

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 732 of 2025

(Arising out of Order dated 23.04.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench-II in I.A. No.(Plan)05/CHD/2024 in C.P. (IB) No.132/CHD/HRY/2022)

IN THE MATTER OF:

VASHISHTH BUILDERS AND ENGINEERS LIMITED
AND VASHISTH ESTATES LIMITED (IN CONSORTIUM)
SUCCESSFUL RESOLUTION APPLICANT
FOR M/S TRISHUL DREAM HOMES LIMITED
SHOP NO. 2, VASHISHTH HEIGHTS, SECTOR 87,
FARIDABAD, HARYANA - 121002
PHONE: +91-9910030147
EMAIL: accounts@vbegroup.in

.... Appellant

Vs

1. TRISHUL DREAM HOMES LIMITED
THROUGH RESOLUTION PROFESSIONAL
MR. JALESH KUMAR GROVER
SCO 818, 2ND FLOOR, NAC MANIMAJRA,
CHANDIGARH – 160101
MOB: +91-9501081808
EMAIL: jk.grover27@gmail.com

2. COMMITTEE OF CREDITORS OF
TRISHUL DREAM HOMES LIMITED
THROUGH AUTHORISED REPRESENTATIVE
MR. RAHUL VERMA
S134, OM SHUBHAM PLAZA, SCO 90-91
SECTOR 16 MARKET, FARIDABAD 121 002
EMAIL: ar.trishuldreamhomes@gmail.com

.... Respondents

Present:

For Appellant: Mr. Nipun Gautam, Mr. Kartik Pandey,
Advocates.

For Respondents: Mr. Aalok Jagga, Mr. APS Madaan, Mr. Vibhu
Aggarwal, Advocates for RP.
Mr. Abhijeet Sinha, Sr. Advocate with Mr.
Viren Sharma, Advocate for CoC.

Cont'd.../

With

Company Appeal (AT) (Insolvency) No. 680 of 2025

(Arising out of Order dated 23.04.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench-II in I.A. No.(Plan)05/CHD/2024 in C.P. (IB) No.132/CHD/HRY/2022)

IN THE MATTER OF:

COMMITTEE OF CREDITORS
FOR M/S TRISHUL DREAM HOMES LIMITED
THROUGH ITS AUTHORIZED REPRESENTATIVE
MR. RAHUL VERMA
134, OM SHUBHAM PLAZA, SCO 90-91,
SECTOR 16 MARKET, FARIDABAD 121002
EMAIL: ar.trishuldreamhomes@gmail.com.

.... Appellant

Vs

1. TRISHUL DREAM HOMES LIMITED
THROUGH RESOLUTION PROFESSIONAL
MR. JALESH KUMAR GROVER
SCO 818, 2ND FLOOR, NAC MANIMAJRA,
CHANDIGARH – 160101
MOB: +91-9501081808
EMAIL: jk.grover27@gmail.com

2. VASHISHTH BUILDERS AND ENGINEERS LIMITED
AND VASHISTH ESTATES LIMITED (IN CONSORTIUM)
SUCCESSFUL RESOLUTION APPLICANT
FOR M/S TRISHUL DREAM HOMES LIMITED
SHOP NO. 2, VASHISHTH HEIGHTS, SECTOR 87,
FARIDABAD, HARYANA - 121002
PHONE: +91-9910030147
EMAIL: accounts@vbegroup.in

.... Respondents

Present:

For Appellant:

Mr. Abhijeet Sinha, Sr. Advocate with Mr. Viren Sharma, Advocate.

For Respondents:

Mr. Aalok Jagga, Mr. APS Madaan, Mr. Vibhu Aggarwal, Advocates for RP.
Mr. Nipun Gautam, Mr. Kartik Pandey, Advocates for SRA.

With

Company Appeal (AT) (Insolvency) No. 681 of 2025

(Arising out of Order dated 23.04.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench-II in I.A. No.(Plan)05/CHD/2024 in C.P. (IB) No.132/CHD/HRY/2022)

IN THE MATTER OF:

JALESH KUMAR GROVER
RESOLUTION PROFESSIONAL
TRISHUL DREAM HOMES LIMITED
SCO 818, 2ND FLOOR, NAC MANIMAJRA,
CHANDIGARH – 160101
MOB: +91-9501081808
EMAIL: cirptrishuldream@gmail.com

