
(2023) 10 NCLT CK 0060

In the National Company Law Tribunal

Case No : IA No. 179, 572 Of 2022, 32, 166 Of 2021 In CP (IB) No.105/Chd/Hry/2019

Greater Mohali Area Development Authority Vs Gaurav Khurana ?

Date of Decision : 19-10-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 5(8)(f), 12(3), 26, 29A, 30, 30(2), 31, 60(5), 66
Companies Act, 2013 — Section 248(1)?Punjab Regional and Town Planning and Development Act, 1995 — Section 28</National Company Law Tribunal Rules, 2016 — Rule 11
Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 — Regulation 21, 36A(8), 40

Citation : (2023) 10 NCLT CK 0060

Hon'ble Judges : Harnam Singh Thakur, Member (J);Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Aishwarya, Sanjay Bhatt, Munisha Gandhi, Salina Chalana, Himanshu Chaubey, Aalok Jagga, APS Madaan, Arora Vishwas Kumar

Final Decision : Disposed Of

Judgement

Subrata Kumar Dash, Member (Technical)

IA No. 572/2022

1. This application has been filed by the Greater Mohali Area Development Authority (hereinafter referred to as GMADA) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 with the following prayers:

- i. Refuse sanction to the Resolution Plan (annexure A-1) qua the corporate debtor, proposed by respondent No.2;
- ii. Impose exemplary costs on the respondents and the Committee of Creditors for proposing/approving such a malafide Resolution Plan in the first place, and for attempting to misuse the IBC;

2. This is an application filed by the Greater Mohali Area Development Authority

("GMADA") which is established under Section 28 of the Punjab Regional and Town Planning and Development Act, 1995. The main object and function of GMADA is to promote and secure better planning & development of any area of the State. It is stated that GMADA along with other institutions has entered into a concessions Agreement dated 15.04.2009 for the development of a Bus Terminal cum Commercial Complex at Mohali on a Design-Build-Operate-Transfer basis with the Corporate Debtor.

2.1 It is further stated that the entire value that the present Corporate Debtor holds on account of the Concession Agreement entered into with the present applicant for the construction of the Bus Terminal cum Commercial Project at Mohali. The applicant i.e. GMADA owns the entire land on which the project is to be set up and is therefore the most affected party when it comes to the resolution of the Corporate Debtor. The GMADA was in the process of terminating the concession agreement dated 15.04.2009 executed in relation to the construction of the Inter-State Bus terminal cum commercial complex at Mohali, on account of the default committed by the said Corporate Debtor in complying with the terms of the agreement.

2.2 It is further stated that the applicant did not have access to the resolution plan, though it has attended the meetings of the COC as a representative of a member of the Class of Creditors and it came to know about the proposals of the RP with a copy of the applications filed before the Hon'ble High Court in W.P. (CO 7331/2021) titled as Sushmita Dev & Ors Vs. Union of India and Ors. as the applicant where in GMADA has been impleaded as respondent No. 2. in the said application.

3. In the course of the present proceedings, the learned senior counsel has vehemently argued against the approval of the Resolution Plan of the corporate debtor and asserted the rights of GMADA as outlined specifically in the following two paragraphs of this application.

"14. In case the Resolution Applicant wished for certain concessions from GMADA, it was required to file a proposal with GMADA, and it was only when consent was accorded by the Applicant that the Resolution Applicant could have incorporated the terms that it has in the Resolution Plan.

xxxxxx

16. That yet, by means of the Resolution Plan, a mischievous and malafide attempt has been made to place the Resolution Applicant in a position that is far superior to the position that the Corporate Debtor was in. Not only that, the Resolution Plan presupposes various concessions that have not even been sought from GMADA till date."

4. The application refers specifically to Clause-12 of the Resolution Plan relevant part of which is extracted below for discussion:-

12. Reliefs and concessions from GMADA for implementation of the Resolution

Plan

The Resolution Applicant shall implement its business plan as set out in this resolution plan and shall undertake all efforts for the revival of the Corporate Debtor, however, in addition to such efforts the revival of the Corporate Debtor requires the following measures as set out below. These reliefs and concessions are sought as they are fundamental to the revival of the Corporate Debtor to start from a clean slate and not be burdened by its history and liabilities due to which the Corporate Debtor is proposed to be resolved under the provisions of the IBC and therefore these reliefs are essential for the successful implementation of the Resolution Plan.

12.1 Greater Mohali Area Development Authority (GMADA) 12.1.1. GMADA shall withdraw the notice of termination dated 04.04.2016 of the concession agreement dated 15.04.2009 on the approval of the Resolution Plan by the Adjudicating Authority and the pending arbitration proceedings shall be deemed to have been terminated.

12.1.2. GMADA to exclude the period already consumed between the compliance date under the concession agreement till the effective date of this Resolution Plan from the concession period of tower A, B, C.

12.1.3 GMADA to revise the compliance date as defined under the concession agreement to start/begin from the implementation date of the Resolution Plan and thereby extending all other consequential timelines as defined in the concession agreement to start/begin from the implementation date till the successful implementation/construction of the project in terms of the Resolution Plan.

12.1.4. GMADA shall provide the option to the Resolution Applicant to either convert the allotment of the project site of the commercial complex under the concession agreement from leasehold to freehold.

The modalities of which shall be worked upon between the parties at the relevant time or an option at the hands of the allottees (Financial Creditors) to convert their respective units into freehold after payment of requisite fees/charges etc. These fees shall commensurate with option of similar nature given by GMADA for other leasehold allottees.

12.1.5. Dispensation from seeking consent of GMADA for any business transfer to be undertaken between the Corporate Debtor and the Resolution Applicant/Special Purpose Vehicle ("SP"). The business transfer, if so finalized by the Resolution Applicant, shall be an integral part of and in accordance with the Resolution Plan and shall be deemed to have carried out without any further deed or action or procedural requirements required to be complied by the Corporate Debtor, SP or the Resolution Applicant. It is clarified that the approval of the Adjudicating Authority shall constitute adequate approval for the business transfer and accordingly, ?? approval/consent shall be necessary from any other

Person or Governmental Authority (including GMADA);

12.1.6. This Resolution Plan provides for settlement of Operational Creditors including GMADA. Post the approval of this Resolution Plan by the CoC and the Adjudicating Authority, GMADA shall ensure that the Corporate debtor is provided with an unencumbered and unfettered takeover of the project in terms of concession agreement dated 15.04.2009 executed between the Corporate Debtor and GMADA and revised as per the terms of the plan.

12.1.7. GMADA/any other authority should verify that the work has been executed as per the plans approved by the statutory authority. In case of any deviation from the approved plans, if required, GMADA shall reconcile and approve and carry out necessary modifications in the various definitive documents etc with respect to the project. Any levy/cost or penalty leviable by GMADA to make the existing project compliant should be waived off. Further any costs incurred towards redevelopment shall be recovered from financial Creditor Allottees.

12.1.8. GMADA shall grant waiver from any imposition of penalty or interest. as the case may be, on the payments envisaged under the present Resolution Plan and any future payments to be made in accordance with the timeline under the Resolution Plan.

