IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

I.A. 843 ND 2025
IN
C.P. IB 284 (PB) OF 2021

IN THE MATTER OF:

VIVEK KHANNA
...Applicant No. 1

RAJEEV CHANDWANI
...Applicant No. 2

NAWAL KUMBHAT
...Applicant No. 3

CHHANDITA WARKARE
...Applicant No. 4

RITESH JAIN
...Applicant No. 5

VEENU GUWALANI
...Applicant No. 6

DAVINDER KAUR
...Applicant No. 7

PARMINDERJIT SINGH
...Applicant No. 8

ANJALI BHATNAGAR
...Applicant No. 9

PRADEEP BHATNAGAR
...Applicant No. 10

VISHAL KAMRA
...Applicant No. 11

BAJAMAHAL PHANI KUMAR
...Applicant No. 12

AMIT BHATNAGAR
...Applicant No. 13

RUCHIKA BEHL
...Applicant No. 14

REKHA SAITH
...Applicant No. 15

MOHD. TUFEL ZAMA

...Applicant No. 16

MOHD. SAKIB ZAMA

...Applicant No. 17

MOHD. SUHEL ZAMA

...Applicant No. 18

NATHU RAM YADAV

...Applicant No. 19

MAHENDRA SINGH

...Applicant No. 20

Versus

MR. GAURAV KATIYAR
INTERIM RESOLUTION PROFESSIONAL
SPAZE TOWERS PVT. LTD.

...Respondent

AND IN THE MATTER OF:

VIVEK KHANNA & ORS

...Financial Creditors

Versus

SPAZE TOWERS PVT. LTD.

...Corporate Debtor

Order Pronounced on: 05.10.2026

CORAM:

SHRI MAHENDRA KHANDELWAL
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Ms. Eshna Kumar, Ms. Astha Agrawal, Advs.

For the RP : Mr. Karan Gandhi, Mr. Sikhar Tiwari, Mr. Pratham Bansal, Ms. Riya Jain, Ms. Vidhika Kapoor, Advs.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by the Applicants under Section 21 and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("Code") read with Rule 11 of the National Company Law Tribunal Rules, 2016 ("NCLT Rules, 2016") seeking the following reliefs:

A. Allow the present application and exclude the Proxy Claimants [as defined hereinabove) from the CoC;

B. Pass an order for the Resolution Professional to provide the account statement detailing money paid and receipts of each unit holders in project Spaze Arrow;

C. Pass an order to set aside / quash / cancel voting No. 4A and 4B passed in the third CoC meeting dated 09.01.2025;

D. Pass any such other order(s) as it may deem fit and proper in the interests of justice.

SUBMISSIONS OF THE APPLICANTS:

2. The CIRP of Spaze Towers Private Limited ("Corporate Debtor") was admitted by order dated 21.10.2024 under Section 7 of the IBC on an application filed by allottees of the "Spaze Arrow" project. The present application seeks reconstitution of the CoC to include only genuine unit holders, exclusion of

persons whose claims allegedly do not qualify as allottee claims, exclusion of alleged proxies of the suspended management, and exclusion of unverifiable claims based on photocopies of agreements in the absence of Tally data.

3. It is alleged that the suspended directors, after unsuccessful attempts before the NCLAT and Supreme Court, have resorted to unlawful means to retain influence over the CIRP and secure appointment of a Resolution Professional of their choice. In the absence of an exhaustive forensic audit, allegedly false claims are stated to have an undue influence on CoC voting, contrary to Section 21(2) of the IBC. It is further alleged that the then Resolution Professional, Mr. Gaurav Katiyar, despite representations, failed to disclose critical data concerning the identities and payment histories of allottees receiving assured returns, allegedly in breach of Sections 25(2)(e) and (h) of the IBC.

