



**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT-III**

Item No.01

IA-3385/2020

And

IB-432(ND)/2019

IN THE MATTER OF:

Mr. ARUN KUMAR SINHA

... Applicant/Financial Creditor

VERSUS

M/s. THREE C HOMES PRIVATE LIMITED

... Respondent/Corporate Debtor

SECTION

Under Section 30(6) r/w Section 31 of IBC, 2016 r/w Regulation 39(4) of IBBI (CIRP Regulations), 2016

Order Pronounced On: 13.06.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the RP : Mr. Rishabh Jain, Adv. along with Mr. Gaurav
Katiyar, RP in person.

For the YEIDA : Mr. Amar Gupta, Mr. Aniket Aggarwal,
Mr. Pravan Tanwar, Advs.

For the RA : Mr. Gopal Jain, Sr. Adv., Mr. Abir Roy,
Mr. Vivek Pandey, Mr. Aman, Ms. Sukanya, Advs.

ORDER

Order pronounced in open court vide separate sheets. The **IA-3385/2020** which is for approval of the Resolution Plan is **allowed**. The main Company Petition, i.e., **IB-432(ND)/2019** stands **disposed of** accordingly.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**

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

IA-3385/2020

In

IB-432(ND)/2019

IN THE MATTER OF:

Mr. ARUN KUMAR SINHA

..... Financial Creditor

VERSUS

M/s. THREE C HOMES PRIVATE LIMITED

..... Corporate Debtor

IN THE MATTER OF IA-3385/2020:

*Under Section 30(6) r/w Section 31 of IBC, 2016 r/w Regulation 39(4) of
IBBI (CIRP Regulations), 2016*

Mr. GAURAV KATIYAR

..... Applicant/Resolution Professional

Pronounced On: 13.06.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the RP : Mr. Rishabh Jain, Adv. along with Mr. Gaurav
Katiyar, RP in person.

For the YEIDA : Mr. Amar Gupta, Mr. Aniket Aggarwal,
Mr. Pravan Tanwar, Advs.

For the RA : Mr. Gopal Jain, Sr. Adv., Mr. Abir Roy,
Mr. Vivek Pandey, Mr. Aman, Ms. Sukanya, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

Mr. Arun Kumar Sinha vs. M/s. Three C Homes Private Limited

IA-3385/2020 In (IB) - 432(ND)/2019

Date of Order : 13.06.2023



1. Brief Facts of the Case

- 1.1** The present application has been filed by Mr. Gaurav Katiyar, Resolution Professional (“RP”) of M/s. Three C Homes Private Limited (“Corporate Debtor”) on 18.08.2020 under the provisions of Sections 30(6) read with Section 31 of the Insolvency & Bankruptcy Code, 2016 (“the Code” or “IBC”) read with Regulation 39(4) of the Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”) for approval of the Resolution Plan in respect of M/s. Three C Homes Private Limited (“Corporate Debtor”) which has been approved by the CoC in its 5th meeting held on 10.08.2020 submitted by Respondent/Successful Resolution Applicant (“SRA”) namely M/s. Ace Infracity Developers Private Limited.
- 1.2** This Adjudicating Authority vide order dated 06.09.2019 was pleased to admit the Company Petition IB-432(ND)/2019 filed by Mr. Arun Kumar Sinha (Financial Creditor), for initiating the CIRP under Section 7 of the Code against M/s. Three C Homes Private Limited (Corporate Debtor) and declared the moratorium and appointed the Applicant Mr. Gaurav Katiyar as an Interim Resolution Professional (IRP). A copy of the admission order dated 06.09.2019 is filed along with the application.

2. Collation of claims by RP

- 2.1** In terms of Section 13 and Section 15 of the Code, the IRP made public announcement in Form-A, which was published in Financial Express (English Edition) and Jansatta (Hindi Edition) Delhi NCR Edition on 20.12.2019, intimating of the commencement of CIRP of the Corporate Debtor herein and for calling the Creditors to submit their claims along with proof in the prescribed format. The last date of submission of claims was 02.01.2020. The IRP constituted the CoC on 09.01.2020 and submitted the first report before this Tribunal on 09.01.2020



vide CA No. 354/ND/2020 and the same was taken on record vide order dated 23.01.2020.

2.2 On 21.01.2020, the CoC passed a resolution for continuing the IRP as RP and accordingly CA-923/2020 was filed before this Tribunal. This Tribunal vide order dated 10.02.2020 approved the recommendation of the CoC to continue the IRP as RP.

