

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**IA No.3392 (PB)/2021, IA No. 3556/2022,
Ivn. P-04/2023, IA No. 5361/2021,
IA No.5979/2022, IA-4615/2021**

**IN
CP (IB) No.875(PB)/2020**

*An application under Sections 30(6) and 31(1) of the Insolvency and Bankruptcy code,
2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board Of India
(Insolvency Resolution Process for corporate persons) Regulations, 2016 for approval of
resolution plan*

In the matter of

M/s. Dhankalash Distributors Private Limited

... Financial Creditor

Versus

Arena Superstructures Private Limited

... Corporate Debtor

IA No.3392 (PB)/2021

In the matter of

Ayyagiri Viswanadha Sarma, Resolution Professional of

Arena Superstructures Private Limited.

.....Applicant

Vs.

Purvanchal Projects Pvt. Ltd

...Proforma Respondent

IA No. 3556/2022

In the matter of

Assets Care and Reconstructions Enterprise Ltd

.....Applicant

vs.

Mr. Viswanadha Sarma and Ors.

.....Respondent

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IA (IB) 3392 (PB)/2022, IA No. 3556/2022,
IVN P. 04/2023, IA No. 5361/2021,
IA No. 5979/2022, IA No. 4615/2021
In CP (IB) 875 (PB)/2020

In Re: Resolution Plan approval of Arena Superstructures Private Limited.

Ivn. P-04/2023

In the matter of

Insolvency and Bankruptcy Board of India ... Applicant

vs.

Arena Superstructures Pvt. LtdRespondent

IA No. 5361/2021, IA No.5979/2022

In the matter of

New Okhla Industrial Development AuthorityApplicant

vs.

A. Vishwanadha Sarma
.....Respondent

IA No. 4615/2021

In the matter of

Ayyagari Viswanadha Sarma
.....Applicant

v.

Deep Accoustics Private Limited & Ors.
.....Respondent

Order pronounced on: 19th July, 2023

Coram:

Chief Justice (Retd.) Ramalingam Sudhakar : Hon'ble President

Shri Avinash K. Srivastava : Hon'ble Member (Technical)

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IA No. 5979/2022, IA No. 4615/2021
In CP (IB) 875 (PB)/2020**

In Re: Resolution Plan approval of Arena Superstructures Private Limited.

PRESENT:

For the Resolution Professional : Nitish Kumar Sharma, Adv. Manmeet Singh, Adv. Nastassia Khurana, Adv. Chaitanyashil Priyadarshi, Adv. Tejaswi Bhanu, Adv. Aditya Dewan, Adv. Sahil Chandra, Adv. Vivek Kumar Mishra Adv.

For the Objector (ACRE) : P. Nagesh (Sr. Adv.), Apporv Agarwal Adv.

For the SRA : Sunil Fernandes, Adv. Diksha Dadu, Adv. Prithu Garg, Adv. Kirti Gupta Adv.

For the NOIDA : Sanjeev Sen., Sr Adv, Abdhesh Chaudhary, Adv. Nishi Kant Singh, Adv. Manisha Suri, Adv. Geetanjali Setia, Adv.

For the IBBI : Madhavi Diwan, ASG, Vikas Mehta, Adv, Rashi Rampal, Adv, Sahil Monga, Adv

ORDER

1. Preliminary

- 1.1. The present interlocutory application bearing **IA(IB)3392(PB)/2021** was moved on 22.07.2022 by Mr. Ayyagiri Viswanadha Sarma, Resolution Professional (“**RP**”) of Arena Superstructures Private Limited, under the provisions of Sections 30(6) and 31(1) of the Insolvency & Bankruptcy Code, 2016 (“**the Code**” or “**IBC**”) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) for approval of the Resolution Plan in respect of Arena Superstructures Private Limited (“**Corporate Debtor**”).
- 1.2. The Corporate Debtor is engaged in the business of Real estate activities which includes buying, selling, renting and operating of

self-owned or leased real estate such as apartment buildings and dwellings, non-residential buildings, developing and sub-dividing real estate into lots, etc. and also act as an agent and advisors for selling, sub let of lands, houses or building whether multi stored, commercial or residential on commission basis and in the field of interior for house/ city, town planning for civil construction etc.

- 1.3. The underlying Company Petition **CP (IB) 875(PB)/2020** was filed by M/s. Dhankalash Distributors Private Limited (**“Financial Creditor”**), against Arena Superstructures Private Limited (**“Corporate Debtor”**) under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (**“CIRP”**) of the Corporate Debtor was admitted by this Adjudicating Authority vide order dated 29.10.2020 (**“Admission Order”**). Initially, Mr. Pawan Kumar Singal was appointed as the Interim Resolution Professional (**“IRP”**) who was later replaced by Mr. Ayyagari Viswanandha as Resolution Professional vide order of this Adjudicating Authority dated 09.06.2021.

2. Collation Of Claims By RP

- 2.1. The IRP made public announcement on 04.11.2020 in Financial Express (English) (NCR edition) and Jansatta (Hindi regional Language) (NCR edition) newspapers and called for proof of claims from the creditors of the Corporate Debtor and informed lenders to submit their claims as envisaged under the Code. Further it is stated that the COC was constituted on 02.12.2020.
- 2.2. The list of financial creditors of the Corporate debtor being members of the COC and distribution of voting share among them

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is mentioned as under:

Sr. No.	Name of the Financial Creditor	Voting Share (%)
1.	Assets Care and Reconstruction Enterprise Ltd. (ACRE) as assignee of PNBHFL	28.60 %
2.	Dhankalash Distributors Pvt. Ltd.	0.29 %
3.	Creditors in Class i.e., Homebuyers	71.11 %

2.3. Details in relation to the real Estate project:

The name of the project is Lotus Arena I. A total of nine towers was proposed to be constructed which will be having 1080 (One thousand and Eighty Flats). In which in Tower I, II and III out of 32 floors 25, 20 and 23 floors respectively have been completed with brick work ; in Tower IV, V and VI out of 29 floors, the brick work has been completed till 5th, 4th, 1st floor respectively and in relation to Tower VII , VIII and IX no construction work has been done.

2.4. It is further to be noted that the out of 1080 flats which were proposed to be constructed, the number of 858 flats sold is 858 and 222 remain unsold. Further it is stated in the Resolution plan that there are 785 homebuyers whose claims have been admitted.

2.5. The amounts claimed and admitted are summarised below:

Particulars	Claim filed	Claim Admitted
Secured Financial Creditor	INR 205,25,26,121	INR 200,27,42,110
Unsecured Financial Creditor (except related party)	INR 2,04,00,308	INR 2,02,11,057
Homebuyers	INR 565,38,33,673	INR

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		497,88,37,414
Staff & Workmen	INR 11,76,646	INR 11,76,646
Operational Creditors	INR 106,76,53,939	INR 79,99,02,994
Related Party (includes Unsecured Financial Creditors & Operational Creditors)	N.A.	N.A.
Total	INR 8,79,55,90,687	INR 780,28,70,221

a. Financial Creditors

Name of the Lenders	Amount Claimed in Cr. Rupees	Amount Admitted in Cr. Rupees
Secured Financial Creditors	INR 205,25,26,121	INR 200,27,42,110
Unsecured Financial Creditors	INR 2,04,00,308	INR 2,02,11,057
Homebuyers	INR 565,38,33,673	INR 497,88,37,414
Total	INR 772,67,60,102	INR 700,17,90,581

b. Operational Creditors

Name of the Creditors	Amount Claimed in Cr. Rupees	Amount Admitted in Cr. Rupees
Staff & Workmen	INR 11,76,646	INR 11,76,646
Other than workmen, employees and government dues	INR 106,76,53,939	INR 79,99,02,994
Total	INR 1,06,88,30,585	INR 80,10,79,640

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2.6. The RP submits that a total of 20 (twenty) CoC meetings have been held during the CIRP period, as follows:

Particulars	Date of CoC Meeting
1 st CoC Meeting	02.12.2020
2 nd CoC Meeting	09.01.2021
3 rd CoC Meeting	06.03.2021
4 th CoC Meeting	15.04.2021
5 th CoC Meeting	04.05.2021
6 th CoC Meeting	26.05.2021
7 th CoC Meeting	19.06.2021
8 th CoC Meeting	28.07.2021
9 th CoC Meeting	24.08.2021
10 th CoC Meeting	08.09.2021
11 th CoC Meeting	27.09.2021
12 th CoC Meeting	29.10.2021
13 th CoC Meeting	07.12.2021
14 th CoC Meeting	25.03.2022
15 th CoC Meeting	19.04.2022
16 th CoC Meeting	18.05.2022
17 th CoC Meeting	17.06.2022
18 th CoC Meeting	23.06.2022
19 th CoC Meeting	01.07.2022
20 th CoC Meeting	11.07.2022

2.7. The appointed registered valuers have submitted their reports providing the fair value of the corporate debtor as Rs. 224.93 crores and liquidation value of the Corporate Debtor as Rs.151 crores as per the valuation report.