4. Objection has been raised to the inclusion of seven alleged "Proxy Claimants" in the CoC, namely Mr. Jaspreet Singh, Mr. Pramod Kumar Soni, Mr. Pramod Soni and Sunita Soni, Mrs. Usha Soni, Dr. Kuldeep Dang and Arvinder Dang, Mrs. Charanjiv Kaur and Mrs. Ramanjit Kaur, whose aggregate admitted claims are stated to be Rs.4,22,49,656, carrying 3.82% voting share. It is alleged that these persons entered into MOUs with the Corporate Debtor for

assured returns and received such returns despite, in several cases, not having paid the entire sale consideration.

5. The application provides details of payments made towards the concerned units and alleges substantial disparity between the amounts actually paid and the amounts claimed/admitted. In the case of Mrs. Charanjiv Kaur, it is specifically alleged that receipts of only Rs.2,04,759 were shown before the Delhi High Court for Unit No. 405, whereas a claim of Rs.16,27,797 was admitted in the CIRP, with the allegation that Unit No. 408A was not disclosed before the High Court.

6. Reference is made to complaints before the EOW and proceedings before the Delhi High Court concerning allegations that the Corporate Debtor siphoned project funds through benamidars/proxies under the guise of assured returns. The police status report recorded that no assured returns were given to allottees who had not paid the complete sale consideration and that the Corporate Debtor had refuted allegations of forgery. Against this background, it is alleged that the Proxy Claimants, despite not having paid the complete sale consideration, received assured returns, indicating that they were either benamidars of the Corporate Debtor or that the suspended management had a beneficial interest in their units.

7. In relation to Mr. Jaspreet Singh, the MOU is alleged to be suspect as it records payment of Rs.14,50,000 towards Unit No. 407 by Spaze Towers Private Limited itself. It is further alleged that Mr. Jaspreet Singh, Mrs. Charanjiv Kaur and Mrs. Ramanjit Kaur reside at the same address and that their MOUs, collectively, show assured returns of Rs.14,40,000 in the first year against an alleged out-of-pocket contribution of virtually nil.

8. Reliance is placed on the DTCP financial audit filed on 14.08.2023, according to which the Corporate Debtor had made payments exceeding Rs.66 crore towards "assured return". It is stated that the audit does not identify the amount paid to each allottee, and that such information would assist in determining genuine allottees and alleged benamidars/proxies. Reference is also made to an inspection sanctioned by the Central Government under Section 206(5) of the Companies Act, 2013 concerning allegations of fraud, siphoning of public funds and other violations.

9. The alleged suspicious claimants are stated to constitute only a partial list from Spaze Arrow, with the full extent of alleged proxies in that project and the other 12 projects remaining unknown. An exhaustive financial audit is therefore sought before determination of CoC voting percentages. It is further stated that the Proxy Claimants had been rejected as financial creditors by the NCLT, Chandigarh, and that acceptance of their claims would be contrary

to such determination. Reliance is placed on Swiss Ribbons Private Limited and Another v. Union of India and Others for the proposition that a Resolution Professional has no adjudicatory powers.

10. A separate concern is raised regarding claims of related parties and family members of the suspended management. According to the DTCP audits of 2016 and 2022, more than 20 units were in the names of directors and their family members, including Gurpal Chawla, Yogita Kumar and Nikita Kumar. It is alleged that these persons had paid only Rs.1,00,000 towards booking for each unit, whereas TDS records reflected payments by Spaze Towers Private Limited of approximately Rs.33 lakh per year to Nikita Kumar and Yogita Kumar. Investigation of the concerned units, MOUs, bank statements and payments is therefore sought.

11. The application further refers to TDS records for FY 2016–17 showing Rs.37,03,756 credited and Rs.3,70,405 deducted and deposited as TDS in the names of both Yogita Kumar and Nikita Kumar by Spaze Towers Private Limited. It is alleged that the sale and assured returns paid to such persons were not reported as related-party transactions in the Company's balance sheet.

