

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 751 of 2023

[Arising out of order dated 29.03.2023 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) in I.A. No. 1575 (MB)/2022 in C.P. (IB) 1147 (MB)/2020.

IN THE MATTER OF:

1. Yogesh Kelkar

1001, 10th Floor, Astoria-Raheja Garden,
Opposite Tip Top Plaza,
LBS Road, Thane (W)
Pin Code- 400604

2. Deepraj Dixit

1001, 10th Floor, Astoria-Raheja Garden,
Opposite Tip Top Plaza,
LBS Road, Thane (W)
Pin Code- 400604

3. Mugdha Walavalkar

1001, 10th Floor, Astoria-Raheja Garden,
Opposite Tip Top Plaza,
LBS Road, Thane (W)
Pin Code- 400604

4. Tholikode Shibu Kriushnankutty

1001, 10th Floor, Astoria-Raheja Garden,
Opposite Tip Top Plaza,
LBS Road, Thane (W)
Pin Code- 400604

5. Milind Vaidya

1001, 10th Floor, Astoria-Raheja Garden,
Opposite Tip Top Plaza,
LBS Road, Thane (W)
Pin Code- 400604

6. Dinesh N. Shah

1001, 10th Floor, Astoria-Raheja Garden,
Opposite Tip Top Plaza,
LBS Road, Thane (W)
Pin Code- 400604

7. Bahubali Dhamane

1001, 10th Floor, Astoria-Raheja Garden,
Opposite Tip Top Plaza,
LBS Road, Thane (W)
Pin Code- 400604

8. Rajendra Pawar

1001, 10th Floor, Astoria-Raheja Garden,
Opposite Tip Top Plaza,
LBS Road, Thane (W)
Pin Code- 400604

9. Savita Aras

Having Address at:
1001, 10th Floor, Astoria-Raheja Garden,
Opposite Tip Top Plaza,
LBS Road, Thane (W)
Pin Code- 400604

10. Balaram Chalke

1001, 10th Floor, Astoria-Raheja Garden,
Opposite Tip Top Plaza,
LBS Road, Thane (W)
Pin Code- 400604

11. Chhaya Chaudhari

1001, 10th Floor, Astoria-Raheja Garden,
Opposite Tip Top Plaza,
LBS Road, Thane (W)
Pin Code- 400604

12. Deegamber Patkar

1001, 10th Floor, Astoria-Raheja Garden,
Opposite Tip Top Plaza,
LBS Road, Thane (W)
Pin Code- 400604

13. Devidas Mungekar

1001, 10th Floor, Astoria-Raheja Garden,
Opposite Tip Top Plaza,
LBS Road, Thane (W)
Pin Code- 400604

14. Dinesh P. Singewar

1001, 10th Floor, Astoria-Raheja Garden,
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LBS Road, Thane (W)
Pin Code- 400604

15. Mahesh Ghadage

1001, 10th Floor, Astoria-Raheja Garden,
Opposite Tip Top Plaza,
LBS Road, Thane (W)
Pin Code- 400604

16. Rajesh Singh

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Opposite Tip Top Plaza,
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17. Rajeshree Giridhar

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Opposite Tip Top Plaza,
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Pin Code- 400604

18. Rohit Kumar Dharne

1001, 10th Floor, Astoria-Raheja Garden,
Opposite Tip Top Plaza,
LBS Road, Thane (W)
Pin Code- 400604

19. Sanjay Singh

1001, 10th Floor, Astoria-Raheja Garden,
Opposite Tip Top Plaza,
LBS Road, Thane (W)
Pin Code- 400604

20. Santosh Chaudhari

1001, 10th Floor, Astoria-Raheja Garden,
Opposite Tip Top Plaza,
LBS Road, Thane (W)
Pin Code- 400604

21. Santosh Patil

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22. Sudha Sanjay Kolekar

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23. Vinayak Thasale

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Pin Code- 400604

24. Vinod Patil

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25. Vishal Dilip Patekar

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26. Vaishnavi Milind More

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Pin Code- 400604

27. Suvarna Manohar Ghag

1001, 10th Floor, Astoria-Raheja Garden,
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28. Milind Raghunath More

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Pin Code- 400604

29. Vaishnavi Miling More

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Pin Code- 400604

30. Nitin B. Vanara

1001, 10th Floor, Astoria-Raheja Garden,
Opposite Tip Top Plaza,
LBS Road, Thane (W)
Pin Code- 400604

31. Mahendra D. Pawar

1001, 10th Floor, Astoria-Raheja Garden,
Opposite Tip Top Plaza,
LBS Road, Thane (W)
Pin Code- 400604

**... APPELLANTS
(HOME BUYERS)**

Versus**1. Resolution Professional of Anudan Properties Private Limited**

Having its office at:

3rd Floor, Building R-2, Rajmudra CHS,
Ramchandra Nagar No. 2, Kamgar Hospital Road,
Thane-400604

Email: cirp.anudan@gmail.com

2. LICHFL Trustee Company Private Limited

Address-1:

Bombay Life Building, 2nd Floor 45/47,
Veer Nariman Road, Mumbai-400001,
Maharashtra, India.

Address-2: 304, 3rd Floor, Vibgyor Tower, G-Block,
C-62, Bandra Kurla Complex, Mumbai-400051,
Maharashtra.

