

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT – III**

**IA/418/2024 & IA/378/2024  
In  
C.P.(IB)/27/I&B/MB/C-III/2019**

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

**IA 418/2024**

**Municipal Corporation of Greater Mumbai  
Through the Assistant Engineer, Water Works**

“L” Ward (I/C), Having Office address at  
“L” Ward Office, S.G. Barve Marg,  
Kurla (West), Mumbai – 400 070

**... Applicant**

**Vs.**

**Abhay Narayan Manudhane,**

*Resolution Professional of  
Housing Development and Infrastructure Limited  
1204, Maker Chamber V, Jamnalal Bajaj Road,  
Nariman Point, Mumbai – 400021*

**... Respondent**

**IA 378/2024**

**Municipal Corporation of Greater Mumbai  
Through the Water Department,**

“S” Ward, MCGM Amenity Building, Lodha  
Complex, Kanjur Village Road, Kanjur  
Marg (East), Mumbai - 400042

**... Applicant**

**Vs.**

**Abhay Narayan Manudhane,**

*Resolution Professional of  
Housing Development and Infrastructure Limited  
1204, Maker Chamber V, Jamnalal Bajaj Road,  
Nariman Point, Mumbai – 400021*

**... Respondent**

*In the matter of*

**Bank of India**

**... Financial Creditor**

**Vs.**

**Housing Development & Infrastructure Limited**

**... Corporate Debtor**

**Order Pronounced on: 11.07.2024**

**CORAM:**

**SHRI CHARANJEET SINGH GULATI  
HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG  
HON'BLE MEMBER (J)**

***Appearances:***

For the Applicant : IA/378/2023 & IA/418/2023  
Adv. Prakash Sehjal a/w Adv. Abhishek  
Khare and Mr. R.P. Shirole

For the Respondent/RP : Mr. Shadab S. Jan a/w Adv. Prerana  
Wagh a/w Adv. Prangana Barva, Mr.  
Mufaddal Paperwala i/b M/s Crawford  
Bayley & Co.

***Per: Charanjeet Singh Gulati, Member (Technical)***

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**ORDER**

**1. IA 418/2024**

- 1.1. This Interlocutory Application has been filed under section 60(5) of the I&B Code, 2016 by the Municipal Corporation of Greater Mumbai ('MCGM') through the Water Department, L ward, seeking following reliefs:
- To pass necessary orders directing the Resolution Professional of the Corporate Debtor i.e. the Respondent herein to consider and accept the claim of Rs.3,59,09,043/- (Rupees Three Crores Fifty-Nine Lakhs Nine Thousand and Forty-Three Only) towards water supply dues submitted by the Applicant in respect of the outstanding dues payable by the Corporate Debtor in the capacity of the statutory creditor.*
  - To condone the delay if any occurred in filing the claim by the Statutory Creditor i.e. the Applicant with the Respondent as laid down under Regulation 12 of the CIRP Regulation;*
  - To condone the delay if any in filing the instant Application before this Tribunal.*

- 1.2. The Corporate Insolvency Resolution Process (CIRP) was initiated against Housing Development and Infrastructure Limited (Corporate Debtor) vide this Tribunal's Order dated 20.08.2019 in CP/27/2019 and Mr. Abhay Narayan Manudhane (Respondent) was appointed as the Interim Resolution Professional (IRP) and was subsequently confirmed as the Resolution Professional (RP).
- 1.3. It is submitted that the Corporate Debtor is the Owner/Developer of various properties which are situated within the limits of the MCGM, and the Water Department of MCGM has provided the Corporate Debtor with a water connection since 2006. The Corporate Debtor is liable to pay statutorily dues of the water supply to the Applicant in respect of various properties that are owned/developed or under development by the Corporate Debtor. However, the Corporate Debtor has failed to pay the dues and an amount of Rs.3,59,09,043/- is outstanding as of 19.01.2024.

**2. I.A. No. 378**

- 2.1 This Interlocutory Application has been filed u/s section 60(5) of the I&B Code, 2016 by the Municipal Corporation of Greater Mumbai ('MCGM') through the Water Department, S ward, seeking following reliefs:
- a. *To pass necessary orders directing the Resolution Professional of the Corporate Debtor i.e. the Respondent herein to consider and accept the claim of Rs.1,03,52,710/- (One Crore Three Lakhs Fifty-Two Thousand Seven Hundred and Ten only) towards water supply dues submitted by the Applicant in respect of the outstanding dues payable by the Corporate Debtor in the capacity of the statutory creditor;*
  - b. *To condone the delay if any occurred in filing the claim by the Financial Creditor i.e. the Applicant with the Respondent as laid down under Regulation 12 of the CIRP Regulation;*
  - c. *To condone the delay if any in filing the instant Application before this Tribunal.*

- 2.2 The total outstanding claim of the Water department of the MCGM with respect to “Dreams the Mall”, from FY 2013-2014 to 2019-2020, is Rs.1,03,52,710/-. Further, the Water Department is consolidating the amount for the period of 21.02.2022 till 22.09.2023.
- 2.3 The Applicant has sent a Demand Notice dated 14.01.2020 to Mr. Wariyam Singh stating that the outstanding amount is pending since January/ February of 2013-2014 till October/November of 2018-2019. The outstanding amount of Rs.88,25,006/- is still pending which he was to pay within 3 days of the receipt of the said letter.
- 2.4 The Applicant has made a representation to Mr. Wariyam Singh via letters dated 19.08.2020 regarding the payment of dues under the “Abhay Yojna” Scheme. The Applicant states that as per the contents of the said letter on the balance amount of Rs.1,03,52,710/-, the department has levied an interest of 2% as per Section 202 of Municipal Corporation Act, 1888 but as per the scheme, for the duration 15.02.2020 till 31.12.2020, the interest of 2% has been forgiven amounting to Rs.61,09,087/-. Therefore, the final balance amount that must be paid amounts to Rs.42,43,623/-.
- 2.5 The Corporate Debtor HDIL is liable to pay statutory dues, outstanding of the water supply to Applicant (MCGM) since 2013 in respect of various properties that are Owned/Developed or Under Development by the Corporate Debtor which they have failed to do despite MCGM providing them with multiple opportunities for the same.

**3. Submissions of the Applicant:**

Since the issues involved herein is common and the MCGM is the Applicant in both the applications, commons submissions have been made which are summarized below:

- 3.1 It is submitted that the claim of the Applicant is the first charge under Section 212 of the Mumbai Municipal Corporation (MMC) Act, 1888. The amount payable to the Applicant includes pending dues and penalty amount as per the provisions of the MMC Act and that the amount mentioned hereinabove will change till the realization of the actual payment.
- 3.2 The Applicant (MCGM) being a State body, falls under the category of a Statutory Creditor and a Secured Creditor. Under the I&B Code, the definition of the Secured Creditor does not exclude any Government Authority.
- 3.3 It is submitted that the Resolution Professional is duty bound by law, to follow the process as mandated under the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and that he has failed to verify the liabilities of the Corporate Debtor through the Book of Accounts under Regulation 4 thereof. Further, the Resolution Professional does not have the Authority to reject claims of Statutory creditors, and it is the settled position of law that if a Resolution Plan ignores the statutory demands payable to any State or Central Government, the Adjudicating Authority is bound to reject such resolution plan.
- 3.4 The Applicant further submits that Regulation 12(2) of the CIRP Regulations, 2016 provides that a Creditor can submit the proof of claim even after the stipulated date mentioned in the public announcement and such claim can be filed till the approval of a resolution plan by the CoC. In the present case, the resolution plan of the Corporate Debtor has not been approved by the COC and therefore, the Respondent must accept the claim of the Applicant in terms of the regulation stated hereinabove and probably on consideration that every

claimant may not notice the public announcement or fail to submit claim by the last date.

**4. Submission of Respondent/Resolution Professional:**

The Resolution Professional has filed a common reply in respect of both these Interlocutory Applications, which is briefly extracted here in under:

- 4.1 At the outset, MCGM has never filed its claim for Rs.3,59,09,043/- and Rs.1,03,52,710 in the requisite Form and the said claim has been raised for the first time only after the final hearing of the Interlocutory Applications for approval of the Resolution Plan by this Tribunal commenced.
- 4.2 The objection raised by MCGM does not fall within the ambit of Section 30(2) of the Code and thus would be irrelevant for the purpose of deciding the legality of the Resolution Plans.
- 4.3 The bills/invoices as annexed to IA No. 378 of 2024, are not in the name of HDIL but in the name of one Mr. Waryam Singh, Dreams Mall.
- 4.4 The claim has been filed at a very belated stage and includes claims of MCGM, that calculated till 19<sup>th</sup> January 2024, and not until the date of initiation of CIRP by HDIL. Therefore, claims of MCGM post initiation of CIRP have also been included.
- 4.5 The claim of MCGM constitutes as an Operational debt. Section 5(21) of the Code, while defining what constitutes as an operational debt clearly lays down that any dues towards Central Government, State Government and Local Authorities would constitute as an operational debt.
- 4.6 Furthermore, as per the contention of MCGM, the claim of MCGM as per section 212 of the MMC Act, should be considered as a secured financial

debt. Reliance has been placed on the judgment of **Hirabhai Ashabhai Patel & Ors. Vs. State of Bombay & Ors. (1954 SCC OnLine Bom 77)** wherein it was held that dues towards water charges/ taxes cannot be considered as a secured debt under section 212 of MCGM Act, and MCGM cannot have a charge on the property/asset for amounts due towards water charges/taxes.

### **Analysis & Findings**

5. We have heard the Ld. Counsel for the Applicant and the Respondent/RP. Perused the record. It is noted that in both these IAs, the Applicant is the Water Department of MCGM albeit different Wards of the Department and the issue is identical. The RP has filed common reply and both IAs were heard together. Accordingly, this Tribunal deems it fit to decide these two IAs by a common order.
6. From the facts of the case, it is noted that pursuant to insolvency petition filed by the Bank of India, Financial Creditor under section 7 of the I&B Code, Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor ('CD') was initiated vide order dated 20.08.2019 and thereafter the Resolution Professional in accordance with the applicable Regulations invited claims and collated it for necessary action.
7. The present two IAs have been filed on 22.01.2024. Further, it is the submission of the RP that the MCGM has never filed its claim for Rs. 3,59,09,043/- and Rs. 1,03,52,710/- in the requisite Form and the said claims have been raised for the first time only after the final hearing of the Interlocutory Applications for approval of the Resolution Plan by this Tribunal commenced. We also note that though the Applicant states that a claim to the RP can be filed before the approval of the Resolution Plan by the CoC as per Regulation 12 of the CIRP Regulations and seeks condonation of delay for that purpose, we nowhere in the application find any document/form evidencing submission of claim to the RP in the prescribed form. It therefore means that the claims in prescribed form

have not been filed by the Applicant any time before the resolution plan has been approved by the CoC and even till date.

