



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-IV**

Company Petition No.: IB 901(ND)/2020

IA – 387/ND/2023

IN THE MATTER OF:

Mr. SURAJ KUMAR KAUSHAL & ORS

...Financial Creditors

VERSUS

M/s SARVOTTAM REALCON PRIVATE LIMITED

... Corporate Debtor

AND

IN THE MATTER OF IA 387/ND/2023:

Under Section 30(6) of IBC, 2016 r/w Reg. 37 to 39 of IBBI (CIRP Regulations), 2016

Mr. SANDEEP GOEL

Resolution Professional of Sarvottam Realcon Private Limited

...Applicant

Pronounced on: 30.07.2024

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE
MEMBER (JUDICIAL)**

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicant : Adv. Shyam Kapadia, Adv. Vikas
Kumar, Adv. Pranjal Shrivastava, Adv.
Arun Kumar, Adv. Sangham Panghal,
Adv.

For the Resolution Professional : CMA Sandeep Goel, Adv. Ankur Mittal,
Adv. Yashika Sharma, Adv.



For the GDA

: Mr. Shashank Singh, Adv. for GDA

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. Preliminary

1.1. The present interlocutory application bearing IA No.387 (ND) 2020 is moved on behalf of Mr. Sandeep Goel, Resolution Professional (**“RP” / “Applicant”**) of M/s Sarvottam Realcon Private Limited (CIN: U45200DL2012PTC230708), under the provisions of Sections 30(6) and 31(1) of the Insolvency & Bankruptcy Code, 2016 [hereinafter referred to as **“the Code”** or **“IBC”**] read with regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**“CIRP Regulations”**) for approval of the Resolution Plan in respect of M/s Sarvottam Realcon Private Limited (**“Corporate Debtor”**) and seeking following reliefs:

- i. Take the present application on record; and/ or;*
- ii. Approve the Resolution Plan which has been duly approved with 100 % vote share of the CoC indicating the reasons thereof in order to keep the Corporate Debtor as a going concern in the interest of Corporate Debtor and all its stakeholders;*
- iii. Grant liberty to the applicant / RP to file additional documents and/ or to remove any defects, if any observed after filing of the present application, by way of supplementary affidavit/ or;*
- iv. Pass any such further order(s)/ direction(s) which may be deemed fit in the of justice.*



- 1.2. The underlying Company Petition CP (IB) No.901(ND)2020 filed by Suraj Kumar Kaushal & Ors. under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (“**CIRP**”) of the Corporate Debtor was admitted by this Adjudicating Authority *vide* its order dated 09.07.2021 (“**Admission Order**”). On that date, *i.e.*, 09.07.2021 (“**Insolvency Commencement Date**”) Mr. Sandeep Goel was appointed as IRP. Further the IRP was confirmed as Resolution Professional by the CoC in its 1st meeting held on 12.08.2021.
- 1.3. Further, the Applicant submitted an application IA No. 3401/ND/2021 before this Adjudicating Authority regarding appointment of Sh. Ashok Kumar Gupta as an Authorized Representative (“**AR**”) for class of Creditors which was allowed by this Adjudicating Authority *vide* its order dated 12.08.2021.
- 1.4. An applicaton bearing No. IA 3766/ND/2021 was filed by M/s Omkara Assets Reconstruction Private Limited whose claim was provisionally admitted to the tune of Rs. 39,73,70,766/- as a secured financial creditor with voting right of 19.36% challenging the claim filed by M/s ALT Sahkari Awas Samiti Limited whose claim has been provisionally admitted and has been assigned voting share of 43.10%. The said application came for hearing before this Adjudicating Authority on 27.08.2021 and this Adjudicating Authority directed the Resolution Professional that “voting share of ALT is kept on abeyance and CoC members can proceed with the present Financial Creditor as listed in CoC.”

