

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COMPANY APPEAL (AT)(INSOLVENCY) NO.740/2023
IA No.2500/2023 and 3307,8228 of 2024

(Arising out of judgement and order dated 31.03.2023 passed by Ld. NCLT Mumbai Bench, Mumbai in IA No.2238 of 2022 in CP(IB) No.4447/MB/2018)

In the matter of:

IFCI Ltd
 IFCI Tower,
 61 Nehru Place,
 New Delhi-110019

Also at

Earnest House,
 7-9th Floors,
 Nariman Point, Mumbai 400021

Appellant

Vs

1. Raju Palanikunnathil Kesavan,
 RP of Heera Construction Co Pvt Ltd
 CGNRA-9 (33/11383A), Kodamassery Lane,
 Challikkavatom, Vennala P.O.,
 Kochi 682020, Kerala
2. Royal Heights Projects Pvt Ltd,
 Lead Member of the Successful Resolution Applicant,
 63/2982, Manjankal House,
 Surabhi Enclave,
 SA road, Kochi-682016

Respondent

For Appellant: Mr. Krishnendu Datta, Mr Amish Tandon, Ms Anushree Kulkarni, Advocates.

Advocate TS Sundaram for Promoters Directors Mr. Ilam Paridi, Advocate.
 Mr. Ashish Dholakia, Sr Advocate, Mr. Rohan Chawla, Advocate.

For Respondent: Mr. Sunil Fernandes, Sr Advocate, Mr Rukma George, Mr. Ashhab Khan, Advocates.
 Mr. Mukund P Unny, Advocate.

With

COMPANY APPEAL (AT)(INSOLVENCY) NO.741/2023
IA No.2504 of 2023

(Arising out of judgement and order dated 31.03.2023 passed by Ld. NCLT Mumbai Bench, Mumbai in IA No.1841 of 2022 in CP(IB) No.4447/MB/2018)

In the matter of:

IFCI Ltd
IFCI Tower,
61 Nehru Place,
New Delhi-110019

Also at

Earnest House,
7-9th Floors,
Nariman Point, Mumbai 400021

Appellant

Vs

1. Raju Palanikunnathil Kesavan,
RP of Heera Construction Co Pvt Ltd
CGNRA-9 (33/11383A), Kodamassery Lane,
Challikkavatom, Vennala P.O.,
Kochi 682020, Kerala

Respondent

For Appellant: Mr.Amish Tandon, Ms Anushree Kulkarni, Advocates.
Advocate TS Sundaram for Promoters Directors Mr. Ilam Paridi, Advocate.
Mr. Ashish Dholakia, Sr Advocate, Mr. Rohan Chawla, Advocate.

For Respondent: Mr. Sunil Fernandes, Sr Advocate, Mr Rukma George, Mr. Ashhab Khan, Advocates.

Mr. Mukund P Unny, Advocate.

JUDGEMENT

JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)

The present appeals have been filed by the Appellant under Section 61 of the I&B Code, 2016 against an impugned order dated 31.03.2023 passed by the Ld. NCLT, Mumbai Bench in IA No.2238 of 2022 and IA No.1841 of 2022 in CP(IB) No.4447/MB/2018, whereof the Ld. NCLT had rejected the application of the appellant and had rather allowed the application filed by the Respondent No.1 *qua* approval of resolution plan.

2. The facts are the Appellant granted financial assistance to M/s Heera Constructions Company Pvt. Ltd. (Corporate Debtor), a real estate company, to the tune of Rs. 50 Crores, by way of a Corporate Loan Agreement; which loan was secured by various mortgages in respect of following properties:

(i) 5.46 Acres of land at Attipra Village, Thiruvananthapuram, Kerala ("Attipra Land") (a third party asset);

(ii) 0.60 Acres of land at Poonithura Village, Ernakulam, Kerala ("Poonithura Land") (CD's asset);

(iii) 0.30 Acres of land at Nedumangad Village, Thiruvananthapuram, Kerala (Ex-Promoter of CD's asset);

(iv) 6 residential flats at Heera Windfaire, Vytilla, Ernakulam, Kerala (Ex-Promoter of CD's asset).

