

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 795 of 2024

&

I.A. No. 2872, 2873 of 2024

(Arising out of Order dated 05.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench I.A. No.2518/2021 in (IB)-923(PB)/2018)

IN THE MATTER OF:

SP Probuild LLP

... Appellant

Versus

Rabindra Kumar Mintri & Ors

... Respondents

Present:

For Appellants: Mr. Ramji Srinivasan, Sr. Advocate with Mr. Anirban Bhattacharya, Ms. Priyanka Bhatt, Ms. Honey Satpal, Ms. Vaishnavi Prakash, Ms. Ritika Prasad, Mr. Rajeev Chowdhary, Ms. Nandini Choudha and Ms. Namrata Sarogi, Advocates.

For Respondents: Mr. Sunil Fernandes, Ms. Anuja Pethia, Mr. Noor Shergill, Mr. Rishabh Govila and Ms. Diksha Dadu, Advocates for SRA.

Mr. Apoorv Agarwal and Ms. Akshita Singh,
Advocate for RP.

Mr. Rachit Mittal, Mr. Parish Mishra and Mr. Adarsh Srivastava, Advocate for R-2.

With

Company Appeal (AT) (Insolvency) No. 816 of 2024

&

I.A. No. 2952 of 2024

(Arising out of Order dated 05.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench I.A. No.2518/2021 in (IB)-923(PB)/2018)

IN THE MATTER OF:

Yashveer Singh

... Appellant

Versus

Rabindra Kumar Mintri & Ors

... Respondents

Present:

For Appellants: Mr. Arun Kathpalia, Sr. Advocate with Mr. Nipun Gautam, Ms. Udit Singh, Mr. Kshitij Wadhwa and Ms. Bani Brar, Advocates.

For Respondents: Mr. Sunil Fernandes, Ms. Anuja Pethia, Mr. Noor Shergill, Mr. Rishabh Govila and Ms. Diksha Daddu, Advocates for SRA.

Mr. Apoorv Agarwal and Ms. Akshita Singh, Advocate for RP.

Mr. Rachit Mittal, Mr. Parish Mishra and Mr. Adarsh Srivastava, Advocate for R-2.

With
Company Appeal (AT) (Insolvency) No. 817 of 2024
&
I.A. No. 2954 of 2024

(Arising out of Order dated 05.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Principal Bench I.A. No.2518/2021 in (IB)-923(PB)/2018)

IN THE MATTER OF:

Reena ... Appellant

Versus

Rabindra Kumar Mintri & Ors ... Respondents

Present:

For Appellants: Mr. Arun Kathpalia, Sr. Advocate with Mr. Nipun Gautam, Ms. Udit Singh, Mr. Kshitij Wadhwa and Ms. Bani Brar, Advocates.

For Respondents: Mr. Sunil Fernandes, Ms. Anuja Pethia, Mr. Noor Shergill, Mr. Rishabh Govila and Ms. Diksha Daddu, Advocates for SRA.

Mr. Apoorv Agarwal and Ms. Akshita Singh, Advocate for RP.

Mr. Rachit Mittal, Mr. Parish Mishra and Mr. Adarsh Srivastava, Advocate for R-2.

J U D G M E N T

ASHOK BHUSHAN, J.

These three Appeal(s) have been filed against the same order dated 05.03.2024 passed by National Company Law Tribunal, New Delhi, Principal Bench in IA No.2518/2021, IA No.3615/2022 and IA

No.4172/2022, by which order, all the aforesaid IAs were disposed of and with respect to other IAs, the Adjudicating Authority directed the same to be listed on 30.04.2024. Aggrieved by the order dated 05.03.2024, these Appeal(s) have been filed.

2. We may first notice the facts giving rise to these Appeal(s). Facts in Company Appeal (AT) (Insolvency) No. 795 of 2024 are noted first and facts in other two Appeal(s) shall be separately noticed:

Company Appeal (AT) (Insolvency) No. 795 of 2024

- (i) The Appellant claims to have paid consideration towards allotment of 50 flats in the Project of M/s Today Homes Noida Pvt. Ltd., i.e., 'Ridge Residency', Sector-135, Noida. The Appellant submits that he was given possession of 09 flats and rest 41 flats were reflected in the website of the Corporate Debtor, but the possession was not given.
- (ii) By order dated 20.08.2019 – M/s Today Homes Noida Pvt. Ltd. – the Corporate Debtor was admitted under insolvency. In the Corporate Insolvency Resolution Process ("**CIRP**") of the Corporate Debtor, Resolution Plan submitted by Consortium of One Group was approved by the Committee of Creditors ("**CoC**") on 03.03.2020 by 100% vote shares. The Resolution Professional ("**RP**") filed an IA No.2518/2021 under Section 30, sub-section (2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**IBC**")