8. As already noted above, the instant IAs have been filed in 22.01.2024 whereas Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated on 20.08.2019, which shows that there has been a delay of around four years. At this belated stage, if the claims are admitted, it would take entire process of Corporate Insolvency Resolution Process backward and the very intention of the speedy resolution of the Corporate Debtor as enshrined in the provisions of the I&B Code would fail.
9. It is relevant to refer to certain Regulations of the CIRP Regulations that govern submissions of claims by creditors to the RP:

**12. Submission of proof of claims.**

*(1) A creditor shall submit claim with proof on or before the last date mentioned in the public announcement. Provided that a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit his claim with proof to the interim resolution professional or the resolution professional, as the case may be, up to the date of issue of request for resolution plans under regulation 36B or ninety days from the insolvency commencement date, whichever is later: Provided further that the creditor shall provide reasons for delay in submitting the claim beyond the period of ninety days from the insolvency commencement.”*

**12A. Updation of claim.**

*A creditor shall update its claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.*

**13. Verification of Claims**

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*(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.”*

10. It is explicit from the above referred Regulations that it mandates the creditors to file their claim to the RP within the prescribed period and neither the Code nor the Regulations permit the RP to consider a claim received after the mandated timeline and at such a belated stage.
11. In this regard, we refer to the Judgement of **Committee of Creditors of Essar Steel Vs. Satish Kumar Gupta and Ors. (2020) 8 SCC 53**, wherein, the Hon'ble Supreme Court has held that-

*“105. Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors, it shall be binding on all stakeholders including guarantors. This is for the reason that this provision ensures at the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were.*

*107. ....A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove...”*

12. Further, the Hon'ble Supreme Court in the case of **RPS Infrastructure Limited vs. Mukul Kumar and Anr. (2023) 10 SCC 718**, has held that-

*“19. The second question is whether the delay in the filing of the claim by the appellant ought to have been condoned by the Respondent No. 1. The IBC is time bound process. There are, of course, certain circumstances in which the time can be increased. The question is whether the present case would fall within those parameters. The delay on the part of the appellant is of 287 days.*

*The appellant is a commercial entity. That they were litigating against the corporate debtor is an undoubted fact. We believe that the appellant ought to have been vigilant enough in the aforesaid circumstances to find out whether the corporate debtor was undergoing CIRP. The appellant has been deficient on this aspect. The result, of course, is that the appellant to an extent has been left high and dry.*

*21. The mere fact that the adjudicating authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, the Court cautioned against allowing claims after the resolution plan has been accepted by the CoC.*

*22. We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant."*

13. We would also like to refer to Hon'ble NCLAT's observation in **Harish Polymer Product vs. George Samuel & Anr [Company Appeal (AT) (Ins) No. 420/2021]** has observed as follows:

*"10. ... if at belated stage when the Resolution Applicants are already before the Committee of Creditors with their Resolution Plan(s) if new claims keep popping up and are entertained, the CIRP would be jeopardized and Resolution Process may become more difficult. Keeping in view the object of the 'I&B Code' which is Resolution of the Corporate Debtor in time bound manner to maximize value, if such requests of applicants like Appellant are accepted the purpose of 'I&B Code' would be defeated."*

14. The aforesaid dictums make it clear that the admission of claims at a belated stage could potentially perpetuate the Corporate Insolvency Resolution Process (CIRP) of a Corporate Debtor endlessly, leading to adverse consequences for the insolvency regime. Thus, the belated claim

of the Applicant cannot be directed to be admitted in view of the Resolution Plans being already approved by the CoC.

15. The Applicant submitted that it had sent various demand notices calling for payments of the outstanding water supply charges. However, we note that though the demand notices are dated 14.01.2020, 19.08.2020, 14.11.2020, 26.02.2021 and 07.06.2021, the same were not addressed to the Corporate Debtor or the RP but was sent to one Mr. Wariyam Singh, who is purportedly connected to the Dream Malls Project. This cannot in any way be construed as a claim submitted to the RP in accordance with I&B Code and applicable Regulations.
16. The RP is bound under the I&B Code to carry out a wide range of functions and duties which includes collation and verification of claims received from the creditors. Regulation 13(1) of the CIRP Regulations clearly states that *“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.”*
17. During submissions, MCGM had relied on **State Tax Officer vs. Rainbow Papers Limited [Civil Appeal No. 1661 of 2021]** to contend that the authority has no obligation to file a claim. It is pertinent here to reproduce the relevant paragraphs of the said judgement:

*“22. Prior to amendment by Notification No.IBBI/2018-19/GN/REG013 dated 3<sup>rd</sup> July 2018, with effect from 4<sup>th</sup> July, 2018, Sub-Regulation (1) of Regulation 12 read with Sub-Regulation (2) provided that a creditor shall submit proof of claim on or before the last date mentioned in the public announcement. Sub-Regulation (2) was amended with effect from 4<sup>th</sup> July, 2018 and now reads “a*

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*creditor shall submit claim with proof on or before the last date mentioned in the public announcement”.*

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24. *In this case, claims were invited well before the 5<sup>th</sup> October, 2017 which was the last date for submission of claims. Under the unamended provisions of Regulation 12(1), the Appellant was not required to file any claim. Read with Regulation 10, the appellant would only be required to substantiate the claim by production of such materials as might be called for. The time stipulations are not mandatory as is obvious from Sub-Regulation (2) of Regulation 14 which enables the Interim Resolution Professional or the Resolution Professional, as the case may be, to revise the amounts of claims admitted, including the estimates of claims made under Sub-Regulation (1) of the said Regulation as soon as might be practicable, when he came across additional information warranting such revision.*

25. *In this case, at the cost of repetition, it may be noted that there was no obligation on the part of the State to lodge a claim in respect of dues which are statutory dues for which recovery proceedings have also been initiated. The appellants were never called upon to produce materials in connection with the claim raised by the Appellants towards statutory dues. The Adjudicating Authority as well as the Appellate Authority/NCLAT misconstrued the Regulations.”*

18. From a bare reading of the above judgment, it is clearly understood that the observations therein were pertaining to the unamended provisions under Regulation 12 of the CIRP Regulations, 2016.
19. By Notification No. IBBI/2018-19/GN/REG013 dated 03.07.2018 (with effect from 04.07.2018), the CIRP Regulations, 2016 was amended and the words “*shall submit proof of claim*” in Regulations 7, 8, 9 and 12 were substituted with “*shall submit claim with proof*”. Thus, from the effective date of the said amendment i.e. 04.07.2018, it became mandatory for creditors to submit their claim with proof.
20. The observations in **Rainbow Papers** (supra) has a reference to pre-amended regulations considering the fact that public announcement in

that case was issued prior to the amendment. Further, the Hon'ble Supreme Court in para 25 of **Rainbow Papers** (supra) as reproduced above in Para 20 has stated that "*in this case, there was no obligation for the State to lodge a claim*" which clearly indicates that the said observations are confined to the facts of that case only. In the present case, the Corporate Debtor was admitted into CIRP on 20.08.2019 i.e. post the amendment dated 04.07.2018 and therefore, is governed by the amended provisions of the CIRP Regulations, 2016. In view thereof, the **Rainbow Papers** (supra) judgment, to the extent above, has no applicability in the present case.

21. The Applicant contended that the RP ought to have verified claims through books of accounts of the Corporate Debtor. In this regard, we refer to the Hon'ble NCLAT's observations in **Kalyan Dombivali Municipal Corporation vs. NRC Limited & Anr. [Company Appeal (AT) (Ins) No. 223 of 2021]**:

*"11. ... The Appellant has not denied the fact that he did not file any claim but its whole case is that the books of accounts of the Corporate Debtor would have reflected the liability of the Appellant but the RP did not examine the books of accounts and included the same in the IM and hence, the resolution plan is not in conformity with the statutory requirement of the Code.*

*\*\*\**

*13. ... in the present case public announcement for inviting claim was made on 07.12.2018 much after the amendment in Regulation 12 of the Regulations which now provides that a creditor shall submit a claim with proof. Meaning thereby, after the amendment in Regulation 12 filing of the claim has become a sine quo non. It is pertinent to mention that being a statutory authority, it cannot feign ignorance about the necessity to file claim after having been informed by the RP of the CIRP proceedings vide letter dated 11.12.2018. As a matter of fact, the Appellant is to be blamed for not initiating the steps to set up its claim before the RP. Moreover, it has now been settled that if the claims are not submitted to the RP and are not part of the resolution plan then the same shall be deemed to have been extinguished."*

22. We further refer to the Hon'ble NCLAT's judgement in **Alok Kailash Saksena, RP vs. State of Karnataka [Company Appeal (AT) (Ins) No. 170 of 2021]** wherein it was held as follows:

*"39. It is an admitted fact that the I.A. No.85 of 2021 filed by the Respondent herein, more than 800 days after 'initiation' of 'CIRP' and almost one year after approval of plan by the 'CoC'. Further, it is an admitted fact that the Respondent had not filed any claim in the proper format within the time before the RP. The 'Adjudicating Authority' vide order dated 26.10.2018 initiated 'CIRP' against the 'Corporate Debtor' and the 'Resolution Professional' published the 'Public Announcement' and invited 'Claims' from all creditors in the month of November, 2018. The paper advertisement has been enclosed at Annexure A-7 page 204. In spite of said advertisement in the newspaper the Respondent failed to file its claim before the 'RP' nor filed any application before the 'Adjudicating Authority' during the CIRP proceeding. The RP collated and verified the claims received by it and on the basis of same the 'CoC' was constituted in December, 2018. After deliberations on the plans of the Prospective Resolution Applicants (in short 'PRAs'), the 'CoC' approved one of the plans and the CIRP process has been completed.*

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*42. It is apt to note that one of the most crucial principles is that **'Time is Essence' in any Resolution Process within which the process has to be completed in a time bound manner as contemplated under the 'Code'**. The Hon'ble Supreme Court in the landmark judgment of M/s Innoventive Industries Ltd. Vs. ICICI Bank & Anr. Reported in (2018) 1 SCC 407 at paras 12, 16 & 31 held that "it can be seen that time is time of essence in seeing whether the corporate body can be put back on its feet, so as to stave off liquidation".*

*43. **Therefore, this 'Tribunal' finds that the 'Claim' of the Respondent is belated and cannot be considered** and the finding of the 'Adjudicating Authority' in directing the 'Appellant / RP' to place the 'Claim' of the Respondent in 'Form-C' before 'CoC' per se illegal and unsustainable. Accordingly, the point is answered against the Respondent.*

*44. The next point for consideration is whether the Resolution Professional has power to admit the Claims suo-motu?*

45. *The I & B Code, 2016, prescribes the duties to be performed by the 'Interim Resolution Professional' and 'Resolution Professional' as per Section 18 and Section 25 of the Code. The IBBI CIRP Regulations prescribed the procedure to be adopted followed. As per Chapter IV Regulation 7 the claims by 'Operational Creditor' to be submitted with proof to the 'IRP' in 'Form-B' and as per Regulation 8 of the Regulations the 'Financial Creditors' shall submit the 'Claims' to the 'IRP' in 'Form-C'. After receipt of claims, the 'IRP' shall verify the 'Claims' in accordance with Regulation 13 and the 'IRP' maintained 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. **There is no such provision that the 'IRP' shall admit the Claim without filing a Claim either in 'Form-B' or in 'Form-C'. Therefore, this 'Tribunal', is of the view that the 'IRP' suo-motu cannot admit the 'Claims' without their being a 'Claim' by the 'Claimants' viz. 'Operational Creditors', 'Financial Creditors' and the 'Claims' by other 'Creditors'. Every 'Claim' shall be submitted by the 'Claimant' with proof. Accordingly, the issue is answered.***

**(Emphasis Provided)**

23. Thus, it is clear that the RP has to collate and verify claims only after receipt of such claim from the creditors within the time prescribed. Since the Applicant herein has not filed any claim to the RP, the prayer seeking admission of the Applicant's claim by the RP is rejected.
24. Considering the same, it is not necessary to deal with the case any further, however, since the Applicant has specifically pleaded it to be a 'secured creditor' under the Code, we would like to touch upon the same. It is noted that as per the contention of MCGM, the claim of MCGM as per section 212 of the Mumbai Municipal Corporation (MMC) Act, 1888 should be considered as a secured financial debt. However, the RP, relying on the judgment of **Hirabhai Ashabhai Patel & Ors. Vs. State of Bombay & Ors. (1954 SCC OnLine Bom 77)** (paragraph no. 21) argues

that dues towards water charges/ taxes cannot be considered as a secured debt under section 212 of MMC Act, and MCGM cannot have a charge on the property/asset for amounts due towards water charges.

