



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II**

IA. No. 23/2024

**In
CP(IB)No.862/MB/CII/2019**

*Application filed under section 33(1) of Insolvency
and Bankruptcy Code, 2016*

**Mr. Prakash Kukreja, RP of
Vijaygroup Housing Private Limited.**

...Applicant

In the matter of

Gracious Communication Private Limited.

**...Operational Creditor
V/s**

Vijaygroup Housing Private Limited.

...Corporate Debtor

Order Pronounced on: 14.08.2024

Coram:

**Anil Raj Chellan : Kuldip Kumar Kareer
Member Technical : Member Judicial**

Appearances:

**For the Applicant : Ld. Sr. Adv. Gaurav Joshi a/w
Adv. Pratiksha Agrawal**



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ORDER

Per: Coram

1. It is an application filed u/s 33(1) of the Insolvency & Bankruptcy Code, 2016 (Code) by Mr. Prakash Kukreja Resolution Professional (RP) of Vijaygroup Housing Private Limited seeking liquidation order based on the resolution passed by the CoC in its 15th meeting held 16.12.2023.
2. On perusal of this application, it appears that CP No. (IB)-862(MB)/2019 was admitted by this Tribunal on 30.09.2022 and Mr. Alok Kumar Murarka was appointed as Interim Resolution Professional (IRP). Further, the CoC members filed an IA No. 242/2023, seeking replacement and the appointment of Mr. Prakash Kukreja as the RP of the Corporate Debtor. This Tribunal, in its discretion, considered the application and subsequently issued an order dated 15.03.2023 appointing Mr. Prakash Kukreja as the Resolution Professional of Corporate Debtor. Thereafter, IRP in compliance with section 13,15 and other applicable sections of the Code, published Form A issuing public announcement inviting claims from the Creditors of the Corporate Debtor and upon receipt of the claims, the CoC was constituted.
3. In the 2nd CoC meeting held on 25.11.2022, the IRP had invited Expression of Interest (EoI) from Prospective Resolution Applicants (PRAs) by publishing Form G on 02.12.2022.



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4. In the 4th CoC meeting held on 13.03.2023, the Applicant filed an IA 1935/2023 under Section 12 of the Insolvency and Bankruptcy Code (IBC) before this Tribunal, seeking a 90-day extension for CIRP of the Corporate Debtor. Additionally, the Applicant requested an exclusion of 52 days from 23.01.2023 to 15.03.2023. This Tribunal, through its order dated 15.05.2023, allowed IA 1935/2023.
5. In the 5th CoC meeting held on 07.04.2023, the CoC authorized the Applicant to Publish a fresh Form G dated 10.04.2023, with the aim of attracting a broader range of potential investors for the successful resolution of the Corporate Debtor.
6. Due to the increase in inquiries regarding the Expression of Interest (EoI) and the need for a process advisor to contact potential buyers, the CoC extended the deadline for submitting EoIs to 30.05.2023, as decided in the 6th CoC meeting held on 04.05.2023. Accordingly, this extension was officially announced in an addendum to Form G dated 11.05.2023.
7. Thereafter, some members of the CoC informed the Applicant that they were in discussions with certain real estate developers who might submit EoIs if given additional time. In response, the Applicant sought and obtained CoC approval via a circular resolution dated 30.05.2023, to extend the last date for submission of EoIs by 11 days i.e. up to 10.06.2023. Accordingly, Addendum II to Form G was published on 31.05.2023.
8. At the 7th CoC meeting on 7.06.2023, members requested an additional extension for the submission of EoIs to provide the process advisors with



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more time to market the project and reach out to the potential bidders. After detailed discussions, the CoC approved an extension of the EoI deadline to 20.06.2023. Accordingly, the Applicant issued Addendum III to Form G published on 09.06.2023.