- (iii) On 16.06.2022, the Appellant filed its claim before the Respondent No.1 (RP). On 24.03.2021, the RP rejected the claim of the Appellant informing that Resolution Plan approved by the CoC is pending approval before the Adjudicating Authority.
- (iv) The Appellant filed IA No.3213 of 2021 seeking various directions including the direction to consider the claim of the Appellant. IA No.3213/2021 was rejected by the Adjudicating Authority on 21.09.2021 observing that Application has become infructuous in view of the approval of the Resolution Plan by the CoC. The Appellant filed Company Appeal (AT) (Insolvency) No. 901 of 2021, challenging the order of Adjudicating Authority, which Company Appeal was also dismissed on 10.11.2021. Civil Appeal No.7907 of 2021 filed by the Appellant was also dismissed by Hon'ble Supreme Court on 12.01.2022.
- (v) This Tribunal delivered judgment in ***"Puneet "Puneet Kaur vs. KV Developers", CA (AT) (Ins) No. 390 of 2022"*** on 01.06.2022. On the strength of which judgment an IA No.3640 of 2022 was filed by the Appellant on 28.07.2022 before the Adjudicating Authority and the Adjudicating Authority vide order dated 30.11.2022 dismissed the IA 3640 of 2022. The Appellant filed Company Appeal (AT) (Insolvency) No. 1529 of 2024 before this Tribunal, which too was dismissed by order dated 04.07.2023. The Appellant thereafter preferred an

Appeal before the Hon'ble Supreme Court, being Civil Appeal No.4650 of 2023, which too was dismissed by Hon'ble Supreme Court on 21.08.2023.

- (vi) An IA No.4815/2023 was filed by the Appellant on 28.08.2023, objecting to the Resolution Plan filed by One Group.
- (vii) Noida Authority filed an IA No.3615 of 2022 praying that Resolution Plan submitted by One Group be rejected. Another IA No.4172 of 2022 was filed by Noida Authority seeking direction to RP to make payment of amount due and payable towards outstanding dues, which have become due during CIRP. The Adjudicating Authority heard IA No.2518 of 2021 filed by the RP for approval of Resolution Plan as well as above two IAs filed by Noida Authority and by a common order all the three IAs were disposed of. The Adjudicating Authority relied on the judgment of Hon'ble Supreme Court in **Civil Appeal Nos. 7590-7591/2023 - Greater Noida Industrial Development Authority Vs. Prabhjit Singh Soni & Ors.** Decided on 12.02.2024 and sent the Plan back to CoC for resubmission after satisfying the parameters set out by the Code in the light of the observations made by Hon'ble Supreme Court in paragraphs 54(b) and (c). By the same order, the Adjudicating Authority directed that other IAs, including the IA No.4815 of 2022 filed by the Appellant be listed on 30.04.2024.

- (viii) The Appellant aggrieved by the order dated 05.03.2024 has filed this Appeal.

Company Appeal (AT) (Insolvency) No. 816 of 2024

- (i) Company Appeal (AT) (Insolvency) No. 816 of 2024 has been filed by Yashveer Singh claiming to be allottee of Unit J-0606 in the Project developed by the Corporate Debtor. The Appellant claims that he has paid Rs.41,17,773/- to the Corporate Debtor with respect to the above unit. The Appellant filed its claim on 06.09.2023, which was rejected by the RP vide email dated 09.09.2023, observing that claim cannot be permitted on the ground of delay and approval of Resolution Plan by the CoC. The Appellant thereafter filed an IA No.5923 of 2023 before the Adjudicating Authority, seeking condonation of delay in filing the claim as well as seeking setting aside the Resolution Plan of One Group.
- (ii) While the IA No.5923 of 2023 was pending before the Adjudicating Authority for adjudication, the Adjudicating Authority passed order dated 05.03.2024 in IA No.2518 of 2021 remitting back the Plan to the CoC and the IA filed by the Appellant was directed to be listed on 30.04.2024.

Company Appeal (AT) (Insolvency) No. 817 of 2024

- (i) The Appellant – Reena claims to be allottee of Unit Bearing No.I-1406 and claimed to have paid an amount of Rs.32,11,234/-. The Appellant filed its claim on 11.08.2023

in Form-CA. Vide his email dated 09.09.2023, the RP expressed its inability to admit the claim. The Appellant filed IA No.4906 of 2023 before the Adjudicating Authority, seeking condonation of delay in filing the claim as well as setting aside the Resolution Plan of One Group. IA No.4906 of 2023 remained pending and was directed to be listed on 30.04.2024, whereas in IA No.2518 of 2021, the Adjudicating Authority passed order on 05.03.2024, which is challenged in the present Appeal.

3. We have heard Shri Ramji Srinivasan, learned Senior Counsel appearing for the Appellant in Company Appeal (AT) (Insolvency) Nos. 795 of 2024; Shri Arun Kathpalia, learned Senior Counsel appearing for the Appellant(s) in Company Appeal (AT) (Insolvency) Nos. 816 and 817 of 2024; Shri Sunil Fernandes, learned Counsel appearing for Successful Resolution Applicant (“**SRA**”); and Shri Appoorv Agarwal, learned Counsel for RP.

