

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA. NO. 6324/ND/2022, IA. NO. 2551/ND/2023

IN

Company Petition No. (IB)- 1035(PB)/2020

IN THE MATTER OF:

Eclear Leasing & Finance Private Limited

... Applicant/Financial Creditor

Versus

Swati Health and Education Services Private Limited. ... Respondent

AND IN THE MATTER OF IA. NO. 6324/ND/2022:

Mr. Pawan Kumar Goyal

Resolution Professional
Swati Health and Education Services Pvt. Ltd.
Having office at: 304, D.R.
Chambers, 12/56, D.B.
Gupta Road, Karol Bagh,
New Delhi 110005

... Applicant/RP

Versus

**Sandeep Gupta, Shalini Gupta
And Anoop Kumar Mittal**

(Consortium Member)
D-105. South City 1,
Sector 41 Gurugram
Haryana, 120005

... Respondent

AND IN THE MATTER OF IA. NO. 2551/ND/2023:

Greater Noida Industrial Development Authority

Through its Authorised Representative,
Address: Plot No. 1, K.P. 04
Greater Noida City,
Gautam Buddha Nagar
Uttar Pradesh

... Applicant/Objector

Versus

Mr. Pawan Kumar Goyal

Resolution Professional
Swati Health and Education Services Pvt. Ltd.
Having office at: 304, D.R.
Chambers, 12/56, D.B.
Gupta Road, Karol Bagh,
New Delhi - 110005

... Respondent

Under Section: 30(6) of IBC 2016

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Dr. Sumant Bhardwaj, Adv. Avinash Yadav, Adv. Anshika Dubey for Resolution Applicant
For the GNIDA : Advocate Manish Kumar Srivastava
For the RP : Adv. Saurabh Kalia, Adv. Sarvik Singhai, Adv. Iswar Mohapatra, Adv. Chaitanya Bansal, Mr. Pawan K. Goyal for RP in person

ORDER

PER: SH. ASHOK KUMAR BHARDWAJ, MEMBER (J)

When the IA. No. 6324/ND/2022 has been preferred for approval of the Resolution Plan dated 15.11.2022, the IA-2551/ND/2023 has been preferred by Greater Noida Industrial Development Authority, opposing the Plan. Thus, both the applications are taken up for disposal in terms of the present common order.

IA. No. 6324/ND/2022:

As the Corporate Debtor, Swati Health and Education Services Private Limited defaulted in repaying an amount of Rs.5,50,00,000/- (Rupees Five Crore Fifty Lakhs) to the Eclear Leasing & Finance Private Limited (FC), an application under Section 7 of IBC 2016 viz. (IB)-1035/(PB)2020 was filed against the CD. In terms of the order dated 04.03.2022, this Adjudicating Authority directed initiation of CIRP qua the CD and declared moratorium in

terms of the provisions of Section 14 of IBC 2016, regarding its affairs. Mr. Pawan Kumar Goyal (IBBI Reg. No. IBBI/IPA-001/IP-P00875/2017-18/11473) was appointed as IRP. The IRP received the intimation regarding the order on 10.03.2022 and made a public announcement on 11.03.2022, in terms of the Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with Section 13 and 15 of the IBC 2016. The announcement was made in the newspapers “Financial Express” (English Edition), and “Jansatta” (Hindi Edition).

2. In response to the announcement, the IRP received only 02 claims within the prescribed time limit i.e. one from the Financial Creditor who had filed application under Section 7 of IBC 2016 (hereinafter referred to as Code) and other one from one Operational Creditor.

3. As has been provided in Section 21 of the Code, the IRP constituted a Committee of Creditors comprising only one FC, having 100% voting rights in the CoC. To satisfy the requirement of Regulation 17(1) of IBBI (CIRP) Regulations 2016 (hereinafter referred to as Regulations), the RP filed the certificate of constitution of Committee qua the CD before this Adjudicating Authority. The summary of the claim of FC and other claims as mentioned by the Applicant in the application for approval of plan filed by him reads thus:

Sl. No.	Name of COC Member	Claim Admitted (Rs. in lacs)	Voting Share (%)
1.	Eclear Leasing & Finance Private Limited (now	1104.06	100

	known as Grow Money Capital Private Limited)		
	Total	1104.06	100

(Rs in Lacs)

Sl. No.	Category	Claim filed	Claim Admitted
1.	Unsecured Financial Creditor (related party)	1110.56	573.02
2.	Operational Creditor (Workmen & Employees)	0	0
3.	Operational Creditors (statutory dues)	2141.95	1824.97
4.	Operational Creditors (Others)	1.74	1.26
5.	Other Creditors	1.34	1.34
	Total	3255.59	2400.59

4. The RP complied with the provision of Regulation 27 and appointed the Valuers referred to in para 7 of the application. The Valuers were appointed on 11.04.2022. As per the valuation report, the Fair Value of assets of the CD was considered as Rs. 3313.33 lakhs while the Liquidation Value of the same was assessed as Rs.2475.33 lakhs. The summary of the fair and liquidation value of the CD is mentioned in para 7 of the application.

5. As per the discussion and approval by the CD in its 02nd meeting, the RP issued Form G dated 10.05.2022 inviting Expression of Interest (EOI) from prospective resolution applicants. In its 03rd meeting held on 06.06.2022, the CoC decided to cancel the invitation for EOI dated 10.05.2022 and issued fresh invitation for Expression of Interest on 09.06.2022 in the prescribed form i.e. Form G. In response to said invitation, the RP received only one Resolution Plan from Prospective Resolution Applicant. In its 05th meeting held on 16.08.2022, the CoC again decided to

cancel the EOI process and decided to start the same afresh. The CoC approved with 100% voting share the revised eligibility criteria for Prospective Resolution Applicant, Evaluation Matrix and RFRP. It also authorised RP to issue fresh Form G inviting Expression of Interest. As a period of 180 days from initiation of CIRP had lapsed, in its 05th meeting itself, the CoC resolved to seek extension of CIRP period for further 90 days, beyond 180 days. In terms of the order dated 09.09.2022 passed in IA. No. 4299/2022 this Adjudicating Authority allowed the extension of CIRP by 90 days beyond 30.08.2022.

6. In response to invitation of EOI dated 19.08.2022 published in Form G, the RP received EOI from 09 PRAs. After verification of the Expression of Interest given by the PRAs (ibid), RFRP dated 20.09.2022 was issued to 08 of them. The details of the 08 PRAs to whom RFRP was issued is given in para 13 of the application. The RP prepared the Information Memorandum dated 08.11.2022 as required in terms of provision of Section 29 of the Code and shared the same with the Prospective Resolution Applicants. Till 21.10.2022 i.e., the last date for submission of Resolution Plans, 03 resolution plans were received from Prospective Resolution Applicants. The details of the PRAs who submitted their plans is given in para 16 of the application. In the 06th CoC meeting 25.10.2022, the Resolution Plans were to be considered, but as all the PRAs/their Representative did not turn up, the meeting was deferred. On 11.11.2022, the CoC requested all the PRAs to submit their revised and final resolution plans by 15.11.2022. Resultantly, 02 PRAs submitted the revised plans and the 03rd PRA stucked to its original plan. The RP opened the revised plans in 08th CoC meeting held on 17.11.2022. Certain

clarification was sought from the PRAs. Both the PRAs who had submitted revised Plans gave their clarification. Thereafter, the RP issued notice dated 22.11.2022 for 09th CoC meeting scheduled to be held on 24.11.2022. In the said meeting, the Resolution Plans were examined. As the Resolution Plan of Consortium of Mr. Sandeep Goyal and Mr. Manoj Gupta was not found legally compliant, in 09th meeting of CoC held on 24.11.2022, a decision was taken not to consider the same. In its 09th meeting held on 25.11.2022, the CoC approved the Resolution Plan submitted by a consortium of Mr. Sandeep Gupta, Ms. Shalini Gupta and Mr. Anoop Kumar Mittal by 100% voting share. The Resolution No. 4 passed by the CoC in said meeting has been reproduced in para 34 of the application. The Letter of Intent (hereinafter referred to as the “LOI”) dated 28.11.2022 issued by RP to SRA was accepted on 29.11.2022.

7. In consideration of the IA. No. 5889/2022, this Adjudicating Authority extended the period of CIRP by 60 days beyond 28.11.2022. The SRA submitted Performance Bank Guarantee (hereinafter referred to as the “PBG”) on 02.12.2022. The same is effective from 01.12.2022. The PBG for Rs. 2.55 Crore is issued by HDFC Bank. The Bank Guarantee is valid till 31.08.2023. A copy of Guarantee is enclosed as Annexure A-16 to the application. A copy of memorandum of consortium Agreement dated 01.03.2022 between Mr. Sandeep Gupta, Ms. Shalini Gupta, and Mr. Anoop Kumar Mittal is enclosed as addendum to Resolution Plan. In terms of the certificate issued by him in prescribed form i.e., Form H, the Resolution Applicant has certified that the plan is compliant with the provisions of the IBC. A copy of Form H is enclosed at Annexure A-18 to the application.

Information regarding the amount claimed, admitted and proposed to be paid has been given in para 43 of the application. Details of various compliances required to be made in terms of the provisions of Section 30(2) of the Code and Regulation 37, 38, and 39 of the Regulations are duly adhered to.

8. The Financial Proposal given by the SRA is Rs. 2532.39 lacs towards settlement of CIRP cost and all other debts of the Corporate Debtor. The summary of amount proposed under different categories and the timeline for payment as mentioned in Para 45 (A) and (B) of the application reads thus:

“45. That in satisfaction of the mandatory requirements of the Code and the CIRP Regulations, the Applicant craves leave to place before this Hon’ble Adjudicating Authority, the following key features in respect of the Resolution Plan:

A. Financial Proposal

Successful Resolution Applicant has proposed Rs.2532.39 lacs towards settlement of CIRP cost and all other debts of the corporate debtor. Summary of the amount proposed under different categories with timelines for payments is as under: -

Sl. No	Particulars	Claim filed	Claim admitted	Amount Provided in the Resolution plan	% of amount provided to amount admitted	Timeline
1.	<i>Insolvency Resolution Process Cost</i>	<i>N.A</i>	<i>Actual</i>	<i>100.00</i>	<i>On Actual basis</i>	<i>Within 90 days from the effective date</i>
2.	<i>Unsecured Financial Creditors (except</i>	<i>1104.07</i>	<i>1104.07</i>	<i>1104.07</i>	<i>100.00</i>	<i>Within 90 days from the effective date</i>

	<i>related party)</i>					
3.	<i>Unsecured Financial related party)</i>	1110.56	573.02	573.02	100.00	<i>Within 90 days from the effective date</i>
4.	<i>Operational Creditors (Workmen & Employees)</i>	0	0	0	0.00	N.A.
5.	<i>Operational Creditors (statutory dues)</i>	2141.95	1824.97	679.00	37.21	<i>Within 90 days from the effective date</i>
6.	<i>Operational Creditors (Others)</i>	1.74	1.26	0.63	50.00	<i>Within 90 days from the effective date</i>
7.	<i>Other Creditors (Related Party)</i>	1.34	1.34	0.67	50.00	<i>Within 90 days from the effective date</i>
8.	<i>Contingent Liability</i>	N.A	N.A	75.00	N.A	<i>Within 90 days from the effective date</i>
	Total	4359.66	3504.66	2532.39		

Remarks

CIRP cost will be paid on actual basis and in case actual CIRP cost is more than Rs 1.00 crore additional amount will be paid by RA and in case actual CIRP cost is less than Rs 1.00 crore than balance will remain in CD account.

B. The indicative timelines as per the resolution plan are as under: -

Process	Timeline (Days)
<i>Effective Date</i>	<i>X</i>
<i>Transfer of Project/ CD to R.A</i>	<i>X+30-Y</i>
<i>Substitution of equity share by R.A and appointment of new Directors</i>	<i>Y+90</i>
<i>Appointment of Monitoring Committee</i>	<i>Y+7</i>

<i>Payment to Pending CIRP Cost</i>	<i>X+90</i>
<i>Payment to Financial Creditors (unsecured)</i>	<i>X+90</i>
<i>Payment to Operational Creditors (unsecured other creditors)</i>	<i>X+90</i>
<i>Payment to Operational Creditors (other than Workmen & Employees)</i>	<i>X+90</i>

9. The amount provided for stakeholders has been mentioned in Para 7 of Form H mentioned in Schedule I to IBBI (Resolution of Insolvency for Corporate Persons) Regulations, 2016. Para 7 of the certificate has been reproduced herein below in Para 14.

10. The SRA has submitted the affidavit of all consortium members, stating therein that the consortium members are eligible to submit the Resolution Plan and are not suffering from any disqualification in terms of the provisions of Section 29A of the Code. They have also given the undertaking required in terms of Section 25(2)(h) of the Code, as decided by the CoC. The copies of the affidavit and undertaking are placed on record as Annexure A-20 to the application.

