

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 541 & 542 of 2026

[Arising out of the Impugned Order dated 02.03.2026 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi, Bench – II in I.A No. 917 of 2026 & IA No. 931 of 2026 in CP (IB) No. 1718(PB) of 2018]

IN THE MATTER OF:

1. SUBRATA ROY

ROOM NO. 122

AKASH AIR FORCE OFFICERS MESS DR. ZAKIR
HUSSAIN MARG NEW DELHI-110003

2. ANAND KRISHNA SHARMA

RAMVIHAR COLONY,
GWALIOR BYPASS ROAD SHIVPURI,
MADHYA PRADESH

3. SUMIT KUMAR SHARMA

B-64, POCKET 2, KENDRIYA VIHAR SECTOR 82,
NOIDA

4. PRAVEEN GAMBHIR

87 B, MASJID MOTH, PHASE-2 DDA FLATS,
G K-3 NEW DELHI – 110 048

5. SAQUELAIN SHAHIDI

6104/6, D6, SANTUSHI APARTMENT VASANT KUNJ
NEW DELHI-110070

6. SUNIL KAPOOR

FLAT NO. 1501, T11 LOTUS ZING,
SECTOR 168
NOIDA – 201 304

7. SANDEEP SINHA

3323 FERRERA MAHAGUN MAZERRIA,
SECTOR 78 1
NOIDA – 200 301

8. YOGESH CHANDRA BHARADWAJ

B 91 B, RAJAT VIHAR SECTOR 62
NOIDA – 201 309

9. RAKSHIT ARORA

FLAT NO.1102, T 11 LOTUS ZING,
SECTOR 168,
NOIDA – 201 304

10. SHIVANGI GUPTA

FLAT NO.1501, T 12A LOTUS ZING,
SECTOR 168
NOIDA – 201 304

11. RAJESHWAR JAIN

59 SHUBH ENCLAVE PARWAN PITAMPURA,
DELHI – 110 034

12. HR TAMANG

E-7 VIDYUT APARTMENT PLOT 2,
SECTOR 12 DWARKA
NEW DELHI – 110 078

13. SUNIL TYAGI

S-92A, SCHOOL BLOCK SHAKARPUR
DELHI – 110 092

14. RK JAIN

UNIT 2161, ATS TRIUMPH SECTOR 104,
VILL. DHANWAPUR
GURGAON – 122 006

15. LEENA NATH

FLORENCE D-605 GRAND OMAXE
SECTOR 93-B NOIDA-201301

16. JITENDRA SALWAN

176-A, DDA MIG FLATS RAJOURI GARDEN
NEW DELHI – 110 027

17. ASHWINI SUKHWANI

D-19, SECTOR 105 NOIDA,
UTTAR PRADESH – 201 301

...Appellants

VERSUS

1. RAJIV MOHAN

303, HIGH LAND APARTMENTS
8 VASUNDHARA ENCLAVE
NEW DELHI – 110 096

2. DINESH CHAUHAN

A-10, 10TH FLOOR TOWER S,

TYPE-5 KIDWAI NAGAR EAST
DELHI – 110 023

3. SUNIL KUAMR SUKHIJA

C-9, 2ND FLOOR,
FRONT SIDE EAST OF KAILASH
NEW DELHI – 110 065

4. NARESH KUMAR JAIN

B-23, SECTOR 26
NOIDA – 201 301

5. ANOOP PRAKASH AWASTHI

AUTHORIZED REPRESENTATIVE C-6,
2ND FLOOR, SUJAN SINGH ROAD RAJOURI GARDEN
DELHI – 110 027

6. KRIT NARAYAN MISHRA

C-3, ASHOKA APARTMENTS PLOT NO.8,
SECTOR 12, DWARIKA
NEW DELHI – 110 078

7. RAJESH RAMNANI

RESOLUTION PROFESSIONAL

D-44, SECOND FLOOR BACK SIDE,
NARAINA VIHAR NEAR NARAINA GURUDWARA
DELHI – 110 028

....Respondents

Present:

For Appellant: Mr. Krishnendu Datta, Sr. Advocate with Ms. Aditi Sharma, Mr. Harsh Gurbani, Mr. Arjun Gaind, Advocates

For Respondents: Mr. Gaurav Mitra & Mr. Kapil Bakshi, Advocates for R1 to R4
Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra, Advocates for R2
Mr. Milan Singh Negi, Mr. Nikhil Kumar Jha, Ms. Katyayani, Mr. Utkarsh, Advocates for R6

