BEFORE THE NATIONAL COMPANY LAW TRIBUNAL BENCH AT NEW DELHI

I.A. NO. OF 2023

IN

COMPANY PETITION (IB) NO. 1082 OF 2018

IN THE MATTER OF:

Kiran Malhotra **...Financial Creditor**

Versus

M/S Alchemist Township India Ltd. **...Corporate Debtor**

And

Alchemist Investor's Welfare Association **...Applicant**

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Through

Date: 07.09.23
Place: New Delhi

MIMANSA LAW OFFICES
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& Gautam Dhamija
C-6/50, SDA, New Delhi-110016
Advocates for the Financial Creditors/ Applicants
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And

Alchemist Investor's Welfare Association **...Applicant**

MEMO OF PARTIES

Kiran Malhotra

....**Financial Creditor**

VERSUS

M/s Alchemist Township India Ltd.
Through Resolution Professional
Having registered office at:
D-54, First Floor, Defence Colony
New Delhi - 110024

...**Corporate Debtor**

AND

Alchemist Investor's Welfare Association
Through its Secretary,
Having its registered office at
19, Basant Vihar, Naubasta
Kanpur, Uttar Pradesh-208021

...Applicant

Place: New Delhi
Date: 07.09.23

Through

MIMANSA LAW OFFICES
Krishna Mohan Menon, Priyadarshi Chaitanyashil
& Gautam Dhamija
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IN THE MATTER OF:

Kiran Malhotra **...Financial Creditor**

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M/S Alchemist Township India Ltd. **...Corporate Debtor**

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Alchemist Investor's Welfare Association **...Applicant**

APPLICATION U/S 60(5) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 R/W RULE 11 OF THE NATIONAL COMPANY LAW TRIBUNAL RULES, 2016 SEEKING DIRECTIONS TO THE RESOLUTION PROFESSIONAL TO ACCEPT THE CLAIMS FILED BY THE MEMBERS OF THE APPLICANT ASSOCIATION AND EXTEND THE TIMELINE FOR FILING OF THE CLAIMS

MOST RESPECTFULLY SHOWETH:

1. The Applicant herein is an Association of Financial Creditors of the Corporate Debtor currently undergoing Corporate Insolvency Resolution Process, which has undertaken the responsibility of mobilising legal actions and assistance to the investors who have lost their life savings by investing their money in the ponzi schemes of the Corporate Debtor. The Applicant has been instrumental in disseminating information to the investors who live in far flung villages of northern and north-eastern India, covering the states of Uttar Pradesh, Bihar and Bengal and convincing the Investors to come forward and file their claims before Resolution Professional (hereinafter **"RP"**) after initiation of Corporate Insolvency Resolution Process (hereinafter **"CIRP/ CIR Process"**) by this Hon'ble Tribunal against the Corporate Debtor.

2. The Applicant Association currently has **(*)** members and more people join every month. The ponzi scheme of the Corporate Debtor targeted gullible investors in far flung areas of India, knowing fully well that the said citizens are not well versed with the laws and as such will be keen to

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invest in offers which give quick returns. Hundreds of claims have been filed with the help of the present Association and thousands of claims have been further mobilised but the said claims could not be filed as the last date of filing claims has been declared by the RP and no fresh claims are being entertained.

3. The Applicant herein is aggrieved by the Letter dt. 29.11.2021 issued by the Ld. RP informing that the RP shall not be accepting any further claims after 30.11.2021, as the same is arbitrary, perverse and against the law laid down by the Hon'ble National Company Law Appellate Tribunal (hereinafter **"NCLAT/Appellate Authority"**) and this Tribunal in catena of judgements. True Copy of the Letter Dt. 29.11.2021 issued by the IRP is annexed herewith as **Annexure- A1.**

4. The brief facts giving rise to the present Application are as below:-

   i. That the Applicant Association herein is representing **(*)** investors/depositors i.e. Financial Creditors of the Corporate Debtor who invested their hard-earned money and life-savings in various projects of the Respondent Company on the promise of receiving MIS Interest and Maturity Value and are aggrieved by the default of the Respondent Company in paying the same since 2014. True Copy of the documents of incorporation of the Applicant Association are enclosed herewith and marked as **Annexure- A2.**

   ii. That in 2017 several Complaints were filed against the Corporate Debtor for running a chit fund/ponzi scheme without the approval of the Securities Exchange Board of India (SEBI) and collecting around Rs. 1,900 Crores from scores of investors on the promise of higher returns. The money collected from the said investments were ultimately mobilised by the firm and were never utilised for the purpose for which they were allegedly collected. Further, these amounts were transferred to bank accounts of other group companies which were mainly shell/paper companies from where they were systematically siphoned off and used to purchase properties at various locations in the country. Presently,

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investigations under the Prevention of Money Laundering Act, 2002 (PMLA) pertaining to the said allegations are pending before the Central Bureau of Investigation (CBI) and Enforcement Directorate (ED).

iii. Simultaneously, the parent Application seeking initiation of CIRP against the Respondent Company was filed before this Hon'ble Tribunal on 24.08.2018 wherein this Hon'ble Tribunal vide an Order Dt. 25.01.2019 was pleased to admit the said parent Application and initiate CIRP. True Copy of the Order dt. 25.01.2019 passed by this Hon'ble Tribunal is annexed herewith as **Annexure-A3.**

iv. Pursuant to the appointment of the Interim Resolution Professional (IRP) by this Hon'ble Tribunal, the IRP issued the notice Dt. 10.12.2020 calling the creditors to file their claims before the RP. True Copy of the notice dt. 10.12.2020 issued by the RP is annexed herewith as **Annexure- A4.**

v. Accordingly, some of the Financial Creditors who are also the members of the Applicant Association filed their claims before the RP and the Association played a crucial part as they ensured that more and more financial creditors/ Investors filed their claims as this was their only hope of receiving their money back.

vi. The RP in terms of the Insolvency and Bankruptcy code, 2016 issued a Letter dt. 29.11.2021 calling the creditors to file their claims by 30.11.2021, informing that no further claims which are filed after 30.11.2021 shall be accepted. True Copy of the Letter Dt. 29.11.2021 issued by the RP is annexed herewith as **Annexure- A5.**

vii. That some members of the Applicant Association who were unaware about the ongoing CIRP against the Corporate Debtor and/or the letter issued by the IRP have filed their claims before the IRP after 30.11.2021. Further, the Applicant association is still currently in the process of locating and reaching out to other

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creditors of the Corporate Debtor who have not filed their claims yet.

5. That the said letter Dt. 29.11.2021 issued by the RP and the consequent act of rejection of the claims filed by the creditors is against the objectives of Insolvency and Bankruptcy Code, 2016.

6. It is pertinent to mention here that a substantial number of creditors who were lured by the Corporate Debtor to participate in the Ponzi scheme floated by it belong to middle/low income groups and not are well-educated. The Applicant herein despite making its best efforts has not been able to locate and reach out to all such creditors to inform them about their rights and the ongoing CIR process against the Corporate Debtor, however is hopeful that more creditors will file their claims in the near future. That, grave injustice would be caused to the interest of such creditors who are already suffering due to malicious acts of the Corporate Debtor and would further be subjected to undue hardships if they are deprived of the chance to file claims before the Ld. RP.

7. That it is settled law that the RP is bound to accept the claims filed by the creditors until the Resolution Plan is approved by the COC and Hon'ble Adjudicatory Authority, as laid down by the NCLAT in the case of **Puneet Kaur & Others v/s. K V Developers & Others, (2022) SCC OnLine NCLAT 245** and this Tribunal in the case of **Twenty First Century Wire Rods Ltd. in C.P.(IB) No. 737 of 2018** vide its Order dated20.05.2019**.** True Copy of the Judgement Dt. 01.06.2022 passed by the Hon'ble NCLAT in the case of **Puneet Kaur (supra)** is annexed herewith as **Annexure-A6.** True Copy of the Judgement Dt.20.05.2019 passed by this Hon'ble Tribunal in the case of **Twenty First (supra)** is annexed herewith as **Annexure- A7.**

8. In the case of **Puneet Kaur (supra)** the Hon'ble Appellate Tribunal relying on the judgement of the Hon'ble Supreme Court in the case of **Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited, (2021) 9 SCC 657** observed that the claims filed by the creditors can only be extinguished if the Resolution Plan is approved by the Adjudicatory Authority, and not before that. The

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relevant excerpt of the Judgement Dt. 01.06.2022 is replicated for the convenience of this Hon'ble Tribunal below:

"18. It is thus clear that extinguishment of claim of the Appellant(s) shall happen only after approval of the Plan by the Adjudicating Authority. The argument of the Respondents that since CoC has approved the Resolution Plan, the claim of the Appellant(s) have been extinguished, cannot be accepted as there is no extinguishment of claim of the Appellant(s) on approval of Plan by the CoC."

9. Further, in light of recent developments, this Hon'ble Tribunal noting the directions passed by the Hon'ble Calcutta High Court vide an Order Dt. 16.09.2021 in W.P.A. 1389/2017 and the pendency of the Writ Petition filed by the Resolution Professional before the Hon'ble Delhi High Court bearing W. P. (C) No. 10566/2022, has been pleased to adjourn the present matter to await the outcome of the said proceedings, on various occasions. True Copy of the Order Dt. 16.09.2021 passed by the Hon'ble Calcutta High Court in W.P.A. 1389/2017 is annexed herewith and marked as **Annexure- A8.**

10. Therefore, it is submitted that since the present case has not reached the stage of approval of the Resolution Plan and in light of the directions of the Hon'ble Kolkata High Court vide an Order Dt. 16.09.2021, the acceptance of the claims filed by the creditors (members of the Applicant Association and other similarly placed creditors) and extension of the timeline for filing claims before the RP shall not cause any prejudice to the rights of the parties or the CIRP proceedings, whatsoever. Further, the Hon'ble Kolkata High Court vide an Order Dt. 29.11.2022 granted liberty to similarly placed investors to approach this Hon'ble Tribunal or the Appellate Tribunal. True Copy of the Order Dt. 29.11.2022 passed by the Hon'ble Kolkata High Court in WPA No. 1389 of 2017 is annexed herewith and marked as **Annexure- A9.**

11. In light of the submissions made above and considering that a substantial number of creditors have not been able to file their claims before the RP, the Applicant humbly prays before this Hon'ble Tribunal to direct the IRP

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to accept the claims filed by the creditors and extend the timeline for filing the claims, in the interest of justice.

PRAYER

In light of the above facts and circumstances, the Applicant humbly prays that this Hon'ble Tribunal may be pleased to:

(i) Allow the present Application;

(ii) direct the RP to initiate accepting the claims filed by the members of the Applicant Association;

(iii) quash the letter dated 29.11.2021 issued by the IRP;

(iv) extent the timeline for submission and filing of the claims before the RP;

(v) pass any other order as this Hon'ble Tribunal deems fit in the interest of justice.

Applicant

Through

Date: 07.09.23
Place: New Delhi

MIMANSA LAW OFFICES
Krishnamohan K. Menon, Chaitanyashil Priyadarshi
& Gautam Dhamija
C-6/50, SDA, New Delhi-110016
Advocates for the Financial Creditors/ Applicants
Mobile Number: 9971953535
E-mail: mail@mimansalaw.in

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उत्तर प्रदेश UTTAR PRADESH 23/08/2023 80AE 846400

Attached

ASHUTOSH KUMAR SINGH ADVOCATE NOTARY GOVT. OF INDIA CENTRAL COURTS GAUTAM BUDH NAGAR (U.P.) 9891

23/08/2023

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AFFIDAVIT

I, Mr. Tapas Bakuli, S/o Mr. Mohan Chandra Bakuli, aged about 41 years, R/o 1255/32, Neelam Utsav Radha Puram Naubasta, Kanpur, Uttar Pradesh-208021, the Secretary/Authorized signatory of the Applicant Association, do hereby solemnly affirm and declare as under:

1. That I am the Authorized Signatory of the Applicant Association in the captioned matter being well acquainted with the facts of the present case, I am fully competent to swear the affidavit.
2. That I have read and understood the contents of the accompanying Application and the same are true and correct to the best of my knowledge.
3. The contents of the Application above are true and correct to the best of my knowledge.

SHUSHIL KUMAR SINGH NOTARY CENTRAL GOVT. KANPUR COURTS U.P. (INDIA) E.N. 684/1996 ADVOCATE

23/08/2023

DEPONENT

VERIFICATION

I, Mr. Tapas Bakuli, the above-named Deponent, do hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge and nothing material has been concealed therefrom.

Verified at Kanpur on this 23rd day of August, 2023.

Tapas Bakuli

DEPONENT

Certified that this documents is presented before me today by Sri..... who is identified by Sri..... verified per identified..... Reliance Attested

P Pal Advocate

Identified By

Shushil Kumar Singh Advocate
Central Govt. Notary
Kanpur Court (U.P.)

