

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 2156 of 2024

[Arising out of the Order dated 11.06.2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench, Court No. II, Kolkata), in IA No. 237/KB/2024 in CP (IB) No. 666/KB/2020]

IN THE MATTER OF:

- | | |
|--|---------------------------|
| 1. Shobhana Thakkar
NCD Holder,
w/o Niranjana Chotalala Thakkar
Aged 76 years.
R/o T-1, 32B, 375, Prince Anwar Shah
Road, Jodhpur Park, Kolkata, West Bengal
- 700068 niranjanthakkar@gmail.com
+91 9331182368 | ...Appellant No.1 |
| 2. NIRANJAN CHOTALAL THAKKAR
NCD Holder,
R/o T-1, 32B, 375, Prince Anwar Shah
Road, Jodhpur Park, Kolkata, West Bengal
- 700068 EMAIL ID:
niranjanthakkar@gmail.com | ...Appellant No.2 |
| 3. Rasik Thakkar,
NCD Holder S / o Mathuradas Thakkar,
Aged 82 years,
R/o 255/Vinod Kunj, Wadala, Mumbai-
400031 | ...Appellant No. 3 |
| 4. Bharat Jayantilal Javeri,
NCD Holder
S/o Jayantilal Javeri,
Aged 76 years,
R/o 71/ A, Grand Paradi, Dadi Seth Hill,
August Kranti Marg, Near Shalimar Hotel,
Kemps Corner, Mumbai 400036 | ...Appellant No. 4 |
| 5. Kamalini Bharat Javeri,
NCD Holder
W /o Bharat Jayantilal Javeri,
Aged 76 years, R/o 71/ A, Grand Paradi,
Dadi Seth Hill, August Kranti Marg, Near
Shalimar Hotel, Kemp's Corner, Mumbai-
400036 | ...Appellant No. 5 |
| 6. Nina Suresh Javeri,
NCD Holder
W /o Suresh Javeri,
Aged 75 years,
R/o 73/ A, Atlas Apartment, J.M. Mehta | |

- Marg, Opp. Chief Justice House,
Walkeshwar,
Mumbai-400006, India
- 7. Pramod Prakash Singh,**
NCD Holder,
S / o Late Mr. Chandrikaprasad Singh,
Aged 65 years,
R/o A 905, Dosti Elite, Road No. 29, Sion
East, Mumbai 400022
- 8. Prashant Jagdish Ashar,**
S/o Jagdish Ashar, Aged 59 years, R/o
1401-1501, Floor-14th, Anand Smruti, 266,
Deodhar Road, Matunga Mumbai 400019
- 9. Sanjeev Ahuja HUF,**
NCD Holder,
Thr. Mr. Sanjeev Ahuja (Karta), S/o Mr.
H.K. Ahuja,
Aged 55 years,
R/o B-231, Saraswati Vihar, Pitampura,
New Delhi-110034
- 10. Shiv Saran Mehra**
NCD Holder, S/o G.S. Mehra
Aged 61 years
R/o 16-Eastern Avenue, Maharani Bagh,
New Delhi 110065

...Appellant No. 6

...Appellant No. 7

...Appellant No. 8

...Appellant No. 9

...Appellant No. 10

Versus

- 1.** Monitoring Committee of
Ashiana Landcraft Realty Pvt. Ltd.
office at 5F, Everest 46/C, Chowringhee
Road, Kolkata – 700071
Email - Sandippandit.ca@gmail.com
- 2.** IV County Private Limited
Resolution Applicant
Registered Office at 8th Floor, Plot No. 15,
Section - 135, Noida, Nepz Post Office,
Gautam Buddha Nagar,
Dadri, Uttar Pradesh, India, 201305
EMAIL: Sandippandit.ca@gmail.com
- 3.** Mr. Jayesh Natvarlal Sanghrajka,
Erstwhile Resolution Professional of
Ashiana Landcraft Realty Private Limited,
C/o Jayesh Sanghrajka & Co. LLP,
405-407, Hind Rajasthan, Building, D.S.
Phalke Road, Dadar East, Mumbai -
400014
Email: jayesh.sanghrajka@incorpadvisory.in
- ..Respondent No. 1**
- ..Respondent No. 2**
- ..Respondent No. 3**

Present:

For Appellant : Mr. Vinod Chaurasia & Mr. Prince Sethi, Advocates
For Respondent : Mr. Sakal Bhushan, Mr. Vasu Bhushan & Mr. Nipun Bhushan, for R-1 to 3.

