



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/ INHERENT JURISDICTION

CIVIL APPEAL NOS. 6797- 6801 OF 2023

ORRIS INFRASTRUCTURE PRIVATE LIMITED ...APPELLANT (S)

VERSUS

RAKESH KUMAR GUPTA & ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NOS. 6792 - 6796 OF 2023

WITH

CIVIL APPEAL NOS. 6802 - 6806 OF 2023

WITH

CONTEMPT PETITION (C) NOS. 249-253 OF 2025
IN C.A. NOS. 6792 - 6796 OF 2023

J U D G M E N T

Table of Contents

I. Introduction	2
II. Facts	3
(i) Findings of Adjudicating Authority (AA) on the allegation of fraud and collusion by the original operational creditor who filed Section 9 Petition.....	11
(ii) Findings of AA on Ownership and control of M/s Orris over the Project.....	16
III. Re Issue I – Whether the AA has the power and jurisdiction to recall CIRP by dismissing the Section 9 petition that was admitted at the instance of a collusive operational creditor?	16
IV. Re Issue II – If there is such a power, whether the CIRP proceedings could be continued.	26
V. Directions	36

I. Introduction

1. A unique situation arose in 2023 when the Adjudicating Authority (“AA”) was called upon to examine whether the corporate insolvency resolution process (“CIRP”) that was initiated with admission of the Section 9 petition under the Insolvency and Bankruptcy Code, 2016 (“IBC”) by M/s Straight Edge Contracts Pvt. Ltd., claiming to be an operational creditor, is fraudulent and in collusion with the corporate debtor. Upon examination, it became crystal clear that the initiation of CIRP was fraudulent and, in fact, collusive. The consequent question that arose for consideration before the AA as well as the National Company Law Appellate Tribunal (“NCLAT”), and continued to prevail for our consideration, is:

- I. *Whether the Adjudicating Authority has the power and jurisdiction to recall CIRP by dismissing the Section 9 petition that was admitted at the instance of a collusive operational creditor?*

2. While the AA held that there is no power of recall after an application is admitted and CIRP commences, the NCLAT held that such power certainly exists. Having held that the power exists, the NCLAT considered it to be a logical consequence to simply reject the application and recall the entire CIRP process. The approach adopted by the AA, the NCLAT, followed by the submissions of the learned counsel at the bar, necessitates formulating yet another question, and it is:

II. *Assuming such a power exists, does dismissal of the petition under Section 9 on the grounds of fraud and collusion, inevitably entail recall of the CIRP process, or can the process be preserved by substituting the original applicant with another?*

3. Having considered the matter in detail, we have answered each of the questions that have arisen for consideration and disposed of these appeals with specific directions. Before we set out the reasons followed by our conclusions, the facts, to the extent that they are relevant for our consideration, are as follows.

II. Facts

4. Of the three Civil Appeals, we have taken the appeal in C.A No. 6797-6801 of 2023 by Orris Infrastructure Private Limited (“Orris”) as the lead matter. Orris Infrastructure Private Limited is the landowner of a parcel of 47.218 acres of land situated at Sector 89, Gurgaon. Orris entered into a development agreement dated 02.11.2011 with M/s Three C Shelters Private Limited, the Corporate Debtor (“CD”), for construction of a real estate project called Greenopolis with 1862 flats (“Project”). The agreement stipulated that the CD is to develop the Project at its own cost and that the constructed flats would be shared in the ratio of 65:35 between the CD and the appellant, respectively.

4.1 Pursuant to the agreement, between 2012-13, the appellant and the CD entered into tripartite apartment buyer agreements with various home

buyers. Apart from others, clause 5 of the agreement requires the CD to complete construction of the Project within 36 months from allotment of each unit with a grace period of 6 months. The relevant clause is reproduced here;

“Subject to Clause 5.2 and subject to all the buyers of the apartments in the Project making timely payment the 3C shall endeavor to complete the construction of the Apartment within 36 months with a grace period of 06 months from the date of the allotment of the Apartment.”

4.2 Despite explicit contractual obligation, the CD was not proceeding to complete the Project in time. Home buyers, who had invested heavy amounts, were anxious about the completion of the project, and in order to seek representative and legal remedies, they came together and formed an association called the Greenopolis Welfare Association (“GWA”).

4.3 GWA filed a Complaint before the Haryana Real Estate Regulatory Authority (“HRERA”) seeking appropriate directions to the CD for completing the Project and handing over possession to allottees. By its order dated 23.01.2019, the HRERA directed the CD to complete construction as per schedule and also directed that monies deposited in the escrow account must be used only for the Project. Aggrieved against the finding of the HRERA that the CD is a joint promoter of the Project and against attachment of 10 acres of its land, Orris appealed to the Haryana Real Estate Appellate Tribunal (“HREAT”), but the HREAT dismissed the

appeal, holding that Orris and the CD, as promoters, must complete the project and hand over possession expeditiously.

4.4 Insofar as consumer complaints by allottees of the CD and Orris are concerned, the National Consumer Disputes Redressal Commission (“NCDRC”), vide its common judgment dated 20.07.2020, held that the CD and Orris shall be responsible towards their respective allottees/consumers.

4.5 As the project was getting further delayed, the HRERA initiated *suo motu* proceedings. Having examined the matter, by its order dated 07.10.2020, the HRERA directed that the CD has no development rights and that Orris, being the landowner, licensee and collaborator of the project, has the primary responsibility for development, construction and completion of the project. The relevant portion of the direction is as follows;

“(i) M/s Orris being one of the landowners, the license holder and collaborator of the project as per the provisions of the Act has the primary responsibility for development, construction and completion of the project.

(iii) M/s Three C Shelters Pvt. Ltd. is directed that since the funds available in the account No.[omitted] of the KMBL Mahindra Bank, Noida are the assets of the homebuyers, therefore, they shall be transferred to the new dedicated RERA account to be opened in the name of “Greenopolis Project” as per the provisions of Section 4(1)(1)(D) of the Act ibid. so that the project can be completed without any future delay. All future receivables from the sold and unsold inventory will be deposited in this account.”

(emphasis supplied)

5. It is in the above-referred background that the proceedings under the IBC were initiated by M/s Straight Edge Pvt Ltd., a company claiming to be an operational creditor of the CD. M/s Straight Edge Pvt Ltd filed the Section 9 petition for initiation of CIRP of the CD on 17.10.2019, and the company petition came up for hearing on 24.10.2019, when the Adjudicating Authority (AA) issued notice to the CD. It is interesting to note that, by the time the company petition under Section 9 came up for further hearing, an affidavit filed on 27.01.2020 by the director of the CD, admitting the operational debt, was already on record. The AA therefore allowed the application on 20.07.2020 in terms of the following order;

“Heard the submissions made by the Operational Creditor as well as Corporate Debtor. Annexure A-10 which is affidavit of admission shows that on January 27, 2020, the Director of Three C Shelters Private Limited. Mr. Girish Chander Joshi has confirmed that the Corporate Debtor has to pay to the Operational Creditor as per his claim. Therefore, the petition is allowed.”

