

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

IA(IBC)/243/KOB/2025

IN

CP (IBC)/05/KOB/2021

*(Under Section 60(5)(C) of Insolvency and
Bankruptcy Code, 2016 and Rule 11 and 32 of the
NCLT Rules,2016)*

Date of Institution:20.06.2025

Order delivered on: 12.11.2025

In the matter of:

***Samson and Sons Builders and
Developers Private Limited***

MEMO OF PARTIES:

**Nova Castle Apartment Owner's
Association,**

(Reg No. TVM/TC/1378/2016)

T.C-3/2430-1, KPRA - 12, Marappalam,
Pattom Palace P.O. Trivandrum 695004

...Applicant No.1

**Sanctuary Apartment Owner's
Association,**

(Reg no. TVM/TC/202/2021)

TC#9/739, RNP Lane,

Sasthamangalam P.O.,

Thiruvananthapuram-695010

...Applicant No.2

-Vs-

K. Parameshwaran Nair

Resolution Professional,



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Samson and Sons Builders and
Developers Pvt Ltd
Reg No. IBBI/IPA-001/IPP01773/2019-
20/12702 37/1736E,
Kripasagaram, K Murali Road,
Kadavanthra, Kochi, Kerala 682020

...Respondent No.1

**Samson and Sons Builders Developers
Private Limited,**

CIN - U45200KL2009PTC024511

TC 3/678, Muttada, Trivandrum.

...Respondent No.2

Coram:

HON'BLE MEMBER (JUDICIAL) : SHRI. VINAY GOEL

HON'BLE MEMBER(TECHNICAL) : SMT. MADHU SINHA

Appearances:

For the Applicant : Mr. Bijoy Pulipra, Adv;

For the Respondent No.1 : Mr. Vinod P V, Adv.

ORDER

Per Coram:

1. The present Application has been filed by Nova Castle Apartment Owner's Association and Sanctuary Apartment Owner's Association, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, and Rules 11 and 32 of the NCLT Rules,2016, seeking the following reliefs:



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1. Declare that the reconstitution of the Committee of Creditors (CoC) undertaken by Respondent No. 1, the Resolution Professional, is illegal, ultra vires the Insolvency and Bankruptcy Code, 2016, and contrary to the principles of natural justice;
2. Quash and set aside the impugned reconstitution of the CoC and direct restoration of the original composition of the CoC, including the Applicant Association and other similarly placed associations of homebuyers who were originally part of the CoC;
3. Hold and declare that the mere submission and approval of a project-wise Resolution Plan by a financial creditor (including homebuyer associations) does not extinguish their status or responsibilities as financial creditors under the Code, and cannot be a valid ground for their exclusion from the CoC;
4. Direct the Resolution Professional to act strictly in accordance with the provisions of the Code and the Regulations made thereunder, and to refrain from any unilateral action affecting the composition or functioning of the CoC without the prior approval of this Hon'ble Tribunal;
5. Direct that the Resolution Plan submitted by the Applicants under IA(IBC)/(PLAN)/3/KOB/2024 for Applicant no.1 and IA(IBC)/(PLAN)/5/KOB/2024 for Applicant no.2, which was approved by the requisite majority of the original CoC, be considered valid and placed before this Hon'ble Tribunal for approval under Section 31 of the Code;
6. Pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

The Brief facts of the case are as follows: -

2. The Applicants stated that Applicant No.1, Nova Castle Apartment Owners' Association, and Applicant No.2, Sanctuary Apartment Owners' Association are both registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration



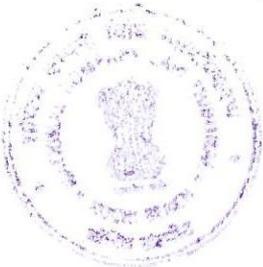
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Act, 1955, representing homebuyers and allottees of the “Nova Castle” and “Sanctuary” projects respectively of the Corporate Debtor, Samson & Sons Builders and Developers Private Limited.

