

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI**

(APPELLATE JURISDICTION)

Comp. App (AT) (CH) (INS) No. 192 of 2023

(IA Nos. 618, 619 & 1435 / 2023)

(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)

**(Arising out of `Order` dated 26.04.2023 passed in
IA (IBC) / 157 / KOB / 2023 in CP (IB) / 5 / KOB / 2021,
passed by the `Adjudicating Authority`, (National Company Law Tribunal',
Kochi Bench)**

In the matter of:

Sharon Hills Residents Association
Represented by its Joint Secretary,
Anderson George, Aged 51 years,
S/o. S. George Apartment No. A 3,
Sharon Hills Phase 1,
Maruthoor, Vattappara PO,
Thiruvananthapuram – 695028

.... Appellant

v.

K. Parameswaran Nair,
Resolution Professional
Samson & Sons Builders &
Developers Pvt. Ltd.
Kaliveena Builders,
Muttada P.O.,
Thiruvananthapuram – 695025

.... Respondent

Present:

For Appellant : Mr. Liju V. Stephen, Advocate

For Respondent : Mr. PV. Vinod & Ms. D. Reetha, Advocates

WITH

Comp. App (AT) (CH) (INS) No. 214 of 2023

(IA Nos. 706 & 707 / 2023)

(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)

**(Arising out of `Order' dated 26.04.2023 passed in
IA (IBC) / 157 / KOB / 2023 in CP (IB) / 5 / KOB / 2021,
passed by the `Adjudicating Authority', (National Company Law Tribunal',
Kochi Bench)**

In the matter of:

Angelwoods Apartments Allottees Association (AAAA)
Represented by its Joint Secretary,
Cyriac Joseph, having its registered Office at
Vadayakod, Vanchiyoor P.O.
Thiruvananthapuram – 695035.

.... Appellant

v.

K. Parameswaran Nair,
Resolution Professional
Samson & Sons Builders & Developers Pvt. Ltd.
Kaliveena Builders, Muttada P.O.,
Thiruvananthapuram – 695025.

.... Respondent

Present:

For Appellant : Mr. Liju V. Stephen, Advocate

For Respondent : Mr. PV. Vinod & Ms. D. Reetha, Advocates

WITH

Comp. App (AT) (CH) (INS) No. 215 of 2023

(IA Nos. 708 & 709 / 2023)

(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)

**(Arising out of `Order' dated 26.04.2023 passed in
IA (IBC) / 157 / KOB / 2023 in CP (IB) / 5 / KOB / 2021,
passed by the `Adjudicating Authority', (National Company Law Tribunal',
Kochi Bench)**

In the matter of:

Orchid Valley Apartment Buyers Association

Represented by its Secretary

Shaju Thomas,

Having its Registered Office at

Santhosh Nagar, Muttada P.O.,

Thiruvananthapuram – 695025

Now functioning at TC/24/244

(Old No. 4/505), D4,

Sreevilas Lane, Kowdiar P.O.,

Trivandrum – 695003.

.... Appellant

v.

K. Parameswaran Nair,

Resolution Professional

Samson & Sons Builders & Developers Pvt. Ltd.

Kaliveena Builders, Muttada P.O.,

Thiruvananthapuram – 695025.

.... Respondent

Present:

For Appellant : Mr. Liju V. Stephen, Advocate

For Respondent : Mr. PV. Vinod & Ms. D. Reetha, Advocates

WITH

Comp. App (AT) (CH) (INS) No. 212 of 2023

(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)

**(Arising out of `Order' dated 26.04.2023 passed in
IA (IBC) / 157 / KOB / 2023 in CP (IB) / 5 / KOB / 2021,
passed by the `Adjudicating Authority', (National Company Law Tribunal',
Kochi Bench)**

In the matter of:

Sanctuary Apartment Owner's Association
Reg. No. TVM / TC / 202 / 2021
TC # 9 / 739, RNP Lane,
Sasthamangalam P.O.,
Thiruvananthapuram, Kerala – 695001
Represented by its Secretary,
Mr. Alex Varghese,
B2, Samson & Sons Apartments,
TKD Road, Muttada P.O.,
Thiruvananthapuram – 695025

..... 1st Appellant

NOVA Castle Apartment
Owner's Association
Reg. No. : TVM/TC/1378/2016
TC-3/2430-1, Kpra – 12, Marappalam,
Pattom Palace, P.O.
Trivandrum – 695004
Represented by its Secretary,
Mr. Arul C. Wilson,
TC-17/4786-1, AN 306, Grace Vil,
Adarsh Nagar, Thekkumood, Pattom,
Trivandrum – 695004

..... 2nd Appellant

v.

