

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

Company Petition No.: IB 300(PB)/2020

**IA - 702/2022, IA - 2522/2022, IA - 5935/2021, IA - 201/2022,
IA - 560/2022, IA - 1199/2022, IA - 1201/2022, IA - 1930/2022,
IA - 2974/2021, IA - 5651/2021, IA - 1178/2022, IA - 2891/2022,
IA - 2949/2022, IA - 3533/2022, IA - 4057/2021, RA - 66/2022,
IA - 4539/2022, IA - 4560/2022, IA - 5313/2022, IA - 5559/2022,
IA - 5354/2022.**

IN THE MATTER OF:

**M/s ASSET CARE AND RECONSTRUCTION ENTERPRISES LIMITED
...Financial Creditor**

VERSUS

**M/s SARE GURUGRAM PRIVATE LIMITED
... Corporate Debtor**

AND

1) In the matter of IA - 702/2022:

Under Section 30(6) of IBC, 2016 r/w Reg. 37 to 39 of IBBI (CIRP Regulations), 2016

Mr. AJIT GYANCHAND JAIN,

Resolution Professional of Sare Gurugram Private Limited
...Applicant

2) In the matter of IA - 2522/2022:

Under Section 60 (5) of IBC, 2016 (salary claim of ex-employee)

Mr. JITENDRA KUMAR

...Applicant

VERSUS

M/s SARE GURUGRAM PRIVATE LIMITED

...Respondent

3) In the matter of IA - 5935/2021:

Under Section 66 of IBC, 2016 (Fraudulent Trading or Wrongful Trading)

Mr. AJIT GYANCHAND JAIN

...Applicant

VERSUS

Mr. SATISH SAHIJPAL & ORS.

...Respondent

4) In the matter of IA - 201/2022:

Under Section 45 & 66 of IBC, 2016 (Avoidance of Undervalued transactions & Fraudulent Trading or Wrongful Trading)

Mr. AJIT GYANCHAND JAIN

...Applicant

VERSUS

Mr. BHUPESH TOKAS & ORS.

...Respondent

5) In the matter of IA - 560/2022:

Under Section 66 of IBC, 2016 (Fraudulent Trading or Wrongful Trading)

Mr. AJIT GYANCHAND JAIN

...Applicant

VERSUS

Mr. SATISH SAHIJPAL & ORS

...Respondent

6) In the matter of IA - 1199/2022:

Under Section 60 (5) of IBC, 2016 (salary claim of ex-employee)

Mr. PARDEEP KUMAR BAJPAI

...Applicant

VERSUS

M/s SARE GURUGRAM PVT LTD

...Respondent

7) In the matter of IA - 1201/2022:

Under Section 60 (5) of IBC, 2016 (salary claim of ex-employee)

Mr. SHAILENDRA CHAUHAN

...Applicant

VERSUS

M/s SARE GURUGRAM PVT LTD

...Respondent

8) In the matter of IA - 1930/2022:

Under Section 60 (5) of IBC, 2016 (salary claim of ex-employee)

Ms. ANU MAHAJAN

...Applicant

VERSUS

M/s SARE GURUGRAM PVT LTD

...Respondent

9) In the matter of IA - 2974/2021:

Under Section 60 (5) of IBC, 2016

M/s PENTA TRAVELS (INDIA) PVT. LTD.

...Applicant

VERSUS

Mr. AJIT GYANCHAND JAIN

...Respondent

10) In the matter of IA - 5651/2021:

Under Section 60 (5) of IBC, 2016

Mr. DINESH KATARIA

...Applicant

VERSUS

Mr. AJIT GYANCHAND JAIN

...Respondent

11) In the matter of IA - 1178/2022:

Under Section 60 (5) of IBC, 2016

Mr. PURUSHOTTAM LALL ARORA

...Applicant

VERSUS

M/s SARE GURUGRAM PVT LTD

...Respondent

12) In the matter of IA - 2891/2022:

Under Section 60 (5) of IBC, 2016

Ms. USHA BANSAL

...Applicant

VERSUS

Mr. AJIT GYANCHAND JAIN RP of Sare Gurugram Private Limited

...Respondent

13) In the matter of IA - 2949/2022:

Under Section 60 (5) of IBC, 2016

M/s QUANTUM PROJECT INFRA PVT LTD

...Applicant

VERSUS

Mr. AJIT JAIN

...Respondent

14) In the matter of IA - 3533/2022:

Under Section 60 (5) of IBC, 2016 (salary claim of ex-employee)

Mr. SANJAY SAGAR

...Applicant

VERSUS

M/s SARE GURUGRAM PVT LTD

...Respondent

15) In the matter of IA - 4057/2021:

Under 19(2) of IBC, 2016

Mr. AJIT GYANCHAND JAIN

...Applicant

VERSUS

Mr. MANISH CHOPRA & OTHER.