3. The Applicants stated that the approval of project-wise Resolution Plans by certain homebuyer associations, who are recognized financial creditors under Section 5(7) of the Insolvency and Bankruptcy Code, 2016, does not extinguish their status or rights under the Code. However, Respondent No.1, the Resolution Professional, has unilaterally and without legal authority or prior approval of this Tribunal, reconstituted the Committee of Creditors (CoC) by excluding such associations solely on the ground of Resolution Plan approval. This action, undertaken without notice or consultation, is illegal, violative of natural justice, and undermines the transparency and integrity of the resolution process. The Applicants stated that such arbitrary exclusion of financial creditors from the CoC deserves to be declared null and void and the CoC be restored as per law.
4. The Applicants stated that the Applicants No.1 and No.2 have filed Interlocutory Applications IA(IBC)/257/KOB/2024 and IA(IBC)/265/KOB/2024 respectively in C.P. (IB)/05/KOB/2021, pending adjudication before this Tribunal, challenging the admission of financial claims submitted in Form C by Kerala Financial Corporation and State Bank of India respectively, both Secured Financial Creditors, during the CIRP conducted by Respondent No.1, the Resolution Professional. The primary grievance is that the loans creating charges over the Nova Castle



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and Sanctuary projects and their underlying lands were sanctioned without the consent or prior intimation of the homebuyers, who had already paid almost the entire purchase consideration under valid Agreements for Sale. Such sanction is alleged to be in violation of binding RBI directives, including master circulars. The Secured Financial Creditors' failure to exercise due diligence enabled the diversion of substantial project funds by the promoters of the Corporate Debtor to unrelated third parties, as evidenced by the Forensic Audit Report obtained by Respondent No.1. Furthermore, the admission of these claims adversely impacts the homebuyers' financial interests, and the liquidation value determined by the RP failed to exclude assets held in fiduciary capacity for the allottees, thereby inflating the valuation.

5. The Applicants stated that the inflated liquidation value has impeded its ability to submit a viable Resolution Plan in accordance with Section 30(2) of the Insolvency and Bankruptcy Code, 2016, an impediment further exacerbated by the Resolution Professional's reliance on a flawed valuation methodology adopted by the registered valuers, which was erroneously accepted without proper scrutiny. The Applicants stated that a Resolution Plan pertaining to its respective project was submitted in accordance with Regulation 37(m) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and was duly approved by the Committee of Creditors during its 17th meeting held through



electronic means (video conferencing) on 30.07.2024 at 3:30 PM from the office of Respondent No.1.

6. The Applicants stated that the Respondent No.1, in furtherance of the resolution process, submitted the Resolution Plans before this Adjudicating Authority under IA(IBC)/(PLAN)/3/KOB/2024 for Applicant No.1 and IA(IBC)/(PLAN)/5/KOB/2024 for Applicant No.2, in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016. However, subsequent to such submission, Respondent No.1 acted beyond the scope of his authority and in violation of the Code by unilaterally reconstituting the Committee of Creditors (CoC), excluding other Associations of Homebuyers (Successful Resolution Applicants) on the ground that their Resolution Plans had already been approved by this Adjudicating Authority. The said reconstitution was done without prior intimation to the affected stakeholders and without obtaining sanction from this Adjudicating Authority.
7. The Applicants stated that the Applicants, along with similarly placed Associations of Homebuyers, became aware of their exclusion from the CoC only upon receipt of the notice for the 18th CoC meeting of M/s. Samson and Sons Builders and Developers Pvt. Ltd. (under CIRP), scheduled via video conferencing on 31.08.2024 at 10:30 AM. During the said meeting, the Authorized Representative of the Homebuyers raised objections to the unilateral reconstitution of the CoC; however, Respondent No.1 dismissed the concern by stating that the claimants of the approved projects were settled under their



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respective Resolution Plans and were no longer creditors, citing the end of the moratorium on 14.08.2024. The Applicants stated that neither they nor the other affected Financial Creditors were informed of the reconstitution beforehand and came to know of their removal only during the meeting. As per Section 21 of the IBC, the IRP is required to constitute the CoC after collation and verification of claims, and under Section 22 read with Regulation 17, to report its constitution to the Adjudicating Authority. The Code does not empower the Resolution Professional to alter or reconstitute the CoC once constituted, and any such action is without jurisdiction and ultra vires. Respondent No.1 failed to inform the stakeholders or seek prior leave of the Adjudicating Authority before effecting such reconstitution. Clause 9 of the Code of Conduct under the IBBI (Insolvency Professionals) Regulations, 2016, prohibits undue preference and interference with CoC functioning. The unilateral reconstitution by Respondent No.1, without consultation or approval, amounts to abuse of authority and reflects prejudicial interference in the CoC's functioning.