2.3 In accordance with Regulation 16A(2) of the CIRP Regulations, the RP filed an application bearing CA-286/ND/2019 on 14.01.2020 before this Tribunal for the appointment of Authorized Representative for the class of creditors. The said application was allowed by this Tribunal and one Mr. Vijay Kishore Saxena was confirmed as Authorized Representative for allottees of real estate project of the Corporate Debtor.

3. The RP submits that a total of 5 (Five) CoC meetings have been held during the CIRP period which are as follows:

S. No.	Sequence of Meeting of CoC	Date of Meeting	CoC Members Present
1.	First Meeting of CoC	21.01.2020	Yes
2.	Second Meeting of CoC	29.02.2020	Yes
3.	Third Meeting of CoC	07.06.2020	Yes
4.	Fourth Meeting of CoC	28.06.2020	Yes
5.	Fifth Meeting of CoC	10.08.2020	Yes

4. Evaluation and voting:

4.1 First meeting of CoC:

The First CoC meeting was held on 21.01.2020 in which the IRP was confirmed as RP which was also approved by this Tribunal vide order dated 10.02.2020. Further, CoC also approved the participation of two representatives of Lotus City Plot Buyers Welfare Association in every CoC meeting without any additional voting power.

The Copy of the minutes of the 1st CoC meeting dated 21.01.2020 is filed along with the application.



4.2 Second meeting of CoC:

The Second CoC meeting was held on 29.01.2020 in which the major agenda items were (a) professional fees of Interim Resolution Professional, (b) appointment and remuneration of Registered Valuers (c) eligibility criteria of prospective resolution applicants required to be invited by the Resolution Professional. As per the Regulation 36(1) invitation for Expression of Interest (“EoI”) Form-G was published on 03.03.2020 in Financial Express (English Edition) and Jansatta (Hindi Edition) Delhi NCR Edition along with the website of the IBBI.

The Copy of the minutes of the 2nd CoC meeting dated 29.01.2020 is filed along with the application.

4.3 Third meeting of CoC:

The Third CoC meeting was held on 07.06.2020 in which the major agenda items were (a) status of EoIs received from Prospective Resolution Applicant (PRAs) and release the provisional list of PRAs (b) status of claim received from Home Buyers and Promoters/shareholders of the company (c) status of application under Section 19(2) of the Code to seek co-operation from ex-management filed before this tribunal.

The Copy of the minutes of the 3rd CoC meeting dated 07.06.2020 is filed along with the application.

4.4 Fourth meeting of CoC:

The Fourth CoC meeting was held on 28.06.2020. In the said meeting, the CoC took note of the provisional list of Prospective Resolution Applicant. The CoC also took note of the fact that the RP received four EoIs but the verification of EoI could not be done due to lockdown and other restrictions imposed by Government due to the pandemic. After due consideration and verification, the RP issued the list of PRAs which was as under:



- (a) M/s. East India Udyog Limited in joint venture with Ashiana Housing Limited – **Eligible.**
- (b) M/s. Ace Infracity Developers Private Limited – **Eligible.**
- (c) M/s. NS Software (a partnership firm wherein Rajdarbar Infotec Private Limited, Sharada Erectors Private Limited and three individuals are partners) – **Ineligible.**
- (d) Mr. Harshvardhan Reddy – **Ineligible.**

The Copy of the minutes of the 4th CoC meeting dated 28.06.2020 is filed along with the application.

4.5 Fifth meeting of CoC:

The Fifth CoC meeting was held on 10.08.2020. Notices were sent to the Financial Creditor including the class of creditors and ex-directors of the Corporate Debtor. The following agendas were discussed in the 5th CoC meeting:

- (a) To discuss, consider, examine and evaluate the compliant Resolution Plan submitted by M/s. Ace Infracity Developers Private Limited;
- (b) To Consider, discuss and approve the feasibility and viability of the complaint Resolution Plan proposed by M/s. Ace Infracity Developers Private Limited;

“RESOLVED THAT *having satisfied about the feasibility, viability of the compliant Resolution Plan proposed by M/s. Ace Infracity Developers Private Limited be and is hereby approved in terms of Section 30(4) of the IBC, 2016.*

RESOLVED FURTHER THAT *the RP be and is hereby authorized to file an application for approval of Resolution Plan before Hon’ble NCLT, New Delhi Bench, in terms of Section 30(6) of IBC, 2016.”*

- (c) To consider, discuss and approve the fees of the Liquidator;



(d) To consider, discuss and approve the plan providing for contribution of Liquidation costs of Corporate Debtor in terms of Regulation 39B(3) of the IBBI (CIRP) Regulation 2016;

(e) To assess and explore the Corporate Debtor as a going concern

The voting by the CoC as well as the voting by the Authorized Representative were concluded on 14.08.2020 and the resolution Plan submitted by M/s. Ace Infracity Developers Private Limited was passed in the 5th meeting of the CoC. Thereafter, the letter of intent was issued on 17.08.2020 and the letter of treatment “BSBG” (Binding Submissions Bond Guarantee) as Performance Security was received.

