

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 63 of 2024**

Arising out of Order dated 23.06.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I in IA No.1950 of 2021 in CP (IB) No.1633/MB/C-I/2019)

**IN THE MATTER OF:**

Deepak Sakharam Kulkarni & Anr. ....Appellants

Vs

Manoj Kumar Agarwal, Resolution Professional of  
D.S. Kulkarni Developers Ltd. & Ors. .... Respondents

**Present:**

**For Appellants:** Mr. Krishnendu Dutta, Sr. Advocate with  
Akshay Gosavi, Mr. Kumar Anurag Singh, Mr.  
Kartik Sandal, Ms. Raveena Devan, Mr.  
Avaneesh Jaiswal and Mr. Zain A.  
Khan, Mr. Anish Ahlawat, Advocates.

**For Respondents:** Mr. Abhijeet Sinha, Sr. Advocate with Mr.  
Varun Kalra, Mr. Samir Malik, Mr. Akash  
Chatterjee and Mr. Pranav Khanna, Advocates  
for R-1.

Mr. Neeraj Kishan Kaul, Mr. Arvind Nayar, Sr.  
Advocate with Mr. Puneet Singh Bindra, Mr.  
Akshay Doctor, Mr. Parag Sawant, Mr. Akshay  
Sharma, Mr. Akshay Joshi, Mr. Rishabh  
Gupta, Ms. Mehreen Garg , Advocates for SRA.

**With**

**Company Appeal (AT) (Insolvency) No. 1142 of 2023**

**&**

**I.A. No. 3986 of 2023**

**IN THE MATTER OF:**

Shirish Deepak Kulkarni ....Appellant

Vs

Manoj Kumar Agarwal, Resolution Professional of  
D.S. Kulkarni Developers Ltd. & Ors. .... Respondents

**Present:**

**For Appellant:** Mr. P. Nagesh, Sr. Advocate, Mr. Kumar Anurag Singh, Mr. Zain A. Khan, Mr. Akshay Sharma and Mr. Anish Ahlawat, Advocates.

Mr. Krishnendu Datta, Sr. Advocate with Mr. Shikher Deep Aggarwal, Advocates for Impleader.

**For Respondents:** Mr. Abhijeet Sinha, Sr. Advocate, Mr. Shahan Ulla, Mr. Akash Chatterjee, Advocates for RP.  
Mr. Neeraj Kishan Kaul, Sr. Advocate with Mr. Puneet Singh Bindra, Mr. Akshay Doctor, Mr. Akshay Sharma, Mr. Rishabh Gupta and Mr. Sameer Sethi, Advocates for SRA.

With  
**Company Appeal (AT) (Insolvency) No. 1307 of 2023**  
&  
**I.A. No. 4619, 4620 of 2023**

**IN THE MATTER OF:**

DS Kulkarni and Company ....Appellant

Vs

Manoj Kumar Agarwal, Resolution Professional of  
D.S. Kulkarni Developers Ltd. & Ors. .... Respondents

**Present:**

**For Appellant:** Mr. Sandeep Bajaj, Mr. Naman Tandon, Ms. Adya Singh, Advocates

**For Respondents:** Mr. Abhijeet Sinha, Sr. Advocate, Mr. Shahan Ulla, Mr. Akash Chatterjee, Advocates for RP.  
Mr. Arvind Nayar, Sr. Advocate with Mr. Puneet Singh Bindra, Mr. Parag Sawant, Mr. Akshay Sharma, Mr. Rishabh Gupta, Mr. Sameer Sethi, Advocates for SRA.

With  
**Company Appeal (AT) (Insolvency) No. 1308 of 2023**  
&  
**I.A. No. 4625, 4627 of 2023**

**IN THE MATTER OF:**

DSK Global Education and Research Pvt. Ltd. ....Appellant

Vs

Manoj Kumar Agarwal, Resolution Professional of  
D.S. Kulkarni Developers Ltd. & Ors. .... Respondents

**Present:**

**For Appellant:** Mr. Sandeep Bajaj, Ms. Aakanksha Nehra, Mr. Naman Tandon, Ms. Gunjan Nayyar and Ms. Adya Singh, Advocates

**For Respondents:** Mr. Abhijeet Sinha, Sr. Advocate, Mr. Varun Kalra, Mr. Samir Malik, Mr. Akash Chatterjee, Mr. Pranav Khanna, Advocates for RP.

Mr. Neeraj Kishan Kaul, Mr. Arvind Nayar, Sr. Advocates with Mr. Puneet Singh Bindra, Mr. Akshay Doctor, Mr. Parag Sawant, Mr. Akshay Sharma, Mr. Rishabh Gupta, Ms. Ira Mahajan, Ms. Pritha Suri, Mr. Jonathan Jose, Advocates for SRA.

**With**  
**Company Appeal (AT) (Insolvency) No. 1223 of 2023**  
**&**  
**I.A. No. 4303 of 2023**

**IN THE MATTER OF:**

Sri Umiyaa Construction Pvt. Ltd. & Ors. ....Appellants

Vs

Manoj Kumar Agarwal, Resolution Professional of  
D.S. Kulkarni Developers Ltd. & Ors. .... Respondents

**Present:**

**For Appellants:** Mr. Krishnendu Datta, Sr. Advocate with Mr. Shikher Deep Aggarwal, Mr. Ajay Sharma, Advocates

**For Respondents:** Mr. Abhijeet Sinha, Sr. Advocate with Mr. Varun Kalra, Mr. Samir Malik, Mr. Shahan Ulla, Mr. Akash Chatterjee, Mr. Pranav Khanna, Advocates for RP.

Mr. Arvind Nayar, Sr. Advocate with Mr. Puneet Singh Bindra, Mr. Akshay Doctor, Mr. Parag Sawant, Mr. Akshay Sharma, Mr. Akshay

**Joshi, Mr. Rishabh Gupta, Mr. Sameer Sethi,  
Ms. Mehreen Garg, Advocates for SRA.**

**WITH**  
**Company Appeal (AT) (Insolvency) No. 1226 of 2023**  
**&**  
**I.A. No. 4320, 4317 of 2023**

**IN THE MATTER OF:**

Dhanaji Mohan Nikam & Ors.

....Appellants

Vs

Manoj Kumar Agarwal, Resolution Professional of  
D.S. Kulkarni Developers Ltd. & Ors.

.... Respondents

**Present:**

**For Appellants:**

**Mr. Krishnendu Datta, Sr. Advocate with Ms.  
Pallavi Singh, Mr. Shikher Deep Aggarwal,  
Advocates**

**For Respondents:**

**Mr. Abhijeet Sinha, Sr. Advocate with Mr.  
Varun Kalra, Mr. Samir Malik, Mr. Shahan  
Ulla, Mr. Akash Chatterjee, Mr. Pranav  
Khanna, Advocates for RP.**

**Mr. Arvind Nayar, Sr. Advocate with Mr.  
Puneet Singh Bindra, Mr. Akshay Doctor, Mr.  
Parag Sawant, Mr. Akshay Sharma, Mr. Akshay  
Joshi, Mr. Rishabh Gupta, Mr. Sameer Sethi,  
Ms. Mehreen Garg, Advocates for SRA.**

**WITH**  
**Company Appeal (AT) (Insolvency) No. 1660 of 2023**  
**&**  
**I.A. No.5986, 5987, 5988 of 2023**

(Arising out of Order dated 01.08.2023 passed by the Adjudicating  
Authority (National Company Law Tribunal), Mumbai Bench-I in IA  
No.01.08.2023 in CP (IB) No.1633/MB/C-I/2019))

**IN THE MATTER OF:**

Bharat Vitthal Jadhav & Ors

....Appellants

Vs

Manoj Kumar Agarwal & Anr.

.... Respondents

**Present:**

**For Appellants:** Mr. Kushal Choudhary, Mr. Angad Ahluwalia and Mr. Jatin Verma, Advocates.

**For Respondents:** Mr. Abhijeet Sinha, Sr. Advocate with Mr. Anand Singh Sanjor, Advocates for RP  
Mr. Arvind Nayar, Sr. Advocate with Mr. Puneet Singh Bindra, Mr. Akash Chatterjee, Mr. Rishabh Gupta, Mr. Sameer Sethi, Mr. Parag Sawant, Mr. Akshay D. and Mr. Akshay Sharma, Advocates for SRA

**With**

**Company Appeal (AT) (Insolvency) No. 1050 of 2023**

(Arising out of Order dated 23.06.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I in IA No.1950 of 2021 in CP (IB) No.1633/MB/C-I/2019)

**IN THE MATTER OF:**

Piyuja Suresh Singhvi & Anr.

....Appellants

Vs

Manoj Kumar Agarwal & Ors.

.... Respondents

**Present:**

**For Appellants:** Mr. Chaitanya Nikte, Mr. Anuj Tiwari and Ms. Aroshi Pal, Advocates.

**For Respondents:** Mr. Abhijeet Sinha, Sr. Advocate with Mr. Anand Singh Sengor, Advocate for RP  
Mr. Akash Chatterjee, Advocate  
Mr. Arvind Nayar, Sr. Advocate with Mr. Rishabh Gupta, Mr. Sameer Sethi, Mr. Parag Sawant, Mr. Akshay Doctor and Mr. Akshay Sharma, Advocates

**With**

**Company Appeal (AT) (Insolvency) No. 1051 of 2023**

(Arising out of Order dated 23.06.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I in IA No.1950 of 2021 in CP (IB) No.1633/MB/C-I/2019)

**IN THE MATTER OF:**

Priyash Suresh Singhvi & Anr.

.... Appellants

Vs

Manoj Kumar Agarwal & Ors.

.... Respondents

**Present:**

**For Appellants:** Mr. Chaitanya Nikte, Mr. Anuj Tiwari and Ms. Aroshi Pal, Advocates

**For Respondent:** Mr. Abhijeet Sinha, Sr. Advocate with Mr. Anand Singh Sengor, Advocate

**Mr. Akash Chatterjee, Advocate**

**Mr. Puneet Singh, Mr. Rishabh Gupta, Mr. Sameer Sethi and Mr. Akshay Sharma, Advocates**

**With**

**Company Appeal (AT) (Insolvency) No. 1361 of 2023  
& I.A. No. 4843 of 2023**

(Arising out of Order dated 01.08.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I in IA No.2157/2021 and in CP (IB) No.1633/MB/C-I/2019)

**IN THE MATTER OF:**

Jiten S. Gada & Ors.

.... Appellants

Vs

Manoj Kumar Agarwal  
Resolution Professional of  
D.S. Kulkarni Developers Ltd. and Ors.

.... Respondents

**Present:**

**For Appellants:** Mr. Krishnendu Datta, Sr. Advocate along with Mr. Varun Garg, Mr. Harsh Pandya, Ms. Alina, Advocates

**For Respondents:** Mr. Abhijeet Sinha, Sr. Advocate with Mr. Varun Kalra, Mr. Samir Malik, Mr. Akash Chatterjee, Mr. Pranav Khanna, Advocates for RP.

**Mr. Arvind Nayar, Sr. Advocate with Mr. Puneet Singh Bindra, Mr. Akshay Doctor, Mr. Parag Sawant, Mr. Akshay Sharma, Mr. Akshay Joshi, Mr. Rishabh Gupta, Ms. Mehreen Garg, Advocates for SRA.**

**With**

**Company Appeal (AT) (Insolvency) No. 1385 of 2023**

(Arising out of Order dated 01.08.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-I in IA No.2157/2021 and in CP (IB) No.1633/MB/C-I/2019)

**IN THE MATTER OF:**

Viraj Sham Jadhav

.... Appellant

Vs

Bank of Maharashtra & Ors.

.... Respondents

**Present:**

**For Appellant:**

**Mr. Kunal Cheema, Mr. Apporv Shukla, Mr. Raghav Deshpande, Mr. Shubham Chandankhede, Mr. Puneet Chahar and Ms. Prableen A. Shukla, Advocates**

**For Respondents:**

**Mr. B.P. Singh, Advocate for R-1.**

**Mr. Abhijeet Sinha, Sr. Advocate with Mr. Varun Kalra, Mr. Samir Malik, Mr. Akash Chatterjee, Mr. Pranav Khanna, Advocates for R-2.**

**Mr. Arvind Nayar, Sr. Advocate with Mr. Puneet Singh Bindra, Mr. Akshay Doctor, Mr. Parag Sawant, Mr. Akshay Sharma, Mr. Akshay Joshi, Mr. Rishabh Gupta, Ms. Mehreen Garg, Advocates for SRA.**

## **J U D G M E N T**

**ASHOK BHUSHAN, J.**

The Appeal(s) have been filed against the – (i) Order dated 23.06.2023 passed by National Company Law Tribunal, Mumbai Bench-I in IA No.1950

of 2021 filed by the Resolution Professional (“**RP**”), by which order Resolution Plan submitted by Ashdan Properties Pvt. Ltd.; Classic Promoters and Builders Pvt. Ltd. and Atul Builders India Pvt. Ltd. (in Consortium) have been approved by the Adjudicating Authority in respect of the Corporate Insolvency Resolution Process (“**CIRP**”) of D.S. Kulkarni Developers Ltd. (the Corporate Debtor); and (ii) Orders dated 01.08.2023, rejecting the IA’s filed by Homebuyers as infructuous consequent to order dated 23.06.2023.

**2.** The above Appeal(s) have been filed by Promoters of the Corporate Debtor; other Group Entities; Operational Creditors; Employees and Homebuyers of the Corporate Debtor. For convenience, the Appeal(s) can be divided in three groups namely – Group-I, Group-II and Group-III.

**Group-I**

- (1) Company Appeal (AT) (Insolvency) No. 63 of 2024 - Deepak Sakharam Kulkarni & Anr. (Promoter);
- (2) Company Appeal (AT) (Insolvency) No. 1142 of 2023 - Shirish Deepak Kulkarni (Promoter);
- (3) Company Appeal (AT) (Insolvency) No. 1307 of 2023 - DS Kulkarni and Company (Related Entity);
- (4) Company Appeal (AT) (Insolvency) No. 1308 of 2023 - DSK Global Education and Research Pvt. Ltd. (Related Entity)

**Group-II - (Homebuyers)**

- (1) Company Appeal (AT) (Insolvency) No. 1361 of 2023 - Jiten S. Gada & Ors.



- (2) Company Appeal (AT) (Insolvency) No. 1385 of 2023 - Viraj Sham Jadhav (Homebuyers)
- (3) Company Appeal (AT) (Insolvency) No. 1050 of 2023 - Piyuja Suresh Singhvi & Anr.
- (4) Company Appeal (AT) (Insolvency) No. 1051 of 2023 – Priyash Suresh Singhvi & Anr.
- (5) Company Appeal (AT) (Insolvency) No. 1660 of 2023 - Bharat Vitthal Jadhav & Ors.

**Group-III**

- (1) Company Appeal (AT) (Insolvency) No. 1223 of 2023 - Sri Umiyaa Construction Pvt. Ltd. & Ors. (Operational Creditor);
- (2) Company Appeal (AT) (Insolvency) No. 1226 of 2023 - Dhanaji Mohan Nikam & Ors. (Employees)

**3.** Before we notice facts and pleadings in above Appeal(s), it is necessary to notice certain facts with regard to DSK Group, which consists of the Corporate Debtor – D.S. Kulkarni Developers Ltd. and other Group Entities, partnership firms, engaged in different business, primarily real estate development. The CIRP proceedings culminated into the Resolution Plan, which has been approved by the impugned order dated 23.06.2023. There has been several proceedings including the proceedings under Prevention of Money Laundering Act, 2002 (hereinafter referred to as the “**PLMA Act**”) against the Corporate Debtor and its Promoters, Related Entities, which also need to be noticed.

**4.** The D.S. Kulkarni Developers Ltd. and Group Companies have been in the business of residential and commercial construction since last

several decades. Deepak Sakharam Kulkarni, Appellant No.1 in one of the Appeals is founder of the Group. Appellant No.2 – Smt. Hemanti Deepak Kulkarni is wife of Deepak Sakharam Kulkarni. Shri Shirish Deepak Kulkarni, Appellant in Another Appeal is son of Deepak Sakharam Kulkarni and Smt. Hemanti Deepak Kulkarni. On 31.12.1984, Deepak Sakharam Kulkarni, Hemanti Deepak Kulkarni and Shirish Deepak Kulkarni, as Partners, constituted a Partnership Firm namely - D.S. Kulkarni & Company. On 18.05.1987 Deepak Sakharam Kulkarni with Hemanti Deepak Kulkarni and Shirish Deepak Kulkarni constituted another Partnership Firm namely – D.S. Kulkarni & Associates. On 20.09.1991, D.S. Kulkarni Developers Ltd. was incorporated as Public Limited Company with Deepak Sakharam Kulkarni as its Chairman and Managing Director. DSK Global Education and Research Pvt. Ltd. was constituted as Registered Company, wherein Deepak Sakharam Kulkarni, Hemanti Deepak Kulkarni and Shirish Deepak Kulkarni and other family Members as Director. There were several other subsidiaries of D.S. Kulkarni Developers Ltd.; other Partnership Firms; different other Private Companies and Firms; Trusts of the DSK Group. D.S. Kulkarni & Co. and D.S. Kulkarni & Associates, which were two Registered Partnership Firms, were constituted in the year 1984 and 1987 for carrying out various developments activities and direct and indirect loans from year 2006-07 till 2015-16. The above two Firms successfully completed various residential/commercial Projects.

**5.** In Corporate Debtor - D.S. Kulkarni Developers Ltd. shareholding of the D.S. Kulkarni Family is 49.98% with Deepak Sakharam Kulkarni having 28.6% share holding as on 26.03.2016. DSK Group has also accepted Fixed Deposits from the public for the purposes of working capital and expansion. D.S. Kulkarni Developers Ltd. with the intent to develop a SEZ Project entered into with a foreign Company namely – GTC Cyprus Holding Ltd. in the year 2007-08 in Joint Venture. The Corporate Debtor also received permission from Director of Industries, Maharashtra on 01.03.2007 to purchase land at village Fursungi, Dist. Pune, which was subject to various conditions as per provisions of Mumbai Tenancy and Agricultural Act, 1948. The Corporate Debtor also obtained approval for constructing of SEZ Project from Government of India, Ministry of Commerce and Industry on 26.07.2007 with various conditions. As per the conditions, the Corporate Debtor has to comply the conditions within a stipulated period to obtain final permission for setting up SEZ Project, failing which, Corporate Debtor would have to return the land to same agriculturist at the same price and further it was obligated to purchase huge land within two years from the date of order and has to purchase land from the agriculturist on market price with full willingness of the land owner. On Corporate Debtor having failed to receive an SEZ approval/ final notification, permission was to be automatically cancelled. Due to stringent conditions for obtaining the final SEZ permission, Deepak Sakharam Kulkarni and Hemanti Deepak Kulkarni to minimize the risk of

losses to Corporate Debtor, purchased the land through their Partnership Firm and/or through their relatives. The Corporate Debtor started purchasing land through D.S. Kulkarni & Co. and its relatives. The fund for purchase of agricultural land to its relatives were given by Hemanti Deepak Kulkarni, the President of the Group. Relatives of the Deepak Sakharam Kulkarni purchased various land in their own names from the funds given by Hemanti Deepak Kulkarni. The foreign Company due to its financial constraints backed out from the Joint Venture, leading to cancellation of SEZ Project. On cancellation of SEZ Project, the Promoter decided to develop an Integrated Township Project spread over 236 acres of land at Fursungi. The Promoter informed the D.S. Kulkarni & Co. and all other Partnership Firms as well as relatives to refund the amount advanced to them for carrying out development in the land purchased by them. Consequently, the balance amount, which was advanced, was refunded. The Collector of Pune had sanctioned the proposed outlay of land of 181 acres for special township by way of order dated 21.01.2013. The land, which was referred to by the Collector, included land in the name of Corporate Debtor, D.S. Kulkarni & Co. and certain other individual Members.

**6.** In the year 2013, DSK Group of Companies with desire to expand their business, formed six different registered Partnership Firms. DSK Group of Companies were accepting the deposits on secured loan from general public. The registered Firms of the DSK Group has also accepted

Fixed Deposits. D.S. Kulkarni & Associates and D.S. Kulkarni & Co. had given advances to the Corporate Debtor in the year 2011-2013 for purchase of property and carrying out development. Other entities of DKS Group also gave various advances to the Corporate Debtor. In April 2017, the Corporate Debtor had made allotment to its various homebuyers in several projects including DSK Vishwa Phase VI, Anandghan, which Project was situated at Dhayari Pune. Certain other Projects of the Corporate Debtor namely – DSK Madhukosh, situated at Andheri Mumbai where, possession were also handed over to the homebuyers. On 28.10.2017, an FIR was lodged against Deepak Sakharam Kulkarni and Hemanti Deepak Kulkarni before EOW, Pune. Several FIRs were registered in Police Station at Pune, as well as in Mumbai being FIR No.347/2017 at Shivaji Nagar Police Station; FIR No.373/2017 at Rajarampuri Police Station Kolhapur; FIR No.309/2017 at Shivaji Park Police Station, Mumbai against Deepak Sakharam Kulkarni, Hemanti Deepak Kulkarni, Shirish Deepak Kulkarni and DSK Group of Companies and others. Based on above, a case was registered under MPED Act, 1999. A Provisional Attachment Order dated 14.02.2019 was passed by Deputy Director, Enforcement Directorate Mumbai Zonal Office with respect to immovable properties and movable properties against the Corporate Debtor, Promoters and other Group Companies and the same were attached. A complaint came to be filed before the Adjudicating Authority under the PMLA against Deepak Sakharam Kulkarni, Hemanti Deepak Kulkarni and Shirish Deepak

Kulkarani also against D.S. Kulkarni & Co., D.S. Kulkarni & Associates and other DSK Group partnership Firms and entities. Notices were issued in the proceedings. Statements of Deepak Sakharam Kulkarni, Hemanti Deepak Kulkarni were also recorded. In proceedings under PMLA, by an order dated 05.08.2019, the Provisional Attachment Order was confirmed by the Adjudicating Authority.

**7.** Bank of Maharashtra filed an Application under Section 7 against the Corporate Debtor and by order dated 26.09.2019, CIRP against the Corporate Debtor commenced. It is to be noted that prior to initiation of CIRP against the Corporate Debtor, Deepak Sakharam Kulkarni and Hemanti Deepak Kulkarni were arrested in the PMLA case on 07.02.2018. Hemanti Deepak Kulkarni was released on 18.11.2022, whereas Deepak Sakharam Kulkarni was released on 09.03.2023.

**8.** After commencement of CIRP vide order dated 26.09.2019, Manoj Kumar Agarwal was appointed as IRP, who was subsequently confirmed as RP. RP issued publication in the newspaper as well as on the website, inviting claims from the homebuyers, some of the homebuyers, who are Appellants before us and have filed their claims in response to the publication issued by the IRP. In response to the notice issued, several homebuyers filed their claim as allotment letter issued by the Corporate Debtor in the year 2017 itself. The RP sent various communications to certain homebuyers including some of the Appellants herein, asking details of payments to the Corporate Debtor. Ultimately the RP issues list of

creditors dated 09.08.2021. Claim of the homebuyers, who could not file any documents to support their payment to the Corporate Debtor were rejected. The claims of the homebuyers who are Appellants before us, also was not included in the list of creditors, as admitted claims.

9. In the CIRP, Resolution Plans were submitted, including Resolution Plan by Ashdan Properties Pvt. Ltd.; Classic Promoters and Builders Pvt. Ltd. and Atul Builders India Pvt. Ltd. (in Consortium), which Resolution Plans were approved by the Committee of Creditors (“CoC”) on 13.08.2021. On 24.08.2021, RP filed an Application before the Adjudicating Authority for approval of the Resolution Plan. Certain homebuyers, including two of the Appellants filed their claims in March 2023, which claim was rejected and communication was issued by the RP, informing them that their claim has been filed with delay, cannot be entertained. Some of the homebuyers filed their Application, whose claim was rejected before the Adjudicating Authority in the year 2023, which Applications remained pending for consideration. The Adjudicating Authority heard the IA No.1950 of 2021 filed by the RP for approval of the Plan and approved the Resolution Plan by order dated 23.06.2023. IAs filed by some of the homebuyers, challenging the rejection of their claims, remained pending, on the date when Resolution Plan was approved. The homebuyers, who are in Group No.II, have filed these Appeal(s), challenging the order dated 23.06.2023 approving the Resolution Plan. Some of the Homebuyers have challenged subsequent order dated 01.08.2023. We have already noticed above that

Promoters as well as their Group Entities, Operational Creditors and employees have also filed the Appeal(s), as noted above, challenging the approval of Resolution Plan dated 23.06.2023.

**10.** We have heard the above Appeals on different dates, but since the Appeal(s) are filed against the orders dated 23.06.2023 and 01.08.2023, we are deciding these Appeal(s) by this common judgment.

**11.** After having noticed the brief background facts, now we proceed to notice facts and pleadings in each Appeal.

**12.** We now proceed to notice the individual facts and prayers made in each of the above appeals. As noticed above Group I consists of four appeals, we proceed to notice details in each appeals separately.

**Comp. App. (AT) (Ins.) No. 63/2024**

**13.** This appeal has been filed by Deepak Sakharam Kulkarni and Smt. Hemanti Deepak Kulkarni challenging the order dated 23.06.2023 passed in I.A. No.1950/2021, approving the Resolution Plan submitted by Respondents No. 2 to 4.

**14.** Appellant's case in the appeal is that upon various complaints received from few depositors of the Corporate Debtor, various regulatory authorities investigating agencies took cognizance. Enforcement Directorate issued letter dated 14.02.2019 in terms of Section 5 of the Prevention of Money Laundering Act, 2002, (hereinafter referred to as 'PMLA Act, 2005'). The Adjudicating Authority by subsequent order dated



05.08.2019, confirmed the provisional attachment order. The Appellants were arrested on 17.02.2018. Appellant No. 1 Deepak Skaharam Kulkarni was released from Jail on 09.03.2023 and Appellant No. 2 Hemanti Deepak Kulkarni was released from Jail on 18.11.2022. CIRP against the Corporate Debtor commenced on 26.09.2019. Appellant's case is that Appellant being lodged in Jail had no access to any of the documents prepared or drawn by the Resolution Professional (RP). After release the Appellants were in process of seeking further information from the stakeholders in respect of Corporate Debtor, when they learnt that orders on the application for approval of the Resolution Plan has been heard and reserved. On 23.06.2023, Adjudicating Authority allowed the application filed by the RP. Appellant's case in the appeal is that the assets of the Corporate Debtor are extremely undervalued.

**15.** It is submitted that actual book asset valuation of the assets is over Rs. 1900 Crores and same has been sold at the meagre amount of around Rs. 826.30 Crores in respect of which only a sum of Rs. 30 Crores is being paid upfront and remaining amount is to be payable within seven years.

**16.** Appellant has brought on record a Valuation Report dated 28.08.2023. Appellant's case is that various assets of the Corporate Debtor has not even been valued and the valuation has not been done even as per ready reckoner valuation. Assets of the Corporate Debtor are being handed over to the Successful Resolution Applicant (SRA) on throw away value.

**17.** Appellant's case further is that in the Resolution Plan, the assets which do not belong to the Corporate Debtor have been included in the Resolution Plan. The case of the Appellant is that the personal properties of the promoters have been included in the Resolution Plan. The Appellant has referred to Clause 13.8 of the Resolution Plan where the Plan contemplates that 7.33 acres of land, at Fursungi shall be sold to the Corporate Debtor the Deed of Conveyance by promoter Shirish Kulkarni. Further land measuring 89.35 acres situated in Village Bavdhan, Taluka Haveli, District Pune, being survey No. 326/1 has been included, which do not belong to the Corporate Debtor.

**18.** It is the case of the Appellant that properties of promoters cannot be included in the Resolution Plan. It is the case of the Appellant that under Sections 18 & 25, IRP can take possession of assets of the Corporate Debtor only.

**19.** Appellant's further case is that the assets having been attached under the PMLA Act, 2005, prior to commencement of CIRP cannot be made the subject matter of the Resolution Plan. The order passed by the Adjudicating Authority, PMLA dated 06.08.2019 cannot be eclipsed by operation of provisions of Section 14 of the Code, inclusion of the said assets makes the Resolution Plan not in compliance of law. It is further stated that Appellant had filed, after coming to know about the facts and after being released from prison, an I.A. No. 2423 of 2023 before the

Adjudicating Authority, which application was kept pending and Resolution Plan was approved by the Adjudicating Authority on 23.06.2023.

**20.** In the appeal, Appellant has prayed for setting aside the order dated 23.06.2023, passed by the Adjudicating Authority in I.A. No.1950/2023.

**Comp. App. (AT) (Ins.) No. 1142/2023**

**21.** This appeal has been filed by Shirish Deepak Kulkarni, one of the promoters of the Corporate Debtor and son of Deepak Sakharam Kulkarni and Hemanti Deepak Kulkarni.

**22.** Appellant's case in the appeal is that the Resolution Plan submitted by Respondents No. 2 to 4 takes away the assets of which the Appellant is owner. Appellant in the appeal in Paragraphs 7.1, 7.2 & 7.3 has pleaded as follows:

*"7.1. The Corporate Debtor i.e. D S Kulkarni Developers Limited was incorporated and it was engaged in the construction business. Print out of the Master Data of the Corporate Debtor as available on the official website of the Ministry of Corporate Affairs is annexed herewith and marked as **ANNEXURE "A-5"**.*

*7.2. Property being land bearing numbers (i) Survey No. 46, Hissa No. 3 at Fursungi, (ii) Survey No. 53, Hissa No. 3B/2, (iii) Survey No. 36, Hissa No. I at Fursungi, (iv) Survey No. 47, Hissa No. IA, (v) Survey No. 48, Hissa No. I A and (vi) Survey No. 44, Hissa No. 7/1 at Fursungi were conveyed in favour of the Appellant.*

<b>Sl. No.</b>	<b>Date of Conveyance</b>	<b>Property Description</b>
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a.	29.09.2009	Gift Deed as executed by Ms. Shilpa Makrand Kulkarni in favour of Mr. Shirish Deepak Kulkarni for land bearing Survey No. 46, Hissa No. 3 at Fursungi.
b.	29.09.2009	Gift Deed as executed by Ms. Swarupa Makarand Kulkarni in favour of Mr. Shirish Deepak Kulkarni for land bearing Survey No. 53, Hissa No. 3B/2 and Land Bearing Survey No. 36, Hissa No. 1 at Fursungi.
c.	29.09.2009	Gift Deed as executed by Ms. Sai Prakash Kulkarni (Sai Kedar Vanjape) in favour of Mr. Shirish Deepak Kulkarni for land bearing Survey No. 47, Land Bearing Survey No. 48, Hissa No. 1A and Land Bearing Survey No. 44, Hissa No. 7/1 at Fursungi.

