

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH

Company Appeal (AT)(CH) (Ins) No. 264 of 2021

[Arising out of Order dated 20.09.2021 passed by the Adjudicating Authority/National Company Law Tribunal, Kochi Bench, Kerala in MA/207/KOB/2020 & IA/101/KOB/2020 in TIBA/07/KOB/2019]

IN THE MATTER OF:

1. **V.K. Abdul Rahim**
28/3858-D, Sargam House,
Waterland Road, Ernakulam,
Committee of Creditor,
Cochin, Kerala -682020 ...Appellant

Versus

1. **Jasin Jose,**
Resolution Professional/ Liquidator
IBBI/IPA-001/IP-P00695/2017-
2018/11225,
Ponmattam, Madaserry House,
Mookkannoor PO, Ernakulam, Kerala,
683577
EmailID: jasinjoseponmattam@gmail.com ...Respondent No. 1

2. **The Federal Bank Limited**
Registered Office at Federal Towers,
Bank Junction, Aluva,
Ernakulam District, Kerala &
Branch Office at LCRD- Ernakulam
Division,
Ground floor, Federal Towers,
Marine drive, Ernakulam-682031 ...Respondent No. 2

Present:

For Appellant : Mr. Babu Karukapadath, Advocate.
For Respondent : Mr. Harikumar G Nair Akhil Suresh, for R-1.
Mr. Jasin Jose (CA), for Liquidator.
Ms. S. Parvathi, for Intervenor.

J U D G M E N T
(Virtual Mode)
(22.09.2022)

NARESH SALECHA, MEMBER (TECHNICAL)

The present `Appeal' is filed against the `impugned order' dated 20.09.2021 passed in MA/207/KOB/2020 in IA/101/KOB/2020 in TIBA/07/KOB/2019 by the `Adjudicating Authority' (`National Company Law Tribunal', Kochi Bench, Kerala), whereby, the `Adjudicating Authority' rejected the said `Petition' under the Insolvency & Bankruptcy Code, 2016 (in short '**I & B Code, 2016**').

Brief Facts:

2. The `Appeal' has been filed by `Mr. V.K. Abdul Rahim- Suspended Managing Director' of `M/s Sargam Builders (P) Ltd.' (`Corporate Debtor') who claims to have 64.48% of `Shares' of the `Corporate Debtor' at the time of commencement of `Corporate Insolvency Resolution Process' and also claiming to be one of the `Unsecured Creditor' of the `Corporate Debtor' for Rs.2.22 Crore.

3. The `Respondent No. 1'/'Mr. Jasin Jose, earlier `Interim Resolution Professional'/'Resolution Professional' and now the `Liquidator' and the `Respondent No. 2' is `The Federal Bank Limited', who is a `Financial Creditor' of the `Corporate Debtor'.

4. It has been alleged by the Appellant that the `Respondent Nos. 1 & 2' fraudulently and in collusion admitted wrong `Claims' of the `Respondent No. 2' and assign wrong `Voting Rights' to the `Respondent No. 2' along with `permitting the unauthorised persons to participate' in the `Committee of Creditors'. This led to the `Liquidation Order' by the `Adjudicating Authority'

under Section 33(2) of I & B Code, 2016. Alleging entire 'Corporate Insolvency Resolution Process' as fraud, the 'Appellant' had filed M.A. No. 207/KOB/2020, before the 'Adjudicating Authority' with prayers including 'recall order of Liquidation' and to 'declare composition and proceedings' of the 'Committee of Creditors', as void. The 'Appellant' had also filed IA/101/KOB/2020 to amend MA/207/KOB/2020. The 'Adjudicating Authority' however, dismissed both the 'Applications', as per common 'impugned order' dated 20.09.2021.

5. This 'Tribunal' has noted the following observations of the 'Adjudicating Authority' in the 'impugned order' dated 20.09.2021.

"The Application MA/207/KOB/2020 was filed on 10.12.2020 filed the Application come up with the amendment petition at a belated stage. In the amendment petition the application sought amendment of MA/207/KOB/2020 on different aspects and that if the amendment application is allowed the character of MA/207/KOB/2020 itself will change. In the amendment petition the applicant wants to import new facts, which cannot be allowed after the pleadings are complete and the matter is ripe for hearing. Moreover, the Liquidation proceedings are to be completed within a stipulated period. Therefore, the application IA(IBC)101/KOB/2021 to amend the MA/207/KOB/2020 is dismissed."

Hence, the 'Appellant' has preferred present 'Appeal' before this 'Tribunal'.

Appellant's Submissions:

6. The Learned Counsel for the Appellant stated that before becoming the 'Managing Director' of the 'Corporate Debtor', the 'Appellant' used to work in 'The Federal Bank Limited' who is a 'Financial Creditor' of the 'Corporate Debtor' and is the 'Respondent No. 2'. The Learned Counsel for the Appellant briefed that while working with the Bank, the 'Appellant' in pursuance to the direction of the 'Reserve Bank of India', the Appellant had submitted a "Staff Accountability Report dated 15.09.1999" against one 'Mr. T. S. Jagadeesan', who was the then 'DGM' of the Federal Bank. Later, 'Mr. T. S. Jagadeesan' became the 'Chief General Manager' ("CGM") of the Bank at the relevant time. In the same connection, the 'Appellant' was called as 'Management Witness' during the enquiry against 'Mr. T. S. Jagadeesan'. This led to a personal animosity against the 'Appellant' by 'Mr.T. S. Jagadeesan'.