J U D G M E N T
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

Instant appeal has been preferred under Section 61 read with 60(5) (c) of the IBC, 2016 against order dated 11.06.2024 passed by the National Company Law Tribunal, Kolkata arising out of IA No. 237/KB/2024 in CP (IB) No. 666/(KB)/2020, whereby the IA moved by the appellant has been dismissed.

2. Necessary facts which are required for disposal of the instant appeal are that the CIRP of the CD namely, Ashiana Landcraft Realty Pvt. Ltd. was initiated on 11.01.2022 and one Jayesh Sanghrajka was appointed as the IRP who was later on confirmed as the RP.

Case of the Appellant

3. The case of the appellant as is evident from the appeal memo is that the appellant and other investors (in total 188) were financial creditors (holding Non-Convertible Debentures) (for short 'NCD') of the CD and have invested in CD under a Portfolio Management Scheme facilitated by Piramal Funds Management Pvt. Ltd. herein after called Piramal Fund Manager.

4. These NCD were secured with IDBI Trusteeship which was appointed as trustee for the NCD holders and during the course of CIRP the NCD holders have informed the RP about their adversarial relationship with Piramal and IDBI trustee and in this regard an FIR was also lodged against them by some NCD holders at Economics Offences Investigation Wing, New

Delhi for Commission of fraud and misrepresentation, however the RP allowed IDBI trustee to represent NCD holders in the CoC throughout the resolution process and NCD holders were not made aware about the resolution drawn by the CoC and other proceedings despite they were financial creditors to the CD.

5. It is further stated that during the course of CIRP some of the NCD holders have moved IA No. 297/2022 and IA No. 768/2022 pertaining to their concern about the criminal proceedings initiated against Piramal fund manager but these applications were rejected by the Adjudicating Authority on the ground that resolution plan takes care of the NCD holders and PMS scheme contributes 21.47% of total debt of secured financial creditors and in proportion of the said debt an amount of Rs. 16,10,87,665/- has been proposed in the plan to be paid to these NCD holders while the amount of Rs. 146.92 Crore was admitted as the claim of the NCD holders and also that the amount of NCD holders was payable to IDBI trustee under the plan at the behest of NCD holders.

6. It is also contended that on 05.09.2023 Piramal fund manager filed a criminal writ petition number 2555 of 2023 before Hon'ble High Court of Delhi for quashing of the FIR filed with Economic Offences Wing by some of the NCD holders and Counsel for the fund manager pleaded before Hon'ble High Court of Delhi that they are ready to pay Rs. 80.53 Crores from their own pocket to the NCD holders, in order to save their goodwill and since the NCD holders were eligible to receive pay outs as per the resolution plan also, they are not inclined to provide interest on their initial investment. Hon'ble High Court of Delhi knowing well that resolution plan is under

implementation separated the NCLT proceedings from Criminal proceedings vide order dated 05.09.2023 which was amended by subsequent order of date 20.09.2023 pertaining to the remittance of amount to the NCD holders through Demand Drafts.

7. It is further stated that the Piramal fund manager did not disclose before the Hon'ble High Court of Delhi that it has received the funds from the Resolution Applicant, while they themselves pleaded before the NCLT that 16.10 Crore is payable to the IDBI Trusteeship and in this way funds were illegally transferred to the Piramal fund manager who was neither a financial creditor nor a trustee of the NCD holders and thus the resolution plan has been violated and the payment is also shown to have been made by one 'Perfect Megastructure Pvt. Ltd. which is/was not the resolution applicant. It is also stated that order passed by the Hon'ble High Court of Delhi was only with regard to the quashing of the Criminal Proceedings and it has nothing to do with the proceedings pending before the NCLT or the resolution plan approved by the NCLT, Kolkata.

8. It is also stated that the NCLT has illegally rejected the application moved by the appellants by passing impugned order of date 11.06.2024 by concluding that NCD holders have received more than, which was due in the resolution plan, while the Piramal fund manager was not having any locus at all. It is further stated that the impugned order is liable to be set aside and Respondent be directed to release Rs. 16.10 Crore and also allotment of 10 lakh class B shares to 188 NCD holders, which they ought to get under the plan.

