

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-III

Item No.03

IA-3583/2022 IA-3447/2021

In

IB-236(ND)/2020

IN THE MATTER OF:

LIC Housing Finance Limited

.... APPLICANT/PETITIONER

Vs.

K V Developers Private Limited

.... RESPONDENT

SECTION

U/s 7 IBC code 2016

Order pronounced on 17.04.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IA-3583/2022 & IA-3447/2021 in IB-236(ND)/2020 is **allowed**.

Sd/-

**(DR. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-III

IA-3447/2021 & IA-3583/2022

IN

Company Petition No. IB-236(ND)/2020

(Under Section 30 (6) and 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016))

IN THE MATTER OF:-

LIC Housing Finance Limited

..... Financial Creditor

Versus

M/s. K V Developers Private Limited

..... Corporate Debtor

AND IN THE MATTER OF:

Mr. Pankaj Narang

Resolution Professional

M/s. K V Developers Private Limited

..... Applicant

CORAM: -

SHRI BACHU VENKAT BALARAM DAS

HON'BLE MEMBER (JUDICIAL)

DR BINOD KUMAR SINHA

HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 17.04.2023

ORDER

PER: DR BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

The present application has been filed under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') on behalf of Mr. Pankaj Narang, applicant herein and Resolution Professional ('RP') of M/s. K V Developers Private Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by the consortium of M/s Brijkishor Trading Private Limited and Mr. Sumit Kumar Khanna ('Successful Resolution Applicant') as approved by the Committee of Creditors ('CoC') in its 7th CoC Meeting held on 13.07.2021 and the Addendum dated 03.07.2022 (pursuant to Hon'ble NCLAT Order dated 01.06.2022) approved in its 9th CoC Meeting held on 08.07.2022 in terms of Section 30(4) of I&B Code, 2016 with a majority of 100%.

2. Briefly stated, the facts as averred by the applicant in the application are as follows:

- a) The Corporate Insolvency Resolution Process against M/s. K V Developers Private Limited ('Corporate Debtor') had been initiated by Hon'ble NCLT vide its order dated 28.10.2020 in C.P.(IB) No.236/2020, a petition under Section 7 of the Code, 2016 filed by M/s. LIC Housing Finance Limited ('Financial Creditor') and Mr. Pankaj Narang ('applicant') was appointed as the Interim Resolution Professional who was later confirmed as the Resolution Professional of the Corporate Debtor.
- b) The Corporate debtor i.e., M/s. K.V. Developers Private Limited is engaged in the business of Real Estate activities with own or leased property including development and sale of land and cemetery lots, operating of apartment hotels and residential and mobile home sites.
- c) The Corporate Debtor has a real estate project by the name of KVD Wind Park in Greater Noida having total 924 residential units in 7 towers and 44 commercial shops and the project is registered with UPRERA having registration number UPRERAPRJ3122.
- d) Pursuant to the public announcement in Form A dated 30.10.2020 in four Newspapers, namely Financial Express & Business Standard (English Language) and Jansatta & Business Standard (Hindi Language)

and published on the website of Insolvency and Bankruptcy Board of India on 30.10.2020, the applicant constituted the Committee of Creditors based on the claims received from the creditors of the Corporate Debtor. The tabular representation depicting the voting percentage along-with the voting of the creditors in each class/ entity of the corporate debtor is as follow: -

Name of the Class/ Entity	Voting Share	Voting for Resolution Plan (Voted for / Dissented Abstained)
Homebuyers/ Allottees	40.50%	FOR THE PLAN
LIC Housing Finance Limited	59.50%	FOR THE PLAN
Total	100%	

- e) The CoC in its meetings had discussed the particulars of Information Memorandum, Evaluation Matrix, Appointment of Registered Valuers for conducting the valuation of the all three classes of assets, appointment of Transaction Auditor and other related matters.
- f) The Expression of Interest in Form -G was issued on 10.01.2021 in two Newspapers, namely Financial Express (English) and Jansatta (Hindi) and the same was also filed with the IBBI. Pursuant to the publication of Form-G, Six (6) Final Prospective Resolution Applicants came forward for submission of the Resolution Plan.
- g) The applicant had received claims from creditors of the Corporate Debtor till the last date of submission of claims and accordingly, in light of the claims received, the applicant in compliance with the provisions of the section 25(2)(e) of Insolvency and Bankruptcy Code, 2016 read with regulations 12(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, had reconstituted the Committee of Creditors on 24.03.2021 with 1 Financial Creditor and 428 creditors in a class as home buyers.
- h) The 5th CoC Meeting held on 10.04.2021, the CoC Members were informed that in pursuance to the Request for Resolution Plan issued to the Prospective Resolution Applicants, the applicant has received 3 Resolution Plans, which were pending to be discussed with the CoC on that date.
- i) The CoC in its 7th CoC Meeting held on 13.07.2021 had discussed all the Resolution Plans received and thereafter opted for E-voting to approve the Resolution Plan submitted by all the three (3) Prospective Resolution Applicants and the e-voting facility in this regard was held on 13.07.2021 to 19.07.2021 and as per the result of e-voting, Resolution Plan dated 01.07.2021 read with addendum dated 08.07.2021 submitted by consortium of M/s Brijkishor Trading Private