Mr. K. Parameswaran Nair,
Resolution Professional
Samson & Sons Builders & Developers Pvt. Ltd.
Regn. No. IBBI/PA-001/IP-P01773/2019-20/
1270237/1736E, Kripasagaram K. Murali Road,
Kadavanthara, Kochi,
Kerala – 682020

..... 1st Respondent

M/s. Samson and Sons Builders and
Developers Pvt. Ltd.
CIN – U45200KL2009PTC024511
TC 3/678, Muttada,
Trivandrum, Kerala

..... 2nd Respondent

Present:

**For Appellants : Mr. Bijoy P. Pulipra & Mr. Kiran Gopi,
Advocates**

For Respondents : Mr. PV. Vinod & Ms. D. Reetha, Advocates

J U D G M E N T
(Hybrid Mode)

Justice Sharad Kumar Sharma, Member (Judicial):

These are four Company Appeals Viz. Comp. App (AT) (CH) (INS) No.192 / 2023, Comp. App (AT) (CH) (INS) No.214 / 2023, Comp. App (AT) (CH) (INS) No.215 / 2023 & Comp. App (AT) (CH) (INS) No.212 / 2023, which have been respectively preferred by the Appellants, being aggrieved, against the respective Judgments, passed by the 'Adjudicating Authority', thereby rejecting their Application, as preferred under Section 12 of I & B Code, 2016, for extension of time for the purposes of completion of the Insolvency Resolution Process.

2. As the facts in each of the cases are identical, for the purpose of brevity all the Appeals are being taken up together, in order to aptly deal with the facts as respectively argued by the respective Counsels for the Parties, it becomes inevitable for the 'Tribunal' to deal with the facts of each Company Appeals independently and precisely.

Comp. App (AT) (CH) (INS) No. 192 / 2023:

3. As far as the Comp. App (AT) (CH) (INS) No. 192 / 2023 of Sharon Hills Residents Association v. K. Parameswaran Nair, Resolution Professional is concerned, the challenge given by the Appellant herein is to the Impugned Order, dated 26.04.2023, as it was passed in IA(IBC)/157/KOB/2023 in CP(IBC)/5/KOB/2021, by virtue of the Impugned Order, the Application preferred by the Appellant for extension of time to complete 'CIRP' proceedings, had been rejected.

4. The facts as stated by the Appellant in the instant Company Appeal are that the Corporate Debtor through an Advertisement, had invited the Prospective Applicants, i.e., the Home Buyers, for the purchase of apartments along with the undivided share in Sharon Hills Phase I project at Thiruvananthapuram.

5. It is contended by the Appellant that being allured by the Advertisement, that the 12 Home Buyers, had entered into Sale and Construction Agreement with the Corporate Debtor, for the purchase of apartment, along with the undivided share to an extent of 18.856 cents of land in Survey No.333/1-1 and 333/2-1 at Vattappara Village of Sharon Hills Phase I Project at Thiruvananthapuram.

6. It was further contended by the Home Buyers that by February 2015, they have paid the entire sale consideration, towards their respective residential apartments, proposed to be purchased by them and the undivided share over the land of the Corporate Debtor.

7. It is the case of the Appellant that in pursuance to the aforesaid transaction, the Corporate Debtor, had handed over the possession of the residential apartment and ever since then, the respective Home Buyers, are in exclusive possession and enjoyment of the respective apartments, for the past more than 7 years.

8. However, with an ulterior motive, the Corporate Debtor, had failed to execute the Registered Sale Deed, within the agreed time, with regard to the residential apartment and the undivided share over the land as promised, within the time period, as referred in the Deed, in relation to the said Project.

9. It has later come to the Notice of the Home Buyers that the Corporate Debtor during the period 2013 to 2016, had availed various Loan facilities from the Financial Creditors by fraudulent means, and by pledging few of the residential apartment over the Project land which were already sold to the Home Buyers. The Corporate Debtor is shown to have availed the Loan facility from Kerala Financial Corporation for a sum of Rs.15 Crores, by pledging the sold

apartments of the Sharon Hills Phase I Project land and Nova Castle Project land.

