

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1545 of 2024 &
I.A. No. 5594 of 2024

(Arising against the impugned order dated 14.05.2024 passed by the Hon'ble National Company Law Tribunal, New Delhi Bench-V in I.A. No. 5659 of 2023 filed in C.P. (IB) No. 1051/ND/2019)

IN THE MATTER OF:

Bharti Goyal,

w/o Sanjay Goyal D-119, Kabir, Marg,
Bani Park, Jaipur-302016.

...Appellant No.1

Swati Srivastava,

R/o D-1001, Microtek Greenburg,
Sector 86, St. Xaviers High School,
Lakhnola, Gurgaon, Haryana 122004.

...Appellant No.2

Versus

Hector Realty Venture Pvt. Ltd.

Through Its Director M-24,
First Floor, Srinivasपुरi, New Delhi- 1100065
Also at: 60, LGF, National Park,
Lajpat Nagar-IV, New Delhi- 110024.

...Respondent No.1

Piyush Garg,

Erstwhile Interim Resolution Professional
Hector Venture Private Limited MPR & Co.,
E-62, LGF, Lajpat Nagar-II,
New Delhi- 110024.

...Respondent No.2

Insolvency and Bankruptcy Board of India,

7th Floor, Mayur Bhawan,
Shankar Market, Connaught Circus,
New Delhi- 110001.

...Respondent No.3

Present:

For Appellants: Mr. Bilal Ali, Advocate.

For Respondents: Ms. Nisha G., Advocate.

J U D G M E N T
(20th August, 2025)

INDEVAR PANDEY, MEMBER (T)

The present Appeal is directed against the Impugned Order dated 14.05.2024, passed by the Learned Adjudicating Authority (NCLT, New Delhi Bench-V) in I.A. No. 5659/2023 in Company Petition No. (IB)-1051/ND/2019. In the said Company Petition, the Petitioner 'Anand Prakash Soni & Ors.' filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') against Hector Realty Venture Private Limited (Corporate Debtor) before the Adjudicating Authority.

2. This appeal has been preferred under Section 61(1) of the Insolvency and Bankruptcy Code, 2016, by Bharti Goyal (Appellant No.1) and Swati Srivastava (Appellant No.2), who is representing 19 other homebuyers. The appellants are the allottees of the Marvela City project of the Corporate Debtor. The appellants are challenging the rejection of their application seeking recall of the order dated 07.09.2022 by Adjudicating Authority, which had allowed withdrawal of the Corporate Insolvency Resolution Process (CIRP) of Corporate Debtor (Hector Realty Venture Private Limited).

3. It is the case of the Appellants that the withdrawal of CIRP was secured through gross fraud and suppression of material facts, without accounting for their legitimate claims and those of similarly situated homebuyers. They contend that the Adjudicating Authority failed to appreciate the existence of substantial evidence on recall of orders obtained by fraud, thereby gravely

violating principles of natural justice. The appeal is thus a plea for recall of the withdrawal of CIRP order to protect the interests of innocent homebuyers.

Brief facts of the case:

4. The brief facts of the case are as follows:

- i. In 2015, the Appellants and several other homebuyers invested large sums of money in the “Marvella City” a housing project located in Haridwar launched by Hector Realty Venture Pvt. Ltd. (the Corporate Debtor). The buyers were promised timely possession of flats by the Corporate Debtor, and on payment of consideration they were issued allotment letters and receipts for payments against allotments of flats. However, despite taking money, the Corporate Debtor did not begin construction of the project.
- ii. Due to non-fulfilment of promises, a group of homebuyers, including Anand Prakash Soni, filed a petition under Section 7 of the Insolvency and Bankruptcy Code (IBC) in CP (IB) No. 1051/ND/2019 before the NCLT, New Delhi, seeking insolvency proceedings against the Corporate Debtor. On 09.12.2019, the NCLT admitted the case and ordered the initiation of the Corporate Insolvency Resolution Process (CIRP) against Hector Realty Venture Pvt. Ltd. A moratorium was imposed, which meant that the company’s assets could not be transferred during the process.
- iii. Initially, Mr. Mukesh Kumar Grover was named as the Interim Resolution Professional (IRP), but subsequently, on 06.01.2020, Mr. Piyush Garg

(Respondent No. 2) was officially appointed as the IRP to manage the affairs of the Corporate Debtor during the CIRP.

- iv. The IRP made the public announcement on 09.01.2020 inviting all creditors to file their claims.
- v. Further, during the moratorium period, the Corporate Debtor illegally sold the project land (meant for Marvella City) to Divya Yog Trust on 03.01.2020, just weeks after the insolvency began on 09.12.201, in violation of the Code, as no asset transfer is allowed during moratorium.
- vi. In August 2022, the Corporate Debtor, along with the IRP and two financial creditors (Ms. Durga Soni and Ms. Shalu Soni), approached the original applicants and offered to settle their dues. They promised to return the money the homebuyers had paid.
- vii. The IRP filed I.A. No. 4281/2022 before the NCLT to withdraw the CIRP under Section 12A of the code, for withdrawal of the application filed under Section 7 and closure of the CIRP proceedings on the ground that the CoC has not been formed and all seven Financial Creditors (Homebuyers) have given their consent for withdrawal of the CIRP proceedings. The said application was allowed by the Ld. Tribunal on 07.09.2022 by passing the following order: -

“ORDER

New IA/4206/2022:-

This is an application filed under Section 60(5) of IBC read with Sections 12 and 33 (1) (a) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016 for initiation of CIRP period.

We have heard the submissions made by Counsel for applicant. At the pre notice stage itself, the applicant has prayed for grant of leave of the Tribunal to withdraw the present application. Leave prayed for is granted. The application stands dismissed as withdrawn.

New IA/4281/2022:-

This is an application filed on behalf of Interim Resolution Professional under Section 12A of IBC, 2016 read with relevant rules and regulations framed thereunder seeking the withdrawal of Section 7 application bearing IB No. 1051/ND/2019.

Counsel for Interim Resolution Professional has submitted that in this matter the CoC has not yet been formed. Counsel has further submitted that all the 7 Financial Creditors have given their consent for withdrawal of the matter, therefore, Interim Resolution Professional has moved this present application. The settlement agreement between the applicant and Corporate Debtor, copies are also annexed.

Having noted the contents of this application as well as prayers made therein, we allow the present application and permit the IRP to withdraw the main Company Petition bearing No. IB-1051/ND/2019. Therefore, the Section 7 application is now dismissed as withdrawn in terms of Section 12A read with Regulation 30A of CIRP Regulations 2016. Consequently, the Corporate Debtor, Mr. Piyush Garg is relieved from his duties and responsibilities as IRP and he is directed to handover the charge to Corporate Debtor. Counsel for IRP has confirmed that the fees of IRP has been received.

