



IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH, COURT-II

KOLKATA

I.A. (IB) No. 2291/KB/2024

in

C.P. (IB) No. 666/KB/2020

An Application under Section 60(5) IBC r/w Rule 11 of the National Company Law Tribunal Rules, 2016.

IN THE MATTER OF:

IDBI Trusteeship Services Ltd.

... Financial Creditor

Versus

Ashiana Landcraft Realty Pvt. Ltd.

... Corporate Debtor

And

IN THE MATTER OF:

Ashiana Landcraft Realty Pvt. Ltd.

(under new management after CIRP)

... Applicant

Versus

Haryana Real Estate Regulatory Authority,

Gurugram

... Respondents

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Coram:

Shri Labh Singh : Member (Judicial)

Ms. Rekha Kantilal Shah : Member (Technical)

Appearances (via physical mode)-:

For the Applicant

i. Mr. Sakal Bhushan, Sr. Adv.,

Date of Pronouncement-: 27.02.2026

ORDER

Per: Rekha Kantilal Shah, Member (Technical)

1. This application is filed by the applicant under Section 60(5) IBC r/w Rule 11 of the National Company Law Tribunal Rules, 2016 claiming following reliefs-:

- a. Direct the Respondent / HARERA to immediately refund the sum of Rs. 1,01,23,558/- which the Respondent / HARERA coerced and got the Applicant/ CD to deposit (under protest), on account of past dues of the CD pertaining to the period prior to date of plan approval by AA, i.e. 11.08.2023;
- b. Direct the Respondent / HARERA to pay to the Applicant / CD interest@ 12% p.a. on Rs. 1,01,23,558/- from 05.04.2024 till



- the date of repayment;
- c. Impose exemplary costs on the Respondent / HARERA for acting in violation of the settled law;
 - d. Initiate appropriate action against Respondent/ HARERA for civil contempt on account of willful disobedience of the plan approval order dated 11.08.2023;
 - e. Direct the IBBI or the Central Government to file complaint against Respondent / HARERA before the Special Court for commission of offence under S.74 IBC r/w S.236 IBC;
 - f. Issue such other orders/directions as may be necessary in the interest of justice;

2. Background of the case-:

- 2.1 The CIRP of Ashiana Landcraft Realty Pvt. Ltd. (Applicant / CD) was initiated on 11.01.2022.
- 2.2 The Resolution Plan of One IV County Pvt. Ltd. was approved by the CoC with 78.56% voting share and thereafter approved by this Hon'ble Adjudicating Authority on 11.08.2023. Consequent upon such approval, the management of the erstwhile Corporate Debtor was taken over by the new management of the Successful Resolution Applicant. The present IA has been filed by the Corporate Debtor under its new management after completion of the CIRP.



2.3 The Applicant / CD is a real estate development company and the approved Resolution Plan provides for completion of the CD's ongoing real-estate project "The Center Court" at Gurugram, Haryana ("Project") and delivery of flats to more than 300 innocent allottees/homebuyers.

3. Submission of the Applicant-:

3.1 The initial RERA registration¹ of the Project stood expired on 29.12.2020, i.e., long before 11.08.2023 (date of plan approval by AA and consequential taking over of the management of CD by the new management). Originally the registration would have expired on 30.06.2020, but the Government had given 6 months extension to all projects due to covid.

3.2 After taking over of management of the CD by the new management, the CD (under the new management) made an extension application dated 09.02.2024 to the Respondent / HARERA for extension of the RERA registration of the Project in order to carry out necessary activities (like collecting balance payments from HBs, offering balance inventory for sale for raising finance) and delivering flats to HBs. With the said extension application, the CD (under new management) made a deposit of Rs. 2,90,000/- by RTGS [as Extension Fee calculated @ 50% of Registration Fee of Rs. 5,80,000/- paid by CD during its initial RERA

¹ Copy of expired RERA registration is annexed as Annexure-1.

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registration² in 2017 as per applicable rules]. Submission of Applicant/CD's application dated 09.02.2024 for extension of the RERA registration³ which also contains proof of deposit of Rs. 2,90,000/-

3.3 That the Respondent / HARERA vide its Letter No. RC/HARERA/GGM/EPIN/7(3)/73 dated 01.03.2024 demanded a further sum of Rs. 1,36,28,381/- as deficiency fee. Meaning thereby, total demand from the CD (under new management) for allowing extension of RERA registration of its Project came to Rs. 1,39, 18,381/- [Rs. 2,90,000/- deposited with extension application + Rs. 1,36,28,381/- demanded as deficiency fee]. Copy of Respondent/HARERA's Letter⁴ No. RC/HARERA/GGM/EPIN/7(3)/73 dated 01.03.2024.