6. However, as IRP had not been appointed by the earlier order, by a subsequent direction dated 16.10.2020, the AA while appointing an IRP for the CD, proceeded to impose moratorium. The relevant portion of the order is extracted hereinbelow for ready reference;

“9. That apart in compliance of sub-section (3) (b) and (C) of Section 9 of the Code, the petitioner has affirmed that respondent corporate debtor has not raised any dispute in respect of the unpaid operational debt.

10. It is reiterated that in the present case the default committed by the corporate debtor is not denied. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the applicant operational

creditor. In fact, there is a clear admission of debt and default and therefore there is no need to comply with any additional requirement as provided in Clauses (d) and (e) of sub-section (3) of Section 9 of the Code.

11. Therefore, on fulfilment of requirements of Section 9 (5) (i) (a) to (d) of the Code, the present application is admitted.

12. In terms of sub-section (6) of Section 9 of the Code the Corporate Insolvency Resolution Process in respect of respondent corporate debtor shall commence from the date of this admission order.”

7. The homebuyers who had formed an association and were pursuing remedies before HRERA and NCDRC were naturally aggrieved with the admission of the CD into CIRP and therefore appealed to the NCLAT, also alleging fraud and collusion between M/s Straight Edge, portraying itself to be the operational creditor and the CD. The NCLAT vide order dated 06.01.2021 dismissed the appeal and confirmed the admission of Section 9 petition on the ground that a number of other creditors, whose petitions were pending, had already invoked the provisions of the Code and the moratorium had commenced from 16.10.2020. The relevant portion of the order is as follows;

“13. The grievance of the Appellant appears to be that it was the biggest Financial Creditor and instead of acting on its Application, the Application of Respondent No.2 was admitted. Prayer - d of the Appeal also indicates that the Appellant also wants CIRP proceedings against the Respondent No.1 – Corporate Debtor. The IRP of Respondent No.1 has with Diary No.24141 filed list of Company Petitions which were moved by stakeholders including home buyers against the present Respondent No. 1 - Corporate Debtor. It is a list of 22 petitions in which it appears that the Appellant also had filed CP No. 1335 of 2019. Sumita Gogoi who filed I.A. 2970/2020 in this matter was another Petitioner with CP No. 503/2019. Intervener – Dhruv Verma in I.A. 2605/2020 also wants the CIRP to

continue. Even if we set aside Impugned Order, there are others waiting against Respondent No. 1 Corporate Debtor. When Respondent No.2 as Operational Creditor filed Petition/Application under Section 9 of IBC, the only consideration for Adjudicating Authority was to examine if there is operational debt due and default. It found the debt due of Rs.29,95,91,034/- was not disputed and passed Impugned Order 1 dated 20.07.2020 allowing the Petition. In such matter, after Petition was allowed, the Adjudicating Authority had no power left to review the Order dated 20.07.2020, especially so, on vague surmises of collusion. We do not see any purpose in setting aside on technical grounds the CIRP initiated. The Order dated 16th October, 2020 vide which Order the Adjudicating Authority has recorded reasons thus shows that there was material to show debt due claimed by the Respondent No.2 - Operational Creditor and default to seek CIRP against Respondent No.1. If the Application was complete, the same was required to be admitted.

14. The grievance raised by the Appellant is that the detailed Orders dated 16th October, 2020 were passed in spite of stay dated 15th October, 2020. For this, I.A. 2547/2020 is filed which relies on Annexure A-2 to say that the staff of the Adjudicating Authority was informed. Para- 2 of I.A. 2547/2020, in this regard, does not disclose the name or particulars of any staff member. There is no reason why the said order was not put on record by a proper application, if the Appellant was so interested. We would thus not find fault with the passing of detailed Order dated 16th October, 2020 which was indicated by the Adjudicating Authority in its Order dated 14th October, 2020 (Annexure R-5). The Adjudicating Authority cured defect and we do not wish to interfere on technical grounds, as it will serve no purpose. Record shows that both Respondents are now under CIRP and we would trust the IRPs/RPs to follow the law. As such, alleged collusion would be irrelevant, even otherwise.

8. By a subsequent order dated 15.04.2021, passed on an application filed by the RP of the CD, the AA directed the parties to maintain status quo as regards to the amounts lying in the escrow account. Various parties, including Orris, challenged this order and the contest continued till this Court, when, by its order dated 01.07.2021, this Court permitted

Orris to approach the AA by filing an appropriate application for the necessary clarification. On the basis of the liberty granted by this Court, Orris filed an application for relevant directions before the AA. Apart from this, an application by Orris for impleadment and an application by RP of M/s Three C Universal Developers, being a shareholder of the CD, were also pending.

9. It is important to note the prayers of Orris and M/s Three C Universal Developers. The prayers of Orris, in IA 2902/ND/2021 (the other IA 2482/ND/2021 is only for impleadment), are as follows -

- “i. Confirm and declare that the order dated 07.10.2020 passed by the Ld. HRERA prior to the commencement of the moratorium as per order dated 16.10.2020;*
- ii. Declare that the Resolution Professional filed IA No. 1573 of 2021 before this Hon’ble Tribunal by concealing the fact that the Corporate Debtor in CIRP has filed an appeal against order dated 07.10.2020 and the same is pending adjudication before HRERA Appellate Authority and the Escrow Bank Account in this IA is the subject matter of that appeal;*
- iii. Reject the application being IA No. 1573 of 2021 filed by the Resolution Professional of the Corporate Debtor as his prayers are contrary to the orders passed by the Ld. HRERA dated 07.10.2020 and/or Hon’ble High Court of Delhi as these funds cannot be used for the purpose of CIRP of the Corporate Debtor.*
- iv. Confirm and declare that the funds lying in the Escrow Account cannot be used by the RP in CIR Process as the same are required to be transferred to Escrow Bank Account opened by applicant in terms of provisions of section 4(2)(I)(D) of RERA Act as per order dated 07.10.2020;*
- v. Direct the RP of the Corporate Debtor not to disturb the possession of the project GREENOPOLIS and allow the Applicant to discharge its obligation under the order dated 07.10.2020 passed by the Ld. HRERA qua completion of the project;*

vi. Pass any other order that this Hon'ble Court may deem fit and proper in the interest of justice."