11. The Plan provides for payment of CIRP cost in priority. It also provides for the repayment of debts of OCs, in terms of the provision of Regulation 38 of the Regulations, 2016. The addendum dated 23.11.2022 provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. The Plan also contains provisions for implementation and supervision of the same. The mandatory contents of the Resolution Plan are mentioned in Para 45 (F) of the application, reads thus:

F. Mandatory Contents of Resolution Plan

Clause No.	Description/Requirement	Details/how Dealt within the Resolution Plan
As set out in Section 30 (2) of the Code, 2016		
a)	<i>Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.</i>	<i>Page 67 & 88 of the Resolution Plan and page A-3 of the addendum.</i>
b)	<p><i>Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than</i></p> <p style="padding-left: 40px;"><i>i. the amount payable to them in the event of liquidation u/s 53; or</i></p> <p style="padding-left: 40px;"><i>ii. the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,</i></p> <p><i>whichever is higher and provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.</i></p>	<p><i>i. Page 31, 32, 39 & 41 of the Resolution Plan and page A-3, 4 of the addendum.</i></p> <p><i>ii. Page 31, 32, 39 & 41 of the Resolution Plan and page A-3, 4 of the addendum</i></p> <p><i>COC has only one member with 100% voting share and resolution plan proposed 100% payment at page 31, 37 of the Resolution Plan</i></p>
c)	<i>Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.</i>	<i>As per addendum dated 23.11.2022, at page A-10 of addendum and at page 64 of the resolution plan.</i>

d)	<i>Implementation and Supervision</i>	<i>Page 61, 64 & 65 of the Resolution Plan</i>
e)	<i>Plan does not contravene any of the Provisions of the law for the time being in force.</i>	<i>As per statement on Page 32 of the Resolution Plan and page A-8 of the addendum.</i>
f)	<i>Conforms to such other requirements as maybe specified by the Board.</i>	<i>As per Page A8 of the addendum.</i>
Mandatory contents of Resolution Plan in terms of Regulation 38 of CIRP Regulations		
38(1)	<i>The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors</i>	<i>Page 31, 39 & 41 of the Resolution Plan and page A-3, 4 of the addendum.</i>
38(1A)	<i>A resolution plan shall include a Statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.</i>	<i>Clause C at page 63 of Resolution Plan</i>
38(1B)	<i>A resolution plan shall include a statement giving details if the resolution plan applicant or any of its related parties has 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.</i>	<i>At page 32 of the resolution plan</i>
38(2)	<i>A resolution plan shall provide:</i>	<i>At page 61 of the RP</i>
	<i>(a) The term of the plan and its implementation schedule;</i>	
	<i>(b) The management and control of the business of the corporate debtor during its term; and</i>	<i>As per addendum dated 23.11.2022, at page A-10 of addendum and at page 64 of the resolution plan.</i>
	<i>c) adequate means for supervising its implementation.</i>	<i>At page 61, 64, 65 of the Resolution Plan.</i>
38(3)	<i>A resolution plan shall demonstrate that:</i>	
	<i>(a) it addresses the cause of default;</i>	

	<p>(b) it is feasible and viable;</p> <p>(c) it has provisions for its effective implementation;</p> <p>(d) it has provisions for approvals required and the timeline for the same: and</p> <p>(e) the Resolution Applicant has the capability to implement</p>	<p>At page 59 of the Resolution Plan.</p> <p>At page 59 of the Resolution Plan.</p> <p>At page 33, 57 & 60-62 of the Resolution Plan.</p> <p>At page 33 & 62 of the Resolution Plan.</p> <p>At page 33 & 60 of the Resolution Plan.</p>
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Measures required for implementation of the Resolution Plan in terms of regulation 37 of CIRP Regulations:

	<i>The Resolution Plan provides for the measures, as may be necessary, for insolvency resolution of the Company for maximization of value of its assets, including but not limited to the following:</i>		
i)	<i>Any proposal on transfer of all or part of the assets of the corporate debtor to one or more persons.</i>	<i>Regulation-37(a) of CIRP Regulations</i>	<i>At clause F on page 58 of the Resolution plan.</i>
ii)	<i>Any proposed sale of all or part of the assets whether subject to any security interest or not.</i>	<i>Regulation 37 (b) of CIRP Regulations</i>	<i>Not proposed by SRA</i>
iii)	<i>Restructuring of the corporate debtor, by way of merger, amalgamation and demerger</i>	<i>Regulation 37 (ba) of CIRP Regulations</i>	<i>Not proposed by SRA</i>
iv.	<i>Any proposed substantial acquisition of shares of the corporate debtor or the merger or consolidation of the corporate debtor with one or more persons.</i>	<i>Regulation 37(c) of CIRP Regulations</i>	<i>Not proposed by SRA</i>
iv.	<i>Any proposed cancellation of any shares of the corporate debtor,</i>	<i>Regulation 37(ca) of CIRP Regulations</i>	<i>At clause F on page 58 of the Resolution plan.</i>
v.	<i>Any proposed satisfaction or modification of any security interest</i>	<i>Regulation 37(d) of CIRP Regulations.</i>	<i>At page 44-45 of the Resolution plan.</i>

v.	<i>Any proposed curing or waiving of any breach of the terms of any debt due from the Corporate Debtor.</i>	<i>Regulation 37 (e) of CIRP Regulations</i>	<i>Not provided by SRA</i>
vi.	<i>Any proposed reduction in the amount payable to the creditors</i>	<i>Regulation 37 (f) of CIRP Regulations</i>	<i>At clause A-2 A-3 & A-4 on page 39 to 41 of the Resolution plan.</i>
vii.	<i>Any proposed extension of maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;</i>	<i>Regulation 37 (g) of CIRP Regulations</i>	<i>Not proposed by SRA</i>
viii.	<i>Any proposed amendment of the constitutional documents of the corporate debtor;</i>	<i>Regulation 37 (h) of CIRP Regulations</i>	<i>Not proposed by SRA</i>
ix.	<i>Any proposed issuance of securities of the Company, for cash, property, securities, or in exchange for claims or interests, or other Appropriate purpose;</i>	<i>Regulation 37 (i) of CIRP Regulation</i>	<i>Not proposed by SRA</i>
x.	<i>Any proposed change in portfolio of goods or services produced or rendered by the corporate Debtor</i>	<i>Regulation 37 (j) of CIRP Regulations</i>	<i>Not proposed by SRA</i>
xi.	<i>Any proposed change in technology used by the corporate debtor.</i>	<i>Regulation 37 (k) of CIRP Regulations</i>	<i>At page A-10 of the addendum, RA proposed use of latest technology for construction of the project.</i>
xii.	<i>List and approvals status of necessary from the Central/ State Governments</i>	<i>Regulation 37 (l) of CIRP Regulations</i>	<i>As per clause B on page 62-63 of the Resolution Plan.</i>

12. As has been mentioned in Para 45 (G) of the application, the Resolution Plan further provides the following:

a) *Management of Company after resolution by the new directors to be appointed by the resolution applicant and it is proposed that consortium member Mr Anoop Kumar Mittal and Sandeep Gupta or their nominees shall be the directors.*

b) *Term of the resolution plan for settlement of CIRP cost and debts is within 90 days from the date of approval of resolution plan. Further it is proposed that the timeline to complete the CD project is 27 months with grace period of 12 months from effective date.*

c) *Implementation and Supervision of the resolution plan will be by the monitoring committee comprising of 3 members, one to be appointed by Financial Creditors, one by Resolution Applicant and one Insolvency Professional. COC has decided to appoint Resolution Professional as Insolvency Professional in the monitoring committee.”*

13. The Resolution Plan also contains a provision regarding infusion of the fund. The relevant Chapter 5 (D) of the Resolution Plan in this regard reads thus:

D.

SOURCES OF FUNDING /PROPOSAL FOR FUNDING

“The Resolution Applicant proposes to use a mix of debt and equity for the purpose of funding the revival of the said Project. In addition, the Resolution Applicant shall have a right to mortgage all the Projects Lands/other Assets in favour of any Bank, Financial Institution/ NBFC for raising loans, and the loan amount raised out of such mortgaged shall be used for completion of the said project and Implementation of the Resolution Plan in this respect, the Resolution Professional shall issue a Public Notice in a widely circulated newspaper. The said certified copies of the Project Land /Other Assets, sale deed shall be handed over to such bank/

financial Institution/NBFC from where the Resolution Applicant proposes to raise loans against the Project land/Building and such bank/ financial Institution/ NBFC shall accept the said certified copies of the sale deed and shall be free to create equitable mortgage in respect of the Project land.

In addition to the above arrangement, Consortium of Resolution Applicant have combined net worth of around Rs. 120.00 Crore which comprises liquid cash in the form of FDs/Mutual Funds/PPF etc., of around Rs.10.00 Crores.”

14. As far as the admission of claim and haircut are concerned, the same is the subject matter of commercial wisdom of the CoC. The relevant excerpt of the Plan/Form H in this regard reads thus:

“7. The amounts provided for the stakeholders under the Resolution Plan is as under:

SI. No	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed %
1	2	3	4	5	6	7
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	0	0	0	0
		b) Other than (a) above:	0	0	0	0
		(i) who did not vote in favour of the resolution Plan	0	0	0	0

		(ii) who voted in favour of the resolution plan	0	0	0	0
		Total [(a)+(b)]	0	0	0	0
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	1110.56	573.02	573.02	51.60
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	0	0	0	0.00
		(ii) who voted in favour of the resolution plan	1104.07	1104.07	1104.07	100.00
		Total [(a)+(b)]	2214.63	1677.09	1677.09	75.73
3	Operational Creditors	(a) Related Party of Corporate Debtor	0	0	0	0.00
		(b) Other than (a) above:				
		(i) Government	2141.95	1824.97	679.00	31.70
		(ii) Workmen	0	0	0	0.00
		(iii) Employees	0	0	0	0.00
		(iv) Others	1.74	1.26	0.63	36.21
		Total [(a)+(b)]	2143.69	1826.23	679.63	31.70
4	Other debts and dues	(a) Related party claims	1.34	1.34	0.67	50.00
		(b) Contingent Liabilities	0.00	0.00	75.00	N.A

Grand Total		4359.66	3504.66	2432.39	54.07
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**If there are sub-categories in a category, please add rows for each sub-category.*

#Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.]

IA. No. 2551/ND/2023

As has been stated in the captioned IA, the Applicant (GNIDA) herein executed a lease deed dated 26.06.2013 in favour of the CD. In terms of the deed, the Applicant had agreed to demise and the CD had agreed to take on lease the Plot No. 61A, Sector-Knowledge Park-V situated at Greater Noida Industrial Development Area District Gautam Budh Nagar, (U.P) measuring 20000 Sqm. As was mentioned in the lease deed, in consideration of the premium of Rs.5,46,60,000/-(Rupees Five Crore Forty-Six Lac Sixty Thousand Only) an amount of Rs.4,68,90,905/-(Rupees Four Crore Sixty-Eight Lac Ninety Thousand Nine Hundred and Five Only) was acknowledged and balance amount was to be paid by the lessee in installments in terms of the provisions of the lease deed along with interest @11% per annum. In the event of default in payment of installment, the interest was to be paid @ 14% per annum. The schedule of installments as mentioned in the lease deed, read thus: -

Sl. No.	Installment No.	Due Date	Total Amount of Installment
1	Installment No. 1	30.09.2011	2991531.00 Paid
2	Installment No. 2	30.03.2012	2991531.00 Paid
3	Installment No. 3	30.09.2012	2991531.00 Paid

4	Installment No. 4	30.03.2013	10761741.00 Paid
5	Installment No. 5	30.09.2013	10761741.00 Paid
6	Installment No. 6	30.03.2014	9907018.00
7	Installment No. 7	30.09.2014	9479656.00
8	Installment No. 8	30.03.2015	9052295.00
9	Installment No. 9	30.09.2015	8624933.00
10	Installment No. 10	30.03.2016	8197570.00

2. In terms of the order dated 04.03.2022 passed in CP (IB)-1035 of 2020, filed by Eclear Leasing & Finance Pvt. Ltd., this Adjudicating Authority directed initiation of CIRP qua the CD viz., Swati Health and Education Services Private Limited. Resultantly, Mr. Pawan Kumar Goyal was appointed as IRP to conduct the Resolution Process. In the wake, the Applicant herein had to submit its claim for outstanding amount of Rs.21,41,95,542/- in Form C before the IRP. Nevertheless, the IRP had admitted the claim only to the extent of Rs.18,24,96,973/-.

3. The salient plea espoused by the Applicant is that the Resolution Professional reduced the amount claimed by it erroneously. The further plea raised in the IA is that in determining the Liquidation value, the provisions of Regulation 35 read with Regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are not followed and such value is arrived at on the basis of presumption and surmises. It is also the plea raised on behalf of the Applicant that the claim of the Applicant ought to have been considered after taking into account its first charge upon the demised premises for the amount of unpaid balance, charges, interest and other dues and it should not have been treated at par with the Operational Creditors.

