IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

IA No. 3143/2022
In
Company Petition No. (IB)-1591(PB)/2018

IN THE MATTER OF:

Manjinder Singh Sandhu

...Financial Creditor

Versus

M/s Golden Peacock Residence Private Limited

...Corporate Debtor

AND IN THE MATTER OF:

1. Manjinder Singh Sandhu

S/o Mr. Jagmail Singh Sandhu,

Age 56years, Occupation – Doctor,

Address: D-1602, La-Lagune Apartments,

Sector 54, Gurgaon – 122011, Haryana

2. Mr. Naval Kishore Singh,

S/o Late Shree L R Singh,

Age 64 years, Occupation – Business,

Address: D 1901,

Acasia Valley, Sector 3, Vaishali,

Ghaziabad, 201010, UP

3. Mr. Ashok Kumar Taneja,

S/o Shree B. N. Taneja, Age 69,

Occupation Business and Mrs Anita Taneja,

Age 66, Address: C6/9,

Safdarjung Development Area,

New Delhi, 110016 through their

Attorney Mr. R B Sharma,

Aged 68, S/o Shree N R Sharma,

Address 314287 Dariya Ganj, New Delhi 110002

4. Mr. Alok Kumar,

S/o Sh Mahavir Choudhary,

Occupation Business, R/o Bestech Park View Spa,

Tower E, Apt 10-03,

Sector 47, Gurgaon-122018

5. M/s Pinnacle Housing Private Limited,

Through its Director Mr. Punit Rai,

s/o Sh Raghunath Rai, Age 47 years, Occupation – business,

having registered office at A-26,

New Krishna Park, Najafgarh Road, New Delhi-110018.

6. Mrs. Richa Jauhri, Age 43,

W/o Mr. Mukand Sundaram,

R/o 115, Mendosa Avenue, San Francisco,

CA 94116-1944, USA through her Attorney,

Mr. Ashish Kumar Jauhri (Brother), Age 46 years,

S/o Mr. Shanker Prasad Jauhri, R/o G-502, Raheja

Residency, Koramangla, 3rd Block,

Banglore-560034.

7. Mr. Vikram Tandon

S/o Mr. Jagmohan Tandon

r/o C-64, Gali No.- Mahendru Enclave,

Shanjarpur, North West Delhi, Delhi-110033

8. Ms. Saswati Dev,

D/o Mr. Sontosh Mohan Dev,

R/o L-6, Kailash Colony, New Delhi 110048

9. Mr. Vipin Vohra,

Age 65 Years, S/o Late Mr.

T N Vohra, Occupation: Chairman, Continental Carriers P Ltd,

10. Shakuntla Devi, represented by her son,

Devinder Pal Singh

R/o 92-P, Sector-II, Huda Colony,

Panipat, Haryana-132103 … Petitioner

VERSUS

1. Original Committee of creditors of Class Home Buyers

In the CIRP of M/s Golden Peacock Residence Pvt. Ltd.

....Respondent No. 1

2. Mr. Jitesh Gupta (RP)

Near Shakti Nagar Railway under Bridge,

New Delhi – 110052

......Respondent No. 2

3. Mr. Mukul Kumar (AR)

D-3/1304, The Legend, Sushant Lok-3,

Sector-57, Gurgaon,

Haryana-122011

......Respondent No. 3

4. Mr. Dharmender Singh

Village Garhi, Gujran, Indri,

Karnal, Haryana-132041

.... Respondent No. 4

5. Mr. Ajay Kumar

Village Sandhala, Yamuna Nagar,

Haryana-135133

.... Respondent No. 5

6. Mr. Sumit Kumar Kamboj

Village Santheri, P.O. Khanpur, Indri,

Karnal, Haryana-132041

....Respondent No. 6

7. Mr. Anil Kumar

Village Badheri, Indri,

Karnal, Haryana-132041

.... Respondent No. 7

8. Mr. Sonu

Village Daniyalpur, P.O. Tikri,

Karnal, Haryana-132001

.... Respondent No. 8

9. Mr. Harshit

77, New Grain Market, Ladwa,

Kurukheshtra, Haryana-136132

... Respondent No. 9

10. Mr. Sanjay Gupta

House No. 987, Sector-13, Urban Estate,

Karnal, Haryana-132054

... Respondent No. 10

11. Mr. Mohinder Kumar

Village Garhi Birbal, Indri,

Karnal, Haryana-132054

... Respondent No. 11

12. Mr. Shamsher Singh

Ward No.1, Indri,

Karnal, Haryana-132041

.... Respondent No. 12

13. Mr. Rahul Gupta

Ward No. 1, Indri,

Karnal, Haryana-132041

... Respondent No. 13

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 09.09.2025

PRESENT:

For Applicant	:	Mr. Abhishek Anand, Mr. Nipun Gautam, Mr. Karan Kohli, Advs.
For the Respondent No. 5	:	Mr. Vinod Chaurasia, Adv.
For the Respondent No. 12		Mr. S.P. Singh Chawla, Mr. Rishabh Gupta, Mr. Dev Sharma, Advs.
For the Respondent No 7,10 &11		Mr. Sunil Fernandes, Sr. Advocate, Mr. Milan Singh Negi, Mr. Nikhil Kumar Jha, Ms. Aakriti Gupta, Advs.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. Upon consideration is an application filed by the Applicants who are Financial Creditors in a class of Golden Peacock Residence Private Limited ("*Corporate Debtor*") undergoing the Corporate Insolvency Resolution Process ("*CIRP*") under Section 60 (5)(a) of the Insolvency and the Bankruptcy Code 2016 read with Rule 11 of the National Company Law Tribunal Rules 2016 with the following prayer:

"A. Quash the decision of Resolution Professional to include the impugned 10 creditors (Respondent No. 4 to 13) as homebuyers/ financial creditors.

B. Declare the decisions of the COC undertaken post inclusion of the impugned 10 creditors as homebuyers/financial creditors, void ab initio.

C. And thereafter direct the RP to hold CoC meeting with 4 agenda items as requested by the CoC vide letter dt 14-1-2021 & 20-01- 2021, wherein CoC has asked to call upon fresh Resolution Plan for the successful resolution of the CORPORATE DEBTOR.