2. Collation of claims by RP



2.1. The Applicant submits that the public announcement was published in Form A on 14.07.2021 in Business Standard (*English and Hindi Edition*) in the Delhi NCR region where the Registered Office and Principal Place of business of the Corporate Debtor is situated and called for proof of claims from the creditors of the Corporate Debtor and informed lenders to submit their claims as envisaged under the Code the last date for submission of claims being 26.07.2021. The applicant collated the claims and formed the CoC on 31.07.2021.

2.2. The details of claims submitted are as follows:

a. List of claims received from Financial Creditor:

Sr. No.	Name of Financial Creditor	Amount admitted by the Resolution Professional in INR
1.	Omkara Assets Reconstruction Private Limited	37,67,95,988
2.	Real Estate Allottees (Other than Alt Society)	106,03,11,181
	Total	143,71,07,169

**b. List of claims received from Unsecured Financial Creditors:
NIL**

c. List of claim received from Operational Creditors (other than workers and employees):

Sr. No.	Name of Operational Creditors	Amount claimed by the Creditor in INR	Amount admitted by the Resolution Professional in INR
1.	Gaziabad development Authority	52,18,47,824	15,22,94,384



d. List of claims from employees or workmen: NIL

It is pertinent to mention that Resolution Professional has not received any claim of workmen & employee or if received has not been accepted by the RP. In any case, a payment Re. 1/- shall be considered as a full and final payment of the same. (@Pg.56 of the application). However, the Successful Resolution Applicant (“**SRA**”) has filed an Affidavit dated 10.10.2023 whereby the SRA undertakes to pay 100% EPFO dues of the Employees and Workmen.

2.3. The RP submits that a total of twenty CoC meetings have been held during CIRP period as follows:

Particulars	Date of CoC Meeting
1 st CoCMeeting	12.08.2021
2 nd CoC Meeting	15.09.2021
3 rd CoC Meeting	12.10.2021
4 th CoC Meeting	10.11.2021
5 th CoC Meeting	09.12.2021
6 th CoC Meeting	08.01.2021
7 th CoC Meeting	31.01.2022
8 th CoC Meeting	16.02.2022
10 th CoC Meeting	28.02.2022
11 th CoC Meeting	10.03.2022
12 th CoC Meeting	05.04.2022
13 th CoC Meeting	02.05.2022
14 th CoC Meeting	16.05.2022
15 th CoC Meeting	09.08.2022
16 th CoC Meeting	02.11.2022
17 th CoC Meeting	19.11.2022



Particulars	Date of CoC Meeting
18 th CoC Meeting	15.12.2022
19 th CoC Meeting	19.12.2022
20 th CoC Meeting	24.12.2022

2.4 Further, the evaluation matrix was approved by the CoC in its 4th Meeting held on 10.11.2021.

3. Valuation of Corporate Debtor

The appointed registered valuers have submitted their reports providing the fair value of the Corporate Debtor as Rs. 136,53,78,041/- (Rupees One Hundred Thirty-Six Crore Fifty-Three Lakh Seventy-Eight Thousand Forty-One only) and liquidation value of Rs. 105,68,28,041/- (Rupees One Hundred Five Crore Sixty-Eight Lakh Twenty- Eight Thousand Forty-One only) as per Form-H annexed with the application as Annexure-24.

4. Evaluation and voting

4.1 The Applicant submits that in terms of provision of Section 25(2)(h) of the Code read with regulation 36A(1) of CIRP Regulations, the revised Form-G was published on 21.10.2021 for inviting Expression of Interest (“**EoI**”) whereby Prospective Resolution Applicants (**PRAs**) were invited to submit the EoI for submitting a resolution plan of the Corporate Debtor on or before 09.11.2021. Pursuant to the publication of the Advertisement, EoIs were received from 11 PRAs as of the last date for submission of the same.

4.2 The Applicant/RP shared the legal compliance report and 29A compliance report with the COC members as submitted by the



independent agency i.e. SignalX Pvt Ltd, who did data check of all the PRAs and same was presented to the COC in its 7th COC meeting held on 31.01.2022 and shortlisted 4 PRA's. Further, the legal counsel of the RP/Applicant presented to the COC the compliance report of all the four resolution plans and declared that all the plans are in compliance as per IBC 2016.

