

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No.1060-1061 of 2023

[Arising out of Order dated 25.07.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, in IA. No. 1571 of 2023 and IA. No. 1584 of 2023 in Company Petition (IB) No. 248/CHD/2019]

IN THE MATTER OF:

Tejinder Pal Setia

....Appellant

Vs.

Kone Elevator India Pvt. Ltd. & Ors.

....Respondents

Present:

For Appellant: Mr. Ramji Srinivasan, Sr. Advocate with Mr. Alok Dhir, Mr. Kanishk Khetan, Mr. Mohit Chaudhary, Mr. Avishkar Singhvi, Mr. Prahar Mithal, Mr. Anubhav Singhal, Ms. Namrata Saraogi, Mr. Kartik Pandey, Advocates.

For Respondents: Ms. Chakshu Thakral, Advocate for R-1.

Mr. Abhijeet Sinha, Mr. Aditya Soni, Mr. Akash Chatterjee, Advocate for R-3.

Mr. Puneet Bali, Sr. Advocate with Mr. Abhishek Anand, Mr. Mohak Sharma, Mr. Supriyo Banerjee, Advocates for R-4 to 58.

Mr. Iswar Mohapatra, Advocate for RP

With

Company Appeal (AT) (Insolvency) No.1035-1036 of 2023

[Arising out of Order dated 25.07.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, in IA. No. 1571 of 2023 and IA. No. 1584 of 2023 in Company Petition (IB) No. 248/CHD/2019]

Cont'd.../

IN THE MATTER OF:

Jagbir Singh

....Appellant

Vs.

Kone Elevator India Pvt. Ltd. & Anr.

....Respondents

Present:

For Appellant: Mr. Ramji Srinivasan, Sr. Advocate with Mr. Alok Dhir, Mr. Kanishk Khetan, Mr. Mohit Chaudhary, Mr. Avishkar Singhvi, Mr. Prahar Mithal, Mr. Anubhav Singhal, Ms. Namrata Saraogi, Mr. Kartik Pandey, Advocates.

For Respondents: Ms. Chakshu Thakral, Advocate for R-1.

Mr. Abhijeet Sinha, Mr. Aditya Soni, Mr. Akash Chatterjee, Advocate for R-3.

Mr. Puneet Bali, Sr. Advocate with Mr. Abhishek Anand, Mr. Mohak Sharma, Mr. Supriyo Banerjee, Advocates for R-4 to 58.

Mr. Iswar Mohapatra, Advocate for RP

J U D G M E N T

ASHOK BHUSHAN, J.

These two Appeals have been filed against the same judgment dated 25.07.2023 passed in I.A. No. 1571 of 2023 filed by Tejinder Pal Setia in CP(IB) No.248/CHD/2019 for closing the CIRP process. Tejinder Pal Setia is a member of suspended Board of Directors of the Corporate Debtor – Chandigarh Overseas Pvt. Ltd. Jagbir Singh (Appellant in Company Appeal (AT) (Insolvency) No.1035-1036 of 2023) also claim to be member of suspended Board of Directors. It shall be sufficient to refer to pleadings in

Company Appeal (AT) (Ins.) No. 1060-1061 of 2023, Tejinder Pal Setia vs. Kone Elevator India Pvt. Ltd. & Ors. for deciding both Appeals. Brief facts of the case necessary to be noticed for deciding these Appeals are:

- (i) Kone Elevator India Pvt. Ltd. claiming to be the Operational Creditor issued Demand Notice dated 15.10.2018 for debt of Rs.92,70,000/- and thereafter, filed an application under Section 9 on 22.04.2019 before the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench.
- (ii) When the petition under Section 9 came at the stage of final disposal a Settlement Agreement dated 27.09.2021 was entered between M/s Kone Elevator India Pvt. Ltd. and M/s Chandigarh Overseas Pvt. Ltd. – the Corporate Debtor, under which the Corporate Debtor acknowledged the dues of the Operational Creditor. However, the parties agreed to settle the dues for an amount of Rs.60 Lakhs out of which Rs.25 Lakhs were paid by Demand Draft on the date of execution of the Settlement Agreement. Cheque of Rs.20 Lakhs dated 15.12.2021 and Rs.15 Lakhs dated 15.03.2022 was given in favour of Kone Elevator India Pvt. Ltd.
- (iii) The Corporate Debtor did not make any payment in pursuance of the Settlement Agreement. The Adjudicating Authority reserved its judgment on 03.02.2023.
- (iv) I.A. No. 529/2023 was filed in the Company Petition offering payment of Rs.20 Lakhs out of remaining Rs.80 Lakhs shall be paid

immediately. The said application was rejected by the Adjudicating Authority by order dated 27.02.2023.

