NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1958 of 2026
& I.A. No.7424 of 2026

IN THE MATTER OF:

NKAY Investment **...Appellant(s)**

Versus

Jayesh Sanghrajka & Ors. **...Respondent(s)**

Present:

For Appellant(s) : Mr. Shreyas U. Lalit, Mr. Himanshu Vats, Mr. Aviral Mishra, Advocates.

For Respondent(s) : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Arpit Dwivedi, Ms. Sakshi Kapoor, Advocates for R-1.
Mr. Krishnendu Datta, Sr. Advocate and Mr. Gaurav Mitra, Sr. Advocate with Mr. Sagar Bansal, Ms. Pratiksha Mishra, Mr. Vishnu Shriram, Ms. Alina Merin Mathew, Mr. Rohitash Tak, Mr. Shubham Saini, Ms. Vidisha Tanna, Mr. Govinda Asana, Advocates for R-2.
Mr. Abhishek Anand, Ms. Palak Kalra, Ms. Shruti Srivastava, Advocates for R-3.

With
Comp. App. (AT) (Ins) No. 1858 of 2026

IN THE MATTER OF:

Sunil Madhavdas Ahuja & Ors. **...Appellant(s)**

Versus

Jayesh Sanghrajka & Ors. **...Respondent(s)**

Present:

For Appellant(s) : Mr. Ashim Sood, Mr. Shreyas U. Lalit, Mr. Himanshu Vats, Mr. Aviral Mishra, Mr. Lavam Tyagi, Mr. Angad Pahel, Ms. Tvesiya Gupta, Mr. Senu Nizar, Mr. Amani Ahuja, Advocates.

For Respondent(s) : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Arpit Dwivedi, Ms. Sakshi Kapoor, Advocates for R-1.
Mr. Krishnendu Datta, Sr. Advocate and Mr. Gaurav Mitra, Sr. Advocate with Mr. Sagar Bansal, Ms. Pratiksha Mishra, Mr. Vishnu Shriram, Ms. Alina Merin

Mathew, Mr. Rohitash Tak, Mr. Shubham Saini, Ms. Vidisha Tanna, Mr. Govinda Asana, Advocates for R-2. Mr. Abhishek Anand, Ms. Palak Kalra, Ms. Shruti Srivastava, Advocates for R-3.

O R D E R
(Hybrid Mode)

[Per: Justice Mohd. Faiz Alam Khan, Member (Judicial)]

During the hearing on 13.10.2026, Learned Counsel for the Respondents at the outset had raised a preliminary issue that the Appellants being a shareholder is having no locus to file the appeal for challenging the plan approved by the CoC as well as by the Ld. Adjudicating Authority.

2. We have heard Mr. Ashim Sood, Learned Counsel for the Appellant as well as Mr. Abhijeet Sinha, Learned Senior Counsel appearing for the Resolution Professional, Mr. Krishnendu Datta, Learned Senior Counsel for the Respondent No.2 – Successful Resolution Applicant and Mr. Abhishek Anand, Learned Counsel for the CoC, on the limited issue of maintainability of the appeals and perused the record.

3. Company Appeal (AT) (Ins.) No. 1858 of 2026 has been filed by the Appellants who are claiming to be the minority shareholders of the CD and as per their contention, together hold approximately 20% of the equity share capital of the Corporate Debtor, against the order dated 03.09.2026 (Impugned Order) passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench-I in IA (IBC)(PLAN) No. 42 of 2026 in CP (IB) No. 291 of 2023, whereby the Resolution Plan dated 12.03.2026, as clarified on 07.05.2026, submitted by Respondent No. 2, Shree Naman Developers Private Limited (SRA), for Gstaad Hotels Private Limited (Corporate Debtor) was approved under Section 31(1) of the Insolvency and Bankruptcy Code,

2016 (Code), whereby the entire existing equity share capital of the Corporate Debtor was extinguished and vests 100% of the equity in the SRA or its Implementing Entity.

4. Company Appeal (AT) (Ins.) No. 1958 of 2026 has been filed by the Appellants who are claiming to be the minority shareholders of the CD and as per their contention holding approximately 10% of the equity share capital of the Corporate Debtor arises out of the order dated 03.09.2026 (Impugned Order) passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench-I in IA (IBC)(PLAN) No. 42 of 2026 in CP (IB) No. 291 of 2023, whereby the Resolution Plan dated 12.03.2026, as clarified on 07.05.2026, submitted by Respondent No. 2, Shree Naman Developers Private Limited (SRA), for Gstaad Hotels Private Limited (Corporate Debtor) was approved under Section 31(1) of the Insolvency and Bankruptcy Code, 2016 (Code). The Resolution Plan extinguishes the entire existing equity share capital of the Corporate Debtor for NIL consideration and vests 100% of the equity in the SRA or its Implementing Entity.

5. Learned Counsel for the appellant submits that the Resolution Amount of Rs. 1,611 crores exceed both the average Fair Value of Rs. 1,250.58 crores and the average Liquidation Value of Rs. 1,028.33 crores of the Corporate Debtor, and yet there is no computation under Section 30(2)(e) read with Section 53(1) of the Code showing that the available value stands exhausted before it reaches the equity shareholders and the objections raised by the Appellants in this regard in IA No. 3877 of 2026, filed before the Adjudicating Authority on 31.08.2026, were never heard, as the Ld. Adjudicating Authority

declined to defer pronouncement of the Impugned Order and thereafter disposed of that application as has become infructuous.

6. It is further submitted that the claim of Omkara Assets Reconstruction Private Limited, a secured financial creditor, on which the NIL value of the equity rests, was never independently verified, although the amount payable to Omkara rose from approximately Rs. 581.42 crores as on 31.03.2025 to approximately Rs. 1,086.93 crores as on 08.07.2025, and interest on it has been compounded monthly against the provisions contained in loan documents.

