IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH – IV

IA(IB) No. 2170 OF 2025
IN
C.P. (IB) NO. 725/MB/2023

[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:

1. Sadanand Hanumanta Gaikwad
2. Shanta Sadanand Gaikwad
3. Bharti Sadanand Gaikwad
4. Bhagwan Sadanand Gaikwad
5. Reshma Bhagwan Gaikwad
6. Rekha Anil Hotkar
7. Adarsh Anil Hotkar
8. Mahadeo Basanna Koganure
9. Gajaraj I. Rudramath

…Applicants

V/s.

1. Manojkumar Agarwal
2. Nand Kishore Agarwal
3. Rajesh Shah

…Respondents

In the matter of

VSJ Investments Pvt. Ltd.

…Financial Creditor

V/s.

Galore Developers Pvt. Ltd.

…Corporate Debtor

Pronounced: **09.10.2026**

***Coram*:**

SHRI ANIL RAJ CHELLAN
HON'BLE MEMBER (TECHNICAL)

SHRI K. R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - IV

IA(IB) No. 2170 of 2025
IN
C.P. (IB) NO. 725/MB/2023

Appearances	***:***	***Hybrid***
For Applicants	:	Adv. Anusha Singh i/b Neel Kothari
For Respondents	:	Adv. Nausher Kohli a/w Adv. Saksham Ahuja, Adv. Mayukh Roy, Adv. Utsav Mukherjee, Adv. Aniket Mehta

ORDER

Per: Anil Raj Chellan, Member (Technical)

1. This Application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (IBC/Code), read with Rule 11 of the National Company Law Tribunal Rules, 2016, by the purchasers of commercial units in a project being developed by Galore Developers Pvt. Ltd. (Corporate Debtor) at Solapur. Respondent No. 1 is the Resolution Professional (RP) of the Corporate Debtor, Respondent No. 2 is the Successful Resolution Applicant (SRA) of the Corporate Debtor, and Respondent No. 3 is the Authorised Representative (AR) appointed for the class of homebuyers. The reliefs, as prayed by the Applicants herein, are reproduced as follows:

> "*(a) this Hon'ble Tribunal be pleased to exercise its powers under the Insolvency and Bankruptcy Code, 2016 and rules laid thereunder and declare that the Resolution Plan submitted by Respondent No. 2 (Exhibit "I") is ultra vires the provisions of the Code and the CIRP Regulations;*
>
> *(a-1) this Hon'ble Tribunal be pleased to exercise its powers under the Insolvency and Bankruptcy Code, 2016 and rules laid thereunder, and set aside the decision taken by the Corporate Debtor's Committee of Creditors approving Respondent No. 2's plan as non-est and void;*
>
> *(b) this Hon'ble Tribunal be pleased to exclude the time taken by the Corporate Debtor's Committee of Creditors to approve Respondent No. 2's Resolution Plan from the Corporate Debtor's Corporate Insolvency Resolution Process;*

IBC Laws | www.ibclaw.in

(c) pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to:

(i) stay the adjudication of Interlocutory Application Diary No. 2709138030312025 filed by Respondent No. 1 seeking approval of the Resolution Plan submitted by Respondent No. 2;

(ii) stay the effect and operation of the Corporate Debtor's Committee of Creditors' decision taken during the voting conducted in March 2025 approving Respondent No. 2's Resolution Plan;

(iii) ad-interim reliefs in terms of prayer clause (c) (i) and (ii) above;

(d) For costs;"

2. The Corporate Debtor, Galore Developers Private Limited, was admitted into Corporate Insolvency Resolution Process (CIRP) by this Tribunal *vide* order dated 09.02.2024 passed in CP (IB) No.725 of 2023 filed by VSJ Investments Private Limited, wherein Respondent No.1 was appointed as the Resolution Professional. Pursuant to the public announcement issued in Form A on 14.02.2024, the Applicants lodged their claims between March and December 2024, which the Resolution Professional admitted under the class of homebuyers/financial creditors. Thereafter, Form G inviting Expression of Interest was issued on 01.09.2024.

3. <u>SUBMISSIONS OF APPLICANT</u>

3.1. The Applicants submit that they form part of the class of homebuyers of the Corporate Debtor and their claims have been treated as those of financial creditors in the relevant class. The public announcement in Form A was issued on 14.02.2024. Thereafter, Form G inviting expressions of interest was issued on 01.09.2024.