- (v) By judgment dated 27.02.2023, the Adjudicating Authority admitted Section 9 application finding debt and default. Adjudicating Authority also appointed Interim Resolution Professional.
- (vi) Company Appeal (AT) (Ins.) No. 262 of 2023 was filed by Tejinder Pal Setia. In the appeal, the Appellant offered to deposit an amount of Rs.35 Lakhs by Bank Draft. Appeal was entertained on 02.03.2023 and Appellant was permitted to deposit Rs.35 Lakhs, notices were issued and interim order was passed directing that no further steps shall be taken in pursuance of impugned order dated 27.02.2023.
- (vii) In the Appeal, an application was filed by one Sanjeev Chadha for being impleaded as one of the Respondent claiming that debt has been assigned by M/s Kone Elevator India Pvt. Ltd. in favour of Sanjeev Chadha. The Application filed by Sanjeev Chadha was allowed as debt was assigned on 03.02.2023 and Sanjeev Chadha was impleaded as Respondent No.3. Tejinder Pal Setia filed an Appeal in the Hon'ble Supreme Court challenging order dated 20.03.2023 impleading Sanjeev Chadha, which Appeal was dismissed by the Hon'ble Supreme Court. An application for intervention in the Appeal was also filed by the Homebuyers.
- (viii) This Appellate Tribunal after hearing the parties vide its judgment and order dated 04.07.2023 dismissed the Appeal.

- (ix) Tejinder Pal Setia filed Civil Appeal No. 4267 of 2023 before the Hon'ble Supreme Court challenging the order of this Tribunal dated 04.07.2023, which Appeal was dismissed by Hon'ble Supreme Court on 14.07.2023. While dismissing the Appeal it was left open to the Appellant to move an appropriate application before the NCLT, expressing his desire to liquidate and pay off the debt due to the Operational Creditor.
- (x) Subsequent to order dated 14.07.2023, an email dated 15.07.2023 was written by Tejinder Pal Setia to Sanjeev Chadha stating that as an erstwhile Director they are ready to make payment of Rs.35 Lakhs + interest on account of late payment. The said email was replied by Sanjeev Chadha expressing disagreement with the view of Suspended Director.
- (xi) I.A. No. 1571 of 2023 was filed by Tejinder Pal Setia offering to liquidate and pay off debt of the Operational Creditor. Demand Drafts of Rs.80,56,300/- were also submitted alongwith the application. On I.A. No. 1571 of 2023, the Adjudicating Authority directed the Respondent No.3 to the Application – Sanjeev Chadha to seek instructions by order dated 19.07.2023. Sanjeev Chandha, however, did not give his consent to accept the settlement.
- (xii) The Adjudicating Authority after hearing the parties on 20.07.2023 reserved the orders on I.A. No. 1571 of 2023. Another I.A. No. 1584 of 2023 was also filed by Homebuyers seeking intervention in I.A.

No. 1571 of 2023 on which orders were also reserved on the same date. The Adjudicating Authority directed the IRP to not constitute the CoC till 26.07.2023 by the same order.

(xiii) Adjudicating Authority by the impugned order dated 25.07.2023 rejected the I.A. No. 1571 of 2023. The Adjudicating Authority took the view that terms and conditions of the Settlement Agreement dated 27.09.2021 has already been breached which were not adhered by the Appellant. The parties are not in agreement with each other with regard to offer given by the Applicant – Tejinder Pal Setia, then the application was rejected. By separate order of the same date 25.07.2023, the Adjudicating Authority allowed I.A. No. 1584 of 2023, which was filed on behalf of the allottees/ Homebuyers, impleading the Homebuyers as party in I.A. No. 1571 of 2023. Aggrieved by both above orders dated 25.07.2023, these Appeals have been filed.

(xiv) Tejinder Pal Setia also filed an MA before the Hon'ble Supreme Court being MA No. 1656 of 2023 in Civil Appeal 4267 of 2023 seeking appropriate directions for closure of CIRP proceedings pending before NCLT, Chandigarh Bench. The said MA was taken up by the Hon'ble Supreme Court on 04.08.2023 and disposed of the application observing that they are not inclined to entertain the MA in disposed of matter and left it open to the Applicant /Appellant to file an appeal before the NCLAT. The Hon'ble Supreme Court further directed that there would be status quo with regard to the further

proceedings for a period of 10 days from date of order or till the appeal is listed before the NCLAT, whichever is earlier.

