NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 949 of 2023

(Arising against the impugned order dated 19.07.2023 passed by the National Company Law Tribunal, New Delhi Principal Bench in I.A. No. 3556 of 2022 & I.A. No. 3392 of 2022, in C.P.(IB) No. 875 OF 2020].

IN THE MATTER OF:

Assets Care & Reconstruction Enterprise Limited
(Through its Authorized Signatory)
2nd Floor, Mohan Dev Building, 13,
Tolstoy Marg, New Delhi - 110001.

...Appellant

Versus

1. **Mr. Viswanadha Sarma**
(Resolution Professional of Arena Superstructures Private Limited)
Building 03, Flat 301, My Home Vihanga, Gopanpally Village, Serlingampally Mandal, Hyderabad, Telangana – 500046

...Respondent No.1

2. **Purvanchal Projects Private Limited**
(Through its Authorised Signatory,
Dr. Jagat Singh Thakur) 2nd Floor,
Purvanchal Plaza, Mayur Vihar, Phase-II,
New Delhi - 110091.

...Respondent No.2

3. **Financial creditor in Class**
(Real Estate Allottee - Home Buyers)
Through its Authorized Representative,
Mr. Bhim Sain Goyal
M-215, Greater Kailash-II,
New Delhi, Delhi – 110048

...Respondent No.3

4. **Dhankalash Distributors Private Limited**
Unit No. 710, 7th Floor, Todi Mansion,
1 Lu Shun Sarani, Kolkata,
West Bengal- 700073.

...Respondent No.4

Present:

For Appellant: Mr. Arun Kathpalia & Mr. Abhijeet Sinha, Sr. Advocates with Ms. Heena Kochar, Ms. Diksha Joshi, Mr. Udit Mendiratta, Mr. Shivkrit Rai and Ms. Apeksha Singh, Advocates.

For Respondent: Mr. Vaibhav Gaggar, Sr. Advocate with Mr. Palash Singhai, Mr. Harshal Sareen and Ms. Aashima Gautam, Advocates for RP.

Mr. Gaurav Mitra, Mr. Utkarsh Joshi, Ms. Kanishka Sharma and Ms. Lavanya Pathak, Advocates for Homebuyers.

Mr. Krishnendu Dutta, Sr. Advocate with Mr. Prithu Garg, Ms. Alina Merin Mathew, Mr. Ashutosh Arvind Kumar and Mr. Aryan Bhat, Advocates.

WITH
Company Appeal (AT) (Ins.) No. 1117 of 2023

(Arising against the impugned order dated 19.07.2023 passed by the National Company Law Tribunal, New Delhi Principal Bench in C.P.(IB) No. 875 OF 2020].

IN THE MATTER OF:

Dhankalash Distributors Private Limited
Unit No. 710, 7th Floor, Todi Mansion,
1 Lu Shun Sarani, Kolkata,
West Bengal - 700073

...Appellant

Versus

1. **Ayyagiri Viswanadha Sarma,**
Resolution Professional
Deloitte India Insolvency Professionals, LLP,
7th Floor, Building 10, Tower B,
DLF Cyber City, Phase -II,
Gurgaon, Haryana – 122002

...Respondent No.1

2. **Purvanchal Projects Private Limited, SRA**
LSC A-7, 2nd Floor, Purvanchal Plaza
Mayur Vihar, Phase-I,
New Delhi - 110091.
...Respondent No.2

3. **Assets Care & Reconstruction Enterprises Private Limited ("ACRE")**
Office: 2nd Floor, Mohandev Building,
13 Tolstoy Marg, New Delhi -110001
...Respondent No.3

4. **Creditors in Class, i.e. Homebuyers**
Through their Authorised Representative,
Mr. Bhim Sain Goyal
Address M-215, Greater Kailash-II,
New Delhi, Delhi, 110048
...Respondent No.4

5. **Anil Kumar Saxena**
R/ o, B-118, First floor, Shivalik,
Malviya Nagar, New Delhi -110017
...Respondent No.5

6. **Ashish Kumar**
R/o, Bs 25, Shalimar Bagh,
New Delhi- 110088
...Respondent No.6

Present:

For Appellant:

For Respondent: Mr. Vaibhav Gaggar, Sr. Advocate with Mr. Palash Singhai, Mr. Harshal Sareen and Ms. Asshima Gautam, Advocates for RP.

Mr. Prithu Garg, Mr. Ashutosh Arvind Kumar and Mr. Aryan Bhat, Advocates for SRA.

WITH
Company Appeal (AT) (Ins.) No. 1231 of 2023

(Arising against the impugned order dated 19.07.2023 passed by the National Company Law Tribunal, New Delhi Principal Bench in I.A. No. 5361 of 2021 & I.A. No. 5979 of 2022 in C.P.(IB) No. 875 OF 2020].

IN THE MATTER OF:

New Okhla Industrial Development Authority
Having its office at:
Administrative Building, Sector 6,
NOIDA, Guatam Budhha Nagar,
Uttar Pradesh- 201301 **...Appellant**

Versus

1. **Ayyagari Viswanadha Sarma,**
Resolution Professional
Registered address:
Building 03, Flat 301, My Home Vihanaga, Gopanally Village, Serlingampally Mandal, Telangana- 500107

Correspondence Address:
Deloitte Touche Tohmatsu India Lip,
7th Floor, Building 10, Tower B,
DLF Cyber City, Phase -II, Gurgaon,
Haryana - 122002 **...Respondent No.1**

2. **Purvanchal Projects Private Limited,**
Successful Resolution Applicant
Having its registered office at:
LSC A-7, 2nd Floor, Purvanchal Plaza
Mayur Vihar, Phase-II,
New Delhi - 110091. **...Respondent No.2**

Present:

For Appellant: Mr. Rachit Mittal, Mr. Parish Mishra, Mr. Shubham Sonthalla, Mr. Kanishk Raj, Ms. Srishti Agrawaal, Mr. Abhishek Sinha and Mr. Shivansh Bansal, Advocates.

For Respondent: Mr. Palash Singhai, Mr. Harshal Sareen and Ms. Aashima Gautam, Advocates for RP.

Mr. Prithu Garg, Mr. Ashutosh Arvind Kumar and Mr. Aryan Bhat, Advocates for SRA.

Mr. Utkarsh Joshi and Ms. Kanishka Sharma, Advocates for Homebuyers.

J U D G M E N T

(30th June, 2026)

INDEVAR PANDEY, MEMBER (T)

COMPANY APPEAL (AT) (Ins.) No. 949 OF 2023

This Appeal has been preferred by **Assets Care & Reconstruction Enterprise Limited ("ACRE")/Appellant**, acting in its capacity as trustee of ACRE-122 Trust and as the sole secured financial creditor of **Arena Superstructures Private Limited ("Corporate Debtor")**, challenging the order dated 19.07.2023 passed by the Learned National Company Law Tribunal, Principal Bench, New Delhi, (Adjudicating Authority) in C.P. (IB) No. 875 of 2020. By way of the said order, the Learned Adjudicating Authority approved the Resolution Plan of **Purvanchal Projects Private Limited (Successful Resolution Applicant") /Respondent No.2** submitted by **Resolution Professional/ Respondent No.1** vide I.A. No. 3392 of 2022 and simultaneously rejected the objections raised by the Appellant in I.A. No. 3556 of 2022 against the said Resolution Plan. The **Homebuyers** who are **Financial Creditor in Class** have been arrayed as **Respondent No.3** and **Dhankalash Distributors Pvt. Ltd.** (Financial

Creditor) has been arrayed as **Respondent No.4.** For the sake of convenience, this appeal would be referred to as **First Appeal** henceforth.

2. The challenge in the present Appeal essentially arises from the grievance of the Appellant that despite being a dissenting financial creditor and the sole secured financial creditor of the Corporate Debtor, the Approved Resolution Plan failed to secure to the Appellant its minimum entitlement in terms of Section 30(2)(b) read with Section 53 of the Insolvency and Bankruptcy Code, 2016. The appellant has made the following prayers:

> *Reliefs Sought:*
>
> *a. Set aside the Impugned Order dated July 19,2023 passed by the Ld. NCLT in inter-alia, LA. No. 3556/2022 and LA. No. 3392/2022 in C.P. (IB) No. 875/ 2020;*
>
> *b. Declare that the Respondent No. 2's Approved Plan is non-compliant with Section 30(2) of the IBC and related regulations and therefore the Ld. NCLT has erred in approving the same under the mandate of the IBC;*
>
> *c. Direct for the payment of the liquidation value as per Section 30(2)(b) read with Section 53(1) of the IBC, payable to ACRE as a dissenting financial creditor and quantified at Rs. 1,44,91,91,358/-;*
>
> *d. During the pendency of this Appeal, stay the operation and implementation of the Impugned Order dated July 19,2023 passed by the Ld. NCLT in inter-alia, LA. No. 3556/2022 and LA. No. 3392/2022 in C.P. (IB) No. 875/2020;*
>
> *e. During the pendency of this Appeal, restrain the RespondentNo.2 from taking over the control of the Corporate Debtor and further taking any steps to implement the Approved Plan; and or*
>
> *f. Pass such other orders or directions as this Hon'ble Appellate Tribunal may be deemed fit and necessary in the facts and circumstances of the present case*

COMPANY APPEAL (AT) (INS.) NO. 1117 OF 2023

3. The Second Appeal being Company Appeal (AT) (Ins.) No. 1117 of 2023 has been preferred by the **Appellant, Dhankalash Distributors Private Limited ("DDPL")**, under Section 61 of the Insolvency and Bankruptcy Code, 2016, assailing the same impugned order dated 19.07.2023 whereby the Adjudicating Authority approved the Resolution Plan submitted by the SRA, while ignoring and overlooking the objections raised by the Appellant in I.A. No. 3986 of 2022 concerning irregularities in the Corporate Insolvency Resolution Process and alleged illegalities in approval of the Resolution Plan. The Appellant, being the original financial creditor at whose instance CIRP against CD was initiated is aggrieved by the dismissal of its objections and approval of the Resolution Plan, has preferred the present Appeal. In this Appeal. **RP** is the **Respondent No.1; SRA** is the **Respondent No.2; Assets Care and Reconstruction Enterprises (ACRE)** is the **Respondent No.3;** and **Creditors in Class (Homebuyers)** are **Respondent No.4** in this appeal. In addition, two registered valuers have also been arrayed as Respondents, viz. **Mr. Ashish Kumar/Respondent No.5** and **Mr. Anil Saxena/Respondent No.6.**

4. The appellant has made the following prayers in the Appeal:

> *Relief sought:*
>
> *A. Set aside and quash the Impugned Order dated 19.07.2023 passed by the Hon'ble National Company Law Tribunal, Principal Bench in IA No. 3392 of 2021 in C.P. (IB) 875 of 2020.*
>
> *B. Direct the Ld. Adjudicating Authority to adjudicate and dispose of the Restoration Application preferred by the Appellant after giving due consideration to the material facts*

placed before the Ld. Adjudicating Authority as well as this Hon'ble Appellate Tribunal by the Appellant.

C. Direct the Resolution Professional to conduct the CIR Process in a fair and transparent manner giving due consideration to the value brought in by the other Resolution Applicants through their Resolution Plans by having a fruitful discussion as to their feasibility and viability, and thereafter re-conduct the voting process.

D. Pass any other order or orders which this Hon'ble Appellate Tribunal deems fit and proper in the facts and circumstances of the case.

COMPANY APPEAL (AT) (INS.) NO. 1231 OF 2023

5. The **Third Appeal** being Company Appeal (AT) (Ins.) No. 1231 of 2023 has been preferred by the **Appellant, New Okhla Industrial Development Authority ("NOIDA")**, under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **'Code'**), assailing the same impugned order dated 19.07.2023. The Appellant is aggrieved by the dismissal of its I.A. No. 5361 of 2021 related to wrongful classification of appellant; wrongful rejection of interest, time extension charges and farmers' compensation and subsequent I.A. No. 5979 of 2022 relating to its claims and concessions allowed to SRA in the Resolution Plan.

6. It is the contention of the appellant that without adequately adjudicating the objections raised by NOIDA regarding treatment of statutory dues, lease obligations, reliefs and concessions sought under the Resolution Plan and the effect of the approved plan upon the rights and interests of the statutory development authority; the resolution plan has been approved by the Ld. AA. The following prayers have been made in this appeal:

Reliefs Sought

a) That this Hon'ble Appellate Tribunal be pleased to set aside the impugned order dated 19.07.2023 passed by the Hon'ble NCLT, Principal Bench, New Delhi in CP(IB) No.875(PB)/2020.

b) That this Hon'ble Appellate Tribunal be pleased to pass any such reliefs and directions as this Hon'ble Tribunal deems fit in the facts and circumstances of the case.

7. All the three Appeals arise from the common impugned order dated 19.07.2023 passed in CP (IB) No. 875 (PB)/2020 in the CIRP of Arena Superstructures Private Limited and involve interconnected questions regarding the approved Resolution Plan. They were heard together and are being decided by this common judgment.

FACTS OF THE CASE

8. Brief facts of the case relevant to disposal of these three appeals are as follows:

(i) The **Corporate Debtor** - Arena Superstructures Private Limited, is a company engaged in the business of construction, development, purchase and sale of residential and commercial properties. The Corporate Debtor was also the promoter of a residential real estate project known as "Lotus Arena-I", situated at Plot No. SC-01/A2, Sector-79, Noida, Uttar Pradesh.

(ii) The Corporate Insolvency Resolution Process ("**CIRP**") against the Corporate Debtor commenced pursuant to a petition filed under Section 7 of the Code by Dhankalash Distributors Private Limited, an

unsecured financial creditor of the Corporate Debtor. The Ld. Adjudicating Authority, by an order passed on 29.10.2020 in C.P. (IB) No. 875 of 2020, admitted the said petition and initiated CIRP against the Corporate Debtor. Mr. Pawan Kumar Singhal was appointed as the Interim Resolution Professional.

(iii) Subsequently, by an order dated 09.06.2021, the Adjudicating Authority replaced the Interim Resolution Professional and appointed Respondent No.1, Mr. Viswanadha Sarma, as the Resolution Professional of the Corporate Debtor. The new Resolution Professional decided to restart the entire resolution process and accordingly published a fresh Form-G on 30.06.2021 inviting fresh Expressions of Interest from resolution applicants.

(iv) During the 10th meeting of the Committee of Creditors held on 08.09.2021, the Resolution Professional informed the CoC members that he had interacted with two registered valuers, namely Mr. Ashish Kumar and Mr. Anil Saxena, appointed by the erstwhile IRP for determination of the liquidation value of the Corporate Debtor. These valuers had originally submitted their valuation reports on 05.02.2021 and 24.05.2021 respectively. However, the Resolution Professional stated that certain “incremental information” had allegedly not been considered by the valuers while preparing their original assessments. Consequently, the said additional information was shared with the valuers, pursuant to which both valuers

submitted addenda revising the liquidation value of the Corporate Debtor substantially downward.

