

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

**COMPANY APPEAL (AT) (INSOLVENCY) NO. 554 of 2021**

**(Arising out of the Order dated 01<sup>st</sup> June, 2021 passed by the Learned Adjudicating Authority (National Company Law Tribunal, New Delhi, Principal Bench), in CA – 2083(PB)/2019 in IB-934(PB)/2018)**

**IN THE MATTER OF:**

**1. Paramvir Singh Tiwana**

S/o. S.S. Tiwana,  
R/o.-SCO-53, I I  
1<sup>st</sup> Floor, Sector – 105,  
Mohali.

**...Appellant No. 1**

**2. Real Estate Ventures**

Through its Partner Gurmeet Singh  
SCO 6, 2<sup>nd</sup> Floor,  
Sector – 28,  
Mohali.

**...Appellant No. 2**

**3. Jatin Mohan Seth**

Family Next Real Estate Pvt. Ltd.,  
Sco, 341-342, 2<sup>nd</sup> Floor,  
Next to Axis Bank,  
Sector – 35B,  
Chandigarh.

**...Appellant No. 3**

**4. Anuj Dua**

S/o. Sh. Nand Lal Dua,  
SCO 20,  
MS Envalve, Old Kalka, Ambala Highway,  
Dhakoli, Zirakhpur,  
Mohali, Punjab.

**...Appellant No. 4**

**5. Vishal Dhiman,**

S/o. Sh. Surender Kumar,  
R/o. H-714, Sector 10,  
Panchkula.

**...Appellant No. 5**

**6. MJ Estates Wealth Maximisers**

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

Through its Sole Proprietor  
Jaswinder Singh Walia  
R/o Kothi No. 69, Phase No. 9,  
Mohali.

...Appellant No. 6

**Versus**

**1. Puma Realtors Pvt. Ltd.**

Through its Resolution Professional  
Pawan Kumar Garg,  
C-4, 1<sup>st</sup> Floor, Malviya Nagar,  
Delhi – 110017.

...Respondent No. 1

**2. One City Infrastructure Pvt. Ltd.**

Resolution Applicant  
8-D, Hansalaya 15,  
Barakhamba Road,  
New Delhi – 110001.

...Respondent No. 2

**Present**

**For Appellants:** Mr. Bilal Ali & Mr. Adarsh Kumar Gupta,  
Advocates.

**For Respondents:** Mr. Krishnendu Datta, Sr. Advocate with Mr.  
Adhish Sharma, Mr. Nitin Pandey, Ms. Varsha  
Himat Singh & Mr. Akash Kattar, Advocates for  
R-2.

Mr. Virendar Ganda, Sr. Advocate with Mr.  
Vivek Sinha, Mr. Vivek Malik & Ms. Akanksha,  
Advocates for Axis Finance.

Mr. Abhijeet Sinha, Mr. Kushank Sindhu, Ms.  
Gazal Ghai & Mr. Anmol Singh, Advocates for  
Erstwhile Resolution Professional.

Ms. Akanksha Mathur & Ms. Sreemantini  
Mukherjee, Advocates.

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

**WITH**

**COMPANY APPEAL (AT) (INSOLVENCY) NO. 564 of 2021**

**(Arising out of the Order dated 01<sup>st</sup> June, 2021 passed by the Learned Adjudicating Authority (National Company Law Tribunal, New Delhi, Principal Bench), in CA – 2083(PB)/2019 in IB-934(PB)/2018)**

**IN THE MATTER OF:**

**1. Mr. Vivek Joshi**

S/o. Late Sh. Arun Joshi,  
R/o. 2393C, SCL Society,  
Sector – 70, Mohali,  
Punjab – 160071.

**...Appellant No. 1**

**2. Mrs. Sakshi Joshi**

W/o Mr. Vivek Joshi,  
R/o. 2393C, SCL Society,  
Sector – 70, Mohali,  
Punjab – 160071.

**...Appellant No. 2**

**3. Mr. Inderpreet Singh Chadha**

S/o. Sh. Dewinder Singh Chadha,  
R/o. H. No. 3012,  
Urban State,  
Phase II, Patiala,  
Punjab – 147002.

**...Appellant No. 3**

**4. Mr. Baljit Singh**

S/o. Sh. Arjan Singh,  
R/o. Friends Enclave,  
Ferozpur Road Zira,  
Tehsil Zira, Distt. Ferozpur,  
Punjab – 160071.

**...Appellant No. 4**

**5. Ms. Kamaljot Brar**

D/o. Late Sh. Kishan Singh Shahi,  
R/o. House No. 659,  
Super Cooperative  
Complex 48 A,  
Chandigarh – 160071.

**...Appellant No. 5**

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

**6. Mr. Jaspreet Singh Brar**

S/o. Sh. Ranwant Singh Brar,  
R/o. House No. 659,  
Super Cooperative,  
Complex 48 A,  
Chandigarh – 160071.

**...Appellant No. 6**

**7. Mrs. Shelly Bhasin**

W/o. Mr. Tarun Bhasin,  
R/o. H. No. B1-601,  
Chloris Mathura Road,  
16/3 Mile Stone, Sector – 19,  
Faridabad – 121002,  
Haryana

**...Appellant No. 7**

**8. Mr. Tarun Bhasin**

S/o. Mr. Ved Prakash Bhasin,  
R/o. H. No. B1-601,  
Chloris Mathura Road,  
16/3 Mile Stone, Sector – 19,  
Faridabad – 121002,  
Haryana

**...Appellant No. 8**

**9. Mrs. Aparna Bhardwaj**

W/o. Mr. Rajeet Bharwaj,  
R/o. H. No. 1701,  
Sector – 4, Panchkula,  
Haryana – 134112.

**...Appellant No. 9**

**10. Mr. Rajeet Bhardwaj**

S/o. Late Sh. Inder Jeet Bharwaj  
R/o. H. No. 1701,  
Sector – 4, Panchkula,  
Haryana – 134112.

**...Appellant No. 10**

**11. Mr. J. L. Bagri**

S/o. Late Sh. Hira Lal,  
R/o. H. No. 1029 A,  
Sector – 16,  
Panchkula – 160071.

**...Appellant No. 11**

**12. Mrs. Bimla Bagri**

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

W/o. Mr. J. L. Bagri  
R/o. H. No. 1029 A,  
Sector – 16,  
Panchkula – 160071.

**...Appellant No. 12**

**13. Mr. Sudhir Kumar Upadhyaya**  
S/o. Sh. Ved Prakash Upadhyaya  
R/o. 1573, Pushpap Complex,  
Sector – 49B,  
Chandigarh – 160047,  
(Through Ved Prakash Upadhyaya)

**...Appellant No. 13**

**14. Mr. Sanchay Harneja**  
S/o. Sh. Hardeep Singh Harneja,  
R/o. H. No. 158, Phase 4,  
Mohali – 160059.

**...Appellant No. 14**

**15. Mr. Ranjan Kumar Singh**  
S/o. of Late Sh. Prof. JM Singh,  
R/o. Flat No. 502, Tower L 3,  
The Views, Emaar,  
Sector – 105, Mohali,  
Punjab – 140307.

**...Appellant No. 15**

**16. Mr. Pankaj Goyal**  
S/o. Late Sh. Prem Kumar Goyal  
R/o. House No. 1114, Sector – 44B,  
Chandigarh – 160071.  
(Through Mrs. Santosh Rani)

**...Appellant No. 16**

**Versus**

**1. Shri Pawan Kumar Garg**  
IBBI/IPA-001/IP-P00608/2017-18/110069  
Resolution Professional  
M/s. Puma Realtors Private Limited  
C – 4, 1<sup>st</sup> Floor,  
Malviya Nagar, South Delhi,  
New Delhi – 110017.  
Email: [ca.pawangarg@gmail.com](mailto:ca.pawangarg@gmail.com)

**...Respondent No. 1**

**2. M/s. APM Infrastructure Private Limited**  
(Lead Member of Resolution Applicant Consortium)

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

107, Transport Centre, Punjabi Bagh,  
Rohtak Road, Delhi-110035  
Email: [cs@agarwalpackers.com](mailto:cs@agarwalpackers.com)

...Respondent No. 2

**3. M/s. One City Infrastructure Pvt. Ltd.**  
(Member of Resolution Applicant Consortium)  
8-D, Hansalaya 15,  
Barakhamba Road,  
New Delhi – 110001.  
Email: [ncltonegroup@gmail.com](mailto:ncltonegroup@gmail.com)

...Respondent No. 3

### **Present**

**For Appellants:** Mr. Gautam Singhal, Advocate.

**For Respondents:** Mr. Krishnendu Datta, Sr. Advocate with Mr. Adhish Sharma, Mr. Nitin Pandey, Ms. Varsha Himat Singh & Mr. Akash Kattar, Advocates for R-2 & R-3.

Mr. Virendar Ganda, Sr. Advocate with Mr. Vivek Sinha, Mr. Vivek Malik & Ms. Akanksha, Advocates for Axis Finance.

Mr. Abhijeet Sinha, Mr. Kushank Sindhu, Ms. Gazal Ghai & Mr. Anmol Singh, Advocates for Erstwhile Resolution Professional.