25. Section 212 of the Mumbai Municipal Corporation Act, 1888 is reproduced below:

**“212. Property taxes to be a first charge on premises on which they are assessed.**

*Property taxes due under this Act in respect of any building or land shall, subject to the prior payment of the land revenue, if any, due to the State Government thereupon be a first charge in the case of any building or land held immediately from the Government upon the interest in such building or land of the person liable for such taxes and upon the goods and chattels, if any, found within or upon such building or land and belonging to such person; and, in the case of any other building or land, upon the said building or land and upon the goods and chattels, if any, found within or upon such building or land and belonging to the person liable for such taxes.”*

26. It is relevant to quote relevant portion of paragraph 21 of **Hirabhai Ashabhai** (supra) which is reproduced below:

*“21. ... our Court has held in -- 'Bombay Municipality v. Haji Eisa Haji Oosman', AIR 1936 Bom 48 (A), that a water-charge under Section 169 is not a tax and, therefore, it cannot be a charge on the property under Section 212.”*

27. As can be seen from the above that the Hon'ble Bombay High Court in **Hirabhai Ashabhai** (supra) has relied on **Bombay Municipality vs. Haji Eisa Haji** wherein it has been held as follows:

*“Mr. Coltman has contended that Section 212 provides a method of recovery. I do not agree with him. Section 212 imposes a charge; and unless you have got a charge, you cannot take steps to enforce that charge. This being a charging Act, I think it must be construed strictly. It would have been quite easy to provide in the Act that the charge for water supplied by measurement should be deemed to be a property-tax or should be upon the same footing as a water-tax, with which Section 140 deals. There is no such provision in the Act. I do not think we are justified, therefore, in treating the charge for water supplied by measurement as a*



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*water-tax, when the Act merely states that sums payable on account of such water shall be recoverable "as if it were an arrear of water-tax." Accordingly, I think that the appellants fail in their contention that there is a charge on the premises in respect of the water supplied by measurement, and that this appeal fails upon that point."*

28. It is clear from the averments in the applications that the amount claimed therein by the Applicant are towards water charges and not tax. Thus, MCGM cannot be considered as a secured creditor under section 212 of the Mumbai Municipality Corporation Act, 1888.
29. In the result, for the reasons discussed above, the present applications are liable to be dismissed.
30. Accordingly, the present applications are **dismissed**. No order as to cost.

Sd/-

**Charanjeet Singh Gulati**  
**(Member Technical)**

Sd/-

**Lakshmi Gurung**  
**(Member Judicial)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH COURT-III**

**I. A. No. 3425 of 2022, I. A. No. 343 of 2023, I. A. No. 942 of 2023, and  
I. A. No. 1056 of 2023**

**IN**

**C. P. No. 27/IB/C-III/2019**

Under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016.

**I.A. 3425 of 2022**

**Unity Small Finance Bank Limited** )  
2<sup>nd</sup> Floor, Centrum House, CST Road, )  
Vidyanagari Marg, Kalina, Santacruz )  
(West), Mumbai, Maharashtra – 400098 ) **... Applicant**

**Vs**

**Mr. Abhay Narayan Manudhane & Ors.)**  
Resolution Professional of Housing )  
Development and Infrastructure Ltd . )  
1204, Maker Chamber V, Jamnalal Bajaj )  
Road, Nariman Point, Mumbai - 400021 ) **... Respondent**

**I.A. No. 343 of 2023**

**Unity Small Finance Bank Limited** )  
2<sup>nd</sup> Floor, Centrum House, CST Road, )  
Vidyanagari Marg, Kalina, Santacruz )  
(West), Mumbai, Maharashtra – 400098 ) **... Applicant**

**Vs**

**1. Mr. Abhay Narayan Manudhane & Ors.)**  
Resolution Professional of Housing )  
Development and Infrastructure Ltd . )  
1204, Maker Chamber V, Jamnalal Bajaj )  
Road, Nariman Point, Mumbai - 400021 ) **... Respondent 1**

**2. Bank of India** )  
Star House, 7<sup>th</sup> Floor, C-5, G- Block )  
BKC, Bandra (East), Mumbai-400051 ) **... Respondent 2**

- 3. Central Bank of India** )  
Stressed Assets Management Branch, )  
Ground Floor, Chandermukhi Building, )  
Nariman Point, Mumbai – 400021 ) **... Respondent 3**
- 4. Canara Bank** )  
(Erstwhile Syndicate Bank) )  
Stressed Assets Management Branch )  
Maker Tower F, 2<sup>nd</sup> Floor, Cuffe Parade, )  
Mumbai - 400005 ) **... Respondent 4**
- 5. Indian Bank** )  
(Erstwhile Allahabad Bank) )  
SAM Branch New Delhi, Ground Floor, )  
17<sup>th</sup> Parliament )  
Road, Nariman Point, Mumbai - 400021 ) **... Respondent 5**
- 6. IL&FS Financial Services Limited** )  
The IL&FS Financial Centre, Plot No. C-22 )  
G Block BKC, Bandra (East) Mumbai - )  
400051 ) **... Respondent 6**
- 7. Indian Bank** )  
Indian Building, SAM Branch New Delhi ) **... Respondent 7**
- 8. IDBI Bank Limited** )  
IDBI Tower, WTC Complex, Cuffee Parade )  
Mumbai - 400005 ) **... Respondent 8**
- 9. UCO Bank** )  
3<sup>rd</sup> Floor, UCO Bank Building, 359, D N )  
Road, Fort, Mumbai- 400001 ) **... Respondent 9**
- 10. Canara Bank** )  
Ground Floor, DDA Building, Nehru )  
Place, New Delhi - 110019 ) **... Respondent 10**
- 11. Bank of Baroda** )  
(Erstwhile Vijaya Bank) )  
Alka Chambers, SV Road, Andheri (West), )  
Mumbai - 400058 ) **... Respondent 11**

- 12. Bank of Baroda** )  
(Erstwhile Dena Bank) )  
Dena Corporate Centre, Corporate )  
Business, Branch- I, Ground Floor, )  
C-10, G Block, BKC, Bandra (East), )  
Mumbai- 400051 ) **... Respondent 12**
- 13. Life Insurance Corporation of India** )  
Investment (M&A) Department, 6<sup>th</sup> Floor, )  
Jeevan Bhima Marg, Mumbai -400021 ) **... Respondent 13**
- 14. Punjab National Bank** )  
(Erstwhile Oriental Bank of Commerce) )  
MCB M Block, Connaught Place, New )  
Delhi – 110001 ) **... Respondent 14**
- 15. Union Bank of India** )  
Central Office, Mumbai, Treasury Branch, )  
3<sup>rd</sup> Floor, 239, Vidhan Bhavan Marg, )  
Mumbai – 400050 ) **... Respondent 15**
- 16. Union Bank of India** )  
Hill Road, Bandra West Branch, 28A, )  
Gulsherabad Building, Ramdas Nayak )  
Marg, Bandra (West), Mumbai- 400050 ) **... Respondent 16**
- 17. Yes Bank** )  
Yes Bank Tower, IFC 2, 26<sup>th</sup> Floor, )  
Senapati Bapat Marg, Elphinstone (W), )  
Mumbai – 400013 ) **... Respondent 17**
- 18. Suraksha ARC** )  
20<sup>th</sup> Floor, 'A' Wing, Naman Midtown, )  
Senapati Bapat Marg, Prabhadevi, )  
Mumbai – 400013 ) **... Respondent 18**
- 19. India Infrastructure Finance Co. Ltd.)**  
5th Floor, Block 2, Plate A & B, NBCC )  
Tower, East Kidwai Nagar, New Delhi ) **... Respondent 19**
- 20. Indian Bank** )  
(Erstwhile Allahabad Bank, SAM Mumbai) )  
2<sup>nd</sup> Floor, 37, Mumbai Samachar Marg, )

- Fort, Mumbai – 400051 ) **... Respondent 20**
- 21. Jade Agricultural Company Pvt Ltd )**  
601, Hallmark Business Plaza, Opp. Guru )  
Nanak Hospital, Bandra (East), Mumbai- )  
400051 ) **... Respondent 21**
- 22. Kotak Mahindra Prime Limited )**  
27 BKC, C 27, G Block, BKC, Bandra )  
(East), Mumbai – 400051 ) **... Respondent 22**
- 23. Home Buyers Represented by )**  
**Authorized Representative Mr. Manoj )**  
**Kumar Agarwal )**  
B-83, Andheri Green Field Tower CHS )  
Limited, Jogeshwari Vikhroli Link Road, )  
Near Poonam Nagar, Andheri East, )  
Mumbai – 400093 ) **... Respondent 23**

**I.A. No. 942 of 2023**

- Central Bank of India )**  
Stressed Assets Management Branch-II, )  
2<sup>nd</sup> Floor, NCL Building, Bandra Kurla )  
Complex, Mumbai – 400051 ) **... Applicant**

**Vs**

- 1. Mr. Abhay Narayan Manudhane & Ors. )**  
Resolution Professional of Housing )  
Development and Infrastructure Ltd . )  
1204, Maker Chamber V, Jamnalal Bajaj )  
Road, Nariman Point, Mumbai - 400021 ) **... Respondent 1**
- 2. Bank of India )**  
Star House, 7<sup>th</sup> Floor, C-5, G- Block )  
BKC, Bandra (East), Mumbai-400051 ) **... Respondent 2**
- 3. Canara Bank )**  
(Erstwhile Syndicate Bank) )  
Stressed Assets Management Branch )  
Maker Tower F, 2<sup>nd</sup> Floor, Cuffe Parade, )

Mumbai - 400005 )	<i>... Respondent 3</i>
<b>4. Indian Bank</b> )	
(Erstwhile Allahabad Bank) )	
SAM Branch New Delhi, Ground Floor, )	
17 <sup>th</sup> Parliament )	
Road, Nariman Point, Mumbai - 400021 )	<i>... Respondent 4</i>
<b>5. IL&amp;FS Financial Services Limited</b> )	
The IL&FS Financial Centre, Plot No. C-22 )	
G Block BKC, Bandra (East) Mumbai - )	
400051 )	<i>... Respondent 5</i>
<b>6. Indian Bank</b> )	
Indian Building, SAM Branch New Delhi )	<i>... Respondent 6</i>
<b>7. IDBI Bank Limited</b> )	
IDBI Tower, WTC Complex, Cuffee Parade )	
Mumbai - 400005 )	<i>... Respondent 7</i>
<b>8. UCO Bank</b> )	
3 <sup>rd</sup> Floor, UCO Bank Building, 359, D N )	
Road, Fort, Mumbai- 400001 )	<i>... Respondent 8</i>
<b>9. Canara Bank</b> )	
Ground Floor, DDA Building, Nehru )	
Place, New Delhi - 110019 )	<i>... Respondent 9</i>
<b>10. Bank of Baroda</b> )	
(Erstwhile Vijaya Bank) )	
Alka Chambers, SV Road, Andheri (West), )	
Mumbai - 400058 )	<i>... Respondent 10</i>
<b>11. Bank of Baroda</b> )	
(Erstwhile Dena Bank) )	
Dena Corporate Centre, Corporate )	
Business, Branch- I, Ground Floor, )	
C-10, G Block, BKC, Bandra (East), )	
Mumbai- 400051 )	<i>... Respondent 11</i>
<b>12. Life Insurance Corporation of India</b> )	
Investment (M&A) Department, 6 <sup>th</sup> Floor, )	
Jeevan Bhima Marg, Mumbai -400021 )	<i>... Respondent 12</i>

- 13. Punjab National Bank** )  
(Erstwhile Oriental Bank of Commerce) )  
MCB M Block, Connaught Place, New )  
Delhi – 110001 ) **... Respondent 13**
- 14. Union Bank of India** )  
Central Office, Mumbai, Treasury Branch, )  
3<sup>rd</sup> Floor, 239, Vidhan Bhavan Marg, )  
Mumbai – 400050 ) **... Respondent 14**
- 15. Union Bank of India** )  
Hill Road, Bandra West Branch, 28A, )  
Gulsherabad Building, Ramdas Nayak )  
Marg, Bandra (West), Mumbai- 400050 ) **... Respondent 15**
- 16. Yes Bank** )  
Yes Bank Tower, IFC 2, 26<sup>th</sup> Floor, )  
Senapati Bapat Marg, Elphinstone (W), )  
Mumbai – 400013 ) **... Respondent 16**
- 17. Suraksha ARC** )  
20<sup>th</sup> Floor, ‘A’ Wing, Naman Midtown, )  
Senapati Bapat Marg, Prabhadevi, )  
Mumbai – 400013 ) **... Respondent 17**
- 18. India Infrastructure Finance Co. Ltd.)**  
5th Floor, Block 2, Plate A & B, NBCC )  
Tower, East Kidwai Nagar, New Delhi ) **... Respondent 18**
- 19. Indian Bank** )  
(Erstwhile Allahabad Bank, SAM Mumbai) )  
2<sup>nd</sup> Floor, 37, Mumbai Samachar Marg, )  
Fort, Mumbai – 400051 ) **... Respondent 19**
- 20. Jade Agricultural Company Pvt Ltd )**  
601, Hallmark Business Plaza, Opp. Guru )  
Nanak Hospital, Bandra (East), Mumbai- )  
400051 ) **... Respondent 20**
- 21. Kotak Mahindra Prime Limited** )  
27 BKC, C 27, G Block, BKC, Bandra )  
(East), Mumbai – 400051 ) **... Respondent 21**