4. It is also the case of the Applicant that without prejudice to his plea to be treated as Financial Creditor, he should at least be given benefit of the provisions contained in Section 30(2)(b) and 53 of IBC, 2016. Its submissions in this regard is that the amount payable to it should not be less than the amount payable to the Operational Creditor in terms of the provisions of sub-Section (1) of Section 53. Besides the above, the application contained the grounds:- (i) the liquidation value taken into account in the Resolution Plan is contrary to Section 18 read with Section 36 of the Code; (ii) the Resolution Plan does not disclose infusion of any capital and/or funds by the Resolution Applicant; (iii) the plan seeks to alter the terms of the Lease Deed with Objector/Applicant, which is impermissible in law; (iv) the land or any stipulation relating to the same owned by the Applicant including mortgage or transfer or creation of any right qua it including leasehold right could not have formed part of Resolution Plan without prior written approval of the Applicant/Objector; (v) the waivers sought by the Successful Resolution Applicant are sweeping in nature and are contrary to law; (vi) the terms of Resolution Plan providing to mortgage the land of the Applicant is illegal and contrary to law. Having no right, title or interest in the land owned by the Applicant/Objector, the SRA cannot be permitted to raise the funds by mortgaging the land owned by the Applicant to the bank. Admittedly in terms of the Lease Deed, the leasehold right cannot be assigned, relinquished, sublet, transferred and the possession thereof cannot be parted with. Even the Corporate Debtor cannot mortgage the leasehold right under the lease without prior permission and approval of the Applicant/Objector; (viii) the Applicant/Objector has no privity of Contract with Successful Resolution Applicant, thus the provision for approval for mortgage of land

owned by the Applicant/Objector for transfer of right qua the same in favour of Successful Resolution Applicant would not only be in violation of the terms and conditions of the Lease Deed but would also be contrary to relevant Rules and Regulations. The stipulation is contrary to the view taken by Hon'ble NCLAT in Greater Noida Industrial Development Authority vs. Earth Infrastructure Limited; (ix) the waiver sought by the Resolution Applicant such as that of payment of change of control, External Development Charges (EDC), Infrastructure Development Charges (IDC), Transfer Charges, unearned increase, compensation etc., are impermissible; (x) the Resolution Plan is contrary to law, as it seeks vesting of Assets (including properties whether leasehold or license basis) of CD without payment of any transfer charges/fees. The plan also seeks the approval of building plan, occupancy certificate and other approvals in this regard contrary to the provisions of the Code as well as UP Industrial Development Act, 1976, read with Rules and Regulations framed thereunder. The stipulations in Resolution Plan is in violation of the Judgment of Hon'ble Supreme Court in Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd., [(2022) 11 SCC 401]; (xi) the Resolution Plan seeking to rewrite the terms and conditions of the Lease Deed entered into by Applicant with CD is against the law. The stipulation contained in the plan that the Applicant herein shall give extension of construction period by 27 months grace period of 12 months from effective date, without any additional cost, penalty, or charges etc., is contrary to the provisions of the Code, 2016; (xii) the stipulation in the plan regarding change in constitution to be taken on record of the Applicant is contrary to the Office Order dated 13.07.2021 governing the same. No approval contrary to order dated 13.07.2021 can be granted. In case of

change of ownership, the Resolution Applicant is liable to pay for the same besides fulfilling the other requirement;(xiii) the Applicant should have been treated as Financial Creditor.

5. Rebutting the pleas espoused in the Application, the Resolution Professional of the CD filed reply dated 30.06.2023. The salient pleas espoused by the CD in its reply are: - (a) there is limited scope of entertaining the objection against a Resolution Plan. The plan approved by CoC is protected under commercial wisdom; (b) the objections raised by the Applicant are mechanical in nature and the sole motive of the Applicant is to maximize its own recovery, at the cost of other stakeholders; (c) the thrust of plea raised by the Applicant is only that the Resolution Plan cannot impose any obligation on the Applicant (Noida Authorities) to consider any request by the SRA and the CD is only a lessee. The Applicant should have kept in mind that it is not a private commercial entity conducting business to make a profit and it is only a state functionary, entrusted to take decision in order to ensure the public good; (d) CIRP is a process which benefit the public as a whole by ensuring that the value of assets of Corporate Debtor are maximized and the Corporate Debtor remains a going concern; (e) By way of the objection raised in the application, the Applicant in essence seeks to remove the land parcel from the CIRP of the Corporate Debtor. If it is permitted to do so the CIRP of the Corporate Debtor is bound to fail; (f) The plan does not contemplate any transfer of leasehold rights of the Corporate Debtor. The Corporate Debtor was a lessee in a lease executed by the Applicant. Post Insolvency Resolution the Corporate Debtor would continue as lessee and no right of the Applicant is abridged or impacted; (g) As far as

reduction of claim is concerned, the RP wrote several emails calling upon the Applicant to provide necessary document/information in support of its claim, but the Applicant ignored to give any response to the communications, thus the RP had no option but to admit the claim on the basis of the record available to it; (h) The Applicant did not challenge the rejection of its claim despite being specifically informed about the decision qua it in 9th meeting of CoC i.e. on 24.11.2022. The claim was submitted in Form C. Besides the issue regarding the classification of the Applicant as Creditor could be decided in New Okhla Industrial Development Authority Vs. Anand Sonbhadra in Civil Appeal No. 2222/2021 decided on 17.05.2022; (i) The liquidation value is determined by the IBBI registered valuers and the Resolution Plan is in conformity with IBBI Regulation as amended up to date; (j) The SRA has indicated source and infusion of funds in the resolution plan approved by the CoC and further in compliance of the order dated 10.04.2023, the RP filed an affidavit before this Adjudicating Authority, giving details of source and infusion of funds as provided by the PRA; (k) No terms of Resolution Plan contemplates alteration in any material term of lease deed entered into between the Applicant and the Corporate Debtor; (l) the waivers and concessions sought in the plan may be decided on merits; (m) the judgment of NCLAT in Earth Infrastructure Limited is in distinct facts, as in the said case the lessee was not undergoing the insolvency. Besides, the judgment in Earth Infrastructure Limited has been challenged before Hon'ble Supreme Court and the Hon'ble Supreme Court has directed the concerned parties to maintain the status quo; (n) the Resolution Plan in itself is an event of mandatory change in control in terms of the Office Order dated 25.06.2019, thus no transfer charges are payable; (o) the plan seeks

the extinguishment of all potential liabilities for the acts committed prior to commencement of CIRP and does not seek any immunity for future liabilities; (p) the SRA does not seek to mortgage the land in disregard of the terms of Lease Agreement.

6. We heard the counsels for the parties and perused the record. As far as the plea regarding the classification of the Applicant not as a Financial Creditor, but as an Operational Creditor is concerned, indubitably the Applicant had preferred its claim in Form C of Schedule I to IBBI (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016. The form is prescribed for the submission of a claim by a Financial Creditor. There can be no two opinions that in terms of the provisions of Section 13 and 13(A) of Uttar Pradesh Industrial Development Act, 1976, where any transferee makes any default in the payment of any consideration money or installment thereof or any other amount due on account of transfer or any site by the authority or any rent due to the authority, the CEO of the authority may direct that in addition to the amount of arrears, a further sum not exceeding that amount shall be recovered from the transferee or occupier as the case may be by way of penalty and the amount shall constitute a charge over the property recoverable as arrears of land revenue or by attachment or sale of the property. Thus, the Applicant herein has charge over the plot of land leased out by it to the CD. In **State Tax Officer vs. Rainbow Papers Limited** 2022 (13) SCR Page 808, Hon'ble Supreme Court held that by virtue of a security interest created in favour of the Government for Tax claims under the Gujarat Value Added Tax, 2003, Tax Authorities i.e., Government was a secured creditor under the IBC, 2016. In the said case, it could be ruled that

if a Resolution Plan excluded such tax or statutory dues payable to the Government, the plan would not be in conformity with the provisions of IBC and would not be binding on the State. Relying upon the said judgment, in **Paschimanchal Vidyut Vitran Nigam Limited vs. Raman Ispat Private Limited & Ors.** (Civil Appeal No. 7976 of 2019), the Appellant which had challenged the order of NCLAT passed by it rejecting the appeal of the Appellant against the order of this Adjudicating Authority passed by it allowing an application directing the District Magistrate and the Tehsildar to release the property attached at the request of the Appellant to the Liquidator of the CD contended that the Appellant was a secured creditor. However, the Hon'ble Supreme Court in **Paschimanchal Vidyut Vitran Nigam** case (supra) ruled that while deciding the Rainbow Papers (Supra), it did not notice the waterfall mechanism provided under Section 53 of IBC, 2016, in terms of which the dues payable to the Government are placed much lower in the ladder than those of secured creditors, unsecured financial creditors and operational creditors. Having taken such a view, the Hon'ble Supreme Court confined the judgment in Rainbow Papers (Supra) to the facts of the said case. Nevertheless, in view of the concurrent finding by this Tribunal and NCLAT, regarding the fact that the Appellant was a secured creditor, the Hon'ble Supreme Court did not endorse the plea put forth on behalf of the Liquidator that the charge being not registered either by the company or by the charge holder, the Appellant could not be treated as a secured creditor. In brief, the view taken in Paschimanchal Vidyut Vitran Nigam Limited (ibid) was that in terms of the provisions of Section 238 of IBC, 2016, the provisions of Section 173 and 174 of the Electricity Act, 2003 could not have an overriding effect over Section 14 of IBC, 2016. The further ratio decidendi of

the judgment in Pachimanchal Vidyut Vitran Nigam Limited is that in terms of the provisions of Section 53 of IBC, 2016, irrespective of being a secured creditor, the dues of the Government would find place below Operational Creditors even. For convenient reference, para 49 to 57 of the judgment passed by the Hon'ble Supreme Court in Paschimanchal Vidyut Vitran Nigam Limited (ibid) are reproduced below: -

“49. Rainbow Papers (supra) did not notice the ‘waterfall mechanism’ under Section 53 – the provision had not been adverted to or extracted in the judgment. Furthermore, Rainbow Papers (supra) was in the context of a resolution process and not during liquidation. Section 53, as held earlier, enacts the waterfall mechanism providing for the hierarchy or priority of claims of various classes of creditors. The careful design of Section 53 locates amounts payable to secured creditors and workmen at the second place, after the costs and expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of secured creditors and even unsecured and operational creditors. This design was either not brought to the notice of the court in Rainbow Papers (supra) or was missed altogether. In any event, the judgment has not taken note of the provisions of the IBC which treat the dues payable to secured creditors at a higher footing than dues payable to Central or State Government.

50. The Gujarat Value Added Tax Act, 2003 no doubt creates a charge in respect of amounts due and payable or arrears. It would be possible to hold [in the absence of a specific enumeration of government dues as in the present case, in Section 53(1)(e)] that the State is to be treated as a ‘secured creditor’. However, the separate and distinct treatment of amounts payable to secured creditor on the one hand, and dues payable to the government on the other clearly signifies Parliament’s intention to treat the latter differently - and in the present case, having lower priority. As noticed earlier, this intention is also evident from a reading of the preamble to the Act itself.

51. According to the principles of statutory interpretation, when an enactment uses two different expressions, they cannot be construed as having the same meaning. It was held in *Member, Board of Revenue v. Anthony Paul Benthall*³⁶ that:

“When two words of different import are used in a statute, in two consecutive provisions, it would be difficult to maintain that they are used in the same sense...”

*This idea is reflected in a subsequent judgment in *Brihan Mumbai Mahanagarpalika & Anr. v. Willington Sports Club & Ors.*³⁷*

52. The views expressed by the present judgment finds support in the decision reported as *Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs*³⁸. In that case, Section 142A of the Customs Act 1962 was in issue – authorities had submitted that dues payable to it were to be treated as ‘first charge’ on the property of the assessee concerned. In the resolution process, it was argued that the Customs Act, 1962 acquired primacy and had to be given effect to. This court, after noticing the overriding effect of Section 238 of the IBC, held as follows:

“55. For the sake of clarity following questions, may be answered as under:

(a) Whether the provisions of the IBC would prevail over the Customs Act, and if so, to what extent?

The IBC would prevail over the Customs Act, to the extent that once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.

(b) Whether the respondent could claim title over the goods and issue notice to sell the goods in terms of the Customs Act when the liquidation process has been initiated?

Answered in negative.

56. On the basis of the above discussions, following are our conclusions:

(i) Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.

(ii) After such assessment, the respondent authority has to submit its claims (concerning customs dues/operational debt) in terms of the procedure laid down, in strict compliance of the time periods prescribed under the IBC, before the adjudicating authority.

(iii) In any case, the IRP/RP/liquidator can immediately secure goods from the respondent authority to be dealt with appropriately, in terms of the IBC.”

