

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI
Company Appeal (AT) (Insolvency) No. 876 of 2025

[Arising out of the Order dated 03.06.2025, passed by the
'Adjudicating Authority' (National Company Law Tribunal, New
Delhi Bench, Court-V), in CP (IB) (IBC) No. 644 of 2023]

IN THE MATTER OF:

Radha Buildtech (India) Pvt. Ltd.
Versus

...Appellant

Solitaire Infomedia Pvt. Ltd.
Through Jalesh Kumar Grover,
Interim Resolution Professional & Ors.

...Respondents

Present:

For Appellant : Mr. Palash S. Singhai, Mr. Harshal Sareen,
Advocates for AR of Premia.
For Respondent : Mr. Karan Kohli, Advocate for RP.
Mr. Jitender Arora, in person.
Mr. Gautam Singhal, Mr. Rajat Chaudhary, Ms.
Kanika Balhara, Advocates for R-2.
Mr. Aditya Madaan, Mr. Prabhav Pachory,
Advocates for R-4 to 78.
Mr. Sanchaya Bansal, Advocate.

With
Company Appeal (AT) (Insolvency) No. 935 of 2025

[Arising out of the Order dated 03.06.2025, passed by the
'Adjudicating Authority' (National Company Law Tribunal, New
Delhi Bench, Court-V), in CP (IB) (IBC) No. 644 of 2023]

IN THE MATTER OF:

Harish Kumar & Ors.

...Appellants

Versus

Jalesh Kumar Grover & Ors.

...Respondents

Present:

For Appellant : Mr. Gaurav Mitra, Mr. Karan Nagpal, Mr. Sorav
Garg, Advocates.
For Respondent : Mr. Karan Kohli, Advocate for RP.
Mr. Jitender Arora, in person.
Mr. Gautam Singhal, Mr. Rajat Chaudhary, Ms.
Kanika Balhara, Advocates for R-2.

Mr. Aditya Madaan, Mr. Prabhav Pachory,
Advocates for R-5-19.
Mr. Sanchaya Bansal, Advocate.

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

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

Company Appeal (AT) (Ins) No. 876 of 2025 has been preferred by the Successful Resolution Applicant (SRA) i.e. Radha Buildtech (India) Pvt. Ltd. of Corporate Debtor Premia Projects Ltd. challenging the impugned order of date 03.06.2025, whereby the Tribunal on an application moved by about 75 allottees/homebuyers under Section 7 of the Insolvency and Bankruptcy Code, 2016 has been allowed and the CIRP of CD M/s Solitaire Infomedia Pvt. Ltd. has commenced.

2. Company Appeal (AT) (Ins) No. 935 of 2025 has been preferred by 4 homebuyers and allottees of residential units in the project undertaken by Prima Projects Ltd. challenging the same order whereby the CIRP of the CD M/s Solitaire Infomedia Pvt. Ltd. has been commenced.

3. Both these appeals though have been preferred by different set of appellants but are connected with the same impugned order and for the sake of convenience are been disposed of by passing this common order.

4. Brief facts necessary for the disposal of these appeals are that on 11.03.2009, the Greater Noida Industrial Development Authority herein after called (GNIDA) allotted a plot of a land measuring 45398.50 sqm situated at Plot No. 201, Sector KP-V, Greater Noida West to Solitaire Infomedia Pvt. Ltd. (CD herein). On 01.10.2012, Mr. Tarun Sheinh became director of the CD and on the same day the CD entered into a collaboration

agreement with M/s Premia Projects Ltd. whereby it was agreed to hand over the possession of the aforesaid land to M/s Premia Projects Ltd. to develop the project and to further have exclusive rights of sales and marketing of 90% of the constructed area while 10% of the constructed area was retained by the CD apart from receiving consideration of Rs. 4.5 Crores.

5. The above-mentioned collaboration agreement was executed by aforesaid Mr. Tarun Sheinh on behalf of the CD. At that point of time he was also a Director of Premia Projects Ltd., however, pursuant to the appointment of Mr. Tarun Sheinh as Director of the CD, all the shareholders of the CD transferred their shareholding to Mr. Tarun Sheinh and his wife on 31.03.2013. Thus, on 31.03.2015, Mr. Tarun Sheinh was having 95% equity of Premia Projects Ltd. controlling both the CD as well as Premia Projects Ltd. In the year 2016, Premia Projects Ltd. Purchased all the shares of the CD which were held by Mr. Tarun Sheinh and his wife leaving only 100 shares with Mr. Tarun Sheinh and thus gained total control of the CD. Thereafter, Premia Projects Ltd. started advertising for a project in the name of Premia Corporate City and eventually they failed to grant possession to the allottees as allegedly the funds received by Premia Projects Ltd. were siphoned off by the Erstwhile Director Mr. Tarun Sheinh.

6. The record further reveals that the allottees initiated insolvency proceedings against Premia Projects Ltd. under Section 7 of the IBC bearing CP IB No. 104 of 2018 which was admitted by the Adjudicating Authority on 30.05.2018 and Mr. Alok Kumar Kuchhal was appointed as the IRP, wherein Respondent No. 4 along with all the Financial Creditors in class filed their

claims before the Resolution Professional, which were also admitted and they also became the members of the CoC.

7. On 26.03.2019, Mr. Jitender Arora was appointed as the Resolution Professional of Premia Projects Ltd. and he moved an application bearing IA No. 4132 of 2020 in CP (IB) No. 104 of 2018 before the Adjudicating Authority for taking charge of the assets of the CD i.e. Solitaire Infomedia Pvt. Ltd. or to allow joint CIRP of the Solitaire Infomedia Pvt. Ltd. and Premia Projects Ltd., however, the said application was rejected by the Adjudicating Authority and feeling aggrieved by the same an appeal was filed before this Appellate Tribunal being CA (AT) (Ins) No. 1069 of 2020 wherein this Tribunal has passed an order on 18.11.2021 holding that it is case where joint CIRP would be required however the same could only be possible if there is an application for admission of CIRP under the Code against the land owner company i.e. Solitaire Infomedia Pvt. Ltd. and thus the matter was remanded back with direction to consider the application for commencement of CIRP against land holding Company i.e. Solitaire and thereafter to further consider consolidated/joint CIRP of both the entities.

8. It is further reflected that one allottee, Mr. Harish Kumar has also filed an application seeking initiation of CIRP against the Solitaire Infomedia Pvt. Ltd. which was however dismissed by the Adjudicating Authority on the grounds of maintainability and an appeal filed against the same was also dismissed on the ground of delay.

9. The Appellant upon the publication of Form G by the Resolution Professional of Premia Projects Ltd. submitted his Expression of Interest (EOI) as well as thereafter a Resolution Plan. The said Resolution Plan was

approved by the CoC of Premia Projects Ltd. and an application under Section 31 of IBC was filed by the RP of Premia Projects Ltd. before the Adjudicating Authority on 15.01.2024 which is still pending before the Adjudicating Authority for disposal.

10. In the meantime, an application was filed by the 74 allottees represented by Respondent No. 4 under Section 7 of the IBC requesting to initiate CIRP of Solitaire Infomedia Pvt. Ltd. also and the said application has been accepted by the Adjudicating Authority by passing the impugned order and aggrieved by the same the appellants of aforesaid both appeals have preferred these two appeals.

11. We have heard Counsel for the parties and have also perused the written submissions filed by them as well as the record.

12. Ld. Counsel for the appellant in CA (AT) (Ins) No. 876 of 2025 submits that initiation of the CIRP of Solitaire Infomedia Pvt. Ltd. (CD) is not permissible under the law as it will defeat the entire CIRP of Premia Projects Ltd., wherein the same set of Allottees/Financial Creditors in Class have filed their claims and the Resolution Plan of the Appellant offering commensurate treatment to the claims of Respondent No.4 has been approved by the requisite majority of Committee of Creditors wherein the Respondent No.4 is also a part.

13. It is further submitted that Respondent No. 4 and other allottees are not the Financial Creditors of Solitaire Infomedia Pvt. Ltd. in terms of Section 5(7) of IBC as they have already filed their claim in the ongoing CIRP of Premia projects Ltd. wherein the CoC has approved the Resolution Plan of the Appellant.

14. It is further submitted that the Adjudicating Authority has acted in a mechanical manner without considering that the Respondent No. 4 was/is the member of the CoC of Premia Projects Ltd. and he has approved the Resolution Plan of the appellant wherein the CD of the instant appeal i.e. Solitaire Infomedia Pvt. Ltd. was also proposed to be merged with the Premia and therefore the interest of the Respondent No. 4 was being taken care of by the Resolution Plan.

15. It is also submitted that the initiation of the CIRP against Solitaire Infomedia Pvt. Ltd. at this stage of the resolution of the Premia Projects Ltd. would completely derail the resolution process of premia which has already been delayed.

16. It is also submitted that the land in question was handed over to the Premia Projects Ltd. vide a collaboration agreement wherein the development rights were conferred upon Premia and hence such development rights being the asset of the Company has been taken care of in sufficient terms in the resolution plan approved by the CoC.

17. It is vehemently submitted that the Adjudicating Authority has completely misinterpreted the order of this Appellate Tribunal dated 18.11.2021 and has not even discussed and deliberated upon the issue whether the Respondent No. 4 were the actual Financial Creditors of the Solitaire Infomedia Pvt. Ltd. or not?

18. It is further submitted that the Adjudicating Authority has failed to appreciate that the biggest creditor of Solitaire Infomedia Pvt. Ltd. is Greater Noida Industrial Development Authority and the same has already been

impleaded in the CIRP of Premia Projects Ltd. vide order dated 12.11.2024 of the Adjudicating Authority.

19. It is submitted with considerable force that once if a resolution plan is approved by the CoC it is a binding contract between the CoC and the SRA and keeping in view the law laid down by the Hon'ble Supreme Court in **Ebix Singapore Private Ltd. vs. Committee of Creditors of Educomp Solutions Ltd. (2022) Vol 2 SCC 401**, the said plan could not be disturbed by initiation of another CIRP against the land owing Company and the CoC members who have approved the plan may not deviate from it. It is however submitted that the impugned order whereby the CIRP of Solitaire Infomedia Pvt. Ltd. has been initiated be set aside and quashed.

20. Ld. Counsel for the Allottees/homebuyers represented by Respondent No. 4 vehemently opposes the submissions made by the Ld. Counsel for the Appellant in CA (AT) (Ins) No. 876 of 2025 by submitting that a resolution professional of Premia acted in utter disregard of the binding directions issued by this Appellate Tribunal vide order dated 18.11.2021 passed in CA (AT) (Ins) No. 1069 of 2020 and the resolution plan submitted by the appellant should not have been put to vote having regard to the observations made by this Appellate Tribunal in its order dated 18.11.2021 and the RP of Premia should have waited for initiation of CIRP against the Solitaire Infomedia Pvt. Ltd.