9. Respondent No. 2 who is the SRA has filed reply on behalf of himself and Respondent Nos. 1 and 3 vis a vis the IA No. 7980 of 2024 moved by the appellants for condonation of delay and a statement has been made by their Counsel on the date of final hearing that their reply with regard to IA No. 7980 of 2024 be also considered as their reply vis a vis the appeal. Respondent No. 2 in his reply has stated that the Adjudicating Authority has not committed any illegality in rejecting a frivolous application moved by the applicants as the SRA has already discharged of its liability under the approved Resolution Plan and the two applicants have already received Rs. 25 lakhs while their entitlement was only of Rs. 5,12,689/- under the plan and instead of putting a quietus to the dispute they are further propagating their frivolous cause. It is also contended that the application before the Tribunal was filed by two applicants but the appeal was initially filed by 66 appellants and it is evident that appellant failed to convince the other appellants to execute their Power of Attorney in their favour and thus the other NCD holders did not become part of the appeal.

10. It is also stated that the 188 NCD holders together invested a sum of Rs. 80.53 Crore under PMS fund managed by one Piramal Fund Management Pvt. Ltd., in the CD and the total investment of the Applicants who had moved an application before the Tribunal was Rs. 25 lakhs and they have already received this amount. It is further contended that under the resolution plan the PMS fund was only entitled to receive a sum of Rs. 16.10 Crore however, under the settlement they have received Rs. 80.53 Crore.

11. It is also stated that in the proceedings under 482 Code of Criminal Procedure, a proposal was given by a Piramal Fund Manager before the Hon'ble High Court of Delhi, and the said proposal was presented by the Hon'ble Court before the investors with an option that those who would receive the money under the settlement will be precluded from agitating the matter any further, anywhere and those who will not accept the proposed amount would be free to pursue their cause before the NCLT or any other forum and since all the 188 NCD Holders have received their money which was originally invested i.e. Rs. 80.53 Crore, the Hon'ble High Court of Delhi on 05.04.2024 directed that the amount of Rs. 16.10 Crore which was due under the resolution plan would now be received by the Piramal Fund Manager. It is also stated that since the NCD holders have received more than their due under the settlement which has also been acknowledged by the Hon'ble High Court of Delhi and they are not entitled to receive any thing under the plan.

12. The intervenor/Piramal Fund Manager in its reply has stated that the aforementioned 188 NCD holders had invested in the CD about Rs. 80 Crore however, some differences had arisen between some of the NCD holders and the fund Manager and a FIR was lodged in this regard by some of the NCD holders however, the parties resolved their disputes and differences in lieu of order dated 05.09.2023 passed by the Hon'ble High Court of Delhi and by virtue of the same order, as amended vide order dated 20.09.2023, the Piramal Fund Manager had issued demand draft on 18.09.2023 for a sum of Rs. 25 lakhs in favour of the applicants (who were before the Adjudicating Authority) and the respective shares of the other NCD Holders and since the

appellant had received more than their due in the resolution plan they cannot re agitate the same issue again and again.

13. It is further stated that on 05.04.2024, the matter was finally disposed of by the Hon'ble High Court of Delhi and the same would indicate that all 188 investors/Debenture Holders have settled their dispute and received their respective share of money, in total Rs. 80.53 Crore therefore, no sums had remained to be payable by the Piramal Fund Manager and considering this the Hon'ble High Court of Delhi directed that since the Fund Manager has disbursed all the amount due to the investors, the money receivable from the CIRP shall be disbursed to the Piramal Fund Manager and the matter was closed.

14. It is further stated that an application bearing Crl MA No. 17711/2024 was filed by the appellants before the Hon'ble High Court of Delhi seeking modification of the order dated 05.04.2024 and to release Rs. 16.10 Crore in their favour and also the shares which were due under the plan. However, the said application was dismissed by the Hon'ble High Court of Delhi on 19.07.2024 and the said order was further challenged by some of the NCD holders by filing a SLP before the Hon'ble Supreme Court and vide order dated 10.01.2025 passed by the Hon'ble Supreme Court in SLP No. 47239 of 2024 the same was dismissed and thus the order of Hon'ble High Court of Delhi became final and in this background the appellants are now precluded from claiming anything under the resolution plan.

15. We have heard Ld. Counsel for the parties and perused the record, as well as written submissions filed by them.

16. Ld. Counsel for the appellant while drawing our attention towards the written submissions submitted by them submits that appellants and other NCD holders (in total 188) have been denied their rightful dues i.e. Rs. 16.10 Crore and their proportionate class B shares under the approved resolution plan dated 11.08.2023. It is submitted that the resolution plan once approved by the adjudicating authority could not be tempered or changed. Thus the Respondent No. 2/IV County Pvt. Ltd. i.e. SRA is/was under a duty to pay the appellants and other NCD Holders their due under the resolution plan.

