

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 92 & 93 of 2025
& I.A. No. 294, 295, 378, 379 of 2025

IN THE MATTER OF:

Jai Prakash Keswani

...Appellant

Versus

MB Malls Pvt. Ltd & Ors.

...Respondents

Present:

**For Appellant : Mr. Kumar Anurag Singh, Mr. Zain A. Khan,
Advocates.**

For Respondents :

With

Company Appeal (AT) (Insolvency) No. 94 of 2025
& I.A. No. 289, 383 of 2025

IN THE MATTER OF:

Harvinder Singh

...Appellant

Versus

MB Malls Pvt. Ltd & Ors.

...Respondents

Present:

For Appellant : Mr. Nipun Gautam, Advocate.

For Respondents :

ORDER
(Hybrid Mode)

21.02.2025: These appeals have been filed challenging the same order passed by the Adjudicating Authority dated 20.09.2024 by which the Adjudicating Authority has approved the Resolution Plan of the Corporate Debtor. Company Appeal (AT) (Insolvency) No. 92 & 93 of 2025 filed by the

Cont'd.../

Promoter i.e. Jai Prakash Keswani, also challenges order passed by the Adjudicating Authority in IA No.5451 of 2023 by which objections were raised by the Appellant to the Resolution Plan. Company Appeal (AT) (Insolvency) No. 94 of 2025 has been filed by a Homebuyer against the approval of Resolution Plan.

2. Learned counsel appearing for the Promoter submits that the Resolution Plan is not implementable and there is no viability and feasibility of the plan. It is submitted that the time for implementation of the plan i.e. handing over of units within 9 months is not possible and further it is subject to receipt of Occupancy Certificate, hence, the plan is conditional and contingent and ought not to have been approved.

3. Learned counsel for the Homebuyer has raised similar issues and submits that plan is conditional and contingent. He has referred to Regulation 38 of the CIRP Regulations, 2016 and submits that the plan does not contain necessary ingredients which are required under Regulation 38, which is indicated from contents of the plan.

4. Learned counsel for the Promoter also made submission that while rejecting IA filed by the Appellant raising objections, it was observed that the objections of the Appellant shall be considered while considering the Resolution Plan approval application whereas in the order which has been passed approving the Resolution Plan there is no consideration.

5. We have considered the submissions of learned counsel for the parties and perused the record.

6. Coming to appeal filed by the Promoter, we may first notice the objections of the Appellant that while deciding the IA 5451, in Para 15 it was observed by the Adjudicating Authority that objections which has been raised by the Promoter shall be considered at the time of approval of the Resolution Plan. In Para 15 of the order following has been observed:

“15. However, several grounds which have been taken by the applicant in the present application pertain to the compliances that a Resolution Plan must follow through in order to be approved by this AA. Consequently, it would be imprudent for this AA to delve into the said contentions in light of the fact that the IA for approval of the aforesaid resolution plan is already pending before this AA and the same will be carefully considered in consonance with the provisions of the IBC, 2016 and the corresponding provisions of the allied rules and regulations.”

7. Now when we look into the order passed by the Adjudicating Authority approving the Resolution Plan i.e. order dated 20.09.2024 in Para 45 the Adjudicating Authority made following observations:

“45. Additionally, it is pertinent to mention that certain contentions pertaining to the present resolution plan were raised in the aforementioned I.A.s. However, with regards to the aforesaid objections which have been raised by the virtue of the said L.A.s, this AA is

satisfied that the said objections have been properly addressed in this resolution plan.”

8. The objections which was raised in the IA thus was held to be properly addressed in the Resolution Plan. The principle argument of the Promoter is that the plan is not implementable within 9 months and neither it is viable and feasible. Plan is not implementable within 9 months is not an issue which can be decided at the time of approval of the plan. The question that the plan cannot be implemented within 9 months is the question which can be raised after expiry of the period as contemplated in the plan.

9. In so far as viability and feasibility, it is the commercial wisdom of the CoC to take a decision on viability and feasibility of the plan. The CoC having approved the plan with 100% voting, the CoC deemed to have adverted to the viability and feasibility of the Resolution Plan. The scope of interference in an order approving Resolution Plan is too limited for the Adjudicating Authority and this Appellate Tribunal which is well settled proposition. We may refer to the judgment of Hon’ble Supreme Court in **“Committee of Creditors of Essar Steel India Limited’ Vs. ‘Satish Kumar Gupta & Ors., (2020) 8 SCC 531”** where the Hon’ble Supreme Court laid down following in Para 129:

“129. As has been held in this judgment, it is clear that Explanation 1 has only been inserted in order that the Adjudicating Authority and the Appellate Tribunal cannot enter into the merits of a business decision of the requisite majority of the Committee of Creditors. As

has also been held in this judgment, there is no residual equity jurisdiction in the Adjudicating Authority or the Appellate Tribunal to interfere in the merits of a business decision taken by the requisite majority of the Committee of Creditors, provided that it is otherwise in conformity with the provisions of the Code and the Regulations, as has been laid down by this judgment.”

10. We, thus, do not find any good ground to interfere in the order approving the Resolution Plan at the instance of the Promoter.

11. Now coming to the Appeal filed by the Homebuyer i.e. Harvinder Singh, the plan has already been approved by 100% vote share of the CoC. Appellant who is one of the homebuyers has to go with the majority decision of the homebuyers and cannot be allowed to question the approval of the plan which is law settled by the Hon’ble Supreme Court in **“Jaypee Kensington Boulevard Apartments Welfare Association and Ors. Vs. NBCC (India) Limited & Ors., (2022) 1 SCC 401”**. The Supreme Court having already held that single homebuyer cannot be allowed to question the approval of the Resolution Plan. He has to sail or sink with the majority decision and in the present case, plan has approved with 100% voting share. We, thus, are of the view that on behalf of one lone homebuyer challenge to the Resolution Plan cannot be maintained.

12. In view of the aforesaid, all the appeals are dismissed.

13. Sufficient cause has been shown by the Appellant to condone delay of 13 days in filing the Appeal. Delay in filing the appeal is condoned. We also find sufficient cause to condone delay in refiling the appeal. Refiling delay is condoned.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Archana/nn