In terms of Section 30(4), the above resolution was required to be passed by a vote of not less than 66% of the voting share of the Financial Creditors. The above resolution was voted and 62.90% of votes were received in favour of the Resolution Plan and therefore since the votes cast by the majority of Financial Creditors in class to be construed as 100% in terms of sub-section 3A of Section 25A of the Code, the votes received are construed as 100% and therefore the Resolution Plan stands passed by 100% votes.

The Copy of the minutes of the 5th CoC meeting dated 10.08.2020 is filed along with the application.

5. Valuation of the Corporate Debtor

In terms of Regulation 27 of CIRP Regulations, the applicant appointed two registered valuers who are entitled to determine the fair and liquidation value of the Land and Building & Financial Assets of the Corporate Debtor, who are as follows:

Valuers of Land and Building:

- Mr. Nishant Chandra Agarwal



- Mr. Sachin Goel

Valuers of Securities or Financial Assets:

- Mr. Manoj Kumar
- Mr. Pradeep Kumar Ray

The Fair value of the Corporate Debtor is Rs. 600,87,00,000/- (Rupees Six Hundred Crore and Eighty Seven Lakh Only) and the Liquidation value of the Corporate Debtor is Rs. 480,70,00,000/- (Rupees Four Hundred Eighty Crore and Seventy Lakh Only) as per Form-H filed with the application.

6. The application bearing IA-3385/2020 filed by the Resolution Professional seeking approval of the Resolution Plan was rejected by this Tribunal vide order dated 08.02.2021 by taking into consideration certain objections taken by some of the allottees in CA-3840/2020. Being aggrieved by the order dated 08.02.2021, the Homebuyers Association filed an appeal bearing Company Appeal No. 151/2021 before the Hon'ble NCLAT. The Resolution Professional also filed Company Appeal No. 193/194/2021 against the said order. The Resolution Applicant also filed an appeal bearing No. Company Appeal 205/2021 against the same impugned order. All three Company Appeals i.e., Company Appeal No. 151/2021, 193/194/2021 and 205/2021 were heard together and the Hon'ble Appellate Tribunal vide order dated 08.07.2021 was pleased to remand the matter back to this Tribunal with the following directions:
 - a. To reconcile the benefits of homebuyers in the approved resolution plan i.e. realization value of plots vis-à-vis the liquidation value of plots;
 - b. To check the compliance of CIRP Regulations (4th Amendment) 2020 and
 - c. To implead the Yamuna Expressway Industrial Development Authority to determine the status of the dispute with the farmers.



7. Pursuant to the directions given by the Hon'ble NCLAT vide order dated 08.07.2021, YEIDA was impleaded as a Respondent in the application seeking approval of the Resolution Plan on 10.08.2021. The said application for approval of the Resolution Plan came into consideration before this Tribunal on 03.08.2021. This Tribunal after hearing the application directed the Resolution Professional to implead Yamuna Expressway Industrial Development Authority (YEIDA) as a party and serve a copy of this application to YEIDA.
8. On 24.09.2021, YEIDA filed its objections to the present application in which it was stated that YEIDA has canceled the lease deed entered into with the Corporate Debtor. The Resolution Professional filed IA-4490/2021 before this Tribunal seeking to set aside the order passed by YEIDA canceling the lease deed. Further, M/s. Lotus City Plot Buyers Welfare Association filed an appeal before the Hon'ble Supreme Court of India against the order dated 08.07.2021 passed by the Hon'ble NCLAT by which the order rejecting Resolution Plan was set aside and the matter was remanded back to this Tribunal. Vide order dated 07.10.2021, this Tribunal permitted the successful Resolution Applicant to file an application for intervention along with its reply to the objections filed by YEIDA. On 12.01.2023, IA-4490/2021 filed by Resolution Professional seeking to set aside the cancellation of lease order passed by YEIDA was allowed by this Tribunal. YEIDA filed an appeal against the said order before the Hon'ble NCLAT. On 17.04.2023, the Hon'ble Supreme Court of India in Civil Appeal No. 7069/2021 directed this Tribunal to take up the plan approval application and pass necessary orders.
9. Subsequently, CA-3840/2020 vide which certain allottees filed objections to the Resolution Plan, was withdrawn by the Objectors/Applicants. The order dated 08.07.2021 passed by Hon'ble NCLAT remanding back the matter to this Tribunal was



challenged by M/s. Lotus City Plot Buyers Welfare Association by way of filing a Civil Appeal No. 7069/2021 before the Hon'ble Supreme Court of India. It has been brought to the notice of this Tribunal that the Hon'ble Supreme Court of India vide order dated 17.04.2023 has passed the following orders: -

“We are informed that after the remand, the matter is now listed before the National Company Law Tribunal on 04.05.2023.