...Respondent

16) In the matter of RA - 66/2022:

Under Rule 11 of NCLT Rules, 2016

Mr. SOJI RAM MEENA

...Applicant

VERSUS

M/s SARE GURUGRAM PVT. LTD

...Respondent

17) In the matter of IA - 4539/2022:

Under Section 60 (5) of IBC, 2016

M/s ASSET CARE AND RECONSTRUCTION ENTERPRISES LIMITED

...Applicant

VERSUS

M/s SARE GURUGRAM PRIVATE LIMITED

...Respondent

18) In the matter of IA - 4560/2022:

Under Section 60 (5) of IBC, 2016

Ms. ANJANA ARORA

...Applicant

VERSUS

Mr. AJIT GYANCHAND JAIN

...Respondent

19) In the matter of IA - 5313/2022:

Under Section 60 (5) of IBC, 2016

Mr. VINOD KUMAR & ORS.

...Applicant

VERSUS

M/s. SARE GURUGRAM PVT LTD

...Respondent

20) In the matter of IA - 5559/2022:

Under Section 60 (5) of IBC, 2016

Ms. POONAM CHAUDHARY

...Applicant

VERSUS

M/s. SARE GURUGRAM PVT LTD

...Respondent

21) In the matter of IA - 5354/2022:

Under Section 60 (5) of IBC, 2016

Mr. AJAY KUMAR

...Applicant

VERSUS

M/s. SARE GURUGRAM PVT LTD

...Respondent

Pronounced on: 24.04.2023

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IA - 702/2022 & Ors.

M/s Asset Care and Reconstruction Enterprises Limited vs M/s Sare Gurugram Private Limited

CORAM:

SHRI RAMALINGAM SUDHAKAR

HON'BLE PRESIDENT

SHRI AVINASH K SRIVASTAVA

HON'BLE MEMBER (TECHNICAL)

Present:

For the Petitioner / Applicant : Adv. Sudha and Sumesh Malhotra in IA- 2891/2022, Ms Parul Sachdeva & Mr. Sumit Kulkarni in IA No.1178/2022, Adv Nikita Jain Garg for RP, Mukund Rawat, Adv for RA, Adv Rakesh Kumar Bajaj

For the Respondent : Shivangi Nanda, Rini Mehra for R-21, in IA no. 5935/2021, Nitish K. Sharma, Adv for R-9 to 13, 17 and 22 in IA 560/2022

For the SRA : Mr. Arvind Nayyar, Sr. Counsel

ORDER

1. Preliminary

1.1. The present interlocutory application bearing IA No.702 (PB) 2022 is moved on behalf of Mr. Ajit Gyanchand Jain, Resolution Professional ("**RP**" / "**Applicant**") of Sare Gurugram Private Limited (CIN: U70109DL2006PTC152635), under the provisions of Sections 30(6) and 31(1) of the Insolvency & Bankruptcy Code, 2016 [hereinafter referred to as "**the Code**" or "**IBC**"] read with regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**") for approval of the Resolution Plan in respect of Sare Gurugram

Private Limited (**“Corporate Debtor”**) and seeking following reliefs:

a) Pass an order and allow the present Application;

b) Pass an order to approve and accept the Final Resolution Plan (Annexure - 13 i.e., the Consolidated Resolution Plan of the Successful Resolution Applicant);

c) Pass an order to declare that upon approval of the Final Resolution Plan by this Hon'ble Adjudicating Authority, the provisions of the said Plan shall be binding on the Company, its creditors, members, directors, employees and other stakeholders in accordance with section 31 of the Code and shall be given effect to and implemented pursuant to the order of this Hon'ble Adjudicating Authority;

d) Pass such orders or further orders as maybe deemed fit and proper in the facts and circumstances of the present case.

1.2. The underlying Company Petition CP (IB) No.300(PB)2020 filed by Asset Care and Reconstruction Enterprises Limited 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* its order dated 09.03.2021 (**“Admission Order”**). On that date, *i.e.*, 09.03.2021 (**“Insolvency Commencement Date”**) Mr. Ajit Gyanchand Jain was appointed as IRP. In the 1st CoC meeting dated 19.04.2021, the CoC appointed Mr. Ajit Gyanchand Jain as the Resolution Professional (**“RP”**). The appointment of RP was confirmed by this Adjudicating

Authority *vide* its order dated 01.06.2021.

