



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**MUMBAI BENCH COURT-III**

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

**IN**

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

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

**I.A. 3425 of 2022**

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

**Vs**

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

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

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

**Vs**

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

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



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



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



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, COURT-III  
I.A. 3425/2022, I.A. No. 343/2023, I.A. No. 942/2023 and I.A. 1056/2023  
In C. P. No. 27/IB/C-III/2019

Fort, Mumbai – 400051 ) **... Respondent 20**

**21. Jade Agricultural Company Pvt Ltd )**

601, Hallmark Business Plaza, Opp. Guru )  
Nanak Hospital, Bandra (East), Mumbai- )  
400051 ) **... Respondent 21**

**22. Kotak Mahindra Prime Limited )**

27 BKC, C 27, G Block, BKC, Bandra )  
(East), Mumbai – 400051 ) **... Respondent 22**

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

B-83, Andheri Green Field Tower CHS )  
Limited, Jogeshwari Vikhroli Link Road, )  
Near Poonam Nagar, Andheri East, )  
Mumbai – 400093 ) **... Respondent 23**

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

**Central Bank of India )**

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

**Vs**

**1. Mr. Abhay Narayan Manudhane & Ors. )**

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

**2. Bank of India )**

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

**3. Canara Bank )**

(Erstwhile Syndicate Bank) )  
Stressed Assets Management Branch )  
Maker Tower F, 2<sup>nd</sup> Floor, Cuffe Parade, )



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

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



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



**22. Unity Small Finance Bank Limited )**

2<sup>nd</sup> Floor, Centrum House, CST Road, )  
Vidyanagari Marg, Kalina, Santacruz (East))  
Mumbai – 400098 )

**... Respondent 22**

**23. M/s Khyati Realtors Pvt. Ltd., )  
M/s Dosti Realty Ltd. & M/s Suraksha )  
Asset Reconstruction Ltd. )**

**RA for “Majestic Towers”- Vertical I )**  
301, Manek Bhavan, Plot No. 68, Hindu )  
Colony, Dadar (East), Mumbai – 400014 )

**... Respondent 23**

**24. M/s Khyati Realtors Pvt. Ltd., )  
M/s Dosti Realty Ltd. & M/s Suraksha )  
Asset Reconstruction Ltd. )**

**RA for “Whispering Towers”- Vertical II )**  
301, Manek Bhavan, Plot No. 68, Hindu )  
Colony, Dadar (East), Mumbai – 400014 )

**... Respondent 24**

**25. M/s Khyati Realtors Pvt. Ltd., )  
M/s Dosti Realty Ltd. & M/s Suraksha )  
Asset Reconstruction Ltd. )**

**RA for “Premier Kurla”- Vertical III )**  
301, Manek Bhavan, Plot No. 68, Hindu )  
Colony, Dadar (East), Mumbai – 400014 )

**... Respondent 25**

**26. M/s Adani Properties Pvt. Ltd. )**

**RA for “Project BKC” – Vertical IV )**

Adani Corporate House, Shantigram, Nr. )  
Vaishno Devi Circle, S.G. Highway, )  
Khodiyar, Ahmedabad, Gujarat- 382421 )

**... Respondent 26**

**27. M/s Dev Land & Housing Pvt. Ltd. )**

**RA for “HDIL Towers”- Vertical V )**

10<sup>th</sup> Floor, Dev Plaza, Opp. Andheri Fire )  
Station, S. V. Road, Andheri (West), )  
Mumbai – 400058 )

**... Respondent 27**

**28. M/s Adani Properties Pvt. Ltd. )**

**RA for “Shahad Lands” – Vertical VII )**

Adani Corporate House, Shantigram, Nr. )  
Vaishno Devi Circle, S.G. Highway, )



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

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

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

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

**... Respondent 29**

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

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

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

**... Applicant**

**Vs**

**Mr. Abhay Narayan Manudhane** )  
Resolution Professional of Housing )  
Development and Infrastructure Ltd. )

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

**... Respondent**

**IN THE MATTER OF**

**Bank of India**

**... Financial Creditor**

**Vs**

**Housing Development and Infrastructure Limited**

**... Corporate Debtor**

**Order pronounced on: 11.07.2024**

**Coram:**

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

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





IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, COURT-III  
I.A. 3425/2022, I.A. No. 343/2023, I.A. No. 942/2023 and I.A. 1056/2023  
In C. P. No. 27/IB/C-III/2019

**Appearances:**

For the Applicant : IA/343/2023 & IA/3425/2022  
Senior Advocate Keric Setalrad a/w Adv. Shyam  
Kapadia a/w Aniruth Pursothaman, Mr. Atul  
Sharma, Mr. Sahil Saiyed, Ms. Riya Savla  
  
IA/942/2023  
Adv. Rathina Maravarman a/w Akansha Hambir  
  
IA/1056/2023  
Ms. Hiral Thakkar i/b. Adv. Sowmya Roop Sanyal

For the RP : IA/3425/2022, IA/343/2023, IA/942/2023 &  
IA/1056/2023  
Mr. Shadab S. Jan a/w Adv. Prerana Wagh a/w  
Adv. Prangana Barva, Mr. Mufaddal Paperwala i/b  
M/s Crawford Bayley & Co.

