

IN THE NATIONAL COMPANY LAW TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

CP (IB) No.654PB)/2019

IN THE MATTER OF:

M/s Vishal Fabric and Ors.

... Financial Creditor

Versus

M/s AVJ Developers Private Limited

...Corporate Debtor

And

IA/ 5385(PB) /2021

In the matter of:

Mr. Anil Tayal (earlier RP)
Resolution Professional for
M/s AVJ Developers Private Limited
Having Office at:
201, Sagar Plaza, Plot No. 19,
District Centre, Laxmi Nagar
New Delhi-110092

...Applicant/RP

And

IA/ 4827 (PB)/ 2021

In the matter of:

Sandeep Kumar Jain

...Applicant

Versus

Mr. Vivek Kumar
Resolution Professional of
M/s AVJ Developers (India) Pvt.Ltd

...Resolution Professional/Respondent

And

IA/ 6135 (PB)/ 2022

In the matter of:

Greater Noida Industrial Development Authority

...Applicant

Versus

Mr. Vivek Kumar

Resolution Professional of

M/s AVJ Developers (India) Pvt.Ltd....

Resolution Professional/ Respondent

And

IA/ 4594 (PB)/ 2021

In the matter of:

Ralhan India Private Limited

...Applicant

Versus

M/s AVJ Developers (India) Private Limited

... Corporate Debtor

And

IA/ 5586 (PB)/ 2021

In the matter of:

Tejinder Gupta

...Applicant

Versus

Mr. Vivek Kumar

Resolution Professional of

M/s AVJ Developers (India) Pvt.Ltd....

Resolution Professional/ Respondent

And

IA/ 3245 (PB)/ 2021

In the matter of:

IIFL Finance Limited

...Applicant

Versus

M/s AVJ Developers (India) Pvt.Ltd

CD/ Respondent

And

IA/ 5461 (PB)/ 2021

In the matter of:



AVJ Heights Apartment Owners Association ...Applicant
Versus
M/s AVJ Developers (India) Pvt.Ltd. ...CD/ Respondent

And

IA/ 4523 (PB)/ 2021

In the matter of:

AVJ Heights Apartment Owners Association ...Applicant
Versus

Mr. Vivek Kumar

Resolution Professional of

M/s AVJ Developers (India) Pvt.Ltd ...**Resolution Professional/ Respondent**

Order pronounced on: 21.11.2023

CORAM:

Chief Justice (Retd.) Ramalingam Sudhakar : **Hon'ble President**

Shri Avinash K. Srivastava : **Hon'ble Member**
(Technical)

Appearances :

For the Resolution Professional	:	Ms. Mani Gupta, Mr. Aman Choudhary, Ms. Sonali Jain, Ms. Saumya Upadhyay, Ms. Sreemantini Mukherjee, Advs. along with Mr. Vivek Kumar, RP
For the Resolution Applicant	:	Ms. Pulkita, Adv. for Mr. Vinay Jain, Mr. Shyam Kishan Saraf, AR in person in IA-2404/2022
For the GNIDA	:	Mr. U.N. Singh, Adv. in IA-6135/2022
For the IIFL (IA 3245/2021)	:	Mr. Abhirup Dasgupta, Mr. Ishaan Duggal, Ms. Mukta Halbe, Advs.
For Applicant	:	Mr. Amrendra Kumar Singh, Adv. in IA-4594/2021 ; Mr. Shashank Agarwal, Mr. Aadil Khan, Advs. in IA-5461/2021, IA-4523/2021 Ms. Ankita Bajpai, Adv. in IA-5586/2021



	Mr. Rajiv Mangla, Mr. Pradeep Kumar Kaushik, Ms. Monika, Advs. (IA-4827/2021)
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ORDER