3.2. It is submitted that Form G contemplated three alternatives for prospective Resolution Applicants, namely: (i) submission of a Resolution Plan for the

Corporate Debtor as a whole; (ii) submission of a Resolution Plan for the residential project individually, by way of demerger, restructuring or any other legally permissible manner; and (iii) submission of a Resolution Plan for the remaining portion of the Corporate Debtor, excluding the residential project.

3.3. According to the Applicants, the aforesaid options contemplated that a Resolution Plan could be submitted either for the Corporate Debtor as a whole, for the residential project alone, or for the remaining/commercial portion of the Corporate Debtor. It is further submitted that the RERA registration of the Project is a singular registration covering both the residential and commercial components.

3.4. The Applicants contend that they form part of the same class of homebuyers as the purchasers of residential units. In support of their contention, reliance has been placed upon the order dated 04.08.2025 passed by the MahaRERA in proceedings concerning the Applicants' commercial units. According to the Applicants, the said order recognises the commercial units as forming part of the RERA-registered Project.

3.5. The Applicants submit that the Respondents have sought to distinguish the residential and commercial portions of the Project and, consequently, to differentiate between the claims of residential and commercial purchasers. According to the Applicants, such distinction is contrary to the position reflected in the MahaRERA order and the structure of the Project as reflected in its RERA registration.

3.6. It was submitted that during the CIRP, four Resolution Plans were received from Prospective Resolution Applicants. According to the Applicants, only the Resolution Plans submitted by S.S. Ekbote and Respondent No.2 proposed differential treatment between residential and commercial purchasers. The Applicants stated that they repeatedly objected to such distinction by addressing communications to the Resolution Professional, the Authorised Representative and the

Successful Resolution Applicant. However, despite their objections and their request that the voting on the Resolution Plans be deferred until their grievances were considered, the voting process proceeded as scheduled between 18.03.2025 and 21.03.2025. The Applicants voted against the Resolution Plan of Respondent No.2 and supported the Resolution Plan submitted by Ms. Ranjana Mane.

3.7. It is submitted that on 03.03.2025, by communication dated 03.03.2025, Respondent No.2 informed the Applicants that commercial units would not be allotted under the proposed Resolution Plan on the ground that such development was commercially unviable and that the commercial purchasers would instead receive only 50% of their admitted claims. According to the Applicants, although the Resolution Plan sought to utilise the commercial Floor Space Index (FSI) available in the project, the corresponding benefit of allotment of commercial units was denied to the purchasers of such units. Reliance was placed upon various clauses of the Resolution Plan to contend that the commercial component of the project continued to be integral to the Resolution Plan.

3.8. The Resolution Plan submitted by Respondent No. 2 is in patent contravention of the provisions of the Code. It is further contended that, upon a plain reading of Clause 4 of the Resolution Plan, the implementation of the Plan is demonstrably conditional and fails to adequately safeguard the rights and interests of various stakeholders of the Corporate Debtor.

3.9. The Applicants state that the 14th CoC meeting was held on 24.02.2025 and that voting on the Resolution Plans was scheduled between 18.03.2025 and 21.03.2025. The Applicants addressed an email dated 18.03.2025 to Respondent No. 1 requesting that voting be withheld until their objections were considered. According to the Applicants, despite this request, voting proceeded as scheduled. The Applicants state that they

voted against the Resolution Plan of Respondent No. 2 and in favour of the plan submitted by Ranjana Mane.

3.10. The principal contention of the Applicants is that the Resolution Plan of Respondent No. 2 creates an impermissible sub-classification within the class of homebuyers by treating purchasers of commercial units differently from purchasers of residential units.

3.11. In support of the aforesaid contention, the Applicants have relied upon Section 30(2)(e) and Section 30(2)(f) of the Code and submitted that a Resolution Plan is required to comply with applicable law and to provide fair and equitable treatment to creditors belonging to the same class.

3.12. Reliance has been placed upon the judgment of the Hon'ble NCLAT in *Akashganga Processors Pvt. Ltd. v. Ravindra Kumar Goyal & Ors.*, [2023 SCC OnLine NCLAT 330], wherein the Appellate Tribunal held that although different classes of creditors may be treated differently, there cannot be discrimination inter se creditors belonging to the same class.

