

NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM Nos.1 & 2

Item No.1 – IA/254(MP)2023 in C.P.(IB)/56(MP)2021
Item No.2 – IA/298(MP)2023 in (MP) CP(IB) 16 of 2020

Proceedings under Section 30(6) r.w. Section 31 IBC, 2016

IN THE MATTER OF:

[IA/254(MP)2023 in C.P.(IB)/56(MP)2021]

Chaya Gupta, RP of JSM Devcons Pvt Ltd

.....Applicant

&

[IA/298(MP)2023 in (MP) CP(IB) 16 of 2020]

Gajesh Labhchand Jain, RP of Ashoka Hi-Tech Builders Pvt
Ltd

.....Applicant

Order delivered on 05/04/2024

Coram:

P. Mohan Raj, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

IA/254(MP)2023 & IA/298(MP)2023

Both cases are fixed for pronouncement of the order.

The common order is pronounced in open Court *vide* separate sheet.

Sd/-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

Narendra S. Tomar/Stenographer

Sd/-

P. MOHAN RAJ
MEMBER (JUDICIAL)

ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
BENCH AT INDORE

IA/254(MP)2023 in C.P.(IB)/56(MP)2021

&

IA/298(MP)2023 in (MP) CP(IB) 16 of 2020

(i) **IA/254(MP)2023**

[An application filed under Section 30(6) r.w. Section 31 of the IBC, 2016]

Chaya Gupta

Resolution Professional
of JSM Devcons Private Limited
911, Apollo Premier, Near
Vijay Nagar Square,
Indore, Madhya Pradesh-452010
Email-cirp.jsm@gmail.com

Resolution Professional/Applicant

In the main matter of: C.P.(IB)/56(MP)2021

[An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016]

Motel Rahans Private Limited

Chatak Arch, F-1, 1st Floor, 7 MG Road,
Indore, Madhya Pradesh-452001

.....Financial Creditor

Versus

JSM Devcons Private Limited

306, Orbit Mall, Scheme No. 54,
A.B. Road, Indore-Madhya Pradesh-452001

.....Corporate Debtor

(ii) **IA/298(MP)2023**

[An application filed under Section 30(6) r.w. Section 31 of the IBC, 2016]

Mr. Gajesh Labchand Jain

Resolution Professional of
Ashoka Hi-Tech Builders Private Limited
(IBBI/IPA-001/IP-P-01697/2019-2020/12588)
C-602, Remi Biz Court, Off Veera Desai Road,
Azad Nagar, Andheri West,
Mumbai-400053

Resolution Professional/Applicant

In the main matter of: (MP) CP(IB) 16 of 2020

[An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016]

Edelweiss Asset Reconstruction Company Ltd

(assignee of L&T Housing Finance Ltd)
Brindavan, Plot No. 177, CST Road,
Kalina, Santacruz
East Mumbai-400098

.....Financial Creditor

Versus

Ashoka Hi-Tech Builders Private Limited

302-A City Plaza, 564, M.G. Road,
Indore-Madhya Pradesh-452003

.....Corporate Debtor

Coram: P. Mohan Raj, Hon'ble Member (J)
Kaushalendra Kumar Singh, Hon'ble Member (T)

Appearance:

For Applicant/RP : Ld. Adv. Mr. Sumesh Dhawan a.w.
Ld. Adv. Mr. Abhishek Naik &
Ms. Chaya Gupta (in person) **(IA 254 of 2023)**

: Ld. PCA Mr. Ayush J. Rajani a.w.
Ld. Adv. Ms. Khushboo Shah Rajani **(IA 298 of 2023)**

For the SRA : Ld. Sr. Adv. Mr. Vikram Nankani a.w.
Ld. Adv. Mr. Kunal Kanungo

For the Secured
Financial Creditor : Ld. Adv. Mr. Nipun Singhvi

Order Pronounced on: 05.04.2024

ORDER

1. The Interlocutory Applications **IA/254(MP)2023 & IA/298(MP)2023** have been filed under Section 30(6) r.w. Section 31 of IBC, 2016 for approval of the Resolution Plan in the matter of JSM Devcons Private Limited and Ashoka Hi-Tech Builders Private Limited respectively, by their respective Resolution Professionals, namely, Ms. Chaya Gupta and Mr. Gajesh Labchand Jain.

2. Admittedly, the facts of the case are that JSM Devcons Private Limited had entered into a joint venture with Ashoka Hi-Tech Builders Private Limited on 17.04.2009 for development and construction of housing project namely 'Pinnacle D Dream in Indore. The land [4.610 Hectares i.e. 11.40 Acres] belongs to Ashoka Hi-Tech Builders Private Limited. As per their joint development agreement, the cost of construction of housing project was to be borne by JSM Devcons Pvt Ltd and the joint venture partner namely Ashoka Hi-Tech Builders Pvt Ltd was to get 32% of the constructed flats. As per the plan, the eleven towers were to be built upon that land/plots, however only six towers namely PT-1, PT-2, PT-7, PT-8 and SPT-3 are built (PT stands for Premium Tower and SPT stands for Super Premium Tower). The remaining part of the land [1.951 Hectares i.e. 4.82 Acres] is still lying vacant and undeveloped. The six towers which have been built up are at different stage

of completion. Some of the flats were complete in all respect and have also been handed over to the allottees who were residing there at the site.

