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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 04.08.2026***
Judgment pronounced on: 13.08.2026
Judgment uploaded on: 13.08.2026

\# **CNR No. DLHC010236272020**

\+ CO.APP. 11/2020, CM APPL. 14993/2021, CM APPL. 55543/2023, CM APPL. 68286/2025, CM APPL. 68289/2025 and CM APPL. 13172/2026

VINEET GOEL .....Appellant

Through: Mr. Animesh Sinha, Mr. Shubham Budhiraja, Ms. Ishita Pandey, Advs.

versus

A.N. BUILDWELL PRIVATE LTD & ORS. .....Respondents

Through: Mr. Vikrant Pachnanda, Mr. Mukul Katyal, Advs. for R-3.
Mr. Shivank Pratap Singh, Ms. Priya Singh, Mr. Samyak Jain, Advs. for SELFC.
Mr. Shlok Chandra, Mr Parikshit Singh Bhati, Ms Lolita Crasta, Advs. for Applicant in CM APPL. 68286/2025.
Ms. Ruchi Sindhwani, Ms. Megha Bharara, Adv. for OL.
Mr. Nidhi Raman, CGSC with Mr. Arnva Mittal, Adv. for RoC.
Mr. Arnav Kumar, Ms. Akanksha Singh, Ms. Preeti Pant, Advs. for Spire Woods Residents Welfare Association.

\# **CNR No. DLHC010275812020**

\+ CO.APP. 12/2020, CM APPL. 14995/2021, CM APPL. 13138/2026 and CM APPL. 13139/2026

VIJAY GUPTA .....Appellant

Through: Ms. Pragya Kumar, Adv.

versus

A N BUILDWELL PRIVATE LIMITED & ORS.
.....Respondents

Through: Mr. Vikrant Pachnanda, Mr. Mukul Katyal, Advs. for R-3.
Mr. Shlok Chandra, Mr Parikshit Singh Bhati, Ms Lolita Crasta, Advs. for Applicant in CM APPLs. 13138-39/2025.
Ms. Ruchi Sindhwani, Ms. Megha Bharara, Adv. for OL.
Mr. Nidhi Raman, CGSC with Mr. Arnva Mittal, Adv. for RoC.
Mr. Arnav Kumar, Ms. Akanksha Singh, Ms. Preeti Pant, Advs. for Spire Woods Residents Welfare Association.

\# **CNR No. DLHC010275772020**

\+ CO.APP. 13/2020, CM APPL. 14997/2021 and CM APPL. 68294/2025

SONU GARG .....Appellant

Through: Mr. Vijay Gupta, Mr. Pardeep Chauhan, Advs.

versus

A N BUILDWELL PRIVATE LIMITED & ORS.
.....Respondents

Through: Mr. Vikrant Pachnanda, Mr. Mukul Katyal, Advs. for R-3.
Mr. Shlok Chandra, Mr Parikshit Singh Bhati, Ms Lolita Crasta, Advs. for Applicant in CM APPL. 68294/2025.
Ms. Ruchi Sindhwani, Ms. Megha Bharara, Adv. for OL.
Mr. Nidhi Raman, CGSC with Mr. Arnva Mittal, Adv. for RoC.

CNR No. DLHC010118932021

\+ CO.APP. 4/2021 and CM APPL. 68290/2025

VIJAY SHANKAR PANDEY .....Appellant

Through: Mr. Lakshay Khanna, Adv.

versus

A N BUILDWELL PVT LTD & ORS. .....Respondents

Through: Mr. Vikrant Pachnanda, Mr. Mukul Katyal, Advs. for R-3.
Mr. Shlok Chandra, Mr Parikshit Singh Bhati, Ms Lolita Crasta, Advs. for Applicant in CM APPL. 68290/2025.
Ms. Ruchi Sindhwani, Ms. Megha Bharara, Adv. for OL.
Mr. Nidhi Raman, CGSC with Mr. Arnva Mittal, Adv. for RoC.
Mr. Arnav Kumar, Ms. Akanksha Singh, Ms. Preeti Pant, Advs. for Spire Woods Residents Welfare Association.

CNR No. DLHC010149802021

\+ CO.APP. 5/2021

VIJAY SHANKAR PANDEY .....Appellant

Through: Mr. Lakshay Khanna, Adv.

versus

M/S A N BUILDWELL PVT LTD & ORS. .....Respondents

Through: Mr. Vikrant Pachnanda, Mr. Mukul Katyal, Advs. for R-3.
Mr. Shlok Chandra, Mr Parikshit Singh Bhati, Ms Lolita Crasta, Advs. for R-4.
Ms. Ruchi Sindhwani, Ms. Megha Bharara, Adv. for OL.
Mr. Nidhi Raman, CGSC with Mr. Arnva Mittal, Adv. for RoC.
Mr. Arnav Kumar, Ms. Akanksha Singh, Ms. Preeti

Pant, Advs. for Spire Woods Residents Welfare Association.