3. Admittedly there were default by the Corporate Debtor; hence a petition under Section 7 of IBC was filed by the appellant *viz* Company Petition No.4447/MB/2018 and it stood admitted by Ld. NCLT, Mumbai *vide order* dated 27.03.2019. The Committee of Creditors, primarily, comprised of home buyers to an extent of 73.13% voting shares and also of secured financial creditor *viz* the appellant herein having 20.55% voting share *plus* other financial institutions *viz* State Bank of India, Kerala Financial Corporation, Tata Capital Housing Finance Ltd and Indian Overseas Bank with a voting share of 3.81%, 0.02%, 1.43% and 1.06% respectively.

4. The Committee of Creditors in its 9th Meeting held on 22.06.2022 had approved the Resolution Plan, as submitted by the Successful Resolution Applicant, with a voting of 74.19%. The appellant, being a financial creditor with largest voting share, however, dissented to the said Resolution Plan. The

appellant rather filed IA No.2238 of 2022 challenging approval of Resolution Plan, but it was dismissed *vide* the impugned order passed by the Ld. NCLT.

5. Heard.

6. The Resolution Plan, primarily, dealt with two properties *viz* Attipra land and Poonithura land. The Attipra land ad-measures 5.46 acres at Attipra Village, Thiruvananthapuram, Kerala and Poonithura land is at Poonithura Village, Ernakulam, Kerala, ad-measuring 0.60 acres of land.

7. Upon the Attipra land, a project namely M/s Heera Nature was to come and whereas upon Poonithura land a project namely M/s Heera River Park was to be developed.

8. Attipra land was admittedly a third party asset, a highly valuable property valued at approximately Rs.50 cores, as is evident by the valuation report obtained by the appellant. The Corporate Debtor had developmental rights over Attipra land *vide* a joint venture agreement dated 30.11.2012 executed between the Corporate Debtor and the owners of such land. Admittedly, the said land was mortgaged in favour of the appellant by its third party owners but because of the joint venture agreement dated 30.11.2012, entered into as above, the Resolution Professional, though included this land in the CIRP and dealt with it in the Resolution Plan but assigned *NIL* value to it and rather *vide* its Clauses 6.9 and 6.11 of such plan, the exclusive security/mortgage of the appellant over Attipra land was extinguished.

9. It was the argument of the learned senior counsel for the appellant the Resolution Professional not only wrongly dealt with a *third party asset* in the CIRP but even failed to carry out valuation of such land and had rather assigned *Nil* value to such valuable piece of land on the ground **(a)** the

Corporate Debtor had only developmental rights over the land; **(b)** the land is not owned by Corporate Debtor; **(c)** the land would not be a part of the liquidation estate of the Corporate Debtor; **(d)** there is no permit/no construction of the project.

10. Assuming the above position was correct, however, but then the RP dealt with identically positioned property in an exactly opposite fashion, where also the land owned by a third party; with developmental rights available through a joint venture; no construction or permit being available, but a value was given.

11. It was argued by the learned senior counsel for the appellant despite the fact both these lands were to be developed and permits were not obtained yet a valuation of Rs.5.26 crore was given to land -M/s Heera River Park and *Nil* valuation was given to M/s Heera Nature on the pretext, limited construction was carried in the project M/s Heera River Park and no construction commenced in project M/s Heera Nature; though Successful Resolution Applicant in its reply alleged there also existed a limited construction on M/s Heera Nature land. Thus the version of the Resolution Professional and Successful Resolution Applicant were at variance.

12. The appellant challenged the resolution plan as the Attipra land was mortgaged to the appellant by its third party owner for grant of loan to such third party and if *Nil* value is given to such land it would certainly wipe off the security of the appellant. Admittedly Attipra land never belonged to the Corporate Debtor and it had only developmental right, which of course, could have also been valued.

