

**NATIONAL COMPANY LAW TRIBUNAL,**  
**MUMBAI BENCH COURT III**

**Item No. 01**

I.A. 647/2022

In

C.P.(IB)- 2714(MB)/2018

CORAM:

SH. HARIHARAN NEELAKANTA IYER  
Member (Technical)

Ms. LAKSHMI GURUNG  
Member (Judicial)

ORDER SHEET OF THE HEARING ON **22.06.2026**

(HEARING THROUGH: HYBRID MODE)

NAME OF THE PARTIES: Dipco Pvt Ltd

V/s.

Ariisto Developers Pvt Ltd.

**Appearance**

For Applicant: None appeared

For Respondent: None appeared

**SECTION 7 OF THE IBC, 2016**

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**ORDER**

**I.A. 647/2022 [Sec.60(5)]**

The above Interlocutory Application is listed for pronouncement of order. The same is pronounced in the open court, vide a separate order.

Sd/-

HARIHARAN NEELAKANTA IYER  
Member (Technical)

---Shripad---

Sd/-

LAKSHMI GURUNG  
Member (Judicial)

MUMBAI BENCH COURT III

**I.A. 647/2022**

**In**

**C.P. No. (IB) 2714/MB/C-III/2018**

*Under Section 60(5) of the Insolvency and  
Bankruptcy Code, 2016*

**1. Gregory Cardoza**

B-604, Udyan Building 3, Behind Ashok  
Nagar, Off Military Road, Marol, Andheri  
(E), Mumbai – 400072

**2. Shaila Cardoza**

B-604, Udyan Building 3, Behind Ashok  
Nagar, Off Military Road, Marol, Andheri  
(E), Mumbai – 400072

**... Applicants**

**Vs.**

**1. Housing Development Finance  
Corporation Limited**

*Having office at:*

Bank House, Dr. Annie Besant Rd, Shiv  
Sagar Estate, Worli, Mumbai - 400018

**2. Prestige Estates Projects Ltd.**

*Having office at:*

VSNL Colony B Wing, 1001C, G Block,  
Bandra Kurla Complex, Mumbai - 400051

**3. Aristo Developers Pvt. Ltd.**

***Through Mr. Jayesh Sanghrajka,  
Resolution Professional***

*Having office at:*

405-407, Hind Rajasthan Building, Dadar,  
Mumbai - 400014

*In the matter of*

**Dipco Private Limited**

*... Financial Creditor*

**Vs**

**Ariisto Developers Private Limited**

... Corporate Debtor

**Order pronounced on: 22.06.2026**

**Coram:**

Ms. Lakshmi Gurung, Member (Judicial)

Sh. Hariharan Neelakanta Iyer, Member (Technical)

**Appearances:**

*For the Applicant* : Adv. Y. R Mishra, Adv. Nadeem Shama a/w. Adv. Siddharth Seshadri, Adv. Hrishikesh Nadkarni  
i/b PAN India Legal Services LLP

*For Respondent 1* : Adv. Vidhi Sharma i/b Indus Law

*For Respondent 2* : Adv. Viraj Parikh a/w Adv. Sayali Diwadkar,  
Adv. Mustafa Nulwala i/b Trilegal

**Per: Coram**

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1. The present Interlocutory Application is filed by Gregory Cardoza and Shaila Cardoza (**Homebuyers/Applicants**) seeking following reliefs:
  - a. Clarify its order dated 23.03.2021 in respect to the additional interest, incidental charges and penalties levied upon the homebuyers including the Applicants by Respondent No. 1;
  - b. Direct Respondent No. 1 to reimburse the extra/additional cost levied upon the homebuyers till the period of 13 November, 2019 and direct them to stop levying additional/extra interest upon the homebuyers;
  - c. Cost of this Interim Application;
  - d. Any other order as this Tribunal may deem fit in the facts and circumstances of this case.