- 22. Unity Small Finance Bank Limited** )  
2<sup>nd</sup> Floor, Centrum House, CST Road, )  
Vidyanagari Marg, Kalina, Santacruz (East))  
Mumbai – 400098 ) **... Respondent 22**
- 23. M/s Khyati Realtors Pvt. Ltd.,** )  
**M/s Dosti Realty Ltd. & M/s Suraksha** )  
**Asset Reconstruction Ltd.** )  
**RA for “Majestic Towers”- Vertical I** )  
301, Manek Bhavan, Plot No. 68, Hindu )  
Colony, Dadar (East), Mumbai – 400014 ) **... Respondent 23**
- 24. M/s Khyati Realtors Pvt. Ltd.,** )  
**M/s Dosti Realty Ltd. & M/s Suraksha** )  
**Asset Reconstruction Ltd.** )  
**RA for “Whispering Towers”- Vertical II** )  
301, Manek Bhavan, Plot No. 68, Hindu )  
Colony, Dadar (East), Mumbai – 400014 ) **... Respondent 24**
- 25. M/s Khyati Realtors Pvt. Ltd.,** )  
**M/s Dosti Realty Ltd. & M/s Suraksha** )  
**Asset Reconstruction Ltd.** )  
**RA for “Premier Kurla”- Vertical III** )  
301, Manek Bhavan, Plot No. 68, Hindu )  
Colony, Dadar (East), Mumbai – 400014 ) **... Respondent 25**
- 26. M/s Adani Properties Pvt. Ltd.** )  
**RA for “Project BKC” – Vertical IV** )  
Adani Corporate House, Shantigram, Nr. )  
Vaishno Devi Circle, S.G. Highway, )  
Khodiyar, Ahmedabad, Gujarat- 382421 ) **... Respondent 26**
- 27. M/s Dev Land & Housing Pvt. Ltd.** )  
**RA for “HDIL Towers”- Vertical V** )  
10<sup>th</sup> Floor, Dev Plaza, Opp. Andheri Fire )  
Station, S. V. Road, Andheri (West), )  
Mumbai – 400058 ) **... Respondent 27**
- 28. M/s Adani Properties Pvt. Ltd.** )  
**RA for “Shahad Lands” – Vertical VII** )  
Adani Corporate House, Shantigram, Nr. )  
Vaishno Devi Circle, S.G. Highway, )



Khodiyar, Ahmedabad, Gujarat- 382421 ) **... Respondent 28**

**29. Home Buyers Represented by** )  
**Authorized Representative Mr. Manoj** )  
**Kumar Agarwal** )

B-83, Andheri Green Field Tower CHS )  
Limited, Jogeshwari Vikhroli Link Road, )  
Near Poonam Nagar, Andheri East, )  
Mumbai – 400093 )

**... Respondent 29**

**I.A. No. 1056 of 2023**

**Whispering Towers Flat Owners Welfare** )  
**Association** )

B-704, Runwal Pride CHSL, Behind R Mall )  
LBS Marg, Mulund (W), Mumbai-400080 )

**... Applicant**

**Vs**

**Mr. Abhay Narayan Manudhane** )

Resolution Professional of Housing )  
Development and Infrastructure Ltd. )

1204, Maker Chamber V, Jamnalal Bajaj )  
Road, Nariman Point, Mumbai - 400021 )

**... Respondent**

**IN THE MATTER OF**

**Bank of India**

*... Financial Creditor*

**Vs**

**Housing Development and Infrastructure Limited**

*... Corporate Debtor*

**Order pronounced on: 11.07.2024**

**Coram:**

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati, Member (Technical)

**Appearances:**

- For the Applicant : IA/343/2023 & IA/3425/2022  
Senior Advocate Keric Setalrad a/w Adv. Shyam Kapadia a/w Aniruth Pursothaman, Mr. Atul Sharma, Mr. Sahil Saiyed, Ms. Riya Savla
- IA/942/2023  
Adv. Rathina Maravarman a/w Akansha Hambir
- IA/1056/2023  
Ms. Hiral Thakkar i/b. Adv. Sowmya Roop Sanyal
- For the RP : IA/3425/2022, IA/343/2023, IA/942/2023 & IA/1056/2023  
Mr. Shadab S. Jan a/w Adv. Prerana Wagh a/w Adv. Prangana Barva, Mr. Mufaddal Paperwala i/b M/s Crawford Bayley & Co.
- For the Respondents : IA/343/2023 & IA/942/2023  
*For CoC:*  
Adv. Rohit Gupta a/w. Adv. Harsh L Behany a/w. Mr. Yash Cheeda, Adv. Prachi Sanghvi i/b H N Legal.  
*For Successful Resolution Applicant:*  
Adv. Aditya Udeshi a/w. Adv. Rahul Sanghavi i/b M/s Sanjay Udeshi & Co.

**Per: Sh. Charanjeet Singh Gulati, Member (Technical)**

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1. The Interlocutory Applications (IA) bearing no. 3425/2022 and 343/2023 have been filed by Unity Small Finance Bank Limited (**Unity Bank**) seeking fresh valuation of the Corporate Debtor and rejection of

project-wise resolution of the Corporate Debtor adopted by the Committee of Creditors (CoC), respectively. The IA no. 1056/2023 is moved by Whispering Towers Flat Owners Welfare Association (**Whispering Towers**) seeking dismissal of application filed by Unity Bank in IA/343/2023. IA No. 942/2023 is filed by Central Bank of India (**Central Bank**) seeking reliefs similar to those sought by the Unity Bank. All these applications are filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**I&B Code**) read with Rule 11 of National Company Law Tribunal (NCLT) Rules, 2016.

2. The issues involved in the above captioned interlocutory applications are more or less similar in nature and have been filed in respect of same Company Petition. Further, these applications were heard together. Therefore, this Tribunal has considered it fit to dispose of these applications by a common order.

3. **Brief Facts:**

3.1 The Corporate Insolvency Resolution Process (**CIRP**) was initiated against Housing Development and Infrastructure Limited (Corporate Debtor) vide this Tribunal's Order dated 20.08.2019 in CP/27/2019 and Mr. Abhay Narayan Manudhane (**Respondent 1**) was appointed as the Interim Resolution Professional (**IRP**) and was subsequently confirmed as the Resolution Professional (**RP**).

3.2 The RP made public announcement inviting Expression of Interest (EoI) on 16.02.2020, however, no resolution plans were received. In the 12<sup>th</sup> CoC Meeting and 13<sup>th</sup> CoC Meeting held on 18.01.2021 and 30.01.2021 respectively, there were discussions on exploring project-wise resolution of the Corporate Debtor and the RP submitted a brief note on the same as prepared by the legal advisor, M/s Crawford Bayley & Co. stating that there is no bar under the I&B Code to explore project-wise resolution. Accordingly, a resolution was put before the CoC to re-issue notice for

inviting EoI for the Corporate Debtor as a whole along with the option of project-wise resolution. However, the said resolution was not passed by the CoC with the requisite percentage of voting.

- 3.3 Since no resolution plan was received by the RP and the initial attempt of project-wise resolution was also not approved by the CoC, the RP sought views of the CoC members to liquidate the Corporate Debtor. Accordingly, at the 17<sup>th</sup> CoC Meeting held on 07.08.2021, the CoC, with 74.60% of voting approved the resolution to consider liquidation of the Corporate Debtor.
- 3.4 Aggrieved by the same, applications were filed by various associations of home buyers seeking a stay on liquidation proceedings and consideration of project-wise resolution of the Corporate Debtor. After some deliberation, the CoC Members decided to explore project-wise resolution. Accordingly, the CoC, in its 18<sup>th</sup> meeting held on 08.09.2021, passed a resolution authorizing the RP to explore project wise resolution.
- 3.5 Subsequently, the Corporate Debtor was divided into 10 verticals/projects as follows:
- i) Vertical I – Majestic Towers
  - ii) Vertical II – Whispering Towers
  - iii) Vertical III – Premier Exotica
  - iv) Vertical IV – Galaxy Apartment
  - v) Vertical V – BKC Inspire
  - vi) Vertical VI – Paradise City
  - vii) Vertical VII – HDIL Towers (Building)
  - viii) Vertical VIII – Land parcels at Vasai and Virar
  - ix) Vertical IX – Land parcel at Kalyan Shahad (“Shahad Land”)
  - x) Vertical X – Rest of the Corporate Debtor and assets not included.

- 3.6 It is pertinent to mention here that the RP filed extension applications from time to time seeking extension for the resolution process of the Corporate Debtor. However, when the extension application bearing no. 2118/2021 was filed pursuant to the CoC approval for project-wise resolution, this Tribunal vide order dated 29.09.2021 rejected to grant extension. On appeals preferred against said order, the Hon'ble NCLAT, vide order dated 04.01.2022, had set aside the impugned order dated 29.09.2021 and granted 90 days extension in the CIRP Period to proceed further with the project-wise resolution of the Corporate Debtor.
- 3.7 On 25.01.2022, the Punjab and Maharashtra Cooperative Bank Limited (Amalgamation with Unity Small Finance Bank Limited) Scheme 2022 was notified by the Government of India whereby the amalgamation of Punjab and Maharashtra Cooperative Bank Limited with the Applicant Bank was notified. Consequently, the Unity Bank was inducted into the CoC of the Corporate Debtor.
- 3.8 At the 22<sup>nd</sup> CoC Meeting held on 23.02.2022, the RP apprised the CoC of the disparity in the valuation of Vertical IV (Project Galaxy) and Vertical IX (Shahad Land) and suggested appointment of a third independent valuer for the two projects/verticals. Accordingly, Mr. Vinod P. Talathi was appointed for the purpose whose valuation report is stated to be in line with one of the earlier two valuation reports.
- 3.9 At the 25<sup>th</sup> CoC Meeting held on 19.09.2022, a total of 14 resolution plans were submitted. Six Resolution Plans, which were in compliance with the Code and applicable Regulations, were placed before the CoC for approval/rejection. The last date for approval/rejection of the 6 resolution plans and for the liquidation of the remaining verticals/projects of the Corporate Debtor was extended from time to time with the approval of the Tribunal, till 04.11.2022. All the six resolution plans were approved by the CoC with the requisite majority.

Consequently, the RP has filed six applications before this Tribunal seeking approval of the Resolution Plans.

3.10 At the 26<sup>th</sup> CoC Meeting, the RP informed the CoC of the proposals received from Paradise Welfare Association, M/s B-Right Real Estate Limited and Galaxy Apartment 'F' Wing Welfare Association, for Resolution Plans for the remaining verticals of the Corporate Debtor i.e. Verticals IV, VI, VII and X.