10. In relation to the aforesaid two financial assistance drawn by the Corporate Debtor, he had pledged and created a Collateral Security for the said Loan transaction qua the sold apartments already sold to Home Buyers without their knowledge. The Home Buyers observed that there was a flaw in extension of the financial assistance by the Financial Creditors for the reason, the same was without properly verifying the credentials of the Corporate Debtor and the Sureties which has been extended by the Corporate Debtor, for the purposes of availing the Loan facility.

11. The Corporate Debtor ultimately had defaulted in remittance of his Loan liability towards the Financial Creditors, and as a result thereto, one among the Creditors of the Corporate Debtor, had initiated a Corporate Insolvency Resolution Proceedings, by initiating a CP(IBC)/05/KOB/2021, before the Adjudicating Authority of the NCLT, Kochi Bench. As a result, there to, the Adjudicating Authority, has passed an Order, under Section 14 of the I & B Code, 2016, on 03.11.2021, for imposing a Moratorium.

12. As a result of admission of the Corporate Debtor in the process of the CIRP Proceedings, the Corporate Debtor, the Resolution Professional, the Respondent herein, had been appointed by the NCLT, Kochi Bench, in

CP(IBC)/05/KOB/2021, who had invited the Claims from the Creditors of the Corporate Debtor, by issuance of a Public Notice, as published on 15.11.2021. In pursuance to the Public Notice, a total Claim which was received by the Resolution Professional, was amounting to Rs.180 Crores, out of which, 69.72% of the said total Claim as raised before the Resolution Professional, was that of the Home Buyers, and the class who claimed to be the Financial Creditors, constituted the financial secured structure of the Corporate Debtor to the tune of 30.28%.

13. Ultimately, at a later stage, the Home Buyers of Sharon Hills Project at Thiruvananthapuram, had get themselves registered as a Society under the Travancore-Cochin Literary Scientific and Cultural Societies Registration Act of 1955, and upon the Registration and acquiring the status being a Registered Society, who have the right to sue and be sued, had submitted a Resolution Plan as per Section 30 of the Insolvency and Bankruptcy Code, in order to take over the dues of Home Buyers of the Sharon Hills Phase 1 Project of the Corporate Debtor.

14. The Committee of Creditors who have been appointed an Expression of Interest was called for and the Provisional List of Prospective Resolution Applicants of Claim, submitted a Resolution Plan, according to the provisions of the I & B Code, 2016, but, it is contended that the Resolution Professional,

without considering any of the legal and factual aspects and submissions, had rejected the Resolution Plan which was submitted by the Appellant.

15. The controversy stood germinated from this stage, that the Resolution Professional thus appointed, inspite of the strict timeline, prescribed under Section 12 of the I & B Code, 2016, for the purposes of completion of the Insolvency Resolution Process, had not completed the same within the prescribed time period and rather, unnecessarily the proceedings were adjourned at the behest of the Financial Creditors.

16. In pursuance to the Compliance Report which was submitted by the Resolution Professional on 16.04.2023, with regards to the three of the Resolution Plans submitted by the Home Buyers Association, they were put for voting, before the Committee of Creditors on 16.04.2023 and the three Plans of the Home Buyers were approved.

17. The Resolution Professional submitted the Plans under Section 30(6) & 31 of the I & B Code, 2016, after the approval of the Committee of Creditors, before the Adjudicating Authority of the NCLT, Kochi Bench on 25.04.2023, the Resolution Plans, were not approved and rather they stood rejected, because of the fact that there was a constraint of time, which had lapsed as contemplated under Section 12 of the Act, thus the Appellant Association, had to file an Application, under Section 60(5) of the I & B Code, 2016, before the NCLT,

Kochi Bench, praying for extension of time, to complete the Insolvency Process.

18. It is contended that the Adjudicating Authority without considering the Resolution Plan, the Petitions for extension of time filed by the Appellant, was rejected by Impugned Order dated 26.04.2023, and had consequently ordered for Liquidation of the Corporate Debtor by the Impugned Order and consequently, had also declined to extend the time period as sought for by the Appellant.