21. It is also submitted that the appellants Resolution Plan repeatedly acknowledges that the project land is owned by Solitaire and the merger proposal is conditional and the resolution applicant has inserted many caveats that if the land does not survive as an asset of the CD (Premia), the

resolution Applicant would not be liable to perform its obligation under the plan.

22. It is further submitted that the resolution plan also contains a misstatement pertaining to the order of this Appellate Tribunal dated 18.11.2021 claiming that the initiation of joint CIRP was considered to be one of the option by the NCLAT however, it can also be resolved through the process of merger.

23. It is also submitted that the conduct of the erstwhile RP of Premia may also not be overlooked at the disciplinary committee of the IBBI has imposed the suspension on Mr. Jitender Arora the erstwhile RP of Premia and further debars him from taking any new assignments as an insolvency professional for a period of one year effective from 13.12.2024. Highlighting this it is submitted that it was the duty of Resolution Professional to bring into the consideration of CoC the complete order passed by this Appellate Tribunal on 18.11.2021.

24. It is further submitted that the appellant is not having any locus to challenge the initiation of CIRP against the Solitaire Infomedia Pvt. Ltd., as he is a resolution applicant of SRA of Premia.

25. Ld. Counsel for the appellants in CA (AT) (Ins) No. 935 of 2025 submits that it was after multiple efforts and delays. Ld. Tribunal vide order dated 03.03.2023 has directed the Resolution Professional of the Premia Projects Ltd. to complete the CIRP on war footing basis and thereafter the CoC of Premia had taken various decisions for inviting the resolution plan and M/s Radha Buildtech Pvt. Ltd. has submitted its resolution plan which was approved by the CoC of the Premia Projects Ltd. and an IA No. 6/2024

was filed by the resolution professional before the NCLT for its approval and the same is still pending.

26. It is vehemently submitted that in the CIRP of Premia Projects Ltd. claims were invited from the Homebuyers of both i.e. Premia Projects Ltd. and Solitaire Infomedia Pvt. Ltd. and the Homebuyers were also members of the CoC of the Premia Projects Ltd. thus initiation of the CIRP of the Solitaire would complicate the resolution process of Premia Projects Ltd.

27. It is also submitted that Premia Projects Ltd. & Solitaire Infomedia Pvt. Ltd. are essentially a single enterprise and are having interwoven assets, therefore running two parallel CIRP would defeat the very purpose of consolidation and there would always be a risk of conflicting outcomes.

28. It is also submitted the Adjudicating Authority has not taken into consideration the fact that simultaneous or parallel CIRP of Solitaire would result in overlapping of CoC's comprising the same class of creditors and in some cases, the same individuals and this dual structure of CoC would run against the pith and substance of the IBC and further more would violate the core objective of the IBC i.e. time bound resolution.

29. Ld. Counsel for the Respondent No. 4 in CA (AT) (Ins) No. 876 of 2025 and Respondent No. 5 to 79 of CA (AT) (Ins) No. 935 of 2025 submits that it was this Appellate Tribunal which vide its order dated 18.11.2021, was in CA (AT) (Ins) No. 1069 of 2020 had directed the Tribunal to consider the issue of consolidation of the CIRP of Premia Project Ltd. as well as Solitaire Infomedia Pvt. Ltd. and this direction was not challenged by any party and thus has attained finality and is binding upon all including the appellant CA (AT) (Ins) No. 876 of 2025 i.e. Radha Buildtech Pvt. Ltd.

30. It is further submitted that request to consolidate the CIRPs of Premia and Solitaire is commensurate to the direction of this Appellate Tribunal passed in order dated 18.11.2021 as the same is not automatic or unconditional rather the same could only be done, according to this Tribunal when the CIRP of the Solitaire would initiate and therefore, the Judgment of this Appellate Tribunal of dated 18.11.2021 is completely misinterpreted by the appellant of CA (AT) (Ins) No. 876 of 2025.

31. It is further submitted that the resolution plan could not supersede judicial directions which have become final and binding on all. More so when the resolution plan was submitted by Radha Buildtech Pvt. Ltd. has not been approved by the Adjudicating Authority and its suggest that the Adjudicating Authority, as per the direction of this Tribunal dated 18.11.2021, is waiting for an appropriate time to start joint CIRP of the both i.e. Premia Projects and Solitaire Infomedia Pvt. Ltd.

32. It is also submitted that the submission with regard to dealing with the merger of both the Companies is an eye wash and has been placed only to bypass mandatory legal processes and the contingent language used for that purpose demonstrates that the appellant itself lacks confidence in the legality of the proposed merger of the two companies. While drawing the attention of this Bench towards the resolution plan it is submitted that a misstatement has been quoted therein by stating that the initiation of joint CIRP was considered to be the one option by NCLAT and it can also be resolved through the process of merger. This interpretation of the order of this Hon'ble Tribunal is beyond imagine and has been done with some ulterior motive.

33. It is also submitted that so far as the CIRP of the Solitaire Infomedia Pvt. Ltd. is concerned the appellant in CA (AT) (Ins) No. 876 of 2025 is not having any locus at all and therefore its appeal is liable to be dismissed only on this score.

34. Ld. Counsel for the Respondent No. 2 in CA (AT) (Ins) No. 935 of 2025 submits that Adjudicating Authority while passing the impugned order has failed to consider the complete set of facts and circumstances and has passed the order in a mechanical manner without acknowledging that the admission of CIRP against Solitaire Infomedia Pvt. Ltd. which is subsidiary company of M/s Premia Projects Ltd. (Holding Company) would lead to an unintended conflict and duplication whereas the insolvency process of the Premia Projects Ltd. is at the concluding stage.

35. It is further submitted that the intention of this Appellate Tribunal in its order dated 18.11.2021 has been completely misinterpreted while the only meaning of the directions given by this Appellate Tribunal was for joint or consolidation of CIRP and that never means initiation of a new CIRP with regard to a subsidiary company.

36. Elaborating further it is submitted that this Appellate Tribunal while its Judgment dated 18.11.2021 is said to have given two directions “i. To direct initiation of separate CIRP of Solitaire, followed by consolidated CIRP of both companies, and ii. To accept a Resolution Plan in the CIRP of M/s Premia Projects Ltd. That proposes merger of M/s Solitaire Infomedia Put. Ltd., thereby integrating the land asset into the resolution framework., and the information with regard to these directions were incorporated in the information memorandum.

37. It is further submitted that homebuyers/allottees of CP (IB) No. 644 of 2023 (pertaining to the CD/Solitaire Infomedia Pvt. Ltd.) were also members of the CoC of the Premia Projects Ltd. which has approved the resolution plan pertaining to the Premia Projects submitted by the Radha Buildtech Pvt. Ltd. and the act on their part to move another application under Section 7 of the IBC would further delay the resolution process of Premia Projects Pvt. Ltd. which has already delayed.

38. It is also submitted that since a resolution plan has already been approved by the CoC of the parent company i.e. M/s Premia Projects Ltd. and which specifically provides for merger/consolidation with the subsidiary company (Solitaire Infomedia Pvt. Ltd.). There was no occasion for the Adjudicating Authority to have initiated the CIRP of the subsidiary company i.e. Solitaire Infomedia Pvt. Ltd. more so, when the claims of the allottees/financial creditors in class of M/s Premia Projects Ltd. have already been collated and verified.

39. It is also submitted that the impugned order has been passed without hearing the resolution professional or the authorised representative of the homebuyers therefore violating the principles of nature justice. It is also submitted that the order of this Appellate Tribunal dated 18.11.2021 has not been followed by the Adjudicating Authority and the initiation of CIRP against the Solitaire Infomedia Pvt. Ltd. under the impugned order would result in various complexities and duplication of claims as well as further delays in the CIRP of Premia.

40. Ld. counsel for Respondent number 5 to 79 in CA (AT) (Ins) No. 935 of 2025 in their written submissions stated that this appeal has become wholly infructuous and is liable to be dismissed as such in view of subsequent material developments which have been concealed by the appellants as both, resolution professionals of Premia Project limited and solitaire Infomedia private limited have filed appropriate consolidation applications i.e. IA number 3369 of 2025 and IA number 3373 of 2025 respectively before the adjudicating authority in compliance of the directions given by a coordinate bench of this appellate tribunal in paragraph number 36 and 37 of the order dated 18th November 2021.

41. It is further submitted that a coordinate bench of this appellate tribunal in its order dated 18th November 2021 specifically directed at first to consider the initiation of CIRP against the solitaire infomedia private limited and secondly, only thereafter to consider consolidation of the CIRP of both entities to achieve a fair and comprehensive resolution for all stakeholders. It is submitted that the adjudicating authority is only required to pass orders of consolidation on the above applications moved by resolution professionals of both companies, who are under resolution process.

42. It is further submitted with considerable force that the appeal filed by the appellant Harish Kumar and others i.e. Appeal No. 935 of 2025 is collusive and self-contradictory as appellant No. 1 of this appeal i.e. Harish Kumar had himself filed a company petition No. 740 of 2021 seeking initiation of CIRP against solitaire Infomedia Pvt Ltd, which was dismissed

on 22 November 2022 solely on the ground of non-fulfilment of statutory threshold under section 7 of the IBC and now the appellants have filed the appeal only to defeat the CIR process lawfully undertaken by 75 home buyers. It is further submitted that subsequently on 23 August 2023, the appeal preferred by appellant No. 1 i.e. Harish Kumar was also dismissed on the ground of delay.

43. While drawing the attention of this Appellate Tribunal towards the minutes of the 11th meeting of the COC held on 22 March 2023 it is submitted that resolution professional of Premia Projects Ltd. has recorded therein that it is the duty of the home buyers to take necessary steps for initiation of CIRP in consolidation of both the entities and it is thereafter a petition under section 7 of the IBC numbered as Company Petition No. 644 of 2023 was filed on 20 July 2023 and therefore the conduct of the appellant No. 1 as well as of the resolution professional (RP) of Premia Projects Ltd is highly contemptuous and it shows their connivance with the Successful Resolution Applicant (SRA).

44. It is also submitted that there is no risk of duplication of claims or prejudice to anyone as the CIRP of M/S solitaire Infomedia private limited shall bring the indispensable land assets under the CIRP process without which the real estate project of Premia Projects could not be completed.

45. It is further submitted that the impugned order has been passed under the teeth of the order passed by a coordinate bench of this Appellate Tribunal on 18th November 2021 and therefore it could not be resisted by anyone as the order was not challenged by anyone at any higher forum and

has become final and binding on all stakeholders, therefore no illegality has been committed by the tribunal in accepting the application.

