IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

I.A. No. 2207 OF 2026
IN
C.P. (IB) I.B.C. No. 674(PB) OF 2021

(Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016)

IN THE MATTER OF:

SANJIB KUMAR & ORS. ...FINANCIAL CREDITORS

VERSUS

M/S. VARDHMAN ESTATES & DEVELOPERS PVT. LTD.
...CORPORATE DEBTOR

AND IN THE MATTER OF:

SHARUK PASSI ...APPLICANT

VERSUS

DEVENDRA UMRAO
RESOLUTION PROFESSIONAL OF
VARDHMAN ESTATES & DEVELOPERS PVT. LTD. & ORS.
...RESPONDENTS

Order Pronounced On: 21.08.2026

CORAM:

JUSTICE ANUPINDER SINGH GREWAL
HON'BLE PRESIDENT

SHRI RAVINDRA CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant	:	Mr. Sunil Fernandes, Senior Advocate along with Mr. Vishal Gehrana, Mr. Piyush Sharma, Mr. Kailash Ram, Ms. Mehek Nayar and Ms. Varsha Himatsinghka, Advocates.
For the Respondent No. 1/CD	:	Mr. Prabhav Ralli, Mrs. Radhika Gupta, Mrs. Deevya Mittal, Mr. Saket Verma, Advocates
For the RP	:	Mr. Abhishek Anand, Advocate along with Mr. Karan Kohli, Ms. Ridhima Mehrotra, Advocates.
For the Respondent No. 2/ SRA	:	Mr. Mansumyer Singh, Advocate along with Mr. Kartikay Mittal, Mr. Shivank Parashar (PCS), and Ms. Vedanshi, Advocates.
For the Respondent No. 4 (CoC)	:	Ms. Eshna Kumar, Advocate.

ORDER

1. The instant Application being I.A. No. 2207 of 2026 has been filed by Mr. Sharuk Passi ("**Applicant**"), an Allottee/Financial Creditor in a Class of the Corporate Debtor, M/s. Vardhman Estates & Developers Pvt. Ltd. ("**Corporate Debtor**"), in the pending Plan Approval Application being I.A. No. 29 of 2025, seeking the following reliefs: -

   a) *Allow the present application;*

   b) *Reject the Additional Affidavit dated 20.02.2026 of the RP insofar it pertains to the Applicant;*

   c) *Defer the approval of the Plan of the SRA till the SRA does not faithfully comply with the final Order dated 03.02.2026 of this Hon'ble Tribunal and*
   (i) Allots the hotel without escalation costs etc. in D2;
   (ii)Allots 12 units without cancellation or escalation or any other costs; and

   d) *Pass ad-interim ex-parte orders in terms of the aforesaid prayers;*

   e) *Pass such other and further order (s)/ direction(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.*

Brief facts of the case

2. Vide order dated 07.02.2023, this Adjudicating Authority admitted the Corporate Debtor into the Corporate Insolvency Resolution Process ("**CIRP**") in C.P. (IB) No. 674 of 2021 under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**Code**"), which was filed by 146 Real Estate Allottees representing 122 allotted units.

3. The Applicant filed his claim with the RP in Form-CA dated 10.06.2024 for an amount of Rs. 71, 09, 32,698/-, pertaining to a Hotel Block and 12 IT/ITES Units. Vide communication dated 09.12.2024, the RP admitted the claim of the Applicant only to the extent of Rs. 22, 18, 75,000/-. On the strength of such part-admission, the Applicant was granted voting rights in the Committee of Creditors ("**CoC**") as a Financial Creditor in a Class, and participated in the CIRP as such.

4. Aggrieved by the part-admission of his claim, the Applicant filed I.A. No. 1081 of 2025 before this Adjudicating Authority, inter alia, seeking admission of his claim in full to the extent of Rs. 71,09,32,698/- on the basis of the Agreement to Sell dated 30.04.2012 and the Settlement Agreement dated 24.05.2019.