Since, the matter is pending before the National Company Law Tribunal from 2021, we direct the said Tribunal to take up the Plan approval application, i.e. Interlocutory Application No. 3385/2020 on the date fixed and pass appropriate orders thereon.

Post this appeal for hearing on 15.05.2023.”

10. Thereafter, the present application i.e. IA-3385/2020 was listed for arguments and the matter was heard on 09.05.2023, 10.05.2023 & 11.05.2023 and the order was reserved.
11. Mr. Rishabh Jain, Learned Counsel appearing for the Resolution Professional in response to the issues raised by the Hon'ble NCLAT has submitted the following:

SUBMISSIONS ON RECONCILIATION OF BENEFITS TO HOMEBUYERS IN THE APPROVED RESOLUTION:-

- (a) With regard to reconciliation of the benefits of homebuyers in the approved resolution plan i.e., realization value of plots vis-à-vis the liquidation value of plots, it is submitted that the allottees are getting “fair value” of their claim as demonstrated in para 10 to 14, page no. 3 to 5 of affidavit dated 13.02.2023 filed by RP.
- (b) As per definition of “Fair Value” mentioned in Regulation 2(hb) of the CIRP Regulations, if the asset is exchanged
 - (i) after proper marketing; and
 - (ii) without any compulsion;then the asset will fetch Fair Value



- (c) In the present case during the implementation of the resolution plan, the allottees are getting possession of their plots and that too after being developed by the Resolution Applicant therefore the allottees are getting fair value for reason that if individual allottee wishes so, they can sell their plot
- (i) after finding out suitable buyer;
 - (ii) without any compulsory time frame to find out a suitable buyer;
 - (iii) seller is not in compulsion to sell the asset; and
 - (iv) after proper marketing.
- (d) Moreover, during the CIRP the Resolution Professional collated claim to the extent of Rs. 123.62 Crores (for 354 Homebuyers) whereas as per valuation report in terms of provisions of Regulation 35 of the CIRP Regulations fair value of 512 residential plots of project “Lotus City” is Rs. 211 Crore.
- (e) As per Resolution Plan for genuine buyers refund of principal shall be allowed from case to case basis.
- (f) The RA is not extinguishing any bona fide and genuine claim of allottee who has not filed any claim before the RP. As per resolution plan, the RA will do the same treatment with the future bona fide and genuine claims of plot-owners who could not submit their claims before the RP as mentioned in the Resolution Plan.

**SUBMISSIONS ON COMPLIANCE OF CIRP REGULATIONS
(4TH AMENDMENT) 2020**

- a. With regard to the compliance of CIRP Regulations (4th Amendment) 2020, it is submitted that the amendment in Regulation 16A(9) vide IBBI (CIRP)(Fourth Amendment) Regulation, 2020 comes into existence with effect from 08.08.2020 at 10:42:32 P.M. whereas pre 5th CoC meeting e-



voting commenced on 08.08.2020 at 03:00 P.M. The Hon'ble Supreme Court in the matter of **Union of India v. G.S. Chatha Rice Mill & Anr (2021) 2 SCC 209, para 94** wherein the Hon'ble Supreme Court held that "electronic Gazette Notification will come into existence from the precise time when the gazette is published in the electronic mode. Kind attention is invited to page no-47 of affidavit dated 13.02.2023 filed by RP wherein DSC on said notification are extracted.

- b. Even otherwise the Ld. AR of real estate allottees of the Corporate Debtor while circulating the agenda to real estate allottees also requested the allottees to submit their views on the Resolution Plan submitted by the Resolution Applicant. Kind attention is invited to para 3, page no-39 of affidavit dated 13.02.2023 filed by RP.
- c. The minutes of 5th CoC meeting also provides that the pre-CoC meeting shall be considered as preliminary views submitted by the Real estate Allottees @ pg. no-129 of I.A.