4. Shri Ramji Srinivasan, learned Senior Counsel in support of Company Appeal (AT) (Insolvency) Nos. 795 of 2024 submits that when the Resolution Plan, which was approved by the CoC on 03.03.2020 and the same has not been approved by the Adjudicating Authority and has been remitted back for resubmission, the Appellant’s claim which was earlier rejected on the ground that Resolution Plan has been approved by the CoC, can now be considered. It is submitted that the Appellant is now not reiterating its prayer raised in the earlier Applications, which stood rejected

upto the Hon'ble Supreme Court, but now is praying for consideration of his claim, since the approval of Resolution Plan by the CoC is no longer in existence and when the CoC is to resubmit the Resolution Plan, the claim of all those homebuyers, whose claims were not considered on the ground of approval of Resolution Plan by the CoC, can very well be considered. The impugned order dated 05.03.2024, gives an opportunity to the RP as well as SRA to consider the claim of the Appellant also, which is duly reflected in the records of the Corporate Debtor. The payments made by the Appellant has not been denied and earlier claim was not considered only on the ground that since CoC has already approved the Plan on 30.03.2020 before filing the claim by the Appellant. The status which was existing after approval of Resolution Plan on 03.03.2020, is no longer available due to the impugned order passed by the Adjudicating Authority on 05.03.2024, the Adjudicating Authority ought to have directed the consideration of claim of the Appellant also. It is submitted that IA, which was filed by the Appellant being IA No.4815 of 2023 is still pending and has been directed to be considered on 30.04.2024, whereas Adjudicating Authority ought to have considered the IA also.

5. Shri Arun Kathpalia, learned Senior Counsel appearing for the Appellant(s) in Company Appeal (AT) (Insolvency) Nos. 816 and 817 of 2024, submits that Appellant(s) have not filed any earlier proceeding and the only Application which have been filed by the Appellant(s) being IA Nos 5923 of 2023 and IA No.4906 of 2023, were the Applications filed by the Appellant(s) seeking direction to admit the claim, which Applications are still pending. In the fitness of things, the Adjudicating Authority ought to

have considered the said Applications and thereafter directed the CoC to resubmit the Plan. It is submitted that the claim of the Appellant(s) were rejected only on the ground that Resolution Plan has been approved by the CoC on 03.03.2020, which situation is no longer operating, in view of the order dated 05.03.2024. The approval of Resolution Plan by the CoC being no longer operates, there is no impediment in consideration of the claim of the Appellant(s), which is reflected in the records of the Corporate Debtor. The RP and SRA are bound to consider the claim of the Appellant(s) and consider the same in the Resolution Plan.

6. Shri Sunil Fernandes, learned Counsel appearing for SRA refuting the submissions of Shri Ramji Srinivasan, submits that claim of SP Probuild LLP - the Appellant has been rejected twice by the Adjudicating Authority, this Tribunal as well as by the Hon'ble Supreme Court. Thus, the Appellant has no right to claim consideration of its claim again in third round, when the same has been rejected twice. The principal of *res-judicata* prohibits the consideration of the claim of the Appellant. It is submitted that order dated 05.03.2024, which has been passed by the Adjudicating Authority, was in an Application filed by NOIDA and the direction issued by the Adjudicating Authority is only to the SRA to resubmit the Plan only with regard to claim of the NOIDA, which has been held as Secured Creditor by the Hon'ble Supreme Court in its judgment dated 12.02.2024 (*supra*). It is submitted that under the direction dated 05.03.2024, there is no occasion for RP or SRA to consider any other claim including the claim of the Appellant. The order dated 05.03.2024 cannot

give any opportunity to the Appellant to re-agitate its claim, which has been rejected.

7. Shri Sunil Fernandes, replying to the submissions of Shri Arun Kathpalia submits that order dated 05.03.2024 is not an opportunity for consideration of fresh claims by the RP or SRA. The Adjudicating Authority has not directed to restart the CIRP, rather, has directed only to resubmit the Plan after considering the claim of the NOIDA, which has been held to be Secured Creditor. No benefit of the order dated 05.03.2024 can be taken by these Appellant(s). It is submitted that the process in approval of Plan has already been delayed and consideration of any other claim at this stage is bound to further delay the finalization of Resolution Plan, which is not in the interest of the homebuyers, who are awaiting for their homes to be delivered.

8. Learned Counsel for the RP submits that RP shall comply any directions issued by this Tribunal in these Appeal(s).

9. We have considered the submissions of learned Counsel for the parties and have perused the records.

10. We need to first notice the contents of the order dated 05.03.2024 passed by the Adjudicating Authority, which is impugned in these Appeal(s). The order dated 05.03.2024, notices the prayers made in three IAs, i.e., IA No.2518 of 2021 filed by RP for approval of Resolution Plan, IA No.3615 of 2022 and IA No.4172 of 2022 filed by the NOIDA, which prayers are as follows:

“The prayer made in IA-2518/2021 which is filed by RP reads as follows:-

1. Approve the Resolution Plan submitted by One Group for the Corporate Debtor, Today Homes Noida Private Limited.
2. Pass any other appropriate orders this Adjudicating Authority may deem fit.

