NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.1474 of 2024

(Arising out of Order dated 24.07.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court-II) in IA Nos.3926, 3596 & 3588 of 2023, IA Nos.3025, 3325 & 3330 of 2020 in Company Petition No.(IB)-1248(PB)/2018)

IN THE MATTER OF:

Shomit Finance Ltd. ...Appellant

Versus

Devendra Singh, Resolution Professional
for Granite Gate Properties Pvt. Ltd. & Ors. ...Respondents

Present:

For Appellant	:	**Mr. Sunil Fernandes Sr. Advocate with Ms. Diksha Daddo, Mr. Pankaj Agarwal and Mr. Shashwat Srivastava and Ms. Lipsa Patnaik, Advocates.**
For Respondents	:	**Mr. Sumant Batra, Mr. Sanyam Saxena, Mr. Sahil Sethi, Ms. Nidhi Yadav, Mr. Shivam Sharma, Mr. Nubair Alvi and Mr. Sarthak Bhandari, Advocates for RP.** **Mr. Satvik Verma, Sr. Advocate with Mr. Shashwat Tripathi, Ms. Ridhima Verma and Ms. Madhu Ayachit, Advocates for R-2.** **Mr. Kunal Tandon Sr. Advocate Mr. Ravinder Singh, Mr. Raveesh Gupta and Mr. Ritvik Bhardwaj, Advocates for AR** **Mr. Abhijeet Sinha Sr. Advocate with Mr. Arijit Mazumdar and Ms. Akanksha Kaushik, Advocates for R-3.**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed challenging order dated 24.07.2024 passed by National Company Law Tribunal, New Delhi Bench (Court-II) in

IA No.3926 of 2023 and other connected IAs (six in numbers). The Appellant aggrieved by order of the Adjudicating Authority in the aforesaid IAs, has filed this Appeal praying for limited relief as sought in the Appeal, which we shall notice hereinafter. By the impugned order the Adjudicating Authority has permitted for withdrawal of IA No.3926 of 2023 as well as IA No.3325 of 2020 and IA No.3330 of 2020.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:

(i) The Corporate Debtor ("**CD**") was made allotment of Plot No.GH-005 in Sector-110, having an area of 1,64,120 square meters, for development of a Group Housing Project named Lotus Panache on the said land by Noida.

(ii) The CD approached the Appellant, which is registered Company for sale of undeveloped area of Plot measuring 2500 square meters with right to construct, promote, advertise and sell the shops located at upper ground floor and lower ground floor of the commercial block for consideration of Rs.32 crores. An Agreement to Sell dated 22.04.2016 was entered with the CD and the Appellant, where the Appellant was given exclusive full and free right to construct, promote, advertise, sell and market the shops located at upper ground floor and lower ground floor of the commercial complex for a consideration of Rs.32 crores. The CD also issued a Possession Letter in favour of the Appellant.

(iii) The CD entered into Deed of Settlement with M/s Lotus Panache Welfare Association and other parties for sale of shopping Arcade for total consideration of Rs.32 crores on 09.07.2018. A Term-Sheet of Construction was executed on 11.07.2018 in-between the CD, Appellant and Lotus Panache Flat Buyers Association, where it was agreed that Rs.32 crores consideration received from the Appellant, shall be used towards construction of Towers 1, 2, 14, 15, 16 and 29.

(iv) The Appellant commenced construction in the year 2017 and obtained certificate by Architect and made an Application as a Developer to the Noida for Occupancy Certificate on 27.12.2018.

(v) On an Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as the "**IBC**") by a Creditor in a class, the Corporate Insolvency Resolution Process ("**CIRP**") commenced against the CD vide order dated 10.01.2019.

(vi) Noida Authority conducted an inspection of the commercial complex and raised various objections by letter dated 25.01.2019. The Appellant replied to the objections and prayed for permitting the conversion of use of land into commercial and an amount of Rs.33,48,904/- was deposited on 24.05.2019 by the Appellant as compounding and revalidation charges towards the construction of the said commercial complex. Noida wrote to the Appellant to submit certain other documents. Certain correspondence between the Noida and the Appellant were exchanged, but Occupancy Certificate, permitting conversion of land into commercial was not granted.

(vii) In the CIRP of the CD, Resolution Plans were invited and in 19th Meeting of the Committee of Creditors ("**CoC**") held on 19.07.2020, Resolution Plan submitted by SMV Agencies Pvt. Ltd. (Respondent No.3) in the Appeal was approved with 80.13% vote share of the CoC.