7. It is further submitted that the Impugned Order is self-contradictory, in as much as paragraph 92 of the same holds that avoidance recoveries would accrue to the shareholders while extinguishing their shares, and paragraph 101 of the same leaves the allocation of residual resolution money to shareholders to be incorporated later through an updated Form H.

8. It is further submitted that the Appellants locus standi is based on right to receive the surplus of the resolution amount under Section 53(1)(h) and this right is available to them as soon as there is a surplus amount, after settlement of dues, and the appellants as shareholders are then entitled to it. In the instant case surplus amount remained even after the claim of the financial creditors (other than related party creditors) are paid with interest and therefore Appellants, as shareholders, have a right to that surplus amount and are interested parties/stakeholders in the Resolution Plan and fall within the definition of aggrieved person in view of the principle of *Ubi jus ibi remedium*. Reliance in this regard has been laid on **Sardar Amarjit Singh Kalra v. Pramod Gupta, (2003) 3 SCC 272, para 33)**, **Embassy Property**

Developments (P) Ltd. v. State of Karnataka, (2020) 13 SCC 308, in order to project that the Appellants have locus standi irrespective of the final outcome of the Appeal.

9. It is further submitted that the Resolution Plan does not comply with Section 53(1)(h) of the IBC, as it does not provide for the surplus to be distributed to the shareholders. In this regard reference is given of Clause 11 of the Resolution Plan and it is submitted that Such violation of the Appellants' statutory right entitles them to take recourse under the law by filing the appeal under Section 61 of the Code before this Appellate Tribunal and the alleged modifications carried out by the Ld. Adjudicating Authority.

10. It is further submitted that Ld. Adjudicating Authority has materially erred in altering the financial proposal of the CoC-approved Resolution Plan by directing payments to related party creditors and such payments are expressly barred by Clause 12 of the Plan which provides that no payment shall be made under this Resolution Plan to any Person who is a Related Party of the Corporate Debtor in respect of any Debt. Once a plan is approved under Section 31(1), it binds all the stakeholders, and its terms cannot be modified by the adjudicating authority, the CoC or the successful resolution applicant. Reliance in this regard is laid on **SBI v. Murari Lal Jalan & Florian Fritsch (Consortium), (2025) 4 SCC 354, para 125), Mathuraprasad C. Pandey v. Partiv Parikh, 2022 SCC OnLine NCLAT 1608, M.K. Rajagopalan v. Periasamy Palani Gounder, (2024) 1 SCC 42.**

11. It is further submitted that the Hon'ble Supreme Court has held in various cases that that the expression "any person aggrieved" in Section 61 of the should be given wide interpretation. The law propounded in

Independent Sugar Corpn. Ltd. v. Girish Sriram Juneja, (2025) 5 SCC 209, GLAS Trust Co. LLC v. BYJU Raveendran, (2025) 3 SCC 625, Balkishan Shrikisan Baldawa v. AgriTech (India) Ltd., 2025 SCC OnLine NCLAT 2062 and **Kalyani Transco v. Bhushan Power and Steel Ltd., (2026) 6 SCC 431** were highlighted.

12. It is further submitted that the before filing this Appeal, the Appellants wrote to the RP several times seeking a detailed break-up of the distribution in terms of the Impugned order but no response was given and it is only when this Appeal was filed the RP filed an affidavit of the SRA with an updated Form H, disclosing the breakup and the surplus available to shareholders for the first time. The Appellants were thus never given an opportunity to address the basis on which the Impugned Order proceeds and even if it is assumed that there is no modification of the Plan, as the Respondents contend, that does not affect the Appellants locus standi as the moment there is a surplus, shareholders can be aggrieved by its treatment, therefore appellant is having every locus to challenge the plan.

13. Learned Counsel for the respondents submits that Appellants being shareholders does not have locus to challenge the Impugned Order by way of which the Resolution Plan has been approved under Section 31 of IBC. It is admitted to the Appellants that they are equity shareholders of the Corporate Debtor and being mere 'shareholders' they do not have any locus to challenge an order approving the Resolution Plan. Ld. Counsels have relied on **Prateek Jain v. Anurag Nirbhaya, 2026 SCC OnLine NCLAT 1180 (Para 15), Shashi Galada v. Nitin Vishwanath Panchal & Anr. 2025 SCC OnLine NCLAT**

1397 and also judgments of the Hon'ble Supreme Court **in BYJU Raveendran** and of this this Appellate Tribunal in **Park Energy**.

14. It is for this submitted that the fact, that the Resolution Plan provides for payment of surplus amount to all creditors and stakeholders including shareholders cannot provide any locus to the Appellant to file an appeal, since the payment is prescribed only as a treatment of the surplus amount in terms of Section 53 of the Code. The distribution of surplus cannot not change the status of the Appellants who will remain the shareholders and therefore has no locus.

15. It is also submitted that the judgment of this Appellate Tribunal **in Ravi Shankar Vedam v. Tiffins Barytes Asbestos & Paints Ltd., 2023 SCC OnLine NCLAT 274 (Para 27 and 28),** has held that permitting shareholders to challenge the Resolution Plan or raise objections against its approval would "render the Explanation to Section 30(2) redundant" and under the Code the shareholders have limited role and are confined to co-operating with the Resolution Professional under Section 19 of the Code and are entitled to receive the liquidation value of their equity, only in accordance with Section 53 of the Code.

16. It is further submitted that the Appellants' grievance that the Impugned Order extinguishes their equity shareholding in the Corporate Debtor for NIL consideration is not tenable as this issue has already been set at rest by this Appellate Tribunal **in Peninsula Holdings and Investments Pvt. Ltd. v. JM Financial Credit Solutions Ltd., CA (AT) (Ins) No. 1393 of 2025 at Paras 36, 38 and 45-48** and in the plan the shareholders are receiving a residual

cash amount of INR 90,12,66,290 (calculated as of 01.10.2026),in accordance with Clause 1.10.6 r/w Clause 8.1.5 of the Resolution Plan.

