



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-478/2024
In
IB-113(ND)/2021

IN THE MATTER OF IB-113(ND)/2021:

M/s. Vistra ITCL (India) Limited

..... **Financial Creditor**

Versus

M/s. Ansal Urban Condominiums Private Limited

..... **Corporate Debtor**

AND IN THE MATTER OF IA-478/2024:

M/s. ASGI Properties Private Limited & Ors.

..... **Applicants**

Versus

M/s. Ansal Urban Condominiums Private Limited & 2 Anrs.

(through Mr. Rajesh Ramani, RP of the Corporate Debtor)

..... **Respondents**

Order Pronounced On: 07.08.2024

CORAM:

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:

For the Applicants : Mr. Akshay Sharma, Adv.

For the Respondents : Mr. Akshit Mago and Ms. Ekssha Kashyap, Advs.
Ms. Priyanshi Tyagi, Adv. a/w Rajesh Ramani, RP

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by M/s. ASGI Properties Private Limited & Ors., the Applicants herein, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 before this Adjudicating Authority, seeking the following reliefs:

“i. To allow the present application.

ii. To reject the resolution plan of the Respondent No. 1

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iii. Pass any other direction/order which this Hon'ble Tribunal may deem fit in the larger interest of Justice."

2. Brief Background of the Case:

The facts that are relevant for the determination of the issues involved in this application are stated as under:

- i.** An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditor i.e. M/s. Vistra ITCL (India) Limited, against the Corporate Debtor i.e. M/s. Ansal Urban Condominiums Private Limited and the said application was admitted ex parte vide order dated 10.03.2022 by this Adjudicating Authority and a moratorium was declared. As proposed by the Financial Creditor, the Respondent herein, Mr. Rajesh Ramani, having IBBI registration number IBBI/IPA-002/IP-N00993/2020-21/13187, was appointed as the Interim Resolution Professional. Subsequently, he was confirmed as the Resolution Professional of the Corporate Debtor at the first meeting of the Committee of Creditors ("COC") held on 09.04.2022, in terms of Section 22 of IBC.
- ii.** Thereafter, the Resolution Plan was submitted by M/s. One City Infrastructure Private Limited which was approved by the CoC in its 12th meeting dated 03.08.2023 (e-voting concluded on 09.08.2023) by 100% voting share in respect of the CIRP of the Corporate Debtor after considering its feasibility and viability. Thereafter, Mr. Rajesh Ramani, the Resolution Professional of the Corporate Debtor filed IA-4863-2023 to seek approval of the Resolution Plan under Section 30(6) read with Section 31 of IBC, 2016, which is pending adjudication before this Adjudicating Authority.



3. Submissions of the Applicants:

- i.** It is submitted that the Applicants are objecting to the Resolution Plan of Respondent No.2 on the following grounds:
 - a. The Resolution Plan deals with the assets which are outside the CIRP of the Corporate Debtor.
 - b. The Resolution Plan unilaterally amends the existing memorandum of understandings executed between the Applicants and the Corporate Debtor.
 - c. The Resolution Plan does not provide for fulfilling the obligation of the Corporate Debtor towards the Applicants.
- ii.** It is submitted that the Corporate Debtor and the Applicant executed a Memorandum of Understanding dated 19.08.2013 wherein the Corporate Debtor sold the GDA-approved Floor Space Index (FSI) area of 1,80,000 Sq. ft. of Tower S1 to the Applicant for a total price consideration of Rs. 13,05,00,000/-. Afterward, the Corporate Debtor and the Applicant No. 1 executed a Memorandum of Understanding cum term sheet dated 26.10.2015 wherein the Corporate Debtor sold the GDA approved Floor Space Index (FSI) area of 87,476.78 Sq. ft. of Tower S2A to the Applicant for total price consideration of Rs. 8,75,64,257/-. It was further stipulated in the MOU than an additional FSI are of 1,13,322.06 Sq. ft. will be sold to the Applicant for a consideration of Rs.11,34,35,382/- after the approval of the same from the GDA.
- iii.** Subsequently, the Corporate Debtor and the Applicant No.1 executed a Memorandum of Understanding cum term sheet dated 02.11.2015 wherein the Corporate Debtor sold the GDA approved Floor Space Index (FSI) area of 97,831.78 Sq ft. of Tower S2B to the Applicant for total price consideration of Rs. 8,31,57,013/-. It was further stipulated in the MOU that an additional FSI of



1,26,736.33 Sq. ft. will be sold to the applicant for a consideration of Rs.10,77,25,881/- after the approval of the same from the GDA.

- iv.** It submitted that under the respective MOUs, the construction of the said towers were to be carried out by the Applicants within a period of 36 months and the Applicant would further sell those units/flats to the prospective buyers. The Applicant No.1 vide its email dated 02.08.2023 requested the Respondent No.1 to clarify the status of the FSI Buyers and whether the same is under the purview of NCLT or not. The Respondent No.1 vide his email dated 07.08.2023 clarified to the Applicant No.1 that the Applicant can continue its construction work on the sold towers and can also sell them to the desired customers. Furthermore & more importantly, the Respondent No.1 categorically clarified that till the towers are under construction, they are out of the domain of the Resolution Professional.
- v.** The Applicants on various occasions requested Respondent No. 1 to perform its obligations under the MOU and enable the Applicants to fulfill its obligations towards its allottees but the same was denied by the Resolution Professional. The Applicants being aggrieved by the inaction of the Resolution Professional filed IA No. 6586/2023 & IA No. 6583/2023 seeking various reliefs against the Resolution Professional to perform its obligations under the MOU executed with the Applicants.
- vi.** The Respondent No. 1 vide its email dated 12.01.2024 served the copy of reply to IA No. 6583/2023 & IA No. 6586/2023 to the Applicants wherein the Applicants were shocked to discover that the approved Resolution Plan is dealing with the FSI buyer's property which is outside the domain of the CIRP of the Corporate Debtor i.e., the constructed towers by the Applicants and furthermore, the Resolution Plan is unilaterally modifying the



existing MOU between the Applicants and the Corporate Debtor when the same is prohibited under the executed MOU between the Applicants and the Corporate Debtor. The relevant limited portion of the Resolution Plan which is being shared with the Applicants is as follows:

"2. There are 8 towers of the corporate debtor where the FSI had been sold, namely, S2A, S2B, D13, D10, SIA, BIA, and BIB. Allotment of SIB has already been cancelled. After the approval of the plan by the NCLT, the corporate debtor shall have no liability whatsoever toward the cancelled FSI buyers or their allottees, or any other creditor claiming to be FSI buyer apart from the above mentioned. Any claim of such FSI buyers shall stand extinguished.