3. In the case of JSM Devcons Pvt Ltd, the CIRP was initiated vide order dated 17.03.2022 by this Adjudicating Authority in the matter of Section 7 petition filed by the Motal Rahans Private Limited in CP (IB) 56 of 2021. The case of Ashoka Hi-Tech Builders Pvt Ltd also got admitted under CIRP vide order dated 06.01.2023 of this Adjudicating Authority in the matter of Section 7 petition filed by Edelweiss Asset Reconstruction Company (assignee of L&T Housing Finance Ltd). In the course of the CIRP, Devvrat Developers Private Limited submitted its Resolution Plans in both the matters which got approved on 05.08.2023 and 18.09.2023 by the respective CoCs. Following that these two applications are filed for approval of the Resolution Plans under Section 30(6) of the IBC, 2016 before the Adjudicating Authority. Both the CIRPs relates to the common project namely 'Pinnacle D Dream', the JSM Devcons Private Limited being a developer and Ashoka Hi-Tech Builders Private Limited being the land owner and thereby we have considered both the plans together for approval through this common order.

4. Following the initiation of CIRP, the respective Resolution Professionals had collated the claim and constituted CoC which finally approved the Resolution Plans by 87.22% and 100% respectively. The constitution of the CoC, the percentage of their voting share and the vote given thereof is given in the table below:

A : JSM Devcons Private Limited - IA 254 of 2023

Creditors	% of Voting Share	Assent	Dissent	Abstain	Not Voted
Financial Creditor in Class (Homebuyers)	59.31	59.31	-	-	-
Edelweiss Asset Reconstruction Company Ltd	25.60	25.60	-	-	-
Ashok Vasodiya	0.80	-	0.80	-	-
Harish Chandra Khandelwal	0.02		0.02		

Harish Chandra Khandelwal HUF	0.16	-	0.16	-	-
Motal Rahans Pvt Ltd	0.46	-	0.46	-	-
Hrithik Roshan	2.31	2.31	-	-	-
Gold Terrace Apartments	6.21	-	6.21	-	-
Siddharth Goyal	0.05	-	0.05	-	-
Sasumorov Enterprises Private Limited	1.66	-	1.66	-	-
Deepak Pahwa	2.06	-	2.06	-	-
Excellent Infrabuild	1.07	-	1.07	-	-
Omkar Tradexim	0.30	-	0.30	-	-
TOTAL		87.22 %	12.78 %		

B : Ashoka Hi-Tech Builders Private Limited - IA 298 of 2023

Creditors	% of Voting Share	Assent	Dissent	Abstain	Not Voted
Edelweiss Asset Reconstruction Company Ltd	100	100	-	-	-
TOTAL		100%			

5. Before considering the matter for approval, we consider it appropriate to list the salient features and proposals as made by the SRA through these Resolution Plans.

5.1 Salient Feature of the Resolution Plan in IA 254 of 2023 in the matter of JSM Devcons Pvt Ltd

(i) The Resolution Plan provides for payment of the CIRP cost Rs. 75 Lakh, as estimated as on the day of the submission of the Resolution Plan within 30 days from the date of the approval by the Adjudicating Authority. (Refer Exhibit 3.3)

(ii) It provides for handing over the possession of the constructed flats to the homebuyers on payment of the balance outstanding amount (without any escalation cost) from them as on the day of filing of Resolution Plan. As per the details given in the Resolution Plan 397

homebuyers had submitted their claim totalling to Rs. 280.65 crores against which claim of 334 homebuyers were admitted at Rs. 188.73 crores. However, as per the application filed by the RP there is increase in the number of homebuyers and the RP has included the claims received till 05.08.2023 i.e. the date when Resolution Plan was approved by the CoC. Accordingly, 401 homebuyers filed their claim totalling to Rs. 288.99 crores against which the claim of 351 homebuyers have been admitted by the RP at Rs. 198.80 crores.

(iii) It provides for payment of Rs. 81.03 crores to the sole secured Financial Creditor (Edelweiss Asset Reconstruction Company Limited) against its admitted claim of Rs. 83.53 crores. 10% of the proposed amount is to be paid within 60 days from the date of the approval of the plan and the balance within 1825 days.

(iv) It provides for payment of 2% only to unsecured Financial Creditors as against their admitted claim. The 6 % of that amount is to be paid within 60 days and balance after 1825 days from the date of the approval of the Resolution Plan. The Resolution Plan does not provide any payment to the related party being unsecured Financial Creditors (other than homebuyers) but as regards dissenting Financial Creditors the Resolution Plan provides (Refer Exhibit 3.4) for payment in terms of Regulation 38(1)(b).

(v) It provides for payment to the Operational Creditors (other than workmen employees, Govt. dues) Rs. 1,50,000 only, which is 0.09% of the admitted claim of Rs. 16.64 crores. It does not provide for payment against the admitted claim of Rs. 3.02 crore of other creditors. It states that the liquidation value payable to Operational Creditors stands at Nil. No claims have been received from employees or workmen, as is also shown in the information memorandum, hence no amount stands payable to them and accordingly the plan does not provide for any amount payable to such operational creditors (employees). It provides for payment of Rs. 10,00,000 to meet any contingencies at the discretion of the resolution applicant. (Refer Exhibit 3.6)

As such the total Resolution Plan value is shown at Rs. 271.27 crores. However, against that, it is noted that there is no cash payment towards the claim of homebuyers as the homebuyers would be provided their allotted units after completion and as such that would satisfy the payment of their claim. As per the plan entire project would be completed by infusing the funds and efforts of the resolution applicant and would be allotted to respective homebuyers within a period of 24 months (+ 6 months' grace) period from the date of the approval of the plan by the Adjudicating Authority. However, it has also been clarified that with regard to the homebuyers who are found to be the respondents in the PUFEE applications, (Preferential, Undervalued, Fraudulent, and Extortionate Credit Transactions) the same would be subjected to the outcome of such PUFEE applications which the RA has proposed to take over upon approval of the Resolution Plan by the Adjudicating Authority. The RA has proposed to infuse Rs. 10 crores within 30 days' post approval of the Resolution Plan for upfront payment in view of Section 30 of the Code.