12. Reference is also made to an alleged “14th project”, namely “Spaze Delhi”. Two claims relating to the said project allegedly appear at serial numbers 228 and

276 of the claims filed by the RP, whereas, according to filings before the NCLAT and Supreme Court, "Spaze Delhi" was not listed as a project of the Corporate Debtor. A separate application is stated to have been preferred in this regard.

13. Several emails were addressed to the authorised representative and IRP seeking details regarding the beneficiaries of the Rs.66 crore assured-return payments and account statements of unit holders in Spaze Arrow. It is alleged that no response was received and that the Resolution Professional declined to provide details of the amounts paid by individual unit holders.

14. The voting percentage of genuine allottees of Spaze Arrow is stated to have reduced by approximately 50%, while that of other unit holders reduced by approximately 20%. The application relies upon e-voting records showing a reduction in the voting percentage of one member from 0.82% in November 2024 to 0.45% in January 2025.

15. It is alleged that the suspended directors deliberately caused the Tally data of the Corporate Debtor to become unavailable. The minutes of the second CoC meeting dated 17.12.2024 record that accounting data for some projects was available from 2016 onwards and under validation, while earlier-year data had been lost due to a technical issue. It is alleged that claims were thereafter filed by proxies and unknown persons merely on the basis of photocopies,

without bank statements, making reconciliation with the available Tally data impossible. Recovery and examination of bank statements dating back to 2011–2012 is stated to be necessary to verify such claims.

16. The suspended directors are alleged to have increased the voting percentage of proxy claimants while denying genuine claims, thereby influencing CoC voting and the appointment of a new Resolution Professional. Mr. Gaurav Katiyar was initially appointed as IRP and his candidature was confirmed in the first CoC meeting dated 19.11.2024. It is alleged that the suspended directors continued to operate from the same office and hindered the functioning of the RP. Mr. Katiyar thereafter sought to engage an insolvency firm at a fee of Rs.10 lakh per month, which proposal was rejected, following which he resigned.

17. Following the resignation of Mr. Katiyar, the suspended directors, through alleged proxies and employees, are stated to have campaigned for appointment of Mr. Narender Sharma as Resolution Professional. In the third CoC meeting, Mr. Atul Mittal and Mr. Narender Sharma were proposed, and it is alleged that the appointment of Mr. Sharma resulted from the influence and lobbying of the suspended directors through the Proxy Claimants. The application further alleges that Mr. Sharma was sympathetic to the

suspended management and was appointed through the votes of the proxy claimants.

18. The Corporate Debtor's challenge to the CIRP order before the NCLAT did not result in any stay, and the CoC was constituted pursuant to the NCLAT order dated 28.10.2024. The challenge before the Supreme Court was dismissed on 08.11.2024. The Corporate Debtor's attempt to confine the CIRP to Spaze Arrow was rejected by the NCLAT on 17.12.2024, and the subsequent appeal before the Supreme Court was dismissed on 02.01.2025.

19. Several other fraudulent and suspicious transactions may exist in Spaze Arrow and the other projects and can be identified only through a detailed financial audit. The CoC minutes are stated to record that the Resolution Professional received proposals for forensic audit from KPMG and Grant Thornton. Reference is also made to alleged expenditure of approximately Rs.192 crore by Spaze Towers on a project in Sector 114, where the land was allegedly transferred to another entity, along with other undisclosed and suspicious transactions. A forensic audit is accordingly stated to be integral to the CIRP and sought to be directed by the Adjudicating Authority.

20. The MOUs of the Proxy Claimants are, in substance, assured-return investment contracts and not agreements of real estate allotment. It is well settled that a person who invests in a real estate project purely to earn a

guaranteed/assured return, without any genuine intention of taking possession and without the ordinary safeguards of a builder-buyer agreement, construction milestones, delivery timelines, or delay compensation is a "speculative investor" and cannot claim the status of an "allottee"/Financial Creditor under Explanation (i) to Section 5(8)(f) of the Code. Reliance has been placed on Pioneer Urban Land and Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416; Nidhi Rekhan v. Samyak Projects Pvt. Ltd., Company Appeal (AT) (Ins) No. 1035 of 2020, NCLAT, decided 31.01.2022, Mansi Brar Fernandes & Ors. v. Shubha Sharma & Ors., Civil Appeal No. 3826 of 2020 and Nikhil Khanna & 87 Ors. v. Spaze Towers Pvt. Ltd., CP (IB) No. 70/Chd/Hry/2022.