5. During the pendency of I.A. No. 1081 of 2025, the Resolution Plan submitted by the SRA was placed for consideration of the CoC in its 9th meeting held on 31.03.2025. The Applicant, as a member of the CoC/Financial Creditor in a Class, exercised his right to vote on the said Resolution Plan and voted against it. Notwithstanding the Applicant's dissent, the Resolution Plan was approved by the CoC with a voting share of 99.75%, and the Plan Approval Application came to be filed by the RP as I.A. No. 29 of 2025, which is pending adjudication before this Adjudicating Authority.

6. Thereafter, I.A. No. 1081 of 2025 was disposed of vide order dated 03.02.2026, whereby this Adjudicating Authority, having noted that the tripartite Settlement Agreement covered both the Hotel Project and the IT Units, held that the claim of the Applicant stood admitted to the extent of the Hotel and the 12 IT Units pursuant to the Settlement Agreement dated 24.05.2019, corresponding to Rs. 15,00,00,000/- towards the Hotel Property and Rs. 7,18,75,000/- towards the IT Units, i.e., Rs. 22,18,75,000/- in aggregate, and directed the RP to admit the claim accordingly. The relevant extract of the order dated 03.02.2026 passed by this Adjudicating Authority in I.A. No. 1081 of 2025 is as follows:

> 2.13 It is to be noted that the settlement agreement dated 24.05.2019, was entered into between applicant, Zestha Project Pvt. Ltd. and the CD. The agreement pre dates the CIRP of the CD. The agreement clearly mentions that the settlement is with respect to entire hotel building in the commercial block comprising of IT Building, Commercial Building and Hotel Blocks developed on Plot measuring 40449.841 Sq. Mtrs. bearing Plot No. 26/1, Knowledge Park III, Greater Noida Industrial Area, Gautam Budh Nagar, Uttar Pradesh. That it is not in dispute that the applicant paid 15 Crore to Zestha Projects Pvt. Ltd. It is recorded in the settlement agreement as extracted above that the "Hotel Property" now requires substantial work to adhere to specifications agreed with second party at the time of signing of the agreement to sell dated 30.04.2012 and first party i.e. Zestha Projects Pvt. Ltd. and confirming party are not in position to invest further fund, they have offer to transfer Hotel Property to second party i.e. the applicant for Rs 15 Crores. The applicants needs to pay only Rs. 1,20,00,000/- crores to suppliers in lieu of the settlement agreement and that sale deed would be executed in favour of

applicant. Further, it is clearly mention that for the sum of Rs. 7,18,75,000/- (interest component) payable to applicant Zestha Projects Pvt. Ltd. and the CD agreed to transfer the built-up IT space for the units as mentioned under the settlement agreement i.e. 12 units. Meaning thereby, the hotel and 12 units shall be transferred to applicant in lieu of Rs. 22 Crore.

2.14 This makes it clear that the tripartite settlement agreement covers not only the hotel project but also the IT unit for which the amount has already been advanced. Therefore, the same is binding agreement both on the confirming party i.e. the CD as well as Zestha Projects Pvt. Ltd. It is to be noted that the applicant filed a claim of Rs. 71,09,32,698/- (Rs. Seventy One Crores Nine Lakh Thirty Two Thousand Six Hundred Ninety Eight Only). However, during the course of hearing, it is stated that they are satisfied if Hotel & 12 units are given to them. Therefore, the same is not dealt with.

2.15 In this view of the matter, we hold that the claim of the applicant is admitted to the extent of hotel and IT unit pursuant to settlement agreement. The RP will admit the claim pursuant to the above directions. Accordingly, **IA-1081/2025** stands **disposed of**.

7. Pursuant to order dated 13.02.2026, whereby the RP was directed to file an affidavit setting out the manner of compliance with the order dated 03.02.2026, the RP filed an Additional/Compliance Affidavit dated 20.02.2026, clarifying the treatment to be accorded to the claim of the Applicant under the approved Resolution Plan.