17. It is further submitted that the Appellants' primary contention on merits is pertaining to the admitted inflated claim submitted by Omkara beyond the loan documents is also set at rest, as subsequent to the filing of the present Appeal, this contention has been considered and rejected by the Hon'ble Supreme Court in its order dated 15.10.2026 passed in Civil Appeal No. 12195 of 2025 (Deepak Raheja vs. Omkara Asset Reconstruction Company Limited & Ors).

18. It is lastly submitted that the Appellants' contention that the Resolution Plan proposes nil consideration for shareholders is factually incorrect and legally unsustainable. Under **Clause 8.1.5** of the Resolution Plan, any residual funds remaining after the full settlement of all creditor claims and interest has to go to the shareholders. In compliance with the NCLT's directives given under Paragraph 101 of the Impugned Order, the Resolution Professional filed an updated Form H and affidavit on 30 September 2026 outlining this shareholder allocation. Following the full implementation of the plan on 01 October 2026 (officially recorded by the NCLT on 05 October 2026), a precise surplus of **₹90,12,66,290** was successfully realized and is currently deposited in a separate account, ready for distribution as soon as shareholders will provide their bank details.

19. Section 61(1) of the Code provides that any person aggrieved by an order of the Adjudicating Authority may prefer an appeal to this Appellate Tribunal. The expression "person aggrieved" is not defined in the Code. Its scope has

been the subject of authoritative pronouncements of this Tribunal and the Hon'ble Supreme Court.

20. In **Sardar Amarjeet Singh Kalra (Supra)** the case was related to the Land Acquisition Act and in the background of the provision contained under Order 22 of the Code of Civil Procedure, it is highlighted that the procedure is the handmaid of justice and the aim of the court should be to protect and preserve the rights of the parties. Why, in the case at hand, we will have to decide at first as to whether the appellants have any locus, being simply shareholders to challenge the impugned order whereby the plan has been approved by the adjudicating authority.

21. Learned Counsel for the appellant has relied on paragraph number 11 of the **Embassy Properties (supra)**, wherein the Hon'ble Supreme Court has highlighted that the IBC is a complete code in itself, and any order which has been passed by the adjudicating authority is to be challenged before the NCLAT and the order passed by the NCLAT may be challenged before the Hon'ble Supreme Court and thereafter, the Hon'ble Supreme Court has discussed and adjudicated the jurisdiction of the adjudicating authority. We fail to understand as to in what manner this law would be helpful to the Appellant. The law is well settled that appeal is a creation of the statute, and the right of appeal is to be regulated by the provisions contained in any Act, subject to the interpretation given with regard to such provisions by the courts.

22. Thus, before entering into the merits of the appeal, we will have to adjudicate on the limited issue of the locus of the appellant in filing the instant appeal against the approval of the resolution plan by the RBI SARFAESI and

non-consideration of the objections filed by the appellant being simpliciter shareholders.

23. In **Mr. Keshav Agrawal v. Abhijit Guhathakurta RP of Videocon Industries Ltd., (2021) ibclaw.in 445 NCLAT**, one of the issues for consideration was, whether a shareholder could challenge approval of the resolution plan on the ground of non-compliance with Section 66 of the Companies Act, 2013 and the cited SEBI Regulations and considered the Position of shareholders in the CIRP process as under: -

> ***"8.*** *Counsel for the Respondent No. 1 also drew our attention towards the explanation which provides that "for the purpose of clause (e) of Sub- Section 2 of Section 30 of the IBC if any approval of shareholder is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the Resolution Plan, such approval shall be deemed to have been given and it shall not be contravention of the Act or Law. Thus, there is deeming provisions in regard to compliance of the provisions of Section 66 of the Companies Act, 2013 and SEBI Regulations. Therefore, it cannot be said that the Resolution Plan is approved in contravention of provisions of Section 66 of the Companies Act, 2013 or any other law for the time being in force.*
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> ***9.*** *We have considered the submissions of Ld. Counsels for the parties. We would like to refer the Judgment of Hon'ble Supreme Court in the case* of ***Jaypee Kensington Boulevard Apartments Welfare Association and Ors. (Supra)*** *in Para 376 to 383 held that: -*
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> *"376. Having given anxious consideration to the rival submissions, we are clearly of the view that objections sought to be taken by the minority shareholders must fail.*
>
> *379. As noticed, by way of Explanation to Section 30(2)(e) of the Code, it has been made clear by the legislature that if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law. The attempt on the part of minority shareholders to raise objection*

against the resolution plan simply flies in the face of this Explanation to Section 30(2)(e) of the Code.

380. Needless to reiterate that in the scheme of IBC, only the CoC is entrusted with the task of dealing with and approving the plan of insolvency resolution; and the shareholders of a corporate debtor, who is already reeling under debts, have not been provided any participation in the insolvency resolution process. It goes without saying that in the case of a corporate debtor like JIL, if the process of liquidation is resorted to under Chapter III of the Code, there is a very little likelihood of the shareholders getting even dewdrops out of the waterfall of distribution of assets, as delineated in Section 53 of the Code, where the preference shareholders and equity shareholders stand last in the order of priority. In the totality of circumstances, when the promoters' shareholding is extinguished and cancelled in toto without any consideration, even nominal exit price of INR 1 crore for minority shareholders cannot be termed as unfair or inequitable. In any case, a decision in regard to the aforesaid step in the resolution plan had been that of the commercial wisdom of the Committee of Creditors and is not amenable to judicial review."