4. **I.A. 3425 of 2022**

4.1 IA 3425/2022 was filed by Unity Small Finance Bank Limited (**Unity Bank/Applicant**) seeking the following prayers:

- a) *Direct that the valuation reports conducted by M/s Kakode & Associates, M/s Rakesh Narula & Co and Mr. Vinod P. Talati in respect of the project/vertical of the land parcel at Shahad, Village Maharal, Taluka Kalyan, District Kalyan are disregarded;*
- b) *Direct that Respondent No. 1 conduct a fresh valuation of the land parcel at Shahad, Village Maharal, Taluka Kalyan, District Kalyan with a view of achieving value maximisation of the assets and achieving equitable distribution of assets;*
- c) *Pending the hearing and final disposal of the present Application, direct that the e-voting process in respect of the approval of the resolution plans for the Shahad Land project/vertical be suspended;*
- d) *Pending the hearing and final disposal of the present Application, direct Respondent No. 1 to refrain from disclosing the results of the e-voting (if concluded) in respect of the resolution plans for the Shahad Land vertical/project to the members of the CoC and further refrain from taking any steps in furtherance of the outcome of the e-voting;*
- e) *Ad-interim reliefs in terms of prayer clauses (c) and (d).*

4.2 In IA/3425/2022, the Applicant/Unity Bank made the following submissions:

- i. In the 1<sup>st</sup> CoC Meeting held on 08.01.2020, the CoC approved the appointment of M/s Kakode & Associates and Rakesh Narula & Co. as valuers for determining the fair value and liquidation value

of the Corporate Debtor. At the 22<sup>nd</sup> CoC Meeting held on 24.02.2022, it was informed that out of the 10 verticals, there was significant difference in valuation of two verticals i.e. Project Galaxy Land and the Shahad Land. Therefore, a third independent valuer, Mr. Vinod P. Talathi, was appointed for assessment of the said two verticals.

- ii. The RP informed the CoC that the liquidation value and fair value of the 8 verticals were calculated by arriving at the average of two valuations whereas the liquidation value and fair value of the Verticals Galaxy and Shahad, have been obtained by calculating the average of the lower of the three valuations obtained by the RP.
- iii. However, the Applicant/Unity Bank, who has a security interest in the Shahad Land, was of the view that the valuations of M/s Kakode & Associates and Mr. Vinod P. Talathi were leaning towards undervaluation but valuation of M/s Rakesh Narula & Co was conducted by a more detailed analysis of the Shahad Land.
- iv. To clear the disparities, the Applicant independently appointed two valuers, being Anarock Property Consultants Private Limited and Ernst & Young Merchant Banking Services LLP, to determine the fair value and liquidation value of Shahad Land. The percentage difference in the liquidation value and fair value of all the valuers is as follows:

<b>Sr. No.</b>	<b>Valuer</b>	<b>Appointed By</b>	<b>Fair Value</b>	<b>Liquidation Value</b>
1	Rakesh Narula & Co	RP	X	Y
2	Kakode & Associates	RP	44.27% of X	44.77% of Y
3	Vinod P. Talathi	RP	48.95% of X	49.25% of Y
4	Average value determined by RP	-	46.69% of X	46.83% of Y

5	Anarock Property Consultants Pvt Ltd	Unity Bank	66.09% of X	71.04% of Y
6	Ernst & Young Merchant Banking Services LLP	Unity Bank	113.02% to 99.27% of X	137.68% to 99.55% of Y

- v. Unity Bank addressed an email dated 27.10.2022 to the RP requesting him to undertake a fresh valuation of the Shahad Land. However, the RP vide its reply email dated 28.10.2022 stated that there is no scope for appointing a fourth valuer under IBC and the RP also denied acceptance of the valuations done by the valuers appointed by the Applicant/Unity Bank. Aggrieved by the same, Unity Bank filed this IA/3425/2022.

5. **I. A. 343 of 2023**

5.1 IA 343/2023 was filed by Unity Small Finance Bank Limited (**Unity Bank/Applicant**) seeking the following prayers:

- a. *Declare that the project-wise resolution adopted by Respondent No. 1 as illegal, contrary to law and impermissible under the IBC;*
- b. *Declare that the passing of resolutions B-1, B-2, B-3, B-4, B-5, B-6, B-7 and B-8 pursuant to the 25<sup>th</sup> CoC Meeting held on 19 September 2022 as illegal, contrary to law and accordingly set aside the same;*
- c. *Issue directions to Respondent No. 1 to conduct fresh valuation of the Corporate Debtor as whole in accordance with Regulation 35 of CIRP Regulations and the IBC;*
- d. *Issue directions to Respondent No. 1 to invite fresh Expression of Interest and call for resolution plans for the entire assets of the Corporate Debtor, and place them before the CoC for their consideration;*
- e. *In the alternative to prayers (c) and (d), direct that the proceeds that are received from all resolution plans in respect of all Verticals of the Corporate Debtor, be distributed proportionate to the entire debt, amongst the financial creditors of the Corporate Debtor;*



- f. To permanently restrain the Respondents, their agents, servants, employees and assignees from acting in furtherance of resolutions B-1, B-2, B-3, B-4, B-5, B-6, B-7 and B-8 as passed pursuant to the 25<sup>th</sup> CoC Meeting held on 19 September 2022;*
- g. Reject IA Nos. 3624/2022, 3625/2022, 3627/2022, 3902/2022 and 3885/2022 filed by Respondent No.1 under Section 30(6) seeking approval of six resolution plans for the Corporate Debtor;*
- h. Reject the application filed by the Respondent No. 1 seeking liquidation of various projects/verticals of the Corporate Debtor;*
- i. For interim and ad-interim reliefs in terms of prayer clauses (a) and (b) above.*

5.2 In IA/343/2023, the Applicant/Unity Bank made the following submissions:

- i. The project wise resolution of a Corporate Debtor is not permitted and is contrary to the provisions and spirit of the I&B Code, 2016. It is submitted that section 5(26) of the I&B Code states that resolution plan means a plan proposed by the resolution applicant for Insolvency resolution of the Corporate Debtor as a going concern. This has been also emphasized in the BLRC Report wherein it has been stated that “*there should be freedom permitted to the overall market to propose solutions on keeping the entity as a going concern*” and that the CoC must evaluate resolution plans accordingly.
- ii. As per the BLRC Report, any action undertaken under the I&B Code or relevant regulations must be recorded with the Adjudicating Authority. However, in the present case, the RP, at no point of time, had approached the Adjudicating Authority or the Appellate Authority seeking approval of project wise resolution of the Corporate Debtor.
- iii. The process undertaken by the RP is effectively an asset sale process whereby all realisable and valuable assets of the CD have been sold as separate transactions to interested buyers while the Corporate

Debtor itself is sought to be liquidated. It is submitted that there cannot be a resolution plan that seeks to purchase only assets of the Corporate Debtor without providing for continuation of going concern status of the Corporate Debtor. It is only under the liquidation process that the Liquidator is entrusted with the power to sell assets of the Corporate Debtor under section 35 of the Code and other applicable rules and regulations. The same is however subject to section 52 of the Code whereby a secured creditor has the right to either relinquish its security interest or realise its security the same. However, by undertaking this sale of assets under the garb of resolution, the RP is not only interfering with the statutory rights of the secured creditor but also with the powers of the Liquidator.

- iv. The RP, in the present case, is proposing resolution of some of the assets of the Corporate Debtor while the remaining assets of the Corporate Debtor including the status of Corporate Debtor as a going concern is sought to be liquidated. This process of resolution as well as liquidation of a Corporate Debtor is not permissible under law.
- v. The Hon'ble NCLAT's judgement in ***Flat Buyers Association Winter Hills-77, Gurgaon vs. Umang Realtech Private Limited [2020 SCC OnLine NCLAT 1199]*** does not serve as a precedent to undertake project-wise resolution of the Corporate Debtor since the facts in Umang Realtech (supra) are distinguishable from the facts of the present case. The judgment passed in Umang Realtech (supra) should be confined to the facts of the case as held by NCLT Chennai in ***Mr. N. Kumar vs. M/s Tata Cooperative Housing Finance Ltd [IA/1245/2020 in CP(IB)/889/CHE/ 2019]***.
- vi. The CoC of the Corporate Debtor is common for all projects/verticals and all the CoC members, irrespective of having any security

interest have participated in the voting process of all the resolution plans. It is submitted that in absence of any procedure for project-wise resolution under the I&B Code, the method adopted in respect of voting for resolution plans prejudices the rights of the secured creditors of a specific vertical. For example, vertical IX has a sole secured creditor being Applicant 1, however, inspite of the fact that the Applicant has abstained from voting, the resolution plan for Vertical IX has been approved by such members of CoC who neither have any right nor any vested interest in vertical IX. The CoC cannot approve or proceed with a process or mechanism which is neither legal nor equitable in nature.

- vii. The reason for considering project-wise resolution of the Corporate Debtor was to achieve maximisation of value, however, the resolution plans provide for very large haircuts which means that the objectives of project-wise resolution have not been effectively attained.
- viii. The PMC Bank scam that involves the Corporate Debtor led to the PMC Bank's collapse of which the worst affected were the public depositors of PMC Bank who held deposits of approximately Rs. 10,535 crores as on 31.03.2022. Pursuant to the PMC Merger with the Applicant, the Applicant has a liability to repay the public depositors of PMC Bank an amount of Rs. 3966 crores over a period of 10 years. The approved resolution plans provide haircuts between 78% to 99% thereby affecting the recovery of monies due from the Corporate Debtor.
- ix. There are serious discrepancies in the valuation of the Shahad Land (Vertical IX). The value ascertained by M/s Kakode & Associates is lesser than 50% of that ascertained by M/s Rakesh Narula & Co. In view of this, the RP appointed a third independent valuer whose

valuation matches with that of M/s Kakode & Associates and hence, the same was considered for the purpose of submission of resolution plan. However, the Applicant is of the view that the valuation done by M/s Rakesh Narula & Co contained more detailed analysis of the Shahad Land. Therefore, the Applicant appointed two valuers, namely, Ernest & young Merchant Banking Services LLP and Anarock Property Consultants Pvt Ltd whose valuation reports shows a considerably higher value of Shahad Land than those considered by the RP.

6. **I. A. 942 of 2023**

6.1 This Application No. 942/2023 has been filed by Central Bank of India (hereinafter referred to as **Central Bank/Applicant**) raising similar objections as pointed out in IA/343 hereinabove against project-wise resolution of the Corporate Debtor and the valuations undertaken by the RP for determining the liquidation value and fair value. The reliefs sought in IA 942/2023 are as follows:

a) (i) *That the voting process carried over with regard to all the Verticals pertaining to CD be set aside as the same is in contravention to the law set by NCLAT in the matter of the Flat Buyers Association Winter Hills – 77, Gurgaon vs. Umang Realtech Pvt. Ltd. through RP & Ors.*

**(or in the alternative)**

(ii) *That the voting process carried over with regard to the Vertical “Premier Kurla” pertaining to CD be set aside as the same is in contravention to the law set by NCLAT in the matter of Flat Buyers Association Winter Hills – 77, Gurgaon vs. Umang Realtech Pvt. Ltd. through RP & Ors.;*

b) (i) *That the CIRP process period be extended under Rule 11 of the Code and direction be issued to convene COC meetings with the object of modifying the Resolution Plan pertaining to all Verticals and/or for “Premier Kurla” consequential to which separate voting be ordered to be considered by COC on the said amended Plan within the purview of the Code on the timelines set by the Adjudicating Authority*

**(or in the alternative)**

(ii) *That the CIRP process period be extended under Rule 11 of the Code and direction be issued to convene COC meetings with the object of modifying the Resolution Plan pertaining to all Verticals consequential to*

*which composite voting be ordered to be considered by COC on the said amended Plans on the timelines set by the Adjudicating Authority after pooling the assets of all Verticals together;*

- c) That the Resolution Plan Applicants in all Verticals inter alia Consortium of M/s Khyati Realtors Pvt. Ltd., M/s Dosti Realty Limited and M/s Suraksha Asset Reconstruction Limited (for the Vertical of “Premier Kurla”) be directed to modify their Plans to the extent that definite payment terms be reflected in the Resolution Plan with regard to Assenting and Dissenting Financial Creditors;*
- d) That direction be issued to Respondent No. 1 to carry out a fresh valuation of all Verticals inter alia Vertical III – Project Premier Kurla exclusively mortgaged with Applicant Bank;*
- e) That direction be issued to Respondent No. 1 to allow inspection of claim documents submitted by Suraksha ARC;*
- f) That pending the hearing and final disposal of the present Application, the approval of the Plans by the Adjudicating Authority be deferred.*

