NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) Insolvency No. 704 of 2022

IN THE MATTER OF:

Amrapali La-Residentia Flat Buyers Welfare Association (ALRFBWA)

Registered Officer at:

R-1704. Homes 121, Section 121,
Opposite CNG Pump, NOIDA
Gautam Buddha Nagar - 211301

...Appellant

Versus

1. La Residentia Developers Pvt. Ltd. (Under CIRP)

Through Its Interim Resolution Professional
Mr. Naveen Kumar Jain

Registered Officer at:

220, 2nd Floor, Vardhman Sunrise PLAZA
Plot No. 1, L.S.C. Vasundhara Enclave
East Delhi – 110096

Also at:

2236, Sector – 46, Gurugram, Haryana – 122001

Also at:

C/o Maa & Company,
F-327/1. 1ST Floor, Lado Sarai,
Old MB Road, New Delhi – 110030

Email: financelaresidentia@gmail.com
insolvencyprofessional@rediffmail.com
cirp.laresidentia@gmail.com

..Respondent No. 1

2. Singhal Pipes Pvt. Ltd.

Registered Office:

2744, Naya Bazaar, Central Delhi
Delhi – 110006
Email: anilsinghal1166@gmail.com

..Respondent No. 2

3. Mr. Pankaj Jain,

Suspended Director of LA Residensia Developers Pvt. Ltd.

Address at: 195, Ram Vihar, 2nd Floor,

Delhi – 110092

Email : vidhyashree.jain@gmail.com **..Respondent No. 3**

4. Mr. Sanjeev Kumar

Suspended Director of LA Residensia Developers Pvt. Ltd.

Address at: A-44, Gyandeep Apartment, Mayur Vihar,

Phase-I, Patparganj, East Delhi -91 **..Respondent No. 4**

5. Mr. Mukesh Kumar Roy

Suspended Director of LA Resdensia Developers Pvt. Ltd.

Address at: C-2/16, Mangal Apartment, Vasundhra

Enclave S.O East Delhi – 96 **..Respondent No. 5**

6. Mr. Kulbhushan Rai Bajaj,

Suspended Director of LA Residensia Developers Pvt. Ltd.

Address at: 200, Sukhdev Vihar, New Delhi - 110025 **..Respondent No. 6**

For Appellant: Mr. Abhishek Naik, Mr. Praveen Agarwal and Ms. Gulafsha Kureshi, Advocates.

For Respondent: Mr. Naveen Kr. Jain and Mr. Kushal Bansal, Advocates for R-1.
Mr. Abhishek Anand and Mr. Karan Kohli, Advocates for R-2.
Mr. C.S. Gupta, Advocate for R-3 to 6.
Mr. Janender Kumar Chumbak and Ms. Asmita Duggal, Advocates for Financial Creditors.

J U D G E M E N T

Ashok Bhushan, J:

1. This Appeal has been filed challenging the Order dated 25th May, 2022 passed by National Company Law Tribunal, New Delhi, Bench-II by which Order, the Application filed under Section 9 of the Insolvency and

Bankruptcy Code, 2016 (hereinafter referred to as "The Code") by the Operational Creditor has been admitted. The Appellant is an Association namely "Amrapali LA-Residentia Flat Buyers Welfare Association" which is registered under Society Registration Act, 1860. The association comprises of Flat Buyers of LA-Residentia Project developed by the Corporate Debtor. I.A. No. 1947/2022 was filed by the Appellant seeking leave to file this Appeal which Application was allowed vide Order dated 07th July, 2022 granting leave to the Appellant to file this Appeal.

2. Brief facts of the case necessary to be noted for deciding this Appeal are:-

(i) Greater Noida Industrial Development Authority (GNIDA) executed a Lease Deed dated 03.02.2011 of plot bearing No. GH-06A, Sector-Tech, Zone-IV with the Corporate Debtor which is a special purpose company incorporated by consortium consisting of six Companies. The Project to be developed by the Corporate Debtor was advertised as "Amrapali LA Residency Project".