1. The present Application **(IA-5385 (PB)/2021)** has been filed under Section 30(6) of the Insolvency & Bankruptcy Code, 2016, (the Code) on behalf of the Resolution Professional (RP) **(Mr. Anil Tayal)**, seeking approval of the Resolution Plan submitted by **Mr. Vinay Jain** which was approved by the COC. Applicant/RP has prayed for the following reliefs:
 - a. Allow the present Application; and*
 - b. Approve and accept the Resolution Plan dated 08.10.2021 submitted by Mr. Vinay Jain as approved by the Committee of Creditors with 72.66% voting share in its 14th COC meeting as submitted in respect of the Corporate Debtor;*
 - c. Declare that upon approval of the Resolution Plan by this Hon'ble Adjudicating Authority, the provisions of the Resolution Plan shall be binding on the Company, its Creditors, members, employees and other stakeholders in accordance with Section 31 of the Code, and shall be given effect to and implemented pursuant to the order of this Hon'ble Adjudicating Authority;*
 - d. Approve the appointment of the monitoring agency as approved by the Committee of Creditors and envisaged under the Resolution Plan;*
 - e. Approve and grant reliefs and directions sought under the Resolution Plan by the Resolution Applicants; and*
 - f. Pass such other order/ order(s) as may be deemed fit and proper in the facts and circumstances of the instant case;*
2. The Company Petition **CP (IB) No.654(PB)/2019** filed by the Financial Creditor under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process ("**CIRP**") of the Corporate Debtor was admitted by this Adjudicating Authority *vide* its order dated **21.10.2019** and **Mr. Anil Tayal** was appointed as IRP.
3. Mr. Anil Tayal's Registration was suspended by IBBI *vide* order dated **20.07.2022** for contravening the provisions of IBC, 2016 and this Adjudicating Authority *vide* order dated **04.10.2022** appointed **Mr. Vivek Kumar** as the new Resolution Professional.

4. Various applications were filed that are connected to the approval of Resolution Plan. Below given is the list of IAs alongwith its prayers which we are inclined to dispose of vide this common order.

IA-5385/2021	This IA is for the Approval of Plan and prayer is as mentioned above.
IA-4827/2021	<p><i>i. To direct the respondent to provide the basis of the claim admitted in list dated 12.06.2021, then to put the claim amount as “Zero” in list of creditors dated 12.07.2021 & then admission of claim amount of Rs. 14,24,033/- out of Rs. 80,92,000/-, post 12th CoC meeting.</i></p> <p><i>ii. To direct the respondent and/or Resolution Applicant to get the registry done of the flat no. C-1204 allotted to the applicant, considering the no dues certificate issued by the CD.</i></p> <p><i>iii. To direct the IBBI, to undertake the inspection of the respondent to review the process of collating the claim and to review the process of making eligible u/s 29A, to Mr. Vinay Jain, the member of the suspended BoD to submit the resolution plan for the CD, who had done the fraud with the creditors by selling one unit to the multiple buyers.</i></p> <p><i>iv. Pass such other orders/directions as this Hon’ble Bench may deem fit and proper in the facts and circumstances of the case.</i></p>
IA-6135/2022	<p><i>a. Reject the Resolution Plan put up for its approval in I.A. No. 5385/2021; and</i></p> <p><i>b. Direct the Resolution Professional to serve a copy of the application bearing C.A. No. 5385/2021 for</i></p>



	<p><i>approval of the Resolution Plan upon the Applicant/ Objector; and</i></p> <p><i>c. Pass any such other order/direction which it may deem fit in the interest of justice.”</i></p>
IA-4594/2021	<p><i>a) To allow the present Application;</i></p> <p><i>b) To declare Respondent No. 2 ineligible to be Resolution Applicant;</i></p> <p><i>c) To direct the Resolution Professional to take steps as per the undertaking given by Respondent No.2.</i></p> <p><i>d) To pass any other Order(s), which this Hon’ble Tribunal deems fit, in the aforesaid facts and circumstance of the case, in favor of the Applicant, against the Respondent No. 1 and 2.”</i></p>
IA-5586/2021	<p><i>a. reject the MSME certificate obtained by the Resolution Professional for the Corporate Debtor during the corporate insolvency resolution process; and</i></p> <p><i>b. consequently, declare the Resolution Applicant ineligible to submit a Resolution Plan in terms of Section 29A(c) and (g) of the Code; and 3 (IB)-654(PB)/2019 c. pass any other orders as this Hon’ble Adjudicating Authority deems fit.</i></p>
IA-3245/2021	<p><i>a.) Direct the Respondent/ Resolution Professional to disclose/ provide all the necessary details and documents forming basis for admission of claims and consequently declare the illegal admission of claim by Resolution Professional/ RP as null and void.</i></p>



