

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, BENCH-V**

I.A. No. 2981 of 2021

IN

C.P. No. 3169 of 2019

In the matter of an Application under
Section 30(6) and Section 31 of the
Insolvency and Bankruptcy Code, 2016.

Mr. Manish Motilal Jaju

...Applicant/Resolution Professional

In the matter of

Spartan Engineering Industries Pvt Ltd.

... Financial Creditor

V/s.

Sivana Realty Private Limited

... Corporate Debtor

Order Dated: 19.07.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Mr. Amir Arsiwala, Advocate a/w Ms. Nidhi shah
and Ms. Nupur Shah

Per: Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. This is an Application filed under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **“Code”**) filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant Mr. Manish Motilal Jaju, which was approved by 99.96% voting share of the members of the Committee of Creditors (hereinafter referred to as **‘COC’**).
2. The facts leading to the Application are as under:
 - a. Corporate Insolvency Resolution Process (**CIRP**) of the Corporate Debtor was initiated by this Bench by an order dated 11.08.2020 under Section 9 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as **‘the Code’**) (**Admission Order**) and Mr. Neehal Mahamulal, was appointed as Interim Resolution Professional. Subsequently, vide order dated 03.11.2020, **the present Applicant** was appointed as the Resolution Professional (**RP**) to conduct the CIRP of the Corporate Debtor. The IRP published a public announcement as per Section 13 & 15 of the Code, inviting claims from the creditors of the Corporate Debtor.
 - b. The Applicant published a Public Announcement in Form A in accordance with Section 15 of the Code, on 17.08.2021, inviting claims from the creditors of the Corporate Debtor. Last date for submission of claims was on 26.08.2020
 - c. The Applicant submits that the details of claim admitted by Interim Resolution Professional as under:

Sr. No	Name of Financial Creditors	Admitted Claim	Voting %
1.	LIC Housing Finance Limited	118,82,50,826	27.21
2.	IDBI Trusteeship Services Limited	116,32,38,975	26.63
3.	Nepean Finvest Private Limited	8,50,00,000	1.93
4.	Mr. Nirav Prakash Shah	16,34,950	0.04
5.	Progressive Bank	99,306	0.001
A	Subtotal of FC not belonging to a Class	2,43,82,24,057	55.81
6.	<u>Class of Homebuyers</u>		
a.	Unaffected Homebuyers*	1,07,03,86,178	24.27
b.	Affected Homebuyers*	90,13,06,756	20.44
B	Total Class of Homebuyers	1,97,16,92,934	44.71
TOTAL (A+B)			100

- d. The members of the Committee of Creditors of the Corporate Debtor include 5 financial creditors have following voting rights:

FINANCIAL CREDITORS - WITH VOTING RIGHTS		
Sr. No.	Name of Creditor	Voting Share
1.	LIC Housing Finance Ltd.	28.32%
2.	IDBI Trusteeship Services Ltd/ ICICI Prudential Life Insurance	27.72%
3.	Nepean Finvest Private Limited	2.03%
4.	Mr. Nirav Prakash Shah	0.04%

5.	Class of Creditors – Home Buyers	41.89%
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- e. Further, two Operational Creditors, Om Sai Enterprises & Bhagwati Enterprises submitted claims amounting to Rs. 43,62,501/- against the Corporate Debtor, of which claims amounting to Rs. 43,19,462/- were accepted by the Interim Resolution Professional.
3. The Applicant states that in the 3rd COC meeting dated 27.11.2020, the COC approved with minimum eligibility criteria, Request for Resolution Plan (**RFRP**) and Form G for inviting Expression of Interest (“**EOI**”) from Prospective Resolution Applicants as per section 25(2)(h) of the Code. Accordingly, Public announcement for inviting EOI was issued. The Form G inviting EOI was published on 02.12.2020. The last date for submission of Expression of Interest (EOI) from Prospective Resolution Applicants was 23.08.2021 and last date for submission of Resolution Plan was 27.09.2021.
4. The Resolution Professional appointed two registered valuers in accordance with Regulation 27 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to determine the fair value and liquidation value of the Plant & Machinery, Land & Building and Securities or Financial Assets (SFA). These valuers had submitted their respective reports. The same was placed before the members of the COC in its 2nd Committee of Creditors meeting held on the 03.11.2020. The details of Liquidation and fair value reports as follows:

