

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1330 of 2025

[Arising out of the Impugned Order dated 02.07.2025 passed by the Adjudicating Authority, National Company Law Tribunal, Chandigarh Bench in I.A. No.2105/2023 in C.P. (IB) No. 248/Chd/Hry/2019]

In the matter of:

TEJINDER PAL SETIA

S/O LATE SH. B.K. SETIA

SUSPENDED DIRECTOR OF THE CORPORATE DEBTOR

I.E. CHANDIGARH OVERSEAS PVT. LTD.

R/O 131, A- BLOCK, MEERA BAG, DELHI- 110087

.... Appellant

Versus

**1. SH. ARVIND KUMAR,
RESOLUTION PROFESSIONAL**
CHANDIGARH OVERSEAS PVT. LTD.
REGD. OFFICE AT: SCO NO. 249,
BASEMENT, SECOTR 44-C,
CHANDIGARH – 160047
EMAIL: irpcopl@gmail.com

.... Respondent No.1

2. M/S. ACCORD INFRA DEVELOPER PVT. LTD.
THROUGH ITS DIRECTOR/ AR
REGD. OFFICE AT:
SHOP NO. P11, NEAR ESI,
DISPENSARY MILAN CINEMA ROAD,
KARAMPURA, DELHI WEST- 110015
EMAIL: accounts.axiom@gmail.com

.... Respondent No.2

**3. M/S. MOHALI HI-TECH BUILDERS AND
PROMOTERS PVT. LTD.**
THROUGH ITS DIRECTOR/ AR
REGD OFFICE AT:
HOUSE NO. 989, SECTOR 69, MOHALI
EMAIL: pathaniaca@airtelmail.in

.... Respondent No.3

4. DEPARTMENT OF INCOME TAX
THROUGH ITS JOINT COMMISSIONER
OFFICE AT: LIVE STOCK COMPLEX,
SECTOR 63, MOHALI

.... Respondent No.4

5. DEPARTMENT OF INCOOME TAX

THROUGH ITS PRINCIPAL COMMISSIONER
OFFICE AT PRINCIPAL CHIEF COMMISSIONER OF
INCOME TAX, DELHI

.... Respondent No.5

6. REGISTRAR OF COMPANIES

THROUGH ITS REGISTRAR
OFFICE AT: CORPORATE BHAWAN,
SECTOR-27, CHANDIGARH

.... Respondent No.6

7. REGISTRAR OF COMPANIES

THROUGH ITS REGISTRAR
OFFICE AT: 4TH FLOOR, IFCI TOWER,
61, NEHRU PLACE, NEW DEHI- 110019

.... Respondent No.7

Present:

For Appellant : Mr. Paras Mithal, Mr. Prabhar Mithal and Mr. Arjun
Katyal, Advocates.

For Respondent : Mr. Atul V. Sood, Advocate for RP.
Mr. Abhijeet Sinha Sr. Advocate with Mr. Rajat Gautam,
Advocates for R2 and R3.
Mr. Sarjit Bhadu Sr. Advocate with Mr. Aditya Soni,
Advocates for Homebuyer.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 02.07.2025 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Chandigarh Bench-I) in I.A. No. 2105(CH)/2023 in C.P. (IB) No. 248/Chd/2019. By the impugned order, the Adjudicating Authority has dismissed the I.A. No. 2105 of 2023 filed

by Appellant- Suspended Director of Chandigarh Overseas Pvt. Ltd. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

2. Coming to the factual matrix of the present case at hand, the Corporate Debtor-Chandigarh Overseas Pvt. Ltd. (**“COPL”** in short) was admitted into CIRP on 27.02.2023 by the Adjudicating Authority. This admission order though challenged before this Tribunal and the Hon’ble Supreme Court attained finality on 06.09.2023. Basis the claims received, the Resolution Professional (**“RP”** in short) constituted the Committee of Creditors (**“CoC”** in short) on 28.07.2023. The present Appellant, suspended director of the Corporate Debtor filed IA No. 2105 of 2023 in November 2023 before the Adjudicating Authority inter-alia challenging the constitution of the CoC and seeking exclusion of two entities namely, M/s Accord Infra Developers Pvt. Ltd. (**“Accord”** in short) and M/s Mohali Hitech Builders and Promoters Pvt. Ltd. (**“Mohali Builders”** in short) from the CoC on the ground that they were neither Financial Creditors nor Class of Creditors-Homebuyers/Allottees besides directing enquiry and investigations into their affairs and declare all resolutions passed in the first CoC meeting by the illegally constituted CoC to be illegal. The Adjudicating Authority on 02.07.2025 passed the impugned order dismissing IA No. 2105 of 2023. Aggrieved by the impugned order, the present appeal has been preferred by suspended director of the Corporate Debtor.

