



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH AT BENGALURU

(Exercising powers of Adjudicating Authority under
the Insolvency & Bankruptcy Code, 2016)
[Through Physical Hearing / VC Mode (Hybrid)]

IA No.401 of 2024 in
CP (IB) No.135/BB/2021

Application under sub-section (5) of Section 60 of the
Insolvency and Bankruptcy Code, 2016

R/w Rule 11 of National Company Law Tribunal Rules, 2016

IN THE MATTER OF:

1. Ms. Aarathi Sivadas

D/o. M. Sivadas
R/a 59, Krishnappa Gardens,
CV Raman Nagar, Bangalore – 560 093.

2. Ms. Jayashree Sivadas

W/o. M. Sivadas
R/a 59, Krishnappa Gardens,
CV Raman Nagar, Bangalore – 560 093.

3. Mr. Rohit Jain

S/o. Dr. Premraj Jain
R/a B205, Prism Sovereign Apartments
12th Cross, BEML Layout, Brookefield,
Bengaluru – 560 037.

4. Mr. Rahul Devarabhotla

S/o. Ravindra Kumar Devarabhotla
R/a Flat No.206, Gulmohar Villa Apartments,
Gulmohar Enclave, Kundalahalli Gate,
Bengaluru – 560 037.

5. Ms. Sonali K.

D/o. K. Bhaskar Rao
R/a C-902, Tower-2, Adarsh Palm Retreat,
Bellandur, Outer Ring Road,
Bengaluru – 560 103.

6. Mr. Amit Agarwal

S/o. Vishnu Kumar Agarwal
R/a Flat # D-205, Nagarjuna Green Ridge Appt.,
HSR Layout, Sec-2, Bangalore – 560 102.

7. Mr. Uddappanda M. Muthanna

S/o. Uddappanda M. Mandanna
R/a #244, 1st Floor, 9th Main, 20th Cross,
HSR Sector-7,
Bangalore – 560 102.

**8. Ms. Anuja Katy George**

D/o. George Abraham
R/a #244, 1st Floor, 9th Main,
20th Cross, HSR Sector-7,
Bengaluru – 560 102.

9. Mr. Ranjit Prabhu Kenaudekar

S/o. Prabhu Anaji Kenaudekar
R/a # E214, Habitat Splendor,
ITPL Road,
Bengaluru – 560 037.

10. Mr. Harshal Aswin

S/o. Aswin Kangondi
R/a No.23312, Prestige Falcon City,
Konanakunte Cross, Kanakapura Cross,
Bengaluru – 560 067.

- Applicants

Versus**Mr. Prasanna Kumar Rath**

Resolution Professional
M/s. Value Designbuild Private Limited
Regd. Office at No.42, 3rd Floor,
Castle Street, Ashok Nagar,
Bengaluru.

- Respondent No.1

M/s. India Resurgence ARC Pvt. Ltd.

Unit 304, 3rd Floor, Piramal Tower,
Peninsula Corporate Park,
Lower Parel,
Mumbai – 400 013.

- Respondent No.2

M/s. Housing Development**Finance Corporation Ltd.**

HDFC House, No.51,
Kasturba Road,
Bengaluru – 560 001.

- Respondent No.3

Order pronounced on: 05th December, 2024**CORAM:**

1. Hon'ble Shri K. Biswal, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

| | | |
|-----------------------------|---|---|
| For the Applicants | : | Shri C.K. Nandakumar, Sr. Adv. with Shri Hemanth R. Rao, Adv. |
| For the Respondents | : | Shri Narayana Kamma, Adv. for RP Shri Raghuram Cadambi, Adv. for HDFC Bank |
| For the Financial Creditor: | : | Shri Varun Devaiah, Adv. |



ORDER

Per: K. Biswal, Member (Judicial)