Ms. Akanksha Mathur & Ms. Sreemantini Mukherjee, Advocates.

### **WITH**

**COMPANY APPEAL (AT) (INSOLVENCY) NO. 664 of 2021**

**(Arising out of the Order dated 01<sup>st</sup> June, 2021 passed by the Learned Adjudicating Authority (National Company Law Tribunal, New Delhi, Principal Bench), in CA – 2083(PB)/2019 in IB-934(PB)/2018)**

### **IN THE MATTER OF:**

**1. Akila Constructions Pvt. Ltd.**  
Through its Proprietor

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

Mr. Jasvir Singh,  
190, Basement  
Sector 40-A,  
Chandigarh.

**...Appellant No. 1**

**2. S. Sony & Co. Pvt. Ltd.**

Through Director Mr. Anil Kumar Soni  
R/o. Anupama Building,  
2<sup>nd</sup> Floor, G-4, Hauz Khas,  
New Delhi.

**...Appellant No. 2**

**Versus**

**1. Puma Realtors Pvt. Ltd.**

Through its Resolution Professional  
Pawan Kumar Garg,  
C-4, 1<sup>st</sup> Floor, Malviya Nagar,  
Delhi – 110017.

**...Respondent No. 1**

**2. One City Infrastructure Pvt. Ltd.**

8-D, Hansalaya 15,  
Barakhamba Road,  
New Delhi – 110001.

**...Respondent No. 2**

**Present**

**For Appellants: Ms. Pallavi Singh, Advocate.**

**For Respondents: Mr. Krishnendu Datta, Sr. Advocate with Mr. Adhish Sharma, Mr. Nitin Pandey, Ms. Varsha Himat Singh & Mr. Akash Kattar, Advocates for R-2.**

**Mr. Virendar Ganda, Sr. Advocate with Mr. Vivek Sinha, Mr. Vivek Malik & Ms. Akanksha, Advocates for Axis Finance.**

**Mr. Abhijeet Sinha, Mr. Kushank Sindhu, Ms. Gazal Ghai & Mr. Anmol Singh, Advocates for Erstwhile Resolution Professional.**

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

**WITH**

**I.A. No. 1706 of 2021**

**In**

**COMPANY APPEAL (AT) (INSOLVENCY) NO. 645 of 2021**

**(Arising out of the Order dated 01<sup>st</sup> June, 2021 passed by the Learned Adjudicating Authority (National Company Law Tribunal, New Delhi, Principal Bench), in CA – 2083(PB)/2019 in IB-934(PB)/2018)**

**IN THE MATTER OF:**

**Larsen & Toubro Limited**

L&T Construction

Through its Authorised Signatory

International Trade Tower

Block – E, 14<sup>th</sup> Floor,

Nehru Palace,

New Delhi – 110019.

**...Appellant**

**Versus**

**1. Puma Realtors Pvt. Ltd.**

Through its Resolution Professional

Pawan Kumar Garg,

Having its Registered Office: C-4, 1<sup>st</sup> Floor,

Malviya Nagar,

Delhi – 110017.

Also At: 25A, J-Pocket,

Sheikh Sarai – II,

New Delhi – 110017

Email: [pumarealtors.pawan@gmail.com](mailto:pumarealtors.pawan@gmail.com)

**...Respondent No. 1**

**2. One City Infrastructure Pvt. Ltd.**

Through its Director

Having its Registered Office at: 8-D, Hansalaya 15,

Barakhamba Road,

New Delhi – 110001.

**...Respondent No. 2**

**3. APM Infrastructure Private Limited**

Through its Director

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

Having its Registered Office at: 107, Transport  
Centre, Punjabi Bagh,  
Rohtak Road,  
New Delhi-110035

...Respondent No. 3

**Present**

**For Appellant: Mr. Anand Shankar Jha & Ms. Meenakshi S. Devgan, Advocates.**

**For Respondents: Mr. Krishnendu Datta, Sr. Advocate with Mr. Adhish Sharma, Mr. Nitin Pandey, Ms. Varsha Himat Singh & Mr. Akash Kattar, Advocates for R-2 & R-3.**

**Mr. Virendar Ganda, Sr. Advocate with Mr. Vivek Sinha, Mr. Vivek Malik & Ms. Akanksha, Advocates for Axis Finance.**

**Mr. Abhijeet Sinha, Mr. Kushank Sindhu, Ms. Gazal Ghai & Mr. Anmol Singh, Advocates for Erstwhile Resolution Professional.**

**WITH**

**I.A. No. 2150 of 2021**

**In**

**COMPANY APPEAL (AT) (INSOLVENCY) NO. 804 of 2021**

**(Arising out of the Order dated 01<sup>st</sup> June, 2021 passed by the Learned Adjudicating Authority (National Company Law Tribunal, New Delhi, Principal Bench), in CA – 2083(PB)/2019 in IB-934(PB)/2018)**

**IN THE MATTER OF:**

**Greater Mohali Area Development Authority  
PUDA Bhawan,  
Sector 62,  
SAS Nagar, Mohali,  
Punjab 160062**

...Appellant

**Versus**

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

**1. Puma Realtors Pvt. Ltd.**

GBK – 01 – 002, One Rise,  
Sector 98, Mohali,  
SAS Nagar,  
Punjab 140308.

...Respondent No. 1

**2. Pawan Kumar Garg**

Resolution Professional of Puma Realtors  
25-A, J-Pocket, Sheikh Sarai – II.  
New Delhi – 110017.

...Respondent No. 2

**Present**

**For Appellant:**

**Ms. Anusha Nagarajan & Ms. Akanksha Bhola,  
Advocates.**

**For Respondents:**

**Mr. Krishnendu Datta, Sr. Advocate with Mr.  
Adhish Sharma, Mr. Nitin Pandey, Ms. Varsha  
Himat Singh & Mr. Akash Kattar, Advocates for  
R-1.**

**Mr. Virendar Ganda, Sr. Advocate with Mr.  
Vivek Sinha, Mr. Vivek Malik & Ms. Akanksha,  
Advocates for Axis Finance.**

**Mr. Abhijeet Sinha, Mr. Kushank Sindhu, Ms.  
Gazal Ghai & Mr. Anmol Singh, Advocates for  
Erstwhile Resolution Professional.**

**WITH**

**COMPANY APPEAL (AT) (INSOLVENCY) NO. 269 of 2022**

**(Arising out of the Order dated 01<sup>st</sup> June, 2021 passed by the Learned  
Adjudicating Authority (National Company Law Tribunal, New Delhi,  
Principal Bench), in CA – 2083(PB)/2019 in IB-934(PB)/2018)**

**IN THE MATTER OF:**

**1. Amarjeet Kaur**

W/o. Balkar Singh  
R/o. H. No. 632,

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

PEB Society,  
Near Forest Complex,  
Sector 68, SAS Nagar,  
Mohali, Punjab – 160062.

**...Appellant No. 1**

**2. Balkar Singh**

S/o. Saghar Singh  
R/o. H No. 632,  
PEB Society,  
Near Forest Complex,  
Sector 68, SAS Nagar,  
Mohali, Punjab – 160062.

**...Appellant No. 2**

**3. Sharanjeet Kaur Grewal**

W/o. Gurpreet Singh Grewal  
R/o. H No. 673B, Block – C,  
PSEB Complex, Sector 68,  
SAS Nagar,  
Mohali, Punjab – 160062.

**...Appellant No. 3**

**4. Gurpreet Singh Grewal**

S/o. Darshan Singh  
R/o. H No. 673B, Block – C,  
PSEB Complex, Sector 68,  
SAS Nagar,  
Mohali, Punjab – 160062.

**...Appellant No. 4**

**5. Paramjeet Kaur**

W/o. Gurusharan Singh,  
R/o. H No. 380, 2<sup>nd</sup> Floor,  
Sector 78, SAS Nagar,  
Mohali, Punjab – 160062.

**...Appellant No. 5**

**6. Gurusharan Singh**

S/o. Sardar Nahar Singh  
R/o. H No. 380, 2<sup>nd</sup> Floor,  
Sector 78, SAS Nagar,  
Mohali, Punjab – 160062.

**...Appellant No. 6**

**Versus**

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

**1. Puma Realtors Pvt. Ltd.**

Through Resolution Professional  
Pawan Kumar Garg,  
C-4, 1<sup>st</sup> Floor, Malviya Nagar,  
Delhi – 110017.

**...Respondent No. 1**

**2. One City Infrastructure Pvt. Ltd.**

8-D, Hansalaya 15,  
Barakhamba Road,  
New Delhi – 110001.