24. A coordinate Bench of this Appellate Tribunal in **Dr. Ravi Shankar Vedam v. Tiffins Barytes Asbestos and Paints Ltd. & Ors., 2023 SCC OnLine NCLAT 274** held that the Code marks a distinct shift from the "debtor-in-possession" to the "creditor-in-control" model; shareholders have only a limited role of cooperating with the Resolution Professional under Section 19; they are entitled, at best, to the residual value of equity under Section 53 in the event of liquidation; and they have no locus standi to challenge an approved Resolution Plan. The Explanation to Section 30(2)(e) providing for deemed approval of shareholders was held to reinforce this position. The Civil Appeal No. 5516/2023, ***Ravi Shankar Vedam v. Tiffins Barytes Asbestos and Paints Ltd. and Ors., (2023) ibclaw.in 384 SC***)

preferred against the said judgment was dismissed by the Hon'ble Supreme Court on 06.11.2023.

25. **In Clarion Health Food LLP v. Goli Vada Pav Pvt. Ltd. and Anr., (2024) ibclaw.in 763 NCLAT**, one of the issue was as to "Whether a majority shareholder of the corporate debtor is a "person aggrieved" under Section 61 of the Insolvency and Bankruptcy Code, 2016 and has locus to appeal against an order admitting a Section 9 application." ***Clarion Health Food LLP v. Goli Vada Pav Pvt. Ltd. and Anr.,*** This Appellate Tribunal examined Sections 3(23), 5(20), 5(21), 6, 9, and 61 of the Code and noted that Section 3(23) defines "person" broadly and includes an individual, which can include a shareholder in a wide sense, but Section 6 restrictively specifies who may initiate CIRP: a financial creditor, an operational creditor, or the corporate debtor itself. The Tribunal recorded the appellant's argument that, because continuation of CIRP would adversely affect its financial interests as majority shareholder, it should be treated as a "person aggrieved" under Section 61 and after considering the statutory scheme and precedents held that the appellant, being a shareholder of the company, was not the aggrieved party within the meaning of the Code and has no locus to file the appeal. It was further held that the appellant's status as majority shareholder did not confer standing to challenge admission of CIRP under Section 9 and that the Code does not treat shareholders or investors as "persons aggrieved" for this purpose.

26. A Larger Bench of this Tribunal in **Park Energy Private Limited v. State Bank of India & Anr., (2025) ibclaw.in 636 NCLAT**, after considering conflicting views of coordinate Benches, authoritatively held that a

shareholder or promoter does not fall within the ambit of “person aggrieved” under Section 61 of the Code and has no locus to maintain an appeal challenging orders passed in the Corporate Insolvency Resolution Process. The Larger Bench observed that permitting individual shareholders to maintain such proceedings would run contrary to the object of time-bound resolution under the Code and would lead to multiplicity of proceedings and also that the Special Leave Petition filed against the said decision was dismissed by the Hon’ble Supreme Court, thereby affirming the binding character of the Larger Bench ruling. In **Park Energy Private Limited (Supra),** a question on reference has come up for consideration before the larger bench of three members constituted to decide the following issue and answered the same as under: -

> ***“Whether a shareholder/promoter falls within the ambit of an “aggrieved person”, as provided under Section 61 of the I & B Code, 2016, and has a locus to challenge the order of admission of Section 7/Section 9 application, was formulated and has been referred to this 3-member Bench”.***

> *“16. We are of the considered view that when rendering a Judgment in an adjudicatory capacity, the Tribunals or the Courts, while exercising their adjudicatory powers will have to consider the rationale, and thought process, i.e., under what circumstances and backdrop a superior court has decided the matter and the interpretation made therein cannot be automatically derived to be applied to an issue until or unless, that particular issue was the specific question to be determined before the superior court, calling for an adjudication. A court decides a matter based on which is actually placed before it. In BYJU Raveendran's case, the question of the sustainability of the proceedings at the behest of the shareholder was not an issue to be decided before Hon'ble Apex Court and therefore, the limited expression given therein to the term "aggrieved person" as given in the Judgment of BYJU Raveendran cannot*

automatically be inferred to conclude that it would automatically make the proceedings to be tenable at the behest of the shareholders also. We are of the view that the ratio propounded by the Hon'ble Apex Court in the said Judgment has to be applied only in the context in which it has been rendered and that we cannot expand its applicability to the issue of whether a shareholder can be an aggrieved person which was not even the subject matter or was at all addressed before the Hon'ble Apex Court, while the aspect of determination of "the aggrieved person" was being considered by it.

17. This is to be considered from yet another perspective, as argued by the Learned Counsel for the Appellant herein, as to what would the term "any person" mean, as it had been referred to in para 75 of the Judgment of BYJU Raveendran which is extracted hereunder: -

"75. The provision stipulates that "any person" who is aggrieved by the order of the National Company Law Appellate Tribunal may file an appeal before the Supreme Court within the prescribed limitation period. Similar language is used in section 61 of the Insolvency and Bankruptcy Code, which provides for appeals to the National Company Law Appellate Tribunal from orders of the National Company Law Tribunal ["61. Appeals and Appellate Authority (1) Notwithstanding anything to the contrary contained under the Companies Act. 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal. "]. The use of the phrase "any person aggrieved" indicates that there is no rigid locus requirement to institute an appeal challenging an order of the National Company Law Tribunal, before the National Company Law Appellate Tribunal or an order of the National Company Law Appellate Tribunal, before this court. Any person who is aggrieved by the order may institute an appeal, and nothing in the provision restricts the phrase to only the applicant creditor and the corporate debtor. As noted above, once the corporate insolvency resolution process is initiated, the proceedings are no longer restricted to the individual applicant creditor and the corporate debtor but rather become collective proceedings (in rem), where all creditors, such as the appellant, are necessary stakeholders. The appellant is not an unrelated party to the corporate insolvency resolution process, but is in fact, an entity whose claims had been verified by the interim resolution professional vide letter dated August 19, 2024. The appellant who claims to be a financial creditor, has expressed reasonable apprehensions about the

prejudice it would face if there were round-tripping of the funds, and the prioritisation of the debts of the second respondent, an operational creditor".

