

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Ins) No. 112 of 2021

IN THE MATTER OF:

1. Bimalesh Bhardwaj
R/o A-125, Ground Floor,
Surya Nagar, Ghaziabad(U.P.)
2. P.S. Mittal
R/o 348/Shahpur Jat
New Delhi – 110049.
3. Ratna Masson
Through Authorized Representative
R/o 10 SV 2, IInd Floor, Eldeco Utopia,
Sector 93 A, Noida, Uttar Pradesh - 201301
4. Pradeep Kumar Sen
Through Authorized Representative
R/o E2/EY Block, River Bank Colony,
Lucknow.
5. Rukmani Sen
Through Authorized Representative
R/o E2/EY Block, River Bank Colony,
Lucknow.
6. Shashi Kala Mishra
Through Authorized Representative
R/o MIG-159 Vikash Nagar
Vistar Bargadwa, Gorakhpur UP
7. Amrit Raj Sharma
Through Authorized Representative
R/o Grand Arya Apartment,
Maurya Vihar Road No.1,Patna.Bihar

8. Praveen Bhardwaj
Through Authorized Representative
R/oA-125, Ground Floor, Surya
Nagar, Ghaziabad, Uttar Pradesh

9. Manisha Pandey
Through Authorized Representative
R/o B-3, Plot No.:849,
Green Street, Sector 5, Vaishali,
Ghaziabad – 201012

10. Vesal Dev Chauhan
Through Authorized Representative
S/o Mr. Rajendra Kumar Chauhan,
R/o 1/172, Surendra Nagar,
Aligarh (U.P.) Pin 202001

11. Shashank Shekhar
Through Authorized Representative
S/o Dharam Sheel Mishra ,
R/o 196, Pocket D, Dilshad Garden,
New Delhi-110095

12. Yogendra Kumar Bhardwaj
Through Authorized Representative
R/o A-125 Surya Nagar Ghaziabad (UP)

13. Ankit Tiyaqi
Through Authorized Representative
R/o D-35, Rameshwar Park Loni
Ghaziabad (U.P.)201102

14. Tarkeshwar Rai
Through Authorized Representative
R/o E4/151 Gali No. 05 Pusta,
5 Sonia Vihar, Delhi 110094

15. Kunwar Pal Singh
Through Authorized Representative
R/o A-78/5 Om Kunj (Near Post Office)
Dilshad Garden,, Delhi 110095

16. Rita Goyal
Through Authorized Representative
W/o Air Cmde Jagdish Chandra Goyal (Retd)
R/O 606 Gulmohar Apartment,Plot 3 B,
Sector 11, Dwarka New Delhi-110075

17. Lalit Kumar
Through Authorized Representative
R/o T-403,Raj Nagar Extension,
Ghaziabad UP-201017

18. Dr. Rekha Bhuwalka,
Through Authorized Representative
W/o Dr.Ashok Bhuwalka
R/o KJ-15 Kavi Nagar, Ghaziabad U.P. 201002

19. Dr. Anil Kumar Rathi
Through Authorized Representative
R/o C/o Jai Nursing Home 2 G, Sewa Nagar,
Meerut Road Ghaziabad-201001 U.P.

20. Manju Seghal,
Through Authorized Representative
R/o C- 6 GF-2 Chander Nagar
Panchwati Ghaziabad -201011

21. Vijendra Kumar Yadav
Through Authorized Representative
R/o 505, Street No 6
Bramihpuri,Ghookna Mod,,Ghaziabad
-201001

22. Vijay Kumar Jha
Through Authorized Representative
R/o 80 Savarkar Apt Plot No-39
I.P. Extn., Patparganj, Delhi
23. Ved Prakesh Chaturvedi
Through Authorized Representative
R/o B-104, Dwarkesh Plaza
Viratnagar, Virar West -401303
24. Sudha Tiwary
Through Authorized Representative
R/o SMQ 81/8 Vayu Vihar Air Force,
Akkulam, Trivandrum Kerala-695031
25. Pratibha Wadhwa
Through Authorized Representative
R/o Moradabad, Uttar Pradesh.