.... Appellant

Vs

1. VASHISHTH BUILDERS AND ENGINEERS LIMITED
AND VASHISTH ESTATES LIMITED (IN CONSORTIUM)
RESOLUTION APPLICANT
VASHISHTH HEIGHTS, SECTOR 87,
FARIDABAD, HARYANA - 121002
PHONE: +91-9910030147
EMAIL: accounts@vbegroup.in

2. COMMITTEE OF CREDITORS
IN THE MATTER OF TRISHUL DREAM HOMES LIMITED
THROUGH ITS AUTHORIZED REPRESENTATIVE
THROUGH MR. RAHUL VERMA
134, OM SHUBHAM PLAZA, SCO 90-91,
SECTOR 16 MARKET, FARIDABAD 121002
EMAIL: ar.trishuldreamhomes@gmail.com.

.... Respondents

Present:

For Appellant:

Mr. Aalok Jagga, Mr. APS Madaan, Mr. Vibhu Aggarwal, Advocates.

For Respondents:

Mr. Nipun Gautam, Mr. Kartik Pandey,
Advocates for SRA.
Mr. Abhijeet Sinha, Sr. Advocate with Mr.
Viren Sharma, Advocate for CoC.

J U D G M E N T

ASHOK BHUSHAN, J.

These three appeals have been filed challenging the same order dated 23.04.2025 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench-II in I.A. No.(Plan)05/CHD/2024 in C.P. (IB) No.132/CHD/HRY/2022. By the impugned order the Adjudicating Authority has rejected I.A. (Plan) No. 5 of 2024 praying for approval of Resolution Plan submitted by the Successful Resolution Applicant. Company Appeal (AT) (Ins.) No.680 of 2025 has been filed by the Committee of Creditors, Company Appeal (AT) (Ins.) No.681 of 2025 has been filed by the Resolution Professional and Company Appeal (AT) (Ins.) No.732 of 2025 has been filed by the Successful Resolution Applicant. All the Appellants are aggrieved by order rejecting the application for approval of Resolution Plan.

2. Brief facts of the case necessary to be noticed for deciding these appeals are:

- (i) The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor – Trishul Dream Homes Ltd. commenced vide order dated 16.06.2023. Public Announcement was made on 18.06.2023 in Form A.

- (ii) IRP was replaced on 05.08.2023 by Respondent No.1. Respondent No.1 was also appointed as Resolution Professional by order dated 18.08.2023. Invitation for Expression of Interest was published on 12.09.2023.
- (iii) After receiving certain new claims, the CoC was reconstituted on 03.10.2023.
- (iv) Four Expression of Interest were received in response to Form G.
- (v) CoC was reconstituted again on 20.11.2023 by including certain more claims
- (vi) One Mr. Rahul Verma was appointed as Authorised Representative of the homebuyers by the Adjudicating Authority on 21.12.2023.
- (vii) Resolution Plans were received, which were examined and few Resolution Applicants were found ineligible. In 7th CoC meeting held on 20.12.2023, the Resolution Professional informed the CoC that plan submitted by Vashisth & Vashisth which was discussed.
- (viii) After issuance of RFRP, claims were received by the RP, which were brought in the notice of the CoC in 9th CoC meeting held on 06.02.2024.

- (ix) The plan received from Vashisth & Vashisth, after due diligence, was found to be compliant. Certain clarifications were sought by the Authorised Representative of the allottees. Vashisth & Vashisth submitted Addendum on 26.02.2024, which was duly shared with the CoC members. The Resolution Plan dated 19.02.2024 along with the Addendum dated 26.02.2024 was put for voting by the CoC. The e-voting window for the homebuyers was opened on 26.02.2024 at 03:00 PM, which was kept open till 12:00 PM on 28.02.2024.
- (x) The Resolution Plan submitted by Vashisth & Vashisth was approved by the CoC members with 91.55% voting share on 28.02.2024.
- (xi) The Resolution Professional filed an application for approval of the Resolution Plan. The Adjudicating Authority asked the Resolution Professional to file a compliance affidavit. The Adjudicating Authority also directed the Resolution Professional to file audited financial statements of the Corporate Debtor and certain other requirements were asked for. The Adjudicating Authority heard the applicant and reserved the order.
- (xii) Vide order dated 23.04.2023, the Adjudicating Authority dismissed the application I.A. No.(Plan)05/CHD/2024 seeking

approval of the plan, aggrieved by which order these appeals have been filed.