- 4.3 The RP in the 7th COC meeting invited the PRAs; namely;
- (a) M/s ANUGRAHAM BUILDER,
 - (b) M/s MAYA BUILDCON PVT LTD
 - (C) M/s SJP HOTELS & RESORTS PRIVATE LIMITED;
 - (d) M/s WORLDFA EXPORTS PRIVATE LIMITED.

The Applicant /RP put the resolution plan summary and open the discussion before CoC members.

4.4 During the course of subsequent meetings, the CoC Members deliberated upon the Resolution Plans before them and asked the PRAs to carry out certain alterations to the proposed Resolution Plans. The PRA's putforth the amended proposed Resolution Plans alongwith the addendum thereto, before the CoC during the 20th CoC Meeting of the Members. Further, the sealed envelope containing the Resolution Plan was opened and discussed.

4.5 It is submitted the Resolution Plans were received only from 3 PRAs i.e. (a) Anugraham Builders (Partnership Firm) (b)Maya xBuildcon Pvt. Ltd. (c) Worldfa Exports Pvt. Ltd. The Applicant apprised the CoC to evaluate the three Resolution Plans. In this 20th CoC Meeting held on 24.12.2022, the Resolution Plan submitted by Anugraham Builders, was approved by 100% voting



in favour of the Plan. The Minutes of 20th CoC Meeting is annexed to the Application as '**Annexure-19**'. Results of voting conducted in 20th meeting of CoC is attached with the application as '**Annexure A-20**'. Copy of the Affidavit/Undertaking of the Successful Resolution Applicant under section 29A of the IBC, 2016 is annexed to the Application and marked as '**Annexure 23-Colly**'.

4.6 Pursuant to Regulation 36B sub-regulation 4A of IBBI (CIRP) Regulations, 2016, the Request for Resolution Plan (RFRP) states that the Successful Resolution Applicant (SRA) shall provide a Performance Guarantee of INR 2,00,00,000/- (Rupees Two Crores only) in favour of Corporate Debtor. In compliance of this condition, it is averred that the SRA has provided the Performance Bank Guarantee (PBG) dated 06.01.2023 for an amount of Rs. 2,00,00,000/-. Further, **the RP is hereby directed to report compliance and submit a copy of the duly renewed PBG, coterminous with the tenure of Resolution Plan, within one week from the date of this order.**

4.7 Pursuant to Regulation 39(4) of IBBI (CIRP) Regulations, 2016, a Compliance Certificate from RP in Form-H is annexed to the application as 'Annexure A-24'.

4.8 That pursuant to section 30(6) of Insolvency and Bankruptcy Code, 2016 read with Regulations 37 to 39 of IBBI (CIRP) Regulations, 2016, Resolution Professional by filing the present application is praying for approval of the Resolution Plan submitted by Resolution Applicant Anugraham Builders as approved by the Committee of Creditors of the Corporate Debtor



with 100% voting under section 30(4) of IBC, 2016 in the 20th Meeting of CoC held on 24.12.2022 and the application for approval of the resolution plan by this Adjudicating Authority was filed by the RP on 10.01.2023.