46. It is further submitted that the resolution professional of premia projects limited has already attempted to obstruct the CIRP of M/S Solitaire Infomedia Pvt. Ltd. by filing an IA No. 3714 of 2024 requesting to de reserve the order dated 10th June 2024, however this application of the RP was dismissed by the adjudicating authority on 22nd may 2025. Moreover, the resolution plan submitted by the SRA and approved by the COC is still pending for approval before the adjudicating authority.

47. It is further submitted that the resolution plan for Premia Project Ltd. was approved on 27th December 2023 by the COC is fundamentally flawed and was legally impermissible as it has not considered an FIR lodged against the corporate debtor and its promoters. While drawing the attention of this Appellate Tribunal towards the submissions of Ld. Counsel for the appellants that in the Resolution Plan submitted by the SRA there is provision of merger of both the entities, it is submitted that in the Resolution Plan it is stipulated that 100% subsidiary of Premia Project Ltd. namely M/S Solitaire Infomedia Pvt. Ltd. being the company owned the project land shall stand merged with the corporate debtor i.e. Premia Project Ltd., whether or not any specific order has been passed and such merger shall be without any 3rd party liability except the liability of greater Noida industrial development authority. It is submitted that this stipulation is not possible unless and until the subsidiary of the corporate debtor i.e. M/s Solitaire Infomedia Pvt. Ltd. is subjected to CIRP, more so when the Plan

itself recorded that the merger is a mandatory requirement of the entire project without which the corporate debtor has nothing, where upon the project can be constructed.

48. While drawing the attention of this Tribunal towards schedule IV of the Resolution plan it is submitted that mandatory merger of 100% subsidiary i.e. M/s Solitaire Infomedia Pvt. Ltd. has been stipulated in the Resolution Plan, however the narration of the facts in the Resolution Plan, a copy of which has been placed at page number 451 and 452 of the Appeal paper book, would reveal that the SRA was very much aware of the directions given by a coordinate bench of this Tribunal and these direction were pertaining to initiate the CIRP of M/S Solitaire Infomedia Pvt. Ltd. and thereafter to proceed with the joint or consolidated CIRP of both entities. Therefore, it has been wrongly recorded in the Resolution Plan that initiation of joint CIRP was considered by this tribunal to be one option while in direct contrast to it this Tribunal has directed to initiate the CIRP of M/S Solitaire Infomedia Pvt Ltd at first and thereafter to move in the direction of joint or consolidated CIRP. Thus the SRA fully knowing about the directions given by this Tribunal has misinterpreted these directions and has purposefully submitted a Resolution Plan, knowing well in advance that the CIRP of the M/S Solitaire Infomedia Pvt Ltd is yet to commence and thereafter a joint CIRP of both the companies would commence. Therefore, SRA now cannot plead that after acceptance of his Plan by the COC of the Premia Projects Ltd. he will face a unprecedented situation. It is requested that the appeal is liable to be dismissed.

49. Having heard learned counsel for the parties and having perused the record, including the written submissions filed by Ld. Counsels for the parties, it will emerge that much of the factual matrix of this case is not in dispute.

50. It is evident that applicants before the tribunal were a group of home buyers who have booked their flats in the project namely Premia Projects Ltd. and the Premia had issued allotment letters and provisional allotment letters to these applicants and agreements were also executed with many allottees and promise was also made to deliver possession of their Flats within the stipulated time. These 75 home buyers have moved the petition under Section 7 of the insolvency and Bankruptcy Code, 2016 bearing Company Petition No. 644 of 2023 before National Company Law Tribunal Court No. 5 New Delhi and the total allottees of premia projects limited being 566, the 75 home buyers are above the benchmark as provided under Section 7 of the IBC.

51. It is also transpired that the Corporate Debtor of the instant case namely M/S Solitaire Infomedia Pvt. Ltd. was allotted a land measuring 45398.50 sq. mtr. situated at plot number 201, Sector KP- V, Greater Noida on 11th March 2009. It also appears admitted to the parties that on 1st October 2012 Mr. Tarun Sheinh became the director of Solitaire And on the same day the Solitaire entered into a collaboration agreement with Premia whereby it was agreed that the possession of the aforesaid land would be given to the Premia to develop the project and it will have exclusive rights of sales and marketing of 90% of the constructed area while retaining ownership and right to sell of 10% of the constructed area apart from

receiving consideration of rupees 4.5 crores, both being part of consideration. It is also not in dispute that the above mentioned agreement was executed by Mr. Tarun Sheinh on behalf of Solitaire and at the time of execution of this collaboration agreement Mr. Tarun Sheinh was also a Director of Premia.

52. It is also reflected that pursuant to the appointment of Mr. Tarun Sheinh as Director of the Solitaire, all the shareholders of the Solitaire, transferred their shareholding to Mr. Tarun Sheinh and his wife on 31st March 2013. The record further reveals that on 25th July 2013 Mr. Tarun Sheinh transferred 51% of the total equity of the solitaire / corporate debtor to Premia and thus retained 46.5% equity with himself and 2.5% equity with his wife. The appellant has himself stated in paragraph No. 7 (iv) of the appeal that by 2015 Premia had acquired 100% effective ownership of Solitaire except 100 shares left held by Mr. Tarun Sheinh and thus rendering Solitaire wholly owned subsidiary of Premia. It is also admitted to the appellant and has been stated so in the appeal that it was only in the year 2016 the project Premia Corporate City was launched by Premia Project Ltd.

53. It is also reflected that Premia failed to deliver possession of the units to the home buyers thereby causing grave prejudice and financial hardship to a large number of allottees and homebuyers filed an application under Section 7 of the IBC against Premia Projects Ltd which was registered as Company Petition No. 104 of 2018, however learned Adjudicating Authority vide order dated 30th May 2018 admitted that company petition and CIRP was commenced with regard to Premia and Mr. Alok Kumar kuchhal was

appointed as Interim Resolution Professional and subsequently Mr. Jitendra Arora was appointed as Resolution Professional of Premia and since then Premia has been undergoing corporate insolvency resolution process (CIRP).

54. It is further reflected that RP of Premia moved an application being IA No. 4132 of 2020 in Company Petition No. 104 of 2018 before Ld. Adjudicating Authority requesting for taking charge of the assets of Corporate Debtor Solitaire or to allow joint CIRP of Solitaire and Premia. The aforesaid application moved by the Resolution Professional of Premia was rejected by the Adjudicating Authority on 29th October 2020 and feeling aggrieved by the same an Appeal was preferred before this Appellate Tribunal being Company Appeal No. 1069 of 2020. This Appellate Tribunal has decided the aforesaid appeal on 18th November 2021 and amongst others hold that a joint CIRP of both companies could only be possible if there is an application for admission of CIRP under section 7 of the IBC against the land owning company namely Solitaire and while remanding the matter directed that Tribunal to consider the CIRP of Solitaire and thereafter the joint CIRP of both.

55. In the meantime, one of the appellant of Company Appeal (AT) (Ins) No. 935 of 2025 namely Shri Harish Kumar has filed a Company Petition bearing CP No. 740 of 2021 on 8th December 2021 under Section 7 of the IBC requesting to initiate CIRP against Solitaire, however the aforesaid petition was dismissed by Ld. Adjudicating Authority on 22nd December 2022 due to non-meeting of the minimum threshold of Home Buyers. Appellant Mr. Harish Kumar appears to have filed an IA No. 24 of 2023 for recalling of the aforesaid order, however that application was also dismissed

as withdrawn on 13th February 2023. An appeal bearing Company Appeal (AT) (Ins) No. 348 of 2023 along with an IA number 1174 of 2023 for condonation of delay was preferred before this Appellate Tribunal, however delay condonation application of the Appellant Mr. Harish Kumar was rejected vide order dated 23rd August 2023.

56. It was on 4th March 2023 Form 'G' was published by the Resolution Professional of Premia and on 5th April 2023 Appellant Radha Buildtech India Pvt. Ltd., herein after called, SRA, Appellant in CA (AT) (Ins) No. 876 of 2025 stated to have filed Expression of Interest ('EOI') and also submitted a Resolution Plan thereafter. The aforesaid Resolution Plan was approved by the COC of Premia in its 19th meeting held on 27th December 2023 and an Application bearing IA No. 06 of 2024, under section 31 of the IBC, seeking approval of the Learned Adjudicating Authority was filed by the RP of Premia on 15th January 2024 and the same is stated to be pending till now.

57. Copies of minutes of the two meetings of the COC of premia projects Ltd. of date 18.02.2020 and of date 20.12.2023 have been brought on record by Learned Counsel for Appellant Radha Buildtech and we would like to have a glance on these minutes in order to appreciate the submissions made by Learned counsel for the parties in later part of this judgement. In the meeting of the COC of Premia held on 18th February 2020, which was the sixth meeting of the COC, relevant decisions for our purpose appears to have been taken with regard to publication of Expression of Interest(EOI), and also deciding the criteria for the said purpose and with regard to Agenda No. 16 authorising the Resolution Professional for filing the necessary applications with the adjudicating authority for commencing the

insolvency process with regard to the subsidiary company, i.e. Solitaire, which is the corporate debtor in the Appeal before us. One other significant fact relevant for our purpose appears to be that the CoC was conscious about the fact that the resolution of Premia may not be possible without inclusion of the land owned by the land owning company i.e. Solitaire in the pool. The Resolution Professional of the premia in this meeting has also informed that the Resolution of the premia depends upon the insolvency process of its subsidiary company i.e. Solitaire. An IA No. 4132 of 2020 appears to have been filed by the RP of the premia for seeking the control over the assets of Solitaire on the ground that they are connected to the Premia Projects Limited. As said earlier this application however was dismissed on 29th October 2020 and on an appeal preferred by the RP of Premia before us the same was decided on 18th November 2021 and the matter was remanded back with the direction to consider the CIRP of the Solitaire and thereafter to consider consolidated joint CIRP of both entities.

58. In the meeting of the CoC of Premia dated 20th December 2023, minutes of which are also on record, Resolution Plan submitted by SRA Radha Buildtech was approved with certain modifications. Perusal of these minutes would reveal that at the outset one of the Applicant in CA (AT) (Ins) No. 876 of 2025 i.e. Mr Kapil Kumar (Before the Adjudicating authority) has raised certain queries/objections with regard to the submission of plan in terms that they have requested consistently to the RP and Authorised Representative to issue a fresh Form G and Expression of Interest however the repetitive solicitation of the same builder to present its plan and conduct of the COC voting until Radha Buildtech attains majority from COC is not

justified approach and may amount to favouritism. A request was made by him to issue a fresh Form G at the earliest. Reply to this query has been made by the RP. We are not entering into the merits of the query and the reply given by the RP in the said meeting as the same is to be considered by the Adjudicating Authority while taking a decision on the approval of plan which has been submitted by the RP and is pending for its approval. The issuance of fresh Form G was however refused due to financial constraint and also on the ground that sufficient percentage of the CoC members has not endorsed the same. The same Mr. Kapil Kumar has also raised objections with regard to the RP being designated as the chairman of the monitoring committee by the SRA on the ground that the RP may favour the SRA. He also raised other allegation against the RP that opportunity to other builders was not granted by the RP. We have noted these facts only for the purpose of keeping the facts straight. One another significant fact which may also be relevant for us is that no discussion in detail has been done with regard to the directions issued by this Appellate Tribunal vide its judgment dated 21st November 2021, in this meeting. However, the merger of Solitaire with the premia was discussed and also replied by the RP in detail.