2. **Based on the averments, the following facts emerge:**
- 2.1 The Applicants are joint homebuyers who were allotted a flat vide an agreement for sale dated 16.07.2015, in Siesta project being developed by M/s Ariisto Developers Private Limited (**Corporate Debtor**) on land under C.T.S. No. 19/6 (Part), situated at Village Mulund, Taluka Kurla, District Mumbai Suburban.
- 2.2 The Corporate Debtor sent an offer letter dated 21.07.2015 to subsidise interest till 31.07.2017 on the loans availed by the Applicants from the lender i.e. Housing Development Finance Corporation Limited (**HDFC/Respondent 2**). The said offer letter was placed on record by HDFC in its Affidavit dated 11.02.2025. The offer letter is quoted below:

*“We thank you for booking a flat in our Project ‘SIESTA’ at Ariisto Heaven. It gives us great pleasure in informing you that we are willing to subsidise the entire Pre EMI interest on the home loan sanctioned to you, from the date of disbursement till 31/07/2017.*

*We would also like to inform you that, the said interest subsidy would be paid by us to HDFC directly. You may approach HDFC for loan requesting it to consider your loan application taking into account our said offer.*

*Kindly note that the offer of subsidising interest is subject to HDFC sanctioning the loan to you and that you are found eligible for the loan disbursement by HDFC failing which our above offer shall stand cancelled automatically without any notice or reference to you.*

*It is further clarified and understood that the offer of subsidising interest on the housing loan shall not be construed by you that HDFC will sanction the loan to you.*

*It is clarified that HDFC may in its sole discretion increase the rate of interest suitably and thenceforth the rate of interest increased as aforesaid shall be applicable to the said loan. It is further clarified and understood that in the event of the cancellation/termination of the allotment of the flat either by you/us for whatever reason before taking possession of the flat by you, you shall not have any claim or right over the flat and we shall be entitled to make payments/make appropriations from the entire amount received by us from you/HDFC without any reference/notice or prior approval from you:*

- 1. Refund to HDFC the entire outstanding principal amount of the loan granted by HDFC and received by us on your account along with any*

*other dues payable by you to HDFC in terms of the loan agreement. Any statement issued by HDFC regarding outstanding principal amount and/or other dues due to HDFC shall be binding upon you and us.*

2. *From the balance, if any forfeit as cancellation charge, an amount not exceeding 5% of the total purchase price in respect of the flat as well as the component of interest subsidy deducted by HDFC from the refund made by HDFC to us in connection with the upfront interest subsidy made by us to HDFC.*

*We are addressing this letter in triplicate to you. You may forward one copy to HDFC along with your loan application form and return another copy to us duly confirmed by you.*

*Thanking you once again.*

*Yours sincerely,*

*For ARIISTO DEVELOPERS*

- 2.3 The Applicants approached HDFC to avail a home loan and accordingly, a Home Loan Agreement dated 29.07.2015 was executed between HDFC and the Applicants. The said agreement is annexed to the reply affidavit of HDFC.
- 2.4 On the same date i.e. 29.07.2015, a Tripartite Agreement was also entered into between the Home buyers (as Borrowers), the Corporate Debtor (as Developer) and HDFC which provides for a subvention scheme. As there was no Tripartite Agreement annexed to the application or the replies, a clarification was sought by this Tribunal vide order dated 20.01.2025 and accordingly, HDFC has placed on record the said Tripartite Agreement dated 29.07.2015 by way of an affidavit dated 11.02.2025.
- 2.5 Under the Tripartite agreement, the Applicants/homebuyers were required to pay only an initial contribution of 5% of the total consideration and the subsequent payments were to be made by HDFC directly to the Corporate Debtor. Accordingly, HDFC disbursed an amount of Rs. 1,69,37,463 to the Corporate Debtor to be repaid in 120 installments.
- 2.6 As per the offer letter dated 21.07.2015, the Corporate Debtor had paid Rs. 30,39,540/- towards the Applicant's pre-EMI loan dues from the date of the agreement i.e. 29.07.2015 till 31.07.2017.