3. Making submissions on behalf of the Appellant, Shri Paras Mithal, Ld. Counsel submitted that the Adjudicating Authority committed a mistake in constituting the CoC with Respondent No.2-Accord and Respondent No.3-Mohali Builders as members therein at a time when they were neither Financial

Creditors nor Allottees/Homebuyers in terms of the IBC framework. It was contended that Respondent No.2 and Respondent No.3 were speculative investors who had usurped creditor status in collusion with erstwhile management and should be excluded from the CoC. It was emphatically asserted that the Agreements dated 24.06.2011 and 26.02.2012 which was relied upon by the Respondent No.2 and the Agreement dated 29.06.2009 by the Respondent No.3 clearly show that the Respondents were not allottees/homebuyers but were promoters and marketers of the housing projects which were developed by the Corporate Debtor. It was vehemently contended that the arrangements contained in these Agreements clearly show that the Respondents were vested with the right to sell, advertise, rename the project and even execute sale documents for third parties. The Respondents also failed to demonstrate that they were allotted any specific unit in the housing project under the said Agreements and had failed to establish themselves as 'allottees' under the provisions of IBC or Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as **"RERA Act"**). It was vehemently contended by the Appellant that the Respondents No.2 and 3 were not allottees and keeping in mind their conduct and actions as well as their status as defined under the Agreements clearly bring them within the purview of a 'Promoter' of a real estate project in terms of RERA Act. The agreement of marketing and reselling was clothed with the colour of a builder-buyer agreement but in reality, the Respondents were business partners and the agreements executed by them with the Corporate Debtor were collusive agreements to defraud the Corporate Debtor. In support of their contention, reliance has been placed on the judgment

of Madhya Pradesh Real Estate Appellate Tribunal in ***Bhopal Development Authority vs. Roop Laxmi Singh (2026) ibclaw.in 13 REAT*** where it has been held that a co-promoter cannot be considered an allottee, even if there is any condition for any consideration amount to be received under the relevant agreements. It was therefore clear that the collusive arrangement contemplated under the Agreements was not for possession of units by Respondent No.2 and 3 as allottees but was a cover-up of their role as a promoter/speculative investor. It was further submitted that the RP had admitted unverified and unaccounted claims of the Respondents which were not supported by the financial statements of the Corporate Debtor or Respondents. The claims of Respondents No.2 and 3 should have been rejected by the RP and they should have been denied a berth on the CoC as a Financial Creditor. It was also asserted that Respondents No.2 and 3 misused their position in the CoC by controlling the decision-making process of the CoC in a manner which prejudiced the interests of genuine homebuyers and other stakeholders. Submission was also made that the RP did not undertake any forensic audit despite allegations of collusion, diversion of assets and fraudulent transactions having been made. That the conduct of the RP was also doubtful is further substantiated by the fact that the RP has been suspended by the IBBI for having made similar admission of inadmissible claims of ineligible parties in another CIRP.

4. Refuting the contentions of the Appellant, Shri Abhijit Sinha, Ld. Sr. Counsel on behalf of Respondents No.2 and 3 submitted that the Appellant, being the erstwhile Director of the Corporate Debtor, lacked locus to assail the impugned order with respect to the composition, constitution and functioning of