\# **CNR No. DLHC010300742021**

\+ CO.APP. 7/2021, CM APPL. 33578/2021, CM APPL. 13140/2026 and CM APPL. 13141/2026

RENUKA KULKARNI .....Appellant

Through: Mr. Lakshay Khanna, Adv.

versus

A.N. BUILDWELL PVT. LTD. (THROUGH OFFICIAL LIQUIDATOR) & ORS. .....Respondents

Through: Mr. Vikrant Pachnanda, Mr. Mukul Katyal, Advs. for R-3.
Mr. Shlok Chandra, Mr Parikshit Singh Bhati, Ms Lolita Crasta, Advs. for Applicant in CM APPLs. 13140-41/2026.
Ms. Ruchi Sindhwani, Ms. Megha Bharara, Adv. for OL.
Mr. Nidhi Raman, CGSC with Mr. Arnva Mittal, Adv. for RoC.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE SHAIL JAIN

J U D G M E N T

ANIL KSHETARPAL, J.:

1. *Vide* this common Judgment, six (06) connected Company Appeals, namely, Company Appeal Nos.11/2020, 12/2020, 13/2020, 4/2021, 5/2021 and 7/2021, preferred under Section 483 of the Companies Act, 1956 [hereinafter referred to as 'Companies Act'], challenging the common Judgment dated 17.02.2020 passed by the learned Single Judge in Company Petition No.6/2019, whereby the Scheme of Compromise and Arrangement [hereinafter referred to as

'Revival Scheme'] under Sections 391 to 393 of the Companies Act came to be sanctioned, shall stand decided by this common judgment.

2. The principal question which arises for consideration is whether the learned Single Judge was justified in sanctioning the Revival Scheme, having regard to the objections raised by the Appellants, who are allottees/investors in the projects of Respondent No.1, A.N. Buildwell Private Limited [hereinafter referred to as 'the Company']. The Appellants principally contend that the Revival Scheme is neither fair nor equitable to the allottees, the interests of different classes of allottees have not been adequately protected, the Revival Scheme as sanctioned materially departs from the one placed before the stakeholders for approval, and the learned Single Judge failed to subject the Revival Scheme to the degree of judicial scrutiny contemplated under Sections 391 to 393 of the Companies Act.

3. Since all the Appeals arise out of the common Judgment dated 17.02.2020 and involve overlapping questions of fact and law, they were heard analogously and are being decided by this common Judgment. For the sake of convenience and to avoid repetition, Company Appeal No.11/2020 is being treated as the lead appeal. Accordingly, the factual matrix is being noticed principally from the pleadings in the said Appeal, while the distinct contentions and individual grievances raised in the remaining Appeals shall be dealt with at the appropriate stage.

FACTUAL MATRIX:

4. In order to comprehend the controversy involved in the present Appeals, the relevant facts, in brief, are required to be noticed.

5. The Company was engaged in the business of development of real estate projects in Gurugram, Haryana. Its projects comprised both commercial and residential developments, including the commercial project known as 'Spire Edge', consisting of different commercial blocks and office spaces, and the residential project known as 'Spire Woods'. In order to finance the development of the aforesaid projects, the Company invited bookings from members of the public by allotting commercial units, office spaces and residential units under separate Builder Buyer Agreements [hereinafter referred to as 'BBAs'].

6. The Appellants are amongst such allottees/investors who booked commercial and/or residential units in the aforesaid projects pursuant to the respective BBAs executed with the Company. It is their case that substantial amounts, and in several cases the entire sale consideration, stood paid to the Company in terms of the respective allotments.

7. According to the Appellants, the BBAs envisaged completion of the projects and delivery of possession within the stipulated timelines. In respect of the commercial units in the Spire Edge project, the Company had also assured returns @12% per annum on the amounts deposited till completion of the project. The BBAs further stipulated that in the event the project was not completed by the agreed date, the Company would be liable to pay compensation for delay at the rate of Rs.55/- per square foot per month, apart from the assured returns, besides other contractual obligations incorporated therein. The BBAs further provided that, in the event of default by the Company in making payments due to the allottees, interest @1% per

month would be payable on the defaulted amount.

8. It is the common case of the Appellants that despite receiving substantial consideration from the allottees, the Company failed to complete the projects within the stipulated timelines envisaged under the respective BBAs. The Appellants allege that possession was either not offered in accordance with the contractual stipulations or was offered without the requisite statutory approvals, including the completion/occupation certificate, resulting in disputes between the Company and the allottees. It is further their case that the Company failed to honour various contractual obligations under the BBAs.

9. In addition to the aforesaid common grievances, the Appellant in Company Appeal No.11/2020 has specifically pleaded that although the BBAs represented that the land on which the Spire Edge project was developed had been allotted by the Haryana State Industrial and Infrastructure Development Corporation *('HSIIDC')* on a freehold basis and that the units would be allotted on a perpetual lease basis, he was informed, at the stage of the offer of possession, that the lease deeds would be executed only for a period of twenty-nine (29) years at a time, renewable in accordance with the prevailing policy of HSIIDC. It is further alleged that despite repeated requests, the Company failed to furnish the requisite completion certificate. According to the said Appellant, upon issuance of the possession letter, the Company also discontinued payment of the assured returns and failed to discharge its contractual obligation of paying delay compensation and interest on the defaulted amounts, ultimately compelling him to initiate civil and criminal proceedings against the Company and its Directors.

10. Owing to mounting financial difficulties and the Company's alleged failure to discharge its financial and contractual obligations towards various stakeholders, including the allottees, several winding-up petitions came to be instituted before this Court. During the pendency of the winding-up proceedings, the Official Liquidator attached to this Court was appointed as the Provisional Liquidator of the Company. Thereafter, a proposal for revival of the Company by way of Revival Scheme was placed before the learned Single Judge. Pursuant to the orders passed by the learned Single Judge, meetings of the different classes of creditors, allottees and other stakeholders were convened for considering the proposed Revival Scheme.