I. Shilpa Kale (Valuation Report – 15.09.2021)	
Market Value	
• Phase I	3.50 crores
• Phase II	30.00 crores
Liquidation Value	
• Phase I	125.00 crores
• Phase II	49.50 crores
II. Manoj Sharma (Valuation Report – 07.09.2021)	
Market Value	
• Phase I	3.80 crores
• Phase II	32.52 crores
Liquidation Value	
• Phase I	129.00 crores
• Phase II	53.00 crores
Average Valuation	
Market Value	
• Phase I	Rs. 3.65 crores
• Phase II	Rs. 31.26 crores
Liquidation Value	
• Phase I	Rs. 127 crores
• Phase II	Rs. 51.25 crores

5. The Applicant further states that the Form-G was issued by Applicant on 02.12.2020 for project phase 1 and in this regard, the Committee of Creditors in its 5th COC meeting dated 30.12.2020 and 6th COC meeting dated 24.02.2021, received Expression of Interest (EOI) from two Prospective Resolution Applicants (PRAs) i.e. **Hall and Anderson Limited and Vira Realspace LLP** and accordingly Request for

Resolution Plans and Evaluation Matrix were issued in accordance with the provisions of the IBC and the CIRP Regulations.

6. The 7th COC meeting was held on 01.03.2021 whereby COC members approved the Phase 1 Resolution Plan submitted by Vira Realspace LLP with 72.69% of the total voting share. Subsequently, an IA No. 643 of 2021 was filed before this Tribunal for the approval of the said plan. Later on, the COC resolved in its 13th meeting held on 03.08.2021 to withdraw the said IA filed for approval of the plan. The withdrawal was allowed vide order dated 04.01.2023 passed by this Tribunal in IA No. 2675 of 2021.
7. Thereafter, the COC decided to invite composite proposals for the Phase I and II. Accordingly, a Fresh invitation for Expression of Interest (EOI) for Comprehensive Resolution Plan was published on 08.08.2021. In this regard, the Committee of Creditors in its 14th COC meeting dated 30.12.2020, received Expression of Interest (EOI) from one Prospective Resolution Applicants (PRA) i.e. M/s. Kabra Estate & Investment Consultants who was accordingly issued Request for Resolution Plans and Evaluation Matrix in accordance with the provisions of the IBC and the CIRP Regulations. The Applicant further submits that M/s. Kabra Estate & Investment Consultants has submitted the Resolution plan before the last day of submission. i.e. 27.09.2021.
8. **The COC, in its 18th meeting held on 30.10.2021, approved Resolution Plan submitted by M/s. Kabra Estate & Investment Consultants, with a voting share of 99.96%. Thereafter, the Applicant has issued compliance certificate in Form “H”.**

9. The Salient Features of the Resolution Plan are as under:

A. Brief Background of the Company / Corporate debtor

- i. Sivana Realty Private Limited (“Corporate Debtor/SIVANA”) (formerly Known as Sunshine Housing Private Limited) a company incorporated under the provisions of the Companies Act, 1956 having its registered office at Samriddhi Garden, CTS No. 403/C, LBS Road, Opp. Eshwar Nagar, Bhandup West, Mumbai - 400078 was incorporated on September 01, 2006.
- ii. The company is engaged mainly in the business of Builders and Real Estate Developers in the Mumbai

B. Background of the Resolution Applicant

M/s Kabra Estate and Investment Consultant is engaged in the business of developing, building, managing property and other allied real estate related services, catering to both individual and corporate customers.

The Resolution Applicant or any of its partners or key managerial personnel are not disqualified under Section 29A of the Code.

