

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 40 of 2024

(Arising out of Order dated 30.10.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench in I.A. No.5253 of 2023 in CP No. (IB)-593(PB)/2018)

IN THE MATTER OF:

Praveen Arya & Ors.

...Appellants

Versus

Anju Aggarwal
(RP of Corporate Debtor) & Anr.

...Respondents

Present:

For Appellants : Mr. Gaurav Gupta, Ms. Nidhi Yadav, Advocates.

For Respondents : Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra, Advocates for RP.

With

Company Appeal (AT) (Insolvency) No.45 of 2024

&

Interlocutory Application No.140 of 2024

(Arising out of Order dated 05.10.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench in I.A. No.5253 of 2023 in CP (IB) No.593(PB) of 2018)

IN THE MATTER OF:

Praveen Arya & Ors.

...Appellants

Versus

Anju Aggarwal
(RP of Corporate Debtor) & Anr.

...Respondents

Present:

For Appellants : Mr. Gaurav Gupta, Ms. Nidhi Yadav, Advocates

For Respondents : Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra, Advocates for RP.

Mr. P. Nagesh, Sr. Advocate with Mr. Rishabh Jain, Advocate for SRA.

With
Comp. App. (AT) (Ins) No. 61 of 2024
&
I.A. No. 190 of 2024

(Arising out of Order dated 30.10.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench in I.A. No.3524 of 2020 in CP (IB) No.593(PB) of 2018)

IN THE MATTER OF:

Nupur Garg

...Appellant

Versus

M/s IP Constructions Pvt. Ltd.

(Through Resolution Professional) & Anr.

...Respondents

Present:

For Appellant : Mr. Gaurav Mitra, Ms. Aishwarya Modi Seth, Mr. Jasmeet Singh and Mr. Pushpendra S. Bhadoriya, Mr. Vijay Sharma, Advocates.

For Respondent : Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra, Advocates for RP.

Mr. P. Nagesh, Sr. Advocate with Mr. Rishabh Jain, Advocate for SRA.

J U D G M E N T

ASHOK BHUSHAN, J.

These three Appeal(s) arise of Corporate Insolvency Resolution Process (“**CIRP**”) of the same Corporate Debtor – M/s IP Construction Pvt. Ltd. The Appellant(s) in these Appeal(s) are commercial space buyer, who were allotted commercial spaces in a Project ‘Coral Brio’. Company Appeal (AT) (Ins.) No.40 of 2024 has been filed by the Appellant challenging order dated 30.10.2023 passed by National Company Law Tribunal, New Delhi Principal Bench in Company Petition No.(IB)-593(PB)/2018, by which order Resolution Plan submitted by Mr. Manish Kumar Bansal, Mr. Rajesh Gupta and Mr. Mukesh Chand Tyagi, consortium of individuals has been

approved. Company Appeal (AT) (Ins.) No.40 of 2024 has been filed challenging the order approving the Resolution Plan.

2. Company Appeal (AT) (Ins.) No.45 of 2024 has been filed by the same Appellants, who have filed Company Appeal (AT) (Ins.) No.40 of 2024 challenging the order of the NCLT dated 05.10.2023 passed in IA No.5253 of 2023 in C.P. (IB) No. 593 (PB) of 2018. By the impugned order dated 05.10.2023, IA No.5253 of 2023 filed by the Appellants has been disposed of, observing that IA has been filed belatedly and the matter has already been progressed at the stage of being reserved for orders.

3. Company Appeal (AT) (Ins.) No.61 of 2024 has been filed by another commercial space buyer challenging order dated 30.10.2023 passed by Adjudicating Authority in IA No.3524 of 2020 in C.P.(IB) No.593 (PB) of 2018. By IA No.3524 of 2020, the Appellant - Nupur Garg has prayed for direction to exclude commercial space SF-05 from the Resolution Plan and seeking a direction for execution and registration of Sale Deed in favour of the Applicant in respect of commercial space/ office No.SF-05. By the impugned order dated 30.10.2023, the IA was disposed of by the Adjudicating Authority noticing that Applicant being a dissenting Financial Creditor, is entitled to the minimum liquidation value. Successful Resolution Applicant (“**SRA**”) is willing to provide 100% of the principal amount or alternative option as stated in the Resolution Plan for all the commercial space buyers. Application was dismissed with the above observations.

