

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

**Company Appeal (AT) (Insolvency) No.1489 of 2022**

**IN THE MATTER OF:**

**Rajesh Kumar & Ors.**

**...Appellants**

**Versus**

**Rabindra Kumar Mintri & Anr.**

**...Respondents**

**Present:**

**For Appellants: Mr. Dhruv Dewan, Mr. Kshitj Mudgal, Mr. Prayay Sharn and Mr. Ravilochan Daliparthi, Advocates/**

**For Respondents: Mr. Apporv Agarwal, Ms. Riya Thomas and Mr. Manav Goyal, Advocates for R-1.**

**Mr. Adhish Sharma and Mr. Nitin Pandey, Advocates for R-2.**

**ORDER**

**15.12.2022:** Heard learned counsel for the Appellant. This Appeal has been filed against the order dated 26.09.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, by which order the application filed by 68 home buyers being I.A. No. 2065/2020 has been rejected. In I.A. No. 2065/2020 following prayers were made by the Appellants:

- “a. Pass an order for replacement of Mr. Rabindra Kumar Mintri, having registration no. IBBI/IPA-001/IP – P00707/2017 – 18/11194 as the resolution professional in the Corporate Insolvency Resolution Process of the Corporate Debtor with Mr. Sanjeet Kumar Sharma, having

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registration no. IBBI/ IPA-001/IP-  
P01132/2018-19/11827; AND

- b. *Pass an order rejecting the revised resolution plan submitted by Sunil Kumar Jain & Apoorv Jain (One Group) as being not conforming and on-compliant of Section 30(1) of the Insolvency and Bankruptcy Code, 2016; AND/OR*
- c. *Pass such other order/orders as it may deem fit and proper in the facts and circumstances of the case.”*

2. In the CIRP process of the Corporate Debtor, Resolution Plan was received and after decision of CoC, the Resolution Plan was put to vote before CoC including 1053 home buyers which are represented by authorized representative and plan was approved by the CoC. Thereafter, Application has been filed before the Adjudicating Authority by 68 home buyers making the prayers as noticed above. The Adjudicating Authority relying on an earlier judgment of this Tribunal in **“Priya Puri & Ors. vs. Mr. Dehashish Nanda & Ors., CA (AT) (Ins) No. 906/2022”** dismissed the application of the Appellants holding that in view of the judgment of Appellate Tribunal the objections raised by the Appellants cannot be sustained. Challenging the order of the Adjudicating Authority rejecting the objections of the Appellants, this Appeal has been filed.

3. It is submitted by learned counsel for the Appellant that the judgment of **“Priya Puri & Ors.”** which has been relied by the Adjudicating Authority

was not applicable in the facts of the present case and the Appellants' case is entirely different from the case of those home buyers who had challenged the Resolution Plan in the aforesaid matter. It is submitted that the objections filed by the Appellants are sustainable and ought to have been considered by the Adjudicating Authority. Learned counsel for the Appellants submits that the Authorized Representative who is said to have voted has not obtained instructions and approval of the home buyers with regard to different items of the Agenda. It is submitted that in the 6<sup>th</sup> CoC meeting several items were deferred without obtaining any opinion of the home buyers which has vitiated the entire process. Learned counsel for the Appellant further submits that with regard to feasibility and viability of the Resolution Plan no opinion was obtained from the CoC and although there was a decision taken in the 7<sup>th</sup> CoC meeting to obtain views on feasibility and viability.

4. We have considered the submissions of learned counsel for the Appellant and perused the record.

5. The judgment of "**Priya Puri & Ors.**" (supra) which is was relied by the Adjudicating Authority was also judgment of this Tribunal where one set of home buyers were challenging the various procedures adopted while approving the Resolution Plan and objections were raised by the home buyers. This Tribunal relying on the judgment of Hon'ble Supreme Court in "**Jaypee Kensington Boulevard Apartments Welfare Association and Ord. vs. NBVV (India) Ltd. and Ors., (2021) 1 SCC 401**" has held that the democratic

principles of the determinative role of the opinion of the majority have been duly incorporated in the scheme of the code and the minority homebuyers have to necessarily sail with the majority within the class. When the majority has approved the Resolution Plan which approval was sought to be challenged by one set of home buyers that has been repelled by this Tribunal in **Priya Puri's case**, the objection raised in the present Appeal are another set of objections raising similar issues regarding voting and other issues.

6. Now we come to the submission of the Appellant that the Authorised Representative has not obtained opinion of the homebuyers on different agenda items which have been considered in the CoC meeting. For the Authorised Representative, who is representative of the home buyers to participate in the CoC has to represent the interest of the CoC and it is incumbent upon the Authorised Representative to obtain instructions to vote for the majority for any agenda item where CoC obtain votes. Where there is no voting of the CoC in an agenda item, the Authorised Representative's opinion can very well be taken note of and considered in the CoC meeting.

7. Regarding the issue of viability and feasibility of the resolution plan, when the CoC approved the Resolution Plan in its commercial wisdom, it is presumed that the approval was given to a viable and feasible plan. The Resolution Plan being approved, this Tribunal also cannot interfere with the commercial wisdom. Approval of the CoC suggest that the plan is viable and feasible.

8. We, thus, do not find any good ground to entertain this Appeal. Appeal is dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

**[Kanthi Narahari]  
Member (Technical)**

**[Barun Mitra]  
Member (Technical)**

*Archana/nn*