(v) As per the original valuation conducted by 1st Valuer Mr. Anil Saxena, the liquidation value of the land and building assets of the Corporate Debtor had been assessed at Rs. 428,78,03,749/-. However, after consideration of the additional information supplied by the Resolution Professional, the reassessed liquidation value was drastically reduced to Rs.159,20,79,150/-. Similarly, the 2nd Valuer Mr. Ashish Kumar, who had originally valued the Corporate Debtor at Rs.412,94,45,763/-, revised the liquidation valuation downward to Rs.141,89,58,164/-.

(vi) Following issuance of the fresh Form-G, six prospective resolution applicants submitted their respective resolution plans. These applicants included Ace Infracity Developers Private Limited in consortium with Campbell Advertising Private Limited, Alpha Corp Development Private Limited, Eldeco Infrastructure and Properties Limited, Hawelia Builder Private Limited, Satya Developers Private Limited and Purvanchal Projects Private Limited. The plans were opened and deliberated upon before the Committee of Creditors (**'CoC'**) during the 10th CoC meeting held on 08.09.2021.

(vii) Punjab National Bank Housing Finance Limited (**PNBHFL**), which was a member of the Committee of Creditors, filed I.A. No. 4546 of 2021 seeking revision of admitted and verified claims of the homebuyers constituting the financial creditors in class. Later on,

PNBHFL by an Assignment Agreement dated 25.04.2022, assigned its debt in favour of the ACRE. Consequently, the Appellant stepped into the shoes of the assignor financial creditor and acquired membership in the Committee of Creditors with a voting share of 28.60%. ACRE also became the sole secured financial creditor of the Corporate Debtor with an admitted debt amounting to Rs.200,27,42,110/-.

(viii) In the 16th meeting of the Committee of Creditors held on 18.05.2022, the Resolution Professional discussed the process for submission of revised resolution plans and proposed 16.06.2022 as the last date for receipt of such revised plans. The said proposal was approved by the Committee of Creditors.

(ix) In the 17th meeting of the Committee of Creditors convened on 17.06.2022, the resolution applicants were invited to present their plans before the Committee of Creditors. During these deliberations, ACRE raised concerns regarding the evaluation matrix, treatment of dissenting financial creditors and the necessity of determining compliance with Section 30(2)(b) of the Code before tabling the plans for voting. The Resolution Professional acknowledged that further discussions on timelines and compliance issues would take place in subsequent meetings.

(x) During the 18th meeting of the CoC held on 23.06.2022, the Resolution Professional informed the members that the resolution plans would be put to vote on either 30.06.2022 or 01.07.2022. Thereafter, on 28.06.2022, the Resolution Professional circulated

compliance reports and a comparative analysis chart in relation to all resolution plans received for the Corporate Debtor. ACRE addressed a detailed email dated 29.06.2022 to the Resolution Professional raising concerns regarding non-compliance of the resolution plans with Section 30(2)(b) read with Section 53 of the IBC, absence of implementation mechanisms under Regulation 38(2)(a) of the CIRP Regulations, and uncertainty regarding release of the Appellant's security interest. The Appellant requested the Resolution Professional to seek clarifications from the respective resolution applicants and specifically highlighted that unless such concerns were addressed, the plans could not be treated as compliant with the Code. On 30.06.2022, the Resolution Professional replied to the ACRE's email. The Resolution Professional asserted that, in his opinion, the plans submitted by Eldeco, Hawelia, Ace and Purvanchal Projects were compliant with Section 30(2)(b) of the IBC.

(xi) Thereafter, the 19th meeting of the Committee of Creditors was held on 01.07.2022 for placing the resolution plans before the CoC for voting. During the meeting, the ACRE once again expressed objections concerning non-compliance of certain plans with Section 30(2)(b) read with Section 53 of the IBC and raised apprehensions regarding the treatment proposed for dissenting financial creditors. The Appellant also sought clarifications from Hawelia Builder Private Limited and Purvanchal Projects Private Limited, both of whom subsequently furnished written responses. The Resolution

Professional thereafter proceeded to put the plans to vote from 03.07.2022 till 09.07.2022.

(xii) Upon completion of voting, the Resolution Plan submitted by Purvanchal Projects Private Limited was approved on 10.07.2022 with 71.11% voting share. Appellant/ACRE had voted in favour of another competing resolution plan submitted by Hawelia Builder Private Limited. Another financial creditor Dhankalash with 0.288% voting rights voted in favour of the Resolution Plan submitted by ACE Infracity.

(xiii) Thereafter, the Resolution Professional filed I.A. No. 3392 of 2022 before the Learned Adjudicating Authority under Sections 30(6) and 31 of the IBC seeking approval of the Resolution Plan submitted by Purvanchal Projects Private Limited (SRA). Simultaneously, ACRE filed I.A. No. 3556 of 2022 objecting to approval of the plan on the ground that the same failed to provide the Appellant its minimum statutory entitlement as a dissenting financial creditor and instead sought to compel the Appellant to recover substantial dues from third-party debtors.

(xiv) The Insolvency and Bankruptcy Board of India also intervened in the proceedings through I.P. No.4 of 2023 and opposed ACRE's interpretation regarding entitlement of dissenting financial creditors under the Code.

(xv) Ultimately, by the Impugned Order dated 19.07.2023, the Ld. Adjudicating Authority approved the Resolution Plan submitted by

Purvanchal Projects Private Limited, allowed the Approval Application filed by the Resolution Professional and rejected the objections filed by ACRE, Dhankalash and NOIDA in their respective IAs.

Submissions of ACRE in CA (AT) (Ins.) No. 949 of 2023

9. Ld. Sr. Counsels Mr. Arun Kathpalia and Mr. Abhijeet Sinha appearing for Appellant/ACRE submitted that it is a Dissenting Financial Creditor (**"DFC"**) having voted against the Resolution Plan submitted by Respondent No. 2/Purvanchal Projects Private Limited (SRA). The Resolution Plan, though approved by 71.11% voting share of the Committee of Creditors and thereafter approved by the Ld. Adjudicating Authority, is contrary to Section 30(2)(b) read with Section 53(1)(b) of the Code, 2016, since the same fails to provide the minimum liquidation value legally payable to ACRE as a dissenting secured financial creditor.

10. Ld. Counsel submits that ACRE's admitted claim amounting to Rs.200,27,42,110/- is fully secured by way of mortgage over the Corporate Debtor's real estate project situated on 5.15 acres of land at Plot No. SC-02/N, Sector-150, Noida ("Project"). It is submitted that the Information Memorandum as well as the Resolution Plan itself expressly acknowledge that ACRE's mortgage extends over the entire project of the Corporate Debtor, including both sold and unsold units. Thus, there is no dispute regarding the subsistence and extent of the mortgage rights of ACRE over the entirety of the project assets.

11. It is further submitted that apart from the mortgage over the Project land and units, ACRE also possesses a hypothecation over the receivables arising from the Project. Such receivables include receivables from 858 sold units amounting to Rs.328.61 crores and receivables from unsold units amounting to Rs.213 crores. The existence of such hypothecation is admitted not only in the Information Memorandum and Resolution Plan, but also in the reply filed by the Successful Resolution Applicant itself. Accordingly, the entire admitted debt of ACRE stands fully secured by mortgage and hypothecation. ACRE submits that the Respondents cannot selectively ignore portions of the admitted security interest while determining ACRE's entitlement under the Code.

12. Ld. counsel submits that Section 30(2)(b) of the IBC categorically mandates that a dissenting financial creditor must receive an amount not less than what such creditor would have received under Section 53(1) in the event of liquidation of the Corporate Debtor. Section 53(1)(b) further provides that secured creditors relinquishing their security interest rank immediately after CIRP costs and pari passu with workmen's dues. It is submitted that the Explanation to Section 53 further clarifies that where debts rank equally, either all debts are to be paid in full or, if insufficient funds are available, distribution must occur in equal proportion within the same class.

13. It is submitted that ACRE and the workmen belong to the same class of recipients under Section 53, since ACRE is the sole secured financial creditor of the Corporate Debtor. Consequently, after deduction of CIRP

costs, the entire liquidation value ought to have been distributed proportionately between ACRE and the workmen. The liquidation value of the Corporate Debtor, as determined by the Registered Valuers on 29.10.2020, was Rs.151,00,41,336/-. After deducting estimated CIRP costs of approximately Rs. 6 crores, the remaining liquidation value comes to Rs.145,00,41,336/-. Out of this amount, the workmen's entitlement is only Rs.8,49,978.04, whereas ACRE's entitlement works out to Rs.144,91,91,357.95, which represents 72.36% of its admitted debt.

14. ACRE submits that despite the aforesaid statutory entitlement, the Resolution Plan proposes payment of merely Rs. 70 crores to it, payable over a staggered period of 42 months from the Transfer Date. Such payment is grossly below the statutory minimum guaranteed under Section 30(2)(b) read with Section 53(1)(b) of the IBC and therefore renders the Resolution Plan non-compliant with mandatory provisions of law.

15. Ld. counsel submits that ACRE's entire admitted debt remains fully secured not only by way of mortgage over the Project, but also by way of hypothecation over receivables arising from sold and unsold units. As per the Resolution Plan itself, the net receivables from 858 sold units amount to Rs.335,38,32,853/-, while the value of 222 unsold units over which ACRE has an uncontested mortgage amount to Rs.214,23,00,000/-. Thus, the aggregate value of receivables and assets over which ACRE possesses security interest exceeds Rs.549.61 crores.

16. It is submitted that the calculations undertaken by the RP and SRA while determining ACRE's entitlement as a dissenting financial creditor completely ignore the hypothecation over receivables despite such hypothecation being expressly admitted in all material documents. The Impugned Order also fails to take note of this crucial aspect. The Appellant submits that Section 3(31) of the IBC specifically includes hypothecation within the definition of "security interest". Therefore, the valuable contractual and statutory security rights of ACRE over receivables amounting to nearly Rs.550 crores cannot simply be extinguished or disregarded.

17. The counsel further submits that neither the RP nor the SRA had previously argued before the Learned Adjudicating Authority that hypothecation rights stood extinguished by operation of the Resolution Plan. Such contention was allegedly raised for the first time during final arguments before this Appellate Tribunal. Therefore, the issue was never properly adjudicated upon by the Learned Adjudicating Authority while passing the Impugned Order.

18. Ld. counsel submits that the contention of the RP and SRA that ACRE's security interest is limited to only 25.64% of the Project is based upon an erroneous interpretation of Section 11(4)(h) of the Real Estate (Regulation and Development) Act, 2016 (**"RERA"**). It is submitted that Section 11(4)(h) merely restricts promoters from creating mortgages or charges over apartments after execution of agreements for sale. However, the provision itself contemplates the possibility of such mortgages being

created and merely safeguards the rights of homebuyers by ensuring that such mortgage does not prejudice their interests. The provision nowhere invalidates the mortgage itself or extinguishes the rights of the mortgagee.

19. It is submitted that under the present Resolution Plan, the interests of homebuyers are already protected since the SRA has undertaken to complete the Project and deliver possession of units to allottees. Therefore, no conflict exists between the rights of homebuyers and the statutory entitlement of ACRE as a dissenting secured financial creditor. Furthermore, the valuation reports already factor in the costs of construction and completion of the Project while arriving at the liquidation value. Consequently, payment of ACRE's lawful entitlement would not adversely affect homebuyers in any manner.

20. Without prejudice, ACRE further submits that even assuming that its mortgage rights over 858 sold units stand affected by Section 11(4)(h) of RERA, ACRE nevertheless continues to possess hypothecation rights over receivables from those units amounting to Rs. 328.61 crores, apart from uncontested mortgage and hypothecation rights over the 222 unsold units valued at Rs.214.23 crores. Thus, even on the Respondents' own interpretation, ACRE remains substantially secured.

21. Ld. Counsel further distinguishes the judgment relied upon by the SRA in *Kotak Mahindra Bank Limited v. Resolution Professional of Universal Buildwell Private Limited, Company Appeal (AT) (Ins.) No. 661 of 2021*. It is submitted that in Kotak, the entire sale consideration for the units had

already been received and no further receivables existed. Moreover, in that case, the secured creditor did not possess hypothecation rights over receivables, unlike the present matter. Hence, the said judgment has no applicability to the facts of the present case.

22. Ld. Counsel submits that the interpretation sought to be advanced by the RP and SRA regarding Section 11(4)(h) of RERA stands directly contradicted by the valuation reports prepared by the Registered Valuers themselves. It is submitted that the addendum to the valuation report dated 03.09.2021 prepared by Registered Valuer Mr. Anil Kumar Saxena records that the total value of the 858 sold units over which ACRE's mortgage rights subsist is Rs.722,59,57,994/-. After deducting the amount already received from homebuyers amounting to Rs.387,21,25,141/, the net receivables from sold units work out to Rs.335,38,32,853/-. In addition, the 222 unsold units are valued at Rs.214,23,00,000/-. Consequently, the total receivables and assets secured in favour of ACRE amount to Rs.549,61,32,853/-. The Valuation Report further notes that the total construction expenditure required for completion of the Project is Rs.322,17,34,067/-. After accounting for the same, the net market value was assessed at Rs.227,43,98,786/-.

23. It is submitted that the aforesaid valuation exercise clearly demonstrates that the rights of homebuyers were fully accounted for while arriving at the liquidation and fair market value. The liquidation value of Rs.159,20,79,150/- also specifically factors in construction costs and contemplates completion and delivery of all units. Thus, the valuation itself

proceeds on the footing that receivables from sold units form part of the realizable value of the Corporate Debtor.

24. Similarly, the addendum prepared by Registered Valuer Mr. Ashish Kumar also computes expected receivables from the Project at Rs.950,15,73,994/-, out of which Rs.387,21,25,141/- had already been received from homebuyers. After considering construction costs of Rs.360,23,65,761/-, the fair market value was arrived at Rs. 202,70,83,092/- and the discounted liquidation value at Rs.141,89,58,164/-. These figures also fully account for completion costs and homebuyers' interests.

25. ACRE submits that the valuation reports fundamentally negate the Respondents' contention that ACRE's security interest is confined to merely 25.64% of the Project. The valuers deducted construction costs for the entire Project while determining liquidation value, rather than restricting such deductions only to unsold units. Therefore, it would be wholly inconsistent and inequitable to burden ACRE's valuation with liabilities relating to the entire Project while simultaneously restricting its security interest to a small fraction thereof. It is further submitted that the RP's subsequent deduction of the 858 sold units amounts to impermissible "double dipping" designed solely to artificially depress the value of ACRE's security interest.

26. The counsel submits that Clause 7.3(iii)(A)(j) of the Resolution Plan seeks to justify payment of only Rs. 70 crores to ACRE on the basis that

ACRE would continue to retain rights against co-borrowers, guarantors and third-party securities. It is submitted that the Resolution Plan seeks to satisfy ACRE's statutory entitlement partly through deferred payment and partly through enforcement of third-party securities. Such an arrangement is contrary to Section 30(2)(b) of the IBC.