Similarly, in *Duncans Industries Ltd. v. AJ Agrochem*³⁹, Section 16G of the Tea Act, 1953 which required prior consent of the Central Government (for initiation of winding up proceedings) was held to be overridden by the IBC. In a similar manner, it is held that Section 238 of the IBC overrides the provisions of the Electricity Act, 2003 despite the latter containing two specific provisions which open with non-obstante clauses (i.e., Section 173 and 174). The position of law with respect to primacy of the IBC, is identical with the position discussed in *Sundaresh Bhatt and Duncan Industries (supra)* [refer also: *Innoventive Industries (supra)*, *CIT v. Monnet Ispat & Energy Ltd.*⁴⁰, *Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*⁴¹, and *Jagmohan Bajaj v. Shivam Fragrances Private Limited*⁴²].

53. In view of the above discussion, it is held that the reliance on *Rainbow Papers (supra)* is of no avail to the appellant. In this court's view, that judgment has to be confined to the facts of that case alone.

54. Lastly, the liquidator had urged that without registration of charge, the same was unenforceable under liquidation proceedings. Section 77 of the Companies Act, 2013 reads as follows:

“77. Duty to register charges, etc.—(1) *It shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the chargeholder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation: Provided that the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed: Provided further that if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time in accordance with section 87: Provided also that any subsequent registration of a charge shall not prejudice any right acquired in respect of any property before the charge is actually registered.*

(2) *Where a charge is registered with the Registrar under sub-section (1), he shall issue a certificate of registration of such charge in such form and in such manner as may be prescribed to the company and, as the case may be, to the person in whose favour the charge is created.*

(3) *Notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by the liquidator or any other creditor unless it is duly registered under sub-section (1) and a certificate of registration of such charge is given by the Registrar under sub-section (2).*

(4) *Nothing in sub-section (3) shall prejudice any contract or obligation for the repayment of the money secured by a charge.”*

55. Section 78 enacts, that when a company whose property is subject to charge, fails to register it, the charge holder (or the person entitled to the charge over the company’s assets) can seek its registration. Section 3 (31) of the IBC defines “security interest” in the widest terms. In this court’s opinion, the liquidator cannot urge this aspect at this stage, because of the concurrent findings of the NCLT and the NCLAT that PVVNL is a secured creditor.

56. The record further shows that after the NCLT passed its order, the appellant preferred its claim on 10.04.2018. Based on that application,

the liquidator had filed an application before the NCLT for modification of its order dated 21.08.2018, and contended that PVVNL also came under the definition of 'secured operational creditor' in realization of its dues in the liquidation proceedings as per law. The application sought amendment of the list of stakeholders. The application was allowed. In view of these factual developments, this Court does not consider it appropriate to rule on the submissions of the liquidator vis-a-vis the fact of non-registration of charges under Section 77 of the Companies Act, 2013.

57. For the above reasons, it is held that the appeal deserves to fail. At the same time, the liquidator is directed to decide the claim exercised by PVVNL in the manner required by law. It shall complete the process within 10 weeks from the date of pronouncement of this decision, after providing such opportunity to the appellant, as is necessary under law.”

7. When in view of the aforementioned judgement of the Hon'ble Supreme Court, though an instrumentality of state may not be entitled to improve its position as claimant in waterfall mechanism, but having statutory charge over the assets of the CD, it may be treated as Secured Creditor. As it is clear from the judgement that the position of the state as claimant has to be as per the provisions of Section 53 of IBC 2016, apparently the statutory charge created in favour of the Applicant over the plot of land leased out by it would not entitle it to be treated as Secured Financial Creditor or being placed along with the Secured Financial Creditor for the purpose of distribution of the proceeds of assets of CD as per waterfall mechanism. Even otherwise also, in view of the Judgement of Hon'ble Supreme Court in the matter of **New Okhla Industrial Development Authority Vs. Anand Sonbhadra** in Civil Appeal Nos. 2222 of 2021 (2023) I SCC, the Applicant herein is not a Financial Creditor but is entitled to be treated as Operational Creditor.

Nevertheless, as recently as on 24.07.2023, in **VMS Equipment vs. Primrose Infratech Pvt. Ltd.** in IA. No. 4869 of 2022 in Company Petition No. (IB) 995(ND)/2018, this Bench viewed that the Greater Noida Industrial Development Authority may be treated as Secured Operational Creditor.

8. It is vociferous contention raised on behalf of the Respondent (RP) that once in exercise of its commercial wisdom, a resolution plan is approved, the same cannot be questioned by the Applicant herein and the scope for interference with the same by this Adjudicating Authority is negligible. As can be seen from the provisions of Section 30(2)(e) read with Section 31(1) of IBC 2016, before approving a resolution plan, this Adjudicating Authority, inter alia, needs to satisfy itself that the resolution plan does not contravene any of the provision of the law for the time being in force. A perusal of the aforementioned provision of the Code itself amplifies that the contention put forth on behalf of RP, that after approval of a plan by CoC, the endorsement of the same by this Adjudicating Authority is mere formality, is totally misconceived. The scope of Section 30(2)(e) of IBC 2016 is wide and vast. The provision creates a scope as wide as the provisions of law applicable to the assets/subject matter of the CD under Insolvency Resolution Process. Though in **Jaypee Kensington Boulevard Apartment Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors.** in Civil Appeal No. 3395 of 2020, the Hon'ble Supreme Court has ruled, "When the Committee of Creditors takes the decision in its commercial wisdom and by the requisite majority, there is no valid reason in law to question the decision so taken, but the immunity from interference for such decision is only to the extent that it relates to the

maximization of the value of the asset.” The relevant excerpt of the Judgement of Hon’ble Supreme Court reads thus:

“77.6.1 The assessment about maximization of the value of assets, in the scheme of the Code, would always be subjective in nature and the question, as to whether a particular resolution plan and its propositions are leading to maximisation of value of assets or not, would be the matter of enquiry and assessment of the Committee of Creditors alone. When the Committee of Creditors takes the decision in its commercial wisdom and by the requisite majority; and there is no valid reason in law to question the decision so taken by the Committee of Creditors, the adjudicatory process, whether by the Adjudicating Authority or the Appellate Authority, cannot enter into any quantitative analysis to adjudge as to whether the prescription of the resolution plan results in maximisation of the value of the assets or not. The generalised submissions and objections made in relation to this aspect of value of maximisation do not, by themselves, make out a case of interference in the decision taken by the Committee of Creditors in its commercial wisdom.”

9. Also, in **Committee of Creditor of Essar Steel India Limited through Authorised Signatory vs. Satish Kumar Gupta & Ors.** in Civil Appeal No. 8766-67 of 2019, Hon’ble Supreme Court viewed, “While the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, in limited judicial review it needs to see that the Committee of Creditors has taken into account the fact that the Corporate Debtor needs to keep going as a going concern during the Insolvency Resolution Process; it needs to maximize the value of its assets; and the interest of all stakeholders including Operational Creditors has been taken care of.” In the said Judgement, the Hon’ble Supreme Court also

noticed the provision of Section 30(2)(e) of IBC 2016. Para 46 of the Judgement reads thus:

“46. This is the reason why Regulation 38(1A) speaks of a resolution plan including a statement as to how it has dealt with the interests of all stakeholders, including operational creditors of the corporate debtor. Regulation 38(1) also states that the amount due to operational creditors under a resolution plan shall be given priority in payment over financial creditors. If nothing is to be paid to operational creditors, the minimum, being liquidation value - which in most cases would amount to nil after secured creditors have been paid - would certainly not balance the interest of all stakeholders or maximise the value of assets of a corporate debtor if it becomes impossible to continue running its business as a going concern. Thus, it is clear that when the Committee of Creditors exercises its commercial wisdom to arrive at a business decision to revive the corporate debtor, it must necessarily take into account these key features of the Code before it arrives at a commercial decision to pay off the dues of financial and operational creditors. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available

is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal.”

10. The view as above taken by the Hon'ble Supreme Court in the Committee of Creditor of Essar Steel India Limited (ibid) could be reiterated in **Maharashtra Seamless Limited vs. Padmanabhan Venkatesh & Ors.** in Civil Appeal No. 4242 of 2019. In view of the aforementioned, we are of the view that it is not open to RP to have a stereotyped reply to all sorts of objections qua the Resolution Plan viz, “The Committee of Creditors has exercised its commercial wisdom.”. As can be seen from sub section (2) of Section 30 of IBC 2016, it is for the Resolution Professional to examine and confirm that the Plan is in consonance with the provisions contained in Clause (a) to (f) of the sub-Section. Only when the Plan is found in consonance with the provisions of sub-Section (2) of Section 30 (ibid), the Adjudicating Authority approves the same. Before approving a Plan, this Adjudicating Authority needs to examine the same judicially, may be within the limited scope of judicial review.

11. The crucial objection to the Plan raised by the Applicant is that the Plan provides for mortgaging the plot leased out by the Applicant to the CD. As it could be ruled by Hon'ble NCLAT in **Greater Noida Industrial Development Authority (GNIDA) Vs. Roma Unicon Designex Consortium** in Company Appeal (AT) (Insolvency) Nos. 180, 629 & 630 of 2022, (2023) ibclaw.in 90 NCLAT, "Assets of land holding companies cannot be treated as those of CD". As has been viewed by Hon'ble NCLAT in its Judgement delivered in the aforementioned case, it is only GNIDA, which could sell, lease or otherwise transfer any land or building allotted to it. The land leased out by Applicant herein to CD cannot be further mortgaged. Any Plan or Proposal by SRA to arrange the funds by mortgaging the land owned by the Applicant in disregard of the terms of the lease would be contrary to law and vitiate the Plan itself. The relevant excerpt of the Judgement of Hon'ble NCLAT reads thus:

"65. Ultimately, the Hon'ble Supreme Court allowed the Appeal and set aside the Order of the NCLT. The above Judgement also fully supports the view that Adjudicating Authority could not have approved the plan implicating the land which was owned by the Appellant in the CIRP Process of the Corporate Debtor.

66. At this stage, we may also notice the provisions of Uttar Pradesh Industrial Area Development Act, 1976. This Act, 1976 was enacted to provide for the constitution of an authority for the development of certain areas in the State into industrial and urban township and for matters connected therewith. The Appellant is an authority constituted under Section 3 of the Act. Section 7 of the Act provides:

"the Authority may sell, lease or otherwise transfer whether by auction allotment or otherwise any land or building belonging to the Authority in the industrial development area on such terms and

conditions as it may, subject to any rules that may be made under this Act, think fit to impose”.

67. The transfer of land thus is statutorily governed and terms and conditions lays down by authority are statutorily protected. Resolution Plan which contains provisions for transfer of the project of the land contrary to the terms and conditions of the lease deed under which the project land was leased out to the land holding company is contrary to the terms and conditions of the lease deed as well as Section 7 of the UP Industrial Area Development Act, 1976. Resolution Plan thus was clearly in breach of the provisions of the 1976 Act which cannot be sustained.

68. We have noticed the statutory provision, that Explanation to Section 18(1)(f) clearly contemplates that assets of subsidiary company are entirely different from assets of the holding company and principle of lifting of veil cannot be invoked contrary to statutory prescription as in the present case that is Section 18(1)(f).

69. Now on the question as to whether the Resolution Plan could have contained the provision obligating the Appellant to transfer lease hold right in favour of SRA or any third entity. It is sufficient to notice the terms and conditions of the lease deed under which land was leased out to the land holding company. For **transfer of plot**, lease deed contains following terms and conditions in lease dated 01.09.2010:

“TRANSFER OF PLOT

1. Without obtaining the completion certificate the Lessee shall have the right to sub-divide the allotted plot into suitable smaller plots as per planning norms and to transfer the same to the interested parties up to 31.03.2010 or as decided by the Lessor, with the prior approval of LESSOR on payment of transfer charges @ 2% of allotment rate. However, the area of each of such sub-divided plots should not be less than 20,000 sq. mts. However, individual flat/plot will be transferable with prior approval of the LESSOR as per the following conditions: -

(i) The dues of LESSOR towards cost of land shall be paid in accordance with the payment schedule specified in the Lease Deed before executing of sub-lease deed of the flat.

(ii) The lease deed has been executed.

(iii) Transfer of flat will be allowed only after obtaining completion certificate for respective phase by the Lessee.

(iv) The sub-Lessee undertakes to put to use the premises for the residential use only.

(v) The Lessee has obtained building occupancy certificate from Building Cell/Planning Section, Greater NOIDA.

(vi) First sale/transfer of a flat/plot to an allottee shall be through a Sub-lease/Lease Deed to be executed on the request of the Lessee to the Lessor in writing.

(vii) No transfer charges will be payable in case of first sale, including the built-up premises on the subdivided plot(s) as described above. However, on subsequent sale, transfer charges shall be applicable on the prevailing rates as fixed by the LESSOR.

(viii) Rs. 1000/- shall be paid as processing fee in each case of transfer of flat in addition to transfer charges.”