(viii) On 11.08.2020, the then Resolution Professional ("**RP**") filed an IA No.3325 of 2020 under Section 46 and 66 of the IBC, praying for avoidance of transaction with the Appellant. Another IA No.3330 of 2020 was filed by the erstwhile RP under Section 74(1) read with Section 60(5). The Appellant also filed IA No.3025 of 2022 raising objections to the Resolution Plan and praying for rejection of the same.

(ix) Correspondence took place between the Appellant and the CD to resolve the issues between them. A Settlement Agreement dated 30.05.2023 was entered between the Appellant, SRA (Respondent No.3 herein) and the RP, where the Appellant offered to pay an amount of Rs.50 crores and to construct the school at Project 'i-Ring'. The settlement was placed before the CoC in its 25th Meeting held on 06.06.2023 and the

CoC by requisite vote share approved the Settlement Agreement dated 30.05.2023.

(x) IA No. 3926 of 2023 was filed jointly by the Appellant and RP for accepting the settlement entered between the parties dated 30.05.2023. IA No.3588 of 2023 was filed by Respondent No.2 – Ashmeet Singh Bhatia, objecting to settlement dated 30.05.2023. Another IA No. 3596 of 2023 was filed by Ashmeet Singh Bhatia, objecting to settlement as well as Resolution Plan.

(xi) The then RP executed Shop Buyer Agreement in favour of the Appellant on 30.09.2023 and 07.02.2024.

(xii) The Adjudicating Authority heard IA No.3926 of 2023 and all other applications, including the Application filed by Noida Authority raising objections to the Resolution Plan; and other applications filed by Respondent No.2; and by the impugned order dated 24.07.2024, permitted the withdrawal of IA No.3926 of 2023, IA No.3325 of 2020 and IA No.3330 of 2020. With regard to above applications, directions have been issued in paragraph 79 of the judgment.

(xiii) The Appellant aggrieved by some directions issued in paragraph 79, has filed this Appeal. The Appellant in the Appeal has made following prayers

> "1. Set aside the order dated order dated 24.07.2024 passed Ld. National Company Law Tribunal, New Delhi Bench - II, in I.A

No. 3926 of 2024 alongwith connected IA's filed in C.P.(IB)-1248(PB)/2018, and;

2. Pass an order restoring the Devika- Iring (renamed as VIBE) back to asset of Appellant i.e., M/s Shomit Finance Limited from asset pool of Corporate Debtor and;

3. Restrain RP and PRA/SRA from dealing and treating asset of Appellant i.e., M/s Shomit Finance Limited in any manner whatsoever except for payments as provided and agreed upon in settlement agreement dated 30.05.2023 approved by COC and;

4. Allow Settlement dated 30.05.2023 as approved by COC of Corporate Debtor and dispose IA No. 3325/2020; IA No. 3330/2020 filed by RP and IA 3025/2022 filed by Appellant in terms of Settlement dated 30.05.2023 or;

5. Pass an order directing Ld. NCLT to recall its order dated 24.07.2024 passed Hon'ble National Company Law Tribunal, New Delhi Bench - II, in I.A No. 3926 of 2024 filed in C.P.(IB)-1248(PB)/2018 and rehear the applications made by the Appellant afresh and/or

6. Pass any other orders that this Ld. Appellate Tribunal may deem fit, in the light and circumstances of the present case in favour of the Appellant, in the interests of transparency, equity and justice."

3. We have heard Shri Sunil Fernandes, learned Senior Counsel appearing for the Appellant; Shri Satvik Verma, learned Counsel appearing for Respondent No.2; Shri Sumant Batra, learned Counsel appearing for the RP; Shri Abhijeet Sinha, learned Senior Counsel appearing for Respondent No.3 – SRA.