27. It is submitted that Section 53 of the IBC contemplates payment in accordance with the waterfall mechanism strictly from the assets of the Corporate Debtor. The debts of each class must be satisfied before distributions are made to lower-ranking stakeholders. However, under the impugned Resolution Plan, ACRE's payment has been deferred into four tranches spread over 42 months, namely Rs. 14 crores in the 33rd month, Rs. 14 crores in the 36th month, Rs. 21 crores in the 39th month, and Rs. 21 crores in the 42nd month from the Transfer Date. Such staggered and delayed payments cannot satisfy the mandatory statutory protection granted to a dissenting secured creditor.

28. The Appellant further submits that Section 30(2)(b) requires payment to a dissenting financial creditor to come from the coffers of the Successful Resolution Applicant or the Corporate Debtor itself. The burden of recovering the statutory minimum entitlement cannot be shifted onto third-party recoveries at the expense and risk of the dissenting creditor.

29. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in *Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors.*, (2022) 1 SCC 401, wherein it was held that

payment under Section 30(2)(b) must be in monetary terms and may include enforcement of security interest. However, the Appellant submits that the "security interest" referred to therein pertains only to security interests created over assets of the Corporate Debtor and not third-party securities. This is evident from the fact that Section 53 itself deals exclusively with distribution of proceeds from liquidation of assets of the Corporate Debtor. Therefore, third-party guarantees or securities cannot form part of the computation of statutory entitlement under Section 30(2)(b).

30. The counsel for the Appellant submits that though the commercial wisdom of the Committee of Creditors ordinarily deserves deference, the same is not absolute and cannot override mandatory statutory protections granted under Section 30(2)(b) of the IBC. Reliance is placed upon the judgment of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta*, (2020) 8 SCC 531, wherein it was expressly held that judicial review is permissible to ensure that the commercial decision of the CoC remains within the four corners of Section 30(2) of the Code.

31. It is further submitted that the discretion vested in the CoC under Section 30(4) remains subject to compliance with Section 30(2)(b). The Hon'ble Supreme Court in *Essar Steel* has categorically held that while the CoC enjoys discretion regarding feasibility and viability of plans and distribution mechanisms, such discretion remains subordinate to compliance with statutory safeguards protecting stakeholders. The use of

the expression “shall” in Section 30(2)(b) clearly indicates the mandatory nature of the provision, whereas Section 30(4) merely uses the expression “may”. Hence, a Resolution Plan that violates the statutory entitlement of a dissenting financial creditor can and ought to be interfered with in judicial review.

32. The Appellant submits that Section 30(2)(b) is a beneficial provision intended to protect vulnerable members of the CoC. In the present case, ACRE, despite being the sole institutional secured financial creditor, held only 28.60% voting share, whereas homebuyers constituting financial creditors in a class held 71.11% voting share. Consequently, ACRE’s interests stood entirely vulnerable to the will of the majority.

33. It is submitted that the comparative chart circulated by the RP itself demonstrates that other competing Resolution Plans offered significantly higher payouts to ACRE and operational creditors while simultaneously ensuring delivery of units to homebuyers without escalation in costs. Hawelia Builder Private Limited offered Rs. 130 crores to ACRE payable within 32 months, Ace Infra offered Rs. 110 crores, and Eldeco offered Rs. 90 crores, whereas Purvanchal’s plan offered only Rs. 70 crores payable over 42 months. Despite this, the CoC approved the plan offering the least value to ACRE and the least infusion towards discharge of institutional debt. ACRE submitted that keeping in view the interests of homebuyers and overall value maximization, it voted in favour of the Resolution Plan submitted by Hawelia Builder Private Limited, since the same proposed the

highest recovery for financial and operational creditors while also ensuring completion of the Project without additional burden upon homebuyers.

34. It is finally submitted that the approval of Purvanchal's Resolution Plan reflects an arbitrary exercise of majority voting power by the CoC, which failed to maximize the value of assets of the Corporate Debtor in accordance with the core objectives of the IBC. The CoC ignored substantially higher monetary offers without any corresponding benefit to the financial creditors in class and thereby unfairly prejudiced the sole institutional secured creditor. Such misuse of commercial wisdom artificially depresses the statutory entitlement of the dissenting financial creditor and undermines the integrity of the insolvency resolution process. Therefore, the Impugned Order approving such Resolution Plan deserves to be set aside by this Hon'ble Tribunal.

Submissions of Resolution professional

35. Ld. Sr. Counsel Vaibhav Gaggar, appearing on behalf of the Resolution Professional, submitted that two loan facilities were extended by Punjab National Bank Housing Finance Limited ("PNBHFL") under a Composite Loan Agreement dated 08.03.2017 in favour of the Corporate Debtor, Fest Homes Developers Private Limited and Villa Stone Propbuild Private Limited as borrowers and co-borrowers. On the insolvency commencement date, an amount of Rs.113,15,56,725.92/- was outstanding under Facility-I and an amount of Rs.90,84,40,732.48/- was outstanding under Facility-II. The said facilities were secured through various securities including mortgage over the project land of the Corporate

Debtor comprising land admeasuring 50,000 sq. meters along with structures thereon situated at Sector-79, Noida, as well as mortgage over land admeasuring 20,863 sq. meters situated at Sector-150, Noida, belonging to the co-borrower i.e. Villa Stone Propbuild Private Limited. Apart from this, hypothecation over project receivables; pledge of shares; personal guarantees; corporate guarantees; and DSRA of Rs.10 Crores were also created in favour of the lender. Therefore, it is evident that apart from the project land of the Corporate Debtor, additional security in the form of co-borrower's land was also available in respect of the said loan facilities.

36. It is submitted that the principal contention raised by the ACRE is that the Resolution Plan allegedly violates Section 30(2)(b) read with Section 53(1) of the Code. According to the ACRE, under Section 30(2)(b), the amount payable to a dissenting financial creditor cannot be less than the amount payable to such creditor under Section 53 in the event of liquidation of the Corporate Debtor. The Appellant has further relied upon the waterfall mechanism contained in Section 53(1) and contended that after payment of CIRP costs and workmen dues, the entire liquidation value ought to have been distributed to the Appellant as it claims to be the sole secured creditor of the Corporate Debtor.

37. He submitted that ACRE has further argued that the liquidation value of the Corporate Debtor is Rs.151 Crores as reflected in Form-H and since its admitted debt is approximately Rs.200 Crores, the entire liquidation value ought to be paid to it. The Appellant has also contended that even assuming its security interest is restricted to unsold inventory, it

additionally possesses security interest and hypothecation over receivables of the project amounting to approximately Rs.350 Crores as on the insolvency commencement date.

38. Ld. Counsel submits that a conjoint reading of Sections 30(2)(b), 30(4), 52 and 53 of the Insolvency and Bankruptcy Code clearly establishes that the minimum liquidation value payable to a dissenting secured financial creditor is linked to and limited by the value of the security interest held by such creditor. The Appellant's contention that its entire admitted claim should fall under Section 53(1)(b) merely because of a deemed relinquishment of security under Section 53 is legally untenable and contrary to the scheme of the Code.

39. It is submitted that even if there is a deemed relinquishment under Section 53 at the stage of approval of a Resolution Plan, the amount recoverable by a secured creditor under Section 53(1)(b) cannot exceed the realizable value of the underlying security interest. Sections 52 and 53 when read harmoniously make it abundantly clear that the secured creditor is only entitled to recover the realizable value of the security, which could otherwise have been enforced outside the liquidation estate. Consequently, where the admitted debt exceeds the realizable value of the security interest, only the secured portion can rank under Section 53(1)(b), whereas the balance unpaid portion would necessarily fall within the lower priority category contemplated under Section 53(1)(e).

40. He further submitted that Section 53(1)(e)(ii) itself supports the aforesaid interpretation since it specifically refers to "any amount unpaid following the enforcement of security interest". Thus, the statutory framework itself recognizes that the secured creditor may recover only to the extent of realizable security value and the remaining unpaid debt stands relegated to a lower category. The Insolvency Law Committee Report dated 20.02.2020 also recognizes and clarifies this position in clauses 7.1 to 7.4 thereof.

41. Ld. Counsel submitted that the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.* has categorically held that Section 30(2)(b) refers to Section 53 only for ensuring minimum payment and does not restrict the Committee of Creditors from classifying creditors as secured or unsecured and distributing amounts on the basis of the value of their security interests. The Hon'ble Supreme Court further recognized that secured creditors may be paid on the basis of the realizable value of their security, which otherwise they could have realized independently outside the insolvency process.

42. He submitted that the legislative intent behind Section 53(1)(b)(ii) has always been that a secured creditor can realize only the amount equivalent to the value of its security interest, where the debt exceeds the value of the security. In this regard, the amendment introduced vide IBC Amendment Act, 2026 further clarifies the legislative intent by expressly recognizing that where the debt exceeds the value of security, the creditor shall be treated as secured only to the extent of the secured amount. The said amendment

is clarificatory in nature and clarifies the legislative position existing since inception of the Code.

43. It is submitted that ACRE is merely the successor-in-interest of PNBHFL, the original lender, and therefore cannot claim any superior or enlarged rights beyond what was available to the original lender itself. In this regard, reliance is placed upon the Demand Notice dated 22.02.2022 issued by PNBHFL under Section 13(2) of the SARFAESI Act, wherein the lender itself had specifically restricted its claim to the unsold inventory of the project. Consequently, ACRE's security interest is also confined only to the unsold inventory and cannot extend to units already allotted to homebuyers.

44. It is further submitted that Section 11(4)(h) of the Real Estate (Regulation and Development) Act, 2016 prohibits creation of mortgage or charge over units already allotted to homebuyers. Therefore, any charge purportedly created over units sold prior to 27.03.2017 in favour of PNBHFL would be legally unenforceable. Hence, the charge of ACRE can only extend to unsold flats and no right can be asserted over units already allotted to homebuyers.

45. Ld. Counsel submits that it is now well settled that agreements executed between builders and homebuyers create enforceable rights in favour of homebuyers even prior to execution of conveyance deeds, and such rights take precedence over the claims of secured creditors. Reliance is placed upon the judgment of the Hon'ble Supreme Court in *Bikram*

Chatterji and Ors. v. Union of India and Ors. and the judgment of this Hon'ble Appellate Tribunal in *Kotak Mahindra Bank Limited v. Resolution Professional of Universal Buildwell Private Limited,* wherein it has been held that flats allotted to homebuyers do not form part of the assets of the Corporate Debtor for the purpose of determining liquidation value payable to dissenting secured creditors.

46. He submits that in light of the aforesaid legal position, the Resolution Professional correctly computed the value of ACRE's security interest. The project consisted of 1080 flats/units, out of which 858 flats had already been allotted to homebuyers as on the insolvency commencement date. Since the project was only around 30% complete, conveyance deeds had not yet been executed. However, as on the date of creation of mortgage, 806 units having an area of approximately 15,21,415 sq. ft., representing nearly 74.36% of the total project area, had already been allotted. Therefore, only 25.64% of the project area comprising 274 flats remained unsold as on the date of creation of security interest. Consequently, the value of ACRE's security interest was correctly computed at Rs.38,71,74,598.55/-, being 25.64% of the total liquidation value of Rs.151,00,41,336/-.

47. It is submitted that the ACRE cannot seek to independently rely upon project receivables for the purpose of determining minimum liquidation entitlement. The registered valuers appointed by the Resolution Professional had categorically stated in their valuation reports that the value of receivables had already been factored into the overall valuation of the project and therefore receivables were not separately valued.

Significantly, the valuation reports were never challenged by any stakeholder at any stage of the CIRP process.

48. It is submitted that the valuation of the project was undertaken on the assumption that the incomplete project would ultimately be completed and the flats would thereafter be handed over or sold. This necessarily means that the receivables would be utilized towards completion and construction costs and would not remain independently available for distribution to secured creditors. Accordingly, the liquidation value of Rs.151 Crores already represents the completed project value after accounting for utilization of receivables towards construction and allied costs.

49. Ld. Counsel submits that Section 4(2)(l)(D) of RERA mandates that 70% of receivables collected from homebuyers are required to be maintained in an escrow account and can be utilized only towards construction and land costs. The remaining 30% may be utilized only for limited project-related purposes and contingencies. Therefore, such receivables cannot be freely appropriated or distributed in favour of secured creditors outside the project framework.

50. He submits that the legal fiction under Section 30(2)(b) requires that the Corporate Debtor be notionally treated as liquidated on the insolvency commencement date. In such a hypothetical liquidation scenario, homebuyers would not be expected to continue making future payments towards their units and therefore no future receivables would remain

available. Regulation 2(k) of the CIRP Regulations itself defines liquidation value as the estimated realizable value of the assets of the Corporate Debtor if liquidated on the insolvency commencement date. Thus, future receivables cannot be included separately for determination of liquidation entitlement.

51. It is further submitted that in the event of liquidation of the Corporate Debtor, there could be no future cash flows or receivables from the project and consequently ACRE could never have enforced or realized such receivables independently. It is also pertinent to mention that the actual CIRP cost in the present matter is Rs.13,86,60,438/-.

52. Ld. Counsel finally submits that in view of the aforesaid facts and settled legal position, the Resolution Plan approved by the Learned Adjudicating Authority is fully compliant with the provisions of the Insolvency and Bankruptcy Code, 2016 and ACRE has failed to establish any violation of Section 30(2)(b) or Section 53 of the Code and seeks dismissal of the Appeal.

Submissions of Successful Resolution Applicant/ Respondent No. 2

53. Ld. Sr. Counsel Mr. Krishnendu Dutta appearing for SRA submitted that the entire challenge raised by the Appellant/ ACRE proceeds on a fundamentally incorrect assumption that its security interest extends over the whole project including units already allotted to homebuyers. It was submitted that such a contention is directly contrary to the provisions of the Real Estate (Regulation and Development) Act, 2016 ("RERA"), settled

judicial precedents, and even the Appellant's own documents. It was contended that Section 11(4)(h) of RERA expressly prohibits a promoter from creating any mortgage or charge over apartments, plots or buildings once the same have already been allotted to homebuyers. Consequently, once allotments were made in favour of homebuyers, no valid security interest could survive in favour of the Appellant or its predecessor with respect to those allotted units. Therefore, the security interest of ACRE was confined only to the unsold inventory available in the project.

54. Ld. Counsel further submitted that the Hon'ble Supreme Court in *Bikram Chatterji v. Union of India*, [*(2019) 19 SCC 161]*, has categorically recognized and protected the rights of homebuyers in real estate projects and held that rights in favour of homebuyers crystallize even prior to execution of formal conveyance deeds. It was submitted that the Hon'ble Supreme Court clearly held that the interests of homebuyers take precedence over the interests claimed by secured creditors and financial institutions. Reliance was specifically placed upon paragraphs 133 to 139 of the said judgment. It was argued that in view of the law laid down therein, the Appellant cannot assert any superior right over flats already allotted to homebuyers.