1. This Application has been filed by **Ms. Aarathi Sivadas and nine others** (hereinafter referred to as 'Applicants / Homebuyers') under sub-section (5) of section 60 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'Code / IBC') against **Mr. Prasanna Kumar Rath and two others** (hereinafter referred to as 'Respondents') by, *inter alia*, seeking to *declare that the constitution of Committee of Creditors of the Corporate Debtor is illegal and in violation of the Code and applicable Rules and Regulations, consequently, to-*
 - (a.) *set aside all decisions of the Committee of Creditors;*
 - (b.) *reject the claim of the Respondent No.2 and remove it from the Committee of Creditors;*
 - (c.) *declare that the "Cancelled Allottees" cannot be part of the Committee of Creditors and direct removal of the "Cancelled Allottee" from the Committee of Creditors;*
 - (d.) *replace the Resolution Professional – Respondent No.1 and appoint Mr.Ratnakar Shetty to conduct the Corporate Insolvency Resolution Process of the Corporate Debtor, etc. with all consequential directs.*
2. Brief facts of the case, as stated by the Applicants, are as follows:
 - 2.1. This Adjudicating Authority (AA) has admitted CP (IB) No.135/BB/2021 filed by M/s. India Resurgence ARC Pvt. Ltd. u/s 7 of the Code, *vide* Order dated 13.04.2023 and appointed Respondent No.1 (R-1) herein as the IRP, who was later confirmed as Resolution Professional (RP) to carry out the CIRP of Corporate Debtor – M/s. Value Designbuild Pvt. Ltd.
 - 2.2. The Applicants and other homebuyers have entered into Agreements with the Corporate Debtor (CD) for apartment delivery by December 2015. However, till date, neither the apartments being delivered, nor the CD being revived due to the RP's illegal and arbitrary actions. The RP constituted a CoC based on the claims received. In the 2nd CoC meeting held on 12.06.2023, the voting shares were: India Resurgence ARC (47.55%), Housing Development Finance Corporation-HDFC (14.83%) and Homebuyers (37.62%). However, in the 6th CoC meeting



held on 03.10.2023, the CoC was reconstituted to include landowners Mr. B.K. Ramprasad and Mr. Narasimhamurthy, with 30.65% share. The new CoC consisted of: India Resurgence ARC (28.45%), HDFC (8.87%), Landowners (30.65%) and Homebuyers (32.03%). In the 7th CoC meeting held on 22.11.2023, the RP reconstituted the CoC to include homebuyers whose bookings were cancelled and refunds paid, noting that these homebuyers did not challenge their cancellations. The revised CoC included various stakeholders, with voting shares allocated accordingly. It is stated that even though Mr. Sambit Sahoo's claim was marked as belated and not admitted, he was included as a cancelled allottee in CoC with a voting share of 0.94%. Similarly, Mr. Kishore Rajendran's name appeared under claims not admitted due to cancelled bookings. In the 8th CoC meeting held on 01.12.2023, the RP informed Members of further reconstitution of CoC based on additional documentation and rectified discrepancies in earlier claim admissions. Therefore, the earlier rejected claims of both Mr. Kishore Rajendran & Mr. Sambit Sahoo were being surreptitiously admitted, allowing them to participate in the CoC despite their previous cancellations and delays in claims.

- 2.3.** Further, the RP acknowledged in the meeting Minutes that the claims of Mr. Kishore Rajendran and M/s. Integrated Cargo & Carrier were submitted after the deadline specified in the public announcement and after the Request for Resolution Plans was published. As per Regulation 13(1B) of the CIRP Regulations, 2016, the RP was required to present these belated claims before the CoC for recommendation and seek condonation of delay from this Tribunal. However, no such resolution was passed to accept these claims, nor did the RP file for condonation; therefore their inclusion in the CoC is illegal. This violation continued in the 9th CoC meeting held on 22.12.2024, where additional belated claims were admitted without following the requisite procedures. Also, even before both the prerequisites were fulfilled, RP has reconstituted the CoC and filed Application for reconstitution of CoC on 18.12.2023 even before the CoC could approve/recommend such claims. Therefore, the RP has blatantly violated Regulation 13(1B). In the same CoC



meeting, the RP created a new class of FCs called "Allottees–Cancelled," despite objections from suspended Director Mr. Koshy regarding the legality of their claims. However, the RP dismissed these objections by claiming that the claims were verified based on the CD's records. When homebuyers raised this issue in the 10th CoC meeting, RP stated that no transfer of land has taken place and that he has included them to *“facilitate a successful resolution of the CD which will benefit both, the Homebuyers and landowners.”* Therefore, the RP has admitted their inclusion despite legal precedent that excludes them from the CoC.

2.4. Challenging the RP's actions, the homebuyers filed an application on 26.01.2024. In the meanwhile, RP in the 11th CoC meeting held on 20.02.2024, has announced about the removal of landowners from the CoC; which is only after the homebuyers sought intervention from this Tribunal. However, the inclusion of landowners since the 6th CoC meeting had already compromised the CIRP process, as they had participated in voting on significant issues and accessed all Resolution Plans. Moreover, the Process Advisor appointed by the RP has advised landowners that they could enter separate Agreements with RAs to support Resolution Plans with varied terms, thus undermining the confidentiality of CIRP and encouraging independent agreements outside its scope, which is beyond the RP's statutory duties. Further, it is averred that the landowners are barred u/s 24 of IBC as they are not FCs, and no resolution has been passed by the CoC to permit them to participate in the meeting.

