NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI BENCH (COURT-II)

IA-3255/2020, IA-3067/2022, IA-2298/2021, IA-3588/2023
IA-506/2024, IA-1158/2024, IA-1159/2024, IA-3926/2023,
IA-3017/2024, IA-3596/2023, IA-3325/2023, IA-3025/2022,
IA-3330/2020 and Inv. Pett. 13/2024
IN
Company Petition No. (IB)-1248(PB)/2018

IN THE MATTER OF (IB)-1248(PB)/2018:
(Under Section: 7 of IBC, 2016)

Shinoj Koshy **... Applicant/ Financial Creditor**

Versus

M/s Granite Gate Properties Pvt. Ltd. **... Respondent/ Corporate Debtor**

AND IN THE MATTER OF IA. NO. 3255/ND/2020:
(Under Section: 30(6) r/w Section 31(1) of IBC, 2016)

Mr. Chandra Prakash,
(Resolution Professional of
Granite Gate Properties Pvt. Ltd.) **... Applicant/ Resolution Professional**

Versus

1. **M/s SMV Agencies Pvt. Ltd.**
   S-25, Green Park, Main Market,
   New Delhi-110016

2. **Allotees of Real Estate Project of**
   Granite Gate Properties Pvt. Ltd.
   (Through Authorized Representative)
   Ms. (sic.Mrs.) Rakesh Verma
   A-342, Logix Technova, Tower A,
   Sector-132, Noida, Uttar Pradesh

3. **New Okhla Industrial Development Authority**
   (Through Authorized Representative)
   Main Administrative Building
   Sector-6, Noida, Uttar Pradesh **... Respondents/ Resolution Applicants**

AND IN THE MATTER OF IA. NO. 3067/PB/2022:

(Under Section: 60(5)(c) of IBC r/w Rule 11 of NCLT Rules, 2016)

New Okhla Industrial Development Authority
Main Administrative Building
Sector-6, Noida **... Applicant**

Versus

Chandra Prakash
(Resolution Professional)
812, 8th Floor, Indra Prakash Building
Barakhamba Road, New Delhi-110001 **... Respondent**

AND IN THE MATTER OF IA. NO. 2298/ND/2021:

(Section: 60(5)(c) of IBC r/w Rule 11 of NCLT Rules, 2016)

New Okhla Industrial Development Authority
Main Administrative Building,
Sector-6, Noida, Gautam Budh Nagar,
Uttar Pradesh **... Applicant**

Versus

Chandra Prakash
(Resolution Professional)
812, 8th Floor, Indra Prakash Building
Barakhamba Road, New Delhi-110001 **... Respondent**

AND IN THE MATTER OF IA. NO. 3588/ND/2023:

(Under Section: 60(5) r/w Section 30(2) of IBC, 2016)

Ashmeet Singh Bhatia
12-A, Savitri Sahini Enclave,
New Hyderabad,
Lucknow-226007 **... Applicant**

Versus

1. M/s Granite Gate Properties Pvt. Ltd.
C-23, Greater Kailash Enclave, Part-I,
New Delhi-110048

2. M/s SMV Agencies Pvt. Ltd.
S-25, Green Park, Main Market,
New Delhi-110016 **... Respondents**

AND IN THE MATTER OF IA. NO. 506/PB/2024:
(Under Section: 60(5) of IBC, 2016)

Mr. Devendra Singh,
(Resolution Professional of M/s Granite Gate Properties Pvt. Ltd.)
Office No. 216, 2nd Floor, Tower-1,
Sector 135, Noida, Uttar Pradesh-201305 **... Applicant**

Versus

1. **M/s SMV Agencies Pvt. Ltd.**
   S-25, Green Park, Main Market,
   New Delhi-110016

2. **Allotees of Real Estate Project of**
   Granite Gate Properties Pvt. Ltd.
   (Through Authorized Representative)
   Mrs. Rakesh Verma
   A-342, Logix Technova, Tower A,
   Sector-132, Noida, Uttar Pradesh

3. **New Okhla Industrial Development Authority**
   (Through Authorized Representative)
   Main Administrative Building
   Sector-6, Noida, Uttar Pradesh **... Respondents**

AND IN THE MATTER OF IA. NO. 1158/PB/2024:
(Under Section: Rule 11 of NCLT Rules, 2016)

Ashmeet Singh Bhatia,
R/o H.No. 12A, Savitri Sahani Enclave.
New Hyderabad, Lucknow, Uttar Pradesh-226007 **... Applicant**

Versus

1. **M/s Granite Gate Properties Pvt. Ltd.**
   (Corporate Debtor)
   C-23, Greater Kailash Enclave, Part - I,
   New Delhi-110048

2. **Rakesh Verma**
   (Authorized Representative of Homebuyers)
   Flat No. 1099, Vikas Kunj,
   Vikas Puri, New Delhi – 110018

3. **Mr. Shinoj Koshy**
   (Financial Creditor)
   24 Barakhamba Road, 1st Floor,
   New Delhi - 110001 **... Respondents**

AND IN THE MATTER OF IA. NO. 1159/PB/2024:
(Under Section: Rule 11 of NCLT Rules, 2016)

Ashmeet Singh Bhatia,
R/o H.No. 12A, Savitri Sahani Enclave.
New Hyderabad, Lucknow, Uttar Pradesh-226007 **... Applicant**

Versus

1. **M/s Granite Gate Properties Pvt. Ltd.**
   (Corporate Debtor)
   C-23, Greater Kailash Enclave, Part - I,
   New Delhi-110048

2. **Mr. Devendra Singh**
   (Resolution Professional)
   Office: Assotech Business Crestera,
   Office No. 135, Noida, Uttar Pradesh – 201305

3. **Mr. Shinoj Koshy**
   (Financial Creditor)
   24 Barakhamba Road, 1st Floor,
   New Delhi - 110001 **... Respondents**

AND IN THE MATTER OF IA. NO. 3926/PB/2023:
(Under Section: Rule 11 of NCLT Rules, 2016)

1. **M/s Shomit Finance Limited**
   Stitle Floor, Devika Tower 6,
   Nehru Place, New Delhi-110019

2. **Mr. Devendra Singh**
   Resolution Professional for
   M/s Granite Gate Properties Pvt. Ltd.,
   C-23, Greater Kailash Enclave, Part-I,
   New Delhi - 110048 **... Applicants**

AND IN THE MATTER OF IA. NO. 3017/PB/2024:
(Under Section: 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016)

Ashmeet Singh Bhatia,
R/o H.No. 12A, Savitri Sahani Enclave,
New Hyderabad, Lucknow, Uttar Pradesh-226007 **... Applicant**

Versus

1. **M/s Granite Gate Properties Pvt. Ltd.**

(Corporate Debtor)
C-23, Greater Kailash Enclave, Part - I,
New Delhi-110048

2. M/s SMV Agencies Pvt. Ltd.
S-25, Green Park, Main Market,
New Delhi - 110016 **... Respondents**

AND IN THE MATTER OF IA. NO. 3596/PB/2023:
(Under Section: Rule 11 of NCLT Rules, 2016)

Ashmeet Singh Bhatia,
R/o H.No. 12A, Savitri Sahani Enclave.
New Hyderabad, Lucknow, Uttar Pradesh-226007 **... Applicant**

Versus

1. Resolution Professional,
Granite Gate Properties Pvt. Ltd.

2. Ankit Agarwal
M-129, Greater Kailash-I,
New Delhi-110048

3. M/s Shomit Finance Limited
Stilt Floor, Devika Tower 6,
Nehru Place, New Delhi-110019

4. Nirmal Singh
(Promoter)
R/o N-104, Panscheel Park,
New Delhi-110017

5. Vidur Bharadwaj
(Promoter)
R/o 51B, Friends Colony (East),
New Delhi-110065

6. Surpreet Singh Suri
(Promoter)
R/o 192B, Sainik Farms,
New Delhi **... Respondents**

AND IN THE MATTER OF IA. NO. 3325/PB/2023:
(Under Section: 60(5)(c) of IBC r/w Rule 11 of NCLT Rules, 2016)

Mr. Shailesh Verma
(Resolution Professional of Gwalior Bypass Project Limited)
Resident of E-1004, Vijaya Apartments,
Mall Road, Ahinsa Khand 2 (Nar Shanti Gopal Hospital)
Indirapuram, Ghaziabad- 201014 **... Applicant**

Versus

National Highways Authority of India
(Through Project Director
Project Implementation Unit- Gwalior)
D-81, Govind Puri, Sachin Tendulkar Marg,
Gwalior (M.P.) – 474011 **... Respondent**

AND IN THE MATTER OF IA. NO. 3025/PB/2022:
(Under Section: 60(5) of IBC, 2016)

M/s. Shomit Finance Ltd.
Stilt Floor, Devika Tower 6,
Nehru Place New Delhi-110019 **... Applicant**

Versus

Mr. Chandra Prakash
(Resolution Professional for
Granite Gate Properties Private Limited) **... Respondent**

AND IN THE MATTER OF IA. NO. 3330/PB/2020:
(Under Section: 60(5) of IBC, 2016)

Mr. Chandra Prakash
(Resolution Professional of
Granite Gate Properties Private Limited) **... Applicant**

Versus

1. **M/s Shomit Finance Limited**
   Flat No. SF-28,
   Stilt Floor Devika Tower-6
   Nehru Place, New Delhi-110019

2. **Vidhur Bhardwaj**
   (Promoter)
   R/o 51B, Friends Colony (East),
   New Delhi-110065

3. **Naveen Kumar Mann**
   Flat No. 2002, Tower 9,
   Lotus Bolevard, Sector 1000,
   Noida 201301

4. **Ravi Bhargav**
   103, 3rd Floor, Street No.5,
   Krishna Nagar, Safdarjung Enclave,
   New Delhi

5. **Mr. Prabhjit Singh Soni**
   GG-1144-C, 3rd Floor,

Near PVR Cinema, Vikas Puri,
New Delhi-110018

6. **M/s Devika Promoters and Builders Pvt. Ltd.**
Flat No. SF-28,
Stilt Floor Devika Tower-6
Nehru Place, New Delhi-110019

7. **M/s Hacienda Projects Pvt. Ltd.**
C-23, Greater Kailash Enclave,
Part-I, New Delhi-110048 **... Respondents**

AND IN THE MATTER OF INV. PETT. NO. 13/PB/2024:
(Under Section: 60(5) r/w Rule 11 of NCLT Rules of IBC, 2016)

Rakesh Verma
(Authorized Representative of Homebuyers)
Flat No. 1099, Vikas Kunj,
Vikas Puri, New Delhi-110018 **... Applicant/Intervenor**

Versus

1. **New Okhla Industrial Development Authority**
Main Administrative Building,
Sector 6, NOIDA

2. **Resolution Professional of**
M/s Granite Gate Properties Private Limited
(Mr. Devendra Singh)
Assotech Business Cresterra,
Office No. 216, 2nd Floor,
Tower – 1, Sector 135, Noida – 201305 **... Respondents**

Order Delivered on: 24.07.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Petitioner : Adv. Deepak Khosla, Adv. Ridhima Verma, Adv. Shashwat Tripathi, Adv. Madhu Ayachit in IA-3588/2023, IA-3596/2023, IA-1158/2024, IA-1159/2024, IA-3017/2024, Adv. SK Chaturvedi.

For the Shomit Finance : Sr. Adv. Sunil Fernandes, Adv. Pankaj Aggarwal,

Adv. Diksha Dadu, Adv. Shashwat Srivastava, Adv. Ranjan Grover in IA- 3596/2023, IA-3926/2023, IA-3330/2020, IA-3325/2020.

For the Noida Authority : Adv. Rachit Mittal, Adv. Parish Mishra

For the RP : Adv. Sumant Batra, Adv. Nidhi Yadav, Adv. Sarthak Bhandari, Adv. Nubair Alvi, Adv. Devendra Singh

ORDER

IA-3255/2020, IA-3067/2022, IA-2298/2021 IA-3588/2023, IA-506/2024, IA-1158/2024, IA-1159/2024, IA-3926/2023, IA-3017/2024, IA-3596/2023, IA-3325/2023, IA-3025/2022, IA-3330/2020, Inv. Pett. 13/2024:- When the prayer made in IA-3255/2020 is to approve the Resolution Plan, the same in IA-3067/2022 and IA-3588/2023 are to reject the plan. The factual development as enumerated in IA-3255/2020 i.e. the IA for approval of the Resolution Plan is:-

(a) In terms of the order passed by this Tribunal, the Corporate Insolvency Resolution Process (CIRP) qua the Corporate Debtor commenced on 10.01.2019, and Mr Prabhijit Singh Soni was appointed as the IRP to conduct the Insolvency Resolution Process. In the process, the IRP made a public announcement dated 13.01.2019, inviting claims from the Creditors qua the Corporate Debtor, with due deference to the provisions of Section 13 & 15 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **"IBC, 2016/Code"**). On receipt of the claims, a Committee of Creditors comprising of the Financial Creditors qua the Corporate Debtor was constituted. The first meeting of CoC was

convened on 18.02.2019. Nevertheless, the IRP suggested by the Financial Creditor was not confirmed as RP.

(b) The two valuers viz. Crest Capital Group Pvt. Ltd and Tech Mach International Pvt. Ltd. were appointed by the IRP, to discharge the function of valuation qua the CD and their appointment was ratified by the CoC in its Second Meeting on 19.03.2019. In the said meeting, M/s. S.P. Chopra & Co., Charted Accountants, were appointed to conduct forensic audit of the CD for the period from 01.04.2009 till date.

(c) A proposed Invitation for Expression of Interest in prescribed Form i.e. Form G was placed before the CoC. The proposal could be approved and the CoC resolved to publish the same on 26.03.2019. Resultantly, the Form G and the Request for Resolution Plans ("RFRP") were published on 26.03.2019 in Financial Express and Jansatta and detailed RFRP along with Form G, Evaluation Matrix and the Information Memorandum were published on the website of the Corporate Debtor maintained by the IRP (www.granitegate.in). True copies of Form G, RFRP and the IM published on 26.03.2019 (collectively) could be annexed with application for approval of Resolution Plan as Annexure-B.

(d) In response to the invitation for the purpose, the IRP received Expression of Interest from 3 (three) Prospective Resolution Applicants. Subsequently, as decided by the CoC, in its Third Meeting held on 12.04.2019, a revised invitation in Form-G was published in the newspapers on 14.04.2019. A copy of revised Form-G as published on 14.04.2019 is annexed with the IA-3255/2020 as Annexure-C.

(e) In terms of the order dated 10.06.2019 passed by this Tribunal, the IRP was directed to examine the claim of the Noida Authority and not to reject the same on the ground of limitation or on the ground that the same is a claim by an entity other than the Financial Creditor. Consequently, the CoC was reconstituted and Noida was included as member thereof, with 23.79% voting share, in the Fifth Meeting of CoC held on 18.06.2019, rescheduled to be held on 27.06.2019 and 29.06.2019.

(f) In view of the inclusion of Noida as member of CoC, a decision was taken in the 5th Meeting of CoC to publish a revised Form-G, Evaluation Matrix and Information Memorandum. In terms of the Resolution passed by CoC, the revised Form G was published on 05.07.2019. In terms of the order dated 01.07.2019 passed by this Tribunal, the period of CIRP was extended by 90 days. Yet, again, this Tribunal passed order dated 17.09.2019, extending the period of CIRP by further 60 days.

(g) Thereafter, a revised Form G was published in both the Financial Express and Jansatta on 30.09.2019 in terms of the decision taken in the 6th Meeting of the CoC, in response to which the IRP received Expression of Interest (EoI) from Five (05) Prospective Resolution Applicants ("PRA"). The IRP disclosed the list of PRAs to the CoC in terms of its letter dated 13.10.2019.

(h) In its 7th Meeting, held on 16.10.2019, the CoC discussed the list of the PRAs. In para 16 of the application, the RP has mentioned the particulars of the PRAs, which reads thus:-

S.NO.	COMPANY NAME	DATE OF RECEIPT OF EOI
1.	SMV AGENCIES PRIVATE LIMITED(JAIPURIA GROUP), NEW DLELHI	03.10.2019
2.	PURVANCHAL PROJECTS PRIVATE LIMITED NOIDA	07.10.2019
3.	PANCH TATVA PROMOTERS PVT LTD, SARITA VIHAR, DELHI	11/10/2019
4.	E HOME INFRASTRUCTURE PVT LTD, K.G. MARG, NEW DELHI DASNAC DESIGNARCH	11.10.2019
5.	SURENDER KUMAR SINGHAL AND SUNIL AGARWAL, KRISH GROUP, GURGAON	12.10.2019

(i) On an application filed by one of the aggrieved homebuyers, before this Tribunal, for removal of IRP for various reasons, this Tribunal passed order dated 20.11.2019, appointing Mr. Rishi Kapoor, Advocate to act as Chairman qua the meeting of the CoC to ensure appointment of a Resolution Professional. In the wake, the 11th Meeting of the CoC was held on 21.11.2019 under the Chairmanship of Mr. Rishi Kapoor, Advocate. In terms of the resolution passed in the meeting, Mr. Chandra Prakash (IBBI/IPA-002/IP-N00660/2018-2019/12023) was appointed as RP qua the Corporate Debtor. Thereafter, this Tribunal passed an order dated 27.11.2019, appointing the present RP in respect of the CD in the present CIRP.

(j) Further, when the Resolution Professional moved an application seeking exclusion of the period spent in litigation, from the period of CIRP, this Tribunal in terms of the order dated 09.12.2019 extended the process by

a period of 60 days. Thereafter, yet another invitation for Expression of Interest was published on the website of CD on 09.03.2020 as per the decision taken in the 15th Meeting of CoC held on 05.02.2020.

(k) The current RP was not provided the Valuation Report submitted by M/s Tech Mach International Pvt. Ltd. along with the CIRP record. In the record handed over by erstwhile IRP to RP, two separate Valuation Reports (one for land and single-story structure by Mr. Ganesh Chandra Mamgai, and other for specified assets on standalone basis by Mr. Prateek Mittal were found.

(l) Considering an application filed before this Tribunal, in terms of the Resolution passed by CoC in its 15th Meeting, on 05.02.2020, seeking exclusion of time spent in legal proceedings and receiving the records from the IRP, this Tribunal passed order dated 07.02.2020, extending the time limit for CIRP by period of 60 days.

(m) The revised list of Prospective Resolution Applicants was shared in its 16th Meeting held on 11.03.2020. Although, UV Asset Reconstruction Pvt. Ltd. had not submitted an Expression of Interest (EoI) earlier, during the tenure of erstwhile IRP, the CoC resolved to accept its Expression of Interest in the above meeting with majority vote. The revised list of Prospective Resolution Applicants, thus stood as under:-

(i) SMV Agencies Pvt. Ltd.

(ii) E-Homes Infrastructure Pvt. Ltd. (Dasnac);

(iii) Panchtatva Promoters Pvt. Ltd.;

(iv) Purvanchal Projects Pvt. Ltd;

(v) UV Asset Reconstruction Co. Pvt. Ltd.

(n) In terms of the Resolution dated 05.02.2020 passed in 15th Meeting of CoC, a Supplementary Information Memorandum was issued on 11.03.2020 to all the PRAs who were to submit their respective Resolution Plans qua the Corporate Debtor on or before 26.03.2020. Furthermore, an updation of Supplementary Information Memorandum dated 28.06.2020 was issued by the Resolution Professional highlighting additional details with respect to summary of receivables and credit note reversal. However, as the RP/Applicant received representations/ requests from the Prospective Resolution Applicants for extension of time to submit their Resolution Plans, the last date for submission of plans was extended by the RP, owing to the lockdowns/curfews imposed by the Central as well as the State Government due to spread of COVID-19 pandemic.

(o) The Forensic Auditors appointed by the erstwhile IRP submitted their final Audit Report dated 13.11.2019, highlighting numerous preferential, undervalued, fraudulent, and avoidable transactions entered into on behalf of the Corporate Debtor.

(p) In the meantime, the Noida Authority filed an application bearing no. CA-1338(PB)/2019, inter alia, seeking declaration from this Tribunal that it should be treated as a Financial Creditor. Though, the hearing qua the application was complete, but on account of demitting the office by the Presiding Member, the order could not be pronounced and the application was listed for re-hearing afresh.

(q) In the 17th Meeting of CoC held on 04.06.2020, through video-conferencing the decision of RP/Applicant to extend the time for

submission of the Resolution Plans was ratified and the last date fixed for the purpose was 25.06.2020. In the meantime, in terms of the order dated 19.06.2020, this Tribunal further extended the CIRP period.

(r) The last date for submission was again extended by CoC, in terms of the resolution passed in its 18th meeting dated 28.06.2020, till 06.07.2020.

(s) The Applicant/Resolution Professional received Resolution Plans from 03 (Three) Prospective Resolution Applicants and the same were verified by the Applicant/ Resolution Professional and its team. Since, the Resolution Plans submitted by the Prospective Resolution Applicants were not in compliance of the Code and applicable Regulations, the Resolution Professional shared the Reports highlighting list of deficiencies with the respective Prospective Resolution Applicants vide e-mail dated 12.07.2020 and granted them time to rectify the deficiencies. The decision to allow the PRAs to cure the deficiency in their plan was ratified by the CoC in its 19th Meeting held on 15.07.2020. It was also resolved by the Coc that the Prospective Resolution Applicant will be allowed one more opportunity to submit Amendment Sheets qua their Resolution Plans latest by 17.07.2020. The Prospective Resolution Applicants were allowed to make amendment only to rectify the procedural defects as highlighted in the check list/ report by the RP. Resultantly, the Resolution Professional sent e-mail dated 16.07.2020 to PRAs, allowing them another opportunity in terms of the Resolution passed by the CoC.

(t) In the aforementioned Meeting of CoC (19th) the homebuyers proposed that all the 03 (three) Resolution Plans received by the RP from:- (i) SMV

Agencies Private Limited; (ii) Purvanchal Projects Private Limited; and (iii) UV Asset Reconstruction Limited, be placed before CoC for simultaneous voting. The CoC passed its Resolution accordingly. The RP further informed the members of CoC that he had received three plans, complete in all respect, which would be shared by the RP with CoC on 18.07.2020 and the simultaneous voting on same would begin from 19.07.2020 till 22.07.2020. The CoC was also informed that the Authorized Representative had evaluated the 03 (three) Resolution Plans in terms of the Evaluation Matrix approved by the CoC in its 15th Meeting and would be sharing the same with the homebuyers before the voting, strictly for guidance purpose. The NOIDA was also requested to independently evaluate all the Resolution Plans on the basis of Evaluation Matrix. Resultantly, the 03 (three) Resolution Plans received for Resolution of Insolvency of the Corporate Debtor were shared with the CoC on 18.07.2020 and were put to vote from 19.07.2020 (05:00 PM) to 22.07.2020 (05:00 PM), in terms of the decision taken by the CoC in its 19th Meeting.

(u) In the 19th Meeting of CoC, held on 15.07.2020 (ibid), the Applicant/ Resolution Professional also informed the CoC that despite unforeseen circumstances and delay, he could file 39 applications questioning Preferential, Undervalued and Fraudulent Transactions and was in the process of filing 10 more applications regarding the same.

(v) During the course of voting qua the Resolution Plans, one of the Prospective Resolution Applicants viz. M/s Purvanchal Projects Pvt. Ltd. sent a legal notice dated 21.07.2020 to the Applicant/RP raising

objections against the Applicant/RP, which was answered. The NOIDA also questioned the voting process on the ground that there was no option provided to the members of CoC to choose "None of the above" or "Abstain" or reject, while exercising their voting right. In the wake, the Resolution Professional clarified to NOIDA that it may exercise its voting right by choosing, "None of the above" as option and the Applicant/RP would take into account the same, while counting the votes.

(w) The CoC could approve the plan submitted by SMV Agencies Private Limited with a vote share of 80.13%. The NOIDA which had 19.97% voting share in the CoC exercised its voting right vide e-mail dated 22.07.2020 and remarked, "None of the Above/Rejected".

(x) Subsequently, the Authorised Representative of Homebuyers sought nominations from the Homebuyers for the Committee proposed to be formed in terms of the Resolution Plan and vide her e-mail dated 07.08.2020, she informed the RP about the names of the persons who were to act as nominees of the Homebuyers in the Monitoring, Legal and Construction Committees. Subsequently, the nominees of the Homebuyers and Resolution Applicant nominated a third independent member to the Monitoring Committee and apprised the RP about the same vide e-mail dated 11.08.2020. As has been noted hereinabove, the IA No. 3255/2020 has been preferred for approval of the Resolution Plan.

2. Nevertheless, the **New Okhla Industrial Development Authority** inter alia has challenged the plan by filing **IA-3067/2022**. The salient pleas raised by NOIDA espoused in the application are:-

(a) The Lease Deed qua Plot No. GH-003, Sector 100, NOIDA was executed between the Applicant and the Corporate Debtor on 30.12.2008 and the Lease Deed in respect of Plot No. GH-005, Sector-110, NOIDA was executed between them on 29.12.2009. The CIRP qua the CD commenced on 10.01.2019 and the claim staked by the NOIDA was admitted by IRP to the extent of Rs. 532.55 Crores. Nevertheless, the NOIDA submitted amended claim form on 17.06.2019 qua both the plots and in 5th CoC meeting convened on 18.06.2019 the admitted claimed amount was revised to Rs. 848.48 Crores.

(b) The NOIDA had filed the claim form as Financial Creditor and the erstwhile IRP even after admission of its claim as Financial Creditor revised the status of the Applicant to that of Operational Creditor on 12.07.2019, which led to filing of C.A. No.1338 (PB) of 2019, seeking admission of claim of NOIDA as a Financial Creditor.

(c) The area of Plot No. GH-005, Sector 110, NOIDA is 1,64,120 sq. meters and that of Plot No. GH-003, Sector 100, NOIDA is 1,20,009 sq. meters. The term of Lease Deed registered vide Registration No. 3639 at Book No.1, year 2008 dated 30.12.2008 in terms of which the Plot No. GH-003, Sector 100, Noida was transferred in favour of Corporate Debtor (formerly known as M/s Red Fort Jahangir Properties Pvt. Ltd.) is 90 years commencing from 30.12.2008. Similarly, the term of Lease Deed registered at Book No.1, year 2009 vide Registration No. 4893 dated 29.12.2009 in terms of which Plot No. GH-005, Sector 110, Noida having an area of 1,64,120 sq. meters was transferred on lease basis by NOIDA to the Corporate Debtor for a period of 90 years from 29.12.2009.

(d) In the 8th meeting of CoC convened on 31.10.2019, wherein the evaluation matrix calculations in finalization of Resolution Plan of the Corporate Debtor were discussed, it could transpire that the SRA had proposed the payout of Rs. 230 Crores for Applicant, out of which Rs. 115 Crores was to be paid by it in six bi-monthly instalments and the remaining Rs. 115 Crores was to be paid from the recovery, as a consequence of Forensic Audit.

(e) The issue raised in C.A. No. 1338 (PB) of 2019 was regarding the category of NOIDA as Creditor and not regarding the amount of claim/ distribution, in its favour. When the Resolution Plan submitted by the SRA (SMV Agencies Pvt. Ltd.) was put to vote, the Applicant had voted against the same.

(f) The issue of NOIDA being Financial Creditor or Operational Creditor was decided by Hon'ble Supreme Court in **New Okhla Industrial Development Authority vs. Anand Sonbhadra** reported in 2002 SCC Online SC 631, wherein the Hon'ble Supreme Court viewed that the NOIDA should be treated as an Operational Creditor.

(g) In view of the aforementioned judgment of Hon'ble Supreme Court, this Tribunal passed order 31.05.2022, disposing of the C.A. No. 1338 of 2019 as infructuous.

(h) The Resolution Plan is in violation of Regulation 36(2) of IBBI (Resolution Process for Corporate Persons) Regulations, 2016, as at internal page 75 of the Resolution Plan (Page 124 of I.A. No. 3255 of 2020), the SRA has mentioned that as per the information shared by the Interim Resolution

Professional in Information Memorandum (IM) dated 17.10.2019, the liquidation value owed to the Operational Creditors is Rs. 21.87 Crores.

(i) In terms of 4th amendment carried in IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the clause (j) and (k) were omitted from Regulation 36(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, thus the mention of liquidation value in Information Memorandum was illegal.

(j) From the text used at internal page 75 of the Resolution Plan, it is clear that the IM disclosed the liquidation value of CD. The text reads thus:-

> *"...As the information shared by the Interim Resolution Professional in information memorandum ("IM") dated 17th October, 2019, the liquidation value owed to the operational creditors is Rs.21.87 Crores...."*

(k) In Plot No. GH-03, Sector 100, NOIDA 3146 flats have been approved to be constructed out of which the sub-lease deeds qua only 574 flats were executed. Similarly, qua Plot No. GH-005, Sector 110, NOIDA 4018 flats were approved to be constructed, out of which the sub-lease deed for only 708 flats were executed. As prescribed by the State Government, the circle rate in the area where Sector 100 and 110 are located, as on insolvency commencement date was Rs. 94,000/- per sq. meter. Thus, the value of GH-003, Sector 100 admeasuring 1,20,009 sq. meters comes to Rs. 11,28,08,46,000/- and that of GH-005, Sector 110 admeasuring 1,64,120 sq. meters comes to Rs. 15,42,72,80,0000/-, whereas the liquidation value of the entire land as shown in the CIRP is Rs. 19,23,50,720/-.

(l) The claims of NOIDA have been filed only upto CIRP commencement date and all the dues accruing to it have to be paid by the Resolution Applicant. But, at page 76 of Resolution Plan (internal page 125 of the I.A. 3255 of 2020), it is mentioned that the claims in relation to the period prior to the date of approval plan would be written off in full and shall stand permanently extinguished by the virtue of the order of the Adjudicating Authority to be passed by it, approving the plan, which is not permissible.

(m) The plan deserves to be nixed for the reason that at its page 126 (internal page 77 of the I.A. No. 3255 of 2020) it is mentioned that "The Resolution Applicant assumes that the title of NOIDA Authority over the land parcels so acquired, is and has always been good, marketable and valid and in the event, the Corporate Debtor becomes disentitled to any parcel of land, the NOIDA will be responsible to grant lease hold right to the Corporate Debtor over additional land parcels".

(n) The relief and concessions regarding the claim of the NOIDA, beyond the commencement of CIRP cannot be granted.

(o) Certain relief and concessions sought by the SRA are conditions precedent to the plan. The plan with such conditions cannot be approved [(page 139-142 of I.A. No. 3255 of 2020) internal page 90-93 of the Resolution Plan].

3. The NOIDA also preferred I.A. No. 2298/2021, espousing therein that the possession of dwelling units handed over to the allottees is contrary to the provisions of Section 13 of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010, thus the same may be

declared as illegal. It has also questioned the minutes of CoC meeting dated 20.04.2021. In the said application, the NOIDA has further espoused:-

(a) The agenda placed before CoC in its 21st meeting convened on 15.04.2021 was opposed by the NOIDA, thus act performed in terms of the agenda as approved by CoC need to be reversed. The agenda items as mentioned in para 4 of the I.A. reads thus:-

> *"4. The agendas for voting in the said CoC meeting were as under:*
>
> *(1) To approve the terms and conditions of next phase of pool & build.*
>
> *(2) To authorize the resolution professional to sell the unsold/ cancelled apartments available in the inventory of the corporate debtor.*
>
> *(3) To authorize the resolution professional to raise interim finance to facilitate construction.*
>
> *(4) To approve appointment of M/s. Saikrishna & Associates as legal advisor.*
>
> *(5) To authorize the resolution professional to discontinue the offer of fit-outs in completed towers after 31st August, 2021.*
>
> *A true copy of the notice of 21st Meeting of Committee of Creditors dated 15.04.2021 issued by the Respondent is annexed and marked as* ***"ANNEXURE-A-1".***"

(b) The charges for water and sewer, instalments, re-schedules instalments, time extension charges etc. which became payable to the NOIDA need to be paid.

4. Mr. Ashmeet Singh Bhatia, a homebuyer preferred I.A. No. 3588/2023, opposing the I.A. No. 3255/2020, filed by RP for approval of the Resolution Plan. The salient pleas espoused in the IA are:-

(a) Though, initially, Mr. Ashmeet Singh Bhatia (hereinafter referred to as **"Applicant Homebuyer"**) voted in favour of the plan, but subsequently, in view of the extraneous factor, the plan has become unfeasible and practically impossible to be implemented.

(b) The Flat No. 2502, allotted to the Applicant Homebuyer is not yet complete and possession of the same has not yet been handed over to the Applicant. The CD was able to raise the construction qua the project in issue only upto the 18th Floor in Tower 19, after which no construction could took place in the project and the Flat No. 2505 (sic2502) which was to be allotted to the Applicant Homebuyer is still hanging in air for more than 10 years.

(c) The Corporate Debtor has been driven to CIRP vide order dated 27.11.2019, passed by the Adjudicating Authority, New Delhi, only due to its financial mismanagement by the promoter directors qua the Three C Group of Companies.

(d) During the course of CIRP qua the CD, the Applicant Homebuyer was apprised of certain highly glaring and shocking facts regarding the mismanagement of the funds of the CD by its promoter and directors, which was further fructified by the two Forensic Audit Report prepared by the auditor, namely, M/s S.P. Chopra & Co., Chartered Accountant, in 2019. Thus, the Applicant Homebuyer wrote a detailed letter dated 04.01.2020 to the RP wherein he mentioned about a glaring ex-facie forged and backdated transactions by which the shares belonging to the Corporate Debtor were illegally transferred to another related party, namely M/s Boulevard Projects Private Limited (under CIRP).

(e) In the Interim Resolution Plan dated 06.07.2020, tabled before the CoC, which admittedly recorded the large scale siphoning off the funds from the Corporate Debtor by its related group companies and provided for creation of a reserve fund account, wherein money was to be recovered from all such fraudulent and preferential transactions that were carried out by the CD. As per the Interim Resolution Plan all such money collected was to be distributed amongst the allottees such as the Applicant Homebuyer. It was in such backdrop that the Applicant Homebuyer accorded his consent to the Interim Resolution Plan.

(f) As and when the Applicant Homebuyer could lay his hands on any data crucial for Resolution Process, he wrote detailed e-mails to the erstwhile RP reporting the same and asking him to file claims against related parties, which had been pushed into CIRP including against the main flagship company of Three C Group as also against the principal contractor and majority shareholder qua the Corporate Debtor.

(g) The Applicant homebuyer had all apprehension as to whether the Resolution Plan in question could succeed at all, as there are huge receivables from the related parties, which had been pushed into CIRP by the promoters and the directors.

(h) The Resolution Plan could also suffer in terms of approval of an ex-facie illegal Resolution Plan of the holding and related company of the Corporate Debtor viz. M/s Boulevard Projects Private Limited. When there was no adjudication on the claim of the Corporate Debtor qua highly valuable equity shares of its 100% subsidiary, M/s Hyacinth Projects Pvt. Ltd, owned by it was fraudulently hijacked during CIRP due

to highly questionable action of IRP/RPs including the current RP, Mr. Devender Singh. It writs large that if the resolution plan qua the related party companies is approved, the resolution of insolvency qua the CD would be adversely prejudiced.

(i) As per the implementation schedule qua the Resolution Plan, the work in Tower-19, Lotus Panache Project of the Corporate Debtor, in which the Applicant Homebuyer has his flat viz. Apartment No. 2502 would only commence at the fag end only after completion of work in all the other pending Towers of the two projects of the Corporate Debtor. Thus, if the related parties/group companies from whom the recoveries are to be made by the Corporate Debtor are pushed to CIRP, the CD will be left with no funds to complete the Tower in which the flat allotted to the Applicant would be located. Such approach would amount to creating a class within a class of Financial Creditors. To buttress the plea, the Applicant Homebuyer has relied upon the judgment of Hon'ble Appellate Tribunal in Binani Industries Limited vs. Bank of Baroda & Anr.