	<p><i>Accordingly, direct for increase of representation / Share of Applicant / IIFL in CoC;</i></p> <p><i>b.) Pass any other reliefs as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the instant case.</i></p>
IA-5461/2021	<p><i>(i) The Resolution Plan submitted by Mr. Vinay Jain, the promoter and suspended director of the Corporate Debtor, be rejected as being illegal in accordance with the provisions of section 30 of the Code;</i></p> <p><i>(ii) In the interim and pending disposal of this Application and IA-4253/2021 (sic), stay be put on the approval of the Resolution Plan submitted by the Suspended Director;</i></p> <p><i>(iii) Necessary strictures be passed against the RP, the Authorised Representative (Mr. Anurag Nirbhaya) as well as AAA Insolvency for professional misconduct while conducting the CIRP of the Corporate Debtor;</i></p> <p><i>(iv) Such other just and necessary orders may be passed as this Hon'ble Tribunal may deem fit and proper in the interest of justice and equity.</i></p>
IA-4523/2021	<p><i>(i) Appropriate strictures be passed/directions be issued to the RP/Respondent, including, but not limited to, for:</i></p> <p><i>a. Properly conducting the COC meetings strictly in accordance with the provisions of the Code;</i></p> <p><i>b. Properly recording the minutes of the COC meetings;</i></p> <p><i>c. Re-evaluating the EOIs received as well as the eligibility of the Applicant as a prospective resolution applicant.</i></p> <p><i>(ii) Mr. Vinay Jain, the promoter and suspended director of the Corporate Debtor be disqualified from</i></p>



	<p><i>submitted the resolution plan for the Corporate Debtor;</i></p> <p><i>(iii) Such other just and necessary orders may be passed as this Hon'ble Tribunal may deem fit and proper in the interest of justice and equity."</i></p>
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5. During the hearing, the common objection which was raised by the all the Applicants/objectors to the resolution plan in abovementioned IAs is regarding the ineligibility of SRA to submit the resolution plan. It has been contended by the Applicants that the SRA having obtained an MSME certificate after the initiation of the CIRP should be disqualified.

6. Before moving forward, we would like to quote few of the judgements/orders delivered by Hon'ble Supreme Court in the matter of **Vinay Jain Versus State of UP and Anr. Criminal Appeal No. 1112/2021 [@ SLP (CRL.) No. 175/2021]**. The Appellant namely Mr. Vinay Jain who is the Successful Resolution Applicant in present matter filed this appeal against the order of rejection of Bail by Hon'ble Allahabad High Court. That subsequently, Mr. Vinay Jain, being the suspended board of director filed an application being **I.A. No. 53557 of 2021** inter-alia, seeking the following reliefs:-

a. Grant liberty to the Petitioner-Applicant to submit resolution settlement proposal to Financial Creditors currently participating in the Committee of Creditors before the Resolution Professional Sh. Anil Tayal arising out of CP (18) No. 654 (PB) of 2019 Vishal Fabrics v AVJ Developers India Pvt Ltd undergoing CIRP before the Ld. NCLT;

b. Grant liberty to the Petitioner-Applicant to settle other creditors such as banks, financial institutions and Governmental bodies by making proposals if acceptable, de-hors the CIRP.

The Hon'ble Supreme Court vide order dated 06.05.2021, whilst disposing of the application directed as under:-

In our view, in the present proceedings there is neither any impediment nor any imprimatur required for purposes of the course of action which the petitioner wants to follow as is admissible in law.

Further, Hon'ble Supreme Court on **29th September 2021** passed the following order:

O R D E R

Leave granted.

The impugned order dated 15.10.2020 is a simplicitor order of rejection of bail. The appellant had already spent over two years in custody. We had issued notice on 12.01.2021 noticing the plea of the appellant that out of 1800 flats to be constructed, 1400 were constructed and possession handed over. However, one tower was not constructed and as a consequence thereof, 37 FIRs in Uttar Pradesh and 8 FIRs in Delhi arising from the tripartite agreement were filed. The role of the appellant was stated to be one of Guarantor and a Director of the Company. The charge sheet had been filed. The question was whether the custody of the appellant was still required considering that no further supplementary charge sheet had to be filed. The appellant filed the list of his assets in pursuance to that order.

Thereafter, proceedings have been held from time to time and we even impleaded the Delhi Government as a party.

On 26.02.2021, we granted interim bail to the appellant in respect of the proceedings qua the flats in question of the project i.e. AVJ Heights, Phase-III, Gautam Budh Nagar, Noida. We had noticed that the passport of the appellant already stood deposited. We called upon the appellant to file status report qua the steps he had taken to meet his obligations.

We may notice that since a Resolution Professional had been appointed, the said Resolution Professional was joined in in the present proceedings.

We have perused the comprehensive affidavit of compliance filed by the appellant. The various facets are as under.

