



2025:DHC:1095



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Order reserved on : 18 September 2024¹**
Order pronounced on : 20 February 2025

+ W.P.(C) 1567/2024 & CM APPL. 6518/2024, CM APPL. 6519/2024, CM APPL. 10599/2024, CM APPL. 11516/2024, CM APPL. 11517/2024, CM APPL. 11518/2024, CM APPL. 14152/2024, CM APPL. 19454/2024, CM APPL. 41270/2024, CM APPL. 43619/2024, CM APPL. 54584/2024

SURESH KUMARIPetitioner
Through: Mr. Tanmaya Mehta and Mr.
Jai Shankar Sikand, Advs.
versus

REGISTRAR OF COMPANIES & ORS.Respondents
Through: Mr. D.N. Chatuvedi, Mr.
Deepak Somani, Mr.
Aayushman Bhatt and Ms.
Shriya Agrawal, Advs. for R-8
Mr. Jayant Bhushan, Sr. Adv.
with Ms. Madhurima Sarangi,
Mr. Amartya Bhushan, Mr.
Ravi Shankar Nanda, Mr.
Varun Kumar, Mr. Yojit Mehra,
Advs. for R-12 and R-13
Mr. Kirtiman Singh, CGSC
with Mr. Waize Ali Noor, Mr.
Ranjeev Khatana, Mr. Maulik
Khurana and Mr. Varun Pratap
Singh, Advs. for UOI
Mr. Nalin Kohli, Sr. Adv. with
Ms. Shruti Aggarwal and Ms.
Vijeta Singh, Advs. for IRP

¹ Written submissions filed by the Petitioner on 07.12.2024, Respondent No. 3 on 07.12.2024, Respondent No. 7 on 16.10.2024, Respondent No. 11 on 03.01.2025 and Respondents No. 12 and 13 on 17.05.2024 and 14.06.2024. Further, Clarifications sought on 22.11.2024 and 17.01.2025



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Mr. J. Sai Deepak, Sr. Adv.
with Mr. Luv Virmani, Adv. for
R-4

Mr. Maninder Singh, Sr. Adv.
with Mr. Prabhas Bajaj and Ms.
Jyoti Taneja, Advs. for R-11

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

CM APPL. 10599/2024 & 11516/2024

1. This order shall decide CM APPL. 10599/2024, moved by the applicant/respondent No.7, Mr. Vidur Bhardwaj, and CM APPL. 11516/2024, moved jointly by applicant/respondent No. 12, Mr. Pratap Singh Rathi, and applicant/respondent No.13, Mr. Ajay Kumar, for the ACE Group of Companies, seeking the recall of the impugned interim order dated 02.02.2024, passed by this Court on the CM APPL. 6519/2024, moved on behalf of the petitioner in the instant writ proceedings.

2. Shorn of unnecessary details, the petitioner, who is a homebuyer, claims to have purchased a plot from **respondent No.3, M/s. Three C Shelters Private Limited [“TCSPL”]**, in a real estate project named ‘Greenopolis’, which was envisioned to be developed in Sector 89, Gurugram, Haryana. Allegations were made against respondent No.3/TCSPL and its Ex-promoters/directors/ management, who are arrayed as respondents No. 6, Mr. Nirmal Singh; respondent No. 7, Mr. Vidur Bhardwaj; respondent No. 8, Mr. Surpreet Suri; respondent No. 9, Mr. Rajeev Bisoya; and respondent No. 10, Mr.



Girish Chander Joshi – along with others, accusing them of allegedly siphoning off approximately Rs. 1,664 crores collected from innocent homebuyers into its various shell/sister concerns. This misappropriation led to respondent No.3/TCSPL being subjected to proceedings under the IBC² before the NCLT³, Delhi, with nearly 536 investors/claimants/homebuyers lodging their claims before the IRP⁴ in CP IB No. 2721/2019.

3. It appears that while the matter was pending before the NCLT, three reports were submitted by the IRP, namely Mr. Pradeep Kumar Kaushik, and the Status Report dated 09.08.2023, which, *inter alia* demonstrated as to how and in what manner the Ex-promoters/directors/management of respondent No.3/TCSPL had been siphoning off the funds. However, it is submitted that the investors/claimants/homebuyers suffered a setback when the NCLAT⁵, *vide* order dated 28.08.2023, set aside the entire CIRP⁶ proceedings. Aggrieved by this, the homebuyers' association, respondent No. 4/Greenopolis Welfare Confederation, preferred Civil Appeal Nos. 6792-6796/2023 before the Supreme Court, whereby *vide* order dated 13.10.2023, the parties were directed “*to maintain status quo including with regard to assets of the company (in liquidation) i.e. respondent No.3/TCSPL*”.

4. In the said backdrop, the petitioner approached this Court, invoking the extraordinary jurisdiction of this Court under Articles

² Insolvency and Bankruptcy Code, 2016

³ National Company Law Tribunal

⁴ Interim Resolution Professional

⁵ National Company Law Appellate Tribunal

⁶ Corporate Insolvency Resolution Process



226 and 227 of the Constitution of India, 1950, seeking certain directions against respondent No.1/Registrar of Companies, and respondent No.2/Union of India through the Ministry of Corporate Affairs for taking cognizance, initiation and conduction of appropriate inquiries and investigation against the management of respondent No.3/TCSPL, as well as its shell/sister group of companies, for alleged action of manipulation of records and siphoning of funds to shell/sister companies based in Kolkata and elsewhere. Additionally, the petitioner sought reliefs in the nature of freezing the assets of such unscrupulous companies and their promoters/directors to safeguard the legal rights of the investors/claimants/homebuyers like the present petitioner.

5. This Court *vide* impugned order dated 02.02.2024, referred to certain facts unearthed by the IRP in his Status Report-2 dated 09.08.2023, which is ‘Annexure P-16’, and it would be pertinent to reproduce the relevant paragraphs of the aforesaid impugned order, which read as follows:

“10. It is pertinent to mention that learned Senior counsel alluded to the damning findings and observations reported by the IRP before the NCLT, which report is Annexure P-16 wherein *vide* paragraph (31) onwards it has been brought to the fore that during the time leading to respondent No.3 becoming involved in the insolvency proceedings up to 16.10.2020 and thereafter, various dubious/suspicious transactions had been carried from the bank account of the corporate debtors maintained with State Bank of India, whereby *inter alia* a sum of Rs. 200 crores have been transferred by way of multiple transactions on the very same day from one company to the another ostensibly to buy shares of some Kolkata based shell companies in the name of the corporate debtor and the money trail led to the following revelations:-

“31. (a) A Sum of Rs. 4,50,00,000/- was transferred from the Account of the Corporate Debtor to M/s Manak



Estates and Finance Private Limited, and thereafter shares of a Kolkata based company namely GREATFUL INFRASTRUCTURES PRIVATE LIMITED that too at a Price of Rs. 498 per share were purchased from this money. It is important to state that this Kolkata based company is nothing but a shell company having investments in the form of shares of some other companies. These aspects require detailed investigation since it is prima facie apparent that these companies are nothing but shell companies of Kolkata being formed for conversion of black monies.

(b) Another such transaction is an amount of Rs. 127,25,00,000/- from the same suspicious bank account maintained with State Bank of India wherein shares of some companies namely ANGARIKA VINIMAY PRIVATE LIMITED, GANADHIP EXPORTS PRIVATE LIMITED, AMARNATH MARKETING PRIVATE LIMITED, JAIWANTI VYAPAAR PRIVATE LIMITED, ATCHYUT CONSTRUCTIONS PRIVATE LIMITED, COLLATE TRADELINK PRIVATE LIMITED, GAJANANA FINCOMPRIVATE LIMITED, GREATFUL INFRASTRUCTURES PRIVATE LIMITED were purchased. It is further more surprising that these companies are also ex-facie shell companies, having no assets except for investment in other companies in the form of shares. Apart from GREATFUL INFRASTRUCTURES PRIVATE LIMITED, the names of rest companies have already been struck-off from the record, as is apparent from the website of Ministry of Corporate Affairs. Curiously, the names of the companies were struck off, just after few months after the shares were transferred in the name of the Corporate Debtor.”

11. Alluding to the IIIrd status report at PDF page No. 995 of the paper-book, it is pointed out that vide paragraph (7.1) & (7.2), the following findings and observations have been brought to the fore as well:-

“7.1. It is respectfully submitted that the records have revealed that there is another group of company viz. Ace Group, wherein there is a direct connection / commonality between the promoters of the Three C Group and the Ace Group. The records demonstrate that the management of Ace Group and Three C group is inter-related with each other. This is also clearly established from the fact that one Mr. Pratap Singh Rathi, Director of Ace Infracity Developers Pvt Ltd. (one of the flagship companies of Ace



Group) has been a common director in M/S Ace Infracity Developers Pvt. Ltd. since 30.01.2015 till present and in Three C Residency Private. Ltd. (one of the companies of Three C Group) from 30.10.2019 to 09.03.2021. Furthermore, Mr. Pratap Singh Rathi is also a director in one more Three C Group company i.e. Three C City Developers Pvt Ltd. from December, 2019 till date.

7.2. It is respectfully submitted that even Bright Buildtech Pvt. Ltd. and the Ace Group have been working in close relation, and the management of both the companies are inter-related to each other. As elaborated in Para 6.2. herein above-

M/s Bright Buildtech Pvt. Ltd. is 100% owned by M/s Three C Town Planners Pvt Ltd.



In 2012, 100% shareholding of Three C Town Planners Pvt Ltd was held by M/s Three C Universal developers Pvt Ltd.

From 2012-2015 funds were siphoned off from the Corporate Debtor to M/s Bright Buildtech Pvt Ltd



100% shares of M/s Three C Town Planners Pvt Ltd. were transferred to Lotus Green LLP at merely Rs. 1 Lakhs (M/s Lotus Green LLP is held by Mr. Harakaran Singh Uppal son of Mr. Nirmal singh)



100% shareholding of M/s Three C Town Planners Pvt Ltd (renamed as M/s Mega Town Planners Pvt Ltd.) was reported to be transferred to M/s Ace Landcraft LLP at a consideration of merely Rs. 1 lakhs.

7.2. It is respectfully submitted that the undersigned has identified that funds from the Corporate Debtor have been diverted into Bright Buildtech Pvt. Ltd. for the Project Ace Palms Floors, Gurgaon. It is significant to note that the project Ace Palms Floors, Gurgaon is owned by M/s Bright Buildtech Pvt. Ltd and Three C group has close connections/ commonality of control with the Ace Group.”

12. Referring to the relevant documents on the record, it has been further pointed out by the learned Senior Counsel for the petitioner that not only the names of some of the shell companies stood struck off from the record but also over a short period of time as many as 10 sister concerns/shell companies of respondent No.3 have been admitted to insolvency proceedings, which have been of collusive nature and in this regard Id senior counsel lamented about



the dubious role played by the previous IRP, namely Mr. Chandra Prakash, who allegedly submitted fabricated reports before the NCLT leading to his suspension by IBBI⁷.

13. Further, learned Senior counsel for the petitioner referred to an email dated 15.10.2019 by Mr. Surpeet Suri, one of the promoters of respondent No.3, a bare reading of which would show that he highlighted that about Rs. 500 crores having been siphoned off from the respondent No.3 to its sister concerns and there is tabular depiction of the names of the companies besides the trail of money/funds that have been siphoned off including the details as to the date of the transfers and amounts involved. It was also pointed out that there has been a conspicuous common connection between the promoters of the 'Ace Group' and respondent No. 3 'Three C Groups of Management' having common Directors and likewise with 'M/s. Bright Buildtech Pvt. Ltd' and other shell companies so much so that huge parcel of land in YEIDA area (Yamuna Expressway Industrial Development Area) as well in Gurgaon and other places have been transferred to M/s. ACE Infracity for nominal value of Rs. 1 lac. This Court has been taken through several documents on the record with respect to transfer of shell companies to ACE Group. It is also submitted that Ace Infracity Pvt. Ltd. is a proxy of respondent no. 3 and Resolution Plan which has been submitted by the IRP is assailed before the Supreme Court which has been stayed in Civil Appeal no. 007762/2023 vide order dated 08.01.2024.”

6. In view of aforesaid *prima facie* findings and forming an assumption that, despite these aforesaid damning facts being brought to the notice of respondents No.1 and 2, they had failed to discharge their duties in terms of Chapter XIV of the Companies Act, 2013, and the following directions were passed to safeguard the interest of the petitioner, as well as other similarly placed investors/claimants /homebuyers:

“20. Accordingly, following interim directions are passed:-

(i) Respondent Nos. 1 and 2, are hereby conjointly directed to initiate action and ensure step-wise compliance in terms of Section 206 to 210 of the Companies Act, 2013 and other analogous provisions in Chapter XIV of the Companies Act, 2013, and

⁷ Insolvency and Bankruptcy Board of India



thereby inspect the affairs of 'Three C Shelters' and the related companies of 'Three C Shelters' in terms of the Status Reports of the IRP before the NCLT as brought out in his reports dated 9th August, 2023 and submit an Inspection Report within four weeks from today before this Court;

(ii) Initiate appropriate legal action against respondent Nos. 6,7 and 8 thereby calling upon them to explain the diversion of funds from respondent No.3 i.e., Three C Shelters Private Limited to other shell companies/sister concerns of its group in terms of the three Status report filed by the IRP dated 9th August, 2023 and take appropriate decision as per the law; and

(iii) Respondent No.1 & 2 are hereby jointly directed to call for the record of the and/or seize the Books of accounts of all related companies of Three C Shelters Private Limited, where the funds have been diverted for the purposes of inspection and ascertain the diversion/siphoning of the funds, and arrest further exhaustion of such funds as per the law;

(iv) To trace the companies in which or to which the funds have been further transferred and initiate action in terms of Section 209 and 221 of the Companies Act,2013 for freezing of the assets of such companies, if so warranted, in a time bound manner; and

(v) To undertake all such necessary measures so as to preserve the assets of the respondent company in liquidation besides the sister concerns/shell companies to safeguard the interest of the homebuyers and other secured & operational creditors.”

7. During the course of proceedings before this Court, upon service of notice of the present petition to the respondents, an application was moved on behalf of the applicants/respondents No. 12 and 13 for impleadment, which was allowed *vide* order dated 20.03.2024. Subsequently, applicants/respondents No. 12 and 13 moved CM APPL. No. 11516/2024 for the recall of the order dated 02.02.2024. Prior to this, respondent No.7, Mr. Vidur Bhardwaj had also moved CM APPL. No. 10599/2024.

