

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

Company Appeal (AT) (Ins.) No. 916 of 2021

IN THE MATTER OF :

- 1. Bipin Sharma**
S/o Late Shri Kishan Lal Sharma,
R/o 164-G, Pocket IV,
Mayur Vihar Phase – 1,
Delhi – 110091
.... **Appellant No.1**
- 2. Arvind Sharma**
S/o Shri Anand Swaroop Sharma,
R/o E-36, Third Floor, West Vinod Nagar,
Delhi – 110092
.... **Appellant No.2**
- 3. Poonam Manchanda**
W/o Shri Ashok Manchanda,
R/o I – 101, Bestech Park View SPA,
Sector – 47, Gurugram – 122018
.... **Appellant No.3**
- 4. Ashutosh Tiwari**
S/o Shri Ramesh Chand Tiwari,
R/o Flat No. 1201, Padam Eternity, Taj Nagri,
Phase – 2, Fatehabad Road, Agra,
Uttar Pradesh – 282001
.... **Appellant No.4**
- 5. Sharad Bhatnagar**
S/o Smt Suraj Bhatnagar,
R/o 141, Chitra Vihar,
Delhi – 110092
.... **Appellant No.5**
- 6. Rajan Luthra**
S/o Shri Avinash Luthra,
R/o 3/18, First Floor, East Patel Nagar,
Delhi – 110008
.... **Appellant No.6**
- 7. Alka Jain & Raj Kumar Jain**
W/o Shri Raj Kumar Jain and
S/o Late Shri Attar Sain Jain,
R/o A – 603, Unique Apartments,
Plot No. 38, Sector – 6, Dwarka,
New Delhi – 110075
.... **Appellant No.7**

- 8. Rameshwar Dayal Mathur & Hailey Mathur**
R/o A – 605, Priyadarshini Apartments.
17 I.P. Extension, Patparganj,
Delhi – 110092 **Appellant No.8**
- 9. Ankur Manchanda**
S/o Shri Ashok Manchanda
R/o I – 101, Bestech Park View SPA,
Sector – 47, Gurugram – 122018 **Appellant No.9**
- 10. Virender Singh**
S/o Late Shri Chandan Singh Bisht,
R/o 13/17, Vasundhara, Ghaziabad,
Uttar Pradesh – 201012 **Appellant No.10**
- 11. Ashok Kapur**
S/o Mr. M. L. Kapur,
R/o 89, Virat Nagar, Panipat,
Haryana – 132103 **Appellant No.11**
- 12. Paramjit Singh**
S/o Shri Amar Singh,
R/o 194 – C, Block BG – 6,
Paschim Vihar, New Delhi – 110063 **Appellant No.12**
- 13. Sonia Bahl & Parveen Bahl**
D/o Shri Yashpal Seth & S/o Shri Nand Lal Bahl,
R/o WZ – 946, Rani Bagh, Shakur Basti,
Delhi - 110034 **Appellant No.13**
- 14. Geetika Sachdeva**
W/o Shri Chand Sachdeva,
R/o WZ – 32, Street 10, Krishnapuri Main Road,
Vikasपुरi Extn., New Delhi - 110018 **Appellant No.14**
- 15. Vishal Luthra**
S/o Shri Avinash Luthra,
R/o 3/18, First Floor, East Patel Nagar,
Delhi – 110008 **Appellant No.15**

Versus

- 1. Earth Infrastructure Limited**
Through Shri Akash Singhal, Resolution Professional,
G 8 & 9, Hans Bhawan, BSZ Marg,
New Delhi – 110002 ...**Respondent No. 1**

2. M/s. Alpha Corp Development Private Limited
(Successful Resolution Applicant for the Corporate Debtor),
Golf View Corporate Towers, Tower A, Sector – 42,
Golf Course Road, Gurugram – 122002
E – mail ID : info@alphacorp.in, Santosh.a@alphacorp.in