**...Respondent No. 2**

**Present**

**For Appellants:**

**For Respondents:**

**Mr. Krishnendu Datta, Sr. Advocate with Mr. Adhish Sharma, Mr. Nitin Pandey, Ms. Varsha Himat Singh & Mr. Akash Kattar, Advocates for R-2.**

**Mr. Abhijeet Sinha, Mr. Kushank Sindhu, Ms. Gazal Ghai & Mr. Anmol Singh, Advocates for Erstwhile Resolution Professional.**

**J U D G E M E N T**

**[Per; Shreesha Merla, Member (T)]**

1. Company Appeal (AT) Insolvency No. 544/2021 is preferred by 6 Appellants who are the ‘Operational Creditors’ stating to have rendered services to the ‘Corporate Debtor’; Company Appeal (AT) Insolvency No. 564/2021 is filed by 16 Appellants who are a group of Allottees of the Project IREO Hub; Company Appeal (AT) Insolvency No. 644/2021 is preferred by M/s. Akila Constructions Private Limited and M/s. S. Sony & Co. Pvt Ltd, who are the ‘Operational Creditors’ of the ‘Corporate Debtor’; Company Appeal (AT) Insolvency No. 645/2021 is filed by M/s. Larsen & Toubro Limited (‘L&T Ltd’);

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

Company Appeal (AT) Insolvency No. 804/2021 is preferred by Greater Mohali Area Development Authority, ('GMADA') and Company Appeal (AT) Insolvency No.269/2022 is preferred by 6 Appellants who are Allottees, challenging the same Impugned Order dated 01.06.2021 passed by the Learned Adjudicating Authority (National Company Law Tribunal, New Delhi Principal Bench) in CA 2083(PB)/2019 in (IB) 934(PB)/2018, whereby the Learned Adjudicating Authority has approved the Resolution Plan. Since all these Appeals are arising out of a common Impugned Order, they are being disposed of by this common Order.

2. By the Impugned Order dated 01.06.2021, the Learned Adjudicating Authority, while exercising its power under Section 31 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as 'The Code') has allowed I.A.2083(PB)/2019 with the following directions:

*"1. It is hereby approved the Resolution plan as submitted by consortium of APM Infrastructure Private Limited & Once City Infrastructure Private Limited, which shall be binding on the Resolution Applicant, Corporate Debtor its Employees, Members, Creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution plan;*

*2. The moratorium as imposed by the Adjudicating Authority in pursuance to the Admission of the case on 17.10.2018 shall cease to have effect from the date of issue of this order;*

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

*3. The Resolution Professional is directed to forward all the records relating to the conduct of the CIRP and Resolution plan to the IBBI and also to all the concerned Authorities;*

*4. The Resolution Professional, as well as other Aggrieved Parties, whose Applications are pending on the file of this Adjudicating Authority, are at liberty to prosecute their respective litigations. And this order is passed without prejudice to the rights of the Parties in the pending Interim Applications.*

*5. No order as to costs.”*

*(Emphasis Supplied)*

**3. Submissions of the Learned Counsel appearing on behalf of the**

**Appellants:**

**Company Appeal (AT) (Insolvency) No.554/2021:**

- It is submitted by the Appellants in this Appeal that they are a group of Small-Scale Firms who supplied services to the ‘Corporate Debtor’ which is a Real Estate Company. On 17.10.2018, Corporate Insolvency Resolution Process (‘CIRP’) was initiated by the Adjudicating Authority and Mr. Pawan Kumar Garg was appointed as the IRP. On 22.10.2018, in accordance with the Public Announcement, the Appellants filed their respective ‘Claims’ in their capacity of ‘Operational Creditors’. It is averred that during the fag end of the CIRP, the Appellants came to know that the Resolution Plan of ‘One City Infrastructure Private Limited’ has been approved by the Committee of Creditors, (‘CoC’) and an Application for approval of Resolution Plan i.e. I.A.2083/2019 was filed by the

Resolution Professional ('RP'). It is submitted that the Appellants had filed I.A.1208/2020 on 13.02.2020, raising objections to the Plan on the ground that it was non-compliant to Section 30 (2) of the Code as it is only providing 25% of the admitted claim amount, whereas GMDA was not even considered as a Creditor of the 'Corporate Debtor' under Sections 5(20) & 5(21) read with Sections 3(11) & 3(21) of the Code, today is being provided with 100% of the amount appearing in the Books of the 'Corporate Debtor'.

- Learned Counsel submitted that the Appellants raised several objections against the Resolution Plan, as approved by the CoC, being discriminatory towards 'Operational Creditors', but I.A.1208/2020 & I.A.3824/2020 filed by them was never decided. Though the Adjudicating Authority had reserved I.A.1208/2020 and I.A.3824/2020 for Orders on 19.01.2021, the same was not pronounced till 30.05.2021. On 31.05.2021 since the Learned Judicial Member was superannuating, the matter was opened for re-hearing, but on 01.06.2021, the newly appointed Hon'ble Acting President went ahead and heard I.A.2083/2019, without hearing the Application I.A.1208/2020 & I.A.3824/2020 where Orders were already reserved. Further, on 14.06.2021, the Impugned Order was suddenly uploaded on the website of NCLT under the signature of Member who had already demitted his office on 01.06.2021. It is submitted that the objections of the Appellants were not heard after reopening the matter. It is submitted that

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

the Acting President was appointed for only two days i.e., 31.05.2021 & 01.06.2021 and the matter was listed before the newly appointed President in violation of the Principles of Natural Justice, without granting a liberty of re-hearing in the IAs, which were reserved for Orders.

- The Impugned Order was passed in violation of the statutory mandate of NCLT Rules, 2016 as it was passed in breach of Rule 152 of the NCLT Rules, 2016 which provides for authorisation to any other Member for pronouncement in case that particular Member ceases to be a Member of NCLT. Even the procedure as prescribed under Rule 151 & 152 of Part V of the Rules was not followed. Impugned Order should have been pronounced on the same day or reserved for Orders to be pronounced by some other Member duly authorised under the Rules 151 & 152.
- The Resolution Plan was approved under Section 31(1) without disposing of the objections of the Appellants raised under Section 30(2) of the Code.
- The Resolution Plan was conditionally approved and therefore the Impugned Order dated 01.06.2021 is non-est and is passed without the jurisdiction. Conditionally approved Plan cannot be said to have a binding effect on the parties.
- GMADA cannot be treated as a Creditor of the 'Corporate Debtor' as they did not prefer any claim and only those 'Claims' which are verified by the RP under Regulation 13 of the CIRP Regulations, 2016 and have been put before the CoC under Regulation 17 as part of list of Creditors, will be

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

eligible to be included in the Information Memorandum under Regulation 36(d) of the CIRP Regulations, 2016 and can be used by the Resolution Applicant for the purpose of distributing money under the Resolution Plan. In the absence of any claim made by GMADA, in complete violation of the Regulations, GMADA was given 100% payment under the Plan.

- GMADA's charge against the alleged hypothecation of the land of the 'Corporate Debtor' has not been registered with RoC which is a mandatory requirement under Section 77 of the Companies Act, 2013, and therefore GMAD could not have been treated as a 'Secured Operational Creditor'.
- Other statutory authorities have also been discriminated as the Resolution Plan provides for only 25% due amount to Income Tax Authorities, whereas GMDA was provided with 100%.
- Learned Counsel placed reliance on the Judgements of this Tribunal in '*M/s. Ergomaxx (India) Pvt. Ltd.*' Vs. '*The Registrar of NCLT Bengaluru & Ors.*'<sup>1</sup>, in support of his contention that any Order passed by the Learned Adjudicating Authority in violation of the NCLT Rules, 2016, would be considered as a nullity. Learned Counsel also placed reliance on the Judgement of the Hon'ble Supreme Court in '*Ghanshyam Mishra & Sons Pvt. Ltd.*' Vs. '*Edelweiss Asset Reconstruction Company Limited & Ors.*'<sup>2</sup> in support of his argument that the Adjudicating Authority was

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<sup>1</sup> Comp. App. (AT) (CH) (ins.) No. 133/2021

<sup>2</sup> (2021) 9 SCC 657

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

wrong in observing that even after approval of the Resolution Plan under Section 31(1) of the Code, the Application of the Appellants can be decided by the Adjudicating Authority.

**Company Appeal (AT) (Insolvency) No.564/2021:**

- Learned Counsel for the Appellant submitted that the Appellants have filed Application CA – 2866(PB)/2019, raising objections to the approval of the Resolution Plan and the Adjudicating Authority vide Order dated 20.12.2019 issued Notice to the first Respondent for appearance on 07.01.2020, on which date, R-1 undertook to file a Reply and serve the copy during the course of the day. Though they had failed to supply the copy of the Reply, but the Resolution Applicant filed a Reply to the objections even though he was not impleaded as a party to the said Application. This proves the conniving stance of R-1 in getting the defective Resolution Plan of the Resolution Applicant approved by the Adjudicating Authority.
- On 28.01.2020, the matter was adjourned to 13.02.2020 and thereafter no further hearing was fixed. Vide Order dated 28.07.2020, the Adjudicating Authority directed the listing of all pending Applications with respect to the approval and objections to the Resolution Plan for 20.08.2020 and the parties were directed to file their Short Written Submissions. On 28.08.2020 after hearing the submissions in part, the matter was adjourned repeatedly till 20.01.2021 and thereafter to 17.02.2021. The matter was

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

reserved for Orders along with I.A.2259(PB)/2019 and I.A. No.2349/2020.