SUBMISSIONS ON FARMER'S COMPENSATION/DISPUTE

- a. With regard to Farmer's Compensation, it is submitted that YEIDA has been impleaded in the captioned application and now Resolution Applicant is offering 100% of principal of farmer's compensation (Rs. 71.66 Crores) which is included in Rs. 173.46 crores agreed to pay to YEIDA.
- b. It is submitted that earlier in para 8.15 @ page no 271, vol-2 of captioned application the RA propose to satisfy the farmers with the help of YEIDA and local administration and proposed to spend Rs. 15 Crores towards development of village in consultation with YEIDA and local panchayat.
- c. But now after the decision of Hon'ble Supreme Court in the matter of Shakuntala Educational and Welfare Society vs. State of U.P. (2020) SCC Online All 676, the RA proposes to pay 100% of principal of farmer's compensation constituting



Rs. 71.66 Crores subject to condition, inter-alia, that YEIDA being lessor as part of reciprocal promise of lease deed and regulator of land will hand over peaceful possession of land to RA.

d. Therefore, after getting peaceful possession of land Rs. 15 Crore shall be paid to YEIDA or shall be spent in consultation with YEIDA.

12. We have perused the additional affidavit dated 25.05.2023 filed by the Resolution Professional with respect to the clarification sought by this Tribunal vide clarification order dated 25.05.2023 in view of the orders passed by Hon'ble NCLAT. We have heard the submissions made by Mr. Jain, Learned Counsel appearing for the Resolution Professional on these issues and also perused the additional affidavit and satisfied that the Resolution Plan has made adequate provisions with respect to all the issues raised by the Hon'ble NCLAT.

13. Objections raised by YEIDA to the Resolution Plan and its submissions:

YEIDA has mainly raised the following three objections to the Resolution Plan:

- I.** It is submitted that the present Resolution Plan to the extent and in so far deals with the dues sought to the Authority is contrary to law and ought to be rejected.
- II.** The Resolution Plan in its current form results in the Resolution Applicant acquiring approximately 100 acres of land on payment of a mere pittance of INR 67.12 crores towards outstanding dues and INR 506 crores payable by the Corporate Debtor in terms of lease deed.
- III.** The Resolution Plan permits the Resolution Applicant to develop, exploit and profiteer from public asset without having to bear any burden and the said Resolution Plan is



contrary and prejudicial to the public interest, ought to be rejected in terms of Section 30(2) of the Code.

It is submitted that the following amounts are outstanding and liable to be paid by the Corporate Debtor towards the Authority's dues:

S. No.	Particulars	Amount due as of 06.09.2019 – Date of commencement of CIRP (In INR)	Amount dues as of 30.11.2022 (In INR)	Treatment in Resolution Plan (INR Crores)
1.	Lease Rent	16,79,62,224.71	336,208,912.15	
2.	Land Premium	1,966,518,357.13	2,957,404,526.56	
3.	64% Additional Compensation Payable to Farmers	1,21,12,11,680.26	1,767,399,400.44	67,12,00,000
	Total	3,34,56,92,262.11	5,061,012,839.15	

In the Resolution Plan which has been approved by the Committee of Creditors on 10.08.2020 various assumptions with regards to reliefs and concessions from the Authority which are summarized below:

I. The Authority will accept the balance premium amount payable, i.e. INR 67,12,00,000/-.

II. The Authority will not claim additional compensation from the Corporate Debtor at the rate of 64% payable to farmers since the Hon'ble High Court of Judicature at Allahabad has already found the said demand to be arbitrary and illegal and that the Resolution Applicant will be able to satisfy the protesting farmers with the help of the Authority.

III. The Authority will waive all interest and penalty and agree to no lease rent payable for a period of three years from the date of final approval of the Resolution Plan.



IV. The Authority will compulsorily grant part or complete completion certificate within 45 days of applying and after completing the Towers and all related completion works.”

We have perused the objections raised by YEIDA to the Resolution Plan and the provision related to this as mentioned in the Resolution Plan. We have heard the submissions made by Mr. Jain, Ld. Counsel appearing for the Resolution Professional on these issues and also heard the submissions made by Mr. Amar Gupta, Ld. Counsel appearing for YEIDA and perused the records and satisfied that the Resolution Plan has made adequate provisions with respect to all the objections raised by YEIDA to the Resolution Plan i.e., dues to the Authority, acquiring of the Land and regarding Section 30(2) of the Code, even though no claim was filed at the CIRP stage by YEIDA to the Resolution Professional of the Corporate Debtor.