10. **Snapshot of Payment**

(Rs. In Crores)

Particulars	Total	90 days from NCLT approval/ trigger date	Within 1year from trigger dated	Within 2 years from trigger dated	Within 3 years from trigger dated	Within 4 years from trigger dated
CIRP Cost etc	0.30	0.30				
Secured Financial Creditors	87.00	1.00	4.00	20.00	25.00	37.00
Unsecured Financial Creditors	1.50	0.01	0.09	0.40	0.50	0.50
Operational Creditors –Non-related other than statutory (As per IM)	0.006	0.006				
Operational Creditors – Statutory Dues (As per IM)	0.00	0.00				
WC	15.00	5.00	10.00			
Total	103.806	6.316	14.09	20.40	25.50	37.50

Note:

- 1) Secured Financial Creditors will be given Rs 1 crores as down payment and payment of 86 Cr would be made in installments over a period of 4-years.
- 2) Unsecured Financial creditors will be given Rs. 1 lakh as down payment and Rs. 1.49 Crore in installments over a period of 4-years.
- 3) Unaffected Flat Purchasers are given flats as per the plan on payment of balance consideration and escalation cost as mentioned in CHAPTER VII. The affected flat purchasers are

given a reduced area fully paid for, as per the details mentioned in CHAPTER VII. The affected flat purchasers shall have to pay the escalation amount as mentioned in Chapter VII.

4) The Operational Creditors (other than Government) will be given Rs 0.63 Lakhs against their admitted claim of Rs. 62.82 Lacs.

5) the operational creditors (Statutory Dues) have been admitted of only Rs. 2/- as on date. The RA will make payment of Rs. 2/- towards the same.

11. Payment of Corporate Insolvency Resolution Process Cost

- (i) In terms of Section 30 (2) (a) of the IBC, the CIRP Costs are to be paid in priority to any other creditor of the Corporate Debtor.
- (ii) The Information Memorandum does not provide for the estimate of the CIRP Cost as on the NCLT Approval Date.
- (iii) Within 30 days post approval of the Resolution Plan, the Resolution Professional shall provide a final statement, containing details of the unpaid CIRP costs, as approved by the CoC from time to time, to the Resolution Applicant.
- (iv) The balance unpaid CIRP cost will be paid within 90 days from the upfront funds infused by the Resolution Applicant as mentioned in Clause 10 of Part I of the Resolution Plan.
- (v) Any balance unpaid CIRP cost above Rs. 30 Lakhs will be reduced from the amount payable to secured Financial Creditors of Corporate Debtor. Also, if the balance unpaid CIRP cost is less than Rs. 30 Lakhs, then Financial Creditors will be entitled to that remaining surplus.

12. Payment to Operational Creditors (Employees and Workmen):

- (i) As per the Information Memorandum, the total verified claim of the employees is NIL and hence no payment is proposed to them.

13. Secured Financial Creditors (Banking/Financial Institutions)**Claims of Secured Financial Creditors**

	Name of Creditor	Total Claim Amount Received	Total Claim Admitted	Claim not admitted
1	LIC Housing Finance	1,18,82,50,826	1,18,82,50,826	-
2	Progressive Co.Op. Bank Ltd.	1,16,785	99,306	17,479
	Total	1,18,83,67,611	1,18,83,50,132	17,479

- (i) As per the IM and the List of Creditors provided by the Resolution Professional, the Resolution Professional has verified and admitted an amount of INR 118.82 Cr. due to the Secured Financial Creditor (Banking/Financial Institutions) of the Corporate Debtor against which the resolution applicant has proposed a total payment of Rs. 87 crores as under: -
- (ii) The Resolution Applicant proposes a total payout of an amount of Rs. 1 Crs / - (Rupees One Crores) ("Debt Resolution Payment") to be paid by the Resolution Applicant within a period of ninety days from the Trigger Date as mentioned in Annexure I. In addition, the RA proposes to mortgage an area of 8000 sq. ft (carpet area) in Phase I & 27,000 sq. ft in Phase II to the Secured Financial Creditor until the payment of the balance 86 Cr is made in installments over a period of 4 years. An escrow account

would be created and the RA shall pay the SFC certain percentages of the sales value received from unsold flats or any fresh sales made over 4 years as mentioned in clause 7.2.2

(iii) On payment of upfront amount and creation of mortgage of 35,000 sq.ft. as stated above, all the other flats shall be released from the mortgage by LIC HFL and no NOC would be required from them and all units/flats/area in phase 1 shall be deemed to be released from the mortgage and they shall file the necessary documents for release of charge with ROC, CERSAI, sub registrar, CIBIL, etc.