6.2 The submissions of Central Bank are briefed as under:

- i. All the CoC Members cannot be forced to participate in the voting process of projects wherein they have not got exposure as the same is in direct contravention to the NCLAT judgment in **Flat Buyers Association Winter Hills-77, Gurgaon vs. Umang Realtech Private Limited [2020 SCC OnLine NCLAT 1199]** wherein it was held that “corporate insolvency resolution process should be project basis, as per the approved plan by the Competent Authority. Any other allottees (Financial Creditors) or financial institutions/banks (other financial creditors) or operational creditors of other project cannot file a claim before the Interim RP of other projects and such claim cannot be entertained... If the same real-estate company (CD) has any other project in another town such as Delhi or Kerala or Mumbai, they cannot be clubbed together nor the asset of the CD for such other projects can be maximised.”*

- ii. The payment terms of Resolution Plan value of Project Kurla, in which Central Bank has a security interest, is vague and contingent in nature that no financial creditor would be able to apprise the Plan on economic viability. The Applicant/Central Bank did not assent to the Plan for the reason that as per the Resolution Plan the assenting financial creditor will recover 25% of the balance in the surplus after deducting the (i) project cost on completion of the project and (ii) interest on working capital facility raised for completion of the Project. Thus, as stated above, the payment clause in the resolution plan appears as a contingent clause. There is a possibility that the surplus may be zero or any other figure which cannot be measured in quantum as of now.
- iii. The entire valuation exercise done on the assets of the Corporate Debtor (particularly on properties mortgaged with the Central Bank) is improper with grave infirmities.
- iv. The classification of M/s Suraksha ARC as a secured financial creditor in Vertical III (Premier Kurla) of the Corporate Debtor is added wrongly and is against the decree dated 17.09.2018 passed by Hon'ble Bombay High Court. It appears that the RP has admitted the claim of Suraksha with no proper documents to either support their claim of Rs. 697.84 crores or of their charge.

**7. I. A. No. 1056 of 2023**

7.1 This IA is filed by Whispering Tower Flat Owner Welfare Association seeking following reliefs:

- a. Dismiss the Interlocutory Application filed by Unity;*
- b. Cost of this Interlocutory Application.*

7.2 The primary ground for seeking dismissal of the application filed by Unity Bank is that the Hon'ble NCLAT in Company Appeals No. 896/2021,

980/2021 and 1045/2021 decided on 04.01.2022 in the present case, had already permitted the RP and CoC to explore project-wise resolution of the Corporate Debtor and granted 90 days extension for the purpose. The said order dated 04.01.2022 is not challenged by Unity Bank and thus, the order is binding upon it.

7.3 Whispering Towers has also contended that Unity Bank is not a financial creditor of the Corporate Debtor since the loans advanced by Unity Bank to the Corporate Debtor is at the advanced stage of investigation by the Enforcement Directorate and as such have been obtained by collusion. A Special Leave Petition (Crl) Diary No. 4368/2020 filed by Whispering Towers against Unity Bank's status as a financial creditor is pending before the Hon'ble Supreme Court.

## 8. **Submissions of the Respondents**

8.1 There are 23 common Respondents in both the IAs No. 343/2023 and 942/2023 being the Resolution Professional, members of the CoC and the authorised representative of the home buyers. However, we also note that the Central Bank of India in IA/942 also impleaded the Successful Resolution Applicants of the six Resolution Plans approved by the CoC. Thus, IA/343 has 23 Respondents whereas IA/942 has 29 Respondents.

8.2 The submissions of all the Respondents are similar and therefore, are clubbed together and summarized hereinbelow:

- i. The Resolution Professional has created the Information Memorandum by conducting due diligence of the Resolution Applicant based on material available on record in terms of Regulation 36A (8) of the CIRP Regulations. Further, the Central Bank i.e. the Applicant in IA/942/2023 had neither raised any objection with respect to the Information Memorandum nor had

brought any material that contradicts with the data available in the Information memorandum.

- ii. The CoC had approved the appointment of the valuers for ascertaining the liquidation value and fair value of the Corporate Debtor. It is submitted that having assented to the appointment of valuers, the Applicants are now estopped from raising any disputes with respect to the valuations of the projects/verticals of the Corporate Debtor. Moreover, issue regarding the valuation on the ground of inaccuracy was not raised during the CoC meetings. The valuation was compliant with Regulation 27 and 35 of the CIRP Regulations.
- iii. It is submitted that deciding the correctness of Valuation Reports does not come within the purview of this Tribunal since the same is beyond the scope of judicial review and exclusively falls within the domain of CoC. The valuation depends upon numerous factors like the quality and nature of asset, prevailing market conditions and whether the asset is free from all encumbrances and litigations etc and also on the reputation of the Corporate Debtor at times. The limited role that this Tribunal may have is to see whether the Resolution Professional has obtained the valuation certificates from the registered valuers as per the provisions of the Code.
- iv. With an objective to maximise the asset value of the Corporate Debtor in a resolution process, an amendment dated 16.09.2022 was brought into effect to the CIRP Regulations by virtue of which the RP and the CoC can issue a request for resolution plan for sale of one or more assets of the Corporate Debtor in cases where no resolution plan has been received for the Corporate Debtor as a whole. In the present case, even while considering project-wise resolution, the RP had simultaneously called for resolution plan



for the Corporate Debtor as a whole which turned out to be non-compliant.

- v. The CIRP of the Corporate Debtor is not a recovery process but is a mere resolution and has to take into account the interest of all stakeholders and to ensure value maximisation of the assets of the Corporate Debtor. The RP submits that since no resolution plans were received for the Corporate Debtor as a going concern, the RP placed the option of liquidation before the CoC. However, the representative of the homebuyers requested the CoC to consider, to assess and take an appropriate decision for project wise resolution. After a lot of discussions in various CoC Meetings, the CoC with the intent to safeguard the interest of homebuyers and to achieve maximisation of value of assets of the Corporate Debtor, decided to explore project-wise resolution of the Corporate Debtor.
- vi. Since the resolution plans have been approved by the CoC after due deliberation, the Applicants cannot impugn the commercial assessment of the majority of the CoC Members on the basis of their subjective satisfaction or assessment.
- vii. When the RP approached the Tribunal seeking extension of time, the Tribunal rejected the same. Being aggrieved by the dismissal order dated 29.09.2021, some of the homebuyers associations preferred appeal before the Hon'ble NCLAT which appeals were allowed by the Hon'ble NCLAT vide order dated 04.01.2022 wherein it was observed that *the Adjudicating Authority failed to give due weight to the Resolution/decision of the CoC dated 8<sup>th</sup> September, 2021 and erred in not allowing even a reasonable period for proceeding further with Project Wise Resolution.*

- viii. It is submitted that the Applicants had not raised any objection before the Hon'ble NCLAT against the project-wise resolution of the Corporate Debtor. Moreover, the order dated 04.01.2022 passed by Hon'ble NCLAT is also not challenged by the Applicants before the Hon'ble Supreme Court. Thus, the Applicants are now estopped from contending against the project wise resolution.
- ix. The Respondents submit that Unity Bank had first filed IA/3425/2022 raising grievances with respect to the valuation reports obtained by the RP. However, it can be seen that nowhere in IA/3425, Unity Bank had raised any contentions regarding project-wise resolution and has only objected to it through IA/343 post the approval of the resolution plans by the CoC with the requisite majority. Thus, the contentions raised in IA/343 are nothing but an afterthought filed to maximise its individual gains.
- x. There is no provision in the I&B Code that permits only a specific class of CoC to vote over resolution plans over which they have any interest. The contention of Central Bank in this regard does not hold any ground and would be contrary to the provisions laid down under the I&B Code and the CIRP Regulations. Further, the Applicants have not raised this objection in the 24<sup>th</sup> and 25<sup>th</sup> CoC Meetings.
- xi. The payment to assenting financial creditors has been proposed to be made out of the surplus generated from the resolution of the Project as detailed in the Resolution Plan. The said proposal is neither contingent nor conditional and is only related with the completion of the resolution of the project. Pertinently, the Resolution Plan lays down the detailed mechanism with regard to the resolution of the project and the surplus generated thereof which shall be paid to the assenting financial creditors as per the

terms of the Plan and therefore, the same is not contingent in nature.

- xii. As regards Central Bank's contention against the classification of M/s Suraksha ARC as a secured creditor, it is submitted that the claim of M/s Suraksha ARC was filed during the 1<sup>st</sup> CoC Meeting dated 08.01.2020 with supporting documents along with valid registered charge with ROC as well as the Mortgage Deed and other documents based on which the RP admitted its claim. However, it is stated that such a dispute was never raised by Central Bank during the CoC meeting in which both the parties were present.

#### **ANALYSIS & FINDINGS**

9. Heard Ld. Counsel for the parties and perused the records.
10. The Corporate Debtor herein, namely Housing Development and Infrastructure (HDIL), was admitted into CIRP by this Tribunal vide order dated 20.08.2019 passed in CP(IB)/27/2019 and Mr. Abhay Narayan Manudhane (Respondent 1 in all the IAs) was appointed as the Interim Resolution Professional (IRP).
11. Pursuant to the public announcement inviting claims from creditors of the Corporate Debtor, the RP constituted the Committee of Creditors (CoC). The CoC confirmed the appointment of the IRP as the Resolution Professional (RP). Thereafter, the RP made public announcement dated 16.02.2020 inviting eligible prospective resolution applicants to submit Expression of Interest (EoI). However, no resolution plan was received by the RP.
12. At the 18<sup>th</sup> CoC Meeting and 19<sup>th</sup> CoC Meeting, the CoC discussed and decided to explore project-wise resolution of the Corporate Debtor. Accordingly, the Corporate Debtor was divided into 10 Verticals and resolution plans were invited for Corporate Debtor as a whole as well as

for project-wise resolution. Thereafter, a total of 14 resolution plans were submitted for resolution of Corporate Debtor as a whole as well as project specific resolution out of which 6 resolution plans were approved by the CoC with the requisite majority. The Applicants through the present applications have challenged the very process of project-wise resolution undertaken by the RP besides other objections.

13. We have carefully analysed the submissions of the Applicants as well as the Respondents in all the IAs. The common issues raised by the dissenting creditors in IA/3425/2022, IA/343/2023 and IA/942/2023 can be summarised as under:

- I. *Whether the decision taken by the requisite majority of Committee of Creditors for exploring project-wise resolution of the Corporate Debtor with the assistance of the RP is permissible under the I&B Code?*
- II. *Whether project-specific CoC can be constituted to vote for project-wise resolution of the Corporate Debtor?*
- III. *Whether a direction can be issued to the RP for conducting fresh valuation for ascertaining the fair value and liquidation value of the Corporate Debtor, considering the facts and circumstances of the present case?*
- IV. *Whether the Resolution Plans which are submitted for approval warranting huge haircuts and contingent payments are valid?*
- V. *Whether the prayer sought by the Central Bank of India for inspection of claim documents of Suraksha ARC is tenable in law?*

**I. Project-wise Resolution under I&B Code**

14. It is an undisputed fact that no resolution plans were received by the RP for resolution of the Corporate Debtor as a going concern. It is seen that

the authorised representative of the home buyers who are a part of the CoC, had requested to explore project-wise resolution of the Corporate Debtor for which purpose opinion was sought from M/s Crawford Bayley & Co, Legal Advisors. In furtherance thereof, the RP listed the following options before the CoC for consideration:

- i) To re-run the process of inviting Expression of Interest for the entire Company as a going concern or
- ii) To re-run the process of inviting Expression of Interest for entire Company as a going concern and also allow parties to submit resolution plan for one or more projects by way of demerger/restructuring etc. or
- iii) To decide any other option available under the Code.