Copy of the Gift Deed dated 29.09.2009 executed by Ms. Shilpa Makrand Kulkarni in favour of Mr. Shirish Deepak Kulkarni for land bearing Survey No. 46, Hissa No. 3 at Fursungi is annexed herewith and marked as **ANNEXURE "A-6"**. Copy of Gift Deed dated 29.09.2009 as executed by Ms. Swarupa Makarand Kulkarni in favour of Mr. Shirish Deepak Kulkarni for land bearing Survey No. 53, Hissa No. 3B/2 and Land Bearing Survey No. 36, Hissa No. 1 at Fursungi is annexed herewith and marked as **ANNEXURE "A-7"**. Copy of Gift Deed as executed by Ms. Sai Prakash Kulkarni (Sai Kedar Vanjape) in favour of Mr. Shirish Deepak Kulkarni for land bearing Survey No. 47, Land Bearing Survey No. 48, Hissa No. 1A and Land Bearing Survey No. 44, Hissa No. 7 / 1 at Fursungi is annexed herewith and marked as **ANNEXURE "A-8"**.

*7.3. The Appellant was arrested on 25.06.2018 as he surrendered in the Ld trial court upon directions of the Hon'ble Apex Court and thereafter, was finally released from Yerawada Central Prison, Pune on 06.03.2023. Thus, the Appellant never had access to any of the documentation being prepared or drawn by the Resolution Professional. Copy of the document proving the date of arrest and release of the Appellant is annexed herewith and marked as **ANNEXURE "A-9" (Colly).**"*

**23.** Appellant's further case is that with regard to above land, there is no written contract between the Appellant and the Corporate Debtor and there is no contract between Appellant and any of the Financial Creditors and further said properties are mortgaged in favour of Toyota Financial Services India Ltd. in respect of loan given to DSK Motors Private Limited. It is further submitted that proceeding under Section 95 has also been initiated against the Appellant as State Bank of India (SBI) being C.P. IB No. 199 (MB)/2021 which proceedings are still pending. The case of the Appellant is that Appellant was never given any opportunity in the CIRP of the Corporate Debtor. The Appellant who was owner of the above property cannot be compelled to transfer the same in favour of the Resolution Applicant. The owner that is the Appellant cannot be divested of the rights to enjoy the ownership rights. Appellant in the appeal has prayed for setting aside the order dated 23.06.2023.

**Comp. App. (AT) (Ins.) No. 1307/2023**

**24.** The appeal has been filed by partnership firm consisting of Deepak Sakharam Kulkarni and Hemanti Deepak Kulkarni.

**25.** The Appellant's case is that in the Resolution Plan in Appendix IV bearing No. 10, Appellant's property being aggregate 89.35 acres survey No. 326/1 Village Bavdhan have been included in the Resolution Plan without acknowledging that the aforesaid assets are owned by the Appellant partnership firm. Appellant's case is that IRP/RP can take possession of assets which are owned by the Corporate Debtor only. Assets which are not owned by Corporate Debtor cannot be included in the Resolution Plan. Proceedings under Section 95(1) has also been initiated against by Encore Asset Reconstruction Company against DS Kulkarni Company being C.P. IB No.1215/2022 which is still pending. The asset aggregating to 89.35 acres has been included the Resolution Plan without even specifying as to in whose name the title vest.

**26.** The RP without verifying the records and without verifying the ownership of the assets have included assets in the Resolution Plan. There has been dereliction of duty by Respondent No. 1 and the Committee of Creditors (CoC). The Partners of the Appellant firm and their family being imprisoned on account of Criminal Proceedings could not actively realise the nature of fraud that was being played on them in the CIRP. The impugned order failed to consider that Resolution Plan is clearly in violation of applicable provisions of law included but not limited to Transfer of Property Act 1882.

**27.** Appellant's case is that property bearing survey No. 326/1 was purchased by the Appellants by Sale Deed dated 07.06.2002 executed by

Lata Shivaji Ingale and another Sale Deed of the same date of 07.06.2002 executed by Shivaji Vithalrao Ingale in favour of the Appellant for land bearing No. 326/1. The Appellant were never divested with the ownership of the aforesaid plot in the approved Resolution Plan, Appellant's property has been illegally dealt with, which Resolution Plan did not deserve the approval by the Adjudicating Authority.

**28.** Partners of the Appellant being in jail till 09.03.2023 and 18.11.2022 respectively, they had never any access of any documentation being prepared or plan of the Resolution Professional. The RP without access to all relevant documents and without obtaining relevant documents have placed the Resolution Plan before the CoC for approval. Appellant have also prayed for setting aside the order dated 23.06.2023.

**Comp. App. (AT) (Ins.) No. 1308/2023**

**29.** The Appellant is a Company registered under the Companies Act 1956, DS Kulkarni Developers Limited, the Corporate Debtor, by Lease Deed dated 24.09.2008 leased out land as mentioned in Schedule 1 to Schedule 4 of the Lease Deed. The lease was taken by the Appellant for commencement of school for professional courses for animation and industrial design. Lease of land for 19 acres for 99 years for the yearly rent of Rs. 1 Crore. Lessee was at liberty to mortgage the land in favour of Financial Institution Banks for obtaining of financial/loans for construction of building/structures. The Appellant has taken facility of Rs.

100 Crores and 20 Lakhs from Central Bank of India to construct and operate the institute on the said property, charge was taken in favour of Central Bank of India. The Appellant proceeded to build infrastructure on the said lease property by investing an amount more than Rs. 263 Crores. Government of Maharashtra, promulgated DSK World University Act, 2017, which came into effect on 05.05.2017, establishing the University which University is offering a variety of courses and the Resolution Plan submitted by Respondents No. 2 to 4, the rights of Appellant have sought to be extinguished. The Lease Deed executed by the Corporate Debtor for 99 years could not have been extinguished in the Resolution Plan. Corporate Debtor at no point of time, including the Resolution Professional, had ever issued a notice terminating the lease. Appellant has questioned the provisions of the Resolution Plan 7.1.1.6.

**30.** It is the case of the Appellant that RP did not terminate the Lease Agreement since on termination, the Appellant was entitled for compensation with regard to building constructed by the Appellant on the lease land, to save the Corporate Debtor from liability of paying compensation, the Lease Deed was never terminated. The Resolution Plan cannot terminate the Lease Deed which was granted for 99 years to the Appellant. The Appellant has also prayed for setting aside the impugned order dated 23.06.2023.

**31.** Now we come to appeals of Homebuyers, which are grouped in Group II.



**Comp. App. (AT) (Ins.) No. 1660/2023**

**32.** The Appellant in the appeal claims to have been issued an allotment letter dated 29.04.2017 by the Corporate Debtor and its sister concern DSK Global Education & Research Ltd. in respect of flats in the project, namely “DSK Vishwa Ph-VI, Anandghan” being developed by Corporate Debtor. The allotment letters were issued to the Appellant on payment of approximately 90% of the total consideration and allotment letters were to be registered on or before April 2019. CIRP having been initiated against the Corporate Debtor, RP called for submission of claims from Homebuyers. RP issued a set of direction and uploaded on the website under the name “directions to submit the claim for Homebuyers”. As per the directions, the homebuyers were required to submit Form CA along with documents in order to prove their claims against the Corporate Debtor. The Appellant submitted their claim before the RP in October 2019 under the category “allotment letter holders as Financial Creditors”. The RP however, proceeded to reject the claim on 25.05.2021, solely on the ground that said claims were based only on allotment letters and there are no proof of payments made to Corporate Debtor.

**33.** With regard to Appellants, the list of Creditors was published by the RP as on 25.05.2021, in which list although claims submitted by the Appellants were noticed, but claim was rejected with respect to Appellants. With regard to Bharat Jhadav and others, following was mentioned in the list of rejecting the claim **“claim rejected as claim is based on just**

**allotment letter and no other supporting documents provided and amount is also not received in Books of Corporate Debtor”.**

**34.** Appellant after the rejection of their claim filed an I.A. No. 1844/2021, which was filed on behalf of Association of Allotment Letter Holders titled as DSK Anandghan (Allotment Letter Holders through its Authorised Representative Bharat Jadhav) seeking a direction to admit their claim. In the application, details of the Flat No. total consideration of Flat, total amount paid and allotment date has been mentioned. The entity who had issued a letter was also mentioned which were mostly the Corporate Debtor, with regard to few Appellants allotment letter was issued by DSK Global. In I.A. No. 1844/2021 notices were issued by Adjudicating Authority on 25.08.2021 to which a Reply was also filed by the RP. Adjudicating Authority, however, without deciding the application I.A. 1844/2021 proceeded to approve the Resolution Plan on 23.06.2023. By a subsequent order dated 01.08.2023, I.A. No.1844/2021 was dismissed by following order:

**“IA 2157/2021 IA 1844/2021 IA 913/2023**

*Mr. Rohit Gupta, Ld. Counsel for the Applicant in IA 913 of 2023 and Mr. Shyam Kapadia, Ld. Counsel for the Resolution Professional of the Corporate Debtor are present. These Interlocutory Applications have been filed by Applicants, Home Buyers seeking direction against the Resolution Professional of the Corporate Debtor for admission of their rejected claims/modification of the Resolution Plan In this case the Resolution Plan has already been approved on 23.06.2023. Hence the present Interlocutory Applications become infructuous and thus, the same are disposed of.”*

**35.** Appellant aggrieved by order approving the Resolution Plan has come up in this appeal. In the appeal, following prayers have been made:

*“A. Allow the present appeal and set aside the order dated 01.08.23 passed by the Hon’ble National Company Law Tribunal, Mumbai Bench, uploaded on 11.08.23 whereby the Ld. Adjudicating Authority was pleased to dispose of IA No. 1844/2021 as being infructuous in view of the approval of resolution plan vide order dated 23.06.23 in CP(IB)/MB/No. 1633/2019; and;*

*B. Direct the Resolution Professional to admit the claims of the flat purchasers, members of the Appellant, based on their allotment letters and thereafter make provisions for such flat purchasers in the Resolution Plan; and;*

*C. Summon the entire record of IA No. 1844/2021 in CP(I.B.) No. 1633/2019; and*

*D. Ad-interim orders in terms of the aforesaid prayer.*

*E. Pass such other and further reliefs that this Hon’ble Appellate Tribunal may deem fit in the facts and circumstances of this case.”*

**Comp. App. (AT) (Ins.) No. 1050/2023**

**36.** This appeal by two Appellants Piyuja Suresh Sanghvi and Suresh Sanghvi has been filed challenging the order dated 23.06.2023, by which Resolution Plan has been approved.

**37.** Appellant’s case in the appeal is that the Development Agreement dated 31.12.2013 was entered between the Corporate Debtor as a developer, acquiring development rights from DSK Global Education and Research Ltd. with respect to property situated at Kirkatwadi, Taluka Haveli, District Pune. In the year 2015, Appellant No. 2 has advanced

certain monies as loans to DSK Kulkarni and Company. Appellant's case is that payments made to DSK Kulkarni and Company are reflected in the Bank Statement of HDFC Bank. It is pleaded that in the year 2015, Directors/Partners Shareholders of Corporate Debtor and DS Kulkarni Company were the same person and management and affairs of the Corporate Debtor as well as DS Kulkarni & Co. were controlled and conducted by same person. In the year 2017, Corporate Debtor decided to take over the liabilities of DS Kulkarni and Company accordingly adjusted the loan of Appellant No. 2 advanced to DS Kulkarni Company and executed a registered Agreement dated 30.06.2017 for a Flat bearing No. 201 in G Wing on 2<sup>nd</sup> Floor in the project DSK Vishwa Ph-VI, Anandghan. The Corporate Debtor in the capacity of developer and DSK Global Education & Research Limited as land owner, executed registered Tripartite Agreement dated 30.06.2017 in favour of the Appellant in purchase of Flat No 201. DS Kulkarni Developers Limited by the general entry bearing No. six dated 26.06.2017 for the period from 01.06.2017 to 30.06.2017 adjusted the loan advanced by Appellant No. 2 through DS Kulkarni Company against the consideration to be paid by the purchasers for the Appellant towards the said Flat No 201.

**38.** Appellant made further payments towards VAT and service tax and towards stamp duties and registration charges directly to the Corporate Debtor towards purchase of the Flat. A copy of the Ledger Account of the Appellant No. 1 maintained by the Corporate Debtor along with the copy of

Bank Statement has also been filed in support of the appeal. Appellant has already paid the total consideration as well as the amount towards the Stamp Duty and registration charges and VAT on service tax. The Corporate Debtor, lastly, modified its RERA application in the month of July 2017, which include the total No of Flats sold in G wing in project DSK Vishwa Ph-VI, Anandghan, which also include the Appellant therein.

**39.** The Appellant in spite of continuous follow-up with the Corporate Debtor to complete construction and handover possession did not get any response nor they were aware of the commencement of the CIRP. Appellant being doctors by profession were occupied by the profession and as soon as they came to know about the CIRP, they filed their Form CA dated 29.03.2023, along with all supporting documents, including the registered Tripartite Agreement. The RP vide email dated 03.04.2023, rejected the claim of Appellant on the ground of delay in filing of the claim. Appellant on 10.04.2023 filed an I.A. No. 2117/2023 before the Adjudicating Authority. The Adjudicating Authority approved the Resolution Plan on 23.06.2023 and by subsequent order dated 22.11.2023, rejected I.A. No. 2117/2023 filed by the Appellant. Appellant also filed Comp. App. (AT) (Ins.) No. 192/2024, challenging the order dated 22.11.2023, which appeal was dismissed by this Tribunal on 21.02.2024.

**40.** Appellant aggrieved by the approval of the Resolution Plan vide order dated 23.06.2023 has come up in the appeal.

**Comp. App. (AT) (Ins) No. 1051/2023**

**41.** The Appellant No. 2 Suresh Sanghwi has advanced certain money in the year 2015 to DS Kulkarni and Company registered Agreement dated 30.06.2017 for Flat bearing No 601, G Wing on 6<sup>th</sup> Floor of Project DSK Vishwa Ph-VI, Anandghan was executed in favour of the Appellant. The registered Tripartite Agreement was executed with the Appellant as purchaser wherein DSK Global Education & Research Ltd. as land owners and Corporate Debtor as developer. By a general entry dated 30.06.2017, the loan advanced by Appellant to DS Kulkarni and Company was adjusted. The Appellant further made payment of VAT and service tax as well as Stamp Duty on registration charge. In the application filed by the Corporate Debtor through the Maharashtra RERA in July 2017, details of Flats sold in G Wing including the name of the Appellant was also mentioned. After admission of CIRP on 26.09.2023, when the Appellant came to know about the CIRP, they filed their claim on 31.03.2023, which was rejected by RP on the ground of delay. I.A. No. 2114/2023 was filed by the Appellant before the Adjudicating Authority which claimed to be dismissed on 22.11.2023 against which Comp. App. (AT) (Ins) No. 192/2024, was filed by the Appellant which was dismissed by this Tribunal on 21.02.2024. The present appeal has been filed by the Appellant challenging the order dated 23.06.2023, approving the Resolution Plan by which Resolution Plan, the Appellant have not been recognised as Homebuyers.

**Comp. App. (AT) (Ins.) No. 1361/2023**

**42.** This appeal has been filed challenging the order dated 01.08.2023 passed by the Adjudicating Authority in I.A. No. 2157/2021 filed by the Appellant.

**43.** The Appellant's case is that Appellants are Homebuyers in Project of the Corporate Debtor, namely DSK Madhukosh, situated in Village Mohili, Taluka Kurla, sub-District Bandra, Mumbai. Appellants were issued allotment letter in April 2017. All allotment letters in favour of the Appellants were issued by the Corporate Debtor dated 20.04.2017 to 29.04.2017. In allotment letter issued in favour of Appellant No. 1 dated 24.04.2017, allotment of Flat No. 503, 5<sup>th</sup> Floor, in Wing B was made. The allotment also acknowledged that Appellant has paid consideration of Rs. 81 Lakhs for the said Flat. The Appellants were handed over possession of the flats. The Corporate Debtor did not execute the registered Agreement with respect to the units aggrieved by which Appellant had approach the Maharashtra RERA in which proceeding Authorised Representative of the Corporate Debtor, gave an undertaking of affidavit admitting that full consideration have been paid by the concerned Appellant and Corporate Debtor shall registered agreement of sale on or before 31.05.2023. Relying on the statement of Corporate Debtor, the Maharashtra RERA disposed of the complaint. Order was passed by Maharashtra RERA on 05.02.2018 on the complaint submitted by allottees. After initiation of CIRP, Appellants filed their claim to the RP in Form CA in October 2019. RP sent an email

dated 17.07.2020, recognising that possession of Flat is with the allottees, however, the Agreement has not yet been executed. RP informed that in absence of duly stamped and registered Agreement, allottee cannot be treated to be a legal owner of the property. Details of payments were asked for. Appellant filed an I.A. No. 2157/2021 on 22.09.2021, seeking relief against the action of the RP for non-execution of Sale Deed and rejection of the claim of the Appellant. The said applications came to be dismissed on 01.08.2023, holding that application has been infructuous in view of order dated 23.06.2023.

**44.** Appellant aggrieved by the said order filed appeal and prayed for following reliefs:

*“i. To set aside the Impugned Order dated August 1, 2023 passed by the Hon’ble National Company Law Tribunal, Mumbai Bench, Kolkata in the application filed under Section 60(5) of the IBC, 2016 being I.A. No. 2157/2021 in C.P. (IB) No. 1633/MB/2019; and/or*

*ii. To direct Resolution Professional/ Respondent No. 1 or Successful Resolution Applicant/ Respondent No. 3 to register sale deed/agreement to sale of the units of the Appellants in the Madhukosh Project of the Corporate Debtor; and/or*

*iii. To direct Resolution Professional/Respondent No.1 to consider claims of the Appellants as submitted or pleaded before the Hon’ble NCLT;*

*iv. To direct Hon’ble NCLT, Mumbai Bench to rehear the matter and pass an order after hearing both side and considering all the facts and documents on records including orders of RERA;”*



**Comp. App. (AT) (Ins.) No. 1385/2023**

**45.** The facts and the pleadings in this appeal is same as by the Appellant in Comp. App. (AT) (Ins.) No.1361/2023.

**46.** The Appellant was also one of the applicants in I.A. No. 2157/2021 filed before the Adjudicating Authority questioning the action of the RP in not executing the sale deed and rejecting the claim of the Appellant. I.A. No. 2157/2021 was listed on various dates before the Adjudicating Authority on different dates in year 2021 and 2022. On 13.06.2022, Adjudicating Authority passed following orders:

***“I.A. No. 1950 of 2021***

*This application is filed for approval of Resolution Plan. **It is made clear that the present Application will be heard after disposing of all other pending Applications.** Accordingly, the same is adjourned on **20.07.2022.**”*

**47.** Although on various subsequent dates, all the applications including the application of the Appellant was also listed, but I.A. No. 2157/2021 was kept pending and Adjudicating Authority approved the Resolution Plan on 23.06.2023 and subsequently by the order dated 01.08.2023, dismissed the application as infructuous.

**48.** In the appeal following prayers have been made:

*“(a) set aside the Impugned Order dated 1<sup>st</sup> August 2023 passed by the learned National Company Law Tribunal Court-I, Mumbai Bench in I.A. No. 2157 of 2021 in C.P (IB) 1633 (MB) 2019;*

*(b) pending the hearing and final disposal of the Appeal, stay the operation, effect and implementation of the Impugned Order dated 1<sup>st</sup> August 2023 passed by the learned National Company Law Tribunal Court-I, Mumbai Bench in LA No. 2157 of 2021 in C.P (IB) 1633 (MB) 2019;*

*(c) pending the hearing and final disposal of the Appeal, the Respondent/s, their servants, agents or any persons acting through or under them be restrained by and order of injunction from creating third party rights and/or dispossessing the Appellant from the Flat No. B-303, 3<sup>rd</sup> floor in the Building/ Wing B admeasuring 52.46 sq. mtrs. of the total carpet area, in project "DSK Madhukosh" alongwith Parking space no. SCP-1 04 situated at CTS No. 659 comprising of S. No. 18/ 12 (Patt), 1711 (Part), Village Mohili, Tal Kurla, Sub District Bandra, Mumbai;*

*(d) award the costs of the proceedings;*

*(e) pass ex-parte/ ad-interim/ interim orders in terms of prayers (b) and (c) above; and*

*(f) any other appropriate Order(s) as this Hon'ble Appellate Tribunal deems fit, just and proper, to protect the interests of the Appellants in the interest of justice, equity and good conscience."*

**49.** Now we come to appeals under Group III, i.e., the appeals filed by Operational Creditor.

**Comp. App. (AT) (Ins.) No. 1223/2023**

**50.** This appeal by five Appellants who claimed to be the Operational Creditor of the Corporate Debtor has been filed challenging the order dated 23.06.2023, approving the Resolution Plan submitted by Respondents No. 2 to 4.

**51.** Appellant's case is that subsequent to the initiation of CIRP on 26.09.2019, Appellant filed their claim before the Resolution Professional, which after verification was admitted by the RP in its entirety. Details of

claims filed by the Appellants and claim admitted and the amount received under the Plan has been tabulated in para 7.3 of the appeal, which is as follows:

<i>Sr. No.</i>	<i>Particulars</i>	<i>Claim Submitted</i>	<i>Claim Admitted</i>	<i>Amount Received</i>	<i>% of Amount Received</i>
1.	<i>Sri Umiyaa Construction Private Limited</i>	7,43,11,257/-	7,43,11,257/-	2,73,831/-	0.368%
2.	<i>Aryan Images</i>	60,94,930/-	60,94,930/-	22,429/-	0.368%
3.	<i>Cosmos Construction Machinery and Equipment Private Limited</i>	54,46,997/-	54,46,997/-	20,781/-	0.368%
4.	<i>Nikhil Transport Company</i>	55,48,330/-	55,48,330/-	20,418/-	0.368%
5.	<i>Atharva Events</i>	37,23,992/-	37,23,992/-	13,704/-	0.368%

**52.** Appellants' grievance in the appeal is that impugned order has failed to correctly consider the market value of the assets of the Corporate Debtor, which has been severely undervalued to accommodate the Resolution Plan of the SRA and deprive the various Creditors including the Appellants of their admitted dues. The commercial wisdom of CoC cannot be used to defeat rights and claims of other creditors/stakeholders. The Operational Creditors are lifeline of the Corporate Debtor and treatment of such Creditors could adversely affect functioning of various industries. The market value of the assets of the Corporate Debtor is approximately six

times to the amount proposed to be paid by the SRA under the Resolution Plan. Adjudicating Authority has failed to apply its mind to the relevant facts and circumstances.

**53.** Appellant has prayed for setting aside the order dated 23.06.2023.

**Comp. App. (AT) (Ins.) No. 1226/2023**

**54.** This appeal by 58 Appellants have been filed challenging the order dated 23.06.2023, approving the Resolution Plan.

**55.** In the CIRP of the Corporate Debtor, the claim of Financial Creditors and Operational Creditors were filed. The cumulative claim of the Operational Creditors, including workers, employees was more than Rs. 10.74 Crores. In the Resolution Plan as against Rs. 10.74 Crores amount of Rs. 9.89 Lakhs have been earmarked which is only 0.97% of the admitted claim. The CoC never discussed or applied its mind to the payout to the employees. The Government dues of Rs. 204 Crores were also extinguished which is contrary to the dictum of Hon'ble Supreme Court in the matter of '**State Tax Officers' Vs. 'Rainbow Papers Ltd.'**' reported in **2022 SCC OnLine SC 1162**. It is pleaded that assets of the Corporate Debtor are more than Rs. 1,900 Crores which is reflected in the Balance Sheet itself. The valuation has not taken into consideration the development potential of the Corporate Debtor. True value of the Corporate Debtor is more than Rs. 4,000 Crores, whereas total valuation of the Resolution Plan is Rs. 826 Crores.

**56.** The Appellant in the appeal has raised various grounds to question the Resolution Plan. Adjudicating Authority has not discussed the payments relating to any class of Creditors, whereas the Adjudicating Authority had to satisfy itself that the Resolution Plan meets the requirement of Section 30(2). It was required for Adjudicating Authority to satisfy whether the Operational Creditor are given their entitlements under the provisions of the Code.

**57.** Appellant has prayed for setting aside the order dated 23.06.2023.

**Submission of the parties in the Appeal(s)**

**58.** We now proceed to note the submissions of learned Counsel for the parties in the above Group of Appeal.

**Company Appeal (AT) (Insolvency) No. 63 of 2024 - Deepak Sakharam Kulkarni & Anr. Vs Manoj Kumar Agarwal, Resolution Professional of D.S. Kulkarni Developers Ltd. & Ors.**

**59.** We have heard Shri Krishnendu Datta, learned Senior Counsel appearing for the Appellant; Shri Abhijeet Sinha, learned Senior Counsel appearing for the RP; and Shri Neeraj Kishan Kaul and Shri Arvind Nayar, learned Senior Counsel appearing for the Successful Resolution Applicant.

**60.** Shri Krishnendu Datta, learned Senior Counsel in support of the Appeal, submits that CIRP process conducted by the RP and the CoC is in violation of the provisions of the IBC and the CIRP Regulations, 2016. It is submitted that CIRP of the Corporate Debtor came to an end on 13.06.2021, after extension and exclusion by the Adjudicating Authority.

The Resolution Plan, which was submitted by SRA on 02.07.2021, was after expiry of the CIRP period. The Resolution Plans were revised and final Resolution Plan was submitted on 29.07.2021, which was approved by the CoC on 13.08.2021, i.e., subsequent to the expiry of the CIRP period, which ended on 13.06.2021. The learned Counsel for the Appellant has referred to Form-H, which has been noticed by the Adjudicating Authority in the impugned order, which itself has suggested that 13.06.2021 was the date of expiry of extended period of CIRP. Application for exclusion of time as filed on 10.06.2021, no order was passed by the Adjudicating Authority, extending the period of CIRP. Thus, the entire process of approval of Resolution Plan, so held after expiry, is in clear violation of IBC and CIRP Regulations. It is submitted that Appellant(s), were put behind the bar, much before the commencement of CIRP and Appellant No.1 was released on 06.03.2023, after the order was reserved by the Adjudicating Authority on the Plan approval Application. The RP had no access to the Office of the Corporate Debtor and the documents, since they were attached in the year 2017-18 itself by the EOW and subsequently by ED, all assets of the Corporate Debtor were attached by Provisional Attachment Order, which was confirmed on 05.08.2019. The Office of the Corporate Debtor and all assets being attached, the RP without access to the Office of the Corporate Debtor and the documents prepared incomplete and faulty Information Memorandum. The entire process, which was founded on incorrect and faulty Information Memorandum is vitiated. Shri Datta further submits

that Valuation Report obtained by RP were incorrect and shows too low valuation of the assets of the Corporate Debtor. In paragraph-13 of the Form-H, the RP himself has admitted that books and records of the Company were attached by the EOW and ED, no employees were available and the Applications filed for access of record and handing over of possession, are pending to be adjudicated by the Adjudicating Authority. The Report submitted by Two Valuers namely – Puneet Tyagi and Deepak Bansal contains gross irregularities and there is unreasonable differences in the Valuation Report. As per the Notification of the Urban Development Department, dated 11.09.2014 under Maharashtra Regional and Town Planning Act, 1966, actual parcel of land was 241.60 acres, whereas Valuation Report submitted by the Puneet Tyagi, parcel of land measured at only 218.6 acres and Valuation Report submitted by the Deepak Bansal, parcel of land measures at only 233 acres. The above is glaring discrepancies in the valuation exercise. Further, Valuer one has considered fair value of parcel of land @ Rs.2.30 crores per acre, whereas Valuer two considered fair value of parcel of land @ Rs.2.51 Crores per acre, whereas as per the ready reckoner at value of @ Rs.3.14 crores per acre was to be taken. There has been several other discrepancy in value of the different projects of the Corporate Debtor. The work completed has not been correctly measured. With regard to Bavdhan land of the Corporate Debtor, which is shown as only 6.27 acres of land, whereas Valuer one has measured the land parcel of 89.66 acres, whereas Valuer two has not even

valued the said parcel of land stating that the said land has been sold to third party. No objection was raised by the RP to the above discrepancies in the Report of the Valuers, nor attention of CoC was invited. The Resolution Plan has included 89.66 acres of land at Bavdhan, which was not the property of the assets of the Corporate Debtor. Audited Financial Report mentions value of the assets of the Corporate Debtor as Rs.1906 crores. Several items of the property were not included by the Valuers and several assets, which does not pertain to the Corporate Debtor has been included, making both the Valuation Report faulty and unacceptable. The Plan suffers from material irregularity and does not comply with the law.

**61.** Shri Abhijeet Sinha, learned Senior Counsel for the PR submits that the RP has prepared the Information Memorandum on the basis of attachment orders available from the Directorate of Enforcement. The Suspended Directors being unavailable, could not provide any inputs or documents. It is submitted that the RP conducted the proceedings in accordance with the IBC and CIRP Regulations. The two Valuers were appointed as per Regulation 35 of the CIRP Regulations, who have submitted their Report. No objection at any point of time was filed by the Appellant before the Adjudicating Authority and IA No.2423 of 2023 was filed by the Appellant belatedly on June 7, 2023, challenging the approval of Resolution Plan, when hearing on Application IA No.1950 of 2022 were already heard and reserved on 22.02.2023. The RP has no information of documents to believe that properties referred to by the Appellant in the



Appeal were not specifically owned by the Corporate Debtor. The RP included the property, which were forming part of the special township area as assets of the Corporate Debtor. The RP has acted in the best interest of the CoC and the Corporate Debtor and conducted the CIRP as is where is basis. It is submitted that record prepared by the RP were received from the Regulatory Authorities and Investigation Agency, which was the basis for preparing the Information Memorandum.