9. The Applicant received EoIs from 19 different Prospective Resolution Applicants (PRAs), of which 18 were deemed eligible according to the CoC's criteria. Following a change in the consortium composition of one PRA, and with CoC approval, all 19 PRAs were included in the final list. According to Addendum III dated 9.06.2023, the deadline for submitting resolution plans was 5.07.2023. The Applicant provided the Request for Resolution Plan (RFRP) and the updated the Information Memorandum, approved by the CoC to the PRAs. The Information Memorandum was continuously updated and shared with PRAs.
10. The Applicant sought an extension for the submission of the resolution plan to 5.08.2023, in the light of additional time sought by some PRAs to complete their due diligence. This extension request potentially conflicted with the CIRP period stipulated by the order dated 24.03.2023, which was scheduled to conclude on 17.08.2023. Therefore, the requested extension necessitated a modification to align with the prescribed CIRP timeline. Accordingly, an IA No. 3546 of 2023 was filed seeking further extension of 60 days from 17.08.2023 and this Tribunal, vide order dated 11.08.2023, allowed IA 3546/2023.
11. In the 9th CoC meeting held on 31.07.2023, the Applicant informed the CoC that based on discussions with certain PRAs, there was a request



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for an extension of the deadline for submission of resolution plans by two to four weeks. After thorough deliberation, the CoC resolved to extend the deadline for resolution plan to 16.08.2023.

12. Thereafter, the Applicant received further extension requests from the PRAs and with CoC approval through a circular resolution on 11.08.2023, extended the deadline for submission of resolution plan from 16.08.2023 to 31.08.2023.
13. In the 10th CoC meeting held on 23.08.2023, based on additional requests from certain PRAs, the CoC resolved to further extend the deadline for submission of resolution plans to 21.09.2023.
14. Subsequently, two PRAs requested for further extension of the deadline for submitting resolution plans. The CoC approved these requests by an 80.95% majority, and the new deadline was set for 06.10.2023.
15. On 16.10.2023, the Applicant received a resolution plan and an EMD of Rs. 2 crores. A CoC meeting was held on 20.10.2023., where the Applicant shared this information and noted that a 60-day extension request was filed. The RA's representative presented an overview of the plan and the CoC members raised concerns about the financial outlay, requesting for an improved plan. The Applicant mentioned that the plan could be reviewed for compliance with IBC provisions and shared it with the CoC members.
16. During the 13th CoC meeting, the Applicant and the CoC aimed to conclude the resolution process by 10.11.2023. Despite multiple reminders, the RA did not submit a revised complaint resolution plan by



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that date. Consequently, following CoC's instructions and to achieve a resolution for all stakeholders, an extension was granted to the RA for submitting resolution plan by 11.12.2023. However, no revised and IBC complaint resolution plan had been received by the Applicant even on 11.12.2023.

17. In the 14th CoC meeting held on 11.12.2023, the CoC discussed the future course of action for the CIRP of the Corporate Debtor. The Applicant informed the CoC that no compliant resolution plan had been received from the RA by 11.12.2023. The RA's representative was invited to the meeting, and it was decided that a revised resolution plan must be submitted by midnight of 15.12.2023.
18. The Applicant received a revised resolution plan from the RA on 15.12.2023 and initiated a review of the Resolution Plan. A CoC meeting was held on 16.12.2023, where the key changes in the plan were discussed. The Representatives of the RA presented the plan, leading to a detailed discussion. During this meeting, two CoC members, Arcil and ABFL raised concerns regarding the financial viability of the Resolution Plan.
19. Initially when the resolution plan was received, the Applicant informed the CoC that the plan is not in compliance with the provisions of the Insolvency and Bankruptcy Code, 2016. The CoC decided to examine the financial proposal put forward in the resolution plan. However, the CoC came to the conclusion that the plan cannot be accepted for two reasons: -



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- a. The amount was too low and, therefore, it would not be commercially feasible for the Corporate Debtor.
- b. The Plan was not in compliance with the provisions of the Insolvency and Bankruptcy Code, 2016.