2.8. The Applicant has filed a Compliance Certificate in prescribed

form, i.e., **Form 'H'** in compliance with regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which has been annexed to the application as **ANNEXURE "A-19"**.

3. Evaluation And Voting

3.1 The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, invitation in **Form 'G'** for Expressions of Interest ("**EoI**") from potential resolution applicants was issued on 14.03.2021 and was again issued on 30.06.2021. The notice was also published on the website of the Insolvency and Bankruptcy Board of India ("**IBBI**").

3.2 The Applicant submits that in response to the invitation for EoI, upto the last date, i.e., 15.07.2021, 19 Eols were received which were as follows:

- i.** Eldeco Infrastructures and Properties Limited
- ii.** Shine Star Build Cap Private Limited
- iii.** ATS Estates Private Limited
- iv.** RKG Fund -I, (A scheme of RKG Trust) managed RKG Assets Management LLP
- v.** Purvanchal Projects Private Limited
- vi.** Hawelia Builders Private Limited
- vii.** Kundan Care Products Limited
- viii.** Ace Infracity Developers Private Limited, in consortium with Campbell Advertising Private Limited (1)

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- ix.** Alpha Corp Development Private Limited
- x.** Basant Projects Limited
- xi.** Mahagun Housing & Construction Private Limited
- xii.** Manikaran Power Limited
- xiii.** One City Infrastructure Private Limited
- xiv.** Satya Developers Private Limited
- xv.** Saya Homes Private Limited
- xvi.** Khyati Realtors Private Limited
- xvii.** Lords Chloro Alkali Limited, in consortium with Dhir Hotels & Resorts Private Limited
- xviii.** 360 Realtors LLP
- xix.** Consortium of Mr. Sandeep Gupta, Mrs. Shalini Gupta, Engineering Project India Limited and Aadi Prop Buld Private Limited

3.3 The information memorandum, evaluation matrix and request for resolution plan was issued to the total 17 prospective resolution applicants on 30.07.2021, and the last date for submission of revised resolution plans was extended from 17.05.2021 to 29.08.2021, and then to 16.06.2022. Till the last date of submissions of resolution plan , 6 PRAs had submitted their resolution plans i.e., Purvanchal Projects Private Limited ("**Purvanchal**"). Hawelia Builders Private Limited ("**Hawelia**"), Eldeco Infrastructure and Properties Private Limited ("**Eldeco**"), consortium of Ace Infracity Developers Private Limited and Campbell Advertising Private Limited ("**Ace-Campbell**"), Satya Developers Private Limited ("**Satya**"), and Alpha Corp Development Private Limited ("**Alpha**").

- 3.4 During the 19thCoC meeting held on 01.07.2022, the RP apprised the CoC members that vide email dated 28.06.2022, he had shared compliance reports and a comparative compliance chart of all the 6 resolution plans and had also uploaded the same on the Virtual Data Room. The plans were discussed in the 19thCoC meeting, held on 01.07.2022 in which out of six only four resolution plans were found to be in compliance with IBC provisions and were thereafter tabled for voting.
- 3.5 The CoC deliberated upon the viability and feasibility of the resolution plans submitted by Purvanchal, Hawelia, Eldeco and Ace-Campbell, and the voting commenced from 02.07.2022 at 4 PM till 09.07.2022, 12:00 PM for members of CoC (including the authorized representative of the homebuyers). The Resolution Plan submitted by Purvanchal was approved by members having 71.11% voting share in the CoC and thereby was approved by the requisite majority as stipulated under the Code, whereas the resolution plan submitted by Eldeco, Hawelia and Ace-Campbell were rejected by 100%, 71.40% and 99.71% vote respectively.
- 3.6 Subsequent to the approval of the Resolution Plan by the CoC, the Applicant issued the Letter of Intent dated 09.07.2022 to the Successful Resolution Applicant and the same was accepted by the Successful Resolution Applicant, the copy of which is annexed as **Annexure "A-15"** of the application. The Successful Resolution Applicant thereafter submitted a bank guarantee for Rs. 5,00,00,000 (Rupees Five Crores Only) on 12.07.2022 issued by Bank of Baroda as performance security. A copy of the bank guarantee is annexed as **Annexure "A-16"** of the application. A

Copy of the Resolution Plan of the Successful Resolution Applicant is annexed herewith to the I.A. and marked as **Annexure “A-18” (Colly)**.

4 Details Of Resolution Plan/Payment Schedule

- 4.1 The Successful Resolution Applicant, **Purvanchal Projects Pvt.Ltd.** is a Private Company (Non-govt. Company) incorporated on 25.03.2010 and is engaged in the business of Real estate activities consisting of residential and commercial premises including commercial business centers and offices, building of homes and residential complexes that represent the best in modern day architecture.
- 4.2 The Resolution Applicant ascertained the cause of default to be:
- a. Under-utilisation and mismanagement of the available funds
 - b. Liquidity crunch
 - c. Mismanagement of the affairs of the Corporate Debtor
 - d. Slow pace of construction
 - e. Inability to complete construction works within the stipulated time period
 - f. Allotment of residential units on back-ended payment plans leading to low collection efficiency of receivables.
 - g. Slowdown in the real estate market in the last 5 years.
- 4.3. The Resolution Applicant proposes to address the causes of default in the following manner:
- a. The Resolution Applicant has demonstrated its financial strength and technical and organizational capabilities, as also its prior experience

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and track record in effectively implementing and completing major real estate projects including distressed projects.

b. The Resolution Applicant will engage competent personnel and professionals to aid and assist the new management of the Corporate Debtor in implementing the Resolution Plan and ensuring that the operations and affairs of the Corporate Debtor are managed properly, professionally and transparently in the interest of all stakeholders including the creditors of the Corporate Debtor.

c. The Plan contains provisions for time-bound payments by Allottees to the Corporate Debtor during the term of the Plan, which shall in turn be utilized for discharging all debts and liabilities of the Corporate Debtor and completing the construction of the Flats in a time-bound manner. Further, the Resolution Applicant will infuse its own funds to implement the Plan and carry out the construction works. The Plan is feasible and viable and can be successfully implemented by the Resolution Applicant.

4.4. The Applicant submits the relevant information with regard to the amount claimed, amount admitted and the amount proposed to be paid by the Resolution Applicant, under the said Resolution plan are tabulated below:

Sl. No.	Category of Creditors	Amount of Claim (Rs. in Cr.)	Claim Admitted (Rs. in Cr.)	Amount Provided (Rs. in Cr.)
1.	CIRP Cost	Actual	-	Rs.6,00,00,000 Any amount in excess of Rs.6 Crores, will be

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				borne by the Secured Financial Creditors and adjusted against the amount payable to it under the plan.
2.	Operational Creditor (including Statutory Liberties admitted by RP)	Rs.1,06,76,53,939	Rs.79,99,02,994	Rs.10,00,00,000
3.	Workmen/ Employees	Rs. 11,76,646	INR 11,76,646	INR 11,76,646
4.	Secured Financial Creditor	INR 205,25,26,121	INR 200,27,42,110	INR 70,00,00,000
	Unsecured Financial Creditor	INR 2,04,00,308	INR 2,02,11,057	INR 50,00,000
	Financial Creditor in a class (Homebuyers/ Allottees)	INR 565,38,33,673	INR 497,88,37,414	The Resolution plan provides for resolution of the dues of the homebuyers by way of delivery of flats (subject to the applicable provisions stipulated under the Resolution Plan)
	Total	-	-	584,50,14,060/-

4.5. The Resolution Plan defines “**Effective Date**” shall mean the date on which the order passed by the Adjudicating Authority approving this Resolution Plan under Section 31 of the Code is communicated to the Resolution Applicant by the Resolution Professional in accordance with the provision of the CIRP Regulations (as defined in the Resolution Plan).