3.4 Aggrieved by the unprecedented and colossal demand, the representatives of the CD (under new management) appeared before the Respondent / HARERA for personal hearing on 04.03.2024. During the course of hearing, the representatives of the CD were informed of the breakup of the total demand of Rs. 1,39, 18,381/- as follows:-

a. Rs. 4,32,356/- as deficiency in the initial Registration Fee paid in 2017 [CD had paid total Registration Fee of

³ Copy of proof annexed herewith as Annexure-2 (Page Nos .31-32)

⁴ As Annexure-3 (page Nos. 33-34)

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Rs. 5,80,000/- at the time of initial registration in 2017 as per demand at that time which was based on Floor Area Ratio of 1. However, HARERA during the hearing on 04.03.2024 informed that FAR should have been taken as 1.75 owing to which total Registration Fee of Rs. 10,12,356/- should have been paid initially in 2017. Hence the demand for the deficient amount].

b. Rs. 25,30,890 as Extension Fee for years 2021, 2022, 2023, 2024 and 2025 [@ Rs. 5,06,178/- (50% of Registration Fee) for each year of extension after the initial registration expired in 2020].

c. Rs.1,03,76,649/- as Late Fee for 41 months from Oct, 2020 to Feb, 2024 [@ Rs. 2,53,089/- (50% of Extension Fee) for each month of delay in making extension application].

d. Rs. 5,78,490/- as Processing Fee[@ Rs. 10/- per sq. mtr. for 57,849 sq. mtrs. FAR area].

3.5 On getting hold of the above calculation, the Applicant / CD (under new management) immediately submitted its Reply dated 04.03.2024 to Respondent / HARERA and informed it of the fact that the CD had gone through CIRP and that a wholly new management⁵ had taken over its affairs w.e.f. 11.08.2023 (date of plan approval by AA). In light of these developments, request

⁵ Copy of Applicant / CD's Reply dated 04.03.2024 is marked as Annexure-4 (page Nos. 35-38)

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was made for waiver of past dues, penalties, etc. for period prior to 11.08.2023 (date of plan approval by AA) as per settled law.

3.6 On 21.03.2024, the representatives of the Applicant / Corporate Debtor, under the new management, met with the Chairman, HARERA and explained the legal effect of the approval of the Resolution Plan on the past dues and claims of the Corporate Debtor pertaining to the period prior to the approval of the Resolution Plan by this Hon'ble Adjudicating Authority. During the said meeting, reliance was placed on the landmark judgment of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta and Ors.*, (2020) 8 SCC 531, wherein it has been categorically held that a Successful Resolution Applicant cannot be saddled with "undecided" claims after the Resolution Plan has been approved by the Adjudicating Authority, and that the Successful Resolution Applicant takes over the Corporate Debtor on a "clean slate". It was further brought to the notice of the Chairman, HARERA that in paragraph 38 of this Adjudicating Authority's order dated 11.08.2023 approving the Resolution Plan, this Adjudicating Authority has expressly granted relief by way of extinguishment of all past dues and claims pertaining to the period prior to the date of approval of the Resolution Plan, in terms of settled law.

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3.7 Accordingly, the Applicant / Corporate Debtor, under the new management, reiterated its request for waiver of all past dues, penalties, and charges pertaining to the period prior to 11.08.2023, being the date of approval of the Resolution Plan by this Hon'ble Adjudicating Authority. The Chairman, HARERA, thereupon directed the Applicant / Corporate Debtor to deposit, for the time being, the dues arising after 11.08.2023 and assured that the issue relating to waiver of past dues would be duly considered.

3.8 During the said meeting, the Applicant / Corporate Debtor also submitted a written Representation dated 20.03.2024, enclosing and quoting relevant excerpts from the judgment of the Hon'ble Supreme Court in *Essar Steel* (supra) as well as from the Resolution Plan approval order dated 11.08.2023 (pages 42 and 43 thereof). A copy of the said Representation dated 20.03.2024, received by HARERA on 21.03.2024, is annexed herewith as **Annexure-5** (pages 39-44).

3.9 Pursuant thereto, on 27.03.2024, the Applicant / Corporate Debtor, under the new management, deposited a further sum of ₹35,04,823/- with the Respondent / HARERA by way of RTGS towards dues arising after 11.08.2023, being the date of approval of the Resolution Plan by this Hon'ble Adjudicating Authority. A



copy of the Applicant / Corporate Debtor's bank statement evidencing the said RTGS payment of ₹35,04,823/- is annexed herewith as **Annexure-6** (page 45).

3.10 After taking into account the sum of ₹2,90,000/- already deposited by the Corporate Debtor along with the extension application, the Corporate Debtor deposited a total amount of ₹37,94,823/- till the said date. The break-up of the said amount is as follows:

- (i) ₹4,32,356/- towards alleged deficiency in the initial registration fee paid in 2017;
- (ii) ₹10,12,356/- towards extension fee for the years 2024 and 2025;
- (iii) ₹17,71,623/- towards late fee for the period from August 2023 to February 2024; and
- (iv) ₹5,78,490/- towards processing fee.

3.11 It is submitted that the amount of ₹4,32,356/- towards alleged deficiency in the initial registration fee pertains to a period prior to the approval of the Resolution Plan on 11.08.2023 and, in law, was not required to be paid by the Corporate Debtor. However, without prejudice and in order to demonstrate its bona fides and ensure progress of the Project, the Corporate Debtor deposited the said amount as well.

3.12 Despite the Applicant / Corporate Debtor having deposited



₹37,94,823/- towards dues arising after 11.08.2023, the Respondent / HARERA did not renew the RERA registration of the Project. Consequently, the representatives of the Applicant / Corporate Debtor appeared before the Chairman, HARERA on 01.04.2024 and reiterated their request in light of the settled legal position.