14. Mandatory contents of the Plan:-

14.1 Payment of CIRP cost (to the extent unpaid)

The CIRP costs (to the extent unpaid) is required to be paid in priority to any other creditors of the Corporate Debtor. As per the information provided in Information Memorandum and the information shared by Resolution Professional, the CIRP costs as on 19.06.2020 were provisionally estimated at Rs. 71,93,905/- and may include any other cost as defined in Section 5(13) of the Code. RP shall issue a certificate of CIRP cost incurred from the CIRP commencement date till the effective date.

As mentioned in the IM, CoC authorized the Resolution Professional to raise interim finance of Rs.10,000/- per claimant per claim as interim finance from CoC members to



finance CIRP costs. As per our understanding, aforesaid interim finance will be credited to the account of respective plot/flat allottees.

14.2 Payment to Operational Creditors

The Liquidator value of the Corporate Debtor has not been provided by the Resolution Professional. As per the information contained in the IM, no claims have been received from Operational Creditors. Hence, repayment of Operational Creditors (other than Workman & Employee) as per section 30(2) (b) of the Code has been assumed to be NIL.

14.3 Payment to Other Creditors

Earlier Promoters and related parties are claiming the following amount as their loan given to Corporate Debtor and further claiming interest thereon but could not furnish any loan agreement or supported evidences to RP. Therefore, these claims are being classified in the category of other creditors by RP.

S. No.	Name of Financial Creditor	Total claimed amount (in Rs.)
1.	M/s. Anushira Realtors Private Limited	34,82,94,959/-
2.	Mr. Aditya Gupta	21,76,40,505/-
3.	Mr. Ashish Gupta	15,68,15,005/-
4.	M/s. Kedar Nath Buildtech Private Limited	1,98,53,600/-
5.	Mr. Gulam Sarwar	1,45,54,220/-

The Resolution Applicant has not made any provision for this amount in Resolution Plan but will settle this liability in accordance with the law.



14.4 Payment of Liquidator value of Dissenting Financial Creditors.

Not provided in IM. In case of the Corporate Debtor, Financial Creditors are the home buyers in the residential project who are yet to make balance payment for the construction of the housing unit. For the purpose of this financial proposal, we have assumed that there are no Dissenting Financial Creditors and upon approval of the Resolution Plan, all home buyers would make payment in accordance with the approved cash flow as per clause 8.9 except the buyers of Park Spaces who are proposed to refund an amount Rs. 4.5 Cr. as per clause 8.9 hereinafter.

14.5 Dues claimed by the YEIDA Authority.

As per information provided by RP, YEIDA has not filed any claim. As per the IM and estimates of RP following are the dues of YEIDA. As per our best estimate the principal amount payable to YEIDA amounts to Rs. 70.81 crores and lease rent of Rs. 3.69 crores already paid as detailed hereunder:

S. No.	Details	Claim (in Rs.)	Proposed
1.	Lease premium as per lease deed	1,83,48,15,950/-	-
2.	Lease premium as per correction deed adding additional area	5,79,07,355/-	-
3.	Total lease premium	1,89,27,23,305/-	-
4.	Lease premium paid	1,18,45,92,070/-	-
5.	Lease premium payable	70,81,31,235/-	-
6.	Interest on lease premium for deferred payment	Not known	Nil
7.	Additional compensation	71,66,03,192/-	Refer note



	for farmers		
8.	Lease rent	Not known	Nil
9.	Lease rent already paid	3,69,67,772/-	Refer Note

Notes: - The Corporate Debtor had not received possession of entire land allotted to it and farmers created law and order situation and did not allow Corporate Debtor to develop the project leading to complete stoppage of work and police authority/administration did not provide any help or assistance for a solution.

14.6 Schedule of treatment of interest of all stakeholders

Distribution of Financial Outlay dealing with interest of all stakeholders, including Financial Creditors, workmen & employee and Operational Creditors and other Creditors of Corporate Debtor has been set forth in Chapter VII & Chapter VIII of this plan.

14.7 Term of the Plan and its implementation schedule

Term of the Plan and its implementation schedule is provided under the Chapter X & XI.

14.8 Term of the Plan

The term of this Resolution Plan is 24 months (“Term”) from the effective date as defined under para 1.1 of the Resolution Plan for closure and handover, within which the plots would be developed and delivered to the Allottees and all actions contemplated under Chapter VIII of this Plan have been completed. The Monitoring Committee shall continue till the closing date. The Resolution Applicant would take a RERA Re-registration for the completion of the work as defined above.