(j) The Resolution Plan cannot be approved because:-

(i) It puts the Homebuyers in jeopardy and instead of seeking to provide resolution, the plan stems out of uncertainty and the financial proposal is prima facie another attempt to defraud the Homebuyers. The entire plan is based on receivables from customers which is mentioned in the IM. It rests on the assumption that a collection of Rs. 376.87 Crores would be made from Homebuyers of both the projects of Corporate Debtor i.e. Lotus Panache (Rs. 297.32 Crores) and Lotus Boulevard (Rs. 79.55

Crores), which would go in financing the Resolution Plan, the total estimated cost of which is fixed at Rs. 435.85 Crores.

(ii) The majority of the Homebuyers, who were members of CoC approved the plan, having the impression that the funds would be pooled in at that point of time, on the premise that a 'Reserve Fund', will be created, where all excess receivables by virtue of preferential/fraudulent and undervalued transactions, after incurring the cost of litigation, would be distributed amongst the homebuyers in pro-rata manner. The Resolution Plan provides that any/all recoveries made from the preferential/fraudulent/ undervalue transactions (PUFE) is estimated to be above Rs. 535 Crores from the fraudulent transactions and Rs. 128 Crores from the preferential and undervalued transactions (total Rs. 663 Crores) as per the details provided to the Resolution Applicant in the Supplementary IM.

(iii) The Resolution Plan is made in isolation, despite acknowledgment of siphoning off more than Rs. 5000 Crores of more than 15,000 Homebuyers in the Three C Group of Companies. It is admitted position, inter alia, the Forensic Audit Reports, prepared by M/s S.P. Chopra & Co., Chartered Accountants, for the Corporate Debtor, for the period 01.04.2010 to 10.01.2019 and from 10.01.2019 to 27.11.2019 revealed that Rs. Thousands of Crores of Rs., which encompass funds of genuine and innocent Homebuyers and allottees of the Corporate Debtor have been siphoned off from the Corporate Debtor, to various related parties,

group companies, potentially related parties, on various counts, such as (i) inter corporate loans; (ii) exorbitant interest on loans received from related parties; (iii) under the garb of contractual obligations; (iv) payment of bogus work charges etc. etc.

(iv) More than Rs. 1000 Crores have been siphoned off from the Corporate Debtor to its holding company viz. 3CUDPL alone, which was appointed as the Principal Contractor by the Corporate Debtor for the construction of the projects, i.e. Lotus Panache and Lotus Boulevard. The Corporate Debtor in its own letter dated 27.11.2018 written to RERA, U.P., has acknowledged that the construction activities were banned due to NGT orders. But despite the ban on the project sites, the 3CUDPL had raised Running Account Bills (**"RA Bills"**) amounting to Rs. 592.16 Crores on monthly basis. Even when the construction work was not complete, the 3CUDPL was appointed for job work relating to interiors and furnishing work. Bogus invoices were raised to adjust the debit balances and book expenses, which are neither supported nor authenticated, against the outstanding of INR 93.21 Crores, appearing in the books as on 31.03.2018 and which ex-facie bogus invoices have discrepancies in numbers, in mentioning of service tax, despite GST having come in force in 2017.

(v) When the total cost of construction for the projects viz. Lotus Boulevard and Lotus Panache, after taking into account the inflation in raw material cost was fixed at INR 2189.90 Crores, the 3CUDPL raised the invoices for the total construction expenses

amounting to INR 2485.15 Crores which evidently exceeds the agreed contracted amount by INR 295.25 Crores. Thus, the funds are diverted.

(vi) At one point of time, the construction companies of the Three C Group were cash rich, but subsequently they were ruthlessly looted by their own promoters and some other holding and/or related group companies of the Three C Group.

(vii) The Resolution Plan does not provide for effective implementation, thus is in the teeth of provisions of Section 30(2) of IBC, 2016.

(viii) The Resolution Plan seeks direction to third parties, without any adjudication, thereby affecting the rights of the third parties arising from various agreements and is thus illegal and deserve to be nixed in terms of the provisions of Section 30(2)(e) of IBC, 2016. In terms of the judgment of Hon'ble NCLAT in K L Jute Products Pvt. Ltd. vs. Tirupati Jute Industries Ltd. & Ors. in Co. App (AT) (Insol.) No. 277/2019, the Adjudicating Authority cannot grant such relief or concession while considering the application for approval of plan, which affect the interest of third parties. Such is also the view taken by Mumbai Bench of NCLT in DBM Geotechnics and Constructions Pvt. Ltd. vs. Dighi Port Ltd.

(ix) The Resolution Plan provides for priority in the matter of distribution to the Operational Creditors, which is in violation of Section 53(1) of IBC, 2016. The plan also does not contain any effective provision for implementation thereof. It is also viewed in Ebix Singapore Pvt. Ltd. vs. Committee of Creditors of Educomp

[(2022) 2 SCC 401], that a Resolution Plan should be implementable.

(x) The present Applicant Homebuyer/Objector would be highly prejudiced, along with thousands of other Homebuyers of the Corporate Debtor, if the IA No. 3255/2020, filed four years ago for approval of the Resolution Plan, which has presently become totally unrealistic is allowed by this Tribunal.

(xi) The Applicant Homebuyer/Objector would be further prejudiced along with thousands of other Homebuyer of the Corporate Debtor, if the recent ex-facie, illegal and fraudulent decision taken by CoC in its 25th meeting held on 6th and 7th June, 2023 is countenanced by this Tribunal.

(xii) The RP did not prefer an appeal against rejection of IA-4658/2020, filed regarding fraudulent and criminal hijacking of the extremely valuable equity shares of M/s Hyacinth Projects Pvt. Ltd (a 100% subsidiary of the Corporate Debtor), for want of prosecution. The new RP also did not file any response to the Company Appeal (AT) (Ins) No. 586 of 2023 filed by the Applicant Homebuyer/Objector against the order dated 27.02.2023, whereby the plan qua BPPL was approved.

(xiii) By joining the IA No. 3926/2023, as an Applicant for withdrawal of IA-3325/2020 and IA-3330/2020, the RP has in a way agreed to cause a wrongful of loss of Rs. 50 crores to the Corporate Debtor and a wrongful gain to Mr. Ankit Aggarwal and his company, M/s Shomit Finance Ltd.

(xiv) If the construction on the site of Lotus Panache Project of the Corporate Debtor is carried without approval of lay out plan by the NOIDA and without consent of the Homebuyers, the construction of the commercial building named as "I-Ring" will be within the teeth of judgment dated 31.08.2021, passed by Hon'ble Supreme Court in the Civil Appeal No. 5041/2021 in Supertech Limited vs. Emarald Court Owner Resident Welfare Association & Ors.

(xv) If the construction qua "I-Ring" commercial building is permissible, the RP should have compulsorily resorted to e-auctioning the development right qua the same.

(xvi) A perusal of IA-3872/2020 viz. Chandra Prakash vs. M/s Groundworks Concept Pvt. Ltd.; IA-3358 of 2020 viz. Chandra Prakash vs. M/s Gravity Facilty Management Solutions Pvt. Ltd. and IA No. 3338/2020 viz. Chandra Prakash vs. M/s RCB Infracon Pvt. Ltd. would reveal that the same are based on sufficient relevant documents and if these applications are adjudicated upon, the avoidance transactions referred to therein would be declared as ab-initio void.

5. In the application filed by him, the Applicant Homebuyer has given the details of certain petitions which according to him are involving CIRP qua group companies of the CD. The details of the proceedings as mentioned in the application reads thus:-

"a. ***CP (IB)-2582 (ND) 2019*** *- Jakson Limited Vs. Three C Universal Developers Pvt. Ltd.*

b. ***CP (IB)-1248 (PB) 2018*** *- Shinoj Koshy Vs. Granite Gate Properties Pvt. Ltd. (The captioned matter)*

c. ***CP (IB)-967 (PB) 2018*** *- Boulevard Projects Pvt. Ltd. SGM Webtech Pvt. Ltd. Vs.*

d. ***CP (IB)-2721 (ND) 2019*** *- Straight Edge Contracts Vs. Three C Shelters Pvt. Ltd.*

e. ***CP (IB)-1718 (PB) 2018*** *- Shiv Dayal Sharma & Others Vs. Three C Projects Pvt. Ltd.*

f. ***CP (IB)-432 (ND) 2019*** *- Mr. Arun Kumar Sinha Vs. Three C Homes Pvt. Ltd.*

g. ***CP (IB)-875 (PB) 2020*** *- Dhankalash Distributors Pvt. Ltd. Vs. Arena Superstructures Pvt. Ltd.*

h. ***CP (IB)-876 (ND) 2020*** *- Dhankalash Distributors Pvt. Ltd. Vs. Piyush IT Solutions Pvt. Ltd.*

i. ***CP (IB)-380 (PB) 2020*** *- IIFL Private Equity Fund Vs. Three C Green Developers Pvt. Ltd.*

j. ***CP (IB)-470 (ND) 2017*** *- Shri Amit Kumar Malik Vs. Kindle Developers Pvt. Ltd.*

k. ***CP (IB)-662-ND-2021*** *- Pragati Impex India Pvt. Ltd. Vs. Vistar Constructions Pvt. Ltd.*

l. ***CP IB-419-ND-2022*** *- IndusInd Bank Limited Vs. Hacienda Projects Pvt. Ltd.*

ii. *In addition to the above, details of the* ***pending fraudulent, malicious and collusive company petitions, seeking CIRPs of Three C Group Companies*** *deeply involved in the said frauds, are mentioned herein below:*

a. ***CP (IB)-362-ND-2022*** *- IndusInd Bank Limited Vs. Cloud 9 Projects Pvt. Ltd.*

b. ***CP (IB)-558-ND-2022*** *- Aditya Birla Finance Limited Vs. Sequel Buildcon Pvt. Ltd.*

c. ***CP (IB)-555-ND-2021*** *- Neerav Bhatnagar Vs. Sequel Buildcon Pvt. Ltd.*

d. ***CP (IB)-292-PB-2022*** *- PNB Housing Finance Limited Vs. Sequel Buildcon Pvt. Ltd.*

e. ***CP (IB)-849-PB-2020*** *- Sundrm Consultants Pvt. Ltd. Vs. Three C Properties Pvt. Ltd.*

f. ***CP (IB)-597-PB-2021*** *- Properties Pvt. Ltd. Sachin Singh & Ors. Vs. Three C*

g. ***CP (IB)-463-ND-2022*** *- Ashok Chand Srivastava & Ors. Vs. Three C Properties Pvt. Ltd.*

h. ***CP (IB)-71-ND-2021*** *- Three C Projects Pvt. Ltd. Vs. Three C Facilities Managements Pvt. Ltd.*

i. ***CP(IB)-269-ND-2021*** *- M/s Spacewood Furnishers Pvt. Ltd. Vs. M/s Prateek Infraprojects India Pvt. Ltd. (earlier name M/s Three C Realtors Pvt. Ltd.)*

iii. *What is further glaring and supports the submissions made hereinabove, is that in all the Petitions filed against the Three C Group of Companies, the alleged Corporate Debtors i.e., Three C Group of Companies, have voluntarily admitted themselves to the debt in question, on the same premise of financial crunch and have in fact intentionally and proactively expedited the process of getting the CIRP in place, at the earliest. The following chart, details some of the said cases;*

S. No.	Particulars	Remarks
1.	CP (IB) 2582(ND) 2019. M/s Jackson Limited vs. M/s Three C Universal Developers Pvt. Ltd.	The counsel for the Corporate Debtor appeared on 13.12.2019 [@ ***Page 6***] and submitted before the Hon'ble Tribunal that he had instructions not to file reply as the Corporate Debtor was not in a position to make any payments. Subsequently vide order dated 17.12.2019, CIRP was ordered. (***Para 11 @Page 11***)
2.	CP (IB) 662/ND/2021 Pragati Impex India Pvt. Ltd. Vs. Vistar Constructions Pvt. Ltd.	Ex-parte proceedings were initiated and CIRP was ordered vide order dated 05.08.2022. (***Para 10 @ Page 17***)
3.	CP (IB) 432/ND/2019 Mr. Arun Kumar Sinha vs. Three C Homes Pvt. Ltd.	***Order, dated 26.08.2019***, of the Tribunal, wherein the ***Corporate Debtor explicitly expressed its inability to pay*** the amount as claimed in default by the Financial Creditor (@ ***Page 22***). The Corporate Debtor failed to appear before this Tribunal to defend its case, when the matter was heard on 06.09.2019 (***Para at the top @ Page 26***) and this Ld. Tribunal passed the order commencing CIRP.
4.	CP (IB) 876/ND/2020 Dhankalash Distributors Pvt. Ltd. Vs. Piyush IT Solutions Pvt. Ltd.	Intentionally and dishonestly, no cogent defence was taken by the alleged Corporate Debtor, *inter alia*, because the so called **Financial Creditor is a Kolkata based, entry operating, paper/shell company** and the amount of **alleged unpaid debt, mischievously claimed as inter-corporate loan, is only a small part of Rs. hundreds of crores of homebuyers** and others stakeholders, of the Corporate Debtor and its related group companies of the Three C Group; **siphoned off/diverted/laundered by this so called Financial Creditor**, under joint, pre-planned criminal conspiracy, through dozens of shady Bank Accounts in a single State Bank of India, Nehru Place Branch New Delhi, *inter alia*, to the companies owned by the families of the white collared criminal promoters of the Three C Group.

		Because of concealment and suppression of these crucial and material facts, CIRP was ordered vide order dated 28.10.2020. The fraudulent, malicious and collusive Company Petition and Reply filed by the alleged Corporate Debtor and the order, dated 28.10.2020 (**@ *Pages 29 to 33***), make no mention of the shady Bank Account No. 36907204840 & 38879762275 of the so called Financial Creditor and 38199481810 of the alleged Corporate Debtor, in SBI, Nehru Place Branch, New Delhi.
5.	CP (IB) 875 (PB) /2020 – Dhankalash Distributors Pvt. Ltd. Vs. Arena Superstructures Pvt. Ltd.	**Intentionally and dishonestly, no cogent defence was taken by the alleged Corporate Debtor,** *inter alia*, because the so called **Financial Creditor is a Kolkata based, entry operating, paper/shell company** and the amount of **alleged unpaid debt, mischievously claimed as inter-corporate loan, is only a small part of Rs. hundreds of crores of homebuyers** and others stakeholders, of the Corporate Debtor and its related group companies of the Three C Group; **siphoned off/diverted/laundered by this so called Financial Creditor**, under joint, pre-planned criminal conspiracy, **through dozens of shady Bank Accounts in a single State Bank of India, Nehru Place Branch New Delhi,** *inter alia*, to the companies owned by the families of the white collared criminal promoters of the Three C Group. **Because of concealment and suppression of these crucial and material facts,** CIRP was ordered vide order dated 29.10.2020. The fraudulent, malicious and collusive Company Petition and Reply filed by the alleged Corporate Debtor and the

		order, dated 29.10.2020 (@ ***Pages 34 to 39***), make no mention of the shady Bank Account No. 36907204840 & 38879762275 of the so called Financial Creditor and 38199407552 of the alleged Corporate Debtor, in SBI, Nehru Place Branch, New Delhi.
6.	**CP (IB)-470 (ND) 2017 – Shri Amit Kumar Malik Vs. Kindle Developers Pvt. Ltd.**	***Para 3*** **of CIRP Order, dated 09.03.2018 (@*Page 41*), explicitly mentioned that the so called Corporate Debtor was duly served in this case vide different modes, including through the process of the Bench. As none appeared on its behalf, it was proceeded ex-party.**
7.	**CP (IB) 1718 (PB) /2018 - Shiv Dayal Sharma & Ors. Vs, Three C Projects Pvt. Ltd.**	**This Hon'ble Tribunal duly recorded in its order dated 28.08.2019 that the objection taken by the Corporate Debtor, like adverse impacts of demonetization, Order of the NGT, farmer's unrest and agitation, etc., are vague averments and merely lame excuses, which lack content, as no details have been furnished in material particulars, as to how the progress of the project was retarded because of these reasons. (@*Paras 10 & 11, @Pages 51 to 53*)**
8.	**CP (IB) 2721/ND /2019 - Straight Edge Contracts Pvt. Ltd. Vs. Three C Shelters Pvt. Ltd.**	**This Hon'ble Tribunal in its order, dated 16.10.2020, commencing CIRP, in its Paras 8, 9 & 10 has explicitly recorded that in the Reply received from the Corporate Debtor, there has been admission of debt and default and no dispute was raised against the claim of the Applicant regarding the unpaid operational debt and there is a clear admission of debt and default. (*Paras 8, 9 & 10, @ Pages 62 to 63*).**
9.	**CP (IB) 380/PB /2020 IIFL Private Equity Fund vs. Three C Green Developer Pvt. Ltd.**	**This Hon'ble Tribunal has recorded in Para 15 of its order, dated 23.12.2021 (@*Pages 71 to 72*), that the Respondent Corporate Debtor has agreed to repay the amount to the Applicant after completion of the project.**

True copies of the orders passed by this Hon'ble Tribunal in the Company Petitions, in tabular form for the ease of understanding, are marked and annexed herewith as ***Annexure-A-5 (Colly)****"*

6. In reply to the IA filed by Applicant Homebuyer, the Resolution Professional namely Mr. Devendra Singh, submitted that:-

(a) The application preferred after three years of the approval of Resolution Plan which was approved on 22.07.2020 is not maintainable, being barred by limitation.

(b) The Applicant has preferred numerous applications in other cases involving related parties of the Corporate Debtor, seeking intervention/ challenging orders passed by this Tribunal initiating CIRP.

(c) The application is also not maintainable for the reason that in terms of the judgment of Hon'ble Supreme Court in Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors. [2021 SCC OnLine SC 253], once a decision is taken and vote is casted all members within that class are bound by the same, thus the Applicant cannot maintain any stand independent of the stand of Authorised Representative of the Financial Creditor in a Class.

(d) In view of the judgment of Hon'ble NCLAT in Express Resorts and Hotels Ltd. vs. Amit Jain, RP, Neesa Leisure Ltd. [Company Appeal (AT) (Insolvency) No. 1158 of 2022], once a Resolution Plan is approved and submitted to the Adjudicating Authority, even the CoC cannot turn around and pray to Adjudicating Authority to send the Resolution Plan back for its consideration.

(e) As could be ruled by Hon'ble NCLAT in Bipin Sharma vs. Earth Infrastructure Ltd. Through Shri Akash Singhal, RP [Company Appeal (AT) (Insolvency) No. 916 of 2021], even if some of the Homebuyers have not voted in favour of the Resolution Plan, but the majority (more than 50%) approved the Resolution Plan, the dissenting Homebuyers who are in minority have to go along with the views of the majority.

7. The IA-506/2024 has been preferred by Mr. Devendra Singh, RP, espousing therein:

(a) He was appointed as RP in terms of the order dated 21.11.2022 when the Resolution Plan by M/s SMV Agencies Pvt. Ltd. & Ors. (SRA) had already been approved by Committee of Creditors (CoC), by way of the voting conducted from 19.07.2020 to 22.07.2020 and the IA-3255/2022 under Section 30(6) of IBC, 2016 for approval of Resolution Plan had also been filed on 14.08.2020, by Shri Chandra Prakash, the then RP of Corporate Debtor.

(b) After deep examination of the facts and the records to find out the correct facts and series of the events in respect of valuation reports, and the mention of alleged liquidation valuation in the Information Memorandum (IM) by the erstwhile Interim Resolution Professional, Shri Prabhjit Singh Soni, the current RP (Applicant) filed additional affidavit dated 16.10.2023.

(c) The current RP/Applicant found the following valuation report, as on the date of the affidavit with respect to the assets of the Corporate Debtor, on record:-

(i) Signed final valuation report for securities and financial assets dated 22.10.2019 prepared by Mr. Prateek Mittal;

(ii) Signed final valuation report for land and building dated 07.11.2019 prepared by Mr. Ganesh Chandra Mamgai;

(iii) Signed final valuation report for land and building dated 03.10.2023 in the name of Er. Ajay Chaturvedi, for Tech Mac International Pvt. Ltd.;

(iv) Draft unsigned valuation report for land and building dated 06.04.2019 in the name of Er. Ajay Chaturvedi, for Tech Mac International Pvt. Ltd.; and

(v) Draft unsigned valuation report for securities and financial assets and land & building dated 30.05.2019 in the name of Crest Capital Advisors.

(d) On an inquiry made by the current RP i.e. Applicant in IA-506/2024, the IRP in terms of the E-mails dated 14.09.2023 and 19.09.2023 informed the current RP that as required by CIRP Regulations, not one but two valuers, i.e. Crest Capital Group Pvt. Ltd. and Tech Mach International Pvt. Ltd. were appointed by him (as also noted in the Minutes of 2nd meeting of CoC held on 19.03.2019) to undertake valuation of Corporate Debtor. The two valuers were not registered with IBBI at the time of their appointment.

(e) The current RP/Applicant found signed valuation reports of two registered valuers- Mr. Prateek Mittal (for securities and financial assets) and Mr. Ganesh Chandra Mamgai (for land and building), in the records of the Corporate Debtor, as handed over to him by the erstwhile

Resolution Professional (Mr. Chandra Prakash) which, as per the information provided orally to the Applicant, were provided on behalf of M/s Crest Capital Group Pvt. Ltd.

(f) As intimated to the current RP/Applicant vide e-mail dated 19.09.2023 by the IRP, the IRP had also received an unsigned report from another Registered Valuer i.e. Er. Ajay Chaturvedi on behalf of Tech Mach International Pvt. Ltd. for land and building. The Registered Valuer sent unsigned report because some additional information sought by him from IRP was still awaited. The Applicant/RP provided the requisite information to Er. Ajay Chaturvedi who has since submitted final valuation report for land and building.

(g) When two valuation reports by Registered Valuers for land and building, one by Mr. Ganesh Chandra Mamgai and one by Er. Ajay Chaturvedi are on record, in respect of Securities and Financial Assets and one valuation report by Registered Valuer Mr. Prateek Mittal is on record, only one valuation report by Registered Valuer for Securities & Financial Assets is required to be obtained for due compliance of Regulation 35 of CIRP Regulations.

(h) The purpose of valuation report in CIRP is- (a) to quantify the liquidation value payable by the successful resolution applicant to the operational creditors ("OCs") and dissenting financial creditors ("DFCs") of CD and (b) to assist the CoC in assessing the resolution plans received. Non-availability of signed and complete record of Er. Ajay Chaturvedi (who has since submitted final signed valuation report for land and building) and absence of second valuation of securities and financial Assets does not

adversely impact any of the two purposes or vitiate the approval of Resolution Plan of SRA approved by CoC.

(i) As far as the liquidation value payable to OCs is concerned it become payable only after this Hon'ble Tribunal approves the Resolution Plan. There is no law, in terms of which the liquidation value need to be made available to the OC. The NOIDA being an OC is treated accordingly. No prejudice would be cause to NOIDA or any other OC, if the liquidation value is arrived at this stage. Besides the liquidation value of the Corporate Debtor is drastically insufficient even to pay the dues of the FCs (allottees/homebuyers) in full, thus the amount payable to OCs (including NOIDA) in case of liquidation of the CD is estimated as NIL.

(j) There is no Dissenting Financial Creditors, as the CD has Operational Creditors only. Besides, no Financial Creditor is aggrieved by the absence of valuation report.

(k) No prejudice would be caused if signed and complete report of Er. Ajay Chaturvedi is taken on record. As per Regulation 2(1)(k) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, liquidation value has to be determined as on insolvency commencement date.

(l) Any change in status of assets after commencement of insolvency can have no bearing on the valuation report. The CoC took the decision based on material placed before it. It found that the material available on record is adequate and sufficient to take a commercial decision. It is not bound by the liquidation value and is free to approve the Resolution Plan on a value that it considers fair and proper in its commercial wisdom. No CoC

member questioned the absence of second valuation report while considering the plans for approval.

(m) The unsuccessful resolution applicant has not challenged the resolution plan approved by CoC. It is also not so that the disclosure of liquidation value (if any) has given advantage only to one prospective resolution applicant.

(n) Grave prejudice would be caused to the financial creditors in a class (homebuyers) if the objections by NOIDA espoused in terms of IA-3067/2022 (page 11 of 506/2024) is entertained. The CIRP qua the CD was initiated on 10.01.2019 (more than 4.5 years ago). The Resolution Plan was finally approved by CoC in July 2020 and is pending before this Tribunal for approval since August 2020. The interest of all stakeholders including nearly 3000 homebuyers (who form 100% of CoC), the Operational Creditors (including Noida Authority, workmen, sub-contractors, etc.) would be served well if compliance of Regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 can be completed by commissioning of the second valuation report for securities and financial assets by the Applicant or second valuation report qua all classes of assets by the Applicant OR alternatively this Tribunal may direct the Resolution Professional to appoint two fresh Registered Valuers to submit their respective valuation reports qua the Corporate Debtor.

(o) As regards allegation of disclosure of "Liquidation Value" in the Information Memorandum, it is clear from the material filed on record by the Applicant with affidavit dated 16.10.2023 that amount of Rs. 21.87

Crores mentioned in Information Memorandum is not the liquidation value borne out of valuation reports and has apparently been taken from draft unsigned valuation report in the name of unregistered valuer M/s Crest Capital Advisors. It is not open to NOIDA to argue that there was no second valuation report and the liquidation value was not disclosed to CoC and to argue in the same breath that liquidation value was disclosed.

(p) When the erstwhile Resolution Professional (Mr. Chandra Prakash) was appointed on 27.11.2019 to replace then IRP (Mr. Prabhjit Singh Soni), several irregularities were noticed in the Information Memorandum, due to which the CoC passed resolution for issuance of fresh Form-G. Thus, on 09.03.2020, fresh form was issued by the erstwhile Resolution Professional and Supplementary Information Memorandum dated 11.03.2020 and 28.06.2020 were issued, in which the receivables of the Corporate Debtor were substantially reduced.

(q) Probably the reduction in the amount offered by the SRA to NOIDA in its 2nd Resolution Plan dated 06.07.2020 from its 1st Resolution Plan dated 23.10.2019 is attributable to such reduction in receivables of the Corporate Debtor in the Supplementary Information Memorandum issued by the erstwhile Resolution Professional. The reduction in amount offered by SRA to NOIDA cannot be attributed to alleged disclosure of liquidation value as the purported disclosure was made in the Information Memorandum dated 17.10.2019 i.e. prior to submission of the 1st Resolution Plan by the SRA. Had the disclosure in Information Memorandum been a reason for the same, the amount offered to NOIDA by the SRA in its 1st Resolution Plan could not be lessor.

8. Having espoused as above, the RP prayed in IA-506/2024 as under:

"a) take on record the final signed valuation report dated 03.10.2023 by Er. Ajay Chaturvedi, obtained by the Applicant subject to approval of this Hon'ble Tribunal.

b) permit the Applicant to appoint a registered valuer to submit valuation report for Financial Assets & Securities.

(c) Alternately, permit the Applicant to commission fresh valuation reports of assets of Corporate Debtor in accordance with Regulation 35 of CIRP Regulations;

(d) Direct the existing or fresh valuation reports, as the case may be, in light of prayers (a) to (c) above, to be placed before the CoC, if deemed fit by this Hon'ble Tribunal;"

9. The IA-3926/2023 could be filed jointly by RP and M/s Shomit Finance Limited. The prayer in the application is for withdrawal of IA-3325/2020, IA-3025/2022 and IA-3330/2020. IA-3325/2022 could be preferred by Mr. Chandra Prakash, erstwhile RP, alleging undervalued and fraudulent transaction in favour of M/s Shomit Finance Limited. The plea espoused in the IA-3325/2020 is that the sale price of retail block viz. 'iRing', forming part of the Group Housing Development, 'Lotus Panache' was not properly assessed and there was huge difference between the rate at which the transaction was entered into with Respondent No.1 to 9 in the application and the average rate per sq. ft. evaluated by the valuator viz. iVAS Partners engaged by the erstwhile RP namely Chandra Prakash.

10. The details of the units allotted to Respondent Nos. 1 to 9 in IA-3325/2020, as mentioned in para 6 of the IA reads thus:-

"6. That upon detailed evaluation of the Annexure A-1 report and the records of the Corporate Debtor, the Applicant has learnt that the

Corporate Debtor entered into the following transactions pertaining to 105 units of the complex iRing', which fall within the scope of Section 45 and 66 of the Code:

(a) <u>Allottee: Mr. Ankit Aggarwal, the Respondent No.1</u>

S. No.	Unit No.	Booking Date	Area (sq. ft.)	Status	All Inclusive Rate/sq.ft.
1.	2	29.05.2018	820.00	Active	6,000.00 INR
2.	3	29.05.2018	820.00	Active	6,000.00 INR
3.	4	29.05.2018	820.00	Active	6,000.00 INR
4.	5	31.05.2018	822.00	Active	6,000.00 INR
5.	6	30.05.2018	821.00	Active	6,000.00 INR
6.	7	30.05.2018	822.00	Active	6,000.00 INR
7.	8	30.05.2018	822.00	Active	6,000.00 INR
8.	9	30.05.2018	822.00	Active	6,000.00 INR
9.	10	30.05.2018	823.00	Active	6,000.00 INR
10.	12A	30.05.2018	1,370.00	Active	6,000.00 INR

(b) <u>Allottee: Ms. Arti Aggarwal, the Respondent No. 2</u>

S. No.	Unit Details	Allotment Date	Area (sq. ft.)	Status	All Inclusive Rate
1.	16	30.05.2018	827.00	Active	6,000.00 INR
2.	14	30.05.2018	842.00	Subsequently allotted to Mr. Manish Kumar Singh	6,000.00 INR
3.	15	30.05.2018	826.00		6,000.00 INR
4.	17	30.05.2018		Cancelled. Available with the Corporate Debtor for Sale.	6,000.00 INR
5.	18	30.05.2018			6,000.00 INR
6.	19	30.05.2018			6,000.00 INR
7.	20	30.05.2018			6,000.00 INR
8.	21	30.05.2018			6,000.00 INR
9.	22	30.05.2018			6,000.00 INR
10.	23	30.05.2018			6,000.00 INR

(c) Allottee: Mr. Deepak Aggarwal, the Respondent No. 3

S. No.	Unit Details	Allotment Date	Area (sq. ft.)	Status	All Inclusive Rate
1.	IR-46	05/29/2018	604.00	Active	6,000.00 INR
2.	IR-01	05/31/2018	178.00	Active	6,000.00 INR
3.	IR-02	05/30/2018	192.00	Active	6,000.00 INR
4.	IR-03	31/05/2018	173.00	Subsequently allotted to Mrs. Savita Yadav	6,000.00 INR
5.	IR-04	05/29/2018	180.00	Active	6,000.00 INR
6.	IR-42	05/31/2018	603.00	Active	6,000.00 INR
7.	IR-43	05/29/2018	581.00	Active	6,000.00 INR
8.	IR-44	05/29/2018	581.00	Active	6,000.00 INR
9.	IR-45	05/29/2018	582.00	Active	6,000.00 INR
10.	IR-11	05/29/2018	823.00	Active	6,000.00 INR
11.	IR-12	05/29/2018	822.00	Active	6,000.00 INR
12.	IR-37	05/30/2018	581.00	Active	6,000.00 INR
13.	IR-38	05/29/2018	581.00	Active	6,000.00 INR
14.	IR-39	05/29/2018	580.00	Active	6,000.00 INR
15.	IR-40	05/29/2018	581.00	Active	6,000.00 INR
16.	IR-41	05/29/2018	603.00	Active	6,000.00 INR

(d) Ms. Samita Gupta, the Respondent No. 4

S.No.	Unit Details	Allotment Date	Area (sq. ft.)	Status	All Inclusive Rate
1.	IR-32	05/31/2018	608.00	Active	6,000.00 INR
2.	IR-33	01/10/2019	585.00	Active	6,000.00 INR
3.	IR-24			Cancelled. Available with the Corporate Debtor for Sale.	6,000.00 INR
4.	IR-25				6,000.00 INR
5.	IR-26				6,000.00 INR
6.	IR-27			Subsequently allotted to Mr. Manish Singh	6,000.00 INR
7.	IR-28				6,000.00 INR
8.	IR-29				6,000.00 INR
9.	IR-30			Subsequently allotted to Mr. Vivek Kaushik	6,000.00 INR
10.	IR-31				6,000.00 INR

11.	IR-34			Subsequently allotted to Mr. Manish Singh	6,000.00 INR
12.	IR-35				6,000.00 INR
13.	IR-36				

(e) Mr. Subhash Bala, the Respondent No. 5

S. No.	Unit Details	Allotment Date	Area (sq. ft.)	Status	All Inclusive Rate
1.	IR-140	05/31/2018	3,717.00	Active	6,000.00 INR
2.	IR-139	05/29/2018	3,941.00	Active	6,000.00 INR
3.	IR-137			Transferred to Mr. Anuj Agarwal	6,000.00 INR
4.	IR-138				6,000.00 INR

(f) Ms. Mehak Kher, the Respondent No. 6

S. No.	Unit Details	Allotment Date	Area (sq. ft.)	Status	All Inclusive Rate
1.	IR-131	05/31/2018	436.00	Active	6,000.00 INR
2.	IR-132	05/29/2018	436.00	Active	6,000.00 INR
3.	IR-133	05/31/2018	435.00	Active	6,000.00 INR
4.	IR-134	05/31/2018	435.00	Active	6,000.00 INR
5.	IR-136	05/31/2018	433.00	Active	6,000.00 INR
6.	IR-153	05/31/2018	611.00	Active	6,000.00 INR
7.	IR-1	05/31/2018	845.00	Active	6,000.00 INR
8.	IR-130	05/29/2018	436.00	Active	6,000.00 INR
9.	IR-126A	05/29/2018	724.00	Active	6,000.00 INR
10.	IR-127		588.00	Transferred to M/s P.R. Apparels.	6,000.00 INR
11.	IR-128		412.00		6,000.00 INR
12.	IR-129		415.00		6,000.00 INR

(g) Mr. Munish Kher, the Respondent No. 7

S. No.	Unit Details	Allotment Date	Area (sq. ft.)	Allotment Status	All Inclusive Rate
1.	IR-102	05/29/2018	651.00	Active	6,000.00 INR
2.	IR-103	05/30/2018	653.00	Active	6,000.00 INR
3.	IR-104	05/30/2018	653.00	Active	6,000.00 INR
4.	IR-105	05/31/2018	654.00	Active	6,000.00 INR
5.	IR-106	05/30/2018	654.00	Active	6,000.00 INR
6.	IR-112	05/29/2018	655.00	Active	6,000.00 INR
7.	IR-101	05/29/2018	655.00	Active	6,000.00 INR
8.	IR-107	05/30/2018	655.00	Active	6,000.00 INR
9.	IR-108	05/29/2018	655.00	Active	6,000.00 INR
10.	IR-110	05/29/2018	655.00	Active	6,000.00 INR
11.	IR-109	05/30/2018	655.00	Active	6,000.00 INR
12.	IR-100	05/29/2018	682.00	Active	6,000.00 INR
13.	IR-0111	05/30/2018	655.00	Active	6,000.00 INR

(h) Mr. Meenu Kher, the Respondent No.8

S. No.	Unit Details	Allotment Date	Area (sq. ft.)	Allotment Status	All Inclusive Rate
1.	IR-118	05/31/2018	659.00	Active	6,000.00 INR
2.	IR-125	05/31/2018	659.00	Active	6,000.00 INR
3.	IR-124	05/31/2018	659.00	Active	6,000.00 INR
4.	IR-123	05/31/2018	659.00	Active	6,000.00 INR
5.	IR-122	05/30/2018	659.00	Active	6,000.00 INR
6.	IR-121	05/31/2018	659.00	Active	6,000.00 INR

7.	IR-120	05/31/2018	659.00	Active	6,000.00 INR
8.	IR-119	05/31/2018	659.00	Active	6,000.00 INR
9.	IR-115	05/31/2018	658.00	Active	6,000.00 INR
10.	IR-126	05/31/2018	659.00	Active	6,000.00 INR
11.	IR-116	05/31/2018	658.00	Active	6,000.00 INR
12.	IR-117	05/31/2018	658.00	Active	6,000.00 INR

(i) Mr. Ram Saran, the Respondent No. 9

S. No.	Unit Details	Allotment Date	Area (sq. ft.)	Allotment Status	All Inclusive Rate
1.	IR-148	05/30/2018	432.00	Active	6,000.00 INR
2.	IR-149	05/29/2018	432.00	Active	6,000.00 INR
3.	IR-150	05/31/2018	432.00	Active	6,000.00 INR
4.	IR-151	05/31/2018	432.00	Active	6,000.00 INR
5.	IR-147	05/31/2018	432.00	Active	6,000.00 INR
6.	IR-146	05/31/2018	432.00	Active	6,000.00 INR
7.	IR-143	05/31/2018	432.00	Active	6,000.00 INR
8.	IR-152	05/31/2018	552.00	Active	6,000.00 INR
9.	IR-AN01	05/31/2018	2,590.00	Active	6,000.00 INR
10.	IR-05	05/31/2018	266.00	Active	6,000.00 INR
11.	IR-135	05/31/2018	434.00	Active	6,000.00 INR
12.	IR-144	05/31/2018	431.00	Active	6,000.00 INR
13.	IR-145	05/31/2018	431.00	Active	6,000.00 INR
14.	IR-141			Subsequently allotted to , Mr. Saurabh Khandelwal	
15.	IR-142				

11. As can be seen from the aforementioned table, the units were allotted by the Corporate Debtor to Respondent Nos. 1 to 9 at the rate of Rs.6,000/- per sq. ft., while the market value assessed in the region by the valuator appointed by the erstwhile RP was Rs. 17,500/- per sq. ft. It has also been canvassed in the IA-3325/2020 that subsequently the allotment of 28 units made in favour of Respondent Nos. 1 to 9 was cancelled, out of which 18 units were allotted to other entities and the remaining 10 units remained available for sale with the Corporate Debtor. In para 9 of the IA-3325/2020 it has been specifically alleged that the retail shops/commercial units forming part of the complex 'i Ring' are allotted to the Respondent Nos.1 to 9, by undervaluing the units. Mr. Chandara Prakash (the erstwhile RP) was handed over by the IRP (Respondent No.11) in the IA inter alia a Development Agreement dated 26.12.2018 allegedly entered between the Corporate Debtor and the Respondent No. 10 viz. M/s Shomit Finance Limited i.e. the Applicant in IA-3926/2023, claiming that it pertains to commercial complex 'i Ring'. It has been espoused in the IA that there is no official record substantiating the authority or even existence of the purported agreement dated 26.12.2018, thus the agreement needs to be brought on record for the sake of transparency. It has also been brought out in IA-3325/2020 that the Respondent Nos.1 to 4 who are shown in the official record as allottees of the commercial units forming part of complex 'i Ring' are directors qua the Respondent No.10 in IA-3325/2020 i.e. the Applicant in IA-3926/2023, namely, M/s Shomit Finance Limited.