70. The transfer of plot as per terms and conditions of the lease could not have been effected without approval of the Appellant. The Respondent themselves realized that without Appellant transferring the plot no right can be accrued in favour of allottees or SRA that is why the conditions was provided in the Resolution Plan asking the direction to the Appellant to transfer the project land in favour of the SRA or Special Purpose Entity. Thus, Resolution Plan could not have contained clause for transfer of land without there being any approval of the Appellant for such transfer. Further direction to the Appellant to transfer while waiving of its entitlement and charges is clearly contrary to the terms and conditions of the lease and not in a public interest.

71. At this stage, we may also notice one more submission which was pressed by the Learned Counsel for the Successful Resolution Applicant Alpha Corp Development Private Limited. It is submitted by

*Learned Counsel for the Respondent No. 2-SRA relying on **Section 3 and Section 5 of Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010** that allottees of project Earth Sapphire Court and Tech One have heritable interest in the area of land leased by the Appellant from the date of execution of the respective apartment buyer agreement. Submission is that allottees themselves have become owner from the date of apartment buyers agreement has been executed. We may notice few provisions of **Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010**. Section 3, subclause (b) defines “apartment” in following manner:*

“Section 3(b), defines “apartment” means a part of any property, intended for any type of independent use, including enclosed spaces located on one or more floors or any part or parts thereof, in a building to be used for residential or official purposes or for the purpose of practicing any profession, or for carrying on any occupation, trade or business (excluding shopping malls and multiplexes) or for such other use as may be prescribed, and with a direct exit to a public street, road or to a common area leading to such street, road and includes any garage or room (whether or not adjacent to the building in which such apartment is located) provided by the promoter for use by the owner of such apartment for parking or, as the case may be for the residence of any domestic aide employed in such apartment;”

“Section 3(d) defines “apartment owner” means the person or persons owning an apartment or the promoter or his nominee in case of unsold apartments and an undivided interest in the common areas and facilities appurtenant to such apartment in the percentage specified in the Deed of Apartment and includes the lessee of the land on which the building containing such apartment has been constructed, where the lease of such land is for a period of thirty years or more;”

“Section 3(g) defines “building” means a building constructed on any land, containing four or more apartments, or two or more buildings in any area designated as a block, each containing two or more apartments with a total of four or more apartments in all such buildings; Provided that an

independent house constructed in a row with independent entry and exit, whether or not adjoining to other independent houses, shall not constitute a building.”

72. Section 4(5) of 2010 Act lays down following:

“4. General Liabilities of Promoter-

.....

(5) An apartment may be transferred by the promoter to any person only after obtaining the completion certificate from the prescribed sanctioning authority concerned as per building byelaws. The completion certificate shall be obtained by promoter from prescribed authority within the period of two years from the date of sale agreement. Provided that if the construction work is not completed within the stipulated period, with the permission of the prescribed authority:

Provided further that if the completion certificate is not issued by the prescribed sanctioning authority within three months of submission of the application by the promoter complete with all certificates and other documents required, the same shall be deemed to have been issued after the expiry of three months.

Explanation. - For the purposes of this sub-section “completion” means the completion of the construction works of a building as a whole or the completion of an independent block of such building, as the case may be.”

73. The builders buyer agreement which was entered into by allottees with the corporate debtor cannot be said to be apartment buyer agreement. Apartment Buyer Agreement is executed after completion and obtaining the completion certificate from the prescribed sanctioning authority. In the present case, in the Information Memorandum, it clearly gives the details of status of the project land which indicates that no project is complete. The apartment as contemplated in 2010 Act are not even in existence in the facts of the present case hence there is no question of applicability of Section 5. Section 5 of the Act deals with rights of apartment owners. Section 5(1) lays down following:

“5 (1) Every person to whom any apartment is sold or otherwise transferred by the promoter shall subject to the other provisions of this Act, be entitled to the exclusive ownership and possession of the apartment so sold or otherwise transferred to him.”

74. The present is not a case where any apartment has been transferred in favour of the allottees. We are of the view that submission made on behalf of the SRA relating to 2010 Act are misconceived.”

12. It is stair decisis that the stay on a judgement would only make the judgement inoperative, it would not render the same non-est till it is reversed. Even a stayed judgement carries its value as a judicial precedence. The right and liabilities of Lessor and Lessee are dealt with in terms of the provisions of Section 108 of the Transfer of Property Act 1982. Generally, the mortgage of a property by a Lessee is regulated in terms of Section 108(b)(j) of the Act. Nevertheless, the mortgage cannot take place in violation of the provisions of the lease deed. In the present case, in the reply to the application filed by it, the RP has categorically stated that no mortgage contrary to the leased hold right or terms of lease deed would take place and the right of the Applicant herein qua the leased-out property would remain unaffected. The relevant excerpt of the reply to the IA filed by the Applicant reads thus:

“15. That Applicant has also made an allegation that the Resolution Plan seeks to alter the terms and conditions of the lease deed executed with the Applicant and the Corporate Debtor. It is not correct because Resolution Plan will be approved as per applicable provisions of IBC.

16. It is submitted that no term of the resolution plan contemplates an alteration in any material term of the lease deed entered into between the Applicant and the Corporate Debtor.

20. That applicant has also alleged that Resolution Plan does not have any stipulation about land use. It is submitted that as per the lease deed the plot/land can be used only for Hospital, Research & Training Institute and SRA can only use the said plot in the permitted category use, so there is no requirement to mention it.

32. It is submitted that to the best of the knowledge of the RP, the SRA does not seek to mortgage the land in a manner prohibited under the terms of the lease agreement entered into between the Applicant and the Corporate Debtor.”

13. In view of the aforementioned affidavit filed by the RP, the Clause regarding the Source of Funding/Proposal of Funding contained in the Resolution Plan would be read down as if the project land/other assets of the CD would not include the property leased out to CD by the Applicant.

14. Regarding the admission of the claim of Applicant by CD, the Applicant never questioned the decision of the RP before filing objection to the Resolution Plan. An Operational Creditor could raise an issue regarding his claim before IRP, only within 90 days from the date of publication in terms of the provision of Section 13 read with Section 15 of IBC 2016. The non-admission of the amount claimed by the Operational Creditor in full in the plan cannot be a ground to reject the plan.

15. The scope of jurisdiction of this Adjudicating Authority regarding approval of the plan could be considered by the Hon'ble Supreme Court in **Kalpraj Dharamshi & Anr. Vs. Kotak Investments Advisors Ltd. & Anr.** in Civil Appeal Nos. 2943-2944 of 2020. The relevant excerpt of the Judgement reads thus:

“141. After considering the judgment of this Court in the case of **Arcelormittal India Private Limited vs. Satish Kumar Gupta and others**⁴⁶ and the relevant provisions of the I&B Code, this court further observed in *K. Sashidhar (supra)* thus:

“52. As aforesaid, upon receipt of a “rejected” resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code.

The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the de-faulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of the Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject-matter expressed by them after due deliberations in CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the “commercial wisdom” of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable.”

(emphasis supplied)

142. This Court has held, that it is not open to the Adjudicating Authority or Appellate Authority to reckon any other factor other than specified in Sections 30(2) or 61(3) of the I&B Code. It has further been held, that the commercial wisdom of CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. This Court thus, in unequivocal terms, held, that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. It has been held, that the opinion expressed by CoC after due deliberations in the meetings through voting, as per voting shares, is a collective business decision. It has been held, that the legislature has consciously not provided any ground to challenge the “commercial wisdom” of the individual financial creditors or their collective decision before the Adjudicating Authority and that the decision of CoC’s ‘commercial wisdom’ is made non-justiciable.

143. This Court in **Committee of Creditors of Essar Steel India Limited through Authorised Signatory** (supra) after referring to the judgment of this Court in the case of **K. Sashidhar** (supra) observed thus:

“64. Thus, what is left to the majority decision of the Committee of Creditors is the “feasibility and viability” of a resolution plan, which obviously takes into account all aspects of the plan, including the manner of distribution of funds among the various classes of creditors. As an example, take the case of a resolution plan which does not pro- vide for payment of electricity dues. It is certainly open to the Committee of Creditors to suggest a modification to the prospective resolution applicant to the effect that such dues ought to be paid in full, so that the carrying on of the business of the corporate debtor does not become impossible for want of a most basic and essential element for the carrying on of such business, namely, electricity. This may, in turn, be accepted by the resolution applicant with a consequent

*modification as to distribution of funds, payment being provided to a certain type of operational creditor, namely, the electricity distribution company, out of upfront payment offered by the proposed resolution applicant which may also result in a consequent reduction of amounts payable to other financial and operational creditors. **What is important is that it is the commercial wisdom of this majority of creditors which is to determine, through negotiation with the prospective resolution applicant, as to how and in what manner the corporate resolution process is to take place.***

(emphasis supplied)

144. *This Court held, that what is left to the majority decision of CoC is the “feasibility and viability” of a resolution plan, which is required to take into account all aspects of the plan, including the manner of distribution of funds among the various classes of creditors. It has further been held, that CoC is entitled to suggest a modification to the prospective resolution applicant, so that carrying on the business of the Corporate Debtor does not become impossible, which suggestion may, in turn, be accepted by the resolution applicant with a consequent modification as to distribution of funds, etc. It has been held, that what is important is, the commercial wisdom of the majority of creditors, which is to determine, through negotiation with the prospective resolution applicant, as to how and in what manner the corporate resolution process is to take place.*

145. *The view taken in the case of **K. Sashidhar** (supra) and **Committee of Creditors of Essar Steel India Limited through Authorised Signatory** (supra) has been reiterated by another three Judges Bench of this Court in the case of **Maharashtra Seamless Limited** (supra).*

146. *In all the aforesaid three judgments of this Court, the scope of jurisdiction of the Adjudicating Authority (NCLT) and the Appellate Authority (NCLAT) has also been elaborately considered. It will be relevant to refer to paragraph 55 of the judgment in the case of **K. Sashidhar** (supra), which reads thus:*

“55. *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 per cent 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.”*

147. *It has been held, that in an enquiry under Section 31, the limited enquiry that the Adjudicating Authority is permitted is, as to 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) the plan 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.”*

16. The view taken as above was reiterated by the Hon’ble Supreme Court in **Ghanashyam Mishra and Sons Private Limited through the Authorised Signatory vs. Edelweiss Asset Reconstruction Company Limited through the Director & Ors.** in Civil Appeal No. 8129 of 2019. The relevant para of the Judgement reads thus:

“57. It could thus be seen, that the legislature has given paramount importance to the commercial wisdom of CoC and the scope of judicial review by Adjudicating Authority is limited to the extent provided under Section 31 of I&B Code and of the Appellate Authority is limited to the extent provided under sub-Section (3) of Section 61 of the I&B Code, is no more res integra.”

17. The Resolution Plan is found in consonance with the provisions of Section 30(2) of the Code and Regulation 38 of the Regulations, thus the same deserves to be approved. Nevertheless, the Part D of the Plan under the head of Sources of Funding/Proposal for Funding would be read as clarified by the RP in reply to IA. No. 2551/2023 i.e., the project land/other assets sought to be mortgaged to raise loans shall not include the plot of land leased to the CD by the Applicant in IA. No. 2551/2023.

18. Referring to the provisions of Regulation 37(1) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Applicant has the right to espouse that all the Governmental Authorities need to grant relief/concession or dispensation for fair and proper implementation of the Transactions contemplated under the Resolution Plan in accordance with the terms and conditions. **However, at the same time, the Resolution Plan specifically states that irrespective of granting any relief and concession, the Resolution Plan will not be withdrawn and will remain valid.** It is also the stand taken in the Resolution Plan that notwithstanding anything to the contrary mentioned in the Plan, the obligation of the Resolution Applicant qua the quantum of payment to be made or terms of settlement proposed in respect of the CD would hold good and would not be subject to any conditions, assumption, relief/concessions and/or qualifications. Nevertheless, the Resolution Plan seeks certain reliefs and concessions, which according to SRA are required for implementing the Plan. The long list of the reliefs and concessions sought by the Applicant reads thus:

“CHAPTER 8

SPECIFIC RELIEFS AND WAIVERS

Regulation 37(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016 provides that a resolution plan may provide for the measures required for implementing it, including but not limited to obtaining necessary approvals from the Governmental Authorities and other Authorities. Accordingly, the Resolution Applicant request all Governmental Authorities to grant any relief / concessions or dispensation as may be required for a fair and proper implementation of the Transactions

contemplated under this Resolution Plan in accordance with its terms and conditions.

The Resolution Applicant aims to implement this Resolution Plan for the revival of the C.D. by requesting grant of the assistance, reliefs, and concessions as set out under this Resolution Plan. If such reliefs are not granted even then the Plan will not be withdrawn but will remain valid. Notwithstanding anything to the contrary mentioned in the Resolution Plan, the obligations of the Resolution Applicant in respect of, the quantum of payment to be made or terms of settlement proposed in respect of creditor of the C.D. is not conditional upon any conditions, assumptions, relief/concessions and/or qualifications.