Greater Noida Industrial Development Authority (GNIDA) claims certain amounts in relation to the project. It is the say of the appellant that out of the total amount towards lease rent of Rs.51.5 crores, the company had already deposited a sum of Rs.44 crores leaving a balance of Rs.7.5 crores. However, that amount is stated to



have escalated into a figure of over Rs.50 crores on account of compound interest etc. and that claim was rejected by the Resolution Professional but the Greater Noida Industrial Development Authority (GNIDA) has filed an appeal before the National Company Law Tribunal (NCLT) which is pending consideration. Thus, that aspect has to be determined in those proceedings.

The appellant has also stated that he is exploring the possibility of an OTS settlement with the various Banks from which loan has been availed off even though his status is of a suspended Director of AVJ Developers India Private Ltd. In the meantime, the appellant interacted with the Resolution Professional to allow him to register the company as a MSME under the Micro, Small and Medium Enterprises Development Act, 2006 (MSME Act, 2006) and the same was approved by the Committee of Creditors (COC) in the 10th meeting by a 74.3 per cent votes in favour and the company has since been registered as an MSME on 03.07.2021 and would thus, be entitled to certain benefits. According to India Infoline Finance Ltd.(IIFL-applicant), this aspect has been assailed before the National Company Law Tribunal (NCLT).

In the Committee of Creditors' 11th and 12th meeting, a new Resolution Plan was allowed to be submitted by the appellant who gave in his expression of interest and in the 13th meeting of Committee of Creditors gave the approval to the appellant to be the Provisional Resolution applicant with 68.95 per cent votes in favour of the same by the home buyers. In fact, he is the only resolution applicant and has now submitted a draft Resolution Plan for consideration of the Resolution Professional for settlement of all disputes with financial creditors, registration of units sold and selling of unsold units in a draft plan on how to finance the construction of the remaining portion of the 11th tower.

The dispute with the IIFL has some other ramifications as undisputedly three loans were availed off by the Company but according to the IIFL, there is a fourth loan of Rs.85 crores which is seriously disputed by the appellant. That aspect is being resolved in appropriate legal proceedings.

We have also perused the additional affidavit filed by the Resolution Professional.

We have only noticed the aforesaid issues to record that there is progress in seeking to resolve the issues of the home buyers in which the home buyers have a participation and appear to be approving number of acts which the appellant has taken. The Resolution Professional is performing its role.

In view of the aforesaid and taking into consideration the different forums which will have to go into the issues put forth before us, we find it is not possible to resolve all the issues here in the present proceedings which really arise only out of the grant of interim bail vide an order dated 26.02.2021.



We are, thus, of the view that the present appeal can be disposed of by making the interim bail order dated 26.02.2021 absolute subject to the condition that the appellant will continue to abide by the undertaking/assurances given to this Court in the various proceedings and will continue to cooperate with the investigation in respect of the FIRs registered against him and on other terms and conditions as may be specified by the trial Court.

The appeal accordingly stands disposed of.

7. It is noteworthy that in the aforesaid order of the Hon'ble Supreme Court dated 06.05.2021, it is stated that the Petitioner can follow the course of action as is admissible in law. Further, in the order dated 29.09.2021, the Hon'ble Supreme Court has stated that it is not possible for it to resolve all the issues in the present proceedings which really arise only out of the grant of interim bail and that the issues put forth will have to be gone into by the different forums; and that the Appellant has been registered as an MSME on 03.07.2021 which has been assailed by IIFL before the NCLT.
8. The legal issue which needs to be discussed here is **Whether SRA is ineligible to submit the resolution plan as Applicant/RP has obtained an MSME certificate post CIRP?** The next question which is pertinent to be answered is **Whether COC was aware of the legal position before approving the resolution plan?**
9. It has been submitted by the Applicant/RP that the resolution for approval of resolution plan by the resolution applicant (SRA) was approved by financial creditors in class by 100% voting share. Accordingly, the members of the COC voted in favour of the resolution plan by Vinay Jain with a voting share of **72.661%**. Further, it has been submitted by the RP that the resolution plan was approved by COC in the 14th meeting held on **11.10.2021** and e-voting on the resolution plan was concluded on **16.10.2021**.
10. Before the date of approval of resolution plan by COC, on **31.05.2021** and **12.06.2021**, Mr Vinay Jain (SRA) requested the Applicant/RP to register the Corporate Debtor under the MSME Act. Applicant/RP placed the abovementioned emails before the COC in the 10th COC meeting and also requested the CoC to decide whether to go for MSME registration or not. After detailed deliberation over the said agenda, the said agenda was

placed for e-voting, wherein by **74.300%**, the CoC instructed the RP to apply for MSME registration of the Corporate Debtor.