the CoC. It was contended that since the Agreements of 2009, 2010 and 2012 were all executed by the Respondents No.2 and 3 with the previous management before the Appellant had become a director of the Corporate Debtor, the Appellant did not have the benefit of first-hand knowledge of the circumstances in which the Agreements were executed or aware of the purpose of execution of the Agreements. In any case, the reliefs claimed in the present appeal challenging the dismissal of I.A. No. 2105 of 2023 seeking exclusion of Respondents No.2 and 3 from the CoC and denial of their treatment in the category of homebuyers and declaration of all decisions of the CoC as illegal cannot be pressed by the Appellant after having ceased to be in management of the Corporate Debtor. It was also added that the ground taken by the Appellant that the claim of Respondents No.2 and 3 was not reflected in the financial records also lacked merit as it was not made on the basis of supporting documents but premised on personal knowledge, the sanctity of which needs to be discounted when dealing with the issue of claims. It was contended that balance sheet is not the sole or conclusive basis for admission of claims as in terms of Regulation 8A of the CIRP Regulations, 2016, the existence of debt due to a creditor in a class can also be established through an agreement for sale, letter of allotment, receipt of payment made, or any other document evidencing the existence of a debt. It was also asserted that the present appeal is nothing but an attempt to derail the CIRP process of the Corporate Debtor. It was also asserted that the Appellant has tried to unnecessarily transpose the provisions of the RERA Act to the IBC framework particularly in attempting to import the definition of the term 'promoter' from the RERA Act, 2018 which cannot be

allowed since the IBC is self-contained legislative enactment and only permits definition of two specific terms from the RERA Act. It was also pointed out that the contention of the Appellant that since Respondents No.2 and 3 had been allotted multiple units in the real estate project, they cannot be held as homebuyer allottees is also a misplaced contention since there is no prohibition under RERA against the allotment of multiple units to a single allottee. Accordingly, any attempt by the Appellant to rely on the RERA definition of “Promoter” to deny the status of a genuine allottee under the IBC to the two Respondents No.2 and 3 is misconceived and contrary to the statutory framework. It was emphatically asserted that there is no bar to the admission of claims even if the allottee is treated as a speculative investor, so long as the essential criteria of financial debt under Section 5(8)(f) of the IBC are satisfied. Reliance was placed on the judgment of this Tribunal in ***Everlike Real Estate & Developers Pvt. Ltd. Vs Mr. Mohit Goyal in CA(AT)(Ins) No. 978 of 2024.*** It was also contended that the Hon’ble Supreme Court in its judgement in ***Mansi Brar Fernandes Vs Subhha Sharma in Civil Appeal No.3826 of 2020*** also reinforces the position that that once the essential ingredients of a financial debt are satisfied, the label of being a “speculative investor” is not sufficient to disqualify an allottee from being treated as a financial creditor. These decisions clearly support the inclusion of Respondent Nos. 2 and 3 in the category of allottees whose claims are based on valid agreements, payments made and where transactions are backed by documentation.

5. Supporting the contentions raised on behalf of the Respondents No.2 and 3, similar arguments were canvassed by Shri Atul V. Sood, Ld. Counsel for the

RP. It was asserted that apart from the fact that the Appellant had no locus to file the appeal being the suspended director of the Corporate Debtor, it was submitted that the Appellant was a chronic and vexatious litigant who has been persistently trying to disrupt the CIRP process at a time when the resolution plan has already been approved by the CoC with 99.21% vote share. The RP submitted that the claims of Respondents No.2 and 3 had been accepted by the RP basis the documents provided by them because no other information/data was available with the RP as the Appellant had been non-cooperative in sharing relevant information. This non-cooperation is evident from the fact that they provided the books of accounts of the Corporate Debtor on 17.09.2023 which was more than six months after the admission of the Corporate Debtor into insolvency. It was also contended that once a homebuyer/allottee pays money for acquisition of units or tenders an advance, such a homebuyer/allottee acquires the status of a Financial Creditor under Section 5(8)(f) of the IBC. The status of such a homebuyer to be deemed as a speculative investor is relevant only at the stage of admission of Section 7 application since a speculative investor though precluded from filing a Section 7 application but is not precluded from filing claims after the Section 7 application is admitted. Submission was pressed by the RP that the Appellant had filed Civil Appeal No. 5533-34 of 2023 before the Hon'ble Supreme Court in which similar grievances had been raised which was rejected by the Hon'ble Apex Court. This shows that the Appellant is trying to frustrate the CIRP process by indulging in forum shopping. On the issue that Respondents No.2 and 3 are related parties of the Corporate Debtor, it was contended that the test of related party is laid down in