4. All the Appeal(s) having arisen out of similar facts and circumstances, have been heard together and are being decided by this common judgment.

5. Background facts necessary to be noticed for deciding the Appeal(s) are:

- (i) The Corporate Debtor – M/s IP Construction Pvt. Ltd., a real estate company, involved in development of Project. The Corporate Debtor (“**CD**”) has issued an allotment letter dated 04.07.2012 in favour of Appellant in Company Appeal (AT) (Ins.) Nos.40 and 45 of 2024, allotting the office spaces Nos.GF-08, GF-09 and GF-10 on the ground floor, each admeasuring 47.93 sq. mt. in the Project Coral Brio situated at C5, Sector-18, Vasundhara, Ghaziabad.
- (ii) Similarly, the Appellant in Company Appeal (AT) (Ins.) No.61 of 2024 was allotted Commercial space/ office Nos. SF-02, SF-03 and F-05 vide allotment letter dated 31.03.2013. On 07.05.2014, Nupur Garg issued a letter to the CD requesting cancellation of commercial spaces/ Office Nos. SF-02 and SF-03 and sought refund of the booking amount. The Appellant Nupur Garg also claimed that on 24.12.2014, Lease Deed was executed between Nupur Garg and the CD regarding the Office Space SF-05 with effect from 01.01.2015 for a period of nine years on lease rent.

- (iii) The CIRP against the Corporate Debtor commenced on an application filed under Section 7 by the Union Bank of India. The Adjudicating Authority vide order dated 11.01.2019 initiated the CIRP by admitting Section 7 application. On 15.01.2019, the IRP made public announcement.
- (iv) The Appellant(s) in Company Appeal (AT) (Ins.) Nos.40 and 45 of 2024, filed their claims on 02.12.2019. The Appellant in Company Appeal (AT) (Ins.) No.61 of 2024 filed its claim on 14.02.2019. The Appellant – Nupur Garg again submitted a consolidated Form CA on 05.03.2019. The RP verified the claim of Appellant and has issued a List of Financial Creditors in the class of Commercial Space Buyer, which included the name of the Appellants of Company Appeal (AT) (Ins.) No.40 of 2024 at Sl. No.21 and Appellant – Nupur Garg at Sl. No.17, admitting their claims.
- (v) In the CIRP of the Corporate Debtor, Resolution Plan was submitted by individual of consortium. The Committee of Creditors (“**CoC**”) on 16.01.2020/ 30.10.2020 approved the Resolution Plan with 87.49% vote shares. The Resolution Plan offers payment of 50% of the principal amount to the class of commercial space buyers and in alternate permitted them to opt for equivalent commercial space at alternate places on rates as mentioned in the Resolution Plan. The RP

immediately filed an application being IA No.1642 of 2020 praying for approval of the Resolution Plan.

- (vi) The Appellant – Nupur Garg filed an IA being 3524 of 2020 praying for various directions including exclusion of commercial space/ office No. SF-05 from the Resolution Plan and seeking direction to execute a Sale Deed.
- (vii) The Appellant of Company Appeal (AT) (Ins.) No.40 of 2024 also filed an application – IA No.212 of 2022 and 765 of 2022, which were withdrawn. An IA No.4369 of 2022 was filed by Appellant of Company Appeal (AT) (Ins.) No.40 of 2024, seeking direction to execute the Sale Deed in favour of commercial space allotted to the Appellant and with respect to other issues pertaining to the claim. IA No.4369 of 2022 was listed on several occasion and on 30.08.2023 was dismissed for non-prosecution. An IA No.5253 of 2023 was filed by the Appellant on 22.09.2023 praying for restoration of IA No.4369 of 2022. By an order dated 05.10.2023, IA No.5253 of 2023 was disposed of by the Adjudicating Authority As noted above, Company Appeal (AT) (Ins.) No.45 of 2024 has been filed, challenging the order dated 05.10.2023, rejecting IA No.5253 of 2023 and Company Appeal (AT) (Ins.) No.40 of 2024 has been filed challenging order dated 30.10.2023, approving the Resolution Plan.

(viii) The Appellant – Nupur Garg has filed Company Appeal (AT) (Ins.) No.61 of 2024 challenging the order dated 30.10.2023 passed in IA No.3524 of 2020.