3. Learned counsel for the CoC as well as learned counsel for the Resolution Professional and Successful Resolution Applicant contended that order of the Adjudicating Authority rejecting the plan approval application is not in accordance with the law. The resolution plan submitted by the Successful Resolution Applicant was compliant plan. The Successful Resolution Applicant also filed an affidavit of compliance in the pursuance of order dated 28.08.2024 to provide for payment of statutory liabilities post approval of the plan. Resolution Plan considered all statutory liabilities provided in the Information Memorandum and provides for complete payment of statutory liabilities. The Resolution Plan was prepared as per the provisions of the CIRP Regulations. CoC in its commercial wisdom had approved the Resolution Plan with 91.55% voting share. Reasons given by the Adjudicating Authority for rejecting Resolution Plan cannot be valid reasons for rejecting resolution plan. Objection regarding valuation raised by the Adjudicating Authority cannot be reason for rejecting the plan. No objection regarding valuation of Corporate Debtor was raised by any member of the CoC or any other stakeholder. Valuation was conducted by the IBBI registered Valuers appointed by the Resolution Professional in accordance with CIRP Regulations assessing fair value and liquidation value of the Corporate Debtor. When no objection regarding valuation of the Corporate Debtor was raised by any stakeholder, it was

not open for the Adjudicating Authority to raise objection with regard to not valuing certain assets shown in the balance sheet. The Resolution Professional has given justification and reconciliation to show that all assets have been considered for the purpose of valuation. Observation with regard to non-compliance of Regulation 6A can also not be reason for rejecting the Resolution Plan. It is submitted that Resolution Professional has filed a Compliance Affidavit in compliance of order dated 16.10.2024 informing that notice have been issued to the creditors whose addresses were available on record. All steps taken by the Resolution Professional have been captured in affidavit filed by the Resolution Professional explaining compliance, however, the Adjudicating Authority without advertent to the Compliance Affidavit filed by the Resolution Professional came to the conclusion of non-compliance of Regulation 6A. Observation with regard to PUFEE application being pursued by the Resolution Application and recovery, if any, shall vest with the SRA was not a reason for rejecting the Resolution Plan. It was commercial wisdom of the CoC to take decision, how PUFEE applications are to be pursued and amount received distributed. Observation of the Adjudicating Authority with regard to certain claim admitted being more than the amount reflected in the balance sheet also did not furnish any ground to reject the Resolution Plan. Balance sheet could not be only document for verification of claim, other documents are also to be considered. The increase in the amount of claim as reflected in the balance sheet was on account of interest, which cannot

be faulted. Observation of the Adjudicating Authority that distribution does not appear just, fair and reasonable cannot be supported by materials on the record. Distribution is in accordance with law. The scope of interference with the commercial wisdom of the CoC is now well settled. Unless there is violation of Section 30(2) in a resolution plan, the Adjudicating Authority cannot reject the approval of Resolution Plan by the CoC in its commercial wisdom. All reasons given in the impugned order of the Adjudicating Authority cannot be basis for rejection of the plan which was approved by the CoC with requisite majority.

4. Present is a case where the CoC, Resolution Professional and Successful Resolution Applicant are all aggrieved by the order rejecting the Resolution Plan and filed appeals, as noted above. In the appeal filed by the CoC, the Resolution Professional and SRA are parties. Similarly, in the appeal filed by the Resolution Professional, the SRA and CoC are parties and in the appeal filed by SRA, Resolution Professional and CoC are parties. As noted above, all the three entities being aggrieved by the order has filed appeals and those who are respondents in each appeal are also Appellant aggrieved by the impugned order. Present is a case where there is no opposition to the resolution plan nor any objection was filed by any stakeholder objecting to the Resolution Plan. The Adjudicating Authority, however, has given certain reasons in rejecting the Resolution Plan, which reasons have been questioned by learned counsel for the Appellant in these appeals.

5. We now proceed to examine the reasons given by the Adjudicating Authority on basis of which the Adjudicating Authority rejected the approval of Resolution Plan to find out whether the said reasons could have been valid ground for rejecting the Resolution Plan.

6. Section 31(1) provides that if the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan.

Section 31 is as follows:

“31. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, ¹[including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.