8. The Applicant stated that the conduct of Respondent No.1 has been biased and prejudicial to their interests, reflecting a deliberate attempt to extend undue preference to the remaining Secured Financial Creditor. The RP's submissions and actions before this Adjudicating Authority have been exclusively favourable to the said creditor, compromising the impartiality required under the Code. The unilateral reconstitution of the CoC



and exclusion of the Associations of Homebuyers has resulted in the remaining Secured Financial Creditors obtaining a dominant voting share, raising serious concerns of collusion and partiality. Respondent No.1 also failed to communicate this development to the Applicants and other affected Associations, demonstrating a lack of transparency and deliberate concealment of material facts, in violation of Clause 12 of the Code of Conduct. Such conduct is beyond the scope of powers under the Insolvency and Bankruptcy Code, 2016, and constitutes a clear breach of the obligation to disclose all material information in a fair and timely manner. Accordingly, the reconstitution of the CoC is non-est in law, having been effected without compliance with the applicable provisions, rules, or regulations, and without the leave of this Adjudicating Authority.

9. The Applicants stated that in "*Board of Control for Cricket in India v. Think & Learn Private Limited ((2025) ibclaw.in 144 NCLT)*", the Adjudicating Authority held that the IRP/RP has a non-adjudicatory role and cannot provisionally or unilaterally constitute or reconstitute the CoC without the CoC's approval or intervention of the Adjudicating Authority. Therefore, the unilateral reconstitution of the CoC by Respondent No. 1 is ex facie void, arbitrary, prejudicial, and beyond the powers granted under the Insolvency and Bankruptcy Code, 2016.
10. The Applicants stated that, as per Regulation 34 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the CoC is mandated to fix the RP's fee, which



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must be proportionate to the labour, time, and effort expended. The Respondent No. 1 continued to draw the same monthly remuneration even after the approval of Resolution Plans, despite a significant reduction in workload and responsibilities. In light of the same, the RP's fees ought to be reduced, being strictly limited to work performed for creditors whose projects remain under resolution. Moreover, the RP is presently drawing the same fees from a reconstituted CoC comprising members with no stake in the resolved projects, warranting a corresponding reduction in his remuneration.

11. The Applicants stated that the Resolution Plans submitted by Applicant Nos. 1 and 2 were duly approved by the CoC with 68.30% votes each in its meeting dated 30.07.2024, and thereafter placed before this Tribunal in IA(IBC)/(PLAN)/3/KOB/2024 and IA(IBC)/(PLAN)/5/KOB/2024, respectively. Despite meeting all requirements under Section 30(2) of the Code, Respondent No. 1, with mala fide intent, raised belated and baseless objections alleging the plans were conditional. This was done solely to obstruct approval, even though the Applicants clarified all ambiguities via affidavit in IA(IBC) 257/KOB/2024. Pursuant to these objections, this Tribunal directed re-submission of the modified plan before a CoC that had been unlawfully reconstituted by the RP without authority. It is further stated that the RP's unilateral removal of homebuyer associations who remain financial creditors under Sections 5(7) and 21 of the Code



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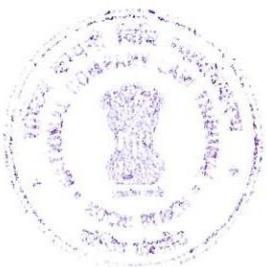
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despite approval of project-wise Resolution Plans is illegal, ultra vires the Code, and in violation of natural justice. The RP has no power to reconstitute the CoC without direction from this Tribunal, and the objections raised and actions taken are procedurally flawed, prejudicial, and merit setting aside.

12. The Respondents No.1 and 2 filed their reply on 05.07.2024 and stated that the Applicants, being Prospective Resolution Applicants (PRAs) for the projects "Nova Castle" and "Sanctuary" with plans pending in IA(IBC)/Plan/3/KOB/2024 and IA(IBC)/Plan/5/KOB/2024, have no locus standi to challenge the constitution of the CoC or seek its reconstitution. As separate entities from the CoC, their attempt to alter its composition is mala fide, aimed at reinstating a previously favourable CoC that approved a non-compliant, conditional plan. The Applicants, comprising homebuyers, are already represented through an Authorised Representative under Section 21(6A) of the Code. As PRAs, they are not entitled under Section 60(5) of the IBC to seek directions regarding CoC composition, and such relief is legally untenable.