12.1.9. GMADA shall revise the annual concession fee charges under the concession agreement to 2% of the upfront consideration subject to increase at the rate of (unreadable)% after every 10 (ten) years, over the previous annual concession fee paid by the Resolution Applicant. 12.1.10. There is no allocation of land as per sanction plan of the project for installing substation. GMADA to allocate land for installation of a suitable substation separately i.e. outside the current approved layout plan. Provision of electricity of 18 MVA connection (high tension) and the erection of suitable substation and conduit to tap the tower has to be at the cost of GMADA as it is part of external development charges and the value of the EDC is built in the allotment price of the land. GMADA has to make provision of 11 KVA power supply for the project site.

12.1.11. GMADA would allow a mortgage of land to raise funds to carry out development work in the project.

5. The applicant has alleged that by means of the Resolution plan, an attempt is being made by the resolution applicant to have a right which is far superior to what the Corporate Debtor originally had and the said plan pre-supposes various concessions that have not even been admitted by GMADA till date. It is further stated that a perusal of Clause-12 reveals that it only contains diktats to GMADA and lays claims to such concessions which cannot be granted by GMADA. It is further stated that the applicant reserves the right to exclude the period already consumed under the concessions agreement or not, and this decision cannot be taken by the CoC. Similarly, the resolution plan cannot ask GMADA to provide options to the resolution applicant to convert the allotment from leasehold to

freehold. Thus, it is claimed that the resolution plan has proceeded to grant itself waivers from certain fees/penalties/ dues which it would otherwise be liable to pay, has also unilaterally reduced the concession fee payable to GMADA, and has done various other acts that this Adjudicating Authority cannot possibly permit it to do under the grab of a Resolution Plan. The plan has even demanded certain electricity connections/ towers at the cost of GMADA, all under the grab of a resolution plan.

5.1 The applicant has stated that it is a settled law that any successor of any entity can not enjoy rights that are better than the rights that were originally available to the entity it has replaced. It is further reiterated that GMADA, categorically and unequivocally states that it has not accorded its consent/ affirmation to any action or in-action attributable to GMADA, proposed in the Resolution Plan. It is submitted that without prejudice to the generality of the aforementioned statement, GMADA rejects all stipulations contained in Clause 12 of the Resolution Plan in the present application.

6. In its reply, the respondent stated that GMADA has no locus to challenge the commercial wisdom of CoC. Reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of Committee of Creditors of Essar Steel Limited Vs. Satish Kumar Gupta 2019 SCC Online SC 1478 dated 15.11.2019

("Essar Steel India Judgment"), in the matter of Swiss Ribbons Pvt. Limited & Another Vs. Union of India & Ors. 2019 SCC Online SC 73 and in the matter of Maharashtra Seamless Limited Vs. Padmanabhan Venkatesh and Ors. (CA No. 4242/2019) dated 22.01.2020. These decisions have inter alia laid down that the CoC's commercial wisdom in approving a Resolution Plan can't be questioned by this Authority.

6.1 It is further stated by the respondent that if the prayers of the applicant i.e. the Operational Creditor are allowed, then the Corporate Debtor might not get revived and shall be pushed into liquidation. The respondent has clarified that the Corporate Debtor was engaged in the development of an integrated State Bus Terminal-Cum-Commercial Complex at Verka Chowk, Mohali, Punjab on a Design Build, Finance, Operate & Transfer ("DBOT") basis awarded by it by GMADA in terms of the Concession Agreement (hereinafter "Concession Agreement"). However, on account of the delay in the completion of the DBOT project by the Corporate Debtor, GMADA issued a notice dated 04.04.2016 to show cause to the Corporate Debtor as to why the said Concession Agreement should not be terminated. Subsequently, the Corporate Debtor invoked the arbitration clause but finally, the parties decided to settle the dispute amicably, and the arbitration proceedings were dropped. It is pointed out that during the present CIRP, the applicant filed a claim of Rs. 89,25,51,457/- with delay, and the same be considered. The applicant is the largest Operational Creditor with more than 10% of the total debt of the Corporate Debtor, GMADA was invited to represent a class of operational creditors in the CoC meeting. Though GMADA failed to attend the 10th and 11th meetings, the minutes of the said meetings

were shared with GMADA. Hence, the applicant-GMADA did attend the 12th meeting and most importantly the 13th meeting of the CoC held on 08.02.2021 in which the reliefs and waivers sought from GMADA, inter alia, including withdrawal of show cause notice of termination of the concession agreement and status OF arbitration proceedings were discussed. Further in the said meeting, the representative of GMADA requested to get a copy of the revised resolution plan and he was informed that GMADA would receive the same after furnishing the non-disclosure agreement, a draft of which was also shared with GMADA on email. As the non-disclosure agreement was never furnished, a copy of the resolution plan could not be shared with the applicant GMADA.

6.2 It is further stated that even in the 14th meeting held on 21.02.2021 wherein the representative of the GMADA was present, no submissions were made pursuant to the discussion held at the meeting. In the 15th meeting, wherein the representative of GMADA was present, the SRA i.e. MDPL, as stated in para 13 of the minutes of the said meeting, expressed its concern over the conditions mentioned in the Concession Agreement. It is stated that the issue of notice of termination by GMADA and the continuation of the concession agreement were discussed in the 16th meeting. The representative of GMADA, after discussing the matter with his higher authorities, clarified that no further process was initiated by GMADA such as termination of the Concession Agreement, taking physical possession of the property of any other action. It is further submitted that even after five years, no notice of termination has been issued nor any instruction from GMADA has been received to stop work on the project.

6.3 It has been stated that the present applicant-GMADA is making a complete turnaround despite being into the knowledge that all the developments taken in the CoC meeting are illogical and would damage the future of the project.

7. The applicant has filed its rejoinder by Diary No. 1005/2 dated 15.07.2022, wherein the applicant has reiterated that in the present application, it has not asserted its rights as an operational creditor in the CIRP but as the owner of the land on which the project is located, it is stated that the applicant has only received Rs. 8.97 crores of its dues amounting to Rs. 85.69 crores but the present objections by the applicant is not against the amount allotted to it as an Operational Creditor but against the other clauses of the resolution plan which has nothing to do with the status of the applicant as an Operational Creditor. It is emphasized that the entire value of the Corporate Debtor holds is on account of the Concession Agreement with the present applicant for the construction of the Bus Terminal cum Commercial Complex at Mohali. It is reiterated that the concessions sought from the GMADA in the resolution plan were not a part of the original agreement and the resolution plan is used to rewrite the contractual obligations that it would inherit as a part of the corporate debtor to take over its advantage.

7.1 It is further stated that the clean slate theory under the CIRP only pertains to

the past dues of the Corporate Debtor and the CoC has far exceeded its scope of powers as it has no right to step into the shoes of the owner of the land and reduce the future rent. Such a decision would not be covered under the "commercial wisdom umbrella". It is stated that the resolution plan even categorically stated that the resolution applicant is committed to honouring the terms of the concession agreement dated 15.04.2009 and such a resolution plan is opposed to public policy and should not be approved.