18. Once again, the answer to the conclusion given by BYJU Raveendran Judgment (supra) as contained in para 75, would be similar to the one which has already been answered by us in the preceding paragraphs. The Hon'ble Apex Court in the para 75 above was dealing with the issue of aggrieved person, in extension to the observation already made in the preceding part of the Judgment of BYJU Raveendran. The para 75 itself cannot be exclusively extracted to be read, as if the reference made to the word "any person or aggrieved person" as considered therein will include shareholders because it was made in the context of observation made in para 42 which limits the expression to a class of creditors and therefore it would not automatically be made applicable to the shareholders too, even if the Judgment refers, the term 'person aggrieved', as "any person" who would be affected by the order. The word aggrieved person would be the person who is affected by the order, would be a person who does not have any other forum or a platform under law available to safeguard his right or interest, arising from the proceedings which are being held before the Tribunal. However as far as the interest of the shareholders is concerned, it is protected by the agent or the authority appointed by the NCLT i.e., Resolution Professional, or the liquidator, where the liquidation has been ordered and the shareholders are taken care of by the aforesaid two agents who are appointed by the court under law. Therefore, the proceedings at the behest of the shareholders, in their individual capacity will not be maintainable as in case the shareholders are permitted to maintain the proceedings under the I & B Code, it would run contrary the very object of the Code of timely resolution of insolvency, and would rather be an abuse the process, in a proceeding where time plays an important role to conclude the proceedings in a time bound basis.

19. There is another logic though we have already observed in the preceding paragraph by way of reiteration, it is once again expressed that the sustainability of the proceedings at the behest of the shareholder, would not be a reasonable proposition, which should be judicially stamped in order to provide avenue for the shareholders, to initiate and pursue the proceeding under any of the provisions of the I & B Code, particularly keeping in mind that the time frame is of a prime relevance under the provisions of the I & B Code. If the said object of permitting the shareholders to sustain the

proceedings is permitted, that will run contrary to the very object of the code itself, besides, being contrary to the interest of the decision-making process by creating to a multiplicity of proceedings which otherwise could have stood closed. Further, when the interest of the shareholder itself stands protected by the agents appointed by the Tribunal and when as we have observed above, the status of the shareholders being that of an investor, who have profit interest only in the Company, and who do not have any administrative interest or control in the exercise of administrative functions of the Corporate Debtor, the proceedings at their behest will not be maintainable.

20. Yet another argument, which has been extended by the Learned Counsel for the Appellant, though not very relevant, is that in some of the earlier proceedings, which was initiated by the shareholders, the matter has been decided on merits and a final determination has already been made. A decision taken by the Tribunal in any earlier proceedings, may be a proceeding initiated by a shareholder, but it was without going into a question of maintainability of the earlier proceedings at the behest of the shareholder or specifically deciding that question, the proceedings in itself may not make it a precedent for the Appellant to argue that in certain proceedings initiated at the behest of the shareholders, since had already been decided, that itself will not lead to an answer to the question of maintainability of the proceedings at the behest of the shareholders. More particularly, when the said question was neither raised, considered nor was ever judicially dealt with by the proceedings drawn under Section 61 or even at the stage of Section 62 before the Hon'ble Apex Court. A lis decided without specifically answering a legal question raised affecting the issue of maintainability of the proceedings cannot be taken as to as an answer, to a question, which was a question of reference made before us about maintainability of the proceedings at the behest of the shareholders, which we answered that the petition at the behest the shareholder will not be maintainable, which we have quite elaborately dealt with in the preceding paragraphs.

21. Owing to the fact that the 3-member bench of the NCLAT, Principal Bench has already answered the question in the matters of Clarion Health Food LLP (supra) and further because of the Judgment of the Hon'ble Apex Court in Byju's case, the issue no more remains res integra. A fact has been brought on record, that the Judgment rendered by the larger bench of the NCLAT, as rendered in the matters of Clarion Health Food LLP Vs Goli Vada Pav Pvt. Ltd. & Another, is

> *presently a subject matter of challenge before the Hon'ble Apex Court, but merely because of pendency of an appeal before the Hon'ble Apex Court, will not dilute the implications of the Judgment of the 3-member bench deciding the issue qua the sustainability of proceeding under Section 7 and Section 9 at the behest of the shareholders, which has been answered in negative. Hence the question referred to us is answered accordingly."*

27. In **Shashi Galada v. Nitin Vishwanath Panchal and Anr., (2025) ibclaw.in 677 NCLAT**, this appellate Tribunal considered the issue whether the appellant, approaching as shareholder/director of the Corporate Debtor, could maintain an appeal under Section 61 of the Code as an aggrieved person and held that the respondents' objection that the appellant's status throughout had been that of a shareholder and director, not promoter, and that an appeal under Section 61 at the behest of a shareholder was not tenable. It is also noted that the respondents' reliance on decisions of co-ordinate benches in ***Nirej Vadakkedathu Paul v Sunstar Hotels and Clarion Health Food LLP v. Goli Vada Pav Pvt. Ltd. & Anr.,*** and further the larger Bench judgment dated 22.07.2025 in Park Energy Private Limited Versus State bank of India & Another, holding that proceedings at the behest of a shareholder would not be maintainable. It is expressly held that, since the appellant's status was that of a shareholder, he had no right to prefer an appeal under Section 61 of the Code.