the judgment of Hon'ble Supreme Court in ***Phoenix ARC Pvt. Ltd. Vs Spade Financial Services Ltd. & Ors in Civil Appeal No. 2842 of 2020*** wherein it has been held that if a Financial Creditor is not a related party in praesenti, he would not be debarred from being a member of CoC. Since the Respondents No.2 and 3 have ceased to be a related party from 2014, and CIRP was initiated after 2014, there is no substance in the contention of the Appellant. It was vehemently contended that the Adjudicating Authority having considered all the issues raised by the Appellant before passing a well-reasoned impugned order, it did not warrant any interference by the Appellate Tribunal.

6. An Intervention Application No. 6574 of 2025 has been filed by the Authorised Representative of the homebuyers in the CIRP of the Corporate Debtor contending that they may be allowed to intervene in the matter opposing the contentions of the Appellant for obstructing the CIRP process of the Corporate Debtor.

7. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully. The short question which requires to be answered is whether there exists sufficient basis for exclusion of Respondents No.2 and 3 from the CoC on the ground that they were neither Financial Creditors nor Class of Creditors-Homebuyers/Allottees.

8. It is the case of the Appellant that a perusal of the recital clauses and the terms of the Agreements of 2011 and 2012 executed between the Corporate Debtor and Respondent No.2 and the Agreement of 2009 with Respondent No.3 clearly demonstrate that both the Respondents were promoters and marketers of the project and not genuine homebuyers/allottees. By virtue of the Agreement

of 2011 executed by the Respondent No.2 with the Corporate Debtor, this entity had made block purchase of large office spaces, commercial units and residential units besides rebranding portions of the project of the Corporate Debtor in their own name for onward sale by them independently. The Respondents had undertaken independent sale of units from their allocated share for which they executed sale deeds, entered into Buyer-Developer agreements, issued allotment letters to third parties besides collected consideration directly from the ultimate homebuyers which effectively rendered their status as that of a partner/promoter and not that of an allottee. It was also added that though the Agreement of 2011 was later re-nomenclated in 2012 from 'Agreement' to 'Agreement to Sell', in the case of Respondent No.2, this was collusively done so as to fraudulently secure them the status of an allottee/financial creditor in class though in reality they still continued as promoters. This is substantiated by the fact that the subject matter as well as the consideration amount involved in the Agreements of 2011 and 2012 remained more or less identical. The Agreement to Sell of 2012 was thus a smoke screen to cover up the fact that the Respondent No.2 was not an allottee but was a promoter engaged in the marketing of the real estate project units. The Respondent No.2 continued to remain a promoter, developer and marketer of the project who had executed collusive agreements with the erstwhile management to hide their status. It was asserted that both from the terms of the Agreement as well as the conduct of the Respondent No.2, it emerges that Respondent No.2 was a promoter and not an allottee. It was also added that the case of Respondent No.3-Mohali Builders for claiming the status of an allottee was still weaker. The transaction between

Mohali Builders and the Corporate Debtor was that of a business partner who had made speculative investment for marketing and reselling of units. The Agreement of 2009 clearly showed that the Corporate Debtor was depicted therein as 'Developer' while Mohali Builders has been defined as 'Promoter'. Even the clauses of the Agreement gave liberty to the Mohali Builders to fix resale prices, retain margins and control third-party agreements.

9. Submission was pressed by the Appellant that when both Respondents had failed to establish that specific units were allotted to them, these entities could not have been ascribed the status of Financial Creditor in Class. However, the RP classified the Respondents No. 2 and 3 as Financial Creditors in a Class without proper examination of the essence of these Agreements in question and entertained the claims filed by them and erroneously included them in the CoC. By admitting their claims and allowing them a berth in the CoC, this has led to irregularities in the constitution of the CoC and led to consequential compromise of critical commercial decisions of the Corporate Debtor. This inclusion was therefore challenged by way of IA No. 2105 of 2023 but was erroneously rejected by the impugned order.