No Orders were passed on their Applications though arguments were heard on 16.02.2021. Vide Order dated 31.05.2021 the Applications were reopened for hearing for 01.06.2021 along with I.A.2349/2020, 2259/2019 & 4109/2020. But on the same day on 31.05.2021, the Hon'ble Acting President retired and in his place, the new Acting President took charge for a period of one day i.e., 01.06.2021. It is submitted that on 01.06.2021 in his capacity as Hon'ble Acting President passed the Impugned Order, allowing I.A.2083(PB)/2019 and approving the Resolution Plan and observed that all the Interim Applications which are pending are at liberty to prosecute the respective litigations without prejudice to the rights of the parties. It is submitted that I.A.2866(PB)/2019 filed by the Appellant, objecting to the approval of the Resolution Plan, which was fixed for hearing on 01.06.2021, was never heard or pronounced. The Resolution Plan is in contravention of the provisions of law as there is discrimination in admission of claims of the Appellants without awarding interest.

- The Resolution Plan arbitrarily fixed the base price of IREO Hub old Allottees @ Rs.67,000 per square yard without regarding the current market rate at which the latest allotments were made to the new Allottees. Both Valuation Reports valued units at Rs.30,000 per square yard to Rs.38,000 per square yard, in spite of this, the Resolution Plan cancelling the current Builder Buyer Agreement ('BBA') set almost double base rates

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

without providing proper amenities. All new allotments valued the units at Rs.35,000 per square yard to Rs.38,000 per square yard to double the base rate be set in the Resolution Plan for the same class of 'Financial Creditors'.

- Clause 18.3 of the Resolution Plan states that 'Dissenting Financial Creditors' will be treated at par with the 'Assenting Financial Creditors' and shall be paid at par with them. Clause 18.4 is in contradiction to Clause 18.3 in so far as it pertains to payment terms of the dissenting IREO Hub Allottees. It is submitted that apart from other irregularities in the Resolution Plan with respect to IREO Hub Allottees, the RP did not circulate the Resolution Plan to Members of the CoC but sent an email to the CoC dated 28.08.2019 requiring the Allottees that if anyone of them wants the copy of the Plan, they need to submit a confidential undertaking. Without submitting the Plan to the CoC Members, he has requested the Members to vote on the same.
- It is vehemently argued that without deciding their pending Applications the Adjudicating Authority ought not to have approved the 'Resolution Plan' 'confidentially'.

**Company Appeal (AT) (Insolvency) No.664/2021:**

- It is submitted that the Impugned Order is in contradiction to the ratio of the Hon'ble Supreme Court in '*Ghanshyam Mishra & Sons Pvt. Ltd.*' (*Supra*), as it is conditional in nature whereas in '*Ghanshyam Mishra &*

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

*Sons Pvt. Ltd.*’ (*Supra*), the Hon’ble Apex Court has categorically given a finding that ‘*as such, when the Resolution Plan is approved by the Learned Adjudicating Authority, the claim, which are not part of the Resolution Plan, shall stand extinguished and the proceedings related thereto shall stand terminated*’. Whereas, the Impugned Order while allowing the Resolution Plan, has held that the RP as well as other aggrieved parties, whose Applications are pending on the file of this Adjudicating Authority, are at liberty to prosecute the respective litigations.

- Applications of the present Appellants objecting to the Resolution Plan was heard at length and reserved for Orders in January 2021, but subsequently released on 30.05.2021 thereafter on 01.06.2021, the Adjudicating Authority has passed the Impugned Order.
- The Plan creates an artificial and arbitrary classification between the same class of Creditors. The Plan contemplates 100% payment to GMADA who has never preferred any claim and other ‘Operational Creditors’ are only getting 25% of their claim amounts.
- To assess the liability of GMADA, the RP had reverted to the Books of Accounts of the ‘Corporate Debtor’ and no such help or assistance has been responded by the RP, other Creditors though the RP had received the relevant documents from these Appellants, refused to consider their pending claims and kept them in the category of ‘unverified’. This Tribunal in ‘*The Assistant Commissioner of Central Tax*’ Vs. ‘*Mr. V. Shanker RP*

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

*for M/s. Sri Ramanjaneya Ispat Private Limited & Ors.*<sup>3</sup>, has held that even Statutory Bodies are bound to file claims as provided in the Rules and Regulations of the Code and merely sending letters cannot be considered as compliance of the Code.

**Company Appeal (AT) (Insolvency) No.645/2021:**

- This Appeal is filed by L&T Ltd., an ‘Operational Creditor’ aggrieved by the approval of the Resolution Plan during pendency of their Applications, seeking for admission of the remainder claim amount of Rs.12,95,88,891/- in CA3457(PB)/2020. It is submitted that in para 12 of the Impugned Order dated 01.06.2011, it is observed that approval of the Resolution Plan is without prejudice to the rights of the Appellant whose Applications are pending. The entire scheme of the Code would be rendered meaningless if a Resolution Plan is allowed without even considering the objections. It is submitted that in this case Orders were reserved on 15.02.2021 and 19.01.2021 and instead of deciding these Applications, the Adjudicating Authority went ahead and confirmed the Resolution Plan. This is contrary to the law settled by the Hon’ble Supreme Court in ‘*Ghanshyam Mishra & Sons Pvt. Ltd.*’ (*Supra*).
- The Resolution Plan has created a classification among the same class of ‘Operational Creditors’ discriminating between them which is also in

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<sup>3</sup> Comp. App. (AT) (Ins.) No. 56/2021

violation of the Judgement of this Tribunal in '*Sushil Ansal*' Vs. '*Ashok Tripathi & Ors.*<sup>4</sup>, and therefore the Impugned Order passed by the Adjudicating Authority is erroneous.

**Company Appeal (AT) (Insolvency) No. 804/2021:**

- This Appeal is preferred by GMDA on the ground that the Appellant intimated the RP on 26.04.2019, subsequent to the letter sent by RP on 18.03.2019, that an amount of Rs.15.93Cr./- was outstanding towards the EDC and License Fee due to the Appellant. But the RP did not respond to that letter, neither did he reject the Appellant's claim at any stage. On 19.12.2021, the RP right to the Appellant seeking to avail the benefit of the scheme notified by the State Government which allowed payment of outstanding Real Estate Dues, by Companies in default, in half yearly instalments. The Appellant responded on 30.12.2021, informing the RP of the schedule for repayment of the amount totaling upwards of Rs.19.27Cr./- while so on 02.07.2021, the RP informed the Appellant that a Resolution Plan for Puma Realtors Pvt. Ltd. has been approved on 01.06.2021 by the Adjudicating Authority, offering to pay Rs.13.71Cr./- as full and final settlement towards the dues.
- It is submitted that the claim of the Appellant comprises EDC and Licence Fee which is in the nature of Statutory Dues and cannot be rejected.

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<sup>4</sup> Comp. App. (AT) (Ins.) 452/2020

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

- It is also contended that the interest and penal interest forming part of the Appellant's claim is required to be paid as no provision under IBC allows for extinguishing the interest.
- It is submitted that there has been material regularity in the conduct of the RP and that the multiple communications sent by the Appellant were never placed before the CoC and seeks that the Appellant's claim be provided for in the approved Plan to its fullest extent.

**Company Appeal (AT) (Insolvency) No. 269/2022:**

- It is submitted that the Appellants being the 'Financial Creditor's/Allottees they were discriminated as they were left in the dark inasmuch as the basic sale price was never defined and refund of only 50% of the principal amount was allowed for in the Resolution Plan without interest and despite the fact that 33 Objection Petitions have been preferred against the Resolution Plan, the Impugned Order approving the Resolution Plan was passed without considering these Applications. The Hon'ble Supreme Court in '*Ghanshyam Mishra & Sons Pvt. Ltd.*' (*Supra*), has held that '*when the Resolution Plan is approved by the Adjudicating Authority, the claims which are not part of the Resolution Plan shall stand extinguished and proceedings related thereto shall stand terminated. Since the subject matter of the Petition are the proceedings, which relate to the 'Claims' of the Respondent, prior to the approval of the Plan, in the light of the view*

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

*taken by us, the same cannot be continued equally, the claims, which are not part of the Resolution Plan, shall extinguished’.*

- It is submitted that the Impugned Order is in contradiction to what was laid down by the Hon’ble Supreme Court in ‘*Ghanshyam Mishra & Sons Pvt. Ltd.*’ (*Supra*).

**4. Submissions of the Learned Counsel appearing on behalf of the erstwhile Resolution Professional and Chairman Monitoring Committee:**

**Company Appeal (AT) (Insolvency) No.554/2021:**

- It is submitted that the CoC Members approved the Resolution Plan by 100% voting majority on 05.09.2019 and the Adjudicating Authority has approved the Resolution Plan under Section 31 of the Code on 01.06.2021.
- The Appellants had approached the Hon’ble High Court of Delhi by way of a Writ Petition titled ‘*Paramvir Singh Tiwana*’ Vs. ‘*Union of India & Ors.*’<sup>5</sup>, on the same grounds as enumerated in the present Appeal, whereby the Hon’ble High Court of Delhi while dismissing the Appellant’s Petition granting them a liberty to approach the appropriate forum only on merits. Subsequently, this Appeal was filed by the Appellants again raising the grounds of *inter alia* procedural irregularities and natural justice. It is submitted that the Appellants have concealed that the High Court have given them opportunity to file an Appeal only on merits.