8. In the short written submissions filed by the applicant, it is emphasized that the phrase "commercial wisdom" cannot be in any manner extended to include within its ambit determination of the rights of the owner of the property and the CoC cannot dictate terms to the owner of the land where the corporate debtor operates. It is further submitted that the applicant states categorically that it is unwilling to grant even one of the said concessions in the manner envisaged in the plan and the approval of the Resolution Plan by the CoC has absolutely no meaning. The applicant states that the plan is conditional on the grounds of certain reliefs from GMADA but the SRA has not approached GMADA for any such concessions so far. Even if the SRA has used the words "these reliefs are essential for the successful implementation of the Resolution Plan" and re-submitted the plan, the same is still conditional.

9. In the short written submission filed, the Resolution Professional has stated that GMADA has no locus standi to challenge the commercial wisdom of the CoC and the reliefs and concessions sought in the Resolution Plan are subject to the approval of the Adjudicating Authority and still become binding once the Resolution Plan is approved under Section 31 of the IBC. It is further stated that as per Clause 12 of the Project Site Lease Deed dated 13.08.2009 between the Chief Administrator GMADA and the corporate debtor, no approval of any nature has been envisaged in either the Concession Agreement or lease deed for the substitution of the Concessionaire. It has been emphasized that in the present case, no substitute of any nature is contemplated as the concessionaire, i.e., the corporate debtor itself will complete the project albeit with a change of management of the corporate debtor if approved by the Adjudicating Authority. It is also stated that Clause 12.4 and Clause 5.1 (b) of the Concession Agreement as entered into between the GMADA and the corporate debtor itself envisages the right of the corporate debtor to seek extension of timelines and revision of payment of annual concession fee payable to GMADA respectively. It is averred that GMADA cannot be permitted to take advantage of its own failure in providing confidentiality undertaking to receive a copy of the Resolution Plan.

10. We have heard the learned Senior Counsel and other counsels on behalf of the parties and have gone through the relevant records carefully.

11. We have carefully gone through the Concession Agreement dated 15.04.2009 for the development of the Bus Terminal-cum-Commercial Complex at Mohali on a Design-Built-Operate-Transfer(DBOT) basis amongst Greater Mohali Area Development Authority and M/s. C & C Towers Ltd and State Transport, GoP and

Punjab Infrastructure Development Board which defines the rights and obligations of the stakeholders of the project.

11.1 The Concessionaire was mandated to (a) plan, design, finance, construct, market and operate the Bus Terminal-cum-Commercial Complex; (b) Ensure management, operation and maintenance of the Project/ Facility as per the provisions of this Concession Agreement; (c) demand, collect and retain Adda Fees from Buses; (d) levy, demand, collect, retain and appropriate revenues such as rentals from commercial complex, advertisement charges and parking fees at public parking areas and other permitted revenues; (e) develop a "landmark complex"; (f) pay the Upfront Consideration and Annual Concession Fee (as applicable) to the Concessioneing Authority; (g) deploy adequate number of Staff for proper Operation and Maintenance of the Project Facility; (h) and transfer the Project Site, Facility and Project Assets, excluding the movable assets created by him, to the Concessioneing Authority at the end of the Concession Period, all in accordance with the terms and conditions in the plan. The Concessionaire had undertaken to implement the Project during the term of this Concession such that the Project reverted to the Concessioneing Authority or its nominee at the end of the term of this Concession Agreement and also, in accordance with the terms of this Concession Agreement.

11.2 The concession agreement clearly lays down, inter alia, the defined scope of the project, concession condition precedent and obligations of the Concessioneing Authority, i.e., GMADA and Concessionaire and other parties and also lays down timelines for the completion of the project operations and maintenance period, possession acknowledgement certificate and Concession Agreement completion certificate. It also lays down the conditions for termination for default and provides for a resolution mechanism.

11.3 In short, terms and conditions for the implementation of the project by the concessionaire have been clearly defined along with provisions for dispute resolution. Article 26 of the Agreement provides for a remedy for force Majure events which has the potential to prevent the parties from performing its obligations under the Concession Agreement. The dispute resolution as outlined in Article 27, further, provides for direct discussion between the parties, arbitration or adjudication, and it also states that the performance of the Concession Agreement shall continue in any case of a dispute under Article 26. In short, the said Concession Agreement conditions have enough flexibility to prevent any arbitrary termination of work without giving a reasonable opportunity to the concessionaire.

11.4 In this connection, we make a reference to the following clause in the Concession Agreement regarding the extension of time and other issues:

12.4 Extension of Time

a. The Concessionaire may apply for an extension of the Time for Completion of Construction if it is or will be delayed either before or after the Time for

Completion of Construction, by any of the following causes:-

i. A Variation;

ii. A Force Majeure event;

iii. A cause of delay giving an explicit and express entitlement to extension of time under any Articles in this Concession Agreement, unless the Concessionaire has not complied with such Article;

iv. Any delay, impediment or prevention by the Concessioneing Authority;

v. Any delay caused by Competent Authorities under Article 12.3 above.

Provided that the Concessionaire shall at all times use its best endeavours to, minimise any delay in the performance of its obligations under this Concession Agreement, whatever may be the cause of such delay.

12. After going through the provisions in the concession agreement minutely, we are of the considered view that the Concession Agreement provides for enough flexibility to resolve issues arising during the execution of the Project; and also amply provides for protecting the interests of GMADA.

13. We notice the fact that the Concession Agreement was signed in the year 2009 and as mentioned in the Resolution Plan, project cost overrun due to delay in the implementation of the project was one of the major reasons for the financial crisis of the corporate debtor, which was initiated into a Resolution Process by our order dated 10.10.2019. The original project was partially completed with 60% to 70 % of the work being completed in Tower A and partial OC received for Tower A which is conditional and cancellable on non-payment. The work in Tower B, C and a portion of Tower A was still incomplete. Additionally, there are approximately 195 allottees who have filed their claims as financial creditors being advanced given by the corporate debtor for the lease of real estate units. In this context, we are of the view that besides taking care of the interest of GMADA as the owner of the land, the resolution plan must ensure the completion of the project without any further delay,

and also deliver the flats to the home buyers. Thus, the interests of all the stakeholders lay in making the current project viable and ensuring its early completion.

14. Now, coming to the argument of the applicant that the CoC has exceeded its power in approving this Resolution Plan, we note that the critical issues have been discussed in detail in various CoC meetings and minuted held during the period of 07.11.2019 to 29.11.2022, and most of these discussions were held in the presence of the representative of GMADA. One such issue as cited by the applicant is the withdrawal of the notice of termination. A reference is made to the following extracts of the minutes of the 16th CoC meeting dated 30.03.2021, which is also a part of the Resolution Plan, which indicates the crucial participation of GMADA in the CoC

meetings:

"Mahakram Developers Private Limited was invited in the 16th CoC meeting at around 3:45 PM for discussion on the key observations on the resolution plan which were also discussed in the 15th meeting of Coc:

The Chairperson Sought clarification from MDPL on whether there was an update on the modification of Clause 13 of the resolution plan with respect to reliefs sought from Hon'ble NCLT for the implementation of the plan namely:

- the Notice of Termination dated 04.04.2016 of the Concession Agreement dated 15.04.2009 issued by GMADA to be declared as null and void, and;

- Concession agreement dated 15.04.2019 entered into between GMADA and the Corporate Debtor is valid and subsisting; and

- the Arbitration proceedings between GMADA and the Corporate Debtor pending before the Arbitral Tribunal comprising of three arbitrators be treated as terminated.