8. It is a matter of record that marathon, *albeit* vociferous, arguments have been advanced on the application moved on behalf of



applicants/respondents No. 12 and 13 by their respective learned Senior Advocates on different dates, as well as by the learned counsel for the petitioner and the learned Senior Advocate for respondent No. 11/M/s. Orris Infrastructure Private Limited [“Orris”], Meanwhile, CM. APPL. No. 10599/224, though argued on 21.02.2024, appears to have not been pressed so far. Anyhow, this Court must consider whether there are any grounds for reviewing, recalling or modifying the order dated 02.02.2024.

APPLICANT NOS. 12 &13 IN CM APPL. 11516/2024

9. The applicants/respondents No. 12 and 13 submit that although the order dated 02.02.2024 was directed at respondents No.1 and 2 to inspect the affairs of the respondent No.3/TCSPL, they are directly affected, as the IRP has endeavoured to reclaim or repossess certain properties belonging to them, which have no nexus or connection with the respondent No.3/TCSPL. It is pertinent to mention that LPA bearing No. 134/2024 was filed by the applicants which was disposed of *vide* order dated 19.02.2024 by the Division Bench headed by the then Hon'ble Acting Chief Justice. It was directed that a recall/modification application may be moved before this Court within three working days, which be decided as expeditiously as possibly preferably within three weeks.

10. Accordingly, the present application was moved on 21.02.2024, and marathon arguments have been heard on different dates. Suffice to state that the applicants, in their application, claim that ACE



Group is a renowned Real Estate Developer in Delhi and the NCR⁸, promoted by the applicants/respondents No. 12 and 13, and that the impugned order has wrongly portrayed it as a proxy of respondent No.3/TCSPL. It is further stated that penal provisions under the Companies Act, 2013, appear to have been set in motion against the ACE Group of Companies without impleading them or issuing notice. The objections which have been raised so as to seek review/modification/recall of the order dated 02.02.2024 may be summarized as under:

- (i) there was no IRP in existence as on the date of filing of the present writ petition in view of the termination of CIRP proceedings against respondent No.3 and particularly in view of directions of the Supreme Court dated 13.10.2024;
- (b) the IRP report had been submitted before NCLT which alone was competent to take action upon it and the present writ petition insofar as it relates to ACE Group is absolutely not maintainable;
- (c) that three companies mentioned in the order, namely Bright Buildtech Private Limited [**BBPL**], M/s. Three C Residency Private Limited [**TCRPL**] and Three C City Developers Private Limited [**TCCDPL**] have been acquired by the ACE Group on *an arm length basis* for valuable consideration in ordinary course of business;
- (d) there is no determination by any Court or Forum of competent jurisdiction as to whether transaction involving **BBPL**, **TCRPL**, and **TCCDPL** amount to siphoning of assets of Three C Shelters Private Limited and such compliance questions cannot be gone into writ proceedings;
- (e) the ACR Group has become Resolution Applicant in accordance with provisions of IBC for two of the Three C Group Companies, viz., Three C Homes Private Limited and Three C Universal Developers Private Limited under ongoing CIRP proceedings and to label them as proxy of respondent No.3 for being successful Resolution Applicant is legally misconceived and untenable in law.

⁸ National Capital Region



11. In order to appreciate the whole controversy, the contents of paragraphs (16) to (20) of the application are reproduced hereunder in *toto*:

“16. The petitioner in the Writ Petition claims to be an allottee of an apartment in one Greenopolis group housing project in sector 89-90, Gurugram, Haryana (Greenopolis Project, in short) in terms of apartment buyer agreement dated 20-06-2013 (ABA, in short) executed by Three C Shelters and Orris Infrastructures Private Limited, i.e. Respondent No.11 (Orris, in short). It may be noted that Greenopolis is being constructed and developed by Three C Shelters under a development agreement dated 02-11-2011 (Development Agreement, in short) executed between Orris and Three C Shelters. Orris is the landowner and the licensee of the Greenopolis and Three C Shelters is the developer/contractor. From a bare perusal of ABA and the averments in the Writ Petition, it could be seen that petitioner is in default of its payment obligations of agreed consideration under ABA. As of today, she has only paid 23.25 lakhs (approx.) out of the agreed total consideration of Rs. 87.16 lakhs payable in respect of the apartment in question. It is submitted that a person who is admittedly in default of material obligations under the ABA, cannot invoke the extra-ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India.

17. The Writ Petition is clearly neither a class action nor a Public Interest Litigation (PIL). From the documents and records, it can be clearly seen that the present writ petition is collusive proceeding at the behest of Orris. The present writ Petition has been filed clearly with an attempt to embroil the assets and properties of companies which otherwise have no financial transactions with Three C Shelters.

18. From the pleadings and documents filed with Writ Petitions, the following undisputed facts may be noted:

(i) NCLT, Principal Bench New Delhi vide an order dated 29-03-2022, (**Annexure P- 11** to Writ Petition) held that Orris is the licensee and developer/owner of Greenopolis Project and Three C Shelters is merely a contractor. The NCLT also held that Greenopolis Project does not belong to Three C Shelters and as such RP is not entitled to take control and custody of the Greenopolis Project. NCLT has also held that the primary responsibility to complete the Greenopolis Project is that of Orris.

(ii) Haryana Real Estate Regulatory Authority (HARERA) vide an order dated 23-01-2019 (**Annexure P-6** to the



Writ Petition) has held that both Orris and Three C Shelters Promoters for the purposes of Real Estate (Development & Regulation) Act, 2016 and as such are jointly and severally liable to complete Greenopolis Project and handover to the apartment buyers;

(iii) Out of 47.5 acres of licensed land forming Greenopolis Project under the Development Agreement only 37.00 acres has been developed by Three C Shelters. The balance 10.5 acres of land forming part of Greenopolis Project having developable FSI of approximately 800000 sq. ft (**Balance Greenopolis Project Land**, in short) is still undeveloped and has huge monetary value. The Balance Greenopolis Project Land has been surrendered by Three C Shelters to Orris vide a Supplemental and Relinquishment Agreement dated 13-09-2017 without any consideration. It is also pointed out that Haryana Real Estate Authority (HARERA, in short) has in fact attached the Balance Greenopolis Project Land vide its order dated 12-07-2018 which was confirmed in the final order dated 23-01-2019. The attachment was challenged by Orris in the HARERA Appellate Authority which was dismissed.

19. It is surprising that the petitioner whose primary grievance is siphoning of assets of Three C Shelters has failed to make any prayer (s) and/or relief(s) against the relinquishment and transfer of the Balance Greenopolis Project Land by Three C Shelters to Orris without any consideration. Further, even more surprising is the fact that despite clear findings returned by the NCLT, Principal Bench New Delhi and the HARERA, Gurugram that the primary responsibility of completing the Greenopolis Project is that of Orris, there is no prayer or relief in the Writ Petition against Orris.

20. In a short span of time of 14 years Ace Group has completed and delivered 07 residential projects viz. Ace Platinum, Ace City, Ace Aspire, Ace Golfshire, Ace Parkway, Ace Divino all situated in Noida and Greater Noida, Uttar Pradesh and Ace Palm Floors in Gurugram, Haryana. In addition, there are many projects which are under construction and development. The Ace Group has completed and delivered 10000 (Ten Thousand) residential apartments to satisfied and happy home buyers. Ace Group has also developed some iconic commercial and IT/ITES projects like City Square, Ace Studio and Ace Capitol in Noida /Greater Noida. Ace Group has a significant presence in Northern India. That the Ace Group has some of the biggest real estate developers in the country as its partner like Godrej Properties and Prestige Group Bengaluru. Ace Group has been setting benchmarks by creating



homes, commercial and institutional spaces and is today a multi thousand crores conglomerate, delivering futurecentric and high-end projects. The Petitioner or Ace Group have no connection whatsoever with Three C Shelters or Three C Group much less being a proxy. It is submitted that labeling of Ace Group as a proxy of Three C Shelters is plainly bogus, malicious and defamatory.

12. It is averred that the NCLT, Principal Bench, New Delhi, *vide* order dated 29.03.2022 in CP IB 2721/ND/2019, held respondent No.11/Orris as a 'Licensee' and the developer/owner of the project 'Greenopolis', while respondent No. 3 /TCSPL, was deemed merely a contractor. Furthermore, the Haryana Real Estate Regulatory Authority [**"HRERA"**] *vide* order dated 23.01.2019, held that both respondent No.3/TCSPL and respondent No.11/Orris, are jointly and severally liable to complete the project 'Greenopolis' and hand over the constructed apartments to the homebuyers; and that out of 47.218 acres of licensed land forming 'Greenopolis Project' under the Development Agreement, only 37.218 acres of land have been developed, while the remaining 10 acres of land remain underdeveloped. Additionally, it is alleged that the balance land of project 'Greenopolis' was surrendered respondent No.3/TCSPL to respondent No.11/Orris *vide* a Supplemental Relinquishment Deed dated 13.09.2017, without any consideration, to the detriment of the homebuyers.

13. It would be suffice to state that the applicants/respondents No. 12 and 13 have provided an extensive account of their track record in an attempt to substantiate their credentials and reputation in the real estate market, particularly in managing the affairs of ACE Group of Companies. The applicants have cited various completed projects and



have also shed light on the history of BBPL⁹, its acquisition, as well as TCRPL¹⁰ and TCCDPL¹¹, upon which some light shall be shed hereinafter. In summary, in the light of the aforesaid facts, the applicants/respondents No. 12 & 13 seek the recall of the impugned order dated 02.02.2024.

LEGAL SUBMISSIONS BY RESPONDENTS NO. 12 & 13

14. During the course of lengthy arguments spanning several days, vociferous submissions have been made to the effect that ACE Group is an independent Group of Companies and is in no way associated with or related to the business of respondent No. 3/ TCSPL. It is reiterated that BBPL, TCRPL and TCCDPL were acquired by ACE Group on an arm's length basis for valuable and fair consideration in the ordinary course of business. Furthermore, considerable emphasis has been placed on the *locus standi* of the petitioner, alleging her to be a proxy acting at the behest of a rival group, i.e., respondent No.11/Orris, and the petition having been filed without disclosing that an application for her impleadment was pending consideration before the Supreme Court.

15. It is vehemently urged by the learned counsels for the applicants/respondents No. 12 and 13 that the investigation under Chapter XIV of the Companies Act, 2013, has been ordered against ACE Group of Companies in complete violation of the principles of natural justice. It is further contended that the petitioner, without exhausting the remedies available to her under the IBC, has indulged

⁹ Bright Buildtech Private Limited

¹⁰ Three C Residency Private Limited

¹¹ Three C City Developers Private Limited



in forum shopping and has failed to satisfy the pre-requisite for filing a 'Public Interest Litigation' in complete violation of the **Delhi High Court (Public Interest Litigation Rules), 2010**. It has been argued that the petitioner has approached this Court without first availing efficacious and alternative remedies, as Chapter XIV of the Companies Act, 2013, clearly provides such recourse.

16. During the course of arguments, it was contended that the petitioner allegedly sent an email dated 28.01.2024, seeking an inquiry/investigation into the affairs of respondent No.3/TCSPL, purportedly on behalf of one Mr. Nitish Badola, concerning his grievance related to an order dated 09.01.2024, passed in an unrelated W.P.(C) 172/2024, in which the petitioner is not even a party. Both Mr. P.V. Kapoor and Mr. Jayant Bhushan, learned Senior Advocates for the applicants/respondents No. 12 & 13, strenuously argued that an inquiry/investigation under Chapter XIV of the Companies Act, 2013, is a serious matter and it was incumbent upon the petitioner to submit a representation to respondents No.1 and 2, along with sufficient material, which was never submitted, and thereby causing great prejudice to their clients. They further submitted that any inquiry/investigation into the affairs of the ACE Group of Companies would be counter-productive, harming its reputation, goodwill and business interests in the Real Estate market, despite its long-standing, clean and unblemished track record. Reference was also made to the decision in **Sri Ramdas Motor Transport Ltd. v. Tadi**



Adhinarayana Reddy¹².

17. It is also urged that the present ‘High Court’ does not qualify as a ‘Court’ within the meaning of Section 210(2) of the Companies Act, 2013, as the term refers exclusively to a Court exercising jurisdiction or powers under the Companies Act and having jurisdiction in relation to place where the registered office of the company is situated. Reference is invited to **south Indian Bank Ltd. v. Naveen Mathew Philip**¹³; **PHR Invent Educational Society v. UCO Bank**¹⁴; and **Rohtas Industries v. S.D. Agarwal**¹⁵.

18. The crux of the grievance is that the impugned order dated 02.02.2024 was passed based on the report of the **IRP dated 09.08.2023**, which is yet to be considered and accepted by the competent forum, namely the NCLT, NCLAT and/or for that matter by the Supreme Court. Significant arguments have been advanced regarding the alleged overreach by the IRP in attempting to take control of certain legitimately acquired assets/ parcels of land that originally belonging to respondent No.3/TCSPL but now under the control and possession of the ACE Group of Companies. In this regard, reference has been made to the decision in **Embassy Property Development Private Limited v. State of Karnataka**¹⁶.

19. At this juncture, it is pertinent to mention that learned Senior Advocates for the applicants/respondents No. 12 and 13 have filed a compilation delineating as many as **eight share purchase agreements**

¹² (1997) 5 SCC 446

¹³ (2023) SCC OnLine SC 435

¹⁴ (2024) SCC OnLine SC 528

¹⁵ (1969) 1 SCC 325

¹⁶ (2020) 13 SCC 308



executed with regard to companies that had been formed by the erstwhile promoters and Directors of respondent No.3/TCSPL viz., share purchase agreement dated 12.12.2012 executed between M/s. Three C Universal Developers Private Limited [“TCUDPL”] and Surpreet Singh Suri being sellers and described as first part in favour of Pradeep Jain S/o Sheel Kumar Jain; Bhupinder Singh Kochar S/o Suchet Singh Kochar; Ajay Khetrpal S/o Basant Kumar Khetrpal; Anand Goel S/o Bishan Dayan Goel; Munish Kher S/o Ram Saran Kher; Meenu Kher D/o Chaman Lal; Prashant Aggarwal S/o Prakash Chand Aggarwal; Pooja Aggarwal W/o Prashant Aggarwal, described as buyers and M/s. Sequel Building Concepts Private Limited [“SBCPL”], which agreement pertained to sale of 1000 number of shares in TCUDPL for a total sum of Rs. 1,00,000/- by the second party described above, which purportedly belonged to the **Ashiana Group**.