2.5. During the 12th CoC meeting held on 29.02.2024, homebuyers raised concerns about speculative investors classified as “cancelled allottees”, arguing that there is no provision in the Code to create a separate class of FCs for those who have received refunds. Once an allotment is cancelled, the individuals cease to be allottees/homebuyers, and stated that their claims for refunds are disputed and not crystallized. Despite these objections, the RP dismissed them without proper justification, stating that anyone aggrieved by the inclusion of cancelled allottees must approach this Tribunal. This lackadaisical response further highlights the RP's failure to address the homebuyers' valid concerns



regarding the improper classification and inclusion of non-qualifying creditors in the CoC.

- 2.6.** During the 13th CoC meeting held on 05.03.2024, the Process Advisor stated that resolution plans would be shared with *“all the FCs and landowners immediately”*, despite of the settled law indicating that landowners cannot be classified as financial or operational creditors. Since the land given for joint development is protected u/s 14(1)(d) of the Code, landowners had no right to participate in the CoC meetings or access the resolution plans. Upon homebuyers objected to the presence of landowners, the RP directed them to leave the meeting. However, when homebuyers questioned the breach of confidentiality, the RP removed the authorized representative Applicant No. 4, who has been authorised by all the other homebuyers, from the meeting. Additionally, one of the RAs, M/s. Worldfa Exports Pvt. Ltd., entered into a Memorandum of Understanding (MoU) with the landowners, which is noted in the Minutes, while a representative of the landowners shared a comparative chart of resolution plans with homebuyers on 03.03.2024. In the said meeting, the voting results showed that all resolution plans were rejected, with only M/s. India ARC approving the resolution plan of Mr. Vijay K. Oswal alongside a decision for liquidation.
- 2.7.** It is alleged that RP could not have conducted the 16th CoC as the same was illegal since 330-day period had ended without the RP seeking any extension. However, the RP has not taken the requisite steps to seek for an extension, resulting in the liquidation of the Corporate Debtor. The CD did not secure HDFC’s consent, and thus the transaction relied upon by India ARC is illegal and void. Additionally, both the CD and VDB were loss-making at the time of the loan, and the CD could not be a co-obligant as it has not received consideration in return. This jeopardized the CD's solvency and risked other creditors. The RP’s failure to seek avoidance of this fraudulent transaction suggests collusion with India ARC and a dereliction of his duties.
- 2.8.** The RP has permitted offset of refunds against advances received, compromising recoveries and resulting in losses for the CD. Hon’ble



Supreme Court in *Bharti Airtel Ltd. v. Vijaykumar V. Iyer*, ruled that creditors cannot claim set-off during CIRP. Despite homebuyers' objections, the RP signed off on this offset instead of taking necessary steps to recover the amounts owed. The aforesaid actions of the RP constitute a dereliction of duty, leading to a vitiated CIRP due to improper CoC constitution and incorrect claim admissions. Homebuyers have already filed complaints against the RP with the IBBI, which is pending adjudication. Hence this Application to change the existing RP and appoint Mr. Ratnakar Shetty as the new Resolution Professional.

3. The Respondent No.1 *i.e.* the RP has filed objections dated 21.06.2024 by *inter alia* contending as under:

- 3.1.** The CD failed to deliver apartments to Home Buyers even after 9 years from the promised date. In spite of this, the CIRP was initiated by one of the Lender but not by the Home Buyers. The RP made significant efforts to revive the project, and following the publication of Form G, 14 Expressions of Interest (EOIs) were received, resulting in 4 Resolution Applications and 3 eligible Resolution Plans put to vote. However, the Home Buyers rejected all the Plans on the ground that they intend to submit their own Plan, however, they never provided any Plan to the CoC or the AA. The RP constituted the CoC based on claims received up to the second meeting.
- 3.2.** The project is governed by a Joint Development Agreement (JDA) dated 24.03.2011 and a supplementary JDA executed on 06.04.2011, which stipulates a 60:40 space-sharing arrangement between the developer and landowners. It is clear that any Resolution Applicant must adhere to the terms of the JDA, and any modifications to the space-sharing arrangement require negotiations with the landowners. The landowners submitted their claims as Financial Creditors to the RP *vide* claim forms dated 25.08.2023. To ensure that any Resolution Plan approved by the CoC is viable and binding on the landowners, their claims were accepted, and were accordingly incorporated as Members of the CoC.
- 3.3.** The CD reportedly cancelled bookings for some Home Buyers and issued partial refunds; however, as the balances remained outstanding,



the claims of these Home Buyers were accepted. At the time of initiation of CIRP, substantial amounts were owed to them, and the CD's actions cannot negate their status as Home Buyers. Mr. Sambit Sahoo initially submitted a claim for Rs. 80.00 lakhs, which was later amended to include an omitted home loan amount, resulting in a total claim of Rs. 2,79,25,384/-. This claim was supported by relevant documentation and presented at the 7th CoC meeting, where it was approved for inclusion in the list of creditors. Additionally, Mr. Kishore Rejendaran's claims concerning Flat No. 1605 and Integrated Cargo & Courier Solutions were initially not admitted as they were received after the stipulated deadline. These claims were later considered acceptable and therefore presented at the 8th CoC meeting, where they were also duly approved.

