



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

**IA No.860/2022, IA No. 733/2022
& IA No. 955/2022**

**In
CP (IB) No.237/Chd/CHD/2021
(admitted)**

**Under Section 21(6A)(b) of the
Insolvency & Bankruptcy Code, 2016
read with regulation 16A of IBBI
(Insolvency Resolution Process for
Corporate Person) Regulations, 2016**

In the matter of:

M/s. Area Importers and Exporters Private Limited
...Petitioner-Operational Creditor

Versus

M/s. Gupta Builders and Promoters Private Limited
....Respondent-Corporate Debtor

And in the matter of:

1. IA No.860/2022

**Mr. Mukesh Gupta
Interim Resolution Professional
M/s. Gupta Builders and Promoters Private Limited
office at : F-1, Milap Nagar, Uttam Nagar,
New Delhi-110059**

....Applicant

And in the matter of:

2. IA No. 733/2022

**Amrita Uppal
W/o Brig. Sh. Ashish Uppal,
House No. 223, Sector 9C, Chandigarh
Chandigarh-160009**

....Applicant

Vs.

**Mr. Mukesh Gupta
Interim Resolution Professional
M/s. Gupta Builders and Promoters Private Limited
office at : F-1, Milap Nagar, Uttam Nagar,
New Delhi-110059**

....Respondent



And in the matter of:

3. IA No. 955/2022

Amrita Uppal

W/o Brig. Sh. Ashish Uppal,

House No. 223, Sector 9C, Chandigarh

Chandigarh-160009

....Applicant

Vs.

Mr. Mukesh Gupta

Interim Resolution Professional

M/s. Gupta Builders and Promoters Private Limited

office at : F-1, Milap Nagar, Uttam Nagar,

New Delhi-110059

....Respondent

Order delivered on: 14.11.2022

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through video-conferencing:

For the Applicant
in IA No. 860/2022

: Mr. Abhishek Anand, Advocate
Mr. Viren Sharma, Advocate

For the Applicant
in IA No. 733/2022
& IA No. 955/2022

: Mr. Nahush Jain, Advocate

For the Respondent
in IA No. 733/2022
& IA No. 955/2022

: Mr. Abhishek Anand, Advocate
Mr. Viren Sharma, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

ORDER

All these three IA's No. i.e., 860, 733 & 955 of 2022 are taken together for discussion and decision being inter-related and interconnected.

IA No.860/2022

The present application is filed on 27.07.2022 by the applicant-resolution professional under Section 21(6A)(b) of the Insolvency & Bankruptcy Code, 2016 read with regulation 16A of Insolvency and Bankruptcy Board of India (Insolvency

IA No.860/2022, IA No. 733/2022
& IA No. 955/2022

In
CP (IB) No.237/Chd/CHD/2021
(admitted)



Resolution Process for Corporate Person) Regulations, 2016, (hereinafter referred to as 'Regulations 2016) seeking appointment of Mr. Navneet Kakkar, Insolvency professional as the Authorised Representative of financial creditors in class-Real-Estate Allottees.

2. The Company Petition i.e. CP(IB) No. 237/Chd/Chd/2021, filed under Section 7 on behalf of Financial Creditor M/s. Area Importers and Exporters Pvt. Ltd., has been admitted by this Adjudicating Authority vide order dated 31.05.2022. In terms of Regulation 6(1) of the Regulations, 2016, the IRP made a public announcement in form A on 02.06.2022 in newspapers namely, Divya Himachal, Shimla (Hindi Edition), Dainik Savera, Chandigarh (Hindi Edition), Rozana (Punjabi edition), Times of India, Chandigarh (English edition), Hari Bhoomi, Rohtak (Hindi Edition). In terms of Regulation 6(2)(c) the last date for submission of proof of claim was 14.06.2010.

3. It is stated by the applicant that while making a public announcement dated 02.06.2022, the IRP gave names of three Insolvency Professionals in the public announcement to act as Authorised Representatives of Financial Creditors in class-Real-estate Allottees/ Home buyers. Further, while sending the claims to the applicant, a Financial Creditor belonging to a class shall indicate its choice of the above-mentioned Insolvency Professional listed against entry no. 13 of Form A to act as an Authorised Representative.