3. KGK Reality (India) Pvt. Ltd.

Having its office at:

3rd Floor, KGK Tower 2, Dattapada Road,
Rajendra Nagar, Borivali (East),
Mumbai- 400066.

...Respondents

Present:

For Appellant : Mr. A.N. Ray, Sr. Advocate with Mr. Gaurav H. Sethi, Advocates.

For Respondents : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Nicholas Choudhury, Mr. Kartik Bhatnagar and Mr. Akash Chatterjee, Advocates for LICHFL/CoC.

Mr. Tishampati Sen, Ms. Riddhi Sancheti, Mr. Ashish Parwani, Mr. Dikshat Mehra, Mr. Anurag Anand, Mr. Mukul Kulhari and Ms. Geetika Mahajan, Advocates for R-3.

WITH

Company Appeal (AT) (Insolvency) No. 717 of 2023

[Arising out of order dated 29.03.2023 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) in I.A. No. 1575 (MB)/2022 in C.P. (IB) No. 1147(MB)/2020.

IN THE MATTER OF:

**1. M/s Chirag Construction
A Partnership Firm**

Having Address at:

Shop No. 4, Ram Kunj CHS,

Opp TJSB Bank, Khopat,

Thane West-400601

Email: chiragroup9@gmail.com

...Appellant No. 1

**2. M/s Vaishnav Construction
A Partnership Firm**

Through Proprietor Mr. Vinod B Patil

Having Address at:

Deu Niwas Shop No. 4, Next to Canara Bank

Kolshet Upper Village, Thane-400607

Email: vaishnavconstruction22@gmail.com

...Appellant No. 2

Versus

**1. Resolution Professional of Anudan Properties
Private Limited**

Having its office at:

3rd Floor, Building R-2, Rajmudra CHS,

Ramchandra Nagar No. 2,

Kamgar Hospital Road, Thane-400604

Email: cirp.anudan@gmail.com

...Respondent No.1

2. KGK Reality (India) Pvt. Ltd.

Having its office at:

3rd Floor, KGK Tower 2, Dattapada Road, Rajendra

Nagar, Borivali (East),

Mumbai- 400066.

...Respondent No. 2

3. LICHFL Trustee Company Private Limited

Bombay Life Building, 2nd Floor 45/47,

Veer Nariman Road, Mumbai-400001,

Maharashtra, India.

Also at:

304, 3rd Floor, Vibgyor Tower, G-Block,
C-62, Bandra Kurla Complex,
Mumbai-400051, Maharashtra.

...Respondent No. 3

Present:

For Appellant : Mr. Gaurav H. Sethi, Mr. Deeptanshu Chandra and Mr. Rahul Pawar, Advocates.

For Respondents : Mr. Dhaval Deshpande, Advocates for R-1/CoC.

Mr. Tishampati Sen, Ms. Riddhi Sancheti, Mr. Ashish Parwani, Mr. Dikshat Mehra, Mr. Anurag Anand, Mr. Mukul Kulhari and Ms. Geetika Mahajan, Advocates for R-2.

Mr. Abhijeet Sinha, Sr. Advocate with Mr. Nicholas Choudhury, Mr. Kartik Bhatnagar and Mr. Akash Chatterjee, Advocates for R3/(LICHFL).

J U D G M E N T

(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present two appeals have been filed under Section 61 of Insolvency and Bankruptcy Code 2016 (**‘IBC’** in short) by the Appellants which arises out of the Order dated 29.03.2023 (hereinafter referred to as **‘Impugned Order’**) passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-IV) in I.A. No. 1575 (MB)/2022 in C.P. (IB) No. 1147(MB)/2020. By the impugned order, the Adjudicating Authority has allowed the I.A. No.1575 of 2022 filed by the Resolution Professional and approved the resolution plan of the KGK Realty (India) Pvt. Ltd.- Successful Resolution Applicant. Aggrieved by the impugned order, the present appeal has been filed by the Appellants in both appeals.

2. Coming to the factual matrix, the Corporate Debtor-Anudan Properties Pvt. Ltd. had launched a Residential cum Commercial Premises Construction Project, namely, 'Silver Spring'. The project was also aimed at rehabilitating 457 slum dwellers under the Slum Rehabilitation Scheme. Since the project could not be completed as per schedule, Respondent No. 2-LICHFL which provided finance to the tune of Rs 79.90 cr moved a Section 7 application against the Corporate Debtor following which the Corporate Debtor was admitted into Corporate Insolvency Resolution Process (**'CIRP'** in short) on 15.03.2021. The Appellants in both sets of Appeal alongwith other home buyers, Operational Creditors and other creditors including LICHFL submitted their claims before the Resolution Professional (**'RP'** in short). Based on the claims received, the RP had constituted the Committee of Creditors (**'CoC'** in short) with a voting percentage of 76.35% to Respondent No. 2; 11.80% for Home Buyers as a creditor in class and 11.85% for unsecured financial creditors. The RP published Form-G five times and invited EOIs from Potential Resolution Applicants (**'PRA'** in short) following which three Resolution Plans received from them were considered by the CoC. The Resolution Plans were put to vote in the 17th CoC meeting and KGK Realty Pvt. Ltd.- Respondent No. 3 was declared the Successful Resolution Applicant (**'SRA'** in short). Since the CIRP period ended on 24.04.2022 and the resolution plan of the SRA as approved by the CoC had been received on that date, the RP had filed IA No. 979 of 2023 for extension of CIRP period from 24.04.2022 to 26.05.2022 (32 days) which was also allowed on 29.03.2023 by the Adjudicating Authority. The RP also placed resolution plan of Respondent No. 3 vide IA No. 1575 of 2022 before the Adjudicating Authority