13. The Respondents stated that the RP reconstituted the CoC in accordance with law and with the knowledge of the CoC, following approval of four project-wise Resolution Plans by this Tribunal vide orders dated 14.08.2024 in IA(IBC)/215/KOB/2024, IA(IBC)/216/KOB/2024, IA(IBC)/Plan/02/KOB/2024, and subsequently on 20.12.2024 in IA(IBC)/Plan/04/KOB/2024. Pursuant to these binding orders, the RP rightly excluded



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creditors whose claims were resolved under the approved plans, as they no longer remain stakeholders of the Corporate Debtor. Under Section 31 of the IBC, upon plan approval, such claims stand extinguished, and it would be illegal to continue assigning voting rights under Section 5(28) to creditors whose debts have been settled.

14. The Respondents stated that the CoC's term concluded on 30.09.2024, by which time all six Resolution Plans had been filed before this Tribunal, and the RP also filed IA(IBC)/Liq/08/KOB/2024 for liquidation of remaining assets, based on the 17th CoC decision dated 30.07.2024. As per Section 23(1) of the IBC, the RP is mandated to continue the CIRP and convene CoC meetings as required until all plans are approved or liquidation is ordered. The Applicant homebuyers participated in both the 17th and 18th CoC meetings, where the reconstitution was discussed under Agenda Item A-6, and the RP clarified that creditors whose plans were approved have no right to remain in the CoC. This was noted without objection. Having accepted the reconstitution then, the Applicants now seek to challenge it in a different capacity as PRAs, which is impermissible under the IBC and lacks precedent.

15. The Respondents further stated that the Corporate Debtor was admitted into CIRP by this Tribunal on 03.11.2021 in CP(IBC)/05/KOB/2021, with ten ongoing real estate projects. Initially, an EOI for a holistic Resolution Plan was issued on 09.06.2022, but no compliant plans were received. Following the



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insertion of Regulation 37(m) in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, effective from 16.09.2022, which allows project-wise/asset-wise Resolution Plans, the RP, based on the CoC's decision, published a second EOI on 12.11.2022 permitting submission of such plans. In response, six PRAs submitted project-wise Resolution Plans for the following projects:

SL. No.	Project Name	Name of PRA
1	Angel Woods JDA	Angel woods Apartment Allotees Association
2	Orchid Valley	Orchid Valley Apartment Buyers Association
3	Pearl Crest -JDA	Pearl Crest Apartment Buyers Association
4	Sanctuary	Sanctuary Apartment Owners Association
5	Nova Castle	Nova Castle Apartment Owners Association
6	Sharon Hills 1	Sharon Hill Residents Association

16. The Respondents stated that out of the six Resolution Plans received, only three plans submitted by (i) Angel Woods Apartment Allotees Association, (ii) Orchid Valley Apartment Buyers Association, and (iii) Pearl Crest Apartment Buyers Association were found compliant with the provisions of the IBC, 2016. The Applicants placed all compiled Resolution Plans before the CoC in its 10th meeting held on 27.01.2023 and 02.02.2023. Due to non-compliance of the remaining three plans, the CoC in its 11th meeting held on 04.04.2023 resolved not to proceed with voting until all plans were compliant, and further resolved to seek a 90-day extension, which was supported by 77.31% voting share.



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Accordingly, RP filed IA(IBC)/157/KOB/2023 on 15.04.2023 seeking such extension. However, as this Tribunal indicated that no further extension would be granted, the CoC in its 12th meeting held on 14.04.2023 approved the three compliant plans under Regulation 37(m) and the Applicant filed the following applications for their approval: (a) IA(IBC)/214/KOB/2023 for Pearl Crest Project, (b) IA(IBC)/215/KOB/2023 for Orchid Valley Project, and (c) IA(IBC)/216/KOB/2023 for Angel Woods Project. It is further stated that this Tribunal, vide order dated 26.04.2023, dismissed the extension application IA(IBC)/157/KOB/2023 and directed initiation of Liquidation, and consequently, dismissed the applications IA(IBC)/214/KOB/2023, IA(IBC)/215/KOB/2023, and IA(IBC)/216/KOB/2023 for the approval of Resolution Plans as infructuous on 02.06.2023.