20. Likewise, reference is made to the share purchase agreement dated 31.12.2013, executed between M/s. Pinnacle Superstructures Private Limited [“PSPL”] and Deepak Khurana, described as the first party (seller), for the sale of 1000 shares to Mr. Dhanesh Chand Agarwal S/o Devi Sahai; Dhanesh Chand Agarwal & Son (HUF); Ms. Aparna Aggarwal R/o Ravindra Mittal; Mahesh Chand Goyal (HUF); Mahesh Chand Goyal S/o Shyam Lal; Abhinav Goyal S/o Mahesh Chand Goyal; Sachin Goel S/o Rajendra Prasad; Dinesh Garg S/o Late Virendra Kumar Garg; Pankaj Kumar Garg S/o Late Virendra Kumar Garg; Ms. Nutan Garg D/o Hari Kumar; and Ms. Shikha Garg D/o Vinod Kumar, who were described as buyer with M/s. Golfgreen



Buildcon Private Limited, which purportedly belongs to the **Urbtec Group**.

21. Furthermore, attention of the Court is invited to the share purchase agreement dated 23.01.2013 executed between M/s. Kindle Developers Private Limited and Deepak Khurana selling 1000 shares amounting to Rs. 1,00,000/- to **M/s. Sunshine Group and M/s. NCR Projects Private Limited** besides **M/s. Golfgreen Residency Private Limited** and the buyers belong to M/s. Sunshine Group. Suffice to state that they refer to the share purchase agreement dated 21.04.2014 between M/s. Three C Green Developers Private Limited selling equivalent shares to the **Allied Group** for Rs. 5,00,000/-; share purchase agreement dated 18.07.2013 executed by M/s. Gaursons Sportswood Private Limited and Deepak Khurana in favour of **Mahagun Group**; and further share purchase agreement dated 09.10.2013 executed by M/s. Gaursons Sportswood Private Limited and Mr. Deepak Khurana in favour of the **Civitech Group**; and share purchase agreement dated 01.06.2012 between M/s. Meriton Infradevelopers Private Limited and Mr. Surpreet Singh Suri to the **Sunworld Group**; and share purchase agreement dated 06.08.2012 executed by M/s. Hacienda Projects Private Limited and M/s. Prateek Buildtech (India) Private Limited in favour of **M/s Prateek Infraprojects Private Limited**.

22. It is undeniable that the attention of this Court has been drawn to the aforementioned share purchase agreements to buttress the point that the sales and acquisitions of certain companies belonging to the respondent No. 3 were conducted in the ordinary course of business



by the ACE Group of Companies. This included the acquisition of companies such as BBPL, TCCDPL, TCRPL at arm's length, with ACE Group of Companies assuming responsibility for clearing substantial financial debts and liabilities of these companies. Additionally, it is pertinent to highlight that certain plots in the project being developed in Sectors 78 and 79 in Noida, Uttar Pradesh, by the respondent No.3/TCSPL were leased to different groups during the period 2013-2014.

CHALLENGE BY RESPONDENTS NO. 4 & 11

23. The application for recall has been vehemently challenged by respondent No. 4/Greenopolis Welfare Confederation, as well as respondent No. 11/Orris. Mr. Maninder Singh, learned Senior Advocate appearing for the respondent No. 11/Orris, took the lead and addressed arguments in opposition to the pleas advanced by the learned Senior Advocates for the applicants/respondents No. 12 and 13. It was pointed out that the total area of the project, which was to be developed, was 47.21 acres, of which they were the owners, and construction was supposed to be carried out on an area of 37.09 acres. A development agreement was executed between the respondent No.3/TCSPL and respondent No.11/Orris on 02.11.2012, which was valid upto 22.12.2019, and the project i.e. 'Greenopolis' was initiated in July 2012, with the booking of flats starting in 2012-2013, while the due date for completion of construction was set for December 2015.

24. The learned Senior Advocate for the respondent No.11/Orris argued that the project envisaged the construction of 1,862 apartments across 29 towers on an area of 37.09 acres. Additionally, 9 more



towers were to be constructed upon 10 acres of land, as per the approved building plans. It was pointed out the promoter/landowner/licensee, i.e., Orris and 15 other individuals/group companies of Orris, was to be allocated 35% of the total build-up area/unit and saleable facilities. In contrast, 65% of the total built-up area/unit and saleable facilities, along with other obligations, were to be handled by the developer, respondent No. 3/TCSPL, as per the development agreement dated 02.11.2011.

25. It was argued that respondent No.11/Orris was, in fact, a consumer and became a victim at the hands of the promoters and directors of respondent No. 3/TCSPL. Respondent No.11/Orris was unaware of the background of the promoters and directors of respondent No.3/TCSPL, who were involved in massive illegal activities and siphoning of funds in 12 other matters in the State of Uttar Pradesh. It was further pointed out that nearly Rs. 825 crores were collected by the developer, i.e., respondent No.3/TCSPL, but the promoters and directors of respondent No.3/TCSPL subsequently just disappeared, abandoning the construction.

26. Pertinent to mention that the Learned Senior Advocate took this Court through the judgment delivered by the Division Bench of **the Allahabad High Court** in Writ No. 41110/2019 titled as '**Nirmal Singh v. State of U.P. & 4 others**', which were a batch matters wherein the petitioners were Shri Surpeet Singh Suri, Vidur Bhardwaj and Lotus 300 Apartments Owners Association and the *modus operandi* adopted by such promoters and directors was explained in



paragraph (3) of the Judgment¹⁷, which goes as under:

“3. This is a classic case of conning, as to how the promoters without investing any amount gets huge tracts of prime land allotted, launches a project and collects Rs.636 crores from the home buyers, out of which they again syphon off almost Rs.190 crores (then sell off a portion of land to a 3rd company, pocket and then syphon the entire sale proceeds (Rs.236 crores), and pay a pittance to Noida Authority, towards the cost of land/premium for land and lease rent, which they were supposed to pay, and defrauded the home buyers, Noida Authority, Banks and other creditors. Not only this but they have also defrauded hundreds of other home buyers in various other projects similarly launched by them with different names. As a part of that conning scheme, after launching a project, they collected money, diverted it to different other companies and then resigned from directorship of the company, and push the company into insolvency and get over with all civil or criminal liabilities. Surprisingly, even after conning everyone they have been going scot free, neither the State nor the authorities are in a position to recover the said amount.”

27. On the same analogy, it was pointed out that respondent No. 11/Orris was to deliver 652 flats by developer/respondent No.3/TCSPL and instead it was saddled with the plight of 1210 buyers. Learned Senior Advocate took this Court through certain other scathing observations by the learned Judges of the Division Bench of the Allahabad High Court, as reflected in paragraph (89) to (92) and conclusions, which are as under:

“89. In this backdrop, the ration of case law cited by petitioner in the case of **R.K. Chaddha Vs. State of U.P. (supra)** is not applicable in the present case. As in the instant matter the promoters/directors had got land allotted from Noida Authority launched project and lured people to invest/book and then sold off a major portion of the land to the third party for Rs.236 crores and then skimmed off this amount to its other companies and thereafter, out of Rs.636 crores collected from home buyers again diverted Rs.191 crores to their other group companies. To divest this amount, corporate structure was set up for masking the sham transactions and a fraud is apparently played with

¹⁷ Delivered on 29.02.2024



the bank or the public at large as well as the State. Therefore, it has become imperative on this Court to lift the corporate veil and to see who are the key persons involved behind this syphoning, layering of funds of HPPL company.

90. After piercing the corporate veil, it is evident that the three promoters/directors/petitioners have transferred/diverted funds from HPPL to different companies in which these three were either promoters/directors/shareholders or had some business interest in it. As per their own balance sheet Rs.191 crores was given as interest free loans, and surprisingly, HPPL was facing cash crunch, they did not had the money to complete the project or pay the Noida Authority dues or the dues of the bank, but even then it did not take any steps to recover the interest free loan which they had given to other companies. Apart from this, the sale proceeds of Rs.236 crores which the company got from selling a portion of the project land, was also diverted away. The syphoning away of funds is evident and this was done while these three petitioners were directors. They had tendered their resignation after the money was moved out of HPPL and they were responsible for doing that. Now the question is as to who has the full control of the company.

COMPLETE CONTROL OF HPPL WITH THE PROMOTERS EVEN AFTER RESIGNING

91. The promoters of the company even after resigning have a complete control over the company. This fact has been ascertained with the several emails, which have been brought on record, which goes to prove that the promoters even much after resigning have been managing the affairs of the company and had been sending emails where they have shown concerns among themselves about rearrangement of the affairs of the company and other group companies irrespective of the purported resignation given by them from these companies long time back.

92. The fact that the promoters are still in the driving seat and have a complete control on the affairs of HPPL and other group companies has also been recognized by the order dated 30.04.2019 passed by Hon'ble High Court in Arbitration and Conciliation Application No.39 of 2018, wherein, Anand Ram, the present director, in a Court proceeding has given a statement that he is just a store keeper with HPPL and has no knowledge about the working of the company and he had appeared on the direction of (Personal Secretary of one of the promoters, Vidur Bharadwaj), it was then the Court had issued summons to one of the directors/petitioners (who had resigned) to appear before the Court. This goes to show that the petitioner and the other directors are in complete control of the company throughout, and the present directors are their petty employees placed by them as puppets.



X X X X X X

114. Since the offence committed by the petitioners/promoters is a scheduled offence under the PMLA Act. The Enforcement Directorate is directed to proceed against all the directors/promoters/designated promoter/officer who is in default, companies/other entities in which money from HPPL is syphoned or parked. These entities/people are directed to cooperate in the investigation and if they do not cooperate in the investigation then Enforcement Directorate would be free to take any appropriate action against them as available under the law. The Enforcement

Directorate will make all sincere efforts to recover the said amount and pay off all dues of all the creditors.

115. Since the company (HPPL) is into Insolvency, there is a moratorium as per Section 14 of the Code so no proceeding can continue against the company by any creditors to recover their dues. Hence, the Noida Authority shall put up all their claims before the Insolvency Resolution Professional.

116. The effect of moratorium under the IB code is confined only to the debtor company HPPL therefore, the director promoters/petitioners will not get any benefit and shall continue to be liable and be prosecuted for such offence.

117. The Noida Authority is directed to issue Occupancy Certificate/part Completion Certificate, as the case may be, and to execute tripartite agreement and registered deed in favour of flat buyer within a month.

118. Accordingly, the writ petitions are disposed of.

119. Registrar (Compliance) of this Court may forward this judgement to the Enforcement Directorate for compliance.”

28. Mr. Maninder Singh, learned Senior Advocate, urged that following the directions issued by this Court on 02.02.2024, as well as the directions by the Allahabad High Court on 29.02.2024, the promoters and directors of respondent No.3/TCSPL have disappeared and he alluded to the proceedings before the Supreme Court in Civil Appeal No. 6797/2023 and 774/2023, whereby it was observed by the Hon'ble Judges of the Supreme Court that the promoters and directors of the respondent No.3/TCSPL had seemingly vanished, instead running the affairs of respondent No.3/TCSPL through dummy persons, such as pantry boys and stooges, who had no stakes in the



company.

29. Alluding to the IRP report dated 09.08.2023 (Annexure P-16), it was urged that, *prima facie*, there are grounds to assume that sister/shell concerns of respondent No.3/TCSPL, which had acquired certain tractions of the land measuring 37.09 acres, sold them for a meagre amount of Rs. 1 lakh. It was pointed out that the formation of these sister concerns can be deciphered from the proceedings in OMP(I) (COMM.) 299/2019, whereby this Court *vide* order dated 09.08.2019 and 20.08.2019, passed certain directions.

30. At this juncture it would be expedient to reproduce the order dated 20.08.2019 which goes as under:

“1. Pursuant to the proceedings held on 9.8.2019, an affidavit has been filed on behalf of the petitioner. The affiant is, one, Mr. Supreet Singh Suri.

2. Mr. Supreet Singh Suri claims to be the Director and the authorised representative of the petitioner company. A perusal of the affidavit shows that the petitioner company has agreed to the offer made by respondent no.1 and 2 on 9.8.2019 to settle the dispute obtaining amongst them.

3. I may also indicate that in paragraph 6 of the very same affidavit it has been averred that the sum of Rs.65.50 crores was sourced by the petitioner company via its sister concern for two specific projects i.e. Greenopolis Welfare Association and Lotus Green Projects LLP (collectively referred to as “Projects”).

4. According to the petitioner company, the money was obtained from Three C Infra Private Limited and Hacienda Projects Private Limited. It is averred that the principal amounts received from Three C Shelter Private Limited and Hacienda Projects Private Limited was Rs.47.50 crores and Rs.18 crores respectively.

5. It is, therefore, the stand of the petitioner company before me that the principal sum of Rs.65.50 crores alongwith simple interest at the rate of 2 per cent per annum, commencing from 21.8.2013, which is the date of the execution of the Optionally Convertible Debenture Subscription Agreement (for short ‘OCD Agreement’) will be utilized by it towards fulfilment of requirements of the aforementioned projects.



6. Mr. Rajiv Nayyar, learned senior counsel, who appears on behalf of respondent no.1 and 2 says that as long as respondents no.1 and 2 are given discharge it is not their concern as to the manner in which the money received by the petitioner company is utilised.

7. I had indicated in my order dated 9.8.2019 that since money was garnered by the petitioner company for constructing flats, it ought to be utilised only for needs and requirements of flat owners who are represented by various homebuyers association.

8. The difficulty that I face today is that apart from respondent no.3 which represents one set of homebuyers there are two applications filed before me for impleadment i.e. I.A. No.10874/2019 and I.A. No.10949/2019 for impleading other set of homebuyers association.

9. Besides this, there could be other homebuyers associations which are perhaps unaware of the proceedings pending in this Court.

10. Therefore, while the dispute between the petitioner company and respondents no.1 and 2 stands resolved, there is a likelihood of claims being made with respect of the monies that the petitioner company will receive by various homebuyers association including the three that I have referred to hereinabove.

11. Thus, in my view, the best course that can be adopted in the given facts and circumstances is that the money as per the terms of settlement arrived at between the petitioner company and respondents no.1 and 2 can be released to the petitioner company which will keep the same in a separate escrow account albeit for a period of four (4) weeks from the date of receipt of funds.