12. The IA-3325/2020 further espouses that as per Development Agreement dated 26.12.2018, the Corporate Debtor approached the Respondent No.10 developer, M/s Shomit Finance Limited, for grant and transfer of development rights qua the land admeasuring 2251.47 sq. mtrs, which is part of the Plot No. GH-005, Sector 110, Noida, on which the project Lotus Panache, is being constructed. In terms of the alleged Development Agreement dated 26.12.2018, the entire development and all rights and entitlement for the development, construction, marketing and sale of the project as also the right to remain in sole possession, control and peaceful enjoyment of the plot and every part thereof, was granted to the Respondent No.10 developer i.e. M/s Shomit Finance Limited. The Development Agreement also provided that M/s Shomit Finance Limited shall have right to construct, develop, market and sell the saleable area of 74,000 sq. ft. as well as enabling and allocating development/construction on the plot as per the building plan dated 27.12.2018. The development Agreement intents to grant M/s Shomit Finance Limited full, free, uninterrupted, exclusive and irrevocable right in respect of the entire construction on the plot. Surprisingly, in exchange of bouquet of development right shown to be granted to the Developer, M/s Shomit Finance Limited, a consideration of mere Rs. 71,81,818/- (Rupees Seventy-One Lakh Eighty-One Thousand Eight Hundred & Eighteen Only) is shown to be payable to the Corporate Debtor under the Development Agreement. The Development Agreement claims that the consideration amount has been deposited into an agreed bank account opened with UCO Bank in terms of the understanding with the Respondent No.11 viz. “Lotus Panache Flat Buyers Association” (hereinafter referred to as

"**the LPFBA**") having its registered office at 17, LGF, Defence Enclave, Vikas Marg, Preet Vihar, Delhi-110092.

13. It is also brought out in IA-3325/2020 that an area to the extent of 40% of total construction area i.e. 30,000/- sq. ft. saleable area shall be entitlement of Corporate Debtor and the same shall be handed over to LBFBA/Respondent No.11 and the Respondent No.10 shall not have any claim over the amount so realized from said 40% of total constructed area referred to in the Agreement as "GGPPL entitlement". It is seen from the averments made in the application that though the Development Agreement was in direct conflict with the allotment letters issued to the Respondent Nos.1 to 9, still the Corporate Debtor could commit in the Development Agreement that the same was not in contravention of any agreement/understanding that the Corporate Debtor might have already entered with any other entity. The Development Agreement was supported by a copy of Resolution passed in the meeting of Board of Directors of CD on 10.12.2018, whereby the Respondent No.20, Mr. Ravi Bhargav, was authorized to execute the Development Agreement and to take further steps for presentation of the Agreement before the concerned Registrar. The IA-3325/2020 also contain a reference to reply to show-cause notice dated 15.05.2019, purportedly sent by the erstwhile IRP, Mr. P.S. Soni to the Respondent No.10, M/s Shomit Finance Limited. The reply by M/s Shomit Finance Limited indicates that the notice was sent by the IRP on gaining knowledge about the Development Agreement through social media. It is seen from the averments made in para 16 of the IA that the reply of M/s Shomit Finance Limited could reveal that the Corporate Debtor had only

assigned the development, sale, marketing and branding rights to it and not the ownership qua the land. It is also mentioned in the application that the Agreement dated 26.12.2018 was entered into between initiation of filing of insolvency petition on 14.08.2018 and admission thereof on 10.01.2019. Nevertheless, in its reply, the M/s Shomit Finance Limited expressed ignorance about the pendency of the proceedings under Section 7 of IBC, 2016. In the IA, the RP could also doubt the existence of Alleged Agreement dated 22.04.2016 and questioned the Development Agreement dated 26.12.2018 as also to other transactions as fraudulent transactions. The averments made in para 15 to 26 of the IA as also the prayer contained in IA-3325/2020 reads thus:-

> *"15. M/s Shomit Finance Limited in Shomit's reply have further alleged that a deed of settlement dated 09.07.2018 was signed between the Corporate Debtor, the LPFBA (Respondent No. 11), Mr. Nirmal Singh (Respondent No. 15) and M/s Three C Universal Developers Pvt. Ltd. for settlement of dispute arising out of F.I.R. bearing number 06/2018 dated 12.1.2018 which had been registered with P.S. Expressway, Gautam Buddha Nagar, U.P. That it has been further alleged in the Shomit's reply that a Term Sheet/MOU was entered between Corporate Debtor, M/s Shomit Finance Limited and the LPFBA dated 11.07.2018, wherein pursuant to Deed of Settlement dated 09.07.2018, all amount payable by M/s Shomit Finance Limited to the Corporate Debtor would be deposited in designated account number 1944021000455 maintained with UCO Bank, and a nominee of the LPFBA would be a joint signatory to such account. It has been further alleged in Shomit's reply that at a later stage i.e. subsequent to the execution of the Development Agreement dated 26.12.2018, M/s Shomit Finance Limited was informed about the decision of the board to*

modify/amend the terms of the Development Agreement dated 26.12.2018 more specifically the terms relating to handing over of 40% of area i.e. 30,000 sq. ft. saleable area to be handed over by M/s Shomit Finance Limited to GGPPL (the Corporate Debtor) for further handingover to the LPFBA. Shomit's reply further alleges that the Corporate Debtor had not been able to conclude a final understanding with the LPFBA regarding sale of constructed area and it was communicated to M/s Shomit Finance Limited that M/s Shomit Finance Limited would have to revert to the original understanding of paying the sale consideration of Rs. 32 crores (there is no official record with the Corporate Debtor of the purported original understanding of paying the sale consideration of INR 32 crores). Shomit's reply further alleges that an MOU/addendum dated 02.01.2019 was signed between the Corporate Debtor and M/s Shomit Finance Limited for limited amendment of Clause 3, 4.1, 4.2, 4.4, and 4.5 of the Development Agreement dated 26.12.2018. It is reiterated that a copy of the stated addendum dated 02.01.2019 is not available with the Applicant/RP. Shomit's reply also alleges that an amount of Rs. 1 crore was also transferred in pursuance of addendum dated 02.01.2019.

16. *It is submitted that surprisingly, although the Development Agreement dated 26.12.2018, mentions that all development rights including the right to enter upon and take sole possession and control of the said plot and every part thereof was given to M/s Shomit Finance Limited however, Shomit's reply alleges that the Corporate Debtor has transferred only the development, sale, marketing and branding rights but did not transfer the land to M/s Shomit Finance Limited. As regards the claim made in the Show Cause notice that the said agreement dated 26.12.2018 was executed between initiation of filing of insolvency petition i.e. 14.08.2018 and admission of petition i.e. 10.01.2019, Shomit's*

reply rebuts the claims by specifically stating that it was not put to any informed knowledge as to existence of such proceedings before the Hon'ble NCLT. Furthermore, Shomit's reply further states that filing of a petition u/s 7 of the Code does not de facto operate as a legal bar on the Corporate Debtor to not enter into any agreement or contract with any third party. It is also alleged by M/s Shomit Finance Limited, that it is not aware as to the reason why the Development Agreement dated 26.12.2018 was not handed over to the IRP by the Corporate Debtor but, claims that all agreements and documents executed between the Corporate Debtor and M/s Shomit Finance Limited were handed over to the IRP vide a letter dated 29.3.2019. It is submitted that the documents handed over by the erstwhile IRP to the applicant/resolution professional, does not contain any such letter dated 29.03.2019.

17. *It is submitted that M/s Shomit Finance Limited further alleges that it has to now pay an amount of Rs. 32 crores emanating from an understanding out of an agreement to sell dated 24.2.2016, out of which Rs. 1.71 crores have already been remitted into the account of the Corporate Debtor. It is also claimed by M/s Shomit Finance Limited that it had stepped in the project when the real estate was in lurch and the projects across the NCR region were getting delayed. It is further alleged in Shomit's reply that M/s Shomit Finance Limited agreed to develop project out of its own fund which ensured the viability of the entire project and thus contributed to the entire project. Shomit's reply further alleges that in that short span, M/s Shomit Finace Limited has been able to develop the area assigned to it and it is not in the best interest of either the project or the investors, to question the intent and purpose of M/s Shomit Finance Limited at this juncture.*

18. *It is submitted that it is evident that M/s Shomit Finance Limited is now merely concocting false stories as they are squarely*

covered under the provisions of Section 43 and 45 of the Code. Shomit's reply alleges that initial discussion between M/s Shomit Finance Limited and the Corporate Debtor commenced in 2016 and a term sheet culminated into an agreement dated 22.04.2016, which was subsequently allegedly recorded as Development Agreement dated 26.12.2018 and the addendum 02.01.2019. Therefore, M/s Shomit Finance Limited alleges that the transaction entered into and between the Corporate Debtor and M/s Shomit Finance Limited is not hit by the provisions of Section 43 or Section 45 of the Code, as the same have been allegedly entered by the aforesaid parties beyond the time period prescribed under the aforesaid sections. In relation to Section 45 of the Code, Shomit's reply further alleges that various term sheets/agreements/registered agreements and the addendums were executed in ordinary course of business of Corporate Debtor and the value of consideration offered by M/s Shomit Finance Limited is not at all significantly less. True copy of reply dated 15.05.2019 to show cause notice along with available copies of documents referred therein are annexed herewith collectively as ***ANNEXURE A-5 (COLLY)*****.**

19. *That the documents handed over by the erstwhile IRP, Mr. P.S. Soni, further reflects that M/s Shomit Finance Limited had written a letter dated 26.06.2019 to New Okhla Industrial Development Authority (hereinafter referred to as "****the Noida Authority****"), wherein, it is mentioned that M/s Shomit Finance Limited had applied for part completion certificate with Noida Authority on 27.12.2018 and completed all formalities listed in the letter received from Noida Authority. However, the office of Noida Authority had asked to deposit charges on account of time extension of lease rights of plot no. GH 005, Sector 110, Noida. M/s Shomit Finance Limited responded to Noida Authority, that since the said project is already under proceedings of the Hon'ble*

NCLT, and an IRP has already been appointed, M/s Shomit Finance Limited is not in a position to pay any charges to the Noida Authority directly. However, M/s Shomit Finance Limited undertook that it shall comply with the decision/direction of the Hon'ble NCLT and will pay the amount decided by the Hon'ble NCLT to the Noida Authority. With such an undertaking, M/s Shomit Finance Limited requested for issuance of completion certificate, as applied for as aforesaid.

20. *Pursuant to the letter dated 26.06.2019 sent by M/s Shomit Finance Limited to Noida Authority, a letter dated 01.07.2019 was addressed by the concerned official at Noida Authority to the IRP, Mr. Soni, requesting him to take cognizance of the letter dated 26.06.2019 issued by M/s Shomit Finance Limited in accordance with law. In response, the IRP wrote a letter dated 05.07.2019 to the concerned official of the Noida authority, astonishingly certifying that all agreements between M/s Shomit Finance Limited and the Corporate Debtor are valid and both parties are performing their parts according to the terms and conditions of the agreements. As per the letter issued by the IRP, Mr. Soni, M/s Shomit Finance Limited will construct the commercial block and after sale of the same, an amount of Rs. 32 crores will be paid to the Corporate Debtor. The letter issued by IRP, Mr. Soni indicated that the arrangement with M/s Shomit Finance Limited is a positive initiative for completion of Lotus Panache project and with this arrangement, thousands of investors/homebuyers will be benefitted. The IRP, Mr. Soni, therefore, requested Noida Authority to provide time extension and completion certificate so that the commercial block be developed by M/s Shomit Finance Limited.*

21. *It is painstaking to note that the erstwhile IRP, Mr. P.S. Soni, without paying any attention or regard to the provisions of the Code, particularly his responsibility to bring transactions covered under Section 43, 45 and 66 of the Code to attention of this Hon'ble*

Tribunal, not only failed to take requisite action against the transactions entered with M/s Shomit Finance Limited but also supported M/s Shomit Finance Limited in its endeavour to procure a part completion certificate for the land and rights which were sought to be transferred by the undervalued and fraudulent Development Agreement dated 26.12.2018. It is submitted that it is beyond comprehension as to how and on what basis, the IRP, Mr. Soni, came to the conclusion that the Development Agreement dated 26.12.2018 or the stated addendum dated 02.01.2019, entered days before the insolvency commencement for sale of the commercial complex i Ring' were valid. The Development Agreement dated 26.12.2018 or the stated addendum dated 02.01.2019 have valued the commercial complex for a consideration of Rs. 32 Crores, when the market value of the saleable area inside the commercial complex, as assessed by valuers, is Rs. 114 crores and even as per allotment letters issued and accepted by the directors/related parties of M/s Shomit Finance Limited, a minimum sale consideration of Rs. 48 crores is payable for the same. True copy of correspondences exchanged between M/s Shomit Finance Limited (Respondent No. 10) with the Noida Authority and IRP, Mr. Soni (Respondent No. 21) are annexed herewith as ***ANNEXURE A-6(COLLY).***

22. *It is interesting to note that on gaining knowle NCLT NCLT (nclts2022@outlook.com) is sigr Agreement dated 26.12.2018, the Respondent No.11, LPFBA, which is an association of homebuyers of the project 'Lotus Panache', and is named as a beneficiary in the Development Agreement, claimed that it is totally shocked and surprised to read the contents of the Development Agreement and the LPFBA has never agreed to the terms and conditions mentioned in the Development Agreement. True copy of notice dated 16.05.2019 sent on behalf of LPFBA (Respondent No. 11) is annexed herewith as* ***ANNEXURE A-7.***

23. *It will also not be out of place to mention herein that a term sheet dated 25.03.2017 was executed between the Corporate Debtor and its related parties, including its three promoters and another association of home buyers, namely, Lotus Panache Welfare Association (hereinafter referred as "**LPWA**"), impleaded in this application as the Respondent No. 12. It is submitted that the term sheet dated 14.07.2017, while making reference to the commercial complex 'i Ring' does not make any mention of the purported agreement dated 22.04.2016, which indicates that as on date of the term sheet, i.e. 14.07.2017, no such agreement for sale of rights in the commercial complex was in place. True copy of term sheet dated 25.03.2017 is annexed herewith as **ANNEXURE A-8.***

24. *It is submitted that it is beyond understanding that if an agreement dated 22.04.2016 was already in place between the parties, then why was a reference to such an agreement was not even made in the Development Agreement subsequently executed as well as registered with the registrar on 26.12.2018. It is therefore apparent that the purported agreement dated 22.04.2016 is nothing but an afterthought and a futile attempt by M/s Shomit Finance Limited to wriggle out of the provisions of Section 45 and 49 of the Code, which provide for avoidance of undervalued and fraudulent transactions such as the present one entered with M/s Shomit Finance Limited. It is submitted that even otherwise the agreement dated 26.12.2018 being subsequent in time to the purported agreement dated 22.04.2016 is in supersession of the agreement claimed to be entered in 2016 and therefore, by virtue of the execution and registration of agreement dated 26.12.2018, the agreement dated 22.04.2016 ceased to have any effect. The Development Agreement dated 26.12.2018 is a fresh agreement and even if an agreement to sell was entered in the year 2016, it ceased to have any effect on the*

date of registration of the Development Agreement dated 26.12.2018. It is pertinent to point out that the records of the Corporate Debtor do not reflect any consideration being paid in pursuance of the purported agreement to sell entered in the year 2016.

25. *It is submitted in light of the above-stated, there cannot be a doubt that the Corporate Debtor entered into undervalued and fraudulent transactions with the Respondent Nos. 1 to 10 and that the transactions in question meet with all the requirements of Section 45 and 66 of the Code.*

X X X

Declare that the transactions entered with the Respondent No. 1 to 9 and/or transactions entered with Respondent No. 10 are void and reverse their effect by:

(a) Passing necessary directions restoring the position that existed before the transactions as if the transactions had not been entered into, i.e. requiring that the subject retail shops forming a part of the commercial complex 'i-Ring', shall be vested in the Corporate Debtor;

(b) Requiring the Respondent No.1 to 10, severally and jointly, to pay a sum equivalent to the benefit received by them;

(c) Requiring the Respondents, severally and jointly to make such contribution, to the assets of the Corporate Debtor, on account of the loss caused to the Corporate Debtor, as this Hon'ble Tribunal deems fit;"

14. The IA-3330/2020 could be preferred by the RP under Section 74(1) of IBC, 2016. The prayer made in the application reads thus:-

"(a) Declare that the transaction entered with the Respondent No.1 are void for being in violation of Section 14 of the Code and reverse its effect;

(b) Take cognizance of the offence committed by the Respondents of not complying with the order of moratorium passed by this Hon'ble Tribunal, and all the Respondents may be summoned, tried and punished in accordance with Section 74(1) of the Code;"

15. The plea espoused in the application is that even after declaration of moratorium in terms of the order dated 10.01.2019, the Corporate Debtor transferred a commercial unit i.e. School on First Floor of I-Ring in the project 'Lotus Panache' by allotment made in favour of the Respondent No.1 in the IA i.e. M/s Shomit Finance Limited, thus an action under Section 74(1) of IBC, 2016 was warranted against the Respondents in the IA for committing Breach of Moratorium. The averments made in paras 4 to 10 of the IA reads thus:-

"4. It is submitted that although the transaction was booked into the accounting software of the corporate debtor after the insolvency commencement date, i.e. on 29.03.2019, the Respondents in order to mislead the resolution professional as well as the auditors engaged in the CIRP process, have prepared back dated allotment letter dated 24.10.2018 for the transaction. However, the actual date of the transaction is visible from a perusal of the accounting software of the corporate debtor which clearly reflects that the transaction took place after the insolvency commencement. It is submitted that the Respondents in furtherance to their misleading acts, made a back dated letter addressed to M/s Devika Promoters and Builders Private Limited (Respondent No. 6), sister concern of Respondent No.1, wherein it has been recorded that a payment of Rs. 4,00,00,000/- (Rupees Four Crores) has been made to M/s Hacienda Projects Private Limited (Respondent No. 7), a related

party of the corporate debtor. The corporate debtor vide said backdated fabricated letter dated 05.12.2018 acknowledged the receipt of Rs. 4,00,00,000/- (Rupees Four Crores) allegedly paid by Respondent No. 6 on behalf of the Respondent No. 1. It is submitted that in the records, a hand written note was made, stating that the entry/adjustment of Rs. 4,00,00,000/- could not be made due to error in the SAP software used by the corporate debtor and therefore, the adjustment was made on 29.03.2019. It is submitted that the Respondents acknowledged receipt of money on 05.12.2018 and as per the note, the adjustment could not be made before 29.03.2019, due to error in the SAP software. It is pertinent to note herein that various allotments and entries were made by the Respondents in the SAP software between 5.12.2018 and 29.03.2019, which clearly shows that the back dated allotment letter and handwritten notes are nothing but an eyewash, and the subject transaction took place only after the insolvency commencement. True and correct copy of the letter dated 05.12.2018 along with copy of the cheque containing hand written note are annexed herewith as ***ANNEXURE A-3 (COLLY).***

5. *It is submitted that the malafides behind the transactions are visible from the fact that the allotment has been shown to be made at an undervalued all- inclusive rate of Rs. 3556/-. It is pertinent to point out that the Applicant/Resolution Professional had commissioned a valuation report from ¡VAS Partners, Plot no. 135, Phase-1, Udyog Vihar, Gurugram, Haryana, India, for valuation of 'i Ring' in which the subject unit is situated in the project 'Lotus Panache. That after accessing the prevailing capital values for similarly positioned projects in the subject micro-market as well as the location dynamics of the subject site, accessibility, status of development, specifications and amenities offered by the developer, etc., has evaluated the all-inclusive sale price of the retail units in 'I Ring' at Rs. 17,500 per sq.ft. It is therefore submitted that, as evident, there is a huge difference between the*

rate per sq. ft. at which the transaction was entered with the Respondent No.1 and the avg. rate per sq. ft. as evaluated by iVAS Partners for retail units in the project 'Lotus Panache'. It is submitted that M/s S.P. Chopra and Co. has submitted another report which has also highlighted the subject transaction as being undervalued, however, the Applicant/ Resolution Professional has not found the mechanism employed in the said report to calculate the average rate per sq. ft. reliable, i.e. by comparing the actual rates, of commercial property at which the company has sold the units, on yearly basis, as majority transactions entered by the Corporate Debtor for commercial units, particularly in the case of 'I-Ring' of Lotus Panache, fall within the scope of Sections 43/45/66 of the Code. It is submitted that the auditor M/s S.P. Chopra & Co., in absence of access to the relevant accounting software, has taken the date of the allotment to be 24.10.2018, i.e. prior to the insolvency commencement, and therefore categorised the transactions as 'undervalued' transactions liable to be avoided under Section 45 of the Code. True and correct copy of the valuation report of iVAS partners is annexed herewith as ***ANNEXURE A-4.*** *True and correct copy of the report submitted by M/s S.P. Chopra and Co. is annexed herewith as* ***ANNEXURE A-5.***

6. *It is submitted that not only was the Respondent No. 1 allotted the subject unit on undervalued and Preferential Rate, but the sale consideration of the Unit has also not been realised. It is submitted that the following adjustments were made into the ledger of the Respondent No.1 in lieu of the consideration payable for the unit.*

S.no.	Date	Description	Amount
1.	29.03.2019	Adjustment – 31803746	3,94,00,000/-

7. *In addition to the above, the preferential treatment given to the Respondent No.1 can also be seen from the payment plan at which allotment was made, as detailed below:*

On Application for booking	1%
At the time of notice for possession	99% + IFMS + Lease

8. *It is submitted that the subject transaction even if would have entered prior to the insolvency commencement date, i.e. on the date mentioned in the fabricated allotment letter, i.e. 24.10.2018, the same would have been liable to reversed and avoided in terms of Section 43 and 45 of the Code.*

9. *It is submitted that the Respondents have acted in stark violation of the provisions of the IBC and the order of moratorium of this Hon'ble Tribunal, in as much as despite being well aware of the CIRP having been initiated, the Respondents have continued to violate the provisions of Section 14. It is submitted that such act of the Respondents is punishable under section 74(1) of the Code, including with imprisonment for a term which shall not be less than three years, but may extend to five years.*

10. *It is submitted that a perusal of the records of the corporate debtor reflect that the Respondent No.2, Mr. Vidur Bharadwaj, who being one of the ex- promoters of the corporate debtor must have approved the subject transaction. It is submitted that the Respondent No.3, Mr. Naveen Mann, apart from being a former director of the company was head of the customer service department of the corporate debtor even pursuant to the insolvency commencement during the tenure of the IRP, Mr. Soni, and all instructions for allotments were passed on the customer service team by Mr. Naveen Mann. It is submitted that the Respondent No. 4 (Mr. Ravi Bhargav) was duly authorised vide board resolution dated 02.03.2016 to act on behalf of the corporate debtor and execute documents such as allotment letters, builder buyer agreement, payment plan etc. to be issued to the allottees. It is submitted that the fabricated back dated allotment letter issued to the Respondent*

No. I have been executed by the Respondent No. 4, Mr. Ravi Bhargava. It is submitted that to give effect to the transaction, the Respondents used an id named 'SM_RANDEEP' which pertains to an ex-employee of the corporate debtor."

16. By way of IA-3025/2022, M/s Shomit Finance Limited (ibid) raised objections against the Resolution Plan preferred by the RP with an application under Section 31 of IBC, 2016, for approval of the same. In the application filed by it, the Applicant has espoused that a part of Plot No. GH-005 in Sector-110, Noida, having an extra area of xx square meters (approx.) is not the asset of the Corporate Debtor and belongs to the Applicant in the IA. According to the Applicant, he had purchased all the right to sell, allot and assign the retail shops situated at LGF and UGG admeasuring super area of 64,000 sq. ft. (Retail Shops) with uninterrupted, exclusive, full and free right to construct the entire commercial block and promote, advertise, sell and market.

17. It is the case of the Applicant in IA-3025/2022 that on 22.04.2016 the Corporate Debtor had issued a possession letter in favour of the Respondent i.e. M/s Shomit Finance Limited and handed over the physical possession of the undeveloped land admeasuring 5945.79 sq. mtrs. to it. Surprisingly, when the Application has been preferred by M/s Shomit Finance Limited and it is the Applicant in the application, in paras 12 to 14 of the IA it is referred to as Respondent. It is seen from para 42 of the application that the parties had entered into an Addendum Agreement dated 02.01.2019 wherein it was decided that the M/s Shomit Finance Limited i.e. Applicant in IA-3025/2022 would pay to the Corporate Debtor a maximum consideration of Rs.

32,00,00,000/-, including payment already made. Paras 42 and 44 of the IA reads thus:-

> *"42. However, the Corporate Debtor was not able to reach to a final understanding with the LPFBA and he had again approached the Applicant on 02.01.2019 with a request to revert back to the original understanding (as per original Agreement) in terms of consideration, i.e. payment of Rs. 32,00,00,000/- (Rs. Thirty Two crores Only) instead of the Area Sharing Approach as decided through the ancillary Development Agreement. The parties thus again entered into an addendum agreement dated 02.01.2019, wherein it was decided that the Applicant would pay to the Corporate Debtor a maximum consideration of Rs. 32,00,00,000/- (Rs. Thirty Two crores Only), including payment already paid and to be paid in future and the area sharing terms would stand cancelled, further, the said consideration was being paid in lieu of complete rights (marketing/ branding/ sale / development) being assigned to the buyer for absolute sale of all retail shops situated at LGF and UGF of LPA/ Devika I – Ring.*
>
> ***XXX***
>
> *44. However, before the said addendum could be registered, by order dated 10.01.2019, passed by this Honourable Adjudicating Authority the Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor and the Interim Resolution Professional (IRP), Sh. Prabhjit Singh Soni was appointed to look after the affairs of the company. Faced with the situation, the Applicant wrote a letter to the Interim Resolution Professional on 27.04.2019 requesting the Interim Resolution Professional to register the addendum but did not get any response from the Interim Resolution Professional. Copy of letter dated 27.04.2019 along with receipt of Speed Post sent to the Interim Resolution Professional is annexed herewith as* ***ANNEXURE Z (Colly.).***

18. As has been noted hereinabove, the IA-3926/2023 has been preferred jointly by the RP and M/s Shomit Finance Limited, seeking to withdraw IA-3325/2020, IA-3025/2022 and IA-3330/2020. As can be seen from the Agreement dated 30.05.2023 reproduced in the application, the M/s Shomit Finance Limited has in a way treated the Commercial Complex "iRing" in Lotus Panache, Sector 110, Noida as part of the assets of the CD. The para 6 of the application reads thus:-

> *"6. That accordingly, several meetings, discussions, and negotiations were held between the RP and M/s Shomit Finance whereby inter alia the following terms of settlement/resolution were agreed between the RP and M/s Shomit Finance by way of execution of an Agreement dated 30.05.2023, which was also placed before the CoC for their approval:*
>
> *(i) M/s Shomit Finance has agreed to settle disputes between itself and the Corporate Debtor with respect to the entire commercial complex 'iRing' in 'Lotus Panache', Sector 110, Noida.*
>
> *(ii) M/s Shomit Finance has proposed to pay a settlement amount of Rs. 50,00,00,000.00 (Rupees Fifty Crores Only) + applicable GST and other taxes against the 65,217.00 sq.ft saleable area of commercial shops. The amounts already paid by M/s Shomit Finance· amounting to Rs. 4,71,10,000.00 (Rupees Four Crores Seventy One Lakh and Ten Thousand Only) shall be adjusted against the abovementioned amount.*
>
> *(iii) The above settlement consideration shall be paid by Mis Shomit Finance for the 65,217.00 sq.ft saleable area of commercial shops in iRing Complex on an "as is where is" basis without any further amount being required from Corporate Debtor towards construction of iRing Complex,*

which will be carried out by M/s Shomit Finance at its own costs.

(iv) In addition to the above, M/s Shomit Finance shall also be liable to construct the School, having super area of 25,000.00 sq.ft., which forms part of the iRing Complex, up to "bare shell" stage at its own cost.

(vi) M/s Shomit Finance has also agreed to waive of all of its rights, interests, and claims with respect to the said School in favour of the Corporate Debtor, which will become an undisputed asset of the Corporate Debtor.

(vi) M/s Shomit Finance has also agreed to pay additional amount on pro-rata basis in the event it becomes entitled to saleable area more than the stipulated 65,217.00 sq.ft. upon completion.

(vii) In the event the above proposal is approved by the CoC, the dispute between the parties having been settled, M/s Shomit Finance shall withdraw its application raising objections to the Resolution Plan, i.e. I.A. 3025/2022, and the RP will withdraw its applications bearing No. I.A. 3325/2020 and IA 3330/2020 against M/s Shomit Finance.

(viii) M/s Shomit Finance has executed an Agreement with the RP, agreeing to the modalities and to be bound by the terms contained therein and pay the settlement amount to the Corporate Debtor as per the payment plan enclosed therein without any demur or protest.

(ix) It has been made clear to M/s Shomit Finance that the terms of settlement shall be binding only upon approval by the CoC and the Successful Resolution Applicant.

Copy of the Agreement dated 30.05.2023 executed between M/s Shomit Finance and the RP is annexed herewith as ***Annexure - A.****"*

19. The IA-1158/2024 has been preferred by one of the homebuyers, namely, Ashmeet Singh Bhatia, referred to as Applicant Homebuyer, seeking removal of Mrs. Rakesh Verma, the Authorized Representative of Homebuyers. The ground espoused in the application for removal of AR are:- (i) the AR has failed to oppose the IA-3926/2023; (ii) when the Applicant Homebuyer written numerous e-mails dated 25.05.2021, 27.05.2021, 09.09.2023 and 23.01.2024 to AR pointing out grave and serious illegalities being committed qua the project in question as also the illegalities regarding the Resolution Plan, the AR did not bring the same on record before this Tribunal and acted in cohorts with the SRA.

20. The Intervention Petition-13/2024 has been preferred by Rakesh Verma, Applicant/Intervener, espousing therein that she received e-mail from 700 homebuyers, supporting her stand and opposing the IA-3067/2022 filed by the NOIDA. According to the Applicant/Intervener/AR, she is representative of Financial Creditor in a Class (Homebuyers), who form 100% of the Committee of Creditors as on date. The prayer made in the application is to allow the AR to intervene in IA-3067/2022.

21. The IA-3017/2024 could be preferred by Mr. Ashmeet Singh Bhatia i.e. Applicant Homebuyer, raising additional objections to the Resolution Plan. Nevertheless, the Applicant has also sought action against the RP and AR. The salient pleas raised by the Applicant in the IA are:-

(a) As can be seen from the counter affidavit filed by NOIDA in Writ Petition No. 28157 of 2023, before Hon'ble High Court of Allahabad, the RP and AR have been permitted illegal construction in the Lotus Panache Project

of the Corporate Debtor, to cause unjust enrichment to the SRA and the ex-promoters;

(b) The sanction plan dated 25.01.2012 vide which Tower-31 was added was issued subject to the provisions of the UP Apartment Act, 2010, and till date, consent of allottees has not been provided qua the same, thus the sanctioned revised plan stands expired;

(c) There is no response regarding the approval/sanction given by NOIDA to the illegal construction of the commercial project i-Ring/Vibe, thus there is admission on its behalf the structure is illegal as contended by the Applicant Homebuyer;

(d) The RP and AR are acting in cohorts with the ex-promoters and are permitting sale of commercial units in the illegal commercial structure titled as i-Ring/Vibe, which is neither a part of the original sanction plan nor that of revised sanction plan issued by NOIDA;

(e) The structure is being raised and sold by M/s Shomit Finance Limited, a company against which a avoidance application Nos. 3325/2020 and 3330/2020 (supra) are pending and are sought to be withdrawn in haste by RP in connivance, inter alia, with the AR;

(f) As per e-mail dated 11.05.2024, the contract for construction of Tower-19 amongst the other Towers could be granted by the RP to M/s Goldstar Realtors Private Limited, an associate company of the SRA, without any competitive tendering process which shows that the RP acting in cohorts with SRA and AR had already paved way and created inroads for the SRA in the projects of the CD, even before the approval of the Resolution Plan;

(g) Resolution Plan is ex-facie illegal and suffers from grave and blatant irregularities and illegalities viz. the illegal and unauthorized constructions- 'i-Ring/Vibe' and 'Tower-31', in the project, without due approval and consent of the NOIDA and that of homebuyers of the Corporate Debtor. In para 5 and 6 of the application, the Applicant has pointed out several violation qua the layout plan/revised layout plan approved by the NOIDA. The para 5 and 6 of the application reads thus:-

"5. In light of the above, the additional objections to the Resolution Plan and the entire illegal CIRP, being conducted in collusion and connivance between SRA, AR and RP, all acting in cohorts with the totally dishonest ex-promoters, are as follows:

I. Admitted case of the NOIDA that the Revised Lay-Out Plan, dated 25.01.2012, has already expired and no extension of time thereof has been granted by the NOIDA.