..... APPELLANTS

VERSUS

1. VALUE INFRATECH INDIA PVT LTD
(Through its Resolution Professional
Mr. Sanjay Kumar Singh)
Having its Registered Office at:
715, Navrang House, 7th Floor, 21 K.G.Marg,
Connaught Place, New Delhi - 110001

...RESPONDENT NO. 1

2. VALUE INFRACON INDIA PVT LTD
(Through its Resolution Professional
Mr. Sanjay Kumar Singh)
Having its Registered Office at:
715, Navrang House, 7th Floor, 21 K.G.Marg,
Connaught Place New Delhi - 110001

...RESPONDENT NO. 2

Company Appeal (AT) (Ins) No. 112 of 2021

3. VALUE INFRABUILD INDIA PVT LTD

Having its Registered Office at:
715, Navrang House, 7th Floor, 21
K.G.Marg, Connaught Place,
New Delhi - 110001

....RESPONDENT NO. 3

4. CAPRI GLOBAL CAPITAL LTD.

Hang its Registered Office at:
502, Tower A, Peninsula Business Park,
Senapati Bapat Marg, Lower Parel,
Mumbai, Maharashtra - 400013

...RESPONDENT NO. 4

Present:

**For Appellant: Mr. Mayank Mittal, Mr. Piyush Singh and
Ms. Aditi Sinha, Advocates**

**For Respondents: Mr. Sanjay Kumar Singh (RP – in person),
Ms. Akansha Mathur, Advocates for 1 and 2.
Mr. Saurabh Kalia and Mr. Siddharth
Tandon, Advocates for R-4.**

Judgment

**(Date: 29.11.2021)
(Through Virtual Mode)**

{Per: Dr. Alok Srivastava, Member (T)}

This appeal has been filed by the Appellants aggrieved by the order dated 4.1.2021 delivered by the Adjudicating Authority (NCLT, New Delhi) in CP (IB)-771(PB)/2018 (hereinafter called Impugned Order) for liquidation of the Corporate Debtor

Company Appeal (AT) (Ins) No. 112 of 2021

(Respondent No. 1 Value Infratech India Pvt. Ltd.) under Section 61 of the Insolvency and Bankruptcy Code, 2016 (in short IBC).

2. The Appellants, who are homebuyers in the project 'SKYWALK RNE' being developed by Respondent No. 1, have stated in the appeal that the Resolution Professional (RP in short) has clubbed the claims of Respondent No.1, Respondent No.2 and Respondent No.3, amounting to Rs.30.70 crores alongwith compound interest @ 24%, thereby giving Respondent No. 4 (Capri Global Capital Limited) undue advantage of much higher voting share than was permissible to the Respondent No. 4, in the constitution of the Committee of Creditors (in short CoC) in the Corporate Insolvency Resolution Process (CIRP in short). The first meeting of the CoC of Corporate Debtor (Respondent No. 1) was held on 31.01.2020. Thereafter the second meeting of the CoC was held on 10.12.2020 which was adjourned after some deliberations and reconvened on 12.12.2020, wherein decision for liquidation of Respondent No. 1 was taken despite objection put forth by Vineet Agarwal, Authorized Representative (AR) of the homebuyers, who are financial creditors in class. The Appellants have claimed that the RP has shown undue favour to Respondent No. 4 (a financial creditor)by adding up all the loans provided by Respondent No. 4 to Respondent No. 1, Respondent No. 2 and Company Appeal (AT) (Ins) No. 112 of 2021