10. It is even more important to note the prayers of RP of Three C Universal Developers, as it alleges fraud and collusion between the alleged operational creditor M/s Straight Edge and the CD. The contents of the application, as articulated by the AA, are as follows -

a. The application filed by the Operational Creditor Straight Edge Contracts Private Limited was fraudulently filed in collusion with the directors of the corporate debtor to defraud the creditors of the corporate debtor.

b. The applicant submitted that Three C Universal Developers Private Limited is also undergoing CIRP and the applicant was appointed by this Tribunal as Resolution Professional for the company vide order dated 17.12.2019 passed by Bench-II of this Tribunal. Three C Universal Developers Private Limited is holding 38.25% equity shares of the Corporate Debtor and owes Rs. 127,56,03,605/-, excluding interest.

c. It is also submitted that Mr. Rajiv Baisoya filed an affidavit expressing the company's inability to pay the debt of Operational Creditor and on the basis of same affidavit the CIRP was initiated against the corporate debtor. However, it is submitted that the Board Resolution filed by Mr. Rajiv Baisoya was dated 24.06.2019, 107 days prior to the issuance of Demand Notice.

d. It is also stated that when the applicant/RP inquired from Mr. Rajiv Baisoya about affairs of the Three C Universal Developers Private Limited, since he was also director of Three C Universal Developers Private Limited, Mr. Rajiv Baisoya informed applicant vide e-mail dated 07.07.2020 that he is only office boy/filing boy/store keeper of the company, and he also gave in a writing letter dated 06.02.2021 confirming the said facts.

e. Further, Mr. Girish Chander Joshi, another director of both the companies also informed the applicant that he was only a pantry boy and had no knowledge about the business and operations of the company. Mr. Joshi also gave same facts vide written letter dated 06.02.2021. It has been pointed out that Mr. Girish Chander Joshi, vide email dated 27.01.2020 admitted the liability towards Operational Creditor.

f. The applicant further pointed out that at the time of issuance of Demand Notice, the Escrow Account was opened with Kotak Mahindra Bank as per the directions of the RERA and all payment of money from the said account could only be withdrawn for the purpose of construction and the corporate debtor did not request the HRERA for release of funds from the said account despite having adequate funds in the said account.

g. Thus, it is prayed that the entire CIRP proceedings are fraudulent & collusive in nature, accordingly, prayed for setting aside the same.

11. The above-referred IAs led to a full-fledged hearing, giving rise to some fundamental questions about the very maintainability of the petition under Section 9 and continuation of CIRP itself. The AA formulated 10 questions, of which only 4 are relevant for our consideration –

“ii. Whether there was active collusion between M/s Straight Edge Contracts Pvt. Ltd. and M/s Three C Shelters Pvt. Ltd. in the initiation of CIRP proceedings and this tribunal has got jurisdiction u/s 65 of IBC to set aside the entire CIR proceedings?

iii. Whether this Tribunal is having jurisdiction to recall or review its own order after the admission of the petition under Section 9 on the ground of allegation of fraudulent and malicious intention of initiation of CIRP proceedings?

...

v. Whether the Resolution Profession by virtue of order dt. 20th July 2020 and 16th October 2020 is entitled to take control and custody of Greenopolis Project?

vi. Whether M/s Three C Shelters Pvt. Ltd. is vested with any right, title & interest in Greenopolis project by virtue of collaborating agreement dated 02/11/2011?”

(i) Findings of Adjudicating Authority (AA) on the allegation of fraud and collusion by the original operational creditor who filed Section 9 Petition.

12. As regards the issue relating to fraud and collusion between Straight Edge and CD, the AA came to a clear and categorical finding of fraud and collusion. The findings are as follows –

“46. ...therefore, it is proved on the record that no work was going on at the site since 2016 onwards. Further, in the order dated 23rd January, 2021, it is clearly reflected that the developer was main contractor on costs basis. Further, the assignment work order was executed on 28th November, 2017 and invoices were raised for the period of Nov. 2017 to August 2018... However, in the same report, it is also reflected that the arrangement of Rs. 21 crores was made for the payment of Straight Edge Contracts Pvt. Ltd. Apart that, a sum of Rs. 53 crores were also lying in the escrow account. Once the arrangement of payment was there and then the factum of not making the payment of Rs. 33 crores as alleged on behalf of the Straight Edge Contracts Pvt. Ltd. creates a serious doubt in the story of the petitioner. This fact also indicates that there was a collusion between them.

47. No doubt, the agreement dated 28th November, 2017 was executed between Straight Edge Contracts Pvt. Ltd. as well as Three C Shelters Pvt. Ltd. and by virtue of that, it was agreed to provide the services for the remaining construction of the project Greenopolis. But it is also matter of fact that in the said agreement dated 28th November, 2017, two other parties were also there i.e. M/s Econovation Homes LLP & M/s Three C Builders Pvt. Ltd. These companies were never found in the subsequent Memorandum of Understanding (MoU) dated 07.01.2019.

48. By virtue of clause 18 of the agreement dated 28.11.2019, all the labour records have to be kept by second party, however, may be checked weekly by the first party. All records/register compliances documents were to be duly submitted by the second party to the first party on monthly basis. Apart that, as per Clause 19, the Second party was required to follow the rules & regulations qua labour including payment, salary, wages, ESI, Payment of Bonus Act, Payment of Gratuity Act as well and the zero date for accounting balance sharing date i.e. 13th November, 2017. Simultaneously, as per the said agreement, M/s Econovation Homes LLP was required to infuse a sum of

Rs. 65 Crores and the Second party i.e. Straight Edge Contracts Pvt. Ltd. was required only to invest Rs. 5 Crores out of its own funds, therefore, the investment was upto Rs. 65 Crores only, whereas, the tentative costs to complete the work of Phase-I, Phase-II, Phase- III without margin was Rs. 256 crores, which can increase or reduced by 10%. The above said agreement dated 28th November, 2017 is totally absent qua the manner of making payment by the Three C Shelters Pvt. Ltd. In order to cover the said ambiguity, another Memo of Understanding (MoU) dated 07.01.2019 was executed on a simple paper, which was not got registered at all, wherein it is simply admitted that M/s Straight Edge Contract Pvt. Ltd. had spent a sum of Rs. 330,846,411 and the respondent/Corporate Debtor could clear only Rs. 312,55,376, therefore, the total amount of Rs. 299,592,035 stated to be due.