(iv) As and when payments are made to LIC HFL from the sales made by the Corporate Debtor, LIC HFL shall on the last day of the month release the proportionate area calculated at the rate of Rs. 24,500 sq.ft. of RERA carpet area of the amount received by it during that month. LIC HFL shall first release all units/flats/area in phase 1 and thereafter in phase 2 and they shall file the necessary documents for release of charge with ROC, CERSAI, sub registrar, CIBIL, etc.

Any NOC if required from the secured financial creditor under this clause, the same should be provided within 72 Hrs. of the request or else it would be considered as deemed NOC has been given.

14. **Unsecured Financial Creditors (Banking/Financial Institutions)**

Claims of Unsecured Financial Creditors

Sr.no.	Name of Creditor	Total Claim Amount Received	Total Claim Admitted (Unrelated)	Claim not admitted
1	Vira Capital	40,68,107	40,68,107	-
2	IDBI Trusteeship Services Ltd	1,16,32,38,975	1,16,32,38,975	-
3	Nepean Finest Private Limited	8,50,00,000	8,50,00,000	-
4	Neeraj Shah	16,34,950	16,34,950	-
5	Trehala Solutions Ltd.	1,50,00,000	-	1,50,00,000
	Total	1,26,89,42,032	1,25,39,42,032	1,50,00,000

- (i) As per the IM and the List of Creditors provided by the Resolution Professional, the Resolution Professional has verified and admitted an amount of INR 125.39 Cr. due to the Unsecured Financial Creditor (Banking/Financial Institutions) of the Corporate Debtor against which the resolution applicant has proposed a total payment of Rs. 1.50 crores as under.

15. Financial Creditor (Home Buyers)

- i. The Resolution Applicant has an understanding from the perusal of lists of claims, that approximately 272 Allotees have filed their claims as financial creditors of a class of home/office buyers, being advance given by them to Corporate Debtor for allotment of flats, offices and shops.
- ii. The Resolution Applicants understands that from the Total 272 Allotees, Phase 1 number of Allotees is 160 and in Phase 2 the number of allotees is 112.
- iii. The Resolution Applicant further understands that in Phase 1, LIC HFL has not given NOC for 41 allotees whose list is given in Annexure B hereto. Similarly, in respect of Phase 2, LIC HFL has

not given NOC for 99 allottees whose list is given in Annexure C hereto.

- iv. Further in respect of the allottees in phase 1 and phase 2 who do not have the NOC from LIC HFL and in respect of which LIC HFL has raised objection that they cannot be treated as home buyers, but since they have been allotted units in Phase I and Phase 2 and their claims have been admitted by the Resolution Professional., The Resolution Applicant feels that since the transactions are under objection by LIC HFL and also some of them could be treated as PUFEE transactions under the IBC, 2016, the RA in the Resolution Plan has dealt with them in a separate manner as affected allottees and the remaining home buyers whose transaction has not been objected by LIC HFL will be treated as unaffected allottees.

Proposal for Affected Home Buyers

- i. The affected allottees have been allotted a total area of approx. 83,000 sq. ft. for a total consideration of Rs. 132 crores. Out of this, they have paid against their units a total sum of approx. Rs. 93 crores and amount of Rs. 39 crore is payable by them. LIC HFL has raised objection to allotment / sale of such units since NOC of LIC HFL was not obtained towards their allotment / sale. It is also noticed that some of the affected parties are shareholders of the Company and they have been classified as a related party by the RP and the RA has proposed the same treatment for them as other affected parties.
- ii. In order to resolve the Corporate Debtor, it is proposed that allotment of such units where NOC was not obtained, their allotments / sale shall stand cancelled vide this resolution plan.