4. Learned Counsel for the Appellant challenging the order of the Adjudicating Authority, specially directions under paragraph 79, relating

to the Appellant submits that Appellant has executed an Agreement to Sell with the CD on 22.04.2016, much before initiation of CIRP on consideration of Rs.32 crores. The CD has granted all advertisement rights, including right to construct entire Panache Arcade, including school, shop to the buyer without any additional cost to the CD. The entire advertisement rights were transferred to the Appellant, who started construction in the year 2017. The entire construction of commercial complex of upper ground floor and lower ground floor have been constructed by the Appellant. The Appellant also has agreed to construct the nursery school on 1st Floor of the commercial complex with its own cost and handover it to the CD. An Agreement was also entered with M/s Lotus Panache Flat Buyers Association, who has also agreed that construction be carried on and for sale of shops in shopping arcade in Lotus Panache by the Appellant for a total sale consideration of Rs.32 crores. The Appellant has also deposited necessary compounding charges for conversion of the land used into commercial complex and has also complied with all necessary shortcomings pointed out by the Noida Authority. The Appellant has also applied for Occupancy Certificate on 27.12.2018. It is submitted that after the Resolution Plan was approved by the CoC on 19.07.2020, correspondence took place between the Appellant and RP for settling the dispute between the Appellant and the CD and Settlement Agreement dated 30.05.2023 was entered with the Appellant, RP and SRA, where the Appellant has undertaken to make payment of Rs.50 crores and also to construct nursery school on first floor and hand it over to the CD. Under the Settlement Agreement, the commercial complex consisting of two floors, was to be allotted to the Appellant. The said Settlement Agreement was also approved by the CoC in its Meeting held on 06.06.2023 and thereafter an IA No.3926 of 2023 was jointly filed by the Appellant and the RP for accepting the settlement on record and disposing of IA No.3325 of 2020, IA No.3330 of 2020 and IA No.3025 of 2020 in terms of the settlement. It is submitted that Respondent No.2, who is a single Homebuyer in one of the Towers of the Project, has no locus to file applications challenging the Resolution Plan or Settlement Agreement entered with the Appellant and the CD. The CoC having approved the Settlement Agreement, no single Homebuyer can challenge the decision by filing any objections. Learned Counsel for the Appellant submits that CoC is fully competent to take its decision in commercial wisdom and CoC having agreed with the settlement, which was also signed by the SRA, the application IA No.3926 of 2023 deserved to be allowed in terms of the settlement. The Adjudicating Authority committed error in simply permitting withdrawal of the applications. It is submitted that Appellant has already paid substantial amount to the CD of Rs.17 crores as on date and the commercial complex asset was required to be excluded from the assets of the CD, in view of the Agreement to Sell dated 22.04.2016 and Settlement Agreement entered between the RP and the SRA. It is submitted that the Appellant took lot of efforts to safeguard the value of the commercial assets and has entered into settlement, which was approved by the CoC with 97% vote share. The commercial complex has been constructed by the Appellant from its own resources, much prior to commencement of the CIRP, with regard to which compounding and revalidation charges have already been deposited by the Appellant.

5. Learned Counsel for the RP submits that the then RP after lot of correspondence and deliberations has placed the Settlement Agreement dated 30.05.2023 before the CoC in 25th Meeting, which was approved with requisite majority. It is submitted that in the CIRP, the erstwhile RP appointed two Valuers to value the assets and the under construction retail block named 'i-Ring' was valued as Rs.58 crores and a liquidation value of Rs.43.5 crores as on 10.01.2019 (insolvency commencement date). The Appellant having offered Rs.50 crores for the commercial complex and offered to construct a school, the CoC has accepted the offer with its overwhelming majority of 96% vote share. Subsequent to approval of Settlement Agreement by the CoC, the then RP filed an Application No. 3926 of 2023 jointly making prayers to dispose of IA 3325 of 2020 and 3330 of 2020 in terms of Settlement Agreement. It is submitted that Respondent No.2 a single Homebuyer, who is an allottee of Flat No.2502 in Tower 19 of the Lotus Panache Project, has no locus to file any objections, either to the Settlement Agreement or to the Plan. A single Homebuyer has to sail with the majority of Homebuyers and as per Section 25A(3A), decision taken by more than 50% of the Financial Creditors in a class is binding on all Homebuyers. It is submitted that the Appellant having agreed to return the benefit received under the impugned undervalued transaction, and handover the school premises back to the CD, the relief sought under the avoidance applications was

satisfied. The Settlement Agreement does not place or confer any additional right on the Appellant. It is further submitted that Settlement Agreement contains an express provision in Clause 5 that in the event the total saleable area of shops exceeds 65,217 square feet, the settlement amount payable by the Appellant shall be proportionately increased on a per square foot basis. Resultantly, the CD is entitled to receive an additional amount of more than Rs.13 crores.