49. In the present matter, though in the report of the Investigating Officer, it is manifest that petitioner herein started working at the site of Greenopolis since June 2017, but the said fact does not find substantiate from any documentary evidence. Moreover, Ld. HRERA as well as HREAT after examining all the facts & evidence on the file recorded concurrent findings that the work of Greenopolis had come to stand still since early 2016. Moreover, the agreement was executed between the petitioner herein & the Corporate Debtor as well as Three C Universal Pvt. Ltd and M/s Econovation Homes LLP on 28.11.2017, but the work was alleged to have been already stand started in the month of June 2017. Had, the work would have been commenced in the month of June 2017, certainly, the parties must have entered into agreement on or before that month and not after five months of the execution of the work that too, when the completion of construction work was worth Rs. 256 crores. Admittedly, the land about 47 acres worth more than Rupees Five Hundred Crore was put into project by Orris Infrastructure Pvt. Ltd., but strangely enough, when the project completion work was allegedly assigned by Three C Shelters Pvt. Ltd. to Straight Edge Contracts Pvt. Ltd., the tentative costs was Rs. 256 crores, then why only Rs. 5 Crore were agreed to be spent by Straight Edge Contracts Pvt. Ltd. and Rs. 65 crores by M/s Econovation Homes LLP. The entire agreement is silent about the rest of the payment, how it would have to come to the project and even the mode of making payment to Straight Edge Contracts Pvt. Ltd. was also not clearly laid down in the said agreement. Further, no default clause is laid down in the

said agreement to fix the liability of the Straight Edge Contracts Pvt. Ltd. These all facts & circumstances create a serious dent not only in the story of the petitioner, but also Corporate Debtor as well.

50. Further, it is to be mentioned that the demand notice in the present matter was issued on 09th October, 2019, whereas the resolution of the Board of the Corporate Debtor pertains to 24th June, 2019, whereby Mr. Rajiv Basoya and Mr. Girish Joshi were directed to file reply. Hence, the company had already preempted that reply on behalf of company must have to be filed with respect to the demand notice, accordingly, both Mr. Rajiv Basoya & Mr. Girish Joshi filed reply in the petition. All these circumstantial evidence on the record indicates that there was active collusion between the Corporate Debtor & the Petitioner herein to get initiate the insolvency proceedings. Further, without any Resolution on the part of the Corporate Debtor, some of the Directors & Petitioner herein got executed a Memorandum of Understanding (MoU) dated 07.01.2019 even without involving M/s Econovation Homes LLP & Three C Universal Pvt. Ltd., which were actually parties to an agreement dated 28.11.2017. Moreover, the said Memorandum of Understanding (MoU) was also not got attested or registered, therefore, the said documents were nothing, but after thought documents fabricated / created just to facilitate the initiation of CIR proceedings. Further, the petitioner herein without redeeming the securities (as alleged work has to be stated to be secured by way properties i.e. plot SC 201/09 approximately 8000 square feet and another plot SC 201/05 approximately 20,000 square feet situated at Noida.), proceeded to file the present petition. One of the erstwhile Director Mr. Surender Singh Suri i.e. respondent No. 4 categorically deposed that Mr. Bhardwaj while deposing before EOW categorically stated that his signatures on the Memorandum of Understanding (MoU) were not genuine, which further puts clouds qua the authenticity of the execution of that document. Further, there was no authorization or resolution of corporate debtor in the favour of Mr. Bhardwaj, Mr. Girish Joshi & Mr. Rajiv Basoya qua execution of the documents of any kind with Straight Edge Contracts Pvt. Ltd. Hence, even, the alleged agreement dated 28.11.2017 also comes under cloud. Further, the Corporate Debtor was having in its Escrow Account Rs. 53 Crores at that time, and the Corporate Debtor despite admitting the liability did not prefer to pay the

same. Hence, the said fact creates a serious doubt about the execution of the very 1st. agreement.

51. Apart that, Three C Shelters Pvt. Ltd. was being represented by Mr. Rajiv Basoya and Mr. Girish Chander Joshi, who were mere pantry boys or office boys in the company... These affidavits clearly proves that these two persons were not at all aware of any of the activities of the company and they were also not familiar with any documents etc. accordingly, they have also made request to discharge and remove them from the directorship... Pleading of the main petition has been merely admitted by these dummy Directors, Mr. Rajiv Basoya and Mr. Girish Chander Joshi. Except, this admission, there is no authenticated document to corroborate the fact whether the work was actually carried out at the site. Ld. HRERA, also specifically held that no construction was going on Greenopolis since earlier 2016. Although, the contention has been raised on behalf of M/s Straight Edge Contract Pvt. Ltd. that it was not a party to that litigation, the said findings, if any recorded, are not binding upon it. But in this context, it is to be mentioned that Three C Shelters Pvt. Ltd. was in fact party therein and the said complaint as well as other proceedings were duly contested by it. Further, Ld. HREAT also recorded the same finding categorically stating as under: "the construction of the project virtually came to a stand still in early 2016." It is Three C Shelters, which admitted the liability in the present application, and the said issue was also hotly contested by Three C Shelters before the Ld. HRERA as well as Ld. HERAT. Therefore, the said findings are very much binding upon the petitioner herein also, as the interest stands accrued to it through the respondent corporate debtor itself.

13. It is evident from the above findings that activities of M/s Straight Edge were anything but straight, in fact outright crooked. There is a clear collusion between M/s Straight Edge and the CD. We may mention at this very stage, that these findings are affirmed by the NCLAT. Even before us there was no contest on the findings of fraud and collusion as found by the AA and affirmed by the NCLAT. We affirm these findings.

(ii) Findings of AA on Ownership and control of M/s Orris over the Project.

14. As regards the contention of Orris with respect to ownership of the project is concerned, while considering issues (v) & (vi), the AA observed that Orris, being landowner and statutory licensee, will be responsible for development of the project. It clarified that the Corporate Debtor has “*no right, title and interest in the said project and also have no right to dispose of the property or sell any of the units as well*”.¹ This observation may be in line with the findings of the HRERA in order dt. 07.10.2020. It also observed that any property in possession of the CD, “*under the contractual arrangement are specifically kept out of the term “Assets” under the explanation under Section 18*”² and that the Resolution Professional is not entitled to take control of the said property.

15. We are not called upon to adjudicate on this issue and as such we express no opinion whatsoever on this matter.

III. Re Issue I – Whether the AA has the power and jurisdiction to recall CIRP by dismissing the Section 9 petition that was admitted at the instance of a collusive operational creditor?

16. As regards issue relating to power and jurisdiction to recall its own order of admission of the Section 9 petition on the ground of fraud and collusion, the AA came to the conclusion that no such power exists. In this

¹ NCLT Order dated 29.03.2022, Para 74.

² NCLT Order dated 29.03.2022, Para 77.

view of the matter, it held that there is no option but to continue the CIRP proceedings. The logic of AA is as follows;

“59. No doubt there is collusion between the petitioner & respondent qua initiation of the CIR proceedings, but under the garb of section 65 of code the entire proceedings already stand initiated before filing of this application, cannot be set aside. Though, NCLT-In the matter of Middle Zone Solitor Hotel India Pvt. Ltd. Vs. Middle Tone Hotel Pvt. Ltd, held that once there are fraudulent initiation of the proceedings, the said proceedings can be set aside. However, Hon'ble NCLAT, in the matter of Adesh Jain (supra) categorically held that this Tribunal has no power to review its own order. Thus, in the light of the principle laid down in order passed in the matter of Adesh Jain (supra), it is held that this Tribunal is not empowered to review or recall its order, except where there is error apparent on the record. Accordingly, this Tribunal stand barred to recall or review its order dated 20.7.2020/16.10.2020.