5. Compliance of the successful resolution plan with various provisions:

The Applicant submits the details of various compliances as envisaged within the Code and the CIRP Regulations which a Resolution Plan to is required to adhere to, which is reproduced hereunder:

I. Submission of Resolution Plan in terms of sub-section (2) of Section 30 of the Code :

Clause of Sec. 30(2)	Requirement	How dealt with in the Plan
(a)	Plan must provide for payment of CIRP cost in priority to repayment of other debts of CD in the manner specified by the Board.	Clause 7.3 (ii) at Page 43 of the Resolution Plan which states that the Resolution applicant undertakes to pay the CIRP cost on before the transfer date , in priority to the payment of other debts of the Corporate debtor and the Resolution applicant has made a provision of upto Rs. 6,00,00,000/- towards CIRP and

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		any excess amount over and above this sum will be borne by the Secured Financial Creditor and adjusted from the amount payable to it under this Plan.
(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 the amount payable to them in the event of liquidation u/s 53; or</p> <p>ii. Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall be not less than 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,</p>	<p>(i) Clause 7.3 (vi) (A) at Pages 59-64 of the Resolution Plan which states that the resolution applicant proposes to settle the entire debts/ dues of the Operational creditor by paying a total amount of Rs. 10,00,00,000/- which will be distributed amongst the Operational creditors in proportion to their admitted claims .</p> <p>(ii) It further states that the amount payable to OCs under this plan is the amount to be paid to such creditors in the event of a liquidation of the Corporate debtor under sec 53 of the Code, or the amount that would have been paid to the creditors, if the amount to be distributed under the Resolution Plan had been</p>

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	<p>whichever is higher and;</p> <p>iii. 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.</p>	<p>distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher.</p> <p>(iii) The resolution Plan provides the payment to settle the claim of dissenting financial creditor by paying an amount of Rs. 70,00,00,000/-.</p>
(c)	<p>Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.</p>	<p>Clause 8.1 at Page 69 of the Resolution Plan which reads as follows: On and from the Transfer Date, the powers of the Board of Directors of the Corporate Debtor will vest with the nominees/representatives/assigns who will be appointed by the Resolution Applicant as Directors of the Corporate Debtor. The Resolution Applicant is solely and exclusively entitled to choose its nominees/representatives/assigns for appointment to the Board of Directors of the Corporate Debtor. The newly constituted Board of Directors shall be vested with the overall control and management</p>

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		<p>of affairs of the Corporate Debtor with effect from the Transfer Date. The Directors appointed by the Resolution Applicant will be entitled to remuneration for their services, as may be decided by the Resolution Applicant/New Management in the sole discretion.</p>
(d)	Implementation and Supervision.	<p>Clause 9.1, 9.2 at Pages 71-72 of the Resolution Plan which states as follows:</p> <p>Within two days from the Effective Date, a Monitoring Committee comprising of (a) two Members nominated by the Resolution Applicant and (b) one Member nominated by the Financial Creditors in a Class (Homebuyers/Allottees), will be constituted by the Resolution Applicant.</p> <p>The Monitoring Committee will discharge the following functions:</p> <p>a. To oversee and supervise the management of the business and affairs of the Corporate Debtor by the Resolution Professional</p>

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		during the Transition Period. b. To oversee and supervise the implementation of this Resolution Plan and ensure that the New Management of the Corporate Debtor discharges its duties and functions in adherence to this Plan and maintains the quality of the construction works.
(e)	Plan does not contravene any of the provisions of the law for the time being in force.	Clause 5.1 (v) at Page 30 of the Resolution Plan and Clause 9.6 at Page 73 of the Resolution Plan which states that this Resolution Plan does not contravene any of the provisions of the law for the time being in force
(f)	Conforms to such other requirements as may be specified by the Board.	Clause 5.1 (vi) at Page 30 of the Resolution Plan.

II. Mandatory contents of Resolution Plan in terms of Regulation 38 of CIRP Regulations:

Regulation	Requirement	How dealt with in the Plan
38(1)	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Clause 5.3, Part 5 at Page 31 of the Resolution Plan, and Clause 7.3 vi. (A) d. at Page 60 of the

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		Resolution Plan whereby the Resolution applicant confirms that the payment to Operational Creditors will be made in priority over the Financial creditors and payment to dissenting financial creditors will be made in priority over other financial creditor.
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stake holders, including financial creditors and operational creditors of the corporate debtor.	Clause 5.7 of the Resolution Plan
38(1B)	A resolution plan shall include a statement giving details if the resolution 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.	Clause 5.5 of the Resolution Plan provides that the Resolution Applicant confirms that neither the resolution Applicant nor any of its related parties have ever failed or ever contributed to the failure of implementation of any other Resolution plan approved by the

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		Adjudicating Authority at any time in past.
38(2)	A resolution plan shall provide : (a) The term of the plan and its implementation schedule; (b) The management and control of the business of the corporate debtor during its term; and	(a) Term of the plan is provided in Clause 5.6(i) and implementation schedule in Part 10 and detailed at Para 6 of this order. (b) Clause 5.6(ii) and Part 8 and detailed at Para 7 of this order.
	(c) Adequate means for supervising its implementation.	(c) Clause 5.6 (iii) and Part 9
38(3)	A resolution plan shall demonstrate that – (a) it addresses the cause of default;	Clause 5.7(i)
	(b) it is feasible and viable;	Clause 5.7(ii)
	(c) It has provisions for its effective implementation	Part 9 and 10
	(d) It has provisions for approvals required	Clause 5.7(iv)
	(e) The Resolution Applicant has the capability to implement the resolution plan	Part 2 and 3

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6. Term of the Resolution plan and implementation schedule :

Sl. No.	Activity	Estimated Timeline
1.	Effective Date	X
2.	Formation of Monitoring Committee and Legal Committee	X + 2 days
3.	Transfer Date / Commencement of Term of this Resolution Plan	Y (X + 30 days)
4.	Upfront cash infusion by the Resolution Applicant	Y
5.	Payment of CIRP Cost	Y
6.	Payment to Workmen & Employees	Y + 90 days
7.	Payment to Operational Creditors	Y + 21 months to Y + 30 months
8.	Completion of construction of the Project and delivery of Flats to Financial Creditors in a Class (Homebuyers/Allottees)	Y + 36 months
9.	Payment to Secured Financial Creditor	Y + 33 months to Y + 42 months
10.	Payment to Unsecured Financial Creditor	Y + 43 months
11.	Completion Date / End of Term of this Resolution Plan	Y + 48 months

7. The Applicant submits that the successful resolution applicant has submitted an affidavit in regard to the eligibility under section 29A of the Code, as required by Regulation 39(1)(a) of the CIRP Regulations. An undertaking has also been submitted by the Successful Resolution Applicant, as mandated in terms of regulation 39(1)(c) of the CIRP Regulations.

8. Details On Fraudulent And Avoidance Transaction

The Resolution Plan provides at Pg 58 that the proceeds of the avoidance transactions applications shall be distributed amongst the Financial Creditors in a class (homebuyers/allottees) in proportion to their voting share.

At this juncture it will be apt to refer the judgment of Division Bench of Hon'ble Delhi High Court in the matter of :

Tata Steel BSL Limited v. Venus Recruiter Private Limited & ors (2023) ibclaw.in 09 HC

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e. The provisions pertaining to suspect transactions exist specifically to benefit the creditors of the corporate debtor by enhancing the asset pool available for resolution of the corporate debtor. The IBC also envisages increasing credit availability in the country as one of its primary objectives. It is apposite that any kind of benefit acquired from the adjudication of avoidance applications, in cases where treatment of such applications could not be accounted in the plan, must be given to the creditors of the erstwhile corporate debtor, considering especially, that in the present case, the creditors took a massive haircut towards resolution of the corporate debtor. Giving such benefit to

the creditors is in consonance with the scheme of the IBC.