3. Other FSI Allottees have also grossly defaulted, and their allotment is subject to cancellation. All remaining FSI buyers are obligated to fulfil their balance payments within 90 days of the Plan Effective Date. Furthermore, they are liable to pay an interest rate of 14% per annum backdated to their respective default dates for the initial three months, and 20% per annum for any period thereafter."

- vii.** It is submitted that the Applicants are not part of the COC and even the Resolution Professional clearly admitted that the said towers are outside his domain and no steps whatsoever were being taken by the Resolution Professional to terminate the said MOUs and therefore, the Resolution Applicant cannot inherit a better right than the Resolution Professional under the Resolution Plan.

4. Submissions of the Respondent No. 1/Resolution Professional:

- i.** The Respondent No. 1 has filed a reply affidavit denying the allegations made by the Applicant and stated that the bare perusal



of the captioned Application would show that the main grievance of the Applicants is regarding performance of the Corporate Debtor's obligations under the MoUs. Clearly, this does not constitute a "claim" as defined under Section 3(6) of the Insolvency and Bankruptcy Code 2016 (the "Code"), which is limited to the right of a person/ entity to receive payment from the Corporate Debtor against the Corporate Debtor under the Code. As such, the objections also do not form part of the mandatory contents of a Resolution Plan under Section 30(2) of the Code read with Regulation 38 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016.

- ii.** It is submitted that the sole motive of the Applicants is to delay and derail the present proceedings at the cost and detriment of the stakeholders/home buyers of the Corporate Debtor. It is to be noted that the Resolution Plan submitted by the Successful Resolution Applicant herein is for the benefit of homebuyers who have voted in favour of the Resolution Plan and have struggled a lot to reach this stage.
- iii.** It is further submitted that the Applicant has not paid an amount of INR 5,75,22,879 (for both the Towers to the Corporate Debtor due against the grant of the said FSI under Clause of the MoU). The Respondent immediately after being appointed as the Resolution Professional sent letters dated 4th July, 2022 to the Applicant for the payment the due amount but the Applicant has neither replied to the said letter and neither paid any amount. Clearly, the Applicant-ASGI itself is in breach of the MOU and therefore has no locus to seek performance of the Corporate Debtor's obligations under the MoU.



5. Submissions of the Respondent No. 2/Successful Resolution

Applicant:

- i. The Respondent No. 2 (M/s. One City Infrastructure Private Limited/Successful Resolution Applicant) has filed a reply affidavit denying the allegations made by the Applicant and stated that the Applicant herein by way of the present Application is seeking specific performance of the contract entered into by and between the Applicant and the Corporate Debtor much before the initiation of the CIRP of the Corporate Debtor. It is pertinent to mention herein that the reliefs sought in the present Application under reply relate to the contractual dispute between the Corporate Debtor and the Applicant and have nothing to do with the present Insolvency Proceedings of the Corporate Debtor.
- ii. It is submitted that the issue concerning the grant of the license of the Project in the name of AUPCL by the Ghaziabad Development Authority is pending adjudication before this Adjudicating Authority in I.A. No. 6237 of 2023. The original license was in the name of AIPL (a sister concern of the Corporate Debtor) namely M/s. Ansal Infrastructure Private Limited which is currently under CIRP. Consequently, the Ghaziabad Development Authority has not recognized the authority of Corporate Debtor for grant of renewal of license. The Resolution Professional has taken steps in that regard and the order qua the same has already been reserved by this Adjudicating Authority.

6. Submissions of the Respondent No. 3/Committee of Creditors:

- i. The Respondent No. 3 (M/s. Palm Products Pvt. Ltd. and M/s. Samkit Finance Pvt. Ltd./Committee of Creditors) has filed a reply affidavit denying the allegations made by the Applicant and stated that the Corporate Debtor is the owner and developer of the Group



Housing Project 'Sushant Aquapolis' Township at Doondahera District, Ghaziabad ("Project"). The Applicants executed separate Memoranda of Understanding ("MoUs"), with the Corporate Debtor for purchasing independent portions of the FSI at the Project and for building residential units utilising the FSI. The purchase of the FSI by the Applicants is subject to payment of the complete sale consideration in accordance with the payment schedule stipulated under the respective MoUs.

- ii.** It is submitted that the Applicants are also obligated to complete the construction of the FSI Area within 36 months from the date of execution, that is, prior to commencement of CIRP. Besides the delay in payment, the Applicants have also failed to complete the construction of the FSI Area. It is the position of the Applicants themselves that the FSI Area is still under construction. This is even after lapse of more than 9 years from the date of execution of the MoUs. However, till date, the Applicants have not remitted the balance sale consideration with applicable interest to the Corporate Debtor in accordance with the MoUs. Accordingly, the title and all the interests, rights in the FSI Area remain with the Corporate Debtor.
- iii.** It is further submitted that this Application is liable to be dismissed for the reasons that (i) Applicants have no locus to object to the Resolution Plan, (ii) Applicants do not allege non-compliance with Section 30(2) of the Insolvency and Bankruptcy Code 2016 (the "Code"), (iii) Applicants' grievances are not 'claims' and do not require consideration under the Resolution Plan; (iv) without prejudice, liability of the Corporate Debtor to perform any obligations under the MoUs is disputed and pending adjudication under I.A. Nos. 6583 of 2023 and 6586 of 2023; (v) Commercial



wisdom of CoC in approving the Resolution Plan is not subject to judicial review.