61. Pursuant to specific provision 61 of the Code, it could be said that if Orris was aggrieved of the order dated 20th July 2020 or 16th October 2020, it has got remedy to approach the Hon'ble NCLAT by way of filing an appeal. As word “Any aggrieved person” includes not only party to the litigation, but it may be any third party, who is affected with any such order can file an appeal. Thus, there was an effective remedy with orris, but it failed to avail. Had, there been any intention on the part of legislature to give the power of review to this tribunal, the said provision would have been specifically incorporated. In the absence of any such specific provision for review, this Tribunal has got no jurisdiction to recall or review its own order, that too, when an efficacious remedy to file an appeal lies with Orris. Hence, it is held that though there was collusion between the petitioner and respondent, but this Tribunal has got no jurisdiction to re-call or review its own order qua initiation of CIR proceedings under the garb of Section 65 of the code. Accordingly, the Point No.II is partly answered in Affirmative, whereas, the Point No. III answered in Negative.”

17. In view of the above-referred reasoning adopted by AA, the following conclusions were drawn;

*“a. Orris is necessary party to the lis, being aggrieved party, hence, it is allowed to intervene as there was active collusion between Petitioner & Respondent corporate debtor and there was material suppression of the facts on behalf of Ld. RP of the Corporate Debtor from this Tribunal.
b. This Tribunal vests with no power to review or recall its own order 20.07.2020 & 16.10.2020, qua initiation of CIR proceedings under the garb of section 65 of code.
c. "Moratorium" commenced on passing of order dated 16.10.2020 and not on 20.07.2020, hence, it doesn't not over-ride the order dated 7.10.2020 passed by Ld. HRERA. Accordingly, both the orders co-exist, being not in conflict with one another.
d. On the strength of collaboration agreement dated 02.11.2011, the status of the corporate debtor is mere of 'contractor' and not 'statutory license holder', of project gsreenopolis, accordingly, it does not vest with any right, title and interest in that project.
e. Project "Greenopolis" belongs Orris being owner of land as well as statutory license holder from Director town & Country planning, Haryana, accordingly, Ld. RP of Corporate Debtor is not entitled to take its control & custody.
f. Rs. 53 Crores lying in the Escrow account pertains to project Greenopolis and has to be utilized for its construction only, accordingly, Ld. RP of Corporate Debtor doesn't have any right & interest in the same also accordingly, it could not be controlled by him.”*

18. Against this order, the RP of Three C Universal Developers, Straight Edge Contracts Pvt. Ltd., RP of the CD, GWA and Girish Chander Joshi (suspended director of CD) filed appeals at the NCLAT.

19. The NCLAT vide the impugned order dated 28.08.2023 examined only the narrow issue of, *“whether the NCLT committed a patent error in not recalling the admission order”*. Relying on *Beacon Trusteeship v. Earthcon Infracon Pvt. Ltd.*³, *S.P. Chengalvaraya Naidu v. Jagannath*⁴

³ 2020 SCC OnLine SC 1233.

⁴ (1994) 1 SCC 1.

and *A.V. Papayya Sastry v. Govt. of A.P. & Ors.*⁵, the NCLAT came to the conclusion that CIRP initiated under the garb of fraud cannot be sustained and that the AA has the power to recall its own orders. With this finding, the NCLAT set aside the CIRP owing to fraud at the time of initiation of insolvency proceedings. The relevant portion of the findings is as follows;

“22. In view of the aforesaid facts and circumstances of the case, we are totally satisfied that there is complete misappreciation of law on the part of the Adjudicating Authority in rejecting the application filed both by the present Appellant as well as M/s. Oriss Infrastructure Pvt Ltd. wherein they have also submitted that the Adjudicating Authority has the jurisdiction to recall its own order if it is obtained by playing fraud upon it.

23. In view of the aforesaid discussions, the present appeal has the merit, therefore, the same is allowed and the impugned order is set aside.”

20. The present Civil Appeals, challenging the judgment and order of the NCLAT, are filed by; i) Orris Infrastructure Pvt. Ltd., ii) Greenopolis Welfare Confederation (“GWC”), a subsequently constituted body of allottees distinct from GWA, and iii) Safalta Goel and Pushpa Goel, individual homebuyers. All these appellants are aggrieved by the impugned judgment of the NCLAT as it sets aside the entire CIRP process. Suspended Directors of the CD also filed an appeal in the name of the CD, challenging the finding of fraud; however, their appeal has been withdrawn.⁶ This act confirms the findings on fraud and collusion. It may

⁵ (2007) 4 SCC 221.

⁶ Civil Appeal No. 7704 of 2023.

be mentioned at this stage that this Court, vide order dated 13.10.2023, directed that *status quo* be maintained by all parties. Vide order dated 19.11.2024, this Court also granted a stay on the impugned order and permitted the CIRP to continue. This stay, read with the clarification that proceedings before AA would continue in accordance with law, also had the effect of reviving the NCLT's order dated 29.03.2022. This Court's order dated 19.11.2024 is in the following terms;

- "1. These appeals are admitted.*
- 2. Until further orders, there shall be stay of the impugned order dated 28.08.2023 passed by the National Company Law Appellate Tribunal (NCLAT), Principal Bench.*
- 3. It is clarified that the stay would not mean the stay of proceedings before the National Company Law Tribunal (NCLT) and the same would proceed in accordance with law..."*

21. Mr. Ramji Srinivasan's submission is simple, without being simplistic. He submitted that the CIRP has reached an advanced stage and the present appeals can be disposed of by making the above-referred interim order dated 19.11.2024 of this Court absolute. Mr. Mukul Rohatgi argued that the proceedings under the IBC can steer clear of fraudulent and collusive initiation of M/s Straight Edge Contracts Pvt. Ltd. by adopting the principles contemplated under the erstwhile Rule 101 to 103 of Companies (Court) Rules, 1959. He would submit that the CIRP proceedings, once initiated, would be in rem. On the other hand, Mr. Krishnan Venugopal has submitted that fraud and collusion vitiate the entire proceedings and he strongly supported the conclusion of the

NCLAT. It is in this context that the first question of law has arisen for our consideration.