- 3.4.** In accordance with Regulation 13(1B) of the CIRP Regulations, 2016, claims received after the stipulated period but before seven days prior to the creditors' meeting were verified by the RP and categorized as acceptable, which includes the aforesaid claims. The RP filed IA No. 266 of 2024 u/s 60(5) of IBC seeking to take on record a revised claims list as of 15.02.2024. The delay in claim submissions was condoned *vide* Order dated 28.05.2024 and the revised list of creditors was taken on record, and therefore there has been no irregularity. The suspended Director lacks locus standi to object Home Buyers' claims as he failed to provide any justification or for showing continued liability in the CD's books of accounts. Further, he has not contested the Sale and Construction Agreements presented by the Claimants, which substantiate their claims. Therefore, his objections seem to obstruct the resolution process and deny Home Buyers' status, despite the CD's cancellation of their bookings without justification. The removal of landowners from CoC was at the insistence of Home Buyers, who recognized the necessity of obtaining No Objection Certificates for Resolution Plans. However, the demand for removal undermined the implementation of any resolution plan.
- 3.5.** One of the Home Buyers, claiming to represent others, called for the removal of speculative investors categorized as cancelled Home Buyers



but failed to substantiate allegation. The suspended Director supported Home Buyers but failed to clarify as to why they were recorded as creditors in the CD's accounts. Additionally, there is no proof that cancellations were communicated or registered with RERA. Many cancelled flats were re-allotted to new buyers, with payments collected but not refunded it to the original claimants. As the landowners were deemed crucial to the resolution process they were invited to 11th CoC meeting to facilitate discussions regarding a MOU and NOCs with the Resolution Applicants (RAs) and to ensure that the plans submitted would also align with the landowners' interests, so as to prevent post-approval disputes. However, due to objections from Home Buyers, the landowners were asked to leave the meeting. The Applicant No.4 was removed for repeatedly disrupting the proceedings, but not for questioning the RP, and another Home Buyer invitee was also asked to leave. The Home Buyers were continued to be represented by Authorised Representative in the meeting. Post-meeting, the landowners were barred from attending subsequent CoC meetings, limiting the RP's involvement in sharing resolution plan details with them. Notably, the Home Buyers had insisted on the landowners' consent being vital for any successful resolution. Further, any communication of the resolution plan details to the landowners was initiated independently by the landowners, without the RP's knowledge.

- 3.6.** The Home Buyers are pushing for re-voting on a Plan from a disqualified applicant, despite it being less favourable and the CFO having prior dealings with the CD related to a security Agreement executed on 31.03.2023, following a court settlement. As per amended Regulations, the voting window can be open for 24 hours to 7 days, extendable in 24-hour increments at creditors' requests. The Resolution Plans, including those from Worldfa and three other RAs, were put to vote in the 13th CoC meeting on 05.03.2024, and none received the requisite votes. In the 14th CoC meeting held on 11.03.2024 where in it was decided to re-vote on Mr. Vijay Oswal's plan, which had received the highest votes. Following requests from Home Buyers, the 15th CoC meeting on 12.03.2024 allowed M/s. Annectos Reward & Retail Pvt.



Ltd. another chance to cure deficiencies. However, information about Annectos being declared NPA by lenders made their application ineligible, and they could not substantiate their claims. Consequently, the decision reverted to Mr. Oswal's plan alone for re-voting as per IBC provisions. Further, the Tie Break Formula was explained in the 14th and 15th CoC meetings, but Worldfa, being an RA, was unaware of these discussions as Minutes were circulated only to CoC Members. Post 15th meeting of the CoC, the voting on resolution commenced on 18.03.2024 and concluded on 23.03.2024. Since all actions taken by the RP were in line with the IBC, it is contended that the concerns raised by Worldfa are without merit.

- 3.7.** The RP's actions regarding the reconstitution of the CoC was in accordance with the duty to collate and admit fresh claims as they were received, and have been duly notified to the AA. Additionally, all Home allottees, including those with cancelled allotments, were treated as Home Buyers under a common Authorised Representative. Despite being categorized as "Cancelled allottees" in the CD's records, their claims were admitted based on payable amounts during the CIRP, and their votes contributed to the Home Buyers' total voting share of 57.72%. The RP denies any errors in the Information Memorandum (IM) regarding the land owner's share, stating that a JDA was executed on 24.03.2011, later amended on 06.04.2011, thus changing the sharing ratio to 40% for land owners and 60% for developers. These agreements do not require registration as they permit development without transferring property. The developer has consistently acknowledged the land owners' share of 40% in JDA, and the same is reflected in the IM.
- 3.8.** As regards the averment that RP has permitted RAs to enter into independent Agreements with landowners outside CIRP, it is stated that during the CIRP, land owners submitted claims based on their JDA share, which were initially admitted to ensure their participation in the resolution process. However, they were later removed from the CoC due to objections from Home Buyers. During discussion with the RAs, it is observed that offers made to land owners in resolution applications did not align with the JDA's space-sharing terms. The RP suggested the