SUBMISSIONS OF THE RESPONDENT:

21. The RP, Mr. Narender Kumar Sharma, was appointed as the RP of the Corporate Debtor pursuant to the Order dated 22.01.2025. Pursuant to the Order dated 16.03.2026, by which the issue of maintainability was decided, the RP was directed to file reply on merits.

22. The CIRP of Spaze Towers Private Limited was initiated by order dated 21.10.2024 in C.P. (IB) No. 284(PB)/2021, with Mr. Gaurav Katiyar appointed as IRP and subsequently confirmed as Resolution Professional. The CIRP

order was challenged before the NCLAT, which, by order dated 28.10.2024, directed that the insolvency process should continue and that the CoC be constituted. The challenge before the Hon'ble Supreme Court in Civil Appeal No. 12189 of 2024 was disposed of, leaving the parties to pursue their contentions before the NCLAT.

23. Pursuant thereto, an application was filed before the NCLAT seeking confinement of the CIRP to the project "Spaze Arrow". The NCLAT, by order dated 17.12.2024, rejected the prayer, observing that claims had been filed in respect of other projects and that confining the CIRP to Spaze Arrow would exclude such claims. The Hon'ble Supreme Court, in Civil Appeal No. 14708 of 2024, agreed with the NCLAT that the Section 7 order could not be confined to one project and dismissed the appeal on 02.01.2025. The appeal against the CIRP commencement order was subsequently withdrawn by the suspended management on 22.08.2025.

24. The present application has been filed by 20 homebuyers/allottees of Spaze Arrow, who were part of the original group of 34 financial creditors who initiated the CIRP. The prayers seek, inter alia, exclusion of the alleged "Proxy Claimants" from the CoC, directions to the RP to provide account statements detailing payments and receipts of unit holders in Spaze Arrow, and setting

aside/quashing/cancellation of Voting Nos. 4A and 4B passed in the third CoC meeting dated 09.01.2025.

25. The CIRP was commenced by order dated 21.10.2024, pursuant to which the erstwhile RP made the public announcement in Form-A on 24.10.2024. Upon receipt and collation of claims, the CoC was constituted in terms of Section 21(1) of the Code. The erstwhile RP thereafter filed I.A. No. 5676 of 2024 under Regulation 17(1) of the CIRP Regulations, certifying the constitution of the CoC, which was taken on record by this Adjudicating Authority by order dated 09.12.2024.

26. Under Section 18(1)(b) of the Code, the IRP is required to receive and collate claims submitted pursuant to the public announcement, while verification is to be undertaken on the basis of information furnished by the creditor and the records of the Corporate Debtor. The Resolution Professional is not an adjudicator but a facilitator, and the power to verify claims is administrative in nature.

27. Reliance is placed on the order dated 09.09.2025 passed by this Adjudicating Authority in Manjinder Singh Sandhu & Ors. v. Original CoC of Class Home Buyers & Ors., I.A. No. 3143/2022 in C.P. (IB) No. 1591(PB)/2018, wherein it was held that once a claim has been admitted or rejected, re-verification by

the RP on his own, without approval of the Adjudicating Authority, would exceed the powers and duties of the RP and is impermissible.

28. The erstwhile RP convened the first CoC meeting on 19.11.2024, wherein the constitution of the CoC as on 13.11.2024, based on claims received up to 06.11.2024 and verified under Regulations 13 and 14 of the CIRP Regulations, was placed before the members. The constitution of the CoC was duly noted by the members. The composition having been placed on record before this Adjudicating Authority and noted by the CoC, the present attempt to reopen or alter the constitution of the CoC is stated to be legally untenable.

