National Company Law Tribunal

Allahabad Bench

C A No. 223/2018 & CA No. 266/2018
in CP No.(IB) 77/ALD/2017

ATTENDENCE - CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 13.12.2018

NAME OF THE COMPANY: Jaypee Greens Krescent Homes Buyers Welfare Association Vs. Jaypee Infratech Ltd.

SECTION OF THE I & B CODE: 60(5)(c) IBC

Sl. NO.	Name	Designation	Representation	Signature
1.	BISHWAJIT DUBEY	Adv.	IDBI Bank & Other Lenders	Aditya
2.	ADITYA MARWAH			
	JANHVI BHASIN	ADV.	IRP	
	SANJAY BHATT			
3.	YASH TANDON	Adv	For Homebuyers	

CA No. 223/2018 &CA No. 266/2018 in CP No. (IB) 77/ALD/2017

Sh. Bishwajit Dubey alongwith Aditya Marwah, Advocate for the IDBI Bank & other lenders, Ms. Janhvi Bhasin alongwith Sh. Saujan Bhatt, Advocate for the IRP and Sh. Yash Tandon, advocate for the Home Buyers are present.

Common order pronounced in both CA 223/2018 & CA 266/2018 in the open Court.

The Members that constitute this Bench expressed difference of opinion on the point pertaining to procedure for determining voting share for passing Resolutions in the COC that comprise multiple class of Financial Creditor during the CIRP.

Hence, the case is referred to the Hon'ble President for hearing on the aforesaid point by one or more or other Members of the Tribunal under Section 419 (5) of the Companies Act read with Rule 60 of the NCLT rules.

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The registry of this Tribunal is directed to address letter to the Registrar NCLT, New Delhi to place this order before the Hon'ble President for referring the matter to one or more of the other members of the Tribunal.

IRP or any ~~arrived~~ aggrieved person is given liberty to file appropriate application at a later stage/appropriate stage seeking exclusion of the period covered by these applications for the purpose of calculation of time limit for completion of CIRP Process if such necessity arises.

CA 223/2018 & CA 266/2018 are disposed of by referring matter of Hon'ble President, NCLT, New Delhi under Section 419 (5) of the Companies Act read with Rules 60 of NCLT rules (Vide separate common order).

Dated:13.12.2018

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SAROJ RAJWARE,
MEMBER (T)

-Sd-

BIKKI RAVEENDRA BABU
MEMBER (J)

Typed by
Shubham Kr. Singh
(P.S.)

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

CA No.223/2018

IN

Company Petition No.(IB)77/ALD/2017

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

1. **JAYPEE GREENS KRESCENT HOME BUYERS WELFARE ASSOCIATION**
H.NO.44B, LAWRENCE ROAD
PKT. C-6, KESHAV PURAM,
NEW DELHI – 110 0035

2. **JAYPEE KASA ISLES WELFARE ASSOCIATION**
FLAT NO.164, PLOT NO.56,
AMRAPALI CGHS, INDRA PRASTHA EXT.
NEW DELHI – 110 035

3. **JAYPEE KENGSINGTON BOULEVARD APARTMENTS WELFARE ASSOCIATION**
93B, POCKET – 6, MAYUR VIHAR, PH – 3,
NEW DELHI – 110 096

4. **GARDEN ISLES WELFARE ASSOCIATION**
A-61, SECTOR 330, NOIDA
GAUTAM BUDH NAGAR, UTTAR PRADESH – 201 301

5. **JAYPEE KLASSIC APARTMENT WELFARE ASSOCIATION**
5/22, BARSATI SARVPRIYA VIHAR
NEW DELHI – 110 017

6. **JAYPEE KOSMOS APARTMENTS WELFARE ASSOCIATION**
A – 337/338, DURGA VIHAR,
NEW DELHI – 110 062

7. **JAYPEE KUBE BUYERS WELFARE ASSOCIATION**
L-65, SF, SRI NIWAS PURI,
NEW DELHI – 110 065

8. **WISH TOWN PROPERTY OWNERS WELFARE ASSOCIATION**
A-7, TF, GANGOTRI VIKASPURI,
NEW DELHI – 110 018

9. **KRH BUYERS ASSOCIATION**
ABL WORKSPACE,
G-56, GREEN PARK MAIN,
NEW DELHI – 110 016 ....**APPLICANTS**

VERSUS

JAYPEE INFRATECH LIMITED
THROUGH RESOLUTION PROFESSIONAL
MR. ANUJ JAIN,
M/S BSSR & CO.
CHARTERED ACCOUNTANTS,
BUILDING NO.10, 8TH FLOOR,
TOWER B, DLF CYBER CITY,
PHASE – II, GURUGRAM – 122 002,
HARYANA ....**RESPONDENTS**

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AND

IN

CA No.266/2018

IN

Company Petition No.(IB)77/ALD/2017

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

1. **IDBI BANK LIMITED,**
   IDBI TOWERS,
   7TH FLOOR, WTC COMPLEX
   CUFFE PARADE, MUMBAI – 400 005
2. **INDIA INFRASTRUCTURE FINANCE COMPANY LIMITED**
   8TH FLOOR, HINDUSTAN TIMES BUILDING
   KASTURBA GANDHI MARG
   NEW DELHI – 110 001
3. **STATE BANK OF INDIA**
   STRESSED ASSETS MANAGEMENT BRANCH-II
   ARYA SAMAJ ROAD
   NEW DELHI – 110 005
4. **BANK OF MAHARASHTRA**
   B-29 CONNAUGHT PLACE
   NEW DELIH – 110 001
5. **ICICI BANKLIMITED**
   ICICI BANK TOWERS
   BANDRA KURLA COMPLEX
   MUMBAI – 400 051
6. **UNION BANK OF INDIA**
   IFB 1ST FLOOR
   UNION BANK BHAWAN
   239, VIDHAN BHAWAN MARG
   NARIMAN POINT
   MUMBAI – 400 021
7. **AXIS BANK**
   AXIS HOUSE
   SECTOR – 128, WISH TOWN
   NOIDA – 201304
8. **IFCI LIMITED**
   IFCI TOWER
   61, NEHRU PLACE
   NEW DELHI – 110 019

...........APPLICANTS

VERSUS

JAYPEE INFRATECH LIMITED
THROUGH INTERIM RESOLUTION PROFESSIONAL
MR. ANUJ JAIN,
SECTOR 128, GAUTAM BUDH NAGAR,
NOIDA – 201 304

...............RESPONDENTS

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IN THE MATTER OF

IDBI BANK LTD.