(vi) It has been clarified that under no circumstances will the over all total proposed amount be increased. It is within the CoC's commercial wisdom to change the *inter se*, distribution, & mechanism amongst the CoC members in terms of the provisions of the Code.

(vii) The Successful Resolution Applicant reserves his rights to prepay at a discounting rate of 18% p.a. to the financial creditor/other creditors.

(viii) Any receivables which accrues to the Corporate Debtor from any third party, as well as any receivables which may accrue to the Corporate Debtor as a result of any proceedings under IBC (including but limited to proceedings where any transaction is avoided/set aside by the Adjudicating Authority in terms of Section 43,45,47,49,50 or 66 of the IBC) shall be for the benefit of the Resolution Applicant as Resolution Applicant has already offered an unconditional additional amount of Rs. 75 Lakh to be payable to Secured Financial Creditor

towards assignment of PUFÉ applications filed by Resolution Professional. The Resolution Applicant would be free to deal with such applications and would step into the shoes of the creditor with all the relevant benefits and rights that would flow to the Resolution Applicant upon approval of Resolution Plan by Hon'ble Adjudicating Authority. Whilst any proceeds recovered from such proceedings shall be retained by the Resolution Applicant. It is clarified that in case any of the Home Buyers are found to be the respondent in any such applications then they fall under the definition of "affected homebuyers" and the Resolution Applicant shall be able to deal with those transactions based on its discretion.

(ix) The Resolution Plan assumes that any money received by the Corporate Debtor post the date on which the NCLT approves the Resolution Plan ("NCLT Approval Date") (after deduction of expenses incurred) for any litigation that has been initiated after the NCLT approval date as a part of the settlement of the ongoing litigation shall be received by RA.

(x) The RA has concrete plans for the management and ongoing operations of the CD. (Refer Exhibit 3.8).

(xi) There are adequate plans for supervision and implementation of the Resolution Plan. (Refer Exhibit 3.8).

(xii) The sources and uses of funds outlining the cost of the Resolution Plan and means of finance in order of priority of the payments waterfall as per Section 53 (1) of IBC, 2016 is clearly outlined (Refer Exhibit 3.8).

(xiii) For clarity, this Resolution Plan is made based on the assumption which *inter alia* includes no liability (of whatsoever nature), no litigation on account of any, non- consideration of any hidden and/or illegal contracts/arrangements made by or on behalf of the Corporate Debtor by the erstwhile promoters of the Corporate Debtor towards performance of any contractual obligation or fulfilment of any sort of commitment(s) by the Corporate Debtor.

(xiv) The Resolution Plan assumes several reliefs and waivers being sought from relevant government departments consequent to the approval of the Resolution Plan by the CoC. (Refer Exhibit 3.9).

5.2 Salient Feature of Resolution Plan in IA 298 of 2023- in the matter of Ashoka Hi-Tech Builders Private Limited

(i) The Resolution Plan provides for payment of CIRP cost within 30 days from the date of the approval. The total CIRP cost as admitted, amounted to Rs. 70 Lakh against which part payment has been made. The unpaid CIRP cost, is capped at Rs. 25 Lakh and any additional unpaid CIRP cost is to be adjusted from the financial pay out to the Financial Creditor. [Refer Exhibit 3.3]

(ii) The Resolution Plan provides for payment of Rs. 1 crore to the sole secured Financial Creditor (Edelweiss Asset Reconstruction Company Limited) against its admitted claim of Rs. 92.80 crore. (The claim of the sole secured creditor has been admitted in the case of principal borrower JSM Devcons Private Limited and also in the case of corporate guarantor Ashoka Hi-Tech Builders Private Limited). 10% of the proposed amount is to be paid within 60 days from the date of the approval of the Resolution Plan and the balance within 1825 days.

(iii) It provides for payment of full amount of Rs. 77,700/- to the Operational Creditors as against their admitted claim of Rs. 77,700/- within 30 days from the date of the approval of the Resolution Plan. [Exhibit 3.6]

(iv) No claims from Operational Creditors (Employees or workmen) were received. Hence no amount stands payable to them. The claim of the unsecured Financial Creditors (other than class of creditors) was not admitted by the RP and hence no amount stands payable to them.

(v) The Resolution Plan also provides for payment of Rs. 2 Lakh to meet any contingencies at the discretion of the Resolution Applicant.

(vi) The Resolution Applicant has proposed to infuse Rs. 75 Lakh within 30 days' post approval of the Resolution Plan by the Adjudicating Authority for upfront payment and in view of Section 30 of the Code.

(vii) It has been clarified that under no circumstances will the overall total proposed amount be increased. It is within the CoC's commercial wisdom to change the *inter se* distribution mechanism amongst the CoC members in terms of provisions of the Code.