ANALYSIS AND FINDINGS

11. Ld. Counsel Mr. Rajeev Mangla appeared on behalf of the Applicant in IA-**4827/2021** has relied upon the judgement of another co-ordinate Bench NCLT (Bench-II) in the matter of **M/s. Hi-Tech Resource Management Limited Vs. M/s. Overnite Express Limited in CP(IB)-2240(ND)/2019** to plead that the MSME certificate obtained by the Ex-Promoter post the initiation of CIRP is not valid for the purpose of approving the Resolution Plan and he relies upon Para-23 of the judgement which is extracted below:

“In the sequel to the above-mentioned discussion and findings, in a nutshell, we conclude that neither the Promoters/Ex-Directors nor the RP/COC are empowered under the IBC 2016 to obtain an MSME Certificate post-commencement of CIRP with the sole purpose of opening or enabling a back door entry to the defaulting promoters, who are otherwise barred under Section 29A of IBC, 2016 to submit the EOI/Resolution Plan.”

Clearly, the Hon’ble Coordinate Bench’s objective behind this ruling is to prevent the backdoor entry to the defaulting promoters who are otherwise barred under Section 29A of the IBC. The section 29A of the IBC **“Persons not eligible to be resolution Applicant”** lays down a list of persons who shall not be eligible to submit a resolution plan, if such person is covered under any of the following clauses of Section 29A. The present case involves the issue of obtaining MSME Certificate post CIRP. The SRA herein is the suspended director whose resolution plan was approved by the COC. The main contention of the Applicants/objector is that the SRA having obtained the MSME certificate post CIRP is disqualified for submission of resolution plan. The relevant statutory provision in this regard is Section 240A r/w Sec 29A of IBC, 2016 which is extracted below:

“Section 240A: Application of this Code to micro, small and medium enterprises.



240A. (1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process or pre-packaged insolvency resolution process of any micro, small and medium enterprises.

(2) Subject to sub-section (1), the Central Government may, in the public interest, by notification, direct that any of the provisions of this Code shall—

(a) not apply to micro, small and medium enterprises; or

(b) apply to micro, small and medium enterprises, with such modifications as may be specified in the notification...

..”

The opening words of Section 240A carves out the exception that Sec 29A(c) and 29A(h) shall not be applicable to the resolution applicant in respect of corporate insolvency resolution process or pre-packaged insolvency resolution process of any micro, small and medium enterprises. It is pertinent to note here that CD was not an MSME when the CIRP order was passed i.e. on **21.10.2019**. It is only after the email sent by suspended director/SRA Mr. Vinay Jain to Applicant/RP wherein Mr. Vinay Jain requested the Applicant RP to register the CD as a MSME. Thereafter, Applicant/RP, prior to the approval of plan by COC, moved an agenda before COC to decide whether to go for MSME registration or not. COC approved this agenda by 74.33%, hence, CD got the status of MSME. The question here is **Whether the exception of 29A(c) and 29A(h) is applicable to the CD in the facts and circumstances of this case as CD got MSME status after it was put into CIRP, and just a few months before the approval of resolution plan by COC.**

12. To answer this question rely upon the judgement of the Chennai bench of the National Company Law Appellate Tribunal(NCLAT) **In re Hari Babu Thota Comp. App. (AT) (CH) (Ins.) No. 110 of 2023** wherein it was held that an application for Micro, Small and Medium Enterprises (MSME) certificate made after the commencement of the Corporate Insolvency Resolution Process (CIRP) is not valid. Relevant part of the order is extracted below:

“In the instant case, the Resolution Applicant registered as an MSME only after the initiation of CIRP. This Tribunal in the case of ‘Digamber Anand Rao Pingle’ Vs. ‘Shrikant Madanlal Zawar &



Ors.’ Comp. App (AT) (Ins) no. 43-43A/2021, wherein the Promoter of the ‘Corporate Debtor’ had filed an Appeal against the ‘Liquidation Order’ passed by the ‘Adjudicating Authority’ claiming that the ‘Corporate Debtor’ was an MSME and that he could file a Resolution Plan, but this Tribunal observed that as the Application for MSME certificate was made after the commencement of CIRP, such unauthorized Application cannot be considered and cannot tide over ineligibility under Section 29-A. The ratio of this matter is squarely applicable to the facts of this case and the matters of eligibility under Section 29-A as observed by the Hon’ble Supreme Court in a catena of Judgements, cannot be undermined. “

13. Another judgement upon which we seek reliance is the judgement in the case of **S. Irudaya Nathan vs. G.V. Ravikumar 2021 SCCOnline NCLAT 636 (para 21)** which is quoted below:

*“ It is projected on the side of the Respondent/Liquidator that the ‘Suspended Directors’ had obtained an MSME Certificate dated 03.10.2020 in an illegal and clandestine fashion, which is void ab initio and deserves to be ignored. In fact, the ‘Directors’/‘Promoters’ has no authority to sign the application during the period of liquidation and though the knowledge of the liquidator and their action to perjury. To put it precisely, the ‘Tribunal’ in its order had pointed out that obtaining ‘MSME’ Registration Certificate without the involvement of the ‘Liquidator’ was held to be illegal and abuse of law. In this regard, the Respondent/Liquidator has adverted to the decision of this ‘Tribunal’ in **Md. Yavar Dala v. S. Kavitha Surana dated 09.12.2020** wherein this ‘Tribunal’ had dismissed the case by stating that obtaining the MSME Certificate was an illegal one and the said decision is squarely applicable to the facts of the present case before this ‘Tribunal.*

The point upon which we seek reliance in the above mentioned judgement of S. Irudaya (*supra*) is not the obtaining of MSME by suspended directors without approval of Liquidator but the fact of obtaining MSME post liquidation process. In present case, it is not the liquidation rather it is at the stage of approval of resolution plan. In the facts of present case it is on the request of the suspended director that the Applicant/RP moved the agenda in COC for registration of CD as MSME. It is a settled law that what cannot be done directly, it cannot be done indirectly as well.



- 14.** Obtaining the MSME certificate by Applicant/RP in this case is directly benefitting the suspended director/SRA as he became eligible by virtue of Sec 29A(c) and 29A(h) is not acceptable. The exemption/ exception of 29A(c) and 29A(h) is given to MSME for the reason of CD being MSME. Special provisions have been laid down by the legislature with respect to MSME. If the CD is not an MSME while it was admitted into CIRP, then afterwards it cannot be turned into one, the provisions specifically laid down for MSMEs will not be applicable to such companies. The intention of the Legislature as we understand is to promote an MSME Company in default however not a Company in default to become an MSME to benefit out of the special provision. If we allow such kind of indulgence as in this case, then it will become a practice for many of the CDs/promoters to request the RP to apply for MSME just before the conclusion of the CIRP process so that they can become eligible under Section 29A to submit the resolution plan which clearly will be an abuse of process of law. Also, it may be pertinent to mention that the issue of obtaining of MSME certificate post CIRP was deliberated before CoC in its 10th meeting. Clearly, the Applicant as well as the CoC ignored the law and relevant statutory provisions. Hence the CoC's approval will not cure the legal infirmity. The plan is not in conformity with the law.
- 15.** Hence, for the aforesaid reasons, we are inclined to reject the application for approval of the Resolution Plan in so far as the Resolution Plan that has been submitted by the suspended director.
- 16.** It is a home buyers matter. Instead of putting the company into liquidation on the rejection of the plan, we deem it appropriate to direct the CoC to consider the various options for Insolvency Resolution of this real estate Company. CoC may also consider using the Reverse CIRP as has been ordered by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 926 of 2019 titled as Flat Buyers Association Winter Hills - 77, Gurgaon Vs. Umang Realtech Pvt. Ltd through IRP & Ors. dated 04.02.2020 by which the Hon'ble NCLAT directed the promoter of the Corporate Debtor to cooperate with the IRP and disburse amount from outside as lender (Financial Creditor) to ensure that the project is completed within the time frame given by it. Further, the RP may also take up the matter of getting



done the registration of the flats/apartments in favour of the allottees in the completed 10 towers in accordance with law. In fact this will be more in consonance with the direction of the Hon'ble Supreme Court calling upon the Ex promoter to co-operate with the execution of the housing project. It will be a win-win situation for all.

- 17.** As far as the 7 other IAs that are reserved along with the IA for the approval of resolution plan, this Adjudicating Authority passed a detailed order dated 11.10.2023 citing the prayers, contentions of the various Applicants. Order dated 11.10.2023 is extracted below:

ORDER

IA-3245/2021

1. The prayer in this application is as follows:

“a.) Direct the Respondent/ Resolution Professional to disclose/ provide all the necessary details and documents forming basis for admission of claims and consequently declare the illegal admission of claim by Resolution

Professional/ RP as null and void. Accordingly, direct for increase of representation / Share of Applicant / IIFL in CoC;

b.) Pass any other reliefs as this Hon’ble Tribunal deems fit and proper in the facts and circumstances of the instant case.”