- iii. Against the aforesaid cancelation the RA proposes to allot fully paid-up units as per Annexure I & J as full and final settlement against their allotment or the amounts paid to the corporate debtor by such unit holders or the amounts credited to their account as paid by the corporate debtor against the aforesaid units. Accordingly, such units shall no longer be liable to pay the balance consideration of Rs. 39 crores as mentioned above and LIC HFL will be deemed to have given its NOC in respect of such allotment to these affected allottees and these units shall be released from the mortgage on approval of the resolution plan by the Adjudicating Authority. The details of such allotment is given in Annexure I & J hereto.
- iv. The affected allottees of phase 1 shall also be liable to pay an escalation charge of Rs. 2850 per sq.ft. of Rera carpet area.
- v. The affected allottees of phase 2 shall also be liable to pay an escalation charge of Rs. 8500 per sq.ft. of Rera carpet area.

Proposal for Unaffected Home Buyers

- i. The unaffected home buyers will be required to make balance payment towards the cost of the flat/ unit as mentioned in Annexure D & E and the same shall be made as per the schedule given in the agreements/allotment letters entered into by them with the Corporate Debtor.
- ii. The unaffected home buyers of phase 1 shall be liable to pay an escalation charge of Rs. 2850 per sq.ft. of Rera carpet area.
- iii. The RA makes it clear, that the escalation cost will also be payable by the Wing F for the area constructed in Wing F and for Wing E, the temple trust will pay the actual cost of construction to the RA.

- iv. In respect of the shops in Phase 2, the RA will be getting the revised plans approved and it is possible that the area of the shops will increase or decrease. In case of change in the Rera carpet area of the shops, then for the difference in are the shop owners will have to pay an additional consideration of Rs. 90,000 per sq.ft. of RERA carpet area. In case the shop owners do not want to purchase the additional area, they will be given a refund of the amount paid by them within 1-year days from the date of receipt of commencement certificate for whole area of Phase 2 without any interest or compensation thereon.
- v. The unaffected home buyers of phase 2 shall be liable to pay an escalation charge of Rs. 8500 per sq.ft. of Rera carpet area.

16. **Operational Creditors**

Claims of Operational Creditors

Amt. in Rs.

Sr No.	Party name	Amount claimed by the Creditors	Amount admitted in respect of such claim	Claim not admitted	Claim rejected
1	<i>Om say Enterprises</i>	14,10,421	14,10,421	-	-
2	<i>Bhagwati Enterprises</i>	29,52,080	29,09,041	-	43,039
3	<i>Ankush Electric Corporation</i>	58,38,579	-	58,38,579	-
4	<i>Ankita Electricals</i>	30,514	30,514	-	-
5	<i>Weather Cool Services</i>	15,74,135	-	15,74,135	-
6	<i>Aman Enterprises</i>	2,02,03,769	5,11,684	1,96,92,085	-
7	<i>Anaya Corporation</i>	3,47,896	3,47,896	-	-
8	<i>Bharat K Kapadia & Co.</i>	3,11,700	3,11,700	-	-
9	<i>C&G Building Consultancy Pvt Ltd</i>	92,158	92,158	-	-
10	<i>Dharmesh Muni & Co.</i>	3,69,200	3,69,200	-	-

11	<i>Eyecup Animation Pvt Ltd.</i>	1,25,870	1,21,043	4,827	-
12	<i>Hallmark hydro projects</i>	13,965	-	13,965	-
13	<i>Hema Vasudev Acharya</i>	12,000	-	12,000	-
14	<i>Maher Construction Company</i>	11,476	-	11,476	-
15	<i>OZA Ceramics</i>	69,058	-	69,058	-
16	<i>Porai HR Services</i>	6,000	-	6,000	-
17	<i>SK Plaster</i>	37,143	37,143	-	-
18	Rahim Salim	9,801	-	9,801	-
19	Evergreen Enterprises	9,877	-	9,877	-
20	Yuki's Parekh & Co.	30,49,866	-	30,49,866	-
21	M S Furniture	4,17,520	1,41,520	2,76,000	-
22	M S Interior	71,448	-	71,448	-
23	Rites Upadhyay	4,49,335	-	4,49,335	-
	Total	3,74,13,811	62,82,320	3,10,88,452	43,039