Comp. App (AT) (CH) (INS) No. 214 / 2023:

19. In the Comp. App (AT) (CH) (INS) No. 214 / 2023, the Society of the Home Buyers of Angelwoods Apartments Allottees Association, had come forward in this Appeal, thereby putting a challenge to the Impugned Order dated 26.04.2023, as passed in IA (IBC)/157/KOB/2023 in CP (IBC)/5/KOB/2021.

20. The Appellant herein, had also agitated a similar contention that, except for few minor distinction, that the Respondent Corporate Debtor in their Advertisement dated 07.08.2014, had in the brochure which was published by the Corporate Debtor for the sale of apartments, along with the undivided share of Angelwoods Project land, in pursuance to the said Advertisements, made by the Corporate Debtor in this Appeal, it was the issue in relation to the 38 Home Buyers, who have entered into Sale and Construction Agreement with the

Corporate Debtor, who too are agitating the similar issue, as against the Impugned Order, whereby, the Application preferred under Section 12, in the light of the provisions contained under Section 60(5) for extension of time period for completion of the Insolvency Resolution Process has been rejected, almost on an identical ground.

Comp. App (AT) (CH) (INS) No. 215 / 2023:

21. In Comp. App (AT) (CH) (INS) No. 215 / 2023, it has been preferred by M/s. Orchid Valley Apartment Buyers Association, by putting a challenge to the Impugned Order, dated 26.04.2023, as it was passed in IA (IBC)/157/KOB/2023 in CP(IBC)/5/KOB/2021, by the NCLT, Kochi Bench.

22. It was the Association of the Home Buyers in this instant Appeal have primarily laid the foundation of the case, also based on almost the similar facts except for that the Respondent for the advertisement of 01.03.2015, was published for the purposes of purchase of the construction of the Home Apartments, made by the Corporate Debtor, which was responded by the 25 Home Buyers who had too entered into a Sale and Construction Agreement with the Corporate Debtor for the purchase of the respective Apartments in Orchid Valley Project in Thiruvananthapuram.

23. The Appellants herein too after the Corporate Debtor was put to CIRP Proceedings, as initiated on 03.11.2021, by the Order, passed by the

Adjudicating Authority and the appointment of the Resolution Professional on 15.11.2021, have raised a claim of a total of Rs.180 Crores, as it was received by the Interim Resolution Professional, out of which, 69.72% of the total Claims was that of the Home Buyers as a class and balance was of the Claim of the secured Financial Creditor as a class constituted to be of 30.28%.

24. It is contended by the Appellant herein that as a consequence of the invitation of the Expression of Interest, the Appellant had submitted their Expression of Interest, before the Committee of Creditors and the Provisional List of Prospective Resolution Plan Application, they have submitted a Resolution Plan, as per Section 30 of the I & B Code, 2016.

25. It is contended by the Appellant that the Resolution Professional inspite of adherence of strict time limit, prescribed under the 'Code', had unfortunately was not able to conclude the Insolvency Proceedings to a concrete decision on account of the fact that even at the stage of 11th CoC Meeting itself a cumulative adjournments were sought which had obstructed the culmination of the proceedings of the 'CIRP'.

26. In the instant case too, by an Order of 26.04.2023, the Adjudicating Authority, by the Impugned Order dated 26.04.2023, declined to grant an extension of time, as contemplated under Section 12, read with Section 60(5) of

the I & B Code, 2016. Consequently, the Appeal under Section 61 of the I & B Code, 2016.

Comp. App (AT) (CH) (INS) No. 212 / 2023:

27. Comp. App (AT) (CH) (INS) No. 212 / 2023, has been preferred by the Appellants, which too is a Registered Society of Home Buyers Viz. ``Sanctuary Apartment Owner's Association and Another''. In this Company Appeal too, the Appellants have agitated their grievance, as against the Impugned Order, dated 26.04.2023, by virtue of which, their application for extension of time by 90 days for the purposes of completion of Insolvency and Resolution Process as filed by the Resolution Professional, seeking extension from 17.04.2023 to 18.07.2023, has been rejected.