12. In case the petitioner company does not receive notice of any proceedings or orders of any appropriate court or authority, it would, as indicated to me, utilise the money only for the projects referred to in paragraph 6 of the affidavit filed on its behalf.

13. Accordingly, the instant petition and pending applications are closed with the following directions:-

(i) The Registry will release to the petitioner company, out of the sum of Rs.250 crores retained with it, a sum of Rs.65.50 crores alongwith simple interest at the rate of 2 per cent per annum, commencing from 21.8.2018 till 20.8.2019.

(i) (a) In case any withholding tax is required to be deposited, the Registry will make suitable adjustments.

(i)(b) The counsel for respondents no.1 and 2 will revert with this aspect of the matter within the next three (3) days. This information will be given to the Joint Registrar (Judicial) by way of an affidavit.



(ii) After the money is released to the petitioner company as quantified in terms of the directions issued hereinabove, the remaining amount shall be released to respondent no.1.

(iii) With the release of money to the petitioner company, the liabilities of respondent no.1 and 2 towards the petitioner company will come to an end.

(iv) Furthermore, the director of the petitioner company i.e. Mr. Supreet Singh Suri, who is present in Court will file an undertaking by way of an affidavit, indicating therein that the money as directed by me hereinabove will be kept in an interest bearing escrow account for a period of four (4) weeks from the date of receipt of the money from the Registry.

14. List the matter before the Joint Registrar (Judicial) on 28.8.2019.”

31. Mr. Maninder Singh, learned Senior Advocate also alluded to the orders passed by the Supreme Court in Civil Appeal No. 7762/2023 dated 08.01.2024 and in Civil Appeal Nos. 7704-7708/2023 dated 11.03.2024. During the course of arguments learned Senior Advocate for the respondent No.11/Orris further invited reference to the order dated 29.03.2023 passed by the NCLT, Delhi, and vociferously canvassed that respondent No.11/Orris has not gained anything from the whole exercise and has been rather victimized at the hands of the scrupulous promoters and directors of respondent No. 3/TCSPL.

LEGAL SUBMISSIONS IN REBUTTAL ON BEHALF OF RESPONDENTS NO. 12 & 13:

32. Rebutting the arguments put forth by the learned Senior Advocate for respondent No. 11/Orris, Mr. P.V. Kapoor and Mr. Jayant Bhushan, learned Senior Advocates for the applicants/respondents No. 12 and 13 argued that there was a clear nexus between respondent No. 3/TCSPL and respondent No. 11/Orris.



They contended that the matter is being complicated by the introduction of ghost litigants. They reiterated that although 47.21 acres of land was initially handed over to respondent No. 3/TCSPL, later 10 acres of land was transferred back to respondent No. 11/Orris without any consideration, a fact the IRP has surreptitiously ignored. Additionally, it was argued that the IRP report dated 09.08.2023 was submitted to the NCLT in a sealed cover, raising questions about how the petitioner obtained a copy of it. Much was made of the fact that the IRP report, which formed the basis of this Court's directions on 02.02.2024, cannot be sustained, as the IRP himself has expressed uncertainty regarding the conclusiveness of the facts presented and has called for further investigations. It was vehemently urged that the IRP has colluded with the promoters and directors of both respondent No. 3/TCSPL and respondent No. 11/Orris, exceeding his powers by attempting to take possession of certain properties belonging to the applicants/ACE Group. Further arguments were made regarding the locus standi of the petitioner to invoke an investigation into the company's affairs as outlined in Section 210(2) of the Companies Act, 2013.

33. Lastly, the learned Senior Advocates for applicants/respondents No. 12 and 13 took this Court through the documents and the compilation placed on record, emphasizing that companies such as BBPL, TCRPL, and TCCDPL were acquired in the ordinary course of business. They highlighted that this acquisition was undertaken after assuming responsibility for significant debts and liabilities owed by these companies. In support of their arguments, reference was made to



the documents filed on record, including balance sheets of each of the companies, as well as orders passed by the NCLT and other authorities over time.

34. Learned counsels for respondents No. 12 and 13 also relied on decisions in **Sri Ramdas Motor Transport Ltd. v. Tadi Adhinarayana Reddy**¹⁸; **Rajasthan State Industrial Development and Investment Corporation v. Diamond and Gem Development Corporation Ltd.**¹⁹; **Subhash Jain v. Rajeshwari Shivam**²⁰; **South Indian Bank Ltd. v. Naveen Mathew Philip**²¹; and **PHR Invent Educational Society v. UCO Bank**²².

STAND OF RESPONDENT NO. 5/GREENOPOLIS WELFARE ASSOCIATION

35. It is pertinent to mention that respondent No.5/Greenopolis Welfare Association, in its counter-affidavit *inter alia* brings out that respondents No.3/TCSPL & 11/Orris jointly sold 1650 units, i.e. 559 and 1091 respectively jointly by signing the Apartment Buyers Agreement with the allottees and collected aggregate amount of Rs. 1159.87 crores as on December, 2018, out of which respondent No.11/Orris collected Rs. 383.06 crores between the period 2012 to 2015 but yet they failed to complete the project which is stuck since 2015. The respondent No. 5 also alluded to the complaints filed before the **HRERA** against respondents No. 3/TCSPL and 11/Orris, and pointed out the order dated 23.01.2019, which held both respondents

¹⁸ (1997) 5 SCC 446

¹⁹ (2013) 5 SCC 470

²⁰ (2021) 20 SCC 454

²¹ 2023 SCC OnLine SC 435

²² 2024 SCC OnLine SC 528



No. 3/TCSPL and 11/Orris accountable for the delay in completing the project. In response to their failure to develop the project, Execution Petition No. E-115/255/2018 of 2019 was filed, and HRERA *vide* order dated 16.01.2020, directed the joint development partners to complete the construction of Phase-I of the project by April 2013, failing which they were directed to pay a penalty of Rs. 1 crore per day. Additionally, the joint development partners were directed to submit a schedule for completing Phase-II and Phase-III of the project on or before 24.01.2020. It is noted that although respondent No.11/Orris filed Appeal No. 158/2019 against HRERA's order dated 23.01.2019 before the Haryana Real Estate Appellate Tribunal [“HREAT”], which came to be dismissed *vide* order dated 23.12.2019. In light of these issues, respondent No.5/Greenopolis Welfare Association seeks the initiation of an investigation against respondents No.3/TCSPL and No.11/Orris.

LEGAL SUBMISSIONS BY THE PETITIONER

36. Learned counsel for the petitioner has opposed the recall application filed by the applicants/respondents No. 12 and 13, arguing that they have not only concealed material facts but are also acting as proxies for respondent No. 3/TCSPL. The petitioner claims that these parties, in active collusion, have been able to siphon off significant funds in connivance with the promoters and directors of the Three C Group of companies. Mr. Tanmay Mehta, learned counsel argued that the application filed by the applicant/respondent No.7, Mr. Vidur Bhardwaj, must be outrightly rejected in light of the Supreme Court's order dated 11.03.2024 in CA No. 7704 of 2023, concerning the



maintainability of the present petition. He emphasized that the petitioner, an aggrieved homebuyer and senior citizen, is merely highlighting a large-scale fraud that has been established through the status reports of the court-appointed IRP and other orders and judgments passed by various adjudicating authorities, including those dated 09.08.2019 and 20.08.2019.

37. A reference was similarly made to the order dated 29.03.2022 passed by the NCLT in CP IB No. 2721/2019, as well as the order dated 01.07.2021 in SLP(C) No. 7712/2021, which relied upon an email dated 15.10.2019 from one of the ex-promoters of respondent No. 3/TCSPL. This email clearly highlighted that, in one of the accounts of respondent No. 3/TCSPL concerning the project 'Greenopolis', there were transactions exceeding Rs. 202 crores. Furthermore, an additional Rs. 132 crores were transferred out of the company, thus evidencing that nearly Rs. 512 crores had been siphoned off and given as loans or advances by respondent No. 3/TCSPL.

38. The attention of this Court was drawn to the raids conducted by the Enforcement Directorate against the respondent No. 3/TCSPL and its ex-promoters/ex-Directors. Mr. Mehta, learned Counsel supported the findings in the report of the IRP dated 09.08.2023, asserting that that its credibility remains intact and cannot be disputed. As regards the non-joinder of the present applicants/respondents No.12 and 13 in the present writ petition, it was argued that they are prospective accused or offenders. In response to the contention that the present writ petition is in the nature of a PIL, it was emphasized that the



petitioner has a personal interest in the matter, specifically to safeguard her investment, and has no malafide intent. Rather, she is also seeking espouse the plight and claim of the innocent home buyers who have been deprived of their money and funds.

39. Learned counsel for the petitioner has relied on decisions in **Union of India v. W.N. Chadha**²³ and **Sri Bhagwan Samardha Sreepada Vallab ha Venkata Vishwanandha Maharaj v. State of A.P.**²⁴

ANALYSIS AND DECISION:

40. I have bestowed my thoughtful consideration to the detailed submissions addressed by the learned counsels for the parties at the Bar. I have meticulously gone through the record of this case including the compilations/written submissions and the case law cited.

41. The petitioner in the Writ Petition claims to be an allottee of an apartment in one Greenopolis group housing project falling in Sector 89, Gurugram, Haryana pursuant to the Apartment Buyer Agreement dated 20-06-2013 executed between respondent No. 3/TCSPL and respondent No. 11/Orris in her favour. The pleadings outline that the project 'Greenopolis' was to be constructed and developed by respondent No. 3/TCSPL under a development agreement dated 02.11.2011, which was executed between respondent No. 11/Orris as the landowner and licensee of the project 'Greenopolis', and respondent No. 3/TCSPL as the developer/contractor. While much has been argued regarding the maintainability of this petition, particularly

²³ 1993 Supp (4) Supreme Court Cases 260

²⁴ (1999) 5 SCC 740



questioning the *locus standi* of the petitioner, this Court is not persuaded by those arguments. There appears to be no suppression of material facts on the part of the petitioner. The present writ petition is not *stricto sensu* a Public Interest Litigation, but rather one indirectly advancing the cause of similarly situated investors/claimants/homebuyers, who form a distinct class.

STATUS REPORT ON BEHALF OF RESPONDENT NO. 1

42. At this juncture, it is pertinent to mention that the Registrar of Companies, Northern Region, has filed four Status Reports at various intervals, in compliance with this Court's directions, with respect to the ongoing investigation. The Status Reports dated 29.02.2024 and 01.04.2024 were filed pursuant to the directions of this Court dated 21.02.2024 and 20.03.2024, respectively. It is brought out in such reports that the investigation in the present matter has been carried out in accordance with the order dated 28.03.2024 passed by the Competent Authority/Ministry of Corporate Affairs²⁵ (Annexure R-1), the gist of which is as under: -

“F.No.CL-II-05/6/2024-O/0 DGCOA-MCA Dated: 28/03/2024.

ORDER

Subject: Investigation order under section 210 of M/s Three C Shelters Private Limited and its related companies in terms of order of the Hon'ble High Court of Delhi dated 02.02.2024- Regarding

PARAGRAPH (1) & (2) omitted as not relevant

3. Now, therefore, in exercise of powers conferred under section 210 (2) of the Act, in the public interest, the Central Government hereby orders the Investigation into the affairs of M/s. Three C Shelters Private Limited and other related companies in terms of the order passed by Hon'ble Delhi High Court dated 02.02.2024

²⁵ MCA



4. Further Investigating Officer is further to look into the following during investigation:
 - (a) Evaluate the fleeing risk of the promoters/directors.
 - (b) Find quantum of fund siphoned away and quantum of Tax and Revenue Loss to the Government.
 - (c) Find out the Significant Beneficial Owner (s) (SBO).
 - (d) The Investigating Officer to seek the details from the income tax department/ED and other agencies in this connection as needed.
 - (e). to follow regularly, directions of the Honorable High Court passed from time to time.
5. That the Inspector appointed shall exercise all the powers available to them under section 217 of the Companies Act, 2013 including powers conferred under section 219 of the Companies Act, 2013 after seeking prior approval of Central Government, wherever required. Further, for related companies including LLPs powers under section 43 of Limited Liability Partnership Act 2008 to be exercised after seeking prior approval of the Central Government by the Investigating Officer.
6. **The Investigating Officer to complete the investigation within six months and submit the report to the Central Government.**
7. Regional Director, Northern Region is requested to appoint Investigating Officer.
8. This order is issued for and on behalf of the Central Government.”

43. Further, the Status Reports in compliance with the directions of this Court dated 02.07.2024, has filed dated 22.07.2024 on the record, which reveal that an order dated 14.06.2024 has been passed by the Competent Authority/MCA (Annexure R-2), which goes as under:-

“File No. CL-II-0/6/202400/o DGCoA-MCA dated 14.06.2024

To
The Regional Director
Northern Region,
Ministry of Corporate Affairs,
New Delhi.

Sub: Investigation in the matter of Three C Shelters Private Limited and its group entities in terms of order of the Hon'ble High Court of Delhi dated 02.02.2024. – regarding.



Sir,

1. With reference to the subject cited above, I am directed to refer to IOs letter dated 08.05.2024 (a copy enclosed) wherein requested for approval of the Central Government under Section 219 of the companies Act, 2013 with regard to companies mentioned in Annexure-1, herein.

2. In this regard, I am directed to convey the approval that IO is permitted to invoke powers of the Inspector under Section 219 of the Companies Act, 2013 while conducting investigation into Affairs of related companies consequent to the investigation order dated 28/03/2024.

3. You are also requested to direct IO to examine fleeing risk and submit a proposal for freezer of assets in terms of the Honorable High Court orders dated 02/02/2024, in the subject company.