- iv.** It is contended that the terms of the MoUs stipulated that the transfer of rights or interest in the FSI Area to the Applicants is subject to receipt of the entire sale consideration. Admittedly, the Applicants have themselves failed to comply with their payment obligations under the MoUs. As on date, the Applicants are liable to pay a sum of INR 6,82,20,905/- and INR 5, 75,22,879/-to the Corporate Debtors, respectively. That pending such payment, the FSI Area along with the title and all accompanying rights and interests, remains with the Corporate Debtor and forms part of the corpus of the Corporate Debtor.
- v.** The Resolution Plan, therefore, correctly deals with the FSI Area in the Resolution Plan, as an asset of the Corporate Debtor. Clause 11 (d) of the MoU enables the Corporate Debtor to terminate the MoU on account of such default. Accordingly, as on date, the MoUs are liable to be terminated. The Resolution Plan, however, grants the Applicants an opportunity to safeguard their interests and prevent termination of the MoUs.

7. Analysis and Findings:

- i.** We have heard the submissions of Ld. Counsel appearing for the Applicants as well as Ld. Counsel appearing for the Respondents. We have also perused the records.
- ii.** In order to appreciate the case in a proper perspective, it would be necessary to refer to the Memorandum of Understanding dated 19.08.2013 and some of the clauses of the Resolution Plan submitted by the M/s. One City Infrastructure Private Limited (Successful Resolution Applicant) therein.



- iii.** Clause 11 of the Memorandum of Understanding speaks about the “RESULT OF NON-PERFORMANCE”. The said Clause is extracted below:

“AND WHEREAS Second party i.e. M/s Adwik Homes Pvt. Ltd. has approached the First Party. i.e. M/s AUCPL for purchase of the total buildable area i.e. FSI area of 180000 square feet (16722.40 Sq. Mtr.) situated and shown as SI at Sushant Aquapolis Township at Ghaziabad as marked in the Lay-out plan of Group Housing Complex as annexed to this Memorandum of Understanding for construction of Group Housing Project/Residential Building.

11. In the case of non-performance of the present Memorandum of Understanding by the Second Party, on any reason whatsoever, the second party will have no right over the FSI Area and in case of a fraudulent case the entire deposited amount of the Second Party after giving one calendar month notice shall be forfeited by the first party and in other case of misuse the 20% of the deposited amount shall be forfeited by the First Party.”

- iv.** The relevant extract of the Resolution Plan concerning the Applicants and their treatment under the Resolution Plan is reproduced below:

"3. Other FSI Allottees have also grossly defaulted and their allotment is subject to cancellation. All remaining FSI buyers are obligated to fulfil their balance payments within 90 days of the Plan Effective Date. Furthermore they are liable to pay an interest rate of 14% per annum backdated to their respective default dates for the initial three months and 20% per annum for any period thereafter."



- v. Admittedly, we find force in the submission raised by the Ld. Counsel appearing for the CoC that the provision provided in the Resolution Plan concerning payment of the balance sale consideration within 90 days, is rather an enabling provision for the Applicants and other FSI buyers. The Applicants have defaulted in their payment and construction obligations under the MoUs. Further, Clause 11(d) of the MoU enables the Corporate Debtor to terminate the MoU on account of such default. Accordingly, the MoUs are liable to be terminated. The Resolution Plan, however, grants the Applicants an opportunity to safeguard their interests and prevent termination of the MoUs. Accordingly, Ld. Counsel appearing for the Resolution Professional supported the contentions raised by Ld. Counsel appearing for the CoC.
- vi. We find that the procedure adopted by the Respondent No. 1/Resolution Professional, the Respondent No. 2/Successful Resolution Applicant and the Respondent No. 3/Committee of Creditors was not illegal and the same has been done in compliance with the provisions of the Code and CIRP Regulations therein. The Respondent No. 1 is a court-appointed officer and is only undertaking its duties under the Code. Furthermore, the Respondent has within its powers as bestowed upon it by the Code is only acting in furtherance of its duties to achieve the purpose of the Code.
- vii. The Hon'ble Supreme Court in the matter **of K. Sashidhar Versus Indian Overseas Bank & Ors.** in *Civil Appeal No. 10673 of 2018* has held that the commercial decision of CoC is non-justiciable. In light of the above-quoted judgment, it is clear that the "Commercial wisdom of CoC" is given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyze or evaluate the commercial



decision of the CoC. The CoC in its Commercial wisdom has approved and not approved the agendas of the 5th meeting of the CoC dated 20.10.2022, this Adjudicating Authority cannot interfere in the same.

- viii.** We find force in the arguments of the Ld. Counsel appearing for the Respondents. Hence, we are of the considered view that the Resolution Professional has not committed any illegality or irregularity w.r.t. the rejection of the claim of the Applicant.
- ix.** It is an admitted fact that the CIRP of the Corporate Debtor is on the verge of conclusion since the Resolution Plan is pending final adjudication before this Adjudicating Authority. Thus, the prayers made in this application cannot be allowed which will amount to derail or delay the present CIRP proceedings of the Corporate Debtor.
- x.** We are of the considered view that if such an application will be allowed, then this Adjudicating Authority will continue to receive further such applications and the case will never be resolved. Further, it will also cause a hurdle to the Successful Resolution Applicant in executing the Resolution Plan.
- xi.** Coming to the factual matrix of the present Application, it is a settled law that once the Resolution Plan has been approved by the CoC, the Adjudicating Authority can't go back to look into the nitty-gritty involved in the CIRP of the Corporate Debtor. Therefore, this Adjudicating Authority cannot entertain the present Application which is not sustainable.



8. In view of the above facts and circumstances and the foregoing discussion. It is accordingly ordered as follows:

- i. The Application bearing **IA-478/2024** filed by the Applicant is **dismissed**.