...........FINANCIAL CREDITOR

VERSUS

JAYPEE INFRATECH LTD.

.................CORPORATE DEBTOR

COMMON ORDER DELIVERED ON 13.12.2018

CORAM : Hon. Mr.Bikki Raveendra Babu, Member (Judicial)
: Hon. Ms. Saroj Rajware, Member (Technical)

For the IDBI Bank & Ors. Banks/Applicants
: Sh. Bishwajit Dubey, Adv. Along with Ms. Ruchi Chaudhary, Sh. Aditya Marwah & Sh. Rahul Agarwal, Advocates.

And Nine Home Buyers Association/Applicants
: Sh. Anand Grover, Sr. Adv. Along with Sh. Amit Mishra, Sh. Shivam Pandey, Sh. Samyak Gangwal & Sh. Yash Tandon, Advocates.

For the IRP/Respondents : Sh. Sanjay Bhatt along with Ms. Janhvi Bhasin, Advocates.

PER SE : Hon. Mr. Bikki Raveendra Babu, Member (Judicial)
: Hon. Ms. Saroj Rajware, Member (Technical)

COMMON ORDER

1. The question of law that has been raised in both applications, one by Nine Home Buyers Associations and other by eight Financial Creditors, all of them being the members of Committee of Creditors (COC) is whether the various threshold voting share fixed for the decision of the COC under various sections of the I & B Code needs to be followed literally or whether they are only directory, and if so, what procedure has to be followed in determining the voting percentage among the COC to pass a particular resolution.

2. The facts in brief that are germane for deciding the controversies raised in these two applications, are as follows:-

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a) IDBI filed CP No.(IB)77/ALD/2017 U/s 7 of the IBC against the Jaypee Infratech Ltd. (JIL/Corporate Debtor). This Adjudicating Authority vide its order dated 09.08.2017 commenced Corporate Insolvency Resolution Process (CIRP) in respect of JIL.

b) Subsequently, a Writ Petition (Civil) No.744 of 2017 in the case of *Chitra Sharma & Ors. v. Union of India and Ors.*was filed before the Hon'ble Supreme Court of India under Article 32 of the Constitution of India by home buyers, who had invested their money in the project of JIL. Some other writ petitions were also filed by some other home buyers.

c) The Hon'ble Supreme Court of India vide its judgment dated 09.08.2018, disposed of all the writ petitions, wherein the Hon'ble Supreme Court directed *interalia* recommencement of CIRP of the JIL and the COC shall be constituted in accordance with the provisions of the Insolvency & Bankruptcy (Amendment)Ordinance, 2018 which subsequently became a Second Amended Act.

d) Consequent to the Hon'ble Supreme Court's judgment the Interim Resolution Professional (IRP) identified Home Buyers as a class of creditors and identified three IRPs, who could act as an Authorized Representative of the Home Buyers in the COC in consonance with Section 21(6A)(b) of the IBC, Regulation 6(2)(bb) and Regulation 4A of the Insolvency & Bankruptcy Board of India (Insolvency Process for Corporate Persons) Regulations, 2016.

e) Mr. Kuldeep Verma, Insolvency Professional was appointed as Authorized Representative for the home buyers as he secured the highest votes. However, only 9,500 home buyers out of 24,000 home buyers voted in the appointment process of Mr. Kuldeep Verma i.e. the Authorized

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Representative. The appointment of Mr. Kuldeep Verma as Authorized Representative was confirmed by this Tribunal vide its order dated 05.09.2018.

f) It is stated by the IRP that till date, two COC meetings have been convened. The first COC meeting was on 12.09.2018 and the second meeting was on 17.10.2018.

3. **(a)** In the first meeting, six voting items were placed by the IRP before the COC, out of which four voting items have been held to be rejected by the COC on account of not having met the minimum voting threshold under the IBC, whereas two voting items were deferred. The table hereunder is illustrative of the result of the First COC meeting :-

Voting Item No.	Voting Item	Voting percentage required	Voting percentage achieved	Decision
1.	Voting on appointment of Mr. Anuj Jain, IRP as RP and ratification of professional fees and IRP insurance.	66%	5.58%	Rejected
2.	Voting on reimbursement/ Ratification of appointment of advisors/consultants and expenses incurred on or by IRP.	51%	45.24%	Rejected
3.	Voting on delegation of Authority by IRP/RP- Section 28 Item	66%	44.66%	Rejected
4.	Voting on approval of related party transactions – Section 28 Item	66%	45.79%	Rejected
5.	Voting on acceptance of resignation of 5 Independent Directors – Section 28 Item	-	-	Deferred
6.	Shortening of notice period from 5 days to 3 days.	-	-	Deferred

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(b) In the second meeting, total six voting items were tabled before the COC. In the second meeting, barring one all other voting items were held to be rejected by the COC on account of not having met the required voting threshold under the IBC. The table hereunder is illustrative of the result of the Second COC meeting :-

Voting Item No.	**Voting Item**	**Voting percentage required**	**Voting percentage achieved**	**Decision**
1.	Appointment of Mr. Vijaykumar V. Iyer as RP.	66%	57.2%	Rejected
2.	Appointment of Deloitte Touche Tohmatsu India LLP ("DTTILLP") to assist the RP.	66%	57.3%	Rejected
3.	Approval of fee of RP	66%	54.9%	Rejected
4.	Approval of related party transactions– Section 28 Item	66%	37.8%	Rejected
5.	Acceptance of resignation of 7 Independent Directors – Section 28 Item	66%	28.6%	Rejected
6.	Approval of Form G (Invitation for expression of interest)	51%	53.3%	Passed

4. By virtue of I & B Code Second Amendment Act, 2018 and the judgment of Hon'ble Supreme Court of India in the matter of *Chitra Sharma and ors. v. Union of India & ors.*, the home buyers are considered as Financial Creditors and included in the COC. As per the Regulation 25 of the CIRP Regulations, 2016, members of COC may vote on a subject during the meeting itself or by way of electronic means within a period of 24 hours of circulation of the minutes of the meeting by the RP.

5. Regulation 25(6) provides that the Authorized Representative shall circulate minutes of the meeting received under Regulation 25(5) to the creditors in class and announce the voting window at least 24 hours before the window opens for voting instructions and keep the voting window open for at least 12 hours.