6. Learned Counsel for the Appellants in Company Appeal (AT) (Ins.) Nos.40 and 45 of 2024 submits that the Appellants being commercial space buyers, who had paid substantial amount to the CD, were entitled for execution of Sale Deed for commercial spaces. In the Resolution Plan the claim of the Appellants for execution of the Deed has not been accepted and there were initial proposed only 50% of principal amount in the Resolution Plan. The commercial spaces, which were allotted to the Appellants are commercial spaces, which are owned by the Appellants and the Appellants were also handed over the possession of the commercial spaces on 15.10.2017. The Appellants were required to pay the balance amount on receipt of the completion certificate. Certain other commercial space buyers have filed ***Company Appeal (AT) (Ins.) No.350 of 2020 – Alok Sharma vs. M/s IP Construction Pvt. Ltd.***, where this Tribunal has directed for execution of Sale Deed in favour of commercial space buyers, after collecting dues and costs. It is submitted that case of the Appellant is fully covered by the above judgment of this Tribunal. It is submitted that the Appellants were entitled for commercial spaces, which were allotted to them and the offer made in the Resolution Plan is not acceptable. Alternate commercial spaces, which are provided in the Plan are on very high rate.

7. Learned Counsel appearing for the Appellant – Nupur Garg in support of the Appeal contends that the Appellant has paid the

consideration for allotment. The Appellant having been allotted commercial space, with regard to which, Lease Deed was also executed by the CD and the Appellant was also entitled for the rent. The Lease Deed have been executed in favour of the Appellant only on the premise that the Appellant is owner of the commercial space. The Corporate Debtor has always accepted his liability to pay the agreed rent for the commercial space SF-05, but has not made provision of the rent in books of accounts, on account of grave fund crisis. The Resolution Plan does not accept the claim of the Appellant that Appellant is the owner of the commercial space and the said space being SF-05, ought to have been excluded from the Resolution Plan. The Appellant was entitled for execution and registration of Sale Deed. The Resolution Plan, ought to have been amended to include the rental dues. The case of the Appellant is also covered by the judgment of this Tribunal in **Alok Sharma's** case.

8. Learned Counsel appearing for the RP refuting the submissions of the Appellant(s), submit that the Appellants are commercial space buyers, whose claims as Financial Creditor of a class, i.e., commercial space buyers, were admitted in CIRP of the CD. List of creditors was issued, including the admitted claim of both the Appellant(s). It is submitted that Appellants in Company Appeal (AT) (Ins.) No.40 of 2024 have voting share of 0.81%, whereas Appellant – Nupur Garg has voting share of 0.88%. Both the Appellant(s) have voted against the Resolution Plan in the 13th CoC meeting held on 16.01.2020. The Appellant(s) being dissenting Financial Creditor have no right to challenge the Resolution Plan. The Plan having

been approved by majority by 87.49% vote shares, it is submitted that Appellant(s) cannot claim the ownership over the commercial space allotted to them. They were only allottees of the commercial space by the CD and the ownership of the assets continued with the CD. The fact that both the Appellant(s) in their application seeking direction to execute the Sale Deed in their favour, itself proves that Appellant(s) are not the owner of the premises. The Resolution Plan having been approved by majority by 87.49%, the Plan is binding on all stake holders of the CD, including the Appellant(s). The Appellant(s) as dissenting Financial Creditors were entitled to the liquidation value as per Section 30, sub-section (2). It is submitted that IA, which was filed by the Appellant of Company Appeal (AT) (Ins.) No.45 of 2024, being IA No.4369 of 2022 was listed for 11 times, but it was never pressed or decided. No one appeared to press the application, hence, it was rejected on 05.10.2023. The prayer of the Appellant to restore the IA was rightly been rejected, since Plan approval application was also heard and reserved on 05.10.2023. It is submitted that the claim of the Appellant of Company Appeal (AT) (Ins.) No.40 of 2024 having been admitted, they are entitled for their claims as per the Resolution Plan. They have no right to challenge the approval of Resolution Plan. The Appeal(s) filed by the Appellant(s) deserve to be dismissed.