17. The Respondents stated that homebuyers filed appeals before the Hon'ble NCLAT in CA(AT)(CH)(INS) 192/2023, 214/2023, 215/2023, and 212/2023 seeking to set aside the liquidation order passed in IA(IBC)/157/KOB/2023. The Hon'ble NCLAT, vide order dated 02.05.2024, allowed the appeals, set aside the liquidation order, and granted a further period of 90 days to the Resolution Professional to complete the CIRP. Pursuant thereto, the RP convened the CoC meeting on 07.05.2024, wherein the CoC resolved to grant 10 days' time to the PRAs listed in the final list dated 18.12.2022 to submit project-wise Resolution Plans. Out of the 8 PRAs, four PRA's namely Angel Woods Apartment Allottees Association, Orchid Valley Apartment Buyers Association, Nova



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Castle Apartment Owners Association, and Sharon Hill Residents Association, did not submit modified plans, instead requesting reinstatement of their earlier submissions. The remaining two PRAs, including Pearl Crest Apartment Buyers Association and Sanctuary Apartment Owners Association, submitted revised project-wise Resolution Plans.

18. The Respondents stated that since the Resolution Plans for the projects "Angel Woods" and "Orchid Valley" were approved by the 12th CoC held on 14.04.2023 with 71.26% and 80.32% voting respectively, the Resolution Professional filed RA(IBC)/2/KOB/2023 for restoration of IA(IBC)/216/KOB/2023 (Angel Woods) and RA(IBC)/3/KOB/2023 for restoration of IA(IBC)/215/KOB/2023 (Orchid Valley) and this Tribunal vide order dated 31.05.2024 allowed the restoration applications.
19. The Respondents further stated that with respect to the "Pearl Crest" project, disputes between the landowner and homebuyers prevented consensus on the initial plan. Following the liquidation order, both parties reached an agreement and submitted a revised Resolution Plan, which was approved by the CoC with 68.30% voting rights in its 15th meeting held on 11.06.2024. The RP has filed IA(IBC)/Plan/2/KOB/2024 for approval of the same. Meanwhile, Resolution Applicants for the "Nova Castle," "Sanctuary," and "Sharon Hills 1" projects filed applications IA(IBC)/257/KOB/2024, IA(IBC)/265/KOB/2024, and IA(IBC)/279/KOB/2024 respectively, seeking various reliefs. On 16.07.2024, this Tribunal directed the RP to place all non-



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compliant plans before the CoC, which approved the plans for these three projects with 71.30% voting rights in the 17th CoC meeting on 30.07.2024. As the extended CIRP period was expiring on 31.07.2024, this Tribunal granted a further extension of 60 days till 30.09.2024 vide order dated 01.08.2024 (IA(IBC)/331/KOB/2024). The RP invited EOI for the balance assets but received none. Subsequently, the RP filed applications IA(IBC)(Plan)/3/KOB/2024, IA(IBC)(Plan)/4/KOB/2024, and IA(IBC)(Plan)/5/KOB/2024 for approval of the Resolution Plans of "Nova Castle," "Sanctuary," and "Sharon Hills-I" projects respectively on 03.09.2024. Since no EOI was received for the remaining assets, the RP informed the 19th CoC on 26.09.2024 about filing the liquidation application for the balance assets as approved in the 17th CoC with 71.30% voting rights and accordingly filed IA(IBC)/Liq/08/KOB/2024 for liquidation.

20. The Respondents stated that the constitution of the 17th CoC as on the date of approval of the Resolution Plan was as follows:

Sl. No.	Name of FC (secured/unsecured)	Voting Percentage
1	Kerala Financial Corporation (Secured FC)	19.48%
2	State Bank of India (Secured FC)	9.05%
3	Unsecured Financial Creditors belonging to Class of Creditors Home Buyers	68.30%
4	Unsecured Financial Creditors belonging to Class of Creditors Deposit Holders	3.00%
5	Toyota Financial Services India Ltd - Secured Financial Creditor	0.17%
	Total	100%

21. The Respondents stated that this Tribunal approved the three Resolution Plans for the projects "Orchid Valley," "Angel Woods," and "Pearl Crest" in IA(IBC)/216/KOB/2023,