6. It has been the case of the Applicant all along that the said Resolution Plan is ex-facie illegal and suffers from grave and blatant irregularities and illegalities viz. the illegal and unauthorized constructions – 'I-Ring/Vibe' and 'Tower-31' in the Project, without due approval and consent inter alia of the NOIDA as well as the homebuyers of the Corporate Debtor. At the cost of brevity, the objections of the Applicant in respect of the illegal construction of Tower-31 and 'I-Ring', are summarized hereinbelow:

The Resolution Plan is in teeth of the provisions of the Uttar Pradesh Apartment (Promotion of Construction, Ownership, Maintenance) Act, 2010, inter alia, on the following counts:

(a) *As per the Original Lay-Out Plan map circulated to the homebuyers of the Project along with their respective ABAs, there was no Tower-31 and instead, in its place, there existed a 'Business Centre' and 'Guest House' adjacent to Tower-19 i.e., the tower wherein the Applicant has booked his Plot. (In this regard, reliance may be placed on the Original Lay-Out Plan @Page. 9 of I.A. 4179 of 2023).*

(b) *However, as per the Revised Lay-Out Plan sanctioned vide letter dated 25.01.2012, instead of the said 'Business Centre' and 'Guest House', a new tower 'Tower-31' has been proposed. (In this regard, reliance may be placed on the Revised Lay-Out Plan @Page. 69 of I.A. 4179 of 2023).*

(c) *Pertinently, the approval of the said Revised Lay-Out Plan was extremely conditional and provisional with various conditions inter alia obtaining prior mandatory consent of the homebuyers of as per Section 4(4) of the UP Apartments Act. However, no such mandatory prior consent of the homebuyers in terms of Section 4(4) of the UP Apartments Act was obtained.*

(d) *In fact, the aforesaid the Revised Lay-Out Plan, dated 25.01.2012 has already expired due to efflux of time as, as per the aforesaid conditional approval, the said Plan was valid only for a period of 5 years from 25.01.2012, during which the conditions prescribed therein were to be fulfilled. (In this regard, reliance may be placed on the conditional approval @Pg. 21 of the conditional acceptance and its translated copy @)Pg. 24 of I.A. 4179 of 2023)*

<u>The Resolution Plan is in teeth of the provisions of the NOIDA Building Regulations, 2010, owing to the following:</u>

*(a) As per Regulation 24.11. of the NOIDA Building Regulations, 2010, **<u>only</u>** 1% of the total FSI of the group housing project can be used for the commercial structures/ purposes. However, despite having already exhausted the same, the Corporate Debtor has gone ahead and unilaterally converted the existing School in the Project, which was the part of the Original Lay-Out Plan, into a commercial structure under the name and style of 'I-Ring'.*

(b) The said 'I-Ring' complex is neither a part of the Original Lay-Out Plan nor the Revised Lay-Out Plan, and the same is nothing but a means of giving a totally fraudulent and illegal "post bid benefit" to the Corporate Debtor by the SRA, at the behest of its Promoters, which even the NOIDA Authority can not give under its applicable Rules and regulations."

22. It is also the case of the Applicant that in the W.P.C. bearing no. 28157 of 2023 (Ashmeet Singh Bhatia v. State of U.P. & Ors.) Hon'ble Allahabad High Court passed an interim order dated 22.08.2023 directed that the construction carried qua the project would be subject to outcome of the petition. Paras 7 to 26 of the application reads thus:-

"7. It is submitted that in view of the aforesaid illegal constructions being carried out in the said Project of the Corporate Debtor, the Applicant was also constrained to file a Writ Petition, bearing number 28157 of 2023, dated 17.08.2023, titled Ashmeet Singh Bhatia v. State of U.P. & Ors., before the Hon'ble Allahabad High Court, inter alia, seeking issuance of appropriate writ(s) in the

*nature of directions to the NOIDA Authority (i) calling for the record and quashing the Revised Lay-Out Plan, dated 25.01.2012 to the extent that it has added Tower-31 in the said Project in violation to the UP Apartment Act, and (ii) directing to pass an order against the illegal commercial shops forming part of 'I-Ring'. True copy of the writ petition bearing number 28157 of 2023, is already marked and annexed as **Annexure A-2 @ page 52** of the Additional Affidavit dated 22.09.2023 filed before this Hon'ble Tribunal and the same may be read as part and parcel hereof and is not being repeated for the sake of brevity.*

8. *Pertinently, vide order dated 22.08.2023 in the said Writ Petition, the Hon'ble Allahabad High Court held that **"any construction made during the pendency of the said writ petition, the same would be subject to final outcome of the writ petition".** Further, vide the same order, the Hon'ble Allahabad High Court also granted time to the Respondents to file their Counter Affidavit to the said Writ Petition. A true copy of the order dated 22.08.2023 passed by the Hon'ble Allahabad High Court in the Writ Petition filed by the Applicant is already marked and annexed herewith as **Annexure A-2 @ page 103** of the Additional Affidavit dated 22.09.2023 and the same be read as part and parcel hereof and is not being repeated for the sake of brevity.*

9. *In furtherance of the above, the NOIDA filed a counter affidavit, dated 05.05.2024 ('**Counter Affidavit**') to the said Writ Petition filed by the Applicant. True copy of the Counter Affidavit, dated 05.05.2024, filed by the NOIDA Authority, is annexed herewith and marked as **Annexure A-1.***

10. *A bare perusal of the Counter Affidavit filed by NOIDA, substantiates the objections made by the Applicant in I.A. 3588 of 2023, qua the illegal structures in the Lotus Panache Project of the Corporate Debtor and makes it crystal clear that the Resolution*

Plan is ex-facie illegal, as it seeks to legalise these illegal structures. The relevant portion of the Reply filed by NOIDA for the ease of reference is mentioned below:

a) *NOIDA Authority in its Counter Affidavit has explicitly stated that the said Revised Lay-Out Plan dated 25.01.2012 stands expired as on date and no extension of time thereof has been granted by the NOIDA. (Refer to Para 36 of the Counter Affidavit). For the ready reference of this Hon'ble Tribunal, the relevant extract of the Counter Affidavit whereby the NOIDA has admitted the aforesaid, is reproduced hereinbelow:*

> *"36. That the contents of paragraph no. 40 of the writ petition are not admitted as the sanction letter dated 25-01-2012 stands expired. The completion certificate has also not been issued and the time extension has also not been granted."*

b) *From the aforesaid, it is evident that the Revised Lay-Out Plan has expired due to efflux of time, and no extension of time in that regard has been granted by the NOIDA, and therefore, any construction which being carried out in the Project in furtherance of the said Lay-Out Plan is ex-facie illegal and thus, in teeth of the scheme of the Code.*

c) *Even otherwise, NOIDA has admitted that the revised layout was subject to the provisions of the UP Act and that admittedly till date consent of allottees has not been achieved on the same, relevant portion is mentioned below:*

> *"17. The standing committee could not make any final decision as the agreement could not take place between developer and allottees.*
>
> *18. In meantime the process of CIRP started in Hon'ble NCLT.*
>
> *19. The resolution plar l has not yet been accepted either by Hon'ble NCLT or by Naida Authority.*
>
> *20. The developer is bound by the terms of sanction of the revised building plan. Unless the consent of the majority of*

the allottees is produced by the developer, the Authority can't grant sanction."

d) *It is submitted that vide the said Writ Petition, the Applicant has placed on record irrefutable facts and documents which clearly evince that the construction said 'I-Ring' structure is being carried out by the SRA in connivance with the Ld. RP and Ld. AR, which is neither a part of the Original Lay-Out Plan, nor the Revised Lay-Out Plan dated 25.01.2012.*

e) *It is extremely pertinent to mention that the NOIDA in its Counter Affidavit, has intentionally avoided and evaded giving a specific response/ reply to the said submissions made by the Applicant regarding 'I-Ring', as in response to the same, the NOIDA has merely stated that "**no specific response is needed".** The mere fact that the NOIDA has explicitly not denied the submissions made by the Applicant regarding the illegal construction of 'I-Ring' and nor has produced any proof regarding the approval of the same, raises serious questions about its legality and supplements the case of the Applicant herein.*

11. *It is not out of place to mention here that that the SRA in the plan, contrary to actual position of law has incorrectly stated that the revised layout plan contains I-ring. A bare perusal of the revised layout plan of 25.01.2012 already on record before this Hon'ble Tribunal would show that the commercial structure which has conveniently replaced the original structure of a school, is not a part of the revised layout plan and the SRA has made incorrect statements. The relevant portion is mentioned hereinbelow:*

"That the revised building plan obtained by the corporate debtor vide letter no. NOIDA/C.A.P./2012/III/191/498 dated 25-01-2012 from the Noida Authority, shall stand ratified and acknowledged upon the approval of this plan from the Adjudicating Authority. That in the revised plan, the corporate debtor has included Tower 31 and the commercial complex, with

additional 10% compounding of G+29, which is less." ***Refer page 141 of I.A. 3255 of 2020.***

12. *Surprisingly, the aforesaid glaring irregularities have not been pointed out by the RP and AR, even once (i) either before the CoC or (ii) Before this Hon'ble Tribunal. In fact, the RP is also a Respondent in the Writ Petition, and has actively participated therein by also filing its Reply dated 04.01.2024, yet, to date, the RP has not flagged these issues and the same would tantamount to dereliction of his duties. The Applicant has dealt with this submission in detail hereinbelow.*

13. *Further, it is no longer under the wraps that the promoters/ erstwhile management of the Corporate Debtor/ GGPPL and Three C group have committed gross and blatant irregularities not only in respect of the present Project in question as is the case of the Applicant, but also across various projects of the Three C group companies, in active connivance and cahoots with the officers of NOIDA Authority, which despite being a statutory authority, has only failed to protect the rights of the innocent homebuyers such as the Applicant herein, but also has been actively contributing to their endless misery by acting at the behest of the Promoters.*

14. *In this regard, it is significant to point out the observations made by this Hon'ble Court recently in* ***Writ-C No. 41110 of 2019*** *titled* ***Nirmal Singh v. State of U.P. & Ors.,*** *whereby the Hon'ble Court has condemned the conduct of the officers of NOIDA Authority and made the following observations, which further supplements the case of the Applicant herein and justifies the reliefs sought by him from this Hon'ble Court vide the captioned Writ Petition:*

> *95. In this backdrop, it would not be wrong to say that* ***the officers of the Noida Authority had been allowing the petitioners to commit the fraud.*** *Though after paying seven instalments (out of which four were of moratorium period where nothing towards the principal amount was to be paid and only interest was to be paid) they have stopped paying instalments*

w.e.f. 25.03.2014 onwards but the Noida Authority did not take any steps to recover the same and virtually allowed the promoters to collect money from the home buyers and syphon away the same to some other companies. It was only in 2019, the Noida Authority got out of the slumber and issued a recovery certificate against the company and against the promoters. The impugned recovery notice issued was only against the additional compensation which the company had to pay to the Noida Authority, which in turn had to be paid to the farmers. ***The Noida Authority had given enough long rope for the promoters to siphon away all the funds of the company and leave the company absolutely in an insolvent condition.***

96. The Noida Authority had in the year 2017 issued a list of defaulters, who had defaulting in making payments to the Noida Authority. The name of the HPPL was there but surprisingly they took no steps to recover the overdue instalments from the company.

97. There is also an indemnity clause in the lease deed executed between Noida Authority and HPPL wherein it was stated that the lessee shall be wholly and solely responsible for implementation of the project and also for ensuring quality, development and subsequent maintenance. The lessee has not completed the project as per the timeline given by the Noida Authority and for the reasons best known to the Noida Authority, they have not taken any action against the promoters. The Noida Authority did not make any effort to even ascertain the reasons for the delay of more than a decade in completion of the project.

98. When the Noida Authority permitted HPPL to sell 27,941.09 square meters of land (hey ought to have recovered the said money but they allowed the HPPL to sell the part of the allotted land) for Rs.236 crores and pocket all the sale proceeds and most surprisingly the Noida Authority did not even ask for the same. Astonishingly, when the The payment schedule was of total land area of 67,941.95 square meters, though the HPPL had sold off 27,941.09 square meters but the Noida Authority did not change the payment schedule but allowed to continue the earlier payment schedule, which was for 67,941 square meter. With this, the Noida Authority had ensured an illegal windfall gains to the promoters at the cost of the interest of Noida Authority. Had the Noida Authority recovered the premium from the sale proceeds or changed the payment schedule when a major portion of land has

been sold off, this outstanding dues would have been far less. Even if they had insisted the HPPL to pay the instalments in time, there would not have been a default and the dues would not have mounted so much.

99. The affidavit filed by the Noida Authority does not explain the reason why there was a stoic silence on behalf of the Noida Authority, for making any efforts to recover the instalments which fell due from 25.03.2014 onwards. On account of gross negligence of Noida Authority in taking any steps or even ascertaining status of payment towards its dues for over a decade has led to ballooning of its dues, which is approximately Rs. 166 crores as of today.

100. ***Apparently, the inaction of the Noida Authority speaks volumes of their conduct. It is because of their inaction against the defaulting company, the gullible home buyers have come to such a situation where they, after paying the entire money, are not getting the occupancy certificate and presently the Noida Authority is also not in a position to recover any amount from the company, as the company is now under insolvency.***

101. ***The Noida Authority merely acted as a private trader (rather than a trustee and regulator) selling rights of these lands to developers, who prospered by making a huge profit. The promoters/developers in cahoots with the officers of the Noida Authority kept defrauding innocent buyers. Astonishingly, while buyers were struggling to get possession of their apartments in such incomplete projects of this developer, Noida continued further to allot large tracts of land to new companies floated by one of the promoters.***

102. Apparently, there is an abject failure of Noida Authority and a complete abdication of their duties *to* ***protect the rights of hapless home buyers. The Noida Authority have been singularly responsible for a series of untenable, arbitrary and irrational actions which have directly and irreversibly impacted hundreds of home buyers, their families, their life savings and their living situation."***

A true copy of the Judgment dated 29.02.2024 passed by the Hon'ble Allahabad High Court in ***Writ-C No. 41110 of 2019*** *titled*

Nirmal Singh v. State of U.P. & Ors., *is annexed herewith and marked as* ***Annexure A-2.***

Thus, in view of the above, it is submitted that Tower-31 and 'I-Ring' are being constructed without the approval of the NOIDA Authority as is evident from the Counter Affidavit filed by the NOIDA Authority, and in the event that the construction thereof are not stayed/ stopped, it shall cause an irreparable harm and injury to the rights of the homebuyers, including the Applicant herein, ***as the same would create a situation akin to that of the illegal 'Twin Towers' of M/s Supertech Limited, wherein the Hon'ble Supreme Court*** *in M/s Supertech Limited v. Emerald Court Owner Resident Welfare Association & Ors. (2021) 10 SCC 1,* ***has upheld the demolition of the said Twin Towers for being in violation of these very NOIDA Building Regulations, 2010.***

II. The SRA is seeking unjust enrichment

15. *Notwithstanding anything contained hereinabove, it is also extremely pertinent to highlight that the Resolution Plan in the present form, would cause unjust enrichment to the SRA, inter alia, owing to the following:-*

    a) *The SRA is making a total equity investment of INR 15,00,00,000 only (Refer @page 64 and 119 of* ***I.A. 3255 of 2020****), against which, the total asset value that the SRA will receive as on date, based on the existing assets of the Corporate Debtor, will be INR 635,03,12,007 (Refer total asset value as on 10.01.2019 as per Information Memorandum on page 489 of* ***I.A. 3255 of 2020****). In fact the total net worth of the SRA for the financial year 2018-2019, as per its net worth statement, is merely INR 40,11,25,244 (Refer page 343 of* ***I.A. 3255 of 2020****). The relevant extract is being reproduced hereinbelow:*

UDIN: - 20420358AAAABR2930

NET WORTH CERTIFICATE

This is to certify that the Net worth of M/s. SMV Agencies Pvt. Ltd., having its registered office at S-25, Green Park, Main Market, New Delhi-110016 (India), for the last five years as per the audited financial statement are as below:

PARTICULARS	AMOUNT
2018-19	40,11,25,244/-
2017-18	39,87,53,213/-
2016-17	39,37,16,196/-
2015-16	38,94,58,168/-
2014-15	26,94,13,281/-
Average Net Worth	37,04,93,220/-

We further certify the computation of Net worth, based on our scrutiny of the books of accounts, records and documents, is true and correct to the best of our knowledge and as per information provided to my / our satisfaction.

b) *Over and above, the SRA will also be entitled to the sale proceeds from the following illegal structures:*

-Tower-31-

i. *A bare perusal of the stock in trade, which includes unsold inventory of Flat 1704 of Lotus Panache, FSI of the proposed Tower 31 and the material at site, would exceed INR 150,68,66,725 (Refer Page 669 of* ***I.A. 3255 of 2020****). Further, as per the valuation report of Mr. Ganesh Chandra Mamgai (Refer @ pages 994 onwards of* ***I.A. 3255 of 2020****), which was conducted for the valuation of solely the Tower-31, strangely so, the Fair value of Tower-31 alone is INR 24,04,38,400 and even the liquidation value is INR 19,23,50,720 (Refer @ page 996 of I.A. 3255 of 2020).*

-I-ring/Vibe

ii. *Assuming thought not admitting that the construction, marketing and sale of the shops in the commercial structure of I-Ring is permitted, the SRA would be making huge profits and gains from its receivables after having invested almost nothing. The SRA is banking on the said receivables and the same can be seen from a bare perusal of the Resolution Plan (Refer Page 90 of* ***I.A. 3255 of 2020,*** *under the head-*

Receivables from commercial project- I- Ring). As on date the average price per Sq.Ft. of a unit in this structure ranges from INR 30,000 to INR 38,0000.

iii. *Even otherwise, it is highly significant to note that even though the question regarding the legality of the structure of I-Ring/commercial complex is sub judice on one hand before this Hon'ble Tribunal, as well as before the Hon'ble High Court of Allahabad, the RP acting in cohorts with the SRA (to ensure at all costs the construction of I- ring and addition to his kitty), the ex-promoters and M/s Shomit Finance, has been constructing the said illegal structure, totally illegally and unauthorizedly, in pro-active collusion with the Ld. RP, the Ld. AR and the SRA. In this regard:*

   A. *Photographs establishing construction of the commercial structure, already handed over during the course of the hearing be relied upon. True copy of coloured photographs of I- Ring/Vibe are marked and annexed herewith as* ***Annexure A-3.***

   B. *Active sales are taking place of commercial units of this inherently illegal structure now being referred to as '**VIBE**'. In fact, brochures with price lists w.e.f. 16.12.2023 and marketing material is being circulated amongst prospective buyers, with incorrect information that the CIRP is over. True copy of Price list, brochures and other marketing material of Vibe, are marked and annexed herewith as* ***Annexure A-4.***

   C. *The erstwhile resolution professional of the Corporate Debtor, namely, Mr. Chandra Prakash ('**erstwhile RP**'), had filed two very well-reasoned and documented avoidance applications bearing being, I.A. 3325 of 2020 and I.A. 3330 of 2020 ('**Avoidance Applications**'),*

*against the M/s Shomit Finance Limited However, the present Ld. RP (who was appointed subsequently), namely, Mr. Devendra Singh, has pro-actively in connivance with M/s Shomit Finance limited, AR and the SRA, has executed an ex-facie fraudulent, so-called Settlement Agreement, dated 30.05.2023 ('**Settlement Agreement**'). Pertinently, vide the said Settlement Agreement, the Ld. RP has agreed to withdraw the said I.A. 3325 of 2020 and I.A. 3330 of 2020, subject to the M/s Shomit Finance Limited withdrawing its I.A. No. 3025 of 2022 and certain other conditions, including agreeing to make certain payments to the Corporate Debtor. In fact, subsequent thereto, the Ld. RP, jointly with M/s Shomit Finance Limited, has also filed an ex-facie illegal I.A. No. 3926 of 2023, before the Ld. AA, seeking withdrawal of the aforesaid two Avoidance Applications.*

c) *Apart from the above, the SRA is also benefitting from the following:-*

   i. *As per the Resolution Plan, the SRA is entitled to a somewhat unearned income to the tune of 10% of the total Receivables in the reserve fund (**Refer @ page 63 of I.A. 3255 of 2020**)*

   ii. *The associate company of SRA, namely M/s Goldstar Realtors Private Limited has already started constructing towers in the projects of the Corporate Debtor on being granted contracts by the RP under the scam of pool and build, whereas, in reality, the RP is making inroads for the SRA in the project, even prior to approval of resolution plan by this Hon'ble Tribunal. Interestingly, the following may be noted in regard to the connection between Goldstar and SRA:*

a. *M/s Gold Star Realtors Pvt. Ltd. is a related party of the SRA, having common director namely, Mr. Rajkumar Ramrakhiyani, who is also the key managerial person and member of the monitoring committee as the representative of the SRA. True copy of director data of Rajkumar Ramrakhiyani is marked and annexed herewith as* ***Annexure A-5.***

b. *An avoidance Application bearing I.A. 3870 of 2020 titled Chander Prakash v. M/s Gold Star Realtors Pvt. Ltd., has been filed by erstwhile RP of the Corporate Debtor, which is a part and parcel of the captioned matter and pending adjudication before this Hon'ble Tribunal;*

c. *M/s Gold Star Realtors Pvt. Ltd., acting on behalf of the potential resolution applicants (which in the present facts and circumstances, would mean the SRA), has also provided a non-interest bearing, unconditional, and irrevocable bank guarantee for an amount of* ***Rs. 1 crore*** *in accordance with the terms of the invitation for expression of interest dated 30.09.2020 issued by the Ld. RP seeking submission of EOI from interested and eligible PRA's for submission of resolution plan for the Corporate Debtor. (Refer to Page 180 of I.A. 3255 of 2020 i.e., the Plan Approval I.A., for the copy of the said Bank Guarantee given by M/s Gold Star Realtors Pvt. Ltd.*

Highly Questionable Conduct of the RP and the AR

16. *In light of the above, it is essential to point out the conduct of the highly questionable professional conducts of the Ld. RP and the Ld. AR: -*

a) *Ld. RP and Ld. AR, instead of acting in the interests of the Corporate Debtor, are acting in cohorts with the ex-promoters and permitting the sale of commercial units in the illegal commercial structure i.e., 'I- Ring', that too by M/s Shomit Finance Limited, against which Avoidance Applications, as mentioned hereinabove, are pending adjudication before this Hon'ble Tribunal;*

b) *The RP and AR, instead of verifying the records with regard to the sanctions/approvals of Tower 31 and I-ring/Vibe from concerned authorities, have turned a blind eye to the glaring illegalities and permitting construction thereof despite being repeatedly inform about the illegalities involved by the Applicant.*

c) *The Ld. RP, in connivance with the Ld. AR, has unilaterally awarded construction contracts for both the projects of the Corporate Debtor to M/s Gold Star Realtors Pvt. Ltd. which is nothing but an admitted related party of the SRA, without any competitive bids, thereby providing a pre-mature inlet to the SRA into the Project. In fact, the aforesaid leads to apprehensions regarding the utilization of the funds from the 'Pool and Build' Plan, and necessitates a forensic audit thereinto;*

d) *The Ld. Rpand Ld. AR are guilty of deliberately and intentionally concealing material facts and documents from this Hon'ble Tribunal, including but not limited to the letter dated 18.12.2023 issued by NOIDA which clearly hints that illegalities are going on in the said Project, more so when the Ld. RP and the Ld. AR themselves ought to have examined the aforesaid illegalities being carried out in the Project and brought to the notice of this Hon'ble Tribunal;*

e) *The Ld. RP, in connivance with the AR, by fraudulently and proactively siding with the SRA and M/s Shomit Finance, has executed the so-called 'Settlement Agreement dated 30.05.2023, whereby on one hand he has agreed to withdraw the Avoidance Applications against M/s Shomit Finance Limited, and on the other hand, acting in cohorts with the ex-promoters, is permitting the construction and sale of commercial units in the illegal commercial structure i.e., 'I-Ring', that too by M/s Shomit Finance Limited.*

f) *The aforesaid contentions against the Ld. RP and Ld. AR, may be read as part and parcel of the I.A Nos. 1158/2024 and 1159/2024, filed by the Applicant, seeking removal of the Id. AR and the Ld. RP.*

17. *In light of the above, by way of the present Application, the Applicant is also seeking directions to the Ld. RP and the Ld. AR, for giving disclosures and/or placing on record the following information/ documents before this Hon'ble Tribunal, which are extremely crucial and material for the purposes of effective adjudication of the Objections I.A., as well as the present Application by the Applicant:-*

(a) Justification for / basis of awarding work orders to M/s Gold Star Realtors Pvt. Ltd. for the balance works of the both the group housing projects of the Corporate Debtor, without any competitive bids, despite pendency of an avoidance application against the said company;

(b) Justification for / basis of filing entering into the aforesaid Settlement Agreement dated 30.05.2023 and filing of I.A. 3926 of 2023 seeking withdrawal of two of the most well-documented Avoidance Applications viz. I.A. I.A. 3325 of 2020 and I.A. 3330 of 2020 filed by the erstwhile RP against M/s Shomit Finance Ltd.;

(c) Books of Accounts and/or other documents evincing the appropriation/utilization of the funds collected from the homebuyers in the 'Pool and Build' Plan;

(d) Whether or not he has intimated or brought to the notice of the COC of the Corporate Debtor and/or the Authorized Representative of the homebuyers, regarding the material irregularities/ illegalities, including but not limited to the fact that the Revised Lay-Out Plan has expired, and no fresh approval/ extension has been granted by the NOIDA?

(e) Whether or not he was aware that the Revised Lay-Out Plan, as admitted by the NOIDA Authority, has expired due to efflux of time?

(f) Document(s) submitted to the NOIDA Authority confirming that the written consents of the allottees/ homebuyers of the Lotus Panache project was duly obtained in terms of Section 4(4) of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010.

(g) Documents inter alia the letters/ emails sent by the Corporate Debtor to the NOIDA Authority, requesting sanction of 'I-Ring' commercial complex in place of the School in the said Project;

(h) Any other document/ clarification that this Hon'ble Tribunal deem fit for the effective and proper adjudication of the Plan Approval Application.

III. Valuation is void ab initio

18. *It is submitted that baring aside the objections already raised by the Applicant regarding the Valuation of the Corporate Debtor and breaches committed therein, as well as those which have been raised by the counsel for NOIDA, which also have been taken into account and recorded by this Hon'ble Tribunal, vide orders dated 16.05.2024 and 17.05.2024 (which may be read as part and parcel*

hereof and are not being repeated herein for the sake of brevity), by way of the present Application, the Applicant seeks to place on record the following additional points/ objections inter alia the breaches/ illegalities committed in the Valuation:

i. ***Admitted case of the Ld. RP that there has been a breach in the valuation:***

19. *It is submitted that it is an admitted case of the Ld. RP himself that there has been a serious breach in the valuation of the Corporate Debtor by the erstwhile RP i.e., Prabhjit Singh Soni. In this regard, relevant to point out that the orders dated 29.08.2023 and 04.10.2023 passed by the Hon'ble Principal Bench in the captioned Company Petition, vide which the objections of NOIDA were duly recorded and in furtherance whereof, the Ld. RP was directed by the Hon'ble Bench to indicate the implication of the events/ breaches committed by the erstwhile RP.*

For the ready reference, the relevant extract of the ***order dated 29.08.2023*** *passed by the Hon'ble Principal Bench in the captioned Company Petition is being reproduced hereinbelow:*

> *During the course of hearing, two breaches of law have been mainly raised by Adv. Rachit Mittal for NOIDA which are disclosure of liquidation value in the Information Memorandum and also the value which has been determined by the IRP in the CIRP Proceedings was only from one valuer whereas the regulation provided for two valuation reports. On the above two breaches of law and the effect of the same on the ongoing proceedings before this Adjudicating Authority, we would like to hear Mr. Sumant Batra, Ld. Counsel for the RP as to the implications of these breaches of the laid down law and the impact thereof on the CIRP Proceedings.*

Further, the relevant extract of the ***order dated 04.10.2023*** *is being reproduced hereinbelow:*

> *Today, in response to our order dated 29.08.2023, it was stated by Ld. Counsel Mr. Sumant Batra for the RP that based on*

information gathered he would place certain records before this Tribunal in relation to the two issues raised by Ld. Counsel Mr. Rachit Mittal for the NOIDA. For this he seeks some time to place those details in a proper form so that the decision can be taken. He is also directed to indicate the implication of the events which had happened at the time when the earlier IRP was in control of the process.

20. *Thus, the fact that breach of law has been committed by the RP and AR, during the conduct of the CIRP, is as such not a matter of dispute.*

21. *In furtherance of the above, the Ld. RP has filed an additional affidavit dated 16.10.2023 ('**Additional Affidavit**'), wherein the Ld. RP has inter alia admitted the following regarding the irregularities in the Liquidation Valuation of the Corporate Debtor:*

    (a) The Ld. RP has found two signed valuation reports, one dated 22.10.2019 by Prateek Mittal with respect to securities & financial assets, and one by Mr. Ganesh Chandra Mamgai dated 07.11.2019 with respect to land and building, and additionally two unsigned valuation reports- one by Crest Capital Advisors with respect to both securities & financial assets and land & Building and another by Er. Ajay Chaturvedi for Tech Mac International Pvt. Ltd. with respect to land and building;

    (b) The Ld. RP cannot confirm whether Crest Capital Advisors and Tech Mac International Pvt. Ltd. were not registered valuers themselves and procured the valuation reports through registered valuers;

    (c) The liquidation value of Rs. 21.87 crores mentioned in the Information Memorandum, as per the erstwhile IRP - Prabhjit Singh Soni, is not the liquidation, but merely a typographical error, and in fact, the liquidation value of the Corporate Debtor as mentioned in Form-H by Chandra Prakash, the erstwhile RP in the Plan Approval 1.A. - is Rs. 25,29,80,224/.

22. *Thus, from the perusal of the above admissions made by the Ld. RP, it is clear that there is no doubt that the valuation is faulty and thus, void ab initio, and which further supplements the case of the Applicant that the material breaches and irregularities inter alia in the Valuation, which cannot be rectified at this stage.*

ii. ***The Valuation Report prepared by Ganesh Chandra Mamgai is only for Tower-31 and not for the entire project of the Corporate Debtor and thus, even otherwise the valuation is void ab initio.***

23. *Apart from the above, it is submitted that even otherwise, the signed report submitted by the registered valuer regarding land and building of the Corporate Debtor i.e., the report dated 07.11.2019 prepared by Ganesh Chandra Mamgai with respect to land and building,* ***only deals with the new proposed illegal Tower-31****, which is only a small part of the entire Project land of the Corporate Debtor.*

The relevant extract of the Valuation Report prepared by Ganesh Chandra Mamgai, showing the Scope and Limitation of the report, is reproduced hereinbelow:

"Scope & Limitation

Valuation has to be carried out for the small patch of land where marketing office and sample flat is presently located in Sector 110, Noida of Granite Gate Properties Private Limited where a additional tower (tower-no-31) is proposed to be constructed in near future in accordance with internationally accepted valuation standards and regulation 27 and 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as on January 10, 2019."

24. *It is extremely crucial to point out that the aforesaid proposed illegal Tower- 31 is merely a small portion of the entire Project land of the Corporate Debtor and admeasures to only 3,990 Sq. Mtr., as compared to the entire land of the Corporate Debtor admeasuring*

2,64,129 Sq. Mtrs. Therefore, the aforesaid valuation done by the so-called registered valuer is highly undervalued and thus, void ab initio and cannot be taken into consideration at all. The RP instead of pointing out this glaring irregularity is seeking to rely on the same and mislead this Hon'ble Tribunal into passing orders by relying on the said valuation report.s

25. In fact, even otherwise, the aforesaid valuer was never appointed with the approval of the COC, as from the bare perusal of the minutes of the 2nd COC meeting held on 19.03.2019, it gets confirmed that only the appointments of Crest Capital and Tech Mach International Pvt. Ltd. were ratified by the COC. True coy of the minutes of the 2nd COC meeting held on 19.03.2019, is annexed herewith and marked as ***Annexure A-6.***

26. Thus, in view of the above, it is submitted that it is no longer a point for consideration that there are material irregularities inter alia in the valuation of the Corporate Debtor, basis which the Resolution Plan has been submitted by the SRA, and thus, in a situation wherein the valuation itself is void ab initio, the said Resolution Plan which naturally is consequence thereof, ought to be rejected in its present form by this Hon'ble Tribunal with the appropriate directions to the Ld. RP for the issuance of a fresh Form G."

23. As both the M/s Shomit Finance Ltd. & RP could file joint IA viz. 3926/2023 for withdrawal of IA-3325/2020 and IA 3330/2020, the applicant Homebuyer namely Ashmeet Singh Bhatia has filed the captioned IA for adjudication of these two IAs.

24. IA-1159/2024 has been preferred by Ashmeet Singh Bhatia, the Applicant Homebuyer, praying therein for issuance of an order for removal of Mr. Devendra Singh (present RP) and for passing an order of appointment of

a new Resolution Professional for the Corporate Debtor. The grounds raised in the application for removal of RP are more less the same as are raised by the Applicant in IA-1158/2024 for removal of the Authorized Representative. Nevertheless, the IA raises the following salient grounds:-

(a) the RP failed to point out the illegalities committed by the erstwhile Resolution Professional with regard to the compliance of Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;

(b) the present RP was appointed on 21.11.2022 and he had sufficient time to go through the documents qua the present CIRP and rectify the defects if any by intimating this Tribunal. Nevertheless, he kept the illegalities qua the CIRP under wrap and only after the illegalities were pointed out by NOIDA, he came forward with suggestions to address the illegalities;

(c) the Resolution Professional failed to recognize that the Resolution Plan submitted by SRA which is ex-facie illegal as it suffers from grave and blatant irregularities and illegalities such as regularization of ex-facie illegal structures 'Tower-31' and 'i-Ring'.

  (i) The plan is hit by Section 30(2) of the Code, as it seeks to surpass the provisions of U.P. Apartment (Promotion of Construction, Ownership, and Maintenance) Act, 2010 as also New Okhla Industrial Development Area Building Regulations, 2010;

  (ii) the plan is in violation of Section 30(1) of the Code, as it cannot be implemented effectively;

  (iii) the plans seeks reliefs and concession from the Tribunal which are beyond the scope and scheme of the Code;

(iv) more than three years old Plan seeks to hugely and materially discriminate against the Applicant in the IA and is creating a class within the class of homebuyers;

(d) the RP failed to see that M/s Goldstar Realtors Private Limited is a related party of the SRA, as both the SRA and M/s Gold Star Realtors Private Limited are related parties.