1.3. The Corporate Debtor is a company incorporated on 28.08.2006 and is in the business of construction and development of residential and commercial real estate projects. Presently, the Corporate Debtor owns two parcels of land admeasuring 66.03 aces which is divided into two projects (collectively referred to as “**Project**”).

- i) Project 1: Land admeasuring 48.818 acres situated in the revenue estate of villages Wazirpur and Mewka, Sector 92, Gurgaon, Haryana, upon which a residential project under the name of “**The Crescent Parc Project**” is being developed; and
- ii) Project 2: Land admeasuring 17.212 acres situated in the revenue estate of Village Dhorka, Sector 92, Gurgaon, Haryana, upon which a residential project under the name of “**The Sports Parc Project**” is being developed.

1.4. It brought to the notice of this Adjudicating Authority that the possession of flats in Phases 1 & 2 of the Project “**The Crescent Parc**” has already been handed-over to the respective allottees / home-buyers and the present Resolution Plan is with respect to the ‘**remaining phases**’ i.e. Phase 3 to Phase-7 of the Project “The Crescent Parc”.

1.5. For representation of home buyer class of Financial Creditors in the Committee of Creditors, the RP shortlisted names of three Insolvency Professionals to act as Authorized Representative, out of which Ms. Rakesh Verma was appointed as Authorized Representative to represent the Financial Creditors i.e., the Class of Home Buyers under Section 21(6A) (b) of the Code. The IRP thereafter filed an application on 05.04.2021 for approval of the Authorised Representative and this Adjudicating Authority vide Order dated 01.06.2021 approved the appointment of Ms. Rakesh Verma as the Authorised Representative for the Homebuyers. A copy of Order dated 01.06.2021 is annexed to the application and marked as 'Annexure-3'.

2. Collation of claims by RP

2.1. The Applicant submits that the IRP made public announcement on 12.03.2021 in Business Standard (*English Newspaper*); Business Standard (*Hindi Newspaper*); Financial Express and Jansatta 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 the last date for submission of claims being 24.03.2021.

2.2. The details of claims submitted are as follows:

Particulars	Count	Amount claimed by the Creditor in INR	Amount admitted by the Resolution Professional in INR
Allottees under Real Estate Project-Home Buyers	1204	1543,34,00,000	1160,73,00,000
Alchemist Asset Reconstruction Company Limited	1	333,20,00,000	333,20,00,000
Bank of India	1	5,98,00,000	5,98,00,000
Assets Care and Reconstruction Enterprise Limited	1	567,88,00,000	567,88,00,000
M/s Sare Facility (Gurgaon) Services Private Limited – Related Party	1	7,49,00,000	1,55,00,000
Operational Creditors	45	19,77,04,567	13,82,33,607
Employees	49	8,33,13,116	5,03,20,232
Other Creditors Claim	267	78,31,27,125	24,50,78,286
Total	1570	2566,15,44,808	2112,71,32,125

2.3. The RP submits that a total of seven CoC meetings have been held during CIRP period as follows:

Particulars	Date of CoC Meeting
1 st CoC Meeting	19.04.2021
2 nd CoC Meeting	13.05.2021
3 rd CoC Meeting	24.06.2021
4 th CoC Meeting	07.08.2021
5 th CoC Meeting	13.09.2021
6 th CoC Meeting	12.10.2021

Particulars	Date of CoC Meeting
7 th CoC Meeting	17.12.2021

3. Valuation of Corporate Debtor

The appointed registered valuers namely Adroit Appraisers and Research Private Limited and AAA Valuation Professionals LLP have submitted their reports providing the fair value and liquidation value of the Corporate Debtor. On an average, the fair value of the Corporate Debtor is Rs. 310,54,77,331/- (Rupees Three Hundred Ten Crore Fifty-Four Lakh Seventy-Seven Thousand Three Hundred and Thirty-One only) and liquidation value of Rs. 248,05,71,971/- (Rupees Two Hundred Forty-Eight Crore Five Lakh Seventy-One Thousand Nine Hundred Seventy-One only) as per Form-H annexed with the application as 'Annexure-16'.