55. He submitted that the NCLAT in *Kotak Mahindra Bank Limited v. Resolution Professional of Universal Buildwell Private Limited* relied upon the judgment in *Bikram Chatterji* and categorically held that flats already allotted to homebuyers do not form part of the assets of the Corporate Debtor for the purpose of liquidation value determination. It was submitted

that the Hon'ble Appellate Tribunal therefore held that such allotted flats cannot be considered while determining the minimum liquidation value payable to a dissenting secured financial creditor. Reliance was placed upon paragraphs 5, 7, 19 and 22 to 29 of the said judgment. It was argued that the same principle squarely applies in the present case and completely demolishes the Appellant's contention regarding valuation of its security interest.

56. It is further submitted that a Division Bench of the Rajasthan High Court in *Union Bank of India v. Rajasthan Real Estate Regulatory Authority & Ors.*, reported in 2022 (1) RLW 343 (Raj), following the judgment in *Bikram Chatterji*, held that Section 11(4)(h) of RERA protects the rights of homebuyers and in the event of any inconsistency between the SARFAESI Act and RERA, the provisions of RERA would prevail. It was submitted that the High Court further held that the rights of homebuyers over allotted units are superior to the rights claimed by secured creditors. It was pointed out that the aforesaid judgment has already been affirmed by the Hon'ble Supreme Court in SLP (Civil) No. 1861-1871/2022 vide order dated 14.02.2022. Therefore, according to the Respondent, the Appellant cannot claim any enforceable security interest over units already allotted to homebuyers.

57. Ld. Counsel further submits that even PNBHFL, which was the predecessor-in-interest of ACRE, had itself acknowledged and admitted in the SARFAESI notice issued to the Corporate Debtor that its security

interest extended only to “unsold flats”. It was argued that the Appellant is therefore estopped from now taking a contrary position before this Tribunal.

58. Ld. Counsel submitted that the project in question consists of a total of 1080 flats/units. It was submitted that as on the Insolvency Commencement Date, out of the total 1080 units, 858 flats had already been allotted to homebuyers. It was further submitted that although conveyance deeds had not yet been executed in favour of homebuyers because the project was only around 30% complete, the absence of registered conveyance deeds does not dilute or extinguish the rights already created in favour of homebuyers under RERA and applicable law.

59. Ld. Counsel referred to paragraphs 27, 28 and 35 of the Reply filed by the Resolution Professional and submitted that the security interest in favour of PNBHFL was created only on 20.03.2017. It was submitted that by that date, 806 units had already been allotted to homebuyers having a total area of 15,21,415 sq. ft., which constituted approximately 74.36% of the total project area. Consequently, only 25.64% of the project area corresponding to 274 flats remained unsold on the date of creation of the security interest. Therefore, according to the Respondent, the Appellant’s security interest could extend only to those 274 unsold flats and nothing beyond that.

60. He submitted that the liquidation value attributable to the security interest available to secured creditors was correctly assessed at Rs.37,01,96,308/-. It was contended that despite such valuation, the ACRE

has already been offered and is entitled to receive substantially more under the approved Resolution Plan. Therefore, the grievance raised by the ACRE regarding inadequate recovery is entirely misconceived and contrary to the factual valuation exercise undertaken during CIRP.

61. Ld. Counsel submitted that the ACRE is incorrectly attempting to claim a separate valuation over "receivables" despite the fact that such receivables had already been factored into the overall project valuation. It was submitted that both valuation reports relied upon during CIRP, clearly recorded that the value of receivables had already been considered while valuing the project and therefore no separate valuation of receivables was undertaken.

62. It was further submitted that the valuation exercise proceeded on the assumption that the incomplete project would eventually be completed and the flats would thereafter be sold or handed over to homebuyers. Therefore, the receivables from homebuyers were inherently considered as funds to be utilized towards construction and project completion and not as separate distributable assets available for appropriation by the secured creditor. Ld. Counsel submitted that after accounting for construction costs and utilization of receivables, the liquidation value of the completed project had been assessed at approximately Rs. 151 crores. Thus, the Appellant cannot seek double counting of receivables for enhancing its liquidation entitlement.

63. Ld. Counsel fully endorsed the contention of RP regarding applicability of Section 4(2)(l)(D) of RERA in this case. He submitted that under the Uttar Pradesh Real Estate Project (Maintenance and Operation of Separate Bank Account) Directions, 2020, the entire 100% receivables of the project are required to be maintained in a "separate bank account", which is specifically designated as a "no-lien account". It was argued that such statutory protection itself defeats the Appellant's claim that receivables can be separately enforced or appropriated in satisfaction of its debt. It was therefore submitted that the provisions of RERA would override any contractual hypothecation arrangement relied upon by the Appellant. According to the Respondent, the Appellant cannot enforce any alleged charge over receivables in a manner contrary to the statutory mandate of RERA.

64. Ld. Counsel submitted that Section 30(2)(b) of the IBC proceeds on a deeming fiction that the Corporate Debtor stands liquidated on the Insolvency Commencement Date for the purpose of determining liquidation value. It was argued that if liquidation were to take place on the Insolvency Commencement Date itself, there would be no question of future receivables arising from homebuyers because homebuyers cannot reasonably be expected to continue making future payments in respect of an incomplete and liquidated project.

65. Ld. Counsel referred to Regulation 2(k) of the CIRP Regulations defining "Liquidation Value" as the estimated realizable value of the assets of the Corporate Debtor if the Corporate Debtor were to be liquidated on the

insolvency commencement date. It was submitted that in such a hypothetical liquidation scenario, no future cash flows or receivables would exist for realization. Therefore, the Appellant cannot artificially inflate its liquidation entitlement by relying upon speculative future receivables which would never arise in liquidation. It was accordingly submitted that in the event of liquidation, ACRE would not be capable of enforcing or realizing any future receivables from the project and therefore the same cannot form part of the liquidation value payable to it under Section 30(2)(b) of the IBC.

66. Ld. Counsel submitted that the ACRE has already been provided an amount far exceeding the value of its actual security interest. It was submitted that under the approved Resolution Plan, ACRE is being paid a total amount of Rs. 70 crores, which is substantially higher than the liquidation value attributable to its security interest assessed at approximately Rs. 37 crores. Therefore, the ACRE cannot claim any prejudice whatsoever under the approved Resolution Plan.

67. Ld. Counsel referred to Clause 7.3(iii)(A)(a) to (d) of the Resolution Plan which details the debt and security interest of ACRE. It was submitted that Clause 7.3(iii)(A)(e) specifically provides for payment of Rs. 70 crores to ACRE in four instalments commencing from the 33rd month and ending in the 42nd month from the Transfer Date. It was further submitted that Clause 7.3(iii)(A)(f), additionally preserves ACRE's entitlement to independently recover from co-borrowers and from other securities available to it. Thus, ACRE is not only receiving more than its liquidation

entitlement under the Plan, but is also retaining independent recovery rights against third-party securities and co-borrowers.

68. Ld. Counsel further submitted that the ACRE has deliberately concealed from this Tribunal the fact that it is already in possession of substantial third-party securities. It was submitted that PNBHFL, being the predecessor-in-interest of ACRE, had already taken symbolic possession under the SARFAESI Act of the co-borrower's land valued at approximately Rs. 96.90 crores. Therefore, apart from receiving Rs. 70 crores under the Resolution Plan, ACRE also continues to enjoy enforcement rights over additional valuable securities. It was contended that ACRE is thus positioned to substantially recover, if not entirely recover, its outstanding debt.

69. It is submitted that the scheme of Sections 52 and 53 of the IBC clearly demonstrates that a secured creditor is entitled to priority only to the extent of the value of its actual security interest. It was argued that any remaining unpaid debt after exhaustion of the value of the security interest would necessarily rank lower under Section 53(1)(e)(ii). Therefore, ACRE cannot insist that its entire admitted claim must rank equally as secured debt irrespective of the actual value of the underlying security available with it. He submitted that a plain reading of Section 53(1)(e)(ii) itself provides that "any amount unpaid following the enforcement of security interest" shall fall under clause (e). It was argued that clauses (b)(ii) and (e)(ii) of Section 53 must be harmoniously interpreted, and such harmonious

interpretation clearly supports the position that only debt equivalent to the realizable value of security can enjoy secured priority.

70. Ld. Counsel further submitted that the aforesaid interpretation stands fortified by the Insolvency Law Committee Report dated 20.02.2020, particularly paragraphs 7.1 to 7.4 thereof. It was submitted that the Hon'ble NCLAT in *Small Industries Development Bank of India (SIDBI) v. Vivek Raheja*, Company Appeal (AT) (Ins.) No. 570 of 2022 decided on 16.09.2022, has also recognized the correct legal position emerging from paragraph 7.3 of the Insolvency Law Committee Report.

71. Ld. Counsel finally submitted that the Legislature itself has now clarified the legal position through the IBC Amendment Act, 2026 by inserting an Explanation to Section 53(1)(b)(ii). It was submitted that the amendment has already received Presidential assent and has been notified in the Official Gazette on 06.04.2026. Reliance was also placed upon paragraph 32.5(v) of the Select Committee Report wherein the clarification has been expressly described as "retrospective". It was therefore submitted that the position canvassed by the Respondent now stands legislatively affirmed as well.

Submissions of Intervener/President of Lotus Arena Buyers Association

72. Ld. Counsel Mr. Gaurav Mitra appearing on behalf of the Intervener, namely Mr. Vishwanath Sharma, President of Lotus Arena Buyers Association (**"LABA"**), submitted that he is supporting the case of the

homebuyers/financial creditors in a class of CD. He submitted that by order dated 07.11.2023 passed by this Appellate Tribunal, IA No. 4004 of 2023 filed by the Intervener had already been allowed, thereby permitting the Intervener to participate in the present proceedings. It was further submitted that the present submissions are being filed in the appeals filed by ACRE and NOIDA.

73. The Ld. Counsel submits that ACRE cannot claim any rights either over the flats already allotted to the homebuyers or over the receivables arising from such allotted units. Such an action would be directly contrary to the legislative intent underlying the Real Estate (Regulation and Development) Act, 2016 ("RERA"), which is a beneficial legislation enacted specifically for the protection of homebuyers. The Counsel submitted that the rights of homebuyers stand statutorily protected under Section 11(4)(h) of RERA and any attempt by ACRE to divert the receivables from homebuyers towards satisfaction of its claims would defeat the entire statutory scheme meant for safeguarding allottees.

74. Ld. Counsel supported the contention of RP that the security interest of ACRE could not be more than National Bank Housing Finance Limited ("PNBHFL"), predecessor of ACRE. In this regard, he invited attention to Section 13(2) notice of SARFAESI Act, which clearly stipulates that the secured assets comprised only 171 unsold units and expressly excluded the 909 flats already sold to homebuyers.

75. The Ld. Counsel submitted that under Section 30(2)(b) of the Insolvency and Bankruptcy Code, 2016 ("IBC"), the minimum amount payable to a creditor is required to be computed with reference to the amount receivable under Section 53 "in the event of liquidation" and not on the basis of an assumed or hypothetical liquidation value. It was submitted that the only meaningful asset available with the Corporate Debtor is the incomplete skeletal structure existing at the project site, which in reality possesses negligible scrap value. The Counsel argued that the liquidation value relied upon by ACRE is based upon an unrealistic assumption that the project is fully constructed, all dues stand paid and flats are complete and deliverable to homebuyers, which is factually incorrect.

76. It was therefore submitted that in an actual liquidation scenario, the realizable value would be substantially lower and ACRE would not even be entitled to receive the amount of Rs. 70 crores already allocated under the approved resolution plan. Consequently, the argument that the approved resolution plan unfairly treats ACRE is wholly misconceived and contrary to the statutory framework governing liquidation distributions.

77. The Ld. Counsel submits that the controversy concerning the extent of entitlement of a secured creditor now stands clarified by virtue of the Explanation added to Section 52(b)(ii) through Section 32 of the Insolvency and Bankruptcy Code (Amendment) Act, 2026. It was submitted that the Select Committee Report on the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 specifically clarifies that the amendments are declaratory and clarificatory in nature and therefore operate retrospectively.

Reliance was placed upon the observations contained in the Select Committee Report to contend that the legislative intent was always to limit the entitlement of secured creditors only to the actual value of the relinquished security interest.

78. Reliance was placed upon the judgment of the Hon'ble Supreme Court in *Sree Sankaracharya University of Sanskrit & Ors. v. Dr. Manu & Anr.*, 2023 SCC OnLine SC 640, particularly paragraphs 8.1 to 8.4, 9 and 10.1, to contend that clarificatory amendments are retrospective in operation. The Counsel submitted that the actual value of ACRE's security interest is approximately Rs. 37.8 crores and therefore ACRE cannot seek priority beyond such value.

79. The Ld. Counsel submitted that ACRE itself had voted in favour of the resolution plan submitted by Hawelia Builders Private Limited despite the fact that the Havelia plan also offered ACRE an amount lower than Rs.144.91 crores, which according to ACRE itself represented its alleged minimum liquidation entitlement. It was argued that ACRE cannot now challenge the approved resolution plan on grounds of inadequate allocation when it had earlier supported another plan offering it substantially lower value.

80. It was further submitted that the Hawelia plan was financially weak and commercially unviable. The Counsel pointed out that Hawelia proposed to spend approximately Rs. 40 crores less towards construction while simultaneously projecting sales approximately Rs. 60 crores higher than

those estimated by Purvanchal. This substantial divergence of nearly Rs. 100 crores between lower construction expenditure and significantly inflated projected sales raised serious doubts regarding the viability and feasibility of the Hawelia plan.

81. The Counsel submitted that Purvanchal proposed a construction budget of Rs. 337 crores as against Hawelia's Rs. 299.45 crores, indicating a more robust commitment towards project completion. Purvanchal also projected more realistic sales estimates and proposed completion within 36 months as compared to 48 months proposed by Hawelia. It was further submitted that Purvanchal possessed significantly greater experience, having completed 21 projects including projects in Greater Noida, whereas Hawelia had experience of only two low-cost housing projects accompanied by a history of delays and customer dissatisfaction. Purvanchal additionally offered multiple benefits to homebuyers including discounts on timely payments, free maintenance for the first year, sharing of all litigation recoveries with homebuyers and greater financial contribution towards Sports City obligations. Further, Purvanchal's payment plan adhered to RERA-compliant interest rates and construction-linked payments without seeking modification of Buyer Builder Agreements, unlike Hawelia which sought imposition of 18% interest and accelerated payment obligations upon homebuyers. It was also pointed out that Purvanchal provided representation to homebuyers in the monitoring committee whereas Hawelia did not contemplate any such representation.

82. The Ld. Counsel submitted that any enhancement in allocation towards ACRE would necessarily come at the direct cost of the homebuyers. It was submitted that Clause 7.3 of the Resolution Plan itself specifically provides that any increase in allocation to ACRE would effectively require additional infusion from homebuyers. Therefore, any attempt to increase ACRE's share would place an unbearable financial burden upon already distressed homebuyers who have been awaiting possession for more than a decade.