Respondent No. 3, thereby giving advantage of inflated vote share in the CoC qua the CIRP of Respondent No.1. The Appellants have also claimed that RP did not follow the procedure prescribed in the IBC for inviting Expression of Interest for submission of Resolution Plan for insolvency resolution of Respondent No. 1. In accordance with the wish of Respondent No. 4, and in undue haste, the RP Sanjay Kumar Singh submitted a proposal for liquidation of Corporate Debtor (Respondent No. 1) before the CoC in its second meeting. As Respondent No. 4 was given highly inflated voting rights, resulting in majority voting right in the CoC, the resolution for liquidation of the Corporate Debtor was approved in the COC meeting. This decision, the Appellants have claimed, is illegal as the constitution of CoC and allocation of highly inflated voting rights, much in excess of its actual financial credit, to Respondent No. 4 is ab-initio illegal.

3. The Appellants have made the following prayers in the appeal:-

- (i) Set aside the Impugned Order dated 4.1.2021 passed by the Adjudicating Authority in CP No. (IB)/771 (PB)/2018.

- (ii) Replace the present Resolution Professional for Respondent No. 1 with any other Resolution Professional, who will act without conflict of interest and in a fair manner.
- (iii) Direct the Resolution Professional to not club the claim of Respondent No. 1 in the present CIRP and to collate claims of all the creditors as per the provision of the IBC.
- (iv) Initiate CIRP proceedings on project-wise basis.

4. The issues that are pertinent in this appeal are as hereunder: –

- (i) Whether the CoC was constituted by the Resolution Professional in accordance with IBC provisions? and,
- (ii) Whether the recommendation for liquidation of Respondent No. 1 was taken by the CoC in contravention of IBC provisions?

5. The relevant actions/dates relating to this matter are as follows:-

Company Appeal (AT) (Ins) No. 112 of 2021

CIRP initiated against Corporate Debtor (Respondent No. 1)	3.1.2020
First meeting of the CoC	31.1.2020
Second meeting of the CoC	10.12.2020/12.12.2020
Public announcement for submission of claims	8.1.2020
Next filing of application under section 21 (a) for appointment of authorized representative of home buyers and exclusion of time spent in litigation	11.3.2020
Order of Adjudicating Authority for appointment of Authorized Representative (AR)	27.11.2020

6. The Learned Counsel for Appellants has argued that the Capri Global Capital Limited (Respondent No. 4) had sanctioned a loan of Rs. 37.50 crores to Respondents No. 1, 2 and 3 vide a common loan agreement dated 17.9.2014 (attached at pp.133-165 of the Appeal Paperbook). He has stated that the Respondents No. 1, 2 and 3 are three separate companies who were disbursed separate loan amounts on the basis of the common loan agreement, whereas in the present matter wherein insolvency resolution of Value Infratech India Pvt. Ltd. (Respondent No. 1) is under consideration and, therefore, the claim of Respondent No. 4 should have been based on the loan disbursed only to Respondent No. 1. He has stated that the loan disbursed by Respondent No. 4

Company Appeal (AT) (Ins) No. 112 of 2021

to Respondent No. 2 was Rs.29.55 crores and to Respondent No. 3 was Rs. 1 crore, while Respondent No. 1 was disbursed an amount of Rs. 6.65 crores only.

7. The Learned Counsel for Appellants has stated that CIRP of the Corporate Debtor was initiated on 3.12.2020 after admission of application under section 7 of IBC against the Corporate Debtor Value Infratech India Pvt. Ltd. (Respondent No. 1). Thereafter claims were invited from creditors vide public announcement on 8.1.2020, and the Appellant submitted his claim on 22.1.2020. He has stated that after the first meeting of CoC, which was held on 30.1.2020, an application under section 19(2) of IBC bearing IA No. 827/2020 was filed by the RP before the Adjudicating Authority for directing the ex-directors and promoters of the Corporate Debtor to provide him documents and records and account details pertaining to Corporate Debtor. Thereafter another application bearing IA No. 1898 of 2020 was filed on 11.3.2020 by the Resolution Professional under section 21-A of the IBC for appointment of Authorized Representative for homebuyers (who are financial creditors in class). The Adjudicating Authority

gave order on this application on 27.11.2020 for appointment of Vineet Agarwal as Authorized Representative of homebuyers.