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6. Regulation 26(1A) of the CIRP Regulations, 2016 provides that the Authorized Representative shall exercise the votes either by electronic means or through electronic voting system as per the voting instructions received by him from the creditors in the class.

7. Section 5(28) of the I & B Code provides that "voting share" means the share of voting rights of a single Financial Creditor in the COC which is based on the proportion of the financial debt owed to such Financial Creditor in relation to the financial debt owed by the Corporate Debtor.

8. Section 21(8) of the I & B Code provides that all the decisions of the COC shall be taken by a vote of not less than 51% of the voting share of the Financial Creditor subject to other provisions of I & B Code such as Section 12A, 12(2), 22(2), 27(2), 28(3), 30(4) and 33(2) of the I & B Code, wherein specific threshold has been mentioned. The following table gives the percent of voting share of Financial Creditors in the COC in various provisions of I&B Code after amendment which came into force on 06.06.2018, are as hereunder :-

S.NO.	SUBJECT	PERCENTAGE OF VOTE OF COC AFTER AMENDMENT
1.	Withdrawal of applications admitted U/s 7, 9 or 10 (Section 12A)	Section 12A Withdrawal of ongoing CIRP applications with **90% approval of COC.**
2.	Section 12(2) Application for extension of CIRP Period 90 days beyond 180 days	**66% voting of COC.**
3.	Section 22(2) Appointment of IRP as RP	**66% voting of COC.**
4.	Section 27(2) Replacement of RP	**66% voting of COC.**
5.	Section 28(3) Approval of committee of creditors for certain action	**66% voting of COC.**
6.	Section 30(4) Approval of Resolution Plan by COC	**66% voting of COC.**
7.	Section 33(2) Decision of the COC to liquidate the Corporate Debtor	**66% voting of COC.**
8.	Section 21(8), Voting threshold reduced to 51% for routine decisions from 75%	

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9. It is stated that the Lenders, Fixed Deposit Holders and Home Buyers have a total voting percentage of 41.8%, 0.01% and 58.1% respectively as on date. The total voting share of the home buyers as a class is 58.1%. However, only a small number of home buyers cast their votes even with regard to the appointment of the Authorized Representative. Even in the Ist COC meeting, the total voting percentage of the home buyers present is 17.18%.

10. It is stated that the voting items being tabled before the COC are not being passed since the requisite threshold is not being met. If large number of home buyers failed to exercise their vote, it is not possible to have a requisite vote share required under the various provisions of I & B Code.

11. It is stated by the IRP that the CIRP came to standstill, because of the failure to meet the minimum voting threshold. Even the resolution like the appointment of Insolvency Professional as Resolution Professional is incapable of being passed by the COC in the present circumstances. Among the lenders, 41.7% voting share was cast in both the COC meetings. In case of appointment of Mr. Vijaykumar V. Iyer as RP, 15.53% out of 17.18% of the home buyers voting share was cast in favour of his appointment. The banks and other financial institutions comprising 41.7% voting share, also cast their vote in favour of Mr. Iyer's appointment. However, the resolution could not be passed as it did not meet the required voting threshold under Section 22(2) of the I & B Code i.e. 66% of the voting of the COC. Even, in respect of other voting items, except item no.6, tabled during the Second meeting of the COC met with the same fate even though those voting items had the overwhelming support of the COC members, who voted on the resolution.

12. It is stated that several voting items cannot be passed on account of Home Buyers, comprising more than 40% of the voting share, failing to exercise their

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votes, even though an overwhelming majority of the members of the COC present and voting have exercised their voting share in favour of the agenda items.

13. It is also stated that in these circumstances the CIRP cannot proceeded as RP cannot be appointed and expenses incurred for the CIRP cannot be ratified and various actions for management of the Corporate Debtor, such as those set out under Section 28 of the IBC cannot be approved by the COC. Further, IRP/RP cannot hire professionals, pay support staff and incur expenses to discharge his duties under the Code, including preservation and protection of the assets of the Corporate Debtor. In order to progress in the resolution process, many actions need to be performed by the RP. It is stated that the object of the Code is, ***for maximisation of value of assets of the Corporate Debtor, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders.......***

14. The Financial Creditors in their application, referred to the judgment of Hon'ble Supreme Court in *Arcelormittal India Private v. Satish Kumar Gupta* 2018 SCC Online SC 1733, which reads as under :-

> *"88. **We cannot forget that the consequence of the chopper falling is corporate death. The only reasonable construction of the Code is the balance to be maintained between timely completion of the corporate insolvency resolution process, and the corporate debtor otherwise being put into liquidation. We must not forget that the corporate debtor consists of several employees and workmen whose daily bread is dependent on the outcome of the corporate insolvency resolution process. If there is a resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible.**.........."*

15. The Financial Creditor also referred to the order of Principal Bench of the Hon'ble NCLT, New Delhi dated 29.09.2018 in CA No.811(PB)/2018 in *Nikhil*

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Mehta & Sons (HUF) & Ors. v. M/s AMR Infrastructure Limited, bearing (IB)-02(PB)/2017, wherein it is held:

> *"36. We have already opined that the court should **lean against an interpretation which makes a statue unconstitutional and unworkable and adopt such an interpretation which makes it constitutional and workable and help in achieving its object. The object of the Code is to promote resolution and to discourage liquidation.** It is seen that an interpretation which sustains the constitutional validity must be preferred over the one which result in declaring it as unconstitutional. It is not impermissible to add certain words which were not contained in the statute to achieve the object of enactment. In that regard reliance may be placed on the observations made by the Supreme Court in the case of Directorate of Enforcement v. Deepak Mahajan (1994) 3 SSC 440 and Ajaib Singh v. Sirhind Coop. Marketing – cum – Processing Service Society Ltd. and Anr. (1999) 3 SCC 82. Therefore it would be necessary to read section 22 in a manner **that it achieves its avowed purpose for promoting resolution over liquidation of every corporate debtors by providing the 'voting share' threshold of the committee of creditors. Therefore the efforts is required to be made to interpret these provisions including section 22(2) in a manner as would advance the object of the resolution rather than the one which would defeat it.***
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> *(Emphasis supplied)*

16. It is stated by the Financial Creditors that the percentage of votes cast in favour or against a particular voting item ought to be calculated by taking into account only those votes that are actually cast and accordingly abstained votes should be disregarded.