28. In **Peninsula Holdings and Investments Pvt. Ltd. v. JM Financial Credit Solutions Ltd. and Anr., (2025) ibclaw.in**, the appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 challenged the order dated 14.07.2025 by which the Adjudicating Authority admitted a Section 7 application filed by the financial creditor against the corporate debtor and

initiated CIRP, appointing an Interim Resolution Professional. The issue before this Appellate Tribunal was as to whether the appeal under Section 61 of the Code filed by the appellant, claiming to be a shareholder and preference shareholder of the corporate debtor, was maintainable in law. It is held that the question whether a shareholder can maintain an appeal under Section 61 stood conclusively settled by the three-member Bench decision in **Park Energy Pvt. Ltd. v. State Bank of India**, which laid down that proceedings at the behest of a shareholder, being merely an investor with profit interest but without administrative control or direct legal injury, are not maintainable under the IBC, and the expression person aggrieved cannot be expanded to include shareholders or investors. This Tribunal emphasized that permitting shareholders to challenge insolvency orders would defeat the object of the IBC by causing multiplicity of litigation and delay, contrary to the Code's emphasis on speedy resolution and finality and also that on admission of CIRP, Section 17 automatically transfers the management and control of the company to the IRP; the board of directors and shareholders lose authority over the affairs of the company, and the IRP/RP protects the interests of shareholders. Paragraphs 36, 37 and 38 of the same are reproduced herein below: -

> ***"36.*** *The issue of whether a shareholder can maintain an appeal under Section 61 of the IBC has been conclusively settled by a three-member Bench of this Appellate Tribunal in 'Park Energy Pvt. Ltd. v. State Bank of India (2025 SCC OnLine NCLAT 1289)'. The larger Bench examined conflicting earlier judgments and laid down a uniform principle that the proceedings at the behest of a shareholder, being merely an investor with profit interest, but without administrative control or direct legal injury, are not maintainable under the IBC. The term 'person aggrieved 'under Section 61 cannot be expanded to include shareholders or investors.*

> ***37.*** *The Judgement in Park Energy (Supra) also clarified that allowing shareholders to challenge insolvency orders would defeat the object of the IBC, which emphasizes speedy resolution and finality of proceedings. If shareholders were permitted to intervene or appeal, it would lead to multiple litigations and delays, contrary to the Code's objectives.*
>
> ***38.*** *Once the Corporate Debtor is admitted into CIRP, Section 17 of the IBC automatically transfers the management and control of the company to the Interim Resolution Professional (IRP). The Board of Directors, and consequently all shareholders, lose their authority over the affairs of the company. The IRP/RP is the protector of the interests of the shareholders in such a situation. Thus, even if the Appellant had prior administrative control, that control ceased upon admission. The mere fact of holding 51% shares or being a "majority owner" does not confer a separate or superior locus under Section 61. The Appellant's attempt to distinguish Park Energy (supra) on the basis of being a majority shareholder or holding preference shares cannot succeed."*

29. In **Balkishan Shrikisan Baldawa v. Agri-Tech (India) Ltd. and Ors., (2025) ibclaw.in 1073 NCLAT**, another three-member bench of this Appellate Tribunal distinguished the law laid down in **Park Energy (Supra)** as under: -

> *"**39.** We note that in the above cited judgment, it was held that the word aggrieved person would be a person, who does not have any other forum or a platform under law available to safeguard his right or interest arising from the proceedings, which are being held before the Tribunal. However, as far as the interest of the shareholders is concerned, it is protected by the agent or the authority appointed by the NCLT i.e. RP or the Liquidator. We note that the above judgment is distinguishable from the present case. In the present case being a shareholder, Appellant had, through an IA under Section 60(5) r/w Section 65, approached the Adjudicating Authority and claimed fraudulent initiation of CIRP, which was dismissed by the AA and now there is appeal before us against that order. The Appellant is claiming collusion between the Respondent – Corporate Debtor and the Financial Creditor. Thus, the above judgment will not be of any help to the Respondent.*

41. *On the other hand, on the issue of the locus and maintainability of the appeal, the appellant places its reliance on* ***Independent Sugar Corporation Limited Vs. Girish Sriram Juneja & Ors. (2025) 5 SCC 209, para 24****. Appellant claims that "any aggrieved person" appearing in Section 62 or Section 61 of the Code must be understood widely and not in a restricted person. The relevant para is extracted as below:*

"24. Once the CIRP is initiated, the nature of proceedings are no longer in personam but rather become in rem. In light of the same, the expression "any person aggrieved" in the context of IBC has been held to be indicative of there being no rigid locus requirements to institute an appeal challenging an order of NCLT before NCLAT or an order of NCLAT before this Court. Similarly, in the context of the Competition Act, even those persons that bring to CCI information of practices that are contrary to the provisions of the Competition Act, could be said to be "aggrieved". Therefore, the term "any person aggrieved" appearing in Section 62 IBC and Section 53-T of the Competition Act must be understood widely and not in a restricted fashion.

*25. In the present case, the appellant as an unsuccessful resolution applicant whose resolution plan could have otherwise been approved by CoC, satisfies the requirement of being aggrieved. This preliminary locus standi objection vis- à-vis the appellant, therefore, does not merit acceptance****."***

[Emphasis supplied]

42. *We note that Hon'ble Supreme Court has interpreted any aggrieved person to be not in a restricted manner but widely as it says that "the term "any person aggrieved" appearing in Section 62 IBC and Section 53-T of the Competition Act must be understood widely and not in a restricted fashion." Countering the above arguments, the Respondent brings to our notice para 197 of the same judgement* ***[Independent Sugar Corporation Limited (supra)]*** *and contends that the meaning of aggrieved person should harmonise with the object of the Code. The para is extracted below:*

"42. In a few cases, the Courts have declined to be bound by the letter when the letter frustrates the patent purposes of the statute. The learned J.C. Shah, J. in New India Sugar Mills Ltd. v. CST, noted that:

"… It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be

understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the legislature."

The limitation of the purposive role of construction is that the interpretation shall not result in legislation by the Court. Hardship, inconvenience, injustice, absurdity and anomalous results are avoided while construing the statute they need be.