3.13. It is further submitted that the Resolution Plan of Respondent No. 2 seeks to distinguish between residential and commercial purchasers despite having been submitted for the Corporate Debtor as a whole. According to the Applicants, such distinction has the effect of denying possession of the commercial units and providing only partial monetary recovery to the commercial purchasers.

3.14. The Applicants have also relied upon the judgment of the Hon'ble Supreme Court in *Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan*, [(2019) 5 SCC 725], to submit that a homebuyer cannot be compelled to accept wholly one sided or arbitrary terms and that a promoter cannot take advantage of its own defaults.

3.15. Reliance has also been placed upon *Binani Industries Ltd. v. Bank of Baroda & Anr.*, [2018 SCC OnLine NCLAT 521], wherein, according to the

Applicants, the Hon'ble NCLAT emphasised the need to balance the interests of all stakeholders and to avoid unintelligible discrimination between similarly situated creditors.

3.16. The Applicants have further relied upon *Pratap Technocrats Pvt. Ltd. v. Monitoring Committee of Rammanagaram Machine Tools Ltd.*, [(2021) 10 SCC 623], to contend that although the commercial wisdom of the CoC is entitled to due deference, a Resolution Plan cannot be approved if it is contrary to the provisions of the Code or applicable law. According to the Applicants, the Resolution Professional must also examine the Resolution Plan's compliance with statutory requirements.

3.17. The Applicants have referred to the judgment of the Hon'ble Supreme Court in *Essar Steel* [(2020) 8 SCC 531] and submitted that the principle of equitable treatment applies to similarly situated creditors. According to the Applicants, while different classes of creditors may receive different treatment, members belonging to the same class cannot be subjected to arbitrary differential treatment without a legally sustainable basis.

3.18. Reliance has also been placed upon the decision of the NCLT, Kolkata Bench in *Suasth Health Care Foundation*, [CP (IB) No. 204/KB/2021], wherein, according to the Applicants, the Tribunal held that the CoC's commercial wisdom does not extend to permitting arbitrary discrimination amongst creditors belonging to the same class.

3.19. The Applicants have further relied upon *IDBI Bank v. Mamta Binani & Ors., 2022* [SCC OnLine NCLAT 741], to contend that similarly situated financial creditors cannot be subjected to disproportionate treatment without a lawful basis and that approval of the CoC by itself would not cure a Resolution Plan which is otherwise contrary to the statutory requirements.

3.20. On the strength of the aforesaid decisions, the Applicants submit that differential treatment may be permissible between different classes of creditors where a legitimate distinction exists; however, according to them,

there cannot be an artificial or arbitrary distinction between creditors forming part of the same class.

3.21. The Applicants accordingly contend that the Resolution Plan of Respondent No. 2, insofar as it distinguishes between residential and commercial homebuyers, denies possession to the latter, and proposing only partial repayment of their admitted claims, does not satisfy the requirements of Section 30(2) of the Code.

3.22. The Applicants further submit that they are recognised as allottees under the Real Estate (Regulation and Development) Act, 2016 (RERA). According to them, they had entered into Agreements for Sale with the Corporate Debtor in respect of commercial units forming part of the 'Galaxy Panache' project bearing MahaRERA Registration No. P52600007266.

3.23. It is submitted that despite payment of the agreed consideration and expiry of the stipulated period, the Corporate Debtor failed to commence construction and/or offer possession of the respective units. Consequently, Applicant Nos. 8 and 9 filed complaints before MahaRERA on 26.02.2024.

3.24. The Applicants state that although they had initially sought refund of the amounts paid, they were permitted to amend their prayers and seek possession along with statutory interest for delayed delivery.

3.25. The Applicants submit that MahaRERA, by its order dated 04.08.2025, held that the allottees were entitled to possession and interest under Section 18 of RERA at the applicable rate. The Corporate Debtor was consequently directed to hand over possession of the respective commercial units with valid occupancy certificates and to pay interest for the period of delay, subject to the conditions stipulated in the said order.

3.26. According to the Applicants, the MahaRERA order is material for the present proceedings as it recognises their status as allottees in respect of the commercial units and, according to them, demonstrates that the commercial units form part of the RERA-registered Project.

3.27. The Applicants further submit that they have elected to remain in the Project and seek possession rather than refund. It is also submitted that the Resolution Professional, during the CIRP, treated their claims under the category of homebuyers/financial creditors.