17. It is stated by the Nine Home Buyers Associations, the only logical way to calculate the percentage of the votes cast in favour or against is to take into account only those votes that are actually cast and abstained votes be not taken into account for this purpose.

18. It is stated by the home buyers that in response to the representation made before the Authorized Representative, the IRP stated in the meeting the abstention in voting process would be counted as negative vote.

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19. It is pointed out that the Hon'ble High Court of Gujarat in the case of *In re: Arvind Mills Limited, 2002 111 CompaCas 118* has expressly held *that abstention from voting cannot be counted as negative voting.* The relevant extract of the aforementioned judgment is reproduced herein below:

> *"that a bare attempt to vote by depositing blank ballot containing any writing is not effective and cannot be included in the total count. Only those ballots that express voters preference can be counted. The requirement contemplates only two preferences: one affirmative and the other negative. To adopt any other rule would be to say that three ballots were contemplated- one affirmative, one negative, and another neither affirmative nor negative but forming a new class into which all ballots void for any reason must go."*

20. It is also pointed out that the Hon'ble High Court of Karnataka in the case of *Kirloskar Electric Co. Ltd., 2003 43 SCL 186 Kar* has upheld the same principle of law. The relevant extract of the aforementioned judgment is as follows:

> *"that a member present and voting may remain neutral, indifferent, unbiased, or impartial- not engaged on either side. One is not supposed to write anything except putting 'yes' or 'no' either in favour of or against the proposition. A vote cast without indicating the mind of the voter either for or against the resolution is no voting at all. So, in construing whether a resolution is passed by three-fourths majority present and voting, what is to be considered in calculating the majority is not the number of persons present and voting, but the number of valid votes includes only votes indicating the mind of the voter for or against the resolution."*

21. It is contended by the Home Buyers Association, the approach adopted by the IRP will militate against the very object and purpose of the Code. It is stated that in a situation like the present one wherein thousands of common people have invested their life's savings to procure a home for themselves, the Corporate Debtor's liquidation would be all the more undesirable. The Hon'ble Supreme Court in its decision dated 09.08.2018 while reviving the CIRP against the Corporate Debtor in *Chitra Sharma v. Union of India,* observed that:

> *"During the course of hearing, there has been an unanimity of opinion that the liquidation of JIL will not subserve the interests of the home buyers."*

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22. The contention of the learned counsel appearing for the home buyers is that the home buyers are to be considered as a separate class of creditors as they have same goal and similar agenda, thereby forming a homogenous group amongst themselves, and the rule of majority in cases of voting by creditors in class should be made applicable for the purpose of CIRP of the Corporate Debtor.

23. It is stated that the workable solution finally adopted in Nikhil Mehta's case was to consider votes of home buyers who voted to be the votes for the entire class of creditors.

24. It is also contended by the learned counsel appearing for the home buyers that the courts must strongly lean against any construction which tends to reduce statute to futility. On this aspect, Ld. Counsel appearing for the home buyers relied upon the decision in *Tinsukhia Electric Supply Co. Ltd. v. State of Assam (1989) 3 SCC,* where it is stated thus:

> *"The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of a statute must be so construed as to make it effective and operative, on the principle "ut res magis valeat quam pereat". It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it."*

25. Ld. Counsel for the home buyers also relied upon another decision of Hon'ble Supreme Court in the case, *Sunil Batra v. Delhi Admn., (1978) 4 SCC 494,* wherein it is held:

> *"It is well settled that if certain provisions of law construed in one way will be consistent with the Constitution, and if another interpretation would render them unconstitutional, the Court would lean in favour of the former construction."*

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26. The IRP stated that inspite of taking many steps and actions to encourage the voting by allottees of homes did not increase the voting percentage of the home buyers. The IRP stated that the Adjudicating Authority may interpret the I & B Code and CIRP Regulations in the light of the submission made in the pleadings.

27. It is the contention of the lenders (Bankers) that the suggestion given by the home buyers that they should be treated as a separate class and any decision taken by any number of home buyers within that class should be considered to be the decision of the whole class ought not to be accepted for the following reasons:

a. *This suggestion on behalf of the home buyers is patently arbitrary, discriminatory, unfair and detriment to other members of COC;*

b. *Presently the home buyers have a total voting percentage of 58.1%, and assuming that if we were accept the submission of homebuyers, it would mean that even if one home buyer votes in favour and other 23,999 home buyers abstain, it would be considered as that the entire 58.1% of COC which consists of home buyers is voting in favour of the resolution. Attributing such a minority decision to be considered as 58.1% of COC decision and thereby bulldozing the same on the other creditors who have actually voted post analysing the pros and cons of approving/ rejecting a particular agenda item/ resolution is patently illogical and arbitrary. Furthermore, only 9,500 home buyers out of 24,000 home buyers have participated in the voting so far, which only comprise 39.1% of the total number of home buyers, and if the suggestion by the home buyers is allowed, their majority decision shall be deciding the will of the entire class of home buyers. Moreover, any decision taken by the creditors on the voting items of the corporate debtor must be a conscious one and not basis mere assumptions on the decisions that might have been taken by the creditors who have abstained from voting;*

c. *The suggestions of the home buyers would be in violation of Section 25A(1) of IBC. Section 25A(1) of IBC provides that the authorized representative shall have the right to participate and vote in meetings of the COC, on behalf of the financial creditor he represents, in accordance with the prior voting instructions of such creditors obtained through physical or electronic means. Moreover, the proviso to Section 25A provides that if any financial creditor does not give prior instructions through physical or electronic means, the authorized representative shall abstain from voting on behalf of such creditor. Therefore,*

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in the present case the authorized representative cannot participate and vote on behalf of those home buyers who do not give the authorized representative their instructions; and

d. *The reliance placed upon the judgment passed in Nikhil Mehta & Sons (HUF) & Ors. v. M/s AMR Infrastructure Limited, bearing (IB)-02(PB)/2017 (**"Nikhil Mehta Case"**) by the home buyers is misplaced. The Hon'ble Tribunal has itself noted in that case that the ratio in that case is applicable only when he entire COC is comprised of same class of creditors i.e. Real Estate (Commercial & Residential); which is not the case in the present facts and circumstanced. The Nikhil Mehta Case read with Regulation 8A of CIRP Regulations, 2016 is only applicable where home buyers are deciding something only for themselves, however in the present case there are multiple classes of creditors which are involved. Furthermore, in the Nikhil Mehta Case at Para 37 it has been held that:*