***45.** From the above analysis, we observe that:*

*(a) The aforesaid judgment of **Park Energy Private Limited (supra)** pronounced on 22.07.20225 has no application in the present case, where the Appeal arises out of an order in the application filed by the Appellant under Section 60(5) and Section 65 of the Code, and not an order under Section 7 of the Code.*

*(b) **Park Energy Private Limited (supra)** also fails to consider earlier judgment of the Hon'ble Supreme Court in **Independent Sugar Corporation Limited (supra)** pronounced on 29.01.2025, wherein in the context of the use of the term "aggrieved party" in the Code, has been held that CIRP is a proceeding in rem and "any person aggrieved" must be understood widely.*

*(c) Therefore, **Park Energy Private Limited (supra)** will not apply to the present facts and circumstances where the application by a related party creditor has been disguised under Section 7 of the Code to circumvent the requirement of approval of the shareholders contemplated under Section 10 of the Code, as has been noted by us separately hereinafter.*

(d) There is strong argument that the present transaction is a collusive transaction between the Corporate Debtor and the Financial Creditor, and the only person aggrieved are the public shareholder like the Appellant.

***46.** We have noted the contentions of both sides and find that the arguments presented by Respondent do not come in the way of the Appellant to be considered as an aggrieved person. The Code doesn't bar the Appellant to file an appeal. Section 61 of the Code clearly states that notwithstanding anything to the contrary contained under the Companies Act, 2013, "any person aggrieved" by the order of the AA under this part may prefer an appeal to the NCLAT. The shareholders are the Appellant in this case and they are aggrieved by the order of the AA and interpreting the law in its widest terms and not in a restricted manner, we come to conclusion that the appellants have the locus to file an*

> *appeal and their appeal is maintainable.* ***Even otherwise, we find that there are serious allegations of fraudulent initiation of CIR proceedings, which should be looked into by us. Accordingly, we further delve into the merits of the Appeal."***
>
> **(Emphasis in Bold by us)**

Thus, a bench of three members, wherein one of us was also a member, after **considering Independent Sugar Corporation Limited (Supra)**, came to a conclusion that the Hon'ble Supreme Court in the above-stated case has interpreted the term "aggrieved person" in a wide manner and not in a restricted fashion. It held that the judgment of **Park Energy Private Limited (Supra)** would have no application to the facts of the said case, where the appeal arises out of an order passed under Section 60(5) and Section 65 of the Code, and not an order under Section 7 of the Code. It also held that **Park Energy Private Limited (Supra)** fails to consider the judgment of the Hon'ble Supreme Court passed in **Independent Sugar Corporation Limited (Supra)**. We find that the three-member bench in **Park Energy Private Limited (Supra) did** not consider the law laid down by the Hon'ble Supreme Court in **Independent Sugar Corporation Limited (Supra).** However, in **Independent Sugar Corporation Limited (Supra)**, it was held that the expression "any person aggrieved" in Sections 61 and 62 of the IBC and Sections 53B and 53T of the Competition Act must be construed widely. CIRP proceedings are in rem once initiated, and an **unsuccessful resolution applicant** whose plan could otherwise have been approved satisfied the requirement of being aggrieved. The preliminary objection on locus standi was rejected. Thus, it was not a case pertaining to the shareholder(s).

30. We also notice that the principle laid down in **Park Energy (Supra)** has been again applied in **Prateek Jain v. Mr. Anurag Nirbhaya, Resolution Professional & Ors., Company Appeal (AT) (Ins.) No. 1496 of 2024, decided on 30.09.2026**, wherein a two member Bench of this Appellate Tribunal held that an individual shareholder, merely by virtue of holding shares, cannot be treated as a "person aggrieved" entitling him to maintain an appeal under Section 61 of the Code, against an order approving a Resolution Plan. The coordinate Bench of this Tribunal discussed the Larger Bench decision in "**Park Energy (Supra)**, **M. K. Rajagopalan v. Periasamy Palani Gounder", (2024) 1 SCC 42 and Balkishan Shrikisan Baldawa vs. Agri-Tech (India) Limited and others (Supra)** and held that the law laid down in Park Energy will continue to bind this Tribunal. Relevant part of the said judgment is reproduced as under: -

> *"6. There had been various facets, which has been argued by the respective Counsel for the parties, but the moot question that falls for consideration before us is that except for the appellant, the plan thus approved, has already attained finality. The question that arises for consideration is that the appellant in the capacity of admittedly being a shareholder can maintain a company petition as against the impugned order of granting an approval to the resolution plan. The learned Counsel for the appellant submitted that the restrictions imposed by the Judgement of "Park Energy Pvt. Ltd. v. State Bank of India and another" as rendered by this Tribunal in CA (AT) (CH) (Ins) No.62 of 2023, that will not operate or create an absolute bar in maintaining the company appeal, at the behest of the shareholder, as against the impugned Order of granting approval of the resolution plan and in relation thereto, the learned Counsel for the appellant had referred to yet another judgement as rendered by this Tribunal in the matters of "Balkishan Shrikisan Baldawa vs. Agri-Tech (India) Limited and others" as it was rendered in CA (AT) (Ins) No. 970 of 2025. He submitted that owing to the fact that the Judgement of Park Energy Pvt. Ltd. (supra)*

which has been decided by larger Bench upon a reference being made in Company Appeal (AT) (CH) (Ins) No.62 of 2023 due to two conflicting views of two coordinate Member Bench, since the same was considered in the subsequent Judgment of Balkishan Shrikisan Baldawa (supra) and the coordinate Bench has carved out an exception vide its Judgement of 15.12.2025 pertaining to an exercise of fraud or collusion between the parties for initiation of insolvency proceedings. There could still be an exception where a proceeding in a company petition or in a company appeal would be maintainable, even at the behest of the shareholders.