8. Aggrieved by the said Compliance Affidavit, the Applicant filed the present I.A. No. 2207 of 2026, alleging that although this Adjudicating Authority, vide order dated 03.02.2026, had directed the RP to admit the claim of the Applicant with regards to the Hotel and the 12 Units, the RP, instead of allotting the same unconditionally, has (i) called upon the Applicant to pay an additional sum of Rs. 1,500/- per sq. ft. as escalation charges towards the Hotel without any basis, and (ii) cancelled the 12 IT/ITES Units earlier allotted to the Applicant. Notice was issued to the Respondents vide order dated 19.05.2026, and the RP was granted time to file a reply along with a synopsis. The RP and the SRA have since filed their respective Reply/Synopsis.

Submissions on behalf of the Applicant

9. Learned Counsel for the Applicant submits that the order dated 03.02.2026 conclusively directed admission of the Applicant's claim with regard to the Hotel and the 12 Units, and that the RP was consequently obligated to allot the said assets to the Applicant without imposing any further conditions.

10. It is submitted that the levy of escalation charges at the rate of Rs. 1,500/- per sq. ft. towards the Hotel is without any basis and amounts to a unilateral and unwarranted addition to the Applicant's liability, which was neither contemplated by the Settlement Agreement dated 24.05.2019 nor authorised by the order dated 03.02.2026.

11. It is further submitted that the cancellation of the 12 IT/ITES Units by the RP, and the consequential reduction of the Applicant's entitlement to a mere 40% refund of the principal amount, runs contrary to the spirit of the order dated 03.02.2026, which had already recognised the Applicant's claim to the extent of the said Units pursuant to the Settlement Agreement.

12. On the above basis, the Applicant prays that the Compliance/Additional Affidavit dated 20.02.2026 be rejected insofar as it pertains to the Applicant, and that approval of the Resolution Plan of the SRA be deferred until the Hotel is allotted without escalation costs and the 12 Units are allotted without cancellation, escalation, or any other cost.

Submissions on behalf of the Resolution Professional and the SRA

13. Learned Counsel for the RP, supported by learned Counsel for the SRA, at the outset, draws a distinction between "admission of a claim" during CIRP and "treatment of such claim" under a Resolution Plan, submitting that the two operate in entirely distinct fields under the scheme of the Code. It is submitted that the order dated 03.02.2026 was confined to the question of admission/quantification of the Applicant's claim under Regulations 13 and 14 of the CIRP Regulations, 2016, and did not, either expressly or by necessary implication, direct any specific manner of allotment, waiver of escalation charges, or exemption of the Applicant from the terms of the Resolution Plan.

14. It is submitted that the treatment provided to the Applicant is strictly in accordance with, and uniformly applicable under, the CoC-approved Resolution Plan, and is at par with all other similarly situated Financial Creditors in the same Class. The particulars are tabulated below:

Claim	Relevant Clause of Plan	Treatment under Approved Plan
Hotel Block	Clause C.1.1 – Unit Holders having valid BBA/Agreement to Sub-Lease	Allotment upon (i) payment of balance consideration (Nil, after adjustment of admitted principal), and (ii) payment of escalation charges of Rs. 1,500/- per sq. ft. together with other applicable charges/taxes, in terms of Clause 67 of the Plan.

12 IT/ITES Units	Clause C.1.3 – Unit Holders having only payment receipts/proof of payment and no valid BBA/Agreement to Sub-Lease	Units stand cancelled; refund of 40% of admitted principal amount (20% within 6 months and 20% within 12 months from the Effective Date).

15. It is submitted that the escalation charges of Rs. 1,500/- per sq. ft. are standard charges, uniformly leviable on all similarly placed Unit Holders having a valid BBA/Agreement to Sub-Lease under Clause C.1.1 read with Clause 67 of the approved Resolution Plan, and are not peculiar or discriminatory to the Applicant. Likewise, the treatment of the 12 IT/ITES Units under Clause C.1.3 cancellation with refund of 40% of the admitted principal amount applies uniformly to the category of Unit Holders possessing only payment receipts/proof of payment without a valid BBA/Agreement to Sub-Lease, a category into which the Applicant admittedly falls insofar as the said 12 Units are concerned, since the Settlement Agreement dated 24.05.2019 does not constitute a BBA or Agreement to Sub-Lease.