22. A fundamental principle of statutory law is that when statutory authorities are empowered to exercise a certain jurisdiction, the power to exercise such jurisdiction rests on the existence of certain facts and events. In administrative law, such facts are referred to as *jurisdictional facts*. Under the Insolvency and Bankruptcy Code, for example, the existence of a “debt” is the jurisdictional fact. In *Carona Ltd. v. Parvathy Swaminathan & Sons*⁷, it is explained that -

“...the fact or facts upon which the jurisdiction of a court, a tribunal or an authority depends can be said to be a ‘jurisdictional fact’. If the jurisdictional fact exists, a court, tribunal or authority has jurisdiction to decide other issues. If such fact does not exist, a court, tribunal or authority cannot act. It is also well settled that a court or a tribunal cannot wrongly assume existence of jurisdictional fact and proceed to decide a matter. The underlying principle is that by erroneously assuming existence of a jurisdictional fact, a subordinate Court or an inferior tribunal cannot confer upon itself jurisdiction which it otherwise does not possess.

In Halsbury’s Laws of England, it has been stated;

“Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive”.

The existence of jurisdictional fact is thus sine qua non or condition precedent to the assumption of jurisdiction by a court or tribunal.”

⁷ (2007) 8 SCC 559, paras 27 and 28.

23. In *Shrisht Dhawan (SMT) v. M/s Shaw Brothers*⁸, this Court observed-

“...What, then, is an error in respect of jurisdictional fact? A jurisdictional fact is one on existence or non-existence of which depends assumption or refusal to assume jurisdiction by a court, tribunal or an authority. In Black’s Legal Dictionary it is explained as a fact which must exist before a court can properly assume jurisdiction of a particular case. Mistake of fact in relation to jurisdiction is an error of jurisdictional fact. No statutory authority or tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the court or tribunal exercises the jurisdiction then the order is vitiated. Error of jurisdictional fact renders the order ultra vires and bad. In Raza Textiles Raza Textile v. Income Tax Officer, Rampur, it was held that a court or tribunal cannot confer jurisdiction on itself by deciding a jurisdictional fact wrongly. ... Error in assumption of jurisdiction should not be confused with mistake, legal or factual in exercise of jurisdiction. In the former the order is void whereas in the latter it is final unless set aside by higher or competent court or authority. An order which is void can be challenged at any time in any proceeding. A permission granted under Section 21 once permitted to attain finality becomes unassailable on error in exercise of jurisdiction. It could be challenged later or in execution only if it could be brought in the category of a void or ultra vires permission. Such invalidity can arise if jurisdiction is exercised by misrepresentation of facts either about existence of vacancy or nature of premises. In other words what attains finality in accordance with law cannot be permitted to be reagitated or reopened except in the larger social interest of preventing a person from practising deceit. Therefore an error of jurisdictional fact which could entitle a Controller to re-examine the matter in the context of Section 21 is the same, namely, fraud or collusion.”

24. Thus, it becomes essential for an AA to be satisfied of the existence of a jurisdictional fact, which alone grants to it the power and jurisdiction

⁸ (1992) 1 SCC 534, para 19.

to proceed under the Act. It is essential, and important, to ensure that assumption of jurisdiction is not “mindless”. This Court in *Shrisht Dhawan* (supra) observed that *“an action is mindless when it is thoughtless or without any care or caution. In law it is passing of an order without any regard to the provision of law. If the section requires the authority to pass an order on inquiry or on being satisfied of existence or non-existence of a fact, then the duty cast is higher and an order which is passed without due regard to duty to investigate then the order may be mindless”*.⁹

25. Further, there may be instances where a court or a tribunal would have been induced to exercise jurisdiction by exercise of fraud or collusion. Fraud and collusion have a different juridical significance when considered in the sphere of private contractual relations and when considered in the context of public-law proceedings. In a private transaction, fraud ordinarily concerns deception practised upon a contracting or affected party, while collusion denotes a concert or common design between persons to secure an improper private advantage or to prejudice the rights of another.

26. In public law, however, the vice travels beyond the private interests of the parties. Fraud may corrupt the decision-making process by misleading the court, tribunal or statutory authority, and collusion undermines the very genuineness of the proceeding by using the process

⁹ Ibid, para 18.

of adjudication or statutory decision-making to procure a privately engineered result. The distinction is therefore necessary because public power is exercised not simply for the benefit of the parties before the authority, but in accordance with law and for the public purpose for which that power is conferred. The object of maintaining the distinction is to protect the integrity of the public decision-making process, to prevent the machinery of law from being employed as an instrument of private arrangement or deception, and to ensure that the principle of finality does not confer legitimacy upon a decision whose foundation or process has itself been vitiated by fraud or collusion.

27. Deception committed by deploying incorrect facts to invoke jurisdiction of a tribunal is fraud in public law as it results in exercise of jurisdiction which otherwise would not have been exercised. In *Shrisht Dhawan*, this Court held -

“20... But fraud in public law is not the same as fraud in private law. Nor can the ingredients which establish fraud in commercial transaction be of assistance in determining fraud in Administrative Law... it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation to statutory law... it was observed that fraud in relation to statute must be a colourable transaction to evade the provisions of a statute. “If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope”. Present day concept of fraud on statute has veered round abuse of power or mala fide exercise of power... The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect

facts knowingly and deliberately to invoke exercise of power and procure an order from an authority of tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which power can be exercised...”

28. Those who invoke IBC proceedings are under a public law obligation and duty not to deceive or mislead. If jurisdiction is exercised on the basis of fraud or collusion, the Court or the Tribunal can undoubtedly withdraw the proceedings at any point of time. Jurisdictional facts affected by fraud or collusion cannot be the foundation for assuming jurisdiction, as such facts cannot continue to sustain jurisdiction.

29. The Courts exercise somewhat greater control over the determination of jurisdictional facts than over findings on non-jurisdictional facts, i.e, facts which do not have a consequence on the jurisdiction.

30. In the facts of the present case, it is conclusively proved that the existence of debt is a mirage; none existed at all. In fact, it was fraudulently portrayed as if there was a debt so that the AA could initiate CIRP proceedings and impose moratorium, thereby blocking other legal remedies of the homebuyers and other claimants. Under these circumstances, there is every power and jurisdiction for the AA to recall CIRP by dismissing the Section 9 petition that was admitted at the instance of a collusive operating creditor. The issue is answered accordingly.

IV. Re Issue II – If there is such a power, whether the CIRP proceedings could be continued.

31. While the AA does have power to recall the CIRP proceedings upon finding of fraud and collusion, the next question that arises is whether it is duty-bound to do so in every case. What would be the consequence of such a finding on CIRP proceedings that have advanced to a mature stage?

32. The statutory architecture of the IBC can be seen as set in two stages. In *GLAS Trust Company LLC v. Byju Raveendran & Ors.*¹⁰, this Court explained that initially, the petitions under Sections 7, 9 or 10 are *in personam*, involving essentially the applicant and the Corporate Debtor. Once the application is admitted and CIRP commences, moratorium is declared, and management is transferred to the IRP, the situation is different, and this is explained as follows-

“41. Once the application is admitted, CIRP commences and NCLT inter alia declares a moratorium; issues a public pronouncement of the initiation of CIRP and a call for submission of claims; and appoints an IRP...”