17. It is further submitted that the proceedings before the NCLT, Kolkata and the proceedings lodged by the Piramal Fund Manager before the Hon'ble High Court of Delhi were distinct and separate proceedings and the money which has been paid by the Piramal Fund Manager under the settlement arrived before the Hon'ble High Court of Delhi was to save their skin from the Criminal prosecution and the said money may never be adjusted with the money which was due to the appellants under the resolution plan approved by the Tribunal.

18. It is vehemently submitted that the text and tenor of the orders passed by the Hon'ble High Court of Delhi on 05.09.2023, 20.09.2023 and 05.04.2024 as well as of date 19.07.2024 passed in modification application moved by the appellants would clearly reflect that the appellants were held free to agitate their grievances at a proper forum and thus it is clear that the money which has been paid by the Piramal Manager under the orders of Hon'ble Delhi High Court has nothing to do with the money receivable by the 188 Debenture Holders under the plan. Thus the Tribunal has

committed manifest illegality in rejecting the application moved by the appellants.

19. Ld. Counsels appearing for the Respondents vehemently opposes the submissions made by the Ld. Counsels for the appellants on the score that under the plan only Rs. 16.10 Crore were required to be paid by the SRA to the NCD holders, while the Piramal Fund Manager in order to set at rest the disputes between itself and the appellants (NCD holders) had offered a settlement money of Rs. 80 Crore before the Hon'ble High Court of Delhi which was floated by the Hon'ble Court to the appellants and other NCD holders and since the appellant and all the NCD holders have received the money under the settlement and have also filed their undertakings before the Hon'ble Administrator appointed by the Hon'ble High Court of Delhi they cannot claim anything further under the resolution plan. It is further submitted that the IDBI Trusteeship was representing the NCD holders in the CoC and in this regard application was also moved before the NCLT for change of trustee which was rejected by the Ld. Tribunal on the ground that the procedure prescribed for the removal of the trustee has not been followed and also on the score that the interest of the NCD holder has been protected under the plan.

20. It is further submitted that since, the appellants and other NCD holders have received their money under the settlement approved by the Hon'ble High Court of Delhi and it is only after the receipt of money by all the NCD holders, the Hon'ble High Court of Delhi in its order dated 05.04.2024 has directed that since the investors have received all the amount due, the money which is receivable from the CIRP shall be

disbursed to the Piramal Fund Manager and therefore, the application as well as the appeal has been filed on frivolous grounds and is liable to be dismissed.

21. After hearing Ld. Counsels for the parties and having perused the written submissions filed by them as well as the record, it is reflected that there are certain facts which are crystal clear on the surface of the record. It appears admitted to the parties that CIRP of the CD, Ashiana Landcraft Realty Pvt. Ltd. was initiated vide order dated 11.01.2022 of Ld. Tribunal and Mr. Jayesh Sanghrajka was appointed as the IRP and who was later on confirmed as RP. It is also evident that 188 investors, Non-Convertible Debenture holders, had invested about Rs. 80 Crore in the CD under a Portfolio Management Scheme facilitated by the Piramal Fund Manager and these NCD's were secured with IDBI Trusteeship, appointed as a Trustee for NCD holders.

22. It is also admitted that a total sum of Rs. 80.53 Crore was invested by the NCD holders in the CD and during the CIRP the claim of Rs. 146.92 Crore was admitted by the RP. However, in the resolution plan submitted by Resolution Applicant, IDBI Trusteeship, of the PMS was proposed to be paid only Rs. 16,10,87,665/- (21.47% of the total debt) and 21.48% of the total pay-out. It is also reflected that in the CoC constituted, IDBI Trusteeship Services- Piramal Fund Manager were given 13.5% Voting Share. The Resolution Plan submitted by Respondent No. 2 was approved by the CoC with a majority vote share of 78.56%. The said Resolution Plan was approved by the Adjudicating Authority vide order dated 11.08.2023 passed on an IA No. 921/2022 presented by the RP. In this plan the secured

financial creditors were allotted upfront amount of Rs. 65 Crores on Pro-rata basis and in addition to the same another 10 Crores were provided, under the same terms as per their share in the list of creditors and they were further allotted 10 lakh class B equity shares of Rs. 10 each. The share of 188 Debenture holders represented by the IDBI Trustee and Piramal Fund Manager was admittedly 21.48% i.e. Rs. 16,10,87,665/- and 2,14,800 class B shares of Rs. 10 (share value of Rs. 21,48,000/-).

23. It is significantly evident that the plan approval order of the adjudicating authority dated 11.08.2023 was not challenged by anybody and thus it has become final. It also appears that two of the appellants namely, Appellant No. 1/ Shobhana Thakkar and Appellant No. 2/ Niranjan Chotalal Thakkar had filed an IA No. 297 of 2022 requesting to appoint authorised representative and to declare the CoC Resolutions as non-est which was rejected by the Ld. Tribunal vide order dated 11.08.2023.

