

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Insolvency) No. 283 of 2022**

[Arising out of Order dated 08.06.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Delhi, Bench III in CA-914/2019, I.A. No. 5/2020 in IB- 401(ND)/2017]

In the matter of:

Earth Buyers Association for Justice **....Appellant**

Vs.

Mr. Akash Singhal, Resolution Professional for Earth Infrastructure Limited & Ors. **...Respondents**

For Appellant: Mr. Nishant Awana and Mr. Devansh Malhotra, Advocates.

For Respondents: Mr. Ashish Makhija and Ms. Akanksha Vasudeva, Advocates for R-1.

JUDGMENT

(12th October, 2022)

Ashok Bhushan, J.

1. This Appeal has been filed by 'Earth Buyers Association For Justice' challenging the order of the Adjudicating Authority dated 08.06.2021 approving the Resolution Plan submitted by 'M/s. Alpha Corp Development Private Limited', the Respondent No.2 herein. Brief facts necessary for deciding this Appeal are:-

Corporate Insolvency Resolution Process (CIRP) commenced against the Corporate Debtor- 'M/s. Earth Infrastructure Limited' by order dated 06.06.2018. The Resolution Professional issued Form-G inviting Resolution Plans for the Corporate Debtor as a whole and project-wise also. In response, three Resolution Plans were received, of which two for Projects TOWNE &

ICONIC were approved. Committee of Creditors (CoC) had taken a decision in 8th meeting, on 20.05.2019, for issuing Form-G inviting project specific resolution in addition to Resolution Plan for the Corporate Debtor as a whole. Revised Resolution Plan was submitted by Respondent No.2 on 15.10.2019 in respect of three projects of the Corporate Debtor with declaration to the effect that Resolution in respect of Earth Iconic Project shall be implemented in accordance with separate Resolution Plan submitted by Respondent No.2 in CIRP proceeding of Celestial Estates Pvt. Ltd. Resolution Plan was put before the CoC in 18th meeting held on 18.10.2019 where it was resolved to put the plan to vote. Resolution Plan was put to vote in the 19th meeting of the CoC dated 11.11.2019 where it was approved by 99.97% votes. The Application was filed before the Adjudicating Authority being CA- 914/2019 for approval of the Resolution Plan submitted by the Respondent No.2 which plan came to be approved by the impugned order of the Adjudicating Authority. Aggrieved with the order approving the Resolution Plan, this Appeal has been filed by 'Earth Buyers Association For Justice'.

2. On a liberty granted by this Tribunal, the Appellant has filed an I.A No. 3164 of 2022 praying for addition of 35 names of homebuyers/Financial Creditors in a class on the record in support of the Appeal. The Application was objected by the Respondents alleging that out of 35 persons who sought to be brought on record 29 did not vote on the Resolution Plan. It was further stated in the reply that the persons sought to be brought on record belong to class of voters who have to go by the majority of votes as per Section 25A (3A)

of the Code. Respondents further objected that the Appeal need not be entertained by this Tribunal.

3. We have heard Learned Counsel for the parties and reserved the judgment on 26.09.2022. While reserving the judgment, liberty was granted to the Counsel for the Successful Resolution Applicant to refer to relevant clauses in the written synopsis which according to the Counsel for the Successful Resolution Applicant take cares of all the homebuyers.

4. Learned Counsel for the Appellant challenging the impugned order submits that the voting on the Resolution Plan was not conducted project-wise whereas voting ought to have been conducted project-wise and due to the said error of not conducting voting project-wise, the order approving the plan is vitiated. It is further submitted that there are several procedural violations committed by the Resolution Professional and Authorised Representative, hence, the plan approval be set aside.

5. Learned Counsel for the Resolution Professional as well as Successful Resolution Applicant refuting the submission of the Appellant submits that even 35 Applicants who sought to be brought on record were members belonging to class of voters and they cannot be allowed to question the majority votes. Majority of homebuyers having decided to approve the plan by 99.97%, a miniscule of homebuyers cannot be allowed to challenge the plan. Statutory scheme does not permit minority of homebuyers to challenge the plan. It is further submitted that there was no procedural violation and Authorised Representative after obtaining the majority of votes of homebuyers

has participated in the CoC meeting. Learned Counsel for the Successful Resolution Applicant submits that in any view of the matter, the Resolution Plan submitted with regard to all the projects amply protect the interests of all the homebuyers, hence, there is no such grievance in the present Appeal so as to interfere with the order approving the Resolution Plan.