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IA(IBC)/215/KOB/2023, and IA(IBC)(PLAN)/2/KOB/2024 respectively, vide order dated 14.08.2024. Further, pursuant to such approval, the RP reconstituted the CoC in the 18th meeting held on 31.08.2024 by excluding the claims of homebuyers pertaining to the approved Resolution Plans of these three projects as follows:

Sl. No.	Name of FC (secured/unsecured)	Revised Voting Percentage as on 14.08.2024 after excluding the stakeholders of resolution plans approved by Hon'ble NCLT
1	Kerala Financial Corporation (Secured FC)	24.66%
2	State Bank of India (Secured FC)	11.45%
3	Unsecured Financial Creditors belonging to Class of Creditors Home Buyers	59.92%
4	Unsecured Financial Creditors belonging to Class of Creditors Deposit Holders	3.75%
5	Toyota Financial Services India Ltd - Secured Financial Creditor	0.22%
	Total	100%

22. The Respondents stated that this Tribunal approved the Resolution Plan for the project "Sharon Hills-1" in IA(IBC)(Plan)/4/KOB/2024 vide order dated 21.12.2024; however, no further CoC meeting has been convened since and stated that if directed by this Tribunal to convene any further CoC, the same shall exclude homebuyers of projects with approved Resolution Plans, as such claimants whose debts are satisfied have no legal right to participate in the CoC. It is further stated that the contentions and relief sought by the Applicants in this application are incorrect. The Applicants have already raised similar grounds in IA(IBC)/257/KOB/2024 and IA(IBC)/265/KOB/2024, rendering the present application



barred by res judicata. With regard to the RP's fees, a separate application filed by RP, IA(IBC)/34/KOB/2025, is pending before this Tribunal.

ANALYSIS AND FINDINGS:-

23. We have heard both sides and also gone through the records. This is a case of multiple real estate projects initiated by the Corporate Debtor, and on commission of default and upon application under section 7 of the Insolvency and Bankruptcy Code, 2016, filed by the Financial Creditors, proceedings under section 7 of the Insolvency and Bankruptcy Code, 2016, were initiated. Initially, Expression of Interest was called for entire consolidated projects, but subsequently, after the insertion of Regulation 37(m) in IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (effective from 16.09.2022), a Project-wise resolution was made possible, and accordingly, Expression of Interest was called again for individual projects. Plans were received from the homebuyers of six projects. Three Resolution Plans submitted by the Apartment Allottees' Associations for Angel Woods, Orchid Valley, and Pearl Crest were found compliant and approved by the CoC in its 12th meeting held on 14.04.2023. For the remaining projects, due to non-compliance, the CoC sought extension, which, having been declined by this Tribunal, resulted in an order of liquidation. But Hon'ble NCLAT was pleased to set aside the liquidation order and directed the Resolution Professional to complete the CIRP process. Meanwhile, there was a dispute between the landowners



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and homebuyers in respect of the project popularly known as “Pearl Crest.” Ultimately, upon mutual settlement, the CoC approved the revised plan of the Pearl Crest Project as well, on 11.06.2024, in its 15th CoC meeting. Thereafter, project-wise plans for Nova Castle, Sanctuary, and Sharon Hills-I were considered and approved by the CoC in its 17th meeting held on 30.07.2024. All CoC-approved plans were submitted to this Adjudicating Authority, which has since approved four Resolution Plans, namely, Angel Woods, Orchid Valley, Pearl Crest, and Sharon Hills-1. The details of the approved Resolution Plan are as under:

Name of the Project	Case Number	Date of CoC approval	Date of NCLT approval
Angel Woods	IA(IBC)/215/KOB/2023	14.04.2023	14.08.2024
Orchid Valley	IA(IBC)/216/KOB/2023	14.04.2023	14.08.2024
Pearl Crest	IA(IBC)(PLAN)/02/KOB/2024	11.06.2024	14.08.2024
Sharon Hills-1	IA(IBC)(PLAN)/04/KOB/2024	30.07.2024	20.12.2024

24. So, in a nutshell, out of the total six projects, four have already been approved, and for two projects, various applications are pending. This present application has been filed by the apartment owners' association of “Nova Castle” and “Sanctuary”, seeking various reliefs. The Applicants have objected to the reconstitution of the CoC by the RP after approval of the abovementioned Resolution Plans and have requested for restoration of the original composition of CoC, and inclusion of the homebuyers'



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associations who were part of the original CoC. The RP, on the other hand, has justified the reconstitution of CoC.