6. Learned Counsel for Respondent No.2 vehemently opposing the Appeal filed by the Appellant submits that the construction of the commercial complex is not in accordance with the approved building plan of the Noida. It is submitted that in the approved plan, only nursery school was to be constructed and the legality of the commercial structure, i.e. i-Ring/Vibe has been challenged by Respondent No.2 in the Allahabad High Court by filing Writ Petition (C) No. 28157 of 2023, where Hon'ble Court has passed an order that any construction made during the pendency of the said writ petition, the same will be subject to the final outcome of the writ petition. It is submitted that the Appellant without obtaining appropriate sanction for commercial structure has proceeded to construct lower and upper ground floor of the shops, which is wholly illegal and the Appeal filed by the Appellant is only with the object to get the approval of the Settlement Agreement 30.05.2023 from this Tribunal. It is submitted that the commercial structure itself being illegal, there is no occasion to accept any settlement. The Settlement Agreement is illegal and untenable in law. It is submitted that Adjudicating Authority has

rightly not approved the Settlement Agreement dated 30.05.2023 and has only permitted the withdrawal of the Applications. It is submitted that the Applications filed for avoidance, were filed by the then RP, after being satisfied with the illegality of transactions. It is submitted that Respondent No.2 has filed an Application before the Adjudicating Authority seeking discovery of documents regarding the commercial structure. It is submitted by Respondent No.2 that Appeal filed by the Appellant deserves to be dismissed.

7. We have considered the submissions of learned Counsel for the parties and have perused the record.

8. The CIRP commenced against the CD on 10.01.2019. The Appellant claims to have entered into an Agreement to Sell dated 22.04.2016, which is part of the Appeal. In the Agreement, Clause-C, 3.1 and 5.1 are as follows:

> "C. AND WHEREAS the Buyer has approached the Seller and proposed to buy all retail shops situated at LGF & UGF admeasuring super area of 64,000 sq. ft. (equivalent to 5945.79 sq. meters) out of the said Lotus Panache Arcade (hereinafter referred to as the "Retail Shops") and for that purpose, the Seller has (i) agreed to sell, allot and assign to the Buyer, the Retail Shops (duly detailed out in Annexure-B) with uninterrupted, exclusive, full and free right to construct (entire Panache Arcade including School for the Seller without additional cost to the Seller), promote. advertise and market the Retail Shops in such manner it deems fit for its own account and own benefit; and (ii) the

Buyer has agreed to buy and acquire the Retail Shops on the terms and conditions contained under this Agreement.

3.1 The Seller has under this Agreement granted the entire Development Rights to the Buyer over the Panache Arcade who shall be entitled to enter upon the Project or any part thereof and undertake the sale of Retail Shops, promotion and development and construction work of Panache Arcade.

5.1 In lieu of the grant of Sale of Retail Shops and the Development Rights over Panache Arcade, the Buyer has agreed to pay an amount of INR32,00,00,000/-(Indian Rupees Thirty-Two Crores Only) plus applicable GST towards the consideration for grant of the Sale and transfer of Retail Shops and grant of the Development Rights over Panache Arcade (the "Consideration") and the same shall be paid by the Buyer as per payment plan annexed herewith as Annexure-C attached to this Agreement. In case the Retail Area increases, the Buyer shall be liable to pay the proportionate additional consideration to the Seller."

9. There is no dispute between the parties that in the Information Memorandum, the commercial block i.e. lower ground retail shop and lower ground floor and upper ground floor were mentioned as assets of the CD. After commencement of the CIRP, the Appellant after correspondence with the RP and Members of the CoC, entered into settlement dated 30.05.2023. The Settlement Agreement is brought on the record of the Appeal. The Settlement Agreement clearly noticed that the Resolution Plan of the CD has already been approved on 19.07.2020 and M/s SMV Agencies Pvt. Ltd. (SRA), who also joined as one of the parties in the Settlement Agreement. It is useful to notice Clauses 5 and 6 of the Settlement Agreement, which are as follows:

“5. The settlement amount shall be an amount of Rs. 50,00,00,000/- (Rupees Fifty Crores Only), plus GST and other applicable taxes, if any, being the amount to collectively cover the allotment price of individual shop allotments, having total saleable area of 65217 sq.ft. against which the amounts already paid by SFL and during the Corporate Insolvency Resolution Process, amounting in total to Rs. 4,71,10,000/- (Rupees Four Crores Seventy One Lacs Ten Thousand Only), shall be adjusted. That it is agreed and understood that in event that the saleable area more than 65217 sq.ft. of the shops the settlement amount shall also increase on per sq.ft. basis. The settlement amount shall be payable in accordance with the payment milestones reflected in Annexure A of this Settlement Agreement. It is specifically agreed and understood that the entire factual and legal position surrounding the insolvency proceedings and pending dues/dispute with Noida Authority are well within the knowledge of SFL and SFL will pay the settlement amount in accordance with the payment milestones provided in Annexure A, without any demur or protest.

