

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

COURT NO. VI, NEW DELHI

CA(CAA) – 10/ND/2024

Sections 230 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

IN THE MATTER OF SCHEME OF COMPROMISE AND ARRANGEMENT

BETWEEN

M/s Mist Direct Sales Private Limited

... Petitioner Company

AND

Unsecured Creditors

Being allottees in “Festival City” project, Noida, UP

... Unsecured Creditors of Petitioner Company

CORAM:

SH. MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

SH. RAHUL BHATNAGAR, MEMBER (TECHNICAL)

For the Applicants: Mr. U.K. Chaudhary, Sr. Adv., Mr. Mansumyer Singh and Ms. Manisha Arora, Advs.

ORDER

PER – RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Order Delivered on: 19.07.2024

1. This is an application filed by the applicant company i.e., Mist Direct Sales Private Limited under Section 230 of the Companies Act, 2013 read with relevant provisions of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 to allow scheme of Compromise and Arrangement proposed by the Applicant Company with its Unsecured Creditors.
2. The applicant has prayed for the following relief(s): -
 - a) *Admit the present company application;*
 - b) *Direct convening of meetings of unsecured creditors being commercial unit allottees in Festival City Project of the Applicant Company as may be approved by the Chairperson appointed for the meeting;*
 - c) *To appoint Chairperson, Alternate Chairperson and Scrutinizer for the proposed meeting in order to ensure conduct of meeting in a fair and transparent manner;*
 - d) *Direct the Applicant Company to serve the notice of meeting upon the commercial unit allottees by way of speed post or email or courier or registered post;*
 - e) *Direct the Applicant Company to publish the notice of meetings in the 'Business Standard' (Delhi and Uttar Pradesh editions) in English and Hindi language;*
 - f) *Direct the Applicant Company to serve the notice of meeting upon the following authorities in terms of the provisions of section 230(5) of the*

Companies Act, 2013 read with rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016:

- a. Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs at B-2 Wing, 2nd Floor, Paryavaran Bhawan, CGO Complex, New Delhi 110003 (“Regional Director”);*
 - b. Registrar of Companies, National Capital Territory of Delhi and Haryana at 4th Floor, IFCI Tower, 61, Nehru Place, New Delhi-110019 (“Registrar of Companies”);*
 - c. Jurisdictional Real Estate Regulation Authority (“RERA”);*
 - d. Concerned Income Tax Authority having jurisdiction on the Applicant Company at Ward 17(1), Delhi*
 - e. Standing counsel of Income Tax.*
- g) Pass such other order(s) as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*
- h) The Applicant Company further prays that during the pendency of the present first motion application and thereafter, while the aforementioned Scheme of Compromise and Arrangement is under consideration of this Hon’ble Tribunal, the legal proceedings initiated by the Commercial Unit Allottee(s) in relation the Festival City Project, including the section 7 petition pending before this Hon’ble Tribunal bearing Company Petition (IB) no. 682/ 2021, be kept in abeyance and further, this Hon’ble Tribunal may also pass such other order(s) as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*

3. It is stated that the Proposed scheme of arrangement has following advantages: -

- (i) Holistic resolution of the grievances raised by the Commercial Unit Allottees of the Festival City Project;*

- (ii) Collective endeavour for earliest completion of the Project;*
- (iii) Exit option to the Commercial Unit Allottees;*
- (iv) Safeguarding the Company from the risk of insolvency and liquidation.*

4. Before proceeding to adjudicate this Petition under section 230 of Companies Act 2013, it is pertinent to bring on record the complete facts with respect to the Project (Festival City).

5. The brief facts related to the Project are as under: -

- a. The Applicant Company (Mist Direct Sales Private Limited) along with M/s Anand Infoedge Pvt. Ltd (Land owner of the Project) & M/s Mist Avenue Pvt. Ltd (First Developer of the project) were developing a commercial IT/ ITES project named “Festival City” situated at Plot No. 1, Sector 143B, Noida, District Gautam Budh Nagar, Uttar Pradesh-201310.
- b. That M/s Anand Infoedge had some financial constraints and accordingly approached M/s Mist Avenue with a proposal of collaboration, wherein M/s Mist Avenue was to obtain development/license permission for the project.
- c. That due to delay in completion of the project, by M/s Mist Avenue. M/s Anand Infoedge cancelled the collaboration with M/s Mist Avenue and entered into another collaboration agreement with M/s Mist Direct Sales Pvt. Ltd. to complete the project.