²[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]”

7. Thus, the Resolution Plan has to be scrutinized via compliance of Section 30(2) of the I&B Code. Section 30(2) is as follows:

“(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the ²[payment] of other debts of the corporate debtor;

³[(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;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

^{3A}(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

¹[Explanation. -For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]

8. The Adjudicating Authority in its impugned order has also noticed that Resolution Professional and SRA in compliance of various directions of the Adjudicating Authority has filed clarification/compliance affidavit. Analysis and finding of the Adjudicating Authority are contained in Para 18. In Para 18 finding and observations made by the Adjudicating Authority is that proposal for payment of CIRP cost of Rs.0.95 Crores has been provided for and Resolution Plan provides that “Any increase in actual CIRP cost from the proposed CIRP cost shall be paid out of amount proposed to Unsecured financial creditors proportionately. Any surplus from the proposed CIRP cost shall be infused in the construction of project. In nutshell, resolution debt amount shall not be changed with the increase of CIRP cost.”. The Adjudicating Authority observed that said clause does not appear to be rational.

9. Present is a case where the creditors in class i.e. homebuyers consist the majority of CoC who have approved the Resolution Plan with 91% vote

share. In event, any increase in the CIRP Cost is made that would be undertaken by the homebuyers. The said provision cannot be said to be irrational. Further the direction in Para 18(a) that said increase in cost shall be met by SRA, cannot be approved. The CoC in its commercial wisdom, which consist of majority of homebuyers – creditors in class, having undertaken to bear the increased cost, if any, no exception can be taken in said clause.

10. In Para 18(b), the Adjudicating Authority has noted the proposal for payment of debts of Operational Creditors and other Creditors as well as dissenting Financial Creditors. In Para 18(b) (iii) and (iv), the Adjudicating authority has raised certain issues regarding valuation report. It is useful to notice Para 18(b) (iii) and (iv), which is as follows:

“(iii) This Adjudicating Authority vide its Order dated 16.10.2024 sought clarification, whether all the assets appearing in the balance sheet on the CIRP date has been considered in the valuation report and the reconciliation of the liability side of the balance sheet regarding communication sent to all the creditors appearing in the balance sheet as on the CIRP date as per Regulation 6A of CIRP Regulations.

(iv) The RP/ Applicant in the compliance affidavit dated 04.11.2025 submitted that all the assets appearing in the balance sheet on the CIRP date have been considered in the valuation report obtained by the RP under Regulation 35 of the CIRP Regulations. However,

based on the audited balance sheet as on the CIRP date (16.06.2023) submitted by the Applicant IRP, vide compliance affidavit dated 04.11.2025, the status of assets considered in the valuation report is as below:

S. N.	Particulars	Balance Sheet on CIRP Date	Fair value	Liquidation value
		Rs.		
1	Non-Current Assets			
A	Property Plant & Equipment and Intangible Assets			
	a. Tangible Assets			
	i. Computer	8,697	-	-
	ii. Office Equipments	18,086	21 ,875	17,500
	iii. Furniture & Fixture	93,480	51,600	41,280
	iv. Plant & Machinery	2,05,561	3,10,025	2,47,120
	v. Shuttering	93,07,111	84,89,262	67,91,409
	Total Tangible Assets	96,32,935	88,72,762	70,97,309
	b. Intangible Assets			
	i. Software	2,394	-	-
B	Deferred Tax Assets(Net)	1,13,61,854	-	-
2	Current Assets			
	a. Inventories	41,35,94,307	67,40,24,355	60,66,21,770
	b. Cash & Bank Balances			
	<i>Current Account</i>	22,681	-	-
	<i>Deposit Account (FDR)</i>	28,99,033	12,46,811	12,46,811
	Cash in hand	14,985	14,985	14,985
	Total Cash & Bank Balances	29,36,699	12,61,796	12,61,796
	c. Short-term Loans & Advances			
	<i>Advances to Suppliers- SUCON India Ltd.</i>	3,07,18,000	46,500	46,500
	<i>Advance for Land – certified by Management</i>	2,08,02,490	-	-
	Total Short-term Loans & Advances	5,15,20,490	46,500	46,500
	d. Other Current Assets			

	<i>TDS receivable</i>	68,892	-	-
	<i>MAT Credit</i>	21,524	-	-
	<i>GST Credit</i>	45,92,731	-	-
	<i>Expense accrued but not due</i>	63,36,000	-	-
	Total Other Current Assets	1,10,19,147	-	-
	GRAND TOTAL	50,00,67,826	68,42,05,413	61,50,27,375

It may be seen from the above Table that the fair value of various assets (shown in italics) have been valued at nil or Significantly less than the value appearing in the balance sheet.