D. Stay the hearing of I.A. No. 2726/2022 (Application for approval of plan) till the present application is pending.

E. Pass any other order of further relief as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

2. The facts that are relevant for the determination of the issues involved in this application are stated as follows:

a) The Applicants/Financial Creditors (Homebuyers), represented by their authorised signatory Mr. Punit Rai pursuant to authorisations dated 30.01.2021, through this application has challenged the unilateral and arbitrary decision of the Resolution Professional in placing Respondents No. 4 to 13 at par with the Homebuyers, thereby reducing their voting share in the CoC from 63% to 32%.

b) That the term "Original Committee of Creditors of Class Homebuyers" **("Original CoC")** refers to the 23 homebuyers listed in Annexure-A of the 6th CoC Meeting and includes the Applicants, who are also Respondent No. 1. The term "Revised

Committee of Creditors of Class Homebuyers" **("Revised CoC")** refers to the expanded group of 33 homebuyers which comprises of the Original CoC and 10 additional members listed in Annexure-B of the 7th CoC Meeting. The newly added members are Respondent Nos. 4 to 13.

c) That it is the contention of the Applicants that Respondents No. 4 to 13 have neither a contractual nor legal basis to be classified as homebuyers and were included in the Revised CoC solely to dilute the voting rights of the Original CoC ahead of the 7th CoC Meeting. Notably, the Resolution Professional had earlier rejected their claims and supported such rejection through detailed responses in I.A. 4117/2020, I.A. 4091/2020, and I.A. 4118/2020, based on documentary evidence. Despite this, the Resolution Professional, for personal gain, later admitted Respondents No. 4 to 13 and convened the 7th CoC Meeting, thereby prejudicing the interests of the Original CoC.

d) The Petitioner Applicants, at the outset, drew the sequence of events to demonstrate the mala fide induction of Respondent Nos. 4 to 13 into the Revised CoC and the consequential anomalies affecting the relief sought in I.A. 577/2021. It submitted that during the CIRP of the Corporate Debtor, two Resolution Plans (i) M/s Unicorn Breez Consortium and (ii) Mr. Sanjay Goel—were placed for voting before the Original CoC in its 6th meeting held on 22.12.2020. The voting was conducted accordingly, and the

Resolution Professional, vide letter dated 04.01.2021, confirmed that both plans had been rejected by the Original CoC.

e) The Petitioners/Applicants, vide letter dated 14.01.2021, requested the Resolution Professional to convene the 7th CoC meeting with the following agenda:

(i) Expedited voting on the Resolution Plan submitted by Mr. Sanjay Goyal (H1), in terms of Regulation 39(3B) of the CIRP Regulations;

(ii) Discussion and approval of a fresh invitation for Resolution Plans, including the Expression of Interest, amended eligibility criteria, Form-G, and Request for Resolution Plan;

(iii) Update to the CoC on the status and scope of the ongoing Forensic Audit, including its progress and expected date of completion.

Subsequently, the Applicants personally visited the office of the Resolution Professional to reiterate their request for convening the meeting; however, the same was declined. Thereafter, vide email dated 20.01.2021 at 10.36 AM, the Petitioners/Applicants sought inclusion of an additional agenda item to their requisition dated 14.01.2021, namely, the replacement of Mr. Jitesh Gupta as Resolution Professional under Section 27 of the IBC, and proposed the appointment of Mr. Naresh Kumar Aggarwal (IP Reg.

No. IBBI/IPA/001/IP-P-02116/2020-21/13274) in his place. The Applicants also requested that the said resolution be placed for voting.

f) That Mr. Mukul Kumar, AR of the Financial Creditors, vide letter dated 23.01.2021, informed the Resolution Professional about the requisition for a CoC meeting made by the Petitioner Applicants and, suo motu, pointed out that their voting share was less than 33% of the total voting rights. Thereafter, the Resolution Professional issued notice dated 29.01.2021 for the 7th CoC meeting enclosing a Revised CoC list as Annexure-B by inducting Respondent Nos. 4 to 13, which reduced the Petitioners' voting share in the Homebuyers' class from 63% to 32%. The meeting was fixed for 03.02.2021.

g) That it is the contention of the Applicant that constitution of the Revised CoC by inducting Respondent Nos. 4 to 13 prior to fixing the 7th CoC meeting on 03.02.2021 was a mala fide act of the Resolution Professional, undertaken in apprehension of replacement of RP and the likely rejection of Mr. Sanjay Goel's (H1) Resolution Plan, which was otherwise required to be voted upon by the Original CoC under Regulation 39(3B) of the CIRP Regulations. By including Respondent Nos. 4 to 13, the Resolution Professional deliberately diluted the strength of the Original CoC members and convened the 7th CoC meeting on that basis.

h) That aggrieved by the events, the Applicants filed I.A. No. 577/2021 before this Tribunal seeking directions to conduct the 7th CoC meeting based on the constitution of the Original CoC, as in the 6th CoC meeting, and challenging the unilateral and arbitrary acceptance of claims of Respondent Nos. 4 to 13 by the Resolution Professional. Vide letter dated 01.02.2021, the Applicants informed the Resolution Professional about the said application and requested deferment of the 7th CoC meeting fixed for 03.02.2021 until the application was decided. A further reminder was sent on 03.02.2021. On 08.02.2021, this Tribunal issued notice on I.A. 577/2021 and directed the Resolution Professional not to approve any Resolution Plan till disposal of the pending applications.

i) The Petitioner Applicants (homebuyers) have, from time to time, raised several concerns with the Resolution Professional, inter alia:

i. Inordinate delay caused in the CIRP;
ii. Inclusion of related parties in the Committee of Creditors (CoC);
iii. Failure to conduct the CIRP in a fair and impartial manner;
iv. Proposal for replacement of the Resolution Professional; and
v. Conduct and scope of the forensic audit.

The Applicants respectfully submit that the induction of Respondent Nos. 4 to 13 into the CoC was effected only after the proposal for replacement of the Resolution Professional had been raised. Such inclusion was part of an ulterior design to frustrate any effective attempt at his replacement and to influence the process concerning the Resolution Plan.

j) Further the Applicant through this application has brought to our record in the respect to the CIRP of the Parent company (Homestead Infrastructure Development Pvt. Ltd.), complaints were made against the Resolution Professional. The ICSI Institute of Insolvency Professionals vide order dated 23.02.2021 had observed that the Resolution Professional had displayed misunderstanding on the working of Insolvency and Bankruptcy Code.

3. REPLY ON BEHALF OF RESPONDENT No. 2/ RESOLUTION PROFESSIONAL

a) The Respondent NO. 2. / RP submitted that a minority group of financial creditors of the class, represented through their authorized person Mr. Punit Rai (Director of Pinnacle Housing Private Limited), filed IA 577/2021 challenging the acceptance of claims of certain CoC members by the Resolution Professional, alleging that such inclusion was intended to reduce their voting share from 53.76% to below 33% by inducting pseudo-allottees, despite those claims having been initially rejected.

b) Respondent No. 2 submitted that it had acted strictly in compliance with the Insolvency and Bankruptcy Code, 2016 and in the interest of stakeholders. Respondents No. 4 to 13 revised their Form CA to include interest, whereupon the Resolution Professional, invoking Regulation 10 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, sought supporting documents and clarifications to substantiate the revised claims, particularly the interest component.