28. The Appellants herein, have contended that after the initiation of CIRP Process on 03.11.2021, the Adjudicating Authority on 26.04.2023, has ordered for Liquidation of the Corporate Debtor for the aforesaid four Projects, because of which it had invited the Resolution Plan to be submitted, before the Resolution Professional. Invariably, it has been a consistent case of the Appellants in this Appeal, that they have submitted their respective Resolution Plan, which was placed before the Committee of Creditors for its approval, but, owing to the fact that certain errors have crept in, which though were curable, the Resolution Professional for the reasons has not accepted their respective

Resolution Plan, without assigning any logical reason, and had even not provided an opportunity to the Appellants to cure the defects as allegedly observed by the Resolution Professional. Consequently, the Resolution Plan was rejected. But however, some of the Resolution Plan which were not supplied with any defect proceeded and were placed before the Committee of Creditors for its approval.

29. It is contended by the Appellants that every apartment of the Home Buyers in each of these Appeals which is the subject matter of the 'CIRP' Proceedings was ``**Stock in Trade**'', in the Real Estate business of the Corporate Debtor and since being '**Stock in Trade**', in the Real Estate business it should not have been reflected in the Balance Sheet of the Corporate Debtor, as it was not an ``Asset'' of the Corporate Debtor, which could have been put to Liquidation and thus they contended, that all their apartments since were subject matter of Sale, based on the invitation of Sale invited by the Corporate Debtor, they will fall out of Liquidation, but the Resolution Professional, had wrongly classified the said residential building of the Home Buyers as to be the ``Assets in Trust'' of the Corporate Debtor.

30. But, we in this Appeal, we may not be required to venture into the merits of the matter for the reasons being that invariably, in all the Appeals as precisely dealt with above. In all the Appeals, its IA (IBC) / 157 / KOB / 2023, which has been the subject matter of consideration, except where the

Application filed by the Resolution Professional for extension of time for 90 days for different Association of Home Buyers, was being considered as prayed for in the said Applications from 17.04.2023 to 15.07.2023, in order to enable to complete the Resolution Process, which was declined to be extended and the reason for denial to extend the time period by the Adjudicating Authority, in all the cases almost happens to be similar.

31. It is argued by the Learned Counsel for the Appellant, that the period of 139 days since it automatically stood excluded from the Resolution period by an Order dated 01.07.2022. The same may not be included, for the purposes of determining as to the upper time period, prescribed under Section 12 of the I & B Code, 2016, for the purpose of completion of the Insolvency Resolution Process. But, however, later on, and invariably in all the cases, 90 days was extended and was granted initially from 18.09.2022 to 17.12.2022, by an Order passed by the Adjudicating Authority on 21.09.2022 in IA (IBC) / 269 / KOB / 2022. In view of the extension as it was granted by an Order dated 21.09.2022, a legal corollary would follow that no further extension, could have been granted in the light of embargo created by the provision, contained under the 1st proviso of sub section 3 of Section 12 of the I & B Code, 2016, but the fact remains that the Adjudicating Authority, had further granted extension of 60 days from 22.12.2022 to 15.02.2022 by an Order dated 22.12.2022, as it was passed in IA (IBC) / 475 / KOB / 2022.

32. Further an extension was sought for, by the Resolution Professional and yet again a 60 days extension for the period from 15.02.2023 to 16.04.2023, which too was granted by an Order of the Adjudicating Authority, dated 15.02.2023 as it was passed in IA No. 67 / KOB / 2023, it has been observed in the Impugned Order, which was not challenged at any stage that its after the grant of the aforesaid extensions that IA (IBC) / 157 / KOB / 2023, has been filed, seeking an extension of further time to complete the Insolvency Resolution Process, which happens to be in contravention to the spirit of the provisions, contained under 1st Proviso to sub section 3 of Section 12 of the Act and for the logic assigned therein was that since the extension has been earlier granted twice, now the same cannot be extended recurringly at the whims and fancies of the Resolution Professional. Because, after the Order of passing the CIRP Proceedings of the Corporate Debtor, more than 5 years and 5 months have already elapsed.

33. It also reveals from the facts that the Interim Resolution Professional, was appointed by the NCLT, Kochi Bench in the respective Company Petitions, and had invited Claims from the Creditors of the Corporate Debtor by issuing Public Notices.