**62.** Shri Neeraj Kishan Kaul, learned Senior Counsel appearing for the Respondent, submits that the Appellants, who were the Director and have grounded the Corporate Debtor are not entitled to be heard. Valuation was conducted as per Regulation 35 of the CIRP Regulations by the two Valuers, who have assessed all assets of the Corporate Debtor. It is submitted that period of CoC was extended till 24.08.2021, whereas Plan was approved on 13.08.2021. The learned Counsel for the Respondent has referred to the order dated 23.06.2023 of the Adjudicating Authority. It is submitted that SRA has no role in valuation exercise, which was conducted by the RP in accordance with law. Even copy of the Valuation Report had not been provided to the SRA. The Promoters have no locus to challenge the valuation. It is submitted that there was no challenge to valuation by any Member of the CoC, even in any paragraph of the Appeal, there was no challenge to the valuation and it is only by way of an additional affidavit, valuation is sought to be challenged by the Appellant. The Valuation Report, as obtained by the Appellant is only for the purpose of the case,

which valuation does not include liabilities of the Corporate Debtor. The RP in Financial Statement has mentioned the assets of the CD as Rs.1906 crores and has also mentioned the liabilities of Rs.1600 crores. The CD has abandoned the Projects as well as the land and it is the SRA, who has to deal and develop the Project. The development potential of the CD is for SRA to consider.

**63.** Shri Krishnendu Datta, learned Senior Counsel making submissions in his rejoinder submits that the Appellant has the locus to file the Appeal. The Appellant – Promoter has right to receive the Resolution Plan. It is submitted that there is no order of extension of CIRP and submission to the contrary advanced by the Counsel for the Respondent is incorrect. It is submitted that commercial wisdom of CoC, cannot be justified when process is arbitrary. The law gives right to question the Plan. The Appellant is not relying on 2023 Valuation Report. The submission of the Appellant was that RP ignored the assets, which were part of the CD's asset. The development potential is intangible assets of the Corporate Debtor. In the Application filed by the SRA before the Stock Exchange, the value of the CD was shown as Rs.3000 crores.

**64.** The learned Counsel for the parties have also placed reliance on various judgments of this Tribunal as well as Hon'ble Supreme Court.

**Company Appeal (AT) (Insolvency) No. 1142 of 2023 - Shirish Deepak Kulkarni Vs. Manoj Kumar Agarwal, Resolution Professional of D.S. Kulkarni Developers Ltd. & Ors.**

**65.** We have heard Shri Krishnendu Datta, learned Senior Counsel appearing in IA No.5185 of 2023; Shri P. Nagesh, learned Senior Counsel appearing for the Appellant; Shri Abhijeet Sinha, learned Senior Counsel for the RP and Shri Neeraj Kishan Kaul and Shri Arvind Nayar, learned Senior Counsel appearing for the SRA.

**66.** Learned Counsel for the Appellant challenging the order dated 23.06.2023 submits that in the Resolution Plan approved by the CoC, personal assets of the Appellant has been included. The Appellant's case is that assets which were covered by Gift Deed dated 29.09.2009, three in number, gifting various land at Village Fursungi, have been wrongly included in the Resolution Plan. The Appellant being owner of the said assets, the assets were required to be kept out of the Resolution Plan. It is submitted that Clause 6.4.1.8 of the Resolution Plan states that properties described in Appendix IV shall stand transferred to the Corporate Debtor and further by Clause 13.8, the Appellant has been mandated to handover the 7.33 acres of land at Village Fursungi and execute and register a Deed of Conveyance in favour of the Corporate Debtor, which is beyond the jurisdiction of the Resolution Plan. Respondent No.1 is not entitled to take possession of the personal assets of the Promoter under Section 18(1)(f).

**67.** Learned Counsel for the RP submits that the properties of Fursungi, Survey Nos.46, 53, 36, 47, 48 and 44 have been included as part of the assets of the Corporate Debtor, which forms a small portion of a special township area, which was owned and developed by the Corporate Debtor.

The Gift Deed, which have been executed in favour of the Appellant were not brought to the attention of the RP, prior to the Appeal. The above assets were included according to the information regarding the special township.

**68.** Shri Neeraj Kishan Kaul, learned Senior Counsel appearing for the SRA refuting the submission of the Appellant, submits that land which is claimed by the Appellant by virtue of above Gift Deeds, were all land belonging to the Corporate Debtor and purchased from the consideration of the Corporate Debtor. It is submitted that the above land, which have been gifted to the Appellant were the land purchased by different Members of the family, directly from farmers, for which the consideration was paid to family Members by Hemanti Deepak Kulkarani and out of the said consideration, the individual family Members have purchased the land from farmers directly. Purchase by family Members of the Deepak Sakharam Kulkarni were all on the basis of money received from the Corporate Debtor/ its sister companies. Hence, the land did not belong to the individual family Members in whose name Sale Deeds were purchased. When individual family Members were not the rightful owner of the assets, they have no right to gift the assets to the Appellant. Further, the entire land covered by the Gift Deed is part of the integrated township project and included in the order issued by the Collector, granting permission of township, hence, it is not open for the Appellant to now claim right in the assets, which do not really belong to the Appellant.

**69. IA No.5185 of 2023** has been filed by the Toyota Financial Services India Ltd. (“**TFSIL**”), who claimed to have extended credit facility of Rs.103.60 crores to DSK Motors Pvt. Ltd. (“**DSK Motors**”), in which, the Appellant was the Director. It is a case of the Toyota Financial Services India Ltd. that to secure the credit facility, the Appellant mortgaged the personal properties in favour of TFSIL. Shri Krishnendu Datta, learned Senior Counsel has referred to the Memorandum of Entry for deposit of Title Deeds dated 29.04.2017 as well as Memorandum of Entry for deposit of Title Deeds dated 20.01.2018, by which the Appellant mortgaged immovable property including Survey No.48 and 49 of Village Fursungi. DSK Motors is currently undergoing liquidation. The Resolution Plan has been approved, in which Survey No.48, Hissa No.1/C/2 and Survey No.49, Hissa No.1A has been included. The properties, which are mortgaged to the TFSIL cannot be included in the Resolution Plan, of which the TFSIL is secured creditor. The NCLT lack jurisdiction to deal with the personal properties of the Appellant, which are not the assets of the Corporate Debtor. TFSIL prays that the Applicant be impleaded as party and be heard.

**Company Appeal (AT) (Insolvency) No. 1307 of 2023**

**70.** We have heard Shri Sandeep Bajaj, learned Counsel for the Appellant; Shri Abhijeet Sinha, learned Senior Counsel for RP; Shri Arvind Nayar, learned Senior Counsel has appeared for SRA.

**71.** Shri Sandeep Bajaj, learned Counsel for the Appellant, challenging the order of the Adjudicating Authority approving the Resolution Plan submits that the Resolution Plan includes the assets of the Appellant, which was purchased by two Sale Deeds dated 07.06.2002 purchased from Shivaji Ingale and Shivaji Vithalrao Ingale respectively. With regard to Survey No.326/1 at Bavdhan in the Revenue record Extract - 7/12, the name of the Appellant appears. The Resolution Plan seeks to include the said property as assets of the Corporate Debtor, which is clearly illegal and in contravention of provisions of IBC and Transfer of Property Act, 1882. The RP was empowered only to deal with assets of the Corporate Debtor and the assets of third party in possession of Corporate Debtor, are not the assets of the Corporate Debtor. The learned Counsel has referred to Section 18(1)(f) of IBC to support his submission. It is submitted that Provisional Attachment Order issued by the Enforcement Directorate cannot be considered as source of title of the property. The ownership assets of third party whether related or not, cannot be extinguished through Resolution Plan. It is submitted that liabilities in respect of said properties not being taken over even the assets cannot be taken over. Shri Sandeep Bajaj, further submits that challenging the order passed by this Tribunal, affirming the rejection of the claim of the Appellant, Civil Appeal No.4354 of 2024 was filed by the Appellant, which Appeal was dismissed on 01.04.2024 clarifying that order dated 01.04.2024 in no way affect the

rights of third party, if any, in proceedings before the NCLT and NCLAT or before Hon'ble Supreme Court.

**72.** Shri Abhijeet Sinha, learned Senior Counsel for the RP submits that property S. No.326/1 was considered as part of the assets of the Corporate Debtor as the same was specified in the schedule of the Provisional Attachment Order dated 14.02.2019 passed by Enforcement Directorate. It is submitted that the Appellant or its Promoters have never approached the RP to raise its grievance. The Appellant has never approached the NCLT also raising any grievance. All contentions are sought to be raised in this Appeal for the first time. Respondent No.1 was never shown the purported Sale Deed or any documents, hence, Respondent No.1 had justified reason to believe that property was owned by the Corporate Debtor, as the same was clearly mentioned and attached by ED as per order dated 14.02.2019. The RP has acted in best interest of the CoC and the Corporate Debtor and conducted the exercise as is where is basis.

**73.** Shri Arvind Nayar, learned Senior Counsel appearing for SRA submits that the Partners of the Appellant Firm were Deepak Kulkarni and Hemanti Kulkarni, who were directly responsible of the precarious state of financial affairs of the Corporate Debtor. The Appellant cannot be held to be entitled to challenge the approval of Resolution Plan. The interest of the Corporate Debtor for the purpose of the IBC is not to be conflated with the interest of the Promoter. The Appellant's challenge is grossly barred by delays and latches. The Appellant never approached the NCLT to raise any

grievance, which is sought to be raised in this Appeal. Shri D.S. Kulkarni, who is one of the Partners of the Appellant, filed an IA No.722 of 2023 before the NCLT on 21.02.2023 seeking the reliefs stated therein. Therefore, if the Appellant could take out his own application before the NCLT, it does not stand to reason why the Appellant had not filed any Application before the Adjudicating Authority. The property was mentioned in the Information Memorandum as the assets of the Corporate Debtor. The property was mortgaged in favour of Tata Capital Housing Finance Limited (“**TCHFL**”). The Corporate Debtor is signatory to the creation of mortgage in favour of TCHFL. TCHFL was the Member of the CoC of the Corporate Debtor and loan advanced against the aforesaid mortgage are being repaid by the SRA in terms of the Resolution Plan. The Appellant’s Firm or its Partner have never challenged the PMLA order. It is further submitted that Civil Disputes and title claims are not the part of jurisdiction of NCLT. The SRA has taken various steps in furtherance of the implementation of the Plan.

**Company Appeal (AT) (Insolvency) No. 1308 of 2023**

**74.** We have heard Shri Sandeep Bajaj, learned Counsel for the Appellant; Shri Abhijeet Sinha, learned Senior Counsel appearing for the RP; and Shri Arvind Nayar, learned Senior Counsel appearing for SRA.

**75.** Shri Sandeep Bajaj submits that lease was executed in favour of the Appellant by the Corporate Debtor dated 24.09.2008, by which Lease Deed executed for 99 years, the Corporate Debtor has leased 19 acres land situated at Village Fursungi , Taluka Haveli, District Pune with granting



lessee right to construct buildings and structures. The Appellant has constructed educational institution after taking facility from Central Bank of India of Rs.100 crores. The Resolution Plan contemplates extinguishment of rights of the Appellant in the building, which was constructed on the lease land. The lease provided that for terminating the lease, the CD was required to assess the building and make payment spent towards construction. The ownership of building is of the Appellant. Under Section 18, the RP cannot take the assets of subsidiary company. The CD or RP never terminated the lease. The Appellant has paid rentals and even if any rental is due, it could have been adjusted. The Appellant has not filed its claim, since it had not arisen. The claim of the Appellant, would only arise when CD terminate the lease. The Central Bank has filed its claim during CIRP. The lease was never terminated, it is only in the Resolution Plan the building has now been transferred. The building cannot be owned by the lessor.

**76.** The learned Counsel for the RP replying to the submissions of the Appellant, submits that as per the Lease Deed dated 24.09.2008 executed by the Corporate Debtor with regard to Survey No.53, 54, 55 and 56 at Village Fursungi, the Appellant was required to pay yearly rent of Rs.1 crore. The Appellant has continuously defaulted in payment of rental amount, since April 2013 to till date. The total outstanding rent against the Appellant is Rs.10.50 crores. The Appellant was also liable to pay interest with delayed payment on rentals. The Lease Deed provided that in

event, rental is due for more than 180 days, the Corporate Debtor shall be entitled to re-enter the property. The RP has issued a notice dated 09.10.2020 to the Appellant in relation to breach of terms and conditions of the Lease Deed. The CD was fully entitled to terminate the lease.

**77.** The learned Senior Counsel for the SRA submits that assets, which was leased out to the Appellant, belong to the Corporate Debtor and the Resolution Plan has rightly taken over the entire assets of the Corporate Debtor including the land and building standing thereon, which is part of the CIRP. It is submitted that no claim was filed by the Appellant in the CIRP of the Corporate Debtor, hence, the Appellant is not entitled to challenge the approval of Resolution Plan.

**78.** Now we proceed to consider appeals relating to homebuyers, we shall notice the submissions of the parties in this group of appeals.

**Company Appeal (AT) (Insolvency) No.1660 of 2023**

**79.** We have heard Shri Kushal Choudhary and Shri Angad Ahluwalia, Learned Counsel for the Appellants and Shri Abhijeet Sinha, Learned Senior Counsel appearing for the Resolution Professional and Shri Arvind Nayar, Learned Senior Counsel appearing for the Successful Resolution Applicant.

**80.** Counsel for the Appellant submits that the Appellants were allotted flats in Project- 'DSK Vishwa Phase-VI, Aanandghan' by the Corporate Debtor vide allotment letters issued between 20.04.2017 to 29.04.2017. The allotment letters clearly acknowledged the payments received by the

Appellants. Appellants had made payments of approximately 90% of the total consideration. Allotment letters were issued by the Corporate Debtor and its sister concern- 'DSK Global Education and Research Limited'. After initiation of CIRP, Appellants filed their claims under the category of allotment letter holders in October 2019. However, the same came to be rejected by the Resolution Professional on 25.05.2021 on the ground that no proof of payments to the Corporate Debtor has been filed by the Appellants. It is submitted that the Corporate Debtor having acknowledged the payments by the Appellants, there was no occasion for the Resolution Professional not to accept the payments. The list of creditors published by the Resolution Professional on 25.05.2021 mentioned reason for rejection of the claim and the only reason was that Appellants had not submitted proof of payment to the Corporate Debtor. It is submitted that the Appellants have filed their IA No.1844 of 2021 before the Adjudicating Authority on 06.08.2021 questioning the decision of Resolution Professional which application remains pending before the Adjudicating Authority and was never decided before approval of the Resolution Plan. It was only on 01.08.2023 that application was rejected as infructuous. When application has questioned the Resolution Professional's decision rejecting their claims, it was incumbent on the Adjudicating Authority to decide the application prior to approval of the Resolution Plan. Appellants who had given their life savings for allotment of flat and having paid 90% consideration rejection of the claims by the Resolution Professional was

wholly illegal and unsustainable. Adjudicating Authority failed to consider the interest of the flat purchaser which is paramount.

**81.** Counsel for the Resolution Professional replying the submissions of the Appellants contended that the claims of the Appellants were rejected since there were no supporting documents provided except allotment letters by the Corporate Debtor. No amount was received in the books of accounts of the Corporate Debtor. It is further submitted that the claims of some of the Appellants were rejected since it was on the basis of the agreement made with 'DSK Global Education and Research Ltd.' and no amount was received in the books of accounts of the Corporate Debtor. It is further submitted that the payments made to 'DSK Kulkarni & Company' was never deposited or encashed by the Corporate Debtor. No payments having been made by the Appellants to the Corporate Debtor, the claim was rightly rejected by the Resolution Professional.

**82.** Counsel for the Successful Resolution Applicant submitted that no steps were taken by the Appellants to get their application IA No.2157 of 2021 decided the claims of the Appellants was solely on the basis of allotment letters without evidence of consideration having been paid to the Corporate Debtor. Application before the NCLT was not maintainable since it was filed by Association purporting to espouse the cause of the constituent members. With regard to 8 Appellants, it is submitted by the Counsel for the Appellants that the allotment letters were issued by 'DSK Global Education and Research Ltd.', sister concern of the Appellants

whereas for Appellant Nos.2 and 24 although allotment letters were issued by the Corporate Debtor, however payments were made to sister concern 'DS Kulkarni & Company'. With regard to other Appellants, although allotment letters were issued by the Corporate Debtor but no supporting documents were provided regarding payments to Corporate Debtor and amount never reflected in the books of the Corporate Debtor.

**Company Appeal (AT) (Insolvency) No.1050 of 2023 & Company Appeal (AT) (Insolvency) No.1053 of 2023:-**

**83.** We have heard Shri Chaitanya Nikte, Learned Counsel for the Appellant, Shri Abhijeet Sinha, Learned Senior Counsel for the Resolution Professional and Shri Arvind Nayar, Learned Senior Counsel for the Successful Resolution Applicant.

**84.** Submissions advanced by Counsel for the Appellants in both the above appeals being similar are noticed together.

**85.** Counsel for the Appellants submits that the Appellants have paid amount to sister concern which amount was acknowledged and adjusted towards consideration of flat at the time of adjustment. Corporate Debtor admittedly took money in its account towards Stamp Duty, Registration, Service Tax and VAT. Appellants in support of his submissions referred to ledger filed along with the appeals. In the RERA disclosures made by the Corporate Debtor the flat allotted to the Appellants were sold. It is submitted that a Tripartite Agreement was entered between the Appellants, Corporate Debtor and its sister concern dated 30.06.2017 allotting the flats

to the Appellants in the Project- 'DSK Vishwa'. The Corporate Debtor who was a developer has acquired development rights in the land mentioned in Schedule II (a) of the Agreement dated 30.06.2017 by executing a Development Agreement dated 31.12.2013. 'DSK Global Education & Research Limited' being land owner also was a part of the Agreement. Allotment of flats to the Appellants cannot be denied by the Resolution Professional. Appellants being unaware of the CIRP process could not file the claim before the Resolution Professional within time and claims could be filed by the Appellants only in March 2023 which was rejected by the Resolution Professional vide e-mail dated 03.04.2023 on the ground that plan has been approved by the CoC on 13.08.2021, hence, claim cannot be considered. Appellants filed an IA before the Adjudicating Authority which too was rejected against which Appellants filed an appeal before this Tribunal which was dismissed by order of this Tribunal dated 21.02.2024 passed in Company Appeal (AT) (Insolvency) No.192 of 2024 and Company Appeal (AT) (Insolvency) No.193 of 2024. It is submitted that in view of the law laid down by this Tribunal in **"Puneet Kaur vs. K.V. Developers Pvt. Ltd. & Ors.- Company Appeal (AT) (Insolvency) No.390 of 2022"**, it was duty of the Resolution Professional to reflect the claims which are in the records of the Corporate Debtor in the Information Memorandum. There being registered agreement entered with the Corporate Debtor which is part of the record of the Corporate Debtor, Resolution Professional was obliged to reflect the claim of the Appellants. Resolution Professional has failed in

its duty to notice and reflect the allotment in favour of the Appellants which was through a Registered Agreement entered into a Corporate Debtor on 30.06.2017 i.e. more than two years prior to commencement of the Insolvency.

**86.** Counsel for the Resolution Professional justifies its rejection of the claims of the Appellants on the ground that the same was filed after approval of the plan by CoC. It is submitted that the plan having been approved by the Adjudicating Authority, the claim of the Appellants cannot be considered. It is further submitted that even on the merits, the claims of the Appellants deserve to be rejected. It is submitted that the Appellants loaned money to sister concern of the Corporate Debtor i.e. 'DSK & Company' and not to the Corporate Debtor and no documents was filed to show that money paid by the Appellants to 'DSK & Company' has been transferred to the Corporate Debtor. Resolution Professional has appointed Independent Forensic Auditor to carry out transaction. Erstwhile promoters of the Corporate Debtor have entered into agreement with homebuyers but no money has been paid to the Corporate Debtor.

**87.** Counsel for the Successful Resolution Applicant submits that the appeal filed by the Appellants having been dismissed by order dated 21.02.2024 where the Appellants have challenged the order of the NCLT dated 22.11.2023 rejecting their applications, the Appellants have no locus to file these appeals. In the order dated 21.02.2024 passed by this Tribunal rejection of the claim of the Appellants has been upheld. It is submitted

that the Appellants have not made any challenge to the Resolution Plan before the Adjudicating Authority now they cannot be allowed to challenge the Resolution Plan. Appellants cannot be held to be homebuyers. Appellants have filed their claims before the Resolution Professional with great delay. They having filed claims only in March 2023 i.e. after the order was reserved in the plan approval application, Adjudicating Authority has rightly rejected their claims.

**Company Appeal (AT) (Insolvency) No. 1361 of 2023 & Company Appeal (AT) (Insolvency) No. 1385 of 2023:-**

**88.** We have heard Shri Gaurav S. Sethi, Shri Varun Garg and Shri Harsh Pandya, Learned Counsel for the Appellants in Company Appeal (AT) (Insolvency) No. 1361 of 2023 and Shri Kunal Cheema, Learned Counsel for the Appellant in Company Appeal (AT) (Insolvency) No.1385 of 2023. Shri Abhijeet Sinha, Learned Senior Counsel for the Resolution Professional, Shri Arvind Nayar, Learned Senior Counsel for the Successful Resolution Applicant and Shri B.P Singh, Learned Counsel appeared for the Bank of Maharashtra.

**89.** Counsel for the Appellants submits that the Appellants were allotted the flats in the Project- 'DSK Madhukosh' situated in Village Mohill, Tal Kurla, Sub-District Bandra, Mumbai. The allotment letters itself mentioned that Appellants have paid the entire consideration and they have also agreed to pay Stamp Duty, Registration Fee and other charges. Appellants' case is that after allotment letters they were handed over the possession of



the units and they have been continuing in possession since then. The Corporate Debtor did not execute the agreement in favour of the homebuyers then complaint was filed before the Maharashtra Real Estates Regulatory Authority by one of the Appellants where the Corporate Debtor had appeared and undertaken to execute the Registered Agreement for Sale by May, 2018. The complaint was disposed of by RERA on 05.02.2018 i.e. much before the initiation of CIRP. When before RERA Authority, the Corporate Debtor admitted that the Appellants are allottees and Agreement shall be executed in their favour, the Resolution Professional has committed gross error in rejecting the claim of the Appellants. Appellants filed their claims before the Resolution Professional in October, 2019 as per the guidelines issued by the Resolution Professional which claim was rejected by the Resolution Professional on 17.07.2020. Appellants have filed an IA No.2157 of 2021 before the Adjudicating Authority against the unjust and illegal actions against the Resolution Professional. The Adjudicating Authority on 23.06.2023 approved the Resolution Plan but kept the application filed by Appellants pending which was dismissed on 01.08.2023 as infructuous.

**90.** Shri Kunal Cheema, Learned Counsel has further submitted that in fact while hearing the applications filed by the Appellants and plan approval application, Adjudicating Authority has passed earlier orders that plan approval application shall be heard after all applications are decided. However, departing from its earlier order passed by the Adjudicating

Authority, Adjudicating Authority proceeded to approve the Resolution Plan on 23.06.2023 and kept the application of the Appellants pending which action of the Adjudicating Authority is contrary to its own order and unsustainable. Appellants who have paid the total consideration and are in possession of their flats, they cannot be given a treatment as has been given by the Resolution Professional and the Adjudicating Authority. The action of the Resolution Professional in rejecting the claim is wholly uncalled for and unjustified. After receiving the claims by the Appellants, Resolution Professional has sent an e-mail to the Appellants where it was noticed that the Appellants are in possession of the flats. In IA No.2157 of 2021, reply was also filed in which Resolution Professional has reiterated its stand that amount having not been received in the account of the Corporate Debtor, the claim cannot be admitted.

**91.** Counsel for the Resolution Professional replying the submissions of the Appellants submits that the Appellants have failed to attach any proof of actual payments made to the Corporate Debtor. Payments made by the Appellants were not reflected in the books of accounts of the Corporate Debtor, therefore, the Resolution Professional was constraint to reject the claim. Only such amount which are raised under any transaction or purchase agreement would have affect the commercial borrowing when amount is paid to the Corporate Debtor and reflected in the books of account of the Corporate Debtor. Admission made before the RERA Authority on behalf of the Corporate Debtor was only in respect of one of

the Appellants. It is submitted that the homebuyers have approved the Resolution Plan and miniscule minority cannot object the same.

**92.** Counsel for the Successful Resolution Applicant also refuted the submissions of the Appellants and submits that the Appellants have failed to prove any payment to the Corporate Debtor, hence, the claim was rightly rejected by the Resolution Professional. Amount shown in the allotment letters given to the Appellants were never received by the Corporate Debtor in its bank account. Reliefs sought by the Appellants before NCLT could not have been granted by the Adjudicating Authority. Undertaking before the RERA Authority was given by the Authorised Representative of the Corporate Debtor. It is submitted that the Appellants are not entitled for any relief in the Appeals.

**93.** Now we proceed to consider the Appeals in Group-III i.e. Appeals filed by the Operational Creditors and Employees.

**Company Appeal (AT) (Insolvency) No. 1223 of 2023:-**

**94.** We have heard Shri Krishnendu Dutta, Learned Counsel for the Appellant, Shri Abhijeet Sinha, Learned Senior Counsel for the Resolution Professional and Shri Arvind Nayar, Learned Senior Counsel for the Successful Resolution Applicant.

**95.** Counsel for the Appellants submits that the Appellants who are Operational Creditors whose full claims were admitted by the Resolution Professional have been proposed an amount of 0.368% which is nothing but denial of any claim of the Appellants. Operational Creditors who are life

line of the Corporate Debtor cannot be treated in such manner. It is further contended that the assets of the Corporate Debtor has been severely undervalued to deprive various creditors including the Appellants their admitted claims. Approval of the Resolution Plan by the CoC and subsequent approval by the Adjudicating Authority is against settled position of law. Adjudicating Authority has failed to consider the object of the Code namely value maximisation of the assets of the Corporate Debtor and protection of the interest of all stakeholders of the Corporate Debtor. Respondents have failed to protect the interest of the Appellants Receivables due to the Corporate Debtor are more than Rs.200 Crores and the Successful Resolution Applicant's proposal to make payment of Rs.866 Crores within seven years defeats logic and commercial wisdom. The value of the Corporate Debtor is approximately six times the amount proposed to be paid by the Successful Resolution Applicant under the Resolution Plan.

**96.** Counsel for the Successful Resolution Applicant submits that the Appellants being Operational Creditors are not entitled to be paid any amount beyond their entitlement under Section 30(2)(b) of the IBC. Appellants did not take any measure to contest the Resolution Plan before the Adjudicating Authority. They failed to file any objection before the Adjudicating Authority. Appellants have no *locus standi* to challenge the approval of the Resolution Plan based on commercial wisdom of the CoC.

**Company Appeal (AT) (Insolvency) No. 1226 of 2023:-**

**97.** We have heard Shri Krishnendu Dutta, Learned Senior Counsel for the Appellants, Shri Abhijeet Sinha, Learned Senior Counsel for the Resolution Professional and Shri Arvind Nayar, Learned Senior Counsel for the Successful Resolution Applicant.

**98.** Appellants 58 in numbers are employees of the Corporate Debtor whose claim in the CIRP was admitted. Appellants claim was accepted by Rs.10.74 Crores and they have been proposed an amount of Rs.9.89 lacs in the Resolution Plan which is 0.97%. There is no fair or equitable treatment to the Appellants. It is submitted that the payments to the related party debenture holders, debenture holders, fixed deposit holders, banks and financial institutions ranges from 100% to 66.47% whereas employees are shabbily treated having paid only 0.97% of their claims. The Corporate Debtor has not been correctly valued in the CIRP. Valuation assigned to the Corporate Debtor is much lower to the actual valuation of the Corporate Debtor. The IBC and its Regulations contemplate fair and equitable treatment to all stakeholders including the employees. The payments proposed to the Appellants can neither be said to be fair nor equitable and the mandate of the IBC and CIRP Regulations have been flouted by the Respondents.

**99.** Counsel for the Resolution Professional refuting the submissions of the Appellants submits that the CIRP has been conducted according to procedure prescribed, no objection was raised by the Appellants before the Adjudicating Authority. Valuation Report cannot be challenged by the

Appellants. Appellants were not entitled for any higher amount to what has been recommended in the Resolution Plan.

**Consideration of issues raised in the appeals.**

**Comp. App. (AT) (Ins.) No.63/2024**

**100.** The first submission which has been pressed by Sh. Krishnendu Dutta, learned Sr. Counsel for the Appellant is that the Plan has been approved by the CoC after expiry of the CIRP period and the entire process leading to approval of the Resolution Plan is vitiated and contrary to the provisions of IBC and CIRP Regulations, 2016. Although in the appeal filed by the Appellant, no such ground was initially taken, but in the Additional Affidavit dated 31.01.2024, relevant dates and events have been pleaded to support the submission.

**101.** Sh. Krishnendu Dutta learned senior Counsel contended that the last date of CIRP came to an end on 13.06.2021 after expiry of the extension period. It is submitted in Form H which was filed by RP, 13.06.2021 was also mentioned as last date on which CIRP expired. It is submitted that although in the Form H it was noticed that an application for extension was pending but no orders were passed for extension of CIRP, CIRP period came to an end.

**102.** Learned Counsel for the Respondent refuting the above submissions has placed before the Court the copy of the order dated 11.01.2022 passed

by the Adjudicating Authority in I.A. No. 2017/2021 and the order dated 20.06.2022 passed in I.A. No. 1563/2022.

**103.** We now proceed to consider the grounds as urged by the Counsel for the Appellant. The Resolution Plan was approved by the CoC on 13.08.2021 and thereafter RP filed the application before the Adjudicating Authority on 18.02.2022 along with Form H. Form H, which was filed by RP has been extracted by the Adjudicating Authority in Paragraph 14 of the impugned order. Column Nos. 13 to 17 of Form H which is relevant for the present purpose is as follows:

*“FORM H*

*COMPLIANCE CERTIFICATE*

*(Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016*

*I, Manoj Kumar Agarwal, an Insolvency Professional enrolled with IIPICAI and registered with the Board with registration number IBBI/IPA-001/IP-Poo714/2017-18/11222, am the Resolution Professional for the Corporate Insolvency Resolution Process (CIRP) of DS Kulkarni Developers Limited (DSKDL).*

*2. The details of the CIRP are as under:*

<b>Sl. No.</b>	<b>Particulars</b>	<b>Description</b>
13	<i>Date of Approval of Resolution Plan by CoC</i>	13.08.2021
14	<i>Date of Filing of Resolution Plan with Adjudicating Authority</i>	18.02.2022
15	<i>Date of Expiry of 180 days of CIRP</i>	On March 12, 2020, the RP had filed an application for extension of 90 days and the same was granted by Hon'ble NCLT. The RP further filed exclusion applications twice on March 2, 2021 and June 10, 2021. However, the 2 <sup>nd</sup> Exclusion Application dated June 10, 2021 has never been listed. Therefore, the last date of the CIRP is subject to the outcome of the second Exclusion Application dated June 10, 2021.
16	<i>Date of Order extending the period of CIRP</i>	03.12.2020 (90 days extension was granted from the date of extension order)
17	<i>Date of Expiry of Extended Period of CIRP</i>	13.06.2021 (after considering the extension and exclusion granted by the Hon'ble NCLT Mumbai Bench). Subsequent to the above, last exclusion application filed on 10.06.2021 for seeking a further exclusion of time till 23.05.2021 is awaiting hearing."