O R D E R
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of the Insolvency and Bankruptcy Code 2016 ('IBC' in short) by the Appellants arises out of the Order dated 02.03.2026 (hereinafter referred as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Bench – II) in I.A No. 917 of 2026 & IA No. 931 of 2026 in CP (IB) No. 1718(PB) of 2018. By the impugned order, the Adjudicating Authority has disposed of both IAs by directing the replacement of the current Resolution Professional ("**RP**" in short) with a RP selected by them. Aggrieved by the impugned order, the present appeal has been preferred.

2. Coming to the brief facts of the case, two IAs, namely IA Nos. 917 and 931 of 2026 have been filed in CP(IB) No. 1718(PB) of 2018 in respect of CIRP of the Corporate Debtor-Three C Projects Pvt Ltd. In its 52nd meeting held on 11.02.2026, the CoC had approved the replacement of the existing RP with the proposed RP, Shri Krit Narayan Mishra following which IA No. 917 of 2026 was filed. IA No. 917 of 2026 had been preferred by the Authorised Representative of the Financial Creditors in class comprising Homebuyers-allottees of the Corporate Debtor undergoing CIRP with the following prayers:

- "a) Take on record the outcome of voting conducted pursuant to the 52nd CoC Meeting;*
- b) Approve the replacement of Mr. Ajit Kumar as Resolution Professional;*
- c) Appoint Mr. Krit Narayan Mishra (IBBI/IPA-001/IPP00441/2017-18/10784) as Resolution Professional of Three C Projects Private Limited;*

d) Pass such other order(s) as this Hon'ble Tribunal may deem fit and proper."

The appointment of the proposed RP by the CoC was challenged vide IA No. 931 of 2026 by four allottees with the following prayers:

- a) Allow the present Application;*
- b) Quash and set aside the agenda and resolution as well as voting of the Committee of Creditors (CoC) taken in the 52nd CoC Meeting dated 11.02.2026 (voting concluded on 23.02.2026) approving the appointment of Respondent No. 2 as the Resolution Professional of the Corporate Debtor;*
- c) Declare that the appointment of Respondent No. 2 as Resolution Professional is illegal and void on account of material irregularity, procedural impropriety, and conduct inconsistent with the provisions of the Insolvency and Bankruptcy Code, 2016 and the Regulations framed thereunder;*
- d) Appoint any other Insolvency Professional or re-appoint Respondent No. 1 as the Resolution Professional of the Corporate in accordance with the provisions of the Code and its Regulations;*
- e) Grant ad-interim and interim relief, staying the operation, implementation, and effect of the impugned decision appointing Respondent No. 2 as Resolution Professional, during the pendency of the present Application; and*
- f) Pass such other and further order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case, in the interest of justice.*

The Adjudicating Authority disposed of both IAs with a common impugned order rejecting the appointment of the RP proposed by the CoC and instead appointed Shri Rajesh Ramnani as the RP. Aggrieved by the impugned order, the present appeal has been preferred by a set of 17 homebuyer-allottees.

3. It was submitted by Shri Krishnendu Datta, Ld. Sr. Counsel for the Appellant that the impugned order was in the teeth of Section 27 of the IBC which clearly empowers the CoC to decide on the replacement of the RP as

long as the decision of the CoC has the support of 66% vote share and the proposed RP whose consent for this purpose is not undergoing any disciplinary proceedings. It was submitted that when the CoC in the instant case had followed the requirements set out by Section 27 of the IBC and had resolved with 100% voting-share to appoint Shri Krit Narayan Mishra with his prior consent as the new RP, in place of the current RP, the Adjudicating Authority could not have appointed another person as the new RP disregarding the choice of the CoC. When all the condition precedents laid down by Section 27 of the IBC for appointment of a particular insolvency professional as the replacement RP had been complied with, the Adjudicating Authority could not have looked beyond these statutory conditionalities and imposed its wisdom on the insolvency professional to be appointed as the new RP. In support of their contention, reliance was placed on the judgement of this Tribunal in ***Venus India Asset-Finance Pvt. Ltd. Vs Suresh Kumar Jain, RP*** in ***CA(AT)(Ins) No. 1395 of 2022*** to contend that the decision to replace the existing RP with another RP lies within the domain of the CoC and the Adjudicating Authority does not have any jurisdiction to reverse the choice exercised by the CoC in appointing the new RP particularly when there was no disciplinary proceeding pending against the proposed RP. In any case, the ground cited by the Adjudicating Authority for not agreeing to the choice of the CoC in that the proposed RP had shown “extraordinary interest” to take up the appointment was also specious, superfluous and lacked specificity. The Adjudicating Authority had failed to show how the proposed RP had betrayed signs of “extraordinary interest”. It was also emphatically asserted

