

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1924 of 2024

&
I.A. No. 7124 of 2024

[Arising out of order dated 24.07.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, New Delhi Bench, Court II), in IA-
1158/2024 in C.P. (IB) No.1248(PB)/2018]

IN THE MATTER OF:

Ashmeet Singh Bhatia

S/o Sh. Gurdeep Singh Bhatia
R/o H. No. 12A, Savitri Sahani Enclave,
New Hyderabad, Lucknow,
Uttar Pradesh-226007

...Appellant

Versus

1. Rakesh Verma

Authorized Representative of Home buyers,
Flat No. 1099, Vikas Kunj,
Vikas Puri, New Delhi – 110018
Email: arpanachegranite@gmail.com

...Respondent No. 1

2. M/s. Granite Gate Properties Pvt. Ltd.

(Corporate Debtor)
CIN: U45200DL2007PTC202952
Through its Resolution Professional,
C-23, Greater Kailash Enclave, Part - I,
New Delhi - 110048
Email: irpgranite@gmail.com

...Respondent No. 2

Present:

**For Appellant : Mr. Ridhima Verma, Mr. Shashwat Tripathi and
Ms. Madhu Ayachit, Advocates.**

**For Respondents : Mr. Sumant Batra, Mr. Sanyam Saxena, Mr.
Nubair Alvi, Ms. Nidhi Yadav, Mr. Sarthak
Bhandari, Ms. Ayat Khusheed, Mr. Shivam
Sharma, Mr. Sahil Sethi, Advocates for RP.**

**Mr. Abhijeet Sinha, Sr. Advocate with Mr. Arijit
Mazumdar, Ms. Akanksha Kaushik, Ms. Heena
Kochar, Advocates for SRA.**

**Mr. Ravinder Singh and Ms. R. Gupta, Advocates
for RA.**

ORDER

ASHOK BHUSHAN, J.

This Appeal has been filed by the Appellant, a Homebuyer of Tower – 19 in the Lotus Panache Project of M/s. Granite Gate Properties Private Limited, the Corporate Debtor. This Appeal has been filed challenging the Order dated 24.07.2024 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, Court – II) in I.A. No.1158/2024 filed by the Appellant by which Appellant sought replacement of Authorised Representative of the Homebuyers. By the Impugned Order, the Application filed by the Appellant has been rejected. Aggrieved by the Order rejecting I.A. No.1158/2024, this Appeal has been filed.

2. I.A. No. 7124/2024 has been filed seeking condonation of 1 day delay in filing the Appeal.

3. We need to first consider the I.A. No.7124/2024, seeking condonation of 1 day delay in filing the Appeal.

4. This Appeal has been e-filed on 24.08.2024 against the Order impugned dated 24.07.2024 passed in I.A. No.1158/2024. 30 days period for filing the Appeal came to an end on 23.08.2024. There being delay of 1 day, an Application for condonation of delay has been filed.

5. Time was granted to file the Reply to the delay condonation Application. Reply has been filed by the Respondent No. 1 opposing the Application for condonation of delay.

6. Learned Counsel for the Applicant in support of the delay condonation Application contends that the ground taken in the Application is that due to bulky and voluminous nature of documents delay was caused.

7. Learned Counsel for the Respondent Mr. Sumant Batra opposing the Application contends that the Application for delay condonation need to be rejected. It is submitted that although the Appeal is claimed to be e-filed on 24.08.2024, the Affidavit filed in support of the Appeal contains the date 09.09.2024, and the Memo of Appeal including the verification contained typed date 09.09.2024, which was cut by hand by changing the date from 09.09.2024 to 24.08.2024. It is submitted that Vakalatnama which has been filed in support of the Appeal is also signed on 09.09.2024. It is submitted that Appeal instituted by the Appellant is the *non-est* filing. Dates mentioned in the Appeal, Affidavit and Vakalatnama uniformly being 09.09.2024 unequally indicates that Appellant initially submitted a filing solely to obtain Diary No. and refiling of the Appeal took place on 09.09.2024. The filing by the Appellant, thus procedurally defective and legally untenable. It is submitted that Appeal be dismissed *in limine* being in violation of limitation prescribed under Section 61. It is submitted that there were other Appeals filed against the same Order Comp. App. (AT) (Ins.) Nos. 1474, 1477 & 1479/2024, which were considered by this Tribunal on 31.07.2024, whereas, in which proceeding, Counsel for the Appellant was present, but he did not mention about the filing.