4. Evaluation and voting

4.1 The Applicant submits that in terms of provision of Section 25(2)(h) of the Code read with regulation 36A(1) of CIRP Regulations, Form-G was published by way of advertisement on 24.05.2021 whereby Prospective Resolution Applicants (**PRAs**) were invited to submit the EoI for submitting a resolution plan of the Corporate Debtor on or before 23.07.2021. Pursuant to the publication of the Advertisement, EoIs were received from 23 PRAs as of the last date for submission of the same.

4.2 The Request for Resolution Plan (“**RFRP**”) and the Evaluation Matrix dated 30.06.2021 was given by the RP to all the participants. A copy of the RFRP is annexed with the Resolution Plan application and marked as ‘Annexure-7’.

4.3 Further the RP received the Resolution Plans on 11.09.2021 from the following 6 (Six) PRAs. The discussion on the plans and the approval by the CoC got delayed due to the outbreak of COVID-19 pandemic throughout the Country:

Sr. No.	PRA
1.	Alpha Corp Development Private Limited
2.	Consortium of KGK Realty (India) Private Limited and Dhoot Infrastructure Projects Ltd.
3.	Mr. Nikhil Jain
4.	Signature Global (India) Limited
5.	Mr. Sumeet Nanda
6.	Mr. Sunil Kumar Jain

4.4 The Applicant submits that in order to ensure that the PRAs qualify under Section 29A of the Code for submission of Resolution Plan, the Applicant appointed BDO Global on 12.10.2021 for expert advice and data analytics. The Applicant also received affidavits in compliance of Section 29A of IBC 2016 from the above-mentioned 6 (Six) PRAs. A copy of the Affidavit under Section 29A is annexed with the petition and marked as ‘Annexure-9’.

4.5 The Applicant, relying on the affidavits on the eligibility of the PRAs and the data furnished in support, concluded that all 6 Resolution Applicants were eligible.

4.6 Thereafter, in the 7th CoC Meeting held on 17.12.2021, it was informed by RP to the members of CoC that Resolution Plans were received from 6 (Six) PRAs. The CoC, in its commercial wisdom after examining the feasibility and viability of the 6 (Six) Resolution Plans, approved the Resolution Plan of '**Consortium of KGK Realty (India) Private Limited**' ("**Successful Resolution Applicant**" / "**SRA**") with 100% votes in its favour in terms of Section 30 (4) of the Code. The table showing votes in favour of the SRA is as below:

Sr. No.	Name of the Creditors	Voting		
		Assent	Dissent	Abstain
1.	Alchemist Asset Reconstruction Company Limited	16.11%	-	-
2.	Bank of India	0.29%	-	-
3.	Assets Care and Reconstruction Enterprises Limited	27.47%	-	-
4.	Authorised Representative of Home Buyer	56.13%	-	-
Total		100.00%	-	-

4.7 As per the RFRP, the SRA has provided an Earnest Money Deposit (EMD) in the form of a Bank Guarantee amounting to Rs.

2,50,00,000/- (Rupees Two Crores Fifty Lacs only) which is annexed at page 383, Volume-III of the Resolution Plan Application.

4.8 Further the RFRP states that the SRA shall provide a Performance Guarantee of INR 15,00,00,000/- (Rupees Fifteen Crores only) **or** 10% of the Net Present Value (NPV) of the sum of money payable to all creditors including the amount of equity infusion for improvement of operations, **whichever is higher**, in favour of The CoC. In compliance of this condition, the SRA has provided two Performance Bank Guarantees (PBG) of Rs. 15,03,38,107/- (Rupees Fifteen Crores Three Lakhs Thirty-Eight Thousand One Hundred and Seven) (ICICI Bank) and Rs. 5,28,21,497 (Rupees Five Crores Twenty-Eight Lakhs Twenty-One Thousand Four Hundred Ninety-Seven) (Axis Bank) dated 18.01.2022, summing up to Rs. 20,31,59,604/- (Twenty Crores Thirty-One Lakhs Fifty-Nine Thousand Six Hundred and Four). *A copy of the two Bank Guarantees dated 18.01.2022 is annexed to the additional note dated 21.03.2021 as 'Annexure-B'.* The Monitoring Agency / Committee is hereby directed to ensure that the PBG is coterminous with the tenure of the Resolution Plan and accordingly be renewed from time to time.

4.9 Pursuant to Regulation 39(4) of IBBI (CIRP) Regulations, 2016, a Compliance Certificate from RP in Form-H is annexed to the

application as 'Annexure A-16'.