29. It is further contended that the prayer for exclusion of the alleged "Proxy Claimants" is generic and concerns homebuyers/financial creditors in a class. Such a grievance ought to have been raised through the Authorised Representative, and no material has been placed to demonstrate that the Applicants had raised the grievance with the Authorised Representative. In the absence of such steps and supporting material, the generic prayer cannot be entertained.

30. The nomenclature "Proxy Claimants" is stated to have no legal basis. The persons referred to in the application are homebuyers whose claims were admitted by the erstwhile RP and on the basis of which the CoC was

constituted. Any revision of claims is governed by Regulation 14 of the CIRP Regulations, 2016.

31. The 89 Allottees had filed claims in respect of assured returns, which were duly verified and admitted by the erstwhile Resolution Professional in accordance with law. Out of these, 41 Allottees pertaining to Project Arrow had entered into MOUs with the Corporate Debtor entitling them to assured returns until possession of their respective units. As the Corporate Debtor failed to hand over possession, these allottees filed their claims, which were duly admitted. The relevant list of assured-return creditors, list of claimants pertaining to Project Arrow and sample MOU were annexed with the reply.

32. Allottees falling within the category of assured returns constitute "allottees" under the Code and are members of the CoC. The Hon'ble Appellate Tribunal in Rita Malhotra & Anr. v. Orris Infrastructure Pvt. Ltd., Company Appeal (AT) (Ins.) No. 484 of 2024, has categorically held that the assured returns class of creditors is encompassed within the definition of "allottee". Accordingly, the allottees who had entered into MOUs with the Corporate Debtor and were entitled to assured returns continue to retain their status as "allottees" under the Code and their entitlement to claim assured returns.

33. The present Application proceeds on the assumption that claimants/homebuyers to whom assured returns had been committed and

paid ought not to have been included in the list of creditors. Since such claims had already been admitted by the erstwhile Resolution Professional, the Answering Respondent cannot now exclude them merely on the basis of allegations made in the Application. The Answering Respondent does not possess the power to rewrite contracts executed by the Corporate Debtor prior to commencement of CIRP, particularly where payments had been accepted from the concerned homebuyers. The contention that such claimants are "proxy claimants" is erroneous, and the said claimants are not related parties of the Corporate Debtor.

34. The status report filed by the Police before the Hon'ble Delhi High Court in CRL.M.C. No. 8265 of 2023 has also been misconstrued by the Applicants. The relevant report records that the case was documentary in nature, that no evidence regarding the allegations of money siphoning and forgery had come on record till that stage, and that the investigation was near completion. Thus, the status report did not return any finding establishing the allegations raised by the Applicants against the assured-return claimants. The attempt to rely upon the said report to characterise legitimate allottees as "proxy claimants" is therefore misconceived and legally impermissible. It is further stated that the Respondent has received the closure report in FIR No. 94 of 2021. The Applicants have deliberately concealed the factum of such closure and cannot

place reliance on the status report while withholding the subsequent closure report so as to prejudice this Adjudicating Authority against the Respondent.

35. Prayer (B) of the present application is not maintainable as the Applicants have already sought a similar relief in I.A. No. 844 of 2025. The doctrine of res sub judice prevents parallel proceedings concerning the same subject matter between the same parties. The principle embodied in Section 10 of the Code of Civil Procedure, 1908, applies in spirit to proceedings under the Code and seeks to prevent multiplicity of proceedings, conflicting decisions and abuse of process.

36. In the present case, the issue relating to furnishing of account statements of unit holders/financial creditors in Project "Spaze Arrow" is already directly and substantially in issue in I.A. No. 844 of 2025. The present Application, insofar as it seeks the same relief, is therefore liable to be rejected at the threshold.

37. Individual homebuyers cannot take a stand contrary to the majority of homebuyers and are required to sail along with the decision of the majority in accordance with the scheme of the Code. Consequently, Prayer (C) sought by the Applicants is not maintainable.