3.28. On the aforesaid basis, the Applicants contend that their claims cannot be treated differently from those of other homebuyers merely because the units purchased by them are commercial units. According to the Applicants, the proposed treatment under Respondent No. 2's Resolution Plan amounts to creation of a sub-class within the same class of creditors and is therefore contrary to the statutory framework of the Code.

3.29. The Applicants accordingly seek the reliefs prayed for in the present Application, including a declaration regarding the alleged non-compliance of Respondent No. 2's Resolution Plan with the Code and the CIRP Regulations.

4. Submissions of Respondent No. 1/RP

4.1. The Respondent No. 1 submitted that the Application is not maintainable and is liable to be dismissed at the threshold. It was submitted that the Applicants constitute only a small minority of the homebuyers and cannot challenge the Resolution Plan which has been approved by the requisite majority of the homebuyers through the AR.

4.2. It was submitted that the AR of the homebuyers had voted in favour of the approved resolution plan during the 16th CoC meeting held on 15.03.2025. In the present case, 111 homebuyers out of a total 120 homebuyers had participated in the e-voting session organised by the AR and 80

homebuyers out of the 111 total participating homebuyers had voted in favour of the resolution plan, i.e., more than 70% of total homebuyers who participated and voted. The Applicants represent only 5 out of the total 120 homebuyers, and therefore, constitute less than 5% of the total homebuyers having voting rights in the CoC.

4.3. The Respondent No. 1 placed reliance upon the judgment of the Hon'ble Supreme Court in *Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd*., [(2022) 1 SCC 401], to submit that once a Resolution Plan is approved or rejected by the requisite majority of the financial creditors belonging to a class, the decision taken by such majority is binding upon the minority members of that class. It was submitted that permitting an individual member of the class to dissent from or challenge the collective decision would defeat the scheme of collective decision-making contemplated under the Code.

4.4. It was, therefore, submitted that since the Resolution Plan of Respondent No. 2 received support from the homebuyers, the Applicants, representing only a small fraction of the homebuyers, cannot maintain an independent challenge to the approval of the Resolution Plan.

4.5. The Respondent No. 1 further submitted that the Corporate Debtor was undertaking two distinct projects, namely, the residential project 'Galaxy Panache' and the commercial project 'Galaxy Panache Shopping'.

4.6. It was submitted that the residential project comprises three buildings, namely A1, B and A2. Building A1 was stated to be structurally completed up to the 17th floor, though the Occupation Certificate (OC) had not been obtained and possession had not been handed over to the homebuyers. Buildings B and A2 were also stated to have been constructed up to the 17th floor, with OC having been obtained only up to the 9th floor and possession having been handed over to certain homebuyers.

4.7. In contrast, according to Respondent No. 1, the commercial project, namely, 'Galaxy Panache Shopping', had not commenced construction and approximately 3,279.78 sq. mtrs. of land remained available for development. It was therefore submitted that the residential and commercial projects were at materially different stages of development and involved distinct factual and commercial considerations.

4.8. The Respondent No. 1 placed reliance upon the judgment of the Hon'ble NCLAT in *Sabari Realty Pvt. Ltd. through its Authorised Representative Hiren Bharani v. Sivana Realty Pvt. Ltd. through its Resolution Professional Mr. Manish Jaju & Ors.,* [2023 SCC OnLine NCLAT 2414], to submit that, where different real estate projects are at different stages of construction, the CoC, in exercise of its commercial wisdom, may adopt differential treatment in respect of homebuyers.

4.9. It was further submitted that the distinction between the residential and commercial projects was expressly reflected in Form G dated 11.09.2024 issued by Respondent No. 1. The residential project was described as 'Galaxy Panache', comprising A1 Wing, A2 Wing and B Wing, whereas the commercial project was separately described as 'Galaxy Panache Shopping', which was stated to be yet to be constructed with approximately 3,279.78 sq. mtrs. of land available for development.

4.10. According to Respondent No. 1, the Applicants did not raise any objection to the Form G at the relevant time and, therefore, could not subsequently challenge the distinction between the residential and commercial projects.

4.11. The Respondent No. 1 had duly examined the Resolution Plan submitted by Respondent No. 2 for compliance with the requirements of Section 30(2) of the Code.

4.12. It was submitted that Respondent No. 1, by email dated 17.03.2025, circulated an evaluation sheet and called upon the prospective Resolution Applicants, including Respondent No. 2, to submit addendum addressing

the issues identified therein. Respondent No. 2 thereafter submitted an addendum to its Resolution Plan by email dated 18.03.2025.