**104.** At Item No. 17, RP has mentioned that 13.06.2021 is the date of expiry for extended period of CIRP. However, in the same column, it has also been mentioned "subsequent to the above last Exclusion Application filed on 10.06.2021 for seeking for further exclusion of time till 23.05.2021 is awaiting hearing". The above statement clearly indicates that application for exclusion of time till 23.05.2021 was filed on 10.06.2021 and awaiting hearing.

**105.** Learned Counsel for the RP has placed before the Court two orders i.e., order dated 11.01.2022 passed in I.A. 2017/2021, by which Adjudicating Authority has allowed an exclusion from 24.03.2021 to 22.05.2021, i.e., period of 60 days. The order dated 11.01.2022 passed in I.A. No. 2017/2021 is as follows:

*“Mr. Shyam Kapadia, Advocate for the Applicant/Resolution Professional is present. This is an Application seeking exclusion of 60 days from the Corporate Insolvency Resolution Process (CIRP) period. This Bench vide order dated 24.03.2021 had allowed the exclusion for period of 24.03.2020 to 23.03.2021 for one year. The present Application now seeks exclusion from 24.03.2021 to 22.05.2021. This Bench allows the exclusion of 60 days from the CIRP period. Accordingly, IA 2017/2021 is **allowed and disposed of.**”*

**106.** Subsequently, an application was filed by the RP being I.A. No. 1563/2022 for rectification of the order dated 11.01.2022, where it was prayed that another 2 days time be allowed to complete the Resolution Process. The Adjudicating Authority while noticing the order dated 11.01.2022 has noticed that exclusion of time was granted extending the

CIRP period till 24.08.2021. Adjudicating Authority vide order dated 20.06.2022 granted exclusion of two more days time i.e., from 22.05.2021 till 24.05.2021. The order dated 20.06.2022 is as follows:

**“IA 1563/2022**

*This is an Application filed by the Applicant, Mr. Manoj Kumar Agrawal, RP of the Corporate Debtor, seeking rectification of order dt. 11.01.2022, whereby exclusion of time was granted w.e.f. 24.05.2021, extending the CIRP period till 24.08.2021. Counsel appearing for the Applicant submits that time granted by this Bench to complete the Resolution Process expired, however the CIRP could not be completed. Hence, they require extension of another two days' time to complete the Resolution process. Having considered the submission of the Counsel and taking note of peculiar circumstances, this Bench in exercise of power enshrined in Rule 11 of NCLT Rules, 2016, grant Two more days' time from 22.05.2021 till 24.05.2021 to complete the Resolution Process.*

*With the aforesaid observation, IA 1563 of 2022 is allowed and disposed of.”*

**107.** Whether the above order can be read to mean that CIRP period stood extended from 13.06.2021 till 24.08.2021 or the orders cannot be treated to any extension of CIRP period is a question to be answered.

**108.** There is no dispute between the parties that CIRP period was coming to an end on 13.06.2021, which is the case taken by the Appellant in Additional Affidavit filed on 31.01.2024. It was pleaded in the list of dates and events as contained in Paragraph 8(d) of the Additional Affidavit that on 13.06.2021, CIRP period expired even after the extending period.

**109.** When we look into the order dated 11.01.2022, as extracted above, it is clear that exclusion of 60 days' time was granted from 24.03.2021 to

22.05.2021 meaning thereby that 60 days exclusion was allowed, and when we add this 60 days from after 13.06.2021, it goes to 12.08.2021. It appears that it is due to the aforesaid reasons a rectification application was filed by RP being I.A. No. 1563/2022, praying for exclusion of further two days' time to complete the process and by order dated 20.06.2022, in addition to 60 days exclusion allowed by order dated 11.01.2022 two days further time was allowed which period clearly covered the date on which Resolution Plan was approved by the CoC i.e., 13.08.2021. The Form H although has noticed that application for exclusion is pending, but order dated 11.01.2022 and 20.06.2022 were not referred to in the Form H and when we read Form H along with the orders dated 11.01.2022 and 20.06.2022 passed by the Adjudicating Authority, granting exclusion of time till 13.08.2021, which is the date of which the Resolution Plan falls well within the CIRP period, hence the submission of the Appellant that Resolution Plan was approved by the CoC after expiry of the CIRP period cannot be accepted.

**110.** Now we come to the next submission of Sh. Krishnendu Dutta, learned Sr. Counsel for the Appellant questioning the valuation of the Corporate Debtor as obtained by the RP. Appellant submits that RP did not have relevant records of the Corporate Debtor and the Appellant being behind the prison could not give any documents or assistance to the RP leading the RP to obtain valuation of the assets on incomplete information which lead valuation of the assets which is not the correct valuation and is much lower than the correct valuation of the assets of the Corporate

Debtor. It is further submitted that in the financial statements prepared by the RP assets of the Corporate Debtor were valued as Rs. 1,906 crores, whereas two valuers pointed out by RP gave much lower valuation.

**111.** It is on the record that in the Meeting of the CoC held on 08.11.2019 two registered valuers were appointed. The RP issued letter to the two valuers, namely Puneet Tyagi and Deepak Bansal to value the land and building of the Corporate Debtor. Appellant by Additional Affidavit dated 29.02.2024 has brought on the record Valuation Reports Submitted by both the valuers. Valuation Report was submitted by Puneet Tyagi dated 22.10.2020 and the Addendum Report was also submitted on 23.06.2021. It is useful to notice the Addendum Report dated 23.06.2021 submitted by Puneet Tyagi, where fair value of the Corporate Debtor has been found as Rs. 798,32,19,714/- and liquidation value has been noticed as Rs. 557,14,44,655/-. The Addendum Letter dated 23.06.2021 has brought on record by the Appellant as Annexure A-3, is as follows:

*“To*

*Mr. Manoj Kumar Agarwal,*

*Resolution Professional*

*M/s. D.S Kulkarni Developers Limited – Under CIRP*

***Subject: Submission of Addendum Report***

*Dear Sir,*

*This letter bears the reference of my engagement as asset valuer in the matter of corporate insolvency resolution proceedings of M/s. D.S Kulkarni Developers Limited as per IBC – 2016. I am pleased to submit the addendum report to the initially submitted report on October 22, 2020, vide reference no.- PT112019/DSK/0143. Due to unavailability of land documents, the valuation of a property having Survey No. 125,*

Hissa No. 1 to 4+8/56, Village- Dhayari, Taluka Haveli, Pune was not given.

### 1.1 Valuation of the Land component

We are provided with the ownership documents in favour of M/s. D.S Kulkarni Developers Ltd. Hence, the same has been considered to derive the value.

In order to estimate the prevailing market rate of the subject property, market survey has been conducted amongst the real estate agent, brokers, property owners in vicinity of subject property which reveals that the plots are available for sale in the range of INR 40,000 to INR 50,000 per sqm for commercial plots depending upon the various factors like, locations, marketability, amenities, demand and supply of similar properties in the said locality.

Considering all the factors that have bearing on the market value of a plot and other economic factors; we are of the opinion that the achievable capital value of underlying land component at the subject property as on date of valuation is Rs. 40,000 per sqm. The same is considered for the purpose of valuation. Thus, land valuation

<b>Area (sqm)</b>	<b>Market Rate (INR/sqm)</b>	<b>Fair Value (INR)</b>	<b>Liquidation Value (INR)</b>
2,240	40,000	8,96,00,000	7,16,80,000

### 1.2 Valuation of building component

<b>S. No.</b>	<b>Particulars</b>	<b>Total Area (sqm)</b>	<b>Age</b>	<b>Fair Value (INR)</b>	<b>Liquidation Value (INR)</b>
1	Parking Floor	192.94	14	18,29,000	13,72,000
2	Ground Floor	192.94	14	24,39,000	18,29,000
3	First Floor	192.94	14	24,39,000	18,29,000
4	Second Floor	192.94	14	24,39,000	18,29,000
		<b>772</b>		<b>91,46,000</b>	<b>68,59,000</b>

I have incorporated the valuation of land and building development and the updated final summary can be read as follows:

<b>S No.</b>	<b>Properties</b>	<b>Fair Value (INR)</b>	<b>Liquidation Value (INR)</b>
<b>1</b>	Property 01: Dream City	5,40,04,59,456	3,74,30,55,674
<b>2</b>	Property 02: DSK Nandanvan	13,04,42,627	9,13,09,839
<b>3</b>	Property 03: DSK Mayurban	19,42,26,699	13,59,58,689
<b>4</b>	Property 04: DSK Goldleaf	7,51,85,214	5,26,29,650

<b>5</b>	Property 05: Land at Balewadi	75,24,02,039	52,66,81,427
<b>6</b>	Property 06: DSK Anandghan	67,18,51,245	47,02,95,872
<b>7</b>	Property 07: DSK Meghmalhar Flats	9,99,46,000	7,88,83,200
<b>8</b>	Property 08: DSK Madhukosh	48,04,91,434	33,63,44,004
<b>9</b>	Property 09: Land at Bavdhan	5,82,79,000	7,07,95,300
<b>10</b>	Property 11: DSK Chandrdeep Flat	2,11,90,000	1,69,52,000
<b>11</b>	Property 12: Land & Building in Survey No. 125, Hissa No. 1 to 4+8/56, Village-Dhayari, Taluka-Haveli, Pune	9,87,46,000	7,85,39,000
	<b>Total</b>	<b>7,98,32,19,714</b>	<b>5,57,14,44,655</b>
	<b>Total (Round Off)</b>	<b>798 Cr</b>	<b>557 Cr</b>

*Hope you will find everything in order; feel free to contact if you have any further query.*

*Best Regards*

*Puneet Tyagi,  
Director,  
Dated: June 23,2021”*

**112.** Another valuer Sh. Deepak Bansal who in its Report dated 06.10.2020 has noticed the fair value and liquidation value in following manner:

*“Resolution Professional*

*Mr. Manoj Kumar Agarwal*

*D S KULKARNI DEVELOPERS LTD*

*REGD. OFFICE: 1187 / 60 J M ROADSHIVAJINAGAR*

*PUNE MH 411005 IN*

*Date: 06/10/2020*

Dear Sir,

In accordance with our appointment letter dated 08st November 2019, we enclose our report on the fair & liquidation valuation of specified assets of D S KULKARNI DEVELOPERS LTD (or the "Company") as on 26th September 2019 ("Valuation Date") in accordance with regulation 27 and 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

The Company has been put under corporate insolvency resolution process by National Company Law Tribunal ("NCLT") through order dated on 26th September 2019.

Registered Valuer has been appointed to determine fair & liquidation value of the specified fixed assets of the Company on standalone basis in accordance with regulation 27 and 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Based on the review and analysis of the information provided by the company as well as analysis of industry and macroeconomics trends as on valuation date, the estimated fair & liquidation value of the below specified assets of D S KULKARNI DEVELOPERS LTD is summarized as below:-

Particulars	Book Value as on 26th September 2019	Fair Value (INR)	Liquidation Value (INR)	Methodology	Annexure
Land	15,98,92,91,000	6,67,96,12,798	4,75,69,16,181	Market Approach	Page 19
Building		1,76,91,59,489	1,41,53,27,591	Market & Cost Approach	Page 20
Total	15,98,92,91,000	8,44,87,72,287	6,17,22,43,772		

The above Estimated Fair & Liquidation value is subject to the basis of valuation mentioned in main report and respective annexures.

Transactions Costs pertaining to the sale /purchase of the assets has not been considered while estimating the fair & liquidation value.

The valuation is not intended for general circulation or publication and is not be reproduced without our prior written consent, or used for any purpose other than for the purposes stated above and cannot be relied upon the third parties. We will not accept any responsibilities to any other party to whom the report may be shown or who may acquire a copy of this report."

**113.** Learned Counsel for the Appellant submitted that there are lot of discrepancies in the Valuation Report submitted by above two valuers, several properties which does not belong to the Corporate Debtor has been valued whereas some properties which ought to have been valued has been left out for the valuation. Learned Counsel has further submitted that there is variance in the area of the assets taken by both the valuers.

**114.** Learned Counsel for the Appellant has referred to Notification dated 11.09.2014 issued by Urban Development Department Mantralaya, Mumbai, under which in Schedule A, details of the land area notified for Special Township Project of M/s. DS Kulkarni Developers Limited is mentioned total is equivalent to 241.6 acres of land, whereas Mr. Puneet Tyagi the first valuer has measured only 218.6 acres of land and another valuer Mr. Deepak Bansal has measured only 233 acres thus there is a glaring difference between taking correct area of the valuation.

**115.** The Valuation Report of Puneet Tyagi has been brought on record by the Appellant itself as the Township Project has been referred to as Property No. 1 and area 218.6 acres have been taken. The Report submitted by valuer is a detailed Report containing the details as to how the valuers have valued the assets, land, and building.

**116.** When we look into the valuation working submitted by valuer, it is clear that in the description of asset value, Puneet Tyagi has taken total land area of property as 233.27 acres, which according to Report as per the PMLA order provided to the valuer. Page 82 of the Report is as follows:



**“(a) CIVIL Properties:**

***Specific for Land (DSK Dreamcity –Village Pharsungi, Pune, Maharashtra)***

- *The physical inspection of land has been carried out on 30st January 2020.*
- *At the time of our site inspection, we were assisted by Mr. Pankaj (RP Team)*
- *The total land area of the property in the favor of D S KULKARNI DEVELOPERS LTD is 233.27 Acres as per the PMLA order provided to us and the same is considered in the valuation exercise.*
- *Description of the property –*
  - *Location - **DSK Dreamcity –Village Pharsungi , Pune, Maharashtra***
  - *Latitude & Longitude - (18.483577,73.986875)- Waterfall (18.484127,73.992240)- Hi Bliss*
  - *Boundaries - North : Road South : Road East : DSK Centre West : DSK Land”*

**117.** The above indicates that both the valuers have taken the same area i.e., 233.27 acres, which was area provided to the valuers as per the PMLA order. Valuers proceeded to take the area as per PMLA order in which we do not find any infirmity. The above indicates that both the valuers considered the same area for property at DSK Green City, Village Fursungi, Pune.

**118.** One more submission advanced by the Appellant was that although land admeasuring 89.66 acres i.e., land at Bavdhan was considered by first valuer, but the second valuer has not valued the said parcel of land stating that sale has been sold to the third-party. The Appellant further stated that in the Bavdhan land, Corporate Debtor is having only 6.27 acres of land.

**119.** It is relevant to notice that the Valuation Report were shared by the RP with the CoC and no Member of the CoC raised any question with regard to Valuation Report and the CoC proceeded to examine the Resolution Plan accordingly. Valuation Reports obtained by RP is for the benefit of the CoC to examine the offers made in the Resolution Plan. It is also relevant to notice that before the Adjudicating Authority at no point of time, any objection was raised with regard to valuation conducted by two registered valuers. The CIRP regulation provides for a mechanism for value of the assets of the Corporate Debtor, which mechanism was followed by the RP. The Valuation Report having not been objected by any Member of the CoC and all proceeded to evaluate the Resolution Plan as per valuation, we at the instance of the promoters of the Corporate Debtor are not inclined to entertain objections raised regarding the Valuation Reports submitted by the expert valuers.

**120.** Learned Counsel for the SRA has placed reliance on the Judgment of the Hon'ble Supreme Court as well as this Tribunal to support his submission that question of valuation cannot be allowed to be raised.

**121.** Counsel for the SRA has placed reliance on the Judgment of the Hon'ble Supreme Court reported in **(2024) 2 SCC 122** in the matter of '**Ramkrishna Forgings Ltd.**' Vs. '**Acil Ltd. (Resolution Professional)**'. In the above case, Adjudicating Authority on an application seeking approval of the Resolution Plan directed the application to be kept in abeyance and directed the official liquidator to carry out the revaluation of

the assets of the Corporate Debtor and provides the exact figures of value of the assets and exact valuation, the facts have been noticed in Paragraph 1 of the Judgment, which is as follows:

*“1. Heard the learned counsel for the parties. The present appeal under Section 62 [ “62. Appeal to Supreme Court.— (1) Any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order.(2) The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within forty-five days, allow the appeal to be filed within a further period not exceeding fifteen days.”] of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) is directed against the judgment dated 19-1-2022 (hereinafter referred to as “the impugned judgment”) passed by the National Company Law Appellate Tribunal (hereinafter referred to as “Nclat”) in Ramkrishna Forgings Ltd. v. ACIL Ltd. (Resolution Professional) [Ramkrishna Forgings Ltd. v. ACIL Ltd. (Resolution Professional), 2022 SCC OnLine NCLAT 1151] which has upheld the order [IDBI Bank Ltd. v. ACIL Ltd., 2021 SCC OnLine NCLT 30896] passed by the adjudicating authority (National Company Law Tribunal [ The National Company Law Tribunal is a creature of Section 408 of the Companies Act, 2013. Under Section 60 of the Code, it has been designated as the adjudicating authority for corporate persons.] ) [hereinafter referred to as “the adjudicating authority — NCLT” or “adjudicating authority” or “NCLT”], Principal Bench dated 1-9-2021 [IDBI Bank Ltd. v. ACIL Ltd., 2021 SCC OnLine NCLT 30896] by which the application seeking approval of a resolution plan for ACIL Ltd. (hereinafter referred to as either “ACIL” or “the corporate debtor”) being IA No. 1636 of 2019 in CP (IB) No. 170(PB)/2018 (hereinafter referred to as “the approval application”) was kept in abeyance while directing the Official Liquidator (hereinafter referred to as “the OL”) to carry out a revaluation of the assets of the corporate debtor and to provide exact figures/value of the assets and exact valuation details.”*

**122.** The order of this Tribunal affirming the order of Adjudicating Authority was challenged before the Hon’ble Supreme Court, where Hon’ble

Supreme Court after noticing the contention of the parties noticed the provision of Regulations 27 and 35 of the CIRP Regulations, 2016. The Hon'ble Supreme Court laid down following in Paragraph 30:

***“Analysis, reasoning and conclusion***

**30.** *Having considered the matter in depth, the Court is unable to uphold the decisions rendered by the adjudicating authority — NCLT as also Nclat. The moot question involved is the extent of the jurisdiction and powers of the adjudicating authority to go on the issue of revaluation in the background of the admitted and undisputed factual position that no objection was raised by any quarter with regard to any deficiency/irregularity, either by the RP or the appellant or the CoC, in finally approving the resolution plan which was sent to the adjudicating authority — NCLT for approval. Further, the statutory requirement of the RP involving two approved valuers for giving reports apropos fair market value and liquidation value was duly complied with and the figures in both reports were not at great variance. Significantly, the same were then put up before the CoC, which is the decision-maker and in the driver's seat, so to say, of the corporate debtor.”*

**123.** Ultimately, the Hon'ble Supreme Court allowed the appeal, set aside both the orders and directed the Adjudicating Authority to pass order on the Plan approval application.

**124.** Learned Counsel for the Respondent also relied on the Judgment of this Tribunal in **Comp. App. (AT) Ins. No. 1633/2023**, decided on 16.02.2024 in the matter of **‘CoC through its Representative, Jaga Ath Kar’ Vs. ‘Anil Tayal, Resolution Professional of Horzion Buildcon Ltd.’**. In the above case, the appeal was filed against an order of the Adjudicating Authority by which the prayer made in I.A. for rejecting the Valuation Report obtained by RP was considered. This Tribunal has noticed the respective submissions of the parties and observed that the question of

valuation is sought to be raised after the approval of the Resolution Plan. This Tribunal affirmed the order of the Adjudicating Authority, rejecting the application seeking rejection of the Valuation Report. In Para 2 of the Judgment facts pertaining to impugned order was noticed, which is as follows:

*“2. Heard learned counsel for the Appellant and learned counsel for the Resolution Professional. This Appeal has been filed against the order dated 25.07.2023 passed by the NCLT, New Delhi, Court-III in I.A. No.1993 of 2023. The Application was filed by the Appellant praying for following reliefs in I.A. No.1993 of 2023:*

*“a) Reject the valuation report obtained by the RP from its valuers and direct him to consider the valuation reports dated 21.12.2022 given by Mr. Anil Kumar Saxena and Ms. Aditi Aggarwal; or in the alternative;*

*b) Appoint a fresh valuer to ascertain a fair value and liquidation value of the assets of Group Housing Society Known as IRIDIA in the matter of M/s Horizon Buildcon Pvt. Ltd.;*

*c) Pass any other or further orders/directions as this Hon’ble Tribunal may deem fit and appropriate in the present circumstances of the matter and in the interest of justice.”*

**125.** This Tribunal, following Judgment of the Hon’ble Supreme Court in **‘Ramkrishna Forgings Ltd.’ (Supra)**, upheld the order of the Adjudicating Authority in Paragraphs 8 and 9, are as follow:

*“8. The learned Senior Counsel in this connection submitted that there was no occasion for NCLT to embark upon a totally alien procedure of getting the OL involved in such valuation, for which a mechanism is already provided under the Code and which, as per him, was strictly adhered to in the present case. It was contended that NCLT had limited power of judicial review given the supremacy of the CoC under the Code. At best, the learned Senior Counsel contended, that it could have disapproved the resolution plan on cogent ground(s) relevant for*

*doing so after testing whether it complies with the requirements of Section 30(2) of the Code, but it could not have acquired jurisdiction, where no such residuary or equity based jurisdiction is available under the Code by interfering with the CoC's decision without pointing out any non-conformity with the provisions of the Code and the Regulations thereunder.*

**9.** *For such proposition, Mr Divan relied upon the decision of this Court in Pratap Technocrats (P) Ltd. v. Reliance Infratel Ltd. (Monitoring Committee) [Pratap Technocrats (P) Ltd. v. Reliance Infratel Ltd. (Monitoring Committee), (2021) 10 SCC 623 : (2022) 1 SCC (Civ) 80] , the relevant being at paras 25, 26 and 44, wherein it has been held that the jurisdiction conferred upon the adjudicating authority — NCLT in regard to the approval of a resolution plan is statutorily structured by sub-section (1) of Section 31 of the Code and such jurisdiction is limited to determine whether the requirements which are specified in sub-section (2) of Section 30 of the Code have been fulfilled. Further, it has been explained that such jurisdiction which is statutorily defined, recognised and conferred, cannot be equated with the jurisdiction in equity that operates independently of the provisions of the statute for the reason that the adjudicating authority — NCLT, which is a body owing its existence to the Code, must abide by the nature and extent of its jurisdiction as defined therein. Regarding the appointment of the OL for getting valuation of the assets, the stand of Mr Divan was that it was not in line with the Code and the Regulations made thereunder.”*

**126.** The valuation of Corporate Debtor is conducted by registered valuers as per the statutory requirement of the CIRP Regulations, 2016, valuers are expert, who are entrusted the job of valuing the assets of the Corporate Debtor. Valuation of assets is not an exact science which is a reason that Reports are obtained from two registered valuers and in event, there are difference of more than 10% only then the Report of third valuer is obtained. Present is the case where there being no substantial difference into the Valuation Reports, services of third valuer was not requisitioned. We are also not unmindful of the fact that assets of the Corporate Debtor were

attached by the State of Maharashtra in MPID Act, 1999 and thereafter Directorate of Enforcement under the PMLA Act, 2002, assets had already been attached, which was an admitted fact. The RP has obtained all relevant details of the assets from the investigating agencies as well as the Directorate of Enforcement, which, in all documents pertaining to title obtained from the agencies were given to the valuers, which was basis of the valuers to proceed to value the land and building of the Corporate Debtor. In the facts of present case, we are not inclined to interfere with the Resolution Plan approved by the Adjudicating Authority on the ground of valuation as contended by the Appellant.

**127.** Learned Counsel for the Appellant has contended that certain assets which belong to the promoters of the Corporate Debtor has been included in the Resolution Plan, which is a ground to set aside the Resolution Plan because in the Resolution Plan properties of promoters cannot be included. Learned Counsel for the Appellant has referred to Section 18(1)(f) of the Code and submit that in the Resolution Plan, third-party assets cannot be included. The assets which have been referred to in appeal are according to the Appellant has been wrongly included are assets which have been dealt in Paragraph 13.8 in the Resolution Plan as well as assets admeasuring 89.35 acres situated at Village Bavdhan. In the brief synopsis, in Paragraph XIII under the heading C, following has been pleaded:

**“C.PERSONAL PROPERTIES OF THE PROMOTORS  
INCLUDED IN THE RESOLUTION PLAN:**

xiii. It is a settled position of law that in terms of Section 18, 25 of the Code, the Resolution Professional and/or the Interim Resolution Professional, as the case may be, can only take possession of the assets of the Corporate Debtor. However, the following clause of the Resolution Plan deals with the personal assets of the promoters. The relevant clauses of the same are being reproduced hereinunder: Clause 13.8:

*“Mr. Shirish Kulkarni shall handover the 7.33 acres of land at Fursungi to the Corporate Debtor and execute and register a deed of conveyance in relation thereto in favour of the Corporate Debtor without any consideration as the lands were held by them in trust for the benefit of the Corporate Debtor and the approval of township including the lands are in the name of the Corporate Debtor”*

3.2. Internal Page 172 of 118 at Para 11 Entry No. 10 in the table, which is reproduced hereinbelow provides as follows:

*"All that piece and parcel of land admeasuring in the aggregate 89.35 acres (i.e. 3,61,610 square meters) or thereabouts situate, lying and being at Village Bavdhan, Taluka Haveli and District Pune which includes but not limits the following survey numbers"*

<b>Sr. No.</b>	<b>Survey No.</b>
<b>10</b>	326/1

*In addition to the same, various lands which do not belong to the corporate debtor have been included including a land admeasuring about 89.35 acres at Sl. No. 11 of the Resolution Plan. That hence, it is the submission of the Appellant that the said Resolution Plan is clearly in violation of applicable provisions of law. Accordingly, in the humble submission of the Appellant, the Impugned Order deserves to be set aside.”*

**128.** We have already noticed that Shirish Kulkarni, the son of the Appellant has already filed Comp. App. (AT) (Ins.) No. 1142/2023, questioning the Paragraph 13.8, where Shirish Kulkarni has been directed



to handover 7.33 acres of land at Fursungi and directed to execute the Deed of Conveyance. Shirish Kulkarni having already filed an appeal challenging the above Clause, we are of the view that it shall be appropriate to consider the said issue in the appeal filed by Shirish Kulkarni i.e., Comp. App. (AT) (Ins.) No. 1142/2023, hence the said ground need no consideration at this stage. Similarly, with regard to land at Bavdhan, the Comp. App. (AT) (Ins.) No. 1307/2023 by DS Kulkarni & Company, where the DS Kulkarni & Company is claiming title to the land by virtue of two Sale Deeds executed in the year 2002. The above ground thus also, need to be considered in the appeal while considering the appeal filed by DS Kulkarni & Company, hence, in the present appeal, the above grounds need no consideration.

**129.** The submission of learned Counsel for the Appellant is that Book value of the assets of the Corporate Debtor was Rs. 1,906 crores, whereas the fair value and liquidation value has been pegged at much lower value by two valuers. We have noticed above that Book Value of the Corporate Debtor was also noticed by the second valuer. Learned Counsel for the SRA is right in his submission that the Book value has been looked into in conjunction with the liabilities of the Corporate Debtor and mere Book Value do not reflect the value of the Corporate Debtor.

**130.** Learned Counsel for the Appellant has also advanced submission that RP had no access to the Corporate Office or the records of the Corporate Debtor which are still under attachment, it has proceeded to prepare Information Memorandum and obtain valuation and conduct the

CIRP, which proceeding cannot be said to be in accordance with the CIRP Process. The facts of the present case indicates that there had been several statutory investigations and attachments of the assets of the Corporate Debtor, much before initiation of CIRP, assets and Bank Accounts of the Corporate Debtor were already attached by the said authorities. The CIRP, had to be conducted in accordance with the IBC and CIRP Regulations. RP on basis of whatever record was available and could be obtained from regulatory authorities and investigating authorities proceeded to the CIRP. Attachment of assets and Office of the Corporate Debtor is the matter of record.

**131.** Submission of the Appellant that assets were not available to be considered in the Resolution Plan in view of the attachment by Directorate of Enforcement has already been settled by Judgments of this Tribunal as well as High Courts. Section 32-A of the IBC which was inserted in the IBC giving overriding effect to all offences committed by Corporate Debtor prior to initiation of CIRP, fully entitled the assets of the Corporate Debtor to be dealt in the Resolution Plan.

**132.** In view of the forgoing discussions, we do not find any ground to interfere with the order, approving the Resolution Plan on the ground advanced by the Appellant.

**133.** Comp. App. (AT) (Ins.) No. 63/2024, deserved to be dismissed.

**Comp. App. (AT) (Ins.) No. 1142/2023**

**134.** The principal ground of challenge to the order of the Adjudicating Authority approving the Resolution Plan in the present appeal is that Resolution Plan has included the land which is owned by the Appellant and the land which is owned by the Appellant cannot be dealt in the Resolution Plan, nor the Appellant can be asked to convey in favour of the Corporate Debtor/Resolution Applicant. In paragraph 7.2 of the appeal, details of land and source of title of the Appellant has been pleaded, which paragraph 7.2 of the appeal is as follows:

*“7.2. Property being land bearing numbers (i) Survey No. 46, Hissa No. 3 at Fursungi, (ii) Survey No. 53, Hissa No. 3B/2, (iii) Survey No. 36, Hissa No. 1 at Fursungi, (iv) Survey No. 47, Hissa No. 1A, (v) Survey No. 48, Hissa No. 1A and (vi) Survey No. 44, Hissa No. 7/1 at Fursungi were conveyed in favour of the Appellant.*

<b>Sl. No.</b>	<b>Date of Conveyance</b>	<b>Property Description</b>
a.	29.09.2009	Gift Deed as executed by Ms. Shilpa Makrand Kulkarni in favour of Mr. Shirish Deepak Kulkarni for land bearing Survey No. 46, Hissa No. 3 at Fursungi.
b.	29.09.2009	Gift Deed as executed by Ms. Swarupa Makarand Kulkarni in favour of Mr. Shirish Deepak Kulkarni for land bearing Survey No. 53, Hissa No. 3B/2 and Land Bearing Survey No. 36, Hissa No. 1 at Fursungi.
c.	29.09.2009	Gift Deed as executed by Ms. Sai Prakash Kulkarni (Sai Kedar Vanjape) in favour of Mr. Shirish Deepak Kulkarni for land bearing Survey No. 47, Land Bearing Survey No. 48, Hissa No. 1A and Land Bearing Survey No. 44, Hissa No. 7/1 at Fursungi.