11. It is relevant to notice that Valuers were appointed by the Resolution Professional as per Regulation 27 of the CIRP Regulations, who submitted its Valuation Report. Value of the assets of the Corporate Debtor is asked for to assist the CoC to take decision. It is relevant to notice that order impugned does not show that any stakeholder has raised any objection to the valuation done by the Valuers.

12. Learned counsel for the Appellant has relied on judgment of the Hon'ble Supreme Court in ***"M. K. Rajagopalan vs. Dr. Periasamy Palani Gounder & Anr., Civil Appeal No.1682-1683 of 2022"*** where the order passed by NCLAT rejecting the Resolution Plan and remanding the matter to the committee of creditors with directions to the resolution professional to proceed from the stage of publication of Form G. One of the issue raised was regarding valuation. The Hon'ble Supreme Court in the above case has occasion to consider Regulation 27 and 35 of CIRP Regulation. It has been held that CoC being fully satisfied and having endorsed the process

of valuation and re-evaluation, there was no reason to interfere with the order of the NCLT. The finding of this Tribunal on the question of valuation was not approved. It is useful to extract Para 41, 41.1, 41.2 and 41.3 of the judgment, which is as follows:

“41. The Appellate Tribunal has laid great emphasis on the point that commercial wisdom of CoC was materially affected for want of existence of a valid and actual valuation report and sharing of all the relevant facts pertaining to the valuation with the members of CoC leading to violation of Regulations 27 and 35 of the CIRP Regulations. We are unable to agree.

41.1. It has rightly been contended on behalf of the appellants that the members of CoC were provided with fair value and liquidation value after obtaining a confidentiality undertaking. We have reproduced hereinbefore all the material parts of the minutes of the meetings of CoC and it is at once clear that the members of CoC were fully satisfied with and endorsed the process of valuation and even re-evaluation as undertaken by the resolution professional. Particularly, the minutes of second, fourth, sixth and seventh CoC meetings stand testimony to the fact that the requirements of Regulation were scrupulously followed and complied with and there had not been any doubt in CoC as regards the process of valuation as also supplying of fair and liquidation value to the members of CoC. The detailed findings of the Adjudicating Authority in this

regard (reproduced in paragraph 15.1.1. hereinabove) make it clear that the Adjudicating Authority independently applied its mind to the process of valuation and presentation of the matter to CoC. Rejection of all the objections in that regard by the NCLT, called for no interference.

41.2. The Appellate Tribunal appears to have unnecessarily and rather unjustifiably presumed that there had been blatant statutory violations and irregularities. Even if certain issues were raised in some of the meetings of CoC as regards the process of valuation, the clarifications from the resolution professional and the steps taken by him for valuation and re-valuation had been to the satisfaction of CoC. It has rightly been contended on behalf of the appellants with reference to the decision in Maharashtra Seamless (supra) that resolution plan is not required to match the liquidation value as such.

41.3. The findings of the Appellate Tribunal in regard to the question of valuation and thereby taking the resolution plan to be in contravention of Sections 30(2) and 61(3) of the Code cannot be approved and are required to be set aside.”

13. Another judgment which has been relied is judgment of the Hon’ble Supreme Court in **“Ramkrishna Forgings Ltd. Vs. Ravindra Loonkar, Resolution Professional of ACIL Ltd. & Anr., Civil Appeal No.1527 of 2022”**. The Hon’ble Supreme Court in the above case held that no objection having been raised by any stakeholder with regard to any

deficiency/ irregularity, there was no occasion to direct for re-valuation. In

Para 27 of the judgment following was held:

“27. Having considered the matter in depth, the Court is unable to uphold the decisions rendered by the Adjudicating Authority-NCLT as also the NCLAT. The moot question involved is the extent of the jurisdiction and powers of the Adjudicating Authority to go on the issue of revaluation in the background of the admitted and undisputed factual position that no objection was raised by any quarter with regard to any deficiency/irregularity, either by the RP or the appellant or the CoC, in finally approving the Resolution Plan which was sent to the Adjudicating Authority-NCLT for approval, Further, the statutory requirement of the RP involving two approved valuers for giving reports apropos fair market value and liquidation value was duly complied with and the figures in both reports were not at great variance, Significantly, the same were then put up before the CoC, which is the decision-maker and in the driver's seat, say, to SO Debtor. K Sashidhar (supra) and Committee of Creditors of Essar Steel India Ltd. (supra) are clear authorities that the CoC's decision is not to be subjected to unnecessary judicial scrutiny and intervention. This came to be reiterated in Maharashtra Seamless Limited (supra), which also emphasised that the CoC's commercial analysis ought not to be qualitatively examined and the direction therein of the NCLAT to direct the successful Resolution Applicant to