No order as to costs.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-5939/2023
In
IB-113(ND)/2021

IN THE MATTER OF IB-113(ND)/2021:

M/s. Vistra ITCL (India) Limited

..... **Financial Creditor**

Versus

M/s. Ansal Urban Condominiums Private Limited

..... **Corporate Debtor**

AND IN THE MATTER OF IA-5939/2023:

Mrs. Supriya Singh & 5 Ors.

..... **Applicants**

Versus

M/s. Ansal Urban Condominiums Private Limited & Anr.

(through Mr. Rajesh Ramani, RP of the Corporate Debtor)

..... **Respondents**

Order Pronounced On: 07.08.2024

CORAM:

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:

For the Applicants :

For the Respondents : Ms. Priyanshi Tyagi, Adv. a/w Rajesh Ramani, RP

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by Mrs. Supriya Singh & 5 Ors., the Applicants herein, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 before this Adjudicating Authority, seeking the following reliefs:

“i. Direct the Respondent No. 1 (Resolution Professional) to restore the units of the Applicants which has been cancelled unilaterally by the Corporate Debtor.

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- ii Direct the Respondent No. 1 (Resolution Professional) to amend the information memorandum and include the units of the Applicants under the same category of the other unit holders whose units have not been cancelled.*
- iii. Direct the Respondent No. 2 to make appropriate amendment in the Resolution Plan and treat the Applicants at par with the other allottees having clear allotment and allot units no. D03/08/01, D02/04/01, D03/08/03, D11/04/02, D09/05/02, D11/02/03 to the Applicant (original allottee) in terms of the builder buyer agreement executed between Applicants and the Corporate Debtor.*
- iv. Pass such other further orders as this Hon'ble Tribunal may deem fit and proper.”*

2. Brief Background of the Case:

The facts that are relevant for the determination of the issues involved in this application are stated as under:

- i.** An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditor i.e. M/s. Vistra ITCL (India) Limited, against the Corporate Debtor i.e. M/s. Ansal Urban Condominiums Private Limited and the said application was admitted ex parte vide order dated 10.03.2022 by this Adjudicating Authority and a moratorium was declared. As proposed by the Financial Creditor, the Respondent herein, Mr. Rajesh Ramani, having IBBI registration number IBBI/IPA-002/IP-N00993/2020-21/13187, was appointed as the Interim Resolution Professional. Subsequently, he was confirmed as the Resolution Professional of the Corporate Debtor at the first meeting of the Committee of Creditors ("COC") held on 09.04.2022, in terms of Section 22 of IBC.



- ii. Thereafter, the Resolution Plan was submitted by M/s. One City Infrastructure Private Limited which was approved by the CoC in its 12th meeting dated 03.08.2023 (e-voting concluded on 09.08.2023) by 100% voting share in respect of the CIRP of the Corporate Debtor after considering its feasibility and viability. Thereafter, Mr. Rajesh Ramani, the Resolution Professional of the Corporate Debtor filed IA-4863-2023 to seek approval of the Resolution Plan under Section 30(6) read with Section 31 of IBC, 2016, which is pending adjudication before this Adjudicating Authority.

3. Submissions of the Applicants:

- i. It is submitted that the Applicant is aggrieved by the unilateral and arbitrary cancellation of the units and inter-alia against the differential treatment provided to the Applicants under the Resolution Plan approved by the Committee of Creditors (CoC) by voting conducted which is pending for approval of this Adjudicating Authority. The present Application is being filed by the Six Applicants who fall under the definition of the Allottees as provided under the Real Estate (Regulation and Development) Act, 2016.
- ii. It is further submitted that the Applicants had entered into a Flat Buyer Agreement with the M/s. Ansal Urban Condominium Pvt. Ltd. ("Corporate Debtor") under which certain units/flats were allotted to the Applicants. As per the Flat Buyer Agreement, the Applicants had paid their respective consideration amount based on the agreement. As per the flat Buyer Agreement, the Corporate Debtor had promised to deliver the possession of the flats with in a prescribed timeline. However, the possession of the respective units was never delivered to the Applicants. Thus, aggrieved by the



- acts of the Corporate Debtor, the Applicants filed different complaints before the Uttar Pradesh Real Estate Regulatory Authority ("UPRERA") seeking a refund of money. Based on the complaints filed by the Applicants before the UPRERA, the UPRERA issued a decree in favour of the complainants.
- iii.** Pursuant to the Order passed by this Adjudicating Authority dated 10.03.2022, the Applicants filed their claims before the IRP which was admitted and subsequently communicated to the Applicants. It is important to highlight that the IRP while admitting the claims, adjusted the amount which was recovered by the Applicants basis the order of the UP RERA.
 - iv.** It is submitted that while the Corporate Insolvency Resolution Process (CIRP) was ongoing, the Applicants were always treated as the Financial Creditors in class and were represented by the authorized representative Mr. Vikky Dang who was confirmed as the authorized representative by the majority of the Home Buyers.
 - v.** It is further submitted that on 20.10.2022, 5th meeting of the CoC was held when the RP for the first time discussed and informed that there were few allottees whose units have been cancelled without even informing the unit holders. This issue was discussed as Item no. 8 on the agenda to the meeting. It was further discussed that these unit holders are no longer allottee of the said units. This was the first time that the CoC was intimated about this issue.
 - vi.** After perusing the Information Memorandum, the Applicants contacted the Resolution Professional telephonically. The RP intimated to the Applicants via authorized representative that such units were found cancelled in the books of account of the Corporate Debtor prior to CIRP initiation and hence the same cannot be restored. It was further informed that the Applicants



cannot be treated at par with the other 15 homebuyers whose units were not cancelled despite them being on the same boat. It is important to note that neither the authorized representative nor the RP replied to the Applicants. The Applicants herein issued various emails seeking the clarification and necessary details from the RP, however, nothing fruitful took place.