4. It is averred by the applicant that after receiving the claims and duly verifying the said claims, the IRP earlier appointed Mr. Arvind Mittal (Reg. Address; 1900, phase 3, Madanpur Khaddar, Sarita Vihar, New Delhi- 110076), who received the highest number of voting shares i.e. 77.5 (1358/1752) of Financial Creditors in class, mentioning their choice. Thereafter, IRP filed an application bearing IA No.



697/2022 for placing on record a report certifying the constitution of the Committee of Creditors, whereby, the resolution of appointing Mr. Arvind Mittal was approved by 92.33 percent voting share in the first meeting of CoC dated 30.06.2022. The same was taken on record vide order dated 08.07.2022. Accordingly, on 23.06.2022 the applicant filed one application bearing IA No. 698/2022 seeking the appointment of Mr. Arvind Mittal as the Authorised Representative of Financial Creditors in a class. However, the same was dismissed as withdrawn vide order dated 29.07.2022.

5. The applicant submitted that the first CoC meeting convened on 30.06.2022, wherein the applicant authorized the members that in terms of Regulation 4A(2)(aa) of the CIRP Regulations, 2016, the IRP shall identify three Insolvency professionals to act as Authorised Representatives who are having their offices registered with the board in the State/ Union Territory which has the highest number of creditors in class as per their addresses in the records of the Corporate Debtor. Further, the IRP apprised the member that due to non-cooperation by the suspended board of directors of the Corporate Debtor, the records of the Corporate Debtor are not available with the IRP in respect of addresses of allottees.

6. It is further submitted by the applicant-Resolution Professional that the applicant informed the CoC members that after collation of claims applicant has ascertained financial creditors in class are located at different regions/ locations, predominantly from Punjab, Chandigarh, Haryana, Delhi, Himachal Pradesh, and other states. The applicant received consent from Mr. Rajeev Khurana (Chandigarh), Mr. Navneet Kakkar (Chandigarh), Mr. Mohit Chawla (Chandigarh), Mr. Arvind Kumar (Mohali, Punjab) to act as Authorised Representative. The applicant put the resolution for the appointment of an Authorised Representative for



voting before the members of the CoC. It is stated that 1362 real-estate allottees cast their votes in the above said voting process having a total voting share of 73.52 percent. The above e-voting was conducted from 04.07.2022 to 08.07.2022.

7. It is stated that in accordance with the above-mentioned e-voting, in total 70.21% (868 allottees) of financial creditors voted in favour of Mr. Navneet Kakkar out of total financial creditors in class in terms of voting share. In view of this, the applicant seeking the appointment of Mr. Navneet Kakkar as the Authorised Representative of the Financial Creditors in a class. The copy of consent in Form AB along with a certificate of Registration and AFA of the Authorised Representative is attached as Annexure A6 of the application.

8. It is further averred that vide Administrative Order date 15.09.2022 passed by this Adjudicating Authority, the applicant was directed to explain the delay in appointment of an Authorized Representative with a note upon which, a note on behalf of Applicant Resolution Professional explaining the delay in appointment of AR for Class of Creditors prior to the first meeting of CoC pursuant to administrative order dated 15.09.2022 passed by this Adjudicating Authority has been filed vide Diary No. 01587/2 dated 19.09.2022, wherein it is stated that:

“in terms of Regulation 17(1) of the CIRP Regulations the Interim Resolution Professional is required to file a report certifying constitution of CoC before this Adjudicating Authority within 2 days of verification of claims received. Further, in terms of Regulation 17(2) of the CIRP regulations, the IRP shall hold the first CoC meeting within 7 days of filing the report under this Regulations. Accordingly, the Applicant convened the First CoC meeting on 30.06.2022 in compliance with Regulation 17(2) of the Code.