for its approval. The Appellants had also moved IA No. 1569 of 2022; IA No. 2055 of 2022 and IA No. 2214 of 2022 objecting to the approval of the resolution plan by the CoC. The Adjudicating Authority allowed IA No. 1575 of 2022 and approved the resolution plan. Aggrieved with the approval of the resolution plan by the Adjudicating Authority, the present appeals have been preferred by the Appellants. Since the pleadings and facts in CA(AT)(Ins) No. 751 of 2023 and CA(AT)(Ins) No. 717 of 2023 largely overlap, we shall refer to the pleadings and facts in CA(AT)(Ins) No. 751 of 2023 for deciding these two appeals. However, in respect of certain specific pleadings made in CA(AT)(Ins) No. 717 of 2023, the same would also be taken into consideration and dealt appropriately.

3. Making his submissions, the Ld. Sr. Counsel for the Appellants submitted that the Adjudicating Authority had erred in considering the I.A. 1575 submitted by the RP seeking approval of the resolution plan of Respondent No.3 without deciding IA No. 1569 of 2022; IA No. 2055 of 2022 and IA No. 2214 of 2022 filed by them in which they had raised objections to the resolution plan. The RP had failed in his duty to examine and scrutinize the resolution plans submitted by the PRAs and fell short of his statutory obligations to ensure that the interests of all stakeholders are protected before placing the same before the CoC for its approval. The RP also failed in his duty for not bringing to the notice of the CoC to the amendments in FSI and TDR. It was also submitted that the resolution plan submitted by Respondent No. 3 did not pass on the benefit of amended FSI and TDR, which had arisen later, to the home-buyers. It was also contended that the resolution plan of the SRA was only designed to maximise the benefits of Respondents No. 2 and 3 did

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not protect the interest of all the home-buyers thus also jeopardising the rehabilitation of remaining slum dwellers.

4. On the role of the CoC, it was contended that it ignored the plea of the Home-Buyers including the Appellants that the scheme of Aanya Real Estate Pvt. Ltd. (**'Aanya'** in short) which was one of the three PRAs had offered better returns than the SRA. Aanya's plan was better in that it provided better value to the Respondent No.2 besides addressing the interests of the home-buyers. On the other hand, the plan of the SRA imposed excessive costs on the home-buyers by seeking additional payment from the home-buyers. However, the CoC did not apply their commercial wisdom in a judicious manner by not accepting the scheme of Aanya. It is further stated that Appellants do not want setting aside of the impugned order in case the SRA is ready to match the terms of the resolution plan of Aanya. Any reluctance on their part ought to be viewed as malafide intent of the RP and Respondent No. 2 trying to unduly benefit Respondent No. 3 at the cost of the minority home-buyers. Acceptance of the resolution plan of the SRA by the CoC was based on dubious considerations which had no nexus with the objective of the IBC to maximise the value of the assets of all stakeholders involved. It was also articulated that in IA No. 2214 of 2022, the Appellant had objected that irrespective of the admitted claims of the unsecured creditors, the resolution plan offered only a lumpsum amount of Rs 5 lakhs causing grave prejudice to their interest.

5. It was also submitted that the Respondent No. 2 misused its voting strength in the CoC thereby violating the principle of corporate democracy. It was vehemently contended that the decision of the CoC in this case was not a collective and consultative decision but more of a unilateral decision of

Respondent No.2 thrust upon the CoC to recover its dues without regard for the revival of the Corporate Debtor. While admitting that the Hon'ble Apex Court in a catena of judgements has upheld the supremacy of the commercial wisdom of the CoC, it was pressed hard that the hands-off approach to the exercise of commercial wisdom of CoC was premised in all cases where the CoC comprised of more than one member and had many other heads to deliberate upon the matter. It was contended that the present is a case of oppression of minority stakeholders by the dominant member of the CoC. Hence, despite commercial wisdom of CoC being paramount, in the present case, interference was warranted as CoC overstepped its mandate but the Adjudicating Authority failed to discharge its obligations. In support of their contention, reliance was placed on the judgment of the Hon'ble Supreme Court in ***Miheer H. Mafatlal v. Mafatlal Industries Ltd. (1997) 1 SCC 579*** wherein it was held that where the Company Court is called upon to sanction a scheme of compromise or arrangement, it has not merely to go by the *ipse dixit* of the majority of the shareholders or creditors or their respective classes who might have voted in favour of the scheme by requisite majority but the Court has to consider the pros and cons of the scheme with a view to finding out whether the scheme is fair, just and reasonable and is not contrary to any provisions of law and it does not violate any public policy. It was contended that it is an obligation on the part of the Appellate Tribunal to examine on merits the arbitrary decision which was taken by the CoC and approved by the Adjudicating Authority which decimated the rights of the home buyers.