For the Respondents : IA/343/2023 & IA/942/2023  
*For CoC:*  
Adv. Rohit Gupta a/w. Adv. Harsh L Behany a/w.  
Mr. Yash Cheeda, Adv. Prachi Sanghvi i/b H N  
Legal.  
*For Successful Resolution Applicant:*  
Adv. Aditya Udeshi a/w. Adv. Rahul Sanghavi i/b  
M/s Sanjay Udeshi & Co.

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

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



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

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

3. **Brief Facts:**

- 3.1 The Corporate Insolvency Resolution Process (**CIRP**) was initiated against Housing Development and Infrastructure Limited (Corporate Debtor) vide this Tribunal's Order dated 20.08.2019 in CP/27/2019 and Mr. Abhay Narayan Manudhane (**Respondent 1**) was appointed as the Interim Resolution Professional (**IRP**) and was subsequently confirmed as the Resolution Professional (**RP**).
- 3.2 The RP made public announcement inviting Expression of Interest (EoI) on 16.02.2020, however, no resolution plans were received. In the 12<sup>th</sup> CoC Meeting and 13<sup>th</sup> CoC Meeting held on 18.01.2021 and 30.01.2021 respectively, there were discussions on exploring project-wise resolution of the Corporate Debtor and the RP submitted a brief note on the same as prepared by the legal advisor, M/s Crawford Bayley & Co. stating that there is no bar under the I&B Code to explore project-wise resolution. Accordingly, a resolution was put before the CoC to re-issue notice for



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

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



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



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

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

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

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

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

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

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



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

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

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



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

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

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

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

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



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

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

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





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

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



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

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



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

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

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

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

***(or in the alternative)***

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

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

***(or in the alternative)***

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



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

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

6.2 The submissions of Central Bank are briefed as under:

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



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

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

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

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

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



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

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

**8. Submissions of the Respondents**

- 8.1 There are 23 common Respondents in both the IAs No. 343/2023 and 942/2023 being the Resolution Professional, members of the CoC and the authorised representative of the home buyers. However, we also note that the Central Bank of India in IA/942 also impleaded the Successful Resolution Applicants of the six Resolution Plans approved by the CoC. Thus, IA/343 has 23 Respondents whereas IA/942 has 29 Respondents.
- 8.2 The submissions of all the Respondents are similar and therefore, are clubbed together and summarized hereinbelow:
- i. The Resolution Professional has created the Information Memorandum by conducting due diligence of the Resolution Applicant based on material available on record in terms of Regulation 36A (8) of the CIRP Regulations. Further, the Central Bank i.e. the Applicant in IA/942/2023 had neither raised any objection with respect to the Information Memorandum nor had



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

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



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

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





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



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

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

#### **ANALYSIS & FINDINGS**

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



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

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

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

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

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



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

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

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



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

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

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



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

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

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

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

***(Emphasis Provided)***

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



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

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

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



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

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

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

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

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

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

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*d. The Committee recommends that the IBC needs to be reformed to better accommodate the complexities of the real estate sector. Some of the recommendations with respect to reforms in IBC are:*

- i. Project wise CIRP – All projects need to be pre-registered with RERA. Since RERA registration is project-wise, this can be adopted under IBC.*





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

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

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

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

***"37. Resolution plan.***

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



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

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

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

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

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

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



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

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



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

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

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

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



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



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

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

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

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

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

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

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



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

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

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

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

42. The appointment of M/s Rakesh Narula and Co and M/s Kakode & Associates as valuers for ascertaining the fair value and liquidation value of the Corporate Debtor was approved by the CoC at the 1<sup>st</sup> CoC Meeting held on 08.01.2020. At the 22<sup>nd</sup> CoC Meeting held on 24.02.2024, the resolution to approve a third independent valuer in terms of project IV and project IX was approved by the CoC. Thereafter, with respect to Project IV and Project IX, the RP considered the reports of the 3<sup>rd</sup> valuer and M/s Kakode & Associates which were in alignment.

43. It is noted that the above quoted regulation 35 clearly states that *the average of the two closest estimates of a value shall be considered the fair value or the liquidation value, as the case may be*. Thus, it cannot be said that there is any misconduct on the part of the RP in considering the two closest estimates, despite them being significantly lesser than the other in the present case, as the RP has merely followed the procedure laid down by the law.



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





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

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

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

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

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



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

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

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

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

“\*\*\*



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

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

### **Conclusion**

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



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

Sd/-

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

Sd/-

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

Uma, LRA