It is submitted that in terms of Regulation 16A of the CIRP Regulations, the IRP is required to apply to this Adjudicating Authority for appointment of Authorised Representative within 2 days of verification of claims. The Applicant had filed the Application bearing IA 698/2022 within the prescribed time. However, on a perusal of the claim forms filed by the Creditors in Class it was ascertained by the Applicant that most of the allottees belong to Punjab, Haryana, Chandigarh etc. and accordingly agenda for appointment of new Authorised Representative was deliberated in the 1st



CoC wherein 73.52% creditors in the class voted in favour of appointment of Mr. Navneet Kakkar having office in Chandigarh (Capital of Punjab and Haryana) on 08.07.2022. Accordingly, the present application seeking appointment of new Authorised Representative was filed before this Adjudicating Authority on 13.07.2022. Further, it is pertinent to mention that in terms of Regulation 16A(3) any delay in appointment of Authorised Representative for any class of creditors shall not affect the validity of decision taken by the committee.”

9. It is also submitted that vide order dated 29.07.2022, the applicant was directed to file an affidavit stating that the selection of a new Authorized representative i.e., MR. Navneet Kakkar was in compliance with Regulation 4A of CIRP Regulations. The compliance affidavit pursuant to this order has been filed by the applicant Resolution Professional vide diary No. 1587/01 dated 08.08.2022. Thus, the applicant-Resolution Professional stated that the appointment of a new Authorized Representative is in accordance with relevant rules and regulations under the Code.

IA No. 733/2022

The present application is filed by a Real Estate Allottee/Home Buyer on 23.06.2022, seeking direction against the respondent IRP to appoint an Authorised Representative in accordance with regulation 4A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and reissue public announcement calling for claims from creditors in class.

2. It is stated that the applicant purchased a commercial space in the project named GBP CENTRUM developed by the corporate debtor. Further, the possession of the above-said property was neither given to the applicant in spite of complete payment being made nor the money was refunded back to the applicant.

3. It is averred by the applicant that as per the public Announcement in Form A issued by the respondent-IRP, it has identified three Insolvency Professionals for

IA No.860/2022, IA No. 733/2022
& IA No. 955/2022

In
CP (IB) No.237/Chd/CHD/2021
(admitted)



the class of creditors in violation of Regulation 4A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as the above-said Insolvency Professionals have their addresses in Delhi including the proposed Authorized Representative, Mr. Arvind Mittal. It is further submitted that the Registered office of the Corporate Debtor is in Chandigarh and its projects are located in District Mohali.

4. The respondent Resolution Professional has filed its reply vide Diary No.01369/01 dated 12.07.2022, wherein the averments made by the applicant are denied and it is stated that the addresses of the real estate allottees were not known to the Respondent-RP at the time of giving public announcement. Further, the RP has filed an application under section 19(2) of the IBC in this regard. The Resolution Professional has reiterated the facts as stated in above mentioned IA No. 860/2022. For the sake of brevity, the same are not repeated herein.

5. It is noted that the application bearing IA No. 698/2022 seeking the appointment of Sh. Arvind Mittal as AR has been dismissed as withdrawn vide order date 29.07.2022 as other IA No. 860/2022 has been filed for appointment of Mr. Navneet Kakkar as new AR. Therefore, the present application renders infructuous and as such disposed of.

IA No. 955/2022

The present application is filed on 22.08.2022 by the same Real Estate Allottee/Home Buyer i.e, Ms. Amrita Uppal, seeking direction against the respondent-Resolution Professional to declare as to which State/UT has the highest number of Homebuyers and to appoint an Authorised Representative in accordance with regulation 4A of Insolvency and Bankruptcy Board of India (Insolvency



Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as 'Regulations').

2. In the present application it is stated that there is a continuing violation committed by the respondent-Resolution Professional in the appointment process of the Authorised Representative (Mr. Navneet Kakkar, Insolvency Professional)for the class of creditors, and his selection as Authorized Representative is not in consonance with Regulation 4A(2)(aa) of Regulations.