4.10 Pursuant to section 30(6) of Insolvency and Bankruptcy Code, 2016 read with Regulations 37 to 39 of IBBI (CIRP) Regulations, 2016, Resolution Professional by filing the present application is praying for approval of the Resolution Plan submitted by the SRA '**Consortium of KGK Realty (India) Private Limited**' as approved by the Committee of Creditors of the Corporate Debtor with 100% voting under section 30(4) of IBC, 2016 in the 7th Meeting of CoC held on 17.12.2021 and the present application for approval of the Resolution Plan by this Adjudicating Authority was filed by the RP on 24.01.2022.

5. Details of Resolution Applicant and Payment Schedule

5.1 The SRA is a consortium comprising of KGK Realty and Dhoot Infra. KGK Realty is the '**Lead Member**' of the KGK-Dhoot Consortium having 74% share in the KGK-Dhoot Consortium, Dhoot infra has 26% share. KGK Realty is the flagship group company for real estate project development, whereas Dhoot Infra is a real estate company based out of Gurugram, and is part of the Dhoot Group. Both companies have successfully completed many residential, commercial, hospitality and industrial projects in Gurugram, Jaipur, Navi Mumbai and Indore cumulating to approximately 60,00,000 (sixty lakh) square feet of area. The SRA

has attached the details of these projects to the Resolution Plan and the same has been verified by the RP.

5.2 The SRA submits that it has a well-qualified team of professionals that has been working on the revival strategy and this Resolution Plan for the Corporate Debtor and hold full capacity to revive the Corporate Debtor with their business acumen and vast industry experience. The details of key management personnel of the SRA is attached to the Resolution Plan as Annexure-3 at page 988, Volume-VI.

5.3 The SRA has all the adequate capabilities, experience and resources to undertake the task of completion of construction of remaining phases, i.e. Phase 3 to Phase 7 of The Crescent Parc Project, within the revised and specified timelines for handing over possession of the same to the Homebuyers in accordance with 'Annexure 5' of the Resolution Plan.

5.4 The SRA, by way of this Resolution Plan is specifically addressing the requirement of handing over the possession of units to the homebuyers who did not surrender or cancel their allotment or whose allotment was not cancelled by the Corporate Debtor or who have not defaulted in their payments to the financial institutions/ banks.

6 Implementation Schedule of Resolution Plan and Construction

Activity Timeline:

6.1 The activity timeline for implementation of the Resolution Plan is as tabulated below:

Implementation Schedule of Resolution Plan

<u>S.No.</u>	<u>Activity</u>	<u>Timeline (days)</u>
Phase I – Approval Process of the Proposed Plan		
1.	Approval of CCI (if required)	Z
2.	Approval of Plan by CoC	X
3.	Appointment of Resolution Applicant as DM and infusion of Project Cost	X
4.	Acceptance of Letter of Intent and providing Performance Bank Guarantee	X+3
5.	Application of NCLT for Approval of Plan	Y
6.	Approval of NCLT of this Plan (Effective Date)	E
7.	Notice on the website of the Company	Within E+15
8.	Intimation to various Governmental Authorities and various other statutory authorities including HRERA, RBI, DTCP, Tax Authorities and various other statutory authorities (as applicable)	
9.	Intimation to all Creditors, existing shareholders and other stakeholders of the Company	

10.	Filing of applications for obtaining the Approvals from any Governmental Authorities including renewal of licence from DTCP, BIP Policy approval from DTCP and approval from the DTCP with respect to the acquisition of the Company by the Resolution Applicant and consequent transfer of the license in favour of the Resolution Applicant and fulfilment of other conditions (on required under the Plan)	E+45 or such time period as and when such approval shall be issued
Phase II – Implementation of Plan		
1.	Interim Management of the Company	From the Effective Date till the Closing Date
2.	Acquisition of Control and management of the Company along with all closing actions	On Closing Date which will be within E+90
Phase III – Settlement of Creditors		
1.	Payment of CIRP Costs	E+90 or on the Closing Date, whichever is earlier
2.	Payment to the dissenting Financial Creditors (if any required)	E+90 or on the Closing Date, whichever is earlier However, there is no dissenting Financial Creditor.
3.	Settlement of claims of the Workmen/Employees	E+90 or on the Closing Date, whichever is earlier
Phase III – Settlement of Creditors		
4.	Payment of the Financial Creditor Settlement Amount in the manner set out in this Plan	Tranche 1 of Rs. 95 cr. on E+90 or on the Closing Date, whichever is earlier, in accordance with Paragraph 2(i), Section II of Part III of this Plan