4. This is issued with the approval of the Competent Authority.,
Encl: As stated

Yours faithfully,
Sd/-

Sridhar Bavisetty,
Joint Director

Copy to:

1. Registrar of Companies Delhi, for information please
2. Guard File.”

44. The aforesaid report dated 14.06.2024 provides the details of the companies that are, *prima facie*, subject to investigation, which are as follows:

Sr. No.	Name of the Company	CIN
1.	Three C Shelters Pvt Limited	U70200DL.2010PTC212025
2.	Three C Properties Pvt Limited	U70200DL2010PTC205856
3.	Three C Homes Pvt Limited	U70101DL2011PTC212252
4.	Three C Green Developers Pvt Limited	U70102DL2010PTC211958
5.	Piyush It Solutions Private Limited	U70102DL2011PTC221242
6.	Hacienda Projects Pvt Limited	U70200DL2010PTC199426
7.	Granite Gate Properties Pvt Limited - Two Projects	U45200DL2007PTC202952
8.	Boulevard Projects Pvt. Limited	U70200DL2010PTC203764
9.	Three C Projects pvt Limited	U70200DL2010PTC205607



10.	Bright Buildtech Pvt limited	U45201DL2006PTC146221
11.	Three C Universal Developers Pvt Ltd	U45200DL2007PTC160055
12.	Three C Town Planners Pvt Limited (Now Mega Town Planners Pvt Limited)	U70109DL2010PTC211989
13.	Three C Universal Developers Pvt Ltd	U45200DL2007PTC160055
14.	Three C Residency Pvt Ltd	U70109DL2011PTC228512
15.	Three C City Developers Pvt. Ltd	U70100DL2010PTC211944
16.	Orris Infrastructure Pvt Limited	U70109DL2006PTC151295
17.	Cloud 9 Projects Pvt Limited	U70200DL2009ULT186855

Table No. 01

Sr. No.	Details of FIR with EOW Delhi	Project Name	Company Name
1.	117 of 2018	Lotus Panache	Granite Gate Properties Pvt. Limited
2.	120 of 2022	Greenoplois	Orris Infrastructure Pvt. Limited
3.	40 of 2020	Lotus Arena-I	Arena Superstructures Pvt Limited
4.	59 of 2020	Greenopolis & Lotus Zing	Three C Projects Pvt Limited
5.	49 of 2019	Lotus Zing	Three C Projects Pvt Limited
6.	137 of 2017	Greenopolis	Three C Shelters Pvt Limited
7.	54 of 2020	Lotus Arena-II	Piyush IT Solutions Pvt Limited
8.	74 of 2018	Lotus 300	Hacienda Projects Pvt Limited
9.	107 of 2018	Delhi one	Boulevard Projects Pvt Limited
10.	72 of 2018	Lotus City	Three C Homes Pvt Limited

Table No. 02

Sr. No.	Name of Company	CIN	Admitted to insolvency on
1.	Three C Shelters Pvt. Limited	U70200DL2010PTC212025	16.10.2020
2.	Three C Properties Pvt	U70200DL2010PTC205856	Petition under Section 9 of



	Limited		IBC pending before LD NCLT
3.	Three C Homes Pvt Limited	U70101DL2011PTC212252	19.12.2019
4.	Three C Green Developers Pvt Limited	U70102DL2010PTC211958	23.12.2021
5.	PIYUSH IT Solutions	U70102DL2011PTC221242	Petition under Section 9 of IBC is pending
6.	Hacienda Projects Pvt Limited	U70200DL2010PTC199426	11.11.2022
7.	Granite Gate Properties Pvt. Limited – Two projects	U45200DL2007PTC202952	10.01.2019
8.	Boulevard Projects Pvt Limited	U70200DL2010PTC203764	08.02.2019
9.	Three C Projects Pvt Limited	U70200DL2010PTC205607	29.10.2020
10.	Bright Buildtech Pvt Limited	U45201DL2006PTC146221	Taken over by ACE Group
11.	Three C Universal Developers Pvt Ltd	U45200DL2007PTC160055	17.12.2019
Table No. 03			
12.	Three C Town Planners Pvt Limited (Now Mega Town Planners Pvt Limited)	U70109DL2010PTC211989	This company is associated with Bright Buildtech Pvt Ltd
13.	Three C Universal Developers Pvt Ltd	U45200DL2007PTC160055	
14.	Three C Residency Pvt Limited	U70109DL2011PTC228512	Acquired land parcel of Three C Group by paying inadequate consideration.
15.	Three C City Developers Pvt Ltd	U70100DL2010PTC211944	
16.	Orris	U70109DL2006PTC151295	The Company was



	Infrastructure Pvt Limited		associated with. Three C Shelters and acquired land of home buyers related to Three C Shelters Pvt Ltd without paying any consideration
17.	Cloud 9 Projects Pvt Limited	U70200DL2009ULT186855	The company received funds from homebuyers and as per the direction of Allahabad High Court, proceedings has been initiated Enforcement Directorate.

THE IRP REPORT AND CONCLUSIONS:

45. In light of the investigation being conducted pursuant to this Court's impugned order dated 02.02.2024, it is evident that the bulk of the detailed oral submissions and the voluminous compilations filed and relied upon by the parties, concerning the IRP report, are being substantiated by the petitioner and respondent No. 11/Orris, while being vehemently contradicted by applicants/respondents No. 12 & 13.

46. Before addressing the pleas and counter-pleas put forth by the respective parties, it must be clarified that, in passing the impugned order dated 02.02.2024, this Court, *prima facie*, acknowledged the admitted facts that the petitioner, along with others in a similar position, appears to have been defrauded by the ex-promoters and ex-directors of respondent no. 3/TCSPL. In this regard, the findings recorded by the IRP in its third report dated 09.08.2023 were relied upon, with the assumption that the IRP was a Court-appointed official.



Consequently, this Court directed an investigation into the affairs of respondent No. 3/TCSPL and its related companies in accordance with Chapter XIV of the Companies Act, 2013.

47. Mr. Tanmaya Mehta, learned counsel for the petitioner, referred to the following details with regard to the TCRPL, BBPL and TCCDPL, which are alleged to be sister concerns of respondent no. 3/TCSPL and are largely owned by the same set of individuals. These companies, which have been acquired by the ACE Group of Companies over time, were *red-flagged* by the IRP in his report dated 09.08.2023:

S.NO.	COMPANY	ARGUMENT BY ACE	RESPONSE
1.	Three C Residency Pvt. Ltd. Lease Deed for land admeasuring 2,57,155 sq. mts. was executed by YEIDA in favour of this company in 2012 (Pg. 48 of CM No. 11516 of 2024) On 27.11.2020, the Shareholding of this company was transferred to Ace Group for an amount of Rs. 1 lakh.	i. YEIDA had cancelled the allotment of land of this company by cancellation letter dt. 16.04.2019 (Pg. 50 of CM No. 11516 of 2024) . ii. There are no assets or cash or bank balance in this company.	i. The Balance Sheet of Three C Residency Pvt. Ltd. as on 31.03.2020 shows that it has assets worth approx. Rs. 236 crores (Pg. 5 and page 33 of Compilation dated 24.05.2024) . This is only the Book Value, whereas the market value of the land allotted to this company, would be much higher.
2.	Bright Buildtech Pvt. Ltd. The ownership of Three C Town Planners was transferred to Lotus Greens LLP in 2012.	i. The company had no assets or cash or bank balance. ii. IBC	i. The Balance Sheet of Bright Buildtech Pvt. Ltd. as on 31.03.2019 shows



	<p>Three C Town Planners is 100% owner of Bright Buildtech Pvt. Ltd. Bright Buildtech Limited has development rights in approx. 50 Acres of Land at Sector 89-90, Gurugram, Haryana (Pg. 37 r/w 39 of CM No. 11516 of 2024). Ace Group acquired shareholding of Three C Town Planners Ltd. in June 2019 for an amount of Rs. 1 lakh.</p>	<p>proceedings had been initiated against this case, however, the Ace Group settled with the Petitioner in IBC proceedings (Pg. 40-41 of CM No. 11516 of 2024).</p>	<p>that it has assets worth approx. Rs. 700 crores (Pg. 68 of Compilation dated 24.05.2024) on that date. This is only the Book Value, whereas the market value of the development rights in land admeasuring 50 acres would be much higher.</p>
3.	<p><u>Three C City Developers Pvt. Ltd.</u> NOIDA Land admeasuring 20,000 sq.mts. was sub-leased in favour of this company (Pg. 54 of CM No. 11516 of 2024). On 25.07.2019, the shareholding of this company was transferred to Ace Group for an amount of Rs. 1 lakh.</p>	<p>i. Ace Group took over liability to pay 90% of outstanding lease premium of this land amounting to Rs. 71 crores.</p>	<p>i. The Balance Sheet of Three C City Developers Pvt. Ltd. as on 31.03.2019 shows that it has assets worth approx. Rs. 36 crores (Pg. 48 and 63 of Compilation dated 24.05.2024). This is only the Book Value, whereas the market value of the land allotted to this company, would be much higher. ii. Further, the Balance Sheet also shows that this company owed money to the tune of approx. Rs. 18 crores (Pg. 58 of Compilation dated</p>



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			24.05.2024) by another company viz. Three C Green Developers Pvt. Ltd.
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48. Although this Court does not want to delve into such complicated issues as the same are firstly required to be thrashed out in the investigation by respondents No.1 & 2 but in order to be fairer to the applicants/respondents no. 12 & 13, it must be pointed that the pleas raised by the learned counsel for the petitioner have been refuted *tooth and nails* by the learned counsels for applicants/respondents no. 12 & 13 canvassing that there has been a deliberate attempt to mislead this Court by the petitioner in collusion with respondent No. 11/Orris on the basis of a tainted and inconclusive report of the IRP. As regards TCRPL, it is pointed out that though the company had assets worth Rs. 236 crores, what is not revealed by the IRP is that the said figure pertains to “inventories” which term is explained in the report of the statutory Auditor *vide* Clause (F), that means the following:-

F. **Inventories**

Inventories comprise of land, development rights for land, construction work in progress and are value as under:

- i) Land, development rights for land and construction work in progress is valued at cost/estimated cost or net realisable value, whichever is lower. Costs include land acquisition cost, estimated internal development costs, government charges towards conversion of land use/licenses including external developments charges, interest on project specific lands in accordance with policy on borrowing costs and other related government charges and cost of development/construction materials.



- ii) Development rights represents amounts paid by the Company under collaboration agreement, to acquire exclusive and irrevocable development rights on the identified land.

49. Long story short, it was pointed out that since TCRPL was entangled in legal conundrum with YIEDA²⁶, the said company was acquired by the ACE Group of Companies on 27.11.2020, taking on all its liabilities. Subsequently, any actions or inactions on the part of YIEDA were contested before the Allahabad High Court in Civil Writ Petition No. 22354/2023, and as per directions of the Court dated 14.07.2023, a sum of Rs. 50 crores have since been deposited towards subject property by TCRPL, which is now controlled by Ace Group of Companies.

50. Learned Senior Advocates for the applicant/respondents No. 12 and 13 have then alluded to the balance sheet of TCRPL and it was pointed out that although its shares were purchased for Rs. 1 Lacs by the year ending 31.03.2019 it had total liability of Rs. 13,21,09,885/- due to the Yamuna Expressway Authority against leasehold land besides unsecured loans and advances to the tune of Rs. 2,54,44,684/-. The said liabilities are relatable to details in Note No. 18²⁷. As regards

²⁶ Yamuna Expressway Industrial Development Authority

²⁷ Trade payable as reflected in note 5 and 7 represents non-current and current portions respectively of the amounts payable against 2,57,155 sq. metre of leasehold land/plot No.TS-2, t Sector – 18, Yamuna Expressway Industrial Development area, Gautam Budh Nagar (UP), acquired by the company from Yamuna Express Industrial Development Authority (YEIDA Authority) for setting up of urban and industrial township, in accordance with the lease deed dated 17th February, 2012. The lease term is of 90 years. As per the revised letter by Y.E.A/232/2013 dated 06/03/213, premium of such leasehold land, is to be paid in 14 half yearly instalments commencing on 19 August, 2013 along with interest rate of 12.50% p.a. on outstanding balance. Yamuna Expressway Industrial Development authority has the first charge upon the demised premises for the amount of unpaid balance, charge, interest and other dues.

The Company has not recognized the Lease rent, Lease premium and interest on lease rent and lease premium for the Financial year 2018-19.



BBPL, it also appears from its balance sheet that its total assets for the year ending 31.03.2019 was Rs.70,129.990/- and Rs.65882.44 respectively.

51. Likewise with regard to BBPL, it was urged that this Court is being mis-lead that assets worth Rs. 700 crores were handed over on a platter to the ACE Group of Companies, but the said assets are again in the nature of “inventories” and no tangible assets in the nature of any immovable properties was owned or possessed by the said company. It is likewise urged that in the case of TCCDPL, the figure of assets taken at Rs. 36 crores are again misnomer, since the assets again contained inventory besides short term loans and advances. It was pointed out that the term “inventory” is defined in the report of the statutory auditor to mean in the same manner as (i) above, that is reflected in the statutory Audit Report of TCRPL except that there is further definition *vide* (II) to the effect that “*development rights of the present amounts paid by the company under the Collaboration Agreement, to acquire exclusive and irrevocable development rights on the identified lands.*” Insofar as the short-term loans and advances are concerned, that come to the tune of Rs. 18.3 crores as reflected in the balance sheet ending 31st March, 2019 of the TCCDPL.

52. If the submissions of the learned Senior Advocates for the applicants/respondents No. 12 and 13 are considered, it appears that BBPL was initially promoted by respondent No. 11/Orris. Upon acquiring land in Sector 89-90, Gurugram, respondent No. 11/Orris, along with BBPL, was granted a license for the development of a



residential township over a 101.5-acre parcel of land. It was pointed out that Lotus Green LLP, a firm promoted by the family members of Nirmal Singh, acquired control and ownership of BBPL from respondent No. 11/Orris, making BBPL a subsidiary of TCPPL, now known as Megha Town Planner Private Limited [“MTPPL”]. Subsequently, BBPL and respondent No. 11/Orris entered into an agreement on 18.05.2013, transferring 50% of the development rights of the township to BBPL.

53. In other words, it is strongly argued on behalf of the applicants/respondents No. 12 and 13 that MTPPL became the holding company of BBPL, and that BBPL was transferred to Lotus Green LLP on 12.07.2018 after completing all the necessary legal formalities. It is also claimed that, at the time of the transfer of control and ownership to Lotus Green LLP, MTPPL had no assets, properties, or projects, as shown in its balance sheet for 31.03.2012 and trial balance sheet for 12.07.2012. It is asserted that, in fact, no part of MTPPL's land was included in the land allegedly allotted to respondent No. 3, or to Lotus Green LLP, in Section 89 of the Greenopolis Project. Furthermore, it is pointed out that BBPL launched a project named Wood View Residencies using its own funds and resources in 2013. However, due to defaults in construction and development, numerous claims were filed before HRERA, NCTL, and NCDRC, as the project was at risk of being declared an NPA²⁸.