8. Learned Counsel for the Appellant has referred to the Order dated 31.07.2024 passed in the aforesaid Appeals. Another Appeal by New Okhla

Industrial Development Authority was also listed on 02.09.2024, where Counsel for the present Appellant was also present.

9. It is further submitted by Learned Counsel for the Respondent No. 1 that delay condonation Application is dated 05.10.2024, whereas Appellant took liberty to file delay condonation Application on 08.11.2024. It is not explained as to when the Application was filed on 05.10.2024, why the liberty was taken to file delay condonation on 18.11.2024.

10. We have considered the submissions of Counsel for the Parties on the I.A. No.7124/2024.

11. From the Report of Registry, it is clear that date of e-filing is 24.08.2024, date of scrutiny is 02.09.2024, and date of refiling is 17.09.2024. The Report after refiling submitted by Registry is dated 14.10.2024. The Report dated 14.10.2024, mentions that I.A. for condonation of delay filed. Thus, in the Report submitted on 14.10.2024, Application dated 05.10.2024 was noticed.

12. The submission which has been much pressed by Learned Counsel Mr. Sumant Batra is that in the Memo of Appeal and Affidavit, which is part of the refiled Appeal indicates that Affidavit is dated 09.09.2024, whereas, date 09.09.2024 which was typed in verification has been cut from 09.09.2024 to 24.08.2024. Vakalatnama is also signed on 09.09.2024.

13. Learned Counsel for the Appellant, explaining the above situation submits that after defect being marked by the Registry, Appeal was refiled on 09.09.2024, and at the time of refiling, the date mentioned was 09.09.2024, in the refiled Appeal, however, when it was pointed out by the Registry that Appeal having been e-filed on 24.08.2024, the date of the Appeal has to be

same date, the date 09.09.2024 was corrected as 24.08.2024. Learned Counsel Mr. Sumant Batra sought to contend that when the Appeal was e-filed, there was neither any Affidavit nor Vakalatnama, hence the Appeal was clear as *non-est* filing. When we have checked the records of e-filing of Appeal as on 24.08.2014 it reveals that Appeal which was e-filed was supported by way of an Affidavit dated 12.08.2024, thus, Appeal was duly supported by an Affidavit when it was duly filed on 24.08.2024. It was for the re-filing of the Appeal that fresh Affidavit dated 09.09.2024 was filed. We, thus do not accept the submission of the Respondent No. 1 that Appeal filed on 24.08.2024 was *non-est* filing Appeal which was e-filed on 24.08.2024 supported by an Affidavit dated 12.08.2024, hence the submission that filing dated 24.08.2024 was *non-est* filing cannot be accepted.

14. The issue which is sought to be raised in the present Appeal by Learned Counsel for the Respondent was considered by this Tribunal in the matter of ***‘Innovators Cleantech Pvt. Ltd.’ Vs. ‘Pasari Multi Projects Pvt. Ltd.’*** in ***I.A.1622 & 1623/2024*** in ***Comp. App. (AT) (Ins.) No.115/2024***, decided on 24.07.2024. This Tribunal in the aforesaid Judgment has held that as per Rule 22 of National Company Law Appellate Tribunal Rules, 2016 and Orders issued by this Tribunal on 21.10.2022 and 24.12.2022, the date of e-filing has to be treated as date for calculation of the limitation. It was further noticed that the date of re-filing after curing the defects cannot be treated to be date of filing of the Appeal for purposes of computation of limitation and date of e-filing cannot be treated to be fresh date of filing of the Appeal. In Paragraph 24 of the Judgment, following was held:

“24. The NCLAT Rules 2016 itself contemplates communication of defects and the removal of the defects in the Appeal. Rule 26, sub-rule (4) further empowers the Registrar in appropriate case, to decline to register the Appeal or filing of any documents. Thus, power is vested with the Registrar to decline to register Appeal when defects are not cured. The procedure for clearing the defects, empowers the Registrar to grant further time for clearing the defects, itself contemplate that defective Appeal filed by the Appellant is permitted to be cured and in event the defects are not cured, the Appeal can be refused to be registered. But when defects are cured and the Appeal is registered, the date of refiling of the Appeal after curing the defects, cannot be treated to be the fresh date of filing of the Appeal for computation of limitation. In the present case, the Appeal having been e-filed on 25.09.2023, i.e. within 30 days from passing of the impugned order dated 28.08.2023, the Appeal cannot be held to be barred by time and the submission advanced by Shri Sanjeev Sen, the Appeal when it was refiled after curing the defects, i.e., 16.01.2024, may be treated as date of filing, cannot be accepted. The date of refiling and date of filing are two different concepts, which are clear from statutory scheme.”

