

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA (IBC) No. 165/JPR/2023;
IA (IBC) No. 647/JPR/2023
IA (IBC) No. 476/JPR/2023
IA (IBC) No. 263/JPR/2023
& IA (IBC) No. 226/JPR/2024
In CP No. (IB)- 161/7/JPR/2020

IN THE MATTER OF:

ARTI KANOONGO & ORS.

...Applicant/ Financial Creditor

Versus

SHRINATHJI BUSINESS VENTURES PVT. LTD.

...Respondent/ Corporate Debtor

IA (IBC) No. 165/JPR/2023

MEMO OF PARTIES

CANARA BANK (E-SYNDICATE BANK)
Branch Office: Malviya Nagar Branch, Near
Apex Circle, Malviya Nagar, Jaipur, Rajasthan
Registered Office: 112, JC Rd, P.B. Halsurpete,
Nagarathpete, Bengaluru- 560001 (Karnataka)

...Applicant

Solr

Solr

*IA (IBC) No. 165/JPR/2023; IA (IBC) No. 647/JPR/2023; IA (IBC) No. 476/JPR/2023;
IA (IBC) No. 263/JPR/2023; & IA (IBC) No. 226/JPR/2024 In CP No. (IB) 161/7/JPR/2020*



Versus

MR. PRASHANT AGRAWAL,
 RP of *Shrinathji Business Ventures Pvt. Ltd.*
 P. Agrawal & Associates, F-106 (1st Floor),
 Sumer Complex, Gautam Marg, C-Scheme,
 Jaipur- 302001 (Rajasthan)

...Respondent

AND IN THE MATTER OF
IA (IBC) No. 647/JPR/2023

MEMO OF PARTIES

DIRECTORATE OF ENFORCEMENT
Government of India
 6th Floor, Loknayan Bhawan, Khan
 Market, New Delhi- 110003

...Applicant No. 1

DIRECTORATE OF ENFORCEMENT
Through Joint Director, Jaipur Zonal Office
 2nd Floor, Jeevan Nidhi-II, LIC
 Building, Bhawani Singh Road, Jaipur-
 302005 (Rajasthan)

...Applicant No. 2

DIRECTORATE OF ENFORCEMENT
Through Deputy Director, Jaipur Zonal Office
 2nd Floor, Jeevan Nidhi-II, LIC
 Building, Bhawani Singh Road, Jaipur-
 302005 (Rajasthan)

...Applicant No. 3

Versus

ARTI KANOONGO
 A-130, Rana Pratap Nagar, Kalwar
 Road, Jhotwara, Jaipur, Rajasthan

...Respondent No. 1

Sgr

Sgr



ANITA KHANDELWAL

164, Kalan Kunj, Kalwar Road,
Jhotwara, Jaipur, Rajasthan

...Respondent No. 2

VINOD KUMAR KANOOGO

A-130, Rana Pratap Nagar, Kalwar
Road, Jhotwara, Jaipur, Rajasthan

...Respondent No. 3

SIVRAJ JANGID

24, Ekta Nagar, Dhawas, Ajmer Road,
Jaipur, Rajasthan

...Respondent No. 4

AND IN THE MATTER OF
IA (IBC) No. 476/JPR/2023

MEMO OF PARTIES

MR. SUDHIR KUMAR MISHRA

49-A, Shri Ram Nagar- B, Near Maharana
Pratap School, Kalwar Road, Jhotwara,
Jaipur

...Applicant No. 1

MR. RAM NIWAS VERMA

210, Govindpura, Pratap Vihar, Kalwar
Road, Jaipur

...Applicant No. 2

MR. SHIVRAJ JANGID

24, Ekta Nagar, Dhabas, Ajmer Road,
Jaipur

...Applicant No. 3

MR. GANESH RAM YADAV

7, Nari Ka Bas, Chakbadh, Kalwar Road,
Jaipur

...Applicant No. 4

Sdr

Sdr

**MR. DILIP KUMAWAT**

A-17, Rana Pratap Nagar, Fauzi Marg,
Kalwar Road, Jaipur

...Applicant No. 5

MR. AMIT KOTHIWAL

B- 2/518, Chitrakoot Scheme, Ajmer
Road, Jaipur

...Applicant No. 6

MR. GOPAL LAL SAINI

76, Hanuman Sadan, Near Harmada Bus
Stand, Opposite Govt. School, Jaipur

...Applicant No. 7

MR. RAJ KAPOOR KUMAWAT

5-A, Fauzi Marg, Rana Pratap Nagar,
Jhotwara, Jaipur

...Applicant No. 8

Versus

MR. PRASHANT AGRAWAL, RP

of Shrinathji Business Ventures Pvt. Ltd.
F-106, Sumer Complex, Gautam Marg,
B/h Bagadia Bhawan, C-Scheme,
Jaipur- 302001 (Rajasthan)

...Respondent

AND IN THE MATTER OF
IA (IBC) No. 263/JPR/2023

MEMO OF PARTIES**SHRINATHJI BUSINESS VENTURE PVT. LTD.,**

Through Resolution Professional, Mr. Prashant Agarwal
F-106, Sumer Complex, Gautam Marg,
B/H Bagadia Bhawan, C-Scheme,
Jaipur- 302001 (Rajasthan)

...Applicant

Solr

Solr

*IA (IBC) No. 165/JPR/2023; IA (IBC) No. 647/JPR/2023; IA (IBC) No. 476/JPR/2023;
IA (IBC) No. 263/JPR/2023; & IA (IBC) No. 226/JPR/2024 In CP No. (IB) 161/7/JPR/2020*



Versus

OMKARA ASSETS RECONSTRUCTION PVT. LTD.

C/515, Kanakia Zillion, Junction of
LBS Road and CST Road, BKC
Annexe, Near Equinox, Kurla (West)
Mumbai-400070, Maharashtra

...Respondent

AND IN THE MATTER OF
IA (IBC) No. 226/JPR/2024

MEMO OF PARTIES

MS. SONIYA GURUDINASINGHANI,

Authorised Representative of the Applicant/sole secured
financial creditor

Kohinoor Square, 47th Floor, N.C.
Kelkar Marg, R.G. Gadkari Chowk,
Dadar (West), Mumbai-400028,
Maharashtra

...Applicant

Versus

MR. PRASHANT AGRAWAL,

RP of *Shrinathji Business Ventures Pvt. Ltd.*

F-106, Sumer Complex, Gautam Marg,
B/H Bagadia Bhawan, C-Scheme,
Jaipur- 302001 (Rajasthan)

...Respondent

FOR THE RP	:	Hemant Kothari, Adv. Prashant Agarwal, in person
FOR THE ED	:	Manjeet Kaur, Adv.
FOR HOMEBUYERS	:	Archit Bohra, Adv. (In IA 476/JPR/ 2023)
FOR THE SRA	:	Prateek Kasliwal, Adv.

Sd/-

Sd/-

*IA (IBC) No. 165/JPR/2023; IA (IBC) No. 647/JPR/2023; IA (IBC) No. 476/JPR/2023;
IA (IBC) No. 263/JPR/2023; & IA (IBC) No. 226/JPR/2024 In CP No. (IB) 161/7/JPR/2020*



FOR SECURED FC : Ayush Rajani, Adv.
FOR CANARA BANK : Bhanu Mishra, Adv.
Ravindra Kumar, Adv.

Order Pronounced On: 29.07.2024

ORDER

Per: Shri Rajeev Mehrotra, Technical Member

1. The main Petition bearing *CP No. (IB) 161/7/JPR/2020* was filed by *Mrs. Arti Kanoongo, Mrs. Anita Khandelwal, Mr. Vinod Kumar Kanoongo and Mr. Sivraj Jangid* ('Financial Creditors'/ 'Homebuyers') under Section 7 of the Insolvency and Bankruptcy Code ('IBC'/ 'Code'), 2016 seeking initiation of the Corporate Insolvency Resolution Process ('CIRP') of *M/s Shrinathji Business Ventures Pvt. Ltd.* ('Corporate Debtor'). The aforementioned Financial Creditors raised their grievances relating to the non-allotment of flats in the group housing project of the Corporate Debtor, namely *Guman Eternity*. This Adjudicating Authority *vide* Order dated 23.12.2021 initiated the CIRP of the Corporate Debtor and appointed the proposed Resolution Professional i.e., *Mr. Prashant Agarwal* as the Interim Resolution Professional ('IRP'), who was later confirmed as the Resolution Professional ('RP') in the first meeting of the Committee of Creditors ('CoC').

Sd/-

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2. Subsequently, the RP had preferred an Application bearing *IA (IBC) No. 62/JPR/2022* under Section 21(6A) of the Code read with Regulation 16A of the IBBI (Corporate Insolvency Resolution Process) Regulation, 2016 ('CIRP Regulation') seeking appointment of Authorised Representative for the class of creditors comprising of the allottees of the Corporate Debtor. Hence, this Adjudicating Authority *vide* order dated 08.02.2022 appointed *Ms. Pratibha Khandelwal* ('AR'/ 'Authorised Representative') (IBBI/IPA-002/IP-N00031/2016-17/10068) as the Authorized Representative for the homebuyers/allottees.
3. Later, an Interlocutory Application bearing *IA (IBC) No. 165/JPR/2023* was filed *vide* Diary No. 754/2023 dated 24.03.2023 by *Canara Bank* ('Bank') earlier known as E-Syndicate Bank seeking necessary directions against the RP to accept/admit the claim filed by the Bank and include the name of the Bank in the list of the Financial Creditors. In the IA, the Bank raised the following contentions:
 - 3.1. The Bank had given loans to *Mr. Vipul Kaushik* and *Mrs. Kiran Kaushik* ('Borrowers') for purchase of flats in the project of the Corporate Debtor i.e., *Guman Eternity*, situated at Plot No. GH-1, RPA Road, Near Science Park, Shashtri Nagar, Jaipur, ('Property'). The Borrowers offered execution of all necessary documents and creation of a

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mortgage on the Property to be purchased in order to secure the repayment of the loan amount. The Bank sanctioned a housing loan facility of Rs. 2 Crore in the name of the Borrowers *vide* sanction letter dated 31.12.2014. The Borrowers had executed the following loan and security documents in favour of the Bank; (1) Housing Loan Agreement, (2) Agreement to Mortgage, (3) Letter of Undertaking for compliance of post release terms and conditions, and (4) Authority letter for deduction of EMI.

3.2. A Tripartite Agreement dated 31.12.2014 was also executed between the Borrowers, the Bank, and the Corporate Debtor from whom the Borrowers purchased the Property. The Borrowers authorized the Bank to make the payment of the loan amount directly to the Corporate Debtor. Further, as per the agreement, the purchased Property shall form a part of the security for the housing loan sanctioned by the Bank.

3.3. It is submitted that the Corporate Debtor agreed and gave consent that the Bank shall have a lien, and create a charge on the purchased Property by way of first charge and the Borrowers also agreed to create a mortgage for the housing loan granted by the Bank. It was also agreed that in the event of default by the Borrowers, the Bank shall have a right



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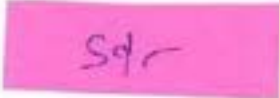
Sgr



to enforce the security on the said property and a right to sell the property.

3.4. The Borrowers failed to maintain the loan account under the aforementioned facility and failed to pay the interest, therefore, the sale deed was not executed in favour of the Borrowers. As per the guidelines issued by the Reserve Bank of India, the Bank classified the outstanding amounts in the accounts of the Borrowers as Non-Performing Assets ('NPA') on 31.08.2016.