The prayer made in IA-3615/2022 which is filed by NOIDA reads as follows:-

- (a) Reject the resolution plan of Respondent No.02- SRA approved by the Committee of Creditors and filed by Respondent No.1 – Resolution Professional vide IA No.2518 of 2021;
- (b) Pass such other order / directions as this Hon’ble Bench may deem fit proper in the facts and circumstances of the case.

The prayer made in IA-4172/2022 which is filed by NOIDA reads as follows:-

- (a) Allow the present application;
- (b) Direct the Respondent- Resolution Professional to make the payment of amounts due and payable towards the outstanding dues which have become due during CIRP or in the alternative make them a part of the CIRP cost under Regulation 31(b) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for corporate persons) Regulations, 2016;
- (c) Pass such other order /directions as this Hon’ble Bench may deem fit and proper in the facts and circumstances of the case.”

11. The NOIDA in support of its claim has relied on the judgment of the Hon’ble Supreme Court passed in **Civil Appeal Nos. 7590-7591/2023 - Greater Noida Industrial Development Authority Vs. Prabhjit Singh**

Soni & Ors. decided on 12.02.2024, which has been noticed by the Adjudicating Authority and relevant extract have been reproduced in the judgment. The Civil Appeal Nos.7590-7591 of 2023 filed by Greater Noida Industrial Development Authority challenging the order of NCLAT, by which order, the Appeal of GNOIDA against the order of NCLT was dismissed. Noida Authority has filed two IAs before the Adjudicating Authority. In one of the IAs the prayer was made to recall the order dated 04.08.2020, by which the Adjudicating Authority approved the Resolution Plan. Another IA No.344 of 2021 filed where the Greater Noida has questioned the decision of the RP in treating the Greater Noida as Operational Creditor. The NCLT vide its order dated 05.04.2021, dismissed both the Applications filed by GNOIDA. Aggrieved by which order, Company Appeal (AT) (Insolvency) No.867 of 2021 was filed, which was dismissed by the NCLAT on 24.11.2022, leaving the Greater Noida Authority to file Civil Appeal Nos.7590-7591 of 2023. The Hon'ble Supreme Court allowed the Appeals filed by Greater Noida Authority vide its judgment dated 12.02.2024. Paragraphs 54 and 55, which are relevant in the present Appeal(s) are as follows:

“The Resolution Plan did not meet the requirements of Section 30 (2) of the IBC read with Regulations 37 and 38 of the CIRP Regulations, 2016

54. In our view the resolution plan did not meet the requirements of Section 30(2) of the IBC read with Regulations 37 and 38 of the CIRP Regulations, 2016 for the following reasons:

- a. The resolution plan disclosed that the appellant did not submit its claim, when the unrebutted case of the appellant

had been that it had submitted its claim with proof on 30.01.2020 for a sum of Rs.43,40,31,951/- No doubt, the record indicates that the appellant was advised to submit its claim in Form B (meant for operational creditor) in place of Form C (meant of financial creditor). But, assuming the appellant did not heed the advice, once the claim was submitted with proof, it could not have been overlooked merely because it was in a different Form. As already discussed above, in our view the Form in which a claim is to be submitted is directory. What is necessary is that the claim must have support from proof. Here, the resolution plan fails not only in acknowledging the claim made but also in mentioning the correct figure of the amount due and payable. According to the resolution plan, the amount outstanding was Rs. 13,47,40,819/- whereas, according to the appellant, the amount due and for which claim was made was Rs. 43,40,31,951/- This omission or error, as the case may be, in our view, materially affected the resolution plan as it was a vital information on which there ought to have been application of mind. Withholding the information adversely affected the interest of the appellant because, firstly, it affected its right of being served notice of the meeting of the COC, available under Section 24 (3) (c) of the IBC to an operational creditor with aggregate dues of not less than ten percent of the debt and, secondly, in the proposed plan, outlay for the appellant got reduced, being a percentage of the dues payable. In our view, for the reasons above, the resolution plan stood vitiated. However, neither NCLT nor NCLAT addressed itself on the aforesaid aspects which render their orders vulnerable and amenable to judicial review.

- b. The resolution plan did not specifically place the appellant in the category of a secured creditor even though, by virtue of Section 13-A of the 1976 Act, in respect of the amount payable to it, a charge was created on the assets of the CD. As per Regulation 37 of the CIRP Regulations 2016, a resolution plan must provide for the measures, as may be

necessary, for insolvency resolution of the CD for maximization of value of its assets, including, but not limited to, satisfaction or modification of any security interest. Further, as per Explanation 1, distribution under clause (b) of sub-section (2) of Section 30 must be fair and equitable to each class of creditors. Nonplacement of the appellant in the class of secured creditors did affect its interest. However, neither NCLT nor NCLAT noticed this anomaly in the plan, which vitiates their order.