11. Upon the meetings being conducted, the respective Chairpersons submitted their reports recording the voting pattern of the different classes of stakeholders. The proposed Revival Scheme, having secured the requisite statutory majority, was thereafter considered by the learned Single Judge. By the Impugned Judgment dated 17.02.2020, the learned Company Judge sanctioned the Revival Scheme, while overruling the objections preferred by certain allottees and objectors and issuing consequential directions for its implementation. According to the Appellants, the Revival Scheme as ultimately sanctioned materially differed from the Scheme which had been placed before the stakeholders for approval and failed to adequately safeguard the interests of certain categories of allottees.

12. In addition to the aforesaid common facts, the Appellant in Company Appeal No.11/2020 has specifically pleaded that the proposed Revival Scheme was founded on suppression of material facts and incorrect disclosures regarding the status of possession, the

rights of certain allottees, and the pendency of civil and criminal proceedings. It is further alleged that the Revival Scheme failed to recognise a separate category of allottees who had not accepted possession on account of the absence of the completion certificate and that several statements made in support of the Revival Scheme were factually incorrect.

13. Besides the common challenge to the sanction of the Revival Scheme, the present Appeals also raise certain distinct questions arising out of the individual facts and contractual rights of the respective Appellants. These include, *inter alia*, the legality of modifications carried out to the Revival Scheme after obtaining the approval of the stakeholders without convening fresh meetings, the validity of the classification of creditors and allottees into separate classes for the purposes of voting, the treatment accorded to different categories of allottees under the sanctioned Scheme, the effect of the Scheme upon the contractual rights flowing from the respective BBAs, and other issues arising from the peculiar facts and contractual arrangements forming the subject matter of the individual Appeals.

14. Having noticed the factual background leading to the sanction of the Revival Scheme and the institution of the present Appeals, this Court shall now proceed to examine the rival submissions advanced on behalf of the parties.

CONTENTIONS OF THE PARTIES:

15. Heard learned counsel for the parties at length and perused the record placed before the Court.

16. Learned counsel appearing on behalf of the Appellants have assailed the Impugned Judgment principally on the ground that the learned Single Judge proceeded to sanction the Revival Scheme merely upon being satisfied that the requisite statutory majority had voted in favour thereof, without adequately examining whether the Revival Scheme, in its substance and effect, was fair, reasonable and equitable to the different categories of allottees. It is submitted that the jurisdiction of the Company Court under Sections 391 to 393 of the Companies Act is not merely ministerial and the Court is required to independently satisfy itself that the Revival Scheme is not oppressive, unconscionable or prejudicial to the interests of the stakeholders who are bound by it.

17. It is further submitted that the Revival Scheme placed before the allottees for voting contained different options, including an option to vote "for, with modification". According to the Appellants, a substantial number of allottees had voted in favour of the Revival Scheme subject to specific modifications and conditions. Such conditional assent, it is submitted, could not have been treated as an unconditional approval of the Revival Scheme. The learned Single Judge, according to the Appellants, erred in treating the objections and modifications as having been considered and rejected without examining whether the Revival Scheme, as ultimately sanctioned, corresponded with the Revival Scheme which had actually received the requisite approval.

18. The Appellants have also questioned the manner in which the interests of different categories of allottees were dealt with under the Revival Scheme. In particular, the Appellants have pointed out that

the contractual rights flowing from the respective BBAs, including the assured returns, lease commitment charges, compensation for delay, interest on defaulted payments and the obligation to provide lawful and usable possession, could not have been diluted or altered merely by sanctioning a revival arrangement, unless the statutory requirements for such alteration were strictly complied with and the interests of the affected allottees were adequately protected.

19. Learned counsel representing the Appellants have further submitted that material facts concerning the status of the projects, the possession offered to the allottees, the statutory approvals and completion/occupation certificates, the status of the leasehold rights and the pending liabilities of the Company were either not placed before the learned Single Judge in their correct perspective or were not adequately examined while considering the Revival Scheme. It is submitted that the Revival Scheme was premised on representations regarding the feasibility and completion of the projects, whereas the subsequent developments demonstrate that substantial hurdles continued to remain in the implementation of the Scheme.

20. Insofar as the Spire Edge project is concerned, it has been submitted that although possession of certain units in Towers B, C and D had been offered and taken by a large number of allottees, disputes continued regarding the completion of the project, statutory approvals, lease documentation, payment of assured returns and other contractual dues. According to the Appellants, these matters were material to the determination of the rights of the allottees and should have been considered while assessing whether the Revival Scheme adequately protected their interests.

21. The Appellants have also relied upon the subsequent conduct of the parties to demonstrate that the concerns raised by them were not merely speculative. It is pointed out that, even after sanction of the Revival Scheme, considerable difficulties arose in obtaining statutory approvals, renewal of licences, change of status of the Company and handing over of possession of portions of the project. In relation to the Spire Woods project, the revival and renewal of the requisite licence itself remained subject to further proceedings and compliance with conditions imposed by the competent authorities. The Appellants submit that these developments reinforce their contention that the feasibility of the Scheme had not been subjected to adequate scrutiny at the stage of its sanction.

22. It is also submitted that the Revival Scheme contemplated completion of the projects within specified periods and was founded upon certain commitments by the propounders and the proposed developers. The subsequent record, however, discloses that the implementation of the Revival Scheme encountered substantial impediments and that some of the essential steps contemplated under the Revival Scheme were not undertaken within the stipulated time. The Appellants contend that the Court could not have sanctioned the Revival Scheme without satisfying itself, on the material then available, that the proposed mechanism was capable of protecting the investments and contractual rights of the allottees.