9. Learned Counsel for the SRA opposing the submissions of learned Counsel for the Appellant(s) submits that the Appellant(s) being dissenting Financial Creditors are entitled only for the liquidation value as per Section 30, sub-section (2). The liquidation value of both the Appellant(s) are 'zero',

however, the SRA has proposed to pay the Appellant 100% of principal amount of claim admitted in the CIRP. The SRA has also deposited the substantial amount before the Monitoring Committee and Appellant(s) are free to get release of their principal amount from the Monitoring Committee. It is submitted that SRA has submitted its Plan for Hotel, which has guest rooms, suits, halls and restaurants etc. The SRA is taking over a Company, which own, run and manage a hotel. Except the three allottees, who were Appellants in Company Appeal (AT) (Ins.) No.45 of 2024, rest of five allottees of ground floors, have accepted the Adjudicating Authority order of refund of 100% principal by not filing any appeal. The approval of the Plan by CoC with 87.49% by majority, is binding on all concerned. The Appellant(s) are also bound by the Resolution Plan. The prayer of the Appellant – Nupur Garg that assets be excluded from the Resolution Plan, cannot be accepted. Nupur Garg and other Appellants cannot claim ownership of the commercial spaces. The ownership still lies with the CD, since no Deed of Title has been executed in favour of the Appellant(s). The judgment of this Tribunal in **Alok Sharma**'s case (supra) was with respect to only those Appellant(s), who were party to the Appeal and that benefit cannot be claimed by the Appellant(s) in the present Appeal(s). The Appellants' claim in the CIRP having been admitted and their claim having been dealt in the Resolution Plan, they are entitled to receive the amount as per the Resolution Plan. The allotment letter or lease for rental does not transfer any ownership right in favour of the Appellant(s).

10. We have heard learned Counsel for the parties and have perused the records.

11. From the submissions of learned Counsel for the parties and materials on record, following questions arise for consideration in these Appeal(s):

- (I) Whether the units allotted to commercial space buyers (the Appellant(s) herein), required to be excluded from the assets of the Corporate Debtor?
- (II) Whether the Appellant(s) on the basis of allotment of commercial spaces by the CD, by virtue of Lease Deed dated 24.12.2014 in respect to Appellant – Nupur Garg, the Appellant(s) are owners of the units allotted to them?
- (III) Whether the Appellant(s) being dissenting Financial Creditors, entitled for the amount as per Section 30, sub-section (2)(b)?
- (IV) Whether the Appellant(s) had made sufficient grounds to interfere with the order dated 30.10.2023 passed by the Adjudicating Authority, approving the Resolution Plan submitting by the SRA?
- (V) Whether rejection of IA 3524 of 2020, filed by the Appellant of Company Appeal (AT) (Ins.) No.61 of 2024 and the rejection of IA No.4369 of 2022 and 5253 of 2023 filed by the Appellant(s) of Company Appeal (AT) (Ins.) No.45 of 2024 deserve to be interfered with?

Question Nos.(I) and (II)

12. Both the questions being interconnected are being taken together.

13. It is an admitted fact that Corporate Debtor has allotted commercial space to the Appellants of Company Appeal (AT) (Ins.) Nos.40 and 45 of 2024 on 04.07.2012 as GF-08, GF-09 and GF-10 on the ground floor, each measuring 47.93 sq. mt. in the Project Coral Brio. Similarly, SF-05, SF-2 and SF-3 on second floor have been allotted to Nupur Garg, Appellant in Company Appeal (AT) (Ins.) No.61 of 2024 vide allotment letter dated 31.03.2013. The Appellant – Nupur Garg has also claimed execution of Lease Deed in her favour dated 24.12.2014 for a period of nine years with effect from 01.01.2015, where the CD undertook to pay monthly rent of Rs.41,250/- per month for first 36 months and monthly rent of Rs.47,438/- with effect from 01.01.2018. It is further claimed by the Appellant – Nupur Garg that after commencement of the CIRP on 11.01.2019, the rent upto June 2019 was paid and the Appellant in IA No.3524 of 2020 has prayed the direction to pay monthly lease rent with effect from July 2019. The allotment letter and Lease Deed executed in favour of the Appellant is an unregistered document. The transfer of title is contemplated by registered documents. It is well settled that allotment which is a contract between parties at best lead to as specific performance of contract. However, the allotment itself does not transfer any title in favour of the Appellant(s). The fact that title do not vest with the Appellant(s) is fully established from the prayers made in the IAs, which were filed by the Appellant(s) before the Adjudicating Authority, seeking

directions to the CD through RP to execute a Sale Deed in favour of the Appellant(s). The prayer by the Appellant(s) to execute a Sale Deed in their favour, itself recognize that the title do not vest with the Appellant(s). The law with regard to conveying a title is well settled. We may refer to the judgment of the Hon'ble Supreme Court in **(1977) 3 SCC 247 – Narandas Karsondas vs. S.A. Kamtam and Anr.**, wherein following has been laid down:

“A contract of sale does not itself create any interest in, or charge on, the property. This is expressly declared in s. 54 of the Transfer of Property Act. See Rambaran Prasad v. Ram Mohit Hazra & Ors. The fiduciary character of the personal obligation created by a contract for sale is recognized in section 3 of the Specific Relief Act, 1963 and in section 91 of the Trusts Act. The personal obligation created by a contract of sale is described in section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to , an interest or easement therein.”