4. Submissions of the Respondent No. 1/Resolution Professional:

- i. The Respondent No. 1/Resolution Professional has filed a reply affidavit denying the allegations made by the Applicant and stated that the Applicant Filed complaints with the Uttar Pradesh Real Estate Regulatory Authority (referred to as "UPRERA") against the Corporate Debtor seeking "refund of money along with interest" on account of delay in handing over the possession of units by the Corporate Debtor as per the terms of Builder Buyer Agreement. It was communicated that the funds deposited by the Applicants had been utilized in the ongoing development and construction activities, thereby precluding the possibility of a refund. Further, the parties were neither interested in awaiting the completion of construction, nor even interested in acquiring possession of the property.
- ii. It is submitted that under the provisions of the Code, it is the duty of the IRP/RP to collate all the claims filed before him and to verify the same from the books of the Corporate Debtor. Moreover, if the claim filed by the Creditor is not showing and/or cannot be verified from the Books of the Corporate Debtor, then in that scenario, it is duty of the Interim Resolution Professional/Resolution Professional to ask for information from the Creditor in order to verify its claim. The Interim Resolution Professional/Resolution Professional can only verify the claim filed before it.



- iii.** It is further submitted that claims of the Applicants were admitted by the Deponent, in accordance with the orders procured by them through UP RERA after adjusting the partial repayments received by the Applicants from the Corporate Debtor. Further, the interest amount admitted for the said Applicants was in line with that provided in respective UPRERA Orders and definitely higher than 8% p.a. simple interest provided to other homebuyers of the project.
- iv.** It is contended that the Respondent No. 1 duly brought in the grievances of the Applicants before the COC Members in various COC Meetings as well as requested the SRA to address the concern of the Applicants in the Resolution Plan and accordingly, the Resolution Applicant has provided the treatment to the following categories of Allottees whose claims have been admitted:-

"11- For the following categories of Allottees whose claim have been admitted

a. Allottees who have not been allotted a unit or not have not been provided with a cost of the unit by the corporate debtor,

b. For Allottees who have a decree in their favour and the original unit as per BBA is not available,

c. For Allottees whose unit had been canceled prior to plan effective date, and the refund due to them had not been made, or only partial refund has been made,

d. For Allottee whose unit is not available with the corporate debtor,

e. For Allottee with a unit in the Unsold towers as per IM, These allottees do not have a unit allotted to them or if allotted, the allotment is invalid/ not available. Therefore, fresh allotment shall be done only for these cases. These Allottees/ Decree Holders can choose from available units with the Corporate



Debtor at a Base Selling Price (BSP) of INR 4200 per square feet of Super area. 100% of their admitted Principal Amount shall be adjusted against the freshly allotted unit. These Allottees shall have to choose from a unit within 90 days from the Plan Effective Date. In the event Allottees do not choose a unit for allotment as per the terms mentioned, such Allottees will be entitled to refund of 50% of the Principal Amount in terms of clause 6. It is clarified that Allottees who have clear allotment and do not fall in any of the above categories, shall be allotted a unit at their original allotment rate as per their BBA or allotment letter.”

Based on the aforementioned facts, it is evident that the Applicants are attempting to mislead this Adjudicating Authority with their malicious intent by claiming that differential treatment was given to them by the Respondent No. 1 due to the cancellation of their units.

- v. It is further contended that this Adjudicating Authority is only concerned with the matters relating to the CIRP of the Corporate Debtor and any cancellation of Units done by the Corporate Debtor prior to the initiation of CIRP cannot be challenged before this Adjudicating Authority. Further, the Applicants having not approached this Adjudicating Authority at the first instance, the present Application on this aspect is also barred by delay and laches.

5. Submissions of the Respondent No. 2/Successful Resolution Applicant:

- i. The Respondent No. 2 (M/s. One City Infrastructure Private Limited/Successful Resolution Applicant) has filed a reply affidavit denying the allegations made by the Applicant and stated that the allotment of the Applicants herein was shown as cancelled in the



Information Memorandum. It is pertinent to mention herein that the allotments of the Applicants herein were cancelled by the erstwhile management of the Corporate Debtor much prior to the commencement of the CIRP of the Corporate Debtor. However, it is when the CoC and RP requested the Respondent herein to address the concern qua the cancelled allotment in the Resolution Plan, the Respondent herein agreed to provide fair and equitable treatment to the said cancelled allotment in the Resolution Plan.

6. Analysis and Findings:

- i.** We have heard the submissions of Ld. Counsel appearing for the Applicants as well as Ld. Counsel appearing for the Respondents. We have also perused the records.
- ii.** The main objection taken by the Applicants is that the Respondent No. 1 didn't treat the Applicants at par with the other homebuyers.
- iii.** In response to the said objection, the Respondent No. 1 stated that he could not have reversed the actions (of cancellation) taken by the Corporate Debtor prior to the initiation of CIRP and the Resolution Plan duly provides for the treatment of such allottees whose units have been cancelled.
- iv.** To answer this issue, the Respondent No. 1 relies upon a judgment passed by the Hon'ble NCLAT in **Sunil Chauhan Vs Rabindra Kumar Mintri**, *Company Appeal (AT) (INS) No. 407 of 2023*, wherein the Hon'ble NCLAT has held in paragraph 11 of its judgement which is reproduced below:

"11. The order cancelling the allotment of the Appellant has been brought on the record which indicate that the allotment was cancelled due to non-payment of balance amount by the Appellant. As noted above, the Resolution Plan contains a clause which deals with the claims which have been filed as well as



which have not been filed before the Resolution Professional. As observed above, in event, the Appellant is entitled for refund of part of its amount, it is always open for the Appellant to make a request to the Resolution Professional after approval of the plan, to deal his claim as per the Resolution Plan."