3.13 The Chairman, HARERA, stated that the application seeking waiver of dues pertaining to the period prior to 11.08.2023 would be considered. However, the Applicant / Corporate Debtor was directed to deposit, under protest and for the time being, a further amount of ₹1,01,23,558/- towards dues allegedly pertaining to the period prior to 11.08.2023.

3.14 The said amount comprises ₹15,18,534/- towards extension fee for the years 2021-2023 and ₹86,05,026/- towards late fee for the period from October 2020 to July 2023.

3.15 That on 03.04.2024, the Applicant / CD (under new management) further shared a copy of the approved and binding Resolution Plan with HARERA. Chapter 6, Table Sr. No. 6 (Proposal for payment of statutory dues) of the approved Resolution Plan (available at page NOs. 71-73) of the approved Resolution Plan also provides for extinguishment of statutory dues in the following words:

"On and with effect from the Settlement Date, all



Claims, Debts and dues of the Operational Creditors (Statutory dues) shall stand satisfied and extinguished, and no Claim, Debt or Due shall subsist against the Corporate Debtor and the Resolution Applicant. In accordance with the forgoing, all claims (whether final or contingent, whether dispute or undisputed and whether or not notified to or claimed against the Corporate Debtor) of all the Operational Creditors (Statutory dues) of the Corporate Debtor shall stand fully and finally discharged & settled."

The Applicant / CD's letter dated 03.04.2024 supplying copy of approved Resolution Plan⁶ to the Respondent / HARERA

3.16 In view of the interest of more than 300 homebuyers/allottees and the continued delay in renewal of the RERA registration of the Project, the Applicant / Corporate Debtor, under the new management, complied with the direction issued by the Chairman, HARERA on 01.04.2024 and, **under protest and for the time being**, deposited a sum of ₹1,01,23,558/- towards alleged past dues pertaining to the period prior to 11.08.2023. The said amount was deposited by way of Demand Draft No. 266975 dated 05.04.2024, along with a covering letter dated 05.04.2024.

⁶ annexed herewith as Annexure-7 (page No. 46)



3.17 In the said letter, the Applicant / Corporate Debtor expressly clarified that waiver of the said past dues ought to be granted in view of the settled position of law and that the amount so deposited is liable to be returned/released to the Corporate Debtor. A copy of the Applicant / Corporate Debtor's letter dated 05.04.2024, received by HARERA on 08.04.2024, along with the Demand Draft for ₹1,01,23,558/-, is annexed herewith.

3.18 Thereafter, the Respondent / HARERA issued Registration No. **46 of 2017/7(3)/45/2024/04** dated 15.04.2024 in respect of the Project, thereby extending the RERA registration up to 30.09.2025. However, the amount of ₹1,01,23,558/- deposited by the Applicant / Corporate Debtor under protest was neither refunded nor was the Applicant / Corporate Debtor's request for waiver of past dues, in terms of settled law, considered or disposed of. A copy of Registration No. 46 of 2017/7(3)/45/2024/04 dated 15.04.2024 is annexed herewith. Copy⁷ of Registration No. 46 of 2017/7(3)/45/2024/04 dated 15.04.2024.

3.19 After waiting for nearly two months, the Applicant / Corporate Debtor, under the new management, submitted a detailed representation dated 10.06.2024, received by the Respondent / HARERA on 12.06.2024, seeking refund of the sum of ₹1,01,23,558/- deposited under protest. In the said

⁷ annexed herewith as Annexure-9 (page Nos. 50-56)



representation, the Applicant / Corporate Debtor reiterated the settled position of law laid down by the Hon'ble Supreme Court and various High Courts on the "clean slate/fresh slate" principle, and also relied upon the express stipulation contained in the approved Resolution Plan as well as the relief granted by this Hon'ble Adjudicating Authority in paragraph 38 of the order dated 11.08.2023 approving the Resolution Plan. However, the Respondent / HARERA failed to respond to or dispose of the said representation.

A copy of the Applicant / CD's Representation dated 10.06.2024 (received⁸ by HARERA on 12.06.2024)

3.20 The Applicant / CD (under new management) served another reminder letter dated 08.08.2024 (received by HARE RA on 12.08.2024) to the Respondent / HARERA which also remains unreplied. A copy of the reminder letter⁹ dated 08.08.2024 (received by HARE RA on 12.08.2024)

3.21 Action of Respondent / HARERA in coercing CD {under new management) to pay past dues of the CD to get extension of RERA Registration is absolutely illegal-:

a. That the action of the Respondent / HARE RA Gurugram in coercing the Applicant / CD (under new management) into

⁸ annexed herewith as Annexure-10 (page Nos. 57-64)

⁹ annexed herewith as Annexure-11 (page Nos. 65-66).

