry out the construction in accordance with the requirement of law i.e., sanctioned by the Board with who is authority, competent to sanctioned plan on the land allotted by the Board. The constructions which were carried out by the promoters, including the appellant prior to commencement of the CIRP, were not in accordance with the sanctioned plan of the Board, hence the constructions were sealed in the year 2016 itself, and the constructions remained under seal during the CIRP process and to work on the aforesaid illegalities, the four options were submitted by the SRA so as to find an approval of the Board to complete the construction and allot the units to the homebuyers who were waiting for their homes to be delivered from the last more than a decade.

18. Learned counsel for the appellant has also placed reliance on the judgement of this Tribunal in the matter of **‘Sh. Sibanarayan Chhotray’ Vs. ‘Indian Overseas Bank & Anr.’** in **Comp. App. (AT) (Ins.) No.887/2024**, where this Tribunal has held that CIRP process has to be completed within the timeline provided in the statutory limit with maximum period allowed 330 days. According to written submissions submitted by the appellant himself, the adjudicating authority has extended twice, the adjudicating authority have extended the period for CIRP till 30.04.2023. Application for approval of the resolution plan has been submitted by the RP on 20.04.2024 i.e., before completion of the timelines. We, thus do not find any breach of the timeline as suggested by the appellant. The resolution plan having already been approved by the CoC before 19.04.2023, on which date, the application was filed before the adjudicating Authority by the RP for approval of the plan. Thus, both approval of the plan and filing of the application for approval of the plan were much before the CIRP period, which was permitted by the adjudicating authority.

19. Insofar as the submission of the appellant that association of the homebuyers were not eligible to submit a resolution plan, we fail to see any substance in the said submission. Homebuyers who are the financial creditor in a class and constitute the CoC are the persons who were most affected by non-completion of the Project by the promoters. Homebuyers have themselves come forward and submitted a plan for carrying out the construction and complete the Project in which no exception can be raised.

20. Learned counsel for the RP has also referred to a notification dated 20.07.2023, by which Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, has been amended by which Regulation 31A in sub-Regulation 1 and explanation has been added which explanation is as follows:

“31A. Regulatory Fee. (1) A regulatory fee calculated at the rate of 0.25 per cent of the realisable value to creditors under the resolution plan approved under [section 31](#), shall be payable to the Board, where such realisable value is more than the liquidation value:

Provided that this sub-regulation shall be applicable where resolution plan is approved under [section 31](#), on or after 1st October 2022.

Explanation: For removal of doubts, it is hereby clarified that the regulatory fee under this sub-regulation, shall not be payable in cases where the approved resolution plan in respect of insolvency resolution of a real estate project is from an association or group of allottees in such real estate project.”

21. The above explanation is clarificatory and clarify that in respect of insolvency resolution of Real Estate Project, Association of group of allottees in such Real Estate Project also can submit a resolution plan.

22. Adjudicating authority did not commit any error in rejecting the objections filed by the appellant to the resolution plan. The order dated 03.12.2024, rejecting I.A. 459/2025 cannot be faulted. Adjudicating authority also in its order dated 03.12.2024, while considering the application filed by the RP for approval of the resolution plan has noticed all relevant facts, including the financial outlay and four contingencies as part of the resolution plan. Adjudicating authority has also noted the terms of the resolution plan and has come to the conclusion that resolution plan complies with CIRP Regulations, 2016, as well as Section 30(2)(b) of the IBC. After being satisfied with the resolution plan submitted by the SRA, being in

compliance with IBC as well as the CIRP Regulations, 2016, adjudicating authority has approved the resolution plan with order dated 03.12.2024.

23. We, thus do not find any substance in submissions raised by the appellant to challenge the impugned order. There is no merit in the appeals. Both the appeals are dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

NEW DELHI

30th May, 2025

himanshu