6. It is agreed and understood that the shops are being allotted to SFL and/or its nominees on 'as is where is' and the entire cost of completion of balance Infrastructure to make the shops market ready shall have to borne by SFL and/or its nominees from its/their own sources without any liability being fastened on GGPPL. Possession of the complex already vest with SFL, and SFL can move ahead for completion of balance construction/infrastructure works provided payments are made as per the Payment Plan annexed as Annexure A. It is agreed and understood that SFL shall be solely responsible for arranging infrastructure for basic amenities/facilities such as lift, electricity connection, water supply and sewage facilities, in the commercial complex Iring'. Pursuant to availability of necessary infrastructure, GGPPL shall provide necessary water and electricity connection to SFL, subject to SFL paying fixed and utility charges of such services on pro rata basis (basis the super area of the shops) similar to the other allottees of the project. SFL shall further enter

> into requisite allotment agreements with GGPPL In the format annexed herewith as Annexure B, similar to the other allottees of GGPPL, in respect of each of the shops in its name or in the name of its nominees. (Subject to any inconsistency between the terms of this settlement agreement and the allotment agreement(s), the terms of the allotment agreement(s) shall be honored by both the parties.) SFL shall have the right to nominate any other entity/person as allottee of a shop and the GGPPL shall ensure necessary recordal of such nomination/transfer in its records, subject to SFL and/or its nominee(s) not being in violation of the terms of the settlement agreement, including but not limited to payment of sale consideration in terms of the Payment Plan annexed herewith as Annexure A, as on the date of making such requisition for transfer/nomination."

10. When we look into Settlement Agreement, Clause 5 clearly mentions that amount of Rs.50 crores collectively covers the allotment price of individual shop allotments, having total saleable area of 65217 sq. ft. against which the amount of Rs.4.71 crores shall be adjusted, which is already paid. Clause 12 of the Settlement Agreement, itself indicate that earlier approved revised plan refers to area of Iring complex as school. In Clause 12 of the Settlement Agreement following was stated:

> "12. That the earlier approved revised plan with GGPPL for Lotus Panache project mentions the area of Iring complex as "school" and that in 2019, approval was obtained for usage of the said complex for commercial purposes for which a compounding fee of Rs. 32,77,904/-stands paid vide challan no. 700024241 dated 24/05/2019."

11. Clause 17 further mentions that Settlement Agreement shall become binding and enforceable against the parties, only after approval of the CoC and NCLT. Clause 17 is as follows:

"17. This Settlement Agreement and subsequent Settlement Agreement shall become binding and enforceable against the parties, only pursuant to the same being approved by the committee of creditors of GGPPL and followed by the Hon'ble NCLT taking cognizance of the same and disposing of the above-stated pending applications in terms thereof."

12. It is also relevant to notice that CoC in its 25th Meeting approved the Settlement Agreement with 96% vote share. The resolution passed in Item No.B1 was approved with 96% vote share, which is as follows:

"**ITEM NO. B1**

TO DISCUSS AND APPROVE THE TERMS OF SETTLEMENT BETWEEN M/S SHOMIT FINANCE LIMITED AND THE CORPORATE DEBTOR.

"RESOLVED THAT the terms of Settlement as per the Term Sheet dated 30.05.2023 executed between M/s Shomit Finance and the Resolution Professional, is hereby approved, and the RP is hereby authorized to do all acts, deeds, and things as may be required to have the terms of settlement recorded before the Hon'ble NCLT."