The case folders and connected papers may be sent to record room.

With this order, the present IA stands dismissed as withdrawn.”

- viii. The CIRP was withdrawn 943 days after it was initiated, based on claims that the CoC had not been formed.
- ix. However, after the withdrawal, the Corporate Debtor did not honour the settlement. The original applicants thereafter filed Company Appeal (AT) (Insolvency) No. 1380 of 2023 before this court, challenging the withdrawal order. On 28.02.2023, Appellant No. 1, Bharti Goyal, filed I.A. No. 1143/2023 in the aforesaid appeal, seeking permission to join the case and highlight how other homebuyers had also been excluded and defrauded.
- x. Meanwhile, the Corporate Debtor again reached out to the original applicants, promising to honour the settlement, if they withdrew their appeal. Eventually, on 31.08.2023, this Court allowed the original applicants to withdraw the appeal, as they were satisfied with the revised settlement. However, this Appellate Tribunal also allowed the intervenor Bharti Goyal (Appellant here), the liberty to take separate legal action. The order passed by this court on 31.08.2023 is reproduced as under:

“31.08.2023:- This Appeal has been filed against the order dated 07.09.2022 by which the Adjudicating Authority has allowed 12A application of the Resolution Professional allowing withdrawal of the CIRP.

2. This Appeal was filed by the Financial Creditors – Homebuyers which was entertained by this Tribunal on 24.04.2023. An I.A. No. 3040 of 2023 has been filed by the Appellants praying for withdrawal of the Appeal. An I.A. No. 1143 of 2022 has been filed by one Bharti Goyal, another Financial Creditor praying for impleadment.

3. *In I.A. No. 1143 of 2022, we have heard learned counsel for the Applicant and permit the Applicant to intervene.*
 4. *The Appellant himself having filed I.A. No. 3040 of 2023 praying for withdrawal of the Appeal, we permit the Appellant to withdraw the Appeal. I.A. No. 3040 of 2023 is allowed.*
 5. *Insofar as, Applicant in I.A. No. 1143 of 2022, we observe that it shall be open for the Applicant to take such remedy as available in law.*
 6. *With observations aforesaid, we permit the Appeal to be withdrawn. Appeal is dismissed as withdrawn.”*
- xi. Acting on that liberty, Bharti Goyal filed I.A. No. 5659/ND/2023 on 29.09.2023 before the Ld. NCLT, seeking to recall the earlier order of Adjudicating Authority dated 07.09.2022, which had allowed CIRP withdrawal. She pointed out that the said order was passed, ignoring her claim and claims of many other homebuyers. On 06.11.2023, Appellant No. 2, Swati Srivastava, representing herself and 19 other homebuyers, filed I.A. No. 6582/2023 to support Bharti Goyal's recall application by seeking intervention/impleadment in I.A. 5659/2023.
- xii. On 21.12.2023, I.A. 6582/2023 was also argued at length, and at the request of the Appellant No. 2, I.A. 6582/2023 was directed to be listed along with I.A. 5659/2023 on the next date of hearing.
- xiii. The Adjudicating Authority passed the Impugned Order dated 14.05.2024, dismissing I.A. No. 5659/2023. It stated that the Appellants had not submitted any documents. Subsequently, the Adjudicating Authority passed another order on 28.05.2024, dismissing I.A. No. 6582/2023 as infructuous, just because the main recall application I.A. No. 5659/2023 was dismissed.

- xiv. The Appellants have now filed this appeal under Section 61(1) of the IBC before this Appellate Tribunal, seeking to set aside the Impugned Order dated 14.05.2024, and to restore the CIRP of the Corporate Debtor so that the interests of all aggrieved homebuyers can be protected.

Submissions of Appellants:

5. The counsel for the Appellants submitted that this Appellate Tribunal had issued notice in the present Appeal on 27.08.2024. The notices were duly served upon Respondent No. 2 Shri Piyush Garg Ex IRP and Respondent No. 3 Insolvency and Bankruptcy Board of India (IBBI), but they did not enter appearance. By order dated 14.10.2024, Respondent Nos. 2 and 3 were directed to be proceeded ex-parte.

6. Later, through order dated 20.12.2024, a final opportunity was granted to Respondent No.1 to file its reply by 03.01.2025, failing which the right to file a reply was to be forfeited. However, Respondent No.1 filed its reply only on 17.02.2025, well after the timeline fixed by this Hon'ble Tribunal. The Appellants submit that since the reply was filed beyond the prescribed time, none of its contents should be taken into consideration while deciding this Appeal.

7. The counsel further submits that Appellant No.1, Ms. Bharti Goyal, had filed *I.A. No. 5659/2023* under Rule 11 of the NCLT Rules, 2016, read with Section 60(5) of the Insolvency and Bankruptcy Code, in Company Petition *IB No. 1051/ND/2019*. This application was filed to recall the order dated

07.09.2022, which was allegedly obtained by playing fraud on the Ld. NCLT by hiding material facts. Later, the Ld. NCLT, through its order dated 21.12.2023, allowed the intervention of 19 other Appellants in I.A. No. 5959/2024 and directed that both applications be heard together. (Appeal Book Annexure-10, Page 390).

8. The counsel submits that all Appellants are homebuyers/allottees in the same project of the Corporate Debtor, *Marvella City* at Haridwar, Uttarakhand. The CIRP of the Corporate Debtor had commenced on 09.12.2019.

9. It is the submission of the Appellants that they could not submit their claim before IRP within the time period as they were unaware of initiation of CIRP against the Corporate Debtor. The Appellants are residents of Jaipur and various cities across India, Whereas the registered office of the Corporate Debtor and the project site are situated at New Delhi and Haridwar respectively. It is their submission that there was no circulation of public announcement in the areas where the applicants have been residing.

10. The Ld. Counsel invited attention to the Judgment of this Tribunal in the matter of Amit Goyal V/s Piyush shelters India Pvt. Ltd. Company Appeal (AT) (Ins) No. 700 of 2021, while taking note on the ineffective Public Announcement made by the said Resolution professional, as well as considering the drastic consequences of such failure on the rights of Home

Buyers has held on the following lines in Para 28 of the Judgment, which is extracted below:

28. "Thus, we see that the homebuyers/Allottees could not have had access to either the registered office of the corporate debtor or the principal place of business at Faridabad since both were closed. Moreover, without the meeting/getting together by the homebuyers/allottees, it was not easy for them to discuss and convey their views to the Authorized Representative who would then represent their views in the CoC. When we see that out of a total of 473 home buyers/allottees only 222 allottees could file claims in time before the Resolution Professional and 251 allottees could either not do so or did so belatedly, we feel that exclusion of more than 251 i.e. about 53% of total homebuyers/Allottees cannot lead to a fair and just resolution of the Corporate Debtor. We also feel that the providing 10% of the claimed amounts to homebuyers/allottees who could not file their claims in the circumstances of this case is an unfair and inadequate treatment of the financial creditors."