In particular, and without limiting the foregoing, the Resolution Applicant seeks the following reliefs and concessions including from Adjudicating Authority and from other Governmental Authorities, which the Resolution Applicant believe are required for implementing this Resolution Plan:

This Resolution Plan is based on the following reliefs and waivers sought against the full and final settlement of all the liabilities and claims of all the creditors towards this Resolution Plan.

1. FROM THE APPROVING AUTHORITIES:

- i. To the extent permissible under the IBC or any other License cancellation should be revoked and should be renewed for the implementation period without any fee, interest and penalty or other charges payment*
- ii. License Compliance conditions should be suspended from the date of grant of License till the Effective Date without any penalty/composition fee, interest or any other charges.*
- iii. To the extent permissible under the IBC or any other Applicable Law for the time being in force, applicable conditions under the provisions of The U.P. (Regulation of Buildings Operations) Act, 1958 or under any statute regarding restriction to obtain license should be waived off and the Licenses in the name of earlier*

- Corporate Debtor, should be renewed in the name of current Corporate Debtor and /or Project SPV, as the case may be.*
- iv. *Resolution Applicant should not be made responsible for any non-compliances before the Effective Date.*
- v. *The Resolution Applicant proposed that R.A shall have the right to accept or not to accept any material amendment to the Resolution Plan approved by the COC Members and the Adjudicating Authority. They shall not create any additional financial pay out including but not limited to increased payment to any of the creditors as provided in the Resolution plan or liability for the Resolution Applicant, or reduction in time period-for payment of any liability or imposition /non extinguishment of significant non-financial Liability.*
- vi. *Any work of construction that has been executed by the previous management in the project till date for implementation of the Project, the Resolution Applicant shall not be liable for the same.*
- vii. *Recovery from related parties and Group Companies of Corporate Debtor will be made. The relief is sought by the Resolution Applicant from the Hon'ble NCLT to direct the related parties and Group Companies of Corporate Debtor to remit back the money to Resolution Applicant which has been paid to such related parties and Group Companies in violation of the provisions of IBC and Companies Act to defraud the Home Buyers/Creditors.*
- viii. *Waiver/Exemption from Shareholder's Approval vide MCA Circular dated October 25, 2017 bearing No IBC/01/2017 with regard to any action required in a Resolution Plan for a Company under Insolvency Process.*
- ix. ***Liabilities Claimed by Secured Financial Creditors*** — *Specific Order to the Financial Creditors that all the debts of the lenders be it due and pending on any account, gets fully and finally satisfied and extinguished, in terms of this Resolution*

Plan (on final payment of the offer as accepted in the approved Resolution Plan) and there remains nothing to be recovered out of such dues, from the Resolution Applicant against such loans/dues and the Charge/Lien created over the Fixed and Current Assets of the Company is completely released/discharged and free from any encumbrances on completion of the Approved Resolution Plan.

- x. Specific Order to the Financial Creditors to “UPGRADE” the Account of Corporate Debtor with Banks/FI under the CIBIL Mechanism to “Standard Category” from. NPA on the completion of the Resolution Plan enable the New Promoters (Resolution Applicants) to revive the business of Corporate Debtor afresh and such action would enable the Resolution Applicant to quickly turn around the Corporate Debtor.*
- xi. Specific Order by NCLT that existing charge of the Un-Secured/Secured Financial Lenders/COC will not extend to current assets created from funds arranged/infused by Resolution Applicant.*
- xii. Specific Order and Approval by NCLT to withdraw all the Recovery Proceedings against the Corporate Debtor under DRT, SARFAESI and any other law shall be withdrawn by the Secured Financial Creditors/COC on completion of Approved Resolution Plan for all loans of all Secured/unsecured/collateral/allottees Financial Creditors.*
- xiii. It is clarified that no right of subrogation shall be available to existing shareholders/promoters/other party in case of invocation of/payment by existing shareholders/promoters under their existing guarantees/contractual comforts and all such rights shall stand waived/extinguished against the Corporate Debtor as on the Date of Approval by NCLT of the Resolution Plan.*

- xiv. **Litigations before various Courts** - Waiver Approval by NCLT for any case pending before Industrial Court, Labour Court, Civil Court, Criminal Court, RERA Court, Consumer Court or any Indian Court/tribunal for recovery or others related to acts before commencement of corporate Insolvency Process which may arise after the approval of Resolution Plan.
- xv. **Liabilities claimed by the Promoters** — Waiver Approval by NCLT for all Liabilities claimed by Promoters and Related Parties for Unsecured Loans and Operational/Other Creditors as on insolvency commencement date to be treated as Fully and Finally Settled with “NIL Value” (as Value of Assets of Corporate Debtor is less than the Dues to Secured Creditors as per Information Memorandum presented by the IP) and No Due remains to be paid over ever after the waiver.
- xvi. **Liabilities accrued/due under Statutory Dues** — Waiver Approval by NCLT for all Statutory Dues accrued or may get accrued due to past liabilities as on insolvency commencement date to the Statutory Authorities i.e., Department concerned with Income Tax, Sales Tax/VAT/GST, Excise etc. by way of Taxes, Fees, Penalties, Penal Interest, TDS, VAT, GST etc.
- xvii. **Liabilities claimed under Operational Creditors** — Waiver Approval by NCLT for all Other Liabilities claimed by Operational/Other Creditors as on the Date of Approval of the Resolution Plan by NCLT to be treated as Fully and Finally Settled with the value as mentioned in Resolution Plan.
- xviii. Liabilities that may accrue under Companies Act, Rules and Regulations Waiver Approval by NCLT for any past liabilities, penalties and any form of payment by way of Late Fees, Damages etc. which occurred or become due because of any non-compliance related to Companies Act and Rules till completion of Approved Resolution Plan.

- xix. **Liabilities accrued/may accrue under Various Acts & Laws** — Waiver from past Liabilities related to all Government Authorities with regard to non-compliances of various Statutes to be adhered related to Consent, Payments of Fees and all Dues, Certification etc. by the Corporate Debtor. The Waiver also includes any dues relating to Interest, Penal Interest, Penalty, Interest on Penalty, any kind of Late Fee as well as Damages.
- xx. Approval by NCLT to allow the Carry Forward, set off and Adjustment of Losses of Corporate Debtor available as Section 79 of Income Tax Act, 1961 is not applicable for Companies under IBC 2016 as well as Allowability of Aggregate of Brought Forward Loss and Unabsorbed Depreciation as per amended Section 115JB of the Income Tax Act, 1961 related to Minimum Alternate Tax (MAT).
- xxi. **Contingent Liabilities/Legal Proceedings pursuant to Resolution Approval** — Approval by NCLT for Contingent Liabilities or any suits other than those explicitly covered in the Resolution Plan, no other person or whosoever shall be eligible to receive any amount whatsoever from the Corporate Debtor, either on account of unverified claims or otherwise or through legal proceedings, etc. All legal proceedings and other contingent liabilities shall irrevocably and unconditionally stand settled and extinguished as on the Effective Date.
- xxii. **Contracts made prior to Effective Date** — Approval by NCLT that any onerous contract made by the Corporate Debtor subsisting before the approval of Resolution Plan shall be duly extinguished and be ineffective on approval of Resolution Plan by NCLT.
- xxiii. **Claims/Rights of Existing Promoter and Promoter Group** — Approval by NCLT that all claims, rights of existing promoter / promoter group against the Corporate Debtor, unless covered in the Resolution Plan, shall stand irrevocably and

unconditionally extinguished and ineffective on approval of Resolution Plan.

- xxiv. **Claims by Government Authorities** — Approval by NCLT that claims of government authorities, in relation of all taxes etc. for period pertaining prior to the insolvency commencement date shall stand extinguished and ineffective.
- xxv. **TDS Recovery from Income Tax Department** — Approval by NCLT that TDS will be recovered by the R.A. from the Income Tax Department as per the Books-of Accounts of C.D. The same amount may be adjusted if any demand arose by Income Tax Department with the R.A.
- xxvi. **Security Deposit & Other Advances Refund** — Approval by NCLT that any amount of Security Deposit as advances paid by the C.D. as per Books of Accounts of C.D. shall be recoverable from the concerned persons where it has been deposited or advances paid.
- xxvii. **Termination of any Negotiable Instruments** — Approval by NCLT that All outstanding negotiable instruments issued by Corporate Debtor or any other person on behalf of Corporate Debtor shall stand terminated and no liability shall arise on the same on the insolvency commencement date.
- xxviii. **Corporate Guarantee/Indemnities by Corporate Debtor** - All liabilities which may arise due to issuance of Corporate Guarantees, Indemnities, etc. provided by the Corporate Debtor (whether known or unknown) shall stand extinguished and ineffective on the insolvency commencement date.
- xxix. **Revocation of Power of Attorneys** — Specific Order and Approval by NCLT to treat all the power of attorneys provided to any person by the Corporate Debtor stands revoked after the Effective Date.
- xxx. **Extinguishment/Revocation of Workmen Contract** — Specific Order and Approval by NCLT that Any contract

subsisting with respect to Workmen contractual labour before the approval of Resolution Plan shall be duly extinguished and be ineffective, which we assume has already been done.

- xxxi. *The statutory authorities including but not limited to Registrar of Companies, Income Tax Department, GST Department, Labour Department, Building and other Construction Workers' Department (hereinafter "BOCW") and Employees' provident Fund Organization ("EPFO") Department should not initiate any proceedings,, civil as well as criminals, in respect of any non-compliance on the part of the Corporate Debtor or the Land-Owning Companies and/or in connection with the project under Applicant Laws. To the extent permissible under the IBC or any other Applicant Laws for the time being in force, the Government Authorities to waive off interest and / or penalty charged/ levied for any non- compliances under the applicable laws including but not limited to compliances under RERA, GST and income Tax against the said project.*
- xxxii. *All Government Authorities should waive requirement for making any filing or undertaking other compliances for the period prior to the Effective date (Including making of Annual filings with the ROC) in respect of Swati Health and Education Services Private Limited in view of non-availability of historical data in this regard.*
- xxxiii. *Upon completion of part or whole of the Said Project, when the Resolution Applicant makes an application for obtaining the occupation-certificate to GNIDA or such other competent authority in terms of the Applicable Laws, the concerned Governmental Authority for the purpose of granting such occupation certificate (including for the other reason as may be deemed reasonable by such concerned authority) if it intends to review / verify compliance of any of these license conditions, or if conditions to issue such occupation certificate, liability to fulfil all such conditions and to provide proof of compliance of the*

same should be of the Resolution Applicant only for the period after the Effective Date.

- xxxiv. **Goods and Service Tax** — The Resolution Applicant shall be allowed time to evaluate the best GST regime that will be beneficial to the Project and allow extended time, from the Effective Date for opting into/out of such suitable regime. To the extent permissible under the IBC or any other Applicable Law for the time being in force, any duty dues payable in respect of the development right transferred in the past by the Land-Owning Companies to the Corporate Debtor shall stand waived off.
- xxxv. The respective competent authorities shall renew/approve the fire clearance in respect of the said project and the same shall extent till the Completion Date.
- xxxvi. The R.A. reserves the right to revisit or extent the timelines of the Implementation Schedule in case any unexpected huge financial burden arises on the Successful Resolution Applicant.
- xxxvii. All the leasing rights with respect to the said project shall vest with the Resolution Applicant exclusively.
- xxxviii. **Central Board of Direct Taxes:**
- Exemption from provisions of Section 56 of the Income Tax Act, with regard to forfeiture of advances not received by the Resolution Applicant and fresh allotment of shares or transfer of shares to the Resolution Applicant or its Associates / Group/ SPV.
 - Exemption from provision of sec 56 of the IT Act.
 - Exemption from provisions of section 50CA of the Income Tax Act if applicable
- xxxix. No Buy Back agreement or subvention agreement shall be entertained and same shall stand automatically terminated on and from Effective Date. The Resolution Applicant shall be under

no obligation and or responsibility to satisfy the conditions under the said agreements.