c) Despite repeated reminders, Respondents No. 4 to 13 failed to submit the requisite documents to the Resolution Professional. Instead, Respondents No. 4, 5, 7, 8, and 12 approached the Hon'ble Tribunal for admission of their claims by filing the following IAs:

    i. IA No. 4117/2020- Dhaimender Singh Vs Jitesh Gupta
    ii. IA No. 5108/2020 Ajay Kumar Vs Jitesh Gupta
    iii. IA No. 5142/2020 Anil Kumar Vs Jitesh Gupta
    iv. IA No. 4091/2020 Sonu Kumar Vs Jitesh Gupta
    v. IA No. 4118/2020 Shamsher Singh Vs Jitesh Gupta

d) Respondents No. 4 to 13 submitted the requisite documents to the Resolution Professional between 14.01.2021 and 16.01.2021 and via emails dated 20.01.2021. Additionally, on 05.01.2021, the suspended Director, Mr. Pramod Kumar, handed over physical files of various allottees, including Respondents No. 3 to 14. Based on these documents, the Resolution Professional verified and accepted their claims, confirming the same vide email dated 21.01.2022.

e) Subsequently, in compliance with Regulation 39(3B) of the IBBI (CIRP) Regulations, 2016, the Resolution Plan of Mr. Sanjay Goel, having received higher votes, was placed before the 7th CoC meeting and duly approved by the majority.

f) The RP submitted that Respondents No. 4 to 13 were part of the 2nd CoC at par with other members, but their revised claims were initially rejected for want of supporting documents. These claims were later revived in the 7th CoC upon receipt of requisite documents from the Suspended Director and Respondents No. 4 to 13, duly verified and admitted by the RP. The RP further submitted that the Applicants' voting share was below 33%, yet their agenda for replacement of RP was voluntarily placed before the 7th CoC but rejected by the members. It is denied that the RP apprehended replacement; rather, the Applicants were intent on rejecting both Resolution Plans and pushing the CORPORATE DEBTOR into liquidation.

g) The Applicants' allegation that Respondents No. 4 to 13 are pseudo homebuyers introduced by the Corporate Debtor to influence CoC voting is baseless. Respondents No. 4 to 13 are genuine financial creditors, duly reflected in the list of allottees shared by the CORPORATE DEBTOR. Their status is supported by a registered Development Agreement dated 24.06.2012 and a Joint GPA dated 29.07.2013 executed between the CORPORATE DEBTOR, Homestead Infrastructure Development Pvt. Ltd., and Raheja Developers Ltd. Payments made to either the CORPORATE DEBTOR or Homestead were duly credited to the respective homebuyers and uniformly applied while verifying their claims (IA 4117/2020, pg. 128). Hon'ble NCLT Bench-II, in CA(IB)1018(ND)/2012, recognized the CORPORATE DEBTOR's subsidiary status and validity of such payments, which has further been affirmed by Hon'ble NCLAT. Hence, objections on this ground are misconceived.

4. **REPLY ON BEHALF OF R5**

a) After initiation of CIRP, the answering respondent submitted his claim, which was provisionally admitted by the RP, enabling his participation in the 2nd CoC. Thereafter, vide email dated 13.07.2020, the RP sought additional documents to address discrepancies. As the respondent failed to furnish the same, the RP rejected the claim and removed him from the CoC.

b) The answering respondent filed I.A. 5108/2020 in December 2020 before this Hon'ble Tribunal for acceptance of his claim, similar applications having been filed by other respondents. During its pendency, he submitted additional documents to the RP via email dated 20.01.2021. Upon verification, the RP re-admitted his claim on 21.01.2021, included his name in the list of unsecured financial creditors (homebuyers), reconstituted the list as on 22.01.2021, and uploaded it on the IBBI portal in compliance with Regulation 13(2)(ca) of the CIRP Regulations, 2016.

5. **WRITTEN SUBMISSION ON BEHALF OF RESPONDENT NOS. 7, 10 AND 11**

a) This reply is filed by Respondents No. 7, 10, and 11 (Sh. Anil Kumar, Sh. Sanjay Gupta, and Sh. Mahinder Kumar). The Applicants, being allottees/class creditors similarly placed as the answering respondents, have no basis to challenge the admission of their claims under the guise of questioning the Resolution Professional's decision.

b) Accordingly, the answering respondents submitted their Form CA claims on 25.11.2019 for ₹3,43,60,000/-, ₹6,39,09,000/-, and ₹3,36,12,880/-, duly supported by application forms, flat buyer agreements, and bank certificates evidencing payments towards purchase consideration

c) The respondents are allottees of the "Michael Schumacher World Tower" project at Sector 109, Gurgaon, having invested their hard-earned money, as evidenced by payment receipts. The project was introduced by the Corporate Debtor along with its holding company, Homestead Infrastructure Development Pvt. Ltd., and the respondents booked their units on this basis. No material has been produced to dispute their status as allottees. After due verification of additional documents, the RP admitted their claims and included them in the CoC, establishing their genuineness.

6. REPLY ON BEHALF OF RESPONDENT No. 12

a) This reply is filed by Respondents No 12 i.e. Sh. Shamsher Singh. In his reply he submitted that after initiation of CIRP against the Corporate Debtor, the answering Respondent submitted its claim, which was provisionally admitted by the RP. The Respondent also participated in the 2nd CoC meeting, evidencing such admission. However, vide email dated 13.07.2020, the RP sought additional documents to verify the claim owing to certain discrepancies. Since the answering respondent failed to furnish the same, the RP rejected the claim and excluded the Respondent from the CoC.

b) That the answering Respondent thereafter filed Interlocutory Application bearing I.A. No. 4118 of 2020 before this Tribunal on 15.09.2020 seeking acceptance of its claim. Similar applications were also filed by other Respondents in the present proceedings for recognition of their legitimate claims. During the pendency of I.A. No. 4118 of 2020, the answering Respondent, vide e-mail dated 20.01.2021, submitted additional documents to the RP and requested reconsideration of its claim.

c) That on 21.01.2021, upon examining the additional documents, the RP re-admitted the claim of the answering Respondent vide e-mail, and accordingly included its name in the List of Unsecured Financial Creditors (Financial Creditors in a Class). The list was reconstituted as on 22.01.2021 and duly filed on the IBBI portal in compliance with clause (ca) of sub-regulation (2) of Regulation 13 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

d) It is submitted that the claim of the answering Respondent was thus legitimately accepted by the RP after due verification, and the same was recorded before this Hon'ble Tribunal on 25.05.2022. In view thereof, the cause of I.A. No. 4118 of 2020 no longer survived, and the answering Respondent filed I.A. No. 628 of 2021 sought withdrawal thereof. The Hon'ble Tribunal, vide order dated 25.05.2022, allowed I.A. No. 628 of 2021 and dismissed I.A. No. 4118 of 2020 as "dismissed as withdrawn."