59. Grievance of the Appellant, Radha Buildtech /SRA, in CA (AT) (Ins) No. 876 of 2025 appears to be that when under the Resolution Plan of the premia the land for which the premia had secured development rights, was formed an integral part of their assets and the Resolution Plan also proposed merger of the Solitaire in order to cater the needs of the stakeholders, the Adjudicating Authority while initiating the CIRP against

Solitaire has not even discussed this aspect of the matter and the home buyers have also not apprised Ld. Adjudicating Authority about the fact that the Resolution Plan of the Radha Buildtech has been approved by the CoC and it is pending for approval before Learned Adjudicating Authority and that initiation of CIRP of Solitaire would defeat the Resolution Plan approved by the CoC of Premia.

60. Before proceeding further to deal with this submission of Ld. Counsel for the Appellant Radha Buildtech it is in the interest of things to dwell deep into the judgment passed by this Appellate Tribunal of date 18.11.2021 in CA (AT) (Ins) No. 1069 of 2025, as all the parties are relying on it, however with different interpretation. The Appellants and RP of Premia are of the view that the course adopted by the COC of Premia of providing merger of Solitaire in Premia, in the Resolution Plan submitted by SRA has achieved what was required by the Appellate Tribunal, while Respondents are of the view that when this Appellate Tribunal has directed to consider the CIRP of Solitaire at first and then to move for consolidated/joint CIRP of both, the duty of all was to move in that direction more so when the judgment of this Appellate tribunal was not challenged by anyone at any higher forum and the Solitaire as well as the Premia were parties before this Tribunal. The adjudicating authority in the impugned order has also relied on certain paragraphs of the aforesaid Judgment and paragraph 22, 23, 28, 29, 31, 34, 35, 36 and 37 of the same are also being reproduced by us in verbatim as under;

"22. It is therefore clear that Tarun Sheinh, who effectively controlled the landholding Respondent No.2 company

(Solitaire Infomedia Limited) and the developer company - Corporate Debtor (Premia Projects Limited), made the dual instruments of Collaboration Agreement and MoU as a clever stratagem to give by one hand land to the developer and receive monies as the price of allotted flats in the other hand, all along claiming the right hand does not know what the left hand is doing as these acts were being done by two outwardly different companies. As has come out in the transaction audit report submitted by the RP through an affidavit (Diary No. 23898 of the Appeal Paperbook), huge amount of money has been siphoned off by Tarun Sheinh from the Corporate Debtor company. It is thus clear that Tarun Sheinh defrauded the homebuyers by collecting money from them through the Corporate Debtor, but not constructing and completing the projects promised under the Memoranda of Understanding entered into with various homebuyers. This circle of cheating was completed because the asset of land on which the project was to be developed and land constructed was owned by another company. In this manner, he made a similar attempt to save his property from being auctioned even when he would not provide constructed flats to the homebuyers.

23. Therefore, if the home buyers who are financial creditors of Developer Company, are to receive their rightful dues and the insolvency resolution of the corporate debtor has to be carried out in an effective manner, piercing of corporate veil is necessary. Once the corporate veil of the two companies is taken off, the intricate business relationship between landowning company and the Corporate Debtor – Developer Company would become crystal clear. The role of the common director in both companies, Tarun Sheinh would become absolutely evident and clear in the clever execution of the back-to-back Collaboration Agreement and MoUs to get possession of the land, and collect monies from the home buyers through one company, siphoning them off for his personal benefit and leaving the corporate debtor bereft of any assets of meaningful value for effective and successful insolvency resolution of the Corporate Debtor. It stands to logic and reason that if the Corporate Debtor does not own any economically valuable assets, no resolution applicant will come forward for successful resolution of the Corporate Debtor. Later, if the Corporate Debtor were to go into liquidation, there would be hardly any tangible assets available for liquidation, and hence the creditors would be left completely high and dry. What happens to the home-buyers who have sunk their hard-earned incomes, often their lifetime savings, in the booking and payment of instalments for the to-be-built flats is a

question that has difficult answer. Hence for successful resolution of the Corporate Debtor, piercing of the corporate veil" of the two companies – Corporate Debtor (Developer) and Landowning subsidiary company (Respondent No. 2) becomes absolutely necessary and imperative.

28. The Insolvency and Bankruptcy Code, 2016 provides for the resolution of insolvent companies for the revival of those companies and for the benefit of financial and operational creditors. The preamble of the IBC states that the reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons is the prime objective of this legislation. Taking a cue from such an objective and the detailed framework provided under IBC, there is no gainsaying the fact that the interests of creditors which doing an effective resolution of an insolvent company are the primary objectives of the IBC. Therefore, if a Corporate Debtor has intricate financial relationship with another company which is controlled in an overwhelming manner by the same set of directors, as the corporate debtor and their businesses are inter-related, intertwined and interwoven, it stands to reason that such companies should be looked at jointly, for matters related to insolvency resolution, as the financial revival of one company will be closely linked to the financial health of the other company.

29. There is no provision in the IBC for a joint CIRP. In **State Bank of India and Anr. versus Videocon Industries Limited and Others** (supra), a consolidated CIRP has been ordered in view of the fact that there are admission orders for insolvency resolution against 15 companies that has already been given, and prayer was made for undertaking consolidated CIRP since the assets of all the 15 companies were inter-linked and interwoven. The Adjudicating Authority has given a 14-point test in para 80 of this judgment for deciding whether consolidation of individual CIRPs should be done to yield maximum benefits to stakeholders. Para 80 of **State Bank of India and Anr. versus Videocon Industries Limited and Ors. (supra)** gives the essential ingredients of the 14-point test which is reproduced hereunder: -

80. Henceforward Summum bonum, is that the UK /USA courts have dealt with the process of consolidation along with the jurisdiction of the Authority by pronouncing that equity and fairness ought to be a yardstick by lifting the corporate veil. Consolidation is to be utilized as a mechanism to maximise the value of

financially stressed group of companies. Economic benefit ought to be the sole BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH MA 1306/2018, MA 1416/2018, MA 393/2019, MA 115/2019, MA 1574/2019, MA 774 /2019, MA 778/2019, MA 1583/2018 Page 45 of 52 purpose and for that a preliminary searching enquiry is suggested which would yield benefit to stakeholders by off-setting any harm, if inflicted, if not consolidated. On due reading of all these judgements, one proposition of law emerges that the motion of „consolidation“ depends upon the facts and circumstances of each debtor/debtors. It is appropriate and suitable to give a ruling at this occasion that there is no single yardstick or measurement on the basis of which a motion of consolidation can or cannot be approved. With humility, this Bench herein below sets-out a list of examples, based upon reading the history of „group insolvency“, so that the presence of them can lead to a decisive conclusion of triggering of „consolidation“ of Insolvency process. Undisputedly, and also laid down by the courts, before ordering consolidation, a preliminary searching inquiry be ensured that whether consolidation yields benefits to stakeholders by offsetting the harm if not consolidated. Areas of inquisition and our finding on the facts of this case are: -

i) Common Control: These companies are promoted by Dhoot Family.

ii) Common directors: The family members of V.N. Dhoot are directors in all the Videocon group companies.

iii) Common assets: There are many instances of interdependency between the group companies and the assets are common to such an extent that, for instance, one company has leased its land to another group company to carry on manufacturing.

iv) Common liabilities: The clauses of the VTL and RTL Agreements have demonstrated that "all guarantees thereof executed by one or more of the other Corporate Debtors are deemed to be one obligations of all the Corporate Debtors. "The company along with 12 other affiliates/entities (collectively referred to as "Obligors" and individually referred to as "Borrower") executed facility agreement with consortium of existing domestic rupee term lenders, in the obligor/co obligor structure, wherein all the Rupee Term Loans of the obligors are pooled together....".

v) Inter-dependence: Some corporate debtors are engaged in manufacturing, assembling and distribution

of comprehensive range of consumer electronic and home appliances. Also manufacturing set top boxes, Colour Televisions, DVD Players Etc. by some Units/subsidiaries in Aurangabad. This is stated to be India's Largest Electronics Retail chain. The uniqueness stated to be that all are marketed under single license of "Videocon Trademark".

vi) Inter-lacing of finance: Pursuant to the RTL Agreement, a consortium of banks and financial institutions including SBI had agreed to grant, 'Rupee Terms Loans' to the RTL obligors under an obligor/co-obligor structure. The Rupee Term Loans under the RTL Agreement were to be utilised for the purposes of refinancing of existing rupee debt of the RTL obligors, funding the capital expenditure in relation to the, 'Ravva Field' and the capital expenditure in relation to the consumer electronics and home appliances BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH MA 1306/2018, MA 1416/2018, MA 393/2019, MA 115/2019, MA 1574/2019, MA 774/2019, MA 778/2019, MA 1583/2018 Page 46 of 52 business of the RTL obligors and such other end users as permitted by the facility agent under the RTL Agreement. Recital C of the RTL Agreement states that: "The Rupee Term loan has been sanctioned by the lenders for the purposes of refinancing of existing Rupee debt of the obligors, funding the capital expenditure in relation to the consumer electronics and home appliances business of the obligors and such other end uses permitted by the Facility Agent".