(ii) The Hon'ble Supreme Court of India in a Writ Petition No. 940/2017 in the case of "Bikram Chatterjee and Ors. Vs. Union of India and Ors." noticing that the amount invested by Flat Buyers are being syphoned by the Amrapali Group of Companies directed for Forensic Audit. The Forensic Auditor submitted a report that the Company "M/s. Stunning Constructions Pvt. Ltd." consortium member was part of Amrapali Group owing a share amounting to 19.75% equivalent to 632 apartments in the LA-Residentia Project.

The Appellant-Association has filed an I.A. before the Hon'ble Supreme Court to treat the Flat Buyers of the Corporate Debtor in parity with other Flat Buyers of Amrapali Group Company and direct NBBC to develop the project. The Hon'ble Supreme Court did not found it fit to include the Corporate Debtor as part of Amrapali Group of Companies however issued certain directions vide Order dated 29th June, 2021.

(iii) The Respondent No. 2- "Singhal Pipes Pvt. Ltd." an Operational Creditor of the Corporate Debtor filed an Application under Section 9 of the Code in CP(IB) No. 188(ND)/2020 alleging default of payment of Rs. 28,07,764/- inclusive of interest of 24% per annum. Section 9 Application proceeded ex-parte against the Corporate Debtor. An application was filed by the Corporate Debtor being I.A. No. 5484 of 2021 to set aside the ex-parte Order dated 11th August, 2021 which Application was dismissed for non-appearance on behalf of Corporate Debtor. Corporate Debtor filed an I.A. No. 12572 of 2022 before the Hon'ble Supreme Court in the Writ Petition seeking urgent relief in the nature of directions to be issued to Greater Noida Industrial Development Authority and Real Estate Regulatory Authority, UP for completion of LA-Residentia Project developed by the Corporate Debtor and for effective compliance of the Order dated 29.06.2021.

(iv) On 08.03.2022, the Adjudicating Authority heard the argument and reserved the Order, however parties were granted liberty to file their written synopsis of their arguments. Corporate Debtor filed

written-synopsis where it was stated that parties were in continuous business relation as Corporate Debtor had purchased and paid for materials worth Rs. 40 Lakhs during the period 01.11.2021 to 31.12.2021.

(v) On 20th May, 2022, Hon'ble Supreme Court partially allowed the I.A. No. 12572 of 2022 and gave certain directions to be complied by the Corporate Debtor in a time bound manner.

(vi) On 25th May, 2022, the Impugned Order was passed by the Adjudicating Authority admitting the Application under Section 9 of the Code. Mr. Naveen Kumar Jain was appointed as Interim Resolution Professional.

(vii) Immediately after the admission of the Section 9 Application under the Code, Operational Creditor and the Corporate Debtor entered into Settlement on 04.06.2022. The entire amount of Rs. 28.07.764/- was paid to the Operational Creditor vide Bank Draft dated 04th June, 2022 No. 450844 drawn in Indian Bank, Anand Vihar, Branch. Operational Creditor submitted Form FA along with Memorandum of Settlement to the Interim Resolution Professional on 08th June, 2022. On 08th June, 2022, IRP informed about his total fee and expenses to be paid to enable to move Application. Total fee of Rs. 6 Lakhs and expenses of Rs. 5,89,657/-. 08th June, 2022 was also the date of submission of claim by the Creditors as per publication dated 27th May, 2022.