(viii) The Successful Resolution Applicant reserves his rights to prepay at a discounting rate of 18% p.a. to the Financial Creditors/other creditors.

(ix) Any receivables which accrues to the Corporate Debtor from any third party, as well as any receivables which may accrues to the Corporate Debtor as a result of any proceedings under IBC (including but limited to proceedings where any transaction is avoided/set aside by the Adjudicating Authority in terms of Section 43,45,47,49,50 or 66 of the IBC) shall be for the benefit of the Resolution Applicant as Resolution Applicant has already offered an unconditional additional amount of Rs. 10 Lakh to be payable to Secured Financial Creditor towards assignment of PUFEE applications filed by the Resolution Professional. The Resolution Applicant would be free to deal with such applications and would step into the shoes of the creditors with all the relevant benefits and rights that would flow to the Resolution Applicant upon approval of Resolution Plan by Hon'ble Adjudicating Authority. Whilst any proceeds recovered from such proceedings shall be retained by the Resolution Applicant.

(x) The Resolution Plan assumes any money received by the Corporate Debtor post the date on which the NCLT approves the Resolution Plan ("**NCLT Approval Date**") (after deduction of expenses incurred) for any litigation that has been initiated after the NCLT

approval date as a part of the settlement of the ongoing litigation shall be received by RA.

(xi) The RA has concrete plans for the management and ongoing operations of the Corporate Debtor. [Refer Exhibit 3.8]

(xii) There are adequate plans for supervision and implementation of the Resolution Plan. [Refer Exhibit 3.8]

(xiii) The sources and uses of funds outlining the cost of the Resolution Plan and means of finance in order of priority of the payments waterfall as per Section 53(1) of IBC, 2016 is clearly outlined in. [Refer Exhibit 3.8]

(xiv) For clarity, this Resolution Plan is made based on the assumption which *inter alia* includes no liability (of whatsoever nature), no litigation on account of any, non-consideration of any hidden and/or illegal contracts/arrangements made by or on behalf of the Corporate Debtor by the erstwhile promoters of the Corporate Debtor towards performance of any contractual obligation or fulfilment of any sort of commitments) by the Corporate Debtor.

(xv) The Resolution Plan assumes several reliefs and waivers being sought from relevant government departments consequent to the approval of the Resolution Plan by the CoC. [Refer Exhibit 3.9]

6. As could be noted from the voting's on Resolution Plan (Refer para 4 above), in the matter of JSM Devcons Private Limited [IA 254 of 2023], out of 11(Eleven) unsecured Financial Creditors, 10(Ten) unsecured financial creditors had voted against the Resolution Plan. There have been no dissenting creditors in the matter of Resolution Plan in the case of Ashoka Hi-Tech Builders Private Limited (IA 298 of 2023). In the context, the RP Ms. Chaya Gupta (in the matter of JSM Devcons Private Limited) filed an additional affidavit giving the details as regards to the fair value and liquidation value as arrived by the valuers and the minimum liquidation

amount payable to the dissenting creditors in terms of Section 30(2)(b) of the IBC.

6.1 The table below reflects average fair and liquidation value, based upon on the valuation reports.

Fair Value (In Rs.)			
	I	II	Average
	RS Valuation Services P Ltd	Mr. Dhiraj Jaiswal	
Land & Building	3,95,00,00,000	2,74,86,31,000	3,34,93,15,500
	Mr. Mayur Mukaty	Mr. Manish Pathak	
Plant & Machinery	35,98,710	33,29,000	34,63,855
	Mr. Mukesh Rathi	Mr. Harshal Bhawsar	
Security & Financial Assets	39,52,99,875	39,52,99,875	39,52,99,875
Total			3,74,80,79,230

Liquidation Value (In Rs.)			
	I	II	Average
	RS Valuation Services P Ltd	Mr. Dhiraj Jaiswal	
Land & Building	2,96,00,00,000	2,47,37,68,000	2,71,68,84,000
	Mr. Mayur Mukaty	Mr. Manish Pathak	
Plant & Machinery	31,02,950	28,72,000	29,87,475.22
	Mr. Mukesh Rathi	Mr. Harshal Bhawsar	
Security & Financial Assets	34,31,82,393	36,06,54,888	35,18,68,640
Total			3,07,17,40,116

As could be noted from the table above, the fair value and liquidation value of the corporate debtor JSM Devcons Pvt Ltd has been arrived at Rs. 374.80 crore and Rs 307.17 crore respectively. Based on the liquidation value so arrived, the minimum liquidation value payable to dissenting creditors in terms of Section 30(2)(b)(ii) has been worked out as under: -

Name of Dissenting Creditors	Percentage of voting	Admitted amount of claim	Minimum liquidation value in terms of Section 30(2)(b) of the IBC
Ashok Vasodiya	0.80	2,60,50,000	2,32,78,965
Harish Chandra Khandelwal	0.02	6,90,000	6,16,602
Harish Chandra Khandelwal HUF	0.16	50,90,000	45,48,557
Motal Rahans Private Limited	0.46	1,48,67,614	1,32,86,091
Gold Terrace Apartments	6.21	20,26,55,192	18,10,98,011
Siddharth Goyal	0.05	16,00,000	14,29,802
Sasumorov Enterprises Private Limited	1.66	5,42,11,394.00	4,84,44,728
Deepak Pahwa	2.06	6,70,66,205	5,99,32,125
Excellent Infrabuild	1.07	3,48,20,527	3,11,16,539
Omkar Tradexim	0.30	97,90,277	87,48,849
TOTAL			37,25,00,269