- d. In the meantime, in the year 2016, owing to farmers' protests dispute arose regarding land parcels which were part of the land where Festival City Project was being developed.
- e. The piece of land came within the jurisdiction of NOIDA. Accordingly, the said land parcel was leased out by NOIDA to Anand Infoedge. However, Greater NOIDA, transferred the aforestated land parcel back to the farmers' society.
- f. This led to the filing of a civil suit bearing no. 662/2017 before the Noida District Court. The aforesaid civil suit is pending for adjudication while stay was granted and is still continuing on the demand(s) raised by NOIDA.
- g. Thereafter, Anand Infoedge filed a writ petition bearing no. 15503/2019 before the Hon'ble Allahabad High Court against NOIDA and Greater NOIDA regarding the ownership/title dispute raised by farmers, which is pending for final adjudication.
- h. On the other hand, RERA vide order dated 07.12.2019 cancelled the 'Festival City Project' registration and observed as follows: -
 - i. only 15.81% of the Project is complete;
 - ii. the promoter of the Project Shri Satinder Singh has been arrested by Revenue Department since he was not able to pay Stamp Duty of Rs. 12 Lakhs;
 - iii. the work on Project is stopped;
 - iv. promoter has misappropriated the funds of the project;

- v. there is no progress in the work of the project; and
 - vi. promoter has changed the plan for project due to which construction of some flats cannot be done.
- i. The reasons for the cancellation given in the UP RERA order dated 07.12.2019 are as under: -

After careful consideration of the complete factual position in the meeting, the Authority has concluded the following :

1) Promoter has not complied to any of the instructions out of the total 06 instructions mentioned in Authority's Order dated 11.07.2019. This act of him is a violation of Sections 4, 7 and 11 of the Act along with other relevant provisions of the Act and Manual.

2) As per Authority's Order dated 11.07.2019, Promoter M/s Mist Direct Sales Pvt Ltd was given time of 4 months under provisions of Section 7(3) of Rera Act to bring progress in the works of project but the Promoter himself is now saying that he is not able to complete the development works of the project. His actions are a violation of his responsibilities under the Act and amounts to breach of trust with the allottees as it is against the agreement and resolution done with the allottees.

3) Project was started 7 years back and the progress structure of the project is around 50 percent. Due to this attitude of Promoter the possibility of completion of project is almost nil. Therefore for protection of allottees, for ensuring compliance of provisions of Rera Act and U.P. Rera and to complete the remaining development works of the project there is no other option than to cancel the

registration of project under the provisions of Section 7 of the Rera Act.

- j. The Company filed an appeal against the Order dated 07.12.2019 of UP RERA before Real Estate Appellate Tribunal however, the said appeal was not entertained. Consequently, the Company filed the statutory second appeal before the Hon'ble Allahabad High Court which is still pending.
- k. Thereafter, a Petition under Section 7 of IBC, 2016 was also filed against M/s Mist Direct Sales (Petitioner Company), M/s Mist Avenue and M/s Anand Infoedge under IBC, 2016 in the year 2019 before this Tribunal seeking initiation of insolvency by 115 allottees of the Project.

6. Some important terms and clauses of this scheme are as under: -

7.1 Upon the Scheme becoming effective, the Company shall take all requisite approvals, commence the construction of the Festival City Project and get it completed in a time bound manner and consequently, offer the possession of the units to the respective Commercial Unit Allottees, subject to the terms as stated herein after, within 2 (two) years from the date of resolution of the land title dispute and revival of the Project with RERA, which is expected to be done with the active support of the Commercial Unit Allottees.

.....