3. It is submitted that after receiving of claims, the Respondent RP has all the data to ascertain as to which state has the highest number of Homebuyers and accordingly appoints AR. Further, as per IA No. 860/2022, the Respondent RP had proposed the three names who are all from UT Chandigarh. However, the Resolution Professional has nowhere ascertained which State/UT has the highest number of HomeBuyers. So, unless the Respondent RP ascertains that UT Chandigarh has the highest number of Homebuyers as per the data available to him, the appointment of AR Mr. Navneet Kakkar cannot be considered in accordance with Regulation 4A(aa) of CIRP Regulations, 2016.

4. The Respondent Resolution Professional has filed his reply vide Diary No. 01987/1 dated 02.09.2022, wherein it is stated that after collation of claims from various Real Estate Allottees, the respondent discovered that as per the "Address for correspondence" mentioned by respective allottees in their claim Form CA, the maximum number of allottees have their "Address for correspondence" at various cities of Punjab, followed by Haryana, Chandigarh, Jammu & Kashmir, and other states respectively. Further, as per the calls received by the respondent from various allottees, the "Address for correspondence" mentioned in Form CA was different from the address of claimants at the time of making the booking of Units



with the Corporate Debtor since many claimants migrated from one location to another.

5. It is further submitted by the Resolution Profesional in its reply that as per the decision taken in first CoC meeting, New Authorized Representative is appointed. In pursuant to that IA No. 860/2022 is filed before this Adjudicating Authority. It is averred that Chandigarh is the Capital of Punjab and Haryana. Further various administrative wings of both States are located in Chandigarh only, including the Hon'ble High Court of Punjab and Haryana. It is stated that the respondent received requests from various Association of allottees that since the maximum no. of allottees are based in Punjab and Haryana, it is desirable to appoint an Authorized representative who is based at Chandigarh, as it is centrally located.

6. It is further stated in reply by the Respondent-Resolution Professional that the maximum number of allottees who have filed their claim with the respondent belongs to Punjab i.e., 561 claimants, then Haryana i.e., 474 claimants, and then Chandigarh i.e., 233 claimants. The list of claimants consisting of the State/UT of the Allottee has been placed before this Adjudicating authority (Annexure R-7). It is further submitted that the provisions of CIRP Regulations are only directory in nature and not mandatory.

7. We have heard the learned counsel for the applicant and the respondent and perused the record carefully.

8. During the course of arguments, it is contended by the learned counsel for the applicant in IA No. 955/2022 that on 27.06.2022 the Counsel for Applicant made mentioning for listing and urgent listing of IA. 733/22, and only after that IRP/RP realised its illegality/irregularity in appointing the Authorized Representative Mr. Arvind Mittal, in violation of Regulation 4A as aforesaid and thus on 28.08.2022,

IA No.860/2022, IA No. 733/2022
& IA No. 955/2022

In
CP (IB) No.237/Chd/CHD/2021
(admitted)



IRP issued an addendum notice for the 1st COC meeting, which included only one item, i.e., for proposing 3 new names of IPs for appointment as ARs, which is reproduced as follows:

"Explanatory Statements to Agenda No. 17: Appointment of Authorised Representative.

"In terms of Provisions of Regulation 4A(aa) of CIRP Regulations, 2016, the IRP shall identify three Insolvency Professionals to act as authorised representative who are having their offices registered with the Board, in the State / Union Territory which has the highest number of creditors in class as per their addresses in the records of the Corporate Debtor. The members of suspended Board of directors have not cooperated with the IRP in providing records / data / documents of the Corporate Debtor or any other information related to the allottees, Projects, Loans etc and hence the records of the corporate debtor are not available with the IP in respect of addresses of allottees. After Collation of Claims received by the Interim Resolution Professional, it has been ascertained that Financial creditors in Class - Real Estate Allottees are located at different regions / locations including that predominantly from Punjab, Chandigarh, Haryana, Delhi, Himachal Pradesh and other states. It is proposed to appoint an Insolvency Professional whose address is registered with the Board in the State of Punjab or Chandigarh, as the Authorised representative of the Financial Creditors in Class - Real Estate Allottees. The agenda may accordingly be taken up and decision taken up by the Committee of Creditors."