15. We, thus are of the view that for purposes of computation of limitation, the date of e-filing of the Appeal which is 24.08.2024 has to be treated the date for purposes of computing the limitation. 30 days period after 24.07.2024, having expired on 23.08.2024, there is a delay of only 1 day in filing of the Appeal.

16. Thus, we find sufficient cause in the grounds taken in the Application for condonation of 1 day delay. The delay of 1 day in filing the Appeal is condoned.

17. Now we proceed to notice the background facts, giving rise to this Appeal for deciding the issues raised in the present Appeal:

- i. The Appellant was allotted residential Apartment No. 2502 on 25th Floor of Tower – 19 in Lotus Panache Project of M/s. Granite Gate Properties Private Limited, the Corporate Debtor.
- ii. By an Order dated 10.01.2019, Corporate Debtor was admitted into Corporate Insolvency Resolution Process (CIRP) by the Adjudicating Authority.
- iii. In pursuance of Form-G' issued by the Resolution Professional (RP), M/s. SMV Agencies Private Limited submitted a Resolution Plan dated 06.07.2020 in respect of the Corporate Debtor.
- iv. The Resolution Plan submitted by SMV Agencies Private Limited came to be approved by the Committee of Creditors (CoC) in its 19th CoC Meeting with 80.13%, vote shares.
- v. The RP filed an I.A. No.3255/2020 on 13.08.2020 for approval of Resolution Plan.
- vi. Appellant filed an I.A. No.3588/2023 opposing the Application for approval of the Resolution Plan. Another I.A. No.3017/2024 was filed by the Appellant raising additional objections to the Resolution Plan. There were other Applications filed by different Stakeholders objecting to the approval of the Resolution Plan.
- vii. One I.A. 3926/2023 has also been preferred by the RP and M/s. Shomit Finance Limited seeking certain directions in terms of the Settlement on 04.03.2024.

- viii. I.A. No.1158/2024 was filed by the Appellant praying for replacement of the Authorised Representatives of the Homebuyers, in which Application, Reply was filed by the Authorised Representative of the Homebuyers objecting to the Application, to which the Rejoinder Affidavit was also filed by the Appellant.
- ix. Adjudicating Authority, vide Impugned Order dated 24.07.2024 has rejected the Application. Challenging the said Order, this Appeal has been filed.

18. Learned Counsel for the Appellant challenging the Order of the Adjudicating Authority rejecting the Application for replacement of the Authorised Representative contends that the Order of the Adjudicating Authority is based only on Regulation 16A(3A) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations). It is well settled that Adjudicating Authority has inherent power to replace the RP and in the present case allegations were made by the Appellant against the RP as well as Authorised Representative alleging that RP and Authorised Representative have colluded with the promoters of the Corporate Debtor and various illegalities have been committed by the RP and the Authorised Representative. It is submitted that Adjudicating Authority ought to have exercised its jurisdiction to replace the Authorised Representative on account of various acts of commission/omission by the Authorised Representative. Adjudicating Authority also committed an error in observing that Application on behalf of single homebuyer for replacement of Authorised Representative is not maintainable. It is contended that Authorised Representative ought to have

analysed the Settlement Agreement dated 30.05.2023 entered into between Devendra Singh RP and Shomit Finance Limited and ought to have raised issue regarding appropriation of the consideration offered by M/s. Shomit Finance Limited, qua the I-Ring Project. It is submitted that Adjudicating Authority after having considered the submissions and allegations made by the Applicant has decided to remove the RP, the same course ought to have been taken by the Adjudicating Authority for replacing the Authorised Representative also.

19. Learned Counsel appearing for the RP refuting the submissions of the Appellant contends that the main purpose for the Authorised Representative is to participate in the Meeting of CoC on behalf of the Financial Creditors in accordance with the prior voting instructions of such creditors. It is submitted that Authorised Representative has not to play any other role in the CIRP. It is submitted that Authorised Representative has duly voted on basis of instructions of the Financial Creditors and majority of Financial Creditors in a class have approved the Resolution Plan as early as in July 2020, and Application for approving the Plan was filed by the RP on 13.08.2020 itself. After approval of the Plan, no individual homebuyer can be given right to file any Application for removal of Authorised Representative in the present case after about 4 years from the approval of the Resolution Plan with a CoC Appellant has filed the Application for replacement of the Authorised Representative. The statutory scheme as delineated by Regulation 16(3A) of the CIRP Regulations provides a threshold for entertaining any Application for replacement i.e., 10% of the Creditors in class. There being number of Creditors in class being several thousand, entertainment of the

Application or at behest of one homebuyer is against the interest of majority of Homebuyers having never been aggrieved by the action of the Authorised Representative has filed any complaint or any Application for replacement. Application filed by the Appellant has rightly been rejected by the Adjudicating Authority.