13. The Resolution Plan did not make it clear as to under which provision of law it had extinguished the security of the appellant over a third party asset and **(b)** how could it prevent the appellant from taking any steps *qua* possession of 125 flats or 1 tower to be given to the third party owner of such land, *per* the Joint Venture Agreement dt. 30.11.2012. Such land as was mortgaged by such third party owners in favour of the appellant herein for grant of loan to them, hence the security interest of the appellant over 125 flats/1 tower, to be constructed at Attipra land, could not have been extinguished.

14. Secondly *qua* Poonithura land too, upon which a project namely M/s Heera River Park was to be developed, it was immovable asset owned by the Corporate Debtor and it had a fair market value of Rs.7.77 crores and such land was mortgaged with the appellant by the Corporate Debtor through deposit of title deeds in the year 2015 *yet* no liquidation value was given to it on the pretext it was never capitalised in the books of accounts of Corporate Debtor and its sale deed was not given to the Resolution Professional. Admittedly there exist a sale deed in favour of the Corporate Debtor *qua* this piece of land. This land was also not included in the Information Memorandum alleging its inclusion could have violated Clause 35 of the CIRP Regulation 2016 and it was merely shown as a financial asset. Admittedly the Resolution Professional had knowledge of its mortgage documents dated 01.06.2015 executed by the Corporate Debtor in favour of the appellant, hence it could not be said it was not an asset of Corporate Debtor. Regulation 35 of CIRP read: -

35. Fair value and liquidation value-(1) *Fair value and liquidation value shall be determined in the following manner:-*

(a) *the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor;*

Provided that the resolution professional shall facilitate a meeting wherein registered valuers shall explain the methodology being adopted to arrive at valuation to the members of the committee before computation of estimates.

(b) *if the two estimates of a value in an asset class are significantly different, or on receipt of a proposal to appoint a third registered valuer from the committee of creditors, the resolution professional may appoint a third registered valuer for an asset class for submitting an estimate of the value computed in the manner provided in clause (a).*

Explanation.- For the purpose of clause (b),

(i) *“asset class” means the definition provided under the Companies (Registered Valuers and Valuation) Rules, 2017;*

(ii) *“significantly different” means a difference of twenty-five per cent. in liquidation value under an asset class and the same shall be calculated as $(L1-L2)/L1$, where,
L1= higher valuation of liquidation value
L2= lower valuation of liquidation value.*

(c) *the average of the two closest estimates of a value shall be considered the fair value or the liquidation value, as the case may be.*

(2) *After the receipt of resolution plans in accordance with the Code and these regulations, the resolution professional shall provide the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of the liquidation value and shall not use such value to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29.;*

(3) *The resolution professional and registered valuers shall maintain confidentiality of the fair value and the liquidation value.*

15. The RP argued valuation of the Poonithura Land (*being a financial asset*) was not possible in as much as it was "not a fixed asset" and any attempt to value the same would have resulted in violation of Regulation 35 of the CIRP

Regulations 2016. However, Regulation 35 of the CIRP Regulations does not talk about valuation only of "fixed assets". The expression "assets" under the IBC is wide enough to include all forms and types of assets of the Corporate Debtor. Evidently, there is nothing in the Resolution Plan or the Information Memorandum to show the Poonithura Land was valued at all, in any manner, whether as a fixed asset or as financial asset or as any other asset.

16. There is nothing in Regulation 35 of CIRP Regulations which requires computation of fair value and liquidation value of only "fixed assets" of the Corporate Debtor. All assets of the Corporate Debtor were required to be valued. In this regard, it is relevant to take note of the definition of the expressions "Fair Value" (Reg. 2(hb) of CIRP Regulations) and "Liquidation Value" (Reg. 2(k) of CIRP Regulations) make reference to "assets" of the Corporate Debtor and not to only fixed assets of the Corporate Debtor. Further, even the Hon'ble Supreme Court, in *Victory Iron Works Ltd. v. Jitendra Lohia & Anr.* [2023 (7) SCC 227] had observed that, for the purposes of the IBC, the expression "asset" includes properties of every kind including rights and entitlements arising out of or incidental to the property.