Limited and Mr. Sumit Kumar Khanna was approved by the Committee of Creditors in terms of Section 30(4) of I&B Code, 2016 with a majority of 100% voting shares in favor.

- j) Pursuant to approval of the Resolution Plan submitted by Successful Resolution Applicant by the CoC, the applicant had issued a Letter of Intent dated 22.07.2021 to the Successful Resolution Applicant ('SRA') inter-alia informing the SRA that the final Resolution Plan dated 01.07.2021 read with addendum dated 08.07.2021 as submitted before the CoC was approved and accordingly, the Successful Resolution Applicant was requested to convey their unconditional acceptance. The applicant adds that pursuant to the issue of Letter of Intent, the Successful Resolution Applicant duly submitted their unconditional acceptance by way of submission of performance Bank Guarantee.

3. While the applicant sought approval of the Resolution Plan dated 01.07.2021 read with the first addendum dated 08.07.2021 and second addendum dated 03.07.2022 approved by the CoC with 100% voting in favor, M/s. Greater Noida Industrial Development Authority ('GNIDA'/'objector') had raised the following objections to the approval of the proposed Resolution Plan and addendums thereto:-

- (i) The objector submits that the Resolution Professional has not verified and collated the claim of the objector i.e., GNIDA, who has already submitted the proof of claim of Rs.30,33,04,375/- due as on 15.07.2021.
- (ii) The objector further submits that neither the proposed Resolution Plan has taken into account the outstanding dues of the objector nor made any provision to pay the outstanding dues of the objector as per the present market value. The objector adds that the debts of the objector/ GNIDA are also reflected in book debts of Corporate debtor which is available with the resolution professional since beginning of the CIRP.
- (iii) The objector submits that the Resolution Plan pays no heed to some of the relevant provisions of the Uttar Pradesh Industrial Area Development Act, 1976 specifically 13-A of the Uttar Pradesh Industrial Area Development Act, 1976 which provides that any amount payable to the Authority under section 13 shall constitute a charge over the property and may be recovered as arrears of land revenue.

(iv) The objector submits that the Respondent Authority/ objector being a statutory authority is a secured creditor within the meaning of 3(30) and 3(31) of the Insolvency and Bankruptcy Code, 2016. To support the contention, the objector placed reliance on **Hon'ble Supreme Court judgment dated 06.09.2022 in Civil Appeal No. 1661 of 2020 of case titled 'State Tax officers (1) vs. Rainbow Paper Limited.**

4. We have heard the submissions made by the Ld. Senior Counsel for the Applicant, Ld. Counsel for Successful Resolution Applicant, Ld. Counsel for the Greater Noida Authority and have meticulously gone through the documents produced on record. We are of the considered view that before examining the Resolution Plan vis-à-vis the mandatory compliance under the Code and the Regulations made thereunder, the objections raised to the approval of Resolution Plan dated 01.07.2021 read with addendum dated 08.07.2021 ('first addendum') and addendum dated 03.07.2022 ('second addendum') are required to be determined.
5. With regard to the objections raised by the Objector, we find that the objector i.e., Greater Noida Industrial Development Authority (GNIDA) had filed an application i.e., I.A./85/2022 seeking direction against the Resolution Professional/Applicant for not verifying and accepting the claim of the objector. This Adjudicating authority after taking note of the fact that the claim of the objector is beyond time as the Objector had filed its claim on 02.09.2021 which is after the approval of Resolution Plan by the CoC, this Adjudicating Authority vide its order dated 28.09.2022 had rejected the claim of the objector. We are also conscious of the fact that the objector GNIDA has challenged the Order dated 29.09.2022 in I.A./85/2022 passed by this Adjudicating Authority with regard to the admission of objector's claim by the applicant and therefore, the Successful Resolution Applicant and the Resolution Professional are duty bound to consider the claim of GNIDA as per the order of the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No.1502 of 2022 & I.A. No. 4775 of 2022.