7. REJOINDER ON BEHALF OF APPLICANT

a) It is submitted that the Resolution Professional has no authority under the Code to reconstitute the Committee of Creditors by admitting or rejecting claims contrary to his earlier decisions. The Hon'ble NCLAT, in *Union Bank of India v. Rajdeep Clothing and Advisory Pvt. Ltd. & Ors.* (Company Appeal (AT)(Ins) No. 399 of 2021), upheld the replacement of an RP who reconstituted the CoC without obtaining specific approval from the Adjudicating Authority. Similarly, in *Rajnish Jain v. Manoj Kumar Singh & Ors.* (Company Appeal (AT)(Ins) No. 519 of 2020), it was categorically held that a RP cannot review his own decision and, if aggrieved, must seek directions from the Adjudicating Authority for reconstitution of the CoC. The Hon'ble NCLAT has reiterated this position in *Mahal Hotel Pvt. Ltd. v. Asset Reconstruction Company (India) Ltd. & Ors.* (Company Appeal (AT)(Ins) No. 633 of 2018), where it was observed that such unilateral reconstitution by an RP is impermissible.

> *"When there is a dispute as to whether Mahal Hotel Private Limited comes within the meaning of 'Financial Creditor' or not, we hold that after constitution of 'Committee of Creditors', without its permission the Resolution Professional was not competent to entertain more applications after three months to include one or other as a Financial Creditor. Further once a decision was taken by the 'Committee of Creditors' to call for a meeting for removal of Resolution Professional, it was improper for Resolution Professional to include Mahal Hotel Private*

Limited as 'Financial Creditor' of the Member of the 'Committee of Creditors'.

b) That it is submitted that the afore-mentioned position of law was also taken note of by this Hon'ble Tribunal in the matter of Prime Implex vs Shalfeyo Industries Pvt. Ltd. (Order dated 11.08.2023 in CP(IB) No. 79/9/JPR/2020) wherein it was held that:

10. In the matter of Union Bank of India (Supra), an appeal was filed by the Union Bank of India against the order passed by Learned NCLT, Ahmedabad Bench on 06.04.2021. In the said order the appointed Resolution Professional ('RP') was removed and a new RP was appointed. The RP informed the respondents that their claims have been rejected since they are related parties to the Corporate Debtor. This was done based on the findings of the Transactional Audit Report. It was held by Hon'ble NCLAT that the IRP/RP cannot, on its own, review and revise his own earlier decision without the approval of Adjudicating Authority. The IRP/RP does not have any power to review the status of a creditor. However, this does not mean that once a creditor is categorized, the category cannot be changed. For this purpose, the right approach would be to file an application before the Adjudicating Authority with relevant material for appropriate directions. Further, whether the constitution of CoC can be changed by RP and if so, under what circumstances and to what extent. The Hon'ble Appellant Authority observed that such a situation is subject to the decision of the Adjudicating Authority which can correct or modify the constitution of

CoC if facts and circumstances of the case demand so and an appropriate application is to be made by the RP for this effect.

c) Therefore, from the settled position of law laid down by the Hon'ble NCLAT and this Tribunal, it is clear that a Resolution Professional cannot review or alter his own decision on admission or rejection of claims. In fact, the Respondent's reply itself admits that the claims were initially rejected and subsequently admitted, resulting in reconstitution of the CoC.

d) In the present case, the Resolution Professional has arbitrarily and mala-fidely reconstituted the CoC, bypassing adjudication by this Hon'ble Tribunal. Despite several claim-admission applications pending and a stay on approval of any Resolution Plan, the RP admitted claims without basis and, as evident from the 7th CoC minutes, assumed powers to override the stay. Such acts are in clear violation of the Code and reflect an attempt to bypass adjudication for ulterior motives. It is therefore prayed that the captioned Application be allowed.

e) It is respectfully submitted that the Respondent has failed to produce any document showing that the Resolution Professional sought additional documents for verification of its claim. It further submitted that since IA No. 5108 of 2020 was pending before this Adjudicating Authority, it should not have admitted the claim without adjudication of the matter.

f) It is submitted that the Hon'ble Tribunal, in its order dated 25.05.2022, made no observation regarding admission of the Respondent's claim by the RP. The order merely records that IAs 628/2021, 630/2021, 632/2021, 4118/2020, 4091/2020, and 4117/2021 were dismissed as withdrawn on the endorsement of counsel. Hence, the Respondent's contention that this Tribunal recorded admission of its claim is wholly without merit.

g) It is submitted that Respondent No. 5 has neither produced any supporting documents nor appreciated the settled law restricting the Resolution Professional's power to reconstitute the CoC. Accordingly, it is humbly prayed that this Hon'ble Tribunal allow the captioned Application and grant the reliefs sought by the Applicants.

ANALYSIS AND FINDING

8. On perusal of the casefile, it is noted that an application bearing C.P. (IB) No. 1591/(PB)/2018 was filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by Mr. Manjinder Singh Sandhu ("Financial Creditor") seeking initiation of the Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor i.e. M/s. Golden Peacock Residence Pvt. Ltd. Upon admission of the said application, this Adjudicating Authority declared moratorium in terms of Section 14 of the Code and further appointed the Respondent as the Interim Resolution Professional, who was subsequently confirmed as the Resolution Professional of the Corporate Debtor in accordance with the provisions of the Code.

9. On 06.12.2019, the Resolution Professional issued emails to Respondents No. 4 to 13 requesting the submission of supporting documents for verification of their claims. Subsequently, on 24.06.2020, the RP issued a second notice reiterating the requirement for corroborative documentation. Thereafter, on 13.07.2020, the RP once again, via email, requested Respondents No. 4 to 13 to furnish the necessary documents to facilitate verification of their claims. Despite these repeated requests, the RP, by email dated 25.07.2020, rejected the claims of Respondents No. 4 to 13, characterizing them as spurious and fraudulent. In response to the rejection, the said Respondents filed applications (I.A. No. 4117 of 2020, I.A. No. 4091 of 2020, and I.A. No. 4118 of 2020) before this Adjudicating Authority, challenging the impugned rejection of their claims by the RP.

10. It is the case of the Applicants that the conduct of the Resolution Professional in re-admitting the previously rejected claims of Respondents No. 4 to 13, (when the above-said applications are pending for adjudication before this Adjudicating Authority) was not merely irregular but appears to have been actuated by a deliberate and calculated strategy to thwart the Applicants' efforts to replace him. The sequence of events underscores this mala fide intent. The Resolution Professional had no jurisdiction to revisit or reverse his earlier decision suo-motu, particularly while the matter remained sub judice before this Adjudicating Authority.

11. On 14.01.2021, the Applicants addressed an email to the RP, requesting the convening of the 7th meeting of the Committee of Creditors and explicitly proposing as agenda items matters of critical importance, namely: a re-vote on the resolution plan submitted by Sanjay Goyal (H1), discussion on Form-H, and the status of the forensic audit. Subsequently, **on 20.01.2021 at 10.36 AM**, the Applicants formally requested the inclusion of an additional agenda item, namely, the proposal for replacement of the RP.