54. It is argued that BBPL was acquired by the Ace Group of Companies after settling the liabilities of the secured creditors in

²⁸ Non-Performing Asset



accordance with the orders of the NCLT in CIRP proceedings against Bright Group, as per the order dated 22.01.2020. It was further stated that after the Ace Group of Companies became the corporate and personal guarantor to the secured creditors, including Yes Bank, and agreed to pay the outstanding dues toward EDC²⁹/IDC³⁰ to the Director General of Town & Country Planning, Haryana, the project name was changed from Wood View Residencies to Ace Palm Floors by MTPPL. It was strongly asserted that there are hundreds of homebuyers and investors in the Ace Palm Floors project, who have made valuable investments and acquired legal ownership rights, and that the project is in an advanced stage of completion.

55. As regards TCCDPL is concerned, it is sought to be projected that though it had acquired a plot of land measuring 20000 Sq. Meters numbered as SC-011C5, Sector 78 and 79 Sports City, Noida *vide* sub-lease dated 11.12.2024 but no development work could take place purportedly due to lack of clarity on the part of the Noida Authority in framing the Master Plan and consequently the project got derailed. It was in the said circumstances that share transfer agreement dated 25.07.2019 was executed and the and the Ace Group of Companies took over entire shareholding of TCCDPL and the Ace Group of Companies has born the entire statutory liabilities besides allocation of developer FAR³¹ etc. It is urged that what the IRP has either missed or deliberately concealed is that 20000 Sq. Meters of land in Section 17 Noida was indeed transferred to Ace Group of Companies for a

²⁹ External Development Charges

³⁰ Internal Development Charges

³¹ Floor Area Ratio



nominal value of Rs. 1,00,000/-. However, financial liabilities which were taken over by the Ace Group of Companies have been completely overlooked and in particular the undertakings given by the Ace Group of Companies to clear outstanding dues of the secured and unsecured creditors besides statutory liabilities.

56. As regards Three C Homes Private Limited [“TCHPL”] and Three C Universal Developers Private Limited [“TCUDPL”], long story short, it is sought to be brought out that the aforesaid companies were undergoing CIRP proceedings, and the Ace Group of Companies emerged as the successful Resolution Applicant. Consequently, the characterization of the Ace Group of Companies as a proxy of respondent No.3/TCSPL is unwarranted, particularly since the acquisition was carried out through the legal process. However, it is pertinent to note that, insofar as TCUDPL is concerned, the Resolution Plan remains stayed by the Supreme Court in Civil Appeal No. 7762/2023, in terms of order dated 08.01.2024.

57. The question arises is whether the foregoing submissions on the part of the learned counsels for the parties should at all be considered by this Court sitting in writ jurisdiction under section 226 of the Constitution of India, 1950? Before the same is answered, we must look into the judicial orders that have passed during the course of the proceedings before this Court.

JUDICIAL ORDERS PASSED DURING THE PROCEEDINGS:

58. There was a grievance espoused by the applicant/respondent No.11/Orris in CM APPL. 41270/2024 that the respondents No. 1 and 2 taking shelter behind the order of this Court dated 02.02.2024, are



directing investigation into the affairs of the applicant/respondent No.11/Orris. Suffice to state that on perusal of the Status Report filed by the respondents No. 1 and 2, it was observed that the investigation into the affairs of the respondent No.3/TCSPL as well as the Ex-Promoters and Directors of the respondent No. 3/TCSPL was going on at a snail's pace. This Court stayed the operation of SCN dated 10.07.2024 issued by the respondent No. 1 against applicant/respondent No.11/Orris. However, the said order was challenged by respondent No.5, Greenopolis Welfare Association, and the Division Bench of this Court in LPA No. 790/2024 *vide* order dated 14.08.2024 with the consent of the parties set aside the order dated 23.07.2024 and gave liberty to the respondent No.11/Orris to raise all contentions and submission *qua* SCN either before the Investigating Officer or by filing appropriate remedies in accordance with law.

59. It may be reiterated that the arguments have been addressed by the parties on different dates, accommodating the Senior Advocates and after the order was reserved on 18.09.2024, the matter was placed for directions to ascertain whether any orders had been passed by the Supreme Court in the interregnum. This Court on 22.11.2024 was apprised that the Supreme Court *vide* order dated 19.11.2024 has passed the following directions:

**“CIVIL APPEAL NO(S). @ DIARY NO.40077/2023
Straight Edge Contracts Pvt. Ltd. versus Rakesh Kumar
Gupta & Ors.**

1. Delay condoned.
2. Shri Arvind Nayar, learned senior counsel appearing for the appellant submits that the grievance of the appellant is that the



observations made by the National Company Law Tribunal (NCLT) in its order dated 29.03.2022 with regard to collusion are unsustainable and therefore, it filed an appeal before the National Company Law Appellate Tribunal (NCLAT) for expunging the said remarks.

3. The further grievance of the appellant is that the said appeal has been dismissed by NCLAT by way of the impugned order without giving an opportunity of hearing to the appellant.

4. We set aside the impugned order dismissing the appeal. The appeal of the appellant herein is restored to the file of NCLAT, which would be decided in accordance with law, after hearing the parties. The appeals will be confined to the prayer for expunging of remarks.

5. The appeals are, accordingly, disposed of.

6. Pending application(s), if any, shall stand disposed of.

CONMT.PET.(C) NO. 13-17/2024 IN C.A. NOS. 6792-6796/2023, CONMT.PET.(C) NOS. 586-590/2024 in C.A. NOS. 6792-6796/2023 & CONMT.PET.(C) No ...@ DIARY NO(S). 23327/2024

1. The contempt petitions are disposed of with the liberty to the petitioner(s) to file appropriate application before the NCLT, which will be considered in accordance with law.

2. Pending application(s), if any, shall stand disposed of.”

CIVIL APPEAL NO(S). 6792-6796/2023, C.A. NO. 6797-6801/2023 & C.A. NO. 6802-6806/2023

Greenopolis Welfare Confederation versus Rakesh Kumar Gupta & Ors.

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.

4. Some of the parties have raised serious grievance with regard to the conduct of the Interim Resolution Professional (for short, ‘IRP’). Shri Nalin Kohli, learned senior counsel appearing for the IRP disputes the said allegations.

5. We do not find it necessary to go into the said allegations. The parties which has/have grievance with regard to the conduct of the IRP would be entitled to move an application before the NCLT, and the same would be decided by the NCLT as expeditiously as possible and in any case within a period of four weeks upon filing of such an application.



6. Till the orders are passed by the NCLT, the order of status quo passed by this Court on 13.10.2023 shall continue to operate.

7. We clarify that we have not considered the merits of the allegations and rebuttal thereof and the NCLT would take decisions on the basis of the material placed before it.

C.A. NOS... .. @ DIARY NO(S). 40077/2023

1. Delay condoned.

2. The appeals are disposed of, in terms of the signed order.

CONMT.PET.(C) NO. 13-17/2024 IN C.A. NO. 6792-6796/2023,

CONMT.PET.(C) No. 586-590/2024 in C.A. No. 6792-6796/2023

& CONMT.PET.(C) No ...@ DIARY NO(S). 23327/2024

The contempt petitions are disposed of, in terms of the signed order.”

60. It is brought on record that, subsequent to the aforesaid directions, the matter came up before this Court for further clarifications on 14.02.2025. This Court has been apprised that, in the interregnum, the NCLT, pursuant to the aforesaid directions by the Supreme Court dated 19.11.2024, considered certain Interim applications filed at the behest of the contesting parties in (IB) - 2721/ND/2019. The primary issue in these applications pertained to the alleged role, irregularities, and misconduct on the part of the IRP, Mr. Pradeep Kumar Kaushik, including concerns related to his report dated 09.08.2023. It would be relevant to reproduce the operative portion of the order dated 17.12.2024 passed by the NCLT, which reads as under:

“35. It would not be gainsaid that in practice this Tribunal is receiving applications by all stakeholders including the creditors/claimants. The applications regarding proper constitution/composition of CoC are also filed before this Tribunal regularly. Thus, if IRP commits any irregularity/mistake/lapse in performance of his duties, the party adversely affected by such lapse is not without remedy and can always seek his/her relief by moving appropriate applications before this Tribunal.

36. As far as issue of maintainability of the application is concerned, the reliance has been placed by Mr. Nalin Kohli, Ld. Sr.



Counsel appearing for IRP as also Mr. Gopal Jain, Ld. Sr. Counsel who is representing the Applicant in a different application (ibid) on various judgments. We would examine the issue of maintainability of application for replacement of RP/ IRP before this Tribunal, even when there is no resolution passed by the CoC to replace him in the application in which the Applicant is represented by Mr. Gopal Jain, Senior Advocate. In the present case, where the IRP appointed by this Tribunal has discharged his function of re-verifying the claim only in terms of the order passed by this Tribunal as upheld by Hon'ble NCLAT cannot be set to have committed any irregularity or lapse. If the IRP has taken some view regarding rejecting any claim erroneously or even so accepting any other claim, the parties are not without remedy and they can always approach this Tribunal by way of an appropriate application. Once this Tribunal had directed the RP to do the verification, the IRP could not have done the same, without having access to books and other records qua the CD. As far as the issue of preparation of status report by the RP and placing the same before the courts are concerned, as can be seen from the aforementioned, on 26.05.2023, this Tribunal directed him to do the verification and on 19.07.2023, Hon'ble NCLAT asked him to complete the process within 4 weeks. Thus, if the RP performed the function in compliance of the aforementioned order, he committed no wrong in preparing the reports and placing the same before the courts including before the Hon'ble Supreme Court to show his Bonafide. It is not so that the RP could publish any final list of creditors or could constitute CoC to go ahead with CIRP process. On the face of various judicial orders and there being nobody to take responsibility of the CD, the IRP acted with required responsibility and magnanimity.

37. We may not be oblivious of the fact that the present proceedings somehow concern the fate of more than 1800 Home Buyers and we need to express our concern in this regard.

38. Taking holistic view in the matter we reject the application for replacement/removal of IRP, but appoint a Monitoring Committee comprising of Hon'ble Mr. Justice Sunil Gaur, former judge of Hon'ble Delhi High Court [Mob: 9971000718], Ms. Rashmi Chopra, Sr. Counsel [Mob: 9810311218; rashmichopra6897@gmail.com] and Mr. Anil Mittal, ex- C.V.O of Canara Bank [Mob: 9619773811; mittalanil.ubi@gmail.com] to monitor the affairs of the process till Constitution of CoC.

39. The two associations before us i.e. GWA and GWC, will also nominate one of their elected representatives to be part of the



Monitoring Committee and they will also be entitled to have their say equal to the aforementioned members nominated by us, in the meeting of the Monitoring Committee regarding the claim and interest of Home Buyers only. It is made clear that none of the representatives of GWA and GWC would be entitled to question any act or conduct of IRP, except in respect of the verification and admission of the claim of homebuyers in the committee. It is further made clear that IRP will discharge his functions in due deference to the provisions of IBC and the Regulations framed thereunder and the Monitoring Committee would only keep an eye on his affairs and would not direct, regulate or control his functions in any manner. If the Monitoring Committee finds anything done by IRP contrary to regulation and procedure, it can only place a report in this regard before this Tribunal and it would be for this Tribunal to pass appropriate orders regarding the issues observed and flagged by the Monitoring Committee. The members of the Monitoring Committee would be entitled to honorarium of Rs. 1 lakh each for every meeting, which would be held by them weekly till Constitution of CoC. The process regarding constitution should be completed as early as possible, preferably within 30 days. The honorarium payable to the members would be paid by IRP and the same would be subsequently included in the CIRP cost. The IA stands disposed of.”

61. That being the disposition directed by the NCLT, it is also pertinent to indicate at this juncture that a fresh Status Report was called by this Court from respondents No.1 & 2, considering the long lapse of time since the hearing of the arguments on 18.09.2024. A Status Report dated 10.02.2025 has been filed by the Inspector Seema Rath, Joint Director, RD (Northern Region). In a nutshell, the Status Report reveals that investigation is going on into 16 more companies, the details of which are as under:

SN	Name of the company	CIN	Status	Last Balance Sheet Filed
1.	Three C Shelters Pvt. Limited	U70200DL2010PTC212015	Under CIRP	31/03/2017
2.	Three C	U70200DL2010PTC205856	Active	31/03/2023



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	Properties Pvt. Limited			
3.	Three C Homes Pvt. Limited	U70101DL2011PTC212252	Active	31/03/2019
4.	Three C Green Developers Pvt Limited	U70102DL2010PTC211958	Under CIRP	31/03/2019
5.	Piyush IT Solutions Private Limited	U70102DL2011PTC221242	Under CIRP	31/03/2020
6.	Hacienda Projects Pvt. Limited	U70200DL2010PTC199426	Under CIRP	31/03/2017
7.	Granite Gate Properties Limited	U45200DL2007PTC202952	Under CIRP	31/03/2017
8.	Boulevard Projects Pvt Limited	U70200DL2010PTC203764	Active	31/03/2017
9.	Three C Projects Pvt Limited	U70200DL2010PTC205607	Under CIRP	31/03/2019
10.	Bright Buildtech Pvt Limited	U45201DL2006PTC146221	Active	31/03/2024
11.	Three C Universal Developers Pvt Ltd	U45200DL2007PTC160055	Under CIRP	31/03/2019
12.	Three C Town Planners Pvt Limited (Presently Mega Town Planners Pvt Limited)	U70109UP2010PTC169949	Amalgamated	31/03/2022
13.	Three C Residency Pvt Limited	U70109DL2011PTC228512	Active	31/03/2024
14.	Three C City	U70100DL2010PTC211944	Active	31/03/2024



	Developers Pvt Ltd			
15.	Orris Infrastructure Pvt Limited	U70109DL2006PTC151295	Active	31/03/2024
16.	Cloud 9 Projects Pvt Limited	U70200DL2009ULT186855	Active	31/03/2017

“5. Summons issued to Complainant, IRP/RP and all Directors of Three C Shelters Private Limited and related companies. In total 33 number of persons have been summoned (which includes Complainant, Directors and RP), out of which 10 appeared for recording statement on oath, 11 did not appeared inclusive of persons/companies who have submitted their documents through legal representatives and finally of the total summons issued, 12 persons recording of statement on oath with extended time will be held in the succeeding months. The recording of statement on oath and issuance of summons are still in progress. As such the information from the Statutory Auditors is also being awaited.