- 2.7 Before the completion of the project, the Corporate Debtor was admitted into Corporate Insolvency Resolution Process (**CIRP**) on 20.11.2018.
- 2.8 In the CoC meeting held on 13.11.2019, the resolution plan submitted by M/s Prestige Estates Projects Limited (**Successful Resolution Applicant/SRA**) was approved by the CoC by 90.68% of voting.
- 2.9 In the resolution plan, a provision of Rs. 20.71 crores was made towards subvention interest of Siesta Homebuyers and other contingencies. Subsequently, the SRA, in response to the concerns raised by the subvention homebuyers, vide letter dated 12.10.2020 agreed to give the discount of Rs. 1500 per sq. ft. and also proposed to pay the interest upto 13.11.2019 i.e. the date of approval of resolution plan by CoC and that future liability of the subvention interest shall be paid by the subvention homebuyers.
- 2.10 The Resolution Plan was approved by the Adjudicating Authority vide order dated 23.03.2021 in Miscellaneous Application (MA) No. 3714/2019 (**Plan Approval Order**). The Plan order also recorded the undertaking of the SRA that the SRA was to pay the interest upto 13.11.2019 and the future subvention interest was to be paid by the subvention homebuyers.
- 2.11 HDFC is a secured financial creditor of the Corporate Debtor with a voting share of 18.86%. After the approval of the resolution plan by the Adjudicating Authority, HDFC sent an email dated 29.07.2021 asking the applicants to make the balance payment. The said email is accompanied by a detailed statement of account. The statement shows that the SRA has made a payment of Rs. 22,93,032/- on 30.06.2021 via RTGS towards pre-EMI. The statement also shows that an additional interest of Rs. 13,79,433 and incidental charges of Rs. 33,328 have been levied upon the Applicants. The summary of the additional interest and incidental charges levied in the statement is produced below:

Date	PMIs Receivable	PMIs Received	Month wise o/s PMIs	Months o/s	X	Additional Interest receivable	Additional interest received	Monthwise O/s Additional Interest	Incidental charges receivable	Incidental charges received	Monthwise O/s Incidental charges
15-Aug-17		131573			X						
xxx	xxx	xxx	xxx	xxx	X						
31-Jan-18	131573		-46672	-0.35	X				100		100
xxx	xxx	xxx	xxx	xxx	X				xxx		xxx
31-Mar-18	131573		131573	1.00	X	1974		1974	146		346
xxx	xxx	xxx	xxx	xxx	X	xxx		xxx	xxx		xxx
30-Jun-21		2293032			X						
30-Jun-21	130180		2619723	20.12	X	39296		1379433	9820		32828
31-Jul-21	130180		2749903	21.12	X			1379433	500		33328
					X						
<b>Total</b>	<b>6501377</b>	<b>3751474</b>	<b>2749903</b>		<b>X</b>	<b>1379433</b>	<b>0</b>	<b>1379433</b>	<b>33328</b>	<b>0</b>	<b>33328</b>

<b>Total Outstanding as of 31.07.2021</b>	
	<b>(Rs.)</b>
Outstanding Principal Loan	16707625
PMI dues	2749903
Additional Interest	1379433
Incidental Charges	33328
<b>Total Amount ==&gt;</b>	<b>20870289</b>

2.12 The Applicants paid the additional interest and incidental charges to HDFC in October 2021 “under protest”.

2.13 It is stated that they had sent email dated 11.08.2021 to the RP seeking clarity, however, no reply came forth. In the letter to the RP dated 11.08.2021, the Applicant *inter alia* stated as follows:

*“We understand that as per the NCLT order, there will not be any dues as of 13th November 2019 as it will be fully paid by RP/Prestige. Also we understand that, we shouldn't bear the penalty cost of the amount paid*

by RP to HDFC in June 2021. So as per NCLT order, does HDFC have the right to charge the penalties from the Subvention borrowers?