12. It is the case of the Applicant that the RP had gone to the extent of diluting the voting share of the Committee of Creditors (CoC). From the records, it is seen that the RP had filled the Counter in IA 5108/2020, wherein the Resolution Professional (RP) in its reply, which he had furnished on 11.02.2022 submitted that claims of the petitioner therein (Respondent no. 4-13 in present application) were fraudulent, fabricated, and aimed at extorting money from the Corporate Debtor by misusing the CIRP process. The payments relied upon are inconsistent, as the booking form is dated 2015 while the ledger shows payments from 2013, and the receipts are in the name of M/s Singla Traders, of which the Applicant became a partner only in 2016. Further, the receipts were issued by Homestead Infrastructure Pvt. Ltd., whereas the Flat Buyer Agreement was with Golden Peacock Residence Pvt. Ltd., and the agreement itself was improperly executed by a person not a director at the time. The RP also alleged collusion, noting that identical ledgers and receipts were used by multiple individuals to raise fictitious claims, with the Applicant even altering claim amounts without proper justification. Thus, the RP contends that the claim is baseless, inconsistent, and part of a larger orchestrated fraud.

13. It is seen that by email dated 23.06.2020, the RP had demanded additional documents from the claimants. The excerpt of the mail is reproduced here-below:

10/16/2020 Gmail - Requirement of Additional Information

Gmail AJAY KUMAR <ajay091988kumar@gmail.com>

Requirement of Additional Information

cirp. Goldenpeacock <cirp.goldenpeacock@gmail.com> Tue, Jun 23, 2020 at 12:40 PM
To: HARSHIT AK <harshitak995@gmail.com>, Sumit Kumar Kamboj <kambojsumit1464@gmail.com>, AJAY KUMAR <ajay091988kumar@gmail.com>, MAHINDER KUMAR <mahinder1988kumar@gmail.com>, SHAMSHER SINGH <shamsherknlsingh@gmail.com>, ANIL KUMAR <anilkumarbadheri29@gmail.com>, SONU KUMAR <sonukumarknl27@gmail.com>, Dharmender Singh <singh.dharmender040286@gmail.com>, SANJAY GUPTA <sanjayguptaknl.1974@gmail.com>, RAHUL GUPTA <rahul.gupta535kkr@gmail.com>
Cc: Jitesh Gupta <jitesh@jkgupta.com>

Dear Claimants,

In reference to your Revised claims forms, you are hereby called upon to provide the following details:

01. Proper Interest Calculation sheet.

02. Complete details of your transaction with the Golden Peacock Residence Pvt. Ltd., Corporate Debtor, including the date of Payments to CD with Receipt and partial Refunds, (if any), received by you.

Jitesh Gupta
(Resolution Professional)
M/s Golden Peacock Residence Private Limited
IBBI Reg. No.: IBBI/IPA-002/IP-N00144/2017-18/10380
257, Vardhaman city Centre-2, Near Shakti Nagar
Railway under Bridge, New Delhi-110052
Email: cirp.goldenpeacock@gmail.com
Mobile No. 011-23644449.

14. It is seen that the RP in its reply in the aforementioned application i.e. IA 5108/2020 in Para 83 submitted the following which is reproduced here below:

"83.It is submitted that supporting documents were demanded by the Respondent vide mail dated 13.07.2020, after being given ample opportunities already, where the Respondent witnessed alteration of the figures each time and discrepancies in the documents submitted by the Applicant, construed that the documents and entries are orchestrated. That there was no communication by the Applicant since 13.07.2020. Further, the Respondent rejected the claim vide mail dated 25.07.2020. Therefore, it is evident that there was no haste in rejecting the claim. It is also denied that the documents relevant to successful verification of the claim were attached by Applicant.

Moreover, there are no supporting documents like Partnership Deed, Statement of Accounts etc. that the Applicant has annexed to substantiate claim."

15. Subsequently, in its reply filed in IA 5108/2020, the RP stated that he had re-admitted the claim of the Claimant on the basis of an e-mail dated 20.01.2021 received from the Claimants. The relevant portion of the Reply of the RP is reproduced here-below:

101. Applicant vide e-mail dated 20.01.2021 submitted additional documents to Respondent RP and sought to reconsider the claim of the Applicant.

102. Respondent RP after examining the said additional documents re-admitted the claim of the Applicant vide his email dated 21.01.2021.

16. Thus, upon perusal of the Reply filed by the RP in IA 5108/2020 and the records of the present application, we note that, as on the date when the claims were admitted by the RP, the issues earlier raised by him vide e-mails dated 23.06.2020 and 13.07.2020 had not been addressed by the Claimants.

17. Further, it is evident from the counter filed by the RP in IA 5108/2020 on 11.02.2022, that there is no reference whatsoever to the purported letter dated 05.01.2021 from the ex-director, Mr. Pramod Gupta, allegedly concerning the submission of certain files/documents to the Resolution Professional, nor to the subsequent letters dated 14.01.2021, 15.01.2021, and 16.01.2021. This clearly indicates that such documents were not in existence at the time when the reply in IA 5108/2020 was signed and filed.

18. It was only after the receipt of the copy of the Application in the present application, i.e., IA 3143/2022 on 02.07.2022, wherein the Original CoC members sought quashing of the RP's decision to include Respondents No. 4 to 13 as homebuyers/financial creditors, and further prayed for voting on the agenda including the resolution for removal of the RP, the RP in its counter filed these documents (*purported letter dated 05.01.2021 from the ex-director, Mr. Pramod Gupta, allegedly concerning the submission of certain files/ documents to the Resolution Professional, and letters dated 14.01.2021, 15.01.2021, and 16.01.2021)*, which surfaced. The sequence of events unmistakably demonstrates that the said letters were fabricated, orchestrated, and concocted with the intent to create an impression of genuineness, despite their complete absence in the RP's earlier reply in IA 5108/2020.

19. It is observed that the claims of Respondents No. 4 to 13 were re-admitted even though no supporting documents were provided. These claims were based on identical letters and emails that were submitted in a suspiciously coordinated manner. The emails were sent very close to each other and the letters were identical in content and language, showing that they were neither independently prepared nor genuinely supported. This uniformity strongly indicates collusion between the claimants and the Resolution Professional, rather than a sincere submission of claims.

20. Additionally, it is the contention of the RP that Respondents No. 4 to 13 submitted hard copies of the desired documents to the Resolution Professional between 14.01.2021 and 16.01.2021, followed by e-mails dated 20.01.2021 and that the physical files of various flat buyers/allottees, including those of Respondents No. 3 to 14, were handed over in person to the Resolution Professional on 05.01.2021 by the suspended Director of the Corporate Debtor, Mr. Pramod Kumar.

Further, during the course, the RP in its Written submission has submitted that **"**the *Same is informed, to the already existed COC members* ***orally,*** now R-2 needs to corroborate these claims.**"**

21. On the basis of the said documents, the Resolution Professional claims to have verified the submissions of Respondents No. 3 to 14 and, accordingly, confirmed acceptance of their claims vide his e-mail dated 21.01.2022.