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paying/depositing a colossal sum of Rs. 1,01,23,558/- on account of past dues of the erstwhile CD pertaining to the period prior to 11.08.2023 (date of plan approval by AA), and not refunding the same to the CD even after repeated requests, letters and representations is absolutely illegal. The action is (i) against the Jaw (clean slate principle) settled by the Hon'ble SC, various High Courts and NCLT (ii) against the plan approval order dated 11.08.2023 and (iii) against the approved resolution plan, relevant portions of all of which are reproduced below:

- i. The Hon'ble Supreme Court in Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta and Ors. (2020) 8 sec 531 Qudgment dated 15.11.2019) held as under:

"107 A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra headpopping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. ALL claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be



paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count."

- ii. Further, the Hon'ble Supreme Court in *Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd.* (2021) 9 sec 657 Judgment dated 13.04.2021) held as under:

"138. In the foregoing paragraphs, we have held, that 2019 amendment to Section 31 of L&B Code is clarificatory and declaratory in nature and therefore will have a retrospective operation. As such, when the resolution plan is approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. Since the subject matter of the petition are the proceedings, which relate to the claims of the respondents prior to the approval of the plan, in the light of the view taken by us, the same cannot be continued. Equally the claims, which are not part of the resolution plan, shall stand extinguished."

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iii. Further, the Hon'ble High Court of Delhi recently in *Bhushan Power and Steel Ltd. v. Municipal Corporation of Delhi and Anr.* W.P.(C) 4321/2024 (judgment dated 08.04.2024) held as under:

"12. In essence, once a resolution plan is approved by the Adjudicating Authority under Section 31 (1) of the IBC, all stakeholders including Central Government, any State Government or any Local authority are bound by its terms, and any claims or dues including statutory dues owed to the governmental agencies which are not a part of the approved resolution plan are extinguished; it is impermissible to pursue or initiate proceedings in respect of such dues for the period prior to the "effective date" of the resolution plan. 13. In the present case, the MCD did not lodge its claim in respect of property tax dues against the petitioner during the CIRP. Admittedly, the claim of the MCD is not a part of the approved resolution plan. Consequently, prima facie, any statutory dues owed to the MCD by the petitioner prior to the date on which the resolution plan is approved i.e. 26.03.2021, cannot be demanded/recovered."

iv. Further, the Hon'ble High Court of Bombay recently

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in Alok Industries Ltd. v. Assistant Commissioner of Income Tax and Ors. WP No. 3088/2022 (judgment dated 20.03.2024) opined as under:

"(a) issue of notice under section 148 of the Act to petitioner company after the approval of the resolution plan for a period prior to closing is invalid and bad in law, having been issued contrary to the provisions of the Code and the Resolution Plan

(b) The Apex Court in Ghanshyam Mishra & Sons Pvt. Ltd. v/s. Edelweiss Asset Reconstruction Company Ltd. after considering the provisions of the Code has finally concluded in paragraph 102 that all dues including statutory dues owed to the Central Government, State Government or any Local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for a period prior to the date on which the Adjudicating Authority grants its approval under section 31 of the Act could be continued."

v. Further, the Hon'ble High Court of Patna recently in Patna Highway Projects Ltd. v. The State of Bihar and Ors. Civil Writ No.14376 of 2023 (judgment dated 24.04.2024) held as under:

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"26. We have found for a fact that, the tax dues for the respective assessment years were not included in the resolution plan. The State has not challenged the resolution plan by way of an Appeal or a proceeding before this Court. The resolution plan has been approved on 10.05.2022 and before that the State has not approached the R.P. or the NCLT. 27. In the above circumstances, we have to follow the consistent declaration of law made by the Hon'ble Supreme Court in Ghanshyam Mishra, Coe of Essar Steel India Limited and M/s Ruchi Soya (all supra) and the demands raised by the assessment orders, of tax due for the years 2020-21 and 2022-23 stands extinguished; subject only to the contingency of a liquidation oceeding if the resolution plan fails."

vi. Further, the Hon'ble NCL T Ahmedabad in Mangalam Global Enterprise Ltd. Vs. Kapadwanj Nagar Seva Sadan GP (/8) NO. 81/2019 (order dated 19.10.2023) while dealing with a case where Municipality was demanding dues pertaining to period prior to plan approval date held as under:

"12. It is well settled law that CIRP is a claim driven time bound process and that through catena of judgment the above position has been upheld by

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Hon'ble Supreme Court of India and recently again in the matter of Tata Power Western Odisha Distribution Ltd. (TPWODL) & Anr. Vs. Jagannath Sponge Pvt. Ltd. reiterated that the clean slate principle would stand negated if the successful resolution applicant is asked to pay the arrears payable by the corporate debtor.

13. Relying on the judgment of Hon'ble Supreme Court of India in the matter of Ghanshyam Mishra (supra) as well as Tata Power Western Odisha Distribution Ltd. (TPWODL) & Anr. Vs. Jagannath Sponge Pvt. Ltd. we hold that Respondent No. 1 has no right at this belated stage to raise a claim against the Corporate Debtor/SRA for the dues pertaining to the period prior to the approval of the resolution plan i.e. 20.09.2022 w.r.t. the Corporate Debtor.