25. We have considered various aspects of this case in the light of provisions of the Insolvency and Bankruptcy Code, 2016, rules and regulations framed thereunder, and the objective of the constitution of CoC. It is important to note that we are not going into the merits of pending plans, and no observations made in this order would have any bearing on the pending litigation and plans already approved. Let us confine to the reliefs claimed in this Application only.

26. It is a fact that in the 18th CoC meeting held on 31.08.2024, the financial creditors decided to reconstitute the CoC upon approval of certain Resolution Plans. The relevant agenda in the said CoC meeting is as under.

ITEM NO. A-6
COMMITTEE OF CREDITORS WITH VOTING SHARE AS PER THE REVISED LIST AS ON 14-08-2024

RP informed the CoC that based on the approval of the Resolution plans of Angel Woods, Orchid Valley and Pearl Crest the Committee of Creditors and their voting rights were revised along with the revision/ reconstitution of the CoC. The detailed revised creditors list as on 14.08.2024 is attached as Annexure 2.

Sl. No.	Financial Creditors	Address	Amount of claim admitted (₹)	% of Voting Rights
1	State Bank of India-Secured Financial Creditor	Stressed Asset Recovery Branch, LMS Compound, Near Museum, Vikas Bhavan P O, Thiruvandhapuram-695033	14,94,01,359	11.45%
2	Kerala Financial Corporation-Secured Financial Creditor	Vellayambalam, Thiruvandhapuram-695033	32,16,57,547	24.66%
3	Toyota Financial Services India Ltd-Secured Financial Creditor	1st Floor, Centropolis No. 21, Langford Road, Richmond Town, Bangalore-560025	28,11,083	0.22%
4	Unsecured Financial Creditors Belonging to home buyers class of creditors	Represented by Authorised representative Mr. Vibin Vincent, Insolvency Professional	78,16,08,271	59.92%
5	Unsecured Financial Creditors Belonging to Deposit holders	Represented by Authorized representative Mrs. Celine P Thomas, Insolvency Professional	4,88,92,868	3.75%
TOTAL			1,30,43,71,128	100.00%

OPERATIONAL CREDITORS CONSTITUTING MORE THAN 10% OF THE ADMITTED DEBT

Sl. No.	NAME	% of debt over the admitted debt	% of Voting
	NA	Nil	Nil



In this regard AR of Home Buyers raised a concern whether the list can be revised on approval of the project wise resolution plan which RP clarified that since the claimants of the approved projects are being settled by SKA as per their Resolution plan on future dates and



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the moratorium for the approved projects also ended on 14.08.2024 and they are not creditors of the company, hence revised the list and CoC, w.e.f 14.08.2024.

Members took note of the same.

27. The following financial creditors were present at the said CoC meeting. The roll call recorded in the minutes of the 18th CoC meeting dated 31.08.2024 is reproduced as under:

ROLL CALL OF PARTICIPANTS INCLUDING THOSE ATTENDING THROUGH VIDEO CONFERENCING OR AUDIO-VISUAL MEANS.

As per the provisions of Regulations 24(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for corporate Persons) Regulations 2016, the Resolution Professional took roll call of every participant including those attending through video conferencing or Audio-Visual means.

At the commencement of the meeting, the Chairperson took a roll call of the participants attending the meeting, requesting them to place their names along with designation and name of institution in the chat box enabled at the video conferencing platform and ascertained the compliances with the provisions of Regulation 24(2) of the CIRP Regulations.