- (xv) Tajinder Pal Setia filed an appeal on 05.08.2023, which was taken up by this Tribunal on 11.08.2023, on which date both the Appeals were heard.

2. We have heard Shri Ramji Srinivasan, learned senior counsel assisted by Shri Mohit Chaudhary, Advocate for the Appellant, Shri Abhijeet Sinha, learned counsel appearing on behalf of Respondent No.3 – Sanjeev Chadha and Shri Puneet Bali, learned senior counsel appearing for the Homebuyers/Allottees.

3. Shri Ramji Srinivasan, learned Senior counsel for the Appellant submits that when the Corporate Debtor has expressed its willingness to liquidate the entire debt of the Operational Creditor as per Settlement Agreement dated 27.09.2021, the Respondent No.3 with ulterior motives has refused to accept the offer. It is submitted that the application filed by the Appellant being I.A. No. 1571 of 2023 was in pursuance of liberty granted by the Hon'ble Supreme Court on 14.07.2023 and the Adjudicating Authority ought to have allowed the application closing the CIRP when the entire debt is sought to be liquidated. The application was filed alongwith a Bank Draft of Rs.80,76,300/-. It is submitted that the Adjudicating Authority has inherent jurisdiction to close the CIRP before constitution of the CoC as has been clearly held by the Hon'ble Supreme Court in **"Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors., (2019) 4 SCC 17"**. It is further submitted

that the Homebuyers had no right to be impleaded in the proceeding and in fact they are setup by the Ex-management of the Corporate Debtor who now wants to take control of the Company. The Homebuyers who have already filed Section 7 application can prosecute their remedy in proceedings under Section 7. They have no right to be impleaded in the present proceeding. The Committee of Creditors was constituted by the IRP on 27.07.2023 although he was informed that MA has been filed before the Hon'ble Supreme Court by the Appellant. The application filed by the Appellant before the Adjudicating Authority ought to have allowed by the Adjudicating Authority by closing the CIRP in facts of the present case.

4. Shri Abhijeet Sinha, learned counsel for Respondent No.3 submits that the Corporate Debtor has breached Settlement Agreement dated 27.09.2021 and even after breach of Settlement was never ready to make the payment of debt as became due as per the Settlement Agreement. It is submitted that even after order of the Hon'ble Supreme Court dated 14.07.2023, the email which was sent by the Suspended Director mentioned that they are ready to offer Rs.35 Lakhs + interest whereas as per the Settlement Agreement, in case of breach, entire amount of Rs.92,70,000/- minus payment received shall become due and shall be liable with interest. The Respondent No.3 has not committed any such conduct which can be complained of by the Appellant. Appellant's offer was never accepted by the Respondent No.3. Application under Section 12A was not maintainable.

5. Learned counsel for the Homebuyers who are impleaded by the impugned order dated 25.07.2023 submits that the Homebuyers filed their Section 7 application in the year 2020 for a claim of more than Rs.121 Crore. It is submitted that the Corporate Debtor for last several years has refused to provide allotted premises to the Homebuyers. The Corporate Debtor needs insolvency resolution, looking to the sequence of the events and facts of the present case.

6. Learned counsel for the IRP submits that in pursuance of the impugned order publication has been issued and the IRP has received claims of more than Rs.136 Crores. It is submitted that the CoC was constituted on 27.07.2023 and a report was also filed by the IRP before the Adjudicating Authority on 28.07.2023.

7. We have considered the submissions of learned counsels for the parties and perused the record.

8. Before we proceed to consider the rival submissions of the parties, we may notice certain clauses of the Settlement Agreement dated 27.09.2021. The Settlement Agreement notices the fact of Agreement dated 14.03.2015 with the Corporate Debtor and Kone. The Settlement Agreement also notices that the Corporate Debtor had acknowledged and assured Kone to pay its dues in the year 2013 and thereafter in the year 2015 but payments could not be made to the Operational Creditor as assured by the Corporate Debtor. It is relevant to notice following part of the Settlement Agreement:

“Thereafter, the aforesaid project was re-christened as Jade Business Park. COPL assured KONE that they shall liquidate the entire dues of KONE and enter into a fresh contract with RONE on 14.03.2015 bearing reference number KEIPE/038/2015/000000494 8057 for the supply, installation, testing and commissioning of 4 Nos. Kone 15 Passenger Machine Room less Gearless Monospace Elevators at the Project in Jade Business Park, Sector-90, Mohali, Punjab on the terms and conditions which were mutually agreed between KONE and COPL. However, despite the assurance given to KONE, COPL did not liquidate the dues of KONE and the cheques as were issued in favour of KONE were dishonored, but no case of cheque-bounce is filed by KONE.