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<sup>5</sup> WP (C) 6377/2021

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

- Pendency of Applications cannot delay an approval of the Resolution Plan as it is the settled position of law that while approving the Resolution Plan, the power of Judicial Review of the Plan is only limited to Section 30 of the Code. In the instant case, the Adjudicating Authority observed that the Resolution Plan fulfilled all the requisite conditions as mandated under the Code and rules made thereafter.
- Commercial Wisdom of the CoC is non-justiciable, unless and until it is ultra vires to the provisions of the Code. It is submitted that the Appellants have also suppressed the status of the Cause List that was uploaded on the NCLT website on 01.06.2021 which had clearly reflected that the Resolution Plans stood approved in C.P.(IB)-934(PB)/2018 on 01.06.2021. Therefore, the Impugned Order does not suffer from any procedural irregularity.
- The Successful Resolution Applicant ('SRA') has already infused a sum of Rs.25Cr./- and the Plan is under implementation. In '*Pratap Technocrat Private Limited & Ors.*' Vs. '*Monitoring Committee of Reliance Infratech Ltd & Anr.*'<sup>6</sup>, it is held that the Tribunal does not have residual equity-based jurisdiction in Order to direct modifications of claims provided for in the Resolution Plan under '*Ebix Singapore Pvt. Ltd.*' Vs. '*Committee of Creditors of Educomp Solutions Ltd. & Anr.*'<sup>7</sup>, it is laid

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<sup>6</sup> 2021 SCC OnLine SC 569

<sup>7</sup> 2021 SCC OnLine SC 707

down that long delay for approval of the Resolution Plan, adversely effects the commercial assessment of the Plan.

**Company Appeal (AT) (Insolvency) No.564/2021:**

- CA2866 of 2019 was filed by the Homebuyers seeking interest to be filed at 18% p.a. as compensation under BBA; to amend Clause 18.4 in accordance with old BBA executed with IREO Hub Allottees. Additional objections were filed by the Appellants on 10.02.2020 wherein the Appellants have prayed for issuance of the request for Resolution Plan to a new Resolution Applicant M/s. Singla Builder Promoters whose Application CA193/2020 was subsequently dismissed vide Order dated 13.02.2020. I.A.4109/2020 was preferred praying for rejection of the Resolution Plan on the ground that it was contrary to the provisions of the Code.
- It is submitted that the Code does not provide for adjudication of contractual issue, thus changing any booking amount or Layout Plan could not have been directed by the Adjudicating Authority. The Resolution Plan has been approved by 100% voting majority in accordance with Section 25A(3A) of the Code.
- It is submitted that multiple meetings were convened to address the grievance of the rights of IREO Hub and it was only after discussions that the Resolution Plan was put to vote. The units between the years 2011 to 2014 were sold when the Real Estate Market were in a boom whereas the

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remaining units were sold three months prior to the initiation of CIRP when the Real Estate Market was facing downfall. Allottees to home allotments were made between the years 2011 to 2014, have been offered a compensation in the Resolution Plan ranging from 22% to 38% on the sale price on account of change in the Layout Plan. The Appellants form part of the 'Financial Creditors' whose vote has been taken up in favour of the Resolution Plan and as such could not be objected to.

- The Adjudicating Authority was not vested with equity-based jurisdiction and the 'Corporate Debtor' should get a clean slate as laid down by the Hon'ble Supreme Court in a catena of Judgements including '*Committee of Creditors of Essar Steel Ltd.*' Vs. '*Satish Kumar Gupta & Ors.*'<sup>8</sup>.

**Company Appeal (AT) (Insolvency) No.664/2021:**

- It is submitted that I.A.3233/2020 was filed praying for fresh CIRP along with rejection of the Resolution Plan on account of 'discrimination' between the same class of Creditors.
- I.A.5257/2020 was preferred by the Appellants praying for admission of the revised claim filed on 03.12.2019 after the completion of the CIRP. It is submitted that the RP could not have considered the revised claim of the second Appellant as the Resolution Plan was approved by the CoC in its Commercial Wisdom. Moreover, while filing highly inflated claims, they

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<sup>8</sup> (2019) 2 SCC 1

have suppressed the fact that the Flats were allotted to them by the 'Corporate Debtor'.

- I.A. 1553/2020 was preferred by the RP against the Appellants, seeking the reversal of the effect of Preferential Transactions, under Section 43, 45 & 66 of the Code, wherein the second Appellant/M/s. S. Sony & Company Private Limited is also a party. Thereafter an amendment Application was also filed by the RP to implead the first Appellant in the said Application.
- I.A.5591/2020 was filed by the RP against the first Appellant seeking to handover the keys of approximately 83 Flats. It is submitted that these Applications clearly reflected that the Appellants and did not approach the Adjudicating Authority with clean hands.
- It is further argued that the Appellants are guilty of suppression as the first Appellant has submitted a claim of Rs.11,26,21,353/- on 01.11.2018 wherein reliance was placed on invoices of 2016 & 2018, but the documents filed did not appear in the records of the 'Corporate Debtor'. The first Appellant was allotted a unit CCB-07-003 in the Project IREO Rise for a consideration of Rs.52,71,196/- vide BBA dated 04.12.2017. A supplementary Agreement was executed wherein the allotted units were changed to JC-001-004 and was subsequently transferred in favour of Mr. Tej Fotedar. First Appellant was also given the keys of approximately 83 Flats in the said Project. After the initiation of CIRP, the RP had requested the first Appellant to handover the keys of the Flats, but they have failed to

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

cooperate. The second Appellant had initially filed a claim as an ‘Operational Creditor’ on 19.10.2018, despite having been allotted three Flats amounting to Rs.1.77Cr./-. Thereafter he filed a revised claim on 03.12.2019, after the approval of the Resolution Plan by the CoC, as a ‘Financial Creditor’ in a class of Creditors.

- In the instant case, GMADA is a Statutory Authority and a certain portion of land being hypothecated by the ‘Corporate Debtor’ in favour of GMADA, thus making it a Secured Creditor. CoC can approve a differential distribution of funds to a certain class of Creditors which may result in a consequent deduction of amounts payable to other ‘Financial and Operational Creditors’. There are no preferential irregularities in the CIRP.

**Company Appeal (AT) (Insolvency) No.645/2021:**

- It is submitted that CA627/2020 was preferred by the Appellants seeking directions against the RP to pass a recent Order regarding the verification of outstanding claim amounting to Rs.12,95,88,891/-. Vide Order dated 13.02.2020, the Adjudicating Authority disposing of CA 627/2020 directed the RP to either admit the claim of the Appellant or give reasons for not accepting the balance part of the claim. Pursuant to the Order dated 13.02.2020, the RP vide email dated 19.02.2020 had explained that the claim of the Appellant was admitted on the basis of the records available and the rest of the amounts were not admissible.

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

- I.A.3457/2020 was filed by the Appellant after 1 year of the approval of the Resolution Plan and after 6 months of the email of the RP informing the Appellant of the explanation *Qua* its claims. The said Application was filed seeking to set aside the email dated 19.02.2020 and to allow the reminder claim of Rs.12,95,88,891/-.
- I.A.3475/2020 was preferred by the Appellant praying to set aside the Resolution Plan of APM Infrastructure Private Limited and One City Infrastructure Private Limited alternatively to pay the Appellants 100% of the admitted claim amount in parity with GMADA. The Appellant had deliberately ignored the fact that the ‘Corporate Debtor’ was in insolvency and the objection of the Resolution Plan was to revive it. GMADA being a Statutory Authority and Secured Creditor does not fall in the same class of Creditors as that of the Appellant and hence the approved Resolution Plan is not discriminatory.
- The pendency of the Applications cannot prevent approval of the Resolution Plan as the Code provides for stringent timelines.

**Company Appeal (AT) (Insolvency) No.804/2021:**

- It is submitted that 100% of the amount due to the Appellant/GMADA as per the Books of the Accounts of the ‘Corporate Debtor’ has been admitted in contrast to other ‘Operational Creditors’ who received only 25% of their admitted claim. Amounts claimed as due by the Appellant on different dates is enumerated as follows:

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

| <b>Date</b> | <b>Particulars</b>    | <b>Amount Due (Rs.)</b>                              |
|-------------|-----------------------|--|
| 17.10.2018  | Admission to CIRP     | 14.82 Cr.  |
| 13.03.2019  | Default notice to R1  | 10.02 Cr. (excluding interest)                       |
| 26.04.2019  | Letter to R2          | 15.93 Cr.  |
| 27.08.2021  | Letter to R2          | On 01.06.2021: 19.79 Cr.<br>On 27.08.2021: 20.20 Cr. |
| 31.08.2021  | Amount accepted by R2 | 13.71 Cr.  |

- If the claims of the Appellant are considered as prayed for, and its dues continue to increase even during the Moratorium and after preparation of Information Memorandum, no Resolution Plan would have been filed for approval before the CoC. The Code has an overriding effect with other statutes and once the provisions of the Resolution Plan is approved by the CoC, it binds all stakeholders including the Government Authorities such as the Appellants. The Commercial Wisdom of the CoC is not justiciable and the amount provided for the GMADA is as per the Books of the Account of the 'Corporate Debtor' though they did not choose to prefer any 'Claim'.