- (i) The Information Memorandum provided by the Resolution Professional to the Resolution Applicant states that the aggregate amount admitted towards Operational Creditors as of the Insolvency Commencement Date is INR 6.30 Crores/ - (Rupees Six Crores and thirty lakhs)
- (ii) The total verified claim of the Operational Creditors (including MCGM) as stated above shall be settled by payment of an amount of Rs 63,000/- to be paid by the Resolution Applicant in 90 days from the effective date.

17. Proposal for Governmental Liabilities Statutory Authority Dues, Tax Dues Etc (Excluding MCGM).

Claims of Operational Creditors (Government/ Statutory Authorities)

Amt. in Rs.

Sr No.	Party name	Amount claimed by the Creditors	Amount admitted in respect of suchclaim	Claim not admitted
1	Deputy Commissioner of IncomeTax, Central Circle-4(1), Mumbai	23,37,40,092	1	23,37,40,091
2	Municipal Corporation of Greater Mumbai	5,95,97,060	1	5,95,97,059
	Total	29,33,37,152	2	29,33,37,150

(i) The Information Memorandum provided by the Resolution Professional to the Resolution Applicant states that the aggregate amount claimed towards Operational Creditors (Statutory/Government Dues) as of the Insolvency Commencement Date is INR 29,33,37,150/- (Rupees Twenty-Nine Crore Thirty-Three Lac Thirty-Seven Thousand One Hundred and Fifty) whereas the admitted amount is only Rs. 2/-. (Rupees two only).

(iii) The total verified claim of the Operational Creditors Operational Creditors (Statutory/Government Dues) as stated above shall be settled by payment of an amount of Rs. 2/ - (Rupees Two only.), to be paid by the Resolution Applicant in ninety days from the effective/ trigger date.

18. **Term, Implementation Schedule and Monitoring of the Resolution Plan**

I. Implementation Schedule

ACTIVITY	DAYS
Approval of the plan by the Hon'ble NCLT	X
Appointment of Monitoring agency	X+7
Effective Date/Date of Execution of definite document/ Trigger Date	X+60 (where X is the date of order of NCLT, NCLAT or Supreme Court finally approving the resolution plan or allowing its implementation)
Equity Infusion and Capital Reduction	X+75
Allotment of Fresh Equity to Resolution Applicant	X+75
Payment of CIRP Cost	X+90

- a) The Resolution Applicant shall, after the Effective Date, obtain the necessary approval from MCGM and Project registration for phase 2 under RERA as 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, whichever is later. In respect of Phase 1, the revalidation shall be obtained from the MCGM/RERA within 3-6 weeks from the effective date.

II. Management of the Corporate Debtor

A. On the Effective Date:

- a) The existing share capital of the corporate debtor shall stand extinguished and the new equity shares shall be allotted to the Resolution Applicant or its nominees.
- b) The Resolution Applicant shall subscribe to Equity Shares of the Corporate Debtor ("Upfront Equity Infusion") in such a way that it will hold 100% (hundred per cent) of the share capital of the Corporate Debtor and acquire control of the Corporate Debtor as a going concern in accordance with Applicable Law. The steps involved in the Acquisition are as follows:
 - (i) Requisite amendments shall be made to the Articles of Association in relation to the transactions contemplated in this resolution plan.
 - (ii) The Resolution Applicant shall fund the Infusion of INR 5,00,00.000 (Rupees One Crores Only.) and the Corporate Debtor shall issue equity share of Rs 5,00,00,000/- comprising of 500,000 Equity shares of Rs 100/- each at par and balance amount will be brought in as unsecured loan or any other appropriate capital instruments for Upfront Infusion, as may be determined by the Resolution Applicant.
 - (iii) The existing pre-CIRP shareholding (including equity shares, the preference share capital (a) of the corporate debtor on the insolvency commencement date) of the promoters/ promoter group and all other existing shareholders in the corporate debtor shall be reduced to NIL without any tax liability and fresh shares shall be allotted to the Resolution Applicant

pursuant to Upfront Equity Infusion in the Corporate Debtor, as stated above.