> *"Therefore, we would say that in case of deadlock the preference can be given to the decisions taken by the high-test percentage in the Committee of Creditors and section 22(2) must be regarded as directory in nature **in case COC is comprised 100% of class of creditors Real Estate (Commercial & Residential).** Even otherwise we have already opined that the class of creditor like Real Estate (Commercial and Residential) are distinct that the other class of creditors which includes well organized financial institutions like Bank, Financial Companies and non banking financial companies etc."*

(Emphasis Supplied)

28. The present total voting percentage of home buyers is 51.8%. If the suggestion of the home buyers is accepted, it would mean, even if one home buyer votes in favour and another 23,999 home buyers abstained, it would be considered as that the entire 58.1% of COC which consist of home buyers is voting in favour of the resolution. It is contended that attributing such a minority decision to be considered as 58.1% of COC decision and thereby bulldozing the same on the other creditors, who have actually voted post analyzing the pros and cons of approving/ rejecting a particular agenda item/ resolution is patently illogical and arbitrary.

29. It is further contended that any decision taken by the creditors on the voting items of the corporate debtor must be a conscious one and not on basis of mere assumptions. It is also contended that the proposal made by the home buyers is

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contra to Section 25A(1) of the Code. It is contended that the decision in the case of *Nikhil Mehta & Sons (HUF) & Ors. v. M/s AMR Infrastructure Limited* is only applicable when the entire COC is comprised of same class of creditors i.e. Real Estate (Commercial & Residential). It is stated that in the present case there are multiple classes of creditors and therefore the *Nikhil Mehta Case* is not applicable.

30. The various provisions in the I & B Code prescribes particular percent of voting share of Financial Creditors for passing resolutions in COC. The concept of present and voting is neither expressly nor impliedly stated in any of the provisions of the I & B Code that contemplated a particular percent of voting share of Financial Creditors is required for passing the resolutions. Therefore, it is necessary to examine, whether the concept of present and voting can be introduced by this Authority by way of purposive of interpretation.

31. On this aspect, Hon'ble National Company Law Tribunal, Principal Bench, New Delhi in *Nikhil Mehta & Sons (HUF) & Ors. v. M/s AMR Infrastructure Limited, bearing CA No.811(PB)/2018 in (IB)-02(PB)/2017* decided on 29.09.2018, in para 35 of the said judgment, it is held as follows:-

> *"35. Another aspect which emerges is that the principle of voting share threshold on the basis of present and voting has been discarded. The recommendation of the committee has not been promulgated by Insolvency Bankruptcy Board (Amendment) Ordinance which is now known as Insolvency Bankruptcy Code (Second Amendment) Act, 2018 enacted with effect from 6-6-2018. In the light of the fact that the Government and Parliament have taken a conscious decisions by discarding the present and voting requirement in the Code, it would not be proper for judicial forum to adopt it by judicial interpretation. Therefore that criteria cannot be adopted for construction of section 22(2) of the Code. Therefore a workable solution by other interpretation process has to be adopted."*

32. In the above said decision of Hon'ble NCLT, Principal Bench held that principle of voting share threshold on the basis of present and voting has been discarded

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and it would not be proper for Judicial forum to adopt it by Judicial interpretation.

33. The Hon'ble NCLT, Principal Bench further held in para 38 of the said decision, which is as follows:

> ***"38. When the principles laid down in the aforesaid paragraphs as approved by Hon'ble Supreme Court are applied to the provisions of section 22(2) and other cognate provisions we find that threshold voting share for decision of the committee of creditor by sixty six percent would not be mandatory in the cases of class of creditors where the prospective buyers of Real Estate (Commercial & Residential) alone constitute the COC. It has been seen that in such cases the total polled voting share is very small which in the present case is 52.78 percent. Therefore we would say that in case of deadlock the preference cane be given to the decisions taken by the highest percentage in the Committee of Creditors and section 22(2) must be regarded as directory in nature in case COC is comprised 100% of class of creditors Real Estate (Commercial & Residential). Even otherwise we have already opined that the class of creditor like Real Estate (Commercial & Residential) are distinct than the other class of creditors which includes well organised financial institutions like Bank, Financial Companies and non banking financial companies etc. Their representation in the committee of creditor is far smaller in number. Each individual Member has high 'voting shares'. On the contrary the class of financial creditor of Real Estate (Commercial & Residential) are scattered in thousands all over the country and is wholly unorganised. In choosing the authorized representative each one of them is not to participate for various reasons. Probably it is for the aforesaid reasons that in Regulation 16A of Insolvency and Bankruptcy Board of India (Insolvency Resolution process for corporate person) Regulation 2016 a provision has been made for selecting an insolvency profession which is choice of highest number of financial creditor in the class to act as authorised representative of the creditor of the respective class. If such a distinction is not implied then there is inherent danger of section 12(2), 12A, 22(2), 27(2), 28(3), 30(4), 33(2) & 21(8) becoming unworkable and unconstitutional. It may thus be declared ultra vires. As the guidance available in various judgment of Hon'ble Supreme Court we may lean towards a construction which sustains the statute and we must also adopt an interpretation which makes the statute workable by advancing its object. Therefore we are of the view that in the case of Real Estate (Commercial & Residential) comprising 100% voting share in COC the aforesaid provision must be read to mean that a resolution would be deemed to be passed if it is voted by highest number of financial creditors in the class of Real Estate (Commercial & Residential). It would***

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make the court workable and would also advance the object of this progressive legislation rather than defeating it."