- f. The amount that is made available after transactions are avoided cannot go to the kitty of the resolution applicant. ***The benefit arising out of the adjudication of the avoidance application is not for the corporate debtor in its new avatar since it does not continue as a debtor and has gone through the process of resolution. This amount should be made available to the creditors who are primarily financial institutions and have taken a haircut in agreeing to accept a lesser amount than what was due and payable to them.***

In view of the judgment, as above, the proceeds of the avoidance transaction needs to be distributed among the financial creditors including the financial institution and the RP has to pursue the avoidance applications on the approval of the Resolution plan.

9. Infusion of funds

- 9.1. It is stated that the Resolution Applicant shall infuse a sum of Rs. 20,00,00,000 (Rupees Twenty Crores Only) in the Corporate Debtor in the following manner:
- a. The upfront cash infusion will be INR 10,00,00,000 (Rupees Ten Crores only) on or before the Transfer Date and will be utilized towards acquisition of equity shareholding of the Corporate Debtor, payment of CIRP Cost, mobilization of resources and restarting the construction works of the Project, and meeting the working capital and capital expenditure requirements of the Corporate Debtor.

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- b. Further infusion of funds will be in the form of high-end equipment, machinery, construction materials, etc. valued at INR 10,00,00,000 (Rupees Ten Crores only) within six months from the Transfer Date.
- c. The Performance Bank Guarantee of INR 5,00,00,000 (Rupees Five Crores only) to be submitted by the Resolution Applicant in terms of the RFRP, which will be cancelled and/or returned to the Resolution Applicant within 7 working days from the date of the upfront cash infusion of INR 10,00,00,000 (Rupees Ten Crores only) into the Corporate Debtor.
- d. In addition to the above, this Resolution Plan relies on the internal accruals/receivables/reserves and surplus of the Corporate Debtor, especially the receivables from Homebuyers/Allottees against their respective flats as also the sale of unsold inventory by the Corporate Debtor in the market, the proposed Special Window for Affordable and Mid Income Housing (SWAMIH) funding subject to eligibility, and/or raising of capital from banks/financial institutions at the sole discretion of the Resolution Applicant/Corporate Debtor, in order to ensure successful completion of the Project and implementation of this Plan.
- e. Further it is stated that the Resolution Applicant may, in its sole discretion, infuse further funds to meet the working capital and capital expenditure requirements of the Corporate Debtor. The Resolution Applicant reserves complete rights to determine the method and means of raising funds to be infused, including but not limited to issue of equity and/or preference shares to the shareholders/promoters of the Resolution Applicant; Shareholder Contribution with Equity like features; Redeemable Optionally Convertible Debentures; Unsecured Subordinated Debt sourced from

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Resolution Applicant/Resolution Applicant's associate/group companies/family members/internal accruals or through its SPV/Nominee Person/Entity, raising of loan either by issue debentures, bonds, commercial papers etc. from Banks/FIs/Mutual Funds/Public etc. at its sole discretion.

10. Total Amount :

The Resolution Applicant proposes to settle and discharge all Claims/debts/dues against the Corporate Debtor pertaining to the period prior to the Effective Date, whether filed or not filed, ascertained or not ascertained, assessed or not assessed, by paying a Total Consideration of INR 86,61,76,646 in the manner provided below:

S. No.	Category/Class of Creditors	Amount Proposed under this Plan (INR)
1.	CIRP Cost (including Transition Period Cost)	6,00,00,000
2.	Secured Financial Creditor (Asset Care and Reconstruction Enterprise Limited)	70,00,00,000
3.	Unsecured Financial Creditor (Dhankalash Distributors Private Limited)	50,00,000
4.	Financial Creditors in a Class (Homebuyers/Allottees)	497,88,37,414 (By way of delivery of flats)
5.	Workmen & Employees	11,76,646

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6.	Operational Creditors (including Statutory Authorities)	10,00,00,000
Total		584,50,14,060

11. Objections

Before considering the application for approval of Resolution Plan there are two objections filed in form of interlocutory applications i.e IA NO. 3556/2022 filed by Assets Care and Reconstruction Enterprise and IA No.5361/2021 and IA No. 5979/2022 filed by the NOIDA.

11.1. IA 3556/2022

1. This application has been filed under Section 60(5) of IBC, 2016 read with Rule 11 of the NCLT Rules, 2016 on behalf of Assets Care & Reconstruction Enterprise Limited (“ACRE”) claiming to be the sole secured Financial Creditor of the Arena Superstructures Pvt. Ltd. (“Corporate Debtor”) objecting to the resolution plan of Respondent no. 2 i.e. Purvanchal Projects Pvt. Ltd. who is the Successful Resolution Applicant in the CIRP Proceedings with respect to the Corporate Debtor. The prayer made in this IA reads as follows:-

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- (a) Declare that the Respondent No. 2's approved Resolution Plan is non-compliant with Section 30(2) of the IBC and related regulations and thus, ineligible to have been approved by the CoC under the mandate of the IBC; and/ or,
- (b) Direct for the payment of the liquidation value as per Section 30(2)(b) read with Section 53(1) of the IBC, payable to ACRE as a dissenting financial creditor and quantified at Rs. 1,44,91,91,358/-, be paid in cash and upfront and in priority to any payment made to assenting financial creditors; and
- (c) Pass any such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

2. It is the submission of the Applicant represented by Sr. Counsel Mr. P Nagesh whom we have heard on various occasions that ACRE has an admitted debt of Rs. 200,27,42,110/- (Rupees Two Hundred Crore Twenty Seven Lakh Forty Two Thousand One Hundred Ten only) and it has a proportionate voting share of 28.60% in the CoC of the Corporate Debtor.

3. ACRE acquired the debt owed to PNB Housing Finance Ltd. by way of Assignment Agreement dated 25.04.2022 as per which ACRE has now stepped into the shoes of PNB Housing Finance Ltd. This happened during the CIRP of the Corporate Debtor.

4. It is the contention of the Applicant ACRE; that the resolution plan submitted by the Respondent No. 2/SRA and approved by CoC with 71.11% voting is non-compliant, since the plan does not provide for such payment to ACRE in its capacity as a

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Dissenting Financial Creditor (“DFC”) in accordance with provisions of Section 30(2)(b) read with Section 53(1) of IBC. It is submitted that the resolution plan ought to have provided the minimum liquidation value, an amount which shall not be less than the amount to be paid to DFC in accordance with Section 53(1) of IBC in the event of liquidation of Corporate Debtor. As per the Applicant this amount translates to Rs. 1,44,91,91,358/- (Rupees One Hundred Forty Four Crore Ninety One Lakh Ninety One Thousand Three Hundred Fifty Eight only) calculated as follows:

Details	Amount (in Rs.)
Liquidation Value (LV) of CD	1,51,00,41,336/-
Less:- CIRP Cost	6,00,00,000/-
Remaining LV	1,45,00,41,336/-

5. The remaining liquidation value is to be distributed as per Section 53(1)(b) of IBC in equal proportion between workmen’s dues and secured creditor’s dues.
6. It is stated that the workmen’s admitted debt is Rs. 11,74,646/- (Rupees Eleven Lakh Seventy Four Thousand Six Hundred Forty Six Only), ACRE’s admitted debt is Rs. 2,00,27,42,110/- (Rupees Two Hundred Crore Twenty Seven Lakh Forty Two Thousand One Hundred Ten only), proportion of debt payable to each creditor is 72.36%, Amount payable to workmen is Rs. 8,49,978.04/- (Rupees Eight Lakh Forty Nine Thousand Nine Hundred Seventy Eight and Four Paise Only) and Amount

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payable to ACRE is Rs. 1,44,91,91,357.95/- Rupees One Hundred Forty Four Crore Ninety One Lakh Ninety One Thousand Three Hundred Fifty Seven and Ninety Five Paise only).