(Emphasis supplied)

vii) Pooling of resources: Facts and evidences have demonstrated that there was common pooling of human resources, liaising and funding. Undisputedly, the directors are common using their contacts and relationship to run all the subsidiaries for which common office staff, accountants, and other human resources are mobilised to manage the affairs collectively. Further, common arrangement of capital/funds is an accepted position in Videocon group.

viii) Co-existence for survival: An interlinked chain of business operations is also evident in this group case. Electronic gadgets/home appliances are manufactured by a unit. However, distribution and market chain is controlled by another entity. Interdependence upon each other is a unique feature visible in Videocon group.

ix) Intricate link of subsidiaries: Consolidated accounts, pooling of resources, commingling of assets and business functions are the examples of intricate link among subsidiaries.

x) Inter-twined accounts: The consolidated accounts of 15 months is one of the evidence to demonstrate that on demand by the lenders, all the subsidiaries have prepared a common position of their assets and liabilities, thereafter, prepared consolidated accounts, stated to be duly approved by an auditor.

xi) Inter-looping of debts: On perusal of the agreements, it is evidenced that the clauses have made a provision of securing the debts owed by subsidiaries of Videocon group. For example, Clause 2.4 of the RTL Agreement states about the Utilisation of the proceeds i.e.: "(i) the obligors hereby agree that the proceeds of the Rupee Term Loan shall be utilized for the following purposes:

(a) Capital expenditure in relation to the Ravva Field and the capital expenditure in relation to the consumer electronics and home appliances business of the obligors, for an amount not exceeding Rs.684 Crores incurred or to be incurred by the Obligors between the current year 2012 and till 2014;

(b) Refinancing of existing Rupee Loans listed in part A of schedule 9 for an amount not exceeding Rs. 19,511 Crores; and

(c) Such other end use as may be permitted by the lenders in writing. " BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH MA 1306/2018, MA 1416/2018, MA 393/2019, MA 115/2019, MA 1574/2019, MA 774 /2019, MA 778/2019, MA 1583/2018 Page 47 of 52

xii) Singleness of economics of units: The group is known by its brand name "Videocon". Therefore, the entire economics of the group revolve around this brand name either for the purposes of procuring raw material or finally selling the appliances manufactured. The group as a whole is therefore, has a common economic feature to sustain and promote the business operations.

xiii) Common Financial Creditors: As per two Agreements viz. RTL & VTL the lenders are members of „consortium of banks" which is common for all. Because the impugned Insolvency Petitions were filed by SBI for itself and also on behalf of the said Joint Lenders Forum, already listed above, the names of all the banks forming consortium thus substantiate the fact that the financial creditors are common for the 15 debtor entities.

xiv) Common group of Corporate Debtors: As per the said two agreements the Debtors are combined together for the purpose of availing various loan facility. Therefore, this is a case where all the Debtors are independently as well as jointly liable for the repayment of loans facilities availed.

We find that in the instant appeal, the two companies – Corporate Debtor Premia Projects Ltd. and the Respondent No. 2 landowning company M/s Solitaire Infomedia Private Limited broadly satisfy the points enumerated in the 14-point test.

30. In the matter of **Mrs. Mamatha versus AMB Infrabuild Private Limited and Ors. (supra)**, the NCLAT has held that the developer and the land owner should be treated jointly for the purpose of initiation of CIRP against them. Hence, the Appellant remitted to the Adjudicating Authority for admission of the case after notice to the parties. The important point to note in this matter is that an application for initiation of CIRP jointly against, ‘developer’ and the ‘landowners’ was filed, which was rejected by the Adjudicating Authority. In the instant appeal the initiation of CIRP has been ordered only against the Corporate Debtor (developer) but at this stage there is neither any application for initiation of CIRP against the landowner/ landholder nor there is any order regarding initiation of the CIRP against the landowning company M/s Solitaire Infomedia Pvt. Ltd.

31. In the situation as obtains in the matter related to the present appeal, a joint CIRP would be possible only if there is an application for admission of CIRP under the IBC against the landowning entity and there is a strong case for undertaking joint CIRP. We have found, upon piercing of corporate veil, that both the Corporate Debtor and Respondent No.2 have common Director Tarun Sheinh and their assets are intricately interwoven in their business operations. In addition, we have also seen that the corporate debtor. M/s. Premia Projects Limited has controlling shares in the landowning company (Respondent no.2). Thus, it is quite clear that their assets have been taken together for the development of the housing project. Therefore, there appears to be a strong case for considering the assets of both the companies jointly.

34. The basis for considering land as a necessary asset in the insolvency resolution of the corporate debtor is evident from the manner of costing of a flat in an

apartment complex. Since IBC does not provide any indication about costing of flats in a housing project, we turn our attention to the Real Estate (Regulations and Development) Act, 2016 which relates to real estate projects and connected matters. As the project is located in Uttar Pradesh we consider the Uttar Pradesh Real Estate Regulatory Authority (General) Regulations, 2019 (hereinafter called „Regulations“). The costing of the flat is covered in the Section 4(l)(D) of the Real Estate (Regulation and Development) Act, 2016, whereby the developer is required to submit in Form 3 provided in the Regulations through a Chartered Account. Clause 3 in the Regulations is as follows:

“Formats of Certificates of Architect, Engineer and Chartered Accountant

3. The certificates, issued by the project architect, project engineer, chartered accountant and submitted to the banks for getting release of money from the designated separate account of the project shall be in Forms REG -1, 2 and 3 respectively. The certificate issued by the project architect on completion of each of the building/wing of the real estate project shall be in Form REG-4.”

35. As is evident from the Form 3 extracted above, the cost of the project includes cost of land and cost of development. This total cost of the project forms the basis of the cost of each flat. Each home buyer pays for the proportionate share of land along with the cost of development and construction. Therefore, in considering their rightful interest in the resolution of the corporate debtor company, it is reasonable and logical to factor in the connected land parcel in the total assets base.

36. In view of the aforementioned discussion, we consider it just, fair and proper that the land held by Respondent No.2 M/s. Solitaire Infomedia Pvt. Ltd., is an integral part of the housing development project, and should be considered as a part of the total asset base for the insolvency resolution of the Corporate Debtor M/s. Premia Projects Limited. The inter-woven nature of the assets of the two companies is amply clear from the provisions of the ‘Collaboration Agreement’ and the ‘MOU’ respectively. The Corporate Debtor has provided valuable consideration to Respondent No.2 and also taken possession of the land in question for developing the housing project through the Corporate Debtor. Hence, the asset of land is effectively transferred to the

Corporate Debtor, on whose strength it has entered into Memoranda of Understanding with various homebuyers. On the basis of these MOUs the CD has collected monies from the home buyers. Moreover, in the costing of flats offered to homebuyers, the cost of land that proportionately is attached with each flat is a part of the total cost of each flat. In such a situation, it would not be fair and just to the creditors of the Corporate Debtor, which include the homebuyers, if the land in question is considered as part of the overall CIRP process and included in the information memorandum. In such a situation, a meaningful resolution plan could be proposed by an applicant.

37. In the instant matter the CIRP of the corporate debtor M/s Premia Projects Ltd. is under consideration. The landowning company M/s Solitaire Infomedia Pvt. Ltd. is not under CIRP; hence it would not be possible to include in the CIRP of the Corporate Debtor the asset of land on which the Corporate Debtor is developing the housing project but which is owned by the Respondent No. 2 company without following the due procedure as enumerated in law. We, therefore, direct that the matter be remanded to the Adjudicating Authority with further direction that an admission application for the landowning company M/s. Solitaire Infomedia Pvt. Ltd. be considered by the Adjudicating Authority, and a consolidation of CIRP be thereafter considered so that the combined assets of land and flats may be considered together to provide fair, just and proper relief to the creditors of the Corporate Debtor Premia Projects Limited”.

61. Perusal of this judgment would reveal that at first this Appellate Tribunal has made all efforts to serve the CD Solitaire Info Media Private Limited, however, every effort of this Tribunal to serve the Solitaire had gone in vain and thereafter this tribunal was compelled to take a decision to serve the CD through publication in two newspapers and when the CD did not appear even thereafter a decision was taken to proceed ex parte against him.

62. This Appellate Tribunal in the aforesaid judgement has categorically held that the erstwhile director of the Premia projects Ltd, namely Mr. Tarun

was effectively controlling the land holding company Solitaire and also the developer company i.e. Premia and has made dual instruments of collaboration agreement and MOU as a clever Stratagem to give on one hand the land to the developer and receive monies as the price of the allotted flats on the other hand and pretend to show that these acts were being done by two different companies. This appellate Tribunal in the aforesaid judgement has further held that in view of the attending facts and circumstances of the case it is necessary to pierce the corporate veil and once the corporate veil of these companies is taken off the intricate business relationship between land owning company i.e. solitaire and premia would become crystal clear and the role of the common director in both companies, Mr Tarun would also become absolutely evident and clear, in clever execution of the back to back agreements and MOU to get possession of the land and collect money from the home buyers through one company, siphoning them off for his personal benefit and leaving the corporate debtor (of that Appeal) i.e. Premia bereft of any assets of meaningful value for effective and successful insolvency resolution of the Premia. This tribunal in aforesaid judgement was very much considered with the fate of home buyers who have sunk their hard earned income, often their lifetime savings, in the booking and payment of instalments for the 'to be built Flats' and while considering also the underlying object of the IBC to do effective resolution of an insolvent company and also to protect the interest of creditors in a timely manner and also considering that both above companies were being controlled by the same set of directors and their businesses are interrelated, intertwined and interwoven held that such companies should be looked at jointly for the

purpose of insolvency resolution as the financial revival of one company will be closely linked to the financial health of the other company. It was further observed by this tribunal that the assets of both the companies have been taken together for the development of the housing project, therefore there appears to be a strong case for considering the assets of both the companies jointly and to undertake joint CIRP. It was further held in para number 36 of the judgement that the land held by solitaire is an integral part of the housing development project and should be considered as a part of the total asset base for the insolvency resolution of the premia. However in para number 37 of the judgment this Tribunal concluded that though it is a case of joint CIRP but as the land owning company Solitaire is not under the CIRP hence it is not possible to include the assets of land on which the premia is developing the housing project and which is owned by the solitaire infomedia, without following the due procedure as enumerated in law and after considering the Law laid down by the Hon'ble Supreme Court in **State Bank of India and another versus Videocon Industries Limited and others**, 2018 SCC Online NCLT 13182, it was directed to remand the matter to the adjudicating authority with further direction that application of the home buyers under Section 7 of the IBC for the land owning company i.e. Solitaire be considered by the adjudicating authority and a consolidation of CIRP be considered thereafter, so that the combined assets of land and flats may be considered together to provide fair, just and proper relief to the creditors of the Premia Projects Ltd.

63. It is crystal clear from the above that since the land owning company i.e. Solitaire was not under CIRP the consolidation of the assets of the

Solitaire in the CIRP of the Premia was not possible. Thus this tribunal had directed that an admission application for land owning company i.e. Solitaire be considered by the adjudicating authority and consolidation of both CIRP be considered thereafter, so that the combined assets of land and flats may be considered together to provide fair just and proper relief to the creditors of the corporate debtor Premia Projects Ltd. Therefore, a clear cut direction was given to the adjudicating authority to consider the application for CIRP of Solitaire and in case of acceptance of such application, the consolidation of CIRP be considered thereafter. In this background and clear cut findings of a coordinate bench of this tribunal we do not find any substance in the submission of Ld. Counsel for the Radha Buildtech SRA that the judgement of this appellate tribunal has not been appreciated in right perspective by the Tribunal. We are of the considered view that as there was a clear cut direction to consider the CIRP of Solitaire at first and thereafter the emphasis in that judgment was for Joint and consolidated CIRP which could only be done once the Solitaire is inducted into the CIRP, therefore, no illegality in this regard appears to have been done by the Ld. Adjudicating Authority in accepting the application moved by the homebuyers who are above the threshold limit and there was no confusion with regard to the legally payable debt and commission of default by the the Solitaire as well as by the Premia as they have already been held by this Tribunal as one and same for the purpose of Resolution and at the cost of repetition we reiterate that both entities and RP of Premia were party to the aforesaid appeal and it is an admitted fact that none of the party has

challenged the order at any higher forum, therefore the findings recorded therein has become absolute and binding on all stake holders.