24. At this stage, we are not giving much significance to the allegations of the appellants that they were not properly represented before the CoC as it is an admitted fact that during the CIRP the 188 Debenture Holders were represented throughout by their authorised representative as provided under Section 21(6)(A)(a) of the IBC. The Form C was also filed by the authorised representative i.e. IDBI trustee on behalf of the PMS Fund. In the same form C authorised representative had given the details of beneficiary Piramal Fund Management Pvt. Ltd. (Fund Manager of 188 Debenture Holder). During CIRP the application moved by the two applicants mentioned herein before was rejected. Another Debenture Holder namely, Guru P Pejavar had also moved an application bearing IA No. 768/2022

requesting for the same relief for which an application was moved by the aforesaid applicants. however, his application was also rejected by the Ld. Tribunal. This matter appears to have not been further taken up in appeal. One of the reason stated by Ld. Tribunal while rejecting the applications of some of the NCD holders for change of trustee as said earlier, was that no document has been placed before the tribunal which may reflect that the trustee has been removed, which could only be removed under clause 44.2 of the Debenture Trust Deed by giving two months' notice. Thus, we are satisfied and is also evident from record that Debenture holders were properly represented in the CoC and since they have not challenged the approved resolution plan itself the objection raised by them with regard to their not properly represented before the CoC is not having much weightage and significance.

25. Coming towards the main objection raised by the appellants with regard to the fact that they are entitled to receive the money under the Resolution Plan despite having received money under the settlement order acknowledged by the Hon'ble High Court of Delhi, it is conspicuously reflected that in pursuance of an FIR lodged by some of the Debenture Holders against the Piramal Fund Manager and IDBI trustee on 30.11.2021 a Criminal Writ Petition bearing no. 2555 of 2023 was filed by Piramal Fund Manager and on 05.09.2023 Hon'ble High Court of Delhi passed an order. Since the interpretation of this order is being made by both the parties in their favour it appears necessary for us to reproduce the relevant part of the said order in verbatim which is placed herein below:

Relevant part of the Order dated 05.09.2023, passed by Hon'ble High Court of Delhi in Criminal Writ Petition No. 2555 of 2023.

“16. Learned counsel for petitioner submits that the criminal jurisdiction has been resorted to by some investors, including the complainant, in a purely civil dispute. Even though no offence is made out on the face of it, however, as a gesture of good-will and on the asking of this Court, the petitioner without prejudice to his rights and contentions, admission of guilt, liability or wrong-doing by the petitioner and also while denying any liability, contractual, civil, criminal or otherwise, is ready to make the offer, even though in terms of the NCLT Order in the CIRP, only an amount of about Rs.16.10 crores is likely be received against this entire investment.

17. It is further submitted by learned counsel for petitioner that to achieve an end to all proceedings whether already initiated or contemplated, whether contractual, civil, criminal or otherwise, before any Court, authority or tribunal, be it SEBI, Police, or any other agency, subject to such appropriate orders as may be passed by this Court, the petitioner is willing to immediately make one-time voluntary deposit of entire amount of Rs.80.53 crores (principal invested) received from all the 188 investors with the Registry of this Court. The aforesaid amount so deposited, can be distributed to the investors, under the supervision of a retired Hon'ble Judge of the Supreme Court or the High Court, as appointed by this Court, subject to the following:

a. The concerned Investor on furnishing an irrevocable voluntary undertaking, not to initiate and pursue, and if pending to withdraw, any / all civil or criminal proceedings or complaint, before any Court, Authority or Tribunal, be it SEBI, Police, or any other agency, with reference to the investment made in this 'Portfolio Management Services Fund' and invested in the said 'M/s Ashiana Landcraft Realty Pvt. Ltd.;

b. All proceedings in connection with this 'Portfolio Management Services Fund', whether already initiated or contemplated by such investor, whether contractual, civil, criminal or otherwise, before any Court, Authority or Tribunal, be it SEBI, Police or any other agency shall terminate with receipt of respective investment by the investor from such deposit upon furnishing the Undertaking;

c. Upon the fund being disbursed to an investor, the proportionate share of such investor from the CIRP proceeds shall be retained by the Petitioner;

d. If however, any particular investor is not willing for furnishing such voluntary irrevocable Undertaking as stated above-

(i) No payment from the said deposit amount of Rs. 80.53 crores would be disbursed to such investor;

(ii) The respective amount from the deposit made ought to be refunded to the petitioner;

(iii) Such investor would be paid only the amount proportionate to his investment, as and when received pursuant to the CIRP of Ashiana;

(iv) All contentions of only such investor as well as of the petitioner would remain open to be adjudicated in appropriate proceedings in accordance with law.