5. Details of Resolution Applicant, Project Details and Payment Schedule

- 5.1 As per the plan, the Successful Resolution Applicant (“**SRA**”) i.e Anugraham Builders, a Special Purpose Vehicle / Partnership Firm is jointly promoted / owned by MR Group (Mr. Vijay Kumar and Mr. Sudhan Kumar) and Mr. Ritesh Jain.
- 5.2 As per the Information Memorandum the "**ALT Sahkari Awas Samiti Limited**" registered under the provision of the U.P Co-operative Societies Act, 1956 with its 182 Members is owner of property bearing Plot No. SL-2, measuring 15845 Sq.Mtr. Khasra No. 294, 297, 308, 310, 311, 317, 318, 323/705, 323, 324, 326 and 327, Mahuddinpur, Kanawani, Tehsil, District Ghaziabad, Uttar Pradesh ('**Said Land**').
- 5.3 On 16.02.2013, the "ALT Society" had entered into MoU and subsequently on 09.03.2015 entered into a Supplementary MoU along with Corporate Debtor for the construction and developing residential apartments i.e. "Sarvottam Shree" on the Said Land ('Project'). The land was bought by the "Society" from the "Ghaziabad Development Authority" by virtue of Sale deed registered with Registrar of Noida on 03.11.2012 bearing Plot No. SL-2, measuring 15845 Sq.Mtr. Khasra No. 294, 297, 308, 310, 311, 317, 318, 323/705, 323, 324, 326 and 327, Mahuddinpur, Kanawani, Tehsil, District Ghaziabad, Uttar Pradesh.



- 5.4 In terms of MoU, the Society has assigned development rights to Corporate Debtor. In consideration of the same, the Corporate Debtor is required to provide 182 flats in total to the Society out of which 80 flats consisting of covered area of 700 sq. ft., 52 flats consisting of covered area of 1050 sq. ft. and 50 flats consisting of covered area of 1400 sq. ft.
- 5.5 The Corporate Debtor has also paid Rs. 1,05,00,000/- as security deposit to ALT Society and ALT Society is required to refund the same upon hand over of 182 flats.
- 5.6 The Resolution Applicant proposes to take over the construction and development of the Project and hand over the units to the Homebuyers and the members of ALT Society within a defined time frame as mentioned in the plan hereinafter.
- 5.7 The Corporate Debtor in terms of Clause 7(i) of MoU is authorized to develop the Said Plot by constructing thereon a group housing building as per the MoU which grants 2.50 FAR to Corporate Debtor.
- 5.8 The activity timeline for implementation of the Resolution Plan is as tabulated below:
Activity Timeline (Days): Taking approval date as the date of the NCLT Order approving the Resolution Plan, the duration of the Plan is 2 years with a grace period of 6 months

S. No.	Event	Timeline
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1	Approval of Resolution Plan by CoC	Within timeline as prescribed under Section 12 of the IBC
2	Submission of Performance Bank Guarantee	As per RFRP
3	Approval of Resolution Plan by NCLT	As per NCLT
4	Appointment of Monitoring Committee	Approval Date
5	Notice on the website of Corporate Debtor (if any)	Within 7 days of Approval Date
6	Intimation to Stakeholders, CoC, IBBI & any other Authority	Within 7 days of Approval Date
7	Submission of revised Building plan to Authority	Within 1 month from the date of plan approval from NCLT
8	Effective Date post approval of revised building plans from GDA and resolution of all pending applications filled in NCLT by any stakeholder	T
9	Payment of Unpaid CIRP Cost	Within 15 days from T
10	Payment to Operational Creditors	As proposed in the Plan



11	Payment to Financial Creditors	As proposed in the Plan
12	Change in Memorandum and Articles of Association, if any required	T+120
13	Take Over of the ownership/management by the Resolution Applicant through issuance of new shares and acquisition from existing shareholders	Within 60 days from T
14	Receipt of all necessary approvals for commencement of construction	Construction Commencement Date
15	Handover of units to the homebuyer and Society Members	Within 2 years from Construction Commence Date + 6 months grace period

5.9 Financial Contours as per the Resolution Plan alongwith timeline:

Particulars	Claim Accepted (Rs.)	Resolution Amount (Rs.)	Timeline for payment	Remarks
CIRP cost as on date of plan approval by the NCLT		Actuals	T+15	CIRP cost will be paid in priority
Secured Financial Creditors	37,67,95,988	20,00,00,000	2.5 to 4 years From construction Commencement date	The debt shall be converted into non-convertible debentures which shall be issued to the Secured Financial Creditor accruing coupon of 0.01% redeemable over a period of