25. To press the captioned IA-1159/2024, the Applicant Homebuyer could also place reliance upon averments made in the others IAs filed by him viz. IA-3926/2023, IA-3596/2023, IA-3588/2023, IA-4179/2023 etc.

26. On 16.05.2024, after hearing the counsels for the parties, this Tribunal passed the following order qua IA-3255/2020, IA-3067/2020 and IA-3588/2023:-

> *"**IA/3255/2020, IA/3067/2022 & IA/3588/2023:** A batch of Real Estate insolvency matters is received by this bench at the strength of the order passed by Hon'ble President. Mr. Sumant Batra, Ld. Counsel appearing for the Resolution Professional in (IB)-1248(PB)/2018, submitted that the ramification of the order passed by Hon'ble President is only that the matters will be heard by this bench and the order does not have any ramification of clubbing the matters. Nevertheless, since a need was felt to list all the aforementioned petitions/ applications before this bench, we direct the counsels for the parties to submit a pictorial chart/ diagram indicating the link between all these applications. They are also required to file the list of applications pending in individual company petitions, indicating the issues involved therein. At this stage, Mr. Sumant Batra, Ld. Counsel appearing for the Resolution Professional in (IB)-1248(PB)/2018 submitted that while examining the aforementioned matters, this Tribunal needs to be conscious that all the Corporate Debtors are*

independent entities and there is no common management qua the same. Nevertheless, we could proceed hearing the matters one by one. Mr. Sumant Batra, Ld. Counsel appearing for the Resolution Professional in (IB)-1248(PB)/2018 pressed IA/506/2024 and submitted that the little infirmity in the procedure, which Resolution Professional acknowledges and accepts is that out of two Valuation Reports required in terms of the provision of Regulation 27 read with Regulation 35 of IBBI (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 was unsigned, thus, the ramification should be that the matter may be remitted back to CoC, so that either already available Valuation Reports can be reconsidered or a fresh Valuation Report can be obtained.

Mr. Sumant Batra also espoused that the CoC would of course be entitled and under obligation to consider the implication of the judgment of Hon'ble Supreme Court in Greater Noida Industrial Development Authority Vs. Prabhjit Singh Soni.

To explain certain factual backdrop, Mr. Sumant Batra submitted that Mr. Chandra Prakash, Resolution Professional was removed after approval of the Resolution Plan and the present Resolution Professional was appointed afresh.

Mr. Rachit Mittal, Ld. Counsel appearing for the NOIDA commenced his arguments with reference to Regulation 27(2) and 35(1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. According to him, the provisions of these regulations are defined, thus the violation of Section 30(2)(e) of IBC, 2016 writ large and this Adjudicating Authority should reject the application filed for approval of the plan. To take his arguments further he submitted that when the size of the plot is approximately 3 lakhs square meter, the site and the area which could be taken into account by the valuators was different. He could also draw our attention to the written submissions filed by him qua IA/3067/2022 on 05.03.2024. In his submission, when two valuators were not appointed and two

valuation reports were not available, there was disregard of Regulation 35(1) (ibid). He made reference to the various pages of the application filed for approval of the Resolution Plan i.e. IA/3255/2020, particularly those at the resolution plans enclosed therewith. The pages referred to him by are 124, 994, 996, 999, 1008, 1010, 1021, 1025, 1027, 1035, 1044. The reference to the aforementioned pages of the paper book qua IA/3255/2020 was made just to espouse that the Information Memorandum contained the liquidation value, which could persuade the SRA to submit comparatively lesser bid. Another point, Mr. Rachit Mittal wanted to buttress with reference to the aforementioned pages was that there was an earlier resolution plan, which could not be voted upon and the value of said plan was higher than the plan which could be approved by the CoC. In his submission, could the liquidation be not mentioned in the Information Memorandum, there could be no occasion for reduction of value of the Resolution Plan. Referring to clause (j) and (k) of Regulation 36 of IBBI (CIRP) Regulations, 2016 he submitted that the clauses could be omitted by way of amendment dated 31.12.2017 and after said date the liquidation value due to Operational Creditor were not required to be mentioned in the Information Memorandum.

He also canvassed that at the point of time when the judgment of Hon'ble Supreme Court in NOIDA Vs. Anand Sonbhadra (Civil Appeal No. 2222/2021) had not come, the NOIDA participated in CoC as Financial Creditor, but while exercising its vote qua the Resolution Plan, it dissented. Referring to the judgment of the Hon'ble Supreme Court in ***Karad Urban Cooperative Bank Ltd. Vs. Swwapnil Bhingardevay and others, (2020) 9SCC 729****, he submitted that when the CIRP process could be initiated from the stage of irregularity committed qua preparation of Information Memorandum, the process should resume from the stage of infirmity only and the argument advanced by Mr. Sumant Batra that the plan may be remitted back to the CoC is not acceptable and the interest of justice would be sub-served only if the RP/CoC invites fresh expression of interest.*

Rejoining the submission, Mr. Sumant Batra, Ld. Counsel appearing for the Resolution Professional would make reference to Regulation 36(2)(k) of IBBI (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 and submit that when it is considered justifiable to disclose the Fair Value in the Information Memorandum, it is not understood that how the disclosure of the Liquidation Value in the Information Memorandum, if any, could prejudice the cause of the NOIDA. He further refers to Section 2(k) of the IBBI (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 to bring forth the definition of "liquidation value". In his submission, the value needs to be arrived at as on date of commencement of CIRP and if at this stage the fresh valuation is done, the entire scheme of IBC, 2016 would be defeated. To buttress his plea, he referred to the judgment of Hon'ble Supreme Court in ***Maharashtra Seamless Ltd. Vs. Padmanabhan Venkatesh and Others (2020) 11 SCC page 467.*** *He also added that the liquidation value is not only the one which is taken into account by the members of the CoC while exercising their voting right qua the plan. He also submitted across the bar a hard copy of his Written Submissions.*

Referring to the factual position, he submitted that the Information Memorandum never contained the plan value. He also espoused that there would be no justification to reverse the clock back and the ideal situation would be that the valuer may be allowed to submit their fresh valuation report.

Interjecting at this stage, Mr. Rachit Mittal submitted that the secured creditor is entitled to copy of valuation report and in the changed circumstances when Regulation 46A has been added to the IBBI (Liquidation Process) Regulations, 2016 w.e.f. 12.02.2024, the dwelling units qua which the possession has already been handed over to the home buyers can't be considered as assets of the Corporate Debtor.

Mr. Deepak Khosla, Ld. Counsel appearing for Applicant in IA/3588/2023 (Home Buyer) espoused the legal principle of "dura lex sed lex". In his submission law is law and needs to be followed even if the application of the same is harsh. According to him, once by mentioning the liquidation value in Information Memorandum, the Resolution Professional violated the procedure, the same is sufficient ground not to accept the application for approval of plan. In his submission, the infirmity in the process can be redressed only if fresh Form G is invited. He further submitted that the claims of the parties stand frozen as on the date of ICD and on expiry of even one year, they sustain 7.5 per cent haircut, qua the claim against the company. He also espoused that if at this stage the liquidation value as on date of ICD is taken into account, with the afflux of time, the stakeholders would have 70 to 80 per cent hit qua their claim. According to him, since the amount of bid offered by SRA was with reference to the liquidation value disclosed in the Information Memorandum, same was less and as a result the lesser amount could be offered to his client, thus he has all locus to appear in these proceedings and advance his submissions.

Mr. Ramji Srinivasan, Ld. Sr. Counsel for the SRA commenced his submissions by referring to the date of commencement of CIRP i.e. 10.01.2019 and then took his arguments forward by pointing out the dates 19.07.2020 and 18.09.2020, when plan was approved and the NOIDA submitted its objection.

Mr. Ramji Srinivasan reiterated the arguments advanced by Mr. Sumant Batra, Ld. Counsel for the Resolution Professional i.e. when the NOIDA was participating in CoC all through and remained present almost in 18 meetings of CoC, it is not open for it at this stage to raise the issue of valuation report Relying upon the judgment of Hon'ble Supreme Court in ***Greater Noida Industrial Development Authority Vs. Prabhjit Singh Soni****, he submitted that it is open for this Tribunal to remit the plan back to CoC only and it is beyond its*

jurisdiction to direct that the process of CIRP should resume from the stage of inviting fresh expression of interest. He also submitted that the curable/remediable infirmity in the process can be no ground to nix the plan and the proper course is to resort to the remedial measures.

Mr. Ramji Srinivasan also submitted that in terms of the judgment of Hon'ble Supreme Court reported at 2024 (1 SCC) page 42 it would be within the scope of commercial wisdom of CoC only to take a decision as to what remedial steps he takes i.e. whether it should take a decision to invite fresh expression of interest or to just call for fresh valuation report and take the required steps in the matter. He also referred to the judgment of Hon'ble NCLAT in ***Jatinder Pal Singh Hanjra Vs. Vivek Raheja****, wherein, this Tribunal not only reminded the plan for being reconsidered, but also directed to invite fresh expression of interest, and the Hon'ble NCLAT ruled that it is for CoC to take a view as to whether it will consider the available plan alone or would invite further expression of interest.*

Mr. Ramji Srinivasan tried to distinguish the judgment in ***Karad Urban Cooperative Bank Vs. Swwapnil Bhingardevay and Others (2020) 9 SCC page 729****, by reading para 11.4 of the judgment. In his submission, in the said judgment the view taken by Hon'ble Supreme Court regarding resumption of the process from the stage of preparation of the information memorandum was only because the plan was approved in 8th meeting of CoC within 2-3 hours.*

According to Mr. Ramji Srinivasan, the change in plan by the SRA as also by other PRA was not because the liquidation value was mentioned in the information memorandum, but same was for the reason that the RP had projected an incorrect picture regarding receivable, in the information memorandum. Earlier the receivable reflected were more, but subsequently the same were reduced.

List for further submission to be made by Mr. Deepak Khosla, Ld. Counsel appearing for the Applicant in IA/3588/2023 and Mr. Rachit Mittal, Ld. Counsel appearing for the NOIDA tomorrow.

The issue of locus of Mr. Deepak Khosla to address this Court on behalf of the Home Buyers which is questioned by Mr. Sumant Batra, Ld. Counsel appearing on behalf of the Resolution Professional and Mr. Ramji Srinivasan, Ld. Sr. Counsel appearing on behalf of the SRA would be examined at the stage of deciding the issue. Nevertheless, at this stage Mr. Deepak Khosla, Ld. Counsel submitted that the issue of locus was also raised before the Principal Bench and the bench presided by Hon'ble President viewed that in terms of the judgment of Hon'ble Supreme Court in Jaypee Kensigton Vs. NBCC (India) Boulevard Apartment Association & Ors. (Appeal No. 3395 of 2020) (Para 171), he has locus to address at this stage. At this stage Mr. Deepak Khosla also submitted that the copy of the written submissions, handed over by Mr. Ramji Srinivasan, Ld. Sr. Counsel across the bar should be made available to him. A copy of such written submissions submitted by Mr. Ramji Srinivasan is handed over to Mr. Deepak Khosla to make a photocopy of the same and return the original to CO.

List on 17.05.2024."

27. On 17.05.2024, we heard Mr. Deepak Khosla, Ld. Counsel for Applicant homebuyer, namely, Ashmeet Singh Bhatia as also Mr. Rachit Mittal, the Ld. Counsel for the NOIDA who supported IA No. 3588/2023 and IA-3067/2022 and opposed IA-3255/2020 filed for approval of the Resolution Plan nd passed the following order:-

*"**IA-3588/2023:** Mr. Deepak Khosla, Ld. Counsel appearing for the Applicant in IA-3588/2023 resuming his submissions from yesterday submitted that: -*

(i) *There are infirmly in the plan as the plan has provided for 31 towers which was never part of the original plan but was part of the revised plan only subject to certain conditions.*

(ii) *That the Tower-31st I-ring/ VIBE was not part of either original or the revised plan.*

(iii) *This Adjudicating Authority has no jurisdiction to approve such plan which defies the law.*

(iv) *The Tower-31 was mentioned in the plan dated 25.01.2012 and the Noida had accorded conditional approval to the same.*

(v) *Remitting the plan back to CoC would be a useless formality.*

(vi) *By investing Rs. 15 crores, the SRA cannot get away with the assets and properties of 200-300 crores.*

vii) *The SRA want to compensate Home Buyer out of the outcome of PUFE applications and still want to retain 10% of such outcome, thus endeavouring to cause unjust enrichment to himself.*

(viii) *The outcome of PUFE is just speculative and not the concrete existence of any wealth.*

(ix) *With passage of time, the Rs. 100/- now offered/invested by SRA would virtually be Rs. 49.67/- as on 2020. The CoC had no jurisdiction to act on such valuation report, which was in breach of regulation 27 & 35 of IBBI (CIRP) Regulations, 2016. There is no discretion vested in this Adjudicating Authority to enable CoC to consider fresh valuation report. Even if the CD is required to be liquidated, the dissolution would not be the only outcome and still there would be a scope to order closure of the proceedings by disposal of the CD as going concern.*

(x) *Nullity remains nullity and the challenge to same can be at any point of time and the plea of slumber cannot be raised by the Respondents, when the ramification of the plea raised on behalf of the Applicant in the said IA is that the mention of liquidation value in the information memorandum and the valuation being not available with the CoC in terms of Regulation 35 of IBC, 2016 the plan is nullity.*

(xi) When there is violation of law, this Tribunal has no jurisdiction to condone the same and exercise its discretion.

(xii) When any provision of law is defied, the consequences need to be followed, howsoever harsh the same may be.

(xiii) When there is mandatory provision of law violated by a party, the doctrine of prejudice need not be invoked and the violation of law in itself would be a sufficient ground to not accept something which law does not permit. To buttress his plea on the issue of nullity, the Ld. Counsel sought to rely upon the judgment of Hon'ble Supreme Court in Vithalbhai Private Limited vs. Union Bank of India. (AIR 2005 SCC 1891)

(xiv) It is not open to this Tribunal to approve the violation of building bye law i.e. Section 4 of Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance Act).

(xv) As can be seen from page No. 37 of the application filed for approval of the Resolution Plan, the financial proposal is quite weird and screwed.

(xvi) With reference to page No. 141 of the application filed for approval of plan, one can see that the RP/SRA expect this Tribunal to give direction to different parties to make payment to it. The such plea raised in the Resolution Plan in a way amounts to expecting this Tribunal to disregard the law.

(xvii) Mr. Deepak Khosla submitted that he would require further one hour to conclude his submission.

(xvii) The direction given on 16.05.2024 regarding filing of the pictorial chart/ diagram in respect of all the cases transferred to this Bench for being heard together as also the separate list regarding the status of various applications have not yet been filed. The parties in all the matters listed before this Bench on transfer from another benches are at liberty to file pictorial chart/ diagram covering all the applications and the separate list regarding the status of pending applications and issues involved therein before the next date of hearing.

In the wake of the submissions made by the Mr. Rachit Mittal, Ld. Counsel for Noida, we deem it appropriate to know the stand of IBBI qua all these matters. In the wake, let a notice be issued to IBBI to nominate its representatives to assist the bench on the next date of hearing.

Nothing recorded hereinabove should be construed or understood to lead and inference that we have taken a decision to hear all these matters as group insolvency case or in connect with each other. The only reason we have given direction or filing a pictorial chart to demonstrate before us the connect between various matters is only to understand whether in PUFE applications, filed in the cases transferred to this Bench, the CDs who were parties before us are beneficiaries.

The Court Officer is directed to serve a copy of this order upon IBBI to comply with the same.

List on 30.05.2024.

IA-3255/2020: *Re-joining the submissions, Mr. Rachit Mittal, Ld. Counsel appearing for the NOIDA further argued: -*

i. *Remitting the plan back to CoC would not be proper course, as issue is not only that the NOIDA need to be treated as Secured Creditor, but is also the one that the liquidation value should not have been included, in the Information Memorandum.*

ii. *In terms of the provisions of Section 53(1)(3), the homebuyer needs to be treated as unsecured creditor and such is also the view taken by Hon'ble Supreme Court in the case of Pioneer vs. Union of India.*

iii. *In Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni & Anr., Hon'ble Supreme Court ruled that the commercial wisdom of CoC is restricted to feasibility and*

viability of the plan, but where land is involved, a different approach is needed.

iv. *In terms of the provisions of Section 31 of IBC, this Tribunal has wide and limited power and in exercise of such power, due care need to be taken that the provisions of Section 30(2) (e) & (f) are not flouted. It should be kept in mind, that the Section 30(2)(f) provides that this Tribunal should satisfy itself that the plan should fulfill such other conditions/provisions as introduced by the IBC such as the provisions of Regulation 27 and 35 of IBBI (CIRP) Regulations 2016.*

v. *The present case is different from the facts of the case involved in Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni & Anr., as in the said case the issue of the Appellant being secured creditor or not inter alia was involved while in the present case the plea raised by the NOIDA is as to whether disclosure of liquidation value in IA has caused prejudice to Creditors, particularly to NOIDA or not.*

vi. *The Regulation 2K of IBBI (CIRP), Regulation 2016 defines the Liquidation value, but the definition cannot be read in isolation and while the reading of the Regulation 2K, the provisions of Regulation 27 of the said Regulation also need to be kept in view, as when the liquidation value as on date of commencement of CIRP need to be given credence, it cannot be ignored that such value would have relevance only for the period of 47 days and when the period is extended a different proposition and situation emerges.*

vii. *The receivables have gone down because of the conduct of the RP only.*

viii. *The contractor (Gold Star Realtors Pvt. Ltd.) and SRA (SMV Agencies Pvt. Ltd. and Ors. have common Director and the contractor (Gold Star Realtors Pvt. Ltd.) is carrying the*

construction qua the Corporate Debtor and receiving consideration.

ix. *The breach of law can be pointed out even by stranger.*

x. *The valuation was conducted by the valuator Ganesh Chandra Mangai qua the land and building of the Corporate Debtor and the same was conducted regarding security and financial assets of the CD by Mr. Prateek Mittal. [Mr. Sumant Batra interjected and pointed out] that it was the Crest Capital Group which was given the assignment to do the valuation and it was said company, which nominated the two aforementioned valuer to discharge the job, in terms of the provisions of Regulation 35 of IBBI (CIRP Regulations 2016, Mr. Sumant Batra also interjected that another valuation report by Engineer Ajay Chaturvedi was unsigned as he did not have complete feedback].*

xi. *Area of the land with the Corporate Debtor, allotted by the NOIDA was 1,20,009 square meters in Sector 100 and the same in Sector 110 was 1,64,120 square meters. The value of land in Sector 100 i.e. Rs. 902,46,76,800/- (Nine hundred two crores, forty six lacs, seventy six thousands eight hundred only) and that of in Sector 110 i.e. Rs. 1234,18,24,000/- (one thousands two hundreds, thirty four crore, eighty nine lacs, twenty four thousands only). The 1/6 value of the land/allotted flats, (as the flat owners get proportionate ownership/sublease of the land) in Sector 100 i.e. Rs. 150,41,12,800/- (one hundred fifty crore, forty-one lacs, twelve thousands, eight hundreds only) and the same in Sector i.e. Rs. 205,69,70,667/- (two hundred five crores, sixty nine lacs, seventy thousands, six hundreds sixty seven only). The said value is, if the rate of the land is kept as 75,200 per square meter while the actual value rate of the land is in Sectors i.e. 94000 per square meter.*

xii. Regarding 708 flats in Sector 110 and 574 flats in Sector 100, the sublease deeds with the approval of the NOIDA have been executed. The area of the land shown by the valuer as 3990 square meter, instead of the area of 1,20,009 square meters plus 1,64,120 square meter can be seen from page 906 of IA-3255 (the report of valuer).

xiii. Initially it was Mr. Prabhjit Soni who was appointed as IRP by Tribunal who was removed by the CoC and then Mr. Chandra Prakash, RP was suspended by the IBBI. Unconnected with the dereliction to duty committed by Mr. Chandra Prakash, he caused the reduction of receivable qua the Corporate Debtor.

xiv. Referring to page 1447 to 1458 (volume 8 of IA-3255/2020), Mr. Mital submitted that in its meeting dated 11.03.2020, the CoC noted the fact that the construction was going on and the money was collected.

xv. With reference to page 124 of IA-3255/2020 it can be seen that the plan was submitted with reference to the liquidation value. The judgment of Hon'ble Supreme Court in Karad Urban Cooperative Bank Limited vs. Swwapnil Bhingardevay and others 2020 (9 SCC) page 729 as sought to be distinguished by Mr. Ramji Srinivasan, Ld. Counsel for appearing for the SRA is in fact not distinguishable.

xvi. The proposition espoused by him can be understood by the example that if liquidation value is nil, the Creditors may not be prejudiced as the receivable by them may be lessor, but an over all view regarding the assets of the Corporate Debtor need to be taken.

xvii. In terms of the press release dated 01.01.2018, the liquidation value can be disclosed to the Members of CoC and the report in the Press Release could finally culminate into Regulation 35(2) of IBBI (CIRP Regulation 2016). The regulation also provides that the fair value, the liquidation value and the valuation report

can be disclosed to every member of CoC in electronic form on receiving an undertaking from them to the effect that they will maintain confidentiality of the fair value then liquidation value and the valuation report.

xviii. In terms of the provisions of the Regulation 46A of IBBI (liquidation process regulation 2016), the allotted flats cannot be treated as assets of the corporate debtor.

xix. The Judgment of the Hon'ble Supreme Court of India New Okhla Industrial Development Vs. Anand Sonbhadra (Civil Appeal No. 2222/2021) came on 17.05.2022 before that the NOIDA was treated as Financial Creditor, thus it voted against the plan, but after the judgment delivered by the Hon'ble Supreme Court in Anand Sonbhadra, the NOIDA being operational creditor questioned the plan on the ground that the liquidation value qua the plan should not have been disclosed in information memorandum. The basis of such argument is that, at page 124 of the IA for approval of plan, i.e. the copy of the resolution plan it has been specifically mentioned that the plan is with reference to liquidation value.

xx. The claim amount of the NOIDA is Rs. 848.48/- crores and even if the plan sent for reconsideration to CoC, it may not include the claim of the NOIDA as secured Creditor. ***Arguments to continue.***

IA-3067/2022*- List on 30.05.2024"*

28. On 30.05.2024, Mr. Sumant Batra, Ld. Counsel appearing for RP made further submissions qua IA-3255/2020, IA-3067/2022, IA-3588/2023 & IA-506/2024. After hearing his arguments qua the IAs, this Tribunal passed the following order:-

*"**IA-3255/2020, IA-3067/2022, IA-3588/2023 & IA-506/2024:***

Mr. Sumant Batra, Ld. Counsel appearing for the RP resumed his submissions and espoused:

1) *The plea raised on behalf of the Noida that the valuation need to be done within 47 days is of no consequence, as the law does not recognize the term liquidation value and it is the liquidation estate, which is mentioned in IBBI (Liquidation Process) Regulations, 2016.*
2) *Distribution is different from liquidation value.*
3) *Law does not recognize liquidation value as yardsticks to determine the value of the plan.*
4) *CoC is not bound by liquidation value while taking decision regarding accepting or rejecting the plan.*
5) *Noida cannot challenge the plan and it can at best claim liquidation value as per Section 30(2) of IBC, 2016.*
6) *The recovery has to be made from liquidation estate and not from liquidation value.*
7) *The liquidation value is fluctuating and if avoidance succeed, the value would increase.*
8) *Arriving at liquidation value is not one of the statutory duties of the RP and the Regulation 35 of IBBI (Insolvency Resolution Process for CD) Rules, 2016 is only procedural in nature.*
9) *Only unsold units qua the CD/project can be taken into account while arriving at the liquidation value.*
10) *When the valuation report regarding finance and security conducted by the valuator were not found, the report prepared regarding assets and properties was not signed. Nevertheless, one duly signed report prepared by the valuator is available on record.*
11) *Currently only one unit is left as unsold with the CD, thus the amount of Rs. 21 crores offered to Noida is quite reasonable.*

12) *As per Section 11(4) (h) of RERA, charge of Home Buyers is there on the flats allotted to them and the Noida cannot claim preference over their claim.*

13) *The Home Buyers are FCs as a class and no Home Buyer has a right to disagree with the other FCs in the process of approving the plan, as in terms of the judgment of Hon'ble Supreme Court in Jaypee Kensington Boulevard Apartments Welfare Association vs. NBCC (India) Limited, the vote of AR has to be treated as unified vote in respect of the claim of all the Home Buyers and no Home Buyers can exercise any independent right to vote qua the plan.*

14) *In terms of the judgment of Hon'ble Supreme Court in Jaypee Kensington Boulevard Apartments Welfare Association vs. NBCC (India) Limited the individual Home Buyer cannot even challenge the plan.*

15) *When irregularity does not result in prejudice to the Applicant, the same cannot be a reason to remit the plan back.*

16) *Resolution Plan need not to match liquidation value.*

17) *The Procedure embodied in IBBI (Insolvency Resolution Process for Corporate Person) 2016 is directory and not mandatory. The Tribunal cannot enter into the issue of valuation and can only see as to whether the valuation is correct or not.*

18) *In the present case either the signed valuation report already available on record may be accepted as valuation report or the RP may be allowing to obtain the fresh valuation report.*

Mr. Batra, Ld. Counsel concluded his submission by saying that in terms of the prayer made in IA-506/2024, the plan may be remitted back to CoC a nd there is no scope to remit the same back to the stage of inviting fresh expression of interest. To buttress his aforementioned plea, Mr. Batra, Ld. Counsel relied upon the judgments of Hon'ble Supreme Court in the case of ***Piya Puri and Others vs. Mr. Debhashish Nanda Resolution Professional of Venta Realtech Private Limited and Others [2022 SCC OnLine NCLAT 4006],***

M.K. Rajagopalan Vs. Dr. Periasamy Palani Gounder and Anr. [(2024) 1 SCC 42], Ramakrishna Forgings Limited Vs. Ravindra Loonkar, Resolution Professional of ACIL Limited and Anr. [(2024) 2 SCC 122]"

29. On 31.05.2024, Mr. Sumant Batra made further submissions qua IA-3067/2022, IA-3255/2020, IA-3588/2023 & IA-506/2024. Mr. Arvind Nayar, the Ld. Senior Counsel who appeared for SRA supported the arguments advanced by Mr. Sumant Batra. Mr. Fernandes Ld. Sr. Counsel appearing for the Authorised Representative made submission to press Intervention Petition-13/2024 and oppose IA-1158/2024. In terms of the order dated 31.05.2024, this Tribunal recorded the submissions made by the Ld. Counsels for the parties as follows:-

*"**IA-3067/2022, IA-3255/2020, IA-3588/2023, IA-506/2024:-** To meet the submissions put forth by Mr. Sumant Batra, the Ld. Counsel for the RP, Mr. Rachit Mittal, Ld. Counsel appearing for NOIDA submitted that:- it is not so that the expression 'liquidation value' is strange to the IBC and Regulations made by IBBI under it, as Sections 30(2)(b), 53(1)(b)(ii), Regulations 35(2) and 35(3) use the expression 'liquidation value'. Further the IBBI (CIRP) Regulations, 2016 are framed under Section 30(2)(f) of IBC, 2016, thus have statutory claim. If the plea that the Regulations are not mandatory and are only procedural and guiding in nature is accepted, then the Regulation 31 would also be guiding in nature and the CIRP cost cannot be claimed.*

*The Judgment of Hon'ble Supreme Court in **Maharashtra Seamless Limited vs. Padmanabhan Venkatesh & Ors.** (Civil Appeal No. 4242 and 4967-4968 of 2019) is not applicable as in the present case the plan and liquidation value both are in question.*

The plea raised on behalf of the RP that the liquidation value may vary from time to time is contrary to the averments made in IA-506/2024

filed by the RP. The salient plea of the NOIDA i.e. the Applicant in IA-3067/2022 is that its claim is for Rs. 848 Crore and on account of no mention of liquidation value in IA, the Applicant could suffer losses, as with reference to such Rule its claim is admitted only to the extent to Rs. 21 Crore.

Though the allotment of all dwelling units except one may have been made in the present matter, but the allottee would not get the proportionate share in the land and the segment of land would still stay back with the CD and its price need to be taken into account by arriving at the liquidation value. The Para 28 of the judgment (ibid) relied upon by Mr. Sumant Batra, Ld. Counsel for the Applicant support the claim of the Applicant in IA-3067/2022.

Opposing the IA-3067/2022 preferred by New Okhla Industrial Development Authority, Mr. Arvind Nayyar, Ld. Sr. Counsel appearing for SRA submitted that:-

(1) The captioned application has been preferred after two years of the approval of the plan, thus cannot be considered to have been filed bona fidely.

(2) The NOIDA i.e. Applicant attended 18 meetings of CoC, in which the process was discussed, thus at this stage it cannot question the plan. The approval of plan would not cause any prejudice to the Applicant but it will cause cascading adverse effect on the Home Buyers.

(3) The invitation of fresh expression of interest will need to ascertain consequences as far as the Home Buyers are concerned.

(4) The Valuation Report is only subjective opinion of the concerned Valuator. Such is the view taken by ***Hon'ble Supreme Court in G.L. Sultania & Anr. vs. Securities and Exchange Board of India & Ors. reported in (2007)***

5 SCC 133. *The left out asset of the CD is one unit and certain additional land which is sufficient to build up one more tower.*

(5) *In view of the judgment passed by Hon'ble Supreme Court in Ebix Singapore Pte Ltd. vs. Committee of Creditors of Educomp Solutions Limited in Civil Appeal No. 3560/2020 it is not permissible for SRA to back step qua the plan at this belated stage.*

(6) *The Goldstar was involved in construction of the projects, much before the SRA came into picture i.e. since September 2017 and it was brought into picture by the Suspended Board of Directors qua the CD.*

(7) *Rajkumar Ramrakhiyani is non-executive Director qua Goldstar since 30.04.2010 and it is an independent director qua SMV i.e. SRA with no shareholding. In terms of the definition of related party given in Section 5 (24A) of IBC, 2016, the SRA and Goldstar cannot be treated as related parties.*

Relying upon ***the judgment of Hon'ble Supreme Court in Banarsi Das vs. Cone Commissioner,*** *Mr. Arvind Nayyar submitted that where the law defeat the object sought to be achieved in a particular manner and in fact function as a counter course of the purpose and object for which it is sought to be an enacted, the same may be ignored.*

Relying upon the Judgment of ***Hon'ble Supreme Court in State of Bihar & Ors. vs. Bihar Rajya Bhumi Vikas Bank Samiti reported in (2018) 9 SCC 472****, he reiterated the submission made by Mr. Sumant Batra, Ld. Counsel for RP and Mr. Ramji Srinivasan, Ld. Counsel for the SRA that the procedural law is only directory and not mandatory, having binding effect to be followed.*

List on 06.06.2024."

30. On 06.06.2024, Mr. Fernandes, Ld. Sr. Counsel for the Applicant in IA-3926/2023 made further submissions regarding IA-3926/2023 as also qua IA-3017/2024 and IA-3596/2023. On said date, after hearing the parties this Tribunal passed the following order:-

> *"**IA-3926/2023:** Mr. Fernandes, the Ld. Sr. Counsel pressed the IA today again. The prayer in the IA is for withdrawal of IA-3325/2020, IA-3330/2020 & IA-3025/2022. IA-3325/2020 & IA-3330/2020 have been preferred by the RP, alleging under value transaction and violation of Section 74(1) of IBC, 2016. The third IA-3025/2022 has been preferred by the Applicant. M/s Shomit Finance Ltd. has opposed the approval of the plan. The application has been filed jointly by the Applicant in the IA i.e. M/s Shomit Finance Ltd. and the RP. Thus Mr. Sumant Batra, the Ld. Counsel for the RP also supported the prayer made in the application.*
>
> *Nevertheless, Mr. Deepak Khosla, the Ld. Counsel opposed the IA. To buttress his objection to IA, he made reference to IA-3017/2024, IA-1096/2024 and IA-3596/2023. Referring to the Judgment of Hon'ble Supreme Court reported in AIR 2005 (Delhi) 41 (Para 13-48), he espoused that the Ld. Counsel who is representing home buyers should not represent the Applicant in the present application. Rejoining the submission, Mr. Fernandes, the Ld. Sr. Counsel appearing for the Applicant submitted that at best, by way of the present application, the Applicant is pressing the settlement arrived at between the Applicant in the IA and the CoC. In his submission once the settlement has been approved by CoC with 96% vote share, which include home buyers, it can't be said that the IA involved any conflict of interest with the home buyers, who he represented through his counsel engaged by the authorized representative of the home buyers. He also submitted that by pressing the captioned IA he is not trying to espouse that the NOIDA cannot take any action regarding the plan/implementation of the settlement, if any law is found*

violated. He also submitted that with the prayer to withdraw the three applications, the Applicant is also not intending to buttress that this Tribunal should not otherwise examine the validity/acceptability of the resolution plan. Mr. Deepak Khosla, the Ld. Counsel appearing for the Applicant in IA1096/2024, IA-3596/2023 & IA-3017/2024 finally referred to the Judgment of Hon'ble Supreme Court in Manna Lal Khetan vs. Kedar Nath Khetan (AIR 1977 SC 536) (Para 19 to 23) and submitted that any contract which infringes/violate any provision of law is void ab initio. Mr. Rachit Mittal, the Ld. Counsel who is appearing for NOIDA also submitted that the settlement referred to in IA-3926/2023 should not be treated as binding on the land owning agency i.e. NOIDA in any manner. With the submissions made on behalf of the parties as above, the arguments qua the IA-3926/2023, IA3017/2024, IA-1096/2024, IA-3596/2023 stands concluded.

Order Reserved.

Ld. Counsels for the parties would have liberty to file written submissions qua all these IAs within three days from today.

IA-3017/2024, IA-1096/2024, IA-3596/2023: *The arguments advanced with reference to IA-3926/2023 filed by M/s Shomit Finance Ltd. are adopted qua the captioned IA.* ***Order Reserved."***

31. On 07.06.2024, we heard the further arguments made by the Ld. Counsels for the parties. As per the order passed by the Hon'ble President (on administrative side), the matter was to be heard on 13.06.2024 and 14.06.2024, but the Ld. Counsels for the parties expressed their inability to remain present before this Tribunal on said dates, on account of dawn of summer vacations before various courts, though this Tribunal was opened till 15.06.2024. Nevertheless, the proceedings recorded by this Tribunal on 07.06.2024 reads thus:-

*"**IA-2298/2021:** Arguments heard. **Order reserved.***

***IA-2695/2020:** In terms of the order dated 06.06.2024, one week time was granted to the Respondent No. 1 to file reply to IA. The IA is reflected in the cause list because the same is linked with the attach matter. Let the same be listed for further hearing on 13.06.2024, by which time, the Respondent No. 1 file its reply if any.*

List on 13.06.2024.

***IA-3067/2022, IA-3255/2020, IA-3588/2023, IA-506/2024:** Arguments to continue on 13.06.2024.*

IA-1158/2024:** Arguments heard. **Order Reserved.

It would be open to the Ld. Counsel for the parties to file written synopsis within three days.

***IA-3018/2024:** Mr. Deepak Khosla, the Ld. Counsel appearing for the Applicant pressed the application for Forensic Audit. Let the same be listed for further consideration on 13.06.2024.*

In the meantime, it would be open to the RP to file reply, if it desire so.