(viii) On 09th June, 2022, IRP was requested to proceed to file withdrawal Application along with Form FA. IRP informed that his fee and expenses to be paid and furnish Bank Guarantee by the Operational Creditor. On 10th June, 2022, the Suspended Director arranged to pay a sum of Rs. 11,90,000/- through Demand Draft No. 114367 dated 10th June, 2022 issued by the Indian Bank. Suspended Director realising that IRP is delaying in filing the Application Form FA to withdraw the Insolvency Application, an Application under Rule 11 of NCLT Rules read with Regulation 30A and Section 12 A was filed on 10th June, 2022, the Application was duly signed by the Suspended Directors of the Corporate Debtor and the Operational Creditor. On 11th June, 2022 IRP sent an email pointing out certain deficiencies in the paper. The deficiencies were of general and procedural nature. On 13th June, 2022, original affidavits were also given to the IRP. IRP on 15th June, 2022 filed an Application for withdrawal of Section 9 Application of the Code. In the Application, IRP also mentioned about the claims received by him. On 17th June, 2022, the Application which was filed by Suspended Director and Operational Creditor under Rule 11 of NCLT Rules, 2016 for withdrawal of the CIRP was listed before the Adjudicating Authority but was adjourned due to non-appearance of the IRP. IRP after filing the Application on 15th June, 2022, in defect, informed the parties that he has constituted the Committee of Creditors (CoC in short) on 18th June, 2022 and has fixed first meeting of CoC virtually on 25th June, 2022.

(ix) This Appeal was entertained by this Court on 27th June, 2022 during the vacation and Interim Order was passed staying the Operation of the Impugned Order passed by the Adjudicating Authority.

3. In this Appeal, the Reply has been filed by Suspended Directors-Respondent No. 3 to 6. Affidavit has also been filed by the IRP in compliance of the Order dated 07th July, 2022 passed in this Appeal.

4. An I.A. No. 2094 of 2022 has been filed by M/s. Religare Housing Development Finance Corporation Limited praying for impleadment. Another I.A. No. 2086 of 2022 has been filed by M/s. Religare Finvest Limited for impleadment of the Applicant. Both the above Applicants claimed to be Financial Creditors of the Corporate Debtor.

5. We have heard Mr. Abhishek Naik, Learned Counsel for the Appellant. Mr. Kushal Bansal, Advocate has appeared for IRP. Mr. Abhishek Anand, Advocate has appeared for Operational Creditor-Respondent No. 2. Mr. C.S. Gupta has appeared for Respondent Nos. 3 to 6. Mr. Janender Kumar Chumbak and Ms Asmita Duggal, Advocates have appeared for Financial Creditors-Applicants.

6. Learned Counsel for the Appellant in support of his Appeal submits that when both the Operational Creditor and Corporate Debtor has entered into Settlement and entire operational debt of Rs. 28,07,764/- was paid on 04th June, 2022, Form FA was submitted to the IRP on 08th June, 2022 and payment of entire fee and expenses of the IRP of Rs. 11,89,657/- having been paid on 10th June, 2022 through Demand Draft dated 10th June, 2022,

IRP deliberately delayed in filing of the withdrawal Application to defeat the Settlement. Further in the Application which was filed by the Operational Creditor and the Suspended Directors of the Corporate Debtor on 10th June, 2022 before the Adjudicating Authority in which 17th June, 2022 date was fixed for hearing before the Adjudicating Authority, IRP deliberately did not appear whereas prior notice was served to him, to avoid passing of any order by the Adjudicating Authority. The Application filed on 15th June, 2022 for withdrawal of the CIRP by the IRP informing the Court about settlement was filed in defect and defects were not cured by the IRP till he constituted the Committee of Creditors and convened the first meeting of CoC. Defect in the Application were cured by him only on 29th June, 2022 so that Application could be taken only after he has constituted the CoC. It is submitted that IRP has acted contrary to the statutory scheme contained in Section 12A read with Regulation 30A of Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations, 2016 in short). Learned Counsel further submits that the project undertaken by the Corporate Debtor is a real estate project whereas operational debt of the Operational Creditor was only Rs. 28,07,764/- and in the written synopsis which was submitted by the Corporate Debtor before the Adjudicating Authority it clearly mentioned that the Operational Creditor is carrying on business with the Corporate Debtor and Corporate Debtor has purchased and paid for materials worth Rs. 40 Lakhs during the period 01.11.2021 and 31.12.2021 which clearly demolished the basis for Application filed by the Operational Creditor for