3.5. In the intervening period, the Bank came to know that the project of the Corporate Debtor i.e., *Guman Eternity*, was already mortgaged with *M/s Dewan Housing Finance Corporation Limited* having its office at Warden House, 2nd Floor, Sir PM Road, Fort, Mumbai ('DHFL or Piramal Finance'). In view of the same, the Bank requested DHFL to record its charge on all the flats of the project of the Corporate Debtor. DHFL *vide* letter dated 19.10.2016 refused to record the charge of the Bank and additionally informed that the land on which the said flats are constructed is already mortgaged with DHFL. Thereafter, the Bank lodged an FIR with CBI, New Delhi for the fraudulent act, and the Investigating Officer of the CBI *vide* letter dated 07.04.2017 asked the Bank to submit all original papers of the concerned loan accounts.





3.6. In the meantime, the CIRP of the Corporate Debtor was initiated *vide* Order dated 23.12.2021 and *Mr. Prashant Agarwal* was appointed as the RP. The RP made a Public Announcement on 26.12.2021 for submission of the claims against the Corporate Debtor and the last date for the submission of the claim was 06.01.2022. The Bank could not file its claim within the stipulated timeline as the Bank was not aware of the Public Announcement. The Bank came to know about the CIRP only when the submissions were made by the counsel for the Corporate Debtor before the DRT in the case filed by the Bank under Section 19 of the Recovery of the Debts and Bankruptcy Act, 1993. The DRT proceedings cannot be continued due to the moratorium as prescribed under Section 14 of the Code, 2016.

3.7. In due course of time, the Bank submitted its claim of Rs. 3,12,03,927/- (Rupees Three Crore Twelve Lakh Three Thousand Nine Hundred Twenty-Seven Only) in Form-C through E-mail dated 08.03.2023. In response to the same, the RP sent an E-mail dated 20.03.2023 stating that the claim submitted by the Bank could not be admitted since it was submitted beyond the stipulated period as provided under the CIRP Regulations. In revert, the Bank stated that Regulation 12 of the CIRP Regulations is directory in nature and not mandatory, and relied on the

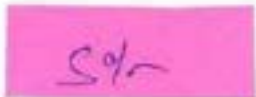
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Judgment Hon'ble NCLT, Principal Bench in the matter of *Edelweiss Asset Recontraction Company Ltd. vs Adel Landmarks Ltd. CP (IB) 1083 (PB)/ 2018* wherein it was held that the rejection of a claim on the ground of delay is not sustainable as the provision is directory in nature. Additionally, the Bank filed Written Submissions *vide* Dairy No. 2040/2023 whereby it reiterated its earlier submissions.

4. The RP filed his Reply to the Application of the Bank i.e. *IA(IBC) No. 165/JPR/2023 vide* Dairy No. 1290/2023 dated 23.05.2023 and submitted that the claim of the Bank was filed belatedly after the last date of submission of the claims. Further, the claim submitted by the Bank was in respect of a home loan provided to *Mr. Vipul Kaushik* who had already filed his claim and the same had also been admitted by RP. Thus, the RP is unable to admit the claim of the Bank as it will result in acceptance of dual claim for a single transaction. Further, the Bank has claimed itself to be a mortgagor of Flat A-801, in *Guman Eternity*, based on the Tripartite Agreement, however, neither the mortgage was executed by the Corporate Debtor nor any charge was created in favour of the Bank under Section 77 of the Companies Act, 2013. Accordingly, the Corporate Debtor has not availed of any financial debt from the Bank, and no mortgage was executed in favour of the Bank. Additionally, the RP also relied on the Judgement of




Hon'ble NCLAT in the matter of *Axis Bank Ltd. vs Value Infracon India Private Limited, Company Appeal (AT)(Insolvency) No. 582 of 2020.*

5. In the meantime, an Application bearing *IA No. 647/JPR/2023* has been filed vide Dairy No. 2865/2023 dated 04.12.2023 by the Directorate of Enforcement ('ED') against *Mrs. Arti Kanoongo, Mrs. Anita Khandelwal, Mr. Vinod Kumar Kanoongo, and Mr. Sivraj Jangid* under Section 65 of IBC, 2016 read with Rule 11 of NCLT Rules, 2016 inter-alia seeking the following reliefs:

- a) *To allow the instant interlocutory Application.*
- b) *To hold the captioned CP No. (IB)- 161/7/JPR/2020 has been filed fraudulently and maliciously by the alleges Operational Creditors/ Applicants No. 1, 2, 3 and 4 for any other purpose other than the insolvency resolution process of the Corporate Debtor in terms of the provisions of Section 65 of the IBC, 2016.*
- c) *To impose the exemplary cost over the Applicants Arti Kanoongo and Ors. for misleading the Hon'ble Adjudicating Authority and misusing and abusing the process of law in the interest of equity and good conscience.*

6. The Application bearing *IA No. 647/JPR/2023* has been filed on the following set of facts:

- 6.1. It has been submitted that ED is investigating the Syndicate Bank fraud case under the provisions of PMLA, 2002 wherein the main accused are *Mr. Shankar Lal Khandelwal*, Builder of Jaipur, *Mr. Bharat Bomb*, CA of Jaipur, *Mr. Vipul Kaushik*, key associate of *Mr. Bharat Bomb* and

Sd/-

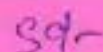
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Mr. Santosh Kumar Gupta, Bank Manager. It is pertinent to note that *Mr. Shankar Lal Khandelwal* is one of the directors of the Corporate Debtor. In order to commit the offence, various fake/ fictitious bank accounts were opened in the name of family members of *Mr. Bharat Bomb* and several others for (i) Discounting forged cheques (ii) forged LC discounting, and (iii) Availing Overdrafts/ loans on fake LIC policies.

6.2. During 2011-15, the accused namely *Mr. Bharat Bomb* and his associates misused the KYC documents of his clients/ employees/ family members as well as existing customers of the Syndicate Bank and created more than 150 fictitious firms and companies. On examination of various documents received from numerous agencies and the statements of various persons, it was found that more than 400 suspected persons/ firms were used in the transactions to defraud the Bank.

6.3. The instant case before this Adjudicating Authority has its genesis in the Syndicate Bank Fraud's Second (2nd) FIR dated 23.03.2017 registered by CBI. The Bank has complained that certain customers have committed fraud in collusion with some officials of the Bank to the tune of of Rs. 20,930.89 Lacs wherein 80 fraudulent house loans,





11 fraudulent loans for commercial properties, 14 forged overdraft facilities, 11 fraudulent term loans and 2 foreign letters of credit at Jaipur Branch and Udaipur Branch, have been provided.

6.4. It was contended that *Mr. Shankar Lal Khandelwal* and his associates fraudulently availed loans of Rs. 58,22,00,000/- (Rupees Fifty Crore Twenty-Two Lakhs Only), and as on 14.02.2018 the outstanding balance in these fraudulent loan accounts is Rs. 60,86,33,905/- (Rupees Sixty Crore Eighty-Six Lakh Thirty-Three Thousand Nine Hundred Five Only).

6.5. It emerged during the investigation that *Mr. Shankar Lal Khandelwal* had availed 43 fraudulent housing loans aggregating to Rs. 47,05,00,000/- (Rupees Forty-Seven Crores Five Lakhs Only) from Syndicate Bank, at Malviya Nagar branch by showing fabricated and forged details of the flat booking at *Guman Eternity* Block-A and *Guman Eternity* Block-B project in the names of different persons including himself, his family members in their companies i.e., *M/s Shrinathji Business Ventures Pvt. Ltd.* and *M/s Sanwariyaji Business Ventures Pvt. Ltd.* at Shastri Nagar and Subhash Nagar Jaipur respectively.

SdrSdr



6.6. Later, on examination of various documents available with ED, it was found that one *Mr. Bharat Bomb* through his associate's accounts transferred Rs. 231.20 Crore to the account of *Mr. Shankar Lal Khandelwal*. Thereafter, ED had filed Original Complaint wherein the Provisional Attachment *Order No. 02/2018* dated 16.05.2018 was passed, and various properties including properties of *M/s Sanwariyaji Business Venture Pvt. Ltd.* i.e. unsold stock of *Guman Eternity Block-B* of Flat No. 103, 104, 201, 203, 204, 301, 303, 304, 401, 403, 404, 501, 502, 603, 604, 701, 703, 801, 802 & 804 and Office at 4th Floor, Solaric Building D of Urmi Corporate Park, Plot No. CTS No. 988 (Part), 98C, S. No. 46 (PT) and 47 (PT) of Village Tungwa, Saki Vihar Road, Andheri (E) Mumbai, were attached. Subsequently, the Adjudicating Authority under the Prevention of Money Laundering Act, 2002 ('PMLA') has confirmed the provisional order of Attachment *vide* its Order dated 09.11.2018.

6.7. The Corporate Debtor is under CIRP and the Original Applicants No. 1 to 3 i.e., Respondent No. 1 to 3 herein, are related parties of the Corporate Debtor. Furthermore, Respondent No. 4 is also associated with the Corporate Debtor as he used to do carpentry work for the

Sd/-

Sd/-

Corporate Debtor. The claims received from Unsecured Financial Creditors (Home Buyers) as on 20.03.2023 are as follows:

S. No.	Name of Creditor	Details of Claim received		Details of claim admitted					Amount of contingent claim	Amount of any mutual dues, that may be set off	Amount of claim not admitted	Amount of claim under verification
		Date of receipt	Amount claimed	Amount of claim admitted	Nature of claim	Amount covered by guarantee	Whether related party	% of voting share in CoC				
1.	Ganesh Ram Yadav	07.01.2022	43669168.69	43669168.69	Home Buyer	Nil	No	4.12	Nil	Nil	Nil	Nil
2.	Shivraj Jangir	06.01.2022	41339127.19	41339127.19	Home Buyer	Nil	No	5.00	Nil	Nil	Nil	Nil
3.	Vinod Kumar Kanungo	06.01.2022	59614804.91	59614804.91	Home Buyer	Nil	Yes	Nil	Nil	Nil	Nil	Nil
4.	Arti Kanungo	06.01.2022	47827840.60	47827840.60	Home Buyer	Nil	Yes	Nil	Nil	Nil	Nil	Nil
5.	Sudheer Kumar Mishra	07.01.2022	67370521.9	67370521.9	Home Buyer	Nil	No	6.35	Nil	Nil	Nil	Nil
6.	Ramniwas Verma	07.01.2022	57135552.21	57135552.21	Home Buyer	Nil	No	5.38	Nil	Nil	Nil	Nil
7.	Dilip Kumawat	07.01.2022	65766656.25	65766656.25	Home Buyer	Nil	No	6.20	Nil	Nil	Nil	Nil