*Copy of the Gift Deed dated 29.09.2009 executed by Ms. Shilpa Makrand Kulkarni in favour of Mr. Shirish Deepak Kulkarni for land bearing Survey No. 46, Hissa No. 3 at Fursungi is annexed herewith and marked as **ANNEXURE "A-6"**. Copy of Gift Deed dated 29.09.2009 as executed by Ms. Swarupa Makarand Kulkarni in favour of Mr. Shirish Deepak Kulkarni for land bearing Survey No. 53, Hissa No. 3B/2 and Land Bearing Survey No. 36, Hissa No. 1 at Fursungi is annexed herewith and marked as **ANNEXURE "A-7"**. Copy of Gift Deed as executed by Ms. Sai Prakash Kulkarni (Sai Kedar Vanjape) in favour of Mr. Shirish Deepak Kulkarni for land bearing Survey No. 47, Land Bearing Survey No. 48, Hissa No. 1A and Land Bearing Survey No. 44, Hissa No. 7 / 1 at Fursungi is annexed herewith and marked as **ANNEXURE "A-8"**.*

**135.** The land which is claimed by the gift deed by the Appellant is the land situated at Village Fursungi, Pune. Appellant has claimed title to the land by three Gift Deed dated 29.09.2009 executed by Ms. Shilpa Makarand Kulkarni, Ms. Swarupa Makarand Kulkarni, Ms. Sai Prakash Kulkarni.

**136.** All the aforesaid Survey Nos. being Survey No. 46 Hissa No. 3, Survey No. 53 Hissa No. 3B/2, Survey No. 36 Hissa No. 1, Survey No. 47 & Survey No. 48 Hissa No. 1A and Survey No. 44 Hissa No. 7/1 are the land of Village Fursungi, which are included in the order dated 11.09.2014, issued by Urban Development Department Mantralaya, Mumbai, by which, Special Township Project has approved on 08.06.2011 by the Government Notification. Special Township Project was approved as a Project of the Corporate Debtor including the aforesaid all the Survey Nos. which are claimed by the Appellant.

**137.** It is further relevant to notice that all the land of Fursungi which is included in special Township Project have been attached by Directorate of Enforcement which was subsequently confirmed on 05.08.2019. The copy of the order dated 05.08.2019 has been brought on the record in the reply filed by Respondent No. 2 to 4. The detailed order dated 05.08.2023, notice the details of land attached by Directorate of Enforcement and other details with regard to purchase of Fursungi land. We have noticed above that land at Fursungi was purchased from the Agriculturist Farmers by close relative/family members of the Deepak Kulkarni and later sold to the Corporate Debtor.

**138.** As noticed above, the Gift Deed was executed in favour of the Appellant by Ms. Shilpa Makrand Kulkarni, Ms. Swarupa, Makram Kulkarni & Ms. Sai Prakash Kulkarni. In the order dated 05.08.2019, details of land purchased at Fursungi by different family members from the close relatives and family members, details of land and the date of purchase of the land by different family members have been mentioned in the order 05.08.2019 of the PMLA. At page 633 under Table No. 4, details of land purchased by Ms. Swarupa Makrand Kulkarni has been given, which is as follows:

<i>Purchase of Land by Swarupa Makarand Kulkarni (niece of Deepak S. Kulkarni) from Agriculturist</i>					<i>Sale of the same Land By Swarupa Makarand Kulkarni to DSKDL</i>				
<i>Sr. No.</i>	<i>Sale Deed No.</i>	<i>Date</i>	<i>Total Amount</i>	<i>-</i>	<i>Sr. No.</i>	<i>Sale Deed No.</i>	<i>Date</i>	<i>Total Amount</i>	<i>-</i>
<u>1</u>	<u>6700</u>	<u>29-08-2007</u>	<u>6737500</u>	<u>-</u>	<u>1</u>	<u>1529</u>	<u>16/02/2008</u>	<u>94250000</u>	<u>-</u>

<u>2</u>	<u>6834</u>	<u>30-08-2007</u>	<u>7081250</u>	-	<u>2</u>	<u>3820</u>	<u>05-02-2008</u>	<u>38268750</u>	-
<u>3</u>	<u>6838</u>	<u>30-08-2007</u>	<u>9040625</u>	-	<u>3</u>	<u>3963</u>	<u>05-07-2008</u>	<u>5200000</u>	-
<u>4</u>	<u>9027</u>	<u>14-11-2007</u>	<u>5775000</u>	-	<u>4</u>	<u>7874</u>	<u>10-04-2007</u>	<u>26325000</u>	-
<u>5</u>	<u>9694</u>	<u>11-12-2007</u>	<u>7287500</u>	-	<u>5</u>	<u>8504</u>	<u>13/10/2008</u>	<u>15925000</u>	-
<u>6</u>	<u>9852</u>	<u>15-12-2007</u>	<u>5637500</u>	-	<u>6</u>	<u>5890</u>	<u>07-08-2008</u>	<u>43550000</u>	-
<u>7</u>	<u>6797</u>	<u>29-08-2007</u>	<u>11825000</u>	-	<u>7</u>	<u>6477</u>	<u>28/07/2008</u>	<u>26325000</u>	-
<u>8</u>	<u>6024</u>	<u>01-08-2007</u>	<u>3231250</u>	-	—	—	—	—	-
<u>9</u>	<u>6022</u>	<u>01-08-2007</u>	<u>8387500</u>	-	—	—	—	—	-
<u>10</u>	<u>6293</u>	<u>10-08-2007</u>	<u>11137500</u>	-	—	—	—	—	-
<u>11</u>	<u>1910</u>	<u>25/02/2008</u>	<u>14377500</u>	-	—	—	—	—	-
<u>12</u>	<u>2573</u>	<u>19/03/2008</u>	<u>9407500</u>	-	—	—	—	—	-
<u>13</u>	<u>6158</u>	<u>17/07/2008</u>	<u>14377500</u>	-	—	—	—	—	-
—	—	—	<u>114303125</u>	-	—	—	—	<u>24984375</u>	-

**139.** Further at page 634 of the Reply, details of land purchased by Ms. Shilpa Makrand Kulkarni and the date of purchase is mentioned, which is as follows:

<i>Purchase of Land by Shilpa Makarand Kulkarni (niece of Deepak S. Kulkarni) from Agriculturist</i>					<i>Sale of the same Land By Shilpa Makarand Kulkarni to DSKDL</i>				
Sr. No.	Sale Deed No.	Date	Total Amount	-	Sr. No.	Sale Deed No.	Date	Total Amount	-
<u>1</u>	<u>6291</u>	<u>10-08-2007</u>	<u>28325000</u>	-	<u>1</u>	<u>1527</u>	<u>16/02/2008</u>	<u>66950000</u>	-
<u>2</u>	<u>8326</u>	<u>20-10-2007</u>	<u>17050000</u>	-	<u>2</u>	<u>1585</u>	<u>18-02-2008</u>	<u>86775000</u>	-
<u>3</u>	<u>66</u>	<u>02-01-2008</u>	<u>5500000</u>	-	<u>3</u>	<u>3739</u>	<u>29-04-2008</u>	<u>28140000</u>	-
<u>4</u>	<u>837</u>	<u>28-01-2008</u>	<u>14162500</u>	-	<u>4</u>	<u>3961</u>	<u>05-07-2008</u>	<u>4062500</u>	-
<u>5</u>	<u>6707</u>	<u>27-08-2007</u>	<u>11618750</u>	-	<u>5</u>	<u>5813</u>	<u>07-05-2008</u>	<u>23400000</u>	-
<u>6</u>	<u>3180</u>	<u>04-09-2008</u>	<u>2887500</u>	-	<u>6</u>	<u>6677</u>	<u>08-04-2008</u>	<u>8190000</u>	-
<u>7</u>	<u>3248</u>	<u>04-09-2008</u>	<u>1375000</u>	-	<u>7</u>	<u>9633</u>	<u>28/11/2008</u>	<u>64400000</u>	-
<u>8</u>	<u>3246</u>	<u>04-09-2008</u>	<u>8087500</u>	-	<u>8</u>	<u>5892</u>	<u>07-08-2008</u>	<u>39487500</u>	-
<u>9</u>	<u>5062</u>	<u>06-12-2008</u>	<u>4252500</u>	-	<u>9</u>	<u>6401</u>	<u>24/07/2008</u>	<u>9100000</u>	-
<u>10</u>	<u>2804</u>	<u>28/03/2008</u>	<u>33575000</u>	-	—	—	—	—	-
<u>11</u>	<u>2852</u>	<u>29/03/2008</u>	<u>412500</u>	-	—	—	—	—	-
<u>12</u>	<u>1706</u>	<u>20/02/2008</u>	<u>12602500</u>	-	—	—	—	—	-
<u>13</u>	<u>2229</u>	<u>03-10-2008</u>	<u>4437500</u>	-	—	—	—	—	-
<u>14</u>	<u>2231</u>	<u>03-10-2008</u>	<u>4526250</u>	-	—	—	—	—	-
<u>15</u>	<u>5512</u>	<u>26/06/2008</u>	<u>4970000</u>	-	—	—	—	—	-
—	—	—	<u>15378250</u>	-	—	—	—	<u>330505000</u>	-

**140.** The land purchase by Kedar Vanjape (Sai Prakash Kulkarni) are at Table No. 6, which is as follows:

<i>Purchase of Land by SaekedarVanjape (niece of Deepak S. Kulkarni) from Agriculturist</i>					<i>Sale of the same Land By SaekedarVanjape to DSKDL</i>				
<u>Sr. No.</u>	<u>Sale Deed No.</u>	<u>Date</u>	<u>Total Amount</u>	-	<u>Sr. No.</u>	<u>Sale Deed No.</u>	<u>Date</u>	<u>Total Amount</u>	-
<u>1</u>	<u>5728</u>	<u>21-07-2007</u>	<u>8250000</u>	-	<u>1</u>	<u>2235</u>	<u>13-10-2008</u>	<u>28275000</u>	-
<u>2</u>	<u>6682</u>	<u>24-08-2007</u>	<u>2337500</u>	-	<u>2</u>	<u>3737</u>	<u>29/04/2008</u>	<u>19880000</u>	-
<u>3</u>	<u>6684</u>	<u>24-08-2007</u>	<u>2337500</u>	-	<u>3</u>	<u>3818</u>	<u>05-02-2008</u>	<u>20800000</u>	-
<u>4</u>	<u>7143</u>	<u>10-09-2007</u>	<u>8800000</u>	-	<u>4</u>	<u>4576</u>	<u>28/05/2008</u>	<u>96850000</u>	-
<u>5</u>	<u>7359</u>	<u>17-09-2007</u>	<u>3712500</u>	-	<u>5</u>	<u>5766</u>	<u>07-04-2008</u>	<u>15000000</u>	-
<u>6</u>	<u>8289</u>	<u>19-10-2007</u>	<u>17393750</u>	-	<u>6</u>	<u>7418</u>	<u>18/09/2007</u>	<u>70037500</u>	-
<u>7</u>	<u>8046</u>	<u>11-10-2007</u>	<u>38981250</u>	-	<u>7</u>	<u>8344</u>	<u>22/10/2008</u>	<u>47450000</u>	-
<u>8</u>	<u>5967</u>	<u>31-07-2007</u>	<u>17531250</u>	-	<u>8</u>	_____	_____	_____	-
<u>9</u>	<u>5965</u>	<u>31-07-2007</u>	<u>3300000</u>	-	<u>9</u>	_____	_____	_____	-
<u>10</u>	<u>5372</u>	<u>10-07-2007</u>	<u>4400000</u>	-	_____	_____	_____	_____	-
<u>11</u>	<u>5370</u>	<u>10-07-2007</u>	<u>4400000</u>	-	_____	_____	_____	_____	-
<u>12</u>	<u>1583</u>	<u>18-02-2008</u>	<u>7100000</u>	-	_____	_____	_____	_____	-
<u>13</u>	<u>3235</u>	<u>04-10-2008</u>	<u>6500000</u>	-	_____	_____	_____	<u>298292500</u>	-
<u>14</u>	_____	_____	<u>125043750</u>	-	_____	_____	_____	_____	-

**141.** The order dated 05.08.2019, further notices that the amount for purchase of the land by family members of the Deepak Kulkarni were from the Corporate Debtor/sister companies of the Corporate Debtor. The order dated 05.08.2019 has tabulated the fund source to both relative/family members of the Deepak Kulkarni for purchase of Fursungi land, mentioning the details amounts for purchase of the land and amount financed by different entities, which table include Swarupa Makrand Kulkarni, Shilpa Makrand Kulkarni and Sai Prakash Kulkarni (Sai Kedar Vanjape), which is at Page 653, 654 and 655:

<i>Fund source to close relatives/family members of Deepak S. Kulkarni to purchase the Fursungi land</i>					
<i>Sr. No.</i>	<i>Purchase of Fursungi land from agriculturists</i>	<i>Relation with D S Kulkarni</i>	<i>Total payment in purchase of the property Amt (in Rs)</i>	<i>Financer</i>	<i>Amt (in Rs.)</i>
<u>1</u>	<i>Ashwani Sanjay Deshpande</i>	<i>Daughter</i>	<i>13,03,38,768</i>	<i>DSKDL</i>	<i>9,27,07,369</i>
				<i>DSK Motors Pvt Ltd</i>	<i>1,16,90,000</i>
				<i>DS Kulkarni and Company</i>	<i>2,26,07,425</i>
				<i>Hemanti Kulkarni</i>	<i>30,90,530</i>
				<i>Ambiance</i>	<i>2,43,444</i>
				<i>Total</i>	<i>13,03,38,768</i>
<u>2</u>	<i>Swarupa Kulkarni</i>	<i>Niece</i>	<i>11,43,03,125</i>	<i>DSKDL</i>	<i>7,00,11,980</i>
				<i>Saptashrungi Oil Mills Pvt Ltd</i>	<i>73,82,500</i>
				<i>DSK Motors Pvt Ltd</i>	<i>53,91,563</i>
				<i>Growrich Agro Forestry Pvt Ltd</i>	<i>55,24,875</i>
				<i>Skylap Marketing Pvt Ltd</i>	<i>36,83,250</i>
				<i>D S Kulkarni &amp; Associates</i>	<i>47,03,750</i>
				<i>D S Kulkarni &amp; Company</i>	<i>97,70,000</i>
				<i>Hemanti Kulkarni</i>	<i>82,35,207</i>
				<i>Total</i>	<i>11,43,03,125</i>
<u>3</u>	<i>Shilpa Makrand Kulkarni</i>	<i>Niece</i>	<i>15,25,05,469</i>	<i>DSKDL</i>	<i>8,71,56,516</i>
				<i>Skylap Marketing Pvt Ltd</i>	<i>1,33,33,125</i>



				Saptashrungi Oil Mills Pvt Ltd	59,15,000
				D S Kulkarni Const Pvt Ltd	50,41,985
				DSK WorldmanProj . Pvt Ltd	22,50,703
				D S Kulkarni & Associates	44,99,203
				D S Kulkarni & Company	3,28,99,437
				Hemanti D Kulkarni	14,09,500
				Total	15,25,05,469
<u>4</u>	Jyoti Deepak Kulkarni (dead)	Wife	4,46,87,000	DSK Motors Pvt Ltd	21,50,000
				DSKDL	3,37,45,000
				Ambiance Ventures Estates & Dev Pvt Ltd	32,48,750
				Saptashrungi Oil Mills Pvt Ltd	2,70,000
				D S Kulkarni & Company	52,73,250
				Total	4,46,87,000
<u>5</u>	Hemanti D Kulkarni	Wife	47,43,750	DSKDL	10,93,750
				Saptashrungi Oil Mills Pvt Ltd	12,25,000
				D S Kulkarni and Company	24,25,000
				Total	47,43,750
<u>6</u>	Makarand Kulkarni	Brother	4,87,25,000	DSKDL	3,88,54,000
				D S Kulkarni & Associates	29,07,000
				D S Kulkarni & Company	69,64,000
				Total	4,87,25,000

<u>7</u>	<i>Shirish Deepak Kulkarni</i>	<i>Son</i>	<i>9,11,63,375</i>	<i>DSKDL</i>	<i>5,93,39,777</i>
				<i>DSK Motors Pvt Ltd</i>	<i>18,12,500</i>
				<i>Ambiance Venture Estates &amp; Dev Pvt Ltd</i>	<i>1,17,66,124</i>
				<i>Saptashruni Oil Mills Pvt Ltd</i>	<i>1,17,66,124</i>
				<i>D S Kulkarni &amp; Company</i>	<i>64,78,850</i>
				<i>Total</i>	<i>9,11,63,375</i>
<u>8</u>	<i>SAI Vanjape</i>	<i>Niece</i>	<i>12,50,43,75 0</i>	<i>DSKDL</i>	<i>6,91,34,063</i>
				<i>DSK Motors Pvt Ltd</i>	<i>48,86,500</i>
				<i>Saptashruni Oil Mills Pvt Ltd</i>	<i>23,80,000</i>
				<i>D S Kulkarni &amp; Company</i>	<i>4,21,43,187</i>
				<i>D S Kulkarni Const. Pvt Ltd</i>	<i>65,00,000</i>
				<i>Total</i>	<i>12,50,43,75 0</i>

**142.** The plot of land which was purchased by Agriculturists, utilising the funds of sister companies of the Corporate Debtor, as noted above clearly indicate that land purchased by family members of the Deepak Kulkarni were not out of their own source and the consideration flow from the Corporate Debtor and its sister companies. When the agriculture land which was purchased by above family members who have gifted the same to the Appellant, the land really did not belong to family members i.e., Shilpa Makrand Kulkarni, Swarupa Makrand Kulkarni, Sai Prakash Kulkarni (Sai Kedar Vanjape), who facilitated the transfer of land from the

Agriculturists, utilising the consideration which was routed through different sister companies of the Corporate Debtor. When Shilpa Makrand Kulkarni, Swarupa Makrand Kulkarni and Sai Prakash Kulkarni (Sai Kedar Vanjape) were not the real owners of the Fursungi land which was purchased from Agriculturists, we are of the clear opinion that name of Appellant in whose favour the Gift Deed was executed on 29.09.2009 was only for namesake, and Appellant held the land as a son of Deepak Sakharam for the benefit of the Corporate Debtor, since utilising the funds from Corporate Debtor and its sister company, the entire land was purchased from Agriculturist in the name of relatives.

**143.** Appellant is aggrieved by Clause 13.8 of the Resolution Plan under the heading “Related Party Transactions”, provides as follows:

*“13.8. Mr. Shirish Kulkarni shall handover the 7.33 acres of land to the Corporate Debtor and execute and register a deed of conveyance in relation thereto in favour of the Corporate Debtor without any consideration as the lands were held by him in trust for the benefit of the Corporate Debtor and the approval of the township including the lands are in the name of the Corporate Debtor.”*

**144.** As noted above, the land which is in the name of Appellant is also part of the integrated Township Project, which Project was got approved by the Corporate Debtor from State of Maharashtra. There is no dispute that integrated Township Project belongs to the Corporate Debtor, which is part of the assets of the Corporate Debtor and we do not find any flaw in Resolution Plan dealing with the entire land of integrated Township Project,

which also consists of above 7.33 acres of land, which is in the name of the Appellant.

**145.** As noted above, the land was purchased from the consideration of the Corporate Debtor and its sister companies. Taking overall facts and circumstances into consideration, we are not persuaded to accept the submission of the Appellant that the land 7.33 acres of land situated at Fursungi, Pune be deleted from the Resolution Plan. We thus are satisfied that no error has been committed in dealing the aforesaid land 7.33 acres in the Resolution Plan and no exception can be taken by the Appellant to the Clause 13.8 in the facts of the present case as noted above.

**146.** We thus do not find any ground as urged by the Appellant to interfere with the order of the Adjudicating Authority approving the Resolution Plan. The appeal filed by Shirish Kulkarni deserves to be dismissed.

**Company Appeal (AT) (Insolvency) No. 1308 of 2023 - DSK Global Education and Research Private Limited**

**147.** The Appellant challenges Clauses of the Resolution Plan under which the rights of the Appellant has been extinguished with respect to the buildings erected on the lease land by the Lessee.

**148.** For appreciating the submission, we need to notice certain terms and conditions of the Lease Deed as well as the pleadings of the parties.

**149.** The Lease Deed was executed by the Corporate Debtor on 24.09.2008 in favour of the Appellant for Survey No.53, 54, 55 and 56 with respective Hissa numbers totalling to 19 acres. The Lease Deed was registered,

containing lease land of 19 acres, i.e. about 76,000 sq. mtrs. It is useful to notice Clauses (a) to (f) of the Lease Deed, which are as follows:

*“(a) The Lessor is seized and possessed of or otherwise well sufficiently entitled to the portions of land/s situate at S.Nos. 53, 54, 55 & 56, Village Fursungi, Tal, Haveli, Dist. Pune particularly described in the **Schedule 1, 2, 3 and 4** hereunder written and hereinafter referred to as the said Lands.*

*(b) The Lessor has purchased the said lands through various Sale Deeds from Previous Owners/ Agriculturist of which details as given in separate Annexure.*

*(c) The Lessor has purchased the said lands adm. About 109543 Are (i.e. 27.33 acres) equivalent to 109543 Sq. mtrs. And Lessor is in possession of the said lands.*

*(d) The Lessee is a company Reg. Under Companies Act, 1956 and it is desirous to commenced a school for Professional courses for Animation and Industrial Design etc. under Name and style **“DSK International Institute of Animation, Gaming and Industrial design”***

*(e) The Lessee has approached the Lessor with a request to grant a long lease of the land/s **admn. About 19 Acres i.e. 760 Are. (about 76000 Sq. mtrs.)** out of above said lands more particularly described in Schedule 1, 2, 3 and 4 with view to construct a building/s or other structure thereon consisting of College Building/s, Hostel/s for student and other related structures/ buildings to run a school/ college for above mentioned purpose.*

*(f) The Lessor has agreed to demise to the Lessee the said land together with the right to construct building/s and structure/s standing thereon for the period of **99 years** and at the rent and upon the terms and conditions recorded therein.”*

**150.** The lease was granted on payment of yearly rent of Rs.1 crore. The above terms and conditions are contained in Clause-1, which is as follows:

*“1. In consideration of the rent hereby reserved and of the terms and conditions, covenants and Agreements herein contained and on the part of the Lessee to be observed and performed the Lessor doth hereby demise Unto the Lessee ALL*

*THAT said piece of land/s situate at S.Nos. 53,54,55 & 56 (off Pune Solapur Highway) at Village Fursungi, Tal. Haveli Dist. Pune particularly described in the **Schedule 1,2, 3 & 4** (hereafter for brevity's sake referred to as "**the demised land/s**") hereunder written together with the right to construct structure/s and building/s thereon and shown in blue wash delineated by red coloured boundary line on the plan thereof hereto annexed TO HOLD the demised land unto Lessee and it's administrators and assigns for the term of **99 years** commencing from the **1<sup>st</sup> day of July, 2008** for the term of **99 years ( Ninety-Nine years)** yielding and paying the **yearly rent of Rs. 1, 0 ,00,000/- (Rupees One Crore only)**, and which rent shall be payable by the Lessee to the Lessor on or before 10<sup>th</sup> day of every quarter in advance. **First quarter will commence from 1<sup>st</sup> July, 2008 to 30th September 2008.** In addition to above rent the Lessee agree to deposit with Lessor **Rs.25,00,000/- (Rs. Twenty Five Lacs Only)** as a deposit."*

**151.** The lease further granted right to the Lessee to construct building upon demised land, a new building for its requirements of School, Hostels, other buildings etc. Clause 2, sub-clause (c) of the Lease Deed is as follows:

*"(c) That, the Lessee shall at it's own efforts, expense and cost be entitled to construct and complete upon the demised land, a new building or buildings for its requirements of School Hostels, other buildings etc. with all requisite and proper sewers, drains and other conveniences thereto in accordance with prevailing law. That Lessee will construct internal roads and shall also construct compound wall to demised the land to protect it's boundaries."*

**152.** The most important Clause, which is relevant for deciding the issues raised in the Appeal are Clause-3, which is as follows:

*"3. PROVIDED ALWAYS AND IT IS AGREED and declared that if the rent hereby reserved or any part thereof shall be in arrears, for the space of **180 days** after the same shall have become due whether the same shall have been legally or formally demanded or not or if and whenever there shall be a breach or non-performance or non-observance by the Lessee of any of the Covenants, conditions or agreements herein contained, it shall be lawful for the Lessor to re-enter upon the demised premises or any part thereof in the name of the whole*

*and immediately thereupon this demise and all rights of the Lessee hereunder shall stand absolutely determined but without prejudice to any right or remedy of the Lessor already accrued and then subsisting **PROVIDED HOWEVER** before making such re-entry in respect of any breach of covenant, notice in writing shall have been given to the Lessee intimating the breach of covenant. If the Lessee fails to make good such breach within **Three months** of the date of service of such notice, the Lessor shall be entitled to re-enter upon the demised premises or any part thereof in the name of the whole and thereafter the Lease shall stand determined provided always that such re-entry shall be without prejudice to any right of action or remedy of the Lessor in respect of any antecedent breach of any of the covenants on the part of the Lessee. The term for payment of interest on the arrears of rent shall not prejudice or affect the right of re-entry herein contained. And in this event Lessor shall be liable to pay to the Lessee cost of construction incurred by the Lessee for constructing buildings/ structure etc. on the said demised premises.”*

**153.** Under Clause 6, the Lessee was entitled to mortgage of the demised land/ proposed buildings in favour of Financial Institutions/ Banks for obtaining finance/ loans for construction of building/s, structure/s etc. The Lessee entered into the possession of land and was been paying the yearly rent payable on each quarter till 2013.

**154.** The lease specifically empowered the Lessor to re-enter on the breach of Covenants, after giving notice in writing, under which Lessee is to make good such breach, failing which Lessor shall be entitled to re-enter.

**155.** The pleadings on record indicate that lease was never terminated by the Corporate Debtor, either before commencement of the CIRP on 26.09.2019 or subsequent to commencement of the CIRP. The Lessee has constructed the building on the said premises. For construction of building on the premises, the Appellant has obtained financial assistance from

Central Bank of India of Rs.100 crores and Rs.20 lacs in the year 2008. The Appellant's case is that it made construction of several buildings and apart from running various educational facilities, it established a University under DSK World University Act, 2017 and the Appellant claims to have running a University with effect from 05.05.2017 of an international repute.

**156.** It is also on the record that for the Central Bank of India, charge was created separately for the land as well as the building.

**157.** The case of the RP as appears from the records, indicate that the Appellant has made payment of rental only till March 2013 and since April 2013, the Appellant was in default in payment of lease rent and till September 2023, lease rental along with interest is Rs.17,24,17,808/-. The above pleadings have been made in reply filed by the RP in the present Appeal. It is relevant to notice that RP, although has pleaded that RP was entitled to terminate the Lease Deed and re-enter and take possession of all the property, but reply does not plead that at any point of time, the Lease Deed was terminated by the RP. It is useful to extract paragraph 17 of the reply of the RP, which is as follows:

*"17. I submit that the Respondent No.1 in course of his duties as envisaged under Section 25 of the Code, exercised the power of preserving and protecting the assets of the Corporate Debtor, including the continued business operations of the Corporate Debtor. Therefore, I say that Respondent No.1 is entitled to take custody and control of all the assets of the Corporate Debtor, including the said Property as the same was owned by the Corporate Debtor and due to continued default in payment of rental amounts by the Appellant since April 2013, the Respondent No.1 is further entitled to terminate the said Lease Deed and*



*re-enter and take rightful possession of the said Property.”*

**158.** Respondent No.2, SRA has also filed reply in this Appeal, wherein an affidavit of RP filed before the Adjudicating Authority dated 15.03.2022 in IA No.1745 of 2021 filed by the Central Bank of India, has been brought on the record by Respondent No.2 to 4, along with RP’s reply as Annexure-18, which has been relied by the learned Counsel for the Appellant. The RP in its affidavit filed in support of reply, has made various pleadings in paragraphs 3, 4, 5, 6, 7 and 8 of the reply. It is useful to extract paragraph 3, 4, 5, 6, 7 and 8 of the reply, which are as follows:

*“3. At the outset I hereby briefly set factual background relating to the claim made by the Applicant:*

*a. A land parcel situated at Fursungi having survey Nos.53 to 56 (“**said Land**”) was leased by the Corporate Debtor to one DSK Global Education and Research Private Limited (“**DSK Global**”) by way of a lease deed dated September 25, 2008 for a period of 99 years, starting from July 1, 2008 (**Lease Deed**). Under the Lease Deed, DSK Global was required to pay the Corporate Debtor a yearly rent of 1,00,00,000/-.*

*b. DSK Global constructed a college building on the said leased parcels of land. The said college was functional till around the year 2017 and has been vacant and non-operational thereafter. The building however continues to stand on the said Land.*

*c. Clause 3 of the Lease Deed, which has also been quoted by the Applicant in their present application on pages 5 and 6 of the Application under reply, makes the following provision in the event of termination of the Lease Deed for breach thereof by the Lessee:*

*“...If the Lessee fails to make good such breach within Three months of the date of service of such notice, the Lessor shall be entitled to re-enter upon the demised premises... And in this event Lessor shall be liable to pay to the Lessee cost of construction incurred by the Lessee for constructing buildings/structure, etc. on the said premises...”*

*(...Emphasis supplied)*

*d. Thus, if the Corporate Debtor wishes to terminate the Lease Deed with DSK Global, the Corporate Debtor would be required to pay DSK Global the cost of construction of the building standing thereon.*

*4. I say that from the above arrangement, it is clear that while the said Land is the property of the Corporate Debtor, the building constructed by DSK Global continues to be the latter's property. In fact, the Applicant has also admitted that the Land and the building thereon have been separately charged to them.*

*5. I say that the Applicant had insisted on my placing security guards at the said Land to guard it. However, this action would constitute repossession of a leased land, and would require the RP to issue of letter terminating the Lease Deed. I say that if I were to terminate the lease, the said DSK Global would be entitled to receive the cost of construction of the building thereon as per clause 3 of the Lease Deed abovementioned. I say that this amount would have been an additional expense incurred during an ongoing CIRP, and would require the approval of the COC.*

*6. I say that the Applicant is also aware that the said Land and building thereon have been seized and possessed by the state authorities pursuant to an Order of the MPID Court at Pune. The Applicant has already been made aware of the various proceedings initiated by me before the MPID Court, and a separate proceedings under Section 18(1)(f) of the IBC before this Hon'ble Tribunal for seeking a handover of possession of all properties of the Corporate Debtor*

*which are in the possession of the authorities further to the MPID proceedings.*

7. *It is denied that the said Land was not included in the list of assets of the Corporate Debtor. While the Applicant appears to rely on discussions held at the COC meeting on April 19, 2021, which is annexed as Exhibit G to the present Application. Reference may be made to page 5 of the said Minutes where the stated discussion is recorded. On a bare perusal of the same, it is clear that there was no discussion of the said Land being excluded from the list of the Corporate Debtor's assets. The discussion was simply about the feasibility of deploying security guards at the said Land.*

8. *I say that the Applicant had raised the issue of the said Land being excluded from the list of assets of the Corporate Debtor in its email dated April 20, 2021, to which I responded on April 22, 2021. In my response, I had specifically clarified that the said Land in question had been included in the list of assets of the Corporate Debtor. However, that as per the Lease Deed the Corporate Debtor cannot re-possess the said Land without paying for the cost of construction of the building thereon. A copy of this letter dated April 22, 2021 is annexed hereto and marked as Exhibit C."*

**159.** The above affidavit of RP clearly states that in event Corporate Debtor wishes to terminate the Lease Deed, the Corporate Debtor would be required to pay the Appellant, cost of construction of the building standing thereon, which have been an additional expense during the ongoing CIRP. Hence, the RP has not terminated the Lease Deed. The RP in paragraph 3 has also extracted Clause 3 of the Lease Deed, which contemplates payment to Lessee the cost of construction incurred by the Lessee in event the Lessor decides to re-enter upon the demised premises, after giving three months' notice to the Lessee. The RP has also stated that land, which is the subject matter of the lease is the assets of the Corporate Debtor,

whereas the building constructed by the DSK Global is the property of the Appellant.