7. However during the course of hearing in the mater of IA 254 of 2023 (For approval of the Resolution Plan in the matter of JSM Devcons), the sole Financial Creditor Edelweiss Asset Reconstruction Company Limited had raised an issue as regards the valuation of the assets of the Corporate Debtor (fair value and liquidation value as determined by the valuers) by filing an IA 313 of 2023. In that context vide order dated 30.11.2023 the RP was directed

to provide a copy of valuation report to the sole secured creditors, which was represented by learned counsel Mr. Nipun Singhvi. Thereupon Mr Singhvi pointed out certain mistakes in the valuation which would have an effect of lowering down the liquidation value and thereby the minimum amount payable to the dissenting creditors. In the process, the RP was asked to ascertain from the concerned valuers if any mistake had crept-in in arriving at the liquidation value of Security and Financial Assets, more so, as regards the trade receivable as reflected in the financial statement at Rs. 34,74,49,875/- for which details of the parties were not available. A plea was taken that unless the details (name & whereabouts) of such parties, from whom the amount could be recovered, is available, the liquidation value in that regard will have to be taken at 'zero' and that the total liquidation value of the corporate debtor would have to be reduced to that extent. Further the learned counsel Mr. Nipun Singhvi also pointed at the certain issues and discrepancies as regards to valuation done in respect of immovable property (land & buildings) of the Corporate Debtor. In that context the RP was also asked to submit the valuation report before us.

On perusal of valuation reports, it was noted that vacant/undeveloped land was not valued based upon the prevailing market value/guideline of sale of the plots/lands in the adjoining areas, rather the valuers had arrived at it by a hypothetical computation based upon the construction of the proposed towers thereon and thereafter computing likely sale consideration of the flats and then reducing therefrom the cost of construction in completion of those towers upon the such vacant land. It was noted that instead of that approach the valuers could have straight away adopted the selling rate of the existing plots in adjoining areas. In that context the RP was asked to seek clarification from the concerned valuer [namely RS Valuation Services Pvt Ltd & Mr Dhiraj Jaiswal] and also to take an opinion thereon from any other expert valuer. On reference by the RP, the said valuers stood by their reports and gave their own justification. The RP had also taken an opinion of an expert [namely Er. Prakash Agrawal] which is also placed on record. A perusal of that report reflects that the said expert has adopted the approach to value the vacant

land [where remaining 5 (five) towers are to be constructed] based on the prevailing selling rate of the plots and not as per the method adopted by those two valuers. If the same approach was adopted by those valuers to workout the liquidation value of the vacant plot, then that will have effect of lowering down the liquidation value as arrived by them.

7.1 We also note that the said expert also commented upon to overall value arrived by the said two valuers and given his own computations. The overall liquidation value of the Corporate Debtor, as computed by him is near to the average value based on the liquidation value computed by the two valuers. We however took note of his approach & methodology on the valuation of the vacant land, which was subject matter & point of reference to him. Nevertheless, the learned Senior Counsel Mr. Vikram Nankani, who appears for the Successful Resolution Applicant, submitted that the Successful Resolution Applicant is bound to make a payment to the dissenting creditors in accordance with the Section 30(2)(b) and stated that payment so arrived at based upon the valuation given by the two valuers shall be paid by the SRA to the dissenting creditors. Keeping in view the submission so made, we did not consider it further to look into the aspect of the valuation. As such the liquidation value of the Corporate Debtor JSM Devcons as arrived at Rs 307.17 crores will have to be adopted for the purposes of computing the minimum amount payable to the dissenting creditors.

7.2 In the matter of Ashoka Hi-Tech Builders, the fair value & liquidation is stated to be at Rs. 133.88 crores & Rs. 104.86 crores respectively. In that case resolution plan provides for payment to operational creditors in entirety; and there are no dissenting financial creditors. As such no such issue had arisen in that matter.

8. With this background we have examined both the Resolution Plans as regards its compliance to the requirements as per the Section 30(2) of the Code r.w. CIRP Regulation 38. Accordingly, a Resolution Plan should adhere to the following requirements: -

(i) It should provide for the payment of insolvency resolution process costs in priority to the repayment of other debts of the corporate debtor.

[Section 30(2)(a)]

(ii) The repayment of the debts of operational creditors should not be less than the amount to be paid to such creditors in the event of liquidation of the corporate debtor under section 53 of the Code, or the amount that would have been paid to the said creditors if the amount to be distributed under the resolution plan had been distributed in accordance of section 53(1) of the Code. Moreover, the payment to the operational creditor is to be made in priority over the financial creditor; Further the repayment of the debts of dissenting financial creditors should not be less than the amount that would have been paid to such creditors in the event of liquidation of the corporate debtor under section 53 of the Code and the payment to the said dissenting financial creditor is to be made in priority to the consenting financial creditors.

[Section 30(2)(b) read with CIRP Regulation 38(1)(a) & 38(1)(b)];

(iii) Provides for the management of the affairs of the corporate debtor after approval of the resolution plan.

[Section 30(2)(c) read with CIRP Regulation 38(2)(b)];

(iv) The implementation and supervision of the resolution plan.

[Section 30(2)(d) read with CIRP Regulation 38(2)(c)];

(v) It does not contravene any of the provisions of the law for the time being in force.