Phase IV – Return of Performance Bank Guarantee

1.	Return of the Performance Bank Guarantee	Within 14 (fourteen) days of the successful implementation of the Plan
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- *The closing date shall be 90 days from the effective date.*
- *The remaining payment of Rs. 130,00,00,000 (Rupees One Hundred and Thirty Crores) shall be made to the Financial Creditors in 4 tranches within 4 years from the effective date.*

6.2 Construction activity timeline:

The Resolution Applicant endeavours to complete construction of remaining phases, i.e. phase 3 to phase 7 of the Crescent Parc Project, and deliver flats to the Homebuyers in a phased manner as per the following schedule (*Annexure 5 of the Resolution Plan*):

Project / Phase	Timeline for completion of Construction and, or application of Occupation Certificate
All Towers in Phase 3	6 (Six) months from Construction Commencement date.
All Towers in Phase 4	16 (Sixteen) months from Construction Commencement date.
All Towers in Phase 5	18 (Eighteen) months from Construction Commencement date.
All Towers in Phase 6	36 (Thirty Six) months from Construction Commencement date.
All Towers in Phase 7	6 (Six) months from Construction Commencement date.
Club House	24 (Twenty Four) months from Construction Commencement date.

- *The construction of the Project and the proposed construction*

timelines set out in the above table shall commence on the date of receipt of all Approvals by the SRA (including but not limited to the Approvals as listed in 'Annexure-4' of the Resolution Plan, including the renewed DTCP Licenses), or from the 90th (ninetieth) day from the Effective Date (whichever is earlier) ("**Construction Commencement Date**"). It is hereby clarified that the SRA shall be responsible for obtaining all the Approvals listed in 'Annexure-4' of this Plan without delay.

- The Sports Parc Project shall be completed over a period of 42 (forty-two) months starting from the completion of 1 (one) year after the Effective Date.

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

7.1 The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations which a Resolution Plan is required to adhere to are as follows:

Compliance with Section 30(2) of the Code:

Clause of sec. 30(2)	Requirement	How dealt with in the Plan
(a)	Provides for the payment of Insolvency Resolution Process Cost.	<i>Para 2(iv), Section II of Part III of the Resolution Plan @Pg. 955, Volume VI of IA 702 of 2020:</i> The outstanding CIRP Cost shall be paid on actuals out of the Cash Infusion Amount, as approved by the members of the CoC, for the period up

Clause of sec. 30(2)	Requirement	How dealt with in the Plan
		to the Effective Date. The estimated CIRP Cost is INR 5,00,00,000/- (Rupees Five Crores). If the actual CIRP Cost payable by the SRA exceeds the Estimated CIRP Cost, then such excess CIRP Cost for construction of the Project shall be payable on actual basis, considering the relevant documentary proof of incurrence thereof.
(b)	<p>(i) Plan must provide for repayment of debts of Operational Creditors</p> <p>(ii) 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</p>	<p><i>Para 2(iii) of Section II, Part III of the Resolution Plan @Pg. 955, Volume VI of IA No. 702 of 2020:</i></p> <p>The entire claim of all the Operational Creditors shall be fully and finally settled by the Resolution Applicant by way of payment of INR 5,00,000/- (Indian Rupees Five Lakhs Only) to be paid in proportion to their admitted claims.</p> <p>There is no dissenting Financial Creditor and the Resolution Plan has been approved unanimously by the CoC Members.</p>

Clause of sec. 30(2)	Requirement	How dealt with in the Plan
	Board.	
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	<p><i>Section VI (2) of Part III @Pp. 970-972, read with Section I(2) of Part III @Pp. 970-971, Volume VI of IA No. 702 of 2020</i></p> <p>From the Closing date, the SRA shall take the following steps:</p> <p>(i) Appointment of 2 (two) directors on the board of directors of the Company.</p> <p>(ii) The Board of Directors shall be reconstituted by the SRA in accordance with the Applicable laws.</p> <p>(iii) The SRA shall appoint new key managerial personnel of the Corporate Debtor.</p>
(d)	Implementation and Supervision of Resolution Plan.	<p><i>Para 9, Clause 9.1, @Pp. 308-310, Volume II of IA No. 702 of 2020:</i></p> <p>On and from the Closing Date, the Resolution Applicant shall take over the management and operations of the Company, and shall acquire the complete management Control of the Company inter alia by way of the following steps:</p> <p>(a) Appointment of 2 (Two) directors on the Board of Directors of the Company.</p> <p>(b) On and from the Closing Date, the Board of Directors of the Company</p>