**160.** Now, we come to the relevant Clauses of the Resolution Plan, which are questioned by the Appellant. In the Resolution Plan in Schedule-3, ‘*Extinguishment of claims/ entitlements*’, paragraph-13, deals with ‘*Related Party Transactions*’. The Clauses of Resolution Plan 13.3, 13.4, 13.5 and 13.6, which are relevant for the present case, are as follows:

*“13.3. All unfulfilled obligation of the Corporate Debtor to all related parties and also to DSK Global Education and Research Limited come to an end save and except the obligations of the Corporate Debtor in the Development Agreement dated 31 December, 2013 as detailed in Clause 13.7 hereinbelow;*

*13.4. The Lease Deed dated 24th September, 2008 executed between the Corporate Debtor and DSK Global Education and Research Limited and registered with the office of Sub-Registrar of Assurances under serial no. HVL-15-6440 of 2008 in respect of a portion of the Fursungi Property stands cancelled/terminated;*

*13.5. All rights of DSK Global Education and Research Limited under the Lease Deed dated 24th September, 2008 come to an end; and all the obligation of the Corporate Debtor towards DSK Global Education and Research Limited in terms of the Lease Deed dated 24th September, 2008 in respect of the Fursungi Property come to an end with no cost or claim recoverable against the Corporate Debtor arising from or through such Lease Deed dated 24th September, 2008;*

*13.6. Any structure standing on the land owned by Corporate Debtor but constructed by DSK Global Education and Research Limited shall be demolished, put for reuse, taken possession of by the Corporate Debtor against the PUFEE transactions and dues paid for and on behalf of DSK Global Education and Research Limited and also against recovery of dues of*

*the Corporate Debtor from DSK Global Education and Research Limited. This relief is important as unjust enrichment of due process should not be allowed for related firms through PUFÉ transactions; and”*

**161.** The question to be answered in the Appeal is as to whether by the aforesaid Clauses of the Resolution Plan submitted by the SRA, the rights of the Appellant in the Lease Deed, can be cancelled/ terminated without terminating the Lease Agreement, as per the Clauses of the Lease Deeds.

**162.** As we have already noticed above, the RP has categorically pleaded before the Adjudicating Authority that termination of Lease Deed has not been done by the RP because, in case of termination, the Corporate Debtor was liable to pay the cost of construction, which would have burdened additional cost in the CIRP. When the Lease Deed has not been terminated by the RP, whether the SRA by the Clauses as indicated above could have terminated the Lease Deed, denying the consequence of Clauses of the Lease Deed as contemplated therein. The Appellant’s case is that the Appellant has spent more than Rs.262 crores for construction of the building and in paragraph 2.6, it has stated the amount, which also include the loan amount of Rs.100 crores from Central Bank of India. It is useful to extract paragraph 2.6 of the synopsis given in the Appeal, which is to the following effect:

*“2.6. The Appellant had thus relying on the said rights created in favour of the Appellant especially the long tenure of the lease terms, proceeded to build infrastructure at the Said Property by investing an amount of around INR 263,38,46,334/- (including the loan amount).*

2.6.1. DSK International Campus, Pune was set up in 2008 through a partnership agreement with Chamber of Commerce & Industry Grand Hainaut and the Appellant comprising of an Animation, Video Game & Industrial Design Institute with state of the art facilities. DSK International Campus were governed by the French CNCP Level 1 certification. Students had opportunity to conduct a part of their curriculum in France and could seek internship world over.

2.6.2. To take things to the next level, the DSK World Education Council was incorporated under the Companies Act, 2013 on 02.02.2015 by the Appellant and on 15.02.2016, an attestation was issued by RUBIKA in respect of certification from the French certification authority of the courses being taught at the Appellant's institute. All the concerted efforts of the Appellant led to the promulgation of DSK World University Act, 2017 and came into effect on 05.05.2017. Thus, the Appellant and was running a university registered with the Government of Maharashtra of international repute wherein it had exchange programs with foreign governments like France, etc.

2.6.3. DSK World University had a wide variety of courses it offered including, Animation, Industrial Design, Gaming and Fashion Design/ Technology, with a cumulative annual student intake of 540 students. The DSK World University was aimed at providing students with high quality learning, which extended beyond the theoretical domain, by providing the students with state of the art machinery and equipments to practically master their learnings. The university was housed with an Industrial Design Laboratory, an Animation Laboratory, a Video Game Laboratory, a Fashion Design Laboratory, along with numerous other facilities, including on campus student and staff housing. The faculty at the University consisted of various global professionals and experts in Gaming, Animation, Industrial Design, etc. with decades of experience.”

**163.** The learned Counsel for the Appellant submits that assets of the third party, including the assets of the subsidiaries/ related entities of Corporate Debtor, cannot be made subject matter of the Resolution Plan. The learned Counsel placed reliance on Section 18(1)(f) and (g) and Explanation, which is as follows:

***“18. Duties of interim resolution professional. –***

*(1)(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including –*

*(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;*

*(ii) assets that may or may not be in possession of the corporate debtor;*

*(iii) tangible assets, whether movable or immovable;*

*(iv) intangible assets including intellectual property;*

*(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;*

*(vi) assets subject to the determination of ownership by a court or authority;*

*(g) to perform such other duties as may be specified by the Board.*

*Explanation. – For the purposes of this [section, the term “assets” shall not include the following, namely: -*

*(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;*

*(b) assets of any Indian or foreign subsidiary of the corporate debtor; and*

*(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.”*

**164.** The learned Counsel for the Appellant, in support of his submission has relied on various judgments of this Tribunal as well as Hon’ble Supreme Court, which need to be noticed.

**165.** The learned Counsel for the Appellant has relied on the judgment of the Hon’ble Supreme Court in ***Dr. K.A. Dhairyawan and Ors. vs. J.R. Thakur and Ors. – AIR 1958 SC 789***. In the above judgment, the Hon’ble Supreme Court had occasion to consider the rights of building erected on the leased land and as to whether the building shall go with the owner of the land. The Hon’ble Supreme Court, after considering the Clauses of the Lease, came to the conclusion that Lease Deed did not transfer the ownership in the building to the Lessor while the lease subsisted. In paragraphs 6 and 7, the Hon’ble Supreme Court has laid down following:

*“6. We have examined the various clauses of the lease and find that in none of them has it been positively stated that the building to be erected on the demised land would be in the ownership of the lessors and that the building would be deemed to have been leased to the lessees along with the demised land. Under the law there was no impediment in the way of the parties to have had a clause, in a positive form, to that effect. In the absence of such a clause the various clauses of the lease, as they exist, will have to be construed in order to ascertain whether on a proper construction thereof it can be said that there had also been a demise of the building. The Schedule to the lease, as already stated, specifically mentions that the land had been demised and there is no mention therein*



that the building when constructed thereon would also form part of the demised property. In 1927 when the lease was executed the Act was not in existence and it may reasonably be said that none of the parties had ever in contemplation that the Act or anything akin thereto would become law in the future affecting the rights of the parties under the lease. The various clauses of the lease are consistent with the ownership in the building being with the lessees in which the lessors had no right while the lease subsisted. In the case of *Narayan Das Khettry v. Jatindra Nath Boy Chowdhury*(1) the Privy Council approved the observations of Sir Barnes Peacock in the case of *Thakoor Chunder Poramanick v. Ramdhone Bhattacharjee* to the following effect:

“We have not been able to find in the laws or customs of this country any traces of the existence of all absolute rule of law that whatever is affixed or built on the soil becomes a part of it, and is subjected to the same rights of property as the soil itself.” In the case of *Vallabhdas Naranji v. Development Office*,, Bandra (3) the Privy Council once again referred to Sir Barnes Peacock's observation as stated above. The Privy Council also quoted the following observation of Couch, C. J., in the case of *Narayan v. Bholagir* (4):..... We cannot, however, apply to cases arising in India the doctrine of the English law as to buildings, viz., that they should belong to the owner of the land. The only doctrine which we can apply is the doctrine established in India that the party so building on another's land should be allowed to remove the materials.”

**7.** Normally, under Section 108 of the Transfer of Property Act, before the expiry of the lease, a lessee can remove all structures and buildings erected by him on the demised land. All that was necessary for him to do was to give back the land to the lessor, on the termination of the lease, in the same condition as he found it. The ownership, therefore, of the building in this case was not with the lessors but was with the lessees. Under Section. 108 of the Transfer of Property Act there was nothing to prevent the lessees contracting to hand over any building or structure

*erected on the land by them to the lessors without receiving any compensation. In other words, although under Section 108 the lessees had the right to remove the building, by the contract they had agreed to hand over the same to the lessors without the right to receive compensation at the end of the lease, the matter being entirely one of contract between the parties. Such a contract, however, did not transfer the ownership in the building to the lessors while the lease subsisted.”*

**166.** The learned Counsel for the Appellant has then relied on the judgment of the Hon’ble Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. & Ors. – (2022) 1 SCC 401**. In the above case, in the CIRP of Jaypee Infratech Ltd. (“**JIL**”) an amount of Rs.750 crores was deposited by holding Company, i.e., Jaiprakash Associated Ltd. (“**JAL**”). The Resolution Plan dealt with the said amount of the holding Company and released the amount, which was the subject matter of challenge by JAL. It was contended on behalf of the JAL that assets of holding Company cannot be part of the Resolution Plan. In the context of the above controversy, regarding the assets of holding Company, the Hon’ble Supreme Court had occasion to consider the submissions advanced and held that property of holding Company, cannot be dealt in the Resolution Plan. The submissions were noticed in paragraph 230.1.1, which is as follows:

**“230.1.1.** *It has been forcefully contended that the assets belonging to a third party cannot be utilised towards the resolution of insolvency of a corporate debtor, as held by this Court in Embassy Property [Embassy Property Developments (P) Ltd. v. State of Karnataka, (2020) 13 SCC 308] . The decision in Anuj Jain [Jaypee Infratech Ltd. v. Axis*

*Bank Ltd., (2020) 8 SCC 401 : (2021) 2 SCC (Civ) 334] has also been referred to submit that therein too, this Court disallowed JIL's assets from being utilised for securing the dues owed by JAL."*

**167.** The Hon'ble Supreme Court after considering the submissions of the parties, in paragraph 240, 241 and 241 laid down following:

**"240.** We may observe that the decisions cited by the parties do not require much discussion. The principles in the cited decisions including those in *Embassy Property [Embassy Property Developments (P) Ltd. v. State of Karnataka, (2020) 13 SCC 308]* that the assets belonging to a third party cannot be utilised towards resolution of a corporate debtor remain fundamental and beyond cavil. Equally, the reference to the maxim *actus curiae neminem gravabit*, and to the decision in *ONGC [ONGC v. Assn. of Natural Gas Consuming Industries, (2001) 6 SCC 627]* has been rather unnecessary because the said principle is essentially employed for the purpose of restitution and putting a party in the position where he would have been but for intervention or lapse of the Court. [ This principle has been succinctly explained by this Court in *South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648* in the following words : (SCC p. 664, para 28)"28. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the "act of the court" embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the court being wrongful or a mistake or error committed by the court; the test is whether on account of an act of the party persuading the court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the court and the act of such party." ] The principle underlying this maxim is also fundamental to all the rules of administration of

*justice and hence, an unintended result of any act or omission on the part of the Court, which occurs for whatever reason, is not allowed to operate to the prejudice of any person. However, this principle would not apply to the present case for the reasons that this Court consciously directed the holding company JAL to make a deposit but, added to that were the other conscious decisions where this amount was not ordered to be forfeited to JIL nor there was any decree that this amount had become property of JIL or the homebuyers of JIL. For what has been found and held hereinabove, we do not consider it necessary to dilate further on these principles.*

**241.** *The upshot is that the said amount of INR 750 crores and accrued interest thereupon, is not the property of JIL. In regard to this amount, neither the stipulation in the resolution plan could be countenanced nor the order of NCLT could be approved.*

**242.** *Accordingly, we hold that the amount of INR 750 crores, which was deposited by JAL pursuant to the orders passed by this Court in Chitra Sharma [Chitra Sharma v. Union of India, (2018) 18 SCC 611] , and accrued interest thereupon, is the property of JAL; and stipulation in the resolution plan concerning its usage by the resolution applicant of JIL cannot be approved. The part of the impugned order dated 3-3-2020 [Anju Agarwal, In re, 2020 SCC OnLine NCLT 1429] placing this amount in the asset pool of JIL is set aside.”*

**168.** In the above case, the Hon’ble Supreme Court categorically held that stipulation in the Resolution Plan in the Resolution Plan concerning its usage of the amount of Rs.750 crores, which was the asset of the holding Company, cannot be approved.

**169.** The learned Counsel for the Appellant has also relied on the judgment of this Tribunal in **Greater Noida Industrial Development Authority vs. Roma Unicon Designex Consortium – (2023) SCC OnLine NCLAT 1612**, wherein in paragraphs 44, following was held:

*“44. ....Thus, assets of the Corporate Debtor and assets of subsidiary of the Corporate Debtor have been separately recognised and dealt with. Section 18, sub-section (1), Explanation further clarifies the law when it says that assets shall include the assets, meaning thereby assets of the Corporate Debtor, shall not include assets of any Indian subsidiary. In the CIRP of Corporate Debtor, thus, assets of subsidiary Company, i.e., Earth Towne were not to be taken into consideration or treated as the assets of the Corporate Debtor. As regards, the law relating to resolution process of a corporate person is concerned, the law is concerned with assets of the Corporate Debtor and its liabilities, so as to focus the resolution on the assets of the Corporate Debtor. The natural corollary to the above provision is that the assets of the subsidiary Company cannot be dealt with, in CIRP of a holding Company. Holding Company and subsidiary Company have separate legal status and the assets of subsidiary Company cannot be taken into consideration.”*

**170.** The above precedents, fully supports the submission of the Appellant that third party assets even though it may be in possession of the Corporate Debtor, cannot be taken control of, nor can be treated to be the assets of the Corporate Debtor by virtue of Section 18(1)(f) and (g) Explanation. In the present case, the Corporate Debtor was admittedly owner of the lease land and lease land has been taken into CIRP by the RP. The building, which was constructed on the lease land, was the building constructed by the Appellant as per the terms and conditions of the Lease Deed and the Appellant is the owner of the building. The Lease Deed has also provided that Lessee shall construct the building for running of Schools, Hostels and other buildings and in event the Lessor has to re-enter, it after giving three months’ notice to the Lessee for breach of any covenant, and re-enter

subject to payment of cost of construction. Thus, payment of cost of construction was clear stipulation before the Lease Deed can be terminated. We have already noticed above that during CIRP, the lease was not terminated. The Transfer of Property Act, 1882, Section 111 deals with 'Determination of lease'. Section 111, sub-clause (g) and (h) provides as follows:

**“111. Determination of lease.**

xxx

xxx

xxx

*(g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee 4[gives notice in writing to the lessee of his intention to determine the lease:*

*(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.”*

**171.** The facts noted above, clearly indicate that lease was never terminated during the CIRP for the reasons as explained by the RP himself in the affidavit as noted above. Whether without terminating the lease, the SRA can extinguish the rights of the Lessee, as has been done by Clause 13.3 to 13.6 of the Resolution Plan extracted above? The learned Counsel for the Appellant has also relied on the judgment of this Tribunal in **UCO Bank vs. Sudip Bhattacharya Resolution Professional of Reliance**

**Naval & Engineering Ltd. – (2021) SCC OnLine NCLAT 3047**, where in paragraph 11 of the judgment, following was laid down:

*“11. The intent of the Code was not to terminate Agreements that have created legal rights in favor of third parties without adhering to due process of Law. Such a termination of legally binding Agreements would be in violation of the provisions of Section 30(2)(e). The Hon'ble Supreme Court in a Catena of Judgements has laid down that margin money acquires the character of 'Trust' when it is given against the Bank Guarantee issued to the beneficiary and asset held under 'Trust' cannot be considered as an asset of the 'Corporate Debtor'. It is significant to mention that in the instant case even the margin money was put in by the Bank and not by the 'Corporate Debtor'.*

**172.** The IBC does not contemplate termination of all contractual agreements, creating legal rights in favour of third parties. There can be cases, where Corporate Debtor even during currency of the CIRP can terminate contractual agreements as per the Clauses of the agreements. But, IBC cannot be used for purpose of extinguishing of contractual agreement, negating rights of third parties. It can be explained by taking an example – a Corporate Debtor is owner of a building, which has been leased out for 30 years' lease to a tenant on payment of yearly rent. When the building is taken in the CIRP, the tenant shall not be automatically deprived of his tenancy rights in the assets. The termination of tenancy can be only done in accordance with the Clauses of the lease, which, if permissible, may be done during CIRP or even thereafter. But by taking the building in the CIRP, rights of tenant cannot be extinguished.

**173.** The learned Counsel for the Appellant has also relied on judgment of the Hon'ble Supreme Court in **Tata Consultancy Services Ltd. vs. SK Wheels Pvt. Ltd. Resolution Professional Vishal Ghisulal Jain – (2022) 2 SCC 583**, where termination of agreement by Tata Consultancy Services Ltd. came to be questioned and the Hon'ble Supreme Court in paragraphs 29 and 30, laid down following:

*“29. It is evident that the appellant had time and again informed corporate debtor that its services were deficient, and it was falling foul of its contractual obligations. There is nothing to indicate that the termination of the facilities agreement was motivated by the insolvency of corporate debtor. The trajectory of events makes it clear that the alleged breaches noted in the termination notice dated 10-6-2019 were not a smokescreen to terminate the agreement because of the insolvency of corporate debtor. Thus, we are of the view that NCLT does not have any residuary jurisdiction to entertain the present contractual dispute which has arisen dehors the insolvency of corporate debtor. In the absence of jurisdiction over the dispute, NCLT could not have imposed an ad interim stay on the termination notice. Nclat has incorrectly upheld [Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain, 2020 SCC OnLine NCLAT 484] the interim order [BMW Financial Services (P) Ltd. v. S.K. Wheels (P) Ltd., 2019 SCC OnLine NCLT 28273] of NCLT.*

**30.** While in the present case, the second issue formulated by this Court has no bearing, we would like to issue a note of caution to NCLT and Nclat regarding interference with a party's contractual right to terminate a contract. Even if the contractual dispute arises in relation to the insolvency, a party can be restrained from terminating the contract only if it is central to the success of CIRP. Crucially, the termination of the contract should result in the corporate death of corporate debtor. In Gujarat Urja [Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, (2021) 7 SCC 209 : (2021) 4 SCC (Civ) 1] , this Court held thus : (SCC pp. 309-10, paras 176-177)



*“176. Given that the terms used in Section 60(5)(c) are of wide import, as recognised in a consistent line of authority, we hold that NCLT was empowered to restrain the appellant from terminating PPA. However, our decision is premised upon a recognition of the centrality of PPA in the present case to the success of CIRP, in the factual matrix of this case, since it is the sole contract for the sale of electricity which was entered into by corporate debtor. In doing so, we reiterate that NCLT would have been empowered to set aside the termination of PPA in this case because the termination took place solely on the ground of insolvency. The jurisdiction of NCLT under Section 60(5)(c) of IBC cannot be invoked in matters where a termination may take place on grounds unrelated to the insolvency of corporate debtor. Even more crucially, it cannot even be invoked in the event of a legitimate termination of a contract based on an ipso facto clause like Article 9.2.1(e) herein, if such termination will not have the effect of making certain the death of corporate debtor. As such, in all future cases, NCLT would have to be wary of setting aside valid contractual terminations which would merely dilute the value of corporate debtor, and not push it to its corporate death by virtue of it being corporate debtor's sole contract (as was the case in this matter's unique factual matrix).*

*177. The terms of our intervention in the present case are limited. Judicial intervention should not create a fertile ground for the revival of the regime under Section 22 of SICA which provided for suspension of wide-ranging contracts. Section 22 of the SICA cannot be brought in through the back door. The basis of our intervention in this case arises from the fact that if we allow the termination of PPA which is the sole contract of corporate debtor, governing the supply of electricity which it generates, it will pull the rug out from under CIRP, making the corporate death of corporate debtor a foregone conclusion.”*

*(emphasis supplied)”*

**174.** The Hon'ble Supreme Court has given a note of caution to NCLT and NCLAT regarding interference with a party's contractual right to terminate a contract. In the present case, even though in the CIRP, the lease executed in favour of the Appellant, could have been terminated as per the Clauses of the Lease Deed, in fact the termination has not happened as has been pleaded by RP in its affidavit as extracted above. When the Lease Deed under which the Appellant has constructed the building and is entitled to receive the construction cost from the Lessor, termination and re-enter has not been done directly, by any sidewind, by the Clauses of Resolution Plan, extinguishing the rights of the Lessee, is impermissible and contrary to the law.

**175.** We may also notice the submissions advanced by the learned Counsel for the SRA opposing the submission of the Appellant in the present Appeal. It is submitted that the Appellant has not filed any objection or any claim before the Adjudicating Authority or with the RP and having not filed any Application before the Adjudicating Authority, it cannot be allowed in this Appeal to challenge the approval of Resolution Plan. It is sufficient to notice that filing of claim did not arise by the Appellant before the RP, since the lease was never terminated, giving any entitlement of cause to the Appellant. Further, Directors of the Corporate Debtor were all in prison, much before the commencement of CIRP and were released in November 2022 and March 2023. The Directors of the Corporate Debtor, who were also Promoters of the Corporate Debtor, could not participate in

the CIRP, nor had an opportunity to appear as Suspended Directors/ Promoters of the Corporate Debtor.

**176.** The Resolution Plan extinguishes the right of the Appellant to the building on the lease land. Hence, by approval of Resolution Plan by the Adjudicating Authority, the Appellant can very well file the Appeal in exercise of its right as granted under Section 61, sub-sections (1) and (3). The Appellant, who feels aggrieved by the order passed by the Adjudicating Authority, approving the Resolution Plan, can very well maintain the Appeal and the locus of the Appellant to file the Appeal cannot be questioned by the SRA. It is further submitted that the Appellant did not challenge the inclusion of the property in the Information Memorandum. We have already noticed the affidavit of RP, where he has clearly stated that land which formed the part of the Lease Deed was included in the assets of the Corporate Debtor and rightly so. The RP having consciously not terminated the Lease Deed, nor claimed re-entry or any right to the building, it is not open for the SRA to question the Appellant's locus to challenge the impugned order. The learned Counsel for the SRA further stated that Central Bank of India has filed its claim and has secured charge over the assets of the Corporate Debtor. The learned Counsel for the Appellant has pointed out that claim in Form-C, submitted by Central Bank of India was filed on the strength of Corporate Guarantee given by the Corporate Debtor. The learned Counsel for the Appellant has referred to Items 6 and 10 of Form-C, which are as follows:

“6.	DETAILS OF HOW AND WHEN DEBT INCURRED	<i>Credit facility was sanctioned to M/s D S K Global Education and Research Limited on 9.9.2008. Which his a sister concern of D S Kulkarni Developers Ltd. who have extended their Corporate Guarantee. M/s D S K Global Education and Research Limited, are enjoying Term Loan facility of Rs.100 crores and the present dues (upto 26.9.19) are Rs.1,18,26,41,577.00”</i>
10.	LIST OF DOCUMENTS ATTACHED TO THIS PROOF OF CLAIM IN ORDER TO PROVE THE EXISTENCE AND NONPAYMENT OF CLAIM DUE TO THE OPERATIONAL CREDITOR	<i>1. Registered Mortgage deed No.1936/2010 registered with Sub-Registrar Class II, Haveli – II.</i> <i>2. EM dt. 27.9.2008 by D S K Global Education and research Pvt. Ltd.</i> <i>3. Letter of Corporate Guarantee dt. 30.03.2012</i> <i>4. ROC Charge Registration</i> <i>5. Statement of account.”</i>

**177.** Thus, the claim was filed on the basis of corporate guarantee given by the Corporate Debtor.

**178.** In view of the foregoing discussions, we are of the view that Resolution Plan could not have extinguished the rights of the Lessee, who owns the lease hold rights and the rights of the building erected thereon. The Resolution Plan has sought to do many things indirectly, which cannot be directly done. Clauses 13.4, 13.5 and 13.6 of the Resolution Plan are contrary to the provisions of law and violates Section 30, sub-section (2) (e) of the IBC and are unsustainable. We, thus, are of the view that Appellant

– DSK Global Education and Research Private Limited is entitled for relief in the Appeal.

**Company Appeal (AT) (Insolvency) No. 1307 of 2023 - DS Kulkarni and Company Vs. Mr. Manoj Kumar Agarwal, Resolution Professional of D.S. Kulkarni Developers Limited and Ors.**

**179.** The Appellant, which is a Partnership Firm and sister concern of the Corporate Debtor has questioned inclusion of property owned by the Appellant in the Resolution Plan. The Appellant's case is that in the CIRP of the Corporate Debtor, only assets of the Corporate Debtor can be included and third party assets, including the assets of the subsidiaries, cannot be included in the CIRP of the Corporate Debtor. The Appellant's case is that by two Sale Deeds executed on 07.06.2002 by Shivaji Ingale and Shivaji Vithalrao Ingale conveyed 20.5 R each of Survey No.326/1 at Village Bavdhan. The Appellant's case is that the Appellant's name is recorded in the Extract 7/12 and continues upto to the date. The said land did not belong to the Corporate Debtor and could not have been included in the assets of the Corporate Debtor. The Appellant, thus, questions the inclusion of the Appellant's land in Appendix IV of the Resolution Plan, which contains description of the properties.

**180.** Before we proceed to consider the rival submissions, it is useful to notice the Sale Deed and the Survey of the area, which has been conveyed to the Appellant. Both the Sale Deeds are registered Sale Deeds, which have been filed at Annexures A-6 and A-7 of the Appeal. The Sale Deeds clearly indicate that Survey No.326 was admeasuring 2 H 42.8 R, which

was divided in two equal parts, S. No.326/1 and has an area of 1 H 21.4 R. Out of entire S. No.326/1 an area of 20.5 R was conveyed by Shri Shivaji Vithalrao Ingale vide Sale Deed dated 07.06.2022, which is clearly reflected from the registered Sale Deed. Similarly, by another Sale Deed, an area of 20.5 R was conveyed by Smt. Lata Shivajirao Ingale from Survey No.326/1. The Appellant has also brought on record the Extract of 326/1, which was downloaded on 06.07.2023. Extract of Survey No.326/1 is as follows:

**“GOVERNMENT OF MAHARASHTRA  
VILLAGE FORM No.SEVEN  
Record of Rights register Sheet  
(The Maharashtra Land Revenue Record of Rights and Registers  
(Preparation and Maintenance) Rule 1971 in this, sub Rule 3, 5, 6 and 7)**

Village: Bavdhan BK (556124) Taluka: Mulshi District: Pune

ULPIN: 26423498680 Survey No. & Sub-Division: 326/1

Holding Type of Land: Cultivator Class 1 Local name of Land

Area, Units Assessment				Acc. No.	Holder Name	Area	Assessment	Pot Kha.	Mutations	Tenants, Parts, other Rights
Units	Ha	R	Sq. M.	1186	Hiralal Shravan Rajput (3130)					Income Tax Recovery Department's charge of Rs.18303246/- + Interest on M/s. D.S. Kulkarni & Co. thru Partner Menanti Deepak Kulkarni (6248) Others Income Tax Recovery Officer-1, Charge of Rs.125167770/- on M/s. D.S. Kulkarni Developers Ltd. (6268) Others Confiscated for M/s.D.S. Kulkarni & Co. Vide Section 4 of Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999
A) Cultivable Land				----- Common Area 0.0694 0.41						
Dry		0.940								
Irri.										
Total A		0.90.40		1187	Snehalata Dinesh Shetty (4078)					
B) Non Cultivable Land (Po. Kha)					Dinesh Vasu Shetty (4078)					
Class A					Hemanti Deepak Kulkarni (3203)					
Class B				----- Common Area 0.4100 2.45						
Total B		0.00.00								
Total A+B		0.90.40								
Assessment 5.40										
Judi										
Special										
Ass.										