6. The submissions made by the Appellants was rebutted and refuted by Ld. Sr. Counsel and other Ld. Counsels for the Respondents. Since their arguments overlap, we are taking note of the submissions conjointly. It is their contention that the Appellants have filed the appeal with the ulterior motive of delaying the implementation of the resolution plan. The Appellants are neither genuine home-buyers nor genuinely opposed to the resolution plan but have been put up by the erstwhile promoters to seek a backdoor entry into the project through one of the PRAs. The very fact that the resolution plan of Aanya stipulated waiver of personal proceedings against the personal guarantors of the Corporate Debtor, who happen to be the erstwhile promoters, clearly puts question marks on the bonafide of the Appellants. Moreover, the present appeal has been filed by some individual home-buyers which is procedurally flawed since the individual home-buyer cannot file appeal but ought to file collectively as a class of creditor through an Authorized Representative.

7. It has been further contended that the plan of the SRA had taken an equitable approach for all existing home-buyers. There was no basis for the allegation that all home-buyers inspite of being a creditor in class have been treated differently. The plan created a level playing field for all purchasers without favoring or penalizing any group. Submitting that Respondent No.2-LICHFL was also receiving only 31% of its total admitted claim, in the face this fact, it was deliberate misrepresentation on the part of the Appellants to canvass that only the interests of the home-buyers have been side-stepped. It was asserted that the resolution plan of the SRA provided that all home-buyers alongwith rehab tenants are to receive their flats within the stipulated

time. On the issue of increase in TDR and additional FSI availability, it was contended that all the PRAs had the opportunity to factor in this increase while formulating their plans and there was no deliberate ploy to deny the passing on of these benefits to the home-buyers.

8. It has also been contended that the business decision of CoC has been given primacy in the statutory construct of IBC. There is an intrinsic assumption that the financial creditors take an informed decision on the viability of the Corporate Debtor and act on the basis of a thorough examination of the proposed resolution plan and its feasibility for the revival of the Corporate Debtor and hence not justiciable. As long as the mandatory, statutory requirements have been met and duly complied with, the Adjudicating Authority is not empowered to verify whether the CoC has exercised its commercial wisdom in a prudent manner or whether the CoC has acted in a just and fair manner. The Adjudicating Authority cannot substitute its views in place of the commercial wisdom of the CoC as it goes against the legal precepts laid down in several judgements of the Supreme Court. In the present case, when the commercial terms of the resolution plan had been considered and passed by the CoC with requisite majority and keeping in view that the Adjudicating Authority enjoys only limited powers of judicial review to interfere with the commercial wisdom of the CoC in approving the resolution plan, the commercial wisdom of CoC cannot be challenged. The limited requirement under Section 31(1) of the IBC is that the Adjudicating Authority has to satisfy itself that the resolution plan as approved by the CoC meets the conditions stipulated in Section 30(2) of the

IBC. Once the Adjudicating Authority is so satisfied, the Adjudicating Authority is mandated by Section 31(1) of the IBC to approve the said plan.

9. On the question raised by the Appellants regarding the CIRP extension order dated 29.03.2023 of the Adjudicating Authority in IA 979 of 2023 after allowing extension of the period from 24.04.2022 to 26.05.2022, it was asserted that the Appellants never having challenged the said order earlier, objections on this ground cannot be raised at this stage. As regards, IA No. 1569 of 2022; IA 2055 of 2022 and IA No. 2214 of 2022 filed by the Appellants objecting to the resolution plan as approved by the CoC, it was contended that the contentions raised in those IAs were heard together with IA No. 1575 of 2022. Though no formal order had been passed on those IAs, all objections of the Appellants therein was heard before the resolution plan was approved.

10. We have duly considered the arguments advanced by the Learned Counsel for all the parties and perused the records carefully.

11. The primary issues for our consideration are broadly:

- (i) whether the RP as alleged by the Appellants had failed in his duties in steering the CIRP in a procedurally correct manner;
- (ii) whether the CoC failed to apply its commercial wisdom in a proper manner;
- (iii) whether the Adjudicating Authority had erred in approving the resolution plan of the SRA.

All these questions are inextricably interlinked and therefore for better clarity instead of segmenting the answers, we shall endeavour to proceed by telescoping our reply into a unified whole.

12. It is the case of the Appellant that the RP had failed in his duty to ensure that the interests of all stake-holders are protected before placing the resolution plan of the SRA to the CoC for its approval. The RP also failed to make the CoC aware that the resolution plan submitted by SRA-Respondent No. 3 did not pass on the benefit of FSI and TDR to the home buyers. It was also contended that the resolution plan of the SRA only maximised their own benefits while putting the burden of additional payments on the home-buyers. Since the plan of the Aanya was more beneficial to both the home buyers and Respondent No.2, the Appellants had approached Respondent No. 2 by way of letter dated 28.04.2022 to vote in favour of Aanya. However, Respondent No. 2 being the dominant of CoC not only did not reply to the letter but instead voted in favour of the SRA. The 17th CoC meeting which approved the resolution plan is also silent about the representation dated 28.04.2022 and does not mention about other CoC members who voted against the resolution plan of the SRA. It is also their contention that RP and Respondent No. 2 had colluded trying to unduly benefit the SRA at the cost of the minority home-buyers. It has been vehemently contended that the CoC ignored the plea of the home-buyers that the plan of Aanya was better than that of the SRA. Since Respondent No.2 had the dominant vote share in the CoC, it approved the plan of SRA while the other stakeholders having voting rights unanimously voted for Aanya. This clearly shows that the CoC failed to apply commercial wisdom in a judicious manner and Respondent No.2 had voted in favour of SRA simply to further their own interests without bothering about the interest of other stakeholders.