9. It is also argued by the applicant/Allottee that the RP has nowhere denied the legal contention/proposition that has been advanced by the Applicant in I.A. No. 955 of 2022 and IA. No. 733 of 2022. However, very strangely and very vaguely the IP /RP has simply contested the Applications on the ground that RP still doesn't have relevant information based on which he may ascertain the State which may have the highest number of Homebuyers located. The said contention of the Respondent in fact contradicts his own version, where he has stated that after the collation of claims he has ascertained the location of Homebuyers. RP has very vaguely stated that the addresses for correspondence mentioned in Form CA by Homebuyers is different from the addresses mentioned at the time of booking by them. However, he



has acknowledged that as per claims received and the addresses for correspondence mentioned in them, the maximum are located in Punjab followed by other neighboring states.

10. Moreover, for proposing the 3 names of IPs in Form A and subsequently after the intervention of Applicant in IA 733/22, when RP proposed 4 new names of IPs, for whom he contends that he has received consent from them to act as ARs. However, the RP has nowhere clarified that from how many IPs he had asked in the first place for their consent to act as ARs. He has simply given the names of the ones whom he claims have given consent. It appears that he has chosen his favourite persons to act as ARs, without even asking from other IPs in the region (who may be more competent) just so that he can instruct the AR appointed by him to act according to him.

11. On the other hand, it is argued by learned counsel for the respondent in IA No. 955/2022 and applicant/IRP in IA No. 860/2022 that Regulation 16A of the CIRP Regulations states that the IRP shall select the insolvency professional who is the choice of financial creditors in a class in Form CA received under Regulation 12(1) of the CIRP Regulations. Proviso to Regulation 16A(1) of the CIRP Regulations states that the choice for an insolvency professional to act as an authorized representative in Form CA received under Regulation 12(2) shall not be considered. Admittedly, the Applicant filed her claim on 15.06.2022 i.e. beyond the last date stipulated in Form A. Accordingly, in terms of the proviso to Regulation 16A(1) of the CIRP Regulations, the selection of the authorized representative of the Applicant cannot be considered by the Answering Respondent being the IRP.

12. It is further argued that the Applicant/Allottee does not have any right to object to the appointment of an Authorized Representative as the decision of the Applicant



cannot be considered by the Respondent. In view of the same, the present Application is liable to be dismissed on this ground alone.

13. It is contended that the present application is filed by one allottee and thus, the decision taken by the Class of Creditors cannot be assailed by the Applicant. Hon'ble Supreme Court in the matter of **Jaypee Kensington Boulevard Apartments Welfare Association & Ors v NBCC (India) Ltd, Civil Appeal No. 3395 of 2020**, has held that such homebuyers who are part of the "class of creditors" are bound by the decision of the class in the majority and has no locus to stand differently and to project his/own viewpoint or grievance by way of objections or by way of appeal.

14. Moreover, pursuant to the order dated 29.07.2022 of this Adjudicating Authority, whereby, the Resolution Professional was directed to file an affidavit stating that the selection of new AR i.e. Mr. Navneet Kakkar is in compliance with Regulation 4A of CIRP Regulations. The Resolution Professional has filed a compliance affidavit vide Diary No. 01587/01 dated 08.08.2022 stating that :

"the selection of the new Authorised Representative has been done in absence of availability of records, books of accounts of the Corporate Debtor due to non-cooperation from the suspended Board of directors of the Corporate Debtor and consequent non availability of addresses of the Financial Creditors in Class - Real Estate Allottees, as per records of the Corporate Debtor. The Deponent have collated claims of various real estate allottees and as per the "Address for Communication" mentioned in their respective FORM CA identified that maximum of Allottees have their addresses at Punjab, Haryana, Chandigarh, Jammu & Kashmir in the order of chronology, and other states respectively. The Deponent, in the 1st COC meeting, accordingly identified the names of three Insolvency Resolution Professionals having registered office in Chandigarh before the allottees to be appointed as AR. Further, new AR has been appointed by the majority of allottees in the first COC meeting as per the e-voting process".