					(6334) Outstanding Mutations – No. Last Mutation No.6334 Date: 30.06.2018 <hr/> Boundaries and Land Measurement Marks
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Old Mutations: (1273), 1370, 1584, 1627, 1967, 2006, 3067, 3203, 3204, 3986, 5922, 5969, 6117

This Village Form No.7 is digitally signed on date 23/06/2019: 08:42:25 PM and since data of Village Form 12 is self certified, no signature stamp is required on 7/12 Record. 7/12 Download Date: 06.07.2023; 13:33:05 AM. A No.2506100001033402 should be used on the website <https://digitalsatbara.mahabhumi.gov.in/DSLRL> for valid verification.”

**181.** We may now notice the relevant Appendix IV, where the description of the properties have been mentioned, where at Item No.11, land situated at Village Bavdhan, has been included aggregating to 89.35 acres. Item No.11, Appendix IV is as follows:

*“11. All the pieces and parcel of land admeasuring in the aggregate 89.35 acres (i.e. 3,61,610 square meters) or thereabouts situate, lying and being at Village Bavdhan, Taluka Hveli and district Pune which includes but not limits the following survey numbers:*

<b>Sr. No.</b>	<b>Survey No.</b>
1.	245/3
2.	214
3.	245/6
4.	102 (open space)
5.	102 (amenities)
6.	314
7.	283/1A
8.	283/1B
9.	247/2
10.	326/1”

It is relevant to notice that Item No.326/1 is included at Sl. No.10, but no area of the plot has been mentioned.

**182.** In the CIRP, S. No.326/1 as noted above, has been included. The RP has filed a reply. The RP, who has prepared the Information Memorandum, included the Plot 326/1 in the CIRP of the Corporate Debtor. The RP's case throughout has been that the said details of the assets of the Corporate Debtor were obtained by the RP from the information received from Investigating Agency, Enforcement Directorate. The RP has filed a reply in the Appeal and has pleaded that the properties, which were included in the CIRP of the Corporate Debtor were based on the information received from Provisional Attachment Order ("**PAO**") dated 14.02.2019. It is pleaded that believing on the PAO, the RP has bonafide included the properties in the assets of the Corporate Debtor. In paragraphs 11 and 12 of the reply of the RP, following has been pleased:

*"11. I say that Respondent No.1 also included the property being land bearing number Survey No.326/1 situated at bavdhan, Taluka Haveli, District Pune ("**said Property**") as part of the assets of the Corporate Debtor.*

*12. I say that the said Property was included by Respondent No.1 as an asset of the Corporate Debtor as the same was specified in the schedule of the Provisional Attachment Order ("**PAO**") no. I.E. PAO No.01/2019 dated February 14, 2019 passed by the Deputy Director, Enforcement Directorate, Mumbai Zonal Office – II ("**ED**") in file No.ECIR No.01/MBZO-II/2018 dated March 8, 2018. Thus, Respondent No.1 in bonafide and as mentioned in the said PAO Order included the said Property as part of the assets of the Corporate Debtor in an effort to maximise the value of the Corporate Debtor. Hereto annexed and marked as*



**“Exhibit-A”** is the relevant extract of the PAO Order dated February 14, 2019. I say that due to the voluminous nature of the said Order, the complete copy is not annexed herewith. Therefore, I crave leave to file the complete copy of the said Order as and when directed by this Hon’ble Tribunal.”

**183.** Provisional Attachment Order was subsequently confirmed by the Adjudicating Authority under the PMLA Act. Provisional Attachment Order mentions at Sl. No.40, Survey No.326/1, which was in the name of Shirish D Kulkarni. It is relevant to notice Item No.40 of the Schedule, which is part of the order dated 05.08.2019, which is as follows:

Sl No.	Name of the owner	Place where property situated	Nature of property	Description of the property	Area	Documents details	Value Rs. in Lakhs	Remarks
40.	Shirish D Kulkarni	Bavdhan	Land	Survey No.326/1 at Village Bavdhan, Tal. Mulshi, Dist. Pune Area 0 H 39 R	0 H 39 R	Sale Deed 860/2015 22/01/2015 11728/2015 19/10/2015 & 7/12 Extract	497.65	Value as per Sale Deed

**184.** The Provisional Attachment Order did include area of Survey No.326/1, area 39 R in the name of Shirish D Kulkarni. The order dated 05.08.2019 referred to Bavdhan property, in which area of 41 R is mentioned in the name of D.S. Kulkarni Developers Ltd., which is at Item Sl. No.10, which is as follows:

Sl No.	Name of the owner	Place where property situated	Nature of property	Description of the property	Area	Documents details	Value Rs. in Lakhs	Remarks
10	D. S. Kulkarni Developers Ltd.	Bavdhan	Land	Survey No.326/1 at Village Bavdhan,	0 H 41 R	7/12 extract	212.79	Value @ 15800/Sq M as per

				Tal. Mulshi, Dist. Pune Area 0 H 41 R				Ready Reckoner
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**185.** The RP in his reply has clearly stated that RP became aware of the ownership of the property of the Appellant only through the Appeal. It was pleaded that the Sale Deeds executed in favour of the Appellant were not before the RP and according to information provided in the PAO, the land was included. It is useful to extract paragraph 14 of the reply of the RP, which is as follows:

*“14. I say that Respondent No.1 became aware of the ownership of the said Property at the time of perusing the present Appeal. I further submit that the Sale Deeds executed in favour of the Appellant herein were not brought to the attention of Respondent No.1 at a prior stage. I further say that the said Property were included by Respondent No.1 according to the information provided in the said PAO Oder which specified that the said Property were owned by the Corporate Debtor. Therefore, in the absence of any clarity regarding the said Property, I say that Respondent No.1 in his capacity as the Resolution Professional included the said Property with the primary goal to maximise the value of the Corporate Debtor.”*

**186.** The basis of the inclusion of the Plot 326/1 is the PAO, as has been pleaded by the RP. When we look into the PAO, it is clear that PAO mentions two part of Survey No.326/1 OH39R in record in the name of Shirish D Kulkarni and another area in the name of Corporate Debtor i.e. OH41R. Thus the PAO attaches only two part of 326/1, 41R in the name of Corporate Debtor and 39R in the name of Shirish D Kulkarni. The area,

which is recorded in the name of Appellant in Extract 7/12, i.e. 20.5 R and 20.5R, equivalent to 41R, is not included in the PAO. The very basis of the inclusion of the area, which is recorded in the Extract 7/12 in the name of the Appellant, thus falls, and reply of RP makes it clear that he came to know about the Sale Deeds of the Appellant only through the Appeal and he included the entire Survey number on the basis of PAO. Firstly, the PAO does not include the entire Survey No.326/1, it only includes area of 39R in the name of Shirish D Kulkarni and area of 41R in the name of Corporate Debtor, whereas the area, which is recorded in the name of Appellant 20.5 and 20.5 till continues in Extract 7/12 and is different area from the area, which was attached from Shirish D Kulkarni and the Corporate Debtor. We have already noticed that Sale Deed, which was executed in favour of the Appellant on 07.06.2002, clearly mentions the total area of 326/1 admeasuring an area of about 1 H 21.4 R, which is clear from the following part of the Sale Deed, executed by Shivaji Vithalrao Ingale, which is as follows:

**“SHRI SHIVAJI VITHALRAO INGALE,**

*Age : Adult, Occupation: Business,  
Residing at-S. No.326, H. No.1, Bavdhan Budruk,  
Taluka – Mulshi, Dist. Pune  
Hereinafter referred to as the “VENDOR” (which  
expression unless repugnant to the context or meaning  
thereof shall mean and include his heirs,  
administrators, executors and assigns etc.)*

**THE PARTY OF FIRST PART**

**M/S. D. S. KULKARNI & COMPANY,**

*A registered Partnership firm having its registered  
office at 1187/60 J.M. Road, Shivajinagar, Pune 411  
005, through its one of the Partner Mrs. Hemanti*

*Deepak Kulkarni, Age : about 41 years, Occupation Business Correspondence address : 1187/60 J.M. Road, Shivajinagar, Pune 411 005.*

*Hereinafter referred to as “PURCHASER” (which expression shall unless repugnant to the context or meaning thereof shall mean and include all the present Partners, future Partners, their heirs, executors, successors-in-title, administrators and permitted assigns etc.)*

**THE PARTY OF THE SECOND PART.**

**WHEREAS** *the land bearing S. No.326 at village Bavdhan Budruk, Taluka Mulshi, District Pune admeasuring about 2H 42.8 R was owned, seized and possessed by Shri Eknath Babu Dagade and Shri Nivrutti Babu Dagade;*

**AND WHEREAS** *the entire land was divided in two equal parts and numbered as S. No.326/1, admeasuring an area of about 1 H 21.4 R in the name of Shri Eknath Babu Dagade and S. No.326/2 admeasuring an area of about 1 H 21.4 R in the name of Nivrutti Babu Dagade respectively vide mutation entry No.1273 dated 1273 dated 8<sup>th</sup> September 1974;”*

**187.** Thus total area is 1H 21.4R of 326/1 and when we include the 1H 41R recorded in favour of the Appellant; 0H41R recorded in the name of the Corporate Debtor; and 0H39R recorded in the name of Shirish D Kulkarni, measurement of entire Plot is complete. Thus, above facts makes it clear that area, which is owned by the Appellant is entirely different from the area, which was recorded in the name of Shirish D Kulkarni and Corporate Debtor from Survey No.326/1. It is relevant to notice that PAO attaches two part of 326/1, i.e. 39R in the name of Shirish D Kulkarni and 41R in the name of Corporate Debtor, but area which is in the name of the Appellant, was not included in the attachment order. The RP in his reply

has candidly submitted that he was not aware of the Sale Deed in favour of the Appellant and he included the area 326/1 on the basis of PAO. As observed, the PAO does not include the entire area of 326/1, hence, mentioning of entire area 326/1 in the assets of the Corporate Debtor is wholly incorrect. Only two parts of Survey No.326/1, i.e., 39R and 41R could have been included. We, thus, are of the view that Appellant is right in his submission that area Survey No.326/1 to the extent of 0H41R, which is recorded in the name of the Appellant was neither attached in PAO, now can be part of the assets of the Corporate Debtor. We have already noticed the provisions of Section 18(1)(f) and (g) Explanation and precedent of the Hon'ble Supreme Court and this Tribunal, while considering the Company Appeal (AT) (Insolvency) No.1308 of 2023, which annunciation, fully supports the submission of the Appellant.

**188.** Learned Senior Counsel appearing for Respondent Nos.2 to 4 in their reply sought to raise objection on the ground of delay and laches. The Partners of the Appellant Deepak Kulkarni and Hemanti Kulkarni were confined to prison and could be released only in November 2022 and March 2023. Partners of the Appellant were not part of the CIRP. The fact that they have filed the Appeal challenging the order approving the Resolution Plan including the assets of the Corporate Debtor, cannot be thrown out on the ground of delay and laches as contended by Respondent Nos.2 to 4. The learned Senior Counsel for Respondent Nos.2 to 4 has also referred to the orders passed by this Tribunal as well as the Hon'ble Supreme Court,

where the Appeals filed by the Appellant in this Tribunal and Civil Appeal in the Hon'ble Supreme Court were dismissed. The learned Counsel for the Appellant has referred to the Appeal filed by Deepak Kulkarni challenging the order of admission, which was dismissed by this Tribunal by refusing to condone the delay in filing the Appeal and order of the Hon'ble Supreme Court confirming the said order. Challenge to admission order by filing an Appeal is not relevant for considering the issues raised in the present Appeal. The learned Counsel for the Appellant has himself brought to the notice of the Court, the order of the Hon'ble Supreme Court dated 01.04.2024 and 17.05.2024 passed in Civil Appeal No.4354 of 2024 filed by DS Kulkarni & Company. The Appeal was filed by the Appellant, challenging order of this Tribunal, which proceedings did not pertain to the challenge to the approval of Resolution Plan by the Adjudicating Authority vide order dated 23.06.2023. Hence, the proceedings taken in this Tribunal and Hon'ble Supreme Court had no bearing on the issues, which has arisen in the present Appeal.

**189.** Respondent Nos.2 to 4 in its reply has also relied on the PMLA, Provisional Attachment Order dated 14.02.2019. We have already noticed the details of PAO dated 14.02.2019 as above and have come to the conclusion that PAO could not have been the basis for including the assets of the Appellant in the CIRP of the Corporate Debtor. It is the RP, who has included the assets of the Appellant in the CIRP of the Corporate Debtor on the basis of PAO and he was not aware of the Sale Deeds in favour of the

Appellant, which he came to know only from the present Appeal. We have already discussed above that PMLA order was with respect to two different portions of Survey No.326/1 and does not relate to area, which was owned by the Appellant. Hence, we are of the view that area owned by the Appellant in Survey No.326/1, i.e. 0H41R (20.5 R each) was neither part of the PMLA order, nor could have been included in the CIRP of the Corporate Debtor. Thus in Appendix-IV, Item No.10, the Survey 326/1 has to exclude the area of 1H 41R, which is owned by the Appellant. Thus, Item No.10 of Appendix-IV has to be read in following manner to not violate the provisions of law, i.e., ***326/1 (excluding area of 0H41R recorded in the name of DS Kulkarni and Company).***

**190.** In view of the above, we are of the view that Appellant is entitled for relief.

**Company Appeal (AT) (Insolvency) No.1660 of 2023**

**191.** The above Appeal has been filed by 25 Appellants whose claims were not accepted by the Resolution Professional on the ground that apart from allotment letters, they have not filed any other documents to prove payments to the Corporate Debtor. Appellants have filed their claims immediately after publication. The claims were filed by the Appellants in October, 2019 and were entertained but rejected on 25.05.2021. In the Appeal, Appellants have filed the list of creditors as issued by the Resolution Professional dated 25.05.2021. The rejection of the claims of the Appellants were basically on two grounds. Firstly, apart from allotment

letters issued by the Corporate Debtor no supporting documents have been provided to prove that the payments have been received in books of the Corporate Debtor. The entry with regard to Appellant No.1 in the list of creditors is as follows:-

*“Claim is rejected as claim is based on just the allotment letter and no other supporting documents provided and amount is also not received in the books of accounts of the Corporate Debtor”*

**192.** The claim of some of the Appellants was rejected on the ground that they have made the claim on the basis of Registered Agreement made with ‘DSK Global Education and Research Ltd.’ and no supporting documents for payment has been filed.

**193.** We need to first notice the allotment letters issued by the Corporate Debtor. Allotment was made to the Appellants in Project- DSK Vishwa Ph-VI Aanandghan situated at Village Kirkatwadi, Grampanchyat Kirkatwadi, Taluka Haveli, District Pune. Allotment letters were issued in favour of the Appellants from 20.04.2017 till 29.04.2017. Allotment letters have been collectively filed as Annexure A-2. In the allotment letters issued to the Appellants amount of total consideration as well as the amount received from the Appellants have been noted. It is useful to extract the allotment issued to the Appellant No.2- Satish Bansilal Selot which allotment letter issued by the Corporate Debtor reads as follows:-

**“D. S. KULKARNI DEVELOPERS LTD.**

*AN ISO 0001,14001,18001 COMPANY*

**PROMOTERS & BUILDERS**



Regd. Off "DSK House" 1187/60,

JM Road Shivajinagar, Pune-411005

Tel: 020-66047100 Fax: 020-25535772

CIN: L45201PN1991PLC063340

Mumbai Office: "DSK House", Veer Savarkar Marg (Cadell Road).

Next to Mayor's Burgston, Shivaji Park, dadar, Mumbai-400-025

Tel: 022-2446 64 46/3446 24 43 Fax: 022-244401 63

Email: [sales@dskil.com](mailto:sales@dskil.com) Website: [www.dsedl.com](http://www.dsedl.com)

Date: 29/04/2017

To,

1. Satish Bansilal Selot

Flat no-12, silver Birch Apt,

Model colony,

Pune-16

### **ALLOTMENT LETTER**

We have accepted your provisional booking of Flat No.K-608, floor 6<sup>th</sup>, in Wing K admeasuring 71. 53 Sq. Mtrs. of Carpet area in your project called "DSK VISHWA Ph- VIAANANDGHAN" situated at Gat No.186 (pt),187 and 188 situated at village Kirkatwadi, Grampanchyat Kirkatwadi, Taluka Haveli, District Pune (hereinafter collectively referred to as the said "Flat").

You have agreed to pay the total consideration of Its. 50,90,000/- (Rupees fifty Lakhs ninety thousand Only) for the said Flat. You have paid Rs. 43,06,858/- (Rupees forty three Lakhs six thousand eight hundred fifty eight Only). You have agreed to pay the balance amount of consideration at the time of registration of Agreement. Apart from the aforesaid total consideration, you have agreed to pay Stamp Duty, Registration Fees, Initial Maintenance charges, VAT, LBT, GST, Service Tax, Share Capital and Entrance Fees if applicable and any other expenses, taxes and levies as may be required and demanded from time to time.

You are aware that, K-52 (SCP) in Lower ground floor is allotted to you. You are also aware that, said

*allotment will be finalized as per rules and regulations of proposed society or apartment condominium.*

*It is informed to you to execute and register the agreement immediately. However on your specific request we have agreed to execute and register necessary agreement under section 4 of the Maharashtra Ownership Flat Act 1963 in respect of the said flat on or before APRIL-2021 or completion of flat or possession is flat whichever is earlier by paying the balance consideration, required duties, charges, taxes and expenses within the prescribe period. The possession of flat will be handed over after registration of agreement on completion of formalities of required documentations.*

*A request letter dated 25/04/2017 is furnished by you and relying on the undertaking mentioned in the request letter, this allotment letter is issued to you.*

**For D.S.Kulkarni Developers Ltd.**

**President”**

**194.** Some of the allotment letters have been issued by ‘DSK Global Education and Research Limited’. One of the allotment letters dated 29.04.2017 issued to Mr. Karan Jethamalji Jain, as follows:-

**“Date: 29.04.2017**

**To,**

**Mr. Karan Jethamalji jain**

**C-101 Achal leela Khoshboo,**

**Soft Road, Vishalnagar Near Nangude School**

**Dimple Nilakh Pune-27.**

**ALLOTMENT LETTER**

*We have accepted your provisional booking of Flat No C-903, floor 9<sup>th</sup>, in Building/Wing C admeasuring 45.52 Sq. mtrs of total carpet area, in our project "DSK VISHWA PH-VI AANANDGHAN" situated at Gat No.186 (pt), 187 and 188 situated at village Kirkatwadi, Grampanchyat Kirkatwadi, Taluka Haveli, District Pune (hereinafter collectively referred to as the said "Flat").*

*You have agreed to pay the total consideration of Rs. 33,36,000/- (Rupees Thirty Three lakhs thirty six thousand Only) for the said Fiat. Out of which you have paid Rs. 24,02,000/- and balance will be paid as per progress. Apart from the aforesaid total consideration, you have also agreed to pay Stamp Duty, Registration Fees, Initial Maintenance charges, VAT, Service Tax, GST, LBT, Share Capital and Entrance Fees if applicable and any other expenses, taxes and levies as may be required and demanded from time to time.*

*You are aware that, a C-B1(SCP) In Wing C is allotted to you. You are also aware that, said allotment will be finalized as per rules and regulations of proposed society or apartment condominium.*

*It is informed to you to execute and register the agreement immediately. However on your specific request we have agreed to execute and register necessary agreement under section 4 of the Maharashtra Ownership Flat Act 1963 in respect of the said flat after completion of said flat, within the prescribe period by complying required formalities and paying Stamp duty, Registration charges and other expenses as mentioned herein above.*

*A request letter dated 25.04.2017 is furnished by you and relying on the undertaking mentioned in the request letter, this allotment letter is issued to you.*

***For M/s. DSK Global Education & Research Ltd.***

***Authorized Signatory”***

**195.** All the allotment letters clearly contain the total consideration for flat and the amount which have already been paid by the Appellants. ‘DSK Global Education and Research Limited’ is land owner with regard to which a Development Agreement was executed in favour of the Corporate Debtor on 31.12.2013 and in the Resolution Plan, Resolution Applicant has accepted to allot flats to ‘DSK Global Education and Research Limited’. In the application which was filed before the Adjudicating Authority by the

Appellant through 'DSK Aanandghan (Association of Allotment Letter Holders)' being IA No. 1844 of 2021, the details of date of allotment, payments, total consideration, amount paid, allotment date as well as issuance of allotment letters have been mentioned. The list contains details of 32 homebuyers which included all the Appellants.

**196.** 'DSK Global Education and Research Limited' is a Pvt. Ltd. Company consisting of the directors who were also directors of the Corporate Debtor. We have already noticed above that the Corporate Debtor with its sister concern, firms, partnership firms all engaged in Real Estate Development. 'DS Kulkarni and Company' and 'DS Kulkarni Associates' were partnership firms which were registered much prior to incorporation of the Corporate Debtor and was carrying business. The financial statement which was filed by the Resolution Professional indicates that amounts were payable to 'DS Kulkarni and Company', 'DS Kulkarni Associates' and 'DSK Global Education and Research Limited' from the Corporate Debtor. Records indicate that the advances were also received by the Corporate Debtor from time to time from 'DS Kulkarni & Company' and 'DS Kulkarni Associates' for purchase of land and for carrying out its activities. In Company Appeal (AT) (Insolvency) No. 1308 of 2023 i.e. Appeal filed by 'DSK Global Education and Research Ltd.', Appellant has brought on record the financial statement of Corporate Debtor as on 26.09.2019 (CIRP commencement date) where Corporate Debtor has acknowledged loans and advances payable to 'DS Kulkarni and Company' and 'DSK Global

Education and Research Limited’ under Item No.34 i.e. related party disclosures. Under Note B, Item No.2 loans and advances payable have been mentioned which is useful to extract:-

**“2. Loans and Advances payable**

<i>DS Kulkarni &amp; Associates</i>	<i>13,092.90</i>	<i>13,692.90</i>
<i>DS Kulkarni &amp; Company</i>	<i>37,387.79</i>	<i>37,387.14</i>
<i>DS Kulkarni Constructions Pvt. Ltd.</i>	<i>14.43</i>	<i>14.43</i>
<i>DSK Infra Pvt. Ltd.</i>	<i>145.23</i>	<i>145.23</i>
<i>DSK Worldman Projects Ltd.</i>	<i>103.39</i>	<i>103.39</i>
<i>DSK Global Education and Research Ltd.</i>	<i>120.26</i>	<i>120.26</i>
<i>DSK Global Education &amp; Research- Anandghan Loan</i>	<i>437.16</i>	<i>437.16</i>
<i>Mrs. H. D. Kulkarni</i>	<i>299.24</i>	<i>299.24</i>
<i>Mr. Shirish Kulkarni</i>	<i>48.94</i>	<i>48.94</i>
<i>Mr. D. S. Kulkarni</i>	<i>96.34</i>	<i>96.34</i>
<i>Ambiance Ventures Estates &amp; Developments Pvt. Ltd.</i>	<i>682.19</i>	<i>682.19</i>
<b>Sub total</b>	<b>53,027.83</b>	<b>53,027.20</b>

**197.** The Appellants before us by compilation has brought on record bank statements to prove the payments made by the Appellants to ‘DS Kulkarni & Company’ and other sister concern. The allotment letter issued by the Corporate Debtor or ‘DSK Global Education and Research Pvt. Ltd.’ clearly contains admission of receipt of the amount. The Resolution Professional who has filed reply in the Company Appeal (AT) (Insolvency) No.1660 of 2023 taking the stand that the claim of the Appellants could not be

admitted since amounts have not actually been received by the Corporate Debtor. This was also stand taken in the list of creditors issued on 25.05.2021. We may also notice that the present is a case where records and office of the Corporate Debtor was attached and the Resolution Professional could not access the records of the Corporate Debtor for verifying the claims and only document which have been relied by the Resolution Professional were the documents received from Investigation Agencies and Directorate of Enforcement. Issuance of allotment letters by the corporate debtor to the Appellants were more than two years before initiation of the CIRP. There can be no reason to dispute the issuance of allotment letters or the admission contained therein of the payment. 'DS Kulkarni and Company' is a partnership firm of the consisting of partners Deepak Sukharam Kulkarni, Hemanti Sukharam Kulkarni and Sirish Deepak Kulkarni who were all directors of the corporate debtor. Rejection of the claims was on the foundation that no payments have been proved to the corporate debtor. When the corporate debtor itself has acknowledged the payments by issuing allotment letters, it was not open for the Resolution Professional to take stand that no payments have been made. Acknowledgment of the corporate debtor in the allotment letters is sufficient to bind the corporate debtor including the Resolution Professional. Along with the rejoinder-affidavit, copy of the common compilations dated 17.04.2022 filed by the Appellants has been brought on record which contains bank statements and other details to prove the

payments to sister company of the corporate debtor. Appellants have also brought on record the materials to prove the payments to 'DS Kulkarni and Company', the partnership firm consisting of directors of the corporate debtor. We have already noticed that the financial statement clearly shows the loan payable to 'DS Kulkarni and Company' by the Corporate Debtor. In the above facts and circumstances, when corporate debtor acknowledges the payment of amount, action of the Resolution Professional rejecting the claim of the homebuyers cannot be sustained. The Appellants have further submitted that they have received the direction from the Resolution Professional to submit their claims in Form CA. Directions issued by the Resolution Professional for submissions of the claims are at Page 66 of the Appeal, which is as follows:-

**"HOME BUYERS**

**DIRECTIONS TO SUBMIT THE CLAIMS FOR HOME BUYERS:**

**As per Regulation 8A of Insolvency and Bankruptcy Code, 2016: Home Buyers are "Class of Creditors as Financial Creditors:**

1. A person claiming to be a creditor in a class shall submit claim with proof to the interim resolution professional under **FORM CA** in **ELECTRONIC FORM ONLY**.
2. The existence of debt due to a creditor in a class may be proved on the basis of-
  - a. the records available with an information utility, if any, or
  - b. other relevant documents, including any-
    - i. agreement for sale;

- ii. letter of allotment;
- iii. receipt of payment made;
- iv. documents for case filed for claims with any authority, if any
- v. order passed by any authority in support of claim, if any
- vi. such other document, evidencing existence of debt.
- vii. KYC Documents, Cancelled Cheque

3. A creditor in a class **(HOME BUYERS)** may indicate its choice of an authorized representative, from amongst the three choices provided by the Interim Resolution Professional in the public announcement, to act as its authorized representative.

a) Mr. Kedar Muley -IBBI/IPA-001/IP-P-01365/2018-2019/12282

b) Mr. Girish Juneja. -IBBI/IPA-001/IP-P00999/2017-2018/11646

c) Mr. Prabhanjan Maheshwari- IBBI/IPA-002/IP-N00517/2017-2018/11637

4. The Profile of the three professionals is available on the website <http://dskcirp.com/>

We would like to inform you that Form CA can be downloaded from the website of <http://dskcirp.com/> or <https://ibbi.gov.in/home/downloads>. The Home Buyers should fill the Form and scan all the documents mentioned above along with the Form CA. Thereafter, kindly submit your claim through **MAIL ONLY NO PHYSICAL COPY OF CLAIM WILL BE ACCEPTED** at the email id [ip.dskdl@gmail.com](mailto:ip.dskdl@gmail.com)

After receiving the mail the team of Interim Resolution Professional will verify the documents and admit the claim accordingly and same will be uploaded on [www.dskcirp.com](http://www.dskcirp.com).”

**198.** When we look into the aforesaid directions issued by the Resolution Professional, it was mentioned that other relevant documents including any



in Clause 2(b) one of the documents mentioned was letter of allotment. The claim filed by the Appellants was in category of letter of allotment and the Resolution Professional took too technical views to reject their claims. Homebuyers who have paid the amount to sister company which was acknowledged by the corporate debtor in the allotment letters cannot be washed out and the homebuyers' claim be rejected. Homebuyers' claims have been rejected by the Resolution Professional taking a technical view that amount is not reflected in the records of the corporate debtor when corporate debtor has itself recognised the payment and which payment is made by the Appellants to sister company i.e. 'DS Kulkarni and Company' for which sufficient evidence was filed before us. We do not approve the action of the Resolution Professional in rejecting the claim of the homebuyers.

**199.** It is further relevant to notice that after rejection of the claims of the Appellants on 25.05.2021, they filed an IA before the Adjudicating Authority being IA No.1844 of 2021 for acceptance of their claims which IA was decided on 01.08.2023 by following order:-

**"IA 2157/2021 IA 1844/2021 IA 913/2023**

*Mr. Rohit Gupta, Ld. Counsel for the Applicant in IA 913 of 2023 and Mr. Shyam Kapadia, Ld. Counsel for the Resolution Professional of the Corporate Debtor are present. These Interlocutory Applications have been filed by Applicants, Home Buyers, seeking direction against the Resolution Professional of the Corporate Debtor for admission of their rejected claims/modification of the Resolution Plan. In this case the Resolution Plan has already been approved on*

*23.06.2023. Hence, the present Interlocutory Applications become infructuous and thus, the same are disposed of.”*

**200.** The Adjudicating Authority approved the Resolution Plan on 23.06.2023 and thereafter rejected the IA filed by the Appellants as having become infructuous. When the application was filed in the year 2021 i.e. much before plan approval application was filed, there was no occasion for not considering the application filed by the Appellants through their representatives and rejection of the application as having become infructuous is unsustainable. However, in view of the plan having been approved by the Adjudicating Authority, we need to consider the claim of the homebuyers in this appeal and there is no occasion for issuing any direction for consideration of IA No.1844 of 2021 afresh at this stage.

**201.** Counsel for the Respondent- Resolution Professional has submitted that there is no disbursement to the corporate debtor for time value of money nor transaction has any effect of commercial borrowing. The above submission of the Resolution Professional cannot be accepted in view of the wide canvas of clause 5(8)(f) which provides for “any amount raised under any other transaction” when the homebuyers have paid amount to DS Kulkarni and Company, which payment has been acknowledged and accepted by the Corporate Debtor, the said amount is an amount raised from an allottee under Real Estate Project. When allotment letter has been issued by the corporate debtor, the Appellants have to be treated as an allottee within the meaning of Section 5(8) *explanation*. We, thus, do not

find any substance in the submission that the Appellants are not allottees and there is no disbursement to the corporate debtor for time value of money. Resolution Professional has taken stand in paragraph 7 of the reply that Appellants had made an agreement with the group entity of the corporate debtor i.e. DSK Global Education and Research Ltd. and payments made to DS Kulkarni and Company on the basis of allotment letter was never deposited or encashed by the corporate debtor and the amount was paid by the allottees to DS Kulkarni and Company, the sister concern of the Corporate Debtor. The fact that amount was not deposited by the corporate debtor or encashed by the corporate debtor cannot be a ground to reject the claim of the Appellants, more so, when corporate debtor itself by issuance of allotment letter has accepted and acknowledged the payments from homebuyers. We, thus, are satisfied that the claim of all the Appellants deserves admission and rejection of their claims by the Resolution Professional is unsustainable. In facts of the present case, Appellants are also entitled to be included in the Resolution Plan as homebuyers whose claims have to be accepted for allotment of house which is to be satisfied by the SRA.