8. The Learned Counsel of the Appellants has further stated that in the second meeting of the CoC held on 10th December 2020 and reconvened on 12th December 2020, the RP provided information to the members regarding applications filed by him. He has argued that the voting share of Respondent No. 4 Capri Global Capital Limited as calculated by RP was wrongly fixed at 96.77%, after considering the total claim of Capri Global Capital Limited as Rs. 1,490,868,70/- which was the total of the three loans provided by Capri Global Capital Limited to Respondents No. 1, 2 and 3 and the voting share of homebuyers was fixed at 3.23%.

9. The Ld. Counsel for Appellants has referred to the order dated 17.12.2018 of the Adjudicating Authority in the matter **Daimler Financial Private Limited vs. Value Infracon India Private Limited [CP (IB) 22 (PB) 2018]**, wherein it was held as hereunder:-

“.....The Resolution Professional could not have allocated voting share to Capri Global Capital Ltd. in taking the total of all the 3 companies whereas only one of them is involved in the present proceedings. The CoC would tilt in favour of Capri

Company Appeal (AT) (Ins) No. 112 of 2021

Global Capital Ltd. as against the voting share of the home buyers, if the whole loan amount of 3 copies is clubbed. We expect the Resolution Professional to act fairly and dispassionately, which is found wanted in the present case because he was aware after the filing of the present application that aforesaid two matters are pending consideration before the NCLT, as he has given consent to act as IRP even in those two matters.”

10. He has also cited Hon’ble NCLAT’s judgment dated 14.5.2019 in the appeal **Capri Global Capital Limited vs. Value Infracon India Pvt. Ltd. (through its Resolution Professional Mr. Sanjay Kumar Singh & Anr.) [CA(AT)(Ins) No. 29 of 2019]** against the above mentioned order in [CP (IB) 22 (PB) 2018] whose relevant paragraphs affirming the order of the Adjudicating Authority are reproduced below:-

“9. The amount having been separately disbursed as per request of three different entities who signed jointly, it is clear that individual entities like ‘Value Infrabuild India Pvt. Ltd.’ received a sum of Rs. 29,55,00,000/-; ‘Value Infracon India Pvt. Ltd.’ received a sum of Rs. 1,00,00,000/- and ‘Value Infratech India Pvt. Ltd. received a sum of Rs. 6,65,00,000/- in their respective Bank Accounts. Having received such amounts separately, the appellant cannot claim all the payments from the ‘Corporate Debtor’ pursuant to the Loan Agreement dated 17th September, 2014 whereinafter 19th September, 2014 letter was issued as extracted above.

10. In view of the fact that the three entities were provided separately in their respective Bank Accounts, the Adjudicating Authority rightly held that the Appellant as a ‘Financial Creditor’ can claim its voting shares based on the amount actually disbursed in favour of Value Infracon India Pvt. Ltd. (Corporate Debtor).”

11. Citing the judgment of Hon'ble NCLAT (supra), he clarified that since the loan amount and consequently voting rights of Capri Global Capital Ltd. (Respondent No. 4 in this appeal) in the CIRP of Value Infracon India Pvt. Ltd. is based on the common Loan Agreement dated 17.9.2014 (supra), hence the vote share of Respondent No. 4 Capri Global in the CoC/CIRP of Respondent No. 1 will be based on the actual loan disbursed to Respondent No. 1, which is Rs. 6.65 crores and not Rs. 149.09 crores. By wrongly taking the total loan figure of Rs, 149.09 crores, the RP has fixed the vote share of Respondent No. 4 at 96.77% in the CoC relating to Respondent No. 1's CIRP.