34. The Resolution Professional has submitted that the Home Buyers of the different Projects, as it engages consideration in all these connected Company Appeals before this Tribunal, since they had constituted themselves into a

Society, and they decided to initiate the Proceedings to salvage their Investment, as made in the various Project, the Resolution Professional has come up with the case that despite of best efforts, the time lines prescribed in the Insolvency and Bankruptcy Code, 2016, for conclusion of the Insolvency Resolution Proceedings could not be adhered too, major time was wasted in the Proceedings which was held by the Financial Creditors.

35. The Resolution Professional had submitted that in compliance with the report filed by him, the Home Buyers have submitted their Resolution Plan, which were put for voting before the Committee of Creditors, on 16.04.2023 and the Plans thus respectively submitted were approved.

36. But, primarily for the purposes of facilitating the filing of an Application for seeking an extension of time to conclude the Insolvency Process, the Resolution Professional had submitted that they had filed the approved Resolution Plans, under Section 30(6) & 31, before the Committee of Creditors, but, the delay has occurred, because of the procedural flaw at the hands of the Financial Creditors and because of other procedural formalities which were required to be fulfilled. Consequent to which, the Resolution Professional on 15.04.2023, has moved an Application being IA (IBC) / 157 / KOB / 2023 (common in all the Appeals), wherein he has invoked Rule 11 of the NCLAT Rules, for seeking an extension of CIRP Process by further period of 90 days.

37. In the Application, thus preferred, apart from the factual backdrop already discussed, the Resolution Professional for the purposes of seeking an extension of time had quite elaborately dealt with the Claims received in Para 5.3 of its application as filed on 16.04.2023, but, had submitted that despite of due diligence, the issues since its engaged consideration of the respective Claims in the Real Estate Project and as there were six PRAs who had submitted the Resolution Plans, sufficient time was engaged, before the CoC in the absence of their being sufficient time granted to the secured Financial Creditor on the basis of the decision of the Board for considering the complexities of the various Projects, had resulted into delaying the process of culmination of the Resolution Proceedings and thus he had contended that on account of the fact that major time period has lapsed, because of the discussions being held between the Home Buyers Association and the Landlords, as they were permitted by the Hon'ble Tribunal, in view of the said fact the Application submitted to exclude causing delay, the Project Plans which are under the JDA and further to exclude the time period as engaged by the secured Financial Creditors, who have sought time for taking further decisions qua the furtherance of the Plan for the purposes of invoking an extension of time the Resolution Professional submitted that despite of the provisions, contained under Sec. 12, there is no legal impediment as such, for the Tribunal to exercise its power under Rule 11 for the purposes of extension of the time period for the reason as explained in the Application in

IAs filed on 15.04.2023. The reason attributable to the delay since was beyond the control of the Resolution Professional and thus he has submitted that owing to the stage at which the Insolvency Resolution Proceedings had reached at an advanced stage the period deserves to be extended in order to bring the Insolvency Proceedings to its logical end.

38. The another reason, which has been assigned in the Impugned Order, by the Learned Adjudicating Authority was that not even a single Resolution Plan was submitted by the Home Buyers nor the same had been approved by the Committee of Creditors. While, on the contrary, the Applicants have submitted that six project plans have been received by the Resolution Professional, but, inspite of the same being filed a perverse finding has been recorded by the Adjudicating Authority that till date, no single plan has been received from the Prospective Home Buyers.

39. A stray observation has been made that Home Owner's Application was made that they may be de-linked from the lands of the 'CIRP' and the land owners alleged that the Home Buyers who had submitted the Plans or submitting the Plans, may be considered independently.

40. In an overall facts and consideration of the case, the two questions come for consideration is, which would be as to whether;

A). The application for the extension of time period for the completion of the Insolvency and Resolution Process, could be extended beyond 330 days which is the statutory upper limit prescribed, despite of the extensions, which has already having being granted as observed in Para 3 of the Impugned Judgment as dealt with above.

B) Secondly, as to whether, the Resolution Plans have been submitted by the Home Buyers and whether the same has been approved, by the Committee of Creditors.

41. The Counsel for the Appellants had consistently taken a stand, during the course of the argument that the Compliance Report of the Resolution Professional, dated 12.04.2023, as it was submitted under Section 32 of the I & B Code, 2016, reflects submission of Resolution Plan by the Home Buyers.