4.13. Respondent No. 1 denied the allegation that the Resolution Plan was conditional merely because Clause 4 thereof referred to the pending proceedings before the Hon'ble Supreme Court arising out of the order of the Hon'ble Bombay High Court.

4.14. It was submitted that Clauses 4.2 to 4.4 of the Resolution Plan dealt with the dispute concerning allocation of 15% of the plot area between the Corporate Debtor and Solapur Municipal Corporation (SMC).

4.15. Respondent No. 1 submitted that the Hon'ble Bombay High Court, by order dated 06.10.2022, had quashed the show-cause notice dated 02.09.2022 issued under Section 51 of the Maharashtra Regional Town Planning Act, 1966 (MRTP Act) and the letter dated 19.09.2022 issued by SMC to the Corporate Debtor. According to Respondent No. 1, the Hon'ble High Court had held that the SMC and its Municipal Commissioner had acted without jurisdiction and authority of law.

4.16. It was further submitted that SMC had challenged the said order before the Hon'ble Supreme Court and the proceedings were pending. According to Respondent No. 1, no stay had been granted by the Hon'ble Supreme Court against the order dated 06.10.2022 and the said order continues to operate.

4.17. Respondent No. 1 referred to Clause 4.4 of the Resolution Plan, which contemplated a situation where the Hon'ble Supreme Court may take a view different from that of the Hon'ble Bombay High Court. According to Respondent No. 1, the said clause provided that, in such an eventuality, the Resolution Applicant would have the rights and remedies available under law to make the project feasible and viable, and further provided that the commercial space would not be affected by any order passed in respect of the residential space.

4.18. It was further submitted that, pursuant to a request made by Respondent No. 1, the Resolution Applicant provided clarification by email dated 29.03.2025 regarding Clause 4.4. According to Respondent No. 1, the Resolution Applicant expressly clarified that any modification of the order dated 06.10.2022 would not result in withdrawal of the Resolution Plan and reaffirmed its commitment to implement the Plan.

4.19. Respondent No. 1 further submitted that the Resolution Plan contemplated payment of 50% of the principal amount paid by the commercial unit purchasers, despite the negative liquidation value of the commercial project land. According to Respondent No. 1, the proposed treatment was therefore not without consideration of the underlying asset position.

4.20. It was also submitted that only the residential project had RERA registration and that the registration certificate forming part of the record related to the residential project.

4.21. Respondent No. 1 further submitted that, by email dated 20.02.2025, it had requested the Resolution Applicant to respond to the queries raised by the homebuyers, including the Applicants who were commercial unit purchasers. The Resolution Applicant thereafter furnished its responses by email dated 03.03.2025, which were forwarded by Respondent No. 1 to Respondent No. 3, the AR representing the homebuyers, by email dated 04.03.2025.

4.22. The Respondent No. 1 submitted that the Resolution Plan had been approved unanimously by the CoC. It was submitted that, during the 15th CoC meeting held on 10.03.2025, the AR informed the CoC that the homebuyers were considering only the Resolution Plan submitted by Respondent No. 2 and had rejected the other three Resolution Plans.

4.23. According to Respondent No. 1, the homebuyers constituted 48.28% voting share in the CoC and had expressed their inclination to proceed

with the Resolution Plan of Respondent No. 2. Consequently, the other Resolution Plans submitted by Ranjana Mane, the consortium of Sanjeev Malhotra and Dhariwal Thirani Lifespaces LLP, and S.S. Ekbote were not considered for approval.

4.24. It was further submitted that, during the 16th CoC meeting held on 15.03.2025, the AR informed the CoC that there was no change in the decision of the homebuyers.

4.25. Respondent No. 1 submitted that the commercial evaluation of a Resolution Plan falls within the domain of the CoC and that the Adjudicating Authority is not required to undertake a comparative or quantitative assessment of the commercial merits of the Resolution Plan.

4.26. In support of the aforesaid submission, reliance was placed upon the judgment of the Hon'ble Supreme Court in *India Resurgence ARC Pvt. Ltd. v. Amit Metaliks Pvt. Ltd.,* [Civil Appeal No. 1700 of 2021], wherein the Hon'ble Supreme Court reiterated that the consideration and approval of a Resolution Plan falls substantially within the commercial wisdom of the CoC and that judicial review by the Tribunal is confined to the parameters prescribed under Section 30(2) of the Code.