7. ACRE has submitted that the plan provides for amount of Rs. 70,00,00,000/- (Rupees Seventy Crore Only) towards ACRE and the plan also states that the ACRE may pursue the remedies against 3rd parties i.e. co-borrowers/guarantors for recovery of its remaining dues in respect of the Corporate Debtor. Moreover, Respondent No. 2/SRA has capped its own liability at Rs. 86,61,76,646/- (Rupees Eight Six Crore Sixty One Lakh Seventy Six Thousand Six Hundred Forty Six Only) as per clause 7.3 (i)(e) of the resolution plan which is extracted below (Para 36 of IA-3556/2022) :

36. Moreover, here the Respondent No. 2 has also capped its own liability at Rs. 86,61,76,646/-, in Clause 7.3(i)(e) of the Resolution Plan, reproduced below:

“This Resolution Plan is commercially viable at the Total Consideration proposed to be paid to the Creditors/Stakeholders of the Corporate Debtor in this Plan. Any increase in the Total Consideration payable to the Creditors/Stakeholders of the Corporate Debtor will render this plan commercially unviable and incapable of effective implementation. Therefore, it is provided that in no event will the Corporate Debtor/Resolution Applicant be held liable to pay any amount in excess of the Total Consideration proposed to be paid to the Creditors/Stakeholders of the Corporate Debtor under this Plan. In case it is discovered at any stage, that any additional amount is payable to any

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Creditor/Stakeholder over and above the payments proposed under this Plan, whether by virtue of any direction from the Resolution Professional/Committee of Creditors/Adjudicating Authority or otherwise, the Corporate Debtor/Resolution Applicant will not bear the same and the Total Consideration will be redistributed suitably amongst the Creditors/Stakeholders and, if that is not feasible, the same will be borne by the Financial Creditors and/or the Allottees in proportion to their voting share.”

- 8.** It is contended that as R-2/SRA has blatantly denied to fulfill its obligation of paying to DFC the minimum liquidation value as per Section 53 of the IBC, hence the Resolution plan is non-compliant with the Code.
- 9.** Notice was issued to both the RP and the SRA who entered appearance through their respective counsels namely Mr. Arvind Nayyar, Ld. Sr. Counsel for RP and Mr. Sunil Fernandes, Ld. Counsel for the SRA. The replies have been submitted by the RP and the SRA and rejoinders to the same have also been submitted by the applicant.
- 10.** Ld. Counsel for the SRA has submitted that the answering respondent has proposed to settle ACRE's entire admitted claim in a sum of Rs. 70 Crores and in addition to the aforesaid amount the Applicant has been given the right to enforce its security interests and encumbrances over the third party assets, properties, guarantees etc. which are available to it even after approval of the plan whereas as per the Security Interest based

on Section 11(4)(h) of RERA Act, the entitlement of ACRE is only around Rs. 37 Cr.

11. IVN. P-04/2023

In the course of hearing, IDBI filed an intervention application bearing no. Ivn. P-04//2023 seeking to implead/intervene itself in the present case more particularly in the present proceeding.

Ivn. P. 04/2023 was allowed and Ld. Counsel for IBBI made submissions as recorded in the subsequent paragraphs.

12. In the Course of further hearings, Ld. Counsels for the RP, SRA & ACRE also placed written submissions. Ld. Counsel for the SRA in his written submissions stated that two loan facilities were extended by PNBHFL under a Composite Loan Agreement dated 08.03.2017 to the following borrowers/co-borrowers.

- A. Corporate Debtor
- B. Fest Homes Developers Private Limited
- C. Villa Stone Build Pvt. Ltd.

12. It is submitted that as per the Hon'ble Supreme Court's decision in Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd. (2022) 1 SCC 401, for the purpose of discharging the obligations mentioned in Section 30(2)(b) of the Code, the dissenting secured Financial Creditor can be paid their entitlement by payment in cash and/or through enforcement of security interest. Accordingly, the SRA has made the following provisions for payment to the Applicant i.e. ACRE under the resolution plan.

- A. Rs. 70 Crores in cash in 4 installments

B. Right to enforce 3rd party security interest including but not limited to the co-borrowers land.

13. It is further submitted that as per the valuation report obtained by PNBHFL during the CIRP, the value of co-borrower's land is estimated at Rs. 96.90 Crores. Thus the Applicant stands to realize a sum of approximately Rs. 166 Crores under the resolution plan which is substantially higher than the sum of about Rs. 144 Crores claimed by the Applicant. On this basis it is contended that the IA deserves to be dismissed.
14. Ms. Madhavi Diwan, Ld. ASGI also appeared on behalf of IBBI and argued that the provision under Section 30 (2) (b) IBC is not meant to encourage liquidation vis-à-vis insolvency but is meant simply to ensure that the dissenting Financial Creditor is not squeezed out and given partly payment by the majority Financial Creditors. However, it cannot be misused by a dissenting Financial Creditor to stall the Insolvency Resolution process and force the Corporate Debtor into liquidation.
15. She further submitted that the conjoint reading of Explanation 1 to Section 30(2) read with 30 (4) of IBC, 2016 would indicate that the CoC's decision passed by majority will prevail. She also argued that waterfall mechanism envisaged under Section 53(1) of IBC, 2016 has to be read harmoniously with Section 52 of IBC, 2016 for the secured creditor to get the benefit of Section 53(1)(b)(ii) of the Code. The fact is that the Financial Creditor has not relinquished the security in the manner set out in Section 52 of IBC, 2016 hence, having entitlement under the waterfall mechanism under Section

53(1)(b)(ii) of IBC, 2016 would not hold ground especially when this is the resolution plan stage and not liquidation and the minimum threshold envisaged for dissenting Financial Creditor cannot be absurdly interpreted as to push the Corporate Debtor into liquidation. She has especially drawn our attention to the Explanation 1 to Section 30(2) and the provisions of Section 30(4) of IBC, 2016 to stress the point that the minimum liquidation value is not sacrosanct and the CoC's majority decision would prevail. Explanation 1 to Section 30(2) of IBC, 2016 reads as under:-

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

16. Further Section 30(4) of IBC, 2016 reads as under:-

Section 30: Submission of resolution plan.

....

(4) The committee of creditors may approve a resolution plan by a vote of not less than 5[sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, 6[the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor] and such other requirements as may be specified by the Board.

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17. She also drew our attention to the Judgments of the Hon'ble Supreme Court in the matter of **Committee of Creditors of Essar Steel India Limited Through Authorised Signatory vs. Satish Kumar Gupta & Ors (2020) 8 Supreme Court Cases 531: SCC Online SC 1478** at Paras 128-129 and 145 which read as under:-

128. When it comes to the validity of the substitution of Section 30(2)(b) by Section 6 of the Amending Act of 2019, it is clear that the

substituted Section 30(2)(b) gives operational creditors something more than was given earlier as it is the higher of the figures mentioned in sub-clauses (i) and (ii) of sub-clause (b) that is now to be paid as a minimum amount to operational creditors. The same goes for the latter part of sub-clause (b) which refers to dissentient financial creditors. Ms Madhavi Divan is correct in her argument that Section 30(2)(b) is in fact a beneficial provision in favour of operational creditors and dissentient financial creditors as they are now to be paid a certain minimum amount, the minimum in the case of operational creditors being the higher of the two figures calculated under sub-clauses (i) and (ii) of clause (b), and the minimum in the case of dissentient financial creditor being a minimum amount that was not earlier payable. As a matter of fact, pre-amendment, secured financial creditors may cramdown unsecured financial creditors who are dissentient, the majority vote of 66% voting to give them nothing or next to nothing for their dues. In the earlier regime it may have been possible to have done this but after the amendment such financial creditors are now to be paid

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the minimum amount mentioned in sub-section (2). Ms Madhavi Divan is also correct in stating that the order of priority of payment of creditors mentioned in Section 53 is not engrafted in sub-section (2)(b) as amended. Section 53 is only referred to in order that a certain minimum figure be paid to different classes of operational and financial creditors. It is only for this purpose that Section 53(1) is to be looked at as it is clear that it is the commercial wisdom of the Committee of Creditors that is free to determine what amounts be paid to different classes and sub-classes of creditors in accordance with the provisions of the Code and the Regulations made thereunder.

129. As has been held in this judgment, it is clear that Explanation 1 has only been inserted in order that the Adjudicating Authority and the Appellate Tribunal cannot enter into the merits of a business decision of the requisite majority of the Committee of Creditors. As has also been held in this judgment, there is no residual equity jurisdiction in the Adjudicating Authority or the Appellate Tribunal to interfere in the merits of a business decision taken by the requisite majority of the Committee of Creditors, provided that it is otherwise in conformity with the provisions of the Code and the Regulations, as has been laid down by this judgment.