MDPL informed that they were awaiting clarification on the aforementioned points from GMADA.

On the matter regarding issuance of notice of termination on 14th April 2016, the representative from GMADA clarified that a notice of termination was only to show cause and not letter of termination seeking reply from the management of C & C Towers Limited within 30 days of issuance of the notice regarding the defaults made by C & C Towers Limited during construction of State Bus Terminal Cum Commercial Complex. The management had duly responded to GMADA within 30 days of the date of the notice and no further process was initiated by GMADA such as termination of concession agreement, taking physical possession of the property or any other action, Moreover, almost five years have elapsed since notice of termination was issued and operations of ISBT, Mohali are still being carried out by the Corporate Debtor Further there are no instructions from GMADA to stop the work for completion of the project. Basis the aforementioned points, representative from GMADA concluded that termination was never initiated and since there was no action from GMADA on the termination, hence no clarification is required.

It was further discussed in the meeting that necessary modifications be made in the resolution plan basis the clarification provided by GMADA.

Mahakram Developers Private Limited submitted that basis the clarification provided by GMADA, they will discuss the matter internally and discuss the key observations on the resolution plan which were discussed in 15th meeting of CoC with the Resolution Professional and submit a revised resolution plan after making necessary modifications in the resolution plan."

(Emphasis Supplied)

14.1 We also note the fact that the initial Resolution Plan presented by the SRA was rejected by the CoC and was subsequently re-submitted with necessary amendments. In the revised plan, the SRA has mentioned certain approvals as essential for the viability of the project. We have found nothing in the pleadings to suggest that the said

approvals have been asked for from GMADA and have been rejected by the latter. We are of the view that stating certain reliefs as essentials for the viability of the project does not make the offer conditional, and it merely underscores the importance of these reliefs being sought.

15. During the present proceedings, our attention was drawn to the correspondence between the applicant and the Resolution Professional for sharing of the Resolution Plan, which clearly shows that GMADA was requested by the Resolution Professional to submit a confidentiality undertaking before the plan could be shared by the RP after making a reference to the relevant Regulation under IBC. The relevant extract from the email dated 20.07.2021 is as under:

"In reference to your below email, please refer to our emails dated November 11, 2020 and March 05, 2021 whereby request was made to Greater Mohali Area Development Authority (GMADA) for submission of the Confidentiality Undertaking. As appraised earlier, Regulation 21 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 requires the insolvency professionals to ensure confidentiality of information relating to CIRP of the corporate debtor."

(Emphasis Supplied)

15.1 We further notice that the representatives of GMADA were present in many of the CoC meetings and sometimes absented himself despite being invited by the Resolution Professional. As per the minutes of the meeting, the applicant-land owner GMADA has been privy to all the important discussions like relief and concessions, withdrawal of notice of termination etc. In view of the same, we do not find any illegality in the CoC's approval of the plan as alleged by the applicant in the present application. We find the request for submission of confidentiality undertaking by the RP to be a legitimate request and had the applicant really wanted to obtain a copy of the Resolution Plan, they could have done the same by submitting a confidentiality undertaking, which is quite routine in nature. It is pertinent to note that during the course of the argument, it is concluded by the learned counsel for GMADA that they have received a copy of the Resolution Plan from the Hon'ble Delhi High Court. In the circumstances, we are not persuaded by the vehement argument of the senior counsel on behalf of the applicant that GMADA was not given a copy of the Resolution Plan to keep it in the dark regarding the concessions and reliefs sought by the SRA.

16. Now, coming to the reliefs sought in Clause 12 of the Resolution Plan as extracted in para 4 above, it is logical to categorise the same as relating to two

time periods, i.e., first, those relating to the period prior to the effective date of the Resolution Plan and second, the reliefs which pertain to the period after the said date. For the sake of clarity, it is reiterated that the effective date of the Resolution Plan is defined in the Resolution Plan as the date on which the respondent-SRA takes over the management of the corporate debtor on approval of the resolution plan.

17. Clause 12 contains reliefs pertaining to (i) withdrawal of notice of termination (12.1.1); (ii) withdrawal of arbitration proceedings (12.1.1) (iii) exclusion of period already consumed between the compliance date under the original Concession Agreement till the effective date (12.1.2) (iv) revision of the consequential timelines considering the start of implementation date as the compliance date under the Concession Agreement, (12.1.3); (v) approval and regularization of any deviation of the approved plan by the corporate debtor and carrying out of necessary modifications (12.1.7). These concessions clearly pertain to a period in which the SRA was not in control of the corporate debtor.

17.1 With reference to the issue of notice of termination, we note that the applicant was a part of the CoC, being the largest operational creditor with more than 10% of the total debt of the corporate debtor. And has attended several meetings of the CoC. As mentioned in the minutes of the 13th CoC meeting, RP pointed out the condition that the necessary measures/reliefs required for the implementation of the Resolution Plan appear to be a condition precedent to implement the plan and it makes the plan conditional. Subsequently, a revised plan was submitted after meeting this objection of the RP. The issue of reliefs and waivers sought from GMADA, inter alia, withdrawal of show cause notice of termination of the concession Agreement was specifically discussed in the 13th meeting of the CoC held on 08.02.2021 in which Mr. Akashdeep Singh attended on behalf of Mr. Anil Kumar as representative of GMADA. In the said meeting, the following reliefs, and concessions were discussed as mentioned in the minutes extracted as under:

On the passing of the Resolution Plan by the Adjudicating Authority, the Notice of Termination dated 04.04.2016 of the Concession Agreement dated 15.04.2009 issued by GMADA shall be deemed to have been withdrawn and concession agreement dated 15.04.2009 is deemed to be valid and subsisting. The Arbitration proceedings between GMADA and Corporate Debtor shall be deemed to have been terminated.

17.2 In the 15th CoC meeting, the SRA, i.e. MDPL, mentioned that GMADA issued a termination notice on 4th April, 2016 of the concession agreement dated 15th April, 2009 for cancellation of the concession agreement, and MDPL cannot proceed with the successful implementation of the plan until the concession agreement is reinstated and the termination notice is withdrawn. The representative of GMADA acknowledged the criticality of the matter and requested the CoC to allow him time to discuss the matter internally with the officials of GMADA and seek clarity on the possibility of withdrawal of Notice of

Termination dated 4th April, 2016 of the Concession Agreement dated 15th April, 2009 issued by GMADA.