To quote an Email sent by HDFC, clarifying their stand on this case:

**“It is further to clarify that as per the NCLT order dated 23.03.2021, the subvention interest which was required to be paid by the old developer i.e. Ariisto Developers under the tripartite agreement has been taken over by the Prestige Developers and have paid only such subvention interest amount to HDFC on behalf of the home buyer. You may note that since the interest on the loan disbursed was neither served by you or the developer, the additional charges and incidental charges has accrued in the loan account as per the terms of loan agreement which is require to be paid by you. As such, we have provided you the statement of total outstanding loan dues (Pre-EMI, additional interest & incidental charges) after adjustment of the payment received from Prestige developer.**

**We state that as per the terms and conditions of loan documents executed by you with HDFC, the Pre-EMI amount shall be remitted in your loan account without any default and in case of default the additional interest and incidental charges would be accrued in your loan account. Timely payment of the Pre-EMIs is the essence of contract, however due to default in your loan account, the above mentioned charges have been accrued in your loan account and you are liable to make the payment of the same which is strictly as per the terms and conditions of the loan agreement.”**

*Therefore we need your expert advice on this to resolve the issue and streamline the loan account.”*

- 2.14 As per the records available, neither the RP nor the SRA is stated to have provided any reply to the aforesaid query of the Applicant. In this background, the Applicant has approached this Adjudicating Authority seeking clarity in the order dated 23.03.2021 in respect to the additional interest and incidental charges levied upon the Applicants by HDFC and to direct HDFC to reimburse the additional interest and incidental charges paid by the Applicants till the period of 13.11.2019.

### **Submissions of the Applicants**

3. It is submitted that HDFC, who is part of CoC, had never informed about additional interest and incidental charges to the Applicant or to this Tribunal before levying the same. This information came to be known to the Applicants through the email dated 29.07.2021.
4. It is further submitted that in the Plan Approval Order, it is recorded that the pre-EMI up to 13.11.2019 would be borne by the SRA and the Applicants shall pay pre-EMI for the remaining period. The pre-EMI up to 13.11.2019 is already paid by the SRA and the Applicants have also paid the dues for the remaining period. However, there is no clarity upon the payment of additional interest, incidental charges and the penalties which are being levied upon the Applicants by HDFC.
5. It is submitted that even if there are any additional charges, the same has to be paid by the SRA who has taken over the Corporate Debtor.

### **Submissions of Respondents**

6. The Applicants have impleaded HDFC as Respondent 1; the SRA as Respondent 2; and the Corporate Debtor through its RP as Respondent 3. Respondents 1 and 2 have filed their respective replies.

### **7. Reply of HDFC:**

- i. It is submitted that as per the Home Loan Agreement dated 29.07.2015, delay in payment of EMI or PEMI would render the borrower liable to pay additional interest @ 18% per annum or such higher rate as per the rules of HDFC and the borrower would also be liable to pay incidental charges and costs to HDFC.
- ii. It is submitted that since the subvention period expired on 31.07.2017 and the loan account was in default since December 2017 and remained so for over 36 months and consequently, additional interest and incidental charges had accrued in the loan account as per the terms and conditions of the home loan agreement. According to the clauses of the loan

agreement, such additional/incidental charges are to be borne by the borrowers i.e. the Applicants.

- iii. It is submitted that by filing this application, the Applicants are seeking to renege from their obligations under the loan agreements executed by and between HDFC and the Applicants. It is further submitted that the Applicants have derived the benefits of the payments made by the SRA and therefore, they cannot now seek a clarification especially when the terms and conditions of the loan agreement with each borrower remains unaltered. In view thereof, the question of seeking a clarification as to who has to bear such additional and incidental charges does not arise and the Applicants have to pay the same.
- iv. It is submitted that the Applicants are in fact one of the Petitioners in Writ Petition No. 105/2020 filed by Homebuyers of the Corporate Debtor before the Hon'ble Bombay High Court against HDFC wherein directions have been sought to HDFC to not take any coercive steps with respect to recovery of their loan amounts against the Homebuyers until possession of the flats is offered by the SRA. From the aforesaid, it is evident that the present application is another attempt on part of the Applicants to shy away from their obligations of making timely payments to HDFC.