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145. The other argument of Shri Sibal that Section 53 of the Code would be applicable only during liquidation and not at the stage of resolving insolvency is correct. Section 30(2)(b) of the Code refers to Section 53 not in the context of priority of payment of creditors, but only to provide for a minimum payment to operational creditors. However, this again does not in any manner limit the Committee of Creditors from classifying creditors as financial or operational and as secured or unsecured. Full freedom and discretion has been given, as has been seen hereinabove, to the Committee of Creditors to so classify creditors and to pay secured creditors amounts which can be based upon the value of their security, which they would otherwise be able to realise outside the process of the Code, thereby stymying the corporate resolution process itself.

.....

18. She also highlighted the decision of The Hon'ble Supreme Court in the matter of **India Resurgence ARC Private Limited vs. M/S. Amit Metaliks Limited &Anr. Civil Appeal NO. 1700 of 2021**(para 13-15, 17, 19-22) which reads as under:-

13. It needs hardly any elaboration that financial proposal in the resolution plan forms the core of the business decision of Committee of Creditors. Once it is found that all the mandatory requirements have been duly complied with and taken care of, the process of judicial review cannot be stretched to carry out quantitative analysis qua a particular creditor or any stakeholder, who may carry his own dissatisfaction. In other words, in the scheme of IBC, every dissatisfaction does not partake the character of a legal grievance and cannot be taken up as a ground of appeal.

14. The provisions of amended sub-section (4) of Section 30 of the Code, on which excessive reliance is placed on behalf of the appellant, in our view, do not make out any case for interference with the resolution

plan at the instance of the appellant. The purport and effect of the amendment to sub-section (4) of Section 30 of the Code, by way of sub-clause (b) of Section 6 of the Amending Act of 2019, was also explained by this Court in Essar Steel (supra), as duly taken note of by the Appellate Authority (vide the extraction hereinbefore). The NCLAT was, therefore, right in observing that such amendment to sub-section (4) of Section 30 only amplified the considerations for the Committee of Creditors while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of resolution plan, with fairness of distribution amongst similarly situated creditors; and the business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment.

15. In regard to the question of fair and equitable treatment, though the Adjudicating Authority as also the Appellate Authority have returned concurrent findings in favour of the resolution plan yet, to satisfy ourselves, we have gone through the financial proposal in the resolution plan. What we find is that the proposal for payment to all the secured financial creditors (all of them ought to be carrying security interest with them) is equitable and the proposal for payment to the appellant is at par with the percentage of payment proposed for other secured financial creditors. No case of denial of fair and equitable treatment or disregard of priority is made out.

....

17. Thus, what amount is to be paid to different classes or subclasses of creditors in accordance with provisions of the Code and the related Regulations, is

essentially the commercial wisdom of the Committee of Creditors; and a dissenting secured creditor like the appellant cannot suggest a higher amount to be paid to it with reference to the value of the security interest.

.....

19. In Jaypee Kensington (supra), this Court repeatedly made it clear that a dissenting financial creditor would be receiving the payment of the amount as per his entitlement; and that entitlement could also be satisfied by allowing him to enforce the security interest, to the extent of the value receivable by him. It has never been laid down that if a dissenting financial creditor is having a security available with him, he would be entitled to enforce the entire of security interest or to receive the entire value of the security available with him. It is but obvious that his dealing with the security interest, if occasion so arise, would be conditioned by the extent of value receivable by him.

20. The extent of value receivable by the appellant is distinctly given out in the resolution plan i.e., a sum of INR 2.026 crores which is in the same proportion and percentage as provided to the other secured financial creditors with reference to their respective admitted claims. Repeated reference on behalf of the appellant to the value of security at about INR 12 crores is wholly inapt and is rather ill-conceived.

21. The limitation on the extent of the amount receivable by a dissenting financial creditor is innate in Section 30(2)(b) of the Code and has been further expounded in the decisions aforesaid. It has not been the intent of the legislature that a security interest available to a dissenting financial creditor over the assets of the corporate debtor gives him some right

over and above other financial creditors so as to enforce the entire of the security interest and thereby bring about an inequitable scenario, by receiving excess amount, beyond the receivable liquidation value proposed for the same class of creditors.

22. It needs hardly any emphasis that if the propositions suggested on behalf of the appellant were to be accepted, the result would be that rather than insolvency resolution and maximization of the value of assets of the corporate debtor, the processes would lead to more liquidations, with every secured financial creditor opting to stand on dissent. Such a result would be defeating the very purpose envisaged by the Code; and cannot be countenanced. We may profitably refer to the relevant observations in this regard by this Court in Essar Steel as follows:—

“85. Indeed, if an “equality for all” approach recognizing the rights of different classes of creditors as part of an insolvency resolution process is adopted, secured financial creditors will, in many cases, be incentivized to vote for liquidation rather than resolution, as they would have better rights if the corporate debtor was to be liquidated rather than a resolution plan being approved. This would defeat the entire objective of the Code which is to first ensure that resolution of distressed assets takes place and only if the same is not possible should liquidation follow.”

19. We have heard the Ld. Counsels for the parties and perused the documents. Ld. Sr. Counsel for RP has submitted that the Applicant ACRE would be entitled to an amount equivalent to their security interest created in respect of the Corporate Debtor. It is submitted that Section 11(4)(h) of The Real Estate

(Regulation and Development) Act, 2016 (RERA) prohibits the promoter of a real estate project from creation of security on sold units. Section 11(4)(h) of RERA is extracted below:-

Section 11 "Functions and duties of promoter" - The Real Estate (Regulation and Development Act, 2016)

.....

(4) The promoter shall-

.....

(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;

20. It is submitted by the Sr. Counsel for RP that the relevant provisions of RERA Act and the Code are capable of being interpreted in a harmonious manner as regards the interest of the homebuyers and if there is a conflict between RERA and the Code as regards to the rights of homebuyers in the units allotted to them then provisions of RERA Act will prevail being the specific statute. In rebuttal to it, the learned Sr. counsel for the applicant in rejoinder stated that in case of conflict IBC would prevail over RERA.

21. It is further submitted by the Sr. Counsel for RP that the loans were advanced by PNB Housing Finance Limited on 08.03.2017 by which time 806 units corresponding an area of 14,34,750 Sq. Ft. had already been sold. Therefore, the portion of project area over which mortgage was created in favour of ACRE would be restricted to the units sold/allotted post commission of mortgage which is 51 in number corresponding to 86,665 Sq. Ft. area and unsold units 222 in numbers corresponding to area of 4,07,945Sq. Ft., in total 279 units out of 1080 units which represents 25.64% of the project area and that would be the extent over which ACRE has mortgage rights. It was also contended by Sr. Counsel for RP during the hearing that as per Demand Notice dated 22.02.2020 (annexed as Annexure B of written submissions dated 20.04.2023) sent by the PNB Housing Finance Ltd.. It is pertinent to mention that on submission of this Demand notice, the counsel for the other side appeared and sought time for rebuttal; however no rebuttal was placed on record. It is admitted that mortgage over project land would “exclude the 909 sold units as on 18.02.2020”. It is therefore, submitted by the RP that the entitlement of the DFC i.e. ACRE under Section 53(1)(b) of the IBC cannot be more than its entitlement under Section 52(1) which would be the maximum value of its security interest if it chooses to relinquish outside the liquidation proceeding. To substantiate his arguments, he has referred to the judgment dated 07.03.2023 passed by this Adjudicating Authority in the matter of **IDBI Bank Vs. Jay pee Infratech limited in IA-3457/PB/2021** which deals with the objection raised by ICICI Bank wherein it has been held by this

Adjudicating Authority that the DFC/ICICI Bank is entitled to receive the liquidation value of the property over which it has security interest and any further entitlement being a difference between the debt advanced by it and the entitlement to security interest would fall under Section 53(1)(e)(ii) which makes the entitlement of ICICI Bank to be “nil”.

22. Likewise in the judgment passed by Hon’ble Supreme Court in ***Committee of Creditors of Essar Steel v. Satish Kumar Gupta and Ors. Civil Appeal No. 8766-67/2019 dated 15.11.2019*** the commercial wisdom of the CoC has been given paramount consideration in as much as Section 32(b) of the code is referred to and Section 53 is referred not in the context of priority in the payment of creditors but only to provide for a minimum payment to the Operational Creditors.
23. He further pointed out that the PNBHFL had attended all the 15 CoC meetings before the loan was assigned to ACRE on 25.04.2022. Subsequent to that the plan was approved by CoC in its 19th meeting held on 09.07.2022.