15. The Resolution Professional has filed additional affidavit vide Diary No. 01587/3 dated 06.10.2022, wherein, apart from the already made submissions, it is stated that :

"7. Further the resolution for confirming Deponent herein being Interim Resolution Professional as Resolution Professional of Corporate Debtor ("Agenda 13") was also put up for e-voting.

8. It is pertinent to mention that the voting by financial creditors in class was done by providing link for e-voting to every individual allottee and every individual allottee has cast their vote independently. It is also stated that since the application for appointment of Authorised Representative was pending before the Hon'ble Adjudicating Authority, each allottee independently voted on all the resolutions which were put to e-voting and there was no vote cast by any AR, since the application for appointment of the AR was pending before the Hon'ble Tribunal.

9. I state that all the agendas pursuant to IS meeting of the CoC including the Agenda No. 13 for confirmation of Mr. Mukesh Gupta as the Resolution Professional & Agenda No. 17 for appointment of Authorised representative were put up for e-voting from 02.00PM on 04.07.2022 till 04.00PM on 08.07.2022 on the e-voting platform - Right2Vote, wherein 2 polls were published, as follows:

- a. 1st poll was created for e-voting to be done by 3 Financial Institutions viz. LIC Housing Finance Limited, Edelweiss Asset Reconstruction Company.*
- b. 2nd poll was published for 1777 number of claimants who belonged to Financial creditors in class- real allottees. Each such claimant had cast his/her vote individually by his/her own, by using the email id filled in the FORM CA submitted by them to the Interim Resolution Professional. (There were 21 emails IDs which were incorrect in the earlier list and hence the correct 21 emails IDs were added. Hence total allottees are reflecting as 1798).*
- c. It is stated that since application for appointment of Authorised representative (AR) was pending to be adjudicated, before the Hon'ble National Company Law Tribunal, Chandigarh, no vote was cast by any representative of Financial Creditors in Class - Real Estate allottees. Each allottee had cast his / her vote independently.*

10. I state that there were 1777 financial creditors in class being real estate allottees in total in the matter of the Corporate Debtor who were invited for casting their vote on various resolutions put to e-voting pursuant to deliberations in the 1st CoC meeting. It is submitted 1362 allottees, having cumulative voting share 73.52% creditors in class cast their vote on all resolutions. That the 868 out of 1362 financial creditors in class selected Mr. Navneet Kakkar to act as Authorised Representative for financial creditors in class having total voting share as 51.62% out of 73.52% total allottees who cast their vote 70.21%. Accordingly, the deponent

IA No.860/2022, IA No. 733/2022
& IA No. 955/2022

In
CP (IB) No.237/Chd/CHD/2021
(admitted)



herein filed the present application seeking appointment of Mr. Navneet Kakkar as the Authorised Representative. Copy of results of voting by every allottee being a financial creditor in class in the matter of the Corporate Debtor is annexed herewith and marked as ANNEXURE A-2.

16. It is further argued that the respondent/Resolution Professional has been acting as per provisions of the Code and CIRP Regulations. Thus, the present application will only delay the time-bound process of CIRP of the corporate debtor. In view of the same, the respondent prays for the dismissal of IA No. 955/2022 and confirms the appointment of Mr. Navneet Kakkar as Authorized Representative by allowing IA No. 860/2022.

17. After hearing the learned counsel for both sides and careful perusal of the record available, we are of the considered view, that there are two cardinal questions for determination in the present controversy

1. Whether applicant Ms. Amrita Uppal being a resident of UT Chandigarh and single allottee has a locus to challenge the validity of the appointment of AR, Mr. Navneet Kakkar?
2. Whether due procedure for the appointment of AR been followed as prescribed under Section 21 (6A) and relevant CIRP Regulations?