***IA-2577/2020, IA-2479/2020, IA-3092/2020, IA-3600/2020, IA-3945/2020, IA-4549/2020, IA-2043/2021, IA-428/2021, IA-3699/2021, IA-2217/2022, CA1245/2020, IA-3442/2023, IA-3596/2023, IA-3926/2023, IA-4179/2023, IA4491/2023, IA-4498/2023, IA-6445/2023, IA-3870/2020, IA-6501/2023, Ivn. P-13/2024, IA-1096/2024, IA-1159/2024, IA-1222/2024, IA-2536/2020, IA2552/2020, IA-2554/2020, IA-2555/2020, IA-2557/2020, IA-2566/2020, IA2628/2020, IA-2629/2020, IA-2631/2020, IA-2696/2020, IA-2807/2020, IA2812/2020, IA-3295/2020, IA-3300/2020, IA-3323/2020, IA-3312/2020, IA3333/2020, IA-3834/2020, IA-3869/2020, IA-4878/2020, IA-2537/2020, IA2550/2020, IA-2551/2020, IA-2556/2020, IA-2558/2020, IA-2559/2020, IA2563/2020, IA-2564/2020, IA-2576/2020, IA-2578/2020, IA-2608/2020, IA2624/2020, IA-**

2625/2020, IA-2627/2020, IA-2697/2020, IA-3254/2020, IA2599/2020, IA-3327/2020, IA-3332/2020, IA-3331/2020, IA-3324/2020, IA3152/2020, IA-3214/2020, IA-3215/2020, IA-3227/2020, IA-3263/2020, IA3265/2020, IA-3270/2020, IA-3276/2020, IA-3342/2020, IA-3302/2020, IA3344/2020, IA-3326/2020, IA-3322/2020, IA-3328/2020, IA-3335/2020, IA3334/2020, IA-3329/2020, IA-3836/2020, IA-3867/2020, IA-3868/2020, IA2538/2020, IA-2694/2020, IA-2833/2020, IA-2839/2020, IA-2825/2020, IA3249/2020, IA-3252/2020, IA-3264/2020, IA-3343/2020, IA-3338/2020, IA3870/2020, IA-3871/2020, IA-3872/2020, IA-3873/2020, IA-3357/2020, IA3358/2020, IA-3243/2023, IA-5474/2023, IA-3330/2020, IA-3325/2020, IA2754/2024, IA-3017/2024:

List all applications on 13.06.2024."

32. As can be seen from the submissions made by the counsels for the parties and the plea raised in IA-506/2024, the first and foremost issue arises to be determined by us is as to whether the CIRP process should be remitted to the CoC for its view or to the stage of inviting fresh Expression of Interest. Apparently, in IA-506/2024, the RP has raised the plea that the Resolution Plan may be remitted back to the CoC for getting the fresh valuation done in terms of the provisions of Regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, read with Regulation 27 of the Regulations or for ratifying the valuation already done. The plea raised in IA-506/2024 has already been referred to hereinabove.

33. Mr. Rachit Mittal, the Ld. Counsel for the NOIDA argued with vehemence that the Regulation 36 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, stood amended on 31.12.2017 and

the clauses (j) and (k) as existed in Regulation 36 (ibid) prior to said date stood omitted, thus the liquidation value ought not to have been given in the Information Memorandum. In his submission, the disclosure of the liquidation value in Information Memorandum could give an idea to the Proposed Resolution Applicants to arrive at the value of the Plan and as the liquidation value mentioned was much less than the actual liquidation value, the plan submitted by the SRA could fetch very less amount to NOIDA and the ideal course would be to remit the CIRP back to the stage of the invitation of Expression of Interest, so that there is healthy competition between the SRA and other PRAs and the value of CD is maximised. Relying upon the Judgment of Hon'ble Supreme Court in **Karad Urban Cooperative Bank Limited vs. Swwapnil Bhingardevay and Others** (2020) 9 Supreme Court Cases 729**,** the Ld. Counsel appearing for NOIDA submitted that the leakage of confidential information may lead to advantage to some and disadvantage to others and where the NCLAT was convinced that the advertisement issued by the Resolution Professional was not in conformity with Regulation 36A of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the very process of inviting Expression of Interest was initiated, ccording yo Hon'ble Supreme Court it should have issued a direction to start the process afresh all over again by issuing fresh advertisement. In the said case, the appeal before Hon'ble NCLAT was preferred from the order passed by this Tribunal approving the plan. The further prayer made in the appeal was to remit the plan back to the CoC. By an order dated 02.06.2020 Hon'ble NCLAT allowed the appeal and remanded the matter back to the Adjudicating Authority with a direction to

send back the Resolution Plan to the Committee of Creditors. The appeal preferred against the order passed by Hon'ble NCLAT could be allowed and the order passed by NCLT could be restored. Nevertheless, the view taken by Hon'ble Supreme Court was based on the ground that the second meeting of creditors was held on 27.03.2018, when the unamended Regulation 36A was in force. In any case the Ld. Counsel for NOIDA emphasised on the observation made by Hon'ble Supreme Court in Para 43 of the judgment, wherein their Lordships of Hon'ble Supreme Court could comment that if NCLAT was convinced that the very process of inviting Expression of Interest was vitiated, the NCLAT should have issued a direction to start the process afresh all over again by issuing a fresh advertisement. Para 43 of the judgment reads thus:-

> *"**43.** But the conclusions reached by NCLAT in this regard cannot hold water for two reasons. If NCLAT was convinced that the very process of inviting expression of interest was vitiated, NCLAT should have issued a direction to start the process afresh all over again by issuing a fresh advertisement. NCLAT did not do this and the person who raised this point is not on appeal."*

34. On the other hand, Mr. Sumant Batra Ld. Counsel appearing for RP argued with aplomb that this Tribunal has no jurisdiction to remit the CIRP for being resumed or commence from any particular stage and while considering an application for approval of the plan, it can either allow the application or reject the same or remit the matter back to CoC for its consideration. To buttress the plea, he relied upon the judgment of Hon'ble Supreme Court in **Maharashtra Seamless Limited vs. Padmanabhan Venkatesh and Others** [(2020) 11 Supreme Court Cases 467]. In the said

case, the application filed by RP before the Adjudicating Authority was disposed of in terms of the order dated 28.09.2018 with the direction to the Resolution Professional to redetermine the liquidation value of the Corporate Debtor by taking into consideration the first and second valuation by P. Madhu and K. Vijay Bhaskar. In terms of the order dated 28.09.2018 the (ibid), the Tribunal had directed RP for convening a meeting of CoC and to place the qualified Resolution Plans along with plan of Maharashtra Seamless Limited (MSL) before CoC for reconsideration, in the light of revised liquidation value of the Corporate Debtor company. The order passed by this Tribunal/Adjudicating Authority was appealed by MSL before Hon'ble NCLAT. As during the pendency of the appeal before NCLAT, the CoC had taken into consideration the revised liquidation value and thereafter had again approved the Resolution Plan submitted by MSL, the Hon'ble NCLAT could dispose of the appeal with the view that the Adjudicating Authority should pass order in the application filed under Section 31 of I&B Code without giving unnecessary adjournments. Thereafter, this Tribunal/Adjudicating Authority approved the plan. Mr. Padmanabhan Venkatesh the promoter of CD challenged the order passed by this Tribunal approving the plan. The plea raised was that the value of plan offered by SRA was less than the liquidation value. Finally, the matter landed before Hon'ble Supreme Court and the Hon'ble Supreme Court ruled that no provision in the Code (IBC) or Regulations thereunder could be brought to the notice of their lordship under which the bid amount was required to match with liquidation value arrived at in terms of the provisions of Regulation 35 of the insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. While taking

such view, Hon'ble Supreme Court relied upon its earlier judgment in **Essar Steel India Limited Committee of Creditors vs. Satish Kumar Gupta**, [2020 (8) SCC 531]. In the judgment (Maharashtra Seamless Limited), Hon'ble Supreme Court also ruled that the object behind prescribing the valuation process was to assist the CoC to take decision on a Resolution Plan properly. In the said case, Hon'ble Supreme Court also viewed the release of assets at a value below its liquidation value seems inequitable, but such ground may be ceded to the commercial wisdom of the creditors rather than assessing the Resolution Plan on the basis of quantitative analysis. Relying upon the judgment, Mr. Sumant Batra, the Ld. Counsel for RP could emphasis that since the valuation of the plan and acceptance of the same is matter of commercial wisdom of CoC, it is not open to this Tribunal to remit the matter to any stage of CIRP and the only scope open to it is to refer the plan back to CoC only. Para 28 to 30 of the judgment reads thus:-

> *"**28.** No provision in the Code or Regulations has been brought to our notice under which the bid of any resolution applicant has to match liquidation value arrived at in the manner provided in Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This point has been dealt with in Essar Steel. We have quoted above the relevant passages from this judgment.*
>
> ***29.** It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the adjudicating authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. We, per se, do not find*

any breach of the said provisions in the order of the adjudicating authority in approving the resolution plan.

30. *The appellate authority has, in our opinion, proceeded on equitable perception rather than commercial wisdom. On the face of it, release of assets at a value 20% below its liquidation value arrived at by the valuers seems inequitable. Here, we feel the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. Such is the scheme of the Code. Section 31(1) of the Code lays down in clear terms that for final approval of a resolution plan, the adjudicating authority has to be satisfied that the requirement of sub-section (2) of Section 30 of the Code has been complied with. The proviso to Section 31(1) of the Code stipulates the other point on which an adjudicating authority has to be satisfied. That factor is that the resolution plan has provisions for its implementation. The scope of interference by the adjudicating authority in limited judicial review has been laid down in Essar Steel, the relevant passage (para 54) of which we have reproduced in earlier part of this judgment. The case of MSL in their appeal is that they want to run the company and infuse more funds. In such circumstances, we do not think the appellate authority ought to have interfered with the order of the adjudicating authority in directing the successful resolution applicant to enhance their fund inflow upfront."*

35. Relying upon the judgment of Hon'ble Supreme Court in **M.K. Rajagopalan vs. Dr Periasamay Palani Gounder And Another** (2024) 1 SCC 42, Dr. Sumant Batra submitted that the statutory provision regulating a matter of practice or procedure would generally be read as directory and once no prejudice is caused to anyone, merely because certain provision of Regulations, say Regulation 35 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, is not followed, the CIRP need not be

remitted back to the stage of preparation of fresh Information Memorandum.

Paras 134 to 139 of the judgment reads thus:-

> *"**134.** The Appellate Tribunal has laid great emphasis on the point that commercial wisdom of CoC was materially affected for want of existence of a valid and actual valuation report and sharing of all the relevant facts pertaining to the valuation with the members of CoC leading to violation of Regulations 27 and 35 of the CIRP Regulations. We are unable to agree.*
>
> ***135.** It has rightly been contended on behalf of the appellants that the members of CoC were provided with fair value and liquidation value after obtaining a confidentiality undertaking. We have reproduced hereinbefore all the material parts of the minutes of the meetings of CoC and it is at once clear that the members of CoC were fully satisfied with and endorsed the process of valuation and even re-evaluation as undertaken by the resolution professional. Particularly, the minutes of second, fourth, sixth and seventh CoC meetings stand testimony to the fact that the requirements of Regulation were scrupulously followed and complied with and there had not been any doubt in CoC as regards the process of valuation as also supplying of fair and liquidation value to the members of CoC. The detailed findings of the adjudicating authority in this regard (reproduced in para 60 hereinabove) make it clear that the adjudicating authority independently applied its mind to the process of valuation and presentation of the matter to CoC. Rejection of all the objections in that regard by NCLT, called for no interference.*
>
> ***136.** The Appellate Tribunal appears to have unnecessarily and rather unjustifiably presumed that there had been blatant statutory violations and irregularities. Even if certain issues were raised in some of the meetings of CoC as regards the process of valuation, the clarifications from the resolution professional and the steps taken by him for valuation and re-valuation had been to the satisfaction of CoC. It has rightly been contended on behalf of the appellants with reference*

to the decision in Maharashtra Seamless that resolution plan is not required to match the liquidation value as such.

137. *The findings of the Appellate Tribunal in regard to the question of valuation and thereby taking the resolution plan to be in contravention of Sections 30(2) and 61(3) of the Code cannot be approved and are required to be set aside.*

Point B — Publication of Form G : Regulation 36-A

138. *A long deal of discussion of the Appellate Tribunal had been diverted towards purported non-compliance of Regulation 36-A(2)(iii) of the CIRP Regulations for want of publication of Form G on the designated website with the Appellate Tribunal assuming that want of compliance of mandatory requirements had been of material irregularity on the part of the resolution professional. The findings of the Appellate Tribunal in this regard are also difficult to be accepted.*

139. *It has rightly been contended on behalf of the resolution professional that Form G was published in all leading newspapers on 9-8-2020 and then, IBBI was also informed about technical issues in uploading the Form on the website. The adjudicating authority has also rightly observed that a statutory provision regulating a matter of practice or procedure would generally be read as directory and in the present case, no prejudice has been shown by anyone as regards technical non-compliance of all the requirements of publication. It has been too far-stretched on the part of the Appellate Tribunal to observe that when CIRP was conducted during the periods of Lockdown in the face of Covid-19 Pandemic, most of the people avoided reading newspapers under the apprehension of Covid infection. As noticed, initially as many as 13 EoIs were received. It has also rightly been contended on behalf of the resolution professional that all the requisite steps having been reasonably taken, the process that had reached an advanced stage could not have been annulled on such technicalities."*

36. In **Ramkrishna Forgings Limited vs. Ravindra Loonkar, Resolution Profession of ACIL Limited and Another** [(2024) 2 SCC 122], Hon'ble Supreme Court ruled that it is for the FCs' who constitute the CoC to take a call one way or the other, Stricto sensu and it is well within the CoC's domain as how to deal with the entire debt of Corporate Debtor. In terms of the view taken by Hon'ble Supreme court, in said case, the Commercial Wisdom of CoC cannot be called into question or casually interfered with. Paras 10 to 12 and 35 of the judgment reads thus:-

> *"**10.** It was further canvassed by the learned Senior Counsel that the Code provides for a mechanism for carrying out valuation of the assets of a corporate debtor in form of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as "the CIRP Regulations"), particularly Regulations 27 and 35 thereof, inasmuch as Regulation 27 provides that the RP shall appoint two registered valuers to determine the fair value and liquidation value of the corporate debtor whereas Regulation 35 provides that the two valuers shall submit the fair value and liquidation value to the RP after physical verification of the inventory and fixed assets of the corporate debtor and further provides that if the estimates shown by the two valuers are significantly different, or upon a proposal from the CoC, the RP may appoint a third registered valuer for valuation of the assets of the corporate debtor.*
>
> ***11.** Another aspect which the learned Senior Counsel drew the Court's attention to was the fact that NCLT's observations in its order dated 1-9-2021 observing that the amount offered by the appellant was very close to the fair value of the assets of the corporate debtor was a non-issue and an uncalled for observation since such fair value of the assets of the corporate debtor was never available to the appellant at the time of submitting its first resolution plan. Thus, the learned Senior Counsel submitted that the premise of the appellant's offered amount*

being in close proximity to the fair value of the assets was inherently erroneous and without basis and the decision to refer it to the OL based on such sole factor is obviously and equally without any basis and fit to be set aside.

12. *It was submitted that this Court has held, in Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh, the relevant being at paras 27 to 29, that aspects related to the valuation of the corporate debtor are not open to judicial scrutiny by NCLT as the object behind such valuation process is to assist the CoC in taking a proper decision in respect of a resolution plan and the valuation conducted in respect of the assets of the corporate debtor and it has further been indicated that the adjudicating authority — NCLT can approve a resolution plan even when it is below the liquidation value and that there is no provision under the Code which states that a resolution applicant's bid must match the liquidation value as the liquidation value is determined merely to assist the CoC in taking a decision on the resolution plan.*

X X X

35. *At this juncture, it also cannot be lost sight of that it is for the FC(s) who constitute the CoC to take a call, one way or the other. Stricto sensu, it is now well settled that it is well within the CoC's domain as to how to deal with the entire debt of the corporate debtor. In this background, if after repeated negotiations, a resolution plan is submitted, as was done by the appellant (resolution applicant), including the financial component which includes the actual and minimum upfront payments, and has been approved by the CoC with a majority vote of 88.56%, such commercial wisdom was not required to be called into question or casually interfered with."*

37. Mr. Ramji Srinivasan and Mr. Arvind Nayar, the Ld. Sr. Advocates also placed reliance upon the above decisions taken by Hon'ble Supreme Court. No doubt in **Karad Urban Cooperative Bank Limited vs. Swwapnil**

Bhingardevay & Ors. [(2020) 9 SCC 729], Hon'ble Supreme Court could make an observation that the Hon'ble NCLATcould have issued a direction to start the process afresh all over again, by issuing a fresh advertisement. But finally, their lordships could dismiss the appeal preferred against the order passed by Hon'ble NCLAT. Thus, the aforementioned observation could not be formed basis of the decision taken by Hon'ble Supreme Court and is not the *ratio decidendi* of the judgment. The observation is only an *obiter*. Nevertheless, it is *stare decisis* that it is only for a coordinate bench to ignore to follow a judgment, by calling the same as *obiter, sub-silentio or per incuriam*. It is not open to a lower forum to ignore the judgment of Appellate Court by calling the same as *obiter.* In any case, in **Maharashtra Seamless Limited vs. Padmanabhan Venkatesh And Others** and **Ramkrishna Forgings Limited** (supra), Hon'ble Supreme Court categorically ruled that it is the domain of commercial wisdom of CoC to examine the valuation of the Resolution Plan and arrive at a decision regarding the acceptability of the same. Thus, the view taken in **Karad Urban Cooperative Bank Limited** (supra) and the one taken in **Ramkrishna Forgings Limited** (supra) as also in **Maharashtra Seamless Limited vs. Padmanabhan Venkatesh And Others** (supra) can be reconciled with the view that this Tribunal should remit the matter for reconsideration by the CoC and it would be for CoC to take a view that from what stage the CIRP process should resume.

38. The second issue that arises to be determined in these proceedings is as to whether in exercise of its discretion, this Tribunal can take a view that irrespective of violation of Regulation 27 and 35 of the CIRP regulations, this Tribunal can approve a plan. Of course, in **M.K. Rajagopalan vs. DR.**

Periasamay Palanu Gounder & Anr. (supra), Hon'ble Supreme Court refused to agree with Appellate Tribunal that the Commercial Wisdom of CoC was materially affected for want of existence of a valid and actual valuation report and sharing all the relevant facts pertaining to the valuation with the members of CoC leading to violation of Regulations 27 and 35 of CIRP Regulations, but in the said case, as could be noted by Hon'ble Supreme Court in para 135 of the judgment the CoC, members were provided with fair value and liquidation value after obtaining a confidentiality undertaking and the CoC which was fully satisfied with valuation endorsed, the process of valuation, and even revaluation as undertaken by the Resolution Professional. Hon'ble Supreme Court also noted that minutes of 2nd, 4th, 6th and 7th CoC meeting stood testimony to the fact that the requirement of Regulation were scrupulously followed and complied with and there had not been any doubt in CoC as regards the process of valuation as also supplying of fair and liquidation value to the members of CoC. Thus, apparently, Hon'ble Supreme Court was satisfied that the requirement of Regulation 27 and 35 of CIRP Regulation was followed. In the present case, at the first place the IRP Mr. Prabhjeet Singh Soni and RP Mr. Chandra Prakash had to be replaced. Secondly, the current RP himself filed IA-506/2024 with the following prayer(supra):-

> *"(a) take on record the final signed valuation report dated 03.10.2023 by Er. Ajay Chaturvedi, obtained by the Applicant subject to approval of this Hon'ble Tribunal;*
>
> *(c) permit the Applicant to appoint a registered valuer to submit valuation report for Financial Assets & Securities;*

(d) Alternately, permit the Applicant to commission fresh valuation reports of assets of Corporate Debtor in accordance with Regulation 35 of CIRP Regulations;

(e) Direct the existing or fresh valuation reports, as the case may be, in light of prayers (a) to (c) above, to be placed before the CoC, if deemed fit by this Hon'ble Tribunal;"

39. From the aforementioned, it is clear that even the RP is of the view that there need to be a fresh valuation in terms of the provisions of Regulation 35 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Besides, making reference to the IA-3255/2020 and the Resolution Plan enclosed therewith, Mr. Rachit Mittal, the Ld. Counsel for NOIDA submitted that since the Information Memorandum could disclose the liquidation value, the Resolution Applicants/ stock bidders could bring very less bids, with reference to the liquidation value mentioned in the IM. As could be viewed in **M.K. Rajagopalan vs. Dr. Periasamay Palanu Gounder & Anr.** (supra), the Resolution Plan is not required to match the liquidation value as such. Thus, the mere disclosure of liquidation value in the Information Memorandum, in disregard to the provisions of Regulation 36 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, can be no ground to remit the Resolution Plan either back to CoC or to the stage of preparation of fresh Information Memorandum. Even, at the cost of repetition Para 134, 136 and 139 of the judgment of Hon'ble Supreme Court in **M.K. Rajagopalan vs. Dr. Periasamay Palanu Gounder & Anr.** (supra) are reproduced thus:-

"Point A — Valuation : Regulations 27 and 35

134. *The Appellate Tribunal has laid great emphasis on the point that commercial wisdom of CoC was materially affected for want of existence of a valid and actual valuation report and sharing of all the relevant facts pertaining to the valuation with the members of CoC leading to violation of Regulations 27 and 35 of the CIRP Regulations. We are unable to agree.*

X X X

136. *The Appellate Tribunal appears to have unnecessarily and rather unjustifiably presumed that there had been blatant statutory violations and irregularities. Even if certain issues were raised in some of the meetings of CoC as regards the process of valuation, the clarifications from the resolution professional and the steps taken by him for valuation and re-valuation had been to the satisfaction of CoC. It has rightly been contended on behalf of the appellants with reference to the decision in Maharashtra Seamless that resolution plan is not required to match the liquidation value as such.*

X X X

139. *It has rightly been contended on behalf of the resolution professional that Form G was published in all leading newspapers on 9-8-2020 and then, IBBI was also informed about technical issues in uploading the Form on the website. The adjudicating authority has also rightly observed that a statutory provision regulating a matter of practice or procedure would generally be read as directory and in the present case, no prejudice has been shown by anyone as regards technical non-compliance of all the requirements of publication. It has been too far-stretched on the part of the Appellate Tribunal to observe that when CIRP was conducted during the periods of Lockdown in the face of Covid-19 Pandemic, most of the people avoided reading newspapers under the apprehension of Covid infection. As noticed, initially as many as 13 EoIs were received. It has also rightly been contended on behalf of the resolution professional that all the requisite steps having been reasonably taken, the process that had reached an advanced stage could not have been annulled on such technicalities."*

40. Also in **Maharashtra Seamless Limited** (supra), Hon'ble Supreme Court viewed that the bid of any Resolution Applicant need not to match liquidation value arrived at in the manner provided in Regulation 35 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. At the cost of repetition the Para 28 of the judgment is reproduced thus:-

> *"**28.** No provision in the Code or Regulations has been brought to our notice under which the bid of any resolution applicant has to match liquidation value arrived at in the manner provided in Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This point has been dealt with in Essar Steel. We have quoted above the relevant passages from this judgment."*

41. But in the present case, the issue is not only that there was technical or formal lapse committed by the RP in mentioning the liquidation value in the Information Memorandum, but as has been argued by Mr. Rachit Mittal, Ld. Counsel for NOIDA, the area of land with the Corporate Debtor allotted by the NOIDA and the value of the land was not taken into account by the valuator correctly. Area of the land with the Corporate Debtor, allotted by the NOIDA was 1,20,009 square meters in Sector 100 and the same in Sector 110 was 1,64,120 square meters. The value of land in Sector 100 i.e. Rs. 902,46,76,800/- (Nine Hundred Two Crores Forty-Six Lacs Seventy-Six Thousands Eight Hundred Only) and that of in Sector 110 i.e. Rs. 1234,18,24,000/- (One Thousand Two Hundred Thirty Four Crore Eighty-Nine Lacs Twenty-Four Thousands Only) is not taken into account by the valuator. The 1/6th value of the land/allotted flats, (as the flat owners get

proportionate ownership/sublease of the land) in Sector 100 is Rs. 150,41,12,800/- (One Hundred Fifty Crore Forty-One Lacs Twelve Thousands Eight Hundreds Only) and the same in Sector is Rs. 205,69,70,667/- (Two Hundred Five Crores Sixty-Nine Lacs Seventy Thousands Six Hundred Sixty Seven Only). The said value is, if the rate of the land is kept as 75,200 per square meter while the actual value rate of the land is in Sectors i.e. 94000 per square meter. Regarding 708 flats in Sector 110 and 574 flats in Sector 100, the sublease deeds with the approval of the NOIDA have been executed. The area of the land shown by the valuer is only 3990 square meter, instead of the area of 1,20,009 square meters plus 1,64,120. Thus, apparently, the valuators did not take into account the total assets of the Corporate Debtor, while doing the valuation.

42. Not only the above, it is also seen from IA-3926/2023 that M/s Shomit Finance Limited agreed with the current RP that the land included in i-Ring Complex also belong to the Corporate Debtor and arrived into a settlement to the effect that the terms of the settlement shall be binding only upon approval by the CoC and Successful Resolution Applicant. Thus, the value of said land also need to be taken into account while arriving at the fair and the liquidation value of the Corporate Debtor. The relevant clauses of the settlement reproduced in IA-3926/2023 reads thus:-

> *"(viii) M/s Shomit Finance has executed an Agreement with the RP, agreeing to the modalities and to be bound by the terms contained therein and pay the settlement amount to the Corporate Debtor as per the payment plan enclosed therein without any demur or protest.*

(ix) It has been made clear to M/s Shomit Finance that the terms of settlement shall be binding only upon approval by the CoC and the Successful Resolution Applicant."

43. In **Collector of Central Excise, Calcutta vs. Alnoori Tobacco Products and Another** [(2004) 6 SCC 186], Hon'ble Supreme Court viewed that the Court should not place reliance on decisions without discussing as to how the factual situation fits in with the factual situation of the decision on which reliance is placed. Para 12 to 14 of the judgment reads thus:-

*"**12.** In Home Office v. Dorset Yacht Co. Lord Reid said (All ER p. 297g-h), "Lord Atkin's speech … is not to be treated as if it were a statutory definition. It will require qualification in new circumstances". Megarry, J. in Shepherd Homes Ltd. v. Sandham (No. 2) observed: "One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament." And, in British Railways Board v. Herrington Lord Morris said : (All ER p. 761c)*

"There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case."

***13.** Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.*

***14.** The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR p. 688, para 19)*

"19. … Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To

decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

* * *

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

44. In **National Sewing Thread Co. Ltd. vs. The Superintending Engineer, TANGEDCO and Anr.** [W.P. No. 29845 of 2022 and WMP No. 29233 of 2022], the Hon'ble High Court of Judicature At Madras viewed that though the Adjudicating Authority may not sit in appeal over the commercial wisdom of the CoC, still it is required to exercise a jurisdiction akin to a revisional jurisdiction to ascertain the correctness of what has been done before and by the CoC. The relevant excerpt of the judgment reads thus:-

*"46. From the **Essar Steel case** to the **Rainbow Papers case** and other decisions, the Adjudicating Authority has been told that its duty is limited to satisfying itself of the due compliance of Sec.30(2) requirement by the CoC when the latter approved the resolution plan. The **Essar Steel** in particular has held that the Adjudicating Authority shall not substitute its sense of fairness and equity to replace the commercial wisdom of the CoC. The **Rajagopalan** effect, it must be stated, does not stop with bringing in clarity in understanding the expression 'commercial wisdom' of the CoC, but also has interfered to realign the understanding of the duty of the Adjudicating Authority. Therefore, even though the Adjudicating Authority may not sit in appeal over the commercial wisdom of the CoC, still it is required to exercise a jurisdiction, akin to a revisional jurisdiction, to ascertain the correctness of what has been done before and by the CoC. And, this may have to be appreciated in the backdrop of the Constitutional need*

*to constitute the Adjudicating Authority as a neutral tribunal to save IBC from facing embarrassing moments in view of the law declared in the **Madras bar Association case**. Set on this plane and based on the discussion hereinabove made, it could be now derived that the Adjudicating Authority may refuse to give his approval to a resolution plan as approved by the CoC in the following circumstances:*

a) if the information which forms the basis for the CoC for according its assent to a resolution plan is incomplete and exhibits lack of due diligence on the part of the RP to collect and collate information. This includes failure of the suspended Board of the Corporate debtor to make full disclosure of its affairs, which the IRP or the RP could have discovered with due diligence;

b) where there is lack of transparency vis-a vis the correctness of the information to the knowledge of the operational creditors;

c) where the CoC does not provide for the minimum payment which the operational creditors would have received in case of liquidation of the corporate debtor;

d) where despite providing for the minimum, the operational creditors are not fairly and equitably treated in terms of Explanation I to Sec.30(2), such as where fairness and equity might have permitted payments above the minimum. To repeat, the Adjudicating Authority may not substitute the commercial wisdom of the CoC with its sense of equity and fairness, but can always refuse his assent to a resolution plan for breach of Explanation I to Sec.30(2) of the IBC."

45. Even otherwise also, as could be ruled by Hon'ble Supreme Court in Union of India and Others vs. Mahendra Singh [2022 SCC OnLine SC 909], if a statute provides for things to be done in a particular manner then it has to be done in that manner and in no other manner. Paras 15 to 17 of the judgment reads thus:-

*"**15.** A three Judge Bench of this Court in a judgment reported as Chandra Kishore Jha v. Mahavir Prasad, held as under:*

> *"17.....It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See with advantage : Nazir Ahmad v. King Emperor [(1935- 36) 63 IA 372 : AIR 1936 PC 253 (2)], Rao Shiv Bahadur Singh v. State of V.P. [AIR 1954 SC 322 : 1954 SCR 1098], State of U.P. v. Singhara Singh [AIR 1964 SC 358 : (1964) 1 SCWR 57].) An election petition under the rules could only have been presented in the open court up to 16-5-1995 till 4.15 p.m. (working hours of the Court) in the manner prescribed by Rule 6 (supra) either to the Judge or the Bench as the case may be to save the period of limitation. That, however, was not done....."*

***16.** The said principle has been followed by this Court in Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh wherein this Court held as under:*

> *"14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure....."*

***17.** Similarly, this Court in Municipal Corporation of Greater Mumbai (MCGM) v. Abhilash Lal and OPTO Circuit India Limited v. Axis Bank has followed the said principle. Since the advertisement contemplated the manner of filling up of the application form and also the attempting of the answer sheets, it has to be done in the manner so prescribed. Therefore, the reasoning given by the Division Bench of the High Court that on account of lapse of time, the writ petitioner might have attempted the answer sheet in a different language is not justified as the use of different language itself disentitles the writ petitioner from any indulgence in exercise of the power of judicial review."*

46. In view of the aforementioned, particularly the plea raised by the RP in IA-506/2024, order passed by Hon'ble Allahabad High Court in W.P. (C) 28157/2023 and the facts regarding area and valuation brought out by NOIDA, we are of the view that there has to be a fresh valuation of the assets of the CD and the Resolution Plan need to be reconsidered by the CoC with reference to such fresh valuation.

47. The third proposition arises to be determined by us is as to whether the NOIDA should be treated as secured creditor or not. In view of the Judgment of Hon'ble Supreme Court in **Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni & Anr.** (Civil Appeal Nos. 7590-7591 of 2023 Arising out of Diary No. 3628 of 2023) we need not to delve deep into the issue. In the said judgment Hon'ble Supreme Court has ruled that the land agency need to be treated as secured creditor. The relevant excerpt of the judgment reads thus:-

> "*b. The resolution plan did not specifically place the appellant in the category of a secured creditor even though, by virtue of Section 13-A of the 1976 Act, in respect of the amount payable to it, a charge was created on the assets of the CD. As per Regulation 37 of the CIRP Regulations 2016, a resolution plan must provide for the measures, as may be necessary, for insolvency resolution of the CD for maximization of value of its assets, including, but not limited to, satisfaction or modification of any security interest. Further, as per Explanation 1, distribution under clause (b) of sub-section 92) of Section 30 must be fair and equitable to each class of creditors. Non-placement of the appellant in the class of secured creditors did affect its interest. However, neither NCLT or NCLAT noticed this anomaly in the plan, which vitiates their order."*

48. Even Mr. Batra, the Ld. Counsel appearing for the RP also conceded that the NOIDA is entitled to be treated as Secured Creditor. Thus, also for this reason, the Resolution Plan need to be remitted back to the CoC/RP for taking a fresh view regarding the same.

49. The fourth issue, we need to address, in the wake of the rival submissions made by the counsels for the parties, particularly, by Mr. Deepak Khosla, the Ld. Counsel for Applicant Homebuyer, Mr. Rachit Mittal, the Ld. Counsel for NOIDA and Mr. Sumant Batra the Ld. Counsel for RP is that, on what date, the liquidation value and the fair value of the inventory and fixed assets of the CD should be arrived at i.e. whether on the date of valuation or as on date of the commencement of CIRP. As can be seen from Regulation 27(1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Resolution Professional should within 7 days of his appointment but not later than 47th day from the insolvency commencement date appoint two registered valuers to determine the fair value and the liquidation value of the CD in accordance with Regulation 35 of the Regulations. The Registered Valuers appointed under Regulation 27 arrive at the estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standard, after physical verification of the inventory and fixed assets of the Corporate Debtor. The clause (k) of Regulation 2(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, defines the 'liquidation value' as estimated realizable value of the assets of the Corporate Debtor, if the Corporate Debtor were to be liquidated on the insolvency commencement date.

The Regulation 2(1)(k) reads thus:-

*"**2. Definitions.—** (1) In these Regulations, unless the context otherwise requires-*

……

(j) ["liquidation value" means the estimated realizable value of the assets of the corporate debtor, if the corporate debtor were to be liquidated on the insolvency commencement date.]"

50. Even otherwise also, as can be seen from Section 14(1) of IBC, 2016, on the insolvency commencement date the Adjudicating Authority by an order declare moratorium for prohibiting all such acts qua the Corporate Debtor, except those mentioned in explanation to Section 14(1) and Section 14(2A) and (3) of the Code. The Section 14 reads thus:-

*"**14. Moratorium.**—(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—*

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

[1][Explanation.—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

[(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified;]

[(3) The provisions of sub-section (1) shall not apply to—

[(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]

(b) a surety in a contract of guarantee to a corporate debtor.].

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

51. The Regulation 13(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, also provides that the IRP or the RP as the case may be shall verify every claim as on the insolvency commencement date within 7 days from the last date of the receipt of the claims. The Regulation 13 reads thus:-

*"**13. Verification of claims.**—(1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.*

[(1A) Where the interim resolution professional or the resolution professional, as the case may be, does not collate the claim after verification, he shall provide reasons for the same.

(1B) In the event that claims are received after the period specified under sub-regulation (1) of regulation 12 and up to seven days before the date of meeting of creditors for voting on the resolution plan or the initiation of liquidation, as the case may be, the interim resolution professional or resolution professional, as the case may be, shall verify

all such claims and categorise them as acceptable or non-acceptable for collation.

(1C) The interim resolution professional or resolution professional, as the case may be, shall:-

(a) intimate the creditor within seven days of categorisation thereof under sub-regulation (1B) and provide reasons where such claim has been categorised as non-acceptable for collation; and

(b) put up the claims categorised as acceptable under sub-regulation (1B) and collated by him to:-

(i) the committee in its next meeting for its recommendation for inclusion in the list of creditors and its treatment in the resolution plan, if any; and

(ii) submit such claims before the Adjudicating Authority for condonation of delay and adjudication wherever applicable.]

(2) The list of creditors shall be –

(a) available for inspection by the persons who submitted proofs of claim;

(b) available for inspection by members, partners, directors and guarantors of the corporate debtor 52[or their authorised representatives];

(c) displayed on the website, if any, of the corporate debtor;

(ca) filed on the electronic platform of the Board for dissemination on its website:

***Provided** that this clause shall apply to every corporate insolvency resolution process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020;]*

(d) filed with the Adjudicating Authority; and

(e) presented at the first meeting of the committee."