17.3 Subsequently, after discussing the matter internally, in the 16th Meeting, it was stated by the GMADA's representative that the termination was never initiated, and as there was no action from GMADA on termination, no clarification is required.

In view of the above, we are of the view that issue of termination of notice has already been accepted by GAMADA as irrelevant and reopening of this issue will render the entire resolution process infructuous.

17.4 Similarly, regarding the relief under para 19 (ii) above, it is noted that the arbitration proceedings were dropped subsequently after the parties agreed that they would settle the matter amicably. We are, therefore, of the view that there is no purpose in setting the clock back by re-initiating the arbitration proceedings.

17.5 The reliefs claimed under para 19 (iii) and (iv) above, pertain to the revision of the time limit mentioned in the original concession agreement of 2009. It is an admitted fact that the project is at present half complete, and on approval of the resolution plan, the SRA is to complete the incomplete part as per the terms in the plan. We also note the fact that the work has stopped for a long time since the default by the earlier management. In this context, it is only logical to hold that the SRA should be allowed to complete the project within a reasonable time limit depending on the amount of work still to be done. The timelines of the concession agreement of 2009, thus, can't be mechanically imposed on the SRA and for all practical purposes and the effective date of the Resolution Plan should be treated as the starting point of the project.

17.6 The reliefs claimed under para 19 (v) above, relate to the deviations made by the corporate debtor prior to the effective date from the approved plans and reconciliation and regularization of the same. As the default has been committed by the earlier management, it is only logical to expect that GMADA will regularize the same and carry out the necessary modifications, if any, without burdening the SRA with the cost of renovation or with the penalty because of deviations in the work plan by the earlier management.

18. Clause 12 also contains the following reliefs which are general in nature. At 12.1.6, it is requested that GMADA shall ensure that the corporate debtor is provided for an encumbered and unfettered takeover of the project in terms of the Concession Agreement dated 15.04.2009. We find this relief to be in keeping with the provisions of the Code and also the various landmark judgments of the Hon'ble Apex Court on the same issue.

19. We now come to the reliefs sought, which pertain to issues that were not in the consent agreement and relate to a period after the effective date of the Resolution Plan. Clauses 12.1.4 and 12.1.5 refer to the conversion of the project site of the commercial complex from leasehold to freehold and also for

dispensation of the consent of GMADA for any business transfer to be undertaken between the corporate debtors and the Resolution Applicant/Special Purpose Vehicle. Similarly, Clauses 12.1.8, 12.1.9, 12.1.10, and 12.1.11 refer to the waiver of penalties, a downward revision of concession fees, allocating land for the setting of substation and allowing mortgages of land to raise funds. These reliefs are obviously to be negotiated between the parties, keeping in view the need to keep the project as a going concern and also to secure the best interests of all the stakeholders. The respondent-corporate debtor therefore has to approach GMADA to obtain these reliefs.

20. In view of the above discussion, we are of the view that the provisions in the Resolution Plan specifically relating to those reliefs and concessions have been framed after elaborate discussions and negotiations in the presence of the representatives of GMADA. A perusal of the minutes of the meeting leads to the inevitable conclusion that the details of reliefs and concessions sought were in the knowledge of the representatives of the Applicant, i.e., GMADA and he has even sought time during the 13th meeting of the CoC to discuss the matter and get back with clarification. The SRA has made it clear that the plan will be workable only after the receipt of the detailed clarification as mentioned in the minutes of the 16th CoC meeting which has also been made part of the Resolution Plan. We, therefore, are not persuaded by the vehement argument by the learned counsel on behalf of the applicant that they only came to know about the reliefs and concessions after the plan was approved by the CoC. We also note that the detailed provisions and certain issues regarding timelines given in the original 2009 plan along with provisions for penalty for deviation for work etc need to be re-looked as the SRA is now to complete the remaining parts of the project for all practical purposes, the project will start for the SRA from the effective date of the Resolution Plan. At the same time, we agree with contentions made by GMADA relating to certain reliefs and concessions sought by the SRA mentioned in the foregoing paragraphs and hold that the SRA is to approach GMADA to secure the same. It is also underlined that after the approval of the Resolution plan, the successful completion of the presently half-completed project will depend on close collaboration between the GMADA, i.e., the owner of the land, and the Concessioneing Authority, and the concessionaire i.e., the SRA.

21. In view of the above, we do not accede to the prayer of the applicant to consider the rejection of the COC-approved Resolution Plan. In the result, this application is dismissed with the above observations.

IA No. 32/2021 & IA No. 166/2021

22. These applications have been filed by Mr. Gaurav Khurana, the Resolution Professional of C&C Towers Limited under the second and third proviso to Section 12(3) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 40 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations of 2016, seeking extension of minimum six weeks or any further period beyond total CIRP period of 330 days for completion of Corporate Insolvency Resolution

Process of the corporate debtor in IA No.32/2021. Further, IA No. 166/2021 was filed by Mr Gaurav Khurana, who sought an extension of a minimum of four weeks beyond 22.02.2021 as prayed for in IA No. 32/2021 or any further period beyond the total CIRP period of 330 days for completion of Corporate Insolvency Resolution Process of the corporate debtor.

23. The brief facts of the IA No. 32/2021 are that the Resolution Applicants were required to submit the Resolution Plans by 21.10.2020 i.e. within 21 days from 29.09.2020 (the date of issuance of the RFRP, Evaluation Matrix and IMs to PRAs). The request was made to extend the timeline for the submission of the Resolution Plan and the submission date was extended to 30.10.2020. However, the CoC expressed their difficulty in completing the process by the end of the CIRP time period ending on 12.11.2020. In view of the same, an extension in CIRP was discussed in the 12th CoC meeting and the agenda will consider the same keeping in view the objectives of the IBC, 2016.

24. The agenda was approved by 91.74% votes. Further, IA No. 166/2021 is filed to complete the CIRP by seeking 4 more weeks time beginning with 22.03.2021 for the effective resolution of the corporate debtor. For which, the agenda was approved in the 14th CoC meeting with 100% votes due to the fact that the Resolution Plan submitted by MDPL was under consideration and negotiations were going on. It is settled law that under exceptional circumstances, this Authority can extend the period of CIRP beyond 330 days.

25. In view of the above-stated facts and circumstances, both IA Nos. 32/2021 and 166/2021 are allowed and disposed of accordingly.

IA No. 179/2022

26. This application has been filed on behalf of 94 financial creditors of the corporate debtor who were deposit holders under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016 with the following prayers:

- a. Reject the Resolution Plan, as submitted by M/s Mahakram Developers Pvt. Ltd., that was approved by the Committee of Creditors of Corporate Debtor.
- b. Direct the Resolution Professional, Mr. Gaurav Khurana to revise the Liquidation Value, considering the Corporate Debtor to be a going concern.
- c. Direct the Resolution Professional, Mr. Gaurav Khurana, to include the Overbooking of Virtual Space in the Application for avoidance, as a Fraudulent Transaction under Section 66 of the Insolvency and Bankruptcy Code, 2016.
- d. Decide the Application for Avoidance as to be filed by the Resolution Professional, before adjudicating upon the Application seeking approval of the Resolution Plan.