Approve	:	Votes 28791: 96%
Reject	:	Votes 8328: 3%
Abstain	:	Votes 4610: 2%"

13. Application – IA No.3926 of 2023 was jointly filed by the Appellant and RP. The prayers made in IA No.3926 of 2023 were to the following effect:

"(a) allow the present application and direct that I.A. No. 3325/2020 and I.A. No. 3330/2020 be disposed of in terms of the settlement Agreement dated 30.05.2023 entered between the Applicants as well as terms mentioned in the instant application;

(b) allow the present application and direction that Application bearing No. 3025/2022 filed by Applicant No.1, M/s Shomit Finance Limited is dismissed as withdrawn;

(c) pass such further order(s) as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

14. The Adjudicating Authority considered IA No.3926 of 2023 jointly filed by the Appellant and the RP along with earlier IA Nos.3325 of 2020 and 3330 of 2020 filed by the earlier RP, as well as Applications filed by Respondent No.2 – Ashmeet Singh Bhatia to the settlement as well as the Resolution Plan and by the impugned order, has permitted the Appellant and RP to withdraw IA Nos.3926 of 2023, 33256 of 2020 and 3330 of 2020. The Adjudicating Authority by the impugned order has also held that the Project, which is called 'iRing' by the Appellant, is part of the assets of the CD and cannot be excluded from the assets of the CD. The prayer of the Appellant to accept the settlement dated 30.05.2023 has not been accepted. The discussion with regard to IA No.3926 of 2023 and other Applications are contained in paragraph 68 of the judgment. In paragraph 68 of the judgment, the Adjudicating Authority made following observations:

> "**68.** IA-3926/2023 has been preferred jointly by the RP and M/s Shomit Finance Limited. Apparently, in terms of the settlement reproduced in the IA3926/2023, it has been made clear to M/s Shomit Finance Limited that the terms of settlement shall be binding only upon approval by the CoC and the Successful Resolution Applicant. The settlement is regarding the entire commercial complex, 'i-Ring' in 'Lotus Paranche'. The IBC does not recognize any independent settlement regarding assets of the CD, which may require approval of SRA. A Resolution Applicant is only

a bidder, who need to give his proposal to resolve the insolvency of CD in the form of a plan. No independent settlement between RP and third party can involve the consent or approval of SRA. Nevertheless, in a way, in terms of the settlement, M/s Shomit Finance Limited conceded that the 'i-Ring' commercial complex is asset of CD. In the wake, there should be no difficulty in allowing the RP and Shomit Finance Limited to withdraw IA-3325/2020, IA-3025/2022 and IA-3330/2020. However, it is made clear that the withdrawal of IAs would not be construed as approval of the settlement reproduced in IA-3926/2023, by this Tribunal. The IAs are allowed to be withdrawn with a semblance that M/s Shomit Finance Limited has conceded that the 'i-Ring' commercial complex is the asset of the CD and would be dealt with in accordance with the development plan qua the project as approved by NOIDA. The IA-3596/2023, filed by the Applicant homebuyer which is objection to the IA-3926/2023 broadly raised concern regarding the fate of 'i-Ring'. It is already clarified that the withdrawal of IA-3025/2022 would have the ramification that the 'i-Ring' would be treated as a set of CD. Such clarification would address the concern raised in IA3596/2023."

15. The Adjudicating Authority in paragraph 68 has clearly observed that withdrawal of IAs shall not be construed as approval of settlement reproduced in IA-3926/2023 and further 'i-Ring' commercial complex shall be treated to be the asset of the CD. Learned Counsel for Respondent No.2 has placed reliance on the judgment of this Tribunal in ***Company Appeal (AT) (Ins.) No.40 of 2024 – Praveen Arya & Ors. Vs. Anju Aggarwal & Anr.***, where this Tribunal considering a case of allottees, who claimed to have received possession of the units and paid the amount as per Builder Buyers Agreement claiming that the units be excluded from the assets of the CD, was considered and rejected. It is

useful to notice paragraphs 18 and 27 of the judgment, which are as follows:

> "18. We, thus, are of the view that by virtue of allotment of commercial space in favour of the Appellant(s), including the Lease Deed dated 24.12.2014 in favour of Nupur Garg, the Appellant(s) cannot claim to have become owners of the commercial spaces. The CD continues to own the assets and the plea of the Appellant(s) that assets be excluded from CIRP of the CD, or the Appellant(s) are owners of the commercial space/ units allotted to them, cannot be accepted. We answer both the questions accordingly.
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> 27. In view of what we have held above, we are of the view that the prayer of the Appellant to exclude the commercial space from the Resolution Plan, could not have been accepted, nor any direction could have been issued for registration of Sale Deed. The claim, which was submitted by the Appellant was admitted in the CIRP. …."