- xl. Liability under BOCW shall be applicable on the Resolution Applicant to the extent of the amount spent by it on the construction of the said project. The Resolution Applicant shall not be liable or responsible toward the liability under the BOCW Act or the cost of the Said Project, as the case maybe.*
- xli. Under no circumstances the Governmental Authorities shall refuse the Completion certificate and the occupation certificate of the said project if the Resolution Applicant questions the liability towards BOCW on the cost of construction incurred by the erstwhile developer.*
- xlii. Any changes in the drawings, lay-out plan specifications etc. of the said projects shall be the sole discretion of the Resolution Applicant. In case any such changes are proposed, the Resolution Applicant shall take all steps as may be required to execute such changes.*
- xliii. All available Floor space index (“FSI”) whether present or in future shall be available to the Resolution Applicant for construction, maintenance, future development work, sale, transfer or deal with it in any manner as it may deem fit, including transferring of part or whole of its right, interest and or entitlements, including development right, as may be permissible under the applicable laws.*
- xliv. All FSI or Floor Area Ratio (“FAR”) which is presently available but has not been used by the erstwhile developer shall also be available to the Resolution Applicant for the aforementioned purposes,*
- xlv. Under this Resolution Plan, the Resolution Applicant / relevant Project SPAT shall be free to revise the Building Plan of the said project for the better commercial exploitation of the same.*

- xlvi. *The R.A. reserves the right to resubmit the Building Plan after approval of the Resolution Plan. The approving/concerned authorities shall permit the fresh building plan on retrospective basis.*
- xlvii. *Cooperation of employees and workmen shall be expected and deemed necessary in respect of all the details within their knowledge which are relevant to this Resolution Plan of the Resolution Applicant.*
- a. *The Resolution Applicant shall not be responsible for any amount collected by the Corporate Debtor from any of the Un-Secured/Operational/Other creditors and not deposited with the respective statutory authorities /Government authority /semi-Government authority or any other competent authority. It is hereby clarified that the Resolution Applicant reserves the right to recover such amount afresh from the Unsecured/ Operational/ Other creditors, in case the Resolution Applicant receives any demand for such dues from the respective statutory authorities! Government authority/ semi-government authority or any other competent authority, such dues, post collection, shall be deposited by the Resolution Applicant with such statutory authority/ Government authority/semi-Government authority or any other competent authority.*
- b. *Liabilities of Swati Health and Education Services Private Limited shall be restructured in accordance with the Resolution Plan either through an appropriate mechanism including through a scheme of arrangement or otherwise, as required and all stakeholders of Swati Health and Education Services Private Limited shall have deemed to have granted their consent in this regard, as may be required in terms of the Applicable Law.*
- c. *The Resolution Applicant reserve the right to receive 100% of total amount and assets recovered from the Corporate Debtor and its related parties under sec 43 to 66 of IBC and under various other Applicable Laws for the time being in force.*
- d. *The implementation of this Resolution Plan shall be dependent upon the requisite approvals from the*

competent Authority and shall be in accordance with the Uttar Pradesh Building Statute and Bye-laws.

- e. The renewal of Occupancy Certificate, including Partial Occupancy Certificate, as the case may be, is to be issued by GNIDA or by any other Authority. Further, the GNIDA or any other Authority shall be duty bound to issue the renewal of Occupancy Certificate including the partial Occupancy Certificate, if any as the case may be and is required by the RA, subject to meeting the procedural requirements to that effect. The GNI DA shall not put any embargo or impediment, except in accordance with law, on issuance of such renewal of Occupancy Certificate and Partial Occupancy Certificate as and when applied by the R.A. Since the Project, subject to acceptance of the present Resolution Plan, shall be taken over by the RA herein on “as on where on basis”, the. RA under any circumstances, shall not be held liable for the wrong doings by the Corporate Debtor or the Contractors appointed by the Corporate Debtor. Further, the requirement vis-à-vis obtaining various NOCs from different governmental agencies shall stand dispersed with in favour of RA and the GNIDA or any other Authority in absence of such NOCs as mentioned foregoing shall not hinder or obstruct, in any manner whatsoever, the grant of renewal of Occupancy Certificate, subject to adherence and compliance by the RA to all the norms, upon which the sanction of the Project was granted to the Corporate Debtor. Further, in event of any unforeseen circumstances arising out of change in any government policy or judicial order, the renewal of Occupancy Certificate or the Partial Occupancy Certificate, as the case may be, could not be issued at the time of applying of the same by the RA, then in such an event, the RA shall be allowed and entitled to handover the possession based on fresh allotments. In such an event, the Project shall be deemed to be completed and no Authority or any other person shall claim any penalty whatsoever, for the want of Occupancy Certificate/renewal of Occupancy Certificate.*
- f. The relevant Governmental Authorities shall not initiate any investigations, actions or proceeding in relation to any non-compliances with Applicable Law by the CD during the period prior to the Effective Date. Neither shall the Resolution Applicant, nor the Company, nor their respective directors, officers and employee appointed on*

and as of the Closing Date be liable for any violations, liabilities, penalties or fines with respect to or pursuant to the Company not having in place requisite licenses and approvals required to undertake its business as per Applicable Law, or any non-compliances of Applicable Law by the Company. Further, the relevant Governmental Authorities. will provide a reasonable period of time after the Completion Date, for the Resolution Applicant to assess the status of any non-compliances under the Applicable Law (including with respect to applicable environmental laws, directions or orders by the Ministry of Environment and Forest, permits clearances and forest related clearances) and to procure that the Company regularizes such non-compliances under the Applicable Law existing prior to the Completion Date.

- g. The Statutory Authorities/Concerned. Authorities are bound to new all the Licenses/approvals/permissions as and when applied by the Successful Resolution Applicant. They are also bound to waive entire penalty, interest or any other charges on commercial project of C.D.*
- h. The Claims of all the former, Previous. Co promoter/ Suspended Directors/ Shareholders and their related Parties shall be dealt in accordance with the provisions of IBC 2016 and Rules and Regulations framed there under. Any inadvertent error in identifying such persons and their claims shall stand rectified accordingly, for treating such claims as non-Est and void-ab-into.*

2. OTHER RELIEFS SOUGHT:

- a. Any agreement (including any tripartite agreement) entered into between the Corporate Debtor, developer and/or any financial institution including public sector banks, private banks, non-banking finance companies, housing finance companies, shall not be applicable on, or the responsibility/obligation of, the Resolution Applicant.*
- b. To the extent permissible under the IBC or any other Applicable Law for the time being in force, any stamp duty/ liability payable under the any Statutory Stamp Act or any other applicable law shall be waived off.*
- c. On approval of Resolution Plan by COC, the Resolution Professional of this Project shall be bound to initiate the process for taking all*

necessary statutory approvals from the Appropriate/Concerned Authorities for the benefit of Resolution Process.

- d. The State Environment Impact Assessment Authority, competent authority, shall renew the Environmental Clearance granted to all Institutional Projects of C.D and shall extend it till the Completion Date.*
- e. No obligation shall be imposed upon or penalties charged on Swati Health and Education Services Private Limited or the Resolution Applicant in relation to any act or omission by the Resolution Applicant on the basis of non-availability of Information.*
- f. To the extent permissible under the IBC or any other Applicable Law for the time being in force, GNIDA and other Government Authorities shall waive off all penalties, interest, license renewal cost/fee, and any other charges payable to GNIDA, Electricity Department and such other Government Authorities, with regard to the Resolution Applicant who is undertaking a revival of the Project in the interest of all stakeholders. As on the Effective Date, the Government Authorities shall renew all the licenses/approvals for a period of 2 to 3 years without any cost/fee to, and in favour of, the Successful Resolution Applicant in a time bound manner*
- g. Any Bank Accounts, Fixed Deposits, Escrow Accounts, Performance Guarantees, Bank Guarantees, residual funds in the accounts of Corporate Debtor or its promoters, and any other residuary assets related to the Institutional Projects, shall deemed to be transferred to the Resolution Applicant, without any further act or deed. It is hereby clarified that no pending liabilities shall be transferred to the Resolution Applicant.*
- h. The Resolution Applicant shall have a right to mortgage the Institutional Project Land & Building in favour of any Bank, Financial Institution/NBFC for raising loans, and the loan amount raised out of such mortgaged shall be used implementation of the Resolution Plan after making payment to all the creditors as per Resolution Plan. In this respect, the Resolution Professional shall issue a Public Notice in a widely circulated newspaper. The said certified copies of the Project Land sale deed/lease deed/occupancy certificate shall be handed over to such bank/ financial Institution/NBFC from where the Resolution Applicant proposes to raise loans against the Institutional Project land & building and such bank/ financial Institution/ NBFC shall accept the said certified copies of the sale deed/lease deed/occupancy certificate and shall be free to create equitable mortgage in respect of the Institutional Project land & building.*

- i. *All the Licenses in the name of C.D. stands automatically renewed in the name of Successful Resolution Applicant or its S.P.V. or its Nominees upon approval of the Resolution Plan. The Concerned Authorities to co-operate in this regard as and when requested by Successful Resolution Applicant.*
- j. *The Resolution Applicant shall apply before the Governmental Authorities for renewal of all expired licenses to be granted in favour of all Institutional Project and which shall extend it till the Closing date.*
- k. *As on Effective date, the Government Authorities shall Issue, transfer, revise, renew, and or reissue, as the case may be, all the licenses / approvals required for or in connection with the Project without any cost/ fees to, and in favour of the Resolution Applicant and or the SPV, as the case may be, in a time bound manner.*
- l. *Road infrastructure which is part of the Master Plan of this Project, falling in the area or connecting to the Project shall not be the responsibility of the Resolution Applicant*
- m. *The provisions for water and electricity shall be made. However, the supply thereof will not be the responsibility of the Resolution Applicant/Project SPV/ Maintenance Agency/ Associates. The same shall be considered as the responsibility of the concerned agency of the Municipal Corporation/Concerned Department **or any other** competent authority.*

3. EXTINGUISHMENT AND WAIVER OF CLAIMS AND LIABILITIES:

- a. *All liabilities (including without limitation for any penalty, interest, fines or fees) or obligation of the Corporate Debtor, in relation to:*
 - i. *any investigation, inquiry or show cause, proceedings whether civil or criminal or whether pending for initiation or initiated;*
 - ii. *any non-compliance of provisions of Laws, rules, regulations, directions, notifications, circulars, guidelines, policies, licenses, approvals, consents or permissions or any offence including offence falling under the Economic Offence Wing.*
 - iii. *Change of control, Transfer charges, unearned increase, compensation or any other such liability whatsoever under any contract, agreement, lease license, approval, consent, privilege, or permission to which the Corporate Debtor or its subsidiaries, joint ventures or associates are entitled.*

- iv. *Any leasehold rights or freehold rights to moveable or immovable properties in the possession of the Corporate Debtor;*
 - v. *Any contract agreements or commitments made by the Corporate Debtor, whether admitted or not due or contingent asserted or unasserted, crystallized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the Balance Sheet of the Corporate Debtor or the Profit and loss account statement of the Corporate Debtor, in relation to any period prior to the CIRP commencement date, shall be written off in full and shall be permanently extinguished or discharged appropriately, as the case may be, and the Corporate Debtor or the Resolution Applicant /SPSV or any of their or their respective affiliates/ associates/ personnel shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.*
- b.** *On the settlement of dues of various Allottees as mentioned in this Resolution Plan, all obligations, claims and Liabilities (whether final or contingent, whether disputed or undisputed, and whether or not notified to or claimed against the Corporate Debtor) of the Corporate Debtor, all outstanding disputes or legal proceeding against the company, all right or claims of any person against the Corporate Debtor, in each case, relating to the period prior to the Closing Date, shall immediately, irrevocably and unconditionally stand extinguished, waived, withdrawn and abated on the from the “Closing Date” and no person shall have any further rights or claims in this regard.*
- c. Guarantees:** *All obligations, liabilities claim or proceeding on relation to any corporate guarantees, indemnities and all other forms of credit support provided by the Corporate Debtor and/or the Land-Owning companies prior to the Closing Date which is deemed to be Owed and due as of the insolvency commencement date, and shall immediately, irrevocably and unconditionally stand extinguished waived, withdrawn and abated on and from the closing Date. Including but not limited to any form of credit support for person that are currently affiliates, promoters or promoters' group (including the existing Promoter Group), persons acting in concert with promoters, holding companies, subsidiary companies, associate companies and/or Group companies of the Corporate Debtor.*
- d. Right of Subrogation:** *Any person (including the existing promoter group) that has provided any form of security for and on behalf of, and/or in order to secure any obligation of the Corporate Debtor*

(whether by way of hypothecation, pledge, mortgage, guarantee or otherwise) shall not be entitled to exercise any subrogation right in respect of such arrangement against the Resolution Applicant. All obligations, liabilities, claims or proceeding against the C.D. in this regard shall be deemed to be owed and due as of the Insolvency Commencement Date and shall immediately, irrevocably and unconditionally stand extinguished, waived, withdrawn and abated on and from the Completion Date.