				2.5-4 years in 6 equal quarterly instalments from the Construction Commencement Date. [Clause 6.3 @Pg. 44 /81]
Financial Creditors in Class (Real Estate Allotees other than ALT Society)	Rs. 106,03,11,181/-			Homebuyers to be given two options: 1. Continue booking and make payment as per payment plan (@Pg 47) [each Homebuyer shall have to make an additional payment of INR 500 per sqft on the Saleable area @Pg. 84 / 46] Or 2. Discontinue booking and get refund of the balance amount within 90 days after deduction of 25% of sales consideration.
Alt Sahkari Awas Samiti Ltd./ Alt Society.			Handing over of Possession: 2.0 years from the date of commencement of construction. + 6 months of grace period	Each Society member will be given 3 options: 1. Make an additional payment of Rs. 800 per sq. ft. on the saleable area towards unit allocated to them. Payment plan (@Pg.84/ 50) Or 2. Make an additional payment of Rs. 1500 per sq. ft. on the saleable area towards unit allocated. Which shall be paid at the time of possession. (@Pg.50) Or 3. To cancel allotment and take refund @Rs. 3000 per sq.ft. on the saleable area within 90 days from the
Operational Creditor- Workmen & Employees (EPFO Dues will be	Nil	Re. 1/-		Resolution Professional has not received any claim of workmen & employee or if received has not been accepted by the RP. In any case, a payment Re. 1/-



paid 100% @Pg.641 & SRA has filed affidavit dt. 10.10.2023 w.r.t EPFO Dues vide filing no. 0710102003 902023/15 dated 05.01.2024)				shall be considered as a full and final payment of the same. (@Pg.56)
<u>Operational Creditors</u> Ghaziabad Development Authority	Rs. 52,18,47,824	Rs. 15,22,94,384		1. Rs.3,22,94,384/- simultaneously at the time of release of revised compounding plan by GDA (i.e., T) 2. Balance payment of Rs. 12 Cr in four equal 6 monthly installment of Rs. 3 Crs each along with interest at the rate of 12% p.a applicable from the date of release of revised compounding maps. (@Pg.52)
<u>Contingency</u> a) Contingent Claims of Homebuyer, post the submission of the present Resolution Plan or any claim accepted post the submission of Resolution Plan till acceptance of Resolution Plan by AA.				A provision of area of approx. 8950 sqft out of the above-mentioned unsold area which will be utilized to adjust the contingent claims or any future claims of home buyers so received by RP on a first cum first serve basis. (@Pg.45)

6. Compliance of the successful Resolution Plan with various



provisions:

- 6.1. The Applicant has submitted the details of various compliances as envisaged by Sections 30(2) of the Code and Regulations 37 & 38 of CIRP Regulations which a Resolution Plan is required to adhere to. The same is also a part of Form-H Annexed to the Application as Annexure-24.
- 6.2. Further it is submitted that the date of expiry of 180 days of the CIRP was 05.01.2022. RP had sought for an extension of vide IA 5825/2021 and the same was approved by this Adjudicating Authority vide order dated 05.01.2022. Further, and extension after 330 days i.e. from 04.06.2022 to 12.12.2022 and an additional extension of 30 days was sought for by the Applicant in IA 6019/2022 and the same was approved by this Adjudicating Authority vide order dated 13.12.2022.
- 6.3. The Applicant submits that the SRA has submitted an affidavit in regard to the eligibility under section 29A of the Code, as required by Regulation 39(1)(a) of the CIRP Regulations. The same has been annexed to the Application as (**Annexure 23 Colly**).
- 6.4. The Applicant has filed a Compliance Certificate in prescribed Form, i.e Form 'H' in compliance with Regulation 39(4) of the CIRP Regulations and the same is annexed with the application as 'Annexure A-24'.