The Plan shall be valid for a period of 6 months from the date of submission of this Plan including any revisions to



such Resolution Plan. In case of extension of Resolution Plan submission date by the Resolution Professional, the validity period of this Plan shall also be deemed to be valid for a period of six months from such revised submission date. In case the Resolution Plan is approved by the CoC and filed with NCLT, the validity of the Plan will be extended up to the date final order of NCLT for approval of the Plan. The Resolution Plan shall remain valid till its successful implementation (“Resolution Plan validity period”).

14.9 Management of affairs during the implementation of the Plan

Mechanism regarding management and control of Corporate Debtor during the term is as under: -

Detailed mechanism regarding the management and control of the Corporate Debtor has been described in Chapter X. The Resolution Applicant has taken into account the interests of the stakeholders of the Corporate Debtor to the extent possible in Chapter VIII (Financial Proposal).

The Resolution of M/s. Three C Homes Private Limited, as envisaged under this Plan shall contribute significantly to society by completing and delivering the incomplete housing plots to the home buyers who opt for taking possession and payment of the claims received from the remaining home buyers and collated by the RP who have all been in a severe state of distress and despair on account of non-completion and delay of the Project.

14.10 Resolution Plan Size

The Resolution Plan size is Rs. 140,39,27,000/- (Rupees One Hundred Forty Crore Thirty Nine Lakh and Twenty



Seven Thousand Only). The Resolution Plan defines “Effective Date” which means the date on which the NCLT/NCLAT/Supreme Court approves the Resolution Plan with or without amendment or the date on which the final approval is received after complying with due process of law whichever is later.

Further, it is mentioned in the Resolution Plan that the Resolution Applicant shall not bring funds into M/s. Three C Homes Private Limited or take control or management of M/s. C Homes Private Limited prior to the effective date.

15. Reliefs and Concessions

The Resolution Applicant has prayed for the reliefs as enumerated under the Resolution Plan approved by the CoC. From the Resolution Plan approval date, all inquiries, investigations and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this resolution plan shall stand withdrawn, satisfied and discharged. From the date of approval of the Resolution Plan, the Resolution Applicant shall be legally authorised to seek appropriate orders from respective authorities/courts/tribunals for renewal of licences/withdrawal/dismissal or abatement of the proceeding as the case may be. The Resolution Plan also provides details of Reliefs and Concessions under Chapter XIII (13.1 (a) to (z) at Page 131 - 139 of the Resolution Plan).



16. Compliance of the successful Resolution Plan with various provisions:

The compliance of the Resolution Plan is as under:

Section of the Code/Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/ No)
Section 25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the Corporate Debtor?	Eligibility criteria is verified by the RP at the time of verification of EoI.	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit Resolution Plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Clause – 6.9 at page 68-70.	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Affidavit filed separately	Yes
Section 30(2)	Whether the Resolution Plan- (a) Provides for the payment of insolvency resolution process costs?	Clause – 6.1 at page 65 & clause 8.12 at page 103.	Yes
	(b) Provides for the payment to the operational creditors?	Clause – 6.2 at page 65 and vide letter dated 08.08.2020	Yes
	(c) Provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Clause 6.4 at page 66.	Yes
	(d) Provides for the management of the affairs of the corporate debtor?	Clause – 11.1 to 11.4 at page 126-128.	Yes
	(e) Provides for the implementation and supervision of the resolution plan?	Clause – 10.1-10.4 at page 121-125.	Yes
	(f) Contravenes any of the provisions of the law for the time being in force?	Clause – 6.10 at page 71.	Yes
Section 30(4)	Whether the Resolution Plan a.) Is feasible and viable, according to the CoC?	Resolution Plan is approved by 62.9% which According to Section 25A(3A) should be construed as 100%.	Yes
	b.) has been approved by the CoC with 66% voting share?		Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Clause 10.1-10.4, 11.1-11.4 at page 121-128.	Yes



Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation of the Board?	Clause – 4.8 (iv) at page 42.	Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Clause 6.2 at page 65 and vide letter dated 08.08.2020.	Yes
Regulation 38 (1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause – 6.6 at page 68	Yes
Regulation 38 (1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.	Clause – 6.16 at page 72.	Yes
	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	N.A.	Yes
Regulation 38(2)	Whether the Resolution Plan provides: a.) The term of the plan and its implementation schedule?	Chapter XII at page 129-130.	Yes
	b.) For the management and control of the business of the corporate debtor during its term?	Chapter XI at page 126-128.	Yes
	c.) Adequate means for supervising its implementation?	Chapter X at page 121-125	Yes
Regulation 38 (3)	Whether the resolution plan demonstrates that – a.) It addresses the cause of default?	Clause 5.1 at page 53 & Clause 6.12 at page 71.	Yes
	b.) It is feasible and viable?	Clause 6.13 at page 71.	Yes
	c.) It has provisions for its effective implementation?	Clause 10.1-10.4 page 121-125 & Clause 6.14 at page 72.	Yes
	d.) It has provisions for approvals required and the timeline for the same?	Clause 10.2 at page 121-122 & Clause 6.15 at page 72.	Yes