6. With respect to the objector's argument that the Resolution Plan pays no heed to some of the relevant provisions of the Uttar Pradesh Industrial Area Development Act, 1976 specifically 13-A of the Uttar Pradesh Industrial Area Development Act, 1976, we would like to refer Section 238 of the Code, 2016 which essentially grants IBC an overriding effect by insertion of a non-obstante clause by ensuring that provisions of the Code will continue in full force even if they were inconsistent with any other law. Therefore, the provisions of Uttar Pradesh Industrial Area Development Act, 1976 regarding the constitution of charge over the property cannot be enforced in view of Section 238 of the Code, 2016.
7. With respect to the objector's argument that the Respondent Authority/objector being a statutory authority is a secured creditor within the meaning of 3(30) and 3(31) of the Insolvency and Bankruptcy Code, 2016, it is necessary to refer the Hon'ble Supreme Court's judgement in **New Okhla Industrial Development Authority v. Anand Sonbhadra [Civil Appeal No. 2222 of 2021] judgement dated May 17, 2022** wherein it was held that NOIDA and GNIDA shall be treated as Operational Creditor only and therefore, the GNIDA will have to be treated as an Operational Creditor and will have the provisions of Section 30(2) of the Code, 2016 in respect of the Pre-CIRP claims, if so allowed by Hon'ble NCLAT in the appeal referred to in foregoing para 5.
8. However, considering the facts of the present case, the applicant is directed that the lease rentals accrued during the CIRP period and due to the objector shall be payable as part of CIRP Cost subject to the condition that GNIDA submits the claim amount of lease rental outstanding during the CIRP period to the applicant as well as to the Successful Resolution Applicant within a period of 21 clear days from pronouncement of this order.
9. Upon comparison of the above settled position of law as to the status of the objector as an unsecured creditor, with the facts and circumstances of the present case before us, we are of the considered view that the objections as raised by objector do not pose a legal challenge against approval of the proposed

Resolution Plan. Henceforth, this Adjudicating Authority is proceeding with considering the Resolution Plan **dated 01.07.2021 read with the first addendum dated 08.07.2021 and second addendum dated 03.07.2022** as approved by the CoC and filed before this Adjudicating Authority in I.A./3447/ND/2021 & I.A./3583/2022 for approval.

10. The Hon'ble NCLAT on adjudication of the appeal in the case of **Puneet Kaur Vs. K.V. Developers, Company Appeal (AT) (Insolvency) No.390 of 2022** arising out of this Adjudicating Authority's order dated 11.11.2021 in I.A./5146/2021 wherein the application for acceptance of the belated claim filed by the Home Buyer was rejected by this Adjudicating Authority on the ground that the claim was submitted after delay of eight months from the cut-off day and the Resolution Plan has already been put up to voting prior to the filing of claim, after consideration vide its order dated 01.06.2022 had passed the following directions:-

- (i) The Resolution Professional shall provide all details of Homebuyers along with their claims as reflected from the record of the Corporate Debtor, who had not filed their claims, including the Appellant(s) to the Resolution Applicant within a period of one month from today.
- (ii) The Resolution Applicant shall prepare addendum on the basis of information as submitted by Resolution Professional and place the same before the CoC within a further period of one month.
- (iii) The CoC shall consider the addendum in its meeting and decision of the CoC on the Information Memorandum and addendum be placed before the Adjudicating Authority. The CoC shall take decision in its meeting within a period of one month from the date of submission of addendum by the Resolution Applicant.
- (iv) The Adjudicating Authority while, considering approval of the Resolution Plan, which is pending consideration in IA No.3447 of 2021 shall consider the addendum and the minutes of the CoC at the time of finalizing the Resolution Plan.

11. The Applicant/ Resolution Professional in Compliance of Hon'ble NCLAT order dated 01.06.2022 in the case of Puneet Kaur Vs. K.V. Developers, Company Appeal (AT) (Insolvency) No.390 of 2022 had placed on record the addendum to the Information Memorandum dated 28.06.2022 containing the details of the Potential Allottees who have filed claims post submission to/approval by the CoC of the Resolution Plan of the Successful Resolution Applicant ('Delayed Claimants Post Plan Submission' or 'DCPPS') & those who have not filed claims till date ('Potential Claimants Post Plan Submission' or 'PCPPS') and addendum dated 03.07.2022 to the Resolution Plan which was unanimously approved by the Committee of Creditors in its 9th CoC Meeting held on 08.07.2022 and voting commenced from 08:00 p.m. of 10.07.2022 and concluded on 8:00 p.m. of 13.07.2022.
12. The salient features of the Resolution Plan dated 01.07.2021 read with the first addendum dated 08.07.2021 and second addendum dated 03.07.2022, thereto as submitted by consortium of M/s Brijkishor Trading Private Limited and Mr. Sumit Kumar Khanna and as approved by the COC in its Sixth CoC meeting held on 13.07.2021 and addendum dated 03.07.2022 by CoC in its 9th CoC Meeting dated 08.07.2022 with an affirmative voting of 100% are reproduced herein below:

I. Background of the Resolution Applicant:

The Resolution Applicant, consortium of Mr. Sumit Kumar Khanna and M/s Brijkishor Trading Private Limited, along with its management team and technical partners having expertise in the real estate development, are committed to ensure timely completion and handover of the units to the allottees who have filed their claims in terms of the Resolution Plan. The Resolution Plan shall be implemented through the Nominated SPV i.e., M/s. REAR Co Private Limited.

The Resolution Applicant and his team have relevant experience and working relationships to fast track required approvals to restart the construction of the Project. The construction activities of the Project shall be carried out by a team of professionals with proven capabilities to ensure delivery of quality product. The team has significant experience in ensuring timely and quality

construction within timelines.

Mr. Sumit Kumar Khanna -

Mr. Sumit Kumar Khanna, with over 20 years of relevant experience in Corporate Finance and Restructuring with focus on managing and turning around distressed assets especially in the Real Estate sector, will augment the speedy completion of the Project and turnaround of the Corporate Debtor.

M/s. Brijkishor Trading Private Limited – Financial Specialist -

M/s. Brijkishor Trading Pvt Ltd. is mainly involved in financial and investment activities, and is engaged in business of providing advisory services for investments in real estate and financial assets. Some of the key projects developed by ventures sponsored/ managed by the company include: – DBH Buildcon Private Limited – It is developing biggest residential projects in Raipur in Township Format. – SPL Properties BNE Pvt Ltd – It is based in Bangalore and part of Shriram Group. It is a debt free company having net worth of INR 84.80 crore and cash & equivalent balance of INR 171.75 crore as per provisional balance as at 31 March 2021.

II. Summary Proposal of the Resolution Applicant:

Unpaid CIRP Cost: -

Unpaid CIRP cost, as approved by CoC during the CIRP period shall be paid by the Resolution Applicant within 75 days of the Corporate Debtor raising demand for first tranche of receivables from allottees per terms of the Resolution Plan.

Uttar Pradesh RERA Registration: -

Existing Uttar Pradesh RERA Registration numbers for the project issued by Uttar Pradesh Real Estate Regulatory Authority in favour of Corporate Debtor shall continue to vest in favour of the Corporate Debtor, including on account of any change in constitution/ownership/control of the Corporate Debtor, as envisaged under this Resolution Plan, without any payment of past/future dues or any further payment.

III. Construction and Delivery Timelines ensuring enduring handover of the units to the Allottees:

There are 7 towers in the project of B+S+22 and B+S+24 arrangement. Out of 7 towers, 5 towers are at an advance stage of construction. Although the project took off very well, but market conditions has brought in financial constraints which has led to slow pace of construction activity and halt on fresh sales in the project. The estimated timeline in construction and delivery of the project is as follows:-

S. No.	Towers	Completion and Handing over (subject to Force Majeure)
Phase 1A*		
1	Tower-2	15 to 18 months from Implementation Date (with a buffer of 6 months due to unforeseen circumstances)
2	Tower -3	
3	Commercial	
Phase 1B*		
1	Tower-1	18 to 21 months from Implementation Date (with a buffer of 6 months due to unforeseen circumstances)
2	Tower-6	
3	Tower-7	
Phase 2		
1	Tower-4	Indicative timeline of 42 months from Implementation Date (with a buffer of 12 months due to unforeseen circumstances)
2	Tower-5	
3	Club	

IV. Source of Funds:

The Resolution Applicant shall arrange up to Rs. 20,00,00,000/- for the project within 90 days of the Implementation Date. HDFC Bank vide its Letter dated 21.06.2021 have agreed to provide a Project Finance to the Resolution Applicant of up to Rs. 60,00,00,000/-.

Further, the Resolution Applicant while accepting the LoI vide its letter dated 23.07.2021 had also informed that they have envisaged financial assistance/funding from Government of India's SWAMIH Investment Fund and on 18.11.2021 SWAMIH Investment Fund I have issued a non-binding head of terms for Investment by way of subscription to Non-Convertible Debentures for an amount of Rs. 100,00,00,000/- plus an additional amount of up to Rs. 34,90,00,000/-.