RAs to negotiate with land owners for necessary agreements. The Home Buyers' opposition, particularly from Respondent No. 4, has hindered the practical solution suggested by the RP and contributed to the lack of viable resolution plans, leading to recommendations for liquidation. As regards the extension of CIRP, it is averred that the RP obtained two extensions of the CIRP period, totalling 330 days, which ended on 12.03.2024. Although the RP initially proposed a 15-day extension for voting on resolution plans, in view that all four resolution plans were rejected, it is stated that RP has no reasons / justification to move for further extension. Further, it is stated that CoC members have raised various issues during meetings, to which the RP has duly responded. Despite this, Respondent No. 4 frequently sent emails to the RP reiterating the questions that were already addressed in the meetings.

3.9. As regards the 'Cancelled Allottees', RP stated that mere contention of the CD to have cancelled their bookings without refunding the entire amount paid by such allottees to the CD is not a ground for denying inclusion under 'Financial Creditor in the class of Home Buyers'. As such, including the Home Buyers whose allotments have been reportedly cancelled by the CD, is well within the provisions of the Code. It is also stated that no query regarding speculative creditor was raised during the 12th CoC meeting. As regards the breach of confidentiality, it is averred that as accepted by the Petitioners, it was informed in the 12th CoC meeting that the resolution plans will be shared with the land owners. However, no objection was raised in this meeting which was attended by the Petitioner No.4 as an invitee. On 29.02.2024, the RP opened and discussed 4 resolution plans with stakeholders, including FCs, home buyers, and land owners, and shared a comparative chart of the plans afterwards. The RP did not circulate details of the Plans to any of the RAs.

3.10. Further, during 14th CoC meeting, the AR informed the Home Buyers' request for a 60-day CIRP extension. However, since only one resolution plan was eligible for re-voting, the RP opined that seeking such an extension will not be within the provisions of the Code and may not be acceptable. Other FCs opposed the extension, preferring not to incur



further costs. RP also clarified that there was no CoC resolution existed to seek further extension, and that routine extensions are not granted. During the 11th CoC meeting, the Authorised Representative informed that the Home Buyers vide a mail have demanded to cancel / annul all the four resolution plans received till date and present their own plan to the CoC. However, the Home Buyers did not have any plan to offer and did not file any application before this AA. Despite having access to all resolution plans, Home Buyers, led by Petitioner No. 4, were derailing the process and rejected all Plans while insisting on re-voting on the rejected plan of an RA who had been found to be ineligible as per provisions of Section 29A of the Code. As the CoC had rejected all the RAs at the far end of CIRP period, the RP has no other alternative under the Code but to recommend for Liquidation.

- 3.11.** The suspended Director challenged the order of admission of CP by filing Company Appeal (AT) (CH) (Ins.) No. 167 of 2023. In the said Appeal, the Director confirmed that a Facility Agreement was established between the Original Lender and three borrowers, including the CD, for a loan of Rs. 25.2 Crores. This acknowledgment shows that the CD's liability to India Resurgence ARC Pvt. Ltd. is as a borrower, but not a guarantor or co-obligant of another category, and thus Section 186 of the Companies Act is not applicable. The NCLT has previously examined and dismissed violations of Section 186 as arguments to avoid CIRP in cases of established default, as decided in *Indiabulls Commercial Credit Ltd. vs. Koshika Bioscience Pvt. Ltd.* and *Shri Prem Prakash Bansal vs. IDBI Bank Limited*. Section 186 cannot be used by CDs to evade responsibility or resist insolvency when facing financial debt. Furthermore, the claim that the borrower failed to obtain NOC/consent from HDFC does not render the loan from India Resurgence ARC illegal or void, and it is only an argument against the FC's legitimate claim. As the provisions of Sec.186 is not applicable in this case, the RP did not find it necessary to file any application for bringing the loan sanctioned by India Resurgence ARC under an avoidance transaction or fraudulent transaction.