23/08/2023

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DEVENDRA SINGH
INSOLVENCY PROFESSIONAL
IBBI/IPA-002/IP-N00001/2016-17/10001
dev_singh2006@yahoo.com
Mob: 9810339416, 9810331877

29.11.2021

"FROM THE DESK OF RESOLUTION PROFESSIONAL"

Dear All,

As already informed to you through my various letters and communications, Alchemist Township India Limited (Corporate Debtor) is undergoing Corporate Insolvency Resolution Process (CIRP) under Insolvency and Bankruptcy Code, 2016 and the undersigned was appointed as the Resolution Professional in the instant matter by the Hon'ble NCLT principal Bench, New Delhi, vide it's order dated 24.11.2020.

UPDATES

The stakeholders are hereby informed that the Hon'ble NCLT, New Delhi Bench in its hearing held on 02.08.2021 directed to Resolution Professional to make the Public Announcement and provide 30 days time for filing the claims from 02.08.2021. The Resolution Professional is receiving large number of claims even after 02.09.2021.

Now it has been decided that no further claim will be accepted after 30.11.2021. Therefore, the stakeholders are requested to file claim on or before **30.11.2021** through electronic mode (email) on the following mail IDs:

cirp.atil@gmail.com

The Stakeholders are requested to submit their claim as per the timelines given above. No further claims will be accepted after the 30.11.2021. In case of any further clarification or any assistance required for filing the claim, the stakeholders may call on the following helpline numbers:

- 9818948335
- 9818948536
- 9818027344
- 9818948171
- 9818947730

In case you have already filed the claim but the same is not reflected in the claim list uploaded on the website, then the stakeholders may send email for their specific query to the following email ID and may also contact the abovementioned helpline numbers.

helplineatil@gmail.com

DEVENDRA SINGH
RESOLUTION PROFESSIONAL
ALCHEMIST TOWNSHIP PRIVATE LIMITED

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उत्तर प्रदेश UTTAR PRADESH 90AD 869590

यह जनरल स्टाम्प पेपर..... एनवेक्मिस्ट इनवेस्टरी वेलफेयर एसोसिएशन..... जिला कानपुर..... फाइल सं0 125/2024 स्मृति पत्र..... के साथ संलग्न है

निबंधक फर्म्स सोसाइटीज तथा चिट्स कानपुर मण्डल, कानपुर (उ0प्र0)

सत्य प्रतिलिपि

निबंधक फर्म्स सोसाइटीज तथा चिट्स कानपुर

26/07/19

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भारतीय गैर न्यायिक

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भारत

सत्यमेव जयते

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Rs.10

INDIA NON JUDICIAL

उत्तर प्रदेश UTTAR PRADESH

90AD 869591

यह जनरल स्टाम्प पेपर ~~एसेटो~~ इनवेस्टर्स वेलफेयर एसोसिएशन

जिला ~~कानपुर~~ फाइल सं० K-53024

निष्पादक ~~की~~ के साथ संलग्न है

निबंधक फर्म्स सोसाइटीज तथा चिट्स कानपुर मण्डल, कानपुर (उ०प्र०)

सत्य प्रतिलिपि

कृते सहायक

निबंधक सोसाइटीज तथा चिट्स

कानपुर

20/07/19

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-::- स्मृति पत्र -::-

1. संस्था का नाम : एलकेमिस्ट इनवेस्टर्स वेलफेयर एसोसिएशन
2. संस्था का पता : 19, बसन्त विहार, नौबस्ता, कानपुर नगर–208021
3. संस्था का कार्यक्षेत्र : समस्त उत्तर प्रदेश होगा।
4. संस्था के उद्देश्य :

1. संस्था का मुख्य उद्देश्य एलकेमिस्ट निवेशकों को एकता के सूत्र में पिरोने हेतु प्रयास करना तथा उन्हें अल्प बचत के माध्यम से उनके उत्थान एवं विकास हेतु प्रयास करना तथा निवेशकों के अधिकारों के प्रति जागरुकता पैदा करना तथा उनके द्वारा किये गये निवेश के हितलाभ को समय से भुगतान कराने हेतु प्रयास करना, निवेशकों की समस्याओं से कम्पनी को अवगत कराना।
2. भारत सरकार के वित्त मंत्रालय एवं उनके अधीनस्थ विभागों द्वारा समय–समय पर निवेशकों के हितों को संरक्षित करने के लिए जारी दिशा निर्देशों को अनुपालन एवं निवेश जमा कराने वाली कम्पनी एलकेमिस्ट द्वारा किया जा रहा है या नहीं इसकी जानकारी निवेशकों को उपलब्ध कराने का प्रयास करना।
3. निवेशकों द्वारा जमा करायी गयी धनराशियों को भारत सरकार के विभिन्न विभागों द्वारा जारी प्राविधानों एवं नियमों तथा कम्पनी एक्ट, सेबी, भारतीय रिजर्व बैंक एवं अन्य संबंधित विभागों द्वारा समय–समय पर निवेशकों की समस्याओं के निराकरण हेतु प्रयास करना तथा उनके द्वारा जारी दिशा निर्देशों को लागू कराने हेतु हर सम्भव प्रयास करना।
4. एलकेमिस्ट कम्पनी के बोर्ड ऑफ डायरेक्टर्स से वार्ता एवं सदस्यों को जारी शेयर पूँजी की जानकारी रजिस्ट्रार ऑफ कम्पनी द्वारा कम्पनी के आडिट स्टेटमेन्ट के माध्यम से सम्पूर्ण आर्थिक लेखा–जोखा की जानकारी निवेशकों को उनके हित संरक्षण हेतु समय–समय पर उपलब्ध कराना।
5. मासिक ब्याज योजना (MIS) एवं सावधि जमा योजना के अन्तर्गत निवेशकों द्वारा दिये गये सर्टीफिकेट कम्पनी द्वारा निवेशकों के अनुबन्धों का पालन सुनिश्चित कराने हेतु प्रयास करना, कम्पनी द्वारा समय से निवेशकों का भुगतान न दे पाने की स्थिति में कम्पनी के निदेशक मण्डल से शान्ति वार्ता द्वारा दिलाने का प्रयास करना।
6. निवेशकों निःशुल्क कानूनी सलाह उपलब्ध कराना तथा संस्था की ओर से न्यायालयों में निवेशकों की ओर से पैरवी करना, उनके हक दिलाने हेतु प्रयास करना।
7. निवेशकों की विचार गोष्ठियों, सेमिनारों, मिलन समारोहों आदि का आयोजन करना।

सत्य प्रतिलिपि

20/07/01

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5. प्रबन्धकारिणी समिति के पदाधिकारियों एवं सदस्यों के नाम, पता व पद व्यवसाय जिन्हें संस्था के नियमानुसार कार्यभार सौंपा गया है।

क्र.सं.	नाम	पिता/पति का नाम	पता	पद	व्यवसाय
1.	श्री राम प्रताप सिंह यादव	श्री शिवरतन यादव	आई.–2/27, केशवपुरम्, आवास विकास–1, कल्यानपुर, कानपुर	संरक्षक	व्यापार
2.	श्री सुशील कुमार	श्री आर0एन0 शर्मा	म0नं0 4, विश्व बैंक कालोनी, सेक्टर–ए., कानपुर नगर	अध्यक्ष	"
3.	श्री पवन कुमार मिश्रा	श्री लम्बोदर प्रसाद मिश्रा	594–सी., श्याम नगर, कानपुर	उपाध्यक्ष	"
4.	श्री तापस बाकुली	श्री मोहन चन्द्र बाकुली	231, शिवकटरा, लालबंगला, कानपुर 208007	सचिव	"
5.	श्री विनोद कुमार जायसवाल	श्री केशव लाल जायसवाल	म0नं0 942, सेक्टर–सी., विश्व बैंक बर्रा, कानपुर नगर	कोषाध्यक्ष	"
6.	श्रीमती संगीता डिंगर	श्री सुधांशु डिंगर	एस./18, ब्लाक–एक्स–1, मनोज इण्टरनेशनल होटल, कृष्णापुरम्, कानपुर नगर–07.	सदस्य	"
7.	श्री शुभांकर चौधरी	श्री शान्ती नारायण चौधरी	75/बी.–1, आवास विकास–1, कैलाश विहार, कल्यानपुर, कानपुर	सदस्य	"
8.	श्री राम औतार यादव	श्री भोभाल यादव	म0नं0 18/2, सावित्री नगर, सनिगवां, कानपुर	सदस्य	"
9.	श्री बृजेन्द्र सिंह	श्री राम औतार सिंह	म0नं0 33, गायत्री नगर आंशिक, चकेरी, कानपुर नगर	सदस्य	"
10.	श्री शशिकान्त सचान	श्री रघुवीर सहाय सचान	म0नं0 4, जरौली फेस–2, बर्रा, कानपुर	सदस्य	"
11.	श्री सुमित कुमार तिवारी	श्री अनिल कुमार तिवारी	212/ए.–7, काली बाड़ी, हरजेन्दर नगर, कानपुर	सदस्य	"
12.	श्री नीरज त्रिपाठी	श्री सतीश चन्द्र	के.–336, कल्यानपुर ~~खुर्द, सत्यम~~ केशव पुरम आवि0/ विहार, कानपुर	सदस्य	"

निबंधक फर्म्स सोसाइटीज तथा चिट्स कानपुर मण्डल, कानपुर (उ0प्र0)

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6. हम निम्न हस्ताक्षरकर्ता घोषित करते हैं कि इस स्मृतिपत्र एवं नियमावली के अनुसार सोसाइटीज रजि0अधि0 सं0 21 सन् 1860 अन्तर्गत पंजीकृत कराना चाहते हैं।

क्र.सं.	नाम	पता	हस्ताक्षर
1.	श्री राम प्रताप सिंह यादव	आई.–2/27, केशवपुरम्, आवास विकास–1, कल्यानपुर, कानपुर	
2.	श्री सुशील कुमार	म0नं0 4, विश्व बैंक कालोनी, सेक्टर–ए., कानपुर नगर	
3.	श्री पवन कुमार मिश्रा	594–सी., श्याम नगर, कानपुर	
4.	श्री तापस बाकुली	231, शिवकटरा, लालबंगला, कानपुर 208007	
5.	श्री विनोद कुमार जायसवाल	म0नं0 942, सेक्टर–सी., विश्व बैंक बर्रा, कानपुर नगर	
6.	श्रीमती संगीता डिंगर	एस./18, ब्लाक–एक्स–1, मनोज इण्टरनेशनल होटल, कृष्णापुरम्, कानपुर नगर–07	
7.	श्री शुभांकर चौधरी	75/बी.–1, आवास विकास–1, कैलाश विहार, कल्यानपुर, कानपुर	
8.	श्री राम औतार यादव	म0नं0 18/2, सावित्री नगर, सनिगवां, कानपुर	
9.	श्री बृजेन्द्र सिंह	म0नं0 33, गायत्री नगर आंशिक, चकेरी, कानपुर नगर	
10.	श्री शशिकान्त सचान	म0नं0 4, जरौली फेस–2, बर्रा, कानपुर	
11.	श्री सुमित कुमार त्रिवेदी	212/ए.–7, कच्ची बाड़ी, हरजेन्दर नगर, कानपुर	
12.	श्री नीरज त्रिपाठी	के–336, कल्यानपुर ~~खुर्द, सत्यम विहार~~, कानपुर	

दिनांक : 16.01.2017

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-::- नियमावली -::-

1. संस्था का नाम : एलकेमिस्ट इनवेस्टर्स वेलफेयर एसोसिएशन
2. संस्था का पता : 19, बसन्त विहार, नौबस्ता, कानपुर नगर–208021
3. संस्था का कार्यक्षेत्र : समस्त उत्तर प्रदेश होगा।
4. संस्था के उद्देश्य : स्मृतिपत्र के अनुसार होंगे।
5. संस्था की सदस्यता तथा सदस्यों के वर्ग :

कोई भी एलकेमिस्ट कम्पनी का इन्वेस्टर जो इस संस्था के नियमों का पालन करने को तैयार हो तथा इस संस्था के उद्देश्यों में आस्था रखते हों वे इस संस्था के सदस्य अध्यक्ष एवं सचिव द्वारा बनाये जायेंगे।

(अ) आजीवन सदस्य : जो व्यक्ति इस संस्था को 5000/– रुपये एक बार में एक मुश्त अदा करेंगे अथवा इतने या इससे अधिक मूल्य की चल या अचल सम्पत्ति अदा करेंगे वे इस संस्था के आजीवन सदस्य बनाये जायेंगे।

(ब) विशिष्ट सदस्य : जो व्यक्ति इस संस्था के विकास हेतु कार्य करेंगे, समाजसेवी सरकार द्वारा सम्मानित एवं उपाधि प्राप्त होंगे वे इस संस्था के विशिष्ट सदस्य एक वर्ष के लिए मनोनीत किये जायेंगे मताधिकारी नहीं होंगे सदस्यता शुल्क से मुक्त होंगे।

(स) सामान्य सदस्य : जो व्यक्ति इस संस्था को 500/– वार्षिक सदस्यता शुल्क के रूप में अदा करेंगे वे इस संस्था के सामान्य सदस्य बनाये जायेंगे।