11. It is the submission of the Appellants that the public announcement in the present case was ineffective as well as faulty. Further, the act of CD allowed by RP and approved by Ld. NCLT in only settling with the dues of those home buyers, who have been able to file their claim pursuant to the faulty public announcement in exclusion of other allottees of CD is an act which creates discrimination between the same class of creditors (allottees/applicants herein) and is in teeth of law laid down by this Appellate Tribunal in the case of Amit Goel (supra) and in "*Rajputana Properties Pvt. Ltd versus*

Ultratech Cements Ltd. and Others” [Company Appeal AT (Ins.) No. 188 of 2018].

12. Ld. Counsel further submitted that Resolution Professional is also bound to include the claim of allottees whose liability are reflected in the books of account of the Corporate Debtor as held by this Hon’ble Tribunal, in the matter of “*Puneet Kaur versus KV Developers Private Limited, [Company Appeal 390 of 2022]*”. Further, through the said Judgment this Hon’ble Tribunal has also directed re-initiation of the CIR process of the CD, with the direction to Resolution Professional to make the Public announcement again and update the Information Memorandum with the new claims, which thereafter, would be used by the successful resolution applicant for the purpose of giving similar treatment under the Resolution Plan in respect of the all the allottees of Corporate Debtor, irrespective of the timeline in which they may have filed their claims.

13. The Appellants are seriously aggrieved by the actions of Respondent Nos. 1 and 2, who by abusing the process of law, managed to withdraw the CIRP after 943 days by filing *I.A. No. 4281/2022* on 05.09.2022, claiming falsely that the CoC was never constituted. The withdrawal order was passed on 07.09.2022, based on this false statement, even though the CoC had been properly formed.

14. The Ld. Counsel submits that the same allottees, whose liabilities were wrongly shown as settled to secure the withdrawal order dated 07.09.2022, had filed *Company Appeal (AT) (Insolvency) No. 1380 of 2022*, before this

Hon'ble Tribunal. In the aforesaid Appeal, they alleged that the Management and the IRP had committed fraud in securing the withdrawal order from the Ld. NCLT. This Appeal was filed on 07.10.2022, and notice was issued on 21.11.2022.

15. The counsel further submits that in January 2023, when Appellant No.1 came to know about the fraud in CIRP withdrawal, she appeared through her counsel before this Appellate Tribunal in the pending Appeal. By order dated 28.02.2023, this Tribunal was pleased to grant liberty to Appellant No.1 to file an intervention application. Later, on 31.08.2023, *I.A. No. 1143/2023* was allowed and Appellant No.1 was given liberty to pursue appropriate remedies in law against the withdrawal order dated 07.09.2022.

16. It is the submission of Ld. counsel that it is under the liberty granted by this Tribunal that the Appellants filed *I.A. Nos. 5659/2023* and *6582/2023* before the Ld. NCLT, seeking recall of the fraudulent withdrawal order dated 07.09.2022. However, the Ld. NCLT, by the impugned order dated 14.05.2024, rejected both applications, stating that the Appellants had not filed any supporting documents to prove fraud.

17. The Ld. Counsel for Appellants strongly dispute this finding of Ld. Tribunal. It is his submission that the order dated 07.09.2022 and minutes of the 2nd CoC meeting dated 07.09.2020 were already attached as *Annexure-5* in *I.A. No. 5659/2023*. The entire application has been filed again with the present Appeal, and the relevant pages have been clearly marked (*Annexure-*

7: Pages 347–348 for the order and Pages 356–361 for CoC minutes). Ld. Counsel also invites the attention of this Tribunal that sample Buyer Builder Agreements, payment receipts, and a detailed chart showing allotments and payments made by the Appellants were filed with the I.A. No. 5659/2023. The entire set of documents filed with aforesaid IA 5659 as annexures have also been filed in this appeal as Annexure A-7.

18. The counsel for the Appellants respectfully submits that the legal issue regarding the power of the Tribunal to recall its own orders has been settled by a 5-Member Bench of this Hon'ble Tribunal in the case of *'Union Bank of India (Erstwhile Corporation Bank) v. Dinkar T. Venkatasubramanian & Ors.'*, arising out of a reference in *I.A. No. 3961 of 2022 in Company Appeal (AT) (Insolvency) No. 729 of 2020*. It was clearly held in the *Union Bank of India* (supra) that both this Tribunal and the NCLTs have the inherent power to recall an order, if it has been obtained by fraud. It was clarified that although review powers are not available, recall on valid grounds is well within the Tribunal's inherent jurisdiction under Rule 11 of the NCLAT Rules, 2016. Relevant observations from the judgment, particularly in Paragraphs 20 and 27, have been relied upon.

19. Ld. Counsel also places reliance on the judgment passed by this Hon'ble Tribunal in *Rakesh Kumar Gupta v. Straight Edge Contracts Pvt. Ltd. & Ors., Company Appeal (AT) (Insolvency) No. 444 of 2022*, where it was held that if an order has been obtained by fraud, the Ld. NCLT can recall it. The Tribunal, in that case, not only acknowledged the power of recall, but also exercised it

and set aside the fraudulent orders dated 20.07.2020 and 16.10.2020. The Appellants submit that the present case is on a similar footing.

20. The counsel for the Appellants prays that this Hon'ble Tribunal may set aside the impugned order dated 14.05.2024, recall the order dated 07.09.2022, and direct re-initiation of CIRP. The Appellants also seek liberty to file their claims before the new Resolution Professional and request that the conduct of Respondent No.2 be referred to Respondent No.3 for appropriate action.

Submissions of Respondent No.1

21. Per-Contra, Ld. Counsel for Respondent No.1 submits that the impugned order is well-reasoned, legally correct, and passed after considering all relevant facts. Therefore, there is no reason for this Hon'ble Tribunal to interfere with the same.

22. The counsel submits that in 2019, seven Financial Creditors, including Anand Prakash Soni, filed a Section 7 application under the Insolvency and Bankruptcy Code, 2016 against Respondent No.1 before the Hon'ble NCLT, New Delhi Bench. The petition was admitted on 09.12.2019, initiating CIRP. An IRP was appointed, and moratorium under Section 14 was imposed.

23. After admission of the CIRP, the IRP made the required public announcement on 09.01.2020, inviting claims. However, none of the present Appellants filed any claim before the IRP at any stage. In fact, in both the

Appeal and I.A. No. 5659/2023, the Appellants have not stated even once that they submitted their claim to the IRP.