17. In *Victory Iron Works Ltd.* (supra), the Hon'ble Supreme Court, *inter alia*, examined the meaning and scope of the expression of "asset" of a corporate debtor. The question before the Supreme Court was whether developmental rights (obtained through developmental agreements) of the corporate debtor over an immovable property were required to be considered an asset of the corporate debtor and be valued in the CIRP. The Hon'ble Supreme Court examined the definition of the expression "property" as contained in Section 3(27) of the Code and made the following observation.

"Para 35... At the cost of repetition, it must be recapitulated that the definition of the expression "property" under Section 3(27) includes "every description of interest, including present or future or vested or contingent interest arising out of or incidental to property". Since the expression "asset" in common parlance denotes "property of any kind", the bundle of rights that the Corporate Debtor has over the property in question would constitute "asset" within the meaning of Section 18(f) and Section 25(2)(a) of IBC."

18. A bare perusal of Regulation 35 shows there is nothing in the Regulation that limits its scope and ambit only to fixed assets of the Corporate Debtor. All that this Regulation requires is, where all the assets of the Corporate Debtor include fixed assets, a physical verification exercise would be required to be carried out by the Resolution Professional.

19. Applying the abovementioned principles, it is clear that the expression assets of Corporate Debtor refer to all "assets" of the Corporate Debtor, including financial assets, fixed assets, tangible assets, intangible assets, etc.

20. Further, there is nothing in law to suggest if any land is not mentioned in the audited books of the Corporate Debtor, the Resolution Professional cannot treat it as a fixed asset of the Corporate Debtor and direct its valuation.

21. The Resolution Professional in its reply before NCLT, at Para 17, clearly submitted about the status of the securities held by the Appellant that the Appellant would be entitled to *Nil* liquidation value, as such securities held by the Appellant would not form part of liquidation estate of the Corporate Debtor in liquidation. Interestingly, while for Attipra Land, the argument taken by the Resolution Professional for not valuing the same is the land was a third party asset and it would not fall under the liquidation estate of the Corporate Debtor, and whereas *qua* Poonithura land the argument was the absence of its capitalization in books of accounts". Clearly, it had led to removal of

valuable parcels of immovable property from the Corporate Insolvency Resolution Process of the Corporate Debtor. The security interest of the appellant over this land parcel rather could not have been extinguished in the manner as it was sought to be done in the Resolution Plan.

22. Admittedly search and seizure operations were carried out in the office of the Corporate Debtor, by the Enforcement Directorate official on 14.02.2023 *i.e.* prior to the approval of the Resolution Plan. One Mr Manu Subhash, the GM of Corporate Debtor was called upon by the Enforcement Directorate officials and search was conducted in his presence wherein title deeds of various properties were seized by the Enforcement Directorate. A provisional attachment order dated 12.01.2024 was prepared by the Enforcement Directorate and it included various assets of Corporate Debtor, some of which were never included or made part of the Corporate Insolvency Resolution Process of Corporate Debtor. Even the sale deed of Poonithura land was available at the Corporate office of the Corporate Debtor and was seized as a part of search operation and attachment order. Admittedly Mr. Manu Subhash was appointed as Consultant by the Resolution Professional to do the work of the Corporate Debtor and he remained associated with investigations conducted by the Enforcement Directorate, hence was fully aware of the *title deeds* of Poonithura land and of other properties. Despite this Resolution Professional argued he was unaware of various properties as were never brought to his knowledge.

23. It is now an admitted position several *assets* existed which were never a part of information memorandum of the CIRP of Corporate Debtor and the registered value(s) of such assets, as per ED attachment order dated

12.01.2024 ran into crores, Rs.23.35 crore approximately for 23 assets and the market value of which may even be higher, but many were left out. The argument of the Resolution Professional he was not present during the ED operation and/or was not at fault or he had no control over the office of Corporate Debtor cannot be accepted.