20. Learned Counsel for the Respondent No. 1 defended all actions taken by the Authorised Representative of the Homebuyers and submits that Authorised Representative acted in the interest of the Homebuyers and Application filed by the single homebuyer is not maintainable. It is submitted that the Appellant has filed large number of Applications and Appeals in the CIRP of the Corporate Debtor with intent to create obstacles and delay in completion of the CIRP. Authorised Representative has cast his vote on the basis of prior instructions by Financial Creditors in a class. As a Financial Creditor in class having approved the Plan with majority of more than 80% vote shares, it is not open for a lone Homebuyer to file the Application for replacement of the Authorised Representative. It is contended that Appellant has also filed an Application for challenging the approval of the Resolution Plan which was all considered and decided by the Impugned Order. Adjudicating Authority has also approved Resolution Plan by the impugned Order. All allegations made by the Appellant challenging the Resolution Plan has been considered. It is submitted that no grounds have been made out to interfere with the Impugned Order.

21. We have considered the submissions of the Counsel for the Parties and perused the record.

22. Section 25A has been inserted in the IBC Code by Act 26 of 2018, with effect from 06.06.2018. Section 25A provides as follows:

“25A. Rights and duties of authorised representative of financial creditors.–

(1) The authorised representative under sub-section (6) or sub-section (6A) of section 21 or sub-section (5) of section 24 shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.

(2) It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.

(3) The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:

Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.

(3A) Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote:

Provided that for a vote to be cast in respect of an application under section 12A, the authorised representative shall cast his vote in accordance with the provisions of sub-section (3).

(4) The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial

creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.

Explanation.-- For the purposes of this section, the "electronic means" shall be such as may be specified."

23. The duty of the Authorised Representative of the Financial Creditors as enumerated Section 25A is essentially to participate and vote in the Meeting of the CoC and to cast vote on behalf of the Financial Creditor in accordance with the instructions received from each Financial Creditors to the extent of the voting share. Another provision which needs to be noticed is Regulation 16A, which was also inserted in CIRP Regulations by notification dated 03.07.2018. Regulation 16A is as follows:

"16A. Authorised representative.

(1) The interim resolution professional shall select the insolvency professional, who is the choice of the highest number of financial creditors in the class in Form CA received under sub-regulation (1) of [regulation 12](#), to act as the authorised representative of the creditors of the respective class:

³[Provided that the choice of an insolvency professional to act as an authorised representative by a financial creditor in a class in Form CA shall not be considered, if the Form CA is received after the time stipulated in the public announcement.]

(2) The interim resolution professional shall apply to the Adjudicating Authority for appointment of the authorised representatives selected under sub-regulation (1) within two days of the verification of claims received under sub-regulation (1) of [\[regulation 12:\]](#)

[Provided that till the application for appointment of the authorised representative for a class of creditors is under consideration before the Adjudicating Authority, the insolvency professional selected under sub-

regulation (1) shall act as an interim representative for such class of creditors, and shall be entitled to attend the meetings of the committee and shall have such rights and duties as that of an authorised representative.]

(3) Any delay in appointment of the authorised representative for any class of creditors shall not affect the validity of any decision taken by the committee.

(3A) The financial creditors in the class, representing not less than ten per cent. voting share may seek replacement of the authorised representative with an insolvency professional of their choice by making a request to the interim resolution professional or resolution professional who shall circulate such request to the creditors in that class and announce a voting window open for at least twenty-four hours..."

24. Authorised Representative is selected as per the choice of the highest number of Financial Creditors. Sub-Regulation (3A) was subsequently inserted only on 18.09.2023, which now provides a mechanism for replacement of the Authorised Representatives at the time when Application was filed by the Appellant, i.e., in March 2024, Regulation 16A(3A) was already enforced.