initiating Insolvency Process. It is submitted by Learned Counsel for the Appellant that the Hon'ble Supreme Court issued directions in Writ Petition No. 940 of 2017 with regard to the project in question by its Judgement dated 29th June, 2021. It is submitted that the said Order was placed before the Adjudicating Authority by the Corporate Debtor with further statement that the Writ Petition is already listed before the Supreme Court for further direction in March, 2022. Subsequently on 20th May, 2022, the Hon'ble Supreme Court in the said Writ Petition issued further directions with regard to the project in question. The Adjudicating Authority without adverting to the directions passed by the Supreme Court and without even noticing the said directions has admitted the Section 9 Application of the Code ignoring all relevant facts. Learned Counsel submits that IRP in the present case has acted beyond his authority and has proceeded in a manner so as to harm the interest of the Corporate Debtor and the Operational Creditor. The IRP was unduly interested in continuing with CIRP process despite Settlement entered between the parties on 04th June, 2022 itself. The act of constituting the CoC on 18th June, 2022 after filing the Application for withdrawal speaks of his motive.

7. Learned Counsel appearing for Suspended Directors-Respondent Nos. 3 to 6 has also supported the submissions of Learned Counsel for the Appellant and submitted that in the written synopsis filed by the Corporate Debtor it was mentioned that the Operational Creditor is carrying on business with the Corporate Debtor even after filing of the Application under Section 9 and payment of Rs. 40 Lakhs have been made to the Operational

Creditor by the Corporate Debtor between the period 01.11.2021 to 31.12.2021. It is submitted that the entire amount due to the Operational Creditor was also paid through the Demand Draft on 04th June, 2022 which was communicated to the IRP and Form FA was also given on 08th June, 2022 and joint Application duly signed by the Operational Creditor was also filed on 10th June, 2022 before the Adjudicating Authority for withdrawal of the Insolvency Application. It is submitted that Corporate Debtor under the Orders of the Hon'ble Supreme Court is proceeding to complete the project and initiation of CIRP shall cause great prejudice to the Corporate Debtor.

8. Learned Counsel appearing for the IRP during his oral submissions submitted that the CoC was constituted so the Corporate Debtor be run as a going concern. It is submitted that an Application for withdrawal was filed on 15.06.2022. The IRP has acted in the interest of the Corporate Debtor.

9. Learned Counsel for the Financial Creditors has filed IAs for impleadment claimed that they are financial creditors of the Corporate Debtor. The Corporate Debtor has violated the terms of the agreement. He submitted that Financial Creditors had filed their claim against the Corporate Debtor. It is submitted that M/s. Religare Housing Development Finance Corporation Ltd. is secured financial creditor of the Corporate Debtor and Rs. 40 Cr. were extended to the Corporate Debtor.

10. Learned Counsel for the Appellant in replying to the submissions of Financial Creditors submitted that the Financial Creditors through the same Counsel has appeared before the Hon'ble Supreme Court and has made same submissions regarding the financial claim which was noticed by the

Hon'ble Supreme Court in its Order dated 29th June, 2021 and despite the submissions of the Financial Creditors, directions were issued regarding the project in question by the Hon'ble Supreme Court.

11. We have considered the submissions of Learned Counsel for the parties and have perused the record.

12. We need to first notice the submissions of Learned Counsel for the Appellant that Adjudicating Authority ought not to have proceeded to admit the Section 9 Application of the IBC due to following two reasons:

(i) The Corporate Debtor against whom the proceedings were ex-parte, were permitted to file written synopsis. In his written synopsis, Corporate Debtor has stated that even after filing Section 9 Application, Operational Creditor continues with the business with the Corporate Debtor and Corporate Debtor had purchased and paid material worth Rs. 40 Lakhs during the period 01.11.2021 to 31.12.2021 which was a substantial reason to refuse to initiate the insolvency process on the Application filed in the year 2020 by the Operational Creditor.

(ii) The Order of the Hon'ble Supreme Court dated 29th June, 2021 was filed along with the written-synopsis by the Corporate Debtor which order has not even been referred to by the Adjudicating Authority while passing the impugned order.