83. The Ld. Counsel submitted that the allocation of Rs. 70 crores to ACRE under the approved resolution plan is fully fair, equitable and consistent with the statutory mandate contained in Explanation 1 to Section 30(2)(b) of the IBC. It was argued that the distribution mechanism under the approved plan appropriately balances the interests of all stakeholders while simultaneously ensuring completion of the project and protection of homebuyers. The Counsel submitted that the objections raised by ACRE are commercially untenable and legally unsustainable.

84. The Ld. Counsel also relied upon the judgment of the Hon'ble Supreme Court in *Bikram Chatterji (supra) and* judgment of this Appellate Tribunal in *Kotak Mahindra Bank (supra)*, to support the proposition that the insolvency framework must be interpreted in a manner that advances the interests of homebuyers and facilitates completion of projects rather than liquidation.

Submission of Appellant/ Dhankalash in CA AT Ins. No. 1117 of 2023

85. Ld. Counsel for Dhakalash Distributors who is the unsecured Financial Creditor and the Appellant in second appeal, has contended that the Ld. Adjudicating Authority proceeded to approve the Plan without adjudicating the Appellant's Restoration Application (RA No.111 of 2023) and without considering the objections raised by the Appellant in IA No. 3986 of 2022. The Appellant's application had been dismissed for non-prosecution on 04.07.2023 solely due to a technical glitch during the virtual hearing, despite the Appellant having diligently appeared on all previous dates. Pursuant to the directions of the Adjudicating Authority, the Appellant filed written submissions on 18.07.2023; however, the Resolution Plan was approved on 19.07.2023 without hearing or deciding the Restoration Application. Consequently, the Appellant was condemned unheard, causing grave prejudice and rendering the Impugned Order liable to be set aside for violation of the principles of natural justice.

86. Ld. Counsel further submits that the approved Resolution Plan is non-compliant with Section 30(2)(b) of the Insolvency and Bankruptcy Code, 2016. Being a dissenting Financial Creditor, the Appellant was entitled to receive at least the amount payable under the liquidation waterfall mechanism prescribed under Section 53 of the Code. However, the Resolution Plan merely states that the proposed payment constitutes the minimum liquidation value without disclosing any calculation or quantification thereof. The Plan proposes payment of only Rs.50,00,000/- against the Appellant's admitted claim of Rs.2,02,11,057/-, which is

substantially below the liquidation value payable under the Code. The Resolution Professional failed to ensure compliance with Section 30(2)(b) before placing the Resolution Plan before the Committee of Creditors, thereby violating Section 30(3) of the Code.

87. It is further submitted that the Resolution Plan of the Successful Resolution Applicant (SRA) was not compliant with the Evaluation Matrix approved by the CoC. The Evaluation Matrix required 70% upfront cash recovery amount, subject to a minimum of Rs.30 crores, to be kept in an escrow account for restarting construction. Only the Resolution Plans submitted by Ace and Cambell's Consortium complied with this requirement. Therefore, the Resolution Plan of the SRA ought not to have been considered or approved.

88. Ld. Counsel submits that the SRA's Resolution Plan had the lowest plan value among all competing Resolution Applicants. RP and CoC nevertheless preferred the SRA's Plan despite superior plans offering greater value maximization for stakeholders. Further, the matrix scores were never disclosed to the CoC, thereby depriving creditors of an informed decision-making process.

89. He further submits that the feasibility and viability of the competing Resolution Plans were never properly assessed as mandated under Regulation 39 of the CIRP Regulations. The CoC failed to undertake any meaningful discussion or deliberation regarding the feasibility and viability of the plans, and the minutes of the CoC meetings reveal that only

compliance charts were circulated without substantive evaluation. Consequently, the approval process stands vitiated for non-compliance with Regulation 39.

90. Ld. Counsel alleges that the valuation of the Corporate Debtor was manipulated and drastically reduced shortly before submission of the SRA's Resolution Plan. The original valuation reports assessed the average fair value of the Corporate Debtor at Rs.611.09 Crores and the average liquidation value at Rs.421.31 Crores. The timing and extent of the reduction indicate that the valuation exercise was altered to suit the SRA and reduce the minimum liquidation value payable to dissenting Financial Creditors.

91. It is further contended that the RP abused his powers by discarding the existing resolution process and issuing a fresh Form-G after replacing the erstwhile IRP, despite receipt and opening of Resolution Plans from four applicants. The SRA ultimately submitted its Resolution Plan, only after repeated extensions granted at the instance of homebuyers and with the support of the RP. Such conduct demonstrates favoritism and accommodation towards the SRA to the detriment of other Resolution Applicants.

92. Ld. Counsel further alleges collusion between the RP, representatives of the homebuyers and the SRA throughout the CIRP process. Fresh Form-G was issued on the insistence of homebuyers despite objections from other Financial Creditors. Requests by homebuyers for reassessment of valuation

and facilitation of the SRA's participation were entertained and acted upon. Objections raised by the Appellant and ACRE were consistently ignored or dismissed without proper consideration.

93. Ld. Counsel submits that exorbitant CIRP costs were approved by the CoC at the instance of the RP. The RP and his support team secured substantial enhancement of professional fees, including a success fee of Rs. 2 Crores. Legal fees and liquidation expenses were also approved without adequate justification or disclosure, and objections raised by Financial Creditors regarding such costs were disregarded.

94. He further submits that in the circumstances, the actions of the RP and CoC resulted in approval of a Resolution Plan offering the lowest value amongst competing plans, while better and more beneficial plans were ignored. The CIRP process was conducted contrary to the objective of maximization of value of the assets of the Corporate Debtor.

95. Ld. Counsel finally submits that the Impugned Order dated 19.07.2023 was passed without adjudicating the Appellant's objections and Restoration Application, and the approved Resolution Plan suffers from statutory non-compliances, procedural irregularities, valuation manipulation, lack of feasibility assessment, and discriminatory treatment of dissenting Financial Creditors. Accordingly, the Impugned Order approving the Resolution Plan is liable to be set aside.

CA (AT)(Ins) No. 949 & 1117 of 2023 -Analysis & Findings

96. We have heard the Ld. Counsels of the parties, gone through the records of the case including the written submissions filed by the parties. We take up the issues in first two appeal together as both allege non-compliance with provisions of 30(2)(b) of the Code. In the first Appeal ACRE has also contended non-compliance with Sectio 53(1) of the Code.

97. There are two issues to be decided in these two appeals:

(i) Whether the disbursement proposed for ACRE in the resolution plan is in accordance with Section 30(2)(b) & 53(1) of the Code.

(ii) Whether the CIRP proceedings have been carried out in accordance with provisions of the Code and the resolution plan is compliant with Section 30(2) of the Code

98. The first appeal has been filed by Assets Care & Reconstruction Enterprise Limited ("ACRE"), claiming to be the sole secured financial creditor of the Corporate Debtor. The case of ACRE is that its admitted debt is approximately Rs. 200 Crores and since it is the sole secured financial creditor of the Corporate Debtor, it is entitled to receive the entire liquidation value of the Corporate Debtor under Section 30(2)(b) read with Section 53 of the Code. According to ACRE, the Resolution Plan provides only Rs. 70 Crores and therefore the Plan is contrary to the provisions of the Code.

99. On the other hand, the Respondents have contended that the entitlement of ACRE cannot exceed the value of its underlying security interest. It has been submitted that the Appellant's security interest was

restricted only to the unsold units of the project and certain additional securities and therefore the amount of Rs. 70 Crores provided under the Resolution Plan is substantially higher than the liquidation value attributable to the Appellant's actual security interest.

100. ACRE claims a larger entitlement under the Resolution Plan on the basis that its security interest covered the entire project of the Corporate Debtor. Therefore, before examining the amount payable to the Appellant, it is necessary to first determine the actual extent of the security interest available in its favour.

101. The record shows that ACRE is not the original lender. The loan was originally granted by Punjab National Bank Housing Finance Limited ("PNBHFL") and was subsequently assigned to ACRE. Therefore, ACRE derives its rights from PNBHFL and cannot claim any right greater than what was available to the original lender. The assignment only transfers the existing debt and the security attached to it; it does not create any new security or enlarge the scope of the existing security interest.

102. In this regard, the Demand Notice dated 22.02.2022 issued by PNBHFL under Section 13(2) of the SARFAESI Act assumes significance. The relevant portions of the SARFAESI Notice u/s 13(2) dated 22.02.2022 of Schedule-II are extracted below: -

> *"All that piece and parcel of project land admeasuring 50,000 square meters (12.35 acres) of Plot No. SC-01/A2 along with the structure thereon (including unsold stock) of residential project "Arena-I" located at Sector-79, Gautam*

Budh Nagar, Noida, Uttar Pradesh, including 171 unsold units as on 18.02.2020, details whereof are mentioned in Annexure-2 below and excluding the 909 sold units as on 18.02.2020, details whereof are mentioned in Annexure-2 below:-

> *"All that piece and parcel of land admeasuring 20,863 square meters (5.15 acres) bearing Plot No. SC-02/N located at Sector-150, Noida".*
>
> *The repayment of the said loan(s) was further secured inter-alia by way of Hypothecation and escrow of future Receivables from the project "Arena-I", pledge of Shares of Addressee No. 1 to 3 and pledge of Shares of M/s Reverent Developers Private Limited."*

103. It can be seen from the notice u/s 13(2) of SARFAESI Act that on the date of the notice the security interest of PNBHFL was limited to 171 unsold Units only and specifically excluded 909 sold units. The said notice shows that PNBHFL itself treated its security as being limited to the unsold inventory of the project. Thus, even the original lender did not claim a charge over all the units forming part of the project. Once PNBHFL itself proceeded on this basis, ACRE cannot now claim a wider security interest than what was claimed by the original lender.

104. The factual position on record also supports this conclusion. The security interest in favour of PNBHFL was created on 20.03.2017. By that date, 806 units measuring approximately 15,21,415 square feet had already been allotted to homebuyers. These units represented around 74.36% of the total project area. As a result, only 274 flats, representing 25.64% of the total project area, remained unsold when the mortgage was created.

105. The project consisted of 1080 units in total. By the Insolvency Commencement Date, 858 units had already been allotted to homebuyers. It is true that conveyance deeds had not been executed, because the project was only about 30% complete. However, the fact remains that a substantial majority of the units had already been allotted before the creation of the security interest and before commencement of CIRP.

106. The value of a secured creditor's security interest can only be determined on the basis of the assets that were actually available as security. Since only 274 flats remained unsold when the mortgage was created, the Resolution Professional rightly proceeded on the basis that only those flats formed part of the Appellant's security interest.

107. In this regard, we also take note of Section 11(4)(h) of RERA which is extracted below: -

> ***"11. Functions and duties of promoter-***
> ***(4)*** *The promoter shall-*
> ***(h)*** *after he executes and agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;*

108. We note that Section 11(4)(h) of RERA prohibits the creation of a mortgage or charge over units already allotted to homebuyers, and even if such a charge is created, it shall not affect the Rights and interests of the

allottee. Hence any charge created by erstwhile promoters over the units sold prior to 27.03.2017 i.e., the date of mortgage in favour of PNBHFL would be void and the ACREs charge would be limited to unsold inventory only. In this case, the RP has correctly held the security interest of ACRE was limited to number of units unsold as on the mortgage date i.e., on 274 units as 806 units were already allotted to homebuyers.

109. The Respondents have relied upon ***"Bikram Chatterji and Ors. V. Union of India and Ors.; 2019 19 SCC 161"*** and ***"Kotak Mahindra Bank Limited v. Resolution Professional of Universal Buildwell Private Limited; CA (AT) (Insolvency) No. 661 of 2021"***, which are discussed here.

110. The judgment of the Hon'ble Supreme Court in *Bikram Chatterji (supra)* is significant in the facts of the present case because it recognizes and protects the rights of homebuyers in real estate projects. The principle recognized in *Bikram Chatterji* supports the conclusion that the Appellant's security interest could not extend to units that had already been allotted to homebuyers and that such units could not be treated as available for determining the value of the Appellant's security.

111. The judgment of this appellate Tribunal in *Kotak Mahindra Bank (supra)* relies on the judgment of Hon'ble Supreme Court in *Bikram Chatterji (supra)* the relevant paras 23 to 26, 29 & 30 are extracted below:

> ***23.*** *We have noticed that in the Valuation Report, both the Valuers have proceeded to value the super area, which was*

left after deducting the area conveyed. The Valuers proceeded on the premise that the Corporate Debtor has no ownership with respect to the area, which has been conveyed and rest of the area can be valued for the purpose of valuation of the Corporate Debtor. On the record, the RP has given details of name of allottees, which were given BBA with the date of BBA. Annexure R-1 to the reply contains the details of BBA of Ground Floor and other Floors with the name of allottees and the date of BBA. All the BBA, which have been captured in Annexure R-1 are prior to September 2010. The details of areas sold through Conveyance Deed has also been given, which areas have already taken note by the Valuers. The stand taken by the RP and Resolution Applicant is that liquidation value of the Appellant has been treated as NIL, since on the date, the valuation was done, there was no super area left, which could be monetized for the Corporate Debtor. The Corporate Debtor has sold excess area both by Conveyance Deed and BBA. We are satisfied that by the BBA, executed prior to September 2010, when the charge and mortgage was created by Promoters in the project Universal Business Park, all areas were sold. The Valuers, technically were right in taking a view that those areas, which has been conveyed by Promoters, they do not have ownership, however, the Valuers proceeded to take into consideration the areas with regard to which no Conveyance Deed was executed to be the assets of the Corporate Debtor.

24. *When we look into reality, which is apparent from the materials on record, it is clear that with regard to Universal Business Park, entire area was sold by Conveyance Deed and by BBA to the allottees and the Promoters have received the money through the Conveyance Deed and BBA and after execution of the BBA, the allottees acquired the right to receive possession of the units for which payments have been made.*

25. *In this context, we may notice the judgment of the Hon'ble Supreme Court, where the Hon'ble Supreme Court had occasion to consider the nature of right, which accrue through a BBA to allottee and the protection, which homebuyers are required from the Courts of Law. We may refer to the judgment of the Hon'ble Supreme Court in* ***Bikram Chatterji v. Union of India (2019) 19 SCC 161,*** *where the Hon'ble Supreme Court had occasion to consider housing and real estate allotment, Sale Deed, transfer of flats by builders/ developers to homebuyers. The Hon'ble Supreme Court was considering the real estate Project namely – Amrapali Group. Writ petitions under Article 32 were filed by homebuyers praying for various reliefs from the Hon'ble Supreme Court. In the above context Hon'ble Supreme Court while considering the BBA made following observation in paragraph 133 and 134 of the judgment:*

> ***"133.*** *The agreement initially executed in favour of homebuyers to purchase flats may not create any right in the property in praesenti, it will be only on the execution of the registered document that title is going to be perfected, but investment in project is only of homebuyers. In this case, as they have paid money invested in projects, it is for the courts to do complete justice between the parties and to protect the investment so made and interests of homebuyers and to ensure that they get the perfect title and the fruits of their hard-earned money and lifetime savings invested in the projects.*
>
> ***134.*** *On behalf of Bank of Baroda, learned Senior Counsel submitted that the agreement of promoter/ builder with homebuyers is unregistered as such, no right has been created in the immovable property in view of the provisions contained in Section 49 of the Registration Act.*

The submission ignores and overlooks the provisions of RERA which intends to prevent such frauds on homebuyers and ensure completion of projects and that of the agreement between promoters and buyers. There are various rights under the agreement as well as under RERA. The agreement entered into at the time of allotment is the basis of the investment in the projects made by homebuyers, it cannot be said to be a scrap of paper. It is their valuable investment which is required to be protected and cannot be permitted to be Company Appeal (AT) (Insolvency) No. 661 of 2021 20 taken away by builder or secured creditors in an illegal manner. The provisions of Section 17 of the Registration Act no doubt provide that a document of title requires compulsory registration, no doubt registered document has to be executed that also has to be taken care of by the Court so as to protect the interest of homebuyers."