16. Learned Counsel for Respondent No.2 further submits that the said judgment of this Tribunal has also been affirmed by Hon'ble Supreme Court vide order dated 21.02.2025 in Civil Appeal Nos.2642-2625 of 2025. As noted above, the asset on which commercial complex 'i-Ring' is claimed to have been constructed by the Appellant, was part of the assets of the CD. Even the Settlement Agreement as noticed above mentions in Clause 5 that amount of consideration of Rs.50 crores is allotment price, thus, the claim of the Appellant that area under the Settlement Agreement is to be allotted to it and also claim two allotment letters subsequent to the settlement issued by the RP. The mere fact that CD and RP has agreed to allot area, cannot lead to exclusion of the assets from the assets of the CD. We, thus, fully concur with the view of the

Adjudicating Authority that commercial complex 'i-Ring' continues to be asset of the CD.

17. Now we need to notice the directions issued by the Adjudicating Authority in the impugned order with respect to concerned IAs. Relevant directions with regard to issues present in the Appeal are contained in paragraph 79, which is as follows:

> "79. In the wake of the aforementioned findings and discussions and in view of the irregularity in valuation and accounting of assets of CD and the plea raised in IA-506/2024, it is ordered thus:-
>
> a) The Resolution Plan stands remitted back to the CoC. It would be for CoC to take a call, as to whether the CIRP should resume from the stage of preparation of IM or from any other stage or the present SRA/PRA's should be given opportunity to submit revised Resolution Plan after Forensic Audit and proper fresh valuation of the assets of the CD.
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> b) The present IP who is functioning as RP qua the CD is replaced with the IPE- ARCK Resolution Professionals LLP (IBBI/IPE-0030/IPA-1/2022- 23/50013) and henceforth the said Insolvency Professional Entity would act as RP to conduct CIRP qua the CD.
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> c) The present RP would extend all assistance to IPE as a professional.
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> d) The Insolvency Professional Entity would first get the transaction/ forensic audit be conducted qua the CD and then would get the valuation of its assets done in accordance with Regulation 27 read with Regulation 35 of IBBI (CIRP) Regulations, 2016.
>
> e) The 'I-Ring' project would be treated as asset of the CD. Nevertheless it would be open to SRA to deal with the same in accordance with the provisions of regulation 37 (1) a of IBBI

(CIRP) regulations 2016 and in the process the SRA may deal with Shomit Finance Limited.

f) The plea regarding replacement of AR stands nixed. g) The NOIDA would be treated as Secured Creditor with all consequences.

h) The NOIDA would be entitled to two instalments of premium and the amount which is payable towards water and sewage charges as also the time extension charge, etc. to it by the CD as CIRP cost.

i) The IA-3926/2023 is allowed and the IA-3325/2020, IA-3025/2022 and IA-3330/2020 stands dismissed as withdrawn. Nevertheless, as has been directed above the project ('I-ring') mentioned in IA-3926/2023 would be treated as asset of CD and would be dealt with in terms of the Resolution Plan."

18. The relevant directions with regard to the 'i-Ring' Project are in paragraph 79 (e). The prayer made in the Appeal by the Appellant as noted above are to set-aside order dated 24.07.2024 with regard to IA No.3926 of 2023 along with connected IAs and pass an order restoring the IAs as the assets of the Appellant and restrain the RP and SRA from dealing and treating asset of the Appellant in any manner except for payments as provided and agreed upon in Settlement Agreement dated 30.05.2023. We having already held that the said assets belong to the CD, the above prayers made by the Appellant, cannot be accepted. When we look into the directions contained in paragraph 79 (e), the Adjudicating Authority has further directed that nevertheless, it would be open for the SRA to deal with the same in accordance with the provisions of Regulation 37(1) (a) of IBBI (CIRP) Regulations 2016. As regards the IA filed for approval of Resolution Plan, the same was remitted back to the CoC.

19. In view of our above discussions and conclusions, we are of the view that the prayers made in the Appeal to set-aside order dated 24.07.2024 in IA No.3926 of 2023 and connected IAs, cannot be granted. We, however, observe that the interest of the Appellant is amply protected by direction issued in paragraph 79(e), which is the liberty to the SRA/ Resolution Applicant to consider the claim of the Appellant in the Resolution Plan in accordance with law. Subject to observation as above, the Appeal is dismissed. There shall be no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

17th July, 2025

Ashwani