13. Before the Hon'ble Supreme Court, applications were filed by the Appellant as well as the Corporate Debtor, in paragraph 26 Hon'ble Supreme Court issued following directions:

"26. It is therefore directed:-

a) The Company shall be entitled to continue with the construction and development of the instant project;

b) 632 flats which were subject matter of Orders dated 23.07.2019 and 14.10.2019 shall be allowed to be sold by the Company to the interested persons or parties at a fair price or value, provided :-

i) all the concerned transactions including the execution of appropriate documents or deeds are counter-signed by the Court Receiver or his nominee;

ii) The price or value at which said flats are to be sold is certified by the Court Receiver to be fair and appropriate.

iii) all the amounts received by way of such transactions of sale are credited to a separate account completely under the control of the Receiver and/or his nominee;

iv) the cost of construction with respect to those 632 flats, upon due certification by the Chartered Accountants of the Company and to the satisfaction

of the Receiver, shall be made over to the Company; and

v) it shall however be open to the Receiver to give such advances towards the construction of these 632 flats from and out of the amounts deposited in the account as specified hereinabove, depending upon the stage and progress of construction.

c) The injunction with respect said 632 flats, as directed in the Orders dated 23.07.2019 and 14.10.2019, shall stand modified to the extent indicated hereinabove.

d) The difference between the amounts received from the concerned flat buyers for purchase of said 632 flats and the expenditure incurred on cost of construction shall finally be credited to the general account maintained for the benefit of the flat buyers of the Amrapali Group of Companies.

27. Thus, all the applications under consideration stand disposed of in aforesaid terms but without any order as to costs."

14. Further on 20th May, 2022, before the CIRP was admitted, another Order was passed by the Hon'ble Supreme Court where directions were issued with regard to the LA-Residentia to the following effect:

"a. La-Residentia shall prefer an application seeking extension of Registration granted to it under the provisions of the RERA Act within 15 days from today. The application shall be accompanied by all particulars as are required in law. The particulars must include the status and stages of completion undertaken up till now and what is projected in future. It must also indicate the time-line within which the entire project will be completed.

b. The application must be accompanied by requisite fee which are chargeable in accordance with law.

c. After such completion application is preferred, the RERA Authority shall take appropriate decision on the application and intimate the result within two weeks.

d. La-Residentia shall complete the entire project within the time limit so fixed by the extension of Registration.

e. La-Residentia shall be entitled to enter into transactions with respect to 632 apartments which aspect was dealt with in detail in the directions issued in paragraph 26 of the order dated 29.06.2021. 20

f. In keeping with those directions, the transactions shall be entered into which shall be countersigned by the nominee of the learned Court Receiver. All the money shall be credited to a separate account maintained under the directions of learned Court Receiver as stated in said order dated 29.06.2021.

g. Outflow from the account shall also be in accordance with the directions already issued and under the express directions of learned Court Receiver.

We have passed these directions to ensure that the project gets completed and as stated earlier, we shall not be taken to have either dealt with the contentions of various flat-buyers or reflected on the merits or demerits of their contentions."

15. We are satisfied that the fact that between the period 01.11.2021 to 31.12.2021 payment of Rs. 40 Lakhs have been made by the Corporate Debtor to the Operational Creditor and Operational Creditor is continuing with the business relation, ought to have been taken into consideration by the Adjudicating Authority which fact clearly indicated that the Corporate Debtor is not insolvent.

16. In any view of the matter, the Adjudicating Authority ought to have referred to directions of the Hon'ble Supreme Court as noted above which directions permitted continuance of the project to secure the interest of the home-buyers and to ensure that home-buyers should get the flats. The Adjudicating Authority ought to have adverted to the said factors before proceeding to admit the Section 9 Application for an amount of Rs. 28,07,764/- which was the Operational Debt. We thus find that the Order passed by the Adjudicating Authority admitting the Section 9 Application cannot be sustained due to above reasons.