52. It is clear from the aforementioned that the liquidation value of the claim of the claimants referred to in Regulation 7, 8, 8A, 9 and 9A of the IBBI (CIRP) regulations are frozen as on date of commencement of CIRP. However, the concern and argument of the Ld. Counsels for the Applicant Homebuyer and NOIDA is that when the CIRP had commenced more than 4 years ago, the bid/valuation plan should not be with reference to the value of the assets of the CD as on date of commencement of CIRP. As can be seen from Regulation 36A and Form G prescribed thereunder, the invitation for Expression of Interest does not give any details of the assets of the CD or the value thereof. The Information Memorandum and the Evaluation Matrix are issued along with RFRP. As can be seen from Regulation 36(2)(a) of the aforementioned regulations, the IM gives the description of assets and liabilities as on the insolvency commencement date, but it does not provide for giving the value of the assets as on said date or otherwise. Thus, the amount of bid is not linked with the liquidation value in any manner. In **Ramkrishna Forgings Limited vs. Ravindra Loonkar, Resolution Profession of ACIL Limited & Another** (supra), Hon'ble Supreme Court categorically ruled that the Resolution Plan is not required to match the liquidation value as such. Such was also the view taken by Hon'ble Supreme Court in **Maharashtra Seamless Limited vs. Padmanabhan Venkatesh & Others** (supra) i.e. there is no provision in the Code or Regulation under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Regulation 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations,

2016. In Para 30 of the judgment, Hon'ble Supreme Court emphasised that in exercise of its commercial wisdom, the CoC can accept the Resolution Plan, even when the value of same is less than the liquidation value. Nevertheless, it would not mean that the value of the inventory and the assets of the CD should not be taken into account, as on the date of preparation of Resolution Plan in terms of the provisions of Regulation 37 & 38 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. In the backdrop, we conclude that when the liquidation value of the inventory and the assets of the CD has to be as on the date of commencement of CIRP, the bid of the Resolution Applicant can be on the basis of the valuation of such inventory and assets, as on date of submission of Resolution Plan.

53. The fifth issue that arises for our consideration is as to whether a single homebuyer can maintain a petition. It can be seen from Section 21(6) of the IBC, 2016, where the terms of the financial debt extended as part of consortium arrangement or syndicated facility provide for single trustee or agent to act to all financial creditors each financial creditor may:- (a) authorise the trustee or agent to act on his behalf in the committee of creditors to the extent of his voting share; (b) represent himself in the committee of creditors to the extent of his voting share; (c) appoint an insolvency professional (other than the resolution professional) at his own cost to represent himself in the committee of creditors to the extent of his voting share; or (d) exercise his right to vote to the extent of his voting share with one or more financial creditors jointly or severally. The Section 21(6A)(b) provides that where a financial debt is owed to a class of creditor where exceeding the number as may be specified other than the creditors covered under clause (a) of sub-section (6), the

Interim Resolution Professional shall make an application to the Adjudicating Authority along with the list of all financial creditors containing the name of an Insolvency Professional other than the IRP to act as an authorized representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors. In the present case, admittedly, the homebuyers i.e. the financial creditor in a class to which the Applicant belongs had elected their authorized representative in terms of the provisions of Regulation 16(a)(1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. In terms of the provisions of Section 25A of the IBC, 2016, the financial creditor in a class exercises their voting rights in CoC through the Authorized Representative. The Section 25A reads thus:-

*"**25. Duties of resolution professional***

……

*[**25A. Rights and duties of authorised representative of financial creditors.—**(1) The authorised representative under sub-section (6) or sub-section (6A) of section 21 or sub-section (5) of section 24 shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.*

(2) It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.

(3) The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial

creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:

Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.

(3A) Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote:

Provided that for a vote to be cast in respect of an application under section 12A, the authorised representative shall cast his vote in accordance with the provisions of sub-section (3).

(4) The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.

Explanation.—For the purposes of this section, the "electronic means" shall be such as may be specified.]

54. Though the Authorized Representative represents the Homebuyers in CoC as a class and one may say that the right of a homebuyer to workout the remedy for redressal of his grievance independently would not be lost, merely because the law provides that in CoC he needs to be represented in a particular manner. Nevertheless, the issue is no longer *res-integra* and the same could be dealt with by Hon'ble Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. vs. NBCC (India) Limited & Ors.** [(2022) 1 SCC 401]. In the said case, Hon'ble Supreme Court

ruled that it is more than clear that once a decision is taken either to approve or reject a particular plan by a vote of 50% of voting share of the financial creditors within a class, the minority of those who vote as also the others within that class are bound by that decision and there is absolutely no scope for any particular person standing within that class to suggest any dissention as regards the vote over the Resolution Plan. Paras 209 to 210.6 of the judgment reads thus:-

> *"**209.** Taking up other aspects of the rival submissions and having examined the scheme of the Code in relation to a plan of insolvency resolution, we are clearly of the view that the propositions of some of the associations and individual homebuyers to claim themselves as "dissenting homebuyers" and thereby, "dissenting financial creditors" do not stand in conformity with the scheme of the Code and the manner of voting on a plan of resolution by the Committee of Creditors.*
>
> ***210.** 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 the CIRP Regulations. 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.

210.1. *Specific provisions have been made for voting on behalf of a class of creditors in terms of clause (b) of sub-section (6-A) of Section 21 by the authorised representative. The rights and duties of the authorised representative of financial creditors are also delineated in Section 25-A of the Code and any doubt, as to how he would vote and how his vote is counted, is put to rest by insertion of sub-section (3-A) to Section 25-A, which provides that notwithstanding anything to the contrary contained in sub-section (3), the AR shall cast his vote on behalf of all the financial creditors he represents "in accordance with the decision taken by a vote of more than fifty per cent of the voting share of the financial creditors he represents, who have cast their vote".*

210.2. *At this juncture, we may usefully take note of the enunciation of this Court in Pioneer Urban that has direct bearing on the questions raised herein. The decision in Pioneer Urban was rendered by this Court in the backdrop of challenge to the said amendment made to the Code whereby, the allottees of real estate projects were provided the status of financial creditors by way of insertion of Explanation to sub-clause (f) of clause (8) of Section 5 of the Code and with corresponding insertion of Section 25-A as also sub-section (6-A) to Section 21. While dealing with such a challenge, in Pioneer Urban, this Court extensively referred to the objects and reasons for these amendments as also their meaning, connotation and effect. The relevant part of the matter, in regard to the issue at hand, is that along with the aforesaid amendment, this Court also examined the amendment of Section 25-A with insertion of sub-section (3-A) by Act 26 of 2019.*

210.3. *This Court explained the connotation of the said amendment and its logic, while rejecting the challenge to Sections 21(6-A) and 25-A of the Code, in the following:*

"63. Given the fact that allottees may not be a homogeneous group, yet there are only two ways in which they can vote on the Committee of Creditors—either to approve or to disapprove of a proposed resolution plan. Sub-section (3-A) goes a long way to ironing out any creases that may have been felt in the working of Section 25-A in that the authorised representative now casts his vote on behalf of all financial creditors that he represents. If a decision taken by a vote of more than 50% of the voting share of the financial creditors that he represents is that a particular plan be either accepted or rejected, it is clear that the minority of those who vote, and all others, will now be bound by this decision. As has been stated by us in Swiss Ribbons, the legislature must be given free play in the joints to experiment. Minor hiccups that may arise in implementation can always be sorted out later. Thus, any challenge to the machinery provisions contained in Sections 21(6-A) and 25-A of the Code must be repelled."

(emphasis supplied)

210.4. *In the face of clear language of sub-section (3-A) of Section 25-A of the Code, read with the law declared by this Court in Pioneer Urban, the suggestion on behalf of the dissatisfied homebuyers that the said provision was only intended to iron out the logistical issues and technical difficulties is required to be rejected altogether. The said provision, as held by this Court, is to iron out the creases that might have been felt in the proper working of Section 25-A; and it is made explicit that the allottees, even if not a homogeneous group, they could vote only either to approve the resolution plan or to disapprove the same. Divergence of the views within their own class may exist but, when coming to the vote in the Committee of Creditors, their vote would be that of a class.*

210.5. *Having regard to the scheme of IBC and the law declared by this Court, it is more than clear that once a decision is taken, either to reject or to approve a particular plan, by a vote of more than 50% of the voting share of the financial creditors within a class, the minority*

of those who vote, as also all others within that class, are bound by that decision. There is absolutely no scope for any particular person standing within that class to suggest any dissention as regards the vote over the resolution plan. It is obvious that if this finality and binding force is not provided to the vote cast by the authorised representative over the resolution plan in accordance with the majority decision of the class he is authorised to represent, a plan of resolution involving large number of parties (like an excessively large number of homebuyers herein) may never fructify and the only result would be liquidation, which is not the prime target of the Code. In the larger benefit and for common good, the democratic principles of the determinative role of the opinion of majority have been duly incorporated in the scheme of the Code, particularly in the provisions relating to voting on the resolution plan and binding nature of the vote of authorised representative on the entire class of the financial creditor(s) he represents.

210.6. *To put it in more clear terms qua the homebuyers, the operation of sub-section (3-A) of Section 25-A of the Code is that their authorised representative is required to vote on the resolution plan in accordance with the decision taken by a vote of more than 50% of the voting share of the homebuyers; and this 50% is counted with reference to the voting share of such homebuyers who choose to cast their vote for arriving at the particular decision. Once this process is carried out and the authorised representative has been handed down a particular decision by the requisite majority of voting share, he shall vote accordingly and his vote shall bind all the homebuyers, being of the single class he represents."*

55. Mr. Deepak Khosla, the Ld. Counsel for the Applicant tried to interpret Para 219 of the judgment to the effect that in such cases, where homebuyer allege violation of Section 30(2) of the Code, he has locus to approach this Tribunal. Though, the expression used by Hon'ble Supreme Court in Para 219

of the judgment is not such as projected by Mr. Deepak Khosla, but still, the ramification of the judgment of Hon'ble Supreme Court is such that an individual Homebuyer stands subsumed in the Authorized Representative and cannot maintain his individual stand regarding the plan or his grievance and far less he can project himself as dissenting financial creditor. Still, if a homebuyer points out violation of Section 30(2) of the Code, the same can be looked into. Making use of that, the Applicant homebuyers has alleged the violation of Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 and New Okhla Industrial Development Area Building Regulations, 2010 regarding approval of the plan of Corporate Debtor, particularly qua the 'I-ring' project. Besides, the Applicant Homebuyer could allege other irregularities committed by the Corporate Debtor. He also alleged the siphoning of the funds of Corporate Debtor to its other group companies. It is also his allegation that the plan does not provide for proper implementation. He further alleged violation of Regulation 30(2)(e) of IBC, 2016 as the Resolution Plan seeks certain reliefs and concessions and that the Resolution Plan also violates Section 53 of IBC, 2016, as it provides for preference in payment to Operational Creditors over Financial Creditors. Broadly the Homebuyer/Applicant alleged violation of the building bye laws by the CD and the RPs. In any case, in terms of the judgment of Hon'ble SC when the Applicant/Homebuyer cannot raise his individual grievance qua the Resolution Plan and cannot claim himself as dissenting Financial Creditor, he can only draw attention of this Tribunal to violation of Section 30(2) of IBC, 2016.

56. Though the Applicant/Homebuyer has filed IA-1158/2024, for replacement of the Authorised Representative and a perusal of the IA reveals that the grievance of the Applicant arises out of filing of IA-3926/2023, by the RP along with M/s Shomit Finance Limited for withdrawal of avoidance applications and failure of AR to give reply to his E-mails dated 25.05.2021, 27.05.2021, 09.09.2023 and 23.01.2024 but no much credence can be attached to the plea of a single Homebuyer. As far as filing of IA-3926/2023 is concerned, the same has been preferred by the RP and M/s Shomit Finance Limited. Nevertheless, the Authorised Representative should have assessed the settlement entered into between RP and M/s Shomit Finance Limited carefully. She should have realized that once the settlement was to take place on approval by the CoC and successful resolution applicant, apparently the same was treated as part of the plan. In terms of the provisions of regulation 37 of IBBI (CIRP) regulations any proposal which is part of the plan should be subject to such process as is applicable to the plan and the segment of land which was covered by settlement referred to in IA-3926/2023 should have found mentioned in the plan and the consideration as referred to in IA-3926/2023 should have been added to the value of the plan and such value should be distributable as per waterfall mechanism provided in Section 53 of IBC, 2016. As can be seen from Section 25A of IBC, 2016, it is the duty of Authorised Representative not to act against the interest of the Financial Creditors and should always act in accordance with their prior instructions. The limited role of the Authorised Representative is to ensure that the interest of the Financial Creditors as a class is represented diligently. Of course, she ought to have given response to the e-mails sent by the Applicant and she

should also have raised the question as to when the land covered by 'I-ring' Project was to be dealt with as per approval of CoC and SRA and how the land could be dealt with separately and independent of plan. She was also expected to raise issue regarding appropriation of the consideration offered by M/s Shomit Finance Limited qua the 'i-Ring' project. Nevertheless, the Regulation 16A(3A) provides for representation by not less than 10% voting share to seek replacement of the Authorized Representative. An application by a single homebuyer to replace the Authorized Representative is not maintainable. The Regulation 16A(3A) reads thus:-

> *"**16A. Authorised representative.***
>
> *.....*
>
> *(3A) The financial creditors in the class, representing not less than ten per cent. voting share may seek replacement of the authorised representative with an insolvency professional of their choice by making a request to the interim resolution professional or resolution professional who shall circulate such request to the creditors in that class and announce a voting window open for at least twenty-four hours."*

57. As can be seen from Section 5(8)(f)(i) of the Code, any amount raised from an allottee under a real estate project should be deemed to be an amount having the commercial effect of a borrowing. Nevertheless, the 2nd proviso to Section 7(1) provided that for financial creditors who are allottees under a real estate project, an application for initiating Corporate Insolvency Resolution Process against the CD should be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than 10% of the total numbers of such allottees under the same real estate project, whichever is less. Thus, all the allottees qua a Real Estate Project are treated as one class. If by accepting a plea of Mr. Deepak Khosla, Ld. Counsel for the

Applicant Homebuyer, this Tribunal would adventure to evolve the classes as illustrated in Para 60 of the judgment of Hon'ble Supreme Court in **Pioneer Urban Land And Infrastructure vs. Union of India And Others** [(2019) 8 SCC 416], the same would amount to interference with the provisions of IBC, 2016.

58. As has been noted hereinabove, the Section 21(6A)(b) of IBC, 2016, provides for appointment of Authorized Representative qua a class of creditors. As can be seen from first proviso to Section 7(1) of the Code, for the financial creditor referred to in clause (a) and (b) of sub-section (6A) of Section 21, an application for initiating Corporate Insolvency Resolution Process should be filed jointly by not less than 100 of such creditors in the same class or not less than 10% of total number of such creditors in the same class, whichever is less. Thus, when the allottees are treated as a class for the purpose of appointment of AR, it is not open to this Tribunal to evolve a class within a class.

59. Nevertheless, to address the concern flaged by Mr. Deepak Khosla, the Ld. Counsel for the appearing for the Applicant Homebuyer, we examined the issue in detail. As can be seen from Section 25Aof the Code (supra), the AR who represents several financial creditors, shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor to the extent of his voting share. The proviso to Section 25A reads thus:-

"25A. Rights and duties of authorised representative of financial creditors.—

.....

(3) ……

Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share: Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor."

60. The term 'voting share' means the share of the voting right of a single financial creditor in the committee of creditors which is based upon the proportion of the financial debt owed to such financial creditor in relation to the financial debt owed by the Corporate Debtor. The definition of voting share given in Section 5(28) of IBC, 2016, reads thus:-

*"**5. Definitions.—**In this Part, unless the context otherwise requires,—*

.....

(28) "voting share" means the share of 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 financial creditor in relation to the financial debt owed by the corporate debtor."

61. From the proviso to Section 25A(3) of IBC, 2016 read with Section 5(28) of the Code it is clear that the vote share of the Applicant is with reference to the debt owed to him by the Corporate Debtor and whether he exercise such vote directly or through a common AR who represent all the allottees or through different ARs, his vote share wd. be the same. The Section 25A(3A) of the Code amplifies that the AR shall cast his vote on behalf of all the financial

creditors he represents in accordance with the decision taken by a vote of more than 50% of the voting share of the financial creditors he represents, who have cast their vote. Apparently, the Applicant Homebuyers is not supported by even 10% of the allotees. Could it be so, he could have filed application under Regulation 16A(3A) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Moreover, in **Pioneer Urban Land And Infrastructure vs. Union of India And Others** (supra), Hon'ble Supreme Court examined the vires of Section 21(6A) and 25A of IBC, 2016 and upheld the same. The paras 60 to 63 of the judgment reads thus:-

> *"**60.** In the challenge to Section 21(6-A) and Section 25-A of the Code, it has been argued by the learned counsel for the petitioners that the allottees would fall in the following five categories and cannot be said, therefore, to be a homogeneous class. A glance at the five categories would show, they argue, that they have, in fact, conflicting interests. These five categories are stated to be as follows:*
>
> *"(a) Those who have taken possession and have executed sale deeds, with or without further claims for delay compensation;*
>
> *(b) Those who have taken possession but are yet to execute sale deeds, with or without further claims for delay compensation;*
>
> *(c) Those who are yet to receive possession and seek possession, with or without delay compensation; or*
>
> *(d) Those who are yet to receive possession and seek to obtain refunds of sale consideration with interest.*
>
> *(e) Each of the above may be without or without N_{CDRC}/RERA orders/decrees."*
>
> ***61.** It has been argued that different instructions may be given by different allottees making it difficult for the authorised representatives to vote on the Committee of Creditors and that in any case, the collegiality of the secured creditors will be disturbed. To this the answer*

is that like other financial creditors, be they banks and financial institutions, or other individuals, all persons who have advanced monies to the corporate debtor should have the right to be on the Committee of Creditors. True, allottees are unsecured creditors, but they have a vital interest in amounts that are advanced for completion of the project, maybe to the extent of 100% of the project being funded by them alone. As has been correctly argued by the learned Additional Solicitor General, under the proviso to Section 21(8) of the Code if the corporate debtor has no financial creditors, then under Regulation 16 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, up to 18 operational creditors then become the Committee of Creditors or, if there are more than 18 operational creditors, the highest in order of debt owed to operational creditors to the extent of the first 18 are then represented on the Committee of Creditors together, with a representative of the workers. If allottees who have funded a real estate project of the corporate debtor to the extent of 100% are neither financial creditors nor operational creditors, the mechanism of the Committee of Creditors, who is now to take decisions after the Code is triggered as to the future of the corporate debtor, will be non-existent in a case where there are no operational creditors and no secured creditors, because 100% of the project is funded by the allottees. Even otherwise, as correctly argued by the learned Additional Solicitor General, it would in fact be manifestly arbitrary to omit allottees from the Committee of Creditors when they are vitally interested in the future of the corporate debtor as they have funded anywhere from 50% to 100% of the project in most cases.

62. *On this point, we were referred to the Insolvency and Bankruptcy Code (Amendment) Bill, 2019, which has just passed through Parliament, to amend the provisions of the Code in various aspects. What is interesting is the insertion of Section 25-A(3-A) as follows:*

*"**5. Amendment of Section 25-A**.—In Section 25-A of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely—*

'(3-A) Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6-A) of Section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent of the voting share of the financial creditors he represents, who have cast their vote:

Provided that for a vote to be cast in respect of an application under Section 12-A, the authorised representative shall cast his vote in accordance with the provisions of sub-section (3).'"

***63.** Given the fact that allottees may not be a homogeneous group, yet there are only two ways in which they can vote on the Committee of Creditors—either to approve or to disapprove of a proposed resolution plan. Sub-section (3-A) goes a long way to ironing out any creases that may have been felt in the working of Section 25-A in that the authorised representative now casts his vote on behalf of all financial creditors that he represents. If a decision taken by a vote of more than 50% of the voting share of the financial creditors that he represents is that a particular plan be either accepted or rejected, it is clear that the minority of those who vote, and all others, will now be bound by this decision. As has been stated by us in Swiss Ribbons, the legislature must be given free play in the joints to experiment. Minor hiccups that may arise in implementation can always be sorted out later. Thus, any challenge to the machinery provisions contained in Sections 21(6-A) and 25-A of the Code must be repelled."*

62. In view of the aforementioned, particularly, on the face of Regulation 16A(3A) of the Code, we are unable to direct the replacement of AR. Nevertheless, it needs to be observed that when the vote shares of Homebuyers in any CoC are calculated, the same should be with reference to

the vote shares of individuals homebuyers and every homebuyer should be apprised of the calculation of vote, as and when, the vote share is exercised. The AR should discharge such function in the interest of transparency.

63. As has been noted hereinabove, the Applicant Homebuyer Mr. Ashmeet Singh Bhatia has preferred IA-1159/2024, seeking replacement of Mr. Devendra Singh, the current RP. The provision regarding replacement of RP is contained in Section 27 of IBC, 2016. In terms of the provisions of sub-section (2) of Section 27, the committee of creditors may at a meeting by a vote of 66% of voting shares resolved to replace the Resolution Professional appointed under Section 22 with another Resolution Professional subject to a written consent from the Proposed Resolution Professional in the specified form. Thus, apparently, a single homebuyer has no locus standi to seek replacement of an RP. However, we cannot be oblivious of the fact that the RP could not appreciate that the settlement reproduced in IA-3926/2023 provided that the terms of settlement would be binding on being approved by the CoC and the Successful Resolution Applicant. It is not understood that how the RP could not appreciate the scheme of IBC and the Regulations issued thereunder. In terms of the provisions of Section 28 of IBC, 2016, the RP could take certain actions with the approval of CoC, but such actions should have been final independent of the involvement of SRA. Anything what needed involvement of SRA should have been part of the Resolution Plan, which needed to be approved by this Tribunal. Besides, anything which comes as part of bid in the form of Resolution Plan, need to be distributed in the order of priority mentioned in Section 53 of IBC, 2016. When as per the

Settlement Deed, M/s Shomit Finance Limited agree to pay certain amount to the Corporate Debtor, it is not clear that in what manner the amount is to be distributed amongst the stakeholders viz. Creditors. The way the Settlement Deed is entered into, we are left with the impression that a lot is needed from RP qua the present proceedings. It is also quite surprising that how the RP could not take note of the fact that M/s Gold Star Realtors Private Limited, a related party of the SRA, could already be involved as contractor for completion of balance work of the projects qua the Corporate Debtor. Notably, both the SRA and M/s Gold Star Realtor Private Limited have Mr. Rajkumar Ramrakhiyani as their common director. The current RP who had taken over the responsibility on 21.11.2022 could prefer application for fresh valuation only in the year 2024. He could also remain indifferent regarding the inventories and assets of the Corporate Debor like his predecessors.

64. As has been brought out by the Ld. Counsel for NOIDA, when the total area of the project is 2,84,129 square meters, the valuator had considered the same only as 3,990 square meters. As can be seen from Section 25 of IBC, 2016, an RP need to take immediate custody and control of all the assets of the Corporate Debtor. Thus, when NOIDA had preferred IA-3067/2022, way back in the year 2022 itself, raising the issue regarding the assets of the Corporate Debtor and valuation thereof, the RP was not expected to take two years to convince himself that a fresh exercise in terms of the provisions of Regulation 27 read with Regulation 35 of IBC, 2016 was required to be done. The RP should not have ignored the improper valuation as also absence of

proper account of assets of the CD. In **Dilip B. Jiwrajka vs. Union of India & Ors.**, Hon'ble Supreme Court outlined the role of RP in following words:-

> *"**2. The Role of the Resolution Professional in Corporate as opposed to Individual Insolvency***
>
> *46. In the above backdrop, it would now be necessary to advert to the role which is ascribed to the resolution professional in Part II and Part III. While both the Parts use the expression "resolution professional", notably, the provisions of Part II contain a material difference from those of Part III relating to the role and functions of a resolution professional. Section 5(27) provides that a resolution professional, for the purposes of Part II, means an insolvency professional appointed to conduct the CIRP or the pre-packaged insolvency resolution process, as the case may be, and to include an interim resolution professional. Part II of the IBC provides in Section 16 for the adjudicating authority to appoint an interim resolution professional on the insolvency commencing date. The insolvency commencing date is defined in Section 5(12) to mean the date of the admission of an application for initiating the CIRP by the adjudicating authority under Sections 7, 9 or Section 10, as the case may be. In other words, upon the admission of an application which has been filed by the operational creditor or the debtor, the provision for the appointment of an interim resolution professional is triggered in terms of Section 16. Since Part II of the IBC deals with the resolution of corporate insolvencies, the statute has implicated the role of the adjudicating authority at the very threshold.*
>
> *47. Upon the appointment of the interim resolution professional, Section 17 postulates that:*
>
> *(a) The management of the affairs of the corporate debtor shall vest in the interim resolution professional;*

(b) *The powers of the Board of Directors or partners of the corporate debtor shall stand suspended and be exercised by the interim resolution professional;*

(c) *The officers and managers of the corporate debtor shall report to the interim resolution professional and provide access to all documents and records; and*

(d) *The financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional in relation to the accounts and furnish information relating to the corporate debtor to the interim resolution professional.*

48. *The duties of the interim resolution professional are specified in Section 18. The interim resolution professional under Section 20, has a mandate to make every endeavour to "protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern".*

49. *The other provisions of Part II indicate the further steps which are to be taken by the interim resolution professional, including constituting a Committee of Creditors as specified in Section 21. Several other consequences do follow upon the appointment of a CoC, including the preparation of an Information Memorandum under Section 29, the submission of a resolution plan under Section 30, and the approval of a resolution plan under Section 31.*

50. *Chapter III of Part II deals with a distinct eventuality, namely, the initiation of liquidation broadly in situations where the resolution plan has not been received or the resolution plan is rejected by the adjudicating authority for non-compliance of the requirements specified for approval of the resolution plan in Section 31. These provisions elicit the vital role which is entrusted to the interim resolution professional initially and later to the resolution professional in cases involving corporate insolvencies. This role has to be contra-distinguished from the role which is ascribed to a*

resolution professional in Part III, who is appointed for the purpose of resolving insolvencies and bankruptcies for individuals and partnership firms. Sections 94 and 95, as we have noticed, provide for applications by the debtor or the creditor for the initiation of the insolvency resolution process in relation to these entities. The appointment of a resolution professional takes place under Section 97. In Part II, as we have noticed earlier, the adjudicating authority is contemplated to have an adjudicatory role right at the threshold. In contrast, in Chapter III of Part III, the appointment of a resolution professional is contemplated by Section 97. Under sub-section (5) of Section 97, the adjudicating authority has to appoint the resolution professional who is either recommended under sub-section (2) or nominated by the Board under subsection (4).

51. *The duties of a resolution professional in a process under Chapter III of Part III are contained in Section 99. The resolution professional is required, firstly, to examine the application within ten days of appointment. Secondly, they may require the debtor to prove that the repayment of the debt which is claimed to be unpaid by the creditor has taken place. The debtor may do so by evidencing an electronic transfer of the unpaid amount from a bank account of the debtor or produce evidence of the encashment of a cheque issued by a debtor or a signed acknowledgement by the creditor of the receipt of the dues.*

52. *We will deal with the impact of sub-section (3) of Section 99 subsequently. Evidently, the provisions of sub-section (3), operate on the resolution professional alone and cannot be construed to be a bar qua the adjudicatory function of the adjudicating authority under Section 100. The resolution professional is empowered by sub-section (4) of Section 99 to seek further information or an explanation in connection with the application from the debtor, creditor or any other person who in the opinion of the resolution professional may provide information. The information which the*

resolution professional is empowered to seek is in aid to his duty to examine the application and submit a report either recommending the approval or the rejection of the application. In other words, the information which the resolution professional is permitted to seek is channelised for the purpose of the functions of the resolution professional in terms of sub-section (1) of Section 99.

53. *The resolution professional is required to examine the application and to ascertain two things: firstly, that the application satisfies the requirement of Section 94 or Section 95 and, secondly, that the applicant has provided the information and furnished the explanation which is sought under sub-section (4). Having carried out the process of examination and ascertainment as specified in sub-section (6), the resolution professional may either recommend the acceptance or the rejection of the application by submitting a report. The report has to record reasons and a copy of the report has to be furnished to the debtor or the creditor, as the case may be. The role of the resolution professional prior to the adjudication process by the adjudicating authority comes to a conclusion with the submission of a report. Upon the submission of the report, the matter then lies within the jurisdiction of the adjudicating authority. This is evident from the fact that Section 100(1) stipulates that the adjudicating authority has to pass an order either admitting or rejecting the application within fourteen days from the date of the submission of the report under Section 99.*

54. *The salient aspect which emerges from the above analysis is that the resolution professional does not possess an adjudicatory function in terms of the provisions of Section 99. In Chapter III of Part III, the legislature has dealt with the resolution of individual or partnership insolvencies and bankruptcies. Therefore, the legislature considered it appropriate to interpose the resolution professional before the adjudicatory function of the adjudicating authority commences under Section 100. The resolution*

professional does not have the kind of power which their counterpart has in Part II. No provision has been made in Part III empowering the resolution professional to take over the assets or the business which is being carried on by the individual or the partnership. The role under Section 99 which is ascribed to the resolution professional is that of a facilitator and is to gather relevant information on the basis of the application which has been submitted under Section 94 or Section 95 and after carrying out the process which is referred to in sub-section (2), sub-section (4) and sub-section (6) of Section 99, to submit a report recommending the acceptance or rejection of the application. Significantly, the statute has used the expression "examine the application", "ascertain" and "satisfies the requirements" and "recommend" the acceptance or rejection of the application. The use of these expressions leaves no manner of doubt that the resolution professional is not intended to perform an adjudicatory function or to arrive at binding conclusions on facts. The role of the resolution professional is purely recommendatory in nature and cannot bind the creditor, the debtor or, the adjudicating authority.

55. *This distinction between the role of the resolution professional in a CIRP under Part II, and an IRP under Part III is of crucial importance. The reason why the legislature has chosen it fit to interpose the function of the resolution professional even before the adjudicating authority under Section 100 comes, is that the application under Section 94 or Section 95, is sought to be moved principally against an individual or a partnership. In terms of Section 78, Part III applies to individuals or partnership firms where the amount of default is not less than one thousand rupees or any amount which the Central Government may specify, not exceeding one lakh rupees. The adjudicating authority would be inundated if all amounts of alleged defaults as low as one thousand rupees were to be judicially determined. Bearing in mind the nature and context of the insolvency resolution, the legislature*

has stepped in by providing an intermediate stage where the resolution professional will collate and compile the relevant materials and submit it in the form of a report to the adjudicating authority recommending either the acceptance or the rejection of the application for initiating insolvency.

56. The next aspect of the analysis would require us to dwell on the impact of the moratorium which is imposed under Section 96."

65. In **Stressed Assets Stabilization Fund (SASF) vs. Piyush Periwal & Ors.** (Company Appeal (AT)(Insolvency) No. 947 of 2021), Hon'ble NCLAT viewed that the Adjudicating Authority which appoint the RP cannot be said to lack jurisdiction to take a decision to replace him. Para 61 of the judgment reads thus:-

"61. The learned Counsel for the RP has emphatically submitted that Adjudicating Authority had no jurisdiction to pass an order replacing the RP. He submits that RP can be replaced only in accordance with Section 27 of the Code, when a Resolution is passed by the CoC for such replacement. There can be no doubt to the scheme of the Code for removal of the RP by the CoC which has to pass a Resolution. The Adjudicating Authority, who has appointed the RP cannot be said to lack jurisdiction to take a decision to replace the RP, when the facts and circumstances of a particular case warrants. In the present case, where serious allegations were made against the RP, regarding not conducting the CIRP transparently, the Adjudicating Authority did not lack jurisdiction to pass an order for replacement of the RP. The jurisdiction of Adjudicating Authority to pass an order replacing the RP has also been accepted by this Tribunal in ***Company Appeal (AT) (INS.) No.1443 of 2022 - Srigopal Choudary vs. SREI Equipment Finance Ltd.,*** *wherein in paragraph 14 and 16, this Tribunal held following:*

*"**14.** We are of the opinion that the Adjudicating Authority being the appointing authority of IRP/RP was well within its jurisdiction to pass an order for removal of the RP particularly in a situation where the RP had not taken any steps to convene a meeting of the CoC for the purposes of removal of RP.*

***16.** After going through the material available on record we are satisfied that the Adjudicating Authority with an object to implement the provisions of IBC in its letter and spirit has rightly exercised its inherent jurisdiction by way of passing order of removing the appellant as RP of the CD. This fact which is reflected on record is sufficient to draw an inference that the Appellant was proceeding contrary to the statutory provisions as contained in the IBC and also delaying the smooth conclusion of CIRP. We are of the considered opinion that there is no defect in the impugned order warranting interference by this Tribunal. On the contrary the conduct of the appellant/RP which was observed by the Adjudicating Authority and reflected so in the impugned order is sufficient enough to direct IBBI to conduct an inquiry regarding the role played by the RP in this matter."*

66. Similarly, in **Union Bank of India vs. M/s Rajdeep Clothing & Advisory Pvt. Ltd. & Ors.** (Company Appeal (AT)(Insolvency) N0. 399 of 2021), it could be ruled by Hon'ble Appellate Tribunal that where the RP commit illegalities, the Adjudicating Authority may not remain only as a spectator and it is entitled to exercise its inherent jurisdiction under Rule 11 of NCLT Rules to do the needful. The relevant excerpt of the judgment reads thus:-

"We are of the opinion that if IRP/RP proceeds contrary to the established principles of conducting CoC Meeting and commits several illegalities the Adjudicating Authority may not act only as a spectator

or he may shut his eyes. In such situation the Adjudicating Authority is entitled to exercise inherent jurisdiction under Rule 11 of NCLT Rules, 2016. Moreover, the said exercise by the Adjudicating Authority has already been approved in a case by this Appellate Tribunal in Company Appeal (AT)(Ins) No.786 of 2020 in Anil Kumar Vs Allahabad Bank and others."

67. Thus, we are of the view that for the purpose of discharging the statutory function of RP in terms of IBC, 2016, qua the CD, we need to appoint a responsible IPE (Insolvency Professional Entity), as provided in Regulation 12 of IBBI (Insolvency Professional) Regulations. However, it is made clear that the RP is not replaced on the plea of Applicant Homebuyer, but is replaced because he remained oblivious about his duties as RP on vital aspects mentioned in Paras 63 and 64 (ibid).

68. IA-3926/2023 has been preferred jointly by the RP and M/s Shomit Finance Limited. Apparently, in terms of the settlement reproduced in the IA-3926/2023, it has been made clear to M/s Shomit Finance Limited that the terms of settlement shall be binding only upon approval by the CoC and the Successful Resolution Applicant. The settlement is regarding the entire commercial complex, 'i-Ring' in 'Lotus Paranche'. The IBC does not recognize any independent settlement regarding assets of the CD, which may require approval of SRA. A Resolution Applicant is only a bidder, who need to give his proposal to resolve the insolvency of CD in the form of a plan. No independent settlement between RP and third party can involve the consent or approval of SRA. Nevertheless, in a way, in terms of the settlement, M/s Shomit Finance Limited conceded that the 'i-Ring' commercial complex is asset of CD. In the

wake, there should be no difficulty in allowing the RP and Shomit Finance Limited to withdraw IA-3325/2020, IA-3025/2022 and IA-3330/2020. However, it is made clear that the withdrawal of IAs would not be construed as approval of the settlement reproduced in IA-3926/2023, by this Tribunal. The IAs are allowed to be withdrawn with a semblance that M/s Shomit Finance Limited has conceded that the 'i-Ring' commercial complex is the asset of the CD and would be dealt with in accordance with the development plan qua the project as approved by NOIDA. The IA-3596/2023, filed by the Applicant homebuyer which is objection to the IA-3926/2023 broadly raised concern regarding the fate of 'i-Ring'. It is already clarified that the withdrawal of IA-3025/2022 would have the ramification that the 'i-Ring' would be treated as a set of CD. Such clarification would address the concern raised in IA-3596/2023.