V. Plan for revival:

Resolution Applicant has worked out financial projections for the Project of the Corporate Debtor on the assumptions contained in this Resolution Plan including infusion of working capital by way of induction of fresh funds for the completion of the Project post the Effective Date. Resolution Applicant believes that the said financial projections and also the underlying assumptions are realistic and achievable

VI. Period of implementation:

The Resolution Applicant shall, after the Effective Date, obtain the necessary approval required under any law for the time being in force within a period of one year after the Effective Date or within such period as provided for in such law.

The Resolution Applicant proposes to use all efforts as may be commercially reasonable to start implementation of this Resolution Plan from the Effective Date in accordance with the other terms contained in this Resolution Plan.

VII. Addendum dated 03.07.2022 to the Resolution Plan [Pursuant to Hon'ble NCLAT order dated 01.06.2022 in Company Appeal (AT)(Ins) No. 390-394 of 2022:

On approval of the Resolution Plan by this Adjudicating Authority, a notice will be published in newspapers having wide circulation in Delhi NCR, informing the Delayed Claimants Post Plan Submission ('DCPPS') & Potential Claimants Post Plan Submission ('PCPPS') to submit their records proving the booking of unit within a period of 30 days from publication, pursuant to which such records will be validated by the Successful Resolution Applicant and amount as verified by SRA for every DCPPS and PCPPS will be considered as final consideration amount and the SRA will refund the said Final Consideration Amount within a period of 36 months from the implementation date of the Approved Resolution Plan.

13. The summary of the amounts provided for the stakeholders under the Resolution Plan dated 01.07.2021 read with the first addendum dated 08.07.2021 and second addendum dated 03.07.2022 is as below: -

(Amount in Rs. lakh)

Sl. No.	Category of Stakeholder*	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1	Dissenting Secured Financial Creditors	0	0	0	0
2	Other Secured Financial Creditors	506919457	506919457	353400000	69.71
3	Dissenting Unsecured Financial Creditors	0	0	0	0
4	Other Unsecured Financial Creditors	2351412131	1486536958	1486536958	63.21
5	Operational Creditors	36792950	1855981.5	NIL	0
	Government	49595067	49595067	NIL	0
	Workmen	0	0	0	0
	Employees	0	0	0	0
				
6	Other Debts and Dues	0	0	0	0
Total		2944719605	2044907463.5	1839936958	62.48

14. The Payment proposal towards M/s. LIC Housing Finance Limited, Financial Creditor as proposed in the Resolution Plan is as follow:-

. For the admitted and verified claims of INR 50,69,19,457/- (Rupees Fifty Crores Sixty Nine Laes Nineteen Thousand Four Hundred Fifty Seven Only), the Resolution Applicant proposes to satisfy the same by as per following settlement plan:

Parameter	Terms
Settlement Amount	Settlement Amount of INR 35.34 Crs
Door to Door Tenure	2 years from Implementation Date
Pricing	5% rate of interest on Settlement Amount The pricing of 5% shall accumulate from Implementation Date till payment of the Settlement Amount
Repayment Schedule	Settlement Amount shall be paid in seven structured instalments: <ol style="list-style-type: none"> 1. Upfront Payment: INR 6 crore within 90 days of Implementation Date 2. End of 9 months (from Implementation Date): 10% of (Settlement Amount less Upfront Payment) 3. End of 12 months (from Implementation Date): 10% of (Settlement Amount less Upfront Payment) 4. End of 15 months (from Implementation Date): 10% of (Settlement Amount less Upfront Payment) 5. End of 18 months (from Implementation Date): 10% of (Settlement Amount less Upfront Payment) 6. End of 21 months (from Implementation Date): 10% of (Settlement Amount less Upfront Payment) 7. End of 24 months (from Implementation Date): 50% of (Settlement Amount less Upfront Payment) The interest of 5%, which has accumulated on unpaid Settlement Amount, shall be paid along with the last installment.
Default Condition	In case the Corporate Debtor has not paid the Settlement Amount at the end of 2 nd year due to any unforeseen hardships or difficulties, given market conditions etc., the balance Settlement Amount outstanding will attract a Penal Interest of an additional 2% over and above the 5% being paid already.

##The balance admitted amount of INR 15.35 Crores shall be assigned by LIC Housing Finance to Resolution Applicant/Nominated SPV against the consideration of INR 1,000 within 30 days of the Effective Date.