7. Details of Resolution Plan/ Payment Schedule / Terms of the Resolution Plan

- 7.1. **Approval Date:** The date on which Certified Copy of Order of Hon'ble NCLT for the approval of the Resolution Plan is issued. (Refer Definition: pg.76)



- 7.2. **Closing Date-** Date on which all the Financial Creditors in Class are assigned possession of flats and all payment as per the Resolution Plan is paid to Financial Creditors. (Refer to Definition: pg.76)
- 7.3. **Construction Commencement date:** Shall be the date on which all the necessary approval including but not limited to environment clearance, GDA approval with necessary FSI, RERA etc. are obtained. (Refer to Definition: pg.77)
- 7.4. **Effective** Date: The effective date shall be the date of settlement of GDA dispute with Society (Refer to Definition: pg.77, Clause 6.2, Sr. No. 8 of the table)
- 7.5. **CIRP Cost:**

Total outstanding CIRP Cost till 30.11.2022 is Rs. 89,33,351. CIRP Cost from 01.12.2023 is estimated to Rs. 60,00,000. Resolution Applicant proposes to infuse an amount of Rs. 15,00,00,000/- (Rupees Fifteen Crores) which is inclusive of Rs. 2,00,00,000 to be paid towards Performance Bank Guarantee.

The amount infused by Resolution Applicant shall be utilized for the purpose of payment of CIRP Cost, payment to GDA towards Compounding Fees, stabilization of the operations of SRPL and for the purpose of initiation of construction and development of the Project on the said land. *(Refer to clause 14 of Addendum @Pg. 83) & Clause 3.5(c) of the Resolution Plan @Pg. No.38; also refer Clause 6.2, Sr. No. 9 of Table)*

- 7.6. **Secured Financial Creditors:**

The total admitted claims of secured financial creditor amounts to Rs. 37,67,95,988.00 for which, the SRA proposes an amount of Rs. 20,00,00,000 (Rs. Twenty Crore). The debt of Rs. 20 Crores will be



converted to non-convertible debentures which shall be issued to the Secured Financial Creditor (SFC) accruing a coupon of 0.01% redeemable over a 2.5 – 4 years in 6 equal quarterly instalments from the Construction Commencement Date. SFC shall give express consent for issuance of any NOC to home loan banker or to unit purchaser/ homebuyer as the case may be and not object to day-to-day functioning of the Project cashflows. It is expressly made clear by the RA that all funds shall be utilized only towards Project related expenses. However, in case there is surplus cashflow in the Project, the RA shall make good the payment to SFC before taking out any funds from the Project.

- 7.7. It is submitted that the SRA along with its financial partner has sufficient resources to meet the plan consideration. The consideration proposed under the plan will be met out from our own resources, balance contribution from the Homebuyer and Society members as specified in the Resolution Plan and if required, may include obtaining project finance along with loan from various sources such as financial institutions / government's 'Special Window' in the form of AIF to provide priority debt financing for the completion of stalled housing projects such as SWAMIH Fund or similar funds. The Resolution Applicant shall be free to raise Project Finance from any Financial institution of its own choice to complete the project and would not be required to take any approvals for the same from CoC, Monitoring committee, Secured Financial Creditor, ALT Society, GDA, Home buyer/s or any statutory body as may be required by such Financial Creditor. In case of any required consent / signatures from Society members or Home buyers for documentation of such a loan would be immediately provided by Society members / Home buyers. All costs for such Project loan, if availed, would be fully borne by the Resolution applicant.