7. At the time, when the aforementioned Mr. Jagadeesan assumed the office of the CGM, the 'Corporate Debtor' had availed a term loan of Rs. 70 Lakhs from the Bank and the then re-payments were being effected without default. In the meanwhile, the 'Respondent No. 2' (Bank) had also sanctioned a term loan of Rs. 27.5 Lakh and another term loan of Rs.5.7 Crore. The Housing Project of the 'Corporate Debtor' was also approved by the Bank for the purpose of providing 'Housing Loan' to the 'Clients' of the 'Corporate Debtor'. However, later, at the instance of the said Chief General Manager of the 'Respondent No. 2' (Bank) and his men, the bank retracted from all these Term Loans and Project Approval, while construction of the Project was in progress. This was done with the purpose of creating an 'NPA' on the 'Corporate Debtor'. One expired Bank Guarantee of Rs. 82.50 lakh in favour

of 'KSFE' was also permitted to be encashed. The Learned Counsel for the Appellant further assailed that all such illegal activities of the 'Respondent No. 2' led to stoppage of the Project and the 'Corporate Debtor' was compelled to return the amounts to a large number of allottees of the apartments, incurring huge losses to it.

8. The Learned Counsel for the Appellant mentioned that the 'Corporate Debtor' started Housing Project named 'Pearl Kochi' for which the 'Corporate Debtor' availed Term Loan from the 'Respondent No. 2'. The Learned Counsel for the Appellant alleged that, despite Project running smoothly, due to the interventions and the influence of 'Mr. T. S. Jagadeesan', Respondent No. 2 refused to disburse further instalments and illegally withdrew approval of the Project. This led to the crisis and caused huge financial losses to the 'Corporate Debtor', which finally led to the 'Liquidation' of the 'Corporate Debtor'. Further, the 'Respondent No. 2' even initiated the proceedings under SARFAESI Act, which was disposed by the 'Debts Recovery Tribunal', Kochi, in S.A. No 423/2013 by 'Order' dated 30.05.2013 in favour of the Respondent No. 2. Thereafter, the Respondent No. 2 filed O.A No. 258/2013 before 'DRT' for realization of the amount, making the 'Appellant' as one of the Defendants therein, as the 'Appellant' also stood as 'Guarantor'. The 'Appellant' while filing the 'Written statement' in the O.A., filed a 'Counter Claim', claiming 'Damages / Compensation' to the tune of Rs. 17,14,19,648.02, which was numbered as Counter Claim No. 2/2014. The Respondent No.2 never filed any Written Statement to the Counter Claim of

the Appellant, before the `DRT` and the matter is still pending even after seven years.

9. The Learned Counsel for the Appellant brought out that inspite of pendency of OA before the `DRT`, `Respondent No. 2` initiated `Corporate Insolvency Resolution Process` against the `Corporate Debtor` and proposed the name of `Mr. Jasin Jose` as `Interim Resolution Professional`. `Corporate Insolvency Resolution Process` was admitted by the `Adjudicating Authority` vide `Order` dated 20.09.2019 in TIBA/07/KOB/2019 which was challenged by the `Appellant` and filed Company Appeal (AT) (Insolvency) No. 1297/2019 which was dismissed by this `Tribunal`, as per `Order` dated 27.01.2020. The `Appeal` filed by the `Appellant` against the same was also dismissed by the Hon`ble Supreme Court of India on 12.10.2020.

10. It has been alleged by the `Appellant` that Mr. Jasin Jose after assuming office as the `Interim Resolution Professional`, who was confirmed by the `Adjudicating Authority` as `Resolution Professional` (Respondent No. 1) did not do anything to keep the `Corporate Debtor` as a going concern.

11. The Learned Counsel for the Appellant complained about the conduct of `Respondent No. 1` (Liquidator) who did not constitute `Committee of Creditor` properly in the `First Committee of Creditor Meeting` and included only `Respondent No. 2` as `Financial Creditor` ignoring other `Creditors` in the Committee of Creditor, thereby assigning 100% `Voting Share` to Respondent No. 2`. The `Interim Resolution Professional` prepared an incorrect `Memorandum of Information` regarding the `Assets and Liabilities`

of the 'Corporate Debtor' for determining its financial position on the date of commencement of 'Corporate Insolvency Resolution Process'.