[Section 30(2)(e)];

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

[Section 30(2)(f)]

Such other requirements of the resolution plan as detailed in IBBI (Resolution Process for Corporate Persons) Regulations, 2016 which are not covered above, are as under:

(a) The resolution plan should include statement as to how it has dealt with the interests of all stakeholders including financial creditors and operational creditors of the corporate debtor.

[CIRP Regulation 38 (1A)]

(b) The resolution plan should include a statement giving details as to whether the resolution applicant or any of its related parties has at any time failed to implement or caused to the failure of implementation of any other resolution plan which was approved by the Adjudicating Authority.

CIRP Regulation 38 (1B)

(c) The resolution plan should contain the term of the plan and its implementation schedule.

[CIRP Regulation 38(2)(a)]

(d) The resolution plan should also demonstrate that it addresses the cause of default; is feasible and viable; has provisions for its effective implementation; has provisions for approvals required and timeline for the same. Further that the resolution applicant has the capability to implement the resolution plan.

[CIRP Regulation 38(3)]

9. Taking into account the above provisions of the Code, the Resolution Plan submitted before us have been examined as follows: -

(i) The Resolution Plan in respect of JSM Devcons Private Limited provides for payment of the CIRP cost amounting to Rs. 75 Lakh to be paid immediately on approval of the Resolution Plan in priority to the repayment of other debts of the Corporate Debtor. Similarly, the Resolution Plan in respect of Ashoka Hi-Tech Builders Private Limited also provides for the payment of CIRP cost of Rs. 70 Lakh against which part payment has already been made and the balance is capped at Rs. 25 Lakh. It has been provided that any excess in the unpaid amount over and above Rs 25 Lakh would be adjusted against the payment proposed to the Financial Creditor. In both Resolution Plans, the

Successful Resolution Applicant has proposed to pay the CIRP cost within 30 days from the date of the approval and that too in priority of the repayment to the other debts. Thus, both the Resolution Plans are in compliance of provision of Section 30(2)(b) of the IBC.

(ii) The Resolution Plan in the case of JSM Devcons Private Limited provides for payment to the Operational Creditors (other than workmen employees, Government dues) Rs. 1,50,000/- only as against their admitted claim of Rs. 16.64 crore. No claims have been received from employees or workmen. Further it does not provide for payment against admitted claim of Rs. 3.02 crore of other creditors. It is stated that the liquidation value payable to Operational Creditors stands at Nil.

According to Section 30(2)(b), the Operational Creditors should not be paid less than the amount payable to such creditors in the event of liquidation of the Corporate Debtor under Section 53 of the Code, or the amount that would have been paid to the said creditors if the Resolution Plan value had been distributed in accordance with Section 53(1) of the Code. As stated earlier, the liquidation value is Rs. 307.17 crore and the Resolution Plan value is Rs. 271.27 crores. Considering the proposed payment to the secured creditor and the unsecured creditors (including dissenting creditors) the balance remains Nil [307.17 - 198.80 - 81.03 - 37.25] and as such the liquidation value payable to the Operational Creditors works out at NIL. Moreover if the plan value is to be distributed in accordance with section 53(1) of the Code, then also nothing remains for distribution to operational creditors.

The Resolution Plan in respect of Ashoka Hi-Tech Builders Private Limited provides for full payment of the Operational Creditors (Rs. 77,000).

As such both the Resolution Plans complied with the provisions of Section 30(2)(b) as regards payment to operational creditors.

(iii) As mentioned in the para 6 above, there are ten (10) dissenting unsecured Financial Creditors. The liquidation value payable to them

workout to Rs. 37.25 crores. From the side of the Successful Resolution Applicant, it has been stated that the dissenting creditor would be paid in accordance with the provision of Section 30(2)(b) of the IBC. The Resolution Plans also provides for payment to them in priority in terms of Regulation 38(1)(b). Further in the context of the Resolution Plan in case of Ashoka Hi-Tech Builders Private Limited, there are no dissenting creditors and, therefore, both the Resolution Plans are found to be complying to the provisions of Section 30(2)(b) of the IBC as regards to the payment to the dissenting creditors.

After the matter was reserved for order, the RP filed an IA 95 of 2024 whereby it is intimated that some of the dissenting creditors have assigned their claim in favour of Sheetal Impex Private Limited. The intimation was taken on record. Be as it may, such assignee would also enter into the shoes of those dissenting creditors and the minimum liquidation value in accordance with Section 30(2)(b) shall be payable to such assignee.

(iv) The mechanism for management and control of the affairs of the Corporate Debtor after approval of the Resolution Plan till its implementation has been provided in the Resolution Plans. Accordingly, in JSM Devcons, the implementation and Monitoring Committee is comprised of 5(five) persons of which 1(one) will be a person nominated by the Resolution Applicant, 1(one) will be nominated by the secured Financial Creditor, 1(one) will be any other professional as may be decided by Resolution Applicant and 2(two) will be the representative of homebuyers as may be decided by them amongst themselves. In Ashoka Hi-Tech Builders, the implementation & monitoring committee is comprised of 3(three) persons of which is 1(one) will be nominated by Resolution Applicant, 1 (one) will be nominated by secured Financial Creditor 1(one) will be any other professional. Both the plans provide that on and from the date of approval of the Resolution Plan by the Adjudicating Authority, the Corporate Debtor shall be managed by the Resolution Applicant and new management will function and control

the Corporate Debtor and monitor all its day to day operations while the Monitoring Committee shall function only as non-invasive general supervision of Monitoring Committee, only to check for any deviations from Resolution Plan with regard to the pay-outs to the stakeholders. Accordingly, the provisions of Section 30(2)(c) r.w. CIRP Regulations 38(2)(b) and Section 30(2)(d) r.w. with CIRP Regulation 38(2)(c) have been complied with in both the plans.