12. The Ld. Counsel for Respondents No. 1 and 2 has argued that the loan disbursed by Respondent No. 4 is on the basis of a common Loan Agreement dated 17.9.2014 (supra). Moreover, the loans are provided to three sister companies who are part of the same group of companies, and the loans have been secured by the same properties. The disbursement request was made vide a common letter dated 19.9.2014, signed by the directors of all the three companies (Respondents no. 1, 2 and 3) (attached at pg. 170 of Appeal paperback) and hence the repayment should also

Company Appeal (AT) (Ins) No. 112 of 2021

happen together. Therefore, the claim of Capri Global Capital Ltd., and its vote share in CoC should be based on the total loan disbursed to the three companies.

13. The Learned Counsel for Respondents No. 1 and 2 has also argued that the Appellants did not challenge the admission order under section 7 of IBC passed against the Corporate Debtor, and admission of claims or constitution of CoC at any time earlier. Therefore, challenging the liquidation order now is not in accordance with legal procedure. He has claimed that the allegations leveled against the RP are false, baseless and not based on facts. In fact, the RP has conducted the process in a very fair and transparent manner providing details at every step to the members of CoC. He has also argued that the liability to repay the disbursed loan amount falls of Respondents No.1, 2 and 3 jointly and severally and, therefore, the fixing of Respondent No.1's vote share at 96.77% in the CoC is justified.

14. The Learned Counsel for Respondents No. 1 & 2 has cited the judgments of Hon'ble Supreme Court in **Chittoori Subbanna vs. Kudappa Subbanna and Ors [SC 1965 2 SCR 661]** and in the Company Appeal (AT) (Ins) No. 112 of 2021

matter of **Phoenix Arc (P) Ltd. vs. Spade Financial Services Limited [2021 3 SCC 475]** in support of his contention. On the basis of these judgments, he has contended that if no challenge was made to the constitution of CoC and the fixing of vote share in CoC earlier, these issues cannot be raised in the appeal now.

15. The Learned Counsel for Respondent No. 4 has argued that Respondent No. 1 (Corporate Debtor Value Infratech India Pvt. Ltd.), along with two other companies from the same group, Value Infracon India Pvt. Ltd. and Value Infrabuild Pvt. Ltd. (all co-borrowers), executed a loan agreement on 17.9.2014 with Respondent No. 4 for providing a loan facility to all the three aforementioned companies upto Rs. 37.50 crores in lieu of mortgage/ hypothecation of properties of all the three borrowers. Therefore, the claim of Capri Global Capital Ltd. should be the total loan amount disbursed to all the three co-borrowers since it is based on a common loan agreement. He has also argued that the Appellants submitted their claim to the Resolution Professional in March, 2020, which is much after the last date for submission of claims which was 22.1.2020. The Learned Counsel for Respondent No. 4 has contended that the matter pertaining to

Company Appeal (AT) (Ins) No. 112 of 2021

filing of application for exclusion of time and to consider financial evaluation matrix and invitation of EOI was taken up in the 2nd meeting of the CoC held on 10.12.2020. Thereafter, on the request of the representative of Respondent No. 4, the said meeting was adjourned to 12.12.2020 and in the said meeting all matters relating to exclusion of time, invitation for EOI and liquidation were discussed and action was initiated/taken by the RP in accordance with these decisions. He has claimed that the Appellants cannot challenge such acts that they did not challenge at the appropriate time in an appeal against the liquidation order.

16. The Learned Counsel for Respondent No. 4 has cited the judgment of Hon'ble NCLAT in **State Bank of India vs. Athena Energy Venture [CA (AT) (Ins) No. 663 of 2020] dated 24.11.2020** wherein the claim of the principal borrowers and guarantors of the same amounts were allowed. On the other hand, in the present case, it is not a question of the principal borrowers and guarantors and CIRPs against both of them but relates to clubbing of the loans provided by Respondent No. 4 to Respondents No. 1, 2 and 3 in the CIRP of Respondent No. 2 to

give Respondent No. 4 an unfair and undue advantage in the voting percentage in CoC.