69. In IA-2298/2021, the Applicant i.e. NOIDA has espoused that the CoC was not justified in attempting to part with certain flats in the project of Corporate Debtor, undergoing CIRP. However, during the course of hearing, Mr. Rachit Mittal, the Ld. Counsel for the NOIDA pressed the relief only for the balance amount of premium and the payment of amount which are due and payable towards the water and sewage charges. He placed reliance upon the judgment of Hon'ble NCLAT in Company Appeal (AT) Insolvency No. 622/2022. Para 10 of the judgment reads thus;:-

> *"10. Section 14 of the Code deals with the moratorium and Section 14(1)(d) of the Code says that there would be a prohibition from the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor. However,*

explanation appended to Section 14(1) (d) says that with the prohibition of recovery of any property by an owner or lessor, a license, permit, registration, quota, concession, clearance or a similar grant or right either given by the Central Govt., State Govt. local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency but there would be a condition for its continuation if there is no default in payment of the dues of such license, permit, registration, quota, concession, clearance or a similar grant or right during the moratorium period. The similar grant or right has to be read in respect of the licence, permit, registration, quota, concession, clearance but it cannot be read as the premium amount or lease rent which has been so ordered by the Adjudicating Authority to be paid by the Appellant to the Respondent."

70. The issue involved in IA-2298/2021 is regarding the payment of inter alia premium amount and lease rent as CIRP cost. In the affidavit filed by SRA, it has been espoused that the amount claimed by NOIDA in the application does not form part of Information Memorandum, thus it should not be allowed to raise the claim at belated stage. It has been mentioned in the plan that the claim filed by NOIDA with RP includes its entire dues. In any case, though in terms of the aforementioned order passed by Hon'ble NCLAT, the NOIDA is not entitled to premium amount or lease rent as CIRP cost. Nevertheless, Mr. Sumant Batra, the Ld. Counsel for the RP fairly submitted that the amount of lease rent has already been paid to the Applicant in IA-2298/2021 (NOIDA) and when the premium due to it for the period prior to commencement of CIRP cannot be considered as CIRP cost, just to avoid any controversy qua the issue the NOIDA would be paid the two instalments of premium which could fell due during CIRP as also the payment towards the

water and sewage charges if any fell due during CIRP and not paid would be paid to the Applicant as CIRP cost.

71. From the judgment of Hon'ble Supreme Court in **Bhupinder Singh vs. Unitech Limited** [(2020) 18 SCC 816], to ascertain how the funds which had been collected both from the Homebuyer and the Financial Institutions has been utilised, Hon'ble SC directed forensic audit to be conducted. Para 12 of the judgment reads thus:-

> *"**12.** At this stage, in order to enable the Court to issue structured direction, it is necessary to ascertain how the funds which have been collected both from the homebuyers and the financial institutions have been utilised. Tracing the money which was received for the purpose of the construction projects but has prime facie been diverted is necessary to enable the Court to take the matter to its logical conclusion. Full details have not emerged despite several directions which have been issued by this Court. Hence, it has now become necessary for the Court to direct a forensic audit to be conducted of Unitech group of companies."*

72. Also in **Bikram Chatterji & Ors. vs. Union of India & Ors.** (Writ (C) No. 940/2017), Hon'ble Supreme Court noted and directed thus:-

> *"153. We have also found that non-payment of dues of the Noida and Greater Noida Authorities and the banks cannot come in the way of occupation of flats by homebuyers as money of homebuyers has been diverted due to the inaction of officials of Noida/Greater Noida Authorities. They cannot sell the buildings or demolish them nor can enforce the charge against homebuyers/leased land/projects in the facts of the case. Similarly, the banks cannot recover money from projects as it has not been invested in projects. Homebuyers' money has been diverted fraudulently, thus, fraud cannot be perpetuated*

against them by selling the flats and depriving them of hard-earned money and savings of entire life. They cannot be cheated once over again by sale of the projects raised by their funds. The Noida and Greater Noida Authorities have to issue the completion/part-completion certificate, as the case may be, to execute tripartite agreement and registered deeds in favour of the buyers on part-completion or completion of the buildings, as the case may be or where the inhabitants are residing, within a period of one month.

154. Resultantly, we order as follows:

(vi) In view of the finding recorded by the forensic auditors and fraud unearthed, indicating prima facie violation of FEMA and other fraudulent activities, money laundering, we direct the Enforcement Directorate and authorities concerned to investigate and fix liability on persons responsible for such violation and submit the progress report in the Court and let the police also submit the report of the investigation made by them so far."

73. We have perused the Forensic Auditor's Report dated 13.11.2019 highlighting numerous Preferential, Undervalued, Fraudulent and Extortionate transactions entered into on behalf of the Corporate Debtor. We have also gone through the scope and approach limitations prefacing the said Report, which states, inter alia, the following:-

I. The Forensic Audit conducted was not performed in accordance with the Generally Accepted Accounting Principles or other assurance standards in India and accordingly does not express any form of assurance.

II. The nature of our engagement is a fact finding one and not an audit of account balances/financial statements to give our opinion or advice.

III. Our scope does not require us to identify any statutory non-compliance.

IV. It shall be the responsibility of Resolution Professional to provide the data and we have performed our review on the basis of supporting documents provided to us by IRP or his team, as the case may be.

V. We are reviewing the transactions between 01.04.2010 to 10.01.2019, as furnished to us by IRP.

VI. Despite of regular reminders, we have not been provided with the books prior to 31.01.2012. Hence, we are unable to review & comment on the transactions prior to 31.01.2012. Accounts for the prior period were maintained in PINGA (an ERP software for accounting) & the same has not been made available to us.

VII. Access to SAP was given on 04.06.2019, after 1.5 months from audit commencement.

VIII. Access to SAP was provided with restricted rights. Rights relating to report extraction, ZA Code right (for extraction of applicant ledger of customers) etc. were not included in the access.

74. We notice that above is based on the information provided by IRP, Sh. Prabhjit Singh Soni, who was subsequently removed on the basis of a complaint lodged by Homebuyers by the order of the Adjudicating Authority vide order dated 20.11.2019 on the ground that the class of Real Estate Buyers had not favoured the continuation of Sh. Prabhjit Singh Soni as the

Resolution Professional. In such circumstances, we are of the view that Sh. Prabhjit Singh Soni can't be trusted to provide complete information to the forensic auditor.

75. In this background, we hold that the Forensic Audit lacks credibility and direct the Resolution Professional to get another Forensic Audit done after giving full access to all relevant information to the Auditor and the scope provided by the RP to the Auditor must include identification of beneficiaries of funds received from creditors including the Homebuyers and also a list of non-compliances with existing laws.

76. Thus, we are of the view that while the current RP may remain associated with the CIRP of the Corporate Debtor, for the purpose of discharging the statutory function of RP in terms of IBC, 2016, qua the CD, considering the complex issues involved in the present case, we deem it appropriate to appoint a responsible IPE (Insolvency Professional Entity), as provided in Regulation 12 of IBBI (Insolvency Professional) Regulations, 2016 with necessary resources and capability to deal with the highly complex issues involved in the present case, as RP qua the CD.

77. The Forensic Audit will be completed within a period of 60 days of this Order and after receiving the Forensic Report, the RP is directed to form an opinion whether the Corporate Debtor has been subject to any further/ additional transaction under Section 43, 45, 50 and 66 and apply to this Adjudicating Authority for appropriate relief within a reasonable period.

78. In the aforementioned gamut of the facts, we are persuaded to arrive at a conclusion that there need to be a forensic audit of the entire affairs of the CD.

79. In the wake of the aforementioned findings and discussions and in view of the irregularity in valuation and accounting of assets of CD and the plea raised in IA-506/2024, it is ordered thus:-

a) The Resolution Plan stands remitted back to the CoC. It would be for CoC to take a call, as to whether the CIRP should resume from the stage of preparation of IM or from any other stage or the present SRA/PRA's should be given opportunity to submit revised Resolution Plan after Forensic Audit and proper fresh valuation of the assets of the CD.

b) The present IP who is functioning as RP qua the CD is replaced with the IPE- ARCK Resolution Professionals LLP (IBBI/IPE-0030/IPA-1/2022-23/50013) and henceforth the said Insolvency Professional Entity would act as RP to conduct CIRP qua the CD.

c) The present RP would extend all assistance to IPE as a professional.

d) The Insolvency Professional Entity would first get the transaction/ forensic audit be conducted qua the CD and then would get the valuation of its assets done in accordance with Regulation 27 read with Regulation 35 of IBBI (CIRP) Regulations, 2016.

e) The 'I-Ring' project would be treated as asset of the CD. Nevertheless it would be open to SRA to deal with the same in accordance with the provisions of regulation 37 (1) a of IBBI (CIRP) regulations 2016 and in the process the SRA may deal with Shomit Finance Limited.

f) The plea regarding replacement of AR stands nixed.

g) The NOIDA would be treated as Secured Creditor with all consequences.

h) The NOIDA would be entitled to two instalments of premium and the amount which is payable towards water and sewage charges as also the time extension charge, etc. to it by the CD as CIRP cost.

i) The IA-3926/2023 is allowed and the IA-3325/2020, IA-3025/2022 and IA-3330/2020 stands dismissed as withdrawn. Nevertheless, as has been directed above the project ('I-ring') mentioned in IA-3926/2023 would be treated as asset of CD and would be dealt with in terms of the Resolution Plan.

IA Nos. 3067/2022, 3255/2020, 3588/2023, 506/2024, 2298/2021, 3926/2023, 3325/2023, 3025/2022, 3330/2020, 1158/2024, 3596/2023, 1159/2024, 3017/2024, and Inv. Pett. 13/2024 stands disposed of accordingly.

Let a copy of this order be sent to ARCK Resolution Professionals LLP forthwith.

Sd/-	**Sd/-**
(SUBRATA KUMAR DASH)	**(ASHOK KUMAR BHARDWAJ)**
MEMBER (T)	**MEMBER (J)**

NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI BENCH (COURT-II)

IA-3018/2024
IN
Company Petition No. (IB)-1248(PB)/2018

IN THE MATTER OF:
(Under Section: 7 of IBC, 2016)

Shinoj Koshy **... Applicant/ Financial Creditor**

Versus

M/s Granite Gate Properties Pvt. Ltd. **... Respondent/ Corporate Debtor**

AND IN THE MATTER OF IA. NO. 3018/ND/2024:
(Under Rule 11, NCLT, 2016)

AND IN THE MATTER OF IA. NO. 3588/ND/2023:
(Under Section: 60(5) r/w Section 30(2) of IBC, 2016)

Ashmeet Singh Bhatia
12-A, Savitri Sahini Enclave,
New Hyderabad,
Lucknow-226007 **... Applicant**

Versus

1. M/s Granite Gate Properties Pvt. Ltd.
C-23, Greater Kailash Enclave, Part-I,
New Delhi-110048

2. M/s SMV Agencies Pvt. Ltd.
S-25, Green Park, Main Market,
New Delhi-110016 **... Respondents**

Order Delivered on: 24.07.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Deepak Khosla, Adv. Ridhima Verma, Adv. Shashwat Tripathi, Adv. Madhu Ayachit, Adv. Apavajita Singh

ORDER

IA-3018/2024: The prayer made in the captioned application reads thus:-

"(a) Allow the present Application and take on record the additional documents, charts and lists placed on record by the Applicant;

(b) Pass an order directing court monitored full forensic and transaction audits from 21.02.2012 onwards till date, into the affairs of at least the Three C Group of companies/ Corporate Debtors, whose company petitions are pending adjudication before this Hon'ble Tribunal and their related parties, including their bank accounts, assets etc. and at least of the mentioned hereinabove 33 shady Bank Accounts in the single State Bank of India, Nehru Place Branch, New Delhi, in order to trace out the money trails of the funds siphoned off/ diverted by their erstwhile managements and promoters;

(c) Pass an order directing the Resolution Professionals of each of the 14 group companies undergoing CIRPs, to place on record the status report regarding the requisite PUFE transactions based avoidance applications filed by them, after getting examined all the information and documents so far available with them respectively;

2. Mr. Deepak Khosla, Ld. Counsel for the Applicant pressed the averments made in various paragraphs of the application. During the course of hearing, he also handed over a written note giving reference of the chart, showing changes in the shareholders and directors of the CD and its group companies, the admission of promoters in a trademark suit while defending the trade name 'Lotus', list of FIRs lodged against the promoters qua the CD, news articles to buttress that the promoters are involved in the fraud, the Audit Report by M/s S.P. Chopra & Co., Fact-Finding Report dated 16.03.2020, Company Wise Data, PUFE applications filed against related

parties, summaries of bank accounts maintained in Nehru Place Branch of SBI, e-mails by Mr. Surpreet Singh Suri to buttress that an amount of Rs.200 crores could be siphoned off out of Three C Shelters, a chart showing siphoning off of the funds from Three C Shelters to 6 companies owned by Mr. Harkaran Singh Uppal through Kolkata based shell companies, letter by RP of TCUDPL highlighting various fraudulent transactions, Comptroller and Auditor General of India Report unfolding the Sports City Project fraud.

3. In the written synopsis filed by him, Mr. Deepak Khosla, the Ld. Counsel for the Applicant espoused:

a) Mr. Nirmal Singh and his associates have fraudulently caused loss of more than Rs. 2000 crores to TCUDPL through a single Sports City Project, Sectors 78 and 79, Noida, through the lead member viz.

(i) Xanadu Estates Pvt. Ltd. owned 2,24,843.75 sqm land, with FAR/FSI development rights worth more than Rs.600 crores, and it's 20,000 equity shares, owned by the Corporate Debtor, were purchased on 27.06.2014 by its 3 promoters, 1/3rd each @ Rs.10 per share, for a total consideration of just Rs.2 lakhs, along with liabilities of about Rs. 300 cores, payable to NOIDA Authority, etc.

(ii) Xanadu Infrastructures Pvt. Ltd., owned 34,176.25 sqm land, with FAR/FSI development rights worth more than Rs. 95 crores, and it's 20,000 equity shares, owned by the Corporate Debtor, were purchased on 27.06.2014 by its promoter Mr. Nirmal Singh, @ Rs.10 per share, for a total consideration of just Rs. 2 lakhs, along with liabilities of about Rs. 45 crores, payable to NOIDA Authority, etc.

(iii) Xanadu Infratech Pvt. Ltd., owned 14,272 sqm commercial land, with FAR/FSI development rights worth more than Rs. 118 crores, and it's 10,000 equity shares, owned by the Corporate Debtor, were purchased on 06.04.2015 by its 3 promoters and one out sider, @ Rs. 10 per share, for a total consideration of just Rs. 1 lakhs, along with liabilities of about Rs. 19 crores, payable to NOIDA Authority, etc.

(iv) Xanadu Realcon Pvt. Ltd. (name changed to Gaursons Sportswood Pvt. Ltd.), owned 80,000 sqm land, with FAR/FSI development rights worth more than Rs. 450 Crores, subdivided into 3 plots in the names of wholly owned subsidiaries. The 10,000 equity shares of each of these were sold to outside builders @ Rs. 10 per share, for just Rs.1 lakh each along with approx. Rs. 107 crores to be paid to the NOIDA Authority, etc.

(v) Sequel Buildcon Pvt. Ltd., owned 1,00,000 sqm land, with FAR/FSI development rights worth more than Rs. 560 crores, subdivided into 3 plots in the names of wholly owned subsidiaries and the 10,000 equity shares. Two of these were sold to outside builders and one Arena Superstructures Pvt. Ltd. was illegally hijacked by its promoter Mr. Nirmal Singh to his personal ownership through M/s Cruze Properties Pvt. Ltd., by selling the equity shares @ Rs. 10 per share, for just Rs. 1 lakh each, along with the proportionate liabilities amounting to approx. Rs. 134 crores to be paid to the NOIDA Authority, etc.

(vi) Sequel Building Concepts Pvt. Ltd., owned 48,000 sqm land, with FAR/FSI development rights worth more than Rs. 270 crores, whose 10,000 equity shares were sold @ of Rs. 10 per share to some individuals, along with liabilities of approx. Rs. 64 crores to be paid to the NOIDA Authority, etc.

(vii) Kindle Developers Pvt. Ltd., owned 1,00,000 sqm land, with FAR/FSI development rights worth more than Rs. 490 crores, subdivided into 4 plots in the names of wholly owned subsidiaries. The 10,000 equity shares of each of these were sold to outside builders, along with liabilities of approx. Rs. 134 crores to be paid to the NOIDA Authority, etc.

b) The funds from CD could be siphoned off through M/s NS Global Pvt. Ltd., a shell company owned/fully controlled by Nirmal Singh.

c) The residential property of family of Nirmal Singh. i.e. N-104, Panchsheel Park, New Delhi, admeasuring 1200 square yards was purchased from M/s Glittering Apartments Pvt. Ltd. having registered office at G-33, Scindia House, Aatma Ram Mansion, Janpat, New Delhi for an estimated price of more than Rs. 70 crores. Out of the total sale consideration Rs. 24 crores were paid through 5 banking channels and the remaining amount was paid illegally in cash.

d) M/s Three C Infrastructure Pvt. Ltd, a subsidiary of TCUDPL and a group related party of the Ace group namely, M/s Crest Promoters Pvt. Ltd. were joint members of a bidding consortium of 7 members, which were allotted about 299.60 acre of land in Sector-150 Noida, in the Sports City

Project by NOIDA Authority in September, 2014 and the said company was illegally and fraudulently hijacked to the management and ownership of the Ace Group in 2022.

e) M/s Three C Education Infrastructures Pvt. Ltd. was 100% owned by the Corporate Debtor. However, from 2014 onwards, its 10,000 equity shares were illegally and fraudulently sold to M/s Silverado Infradevelopers Private Limited for just Rs. 1 lac only. The M/s Silverado Infradevelopers Pvt. Ltd. was wholly owned subsidiary of the Corporate Debtor, but its 100% equity shares could be subsequently transferred in the names of employees of Mr. Harkaran Singh Uppal and as on 31.03.2019, the two employees Mr. Prem Narayan Tiwari and Mr. Sachin Dharne were each owning 5,000 equity share each in the company, having a market value of more than Rs. 100 crores.

f) M/s Globus Constructions Pvt. Ltd., originally owned by Mr. Harmeet Singh Oberoi, the real brother-in-law of Mr. Nirmal Singh, was awarded construction contracts by various flat constructing subsidiary/ associate companies of the Corporate Debtor, including the Corporate Debtor itself, illegally and fraudulently without any competitive tendering. M/s Globus Constructions Private Limited has been deeply involved in siphoning off of funds spanning across Rs. hundreds of crores collected from the homebuyers, through various fraudulent and dubious modus operandi. The shares of M/s Globus Constructions Private Limited were initially purchased by Mrs. Sureena Uppal wife of Mr. Nirmal Singh (51%), Mr. Surpreet Singh Suri (24.50%) and Mr. Vidur Bhardwaj. Later, after

siphoning off the remaining reserves and surpluses left with the company (M/s Globus Constructions Private Limited), the promoters dishonestly and fraudulently transferred its 100% shares to ownership of the CD, leaving it to suffer the consequential effects of the fraud perpetrated by M/s Globus Constructions Private Limited on the various flat constructing subsidiary/associate companies of the CD.

g) The Three C Properties Pvt. Ltd., owned a valuable commercial land – Plot No. H-10, Sector 98, Noida, having commercial real estate development rights worth more than Rs. 1,000 crores. Through a series of fraudulent transactions, Nirmal Singh and his son, Harkaran Singh Uppal, acquired its 100% ownership by 2017 by purchasing its 45% equity shares for a pittance of Rs. 45,000/- in their family owned Lotus Greens LLP and remaining 55% equity shares for a pittance of Rs. 55,000/- in the name of M/s Lotus Greens Developers Pvt. Ltd. owned by Lotus Greens LLP itself.

h) Rs. 18 crores could be illegally siphoned off by Harkaran Singh Uppal, son of Nirmal Singh, through purchase of equity shares of one of the subsidiary companies of TCUDPL namely, Xanadu Infratech Pvt. Ltd. by Lotus Greens Developers Pvt. Ltd. (99.99% owned by Harkaran Singh through Lotus Greens LLP), the payment of which could be directly made from the bank account of Three C Projects Pvt. Ltd. (another subsidiary of the Corporate Debtor/TCUDPL). Rs. 29,99,75,000/- have been illegally siphoned off by Vidur Bhardwaj through projects of equity shares of Xanadu Infra Tech Private Limited through his family owned company namely, M/s Laurel Residency Pvt. Ltd. Pertinently, the aforesaid amount

had been booked as 'loss on sale of investment' in the books of TCUDPL in April 2018. The illegalities could be pointed out and exposed by the RP himself vide his letter dated 17.09.2020 sent to the Promoters, but he did not file any avoidance applications qua the fraudulent transactions.

i) Undervalued sale/transfer of shareholding of wholly owned subsidiary companies of Corporate Debtor/TCUDPL at the behest of Nirmal Singh and others was made. These companies are:-

(a) <u>M/s Eminent Homes Pvt. Ltd.</u>

Till 22.04.2014, M/s Eminent Homes Pvt. Ltd. was 99.99% owned by the Corporate Debtor and its one share was held by Mr. Surpreet Singh Suri as nominee of M/s Three C Universal Developers Pvt. Ltd.

Mr. Nirmal Singh first on 22.04.2014, got these 99.99% shares transferred to one of his employees namely, Mr. Rakesh Tripathi, for just Rs.1,99,990/- and then to another trusted employees, Mr. Deshbandhu Rajesh Srikanta for the same amount and then on 02.05.2016, to his own name for the same amount.

Thus, Mr. Nirmal Singh hijacked this asset rich company of the Three C Group, owning property worth crores of rupees, to his personal ownership, for just Rs.1.99 lakhs.

(b) <u>M/s Silverado Estates Pvt. Ltd.</u>

M/s Silverado Estates Pvt. Ltd. was 99.99% owned by the Corporate Debtor with one share held by Mr. Surpreet Singh Suri as the nominee M/s Three C Universal Developers Pvt. Ltd.

Pertinently, the shares of the said Company were fraudulently sold in 2012, for just one lakh by the Promoters, who were also directors of the Company at that time.

(c) Pinnacle Superstructures Pvt. Ltd.

M/s Pinnacle Superstructures Pvt. Ltd., was wholly owned subsidiary of the Corporate Debtor, whose 100% shares were sold from 2014 onwards, for just Rs. 1 lakh by the Promoters, who were directors of the Company at that time.

(d) Aloft Infratech Pvt. Ltd.

M/s Aloft Infratech Pvt. Ltd. was wholly owned subsidiary of the Corporate Debtor, whose 100% shares were sold from 2014 onwards, for just Rs. 1 lakh through various fraudulent transactions, subsequent to which, Mr. Nirmal Singh hijacked the company to his ownership (99.99%).

(e) M/s Three C Education Ventures Pvt. Ltd.

M/s Three C Education Ventures Pvt. Ltd. was 100% owned by the Corporate Debtor. However, from 2014 onwards its 10,000 equity shares were illegally and fraudulently sold to M/s Silverado Infradevelopers Pvt. Ltd., for just Rs. 1 lakh only.

Pertinently, even Silverado Infradevelopers Pvt. Ltd. was a wholly owned subsidiary of the Corporate Debtor, but its 100% equity shares have subsequently been transferred in the names of the employees of Mr. Harkaran Singh Uppal and as on 31.03.2019, the two employees Mr.

Prem Narayan Tiwari and Mr. Sachin Dharne were each owning 5000 equity shares each in this company, having a market value of more than Rs. 100 crores.

j) As on 31.03.2015, M/s Nirvana Properties Pvt. Ltd. was owned in the ratio of 49.99% by the Corporate Debtor and Mr. Gurdeep Singh, husband of the sister of Mr. Nirmal Singh. Between 19.08.2015 and 04.01.2016 Mr. Nirmal Singh and his son Mr. Harkaran Singh Uppal illegally and fraudulently purchased the said 49.99% shares owned by the Corporate Debtor equally qua M/s Nirvana Properties Pvt. Ltd. for just Rs. 2,49,970/- only.

k) **Undervalued sale/transfer of M/s Lavender Infraprojects Pvt. Ltd.**

M/s Lavender Infraprojects Pvt. Ltd., owning a hotel/commercial plot No. A-3a, admeasuring 3546 sqm. situated in the heart of District Center Phase-II, Nehru Place, New Delhi, worth more than Rs. 100 crores, was transferred to the 100% ownership of Mr. Harkaran Singh Uppal son of Mr. Nirmal Singh, by transferring its 100% equity shares to him for just Rs. 1 lakh only.

l) **Undervalued sale/transfer of M/s Three C Education Foundation (name changed to Lotus Valley Academic Foundation).**

M/s Three C Education Foundation was 50% owned by the Corporate Debtor. However, in 2014, its 10,000 equity shares were illegally and fraudulently sold to Mr. Harkaran Singh Uppal, for just Rs.50,000 only.

m) **Illegal and fraudulent transfer of shares of M/s Granite Hill Properties Pvt. Ltd.**

M/s Granite Hill Properties Pvt. Ltd. (32.50% owned by the Corporate Debtor) owned 50% of a valuable commercial land use Plot No. C-1, Sector 98, Noida, and a commercial real estate development rights worth more than Rs. 75 crores. From 2012 onwards, through fraudulent transaction, its equity shares were sold to some private individual for a pittance of Rs. 32,500/- only.

n) **Illegal and fraudulent transfer of shares of M/s Black Current Infosoftech Pvt. Ltd.**

M/s Black Current Infosoftech Pvt. Ltd., a wholly owned subsidiary of M/s Three C Infratech Pvt. Ltd, in turn a wholly owned subsidiary of the Corporate Debtor, owned a valuable residential property, House No. 657, Sector 16D, Chandigarh.

In 2009, Mr. Nirmal Singh and his son Mr. Harkaran Singh Uppal, illegally and fraudulently purchased its 100% equity shares by their wholly owned company M/s Lotus Green Developers Pvt. Ltd., for just Rs. 1 lakh and then fraudulently sold this valuable property at less than half the applicable circle rate, by transferring its 100% equity shares for just Rs. 1 lakh.

o) **Illegal and fraudulent transfer of shares of M/s Unique Real Projects Pvt. Ltd.**

M/s Unique Real Projects Pvt. Ltd., whose 50%-50% equity shares were owned by M/s Three C Infratech Pvt. Ltd. and M/s Hacienda Infosoftech Pvt. Ltd., (both in turn were wholly owned subsidiaries of the Corporate

Debtor), owned a valuable residential property, House No. 280, Sector-10A. Chandigarh.

In 2010, Mr. Nirmal Singh and his son Mr. Harkaran Singh Uppal, illegally and fraudulently purchased its 100% equity shares through their wholly owned company M/s Lotus Green Developers Pvt. Ltd., for just Rs. 1 lakh and then fraudulently sold this valuable property at less than half the applicable circle rate, by transferring its 100% equity shares for just Rs. 1 lakh.

p) **Illegal and fraudulent transfer of equity shares of Three C Builders Pvt. Ltd.**

Pertinently, Three C Projects Pvt. Ltd. purchased equity shares of Three C Builders Pvt. Ltd. amounting to Rs. 42.50 crores from Infrawiz Projects Pvt. Ltd., which in fact was adjusted with the balance receivable from the Corporate Debtor/ TCUDPL.

As per the financial statements of Three C Builders Pvt. Ltd. for the FY 2016-17, its net worth was in negative i.e., Rs. -0.03 crores and the revenue thereof for the same period is Nil, thereby proving that the Three C Projects Pvt. Ltd. entered into the said transaction with Three C Builders Pvt. Ltd. with malafide intentions of converting the balance payables into investments despite Three C Builders Pvt. Ltd. having negative net worth and revenue. Thus, causing loss of Rs. 85 crores to TCUDPL.

q) To emphasis the requirement of Forensic Audit, Mr. Deepak Khosla, Ld. Counsel for the Applicant relied upon certain judicial precedence. With reference to the same, he emphasised that in order to address the issue

raised in various IAs including the IA Nos. IA-3926/2023, IA-3017/2024, IA-1096/2024, IA-3596/2023, IA-2298/2021, IA-1158/ 2024, IA-3255/2020, IA-3067/2022, IA-3588/2023, IA-506/2024, IA-3325/2020, IA-1159/2024, Ivn. Pett.- 13/2024, IA-3330/2020, IA-3025/2022 and IA-3018/2024, this Tribunal need to direct a Forensic Audit to be conducted. Having placed the reliance upon the judgment of Hon'ble Supreme Court in **Bikram Chatterji & Ors. vs. Union of India & Ors.** (Writ (C) No. 940/2017), he submitted that once the Homebuyers money has been diverted fraudulently, the Forensic Audit of entire affairs of CIRP is an essential requirement.

r) Relying upon the judgment of Writ-C No. 41110 of 2019 (Nirmal Singh vs. State of U.P. & Ors.) etc., Mr. Deepak Khosla submitted that in such cases where Promoter could play fraud on the Homebuyers, this Tribunal should direct Forensic Audit and should not remain as mute spectator. Para 110 and 111 of the order reads thus:-

> *"110. It is apparent that the promoters have played a fraud on the home buyers, Noida Authority, Bank as well as on the Court. The claim of the promoters/petitioner that they are not the directors of the company any more and had nothing to do with the company and the liability of the company can only be recovered from the company can not be sustained. If this amount which is illegally stashed/invested in other companies is brought back then all the creditors would be paid off, but unfortunately, the Noida Authority through its recovery proceedings cannot go to the extent of getting the money back which has already been parked in other companies and the company has been pushed into insolvency. As a matter of fact, IRP also does not have the power to recover this amount, which*

has been illegally siphoned off by the promoters and parked/invested in other entities.

111. The entire transaction through the web of different companies goes to show that the promoters/directors/petitioners have used the HPPL and other similarly situated companies to syphon and layer the funds which they have diverted or invested in various other entities/companies owned or controlled by them. After piercing the corporate veil, it is clear that even after resigning they had the full control of the company. The resignation was just a facade and it was done to avoid any civil or criminal liabilities, and with the sole intention to cheat the home buyers and to avoid payment of dues of Noida Authority.

s) Mr. Sumant Batra Ld. Counsel for the Respondent submitted that the Applicant has made allegation against so many individuals and companies, who are not parties before this Tribunal and have not been served notice.

t) Rejoining the submissions Mr. Deepak Khosla, Ld. Counsel for the Applicant submitted that in the captioned application, he has not asked for determination of Civil Rights of any of the companies or individuals and the only issue raised by him is that this Tribunal should give such direction in terms of which the true position regarding financial affairs of the Corporate Debtor could surface. In his submission nobody should have any objection to issuance of direction for finding out the correct position regarding the financial affairs of the Corporate Debtor. According to him, when Forensic Audit is conducted, it does not remain confined to the transaction within the Corporate Debtor as a natural course, the transaction entered into by the company with all concerned is disgorged. To buttress the plea, he relied upon the order passed by Hon'ble Delhi High Court in V.K. Sharma and

Anr. vs. Nemo (CO.AP-1/2017). The relevant excerpt of the judgment reads thus:-

"8. The issue is no longer res integra. Decision of the Supreme Court reported as (1962) 32 Comp.Cas. 0097 Satish Churn Law Vs. H.K.Ganguly holds that the court has to decide the application filed before it without the involvement of the person whose public examination is prayed for. No doubt, if a person is summoned for being publicly examined he/she would have to be made known the subject matter and the issues on which the person would be examined. The person would also be entitled for the complaint filed against the person.

9. The position therefore would be that the decision whether or not to publicly examine a person is a decision to be taken by the court with the assistance of only the Official Liquidator or the person who has moved the application. Needless to state that the Official Liquidator or the applicant person would have to prima facie satisfy the court with reference to objective facts that case is made out to publicly examine the person named. The said person cannot participate in said decision making process. Only if the court summons the person would the person have a right to know the material in respect of which the person is being examined so that the person can respond. Proceedings by their very nature are not adversarial and are intended at gathering relevant facts which would facilitate the assets of a company to be recovered so that the dues of the creditors can be paid in accordance with law.

10. Accordingly we modify the impugned order and direct the learned Single Judge to decide the applications filed before the Company Judge seeking public examination of persons guided by the law declared by the Supreme Court in Satish Churn's case (supra).

11. Shri Deepak Khosla urged that the learned Company Judge be directed to in turn direct public examination of the persons, if

directed by the learned Company Judge to be so done, before a Registrar or a Joint Registrar of this Court, a request which was vehemently opposed by Shri Rajiv Behl, learned counsel for the Official Liquidator as according to him that would defeat the purpose of a public examination."

u) Mr. Deepak Khosla also placed reliance upon the judgment of Hon'ble Supreme Court in **Satish Churn Law. v. H.K. Ganguly** (1962) 032 C-C 0097. The relevant excerpt of the judgment reads thus:-

"Nor do the rules of procedure framed by this court for examination under section 477 contemplate any right of inspection of the statement of the official liquidator. As we have already pointed out, rule 243 contemplates an order ex parte and the scheme of the Rule further emphasises the fact that all these enquiries are intended as already discussed to be confidential proceedings. The person whose examination is sought to be held, has therefore no right to inspect the statement made by the liquidator on which the order of the court proceeds. Rule 360 of the Companies (Court) Rules provides that every duly authorised officer of the Central Government, and, save as otherwise provided by these Rules, every person who has been a director or officer of a company which is being wound up, shall be entitled, free of charge, at all reasonable times to inspect the file of proceedings of the liquidation and to take copies or extracts from any document therein, and, on payment of the prescribed charges, to be furnished with such copies or extracts. The right to inspection is given in respect of the file of the proceedings of the liquidation. But the statement made by the official liquidator under rule 243 does not form part of the file of the proceedings of the liquidation. The statement is not to be made on oath: it has to be shown to the company judge and the judge has to apply his mind to the contents thereof, but it does not, as pointed out by Mr. Justice LAW, form part of the liquidation proceedings. In the Company (Court) Rules, there

is no rule specifying the documents which are to be included in the file of the liquidation proceedings. The order passed by the court and the summons issued thereon may be regarded as forming part of the file of the proceedings of liquidation, but having regard to the nature of the statement made by the official liquidator on which this judge's order is passed, it is not part of the file of the proceed-ings of liquidation. The person summoned even if he is an officer or director of the company, is therefore not entitled to inspection thereof relying upon rule 360."

v) Nevertheless, while examining the IA Nos. IA-3926/2023, IA-3017/2024, IA-1096/2024, IA-3596/2023, IA-2298/2021, IA-1158/2024, IA-3255/2020, IA-3067/2022, IA-3588/2023, IA-506/2024, IA-3325/2020, IA-1159/2024, Ivn. P13/2024, IA-3330/2020, IA-3025/2022 and IA-3018/2024, (OR) we could already form an opinion that there should be Forensic Audit qua the Financial Affairs of the CD and have passed an appropriate order. In the wake, the present application has become **infructuous/otiose and is accordingly disposed of.**

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)