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6. सदस्यता की सामाप्ति : मृत्यु होने पर, पागल होने पर, दीवालिया होने पर, किसी न्यायालय द्वारा अनैतिक अपराध में दण्डित होने पर, संस्था का निर्धारित सदस्यता शुल्क समय से न अदा करने पर, संस्था की लगातार तीन बैठकों में अनुपस्थिति रहने पर, अविश्वास का प्रस्ताव पारित होने पर त्याग पत्र स्वीकृत होने पर, उपरोक्त व्यवसाय बन्द कर देने पर, प्रबन्ध समिति के 2/3 बहुमत से निष्कासित करने पर सदस्यता स्वतः ही समाप्त जो जायेगी देय सदस्यता शुल्क वापस नहीं होगा और न ही सदस्यता का क्लेम कर सकेंगे।
7. संस्था के अंग : संस्था के दो अंग हैं अ) साधारण सभा,
   ब) प्रबन्धकारिणी समिति।

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8. साधारण सभा :

गठन :– संस्था के आजीवन, विशिष्ट, समान्य सदस्यों को मिलाकर साधारण सभा का गठन किया जायेगा।

बैठकें :– साधारण सभा की सामान्य बैठकें वर्ष में एक होगी तथा विशेष बैठकों आवश्यकतानुसार सदस्यों को सूचना देकर किसी भी समय अध्यक्ष के अनुमोदन पर सचिव द्वारा बुलाई जा सकती हैं।

सूचना अवधि :– सामान्य बैठकों की सूचना सदस्यों को 15 दिन पूर्व तथा विशेष बैठकों की सूचना सदस्यों को 3 दिन पूर्व अति आवश्यक बैठकों की सूचना सदस्यों को 24 घण्टे पूर्व दी जायेगी।

गणपूर्ति :– गणपूर्ति के लिए कुल सदस्यों में से 2/3 उपस्थिति सदस्यों का कोरम होगा, कोरम के अभाव में दो बैठकें स्थगित हो जाती हैं तो पुनः बुलाई गईं बैठकों के लिए कोरम 1/2 सदस्यों की उपस्थिति का होगा।

विशेष वार्षिक अधिवेशन की तिथि आदि :–

संस्था का विशेष वार्षिक अधिवेशन प्रतिवर्ष हुआ करेगा जिसकी तिथि संस्था की प्रबन्ध समिति तय करेगी।

साधारण सभा के अधिकार एवं कर्तव्य :–

1. संस्था की प्रबन्ध समिति का निर्वाचन करना।
2. संस्था के वार्षिक आय व्यय बजट व वार्षिक कार्यक्रमों की रिपोर्ट को स्वीकृत करना।
3. संस्था के नियमों एवं विनियमों में संशोधन परिवर्तन परिवर्धन करना।
4. प्रबन्ध समिति द्वारा पारित प्रस्तावों का अनुमोदन करना।

9. प्रबन्धकारिणी समिति :

अ) गठन : साधारण सभा में से बहुमत या गुप्त मतदान या चुनाव प्रक्रिया या हाथ उठाकर प्रबन्धकारिणी समिति का गठन होगा, प्रबन्धकारिणी समिति में एक–संरक्षक, एक–अध्यक्ष, एक–उपाध्यक्ष, एक–सचिव, एक–कोषाध्यक्ष तथा शेष 07 सदस्य होंगे। प्रबन्धकारिणी समिति की संख्या 12 है जो 15 तक बढ़ायी घटायी जा सकती है।

ब) बैठकें : प्रबन्धकारिणी समिति की सामान्य बैठकें वर्ष में दो होगी तथा विशेष बैठकें आवश्यकतानुसार सदस्यों को सूचना देकर किसी भी समय अध्यक्ष के अनुमोदन पर सचिव द्वारा बुलाई जायेगी।

स) सूचना अवधि : सामान्य बैठकों की सूचना सदस्यों को 7 दिन पूर्व तथा विशेष बैठकों की सूचना सदस्यों को 24 घण्टे पूर्व दी जायेगी।

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द) गणपूर्ति : गणपूर्ति के लिए कुल सदस्यों में से 2/3 उपस्थिति सदस्यो का कोरम होगा कोरम के अभाव में दो बैठकें स्थगित हो जाती हैं तो पुनः बुलाई गई बैठकों के लिए कोरम 1/2 सदस्यों की उपस्थिति का होगा।

य) रिक्त स्थानों की पूर्ति : प्रबन्धकारिणी समिति के अर्न्तगत कोई भी आकस्मिक स्थान रिक्त होने पर उस स्थान की पूर्ति साधारण सभा की बैठकों में शेष कार्यकाल के लिए बहुमत से कर ली जायेगी।

र) प्रबन्धकारिणी समिति के अधिकार एवं कर्तव्य :–

1. संस्था की उन्नति एवं विकास हेतु कार्य करना।
2. संस्था के वार्षिक आय व्यय बजट व वार्षिक कार्यक्रमों की रिपोर्ट तैयार करना।
3. संस्था के विवादों को सुलझाना।
4. संस्था के संचालन हेतु नियम उपनियम बनाना उपसमितियाँ मनोनीत करना तथा एलकेमिस्ट इन्वेटर्स एवं निवेशकों के कल्याण सम्बन्धी कार्यक्रमों का संचालन करना।
5. संस्था के चल व अचल सम्पत्ति की सुरक्षा करना प्राप्त करना।
6. संस्था के उद्देश्यों की पूर्ति के लिए केन्द्रीय सरकार, राज्य सरकार, बैंकों, वित्त मंत्रालय, एवं केन्द्रीय एवं राज्य सरकार के वित्तीय विभागों, सेबी, रजिस्ट्रार ऑफ कम्पनी, अन्य सरकारी विभागों द्वारा निवेशकों की समस्याओं को निपटाने का प्रयास करना।
7. सदस्यों से सदस्यता शुल्क लेगी।

ल) कार्यकाल :– प्रबन्धकारिणी समिति का कार्यकाल 5 वर्ष का होगा।

10. पदाधिकारियों के अधिकार एवं कर्तव्य :–

संरक्षक : संस्था के प्रत्येक कार्य को संरक्षिता प्रदान करना, सभी पदाधिकारियों को सुझाव एवं निर्देश देना, संस्था पर नियंत्रण रखना, संस्था की उन्नति एवं विकास हेतु कार्य करना, समय–समय पर धनराशियों की जांच करना व प्रबन्ध समिति में उस पर निर्णय लेना।

अध्यक्ष :

1. संस्था की उन्नति एवं विकास हेतु कार्य करना।
2. बैठकों के लिए दिनांकों का अनुमोदन करना बैठकों को बुलाना तथा स्थगित करना।
3. किसी विषय पर समान मत आने पर अपना एक निर्णायक मत देना।
4. बैठकों में शान्ति बनाये रखना प्रस्ताव रखने की अनुमति देना।

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उपाध्यक्ष : अध्यक्ष की अनुपस्थिति में उनके कार्यों को करना सामान्य स्थिति में उनका सहयोग करना।

सचिव :

1. समस्त प्रकार का पत्र व्यवहार करना।
2. संस्था का मुख्य प्रशासनिक पदाधिकारी होगा।
3. संस्था की बैठकों की कार्यवाही लिखना लिपिबद्ध करना सुनाना तथा कार्यक्रमों का प्रचार–प्रसार करना।
4. संस्था के अभिलेख तैयार करना।
5. संस्था की अदालती कार्यवाही करना।
6. संस्था के द्वारा संचालित कार्यक्रमों हेतु कर्मचारियों, कार्यकर्ताओं की नियुक्ति, निष्कासन, पदोन्नति, पदच्युत करना वेतन भोगी कर्मचारियों का वेतन तय करना व भुगतान करना।
7. समस्त स्टाफ की चरित्र पंजिकायें रखना उनमें कार्य के आधार पर अनुकूल एवं प्रतिकूल प्रविष्ट करना, कारण बताओ नोटिस जारी करना, पृथक या निलम्बित करना।
8. संस्था के चल व अचल सम्पत्ति की सुरक्षा हस्तान्तरण किराये पट्टे पर लेने देने संबंधित प्रपत्रों पर दस्तावेजों, शर्तनामों बैनामों आदि पर हस्ताक्षर करना।
9. संस्था के सदस्यों से सदस्यता शुल्क लेना रसीदें देना।
10. अन्य धनराशियां प्राप्त करना।
11. संस्था की ओर से सरकारी विभागों में प्रतिनिधित्व करना।
12. बैंकों से ऋण प्राप्त करने वाले प्रपत्रों, बन्धक विलेखों पर हस्ताक्षर करना, ऋण प्राप्त करना व व्यय की व्यवस्था करना।

कोषाध्यक्ष :

1. संस्था के आय व्यय का लेखा जोखा रखना।
2. संस्था के कोष सम्बन्धी अभिलेख तैयार करना।
3. संस्था के अध्यक्ष एवं सचिव द्वारा हस्ताक्षरित बिल बाउचरों का भुगतान करना।

11. संस्था के नियमों व विनियमों में संशोधन प्रक्रिया :–

संस्था के नियमों एवं विनियमों में संशोधन परिवर्तन परिवर्धन 2/3 बहुमत से सोसायटीज रजि0 अधिनियम की धारा 12 के अनुसार साधारण सभा की बैठकों में किये जायेंगे।

सत्य–प्रतिलिपि

वरि0 सहायक
कृषक सोसाइटीज तथा चिट्स
कानपुर
20/07/19

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12. संस्था का कोष :–

संस्था का समस्त कोष किसी भी बैंक या पोस्ट आफिस में संस्था के नाम से खाता खोलकर जमा किया जायेगा खाते का संचालन अध्यक्ष, सचिव एवं कोषाध्यक्ष में से किन्हीं दो के संयुक्त हस्ताक्षरों से किया जायेगा।

13. संस्था के आय व्यय का लेखा परीक्षण (आडिट) :

संस्था के आय व्यय का लेखा परीक्षण आडिट प्रतिवर्ष सत्र समाप्ति पर किसी योग्य व्यक्ति आडीटर या चाटर्ड एकाउन्टेन्ट द्वारा कराया जायेगा।

14. संस्था द्वारा अथवा उनके विरुद्ध अदालती कार्यवाही के संचालन का उत्तरदायित्व :

संस्था द्वारा होने वाली अदालती कार्यवाही के संचालन की पैरवी अध्यक्ष अथवा सचिव द्वारा की जायेगी अथवा उनके द्वारा अधिकृत व्यक्ति एडवोकेट द्वारा की जायेगी।

15. संस्था के अभिलेख :–

1. सदस्यता रजिस्टर
2. कार्यवाही रजिस्टर
3. लेजर कैशबुक
4. एजेण्डा रजिस्टर
5. अन्य अभिलेख जिनकी आवश्यकता होगी रखे जायेंगे।

16. विघटन :– संस्था के विघटन और विघटित सम्पत्ति के निस्तारण की कार्यवाही सोसायटीज रजि0 अधिनियम की धारा 13 व 14 के अर्न्तगत की जायेगी।

सहायक फर्म्स सोसाइटीज तथा चिट्स कानपुर मण्डल, कानपुर (उ0प्र0)

सत्य प्रतिलिपि

दिनांक : 16.01.2017

हस्ताक्षर

सत्य-प्रतिलिपि

सहायक
फर्म्स सोसाइटीज तथा चिट्स
कानपुर

20/07/17

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IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. NO. IB-1082(PB)/2018

IN THE MATTER OF:
Kiran Malhotra .....Financial Creditor/Petitioner
v.
Alchemist Township India Limited
.....Corporate Debtor/Respondent

SECTION: Under Section 7 of The Insolvency and Bankruptcy Code, 2016

Judgment delivered on 25.01.2019

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR
HON'BLE PRESIDENT

DR. DEEPTI MUKESH
HON'BLE MEMBER (J)

PRESENTS:

For the Petitioner: Mr. Prem Kumar Chugh, Advocate
For the Respondent: Ms. Sonia Dube & Ms. Harshita Verma, Advocates

M.M. KUMAR, PRESIDENT

JUDGMENT

Ms. Kiran Malhotra claiming himself to be a 'financial creditor' has invoked the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of

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respondent company, Alchemist Township India Limited, who is stated to be the corporate debtor.

2. The Respondent company-the Corporate Debtor, Alchemist Township India Limited (CIN U70100DL2006PLC263246) was incorporated on 04.07.2006 under the provisions of the Companies Act, 1956. The registered office of the respondent corporate debtor is situated at Flat No. 1511, Front Portion, Hemkunt Chambers, 89, Nehru Place, New Delhi-110019. Its authorized share capital is Rs. 50,000,000/- divided into 5,000,000 equity shares of Rs. 10 each and the paid up share capital is Rs. 1,00,00,000/- divided into 1,000,000 equity shares of Rs. 10 each which is based on the details given in master data obtained from the official website of Registrar of Companies (AnnexureA-6). Since the registered office of the respondent corporate debtor is in Delhi, this Tribunal being Adjudicating Authority has territorial jurisdiction in respect of respondent corporate debtor as per the provisions of sub-section (1) of Section 60 of the Code.