Sd/-

Sd/-



	Raj Kapoor Kumawat	07.01.2022	43580428.74	43580428.74	Home Buyer	Nil	No	4.11	Nil	Nil	Nil	Nil
9.	Anita Khan delwal	07.01.2022	49819414.47	49819414.47	Home Buyer	Nil	Yes	Nil	Nil	Nil	Nil	Nil
10.	Gopal Lal Saini	07.01.2022	52567815.00	52567815.00	Home Buyer	Nil	No	4.95	Nil	Nil	Nil	Nil
11.	Sudhir Kumar Mishra	07.01.2022	106064130.11	106064130.11	Home Buyer	Nil	No	9.99	Nil	Nil	Nil	Nil
12.	Amit Kothiwala	02.02.2022	28693717.86	28693717.86	Home Buyer	Nil	No	2.70	Nil	Nil	Nil	Nil
13.	Ajay Kumar Arora	08.03.2022	52096988.00	21984773.70	Home Buyer	Nil	No	2.07	Nil	Nil	Nil	30112214.30
14.	Sambhav Jain	08.03.2022	67269036.00	21280536.99	Home Buyer	Nil	No	2.00	Nil	Nil	Nil	45988499.01
15.	Vipul Kaushtik	10.03.2022	106093134.00	35584898.63	Home Buyer	Nil	No	3.35	Nil	Nil	Nil	70508235.37
16.	Bhaskar Jain	10.03.2022	66504923.00	28444515.07	Home Buyer	Nil	No	2.68	Nil	Nil	Nil	38060407.93
17.	Mahendra Meghwal	10.03.2022	108667856.00	25572049.32	Home Buyer	Nil	No	2.41	Nil	Nil	Nil	83095806.38
18.	Nitin Parikh	10.03.2022	82270605.00	35131890.41	Home Buyer	Nil	No	3.31	Nil	Nil	Nil	47138714.59
19.	Kamlesh Singh	24.01.2023	25224235.00	25303094.23	Home Buyer	Nil	No	2.38	Nil	Nil	Nil	Nil
20.	Krishna Kumar	24.01.2023	72345163.00	66019007.57	Home Buyer	Nil	No	6.22	Nil	Nil	Nil	6326155.43

30/12

30/12



Yada v												
Total		124392 1117.94	9227699 43.84				73.22					32115 1174.1 0

6.8. The claim of *M/s Omkara Assets Reconstruction Private Limited* was also admitted as a secured financial creditor. There is one more secured financial creditor i.e., Canara Bank, whose claim has not been admitted by the RP, since the claim was filed at a belated stage. Further, some additional claims had been received by the RP from Unsecured Financial Creditors, details of the same are as follows:

Sr. No.	Name	Claim Received (In Rs.)	Claim Admitted (In Rs.)
1.	Guman Builders & Developers Pvt. Ltd.	1,78,61,472.00	0.00
2.	Blue Moon Dream States LLP	12,36,638.00	600000.00
3.	Guman Khandelwal	4,89,440.00	161000.00
4.	Shree Kripa Steel Industries LLP	12,38,564.00	450000.00
5.	Shri Govind Kripa Buildmart Pvt. Ltd.	20,41,522.00	994000.00
6.	Hotel Palak Paradise (A unit of KBCPL)	16,24,821.00	0.00
7.	Khandelwal Buildcon Pvt. Ltd.	3,23,764.00	145000.00
8.	Mohan Lal Khandelwal	22,92,172.00	0.00
Total		2,71,08,393.00	23,50,000.00

Sd/-

Sd/-



6.9. Subsequent to the filing of the claim of *M/s Omkara Assets Reconstruction Pvt. Ltd*, 6 more claims were received from the homebuyers and the same were admitted by the RP. On the contrary, the claim filed by Canara Bank was not admitted although the same was filed immediately after the claims of the aforementioned homebuyers. Moreover, it was contended that the RP declined to admit the claim of Canara Bank knowing fully well that the non-admission of the claim of Canara Bank would frustrate the purpose of CIRP as in case of its claim being admitted, *Canara Bank* would have the highest voting percentage on the basis of its claim value.

6.10. The revised list of the CoC along with the voting share of the creditors is as follows:

S. No.	Name of Financial Creditor	Voting Share (%)
1.	Kamlesh Singh	2.38
2.	Krishna Kumar Yadav	6.22
3.	Sudheer Mishra	6.35
4.	Ram Niwas Verma	5.38
5.	Sudheer Mishra	9.99
6.	Sambhav Jain	2.00
7.	Shivraj Jangid	3.90
8.	Ganesh Ram Yadav	4.12
9.	Dilip Kumawat	6.20
10.	Amit Kothiwal	2.70
11.	Ajay Kumar Arora	2.07
12.	Bindu Jain & Bhaskar Jain	2.68

Sd/-

Sd/-



13.	<i>Gopal Lal Saini</i>	4.95
14.	<i>Raj Kapoor Kumawat</i>	4.11
15.	<i>Vipul Kaushik</i>	3.35
16.	<i>Mahendra Meghwal</i>	2.41
17.	<i>Nitin Parikh</i>	3.31
18.	<i>Omkara Assets Reconstruction Pvt. Ltd.</i>	27.88
	Total	100.00

6.11. It is pertinent to note that amongst 17 homebuyers/members of the CoC which are mentioned above, the ED has recorded the statements of some of the homebuyers during the investigation. The names of the homebuyers whose statements have been recorded by ED are as follows:

<i>Sr. No.</i>	<i>Name of Member/Homebuyer</i>	<i>Date of the Statement before ED</i>
1.	<i>Mr. Dilip Kumawat</i>	29.01.2021
2.	<i>Ajay Arora</i>	09.10.2017
3.	<i>Gopal Lal Saini</i>	16.03.2017
4.	<i>Vipul Kaushik</i>	07.12.2017
5.	<i>Mahendra Meghwal</i>	04.10.2016, 24.08.2017 and 15.06.2018

6.12. It was pointed out that the person whose statements were recorded by the ED are employees of either *Mr. Bharat Bomb* or *Mr. Shankar Khandelwal*, in different capacities. Copies of statements of the aforementioned person are annexed as Annexure-MA-1 of the instant Application.

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6.13. In the meantime, some of the members of the CoC who filed their claims at a later stage, wrote letters to the RP to withdraw their claims in view of the statements recorded by the investigating agencies wherein they have stated that they had not made any payments or raised any loan for purchasing the flats.

6.14. In relation to the Resolution Plan, the ED contended that the Resolution Plan submitted by the Successful Resolution Applicant ('SRA') i.e., *M/s Subhash & Company*, does not disclose the complete information with regards to the Resolution Applicant. Moreover, the Resolution Plan was submitted at a meager value against the fair valuation of the assets in question. Further, the Resolution Plan provides for only 5% of the amount towards the claims of the Homebuyers.

6.15. It was contended that ED requires complete records from the office of RP such as documents submitted by the claimants in support of their claim, documents of due diligence done by the RP.

7. Respondent Nos. 1 to 3 i.e., *Aarti Kanoongo, Anita Khandelwal, and Vinod Kumar Kanoongo*, in IA No. 647/JPR/2023 have filed their Reply vide Dairy No. 184/2024 dated 19.01.2024 and stated the following:

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- 7.1. The Respondents in the instant IA were desirous of purchasing a residential flat in *Guman Eternity*, a project by the Corporate Debtor. In pursuance of the same, the answering Respondents booked the flats and made part payment for the flats. Further, it was agreed that the balance consideration for the flats will be paid at the time of the registry of the flats.
- 7.2. In the meantime, in 2016 one of the directors of the Corporate Debtor, *Mr. Shankar Khandelwal*, was arrested by CBI and the possession of the said flats could not be delivered. Thereafter, in June 2018, the said Director had given an assurance to repay the part sale consideration that had been paid by the Answering Respondents. However, no such amount was repaid to the Answering Respondents.
- 7.3. Subsequently, the Answering Respondents had filed an Application under Section 7 of the Code as Financial Creditors on the premise that they were *bonafide* purchasers of property (flat) for which they had paid substantial monetary consideration. On the basis of the said facts, this Adjudicating Authority had initiated the CIRP of the Corporate Debtor *vide* its Order dated 23.12.2021.
- 7.4. Post initiation of the CIRP, a Committee of Creditors ('CoC') was constituted which was further reconstituted subsequently. It was



pointed out that the Answering Respondents were not included in the CoC. Accordingly, it is highly premature to apprehend or challenge the CIRP and claims which are filed by the Answering Respondents. In the instant IA, the ED has contended that the Answering Respondents are related parties of Corporate Debtor, even if the Answering Respondents are related parties, then also it will not defeat their right to file their claims under the Code.

7.5. Further, the Answering Respondents contended that the CIRP of the Corporate Debtor was not initiated with any fraudulent or malicious intention. The Answering Respondents are *bonafide* purchasers of the flat for which they had paid a substantial amount to the Corporate Debtor. The Respondents are genuine homebuyers and lawful claimants. Moreover, there is no provision under the Code that debars related parties from filing their legitimate claim.

7.6. The purview and scope of the proceeding under the provisions of the PMLA Act, 2002 is significantly different from the proceedings under Section 65 of the Code, 2016. There is no basis or locus standi of ED to challenge the proceedings before this Adjudicating Authority.

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8. Respondent No. 4, *Mr. Sivraj Jangid*, filed his Reply *vide* Diary No. 182/2024 dated 19.01.2024, in IA No. 647/JPR/2023 and stated the following:

8.1. The Answering Respondent has booked a flat in the project of the Corporate Debtor by taking a loan from *Canara Bank*. Concerning the same, an Allotment Letter was issued and an Agreement to Sale was executed between the Answering Respondent and the Corporate Debtor.

8.2. Meanwhile, in 2016, one of the Directors of the Corporate Debtor namely *Mr. Shankar Khandelwal* was arrested by CBI owing to some scam. Subsequent to the arrest, there was an investigation by ED into the affairs of the Corporate Debtor and consequently, various properties of the Corporate Debtor including the project "*Guman Eternity*" were put under provisional attachment and as a result of that the flat of the Respondent was also attached.

8.3. Subsequently, in the year 2018, *Mr. Shankar Khandelwal* was released from jail and was approached by the Respondent to refund the amount which was invested by him in the project. On the Respondent's insistence, *Mr. Shankar Khandelwal* agreed and proposed a settlement. Consequently, a settlement agreement was executed in 2018 wherein it

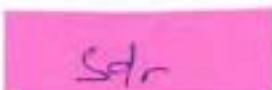
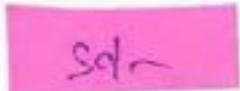
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was agreed that the Corporate Debtor and the Developer of the Guman Eternity project would return the entire money owed to the Answering Respondent along with the applicable interest in lieu of cancellation of the flat. In 2022, the Answering Respondent came to know about the initiation of CIRP of the Corporate Debtor and filed its claim against the Corporate Debtor and boarded the CoC.

- 8.4. The instant IA has been filed at a belated stage with malicious intention to derail the Resolution Process as provided under the Code. The Answering Respondent is a homebuyer who has taken a loan which is duly recorded in the books of accounts of the Bank. Moreover, it is not the case that the money has been siphoned off by the Answering Respondent.
- 8.5. The Answering Respondent further submitted that the statements of *Mr. Gopal Lal Saini* cannot be relied upon as the same were recorded by the ED under coercion and undue influence during the investigation.
- 8.6. It is further submitted that ED cannot challenge the decision taken by the CoC in the exercise of its commercial wisdom, whether it is correct or bad in law. The commercial wisdom of the CoC is supreme and cannot be adjudicated by this Adjudicating Authority. Additionally, the Answering Respondent filed Written Submissions *vide* Dairy No.