27. The order was reserved in this application on 19.09.2023, but the same was relisted as the issues raised in this application were closely linked to the approval

of the resolution plan which was being considered in IA No. 331/2021 and these two applications were to be considered together.

28. In this application, it is stated that the same is premised on the fraudulent transactions undertaken by the corporate debtor which have been recorded by the

Hon'ble High Court of Delhi vide its order dated 13.08.2021 passed in WP (c) No. 7331 of 2021. The Corporate Debtor took a loan of Rs. 200 crores in November 2011 and was declared 'NPA' in 2015. Edelweiss Assets Reconstruction Company was appointed by the bank to restructure the existing liabilities of Rs. 113.44 crores. In 2016-17, Corporate Debtor in connivance with M/s Karvy Realty devised a Scheme to raise additional finance. The same was floated after a termination notice was received due to the failure of completion of a project entered between the Corporate Debtor and GMADA. The Applicants were lured to invest the amount of Rs. 90 crores in an illegal scheme. On 25.05.2018, due to a delay in repayment in assured return under the Buyback scheme, an apology letter was issued by the promotor of the Corporate Debtor. CIRP was initiated by an order of this Bench on 02.12.2019, Mr. Gaurav Khurana was appointed as Resolution Professional by this Adjudicating Authority and CoC was reconstituted wherein the investors of the Buyback Scheme were classified as 'Deposit holders' and the allotment agreement holders were classified as the allottees. On 22.10.2020, BDO India LLP pursuant to the engagement letter issued by the RP, submitted a Transaction Audit Report that included preferential transactions to the tune of Rs. 1.85 crores, undervalued transactions or Rs. 91 lakhs, and fraudulent transactions of Rs. 91 crores. The Corporate Debtor defaulted on repayment of monies to the applicant and diverted the funds in favour of its parent company, CCCL. An addendum to the Transaction Audit report dated 12.12.2020 was prepared reflecting the following aspects: Overbooking, Fraudulent trading for an additional 1,99,000 sq. feet valued at Rs. 61.07 crores, diversion of Rs. 31.78 crores in favour of parent company and Rs 18.53 crores received from investors towards repayment of debt of Corporate Debtor and diversion through other payments, i.e., Rs 13.23 crores paid to EARC, Rs 5.52 crores paid to Karvy Realty and Rs 1.93 crores paid to deposit holders.

29. The other allegations made in this application against the resolution plan submitted by the SRA are as under:

I. Liquidation value

In the ninth meeting of the Committee of Creditors dated 04.11.2020, as per the valuation report submitted by the valuers the average liquidation value of the company as a going concern is Rs.75.22, crores whereas, for the purpose of the Resolution Plan, the average liquidation values are taken considering the corporate debtor as a non-going concern at Rs.3 lakhs.

II. Violation of Section 29A

The resolution professional engaged M/s Grant Thornton to prepare a report

under Section 29A and several adverse remarks were made in the said report against M/s Mahakram Developers Private Limited, including the observation that the Successful Resolution Applicant by public notice, the company was liable to be dissolved under section 248 (1) of the Companies Act, 2013.

III. Overbooking in the project, utilization of funds received through Karvy scheme.

An addendum to the final audit report dated 12.12.2020 was prepared reflecting several violations including overbooking against an available area of 91,000 sq. ft cumulatively by the corporate debtor by allotting an area of 2,89,455 Sq.ft under the Karvy Scheme. Fraudulent trading of an additional 1,99,000 sq. feet for Rs. 61.07 crores, diversion of Rs. 31.78 crores in favour of parent company and diversion of Rs 18.53 crores received from investors towards repayment of debt of Corporate Debtor, and diversion of payment of Rs 13.23 crores to EARC, Rs 5.52 crores paid to Karvy Reality and Rs 1.93 crores paid to deposit holders.

IV. Dissenting creditors are not to get anything in the Resolution Plan

The applicant submitted that in the 16th meeting of COC, GMADA had clarified that the concession agreement will not be terminated by it, and the company should be considered as a going concern. Further, it is submitted that the dissenting creditors will not receive any amount under the Resolution Plan, even if the company is considered a going concern.

V. Lack of experience of the SRA

The Resolution Applicant is not eligible as per the eligibility criteria laid down by CoC. The SRA does not meet the criteria of the minimum consolidated net worth of Rs. 25 crores at group level, it does not have any experience in running a large industrial business during three preceding financial years, or the ability to turn around large industrial business preferably Real Estate either directly or through Joint Ventures. As per the Section 29A report by Grant Thornton, the company was proposed to be struck off from the Registrar of the ROC on grounds of inactivity.

VI. The objective of value maximisation is not being achieved

The Resolution Plan does not achieve the objective of value maximisation of assets of the corporate debtor. The primary assets of the corporate debtor lie in the Concession Agreement entered into between the parties. As per the valuation report, the corporate debtor will be considered as a going concern for Rs.75.22 Crores. However, the real value of a concession agreement which is operational for 30 years is much more.

30. The gist of the reply of the Resolution Professional to the aforementioned allegations, is as below;

A. Reliance is placed on the Hon'ble Supreme Court's judgment in Jaypee Kensington Boulevard Apartments Welfare Association and Ors Vs NBFC (India)

Limited and Ors, 2021 SCC Online 253 (Para 210), wherein it was held that dissatisfied homebuyers are bound by the decision of the majority.

B. The Committee of Creditors also comprised of the Authorized Representative of a class of deposit holders appointed by this Adjudicating Authority. The CoC put the Resolution Plan to vote and took the collective decision of approving the Resolution Plan by a majority vote share of 68.21% vote.

C. The commercial wisdom of the CoC is of paramount importance and is non-justiciable for ensuring completion of the CIRP process within the prescribed timeline, and it has been intrinsically assumed that the financial creditors are fully aware about the viability of the Corporate Debtor and the feasibility of the Proposed Resolution Plan. The CoC is duty-bound to perform a thorough examination of the proposed Resolution Plan, and the assessment of the same by their team of experts. Thus any decision on the Resolution Plan is based primarily on the voting held during the CoC meetings.

D. Reliance was also placed upon the Hon'ble Supreme Court's decisions in K Shashidhar vs Indian Overseas Bank & Ors (Civil Appeal No.10673 Of 2018), and Committee of Creditors of Essar Steel India Limited vs Satish Kumar Gupta Civil Appeal no. 8766-67 of 2019).

E. The Applicants have alleged that the Resolution Professional had contravened Regulation 36A (8) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016, through his act of allowing a Resolution Applicant, who had failed to satisfy the eligibility criteria laid down by the CoC, by virtue of the said SRA being a defunct or dormant company that is even facing a proposal to be struck off from the Register of Companies. The RP submits that the given allegation is baseless and untenable as at no point in time was it contended or brought up by the class of deposit holders through the AR before the CoC, and that even the Applicant has submitted no evidence that supports the stated allegation, thus rendering it non-maintainable and untenable under the code.