23. *Per contra*, learned counsel representing the Respondents have supported the Impugned Judgment and submitted that the Revival Scheme was approved by the requisite majority of the stakeholders and was consequently binding upon all concerned. It is submitted that

the Company was facing liquidation and that the Revival Scheme provided the only realistic mechanism for protecting the interests of the allottees and reviving the projects.

24. It is further submitted on behalf of the Respondents that the majority of the allottees had supported the Revival Scheme and that the Court should not substitute its own view for the commercial wisdom of the stakeholders. Reliance has also been placed upon the progress made after sanction of the Revival Scheme, including infusion of funds by the Propounders, execution of the Joint Development Agreement [hereinafter referred to as 'JDA'] in relation to the Spire Woods project, steps taken for renewal of the requisite licences and permissions and efforts made towards completion and restoration of the projects.

25. In relation to the objections concerning the voting process, it is submitted that the modifications accompanying the ballots were duly noticed and considered by the learned Single Judge and that the substance of the principal objection relating to the continuation of criminal proceedings had already been dealt with in the Impugned Judgment. It is therefore submitted that no prejudice can be said to have been caused to the Appellants on account of the manner in which the votes were considered.

26. The Respondents have also contended that the Appellants represent only a small minority of the allottees and that setting aside the Revival Scheme at this stage would seriously prejudice the large number of allottees who have supported the Revival Scheme and are awaiting completion of their respective projects. It is submitted that

the Court should have regard to the interests of the overwhelming majority of the allottees and should not permit a small number of dissenting allottees to frustrate the revival process.

27. No other submissions have been made by learned counsel representing the parties.

ANALYSIS AND FINDINGS:

28. This Court has given its thoughtful consideration to the rival submissions advanced by learned counsel representing the Appellants, the propounders of the Revival Scheme, the Company, the Official Liquidator and the other Respondents. This Court has also carefully perused the Revival Scheme, the reports of the Chairpersons of the meetings, the Modification Slip, the objections placed before the learned Single Judge, the Impugned Judgment dated 17.02.2020, the subsequent orders passed in the proceedings arising therefrom and the material placed before this Court during the pendency of the present Appeals.

29. At the outset, this Court deems it appropriate to delineate the scope of interference in an appeal against an order sanctioning a Scheme under Sections 391 to 393 of the Companies Act. There can be no quarrel with the proposition that the Court does not sit in appeal over the commercial wisdom of the creditors or members who, upon being duly informed and acting *bona fide*, approve a scheme by the requisite statutory majority. The Court is not required to determine whether a different scheme would have been commercially more advantageous or whether the terms of the scheme could have been improved.

30. The aforesaid limitation, however, operates only after the Court has satisfied itself that the statutory requirements governing sanction of the scheme stand fulfilled. The commercial wisdom of the majority cannot displace the statutory duty of the Court to ascertain whether the scheme placed before the Court is the scheme which was approved by the requisite majority, whether the material placed before the voters was sufficient to enable an informed decision, whether the class acted *bona fide* and fairly, whether the scheme is just, fair and reasonable to the class as a whole, whether it is contrary to law or public policy, and, in the case of a company under liquidation, whether the arrangement genuinely provides for revival and protection of the interests of the stakeholders rather than merely postponing or circumventing the consequences of liquidation.

31. These principles are not matters of appellate policy but constitute the very parameters within which the jurisdiction under Sections 391 to 393 of the Companies Act is required to be exercised. The decision of the Supreme Court in ***Meghal Homes (P) Ltd. v. Shree Niwas Girni K.K. Samiti & Ors.***[1], relied upon in the Impugned Judgment itself, recognises that the Court must examine whether the statutory procedure has been complied with, whether the requisite majority has approved the scheme, whether the members or creditors had the relevant material to arrive at an informed decision, whether the decision is just and fair to the class as a whole, whether the scheme is contrary to law or public policy, whether the stakeholders acted *bona fide* and whether the scheme as a whole is just, fair and reasonable. The same decision also makes it clear that, once these

[1] (2007) 7 SCC 753

requirements are satisfied, the Court does not sit in appeal over the commercial wisdom of the majority.

32. Thus, the question before us is not whether the Revival Scheme was commercially preferable to liquidation, nor whether the majority of stakeholders could have arrived at a different commercial arrangement. The question is narrower and anterior: whether the statutory majority contemplated by Section 391(2) of the Companies Act had, in fact, agreed to the Revival Scheme which came to be sanctioned by the learned Single Judge, and whether the Court had before it sufficient material to record the requisite satisfaction for sanction thereof.

33. In the considered view of this Court, this distinction assumes decisive significance in the present case.

Re: Votes cast "For, with Modification"

34. The principal difficulty arises from the manner in which the votes cast by the allottees of Blocks B, C and D of the Spire Edge Project have been treated.

35. The Chairman's Report records that, out of 384 valid votes, 22 votes were cast in favour of the Revival Scheme without modification, 293 votes were cast in favour of the Revival Scheme with modification, 19 votes were cast against without modification and 50 votes were cast against with modification. Thus, while 315 votes were categorised as being "for" the Revival Scheme, the overwhelming majority, namely 293 votes, were expressly accompanied by modifications.

36. The learned Single Judge noticed the aforesaid voting pattern and recorded that 82% of the valid votes had been cast, by the investors present and voting, in favour of the Revival Scheme, resulting in approval by more than 75% of the creditors present and voting. The learned Single Judge thereafter proceeded on the basis that the majority had approved the Scheme “with modification” and declined to interfere, *inter alia*, on the ground that the Court could not sit in appeal over the commercial wisdom of the majority.