6. Mr. Pradeep Kumar Kaushik, proposed Interim Resolution Professional "IRP" appeared on 04.01.2025, for recording his statement on oath, wherein he stated that vide order dated 17.12.2024 passed by the NCLT, New Delhi Bench (Court-II) in the matter of M/s Straight Edge Contracts Private Limited V/s M/s Three C Shelters Private limited and in the matter of I.A. No. 5743/2024, the Ld. NCLT while dismissing the application of GWA has appointed a Monitoring Committee comprising of Hon'ble Mr. Justice Sunil Gaur, former judge of Hon'ble Delhi High Court, Ms. Rashmi Chopra, Sr. Counsel and Mr. Anil Mittal, ex- C.V.O of Canara Bank to monitor the affairs of the process till Constitution of CoC. The two associations i.e. GWA and GWC, will also nominate one of their elected representatives to be part of the Monitoring Committee. The IRP on 07.02.2025 by hand submitted information with regard to Status Report prepared by him in respect to the Three C Shelter Pvt Limited. The information is bulky and is being examined.”

DECISION:

62. In view of the aforesaid turn of events and considering the complexity of the factual narrative and interwoven set of legal



proceedings involving several parties and decisions rendered by the Supreme Court, along with the fact that NCLT is now seized of the matter, the bottom line is that the petitioner and those who are similarly placed, i.e., the homebuyers, are yet to see the light at the end of the tunnel. Unhesitatingly, this Court finds no ground to recall the order dated 02.02.2024. The issues relating to the genuineness of the IRP report dated 09.08.2023, which has been espoused on behalf of the petitioner, respondent No.11/Orris and respondent No.4/Greenopolis Welfare Confederation on one side, and contested by applicants/respondents No. 12 and 13, along with respondent No.5/Greenopolis Welfare Association on the other side, are complex set of facts which need to be addressed by the NCLT in view of the directions of the Supreme Court.

63. Thus, there is no gainsaying that the NCLT is seized of the matter with regard to the CIRP proceedings pertaining to respondent No.3/TCSPL, which will invariably delve into all the relevant aspects of the matter. At the cost of repetition, a Monitoring Committee has already been constituted by the NCLT, which will naturally examine the complex factual issues and facts raised by the parties, including the successive reports by the three IRPs appointed including the present one, besides the revival of respondent No.3/ TCSPL so as to provide some relief to the petitioner and homebuyers.

64. **The bottom line** is that the petitioner is espousing her personal cause and, in doing so, has also espoused the cause of the similarly placed investors/claimants/homebuyers, who form a distinct class and whose long-promised dream of owning residential flats remains



unfulfilled, as construction has been stalled for over thirteen years now. Their contributions towards construction, amounting to more than nearly Rs. 1500 crores, have been evidently siphoned off by adopting various dubious means by the unscrupulous promoters and directors of respondent No. 3/TCSPL, viz., respondent No. 6/Mr. Nirmal Singh, respondent No.7/Mr. Vidur Bhardwaj and respondent No.8/Mr. Surpreet Suri, respondent No.9/Mr. Rajeev Bisoya and respondent No.10/Mr. Girish Chander Joshi, who have since abandoned the project and roaming around Scot free. The *modus operandi* adopted by them in defrauding the homebuyers has been exposed even in the above referred directions by the Allahabad High Court, the foot prints of which are evidently visible in the instant matter too.

65. The thing is that much has happened after the filing of the instant writ petition and the passing of the impugned order dated 02.02.2024, continuing up to the present date. There has been a blatant attempt by *respondent No. 11/Oris, along with the applicants for ACE Group of Companies, to take the entire dispute to a different tangent*. Furthermore, the roles of the two homebuyer Association have come into question, as they appear to have taken opposing stances in this highly contentious matter. Now that the investigation under Chapter XIV of the Companies Act, 2013, has commenced, any order to recall investigation shall be counter-productive and shall not serve the ends of justice. Any such action would be highly detrimental to the interests of the primary stakeholders—namely, the affected homebuyers.



66. The reliance by the learned Senior Advocates upon the decision in the case of **Rohtas Industries Ltd. v. S.D. Agarwal**³² does not help them in any manner. The Supreme Court had an occasion to consider the scope of exercise of powers under Section 237(b)³³ of the Companies Act, 1956, and it was held:

2. Section 237(b) provides that the Central Government may appoint one or more competent persons as inspectors to investigate the affairs of the company and to report thereon in such manner as the Central Government may direct, “if, in the opinion of the Central Government, there are circumstances suggesting:

- (i) that the business of the company is being conducted with intent to defraud its creditors, members or any other persons, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose;
- (ii) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or
- (iii) that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, the managing agent, the secretaries and treasurers or the manager, of the company.”

3. The conditions for the exercise of the statutory power are clearly stated in Section 237(b). It is well to bear in mind, firstly, that Section 237(b) confers an administrative and not a judicial power; secondly, that the power is discretionary; thirdly, that the

³² 1968 SCC OnLine SC 372

³³ (b) may do so if, [in its opinion or in the opinion of the Tribunal], there are circumstances suggesting –

(i) that the business of the company is being conducted with intent to defraud its creditors, members or any other persons, or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any of its members, or that the company was formed for any fraudulent or unlawful purpose;

(ii) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members ; or

(iii) that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company.



object of the investigation is to find out whether in fact fraud etc., have been committed by persons in relation to the company's affairs; fourthly, that the condition for making the order is the opinion of the Central Government that there are circumstances suggesting fraud, etc. and lastly that there is no appeal from such opinion to the court.

4. The law recognises certain well recognised principles within which the discretionary power under Section 237(b) must be exercised. There must be a real exercise of the discretion. The authority must be exercised honestly and not for corrupt or ulterior purposes. The authority must form the requisite opinion honestly and after applying its mind to the relevant materials before it. In exercising the discretion the authority *must have regard only to circumstances suggesting one or more of the matters specified in sub-clauses (i), (ii) and (iii). It must act reasonably and not capriciously or arbitrarily. It will be an absurd exercise of discretion, if, for example, the authority forms the requisite opinion on the ground that the Director in charge of the company is a member of a particular community. Within these narrow limits the opinion is not conclusive and can be challenged in a court of law. Had Section 237(b) made the opinion conclusive, it might be open to challenge as violative of Articles 14 and 19 of the Constitution, see Corporation of Calcutta v. Calcutta Tramways Co. Ltd [(1964) 5 SCR 25] distinguishing Joseph Kuruvilla Vellukunnel v. Reserve Bank of India [(1962) Supp 3 SCR 632] . Section 237(b) is not violative of Articles 14 and 19.*

5. If it is established that there were no materials upon which the authority could form the requisite opinion the court may infer that the authority did not apply its mind to the relevant facts. The requisite opinion is then lacking and the condition precedent to the exercise of the power under Section 237(b) is not fulfilled. On this ground I interfered with the order under Section 237(b) in *Barium Chemicals v. Company Law Board*[(1966) Supp 3 SCR 949] .

67. In summary, there are overwhelming material to suggest that the buying and selling of sister concerns, which were previously managed and controlled by the ex-promoters & directors of respondent No. 3/TCSPL, raise significant concerns that warrants investigation. Likewise, the reliance placed on the case of **Embassy**



Property Developments (P) Ltd. v. State of Karnataka³⁴, does not aid the applicants/respondents No. 12 and 13. **The Supreme Court**, while addressing the issue of the High Court’s jurisdiction to interfere with the discretion exercised by judicial and quasi-judicial authorities, held as under:

“15. One of the well-recognised exceptions to the self-imposed restraint of the High Courts, in cases where a statutory alternative remedy of appeal is available, is the lack of jurisdiction on the part of the statutory/quasi-judicial authority, against whose order a judicial review is sought. Traditionally, English courts maintained a distinction between cases where a statutory/quasi-judicial authority exercised a jurisdiction not vested in it in law and cases where there was a wrongful exercise of the available jurisdiction. An “error of jurisdiction” was always distinguished from “in excess of jurisdiction”, until the advent of the decision rendered by the House of Lords, by a majority of 3 : 2 in *Anisminic Ltd. v. Foreign Compensation Commission* [*Anisminic Ltd. v. Foreign Compensation Commission*, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] . After acknowledging that a confusion had been created by the observations made in *R. v. Governor of Brixton Prison, ex p Armah* [*R. v. Governor of Brixton Prison, ex p Armah*, 1968 AC 192 : (1966) 3 WLR 828 (HL)] to the effect that *if a Tribunal has jurisdiction to go right, it has jurisdiction to go wrong*, it was held in *Anisminic* [*Anisminic Ltd. v. Foreign Compensation Commission*, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] that the real question was not whether an authority made a wrong decision but whether they enquired into and decided a matter which they had no right to consider.

16. *Anisminic* [*Anisminic Ltd. v. Foreign Compensation Commission*, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] , hailed as a breakthrough and a legal landmark (see *Racal Communications Ltd., In re* [*Racal Communications Ltd., In re*, 1981 AC 374 : (1980) 3 WLR 181 (HL)]) abolished the old distinction between errors of law that went to jurisdiction and errors of law that did not. *Anisminic* [*Anisminic Ltd. v. Foreign Compensation Commission*, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] was hailed in *O’Reilly v. Mackman* [*O’Reilly v. Mackman*, (1983) 2 AC 237 : (1982) 3 WLR 1096 (HL)] to have liberated English public law from the fetters that the courts had theretofore

³⁴ (2020) 13 SCC 308



imposed upon themselves so far as determinations of inferior courts and statutory tribunals were concerned, by drawing esoteric distinctions between errors of law committed by such tribunals that went to their jurisdiction, and errors of law committed by them within their jurisdiction.

17. But *Racal, In re* [*Racal Communications Ltd., In re*, 1981 AC 374 : (1980) 3 WLR 181 (HL)] made a distinction between courts of law on the one hand and administrative tribunal/administrative authority on the other and held that insofar as (inferior) courts of law are concerned, the subtle distinction between errors of law that went to jurisdiction and errors of law that did not, would still survive, if the decisions of such courts are declared by the statute to be final and conclusive. Thus one distinction was gone with *Anisminic* [*Anisminic Ltd. v. Foreign Compensation Commission*, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] , but another was born with *Racal, In re* [*Racal Communications Ltd., In re*, 1981 AC 374 : (1980) 3 WLR 181 (HL)] . This could be seen from the after-effects of *Anisminic* [*Anisminic Ltd. v. Foreign Compensation Commission*, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] . [*Anisminic*, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] had its own quota of problems. Prof. Wade, as pointed out in *R. v. Lord President of the Privy Council, ex p Page*, 1993 AC 682 : (1992) 3 WLR 1112 (HL), seems to have opined that the true effect of *Anisminic* was still in doubt. People like Sir John Laws, quoted by Prof. Paul Craig, and which was extracted in the decision in *R. (Privacy International) v. Investigatory Powers Tribunal*, 2019 UKSC 22 : (2019) 2 WLR 1219, seems to have opined that once the distinction between jurisdictional and non-jurisdictional errors was discarded, there was no longer any need for the ultra vires principle and that ultra vires is, in truth, a fig leaf which has enabled the courts to intervene in decisions without an assertion of judicial power which too nakedly confronts the established authority of the Executive or other public bodies. According to Sir John Laws, *Anisminic*, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL) has produced the historical irony that with all its emphasis on nullity, it nevertheless erected the legal milestone which pointed towards a public law jurisprudence in which the concept of voidness and the ultra vires doctrine have become redundant. In *R. (Privacy International)*, 2019 UKSC 22 : (2019) 2 WLR 1219 the UK Supreme Court also quoted the editors of *De Smith's Judicial Review* to the effect:“84. ... ‘The distinction between jurisdictional and non-jurisdictional error is ultimately based upon foundations of sand. Much of the superstructure has already crumbled. What remains is likely quickly to fall away as the courts rightly insist



that all administrative action should be simply, lawful, whether or not jurisdictionally lawful.” (WLR p. 1251, para 84)]

18. Interestingly just four days before the House of Lords delivered the judgment in *Anisminic Ltd. v. Foreign Compensation Commission*, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] (on 17-12-1968), an identical view was taken by a three-member Bench of this Court (delivered on 13-12-1968) in *Official Trustee v. Sachindra Nath Chatterjee* [*Official Trustee v. Sachindra Nath Chatterjee*, (1969) 3 SCR 92 : AIR 1969 SC 823] approving the view taken by the Full Bench of the Calcutta High Court in *Hriday Nath Roy v. Ram Chandra Barna Sarma* [*Hriday Nath Roy v. Ram Chandra Barna Sarma*, 1920 SCC OnLine Cal 85 : ILR (1921) 48 Cal 138] . It was held therein that : (*Sachindra Nath Chatterjee case* [*Official Trustee v. Sachindra Nath Chatterjee*, (1969) 3 SCR 92 : AIR 1969 SC 823] , AIR p. 828, para 15)

“15. ... before a court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought, but must also have the authority to pass the orders sought for”.

(emphasis supplied)

This Court also pointed out that it is not sufficient that it has some jurisdiction in relation to the subject-matter of the suit, but its jurisdiction must include (1) the power to hear and decide the questions at issue, and (2) the power to grant the relief asked for. This decision in *Official Trustee* [*Official Trustee v. Sachindra Nath Chatterjee*, (1969) 3 SCR 92 : AIR 1969 SC 823] was followed in a recent decision in *Iffco Ltd. v. Bhadra Products* [*Iffco Ltd. v. Bhadra Products*, (2018) 2 SCC 534 : (2018) 2 SCC (Civ) 208] , quite independent of *Anisminic Ltd. v. Foreign Compensation Commission*, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] and its followers.

19. Though the decision in *Official Trustee* [*Official Trustee v. Sachindra Nath Chatterjee*, (1969) 3 SCR 92 : AIR 1969 SC 823] preceded *Anisminic Ltd. v. Foreign Compensation Commission*, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] and can proudly be claimed as the Indian precursor to an English legal landmark, several subsequent decisions of this Court considered *Anisminic Ltd. v. Foreign Compensation Commission*, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] alone to have provided the breakthrough. In *Mafatlal Industries Ltd. v. Union of India* [*Mafatlal Industries Ltd. v. Union of India*, (1997) 5 SCC 536] , Paripoornan, J. provided the list of Indian cases which cited *Anisminic Ltd. v. Foreign*



Compensation Commission, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] with approval. They are:

(1) *Union of India v. Tarachand Gupta & Bros.* [*Union of India v. Tarachand Gupta & Bros.*, (1971) 1 SCC 486] ,

(2) *A.R. Antulay v. R.S. Nayak* [*A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] ,

(3) *R.B. Shreeram Durga Prasad & Fatehchand Nursing Das v. Settlement Commission* [*R.B. Shreeram Durga Prasad & Fatehchand Nursing Das v. Settlement Commission*, (1989) 1 SCC 628 : 1989 SCC (Tax) 124] ,

(4) *Associated Engg. Co. v. State of A.P.* [*Associated Engg. Co. v. State of A.P.*, (1991) 4 SCC 93] , and

(5) *Shiv Kumar Chadha v. MCD* [*Shiv Kumar Chadha v. MCD*, (1993) 3 SCC 161] .