that the Adjudicating Authority had also failed to show how the conduct of the proposed RP was in contravention of the Code of Conduct of Insolvency Professionals or in violation of the provisions of IBC. Moreover, the Adjudicating Authority had been erroneously swayed by the allegations raised by only 4 allottees out of 2149 allottees of the Corporate Debtor to allow IA No. 931 of 2026 and rejecting the appointment of the RP proposed by the CoC in utter violation of the IBC framework. Submission was pressed that when the appointment of RP is the prerogative of the CoC, the Adjudicating Authority could not have interfered with the choice of the RP and substitute the choice of the CoC with another person who did not enjoy the trust and confidence of the CoC. It was also the contention of the Appellant that the RP appointed by the Adjudicating Authority was a related party of the outgoing RP as they were both common directors of a restructuring company. Hence, it was contended that the appointment of a related insolvency professional was contrary to the principles of fairness and did not inspire confidence. Assailing the impugned order, the Appellant have contended that the same deserved to be set aside.

4. Making rival submissions, Shri Gaurav Mitra, Ld. Counsel for the Respondent submitted that the Adjudicating Authority had rightly rejected the appointment of the proposed RP since the proposed RP had shown extraordinary interest in conducting the CIRP proceedings. It was submitted that the appointment of the new RP by the CoC was vitiated because the proposed RP had orchestrated certain steps to influence the CoC into appointing him including providing legal advice to the CoC even before his appointment.

Further there was a clear case of bias and conflict of interest which was evident from the fact that the RP had engaged a legal counsel to defend his interests in IA No. 931 before the Adjudicating Authority. It was pointed out that the new RP had acted in connivance with a group of home-buyer/allottees to whom he extended certain assurances prior to his appointment which were contrary to the statutory framework of the IBC and the Code of Conduct for the Insolvency Professionals. This conduct of the proposed RP was not in alignment with the principles of neutrality and transparency. In such circumstances, the Adjudicating Authority had rightly undertaken to scrutinise the conduct of the proposed RP and on finding sufficient grounds that the proposed RP had displayed “extraordinary interest” in his own appointment decided to reverse the appointment. The Adjudicating Authority was also well within its rights not to agree to the choice of the CoC in the appointment of the replacement RP to safeguard the integrity of the process of appointment of RP.

5. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.

6. The short question that requires to be answered is whether the decision of the Adjudicating Authority to reject the appointment of RP proposed by the CoC and nominating another RP of its own choice is legally sustainable.

7. At this stage itself it may be useful to take a look at the impugned order how the appointment of the new RP as proposed by the CoC has been dealt therein. The relevant excerpts are as follows:

“In the present case, the commitments made by the proposed IP to CoC, while giving his consent and his act of giving legal advice and

then engaging a Counsel to support his appointment as RP reflect his extraordinary interest in the matter. Such practice is no envisaged by any law, practice or procedure. All said and done, irrespective of what development and understanding transpired between the parties, outside the process, we find that the CoC has passed the resolution with 100% vote share to replace the current RP. In the wake, to subserve the interest of justice, we direct the replacement of the current RP with Mr Rajesh Ramnani.....”

From the above order, we find that the Adjudicating Authority agreed to replace the current RP but did not agree with the name of Shri Krit Narayan Mishra recommended by the CoC on three grounds. Firstly, that the proposed RP had given certain commitments while giving his consent; secondly, that the RP had given legal advice to the CoC even before his appointment and thirdly, that he had engaged a legal counsel to support his appointment as RP. The Adjudicating Authority was of the opinion that the above three developments point towards the proposed RP evincing ‘extra ordinary interest’ in his being appointed as the RP and that the Adjudicating Authority may not turn a blind eye to such extraneous factors.