- 3.12.** The Petitioner's claim that RP has allowed refunds to be offset against advances from home buyers is denied and stated that no offsets were occurred during the moratorium period. Some home buyers' bookings were cancelled by the CD, which has led to partial refunds, but not the full amount. Thus, outstanding amounts owed to these buyers, as of the CIRP date, reflect these partial refunds. All transactions, including refunds, occurred before the CIRP initiation and were recorded in the CD's books. The Hon'ble NCLAT and Hon'ble Supreme Court's rulings, including *Bharti Airtel vs. Vijaykumar V. Iyer*, clarify that set-off rights during the moratorium are not recognized under the IBC, with specific exceptions, which do not apply here since all transactions are occurred prior to the CIRP.
- 4.** The Respondent No.2 i.e. M/s. India Resurgence ARC filed its Objections dated 20.08.2024 by *inter alia* contending as follows:
- 4.1.** Religare Finvest Ltd. extended a loan of Rs. 25.2 crore to the CD – Principal Borrower, VDB Whitefield Development Pvt. Ltd., and Co-borrower Koshy Varghese under a Facility Agreement dt.28.02.2015. The loan, secured by an equitable mortgage on immovable properties, was to be repaid in 21 months, with interest at 16.75% for the first six months and EMIs of Rs. 1.87 crore for the remaining period. However, the CD failed to make timely payments, and the loan account was declared NPA on 31.07.2016. By 31.08.2021, Rs. 19.29 crore was outstanding. India Resurgence ARC, having acquired the loan under an Assignment Agreement dt.05.11.2019, initiated insolvency proceedings in CP (IB) No.135/BB/2021, which was admitted, and R-1 herein was appointed as RP. R-1 accepted the FC's (R-2) claim based on the Loan Sanction letter, Facility Agreement, Loan Statement, and Assignment Agreement.
- 4.2.** The Applicants, being individual Home Buyers, lack the locus standi to file this Application to challenge the admission of claims by the FC (R-2) by the RP. Regulation 16A (5) of the IBBI CIRP Regulations, 2016, prohibits even Home Buyers' representatives from challenging the RP's decision on the admission of claims. It is alleged that the present application has been filed in collusion with suspended Directors of the



CD with an intention to protract the litigation by raising un-tenable grounds. Further, the claim that the RP failed to conduct due diligence and improperly admitted the claims of R-2 is denied. The Applicants also allege that the loan transaction of R-2 violated Section 186 of the Companies Act, 2013, for not obtaining HDFC's consent. However, Section 186(11)(iii) provides an exception for NBFCs like Religare Finvest Ltd., which is registered with the RBI and engaged in lending activities. Therefore, Section 186 does not apply, and thus R-2's claim was lawfully accepted.

- 4.3.** The RP had examined the accounts of the Original Lender M/s. Religare Finvest Ltd. for the period between 28.02.2015 till 31.10.2020 i.e. from the first disbursement of loan till the date of assignment to R-2 and from 01.11.2020 till 17.04.2023 as maintained by the R-2 and has collected and accepted the claim of the R-2 herein after being fully satisfied with the same. Thus, there is neither any irregularity nor illegality in the said process warranting interference of this Tribunal at this stage.
- 5.** During the hearing held on 22.08.2024, Ld. Counsel appearing for the R-3 stated that he does not want to file response to the instant application as no relief was sought against them.
- 6.** The Applicants-Homebuyers have filed written submissions dated 11.09.2024 by reiterating the averments made in the Application have further submitted that it is settled law that this Tribunal has the authority to replace the RP without invoking Section 27 of IBC if misconduct is proven, and the same has been affirmed by the Hon'ble NCLAT in cases such as "*Stressed Assets Stabilization Fund vs. Piyush Periwal*" and "*Katra Realtors Pvt. Ltd. v. Rajesh Ramnani*". Hon'ble NCLAT also stated in "*Sirgopal Choudhary RP of Shree Ram Urban Infrastructure Ltd. v. SREI Equipment Finance Ltd.*" that the AA can remove the RP particularly in a situation where the RP had not taken any steps to convene a meeting of the CoC for the purposes of removal of RP. In this case, the RP has committed multiple illegalities, and therefore this Tribunal can replace the RP without needing to meet the requirements of Section 27 of IBC.



7. The Respondent No.1 – RP has filed written submissions *vide* Diary No.5060 dated 29.08.2024 by, *inter alia*, adding the following :