34. On this aspect, there is a decision of Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No.45 of 2018 with Company Appeal (AT) (Insolvency) No.23 of 2018 decided on 06.09.2018. In that decision, the Hon'ble NCLAT by referring to section 21 of the I & B Code as it stood prior to amendment, held as follows:-

> ***"Requirement of minimum seventy-five percent of the voting shares of the 'Financial Creditors' has been reduced subsequent to the passing of impugned orders dated 23rd November, 2017 and 27th November, 2017. From plan reading of Section 21(8) (as it then was) it is clear that all the decisions of the 'Committee of Creditors' is required to be taken by a vote of not less than seventy-five percent of the voting shares of the 'Financial Creditors', including the approval of the 'Resolution Plan'. Sub-section (8) of Section 21 being mandatory in nature, any plan which has not been approved by the 'Committee of Creditors' with voting shares of seventy-five percent, cannot be approved by the Adjudicating Authority as it will be against the provisions of Section 30(2)(e) of the 'I & B Code' which stipulates that the 'Resolution Plan' does not contravene any of the provisions of the law for the time being in force. Less than seventy-five percent of the voting shares of the 'Committee of Creditors' in the matter of approval of the 'Resolution Plan' being against the provisions of clause (e) of sub-section (2) of Section 30, it cannot be approved."***

35. Therefore, in the above said decision it is held that Section 21(8) of the Code is mandatory.

36. Therefore, in view of the judgment of Hon'ble Principal Bench in *Nikhil Mehta Case* the requirement of 66% of voting is only directory, in respect of Section 22(2) of the Code, whereas in view of the decision of Hon'ble NCLAT the requirement of 75% of voting prior to amendment and post amendment 66% of voting percentage is mandatory in respect of Section 21(8) of the I & B Code.

37. It is contended by the learned counsel appearing for the Lenders and as well as the home buyers that purposive interpretation must be taken into consideration to advance the objects of the I & B Code.

Sd

38. One of the objects of the I & B Code is to promote resolution than liquidation. Another object in including the home buyers as Financial Creditors by way of second Amendment Act, 2018 is to protect the rights and interest of the home buyers as a class by lowering the voting threshold of COC. Therefore, any interpretation of any of the provisions of the I & B Code that provide a threshold limit of percent of voting share has to advance the said object, without taking into consideration whether the interest of any particular stakeholders is going to be affected or not. Therefore, the aforementioned two objects must be taken as a whole and then interpretation has to be made in respect of the threshold limits of percent of voting share, prescribed under Sections 12(2), 12A, 22(2), 27(2), 28(3), 30(4), 33(2) & 21(8) of the Code.

39. On this aspect, learned counsel appearing for the home buyers cited following decisions:-

a) ***In Sunil Batra Vs. Delhi Admn's (1978 4 S.C.C 494 the Hon'ble Supreme Court has stated that:***

> ***"It is well settled that if certain provisions of law construed in one way will be consistent with the Constitution, and if another interpretation would render them unconstitutional, the Court would lean in favour of the former construction."***

b) ***Similarly, in the case of Tinsukhia Electric Supply Co. Ltd v. State of Assam, (1989)3 SCC, it was stated thus:***

> ***"The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of a statute must be so construed as to make it effective and operative, on the principle "ut res magis valeat quam pereat". It is, no doubt true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statue could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it."***

c) ***In the case of Shailesh Dhairyawan v. Mohan Balkrishna Lulla (2016) 3 Supreme Court Cases 619, which is as follows:-***

> ***"31. The aforesaid two reasons given by me, in addition to the reasons already indicated in the judgment of my learned***

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Brother, would clearly demonstrate that the provisions of Section 15(2) of the Act require purposive interpretation so that the aforesaid objective/purpose of such a provision is achieved thereby. The principle of "purposive interpretation" of "purposive construction" is based on the understanding that the court is supposed to attach that meaning to the provisions which serve the "purpose" behind such a provision. The basic approach is to ascertain what is it designed to accomplish? To put it otherwise, by interpretative process the court is supposed to realise the goal that the legal text is designed to realise. As Aharon Barak puts it:"

"33. We may also emphasise that the statutory interpretation of a provision is never static but is always dynamic. Though the literal rule of interpretation, till some time ago, was treated as the "golden rule", it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. It is brings about an end which is at variance with the purpose of stature, that cannot be countenanced. Not only legal process thinkers such as Hart and Sacks rejected intentionalism as a grand strategy for statutory interpretation, and in its place they offered purposivism, this principle is now widely applied by the courts not only in this country but in many other legal systems as well."

40. Keeping the principles laid down in the aforesaid decisions I proceed to find out the solution to the deal lock created in the process of voting in COC on various resolutions.

41. In the case on hand, the home buyers as a class constituted 58.1% of voting share. The IRP so far conducted two CoC meetings, the first meeting on 07.09.2018 and the second meeting on 17.10.2018. The resolutions passed/rejected in the said meetings have been displayed in para 3(a) and 3(b) of this order. A perusal of those tables goes to show that the majority of the resolution have not been passed because the percentage of total votes poled are not even meeting the required threshold percent of voting share for that particular resolution.

42. The Hon'ble NCLT, Principal Bench in M/s AMR Infrastructure Limited held that, in case where the COC consist of only one class of creditors namely 'Real

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Estate', then the majority vote in favour of Resolution has to be taken into consideration irrespective of threshold of 66% provided in Section 22(2) of the Code. In the instant case there are multiple class of Financial Creditors in COC. But more than 50% of the total voting share constitute a class of creditors namely 'Home Buyers/ Allottees of Flats & Plots of Corporate Debtor. In the process of voting, each home buyer has got a vote, but the value of vote is based on value of verified claim due to him. Due to non-participation of majority of Home Buyers dead lock has been created in CIRP that may invariably lead to liquidation of Corporate Debtor. To avoid liquidation and to see that CIRP to proceed, following the rationale adopted in the decision in M/s AMR Infrastructure Ltd. a procedure need to be evaluated to further the objectives of I&B Code balancing the interests of various stakeholders in the Code.

43. In the case of Lenders namely Banks and other Financial Institutions, they are well organized people and their representation would be there in all the COC meetings.

44. The proposal of the home buyers that any decision taken by any number of the home buyers within that class, should be considered to be the decision of the whole class is unjust for the simple reason that the voice of the home buyers that voted cannot be treated as the voice of home buyers that abstained from voting. The votes of the abstained persons can never be treated as in favour or against a particular resolution more so in favour of the votes poled in a particular class. If votes poled in a particular class is taken as it represent the view of that class of creditors that abstained also is nothing but imposing the view of one creditor om the another and it would also disturb the procedure laid down in Section 21(6B) of I & B Code R/w Regulation 16A(7) of CIRP Regulations. "Dissenting financial creditor" is defined ~~find~~ in Regulation 2(f) of Insolvency Resolution Regulations, 2016, which reads as under:

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"dissenting financial creditor" means a financial creditor who voted against the resolution plan or abstained from voting for the resolution plan, approved by the committee. No doubt the above said definition refers only to resolution plan but the same can be extended in respect of other resolutions also. In case proposal of the home buyers is accepted, there is a possibility that the voting share of Home Buyers would only prevail upon the voting share of the other creditors who are members of COC and it may not balance the interests of various stake holders and it may result only to the advantage of one class of creditors namely Home Buyers and to the disadvantage of other class of creditors.