(v) The respective RPs have submitted that the plan does not contravene any provisions of law. The Successful Resolution Applicant has also stated it would comply with all the relevant laws as applicable from time to time. We also noted that the plan does not contravene any provisions of the law for the time being in force. Thereby, Section 30(2)(e) has been complied with in both the Resolution Plans.

(vi) Both the resolution plans also conform to other IBBI Regulations as given hereunder:

(a) The resolution plans adequately deals with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor. Thereby, both the plans are in compliance with CIRP Regulation 38 (1A).

(b) It is submitted that neither the resolution applicant nor any of its related parties have at any time failed to implement or contributed to the failure of implementation of any other resolution plan which was approved by the Adjudicating Authority. Thereby, both the plans are in compliance with CIRP Regulation 38 (1B).

(c) The term of the Plan and its implementation schedule is as under:

A : JSM Devcons Private Limited - IA 254 of 2023

Sr. No	Activity	Estimated Timeline
1.	Payment of CIRP Costs as approved by CoC	E+15 days
2.	Payment to Operational Creditors	E+60 days
3.	Payment to Secured Financial Creditors	E+1,825 days; while the first tranche of 10% will be paid in first 60 days Balance would be paid within E+1,825 days
4.	Payment to Unsecured Financial Creditors (other than homebuyers)	6% of the proposed amount within E+ 60 days Balance within E+1,825 days
5.	Dissolution of Monitoring Committee	Monitoring Committee shall stand automatically dissolved upon completion and obtaining the "occupation certificate" towards the 6 Towers for which there are claims of homebuyers as per the information memorandum/payment to the secured Financial Creditor is completed whichever is later.
6.	Allotments to homebuyers based on their respective allotment letters	E+24 months + 6 months grace period

B : Ashoka Hitech Builders Private Limited - IA 298 of 2023

Sr. No.	Activity	Estimated Timeline
1.	Payment of CIRP Costs as approved by CoC	E+30 days
2.	Payment to Operational Creditors	E+30 days
3.	Payment to Secured Financial Creditors	10% will be paid within E+60 days from the Order of the NCLT approving the Resolution Plan. Balance 90% amount would be paid at E+1825 days to the Secured Financial Creditor.

Note- [E stands for approval date]

Thereby CIRP Regulation 38(2)(a) has been complied with.

(d) Both the resolution plans address the cause of default; is feasible and viable; has provisions for its effective implementation; contains provisions for approvals required and the timeline for the same. Further that the resolution applicant has the capability to implement the resolution plan. Thus CIRP Regulation 38(3) has been complied with.

10. Devvrat Developers Private Limited is registered at Registrar of Companies, Mumbai and its authorized share capital is Rs. 8 crores and paid up capital is Rs. 1,59,70,000. It was incorporated on 25.05.1995. Its Registered Office Address is 101, 1st Floor, Dol Bin Shir, Janmabhoomi Marg, Fort, Mumbai – 400001, CIN-U70100MH1995PTC088764. It is involved in Real Estate Activities with own or leased property. The sources of fund are by way of internal approval and funds available with the Resolution Applicant.

11. While considering for approval of both the resolution plans, we have noted that the resolution of the project 'Pinnacle D Dream' can be successfully achieved if the resolution applicant in both the matters is common. It is to be noted that the JSM Devcons Private Limited has acted as developer, whereas the Ashoka Hi-Tech Builders Private Limited is the landowner. As per the joint development agreement, the Ashoka Hi-Tech Builders Private Limited gets 32% of the flats so constructed or the revenue generated thereon on sale of flats to the homebuyers. The homebuyer has, in effect, entered into the deal with the prime developer JSM Devcons Private Limited; but the registry of the flats are made by way of sale-deeds executed jointly by the JSM Devcons Private Limited & Ashoka Hi-Tech Builders Private Limited. In that way, Ashoka Hi-Tech Builders Private Limited also has adopted the role of codeveloper. While booking the flats with JSM Devcons Private Limited & making the payment thereof, the homebuyers had acquired the lien not only over the super structure but also onto the proportionate land. We also noted that in both the resolution plans, the Successful Resolution Applicant has not proposed any payment to the promoters (as against their share capital). The respective CoCs have approved such plans as per their commercial wisdom.

But then we also note that the Successful Resolution Applicant has not charged any escalation cost to the homebuyers. The homebuyers are to pay the balance amount of the cost of flats only. Taking into all these facts and considering the approval of the plan by the respective CoCs as per their commercial wisdom, and after examining the plan in terms of Section 30(2) r.w. Section 31 of the IBC, we find it appropriate to accord our approval too.