15. The payment schedule provided to the home buyers, creditors in the class proposed Resolution Plan is as follows:-

Milestone/ Date Demand	Option 1 – Construction linked payment Plan	Option 2 – Deferred payment plan
30 days from the Effective Date	1. 10% of Balance Sale Consideration, and 2. 10% of the Sale Price Equaliser Residential / Sale Price Equaliser Commercial.	1. 10% of Balance Sale Consideration, and 2. 10% of Sale Price Equaliser Residential / Sale Price Equaliser Commercial
90 days from commencement of construction of respective tower	1. 30% of Balance Sale Consideration, and 2. 30% of the Sale Price Equaliser Residential / Sale Price Equaliser Commercial.	Nil
360 days from commencement of construction of respective tower	1. 30% of Balance Sale Consideration, and 2. 30% of the Sale Price Equaliser Residential / Sale Price Equaliser Commercial.	Nil
On offer of possession/ fit out of respective unit	1. 30% of Balance Sale Consideration, and 2. 30% of the Sale Price Equaliser Residential / Sale Price Equaliser Commercial	1. 90% of Balance Sale Consideration, 2. 90% of the Sale Price Equaliser Residential / Sale Price Equaliser Commercial, and 3. Finance cost# equivalent to -INR 200 per square feet for residential units. -INR 500 per square feet for commercial units # Finance cost is waived off for Allottees who were

		allotted units under subvention and flexi payment plans by Corporate Debtor.
<p>Salient Feature: -</p> <p>a) Allottees, whose accounts have been classified as Non-Performing Account by their lending banks or who are financially stressed, may cancel the allotment of their unit within 90 days of Effective Date. The principal amount (net of tax, delayed payment charges/ interest etc.) paid by such Allottees shall be refunded after deducting 10% of the principal amount upon re-sale of such unit to a new buyer.</p> <p>b) Resolution Applicant is offering a discount of INR 50/- per square feet to Allottees who make all due payments per payment plan opted by them within due date.</p> <p>c) The Corporate Debtor shall also offer a discounted rate of INR 3,000 per sq. ft. to Allottees, who are willing to purchase any additional unit within 3 months from the Effective Date</p>		

16. In view of Section 31 of the Code, the Adjudicating Authority, before approving the Resolution Plan, is required to examine that a Resolution Plan which is approved by the CoC under Section 30 (4) of the Code meets the requirements as referred under Section 30 (2) of the Code.

Section 30 (2) is quoted below: -

“(2) The resolution professional shall examine each Resolution Plan received by him to confirm that each Resolution Plan –

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the Resolution Plan, in such manner as may be specified by the Board, which shall not be less than the amount

to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a Resolution Plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a Resolution Plan;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the Resolution Plan;

(d) The implementation and supervision of the Resolution Plan;

(e) does not contravene any of the provisions of the law for the time being in force

(f) conforms to such other requirements as may be specified by the Board.

Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 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 a contravention of that Act or law.]”

17. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in clause 4 (Payment of CIRP Cost) of Part-III of the Resolution Plan wherein it provides for the payment of the CIRP cost in priority to any other creditor of the Corporate Debtor.

18. In respect of compliance of Section 30(2)(b) of the Code, it is seen that there is a provision in clause 5 (Payment to Operational Creditors Employees and Workmen), Clause 6 (Payment to Operational Creditors Other than Employees and Workmen), and Clause 7 (Payment to Operational Creditors Statutory Dues) of Part-III of the Resolution Plan wherein it provides that no claim received from Operational Creditors (Workmen/Employees), for Operational

Creditors (other than Workmen and Employees) the admitted and verified amount of Rs.18,55,981.5/- including any claim admitted in future and for Operational Creditors (Statutory Dues) admitted and verified claims of 4,95,95,067/- including any claim admitted in future, shall stand discharged, settled, extinguished in full and reduced to NIL with effect from the Effective Date.

19. Moreover, the Successful Resolution Applicant in its Affidavit dated 13.03.2023 had submitted and undertakes that the Successful Resolution Applicant shall abide by the judgement of the Hon'ble Supreme Court in the Review Petition (Diary) No. 32268 of 2022 titled as 'Sanjay Kumar Agarwal v. State Tax Office (1) & Ors.' for the purpose of admitted claim amounting to Rs. 4,95,95,067/- of the Commercial Tax Department admitted under the category of Operational Creditors (Statutory Dues).
20. In respect of compliance of Section 30(2)(c) and 30(2)(d) of the Code, it is seen that the manner of the management of the affairs and control of the business of the Corporate Debtor has been provided in detail in Clause 2 of Part II (Implementation of Resolution Plan) and Clause 3 (Management of the Corporate Debtor) of Part II (Implementation and supervision) of the Resolution Plan. The clause 3 of Part II of the Resolution Plan, provides for the Management of the Corporate Debtor which provides that Monitoring Agency shall comprise: (i) Resolution Professional who shall be the Monitoring Agent; (ii) 2 representatives of the Resolution Applicant; (iii) 2 Authorised Representative of the Allottees as observers (to be nominated by CoC of the Corporate Debtor prior to Effective Date) and (iv) 1 Authorised Representative of LIC Housing Finance Ltd. as an observer. The term of Monitoring Agency shall be for a period until all Allottees have been given possession of the units in accordance with this Resolution Plan i.e., the term of the Resolution Plan.
21. In respect of compliance of Section 30(2)(e) and 30(2)(f) of the Code, it is seen that the information provided in Part I (Business Plan of the Resolution Applicant in relation to the Corporate Debtor) and other provisions of this Plan