553/2024 dated 04.03.2024 wherein he reiterated the contentions raised in the Reply and relied on the following Judgements:

- I. *Monotrone Leasing (P.) (Ltd.) Vs PM Cold Storage (P.) (Ltd.)* [2020 SCC OnLine NCLAT 581]
- II. *Sanjay Pandurang Kalate Vs Vistara ITCL (India) Ltd.* [2023 SCC OnLine NCLAT 713in Company Appeal (AT) (Insolvency) No 742/2023]
- III. *A. Tajudeen Vs Union of India* [(2015) 4 SCC 435]
- IV. *Amour Infrastructure LLP Vs Digital Integrated Technologies Pvt. Ltd.* [2023 SCC OnLine NCLAT 727]
- V. *Directorate of Enforcement Vs Rahul Puri* [Crl. M. C. 6466/2019 and Crl. M.A. 42700/2019]
- VI. *Neeta Chemicals Pvt. Ltd. Vs State Bank of India* [2018 SCC OnLine NCLAT 158]
- VII. *M/s Unigreen Global Private Limited Vs Punjab National Bank & Ors.* [2017 SCC OnLine NCLAT 610]

9. ED filed its Written Submissions vide Dairy No. 573/2024 dated 05.03.2024 wherein it reiterated its submissions and additionally relied upon the Judgement of Hon'ble NCLT Delhi Bench in the matter of Zoom

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Communications Private Limited Vs M/s Par Excellence Real Estate Private Limited in (2022) ibclaw.in 345 NCLT wherein it was held that:

"21. The aforesaid sequence of events shows that the Application for initiating the CIR Process has been filed by concealing a material fact that the Applicant and the Corporate Debtor were related Parties at the time of transaction basing on which operational debt has been claimed. Since, the said transaction has turned out to be a sham transaction, we are of the considered view that both the parties are in collusion and the present Application has not been filed for the resolution of Insolvency rather, the parties have attempted to kickstart the CIR Process with a malicious intent for a purpose other than the resolution of insolvency of the Corporate Debtor, which is not permissible under the IBC 2016. As per the Code, if any person [as defined under Section 3(23) of IBC] initiates the Insolvency Resolution Process fraudulently or with malicious intent for any purpose other than for the resolution of the insolvency, or liquidation and such an act is punishable under Section 65 (1) of IBC 2016."

10. In the meantime, an application bearing *IA(IBC) No. 476/JPR/2023* was filed by some of the homebuyers/allottees vide Dairy No. 2021/2023 dated 17.08.2023 wherein some of the homebuyers/allottees namely, *Mr. Sudhir Kumar Mishra, Mr. Ram Niwas Verma, Mr. Shivraj Jangid, Mr. Ganesh Ram Yadav, Mr. Dilip Kumawat, Mr. Amit Kothiwal, Mr. Gopal Lal Saini and Raj Kapoor Kumawat*, raised the following contentions: -

- 10.1. The instant IA has been filed by the Applicants who are members of the CoC of the Corporate Debtor and had filed their respective claims against the Corporate Debtor. It is submitted that an IA bearing No.

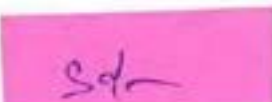
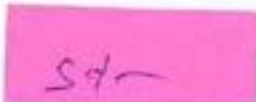
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647/JPR/2023 was filed by ED wherein allegations were made against the Applicants herein concerning genuineness of their claims filed before RP.

- 10.2. It was mentioned that the Applicants were approached by *Mr. Shankar Khandelwal*, one of the Directors of the Corporate Debtor, for booking the flats in the project namely, *Guman Eternity*, with the promise to manage the loan facility from the Bank. In view of the same, the Applicants availed a loan facility from *Canara Bank* and paid the token amount to book the flats in the said project. Consequently, the Corporate Debtor issued allotment letters and executed agreements to sale in favour of the Applicants.
- 10.3. Meanwhile, in 2016, *Mr. Shankar Khandelwal* was arrested by CBI. Subsequent to his arrest, an investigation was carried out by ED into the affairs of the Corporate Debtor and pursuant to that various properties of the Corporate Debtor including the project *Guman Eternity* were provisionally attached.
- 10.4. Considering the provisional attachment, the Applicants stopped paying the EMI concerning the home loans. Resultantly, the loan accounts of the Applicants were declared as NPA, and SARFAESI



proceedings were initiated against them. In some of the cases, the Hon'ble Debt Recovery Tribunal ('DRT') issued recovery certificates.

- 10.5. In 2022, the Applicants came to know about the initiation of the CIRP of the Corporate Debtor and consequently, they filed their claims before the RP. Later the RP put forth a Resolution Plan for approval of the CoC and the same has been approved by the CoC which is pending before this Adjudicating Authority.
- 10.6. The present Application is filed by Applicants/Members of the CoC to put forth their stand and prove the credibility and genuineness of their claim before this Adjudicating Authority.
11. In the meantime, the COC in its 11th meeting approved the Resolution Plan filed by Successful Resolution Applicant i.e., *M/s Subhash & Co.* ('SRA'). Subsequently, an IA bearing *IA (IBC) No. 263/JPR/2023* was filed by the Resolution Professional seeking approval of the Resolution Plan from this Adjudicating Authority. The relevant details of the Resolution Plan as contained in *IA (IBC) No. 263/JPR/2023* is provided hereunder: -
- 11.1. The Resolution Plan submitted by *M/s Subhash & Co* was approved in the 11th CoC meeting wherein 72.12% of the Creditors i.e., the Homebuyers voted in favour of the Resolution Plan, and the sole

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secured financial creditor, *Omkara Asset Reconstruction Private Limited*, holding 27.88% voted against the Resolution Plan.

- 11.2. Subsequent to the approval of the Resolution Plan, a letter of intent was issued in favour of the SRA on 19.04.2023 and the SRA was called upon to deposit 10% of the value of the Resolution Plan as performance security. The SRA deposited the required amount i.e., 1.10 Crores, as performance security in the bank account of the Corporate Debtor on 26.04.2023.
- 11.3. As per the Compliance Certificate under Form-H pertaining to the Resolution Plan, the Fair Value of the Corporate Debtor is Rs. 23,64,88,523.50/- (Rupees Twenty-Three Crores Sixty-Four Lakh Eighty-Eight Thousand Five Hundred and Twenty-Three and Fifty Paiza Only) and the Liquidation value is 18,81,38,523.50/- (Rupees Eighteen Crore Eighty-One Lakh Thirty-Eight Thousand Five Hundred and Twenty-Three and Fifty Paiza Only).
- 11.4. The salient features of the Resolution Plan as provided in the captioned IA are reproduced hereunder: -

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	Type of Claim Payment	Amount of Admitted Claims	Upfront Within 30 days of communication of order of NCLT	Within 6 months of communication of order of NCLT	Within 9 months of communication of order of NCLT	Total payment under resolution plan
1	CIRP Expenses	1,00,00,000	1,00,00,000	-	-	1,00,00,000
2	Operational Creditors (Workmen)	-	-	-	-	-
3	Secured financial Creditors	29,59,67,506	Nil	50,00,000	5,50,00,000	6,00,00,000
4	Operational Creditors (Employees)	-	-	-	-	-
5	Unsecured Financial Creditors (Belonging to Class of Creditors)	68,79,83,609*	8,00,000	3,90,00,000	-	3,98,00,000
6	Unsecured Financial Creditors (Other than belonging to any class of creditors)	23,50,000	-	-	-	-
7	Statutory Dues (Govt. Dues)	4,09,04,588	2,00,000	-	-	2,00,000
8	Operational Creditors (Other than employees and workmen)	1,52,60,313	-	-	-	-
9	Other Creditors	-	-	-	-	-
	Total	105,24,66,016	1,10,00,000	4,40,00,000	5,50,00,000	11,00,00,000
10	Equity Contribution					27,10,000
11	Estimated Expenses for revival					15,50,00,000
	Total Value of Plan					26,77,10,000

* The Amount of admitted claims for *Unsecured Financial Creditors (Belonging to Class of Creditors)* in the Resolution Plan is 68,79,83,609 while in the 11th CoC meeting the said amount is mentioned as 92,27,69,943.84/-.

11.5. The compliance aspect of the Resolution Plan under Section and Regulations provided under the Resolution Plan is as under: -

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<i>Section of the Code / Regulation No.</i>	<i>Requirement with respect to Resolution Plan</i>	<i>Clause of Resolution Plan</i>	<i>Compliance (Yes / No)</i>
25(2)(h)	<i>Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?</i>	<i>As per EOI, the resolution applicant was meeting criteria approved by CoC.</i>	Yes
Section 29A	<i>Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?</i>	<i>Resolution Applicant is eligible as per final list of resolution professional.</i>	Yes
Section 30(1)	<i>Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?</i>	<i>Affidavit has been provided to its effect.</i>	Yes
Section 30 (2)	<i>(a) Provides for the payment of insolvency resolution process costs?</i>	23.1.1 and 26	Yes
	<i>(b) Provides for the payment to the operational creditors?</i>	23.1.7, 23.1.8 and 23.1.9	Yes
	<i>(c) Provides for the payment to the financial creditors who did not vote in favour of the resolution plan?</i>	Provided through Explanation to the final Resolution Plan	Yes
	<i>(d) Provides for the management of the affairs of the corporate debtor?</i>	7, 9, 12, and 22.5	Yes
	<i>(e) Provide for the implementation and supervision of the resolution plan?</i>	14 and 19	Yes
	<i>(f) Contravenes any of the provisions of the law for the time being in force?</i>	Sub-clause (d) of clause 14	No

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Section 30(4)	<i>Whether the Resolution Plan</i> <i>(a) Is feasible and viable accordingly to the CoC?</i> <i>(b) Has been approved by the CoC with 66% voting share?</i>	<i>According to the members of the Committee of Creditors, the Resolution Plan is feasible and viable.</i> <i>Yes, the members of Committee of Creditor accorded their consent for approval of resolution plan with 72.12% voting shares.</i>	Yes Yes
Section 31(1)	<i>Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?</i>	<i>The Resolution Applicant has provided for implementation plan in the Resolution Plan and the same has been found effective by the CoC.</i>	Yes
Regulation 38(1)	<i>Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?</i>	23.1.8 and 26	Yes
Regulation 38(1A)	<i>Whether the Resolution Plan includes a statement as to how it has dealt with the interests of all stakeholders?</i>	23.1	Yes
Regulation 38(1B)	<i>(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.</i>	<i>An undertaking has been provided to this effect by the Resolution Applicant.</i>	Yes

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	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	N.A.	Yes
Regulation 38(2)	Whether the Resolution Plan provides:- (a) The term of the plan and its implementation schedule? (b) For the management and control of the business of the corporate debtor during its term? (c) Adequate means for supervising its implementation?	14.1 7,9,12 and 22.5 14 and 19	Yes Yes Yes
38(3)	Whether the resolution plan demonstrates that (a) It addresses the cause of default? (b) It is feasible and viable? (c) it has provisions for its effective implementation? (d) It has provisions for approvals required and	8 The same has been studied by the Committee of Creditors and the Resolution Professional and the same was found to be feasible and viable. 14 and 19 14 and 19	Yes Yes Yes Yes

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	<i>the timeline for the same?</i> <i>(e) The resolution applicant has the capability to implement the resolution plan?</i>	<i>Sub-clause (g) of clause 21</i> <i>4 and 12</i>	<i>Yes</i>
<i>39(2)</i>	<i>Whether the RP has filed applications in respect of transactions observed, found or determined by him?</i>	<i>Due to lack of information from the suspended director and since books of accounts of the corporate debtor are in possession of ED, the same could not be determined.</i> <i>An affidavit to this effect was filed by the RP in the application under Section 19(2) of the Code, 2016</i>	<i>No</i>
<i>Regulation 39(4)</i>	<i>Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]</i>	<i>The Resolution Applicant deposited Rs. 1.10 crores to be earmarked as Performance Guarantee, in the CIRP Bank Account of the Corporate Debtor.</i>	<i>Yes</i>