	e.) The resolution applicant has the capability to implement the resolution plan?	Chapter-III at Page 23-27 & clause 6.16 at Page 72.	Yes
Regulation 39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No application filed by RP, Refer point 15(2) of this certificate.	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	The Resolution Applicant has Provided Binding submission Bond Guarantee (BSBG) of Rs. 5 Crore in terms of Clause 1.8 of RFRP,RP has received a letter from the Resolution Applicant to treat this BSBG as performance guarantee.	Yes

The Applicant/RP submits that the Successful Resolution Applicant is not disqualified under Section 29A of the Code to submit the Resolution Plan, as required by Regulation 39(1)(a) of the CIRP Regulations. A separate undertaking has also been submitted along with the EoI by the Successful Resolution Applicant, as mandated in terms of Regulation 39(1)(c) of the CIRP Regulations. The Applicant/RP has filed a Compliance Certificate in the prescribed Form, i.e., **Form-H** as per the Resolution Plan in compliance with Regulation 39(4) of the CIRP Regulations.

17. Analysis & Findings

17.1 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 in its 5th meeting with 100% voting share. As per the CoC, the Plan meets the requirement of being a viable and feasible and for the revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.



17.2 At this juncture, we rely upon the Judgement passed by the Hon'ble Supreme Court in the matter of **"Vallal RCK versus M/s. Siva Industries and Holdings Limited and Others, Civil Appeal Nos. 1811-1812 of 2022"**

whereby the Hon'ble Apex Court has answered the question as to whether **'the adjudicating authority (NCLT) or the appellate authority (NCLAT) can sit in an appeal over the commercial wisdom of the Committee of Creditors ("CoC") or not'**. We rely upon the following paragraphs:

"21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring the completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that Financial Creditors are fully informed about the viability of the Corporate Debtor and the 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."

A reference in this respect could be made to the judgments of this Court in the cases of **"K. Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.**

27. This Court has, time and again, emphasized the need or minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this



Court made in the case of **Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another**¹:

.....

“95. However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC”

17.3 In light of the above-quoted judgements, it is clear that the “Commercial wisdom of CoC” is given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyse or evaluate the commercial decision of the CoC. The Resolution Plan submitted by Respondent/Successful Resolution Applicant (“SRA”) namely M/s. Ace Infracity Developers Private Limited has been voted by the CoC unanimously in its 5th meeting with 100% voting share, this Adjudicating Authority cannot interfere in the same.

17.4 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

¹ Civil Appeal No. 9664 of 2019, Dated 15.03.2021
Mr. Arun Kumar Sinha vs. M/s. Three C Homes Private Limited
IA-3385/2020 In (IB) – 432(ND)/2019
Date of Order : 13.06.2023



(Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- 17.5** The reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly as per law.
- 17.6** 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.
- 17.7** In case of non-compliance of this order or withdrawal of the Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the EMD amount paid by the Resolution Applicant as well as the Performance Guarantee.
- 17.8** The present application has been filed with bonafide means, in the interest of justice and to advance the objectives of the Code.

18. Orders

- 18.1** The **IA-3385/2020** which is for approval of the Resolution Plan is **allowed** and the Resolution Plan of Rs. 140,39,27,000/- (Rupees One Hundred Forty Crore Thirty Nine Lakh and Twenty Seven Thousand Only) is hereby **approved. The Resolution Plan shall form part of this Order.** Accordingly, **IA-3385/2020** stands disposed of as becomes infructuous. The main Company Petition, i.e., **IB-432(ND)/2019** stands **disposed of** accordingly.
- 18.2** The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Corporate Debtor Company shall come into force with immediate effect.
- 18.3** The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- 18.4** The RP shall submit the records collected during the commencement of the proceedings to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.



18.5 Liberty is hereby granted for moving appropriate application(s) if required in connection with the implementation of this Resolution Plan.

18.6 A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, NCT of Delhi & Haryana.

18.7 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.

18.8 The Resolution Professional is further directed to hand over all records, premises/factories/documents available with it to the Resolution Applicant to finalise the further line of action required for starting the operation. The Resolution Applicant shall have access to all the records and premises through the Resolution Professional to finalise the further course of action required for starting operations of the Corporate Debtor.

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

The Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

File be consigned to the record.

No order as to costs.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**