14. Another judgment, which need reference is judgment of the Hon'ble Supreme Court in **Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana & Ors. – AIR 2012 206**, wherein in paragraphs 18 and 19, following have been laid down:

“18. *It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.*

19. *Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor*

transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter.”

15. The Hon’ble Supreme Court had occasion to consider a homebuyer’s project in **Jaypee Kensington Boulevard Apartment Welfare Association & ors. Vs. NBCC (India) Ltd. & Ors. – (2022) 1 SCC 401**, where Hon’ble Supreme Court has held that Resolution Plan has to comprehensively deals with all the assets and liabilities of the Corporate Debtor and no housing project could be segregated for the reason that the same has been completed or is nearing completion. In paragraph 226, the Hon’ble Supreme Court laid down following:

“226. For what has been discussed above, we hold that the homebuyers as a class having assented to the resolution plan of NBCC, any individual homebuyer or any association of homebuyers cannot maintain a challenge to the resolution plan and cannot be treated as a dissenting financial creditor or an aggrieved person; the question of violation of the provisions of the Real Estate (Regulation and Development) Act, 2016 does not arise; the resolution plan in question is not violative of the mandatory requirements of the CIRP Regulations; and when the resolution plan comprehensively deals with all the assets and liabilities of the corporate debtor, no housing project could be segregated merely for the reason that the same has been completed or is nearing completion.”

16. The learned Counsel for the Appellant has also relied on the judgment of this Tribunal in **Company Appeal (AT) (Ins.) No.350 of 2020 – Alok Sharma vs. M/s IP Construction Pvt. Ltd.** It is contended that

this Tribunal has set aside the order of NCLT dismissing CA No. 2265 (PB)/2019 in CP (IB) No.593(PB)/2018 filed by similarly placed commercial space buyers, which Appeal was also filed by a commercial space buyer, where this Tribunal has allowed the Appeal and directed for execution of Sale Deed in their favour. Learned Counsel for the Appellant has relied on directions issued by this Appellate Tribunal in the aforesaid Appeal. Reliance has been placed in directions (m), where this Tribunal directed following:

“m. Hence, in view of the above observations, this ‘Appellate Tribunal’ is not in a position to sustain the order of the ‘Adjudicating Authority’ and accordingly, this ‘Tribunal’ sets aside the impugned order dated 16.01.2020, dismissing CA No.2265/(PB)/2019 in CP(IB) 593 of 2018 and directs the ‘Resolution Professional’ to execute the sale deed after collecting ‘Dues and Costs’, if any, remaining unpaid, including the ‘Costs of Registration’, ‘Penalty’ and ‘other incidental Costs’, till date, etc.

The instant ‘Appeal’ is allowed with the above observations. Pending application, if any, stands disposed of. Interim order, if any, passed by this ‘Tribunal’ stands vacated.

No order as to costs.”

17. The above direction, which was issued by this Appellate Tribunal was with respect to 12 spaces of commercial space buyers, who had filed the Appeal and who had filed the CA giving rise to the Appeal. In the above case, this Tribunal observed that “*Hence, we are unable to sustain the views of Respondent/ RP that these houses registration will violate ‘Moratorium’ under Section 14 of the Code*”. After taking the aforesaid view, the direction

was issued to execute the Sale Deed after collecting dues and costs. The above order has to confine to the Appellant, who had filed the Appeal. The above order at best can be held to lay down ratio that moratorium under Section 14, does not prohibit execution of Sale Deed, but the said judgment itself cannot be held to declare that unit allottees are the owners of units allotted to them.

18. We, thus, are of the view that by virtue of allotment of commercial space in favour of the Appellant(s), including the Lease Deed dated 24.12.2014 in favour of Nupur Garg, the Appellant(s) cannot claim to have become owners of the commercial spaces. The CD continues to own the assets and the plea of the Appellant(s) that assets be excluded from CIRP of the CD, or the Appellant(s) are owners of the commercial space/ units allotted to them, cannot be accepted. We answer both the questions accordingly.