24. The learned counsel for the appellant referred to an application IA No.3307/2025 to say there were 11 different properties, registered in the name of the Corporate Debtor and the suspended managing director of the Corporate Debtor and the Resolution Professional also *admitted* of 6 of such properties, being registered in the name of the Corporate Debtor, but admittedly 6 such properties have not been shown in the Information Memorandum. In Para 12 of affidavit of Resolution Professional of dated 24.07.2024, it is noted in pursuance of the order dated 10.07.2024 of this Tribunal, the Resolution Professional had applied to the Sub-Registrar Office, Chevayur, for the encumbrance certificates. It was alleged by the Resolution Professional these properties were either attached/stayed in the various courts proceedings as also by the ED and were embroiled in various litigations and several orders on attachment/stay/confiscation having been passed by the learned local courts, hence were irrelevant for the purpose.

25. It was rather argued by the Resolution Professional in the absence of the title deeds/sale deed/agreements and also details of various legal proceedings it was not possible for the Resolution Professional to definitely ascertain that the corporate debtor has an absolute interest/title in the land as mentioned in IA No.3307/2024. Thus the case of the Resolution Professional is such properties were not included in the Information

Memorandum as he gave details of only such land parcels, whose physical and digital record/data, title deeds/joint ventures and development agreements/claim were received and the properties, which later were got verified from the Department of Registration at Kerala were definitely not within his knowledge.

26. Now if we examine an additional affidavit of dated 16.12.2024 of the Promoter, it rather referred to Punchnama(s) dated 14.02.2023 and of dated 15.02.2023 and to various original title deeds of the properties from Sl. No. 1 to 63 and the provisional attachment order No.02/2024 of dated 12.01.2024 which reveals details of copies of the sale deeds of all attached 62 immovable properties, submitted by M/s Heera Construction Co Pvt Ltd and its managing director Mr. Abdul Rashid. The valuation of such properties was also mentioned in the provisional attachment order No.02/2024. Thus it cannot be said the provisional attachment orders etc were never in the knowledge of the Resolution Professional. He miserably failed to account for such properties and to include it in Information Memorandum.

27. Section 25(2) (a) of the IBC casts a duty upon the Resolution Professional to take immediate custody and control of all the assets of the Corporate Debtor and to prepare an Information Memorandum in accordance with Section 29. Further explanation to Section 29 says the relevant information would include the financial position of the Corporate Debtor, including of information relating to disputes etc. and Regulation 36 of CIRP Regulations, 2016 says the Information Memorandum shall include all assets and liabilities, including contingent liabilities with such description as on the insolvency commencement date, as are generally necessary for ascertaining

their value. Further Clause 2(b) of Regulation 36 refers to declaration of details of all material litigations and ongoing investigation or proceedings initiated by Government and statutory authorities. Thus there was a failure on the part of Resolution Professional on this account.

28. Now in the schedule of properties attached by the Enforcement Directorate, the Poonithura land is at Sl No.45 and its sale deed is No.332 of 2013 of dated 04.02.2013 and the appellant had an exclusive charge over such property, yet no value was given to it. The provisional attachment order itself shows various other properties of the Corporate Debtor which were never made a part of the CIRP, hence there is a irregularity in the entire process.

29. In Masatya Technologies Pvt Ltd Vs Amit Agarwal, RP for Vistar Construction Pvt Ltd and Another 2023 SCC OnLine NCLAT 2395, the Court held as under:-

2. *The Adjudicating Authority after noticing the aforesaid in Para 19, 20 and 21 has directed following:*

"19. Needless to say, the Prospective Resolution Applicants (PRAs) furnish their Resolution Plans based on the Information Memorandum (IM) prepared by the Resolution Professional, where a list of all the Assets of the Corporate Debtor is given. Since the properties situated at Dwarka (ibid) were a later discovery, they were not included in the Information Memorandum. Thus, the valuation of the newly inducted properties situated at Dwarka was not conducted by the RP, and the other PRAs were not given any chance to bid for the Corporate Debtor while keeping in mind the property situated at Dwarka being part of the asset pool of the Corporate Debtor. Had the properties at Dwarka been included/added subsequently in the IM and valuation, the Fair Market Value and Liquidation Value of the Corporate Debtor would have changed significantly to attract more Prospective Resolution Applicants to submit the Resolution Plan with higher value.