24. The counsel points out that Appellant No.1, in her own application I.A. No. 5659/2023, admitted that she came to know about the CIRP withdrawal order dated 07.09.2022 only in January 2023. It is a settled principle of law that courts help only those who are vigilant and not those who sleep over their rights.

25. The counsel further submits that in 2022, all the seven original Financial Creditors settled their disputes with Respondent No.1. Based on that, the IRP filed I.A. No. 4821 of 2022 for withdrawal of the CIRP. The Hon'ble Adjudicating Authority allowed the withdrawal on 07.09.2022. It is important to note that till the date of withdrawal i.e., 07.09.2022, none of the present Appellants approached the IRP or the NCLT. Even if it is assumed that the withdrawal was based on the CoC's 90% approval, the procedure under Section 12A of the Code read with Regulation 30A was followed properly. Once such approval is obtained, there is very little scope for courts to interfere. The IRP moved the withdrawal application under Section 12A of the Code, which requires 90% CoC approval. Since the CoC had only 7 members, and all gave their consent, the requirement was fulfilled. Thus, the NCLT rightly dismissed Appellant No.1's request to recall the withdrawal order.

26. The Counsel for Respondent also relies on the judgment of the Hon'ble Supreme Court in *Vallal RCK v. M/s Siva Industries and Holdings Ltd. & Ors.* [(2022) Civil Appeal Nos. 1811–1812] which held that when 90% of CoC members approve a withdrawal, courts should not interfere with such commercial decisions.

27. The original Financial Creditors later filed Company Appeal (AT) (Insolvency) No. 1380 of 2023 against the 07.09.2022 order before this Hon'ble Tribunal, but soon withdrew it. The Hon'ble Tribunal disposed of the matter on 31.08.2023. Appellant No.1 had also filed an impleadment application, but the Tribunal, while disposing of the appeal, simply allowed her to seek other remedies in law.

28. The counsel submits that since Appellant No.1 was not allowed impleadment in the earlier appeal, she filed I.A. No. 5659/2023 before the NCLT seeking recall of the CIRP withdrawal order. Later, Appellant No.2, representing 19 homebuyers, filed I.A. No. 6582/2023 to get impleaded in Appellant No.1's application.

29. The Counsel submitted that none of the Appellants filed claims before the IRP, nor were they part of the original Section 7 proceedings or CoC. Therefore, they have no locus standi to challenge the withdrawal order passed by the NCLT. The mere fact that some homebuyers have claims does not bar the CIRP withdrawal, if the original applicants have settled. Since the

Appellants failed to file their claims during the CIRP, they cannot challenge its withdrawal now.

30. The counsel further submits that this Appeal is speculative and baseless. Except for Appellant No.1, none of the other Appellants were parties to the NCLT proceedings or the previous appeal. They thus have no standing to maintain the present appeal.

31. Appellant No.2, who claims to represent 19 homebuyers, was never part of the original proceedings. These persons were not even impleaded in I.A. No. 5659/2023 filed by Appellant No.1. Moreover, I.A. No. 6582/2023 filed by Appellant No.2 became infructuous after I.A. No. 5659/2023 was dismissed. It was accordingly also dismissed as infructuous.

32. The Appellants, especially Appellant No.2, have suppressed this dismissal of I.A. No. 6582/2023 and misled this Hon'ble Tribunal. Since their impleadment application has already been rejected, they have no legal right to file the present appeal. After the CIRP was initiated on 09.12.2019, the COVID-19 pandemic delayed proceedings. Eventually, the original Financial Creditors settled the matter, and the withdrawal was duly approved by CoC and allowed by the NCLT.

33. The Appeal is based on wrong facts and misleading arguments. The Appellants have suppressed key information and presented a distorted version of events to this Hon'ble Tribunal.

34. It is submitted that Appellant at Serial No.3, Smt. Sushma Sunil Chaudhary has already been allotted and registered an alternate plot in Haridwar, but has failed to disclose this. This deliberate concealment further weakens the Appellants' case.

35. Lastly, the counsel submits that the present proceedings are misusing the Code as a tool for money recovery, which is not its intended purpose. If such Appeals are entertained, the basic objective of IBC will be defeated and judicial forums will be flooded with frivolous litigation.

36. In view of the above submissions, the counsel for Respondent No.1 prayed that the present Appeal may be dismissed with costs, as it is devoid of merit, procedurally unsustainable, and filed with a view to misuse the process of law.

Analysis and Findings

37. We have heard the Learned counsels for Appellants and the Respondent No.1 in detail. We have gone through the detailed records of the case, including the Written submissions filed by the parties. In spite of service of notice, Shri Piyush Garg, Erstwhile IRP (Respondent No. 2) and Insolvency and Bankruptcy Board of India (Respondent No.3) did not enter appearance and were directed to be proceeded as ex-parte.

38. Based on the submissions of both the parties, we have identified two issues for determination:

Issue 1: Whether the Appellants' (homebuyers) have the locus to agitate their claim at this belated stage due to non-filing of claim within stipulated period and whether their application is maintainable at this stage when the CIRP Process has been completed?

Issue 2: Whether the withdrawal of CIRP of Hector Realty Venture Private Limited by order dated 07.09.2022 was vitiated by fraud and suppression of material facts?

39. The first issue is critical to examining the maintainability of this appeal as the Respondent claims that due to failure on the part of appellants in filing within the stipulated period debars them from seeking further relief and this appeal therefore is liable to be dismissed as non-maintainable at the threshold. We also have to examine the role of IRP in this regard i.e. whether the IRP was under an obligation to include them as financial creditors on the basis of the records already available with the Corporate Debtor.

40. The Appellants are allottees in the housing project "Marvella City" being developed by the Corporate Debtor. Each of them had executed Builder Buyer Agreements and made substantial payments towards the allotted units. However, none of them submitted individual claims during the claim submission window opened by the IRP after admission of the CIRP.

41. It is the submission of Appellants that they were never informed about the CIRP, and that they only came to know about the withdrawal in January 2023. They argue that most of them reside far away from the Corporate Debtor's registered office and were not in a position to access newspaper announcements. They further assert that their names and payment records

were already available in the Corporate Debtor's own documents, including Builder Buyer Agreements and account statements, and that the IRP made no effort to contact or include them in the resolution process.

42. Per-contra the Respondents have taken the stand that since the Appellants did not submit claims within the prescribed period, they cannot now seek to challenge the CIRP withdrawal, which was based on settlements reached with other financial creditors. They also argue that the Appellants' rights, if any, are now time-barred, and that they have no locus to pursue this appeal.