4.27. Respondent No. 1 further submitted that the role of the Resolution Professional is limited to examining whether the Resolution Plans comply with Section 30(2) of the Code and ensuring that the plans are complete in all respects before placing them before the CoC.

4.28. Reliance was placed upon the judgment of the Hon'ble Supreme Court in *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta & Ors.,* [Civil Appeal Nos. 9402-9405 of 2018], wherein the Hon'ble Supreme Court explained that the Resolution Professional is required to examine and confirm whether a Resolution Plan conforms to the requirements of Section 30(2) and to place compliant plans before the CoC for its consideration.

4.29. It was submitted that the Resolution Professional is not empowered to substitute his own decision for that of the CoC or to determine the commercial desirability of a Resolution Plan. According to Respondent No. 1, the Resolution Professional had duly undertaken the requisite scrutiny of Respondent No. 2's Resolution Plan and the Plan was thereafter placed before the CoC for consideration and approval.

5. SUBMISSIONS OF RESPONDENT NO. 2

5.1. Respondent No. 2 opposed the present Application and submitted that the Resolution Plan duly takes into consideration the interests of all stakeholders, including the purchasers of commercial units, and has been formulated in accordance with the Code and the applicable CIRP Regulations.

5.2. The Resolution Plan was considered and approved by the CoC in its 16th meeting held on 15.03.2025 with the requisite majority prescribed under Section 30(4) of the Code, pursuant to which Respondent No. 2 was declared as the SRA. It was submitted that the Plan also complies with the requirements of Section 30(2) of the Code and provides for treatment of similarly situated stakeholders in accordance with law.

5.3. It was further submitted that the Resolution Plan does not take away or prejudice any substantive rights of the Applicants as purchasers of commercial units. According to Respondent No. 2, the present Application is an attempt by a few commercial unit purchasers to challenge the commercial decision of the CoC and thereby obstruct the resolution of the Corporate Debtor.

5.4. Respondent No. 2 submitted that the AR of the homebuyers had voted in favour of the Resolution Plan during the 16th meeting of the CoC held on 15.03.2025. It is submitted that the Resolution Plan has received the overwhelming support of the homebuyers and that the Applicants, being

a small minority, cannot seek to defeat or obstruct the collective decision taken by the class through its AR.

5.5. The principal contention of Respondent No. 2 is that the residential and commercial components of the development constitute distinct projects and that the distinction between the two was known throughout the CIRP process.

5.6. It is submitted that the RERA registration relied upon by the Applicants pertains exclusively to the residential project, namely “Galaxy Panache”. the commercial project, namely “Galaxy Panache Shopping”, is not covered by the said RERA registration.

5.7. It was submitted that the rights, entitlements and protections flowing from the RERA registration relied upon by the Applicants are therefore applicable to the residential allottees and cannot automatically be extended to purchasers of commercial units forming part of the separate commercial project.

5.8. It was submitted that the Resolution Plan distinguishes between residential and commercial purchasers on the basis of the commercial viability of the respective components of the Project. It was submitted that the various Resolution Applicants had adopted different approaches towards the commercial units. According to Respondent No. 2, some Resolution Applicants had either excluded the commercial units altogether or proposed to deal with them conditionally.

5.9. Respondent No. 2, submitted that it had made a commercially considered proposal for settlement of the claims of the commercial unit purchasers by offering 50% of their admitted claims as full and final settlement. The said proposal was communicated to the commercial unit purchasers by email dated 03.03.2025 and was subsequently considered by the CoC.

5.10. Respondent No. 2 further addressed the Applicants' contention that Clause 4 of the Resolution Plan rendered the Plan conditional.

5.11. It was submitted that the Applicants had selectively relied upon Clause 4 without considering the context in which the said clause was incorporated. According to Respondent No. 2, the clause merely records the existing litigation between the Corporate Debtor and SMC and sets out the course of action available to the SRA in the event of an adverse outcome in the pending proceedings.

5.12. The Hon'ble Bombay High Court had held that SMC and its Municipal Commissioner had acted without jurisdiction and without authority of law, although SMC has challenged the order dated 06.10.2022 before the Hon'ble Supreme Court, no stay has been granted against the said order. Consequently, according to Respondent No. 2, the order of the Hon'ble Bombay High Court continues to operate and the Resolution Plan has been formulated on the basis of the legal position presently prevailing.