10. To buttress the contention further that the Respondents were not allottees but promoters, the Ld. Counsel for the Appellant invoked the definition of 'Promoter' in terms of the RERA Act. It was submitted that the IBC imports the meaning of 'allottee' from the RERA Act and when Section 2(d) of the RERA Act which defines the term 'allottee' is seen, it becomes clear that this term has been used in contra-distinction to that of a 'promoter' which term has been defined under Section 2(zk) of the RERA Act. It was contended that the scheme of RERA

provides for a mechanism to an 'allottee' to fight for their rights against the 'promoters' before the competent authority. Thus, the two terms 'allottee' and 'promoter' are mutually exclusive and hence an allottee cannot be viewed as a promoter and vice versa. It was contended that in terms of the Agreements executed by the Respondent No.2 and 3, both of them get squarely covered by the definition of a 'promoter' of a real estate project and cannot be treated as an allottee.

11. Per contra it is the case of the Respondent Nos. 2 and 3 that the Appellant cannot claim privity to the purpose and intent behind the arrangement drawn under the Agreements of 2009, 2011 and 2012 as it is clear from the Agreements placed on record that the Appellant was not a party or a signatory at the time of execution of these Agreements since they became part of the management much later in 2014. Their understanding of the context of the Agreements was misplaced based as it was on their own contrived assumptions and presumptions of collusive arrangements at a time when the Agreements were signed by the previous management. Furthermore, when the existence of the Agreements entered into between the Corporate Debtor and Respondent Nos.2 and 3 had been in the knowledge of the Appellant since their induction as Director of the Corporate Debtor in October 2014 and these Agreements had never been challenged by them before any judicial or statutory forum, they cannot be seen to raise these issues now that they have ceased to hold that position now.

12. The over-emphasis placed by the Appellant to harp on the terms of the 2011 Agreement of Respondent No.2 to claim that the said Agreement was a

marketing/service arrangement which substantiated that Respondent No.2 was not an allottee is misplaced because it is indisputable that the subsequent Agreement of 2012 clearly records an absolute sale of property with the right to further sell. Further, the Agreement with Respondent No.3-Mohali Builders was also clearly an Agreement to Sell and mere nomenclature of “Promoter” in the recital of parties cannot override the substance of the transaction. Further the reference to Respondent No.3 as promoter in the Agreement of 2009 is immaterial and irrelevant as the Corporate Debtor was registered as a promoter with the RERA authorities. Further, there is no denial of the fact that the Respondents had made payments for the allotments, even if they were multiple allotments, and payments having been made by them, they cannot be denied the right to lodge their claims and become members of the CoC.

13. It was also asserted that the Appellant has tried to unnecessarily transpose provisions of the RERA Act to the IBC framework beyond the confines laid down in specific terms by explanation (ii) to Section 5(8) of the IBC. It was also contended that the judgment of Madhya Pradesh Real Estate Appellate Tribunal in ***Bhopal Development Authority supra*** relied upon by the Appellant is inapplicable as the facts in that case are distinguishable in that it related to a dispute between co-promoters in a Joint Venture Agreement concerning development rights over land which had been taken up under the provisions of the RERA Act and did not deal with any issue relating to insolvency, financial debt, determination of status as a financial creditor or the CIRP process under the statutory framework of IBC.

14. Coming to our analysis and findings, having heard the rival contentions of the parties herein and having perused the Agreements of 2009, 2011 and 2012, we are inclined to agree with the Respondents No.2 and 3 that the Appellant has inordinately preened too much into the recital and clauses of the Agreements to deliberately obfuscate the status of the Respondents No.2 and 3 from that of allottees to that of a non-allottee and a non-Financial Creditor in Class. The existence of debt due to a creditor in a class can be established through an agreement for sale, letter of allotment, receipt of payment made, or any other document evidencing the existence of a debt and in the present case the Respondents No. 2 and 3 have clearly established the same as has been noted by the Adjudicating Authority in the tabular chart at page 120 of the impugned order. In all fairness, the Ld. Counsel for Appellant while making his submissions submitted that the Appellant would not like to press the point made by them earlier that the claims of the Respondents were unsupported by financial statements/books of the Corporate Debtor. As long as an allottee pays consideration and puts in money for purchase of units, this will have the effect of commercial borrowing and consequently such unit purchaser is clearly entitled to be treated as Financial Creditor in terms of Section 5(8)(f) of the IBC which would entitle him to make a “claim” in terms of Section 3(6) of the IBC. Seen from this perspective, we are of the considered view that the Adjudicating Authority has not committed any error in holding that it did not find any impediment in holding the Respondents No.2 and 3 to be allottees who were entitled to file their claims.