Sl. No.	Financial Creditors	Amount of claim admitted (₹)	% of Voting Rights	Present	Absent
1	State Bank of India-Secured Financial Creditor - Represented by Mr.	14,94,01,359	11.45%	11.45%	

	Velayudhan- AGM of SARB Trivandrum				
2	Kerala Financial Corporation-Secured Financial Creditor- Represented by DGM Mr. Anil John Abraham	32,16,57,547	24.66%	24.66%	-
3	Toyota Financial Services India Ltd-Secured Financial Creditor - Represented by Mr. Vivek Kumar and Mr. Panduranga Kini	28,11,083	0.22%	-	0.22%
4	Unsecured Financial Creditors Belonging to home buyers class of creditors - Represented by Mr. Vibin Vincent	78,16,08,271	59.92%	59.92%	-
5	Unsecured Financial Creditors belonging to Deposit holders- Represented by Ms. Celine P Thomas	4,88,92,868	3.75%	3.75%	-
	TOTAL	1,30,43,71,128	100.00%	99.78%	0.22%



28. So, the representatives of both the Applicants were present at the time CoC decided on its reconstitution. Now question before us is whether, at this stage, Applicants can file an application for the restoration of the earlier CoC, against the decision of the CoC taken in a meeting duly represented by the Applicants. In our opinion, the answer would be negative. If the Applicants had any grounds, they should have raised them in the meeting itself once there was an agenda for the reconstitution of the committee.
29. Secondly, the person or the secured financial creditors or homebuyers whose names have been removed from the CoC would be the aggrieved persons by the decision of the CoC. The said persons have not come to this Adjudicating Authority to question the validity of the decision taken by the CoC for its reconstitution and removal of their names. If the person whose name has been removed is not aggrieved with such action, in our opinion, the Applicants have no right to agitate on behalf of the third person.
30. At this juncture, we would like to reproduce Section 21(4) (a) of the Insolvency and Bankruptcy Code,2016:

21. Committee of creditors.—

(4) Where any person is a financial creditor as well as an operational creditor,-

(a) such person shall be a financial creditor to the extent of the financial debt owed by the corporate debtor, and shall be included in the committee of creditors, with voting share proportionate to the extent of financial debts owed to such creditor;

31. The entire scheme of Insolvency and Bankruptcy is a creditor-driven process where the commercial wisdom of creditors will prevail, and due importance has been given to such wisdom. The Courts are refraining themselves from interfering into the said



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commercial wisdom except in exceptional cases, where there is gross negligence or an element of fraud or non-compliance of certain other conditions as stipulated in the Insolvency and Bankruptcy Code,2016. But primarily, the commercial wisdom of CoC would prevail. It is a settled proposition of law that the creditors have voting rights proportionate to their stake. So, the stake of creditors would govern the voting rights and the importance of the said creditors. The higher is their stake, the larger would be the voting percentage. The Insolvency and Bankruptcy Code,2016, has been founded on a principle of giving rights to different creditors in a mathematical manner, and there is no discretion or advantage of size, capabilities, or possession of other material infrastructure. Even a small company having a big stake in a particular case would have more importance and more voting rights than a leading nationalized bank or a creditor with a big balance sheet. So, the existence of stake at a given time is a very important aspect for the purpose of the constitution of CoC. The legislature, in its own wisdom, has devised this mechanism to ensure prudent, practical, and genuine decisions by the CoC during the insolvency process. A person having a stake would not do anything or take any decision that may harm their own interest. And CoC is a mechanism for collective decision-making by all the creditors for the effective resolution of their dispute with the debtor.

32. Now coming to the present case, upon approval of the Resolution Plans of some of the projects, the home buyers of the said plans or



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said project ceased or lost their interest in the Corporate Debtor and resolution process and consequently in the CoC. Once they have no interest in the remaining assets or projects, any decision taken by them would not come within the ambit of financial creditors and commercial wisdom as required and expected under the provisions of the Insolvency and Bankruptcy Code, 2016. So, the restoration of the committee of Creditors to its original status, as prayed by the Applicants, if allowed, would go against the basic spirit of the Insolvency and Bankruptcy Code, 2016, and no such restoration of the earlier Committee of Creditors can be allowed as prayed for.

33. Accordingly, the application, **IA(IBC)/243/KOB/2025** merits dismissal and the same is **dismissed** with a cost of **Rs. 1,00,000/-** to be deposited with the National Defence Fund.
34. The Registry is directed to send e-mail copies of this order forthwith to all the parties and their Learned Counsels for information and for taking necessary steps.
35. Let the certified copy of the order be issued upon compliance with the requisite formalities.
36. File be consigned to records.

Sd/-
MADHU SINHA
(MEMBER TECHNICAL)

Sd/-
VINAY GOEL
(MEMBER JUDICIAL)

Signed on this the 12th day of November, 2025.

At*steno D

Certified to be True Copy