- (iv) The reduction of the entire Share Capital of the corporate debtor shall be affected as an integral part of this Resolution Plan by the NCLT order without any further act, deed or instrument. Implementation of the resolution plan in terms of the NCLT order shall be deemed to be due compliance of all provisions of applicable law in this regard, and there shall be no requirement to add "and reduced" in the name of the corporate debtor.
- (v) Pursuant to the above, the Resolution Applicant shall hold 100% of the shareholding in the corporate debtor.
- (vi) The above steps shall take place simultaneously.

B. Monitoring of the Corporate Debtor, Post Approval of Resolution Plan by the Hon'ble Nclt

- (i) With effect from the Effective Date, the duty to oversee the implementation of the Resolution Plan shall inter alia vest with the Monitoring Agency.
- (ii) The Monitoring Agency shall comprise of 3 representative of the Resolution Applicant and one representative of the Secured Financial Creditors and two representatives of the class of creditors home/flat/office/shop buyers from phase 1 and phase 2 respectively and the insolvency professional
- (iii) The term of Monitoring Agency shall be for a period of 5 years i.e., the term of the Resolution Plan or up to the implementation of the Resolution plan as defined in Schedule IV. i.e., till the Completion Certificate is obtained for phase 1 and 2.

The Monitoring Agency shall also have the role and responsibility to supervise the implementation of the Resolution Plan and in case of any observations/suggestions by the Monitoring Agency, it shall communicate the same to the Board of Directors of the Corporate Debtor for appropriate steps/action.

19. **Performance Bank Guarantee**

The Resolution Applicant shall provide a performance security by way of a PBG of Rs. 3,00,00,000/- (Rupees three Crores Only) issued by any scheduled commercial bank in India in accordance with the terms and condition of the RFRP as under:

Rs.3 crores to be paid within 10 (ten) working days of issuance of LoI by the RP in favor of the Successful Resolution Applicant

In case non - submission of the PG by the Successful Resolution Applicant, within ten working days of issuance of LoI, shall lead to cancellation of LoI issued by the CoC, unless otherwise determined by the CoC at its sole discretion.

The PG (where in the form of Bank Guarantee), shall be in accordance with Format VIII of the RFRP. The PG (where in the form of Bank Guarantee) shall be valid from the date of issuance of the LoI by the CoC for a period of 18 months or for the tenure of the Resolution Plan whichever is later and shall be subject to re - issuance or extension by the Successful Resolution Applicant as may be required by the CoC (as assisted by the Resolution Professional). Failure to reissue or extend the PG by

the Successful Resolution Applicant will lead to the cancellation of LoI and automatic invocation of the PG unless otherwise determined by the CoC at its meeting.

It is hereby clarified that an amount of Rs 2,00,00,000/- (Rupees two crores only) has already been deposited by the Resolution Applicant as Earnest Money Deposit. The RA reserves the right to replace the EMD by the Bank Guarantee.

20. **Treatment of transaction under Section 43,44,45,49, 50 and 66 of the I & B Code.**

The Resolution Plan provides that if any money is realized following the applications filed by the RP with the Adjudicating Authority for avoidance transactions under Section 43,44,45,49, 50 and 66 of the I & B Code, the benefit, if any, shall belong to the secured financial creditor/ home buyers and the resolution applicant equally and the cost of the said application shall also be borne equally.

21. **Observations and Findings:**

- i. As per IBC Code 30(2)(a) – A Resolution Plan 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.