64. So far as the submission of Ld. Counsel for the appellant in CA (AT) (Ins) No. 876 of 2025 i.e. Radha Buildtech, to the tune that 'he is SRA and the merger of the Solitaire with the Premia has been proposed in the Resolution Plan and now after the approval of his plan by the CoC he may not confront anything new' is concerned, we are of the view that the appellant (SRA) may not take much advantage of the fact that as the Resolution Plan submitted by him has been accepted by the CoC as the same is now pending for approval before the adjudicating authority. It is to be recalled that the RP of the premia has issued Information Memorandum wherein the judgement passed by a coordinate bench of this Tribunal of date 21st November 2021 has been shown, thus it could not be said that the fact of the appeal decided by a coordinate bench of this Appellate Tribunal was not in the knowledge of the SRA or the directions given therein were not known to it. Therefore, it is not the case where by admitting the Solitaire in the CIRP, the SRA of the premia projects limited would come across a new situation which was not in contemplation of it when the Resolution Plan was submitted. When the Appeal was decided by a coordinate bench of this Appellate Tribunal has been mentioned in the Information Memorandum it is a natural Corollary that the said judgement might have been gone through by the SRA before submitting Resolution Plan or Expression of Interest and when a specific finding has been given therein with regard to the commencement of joint/consolidated CIRP and to consider the inclusion of the Solitaire in the CIRP, it was on the cards, so far as the Appellant SRA

is concerned that a joint CIRP is bound to happen with regard to these two entities. Therefore, keeping in view the facts and circumstances of this case it could not be said that the SRA has met a situation which was not contemplated, when it was very much in its knowledge, as in the documents floated by the RP, Appeal decided by this Appellate Tribunal on 18th November 2021 has been shown and has also been discussed in the meeting of the CoC wherein the Plan has been approved it could not be said that SRA, as of now is encountered with a situation which was not in sight when its plan was approved. Therefore, we do not find any substance in this submission of Ld. counsel for the Appellant.

65. The other submission of Ld. Counsel for the SRA/Appellant in CA (AT) (Ins) No. 876 of 2025 is that the same set of creditors, who were in the COC of Premia and have approved the Resolution Plan submitted by it have filed this application under section 7 of the IBC and therefore this was not permissible. In our considered opinion the submission of Ld. counsel for the Appellant is not tenable as it is evident that the Application under Section 7 of the IBC was filed by the applicants therein on 20th July 2023 and the Resolution Plan of Radha Buildtech/SRA was admittedly approved by the COC of Premia on 27th December 2023. Thus the reverse of what has been argued by Ld. Counsel for the Appellant and Resolution Professional of Premia appears to be true i.e. that Resolution Plan of SRA has been approved by the COC during the pendency of the company petition number 644 of 2023.

66. One of the submission which has been advanced with considerable force by Ld. Counsel for SRA/Radha Buildtech is that when the Plan

submitted by it has included a specific provision of merger of both the entities and a specific provision of merger of both the entities was placed in the Plan, there was absolutely no necessity of initiation of CIRP against Solitaire. At first glance this submission may appear of having some substance but when we will dwell deep into it we will find that at the time of considering the admission of any Petition under Section 7 of the IBC the tribunal is only required to see that there is existence of legally payable debt and there is also default in payment of the same and when these two ingredients are established by a financial creditor it is incumbent on the Adjudicating Authority to accept the application filed under section 7 of the IBC and to commence the CIRP of the corporate debtor. Generally, the equity is an alien word in corporate resolution.

67. In **M. Suresh Kumar Reddy vs Canara Bank and others, reported in (2023)8 SCC 387**, Hon'ble Supreme Court, while considering the issue with regard to the admission of a petition under section 7 of the IBC, has held as under: -

"9. We have given careful consideration to the submissions. This Court in Innoventive Industries Ltd. v. ICICI Bank [Innoventive Industries Ltd. v. ICICI Bank, has explained the scope of Section 7. Paras 28 to 30 of the said decision read thus: (SCC pp. 438-39)

"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the

application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing—i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial

debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

(emphasis supplied)

10. The view taken in *Innoventive Industries* has been followed by this Court in *E.S. Krishnamurthy*. Paras 32 to 34 of the said decision read thus: (*E.S. Krishnamurthy* case, SCC pp. 177-79)

“32. In *Innoventive Industries*, paras 28 and 30, a Two-Judge Bench of this Court has explained the ambit of Section 7 IBC, and held that the adjudicating authority only has to determine whether a “default” has occurred i.e. whether the “debt” (which may still be disputed) was due and remained unpaid. If the adjudicating authority is of the opinion that a “default” has occurred, it has to admit the application unless it is incomplete. Speaking through Rohinton F. Nariman, J., the Court has observed: (SCC pp. 438-39, paras 28 & 30)

‘28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the *Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016*. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor.

The speed within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.’

33. In the present case, the adjudicating authority noted that it had listed the petition for admission on diverse dates and had adjourned it, inter alia, to allow the parties to explore the possibility of a settlement. Evidently, no settlement was arrived at by all the original petitioners who had instituted the proceedings. The adjudicating authority noticed that joint consent terms dated 12-2-2020 had been filed before it. But it is common ground that these consent terms did not cover all the original petitioners who were before the adjudicating authority. The adjudicating authority was apprised of the fact that the claims of 140 investors had

been fully settled by the respondent. The respondent also noted that of the claims of the original petitioners who have moved the adjudicating authority, only 13 have been settled while, according to it '40 are in the process of settlement and 39 are pending settlements'. Eventually, the adjudicating authority did not entertain the petition on the ground that the procedure under IBC is summary, and it cannot manage or decide upon each and every claim of the individual homebuyers. The adjudicating authority also held that since the process of settlement was progressing "in all seriousness", instead of examining all the individual claims, it would dispose of the petition by directing the respondent to settle all the remaining claims "seriously" within a definite time-frame. The petition was accordingly disposed of by directing the respondent to settle the remaining claims no later than within three months, and that if any of the remaining original petitioners were aggrieved by the settlement process, they would be at liberty to approach the adjudicating authority again in accordance with law. The adjudicating authority's decision was also upheld by the appellate authority, who supported its conclusions.

34. The adjudicating authority has clearly acted outside the terms of its jurisdiction under Section 7(5) IBC. The adjudicating authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the adjudicating authority must then either admit or reject an application, respectively. These are the only two courses of action which are open to the adjudicating authority in accordance with Section 7(5). The adjudicating authority cannot compel a party to the proceedings before it to settle a dispute."

(emphasis in original and supplied)

11. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7. "Default" is defined under sub-section (12) of Section 3 IBC which reads thus:

"3. Definitions. —In this Code, unless the context otherwise requires—

* * *

(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;"

Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a corporate debtor. In such a case, an order of admission under Section 7 IBC must follow. If NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application."

68. It is also to be recalled that pending of CIRP proceedings against the holding company will not be a ground to reject or dismiss the application moved for initiation of CIRP against the subsidiary company i.e. Solitaire. It appears to be an admitted situation that Solitaire was a subsidiary of Premia and both companies, before the initiation of CIRP against Premia, were being controlled by the same management. In this background when a clear cut direction has already been given by a coordinate bench of this Appellate Tribunal to consider the initiation of CIRP against the Solitaire for the purpose of initiation of consolidated and joint CIRP of both the entities, vide order dated 18th November 2021, the said objective could only be achieved by placing the Solitaire in CIRP if the same could validly and legally be initiated. In view of M. Suresh Kumar Reddy the Tribunal is only required to satisfy itself with regard to existence of a legally payable debt, nature of the debt, commission of default and also that the application is complete, whereon much discretion is not left with the adjudicating authority, except to order for initiation of CIRP.

69. Real estate insolvency pertaining to home buyers and owner Developers being distinct entities has been a complex subject. Real estate projects many times involve many other inter connected companies, and involvement of these many companies having diversified interests have made

this subject more complex, however the Courts have made attempts to make it simple keeping in view the Home Buyers interest. Consolidation of the CIRP of those Companies who are managed by same set of management and having an interwoven asset with each other in order to maximise the value of the resolution of CD for the benefit of the Home Buyers have been undertaken by the Courts and Tribunals in order to amalgamate the assets and liabilities of interconnected companies paving the way for a common CIRP. The object of this is to maximize asset value of the project/CD, reduction in costs and enhance faith of the prospective Resolution Applicants, which often results submission of Plans of enhanced values, to the benefit of Home Buyers. This envisages amalgamation of assets and liabilities of the connected companies in a pool, allowing initiation of a consolidated Joint Corporate Insolvency Resolution Process (CIRP). Various experiments have been done by the Courts and Tribunals in this regard. In **State Bank of India v. Videocon Industries Ltd. (Supra)** this Appellate Tribunal has laid down test of 14 factors for the initiation of Consolidated Joint CIRP of Companies. These factors have been considered in detail by this Tribunal in its order dated 18.11.2021 whereby the directions for consolidated CIRP were passed, subject to the inclusion of Land owing Company i.e. Solitaire in CIRP. Thus the inclusion of Solitaire in the CIRP was a condition precedent of consolidated CIRP of both the Companies.

70. This Appellate Tribunal in **Company Appeals (AT) (Insolvency) No. 378 ,379, 380,381,382,383 and 384 of 2019, leading Appeal being 378 of 2019, Edelweiss Asset Reconstruction Company Limited Vs. Sachet Infrastructure Pvt. Ltd., decided on 20th September, 2019** where the

Land owners and developers were different entities held that in such cases joint CIRP is the only solution, in following words: -

"32. As the project will be developed on the land of five 'Corporate Debtors', as referred to above as per the township plan, they have rightly taken plea that simultaneous 'Corporate Insolvency Resolution Processes' should continue against them under the guidance of same 'Resolution Professional'.

33. We find that it is a case of joint consortium of different 'Corporate Debtors' and thereby a group insolvency is required to develop the township on the land of 'Sachet Infrastructure Pvt. Ltd.'; 'Magad Realtors Pvt. Ltd.'; 'Mehak Realtech Pvt. Ltd.'; 'Sameeksha Estate Pvt. Ltd.' and 'Jamvant Estates Pvt. Ltd.' and others along with 'Corporate Insolvency Resolution Process' as initiated against 'Adel Landmarks Limited' who is the sole Developer.