7.6 The Company is expecting a resolution of the land title dispute and revival of the Project with RERA at the

earliest and consequently, restart of the construction activity and completion of the Project. However, if for any reason whatsoever, any Commercial Unit Allottee(s) wishes to opt out of the Project at anytime after 1 (one) year from the Effective Date and intimates the Company about the decision to opt out in writing, then the Company shall be obligated to refund the amount paid by such allottee(s) on immediate basis as full and final settlement payment, notwithstanding the earlier terms agreed in the builder buyer agreement and/ or IT/ITES shop(s) buyer's agreement between the Company or its predecessor and such Commercial Unit Allottees.

.....

7.9 Notwithstanding the earlier terms agreed in the builder buyer agreement and/ or IT/ITES shop(s) buyer's agreement between the Company or its predecessor and the Commercial Unit Allottees, in case the possession of the respective constructed unit(s) is not offered within the time prescribed under clause 7.1 herein above i.e. within 2 years of the clearance of the land title dispute and revival of the Project with RERA to the Commercial Unit Allottee(s) not opting for refund, such Commercial Unit Allottee(s) shall be eligible to claim from the Company an amount of Rs. 9 per square feet from the expiry of the 2 years period till offer of the possession.

8.1 Upon the Scheme becoming effective, no fresh legal proceedings shall be initiated or no existing legal proceedings, in relation to the Festival City Project, shall be continued under any legislation, Code, or applicable law in force against the Company or any other entity involved in the Festival City Project.

8.2 Upon the Scheme becoming effective, all the existing legal proceedings (including execution of any existing order(s)/ decree(s)/ entitlement(s), if any, initiated against the Company and the directors or promoters or any officer of the Company or any other entity involved in the Festival City Project before any Court, Tribunal, or before any other forum or authority under the provisions of the Act, Insolvency & Bankruptcy Code, 2016, and/or under any other legislation, Code, or applicable law in force, if any, shall stand withdrawn and abated.

12.1 This Scheme is and shall be conditional upon and subject to the following:

- a. The Scheme is approved by the requisite majority of unsecured creditors being Commercial Unit Allottees as prescribed under section 230(6) of the Act as required and directed by the Tribunal;*
- b. Obtaining the sanction of the Tribunal or such other competent authority(ies), if any, by the Company under Sections 230 and other applicable provisions of the Act; and*
- c. The certified or authenticated copies of the order of the Tribunal sanctioning this Scheme is filed with the Registrar of Companies having jurisdiction over the Company.*

13.1 Notwithstanding anything contained above, the Scheme does not envisage any compromise or arrangement with any other stakeholder of the Company including but not limited to shareholders, directors, suppliers or any other creditors except the Commercial Unit Allottees of the Company. Accordingly, no approval

from any other stakeholders shall be required for implementation of the Scheme.

7. This Tribunal had vide order dated 05.04.2024 sought clarification from the Petitioner on the following points: -

I. *In clause 7.1 of the Scheme, it is stated that: -*

“Upon the Scheme becoming effective, the Company shall take all requisite approvals, commence the construction of the Festival City Project and get it completed in a time bound manner and consequently, offer the possession of the units to the respective Commercial Unit Allottees, subject to the terms as stated herein after, within 2 (two) years from the date of resolution of the land title dispute and revival of the Project with RERA, which is expected to be done with the active support of the Commercial Unit Allottees.”

The clause 7.1 of the scheme is conditional as it is from the date of resolution of title dispute. The dispute with respect to title is pending for a long time. The Petitioner is directed to clarify whether the terms of the scheme of arrangement could be conditional on some event regarding which no time frame can be ascertained?

II. *In para 11 of the Application, it is stated that there are some investigations pending against the company. However, in the affidavit dated 05.02.2024 submitted by Mr. Dinesh Kumar, Authorised Representative of Applicant Company, it is stated that there is no investigation pending against the Applicant Company. Both the statements are contradictory to each other; hence the Petitioner is directed to clarify whether there are investigations pending against the company and if so why an ostensibly false affidavit has been submitted.*