16. It is submitted that the Applicant's claim to the extent of Rs. 22,18,75,000/- had, in fact, already been admitted prior to the order dated 03.02.2026, and the Applicant, in that capacity, was granted 8.87% voting share in the CoC and actively participated in the CIRP, including at the 9th CoC meeting held on 31.03.2025, at which stage the categorisation and treatment of claims under Clauses C.1.1 and C.1.3 of the Resolution Plan already stood embedded in the Plan placed for voting.

17. Having exercised his right to vote (albeit in dissent) as a constituent of the Class, and the Resolution Plan having nonetheless been approved with a voting share of 99.75%, it is submitted that the Applicant, being bound by the

decision of the majority within his Class, has no locus to now assail the treatment accorded to him under the approved Plan, much less under the guise of alleged non-compliance of an order that was, in terms, confined to admission of claim.

18. Reliance in this regard is placed on **Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd., (2022) 1 SCC 401**; **Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531**; **Ebix Singapore Pvt. Ltd. v. Committee of Creditors of Educomp Solutions Ltd., (2022) 2 SCC 401**; and a series of decisions of the NCLAT, for the proposition that an individual Allottee/Financial Creditor forming part of a Class is bound by the majority decision of the Class and cannot independently assail or seek to reopen a Resolution Plan approved by the requisite majority of the CoC.

19. It is lastly submitted that this Adjudicating Authority has, vide order dated 11.02.2026 passed in I.A. No. 595 of 2026, already dismissed a similar challenge raised by the Zestha I-Valley Home Buyers Association on the very ground that members forming part of the CoC cannot be permitted to assail the Resolution Plan, and that the present Application, being an indirect attempt to reopen the approved Resolution Plan under the guise of an implementation grievance, is equally liable to be dismissed.

<u>Findings and Analysis</u>

20. We have heard learned Counsel for the parties and perused the material available on record. Two limited questions arise for our consideration: **First**, whether the levy of escalation charges of Rs. 1,500/- per sq. ft. towards the Hotel Block is contrary to the order dated 03.02.2026 or otherwise impermissible; and **Second**, whether the cancellation of the 12 IT/ITES Units,

with consequential refund of 40% of the admitted principal amount, is in violation of the said order or of the approved Resolution Plan.

21. It is by now well settled that admission and collation of claims by a Resolution Professional stands on an entirely different footing from the treatment which such claims eventually receive under a Resolution Plan. The Supreme Court in **Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531**, has explained the twin but distinct functions of the Resolution Professional and the CoC in this regard:

> *"48. …Another very important function of the resolution professional is to collect, collate and finally admit claims of all creditors, which must then be examined for payment, in full or in part or not at all, by the resolution applicant and be finally negotiated and decided by the Committee of Creditors.*
>
> *64. Thus, what is left to the majority decision of the Committee of Creditors is the 'feasibility and viability' of a resolution plan, which obviously takes into account all aspects of the plan, including the manner of distribution of funds among the various classes of creditors. … What is important is that it is the commercial wisdom of this majority of creditors which is to determine, through negotiation with the prospective resolution applicant, as to how and in what manner the corporate resolution process is to take place."*

22. Applying the above principle, the admission of the Applicant's claim to the extent of Rs. 22,18,75,000/-, whether at the stage of the RP's initial determination or pursuant to the order dated 03.02.2026, was and remains a determination of the existence and quantum of the claim for the purpose of participation in the CIRP. A perusal of the order dated 03.02.2026 makes it

evident that this Adjudicating Authority was, at that stage, concerned only with the question of quantification of claim under the tripartite Settlement Agreement, and directed the RP to "admit the claim pursuant to the above directions".

23. Nothing in the said order directs allotment of the Hotel or the 12 Units free of the terms of the Resolution Plan, or exempts the Applicant from charges/conditions otherwise uniformly applicable under the Plan. The Applicant's attempt to read into the order dated 03.02.2026 a direction for unconditional allotment, which the order does not contain, is misconceived.