- c. Under Regulation 38 (3) of the CIRP Regulations, 2016, a resolution plan must, inter alia, demonstrate that (a) it is feasible and viable; and (b) it has provisions for approvals required and the time-line for the same. In the instant case, the plan conceived utilisation of land owned by the appellant. Ordinarily, feasibility and viability of a plan are economic decisions best left to the commercial wisdom of the COC. However, where the plan envisages use of land not owned by the CD but by a third party, such as the appellant, which is a statutory body, bound by its own rules and regulations having statutory flavour, there has to be a closer examination of the plan's feasibility. Here, on the part of the CD there were defaults in payment of instalments which, allegedly, resulted in raising of demand and issuance of pre-cancellation notice. In these circumstances, whether the resolution plan envisages necessary approvals of the statutory authority is an important aspect on which feasibility of the plan depends. Unfortunately, the order of approval does not envisage such approvals. But neither NCLT nor NCLAT dealt with those aspects.

Relief

55. As we have found that neither NCLT nor NCLAT while deciding the application / appeal of the appellant took note of the fact that,- (a) the appellant had not been served notice of the meeting of the COC; (b) the entire proceedings up to the stage of approval of the resolution plan were ex parte to the appellant; (c) the appellant had

submitted its claim, and was a secured creditor by operation of law, yet the resolution plan projected the appellant as one who did not submit its claim; and (d) the resolution plan did not meet all the parameters laid down in sub-section (2) of Section 30 of the IBC read with Regulations 37 and 38 of the CIRP Regulations, 2016, we are of the considered view that the appeals of the appellant are entitled to be allowed and are accordingly allowed. The impugned order dated 24.11.2022 is set aside. The order dated 04.08.2020 passed by the NCLT approving the resolution plan is set aside. The resolution plan shall be sent back to the COC for re-submission after satisfying the parameters set out by the Code as expounded above. There shall be no order as to costs”

12. The Hon’ble Supreme Court took the view that Resolution Plan, which was submitted, did not meet the requirement of Section 30, sub-section (2) read with Regulations 37 and 38 of CIRP Regulations, 2016. It was also observed by the Hon’ble Supreme Court that Greater Noida Authority was a Secured Creditor in view of Section 13A of UP Industrial Development Act, 1976 and the claim of Greater Noida Authority was not considered as Secured Creditor. Hence, the Plan does not meet the requirements of law. The Adjudicating Authority in its order has also extracted paragraphs 54 and 55 of the judgment and after extracting the aforesaid two paragraphs, has issued following directions in its order dated 05.03.2024:

“In the instant case, we are concerned with para nos. **54 (b) and (c)** which relates to placing the Appellant in the category of secured creditors and for ensuring that the plan envisages necessary approvals of the statutory authority.

In the light of the relief granted by the Hon’ble Supreme Court enunciated in **para 55 above**, we deem it appropriate to send the plan back to the CoC for resubmission after satisfying the

parameters set out by the Code, in the light of the observations of the Hon'ble Supreme Court's order (para 54 b & c. supra).

Accordingly, IA-2518/2021, IA-3615/2022 and IA-4172/2022 stands disposed of in above terms.

IA-2059/2023 IA595/2021, IA-966/2021, IA-4024/2021, IA-4182/2023, IA-2691/2023, IA-2979/2023, IA-2088/2023, IA-3078/2023, IA4177/2023, IA4533/2023, IA-4711/2023, IA-3401/2023, IA3790/2023, IA3963/2023, IA-4242/2023, IA-4815/2023, RA-62/2023, IA-4879/2023, IA-4906/2023, IA-5106/2023, IA-5107/2023, IA5487/2023, IA5837/2023, IA-5923/2023, IA-6268/2023 & IA-685/2024

List all the these IAs on **30.04.2024.**"

13. Following the judgment of the Hon'ble Supreme Court, the Adjudicating Authority found it appropriate to send the Plan back to CoC for resubmission after satisfying the parameters set out by the Code, in the light of the observations of the Hon'ble Supreme Court in paragraph 54 (b) and (c). One of the consequences of the order dated 05.03.2024 of the Adjudicating Authority is that the Resolution Plan approved by the CoC dated 03.03.2020 is no longer in existence. Use of expression "**to send the plan back to CoC for resubmission after satisfying parameters set out by the Code**" clearly indicate that Resolution Plan has to be resubmitted by the SRA to the CoC. The submission, which is much pressed by Shri Sunil Fernandes, learned Counsel for SRA is that direction issued by the Adjudicating Authority vide order dated 05.03.2024 cannot give any benefit to the present Appellant(s), since the directions are only qua the NOIDA with respect to their IA Nos.3615 and 4172 of 2022 and the SRA is only obliged to consider the claim of NOIDA as Secured Creditor and resubmit the Plan. Considering the NOIDA as Secured Creditor and the direction of

the Adjudicating Authority, cannot be read to mean that SRA has to consider any other claims while resubmitting the Plan. No exception can be taken to the submissions advanced by learned Counsel for the SRA that order dated 05.03.2024 oblige the SRA, only to consider the claim of Greater Noida Authority as Secured Creditor.