17. The Learned Counsel for Respondent No. 4 has also cited the judgments of Hon'ble Supreme Court in the matters of **K. Sashidhar vs. Indian Overseas Bank [2019 SCC Online SC 257]** and **Ebix Singapore Pvt. Ltd. vs. Committee of Creditors of Educomp Solutions Limited [2021 SCC Online SC 707]**. In both the judgments, the Hon'ble Apex Court has held that once the Successful Resolution Plan has been approved by the Adjudicating Authority on the recommendation of CoC and implemented thereafter, the resolution plan achieved finality and cannot be reopened, unless the plan suffers from legal infirmity.

18. We have perused the loan agreement dated 17.9.2014 qua which Value Infrabuild India Pvt. Ltd. (Respondent No.3), Value Infracon India Pvt. Ltd. (Respondent No.2) and Value Infratech India Pvt. Ltd. (Respondent No.1) were sanctioned financial assistance up to Rs. 37.50 crores by Capri Global Capital Limited (Respondent No. 4).(Loan agreement attached at pp.138-165 of Appeal Paperbook). The request for drawdown of the loan amounts Company Appeal (AT) (Ins) No. 112 of 2021

was sent by Directors of three above mentioned companies to Respondent No. 4 vide a common letter dated 19.9.2014, which was separately signed by the directors of all three companies. This letter is reproduced in the judgment of Hon'ble NCLAT in CA (AT) (Ins) No. 29 of 2019 (attached at pp. 166-167 of Appeal paperback).

19. Regarding the matter of the Appellant not getting a realistic opportunity to challenge the issues of constitution of CoC and the admission of claim of Capri Global Capital Ltd. anytime earlier, it is recalled that the Authorized Representative for homebuyers was appointed vide order dated 27.9.2020. The vote share of Capri Global and homebuyers and the claim amounts of Capri Global and homebuyers came to the knowledge of the Authorized Representative of homebuyers in the 2nd meeting of CoC on 10 December 2020 and despite vehement objection of the Authorized Representative of homebuyers, the CoC went ahead to take decisions for not submitting application for exclusion of time (spent in judicial intervention), framing of Information Memorandum and liquidation of the corporate debtor. It was for the first time the Authorized Representative of the Appellants

Company Appeal (AT) (Ins) No. 112 of 2021

attended the CoC meeting and the proposals that were discussed in reconvened CoC meeting on 12.12.2020 without any prior circulated agenda. No reason was provided by the representative of Respondent No. 4 or Resolution Professional for the adjournment of this meeting to 12.12.2020. Moreover, the Authorized Representative could not have responded to the proposals without consulting the homebuyers who he was representing. Soon afterwards, the RP filed application before the Adjudicating Authority seeking order for liquidation of the Corporate Debtor. Hence we do not think the homebuyers, who are a diverse lot and who needed to get together with the AR to formulate their response on these issues had a realistic chance to challenge the constitution of CoC and admission of claim amounts at an early time.

20. We find that, while the CoC took a decision for going for liquidation of the Corporate Debtor, the Appellants have challenged the very basis of constitution of CoC and fixing of voting rights by labeling it illegal, done to provide undue and unfair advantage to Respondent No. 4. Moreover, the Appellants have also claimed that the CoC took a decision for liquidation without following the procedure under CIRP stipulated in the IBC. The