18. Learned counsel for petitioner submits that the petitioner undertakes to extend full cooperation for efficient management of the entire process under the aegis of any retired Judge which may be appointed by this Court. It is further submitted that the petitioner, on facts, is without fault. Consequently, it is prayed that till such time the process of distribution is underway, all authorities, agencies, including the Police and or the regulator be restrained from acting on or taking coercive steps pursuant to complaints relating to the Project.

19. On the other hand, learned counsel for respondent No.2 has disputed the aforesaid facts. However, submits that the investors made the payment in the year 2017 and now 2023 is going on and the respondent No.2 along with 55 complainants, may not take any coercive steps against the petitioner and shall withdraw/get quashed all the proceedings pending before any authority or tribunal, if proportionate amount of the investors is disbursed along with interest @4% per annum for six years; and if the petitioner does not come forward to pay interest, the right of respondent No.2 and other 55 complainants be kept open, who may continue to the proceedings initiated against petitioner.

20. Learned counsel for petitioner, on instructions submits that the amount to be paid in terms of the NCLT Order in the CIRP is Rs.16.10 crores, which has to be proportionately disbursed amongst all 188 investors,

however, petitioner has reputation in the business and market, therefore, he has come forward to pay an amount of Rs.80.53 crores from his own pocket. Therefore, the proposal of respondent No.2 with regard to interest is not acceptable to the petitioner.

21. Be that as it may, since the petitioner has come forward on his own as a good gesture to deposit an amount of Rs.80.53 crores for disbursement of the same in favour of 188 investors, accordingly, the petitioner is directed to deposit the aforesaid sum with the learned Registrar General of this Court within two weeks, as agreed, which shall be invested into Fixed Deposit sweep-in facility.

22. A notice be directed to be issued to all the 188 investors individually as well as by way of publication in two leading daily national newspapers having English and Hindi editions for information.

23. We hereby appoint Mr. Pradeep Nandrajog, Former Chief Justice of Rajasthan High Court (Mobile:9818000130), High Court of Bombay and Former Judge of this Court as Administrator, who shall disburse the aforesaid amount in favour of the investors who are willing to withdraw their respective claims and legal proceedings as given in Annexure A annexed with Offer of Proposal.

24. The petitioner herein shall pay the fees of learned Administrator as to be decided by him in consultation with the petitioner.

25. The investors who are willing to withdraw their respective amount from the aforesaid Fixed Deposit shall withdraw/get quashed all the proceedings initiated by themselves against the petitioner herein which are pending before any authority.

26. We hereby make it clear that the investors who want to continue with the proceedings against the petitioner herein shall not be disbursed any amount from the aforesaid amount.

27. Since the petitioner is willing and ready to deposit the amount of Rs.80.53 crores within two weeks therefore till further orders all the proceedings (civil, criminal) against the petitioner arising out of present case and pending before any authority, tribunal, including SEBI, shall remain stayed, except pending proceedings before NCLT.

28. It is made clear that the amount deposited before the learned Registrar General of this Court in the form of Fixed Deposit availing sweep-in facility shall be released to investors subject to fulfilment of the aforesaid conditions.

29. The disbursements in aforesaid terms shall be made for a period of 3 months from the date the Hon'ble Administrator assumes the charge.

30. After the conclusion of the tenure the entire remaining unclaimed amount shall be returned to the petitioner.

31. Arguments heard in part.

32. A copy of this order be transmitted to the concerned NCL T Bench for information.

33. For further arguments, renotify on 02.11.2023”.

Relevant part of the Order dated 20.09.2023, passed in Criminal Writ Petition 2555 of 2023 by Hon’ble High Court of Delhi.

“8. Accordingly, in view of the reasons as well as no objection given by the respondents, we hereby modify the Order dated 05.09.2023 to the extent that the petitioner shall deposit a sum of Rs. 80,53,00,000/- (Eighty Crore Fifty-Three Lakhs Only) by way of 188 Demand Drafts made in favour of each 188 investors as per Annexure A-2 to the present petition with the Administrator to enable him to hand over respective Demand Drafts to each 188 investors who are ready to furnish Demand Affidavit-cum-Undertaking as per Annexure A-3 to the present petition. The Administrator shall look into Annexure A-3 and as required may modify the same with consultation of the parties’ whosever raise objection therein”.