3. The 'Financial Creditor'-Petitioner has proposed the name of Resolution Professional, Shri Parmod Goel, Nil 26-AB, First Floor, Malviya Nagar, New Delhi-110017, email id

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pramodgoel@yahoo.co.in. He has registration No. IBBI/IPA-001/IP-P00282/2017-18/10526. A written communication sent by him in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been placed on record (Annexure A-4). There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or ICAI. In addition, further necessary disclosures have been made by Mr. Parmod Goel, as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

4. It is the case of the petitioner that she submitted an application form dated 15.06.2013 (Annexure A-5) before the Respondent expressing her interest to purchase a plot/unit in the housing project at Park Avenue, Talwani Bhai, Tehsil Zeera, District Ferozepur, Punjab which was proposed to be constructed by the respondent company. The booking amount of Rs. 6,50,000/- was paid by the petitioner to the Respondent vide cheque No. 109633 dated 12.06.2013 drawn on Jammu and Kashmir Bank Ltd. along with the aforesaid application.

5. The Respondent issued a letter dated 06.07.2013 (Annexure A-7) while accepting the offer made by the petitioner wherein

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certain commitments were made. It would be beneficial to read the aforesaid reply of the Respondent Company which is set out below verbatim:

"We are in receipt of your application dated 15.06.2013 expressing your interest to acquire plot/villa/apartment in our housing project at Park Avenue, Talwandi Bhai, Tehsil:Zeera, Dist: Firozpur, Punjab been allotted Customer ID No. TL00011449

Please quote this Customer ID for all your future correspondence.

We have also noted your request to offer you plot/villa/apartment in our other projects for a period of Four Years in the event of it being not possible to offer the plot/villa/apartment in the Project as applied for.

In the event of your not accepting allotment of plot/villa/apartment offered to you by us, from time to time for any reason whatsoever, we shall refund the amounts received, together with compensation assessed by us, depending upon appreciation in the value of Real Estate, which in any event, shall not be less than Rs. 975000/- (Nine Lakh Seventy Five Thousand Only)

subject to deduction of applicable taxes and administrative costs, if any. Our decision with regard to the amount of compensation will be final.

Prior to the expiry of the period as aforesaid, you may obtain refund of such amount, as may be mutually agreed, after deduction of applicable taxes and administrative costs, if any.

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You shall cease to receive any offer on and from 10/06/2017

Our decision with regard to the amount of compensation will be final and binding.

Yours faithfully,
For Alchemist Township India Limited,

(C.S. JOLLY)
Director

A close glance on the aforesaid reply makes it patent that the respondent company highlighted its wish to accept the offer of the petitioner with further promise that if the Respondent Company failed to offer the promised plot/unit to the petitioner in the aforesaid project then petitioner would be accommodated in the other project of the respondent Company. It was also contemplated that if petitioner does not accept allotment of plot offered by the Respondent Company, from time to time for any reason, then Respondent Company was bound to refund the amount received by it together with compensation, depending upon the appreciation in the value of Real Estate, which in any event, was not be less than as Rs. 9,75,000/-.

6. After lapse of sufficient long time, when no communication was received from the Respondent Company regarding status of

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the aforesaid project, the petitioner submitted a notice to the respondent seeking refund of the minimum assured amount of Rs. 9,75,000/- along with compensation appreciation in the value of real estate on the basis of commitment made by the Respondent Company (Annexure A-7). Again, a letter dated 21.09.2017 (Annexure A-8) was submitted by the petitioner in the office of the respondent situated at Chandigarh which was acknowledged by it by affixing a stamp and signature as well. Again another letter was sent by the petitioner on 27.12.2017 (Annexure A-9). Finally, a legal notice dated 15.02.2018 (Annexure A-10) was sent by the petitioner through his counsel seeking refund of Rs. 9,75,000/- along with interest @ 18% per annum w.e.f. 10.06.2017 and compensation as per the terms of letter dated 06.07.2013 (Annexure A-7) but all in vain. A copy of terms and conditions which were to be incorporated in the buyer agreement has been placed on record (Annexure A-12 at pg. 112-113).

7. It is claimed that the Respondent is liable to pay an amount of Rs. 11,62,520/- and interest @ 18% per annum w.e.f. 01.08.2018 to the petitioner.

8. After service of notice when the matter came up for consideration on 03.10.2018 learned counsel for the respondent

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sought time to file vakalatnama and reply. We granted two weeks' time for filing vakalatnama and reply. The matter was to be heard on 05.11.2018 when the matter was again posted for hearing on 12.11.2018. However, again time was sought and we granted one last opportunity to file reply within a week and fixed the matter for arguments on 17.12.2018. On 17.12.2018 we had saddled the respondent with cost of Rs. 20000/- on account of non-filing of reply and further granted a week's time for the said purpose and ordered listing of the matter on 24.01.2019.

9. Thereafter on 24.01.2019 neither the cost was paid nor any reply was filed by the Corporate Debtor inspite of direction issued by us on various occasions. Accordingly, we decided to proceed without reply. Accordingly, we heard the arguments and reserved the order.

10. Now we deal with the submissions made on behalf of the Financial Creditor.

11. According to the learned counsel there is no resistance nor the claim of the Financial Creditor in respect of 'unpaid debt' has been controverted. It must therefore be considered to have been admitted. We find substance in the submission.

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12. Learned Counsel for the petitioner has argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process by a Financial Creditor stand fulfilled. In that regard, he has submitted that the application is complete as per the requirements of Section 7 (2) of the Code and other conditions prescribed by Rule 4 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. He has further submitted that the details of default along with its dates have been clearly stated in part IV along with all the minute details. There is overwhelming evidence to prove default and name of the resolution professional has also been clearly specified.

13. It is patent that an application form (Annexure A-5) expressing an interest to acquire the plot/unit in the proposed project of the Respondent Company was submitted by the petitioner on 15.06.2013. The booking amount of Rs. 6,50,000/- was paid along with the said application form. According to the letter dated 06.07.2013 (Annexure A-7) the Respondent Company proposed to offer a plot/unit to the petitioner either in the project for which application form was submitted by the petitioner or in the other projects. In the event the Respondent Company failed to do so, a further commitment was made, namely in case the

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petitioner does not accept the allotment of the alternative plot/unit offered by the Respondent Company for any reason then the petitioner would be entitled to refund of the amount received together with compensation depending upon appreciation in the value of Real Estate, which in any event, was not be less than Rs. 9,75,000/-. In the said letter it was also promised by the Respondent that the petitioner would receive the offer on and from 10.06.2017. The petitioner-allottee has not been paid any amount of compensation nor the status of the project is intimated to the petitioner.

14. Having heard the learned counsel for the petitioner it would first be necessary to examine the provisions of Section 7 (2) and Section 7 (5) of IBC which read as under:-

"Initiation of corporate insolvency resolution process by financial creditor.

7 (1) .....

7 (2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

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7 (3) .....

7 (4) .....

7 (5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) ....."

15. A conjoint reading of the aforesaid provision would show that form and manner of the application has to be the one as prescribed. It is evident from the record that the application has been filed on the proforma prescribed under Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code. We are satisfied that a default amounting to lacs of rupees has occurred. As per requirement of Section 4 of the Code if default amount is one lac or more then the CIR Process would be issued. The application under sub section 2 of Section 7 is complete; and no disciplinary

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proceedings are pending against the proposed Interim Resolution Professional.

16. It is pertinent to mention here that clause (8) of Section 5 of the Code has been amended by the Insolvency and Bankruptcy (amendment) Ordinance, 2018 with effect from 6th June, 2018. In view of the revised definition, any amount raised from an allottee under a real estate project is deemed to be an amount having the commercial effect of a borrowing and thus is covered by the definition of 'Financial Debt' under the Code. Definition of 'Financial Debt' has been amended to specifically include dues of home buyer i.e. Real Estate (Residential). The amendment also recognizes home buyer as "Financial Creditor". Accordingly, the home buyer can initiate Corporate Insolvency Resolution Process against defaulting builder or developer, as "Financial Creditor" in terms of Explanation to Section 5 (8) (f) of the Code with effect from 06.06.2018.

17. In light of the aforesaid facts it is patent the petitioner is thus covered by the expression 'Financial Creditor' as has been used in the amended definition of Section 5 (8) (f) of the Code and the explanation appended thereto. In that regard we draw support

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from the observations made by Hon'ble the Appellate Tribunal in the case of ***Rajendra Kumar Saxena V. Earth Gracia Buildcon Pvt. Ltd.*** passed in Appeal (AT) (Insolvency) No. 187/2018 wherein it has been held as under:

> *"By the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 No. 6 of 2018 dated 6th June, 2018 followed by the Act, in clause (8), in Sub-clause (f), of Section 5 an explanation has been inserted as per which any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing.* ***Thereby, after amendment of the Act, the allottees of real estate project have been treated as 'Financial Creditors'.***"
>
> (Emphasis supplied).

A bare perusal of the aforesaid paragraph of the judgment would show that even without any element of 'assured return' an allottee in the real estate project has to be regarded as a 'Financial Creditors'. The petitioner eminently fulfills the aforesaid condition.

18. The amount has been raised from the petitioner/allottee under a real estate project. In such a situation not only the debt

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has a commercial effect of borrowings and come within the scope of 'financial debt' but also the petitioner is covered by the definition of expression 'financial creditor'.

19. Therefore, petitioner being financial creditor can invoke Corporate Insolvency Resolution Process under Section 7 of the code against the respondent corporate debtor in case of default in repayment of financial debt.

20. As a sequel to the aforesaid discussion and the material placed on record it is confirmed that applicant-financial creditor had disbursed the money to the respondent corporate debtor as consideration for purchase of a residential flat. A considerable long period has lapsed, the principal amount disbursed has not been refunded by the respondent corporate debtor as per the commitment made by it in the letter Annexure A-7. It is accordingly held that respondent corporate debtor has committed default in repayment of the outstanding financial debt which exceeds the statutory limit of rupees one Lakh. Thus, the application warrant admission as it is complete in all respects.

21. Accordingly, in terms of Section 7 (5) (a) of the Code, the present application is admitted.

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22. Mr. Parmod Goel, Nil 26-AB, First Floor, Malviya Nagar, New Delhi-110017, email id – pramodgoel@yahoo.co.in, Registration No. IBBI/IPA-001/IP-P00282/2017-18/10526 is appointed as an Interim Resolution Professional.

23. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

24. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) and thus the following prohibitions are imposed which must be followed by all and sundry:

> "(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

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(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor."

25. It is made clear that the provisions of moratorium shall not apply to such transactions which might be notified by the Central Government in consultation with any financial regulator. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI

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(Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

26. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, *interalia*, by Sections 15, 17, 18, 19, 20 & 21 of the Code. He must follow best practices and principles of fairness which are to apply at various stages of Corporate Insolvency Resolution Process. His conduct should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, erstwhile directors, promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else the Interim Resolution Professional/Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional/Resolution Professional shall be under a duty to

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protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.

27. Before parting we wish to observe about the approach adopted by the Corporate Debtor-Respondent. In that regard it would be appropriate to refer to the orders granting time to the Corporate Debtor-Respondent for filing reply. The aforesaid position would become evident from a series of orders dated 03.10.2018, 12.11.2018, 17.12.2018 & 24.01.2019 which are set out below:-

Order dated 03.10.2018

"Ld. Counsel for the respondent seeks and is granted two weeks time to file vakalatnama and reply.

Rejoinder, if any, be filed within one week thereafter with a copy in advance to the counsel opposite.

List for further consideration on 05.11.2018.

Order dated 12.11.2018

One last opportunity granted to file reply within a week with a copy in advance to the counsel for the petitioner. Vakalatnama and resolution of the respondent company may also be filed before the next date of hearing.

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Rejoinder, if any, be filed within one week thereafter with a copy in advance to the counsel opposite. If the reply is not filed then no further adjournment shall be granted and the same shall proceed on merit.

List for arguments on 17.12.2018.

Order dated 17.12.2018

Despite last opportunity granted on 12.11.2018 reply has not been filed and further time has been sought. Let reply be now filed within one week with a copy in advance to the counsel for the petitioner which shall be subject to payment of Rs. 20,000/- as cost to be payable to the petitioner.

Rejoinder, if any, be filed within one week with a copy in advance to the counsel opposite.

List for arguments on 24.01.2019.

Order dated 24.01.2019

On 17.12.2018 the following order was passed:-

"Despite last opportunity granted on 12.11.2018 reply has not been filed and further time has been sought. Let reply be now filed within one week with a copy in advance to the counsel for the petitioner which shall be subject to payment of Rs. 20,000/- as cost to be payable to the petitioner.

Rejoinder, if any, be filed within one week with a copy in advance to the counsel opposite."

It is seen from the reading of the order that despite the last opportunity granted on 12.11.2018 further time of one week was given to file reply. Over a period of one month is gone by but no reply has been filed nor the cost of Rs. 20,000/- has been paid. We do not see the possibility of granting any further time to file reply.