8. It is the case of the Appellant that it is a settled position of law that appointment of the RP is the prerogative of the CoC and in the present case as the CoC was not satisfied with the performance of the current RP, it fell within the ambit of the commercial wisdom of the CoC to replace him. Moreover, in view of the poor progress of the CIRP under the current RP, the CoC was concerned about having a new RP who could ably, efficiently and effectively discharge the responsibility of completing the resolution of the Corporate Debtor. In such circumstances, there was nothing wrong on the part of the CoC that while seeking the consent of the new RP, it sought

assurance from the proposed RP on the proper implementation of the resolution process. This expectation of the CoC from the proposed RP was a legitimate expectation and the positive assurance given in response by the proposed RP did not violate any parameters of the IBC. Further seeking of legal opinion by the CoC from the proposed RP prior to his appointment on issues arising out of CIRP was nothing unusual as the proposed RP was a qualified lawyer as well as a trained insolvency professional. Moreover, the RP while giving his legal opinion had made it clear that his opinion was given in an independent professional capacity and not intended to influence his appointment as RP. Seeking of legal representation by the proposed RP was also perfectly justified in IA No 931 of 2026, since he was impleaded in the said legal proceeding and the proposed RP was therefore well within his rights to be represented through a legal counsel. The apprehensions of “extraordinary interest” as returned in the findings by the Adjudicating Authority of being detrimental to the CIRP was without proper substantiation and the Adjudicating Authority had also failed to refer to a single provision of law which had been violated by the proposed RP.

9. Before we proceed any further, we need to first glance through the provision of Section 27 of the IBC which provides for the manner and modalities of replacement of RP by the CoC. Section 27 of the IBC reads as under:

27. Replacement of resolution professional by committee of creditors. -

(1) Where, at any time during the corporate insolvency resolution process, the committee of creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it

may replace him with another resolution professional in the manner provided under this section.

(2) The committee of creditors may, at a meeting, by a vote of sixty-six per cent of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.

(3) The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.

(4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16.

(5) Where any disciplinary proceedings are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section.

10. From a plain reading of the above statutory provision which provides for the manner and modality of replacement of RP, it becomes clear that Section 27(1) empowers the CoC to replace the current RP with another RP at any stage during the CIRP process. Section 27(2) of the IBC however clearly lays down that for the CoC to succeed in replacing the existing RP, the resolution for replacement must have the support of 66% vote share. The same sub-section also clearly mandates that obtaining of the written consent from the newly proposed RP as another pre-requisite to be met by the CoC while proposing the replacement. Sections 27(3) and (4) when read conjointly further provides that the name of the proposed RP is to be forwarded by the CoC to the Adjudicating Authority which in turn shall forward the name to the IBBI for its confirmation. Section 27(5) when read alongwith Section 16 of the IBC envisages that the RP proposed by the CoC should not have any disciplinary proceeding pending against him.

11. Having gone through Section 27 of the IBC, it is quite clear that as long as the decision of the CoC to propose the replacement of the current RP enjoys more than 66% vote-share and the new RP's written consent has been obtained, the name of the proposed RP is to be forwarded by the Adjudicating Authority to the IBBI for confirmation and appointment provided no disciplinary proceeding should be pending against the RP. It is also more than crystal clear that the statutory scheme does not envisage any manoeuvring room for the Adjudicating Authority to change the name of the RP proposed by the CoC with its own nominee. We also notice that the Appellant has adverted our attention to the judgement of this Tribunal in **Venus India Asset-Finance judgement supra** wherein it has held that “....when the CoC contemplates change of Resolution Professional, the Adjudicating Authority in terms of the statutory construct has to merely look into two basic check boxes which is whether the CoC has resolved to that effect with 66% vote share and whether the proposed Resolution Professional has given his written consent and not look at anything beyond.”

12. Having noticed the statutory construct as well as a judicial precedent, we now proceed to dwell on the relevant facts. We notice that in its 52nd meeting held on 11.02.2026, the CoC had approved the replacement of the existing RP with the proposed RP with 100% vote-share thus meeting the mandate of Section 27(2). We also find that the CoC had sought the consent of the proposed RP on 30.12.2025 which consent for appointment was given by the proposed RP on 05.01.2026. Thereafter, the RP had filed IA No. 917 of 2026 before the Adjudicating Authority for appointment of a new RP of their

choice in terms of Section 27(3) of IBC. However, the Adjudicating Authority did not forward the proposed name to the IBBI as required under Section 27(4) and instead appointed another person of its own choosing.