20. But in *M.L. Sethi v. R.P. Kapur* [*M.L. Sethi v. R.P. Kapur*, (1972) 2 SCC 427] , K.K. Mathew, J., made certain interesting observations about *Anisminic Ltd. v. Foreign Compensation Commission*, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] . The learned Judge observed that the effect of the dicta in *Anisminic Ltd. v. Foreign Compensation Commission*, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] is to reduce the difference between jurisdictional error and error of law within jurisdiction almost to a vanishing point and that it came perilously close to saying that there is jurisdiction if the decision is right in law, but none if it is wrong. *Anisminic Ltd. v. Foreign Compensation Commission*, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] , according to him virtually left a court or tribunal with no margin of legal error.

21. Again in *Hari Prasad Mulshanker Trivedi v. V.B. Raju* [*Hari Prasad Mulshanker Trivedi v. V.B. Raju*, (1974) 3 SCC 415] K.K. Mathew, J., speaking for the Constitution Bench, pointed out that though the dividing line between lack of jurisdiction or power and the erroneous exercise of it has become thin with *Anisminic Ltd. v. Foreign Compensation Commission*, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] , the distinction had not been wiped out completely.

22. But it is relevant to note that *Official Trustee v. Sachindra Nath Chatterjee*, (1969) 3 SCR 92 : AIR 1969 SC 823] / *Anisminic Ltd. v. Foreign Compensation Commission*, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] and what followed both, were mostly in the context of the power of the superior court to interfere with the decisions of subordinate courts/tribunals or administrative authorities. Most of these decisions were not in the context of the exercise of jurisdiction



despite the availability of alternative remedy. That there exists such a distinction between (i) cases where the jurisdiction of a superior court is questioned on the basis of ouster clauses and (ii) cases where the exercise of jurisdiction by a superior court is questioned on the ground of availability of alternative remedy, was recognised even in *Anisminic* [*Anisminic Ltd. v. Foreign Compensation Commission*, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] , when Lord Reid referred to the decision in *Smith v. East Elloe Rural District Council* [*Smith v. East Elloe Rural District Council*, 1956 AC 736 : (1956) 2 WLR 888 (HL)] as posing some difficulty. As a result, the Court of Appeal held in *R. v. Secy. of State for the Environment, ex p Ostler* [*R. v. Secy. of State for the Environment, ex p Ostler*, 1977 QB 122 : (1976) 3 WLR 288 (CA)] that the availability of a statutory right to challenge within a specified time-limit, among other points, provided a sufficient basis for distinguishing *Anisminic* [*Anisminic Ltd. v. Foreign Compensation Commission*, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] . This was taken note of by the UK Supreme Court in *Regina (Privacy International) v. Investigatory Powers Tribunal*, 2019 UKSC 22 : (2019) 2 WLR 1219] . Therefore the question whether the error committed by an administrative authority/tribunal or a court of law went to jurisdiction or whether it was within jurisdiction may still be relevant to test whether a statutory alternative remedy should be allowed to be bypassed or not.

23. In several cases, both in England and India, the ancient rule stated by Willes, J., in *Wolverhampton New Waterworks Co. v. Hawkesford* [*Wolverhampton New Waterworks Co. v. Hawkesford*, (1859) 6 CBNS 336 : 141 ER 486] to the effect that where a liability not existing at Common Law is created by a statute, which also gives a special and particular remedy for enforcing it, the remedy provided by the statute must be followed, has been quoted with approval. For instance, *United Bank of India v. Satyawati Tondon* [*United Bank of India v. Satyawati Tondon*, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] held that the availability of a remedy of appeal under the DRT Act, 1993 and Sarfaesi Act, 2002 should deter the High Courts from exercising the jurisdiction under Article 226. Similarly, the availability of remedy of appeal under Section 173 of the Motor Vehicles Act, 1988 as against an award of the Accidents Claims Tribunal was held in *Sadhana Lodh v. National Insurance Co. Ltd.* [*Sadhana Lodh v. National Insurance Co. Ltd.*, (2003) 3 SCC 524 : 2003 SCC (Cri) 762] as sufficient for the High Court to refuse to exercise its supervisory jurisdiction. The same principle was applied in (1) *Nivedita Sharma v. COAI* [*Nivedita*



Sharma v. COAI, (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947] , and (2) *Cicily Kallarackal v. Vehicle Factory* [*Cicily Kallarackal v. Vehicle Factory*, (2012) 8 SCC 524 : (2012) 4 SCC (Civ) 540] in relation to the awards passed by the special fora constituted under the Consumer Protection Act, 1986.

51. Even fraudulent tradings carried on by the corporate debtor during the insolvency resolution, can be inquired into by the adjudicating authority under Section 66. Section 69 makes an officer of the corporate debtor and the corporate debtor liable for punishment, for carrying on transactions with a view to defraud creditors. Therefore, NCLT is vested with the power to inquire into (i) fraudulent initiation of proceedings as well as (ii) fraudulent transactions. It is significant to note that Section 65(1) deals with a situation where CIRP is initiated fraudulently “*for any purpose other than for the resolution of insolvency or liquidation*”.

52. Therefore, if, as contended by the Government of Karnataka, the CIRP had been initiated by one and the same person taking different avatars, not for the genuine purpose of resolution of insolvency or liquidation, but for the collateral purpose of cornering the mine and the mining lease, the same would fall squarely within the mischief addressed by Section 65(1). Therefore, it is clear that NCLT has jurisdiction to enquire into allegations of fraud. As a corollary, NCLAT will also have jurisdiction. Hence, fraudulent initiation of CIRP cannot be a ground to bypass the alternative remedy of appeal provided in Section 61.”

68. In the light of the aforementioned proposition of law, this Court is not by-passing the jurisdiction of the NCLT to determine the fate of the respondent no. 3/TCSPL, which is involved in CIRP, nor is it usurping any power under Section 63 of the IBC. However, it is undeniable that the investigation by respondents No. 1 and 2 is progressing at a snail's pace *qua* respondent No. 3/TCSPL and its ex-promoters & directors, marked by tardiness and a lack of urgency, which is unacceptable in law and prejudicial to the interests of the homebuyers.

69. Much has been argued on behalf of applicants/respondents No.



12 and 13 that they acquired the companies, as reflected in the IRP's report, at arm's length. However, it cannot be overlooked that when the ACE Group of Companies acquired these companies, they must have been aware of the goodwill and reputation of these companies and their ex-promoters and directors, who were facing several litigations from their investors, both secured and unsecured. Therefore, the *ACE Group of Companies* needs to come clean regarding these acquisitions and the investigation as directed under Chapter XIV cannot be scuttled. Moreover, it is not within the domain of this Court to delve into the minutest aspects of the sale and purchase of these companies and render a finding on merits. Such an inquiry is not warranted in writ proceedings under Article 226 of the Constitution of India, 1950.

70. Similarly, the plea of Respondent No. 11/Orris is also on no better footing. Throughout these proceedings, these parties have opened a Pandora's box, revealing a dismal and unsavoury state of affairs in the real estate market, and demonstrating how innocent homebuyers are being taken for a ride. It was evident throughout the proceedings that the entire issue hinged on the IRP report, over which there has been no final verdict from this Court or from any other judicial or quasi-judicial forum declaring the IRP report as the gospel truth. Given that successive IRP reports are now before the NCLT and a Monitoring Committee has been constituted, it is essential that the law is allowed to take its own course.

71. All said and done, it remains clear in the mind of this Court that respondent No. 11/Orris and the ACE Group of companies,



represented by respondents No. 12 and 13, are active and functioning entities within the real estate market. The material presented suggests that these parties have been meeting their contractual obligations and are not facing significant allegations of fraud or fund siphoning by their secured or unsecured creditors. Regarding the ACE Group of companies, both the petitioner and respondent No. 11/Orris have failed to establish any direct link or connection to the ex-promoters and directors of respondent No. 3/TCSPL. It also appears that the ACE Group acquired some of the sister companies at arm's length, as part of the ordinary course of business, and notably, none of their companies have acquired land in Gurugram that is part of the "Greenopolis Project."

INVESTIGATION BY SERIOUS FRAUD INVESTIGATION OFFICE³⁵

72. At this juncture, it is pertinent to refer to Section 212 (1) of the Companies Act, 2013, that enables the Central Government to entrust investigation into the affairs of a company to SFIO under where Government is of the opinion that it is necessary to investigate into the affairs of a company –

- (a) On receipt of a report of the Registrar or inspector under section 208 of the Companies Act, 2013;
- (b) On intimation of a special resolution passed by a company that its affairs are required to be investigated;
- (c) On the public interest; or
- (d) on request from any department of the Central Government or a State Government.

³⁵ SFIO



73. Section 212(3) of the Companies Act, 2013 provides that the Central Government has the power to order investigation in respect of any company which it deems necessary and also to order special investigations in respect of other concerns related to corporate law. The Central Government may appoint any authority, officer or agency to conduct the investigations and to report its findings to the Central Government with the primary objective of investigating frauds and offences relating to a company under section 447 of the Act. The entire setting of the present matter, compels this Court to direct the Central Government to entrust the investigation to the SFIO as regards the role of the ex-promoters and directors of respondent no. 3/TCSPL is concerned. Reference can be invited to decision by the Telangana High Court in **Karvy Stock Broking Limited vs Union of India**³⁶, where it was emphasized that the Central Government's opinion is sufficient to order an SFIO investigation based on *prima facie* circumstances of fraud or wrongdoing. Additionally, the Bombay High Court's decision in **Parmeshwar Das Agarwal vs The Additional Director (Investigation), SFIO**³⁷, also ruled that the formation of an opinion requires the presence of relevant circumstances, which must be substantiated with evidence. Furthermore, these circumstances should be of such a nature that they can be convincingly proven if their existence is challenged in a court of law.

³⁶ 2020 SCC OnLine TS 1048

³⁷ W.P.(C) 2025/2016



74. Indeed, mere assumptions or beliefs are not adequate. But in the instant matter, the entire facts and circumstances presented go beyond mere assumptions, surmises or conjectures. The stark fact is that the Greenopolis project has been abandoned by the respondent Nos. 6-10/ex-promoters and directors after siphoning of funds generated directly through respondent no. 3/TCSPL and the petitioner as well as those who are similarly placed investors/claimants/homebuyers are the victims at their hands, which is an undisputed proposition.

FINAL ORDER/DIRECTIONS

75. In view of the foregoing discussion, in modification of earlier order dated 02.02.2024, the following directions are passed:

- (i) CM APPL. 10599/2024 moved on behalf of the applicant/respondent No.7, Mr. Vidur Bhardwaj, for recalling of order dated 02.02.2024 is hereby dismissed;
- (ii) The Central Government is hereby directed that the investigation be conducted into the affairs of the respondent No.3/Three C Shelters Pvt. Ltd. besides its Ex-Promoters and Directors/Management *viz.* respondent No.6/Mr. Nirmal Singh, respondent No.7/Mr. Vidur Bhardwaj, respondent No.8/Mr. Surpreet Suri and respondent No.9/Mr. Rajeev Bisoya besides respondent No.10/Mr. Girish Chander Joshi through the SFIO to unearth the manner in which the funds generated from the petitioner and other homebuyers have been *siphoned off* to the detriment of its secured and unsecured creditors including the homebuyers;
- (iii) In so far as respondent No.11/Orris, as well as ACE Group of Companies represented by applicants/respondents No. 12 and 13 are concerned, the said companies shall be outside the purview of investigation by the SFIO;
- (iv) However, respondents No.1 & 2 shall continue to



investigate the matter with regard to ascertaining the genuineness of the transactions between respondent No. 11/Orris and respondent No. 3/TCSPL in accordance Sections 206, 209, 216, 217, 219 and 224 of the Companies Act, 2013, and take the matter to its logical end;

- (v) As regards respondent No. 11/Orris, respondent Nos. 1 & 2 while conducting investigation shall have due deference to various judgments/orders/directions passed on the judicial side as well by the quasi-judicial authorities;
- (vi) As regards ACE Group of Companies too, respondent Nos. 1 & 2 shall have due deference to various judgments/orders/directions passed on the judicial side as well by the quasi-judicial authorities
- (vii) Respondent Nos. 1 & 2 shall investigate the matter against the ACE Group of Companies uninfluenced by the findings in the report of the IRP dated 09.08.2023 in accordance with Sections 206, 209, 216, 217 and 224 of the Companies Act, 2013;
- (viii) In case the Investigating Officer appointed by respondent Nos. 1 & 2 finds that there has been any connection between the Management of respondent No3/TCSPL as well as ACE Group of Companies with regard to M/s. Bright Buildtech Pvt. Ltd.; M/s. Mega Town Planners Pvt. Ltd.; Three C Residency Pvt. Ltd; Three C City Developers Pvt. Ltd., he shall be empowered to inquire into the same and examine and satisfy himself about the genuineness of such acquisitions in accordance with law, except for those companies where recourse could be taken under section 65 & 66 of the IBC before the NCLT.

76. In view of the above, CM APPL No. 11516/2024 moved jointly by applicant/respondent No.12, Mr. Pratap Singh Rathi and applicant/respondent No.13, Mr. Ajay Kumar is also dismissed. Nothing contained in the instant order shall prevent the NCLT from



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proceeding with necessary inquiries against respondent No.3/TCSPL and its ex-promoters and directors as also any other sister/shell companies in accordance with the law.

77. Nothing contained in this order shall tantamount to an expression of opinion on the merits of the matter before the NCLT as also with regard to the investigation to be conducted by the other agencies.

78. A status report shall be filed by the Central Government as well the SFIO on or before on 26.05.2025.

79. Accordingly, both the applications stand disposed of.

DHARMESH SHARMA, J.

FEBRUARY 20, 2025

Sadiq