enhance its fund flow was disapproved of by this Court. Thus, if the CoC, including the FC(s) to whom money is due from the Corporate Debtor, had undertaken repeated negotiations with the appellant with regard to the Resolution Plan and thereafter, with a majority of 88.56% votes, approved the final negotiated Resolution Plan of the appellant, which the RP, in turn, presented to the Adjudicating Authority-NCLT for approval, unless the same was failing the tests of the provisions of the Code, especially Sections 30 & 31, no interference was warranted. In Kalpraj Dharamshi v Kotak Investment Advisors Limited, (2021) 10 SCC 401, the Court concluded that in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of "commercial wisdom", NCLAT was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%."

14. Thus, we are of the considered opinion that when no objection to the valuation conducted of the Corporate Debtor was raised by any stakeholders, it was not open for the Adjudicating Authority to enter into the issue of valuation of assets of the Corporate Debtor and to make the said ground for rejecting the Resolution Plan.

15. In Para 18(iv), in tabular form assets in the valuation report has been noticed and with regard to several assets value of asset is Nil or significantly less in comparison to as appearing in the balance sheet. It has been submitted on behalf of the Appellant that the IBBI registered valuers have

noticed balance sheet, all assets and considered all relevant facts with regard to current account, which has been also noticed by the Adjudicating Authority. It is submitted that the amount of Rs.22,681/- in Current Account, which was shown in the balance sheet, being nil was not taken note of. Further, regarding Deposit Account (FDR) for Rs.28,99,033/- an amount of Rs.12,46,811/- was taken since the amount of Rs.18,46,800/- was utilized for bank guarantee for EDC dues of Corporate Debtor. Learned counsel for the parties have submitted that there are entries which are blackened by the Adjudicating Authority in Para 18(iv) and the Valuers having taken their own decision, who are expert in valuing the assets, non-mention of any amount towards TDS receivable, MAT credit, GST credit as nil, cannot be said to be any error in valuation. It was not known as to when the said amount will be received, hence, it was not included in the valuation which cannot be said to be any error. We, thus, are of the view that observation made by the Adjudicating Authority with regard to valuation of assets are wholly uncalled for and not germane in rejecting the Resolution Plan.

16. The Adjudicating Authority in Para 18 has also referred to certain statutory liabilities as shown in the balance sheet as on CIRP date of the Corporate Debtor and has observed that they have not been considered in the Resolution Plan. On direction issued by the Adjudicating Authority by order dated 22.08.2024, an affidavit was filed by the SRA that all statutory liabilities including GST, workmen labour cess, compensation etc. would

be borne by the SRA. When the SRA as per the order of the Adjudicating Authority has filed compliance affidavit, in Para 18(viii) payment to certain creditors including statutory liabilities which was shown in the balance sheet, were not required to be mentioned. Only one claim was filed, which was admitted. It is not shown that other creditors have filed any claim. We, thus, are of the view that that could not have been any ground to reject the resolution plan since the creditors shown in the balance sheet have not filed their claim and the Resolution Plan does not deal with their claim.

17. In Para 18(vi), status of liabilities in the Resolution Plan has been noticed which indicate that substantial liabilities in the balance sheet has been admitted on the basis of claim filed.

18. In Para 18(ix) and (x), the Adjudicating Authority has come to the conclusion that there is non-compliance of mandatory Regulation 6A of CIRP Regulation. Regulation 6A has been extracted by the Adjudicating Authority in Para 18(ix), which is as follows:

“Regulation 6A: Communication to creditors.

6A. The interim resolution professional shall send a communication along with a copy of public announcement made under regulation 6, to all the creditors as per the last available books of accounts of the corporate debtor through post or electronic means wherever the information for communication is available.

Provided that where it is not possible to send a communication to creditors, the public announcement made under regulation 6 shall be deemed to be the communicated to such creditors.”