Arguments heard. Put up for order tomorrow i.e. 25.01.2019."

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The aforesaid details concerning the conduct of the Corporate Debtor-Respondent would reveal that a designed effort has been made to impede the insolvency proceedings by seeking time over and over again for filing reply. The leniency shown by the Bench has been misused. It was therefore, in these circumstances that the order dated 12.11.2018 was passed whereby direction was issued that in case reply was not filed then no further adjournment was to be granted and the matter was to proceed on merit. Further we had saddled the respondent with cost of Rs. 20000/- on account of non-filing of reply and granted a week time for the said purpose and ordered for listing the matter on 24.01.2019 but the position remains the same. We are constrained to observe that in some of the cases the Corporate Debtor-Respondent deliberately delay the proceedings so as to avoid the initiation of Corporate Insolvency Resolution Process. This case thus is a classic example of such a conduct. We say no more on this issue.

28. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional namely Mr. Parmod Goel to meet out the expenses to perform the functions assigned to

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him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

29. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.

-Sd/-
25.01.201

(M.M.KUMAR)
PRESIDENT

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-Sd-

(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)

25.01.2019
(VINEET)

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Business Standard NEW DELHI | THURSDAY, 10 DECEMBER 2020

ALCHEMIST TOWNSHIP INDIA LTD (ATIL)

(Undergoing Corporate Insolvency Resolution Process under I&B Code, 2016)
Redg Office : Flat No. 1511 (Front Portion), Hemkunt Chambers,
89 Nehru Place, New Delhi-110019

NOTICE TO CREDITORS

The creditors of Alchemist Township India Ltd (ATIL), Corporate Debtor are hereby informed that the Corporate Insolvency Resolution Process of ATIL was commenced on 25.01.2019, wherein Mr. Pramod Goel was appointed as IRP. Further, the Hon'ble NCLAT in the hearing held on 01.03.2019 set aside the order of commencement dated 25.01.2019 passed by Hon'ble NCLT, New Delhi. Thereafter, on 01.10.2020, the said application IB No. 1082/PB/2018 was revived and the CIRP process resumed since 01.10.2020. The undersigned has been appointed as Resolution Professional by Hon'ble NCLT, Principal Bench, New Delhi vide its order dated 24.11.2020 (copy of the order was received by the RP on 03.12.2020).

All the creditors are hereby informed that all correspondence in the matter to be sent on cirp.atil@gmail.com. The creditors of Alchemist Township India Ltd (ATIL), are hereby called upon to submit their claims with proof to the resolution professional at: **D-54, 1st Floor, Defence Colony, New Delhi – 110024,** Email: cirp.atil@gmail.com;

The claims may be submitted in the specified Forms B, C, CA, D, E and F in terms of Regulations 7, 8, 8A, 9 and 9A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 by the Operational Creditors, Financial Creditors, Claims by creditors in a class, Workmen or Employees, Authorized representative of group of workmen and employees, and other creditors respectively, as the case may be. The Financial Creditors shall submit their claims with proof by electronic means only. All other creditors may submit the claims with proof in person, by post or by electronic means. The relevant claim forms can be downloaded from: https://www.ibbi.gov.in/home/downloads

A Financial Creditor belonging to a class shall indicate its choice of Authorised Representative from among the three Insolvency Professionals listed below as Authorised Representative of the class in Form CA.

S.No.	Name of Insolvency Professional	IBBI Registration No.
1.	Mr. Yogesh Kumar Gupta	IBBI/IPA-003/IP-N00078/2017-18/10701
2.	Ms. Rakesh Verma	IBBI/IPA-001/IP-P-01814/2019-2020/12794
3.	Mr. Dharmendra Kumar	IBBI/IPA-003/IP-N000112/2017-2018/11264

Submission of false or misleading proofs of claim shall attract penalties.

Sd/-

Devendra Singh, Resolution Professional
In the matter of Alchemist Township India Limited
Regn. No: IBBI/IPA-002/IP-N00001/2016-17/10001
Address: ATS Greens Paradiso, Flat No: 02054, Tower - 2,
Plot No: GH-03, Sector – CHI - 04, Greater Noida, UP- 201308
Office at: D-54, 1st Floor, Defence Colony, New Delhi - 110024
Mail Id; cirp.atil@gmail.com ; dev_singh2006@yahoo.com

Date : 09.12.2020
Place: New Delhi

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DEVENDRA SINGH
INSOLVENCY PROFESSIONAL
IBBI/IPA-002/IP-N00001/2016-17/10001
dev_singh2006@yahoo.com
Mob: 9810339416, 9810331877

29.11.2021

"FROM THE DESK OF RESOLUTION PROFESSIONAL"

Dear All,

As already informed to you through my various letters and communications, Alchemist Township India Limited (Corporate Debtor) is undergoing Corporate Insolvency Resolution Process (CIRP) under Insolvency and Bankruptcy Code, 2016 and the undersigned was appointed as the Resolution Professional in the instant matter by the Hon'ble NCLT principal Bench, New Delhi, vide it's order dated 24.11.2020.

UPDATES

The stakeholders are hereby informed that the Hon'ble NCLT, New Delhi Bench in its hearing held on 02.08.2021 directed to Resolution Professional to make the Public Announcement and provide 30 days time for filing the claims from 02.08.2021. The Resolution Professional is receiving large number of claims even after 02.09.2021.

Now it has been decided that no further claim will be accepted after 30.11.2021. Therefore, the stakeholders are requested to file claim on or before **30.11.2021** through electronic mode (email) on the following mail IDs:

cirp.atil@gmail.com

The Stakeholders are requested to submit their claim as per the timelines given above. No further claims will be accepted after the 30.11.2021. In case of any further clarification or any assistance required for filing the claim, the stakeholders may call on the following helpline numbers:

- 9818948335
- 9818948536
- 9818027344
- 9818948171
- 9818947730

In case you have already filed the claim but the same is not reflected in the claim list uploaded on the website, then the stakeholders may send email for their specific query to the following email ID and may also contact the abovementioned helpline numbers.

helplineatil@gmail.com

DEVENDRA SINGH
RESOLUTION PROFESSIONAL
ALCHEMIST TOWNSHIP PRIVATE LIMITED

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2022 SCC OnLine NCLAT 245

In the National Company Law Appellate Tribunal[†]

(BEFORE ASHOK BHUSHAN, CHAIRPERSON AND SHREESHA MERLA, MEMBER (TECHNICAL) AND NARESH SALECHA, MEMBER (TECHNICAL))

Company Appeal (AT) (Insolvency) No. 390 of 2022[1]

Puneet Kaur ... Appellant;

Versus

K.V. Developers Private Limited and Others ... Respondents.

And

Company Appeal (AT) (Insolvency) No. 391 of 2022[2]

Mayukh Chakraborthy ... Appellant;

Versus

K.V. Developers Private Limited and Others ... Respondents.

And

Company Appeal (AT) (Insolvency) No. 392 of 2022[3]

Mahesh Chandra Sahu ... Appellants;

Versus

K.V. Developers Private Limited and Others ... Respondents.

And

Company Appeal (AT) (Insolvency) No. 393 of 2022[4]

Ravi Raghavachary ... Appellant;

Versus

K.V. Developers Private Limited and Others ... Respondents.

With

Company Appeal (AT) (Insolvency) No. 394 of 2022[5]

Shabnam ... Appellant;

Versus

K.V. Developers Private Limited ... Respondents.

Company Appeal (AT) (Insolvency) No. 390 of 2022, Company Appeal (AT) (Insolvency) No. 391 of 2022, Company Appeal (AT) (Insolvency) No. 392 of 2022, Company Appeal (AT) (Insolvency) No. 393 of 2022 with Company Appeal (AT) (Insolvency) No. 394 of 2022

Decided on June 1, 2022

Advocates who appeared in this case:

Mr. Mahesh Kumar and Ms. Simran Soni, Advocates for the Appellants;

Mr. Abhinav Vasisht, Sr. Advocate with Mr. Rakesh Kumar Bajaj and Mr. Harish Taneja, Advocates for R-1 & 2;

Mr. Nitin Kumar and Mr. Gagan Gulati, Advocate for R-3;

Mr. Sumesh Dhawan and Ms. Vatsala Kak, Advocates for R-4 for the Respondent.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, CHAIRPERSON:— These five Appeal(s) have been filed by Homebuyers of Corporate Debtor - K.V. Developers Private Limited aggrieved by order of the Adjudicating Authority refusing to entertain their belated claims as Financial Creditors of the Corporate Debtor.

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2. In Company Appeal (AT) (Insolvency) No. 390 of 2022 the order dated 11.11.2021 rejecting the I.A. No.5146 of 2021 has been challenged. The Adjudicating Authority while rejecting the I.A. observed that the claim by the Applicant in the matter was filed after delay of eight months from the cut-off date as decided by Resolution Professional. The Resolution Professional having already been put up to voting prior to the filing of claim, the Application was rejected.

In Company Appeal (AT) (Insolvency) No. 391 of 2022, order dated 26.10.2021 of the Adjudicating Authority rejecting the I.A. 4864 of 2021 filed by the Appellant has been challenged, by which order, Adjudicating Authority observed that the Resolution Plan for the Corporate Debtor having already approved by the Committee of Creditors ("CoC"), the claim of the Appellant filed after lapse of eight months from the cut-off date cannot be entertained.

In Company Appeal (AT) (Insolvency) No. 392 of 2022 order dated 04.01.2022 has been challenged, by which I.A. No.5119 of 2021 filed by the Appellant has been rejected observing that Committee of Creditors has already approved the Resolution Plan on 20.07.2021, which is pending consideration before the Tribunal for final approval, hence the Applicant, who had submitted Application after a gap of more than eight months, cannot be entertained.

In Company Appeal (AT) (Insolvency) No. 393 of 2022, the order dated 04.01.2022 has been challenged, by which order I.A. No.4863 of 2021 filed by the Appellant has been rejected observing that CoC has already approved the Resolution Plan on 20.07.2021, which is pending consideration before the Tribunal, hence, Applicant who has come after a gap of more than eight months, cannot be entertained.

In Company Appeal (AT) (Insolvency) No. 394 of 2022, the order dated 07.12.2021 has been challenged, by which order, I.A. No.5602 of 2021 filed by the Appellant has been rejected observing that CoC having already considered the Resolution Plan and the Applicant has come up after a gap of more than eight months by filing a claim on 09.11.2021, the claim cannot be entertained.

3. The claim of the Appellant(s) were filed against the same Corporate Debtor, i.e., *K* v. *Developers* Private Limited, a real estate Company arising out of more or less same facts and circumstances. All these Appeal(s) have been heard together and are being decided by this common judgment.

4. For deciding all these Appeal(s), it is sufficient to notice the facts and sequence of events in Company Appeal (AT) (Insolvency) No. 390 of 2022 - *Puneet Kaur* v. *K.V. Developers Private Limited*:

(i) The Adjudicating Authority vide order dated 28.10.2020 admitted the Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") filed by LIC Housing Finance Limited, a Financial Creditor. The Respondent No. 2 Shri Pankaj Narang was appointed as Interim Resolution Professional, who was subsequently confirmed as Resolution Professional. The Resolution Professional published Form-A dated 30.10.2020 inviting claim from creditors on or before 11.11.2020. Publication was also made in two newspapers.

(ii) The Appellant(s) who have booked their flats with the Corporate Debtor, could not know about the publication of Form-A and the initiation of Corporate Insolvency Resolution Process ("CIRP"). The Appellant in Company Appeal (AT) (Insolvency) No. 390 of 2022, resides in UK; the Appellant in Company Appeal (AT) (Insolvency) No. 392 of 2022, resides in Jhansi; the Appellant in Company Appeal (AT) (Insolvency) No. 393 of 2022 resides in Chennai, "although he has given address of Noida, which is same as that of attorney of Appellant in Company Appeal (AT) (Insolvency) No. 390 of 2022. The Appellant's husband in Company Appeal (AT) (Insolvency) No. 394 of 2022 resides in Bangalore. Due to

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Appellant(s) not being residing in Noida, where the office of the Corporate Debtor situated, could not have learnt about Corporate Insolvency Resolution Process ("CIRP") and hence, could not file their claims within time.

(iii) The Appellant in Company Appeal (AT) (Insolvency) No. 390 of 2022 filed its claim on 14.07.2021, whereas, Successful Resolution Applicant namely - Consortium of Sumit Kumar Khanna and M/s. Brij Kishore trading Pvt. Ltd. Filed its Resolution Plan on 09.04.2021, which was put for E-voting from 13.07.2021 to 19.07.2021. The Appellant in Company Appeal (AT) (Insolvency) No. 390 of 2022 has filed her claim in Form-CA to the Resolution Professional for an amount of Rs. 23,18,422/-. Along with claim, the Appellant has submitted allotment letter dated 22.02.2016 and 15 payment receipts of Rs. 23,18,422/-.