13. When we look at the sequence of events, we find that after the Corporate Debtor was admitted into CIRP, the RP on the basis of claims admitted, constituted the CoC with the secured financial creditor-Respondent No.2 having 76.35% vote share, unsecured financial creditors with 11.85% and financial creditors belonging to a class having 11.80% vote share. The composition of the CoC has not been challenged by the Appellants. Material on record show that timely CoC meetings were also held. It is also an undisputed fact that the RP had published Form G on five occasions. Thus, suffice to say, the RP had given sufficient opportunity to resolution applicants to get the best possible plan for the revival of the Corporate Debtor.

14. However, the Appellants have pointed out that it was a shortcoming on the part of the RP in not bringing to the notice of the PRAs of the increase in TDR and additional FSI availability which information could have led to better resolution plans. When we look at the CoC meetings, it comes to notice that the minutes of the 15th CoC meeting held on 25.03.2022 records that the CoC stood apprised of the change in the availability of FSI. The said CoC meeting after taking due note of the circular mentioning about change in FSI availability also extended the time for submission of resolution plan by the PRAs by nine days and in fact the resolution plans of all the PRAs were submitted subsequent to the increase in TDR and additional FSI availability. Thus, all the PRAs had the opportunity to factor in this increase while formulating their plans. In our considered view, therefore, there was no requirement for the RP to specifically instruct the PRAs to consider this factor while submitting their resolution plan. Without going onto the contention raised by the SRA that in terms of the structural report of the project, vertical

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extension of the building was not feasible, we find sufficient merit in the contention of the RP that the parameters of additional FSI and TDR was equally known to all PRAs and it was clearly the business decision of the PRAs on how they wished to pass on these additional benefits in their resolution plans. It is, therefore, misconceived on the part of the Appellant to blame the RP on this score.

15. This brings us to the contention of the Appellants that RP and Respondent No. 2 had colluded so as to unduly benefit the SRA at the cost of the minority home-buyers. The Appellants to buttress their contention, mentioned that the Appellants had sent a letter dated 28.04.2022 to the Respondent No.2 to vote in favour of Aanya since their plan was beneficial to both the Home-buyers as well as Respondent No. 2. On close scrutiny, it becomes clear that the representation sent by the home-buyers on 28.04.2022 urging Respondent No. 2 to cast their vote in favour of Aanya was submitted after the cut-of date fixed for voting on the resolution plan which happened to be on 24.04.2022. It is also pertinent to note that the Appellants till the stage of voting also did not make a murmur of mention in respect of any such written representation. Hence, submission of any representation once the voting process was already over was a meaningless exercise and the Respondent No. 2 cannot be faulted on this score now. Moreover, since this letter was sent by the Appellants directly to LICHFL and that too after the voting on the plan was over, we are inclined to believe that this issue is now raised as an after-thought to derail the resolution process.

16. It has been also the contention of the Appellant that the SRA has offered Rs 1 cr. lesser than Aanya besides demanding Rs 17 cr. additionally from the home buyers as against Rs 5 cr. demanded by Aanya. It has been submitted by the Appellants that the plan of SRA provides for additional payment from the home-buyers by fixing up new sale rates as per current market price and asking home buyers to pay the difference. Since the sale had been carried out at different rates to the home buyers, depending on their year of purchase, the additional amount claimed from the home-buyers was a variable amount. This has led to treating home-buyers differently though as a creditor in class, they should have been treated equally.

17. It is the counter contention of the SRA that purchasers have only been required to pay the difference between the resolution plan price and amounts they have already paid as per their allotment letters. This additional payment had a rational basis arising out of increase in project cost owing to a period of 10 years having lapsed since the time the home-buyers had booked their flats. The project having been delayed, the construction costs have gone up since the start of the project. The resolution plan price was kept at Rs 14000 per sq. ft. for residential premises, Rs 18500 per sq. ft. for office and Rs 23000 per sq. ft. for shops. It has also been pointed according to this plan, 31% of the home buyers were not required to incur any additional costs. 24% were to see increase of less than Rs 2500/- per sq. ft. and another 24% to see increase between Rs 2500/- and Rs 5000/- per sq. ft. Only 21% were to face an increase exceeding Rs 5000/- per sq. ft. The highest payment bracket was affecting only those who had received units in lieu of services rendered at discounted rates significantly below the applicable market value and were

predominantly related parties to the Corporate Debtor and speculative investors. The mechanism worked out for home-buyers to make additional payments was necessary to ensure the project viability besides creating parity among all purchasers, requiring those who paid less initially to contribute more to align with market rate. It has been emphatically asserted that the resolution plan of the SRA was therefore reasonable and fair. While on the one hand, it ensured that the home buyers were finally able to take possession of the units promised to be allotted to them on the other hand it also provided for an exit option for home buyers who wished to withdraw from the project on receipt of due refunds. The resolution plan of the SRA gave the home buyers two options which was either to accept possession according to the resolution plan or opt for refund of the principal amount in 24 monthly instalments. The SRA has therefore contended that this clearly demonstrates the fairness of the resolution plan and the viability of the plan in addressing the interest of all the stakeholder while reviving the project.