20. Further, through the present Resolution Plan, the ownership rights of the newly-inducted Dwarka Properties (ibid), which were never part of the Information

Memorandum notified by the RP, are proposed to be transferred to the SRA herein, who would be in an advantageous position vis-à-vis the prospective bidders in rem. In our considered view, this is a material irregularity in the exercise of the powers by the Resolution Professional during the CIR Process of the Corporate Debtor.

21. In the circumstances, we have no other option but (a) to reject the present Resolution Plan; (b) direct the Resolution Professional to conduct a fresh valuation of the Corporate Debtor's properties, inter alia, including the Unit no. 910, 923, 923A, and 1022A at 10th floor having covered area 345 Sq. Ft. forming part of the Hotel Building constructed at Plot No. 4, Dwarka City Centre, Sector-13, Dwarka, New Delhi and issue the Information Memorandum; (c) issue a fresh 'Form G' through a wide publication; and (d) complete the entire process of seeking approval of CoC, for the Resolution Plans if received, at the earliest. It is, however, made clear that the SRA of the present resolution plan will have the liberty to submit its EOI if it so wishes."

6. The Adjudicating Authority has taken in consideration the fact that properties shall come to the kitty of the Corporate Debtor, as noted above, whose value is much more than the entire plan value submitted by the Resolution Applicant, hence, order was issued for issuance of Form G. We fully agree with the observation of the Adjudicating Authority as made in Para 19, 20 and 21 of the impugned order, as extracted above, which was sufficient reason for issuance of fresh Form G. However, we are of the view that some time ought to have been fixed by the Adjudicating Authority for completion of the entire process. We, thus, while affirming order of the Adjudicating Authority issue further direction in following manner:

(i) The entire process including consideration of Resolution Plan shall be completed within a period of three months from today.

30. In Masatya Technologies (supra) post approval of the resolution plan, certain other immovable properties of the Corporate Debtor were detected. These new properties were valuable properties and were not a part of the Information Memorandum. Through the resolution plan, inter alia, *these new properties were sought to be given to the Successful Resolution Applicant.* The

NCLT rejected the resolution plan of the Successful Resolution Applicant, *inter alia*, for following reasons: **(i)** these new properties were not part of the Information Memorandum and were not valued.; **(ii)** had these new properties been included and valued, the fair market value and liquidation value would have changed significantly to attract more applicants to submit plan with higher value; **(iii)** through the resolution plan in question, these new properties were sought to be given away for free to the Successful Resolution Applicant; **(iv)** this would place the Successful Resolution Applicant in an advantageous position *vis a vis* prospective resolution applicants in rem; **(v)** this would be a material irregularity in the exercise of powers of the resolution professional in the insolvency resolution process. The NCLT accordingly rejected the resolution plan and directed issuance of a valuation of the new properties and further directed issuance of a Fresh Form G. The Successful Resolution Applicant was permitted to also participate in the process. The entire process was directed to be completed in a time bound manner.

31. Interestingly, additional affidavit dated 21.11.2024 filed by the Successful Resolution Applicant says all the assets/properties of the corporate debtor would now continue to vest in the same management, whether disclosed or not, *per* Clause 13.11 as it takes into account any benefit that may accrue to the Corporate Debtor, which may not be reflected in the books for reasons of over sight or any other reason.

32. Clause 13.11 of the Resolution Plan is thus relevant as it gives all new properties to the SRA free of cost. Clause 13.11 of the Resolution Plan is as under:-

13.11 All assets including properties (whether freehold, leasehold or license basis), awards, judgments, decree, order, all other actionable claims, rights, entitlements, benefits of the Corporate Debtor (whether reflected in the books or not) shall continue to remain vested in the Corporate Debtor free and clear from all Encumbrances.