(iv) The Resolution Plan submitted by the Successful Resolution Applicant was approved on 20.07.2021 by 100% voting in the 15th CoC meeting. The Resolution Professional filed I.A. No. 3447 of 2021 under Section 30, sub-section (6) before the Adjudicating Authority seeking approval of the Resolution Plan. I.A. No. 5146 of 2021 was filed by the Appellant - Puneet Kaur before the Adjudicating Authority praying for direction to the Resolution Professional to admit the claim of the Applicant, which Application came to be rejected by impugned order dated 11.11.2021.

(v) The facts and sequence of events in other four Appeal(s) are more or less same. The case in all other Appeal(s) is also that they could not know about the CIRP and they filed their claim belatedly. The claim of Appellant in Company Appeal (AT) (Insolvency) No. 391 of 2022 was filed on 23.07.2021 in Form-CA for an amount of Rs. 34,00,000/- along with allotment letter containing receipts of the payments made.

In Company Appeal (AT) (Insolvency) No. 392 of 2022 a claim was filed on 23.07.2021 raising a claim of Rs. 27,57,259/- along with Form-CA, allotment letter and receipt of the payments were filed.

In Company Appeal (AT) (Insolvency) No. 393 of 2022, a claim was submitted on 23.07.2021 for an amount of Rs. 18,63,489/- along with Form-CA with allotment letters and payment receipts were also filed.

In Company Appeal (AT) (Insolvency) No. 394 of 2022, the claim was submitted on 09.11.2021 for an amount of Rs. 38,55,267/-, Builder Buyers Agreement and payment receipts were also filed along with Form-CA.

(vi) As noted above, Appellant(s) filed IAs before the Adjudicating Authority seeking direction to the Resolution Professional to admit their claims, which have been rejected by the Adjudicating Authority observing that claims having been filed after gap of eight months from the last date of the submission of the claim, they cannot be admitted. Further, CoC has already approved the Resolution Plan. Aggrieved by the orders passed by the Adjudicating Authority, Appellant(s) have come up in this Appeal,

5. We have heard Shri Mahesh Kumar, learned Counsel for the Appellant, Shri Abhinav Vasisht, learned Senior Counsel has appeared for Resolution Professional, Shri Nitin Kumar, learned Counsel appeared for CoC and Shri Sumesh Dhawan, learned Counsel appeared for Successful Resolution Applicant.

6. Learned Counsel for the Appellant(s) submits that Appellant(s) are Financial Creditors and even though, they could not file their claims within the time prescribed in Form-A, but details of their allotment and payments made by them already existed in record of the Corporate Debtor. It was the duty of the Resolution Professional to inform the Appellant(s) to file their claims and further the claim of the Appellant(s) qua the Corporate Debtor being matter of record, Resolution Professional could very well included their claims in the Information Memorandum prepared under Regulation

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36 of CIRP Regulations as liabilities to Corporate Debtor to inform the Resolution Applicant to take into consideration the liabilities towards those Homebuyers, who could not file their claims. The Resolution Professional could have included the names of all the Homebuyers and mentioned about them in the Information Memorandum. The Resolution Professional has not included the names of the Appellant(s) in the Information Memorandum, which has caused great prejudice to the Appellant(s). The Appellant(s), who are Homebuyers cannot be equated with other Financial Creditors. The Homebuyers have to be treated in different category.

7. The learned Counsel for the Appellant(s) further submits that claims of the Appellant(s) ought to have been admitted based on the record of the Corporate Debtor. It is further submitted that the Resolution Professional has dealt with claims including the belated claims submitted before the Resolution Professional are 225+239 total 464, whereas, Resolution Plan does not indicate any provision with regard to money, which was deposited by the Appellant(s) and the claim of possession of flats by the Appellants. It is submitted that in the reply filed by the Resolution Professional in these Appeal(s) in paragraph 11 of the reply, it was stated that claims towards the Homebuyers/Allottees including the Appellant herein have already been dealt with in the Resolution Plan and Appellant(s) are abusing the process of this Appellate Tribunal by filing the Appeal for seeking relief. It is submitted that fact is that there is no provision in the Resolution Plan with regard to claims of the Appellant(s) and other Homebuyers, who could not file their claims.

8. The learned Senior Counsel for Resolution Professional Shri Abhinav Vasisht refuting the submissions of the learned Counsel for the Appellant(s) submits that Appellant(s) have submitted their claim much after submission of the Resolution Plan. Only Appellant in Company Appeal (AT) (Insolvency) No. 390 of 2022 has filed the claim before the approval of the Resolution Plan. All other Appellant(s) have filed their claims subsequent to approval of Resolution Plan by CoC. It is submitted that Appellant(s) having not filed their claims within time and filing of their claim was also beyond 90 days as provided by Section 12 of the Code, no error has been committed by Resolution Professional in not including the Appellant(s) in the List of Creditors. There was no occasion to include the name of the Appellant(s) in Information Memorandum, since, they have not filed their claim within time. There is no obligation on the Resolution Professional to inform the Homebuyers for filing their claims, apart from making publication in Form-A as required by Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the “CIRP Regulations”). The law as it exists, does not oblige the Resolution Professional to send any information to Homebuyers.

9. The learned Counsel for the Successful Resolution Applicant also supported the submission of learned Senior Counsel for the Resolution Professional and submitted that claims filed by all the Appellant(s) were beyond the time prescribed for filing the claim. The Resolution Plan was approved by the CoC on 20.07.2021 and except Appellant in Company Appeal (AT) (Insolvency) No. 390 of 2022, all other claims were filed after 20.07.2021. The Appellant(s) having not filed their claim before the prescribed time, their rights have extinguished after the approval of the Resolution Plan by the CoC on 20.07.2021. The Adjudicating Authority has rightly rejected the IAs filed by the Appellant(s). The Resolution Plan has been submitted based on the Information Memorandum prepared by the Resolution Professional. The Regulation 36 (2)(d) of CIRP Regulations mentions that Information Memorandum shall contain a List of Creditors containing the names of creditors and the amount claimed by them and amount of their claims admitted and the security interest, if any, in respect of such claims. The Resolution Applicant has submitted the Resolution Plan as per Information Memorandum and now no claim can be entertained after approval of the Resolution Plan. The CIRP has been conducted in the time bound manner and now the

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Application for approval of Resolution Plan is pending consideration before the Adjudicating Authority.

10. The learned Counsel for the parties in support of their submissions have relied on various judgments of this Tribunal as well as Hon'ble Supreme Court, which shall be referred to while considering submissions in detail.

11. We have considered the submissions of learned Counsel for the parties and have perused the record.

12. From the submissions of learned Counsel for the parties, following are the questions, which arise for consideration in these Appeal(s):

(1) Whether the Adjudicating Authority has rightly rejected the IAs filed by the Appellant(s) seeking direction to include their claims, which was belatedly filed?

(2) Whether after approval of the Resolution Plan on 20.07.2021 by CoC, the claim of the Appellant(s) stood extinguished?

(3) Whether the Resolution Professional was obliged to include the details of Homebuyers as reflected in the records of the Corporate Debtor in the Information Memorandum, even though they have not filed their claim before the Resolution Professional within time?

(4) Whether Resolution Applicant ought to have also dealt with Resolution Plan regarding Homebuyers, whose names and claims are reflected in the record of the Corporate Debtor, although they have not filed any claim?

Question No. (1)

13. There is no dispute between the parties that the claim by the Appellant(s) were filed beyond the timeline prescribed in Form-A. Form-A required that the claims to be filed by 11.11.2020, whereas the claims were filed by the Appellant(s) on 14.07.2021, 23.07.2021 and in 09.11.2021. The learned Counsel for the Respondent has placed reliance on a judgment of this Tribunal in *Mukul Kumar* v. *RPS Infrastructure* - Company Appeal (AT) (Insolvency) No. 1050 of 2020, where this Tribunal has held that the Resolution Plan has already been approved by the CoC and pending resolution for approval, new claims cannot be entertained. In paragraph 34 of the judgment, following has been laid down:

> *"34. With the aforesaid, we are of the view that when the Resolution Plan has already been approved by the CoC and it is pending before the Adjudicating Authority for approval, at this stage, if new claims are entertained the CIRP would be jeopardized and the Resolution Process may become more difficult. Keeping in view the object of the IBC which is resolution of Corporate Debtor in time bound manner to maximize the value, if such request of claimant is accepted the purpose of IBC would be defeated. Hon'ble Supreme Court in the case of* CoC of Essar Steel India Ltd. *(Supra) held as under:—*
>
> *88. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6)of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this*

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count."

14. The same principle has been reiterated in another judgment of this Appellate Tribunal, i.e., *Harish Polymer Product* v. *George Samuel RP for Jason Dekor Private Limited* - Company Appeal (AT) (Insolvency) No. 420 of 2021.

15. The List of Creditors was already published by Resolution Professional, which did not include the name of the Appellant(s). The Resolution Plan as submitted by Resolution Applicant was based on List of Creditors as published by Resolution Professional. It is true that Homebuyers whose number runs in several hundred in real estate project belong to different class of Financial Creditors. All Homebuyers who have booked a flat may not normally be residing in the area where Corporate Debtor has its corporate office and registered office. The publication in the newspaper is normally done in the area where Corporate Debtor has its registered office and corporate office and there is every likelihood that all Homebuyers could not know within the fourteen days period allowed in Form-A to file their claim and practically Homebuyers who are hundreds in number neither come to know about the CIRP nor did they file their claim within the fourteen days' time allowed. Even in maximum 90 days period as provided in Section 12(2), on several occasion, Homebuyers could not file their claims. The Homebuyers are a class belonging to middle class of society and majority of whom, who book flat has taken loan from Banks and other financial institutions and they are saddled with liability to pay their loan from their hard-earned income they make payment to the Corporate Debtor in hope of getting a possession of the flat for their residence. Non-submission of claim within the time prescribed is a common feature in almost all project of real estate. But as law exists today, they cannot be included in the List of Creditors and that too after approval of Plan by CoC. We, thus, do not find any ground to interfere with order of the Adjudicating Authority rejecting their Application for admission of their claim. However, their claims need to be dealt in a manner, which we shall deal in later part of this judgment.

Question No. (2)

16. The submission raised on behalf of Resolution Professional as well as Successful Resolution Applicant is that after approval of the Resolution Plan by CoC on 20.07.2021, the claim of all the Appellant(s) stood extinguished, which submission is refuted by the learned Counsel for the Appellant(s). The question to be answered is as to whether after the approval of the Resolution Plan by the CoC, which does not include the claim of the Appellant(s), the claim of the Appellant(s) stood extinguished? The answer is to be found in statutory provision of Section 31, sub-section (1), which deals with the approval of Resolution Plan is to the following effect:

> *"31. Approval of resolution plan.— (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in subsection (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.*
>
> *Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation."*

17. The Hon'ble Supreme Court in *Ghanashyam Mishra and Sons Private Limited* v. *Edelweiss Asset Reconstruction Company Limited*, (2021) 9 SCC 657 while dealing with the above question, concluded in paragraph 102.1 and held that once Resolution Plan is approved by the Adjudicating Authority, the claims as provided in the

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Resolution Plan shall stand frozen and all such claims, which are not part of Resolution Plan shall stand extinguished. Paragraph 102.1 is as follows:

> *"102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person wil be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan."*

18. It is thus clear that extinguishment of claim of the Appellant(s) shall happen only after approval of the Plan by the Adjudicating Authority. The argument of the Respondents that since CoC has approved the Resolution Plan, the claim of the Appellant(s) have been extinguished, cannot be accepted as there is no extinguishment of claim of the Appellant(s) on approval of Plan by the CoC. Question No. (2) is answered accordingly.

Question Nos. (3) and (4)

Since, both the above questions are interrelated, they are taken up together.

19. We have noticed above that in the event a claim belatedly filed by a Homebuyer is not accepted to be taken up, such Homebuyer cannot be included in the List of Creditors as prepared under CIRP Regulations. The case of *Homebuyers* has been now recognized as Financial Creditors under the provisions of the Code as amended by Act 26 of 2018 (w.r.e.f. 06.06.2018). The amendment in Code was brought to mitigate the misery of Homebuyers and to give them participation in the CIRP of a real estate Company. Looking to the procedure as is prevalent regarding filing of the claim by Financial Creditors, large number of Homebuyers are unable to file their claim within the time due to various genuine reasons related to such Homebuyers. Homebuyers make payment to the Corporate Debtor, receive allotment letter from the Corporate Debtor and also enter into Builder Buyers Agreement. All the documents pertaining to Homebuyers are on the record of the Corporate Debtor and Interim Resolution Professional/Resolution Professional does take charge also of all the records of the Corporate Debtor. Even though, Interim Resolution Professional/Resolution Professional are not obliged to include the name of such Homebuyers, who have not filed the claim within the time in their List of Creditors, but there is no reason for not collating the claims of such Homebuyers whose claims are reflected from the records of the Corporate Debtor, including their payments and allotment. Regulation 36 of CIRP Regulations as amended with effect from 4th July, 2018 provides:

> *"36. Information memorandum. (1) Subject to sub-regulation (4), the resolution professional shall submit the information memorandum in electronic form to*
>
> *(a) each member of the committee within two weeks of his appointment as resolution professional; and*
>
> *(b) to each prospective resolution applicant latest by the date of invitation of resolution plan under clause (h) of subsection (2) of section 25 of the Code.]*
>
> *(2) The information memorandum shall contain the following details of the corporate debtor—*
>
> *(a) assets and liabilities with such description, as on the insolvency commencement date, as are generally necessary for ascertaining their values.*
>
> *Explanation:'Description' includes the details such as date of acquisition, cost of acquisition, remaining useful life, identification number, depreciation charged, book value, and any other relevant details.]*

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(b) the latest annual financial statements;

(c) audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application;

(d) a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;

(e) particulars of a debt due from or to the corporate debtor with respect to related parties;

(f) details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;

(g) the names and addresses of the members or partners holding at least one per cent stake in the corporate debtor along with the size of stake;

(h) details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;

(i) the number of workers and employees and liabilities of the corporate debtor towards them;

(j) 15[***]

(k) 16[***]

(l) other information, which the resolution professional deems relevant to the committee."