14. The submissions of the Appellant(s) on the other hand that by virtue of the order passed on 05.03.2024, refusing to approve the Resolution Plan approved by the CoC, the CoC can now consider the claim of the Appellant(s), which were not considered, only due to the reason that claims were filed subsequent to approval of Plan by the CoC on 03.03.2020. It is submitted that the approval of Resolution Plan by the CoC on 03.03.2020 being no longer operating, there is no impediment on consideration of claims of those homebuyers, which are reflected in the records of the Corporate Debtor. We have noticed that Appellant – SP Probuild LLP has filed IA No.4815 of 2023 and other two Appellants have filed their IA Nos.5923 and 4906 of 2023. The Applications filed by the Appellant(s) in Company Appeal (AT) (Insolvency) Nos.816 and 817 of 2024 were Applications where prayer for acceptance of their claim, which was rejected on the ground that Plan has been approved, were made. It is useful to notice the email of RP, by which claim filed by the Appellant – Yashveer Singh and Reena was rejected. In the email dated 09.09.2023 addressed to Yashveer Singh, following was stated:

Dear Ma'am,

This is in reference to your trailing mail, the Insolvency Proceeding against Today Homes Noida Private Limited (Corporate Debtor) was

initiated vide Hon'ble National Company Law Tribunal order dated 19th August, 2019, and the Resolution Plan of the same was approved by the Committee of Creditor in the month of March 2020.

However, as per Regulation 12 and the powers vested in me vide the Insolvency and Bankruptcy Code, 2016, I regrettably inform you that your claim is time-barred as the Resolution Plan has been filed with the Adjudicating Authority. I would thus request you to approach the Hon'ble National Company Law Tribunal to find an efficacious remedy.

If the Adjudicating Authority permits your claim, I shall be obliged to honor the same. Till then, I have no remedy to offer to you. Thank you for reaching out to us!

Best regards

Rabindra Kumar Mintri

Resolution Professional | Today Homes Noida Private Limited”

15. We have also noticed that by the same order dated 05.03.2024, the Applications, i.e., IA Nos.4815, 5923 and 4906 of 2023 have been directed to be listed on 30.04.2024. The said Applications are still pending for consideration.

16. Although, various submissions have been raised by the Appellant(s) and Respondents in support of their respective claims, we are of the view that in view of the pendency of the Applications of the Appellant(s) before the Adjudicating Authority, which are yet to be adjudicated, we do not find it necessary at this stage to enter into submission or express any opinion on merits. We are of the view that approval of Resolution Plan by the CoC on 03.03.2020 being no more in operation and the SRA has to resubmit the Resolution Plan, as per direction of the Adjudicating Authority dated

05.03.2024 and has to include the claim of NOIDA as Secured Creditor with respect to other Applications, which are pending consideration, it is appropriate that resubmission of the Plan by SRA should await the disposal of those Applications. Applications, including Applications for acceptance of the claim, which although are belated claims, it is for the Adjudicating Authority to consider the Applications and take a decision as to whether the said claims have to be included or not.

17. The learned Counsel for the Appellant has also referred and relied on the judgment of this Tribunal in ***“Puneet Kaur vs. KV Developers”, CA (AT) (Ins) No. 390 of 2022***, where this Tribunal held that even if the homebuyers has not filed the claim within the time, the RP is under obligation to include the claims, which are reflected in the records of the Corporate Debtor. In paragraph 21 to 23, this Tribunal has held as follows:

“21. When the allotment letters have been issued to the Homebuyers, payments have been received, there are Homebuyers and there is obligation on the part of real estate Company to provide possession of the houses along with other attached liabilities. The liability towards those Homebuyers, who have not filed their claim exists and required to be included in the Information Memorandum. Further, under Regulation 36, sub-regulation 2(l), there is column for other information, which the Resolution Professional deems relevant to the Committee. The liabilities which have been undertaken by the Corporate Debtor, huge money received by the Corporate Debtor from Homebuyers, whose claims, which could not be filed within time, could not be wished away by the Resolution Professional, on the convenient ground that claims have not been filed by such Homebuyers. The purpose of CIRP of Corporate Debtor is to find out all liabilities of the Corporate Debtor and take steps

towards resolution. Unless all liabilities of the Corporate Debtor are not known or included in the Information Memorandum, the occasion to complete the CIRP shall not arise.