Clause of sec. 30(2)	Requirement	How dealt with in the Plan
		<p>shall be reconstituted by the SRA in accordance with Applicable Laws (including the applicable requirements of appointing independent directors, if any). The Resolution Professional will file all relevant forms and take all necessary actions in this regard.</p> <p>(c) All powers of the Board of Directors of the Company under Applicable Laws shall be restored, and the Board of Directors (as reconstituted by the Resolution Applicant) shall be entitled to exercise all powers of a Board of Directors under Applicable Law, including under Section 179 of the Companies Act, 2013.</p> <p>(d) On and from the Closing Date, all the existing directors and Key Managerial Personnel of the Company including the Chief Executive Officer, Chief Operating Officer and Chief Financial Officer shall be deemed to have resigned and new Key Managerial Personnel, including persons to be appointed as the Chief Executive Officer, Chief Operating Officer and Chief Financial Officer of the Company, shall be appointed by the Resolution Applicant.</p> <p>The Resolution Plan provides for the</p>

Clause of sec. 30(2)	Requirement	How dealt with in the Plan
		<p>constitution of a Monitoring Agency and for the implementation and supervision of the Resolution Plan after the Effective Date. Monitoring Agency shall be comprising of:</p> <p>(a) One representative of the erstwhile RP of the Corporate Debtor (who may also act as chairman of the Committee),</p> <p>(b) one representative of the resolution applicant,</p> <p>(c) 2 representatives of the CoC each representing one financial creditor and</p> <p>(d) Homebuyers.</p> <p>The Monitoring Agency will oversee and supervise the management of the business and affairs of the Corporate Debtor by the Resolution Professional during the Transition Period and overseeing the implementation of the Resolution Plan including the functions of the New Management of the Corporate Debtor in discharging their duties in accordance with the Resolution Plan.</p>
(e)	Plan does not contravene any of the provisions of law for the time being in force.	<p><i>Para 7 of Part II of the Resolution Plan @Pg. 938, Volume VI of IA 702 of 2020:</i></p> <p>The SRA confirms that this Plan is not</p>

Clause of sec. 30(2)	Requirement	How dealt with in the Plan
		in contravention of the provisions of any Applicable Law and shall ensure compliance with any amendment or clarifications to the IBC, or to any of the rules and regulations issued thereunder, as amended from time to time.
(f)	Conforms to such other requirements as may be specified by the Board.	SRA states that the Resolution Plan conforms to such other requirements as may be specified by the Board.

Measures required for Implementation of Resolution Plan in terms of Regulation 37 of CIRP Regulations:

Regulation 37 (1)	Requirement	How dealt with in the Plan
(a)	Transfer of all or part of the assets of the corporate debtor to one or more persons;	Not Applicable.
(b)	Sale of all or part of the assets whether subject to any security interest or not;	<i>Section II, Para 2(ii)(b)(F) of Part III of the Resolution Plans @Pg. 947, Volume VI of IA No. 702 of 2020:</i> The SRA shall be entitled to sell, transfer, dispose of, lease or license the remaining unsold units in remaining phases, i.e., Phase 3 to Phase 7 of the Crescent Parc

Regulation 37 (1)	Requirement	How dealt with in the Plan
		Project, as set out in Annexure 10 of Volume VI of IA No. 702 of 2020 in the manner deemed fit by him under his absolute discretion.
(ba)	Restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Not Applicable.
(c)	The substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	<p><i>Section II, Para 1(i) and (iii) of Part III of the Resolution Plan @Pg. 942, Volume VI of IA No. 702 of 2020:</i></p> <ul style="list-style-type: none"> • Infusion of an amount of INR 10,00,00,000/- (Indian Rupees Ten Crores Only) to subscribe to the equity shares of the Corporate Debtor such that the Resolution Applicant holds 90% (Ninety Percent) – 99% (Ninety-Nine Percent) shareholding of the Corporate Debtor. • The inter se shareholding of the SRA in the Corporate Debtor shall be as follows: 74% (Seventy-Four Percent) held by KGK Group and the balance 26% (Twenty-Six Percent) held by Dhoot Infra.