## 8. **Reply of SRA**

- i. The Resolution Plan submitted by the SRA was approved by this Tribunal on 23.03.2021. The said plan approval order was challenged by few homebuyers before the Hon'ble NCLAT but the appeal stood dismissed on 23.12.2022. Further, vide dated 29.03.2023, the Hon'ble Supreme Court has also upheld the said resolution plan order.
- ii. In the resolution plan, the treatment to be given to homebuyers was provided in the 2<sup>nd</sup> affidavit dated 26.10.2020, the relevant clause is reproduced below:

*"In addition to above, for homebuyers under subvention, we had proposed to clear all the outstanding dues upto 13th November 2019*

*i.e. the date on which COC approved the Resolution Plan submitted by Prestige, further, we shall adjust the excess amount paid in terms of per square feet rate on their respective units by the subvention homebuyers over the per square feet rate available at the time of booking to non-subvention buyers. Even though the difference in rates vary for different homebuyers, we have decided to adjust the amounts of all the homebuyers by Rs. 1,500/sft of saleable area mentioned in the Booking Form; which is more than the maximum difference in rates between the subvention scheme buyers and non-subvention scheme buyers.”*

- iii. It is submitted that in accordance with the terms of the resolution plan, the SRA has complied with its obligations to make all payments towards subvention scheme upto 13.11.2019. The SRA has paid a sum of Rs. 1,40,00,000 to HDFC to the Applicants’ subvention scheme account.
- iv. It is submitted that the Applicants are aggrieved by certain additional charges levied by HDFC and the relationship between the Applicants and HDFC is that of lender-borrower and any additional levy by HDFC against the Applicants are disputes between them to which the SRA is not concerned and such dispute is not a matter in relation to the CIRP of the Corporate Debtor.

### **Discussions and Findings**

9. The submissions of the parties have been considered and documents on record have been perused.
10. It is seen that this Adjudicating Authority in its order dated 23.03.2021 while approving the resolution plan of SRA has noted as follows:

*“14. The said Resolution Plan which was approved by the CoC has been revised/amended from time to time*

*...*

*e. Lastly, Prestige by way of its affidavit dated 26.10.2020 brought on record clarity on commercial terms and conditions offered to homebuyers. In the same affidavit, Prestige has stated that such terms and conditions shall be treated as a part and parcel of its Resolution Plan.*

*xxx”*

“15. The RP has submitted the copies of the emails wherein a confirmation has been received by him from the creditors who are relinquishing a part of their share of consideration in favour of other creditors as a part of inter se arrangement. The summary of the same is as follows:

*xxx*

*In the original Resolution Plan approved by the CoC members on November 13, 2019, a provision of Rs.20.71 Cr. was made towards Subvention Interest of Siesta Homebuyers and other contingencies. Subsequently Prestige (i.e. Resolution Applicant) in response to the concerns raised by the subvention homebuyers, agreed to give the discount of Rs. 1500 per Sq. Ft. and proposed to pay the interest upto November 13, 2019 i.e. Resolution Plan approval day by the CoC and the future liability of the subvention interest to be paid by subvention Homebuyers. Accordingly, there is a reduction of provision to the extent of Rs.10.14 Cr. and the same is utilized by the creditors for inter-se arrangement.”*

11. It can be seen from the above paragraphs of the order dated 23.03.2021 that the Adjudicating Authority has only quoted the submissions of the RP from the MA No. 3714/2019 submitted for approval of resolution plan. It is also recorded that the SRA has stated that the terms and conditions provided by the SRA to the homebuyers shall be part and parcel of the resolution plan. Accordingly, this Adjudicating Authority approved the Plan as per the terms contained therein together with the amendments provided by the SRA.
12. Thus, the statement that the SRA shall pay the outstanding subvention interest on behalf of the homebuyers till 13.11.2019 has been recorded in the order dated 23.03.2021 *ad-verbatim* and the same cannot be considered as a new direction given by this Adjudicating Authority which could require a clarification by this Adjudicating Authority. Therefore, the question of clarification or interpretation of this part of the order by the Adjudicating Authority does not arise.
13. Thus, in view of the discussions above, we are of the considered view that no clarification needs to be provided by this Adjudicating Authority with respect to its order dated 23.03.2021. Accordingly, prayer ‘a’ seeking clarification of order dated 23.03.2021 is **rejected**.