15. On the contention of the Appellant that viewed from the prism of RERA Act, the Respondents No.2 and 3 cannot be viewed as allottees but have to be treated as promoters, we are of the considered view that the Appellant has tried to unnecessarily transpose the provisions of the RERA Act to the IBC framework particularly when the legislature has consciously limited the applicability of RERA Act specifically in respect of the definition of the terms 'allottee' and 'real estate project' as inserted in Explanation (ii) to Section 5(8) by the IBC (Second Amendment) Act, 2018. This limited adoption of RERA Act is evident from the text of Section 5(8)(f) read with the explanation therein, which defines financial debt in the context of real estate transactions. The deliberate inclusion of only these two definitions- 'allottee' and 'real estate project'- implies a conscious legislative intent not to import any other definition from RERA, such as 'promoter' or 'agent'. On the contrary, the Appellant has tried to import the definition of the term 'promoter' also from the RERA Act, 2018 which cannot be countenanced since the IBC is self-contained Code and in the absence of express provision made therein, we cannot accept the stand-point of the Appellant to transpose other provisions of the RERA Act on the IBC. We cannot be oblivious of the fact that the role and rights of various stakeholders under RERA are distinct as it serves a different regulatory purpose whereas in the given factual matrix, we are concerned solely with admission of claims by RP in terms of Section 3(6) of IBC and in determining the existence of financial debt in terms of Section 5(8) of the IBC. We therefore do not find any infirmity on the part of the Adjudicating Authority to have upheld the decision of the RP to have admitted

the claims of the Respondents No.2 and 3 after treating them as allottees and making them a part of the CoC.

16. The Appellant in their pleadings also raised the plea that the RP had acted in violation of law by admitting the claims of the Respondents No.2 and 3 as Financial Creditors in the CoC inspite of having been declared dissolved entities and struck off from the ROC. Assertion was made that in the absence of revival/restoration of the Company under Section 252 of the Companies Act, the Respondents No.2 and 3 could not have maintained and enforced any claim in the CIRP of the Corporate Debtor. This plea of the Appellant was held to be devoid of merit by Respondent No.2 and 3 as well as the RP. It was contended that in terms of Section 250 of the Companies Act, 2013, even when a company is struck off the register of companies, it continues to exist for the purpose of realizing amounts due to the company and for the payment or discharge of its liabilities or obligations. Hence, even if Respondents No.2 and 3 were struck off from the register of ROC, that does not preclude them from asserting their rights as creditors or from participating in the CIRP as their claims were otherwise valid and legally admissible.

17. We find substance in the above contention made by Respondents No.2 and 3. The law as it stands today does not prohibit admission of any claim filed by companies struck off from the register of companies, the Adjudicating Authority has not erred in holding that there was nothing wrong on the part of the RP to admit the claims of Respondents No.2 and 3. We also find that the Adjudicating Authority has relied on the judgement of the High Court of Delhi in the matter of ***A.B. Creations and Anr. Vs Bhan Textiles Pvt. Ltd., (2024) ibclw.in 1155***

HC in holding that even if a company is dissolved under Section 248 of the Companies Act, there is no bar on them for pursuing their legal remedies from realizing the amount due to the company, whether crystallised or not, as much as they are liable to be subjected for the payment or discharge of the liabilities or obligations of the company arising from any contract or statutory implications. We are of the considered view that the provisions of the Companies Act has been wrongly relied upon by the Appellant to deny the claims of Respondents No.2 and 3 and make this a ground to seek their exclusion from the CoC.