34. For the said reasons, we hold that group 'Corporate Insolvency Resolution Process' proceeding is required to be initiated against five 'Corporate Debtors' namely— 'Sachet Infrastructure Pvt. Ltd.'; 'Magad Realtors Pvt. Ltd.'; 'Mehak Realtech Pvt. Ltd.'; 'Sameeksha Estate Pvt. Ltd.' and 'Jamvant Estates Pvt. Ltd.' apart from the 'Corporate Insolvency Resolution Process' which has already been initiated against 'Adel Landmarks Limited'- ('Principal Borrower').

41. In view of our findings and as the Adjudicating Authority has failed to appreciate the relevant fact that in the facts and circumstances, a group insolvency is to be initiated and in absence of simultaneous 'Corporate Insolvency Resolution Process' against five 'Corporate Debtors' namely— 'Sachet Infrastructure Pvt. Ltd.'; 'Magad Realtors Pvt. Ltd.'; 'Mehak Realtech Pvt. Ltd.'; 'Sameeksha Estate Pvt. Ltd.' and 'Jamvant Estates Pvt. Ltd.', the township project of Town and Country Planning, Haryana, will not be complete, we set aside the impugned order dated 7th March, 2019"

71. In **Sandeep Garg & Anr. vs. M/s DMI Finance Pvt. Ltd. & Anr., Company Appeal (AT) (Insolvency) No. 321 of 2021 decided on 24.03.2022, This Tribunal opined as under: -**

"12. The Ld. Counsel of Appellant has claimed that the IBC Petition under Section 7 filed by the Respondent No. 1 before the Adjudicating Authority was complete in all respects and no defects or deficiencies were raised by the Corporate Debtor at that time and hence the debt and default are not disputed. The main dispute raised by the Appellant is that there are CIRPs going on against two other co-borrowers viz Ninex Developers and Red Topaz Real Estate companies on the basis of the same loan agreement, and hence the section 7 application against Abloom Infotech is not maintainable.

30. The Ld. Counsel for Appellants has opposed the simultaneously on-going CIRPs against co-borrowers. The judgments of Hon'ble Supreme Court in the matters of Lalit Kumar Jain Vs. Union of India & Ors. [Transferred Case (C) No. 245 of 2020], State Bank of India. Vs. Ramakrishnan & Anr. (Civil Appeal No. 3595 of 2018) and State Bank of India Vs. Athena Energy Ventures Pvt. Ltd. [(2020) SCC Online NCLAT 774] are relevant in this context which hold that the principal debtor and surety have co-extensive liabilities and also that there is no bar under the IBC for the financial creditor to simultaneously file claims against all co-borrowers or there is any prohibition for the financial creditor to proceed against both the corporate debtor and the surety.

31. We also note that the judgment of NCLAT in the matter of Dr. Vishnu Kumar Agarwal Vs. M/s Piramal Enterprises Ltd. [CA (AT) (Ins) No. 346 of 2018 has been subsequently revised through a judgment of NCLAT in the case of State Bank of India Vs. Athena Energy Ventures Pvt. Ltd. (supra)....."

72. In Maitreya Doshi vs Anand Rathi Global Finance Ltd. and Anr., CIVIL APPEAL NO. 6613 OF 2021 decided on 22nd September, 2022,

Hon'ble Supreme Court has held as under: -

"37. If there are two borrowers or if two corporate bodies fall within the ambit of corporate debtors, there is no reason why proceedings under Section 7 of the IBC cannot be initiated against both the Corporate Debtors. Needless to mention, the same amount cannot be realised from both the Corporate Debtors. If the dues are realised in part from one Corporate Debtor, the balance may be realised from the other Corporate Debtor being the co-borrower. However, once the claim of the Financial Creditor is

discharged, there can be no question of recovery of the claim twice over."

73. In **BRS Ventures Investments Limited vs SREI Infrastructure Finance Limited and Another**, reported in **(2025) 1 SCC 456**, while considering the initiation of CIRP against Borrower when the CIRP has already commenced against Surety/Guarantor, Hon'ble Supreme Court in para No. 31,33 ,43 and 44.2 as under: -

"31. There is a mandate of clause (d) of sub-section (4) of Section 36 IBC that the assets of an Indian subsidiary of the corporate debtor shall not be included in the liquidation estate assets and shall not be used for the recovery in liquidation. Section 18 entrusts several duties to the IRPs concerning the corporate debtor's assets. Consistent with the provisions of Section 36(4)(d), Explanation (b) to Section 18(1) provides that the term "assets" used in Section 18 shall not include the assets of any Indian subsidiary of the corporate debtor. Perhaps the reason for including these two provisions is that it is well-settled that a shareholder has no interest in the company's assets.

33. A holding company and its subsidiary are always distinct legal entities. The holding company would own shares of the subsidiary company. That does not make the holding company the owner of the subsidiary's assets. In Vodafone International Holdings BV, this Court took the view that if a subsidiary company is wound up, its assets do not belong to the holding company but to the liquidator. As mentioned in the decision, the reason is that a company is a separate legal persona and the fact that the parent company owns all its share has nothing to do with its separate legal existence. Therefore, the assets of the subsidiary company of the corporate debtor cannot be part of the resolution plan of the corporate debtor.

43. The last argument sought to be canvassed was that by the admission of an application under Section 7 IBC against the 2nd respondent corporate debtor, the valuable assets of ACIL have been taken away. As observed earlier, the assets of the subsidiary company of ACIL cannot form part of the CIRP process of ACIL, and factually, the assets of the 2nd respondent corporate debtor were not part of the resolution plan approved in the CIRP of ACIL.

44.2. A holding company is not the owner of the assets of its subsidiary. Therefore, the assets of the subsidiaries cannot be included in the resolution plan of the holding company."

74. In **Flat Buyers Association Winter Hills Vs. Umang Realtech Pvt. Ltd. through IRP & Ors., Company Appeal (AT) (Insolvency) No. 926 of 2019** decided by this Appellate Tribunal on 04.02.2020 while considering the complex issues emerging in Resolution of Developers and Home Buyers it was opined as under: -

"8. The 'allottees' (Homebuyers) come within the meaning of 'Financial Creditors'. They do not have any expertise to assess 'viability' or 'feasibility' of a 'Corporate Debtor'. They don't have commercial wisdom like Financial Institutions/ Banks/ NBFCs. However, these allottees have been provided with voting rights for approval of the plan. Many of such cases came to our notice where the allottees are the sole Financial Creditors. However, it is not made clear as to how they can assess the viability and feasibility of the 'Resolution Plan' or commercial aspect/ functioning of the 'Corporate Debtor' in terms of the decision of the Hon'ble Supreme Court in "Innoventive Industries Limited v. ICICI Bank and Anr.³" followed by "Swiss Ribbons Pvt. Ltd. & Anr. V. Union of India & Ors.⁴" and "Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.⁵".

9. In terms of the 'I&B Code' and the decisions of the Hon'ble Supreme Court, the 'Resolution Plan' must maximise the assets of the Corporate Debtor and balance the stakeholders (secured and unsecured creditors- Financial Creditors/ Operational Creditors).

10. The Infrastructure which is constructed for the allottees by Corporate Debtor (Infrastructure Company) is an asset of the Corporate Debtor. The assets of the Corporate Debtor as per the Code cannot be distributed, which are secured for 'Secured Creditors'. On the contrary, allottees (Homebuyers) who are 'Unsecured Creditors', the assets of the Corporate Debtor which is the Infrastructure, is to be transferred in their favour ('Unsecured Creditors') and not to the 'Secured Creditors' such as Financial Institutions/ Banks/ NBFCs. Normally, the Banks/ Financial Institutions/ NBFCs also would not like to take the flats/

apartments in lieu of the money disbursed by them. On the other hand, the ‘unsecured creditors’ have a right over the assets of the Corporate Debtor i.e. flats/ apartment, assets of the Company.

11. In most cases, the Committee of Creditors take ‘haircut’. The Resolution Applicants satisfy them most of the time with lesser amount than the amount as determined. In the case of allottees (Financial Creditors), there cannot be a haircut of assets/ flats/ apartment. "

75. In **State Bank of India vs Athena Energy Respondent Ventures Private Limited, Company Appeal (AT) (Ins) No.633 of 2020, decided on 24th November, 2020**, where one of the issue was as to whether the ‘Corporate Insolvency Resolution Process’ can be initiated against two ‘Corporate Guarantors’ simultaneously for the same set of debt and default?” This Appellate tribunal held as under: -

“13. Apart from this, the observations in the Judgement in the matter of Piramal do not appear to have noticed Sub-Sections 2 and 3 of Section 60 of IBC. It would be appropriate to reproduce Section 60(1) to (3) which reads as under: -

* * *

We have referred to these details as Hon’ble Supreme Court of India in Judgement in the matter of “State Bank of India versus V. Ramakrishnan & Anr.” (which was pronounced on 14th August, 2018 three days before the above Notification) ((2018) 17 SCC 394) discussed Section 60(2) and (3) as they stood before this amendment was enforced. We will refer to the above Judgement in the matter of “Ramakrishnan” later. At present, we have referred to the above provision which had come on the statute book when Act 26 of 2018 was enforced and the Judgement in the matter of Piramal which was passed on 8th January, 2019 did not notice the above amendment. If the above provisions of Section 60(2) and (3) are kept in view, it can be said that IBC has no aversion to simultaneously proceeding against the Corporate Debtor and Corporate Guarantor. If two Applications can be filed, for the same amount against Principal Borrower and Guarantor keeping in view the above provisions, the Applications can also be maintained. It is for such reason that Sub-Section (3) of Section 60 provides that if

insolvency resolution process or liquidation or bankruptcy proceedings of a Corporate Guarantor or Personal Guarantor as the case may be of the Corporate Debtor is pending in any Court or Tribunal, it shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such Corporate Debtor. Apparently and for obvious reasons, the law requires that both the proceedings should be before same Adjudicating Authority.

19. It is clear that in the matter of guarantee, CIRP can proceed against Principal Borrower as well as Guarantor. The law as laid down by the Hon'ble High Courts for the respective jurisdictions, and law as laid down by the Hon'ble Supreme Court for the whole country is binding. In the matter of Piramal, the Bench of this Appellate Tribunal "interpreted" the law. Ordinarily, we would respect and adopt the interpretation but for the reasons discussed above, we are unable to interpret the law in the manner it was interpreted in the matter of Piramal. For such reasons, we are unable to uphold the Judgement as passed by the Adjudicating Authority".