basic reason for seeking Resolution Plan under CIRP is to ensure that the Corporate Debtor can continue to function as a going concern, while taking care of interests of its creditors. Liquidation is the last resort which implies corporate death of the company. For the Corporate Insolvency Resolution Process to result in successful resolution of the corporate Debtor, preparation of a correct information memorandum is a must, which may result in workable resolution plans. In the present case, we find that information memorandum was not prepared with full and correct details of assets and liabilities of the Corporate Debtor. The RP also did not pursue his application u/s 19(2). As a result the CoC decided to abandon the step of inviting of EOI for Resolution Plan. Thereafter in undue haste, the CoC decided to go for liquidation of the Corporate Debtor. Since the CoC consisted of two members – Capri Global and homebuyers – with Respondent No. 4 being given inflated voting share, the decisions by CoC was completely swayed by the Respondent No. 4 and its selfish interests. The decisions of CoC was a blotted one, since it was taken in the CoC, in which Respondent No. 4 was given voting right much in excess of its real and correct share.

21. It is quite surprising that the Resolution Professional filed IA No. 827/PB/2020 under Section 19(2) of the IBC for issuing directions to the ex-Directors and promoters to provide documents and records including account details of Corporate Debtor. Without obtaining any order under section 19 (2) from the Adjudicating Authority, the Resolution Professional goes ahead and submits an Information Memorandum to the members of the CoC as recorded in paragraph 8 in the minutes of the second meeting dated 10/12/12/2020 of CoC (pg. 176 of Appeal paperback). Furthermore, a statement is recorded in the minutes of the meeting which reads as follows:-

“It is being informed that the Corporate Debtor has discontinued its operations and have permanently closed its office, the Directors of the Corporate Debtor have resigned from office. The resolution Professional has filed an application under section 19(2) of the IBC for cooperation from the directors and promoters to deliver data. The application is not heard by Hon’ble NCLT. The Resolution Professional placed the copy of the Office Memorandum before the CoC for taking note of the same.”

22. A duty has been cast on the RP under section 25 of IBC where he has to take immediate custody and control of assets of Corporate Debtor, including the business record of the Corporate Debtor; and furthermore a duty has been passed on the Resolution Professional under section 25(2)(g) to prepare an information Company Appeal (AT) (Ins) No. 112 of 2021

memorandum in accordance with the provisions of IBC.. Section 29 of the IBC requires the Resolution Professional to prepare an information memorandum in such form and manner contain such relevant information as may be specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 for formulating a Resolution Plan. Regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 provide in detail what should be contained in the Information Memorandum. In brief, the information memorandum should contain details of assets and liabilities of the Corporate Debtor, latest annual financial statement, audited financial statement of the Corporate Debtor, list of creditors, particulars of debt due from or to the corporate debtor and some other information. It is surprising as to how the Resolution Professional could prepare an information memorandum without getting access to the records and documents of the Corporate Debtor, as he had sought through IA No. 827/PB/2020, and on which orders could be obtained from the Adjudicating Authority. In addition, the Resolution Profession did not even attempt to obtain details of assets and liabilities, financial statement from other records that

have to be statutorily filed in relation to the company under the provisions of the Companies Act.

23. We are of the clear and firm opinion that in view of the judgment of this tribunal in Capri Global Capital Limited vs. Value Infracon India Pvt. Ltd. (through its Resolution Professional Mr. Sanjay Kumar Singh) & Anr. (supra), it was the RP's responsibility to fix financial creditors' claim amounts and vote shares properly and in accordance with law, moreso, when the NCLAT had already given its verdict in CA (AT)(Ins) 29 of 2020 (supra). He has been sadly remiss and found wanting in the performance of his duties as per the provisions of IBC. The hasty manner in which the items were taken up for discussion in the 2nd CoC meeting, and no action was taken to pursue the application u/s 19(2) and file an application for exclusion of time spent in judicial intervention, are stark pointers to the irresponsible handling of these issues by the RP, for which he can't be absolved of blame. An independent enquiry in his acts of omission and commission while carrying out the CIRP of the corporate debtor by the Insolvency and Bankruptcy Board of India can either absolve him of the allegation of his collusion with Respondent No. 4 or establish his involvement. We find that the RP did not take adequate interest in securing the Company Appeal (AT) (Ins) No. 112 of 2021

records and account details of the Corporate Debtor and took a hasty view that in the absence of records, and disappearance of its ex-directors of the Corporate Debtor should be sent into liquidation.