12. The Learned Counsel for the Appellant pointed out that under Section 18 (1) (c), the Respondent was required to constitute a 'Committee of Creditor', as contemplated under Section 21 of I&B Code, 2016. Section 21 (2) specifically mandates that, all the 'Financial Creditors' of the 'Corporate Debtor' shall be in the 'Committee of Creditor'. The Learned Counsel for the 'Appellant' mentioned that as per Section 5(28) of the I & B Code, 2016, 'Voting Share' is based on the proportion of 'Financial Debt' owed to such 'Financial Creditors' in relation to the Financial Debt. The Financial Debt as defined under Section 5 (8) is the total 'Debt' of the 'Corporate Debtor', which shall necessarily include the all 'Financial Creditors' of the 'Corporate Debtor', including 'Home Allottees', especially, in view of the specific provision under Sec.5(8)(f)(i) of I & B Code, 2016.

13. The Learned Counsel for the Appellant assailed the 'Respondent No. 1' for violating the 'Rules & Regulations'. The Learned Counsel for the 'Appellant' maintained that the liability of the 'Corporate Debtor' towards the 'Respondent No.2' was only Rs.28,31,709.81, whereas the outstanding due to the 'Home Allottees' was Rs.2,52,65,453/- along with the 'Unsecured Loan' of Rs.40,49,470/- and 'Short Term Borrowing' of Rs.2,21,95,889.43, making the total liability of the 'Corporate Debtor' to Rs. 5,43,42,522.24/-. It has been alleged that the 'Voting Share' of the 'Bank' should have been only limited and instead of the same, the Respondent No. 1 allotted the entire 100% 'Voting Shares' to the Respondent No. 2.

14. The Learned Counsel for the Appellant explained that dues to this fraudulent 'Voting Share', the Respondents got the approval of the necessary '66% of Voting Shares' in the subsequent proceedings under Section 33 (2) of I & B Code, 2016 to 'Liquidate' the 'Corporate Debtor'. 'Liquidation order' was obtained even without a 'Notice' to any person connected with the 'Corporate Debtor'. This was a fraud practiced by the 'Respondent No. 1', who wanted to continue as 'Resolution Professional' and then as 'Liquidator' for fee, etc.

15. The Learned Counsel for the Appellant mentioned that in the '1st Committee of Creditor', as against the 'Actual Debt' of Rs.28,31,709/- due to the Bank, the 'Resolution Professional' admitted the illegal 'Claim' of Rs.4,39,60,553.25 (Rs.1,10,25,692.86 towards Principal and Rs.3,29,34,860.39 towards Interest), without any proper proof.

16. The Learned Counsel for the Appellant emphasised that the 'Committee of Creditor Meetings' were 'illegal and void' and the persons who represented the 'Respondent No. 2'/'Bank' were not authorized.

17. As per the Learned Counsel for the Appellant, Regulations 21(2), 23(3)(e), 24(2)(f) stipulate that, only one person specifically authorized by the 'Financial Creditor' can participate in the 'Committee of Creditor Meetings'. The Learned Counsel for the Appellant stated that the 'Constitution of Committee of Creditor' and its 'Meetings' are 'void', 'illegal' and 'fraudulent' and is 'vitiating' in all respects.

18. The Learned Counsel for the Appellant assailed the `conduct of Respondent Nos. 1 & 2' who tried to ensure that no `Resolution Applicant' came forwarded in the `Corporate Insolvency Resolution Process' by stating that the `Corporate Debtor' as an `Entity', incurring huge losses. Further, to damage the `Corporate Debtor', the `Form G' was published in newspapers having very lower circulation as a camouflage, in violation of Regulation of 36A(2)(i), when the Covid-19 was at its peak in Kerala with short notice time of only 15 days time for the `Prospective Resolution Applicants' to submit their `Expression of Interest'. The reason projected in the `Liquidation Application' that there is no `Expression of Interest', even after publishing `Form-G' was created by the Respondent No. 1, with an ulterior motive and did not make a second attempt to invite `Expression of Interest' to test the market.

19. The Learned Counsel for the Appellant further stated that the `Respondent No. 1' later admitted the `Claims' of three `Home Allottees', who support the `Respondent No. 2' in order to support the `Respondent No. 2'. Accordingly, in the `4th Committee of Creditor', the `Respondent No. 1' wrongly claimed that, they obtained more than 66% `Voting Shares' for `Liquidation' and it was decided to go for `Liquidation'.

20. The Learned Counsel for the Appellant unfolded that the construction was in progress, but the `Respondent No. 2' failed to disburse the amounts covered by the Term Loans and failed to meet its obligations and therefore the construction stopped. There were originally 50 Allotees. Under such adverse circumstances, some of the `Allotees' backed out and the `Corporate

Debtor' had to pay them back. The counter 'Claim' of the 'Corporate Debtor' of Rs. 17,14,19,648/- is, inter alia, with respect to such loss sustained by the 'Corporate Debtor'.

21. The Learned Counsel for the Appellant brought out that only two of the Allottees have filed cases and obtained Decree from the 'National Consumer Disputes Redressal Commission', and may result into a small portion of the entire debt of the Corporate Debtor. However, the 'Respondent No. 1' suppressing the 'Counter Claim' of the 'Appellant' attempted to magnify the two Decrees obtained from 'National Consumer Disputes Redressal Commission'

22. The Learned Counsel for the Appellant emphasised that the 'Respondent No. 1', as Liquidator created an impression that the 'Suspended Directors' of the 'Corporate Debtor' including the 'Appellant' is not co-operating with the 'Corporate Insolvency Resolution Process' proceedings while the facts are different. There has not been a single instance of the 'Corporate Debtor' or any of its 'Suspended Directors', including the Appellant or Staff causing any obstructions to the conduct of 'Corporate Insolvency Resolution Process'.