42. It was contended that the Committee of Creditors have already approved the Resolution Plan, which was submitted by the Members of the Appellants Association and as such the findings which have been recorded, regards non-submission of Resolution Plan, is absolutely perverse and contrary to the records.

43. It has been argued by the Learned Counsel for the Appellants that though the proviso, creates an embargo that once an extension of time has already been granted, the same cannot be extended for further period, though Law do not

specifically create any legal embargo or a bar, that in order to meet out the ends of Justice to consider the Resolution Plan and for an appropriate and just adjudication, the extension cannot be granted, in appropriate cases, because Law has to be flexibly interpreted to do justice and not to deprive it merely of the time restrictions, under the Procedural Law.

44. He further submits that the Adjudicating Authority while exercising their inherent powers, it can be invoked and the period for completion of Insolvency Resolution Process in an appropriate cases could be extended, owing to the aforesaid logic reason as observed by us as above.

45. The Learned Counsel for the Appellant has relied upon the Judgment as it was discussed by the Learned Adjudicating Authority in the Impugned Judgment of *Committee of Creditors of Essar Steel (India) Ltd. v. Satish Kumar Gupta & Ors. as reported in (2020), 8 SCC 531*. The basic principle and foundation as laid down by the Hon'ble Apex Court, by analysis of the said Authority, on the issue of the aspect for extension of time period beyond 330 days, for extension of time period beyond 330 days, the Hon'ble Apex Court have observed that though normally, the time period for completion of the Resolution Process, it must be completed within the outer limit of 330 days, from the date of commencement of Insolvency, including the period of extensions which have been granted in the Proceedings which are drawn by filing of the Application, under Section 60(5) of the 'Code'. But, the Hon'ble

Apex Court has observed that there cannot be any straight jacketed formula which could or should be adopted for not extending the time period. It was observed that the time might have been extended earlier. But, still the Adjudicating Authority, can consider the facts of the case and particularly keeping the interest of the Claimants in mind, it can grant a short extension for the purposes of completion of Insolvency Process even beyond the period of 330 days, particularly the vital principles which Courts / Tribunals, have to bear in mind is that it was the interest of the Stakeholders which was the paramount factor and not that of the Corporate Debtor, because denial of extension of time period at times it may result into putting back the Claimants at a backfoot, instead of proceeding for Liquidation, the time taken in legal proceedings, due to various unforeseen factors often leads to delays, that has to be considered and it cannot be ascribed to be shouldered by the Litigants, before the Adjudicating Authority.

46. Furthermore, in order to avoid any arduous litigation process, the Adjudicating Authority could extend the time period, even beyond 330 days under the added proviso to Section 12, by reasons after considering the entire factors in each cases, by granting a grace of extension, particularly looking into the interest of Stakeholders, the conservative decision of non extension of time period, may lead to future intricacies and deprivations too, the relevant paragraph is extracted hereunder:

“ The effect of this declaration is that ordinarily the time taken in relation to the corporate resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days. Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation. ”

47. In yet another Judgment, as it has been rendered by the Principal Bench of the NCLAT, in **Comp. App (AT) (INS) No. 896 / 2021 in Whispering Tower Flat Owner Welfare Association v. Abhay Narayan Manudhane and Ors.**, have taken almost a similar view on the aspect of extension of time for the purposes of completion of Insolvency Process, by laying down the basic principles on which, the extension of time period for completion of the

Insolvency Resolution Process could be granted and the principle logic which was assigned by the Principal Bench of the NCLAT, it was that in case, if the Corporate Debtor, is put to Liquidation, by not considering the Resolution Plan of the Stakeholders, the most sufferers, would be the Home Buyers.

48. By relying upon the Judgment of *Essar Steel India mentioned Supra* as well as the Judgment of the *Flat Buyers Association Winter Hills – 77, Gurgaon v. Umang Realtech Pvt. Ltd., through IRP & Ors.*, as decided by the *NCLAT in Comp. App (AT) (INS) No. 926 / 2019*, held as under:

11. ``The learned Counsel appearing for Resolution Professional candidly submitted that the Resolution Professional is not opposing the present Appeal and would govern itself by any orders passed by this Tribunal. The Resolution Professional has also relied on Committee of Creditors' decision dated 8th September, 2021 and has stated that with regard to eight Projects as noted in the decision of CoC, 25 Expression of Interests have been received. It is further submitted that minimum number of 70 days are required to run the process.