18. So far as the first point for determination is concerned, no doubt every allottee has the right to challenge the appointment of an authorized Representative but in the case in hand, the main objection which has been taken against the appointment of Mr. Navneet Kakkar as Authorized Representative is that his appointment is in violation of Regulation 4A(2)(aa) as the majority of allottees/creditors belong to the state of Punjab and Authorized Representative is Chandigarh based. However, this objection is not tenable on behalf of the applicant as she herself is a resident of Sector 9C, Chandigarh.



19. Moreover, it is pertinent to note that in total there are 1777 allottees/creditors belonging to the State of Punjab, Haryana, Himachal Pradesh, U.T. of Chandigarh and Jammu & Kashmir. The applicant herein is just one allottee out of 1777 allottees in the matter of Corporate Debtor and as such, she cannot stand outside the decision of the class of creditors out of which homebuyers having 73.52% voting share have selected Mr. Navneet Kakkar as an Authorized Representative. The applicant being a single allottee having only a 0.05% share cannot dictate unilateral terms or object to the decision of the majority of the class of creditors. The Ld. counsel for the respondent/RP has rightly placed reliance upon the authority titled as ***Jaypee Kensington (supra)***.

20. Thus, the applicant being a single allottee has no locus to challenge the appointment of an Authorized Representative in the matter of the Corporate Debtor as approved by the majority of the class of creditors.

21. The applicant might have a grievance that her claim was not accepted by IRP being time-barred as alleged but for that, she has got independent remedy by the filing of an appeal, if any, but she cannot be allowed to stall the whole process of CIRP at this stage. No other homebuyer or creditor has come forward to challenge the appointment of Authorized Representative.

22. Now, delving upon the second question of whether the due procedure for the appointment of an Authorized Representative has been followed as prescribed under Section 21(6A) and the relevant CIRP Regulations. The following relevant provisions and regulations under the Code are reproduced for ready reference;

Section 21(6A) Where a financial debt— (a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;



(b) is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;

(c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors, and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

Regulation 4A. Choice of authorised representative

(1) On an examination of books of account and other relevant records of the corporate debtor, the interim resolution professional shall ascertain class(s) of creditors, if any.

(2) For representation of creditors in a class ascertained under sub-regulation (1) in the committee, the interim resolution professional shall identify three insolvency professionals who are-

(a) not his relatives or related parties;

(aa) having their addresses, as registered with the Board, in the State or Union Territory, as the case may be, which has the highest number of creditors in the class as per their addresses in the records of the corporate debtor:

Provided that where such State or Union Territory does not have adequate number of insolvency professionals, the insolvency professionals having addresses in a nearby State or Union Territory, as the case may be, shall be considered;

(b) eligible to be resolution professional under regulation 3; and

(c) willing to act as authorised representative of creditors in the class.

(3) The interim resolution professional shall obtain the consent of each insolvency professional identified under sub-regulation (2) to act as the authorised representative of creditors in the class in Form AB of the Schedule

Regulation 16A. Authorised representative.

(1) The interim resolution professional shall select the insolvency professional, who is the choice of the highest number of financial creditors in the class in Form CA received under sub-regulation (1) of regulation 12, to act as the authorised representative of the creditors of the respective class: Provided that the choice for an insolvency professional to act as authorised representative in Form CA received under sub-regulation (2) of regulation 12 shall not be considered.

(2) The interim resolution professional shall apply to the Adjudicating Authority for appointment of the authorised representatives selected under sub-regulation (1) within two days of the verification of claims received under sub-regulation (1) of regulation 12.

(3) Any delay in appointment of the authorised representative for any class of creditors shall not affect the validity of any decision taken by the committee.

(4) The interim resolution professional shall provide the list of creditors in each class to the respective authorised representative appointed by the Adjudicating Authority.



(5) *The interim resolution professional or the resolution professional, as the case may be, shall provide an updated list of creditors in each class to the respective authorised representative as and when the list is updated.*

Clarification: The authorised representative shall have no role in receipt or verification of claims of creditors of the class he represents.