17. Now we come to the aspect of the Settlement between the Corporate Debtor and the Operational Creditor. The fact is not disputed that on 04th June, 2022, Operational Creditor and Corporate Debtor entered into Settlement and paid Operational Debt of Rs. 28,07,764/- through the Demand Draft to the Operational Creditor and Form FA was also handed over to the IRP on 08th June, 2022 by the Operational Creditor for filing an

Application for withdrawal of Section 9 Application. On 08th June, 2022, IRP had informed his fee of Rs. 6 Lakhs and expenses of Rs. 5,89,657/- which was also paid through the Demand Draft dated 10th June, 2022. Suspended Directors of the Corporate Debtor having realized that IRP might delay in filing the Application, an Application under Rule 11 of NCLT Rules, 2016 was filed by the Suspended Directors of the Corporate Debtor which Application was also signed by the Corporate Debtor praying for withdrawal of the said Application. The Copy of the Application dated 10th June, 2022 has been brought on record in which application, following prayers have been made:

> *"In the above facts and circumstances of the case this Hon'ble Tribunal may graciously be pleased to:*
>
> *a. Allow the present application U/s 60(5) of the Insolvency and Bankruptcy Code 2016 r/w Rule 11 of the NCLT Rules-2016 R/w Regulation 30(A) allow to withdrawn Insolvency Application filed U/s 9 of the IBC 2016 filed by the Operational Creditor along with its all consequential proceedings; and*
>
> *b. Terminate the Corporate Insolvency Resolution Process initiated vide order dated 25.05.2022; and*
>
> *c. Discharge the Interim Resolution Professional and restored the management to the Directors as holding position prior to initiating CIRP and release the Corporate Debtor from the rigorous provisions of IBC 2016; and*
>
> *d. Pending consideration of present application, IRP be directed not to constitute Committee of Creditors*

e. Pass such other order or further orders as this Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case."

18. The said application also came to be listed before the Adjudicating Authority on 17th June, 2022 but IRP did not appear before the Adjudicating Authority and hence no Order could be passed on such date. Learned Counsel for the IRP submits that he already filed an Application on 15th June, 2022 on the basis of Settlement which he received from the Corporate Debtor. Learned Counsel for the Appellant submitted that Application which was filed by the IRP on 15th June, 2022 was defective application and defects were removed by the IRP on 29th June, 2022 after he communicated that he has constituted the CoC.

19. At the time of enactment of Insolvency and Bankruptcy Code, 2016, there was no provision akin to Section 12A it was only after the observations were made by the Hon'ble Supreme Court of India in the matter of **"Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India"** (2019) 4 SCC 17 that Insolvency Application can be permitted to be withdrawn, Section 12A was inserted in the Code. In the CIRP Regulations, Regulation 30A was also added with effect from 25th July, 2019. Regulation 30-A is as follows:

*"**30-A. Withdrawal of application**. (1) An application for withdrawal under section 12-A may be made to the Adjudicating Authority –*

(a) before the constitution of the committee, by the applicant through the interim resolution professional;

(b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be:

Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

(2) The application under sub-regulation (1) shall be made in Form FA of the Schedule accompanied by a bank guarantee-

(a) towards estimated expenses incurred on or by the interim resolution professional for purposes of regulation 33, till the date of filing of the application under clause (a) of sub-regulation (1); or

(b) towards estimated expenses incurred for purposes of clauses (aa), (ab), (c) and (d) of regulation 31, till the date of filing of the application under clause (b) of sub-regulation (1).

(3) Where an application for withdrawal is under clause (a) of sub-regulation (1), the interim resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt.

(4) Where an application for withdrawal is under clause (b) of sub-regulation (1), the committee shall consider the application, within seven days of its receipt.

(5) Where the application referred to in sub-regulation (4) is approved by the committee with ninety percent voting share, the resolution professional shall submit such application along with the approval of the committee, to the Adjudicating Authority on behalf of the applicant, within three days of such approval.

(6) The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (3) or (5).

(7) Where the application is approved under sub-regulation (6), the applicant shall deposit an amount, towards the actual expenses incurred for the purposes referred to in clause (a) or clause (b) of sub-regulation (2) till the date of approval by the Adjudicating Authority, as determined by the interim resolution professional or resolution professional, as the case may be, within three days of such approval, in the bank account of the corporate debtor, failing which the bank guarantee received under sub-regulation (2) shall be invoked, without prejudice to any other action permissible against the applicant under the Code."