43. To appreciate the matter in its proper perspective, a brief background of relevant facts is essential. The CIRP against the Corporate Debtor was initiated on 09.12.2019 by the Adjudicating Authority under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), in CP No. (IB)-1051/ND/2019. The Interim Resolution Professional (IRP), Mr. Piyush Garg, was appointed and public announcement was made on 09.01.2020 inviting claims from creditors.

44. It can be seen that the relevant period during which the CIRP was initiated and claims were invited coincided with the onset of the COVID-19 pandemic. In such circumstances, the mere act of publishing newspaper notices could not have sufficed to reach homebuyers effectively. Thus, it was unreasonable to expect individual homebuyers, many of whom are laypersons with no legal background, to track public announcements without any personal notice or outreach. The responsibility to ensure that all financial

creditors were informed and given a fair opportunity to submit their claims rested squarely with the IRP.

45. The IRP, being a professional entrusted with the duties of public notice and claim collation, under Regulation 6 of the CIRP Regulations and was required to act with added diligence in identifying and contacting such stakeholders. The relevant Regulations 6 & 6A are extracted below:

“Regulation 6: Public announcement.

6. (1) An insolvency professional shall make a public announcement immediately on his appointment as an interim resolution professional.

Explanation- ‘Immediately’ means not later than three days from the date of his appointment.

(2) The public announcement referred to in sub-regulation (1) shall:

(a) be in Form A of the [Schedule-I];

(b) be published-

(i) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and any other location where in the opinion of the interim resolution professional, the corporate debtor conducts material business operations;

(ii) on the website, if any, of the corporate debtor; and

(iii) on the website, if any, designated by the Board for the purpose,

[(ba) state where claim forms can be downloaded or obtained from, as the case may be;

(bb) offer choice of three insolvency professionals identified under regulation 4A to act as the authorised representative of creditors in each class; and]

(c) provide the last date for submission of proofs of claim, which shall be fourteen days from the date of appointment of the interim resolution professional.

(3) The applicant shall bear the expenses of the public announcement which may be reimbursed by the committee to the extent it ratifies them.

Regulation 6A: Communication to creditors.

6A. *The interim resolution professional shall send a communication along with a copy of public announcement made under regulation 6, to all the creditors as per the last available books of accounts of the corporate debtor through post or electronic means wherever the information for communication is available.*

Provided that where it is not possible to send a communication to creditors, the public announcement made under regulation 6 shall be deemed to be the communicated to such creditors.”

46. It is also significant to note that **Regulation 6A**, inserted by the **IBBI notification dated 16 September 2022**, was introduced to address recurring failures by RP in reaching out to creditors - particularly homebuyers - whose names were already recorded in the Corporate Debtor’s books. This provision now mandates the IRP to send a copy of the public announcement individually to all such creditors, by post or electronic means, based on the last available books of account of the Corporate Debtor. The legislative intent behind this insertion was to ensure that creditors, especially scattered retail allottees, are not left unaware of insolvency proceedings merely due to lack of formal claim submission. In fact, the present case is a clear example of the very problem this amendment was meant to prevent—where known homebuyers were not personally informed despite their details being available, and were wrongly left out of the process.

47. We have also seen from the record that a Committee of Creditors (CoC) was formed by the IRP using claims from only 7 homebuyers, even though there were 20 others similarly placed allottees who had signed Builder Buyer Agreements and made significant payments to the Corporate Debtor. These

homebuyers, including the Appellants, were clearly identifiable from the builder's own records. Yet, the IRP made no effort to contact or include them.

48. By limiting the CoC to a small group, the IRP allowed the process to move forward in a closed and convenient manner, which made it easier to settle and withdraw the CIRP—while keeping out most of the financial creditors. This goes against the basic principles of fairness and transparency under the Code.

49. As to delay in filing the appeal, the same may not be fatal as the Appellant No.1 acted in January 2023 upon acquiring knowledge. The intervention in the prior appeal, the liberty granted by the Tribunal on **31.08.2023**, and the filing of I.A. 5659/2023 in **October 2023**, show that the Appellants acted diligently. We must not allow the passage of time to shield an order obtained by fraud.

50. On the question of locus, the Appellants are financial creditors as allottees under Section 5(8)(f) of the Code. They are entitled to participate in the CIRP. Their exclusion by misrepresentation cannot be used to deny them the right to seek recall of the very order that led to such exclusion.

51. The Appellants, have relied on two Judgments of this Tribunal regarding the duties and obligations of Resolution Professionals in real estate insolvency cases.

52. In *Amit Goyal v. Piyush Shelters India Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 700 of 2021*, decided by the NCLAT on 15 February 2022 more than half of the homebuyers were left out due to a weak public notice, and

this Appellate Tribunal held that this exclusion was unfair. The relevant para 28 of the Judgment is extracted below:

28. "Thus, we see that the homebuyers/Allottees could not have had access to either the registered office of the corporate debtor or the principal place of business at Faridabad since both were closed. Moreover, without the meeting/getting together by the homebuyers/allottees, it was not easy for them to discuss and convey their views to the Authorized Representative who would then represent their views in the CoC. When we see that out of a total of 473 home buyers/allottees only 222 allottees could file claims in time before the Resolution Professional and 251 allottees could either not do so or did so belatedly, we feel that exclusion of more than 251 i.e. about 53% of total homebuyers/Allottees cannot lead to a fair and just resolution of the Corporate Debtor. We also feel that the providing 10% of the claimed amounts to homebuyers/allottees who could not file their claims in the circumstances of this case is an unfair and inadequate treatment of the financial creditors."

53. In the present case also, we find that the public announcement made by the earlier IRP was not done properly and failed to reach many genuine homebuyers. Although the IRP had access to Builder Buyer Agreements and payment records, he did not make the necessary efforts to inform or include all the homebuyers who had financial claims. As a result, the Committee of Creditors (CoC) was formed using claims from only a few homebuyers who happened to file them in time. More than 20 similarly placed homebuyers, including the Appellants, were completely left out. This means the CoC was incomplete and did not truly represent the full class of financial creditors.

54. This led to a situation where the ex-management of the Corporate Debtor settled dues only with those few homebuyers whose claims were filed—while leaving out others from the same class of creditors. Such selective treatment of creditors within the same class is against the basic principles of the IBC and cannot be accepted.