26. *In the above case before the Hon'ble Supreme Court, the Banks, who had security interest contended that they have agreements with the Promoters. In reference to the claim of the Banks regarding mortgage, Hon'ble Supreme Court had observed that in the facts and circumstances of the case, rights or interest of the allottees are not affected by the mortgage created by the Bankers. In paragraph 136 of the judgment, following has been held:*

"136. *The learned Senior Counsel on behalf of Bank of Baroda submitted that the provisions of Section 11(4)(h) of RERA provides that the promoter, after he executes an agreement for sale for any apartment, plot or building, cannot mortgage or create a charge on such an apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then it shall not affect the right and interest of the allottee who*

has taken or agreed to take such apartment, plot or building, as the case may be. The provision has a non obstante clause. As the provision has given an overriding effect by non obstante clause, the provision is of no help to the banks as the agreement had been by promoters with homebuyers entered into earlier in point of time to the creation of the mortgage. There could not have been any mortgage created subsequently and even if validly created, it would not affect the right and interest of the allottee as intended by RERA. Thus, the right and interest of the allottee are safeguarded by virtue of the provisions contained in Section 11(4)(h). As the project was pending, the provision intends to confer a right on the allottee and save the allottees and also their interests from such liability. Even if the provision is held not applicable on the ground that RERA came into force later, since there was no valid mortgage as held by us, it was incapable of affecting the right or interest of the allottee. Had it been ensured that the money due to Noida and Greater Noida Authorities was paid by the promoters to the authorities, the fraud of siphoning of money would not have taken place to the extent it has been done. Moreover, the money borrowed from banks has not been invested in the projects. In fact, projects required no funding. It would be iniquitous to charge the allottees with the bankers' money. Thus, in the peculiar facts and circumstances of the case, we hold that rights or interests of the allottees are not at all affected by the mortgage created by the bankers or by the dues of the Noida or Greater Noida Authorities."

29. *We have also noticed the caveats given by the Valuers in their Report. The valuation of the different projects including*

project Universal Business Park was with the caveats as noted above. The Valuers did not enter into issue of encumbrance over the assets. The finding has been recorded by the Adjudicating Authority in paragraph 49 that since the units have already been sold, are no longer the asset of the Corporate Debtor, hence, the liquidation value of the Universal Business Park project is NIL. The Adjudicating Authority has rightly come to the above conclusion after considering the facts and circumstances of the present case. We fully concur with the observations made by the Adjudicating Authority in paragraph 49."

112. The judgment of this Appellate Tribunal in *Kotak Mahindra Bank (supra)* takes into consideration the judgment of Hon'ble Supreme Court in *Bikram Chatterji* and clearly lays down that security interest of any lender in housing projects would be limited to unallotted units/ area. The allotments made by Builder-Buyer Agreement (BBA) would be outside the purview of security interest of the lender. The judgment also notes the effect of Section 11(4)(h) of the RERA Act on the relative rights of Homebuyers, Builders and Financial Institutions having mortgage on such properties. We are of the view that the ratio laid down by these judgements squarely applies to the facts of the present case.

113. The record before us shows that out of 1080 units in the project, 806 units had already been allotted before creation of the mortgage and 858 units stood allotted by the Insolvency Commencement Date. Although conveyance deeds had not been executed, the rights of homebuyers had already come into existence. Therefore, ACRE cannot proceed on the assumption that all allotted units continued to remain freely available as

part of its security. Looking at the entire factual record, we are satisfied that the Appellant's security interest could not have extended over the entire project. The assignment in favour of ACRE did not enlarge the rights originally available to PNBHFL. The Demand Notice issued by PNBHFL itself shows that the lender treated its security as limited to the unsold inventory. Further, only 274 flats representing 25.64% of the project area remained unsold when the mortgage was created. We therefore find no error in the finding of the RP, subsequently confirmed by the Adjudicating Authority that the ACRE's security interest was confined to the unsold inventory and did not extend to units already allotted to homebuyers.

114. After determining the extent of the Appellant's security interest, the next question is whether the value of such security interest was correctly assessed and whether the Appellant could nevertheless claim the entire liquidation value of the Corporate Debtor.

115. The liquidation value of the Corporate Debtor was assessed at Rs.151,00,41,336/-. Once it is accepted that only 25.64% of the project area remained available as security on the date of creation of the mortgage, the value attributable to the Appellant's security interest necessarily has to be restricted to that proportion. The record shows that the Resolution Professional applied the proportion of unsold inventory, namely 25.64%, to the overall liquidation value of Rs.151,00,41,336/-. On this basis, the value of the Appellant's security interest was calculated at Rs.38,71,74,598.55/- The calculation made by the Resolution Professional is based on figures available on record. The number of units already allotted; the date of

creation of the mortgage; the extent of unsold inventory; and the liquidation value of the project are all supported by the documents placed before us and are admitted by all parties. No material has been shown to establish that these figures are incorrect.

116. The Appellant's case is that since its admitted claim is approximately Rs.200.27 Crores, and since it is the sole secured financial creditor of the Corporate Debtor, it should receive the entire liquidation value of the Corporate Debtor after subtracting the CIRP costs.

117. However, the amount of debt and the value of the security interest are two different concepts. A secured creditor can claim priority only to the extent of the security actually available in its favour. Merely because the admitted debt is larger than the liquidation value does not automatically entitle the creditor to the entire liquidation value irrespective of the extent of its security. In this regard we take notice of Section 52(9) of the code, which is extracted below:

> ***52. Secured creditor in liquidation proceedings. —***
> *…..(9) Where the proceeds of the realisation of the secured assets are not adequate to repay debts owed to the secured creditor, the unpaid debts of such secured creditor shall be paid by the liquidator in the manner specified in clause (e) of sub-section (1) of section 53.*

Section 52(9) clearly lays down that in liquidation proceedings, where the secured creditor decides to enforce its security interest outside liquidation proceedings u/s 52 of the Code, then after realizing proceeds from the realisation of the secured asset, the balance claim if any of the Secured

creditor would be paid from the liquidation proceeds in accordance with section 53(1)(e)(ii) of the code, which is much lower in priority for distribution; and not in accordance with 53(1)(b)(ii) of the Code.

118. Once the value of the Appellant's security interest is determined at approximately Rs.38.71 Crores, the basis for claiming the entire liquidation value of Rs.151 Crores no longer survives. The balance claim of the ACRE has to be necessarily considered under section 53(1)(e)(ii) of the code. The Appellant cannot seek distribution in respect of assets, which did not form part of its actual security interest. We also note that an amount of Rs.70 Cr has been provided to ACRE in the Resolution Plan, which is much more than its security interest.

119. We are therefore of the view that the valuation exercise carried out by the Resolution Professional is based on objective facts and a logical assessment of the security available. We find no infirmity in the conclusion that the value of the Appellant's security interest stood at approximately Rs.38.71 Crores.

120. Regarding the Appellant’s claim that it had a charge over receivables arising from the project and that such receivables should be separately taken into account while determining its entitlement under the Resolution Plan, we note that at the time of initiation of CIRP, the project was only around 30% complete. Any receivables from homebuyers were therefore linked to the future completion of the project. Such receivables could not be viewed as independent assets completely separate from the project itself.

More importantly, liquidation value is determined on the assumption that the Corporate Debtor stands liquidated on the Insolvency Commencement Date. If liquidation were to take place on that date, there would be no continuing project generating future cash flows or future receivables. Homebuyers cannot reasonably be expected to continue making payments towards an incomplete project that has gone into liquidation. Therefore, future receivables cannot be treated as independently realizable assets while determining liquidation entitlement.

121. The Appellant's claim over receivables also overlooks the statutory framework governing real estate projects. Receivables generated from homebuyers are connected with the completion of the project and cannot be appropriated in a manner contrary to the regulatory framework applicable to such projects under RERA. Therefore, the alleged charge over receivables cannot be viewed in isolation from the obligations attached to those funds.

122. The actual treatment provided to the Appellant under the approved Resolution Plan is also relevant. Clause 7.3(iii)(A)(a) to (d) records the debt and security interest of ACRE. Clause 7.3(iii)(A)(e) provides for payment of Rs.70 Crores to ACRE in four instalments commencing from the 33rd month and ending in the 42nd month from the Transfer Date. Further, Clause 7.3(iii)(A)(f) preserves ACRE's right to independently proceed against co-borrowers and other securities available under the transaction documents. Thus, apart from receiving Rs.70 Crores under the Resolution

Plan, ACRE continues to retain its rights against co-borrowers, guarantees and other available securities.

123. The record also shows that valuable third-party securities were available in connection with the loan transaction. Therefore, the recovery avenues available to the Appellant do not come to an end with the amount payable under the Resolution Plan.

124. The Appellant's security interest was limited to the unsold inventory of the project. The value of such security interest was correctly assessed at approximately Rs.38.71 Crores on the basis of the material available on record. The claim regarding future receivables cannot be accepted in the context of liquidation value, since liquidation proceeds on the assumption that the Corporate Debtor stands liquidated on the Insolvency Commencement Date. Further, the Resolution Plan provides Rs.70 Crores to the Appellant, which is significantly higher than the assessed value of its security interest, while also preserving its rights against co-borrowers and other available securities.

125. After examining the entire factual record, the chronology of creation of the security interest, the extent of units already allotted to homebuyers, the valuation exercise carried out by the Resolution Professional, the issue relating to receivables, the actual CIRP costs and the treatment provided to the Appellant under the approved Resolution Plan, we do not find any error in the approach adopted by the Adjudicating Authority.

126. The Appellant has placed reliance on the Judgement of Hon'ble SC in "***Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors.*****, (2022) 1 SCC 401"**. We note that in Jaypee Kensington (Supra) Hon'ble SC was considering the manner in which the entitlement of a dissenting financial creditor could be satisfied under a resolution plan, including through enforcement of security interest. In the present case, however, the dispute is not regarding the mode of payment, but regarding the extent of the Appellant's entitlement itself. The issue before us is whether the Appellant is entitled to the entire liquidation value of the Corporate Debtor or only to the value attributable to its actual security interest. We note that the aforesaid judgment does not deal with determination of the value of a dissenting secured creditor's entitlement in CIRP as is the matter herein, the same does not assist the case of ACRE.

127. ACRE has also placed reliance upon the Judgement of Hon'ble SC in "***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.*****, [(2020) 8 SCC 531]"** wherein the Hon'ble Supreme Court held that the Adjudicating Authority can exercise judicial review to ensure that a resolution plan complies with Section 30(2) of the Code. In the present case, the Adjudicating Authority has in fact examined the objections raised by the ACRE concerning its security interest; liquidation entitlement; and treatment under the Resolution Plan, before recording its findings. Therefore, the principle laid down in *Essar Steel* stands fully satisfied in the present case. The judgment does not support the proposition that merely because a dissenting financial creditor disagrees with the findings recorded

by the Adjudicating Authority, the approved Resolution Plan must be interfered with.

128. In these circumstances, we find no legal or factual infirmity in the Impugned Order. The findings recorded by the Adjudicating Authority are based on the material available on record and do not call for any interference.

129. We now examine the second issue, which has been raised by Unsecured Financial Creditor Dhankalash in the second appeal, wherein it has argued that it has not been provided opportunity of being heard, as its restoration application was not decided by the Adjudicating Authority before approval of the Resolution Plan; and the CIRP was not conducted in a fair and transparent manner, without discussing feasibility and viability of competing Resolution plans. It is the submission of Dhankalash that Resolution Plan approved by the Adjudicating Authority therefore suffers from illegality and material irregularity and is liable to be quashed as its not compliant with Section 30(2) of the Code.

130. The record shows that the Resolution Plan was not approved in a hurried manner. The CIRP remained under consideration of the Committee of Creditors for a considerable period during which 20 CoC meetings were held. Several prospective resolution applicants participated in the process and multiple resolution plans were received and evaluated. Thereafter, a fresh Form-G was issued, additional applicants entered the process, revised plans were invited, and competing proposals were considered by the CoC. Ultimately, after several rounds of deliberations and evaluation, the

Resolution Plan of Purvanchal Projects Pvt. Ltd. was approved with 71.1% voting share in the 19th Meeting of CoC. Thus, the approved plan was the outcome of a competitive process involving various bidders and extensive consideration by the CoC.

131. The Appellant which has 0.29% voting share in the CoC, has questioned the issuance of a fresh Form-G; the valuation exercise; the evaluation of competing plans; and the conduct of the Resolution Professional. However, these aspects were discussed during the CIRP process itself and were known to all the members of the CoC. The CoC proceeded to approve the Resolution Plan of SRA, after considering all available options, and after deliberating the pros and cons of each proposal. Merely because the Appellant with a miniscule stake in CIRP disagrees with the manner in which the CoC evaluated the plans cannot by itself render the process illegal, which was carried out after extensive discussion in the CoC. The Hon'ble SC in a catena of judgements has clearly laid down than the commercial wisdom of the CoC is supreme.

132. The Appellant has also contended that other resolution plans were more beneficial to stakeholders. However, the assessment of which plan is more feasible, viable and beneficial is a matter that falls within the commercial wisdom of the CoC. The CoC had majority of Homebuyers and it had before it several competing plans and, after considering their respective merits, it chose to approve the plan submitted by the Successful Resolution Applicant, which was the most beneficial to majority members

of CoC viz. Homebuyers. We cannot substitute our own view for the commercial decision taken by the CoC after due deliberation.

133. It is the submission of Dhankalash that they have been provided only Rs.50 lakhs in the Resolution Plan, against an admitted claim for Rs.2.02 Crore. We note that Dhankalash is an unsecured Financial Creditor with no security interest on the assets of the CD. Accordingly, its claim under the waterfall mechanism would be governed by section 53(1)(d) of the code. Dhankalsh is claiming parity with ACRE, which is also a Dissenting Finanncial Creditor, however, we note that ACRE is a secured financial creditor and its claim would be dealt according to Section 53(1)(b)(ii) of the code, which is higher in priority than that of the Dhankalsh. The resolution Plan provides Rs.70 Cr to ACRE against an admitted claim of Rs.200.27 Cr, which in percentage terms comes to 34.95%. The claim satisfaction percentage of Dhankalash on the other hand comes to 24.75%, as it is on lower priority than ACRE. We find no infirmity in the allocation for Dhankalash in the Resolution Plan, as it seems to be compliant with the waterfall mechanism provided in Section 53(1) of the Code. The claim of Dhankalash is lower in priority to that of CARE, so the question of equivalence solely due to both being Dissenting Financial Creditor has no merit.