**Company Appeal (AT) (Insolvency) No.269/2022:**

- It is submitted that the Resolution Plan was approved by 100% voting majority and this Appeal has been preferred by a group of 6 'Financial Creditors' in a class i.e., Real Estate Allottees. It is argued that the first and second Appellant have not filed their claims with the RP till the approval of the Resolution Plan by the Adjudicating Authority and in fact had filed

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

their claims with the SRA only after the approval of the Resolution Plan. It is settled position of law that while approving the Resolution Plan, the jurisdiction of the Adjudicating Authority is only limited to ensure compliance of Section 30 of the Code. The grievances raised by the Appellants pertains to the commercial aspect of the Plans and as such the CoC would have been the appropriate forum to raise these issues. It is submitted that the approval of the Resolution Plan is exclusively within the domain of the Commercial Wisdom of the CoC and the Tribunal had not vested with residual equity-base jurisdiction to direct modification of 'Claims' provided for in the Plan.

**5. Submissions of the Learned Sr. Counsel appearing on behalf of the Successful Resolution Applicant ('SRA'):**

- a) Since the submission of the Learned Sr. Counsel, Mr Dutta are common to all the issues raised in these Appeals, they are being dealt with comprehensively:
  - It is submitted that there is no infirmity in the proceedings before the Adjudicating Authority either legally or procedurally as the Adjudicating Authority was hearing the matter virtually and the Hon'ble Acting President was presiding from Bangalore and the Technical Member was presiding from New Delhi and after hearing the submissions of all the parties, the Adjudicating Authority had opined that they would be passing the approval of the Resolution Plan of 'One City Infrastructure Private

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

Limited’ & ‘APM Infrastructure Private Limited’. It is also submitted that the ‘status of the Cause List’ was uploaded on the very same date i.e., on 01.06.2021 regarding approval of the Resolution Plan.

- The Appellants in Company Appeal (AT) (Insolvency) No.544/2021 have concealed the Order dated 12.07.2021 passed by the Hon’ble Delhi High Court whereunder the Writ Petition preferred by these Appellants was withdrawn with a liberty given by the Hon’ble High Court to assail the Impugned Order before the appropriate forum on ‘merits’ and not on the grounds of natural justice.
- There is no discrimination between GMADA and other ‘Operational Creditors’ as the decision of the CoC is final and the claim of GMADA is in a different category as the completion of the entire Project depends on the support of GMADA in obtaining licences, approvals and permits. It is further submitted that the scope of scrutiny by the Adjudicating Authority is very limited and the contention of the Appellants to be treated at par with the ‘Operational Creditors’, is erroneous. The Judgement of ‘*Sushil Ansal*’ (*Supra*), relied upon by the Appellants is not applicable to the facts of this case as the decrees, which have been passed in the present matter have been passed in favour of the Homebuyers. The decree holder at a RERA decree in their favour in the cited matter and had given up their status as a Homebuyer, whereas, in the present case, such an issue did not arise.

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

- It is submitted that an upfront payment of Rs.25Cr./- was made by the SRA towards the unpaid CIRP Cost and towards amounts payable to ‘Operational and Financial Creditors’ against settlement of admitted claims. Additional amount of Rs.10.75Cr./- has been infused towards the construction cost in the interest of 700 Homebuyers. It is submitted that 167 Conveyance Deeds have been executed and 230 BBAs with different Homebuyers. Learned Counsel relied on the ratio of the Hon’ble Supreme Court in *‘Pratap Technocrat Private Limited’ (Supra)*, wherein the Hon’ble Apex Court has upheld the observation of the Adjudicating Authority that pending Applications will not come in the way of the approval of the Resolution Plan.

**6. Submissions of the Learned Sr. Counsel appearing on behalf of the Axis Finance Ltd.:**

- M/s. Axis Finance Ltd has been impleaded as Respondents vide Orders passed by this Tribunal on 22.10.2021 in I.A.1779/2021. Learned Sr. Counsel, Mr. Ganda submitted that the Appellants have been raising frivolous objections at the behest of one Singla Builders & Promoters (‘SBP’), which could be seen from the perusal of I.A.1208/2020 filed by Appellants 1, 3, 4 & 5 wherein it is prayed that the Resolution Plan of SBP may be considered. The Plan was approved on 23.08.2019 and Appellants 1, 3, 4 & 6 filed I.A.1208/2020 on 11.02.2020. Appellants 2 & 6 filed I.A.3824/2020 on 17.08.2020, raising the same objections raised in

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

I.A.1208/2020. Learn Sr. Counsel also referred to the Judgement of the Hon'ble Delhi High Court in '*Paramvir Singh Tiwana*' (*Supra*). It is submitted that the Appellant filed a Civil Appeal before the Hon'ble Supreme Court in '*Paramvir Singh Tiwana & Ors.*' Vs. '*Puma Realtors Pvt. Ltd. & Anr.*', which was listed on 22.10.2021 and the same was dismissed. It is submitted that the Plan was approved by voting percentage of 100% votes and approval of the Plan was kept pending from 23.08.2019 till 01.06.2021, owing to misconceived Applications filed by the Applicants. As it was long delayed, the Adjudicating Authority heard, I.A.2083/2019 on 01.06.2021 and has rightly passed the Order approving the Plan.

**Assessment:**

7. At the outset, we address to the contention of the Appellants that there were procedural irregularities and that the Impugned Order was passed in violation of the Principles of Natural Justice and further that their Applications were kept pending though they were reserved for Orders and the Application I.A.2083/2019 'approving the Resolution Plan' was allowed without passing Orders in the other IAs filed by all the Appellants herein. It is the case of the Appellants that though the Adjudicating Authority had reserved I.A.1208/2020, 3824/2020 & 1409/2020 and other Applications preferred by the Appellants in these Appeals, without

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<sup>9</sup> Civil Appeal No. 6234/2021

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

deciding on these IAs, the Adjudicating Authority had approved the Resolution Plan, conditionally which is against the principles laid down by the Hon'ble Supreme Court in '*Ghanshyam Mishra & Sons Pvt. Ltd.*' (*Supra*), that after approval of the Plan no claim of the Creditors or any change in the Resolution Plan would survive.

8. Admittedly, the CIRP was initiated on 17.10.2018, the Public Announcement was made on 23.10.2018, the Expression of Interest ('EoI') in 'Form-G' was published on 16.04.2019, but no response was received and another EoI was published on 28.05.2019 and 9 EoIs were received by the RP. On 08.06.2019, the list of legible Prospective Resolution Applicants was issued and the 9<sup>th</sup> CoC Meeting was convened on 23.08.2019, when the Resolution Plan was placed before the CoC. On 05.09.2019, the CoC Members approved the Resolution Plan by 100% voting majority. On 01.06.2021, the Adjudicating Authority approved the Resolution Plan under Section 31 of the Code.

9. Learned Counsel filed his Additional Written Submissions stating that the Impugned Order was uploaded only on 15.06.2021 when the Adjudicating Authority had Summer Vacations from 12.06.2021 and that the Hon'ble Acting President was appointed only on 31.05.2021 and 01.06.2021 and could not have possibly prepared the Order in a single day. The material on record evidences that the 'status of the Cause List' was uploaded on the NCLT website on 01.06.2021, indicating the approval of the 'Resolution Plan' the Hon'ble Acting President was conducting the proceedings virtually from Bangalore and the Technical Member

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

from New Delhi and therefore the pronouncement was made virtually and status of the Cause List was uploaded on the website on the very same day. The contention of the Learned Counsel that the Impugned Order was uploaded only on 15.06.2021 and therefore is a procedural irregularity is untenable as it is their own case that the Hon'ble Acting President was appointed only for a single day. It is not the case of the Appellant that the Cause List did not show I.A.2083/2019, on 01.06.2021. We find force in the contention of the Learned Sr. Counsel for the Respondent that the Adjudicating Authority had pronounced that the Application will be allowed and the Resolution Plan filed by the SRA was approved. It was clarified that a detailed Order would be passed during the course of the day. We find no legal or procedural irregularities in this pronouncement. At this juncture, we find it pertinent to reproduce the Order of the Hon'ble High Court of Delhi dated 12.07.2021, in '*Paramvir Singh Tiwana*' Vs. '*Union of India & Ors.*'<sup>10</sup> preferred by the Appellants in Company Appeal (AT) (Insolvency) No.554/2021:

**CM APPL. 20046-47/2021**

- “1. Exemptions allowed, subject to all just exceptions*
- 2. The notarized affidavit be filed within two weeks of the court resuming physical hearing.*
- 3. The applications stand disposed of.*

**W.P. (C) 6377/2021 & CM APPL. 20045/2021 (stay)**

- 4. The present petition has been filed assailing the order dated 01.06.2021 passed in company application being*

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<sup>10</sup> W.P. (C) 6377/2021

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

*Company Application No. 2083/2019 in Company Petition No. (IB)-934(PB)/2018 titled as “Paramjit Singh Saini Vs. Puma Realtors Private Limited, whereby the learned Tribunal has approved the resolution plan of respondent no. 4 company.*

*5. After arguing the matter vehemently for about an hour, learned counsel for the petitioners seeks leave to withdraw the present petition with liberty to assail the impugned order on merits before the appropriate appellate forum.*

*6. The petition is, accordingly, dismissed as withdrawn with liberty as prayed for.*