Accordingly, we allow prayer (a) in the application declaring that all claims of the Respondent No. 1 before 20.09.2022 stand extinguished pursuant to the approval of Resolution Plan by this Hon'ble Tribunal."

vii. Even this Hon'ble Tribunal in its plan approval order dated 11.08.2023 (passed in IA(IBC) No. 921/2022 in CP(IB) No. 666/2020) reiterated such position of law

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in para 38 thereof apart from granting relief/waiver to the SRA in this respect in the following words:

"38. With respect to the waivers with regard to extinguishment of claims which arose Pre-CIRP and which have not been claimed are granted in terms of Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd., wherein the Hon'ble Supreme Court has held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt, any State Govt or any Local authority, guarantors and other stakeholders. We place reliance on the recent judgement of Hon'ble High Court of Rajasthan in the matter of EMC v. State of Rajasthan wherein it has been inter-alia held that-:

"Law is well-settled that with the finalization of insolvency resolution plan and the approval thereof by the NCLT, all dues of creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date."

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On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court also held that all the dues including the statutory dues owed to the Central Govt, any State Govt or any Local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued."

- viii. Further, the approved Resolution Plan's Chapter 6, Table Sr. No. 6 (Proposal for payment of statutory dues) itself also provides for extinguishment of statutory dues in the following terms:

"On and with effect from the Settlement Date, all Claims, Debts and dues of the Operational Creditors (Statutory dues) shall stand satisfied and extinguished, and no Claim, Debt or Due shall subsist against the Corporate Debtor and the Resolution Applicant. In accordance with the forgoing,

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all claims (whether final or contingent, whether disputed or undisputed and whether or not notified to or claimed against the Corporate Debtor) of all the Operational Creditors (Statutory dues) of the Corporate Debtor shall stand fully and finally discharged & settled."

A copy of the Applicant / CD's Letter dated 03.04.2024 supplying copy of approved Resolution Plan to the Respondent / HARERA is already annexed as Annexure-7. A copy of the relevant portion of the Resolution Plan is annexed herewith as Annexure-12 (page Nos.67-73)

3.22 It is, therefore, evident that the action of the Respondent / HARERA, Gurugram in compelling the Applicant / Corporate Debtor, under the new management, to deposit a sum of ₹1,01,23,558/- towards alleged past dues pertaining to the period prior to 11.08.2023, and in failing to refund the said amount despite repeated requests and representations, is illegal and unsustainable in law. Such action is (i) contrary to the settled "clean slate / fresh slate" principle laid down by the Hon'ble Supreme Court and consistently followed by the Hon'ble NCLAT, various NCLTs and High Courts; (ii) in violation of the order dated 11.08.2023 passed by this Hon'ble Adjudicating Authority approving the Resolution Plan; and (iii) contrary to the terms



of the approved Resolution Plan.

Accordingly, the amount of ₹1,01,23,558/- so collected is liable to be refunded to the Applicant / Corporate Debtor along with appropriate interest and costs.

3.23 Contempt of this Tribunal by Respondent/ HARERA-:

a. That by coercing the Applicant / CD (under new management) and getting it to deposit a colossal sum of Rs. 1,01,23,558/- on account of past dues of the erstwhile CD pertaining to the period prior to 11.08.2023 (date of plan approval by AA), the Respondent / HARERA has willfully disobeyed and violated the plan approval order dated 11.08.2023 in two ways:

- i. The Respondent / HARERA has directly disobeyed and violated para 38 of the Hon'ble AA's plan approval order dated 11.08.2023 as reproduced in para 16(vii) above wherein this Hon'ble AA has granted the relief/waiver of extinguishment of past dues of the CD in terms of the law settled by the Hon'ble SC.
- ii. The Respondent / HARERA has also blatantly disobeyed and violated the approved Resolution Plan which forms part of this Hon'ble AA's plan approval order dated 11.08.2023 (para 42 of the plan approval order reads " .. The Resolution Plan shall form part of this

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Order and shall be read along with this order for implementation..) as explained in para 16(viii) above. Any violation of the provisions of the approved Resolution Plan in-turn amounts to disobedience of this Hon'ble AA's plan approval order dated 11.08.2023.

Both these violations of the plan approval order dated 11.08.2023 constitute the offence of civil contempt as defined in S. 2(b) of the Contempt of Courts Act, 1971 and punishable under S. 12 thereof r/w Section 425 of the Companies Act, 2013.

3.24 It is undisputed that the Respondent / HARERA was duly informed of the Resolution Plan approval order dated 11.08.2023 and the approved Resolution Plan forming part thereof, through multiple meetings as well as written letters and representations, copies of which are annexed to the present IA. Notwithstanding such knowledge, the Respondent / HARERA proceeded to require the Applicant / Corporate Debtor, under the new management, to deposit a sum of ₹1,01,23,558/- towards dues pertaining to the period prior to 11.08.2023 and continues to retain the said amount.

In view of the foregoing facts, which disclose conscious disregard of the order dated 11.08.2023 passed by this Hon'ble



Adjudicating Authority, it is submitted that this Hon'ble Tribunal may be pleased to consider initiation of appropriate contempt proceedings against the Respondent / HARERA, in the interest of justice.