5.13. It was submitted that Clause 4.4 does not make the Resolution Plan conditional upon the outcome of the proceedings before the Hon'ble Supreme Court, nor does it confer upon the SRA an unrestricted right to withdraw from the Resolution Plan. According to Respondent No. 2, the clause merely identifies the legal and commercial consequences of a possible adverse judicial outcome and preserves the remedies available to the SRA under law.

5.14. On the aforesaid basis, Respondent No. 2 submitted that the Applicants' contention that the Resolution Plan is conditional is misconceived and proceeds from an isolated reading of the relevant clause without considering the surrounding circumstances and the pending litigation.

6. SUBMISSIONS OF RESPONDENT NO. 3

6.1. Respondent No. 3, the Authorised Representative of the class of homebuyers, submitted that the present Application is misconceived and liable to be dismissed insofar as any allegation of breach of statutory or fiduciary duty has been levelled against Respondent No. 3.

6.2. It was submitted that pursuant to the admission of the Corporate Debtor into CIRP by order dated 09.02.2024, public announcement inviting claims was issued on 14.02.2024 and the CoC was constituted on 06.03.2024 comprising VSJ Investments Private Limited and the class of homebuyers. Thereafter, by order dated 01.05.2024, this Tribunal appointed Respondent No.3 as the AR of the class of homebuyers. Since its appointment, Respondent No.3 has participated in the meetings of the CoC and represented the homebuyers in accordance with the provisions of the Code.

6.3. It was submitted that the Resolution Plans were placed before the homebuyers for voting through an electronic voting process conducted between 18.03.2025 and 21.03.2025. Out of 120 eligible homebuyers, 111 participated in the e-voting. The Resolution Plan submitted by Respondent No.2 secured more than 50% of the votes cast by the homebuyers and consequently emerged as the preferred Resolution Plan of the class.

6.4. The voting results were thereafter communicated by Respondent No.3 to the Resolution Professional, following which Respondent No.3 cast the vote before the CoC strictly in accordance with the decision of the majority of the homebuyers represented by it.

6.5. Respondent No.3 denied the allegations of bias, arbitrariness and breach of fiduciary duty. It was submitted that throughout the CIRP, Respondent No.3 acted in the interest of the class of homebuyers and not in the interest of any individual creditor.

6.6. Respondent No. 3 further submitted that the Applicants have failed to disclose that the Corporate Debtor was developing two separate projects,

namely, the residential project “Galaxy Panache” and the commercial project “Galaxy Panache Shopping”, which were at materially different stages of development. The residential project was nearing completion whereas construction of the commercial project had not commenced. The distinction between the two projects was reflected throughout the CIRP, including in Form G, and was never challenged by the Applicants at the relevant stage. It was therefore submitted that there existed a reasonable and commercial basis for treating the residential and commercial purchasers differently under the Resolution Plan.

6.7. Respondent No.3 had duly responded to the queries raised by the Applicants in the capacity as Authorised Representative and ensured that all eligible homebuyers were afforded an opportunity to participate in the e-voting process. The voting process was conducted transparently and Respondent No.3 merely communicated the collective decision of the homebuyers before the CoC.

6.8. Respondent No.3 lastly submitted that the Applicants' challenge to the Resolution Plan is, in substance, a challenge to the commercial wisdom exercised by the CoC and not to any act or omission on the part of the AR. The function of the AR is confined to representing the class of creditors and casting its vote in accordance with the majority decision under Section 25A of the Code. The AR is neither required nor empowered to independently assess the commercial merits of competing Resolution Plans or to override the collective decision of the creditors in the class.

7. ANALYSIS AND FINDINGS

7.1. We have heard the Ld. Counsel appearing for the parties and perused the documents on records.

7.2. The principal issue which arises for consideration is whether the Resolution Plan submitted by Respondent No.2 is liable to be interfered with on the ground that it creates an impermissible distinction between

purchasers of residential units and purchasers of commercial units, who according to the Applicants constitute one homogeneous class of homebuyers.