15. From an analysis of the minutes of the CoC Meetings, it is seen that extensive discussions were made regarding the project-wise resolution of the Corporate Debtor. Even so, in the 16<sup>th</sup> CoC Meeting held on 11.06.2021, the CoC with 74.605% of voting decided in favour of liquidation of the Corporate Debtor.
16. However, in the 18<sup>th</sup> CoC meeting held on 08.09.2021, the CoC, on request of the authorized representative of homebuyers, re-considered the feasibility of project-wise resolution in the interest of the homebuyers. Accordingly, resolution was passed authorising the RP to *explore the possibility to re-run the process of inviting Expression of Interest for entire company as a going concern and/or also with an option to submit resolution plan for one or more projects individually or jointly with other projects by way of demerger/ restructuring or any other manner permitted under the Code.*
17. Nowhere it can be seen from the minutes of the CoC Meetings that between the 13<sup>th</sup> CoC meeting and 18<sup>th</sup> CoC meeting, the dissenting financial creditors/ Unity Bank and Central Bank of India have objected

the idea of project-wise resolution as being violative of the objects of the I&B Code. Only in the 19<sup>th</sup> CoC Meeting, there is a mention that *PMC Bank is in favour of re run process but they are not in favour of distribution mechanism as proposed in resolution, hence they have not voted in favour of resolution.* It is also mentioned in the minutes that some of the other CoC members have also raised the issue before the RP. It is clear from the above that only the manner of distribution was in dispute among the CoC members and not the experiment of project wise resolution altogether.

18. Since in the 18<sup>th</sup> & 19<sup>th</sup> CoC meetings, the resolution for project wise resolution was passed and pursuant to which the Request for Resolution Plan (RFRP), Evaluation Matrix, Earnest Money Deposit, etc. were also approved by the CoC, we are of the view that when the CoC in its commercial wisdom has decided and approved to explore project wise resolution, the same should not be interfered by this Adjudicating Authority if otherwise it is in accordance with law.
19. The dissenting financial creditors have challenged the project wise resolution adopted by the RP as being impermissible under law and against the spirit of I&B Code.
20. In this regard, we are conscious of the fact that this Tribunal's order dated 29.09.2021 rejecting grant of extension for exploring project-wise resolution was set aside by Hon'ble NCLAT in Company Appeals No. 896/2021, 980/2021 and 1045/2021 vide order dated 04.01.2022 wherein it was held as follows:

*“18. ... The Resolution taken on 8th September, 2021 as extracted above was with regard to Project Wise Resolution, dividing entire assets into eight Projects. This Project Wise Resolution became possible only after 8th September, 2021. **The Committee of Creditors, whose commercial wisdom has to be given due***

***weight, rightly took the decision for Project Wise Resolution.***

*19. No Resolution Applicant is ready to undertake huge real estate Project which has amply been proved when Expression of Interest for Project Wise Resolution was called, 25 Applicants have already shown their interest in different Projects. The Adjudicating Authority failed to give due weight to the Resolution/ decision of the CoC dated 8th September, 2021 and **erred in not allowing even a reasonable period for proceeding further with Project Wise Resolution.***

*20. The Hon'ble Supreme Court time and again reminded that the object of IBC is to resolve the insolvency resolution process and liquidation is to be adopted as a last resort.*

*23. In view of the above discussion, we allow the Appeal and set aside the order of the Adjudicating Authority dated 29.09.2021, allow the Application being I.A. No.2118 of 2021 in C.P.(IB)-27(MB)/2019 filed before the Adjudicating Authority and grant extension of 90 days from the date of this order **during which period the Resolution Professional and the Committee of Creditors may complete the Project Wise Resolution as decided in their meeting on 8th September, 2021.** No order as to costs."*

***(Emphasis Provided)***

21. Thus, it is clear from the above that the Hon'ble NCLAT has while granting extension of time, observed that project-wise resolution of the Corporate Debtor is a feasible option as also due weight has to be given to the commercial wisdom of CoC considering the facts and circumstances of the present case.

22. We note that the Applicants as well as the Respondents have referred to ***Flat Buyers Association Winter Hills-77, Gurgaon vs. Umang Realtech Private Limited [2020 SCC OnLine NCLAT 1199]*** and disputed its applicability in the present case. On a perusal of the same, it is seen that the facts in **Umang Realtors** (supra) is distinguishable from the present case since issue in the **Umang Realtors** (supra) was in relation of “reverse CIRP’ whereunder the Promoters of the Corporate Debtor was permitted to take-over the project which is in the verge of completion and further, the CIRP was initiated only in respect of the project in question and not the Corporate Debtor as a whole.
23. Moreover, the present case has an extant order passed by the Hon’ble NCLAT in Company Appeals No. 896/2021, 980/2021 and 1045/2021 being authoritative in nature as the Hon’ble NCLAT has granted extension of 90 days for the purpose of exploring project-wise extension. Reportedly, the said judgment of Hon’ble NCLAT is also not challenged by any of the parties/stakeholders related thereto. Thus, a deviation from the above observations is impermissible since the said order is binding upon the Corporate Debtor and stakeholders thereto as well as this Adjudicating Authority.
24. We would also like to throw some light on the legislative development with respect to project-wise resolution. Owing to the challenges faced in the resolution process of companies in the real estate sector, an amendment dated 15.02.2024 was made in Regulation 36A of the CIRP Regulations thereby facilitating project-wise resolution. The amended regulation is reproduced below:

**“36A. Invitation for expression of interest.**

*(1) The resolution professional shall publish brief particulars of the invitation for expression of interest in Form G of the Schedule-I at the earliest, not later than sixtieth day from the insolvency*



*commencement date, from interested and eligible prospective resolution applicants to submit resolution plans.*

***Clarification: The resolution professional after the approval of the committee may invite a resolution plan for each real estate project or group of projects of the corporate debtor.***

25. At this juncture, it is pertinent to look into the chronology of events that has led to the present amendment. The Ministry of Housing and Urban Affairs (MoHUA) had constituted a Committee under the Chairmanship of Shri Amitabh Kant to examine the issues related to legacy stalled Real Estate Projects. The said Committee submitted its Report (July 2023) suggesting the following:

*“Report of the Expert Committee on Rehabilitation of Legacy Stalled Real Estate Projects*

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*5. The Committee concluded that the primary reason for stress in real estate projects is lack of financial viability of these projects. This has resulted in cost overruns, project and time delays. The Committee observed that the steps to improve the Internal Rate of Return (IRR) of these projects would attract more funding and judicial interventions such as Insolvency & Bankruptcy Code (IBC) should be used only as a last resort. The Project resolution should be a win-win situation for all stakeholders.*

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*VII. Use of IBC for resolving projects as a measure of last resort:*

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- d. The Committee recommends that the IBC needs to be reformed to better accommodate the complexities of the real estate sector. Some of the recommendations with respect to reforms in IBC are:*
- i. Project wise CIRP – All projects need to be pre-registered with RERA. Since RERA registration is project-wise, this can be adopted under IBC.*

26. Considering the above recommendations of the Expert Committee, the IBBI released the Discussion Paper dated 06.11.2023 on 'Real-Estate Related Projects- CIRP & Liquidation' emphasizing on the complexities involved in the resolution of Corporate Debtors which are engaged in the business of real estate. The IBBI suggested amendment in Regulation 36A of the CIRP Regulations with the following observations:

*“... investing in all projects by one resolution applicant requires huge capital, and thus limits the number of resolution applicants. It is often seen that some resolution applicants are not interested in all projects and want to undertake specific projects. Moreover, multiple bidders for different projects could yield better value than a single bidder for the entire business.”*

27. Accordingly, an amendment was made in Regulation 36 of the CIRP Regulations which is already elaborated in Para 23 above. Thus, we are satisfied that the adoption of project wise resolution of the Corporate Debtor is not against the spirit of I&B Code or against law.

28. The Applicants contended that the legal proposition with respect to resolution plans is that there should be transfer of Corporate Debtor as a 'going concern' whereas the RP in the present case is merely selling assets of the Corporate Debtor which is only permissible during liquidation. In this regard, we shall refer to Regulation 37 of the Insolvency and Bankruptcy Board of India (Insolvency Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**) which states as follows:

**“37. Resolution plan.**

*A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to the following: -*

(a) transfer of all or part of the assets of the corporate debtor to one or more persons;

(b) sale of all or part of the assets whether subject to any security interest or not;

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(m) sale of one or more assets of corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets; and manner of dealing with remaining assets.”

29. It is clear from the bare reading of the above regulation that under a resolution plan, transfer/sale of one or more assets of the Corporate Debtor to one or more resolution applicants is permitted which indicates that the resolution process of the Corporate Debtor need not necessarily be acquisition of the entire Corporate Debtor as a ‘going concern’ by one resolution applicant only.

30. Further, the Ministry of Corporate Affairs released the Sixty-Seventh Report (February 2024) on action taken by the Government on recommendations contained in the 32<sup>nd</sup> Report of the Standing Committee on Finance (17<sup>th</sup> Lok Sabha) on ‘Implementation of Insolvency and Bankruptcy Code- Pitfalls and solutions’ stated the following:

*“The intent of the Code is to allow all possible forms of solution for insolvency resolution of the corporate debtor which is clearly reflected under section 5(26) of the Code and to further clarify this intent an explanation was inserted vide Insolvency and Bankruptcy (Amendment) Act, 2019 dated 06.08.2019 thereby providing that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger. Regulation 37 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which provides flexibility to the resolution professional in developing resolution plan is in sync with Section*

*5(26) and section 30(2) of the Code. The Code gives the broader legislative guidelines and delegated legislation through regulations give further details. As an example, the resolution plan in Jet Airways submitted by consortium of Murari Lal Jalan and Florian Fritsch (Resolution Applicant) was approved by NCLT. In addition to this IBBI in its discussion paper dated 27th June, 2022 proposed that resolution professional and the creditor may explore to resolve the corporate debtor by inviting plans for resolution of parts of the assets and businesses logically grouped together. Amendment in the Regulation may be made after following the due process including public consultations.”*

31. As we can see from para 23 above that the amendment in Regulation 36A is a *clarification* stating that resolution plans can be invited for a project or group of projects of the Corporate Debtor. The Hon’ble Supreme Court in a catena of cases have held that if the legislative intent behind an amendment is to provide for clarification or explanation, then such an amendment operates retrospectively. Reference shall be given to **Zile Singh vs. State of Haryana [AIR 2004 SC 5100]** wherein it has been held that “*an amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect.*” Relying on **Zile Singh** (supra), the Hon’ble Supreme in **Ghanashyam Mishra and Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Company Limited [Civil Appeal No. 8129 of 2019]** held that the amendment made to Section 31 of the I&B Code being clarificatory and declaratory in nature will have a retrospective effect. In similar terms, the amendment dated 15.02.2024 made to Regulation 36A of the CIRP Regulations, 2016 carries retrospective effect because of its clarificatory nature. Further, as mandated in the amended clause of Regulation 36A, the RP had adopted this approach of resolution only after approval of the

CoC and the CoC, in its 18<sup>th</sup> Meeting, decided, in its commercial wisdom, to explore project wise resolution after due consideration. This decision of the CoC has been considered valid ground for extension of time of CIRP by the Hon'ble NCLAT vide order dated 04.01.2022 wherein it has further observed that RP and CoC may complete the project-wise resolution within the extended time.

32. In view of the discussions made above, we have no hesitation in holding that project-wise resolution of the Corporate Debtor when the Corporate Debtor is into the real estate business as is the case in the present matter can be a valid option and it is not necessary to achieve resolution of the entire Corporate Debtor as a going concern by one Resolution Applicant. Thus, we do not view it fit and necessary to interfere with the decision of the CoC in this regard.
33. Thus, the prayers 'a', 'b', 'd', 'f', 'g' and 'i' in IA/343/2023 and prayer 'a' in IA/942/2023 are **rejected**. Further, prayer 'h' in IA/343/2023 seeking rejection of applications filed for liquidation of remaining 4 verticals of the Corporate Debtor is rendered **infructuous** since permission has been granted for re-run of CIRP in respect of the remaining verticals.