7. We are afraid to accept this argument extended by the learned Counsel for the appellant, and the reason being that, so far as the matter pertaining to the Balkishan Shrikisan Baldawa (supra) is concerned, though it apparently seems to have been rendered by three Judges Bench, but that was a regular constitution of Bench according to the roaster assigned by Hon'ble Chairperson and mainly that judgement has been rendered by Bench constituting of three Members, will not have a precedence over the Judgement rendered by three Members answering a legal question, which has been referred to be decided by a specially constituted Bench of Park Energy Ltd. The reason being that the Judgement of Park Energy Pvt. Ltd. will have the precedence and the binding effect over the Judgement of Balkishan Shrikisan Baldawa, for the reason that the Judgement of Park Energy Pvt. Ltd. has been affirmed by the Hon'ble Apex Court, as the SLP preferred against it, has been dismissed. In that situation, where a ratio decidendi is based upon a reference being answered by us in the matters of Park Energy Ltd., that will have precedence and binding effect over Judgement of Balkishan Shrikisan Baldawa, which cannot be treated to have been passed by a coordinate Bench of 3 Members, because that Bench would be treated as to be a Regular Bench in accordance with the roaster as assigned by the Chairperson. Merely because of the fact that it was constituted by the three Members, that will not have a superseding or binding effect over and above the ratio answered in the judgement of Park Avenue Pvt. Ltd. (supra). Because the constitution of 3 Member Bench in the matters of Balkishan Shrikisan Baldawa, would be treated to be the regular Bench, not a larger Bench constituted

> ***by special order to answer a question. And that too when the Park Avenue Pvt. Ltd. (supra), was carried unanimously by a Bench having two Judicial Members and a Technical Member, answering the limits of rights of a shareholder to traverse to the proceedings under the Code, alleging to be aggrieved person.*"**
>
> ***(Emphasis by Us)***

31. Therefore, the Co-ordinate bench **Prateek Jain (Supra)** distinguishes the law laid down by a three-member bench **in Balkishan (Supra)** on the grounds that:

(i)The judgment in Park Energy Private Limited is a judgment by a three-member bench on a reference made to it, as there were two conflicting judgments of equal strength of benches. The judgment of **Park Energy Private Limited** has been affirmed by the Hon'ble Apex Court, as the SLP filed against it has been dismissed.

(ii)The judgment in Balkishan cannot be treated to have been passed by a coordinate bench of three members, as it was a regular bench before which the case was placed according to the roster as assigned by the Chairperson.

(iii)The constitution of the three-member bench in **Balkishan** was comprising of two judicial members and a technical member, and also that the bench in **Park Energy Private Limited** was constituted by special order to answer a question.

32. Thereafter the Coordinate Bench in **Prateek (Supra)** after considering the law laid down in **Park Energy, M/s Clarion Health Food LLP v. Goli**

Vada Pav Pvt. Ltd., Company Appeal (AT) (Ins) No.1522 of 2023, and GLAS Trust Company LLC v. BYJU Raveendran & Ors., (2024 SCC OnLine SC 3032 held as under: -

> *"15. Exclusively, owing to the fact that, the appellant is a shareholder, the company appeal at his behest against an order of approval of the resolution plan, would not be maintainable, as he will not be or even treated to be an aggrieved person as per the judgement of Park Energy Pvt. Ltd. (supra). Hence, the company appeal held to be not maintainable at the behest of the appellant. The same is accordingly dismissed."*

33. We may not be in agreement, the manner in which the law laid down by a three-member judgment of this Appellate Tribunal in Bala Kishan (Supra) has been perceived in Prateek (Supra), however, this would not affect our view with regard to the fact that Appellants being simpliciter shareholders are not having any locus to challenge the Resolution Plan. So far as the distinction which has been carved out by three members' judgment in **Balkishan Shrikishan Baldaava (Supra)**, we leave it the same to be discussed at an appropriate time in an appropriate case as in the case at hand we do not find any element of fraud or malicious proceedings.

34. Thus, it is evident from the aforementioned case laws that a shareholder simpliciter may not be aggrieved by the approval of the resolution plan by the COC or even by the adjudicating authority, and thus he cannot maintain an appeal, only in the role of a simpliciter shareholder. The mere fact, as submitted by learned counsel for the Appellants, that the Resolution Plan provides a residual amount to the equity shareholders will not alter the legal position. The residual interest of equity is purely consequential upon the distribution decided by the Committee of Creditors in its commercial wisdom. Receipt of a residual amount does not enlarge the statutory standing of a shareholder so as to enable him to maintain an appeal under Section 61. The

grievance that the residual amount might have been higher is not a ground that may convert a shareholder into a "person aggrieved". The limited scrutiny that the Adjudicating Authority is required to undertake under Section 31 of the Code is confined to examining whether the Plan complies with the requirements of Section 30(2). That scrutiny is not open to re-examination at the instance of a person who lacks locus under Section 61. Maintainability is a threshold jurisdictional issue. Once it is held that the Appellants are not persons aggrieved, this Appellate Tribunal has no jurisdiction to embark upon a merit's examination of the Plan at their instance.

35. In view of the consistent view of this Appellate Tribunal in the above mentioned cases i.e. **Ravi Shankar Vedam (affirmed by the Hon'ble Supreme Court)**, **M/s Clarion Health Food LLP,** Park **Energy (As per the Judgment in Prateek Jain, SLP filed against it was dismissed)** and the subsequent reaffirmation of this principle in **Prateek Jain,** we hold that the Appellants, being only in the role of shareholders of the Corporate Debtor, have no locus standi to maintain the present Appeals under Section 61 of the Code.

36. The Appeals are accordingly **dismissed** as not maintainable. All pending applications stand disposed of. There shall be no order as to costs.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

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