In addition, vide letter dated 25.11.2015, COPL acknowledged that a sum of Rs.92,70,000/- is pending payment from their end and accordingly, assured and confirmed to KONE that the side outstanding amount shall be paid by the Corporate Debtor latest by 15.02.2016. Thereafter, once again, COPL acknowledged the outstanding dues of KONE vide letter dated 05.04.2016.

AND WHEREAS KONE issued demand notice dated 15.10.2018 under the Insolvency and Bankruptcy Code, 2016 to COPL which was sent through Speed Post on 18.10.2018 to the registered office as well as Delhi office of COPL. The dues of KONE remained unpaid, and consequently KONE has filed a Petition under Section 9 of the Insolvency and Bankruptcy Code, 2019 bearing number CP (IB) No.

248/Chd/Chd/2019 before the NCLT at Chandigarh and the said Petition is at the stage of final disposal.

AND WHEREAS with the indulgence and sincere efforts of the representatives of KONE and COPL both the parties herein have agreed for the amicable solution to the claim of KONE before the NCLT on the terms and conditions which are being recorded in this Settlement Agreement.

NOW THIS SETTLEMENT AGREEMENT WITNESSETH AS UNDER:

- 1. COPL acknowledges that pursuant to the above, they are liable to pay the claimed amount to KONE. However, due to financial constraints, COPL has offered to pay a sum of Rs.60,00,000/- (Rupees Sixty Lakhs Only) to KONE as a full and final settlement of all the dues of KONE as are payable by COPL.*
- 2. KONE has accepted the aid offer of COPL, and are agreeable to accept an amount of Rs.60,00,000/- (Rupees Sixty Lakhs Only) as a full and final settlement of the claim pending before the NCLT on COPL complying with the terms of payment as per this Settlement Agreement.*
- 3. COPL shall pay an amount of Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) being the first instalment at the time of signing of this Settlement Agreement. The second instalment of Rs.20,00,000/- (Rupees Twenty Lakhs Only) shall be paid on or before 15.12.2021, and the third instalment of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) shall be*

paid on or before 15.03.2021. The first instalment shall be paid by means of a demand draft and towards the second and third instalment, the post dated cheques shall be given by COPL to KONE at the time of signing the present Settlement Agreement. It has been assured and represented to KONE that COPL shall ensure that the post dated cheques are honoured on their first presentation. In case of default and dishonour of the cheques, KONE shall be entitled to continue with the existing pending proceedings before the NCLT and to take initiate any other legal proceedings as may be advised to them to claim the entire claim amount of Rs.92,70,000/- (after adjusting the amount received) with interest @ 12% per annum and casts. The breakup of the payment shall be an under:

- a. Demand Draft no. 009371 dated 27.09.2021 for an amount of Rs.25,00,000/- in favor of KONE Elevator India Pvt. Ltd.*
- b. HDFC Bank Cheque no, 000901 dated, 15.12.2021 for an amount of Rs.20,00,000/- in favor of KONE Elevator India Pvt. Ltd.*
- c. HDFC Bank Cheque no. 000902 dated 15.03.2022 for an amount of Rs.15,00,000/- in favor of KONE Elevator India Pvt. Ltd.”*

9. From the above facts which have been recorded in the Settlement Agreement, it is clear that the Corporate Debtor has defaulted in making payment to the Operational Creditor since 2015 and the Settlement Agreement dated 27.09.2021 was also breached since payment as per the

Settlement Agreement was not discharged by the Corporate Debtor. In Para 3 of the Settlement Agreement following was stated:

“In case of default and dishonour of the cheques, KONE shall be entitled to continue with the existing pending proceedings before the NCLT and to take initiate any other legal proceedings as may be advised to them to claim the entire claim amount of Rs.92,70,000/- (after adjusting the amount received) with interest @ 12% per annum and casts.”