23. The Learned Counsel for the Appellant amplified that on 01.07.2020, when the COVID-19 restrictions were in peak in Kerala, the Respondent No. 1 sent a letter to the staff of the 'Corporate Debtor', with a copy to the Appellant, asking for certain documents and due to the COVID-19 restrictions, these could not be furnished. Further, the sole Office Staff, who

was residing in "Containment Zone" was not available in the Office and therefore, the 'Corporate Debtor' could not immediately provide those documents to the 'Respondent No. 1'. To make an impression that the 'Suspended Directors' are opposing the process of 'Corporate Insolvency Resolution Process', the 'Respondent No.1' incorporated such statements in IA No129/KOB/2020 and obtained the 'ex-parte Liquidation Order' and the 'Police Protection Order', against the 'Appellant'.

24. The Learned Counsel for the Appellant assailed the 'Adjudicating Authority' order of 'Liquidation'. An 'Appeal' was filed by the 'Appellant' as C.A. (AT) (Insolvency) No.1037/2020 which was withdrawn to pursue with the 'Adjudicating Authority'. The M.A. No. 207/KOB/2020 proceeded with before the 'Adjudicating Authority' and the 'Appellant', inter alia, sought to recall 'Liquidation Order' and to 'declare the Constitution of the Committee of Creditor' and its 'Meeting' void. Though, a detailed hearing of the matter was sought for, before the 'Adjudicating Authority', however only after short hearing, both M.A and I.A. were 'dismissed' by the 'Adjudicating Authority'.

25. The Learned Counsel for the Appellant alleged that the 'illegal and collusive role of Respondent No. 2' along with 'Respondent No. 1' was only with an intent to harm the 'Appellant' and the 'Corporate Debtor'. 'Respondent No. 1' misled the 'Adjudicating Authority' who issued the 'impugned order' which was not in accordance with the law.

26. The Learned Counsel for the Appellant urged to allow the 'Appeal' and dismiss the 'impugned order' of the 'Adjudicating Authority'.

Respondent's Submissions:

27. The Learned Counsel for the Respondent gave an overall view and facts of the case. 'Sargam Builders Pvt. Ltd.' ('Corporate Debtor') entered into housing and tourism sector in the year 1997 and completed one 'Project', named 'PERIYARBANKS', on the banks of river 'Periyar' in 'Aluva'. The second Project was 'Pearl Kochi' at 'Vallarpadam' which never took off and the Project is stalled since 2010-11. The Learned Counsel for the Respondent also highlighted that since the beginning, the 'Corporate Debtor' faced litigations on various fronts in addition to 'Civil Disputes' in respect of the Project property and finally due to financial constraints, the accounts of 'Corporate Debtor' became 'NPA' and the Project stopped.

28. The Learned Counsel for the Respondents stated that, at present no Business activities are carried out by the 'Corporate Debtor'. The 'Corporate Office' of the 'Corporate Debtor' is just one room which is actually a portion of the residential House of the Director and only one personal staff is employed as per the Attendance Record that takes care of the 'Corporate Debtor' administrative matters. The Project remains stalled since 17.09.2011, due to various reasons and the building permits also stood expired on 29.03.2012.

29. The Learned Counsel for the Respondents pointed out that initially, there were 53 Home Buyers and now only 13 Home Buyers are remaining in the Project. The claims received from 9 have been admitted and further 3 Claims received recently and waiting to be admitted, subject to the approval of the 'Adjudicating Authority'.

30. The Learned Counsel for the Respondent (Liquidator) had also filed 'Status Report' and pointed out the 'List of Events' after admission of the case by the 'Adjudicating Authority':

List of Events	DATES
'Adjudicating Authority' Admission Order for CIRP Passed on	20.09.2019
Paper Publication made on	25.09.2019
Kerala High Court Interim Stay	25.09.2019-30.09.2019
Kerala High Court directed the Appellant to Approach NCLT	01.10.2019-31.10.2019
Adjudicating Authority ordered to resume CIRP	13.11.2019
NCLAT ordered staying Committee of Creditor	28.11.2019
NCLAT dismissed the appeal challenging CIRP Admission Order	27.01.2020
Appeal filed in Hon'ble Supreme Court against the order of NCLAT was dismissed by SC on	12.10.2020

31. The Learned Counsel for the Respondent (Liquidator) had further relied upon the 'Status Report' and pointed out the events post 'Liquidation Order', which are as herein under:

PARTICULARS	DATES
Liquidation date	16.09.2020
Public announcement made on	24.09.2020
Last date of receipt of claim	22.10.2020
Stakeholders committee constituted on	22.11.2020