and the supporting documents are provided by the Successful Resolution Applicant. It seems that the declaration given in the Resolution Plan is in compliance with such other requirements as may be specified by the Board and has been provided in clause 14 (Section 29 A Compliance), Clause 17 (other confirmation) of Part –II of the Resolution Plan.

22. In respect of compliance regarding Regulation 38 (1A) of the CIRP Regulations, it is seen that the Annexure- 3, Annexure-4 and Annexure-5 of the Resolution Plan, provide how it will deal with the interest of all the stakeholders including secured and unsecured financial creditors, operational creditors of the corporate debtor, statutory dues and interests of the employees and workmen, as per the requirement of Regulation 38(1A) of the CIRP Regulations.

23. In respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the applicant has filed compliance certificate in Form-H certifying that the Resolution Plan submitted by the Successful Resolution Applicant meets the requirements as laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code. Further, an affidavit has been obtained from the Successful Resolution Applicant stating that he is not ineligible under the provisions of Section 29A of the Code, 2016. Moreover, an affidavit by the Successful Resolution Applicant in compliance of Regulation 39(1) of CIRP Regulations is also placed on record of this Adjudicating Authority.

24. The Schedule I (Definitions & Construction) of the Resolution Plan defines the following terms:-

- a) “Approval Date” means the date of approval of the Resolution Plan of the Resolution Applicant by the Hon’ble NCLT.
- b) “Effective Date” means the date of approval of this Resolution Plan by the Hon’ble NCLT.

c) "Implementation Date" means 6 (six) weeks from the Effective Date subject to grant of necessary approvals from concerned Authority for commencing the construction of the Project.

25. On perusal of Form-H annexed as Annexure-18 at page no. 702-704 of I.A. 3447/2021, we observe that the Fair Market Value of the Corporate Debtor as provided in Form- H is Rs.1,09,09,62,604/- and the Liquidation Value of the Corporate Debtor is Rs. 82,59,44,748/-. We further observe that one application bearing C.A./1917/ND/2021 under Section 43 and 45 of the Code, 2016 filed on 14.03.2021 is pending before this Adjudicating Authority.

26. On perusal of the proposed Resolution Plan, we observe that clause 12 (iv) (Treatment Of Amounts Claimed Under Ongoing Litigations) of Part II of the proposed Resolution Plan @Page 629 Vol. IV, it is mentioned that any recovery which is made from the avoidance transactions under Section 43,44,45,49, 50 and 66 of the Code shall be **shared equally between the Financial Creditors - allottees and the Resolution Applicant**). Further clause 12 (v) (Treatment of Amounts Claimed Under Ongoing Litigations) of Part II of the proposed resolution plan @Page 630 Vol. IV, it is mentioned that the Successful Resolution Applicant retains the right to report and take required legal action on any transactions which have taken place within the relevant period under Section 43,44,45,49, 50 and 66 of the Code, not forming part of the transactions reported vide the Applications already filed by the Resolution Professional, under Section 43,44,45,49,50 and 66 of the Code. This Adjudicating Authority vide its order dated 07.03.2023. had directed the Successful Resolution Applicant to clarify as to how the above is in accordance with the law and judicial pronouncement particularly in the light of the Hon'ble Delhi High Court's judgment in **Tata Steel BSL Limited versus Venus Recruiter Private Limited [2023/DHC/000257]**.

27. The successful Resolution Applicant in compliance of the order dated 07.03.2023 had filed the affidavit dated 13.03.2023 wherein Successful Resolution Applicant submits and undertakes that any cash recovery from the

alleged parties from the transactions under Section 43,44,45,49, 50 and 66 of the Code under any application, shall be distributed amongst the Financial Creditors – Allottees only, in proportion to their respective claims and shall not be shared Equally amongst the Successful Resolution Applicant and the Allottees.