8. Details on Management/Implementation and Reliefs as per the Resolution Plan

- 8.1 The Resolution Plan also provides details of management and control, implementation and supervision of the Resolution Plan and term of plan. After the approval of the resolution plan by the CoC till the date the plan is approved by Adjudicating Authority, the Corporate Debtor shall continue to be managed by the Resolution professional. On Adjudicating Authority Approval, and till Closing Date, the Monitoring Committee shall be formed to supervise the implementation of the Resolution Plan as detailed in Clause 4 of the present Resolution Plan.
- 8.2 The Monitoring Committee shall consist of the Resolution Professional, one representative of secured financial creditor, one representative of homebuyers, one representative of ALT Society and two representatives of Resolution Applicant as per Clause 4 of the Resolution Plan. All the members of the MC shall work pro bono (free of cost) except Resolution Professional who would be taking the Fees post Effective Date as already approved by the Approving authority at the time of appointment as the RP. *(Refer to Clause 2 of Resolution Plan: Pg. 34; Clause 8 of the Resolution Plan: pg. no. 62; Refer to Clause 4 of the Resolution Plan: pg. no. 39-41, along with Clause 11 of Addendum: pg. no. 82).*

9. Details on fraudulent and avoidance transaction

SRA has clarified that RA shall not be incurring any cost, whatsoever, nor shall be beneficiary of any recovery made pursuant to an avoidance application filed under IBC by the Resolution Professional. *(Refer Clause 7.1.2 (vi) of Resolution Plan: pg. no.55-56 r/w Clause 18 of Addendum: pg. no. 83).* Further this Adjudicating Authority directs that the Financial Creditor shall pursue the PUFEE Applications filed



and pending before this Adjudicating Authority and it shall be the beneficiary of the proceeds of such application. In view of the judgment, passed by the Division Bench of Hon'ble Delhi High Court in the matter of: **Tata Steel BSL Limited v. Venus Recruiter Private Limited & ors (2023) ibclaw.in 09** HC, the proceeds of the avoidance transaction needs to be distributed among the financial creditors. The relevant paragraph is as extracted below:

“89....

- e. The provisions pertaining to suspect transactions exist specifically to benefit the creditors of the corporate debtor by enhancing the asset pool available for resolution of the corporate debtor. The IBC also envisages increasing credit availability in the country as one of its primary objectives. It is apposite that any kind of benefit acquired from the adjudication of avoidance applications, in cases where treatment of such applications could not be accounted in the plan, must be given to the creditors of the erstwhile corporate debtor, considering especially, that in the present case, the creditors took a massive haircut towards resolution of the corporate debtor. Giving such benefit to the creditors is in consonance with the scheme of the IBC.*
- f. The amount that is made available after transactions are avoided cannot go to the kitty of the resolution applicant. The benefit arising out of the adjudication of the avoidance application is not for the corporate debtor in its new avatar since it does not continue as a debtor and has gone through the process of resolution. This amount should be made available to the creditors who are primarily financial institutions and have taken a haircut in agreeing to accept a lesser amount than what was due and payable to them.”*

10. Waivers, Reliefs and Exemptions

10.1 The SRA has prayed for the reliefs, waivers and concessions as enumerated under the Resolution Plan approved by the CoC, namely, that from the plan approval date all inquiries, investigations and proceedings, whether civil or criminal, suits,



claims, disputes, interests and damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this Resolution Plan, shall stand withdrawn, satisfied and discharged, from the date of approval of the 'Resolution Plan'. In this regard, the SRA shall be legally authorized to seek appropriate orders from respective authorities/ courts/ tribunals for renewal of licenses/ withdrawal/ dismissal or abatement of the proceedings as the case may be.

10.2 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.**

11. Findings

11.1. On hearing the submissions made by the Ld. Counsel for the Resolution Professional and after perusing the record, we find that the Resolution Plan has been approved by the CoC with 100% of the members voting in favour of the Resolution Plan. As per the resolution of the CoC, the Plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Adjudicating Authority.



11.2. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

11.3. The reliefs, concessions and waivers sought by the SRA will be dealt with strictly as per law 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 is not inclined to granting any relief prayed for except that is provided in the case itself and 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.”

11.4. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the SRA is permitted to do the same within one year as prescribed under section 31(4) of the Code or within such period as provided for in such law, whichever is later.

11.5. In case of non-compliance with this order or withdrawal of the Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the Performance Bank Guarantee, already paid by the SRA.