III. *In the Auditor's Report as submitted by the Petitioner along with the Petition it is stated as under: -*

- i. *As per Real Estate Regulation Act 2016, the company's registration has been cancelled due to non-compliance with the provisions of the Act.*
- ii. *Reference is drawn to point No 13. The Company has 6 bank accounts with different Scheduled Banks. Out of these, 3 bank accounts have been frozen by Banks on the basis of order dated 30-01-2019 received from Sub Divisional Magistrate (SDM - Gautam Budh Nagar) against nonpayment of dues. The bank statement in respect of Axis Bank (3 accounts) have been taken as the same as previous year due to unavailability of closing balance amounting to Rs. 62,307 /-. Further 2 bank accounts also have been frozen by Banks on 19.09.2019 on order of SDM (Gautam Budh Nagar)*
- iii. *Material Uncertainty Related to Going Concern: We draw attention to Note 3 in the financial statements, which indicates that the company has accumulated losses as at March, 2023 amounting to Rs. 102,60. 73 lac and have fully eroded the net worth of the company. These events or conditions indicate that a material uncertainty exists that may cast significant doubt on the Company's ability to continue as a going concern.*

There are serious concerns with respect to Company's ability to continue as a going concern raised by the applicant company's auditor themselves. In such a scenario can a company propose a scheme of arrangement under section 230 of Companies Act 2013? If yes, are there any supporting judgements?

IV. *Rule 4 (4) of The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 is stated as under: -*

3. Application for order of a meeting.

.....

(4) The applicant shall also disclose to the Tribunal in the application under sub-rule (1), the basis on which each class of members or creditors has been identified for the purposes of approval of the scheme.

However, neither in the petition nor in the scheme the petitioner has specified the different class of creditors in the project and which class of creditor is coming for the scheme of arrangement. Therefore, Petitioner is directed to clarify the same.

8. The Petitioner has filed reply dated 01.05.2024 in response to the clarification sought vide order dated 05.04.2024. The response in brief is as under: -

Reply to query 1-

- i. That the Scheme of Arrangement per-se is not conditional. The Scheme provides for 2 options before the unsecured creditors being commercial unit allottees in the Festival City Project, Noida, UP. One option available to the said allottees is to continue with the booking for getting a unit in the Festival City Project in the given time frame after resolution of the land title dispute and the other option available with the said allottees is to seek refund of the amount paid in a specified time frame.
- ii. The Applicant Company, in Para 7.6, has duly disclosed that the Applicant Company is expecting a speedy resolution of the land title dispute and revival of said project with Real Estate

Regulatory Authority because pleading before the Hon'ble Allahabad High Court have largely been completed and the matter is pending for final argument and judgment.

Reply to query 2-

- iii. That no investigation proceedings have been initiated or are pending against the Applicant Company under the provisions of the Companies Act, 2013.
- iv. That during the pendency of some litigation or proceedings by different authorities, some investigation in pursuance of the said litigation or pending proceedings may be initiated by the said authorities or forums. From that perspective, the submission with regard to "the consequential investigation" was made in the Application. However, as a matter of fact, it is hereby again confirmed that no investigation proceedings have been initiated against the Applicant Company under any forum by any authority.
- v. That no false affidavit was submitted by the Applicant Company as part of the Company Application.

Reply to query 3-

- vi. That the present Scheme of compromise/ arrangement endeavours revival of the project of the Applicant Company and would ensure continuity and maintaining the business of the Applicant Company as a going concern.

- vii. That the observation of the auditor is required to be given in terms of the accounting norms. However, it does not mean that the Company is restricted to propose a scheme of arrangement with its creditors or any other stakeholders.
- viii. That neither under the Companies Act nor under the applicable rules made there under, there is any restriction for a company which has negative net-worth to come out with a scheme of compromise or arrangement with any of its stakeholders
- ix. The statement made by the auditor is on the basis of the accumulated losses and negative net-worth of the Applicant Company and does not take into account the initiatives and steps being taken by the Applicant Company for revival of the Project after obtaining the requisite approvals and sanctions upon getting a clearance on the title of the land on which the Project is being made.
- x. That several Tribunals and Courts have sanctioned schemes wherein the restructuring involving unsecured creditors or home buyers were contemplated, predicated upon the company's endeavor to revive its project and reach an accord with unsecured creditors.
- xi. Further, with respect to the second point of auditor stated by the Tribunal "*As per Real Estate Regulation Act 2016, the company's registration has been cancelled due to noncompliance with the provisions of the Act*", it is hereby reiterated that cancellation of

registration of RERA is an outcome of dispute on the title of land and cannot be attributed to the Applicant Company. Due to such disputes and the consequent delays, which is outside the control of the Company and its management, the registration of the project was cancelled by RERA.