18. This brings us to the contention of the Appellant that Respondents No.2 and 3 are speculative investors and co-developers who were interested only in the profit of the project and were not homebuyers/allottees. It is the case of the Appellant that in order to be a genuine allottee, the homebuyer must be a purchaser of a specific unit with clear intention to take possession of such a unit. In support of their contention, the Appellant has relied on the judgment of the Hon'ble Apex Court in ***Pioneer Urban Land and Infrastructure Ltd. Vs UOI (2019) 13SC*** which held that speculative investors seeking profit through resale rather than possession are not allottees and that in the present case since both the Respondents failed to establish that specific units had been allotted to them which they had taken possession of, it reinforces that they were mere speculative investors.

19. We find that the Adjudicating Authority has also considered this contention of the Appellant as to whether the claim of the Respondents can be rejected on the grounds of holding them to be speculative investors. In doing so,

the Adjudicating Authority has relied on the judgement of this Tribunal in ***Everlike Real Estate judgment supra*** which has also kept in mind the ***Pioneer Urban Land and Infrastructure judgment supra*** to hold that IBC does not discriminate between a homebuyer who purchases a unit for self-use or purchases multiple units for commercial purposes. The relevant excerpts of the judgement are as reproduced below:

“47. The word ‘allottee’ as contained in explanation 1 of Section 5(8)(f) of the Code is by nature is quite exhaustive and illustrative and may include Homebuyer or unit owner or any commercial property owner.

48. The Code or the RERA Act, 2016 do not differentiate anywhere between the Homebuyers who purchase units for his own consumption or the Homebuyers or unit purchaser who purchase the multiple units for commercial purposes.

49. The Hon’ble Supreme Court of India in Pioneer Urban Land (2019) ibclaw.in 13 SC held that the allottee, who has given advance or paid money to the Real Estate Developers is a Financial Creditor. The issue regarding the genuine Homebuyers v/s Speculative Homebuyers is relevant only at the stage for the admission of CIRP under Section 7 of the Code. Thus, it becomes clear that the Hon’ble Supreme Court of India held the position of speculative investors only for seeking unnecessary insolvency of the Corporate Debtor. The Hon’ble Supreme Court held that any allottee who paid for purchasing units will be treated as having effect of commercial borrowing and consequently such unit purchaser will be treated as Financial Creditors.

50. Thus, it becomes clear that whether the homebuyer/ allottee is genuine homebuyer or genuine allottee or speculative homebuyers/ allottee but if he has paid the money for acquisition of such properties or given the advance, such allottee/ homebuyer shall be treated as Financial Creditor in terms of Section 5(8)(f) of the Code. Hence, the pleadings of the Respondent No. 2 in this regard that the Appellant is speculative investor will not affect the rights of the Appellant to be treated as the Financial Creditors.”

20. When we look at the ratio of the above judgment, we find that the same is squarely applicable in the present case and the claims of Respondents No.2 and 3 could not have been extinguished merely because of being a speculative

investor. Thus, judgement clearly holds that even if an allottee falls under the category of speculative investor, as has been claimed by the Appellant, the bar on such a speculative investor allottee is only for initiation of CIRP and not for purposes of filing their claim as creditor in class. Furthermore, Section 15 of the RERA Act expressly contemplates that a single allottee may book multiple apartments or plots in a project, and there is no restriction on third-party sales or multiple bookings by the same entity. The mere fact of multiple allotments does not alter the status of the Respondents as allottees and hence the RP did not commit any error in admitting the claims of the Respondents as allottees and in assigning them a berth in the CoC.

21. This brings us to the submission made by the Appellant that as per the books of accounts of Respondent No.2 an amount of Rs. 9.965 Cr. had been purportedly paid for the sale and transfer of certain properties, while the Corporate Debtor had transferred properties worth 15.37 Cr. to the Respondent No.2 and to other persons on its behalf. As such no amount was therefore recoverable by Respondent No.2. Instead, it was Respondent No.2 who owed money to the Corporate Debtor. It was also added that similarly in the case of Respondent No.3-Mohali Builders, a claim of Rs 7.78 Cr. was accepted by the RP whereas the books of account showed only a receipt of Rs 3.80 Cr. This clearly shows that the RP had acted in a non-transparent manner in admitting non-existent claims of Respondents No.2 and 3. It was contended that the RP had admitted claims without proper claim collation or verification. The claims filed by Respondents No.2 and 3 were in excess of the amount recorded in the books of account. Moreover, the claims were based on unaccounted cash receipts