13. This now brings us to the grounds cited by the Adjudicating Authority in not agreeing to the name proposed by the CoC which are already captured at para 7 above.

14. One of the grounds for the Adjudicating Authority to not agree to the choice of the CoC in the appointment of the replacement RP was that the proposed RP had made certain commitments to the CoC prior to his appointment which action showed an element of “extraordinary interest” on the part of the proposed RP. It is an undisputed fact that the CoC through 12 out of 14 Tower Representatives had issued a letter dated 30.12.2025 to the proposed RP to give his consent to be appointed as the RP. The said letter undisputedly sought assurance from the proposed RP on his agreeing to abide by certain construction related mile-stones and other CIRP related steps. It is also an admitted fact that the proposed RP while giving his consent to the CoC through the Tower Representatives to act as the RP had agreed to make bonafide efforts towards meeting these commercial, operational and project related mile-stones. It is however the case of the Respondent that the Adjudicating Authority was justified in not agreeing to the appointment of the proposed RP since the CoC’s seeking of prior assurances from the RP and the RP yielding to make these commitments have been rightly held to be extraneous factors which polluted the process of proposing a new RP. It is also the case of the Respondent that the letter dated 05.01.2026 from the

proposed RP clearly shows that the consent which had been given by him was conditional consent. It was also alleged that since the CoC had proposed to provide the RP performance-based bonus, this showed that the RP was being engaged for other extraneous reasons.

15. To arrive at our findings on this ground of objection raised by the Adjudicating Authority, we may retrace the steps taken by the CoC prior to suggesting the name of the new RP. We begin with the letter from CoC to the proposed RP dated 30.12.2025 and the reply from the proposed RP thereto dated 05.01.2026. When we see the letter dated 30.12.2025 addressed to the proposed RP as placed at page 216 of the Appeal Paper Book (“**APB**” in short) we notice that achievement of certain milestones and policies were expected from the proposed RP as extracted below:

“.....1.1.1. One Lift in Tower 9,10, 12A, 14 to be installed within 45 days of your appointment. One lift for Tower 7, 8 and 11 within 150 days after placement of order.

1.1.2. WTP, Road, drains, sewer line, Civil work of STP, External fire services work to be completed within 90 days of your appointment.

1.1.3. Completion of Tower 7, 9, 10, 12A and 14 within 120 days of your appointment.

1.1.4. Completion of installation of HT/LT Panel and associated electrical work within 150 days of your appointment.

1.1.5. Completion of Tower 8 and 11 within 180 days of your appointment.

1.1.6. Application of Fire NOC for Tower 7, 8, 9 and 10 by 120 days of your appointment and Tower 11, 12A and 14 by 180 days of your appointment.

In addition, the RP was expected to meet some other targets like initiation of ‘Pool and Build’ scheme; raise deficit finance from SWAMIH 2.0; ensure cash flow etc.

16. It is the case of the Appellant that these assurances were sought by the CoC from the proposed RP so as to be assured that the RP would be ensuring the robust execution of the resolution process. We cannot be unmindful of the fact that in the present case the CoC consisted of homebuyers who were financial creditor in class and they had placed these milestones before the proposed RP to be assured of themselves that they were selecting the right RP who would make diligent efforts to complete the resolution process in a timely manner. We do not find any illegality in the CoC seeking such an assurance from the proposed RP since the CoC was dissatisfied with the tardy progress of resolution process under the current RP and wanted to be assured of effective, efficient and timely completion of the resolution.

17. It is equally relevant to now notice the excerpts of the reply received from the proposed RP as at page 218 of APB:

“I note the commercial, operational and project-related terms, expectations and milestones indicated in your letter. I confirm that the same are acceptable to me in principle, subject to their approval by the Committee of Creditors (CoC) and continued compliance with the IBC Code, Regulations, and applicable law. In the event the CoC accords its approval and the same are found to be legally permissible, I shall make sincere and bona fide efforts to achieve the operational milestones referred to in your letter (Annexed with this letter).

.....It is, however, clarified that the achievement of such milestones and adherence to indicative timelines shall remain subject to availability and timely infusion of funds, cooperation of contractors, vendors and other stakeholders, receipt of statutory and administrative approvals, and absence of force majeure or other circumstances beyond the reasonable control of the Resolution Professional. Where deviations or extensions become necessary, the same shall be placed before the CoC for deliberation, and any modification of timelines or scope shall be undertaken only with the approval of the CoC, in accordance with law.