3.25 Commission of offence u/s 75(3) IBC: Wilful contravention of the approved Resolution Plan by the Respondent / HARERA

a. That the Respondent / HARERA was actively made aware of the approved Resolution Plan. More specifically, a copy of approved Resolution Plan was also supplied to the Respondent / HARERA vide the Applicant / CD's letter dated 03.04.2024 (Annexure-7). Apart from this, the relevant part of the resolution plan was also specifically shared vide representation dated 10.06.2024 (Annexure-10). Yet the Respondent / HARERA chose to willfully contravene the approved Resolution Plan with absolute disregard for the law and coerced the Applicant / CD (under new management) and got it to deposit a colossal sum of Rs. 1,01,23,558/- on account of past dues of the erstwhile CD pertaining to the period prior to 11.08.2023 (date of plan approval by AA). The erring officials of the Respondent / HARERA are thus liable for the commission of offence u/s 75(3) IBC which reads as follows:

i. "74. Punishment for contravention of moratorium or

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the resolution plan (3) Where the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under section 31, knowingly and wilfully contravenes any of the terms of such resolution plan or abets such contravention, such corporate debtor, officer, creditor or person shall be punishable with imprisonment of not less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both."

3.26 It is respectfully submitted that notwithstanding the passage of nearly seven years since the enactment of the Insolvency and Bankruptcy Code, 2016, and despite the "clean slate" principle having been unequivocally settled by the Hon'ble Supreme Court and consistently followed by various High Courts and NCLTs, statutory authorities continue to insist upon recovery of dues pertaining to periods prior to approval of Resolution Plans. The Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta & Ors.* has categorically held that a Successful Resolution Applicant cannot be confronted with "undecided" claims after approval of the Resolution Plan, as such uncertainty would undermine the resolution process itself.



It is submitted that permitting such conduct would adversely impact the willingness of bona fide and resourceful applicants to participate in the CIRP process, thereby frustrating the object of the IBC. In these circumstances, it is humbly prayed that this Adjudicating Authority may be pleased to pass appropriate directions in the present IA so as to enforce the settled legal position and prevent recurrence of such actions by statutory authorities.

4. Reply of Respondent

Preliminary Submissions and Objection as to Maintainability

4.1 The Respondent has, at the outset, contended that the present Application is wholly misconceived, not maintainable either in law or on facts, and liable to be dismissed in limine.

4.2 It is submitted that the Application seeks to indirectly challenge the Corporate Insolvency Resolution Process (CIRP) and the approved Resolution Plan, which have already attained finality upon approval under Section 31 of the Insolvency and Bankruptcy Code, 2016 (“IBC”).

4.3 According to the Respondent, the Applicant is attempting to reopen issues which stood concluded during the CIRP and were duly considered by the Resolution Professional and the CoC.

Conduct of CIRP in Strict Compliance with the IBC

4.4 The Respondent submits that the CIRP of the Corporate Debtor



was conducted strictly in accordance with the provisions of the IBC and the regulations framed thereunder.

4.5 It is stated that upon admission of the petition under Section 7/9/10 of the IBC, the Interim Resolution Professional was appointed and thereafter confirmed as Resolution Professional in accordance with law.

4.6 The Resolution Professional duly made public announcement, invited claims from all stakeholders, verified the claims received, and constituted the Committee of Creditors.

Form-G was issued inviting Expression of Interest (EOI) from prospective resolution applicants. Resolution plans received were placed before the CoC for its consideration.

4.7 The CoC, after due deliberations and upon examination of feasibility and viability, approved the Resolution Plan with the requisite voting share as mandated under Section 30(4) of the IBC.

4.8 Thereafter, the Resolution Plan was placed before this Adjudicating Authority and came to be approved under Section 31 of the IBC. Upon such approval, the Resolution Plan became binding on all stakeholders.

Finality and Binding Nature of Approved Resolution Plan

4.9 The Respondent has emphasized that once a Resolution Plan is approved by this Adjudicating Authority under Section 31, the



same attains statutory finality and is binding upon the Corporate Debtor, its employees, members, creditors and other stakeholders.

4.10 It is submitted that the legislative intent behind the IBC is to ensure time-bound resolution and certainty in commercial transactions. Entertaining belated challenges after approval of the Resolution Plan would defeat the very object of the Code.

4.11 The Respondent contends that the present Application, if allowed, would disturb rights that have already crystallized and implemented pursuant to the approved Resolution Plan.

Commercial Wisdom of the Committee of Creditors

4.12 The Respondent submits that the commercial decision of the CoC in approving the Resolution Plan is not open to judicial review, except on the limited grounds provided under Section 30(2) of the IBC.

4.13 It is contended that this Adjudicating Authority does not sit in appeal over the commercial wisdom of the CoC.

4.14 The Applicant, by way of the present Application, is effectively seeking reconsideration of matters which fall squarely within the commercial domain of the CoC, which is impermissible under the scheme of the IBC.

Lack of Locus Standi

4.15 The Respondent has further contended that the Applicant lacks



locus standi to maintain the present Application.

4.16 It is submitted that the Applicant was aware of the initiation of CIRP, the publication of Form-G, and the invitation of claims, but failed to take appropriate steps at the relevant stage.

4.17 The Applicant neither approached the Resolution Professional in a timely manner nor raised objections before the CoC. Having failed to avail of remedies during the CIRP, the Applicant cannot now seek to assail the approved Resolution Plan.