42. From this scheme of Chapter II IBC, it appears that the admission of an application is a significant event that alters the nature of the proceedings, and the stakeholders involved. Initially, when the petition is filed by the financial creditor, operational creditor or corporate applicant, as the case may be, the proceedings are in personam and the only relevant stakeholders are the applicant creditor and the corporate debtor... Therefore, the proceedings now change character — they become in rem and are no longer the preserve of only the applicant creditor and the corporate

¹⁰ (2025) 3 SCC 625.

debtor and even creditors who were not the original applicants, become necessary stakeholders.

43. A three-Judge Bench of this Court in Indus Biotech (P) Ltd. v. Kotak India Venture (Offshore) Fund adjudicated on the question of the stage at which the proceedings under the IBC attain the status of in rem and create third-party rights for all creditors. This Court held that the trigger point is not the filing of the application, but the admission of the application, and observed as follows...

44. In summary, the scheme of the IBC under Chapter II gives rise to two significant principles:

44.1. Once the petition is admitted, the proceedings are no longer the preserve of the applicant creditor and the debtor. They now become in rem and all creditors of the corporate debtor become stakeholders in the process; and

44.2. Once the petition is admitted, the management of the affairs of the corporate debtor is vested in the IRP and eventually, in the RP. Thus, the corporate debtor no longer exists in the form that it did, before the admission of the petition. Once CIRP is initiated, the interests of the erstwhile management of the corporate debtor must be distinguished from the interests of the corporate debtor."

33. Section 9 of the Code enables an Operational Creditor to initiate CIRP upon the occurrence of "default", subject to the statutory requirements concerning demand notice, absence of a pre-existing dispute and completeness of the application. Section 9(5) provides the statutory test for admission or rejection. The provision is mandatory in character, and the AA has to examine the statutory conditions prescribed by the Code. This Court has consistently emphasised that the inquiry at the stage of admission is a limited one and if there is a plausible pre-existing dispute which is not "spurious, hypothetical or illusory," the Section 9 application cannot be admitted. This is because the jurisdiction

at the stage of admission is not intended to become a full-fledged adjudication of the underlying commercial dispute.

34. Admission of any application for insolvency resolution is a watershed moment and before admission, the proceedings are essentially *inter se*, i.e., between the Operational Creditor and the Corporate Debtor. After admission, the proceedings acquire a fundamentally different character.

35. The statutory regime that applies after an application is admitted involves exercises of powers and jurisdiction under several interlocking provisions of the Code such as Sections 14, 17, 18, 20, 21, 25, 32 and 53.

36. Section 14, relating to Moratorium: On admission of the CIRP application, Section 14 imposes a moratorium having consequences far beyond the original applicant's individual claims. While existing management of the Corporate Debtor loses control, moratorium protects the Corporate Debtor against institution or continuation of proceedings, execution of judgments, enforcement of security interests and other coercive actions. The process that commences after admission encompasses the entire body of creditors and other stakeholders, not merely interests of the applicant. A proceeding having consequences of this magnitude cannot logically remain a private proceeding between the original Operational Creditor, the applicant under Section 9 and the Corporate Debtor.

37. Sections 17 and 20 relating to passing on the management to the IRP: Section 17 provides that, from the date of appointment of the IRP, management of the affairs of the Corporate Debtor vests in the IRP and the powers of the Board of Directors stand suspended. Section 20 obliges the IRP to preserve and protect the value of the property of the Corporate Debtor and continue its operations as a going concern. The consequence is material as the applicant creditor loses the character of being the person in control of the insolvency proceeding. The insolvency process is placed in the hands of an independent insolvency professional.

38. Section 18 relating to collection and collation of claims: Section 18 requires the IRP to collect information relating to the assets, finances and operations of the Corporate Debtor and receive, collate and verify claims submitted by creditors. This is perhaps the clearest indication that the proceeding has ceased to be an individual dispute. Once claims of numerous creditors are invited, received and adjudicated, the statutory process is concerned with the collective insolvency estate.

39. Section 21 relating to formation of Committee of Creditors (“CoC”); although Operational Creditors do not ordinarily constitute the voting constituency of the CoC, the existence of the CoC demonstrates the statutory intendment to provide a comprehensive and sustainable solution to insolvency of the corporate debtor as a whole. The insolvency process is not structured to secure payment of the debt of the creditor who

happened to file the initiating application, rather, it contemplates a collective architecture to deal with the insolvency of the Corporate Debtor and therefore the duties of the Resolution Professional under Section 25 of the Act extend to preserving and protecting the assets of the Corporate Debtor, representing and acting on behalf of the Corporate Debtor, maintaining claims register, inviting prospective resolution applicants, presenting resolution plans and taking measures necessary for resolution. These provisions thus indicate in clear terms the purpose and object of the Code relating to insolvency resolution for maximization of value of assets. After admission, the process formulated under the Code, detaches itself from the original applicant and reorients towards securing a larger public purpose of promoting entrepreneurship and availability of credit for the economy.

40. Further, Section 30(2) requires a Resolution Plan to make provision for payment of debts of Operational Creditors and others in the manner prescribed by the Code. Consequently, an Operational Creditor who never initiated the CIRP nevertheless acquires statutory interests within the process. The Code is designed to move away from resolving the individual debt of the initiating creditor to the resolution of collective liabilities for rendering Corporate Debtor solvent. The larger purpose to subserve is to ensure credit availability for robust entrepreneurship for our economy.

41. Section 53 relates to distribution of liquidation estate; the waterfall mechanism under Section 53 illustrates the collective character of insolvency proceedings where distribution is not according to the identity of the person who first invoked the code. This again reinforces the proposition that the initiating creditor is merely the triggering creditor, and not the proprietor of the CIRP.

42. Yet another provision of the Code, Section 12A, introduced in 2018, is significant as it demonstrates that the applicant ceases to have unilateral control of the proceedings. Section 12A provides for withdrawal of the application admitted under Sections 7, 9 or 10 “*with the approval of 90% voting share of the Committee of Creditors*”.¹¹ The provision was introduced precisely because after admission, withdrawal is no longer a unilateral choice of the applicant.

43. Once the CIRP proceedings have commenced, a large number of independent creditors would have submitted their claims. These creditors have not chosen the original applicant but are seeking to participate in the

¹¹ Section 12A, IBC 2016 –

“12-A. *Withdrawal of application admitted under Section 7, 9 or 10.*—(1) Subject to sub-section (2), the Adjudicating Authority may allow the withdrawal of an application admitted under Section 7, 9 or 10, on an application made by the resolution professional, with the approval of ninety per cent voting share of the committee of creditors in such manner as may be specified.