18. This now brings us to the role played the CoC in the exercise of its commercial wisdom in the scrutiny of the plans in the light of the contentions raised by the Appellants that it was ‘commercial folly’ and not display of wisdom. For better appreciation of this issue at hand, at this stage, it may be useful to notice the minutes of the 17th CoC meeting held on 24.04.2022 to approve the resolution plan of the Corporate Debtor which is as under:

AGENDA ITEM NO 5:

TO DISCUSS AND APPROVE THE RESOLUTION PLAN FOR THE CORPORATE DEBTOR

Till the closing hours of last date of submission of Resolution Plan i.e. April 03, 2022, the RP has received Resolution Plans from the following Resolution Applicants viz.: -

- KGK Realty (India) Private Limited*
- 'Ashdan Properties Private Limited' and 'NNP Buildcon Private Limited'*
- Aanya Real Estate Private Limited*

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The Committee of members in its meeting held on April 07, 2022 presented a comparative analysis of all the plans received.

The COC and PRA's have been negotiating on the Resolution plan since past 3 weeks.

There was a zoom meeting held with all the PRAs on April 11, 2022, for discussion wherein all the PRAs presented their proposal to the members of the COC.

The Resolution Plans were further discussed and negotiated on April 14, 2022 through zoom meetings with all the PRAs. PRAs were in continuous discussion with the COC as regards their respective resolution plans.

Further, the Resolution Plan which confirm with requirement of the Code and Regulations made thereunder shall be presented to the CoC for its approval as per Section 30(4) of the Code read with Regulation 39 of the CIRP Regulations.

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In-view of the foregoing and Section 30(3) of the Code, the RP placed the Resolution Plan received from all 3 PRA's before the members of the CoC being compliant with the provisions of the Code and the Regulations.

In view of discussions held, the PRA's were requested to communicate the changes they intend to make in the Resolution Plans submitted by them. Since as per the timelines and considering the extension and exclusion period the last date for the CIRP is today i.e. April 24, 2022, the members of CoC instructed the PRA's to submit the addendums to the Resolution Plan before 05 P.M today i.e. April 24, 2022.

.....

Till the closing hour of 05:00 P.M., the Resolution professional received addendum from all the PRAs.

Accordingly following Resolution Plans were put for voting:

a. KGK Realty (India) Private Limited: Revised Resolution Plan dated April 22, 2022 along with the addendum dated April 24, 2022 received through email.

b. Ashdan Properties Private Limited' and 'NNP Buildcon Private Limited': Resolution Plan dated April 22, 2022 along with the addendum dated April 24, 2022 received through email.

c. Aanya Real Estate Private Limited: Resolution Plan dated April 22, 2022 along with the addendum dated April 24, 2022 received through email.

Further, the RP received the Evaluation Matrix from the members of the CoC with their scoring on all three Resolution Plans.

.....

(Emphasis supplied)

19. The above minutes of the 17th CoC meeting clearly shows that all the three PRAs were given equal opportunity by the CoC to present their respective resolution plans. The Authorized Representative of the creditors in class were also present in the deliberations. Furthermore, we notice from the above minutes, that the decision of the CoC to approve the plan of the SRA was preceded by extensive negotiations with all PRAs; holding of thorough and comparative analysis of all plans of the PRAs against a structured evaluation matrix and after satisfying itself that the plans are compliant with the provisions of the IBC and regulations framed thereunder. While approving the Resolution Plan, the CoC has considered several factors including past experience, progress, market value, financial strength, capability etc. of all the resolution applicants. On conclusion of voting, the resolution plan of the SRA was passed by the CoC with 76.35% vote share which exceeded the stipulated requisite majority.

20. The democratic principles of a determinative role of majority opinion in the decision making process of CoC is well established. When the resolution plan has been approved by the CoC with requisite majority and after holding due deliberations, the decision becomes a collective business decision. We have no hesitation in holding that in facts of the present case, when the CoC stood properly constituted and it approved the resolution plan after holding due deliberations and with prescribed requisite majority, there is no foundational basis to agree with the bald assertion made by the Appellant that the principles of corporate democracy has not been upheld.

21. This brings us to the contention of the Appellants that the decision of the CoC was a one-sided decision of Respondent No.2 foisted upon the CoC to recover their dues with scant regard for maximising the value of the assets of all other stakeholders involved. In support of their contention, reliance was placed on the judgment of the Hon'ble Supreme Court in **Miheer H. Mafatlal v. Mafatlal Industries Ltd. (1997) 1 SCC 579** ('Mafatlal' in short) and specific attention has been adverted to the following observations made therein:

“28.On a conjoint reading of the relevant provisions of Sections 391 and 393 it becomes at once clear that the Company Court which is called upon to sanction such a scheme has not merely to go by the ipse dixit of the majority of the shareholders or creditors or their respective classes who might have voted in favour of the scheme by requisite majority but the Court has to consider the pros and cons of the scheme with a view to finding out whether the scheme is fair, just and reasonable and is not contrary to any provisions of law and it does not violate any public policy. This is implicit in the very concept of compromise or arrangement which is required to receive the imprimatur of a court of law. No court of law would ever countenance any scheme of compromise or arrangement arrived at between the parties and which might be supported by the

requisite majority if the Court finds that it is an unconscionable or an illegal scheme or is otherwise unfair or unjust to the class of shareholders or creditors for whom it is meant. Consequently, it cannot be said that a Company Court before whom an application is moved for sanctioning such a scheme which might have got the requisite majority support of the creditors or members or any class of them for whom the scheme is mooted by the company concerned, has to act merely as a rubber stamp and must almost automatically put its seal of approval on such a scheme. It is trite to say that once the scheme is sanctioned by the Court it would bind even the dissenting minority shareholders or creditors. Therefore, the fairness of the scheme qua them also has to be kept in view by the Company Court while putting its seal of approval on the scheme concerned placed for its sanction...."