14. In Prayer 'b', the Applicants are seeking reimbursement of the additional interest and incidental charges paid by them under protest.
15. From the averments in the application, it is noted that the Applicants have booked flat in the Project 'Seista' developed by the Corporate Debtor. A Home Loan Agreement dated 29.07.2015 was executed between the HDFC and the Applicants. As per clause 2.7 of the agreement, the payment of EMI or PEMI was to be made by the Borrowers i.e. homebuyers and for delay in the payment of EMI or PEMI, the borrower was liable to pay additional interest @ 18% per annum or such higher rate and also incidental charges and costs to HDFC.
16. On the same date, a Tripartite agreement was also executed between HDFC (as lender), Applicants (as borrowers) and Corporate Debtor (as developers). Under the Tripartite Agreement, the Applicants were required to pay 5% of the total amount and the subsequent payments were to be made by HDFC directly to the Corporate Debtor. The HDFC disbursed amount of Rs. 1,69,37,463 to the Corporate Debtor.
17. The Corporate Debtor sent a letter to the homebuyers and agreed to pay interest till 31.07.2017, and as agreed, the Corporate Debtor paid Rs. 30,39,540 towards interest till 31.07.2017 which is undisputed.
18. Subsequently, the Corporate Debtor was admitted to CIRP on 20.11.2018. HDFC was a part of the Committee of Creditors (CoC) of the Corporate Debtor. The resolution plan submitted by Prestige Estates Projects Limited (SRA) was approved by CoC on 13.11.2019.
19. Addressing certain grievances of the homebuyers, the SRA sent letter dated 12.10.2020 and stated that the interest under subvention upto 13.11.2019 (date of approval of resolution plan by CoC) shall be paid by the SRA and that the future liability of the subvention interest shall be paid by the homebuyers. The relevant contents of the said letter are extracted below:

“\*\*\*

*No additional cost (other than what is statutory required to be paid for stamp duty, registration of documentations including fresh or*

*supplemental agreement as the case may be and GST and any other Govt charges as per applicable laws) shall be imposed on the home buyers in any manner whatsoever. However, the homebuyers shall have to make the balance payment towards their flat over and above the amounts already paid.*

*In addition to above for homebuyers under subvention we had proposed to clear all the outstanding interest dues up to 13<sup>th</sup> November 2019 i.e. the date on which the CoC approved the Resolution Plan submitted by Prestige. Further, we shall adjust the excess amount paid in terms of per square feet rate on their respective units by the subvention homebuyers over the per square feet rate available at the time of booking to non - subvention buyers. Even though the difference in rates vary for different homebuyers, we have decided to adjust the amounts of all the homebuyers by Rs. 1500/sft of saleable area mentioned in the Booking Form; which is more than the maximum difference in rates between the subvention scheme buyers and non-subvention scheme buyers.”*

20. We note that the letter specifies about clearing all the outstanding interest dues up to 13.11.2019 but is silent on whether the same would include additional interest or incidental charges, if any, levied by HDFC for delay in payment under clause 2.7 of the agreement.
21. The submission of the Applicants is that HDFC being aware of the representations made by SRA should not have charged additional interest and incidental charges which was never demanded by HDFC until payment was received from SRA, and therefore HDFC should reimburse such charges. It is further submitted that even if any such additional charges has accrued, it is the liability of the SRA to pay the dues.
22. On the other hand, the SRA has contended that the payment of additional interest and incidental charges arises from the Home Loan Agreement entered between the Applicants and HDFC and therefore, the SRA cannot be held liable to make the payment.
23. Considering the submissions of the parties, we note that there is a dispute between the parties as to the liability to pay the additional interest and

incidental charges levied by HDFC on 29.07.2021 for the period till 13.11.2019.