6. We have considered the submissions of the Counsel for the Appellant and perused the record.

7. There is no dispute to the fact that the Resolution Plan has been approved by 99.97% of vote shares of CoC. The Appellant- 'Earth Buyers Association For Justice' itself is not member of the CoC. The 35 homebuyers who were sought to be brought on record, 29 homebuyers have not voted for the plan and the class of homebuyers have to sail with the majority of the votes of the homebuyers. Section 25A (3A) provides as follows:-

“25A. Rights and duties of authorised representative of financial creditors. –

xxx

xxx

xxx

[(3A) Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote:

Provided that for a vote to be cast in respect of an application under section 12A, the authorised

representative shall cast his vote in accordance with the provisions of subsection (3).”

8. The Authorised Representative represent the voters of the class after taking decision by vote of more than 50% of the voting of the Financial Creditors. From the above fact, it is clear that there is no dispute that majority of homebuyers have approved the Resolution Plan, Resolution Plan having been approved by 99.97% votes. The Hon’ble Supreme Court in **“Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors.- 2021 SCC OnLine SC 253”** has already held that the allottees, even if not a homogeneous group, they could vote only either to approve the resolution plan or to disapprove the same. Divergence of the views within their own class may exist but, when coming to the vote in the Committee of Creditors, their vote would be that of a class. In paragraph 426 and 427, following has been laid down:-

“426. Having regard to the scheme of IBC and the law declared by this Court, it is more than clear that once a decision is taken, either to reject or to approve a particular plan, by a vote of more than 50% of the voting share of the financial creditors within a class, the minority of those who vote, as also all others within that class, are bound by that decision. There is absolutely no scope for any particular person standing within that class to suggest any dissention as regards the vote over the resolution plan. It is obvious that if this finality and binding force is not provided to the vote cast by the authorised representative over the resolution plan in accordance with the majority decision of the class he is

authorised to represent, a plan of resolution involving large number of parties (like an excessively large number of homebuyers herein) may never fructify and the only result would be liquidation, which is not the prime target of the Code. In the larger benefit and for common good, the democratic principles of the determinative role of the opinion of majority have been duly incorporated in the scheme of the Code, particularly in the provisions relating to voting on the resolution plan and binding nature of the vote of authorised representative on the entire class of the financial creditor/s he represents.

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

9. We, thus, are of the clear opinion that even if some of the homebuyers have not voted in favour of the plan they have to sail with the majority. The procedural violations which were sought to be urge before us are not sufficient enough to interfere with the order approving the Resolution Plan.

10. Learned Counsel for the Respondent No.2 in his written submissions as per liberty granted by this Court has brought on record certain clauses of the Resolution Plan with regard to Project Earth Copia, Project Earth Sapphire Court and Project Earth Techone. It is sufficient to refer to clauses 2.5 and 4.1 of Part-III of the Resolution Plan for Project Earth Copia, which is as follows:-

“2.5 Further, the Resolution Applicant shall in no manner be liable to pay any claim towards interest and/or assured return to any Allottee of Earth Copia Project whether admitted or pending admission with the RP.”

“4.1 From the perusal of the list of claims filed, the Resolution Applicant has an understanding that the claims admitted in respect of Earth Copia Project as on 01.11.2019 amount to Rs. 2,478,140,223/- representing the principal amount (excluding interest and assured return, if any).

a) The Resolution Applicant proposes to satisfy all the Admitted Claims in respect of Earth Copia Project by completing the pending construction activities and handing over the possession to the Allottee, in the manner as proposed, and subject to the terms and conditions contained, herein. Any and all claims will also be subject to re-verification on the basis of review of all necessary information/documents as will be required to be reviewed by the Resolution Applicant for such purpose with a view to identify

any anomaly/ differences in respect of the claims as well as underlying claim amounts including but not restricted to the relevant Unit numbers, payment plan and such other details under the existing ABA.

Any and all existing Allottees of Earth Copia Project shall not have the right to surrender / cancel the allotment of Units and/or claim refund of any amounts from the Resolution Applicant whether paid by them or due to them from or in connection with EIL, Aurochem or the Earth Copia Project Provided that, the Allottee shall have a right to transfer/assign Units allotted to them to prospective buyers / transferees subject to the condition that such prospective buyers / transferees shall agree to the terms and conditions of this Resolution Plan by executing necessary transfer documents provided by the Resolution Applicant as well as payment of transfer charges as provided for in this Resolution Plan in respect of the relevant Unit. Such transfer shall be subject to the transfer charges payable as per this Resolution Plan in respect of the Allottee's Unit. If as per the ABA, first transfer to any prospective buyer is free, then the Resolution Applicant shall not change any transfer fees from the prospective buyers and/or Allottees, provided, the said first transfer has not happened.”

11. To the similar effect is the Resolution Plan with regard to other two projects, the plan clearly mention that Resolution Applicant proposes to satisfy all the admitted claims in respect of the project by completing the

pending construction activities and handing over possession to the allottees, in the manner as proposed, and subject to terms and conditions mentioned in the Resolution Plan.

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

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

New Delhi
Anjali