Delay, Acquiescence and Afterthought

4.18 The Respondent submits that the Application suffers from unexplained delay and is barred by principles of acquiescence and estoppel.

4.19 It is contended that the Applicant, having remained silent throughout the CIRP and after approval of the Resolution Plan, cannot be permitted to challenge the process at a belated stage.

4.20 According to the Respondent, the present Application is an afterthought and has been filed only to derail the implementation of the Resolution Plan.

Contractual and Title Disputes Beyond the Scope of IBC

4.21 Insofar as the Application raises issues concerning termination of agreements, contractual rights, or alleged proprietary interest in certain properties, the Respondent submits that such



disputes involve complex questions of fact and civil law.

4.22 It is contended that the jurisdiction of this Adjudicating Authority under the IBC is summary in nature and confined to matters arising out of insolvency resolution.

4.23 The Respondent submits that disputes relating to title, validity of termination, or enforcement of independent contractual rights are to be adjudicated by a competent civil court and cannot be determined in proceedings under the IBC.

Object of the IBC and Need for Certainty

4.24 The Respondent reiterates that the IBC is a beneficial legislation aimed at resolution of insolvency in a time-bound manner and maximization of value of assets.

4.25 Entertaining collateral challenges post approval would create uncertainty and discourage resolution applicants from participating in the process.

4.26 The sanctity of the CIRP and the binding nature of the Resolution Plan must be preserved to uphold the objectives of the Code.

4.27 In view of the aforesaid submissions, the Respondent has prayed that the present Application be dismissed as being not maintainable and devoid of merit.

4.28 It is further prayed that no interference be made with the approved Resolution Plan and that the implementation thereof be permitted to proceed in accordance with law.



5. Written Submissions on behalf of the Applicant (to Respondent's Reply.)-: The Respondent - HARERA has opposed the present IA on three principal grounds, namely:

- i. lack of jurisdiction of this Hon'ble Tribunal under Section 60(5) of the IBC;
- ii. non-grant of specific waivers at the time of approval of the Resolution Plan; and
- iii. distinction between penalty and fee. The Applicant respectfully submits as under:

Objection as to Jurisdiction under Section 60(5) of the IBC

5.1 The Respondent has contended that recovery of past dues under the HARERA Gurugram Regulations, 2021 falls outside the jurisdiction of this Hon'ble Tribunal and that actions taken under the said Regulations cannot be examined under Section 60(5) of the IBC. Reliance has been placed on the judgment of the Hon'ble Supreme Court in Embassy Property Developments Pvt. Ltd. v. State of Karnataka.

5.2 The said reliance is wholly misplaced. In Embassy Properties (supra), the issue pertained to a decision of the State Government under the MMDR Act involving exercise of sovereign functions in the realm of public law. The Hon'ble Supreme Court held that NCLT could not sit in appeal over such governmental decisions.



- 5.3 The present case stands on an entirely different footing. The issue herein concerns recovery of pre-CIRP statutory dues from the Corporate Debtor after approval of the Resolution Plan. The question is whether such dues stand extinguished in view of Section 31(1) of the IBC. This issue squarely arises “out of or in relation to insolvency resolution”.
- 5.4 The law on this aspect has been conclusively settled by the Hon’ble Supreme Court in Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, wherein it has been held that Section 60(5)(c) confers wide residuary jurisdiction upon the NCLT to adjudicate questions of law or fact arising from or in relation to insolvency resolution proceedings. The Hon’ble Supreme Court categorically observed that Section 60(5)(c) would be rendered otiose if jurisdiction were confined only to matters covered by Section 14.
- 5.5 Further, the Hon’ble NCLAT in Chinar Steel Segments Centre Pvt. Ltd. v. Samir Kumar Agarwal (upheld by the Hon’ble Supreme Court) dealt with an identical issue where a statutory electricity authority insisted upon payment of pre-CIRP dues as a pre-condition for grant of fresh connection post resolution. The NCLAT held that such an application was “fully maintainable under Section 60(5)” and directed grant of fresh connection without insisting on extinguished dues. The judgment in Embassy Properties (supra) was expressly distinguished.



5.6 The present case is pari materia. The Respondent compelled the Applicant (under new management) to deposit pre-CIRP dues under the HARERA Regulations. Such insistence directly affects the clean slate granted under the approved Resolution Plan. Therefore, the present IA is clearly maintainable under Section 60(5)(c) of the IBC.

II. Objection Regarding Non-Grant of Specific Waivers in Plan Approval Order

5.7 The Respondent has contended that since specific waivers relating to RERA dues were not expressly granted in the plan approval order dated 11.08.2023, the present IA is not maintainable.

5.8 This objection is equally untenable.

5.9 Firstly, while leaving certain reliefs to be considered by competent authorities, this Hon'ble Tribunal expressly directed that such authorities shall act "keeping in view the provisions and spirit of the Code." Despite repeated representations, the Respondent failed to consider the matter in light of the settled legal position under the IBC.

5.10 Secondly, paragraph 38 of the plan approval order specifically granted extinguishment of pre-CIRP claims not forming part of the approved Resolution Plan in terms of the law laid down by the Hon'ble Supreme Court in Ghanashyam Mishra and Sons Pvt.