My appointment, if approved, shall take effect only upon approval of the CoC by the requisite voting share and confirmation/ approval by the Hon'ble NCLT as per the provisions of the Code and the rules & regulations framed thereunder. Upon appointment, I shall function in an independent and transparent manner, discharging statutory and fiduciary duties in the interest of the Corporate Debtor and all the stakeholders, in strict compliance of the Code and all other laws for the time being in force.”

18. When we look at the above reply of the proposed RP in his consent letter, we find that the proposed RP had merely conveyed his positive disposition to measure up to the CoC's expectations subject to the rigours of the IBC. Moreover, when the assurances and commitments given by the proposed RP were confined to project-related time-lines and milestones for completion of the resolution process, the commitments were indubitably geared towards furthering one of the objectives of IBC i.e. of timely resolution and hence cannot be seen as extraneous to the resolution process. The assurances do not in any way contravene or violate the code of conduct that the RPs are required to follow. There is nothing substantive to show that the consent of the proposed RP was capricious or violative of the provisions of the IBC and CIRP Regulations framed thereunder. It would also be wrong to say that the RP had hedged his consent with conditionalities since he had only pointed at the likely impediments which may affect his performance like timely infusion of funds, co-operation of other stakeholders, absence of force majeure etc. Thus, this was a case where the RP had candidly pointed to circumstances beyond his reasonable control which may hinder his performance. Above all we notice that the proposed RP had given the overarching undertaking to work in accordance with the provisions of IBC and on the directions of the CoC as

well as the Adjudicating Authority. Given this position, we do not find any good reason to agree with the finding returned by the Adjudicating Authority to hold the consent letter of the proposed RP to betray any sort of “extraordinary interest” to take up the responsibility of discharging the obligations of RP.

19. This brings us to the other ground on which the Adjudicating Authority had premised its conclusion of “extraordinary interest” on the part of the proposed RP which was the tendering of legal opinion prior to his appointment. It was contended by the Respondent that the Adjudicating Authority had rightly taken note that the proposed RP was found dabbling with some sections of the creditor in class in giving legal opinion on the insolvency resolution of the Corporate Debtor which demonstrates bias and conflict of interest.

20. It is the contention of the Appellant that there is no bar on the CoC in seeking legal opinion from a qualified professional on any issue arising out of CIRP. Moreover, while seeking the said legal opinion, it was made clear by the Tower Representative that the opinion sought had no nexus or bearing on the proposed RP being confirmed as an RP. It is further the contention of the Appellant that the opinion was not tendered suo-moto by the proposed RP but had been requested by one of the Tower Representatives who was a part of the CoC and that too on the aspect of implementation of “Pool and Build” scheme and raising of interim finance. In any case, since the proposed RP was a qualified lawyer, he was competent to give his opinion on issues connected to the CIRP of the Corporate Debtor.

21. In order to return our observations on this aspect, we would like to see the response tendered by the proposed RP when the said advice was solicited from him by the Tower Representative. The said reply has been placed on record by the Appellant by way of an additional affidavit, the relevant parts of which reply is as extracted below:

*“From Krit Narayan Mishra
<kritmassociates@gmail.com>
Date Mon 2/9/2026 1:50 PM
To subrata roy <subrataroy25@hotmail.com>*

Dear Sir.

It is with reference to your question and request for independent legal opinion in trailing mail.

This legal opinion is issued strictly in response to specific legal queries raised and is based solely on the interpretation of the Insolvency and Bankruptcy Code, 2016, the applicable rules and regulations framed thereunder, and prevailing judicial precedents. This opinion is rendered in an independent professional capacity.

It is clarified that this opinion is not linked, directly or indirectly, to any proposal, discussion or consideration regarding appointment as Resolution Professional, nor is it intended solicit, Influence, or secure any such appointment. The issuance of this opinion shall not rise to any expectation, representation, or estoppel in that regard.

This opinion is Issued without prejudice to any rights, remedies, or positions that may available in law and is confined strictly to the legal issues addressed herein.