Format of undertaking submitted by Appellants and other investors before Hon’ble Administrator.

UNDERTAKING

I/We, Shobhana Thakkar having read the Order dated 05.09.2023 modified on 20.09.2023 passed in W.P. (Crl.) 255 of 2023 passed by Hon'ble Justice Suresh Kumar Kait and Hon'ble Justice Neena Bansal Krishna, affirm having understood both the Orders. I have understood the condition contained in the Order dated 05.09.2023 based

where upon I have to exercise my option to receive the principal sum invested by me under the Portfolio Management Services Agreement between me and Piramal Fund Management Private Limited.

I undertake to abide by the condition referred to in the Order dated 05.09.2023 and authorize Mr. Sanjeev Ahuja, Advocate, resident of B-231, Saraswati Vihar Delhi-110034, to receive the bank drafts in my name.

Self-attested copy of my Adhaar card and PAN card would be delivered by Mr. Sanjeev Ahuja while receiving the bank draft, who would be submitting his signatures attested by the manager of the bank in which he maintains an account”.

**Relevant part of the Order dated 05.04.2024, passed in Criminal Writ
Petition 2555 of 2023 by Hon’ble High Court of Delhi.**

“2. Learned counsel appearing for the respondents, on instructions from Inspector Shekhar Choudhary, who is the Investigating Officer of the case does not dispute this position.

3. It is submitted that money has already been disbursed in terms of order dated 05.09.2023.

4. Since the petitioner has disbursed all the amounts due to investors, the money receivable from the CIPR shall be disbursed to the petitioner.

5. In view of the above, the petition is disposed of.

6. The Registry is directed to handover the original undertaking given by the Investors pursuant to order dated 05.09.2023 to the petitioner. Photocopy of the same shall be retained by the Registry for the sake of record”.

**Relevant part of the Order dated 19.07.2024, passed by the Hon’ble
Delhi High Court in Crl. W.P. No. 2555 of 2023.**

“3. This Court vide order dated 05.09.2023 appointed Mr. Pradeep Nandrajog, Former Chief Justice of Rajasthan High Court (Mobile: 9818000130), High Court of Bombay and Former Judge of this Court as Administrator, to disburse the amount in favour of the investors who were willing to withdraw their respective claims and legal proceedings as given in Annexure A annexed with Offer of Proposal. Accordingly, all 188 investors settled their case

and money in terms of order dated 05.09.2023 was disbursed to them.

4. By way of present application applicants are seeking direction to release Rs.16.10 crores to all the 188 debenture holders proportionally in terms of order dated 11.08.2023 passed by the NCLT, Kolkata Bench.

5. In view of the averments made in the present application, we do not find any ground to clarify the order as the amount disbursed vide order dated 05.09.2023 was qua quashing of the FIR. If the applicants still have any issue, they are at liberty to avail civil remedy before the appropriate forum as per law”.

26. The aforesaid orders passed by the Hon'ble High Court of Delhi would reveal that during the deliberations before the Hon'ble Court of Delhi a proposal/offer was placed by the Counsel of Petitioner, Piramal Fund Manager which was directed to be taken on record. It is to recall that this Criminal Writ Petition was preferred by the Piramal Fund Manager for the purpose of quashing of the FIR lodged against it and IDBI trusteeship. Under the settlement proposal which was placed before the Hon'ble High Court of Delhi it was provided, as is evident from the order of the Hon'ble High Court of Delhi dated 05.09.2023, that Petitioner- Piramal Fund Manager is ready to deposit Rs. 80.53 Crore which was the Principal amount invested by all 188 investors/debenture holders and this money could be distributed to the investors under the supervision of a Retired Hon'ble Judge of a High Court or Supreme Court, on the condition that investor/debenture holder would furnish an irrevocable voluntary undertaking not to initiate and pursue, and if pending to withdraw any/all proceedings of any nature with reference to the investment made in Portfolio Management Services Fund and investment in the CD.

27. The proposal was also with regard to the fact that upon the fund, disbursed to an investor the proportionate share of such investor from the CIRP proceeds shall be retained by the Piramal Fund Manager. It was also made clear, in the settlement/proposal that if a particular investor (debenture holder), is not willing for furnishing voluntary irrevocable undertaking he will not get any money under the settlement (from Rs. 80.53 Crore which would be deposited by the Piramal Fund Manager) and share of such investor would be refunded to the Piramal Fund Manager and such investor (who is not receiving his share under the settlement) shall receive only the amount due under the CIRP of the CD and in this regard all contention of only such investor would remain open to be adjudicated in appropriate proceedings.