List of stakeholders/claim list/list of Assets/ preliminary report filed with Kochi NCLT on	09.12.2020
Liquidator took the assistance of police to collect the documents for valuation on	13.11.2020 documents handed over on 18.11.2020
The suspended Managing Director Mr. VK Rahim filed appeal in Hon'ble NCLAT against the Liquidation order on	10.11.2020
MA No. 207/KOB/2020 in IA No. 129/KOB/2020 in TIBA/07/KOB/2019 in TIBA/07/KOB/2019 filed by Mr. VKA Abdul Rahim	The case dismissed with the direction to the petitioner VK Abdul Rahim to pay Rs. 25000/- to Liquidator as cost and dismissed the case.
IA (IBC) 101/KOB/2021 in MA No. 207/KOB/2020 in I.A No. 129/KOB/2020 in TIBA/07/KOB/2019 filed by Mr VKA Abdul Rahim	The case dismissed on 20.09.2021
WP filed in High Court	Further to the above Mr. VK Abdul Rahim filed a Writ Petition in Kerala High Court challenging the above order and for a stay. Kerala High Court dismissed the appeal.
Appel filed in NCLAT	Further to dismissal of WP by Kerala High Court Mr. VK Abdul Rahim has filed an appeal in NCLAT challenging the NCLT order which is the present matter of case.

32. Learned Counsel for the Respondent gave Citations of the Case, **B.K Educational Services (P) Ltd. vs. Parag Gupta Associates-** AIR 2018 SC

5601, **Babulal Vardharji Gurjar vs. Veer Gurjar Aluminium Industries Pvt. Ltd.** 2020 SCC1, **Budraja vs. Chairman Orissa Mining Corporation Ltd. & Anr.** 2008(2) SCC 444 and **Swiss Ribbons Pvt. Ltd. vs. Union of India** 2019 (4) SCC 17 to support his case against the `Appeal`.

33. The Learned Counsel for the Respondent emphasized that the `Suspended Directors` are not at all co-operating in the `Corporate Insolvency Resolution Process` and they were only finding ways for creating hurdle. The `Appellant` is making wrong allegations against the conduct of the `Committee of Creditor Meetings`. Their challenge to the MA/207/KOB/2020 & IA (IBC) 101/KOB/2021 order of admission of the TIBA/07/KOB/2019, before this `Tribunal` and the `Appeal` against the order, before the Hon'ble Supreme Court also failed. Thus, the `Appellant` lost at all judicial forum i.e. DRT, NCLT, NCLAT and finally at Hon'ble Supreme Court of India.

34. The Learned Counsel for the Respondent stated that on the one side, the Petitioner has been litigating to stop the `Corporate Insolvency Resolution Process` proceeding and on the other side, claiming that the `Resolution Professional` has not adjudicated the `Counter Claim` pending in `DRT`.

35. The Learned Counsel for the Respondent stated that filing of `Counter Claim`, is only a technical remedy in `DRT` and the outcome may not be favoring the `Appellant`, as such the `Appellant` never pursued the matter during the `Corporate Insolvency Resolution

Process' period and he has never shared any of the details of the case files to the IRP/IRP, rather went on challenging the admission of the 'Corporate Insolvency Resolution Process'.

36. The Learned Counsel for the Respondent assailed the conduct of the 'Appellant' and that 'Appellant' has deliberately suppressed the fact that he is the 'Suspended Managing Director' of the company and purposefully opted to file an 'Application' in the capacity of 'Shareholder' of the 'Company'.

37. The Learned Counsel for the Respondent emphasized that the 'Corporate Debtor' is only a company hanging in the 'eye of law' whose Registered Office is part of the house of the 'Suspended Managing Director', with no proper Rent Agreement, no Electricity or Water connection in the name of the company. Only one employee is employed. Right from the beginning, the 'Resolution Professional' requested for the relevant details for conducting the 'Corporate Insolvency Resolution Process' but the 'Suspended Director' as well as his employee, never allowed the 'Insolvency Resolution Professional' to enter the Office premises (Part of the house) stating they prefer to go for an 'Appeal' and no 'Corporate Insolvency Resolution Process' to be proceeded with, until the 'Appeal' gets disposed of.

38. The Learned Counsel for the Respondent assailed the behaviour of the 'Appellant' and said that the 'Insolvency Resolution Professional' has multiple times sought the Adjudicating Authority's direction for the

cooperation from the `Petitioners' and `IRP/RP' had to take Police assistance and even with that `IRP/RP' failed to take possession of the company and only after taking the personal appearance of the Suspended Directors', before the 'Adjudicating Authority' and direction of the 'Adjudicating Authority' at `Liquidation' stage, Possession could be completed.

39. The Learned Counsel for the Respondent mentioned that the Suspended Director was projecting the company with high net worth by revaluing the land which cannot be considered as `Inventory'.

40. The Learned Counsel for the Respondent pleaded that the 'Corporate Debtor' in its Balance Sheet never accounted the Accrued Interest on Loan after the account turned `NPA' and was just carrying forward the long last Bank Ledger amounting to Rs.28,31,704.81/-.