22. In the above context, we refer to certain observation of this Tribunal in **Company Appeal (AT) (Insolvency) No. 871-872 of 2019 – Santosh Wasantrao Salokar vs. Vijay Kumar V. Iyer** decided on 24th January, 2020 along with other Appeals, where this Tribunal made observations in paragraph 23 as follows:

“23. It is further observed in respect of Company Appeal (AT) (Insolvency) No. 892-893 of 2019 & Company Appeal (AT) (Ins.) No. 924 - 925 of 2019 that various claims are collected by the Resolution Professional during the CIRP process by inviting the claim from individual, organisations etc. But there are several micro claimant as also large claimants like Government claimants particularly Sales tax department, Income Tax Department etc., who generally are not filing claim, filing claim at a belated stage or filing not in appropriate format as a result of which Government dues are not considered although it may be reflected in the financial statements/books of Accounts of Corporate Debtor and similarly micro claims relating to Individual, MSME, and other small traders are also not considered by the Resolution Professional because of time constraint, belated receipt or non receipt of the claim even though the same may be provisioned for in the books of Accounts of Corporate Debtor hence in order to strengthen the system including the preparation of information memorandum as per regulation 36 of IBBI, it would be fair and proper if appropriate provision is incorporated under IBBI, (Insolvency Resolution Process for Corporate persons) Regulation 2016 for preparation of Balance Sheet as on date of initiation of CIRP process and the same gets audited from a regular Statutory Auditor of the Corporate Debtor certifying all schedules, including micro details of both Assets and Liabilities so that admitted liabilities in the Corporate Debtor records are not ignored even if such claims are not received in time etc. It will aid &

smoothen the existing system of collection and consideration of claim and these small individuals, MSME, SME and Government Department will not be the sufferer. It will also avoid large number of cases being filed by such left out Creditors.”

23. We thus are of the considered opinion that Information Memorandum ought to have included the claim of those Homebuyers, who have not even filed their claims to correct liabilities of the Corporate Debtor for its appropriate resolution. In the present case, in the reply filed by Resolution Professional in paragraph 11, following statement has been made:

“11. It is pertinent to mention herein that the claims towards the Homebuyer/ Allottees including the Appellant herein have already been dealt with in the Resolution Plan as submitted by Respondent No.4. it is stated that despite the same, the Appellant is abusing the process of this Hon’ble Appellate Authority by filing the captioned Appeal for seeking reliefs against the Respondents on frivolous grounds.”

18. The learned Counsel for SRA Shri Sunil Fernandes has reiterated his submission that the Resolution Plan also considered the cases of those homebuyers, who also have not filed their claims and has referred to paragraph 18.4(iii) and 18.4 (xiii) of the Resolution Plan.

19. Shri Arun Kathpalia, learned Senior Counsel for the Appellant(s) submits that the Addendum, which has been submitted by SRA and which has been placed in the Company Appeal (AT) (Insolvency) Nos. 795 of 2024 along with additional affidavit, is not confined to the treatment of claim of NOIDA as Secured Creditor, but Addendum dated 26.04.2024 also include

certain provision regarding homebuyers also. He has referred to Part-II of the Addendum dated 26.04.2024, which provides as follows:

“II Additional terms for Beneficial Treatment of Homebuyers:

10. In addition to payments to NOIDA, the addendum also has additional terms for the benefit of Homebuyers. The beneficial changes to clauses for Allottees are as follows:

Sl.No.	Clause	Original clause	Revised clause (Changes in clauses are I blue text for the convenience of CoC)
<i>Discount to Allottees</i>			
22.	18.4	Table – Milestone of payments It is proposed that Residents shall pay INR 200 per square feet of super area within 90 days of the Start Date. All other Allottees (besides the Residents) whose claim has been accepted shall pay INR 400 per square feet of super area over and above their overdue and balance amount. ... Discounts shall be provided to only Allottees .. the discounts shall be given at the stage of Offer of Possession.	The extract of the clause will be substituted/ replaced with the following text: <i>All allottees (regardless of being residents or non-residents) have to pay an additional amount of INR 200 psf at the time of offer of possession for fit out.</i> It is clarified that payment of INR 400 psf shall not be demanded from non-residents.
23.	18.4(iv)	along with the additional amount of INR 200 psf for Resident and INR 400 psf for other Allottees according to the Plan	<i>Deleted</i>
24.	18.13 (vi) a	In the event any recovery of money is done from the previous management of THNPL, the entire amount collected shall be first used to give discount to only the Allottees who are paying additional amount of INR 400 psf, to the extent of INR 100 psf of super area.	<i>Deleted</i>
<i>Cancelled Units</i>			