20. Voting on the resolutions proposed in the 15th CoC meeting concluded on 29.12.2023. It was found that the CoC did not approve the resolution plan and instead approved the liquidation of the Corporate Debtor, with a voting share of 82.92% and passed the following resolutions which is extracted below:

“RESOLVED THAT in view of having the CoC’s rejection on the commercial feasibility of the revised resolution plan as received by the PRA Mrs. Alpana Dangi on 15th Dec,23, by the vote of not less than sixty-six percent, with the requirements of Section 30(2) & 30(4) of the IBC within the insolvency resolution process period and the Committee of Creditors in exercise of its commercial wisdom and after considering various factors including those set out in Regulation 40D of the IBBI (Insolvency Resolution Process for Corporate Persons), 2016, consent of the members of the Committee of Creditors be and is hereby accorded to initiate liquidation process of Vijaygroup Housing Private Limited (“Corporate Debtor”) under Chapter III of the IBC and to appoint Mr. Ram Ratan Kanogoo (IP Reg No: IBBI/IPA-001/IP-P00070/2017-2018/10156) as the Liquidator of the Corporate Debtor and to authorize Mr. Prakash Kukreja as the Resolution Professional of the Corporate Debtor to file necessary application under Section 33(2) of the IBC and other provisions of IBC and applicable law, before the National Company Law, Mumbai for initiation of liquidation against the Corporate Debtor.”



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“FURTHER RESOLVED THAT the Resolution Professional be and is hereby authorized to take such steps, determine the scope of work and the terms of appointment as may be necessary for relation to the above, if required and to settle all matters arising out of and incidental thereto and sign and execute all documents and writings that may be required and generally to do all acts, deeds, make payments and things that may be necessary, proper, expedient or incidental thereto and sign and execute all documents and writings that may be required and generally to do all acts, deeds make payments and things that may be necessary, proper, expedient or incidental for the purpose of giving effect to the aforesaid resolution.”

21. After hearing the Counsel for the Applicant and examining the Petition, it is clear that CoC tried its level best to resolve the insolvency of the Corporate Debtor by way of a resolution plan. However, only one Resolution Plan was received, which was also found not viable and feasible with the result that the CoC decided to go ahead with the liquidation process. In the given circumstances, we are of the considered opinion that this is a fit case for liquidation. Therefore, we hereby order the liquidation of the company within the following terms:

- a. The **Mr. Ram Ratan Kanoongo**, holding Registration No. **IBBI/IPA-001/IP-P00070/2017-18/10156**, is appointed as the Liquidator in terms of Section 34 of the Code;
- b. Registry is directed to communicate this Order to the Registrar of



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Companies, Mumbai and to the Insolvency and Bankruptcy Board of India;

- c. The Order of Moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 shall cease to have its effect and a fresh Moratorium under Section 33(5) of the Insolvency and Bankruptcy Code shall commence;
- d. This order shall be deemed to be a notice of discharge to the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016;
- e. The Liquidator is directed to proceed with the process of liquidation in a manner laid down in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 and in accordance with the relevant rules and regulations.
- f. The Liquidator shall follow up and continue to investigate the financial affairs of the Corporate Debtor in accordance with provisions of Section 35(1) of the Code.
- g. The liquidator shall also follow up the pending applications for their disposal during the process of liquidation including initiation of steps for recovery of dues of the Corporate Debtor if any as per law.



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- h. The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within seventy-five days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016;
- i. Copy of this order be sent to the financial creditors, corporate debtor, the Liquidator for taking necessary steps.

22. The IA- 23/2024 filed by the RP for Liquidation of the Corporate Debtor stands **allowed accordingly in aforesaid terms.**

Sd/-

ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

IA No. 3016/2024
In
CP (IB) 862/MB/ of 2019

Under Section 60 (5) of the Insolvency and
Bankruptcy Code, 2016

Dilip Ambadas Lonkar & Ors.

... Applicants

V/s

Prakash Kukreja & Ors.

... Respondents

IN THE MATTER OF

Gracious Communications Pvt Ltd

... Operational Creditor

V/s

Vijaygroup Housing Pvt Ltd

... Corporate Debtor



Order delivered on :- 14.08.2024

Coram:

Anil Raj Chellan

Member (Technical)

Kuldip Kumar Kareer

Member (Judicial)

Appearances:

For the Applicant : Adv. Zaid Ansari a/w Adv. Mangesh
Kokare, Adv. Owais Hingora

For the Respondent No. 1: Sr. Adv. Mr. Gaurav Joshi, Adv. Vishnu
Shriram, Adv. S. Kapoor, Adv. A. Parekh.