41. The Learned Counsel for the Respondent mentioned that admittedly the four officials representing the `Financial Creditor' (Federal Bank) attended the `Committee of Creditor Meeting', right from the `1st Committee of Creditor Meeting' to the last `Committee of Creditor Meeting' and even under `Liquidation' in `Stakeholders' meeting. However, looking into I & B Code, 2016, overall perspectives in general and for all Banking matters, most of the meetings are attended by more than one official of the Bank.

42. The Learned Counsel for the Respondent No. 1 mentioned that it is irrelevant as how many representative of the Bank attended the 'Committee of Creditors' meeting as the `Voting Share' of the Bank

remains the same. Hence, allegation of the 'Appellant' is baseless and created only to confuse the matter and derail the 'Liquidation Process'.

43. The Learned Counsel for the Respondent emphasized that in the present scenario, where Real Estate Sector is not in demand and considering the large number of unsold unit of finished Projects, unfinished Units, pending Projects, Projects of various completion stage, 'Committee of Creditor' felt that obtaining a fresh 'Resolution Plan' would be difficult and meaningless and therefore recommended for 'Liquidation' of the 'Corporate Debtor' to maximize the value for the 'Stakeholders'.

44. The Learned Counsel for the Respondent finally concluded his arguments and submitted that the 'Appeal' is without any merit and need to be set aside with 'exemplary costs' as 'Appellant' has been misusing provision of the I & B Code, 2016 to derail 'Liquidation Process', even after losing his cases in this 'Appellate Tribunal' as well as in 'Hon'ble Supreme Court of India'.

Findings

45. Heard the Learned Counsel for the Parties and also perused various record made available to us. Several issues have been raised in the 'Appeal' which are required to be deliberated upon before coming to final conclusion.

(i) Whether the 'Committee of Creditor' constitution was correct in terms of the I & B Code, 2016?

(ii) Whether meetings of 'Committee of Creditor' were correctly conducted by the 'Interim Resolution Professional'/'Resolution Professional'/'Liquidator', under I & B Code, 2016.

(iii) Whether the 'Respondent No. 1' has erred by accepting the Claims of the Bank in excess of the amount due as mandated under Section 18 of I & B Code, 2016.

(iv) Whether the 'Respondent No. 1' is duty bound under Section 25(2) (b) of I & B Code, 2016 to take up the issue of 'Counter Claim', either before the 'Adjudicating Authority' or 'DRT' before proceeding with the 'Corporate Insolvency Resolution Process' and 'Liquidation Proceedings'?

Issue No. (i) Whether the 'Committee of Creditor' constitution was correct in terms of the I & B Code, 2016?

(a) Section 21 of I & B Code, 2016 provides for composition of Committee of Creditor. It is the duty of the Interim Resolution Professional to constitute a committee of creditors in terms of Section 21(1) of I & B Code, 2016 after collation of all claims received against the 'Corporate Debtor' and determination of such claims of the Financial Creditor of 'Corporate Debtor'.

(b) The Section 21(2) of I & B Code, 2016 mandates that, "the Committee of Creditor shall comprise of all Financial Creditors" except related party as per provision to Section 21(2) of I & B Code, 2016.

(c) Section 5(28) of the I & B Code, 2016, defines "voting share"- "means the share of voting rights of a single financial creditor in the

Committee of Creditor, which is based on proportion of financial debt owed to such Financial Creditors in relation to the Financial Debt owed by the 'Corporate Debtor'".

- (d) Financial Debt, as defined under Section 5 (8) is the total debt of the 'Corporate Debtor', which shall necessarily include the whole financial creditors of 'Corporate Debtor', including home allottees, especially in view of the specific indication in Section 5(8)(f)(i), which was introduced by way of amendment of I & B Code, 2016.
- (e) The 'Committee of Creditor' shall consist of all 'Financial Creditors' of the 'Corporate Debtor' including Home Allottees. This has also been confirmed in various judgments including (2018) 18 SCC 575- **Chitra Sharma Vs Union of India &Ors** and (2019) 8 SCC 416- **Pioneer Urban Land and Infrastructure Ltd Vs. Union of India** and (2020) 8 SCC 531 **Essar Steel India Ltd Committee of Creditors vs. Satish Kumar Gupta** as cited by the Learned Counsel for the 'Appellant' in his submissions.
- (f) These decisions settled the principle that the 'Committee of Creditor' shall consists of all 'Financial Creditors' including all home allottees. The 'Resolution Professional' is required to constitute the 'Committee of Creditor' with home allottees to protect the interest of all concerned including home allottees as the 'Committee of Creditor' is the decisive authority in the whole process.
- (g) Under Section 18 of I & B Code, 2016, it is the duty of the 'Interim Resolution Professional' to collect 'financial' information relating to

the 'Corporate Debtor', including its 'Assets' and 'Liabilities' on the initiation date and also to constitute the 'Committee of Creditor'.