25. Section 25A came for consideration before the Hon'ble Supreme Court in the matter of **'Pioneer Urban Land and Infrastructure Ltd. & Anr.' Vs. 'Union of India & Ors.'** reported in **(2019) 8 SCC 416**, where Hon'ble Supreme Court laid down that if a decision is taken by vote of more than 50% of the voting shares of the Financial Creditors who are represented by Authorised Representative, all others have to be bound by the said decision. In Paragraph 63 of the Judgment following has been laid down:

"63. *Given the fact that allottees may not be a homogeneous group, yet there are only two ways in which they can vote on the Committee of Creditors—either to approve or to disapprove of a proposed*

resolution plan. Sub-section (3-A) goes a long way to ironing out any creases that may have been felt in the working of Section 25-A in that the authorised representative now casts his vote on behalf of all financial creditors that he represents. If a decision taken by a vote of more than 50% of the voting share of the financial creditors that he represents is that a particular plan be either accepted or rejected, it is clear that the minority of those who vote, and all others, will now be bound by this decision. As has been stated by us in Swiss Ribbons [Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17] , the legislature must be given free play in the joints to experiment. Minor hiccups that may arise in implementation can always be sorted out later. Thus, any challenge to the machinery provisions contained in Sections 21(6-A) and 25-A of the Code must be repelled.”

26. As per the statutory scheme, all voting which has to be done by the Authorised Representative in the Meeting of the CoC is on the basis of prior instructions received from Financial Creditors. As noted above, the Resolution Plan of the Corporate Debtor came to be approved in July 2020, with vote shares of 80.13% and the Application was immediately filed by the RP for approval of the Resolution Plan on 13.08.2020, which could ultimately be decided by the Impugned Order dated 24.07.2024.

27. Learned Counsel for the Appellant has contended that Order of the Adjudicating Authority is based only on Regulation 16(3A) of the CIRP Regulations, whereas, even if Application for replacement is not filed in accordance with the Regulation 16(3A) of the CIRP Regulations, Adjudicating Authority has ample jurisdiction under the inherent powers to remove the Authorised Representatives. Learned Counsel submits that RP can also be removed by the Adjudicating Authority in its inherent power, which is a law well settled. Adjudicating Authority in the Impugned Order has noticed the Judgment of this Appellate Tribunal where this Tribunal has held that

Adjudicating Authority who appoints RP cannot be said to lack jurisdiction to take a decision to replace him. It is useful to notice Paragraphs 65 & 66 of the Judgment of the Adjudicating Authority, which is as follows:

*“65. In **Stressed Assets Stabilization Fund (SASF) vs. Piyush Periwal & Ors. (Company Appeal (AT)(Insolvency) No. 947 of 2021)**, Hon’ble NCLAT viewed that the Adjudicating Authority which appoint the RP cannot be said to lack jurisdiction to take a decision to replace him. Para 61 of the judgment reads thus:-*

*“61. The learned Counsel for the RP has emphatically submitted that Adjudicating Authority had no jurisdiction to pass an order replacing the RP. He submits that RP can be replaced only in accordance with Section 27 of the Code, when a Resolution is passed by the CoC for such replacement. There can be no doubt to the scheme of the Code for removal of the RP by the CoC which has to pass a Resolution. The Adjudicating Authority, who has appointed the RP cannot be said to lack jurisdiction to take a decision to replace the RP, when the facts and circumstances of a particular case warrants. In the present case, where serious allegations were made against the RP, regarding not conducting the CIRP transparently, the Adjudicating Authority did not lack jurisdiction to pass an order for replacement of the RP. The jurisdiction of Adjudicating Authority to pass an order replacing the RP has also been accepted by this Tribunal in **Company Appeal (AT) (INS.) No.1443 of 2022 - Srigopal Choudary vs. SREI Equipment Finance Ltd.**, wherein in paragraph 14 and 16, this Tribunal held following:*

“14. We are of the opinion that the Adjudicating Authority being the appointing authority of IRP/RP was well within its jurisdiction to pass an order for removal of 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.

16. After going through the material available on record we are satisfied that the

Adjudicating Authority with an object to implement the provisions of IBC in its letter and spirit has rightly exercised its inherent jurisdiction by way of passing order of removing the appellant as RP of the CD. This fact which is reflected on record is sufficient to draw an inference that the Appellant was proceeding contrary to the statutory provisions as contained in the IBC and also delaying the smooth conclusion of CIRP. We are of the considered opinion that there is no defect in the impugned order warranting interference by this Tribunal. On the contrary the conduct of the appellant/RP which was observed by the Adjudicating Authority and reflected so in the impugned order is sufficient enough to direct IBBI to conduct an inquiry regarding the role played by the RP in this matter.”