10. The Settlement Agreement, thus, clearly contemplates that in event of default, the Operational Creditor shall continue with the existing pending proceedings. The default having been committed by the Corporate Debtor, it is not open for the Corporate Debtor to insist that the Operational Creditor should not continue the proceedings. From the Settlement Agreement it is also clear that on account of breach the entitlement of Operational Creditor was Rs.92.70 Crores minus Rs.25 Lakhs with interest @12%.

11. When the Appellant filed Appeal challenging the admission order dated 27.02.2023, it only offered to make payment of Rs.35 Lakhs which was not as per the Settlement Agreement. Appeal has been dismissed by this Tribunal, as noted above. Against said order an appeal was filed before the Hon'ble Supreme Court by Tejinder Pal Setia, on which order dated 14.07.2023 was passed, which is to the following effect:

“O R D E R

We are in agreement with the findings recorded by the National Company Law Appellate Tribunal (NCLAT), Principal Bench, New Delhi dated 04.07.2023 with regard to the debt due and payable by the Corporate Debtor - Chandigarh Overseas Private Limited (COPL), the respondent no. 2 before us.

At this stage, the Learned Senior Advocate appearing for the appellant - Tejinder Pal Setia, suspended Director of the Corporate Debtor/respondent no. 2 - COPL, states that the appellant - Tejinder Pal Setia is ready and willing to pay the debt due and payable to the operational creditor/respondent no. 1 - M/s. Kone Elevator India Pvt. Ltd., which has been purportedly assigned to respondent no. 3 - Sanjeev Chadha. This statement, it is stated, is being made to bring the litigation to an end and should not be read as an acceptance of the assignment in favour of respondent no.3 - Sanjeev Chadha.

We would have gone into the aspect and submissions, albeit it is pointed out that the flat buyers have filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, which proceedings are pending before the National Company Law Tribunal (NCLT), Chandigarh bench, Chandigarh.

In view of the aforesaid position, while we dismiss the present appeal, and we leave it open to the appellant - Tejinder Pal Setia to move an appropriate application before the NCLT, expressing his desire to Liquidate and pay off the debt due to operational

creditor/respondent no. 1 - M/s. Kone Elevator India Pvt. Ltd., which stands assigned to the respondent no. 3 - Sanjeev Chadha. If any such application(s) is filed, the same would be decided in accordance with law. We express no opinion in this regard and leave all questions open.

Learned counsel appearing for the Interim Resolution Professional (IRP) states that for a period of one week from today, the IRP will not issue an order constituting the Committee of Creditors.

Pending application(s), if any, including application(s) for impleadment/intervention shall stand disposed of.”

12. It was after order dated 14.07.2023 of the Hon’ble Supreme Court, application I.A. No. 1571 of 2023 was filed by the Appellant – Tejinder Pal Setia praying for closure of the CIRP. The CoC was not constituted till 26.07.2023, as noted above and was constituted only on 27.07.2023. Appellant after the order dated 25.07.2023 rejecting I.A. No. 1571 of 2023 and impleading the Homebuyers has filed a MA before the Hon’ble Supreme Court, which MA came to be disposed of on 04.08.2023 by following order:

“O R D E R

We are not inclined to entertain the present application in a disposed of matter and leave it open to the applicant to file an appeal before the National Company Law Appellate Tribunal (NCLAT).

However, in view of our order dated 14.07.2023, we deem it appropriate to direct that there would be status quo with regard to the further proceedings for a period of ten days from today or till the appeal is listed before the NCLAT, whichever is earlier.

Recording the aforesaid, the miscellaneous application is disposed of.”

13. The Hon’ble Supreme Court by order dated 04.08.2023, relegated Appellant to file an appeal before this Tribunal and directed for status quo with regard to the further proceedings for a period of ten days from 04.08.2023 or till the appeal is listed before the NCLAT. The application 1571 of 2023 was filed by the Appellant at time when CoC was not constituted. In event Settlement is reached before the CoC is constituted, the settlement between the parties can be accepted in an application under Section 12A and the Adjudicating Authority can close the CIRP proceeding accepting the settlement. The present is a case where offer made by the Appellant was not accepted by the Assignee – Respondent No.3. The Adjudicating Authority proceeded to reject the application on the ground that Settlement Agreement between the parties has already been breached and parties are not in agreement with the offer given by the Appellant to Respondent No.3. In Paras 11, 12 and 14 following observations have been made by the Adjudicating Authority:

“11. Further, it is worthwhile to note that the said terms and conditions of the settlement agreement dated 27.09.2021 have already been breached. This

fact is already made clear by this authority in the order dated 27.02.2023 passed in IA No.529/23 that the present applicant has not offered full and final payment for the remaining amount of Rs. 15.00 Lakhs as per the agreement dated 27.09.2021.