- (h) In the present Appeal, the Respondent No. 1 constituted the 'Committee of Creditor' assigning 100% voting shares to the Respondent No. 2. 'Interim Resolution Professional' prepared Information Memorandum, inter alia with reference to the financial position of the 'Corporate Debtor'.
- (i) It has been alleged that the liability of the 'Corporate Debtor' towards the Respondent No. 2 was only Rs.28,31,709.81/- and therefore Respondent No. 2 was entitled to have only 5.21% shares in the 'Committee of Creditor'. It has been brought by the 'Appellant' that the amounts due to the home allottees was Rs.2,52,65,453/- which is almost 10 times of the amount due to the Bank along with the unsecured loan of Rs.40,49,470/- and a short term borrowing of Rs. 2,21,95,889.43/- making the total liability/debt to the tune of Rs. 5,43,42,522.24/- due to the 'Financial Creditors'. The Appellant further stated that the Respondent No. 1 instead of allotting only 5.21% shares to Respondent No. 2 in the 'Committee of Creditor', illegally allotted the entire 100% 'Voting Shares' in the 'Committee of Creditor' without allotting any 'Voting Shares' to any other 'Financial Creditors', including the 'Home Allottees'.
- (j) On the other hand, we have observed from the submissions and pleadings by the Respondents who claims that the 'Committee of Creditors' was strictly constituted as per provisions of the I & B Code, 2016 and brought out that on immediate admission of

‘Corporate Insolvency Resolution Process’ and appointment of ‘Interim Resolution Professional’, within three days Public Announcement has to be made under Regulation 6 of IBBI (Resolution Process for Corporate Persons) Regulations, 2016. Similarly, under Regulation 13, ‘Interim Resolution Professional’ has to verify the claim and under Reg. 17 has to file a report certifying ‘Constitution of the Committee’ to the ‘Adjudicating Authority’.

(k) Respondent No. 1 emphasized that the above procedures were followed strictly. It has also been brought out by the Respondent that the ‘Interim Resolution Professional’ cannot calculate the ‘Voting Share’ without submitting the ‘Claim’ by the ‘Creditors’, as alleged by the ‘Appellant’. The Respondents stated that the ‘Committee of Creditors’ consists all ‘Financial Creditors’ of the ‘Corporate Debtor’ except related party of the ‘Corporate Debtor’. The Respondent also submitted that the ‘Interim Resolution Professional’ did not receive any ‘Claim’ from the ‘Appellant’, Home Buyers and from any other Creditors other than the ‘Applicant’ to the ‘Corporate Insolvency Resolution Process’ i.e. Federal Bank and hence the ‘Committee of Creditor’ was constituted, initially only with the Federal bank. ‘First Committee of Creditor’ meeting was attended by the Federal Bank only subsequently the ‘Interim Resolution Professional’ received the claim from three Home Buyers in the month of April

2020, and they were made part of the `Third Committee of Creditor' onwards i.e., from 07.08.2020.

(l) It has been brought out that, initially there were 53 Home Buyers and now only 13 Home Buyers are remaining in the Project and the Claims received from 9 have been admitted and further 3 claims received recently and waiting to be admitted subject to the approval of the `Adjudicating Authority'.

(m) After taking the above facts into consideration along with the rule position as stipulated in I & B Code, 2016, this `Tribunal' do not find any error on the part of `Interim Resolution Professional' regarding `Constitution of Committee of Creditors', which was approved by the `Adjudicating Authority'. We, therefore, do not find any merit in the `Appeal' on this issue.

Issue No. (ii) Whether meetings of the `Committee of Creditor' were correctly conducted by the `Interim Resolution Professional' / `Resolution Professional' / `Liquidator' under the following I & B Code, 2016.

(a) It has been alleged that the `Committee of Creditor' meetings were conducted illegally as these were not conducted according to right voting percentage of various `Financial Creditors'. It has further been alleged that meetings of `Committee of Creditors' were attended by the unauthorized persons who were permitted wrongly by `Interim Resolution Professional' to participate in these meetings.

- (b) It has also been brought out by the 'Appellant' that as per Regulations, only 1 person specifically authorized by the 'Financial Creditor' alone can participate in the 'Committee of Creditor' meeting against four unauthorised persons from Respondent No. 2.
- (c) On the other hand, the 'Respondent No. 1' mentioned that, admittedly the four officials representing the Financial Creditor i.e. Respondent No. 2 (Federal Bank) attended all meetings of 'Committee of Creditor' and even under 'Liquidation' in Stakeholders' meeting. However, looking into I & B Code, 2016, overall perspectives in general and for all banking practices for such meetings, generally such meetings are attended by more than one official of the Bank.
- (d) We have perused the Regulations regarding this issue and find that as per I & B Code, 2016 that the 'Financial Creditors', other than Creditors under section 21 (6A)(h), must be represented in the 'Committee of Creditor' by such persons who are competent and are authorized to take decisions on the spot and without deferring decisions for want of any internal approval from the financial creditors.
- (e) We also note that no perceived adverse impact on any stakeholder can occur and it is not of much significance whether one representative of Bank attended the 'Committee of Creditors' meetings or more than one attended since the voting share of Bank would depend upon the proportionate voting rights.

(f) As such, on Issue No. (ii) as discussed above, we do not find any error on the part of 'Resolution Professional' and nothing wrong contained in the 'impugned order' regarding this aspect.