2. Ld. Counsel Mr. Abhirup Dasgupta appearing for the IIFL in this application, which is objection to the Plan stated that the SRA having obtained an MSME certificate after initiation of the CIRP should be disqualified.

IA-4594/2021

1. The prayer in this application is as follows:

“a) To allow the present Application;

b) To declare Respondent No. 2 ineligible to be Resolution Applicant.

c) To direct the Resolution Professional to take steps as per undertaking given by the Respondent No.2.

d) To pass any other Order(s), which this Hon’ble Tribunal deems fit, in the aforesaid facts and circumstance of the case, in favour of the Applicant, against the Respondent No. 1 and 2.”

2. Ld. Counsel Mr. Amrender Kumar Singh appearing in this application which is objection to the Plan and stated that he also supported the contention of the Ld. Counsel Mr. Abhirup Dasgupta for the IIFL.

IA-5586/2021

1. The prayer in this application is as follows:

“a. reject the MSME certificate obtained by the Resolution Professional for the Corporate Debtor during the corporate insolvency resolution process; and

b. consequently, declare the Resolution Applicant ineligible to submit a Resolution Plan in terms of Section 29A(c) and (g) of the Code; and

c. pass any other orders as this Hon'ble Adjudicating Authority deems fit."

2. Ld. Counsel Ms. Ankita Bajpai appearing in this application representing the group of 26 Homebuyers stated that she also supported the contention of the Ld. Counsel Mr. Abhirup Dasgupta for the IIFL and Ld. Counsel Mr. Amrender Kumar Singh regarding the ineligibility of the SRA. However, in law, they are not entitled to object to the plan because the majority of the Homebuyers have already approved the Plan. Ld. Counsel only pleads that their sole concern is that a plan that is opposed to the law should not be approved.

IA-4827/2021

1. The prayer in this application is as follows:

i. To direct the respondent to provide the basis of the claim admitted in list dated 12.06.2021, then to put the claim amount as "Zero" in list of creditors dated 12.07.2021 & then admission of claim amount of Rs. 14,24,033/- out of Rs. 80,92,000/-, post 12th CoC meeting.

ii. To direct the respondent and/or Resolution Applicant to get the registry done of the flat no. C-1204 allotted to the applicant, considering the no dues certificate issued by the CD.

iii. To direct the IBBJ, to undertake the inspection of the respondent to review the process of collating the claim and to review the process of making eligible u/s 29A, to Mr. Vinay Jain, the member of the suspended BoD to submit the resolution plan for the CD, who had done the fraud with the creditors by selling one unit to the multiple buyers.

iv. Pass such other orders/directions as this Hon'ble Bench may deem fit and proper in the facts and circumstances of the case."

2. Ld. Counsel Mr. Rajeev Mangla appeared on behalf of the Applicant. This application is filed by a sole Homebuyer. Instead of arguing the relief sought for in this IA, he supports the argument of Ld. Counsel Mr. Abhirup Dasgupta for the IIFL placing reliance on the decision of the coordinate bench of NCLT i.e. Bench-2, NCLT, New Delhi in the matter of **"M/s. Hi-Tech Resource Management Limited Vs. M/s. Overnite Express**



Limited” in CP(IB)-2240(ND)/2019 to plead that the MSME certificate obtained by the Ex-Promoter post the initiation of CIRP is not valid for the purpose of approving the Resolution Plan and he relies upon Para-23 of the judgement which is extracted below:

“In the sequel to the above-mentioned discussion and findings, in a nutshell, we conclude that neither the Promoters/Ex-Directors nor the RP/COC are empowered under the IBC 2016 to obtain an MSME Certificate post-commencement of CIRP with the sole purpose of opening or enabling a back door entry to the defaulting promoters, who are otherwise barred under Section 29A of IBC, 2016 to submit the EOI/Resolution Plan.”

IA-4523/2021, IA-5461/2021

1. The prayer in the IA-4523/2021 is as follows:

“(i) Appropriate strictures be passed/directions be issued to the RP/Respondent, including, but not limited to, for:

- a. Properly conducting the COC meetings strictly in accordance with the provisions of the Code;*
- b. Properly recording the minutes of the COC meetings;*
- c. Re-evaluating the EOIs received as well as the eligibility of the Applicant as a prospective resolution applicant.*

(ii) Mr. Vinay Jain, the promoter and suspended director of the Corporate Debtor be disqualified from submitted the resolution plan for the Corporate Debtor;

(iii) Such other just and necessary orders may be passed as this Hon’ble Tribunal may deem fit and proper in the interest of justice and equity.”