S. NO	ALLEGED HOMEBUYERS	EMAIL DATE AND TIME	LETTER DATE
1.	Ajay Kumar (***R-5***)	21.01.2021 at 06:16 P.M	15.01.2021
2.	Anil Kumar (***R-7***)	21.01.2021 at 06:15 P.M	15.01.2021
3.	Dharmender Singh (***R-4***)	21.01.2021 at 06:18 P.M	14.01.2021
4.	Harshit (***R-9***)	21.01.2021 at 06:16 P.M	15.01.2021
5.	Mahinder Kumar (***R-11***)	21.01.2021 at 06:17 P.M	15.01.2021
6.	Rahul Gupta (***R-13***)	21.01.2021 at 10:29 A.M	15.01.2021
7.	Sanjay Gupta (***R-10***)	21.01.2021 at 06:17 P.M	16.01.2021
8.	Shamsher Singh (***R-12***)	21.01.2021 at 06:18 P.M	14.01.2021
9.	Sonu Kumar (***R-8***)	21.01.2021 at 06:17 P.M	16.01.2021
10.	Sumit Kumar Kamoj (***R-6***)	21.01.2021 at 06:16 P.M	16.01.2021

22. Further, upon perusal of the record, it is evident that Respondents No. 4 to 13 did not submit any new or additional material at the time of their purported re-admission of claims on 21.01.2021. The letters dated 14.01.2021, 15.01.2021, and 16.01.2021 were merely identical, templated communications that contained no substantive documentation. Further, Respondent Nos. 5 and 12, in their reply, have merely referred to an email dated 21.01.2021, with no mention whatsoever of any letter. Significantly, there is no acknowledgement on record from the Resolution Professional evidencing receipt of such letters, neither disclosing the mode of delivery, nor furnishing any proof of the date, time, or manner of their receipt. The Resolution Professional has also failed to produce any corroborative material demonstrating such acknowledgement. In the absence of any fresh or credible evidence, the Resolution Professional had neither legal nor factual justification to reverse his earlier decision. The subsequent re-admission of the claim appears to be motivated solely by a change in the Resolution Professional's personal stance vis-à-vis the Applicants' request for his removal. Such re-admission cannot, therefore, be treated as a bona fide reconsideration or review; rather, it constitutes a collusive exercise aimed at circumventing the due process of law.

23. Further, during the course of the hearing, this Hon'ble Adjudicating Authority observed in its Order dated 02.05.2025 as follows*:*

> "
>
> ***IA/3143/ND/2022:-***
>
> *Heard the arguments on behalf of the Applicant, Ld. Counsel for R-12 as well as Resolution Professional. Ld. Counsel for R-12 was asked whether R-12 got any confirmation from RP regarding the receipt of the letter dated 14.01.2021. Ld. Counsel for R-12 submitted that they did not get any receipt from RP and R-12 has filed no such document in this regard...."*

24. *We are inclined to refer to the Order passed by Hon'ble NCLAT the matter of Mr. Rajnish Jain vs. Manoj Kumar Singh (RP) and Ors (Company Appeal (AT) (Insolvency) No. 519 of 2020) wherein it has been held that:*

> *"the IRP after collation of Claims and Formation of CoC was not entitled to suo-moto review or change the status of a creditor from financial to operational creditor, updating list and review are*

different acts. If the resolution professional was aggrieved, he should have moved the adjudicating authority. The aggrieved person can challenge either constitution. The resolution professional cannot arbitrarily on its own overturn earlier decision change the status of a creditor from financial creditor to Operational creditor."

25. We note that the duty of the Resolution Professional is strictly confined to verifying and confirming that the claims submitted to him are genuine and supported by requisite documentation. In the present case, the RP has exceeded the scope of his powers by suo-motu reviewing and admitting the claims of the Applicants while the matter was pending before this Hon'ble Adjudicating Authority. Such conduct constitutes an overreach of authority, as the RP cannot unilaterally entertain or re-admit claims that are sub judice before this Tribunal. The action of admitting the claims in these circumstances is therefore contrary to the principles of law and the procedural safeguards prescribed under the Insolvency and Bankruptcy Code.

26. As per section 18(1)(b) of the Code, the IRP is duty bound to receive and collate all the claims submitted by the creditors to him/her, pursuant to the public announcement u/s 13 and 15. Further, u/s 25(2)(e) of the IBC, the Resolution Professional is mandated to maintain an updated list of claims. The manner in which such duties which are cast upon the IRP and the RP are to be performed, have been prescribed under Regulation 10 to 14 of the CIRP Regulations, 2016. Regulation 13 of the CIRP Regulations deals with verification of claims. Regulation 13 states that the IRP/RP, as the case may be, shall verify every claim, as on the insolvency commencement date, within 7 days from the last date of the receipt of claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims and update it. We find that there is no provision of law whereby the IRP/RP can conditionally accept or reject the claim. We also observe that such "verification" of claims should be made based on the information that is furnished by the creditor as well as the records of the Corporate Debtor. It is settled position in law that the Resolution Professional is not an adjudicator but merely a facilitator and therefore, the powers conferred on the resolution professional for this purpose is merely an "administrative power" and the same cannot be used by the professional to act like an "adjudicating authority" which power is exclusively conferred on the NCLT and NCLAT by the IBC. In the present case, the IRP/RP had rejected the claims of the Applicants on merit, and while an appeal against such rejection was pending adjudication before this Adjudicating Authority, the RP, relying on a newly fabricated set of documents, allowed the admission of the claims. **We opine that once a claim is admitted or rejected; to re-verify it of its own would be exceeding the powers and duties of the present Resolution Professional without the approval of the adjudicating authority, such conduct is clearly impermissible and cannot be sustained.**

27. It is evident from the record that the Resolution Professional has clearly exceeded the scope of his authority and, in doing so, compromised the integrity of his function. The manner in which the claims of

Respondents No. 4 to 13 were re-admitted, without any fresh or credible documentation and while the matter was sub judice, indicates a conduct that is inconsistent with the impartial and fiduciary duties owed by the RP to the corporate debtor and its creditors.

28. The sequence of events and the uniformity of the claims suggest that the RP has acted in concert with the claimants, reflecting a possible collusion with an intent to undermine the legitimate interests of other stakeholders. Such overreach in admitting claims, despite the absence of requisite proof and judicial oversight, constitutes a dereliction of duty and a clear abuse of office. In view of the foregoing, strict action against the RP is warranted.

29. We further note that under the statutory framework, the Resolution Professional is not empowered to receive documents in hand or through any informal mode. **Regulation 8(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016** mandates that:

"A person claiming to be a financial creditor, other than a financial creditor belonging to a class of creditors, shall submit claim with proof to the interim resolution professional in electronic form in Form C of the Schedule-I."

The Resolution Professional, therefore, could not have entertained or acted upon alleged documents or letters that do not comply with the statutory requirement. Further, It is on record that Respondent Nos. 5 and 12, during the hearing of this matter had submitted that they had not received any confirmation or acknowledged from the RP for the alleged letters. This strengthens the inference that such letters have been prepared, concocted or fabricated solely with the object of reducing and diluting the legitimate voting share of the existing CoC members.