**Liability of SRA**

24. It is noted that the Corporate Debtor in its offer letter dated 21.07.2015 has agreed to pay the interest only upto 31.07.2017 which has been already paid by the Corporate Debtor and there is no dispute about the same.
25. Thus, the Corporate Debtor had agreed to pay the subvention interest only up to 31.07.2017 and thereafter, it was the homebuyers/applicants who were liable to pay the interest. However, since the Corporate Debtor was admitted to CIRP on 20.11.2018 without completing the project and considering the representation of the homebuyers, the SRA had committed to clear the outstanding interest till 13.11.2019.
26. Accordingly, the SRA has paid Rs. 1.40 crores to HDFC as agreed under the approved resolution plan on 30.06.2021. Subsequently, on 29.07.2021, HDFC levied additional interest and incidental charges for the period from August 2017.
27. We are of the view that since SRA has already paid the amount committed by them, the SRA cannot be burdened with any additional liability beyond the amount envisaged in the Resolution Plan which would amount to modification of resolution plan.
28. In this context, we refer to the observations of Hon'ble NCLAT in ***Calyx Chemicals and Pharmaceuticals Private Limited vs. Ravindra N. Athavale & Anr. [Company Appeal (AT) (Ins) No. 522 of 2024]***, decided on 18.12.2024:

*“27. Each aspect of the Resolution Plan must be approved by the CoC. There is no concept present in the IBC, permitting any post facto approval of a Resolution Plan by the Adjudicating Authority which has not been considered by the CoC or allowing any modification of the plan by the Adjudicating Authority once such plan is approved by the CoC. Parliament has not introduced any express provision under the IBC permitting any amendment or modification of the Resolution Plan by the Adjudicating*

*Authority once the approval of CoC is granted. Thus, modification of approved resolution plan without the approval of CoC is outside the scope of jurisdiction of Adjudicating Authority and the Appellate Authority.”*

29. We also note that an association of Homebuyers had challenged the approval of Resolution Plan by Adjudicating Authority, which was dismissed by Hon’ble NCLAT vide order dated 23.12.2022. The said order dated 23.12.2022 is annexed to the Reply of SRA.
30. An appeal against the Hon’ble NCLAT’s order was further dismissed by the Hon’ble Supreme Court vide its order dated 29.03.2023. The order dated 29.03.2023 is also annexed to the reply of SRA. In view of the order dated 29.03.2023 passed by Hon’ble Supreme Court, the Resolution Plan has attained finality.
31. Thus, any direction to the SRA for making any additional payment by including the additional interest/incidental charges would amount to reopening of the resolution plan. Therefore, the Adjudicating Authority cannot direct the SRA to pay the additional interest and incidental charges levied by HDFC.

### **Liability of the Applicants**

32. As already noted above, Clause 2.7 of the Home Loan Agreement dated 29.07.2015 executed between the HDFC and the homebuyers deals with the consequences of delay in payments. The said clause 2.7 of the Home Loan Agreement dated 29.07.2015 is reproduced below:

***“2.7 Delay in payment of EMI etc.***

*(a) No notice, reminder or intimation will be given to the Borrower regarding his obligation to pay the EMI or PEMI regularly on due date. It shall be entirely his responsibility to ensure prompt and regular payment of EMI or PEMI.*

*(b) The delay in payment of EMI or PEMI shall render the borrower liable to pay additional interest at the rate of 18 per cent per annum or at such higher rate as per the rules of HDFC in that behalf as in force from time to time. In such event, the borrower shall also be liable to pay incidental charges and costs to HDFC.”*