12. It is noted that the Resolution Applicant has sought by and large similar relief(s) and concessions as detailed therewith in both the resolution plans at Exhibit 3.9 of Section 3, as well as in Section 5. In addition to that specific relief(s) have been sought on the following: -

- (i) All powers, rights and entitlements rested with any person or persons with respect to the said Real Estate Projects, the movable and immovable properties the new management will deemed to have all power vested in them by/from such parties for smooth execution and completion of Projects.
- (ii) New management will not be required to take any permission/power of attorney/No objection certificate from previous management/ past consultants/ past promoters of said Real Estate Projects/owners of movable and immovable properties.
- (iii) No one associated in past with the Projects to have right to sue or create hurdles in the execution and implementation of said Projects.
- (iv) The new management reserves the right to mortgage the right held with them to raise finances as and when required for smooth execution and completion of Projects subject to approval from the secured financial creditor.
- (v) The new management reserves the right to modify the plan subject to approvals for smooth execution and completion of Projects.
- (vi) The Resolution Plan envisages that all and any liabilities towards income tax, GST, taxes/penalty/fine of any nature whatsoever under the prevailing laws in India, for any such period prior to the “transfer

date” even if any such assessment or investigation are concluded after the “transfer date” but relates to the period prior to the “transfer date”, shall stand extinguished and the Resolution Applicant shall not be liable for the same.

(vii) Any liabilities that are not captured in the Information Memorandum issued from time to time shall stand extinguished and written off today and forever as is settled law in terms of the decision the Hon’ble Supreme Court in the case of Ghanshyam Mishra and Sons Pvt Ltd Versus Edelweiss Asset Reconstruction Company Limited & Ors. reported in [2021] 9 SCC 657.

(viii) Any or all corporate guarantees provided by the Corporate Debtor before the Effective Date/NCLT Approval Date shall stand annulled.

(ix) Any or all personal guarantees given by any of the suspended Directors in favour of any third party and upon invocation of the said personal guarantees, the said suspended Directors shall not rights to subrogation against the corporate debtor on the resolution plan stands approved by the NCLT.

(x) Any or all assets of the Corporate Debtor including rights in subsidiaries/Associate/ Related or any other companies that are undisclosed/untraced shall solely belong to Resolution Applicant with no recourse to any other person.

13. During the course of hearing, the learned Senior Counsel Mr. Vikram Nankani appearing for the Successful Resolution Applicant submitted that the various relief(s) and concessions, which are sought, are those which are generally granted on approval of the Resolution Plan, however, he also stated that these are not conditional to the approval of the Resolution Plan.

14. As regards reliefs and concessions claimed by the resolution applicant with respect to the unpaid liabilities after approval of the plan and the claims not filed at all with the RP during the CIRP, the law has been well settled by the Hon’ble Supreme Court in the case of **Ghanashyam Mishra and Sons**

Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors. reported in MANU/SC/0273/2021 in the following words:

86. *“.....The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.*

87. *We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief.....”*

15. In view thereof following relief(s) and concessions are being allowed:

(i) Existing equity shares of Corporate Debtor shall be cancelled without any consideration. The approval of ownership of Corporate Debtor shall take place on issuance of afresh equity shares to the Successful Resolution Applicant. The required formalities in the RoC Office will have to be carried out by the RP/Successful Resolution Applicant by filing requisite form. The RoC shall consider the same keeping in view the intent and sprit of the IBC.

(ii) All unpaid liabilities and claims which are not filed with the RPs before the approval of the Resolution Plans and those which are not included in the said Resolution Plans would stand extinguished.

(iii) Specific reliefs as sought and stated in para 12-(i) to (x) hereinabove are granted.

As regards other reliefs and concessions sought by the resolution applicant, we direct the said successful resolution applicant to approach the concerned statutory authority for those concessions and those authorities will consider

the same as per the provisions of law under the relevant Acts keeping in view the intent and spirit of the Code. The SRA will have liberty to seek any further directions from this Adjudicating Authority if the need be, in this regard by filing separate appropriate applications.

16. The proviso to Section 31 of the Code, 2016, states that before passing any order for approval of the resolution plan, the Adjudicating Authority should also satisfy that the resolution plan has provisions for its effective implementation. We being satisfied, approve the resolution plan submitted by Devvrat Developers Private Limited for Corporate Debtors i.e., JSM Devcons Private Limited & Ashoka Hi-Tech Builders Private Limited and proceed to pass the following order:

- (i) Accordingly, both the applications **IA 254 of 2023 & IA 298 of 2023** are allowed.
- (ii) The resolution plans of Devvrat Developers Private Limited for Corporate Debtors i.e., JSM Devcons Private Limited & Ashoka Hi-Tech Builders Private Limited, as approved by the respective CoCs, meets the requirement as referred to in sub-section (2) of Section 30 and accordingly are approved.
- (iii) The approved 'Resolution Plan' shall become effective from the date of passing of this order.
- (iv) The order of moratorium dated 17.03.2022 (in IA 254 of 2023) & 06.01.2023 (in IA 298 of 2023) passed by this Adjudicating Authority under Section 14 of I&B Code, 2016 shall cease to have effect from the date of passing of this order.
- (v) The respective Resolution Professionals shall forthwith send a copy of this Order to the participants and the Resolution Applicant.
- (vi) The respective Resolution Professionals shall forward all records relating to the conduct of the corporate insolvency resolution process and Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded in its database.

(vii) Accordingly, both Interlocutory Applications i.e. IA 254 of 2023 in CP(IB) 56 of 2021 & IA 298 of 2023 in (MP) CP(IB) 16 of 2020 is allowed and stands disposed of in terms of the above directions.

(viii) Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

Sd/-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

Narendra S. Tomar/ Stenographer

Sd/-

P. MOHAN RAJ
MEMBER (JUDICIAL)