55. Our attention was also invited to the Judgment in '*Puneet Kaur v. K.V. Developers Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 390 of 2022*', decided on 10 August 2022, wherein this Tribunal held that homebuyers, being financial creditors in a class under Section 5(8)(f) of the Code, cannot be excluded from the CIRP on account of procedural lapses or inaction by the Resolution Professional. It was emphasized that where the names and payment records of such allottees are available in the Corporate Debtor's own records, the IRP is under a duty to proactively identify them, collate their claims, and ensure they are represented through an Authorized Representative as per Regulation 6A of the CIRP Regulations. The Tribunal made it clear that failure to include even one eligible homebuyer undermines the participatory nature of the insolvency process and violates the principle of creditor democracy. The relevant para 27 of the judgement is extracted below:

"27. In the present case there is no denial that details of the Appellant(s) and other Homebuyers, who could not file their claims has not been reflected in the Information Memorandum. There being no detail of claims of the Appellant(s), the Resolution Applicant could not have been taken any consideration of the claim of the Appellant(s), hence, Resolution Plan as submitted by Resolution Applicant cannot be faulted.

However, we are of the view that the claim of those Homebuyers, who could not file their claims, but whose claims were reflected in the record of the Corporate Debtor, ought to have been included in the Information Memorandum and Resolution Applicant, ought to have been taken note of the said liabilities and should have appropriately dealt with them in the Resolution Plan. Non-consideration of such claims, which are reflected from the record, leads to inequitable and unfair resolution as is seen in the present case.

To mitigate the hardship of the Appellant, we thus, are of the view that ends of justice would be met, if direction is issued to Resolution Professional to submit the details of Homebuyers, whose details are reflected in the records of the Corporate Debtor including their claims, to the Resolution Applicant, on the basis of which Resolution Applicant shall prepare an addendum to the Resolution Plan, which may be placed before the CoC for consideration.....”

(Emphasis supplied)

56. The Adjudicating Authority had also examined the Puneet Kaur (Supra) and reached a finding that the Puneet Kaur case related to a case wherein the CIRP was ongoing and RA was expected to present a resolution plan, and differentiated it from the facts of the present case wherein the CIRP order has already been withdrawn.

57. We are of the view that the present case is squarely covered by Puneet Kaur (supra) where the IRP-despite being in possession of Builder Buyer Agreements and payment receipts - failed to recognise the claims of Appellants and other similarly placed homebuyers as financial creditors, and proceeded to file a withdrawal application without disclosing their exclusion.

This omission runs directly counter to the obligations outlined in Puneet Kaur (supra) and reinforces the contention that the CIRP was conducted in breach of statutory duties and in disregard of the rights of an entire class of creditors.

58. It must also be borne in mind that homebuyers represent a class of financial creditors who often invest their life savings into residential projects with the legitimate expectation of securing a home. These individuals are not speculative investors but ordinary citizens, including retirees, salaried professionals, and first-time buyers, who part with their hard-earned money over years to fulfill a basic housing need. To exclude such stakeholders from the CIRP merely on technicalities—particularly when their names and payments are already reflected in the builder's records—is not only unjust but also contrary to the intent of the IBC. The Code, while commercial in nature, is not blind to equity and fairness. Homebuyers must not be left remediless due to the inaction or selective conduct of a Resolution Professional, especially when they have acted in good faith and their claims are traceable to the records of the Corporate Debtor. The law must protect substance over form, and ensure that the legitimate financial interests of homebuyers are not erased through procedural oversights.

59. Applying the ratio of the judgments referred above to the present case, it is clear that the IRP did not perform his duty of collating and including the Appellants' even though their payment details were available in the company's records. He also failed to bring this fact to the notice of Ld. NCLT before seeking withdrawal of CIRP. Because of this failure on the part of IRP, the Appellants were wrongly left out of the settlement. We find that this caused

real harm to the Appellants, and allowed CIRP to be withdrawn in an unfair and improper way.

60. We are of the view that the public notice of the CIRP was not circulated properly due to which the Homebuyers (Financial Creditors in class) could not submit their claims to the IRP. IRP did not make any effort to ensure that Homebuyers whose names feature on the Financial Records of the CD were contacted and duly informed about initiation of CIRP process. It is due to such laxity on the part of IRP that all homebuyers could not file their claim in time.

61. In view of the discussion above we hold that the Appellants have the locus and the appeal is maintainable.

62. We now take up the second issue in this appeal i.e. Whether the withdrawal of CIRP of Hector Realty Venture Private Limited by order dated 07.09.2022 was vitiated by fraud and suppression of material facts, thereby justifying recall. The Appellants seek recall of this withdrawal order on the ground that it was obtained by fraud and deliberate suppression of material facts. The Appellants contend that the IRP, in collusion with the management of the Corporate Debtor, falsely represented to the Adjudicating Authority that no CoC had been constituted, whereas documentary evidence such as the minutes of the 2nd CoC meeting dated 07.09.2020 (pg 356 of appeal volume 2) clearly establish that the CoC was constituted and functioning.

63. According to the Appellants, they had made substantial payments to Corporate Debtor under builder-buyer agreements. However, they allege that

despite being financial creditors within the meaning of Section 5(8)(f) of the IBC, they were never informed about the CIRP nor were their claims invited or considered. Ld. Counsel for the appellants argued that deliberate misrepresentation about formation of CoC allowed the Respondents to bypass the mandatory procedure under Section 12A of the Insolvency and Bankruptcy Code, 2016 (IBC), which requires 90% approval of CoC members for withdrawal of CIRP. The Appellants further contend that they were not afforded any opportunity to submit claims or participate in the process and that the NCLT's dismissal of their recall application ignored material on record.

64. The Respondents, on the other hand, deny the allegations of fraud. It is submitted that the CIRP was withdrawn after a valid settlement with the original financial creditors, and that the Appellants never filed any claim during the CIRP despite public notice. It is further submitted that the Adjudicating Authority rightly dismissed the recall application due to absence of prima facie evidence of fraud.

65. We note that a CoC was constituted by the Respondent No.2/ IRP during the CIRP. The minutes of the 2nd CoC meeting dated **07.09.2020** have been placed on record by the Appellants as Annexure-5, confirm that not only was a CoC in place, but meetings were being held and decisions were being taken on financial matters. This fact has not been rebutted by the Appellant.

66. In the second CoC meeting, the members did not confirm Mr. Piyush Garg as the Resolution Professional. During this meeting, the IRP said that because of the COVID-19 pandemic, his office could only start functioning in

September 2020. The Committee of Creditors (CoC) was constituted by the IRP solely on the basis of claims received from 7 homebuyers, even though there were 20 other similarly placed allottees whose names and payment details were available in the Corporate Debtor's own records. This selective constitution of the CoC enabled a limited and convenient decision-making process, which excluded the larger class of financial creditors, including the Appellants. The IRP himself presided over such meetings and prepared the minutes.

67. However, on 05.09.2022, i.e. nearly two years later, the same IRP filed I.A. No. 4281/2022 seeking withdrawal of CIRP, claiming that the matter was at the "pre-CoC" stage and that settlement had been reached with the original financial creditors. Based on this assertion, the Adjudicating Authority passed the withdrawal order on 07.09.2022. This assertion in the withdrawal application; that no CoC was ever constituted, forms the crux of the present dispute.