(2) Notwithstanding anything contained in any law for the time being in force, an application admitted under Section 7, 9 or 10 shall not be withdrawn—

(a) before the constitution of the committee of creditors under sub-section (1) of Section 21; and

(b) after the first invitation for submission of a resolution plan has been issued by the resolution professional.

(3) The Adjudicating Authority shall pass an order under sub-section (1) within a period of thirty days from the date of receipt of the application:

Provided that if the Adjudicating Authority has not passed an order within such period, it shall record the reasons for such delay in writing.”

resolution process. Their claims are pursuant to the invitation issued by the resolution professional and their rights become part of the collective insolvency estate. It would be against the very concept of finding a resolution to the insolvency of the Corporate Debtor if these creditors are to initiate fresh proceedings under Section 9 as the original applicant is found to be in collusion with the Corporate Debtor. The resolution process of a Corporate Debtor has to be unitary, and the Code does not contemplate multiple and simultaneous resolution processes if there are no other glaring intervening circumstances.

44. The CIRP is intertwined with the jurisdiction, control and supervision of the Adjudicating Authority. The IRP, or the RP as the case may be, is independent of the suspended directors of the Corporate Debtor and their conduct is under direct supervision and direction of the Committee of Creditors. The resolution process can therefore continue even in the absence of the original applicant. The carriage of the proceedings at this stage is not vested in the original applicant but in the joint and collaborative decisions of the resolution professional and the Committee of Creditors as approved by the Adjudicating Authority.

45. The text of the Code, coupled with the purpose and object that it seeks to subserve, enables us to conclude that insolvency resolution process can be continued even after a finding that the original application under Section 9 was initiated fraudulently and with active collusion of the

suspended Directors of the corporate debtor. The issue is answered accordingly.

46. For deciding whether to continue the resolution process, the AA will take into account multiple factors, the most important of which lies in ensuring that the future proceedings can be conducted with integrity and confidence that the purpose and object of the Act could be achieved with certainty, probity and transparency.

47. The AA would, *inter alia*, be guided by the commercial wisdom of the Committee of Creditors as also the submissions of the Resolution Professional before whom multiple stakeholders would have filed their claims. The decision of the AA is crucial. We do not rule out the circumstances in which the AA could nevertheless come to the conclusion that continuation of insolvency proceedings in the circumstances, where the original applicant has turned out to be a collusive party, cannot be permitted for reasons that it may indicate for the decision taken.

48. Returning to the facts of the present case, while the adjudicating authority as well as the NCLAT have concurrently found that the Original Application of M/s Straight Edge Contracts Pvt. Ltd. is collusive and has been motivated by the interests of the suspended Directors of the Corporate Debtor, the consequential decision as to whether CIRP proceedings should be continued or not in the facts and circumstances of the case has not been taken. While the AA wrongly held that there is no

power under the Code to withdraw the proceedings once admitted, the NCLAT reversed that decision and held that such a power exists but did not take the crucial step of deciding whether the proceedings should be continued. We are not in agreement with the approach adopted either by the AA or by the NCLAT; both failed to take the proper consequential action upon finding that the original application is collusive.

49. In view of the above discussion, we restate the principles that we have followed in arriving at our decision:

i. Initiation of proceedings under Sections 7, 9 or 10, as case may be, of the Insolvency and Bankruptcy Code, 2016, is based on certain fundamental facts which are jurisdictional in nature. If reliance on such jurisdictional facts, as indicated in the applications, is subsequently proved to be fraudulent and collusive, the AA is entitled to recall admission of the application. This is for the reason that in the invocation of statutory jurisdiction, there is an inherent *public law duty not to deceive or mislead* on jurisdictional facts, as such manipulation will have the effect of subverting the very purpose and object of the statute.

ii. Commencement and conclusion of proceedings under Sections 7, 9 or 10, as the case may be, are in two stages. At the initial stage, the original applicant has the carriage of the proceedings till the petitions are admitted. Once the petition is admitted, the

proceedings are no longer the preserve of the original applicant, creditor or debtor. They become *in rem*, and all creditors of the corporate debtor become stakeholders in the process, and the affairs of the corporate debtor are vested in the RP, and the proceedings are under the jurisdiction of the AA.

iii. After the applications are admitted by the AA and CIRP proceedings commence, it is not permissible for the original applicant to withdraw the case. This position has also attained statutory recognition in 2018 with the inclusion of Section 12A in the IBC, 2016.

iv. If the AA arrives at a conclusion that initiation of CIRP under Sections 7, 9 or 10, as the case may be, is based on fraud and collusion, it shall disallow the original applicant from participating and may also initiate proceedings under Section 65 of the Act.

v. If the AA is of the opinion that the CIRP proceedings that have commenced need to be continued to subserve the larger interests of resolving the corporate insolvency of the corporate debtor for which there are other stakeholders, it has the power and jurisdiction to take such a decision. For this purpose, it shall hear the RP, elicit the view of the CoC and also the other stakeholders. It is the duty of the AA to ensure that the proceedings are concluded with integrity and transparency, and that the purpose and object of the code is subserved.

V. Directions

50. For the reasons stated above,

(i) The present Civil Appeals filed by Orris Infrastructure Private Limited in Civil Appeal Nos. 6797-6801 of 2023, Greenopolis Welfare Association in Civil Appeal Nos. 6792-6796 of 2023, and Safalta Goel and Anr. in Civil Appeal Nos. 6802-6806 of 2023, are allowed in part and the judgment and order of the NCLAT in Comp. App. (AT) (Ins) No. 444 of 2022, Comp. App. (AT) (Ins) No. 651 of 2022, Comp. App. (AT) (Ins) No. 370 of 2022, Comp. App. (AT) (Ins) No. 602 of 2022, and Comp. App. (AT) (Ins) No. 1379 of 2022 is hereby set aside, and it is further directed that;

(ii) The CIRP proceedings No. IB-2721/ND/2019 pending before AA are restored to their original number.

(iii) The AA shall now decide upon the continuation of the proceedings in view of the conclusive finding of fraud and collusion of the original applicant M/s Straight Edge Contracts Pvt. Ltd. For this purpose, it shall take into account all the necessary facts and events, including the ownership of the Greenopolis project, hear the RP, the CoC and other stakeholders, including the homebuyers who have already adopted other statutory and judicial remedies.

(iv) In the event AA decides to continue the CIRP process, in view of the long pendency of these cases, there shall be a further direction to the AA to conclude the proceedings expeditiously.

51. In view of the above, the Contempt Petition (C) Nos. 249-253/2025 are closed. Pending applications, including the applications for intervention/impleadment are disposed of.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[ALOK ARADHE]

**NEW DELHI;
SEPTEMBER 30, 2026.**