.....**Respondent No. 2**

3. Gulshan Gaba for the Corporate Debtor
Authorised Representative for Allottees, Home Buyers etc.
E – 149, Opp. Sainik Vihar’s Gate No. 1,
Rishi Nagar, Rani Bagh, New Delhi – 110034
E – mail ID : ar.earthinfrastructure@gmail.com

.....**Respondent No. 3**

Present

For Appellant: Mr. Ashok Manchanda, Advocate

**For Respondent: Ms. Akanksha Vasudeva, Advocate for R-1
Mr. Vivek Kohli, Sr. Advocate with Ms.
Prerna, Mr. Sandeep Bhuraria, Ms. Parijat,
Mr. Nalin, Advocates for R-2.**

JUDGMENT

(Date: 14.11.2022)

[Per.: Dr. Alok Srivastava, Member (Technical)]

1. The Appellants, Bipin Sharma and 14 others, have filed this appeal under section 61 of the Insolvency and Bankruptcy Code, 2016 (in short ‘IBC’) aggrieved by the order dated 8.6.2021 (hereinafter called ‘Impugned Order’) passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi) in CA (AT) (Ins) No. 914 of 2019 and I.A No. 5 of 2020 filed in Company Petition No. IB (401)(ND)/2017.

2. The Appellant has stated and argued that a resolution plan was submitted by M/s. Alpha Corp. Development Private Limited (Respondent No.2) in the Corporate Insolvency Resolution Process (in short 'CIRP') of the corporate debtor Earth Infrastructure Ltd. The Appellant has claimed that this resolution plan, which was approved by the Adjudicating Authority vide Impugned Order dated 8.6.2021, was non-compliant with the provisions of section 30(1) and 30(2) of the IBC and suffers from serious irregularities and is fraught with surreptitious amendments and insertions which are prejudicial to the genuine and legitimate interests of the members of the Committee of Creditors (in short 'CoC').

3. The Appellant has further stated that the proposed resolution plan does not make any provision regarding payment of debt to 56% of the financial creditors (home buyers), who either voted against the resolution plan or who did not vote at all and this fact is admitted by Respondent No. 2 (Successful Resolution Applicant) in its parawise reply dated 6.11.2020, where it has clearly admitted that Successful Resolution Applicant was under no obligation to provide exit plan for financial creditors who did not vote in favour of the Resolution plan. The Appellant has further stated that the Resolution Professional did not provide sufficient notice before convening the CoC meeting as 24 hours' notice before the start of e-voting, *Company Appeal (AT) (Ins.) No. 916 of 2021*

which are mandatory under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short 'CIRP Regulations') and therefore the members of the CoC could not properly examine the revision/ modifications/amendments that were carried out in the proposed resolution plan at a very late stage. The Appellant has also claimed that the Resolution plan was approved by the CoC for four projects and not for three projects and the Adjudicating Authority has erred in presuming in its order in para 12 that the Resolution plan has been approved for three projects.

4. We heard the arguments advanced by the Learned Counsels for the Appellants and the Respondents and perused the record.

5. At the outset, the Learned Senior Counsel appearing for Respondent No. 2, raised challenge to the maintainability of the appeal, inter-alia, on the ground that a similar matter has been dismissed by the Hon'ble Chairperson Bench of this Tribunal in the appeal bearing CA (AT) (Ins.) No. 283 of 2021 by an order dated 12.10.2022 and since this appeal is squarely covered by the said decision, therefore, it is not maintainable on the same grounds as were taken in CA (AT) (Ins) No. 283 of 2021, and it should be dismissed on the ground of non-maintainability.

6. The Learned Counsel for Appellant was also heard on the issue of maintainability, and his argument was that the appeal is maintainable because the Adjudicating Authority has not touched upon various aspects relating to non-compliance of section 30 (1) and (2) of the IBC while examining and approving the Resolution plan filed by Respondent No. 2 and therefore, it is absolutely necessary that this appeal be heard and the order approving the resolution plan be examined for non-compliance of section 30 of the IBC.