134. As regards the grievance that IA No. 3986 of 2022 and the subsequent Restoration Application were not separately adjudicated before approval of the Resolution Plan, it is necessary for us to examine, whether any real prejudice was caused to the Appellant. The objections sought to be raised

by the Appellant substantially related to valuation, evaluation of plans, CIRP costs and other commercial aspects of the resolution process. These were matters which had already been considered during the CIRP and by the CoC while evaluating the competing plans. Therefore, no material has been placed on record to show that the outcome of the CIRP would have been different had the Restoration Application been separately decided.

135. The allegations of collusion, bias and manipulation also remain unsupported by any cogent evidence. On the contrary, the facts show participation of multiple resolution applicants, consideration of several competing plans, repeated opportunities for revision of plans and eventual approval by the requisite majority of the CoC. These circumstances indicate that the resolution process was subjected to adequate scrutiny before the Resolution Plan came to be approved.

136. The facts on record show that the CoC considered several resolution plans, evaluated competing proposals and thereafter approved the Resolution Plan with the requisite majority after due deliberations. The objections raised by the Appellant essentially seek a re-examination of commercial decisions already taken by the CoC. We do not find any violation of a mandatory provision of the Code or any material illegality in the approval process.

137. We are therefore of the view there is no material irregularity in approval of the plan, which is compliant with Section 30(2) of the Code.

CA AT Ins. No. 1231 of 2023

Submission of Appellant/NOIDA

138. We now take up the third appeal filed by the NOIDA Authority. Main grievance of NOIDA is that they have been treated as an Operational Creditor whereas based on the documents on record, they should have been treated as Secured Creditor. So, the only issue to be determined in this appeal is whether the claim of NOIDA is that of a Secured Creditor.

139. Ld. Counsel Mr. Rachit Mittal appearing on behalf of the Appellant/New Okhla Industrial Development Authority ("NOIDA") submitted that the Appellant is a statutory authority constituted under the provisions of the Uttar Pradesh Industrial Area Development Act, 1976, and is the lawful owner of the project land in question. The Corporate Debtor was merely a lessee under a registered Sub-Lease Deed dated 19.10.2012 and was under a continuing obligation to pay lease premium, annual rent, extension charges and other dues arising from the said lease arrangement. It was submitted that the Appellant had duly filed its claim in Form-C for an amount of Rs.84.19 Crores, out of which only Rs.68.90 Crores was admitted. However, despite the statutory nature of the dues and the existence of a charge in favour of the Appellant, the Resolution Professional illegally classified the Appellant as an "Operational Creditor" and denied it the status of a secured creditor, thereby causing grave prejudice to the Appellant.

140. Ld. Counsel submits that the Resolution Professional acted wholly beyond the scope of his statutory authority by classifying the Appellant as an "Operational Creditor" and by rejecting a substantial portion of the Appellant's claim. Such an exercise, according to the Appellant, amounts to adjudication of rights and liabilities, which falls exclusively within the jurisdiction of the Adjudicating Authority and the Appellate Tribunal. He further submitted that the Resolution Professional acted in complete excess of jurisdiction by treating the Appellant's secured statutory claim as an ordinary operational debt. It was contended that such action is ultra vires the provisions of the IBC and contrary to the settled principles laid down by the Hon'ble Supreme Court. The Appellant therefore submitted that the rejection and downgrading of its claim is illegal, arbitrary and liable to be set aside by this Hon'ble Tribunal.

141. In support of the aforesaid contention, the Ld. Counsel for the Appellant placed reliance upon the following judgments:

a. *Swiss Ribbons Pvt. Ltd. vs. Union of India* – particularly paragraphs 88 to 91;
b. *Anuj Jain, IRP of Jaypee Infratech Ltd. vs. Axis Bank Ltd.* – particularly paragraph 53.2;
c. *GNOIDA Vs. Prabhjit Singh Soni* – particularly paragraphs 21 and 22.

142. It is submitted that the Ld. Adjudicating Authority committed a grave error in treating the Appellant merely as an Operational Creditor instead of recognizing it as a Secured Operational Creditor. According to the Appellant, such wrongful classification has resulted in extinguishment of all rights

guaranteed to the Appellant under the Sub-Lease Deed and under the statutory framework governing the Authority. It was argued that despite the debt arising from the lease deed exceeding Rs.84 Crores, the Resolution Plan arbitrarily allocates only approximately Rs.7–8 Crores to the Appellant without any reasonable or justifiable basis.

143. Ld. Counsel submits that the Appellant is the lawful owner of the commercial plot which had been leased to the Corporate Debtor under the registered Sub-Lease Deed dated 19.10.2012. The aforesaid lease deed is a tri-partite lease deed between "New Okhla Industrial Development Authority- the Lessor" and "M/s Sequel Buildcon Pvt. Ltd.- the Lessee" and "M/s Arena Superstructures Pvt. Ltd.- the Sub-lessee". By virtue of the said arrangement, the Appellant became entitled to receive lease premium, annual ground rent and all other dues payable under the lease documents. The sub-lease also provides that the lessor shall have the first charge on the plot towards payment of all dues of Lessor.

144. He submits that Sections 13 and 13-A of the Uttar Pradesh Industrial Area Development Act, 1976 expressly create a statutory charge in favour of the Authority with respect to all amounts payable on account of transfer of site, building or rent due in respect of the lease. Therefore, according to the Appellant, the dues in question are not ordinary contractual claims but statutory dues backed by a statutory charge created by operation of law.

145. It is further submitted that the Ld. Adjudicating Authority failed to appreciate that the aforesaid statutory charge squarely falls within the

ambit of "security interest" as defined under Section 3(31) of the IBC, thereby making the Appellant a "Secured Creditor" within the meaning of Section 3(30) of the Code. The Resolution Plan, however, completely ignored the statutory charge and illegally treated the Appellant as an ordinary Operational Creditor. It was submitted that the admitted claim of the Appellant was arbitrarily reduced and the treatment accorded under the Resolution Plan is contrary to the express provisions of law and violative of the statutory rights vested in the Appellant.

146. The Ld. Counsel placed reliance upon the judgment of the Hon'ble Supreme Court in *State Tax Officer v. Rainbow Papers Limited* and submitted that the Hon'ble Supreme Court has categorically held that a statutory charge created in favour of a statutory authority constitutes a "security interest" under the Insolvency and Bankruptcy Code. It was further submitted that the Hon'ble Supreme Court has clearly observed that if a Resolution Plan ignores statutory dues payable to a State Government or statutory authority, such Resolution Plan deserves rejection. According to the Appellant, the Resolution Plan in the present case suffers from the very same illegality and therefore deserves to be set aside by this Hon'ble Tribunal.

147. He submitted that the Resolution Plan fails to satisfy the mandatory requirements prescribed under Section 30(2) of the IBC read with Regulations 37 and 38 of the CIRP Regulations, 2016 and has caused serious prejudice to the rights and interests of the Appellant. The Ld. Counsel relied upon the judgment of the Hon'ble Supreme Court in *Greater*

Noida Industrial Development Authority v. Prabhjit Singh Soni & Anr. and particularly paragraph 54(b), wherein statutory authorities such as the Appellant have been recognized as Secured Creditors.

148. He further submitted that the Resolution Plan approved by the Ld. NCLT is contrary to Section 30(2)(b) of the Insolvency and Bankruptcy Code, 2016 insofar as it proposes payment to the Appellant below even the liquidation value. It was argued that such treatment of statutory dues payable to a public authority is impermissible in law and the Resolution Plan could never have been approved in its present form.

149. In the end, Ld. Counsel submitted that NOIDA has suffered an enormous loss of public revenue due to the wrongful classification and discriminatory treatment accorded under the Resolution Plan. Against the admitted claim of Rs.68.90 Crores out of the total claim of Rs.84.19 Crores, the Resolution Plan arbitrarily proposes payment of only Rs.7–8 Crores to the NOIDA Authority. According to him, such drastic reduction of statutory dues payable to a public authority undermines public revenue and is wholly contrary to Section 30(2)(b) of the IBC. It was submitted that the Resolution Plan stands vitiated on this ground alone and deserves to be set aside in entirety.

150. Summing up, Ld. Counsel prayed that appropriate directions be issued to the Resolution Professional to recognize the Appellant as a Secured Creditor, and further remand the Resolution Plan for proper and

lawful treatment of the Appellant's claim in accordance with the provisions of law.

Submissions of Resolution Professional

151. Mr. Palash Singhai, Ld. Counsel for RP submitted that the present Appeal was nothing, but an attempt by the Appellant, despite being a statutory authority, to take a completely contradictory stand from the one adopted during the Corporate Insolvency Resolution Process ("CIRP"). It was submitted that the Appellant had itself submitted its claim before Respondent No. 1 in Form C dated 12.05.2021, wherein the Appellant had categorically admitted that it did not possess any "security interest" over any asset or property of the Corporate Debtor. He further submitted that subsequent to filing Form C, the Appellant had also addressed a Letter dated 16.08.2021 to Respondent No.1, whereby certain clarifications and documents pertaining to the land and project were furnished. However, even in the said communication, the Appellant never asserted that it was required to be treated as a "Secured Creditor." It was emphasized that the claim seeking status as a "Secured Creditor" was raised for the very first time only through Written Submissions dated 03.07.2023 filed before the Adjudicating Authority.

152. He submitted that under the settled principles of approbate and reprobate, as well as principles governing procedural propriety, a litigating party cannot be permitted to take a stand in appellate proceedings which is completely contrary to the position consistently maintained throughout the proceedings before the Adjudicating Authority. It was argued *that* once the

Appellant had itself categorically disclaimed any security interest in its own statutory claim form, the Appellant stood estopped from subsequently asserting the status of a Secured Creditor at the appellate stage.

153. Ld. Counsel further submitted that the definition of "Security Interest" under the Code is clear, specific, and leaves no scope for ambiguity. Reliance was placed upon Section 3(31) of the IBC, which defines "security interest" to mean a right, title, interest, or claim to property created in favour of a secured creditor through a transaction securing payment or performance of an obligation, including mortgage, charge, hypothecation, assignment, encumbrance, or any similar arrangement.

154. The Learned Counsel further submitted that a plain reading of Section 3(31) demonstrates that two essential conditions are required for existence of a "security interest" under the Code. Firstly, such right, title, interest, or claim must be created by a "transaction"; and secondly, such transaction must secure payment or performance of an obligation. It was pointed out that the term "transaction" itself is defined under Section 3(33) of the Code to include an agreement or arrangement in writing involving transfer of assets, funds, goods, or services from or to the Corporate Debtor.

155. The Ld. Counsel submitted that a conjoint reading of Sections 3(31) and 3(33) of the Code leaves no room for doubt that a "security interest" under the IBC can arise only from a bilateral written agreement or arrangement entered into between parties. It was argued that any right or encumbrance arising unilaterally merely by operation of statute, without

any written agreement or arrangement between the creditor and the Corporate Debtor, cannot qualify as a "security interest" within the meaning of the Code.

156. It was further submitted that the above position becomes even more apparent when contrasted with Section 100 of the Transfer of Property Act, 1882, which expressly recognizes charges created either "by act of parties or operation of law." The Learned Counsel argued that while framing Section 3(31) of the IBC, the legislature consciously omitted the words "or operation of law," thereby making a deliberate departure from the broader language contained in Section 100 of the Transfer of Property Act. Such omission clearly reflected legislative intent to exclude statutory charges from the category of "security interests" entitled to priority under the insolvency waterfall mechanism.

157. The Ld. Counsel also submitted that the aforesaid interpretation is fully consistent with Section 77(3) of the Companies Act, 2013, which provides that no charge created by a company shall be taken into account by a liquidator or any creditor unless such charge is duly registered under Section 77(1) and a certificate of registration is issued by the Registrar of Companies. It was argued that a statutory lien arising purely by operation of law, without any registered charge under the Companies Act, cannot qualify as a "security interest" under the IBC framework.

158. He further relied upon Regulation 21 of the IBBI (Liquidation Process) Regulations, 2016, which prescribes the specific modes through which

security interest may be proved, namely: (a) records maintained with an information utility; (b) certificate of registration of charge issued by the Registrar of Companies; or (c) proof of registration with the Central Registry. It was submitted that none of the aforesaid methods of proof were available to the Appellant in respect of any alleged statutory charge under the U.P. Industrial Area Development Act, 1976 ("UPIADA"). Accordingly, it was argued that any right allegedly arising merely by operation of law could not be proved in accordance with Regulation 21 and therefore cannot be recognized as a valid security interest under the Code.

159. He submitted that the Insolvency and Bankruptcy Code (Amendment) Act, 2026 (No. 6 of 2026), which received Presidential assent on 06.04.2026 and was published in the Official Gazette, inserted a specific Explanation to Section 3(31) of the Code. The said Explanation expressly clarified that a "security interest" would exist only where a right, title, interest, or claim to property is created pursuant to an agreement or arrangement by the act of two or more parties, and further clarified that security interests created merely by operation of law shall not fall within the ambit of Section 3(31).

160. The Learned Counsel submitted that the Explanation had been inserted specifically "for the removal of doubts," which is a recognized legislative drafting device used to clarify the true import and meaning of an already existing statutory provision. It was argued that such an Explanation is clarificatory in nature and does not amount to a substantive amendment of the law. Reliance was placed upon the judgment of the Hon'ble Supreme Court in *Commissioner of Income Tax v. Podar Cement (P) Ltd.* to contend

that an Explanation inserted "for the removal of doubts" merely clarifies the true meaning of the original provision rather than introducing a new legal principle.

161. It was further submitted that even if the Amendment Act had not yet been brought into force through a commencement notification, the same still possessed significant persuasive value while interpreting Section 3(31) of the Code because clarificatory amendments are retrospective in operation and are deemed to have always formed part of the original enactment. Reliance in this regard was placed upon the judgments of the Hon'ble Supreme Court in *J.K. Lakshmi Cement Ltd. v. Commercial Tax Officer* and *Zile Singh v. State of Haryana.* It was argued that the Explanation merely reiterated what was already implicit in the original statutory language of Section 3(31).

162. He submitted that the 2026 Amendment explicitly clarifies that a security interest shall not include any right created merely by operation of law. According to the Learned Counsel, this clarification directly defeats the Appellant's claim that any alleged statutory rights under the UPIADA could amount to a "security interest" under the IBC.

163. Ld. Counsel submitted that the Appellant had heavily relied upon the judgment of the Hon'ble Supreme Court in *Greater Noida Industrial Development Authority v. Prabhjit Singh Soni & Anr.* However, it was argued that the reliance placed upon the said judgment was entirely misplaced and factually distinguishable. The Learned Counsel submitted that in the said

case, the controversy related to payment of penalty under Sections 13 and 13A of the U.P. Industrial Area Development Act, 1976, where the Corporate Debtor had committed default in payment of instalments and consequently demand-cum-pre-cancellation notices had been issued invoking the penal and recovery provisions under Sections 13 and 13A of the Act.