12. *Omkara Assets Reconstruction Limited* filed its Reply in *IA(IBC) No. 263/JPR/2023* vide Dairy No. 1456/2023 dated 08.06.2023 and contended the following:

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- 12.1. The Answering Respondent has been substituted in the place of *Piramal Capital Housing Finance Limited* by way of an assignment deed dated 10.01.2023 holds 34% in the CoC voting share.
- 12.2. The Answering Respondent attended the 10th CoC meeting dated 13.02.2023 and for the first time it was apprised about the developments that had taken place with respect to the approval of the Resolution Plan.
- 12.3. Further, it was stated that the 11th CoC meeting was conducted in 4 phases wherein the terms and conditions of the Resolution Plan were finalized. Since the Authorized Representative of the homebuyers was convinced with the Resolution Plan and as the voting share of the Answering Respondent did not affect the approval of the Resolution Plan, no further discussion and negotiation were held.
- 12.4. Therefore, in light of the aforementioned facts the answering Respondent in its commercial wisdom voted against the approval of the Resolution Plan as submitted by *M/s Subhah & Co.*
13. The dissenting financial creditor i.e., *Omkara Assets Reconstruction Limited*, filed its Written Submissions vide Dairy No. 1478/2024 dated 04.06.2024 and stated the following:



- 13.1. The Answering Respondent having an admitted secured financial debt of Rs. 29,59,67,506/- (Rupees Twenty-Nine Crores Fifty-Nine Lakhs Sixty-Seven Thousand Five Hundred and Six Only) with 27.88% voting share in the CoC. The Resolution Plan submitted by *Subhash & Co.* was earlier rejected since it was only approved by 63.10% instead of 66%. Subsequently, the additional claims were admitted by the RP of some homebuyers and the same Resolution Plan was put forth for voting and it was approved by 72.12% voting share.
- 13.2. It is pertinent to note that in the meantime an IA was filed by ED wherein material documents and arguments were made which goes to the root of the CoC constitution since several homebuyer who allegedly became part of the CoC are fraudulent creditors. Out of the entire class of creditors, six homebuyers had informed the Resolution Professional about withdrawal of their claims much prior to approval of the Resolution Plan by the CoC. Instead of permitting the withdrawal, RP allowed them to be a part of the CoC. Upon the withdrawal of the claims of these homebuyers the class of creditor would drop from 72.12% to 57.35% which is much below the requisite threshold of 66%.





- 13.3. Further Form H of the Resolution Plan does not comply with Section 30 of the Code. The RP himself has stated in his pleading that:

"..... It is apposite to mention that the value of the Resolution Plan is less than the liquidation value of the corporate debtor and consequently, it does not satisfy the provision relating to payment to dissenting financial creditor not being lesser than the liquidation value."

(emphasis supplied)

- 13.4. The RP further clarified that the proposed Resolution Plan is not in compliance with Section 30(2)(b) of the Code. The relevant extracts are reproduced hereunder:

"4. I hereby certify that-

(i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force, with following exception:

(a) Section 30(2) (b) of the Code, 2016: Since the realisable value of the resolution plan is less than the liquidation value of the corporate debtor, it contravenes the provision of Section 30(2)(b) of the Code, 2016, which states, "provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of corporate debtor"...(emphasis supplied)"

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13.5. The proposed Resolution Plan contravenes Section 30(2)(b) of the Code. For the ease of reference, the relevant extract of Section 30(3) is as follows:

"...(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-Section (2) "

13.6. Additionally, the Respondent also relied on the Judgement of the Hon'ble NCLAT in the matter of *Peter Beck and Partner Vermoögensverwaltung GmbH Vs Sharon Bio-medicine Limited & Ors.* in Company Appeal (AT) (Insolvency) No. 912 of 2023.

14. The RP has also filed the Written Submissions *vide* Dairy No. 1771/2023 dated 21.07.2023 and stated that the Respondent had no objection to the approval of the Resolution Plan, however, only for the purpose of seeking benefit of priority in timeline of payment, dissented to the approval of the Resolution Plan. Further the RP prayed for vacation of attachment of the assets of the Corporate Debtor by the Enforcement Directorate. The RP relied on the following Judgements:

I. *Directorate of Enforcement Directorate Vs Sh. Manoj Kumar Agarwal & Ors., Company Appeal (AT) (Insolvency) No. 575/2019 dated 09.04.2021*

II. *Manish Kumar Vs Union of India & Anr., (2021) 5 SCC 1*

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III. *DSK Southern Projects Limited in IA No. 3374/2022 in CP No. (IB) 178/(MB)/CV-IV/2021*

15. The SRA filed its Written Submissions in *IA No. 263/JPR/2023* and contended that the Resolution Plan submitted by the SRA was approved by the CoC with the requisite majority and the SRA has also deposited the performance security for the approved Resolution Plan. The SRA relied upon the following Judgments in support of its contentions: -

15.1. *DBS Bank India Pvt. Ltd. v/s Rakesh Kumar Jain & Anr. In Company Appeal (AT) (Insolvency) No. 540 of 2021.*

15.2. *K. Sashidhar v/s Indian Overseas Bank MANU/SC/0189/2019*

16. The Application bearing *IA No. 225/JPR/2024 vide Dairy No. 981/2024* dated 22.04.2024 has been filed by *M/s Omkara Assets Construction Private Limited* wherein it is stated that the Form-H which is filed under *IA No. 263/JPR/2023* for approval of the Resolution Plan states that the realisable value of the Resolution Plan is less than the liquidation value which contravenes Section 30(2)(b) of the Code, 2016. Further, it is submitted that the RP is also required to provide clear distribution details for the stakeholders in terms of Section 30 read with Section 53 of the Code.

17. We have heard the arguments advanced by the parties to the case and perused the documents presented. The IAs bearing no. *IA(IBC) No. 165/JPR/2023*,

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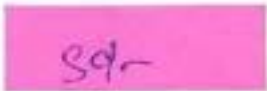
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IA(IBC) No. 647/JPR/2023, IA(IBC) No. 476/JPR/2023, IA(IBC) No. 263/JPR/2023, and IA(IBC) No. 226/JPR/2024 herein are being considered simultaneously for proper and effective adjudication of the issues and reliefs prayed for. Since, in *IA(IBC) No. 647/JPR/2023* filed under Section 65 of the Code, the Enforcement Directorate has alleged fraudulent and malicious initiation of the CIRP of the Corporate Debtor, the outcome of the said IA will have bearing upon all the other Interlocutory Applications. Therefore, it becomes incumbent to first consider the said IA before delving into the other Interlocutory Applications.

18. Before we consider the merits of the case, it is pertinent to recapitulate relevant facts pertaining to the initiation of the CIRP of the Corporate Debtor as it will have a bearing on the determination of the instant case. The relevant facts are as follows: -

- 18.1. In the present case, an Application under Section 7 of the Code, 2016 had been filed by *Mrs. Arti Kanoongo, Mrs. Anita Khandelwal, Mr. Vinod Kumar Kanoongo, and Mr. Shivraj Jangid* alleging that they were allottees in the real estate project of the Corporate Debtor i.e., *Guman Eternity*. It is relevant to mention that *Mrs. Anita Khandelwal* is the sister of *Mr. Shankar Khandelwal*. *Mr. Vinod Kumar Kanoongo* is the brother-in-law of *Mr. Shankar Khandelwal* and *Mrs. Arti*



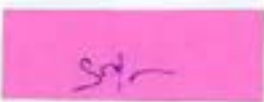
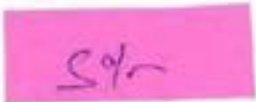



Kanoongo is the daughter-in-law of *Mr. Vinod Kumar Kanoongo*. Further, *Mr. Sivraj Jangid* was one of the associates of *Mr. Shankar Khandelwal* and used to do carpentry work at the construction sites of the Corporate Debtor.

- 18.2. The purchase of the flats by the allottees who filed the Application under Section 7 of the Code was financed by *Canara Bank (earlier Syndicate Bank)* through Tripartite Agreement entered among the allottee/homebuyer, the Corporate Debtor, and the Bank. One of the clauses of the said Tripartite Agreements provided that in the event of cancellation, the Builder/Corporate Debtor shall refund the amount to the Bank. For ease of reference, the said clause of the Tripartite Agreement is reproduced hereunder: -

"That in the event of cancellation of allotment of the Borrower by the BUILDER/AUTHORITY for any reasons whatsoever, the BUILDER/AUTHORITY shall refund to the Bank forthwith the entire amount received by the BUILDER/AUTHORITY to the BANK with applicable interest as per the agreement entered into by the BORROWER with THE BANK, including the BORROWER'S own deposit made with the BUILDER/AUTHORITY."

- 18.3. Subsequently, *Mr. Shankar Khandelwal*, one of the two directors of the Corporate Debtor, was arrested by the *Enforcement Directorate* in

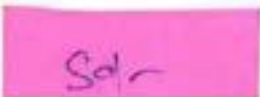





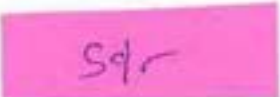
the *Syndicate Bank* fraud case wherein he was charged with the allegations of misusing the KYC documents of his clients/employees/family members to fraudulently avail housing loans aggregating to Rs. 20,930.89 Lacs from *Syndicate Bank*. It is relevant to mention here that the Corporate Debtor i.e., *Shrinathji Business Venture Pvt. Ltd.*, only has one other director namely, *Mrs. Guman Khandelwal w/o Mr. Shankar Khandelwal*.

18.4. After being released from the custody in the fraud case, *Mr. Shankar Khandelwal* entered into a Consensus Agreement/MOU ('Arrangement') on behalf of the Corporate Debtor with the allottees who initiated the CIRP. In complete violation of the terms of the Tripartite Agreement, the Consensus Agreement executed only between the Corporate Debtor and the Allottee provided for payment of the consideration including the loan advanced by the Bank to the Allottee from the Corporate Debtor.

18.5. The Application under Section 7 of the Code for initiation of the CIRP of the Corporate Debtor was filed on the basis of non-fulfilment of the aforementioned consensus agreements. The CIRP of the Corporate Debtor was initiated by this Adjudicating Authority *vide* Order dated 23.12.2021 wherein *Mr. Prashant Agarwal* was appointed as Interim



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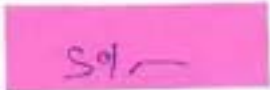
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Resolution Professional and was later confirmed as Resolution Professional. In compliance with Sections 13 and 15 read with Regulation 6 of CIRP Regulations, 2016, the RP published a public announcement on 26.12.2021 wherein the last date for submission of the claim was 06.01.2022.

18.6. The instant case relates to claims of the homebuyers/allottees which fall within the class of creditors that is required to be represented by an Authorized Representative ('AR') as per Section 21(6A) of the Code, 2016. In pursuant to the same, an Application was filed under Section 21(6A) of the Code read with Regulation 16A of the CIRP Regulation, 2016 for the appointment of an Authorised Representative. Ensuing that, this Adjudicating Authority *vide* Order dated 08.02.2022 appointed *Ms. Pratibha Khandelwal* as AR for the class of the creditors comprising of the allottees of the Corporate Debtor.