- v. Admittedly, in the present case, the Units allotted to the Applicants were already cancelled before the Initiation of CIRP of the Corporate Debtor and the Respondent No. 1 has already admitted the claims of the Applicants in the category Creditors in a Class.
- vi. A perusal of the clauses rendered by the Respondent No. 1 in its reply affidavit shows that the SRA namely M/s. One City Infrastructure Private Limited duly complied with the treatment of the Applicants claim in accordance with the provisions of the Code and CIRP Regulations.
- vii. We find that the procedure adopted by the Respondent No. 1/Resolution Professional was not ultra vires and the same has been done in compliance with the provisions of the Code and CIRP Regulations therein. The Respondent No. 1 is a court-appointed officer and is only undertaking its duties under the Code. Furthermore, the Respondent No. 1 has within its powers as bestowed upon it by the Code is only acting in furtherance of its duties to achieve the purpose of the Code.
- viii. The Hon'ble Supreme Court in the matter **of K. Sashidhar Versus Indian Overseas Bank & Ors.** in *Civil Appeal No. 10673 of 2018* has held that the commercial decision of CoC is non-justiciable. In light of the above-quoted judgment, it is clear that the "Commercial wisdom of CoC" is given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyze or evaluate the commercial decision of the CoC. The CoC in its Commercial wisdom has



approved and not approved the agendas of the 5th meeting of the CoC dated 20.10.2022, this Adjudicating Authority cannot interfere in the same.

- ix.** We find force in the arguments of the Ld. Counsel appearing for the Resolution Professional. Hence, we are of the considered view that the Resolution Professional has not committed any illegality or irregularity w.r.t. the rejection of the claim of the Applicant.
- x.** It is an admitted fact that the CIRP of the Corporate Debtor is on the verge of conclusion since the Resolution Plan is pending final adjudication before this Adjudicating Authority. Thus, the prayers made in this application cannot be allowed which will amount to derail or delay the present CIRP proceedings of the Corporate Debtor.
- xi.** We are of the considered view that if such an application will be allowed, then this Adjudicating Authority will continue to receive further such applications and the case will never be resolved. Further, it will also cause a hurdle to the Successful Resolution Applicant in executing the Resolution Plan.
- xii.** Coming to the factual matrix of the present Application, it is a settled law that once the Resolution Plan has been approved by the CoC, the Adjudicating Authority can't go back to look into the nitty-gritty involved in the CIRP of the Corporate Debtor. Therefore, this Adjudicating Authority cannot entertain the present Application which is not sustainable.



7. In view of the above facts and circumstances and the foregoing discussion. It is accordingly ordered as follows:

- i. The Application bearing **IA-5939/2023** filed by the Applicant is **dismissed**.

No order as to costs.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-6583/2023
In
IB-113(ND)/2021

IN THE MATTER OF IB-113(ND)/2021:

M/s. Vistra ITCL (India) Limited **Financial Creditor**

Versus

M/s. Ansal Urban Condominiums Private Limited **Corporate Debtor**

AND IN THE MATTER OF IA-6583/2023:

M/s. Adwik Homes Private Limited **Applicant**

Versus

Mr. Rajesh Ramani, RP of the Corporate Debtor **Respondent**

Order Pronounced On: 07.08.2024

CORAM:

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:

For the Applicant : Mr. Akshay Sharma, Adv.
For the Respondent : Ms. Priyanshi Tyagi, Adv. a/w Rajesh Ramani, RP

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by M/s. Adwik Homes Private Limited, the Applicant herein, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 before this Adjudicating Authority, seeking the following reliefs:

- "i To allow the present application.*
- ii. To direct the Respondent to take steps to renew the expired map approval of the "Sushant Aquapolis" Project of Corporate Debtor;*
- iii. To direct the Respondent to complete the external infrastructure work of the Tower S1 "LA CASA", OR*

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iv. Alternatively, to allow the Applicant to complete the external infrastructure work of the Tower S1 under supervision of RP subject to adjustment of cost against pending payment.

V. Pass any other direction/order which this Hon'ble Tribunal may deem fit in the larger interest of justice."

2. Brief Background of the Case:

The facts that are relevant for the determination of the issues involved in this application are stated as under:

- i.** An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditor i.e. M/s. Vistra ITCL (India) Limited, against the Corporate Debtor i.e. M/s. Ansal Urban Condominiums Private Limited and the said application was admitted ex parte vide order dated 10.03.2022 by this Adjudicating Authority and a moratorium was declared. As proposed by the Financial Creditor, the Respondent herein, Mr. Rajesh Ramani, having IBBI registration number IBBI/IPA-002/IP-N00993/2020-21/13187, was appointed as the Interim Resolution Professional. Subsequently, he was confirmed as the Resolution Professional of the Corporate Debtor at the first meeting of the Committee of Creditors ("COC") held on 09.04.2022, in terms of Section 22 of IBC.
- ii.** Thereafter, the Resolution Plan was submitted by M/s. One City Infrastructure Private Limited which was approved by the CoC in its 12th meeting dated 03.08.2023 (e-voting concluded on 09.08.2023) by 100% voting share in respect of the CIRP of the Corporate Debtor after considering its feasibility and viability. Thereafter, Mr. Rajesh Ramani, the Resolution Professional of the Corporate Debtor filed IA-4863-2023 to seek approval of the Resolution Plan under Section 30(6) read with Section 31 of IBC,



2016, which is pending adjudication before this Adjudicating Authority.

3. Submissions of the Applicant:

- i.** It is submitted that the Corporate Debtor and the Applicant executed a Memorandum of Understanding dated 19.08.2013 wherein the Corporate Debtor sold the GDA-approved Floor Space Index (FSI) area of 1,80,000 Sq. ft. of Tower S1 to the Applicant for a total price consideration of Rs. 13,05,00,000/-.
- ii.** Afterward, the Corporate Debtor and the Applicant No. 1 executed a Memorandum of Understanding cum term sheet dated 26.10.2015 wherein the Corporate Debtor sold the GDA approved Floor Space Index (FSI) area of 87,476.78 Sq. ft. of Tower S2A to the Applicant for total price consideration of Rs. 8,75,64,257/-. It was further stipulated in the MOU than an additional FSI are of 1,13,322.06 Sq. ft. will be sold to the Applicant for a consideration of Rs.11,34,35,382/- after the approval of the same from the GDA.
- iii.** It stipulated under the MOU that the Applicant will construct the said towers and the Applicant can further sell those units/flats to the prospective buyers. It was also specifically provided in the MOU that all the external development such as Roads, Drainage, connectivity for sewerage disposal, water supply connection & parking area shall be completed by the Corporate Debtor.
- iv.** It is submitted that the Applicant has almost completed the 95% construction of the LA CASA project as on 23.11.2023. The Applicant also sold units to 148 different allottees in the project by virtue of tripartite builder buyer agreement executed between the Buyer, Applicant, and Corporate Debtor.
- v.** After initiation of the CIRP of the Corporate Debtor, the Respondent/Resolution Professional vide his email dated



08.07.2023 clarified to the FSI owners that the Applicant can continue its construction work on the sold towers and can also sell them to the desired customers and therefore, accordingly the Applicant carried on the construction of the said towers and as on today, the said towers are near completion.