66. Similarly, in **Union Bank of India vs. M/s Rajdeep Clothing & Advisory Pvt. Ltd. & Ors. (Company Appeal (AT)(Insolvency) NO. 399 of 2021)**, it could be ruled by Hon’ble Appellate Tribunal that where the RP commit illegalities, the Adjudicating Authority may not remain only as a spectator and it is entitled to exercise its inherent jurisdiction under Rule 11 of NCLT Rules to do the needful. The relevant excerpt of the judgment reads thus:-

“We are of the opinion that if IRP/RP proceeds contrary to the established principles of conducting CoC Meeting and commits several illegalities the Adjudicating Authority may not act only as a spectator or he may shut his eyes. In such situation the Adjudicating Authority is entitled to exercise inherent jurisdiction under Rule 11 of NCLT Rules, 2016. Moreover, the said exercise by the Adjudicating Authority has already been approved in a case by this Appellate Tribunal in Company Appeal (AT)(Ins) No.786 of 2020 in Anil Kumar Vs Allahabad Bank and others.”

28. The submission which has been pressed by the Counsel for the Appellant is that when allegations were made by the Appellant both against the RP and the Authorised Representative of the Homebuyer, Adjudicating Authority having accepted those allegations directed for removal of the RP,

the same course ought to have been followed for the Authorised Representative also. In the above context, we may notice that Adjudicating Authority itself has clarified in the Order that replacement of the RP is not being made on the plea of the Applicant, rather Adjudicating Authority has directed for replacement since he remained oblivious about his duties as RP on vital aspects mentioned in Paragraphs 63 & 64 of the Order. In Paragraph 67 of the Judgment, Adjudicating Authority has made following observations:

“67. Thus, we are of the view that for the purpose of discharging the statutory function of RP in terms of IBC, 2016, qua the CD, we need to appoint a responsible IPE (Insolvency Professional Entity), as provided in Regulation 12 of IBBI (Insolvency Professional) Regulations. However, it is made clear that the RP is not replaced on the plea of Applicant Homebuyer, but is replaced because he remained oblivious about his duties as RP on vital aspects mentioned in Paras 63 and 64 (ibid).”

29. From the observations of the Adjudicating Authority in Paragraph 67, it is clear that the RP was replaced not on the pleas made by the Appellant but was for the reasons as mentioned, hence the submission of the Appellant cannot be accepted that in the same way, RP was replaced Authorised Representative was also required to be replaced.

30. There are more than one reasons for upholding the Order of the Adjudicating Authority, rejecting the IA filed by the Appellant being I.A. No.1158/2024:

- i. The Resolution Plan of the Corporate Debtor was approved by the CoC as early as on 15.07.2020 with 80.13% votes on behalf of the Financial Creditors in a class where the Authorised Representative voted in the Meeting of the CoC. The Application for approval of the Resolution Plan

was filed by the RP on 13.08.2020, which remain under consideration till passing of the impugned Order dated 24.07.2024.

The Application for replacement of the Authorised Representative has been filed by the Appellant only on 04.03.2024. Filing of the Application for replacement after more than 3-1/2 years when Plan was approved could not be entertained.

- ii. The Authorised Representative of Homebuyers i.e., Financial Creditors in a class has to cast his vote in accordance with the prior instructions of Authorised Representative of the class. All Authorised Representative in a class are bound by the voting by majority of votes as reflected by the voting by the AR. A lone Homebuyer cannot be allowed to question the voting by Authorised Representatives on behalf of majority of Financial Creditor in a class.

31. When a procedure for replacement of the Authorised Representatives have been introduced in the Regulations by 16A(3A) inserted on 18.09.2023, the said statutory provision has to be followed for replacement of Authorised Representatives. Adjudicating Authority did not commit any error in relying on the Regulation 16A(3A) of the CIRP Regulations for not accepting the Application of the Appellant.

32. Looking to the limited role of Authorised Representative, i.e., only being confined to the voting in the Meeting of the CoC, no such grounds or facts were brought on the record, on basis of which Adjudicating Authority could have exercised its inherent jurisdiction in directing for replacement of Authorised Representative of the Homebuyers.

33. In view of the foregoing discussions and conclusions, we are of the view that no case has been made out to interfere with the impugned Order dated 24.07.2024, rejecting I.A. No.1158/2024 filed by the Appellant.

There is no merit in the Appeal. Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

16th January, 2025

himanshu