76. Above placed case Laws would show that keeping in view the vulnerability of the Home Buyers every effort has been taken by the Courts to safeguard their interest. In view of above cases there also appears no bar for the financial creditors to initiate CIRP against two Corporate Debtors who after lifting the corporate veil are found to be so interconnected that one of them may not be separately resolved. Moreover, in instant case the Home Buyers appear to have acted in pursuance of the order of this Tribunal Dated 18.11.2021, in moving an Application under section 7 of the IBC, which has become final so far as parties are concerned.

77. So far as the provision contained in the Resolution Plan for merger of the two entities are concerned, this aspect is also full of legal battles as the law with regard to inclusion of properties of subsidiary company in the

resolution process of holding company in the resolution plan of the CD is still at the infant stage.

In Greater Noida Industrial Development Authority Vs. Roma Unicon Designex Consortium and Ors., MANU/NL/0069/2023 wherein the land of the three Projects was leased by Greater Noida Industrial Development Authority (GNIDA) to three entities and CD M/s. Earth Infrastructure Limited was the developer. The Corporate Debtor - Earth Infrastructures Ltd., after the execution of the Lease Deed proceeded to advertise the three projects namely – Earth Towne, Earth Sapphire Court and Earth Tech one. The construction of the projects was stopped and the CIRP was initiated against only the Corporate Debtor. It was submitted on behalf of the GNIDA that CIRP was initiated only against Earth Infrastructures Ltd., which was the owner of the subsidiary company. The Resolution Plan with regard to Earth Towne, Sapphire Court and Earth Tech one Projects were approved and dues of the Appellant GNIDA were completely denied and an issue No. (III) was formulated to the tune that Whether assets of the subsidiary companies can be dealt with in Corporate Insolvency Resolution Process of holding Company? This Appellate Tribunal considering **MANU/SC/1661/2019: (2020) 13 SCC 308 – ‘Embassy Property Developments Private Limited vs. State of Karnataka and Ors.’** and **taking notice of the provisions of Section 18 of the IBC**, opined that assets owned by third party, which is in possession of the Corporate Debtor under contractual arrangements, is specifically kept out of the term of ‘assets’ under the explanation to Section 18, in following words: -

47. The above judgment of the Hon'ble Supreme Court clearly lays down that for asset, which is not the asset of

the Corporate Debtor, there will be no jurisdiction with the NCLT to deal with lease hold rights.

48. This Tribunal in Company Appeal(AT) (Insolvency) No. 229 of 2018 - M/s. Dynepro Pvt. Ltd. vs. Mr. V. Nagarajan decided on 30.01.2019, after noticing the provisions of Section 18 in paragraph 17, has made following observation:

"As per the explanation for the purpose of Section 18(1), the term 'assets' do not include assets owned by a third party in possession of the corporate debtor held under contractual arrangements including bailment. It also do not include assets of any Indian or foreign subsidiary of the corporate debtor and such other assets as may be notified by the Central Government."

49. This Tribunal in Company Appeal(AT) (Insolvency) No. 182 of 2018 in Bhavik Bhimjyani vs. Uday Vinodchandra Shat, RP of Neelkanth Township & Construction Pvt. Ltd. & Ors. has reiterated that Resolution Professional has no jurisdiction to take over any assets of the subsidiary Company of the Corporate Debtor. In paragraph 8 of the judgment, following has been laid down:

"8. We make it clear that the Resolution Professional/Liquidator has no jurisdiction to take over any asset of the subsidiary company of the Corporate Debtor including 'Urban Rupi Infrastructure Private Limited' and 'Neelkanth Palm Realty Private Limited',....."

Thus in our considered opinion the course suggested by this Tribunal vide order dated 21.11.2021, i.e. for consolidated CIRP is the best recourse available in the facts and circumstances of this case. It is to be recalled that it was the Resolution Professional of Premia who had at first moved an Application IA No. 4132 of 2020 before the Ld. Adjudicating Authority during the CIRP process of Premia requesting for taking charge of the assets of the Solitaire. This application moved by the RP of Premia was rejected by the Ld. Adjudicating Authority on 29th October 2020 and feeling aggrieved by this order, it was the RP of Premia, who has filed an appeal before this appellate tribunal bearing Appeal No. 1069 of 2020 and it is in this appeal

this Appellate Tribunal has opined that land held by Solitaire is an integral part of the housing development project and should be considered as part of the total assets base for the Insolvency Resolution of the Premia and also that the assets of the two companies are interwoven, as the Premia has provided valuable consideration to the Solitaire and have also taken possession of the land for developing the housing project. It was ultimately concluded that assets of land are required to be transferred to the Premia, but keeping in view that only the CIRP of Premia is under consideration and land owning company Solitaire is not under CIRP it was held that it is not possible to include the assets of Solitaire in the CIRP of the Premia, without following the due procedure as enumerated in law. A clear crystal direction was thus given that the matter is being remanded to the Adjudicating Authority with further direction that an application for initiation of CIRP of the land owning company Solitaire be considered and consolidation of CIRP of both be considered thereafter so that the combined assets of land and Flats may be considered together to provide fair, just and proper relief to the creditors of the premia.

78. When there was no bar to initiate the CIRP of Solitaire by the same set of homebuyers who have initiated the CIRP of Premia it was the duty of the RP of the Premia to have discussed this matter in the COC of Premia and to persuade the members of the COC to move an application under Section 7 of the IBC, in compliance of the order of this Appellate Tribunal dated 18th November 2021, so that consolidated /joint CIRP of both the entities is achieved in order to maximise the benefits for the home buyers who appears to be the only financial creditors.

79. When this Tribunal in its order dated 18th November 2021 has given clear cut directions to move in a particular direction the duty of at least the RP of the Premia, who has also filed that Appeal, was to make sincere efforts for compliance of the order of this Appellate Tribunal. The Resolution Professional of Premia in his written submissions have only stated that after order dated 18th November 2021 he filed the copy of the said order before the Adjudicating Authority for necessary directions and in compliance of the order Section 7 petition was filed by appellant Mr. Harish Kumar as there was no Authorised Representative of homebuyers at that point of time. At first any copy of the petition filed by the Appellant Harish Kumar has not been made available by any party, so we cannot say with certainty that the application moved by appellant Harish Kumar under Section 7 of the IBC was moved in compliance of the directions issued by this Appellate Tribunal on 18th November 2021, secondly in the order dated 22nd November 2022 whereby that Petition was dismissed by the Ld. Adjudicating Authority there is no mention either of the order of this Tribunal dated 18th November 2021 or of the fact that the petition has been moved there under. On 1st July 2022 Mr. Parveen Kumar Aggarwal is stated to have been appointed as the Authorised Representative of the Financial Creditors in Class i.e. homebuyers. It is recalled that the application under Section 7 of the IBC was filed by Appellant Harish Kumar on 8th December 2021. It is strange to see that the RP of the Premia has not even advised the Harish Kumar to obtain the support of at least so much of the homebuyers so that the threshold limit may be achieved, especially when at that point of time no Authorised Representative of the Financial Creditors in Class was appointed

and all the homebuyers were the members of the COC and would have been in the contact of the RP of Premia and it shows that the RP of Premia was acting in a dormant way. We have not come across a single Resolution of the meeting of the COC of Premia which may show that the RP has explained the directions of this Appellate Tribunal to the members of the COC in a detailed manner so that the object of issuing directions by this Appellate Tribunal may be achieved. So we do not find any substance in the submissions of Ld. Counsel for SRA or RP of Premia that initiation of CIRP against the Solitaire would delay the CIRP of Premia. The CIRP of the Premia prima facie appears to have been delayed to some extent by the non-action of the RP of the Premia. We in ordinary course may very well suggest the modalities to be adopted in future by the Adjudicating Authority but we are restraining ourselves only to assess the correctness of the impugned order as the Resolution plan submitted by SRA has been approved by the COC and is pending for consideration before the Adjudicating Authority.

80. We do not want to devote much time on the necessity of the consolidated/ joint CIRP of both the entities as the same has been discussed at length by this Appellate Tribunal while passing judgment dated 18th November 2021 and detailed discussions have been made there in with regard to this necessity of consolidated CIRP and the direction for consolidated/joint CIRP was passed having regard to the peculiar circumstances of this case with a condition precedent that to achieve consolidated/joint CIRP the Solitaire should also be in the CIRP. The Adjudicating Authority thereafter has passed the impugned order under the directions of this Appellate Tribunal dated 18th November 2021 and keeping

in view all the facts and circumstances of this case we do not find any illegality there in. Since the CIRP of the Solitaire has now commenced though with considerable delay but now the next step would be, as directed by this Appellate Tribunal vide order dated 18th November 2021 to consolidate the CIRP of both entities. Respondents No. 5 to 79 in their written submissions have stated that Resolution Professionals of both the companies have filed their consolidation applications i.e. IA No. 3369 of 2025 and IA No. 3373 of 2025 before the Adjudicating Authority requesting for consolidated CIRP, if it is so we hope and trust that Ld. Adjudicating Authority shall take a decision on these Applications without any further delay.

81. So far as the CA (AT) (Ins) No. 935 of 2025 filed by the Appellants led by Appellant No.1, Mr Harish Kumar is concerned we do not find any substance there in also, for the reasons stated aforesaid. However, in addition to the aforesaid reasons we would like to add that Appellant No. 1 Harish Kumar has earlier filed an application under section 7 of the IBC requesting to initiate CIRP against Solitaire and the same was dismissed. Appellant Harish Kumar has also filed an appeal before this Appellate Tribunal along with an application for condonation of delay and his application for condonation of delay was also dismissed. Prior to filing appeal before this Appellate Tribunal the Appellant Harish Kumar has also filed an application to recall the order whereby his application was dismissed, however the same was also dismissed as withdrawn by the learned Adjudicating Authority. Thus at least Appellant Harish Kumar is estopped from deviating from his earlier position when he himself has

requested to initiate the CIRP against solitaire. We do not see any apprehension for the rest of the Appellants who have joined Appellant Harish Kumar in filing the Appeal as they are Financial Creditors in a Class and they would be dealt with as provided in the IBC and initiation of consolidated joint CIRP of both the entities is not going to affect their interest adversely.

82. Thus keeping in view all the facts and circumstances of this case and for the reasons and law discussed hereinbefore we do not find any illegality in the impugned order passed by the learned adjudicating authority which may persuade us to interfere in the same. The impugned order has been passed in pursuance of the directions issued by this Appellate tribunal on 18.11.2021 passed in Appeal No. 1069 of 2020 and is therefore **affirmed**.

83. In result both the Appeals filed by the Appellants lacks force and are **dismissed**.

84. There is no order as to costs. Pending IA's are also closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

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

[Naresh Salecha]
Member (Technical)

New Delhi.
29.08.2025.

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