37. However, this Court is of the considered opinion that the aforesaid approach overlooks the anterior question arising from the very nature of the votes cast.

38. Section 391(2) of the Companies Act requires a majority in number representing three-fourths in value of the creditors, or class of creditors, present and voting, to agree to the compromise or arrangement. The statutory requirement is, therefore, not satisfied merely because a numerical majority has been categorised as having voted “for”. What is required to be ascertained is whether the requisite majority agreed to the arrangement which the Court was ultimately called upon to sanction.

39. A vote cast “for” the Scheme simpliciter expresses assent to the Scheme as placed before the meeting. A vote cast “for, with modification” is, by its very description, conditional upon the modification accompanying the vote. The two cannot be treated as identical without first examining the nature and effect of the condition attached to the latter vote.

40. This distinction assumes significance where the modifications are substantive and concern the contractual and financial rights of the allottees under the BBAs, including assured returns, lease commitment charges and other obligations relating to the projects. The modifications, therefore, could not be treated as merely clerical or inconsequential matters of form.

41. The distinction is therefore not one of form. The modifications went to the substantive rights and obligations of the allottees. If the modifications were accepted, the arrangement assented to by such voters would be one arrangement. If they were rejected, the arrangement would be materially different.

42. Once this position is appreciated, the conditional votes could not have been aggregated with the unconditional votes and treated as an unqualified approval of the Revival Scheme. The learned Single Judge was required to examine the precise terms of the modifications and determine their legal effect before concluding that the requisite statutory majority had approved the Scheme ultimately sanctioned.

43. This Court is conscious that the Chairman's Report is an important document and that the voting result recorded therein ordinarily deserves due weight. The present enquiry is not directed towards questioning the manner in which the meeting was conducted or substituting this Court's assessment for that of the Chairman. The issue is the legal consequence to be attached to the votes recorded therein while exercising jurisdiction under Section 391 of the Companies Act.

44. If the 293 votes were conditional upon acceptance of the modifications and those modifications were ultimately not incorporated into the Revival Scheme, such votes could not, without further examination, be treated as unconditional assent to the Scheme in its original form. At the very least, the Court was required to determine whether, notwithstanding the modifications, those votes could lawfully constitute assent to the Scheme ultimately sanctioned.

45. No such exercise is discernible from the Impugned Judgment. The modifications appear to have been considered substantially as objections seeking better terms, while the aggregate votes in favour were treated as constituting the requisite majority. In the considered view of this Court, this conflated two distinct stages of the statutory enquiry: first, whether the requisite majority had agreed to the arrangement; and second, whether the Court should sanction the arrangement so approved.

46. Commercial wisdom cannot be invoked to overcome uncertainty as to whether the statutory majority had, in fact, assented to the arrangement being sanctioned. It becomes relevant only after the existence of the requisite statutory assent is established.

47. This Court is, therefore, unable to sustain the finding that the Revival Scheme had obtained the requisite statutory majority merely by aggregating the votes cast "without modification" with those cast "with modification", without first determining the legal effect of the conditions attached to the latter category.

Re: Nature of the Modifications and Contractual Rights

48. The Respondents have contended that the modifications sought by the allottees were merely an attempt to secure better terms and that, once the statutory majority had approved the Revival Scheme, individual creditors could not insist upon their preferred terms. There can be no quarrel with the proposition in principle. However, the question in the present case is anterior: whether the votes cast "for, with modification" could be treated as assent to the Revival Scheme in the form ultimately sanctioned.

49. The nature of the modifications assumes significance in this regard. Pursuant to the order dated 11.01.2019, the allottees exercising the option of voting "for, with modifications" were required to attach the proposed modifications to their respective ballot papers. The modifications thus formed part of the manner in which such votes were cast.

50. The language of the Modification Slip makes the nature of the assent clear. The voter first recorded a vote "AGAINST" the Scheme "as currently Proposed" and thereafter voted "FOR" the Scheme subject to deletion of specified clauses and incorporation of further modifications. The assent was, therefore, expressly conditional. The clauses identified in the Modification Slip concerned, *inter alia*, financial obligations, adjustment of assured returns, payments contemplated under the Scheme, the position of Blocks B, C and D and past-period litigation. These were not matters merely incidental or clerical in nature.

50.1 The Modification Slip has been reproduced under for ready reference:

IN THE HIGH COURT OF DELHI AT NEW DELHI
(ORIGINAL COMPANY JURISDICTION)
COMPANY APPLICATION NO. 332 OF 2018
COMPANY APPLICATION (MAIN) NO. 115 OF 2016
IN CO.PET 704/2014

MODIFICATION SLIP

COURT CONVENED MEETING OF ALLOTTEES OF BLOCK – BCD OF SPIREEDGE PROJECT OF THE COMPANY A.N. BUILDWELL PVT. LTD. (In Liquidation)

I/We hereby record my/our presence at the meeting of Allottees of Block – B, C & D of the project Spire Edge of the Company A. N. Buildwell Pvt. Ltd. (in liquidation) being held as per the Directions passed by the Hon'ble Delhi High Court – Division Bench in Co. Appl. 26/2018 on January 14, 2018 at 12:00 PM at CP-4, Sector – 8, IMT Manesar, Tehsil and District Gurugram (Haryana). The Hon'ble Division Bench had modified the order of the Single Bench – Delhi High Court passed in the matter of Co.App.(M) 115/2016 and Co.Appl.(M) 332/2018 in Co.P.704/2014 acknowledging the Allottees of Block B, C & D of the Project – Spire Edge as Creditors.