issued by the management prior to the taking over by the suspended directors. The acceptance of unaccounted cash transactions as claims of Respondent No.2 by the RP without proper verification and reconciliation demonstrates a deliberate design on the part of RP to unfairly help the Respondents No.2 and 3 to secure their entry into the CoC and establish control the decision-making process of the CoC. It was further contended that even if it was admitted that money had been disbursed by the Respondents No.2 & 3 to the Corporate Debtor, the disbursement did not have the character of time value for money and hence cannot be treated as a financial debt and in support of their contention, reliance has been placed on the judgment of this Tribunal in ***Sugan Choudhary Vs Arun Enterprises in CA(AT)(Ins) No. 746 of 2022.***

22. Countering the contention of the Appellant, it was submitted by the Respondent No.2 and 3 that the liability to pay the debt owed to Respondent Nos. 2 and 3 had been admitted by the Corporate Debtor in their own reply in the Company Petition No. 210/Chd/Chd/2020 filed by various homebuyers. It was also asserted that the contention that the amounts claimed by the Respondents No.2 and 3 did not exist in the financial record and balance sheet of the Corporate Debtor does not carry sufficient basis since in terms of Regulation 8A of the CIRP Regulations, the existence of debt which due to a creditor in class could also be proved on the basis of Agreement for Sale, Letter of Allotment etc. and hence balance sheets cannot be relied upon to be the sole criteria for admission of claims. Hence, it was asserted that there was no discrepancy in the admission of claims of Respondents No.2 and 3.

23. When we look at the impugned order, we notice that the Adjudicating Authority after noticing CIRP Regulation 8A of CIRP Regulations also took the view that creditors in class are entitled to submit their claims basis certain specified documents other than audited balance sheets. The Adjudicating Authority has rightly noticed the relevant CIRP Regulations while returning its findings. We do not find any error in this finding returned by the Adjudicating Authority since non-reflection of claim amount in the balance sheet cannot be a cogent ground for rejection of the claim. In such circumstances, the relief sought by the Appellant for exclusion of Respondents No.2 and 3 from the CoC is devoid of merit. Furthermore, the judgment in ***Sugan Choudhary supra*** relied upon by the Appellant is inapplicable as it pertained to a private Agreement to Sell having no connection to a real estate project or rights of an allottee under the IBC. It neither involved CIRP nor dealt with claims by homebuyers as financial creditors. Hence, the reliance placed on it is misplaced.

24. During the oral submissions made in the course of the hearing, the Ld. Counsel for the Appellant informed that it does not wish to press their contention of Respondents No.2 and 3 being related parties of the Corporate Debtor at the time of initiation of CIRP. Hence, we do not propose to dilate on this issue any further when the Appellant does not wish to pursue this limb of argument.

25. In sum, we are of the considered view that the Appellant has failed to produce cogent grounds and proof to substantiate the exclusion of Respondent No. 2 and 3 from the CoC on the grounds if having filed inadmissible claims.

26. Given the above backdrop, we are of the considered view that the impugned order of the Adjudicating Authority rejecting the IA No 2105 of 2023 filed by the Appellant cannot be said to be beyond the jurisdiction of the Adjudicating Authority. We do not find sufficient basis made out by the Appellant to interfere with the order of the Adjudicating Authority in exercise of our appellate jurisdiction. Having noticed the sequence of events and the protracted nature of litigation, we are constrained to add that we do not countenance the conduct of the Appellant, being suspended management of the Corporate Debtor, in making repeated forays at litigation by rehashing the same issues before different fora of law and hence while dismissing the Appeal, we also impose costs on the Appellant of Rs 5 lakhs to be paid to the Prime Minister's Relief Fund within 15 days from the date of this order for putting unnecessary roadblocks and causing delay in the consideration of the resolution plan by the Adjudicating Authority. All other IAs are also disposed of with the above directions.

**[Justice Ashok Bhushan]
Chairperson**

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

Place: New Delhi

Date: 10.03.2026

Abdul