11.6. Further, this Adjudicating Authority vide order dated 05.04.2024 had directed the Resolution Professional to explain the compliance of Section 30(2) of the Code, 2016 with respect to dues of Ghaziabad Development Authority ('GDA') in light of **Hon'ble Supreme Court's recent judgement in Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni & Anr. (Civil Appeal Nos.7590-7591 of 2023)** and also directed the Ghaziabad Development Authority to submit their written submissions in the present matter.

11.7. The Resolution Professional in compliance of this Adjudicating Authority's order dated 05.04.2024 had filed their Compliance Affidavit dated 11.05.2024 wherein the case of Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni & Anr. (Civil Appeal Nos.7590-7591 of 2023) was distinguished with the



present case on the ground that the subject property, upon which the Project is being built is a 'freehold' property and GDA has no ownership/ charge upon the said land. Also, it was submitted that the function of GDA in the present case was merely that of facilitation and not for providing land on lease. The Resolution Plan approved by the CoC records a sum of Rs. 15,22,94,382 to be paid to the GDA.

11.8. The Ghaziabad Development Authority in compliance of this Adjudicating Authority's order dated 20.03.2024 had filed their written submission wherein it was submitted that the said land is the personal land of developer i.e., Corporate Debtor herein and therefore, no allotment of land is given by the Ghaziabad Development Authority. However, the claim in Claim Form-B was submitted before the Resolution Professional of the Corporate Debtor. Moreover, the GDA, has not objected to the approval of the Resolution Plan. The written submissions filed by the Resolution Professional and Ghaziabad Development Authority is taken on record.

11.9. 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 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.”

11.10. 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**, vide 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.”

11.11. 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. Therefore, in our considered view, there is no impediment in giving approval to the proposed Resolution Plan.

12. Orders

12.1 Subject to the observations made in this Order, the Resolution Plan is hereby **approved. The Resolution Plan shall form part of this Order.**

12.1. The approved Resolution Plan as annexed alongwith COC approved addendums shall be binding on all the stakeholders of the Corporate Debtor and become effective from the date of passing of this Order, and shall be implemented strictly as per the term of the plan and implementation schedule given therein. The Resolution Plan will form part of the order.

12.2. The Monitoring Agency, as provided in the Resolution Plan shall be set up by the Applicant within 07 days of passing of this Order, which shall take all necessary steps for expeditious implementation of the Resolution Plan as per approval;

12.3. The SRA shall deliver/provide possession of the units to the Home Buyers/Allottees strictly as per the time frame promised in the Resolution Plan and approved by this Authority. The Monitoring Agency will supervise and monitor the progress of construction of



units and related infrastructure developments on a day-to-day basis and file the progress report before this Adjudicating Authority on monthly basis;

- 12.4. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- 12.5. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- 12.6. 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.
- 12.7. Accordingly, **IA (IB) No.387/(ND) 2023** is allowed.
- 12.8. Liberty is hereby granted for moving appropriate application if required in connection with the implementation of this Resolution Plan.
- 12.9. A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, NCT of Delhi & Haryana.
- 12.10. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.



12.11. The Resolution Professional is further directed to hand over all records, licences, plans, approvals of premises/ factories/ documents and all other relevant records relating to the Corporate Debtor, available with it to the SRA to finalize and co-operate on the further line of action required for starting the operation and implementation of this Plan. The Resolution Applicant shall have access to all the records, documents and the premises through the Resolution Professional to finalize the further course of action required for starting and running the operations of the Corporate Debtor on a clean slate basis.

12.12. The Registry is directed to send copies of the order forthwith to IBBI, all the parties and their Ld. Counsels for information and for taking necessary steps.

12.13. Certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Accordingly, **IA (IB) No.387/(ND) 2023** in **CP IB 901/ND/2020** stands allowed.

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(DR. SANJEEV RANJAN)

(MANNI SANKARIAH SHANMUGA SUNDARAM)

MEMBER (TECHNICAL)

MEMBER (JUDICIAL)