45. Coming to the home buyers' case, they cannot represent before the COC on each and every case that is why they were given an opportunity of being represented through an Authorized Representative under Regulation 16A of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations.

46. Further, the class of Financial Creditor namely 'home buyers' are scattered in thousands all over India and abroad and are largely unorganized. This situation of non-passing of resolutions is only on account of less number of home buyers exercising their vote in spite of following the electronic voting system provided under Regulation 25(5) of the Regulations and inspite of keeping it open for more than 24 hours after the polling. The various threshold limits of voting percentage for passing various resolutions as laid down in various sections of the Code is to be followed even in a case where COC consist of Real Estate class of creditors 50% or more, and when the voting of Home Buyers is less in number and when there is dead lock no resolution would be passed and ultimately the CIRP would end invariably in liquidation, which is not at all the main object of I & B Code. The situation that prevailed in the case of Corporate Debtor in this

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case is that no resolution which would help to revive the company would be passed because large percentage of Home Buyers are not participating in voting.

47. Therefore, in order to advance the object of I & B Code and the Amendment Act 2 of 2018 and with a view to safeguard the interests of all classes of creditors and all stakeholders, I am of the considered view, "***That in case where the COC comprise Real Estate class of creditors up to 50 percent of voting share or more and when there is a dead lock in passing the resolutions, the highest number of voting share in favour of resolution has to be taken into consideration without looking into the threshold limit provided under the various provisions of the I&B Code, except for the purpose of withdrawal of the petition, the approval of the resolution plan, and liquidation i.e. under Section 12A, 30(4) and 33(2) respectively, so that CIRP would continue for the time being and in the meanwhile Central Government may ~~to~~ bring amendment to the relevant provisions of I & B Code and CIRP regulations prescribing the procedure to be followed in determining the voting share for passing various resolutions where COC comprise of Real Estate class of creditors 50% or more and when there is dead lock in passing the resolutions, or else the CIRP which remained static continue to be the same not only in this case, but in the cases of similar nature where Real Estate/Home Buyers as a class that comprise majority percent voting share abstain from voting.***"

Dated: 13.12.2018

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(BIKKI RAVEENDRA BABU)
MEMBER (JUDICIAL)

OPINION OF LD. MEMBER (TECHNICAL)

48. I agree that it is impossible to meet the requirement of 66% affirmative votes for any resolutions where Home Buyers are in majority, due to their high level of non-participation in COC and there is a need to give purposive interpretation to provisions of IBC which are resulting in a dead lock. But purposive interpretation has to balance interests of all stake holders, especially the interests of Home Buyers, as envisaged in preamble to the Amendment Ordinance, 2018 dated 6.6.2018.

The view of Ld. Member (Judicial), that the majority decisions should prevail in respect of resolutions other than the resolutions U/s 12A, 30(4) and 33(2), without looking into the threshold limit provided under IBC does not advance the interests of Home Buyers. In the interest of justice & fair play, Home Buyers have to be given their due say in COC. The provisions of the Code lay down threshold limits at 51% for routine resolutions, 66% for important & critical resolutions and 90% for withdrawal of application. Bringing down threshold to mere majority from 66% of the total votes prescribed under the code will dilute the participation of Home Buyers in the decision making process on important & critical resolutions.

49. The voting percentage of Home Buyers, Banks and Fixed Deposit Holders is 58.1%, 41.8% and 0.1% respectively. Although Home Buyers constitute majority voting share in COC yet their share is not reflecting in the voting pattern and is significantly depressed due to non-participation of large number of Home Buyers in the voting and thereby their majority voting share of 58.1% is practically reduced to a minority voting share of 17% only in COC. This defeats the object of including Home Buyers as a class in financial creditors by way of amendment and providing them place in COC. In spite of majority voting share of 58.1% in COC, an anomalous situation is created whereby say of Home

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Buyers gets reduced to only 17% while Banks with 41.8% voting share end up with the largest say in COC.

50. The very object of including the Home Buyers as a class of Financial Creditor is to protect their interest. In a situation where there are multiple Financial Creditors clubbing them together for majority vote will not be conducive to provide a level playing field. Unlike other financial creditors like Banks & Financial Institutions, who are organized institutions and are invariably represented in COC due to their smaller number and high voting share, Home Buyers are not organized and are scattered and suffer from high level of absenteeism. The reasons for non-representation of the Home Buyers on COC may be many. Apart from being scattered they may not be technically literate to vote on-line or even have access to internet and may also not be aware of the consequences of non- attendance and non-voting in the COC meetings. The interests of Home Buyers would be protected only if their total voting share is taken into consideration separately. Home Buyers have common cause, common interests & common goals being a homogenous group among themselves. In order to protect the interest of Home Buyers, I am of the view that they are to be treated as a separate class in their voting rights. Thus, if the Home Buyers are voting in favour or against the resolution, it should be taken that the voting pattern is representative of the class as a whole and the class is taken to have voted in the same fashion proportionately. By giving proportional representation within their voting share, it would be ensured that the resolutions of COC can be approved/rejected on the basis of laid down threshold percentages and CIRP is not halted.

51. In order to protect the rights of the Home Buyers, I am of the view that the Home Buyers must be treated as a separate class with En-block voting rights. The

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decision taken by the number of Home Buyers that voted, shall be treated as the decision of the class of Home Buyers, since they represent the class and their interests are common. Once Home Buyers are given proportional representation in their class, it would also not be necessary to lower the threshold limits laid down under the Code.

52. Therefore, I am of the considered view that the votes cast by the Home Buyers in favour of the resolution or against the resolution shall be taken to represent the views of the class as a whole and their voting share shall be proportionately increased, taking the total voting share into consideration.