7. The Learned Counsel for Respondent No. 2 has brought to our attention section 25-A (3A) of the IBC wherein it is provided that the allottees in a housing project shall be represented in the CoC meeting through their "Authorised Representative", who will act and vote in the CoC on the basis of the views given by simple majority i.e. more than 50% of the homebuyers voting in connection with a resolution/proposal. After having gone through this process of submitting their views through the Authorised Representative, the individual homebuyers shall not have any independent right to challenge the action taken by the Authorised Representative, if he has acted in accordance with the requirements of section 25-A (3A). He has also claimed that no documentary evidences have been placed on record with respect to filing and acceptance of the claim of Appellants No. 1

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to 15 and therefore, the said Appellants have not been able to show that they are homebuyers, whose claims have been accepted by the Resolution Professional and on this ground too, they are not entitled to prefer this appeal.

8. We reproduce below the relevant sub-sections (1) and (3A) of section 25-A of the IBC and Regulation 25-A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for better appreciation of the arguments presented by the Learned Senior Counsel for Respondent No. 1 and Respondent No. 2 and Learned Counsel for Appellant:-

INSOLVENCY AND BANKRUPTCY CODE, 2016:

“Section 25-A: Rights and duties of authorised representative of financial creditors.

25-A. (1) *The authorised representative under sub-section (6) or sub-section (6A) of section 21 or sub-section (5) of section 24 shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.*

xx xx xx xx

(3) *The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:*

xx xx xx xx

(3A) *Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the*

decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote:

Provided that for a vote to be cast in respect of an application under section 12A, the authorised representative shall cast his vote in accordance with the provisions of sub-section (3).”

**Insolvency and Bankruptcy Board of India
(Insolvency Resolution Process for Corporate Persons)
Regulations, 2016:**

‘25-A. Voting by Authorised Representative – *The authorised representative shall cast his vote in respect of each financial creditor or on behalf of all financial creditors he represents in accordance with the provisions of sub-section (3) or sub-section (3-A) of section 25-A, as the case may be.”*

9. We note that section 25-A of IBC provides a mechanism for participation of the Authorised Representative in the meetings of CoC on behalf of financial creditors in class. Sub-section (2) of section 21 of IBC, the CoC is mandated to comprise of all financial creditors of the corporate debtor and for financial creditors in class, a provision is made for their representation through an Authorised Representative, whose selection is governed by Regulation 16-A of CIRP Regulations. Once the Authorised Representative is selected in the prescribed manner as per Regulation 16-A, he shall represent the financial creditors in class (in the present case homebuyers are the financial creditors in class) in the CoC as per section 21 of the

IBC and shall participate in the meeting of the CoC as required under section 24 of the IBC. The manner of eliciting the views of the financial creditors in class by the Authorised Representative, is to be done by the Authorised Representative in accordance with sub-regulation 9 of Regulation 16-A of the CIRP Regulations.

10. A perusal of the provisions relating to selection of Authorised Representative, the manner and modality of her/his participation in the CoC meetings to represent the views of the financial creditors in class is provided very clearly and elaborately in the IBC and the CIRP Regulations. The Authorised Representative so selected to participates in the CoC meetings as well as in decision making in the CoC, he does so on behalf of all the home allottees/homebuyers and the view of individual homebuyer is therefore subsumed in the majority (of more than 50%) decision coming through that process when the financial creditors in class express views and voted in any matter. This view is then placed before the CoC by the Authorised Representative.

11. Thus, the Authorised Representative's primary duty and responsibility is to present the views of the financial creditors in class in the CoC meetings. We note that there is no deficiency or irregularity pointed out by the Learned Counsel for Appellant in the selection of the Authorised Representative. The fifteen
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Appellants in the present appeal are homebuyers. The Respondent No. 1 has stated that out of these 15 appellants, the name of one homebuyer Mr. Sharad Bhatnagar does not appear in the record of CoC. Out of the rest 14 appellants, 8 homebuyers participated in the voting held by the Authorised Representative. Their votes are thus recorded in the voting whereas 6 have not voted at all. The views/votes of 8 voting homebuyers are therefore covered in the voting exercise, where we find that an overwhelming majority of 99.97% have voted to approve the resolution plan. Thus, it is clear that a miniscule number of homebuyers have come before us as applicants and out of this small number, six have not even cared to cast their vote, have to sail with the decision of the majority of homebuyers. This is the scheme of IBC.