28. The aforesaid proposal was conveyed by the Hon'ble High Court of Delhi to the Respondents before it pertaining to which certain objections with regard to the non-payment of interest were made by their Counsel before the High Court. However, in paragraph no. 21 of the said order the Hon'ble Court has recorded that since the Petitioner (Piramal Fund Manager) has come forward on his own as a good gesture to deposit Rs. 80.53 Crore for disbursement to 188 investors, the Piramal Fund Manager was directed to deposit this money with the Registrar General of the Hon'ble High Court of Delhi and a notice was issued to all the 188 investors individually by publication in two leading National Newspapers. Hon'ble Justice Pradeep Nandrajog, Former Chief Justice of the Rajasthan High Court was appointed as an administrator to supervise the whole process and it was specifically held in para no. 25 of the aforesaid order of date

05.09.2023, that investors who are willing to withdraw their respective amount from the amount deposited by the Piramal Fund Manager shall withdraw/get quashed all the proceedings initiated by them against the Piramal Fund Manager. Specific stipulation is made in Paragraph no. 26 pertaining to the fact that investors who want to continue with the proceedings against the petitioner, (Piramal Fund Manager) shall not be disbursed any amount from the amount deposited by the Piramal Fund Manager.

29. A careful perusal of the order of Hon'ble High Court of Delhi dated 05.09.2023 would reveal that the offer/proposal which was made by the Piramal Fund Manager was taken on record and it was placed before all the investors/debenture holders with a rider that if they will accept their money under the settlement/proposal put forth by the Piramal Fund Manager they will not get anything under the resolution plan and the undertaking which has been furnished by all the investors/debenture holders in order to receive their share under the settlement would also reveal that they have exercised their option to receive the principal sum invested by them under the Portfolio Management Services agreement and they further undertake to abide by the conditions referred in the order dated 05.09.2023 of the Hon'ble High Court of Delhi and have also filed irrevocable written undertaking to this effect.

30. The intention of the Hon'ble High Court of Delhi would further become clear by the order dated 05.04.2024 wherein after being satisfied that all the money under the settlement has been disbursed to all the investors/debenture holders, the Hon'ble High Court of Delhi in para no. 4

of the said order dated 05.04.2024 has recorded that since the Piramal Fund Manager has disbursed all the amount due to investors, the money receivable under the CIRP shall be disbursed to the Petitioner/Piramal Fund Manager.

31. Thus, it is crystal clear that two options were provided by the Hon'ble High Court of Delhi to the investors (i) either to receive the amount under the settlement, commensurate to their share in the settlement money deposited by the Piramal Fund Manager of Rs. 80.53 Crore or (ii) to pursue their proceedings under the approved plan and in this condition they will not receive any money under settlement. While exercising option of receiving their share of money, such investor was further obliged to file a written irrevocable undertaking, referred above.

32. It is thus evident that after being satisfied that all the amount which investors were ought to receive under the settlement has been received by them, the Hon'ble High Court of Delhi directed on 05.04.2024 that now the Piramal Fund Manager may receive the money under the approved plan. The acknowledgment of the appellants with regard to the knowledge of this fact that they were fully aware that by receiving their portion of money under the settlement they cannot receive anything further under the resolution plan, would be more clear by the fact that they had moved an application for modification of the order dated 05.04.2024 which was incidentally rejected by the Hon'ble High Court of Delhi and SLP filed against the same was also dismissed by the Hon'ble Supreme Court.

33. Thus, from the aforesaid factual matrix it is clear that the appellants were attempting to receive the money due to them, twice i.e. firstly under the

settlement held before the Hon'ble High Court of Delhi and secondly under the resolution plan also, while after receiving the money under the orders of the Hon'ble High Court of Delhi under the settlement and by filing an undertaking they have admitted to forego the amount which they ought to receive under the resolution plan. This was not permissible as the investors were clearly given option either to receive money under the settlement and in this case to submit an undertaking before the Hon'ble Administrator and not to pursue any proceedings with regard to the money invested by them in CD or to pursue their case under the resolution plan, but they could not pursue both and cannot receive money simultaneously under settlement, as well as under the resolution plan.

34. Thus in our considered opinion, Ld. Tribunal has done nothing wrong in rejecting the application of the appellants by passing the impugned order dated 11.06.2024 and the same is hereby confirmed.

35. Resultantly, the appeal preferred by the appellant is devoid of force and is **dismissed** as such. There is no order to costs and pending IA's shall also be closed.

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

New Delhi.
20.08.2025.

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