My vote is 'AGAINST' the Scheme as currently Proposed;

AND

My vote is 'FOR' the Scheme subject to the deletion of clause # in Part B- 6.1.2 (WTC Charges), 6.1.3 (AR adjustment with proportionate car parking space), 6.4.1 (5Cr over 36 months), 6.4.2, 6.6 (BCD meeting as per DB order dated 11/12/2018), 8.7 (past period litigations) from the scheme and following modifications. Points 1 to 4, specifically required in present scheme of Revival as given below:

1. The Revival Scheme should be comprehensive and ensure the completion and hand over of both the Projects – i.e. 1) Commercial and IT Project – Spire Edge at Manesar, Gurgaon and 2) Residential Project Spire Woods, 103 Gurugram, simultaneously:
    a. All conditions of BBA shall prevail, including financial commitments to customers of Spire Edge need to be fulfilled as outlined below in Point 2.
    b. The rights of all class of creditor shall be superior to and take precedence to those of the Promoters / Share-holders or their associated companies.
    c. The Revival Scheme shall not sanction any illegal modification of equity and debt instruments like debentures etc, giving rise to any fresh claims by Pro-pounders, Promoters or Shareholders.

2. The Revival Scheme shall be amended to include the following aspects of the BBA specific to customers of Spire Edge, Block BCD, as had been agreed to post the court directed meetings at the office of the OL in October 2017 and contained in the OL's report:
    a. **Payment of 14 months of unpaid assured returns / commitment charges.**
        i. The Pro-pounders and AN Buildwell Pvt. Ltd. had offered possession of the incomplete Block B, C & D of the project Spire Edge to the Allottees on 30/10/2011 and the Assured Returns had also been stopped in the pretext of "Possession has been offered", while the Occupation Certificate was received only in December, 2012, i.e. 14 months.
        ii. The deceit caused delay due to which building could not be put on lease.

b. **Refund of illegal charges paid or adjusted against assured returns.**
   i. The Pro-pounders and AN Buildwell Pvt. Ltd. have also collected charges in the name of Technology Upgradation, WTC Charges, escalation of land etc., which were termed illegal vide order of Hon'ble Delhi High Court dated 08/03/2016 in the Co. Pet. 704/2014, Amarpreet Singh Oberoi Vs. AN Buildwell & Others.
   ii. The said illegal charges collected from the Allottees of Block – B, C & D shall be refunded to the Allottees of Block – B, C & D.
   iii. Only charges specifically mentioned in the BBA shall stand applicable.

c. **Rs. 20 Crore towards Completion, repair and restoration of Block BCD.**
   i. The Pro-pounders and AN Buildwell shall transfer a total sum of Rs. 20.0 Crore towards the completion and restoration of Block BCD in a dedicated account. The funds shall include an up-front payment of Rs. 8.0 Crore and then 2.0 Crore per month for the next 6 months.
   ii. The Funds shall be managed by SELFC, a company established to facilitate leasing and maintain Spire Edge.
   iii. The Pro-pounders, Promoters, Shareholders and AN Buildwell Pvt. Ltd. shall relinquish any shares held in SELFC, either directly or indirectly, and SELFC shall consist entirely of customers, both registered and unregistered.
   iv. The Pro-pounders and AN Buildwell Pvt. Ltd. shall ensure that any common services with other blocks are duly completed and any proportional share of costs are paid by them as a part of the Revival Scheme.

d. **Indemnify customers of Block BCD from any liability, past or future, towards any statutory or regulatory dues or arising out of any reason whatsoever.**
   i. The Pro-pounders and AN Buildwell Pvt. Ltd shall be solely responsible for all Statutory / Government Dues, past and future.
   ii. The Pro-pounders and AN Buildwell Pvt. Ltd. shall not be entitled to call for any further demand on any account including in the name of maintenance, escalation in the cost, any additional Internal or External Development Charges or any additional government dues etc.

3. The Revival Scheme shall be under the supervision of the Hon'ble High Court until successful completion of both projects and settlement of creditor dues.
   a. The Chairman of the Board shall be a retired High Court Judge.
   b. Four elected Customers Representatives (2 Spire Edge and 1 Spire Woods) shall be mandatory and allowed as observers at all meetings of AN Buildwell.

4. All ongoing Criminal Matters filed by Customers shall continue till the successful completion of both Projects and honoring of all commitments made.
   a. The Pro-pounders shall not make any filing based on this Revival Scheme without the specific approval of SELFC Board and Customer Associations in writing.
   b. However, the customers will not press the same in the interim period, and have no objection to an interim stay on ongoing investigations and cases.

Name of Original Allottee	
Name of the Proxy / Authorised Representative	
Registration No. / File No.	

Signature of the Allottee/Proxy /Authorised Representative

51. The modifications also cannot be viewed entirely divorced from the contractual rights asserted by the allottees under their respective

BBAs, including claims relating to assured returns, lease commitment charges, delay compensation and other financial obligations. This Court is not, in these Appeals, adjudicating upon the ultimate entitlement of any individual allottee to such amounts. Their relevance is confined to the question whether the Revival Scheme proposed to affect rights which formed part of the contractual relationship between the Company and the allottees and whether the assent relied upon in support of the Scheme was an informed and unconditional assent.

52. The learned Single Judge was, therefore, required to examine the precise modifications attached to the votes and determine their legal effect. If the modifications were not accepted and were not incorporated into the Revival Scheme, the Court was required to consider whether votes expressly made subject to those modifications could nevertheless constitute assent to the Scheme in the form ultimately sanctioned. Treating the modifications merely as objections seeking better terms did not answer this question.