19. Learned counsel for the Resolution Professional has submitted that the Resolution Professional has filed a compliance affidavit in compliance of order dated 16.07.2024 passed by the Adjudicating Authority in I.A. No.(Plan)05/CHD/2024. In Para 2 of the affidavit, the direction was referred, which Para 2 is as follows:

“2. That L.A. No. (Plan) 05/CHD/2024 was listed before this Hon'ble Tribunal on 16.07.2024 whereby this Hon'ble Tribunal issued the following directions to the Resolution Professional:-

- i. To file an affidavit that individual notices were issued to homebuyers who have not filed their claims; and*
- ii. File the latest balance sheet prepared by the erstwhile management and the first balance sheet prepared by the Resolution Professional along with reconciliation of assets and liabilities thereof.”*

20. Resolution Professional has filed the affidavit giving details of claim from the Financial Creditor/ Creditor in class. Reference of 174 Financial Creditors who did not file their claim and some of the letters sent to them

were returned. In Para 4 to 8, the Resolution Professional has submitted as follows:

“4. That the Resolution Professional Applicant had received 227 claims from the Financial Creditors in a class / allottees/ homebuyers in the matter of M/s Trishul Dream Homes Limited till the date of issuance of RFRP i.e. 29.10.2023.

5. That the Resolution Professional had sent individual letters to 174 Financial Creditors in a class / allottees/ homebuyers who did not file their claim in November 2023. Subsequently, approximately 24 letters were returned undelivered. Copy of the postal receipts in relation to the letters sent by the Resolution Professional is attached herewith as Annexure-1.

6. That, in pursuance to the letters sent by the RP, after the date of issuance of RFRP Le. 29.10.2023, the Resolution Professional received 34 claim forms from the Financial Creditors in a class/ allottees/homebuyers. In addition to this, the COC in its 9% meeting held on 06.02.2024 voted in favour of inclusion of such allottees in the 'List of Creditors' Accordingly, the RP filed IA (L.B.C)/698(CH)2024 under Regulations 12(1) and 13 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to seek the approval of the Hon'ble Adjudicating Authority in this regard which was duly allowed vide order dated 21.03.2024,

7. That the Resolution Professional filed I.A. NO. (PLAN) 05/CHD/2024 seeking approval of resolution plan in the matter of Trishul Dream Homes Limited on 11.03.2024 (Diary No. 00922). After the filing of the said application, the Resolution Professional received 10 (Ten) additional claims from the Financial Creditors in a class/allottees/homebuyers.

Summary of letters sent

Total letters sent	Returned	Belated claims received by RP
174	24	• After issuance of RFRP-34 • After filing of application seeking approval of resolution plan -10 Total - 44

8. That the Successful Resolution Applicant ('SRA') has addressed the claims find belatedly as well as the claims which have not been filed yet in their resolution plan and has even proposed same treatment to such homebuyers. It has been duly mentioned at Page 716 (Resolution Plan) of the IA. NO. (PLAN) 05/ CHD/ 2004 (Volume IV, Annexure A-18)."

21. Thus, present is a case where the Resolution Plan has claimed that communication was sent to the creditors. In the said affidavit, he has given details of steps in response of order dated 16.07.2024 issued by the Adjudicating Authority itself. The compliance affidavit has been brought before us. The Adjudicating Authority without adverting to the compliance

affidavit has held that there is breach of Regulation 6A. Thus, the observation of the Adjudicating Authority that there is breach of Regulation 6A is unsustainable.

22. Present is a case where public announcement was made, the proviso to Regulation 6A is also relevant which contains an exception, that where it is not possible to send a communication to creditors, the public announcement made under regulation 6 shall be deemed to be the communicated to such creditors. We, thus, are of the view that rejection of the Resolution Plan on the ground as mentioned in Para 18(x) is unsustainable.

23. Now we come to another reason given by the Adjudicating Authority in Para 18(xi) where with regard to PUFÉ application, plan provided that all the recoveries from the avoidance transactions shall be exclusively for the benefit of the Resolution Applicant and the financial and other creditors shall not have any rights on the ground that RA has proposed to settle all the claims in full.

24. CIRP Regulation 38(2)(d) which has been added w.e.f. 14.06.2022 provides as follows:

“[(d) provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after

the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed:

Provided that this clause shall not apply to any resolution plan that has been submitted to the Adjudicating Authority under sub-section (6) of section 30 on or before the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022.]”

25. When the statutory regulation itself provides that the plan can provide for the manner in which the proceeds from such proceedings shall be distributed, no exception can be taken from the clause in the Resolution Plan that SRA shall prosecute the applications and recovery shall go to the SRA. The above provision of the Resolution Plan having been approved by 91% vote share, no exception can be taken from the said clause and the Adjudicating Authority committed error in finding fault with the said clause.