12. The above view finds support in the judgment of the Hon'ble Supreme Court in **“Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors.- 2021 SCC OnLine SC 253”** wherein it is held that the allottees, even if they are not a homogeneous entity, could vote either to approve the resolution plan or to disapprove it when they vote to provide their views to the Authorised Representative. Individual allottees can hold different views within their own class, but after they have internally voted as

members of the financial creditor in class, and then Authorised Representative votes in the Committee of Creditors in accordance with the majority view of the financial creditors, they cannot press their individual views any more. Hon'ble Supreme Court has held in paragraphs 426 and 427 of their judgment, as follows:-

“426. Having regard to the scheme of IBC and the law declared by this Court, it is more than clear that once a decision is taken, either to reject or to approve a particular plan, by a vote of more than 50% of the voting share of the financial creditors within a class, the minority of those who vote, as also all others within that class, are bound by that decision. There is absolutely no scope for any particular person standing within that class to suggest any dissention as regards the vote over the resolution plan. It is obvious that if this finality and binding force is not provided to the vote cast by the authorised representative over the resolution plan in accordance with the majority decision of the class, he is 6 Company Appeal (AT) (Insolvency) No. 283 of 2022 authorised to represent, a plan of resolution involving large number of parties (like an excessively large number of homebuyers herein) may never fructify and the only result would be liquidation, which is not the prime target of the Code. In the larger benefit and for common good, the democratic principles of the determinative role of the opinion of majority have been duly incorporated in the scheme of the Code, particularly in the provisions relating to voting on the resolution plan and binding nature of the vote of authorised representative on the entire class of the financial creditor/s he represents.

427. To put it in more clear terms qua the homebuyers, the operation of sub-section (3A) of Section 25A of the Code is that their authorised representative is required to vote on the resolution plan in accordance with the decision taken by a vote of more than 50% of the voting share of the homebuyers; and this 50% is counted with reference to the voting share of such homebuyers who choose to cast their vote for arriving at the particular decision. Once this process is carried out and the authorised representative has been handed down a particular decision by the requisite majority of voting share, he shall vote accordingly

and his vote shall bind all the homebuyers, being of the single class he represents.”

13. We adopt the judgment in CA (AT)(Ins) No. 283/2022 dated 12.10.2022 of Hon’ble Chairperson Bench of NCLAT wherein the Resolution Plan relating to the same corporate debtor M/s. Earth Infrastructure Limited was under challenge.

The Hon’ble Bench noted as follows:-

“11. To the similar effect is the Resolution Plan with regard to other two projects, the plan clearly mention that Resolution Applicant proposes to satisfy all the admitted claims in respect of the project by completing the pending construction activities and handing over possession to the allottees, in the manner as proposed, and subject to terms and conditions mentioned in the Resolution Plan.

12. The above clause of the Resolution Plan does substantial justice with the homebuyers-allottees. After taking aforesaid clauses on the record, we are of the view that no good grounds have been made out to interfere with the impugned order approving the Resolution Plan. Subject to above, the Appeal is dismissed.”

14. We find that the appellants, who have exercised their right to vote or not cared to exercise their right to vote form a miniscule minority, opposing the approval of resolution plan. Having done so, they now do not possess an independent right to challenge the majority vote (99.97%) of the homebuyers.

15. Thus, we are of the clear opinion that even if some of the homebuyers have not voted in favour of the plan, but the majority (more than 50%) have voted in favour of the resolution

plan approving the same, the dissenting homebuyers who are in minority have to go along with the views of the majority. They are, therefore, not entitled to prefer this appeal. The appeal is disposed of on the ground of non-maintainability.

16. No order as to cost.

(Justice Rakesh Kumar Jain)
Member (Judicial)

(Dr. Alok Srivastava)
Member (Technical)

New Delhi

14th November, 2022

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