Having considered the issue as above, we find sufficient force in the arguments presented by the RP. Section 52 read with Section 53 of IBC and Section 30(2)(b) of IBC would reveal that the DFC would at best be entitled to the liquidation value commensurate with its security interest. Any amount unpaid thereafter, would fall under Section 53(1)(e)(ii) which would rank below the unsecured creditors.. We have also heard the contention raised by the Ld. ASG, Ms. Madhavi Diwan and perused the Explanation 1 of Section

30(2) read with Section 30 (4) of IBC, 2016 (extracted in para 15 ibid). Explanation 1 of Section 30(2) of IBC, 2016 in our view read with Section 30 (4) of IBC, 2016 persuade us to believe that the CoC's majority decision would prevail and a dissenting Financial Creditor cannot be allowed to push the Corporate Debtor into liquidation even there is a viable resolution plan. This will contrary to the objective of the Code. The ACRE has been provided with an amount of Rs. 70 Crore in the plan which is, more than the amount of entitlement commensurate with its security interest. It is also the submission of the Counsel for the SRA that in addition to the amount of Rs. 70 Crore, the Applicant has been given the right to enforce its security interest and encumbrances over the third-party assets, properties, guarantees, etc. which are available to it even after approval of the plan. This satisfies the equitable approach that is required of the COC.

24. Accordingly, we find no reason to interfere in the commercial wisdom of the CoC and to provide the DFC the amount in excess of what is provided in the plan. **Hence, IA-3556/2022 stands rejected.**

11.2. IA 5361/2021

It is an application filed by NOIDA seeking following reliefs:

- a. Direct the Respondent to classify the Applicant as the Financial Creditor to the Corporate Debtor;
- b. Direct the Respondent to register the claim filed by the Applicant in the category of the Financial Creditor to the Corporate Debtor,

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- c. Direct the Respondent to allow the Applicant to participate in the CoC meetings of the Corporate Debtor;
- d. Direct the Respondent to admit the Applicant's claim with respect to 11% p.a. Scheduled Interest forming the part of the Lease Premium amount under the Sub-Lease Deed for the period after the Insolvency Commencement Date;
- e. Direct the Respondent to admit the Applicant's claim in respect of the ground rent/lease rent under the Sub-Lease Deed for the period after the Insolvency Commencement Date;
- f. Direct the Respondent to admit the Applicant's claim with respect to Time Extension Charges under the Sub-Lease Deed for the period after the Insolvency Commencement Date;
- g. Direct the Respondent to admit the Applicant's claim with respect to 64.7% farmers compensation payable in respect of the Demised Premises and;
- h. Pass any other relief or reliefs as this Hon'ble Tribunal deems fit in the nature of justice, equity and good conscience.

11.3. **IA No. 5979/2022**

This application is also filed by NOIDA as objection to the Resolution Plan with the following relief:

- (i) Take the Objections of the applicant to the Resolution Plan on record;

- (ii) Reject the Resolution Plan in terms of section 31(2) of the Insolvency & Bankruptcy Code;
- (iii) Pass any other relief or reliefs as this Hon'ble Tribunal deems fit in the nature of justice, equity and good conscience.

11.4. Ld. Senior Counsel Mr. Sanjiv Sen appeared on behalf of NOIDA and stated that the application for including NOIDA as a Financial Creditor in the proceedings as has already been decided by the Hon'ble Supreme Court in the matter of ***New Okhla Industrial Development Authority versus Anand Sonbhadra Civil Appeal No. 2222 of 2021*** that the NOIDA will be treated as an Operational Creditor. Hence, the prayer contained in this IA-5361/2021 to this extent stands withdrawn as recorded in the earlier order dated 07.07.2023.

11.5. The Learned Senior Counsel further argued in the applications that the distribution as proposed by the RP in the Resolution Plan is neither fair nor equitable and stated that the SRA seeks extinguishment of all the rights of NOIDA guaranteed under the sub-lease deed. Moreover, the debt due to NOIDA arising from the sub-lease deed is over Rs. 84 Crores however, the Resolution Plan allocates mere Rs. 7-8 Crores to NOIDA without any justifiable reasons and that too when the Fair Value and liquidation value of the project indicated in Form H is Rs.224.93 Crores and Rs.151 Crores respectively. He contended that the resolution applicant is trying to acquire an asset worth running in hundreds of crores belonging to NOIDA by paying a meagre amount of Rs. 7-8 Crores .

11.6. To support his arguments, the Learned Counsel has relied upon certain judicial pronouncements which are as follows:

Reliance has been placed at Para 47 of Municipal **Corporation of Greater Mumbai v. Abhilash Lal & Ors.(2020)13 SCC** which is extracted as follows:

“In the opinion of this Court, Section 238 cannot be read as overriding the MCGM’s right – indeed its public duty to control and regulate how its properties are to be dealt with. That exists in Sections 92 and 92A of the MMC Act. This court is of opinion that Section 238 could be of importance when the properties and assets are of a debtor and not when a third party like the MCGM is involved. Therefore, in the absence of approval in terms of Section 92 and 92A of the MMC Act, the adjudicating authority could not have a overridden MCGM’s objections and enabled the creation of a fresh interest in respect of its properties and lands. No doubt, the resolution plans talks of seeking MCGM’s approval; they also acknowledge the liabilities of the corporate debtor; equally, however, there are proposals which envision the creation of charge or securities in respect of MCGM’s properties. Nevertheless, the authorities under the Code could not have precluded the control that MCGM undoubtedly has, under law, to deal with its properties and the land in question which undeniably are public properties.

The resolution plan therefore, would be a serious impediment to CGM’s independent plans to to ensure that public health amenities are developed in the manner it chooses, and for which fresh approval under the MMC Act may be forthcoming for a separate scheme formulated by that corporation (MCGM).”

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In our view this judgment will not have applicability in the present matter as when we look to Para 36 of the judgment which reads as follows:

It is evident from a plain reading of Section 92(c), that the Commissioner (of MCGM) is empowered to, with the sanction of the corporation, “lease, sell or otherwise convey any immovable property belonging to the corporation.” It is not in dispute that the original contract entered into on 20-12-2005 contemplated the fulfillment of some important conditions, including firstly, the completion of the hospital project within a time frame; and secondly, timely payment of annual lease rentals. It is a matter of record that the hospital project was scheduled to be completed by 24th April, 2013. MCGM cites Clause 15(g) of the contract to urge that within a month of this event, i.e. completion of the hospital, a lease deed had to be executed. This event never took place. Therefore, the terms of the contract remained, in the opinion of the court, an agreement to enter into a lease; it did not per se confer any right or interest, except that in the event of MCGM’s failure or omission to register the lease (in the event Seven Hills had complied with its obligations under the contract), it could be sued for specific performance of the agreement, and compelled to execute a lease deed. That event did not occur; Seven Hills did not complete construction of the 1600 bed hospital. Apparently, it did not even fulfill its commitment, or pay annual lease rentals. In these circumstances, MCGM was constrained to issue a show cause notice before the insolvency resolution process began, and before the moratorium was declared by NCLT on 13th March, 2018. According to MCGM, in terms of Clause 26 (of the contract), even the agreement stood terminated due to default by Seven Hills. This court does not propose to comment on that issue, as that is contentious and no finding has been recorded by either the adjudicating authority or the NCLAT”.

- 11.7. From the perusal of the above it can be inferred that there was an agreement which was entered between the parties and there was no lease deed executed therefore, it was not the property of the CD. The facts of the present case are different as in the present case there was lease agreement entered into between the parties which is still subsisting and the property belongs to the corporate debtor, thus we do not find any legal basis to support this argument.
- 11.8. During the course of the hearing, one more objection was raised by NOIDA that the Hon'ble Supreme Court of India in the matter of **State Tax Officer v. Rainbow Papers Limited reported as 2022 SCC OnLine SC 1162**, observed that the Committee of Creditors comprising of financial creditors cannot secure its own dues at the cost of dues owed to the government or any governmental authority. They relied on the following paragraph of the Judgment:

“52. If the Resolution Plan ignores the statutory demands payable to any State Government or a legal authority, altogether, the Adjudicating Authority is bound to reject the Resolution Plan.”