4. *On the settlement of dues of various claimants as mentioned in this Resolution Plan, the entire outstanding obligation of the Resolution Applicant toward the dues of each of the creditors/stakeholders mentioned therein shall stand fully discharged and nothing further shall be deemed to be payable to any of the category of the creditors/stakeholders as mentioned therein.*
5. *This Resolution Plan shall be binding on the Corporate Debtor, their creditors, guarantors, members, workmen and employees and authorities and all other stakeholder (including the existing promoter group) in accordance with Section 31 of the IBC.*
6. *The terms of this Resolution Plan shall be deemed to have been approved by Swati Health and Education Services Private Limited, its creditors, guarantors, members, workmen, employees and statutory authorities and other stakeholders (including existing promoter group) and shall not require any separate approval or actions of the aforesaid.*
7. *It is hereby clarified that notwithstanding anything to the contrary contained elsewhere, no past, present or future liabilities shall accrue to the Resolution Applicant, save and except those assumed herein specifically by the Resolution Applicant in this Resolution Plan.*
8. *Any liabilities (civil or criminal) arising out of any work executed in the past by the erstwhile promoter/ the Corporate Debtor or its related/ associate companies shall not in any manner be the liabilities/ responsibility of the Resolution Applicant and/or its subsidiary /associate companies.*

9. *In addition, all legal proceeding initiated before any forum by or on behalf of any employees or workmen, to enforce any rights or claims against the company shall immediately, irrevocably and unconditionally stand abated, withdrawn, settled and/or extinguished and the employees/workmen shall take all necessary steps to ensure the same.*
10. *As on the Effective Date, disputes initiated or pending against the Corporate Debtor in regard to the Project, including proceeding initiated by the Allottees, contractors, subcontractor, association of apartment Allottees, creditors etc. shall be deemed to have been settled and withdrawn by the concerned parties.*
11. *No guarantor of any loan to the Corporate Debtor shall have any right of subrogation against the Resolution Applicant.*
12. *The Resolution Plan is based on claims admitted by RP up to 12.08.2022. In case any claims admitted/revised by RP/AA after 12.08.2022, the payment provision to category of creditor will decrease proportionately as per the Proposed Plan of R.A.*
13. *This Resolution Plan thus addresses the interests of all stakeholders of Swati Health and Education Services Private Limited as contemplated by IBC.*
14. *On and from the Effective Date, the Resolution- Applicant, shall have the sole and exclusive development rights and any economic benefits arising out of this Resolution Plan, and shall have exclusive right, title and interest, in any and all unsold area in the said project proposed to be revived by this Resolution Plan.*
15. *All agreed benefits and obligations under this Resolution Plan available to Allottees, would also be applicable to successor of the Allottees and persons who purchase units from them.*
16. *Any asset which is related directly or indirectly to any of the said project, detected subsequent to submission of this Resolution Plan and purchased by the Corporate Debtor out of the funds of the said project of which this Resolution Plan is being filed by the Resolution Applicant, such*

asset (movable/immovable) shall be deemed to be the property of such project. If in the future it comes to the knowledge of the Resolution Applicant that some asset is derived out of joint-cash-flow of various project, then the Resolution Applicant shall have proportionated right in respect to the project percentage except any liabilities.

17. *In the eventuality, if the Resolution Plan submitted in respect of this project is not approved by the Adjudicating Authority, the Resolution Applicant hereby reserves the right to be provided with a preferential opportunity to present and submit a revised Resolution Plan in respect of the Project.*
18. *The Resolution Applicant shall have no liabilities towards/in connection/on behalf of, directly or indirectly, the persons currently classified as promoter or promoter group (including the existing group), related parties and persons acting in concert with promoters, Holding companies, group companies Subsidiary Companies, Associate Companies, Co-Promoters, group companies and/or their respective affiliates/associate, in each case in connection with the Corporate Debtor, Land-Owning Companies and/or the project. It is further clarified that the liabilities towards such persons as mentioned herein shall not be taken over in any manner whatsoever in nature and irrespective of the fact that they might have been agreed upon to be satisfied whether in this Resolution Plan or otherwise.”*

19. As can be seen from the above, the Resolution Applicant has expected all Government Authorities to grant it (the Consortium) relief/concession or dispensation needed for fair and proper implementation of the transactions contemplated in terms of the Resolution Plan. Nevertheless, the SRA has also committed that irrespective of the grant of the relief/concession solicited therein, the plan will not be withdrawn and will remain valid. It is also made clear in the plan that the amount of payment to be made in terms of the plan, to the Creditor of the CD is not subjected to any condition, assumptions,

relief/concessions, and/or qualifications. However, a long list of relief, concession, dispensation and waiver solicited by the Resolution Applicant (ibid) is there mentioned in the Plan. The relief/concession broadly solicited by the SRA pertained to the renewal of licenses qua the CD, without subjecting it to payment of any penalty/composition fees, interest, or any other charges. The further concession sought in the plan is waiving off the restriction to obtain license, applicable under the provisions of U.P. (Regulation of Buildings Operations) Act, 1958, or under any statute. As has been noted herein above, there are numerous other relief and concessions prayed for in the plan. As can be seen from Section 31(4) of IBC 2016, the Resolution Applicant shall pursuant to the Resolution Plan approved under sub-Section 1 of Section 31 of IBC 2016 shall obtain the necessary approval required under any law for the time being in force within a period of one year from the date of the order passed under Section 31(1) of IBC 2016. Besides, in terms of the provisions of Section 14 of the Code, even during the period of CIRP, the license, permit, registration, quota, concession, clearances, or similar grant or right given by the Central Government/State Government, Local Authority, Sectoral Regulator or any other Authority constituted under any other law for the time being in force shall not be suspended or terminated on the ground of Insolvency subject to the condition that there is no default in payment of current dues arising for the use or continuance of the license, permit, registration, quota, concession, clearance or similar grant or right during the moratorium period. Thus, when even during the moratorium period, the facilities mentioned above are made available to the CD only when there is no default in payment of the current dues, on approval of the

Resolution Plan, the SRA/CD cannot be put on better footings. For convenient reference, the Explanation is reproduced herein below:

“14. Moratorium. –

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -

(a)

(b)

(c)

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation.- For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;”

20. In any case, in terms of the provisions of Section 13 and 15 of the IBC 2016 read with Regulation 6, 6A, 7, 8, 8A, 9 and 9A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, all the claimants such as Operational Creditors, Financial Creditors, Creditors in Class, Workmen and Employees and other Creditors can raise their claims before the IRP/RP. The claims are dealt with by IRP in terms of the provisions of Section 18(b) of the IBC, 2016 and by RP in terms of the provisions of Section 25(b) thereof read with Regulations 12(A), 13 and 14 of the IBBI

(Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Thereafter, the RP prepare an Information Memorandum in terms of the provisions of Regulation 36(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Memorandum contains inter alia a list of creditors containing the range of creditors, the amounts claimed by them, the amount of their claim admitted and the security interest if any in respect of such claims. As has been provided in Regulation 36(1) of the Regulations (ibid), the Information Memorandum is required to be submitted in electronic form to each member of CoC, on or before 95th day from the Insolvency commencement date. As has been provided in Regulation 36(A) of the Regulations the RP publish brief particulars of the invitation for Expression of Interest in Form G of Schedule I to the Regulations at the earliest i.e. not later than 60th day from the Insolvency commencement date, from interested and eligible Prospective Resolution Applicants to submit Resolution Plans. As can be seen from Regulation 36(B) of the Regulations, the RP shall issue Information Memorandum Evaluation Matrix (IMEM) and request for Resolution Plans, within 5 days of the date of issue of provisional list of eligible Prospective Resolution Applicants (required to be issued under Regulation 36(A)(10) of the Regulations). It is with reference to such Information Memorandum Evaluation Matrix that the RP issues request for Resolution Plan. The request for Resolution Plan detail each step in the process and the manner and purposes of interaction between the Resolution Professional and the Prospective Resolution Applicant. The Resolution Plan submitted after consideration of the IMEM and RFRP is then examined by the Committee of Creditors. Nevertheless, it needs to satisfy the requirements of Regulation 37 and 38 of the extant Regulations. Once the plan is approved

by the CoC, in terms of the provisions of Regulations 39 of the aforementioned Regulations, it virtually becomes a contract entered into between the CD represented through RP, SRA and the Creditors of the CD. On being approved by this Adjudicating Authority, by operation of Section 31(1) of the Code, the plan becomes binding on the Corporate Debtor and its employees, members, creditors (including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being enforced such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan. Thus, Section 31(1) of IBC, 2016, takes care of most of the relief/concession/waiver solicited by the Resolution Applicant.

21. Besides, in terms of the provisions of Section 32(A) incorporated in the Code by Act No.1 of 2020, w.e.f. 28.12.2019, for an offence committed prior to the commencement of the Corporate Insolvency Resolution Process the liability of CD ceases and the CD is not liable to be prosecuted from the date of approval of Resolution Plan by this Adjudicating Authority, if the Resolution Plan results in change of management or control of the CD to a person who was not promotor or in the management or control of the CD or a related party of such a person or a person with regard to whom the concerned Investigating Agency has reason to believe that he had abated or conspired for the commission of the offence and has submitted or filed a report or a complaint to the relevant statutory authority or Court. In such cases, where the prosecution is instituted against the CD, during CIRP, the CD stands discharged qua the same from the date of approval of the Resolution Plan. Nevertheless, every person who was a designated partner as

defined in clause (j) of Section 2 of the Limited Liability Partnership Act, 2008, “an officer who is in default” as defined in Clause (60) of Section 2 of Companies Act, 2013 or was in any manner in charge of, or responsible to the CD for the conduct of his business or associated with the CD in any manner and was directly or indirectly involved in the commission of an offence as per the report submitted or complaint filed by Investigating Agency shall continue to be liable to be prosecuted and punished for such an offence committed by the Corporate Debtor notwithstanding the Corporate Debtors’ liability ceases after approval of the plan.

22. In the wake of the provisions of Section 32(A)(2), no action is taken against the property of the Corporate Debtor in relation to an offence committed prior to the commencement of the Corporate Insolvency Resolution Process of the CD, where such property is covered under Resolution Plan approved by this Authority under Section 31, which result in the change in the control of the CD to a person who was not a promotor or in the management or control of the Corporate Debtor or related party of such person or a person with regard to whom the Investigating Agency has reason to believe that he had abated or conspired for commission of the offence and has submitted or filed a report or complaint to the relevant statutory authority or Court.

23. The action against the property of the Corporate Debtor as referred to in Section 32(A) of the Code includes the attachment, seizure, retention or confiscation under such law as may be applicable to the Corporate Debtor. One may also be not oblivious of the fact that in the backdrop of provisions

of Section 31(3)(a) of the IBC, 2016, the moratorium order passed by the Adjudicating Authority under Section 14 ceases to have effect.

24. From the aforementioned analysis and discussion, it is apparent that the CD/SRA cannot be exempted from the liability to pay the dues/fees towards the required license, permit, registration, quota, concession, clearance or similar grant or right. Further, it would be incumbent on the SRA/CD to obtain the necessary approval required under any law for the time being enforced within a period of one year from the date of this order or within such period as provided for in relevant provisions of law, whichever is later. The SRA would be liable to pay the required fees/charges if any for such approval.

25. In sum and substance, the SRA/CD would be entitled to no other relief/concession/waiver except those available to it as per the provisions of Section 31(1) and 32(A) of IBC, 2016.

Thus, the relief and concession sought by the SRA except those admissible to it in terms of the provisions of Section 31 and 32(A) of IBC are nixed.

26. In view of the aforementioned, **the Resolution Plan submitted by the SRA is approved subject to the clarification that in terms of the reply to IA. No. 2551 of 2023 filed by the RP** the assets of CD referred to in Part D of the Plan, would not include the plot leased out by the Applicant in said IA to CD, for the purpose of part D (Sources of Funding/Proposal for Funding) of the plan. In other words, the SRA would not be entitled to secure a loan from any source by creating security interest qua the plot of land leased out by Applicant in IA No. 2551/2023 to the CD. The clarification is made in

terms of the understanding of the plan by RP himself, who has filed a specific affidavit in this regard and would not be treated as a modification of the Resolution Plan in any manner. The Resolution Professional shall send a copy of this order to the participants and Resolution Applicant forthwith. He will also intimate each claimant about the principle formulae, as the case may be regarding payment of debt in terms of the Resolution Plan. The provisions of the Resolution Plan shall take effect notwithstanding the consent of the members or partners of the Corporate Debtor. The plan shall have the effect in terms of the provisions of Section 31(1) of IBC, 2016. No other relief, concession, waiver, or relaxation would be available to SRA/CD/for implementation of plan except those provided in Section 31(1) and 32(A) of the Code. The SRA/CD would be liable to pay the prescribed charges/fees for use or continuation of the requisite license, permit, registration, quota, concession, any other grant or right. Nevertheless, there will be no restriction against the CD/SRA obtaining any license under the provisions of U.P. (Regulation of Buildings Operation) Act, 1958 or under any other statute, subject to payment of applicable fees/charges. The Resolution Applicant shall ensure that the bank guarantee/performance security furnished by it remains alive till the implementation of the plan. The Resolution Professional shall comply with the provisions of Regulation 39(A) of IBBI (Resolution Process for Corporate Persons) Regulations, 2016. The Supervising/Implementation/Management Committee are directed to ensure that the plan is implemented in letter and spirit. He shall also comply with the provisions of Regulation 39(5) and (5A) of the Regulations.

27. **Ergo, IA. No. 6324/2022 and IA. No. 2551/2023 stands disposed of accordingly.**

**Sd/-
(L. N. GUPTA)
MEMBER (T)**

**Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**