20. The Application which was filed by the Suspended Directors and the Operational Creditor under Rule 11 NCLT Rules, 2016 as well as the Application filed by IRP on 15th June, 2022 were referable to Regulation 30A(1)(a). According to the IRP's case, he constituted the CoC on 18th June, 2022 by which date both the Applications were filed before the Adjudicating Authority, and the said Applications could have been allowed by the Adjudicating Authority before constitution of CoC. Regulation 30-A(3) states that Where an application for withdrawal is under clause (a) of sub-

regulation (1), the interim resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days. IRP received the Form FA as a Settlement between the parties on 08th June, 2022 and also received his entire fee and expenses on 10th June, 2022 he did not file Application as per Regulation 30-A(3). This Tribunal while hearing this Appeal on 07th July, 2022 passed following Order:

> *"07.07.2022: I.A. No. 1947 of 2022*
>
> *This is an Application filed by the Applicant/ Appellant seeking leave to file this Appeal. We are satisfied that there is sufficient cause to grant liberty to the Applicant to file this Appeal.*
>
> *The Application - I.A. 1947 of 2020 is allowed. IRP appearing through learned counsel may file an affidavit explaining his conduct in not filing the application for withdrawal of the Section 9 Application under Section 12A when the parties have already settled and communicated the same and Form-F was also submitted. Affidavit may be filed within three days after giving copy to learned counsel for the Appellant.*
>
> *List this Appeal on 11.07.2022.*
>
> *Interim orders to continue. IRP shall not take any further steps in the CIRP."*

21. IRP in pursuance of the Order dated 07.07.2022 has filed Affidavit dated 09th July, 2022. In the entire Affidavit, IRP has not given any explanation or reason as to why he proceeded to constitute the CoC on 18th June, 2022 when the Application for withdrawal was already filed by himself on 15th June, 2022. When the Code provides withdrawal under Section 12-A

and provides mechanism under Regulation 30A and when the said Provision was invoked by the Operational Creditor and the Corporate Debtor and Form FA was submitted to IRP, he was under obligation to proceed to file appropriate Application. On one hand, when IRP was given Form F and his entire fee and expenses is paid, he filed the Application only on 15th June, 2022. We fail to see that why he proceeded to constitute the CoC on 18.06.2022. His action speaks for his intent that his intent was that even if Operational Creditor and the Corporate Debtor have settled he may proceed with the CIRP. The IRP has to act in accordance with the statutory scheme. The object and purpose of the IBC is the resolution of the Corporate Debtor and in the facts of the present case when in a Real Estate Project, Operational Creditor had filed the Application for amount of Rs. 28,07,764/- which amount was paid, what was the interest of the IRP to proceed with the constitution of CoC and proceed with the CIRP has not been explained. IRP wanted to continue with the CIRP even after Corporate Debtor and Operational Creditor has settled and Application is filed for withdrawal of the CIRP. We do not find the conduct of the IRP in consonance with the scheme of the Code. Present is the case where Insolvency and Bankruptcy Board of India may look into the matter and examine the conduct of the IRP.

22. In view of the foregoing discussion, we are of the view that this Appeal deserves to be allowed. The Impugned Order passed by the Adjudicating Authority dated 25th May, 2022 is set aside.

23. In so far as two I.A.s filed by the Financial Creditors as noted above, we are of the view that it is always open to the Financial Creditor to take

recourse to law as permissible to them for protecting their interest. At the instance of the Financial Creditors we are not inclined to permit the CIRP Process to go on in the facts of the present case as noted above.

24. We thus are of the view that it is not necessary to implead the Financial Creditors in this Appeal. Both the I.A.s i.e I.A. No. 2086 of 2022 and I.A. No. 2094 for impleadment are rejected.

[Justice Ashok Bhushan]
Chairperson

[Justice M. Satyanarayana Murthy]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

New Delhi
25th July, 2022
Basant