- 11.9. Ld. Sr. Counsel Mr. Sen has stated that as narrated in the State Tax Officer (1) Vs. Rainbow Paper Ltd (2022) SCC Online SC 1162 case, GVAT Act has following provisions:-

“48. Tax to be first charge on property.— Notwithstanding anything to the contrary contained in any law for the time being in force, any amount payable by a dealer or any other person on account of tax, interest or penalty for which he is liable to pay to

the Government shall be a first charge on the property of such dealer, or as the case maybe, such person.”

Hon’ble Supreme Court in the above Rainbow Paper judgment has held as follows:-

“57. As observed above, the State is a secured creditor under the GVAT Act. Section 3(30) of the IBC defines secured creditor to mean a creditor in favour of whom security interest is credited. Such security interest could be created by operation of law. The definition of secured creditor in the IBC does not exclude any Government or Governmental Authority.”

Ld. Sr. Counsel Mr. Sen drew our attention to The Uttar Pradesh Industrial Development Act, 1976, Section 13 & 13A which are extracted below:-

“13. Where any transferee makes any default in the payment of any consideration money or instalment thereof or any other amount due on account of the transfer of any site or building by the Authority or any rent due to the Authority in respect of any lease, or where any transferee or occupier makes any default in the payment of any fee or tax levied under this Act, the Chief Executive officer may direct that in addition to the amount of arrears, further sum not exceeding that amount shall be recovered from the transferee or occupier, as the case may be, by way of penalty.”

*“13-A. Any amount payable to the Authority under section 13 shall constitute a charge over the property and may be recovered as arrears of land revenue or by attachment and sale of property in the manner provided under sections 503, 504, 505, 506, 507, 508, 509, 510, 512, 513 and 514 of the Uttar Pradesh Municipal Corporations Act, 1959 (Act no. 2 of 1959) and such provisions of the said Act shall mutatis mutandis apply to the recovery of dues of an authority as they apply to the recovery of a tax due to a Municipal Corporation, so however, that references in the aforesaid sections of the said Act to Municipal Commissioner', 'Corporation Officer' and Corporation shall be construed as references to 'Chief Executive Officer' and Authority' respectively;
Provided that more than one modes of recovery shall not be commenced or continued simultaneously.”*

Drawing a parallel with the GVAT Act, he has submitted that as per Section 13A, the dues payable to NOIDA constitute a charge over property and may be recovered as arrears of land revenue or by an attachment of sale of property. Per contra, Mr. Sunil Fernandes, Ld. Counsel for the SRA submitted that the GVAT Act is in application to tax, interest or penalty liability of a dealer or any other person, which is not the case here. However, we observe that Section 13A is in reference to Section 13 which refers to amount of penalty which shall be recoverable from transferee, in this case the CD. It is not the case of NOIDA that

they have imposed any penalty on the CD. In fact they issued a show cause notice belated in the year 2019 to the CD. However, they did not exercise power of resumption of land which was vested in them as per the lease agreement. Therefore, we are not persuaded to accept their contention that NOIDA's dues in this case are to be treated as secured creditor akin to the provisions of GVAT.

11.10. Mr. Sen also took plea that paras no. 141 and 145 of Jaypee Kensington Boulevard Apartments Welfare Association Vs. NBCC (India) Ltd. (2022) 1 SCC 401 support his contention/stand. However, we find that in the matter of IDBI Bank Limited Vs. Jaypee Infratech Limited (IA No. 2836/PB/2021, IA No. 3457/PB/2021, IA No. 3306/PB/2021 & IA No. 2521/PB/2022), it is held as follows:-

*“80. Further, we are conscious of the fact that under the provisions of IBC 2016, NCLT has no ‘equity jurisdiction’. It can neither interfere with the commercial wisdom of CoC nor it can go beyond the provisions of the Code. Since YEIDA itself had filed its claim as an “Operational Creditor” and the Liquidation value owed to the Operational Creditors in the proposed Resolution Plan is ‘Nil’, and the SRA/Suraksha has still provided an amount of Rs. 10 Lakh for this contingency in its Resolution Plan, **we find no illegality committed by the SRA/ Suraksha by treating the claim of YEIDA as an Operational Debt and making a provision***

towards its payment in accordance with the provisions of IBC, 2016.”

11.11. From the perusal of the documents, it is evident that there are claims of NOIDA, but be that as it may, relying upon the Judgments of Hon'ble Supreme Court we have to but reject the applications filed by NOIDA as NCLT has no 'equity jurisdiction' and it can neither interfere with the commercial wisdom of CoC nor it can go beyond the provisions the Code. Since NOIDA is an "Operational Creditor" and in the present matter also the Liquidation value owed to the Operational Creditors in the proposed Resolution Plan is 'Nil', but the SRA has still provided an amount of Rs. 8 crores approx in its Resolution Plan, we find no infirmity in the resolution plan by making a provision towards its payment in accordance with the provisions of IBC, 2016.

11.12. As regards the objection taken by NOIDA that certain reliefs and concessions sought by the SRA in the Resolution Plan tinkers with the Lease Agreement, it is stated by SRA in the Resolution Plan, "*.....they will implement this Resolution Plan, whether or not the Relief and Concession are granted.*" Hence, we are of the view that the SRA has not made the grant of reliefs and concessions as the condition precedent for approval of the Resolution Plan.

Accordingly, **IA No.5361/2021 and IA No.5979/2022 are dismissed.**

12. IA No. 4615/2021

- 12.1. The present application has been filed under Sec 43,45,49 and 66 of IBC, 2016 for placing on record transactions which are wrongful, preferential, undervalued and fraudulent in nature involving the Corporate Debtor.
- 12.2. After perusal of application and in view of the direction of Hon'ble Supreme Court in the case of "**Anuj Jain Interim Resolution Professional vs. Axis Bank Limited &Ors. in Civil Appeal Nos.8512-8527 of 2019**", it is directed that the present application be segregated and separate applications be filed for each kind of transactions and same be done within four weeks.
- 12.3. Further as the resolution plan stands approved, thus present matter needed to be pursued further as per Para 8 of our order *ibid.* **With the above directions, the present application stands disposed of.**

13. Analysis & Findings

- 13.1. On hearing the submissions made by the Ld. Counsel for the Resolution Professional and perusing the record, we find that the Resolution Plan has been approved by the CoC with 71.11% of the members voting in favour of the Resolution Plan. As per

the CoC, the Plan meets the requirement of being a viable and feasible revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.

- 13.2. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- 13.3. The SRA has prayed for certain reliefs, waivers and concessions as enumerated under the Resolution Plan approved by the CoC and stated that the Adjudicating Authority's refusal to grant any relief or concession will not affect the terms or implementation of this Resolution Plan. Thus, it is ordered that the reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly as per law.
- 13.4. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.
- 13.5. In case of non-compliance of this order or withdrawal of Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall

forfeit the EMD amount already paid by the Resolution Applicant as well as the Performance Bank Security/Guarantee.

14. Orders

- 14.1. Subject to the observations made in this Order, the Resolution Plan of **Rs. 584,50,14,060/- (Rupees Five Hundred and Eighty Four Crores Fifty Lakhs Fourteen Lakh and Sixty Only)** is hereby **approved. The Resolution Plan shall form part of this Order.**
- 14.2. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Debtor Company shall come into force with immediate effect.
- 14.3. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- 14.4. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters.
- 14.5. **IA (IB) 3392 (PB)/2022, IA No. 3556/2022, IVN. No. 04/2023 IA No. 5361/2021, IA No. 5979/2022 and IA No. 4615/2021 along with CP (IB) No. 875(PB)2020** shall stand **disposed of** accordingly.

- 14.6. The liberty is hereby granted for moving any appropriate application, if required in connection with the implementation of this Resolution Plan.
- 14.7. A Certified copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, NCT of Delhi & Haryana.
- 14.8. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan especially as per Para 8 of this order with regard to PUFEE transaction.
- 14.9. The Resolution Professional is further directed to hand over all the records, premises/factories/documents available with it to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records, premises/factories/ documents through the Resolution Professional to finalise the further course of action required for starting of operations of the Corporate Debtor.
- 14.10. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 14.11. Certified copy of this order may be issued, if applied for, upon

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compliance of all requisite formalities.

14.12. File be consigned to records.

-sd-

**(RAMALINGAM SUDHAKAR)
PRESIDENT**

-sd-

**(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)**