Reply to query 4-

- xii. That the arrangement is with its unsecured creditors who are Commercial Unit Allottees in "Festival City Project".
- xiii. That the Clause 5.6 of the Scheme defines meaning of the term "Commercial Unit Allottees" as allottees of units in commercial IT/ ITES in the project Festival City.
- xiv. Furthermore, Clause 7.8. of the Scheme stipulates that *"Upon the Scheme being effective, the Scheme shall be binding on the Company and on all the unsecured creditors being Commercial Unit Allottees of the Festival City Project."*
- xv. Thus, from the above stated clauses of the Scheme and the Company Application, it is humbly submitted that the Scheme is proposed by the Applicant Company for a particular class of the unsecured creditor and Company Application clearly depicts the allottees of Festival City Project are duly identified as the class of unsecured creditors for the Scheme.

xvi. Accordingly, no non-compliance with rule 4(4) of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 has been done.

9. We have gone through the response given by the petitioner qua the clarification sought and have gone through the scheme in detail as well as the averments made in the Petition. We have also heard the Ld. Sr. Counsel Shri U.K. Chaudhary for the Petitioner Company.

10. At the outset we would like to refer to a judgment of the Hon'ble NCLAT in the matter of *Wiki Kids Limited and another v. Regional Director and Other, Company Appeal (AT) No.285 of 2017* wherein it was held that NCLT can reject a scheme of arrangement if it is not in public interest. Relevant extract of the aforesaid judgement is reproduced as under: -

19. The Tribunal below has enough expertise to look into the Scheme of Amalgamation and can also see whether it is not just and fair to all shareholders. It has a duty to act in public interest. In the matter of company, it needs to see if it is in the interest of all the shareholders and the company. In the light of this it is desirable not to look into the mathematical details but a broad look at the scheme of amalgamation. If it shows that there are wide variation in the valuation as can be achieved, it will be desirable that expertise available in the Tribunal has to look so that unfair advantage does not flow to one of the group of shareholders or the other.

Drawing the analogy from above judgment, it is very clear that this Tribunal has a duty to act in public interest and to see that the scheme is in the interest of all stakeholders and is not prejudicial to any.

11. Therefore, when a petition for approving a scheme of compromise and arrangement under Section 230 of the Companies Act, 2013, is filed before this Tribunal, it must be seen whether the scheme is not prejudicial to the interests of any class of stakeholders involved and that an unfair advantage does not flow to one group in comparison to another. Section 230 of Companies Act, 2013 requires that the Tribunal must ensure that proper notices are sent to all the concerned who are to take a call on approving the scheme. This provision in the Act is there to ensure that complete information is provided to the stakeholders so that they can take an informed decision in the matter. Considering the importance the Companies Act 2013 attaches to this is clear from Section 230 of Companies Act, 2013 which requires this to be done under the supervision of this Tribunal. Hence, all relevant material facts, including the latest financial position of the company, any pending investigations or proceedings, and the effect of these on the Scheme are required to be disclosed to the Stakeholders. The scheme should not result in the oppression of any group which have not been included in the scheme, but are however, an integral part of the overall project concerned nor should it be prejudicial to the public interest.

12. In the above context let us examine some of the clauses/provisions under the Scheme.

13. As per clause 7.1 read with clause 7.6, it is stated that the project construction will be completed after two years from the date of resolution of the land title dispute and reviving the Project with RERA. The dispute related to title of part of the land has been pending for a long time. Even if we consider that the dispute will be settled soon there is the issue of re-registration of the project with UPRERA. The Petitioner in the Petition and in its reply to the clarification has stated that cancellation of registration of RERA is an outcome of dispute on the title of land and cannot be attributed to the Applicant Company. However, on perusal of the order of UPRERA by which the registration of the project was cancelled it is seen that the project was cancelled not on account of dispute on the title of land but because, the promoter failed to comply with the NOIDA's instructions, violated multiple sections of the RERA Act. Despite being given time to progress, the promoter admitted inability to complete the development, breaching trust with the allottees. The project had minimal completion, and work had stopped. Additionally, funds were misappropriated, there was no progress in the work, and changes in the project plan prevented the construction of flats. With such adverse findings by UPRERA how favourable will UPRERA be to re-register the project? This fact should have been mentioned in the Scheme, so that the same would have been brought to the notice of allottees/constituents of the meeting.