Your Questions:

- 1. Can “Pool & Build” be made compulsory for all undelivered homebuyers if CoC passes resolution with 66% voting?*
- 2. Can interim finance be made compulsory for all undelivered homebuyers if approved with 66% voting?.....”*

22. When we see the above general remarks made by the proposed RP while giving his legal opinion, we find that he made it amply clear that his opinion was being given in an independent professional capacity and not intended to influence his appointment as RP. The advice sought to be given by the proposed RP also centred around CIRP related issues. From a reading of the tone and tenor of the reply given by the proposed RP and the caveats contained therein, we do not find the response to be incongruous with the IBC framework in any manner. In any case, when there is no specific finding in the impugned order as to what part of the above statement of the proposed RP amounted to showing his extraordinary interest in the CIRP of the Corporate Debtor, we are constrained to observe that the Adjudicating Authority's apprehension and conclusion that the proposed RP was showing undue interest in this CIRP was based on surmises and therefore lacked foundational basis.

23. The third ground on which the Adjudicating Authority has concluded that the proposed RP was showing extraordinary interest was that he was represented by a legal counsel during the hearing of IA No. 931 of 2026. When we look at the material placed on record at page 331 of APB, it is clear that the proposed RP had been arrayed as a party in IA No. 931 of 2026. When the proposed RP had been impleaded as a party by the Respondents, the engagement of a legal counsel by the proposed RP to defend his interest was the normal course of action that would have been adopted by any party if arrayed in a litigation. The Adjudicating Authority cannot be seen to question the conduct of the proposed RP on this score as it would tantamount to

denying a party the legitimate right of legal representation which would be contrary to the principles of natural justice and right to fair hearing and representation.

24. We are therefore of the considered view that we do not find any specific finding returned by the Adjudicating Authority as to how the proposed RP had violated any provision of IBC or had by his conduct shown extraordinary interest in the CIRP proceedings or acted in a manner whereby he had sought to interfere in the insolvency proceedings in a non-transparent manner which had the potential of being detrimental to the CIRP or the stakeholders in the CIRP process. We do not find sufficient and substantive ground to have been made out which demonstrates that the proposed RP had acted in a manner which offended the Code of Conduct of Insolvency Professionals or acted in subversion of the IBC framework or its objectives.

25. Having said that, we would also like to add that the Adjudicating Authority should have exercised greater caution in according seriousness to the conjectural and unsubstantiated allegations raised by a miniscule minority of 4 allottees out of 2149 home-buyers allottees that the choice of the proposed RP suggested by the CoC suffered from bias. The Adjudicating Authority in the present case by substituting the RP proposed by the CoC with its own nominee has therefore clearly usurped the jurisdiction of the CoC. The Adjudicating Authority does not have any jurisdiction to substitute the wisdom of the CoC in the appointment of a replacement RP. This interference on the part of the Adjudicating Authority in not accepting the CoC's choice of the RP and substituting with a RP nominated by them is wholly unwarranted

and legally impermissible in terms of Section 27 of the IBC. The Adjudicating Authority's substitution of the wisdom of CoC with its own wisdom is strongly deprecated as it not only runs counter to the statutory provisions of IBC but also overlooks the caution expressed by the Hon'ble Apex Court in a catena of judgements to respect the supremacy of the commercial wisdom of the CoC.

26. When the statutory provisions are unambiguous and fully empowers the CoC to replace the RP by following the prescribed procedure and parameters laid down under Section 27 of the IBC, the decision of the CoC cannot be interfered with by the Adjudicating Authority or by this Tribunal in the exercise of its appellate jurisdiction unless and until the decision of the CoC disturbs the foundational principles of IBC which is not the case here. The Adjudicating Authority is required to apply its mind within the four corners of law and cannot over-reach its assigned role by assuming the role of being a moral guardian. Since the Adjudicating Authority has chosen to exercise a jurisdiction not vested on it by law, the impugned order passed by the Adjudicating Authority is held by us to be *coram non judice*.

27. In view of the aforesaid discussion, we are of the considered view that the appointment of Shri Rajesh Ramnani as RP by the Adjudicating Authority is not sustainable in the eyes of law. The Appeal is allowed and the impugned order is set aside. The matter is remanded back to the Adjudicating Authority with directions that the decision of CoC to replace the current RP with Shri Krit Narayan Mishra is forwarded by them forthwith to the IBBI in terms of Section 27(4) of the IBC for further action in accordance with law. NCLAT

Registry is also directed to send a copy of this order to IBBI. Both IAs are disposed of with the above terms.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date: 22.04.2026

Sheetal/Abdul