33. Sub-clause (b) of Clause 2.7 states that any delay in payment of EMI or PEMI shall render the borrower liable to pay the additional interest. Thus, the levy of additional interest and incidental charges essentially flows from clause 2.7 of the Home Loan Agreement entered into between the Applicants and HDFC.
34. We note that as on the date of approval of resolution plan by this Tribunal on 23.03.2021, these additional interest and incidental charges were not in existence since the same were levied by HDFC only on 29.07.2021 after receiving the interest from the SRA for the period up to 13.11.2019. HDFC was a member of the CoC as well as a signatory to the Home Loan Agreement and also the Tripartite Agreement with the Corporate Debtor, and was well aware of the representations made to the homebuyers and the consequent amendments made in the resolution plan and the undertakings of the SRA under the subvention, and accordingly, HDFC could have been more vigilant if it wanted to charge additional interest and incidental charges on homebuyers and should not have become a mere spectator in the entire process and then proceed to demand dues from the homebuyers who trusted the undertakings given to them at the time of approval of resolution plan.
35. Though it could be argued that homebuyers are vulnerable and gullible who have been waiting for possession of their flats for years and that the case of homebuyers should be considered sympathetically as protecting the interest of homebuyers is an essential object under the Code in cases of real estate insolvencies, however, the adjudicating powers of this Tribunal is also circumscribed under the Code. The Tribunal as Adjudicating Authority under IBC is conferred with the jurisdiction to only adjudicate on those contractual disputes which are connected with or related to the CIRP of the Corporate Debtor, as held in ***M/s Embassy Property Developments Pvt. Ltd. vs. State of Karnataka & Ors. [Civil Appeal No. 9170 of 2019]*** and ***Gujarat Urja Vikas Nigam Limited vs. Mr. Amit Gupta & Ors. [Civil Appeal No. 9241/2019]***.
36. Further, the Hon'ble Supreme Court in ***K Sasidhar vs Indian Overseas Bank & Ors. [Civil Appeal No. 10673 of 2018]*** has also emphasized that

the Adjudicating Authority has been endowed with limited jurisdiction under the Code and *not to act as a court of equity or exercise plenary powers*.

37. In the present case, the Resolution Plan was approved by this Adjudicating Authority on 23.03.2021 and the SRA paid the interest up to 13.11.2019 to HDFC on 30.06.2021. Thereafter, the HDFC vide email dated 29.07.2021 had demanded the additional interest and incidental charges that has accrued for delay in payment of interest accrued after 31.07.2017.
38. The aforesaid sequence of events makes it clear that the levy of additional interest and incidental charges by HDFC is unrelated to and not connected with the CIRP of the Corporate Debtor.
39. It is also pertinent to note that the present application is filed by only two of the homebuyers of the Seista Project of the Corporate Debtor. We note from the records available that there are 182 homebuyers in the Seista Project. Thus, the present application seems to arise from the nature of grievance of two homebuyers who have been allotted one flat by the Corporate Debtor.
40. In view of the above, we are of considered view that it is beyond the jurisdiction of this Adjudicating Authority to adjudicate on whether HDFC was right in levying additional interest and incidental charges on the homebuyers by referring to the clauses of the agreements. Accordingly, no direction can be given to HDFC to reimburse the additional interest and incidental charges paid by the Applicant for the period till 13.11.2019 as the issue is beyond the jurisdiction of this Adjudicating Authority. Thus, prayer 'b' is also **rejected**.

### **Conclusion**

41. The discussions made in the preceding paragraphs can be concluded as follows:
  - a. There is no need for any clarification of the order dated 23.03.2021 in respect of the additional interest and incidental charges levied by HDFC.

- b. No direction can be given to the SRA to make any payment beyond the amount envisaged in the resolution plan as the same would amount to reopening of the resolution plan.
  - c. This Adjudicating Authority is not the right forum for issues arising out of contracts between two parties which are not related to or connected with the CIRP of the Corporate Debtor.
  - d. The Home Loan Agreement between the borrower and lender are bilateral in nature and merely because the borrower is a homebuyer would not give an obligation on the Adjudicating Authority to interpret such a contract under the framework of the Code especially when it is not related to the CIRP of the Corporate Debtor.
42. Before parting, we clarify that this order shall not be construed to be passed on the merits of the case and the decision of this Adjudicating Authority to refrain from deciding the issue relating to the levy of additional interest and incidental charges by HDFC and the obligation of the Applicant to pay the same, shall not preclude the Applicant from approaching the appropriate authority and seek appropriate directions in this regard.
43. With these observations, IA is **dismissed**.
44. No order as to costs.

**Sd/-**

**Hariharan Neelakanta Iyer**  
**Member (Technical)**

Uma

**Sd/-**

**Lakshmi Gurung**  
**Member (Judicial)**