24. Thus the Resolution Professional, after wrongly fixing the vote share of Respondent No. 1 at 96.77% led the CoC into taking a *malafide* decision for liquidation of the Corporate Debtor by playing along with the intentions of Respondent No. 1, even though he had not taken requisite steps as required under IBC to call for Expression of Interests and submission of Resolution Plans which could have saved the Corporate Debtor from liquidation, which means corporate death and is not a desirable situation. He has claimed that, thus, a hasty decision for liquidation of the Corporate Debtor (Respondent No. 1) was taken by the CoC. In such a situation, he has claimed, the entire proceedings in the 2nd meeting of the CoC were hijacked in its favour by Capri Global Capital Limited's representative with the Resolution Professional playing into his hands, and abandoning his duty, as enshrined in the IBC.

25. The Learned Counsel for Respondent No. 4 has cited NCLT, Mumbai's order in the matter of State Bank of India vs PE Electronic Limited [CP (IB) 528/MB/2018] wherein simultaneously Resolution Process against the associate Videocon Group was allowed is in support of his argument in going for liquidation. Suffice to say that consolidation of CIRPs was ordered for companies of Videocon Group which meant that all claims and liabilities as well as assets will be grouped together for resolution of all the companies.

26. From the minutes of second meeting of the CoC, it is clear that the Resolution Professional has resorted to very novel and ingenious way of circumventing the duties imposed upon him in the IBC for preparation of information memorandum, exclusion of time to extend CIRP period and inviting Expression of Interest for Resolution Plan for the Corporate Debtor. He, with active support of Nitin Goel, representation of Respondent No. 4, managed to deal with these important issues in a very superficial and objectionable manner. Such action of RP betrays of prejudicial action reeking of favouritism for Respondent No. 4.

27. Thus we find that the CoC was not constituted in accordance with the provisions of IBC. In the matter, the CIRP was not pursued with fairness and due diligence by the Resolution Professional and the resolution for liquidation of the Corporate Debtor was taken in a meeting with an improper voting share ascribed to Respondent No. 4 and taken in unseemly haste. These are actions of omissions and commissions, which we cannot absolve the Resolution Professional from his conduct should be investigated by Insolvency and Bankruptcy Board of India and action as appropriate may be taken against the present Resolution Professional.

28. In the result, we direct the following:-

(i) The CoC as constituted in the CIRP of the Corporate Debtor was not in accordance with provisions of IBC, therefore its constitution is quashed.

(ii) The claims of various financial creditors including home buyers should be appropriately fixed, keeping in view the order of this Tribunal in CA (AT) (Ins) 29 of 2020.

(iii) The application IA No. 1898 of 2020 wherein an application for exclusion of time spent in pursuing the application before the Adjudicating Authority under sections 19(2) and 21-A of the IBC should be preferred before the Adjudicating Authority for appropriate order.

29. The action of the Resolution Professional Sanjay Kumar Singh in this matter cannot be said to have been above board. He can't be absolved of certain actions of omission and commission, which have caused prejudice to homebuyers. He should, therefore, be replaced with immediate effect and a suitable Resolution Professional be appointed in the CIRP of Respondent No. 1 by the Adjudicating Authority. As pointed out earlier in this judgment, the Insolvency and Bankruptcy Board of India should investigate the conduct of the Resolution Profession Sanjay Kumar Singh in observing various provisions of IBC and take appropriate action.

30. With the above directions, we remand the matter to the Adjudicating Authority for taking action as directed, in accordance with the provisions of IBC and law.
Company Appeal (AT) (Ins) No. 112 of 2021

31. No order as to costs.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Dr. Alok Srivastava)
Member (Technical)

New Delhi

29th November, 2021

/aks/