30. Subsequently, on 20.01.2021, the Applicants emailed the RP requesting the addition of a fourth agenda item for discussion in the 7th CoC meeting, namely, the replacement of the RP (Respondent No. 2 herein). Despite these circumstances, on 21.01.2021, the RP admitted the claims of Respondents No. 4 to 13 based on their emails. We note that the Applicants, by email dated 20.01.2021 at 10:36 AM, formally requested the inclusion of an additional agenda item, namely, the proposal for the replacement of the Resolution Professional. It is significant that the alleged claims of Respondents Nos. 4 to 13 were admitted through emails dated 21.01.2021, merely one day after the Applicants' request for the RP's replacement. This timing strongly indicates that the documents were created with a mala fide intention to dilute the Committee of Creditors, thereby protecting the Respondents position and preventing the Resolution Professional from demitting office. **Therefore, we observe that the documents were fabricated to create a misleading impression of authenticity and to simulate substantial veracity.**

31. It is noted that the Resolution Professional, having once rejected the claims of Respondent Nos. 4 to 13 upon due verification and having duly communicated the same to the Authorised Representative vide email dated 25.07.2020, had no justifiable basis to subsequently reintroduce and accept those very claims in the impugned 7th CoC Meeting. The sequence of events clearly indicates that such reversal was not borne out of any fresh material or lawful consideration, but rather appears to have been orchestrated by the Resolution Professional with a view to safeguard his continuance in office. The purported letter dated 05.01.2021 from the ex-director, Mr. Pramod Gupta, concerning the submission of certain files/documents to the Resolution Professional coupled up with the timing of the alleged letters dated 14.01.2021, 15.01.2021 and 16.01.2021, whereby these claims came to be reconsidered, in close proximity to the applicants' requisition dated 20.01.2021 seeking replacement of the Resolution Professional under Section 27 of the Code, lends credence to the inference that the Resolution Professional had deliberately planted/ manufactured such alleged documents to dilute the voting share of the genuine homebuyers and to frustrate the legitimate move for his replacement.

32. Further, from the record before us, it is evident that no documents were furnished by the Claimants as per the emails dated 23.06.2020 and 13.07.2020 to comply with the request of the RP in order to overcome his Objections. We are, therefore, at a loss to comprehend as to what "mysterious" documents surfaced before the RP, on the basis of which he proceeded to admit the claims after levelling such stern and stringent allegations against the claimants wherein it had earlier rejected their claims. This peculiar sequence of events casts a serious cloud of doubt on the credibility of the RP's actions.

33. The omission of any reference to the alleged letters dated 14/15/16 January 2021 in the earlier reply filed by the Resolution Professional (RP) in IA 5108/2020, and their subsequent introduction for the first time in the reply to the present proceedings, clearly indicates that the said documents were fabricated by the RP in collusion with the Director of the Corporate Debtor and Respondent Nos. 4 to 13. Such fabrication was evidently undertaken with the mala fide intent of diluting the composition of the Committee of Creditors (CoC) of the Corporate Debtor and to secure his undue benefit by subverting the proposal for his removal from the position of RP, thereby exposing the manipulative conduct of the RP.

34. It is a settled proposition of law that the Resolution Professional has no authority under the Code to unilaterally reconstitute the Committee of Creditors by admitting or rejecting claims contrary to an earlier decision already taken. The **Hon'ble National Company Law Appellate Tribunal, in *Union Bank of India v. Rajdeep Clothing and Advisory Pvt. Ltd. & Ors.* (Company Appeal (AT)(Ins) No. 399 of 2021)**, upheld the decision of the Adjudicating Authority to replace the Resolution Professional on the ground that he had reconstituted the CoC without obtaining the specific approval of the Adjudicating Authority. A similar view was taken by the **Hon'ble NCLAT in *Rajnish Jain v. Manoj Kumar Singh & Ors.* (Company Appeal (AT)(Ins) No. 519 of 2020),** wherein it was categorically held that the Resolution Professional does not possess the power to review his own decision, and if aggrieved by such decision, the proper course would be to seek directions from the Adjudicating Authority for reconstitution of the CoC. The Hon'ble NCLAT, while so holding, also referred to its earlier decision in *Mahal Hotel Pvt. Ltd. v. Asset Reconstruction Company (India) Ltd. & Ors.* (Company Appeal (AT)(Ins) No. 633 of 2018), thereby reaffirming the principle that a Resolution Professional cannot suo motu alter the composition of the CoC, and any such act amounts to overreach of jurisdiction.

35. The **Hon'ble National Company Law Appellate Tribunal, in *Union Bank of India v. Rajdeep Clothing and Advisory Pvt. Ltd. & Ors.* (Company Appeal (AT)(Ins) No. 399 of 2021)** The relevant para are reproduced here below:

> *23A.We have, thus, gone through the legal framework governing the process of admission, rejection or revision of claims submitted by creditors of the Corporate Debtors, determination of status of a creditor as a related party, voting rights Financial Creditors, constitution of COC and reporting compliance related thereto. Few important questions arise for our consideration. It has been observed that IRP/RP are primarily responsible for preparation and updating of list of creditors. First and foremost question which needs to be asked is whether in the garb of exercise of such duty IRP/RP can review the status of a creditor i.e., from Financial Creditor to Operational Creditor or vice-versa or a non-related Financial Creditor can be treated as related party without prior approval of Adjudicating Authority. From*

the perusal of all provisions as well as regulations it is apparent that no such power exists either with RP or COC. As far as powers of COC, in this regard, are concerned, this scheme has been intentionally designed by legislature so that the Financial Creditors who only have voting rights cannot usurp the CIRP because a number of decisions cannot be taken without approval of COC with minimum percentage of vote required for approval or rejection of such actions. Thus, if the COC is given any power, which is certainly prone to misuse of abuse due to apparent conflict of interest. Now, coming to the powers of IRP/RP, it is apparent that they are responsible for collating the claims, revising the claims from time to time based upon information coming to their possession or being provided by the creditors. ***We have found no provision in the CODE or Regulations which permit for review of status of a creditor as all provisions focus only on the amount of claim. Thus, IRP /RP cannot, on its own, review and reverse his own earlier decision without approval of Adjudicating Authority........***

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....We are further of the view that scope of updating exercise is limited and confine to the determination of quantum of claim and, by no stretch of imagination it gives any power to the IRP /RP to review the status of a creditor. This position does not mean that once a creditor is categorized, this category cannot be changed. For this purpose, the right approach would be to

file an application before the Adjudicating Authority with the relevant material for appropriate directions and the decision of the Adjudicating Authority would resolve that issue. This position will not change even if report of some External Expert has been taken by RP on its own or with the approval of COC. It may not be out of place to mention that this decision of the Adjudicating Authority cannot be challenged by RP though COC or the creditor can challenge the same before the Appellate Authority as they may be an aggrieved party.