14. The object of the IB Code is the resolution of the insolvency of a Corporate Debtor. Efforts of all stakeholders has to be towards resolution of insolvency. There can be no dispute that the law mandates that CIRP proceedings have to be concluded within 330 days. Hon'ble Supreme Court, after noticing the above requirement of 330 days in Section 12, laid down in (2020) 8 SCC 531 - Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta and Ors. that normally as per law, insolvency resolution process has to be completed within 330 days maximum, but in exceptional cases, the period can be extended by Adjudicating Authority / Appellate Tribunal. In paragraph 127 of the judgment, following has been laid down:

“127. Both these judgments in Atma Ram Mittal [Atma Ram Mittal v. Ishwar Singh Punia, (1988) 4 SCC 284] and Sarah Mathew [Sarah Mathew v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721] have been followed in Neeraj Kumar Sainy v. State of U.P. [Neeraj Kumar Sainy v. State of U.P., (2017) 14 SCC 136 : 8 SCEC 454] , SCC paras 29 and 32. Given the fact that the time taken in legal proceedings cannot possibly harm a litigant if the Tribunal itself cannot take up the litigant's case within the requisite period for no fault of the litigant, a provision which mandatorily requires the CIRP to end by a certain date — without any exception thereto — may well be an excessive interference with a litigant's fundamental right to nonarbitrary treatment under Article 14 and an excessive, arbitrary and therefore unreasonable restriction on a litigant's fundamental right to carry on business under Article 19(1)(g) of the Constitution of India. This being the case, we would ordinarily have struck down the provision in its entirety. However, that would then throw the baby out with the bath water, in as much as the time taken in legal proceedings is certainly an important factor which causes delay, and which has made previous statutory experiments fail as we have seen from Madras Petrochem [Madras Petrochem Ltd. v. BIFR, (2016) 4 SCC 1 : (2016) 2 SCC (Civ) 478] . Thus, while leaving the provision otherwise intact, we strike down the word “mandatorily” as being manifestly arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigant's right to carry on business under Article 19(1)(g) of the Constitution. The effect of this declaration is that ordinarily the time taken in relation to the corporate resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into

liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days. Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation.”

15. The Hon’ble Supreme Court in the above case has held that it would be in the interest of all stakeholders that the Corporate Debtor will be back on its foot instead of being sent into liquidation. It was further held that time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority/Appellate Tribunal. In the present case, it’s the case of Appellant (Company Appeal (AT) (Insolvency) No. 896 of 2021) that I.A. No.827 of 2021 was filed praying that Tribunal may direct the Respondent to form a special Resolution Plan for the “Whispering Towers Project” by seeking Resolution Applicants specifically for the said Project and create Special Purpose Vehicle for completion of the said Project to enable the members of his Intervener Association to get possession of their homes, which Application remained pending.

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

49. In accordance with the aforesaid principle, laid down by the Judgment of the Principal Bench of NCLAT, the 'Tribunal', was conscious of the fact that in those case too, it was contended that no Resolution Plan was received and the Committee of Creditors, had declined the request of the Resolution Professional to undertake the Projectwise Resolution Process, but, ultimately, based upon the finding recorded as above and particularly from the perspective of the interest of the Stakeholders.

50. Owing to the aforesaid and particularly looking to the vital interest of the Home Buyers, the respective 'Company Appeals', would stand 'Allowed'. The Impugned Order / Judgment dated 26.04.2023, in each of the Company Appeals are hereby quashed. The IA (IBC) / 157 / KOB / 2023, as preferred in CP (IB) / 5 / KOB / 2021, is hereby allowed, consequently further extension for a period of 90 days as prayed for, in the aforesaid Application, is granted to the Resolution Professional, to complete the Insolvency Proceedings, we feel it to make clear that no further extension henceforth would be granted, it is apt to observe that this 'Tribunal', is not venturing into the merits of any of the Claims of Home Buyers, which is yet to be independently considered in the voting of the Committee of Creditors exclusively on its own merits, except for the issue of extension of time period, this 'Tribunal' has not delved with any other action.

The Appeals are accordingly `Allowed'. All pending Interlocutory Applications, would stand `Closed'. No Order as to costs.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

02 / 05 /2024

SR / TM