24. It is not in dispute that the Applicant, upon part-admission of his claim, was recognised as a Financial Creditor in a Class and was granted 8.87% voting share in the CoC. It is equally not in dispute that the Resolution Plan of the SRA, containing Clause C.1.1 (governing Unit Holders with a valid BBA/Agreement to Sub-Lease, entitled to allotment upon payment of balance consideration together with escalation charges) and Clause C.1.3 (governing Unit Holders having only payment receipts without a valid BBA/Agreement to Sub-Lease, whose units stand cancelled with 40% refund of principal), was placed before the CoC in its 9th meeting held on 31.03.2025, at which the Applicant exercised his right to vote and voted against the Plan. The Plan was nonetheless approved with a voting share of 99.75%.

25. This being so, any grievance the Applicant may have had regarding the treatment of his claim whether the levy of escalation charges on the Hotel Block or the categorisation of the 12 Units under Clause C.1.3 was a matter that fell squarely within the domain of the CoC's commercial wisdom at the time of voting on the Resolution Plan, and ought to have been agitated before the CoC at that stage. Having failed to secure a differential or more favourable

treatment before the CoC, and the Resolution Plan having since been approved by the requisite majority, it is not open to the Applicant to reopen the very same grievance before this Adjudicating Authority after the event, dressed up as an implementation grievance under the order dated 03.02.2026.

26. The law on this point is well settled. The Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd., (2022) 1 SCC 401**, has held as under:

> *"210.5. …once a decision is taken, either to reject or to approve a particular plan, by a vote of more than 50% of the voting share of the financial creditors within a class, the minority of those who vote, as also all others within that class, are bound by that decision. There is absolutely no scope for any particular person standing within that class to suggest any dissention as regards the vote over the resolution plan. …*
>
> *213. … There is no scope for any homebuyer suggesting himself to be a dissenting financial creditor merely because he was not with majority within the class. His dissatisfaction does not partake the legal character of a dissenting financial creditor.*
>
> *214. … The homebuyers as a class shall be deemed to have voted in favour of approval of the resolution plan …; and once having voted so, any particular constituent of that class cannot be heard in opposition to the plan by way of objection or appeal. The statute, that is IBC, has itself provided for estoppel against any such attempted opposition to the plan by a constituent of the class that had voted in favour of approval."*

27. This ratio has consistently been followed by the NCLAT, including in **Priya Puri v. Debashish Nanda, Company Appeal (AT)(Ins) No. 906 of 2022**; **Ankur Narang & Ors. v. Nilesh Sharma, Company Appeal (AT)(Ins) No. 1240 of 2023**; **Girish Nalavade v. Bhrugesh Amin, Company Appeal (AT)(Ins) No. 1542 of 2023**, wherein it was held that once the CoC has approved a resolution plan by requisite majority and no material irregularity in the conduct of the CIRP is demonstrated, the same cannot be a subject matter of judicial review or modification. We are in agreement with this line of authority.

28. This Adjudicating Authority itself, vide order dated 11.02.2026 passed in I.A. No. 595 of 2026, dismissed a substantially similar challenge to the very same Resolution Plan raised by the Zestha I-Valley Home Buyers Association, inter alia, on the ground that members of the said Association who already formed part of the CoC and had voted in favour of the Plan could not be permitted to turn around and question its approval. The same logic applies with equal, if not greater, force to the Applicant herein, who was himself a member of the CoC and personally exercised his vote on the Resolution Plan.

29. We may also refer to **Ebix Singapore Pvt. Ltd. v. Committee of Creditors of Educomp Solutions Ltd., (2022) 2 SCC 401**, wherein the Supreme Court held that a Resolution Plan, once approved by the CoC, is binding inter se the CoC and the Successful Resolution Applicant, and its terms cannot be permitted to be reopened, modified, or reneged from. Once the CoC-approved treatment of a claim forms part of such a binding Plan, an individual constituent of the CoC cannot be permitted to unilaterally seek a departure therefrom.