38. The appointment of the Respondent as Resolution Professional was confirmed by this Adjudicating Authority vide order dated 22.01.2025. By way of the

present Application, the Applicants are, in effect, seeking to recall or reopen the said order, which is impermissible. The appointment was not challenged before the Hon'ble Appellate Tribunal and has consequently attained finality.

39. Further, the replacement of an IRP and appointment of a Resolution Professional falls within the domain of the CoC. The CoC is empowered to replace the IRP and appoint a Resolution Professional where the requisite 66% majority is obtained. Therefore, the reliefs seeking interference with or replacement of the Resolution Professional are not maintainable in the manner sought by the Applicants.

40. It was further placed on record that the Applicant No. 1 in the present Application had also filed Application No. 185747/2026 in Writ Petition No. 900/2025 seeking withdrawal of the said writ petition. In the said application, the Petitioner stated that, upon analysing the Transactional Audit Report dated 19.07.2025 prepared by M/s Kansal Singla & Associates, Chartered Accountants, on the instructions of the Resolution Professional, and the Auditor's Certificate dated 29.01.2026 issued by Arora & Bansal, Chartered Accountants, the statutory auditors of the Company, no criminality, siphoning of funds or subvention transactions were found in relation to his individual Unit No. 035, GF, admeasuring approximately 508 sq. ft. of super area in Project Spaze Arrow developed by the Company.

ANALYSIS AND FINDINGS:

41. We have considered the averments made in the Application, the submissions advanced on behalf of the Applicants and the Respondent, and the documents placed on record.

42. The principal issues arising for consideration are whether the alleged "Proxy Claimants" are liable to be excluded from the Committee of Creditors ("CoC"), whether the Applicants are entitled to the account statements sought by way of Prayer (B), and whether the voting undertaken in the third meeting of the CoC dated 09.01.2025 is liable to be set aside.

43. At the outset, it is necessary to note that the constitution of the CoC was undertaken by the erstwhile Resolution Professional after receipt, collation and verification of claims in accordance with Sections 18 and 21 of the Code read with Regulations 13 and 14 of the CIRP Regulations, 2016.

44. The constitution of the CoC, based on the claims verified up to 06.11.2024, was placed before the first meeting of the CoC held on 19.11.2024 and was thereafter placed before this Adjudicating Authority by way of I.A. No. 5676 of 2024, which was taken on record by order dated 09.12.2024. Thus, the composition of the CoC was based upon the claims received and verified in the course of the CIRP.

45. The Applicants essentially seek a re-examination of the claims of certain members of the CoC by characterising them as "Proxy Claimants". However, the mere allegation that a claimant is a proxy, benamidar or connected with the suspended management cannot, by itself, furnish a basis for exclusion from the CoC. The material placed by the Applicants, including references to alleged disparities in payments, common addresses, assured-return payments and transactions reflected in certain records, may give rise to questions requiring examination, but do not, in the absence of a conclusive determination, establish that the concerned persons are not genuine creditors.

46. The Applicants have particularly relied upon the fact that certain allottees had entered into MOUs providing for assured returns and have contended that such arrangements were in substance investment arrangements and not genuine allotments. This contention cannot be accepted in the manner in which it has been advanced. In Rita Malhotra & Anr. v. Orris Infrastructure Pvt. Ltd., Company Appeal (AT) (Ins.) No. 484 of 2024, decided on 02.07.2024, the Hon'ble NCLAT considered the status of creditors who had been allotted commercial space under an assured-return arrangement and held that such persons continued to fall within the ambit of "allottee" for the purposes of the IBC.