18.7. Thereafter, a Report was filed by the RP under Regulation 17(1) of the CIRP Regulations for certifying the constitution of the CoC. The RP after the collation of the alleged claims received against the Corporate Debtor constituted a CoC comprising of the following classes of Creditors:



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A. Class of Creditors comprising of the allottees/homebuyers who are represented through the Authorised Representative i.e., *Mrs. Pratibha Khandelwal*, under Section 21 (6A) of the Code, 2016.

<i>Sr. No.</i>	<i>Name of the Creditors</i>	<i>Voting Share (%)</i>
1.	<i>Kamlesh Singh</i>	2.38
2.	<i>Krishna Kumar Yadav</i>	6.22
3.	<i>Ram Niwas Verma</i>	5.38
4.	<i>Shivraj Jangid</i>	3.90
5.	<i>Ganesh Ram Yadav</i>	4.12
6.	<i>Dilip Kumawat</i>	6.20
7.	<i>Amit Kothiwal</i>	2.70
8.	<i>Raj Kapoor Kumawat</i>	4.11
9.	<i>Sudheer Mishra</i>	6.35
10.	<i>Sudheer Mishra</i>	9.99
11.	<i>Sambhav Jain</i>	2.00
12.	<i>Ajay Kumar Arora</i>	2.07
13.	<i>Bindu & Bhaskar Jain</i>	2.68
14.	<i>Gopal Lal Saini</i>	4.95
15.	<i>Vipul Kaushik</i>	3.35
16.	<i>Mahendra Meghwal</i>	2.41
17.	<i>Nitin Parikh</i>	3.31
	<i>Total Quorum</i>	72.12

B. Secured Financial Creditor

<i>Sr. No.</i>	<i>Name of the Secured Financial Creditor</i>	<i>Voting Share (%)</i>
1.	<i>Om kara Asset Reconstruction Private Limited</i>	27.88
	<i>Total Quorum</i>	27.88%

18.8. In the backdrop of the aforementioned facts, the ED has contended that the aforementioned allottees namely, *Mrs. Arti Kanoongo*, *Mrs.*

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Anita Khandelwal, Mr. Vinod Kumar Kanoongo, and Mr. Shivraj Jangid, initiated the CIRP of the Corporate Debtor despite knowledge of the fact that the project of the Corporate Debtor namely, *Guman Eternity*, is under investigation before ED. Further, it has been contended that the said allottees are also related parties of the Corporate Debtor.

- 18.9. Moreover, six of the alleged homebuyers/allottees who are also part of the CoC namely, *Mr. Sambhav Jain, Mr. Bhaskar Jain, Mr. Ajay Kumar Arora, Mr. Vipul Kaushik, Mr. Mahendra Meghwal, and Mr. Nitin Parikh*, have addressed letters of withdrawal of claims to the RP wherein they have categorically stated that they have not made any payment and they should not be considered as homebuyer or stakeholder. Further, in the said letters, they have requested that their names be removed from the list of members of CoC, if included.
19. The moot point of law which arises for our consideration in the instant matter is whether the CIRP of the Corporate Debtor was initiated fraudulently or with malicious intent within the meaning of Section 65 of the Code.
20. At this juncture, it is relevant to refer to Section 65 of the Code and the same is reproduced hereunder: -

"65. Fraudulent or malicious initiation of proceedings

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(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the adjudicating authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the adjudicating authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.

(3) If any person initiates the pre-packaged insolvency resolution process-

(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or

(b) with the intent to defraud any person,

the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees."

21. A perusal of the aforementioned Section makes it clear that the Code provides stringent action under Section 65 against the person who initiates proceeding under the Code fraudulently or with malicious intent, for the purpose other than the resolution of Insolvency or liquidation under the Code. To levy a penalty under Section 65 of the Code, a 'prima facie' opinion is required to be arrived at that a person has filed the petition for initiation of proceedings fraudulently or with malicious intent. No penalty can be saddled either under Section 65(1) or (2) of the Code without recording an

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opinion that a prima facie case is established to suggest that a person 'fraudulently' or with malicious intent for the purpose other than the resolution of Insolvency or Liquidation or with an intent to defraud any person has filed the Application.

22. In the instant case, prior to the CIRP of the Corporate Debtor, Enforcement Directorate registered a case against the Corporate Debtor wherein it was alleged that *Mr. Shankar Khandelwal*, director of the Corporate Debtor, has defrauded the Syndicate Bank by misusing KYC documents of its associates and family members to fraudulently avail home loans from the Bank. During the submissions before ED, the main accused i.e., *Mr. Shankar Lal Khandelwal* has admitted that he in cohort with his associates has availed about 49 housing loans from Syndicate Bank by showing fraudulent booking of flats at *Guman Eternity* and he himself utilized the loan proceeds and repaid the instalments of loans. It is germane to mention that the loan accounts of the alleged allottees who initiated the CIRP of the Corporate Debtor are under scrutiny in the said investigation before the ED.
23. During the pendency of the investigation, the original Applicants entered into a Consensus Agreement with *Shankar Khandelwal* wherein it was agreed that the amount received by the Corporate Debtor from the Bank shall be returned to the alleged allottee. The Consensus Agreement was in

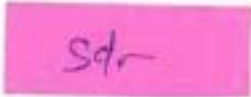
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complete violation of the terms of the Tripartite Agreement according to which in the event of cancellation of allotment, the Builder/Corporate Debtor shall refund the amount to the Bank with the applicable interest.

24. Further, it is relevant to mention that the three of the alleged allottees are related parties of the Corporate Debtor. One of the Applicants, *Mrs. Anita Khandelwal*, is a sister of *Mr. Shankar Khandelwal*. *Mr. Vinod Kumar Kanoongo* is brother-in-law of *Mr. Shankar Khandelwal* and *Mrs. Arti Kanoongo* is the daughter-in-law of *Mr. Vinod Kumar Kanoongo*. *Mr. Sivraj Jangid* was one of the associates of *Mr. Shankar Khandelwal* and used to do carpentry work at the construction sites of the Corporate Debtor. At the time of filing of the Section 7 Application, the Applicants nowhere disclosed the said facts and consciously concealed all the above information from this Adjudicating Authority.
25. At this juncture, it will be relevant to mention that ED has recorded the statements of some of the alleged homebuyers/allottees concerning their veracity of the home-loans and their status as a homebuyer. In their statements, the said homebuyers who are also the members of the CoC have stated that they have neither taken any loan nor booked any flats in the project of the Corporate Debtor i.e., *Guman Eternity*. The relevant extracts of the statements recorded by the ED are reproduced hereunder: -



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I. Statement of Gopal Lal Saini

"Question No. 11: - In Shankar Khandelwal's Guman Eternity Flats No. A-601, GH-1 has been booked in your name for which you have taken a loan of one crore twenty lakh rupees under Syndicate Bank account number 83047740000833, Please Explain.

Answer: - I am a poor person, the annual income of my whole family is one lakh twenty thousand rupees. I cannot even think of taking a loan of one crore twenty lakh rupees, I have not taken this loan. Nor I have booked my such flat."

II. Statement of Dilip Kumawat

Dated 29.01.2021

"Shankar Khandelwal got a flat booked in the name of me and my wife Anita Kumawat in his project Guman Interneti Shastri Nagar and took a loan of Rs. 1.5 Cr. from Syndicate Bank. He used this amount also & instalments were also being paid by him. We have nothing to do with the above property and loan."

III. Statement of Mahendra Meghwal

Out of the above-mentioned properties, I do not have any documents for properties serial number 6 to serial number 11. My signature is on the purchase of these properties, which I have signed at the behest of Bharat Bomb. I came to know about these properties which are serial number 6, 7, 8 when I received loan related letters from the concerned bank.*

Note:- The property at serial no. 7 is A-802, Guman Eternity, Shastri Nagar, Jaipur (Sic)

26. Besides, we cannot lose sight of the fact that the alleged loans taken from the Syndicate Bank and the said loan accounts are under investigation of ED in the Syndicate Bank fraud case wherein fraudulent home loans were taken by misusing the KYC of the people. Moreover, the main accused i.e., Mr.

Saini

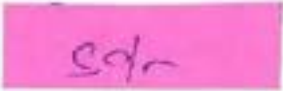
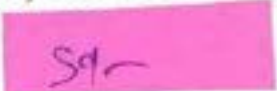
Saini



Shankar Khandelwal, has categorically stated in the statements before ED that the flats in the project of the Corporate Debtor i.e., *Guman Eternity*, are purchased by himself using KYC of its associates and family members.

27. Further, it is pertinent to mention here that the project of the Corporate Debtor i.e., *Guman Eternity*, along with its other properties was provisionally attached by the ED *vide* Provisional Attachment Order No. 02/2018 dated 16.05.2018. Further, the Ld. Adjudicating Authority under the PMLA, 2002 has confirmed the provisional order of the attachment *vide* its order dated 09.11.2018. In backdrop of the alleged fraud that has taken place, we cannot ignore the possibility that since the main accused i.e., *Mr. Shankar Khandelwal*, could not have sold the project of the Corporate Debtor due to attachment of the ED, he took recourse of the remedy available under the Code. Thus, on a combined consideration of the allegations levied by the ED, the conduct of the Applicants namely, *Mrs. Arti Kanoongo*, *Mrs. Anita Khandelwal*, *Mr. Vinod Kumar Kanoongo*, and *Mr. Shivraj Jangid*, and the statements produced by ED, it appears that the CIRP of the Corporate Debtor was initiated fraudulently.

28. At first, the CIRP of the Corporate Debtor was initiated fraudulently at behest of people whose own status as allottees in the project of the Corporate Debtor is in question. Further, once the CIRP was initiated, the CoC

consisting of the alleged homebuyers/allottees in majority having 72.12% voting share. It is germane to mention here that six of the CoC members namely, Mr. Sambhav Jain, Mr. Bhaskar Jain, Mr. Ajay Kumar Arora, Mr. Vipul Kaushik, Mr. Mahendra Meghwal, and Mr. Nitin Parikh, addressed identical letters to the Resolution Professional seeking withdrawal of their claims stating that they are not the homebuyers. For the sake of reference, one of the letters of withdrawal is reproduced hereunder: -

"To,

*The Resolution Profession
Prashant Agrawal
Jaipur*

Dear Sir,

I have come to know about the commencement of CIRP process in the matter of Shrinathji Business Ventures Pvt. Ltd. Wherein you have been appointed as IRP and later on RP in the above company.

In terms of the CIRP you had invited claims and without knowing the fact and understanding the legal consequences. I submitted my claim in the innocent belief, while earlier I had already given my statements before various agencies/ forums that I am neither any connected party nor made any payment or raised any loan in my name.

Therefore, I declare that the claim submitted by me may please be immediately considered as withdrawn. You are further requested not to consider myself as home buyer or stake holder in any manner from the date of commencement of the CIRP. Further, if you have included my name in the list of COC the same may kindly be deleted and consider my claim as not filed. We further more inform that neither I am interested in filing any sort of claim nor I want to be included in list of stakeholders in the matter of corporate debtor Shrinathji Business Ventures Pvt. Ltd.