26. Now we come to the last reason given by the Adjudicating Authority i.e. Para 18 (xii), which provides as follows:

“(xii) We also note that the claims of the following financial and operational creditors have been admitted more than the amount as appearing in the balance sheet:

Particulars	As per balance sheet as on CIRP date	Claim filed	Claim Admitted
	Rs.		
Vipin Kumar Sharma	-	7,05,467	5,00,000
Pratibha Securities Pvt. Ltd.	28,00,000	28,00,000	31,45,566
Dolphin Fincap India Pvt. Ltd.	52,89,000	52,89,000	64,64,904
Mega Fincap Private Limited	2,02,26,302	2,02,26,302	2,41,94,859
Shatabdi Leaprofin Pvt. Ltd.	62,20,000	62,20,000	77,79,908
Pilkuwa Cloth Merchants Pvt. Ltd.	1,15,50,000	2,10,70,000	2,62,82,117
Advance from Customers	18,94,25,665	63,39,39,522	58,22,98,262
Security Deposit of Customers	12,18,639		
Total	23,67,29,606	69,02,50,291	65,06,65,616

27. The Adjudicating Authority noted that as per the balance sheet the amount of claim of Financial Creditors and Operational Creditors was Rs.23,67,29,606/- whereas claim was filed for Rs.69,02,50,291/- and the claim was admitted to the extent of Rs.65,06,65,616/-. Learned counsel for the Resolution Professional submitted that the claims were collated and verified in accordance with the CIRP Regulation and no grievance has been raised with regard to claims admitted, as mentioned in Para 18(xii).

28. We have also noticed the provision of Section 31(1) which require the Adjudicating Authority to scrutinize the Resolution Plan and if the Resolution Plan meets the requirements of Section 30(2), it needs to be approved. The provision of Section 31(2) clearly provides that in event the

resolution plan is in violation of Section 30(2), it can be rejected by the Adjudicating authority exercising its jurisdiction under Section 31(1). The scope of intervention by the Adjudicating Authority with the commercial wisdom of the CoC is well settled in the judgment of Hon'ble Supreme Court in **“Arun Kumar Jagatramka vs. Jindal Steel & Power Ltd. & Anr., Civil Appeal No.9664 of 2019”**. In Para 89 of the judgment, the Hon'ble Supreme Court has issued following note of caution:

“..... However, we do take this opportunity to offer a note of caution for the NCLT and NCLAT functioning as the Adjudicatory Authority and Appellate Authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from the NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC. This conscious shift in their role has been noted in the report of the Bankruptcy Law Reforms Committee (2015) in the following terms:

“An adjudicating authority ensures adherence to the process

At all points, the adherence to the process and compliance with all applicable laws is controlled by the adjudicating authority. The adjudicating authority gives powers to the insolvency professional to take appropriate action against the directors and management of the entity, with recommendations from the creditors committee. All material actions and events during the process are recorded at the adjudicating authority. The adjudicating authority can assess and penalise frivolous applications. The adjudicator hears allegations of violations and fraud while the process is on. The adjudicating authority will adjudicate on fraud, particularly during the process resolving bankruptcy. Appeals/actions against the behaviour of the insolvency professional are directed to the Regulator/Adjudicator.””

29. None of the observations made by the Adjudicating Authority in Para 18, as noted above, amounts to any findings which can be read to be violation of Section 30(2) of I&B Code so as to reject the Resolution Plan submitted by the SRA. Even with regard to issues which have been pointed out by the Adjudicating Authority, there were ample explanation on the record which has not been adverted to by the Adjudicating Authority in the application for approval of Resolution Plan. The Resolution Professional is not supposed to include every explanation with regard to matters covered in the plan and the Resolution Plan is a primary document which refers to various clauses contained in the plan. The Adjudicating Authority has failed to point out any violation of Section 30(2) in Para 18 of the judgment on the basis of which rejection of the resolution Plan can be sustained. We, thus, are satisfied that the Adjudicating Authority committed error in rejecting I.A. No.(Plan)05/CHD/2024.

30. In result, all the Appeals are allowed. Impugned order dated 23.04.2025 is set aside. I.A. No.(Plan)05/CHD/2024 is allowed. Resolution Plan submitted by the SRA is approved. The Adjudicating Authority may pass a consequential order consequent to approval of Resolution Plan within 60 days from the date this order is produced before the Adjudicating Authority.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

20th May, 2025

Archana