- vi.** It is submitted that the Applicant is unable to offer the legal possession to the allottees due to the sheer inaction of the Respondent by not performing its basic functions enunciated under the Code for keeping the Corporate Debtor as a going concern. The Applicant cannot offer physical/legal possession to its allottees as the approval map of the group housing project of the Corporate Debtor stands expired and only after the renewal of the same, the Applicant can execute the registry of the allotted units in favor of its allottees.

4. Submissions of the Resolution Professional:

- i.** The Respondent/Resolution Professional has filed a reply affidavit denying the allegations made by the Applicant and stated that the Applicant is aggrieved by the failure of the Corporate Debtor to perform its obligations under the MoU including (i) ensuring a valid license, map and other permissions required for developing the Project, and (ii) constructing the external infrastructure of the Project. These obligations of the Corporate Debtor are purely contractual and do not concern, or relate to the Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor.
- ii.** The validity of the approval map of the Project expired in February, 2022 i.e. prior to the admission of the Corporate Debtor into CIRP. Therefore, it is indisputable that the issues raised in this Application do not concern the CIRP of the Corporate Debtor. This Application has been filed solely to circumvent the moratorium



under Section 14 of the Code, which prevents institution of any suits against the Corporate Debtor during the CIRP.

- iii.** The resolution plan approved by the COC deals with the treatment of the FSI buyers. The relevant limited portion of the Resolution Plan is as follows:

"2. There are 8 towers of the corporate debtor where the FSI had been sold, namely, S2A, S2B, D13, D10, SIA, BIA, and BIB. Allotment of SIB has already been cancelled. After the approval of the plan by the NCLT, the corporate debtor shall have no liability whatsoever toward the cancelled FSI buyers or their allottees, or any other creditor claiming to be FSI buyer apart from the above mentioned. Any claim of such FSI buyers shall stand extinguished.

3. Other FSI Allottees have also grossly defaulted, and their allotment is subject to cancellation. All remaining FSI buyers are obligated to fulfil their balance payments within 90 days of the Plan Effective Date. Furthermore, they are liable to pay an interest rate of 14% per annum backdated to their respective default dates for the initial three months, and 20% per annum for any period thereafter."

- iv.** It is contended that the Applicant has concealed material fact that the Applicant had entered into an Agreement with the Corporate Debtor to develop the towers of S1, D10 & D12. While the total FSI area of Towers D10 & D12 ad-measures 1,97,132 sq. ft., the total FBI area of Tower SI is measuring 1,80,000 sq. ft. Subsequently, on 06.09.2018, the Applicant sent a surrender deed of tower D 12 stating its unwillingness to develop the tower, thereby surrendering its rights as well as the vacant possession of D12 to the Corporate Debtor. Resultantly, now the FSI area for Tower D 10 is 1,52,291 square feet only.



- v. It is further submitted that the Applicant is not entitled to the reliefs sought in the Application in view of the fact that Respondent has taken all steps for ensuring compliance with the MoU and the Applicant has itself failed to comply with its obligations under the MoU. Moreover, the captioned Application filed by the Applicant is not maintainable in as much as the towers/area which have been allotted to the Applicant is not part of the present CIRP and this Adjudicating Authority ought not to adjudicate any issue arising from that place, which admittedly does not form part of the present CIRP.
- vi. It is contended that the prayers of the Applicant can also not be granted in view of the fact that any construction in the land/area of the Corporate Debtor may be initiated only when all approvals, NOCs, Licenses, etc. including of GDA, Pollution, etc. is granted to the Corporate Debtor. The Applicant has also concealed from this Adjudicating Authority that till date the Applicant has not paid an amount of Rs. 6,78,93,916/- to the Corporate Debtor due against the grant of the said FSI under Clause of the MoU.

5. Analysis and Findings:

- i. We have heard the submissions of Ld. Counsel appearing for the Applicants as well as Ld. Counsel appearing for the Respondents. We have also perused the records.
- ii. In order to appreciate the case in a proper perspective, it would be necessary to refer to the Memorandum of Understanding dated 19.08.2013 and some of the clauses of the Resolution Plan submitted by the M/s. One City Infrastructure Private Limited (Successful Resolution Applicant) therein.



- iii.** Clause 11 of the Memorandum of Understanding speaks about the “RESULT OF NON-PERFORMANCE”. The said Clause is extracted below:

“AND WHEREAS Second party i.e. M/s Adwik Homes Pvt. Ltd. has approached the First Party. i.e. M/s AUCPL for purchase of the total buildable area i.e. FSI area of 180000 square feet (16722.40 Sq. Mtr.) situated and shown as SI at Sushant Aquapolis Township at Ghaziabad as marked in the Lay-out plan of Group Housing Complex as annexed to this Memorandum of Understanding for construction of Group Housing Project/Residential Building.

11. In the case of non-performance of the present Memorandum of Understanding by the Second Party, on any reason whatsoever, the second party will have no right over the FSI Area and in case of a fraudulent case the entire deposited amount of the Second Party after giving one calendar month notice shall be forfeited by the first party and in other case of misuse the 20% of the deposited amount shall be forfeited by the First Party.”