28. Further, the Successful Resolution Applicant in its affidavit dated 13.03.2023 submitted that as per the Information Memorandum there are Nil dues of Employees/Workmen and therefore, no liability towards the Provident Fund dues of Employees/workmen arises, however, the Successful Resolution Applicant undertakes that in case if any legally payable liability with respect to Provident Fund or Gratuity arises, the Successful Resolution Applicant undertakes to honour the same in accordance of law.

29. This Adjudicating Authority after considering the submissions of the Ld. Counsel for Successful Resolution Applicant and the clarifications and undertakings made in the Affidavit dated 13.03.2023, had vide order dated 14.03.2023 taken on record the Affidavit dated 13.03.2023 as the part of the proposed Resolution Plan dated 01.07.2021 read with the first addendum dated 08.07.2021 and second addendum dated 03.07.2022.

30. As to the relief and concessions sought in the Resolution Plan more specifically set out in Clause 10 (Necessary Measures needed for implementation of the Resolution Plan) of Part – I of the Resolution Plan, taking into consideration the decision of the Hon'ble Supreme Court in the matter of **Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019**, this Adjudicating Authority direct the Successful Resolution Applicant to file necessary application before the necessary forum/ authority in order to avail the necessary relief and concessions, in accordance with respective laws. The relevant part of the judgement is reproduced herein below:-

39. Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the

corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

“25. Duties of resolution professional –

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:-

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings.”

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”

31. In so far as the approval of the resolution plan is concerned, this authority is not sitting on an appeal against the decision of the Committee of Creditors and this Adjudicating Authority is duty bound to follow the judgement of the **Hon’ble Supreme Court in the matter of K.Sashidhar v. Indian Overseas Bank (2019) 12 CC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follow:-

35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the

Page **21** of **25**

repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

32. Also the Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019, vid its judgement dated 15.11.2019** has observed as follows:

“38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants.”

33. Thus, from the judgements cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of the creditors.

34. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan dated 01.07.2021 read with addendum dated 08.07.2021('First Addendum'), addendum dated 03.07.2022 ('Second Addendum') along with affidavit dated 13.03.2023.
35. Accordingly, subject to the aforesaid observations, we hereby **approve the Resolution Plan dated 01.07.2021 read with the first addendum dated 08.07.2021 and second addendum dated 03.07.2022 along with affidavit dated 13.03.2023 ('Approved Resolution Plan')**, which shall be binding on the Corporate Debtor and its employees, shareholders of corporate debtor, creditors including the Central Government, any State Government or any Local Authority to whom statutory dues are owed, guarantors, Successful Resolution Applicant and other stakeholders involved.
36. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order, subject to our aforesaid observations. It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.
37. The Successful Resolution Applicant is directed to deposit Performance Bank Guarantee ('PBG') amounting to Rs. 8,80,00,000/- (Rupees Eight Crores Eighty Lacs Only) in addition to the already deposited amount of Rs. 1,20,00,000/- (Rupees One Crore Twenty Lacs Only) totalling to Rs. 10,00,00,000/- (Rupees Ten Crores Only) in compliance of Clause 3 (Performance Bank Guarantee) of Part – III of the Resolution Plan within a period of 21 working days from the pronouncement of this order.
38. The Successful Resolution Applicant is further directed to make Publication of the Notice as provided in addendum dated 03.07.2022 to the Resolution Plan in Business Standard (English, Delhi & Delhi NCR Edition) and Business Standard (Hindi, Delhi & Delhi NCR Edition) Newspaper or in any other

newspaper and also to send individual notice to the DCPPS and PCPPS at their addresses available in the records of the Corporate Debtor within a period of 30 days from pronouncement of this order.

39. The Successful Resolution Applicant is directed to file a compliance affidavit with regard to submission of Performance Bank Guarantee and Publication and service of notice with this Adjudicating Authority within a period of clear Forty-Five days from pronouncement of this orders.
40. We further reiterate that the Approved Resolution Plan shall not construe any waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the Approved Resolution Plan, the same shall be subject to approval by the concerned authorities. The same view has been held by the Hon'ble Supreme Court in **Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development case (supra).**
41. Accordingly, MoA and AoA of the Corporate Debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the Approved Resolution Plan as mentioned above, it is clarified that the Successful Resolution Applicant shall pursuant to the Resolution Plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for such in law.
42. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the Corporate Debtor and the Approved Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code. The Resolution Professional is further directed to handover

all the records, premises, properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.

43. The Monitoring Committee is directed to file the monthly status report with regard to the implementation of the approved plan before this Adjudicating Authority.
44. Resultantly, ***I.A.3447/ND/2021 and I.A/3583/ND/2022 stand allowed, subject to the aforesaid discussion and directions.***

Let the copy of the order be served to the parties

Sd/-

**(DR.BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (J)**