(6) *The interim resolution professional or the resolution professional, as the case may be, shall provide electronic means of communication between the authorised representative and the creditors in the class.*

(7) *The voting share of a creditor in a class shall be in proportion to the financial debt which includes an interest at the rate of eight per cent per annum unless a different rate has been agreed to between the parties.*

(8) *The authorised representative of creditors in a class shall be entitled to receive fee for every meeting of the committee attended by him in the following manner, namely:*

Number of Creditors in the class	Fee per meeting of the committee (Rs.)
10-100	15,000
101-1000	20,000
More than 1000	25,000

(9) *The authorised representative shall circulate the agenda to creditors in a class, and may seek their preliminary views on any item in the agenda to enable him to effectively participate in the meeting of the committee: Provided that creditors shall have a time window of at least twelve hours to submit their preliminary views, and the said window opens at least twenty-four hours after the authorised representative seeks preliminary views: Provided further that such preliminary views shall not be considered as voting instructions by the creditors.*

23. On a conjoint reading of the above provisions of the Code and regulations, it is apparent that an Authorized Representative is required to be appointed for a class of creditors being homebuyers.

24. This Bench vide order dated 29.07.2022, directed the Resolution Professional to file an affidavit stating that the selection of a new Authorized Representative is in compliance with Regulation 4A of CIRP Regulations. It is explained by the respondent/Resolution Professional as to how the appointment of Mr. Navneet Kakkar through the e-voting procedure was followed and concluded. However, no



counter affidavit has been filed by the applicant in IA No. 955/2022 that no such procedure of e-voting and selection of AR was followed.

25. Lastly, it is pointed out by Ld. counsel for the applicant that when the majority of allottees are from the State of Punjab then an Insolvency Professional based in U.T. of Chandigarh cannot be appointed as Authorized Representative. As already discussed while dealing with Point No. 1 that the applicant herself is Chandigarh based and the majority of allottees belong to the State of Punjab, Haryana, and U.T Chandigarh then if at all, a Chandigarh based Authorized Representative is appointed then no prejudice is going to be caused to any allottee/homebuyer as it is admitted fact that registered office of the Corporate Debtor is in Chandigarh and its real estate projects are located in District Mohali (a part of Tricity). More so, U.T. Chandigarh has its unique features unlike other U.T.'s that it is a common Capital for both the States of Punjab & Haryana. Common High Court for both the States is seated here apart Govt. Secretariats and Governors to both States.

26. If at all there is any violation of Sub-Regulation 4A(2)(aa), then in the above-given circumstances, it is not mandatory but only directory, particularly in the case of U.T. Chandigarh. Here reliance has been rightly placed upon by the Ld. counsel for the respondent on ***Aditya Kumar Tibrewal v. Om Prakash Pandey & Ors. in Company Appeal (AT) (INS) No. 583 of 2021***, wherein it has been held that provisions of CIRP Regulations are directory and the words "shall" to be read as "may".

27. It has been further held by the Hon'ble Supreme Court in the matter of ***Rani Kusum v. Kanchan Devi (2005 6 SCC 705)*** that the rules of procedure are the handmaid of justice and to advance the cause of justice. It was further observed that procedural law should be an aid to justice and not an obstruction.



28. It may be noted that there has been a delay in the appointment of the Authorized Representative. This Bench vide order dated 15.09.2022 directed the Resolution Professional to explain the said delay, which has been properly explained as discussed above. Moreso, Regulation 16A(3) provides that any delay in the appointment of the authorized representative for any class of creditors shall not affect the validity of any decision taken by the committee.

29. In the light of the discussion foregoing and reasons recorded hereinbefore, we are of the considered view and conclusion that IA No. 955/2022 is bereft of merits and dismissed. Whereas IA No. 860/2022 deserves to be allowed and Mr. Navneet Kakkar is appointed as Authorized Representative of financial creditors in class/Real Estate Allottees of Corporate Debtor. Ordered accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

November 14, 2022

PB/ASH

Sd/-

(Harnam Singh Thakur)
Member (Judicial)