Question Nos.(III) & (IV)

19. From the facts, which have been brought on record, it is clear that both of the Appellant(s), i.e. Company Appeal (AT) (Ins.) No.40 of 2024 and Company Appeal (AT) (Ins.) No.61 of 2024 are the allottees of commercial spaces. They have respective voting shares. Nupur Garg has voting share of 0.88% and Appellant in Company Appeal (AT) (Ins.) No.40 of 2024 has voting shares of 0.81%. All commercial space buyers collectively have voting shares of 12.51%. In paragraph 2.2 of the impugned order, the Adjudicating Authority has noted the particulars of creditors, including the voting shares. Paragraph 2.2 of the impugned order is as follows:

Particulars	Number of Claims	Claim Received (Rs.)	Claim Admitted (Rs.)	Voting Share%
Secured Financial Creditor- Union Bank of India	1	43,69,66,133.85	43,69,66,133.85	44.20
Unsecured Financial Creditor- Baba Agribuild Private Limited	1	4,47,97,500	4,47,97,500	4.43
Financial Creditors- In case of Commercial Space Buyers	20	13,52,31,482.84	11,39,06,557.83	12.51
Financial Creditors- In class of Service Apartment	40	21,15,42,755.82	19,47,73,637.88	18.28
Financial Creditors- In class of Secured Service Apartment	47	24,72,64,384	17,83,86,354	20.58
Total	109	1,07,58,02,256.51	96,78,30,183.56	100

20. The Financial Creditors in class of commercial space buyers, who collectively have 12.51% vote share have voted against the Plan. In paragraph 3.10 of the impugned order, the Adjudicating Authority has noted vote shares and the manner of voting by each creditor. Paragraph 3.10 is as follows:

“3.10. Therefore, the resolution Plan of Manish Bansal (Group of individuals) was approved with 87.49% of voting share and the voting was as follows:

Particulars	Voting Share%	Voting for resolution plan
Secured Financial Creditor- Union Bank of India	44.20	Voted For
Unsecured Financial Creditor- Baba Agribuild Private Limited	4.43	Voted For

Financial Creditors- In case of Commercial Space Buyers	12.51	Dissented
Financial Creditors- In class of Service Apartment	18.28	Voted For
Financial Creditors- In class of Secured Service Apartment	20.58	Voted For
Total	100	

21. A perusal of result of voting on Resolution Plan, indicate that Financial Creditors in case of commercial space buyers have dissented. The Appellant(s) are also part of Financial Creditors in class of commercial space buyers. Financial Creditors being a dissenting Financial Creditors are entitled as per Section 30, sub-section (2) sub-clause (b), which is as follows:

“30(2)(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

- (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
- (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

- (i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;
- (ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or
- (iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;”

22. The above provision indicate that amount to be paid to the Financial Creditors, who do not vote in favour of the Resolution Plan shall not be less than the amount to be paid to such creditors in accordance with subsection (1) of Section 53 in event of a liquidation of the Corporate Debtor. When we look into the total plan value offered by SRA and compare with the amount, which is admitted with regard to Financial Creditors – secured and unsecured, the liquidation value of the unsecured Financial Creditors in a class of commercial space buyers is ‘zero’. In the Resolution Plan, which was submitted by SRA, the SRA has offered to pay 50% of the principal amount to the Financial Creditors in case of commercial space buyers. The Adjudicating Authority, however, in the impugned order has noted the revised proposal given by SRA on 04.10.2023, offering 100%

refund of the principal amount and alternative proposal for commercial space buyers was also given in the Resolution Plan by the Resolution Applicant. In paragraph 11.4 of the impugned order, the Adjudicating Authority has noted the offer of the SRA paying 100% of admitted amount within 90 days or an alternate option provided to opt for commercial space project. Paragraph 11.4 of the judgment is as follows:

“11.4. Further the revised treatment in the Resolution Plan for the all commercial space buyers is given by the SRA in which they will be paid 100% of their admitted amount within 90 days or an alternative option is also provided to opt for commercial space possession with registered sale deed in terms of new offer rate and adjustment of 100% of the paid principal.”