For the Respondent No.2 : Adv. Manaswi Adrawal a/w Adv. Mahesh
Dube

ORDER

Per: - Mr. Kuldip Kumar Kareer, Member (Judicial)

1. The present application is filed by Dilip Ambadas Lonkar & Ors. under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('the Code') inter alia challenging the entire process of Corporate Insolvency Resolution (CIRP) carried out by the Respondent No. 1 and particularly the approval granted for the liquidation of the Corporate Debtor by Respondent No. 2 and 3. The Applicants seek following reliefs:

- This Tribunal be pleased to declare that the process followed by



the Respondent No. 1 during the CoC meetings, culminating in the resolutions for the liquidation of the Corporate Debtor (as recorded in the 15th CoC meeting and reiterated in the 16th CoC meeting on 01.02.2024 was conducted with mala fides.

- This Tribunal be pleased to declare that the resolution of liquidation passed in the 15th CoC meeting and subsequently recorded in the 16th CoC meeting is null and void and be set aside.
- This Tribunal be pleased to direct the Respondent No. 1 to restart the Expression of Interest process with a new Form G.
- This Tribunal be pleased to release the RERA Account (HDFC account no. 50200026013942) and its funds from the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor.
- This Tribunal be pleased to direct the Respondents to return the funds from the RERA Account to the Applicants and other home-buyers, from the date of appropriation by the Respondent No. 1 towards the CIRP of the Corporate Debtor till realization.
- This Tribunal be pleased to direct the release of certain structures (NE24, SE5 and SE25) referred to in Paragraph Nos. 4.2. and 10.1 along with the land of the said Project from the clutches of the CIRP of the Corporate Debtor.

Facts of the case:

2. Vijayhousing Pvt. Ltd. ('the Corporate Debtor') was admitted to Corporate Insolvency Resolution Process (CIRP) pursuant to an order passed by this Tribunal dated 30.09.2022. It also appointed Mr. Alok as the Interim Resolution Professional. Subsequently by an order dated



15.03.2023, Mr. Prakash Kukreja, the Respondent herein was appointed as Resolution Professional.

3. The Corporate Debtor is a developer who has been in the real estate business for the past three decades and has developed multiple housing projects across Mumbai.

Submissions of the Applicant:

4. The Applicants submitted that they are homebuyers, who have a voting share of 11.28% in the Committee of Creditors ('CoC') meeting, Applicants No. 1 to 9 are representatives for Applicants No. 10 to 145 and Applicant No. 146 is a financial creditor among the homebuyers. Respondent No. 4 to 7 are unsecured financial creditors of the Corporate Debtor (other than home-buyers) having voting share of 2.99%, 2.33%, 1.42% and 0.48% respectively.
5. It is submitted that the Applicants are innocent purchasers, including significant number of senior citizens, who have invested their life savings in the hope of fulfilling their lifelong dream of securing residential accommodation in the project under the name of "Vijay Estate- Vakas".
6. At the stage of its admission into CIRP, the Corporate Debtor was, among other activities, engaged in the real estate development of a project named "Vijay Estate-Vakas", spanning over 83.11 acres situated at Neral – Kashele S.H. No. 103, Village Vakas, Neral (East), Taluka - Karjat, District – Raigad ('said Project'). The Applicants assert that they purchased various residential premises constructed and/or to be constructed as part of the said Project on an ownership basis through registered documents. They contend that they own the premises along



with the structures in which these premises are situated and the land parcel required for the completion of the said Project and the associated land should not be included in the Corporate Debtor's assets under CIRP and accordingly, should be released from CIRP.