47. The Hon'ble Supreme Court in ***Mansi Brar Fernandes Vs. Shubha Sharma and Anr, 2025 INSC 1110*** in paragraph 18.4.6 has held the following:

> *"18.4.6. However, it must be clarified that the distinction between speculative investors and genuine homebuyers is relevant only at the stage of initiation of CIRP. Such allottees are not barred from filing claims for the principal amount invested, or from pursuing remedies before other fora in accordance with law."*

48. Therefore, the existence of an assured-return clause, by itself, does not render an allottee ineligible to be treated as a financial creditor or disentitle such person from being included in the CoC. The determination must depend upon the nature of the underlying transaction and the material relating to the particular claim. In the present case, the 89 assured-return allottees were stated to have filed claims arising from their respective transactions with the Corporate Debtor, of which 41 pertained to Project Spaze Arrow. Their claims were examined and admitted by the erstwhile Resolution Professional.

49. The Applicants have referred to individual transactions and have pointed out alleged discrepancies between amounts paid, amounts reflected in certain documents and amounts admitted in the CIRP. Such discrepancies, even if existing, cannot automatically lead to the conclusion that the entire claim is fictitious or that the claimant is a proxy of the suspended management. Claim

verification is undertaken on the basis of the information furnished by the creditor and the records available with the Corporate Debtor. The Resolution Professional is not vested with adjudicatory powers to conclusively determine disputed questions of fraud, benami ownership or criminality. Consequently, where the claims had already been verified and admitted, their exclusion from the CoC cannot be directed merely on the basis of allegations which remain to be established.

50. The contention regarding the alleged unavailability of historical Tally data also does not, by itself, invalidate the claims admitted during the CIRP. The minutes of the CoC relied upon by the Applicants themselves indicate that accounting data for certain periods was available and was under validation, while data for earlier years was stated to have been lost due to a technical issue. The absence of complete accounting records may necessitate further reconciliation or investigation in the course of the CIRP, but it cannot lead to an automatic presumption that claims supported by the documents and information available to the Resolution Professional are fabricated.

51. Equally, the reference to the proceedings before the Hon'ble Delhi High Court and the police status report does not advance the Applicants' case to the extent sought. The Applicants rely upon the status report to contend that the

alleged payment of assured returns to persons who had not paid the entire consideration indicates siphoning of funds and the existence of benamidars.

52. However, the Respondent has placed on record that a subsequent closure report in FIR No. 94 of 2021 was received. The Applicants cannot rely selectively upon an earlier status report while disregarding the subsequent development. More importantly, no material has been placed before us demonstrating that the closure report recorded a finding of criminality, siphoning of funds or forgery against the persons sought to be excluded from the CoC. Thus, the allegations of siphoning or benami transactions cannot be treated as established findings for the purpose of determining CoC membership.

53. The Applicants have also relied upon the alleged relationship of certain claimants with the suspended management and upon TDS entries concerning family members of the suspended directors. The same cannot ipso facto result in exclusion of the concerned persons from the CoC. The question whether a particular creditor is a "related party" within the meaning of the Code has to be determined on the basis of the statutory parameters and the facts pertaining to that creditor. Mere familial relationship, common address, or the existence of financial transactions, without establishing the ingredients

contemplated under the Code, cannot be treated as conclusive proof of ineligibility.

54. The Applicants further seek to set aside Voting Nos. 4A and 4B passed in the third CoC meeting dated 09.01.2025 on the premise that the voting strength of the CoC had been distorted by the inclusion of the alleged Proxy Claimants. Since we have already found that the Applicants have not established, on the material presently before us, that the concerned claimants were ineligible to form part of the CoC, the consequential challenge to the voting exercise also cannot be sustained. A voting decision of the CoC cannot be invalidated merely because one or more members of the CoC are subsequently alleged to have been wrongly admitted, particularly when no adjudication establishing such ineligibility has been placed before us.