- iv.** The relevant extract of the Resolution Plan concerning the Applicants and their treatment under the Resolution Plan is reproduced below:

"3. Other FSI Allottees have also grossly defaulted and their allotment is subject to cancellation. All remaining FSI buyers are obligated to fulfil their balance payments within 90 days of the Plan Effective Date. Furthermore they are liable to pay an interest rate of 14% per annum backdated to their respective default dates for the initial three months and 20% per annum for any period thereafter."



- v. Admittedly, we find force in the submission raised by the Ld. Counsel appearing for the Respondent/Resolution Professional concerning payment of the balance sale consideration within 90 days, is rather an enabling provision for the Applicants and other FSI buyers. The Applicants have defaulted in their payment and construction obligations under the MoUs. Further, Clause 11(d) of the MoU enables the Corporate Debtor to terminate the MoU on account of such default. Accordingly, the MoUs are liable to be terminated. The Resolution Plan, however, grants the Applicants an opportunity to safeguard their interests and prevent termination of the MoUs.
- vi. We find that the procedure adopted by the Respondent/Resolution Professional was not illegal and the same has been done in compliance with the provisions of the Code and CIRP Regulations therein. The Respondent is a court-appointed officer and is only undertaking its duties under the Code. Furthermore, the Respondent has within its powers as bestowed upon it by the Code is only acting in furtherance of its duties to achieve the purpose of the Code.
- vii. The Hon'ble Supreme Court in the matter **of K. Sashidhar Versus Indian Overseas Bank & Ors.** in *Civil Appeal No. 10673 of 2018* has held that the commercial decision of CoC is non-justiciable. In light of the above-quoted judgment, it is clear that the "Commercial wisdom of CoC" is given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyze or evaluate the commercial decision of the CoC. The CoC in its Commercial wisdom has approved and not approved the agendas of the 5th meeting of the CoC dated 20.10.2022, this Adjudicating Authority cannot interfere in the same.



- viii.** We find force in the arguments of the Ld. Counsel appearing for the Respondent. Hence, we are of the considered view that the Resolution Professional has not committed any illegality or irregularity w.r.t. the rejection of the claim of the Applicant.
- ix.** It is an admitted fact that the CIRP of the Corporate Debtor is on the verge of conclusion since the Resolution Plan is pending final adjudication before this Adjudicating Authority. Thus, the prayers made in this application cannot be allowed which will amount to derail or delay the present CIRP proceedings of the Corporate Debtor.
- x.** Coming to the factual matrix of the present Application, it is a settled law that once the Resolution Plan has been approved by the CoC, the Adjudicating Authority can't go back to look into the nitty-gritty involved in the CIRP of the Corporate Debtor. Therefore, this Adjudicating Authority cannot entertain the present Application which is not sustainable.

6. In view of the above facts and circumstances and the foregoing discussion. It is accordingly ordered as follows:

- i.** The Application bearing **IA-6583/2023** filed by the Applicant is **dismissed**.

No order as to costs.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-6586/2023
In
IB-113(ND)/2021

IN THE MATTER OF IB-113(ND)/2021:

M/s. Vistra ITCL (India) Limited **Financial Creditor**

Versus

M/s. Ansal Urban Condominiums Private Limited **Corporate Debtor**

AND IN THE MATTER OF IA-6586/2023:

M/s. ASGI Properties Private Limited **Applicant**

Versus

Mr. Rajesh Ramani, RP of the Corporate Debtor **Respondent**

Order Pronounced On: 07.08.2024

CORAM:

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:

For the Applicant : Mr. Akshay Sharma, Adv.
For the Respondent : Ms. Priyanshi Tyagi, Adv. a/w Rajesh Ramani, RP

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by M/s. ASGI Properties Private Limited, the Applicant herein, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 before this Adjudicating Authority, seeking the following reliefs:

- "i. To allow the present application.*
- ii. To direct the Respondent to take steps to renew the expired map approval of the "Sushant Aquapolis" Project of Corporate Debtor;*
- iii. To direct the Respondent to complete the external infrastructure work of the Tower S2A & S2B, OR*

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iv. Alternatively, to allow the Applicant to complete the external infrastructure work of the Tower S2A & S2B under supervision of RP subject to adjustment of cost against the pending dues.

V. Pass any other direction/order which this Hon'ble Tribunal may deem fit in the larger interest of justice. For”

2. Brief Background of the Case:

The facts that are relevant for the determination of the issues involved in this application are stated as under:

- i.** An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditor i.e. M/s. Vistra ITCL (India) Limited, against the Corporate Debtor i.e. M/s. Ansal Urban Condominiums Private Limited and the said application was admitted ex parte vide order dated 10.03.2022 by this Adjudicating Authority and a moratorium was declared. As proposed by the Financial Creditor, the Respondent herein, Mr. Rajesh Ramani, having IBBI registration number IBBI/IPA-002/IP-N00993/2020-21/13187, was appointed as the Interim Resolution Professional. Subsequently, he was confirmed as the Resolution Professional of the Corporate Debtor at the first meeting of the Committee of Creditors ("COC") held on 09.04.2022, in terms of Section 22 of IBC.
- ii.** Thereafter, the Resolution Plan was submitted by M/s. One City Infrastructure Private Limited which was approved by the CoC in its 12th meeting dated 03.08.2023 (e-voting concluded on 09.08.2023) by 100% voting share in respect of the CIRP of the Corporate Debtor after considering its feasibility and viability. Thereafter, Mr. Rajesh Ramani, the Resolution Professional of the Corporate Debtor filed IA-4863-2023 to seek approval of the Resolution Plan under Section 30(6) read with Section 31 of IBC,



2016, which is pending adjudication before this Adjudicating Authority.

3. We find from the record that both the IAs (IA-6583/2023 & IA-6586/2023) are identical. IA-6583/2023 having been dismissed on merits, the present application bearing IA-6586/2023 is dismissed as devoid of merits.
4. In view of the above facts and circumstances and the foregoing discussion. It is accordingly ordered as follows:
 - i. The Application bearing **IA-6586/2023** filed by the Applicant is **dismissed**.

No order as to costs.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)