“payment for the remaining amount of Rs. 15 Lakhs as per agreement dated 27.09.2021 between the parties. The present applicant-Corporate Debtor has not complied with the time-lines and schedule of payment of second installment of Rs.20 Lakhs to be paid, on or before 15.12.2021 and third installment of Rs.15 Lakhs on or before 15.03.2022”.

12. It may be noted that even applicant had no intention to act upon the agreement dated 27.09.2021. If at all he intended to comply with it then he could have done immediately after the order of admission dated 27.02.2023 passed by this Adjudicating Authority.”

14. However, the parties were not in agreement with each other to the offer given by the applicant/respondent No.3. Thus, it can be safely said that the application under Section 12A of the Insolvency and Bankruptcy Code, 2016 read with Regulation 30A of the insolvency and Bankruptcy Board of India (Insolvency and Bankruptcy Resolution Process for Corporate Persons) Regulations 2016 is not maintainable in absence of any settlement agreement, particularly when the terms and conditions of the earlier agreement dated 27.09.2021 are breached cannot be reinforced or imposed by the applicant upon respondent No.3.”

14. At time when the CoC was not constituted, there can be no impediment in power of Adjudicating Authority to exercise jurisdiction under Rule 11 to close the CIRP even if no application as per the procedure under Section 12A r/w Regulation 30A has been filed. The Adjudicating Authority itself has recorded finding that application filed by the Applicant was maintainable, which finding is recorded in Para 10 of the order.

15. There are two reasons due to which we are of the view that insolvency resolution process initiated against the Corporate Debtor need not be closed. Two reasons are as follows:

- (i) Firstly, the sequence of events and the facts which have been mentions in the Settlement Agreement dated 27.09.2021 clearly indicate that the Corporate Debtor has not been able to clear the dues of the Operational Creditor in last 8 years and the cheques given by the Corporate Debtor were dishonoured and Settlement Agreement dated 27.09.2021 was breached. The facts clearly indicate that the Corporate Debtor needed resolution of its insolvency. The fact that after the Appeal was dismissed by this Tribunal admitting CIRP process and after the order of Hon'ble Supreme Court dated 14.07.2023, Corporate Debtor for the first time in an application I.A. No. 1571 of 2023 has come forward with case that he shall make payment as per the Settlement Agreement of the dues, does not

absolve the Corporate Debtor from its breaches and failure, which has been noted above.

- (ii) Secondly, the Homebuyers who have been impleaded by the Adjudicating Authority by order dated 25.07.2023 in I.A. No. 1571 of 2023 are now respondent in this Appeal and they have stated that Section 7 application has been filed by the Homebuyers against the Corporate Debtor in the year 2020 which proceedings have been going against the Corporate Debtor from 2020. The Homebuyers have filed the Section 7 proceeding for an amount of more than Rs.121 Crores. Learned counsel for the IRP who has received the claims in the CIRP process has collated the claims and has published the list of unsecured Financial Creditors as on 21.07.2023 which indicate total claims admitted are of Rs.137,68,87,945/-, which list has been brought on the record by the Appellant itself as Annexure A11. The above also indicate that there are huge liabilities against the Corporate Debtor which reinforces our opinion that insolvency resolution of the Corporate Debtor is imminent.

16. We are conscious that the mere fact that there are claims of other creditors against the Corporate Debtor are not impediment for closing the CIRP filed by an Applicant either under Section 7 or Section 9, if the Applicant enters into settlement with the Corporate Debtor and the debt is liquidated

but present is a case where offer given by the Appellant in its application under I.A. No. 1571 of 2023 came after breach of the Settlement Agreement at the stage when Appeal against the admission order was dismissed by this Tribunal and the said order was upheld by the Hon'ble Supreme Court. For the reasons as noted above, we are of the view that CIRP against the Corporate Debtor need not be closed and be allowed to complete its due course in accordance with law. We have also noted above that the CoC was constituted on 27.07.2023 and for any closure of CIRP, at this stage, 90% approval of the CoC is mandatory as per the statute, which although was not required when the application I.A. No. 1571 of 2023 was filed by the Appellant but for the reasons, as indicated above, which needs no repetition, CIRP could not have been closed by the Adjudicating Authority at that stage also.

17. In view of the foregoing discussion, we see no merits in the Appeals. Both the Appeals are dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

23rd August, 2023

Archana