29. However further question remains whether the Court has jurisdiction like an appellate authority to minutely scrutinise the scheme and to arrive at an independent conclusion whether the scheme should be permitted to go through or not when the majority of the creditors or members or their respective classes have approved the scheme as required by Section 391 sub-section (2). On this aspect (the nature of compromise or arrangement between the 5 company and the creditors and members has to be kept in view. It is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept in view by the Court. The Court certainly would not act as a court of appeal and sit in judgment over the informed view of the parties concerned to the compromise as the same would be in the realm of corporate and commercial wisdom of the parties concerned. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the Scheme by the requisite majority. Consequently, the Company Court's jurisdiction to that extent is peripheral and supervisory and not appellate. The Court acts like an umpire in a game of cricket who has to see that both the teams play their game according to the rules and do not overstep the limits. But subject to that how best the game is to be played is left to the players and not to the umpire..... "

22. We are, however, of the opinion that **Mafatlal** judgement supra does not come to the rescue of the Appellants since it has been made in the backdrop of Sections 391 and 393 of the Companies Act with regard to any

scheme of compromise or arrangement arrived at between parties while the present matter relates to approval of the resolution plan under IBC which by itself is a self-contained Code. Present being a matter relating to approval of resolution plan which is indubitably distinct and unrelated to a scheme of compromise or arrangement contemplated under the Companies Act, we are not much impressed with the application **Mafatlal** supra judgement to the facts of this case.

23. Per contra, the Respondents have relied on a series of judgements of the Hon'ble Supreme Court which have affirmed the paramount status of the commercial wisdom of the CoC. The relevant judgements and the relevant excerpts which have been adverted attention to are reproduced below. The Hon'ble Supreme Court in **K. Sashidhar v. Indian Overseas Bank & Ors.** **2019 SCC Online SC 257** has observed the following:

“5.2. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of

the proposed resolution plan._They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberation in the CoC meetings through voting, as per voting shares, in a collective business decision. The legislature consciously, has not provided any ground to challenge the “commercial wisdom” of the individual financial creditors or their collective decision before the adjudicating authority. That is made nonjusticiable...

58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with 31(1) of the I&B Code. No other enquiry would be permissible. Further the jurisdiction bestowed upon the appellate authority (NCLT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters “other than” enquiry into autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as court of equity or exercise plenary powers.”

The Hon’ble Supreme in **Committee of Creditors of Essar Steel India Limited through Authorised Signatory V. Satish Kumar Gupta & Ors. (2020) 8 SCC 531** has observed as follows:

“54. Since it is the commercial wisdom pf the Committee of Creditors that it is to decide on whether or not to rehabilitate the corporate debtor by means of acceptance of a particular resolution plan, the provisions of the Code and the Regulations outline in detail the importance of setting up of such Committee, and leaving decisions to be made by the requisite majority of the members of the aforesaid Committee in its discretion....”

The Hon’ble Supreme Court in **Kalpraj Dharamshi & Anr v. Kotak Investment Advisors Ltd & Anr. (2021) 10 SCC 401** has observed that:

“171. It would thus be clear, that the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of

CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the I&B Code.”

The Hon’ble Supreme Court in Civil Appeal Nos. 1811-1812 of 2022 titled as **Vallal RCK v. M/s Siva Industries and Holdings Ltd. and Ors.** has held as follows:

“26. It is thus clear that the decision of the CoC was taken after the members of the CoC, had due deliberation to consider the pros and cons of the Settlement Plan and took a decision exercising their commercial wisdom. We are therefore of the considered view that neither the learned NCLT nor the learned NCLAT were justified in not giving due weightage to the commercial wisdom of CoC.”

24. It is, however, the contention of the Appellants that the above judgments of the Hon’ble Supreme Court which the Respondents have relied upon to assert the supremacy of the commercial wisdom of the CoC are not applicable in the present matter since in the present case the CoC was a single member CoC. We are not in a position to agree with this misplaced interpretation of the Appellants since the Hon’ble Apex Court has not made any such artificial distinction between a single-member or a multi-member CoC in bestowing supremacy to its commercial wisdom. Regardless of the composition of CoC, the IBC places the CoC in control of the insolvency resolution process. For this purpose it has provided for different threshold levels of voting percentages for CoC to take decisions. As regards approval of resolution plan is concerned, the IBC provides for 66% vote share and once this threshold is met, the decision of the CoC, irrespective of whether it is a single-member or multi-member, the decision of the CoC becomes sacrosanct and binding on all stakeholders. The decision of the CoC on the validity of a resolution plan is essentially a business decision and hence should be left to *Comp. App. (AT) Insolvency Nos. 751 & 717 of 2023*

the CoC so long as it musters more than 66% vote share. There can be no fetters on the commercial wisdom of the CoC.