7. Although the said Project was intended to be developed as part of a large layout and in a phased manner comprising of eight phases, as of the date of admission of the Corporate Debtor into CIRP, only phases 1 and 2 out of the eight phases were completed to the extent detailed below, before the Corporate Debtor was admitted into CIRP by this Tribunal:

Block	Completion of Work (%)
NE24	90
SE5	70
SE25	60

8. The Corporate Debtor was unable to undertake the construction of the remaining phases and blocks before its admission into CIRP. The majority of the homebuyers, whose claims have been admitted and are part of the CoC, have purchased residential units in the three blocks listed above, which are part of Phase 1 and 2. As on the date of filing this Application, there are 272 homebuyers whose claims have been admitted by Respondent No. 1.
9. It is stated that throughout the CIRP of the Corporate Debtor, Respondent No. 1 has repeatedly failed to effectively discharge his obligation under the Insolvency and Bankruptcy Code (IBC). Specifically, he has not cooperated with the Applicants/homebuyers and the (PRAs), with an apparent premeditated intent to push the



Corporate Debtor towards liquidation. This includes willfully refusing to provide the Resolution Plan to the homebuyers.

10. It is further submitted in the 15th CoC meeting, the Respondent No. 1 deliberately suggested that the liquidation of the Corporate Debtor would be viable option, assuming and declaring to the CoC members that they were not inclined towards or convinced about the commercial feasibility of the resolution plan dated 15.12.2023, submitted by Ms. Alpana Dangi. It is submitted that the process followed by Respondent No. 1 in conducting the CoC meetings, which led to the liquidation resolution of the Corporate Debtor, is malafide. Therefore, the liquidation resolution passed at the 15th CoC meeting held on 16.12.2023 and subsequently recorded at the 16th CoC meeting held on 01.02.2024 should be declared illegal, null and void and be set aside.

11. It is further submitted that in accordance with the RERA Act, promoters are required to open a separate RERA account in a scheduled bank to cover construction and land costs for a specific project. In this case, the Corporate Debtor has opened RERA account with HDFC Bank (account no. 50200026013942) for the project. This RERA account cannot be considered an asset of the Corporate Debtor. Instead, the Corporate Debtor acts only as a trustee of the funds, with the home-buyers being the beneficiaries. Hence the Application.

Reply of the Respondent No. 1:

12. In reply Respondent No. 1 submitted that the Applicants are homebuyers of the Corporate Debtor being financial creditors who have voting share of 6.9% (approximately) in the CoC meeting, contrary to the 11.28% claimed in the Application.



13. It is submitted that the Respondent No. 1 has conducted the CIRP in strict and full compliance of the provisions of the Insolvency and Bankruptcy Code, 2016. The present IA seeks to undermine the CoC's commercial decision to reject the sole resolution plan and initiate liquidation of the Corporate Debtor.
14. It is further submitted that a resolution plan was received from one Ms. Alpana Dangi ('RA') on 16.10.2023 after a detailed due diligence process. Pursuant to multiple rounds of negotiations held between the RA and CoC, multiple extension of time was granted to the RA. Finally, the RA submitted an amended and revised resolution plan on 15.12.2023.
15. It is submitted that in the 15th CoC meeting held on 16.12.2023, the sole resolution plan received was put for consideration through e-voting between 18.12.2023 to 29.12.2023. After detailed consideration, the plan was rejected by the CoC with 81.50% votes and simultaneously a resolution for liquidation with 82.92% votes was approved.
16. It is further submitted that Respondent No. 1 has made all efforts to secure the bank accounts related to the Corporate Debtor and provided updates to the CoC members.
17. It is submitted that the Applicants have referred to a RERA account maintained with HDFC Bank (account no. 50200026013942). It is pertinent to mention that the email dated 12.05.2023 was received from HDFC Bank for the balance in the aforementioned account and the bank has approved the deactivation of the account.
18. In compliance with the duties conferred upon Respondent No. 1, the RERA account of the Corporate Debtor was taken over when



Respondent No. 1 assumed control of the Corporate Debtor's affairs. In the 6th and 7th CoC meetings, Respondent No. 1 updated the CoC members on the number of bank accounts held by the Corporate Debtor and those whose balance had been transferred to the CIRP Bank Account. The CoC was also informed about the closure of the Escrow account with HDFC bank. Further, Respondent No. 1 was regularly updated the CoC members about the cash flow of the Corporate Debtor and none of the CoC members have raised any objections against it.