F. The Respondent, i.e., RP claims that once a Resolution Plan has been approved by the CoC under the Code, the Hon'ble Adjudicating Authority is required to only ascertain whether the Resolution Plan meets the requirements under Section 30 of the Code. In the present case, the Applicants have instead sought the rejection of the Resolution Plan submitted by the RA and are seeking misconceived directions from the RP for revisions of the Liquidation Value to be a 'going concern' as well as inclusion in the virtual space in the projects by the CD.

G. It is further stated by the Respondent-RP that the only limited Judicial Review available to the Hon'ble Adjudicating Authority would pertain to the very neat and narrow scope of conforming whether the resolution plan provides for the payments of the CIRP process in priority, of the debts of Operational Creditors, of debts of dissenting financial creditor and lastly, whether the plan provides for the management of the affairs of the Corporate Debtor through the approval of the Resolution Plan and the implementation as well as supervision of the resolution

plan, as per requirements listed in Section 30 of the Code of 2016.

31. Reliance has been placed upon the decision of the Hon'ble Apex Court in the matter of K Shashidhar case(supra), which held, inter alia, that after the approval of the Resolution Plan by the CoC, the jurisdiction of the Hon'ble Adjudicating Authority is limited to whether the Resolution Plan satisfies the requirements of Section 30(2) of the Code.

I. RP states that the Applicants have sought relief of adjudication of Avoidance Application prior to Plan Approval Application, i.e, IA No 331 of 2021 with an allegedly misplaced reliance on the judgment of the Hon'ble Delhi High Court in M/s Venus Recruiters Private Limited Vs Union of India and Ors 2020 (W.P.(C) 8705/2019 & CM APPL. 36026/2019). The RP on the other hand has filed for an Avoidance application under IA No 584 of 2021 on 15 Jan 2021 and an application for approval of the Resolution on 31 May 2021, thus the facts and the findings of Venus Recruiters Supra aren't applicable to the facts of the instant case. RP has placed reliance upon Section 26 of the Code, that the continuation of the Avoidance Applications after approval of the Resolution Plan is not barred under the provisions and object of the Code.

32. In the Short Written Submissions, it has been stated by the Respondent that the present applicant has no locus standi to file the application as it is filed by 94 financial creditors falling under the class of deposit holders raising objections against the Resolution Plan, whereas there are a total of 565 financial creditors in the class of deposit holders whose claims have been verified and admitted by the RP and who altogether hold 23.23 % voting share of the CoC. Reliance has been placed on the decision of the Hon'ble Supreme Court in the case of Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBFC (India) Limited and others (2021 SCC Online 253), wherein it was held that the home buyers are bound by the decision of the majority. It is further stated that the commercial decision of the CoC in the approval of the Resolution Plan cannot be challenged in the present case. Reliance has also been placed on the decision of K. Shashidhar vs. Indian Overseas Bank and Ors; (2019) 12 Supreme Court Cases 150 and Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta (2019 SCC onLine SC 1478). It is further stated that once a Resolution Plan has been approved by the CoC, the Adjudicating Authority is required to only ascertain whether the Resolution Plan meets the requirement of Section 30 of the Code. It is further stated that the applicant's prayer to adjudicate the avoidable applications prior to the approval of the plan by placing reliance on the judgment of the Hon'ble Delhi High Court in the matter of M/s. Venus Recruiters is misplaced and incorrect in law.

33. The short written submissions were filed by Respondent No. 3 i.e., Mahakram Developers Private Limited (the Resolution Applicant of the Corporate Debtor) who while adopting the reply by Respondent No 1 also made the following submissions:

I. The Applicants have no Locus Standi to file the present Application as out of the total of 565 financial creditors in the class of Deposit Holders who together hold 23.32% of the vote share in the CoC, the Applicants comprise of only 94 of such individual Financial Creditors. They are raising objections against the Resolution Plan and seeking rejection of the same, despite representing only 16.6% of total Deposit Holders' Financial Creditors in class.

II. Financial Creditors are collectively treated as one class of financial creditors during the course of the CIRP, and therefore can't be seen as 'individual financial creditors' for the purposes of the CIRP and hence cannot file objections on their own in an individual capacity, especially to raise objections against the Resolution Plan. Respondent has placed reliance on the mandate of the Hon'ble Supreme Court in Jaypee Kensington Boulevard Apartments Welfare Association and Ors. v. NBCC (India) Limited and Ors., 2021 SCC Online SC 253 to reiterate the stance that the Code treats the Financial Creditors in class collectively as a whole, thus the Applicants can't be permitted to file objections in the capacity of Individual Financial Creditors or maintain the present Application.

III. The commercial wisdom of the CoC is paramount while approving a Resolution Plan. The Applicants in the present application raise objections to and seek rejection of the Answering Respondent's Resolution Plan on the grounds that the Resolution Applicant is allegedly ineligible under the criteria laid down by the CoC. However, the Respondent states the very same CoC inter alia also comprised of the Authorised Representative of the Deposit-Holder financial creditors in class that was appointed by this Hon'ble Adjudicating Authority, and the CoC as a whole extensively dealt with all aspects including the feasibility, viability of the Resolution Plan before putting the Resolution Plan to vote. Applicants had raised allegations that not only does the Answering Respondent not meet the eligibility criteria, but also doesn't have evidence to showcase that it will revive the Corporate Debtor, however, the same factors were already dealt with by the CoC extensively and thoroughly, and the latter, after taking into account the commercial considerations involved, approved the Resolution Plan.

IV. Respondent raised the Judicial Decisions of the Hon'ble Supreme Court in 'Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta', 2019 SCC OnLine SC 1478, which in turn relied on its previous decision in K.Sashidhar v. Indian 2 Overseas Bank and Ors., (2019) 12 SCC 150 wherein it was held that the Hon'ble Adjudicating Authority with the limited judicial review available to itself, can in no circumstance, trespass upon a business decision of the majority of the CoC. Respondent states that the allegations raised with respect to the evaluation matrix and the credentials of the Resolution Applicant are misconceived and unacceptable, and, are liable to be dismissed.

V. That the Applicants have sought directions qua the Respondent No.1 for revisions of the Liquidation Value to be a 'going concern' and inclusion of Overbooking of virtual space in the projects by the Corporate Debtor in the Avoidance Application filed by the Answering Respondent as an allegedly

fraudulent transaction falling under Section 66 of the Code and sought adjudication of the Avoidance Application i.e., IA No. 584 of 2021 filed by the Respondent No.1 before plan approval Application i.e., IA No. 331 of 2021. In response, the Respondent states that the reliefs sought are non-maintainable under the scheme of the Code, as the jurisdiction of the Hon'ble Adjudicating Authority after approval of the Resolution Plan by the CoC is limited to examination under Section 30(2) of the Code only as per K. Sashidhar v. Indian Overseas Bank and Ors., (2019) 12 SCC 150, i.e, confirming that the Resolution Plan provides for: Payment of Insolvency Resolution Process costs in priority; Payment of debts of Operational Creditors; Payments of debts of dissenting Financial Creditors; For management of affairs of the Corporate Debtor after approval of the Resolution Plan; Implementation and supervision of the Resolution Plan as per the requirements of sub-section (2) of Section 30 of the Code and thus in view of the scheme of the Code, the present Application is liable to be dismissed.