## **II. Constitution of Project-Specific Committee of Creditors**

34. We note from the minutes of the CoC meetings that the issue relating to the reconstitution of separate CoC based on the projects/verticals of the Corporate Debtor was raised by the homebuyers' associations and some other CoC members, however, no decision was arrived on the same. The Applicants in the respective captioned applications have objected to the voting process of the resolution plans wherein all the CoC members irrespective of their interest in the projects/verticals have voted for all the resolution plans.

35. We are of considered view that there is no provision under the I&B Code that permits constitution of project-specific Committee of Creditors (CoC). Further, the CoC is constituted under section 21 of the I&B Code for the Corporate Debtor as a whole and not based on the security interest that they may have in specific assets of the Corporate Debtor.
36. Furthermore, the IBBI Discussion Paper dated 06.11.2023 proposed that *CoC, on examination, may direct the RP to invite separate plan for each project. It would also encourage the association of allottees of a real estate project to bring their own resolution plan and resolve issues in a specific project.* It can be inferred from the aforementioned that the IBBI proposes the CoC to collectively decide on the viability and feasibility of project wise resolution but nowhere it recommends formation of subsets i.e. project specific CoC for the purpose.
37. Adv. Rathina Maravarman, appearing for the Central Bank of India, argued that the Central Bank and other lenders cannot be forced to participate in the voting process of projects wherein they have not got exposure as the same is in direct contravention to the NCLAT judgment passed in **Flat Buyers Association Winter Hills-77, Gurgoan vs. Umang Realtech Pvt Ltd** wherein it has been held that *any other allottees or financial institutions/banks or operational creditors of other project cannot file a claim before the Interim RP of other project and such claim cannot be entertained.* In other words, separate CoC should be formed for each project e-voting on its resolution plan.
38. She further argued that forcing all CoC Members to vote for all verticals when the securities wherein they have got their charges have not been merged together in common is in direct contravention to the NCLAT Judgment of **Umang Realtors** (supra). It was argued that securities have to be pooled out together for the benefit of all lenders failing which

members cannot be forced to vote in all verticals inter alia inclusive of verticals they have not got exposure.

39. We have perused the **Umang Realtors** (supra) judgment in this regard and also **Mr. Vijay Kumar Pasricha vs Mr. Manish Kumar Gupta, IRP of Winter Hills [I.A. No. 1987 of 2020, 2187, 2513 of 2021 & 3239 of 2022 in Company Appeal (AT) (Ins.) No. 926 of 2019]** wherein some clarification was sought with respect to Umang Realtors judgment. It is perceived that in Umang Realtors (supra), the CIRP was initiated only with respect to one project i.e. Winter Hills and not the entire Corporate Debtor which was reiterated by the Hon'ble NCLAT in the clarification applications wherein it was clearly held that CIRP as well as moratorium is only with respect to project Winter Hills and therefore, the CoC was directed to be constituted only with respect to the said project. Therefore, the facts in the present case being completely distinguishable, the judgment of Umang Realtors (supra) does not apply here.
40. Thus, the prayer 'b' in IA/942/2023 seeking constitution of project specific CoC is rejected.

### **III. Fresh Valuation of the Corporate Debtor**

41. As regards the plea for fresh valuation of the Corporate Debtor, it is pertinent to first look into Regulation 35 of the CIRP Regulations, 2016 which is reproduced below:

#### **35. Fair value and Liquidation value**

*(1) Fair value and liquidation value shall be determined in the following manner:-*

*(a) the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical*

*verification of the inventory and fixed assets of the corporate debtor;*

*Provided that the resolution professional shall facilitate a meeting wherein registered valuers shall explain the methodology being adopted to arrive at valuation to the members of the committee before computation of estimates.*

*(b) if the two estimates of a value in an asset class are significantly different, or on receipt of a proposal to appoint a third registered valuer from the committee of creditors, the resolution professional may appoint a third registered valuer for an asset class for submitting an estimate of the value computed in the manner provided in clause (a).*

*(c) the average of the two closest estimates of a value shall be considered the fair value or the liquidation value, as the case may be.*

42. The appointment of M/s Rakesh Narula and Co and M/s Kakode & Associates as valuers for ascertaining the fair value and liquidation value of the Corporate Debtor was approved by the CoC at the 1<sup>st</sup> CoC Meeting held on 08.01.2020. At the 22<sup>nd</sup> CoC Meeting held on 24.02.2024, the resolution to approve a third independent valuer in terms of project IV and project IX was approved by the CoC. Thereafter, with respect to Project IV and Project IX, the RP considered the reports of the 3<sup>rd</sup> valuer and M/s Kakode & Associates which were in alignment.
43. It is noted that the above quoted regulation 35 clearly states that *the average of the two closest estimates of a value shall be considered the fair value or the liquidation value, as the case may be.* Thus, it cannot be said that there is any misconduct on the part of the RP in considering the two closest estimates, despite them being significantly lesser than the other in the present case, as the RP has merely followed the procedure laid down by the law.



44. We note that the RP has conducted the valuation in accordance with the Code and applicable regulation, thus, we consider it not necessary to direct for re-valuation of the assets of Corporate Debtor. Further, as stated in **Ramkrishna Forgings Limited v Ravindra Loonkar & Anr. [CIVIL APPEAL No.1527 OF 2022]**, such course would impede quick resolution of the Corporate Debtor.
45. Further, we are also of the view that the validity of reports submitted by experts cannot be examined by this Tribunal if the same has been prepared in accordance with law because such an excursion would tantamount to undermining the competence of experts and going into the field of the experts without possessing needed expertise and authority. We are supported by the Hon'ble NCLAT's judgment in **Beacon Trusteeship Limited vs. Jayesh Sanghrajka & Ors** (decided on 27.05.2024) [Company Appeal (AT) (Ins) No. 1494-1495 of 2022 & 99, 107-108 of 2023] wherein it has been held as follows:
- “17. The argument that Valuation Reports were not correct has no substance. The RP has shared all information regarding the Corporate Debtor available with it to the valuers and valuers after detailed correspondence with the RP had provided the Valuation Report. Valuers who submitted the Reports are expert and it is not open for the Appellant or this Tribunal to sit in Appeal on the Valuation Report.”*
46. In view thereof, prayer 'c' in IA/343/2023 and prayer 'd' in IA/942/2023 seeking fresh valuation for determining the fair value and liquidation value of the Corporate Debtor is **rejected**. IA/3425/2022 filed by Unity Bank for the sole purpose of revaluation of the assets of the Corporate Debtor is accordingly **dismissed**.

**IV. Viability and Feasibility of the Resolution Plans**

47. It is submitted by the Applicants that the aim of project-wise resolution is maximisation of assets, however, the Resolution Plans approved by the CoC provides for almost 78% to 99% haircuts. In this regard, we say that a resolution plan providing for a lesser amount to the creditors does not make such resolution plan *prima facie* illegal. We are supported by Hon'ble NCLAT's observations in **Mr. Ankur Narang & Ors. vs. Mr. Nilesh Sharma RP & Ors [Company Appeal (AT) (Ins) No. 1240 of 2023]** wherein it was held as follows:

*“18. Merely because there is a reduction in the claim of any creditor does not make the resolution plan fall foul of law. We quite agree with the Adjudicating Authority that “resolution plan providing a lesser amount than admitted does not make it illegal”. Any clause in the resolution plan which requires creditors to take a hair-cut cannot be construed as being violative of Section 30(2)(e) of the IBC.”*

48. As regards the contention of CBI that payment proposal under the Resolution Plan is contingent in nature, we note that the clauses expressly stating the schedule of payment to the financial creditors is integral part of the resolution plan and it is postulated that the CoC have approved the Resolution Plan only after careful analysis of the same. Thus, the limited interference by this Adjudicating Authority in this regard is restricted here in technically examining the distribution proposed under the Resolution Plan when the CoC itself have taken a recourse in its commercial wisdom. The Hon'ble Supreme Court in **K. Sashidhar vs Indian Overseas Bank & Ors [Civil Appeal No. 10673 of 2018]**:

*“62. ... In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on*

*the proposed resolution plan in the form of votes, as per their voting share. In the meeting of CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the resolution professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the “commercial/business decision” of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count.”*

49. Accordingly, a Resolution Plan either on the extent of haircut or a particular kind of payment plan does not *prima facie* render it illegal if the same has been approved by CoC in its commercial wisdom and the Plan is otherwise compliant with the applicable regulation and law.
50. However, we would also like to clarify that this Tribunal is, at present, not going into the merits of the Resolution Plans submitted by the RP for approval. The viability and feasibility of the Resolution Plans for each Vertical shall be analysed while deciding the respective Plans. Therefore, prayer ‘c’ in IA/942/2023 which seeks modification of Resolution Plan for Vertical III- Premier Exotica is **rejected** as the concerned Resolution Plan shall be tested with reference to applicable Regulations and law while deciding the Interlocutory Application concerning Resolution Plan of Project Premier Exotica.

**V. Suraksha ARC as a Secured Financial Creditor**

51. As regards the objection against the admission of the Suraksha ARC’s claim as a secured financial debt, reference is made to minutes of the 1<sup>st</sup> CoC Meeting held on 08.01.2020 which states as follows:

“\*\*\*

*... The CoC members thereafter enquired whether the asset is exclusively charged to Suraksha ARC and same was confirmed by representative of ARC.”*

52. We see from the above that the position of Suraksha ARC with respect to the Corporate Debtor was in question right since the 1<sup>st</sup> CoC Meeting held on 08.01.2020. We have carefully analysed the Application No. 942/2023 filed by the Central Bank of India, however, we have not found any document placed on record evidencing that CBI has raised this issue ever before. Neither the minutes of meeting nor any emails addressed to the RP which are annexed to the application suggest that CBI had opposed the admission of Suraksha ARC as a secured financial Creditor.
53. Further, we also note that from the minutes of 1<sup>st</sup> CoC meeting that the matters relating to Suraksha ARC was discussed with the CoC present during the meeting which also includes CBI. However, this issue is being raised for the first time through the instant application no. 942/2023 post the approval of the Resolution Plans by the CoC which stage marks almost the end of the CIRP period. Thus, such a belated contention of CBI which is also devoid of merits holds no water, and prayer ‘e’ seeking direction to RP to allow inspection of claim documents submitted by Suraksha ARC is rejected.

### **Conclusion**

54. The analysis and findings of this Tribunal in the above captioned applications are summarized below:
- i) Considering the facts and dictum in the present case, we hold that project-wise resolution of Corporate Debtor, as approved by the Committee of Creditors (CoC) in its commercial wisdom, is valid and the same needs no interference from this Tribunal.

- ii) The CoC constituted by the RP under section 18(c) of the I&B Code is for the Corporate Debtor as a whole and no provision under the Code and/or Regulation permits subset of CoC in accordance with the security interest that a CoC Member has with respect to a particular project.
  - iii) The Adjudicating Authority considers it not fit to judicially examine the validity of the valuation reports prepared by the registered valuers in accordance with applicable regulations and law.
  - iv) The haircut provided in the Resolution Plan does not *prima facie* renders it illegal. As a general rule, the decision regarding the feasibility and viability of the Resolution Plan and the distributions proposed therein lies in the domain of the CoC which takes recourse in its commercial wisdom after due consideration. However, it is clarified that this Tribunal is not adjudicating upon the calibre of the concerned Resolution Plans at this stage.
  - v) The CBI's belated objection against Suraksha ARC's classification as a secured financial creditor is rejected owing to the facts and circumstances of the case as also being devoid of merits.
55. In the result, for all the reasons discussed above, the IAs No. 3425/2022, 343/2023 and 942/2023 are **dismissed** and IA/1056/2023 is **allowed**. Accordingly, the captioned IAs are **disposed of** in above terms. No order as to costs.

Sd/-

**Charanjeet Singh Gulati**  
**Member (Technical)**

Sd/-

**Ms. Lakshmi Gurung**  
**Member (Judicial)**

Uma, LRA