**Company Appeal (AT) (Insolvency) No.1050 of 2023**

**&**

**Company Appeal (AT) (Insolvency) No.1053 of 2023:-**

**202.** These Appeals have been filed by the Appellants who claim registered agreement dated 30.06.2017 by the corporate debtor in their favour for the Project 'DSK Vishwa- Phase-VI Aanandghan' and Registered Agreement

dated 30.06.2017 which have been brought on record in the paper book of the appeals. It is sufficient to refer to the Registered Agreement dated 30.06.2017 entered between corporate debtor- 'D.S. Kulkarni Developers Ltd.', Appellants and 'DSK Global Education and Research Ltd.'. Agreement has been executed by corporate debtor allotting flats to Appellants in both the appeals being Flat No. G 201 on 2<sup>nd</sup> Floor and Flat No. G 601 on 6<sup>th</sup> Floor respectively. Clause 5 of the Registered Agreement mentioned the consideration as Rs.2292000/- for the Appellants in Company Appeal (AT) (Insolvency) No.1050 of 2023. Schedule IV of the Agreement further provides that purchaser shall make the payment of agreed consideration to 'DSK Global Education and Research Ltd.'. Schedule IV of the Agreement is as follows:-

***“SCHEDULE- IV***

*The Purchaser/s shall pay the agreed consideration of*  
***Rs. 2292000/-(Rupees Twenty Two Lac Ninety Two Thousand Only)*** *in respect of the said flat to the DSK Global in the following manner-*

*Rs. 458400/- On or Before Execution of Agreement*

*Rs. 343800/- On or Before Commencement of Plinth*

*Rs. 91680/- On or Before Commencement of 1<sup>st</sup> Slab*

*Rs. 91680/- On or Before Commencement of 2<sup>nd</sup> Slab*

*Rs. 91680/- On or Before Commencement of 3<sup>rd</sup> Slab*

*Rs. 91680/- On or Before Commencement of 4<sup>th</sup> Slab*

*Rs. 91680/- On or Before Commencement of 5<sup>th</sup> Slab*

*Rs. 91680 On or Before Commencement of 6<sup>th</sup> Slab*

*Rs. 91680/- On or Before Commencement of 7<sup>th</sup> Slab*

*Rs. 91680/- On or Before Commencement of 8<sup>th</sup> Slab*

*Rs. 91680/- On or Before Commencement of 9<sup>th</sup> Slab*  
*Rs. 91680/- On or Before Commencement of 10<sup>th</sup> Slab*  
*Rs. 91680/- On or Before Commencement of 11<sup>th</sup> Slab*  
*Rs. 91680/- On or Before Commencement of 12<sup>th</sup> Slab*  
*Rs. 91680/- On or Before Commencement of 13<sup>th</sup> Slab*  
*Rs. 91680/- On or Before Commencement of Brick Work*  
*Rs. 68760/- On or Before Commencement of Internal Plaster*  
*Rs. 68760/- On or Before Commencement of Flooring*  
*Rs. 68760/- At the time of obtaining completion certificate or at the time of possession whichever is earlier*

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***Rs. 2292000/- Total***

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**203.** The above Agreement also clearly dispels the stand taken by the Resolution Professional that all payments have to be shown in the books of account of the corporate debtor. Corporate debtor itself has entered into Registered Agreement with the Appellants where payments have to be made to 'DSK Global Education and Research Ltd.'. Present is a case where in the Registered Agreement both 'DSK Global Education and Research Ltd.', Corporate Debtor and the Appellants are party.

**204.** In the present case, the Appellants could not file the claim since their case is that they were not aware of the CIRP and they came to know the CIRP only in March 2023 which claim was filed and was rejected by the Resolution Professional. Appellants unsuccessfully challenged the order rejecting their claims in this Tribunal.

**205.** The Appellants in support of their submissions have relied on the judgment of this Tribunal in **“Puneet Kaur vs. K.V. Developers”** (supra) where this Tribunal has laid down that even if a homebuyer has not filed the claim and his claim was reflected in the documents and books of accounts of the corporate debtor, it has to be accepted by the Resolution Professional and to be shown in the Information Memorandum. There being Registered Agreement with the Appellants, the said Agreement was not to be ignored by the Resolution Professional. It is further relevant to notice that the present is a case where Resolution Professional’s case is that he has no access to the records of the corporate debtor.

**206.** Counsel for the SRA has questioned the locus of the Appellants to challenge the plan approval order. It is submitted that IA No.2117 of 2023 filed by the Appellants was rejected on 22.11.2023 against which appeal was filed being Company Appeal (AT) (Insolvency) No.193 of 2024 which has been dismissed by this Tribunal on 21.02.2024. When we look into the order of this Tribunal on 21.02.2024, it is clear that the said appeal arose out of the order of the Adjudicating Authority who rejected application of the Appellant to accept their claims which was rejected as barred by time. In paragraph 10 of the judgment dated 21.02.2024, this Tribunal has observed:-

*“10. The learned Counsel for the Appellants relied on judgment of this Tribunal in K V Developers Private Limited. That was a case where claims could not be filed by the Homebuyers, but the claims were reflected in the account of the Corporate Debtor. This Tribunal in*

*the said judgment took the view that when claims are reflected in the accounts of the Corporate Debtor, it is the duty of the RP to collate the claim and show the same in Information Memorandum. In the present case, it is not the case of the Appellant that their claims are reflected in the account of the Corporate Debtor, nor any materials have been filed along with the Appeal to prove that their claims have been reflected in the records of the Corporate Debtor. We, thus, are of the view that reliance on the judgment in K V Developers Private Limited is clearly misplaced and does not help the Appellants in the present case.”*

**207.** In the present case, Appellants have brought on record the Registered Agreement dated 30.06.2017 entered with the Corporate Debtor which is a relevant record for consideration of the claim of the Appellants. The proceeding which arose from the order dated 21.11.2023 was the proceeding in which the claim was rejected of the Appellants as barred by time and also on the ground that the Resolution Plan has already been approved on 13.08.2021 whereas claim was filed by the Appellants on 29.03.2023. We are of the view that the order passed by the Adjudicating Authority on 22.11.2023 as well as this Tribunal on 21.02.2024 shall not operate against the Appellants in consideration of their claims which is raised in the appeal filed challenging the order approving the Resolution Plan. While considering the Company Appeal (AT) (Insolvency) No.1660 of 2023, we have already taken the view that the stand of the Resolution Professional that only those claims were accepted whose payments were reflected in the records of the corporate debtor has not been accepted. Appellants' case in the present case is that in the ledger account of the

corporate debtor, payments made by the Appellants have been reflected. Ledger account has been produced by the Appellants in the appeal which is in the name of the Appellant- Piyuja Suresh Sanghvi. At Page 190 ledger states following:-

**“09. MISS. PIYUJA SURESH SANGHVI  
Flat at Aanandghan DSK- G 201**

*Ledger Account  
1-Jun-17 to 30-Jun-17*

<b>Date</b>	<b>Particulars</b>	<b>Vch Type</b>	<b>Vch No.</b>	<b>Debit</b>	<b>Credit</b>
25-Jun-17	<b>D.S. KULKARNI DEVELOPERS LTD.</b> Flat No. G-201- TOTAL AREA 45.52 METER (45.52*10.764 = 489.97 IE 490 SQ FT.) @ 4677	Journal	6	22,92,000.00	
27-Jun-17	<b>Kotak Mahindra Bank- A/c. No.3911814759</b> For VAT Rs. 22920/- & SERVICE TAX RS. 103140/-	Payment	13	1,26,060.00	
	<b>Kotak Mahindra Bank- A/c. No.3911814759</b> For STAMP DUTY & REG. CHARGES (STAMP DUTY 114600/- + REG. CHARGES 25220/-)	Payment	14	1,39,820.00	
				25,57,880.00 <b>25,57,880.00</b>	25,57,880.00 <b>25,57,880.00</b>



	<b>Closing Balance</b>				
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**208.** The above ledger further indicates that the amount for consideration has been debited by general entry and the payments made by the Appellants towards Service Tax and Registration Charges are reflected in the ledger. Those amounts are also reflected in the ledger as claimed by the Appellants and judgment in **“Puneet Kaur vs. K.V. Developers”** (supra) of this Tribunal is fully applicable. Bank Statement of Kotak Mahindra Bank has already been filed by the Appellants to prove NEFT payment to the corporate debtor for payment of amount towards VAT, Service Tax as well as Stamp Duty and Registration Charges which are reflected in the ledger of the corporate debtor. Further documents have been filed to prove loan to ‘DS Kulkarni & Co.’. Ledger account to ‘DS Kulkarni & Co.’ has been filed which mentions that loan adjusted against purchase of Flat Nos. G 201 and G 601. At page 192 ledger account as brought on the appeal is as follows:-

**“Loan to D.S. Kulkarni & Co.**

*Ledger Account*

*1-Apr-15 to 31-Mar-18*

<b>Date</b>	<b>Particulars</b>	<b>Vch Type</b>	<b>Vch No.</b>	<b>Debit</b>	<b>Credit</b>
13-Apr-15	HDFC BANK-0148 100 0018132 CH. NO. 000389- HDFC BANK LTD. CAMP BRANCH, PUNE 411 001	Payment		10,00,000.00	
16-Apr-15	HDFC BANK-0148 100 0018132 CH. NO. 000397- HDFC BANK LTD. CAMP BRANCH, PUNE 411 001	Payment		25,00,000.00	

23-May-15	HDFC BANK-0148 100 0018132 CH. NO. 000445- HDFC BANK LTD. CAMP BRANCH, PUNE 411 001	Payment		25,00,000.00	
				60,00,000.00	60,00,000.00
	<b>Closing Balance</b>			<b>60,00,000.00</b>	<b>60,00,000.00</b>
1-Apr-16	Opening Balance			60,00,000.00	
28-Jul-16	Kotak Bank A/c No.- 6311761128 CH. No.- 634399- BOM, BUDHWAR PETH	Receipt			10,00,000.00
29-Jul-16	Kotak Bank A/c No.- 6311761128 CH. No.- 634399- BOM, BUDHWAR PETH- CHEQUE RETURNED	Payment		10,00,000.00	
30-Jul-16	Kotak Bank A/c No.- 6311761128 RTGS RECEIVED FROM DSK (BANK OF MAHARASHTRA- UTR NO. MAHBR5201607300 2644693)	Receipt			10,00,000.00
				70,00,000.00	20,00,000.00 50,00,000.00
	<b>Closing Balance</b>			<b>70,00,000.00</b>	<b>70,00,000.00</b>
Apr-17	Opening Balance			50,00,000.00	
Jun-17	(as per details) PIYUJA S. SANGHVI  PRIYASH S. SANGHVI BEING LOAN ADJUSTED AGAINST PURCHASE OF FLAT OF G-201 AND G-601	Journal 22,92,000.00 24,04,000.00			46,96,000.00
	INTEREST FROM D.S. KULKARNI & CO. BEING INTEREST RECEIVABLE FROM D.S. KULKARNI AND CO. FROM 01.04.2017 TO 30.06.2017	Journal		57,750.00	

				50,57,750.00	46,96,000.00 3,61,750.00
	<b>Closing Balance</b>			<b>50,57,750.00</b>	<b>50,57,750.00</b>

**209.** The above facts clearly indicate that amount of consideration was adjusted towards the allotment of Flat No. G 201 and Flat No.G 601 which both units are involved in these two appeals, hence, there was sufficient proof on the record that amounts were paid by the homebuyers and their consideration was taken into consideration for allotment and issuance of Registration Agreement. We, thus, are of the view that despite rejection of their claims by Resolution Professional on the ground of delay sufficient materials have been brought on the record in these appeals to take the view that appellants' claims are also entitled to be considered in the Resolution Plan by the SRA and non consideration of the claims of the Appellants shall be unjust and unfair.

**Company Appeal (AT) (Insolvency) No. 1361 of 2023**

**&**

**Company Appeal (AT) (Insolvency) No. 1385 of 2023:-**

**210.** Appellants in the above two appeals are homebuyers who were issued allotment letters by corporate debtor with the Project- 'DSK Madhukosh' between 20.04.2017 to 29.04.2017. The allotment letter acknowledged the payment of entire consideration. It is useful to extract the allotment letter issued to one of the Appellants- Jiten S Gada dated 24.04.2017:-

"Date:- 24.04.2017  
To,  
Mr. Jiten Shantilal Gada (HUF)

A-21, Anupam, 3<sup>rd</sup> Floor,  
Opp. Telephone Exchange  
LBS Marg, Ghatkoper (W)  
Mumbai- 400086

### **ALLOTMENT LETTER**

We have accepted your provisional booking of Flat No. 103, floor 1<sup>st</sup> in Building/Wing B, admeasuring 52.46 Sq. mtrs of total carpet area, in our project "DSK MADHUKOSH" situated at CTS No.659 comprising of S.No. 18/12 (Part), 17/1 (Part), 18/11 (Part), 18/8 (Part), 18/9 (Part), & CTS No. 662/4, comprising of S.No. 18/7 (Part), village Mohill, Tai Kurla, Sub District Bandra, Mumbai. (hereinafter collectively referred to as the said "Flat")

You have paid the total consideration of RS. 76,00,000/- (Rupees Seventy Six Lakhs Only) for the said Flat. Apart from total consideration you have also agreed to pay Stamp Duty, Registration Fees, Initial Maintenance charges, VAT, Service Tax, GST, LBT, Share Capital and Entrance Fees if applicable and any other expenses, taxes and levies as may be required and demanded from time to time.

You are aware that, a Car park No: 97 (SCP) on I basement floor is allotted to you. You are also aware that, said allotment will be finalized as per rules and regulations of proposed society or apartment condominium.

It is informed to you to execute and register the agreement immediately. However on your specific request we have agreed to execute and register necessary agreement under section 4 of the Maharashtra Ownership Flat Act 1963 in respect of the said flat on or before September 2017 within the prescribe period by complying required formalities and paying Stamp duty, Registration charges and other expenses as mentioned herein above.

A request letter dated 20-04-2017 is furnished by you and relying on the undertaking mentioned in the request letter, this allotment letter is issued to you.

**For M/s. D. S. KULKARNI DEVELOPERS LTD.  
Authorized Signatory"**

**211.** Similarly, allotment letters issued by the corporate debtor to all the appellants accepting their payments of entire consideration. Further, in the present case the claim was filed by the appellants on 09.10.2019 i.e. well within time. Appellants' further case is that they were put in possession of

the units and they have been continuing in possession. Appellants have also brought on the record the order dated 05.02.2018 issued by the Maharashtra RERA where undertaking of the corporate debtor was recorded that the Registered Agreement for sale shall be executed. It is useful to notice the order dated 05.02.2018 which is passed by Maharashtra RERA which is as follows:-

**“Order**

(5<sup>th</sup> February, 2018)

1. The complainant is an allottee of a flat bearing No. B 102 admeasuring carpet area of 52.46 sq.mtrs, in building No. B in the building known as known as "DSK Madhukosh" bearing MahaRERA registration No. P51800009465 at Mumbai.
2. This matter was heard today. The complainant has stated that he had booked a residential flat in respondent's project and paid 100% amount to the respondent. The respondent had also issued him an allotment letter dated 29<sup>th</sup> April 2017 and agreed to handover the possession of the flat by June 2017. But till date the respondent neither executed registered agreement for sale with him nor gave possession of the flat. Hence, the complainant has prayed for directions to the respondent for execution of agreement for sale win the complainant, for early date of possession and also Interest for the delayed possession.
3. The respondent has admitted the fact that the complainant has paid substantial amount to him. However, she has stated that due to financial crunch she could not execute the agreement for sale with the complainant till date. However, the respondent has filed notarized affidavit-cum-undertaking executed by Mrs. Hemanti Deepak Kulkarni, authorized signatory of the respondent on record of this Authority stating that she will execute the registered agreement for sale with the complainant by May 2018. In addition to this, the respondent has stated that the possession of the flat would be handed over to the complainant by May 2018. The complainant accepted the said undertaking.
4. In view of above, this Authority is of the view that since there is no agreement between the complainant and the respondent,

section 18 of the Real Estate (Regulation and Development) Act, 2016 is not applicable to this case and therefore, the complainant can not seek interest for the delayed possession. However, since the respondent has given the undertaking to register the agreement and the complainant has also accepted the same, nothing survives in this complaint. Hence the complaint stands disposed of.”

**212.** When before Maharashtra RERA corporate debtor has acknowledged that it shall execute the agreement of sale in favour of the appellants, there can be no denial that appellants are allottees within the meaning of IBC. Resolution Professional after receiving of the claims by the Appellants has also sent a communication to homebuyers dated 17.07.2020 where again it was observed that the claim will be admitted subject to verification of the books of accounts of DSDKL. The allotment letter which was issued in April 2017 clearly acknowledges the receipt of the entire payment and it was not appropriate for the Resolution Professional to reject the claims of the appellants. It is further relevant to notice that after rejection of the claim of the appellants, they have filed IA No. 2157 of 2021 before the Adjudicating Authority which IA was listed before the Adjudicating Authority on several occasions. Adjudicating Authority has passed the order on 01.08.2023 rejecting the IA No. 2157 of 2021 as infructuous. Appellant has brought on record the earlier order passed by the Adjudicating Authority where Adjudicating Authority has directed the IA No.2157 of 2021 and other IAs shall be heard prior to hearing on the Resolution Plan application. On 13.06.2022 when plan approval application being IA No.1950 of 2021 as

well as application IA 2157 of 2021 filed by the appellants was listed, following orders were passed:-

**“IA 1950/2021**

*This Application is filed for approval of Resolution Plan. It is made clear that the present Application will be heard after disposing of all other pending Applications. Accordingly, the same is adjourned on 20.07.2022.*

**IA 2157/2021**

*None present for the Applicant in the present Applications. Ld. Senior Counsel appeared for the Respondent/Resolution Professional (RP) submits that affidavit in reply is filed however, hard copies of the same have not yet been placed on record. Respondent is directed to place hard copies of Reply on record well before the adjourned date. It is also contended by respondent that these Applications can be disposed of as Applicants in these Applications have failed to produce any payment before the Corporate Debtor and as such their claim cannot be considered by the RP. However, applicants have stated that they paid money. Ld Sr Counsel was asked to indicate the modus operandi of receiving money by partnership firm and allotment by the Company, whether such practice was followed by CD in other cases. List this matter on 11.07.2022.”*

**213.** The Adjudicating Authority although has directed that the plan approval application shall be heard after disposing of all other pending applications but proceeded to approve the plan by keeping IA No.2157 of 2021 pending which was subsequently dismissed as infructuous. When the homebuyers had filed application and claiming that claims were entitled to be admitted in the CIRP of the corporate debtor with substantial ground, rejection of their application as infructuous due to plan approval order cannot be justified. The plan having been approved by the Adjudicating Authority on 23.06.2023 against which order these appeals have been filed,

there is no occasion now for directing the Adjudicating Authority to consider the IA No.2157 of 2021 on merits. Hence, we have proceeded to examine the claim of the Appellants on merits. We are fully satisfied that appellants claim was not liable to be rejected on the ground that they have not submitted any document to prove the payment to the corporate debtor when the corporate debtor itself in the allotment letter has acknowledged the payment of entire consideration. We, thus, are satisfied that the claim of the appellants deserves consideration. The Resolution Professional erred in not accepting the claims.

**214.** Learned Counsel for the RP as well as for the SRA tried to condemn the allotment letter issued by the Corporate Debtor in favour of the Appellants, Homebuyers as fraudulent exercise, without any payment to Corporate Debtor. We need to look into the background facts under which allotment letters were issued by the Corporate Debtor in April 2017 in favour of the Appellants, which were more than two years prior to initiation of CIRP. We have already noticed that the complaints and FIR by several depositors and individuals against the Corporate Debtor and Group Companies, had begun in the year 2017. The money having received from the Appellants by sister concern of the Corporate Debtor, allotment letters issued by the CD by accepting the payment received, cannot be held to fraudulent, but was genuine steps taken by CD to acknowledge the claim and was a mitigating step to pacify the person from whom money was taken by the Group Entities and the Corporate Debtor. We are, thus, of the clear



opinion that allotment letters, which were issued by the Corporate Debtor in favour of the Appellants as Homebuyers, were genuine allotment letters and has rightly acknowledged the payment receipts.

**Company Appeal (AT) (Insolvency) No. 1223 of 2023**  
**&**  
**Company Appeal (AT) (Insolvency) No. 1226 of 2023:-**

**215.** These two appeals have been filed by the operational creditors and employees questioning the amount proposed to the appellants in the resolution plan. In Company Appeal (AT) (Insolvency) No.1223 of 2023, we have already noticed the amount proposed to the operational creditors as against the admitted amount. In paragraph 7.3 of the appeal, details of the amount, claim admitted and amount received with percentage have been mentioned. Paragraph 7.3 of the appeal is as follows:-

*“7.3. Pursuant to the initiation of CIRP, the Appellants herein, being Operational Creditors, filed their respective claims before Respondent No.1, which, after verification, were admitted by the Respondent No.1 in entirety. Tabular representation of the claims filed by the Appellants and admitted by the Respondent No.1 is provided hereinbelow:-*

Sr. No.	Particulars	Claim Submitted	Claim Admitted	Amount Received	% of Amount Received
1.	Sri Umiyaa Construction Pvt. Ltd.	7,43,11,257/-	7,43,11,257/-	2,73,831/-	0.368%
2.	Aryan Images	60,94,930/-	60,94,930/-	22,429/-	0.368%
3.	Cosomos Construction Machinery and Equipment Pvt. Ltd.	56,46,997/-	56,46,997/-	20,781/-	0.368%
4.	Nikhil Transport Company	55,48,330/-	55,48,330/-	20,418/-	0.368%
5.	Atharva Events	37,23,992/-	37,23,992/-	13,704/-	0.368%

**216.** The above indicate that the payment of amount to operational creditors is 0.368%. Similarly, in the appeal filed by the employees being Company Appeal (AT) (Insolvency) No.1226 of 2023, their case is that the payment of the amount to the appellants is less than 1% of their claims. Employees in their appeal have also raised issue of valuation. We have already considered the question of valuation of the corporate debtor while considering the Company Appeal (AT) (Insolvency) No.63 of 2024. Hence, we see no reason to consider the question of valuation at the instance of the employees. The Resolution Professional has filed reply in both the appeals. It is submitted by the Resolution Professional that the plan has been approved by 83.37% of the vote share. It is submitted that the operational creditors have not filed any objection before the Adjudicating Authority. When we look into the pleadings in the appeals filed by the operational creditors as well as the employees, no grounds have been made out that payments which have been offered to them is less than their entitlement as per Section 30(2)(b). It is now well settled that plan which is approved by the CoC, can be interfered with only when there is non-compliance of the provisions of Section 30(2). Operational creditors in which employees were also included are entitled for payment as per Section 30(2)(b). Thus, the only ground on which an amount proposed in the plan can be interfered with to an operational creditor when the amount is not in conformity with Section 30(2)(b). It is true that the amount offered to the operational creditors is .368% and to the employees is .97% but law as exist

today does not permit interference in the amount proposed in the plan unless appellants are able to prove any violation of Section 30(2)(b) of the Code. Although appellants are pleaded that amount is inequitable and unfair and a meagre amount but there being no pleading that the amount is less which they are entitled under Section 30(2)(b). We are unable to interfere with the payouts given to operational creditors/employees in the Resolution Plan. We, thus, are of the view that on the ground as raised by the appellants, the Resolution Plan and the order approving the plan needs no interference.

**Reliefs, if any, for the Appellants**

**217.** The jurisdiction of Adjudicating Authority and the Appellate Tribunal to interfere with the Resolution Plan approved by the CoC, in exercise of its commercial wisdom, are well settled. The limited jurisdiction as has been recognized by the precedents of the Hon'ble Supreme Court is when the Resolution Plan is in not conformity with statutory requirements of Section 30, sub-section (2) of the IBC. Thus, the jurisdiction with NCLT and Appellate Tribunal is limited to examine as to whether the Resolution Plan is in compliance with Section 30, sub-section (2), sub-clause (e) of the IBC. Section 31, sub-section (1) provides:

**“31. Approval of resolution plan. –** (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the

corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

*Provided* that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

**218.** While considering Company Appeal (AT) (Insolvency) No. 1307 of 2023 - DS Kulkarni and Company and Company Appeal (AT) (Insolvency) No. 1308 of 2023 - DSK Global Education and Research Pvt. Ltd., we have come to the conclusion that the Resolution Plan, includes the assets, which do not belong to the Corporate Debtor and under Section 18(1)(f) and (g) explanation, the assets of only Corporate Debtor can be taken control by the RP. We have already held that Resolution Plan cannot include the assets of third party, which are although in possession of the Corporate Debtor, but not owned by the Corporate Debtor. Inclusion of assets of Appellant in Company Appeal (AT) (Insolvency) Nos. 1307 and 1308 of 2023 is, thus, clearly in violation of law. While considering the Company Appeal (AT) (Insolvency) No. 1308 of 2023, we have held that the lease, which was granted to the Appellant DSK Global Education and Research Pvt. Ltd. was never terminated and the building, which was constructed by the Appellant, was owned by the Appellant and the clauses of Resolution Plan,

which extinguished the rights of the Appellant, were not in accordance with law.

**219.** The part of the Resolution Plan being not in accordance with law, which has been approved by the Adjudicating Authority, the course open for this Tribunal is to either set aside the Resolution Plan or to delete the clauses, which are not in accordance with law to make the Resolution Plan compliant. We are of the view that second course need to be adopted, by deleting the clauses in the Resolution Plan, which are contrary to the law, as per Section 30, sub-section (2), sub-clause (e), so as not to interfere with the other part of the Resolution Plan, which have been approved.

**220.** Now we come to Appeal(s) filed by Homebuyers, i.e., Company Appeal (AT) (Insolvency) Nos.1385, 1050, 1051, 1361 and 1385 of 2023. The claim of the Appellant(s), who were allottees of the different units allotted by the Corporate Debtor clearly sustainable. In the Resolution Plan, the claims of the Homebuyers, whose name have been accepted and admitted, have been proposed to give the units. These Appellant(s), as held by us that their claims also to be accepted and they are also to be given units as given to other Homebuyers, whose claims have been accepted. We direct the SRA to accept the claims of the Appellant(s)/ Homebuyers in the above Appeal(s) and to give them the same treatment as has been given to other Homebuyers, so that the Resolution Plan can be saved from invalidity.

**221.** Coming to the Company Appeal (AT) (Insolvency) Nos.63 of 2024; 1142 of 2023 of Group-I, we have already found that those Appellant(s) are not entitled for any reliefs.

**222.** Coming to the Appeal in Group-III, i.e., Appeal(s) filed by Operational Creditor and Employees, being Company Appeal (AT) (Insolvency) Nos.1223 and 1226 of 2023, we have found that at their instance, Resolution Plan need no interference.

**223.** In view of the foregoing discussions and conclusions, we proceed to decide the above Group of Appeal(s) in following manner:

**1. Company Appeal (AT) (Insolvency) Nos.63 of 2024, 1142 of 2023, 1223 of 2023 and 1226 of 2023.**

- No reliefs can be granted in these Appeal(s). Resolution Plan does not require any interference at the instance of these Appellant(s). The Appeal(s) are dismissed.

**2. Company Appeal (AT) (Insolvency) No.1307 of 2023**

This Appeal is partly allowed. Excluding the area of 41R recorded in the name of Appellant in Survey No.326/1, the Resolution Plan at Appendix-IV, Item No.10, is required to be modified and substituted to make the Resolution Plan compliant. Thus, Appendix-IV, Item No.10 stand substituted by following:-

<b>Sr. No.</b>	<b>Survey No.</b>
<b>10</b>	<ul style="list-style-type: none"><li>• 326/1 (excluding area of OH41R recorded in the name of DS Kulkarni and Company).</li></ul>

**3. Company Appeal (AT) (Insolvency) No.1308 of 2023**

- This Appeal is partly allowed. Clauses 13.4, 13.5 and 13.6 of the Resolution Plan are deleted from the Resolution Plan to make the Resolution Plan compliant. The Appellant's (DSK Global Education and Research Pvt. Ltd.) rights and building standing on the lease land, shall not be treated to have extinguished.

**4. Company Appeal (AT) Insolvency Nos.1361, 1385, 1660 of 2023**

- These Appeal(s) filed by Homebuyers are allowed. The claims of the Appellant(s) are accepted as allottees of the Corporate Debtor. The order of RP, rejecting their claims is set aside. The Appellant(s) name shall be treated to be included in the list of Homebuyers, whose claim have been accepted and they shall also be treated by SRA in the Resolution Plan, in the same manner as other Homebuyers, whose claims have been admitted. The Appellant(s) shall also be entitled for the units allotted to them in accordance with clauses of the Resolution Plan.

**5. Company Appeal (AT) Insolvency Nos.1050 and 1051 of 2023.**

- The Appellant(s) having successfully proved the allotment by Registered Deed executed on 30.06.2017 and their payments also reflected in ledger of the Corporate Debtor, they are also entitled to claim treatment as has been given to the claims of the other Homebuyers. They are entitled to be treated in the same manner as other Homebuyers, whose claims have been admitted in the Resolution Plan.

The SRA is directed to treat the Appellant(s) also allottees of their respective units and they shall also be given the units as per the Resolution Plan.

**224.** Subject to directions as above, the order of Adjudicating Authority dated 23.06.2023 approving the Resolution Plan submitted by Ashdan Properties Pvt. Ltd.; Classic Promoters and Builders Pvt. Ltd. and Atul Builders India Pvt. Ltd. is upheld.

**225.** In event of non-compliance of above directions, liberty is given to the Appellant(s), whose Appeal(s) have been partly allowed to file an IA for appropriate directions.

Parties shall bear their own costs.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Barun Mitra]**  
**Member (Technical)**

**NEW DELHI**

**1<sup>st</sup> July, 2024**

*Ashwani/Himanshu/Anjali*