Date: 10.01.2023

Place: "

Sd/-

Sd/-



29. Thus, it becomes clear that the CoC consisted of members who were not the genuine homebuyers. In view of the aforementioned facts, we cannot ignore the possibility that the CIRP was commenced so that the project of the Corporate Debtor can be released from the clutches of ED by getting benefit of Section 32A of the Code i.e., *Liability for Prior Offences*, and at the same time the alleged homebuyers will be compensated for the flats that they neither bought nor paid a single penny for it.
30. Additionally, the claims filed by the alleged homebuyers/allottees and admitted by the RP appears to be highly inflated when compared with the amount claimed by the Canara Bank or cost of the flats in the project of the Corporate Debtor. In this regard reference can be made to the documents filed with the minutes of 15th CoC meeting vide Dairy No. 1532/2024 dated 18.06.2024. Relevant extracts of the same are reproduced hereunder: -

Shrinathji Business Venture Private Limited

GUMAM ETERNITY (BLOCK - A)

As on Date 08-03-2024

Enclosure 1

36

Flat No.	Party Name	Related Party	Current Status	Claims Filed	Claimed Amount	Admitted	Voting Percent	ED Attachment	Sought Withdrawal	Date of Claim Filing by Canara	Claim filed By Canara Bank	Amount Claimed by Canara Bank	Amount Admitted of Canara Bank
B-01	Kamlesh Singh	No	ATS	Yes	2,52,24,235.00	2,52,03,094.23	2.38	Yes	No		No		
Dairy Shop	Kishore Kumar Yadav	No	ATS	Yes	7,23,45,163.00	6,00,19,007.57	6.22	Yes	No		No		
A-101	Dheeraj Sarva	No	ATS	No	-	-	-	Yes	No	12-01-2023	Yes	1,35,75,923.00	0.00
A-102	Anita Khadkekar	Yes	ATS	Yes	4,98,19,414.47	4,98,19,414.47	-	Yes	No	12-04-2023	Yes	1,50,27,561.00	0.00
A-103	Sudhakar Mishra	No	ATS	Yes	6,73,70,521.90	6,73,70,521.90	6.35	Yes	No	12-04-2023	Yes	1,60,05,062.00	0.00
A-104	Ram Nives Verma	No	ATS	Yes	5,71,35,552.21	5,71,35,552.21	5.30	Yes	No	12-04-2023	Yes	1,66,27,780.00	0.00
A-201	Ram Chandra Yadav	No	Sold	N.A.	-	-	-	N.A.	N.A.		N.A.		
A-202	Mind Kumar Kanchaga	Yes	ATS	Yes	5,96,14,804.91	5,96,14,804.91	-	Yes	No	12-04-2023	Yes	1,52,94,382.00	0.00
A-203	Sudhakar Mishra	No	ATS	Yes	10,60,64,130.10	10,60,64,130.10	9.99	Yes	No		No		
A-204	Sankhdev Jain	No	ATS	Yes	6,72,69,036.00	2,12,80,536.99	2.00	Yes	Yes	12-04-2023	Yes	1,54,82,316.00	0.00
A-301	Shivraj Jangid	No	ATS	Yes	4,13,38,127.19	4,13,39,127.19	3.89	Yes	No	12-04-2023	Yes	1,03,26,647.00	0.00
A-302	Ganesh Ram Yadav	No	ATS	Yes	4,36,69,168.69	4,36,69,168.69	4.11	Yes	No	12-04-2023	Yes	1,40,34,472.00	0.00
A-303	Dilip Kumar	No	ATS	Yes	6,57,66,655.25	6,57,66,655.25	6.20	Yes	No	12-04-2023	Yes	1,91,43,413.00	0.00
A-304	Rishi hemant Gurbani & Hemant Gurbani	No	Sold	N.A.	-	-	-	N.A.	N.A.		N.A.		
A-401	Amit Kothari	No	ATS	Yes	2,86,93,717.86	2,86,93,717.86	2.70	Yes	No	12-04-2023	Yes	69,63,687.00	0.00
A-402	Jogendra Singh	No	Sold	N.A.	-	-	-	N.A.	N.A.		N.A.		
A-403	Usha Gupta	No	Sold	N.A.	-	-	-	N.A.	N.A.		N.A.		
A-404	Shaktantab Gupta	No	Sold	N.A.	-	-	-	N.A.	N.A.		N.A.		
A-501	Ajay Kumar Arora	No	ATS	Yes	5,20,95,988.00	2,19,84,773.70	2.07	Yes	Yes	12-04-2023	Yes	1,57,52,500.00	0.00
A-502	Ram Chandra Saini	No	ATS	No	-	-	-	Yes	No	12-04-2023	Yes	1,56,58,551.00	0.00
A-503	Sindu Jain & Bhaskar Jain	No	ATS	Yes	6,65,04,903.00	2,84,44,515.07	2.68	Yes	Yes	12-04-2023	Yes	2,30,00,000.00	0.00
A-504	Ari Kanchaga	Yes	ATS	Yes	4,78,27,840.60	4,78,27,840.60	-	Yes	No	12-04-2023		1,47,45,300.00	0.00
A-601	Gopal Lal Saini	No	ATS	Yes	5,25,67,815.00	5,25,67,815.00	4.95	Yes	No	12-04-2023		1,90,30,595.00	0.00

No.	Flat No.	Party Name	Related Party	Current Status	Claim Filed	Claimed Amount	Admitted	Waiting Percent	EB Attachment	Suited Withdrawal	Date of Claim Filing by Canara	Claim Filed By Canara Bank	Amount Claimed by Canara Bank	Amount Admitted of Canara Bank
1	A-602	Utsav Tower	No	ATS	No	-	-	-	Yes	No	12-04-2023	Yes	1,35,30,430.00	0.00
2	A-603	Rajeev Varna	No	ATS	No	-	-	-	Yes	No	12-04-2023	Yes	1,41,09,745.00	0.00
3	A-604	Raj Kapoor Kurnavat	No	ATS	Yes	4,35,00,408.74	4,35,00,408.74	4.11	Yes	No	12-04-2023	Yes	1,19,36,511.00	0.00
4	A-701	Guman Khandelwal	No	Sold	N.A.	-	-	-	Yes	N.A.		N.A.		
5	A-702	Guman Khandelwal	No	Sold	N.A.	-	-	-	Yes	N.A.		N.A.		
6	A-703	Karla Khandelwal	No	Sold	N.A.	-	-	-	Yes	N.A.		N.A.		
7	A-704	Karla Khandelwal	No	Sold	N.A.	-	-	-	Yes	N.A.		N.A.		
8	A-801	Vijal Keshvi	No	ATS	Yes	10,60,03,134.00	3,95,81,090.63	3.35	Yes	Yes	08-09-2023	Yes	3,12,83,927.00	0.00
9	A-802	Valencia Meghwal	No	ATS	Yes	10,86,57,858.00	2,95,72,049.32	2.41	Yes	Yes	12-04-2023	Yes	2,04,30,993.00	0.00
10	A-803	Sahant Kumar Gidara	No	Sold	N.A.	-	-	-	N.A.	N.A.		N.A.		
11	A-804	Shri Parth	No	ATS	Yes	8,22,70,635.00	3,54,31,090.41	3.31	Yes	Yes	12-04-2023	Yes	2,09,13,720.00	0.00
Total Claim						1,24,39,21,117.92	92,27,69,943.84							
Less: Claim of Related Party						15,72,62,059.98	15,72,62,059.98							
Total Claim of Home Buyers constituting COC						1,08,66,59,057.94	76,55,07,883.86	72.12						
Claim of Canara						29,96,67,986.08	25,59,57,506.00	27.88						
Total Claim (excluding Related Party)						1,38,26,26,563.94	1,06,14,75,369.86	100.00					35,28,88,465.00	0.00

Summary			Filed - HIs	Admitted - HIs	Claim Filed by Canara	Filed by Canara	Admitted of Canara
1	Total Sold Flats	10	0.00	0.00	0	0.00	0.00
2	Total Claim Filed	20					
(a)	Related Party	3	15,72,62,059.98	15,72,62,059.98	3	4,50,57,243.00	0.00
(b)	Non-Related Party	17	1,08,66,59,057.94	76,55,07,883.86	14	25,44,12,436.00	0.00
3	Claim Not Filed	4			4	4,34,03,725.00	0.00
Total			1,24,39,21,117.92	92,27,69,943.84	21	35,28,88,465.00	0.00

Note: No claim filed by Canara Bank for the units mentioned on serial no. 1, 2 and 9

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31. A perusal of the aforementioned document reveals that the alleged homebuyers/allottees filed their claims which were almost twice or thrice the amount of the loan taken from the Canara Bank. Moreover, the same has also been admitted by the RP. It transpires that the whole exercise was undertaken to have the alleged homebuyers/allottees, whose own status is in question, in majority in the CoC so as to influence the decision making of the CoC.
32. At this juncture, it is relevant to refer to the Judgment of the Hon'ble NCLAT in the case of *Hindalco Industries Ltd. v/s Hirakud Industrial Works Ltd. and Others* 2023 SCC OnLine NCLAT 1554 wherein it was seized with the interpretation and implementation of Section 65 of the Code and observed that: -

"97. Section 65 of the IBC prescribes a stringent punishment, which may be a penalty extending up to Rs. one crore for fraudulent and malicious initiation of the CIRP. In such a background, we are of the clear view that the initiation of CIRP was done fraudulently by the corporate debtor working in collusion with financial creditor Nandakini and therefore such fraudulent initiation of CIRP started with the admission order under section 7 is liable to be set aside. Therefore, taking recourse to section 65 of the IBC, we set aside the admission order of the section 7 application as its basis, the section 7 application, and loan therein which is claimed to be due and in default are found to be fraudulent.

...

114. In the present case, as the initiation of CIRP itself has been found to be tainted and faulty, and in addition, the subsequently constituted CoC is also found to include parties that are connected with each other and

acting in concert with the corporate debtor and other parties, we are of the opinion that the interest of justice would be served if the admission order under section 7 passed by the Adjudicating Authority is quashed. We, therefore, set aside the said admission order which would lead to all the other actions including CIRP as non est and null and void.

115. Thus, beginning with the initiation of CIRP to the constitution of CoC, its various decisions and resolutions and the denial of opportunities to the workers to submit their claims (although such a request was not made explicitly and also there was a delay when the HIW Workers' Union contacted the RP for copies of Section 7 application and pleadings therein), we are of the view that all these proceedings are fraudulent and also reek of malice and are, therefore found to be bad in law."

33. In light of the peculiar facts of the instant case and the Judgment of the Hon'ble NCLAT, we are *exfacie* of the view that the Corporate Insolvency Resolution Process of the Corporate Debtor was initiated fraudulently and with ulterior motives. We are of the opinion that the interest of justice would be served if the admission order under Section 7 passed by this Adjudicating Authority is hereby quashed. We, therefore, set aside the Admission Order dated 23.12.2021 which would lead to all the other actions including CIRP as *non est* and null and void.

34. In addition to the fraudulent and malicious initiation of the CIRP, it is relevant to take note of the conduct of the RP, *Mr. Prashant Agarwal*, and the AR, *Ms. Pratibha Khandelwal*, during the progress of CIRP as a more professional competence was desired from them. In spite of the knowledge of the pending investigation before the Enforcement Directorate qua fraudulent availing of

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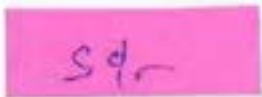
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home loans from the Syndicate Bank, the Resolution Professional proceeded with the claims of the alleged allottees and admitted them. Moreover, we cannot ignore the fact that the loan accounts of all the CoC members of the Corporate Debtor are under scrutiny before the ED in the Syndicate Bank fraud case. Thus, the given circumstances, raise serious concerns about the duties performed by the RP during the CIRP of the present case.