- 7.1.** The Applicants, being minor fraction of homebuyers, have no locus to seek an extension since the majority has already voted to reject all Resolution Plans, and thus binding u/s 25(3)(a) of IBC. Additionally, the claim of R-2 as a FC has been upheld by the NCLT and NCLAT, and thus cannot be challenged again, especially with pending IA No. 786 of 2023 filed by suspended management on similar grounds. Further, the CD's unilateral cancellation of flat allotments does not affect the homebuyers' status in the CoC, as they are considered FCs u/s 21(2) of IBC. The Supreme Court in *Vishal Chelani & Ors v. Debashis Nanda* confirmed no distinction among financial creditors. The NCLAT in *KV Developers* in Company Appeal (AT) (Ins.) No.390 of 2022 ruled that the RP must collate claims where payments are recorded, thus homebuyers retain their CoC status until fully refunded.
- 7.2.** Regulation 13(1B) & (1C) of CIRP Regulations, 2016 allows acceptance of belated claims before the AA for condonation of delay, up to seven days before the creditors' meeting. The RP considered the claims, and the CoC was reconstituted. The condonation of delay was approved by this Tribunal *vide* orders passed in IA No. 266 of 2024 and it cannot be questioned. The land belongs to the third party i.e. the landowner and as per the JDA, 43 of 108 flats were allotted to the landowner by the CD, hence classified them as Financial Creditors as allottee. The Homebuyers in the 11th CoC proposed a resolution that any resolution plan submitted by RAs without NOCs from the landowner shall be annulled since without consent of landowner, the existing Agreements cannot be implemented. The Hon'ble Supreme Court in *Greater NOIDA Industrial Development Authority vs. Prabhjit Singh Soni & Anr.*, in Civil Appeal Nos.7590-7591 of 2023, emphasized that plans involving third-party land must be closely examined for feasibility. Consequently, landowners of the VDB project were included in the CoC of CD to ensure compliance with these requirements. However, following the objections from homebuyers & legal opinions sought on 30.01.2024, landowners were removed from the CoC, as noted in the reconstitution report filed



vide IA No.60 of 2024. It is further stated that actions taken by the RP in good faith cannot be deemed misconduct u/s 233 of the IBC. In this regard, he has relied on the decision of Hon'ble Apex Court in *Zunjarrao Bhikaji Nagarkar v. Union of India*. Hence, the landowners' participation in CoC meeting was in line with the Supreme Court's directive regarding third-party land use.

- 7.3.** Further, the Applicants, holding only 12.06% of the voting shares in a creditor class of 57.06%, cannot challenge the CoC decision. The Hon'ble Supreme Court in *Jaypee Kensington Boulevard Apartments Welfare Association* (Civil Appeal No. 3395 of 2020), upheld "drag along" or "sail along" provisions in the Code. Moreover, u/s 27 of the IBC, the CoC can replace a RP during the CIRP by a 66% vote. It is asserted that the RP has conducted the CIRP in fair and reasonable manner. The Tribunal has duly granted extensions for a period of 90 days and 60 days respectively. A proposed 15-day extension was rejected by the CoC during the 14th meeting; hence no application was submitted. Additionally, CoC meetings continued beyond 330 days as permitted u/s 23 of the IBC and CIRP Regulation 18(2), with the 16th meeting held to discuss Home Buyers' requests. Since no resolution plans were approved within 330 days, the RP is bound to file for liquidation. Hence, there were no violations of CIRP Regulations, including the voting window extension done as per proviso to CIRP Regulation 25(5)(b).
- 7.4.** The loan from M/s. Religare, taken over by M/s. India Resurgence ARC Pvt. Ltd., was issued on 28.02.2005, over seven years before the CIRP. The RP believes this transaction does not qualify as an avoidance transaction under the law. Further, the RP engaged M/s. SGNZ & Co. for due diligence on the RAs. Following their report on 28.10.2023, only qualified RAs were allowed to participate. M/s. Annectos Plan was not put for voting on identifying Section 29A violation. Pursuance to this, EMD has been forfeited as per Regulation 39 of CIRP Regulations 2016. Also, the Plan of Mr. Oswal was again put for voting in compliance of proviso to CIRP Regulation 39(3B), as it received highest vote. Since all the Plans were rejected by the CoC and extension of CIRP period agenda also was rejected by CoC, the RP filed the liquidation I.A.



- 7.5.** Following the liquidation application filed on 30.04.2024, Mr. Vijay K. Oswal submitted a revised Resolution Plan with an enhanced offer. To explore revival possibilities, IA No. 595 of 2024 was filed, seeking a one-time extension of 90 days with a request to keep the liquidation I.A. in abeyance. In this regard, reliance is placed upon the decision of Hon'ble Apex Court in *CoC of Essar Steel India Ltd. through Authorised Signatory v. Satish Kumar Gupta & Ors.* (Civil Appeal No.8766-67 of 2019).
- 7.6.** It is therefore asserted that no provisions of the IBC have been violated at any point during the CIRP and also no purpose would be served for blaming the RP, as it is the CoC who has rejected all the Plans put before them, that too when the landowners were not even part of the CoC, and thus prays that actions of RP be protected by making a reference to Section 233 of the Code.
- 8.** Heard the Ld. Sr. Counsel appearing for the Applicants and Ld. Counsels for the Respondents and perused the pleadings on record.
- 9.** In the light of pleadings of the Parties as briefly stated supra, the following issues arise for our consideration in this Application:
- 1) Whether the Applicants have any locus standi to question all actions of the RP in conducting CIRP of the CD?**
 - 2) Whether the RP has violated any provisions of Code and the Rules made thereunder as alleged by the Applicants?**
 - 3) What is the jurisdiction of the Tribunal and the object of Code?**
- 10.** So far as the first issue is concerned, as briefly stated supra, the Applicants have participated in the CIRP in question and raised several objections and those objections were also considered by the RP and rectified the mistakes by RP also. As stated by the RP, the Applicants are holding 12.06% of the voting shares in a creditor class of 57.06% and any decisions to be taken is by majority. The Applicants, by making so many untenable grounds are praying to change RP with their own RP and it cannot be sought by the Applicants under law. Moreover, u/s 27 of the IBC, the CoC can replace a RP during the CIRP by majority of 66% vote. The present Application is filed on 02.04.2024, when all the Resolution Plans received were duly considered and rejected and the statutory period of 330 days for completion of the CIRP in question was