53. The counsel for Banks argued that if votes are assigned to Home Buyers who do not cast their votes, the same will not be correct reflection of their will. As already stated, Home Buyers is a homogenous class with a common cause, common interest and common goals and their votes will only reflect the common interests. Moreover, no detriment is caused to other lenders, as their total voting share is determined in terms of their total investment and does not impinge on voting share of other lenders. On the contrary if their voting share is reduced due to absentees, it would be unfair and detrimental to Home Buyers. Further, it is expressed that it may also lead to assigning abnormally high weightage to the class, even if only one Home Buyer votes. Although it's a hypothetical example, but it can be taken care by laying down the minimum number of Home Buyers required to vote, to be taken as a representative sample of the class as a whole. In the instant case, total Home Buyers are about 24,000 and nearly 10,000 have participated in voting. Although it constitutes 17% of voting share out of 58.1%, yet 10,000 Home Buyers out of 24,000 can be considered a representative sample. Therefore, it is proposed that the Home Buyers that voted must be at least 15% or more to be considered as representative of the class.

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54. I also recommend that alternative/fail safe methods need to be evolved to increase the participation of Home Buyers. To get over technical illiteracy on e-voting & access to internet, option of postal ballots may also be used.

55. In the case on hand, even if all Banks & 17% of Home Buyers votes in favour of Resolution Plan, it will still not sail through as it would not receive mandatory voting percentage of 66%. Therefore, required important/crucial decisions will still fail U/s 12A, 30(4) and 33(2), bringing CIRP to a halt at these crucial stages. Therefore, the lasting solution to the problem of dead lock can only be found by treating Home Buyers as a class and their voting pattern taken with reference to total voting share of the class, to reflect the will of the class.

DATED: 13.12.2018

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SAROJ RAJWARE
MEMBER (TECHNICAL)

56. The Members that constitute this Bench expressed difference of opinion on the point pertaining to procedure for determining voting share for passing resolutions in the COC that comprise multiple classes of Financial Creditors during CIRP.

57. The following is of the opinion of Member Judicial, Bikki Raveendra Babu:-

> ***"That in case where the COC comprise Real Estate class of creditors up to 50 percent of voting share or more and when there is a dead lock in passing the resolutions, the highest number of voting share in favour of resolution has to be taken into consideration without looking into the threshold limit provided under the various provisions of the I&B Code, except for the purpose of withdrawal of the petition, the approval of the resolution plan, and liquidation i.e. under Section 12A, 30(4) and 33(2) respectively, so that CIRP would continue for the time being and in the meanwhile Central Government ~~has~~ may ~~to~~ bring amendment to the relevant provisions of I&B Code and CIRP regulations prescribing the procedure to be followed in determining the voting share for passing various resolutions where COC comprise of Real Estate class of creditors 50% or more and when there is dead lock in passing the resolutions, or else the CIRP which remained static continue to be the same not only in this case, but in the cases of similar nature where Real Estate/Home Buyers as a class that comprise majority percent voting share abstain from voting."***

58. The following is of the opinion of Member Technical, Saroj Rajware :-

> ***"In order to protect the rights of the Home Buyers, I am of the view that the Home Buyers must be treated as a separate class with en block voting rights. The decision taken by the number of Home Buyers that voted, shall be treated as the decision of the class of Home Buyers, since they represent the class and their interests are common. Once Home Buyers are given proportional representation in their class, it would also not be necessary to lower the threshold limits laid down under the Code.***
>
> ***Therefore, I am of the considered view that the votes cast by the Home Buyers in favour of the resolution or against the resolution shall be taken to represent the views of the class as***

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a whole and their voting share shall be proportionately increased, taking the total voting share into consideration.

The counsel for Banks argued that if votes are assigned to Home Buyers who do not cast their votes, the same will not be correct reflection of their will. As already stated, Home Buyers is a homogenous class with a common cause, common interest and common goals and their votes will only reflect the common interests. Moreover, no detriment is caused to other lenders, as their total voting share is determined in terms of their total investment and does not impinge on voting share of other lenders. On the contrary if their voting share is reduced due to absentees, it would be unfair and detrimental to Home Buyers. Further, it is expressed that it may also lead to assigning abnormally high weightage to the class, even if only one Home Buyer votes. Although it's a hypothetical example, but it can be taken care by laying down the minimum number of Home Buyers required to vote, to be taken as a representative sample of the class as a whole. In the instant case, total Home Buyers are about 24,000 and nearly 10,000 have participated in voting. Although it constitutes 17% of voting share out of 58.1%, yet 10,000 Home Buyers out of 24,000 can be considered a representative sample. Therefore, it is proposed that the Home Buyers that voted must be at least 15% or more to be considered as representative of the class.

I also recommend that alternative/fail safe methods need to be evolved to increase the participation of Home Buyers. To get over technical illiteracy on e-voting & access to internet, option of postal ballots may also be used.

In the case on hand, even if all Banks & 17% of Home Buyers votes in favour of Resolution Plan, it will still not sail through as it would not receive mandatory voting percentage of 66%. Therefore, required important/crucial decisions will still fail U/s 12A, 30(4) and 33(2), bringing CIRP to a halt at these crucial stages. Therefore, the lasting solution to the problem of dead lock can only be found by treating Home Buyers as a class and their voting pattern taken with reference to total voting share of the class, to reflect the will of the class."

59. Hence, the case shall be referred by the President for hearing on the above said point by one or more of the other Members of the Tribunal U/s 419(5) of the Companies Act, 2013 read with rule 60 of NCLT Rules.

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60. The Registry of this Tribunal is directed to address a letter to the Registrar, NCLT, New Delhi to place this order before the Hon'ble President for referring the matter to one or more of the other Members of the Tribunal.

61. In CA No.266 of 2018, Applicants sought for exclusion of time covered by CA No.266/2018 in calculating the time limit for completion of the Insolvency Process.

62. The IRP or any other person aggrieved is given liberty to file an appropriate application at a later stage/ appropriate stage seeking an exclusion of the period covered by these applications for the purpose of calculating the time limit for completion of Insolvency Process, if such necessity arises.

63. CA No.223 of 2018 and CA No.266 of 2018 are disposed of by referring the matter to the Hon'ble President, NCLT, New Delhi in respect of point relating to the procedure for determining voting percentage for passing resolutions in the COC that comprise multiple class of Financial Creditors during CIRP.

64. CA No.223 of 2018 and CA No.266 of 2018 are disposed of accordingly.

Dated: 13.12.2018

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SAROJ RAJWARE,
MEMBER (TECHNICAL)

Sd

BIKKI RAVEENDRA BABU,
MEMBER (JUDICIAL)

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