25. From the above judgements it also becomes undisputedly clear that in the statutory framework of the IBC, there is only limited review available to the Adjudicating Authority and it cannot trespass upon the business decision of the majority of the CoC. The Adjudicating Authority has limited jurisdiction in the approval of the resolution plan. It is not for the Adjudicating Authority to evaluate on merits the rationale underlying only commercial decision of the CoC. When the CoC has approved a Resolution Plan by requisite voting share after considering its feasibility and viability, such decision of CoC cannot be interfered in the exercise of judicial review either by the Adjudicating Authority or by this Tribunal in the exercise of its appellate powers.

26. Under Section 31(1) of the IBC, the Adjudicating Authority has limited jurisdiction to judicially review the commercial wisdom of the CoC. All that needs to be satisfied before approving the resolution plan is to satisfy itself that the resolution plan as approved by the CoC meets the conditions stipulated in Section 30(2) of the IBC. Once the Adjudicating Authority is so satisfied, the Adjudicating Authority is mandated by Section 31(1) of the IBC to approve the said plan.

27. It is contended by the Respondents that the resolution plan of the SRA meets all the mandatory requirements under Section 30(2) of the IBC read with Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. When we look at the impugned order at para 3.3 and para 5 we find that this aspect has been fleshed out therein which is as reproduced below:

Comp. App. (AT) Insolvency Nos. 751 & 717 of 2023

“Para 3.3

.....

- d. The Resolution Plan provides for –*
- i. The payment to the operational creditors;*
- ii. The payment to the financial creditors who did not vote in favour of the resolution plan;*
- iii. The management of the affairs of the corporate debtor;*
- iv. The implementation and supervision of the resolution plan;*
- e. The Resolution Plan does not contravene any of the provisions of the law for the time being in force;*
- f. The Resolution Plan is feasible and viable, according to the CoC and approved by 76.35% vote;*
- g. The Resolution Professional made a determination if the Corporate Debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the Insolvency Commencement date, under intimation to the Board;*
- h. The amount due to the operational creditors under the Resolution Plan has been given priority in payment over financial creditors;*
- i. The resolution plan includes a statement as to how it has dealt with the interests of all stakeholders; and*
- j. The Resolution Applicant has submitted the statement giving details of non-implementation in case the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of Resolution Plan approved under the Code.”*

“Para 5

.....the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39 (4) of the Regulations. The Resolution Plan is not in contraventions of nay of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved.....”

The Appellants have however failed to substantiate before the Adjudicating Authority that the resolution plan of the SRA contravenes any of the IBC provisions or that there was material irregularity in the exercise of powers by the CoC or the RP.

28. This brings us to the contention of the Appellants that the resolution plan has not properly addressed the issue of payment to the unsecured financial creditors having been provided a lumpsum amount of Rs 5 lakh in full and final settlement of their claim. We are not in a position to accept the submission made by the Appellants that merely because a lumpsum amount of Rs 5 lakh has been allocated to them as unsecured financial creditors the plan cannot be accepted. We notice that even secured financial creditors have also taken a 68% haircut. CoC in its commercial wisdom has decided to allocate amounts to the various stakeholders as per their commercial decision for maximising the value of assets of all stakeholders. That being the case, the Adjudicating Authority with the limited powers of judicial review available to it, cannot substitute its views with the commercial wisdom of the CoC in rejecting the resolution plan simply because the Appellants are aggrieved by the amounts proposed to be paid to them under the resolution. Every dissatisfaction does not partake the character of a legal grievance and cannot become a ground of appeal. The scope of judicial review being strictly circumscribed within the boundaries of Section 30(2) of the IBC for the Adjudicating Authority and this discipline having been emphasised time and again by the Hon'ble Supreme Court in several judgments, the powers of the Adjudicating Authority dealing with the resolution plan does not extend to examining the correctness or otherwise of the commercial wisdom exercised by the CoC. Merely because there is a reduction in the claim of any creditor does not make the resolution plan fall foul of law. Any clause in the resolution plan which requires creditors to take a hair-cut cannot be construed as being violative of Section 30(2) of the IBC. Under such circumstances there is

nothing to show that there has been transgression of the bounds of rules and regulations which have caused any serious miscarriage of justice to the Appellants.

29. Even the powers of this Tribunal is circumscribed in this regard to grounds specified in Section 61(3) of the IBC and the Appellants have failed to make out a case of applicability of any such limited grounds. In the present matter at hand, neither any contravention of law nor material irregularity has been brought on record. It is settled law that once the CoC has approved the resolution plan by requisite majority and the same is in consonance with applicable provisions of law and nothing has come to light to show that any material irregularities have been committed in the conduct of the CIRP proceedings, the same cannot be a subject matter of judicial review and modification.

30. Having regard to the foregoing discussion, we are of the view that the Adjudicating Authority did not err in approving the resolution plan. In result, we hold that the impugned order does not warrant any interference. Appeals being devoid of merit are dismissed. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

Place: New Delhi

Date: 04.09.2024

Abdul/ Harleen