53. This Court is not holding that contractual rights of allottees cannot be compromised by a Scheme sanctioned under Sections 391 to 393 of the Companies Act. Nor is this Court adjudicating upon the merits of the claims raised by the allottees. The limited question is whether, where votes were expressly made subject to substantive modifications affecting such rights, those votes could be counted as unconditional assent to the Scheme without first determining the legal effect of the conditions attached to them.

54. In the considered view of this Court, the aforesaid enquiry was necessary before the votes could be relied upon for establishing the

requisite statutory majority. The failure to undertake that enquiry assumes significance in the present case, particularly when the modifications were treated in the Impugned Judgment substantially as objections seeking better terms rather than as conditions attached to the votes themselves.

55. It is also material that the objections raised by the individual allottees were not examined by the learned Single Judge in the manner required. The Impugned Judgment principally considers the objections raised by Spire Edge Maintenance Lease and Facilitation Ltd. *('SELFC')*, while the substantive objections of the individual allottees, including those concerning their contractual rights and the effect of the proposed Revival Scheme thereon, do not appear to have been independently examined. Their objections could not have been rejected merely by treating them as an attempt to secure better terms under the Scheme. The Court was required to consider the nature of those objections and determine whether they raised any issue bearing upon the validity, fairness or statutory approval of the Revival Scheme.

56. This omission assumes significance in the present case because the modifications attached to the ballot papers were not unrelated or collateral demands. They concerned matters capable of materially affecting the rights and obligations of the allottees under the BBAs. The learned Single Judge was, therefore, required to examine those objections and the modifications sought before treating the votes cast subject to such modifications as assent to the Revival Scheme as sanctioned. The absence of such an examination cannot be treated as a mere matter of commercial judgment.

Re: Informed Decision and Material Disclosure

57. Section 393 of the Companies Act requires that the creditors or members called upon to consider a Scheme be furnished with the material necessary to enable them to take an informed decision. The purpose of this requirement is to ensure that the statutory majority is arrived at upon a proper understanding of the Scheme and its consequences.

58. In the present case, the Revival Scheme concerned two distinct projects, namely, Spire Edge and Spire Woods, involving different categories of allottees, different stages of construction and different contractual arrangements. The Court was, therefore, required to examine whether the material placed before the respective classes was sufficient to enable them to understand the manner in which the Scheme proposed to deal with their respective interests and obligations.

59. This enquiry assumes particular significance where the Revival Scheme seeks to govern existing rights and obligations of allottees under their respective BBAs. The fact that the Scheme was supported by a substantial majority could not dispense with the requirement that such majority should have been furnished the material necessary to make an informed decision.

60. The Impugned Judgment, however, does not disclose any substantive examination of whether the material furnished to the allottees was sufficient for this purpose. In the absence of such examination, the Court could not have proceeded solely on the basis

of the numerical voting result to conclude that the statutory requirement for sanction of the Revival Scheme stood satisfied.

Re: Fairness to the Class as a Whole

61. The Respondents have placed considerable reliance upon the fact that 82% of the valid votes, present and voting, in Blocks B, C and D were categorised as being in favour of the Revival Scheme and that the overwhelming majority of the allottees of Spire Woods had also voted in favour. In relation to Spire Woods, 358 out of 364 valid votes were recorded in favour of the Scheme, of which 292 were "with modification".

62. This Court has no doubt that a substantial majority of the stakeholders supported the revival of the Company and its projects. Such support is undoubtedly relevant, however, the relevant test is whether the Revival Scheme is just, fair and reasonable to the class as a whole. This requires the Court to consider whether the Scheme fairly addresses the interests of the members of the class and the effect which the Scheme proposes to have upon their existing rights. Numerical superiority, by itself, cannot dispense with such an enquiry.

63. At the same time, the mere fact that some stakeholders oppose the Revival Scheme cannot, by itself, justify its rejection. Where the statutory requirements have been complied with, the requisite majority has approved the Scheme and the Scheme is otherwise just, fair and reasonable, the Court cannot interfere merely because some stakeholders may consider an alternative arrangement more beneficial.

64. In the present case, however, the enquiry into fairness cannot be divorced from the manner in which the approval itself was recorded. The substantial number of votes cast with modifications, coupled with the objections raised by the allottees, required the Court to ascertain whether the Scheme, in the form sanctioned, fairly represented the arrangement to which the class had assented. That enquiry was material to the exercise of jurisdiction under Sections 391 to 393 of the Companies Act.

Re: Commercial Wisdom

65. This Court may now examine the principal submission advanced on behalf of the Respondents that the Revival Scheme should not be interfered with, as doing so would amount to an impermissible interference with the commercial wisdom of the majority.

66. There can be no dispute with the proposition. Indeed, the same principle has been recognised by the Supreme Court in ***Meghal Homes*** *(supra)* and by the learned Single Judge in the Impugned Judgment.

67. However, the proposition has no application where the Court is called upon to determine whether the statutory requirements preceding the exercise of such commercial wisdom have been satisfied. The Court is not required to choose between two commercially viable schemes. It is required to determine whether the scheme placed before it was validly approved and whether the process leading to sanction satisfied the statutory safeguards.

68. In the present case, the interference is not founded upon any disagreement with the commercial decision to revive the Company or the terms of the Revival Scheme. It arises from the failure to determine whether the votes relied upon as constituting the requisite majority amounted, in law, to assent to the Revival Scheme in the form ultimately sanctioned. That enquiry falls within the statutory jurisdiction of the Court and does not constitute an interference with commercial wisdom.