VI. Respondent submits that the Applicants have engaged in Forum Shopping to create hurdles in the implementation of the Resolution Plan to get a favourable order by moving Writ Petition (C) 7331/2021 before the Hon'ble High Court of Delhi titled Sushmita Dey & Ors. v. Union of India & Ors. where they have raised almost identical issues as set forth in the present Application. Though notice was issued in the aforementioned Writ Petition and the same is still pending adjudication, the Hon'ble Court declined to grant any interim relief to the Applicants.

VII. Respondent states that the present Application has been filed as a desperate measure by the Applicants to create an impediment in the approval of the Resolution Plan of the answering Respondent by the Ld. Adjudicating Authority and for this reason alone the Application is liable to be dismissed by this Ld. Adjudicating Authority.

VIII. It is submitted that the objections raised by the Applicants herein bear no relevance to the determination of I.A. No. 331 of 2021 filed by the Resolution Professional for approval of the Resolution Plan of the answering Respondent. On the contrary, the sum and substance of the allegations levelled by the Applicants are against the alleged irregularities committed by the Corporate Debtor in connivance with M/s Karvy Realty.

IX. It is stated that the above allegations have no bearing on the competence of the Answering Respondent to submit a Resolution Plan in terms of the Code. Allegations against the answering Respondent were brought up in the Applicant's report dated 20.11.2020 prepared by M/s Grant Thornton under Section 29A of the Code with respect to the answering Respondent. Under the said Report, it was stated that vide a Public Notice issued by the Ministry of Corporate Affairs, Union of India the Answering Respondent Company was liable to be dissolved/struck off under Section 248(1) of the Companies Act, 2013.

Respondent denies that the above allegations hold ground, as on the above date the Answering Respondent Company was duly complying with all the relevant provisions of law and conducting its business in the normal course as is evident from the Master Data and the compliance status of the Company, where in the latter status, the company is being reflected as 'Active Compliant'. It is further stated that apart from the above, the Resolution Plan of the answering Respondent was duly deliberated upon by the CoC and was then approved in their commercial wisdom. Therefore, the allegations raised by the Applicants are not germane to the eligibility of the answering Respondent as the Resolution Applicant and the Application is therefore liable to be dismissed by this Ld. Adjudicating Authority.

34. The written submissions filed by learned counsel for the Applicant repeated the allegations that Resolution Applicant does not fulfil the single eligibility criteria as approved by the CoC either on account of net worth or experience. It is pointed out that the company has not done any business in the Financial Years 2018-19 and 2019-2020. It is also stated that the Resolution Plan is contrary to the objective of the IBC and violation of the assets of the corporate debtor is on the lower side and the CoC-Resolution Professional has not been able to ensure maximisation of the value of the corporate debtor as laid down by the Hon'ble NCLAT in the case of Binani Industries Limited Vs. Bank of Baroda Another (2018) 147 CLA 320.

34.1 The written synopsis submitted by learned counsel for the Applicant has further stated that the resolution plan discriminates between dissenting and assenting creditors, whereby assenting creditors were given the option of either retaining the allotment or seeking a refund of their amount. However, the Resolution Plan leaves the dissenting creditors in a catch-twenty-two situation, whereby choosing either option meant losing the hard-earned monies.

34.2 It is further submitted that during the voting on the plan, Edelweiss Assets Reconstruction Company Limited, (EARC) along with the lending banks, holding a voting percentage of 61.93% approved the said Resolution Plan and the other stakeholders have dissented. Reliance has also been placed in the case of M.K. Rajagopalan vs. Dr. Periasamy Palani Gounder & Anr. 2023 (Civil Appeal No. 1682-1683 of 2022), where it was held that the commercial wisdom of the CoC cannot approve the plan, whereas the Resolution Applicant is ineligible as per the IBC Code.

35. We have carefully considered the submissions made and have gone through the relevant records.

36. It is an undisputed fact that only 94 deposit holders out of the total number of 565 deposit holders constituting only a fraction of the total number have filed the present application. We further note that the issues raised in the present application were never raised in the meeting of the CoC by the Authorised Representative of the 565 financial creditors in the class of deposit holders, even

though the AR was present and actively participated in the COC meetings. The applicants have raised several objections with regard to the resolution plan which have already been considered by the CoC in great detail and the clarifications of the SRA on these issues have been accepted by the CoC. The issues like the experience of the resolution applicant to manage the affairs of the corporate debtor, and qualification of the resolution applicant under section 29A of the code, falls squarely within the powers of the COC to consider. Similarly, the allegations of fraudulent transactions being carried out by the management, overbooking of space etc fall within the ambit of several provisions of the IBC, and would be dealt with as per the provisions of the relevant provisions of the code. Such allegations, however, do not lend any support to the applicants' prayer that the resolution plan should be rejected. We do not find any specific reason to interfere with the decisions of the CoC on these issues. As

regards the valuation adopted for the purpose of the resolution plan, necessary directions have been passed while approving the resolution plan in IA No 331/2021.

37. Now coming to the eligibility of the applicant to file this petition, we refer to the following extract of the decision of the Hon'ble Supreme Court of India in the Case of Jaypee Kensington Boulevard Apartments Welfare Association and Ors Vs NBFC (India) Limited and Ors, 2021 SCC Online 253 which holds as under.

"As noticed, for the purpose of approval of a resolution plan in CIRP, what is required is its approval by a vote of not less than 66% of the voting share of financial creditors; and what is counted for the requisite percentage (66) is the voting share of the financial creditors and not the individual votes of financial creditors. The expression 'voting share' has been precisely defined in clause (28) of Section 5 to mean the voting rights of a single financial creditor in the Committee of Creditors, which is based on the proportion of the financial debt owed to such a financial creditor vis-à-vis the financial debt owed by the corporate debtor. In the scheme of the Code with Explanation to Section 5 (8)(f), the debt owed by the corporate debtor towards allottees of the real estate project is considered to be a financial debt but for that matter, every individual allottee does not become an independent financial creditor of the corporate debtor, if the number of allottees are 10 or more, in terms of the meaning assigned to the expression "class of creditors" in CIRP Regulations⁸⁵. The allottees, like the homebuyers of JIL, falling within clause (f) of sub-section (8) of Section 5 do carry the status of financial creditors but they would be falling in a class collectively; and the voting share of that class would be in terms of the financial debt owed to that class as a whole."

(Emphasis supplied)

38. We are of the view that the ratio of the aforementioned decision is squarely applicable to the facts of the present case and the present application by a small fraction of a class of creditors (deposit holders) is not maintainable, especially

when the Authorised Representative appointed by this tribunal for the same class of creditors has attended the meetings of the CoC, and did not raise the same issues when the resolution plan was put up for their approval. In the circumstances, we don't find any reason to interfere with the decision of the COC in approving the plan.

39. In the result, this appeal fails and is disposed of accordingly.