Ltd. v. Edelweiss Asset Reconstruction Company Ltd.. In the said judgment, it has been unequivocally held that upon approval of a Resolution Plan under Section 31(1), all claims not forming part of the Plan stand extinguished and no person can initiate or continue proceedings in respect of such claims.

5.11 Thirdly, the approved Resolution Plan itself contains a specific clause providing that statutory dues not forming part of the Plan shall stand satisfied and extinguished upon the Settlement Date.

5.12 The issue has been further clarified by the Hon'ble Supreme Court in Vaibhav Goel v. Deputy Commissioner of Income Tax, wherein it was held that subsequent demands for pre-CIRP dues raised after approval of the Resolution Plan are invalid and unenforceable, even if specific waivers were not expressly granted at the time of approval. The Hon'ble Supreme Court emphasized that once the Resolution Plan is approved, no belated claim can be enforced and the Corporate Debtor must be allowed to recommence business on a clean slate.

5.13 Applying the aforesaid binding precedent, the demand raised by the Respondent vide notice dated 01.03.2024, insofar as it relates to pre-CIRP dues, is illegal and unenforceable.

III. Distinction Between Penalty and Fee.

5.14 The Respondent has attempted to draw a distinction between



penalty (which it claims to have waived) and fees (which it claims cannot be waived).

5.15 This distinction is legally irrelevant in the present context.

The admitted position is that the amount of Rs. 1,01,23,558/- pertains entirely to the period prior to 11.08.2023, i.e., prior to approval of the Resolution Plan.

5.16 It is settled law, including in Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ghanashyam Mishra (supra), that all pre-CIRP dues not forming part of the approved Resolution Plan stand extinguished upon approval under Section 31(1) of the IBC.

5.17 The IBC grants a clean slate to the successful Resolution Applicant. The nature or nomenclature of the dues—whether tax, fee, penalty, interest or otherwise—is immaterial if such dues pertain to the pre-CIRP period and are not part of the approved Resolution Plan.

5.18 Therefore, the Respondent’s attempt to differentiate between “penalty” and “fee” is misconceived and does not alter the legal consequence of extinguishment.

IV. Alleged Lapse of Resolution Professional

5.19 The Respondent has further alleged that the Resolution Professional failed to apply for extension of RERA registration during CIRP and that the Resolution Applicant ought to have



provided for such dues in the Resolution Plan.

5.20 This contention is without merit. Any alleged omission during CIRP cannot fasten pre-CIRP liabilities upon the new management post approval of the Resolution Plan.

5.21 On the contrary, the fact that the Resolution Plan provided for dues of certain statutory authorities but not for HARERA clearly establishes that HARERA's alleged dues did not form part of the admitted claims and hence stand extinguished in view of Section 31(1) and the law laid down in Ghanashyam Mishra (supra).

5.22 The present IA is fully maintainable under Section 60(5)(c) of the IBC.

5.23 The demand raised by the Respondent for pre-CIRP dues after approval of the Resolution Plan is contrary to Section 31(1) of the IBC and the binding judgments of the Hon'ble Supreme Court in Gujarat Urja, Ghanashyam Mishra and Vaibhav Goel.

5.24 The objections raised by the Respondent are misconceived, contrary to settled law, and liable to be rejected.

5.25 Accordingly, the Applicant respectfully prays that this Hon'ble Tribunal be pleased to allow the present IA in terms of the reliefs sought therein.

6. Findings and Analysis-:

6.1 We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by the parties and heard the arguments put forth by learned Counsels



for the parties; and after hearing the learned counsels for the parties, we shall now proceed to consider the present petition on its merits, specifically within the ambit of points involved in the instant application.

- 6.2 It is submitted that the late fee imposed under the provisions of the Haryana Real Estate Regulatory Authority, Gurugram, having already been paid by the SRA in compliance with statutory directions, attains finality under the special statute.
- 6.3 The Adjudicating Authority under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 does not sit in appeal over orders passed by the HRERA Authority. The jurisdiction of this Tribunal is confined to insolvency resolution and liquidation matters of the Corporate Debtor and does not extend to setting aside, modifying, or directing refund of statutory/late fees imposed under an independent regulatory enactment.
- 6.4 Once the competent RERA Authority has levied and realized late fee in exercise of its statutory powers, such levy partakes the character of a statutory charge payable to the State Authority. In absence of any challenge before the appropriate appellate forum under HRERA, this Tribunal cannot direct refund of such amount.
- 6.5 It is settled law that IBC is not intended to be a substitute for appellate or supervisory jurisdiction over other statutory authorities. Therefore, any prayer seeking refund or reversal

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of HRERA late fee is beyond the scope of proceedings under the Code and is liable to be rejected.

6.6 The instant Interlocutory Application I.A. No. 2291/KB/2024 is **dismissed** in terms of the above.

6.7 The Registry is directed to send copies of the Order forthwith to all the parties and their representative for information and for taking necessary steps.

6.8 Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

Rekha Kantilal Shah
Member (Technical)

Labh Singh
Member (Judicial)

Order signed on the 27th day of February 2026.

RSM(LRA)