20. There are two important provisions of Regulation 36. Regulation 36(2)(a) and Regulation 36(2)(l). Regulation 36(2) oblige the Resolution Professional to include the details of Corporate Debtor regarding assets and liabilities. The word "liabilities" is an expensive word. The "liability" has been defined in *P. Ramanatha Aiyar - Advanced Law Lexicon* in following words:

"The term 'liability means a liability to pay money or money's worth and it includes "any liability for breach of trust, any liability in contract, tort or bailment and any liability arising out of an obligation to make restitution. [(English) Insolvency Act, 1986, section 382(4) as cited in Chitty on Contracts, *27th Edition, 1994 Vol. I, c.20, para 20-037, p.1015]"*

21. When the allotment letters have been issued to the Homebuyers, payments have been received, there are Homebuyers and there is obligation on the part of real estate Company to provide possession of the houses along with other attached liabilities. The liability towards those Homebuyers, who have not filed their claim exists and required to be included in the Information Memorandum. Further, under Regulation 36, sub-regulation 2(1), there is column for other information, which the Resolution Professional deems relevant to the Committee. The liabilities which have been undertaken by the Corporate Debtor, huge money received by the Corporate Debtor from Homebuyers, whose claims, which could not be filed within time, could not be wished away by the Resolution Professional, on the convenient ground that claims have not been filed by such Homebuyers. The purpose of CIRP of Corporate Debtor is to find out all liabilities of the Corporate Debtor and take steps towards resolution. Unless all liabilities of the Corporate Debtor are not known or included in the Information Memorandum, the occasion to complete the CIRP shall not arise.

22. In the above context, we refer to certain observation of this Tribunal in Company Appeal (AT) (Insolvency) No. 871-872 of 2019 - *Santosh Wasantrao Salokar* v. *Vijay Kumar V. Iyer* decided on 24th January, 2020 along with other Appeals, where this Tribunal made observations in paragraph 23 as follows:

"23. It is further observed in respect of Company Appeal (AT) (Insolvency) No.

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892-893 of 2019 &Company Appeal (AT) (Ins) No. 924 - 925 of 2019 that various claims are collected by the Resolution Professional during the CIRP process by inviting the claim from individual, organisations etc. But there are several micro claimant as also large claimants like Government claimants particularly Sales tax department, Income Tax Department etc., who generally are not filing claim, filing claim at a belated stage or filing not in appropriate format as a result of which Government dues are not considered although it may be reflected in the financial statements/books of Accounts of Corporate Debtor and similarly micro claims relating to Individual, MSME, and other small traders are also not considered by the Resolution Professional because of time constraint, belated receipt or non receipt of the claim even though the same may be provisioned for in the books of Accounts of Corporate Debtor hence in order to strengthen the system including the preparation of information memorandum as per regulation 36 of IBBI, it would be fair and proper if appropriate provision is incorporated under IBBI, (Insolvency Resolution Process for Corporate persons) Regulation 2016 for preparation of Balance Sheet as on date of initiation of CIRP process and the same gets audited from a regular Statutory Auditor of the Corporate Debtor certifying all schedules, including micro details of both Assets and Liabilities so that admitted liabilities in the Corporate Debtor records are not ignored even if such claims are not received in time etc. It will aid & smoothen the existing system of collection and consideration of claim and these small individuals, MSME, SME and Government Department will not be the sufferer. It will also avoid large number of cases being filed by such left out Creditors."

23. We thus are of the considered opinion that Information Memorandum ought to have included the claim of those Homebuyers, who have not even filed their claims to correct liabilities of the Corporate Debtor for its appropriate resolution. In the present case, in the reply filed by Resolution Professional in paragraph 11, following statement has been made:

"11. It is pertinent to mention herein that the claims towards the Homebuyer/Allottees including the Appellant herein have already been dealt with in the Resolution Plan as submitted by Respondent No. 4. it is stated that despite the same, the Appellant is abusing the process of this Hon'ble Appellate Authority by filing the captioned Appeal for seeking reliefs against the Respondents on frivolous grounds."

24. During the course of hearing, when pointed query was made to the Counsel appearing for Resolution Professional and Successful Resolution Applicant that what is the provision made for those claims including the claims of the Appellant(s), who have not filed their claim. The answer given was that their claims shall stand extinguished. The reply in paragraph 11 as quoted above sought to give impression that claim of the Homebuyers, who have not filed their claims have been dealt with in the Resolution Plan, but during the submission, it has been stated that their claims stand extinguished.

25. However, we further take exception to the statement made in paragraph 11 that Appellant(s) are abusing the process of this Tribunal by filing the Appeal. The Appellant(s), who are Homebuyers and have made payments to the Corporate Debtor, has every right to agitate their claim. The Resolution Professional and Resolution Applicant having not given any credence to their claims, cannot be heard in saying that Appellant are abusing the process by filing Appeal in the Appellate Tribunal.

26. The learned Counsel for the Appellant(s) has also placed reliance on a judgment of this Tribunal in Company Appeal (AT) (Insolvency) No. 700 of 2021 - *Amit Goel* v. *Piyush Shelters India Private Ltd.* decided on 18.01.2022 with other connected Appeals. In the aforesaid Company Appeal(s), Appeal(s) were filed challenging the

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order passed by the Adjudicating Authority approving the Resolution Plan with regard to real estate Corporate Debtor. In the above case, the claims were divided in two categories. The submissions of the Appellants were noted in paragraph-4 to the following effect:

> *"4. The Appellants have stated that later, in the 8th CoC meeting which took place on 25.09.2019, it was decided to publish the 4th Expression of Interest (EOI) which was published in Jansatta and Financial Express newspapers on 01.10.2019 with last date for submitting EOI on 07.10.2019. It is claimed by the appellants that Maya Buildcon, which had earlier withdrawn its resolution plan, filed CA No. 282/2019 before Adjudicating Authority that it be allowed to submit a revised resolution plan. This application remained pending but the RP allowed a consortium which included Maya Buildcon to submit a resolution plan and place it before the CoC for consideration. A revised plan was subsequently approved by the CoC in e-voting held on 6/7 November 2019. While the resolution plan was pending consideration of the Adjudicating Authority an applicant Vishal Saxena, who could not file his claim in time. obtained order of the Adjudicating Authority in CA No. 12/2020 on 3.2.2020, for admission and consideration of his claim. The appellants have further stated that while Vishal Saxena's claim and other claims that were filed after delay were admitted/accepted by the RP, the resolution plan approved by the CoC and the Adjudicating Authority the Impugned Order has created two separate categories of financial creditors in class - one of 'claimants who filed their claims in time', and the other of 'non-claimants' who could not file their claims in time. The two categories have received different shares in the approved resolution plan, and so while the 'claimants' have received possession of the booked properties, the 'non-claimants' have got just 10% of their booked amount after verification of their claims within one month, and thereafter all such claims would stand extinguished."*

In the above case, the Resolution Plan contemplated a provision that those Homebuyers, who are non-claimants, they shall be paid 10% of their booked amount after verification of their claims. In the above case, hundreds of Homebuyers could not file their claims, final Resolution Plan contained the following as extracted in paragraph 8 of the judgment is as follows:

> *"8. The Appellant-Harjeet Kaur in Company Appeal (AT) (INS) No. 761 of 2021, is an allottee in the project of the Corporate Debtor. Similarly, the Appellant in Company Appeal (AT) (Ins) No. 925 of 2021, Shri Bala Pareek and others are also allottees of the Corporate Debtor. The Learned Counsels for Appellants in CA 761 of 2021 and CA 925 of 2021 have claimed that the approved resolution plan gives unequal treatment to the same category of financial creditors thus discriminating between financial creditors of the same class. The final resolution plan provides as follows in its Para V(7) (at Pg. 153 of the Appeal Paperbook in Company Appeal No. 700 of 2021):—*
>
> *"The allottees with MOU, who have not filed their claim till the last date of filing resolution plan, shall not be entitled for any relief or claim for possession over the property, whether paid in full or part. However, resolution applicant make an offer for them to take 10% of the verified amount within a period of one month and thereafter their claim shall be treated as abandoned."*

This Tribunal allowed the Appeal(s) by observing in paragraph 27 and 28:

> *"27. We now turn our attention to the allegation of the Appellants that due to inadequate publicity regarding the initiation of CIRP of the Corporate Debtor, they were not aware of the public announcement, and hence could not file their claims with Resolution Professional in time. The replies on behalf of Resolution Professional submitted in CA No. 700 of 2021 at page 26, para 30 mentions that,*

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"That it is respectfully submitted, that, the erstwhile resolution professional did not get any cooperation from the Appellant as was statutorily required from him for discharge of duties by the resolution professional during the CIRP of Corporate Debtor, further, the registered office of the Corporate Debtor at Meerut was closed and the only principal place of business at Faridabad as per MCA records -Piyush Global situated at Plot 5, YMCA Chowk, Delhi Mathura Road, Faridabad (HR) which was sealed by the secured financial creditor - HDB Financial Services Limited (HDBFS) under SARFAESI Act, 2002 and Municipal Corporation of Faridabad (MCF) since prior to start of CIRP on 3rd December,2018. Further, all the employees of the Corporate Debtor had left and no employees of the Corporate Debtor were on the rolls of the corporate debtor as on insolvency commencement date on 3rdDecember 2018. All the business operation of the Corporate Debtor was also closed."

28. Thus we see that the homebuyers/allottees could not have had access to either the registered office of the corporate debtor or the principal place of business at Faridabad since both were closed. Moreover, without the meeting/getting together by the homebuyers/allottees, it was not easy for them to discuss and convey their views to the Authorized Representative who would then represent their views in the CoC. When we see that out of a total of 473 home buyers/allottees only 222 allottees could file claims in time before the Resolution Professional and 251 allottees could either not do so or did so belatedly, we feel that exclusion of more than 251 i.e. about 53% of total homebuyers/allottees cannot lead to a fair and just resolution of the Corporate Debtor. We also feel that the providing 10% of the claimed amounts to homebuyers/allottees who could not file their claims in the circumstances of this case is an unfair and inadequate treatment of the financial creditors."

This Tribunal in the above case has held that when 251 of allottees could not file their claims or filed their claims belatedly, the exclusion of 251 Homebuyers cannot lead to a fair and just resolution of the Corporate Debtor and provisions of providing 10% also held to be unfair and inadequate treatment to the Financial Creditors. The appeal was allowed by issuing following direction in paragraph 39:

"39. In light of the aforementioned discussion, we set aside the impugned order dated 14.7.2021 and direct that the process be started afresh with claims of homebuyers/allottees accepted by the Resolution Professional by giving them realistic time limit for submission of claims, in keeping with the order of the Adjudicating Authority in CA 12/2020, leading to a revised information memorandum, which should then be used for inviting Expressions of Interest. In the CIRP, the views of the financial creditors in class should be elicited by the Authorized Representative prior to CoC meetings in letter and spirit of section 25A of IBC. Thereafter, the CoC shall consider the resolution plans so received in accordance with the provisions laid down in law. For this entire exercise, we allow a period of 90 days to the CoC from the date of this order to complete the entire exercise."

27. In the present case there is no denial that details of the Appellant(s) and other Homebuyers, who could not file their claims has not been reflected in the Information Memorandum. There being no detail of claims of the Appellant(s), the Resolution Applicant could not have been taken any consideration of the claim of the Appellant (s), hence, Resolution Plan as submitted by Resolution Applicant cannot be faulted. However, we are of the view that the claim of those Homebuyers, who could not file their claims, but whose claims were reflected in the record of the Corporate Debtor, ought to have been included in the Information Memorandum and Resolution Applicant, ought to have been taken note of the said liabilities and should have appropriately dealt with them in the Resolution Plan. Non-consideration of such claims, which are reflected from the record, leads to inequitable and unfair resolution as is

seen in the present case. To mitigate the hardship of the Appellant, we thus, are of the view that ends of justice would be met, if direction is issued to Resolution Professional to submit the details of Homebuyers, whose details are reflected in the records of the Corporate Debtor including their claims, to the Resolution Applicant, on the basis of which Resolution Applicant shall prepare an addendum to the Resolution Plan, which may be placed before the CoC for consideration. The above exercise be completed within a period of three months from today and the addendum along with minutes of the CoC be placed before the Adjudicating Authority at the time of approval of Resolution Plan, which is pending consideration before the Adjudicating Authority. The Resolution Applicant may also bring into the notice of the Adjudicating Authority the order of this date, so that the Adjudicating Authority may await the addendum and minutes of the CoC, which may be considered along with approval of the Resolution Plan. We thus, dispose of these Appeal(s) with following directions:

(1) The Resolution Professional shall provide all details of Homebuyers along with their claims as reflected from the record of the Corporate Debtor, who had not filed their claims, including the Appellant(s) to the Resolution Applicant within a period of one month from today.