26.	18.4 (i)	Completion of the Project is planned within a period of 2 years, 6 months from the Start Date. The Completion of the Project shall be done in phases as mentioned below: <table><tr><th>Particulars</th><th>Estimated Timeline from Start Date</th></tr><tr><td>Phase 1 – i) 2 Towers (I and J) (ii) Commercial Block</td><td>4 Qtr</td></tr><tr><td>Phase 2- 4 Towers (P, Q, R, and A)</td><td>8 Qtr</td></tr><tr><td>Phase 3 – 3 Towers (F, G and H)</td><td>10 Qtr</td></tr></table>	Particulars	Estimated Timeline from Start Date	Phase 1 – i) 2 Towers (I and J) (ii) Commercial Block	4 Qtr	Phase 2- 4 Towers (P, Q, R, and A)	8 Qtr	Phase 3 – 3 Towers (F, G and H)	10 Qtr	The timelines for project completion will be brought forward by 9 months. The clause will be substituted by – <i>Completion of the Project is planned within a period of 1 years, 9 months from the Start Date. The Completion of the Project shall be done in phases as mentioned below</i> <table><tr><th>Particulars</th><th>Estimated Timeline from Start Date</th></tr><tr><td>Phase 1 – i) 2 Towers (I and J) (ii) Commercial Block</td><td>4 Qtr</td></tr><tr><td>Phase 2- 4 Towers (P, Q, R, and A)</td><td>6 Qtr</td></tr><tr><td>Phase 3 – 3 Towers (F, G and H)</td><td>7 Qtr</td></tr></table> <i>It is clarified that the work under Pool & Built shall continue. In support of the same, the RA has offered interim finance of INR 12 Crore to cover the shortfall in tower F, G, H I Q & R. The same is explained in clause 11 of this addendum.</i> <i>It is also clarified that timelines for possession as per Pool & Built shall be adhered to.</i> Rest of the clause remains the same.	Particulars	Estimated Timeline from Start Date	Phase 1 – i) 2 Towers (I and J) (ii) Commercial Block	4 Qtr	Phase 2- 4 Towers (P, Q, R, and A)	6 Qtr	Phase 3 – 3 Towers (F, G and H)	7 Qtr
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Phase 3 – 3 Towers (F, G and H)	7 Qtr																		

Scope of RA:			
27.	18.4 (xxiii)	New Clause	<i>The procurement of Occupancy Certificates and Completion Certificates shall be the responsibility of the RA. The RA shall also be responsible for registration of the sub-lease deed of the allottees, subject to the payment of stamp duty charges by the allottees.</i>
For Residents:			
28.	18.4(iii)	The maintenance of the towers where possession has been given shall be taken up by the Corporate Debtor only after at least 75% of the Residents have paid the additional amount of INR 200 per square feet of super area. Till that time, the RWA shall be responsible for maintenance of the Project and collection of the running maintenance fee. The Resolution Applicant or the Corporate Debtor shall not be held liable for any maintenance of the Project till that time.	The following text shall be added to the clause – <i>Upon receipt of payment by at least 75% of the residents residing in that tower, repair work and tower completion work in that tower shall be taken up. This includes all work related to repainting and repair of façade, treatment of expansion joints etc.</i> <i>However, it is clarified that repair of common facilities and facilities pertaining to fire safety shall be taken up on priority regardless of contribution by Residents</i>
Power Backup			
29.	18.4(vi)	It must be noted that Power Backup shall be provided only for common area and common facilities... shall not be provided. And mention of Power Backup in the table below.	The text shall be substituted with the following text – <i>Power Backup shall be provided as per BBA.</i>

20. It is submitted that Addendum, which according to SRA has been prepared, considering the claims of homebuyers and granting certain additional benefits to the homebuyers, there is no impediment in

considering the claims of both the homebuyers, whose claims are reflected in the records of the Corporate Debtor. It is further submitted that there cannot be different treatment of homebuyers, whose claims are reflected and verified by the RP and those who have not filed their claims and whose claims could not be verified, but reflected in the records of the Corporate Debtor.

21. As observed above, Applications by different Applicants including these two Appellant(s) being pending consideration, we are of the view that at this stage, it is not necessary for this Tribunal to express any opinion on the merits of the Applications, which are pending adjudication before the Adjudicating Authority. As observed above, resubmission of the Resolution Plan by the SRA has to await the decision of all other Applications, which was deferred by the Adjudicating Authority for consideration on 30.04.2024, as per order dated 05.03.2024 itself. There is no doubt that claim of the NOIDA has to be considered as per the direction dated 05.03.2024 as Secured Creditor, but since other Applications are still pending, we are of the view that ends of justice will be served in disposing of these Appeal(s) with following directions:

- (I) The order dated 05.03.2024 passed by Adjudicating Authority is not being interfered with.
- (II) The Adjudicating Authority may consider and dispose of the Applications as noted in the order dated 05.03.2024, which were deferred for consideration on 30.04.2024 at an early date.

- (III) The SRA, who has to resubmit the Resolution Plan before the CoC for consideration, will await the decision of Adjudicating Authority on the Applications, which are pending and as noted in the order dated 05.03.2024. The Resolution Plan be put before the CoC for consideration and voting after incorporating the directions of Adjudicating Authority in above regard.
- (IV) We request the Adjudicating Authority to consider the other Applications as noted in the order dated 05.03.2024 at an early date.

22. All the Appeal(s) are disposed of accordingly. All pending IAs in these Appeal(s) are also disposed of. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

8th May, 2024

Ashwani