35. Further, it is pertinent to mention that the Resolution Professional received claims of six alleged homebuyers namely *Mr. Ajay Kumar Arora, Mr. Sambhav Jain, Vipul Kaushik, Bhaskar Jain, Mahendra Meghwal, and Nitin Parikh*, in the minutes of the 3rd CoC meeting dated 08.04.2022. The Resolution Professional kept the said claims in abeyance till 9th CoC meeting which was held in three phases on 31.10.2022, 01.11.2022, and 03.11.2022. Thereafter, the aforementioned alleged allottees addressed letters to the RP seeking withdrawal of their claims on 10.01.2023 and in the said letter, they specifically stated that they have neither taken any loan nor booked any flat in the project of the Corporate Debtor. Despite receiving the aforementioned letter, the Resolution Professional admitted their claims in the 10th CoC meeting dated 13.02.2023.

In addition to the aforesaid instances, it is relevant to take note of the actions of the Authorised Representative of the homebuyers towards its duties as






prescribed under the Code. This Adjudicating Authority *vide* Order dated 08.02.2022 appointed *Ms. Pratibha Khandelwal* as the Authorized Representative of the class of creditor comprising of the homebuyers.

36. The statutory scheme as is reflected from Section 25A of the Code indicates that the Authorized Representative is chosen to represent the creditors in a class in the CoC. The Authorized Representative is under a statutory obligation to file the instructions received from the financial creditors with the CoC and vote in accordance with the said instructions. Further, as per the proviso of Section 25A (3) of the Code, the AR is supposed to abstain from voting in the absence of any prior instructions from the Financial Creditors.
37. In the instant case, during the course of arguments, the AR stated before this Adjudicating Authority that *'She has neither met nor spoken to any of the alleged homebuyers whom She represents*. Since, the AR has not filed any instructions with the CoC and has stated before this Adjudicating Authority that she has not met any of the homebuyers, the AR should have refrained from voting in the CoC meetings and shown better professional competence. It is pertinent to mention here that the homebuyers as represented by the AR constitutes 72.12% of the CoC.

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38. As per the scheme of the Code, the management of the affairs of the Corporate Debtor rests with the RP and the IRP/RP acts as an officer of this court and is obligated to ensure adherence to the provisions of the Code. The RP has been entrusted with the responsibility of constituting the CoC as per Section 21 of the IBC. Further, Section 21 of the Code provides that the CoC shall comprise of all the financial creditors of the Corporate Debtor. In the instant case, the RP has admitted the colossal claims of the alleged homebuyers/allottees which were almost twice or thrice the amount of the loan taken from the Canara Bank. It should have been highlighted before the Adjudicating Authority.
39. Moreover, the RP is saddled with the responsibility of conducting the CoC meetings, reference can be made to Chapter IV of the CIRP Regulations. The aforementioned Provisions and Regulations of the Code cast a statutory obligation upon the RP to conduct the meetings of the CoC in accordance with the Code. In the instant case, the AR has not filed any instructions of the Financial Creditors with the CoC and has casted votes on behalf of the homebuyers without there being any instructions on record. The RP being the Chairperson of the CoC and the officer of the Code, was under the obligation to ensure that the AR casts the votes in accordance with the instructions of the class of creditors. Since, there are no instructions that has

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been recorded in the CoC meeting as mandated under the Code, yet the RP allowed the AR to cast the votes on behalf of the homebuyers in complete contravention of the provisions of the Code.

40. In view of the observations concerning the actions of the AR and the RP, we are of the opinion that the AR and RP in the CIRP process should have demonstrated better professional competence.
41. In the instant case, the CIRP of the Corporate Debtor has been initiated by the alleged homebuyers/allottees whose very status as an allottee is in question given the pending investigation before the ED. Further, some of the original Applicants were related parties to the Corporate Debtor and relatives of *Mr. Shankar Khandelwal*. Even during the CIRP, the alleged homebuyers/allottees filed inflated claims and the same were admitted by the RP resulting in a CoC controlled by homebuyers and reducing the voting percentage of other lenders to an inconsequential level. Moreover, claims of some of the homebuyers were admitted by the RP subsequent to their letter concerning withdrawal of their claims. The aforementioned actions were taken with the malicious intension of depriving the Canara Bank (E-Syndicate Bank) of its legitimate right as provided under the Tripartite Agreement by fraudulently entering into a Consensus Agreement. The said

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well-crafted manoeuvre was undertaken with the intention of abusing the process of the Code.

42. In light of the aforesaid observations, we are of the view that the CIRP of the Corporate Debtor was initiated fraudulently and maliciously as provided under Section 65 of the Code, the others IA's that are being considered simultaneously are decided hereunder:

IA (IBC) No. 165/JPR/2023

43. The *IA (IBC) No. 165/JPR/2023* was filed by *Canara Bank* earlier known as *E-Syndicate Bank* seeking necessary directions against the RP to accept/admit the claim filed by the Bank and include the name of the Bank in the list of the Financial Creditors. A perusal of the main Petition reveals that the Consensus Agreement, based on which the CIRP of the Corporate Debtor was initiated was signed between Corporate Debtor and certain home buyers. The Consensus Agreement was entered between the Corporate Debtor and the alleged homebuyers with the intention to deprive Canara Bank of its rights under the Tripartite Agreement. Further, since the Tripartite Agreement was entered among the Corporate Debtor, alleged homebuyers, and Canara Bank, the terms of the same cannot be changed only by two of the parties. Thus, the Consensus Agreement between the

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Corporate Debtor and the alleged homebuyers was entered to oust the claim of the bank and is in complete violation of the basic principles of the Contract Law. Thus, in line with the settled principles of Contract Law we ignore the Consensus Agreement entered into between the Corporate Debtor and the alleged homebuyers. Further, we restore the right of the bank as provided under the Tripartite Agreement in all the loan agreements and safeguards its interest in so far as the money lend under the Tripartite Agreement is concerned.

44. Moreover, since the CIRP of the Corporate Debtor has been set aside under Section 65 of the Code, the grievance of the Canara Bank concerning non-admission of the claim no longer subsists. In view of the aforesaid observations, the I.A. bearing no. *IA (IBC) No. 165/JPR/2023* stands disposed off.

IA (IBC) No. 476/JPR/2023

45. The Application bearing *IA(IBC) No. 476/JPR/2023* was filed by some of the homebuyers/allottees namely, *Mr. Sudhir Kumar Mishra, Mr. Ram Niwas Verma, Mr. Shivraj Jangid, Mr. Ganesh Ram Yadav, Mr. Dilip Kumawat, Mr. Amit Kothiwal, Mr. Gopal Lal Saini and Raj Kapoor Kumawat*, to showcase

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the genuineness of their claims and to counter the allegations that were raised by the ED in the *I.A. (IBC) No. 647/JPR/2023*.

46. This Adjudicating Authority has already established that the CIRP of the Corporate Debtor was initiated fraudulently and with malicious intent for purposes other than for the resolution of insolvency of the Corporate Debtor. The statements filed by ED and the order of the Adjudicating Authority under the PMLA, 2002 dated 09.11.2018 wherein the provisional attachment of the properties of the Corporate Debtor was confirmed shows that the loan accounts of all the aforementioned alleged allottees is under investigation in the Syndicate Bank fraud case. Therefore, we are of the view that there are serious doubts about the status of all the Applicants as allottees in the project. In view of the foregoing, the *I.A. (IBC) No. 476/JPR/2023* stands disposed off.

IA (IBC) No. 263/JPR/2023 & IA (IBC) No. 226/JPR/2024

47. The IA bearing *IA (IBC) No. 263/JPR/2023* was filed by the Resolution Professional seeking approval of the Resolution Plan submitted by *M/s Subhash & Co.*, whereas the Application bearing *IA No. 226/JPR/2024* has been filed by the dissenting secured financial creditor, *M/s Omkara Assets*

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Construction Private Limited, raising objections with regards to non-compliance of Section 30(2)(b) of the Code in the proposed Resolution Plan.

48. We are of the view that the present case is a case of fraudulent and malicious initiation of CIRP, and hence, when the basic edifice on which the Resolution Plan of the Corporate Debtor is based is *non est* in law, the superstructure of the Resolution Plan cannot sustain itself or maintain its existence. In view of the Order passed under Section 65 of the Code and the aforementioned observations, the *IAs bearing no. IA (IBC) No. 263/JPR/2023 and IA (IBC) No. 225/JPR/2024* stand disposed off.

49. In light of the aforementioned observations, we hereby direct as follow: -

49.1. The CIRP of the Corporate Debtor was commenced fraudulently and with malicious intention by the Applicants namely, *Mrs. Arti Kanoongo, Mrs. Anita Khandelwal, Mr. Vinod Kumar Kanoongo and Mr. Shivraj Jangid*. We hereby impose a cost of Rs. 10 Lakhs upon each of the Applicants under Section 65 of the Code to be deposited within a period of one month from the date of this order with the Pay & Accounts Officer, Ministry of Corporate Affairs, Government of India.

49.2. Regarding handling of this matter by the Resolution Professional, *Mr. Prashant Agarwal* (IBBI/IPA-002/IP-N00031/2016-2017/10068)

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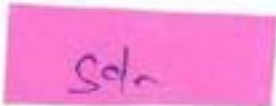
and the Authorised Representative, *Ms. Pratibha Khandelwal* (IBBI/IPA-002/IP-N00032/2016-17/10068), we express our concern regarding the lack of professional competence demonstrated by both the Insolvency Professionals in handling this matter.

49.3. The Consensus Agreement between the Corporate Debtor and the alleged homebuyers which was entered to oust the claim of the Canara Bank is hereby ignored. Further, we restore the right of the Canara Bank as provided under the Tripartite Agreement in all the loan agreements and safeguard its interest in so far as the money lent under the Tripartite Agreement is concerned.

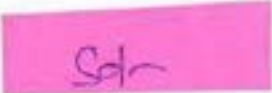
49.4. Further, the Resolution Professional is hereby directed to refund Rs. 1.10 Crores to the Successful Resolution Applicant in lieu of the performance security amount deposited in the bank account of the Corporate Debtor within one month of the date of this order.

49.5. A copy of this order shall be forwarded to parties to the case, the Resolution Professional, the Authorised Representative, and the Successful Resolution Applicant.

50. In view of the aforementioned directions *IA (IBC) No. 165/JPR/2023, IA (IBC) No. 647/JPR/2023, IA (IBC) No. 476/JPR/2023, IA (IBC) No.*



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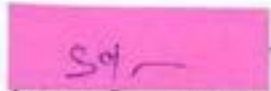


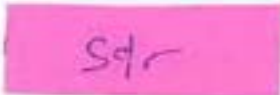
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263/JPR/2023 and IA (IBC) No. 226/JPR/2024 in CP No. (IB) 161/7/JPR/2020 stand disposed off.

51. In light of the fact that the CIRP of the Corporate Debtor namely *M/s Shrinathji Business Ventures Private Limited* under *CP No. (IB) 161/7/JPR/2020* stands quashed by the instant Order, we hereby direct that the pending IAs, if any, in the instant case stand disposed off.


DEEP CHANDRA JOSHI
(JUDICIAL MEMBER)


RAJEEV MEHROTRA
(TECHNICAL MEMBER)