(2) The Resolution Applicant shall prepare an addendum on the basis of information as submitted by Resolution Professional and place the same before the CoC within a further period of one month.

(3) The CoC shall consider the addendum in its meeting and decision of the CoC on the Information Memorandum and addendum be placed before the Adjudicating Authority. The CoC shall take decision in its meeting within a period of one month from the date of submission of addendum by the Resolution Applicant.

(4) The Adjudicating Authority while considering approval of the Resolution Plan, which is pending consideration in IA No. 3447 of 2021 shall consider the addendum and the minutes of the CoC at the time of finalizing the Resolution Plan.

28. The Resolution Professional shall bring into the notice of the Adjudicating Authority, the order of this date, so as to enable the Adjudicating Authority to await the filing of addendum along with the minutes of the CoC.

29. The Appeal(s) are disposed of in view of the above terms. Parties shall bear their own costs.

---

† Principal Bench, New Delhi

[1] (Arising out of Order dated 11.11.2021 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Bench-III in I.A. No. 5146 of 2021 in C.P.(IB) No. 236/(ND)/2020)

[2] (Arising out of Order dated 26.10.2021 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-III in I.A. No. 4864 of 2021 in C.P.(IB) No. 236/(ND)/2020)

[3] (Arising out of Order dated 04.01.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-III in I.A. No. 5119 of 2021 in C.P.(IB) No. 236/(ND)/2020)

[4] (Arising out of Order dated 04.01.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-III in I.A. No. 4863 of 2021 in C.P.(IB) No. 236/(ND)/2020)

[5] (Arising out of Order dated 07.12.2021 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-III in I.A. No. 5602 of 2021 in C.P.(IB) No. 236/(ND)/2020)

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IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 03
(IB)-737(PB)/2018

IN THE MATTER OF:
Twenty First Century Wire Rods Ltd. ..... Petitioners/Applicant

Under Section 10 of Insolvency and Bankruptcy Code, 2016 (CIRP)

Order delivered on 20.05.2019

Coram:
CHIEF JUSTICE (RTD.) M. M. KUMAR
HON'BLE PRESIDENT

SH. S. K. MOHAPATRA
HON'BLE MEMBER (TECHNICAL)

PRESENT:
For the Applicant — Mr. Krishnendu Datta & Mr. Yugank Goel, Advs.
For Resolution Professional — Ms. Shweta Vashisht, Adv.

ORDER

CA-942(PB)/2019

The prayer made in this application is to condone the delay in filing of claim form by the applicant namely Noble Resources Ltd. beyond the ninety days period specified in Regulation 12(2) of CIRP Regulations. The Resolution Professional appears to have ignored the claim on the ground of delay and a direction has been sought to the Resolution Professional to consider the claim without having regard to the delay.

Notice of the application.

Ms. Shweta Vashisht, Ld. Counsel for the Resolution Professional accepts notice. A copy of the application has been furnished to her. Keeping in view the nature of controversy and the

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view already taken by us we do not feel that any reply would be necessary.

In CA-727(PB)/2019 in the instant Corporate Insolvency Resolution Process we have condoned the delay and have issued direction to the RP to consider a claim without rejecting it on the ground of delay.

We pass the same order in the instant matter and disposed of the application with a direction to the Resolution professional to take into consideration the claim made by the applicant on the basis of the award passed by the Arbitrator. The Resolution Professional shall not reject the claim on the ground of delay as the CIR Process is still under progress and no resolution plan has been approved by the CoC so far.

CA-942(PB)/2019 stands disposed of.

Sd-

(M.M.KUMAR)
PRESIDENT

Sd/-

(S. K. MOHAPATRA)
MEMBER (TECHNICAL)

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20.05.2019
Ritu Sharma

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16.09.2021
Court No.1
Item No. 31,
70 & 91
SD & SB

WPA 1389 of 2017
Ajay Kumar Das & Ors.
-vs-
Union of India & Ors.
with
CAN/1/2017(Old No:CAN/4192/2017)
CAN/2/2017(Old No:CAN/7613/2017)
CAN/3/2017(Old No:CAN/7811/2017)
CAN/4/2017(Old No:CAN/7851/2017)
CAN/5/2017(Old No:CAN/7878/2017)
CAN/6/2017(Old No:CAN/7978/2017)
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CAN/623/2020(Old No:CAN/648/2020)
CAN/624/2020(Old No:CAN/872/2020)
CAN/625/2020(Old No:CAN/969/2020)
CAN/626/2020(Old No:CAN/1003/2020)
CAN/627/2020(Old No:CAN/1006/2020)
CAN/628/2020(Old No:CAN/1058/2020)
CAN/629/2020(Old No:CAN/1059/2020)
CAN/630/2020(Old No:CAN/1060/2020)
CAN/631/2020(Old No:CAN/1105/2020)
CAN/632/2020(Old No:CAN/1106/2020)
CAN/633/2020(Old No:CAN/1255/2020)
CAN/634/2020(Old No:CAN/1285/2020)
CAN/635/2020(Old No:CAN/1374/2020)
CAN/636/2020(Old No:CAN/1394/2020)
CAN/637/2020(Old No:CAN/1411/2020)
CAN/638/2020(Old No:CAN/1565/2020)
CAN/639/2020(Old No:CAN/1598/2020)
CAN/640/2020(Old No:CAN/1599/2020)
CAN/641/2020(Old No:CAN/1634/2020)
CAN/642/2020(Old No:CAN/1647/2020)
CAN/643/2020(Old No:CAN/1805/2020)
CAN/644/2020(Old No:CAN/1813/2020)
CAN/645/2020(Old No:CAN/2016/2020)
CAN/646/2020(Old No:CAN/2188/2020)
CAN/647/2020(Old No:CAN/2189/2020)
CAN/648/2020(Old No:CAN/2422/2020)
CAN/649/2020(Old No:CAN/2426/2020)
CAN/650/2020(Old No:CAN/2430/2020)
CAN/651/2020(Old No:CAN/2431/2020)
CAN/652/2020(Old No:CAN/2432/2020)
CAN/653/2020(Old No:CAN/2434/2020)
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CAN/669/2021, CAN/670/2021
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CAN/673/2021, CAN/674/2021
CAN/675/2021, CAN/676/2021
CAN/677/2021, CAN/678/2021

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CAN/679/2021, CAN/680/2021
with
WPA 20070 of 2018
CAN 1 of 2019 (Old CAN 106 of 2019)
Amarendranath Roy, Pres, INV. Welfare Ass. In Alchmist Group
-vs-
Union of India & Ors.
with
WPA 26915 of 2017
Alchemist Investors and Borker Welfare Association & Ors.
-vs-
Union of India & Ors.

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
... for the petitioner present on virtual mode.
Mr. Subhasis Chakraborty,
Mr.Arindam Das
Ms. Sushmita Kumari Singh, advocates
....for the petitioner present in Court in WPA 1389 of 2017.
Mr. Pradyut Kumar Das, advocate
....for the applicants/petitioners in Court in WPA 1389 of 2017 & CAN 272 of 2018, CAN 273 of 2018, CAN 561 of 2018, CAN 1764 of 2018 & CAN 1766 of 2018.
Mr. Y. J. Dastoor, Additional Solicitor General with
Mr. Phiroze Edulji, advocate
Ms. Amrita Pandey, advocate
Ms. Sumitra Das, advocate
.... for the UOI present in Court.
M/s. Prasanta Kumar Dutt and
Susanta Kumar Dutt, advocates
... for the SEBI present in Court
Mr. Syamantak Banerjee, advocate.
....for the SEBI present on virtual mode.
Mr. Saptarshi Chattopadhyay, advocate
.... for the applicant in CAN 670 of 2019.
Mrs. Hironmoyee Ghosh, advocate
Mr. Surojit Dutta, advocate
.... for the applicants in CAN 678 of 2021.
Md. Jannatul Firdous, advocate
....for the applicant in CAN 680 of 2021.
M/s. Nabankur Paul,
Md. Apzal Asari, advocates
....for the applicants in CAN 566 of 2019 and CAN 345 of 2018.

Learned counsel for the Alchemist Group of companies seeks time to file supplementary affidavit.

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Let the same be filed. In addition to whatever information is sought to be furnished in the affidavit, information regarding details of the properties owned by the Alchemist Group of Companies along with its approximate value be furnished. If any proceedings are pending before any authority, the details thereof be also mentioned.

The amount to be refunded by the Alchemist Group of Companies to the depositors under various schemes as on August 31, 2021 be detailed out.

The learned counsel appearing for the SEBI shall apprise this Court as to whether any proceedings against the Alchemist Group of Companies are pending. If yes, the status thereof, and also as to whether any amount is to be recovered by SEBI on account of penalty or otherwise from the Alchemist Group of Companies.

It was further pointed out that at the time of hearing, that some of the investors have approached the National Company Law Tribunal (NCLT). To this serious issue was raised by the learned counsel for the petitioner stating that when all the issues regarding refund of the amount deposited with the Alchemist Group of Companies, is being considered by this Court, certain depositors have been planted to file application before the NCLT with the active support of the company to misdirect the issue.

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We are not finally opining on this issue. However, we direct that no final order shall be passed by the NCLT during the pendency of the present writ petition before this Court.

A bunch of CAN applications have been filed in WPA 1389 of 2017 for being impleaded as parties, claiming that the applicants are also depositors with the Alchemist Group of Companies under various schemes. In our opinion when the issue regarding refund of the money to all the depositors of the Alchemist Group of Companies is being considered in the main petition, the individual depositors are not required to be impleaded as parties to the proceedings. In case they have any grievance or any issue to be pointed out, they shall be at liberty to assist the Court in the pending matters.

The writ petitions being WPA 1389 of 2017, WPA 20070 of 2018 (CAN 106 of 2019) and WPA 26915 of 2017 are adjourned to November 23, 2021.

The connected applications in WPA 1389 of 2017 except the application being CAN 5390 of 2018 are disposed of.

[Rajesh Bindal, C.J. (A.)]

[Rajarshi Bharadwaj, J]

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ANNEXURE- A9

29.11.2022
KC(18&19)

WPA 1389 of 2017
Ajoy Kumar Das and Ors.
-versus-
Union of India and Ors.
With
CAN 681 of 2021
With
CAN 682 of 2021
With
CAN 683 of 2021
With
CAN 684 of 2022
With
CAN 685 of 2022
With
CAN 686 of 2022
With
CAN 687 of 2022
(Not found)
with
CAN 688 of 2022
With
CAN 689 of 2022
With
CAN 690 of 2022
With
CAN 691 of 2022
With
CAN 692 of 2022
With
CAN 693 of 2022
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CAN 694 of 2022
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CAN 695 of 2022
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CAN 696 of 2022
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CAN 697 of 2022
With
Can 698 of 2022
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CAN 699 of 2022
With
CAN 700 of 2022
With
CAN 701 of 2022
With

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WPA 26915 of 2027
Alchemist Investors and Broker Welfare
Association and Ors.
-versus-
Union of India and Ors.

(Ponzi Matter)

Mr. Subhasis Chakraborty,
Mr. Arindam Das,
Ms. Sushmita Kumari Singh,
Mr. Amit Chowdhury.....For the petitioners.

Ms. Sabita Roy.....For the Union of India.

Mr. Amitesh Banerjee,
Mr. Tulsi Das Roy,
Mr. Tarak Karan.....For the State.

Mr. Prasanta Kumar Dutta,
Mr. Susanta Kumar Dutt,
Mr. Syamantak Banerjee.....For the SEBI.

Mr. Neguive Ahmed.....For the One Man Committee.

Mr. Shyamal Sarkar, Sr. Adv.,
Mr. Atish Ghosh,
Ms. Sumana Biswas,
Ms. Antara Dey.....For the respondent no. 18.

Mr. Sankarshan Sarkar.....For the respondent no. 27.

Let affidavit in reply in connection with CAN 688 of 2022 be filed by 3rd January, 2023.

List this batch of applications on 5th January, 2023.

In the meantime the writ petitioners are at liberty to take steps before the National Company Law Tribunal/National Company Law Appellate Tribunal.

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The erstwhile boards of the respondent nos. 18 and 27 will file separate affidavits by 3rd January, 2023 disclosing the assets of the respective companies before they were taken over by the Resolution Professionals.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

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