- ii. As per Section 30(2)(b), the Respondent has agreed to pay Operational Creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.
- iii. The Resolution Applicant has agreed to meet the cost of project from existing resources including infusion of equity/debt through the parent company, from sale of unsold inventories and, if required, by raising finance through external sources.
- iv. The Resolution Applicant has also agreed that dissenting financial creditors shall be paid in priority and not less than the value they would have been paid in the event of liquidation of the Corporate Debtor. The Respondent has proposed to pay liquidation value to unsecured financial creditors who dissent from the plan.
- v. The plan provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(c).
- vi. The plan provides for a term of the plan, implementation schedule and supervision of the Resolution Plan under Section 30 (2) (d) & Regulation 38(2)(c).
- vii. The Resolution Plan does not contravene any of the provisions of the law for the time being in force - Resolution Plan provides for the implementation and supervision of the resolution plan as per Section 30(2) (e)
- viii. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).

- ix. As per IBBI Guidelines 38(1)(b) - the amount payable under a Resolution Plan -to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- x. The resolution applicant or any of its related parties has not failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.
- xi. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
 - a. The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors. Regulation 38(1).
 - b. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2) (c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
 - c. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a)).
 - d. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
 - e. The amount payable under a resolution plan to the Financial Creditors, who have right to vote under sub-section (2) of section 21 and did not vote in favor of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.

- f. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
- g. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.
- h. The plan provides for the management and control of the business of the Corporate Debtor during its term.
- i. All the above factors demonstrate that the plan addresses the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
- j. That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1)(b) of the Regulations.
- k. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, keeping in view the objectives of the Code (Regulation 38(1A)).

22. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for

the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is 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.

23. In ***India Resurgence Arc Private Limited vs. Amit Metaliks Limited and Ors. (2021)*** the Hon'ble Apex Court held that the process of consideration and approval of resolution plan is essentially within the commercial wisdom of Committee of Creditors (CoC). The scope of judicial review remains limited under Section 30(2) of the Insolvency and Bankruptcy Code (IBC), 2016 by which the court would examine that the resolution plan does not contravene any statutory provisions and it conforms to such other requirements as may be specified by the Board. The court held that the process of judicial review cannot be stretched if all the above-mentioned requirements have been duly complied with and that dissenting financial creditor, expressing dissent over the value of security interest held by it, cannot seek to challenge an approved Resolution Plan. Lastly, it was held that Section 30 of the IBC, 2016 only amplified the considerations for the CoC while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of resolution plan, with fairness of distribution amongst similarly situated creditors; and that the

business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment.

24. The Hon'ble Apex Court at para 42 in ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online***, has clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved.

*“Para 42- Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (supra).”*

25. In view of the above cited case law, the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent of scrutiny provided under section 31 of Code and the direction of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code.

26. In view of the discussions and the law thus settled, this Bench is of the considered view that the instant Resolution Plan meets the

requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. There are no workers claims. Resolution Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

ORDER

- a) The Interlocutory Application No. 2981 of 2021 is **allowed**. The Resolution Plan submitted by **M/s. Kabra Estate & Investment Consultants**, is hereby approved. **It shall become effective from this date and shall form part of this order.** It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force is due.
- b) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- c) The moratorium under Section 14 of the Code shall cease to have effect from this date.

- d) The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. It is seen that the Resolution Applicant has sought several dispensations, concessions and waivers. Any waiver sought in the Resolution plan shall be subject to approval by the Authority concerned in the light of the Judgment of Supreme Court in **Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited**, the relevant para's of which are extracted herein below:

“on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in, respect to a claim, which is not part of the resolution plan.”

“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any

proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

- e) The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- f) The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- g) The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- h) The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.

- i) 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.
- j) The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- k) The Interlocutory Application No. 2981 of 2021 is accordingly allowed and disposed of.**

SD/-

Anuradha Sanjay Bhatia
Member (Technical)

SD/-

Kuldip Kumar Kareer
Member (Judicial)