164. He submitted that the factual position in the present case was materially different because admittedly the Appellant had never invoked Sections 13 or 13A of the UPIADA prior to commencement of CIRP against the Corporate Debtor. Therefore, according to the Learned Counsel, the ratio and findings in the Greater Noida judgment were wholly inapplicable to the facts of the present Appeal.

165. He submitted that the admitted claim amount of the Appellant was approximately Rs. 68.90 Crores, which had been admitted by the Resolution Professional in the category of Operational Creditor and treated accordingly throughout the CIRP. It was emphasized that the Appellant never challenged such categorization during the CIRP proceedings. It was further submitted that the minimum liquidation value payable to Operational Creditors in the present matter was nil because the aggregate admitted claims of creditors ranking above Operational Creditors under the waterfall mechanism substantially exceeded the liquidation value of the Corporate Debtor. Therefore, according to the Learned Counsel, the treatment accorded to the Appellant under the Resolution Plan was fully compliant with Section 30(2)(b) read with Section 53(1) of the Code.

166. Ld. Counsel also relied upon the judgment of this Appellate Tribunal in *Flat Buyers Association v. Umang Realtech Pvt. Ltd.*, wherein it was held that assets of a real estate Corporate Debtor cannot be distributed amongst secured creditors and are instead liable to be transferred in favour of allottees/homebuyers. It was submitted that in the present case there are more than 800 homebuyers who had already been allotted flats in the project constructed over the land leased by the Appellant and therefore the interests of such homebuyers deserved paramount consideration.

167. Lastly, he submitted that the Sub-Lease Deed executed between the Appellant and the Corporate Debtor on 19.12.2012 continued to remain a valid and subsisting instrument. It was pointed out that the Appellant itself had participated in the CIRP proceedings on the basis of dues arising from the said Sub-Lease Deed and had never terminated the lease agreement. It was therefore argued that once the Resolution Plan stands approved, the same becomes binding upon all stakeholders in terms of Section 31 of the Code read with Section 238 thereof, which overrides all inconsistent contractual provisions to the extent necessary for implementation of the approved Resolution Plan.

Submissions of Vishwanath Sharma, Intervener on behalf of Homebuyers

168. Mr. Utkarsh Joshi, Ld. Counsel for the Homebuyer supported the submissions of RP. He submitted that NOIDA had itself approved the layout plans of the project in the year 2014. However, after approval of the resolution plan and after the order dated 25.07.2023 passed by this Hon'ble

Appellate Tribunal permitting implementation of the plan, NOIDA deliberately obstructed implementation by refusing to comply with the resolution framework despite there being no stay operating against the approved plan.

169. He further submitted that Sections 31 and 238 of the IBC unequivocally provide that an approved resolution plan shall be binding upon all stakeholders including the Central Government, State Government and local authorities in respect of statutory dues. Therefore, once the resolution plan attained approval and implementation was permitted, NOIDA became statutorily bound by the same. The Counsel argued that NOIDA cannot selectively participate in the insolvency process when convenient and subsequently refuse to honour the binding consequences of the process.

170. He further submitted that NOIDA's actions are arbitrary, unreasonable and violative of constitutional principles including the fundamental rights guaranteed under Article 21 of the Constitution. Reliance was placed upon the judgment in *Mansi Brar Fernandes v. Shubha Sharma & Ors.*, 2025 INSC 1110, particularly paragraphs 20.1 to 20.5.

171. Ld. Counsel placed reliance upon the order dated 29.04.2025 passed by the Hon'ble Supreme Court in *Himanshu Singh & Ors. v. Union of India & Ors.*, SLP (C) No. 7649 of 2023, particularly paragraphs 4, 5, 14 and 23, as well as the order dated 14.09.2023 in *Virendra Singh Nagar v. State of Uttar Pradesh & Anr.*, SLP (Crl.) No. 1251 of 2023, particularly paragraphs

3 to 5, to demonstrate judicial concern regarding the conduct of authorities and builders in real estate matters affecting homebuyers.

172. The Ld. Counsel finally submitted that being a public authority, NOIDA ought to act in a manner that facilitates completion of the project and protects the interests of thousands of homebuyers rather than obstructing the resolution process. It was submitted that if NOIDA seeks to recover amounts from the erstwhile promoters, it is always open to NOIDA to initiate appropriate proceedings against such promoters. However, from the information available to homebuyers, no meaningful action has been initiated against the erstwhile promoters.

173. Ld. Counsel argued that NOIDA's present conduct raises serious concerns regarding its bona fides, particularly when it seeks to extract further money from already distressed homebuyers while allowing the erstwhile promoters to escape liability. The Counsel submitted that the actions of NOIDA should ultimately be guided by public interest and should facilitate timely completion and delivery of homes to innocent purchasers who have suffered for years.

Analysis & Findings

174. The only issue in this appeal is whether the Appellant/NOIDA is entitled to a treatment different from that of an ordinary Operational Creditor in view of the rights arising from the registered Sub-Lease Deed dated 19.10.2012 and the statutory framework governing the project land,

and whether the Resolution Plan approved by the Adjudicating Authority adequately considered those rights in accordance with law?

175. The land on which the project of the Corporate Debtor is being implemented is owned by NOIDA and it has been sub-lease to the Corporate Debtor for a period of 90 years against payment of lease premium. NOIDA filed its claim in the CIRP for an amount of Rs. 84.19 Crores out of which the RP admitted Rs.68.90 Crores. The Resolution Plan proposes a payment of only about Rs.8 Crores to NOIDA. The main contention of the NOIDA Authority is, that it's the lawful owner of the project land and that the Corporate Debtor derived its rights over the land only through the registered Sub-Lease Deed dated 19.10.2012 executed between the parties. Under the said deed, the Corporate Debtor was obliged to pay lease premium, annual ground rent, extension charges and other dues payable to NOIDA. According to the Appellant, the Resolution Plan failed to properly consider these rights and wrongly treated NOIDA at par with an ordinary Operational Creditor despite the unique nature of its relationship with the Corporate Debtor.

176. NOIDA has relied upon the registered sub-lease deed claiming that it creates a charge upon land and clearly creates a security interest under Section 3(31) of the Code. It made a twofold contention; Firstly, such charge/right has been created by the transaction namely the lease deed and secondly, it obliges the corporate debtor to make payment of its dues.

177. The Respondents on the other hand, have contended that NOIDA was correctly treated as an Operational Creditor. They have placed reliance upon the Explanation inserted in Section 3(31) of the Insolvency and Bankruptcy Code, 2016 by Section 2 of the Insolvency and Bankruptcy Code (Amendment) Act, 2026, which has been brought into force through Gazette Notification S.O. 2625(E) dated 22.05.2026 with effect from 26.05.2026. According to the Respondents, the amendment clarifies that a security interest created merely by operation of law would not constitute a security interest under the IBC and therefore NOIDA cannot claim any special status on the basis of the statutory charge asserted by it.

178. At the outset, we find that the present dispute cannot be viewed as a routine claim for recovery of dues. The Appellant is not a creditor whose claim arises from supply of goods or services to the Corporate Debtor. The project itself stands on land owned by NOIDA. The Corporate Debtor acquired and continued to enjoy rights over the project land only by virtue of the registered Sub-Lease Deed dated 19.10.2012. The foundation of NOIDA's claim lies in the registered Sub-Lease Deed dated 19.10.2012, which governs the relationship between the parties and regulates the Corporate Debtor's rights and obligations in respect of the project land. The statutory provisions relied upon by NOIDA merely supplement and protect rights that already arise from the said lease arrangement. Therefore, the rights asserted by NOIDA are intrinsically connected with the very source from which the Corporate Debtor derived its entitlement to occupy and develop the project land.

179. In this case NOIDA Authority has relied on a Clause in Sub-lease Deed made on 19.10.2012 between the **"New Okhla Industrial Development Authority- the Lessor"** AND **"M/s Sequel Buildcon Pvt. Ltd.-** a Relevant Member of M/s Xanadu Estates Pvt. Ltd. (Consortium) Company which is the **"Lessee"** AND **"M/s Arena Superstructures Pvt. Ltd**.,(100% owned subsidiary of M/s Sequel Buildcon Pvt. Ltd.) called as - the **"Sub-lessee"**. Citation portion of the Deed reads as follows:

> *"And whereas the Lessor approved the sub division of Sports City Plot No.* ***SC-01/A Sector-79 measuring 1,00,000 Sqm.*** *Into 2 parts numbering as* ***SC-01/A1 Sector-79 measuring 50,000 Sqm. And SC-01/A2 Sector-79 measuring 50,000 Sqm.*** *To be developed by* ***(1) M/s Sequel Buildcon Pvt. Ltd. and (2) M/s Arena Superstructures Pvt. Ltd. (100% owned subsidiary company of M/s Sequel Buildcon Pvt. Ltd.)****, respectively and allowed the Lessee to sub lease as per the terms and conditions of the Brochure for the development of Sports City for recreational, commercial and residential including group housing of the scheme vide letter No. Noida/Commercial/2012/1187 dated 3rd October, 2012"*

180. Further, Part II of the said Sub lease document deals with payment by Sub-Lessee to Lessor. In sub-clause (f) the following declaration is given about the charge: -

> ***"II. AND THE SUB-LESSE DOTH HEREBY DECLARE AND COVENANT WITH THE LESSOR IN THE MANNER FOLLOWING:***
>
> *(a)….*
>
> *(f)….*
>
> *Lessor shall have the first charge on the plot towards payment of all dues of Lessor."*

181. We note the following from the aforesaid portions of Lease Deed:

a. It's a tripartite Sub-Lease Deed between NOIDA-the Lessor; Sequel Buildcon the Lessee; and Arena Superstructures the CD herein as Sub-Lessee.

b. The Sub-Lessee Arena Superstructures (CD) is a 100% subsidiary of the Lessee.

c. The Sports City Plot No. SC-01/A Sector 79 having an area of 100,000Sqm was further divided by NOIDA in 2 plots having equal area of 50,000Sqm each, and the second plot no. SC-01/A2 Sector 79 having an area of 50,000Sqm was further sub-Leased to Arena Superstructures (CD).

182. We note from the registered sub-lease document that the Lessee and Sub-Lesse are parent and 100% subsidiaries. The leasehold rights and liabilities of the 2nd sub-Leased plot have been transferred to CD. We further note that the Sub-Lease Deed creates a first charge on the property in favour of Lessor NOIDA. Further the Deed secures payment to NOIDA for alludes from Corporate Debtor. This document is a contract to which both NOIDA and Corporate Debtor are parties, the third party being the Parent company of the CD.

183. We now examine the aforesaid document with respect to 3(31) of the Code which define 'security interest' is extracted below: -

> *"3(31) "security interest" means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or*

arrangement securing payment or performance of any obligation of any person:

PROVIDED that security interest shall not include a performance guarantee;"

184. We note from the above that the aforesaid sub-lease deed creates the first charge in favour of NOIDA to secure payment of its dues from the corporate debtor. The charge is created by an agreement and not by operation of a statute. We also note that the rights asserted by NOIDA are based on this agreement and the its reliance on the statutory charge under Sections 13 and 13-A of the Uttar Pradesh Industrial Area Development Act, 1976 is only to further strengthen its case.

185. We also note that the Parliament has inserted an Explanation to Section 3(31) of the IBC through Section 2 of the Insolvency and Bankruptcy Code (Amendment) Act, 2026, and the same has been brought into force through Gazette Notification S.O. 2625(E) dated 22.05.2026. The Explanation clarifies that a security interest created merely by operation of law would not qualify as a security interest under the Code. However, in our considered view, in this case the reliance is upon a registered lease deed and not upon creation of statutory charge by operation of law.

186. It is to be noted that the RP in its submission has stated that two elements are essential to constitute a security interest under Section 3(31) of the Code: (i) the right, title, interest or claim must be created by a transaction; and (ii) such transaction must secure payment or performance

of an obligation. Further the word 'transaction' is itself defines under Section 3(33) of the Code as:

> ***"3(33)*** *Transaction" includes an agreement or arrangement in writing for the transfer of assets, or funds, goods or services, from or to the corporate debtor.***"**

We are of the view that the registered sub-lease deed meets all the requirements as laid down in Section 3(31) and 3(33) of the Code and accordingly NOIDA should have been treated as the Secured Creditor in the Resolution Plan.

187. The material placed before us shows that NOIDA had specifically objected to the treatment accorded to it under the Resolution Plan and had raised concerns regarding the impact of the Resolution Plan upon its rights arising from the lease arrangement governing the project land. These objections required a detailed examination by the Adjudicating Authority.

188. However, on a careful reading of the Impugned Order, we find that there is no meaningful discussion regarding the nature of the rights arising from the registered Sub-Lease Deed dated 19.10.2012 or the effect of the Resolution Plan upon those rights. The Impugned Order primarily proceeds on the basis that the Resolution Plan had received the approval of the Committee of Creditors. While the commercial wisdom of the Committee of Creditors deserves due deference, approval by the CoC cannot dispense with the requirement of examining legal rights that arise independently under contractual arrangements governing the project land.

189. We are therefore of the view that the Adjudicating Authority failed to adequately examine the distinctive position occupied by NOIDA as the owner of the project land and as a party to the registered Sub-Lease Deed dated 19.10.2012, from which the Corporate Debtor derived its rights. The objections raised by NOIDA on this aspect deserved independent consideration before approval of the Resolution Plan.

190. In these circumstances, we are satisfied that the issues raised by the Appellant were not considered in their proper perspective. The Impugned Order does not reflect any detailed examination of the consequences of the Resolution Plan on the rights of NOIDA arising from the registered Sub-Lease Deed dated 19.10.2012 and the statutory framework governing the project land. Such consideration was necessary before the Resolution Plan could be approved.

191. Accordingly, we are of the view that the claim of NOIDA requires reconsideration, as their claim is held to be that of a Secured Creditor, arising from the registered Sub-Lease Deed dated 19.10.2012. The Resolution Plan incorrectly classifies the claim of NOIDA to be that of an Operational Creditor.

192. In view of our findings above and in in earlier paragraphs, we dispose of the appeals in the following manner:

(i) CA (AT) (Ins) No. 949 of 2023 and 1117 of 2023 are dismissed.

(ii) CA(AT) (Ins) No. 1231 of 2023 is disposed of in the following manner:

a) Impugned Order is set aside to the limited extent of distribution proposed in the Resolution Plan. There would be no change to the remaining part of the Resolution Plan.

b) RP is directed to propose an addendum to the Resolution Plan, treating NOIDA as a Secured Creditor and revising the distribution proposed in the Resolution Plan. CoC to consider the revised distribution and after approval of the CoC, the same may be placed before Ld. Adjudicating Authority for final approval.

[Justice Ashok Bhushan]
Chairperson

[Indevar Pandey]
Member (Technical)

Harleen/
Pragya (LRA)