68. It is relevant to note that Appellant No.1 claims to have become aware of the CIRP withdrawal only in January 2023, upon which she moved an application (I.A. No. 1143/2023) to intervene in Company Appeal (AT)(Insolvency) No. 1380 of 2022 (filed against the original withdrawal order). This Tribunal, by its order dated 31.08.2023, granted liberty to Appellant No.1 to pursue appropriate remedies in law. Acting on this liberty, she filed I.A. No. 5659/2023 before the NCLT on 19.10.2023, seeking recall of the CIRP withdrawal order. Subsequently, I.A. No. 6582/2023 was filed by Appellant No.2 on behalf of 19 other homebuyers to support the recall plea.

69. The NCLT, however, dismissed I.A. No. 5659/2023 by its order dated 14.05.2024, holding that the Appellants had failed to place documents to substantiate the allegation of fraud. This order is under challenge in the present appeal. The relevant paragraph 12 of the relevant order is extracted below:

“12. It is further observed that the Applicant had raised several other contentions such as the concealment of the fact of the CoC by the Erstwhile Resolution Professional and the management of Corporate Debtor, however, it is observed that the Applicant has not annexed any document which shows that the CoC was constituted and the withdrawal of the CIRP was not at a pre-CoC constitution stage. Further, no report from the Erstwhile Resolution professional certifying that the CoC was constituted has been placed on record. Hence, this contention raised by the Applicant does not hold any ground. Further, the Applicant contends that the claim of the Applicant is reflected in the books of accounts of the Corporate Debtor, however, the Applicant has not filed the books of Accounts of the Corporate Debtor before this Adjudicating Authority. It is observed that the Applicant has made all the contentions without any supporting evidence. Further, mere averment, in the absence of substantiating document, cannot be acted upon.”

70. We note that the observation made in paragraph 12 of the impugned order that no document was filed to show constitution of the CoC is not borne on facts. The minutes of the 2nd CoC meeting dated 07.09.2020 were filed as Annexure-5 to the recall application. The minutes clearly record the formation of the CoC, list the members present, and bear the signature of the IRP. This

document was sufficient to establish that the CIRP had progressed beyond the pre-CoC stage.

71. We also note that the existence of these minutes has not been specifically denied by the Respondent. The absence of a separate certification by the IRP, does not dilute the evidentiary value of duly recorded and signed CoC minutes. In insolvency proceedings, such minutes are official records and cannot be disregarded. We also note that the Appellant filed Builder Buyer Agreements, payment receipts, and a claim summary, all of which support her status as a financial creditor. Expecting a homebuyer to produce the Corporate Debtor's internal books of accounts; documents not within her access, is unreasonable.

72. It is undisputed that a public announcement was made by the IRP in January 2020. The CIRP remained in force for more than two years before the withdrawal application was filed in 2022. What is materially relevant is the fact that in the withdrawal application filed by the IRP, it was asserted that the CoC had not been constituted, and therefore, the CIRP could be withdrawn without following Section 12A. This assertion was the foundational basis of the withdrawal order dated 07.09.2022.

73. Before addressing the factual matrix, it is essential to examine the scope and mandatory nature of Section 12A of the Insolvency and Bankruptcy Code, 2016, and its interplay with Regulation 30A of the CIRP Regulations. Section 12A was introduced through the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, and came into effect on 06.06.2018. It provides the only statutory route for withdrawal of CIRP proceedings post-

admission of an insolvency application under Sections 7, 9, or 10 of the Code.

Section 12 A of the Code is extracted below:

Section 12A. Withdrawal of application admitted under section 7, 9 or 10.— The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified.”

*“Section 30A. Withdrawal of application.—
(1) An application for withdrawal under section 12A may be made to the Adjudicating Authority—
(b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be:
Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.”*

74. This provision is supplemented by Regulation 30A of the IBBI (CIRP) Regulations, 2016, which lays down a structured procedure to be followed for seeking withdrawal—either before or after the constitution of the Committee of Creditors (CoC). Importantly, once the CoC is constituted, the approval of 90% voting share is a statutory prerequisite, reflecting the principle that CIRP, after admission, is no longer a matter between the applicant and the Corporate Debtor alone—it becomes a collective process involving all creditors.

75. Thus, a withdrawal application under Section 12A, once CoC is constituted, is permissible only with the approval of 90% voting share of the CoC. The misrepresentation by the IRP that no CoC was constituted effectively nullified this statutory protection, allowing withdrawal without creditor participation. This amounted to suppression of facts and also distorted the judicial process by misleading the court on a crucial jurisdictional fact. Such suppression, when deliberate and material, constitutes fraud on the court.

76. This requirement of approval by 90% of voting share in CoC has also been judicially affirmed in **Swiss Ribbons Pvt. Ltd. v. Union of India**, (2019) 4 SCC 17, wherein the Hon'ble Supreme Court held that post-admission, insolvency proceedings assume the character of *in rem* proceedings and must follow the due process mandated by the Code. It was held that withdrawal without CoC approval cannot be permitted once CIRP is underway and rights have accrued to multiple stakeholders.

77. The ratio laid down by Swiss Ribbons (Supra) has been reaffirmed by the Hon'ble Supreme Court, in its decision dated **23.10.2024**, in **Civil Appeal No. 9986 of 2024: GLAS Trust Company LLC v. Byju Raveendran & Ors.**, wherein the Hon'ble SC has comprehensively settled the law governing the withdrawal of CIRP proceedings. In GLAS Trust (Supra), this Tribunal had allowed withdrawal of CIRP proceedings, post-admission based on a private settlement, invoking its inherent powers under Rule 11 of the NCLAT Rules, 2016. The Supreme Court set aside this decision, reiterating the primacy of Section 12A. Hon'ble SC held that once the insolvency process is admitted, the proceedings become *in rem*. It is no longer open to the parties to privately

settle and seek withdrawal without following the due process under Section 12A, which requires 90% CoC approval.

78. In the present case, it is clear that the CoC of corporate Debtor was constituted prior to 07.09.2020 i.e. before the date of 2nd CoC meeting, minutes for which were placed on record by the appellants. However, the IRP, in the withdrawal application filed vide I.A. No. 4281 on 05.09.2022, falsely represented that no CoC had been formed. As a result, the withdrawal was processed and granted without the required 90% approval of the CoC under Section 12A. Due to this misrepresentation the Adjudicating authority allowed the withdrawal of CIRP on 07.09.2022 without creditor consultation or consent. It is this violation that goes to the very root of the subsequent recall plea filed in NCLT.