33. A similarly worded clause was not approved by Hon'ble Supreme Court in Jaypee Kengiston Boulevard Apartments Welfare Association v. NBCC (India) Limited (2022) 1 SCC 401, wherein the Hon'ble Supreme Court held as under-

259.3. *As noticed, in the said Clause 23, a fleeting suggestion on the part of the resolution applicant had been that "JAL lenders mortgaged land shall continue to be vested in the corporate debtor free from any mortgage, charge and encumbrance". The adjudicating authority dealt with the said clause of the resolution plan in an equally cursory manner by observing that the point was not clear but, if it was referring to the land mortgaged with the lenders of JAL, the issue had already been decided by the Supreme Court and need not be reiterated. In this entire process of mistakes/errors (might be accidental) and corrections as also cursory observations, the adjudicating authority totally missed out that one transaction relating to 100 acres of land, being "Tappal Property 1", remained unaffected by the judgment in Anuj Jain; and that the security creating over this land could not have been annulled in the manner suggested in the plan.*

34. In 63 Moons Technologies Limited v. The Administrator of Dewan Housing Finance Corporation (Co App (AT) (Ins) No. 454/2021 & Batch, judgement dated 27.01.2022) this Tribunal had observed a resolution plan which is otherwise illegal or contains terms contrary to law, cannot be countenanced based on the strength of voting or the manner of voting by the COC. Strength or manner of voting would not cure any illegality in a resolution plan and the NCLAT is under a legal and statutory duty to enquire whether a resolution plan suffers from any illegality or otherwise contains any unlawful

terms. This position obtains regardless of whether any person points out any illegality in the plan or not.

35. Thus what we find from record is the Resolution Professional failed to disclose about the pendency of the Enforcement Directorate proceedings as well as the search/seizure by the Enforcement Directorate authorities. It was only during the pendency of the present appeal before this Tribunal, through ex-Management affidavit dated 16.12.2024 the Enforcement Directorate proceedings and Resolution Professional's participation have come to light. Further the Successful Resolution Applicant also failed to bring to the attention of this Tribunal and the Ld. NCLT of the ED proceedings and such new assets were subject matter of those proceedings.

36. For proper exercise of commercial wisdom by the Committee of Creditors all aspects should have been placed before the Committee of Creditors. Admittedly during the pendency of this appeal various valuable new assets have since been detected which were admittedly not a part of the Corporate Insolvency Resolution Process of Corporate Debtor at all. Thus when crucial aspects were never placed before the Committee of Creditors it cannot be said the Committee of Creditors' commercial decision would prevail, as all 'relevant information' was not available before it.

37. The Successful Resolution Applicant is all set to take *new* assets for free by citing Clause 13.11 (supra) of the Resolution Plan. Admittedly the Resolution Plan has been approved by the *Committee of Creditors viz* by majority of home buyers whereas the secured financial creditors in the Committee of Creditors had dissented. Admittedly Attipra land, a third party

asset, not owned by the Corporate Debtor and upon which the Corporate Debtor had development right through a joint venture agreement dated 30.11.2012 and in consideration thereof 23% of its super built up area was to come to the third party land owners, which area was rather mortgaged with the Bank, was not valued at all, without any explanation provided by the Resolution Professional. Even the Poonithura land was not valued by the Resolution Professional despite the fact Form C of the appellant and Information Memorandum of Corporate Debtor make a reference to the land as well as its mortgage to the appellant and since it was not made part of the Resolution Plan, it also alongwith *new* assets so discovered, all are sought to be taken away by the Successful Resolution Applicant by placing reliance on Clause 13.11 of the Resolution Plan (supra), which to our mind would never be fair.

38. We are also constrained to find six years have lapsed since initiation of the Corporate Insolvency Resolution Process but admittedly no steps have been taken by the Successful Resolution Applicant for completion of the project as per schedule contemplated in the Resolution Plan, despite there being no stay against the implementation of the Resolution Plan. Thus, in view of various infirmities in the CIRP of Corporate Debtor, we find it a fit case for issuance of fresh Form G and the entire process including the consideration of Resolution Plan be completed within a period of three months from today, *per* Mastya Technologies(Supra) as above.

39. In view of the above the appeals are disposed off.

40. Pending applications are also disposed of.

(Justice Yogesh Khanna)
(Member (Judicial))

(Mr Ajai Das Mehrotra)
Member (Technical)

Dated: 11-11-2025
BM