14. Further it is observed that the petitioner has made only a partial disclosure in its petition under Section 230 of the Companies Act, 2013. The full disclosure of all relevant material facts is imperative for a fair

and thorough examination of the scheme of compromise and arrangement by the allottees. The absence of complete information, including any pending investigations or proceedings, and their potential impact on stakeholders, undermines the transparency and fairness required in such matters in the interest of the stakeholders for whom the scheme has been proposed. Without full disclosure, this Tribunal also cannot adequately assess whether the scheme is equitable, reasonable, and not prejudicial to any class of stakeholders or the public interest.

15. This Tribunal also sought clarification from the Petitioner Company regarding disclosure of all pending investigations against the company. The Petitioner submitted that there are no pending investigations or proceedings under the Companies Act whereas Section 230 of the Companies Act does not mention disclosure only under Companies Act. The Petitioner has just stated that during the pendency of some litigation or proceedings by different authorities, investigations pursuant to the said litigation or pending proceedings may be initiated by those authorities or forums. Their response can only be said to be non-committal and an effort to obfuscate the issue.

16. In the absence of complete disclosure of material facts, it would not be a fair, just and equitable proposition before the allottees in order for them to take a well considered and well informed decision regarding the scheme.

17. The Petitioner has stated that the present arrangement is for holistic resolution of the issues pertaining to the Festival City Project in

the interest of all the 1600 allottees. However, there is no involvement or consent taken or proposed to be taken from the secured creditors who are an integral part of the project and therefore their interest can be compromised.

18. Further any scheme of arrangement which involves the deferment of debt of a class, in this case, Unsecured Creditors/Allottees (who have been recognised as Financial Creditors although unsecured) necessarily places a responsibility on the company to mobilise resources in order to meet the objectives of the scheme. It must therefore involve/ take consent of the other classes of creditors such as secured creditors, as they would also be strongly affected by such a scheme especially when the scheme claims to provide a holistic resolution of the Project. Analogy may be drawn from the process of resolution laid down under the IBC, 2016 in which the responsibility of approval of a Resolution Plan rests primarily with the CoC which consists of all Financial Creditors and includes both Secured and Unsecured Financial Creditors.

19. During the course of arguments, Ld. Sr. Counsel Shri U.K. Chaudhary relied upon the judgment of the Hon'ble NCLAT in the matter of *MEL Windmills Pvt. Ltd. Vs. Mineral Enterprises Limited and Ors.*, 2019 SCC Online NCLAT 900. In that case, the Tribunal declined to convene a meeting for demerger, which was subsequently overruled by the Hon'ble NCLAT, stating that in a first motion petition, the NCLT is not required to examine the merits of the scheme. Before us is a petition filed for sanctioning a scheme of Compromise and Arrangement wherein it is observed that there are many shortcomings which are

essential requirements in a first motion petition. The very purpose of taking permission from this Tribunal for convening a meeting is to ensure that the scheme is not prejudicial to the interests of any class of stakeholders involved and that all classes of stakeholders who will be affected by the Scheme have been made to participate in its approval. Most importantly, all relevant material facts, any pending investigations or proceedings, and the effect of these on the Scheme are disclosed to all those stakeholders who will decide regarding approval of the scheme. The same is not the case here and therefore this judgement does not render any help to the Petitioner.

20. As per clause 7.6 read with clause 7.9 of the scheme, it is stated there will be a deferment period of one year from the effective date if any commercial unit allottees wishes to opt out of the project. Hence there will be no immediate refund. Furthermore, it is mentioned that if the company does not offer possession of the units within two years of clearing the land title dispute and reviving the project clearance from UPRERA, the allottees can claim Rs. 9 per square foot for the delay period until possession is offered. Keeping in mind that allottees deposited their money in the year 2012 this means that even if there is further delay in giving possession, the allottees would be get only a negligible compensation which would be highly pre-judicial to their interests.