23. Alternate option for commercial space buyers has also been extracted by Adjudicating Authority, in paragraph 4.4, which is part of the Resolution Plan. Paragraph 4.4 of the impugned order is as follows:

“Alternate option for commercial space buyer:

Alternative option for commercial space buyer			
Possession with registered sale deed			
New Tariff & Offer Rate (Per sq. ft. of super area)			
Floor	New Tariff General	Defer Rate for Commercial Allottees	Adjustment of Money Already Paid
Ground	18,000	16,000	100% of the principal amount paid shall be adjusted against total value of commercial space opted.
First	14,000	12,000	
Second	11,000	9,000	
Offer Conditionality:			
1) Offer includes relocation of existing space within the option of available space.			

- 2) No guarantee to continue with the existing space. Kindly check for new model plan for commercial space. So far as it shall be possible & commercially feasible, existing space may also be offered.
- 3) Old Agreement/ Offer/ Possession Letter shall stand cancelled on NCLT approval date.

24. Thus, as per Resolution Plan and the order passed by the Adjudicating Authority, the commercial space buyer are entitled for 100% of their principal amount with alternate option for commercial space buyers. Thus, as per the Resolution Plan, the Appellant(s) are entitled either to opt for 100% refund of the principal amount within 90 days or to opt for an alternate option for commercial space, which is part of Resolution Plan. Thus, we are of the view that the Appellant(s) under Section 30, sub-section (2)(b) were entitled for only liquidation value, which according to the Resolution Plan is 'zero'. However, the SRA having offered 100% refund of the principal amount with alternative proposal for commercial space, the entitlement of Appellant(s) as per the Resolution Plan is of 100% refund of the principal amount or the option for alternate commercial space.

25. The law with regard to interference with the commercial wisdom of the CoC approving the Resolution Plan is well settled. The limited ground on which the Adjudicating Authority or the Appellate Tribunal can interfere with the approval of the Resolution Plan is only to examine as to whether the Resolution Plan is in compliance of Section 30, sub-section (2) of the IBC. The present is not a case that Appellant(s) have pleaded or proved any ground that Resolution Plan is in violation of provisions of Section 30, sub-section (2) (b). We have already found that payment offered to the

Appellant(s) in the Resolution Plan, does not violate the provisions of Section 30, sub-section (2) (b). We, thus, do not find any ground to interfere with the order dated 30.10.2023 passed by Adjudicating Authority approving the Resolution Plan. The question is answered accordingly.

Question No.(V)

26. Now, we come to IA No.3524 of 2020, which was filed by Nupur Garg, Appellant in Company Appeal (AT) (Ins.) No.61 of 2024. The prayers, which were made in the application have been quoted by the Adjudicating Authority in paragraph 11 of the order, which are as follows:

“11. IA 3524/2020

1. The Applicant namely, Nupur Garg being one of the commercial space buyers has sought the following reliefs in the present Application :-
 - i. Pass appropriate directions to exclude commercial space/office No. SF-05 from the Resolution Plan that has been approved by the CoC on 30.01.20 by relying on the incorrect information memorandum prepared by the Resolution Professional.
 - ii. Pass appropriate directions for execution and registration of sale Deed in favour of the Applicant in respect of commercial space/office No. SF-05.
 - iii. Pass appropriate directions to suitably modify the approved claim of the Applicant to include outstanding rent amount which became accrued and due of Rs. 20,69,552/- as the principal/basic amount of the claim.
 - iv. Pass appropriate directions for payment of legitimate outstanding rental dues starting from July 2019 till date, cumulatively amounting to Rs. 6,64,132/- (Six Lakhs Sixty-

Four Thousand One hundred and thirty-two) along with interest @ 18 p.a compounded quarterly on the unpaid rent, on account of lease of commercial space/office No. SF-05 to the Corporate Debtor by the Applicant.

- v. Pass appropriate directions to take action remedial measure against the RP, including initiation of disciplinary action, if any, as deemed fit.
- vi. Any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of this case.”