*7. It is made clear that grant of the aforesaid liberty to the Petitioner to approach the appropriate forum will not amount to any expression opinion by this Court.”*

*(Emphasis Supplied)*

**Civil Appeal No. 6234 of 2021**

*“Heard learned Counsel for the parties.*

*In light of the order passed by this Court in Civil Appeal No. 6127 of 2021 dated 8<sup>th</sup> October, 2021, the present Civil Appeal also stands dismissed.*

*Pending application(s), if any, shall stand disposed of.”*

**10.** From the aforementioned Order, it is clear that the matter was heard at length for an hour and that the Petitioners therein and the Appellants in Company Appeal (AT) (Insolvency) No.554/2021 here have sought to withdraw the Petition with a liberty to assail the Impugned Order ‘on merits’ before the appropriate forum and therefore the contention of the Appellants/Paramvir Singh Tiwana that there were procedural irregularities and Principles of Natural Justice have not been followed,

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

cannot be raised now at this appellate stage. Having first approached the Hon'ble Delhi High Court impugning the very same Order dated 01.06.2021, and on the same facts enumerated in this Appeal, and then having withdrawn with the liberty to assail the Order 'on merits', they cannot now raise the very same issue. Be that as it may, at the cost of repetition, the status of Cause List was uploaded on the website of the NCLT on the very same date i.e., on 01.06.2021 categorically stating that the Resolution Plan has been duly approved. Rule 150 of the NCLT Rules, 2016, stipulates that after hearing, the Tribunal shall make and pronounce an Order either at once or as soon as thereafter as may be practicable. In the instant case, the Order was pronounced as the Bench had allowed the Application and the Cause List states as such. For all the aforementioned reasons, i.e., the Order of the Hon'ble Delhi High Court dated 12.07.2021, the fact that the status of the Cause List was uploaded on 01.06.2021, we do not find it a fit case to hold that there were any procedural or legal irregularities.

**11.** The Hon'ble Supreme Court in a catena of Judgements has held that the Tribunal does not have residual equity based jurisdiction to direct modifications of claims provided for in the Resolution Plan once the Plan is approved. We place reliance on the Judgement of the Hon'ble Supreme Court in '*Pratap Technocrat Private Limited & Ors.*' Vs. '*Monitoring Committee of Reliance Infratech Ltd & Anr.*'<sup>11</sup>:

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<sup>11</sup> 2021 SCC OnLine SC 569

*“23. The third aspect relates to the order of NCLT in Doha Bank proceedings. The order of NCLT in the application which was moved by Doha Bank for the removal of certain financial creditors from the CoC, has no bearing on the status of the approval of the resolution plan for the reason that it had received a unanimous approval with the 100% voting share in the CoC. The exclusion of certain financial debts and hence, the exclusion of certain financial creditors from the CoC, pursuant to the order of NCLT in the Doha Bank proceedings, has no practical implication since the resolution plan continues to be approved with a 100% majority even after their exclusion.”*

.....

*“26. The resolution plan was approved by the CoC, in compliance with the provisions of IBC. The jurisdiction of the adjudicating authority under Section 31(1) is to determine whether the resolution plan, as approved by the CoC, complies with the requirements of Section 30(2). NCLT is within its jurisdiction in approving a resolution plan which accords with IBC. There is no equity-based jurisdiction with NCLT, under the provisions of IBC.”*

.....

*“30. The jurisdiction which has been conferred upon the adjudicating authority in regard to the approval of a resolution plan is statutorily structured by sub-section (1) of Section 31. The jurisdiction is limited to determining whether the requirements which are specified in sub-section (2) of Section 30 have been fulfilled. This is a jurisdiction which is statutorily-defined, recognised and conferred, and hence cannot be equated with a jurisdiction in equity, that operates independently of the provisions of the statute. The adjudicating authority as a body owing its existence to the statute, must abide by the nature and extent of its jurisdiction as defined in the statute itself.”*

.....

“47. These decisions have laid down that the jurisdiction of the adjudicating authority and the appellate authority cannot extend into entering upon merits of a business decision made by a requisite majority of the CoC in its commercial wisdom. Nor is there a residual equity based jurisdiction in the adjudicating authority or the appellate authority to interfere in this decision, so long as it is otherwise in conformity with the provisions of IBC and the Regulations under the enactment.”

*(Emphasis Supplied)*

12. In the aforementioned Judgement, the ratio laid down by the Hon’ble Apex Court is that once the Resolution Plan is approved, the Adjudicating Authority has a very limited jurisdiction except in determining whether the requirements which are specified in sub-Section (2) of Section 30 have been fulfilled or not and cannot interfere in the merits of the ‘Business Decision of the CoC’. The Hon’ble Supreme Court in **‘Bank of Baroda & Anr.’ Vs. ‘MBL Infrastructures Ltd. & Ors.’**<sup>12</sup>:

“62. Having held so, we would like to come to the last part of our order. Though the very resolution plan submitted by Respondent 3, being ineligible is not maintainable, much water has flown under the bridge. The requisite percentage of voting share has been achieved. We may also note that the percentage has been brought down from 75% to 66% by way of an amendment to Section 30(4) of the Code.

**63.** Secondly, majority of the creditors have given their approval to the resolution plan. The adjudicating authority has rightly noted that it was accordingly approved after taking into consideration, the techno-

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<sup>12</sup> (2022) 5 SCC 661

*economic report pertaining to the viability and feasibility of the plan. The plan is also put into operation since 18-4-2018, and as of now Respondent 1 is an on-going concern. Though, Respondent 11 has taken up the plea that its offer was conditional, it has got a very minor share which may not be sufficient to impact by adding it with that of the appellant and Respondent 7. Respondent 7 and Respondent 11 did not choose to challenge the order of the Appellate Tribunal.*

*64. We need to take note of the interest of over 23,000 shareholders and thousands of employees of Respondent 1. Now, about Rs 300 crores has also been approved by the shareholders to be raised by Respondent 1. It is stated that about Rs 63 crores has been infused into Respondent 1 to make it functional. There are many on-going projects of public importance undertaken by Respondent 1 in the nature of construction activities which are at different stages.*

*65. We remind ourselves of the ultimate object of the Code, which is to put the corporate debtor back on the rails. Incidentally, we also note that no prejudice would be caused to the dissenting creditors as their interests would otherwise be secured by the resolution plan itself, which permits them to get back the liquidation value of their respective credit limits. Thus, on the peculiar facts of the present case, we do not wish to disturb the resolution plan leading to the on-going operation of Respondent 1.”*

*(Emphasis Supplied)*

**13.** In this judgement, the Hon'ble Apex Court has observed that as the requisite percentage of the Voting Share has been achieved, majority of the Creditors have given their approval, and the Plan was also put into operation, and much water has flown under the bridge has categorically held that the ultimate objective of the Code is 'Maximisation of Assets in a time bound manner' is to

be kept in mind. We do not find any material irregularity in contravention of the Code in the Adjudicating Authority having approved the Plan and given liberty to the Appellants to prosecute litigation, and is therefore not a reason to set aside the approval of the Resolution Plan.

14. Now we address ourselves to the issue raised by the Appellant/‘Operational Creditors’ in these Appeals that there is discrimination between the class of Creditors and that GMADA was paid 100% of the amount in the Books of the ‘Corporate Debtor’, though they did not prefer any claim, while the Appellants were given only 25% of the claim amounts which is in violation of Section 30(2)(b) & (e) of the Code. The Hon’ble Supreme Court has laid down in *‘Committee of Creditors of Essar Steel Ltd.’ Vs. ‘Satish Kumar Gupta & Ors.*<sup>13</sup>:

*“64. Thus, what is left to the majority decision of the Committee of Creditors is the “feasibility and viability” of a resolution plan, which obviously takes into account all aspects of the plan, including the manner of distribution of funds among the various classes of creditors. As an example, take the case of a resolution plan which does not provide for payment of electricity dues. It is certainly open to the Committee of Creditors to suggest a modification to the prospective resolution applicant to the effect that such dues ought to be paid in full, so that the carrying on of the business of the corporate debtor does not become impossible for want of a most basic and essential element for the carrying on of such business, namely, electricity. This may, in turn, be accepted by the resolution applicant with a consequent modification as to distribution of funds, payment being provided to a certain type of operational*

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<sup>13</sup> (2020) 8 SCC 531

*creditor, namely, the electricity distribution company, out of upfront payment offered by the proposed resolution applicant which may also result in a consequent reduction of amounts payable to other financial and operational creditors. What is important is that it is the commercial wisdom of this majority of creditors which is to determine, through negotiation with the prospective resolution applicant, as to how and in what manner the corporate resolution process is to take place.”*

.....

*“85. Indeed, if an “equality for all” approach recognising the rights of different classes of creditors as part of an insolvency resolution process is adopted, secured financial creditors will, in many cases, be incentivised to vote for liquidation rather than resolution, as they would have better rights if the corporate debtor was to be liquidated rather than a resolution plan being approved. This would defeat the entire objective of the Code which is to first ensure that resolution of distressed assets takes place and only if the same is not possible should liquidation follow.”*

.....