23B.The other important question is whether constitution of COC can be changed by RP and if so, under what circumstances and to what extent. It is an admitted position of law that IRP is required to constitute COC in terms of provisions of Section 21(1) of the CODE. The RP is also entitled to determine the voting share to be assigned to each Financial Creditor, being a member of COC and who is not a related party as per the provisions of Section 24(6), 24(7) r.w. first proviso to Section 21(2) of the CODE. As per Regulation 12(3), if a claim of a Financial Creditor is admitted under Regulation 13(2), such Financial Creditor shall be included in COC from the date of admission of such claim. It is specifically provided in proviso to Regulation 12(3) that any decision taken prior to such inclusion would remain valid in spite of change of constitution of COC because of such re-constitution of COC. Thus, the only

situation which has been prescribed in the CODE r.w. Regulation 12 (3) is this one. This re-constitution happens only because of admission of a claim of a Financial Creditor subsequently meaning thereby the Financial Creditors who have already been included cannot be excluded from COC by RP for any reason of whatsoever nature. We are, however, of the view that this legal situation is subject to decision of the Adjudicating Authority which can correct or modify the constitution of COC, if facts and circumstances of case demand so and an appropriate application is made by RP to this effect. We again state that decision of the Adjudicating Authority in this regard cannot be challenged by RP though it may be challenged by any member of COC who is aggrieved by such decision. Before leaving this issue we also consider it pertinent to mention that the power to constitute COC, as such, cannot include a power to re-constitute COC except as provided in the CODE or CIRP Regulations. Thus, the Financial Creditor who is a part of COC, cannot be removed by RP without prior approval of the Adjudicating Authority.

24. Although, we have already reached to a conclusion but we also consider it relevant to discuss the role and responsibilities of RP so that CIRP can be conducted in an efficient manner and desired results are obtained within the timelines prescribed under the CODE/Regulations made thereunder and _ that would not only guide the RP in the present *case but would also be of great help to all Insolvency Professionals acting as IRP/RP.* ***From the perusal of all substantive provisions of law as contained in the CODE itself, it is abundantly clear that Resolution Professional is only an Administrator and Facilitator and does not have any adjudicatory powers.*** *This position of law has been established through number of judicial pronouncements including the leading one, being the decision of Hon'ble Supreme Court in the case of Swiss Ribbons. The position of liquidator stands on a different footing as the liquidator has been given adjudicatory powers as far as determination of claims is concerned and as per Section 42 of the CODE, Adjudicating Authority acts as an Appellate Authority against the decisions of liquidator while accepting or rejecting or reducing the claims of creditors. This is so because there is no Committee of Creditors in the liquidation process of Corporate Debtor.* ***Further, even during CIRP there exists no provision in law that Committee of Creditors can take a final decision on the aspect of admission or rejection or reduction of claims of Financial Creditor or its status. It is not at all in dispute that Adjudicating Authority is the supervisory body for IRP/Resolution Professional.*** *Though, Committee of Creditors is not under its superintendence, nevertheless, Committee of Creditors has been given final powers only as regard to approval of Resolution Plan or liquidation of Corporate Debtor and matters specified under Section 28 of the CODE or replacement of a Resolution Professional under*

Section 27 of CODE. ***Therefore, any irregularity or violation of principles of natural justice in other areas of CIRP can certainly be looked into by the Adjudicating Authority and if it is found that the actions/decisions of Committee of Creditors are also not in accordance with the provisions of law, then, in our considered view, the same can be reviewed for both violations and reversed by Adjudicating Authority.***

36. In view of the foregoing discussion, we note that material irregularity in the conduct of the CIRP is one that significantly impacts the fairness, legality, and integrity of the process. Such irregularities can lead to delays, financial losses, and litigation, thereby defeating the objectives of the Code. Material irregularities may arise from non-compliance with the statutory provisions, rules, and regulations governing the CIRP. Any deviation from these prescribed legal provisions, both procedural or substantive, may amount to a material irregularity and affect the legitimacy of the resolution process, of-course, depending upon the facts and context of each case and no strict guidelines can be laid down

37. At this stage, we must record our profound concern over the conduct of the Resolution Professional. Such dereliction of duty undermines the confidence that creditors and other stakeholders repose in the insolvency resolution process. In our considered view, the RP can no longer be entrusted with the continuation of the Corporate Insolvency Resolution Process, which necessitates immediate corrective intervention. In the exercise of our inherent powers under Rule 11 of the NCLT Rules, 2016, and in order to prevent abuse of the process while safeguarding the integrity of the Insolvency and Bankruptcy Code, 2016. Accordingly, we pass the following orders:

ORDER

A. For reasons recorded hereinabove, we hold that the Resolution Professional acted beyond his authority in including Respondent Nos. 4 to 13 as financial creditors/homebuyers, relying on fabricated and improperly submitted documents, in clear contravention of the Code, CIRP Regulations and hence we direct the present RP to be **replaced forthwith**.

B. The decision of the Resolution Professional to include the said ten creditors (Respondent Nos. 4 to 13) is ***quashed and set aside.*** **Consequently, all decisions of the CoC taken post such inclusion are declared *void ab initio.***

C. Hence, this Adjudicating Authority hereby appoints **Mr. Vineet Gupta** having address: 408, Laxmi Deep Building, Dist. Centre, Laxmi Nagar ,New Delhi, National Capital Territory of Delhi ,110092, Email id vineetsinghalco@hotmail.com, registration number - IBBI/IPA-001/IP-P00810/2017-2018/11377 as Resolution Professional (RP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 within three days of this order. The Resolution Professional shall also file a 'Declaration Disclosure Statement' within two days from the date of this order.

D. The fee payable to the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

E. The erstwhile Resolution Professional, Mr. Jitesh Gupta (Registration No. IBBI/IPA-002/IP-N00144/2017-18/10380), is hereby directed to immediately and unconditionally hand over all documents, records, and any other material in his possession pertaining to the Corporate Debtor to the newly appointed Resolution Professional, **Mr. Vineet Gupta**. This handover shall include all physical and electronic records, correspondences, financial statements, and any other relevant documentation or data necessary for the continuation and effective administration of the Corporate Insolvency Resolution Process (CIRP). The handover is to be completed without delay to ensure there is no impediment in the progression of the insolvency proceedings, and to facilitate a smooth transition in the management of the CIRP.

F. The Registry/Court Officer is hereby directed to promptly communicate a certified copy of this order to both Mr. Jitesh Gupta and Mr. Vineet Gupta. The Resolution Professional, Mr. Vineet Gupta, is further directed to file a compliance report before this Adjudicating Authority upon the successful receipt of all relevant materials from Mr. Jitesh Gupta.

G. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("**IBBI**") for their record and necessary proceeding against the erstwhile RP Mr. Jitesh Gupta.

H. The newly appointed Resolution Professional herein, is directed to convene a meeting of the CoC strictly in accordance with law, placing the four agenda items requisitioned vide letters dated 14.01.2021 and 20.01.2021, including the agenda for inviting fresh Resolution Plans.

The Application stands allowed in the above terms.

Sd/-	**Sd/-**
ATUL CHATURVEDI	**MANNI SANKARIAH SHANMUGA SUNDARAM**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**