79. Applying this ratio of the Swiss Ribbons (Supra) and GLAS Trus (Supra) to the present case, it is clear that the withdrawal of CIRP on 07.09.2022 was allowed in contravention of Section 12A and without involvement of the CoC.

80. In the recall petition also the NCLT failed to take notice of facts on record and returned a finding that there was no suppression of material facts or fraud and accordingly dismissed the I.A. No. 5659 as being devoid of merit. This decision of the Adjudicating Authority dated 14.05.2024 is erroneous in ignoring this statutory violation, but it also stands contrary to binding judicial precedent. It is clear that Section 12A is not a mere procedural formality, rather, it embodies a substantive protection against unilateral withdrawal of CIRP once collective rights have crystallized. The mandatory requirement of CoC approval is the only legally sanctioned exit after CIRP commences. Any

deviation from this scheme, especially one procured through misrepresentation, is per se fraudulent and liable to be set aside.

81. The law on the power of recall by NCLT and NCLAT is also well settled. There are precedents which make it abundantly clear that where fraud is alleged and prima facie demonstrated, recall is not only permissible—it becomes necessary to prevent abuse of the process.

82. In *Union Bank of India (Erstwhile Corporation Bank) v. Dinkar T. Venkatasubramanian & Ors.*, in the Reference made by three Member Bench in I.A. No. 3961 of 2022 in Company Appeal (AT) (Ins.) No. 729 of 2020 it was clearly held by a five-member bench of this Tribunal that NCLAT has the power to recall the order which has been obtained by playing fraud upon it. That the relevant Paragraphs No. 20,26,27 are extracted herein below-

“20. The above judgments of the Hon’ble Supreme Court clearly lays down that there is a distinction between review and recall. The power to review is not conferred upon this Tribunal but power to recall its judgment is inherent in this Tribunal since inherent power of the Tribunal are preserved, powers which are inherent in the Tribunal as has been declared by Rule 11 of the NCLAT Rules, 2016. Power of recall is not power of the Tribunal to rehear the case to find out any apparent error in the judgment which is the scope of a review of a judgment. Power of recall of a judgment can be exercised by this Tribunal when any procedural error is committed in delivering the earlier judgment; for example; necessary party has not been served or

necessary party was not before the Tribunal when judgment was delivered adverse to a party. There may be other grounds for recall of a judgment. Well known ground on which a judgment can always be recalled by a Court is ground of fraud played on the Court in obtaining judgment from the Court. We, for the purpose of answering the questions referred to us, need not further elaborate the circumstances where power of recall can be exercised.

26. *In view of the law laid down by Hon'ble Supreme Court which holds that the Tribunal has inherent power to recall its judgment on appropriate grounds, the three-member bench judgment in "Agarwal Coal Corporation Private Limited" and "K.L.J Resources Ltd. & Anr." observing that the Tribunal does not have power to recall cannot be approved. The three-member bench judgments of this Tribunal insofar as observation that this Tribunal has no power to review, no exception can be taken to that part of the judgment. We, however, hold that the judgment laying down that this Tribunal has no power to recall the judgment does not lay down correct law.*

27. *In view of the foregoing discussion, we answer the questions referred to this Bench in following manner: I: This Tribunal is not vested with any power to review the judgment, however, in exercise of its inherent jurisdiction this Tribunal can entertain an application for recall of judgment on sufficient grounds."*

(Emphasis Supplied)

83. The judgement in Union Bank (Supra) lays down the distinction between review and recall. While review requires statutory authority, the power to recall a judgment obtained by fraud is inherent and preserved under Rule 11 of the NCLAT Rules, 2016. Fraud, suppression of material facts, or absence of necessary parties constitute valid grounds for recall.

84. Similarly, in *Rakesh Kumar Gupta v. Straight Edge Contracts Pvt. Ltd. & Ors.*, Company Appeal (AT) (Insolvency) No. 444 of 2022, this Tribunal held that Ld. NCLT has the power to recall its order if the same has been obtained by playing a fraud upon it and consequentially has also recalled the respective orders. Relevant paragraphs no. 22,23,24 of the judgement are extracted below:

“22. In view of the aforesaid facts and circumstances of the case, we are totally satisfied that there is complete misappreciation of law on the part of the Adjudicating Authority in rejecting the application filed both by the present Appellant as well as M/s. Oriss Infrastructure Pvt Ltd. wherein they have also submitted that the Adjudicating Authority has the jurisdiction to recall its own order if it is obtained by playing fraud upon it.

23. In view of the aforesaid discussions, the present appeal has the merit, therefore, the same is allowed and the impugned order is set aside.

24. Since, we have allowed the present appeal on the issue that the Adjudicating Authority had the jurisdiction to recall its own order which has been obtained by playing fraud upon it, the order passed by the Tribunal on 20.07.2020 & 16.10.2020 are hereby recalled.”

85. The Respondents have not provided any explanation for the inconsistency between the formation of the CoC in 2020 and the contrary claim made in 2022. The fact that minutes of CoC meetings exist, and yet the IRP stated under affidavit that no CoC had been formed, reveals a deliberate misrepresentation. The subsequent suppression of allottees' claims only exacerbates the fraudulent nature of the process. Further, the NCLT's impugned order dated 14.05.2024 dismisses the recall application on the ground that no supporting documents were filed. This finding is contrary to record, as the recall application filed by I.A 5659/ND/2023, which has been attached to this petition (347 PG APPEAL VOL 2), annexed the CoC minutes, Builder-Buyer Agreements, payment records, and charts showing the Appellants' financial exposure. These materials on record were ignored without consideration, rendering the impugned order unsustainable.

86. We are also guided by the principle that 'fraud vitiates even the most solemn proceedings'. The Hon'ble Supreme Court in *Indian Bank v. Satyam Fibres (India) Pvt. Ltd.*, (1996) 5 SCC 550, held that fraud is an extrinsic collateral act, which vitiates all judicial acts, whether in rem or in personam. Courts have an inherent power to recall orders obtained by fraud.

87. In view of the above, we are of the view that the withdrawal order dated 07.09.2022 was vitiated by fraud. The Appellants have substantiated the allegation through documentary evidence, and the Respondents have not been able to rebut or explain the contradictions. The Adjudicating Authority's refusal to recall the order, in the face of such evidence, constitutes a serious

error of law and a failure of judicial duty. The second issue is also answered in affirmative.

88. In view of the above findings the appeal is allowed. The order dated 14.05.2024 passed by the Adjudicating Authority in I.A. No. 5659/2023 is set aside. The CP IB No. 1051/ND/2019 is restored. Parties to appear before NCLT New Delhi Bench Court-V on 26.08.2025.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

SA/Pragya (LRA)