27. In view of what we have held above, we are of the view that the prayer of the Appellant to exclude the commercial space from the Resolution Plan, could not have been accepted, nor any direction could have been issued for registration of Sale Deed. The claim, which was submitted by the Appellant was admitted in the CIRP. In the Appeal filed by Nupur Garg, at Annexure A-10, the list of financial creditors in the class of commercial space buyers has been annexed at page 175, which include the amount of claim submitted and amount of claim admitted by the RP. The name of Nupur Garg is at Sl. No.17, whereas name of Appellant in Company Appeal (AT) (Ins.) No.40 of 2024 are at Sl. No.21. The amount claimed and admitted with regard to the Appellant(s) in these Appeal(s) are as follows:

17	Nupur Garg	4,40 0,00. 00	43,66, 395.0 0	87,66,3 95.00	44,00, 000.0 0	43,12 ,516. 27	87,12, 516.27	0. 88 %	Service Tax Claimed as Principal not approved. Interest approved from may 15, 2014 from the agreed date of interest Rent and Interest on Rent is pending as the same is not reflecting in books.
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21	Ravi kant Dwivedi, Naresh Singh Yadav and Praveen Arya	57,8 1,46 0.00	26,73, 639.0 0	8,455,0 99,00	56,93, 704.0 0	23,57 ,873. 89	80,51,5 77.89	0.81 %	
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28. The Appellant - Nupur Garg has also pleaded that after commencement of the insolvency, she was paid rent upto June 2019 by the RP and hence, from the prayers made in the application IA No.3524 of 2020, it is clear that Appellant has prayed for payment of rent only with effect from July 2019. In the order passed by the Adjudicating Authority dated 30.10.2023 by which IA No.3524 of 2020 has been rejected, there is no consideration of the prayer No.(iv), as claimed in IA No.3524 of 2020. The claims, which were admitted pertained to the claim of the Appellant upto the date of commencement of the CIRP. There has been no consideration of the claim of the rent by the Appellant from July 2019, which was one of the prayers made in the application, we are of the view that ends of justice will be served in granting liberty to the Appellant – Nupur Garg to file an appropriate application for claim of rent subsequent to commencement of CIRP. It shall also be open for the Appellant to claim the said rent as CIRP cost. However, we are not expressing any concluded opinion for the said claim and it is for the Adjudicating Authority to consider and take appropriate decision.

29. We, thus upheld the order of the Adjudicating Authority passed in IA No.3524 of 2020, subject to liberty granted to the Appellant – Nupur Garg

to file fresh application with regard to prayer (iv), which has not been adverted to and decided in the impugned order.

30. Coming to the IA, which was filed by the Appellant in Company Appeal (AT) (Ins.) Nos.40 and 45 of 2024, is the Application, which was earlier filed being IA No.4369 of 2022. The Appellant has prayed for direction to execute the Sale Deed and certain issue with regard to claims. The claims of the Appellant has been admitted by RP, which is reflected in the List of Creditors as noted above. The claim of the Appellant, prior to CIRP, thus, become final. Although, IA No.4369 of 2022 was dismissed for non-prosecution and IA No.5253 of 2023 was dismissed on the ground that the matter has progressed too far. The RP in his reply to the Appeal has stated that IA No.4369 of 2022 was listed 11 times and IA No.5253 was listed 8 times. In any view of the matter, the application for recall of the order was not accepted by Adjudicating Authority on the ground that Plan approval has already been reserved.

31. We, thus, do not find any ground to interfere with the order dated 05.10.2023 passed by Adjudicating Authority in IA No. 5253 of 2023. More so, in view of our reasons and discussions and what was claimed by the Appellant in IA 4369 of 2022 has already been considered and for the reasons given above, no direction for execution of the Sale Deed in favour of the Appellants in Company Appeal (AT) (Ins.) No.40 of 2024 could be issued. We, thus, do not find any ground to interfere with the order dated 05.10.2023 passed by Adjudicating Authority in IA No.5253 of 2023.

32. In view of the above reasons and conclusions, we dispose of the Appeal(s) in following manner:

- (I) Company Appeal (AT) (Ins.) No.40 of 2024 is dismissed upholding the order dated 30.10.2023 passed by Adjudicating Authority approving the Resolution Plan.
- (II) Company Appeal (AT) (Ins.) No.45 of 2024 is dismissed.
- (III) Company Appeal (AT) (Ins.) No.61 of 2024 is disposed of upholding the order dated 30.10.2023 passed by Adjudicating Authority in IA No.3524 of 2020, subject to liberty granted to the Appellant – Nupur Garg to file fresh application before the Adjudicating Authority for prayer (iv) made in IA 3524 of 2020, i.e. claim of the Appellant for lease rent from July 2019.

All pending IAs, if any, are also disposed of. Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

21st November, 2024

Ashwani