21. Clause 8.1 read with clause 8.2 of the scheme, states that upon the Scheme's effectiveness, no new or existing legal proceedings related to the Festival City Project can be initiated or continued against the

Company or any involved entity. All current legal proceedings, including orders and decrees against the Company and its officers, will be withdrawn and abated. Reliefs such as the abatement of existing legal proceedings and the prohibition of new ones, as outlined in the scheme, cannot be granted by this Tribunal while passing an order under Section 230 of the Companies Act, 2013. Section 230 deals with compromises and arrangements between a company and its creditors or members. While the Tribunal has broad powers to sanction schemes of arrangement or compromise, these powers are subject to judicial principles and statutory compliances. The Tribunal cannot override basic rights, such as the right to legal recourse and natural justice. Therefore, existence of such provisions in the Scheme would be highly misleading for the constituents of the proposed meeting desired under the Scheme.

22. It is also pertinent to mention here that the some of the other Unsecured Creditors had approached this Adjudicating Authority while this Adjudicating Authority was adjudicating CP (IB) 682/2021 under Section 7 of the IBC, 2016 which had been filed by 115 individual allottees. They had filed Intervention Petitions praying for giving an opportunity to all the allottees to consider the scheme of Compromise and Arrangement filed under Section 230 of the Companies Act, 2013 proposed by the CD. This Adjudicating Authority after hearing the submissions of all the parties dismissed the Intervention Petitions filed by the Unsecured Creditors vide order dated 27.02.2024. The abovementioned order dated 27.02.2024 was appealed before the

Hon'ble NCLAT and it was also prayed that NCLT should not proceed with the Petition filed under CP (IB) 682/2021 for initiation of CIRP against all the CD(s) till application under Section 230 of the Companies Act filed by M/s Mist Direct Sales is finalised. The Hon'ble NCLAT dismissed the plea of the appellant and upheld the order of this Adjudicating Authority and while dismissing the appeal the Hon'ble NCLAT observed as under: -

16. The Company Petition which has been filed in the year 2024 by Respondent No.6- M/s. Mist Direct Sales Pvt. Ltd., Counsel for the Respondent No.2 has produced the order dated 05.04.2024 of the Adjudicating Authority where petitioners have been asked to clarify various aspects. **The petition under Section 230 for scheme by the corporate debtor is independent proceeding but filing of the said petition cannot be a ground to not permit the proceeding under Section 7 which are being halted and obstructed by one or other attempts by corporate debtor and other applicants as noted above.** It is further noticed that the case of the corporate debtor as noticed from the record, it is clear that the RERA registration of the project has already cancelled and there is a dispute of title as claimed by the corporate debtor regarding the land. We, thus, do not find any substance in the submission of the counsel appearing for Respondent No.6 to accept the submission that Section 7 application be further not proceeded with till application under Section 230 of the Companies Act filed by Respondent No.6 be finalised.

17. From sequence of the events as noted above and especially the order of the Hon'ble Supreme Court dated

11.12.2023, it is clear that Section 7 application has to be proceeded and decided in accordance with law and in the facts of the present case, Adjudicating Authority did not commit any error in rejecting the Intervention Petition No.12 of 2024. We, thus, do not find any error in the impugned order. The appeal is dismissed.

23. From the above judgement, it is clear that prayer (h) of the Petitioner to keep the Company Petition (IB) 682/2021 in abeyance till final disposal of this Company Petition under section 230 of the Companies Act, 2013 cannot be granted as the Hon'ble NCLAT has very clearly observed that the petition under Section 230 for a scheme by the corporate debtor is an independent proceeding and filing of this petition cannot be used as a reason to prevent proceedings under Section 7, which are being consistently hindered and obstructed by various attempts from the corporate debtor and other applicants.

24. We are therefore of the view that the Scheme suffers from lack of disclosure of material facts which are essential for the allottees/constituents of the meeting to consider and excludes some class of creditors who are integral to this project and should have a say in the decision making. It is a conditional scheme fraught with too many uncertainties. In the light of the foregoing discussions, the petition stands **dismissed.**

A copy of this order shall be served to the concerned parties.

SD/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)