55. The Applicants have further sought to connect the impugned voting with the subsequent appointment of Mr. Narender Sharma as Resolution Professional and have alleged that the suspended management influenced the voting through the alleged Proxy Claimants. Such allegations, however, remain just an assertion. The appointment of the Resolution Professional was subsequently confirmed by this Adjudicating Authority vide order dated 22.01.2025. The said order has not been shown to have been challenged before the Hon'ble Appellate Tribunal. The present Application, insofar as it

seeks to reopen the consequences of the said appointment by indirectly questioning the CoC voting on the basis of unsubstantiated allegations, cannot be permitted to operate as a collateral challenge to the order dated 22.01.2025.

56. It is also relevant that the replacement of an Interim Resolution Professional and appointment of a Resolution Professional is ordinarily a matter falling within the statutory scheme governing the CoC, subject to the requisite voting threshold prescribed under the Code. The Adjudicating Authority does not ordinarily substitute its own view for the commercial decision of the CoC unless a specific statutory violation or material irregularity affecting the decision-making process is established. In the present case, no such foundational illegality has been established. Section 27 of the Code reads thus:

> ***"Section 27: Replacement of resolution professional by committee of creditors.***
>
> *27. (1) Where, at any time during the corporate insolvency resolution process, the committee of creditors is of the opinion that a resolution professional appointed under section 22 is required to be replaced, it may replace him with another resolution professional in the manner provided under this section.*

1[(2) The committee of creditors may, at a meeting, by a vote of sixty-six per cent. of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form.]

(3) The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority.

(4) The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16.

(5) Where any disciplinary proceedings are pending against the proposed resolution professional under sub-section (3), the resolution professional appointed under section 22 shall continue till the appointment of another resolution professional under this section."

57. The Applicants have sought an exhaustive forensic audit as the basis for reconstitution of the CoC. However, the reliefs prayed for in the present Application do not seek a general investigation into the affairs of the Corporate Debtor but seek immediate exclusion of identified creditors and annulment of the voting undertaken by the CoC. A direction for investigation cannot be

issued merely on the basis of suspicion so as to retrospectively invalidate claims which have already been verified in the CIRP.

58. Significantly, the Applicants themselves rely upon various pending and concluded proceedings concerning the affairs of the Corporate Debtor. The subsequent closure report in the criminal proceedings is also material in assessing the allegation of siphoning of funds. Further, as placed on record by the Respondent, Applicant No. 1 had sought withdrawal of W.P. No. 900/2025 after referring to the Transactional Audit Report dated 19.07.2025, wherein, in relation to his individual Unit No. 035, GF, in Project Spaze Arrow, no criminality, siphoning of funds or subvention transaction was found. While this finding is confined to the particular unit referred to therein and cannot by itself determine the status of every other transaction, it nevertheless demonstrates that the broad allegations of siphoning cannot be treated as established merely on the basis of the assertions made in the present Application.

59. Further it is borne out of record that the issue of PUFE transactions is sub judice before the Hon'ble High Court of Delhi in W.P.(C) No. 9094 of 2021 and an investigation under Section 208 of the Companies Act, 2013 has already been undertaken. Thus, if any transaction is found, upon examination in accordance with law, to constitute a preferential, undervalued, fraudulent or

wrongful transaction can be dealt with under the relevant provisions of the Code at the appropriate stage and on the basis of the material available.

60. In view of the foregoing discussion, we find that the Applicants have not established that the seven persons described as "Proxy Claimants" were ineligible to be treated as financial creditors or that their claims were liable to be excluded from the CoC. The allegations relating to assured returns, discrepancies in payments, common addresses, family relationships, incomplete Tally records and alleged siphoning of funds, in the absence of a conclusive finding establishing the ineligibility of the concerned claimants, cannot form the basis for reconstitution of the CoC or annulment of its voting decisions.

61. Accordingly, we find no merit in the present Application. The reliefs sought by the Applicants cannot be granted on the material placed before us. The Application bearing I.A. 843 ND 2025 is, therefore, **dismissed**.

No order as to costs.

-SD/-

ATUL CHATURVEDI
MEMBER (TECHNICAL)

-SD/-

MAHENDRA KHANDELWAL
MEMBER (JUDICIAL)