30. Even otherwise, and without prejudice to the foregoing, we find no merit in either limb of the Applicant's grievance on facts. As regards the Hotel Block, Clause C.1.1 of the approved Resolution Plan entitles a Unit Holder with a valid BBA/Agreement to Sub-Lease to the Hotel upon (i) payment of balance consideration (which, admittedly, stands at Nil after adjustment of the principal already paid), and (ii) payment of escalation charges at Rs. 1,500/- per sq. ft. together with other applicable charges and taxes, in terms of Clause 67 of the Plan.

31. This condition is not peculiar to the Applicant; it is a standard, uniformly applicable stipulation attaching to the Hotel Block as a category of asset under the Plan, arising from increased project/construction costs and payable by all similarly placed Unit Holders. The RP, in requiring payment of such escalation charges as a precondition to allotment, has done no more than apply the Plan as approved by the CoC. No violation of the order dated 03.02.2026 which did not touch upon escalation charges at all is made out.

32. As regards the 12 IT/ITES Units, it is submitted that the Applicant does not hold a valid BBA/Agreement to Sub-Lease qua the said Units, and rests his claim only on payment receipts/proof of payment together with the Settlement Agreement dated 24.05.2019. Such a category of claim falls within Clause C.1.3 of the approved Resolution Plan and not in Clause C.1.1, under which the concerned Units stand liable to cancellation, with the Unit Holder becoming entitled to a refund of 40% of the admitted principal amount, payable as 20% within 6 months and 20% within 12 months from the Effective Date.

33. The RP's action in cancelling the 12 Units and extending to the Applicant a refund of 40% of the admitted principal amount is, therefore, a straightforward and correct application of Clause C.1.3 of the approved Plan, and does not travel beyond, or run contrary to, the order dated 03.02.2026, which, as noted above, was confined to admission/quantification of claim and did not direct that the 12 Units be allotted to the Applicant in specie or free of the classification prescribed under the Plan.

34. It bears emphasis that "equitable treatment" of creditors under the Code means equitable treatment within the same class, as recognised in **Essar Steel** (supra) at paragraph 77. The Applicant has not shown, nor is it the case, that any other similarly placed Unit Holder falling within Clause C.1.1 or Clause C.1.3 has been extended a more favourable treatment than the Applicant. In the absence of any such discrimination, and the treatment being a faithful application of the terms of the CoC-approved Resolution Plan, no case for interference is made out.

35. In view of the above, we are unable to accept either of the two contentions urged on behalf of the Applicant. The grievance regarding escalation charges on the Hotel Block, and the grievance regarding cancellation of the 12 IT/ITES Units with 40% refund, are both matters that lay within the domain of the CoC's commercial wisdom at the time the Resolution Plan was placed for voting, ought to have been raised before the CoC at that stage, and cannot be permitted to be re-agitated before this Tribunal now that the Resolution Plan stands approved by the requisite majority of 99.75%.

36. Further, on facts, we find that the RP has correctly and uniformly applied Clauses C.1.1 and C.1.3 of the approved Resolution Plan to the Applicant's claim, and no violation of the order dated 03.02.2026 is made out.

Order

37. For the reasons recorded above, I.A. No. 2207 of 2026 is found to be devoid of merit and is accordingly **dismissed**. The prayer for rejection of the Additional/Compliance Affidavit dated 20.02.2026 of the RP, and the prayer for deferment of approval of the Resolution Plan of the SRA, both stand rejected.

38. It is clarified that dismissal of the present Application shall not preclude the Applicant from receiving the treatment due to him strictly in terms of Clauses C.1.1 and C.1.3 of the approved Resolution Plan, as set out in the RP's Additional/Compliance Affidavit dated 20.02.2026, and as extended uniformly to all similarly placed Financial Creditors in the Class.

39. **The instant application bearing I.A. No. 2207 of 2026, accordingly fails and is dismissed. There shall be no order as to costs**.

Sd/-
(ANUPINDER SINGH GREWAL)
PRESIDENT

Sd/-
(RAVINDRA CHATURVEDI)
MEMBER (TECHNICAL)