19. The resolution professional has followed the Code and advised COC accordingly as and when required. The resolution plan, which was submitted, was not adhering to the Insolvency and Bankruptcy Code and, therefore, the RA were given additional time for rectification. There were multiple rounds of discussion between the COC and the representatives of the RA, but they failed to reach an understanding.
20. In the end, the Respondent, has, submitted that the Application has no merit and is liable to be dismissed.

Submissions of the Respondent No. 2:

21. The Respondent No. 2 is a Secured Financial Creditor of the Corporate Debtor and the voting share in CoC meeting was 71.73%.
22. It is submitted that the Applicants have claimed to be homebuyers in the corporate insolvency resolution process (CIRP) of the Corporate Debtor, represented by an Authorized Representative appointed under Section 21 of the Insolvency and Bankruptcy Code, 2016 (IBC). Accordingly, the homebuyers are supposed to act through this authorized representative only.
23. It is further submitted that the Applicants claim to represent the entire



class of homebuyers in the CIRP of the Corporate Debtor and seek relief on behalf of all homebuyers. However, the IA shows that there are 272 homebuyers, but it has only been affirmed by 10, and even if 146 homebuyers are assumed to support the IA, it does not represent the entire class. Therefore, the IA is not maintainable and should be dismissed on this ground alone.

24. The IA challenges the CoC's decision to liquidate the Corporate Debtor, which the CoC has taken in its commercial wisdom. It is settled law that such decisions are non-justiciable.
25. The Applicants have actively participated in the CIRP of the Corporate Debtor at every stage and voted on all CoC resolutions and decisions. However, they have filed the IA complaining about the CIRP only after the CoC rejected the resolution plan and approved liquidation. Thus, the IA is filed with mala fide intent to oppose the CoC's decisions, which were made in due compliance with the law.
26. During the CIRP, the Resolution Professional (RP) received only one resolution plan from a prospective resolution applicant, Mrs. Alpana Dangi (PRA), which was shared with the CoC on October 20, 2023. At the 13th CoC meeting, the CoC deliberated on this resolution plan and suggested changes to it.
27. The RP coordinated with the PRA for the submission of a compliant resolution plan. However, the PRA repeatedly delayed the submission. The CoC, with the bona fide intention of reviving the Corporate Debtor and avoiding liquidation, granted several extensions. The deadlines for submitting the revised resolution plan were extended from November 20, 2023, to December 1, 2023, and then to December 11, 2023.



28. At the 14th CoC meeting, the RP informed the CoC that despite repeated follow-ups, the PRA had not submitted a revised resolution plan. The current plan from the PRA did not comply with IBC provisions and had serious discrepancies, such as no payments to operational creditors and the non-inclusion of a pending application for avoidance of preferential and fraudulent transactions involving the Corporate Debtor. In these circumstances, the PRA requested additional time to make necessary modifications.
29. Thereafter, the PRA submitted a revised resolution plan on December 15, 2023. At the 15th CoC meeting held on December 16, 2023, the CoC discussed the revised resolution plan. The RP informed the CoC that the revised plan still did not comply with IBC provisions. To determine the commercial acceptability of the plan, the CoC decided to vote on its commercial feasibility. Thus, the CoC ensured due consideration of the revised plan despite its non-compliance with the IBC provisions. The CoC applied its commercial wisdom upon the revised resolution plan and voted against it. Additionally, the resolution to initiate liquidation of the Corporate Debtor was also put to vote and accordingly CoC voted in favour of liquidation with 85.25% votes.
30. The Respondent No. 2 further submits that the CoC had taken all the necessary steps for the revival of the Corporate Debtor and continues to do so but it is well settled law that the decisions taken by the CoC in its commercial wisdom are non-justiciable and the same cannot be challenged by any person before this Tribunal. Therefore, on this ground alone, all reliefs claimed in the present IA are liable to be rejected.