*“88. By reading para 77 (of Swiss Ribbons [Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17] ) de hors the earlier paragraphs, the Appellate Tribunal has fallen into grave error. Para 76 clearly refers to the UNCITRAL Legislative Guide which makes it clear beyond any doubt that equitable treatment is only of similarly situated creditors. This being so, the observation in para 77 cannot be read to mean that financial and operational creditors must be paid the same amounts in any resolution plan before it can pass muster. On the contrary, para 77 itself makes it clear that there is a difference in payment of the debts of financial and operational creditors, operational creditors having to receive a minimum payment, being not less than liquidation value, which does not apply to financial creditors. The amended Regulation 38 set out*

*in para 77 again does not lead to the conclusion that financial and operational creditors, or secured and unsecured creditors, must be paid the same amounts, percentage wise, under the resolution plan before it can pass muster. Fair and equitable dealing of operational creditors' rights under the said regulation involves the resolution plan stating as to how it has dealt with the interests of operational creditors, which is not the same thing as saying that they must be paid the same amount of their debt proportionately. Also, the fact that the operational creditors are given priority in payment over all financial creditors does not lead to the conclusion that such payment must necessarily be the same recovery percentage as financial creditors. So long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and accept a resolution plan, which may involve differential payment to different classes of creditors, together with negotiating with a prospective resolution applicant for better or different terms which may also involve differences in distribution of amounts between different classes of creditors.”*

**15.** From the aforementioned Judgement, it is clear that so long as the provisions of the Code and the regulations have been met, it is the Commercial Wisdom of the requisite majority of the CoC which is to negotiate and accept the Resolution Plan, which may involve differential payments to different classes of Creditor, together with negotiating with a Prospective Resolution Applicant for better or different terms which may also involve differences in amounts of distribution between the different classes of Creditors. It is observed by the Hon'ble Apex Court that the equity principle cannot be stretched to treating unequal equally as they will destroy the very objective of the Code while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the CoC, the

limited Judicial Review available is to see that the CoC has taken into account the fact that the ‘Corporate Debtor needs to be kept going as a going concern during the Insolvency Resolution Process, that it needs to ‘maximise the value of its assets’ and the interest of all stakeholders’.

**16.** In the instant case, what has to be kept in mind is that the ‘Corporate Debtor’ is a Real Estate Company involved in construction of Housing and Commercial Units and the land on which the construction is to be completed belongs to GMADA. As the nature of the activity of the ‘Corporate Debtor’ is dependent on the land owned by GMADA, the commercial decision taken by the CoC to make a provision in the Resolution Plan with respect to the Statutory Dues owed to GMADA, cannot be faulted with, though GMADA has failed to make the requisite claim, as provided for under the Code, but has been in communication with the RP. Though we do not appreciate the act of GMADA not having filed their claim, the fact remains that the ‘Real Estate Project’ is being constructed on GMADA land and all approvals, permits and licences involves GMADA, which is a ‘Secured Creditor’. Further, the nature of business and the ground realities were kept in mind by the CoC before taking a commercial decision. In approval of the Resolution Plan, the CoC takes a business decision *‘based on ground realities, by a majority which binds all stakeholders including dissenting Creditors’*.

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

17. As regarding the grievances of the Homebuyers who are arrayed as 'Financial Creditors', it is relevant to see the voting percentage of the CoC, which has approved the Resolution Plan;

(a) Homebuyers 85.87% out of 100% (total voting 60.44%, 54.04% and 5.14% in dissent.)

(b) Banks 14.13%.

Having regard to the fact that a substantial majority of the Homebuyers have voted in favour of the Plan and the Project Hamlet 1 is 90% complete as on 01.06.2022, (as submitted by the Learned Sr. Counsel, Mr Datta appearing for the SRA) and Conveyance Deeds were executed and possession offered to 161 Homebuyers and compensation to be paid to 100 Homebuyers in the Group Housing Project and 50% of the Hamlet 2 Project having been completed with Builder Buyer Agreements ('BBA') having been executed for 238 Homebuyers and 25 BBAs having been executed in the SCO Hub, we are of the considered view that it would be futile and would go against the scope and spirit of the Code, if we set the clock back at this stage. Learned Counsel has also drawn the attention of the Bench to the payments having been infused/paid to the Creditors, keeping in view the progress of construction and the interest of 700 Homebuyers. It is submitted by the Learned Sr. Counsel representing Axis Bank that Axis Bank being a Secure Financial Creditor has claims of Rs.30,25,78,912/- together with interest and that the Plan was approved by 100% majority:

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

| <i>Nature of Payments</i>                   | <i>Cheque handed over &amp; cleared (in Rs.)</i> | <i>Cheques in hand (in Rs.)</i> |
|---|--|---------------------------------|
| <i>Operational Creditors</i>                | <i>91,45,526.00</i>                              | <i>2,11,14,604</i>              |
| <i>Ex-Employees</i>                         | <i>62,77,364.00</i>                              | <i>17,492</i>                   |
| <i>CIRP Cost</i>                            | <i>1,94,85,338.00</i>                            | <i>14,14,662</i>                |
| <i>Greater Mohali Development Authority</i> | <i>13,70,77,528.00</i>                           | <i>-</i>                        |
| <i>Axis Finance Ltd.</i>                    | <i>4,03,22,364.00</i>                            | <i>-</i>                        |

18. We are also conscious of the principle laid down by the Hon'ble Apex Court in a catena of Judgements that any delays in the approval of the Resolution Plan would adversely affect the commercial assessment of the Resolution Plan. The Hon'ble Supreme Court in '*K. Sashidhar*' Vs. '*Indian Overseas Bank & Anr.*'<sup>14</sup>, and '*Kalparaj Dharamshi & Anr.*' Vs. '*Kotak Investment Advisors Limited*'<sup>15</sup>, has clearly laid down that the Commercial Wisdom of the CoC is not justiciable and it is not open to the Adjudicating Authority or the Appellate Authority to take into consideration any factor other than those specified in Section 30(2) or Section 61(3) of the Code. Learned Counsel for the Appellant, Mr. Bilal Ali has strenuously contended that the Adjudicating Authority has approved the Resolution Plan in violation of Section 30(2) of the Code and this is in contravention of the ratio laid down by the Hon'ble Supreme Court in '*State Tax Officer (1)*' Vs. '*Rainbow Papers Limited*'<sup>16</sup>, wherein the Hon'ble Apex Court has held that the word '*May*' arising in Section 31(1) of the Code would read as '*Shall*' while construing Section 31(1) of the Code. The facts of '*State*

<sup>14</sup> (2019) 5 SCC 150

<sup>15</sup> (2021) 10 SCC 401

<sup>16</sup> Civil Appeal no. 1661/2020

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

**Tax Officer (I) (Supra)**, is distinguishable in the sense that dues therein pertain to Statutory Dues and the state being a ‘Secured Creditor’ under the GVAT Act, should be paid its dues. It was observed that the definition of the Secured Creditor in the Code does not exclude any Government or Governmental Authorities. The issue in the instant Company Appeal (AT) (Insolvency) No. 554/2021 is not related to ‘Statutory Dues’ or ‘Security Interest’ moreover we have observed that if there is any differential treatment in the ‘Operational Creditors’ dues (100% paid to GMADA/ a Secured Creditor) is solely based on the commercial decision of the CoC and any differential treatment between the class of Creditors, based on the nature of business involved, cannot be construed as ‘material irregularity’.

**19.** It was brought to our notice by the Learned Counsel Mr. Bilal Ali that this Tribunal has dealt with belated claims of Homebuyers in **‘Puneet Kaur’ Vs. ‘K.V. Developers Pvt. Ltd. & Anr.’**<sup>17</sup>, wherein the belated claims of the Homebuyers was directed to be added in the addendum. However, in that case the Resolution Plan was not approved by the Adjudicating Authority. In the instant case, the Resolution Plan is already implemented.

**20.** Keeping in view the peculiar facts of the instant case that the Resolution Plan was approved by the CoC way back in 2019 and the Adjudicating Authority has approved the Plan on 01.06.2021 after a period of two years and the Plan has already been implemented, we do not see it a fit case to set the clock back,

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<sup>17</sup> Comp. App. (AT) (Ins.) No. 390/2022

*Comp. App. (AT) (Ins.) Nos. 554, 564, 664/2021 & I.A. No. 1706/2021 in Comp. App. (AT) (Ins.) No. 645/2021 & I.A. No. 2150/2021 in Comp. App. (AT) (Ins.) No. 804/2021 with Comp. App. (AT) (Ins.) No. 269/2022*

specifically keeping in view the ratio of the Hon'ble Supreme Court in the aforenoted Judgements. It is hoped that the IBBI & the Government may take effective steps to make necessary amendments/frame Regulations to protect the class of 'Financial Creditors'/Homebuyers from imposition of any haircuts, and likewise take essential measures to safeguard the interest of 'Operational Creditors' in the 'Structure of the Resolution Plans'.

**21.** For all the foregoing reasons, these Appeals are dismissed accordingly. No order as to costs.

**22.** Pending IAs, if any, are closed.

**[Justice Anant Bijay Singh]**  
**Member (Judicial)**

**[Ms. Shreesha Merla]**  
**Member (Technical)**

**Principal Bench,  
New Delhi  
22<sup>nd</sup> December, 2022**

*himanshu*