7.3. The Applicants contend that they have been admitted as financial creditors in the class of homebuyers and that their commercial units form part of the same RERA registered project. According to them, once they belong to the same class of creditors, the Resolution Plan cannot create a sub-class by providing possession to residential allottees while restricting commercial purchasers only to refund of 50% of their admitted claims. The Applicants therefore contend that the Resolution Plan violates Section 30(2) of the Code and the principle of equitable treatment recognised in *Essar Steel* (supra), *Binani Industries* (supra), *Akashganga Processors* (supra) and other judgments relied upon by them.

7.4. The Respondents, on the other hand, contend that the distinction is neither arbitrary nor artificial. Their case is that the residential project and the commercial project are separate developments, are at entirely different stages of completion, possess different commercial viability, and were treated distinctly throughout the CIRP, including in Form G. It is further submitted that the Resolution Plan merely recognises this factual distinction and that the commercial evaluation underlying such treatment falls exclusively within the commercial wisdom of the CoC. The Respondents have further submitted that the Resolution Plan has been approved by the requisite majority of the CoC and the majority of homebuyers represented through the AR, and that this decision is binding upon the dissenting minority.

7.5. Before examining the submissions, it is necessary to notice the settled principles governing judicial review of a Resolution Plan. The Hon'ble Supreme Court has consistently held in *Essar Steel* (supra), *Pratap Technocrats* (supra), *India Resurgence ARC* (supra) *and Jaypee Kensington* (supra) that this Adjudicating Authority does not sit in appeal

over the commercial wisdom of the Committee of Creditors. The jurisdiction of this Tribunal is confined to examining whether the Resolution Plan satisfies the requirements prescribed under Section 30(2) of the Code and whether the approval process suffers from any statutory infirmity. Commercial decisions regarding feasibility, viability and distribution amongst stakeholders ordinarily fall within the exclusive domain of the Committee of Creditors.

7.6. Equally settled, however, is the principle that while differential treatment between different classes of creditors may be permissible, arbitrary discrimination amongst similarly situated creditors belonging to the same class would not be consistent with the provisions of the Code. Therefore, the question before this Tribunal is not whether a better commercial proposal could have been adopted but whether the distinction drawn in the Resolution Plan possesses a rational and legally sustainable basis.

7.7. From the material placed on record, it emerges that the Respondents have consistently maintained that the residential and commercial developments are distinct projects. It is their specific case that while the residential component had substantially progressed, the commercial project had not commenced construction and its commercial feasibility was materially different. This distinction is stated to have been reflected in Form G itself and was one of the factors considered by the Resolution Applicant while formulating the Resolution Plan. The Resolution Applicant has further justified the proposal of refund of 50% of the admitted claims of commercial purchasers on the basis of the viability of the commercial project.

7.8. The Applicants, however, dispute the aforesaid distinction by placing reliance upon the MahaRERA order to contend that both residential and commercial purchasers constitute one class of allottees. However, even assuming that the Applicants form part of the class of financial creditors as homebuyers, the mere existence of differential treatment would not

ipso facto invalidate a Resolution Plan unless such differentiation is shown to be arbitrary or contrary to the provisions of the Code.

7.9. In the present case, the distinction sought to be drawn by the Resolution Applicant is founded upon the different stage of construction, different commercial viability and the separate treatment of the projects during the CIRP. Whether such commercial assessment is economically sound is not a matter for judicial review under Section 31 of the Code. Once the Resolution Professional has certified compliance under Section 30(2) and the CoC, after considering the Resolution Plan, has exercised its commercial wisdom, this Tribunal cannot substitute its own commercial assessment merely because another view is possible.

7.10. We also find no substance in the contention that the Resolution Plan becomes conditional simply because Clause 4.4 refers to the pending proceedings before the Hon'ble Supreme Court. The clause only records the consequences of any adverse judicial determination and preserves the legal remedies available to the Resolution Applicant. The clarification furnished by the Resolution Applicant further demonstrates that the Resolution Plan is not liable to be withdrawn solely on account of the outcome of the pending proceedings. Consequently, Clause 4.4 cannot be construed as rendering the Resolution Plan non-compliant with the Code.

7.11. As discussed, we find no merit in the present Application, and the same is liable to be dismissed. Accordingly, the present Application **IA (IB) No. 2170 of 2025** is **dismissed** with no order as to costs.

Sd/-

ANIL RAJ CHELLAN

MEMBER (TECHNICAL)

Siddhi, LRA

Sd/-

K. R. SAJI KUMAR

MEMBER (JUDICIAL)