expired on 12.03.2024. And the RP has made every effort to see a Resolution plan is accepted and thus another 14th CoC meeting was held on 11.03.2024, wherein, the earlier rejected Resolution Plan was put to vote to CoC. However, the CoC again rejected this proposal also, leaving no scope for resolution of Corporate Debtor and leading to initiate Liquidation process as per extant provisions of Law. Therefore, the RP has filed an Application bearing I.A. (Liq.) No.05 of 2024 on 16.04.2024, which is pending disposal on the file of this Tribunal. Another Application bearing I.A. No. 595 of 2024 was also filed by the RP on 09.07.2024 seeking extension of further time of 90 days to explore the possibilities of getting suitable Resolution Plan broadly acceptable to all claimants and the same is pending disposal. In addition to these I.As, there are about 10 I.A.s filed by different Parties for different reliefs which are also pending disposal. It is not the case here that all concerned Parties have not participated in the CIRP of the Corporate Debtor. The Applicants having actively participated in the CIRP cannot now question the proceedings of RP at penultimate stage that too on un-tenable and un-substantial grounds.

11. So far as the second issue is concerned, the record of the Tribunal has disclosed that the RP has filed several IAs by putting all his actions on the record and also placed on record constitution / re-constitution of the CoC and due permissions were also taken from the Tribunal. It is also to be noted that several allegations made by the Applicants like constitution / re-constitution of CoC, adding and deleting some Parties after raising objections etc., are already placed on record. The Applicants cannot question the actions taken by the RP and taken by the Tribunal at this penultimate stage. The RP has satisfactorily answered various allegations made by the Applicants. As the Tribunal is having summary jurisdiction over the issues arising out of insolvency proceedings, it cannot enter into roving enquiry for minute allegations made by the Applicants like the Hon'ble Civil Court, where a comprehensive enquiry is possible. And if every minute allegations are to be entertained and investigated by the Tribunal, CIRP proceedings cannot be concluded in the prescribed statutory period. However, the Tribunal is broadly supposed to examine principles of natural justice while examining various issues raised by Parties. Therefore, the prayer of the Applicants to replace the RP with their suggested RP is not only un-tenable under law and it is also un-



substantiated by them for taking such course of action and which serves no purpose.

12. So far as the third issue is concerned, as stated supra, the AA is only having summary jurisdiction over the issues and substantial issues will be decided by the Authorities like RP / Investigator, etc., who will be nominated by the Tribunal. And the Tribunal will examine the issues come before it, if any fundamental violations have taken place prejudicing the interest of any Party/ Parties. While examining those issues, the Tribunal should keep in mind the statutory limitation period and the object of the Code. It is true that Resolution of Corporate Debtor is ultimate object of the Code and is also the primary duty that has been cast upon the Tribunal. And to achieve this object, the Tribunal can exercise its discretionary powers and its wisdom. It is settled law that even when the Corporate Debtor is placed under the Liquidation process, the Tribunal should make every effort/facilitate to revive it rather than to liquidate the Corporate Debtor.
13. For the aforesaid reasons and circumstances of the case and the settled position of law on the issue, we are of considered view that the Applicants are not entitled for the relief as sought for. However, since the statutory period of 330 days to conclude CIRP in question was over as early as on 12.03.2024, pending IAs especially I.A.No.05 of 2024 seeking to initiate liquidation process and another I.A. No. 595 of 2024 filed by RP seeking further extension of time beyond 330 days will be considered by this Tribunal in accordance with law.
14. In the result, **I.A. No.401 of 2024 in CP (IB) No.135/BB/2021 is hereby dismissed** and the Registry is directed to list the above IAs for hearing and disposal within two weeks from today.

Sd/-

MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

jsr

Sd/-

K. BISWAL
MEMBER (JUDICIAL)