Other Grounds Urged:

69. The Appellants have also questioned the feasibility of the proposed revival of the Spire Woods Project, including the sufficiency and certainty of the proposed investment of Rs.20 crores by the new developer, as well as the status of approvals and infrastructure concerning the Spire Edge Project. This Court does not propose to undertake any independent assessment of the commercial sufficiency of the proposed investment or the technical feasibility of the projects.

70. The relevance of these objections is confined to whether the Revival Scheme, particularly when challenged on specific grounds by the stakeholders, was sufficiently definite and capable of implementation to constitute a genuine arrangement for revival. The subsequent material placed before this Court, including the steps required for renewal of licences and other statutory approvals, does not by itself establish that the Scheme was incapable of implementation on the date of sanction, but does indicate that the concerns regarding its feasibility were not wholly speculative.

71. The Respondents have also relied upon the steps taken after sanction of the Revival Scheme, including infusion of funds, appointment of consultants and contractors, supervision by the Court Appointed Commissioner and efforts towards obtaining requisite permissions and renewals. Such subsequent developments are relevant circumstances, but cannot retrospectively validate an order of sanction if the statutory requirements were not satisfied when the order was passed. This Court, therefore, does not interfere on account of any subsequent difficulty in implementation or delay in revival. The subsequent developments cannot, however, cure any defect in the statutory process preceding sanction.

72. The Appellants had further objected to clauses of the Revival Scheme which contemplated, *inter alia*, restriction upon proceedings by statutory authorities and stay or vacation of pending civil and criminal proceedings. The learned Single Judge, relying upon ***J.I.K. Industries Ltd. & Ors. v. Amarlala V. Jumani & Anr.***[2], and ***Krishna Texport Industries Ltd. v. DCM Ltd.***[3] had already declined to approve the portions which purported to interfere with criminal proceedings. This Court finds no occasion to differ from that approach and, accordingly, does not base its conclusion upon these clauses.

73. Considerable submissions have also been advanced regarding the alleged financial irregularities, siphoning of funds and conduct of persons associated with the erstwhile management, as well as the alleged conduct of some of the Appellants. This Court does not consider it necessary to return any finding on such allegations, which

[2] (2012) 3 SCC 255
[3] (2008) 104 DRJ 101 (DB)

remain matters for the competent forums. The learned Single Judge had, in any event, taken supervisory measures by appointing a Court Appointed Commissioner and directing maintenance of funds in an escrow account. Such safeguards may regulate implementation, but cannot cure any defect in the statutory process by which the Revival Scheme was sanctioned.

74. The Respondents have urged that the Appellants constitute only a small group of allottees and that their objections were intended to frustrate the revival process. The number of persons raising objections, however, cannot determine the validity of the order of sanction. Likewise, the mere fact that an allottee seeks enforcement of contractual rights having financial implications cannot, without more, establish *mala fides*. These considerations may bear upon individual claims, but cannot validate a Scheme if the statutory requirements governing its sanction have not been duly satisfied.

75. This Court is also conscious that setting aside the Revival Scheme may cause prejudice to the allottees who supported it and have been awaiting completion of the projects. That consideration cannot, however, substitute for compliance with the statutory requirements. This Court is not expressing any view that revival is preferable or otherwise to liquidation, nor is it holding that the Company or its projects cannot be revived. The interests of the stakeholders who supported revival would equally require that any arrangement ultimately binding upon them is legally valid and sanctioned in accordance with law.

76. In view of the aforesaid, the interference in the present Appeals does not proceed upon any assessment of the commercial merits or feasibility of the Revival Scheme, nor upon the subsequent difficulties in its implementation, the conduct of the parties, or the number of stakeholders supporting or opposing it. The interference arises from the foundational question already noticed hereinabove, namely, whether the Scheme in the form sanctioned had obtained the requisite statutory approval and whether the objections and material placed before the learned Single Judge were adequately examined before such sanction was granted.

CONCLUSION:

77. On an overall consideration of the matter, this Court is satisfied that the Impugned Judgment dated 17.02.2020 cannot be sustained and is liable to be set aside.

78. The Appeals are, accordingly, allowed and the Impugned Judgment dated 17.02.2020 sanctioning the Revival Scheme is set aside. The matter is remanded to the learned Single Judge for fresh consideration of the Revival Scheme and the objections thereto, in accordance with law.

79. The learned Single Judge shall, while considering the matter afresh, examine the legal effect of the votes cast "for, with modification", the modifications attached thereto, the objections raised by the individual allottees and other stakeholders, and such other issues as may arise for consideration in accordance with Sections 391 to 393 of the Companies Act. If any fresh Scheme or modified arrangement is proposed, the same shall be dealt with in accordance

with the statutory procedure, including convening of meetings, wherever required in law, and furnishing of the material necessary to enable the concerned stakeholders to take an informed decision.

80. It is clarified that this Court has not adjudicated upon the individual claims of any allottee for refund, assured returns, lease commitment charges, penalty, interest, compensation or any other amount under the respective BBAs. All such claims, if otherwise maintainable, shall remain open to be pursued before the forum competent to adjudicate the same.

81. Nothing contained in this Judgment shall affect any criminal proceedings, investigation or proceedings before statutory authorities, which shall continue to be governed by law and by the orders passed by the competent forum.

82. The present batch of Appeals, along with pending applications, shall stand disposed of.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

AUGUST 13, 2026
s.godara/shah