2. The prayer in the IA-5461/2021 is as follows:

“(i) The Resolution Plan submitted by Mr. Vinay Jain, the promoter and suspended director of the Corporate Debtor, be rejected as being illegal in accordance with the provisions of section 30 of the Code;



(ii) In the interim and pending disposal of this Application and IA-4253/2021, stay be put on the approval of the Resolution Plan submitted by the Suspended Director;
(iii) Necessary strictures be passed against the RP, the Authorised Representative (Mr. Anurag Nirbhaya) as well as AAA Insolvency for professional misconduct while conducting the CIRP of the Corporate Debtor;
(iv) Such other just and necessary orders may be passed as this Hon'ble Tribunal may deem fit and proper in the interest of justice and equity."

3. These applications have been filed by the AVJ Heights Apartment Owners Association which is currently representing around 600 Homebuyers out of the total of around 1800 Homebuyers in the case. Ld. Counsel Mr. Shashank Agarwal for the Applicant supported the plea taken by Ld. Counsel Mr. Abhirup Dasgupta for the IIFL in the matter. However, in law, they are not entitled to object to the plan because the majority of the Homebuyers have already approved the Plan. Ld. Counsel only pleads that his sole concern is that the plan is opposed to the law and it should not be approved. Though he cannot stand out as he is a minority of the group of Homebuyers who have already approved the Plan. However, he submits that he is only on the legal plea that the SRA is ineligible as having submitted the MSME certificate after initiation of CIRP in violation of the Code.

IA-6135/2022

1. This application has been filed by the Ld. Counsel Mr. U.N. Singh for the GNIDA opposing the plan and the prayer is extracted below:

"a. Reject the Resolution Plan put up for its approval in IA. No. 5385/2021; and
b. Direct the Resolution Professional to serve a copy of application bearing C.A. No. 5385/2021 for approval of Resolution Plan upon the Applicant/ Objector; and
c. Pass any such other order/direction which it may deem fit in the interest of justice."



2. Ld. Counsel Mr. U.N. Singh for the GNIDA stated that he supports the stand taken by Mr. Abhirup Dasgupta for the IIFL supra.

3. Ld. Counsel Mr. Ambuj Tiwari appeared through VC for the SRA and stated that he has filed one appeal before the Hon'ble NCLAT on MSME issue, however, there is no order of stay.

4. In all the above IAs, order is reserved.

IA-5385/2021

This IA is for approval of the Resolution Plan.

Arguments Heard. Order Reserved.

18. Therefore, all those prayers concerning the rejection of the Resolution plan being submitted by the SRA who is ineligible to submit the plan are hereby ALLOWED to the extent of ineligibility of SRA and the Resolution Plan is directed to be sent back to COC for reconsideration in accordance to the provision of law.
19. Other than abovementioned applications, there are 20 applications pending which are listed on **05.12.2023** mentioned in Order dated 11.10.2023. Learned Counsels for those applications are hereby directed to take note of the fact that Resolution Plan has been sent back to COC for reconsideration, therefore, whichever application is connected or related to approval of resolution plan may kindly be relooked into and pursued with in accordance with law, if necessary.

ORDER

20. Accordingly, we order as follows:

- i. **IA- 5385/2021** for the Approval of Resolution Plan is hereby **REJECTED**; the matter is sent back to the CoC for consideration of resolution of the Corporate Debtor by inviting plans afresh or by embarking upon a Reverse Corporate Insolvency Process or by any other legally permissible process. Further, the RP may also take up the matter of getting the registration of the flats/apartments done in favour of the allottees in the completed 10 towers in accordance with law.



- ii. Prayer '**b**' in **IA 4594/2021** is **ALLOWED**;
- iii. Prayers '**a**' and '**b**' in **IA 5586/2021** are **ALLOWED**;
- iv. Mr. Rajiv Mangla on behalf of the sole homebuyer in **IA 4827/2021** did not press his prayers rather supports the argument on the of ineligibility of SRA. In as much as this contention is concerned, it has been answered; **IA-4827/2021** is **disposed of** accordingly;
- v. Prayer '**ii**' in **IA -4523/2021** and Prayer '**i**' in **IA- 5461/2021** is **ALLOWED**;
- vi. Prayer '**a**' in **IA-6135/2022** which is the rejection of the Resolution Plan is answered as above on the ground of ineligibility of SRA to submit the plan;
- vii. The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- viii. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Copy of this Order be sent to IBBI for its record.

Sd/-
(RAMALINGAM SUDHAKAR)
PRESIDENT

Sd/-
(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)