Rejoinder of the Applicants:

31. It is submitted that the present case does not involve a realty project at a nascent stage. As stated in paragraph No. 10.1 of the captioned IA, at the time of commencement of the CIRP, it is pertinent to mention that Block NE24 consists of 10 buildings, Block SE05 consists of 8 buildings and Block SE25 consists of 6 buildings. For Block NE24, civil and related works, including painting and lift installation, are nearly complete, with all flats fully constructed. Similar to the other blocks, all flats within Block SE25 are fully constructed.
32. It is submitted by the applicants that there are multiple pieces of land that the corporate debtor had right to develop. The claim of the applicants is that the respondent no. 1 has not mentioned these lands in the information memorandum. There are multiple lands in the name of multiple people wherein they entered into agreements with the corporate debtor for development rights.
33. As per clause 16 of the Agreements for Sale, the Corporate Debtor was obligated to handover possession of the flats.
34. The Applicants reaffirm that the RERA account and its proceeds are not the assets of the Corporate Debtor and should be excluded from the liquidation estate. They state that these funds are solely for the benefit of the homebuyers and must be used exclusively for the completion of the real estate project, and therefore, should not be included in the liquidation process of the Corporate Debtor.

Findings: -

35. We have heard the Counsel for the parties and gone through the record.



36. During the course of the arguments, Counsel for the Applicant has vehemently argued that the Resolution Professional of this case has not conducted the CIRP in a bona fide manner. In this regard, it has been pointed out by the Counsel for the Applicant that there were multiple assets in the shape of lands over which the Corporate Debtor had development rights which were neither included in the Information Memorandum nor were made a part of the CIRP, which eventually affected the whole process in as much as sufficient resolution plans were not received.

37. Counsel for the Applicant has further argued that even otherwise, the liquidation of the Corporate Debtor at this stage would not be in the interest of the homebuyers who have put in their saving to purchase apartments and it would be in the interest and welfare of all the stakeholders, if an attempt is made to re-run the CIRP and issue fresh Form-G to receive an appropriate resolution plan.

38. On the other hand, Counsel for the Respondents has argued that the Applicant have no locus in the matter and the present application has not even filed by one segment of the homebuyers. It has further been pointed out that the application has not been filed even through the Authorized Representative of the homebuyers and on this ground alone, the same is liable to be dismissed.



39. It has further been argued on behalf of the Respondents that the CIRP process was run strictly in accordance with the IB Code, 2016 and the Regulations framed thereunder and the attribution of mala fides to the Resolution Professional are totally baseless and uncalled for, which the Applicants have miserably failed to substantiate.
40. Having weighed the contentions raised by the Counsel for the parties, we are of the considered view that so far as the allegation of mala fide intent raised against the Resolution Professional, the same are not sustainable nor the same have been substantiated with even some prima facie evidence. It cannot be disputed that the residential projects undertaken by the Corporate Debtor are not completed as yet nor any Occupancy Certificate has been issued by the concerned Authorities such as RERA etc. Therefore, the question of handing over the incomplete projects to the homebuyers at this stage would neither be feasible nor the same is permissible under the law.
41. So far as the apprehension of the Applicant/homebuyers that once the company is into liquidation, their interest and rights would be jeopardise, in our considered view, even the said apprehension is misconceived as even after the liquidation is initiated, the Corporate Debtor and the projects of the Corporate Debtor can be sold as a going concern, which is more or less akin to a resolution plan. Apart from this, it is noteworthy that the CoC has opted to go for liquidation of the Corporate Debtor and



resolution of the liquidation has been passed with a majority of 85%. It is a settled preposition of law that the commercial wisdom of the CoC cannot be questioned and that too by a fraction of the homebuyers who have not filed this application even through then Authorized Representative. It is also worth mentioning that before passing the resolution, as is evident from the records, the CoC has tried its best to resolve the insolvency of the Corporate Debtor but since no viable resolution plan was received, it was left with no option but to go for liquidation. Therefore, in our considered view, the objections raised by the Applicant does not seem to be sustainable in the eyes of law and are, therefore, liable to be rejected.

42. As a result of the foregoing discussion, the IA No. **3016/2024** is **dismissed** being devoid of any merit. There shall be no order as to costs.

Sd/-
Anil Raj Chellan
Member (Technical)

Sd/-
Kuldip Kumar Kareer
Member (Judicial)