Issue No. (iii) .Whether the Respondent No. 1 has erred by accepting the claims of the Bank in excess of the amount due as mandated under section 18 of I & B Code, 2016.

(a) We note from the submissions of the 'Appellant' that liability of the 'Corporate Debtor' towards the 'Respondent No. 2' was only Rs. 28,31,709.81/- as against total debt of Rs.4,39,60,553.25/- claimed by the Respondent No. 2 and wrongly admitted by the Respondent No. 1.

(b) On the other hand, it has been brought to the notice of this 'Tribunal' that the 'Appellant' has taken only initial principal portion without taking into account any interest portion.

(c) The Appellant has also not taken the liability on the part of encashed Bank Guarantee issued by the Respondent No. 2 on his behalf in favour of 'KSFE' amounting to Rs.82,09,767.43/-. Therefore, the total 'Claims' as admitted by the 'IRP' and admitted by the 'Adjudicating Authority' initially was Rs.4,39,60,553.25 (Rs.1,10,25,692.86 towards principle and Rs.3,29,34,860.39 towards Interest).

(d) We, therefore, observe that the 'Appellant' has wrongly taken only principal portion of debts towards Respondent No 2 (Bank) ignoring the interest component on the principal and the amount of encashed

BG by 'KSFE' which seem to be legitimate claims of Respondent No 2 in any case.

- (e) This Tribunal also consciously note that loan by Respondent No. 2 in favour of the 'Appellant' was sanctioned way back in 2011 whereas CIRP was admitted on 29.09.2019. No one can assume that liability of the 'Corporate Debtor' towards the Respondent No. 2 for interest will not accrue and balance amount will remain at only Rs. 28,31,709.81/-. This will be against the canons of financial propriety and against commercial sense. Hence, this logic of the 'Corporate Debtor' of this loan outstanding balance is beyond comprehension. It is the responsibility of 'Interim Resolution Professional' to collate and to verify of the 'Claim' from all the 'Creditors' who submit the same along with the documentary evidence. In this case also, the Respondent No 1 did accordingly.
- (f) The Respondent has claimed that we have verified all claims after due diligence and verifying with documentary evidence and the 'Adjudicating Authority' also accepted the same. As such, no error is found on this issue.

Issue No. (iv) Whether the Respondent No. 1 is duty bound under Section 25 (2) (b) of I & B Code, 2016 to take up the issue of 'Counter Claim', either before the 'Adjudicating Authority' or 'DRT' before proceeding with the 'Corporate Insolvency Resolution Process' and 'Liquidation Proceedings'?

- (a) It has been alleged that one 'Counter Claim' of the 'Appellant' against the Respondent No. 2 filed in S.A. No. 423/2013 before the 'DRT' against the Bank is pending consideration, before the 'DRT'. 'Counter Claim' raised by the 'Corporate Debtor' and the 'Appellant' against the 'Respondent No. 2 Bank' is for Rs.17,14,19,648/- which has not yet been adjudicated by 'DRT'. The same 'Claim' was raised by the 'Appellant' before the 'Adjudicating Authority' as well. It has been further alleged that the Respondent No. 1 has not taken any step to admit the 'Counter Claim'. The 'Respondent No. 1' has also not allegedly approached for any direction or orders from the 'Adjudicating Authority'. The 'Respondent No. 1' has not even taken any steps to represent the 'Corporate Debtor' in the 'Counter Claim', before the 'DRT'.
- (b) On the other hand, 'Respondent No. 1' has brought out that mere filing of such huge 'Counter Claim', before the 'DRT' for alleged loss of profit on account of non-selling of apartments and/or refund of money to allottees of the Project who could not be given possession of such apartment is yet to be decided by the 'DRT'. As such, this doesn't impact the 'CIRP proceeding' and the allegation does not hold good.
- (c) This 'Tribunal' finds no error, on the part of the 'Resolution Professional' / 'Liquidator' and the 'Adjudicating Authority', to interfere in the subject matter in issue, and viewed in that perspective, this 'Tribunal' is not inclined to take a different view than the one arrived at by the 'Adjudicating Authority'. Accordingly, the 'Appeal' fails.

46. Based on the abovesaid detailed deliberations and reasons, this `Tribunal', bearing in mind the surrounding facts and circumstances of the case in a conspectus manner, comes to a consequent conclusion that no case is made out by the `Appellant', necessitating any interference by this `Tribunal' in the instant `Company Appeal' filed by the `Appellant'. Accordingly, the `Appeal' fails.

Disposition:

47. In fine, the Comp. App (AT) (CH) (Ins.) No. 264 of 2021 is dismissed. No costs. The connected pending `Interlocutory Applications', if any, are Closed. Before parting with the case, this `Tribunal' directs the `Appellant'/`Applicant' to pay the deficit Court Fee of Rs.5,000/-, before the `Office of the Registry' of the NCLAT, Chennai Bench, within four weeks from the date of this Judgment and to produce the `Receipt' for the said payment, before the Dy. Registrar of NCLAT, Chennai Bench, without fail.

**[Justice M. Venugopal]
Member (Judicial)**

**[Naresh Salecha]
Member (Technical)**

Simran/MD