Regulation 37 (1)	Requirement	How dealt with in the Plan
(ca)	Cancellation or delisting of any shares of the corporate debtor, if applicable;	Not Applicable.
(d)	Satisfaction or modification of any security interest;	Annexure 7 of the Resolution Plan @Pg. 993, Volume VI of IA No. 702 of 2020
(e)	Curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Not Applicable.
(f)	Reduction in the amount payable to the creditors;	The claims of all the creditors shall be settled in accordance with the terms of the resolution plan and as stated in para 2.2 read with para 8.12 of this Order.
(g)	Extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Not Applicable.
(h)	Amendment of the constitutional documents of the corporate debtor;	The Resolution Plan does not envisage any amendment in the constitutional documents of the Corporate Debtor.
(i)	Issuance of securities of the corporate debtor, for cash, property, securities,	Not Applicable.

Regulation 37 (1)	Requirement	How dealt with in the Plan
	or in exchange for claims or interests, or other appropriate purpose;	
(j)	Change in portfolio of goods or services produced or rendered by the corporate debtor;	No Change in portfolio of goods or services are proposed as Resolution Plan is envisaging completion of construction of real estate project of the Corporate Debtor and handover the units to allottees.
(k)	Change in technology used by Not Applicable the corporate debtor;	Not Applicable.
(l)	Obtaining necessary approvals from the Central and State Governments and other authorities.	The Resolution Applicant undertakes to obtain the necessary approvals for successful implementation of the resolution plan.

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 payable to the operational creditors under a resolution plan shall be paid in priority over financial creditors.	<i>Para 2(iii) of Section II, Part III of the Resolution Plan @Pg. 955, Volume VI of IA No. 702 of 2020:</i> The entire claim of all the Operational

Regulation	Requirement	How dealt with in the Plan
		Creditors shall be fully and finally settled by the SRA by way of payment of INR 5,00,000/- (Indian Rupees Five Lakhs Only) to be paid in proportion to their admitted claims as set out under Annexure 13. The payment to operational creditors shall be done in priority over other stakeholders of the Corporate Debtor.
38(1 A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	Section I (1) of Part III -Financial Proposal of the Resolution Applicant @ Pg. 938, Volume VI of the Application
38(1 B)	A resolution plan shall include a statement giving details of 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.	<i>Para 6(ii) of Section I, Part I of the Resolution Plan @Pg. 936, Volume VI of IA No. 702 of 2020:</i> Neither the SRA nor any of its related parties 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.
38(2)	A resolution plan shall provide:	

Regulation	Requirement	How dealt with in the Plan
	(a) the term of the plan and its implementation schedule;	<p>Para 4 of Part II @Pg. 937, read with Section V (3) of Part III @Pp. 966 and 967, Volume VI of IA No. 702 of 2020:</p> <p>(Term of the Resolution Plan is set out in para 6 of this Order.</p>
	(b) the management and control of the business of the corporate debtor during its term; and	<p><i>Section VI (2) of Part III @Pp. 970-972, read with Section I (2) of Part III @Pp. 939 and 941, Volume VI of IA No. 702 of 2020:</i></p> <p>(i) <u>Prior to the Closing Date:</u></p> <p>(a) On and from the Effective Date, and until the Closing Date, the management and operations of the Company shall be undertaken and monitored by the Monitoring Agency. The operations of the Company shall be managed and conducted in ordinary course, and on a going concern basis, by the Monitoring Agency, which shall provide updates (in the form of information only) to the SRA and the NCLT, from time to time.</p> <p>(ii) <u>On and After the Closing Date:</u></p> <p>On and from the Closing Date, the SRA shall take over the management</p>

Regulation	Requirement	How dealt with in the Plan
		<p>and operations of the Company, and shall acquire the complete management Control of the Company inter alia by way of the following steps:</p> <p>(a) Appointment of 2 (Two) directors on the Board of Directors of the Company,</p> <p>(b) On and from the Closing Date, the Board of Directors of the Company shall be re-constituted by the SRA in accordance with Applicable Laws (including the applicable requirements of appointing independent directors, if any). The Resolution Professional will file all relevant forms and take all necessary actions in this regard.</p> <p>(c) All powers of the Board of Directors of the Company under Applicable Laws shall be restored, and the Board of Directors (as reconstituted by the Resolution Applicant) shall be entitled to exercise all powers of a Board of Directors under Applicable Law, including under Section 179 of the Companies Act, 2013.</p> <p>(d) On and from the Closing Date, all</p>

Regulation	Requirement	How dealt with in the Plan
		<p>the existing directors and Key Managerial Personnel of the Company including the Chief Executive Officer, Chief Operating Officer and Chief Financial Officer shall be deemed to have resigned and new Key Managerial Personnel, including persons to be appointed as the Chief Executive Officer, Chief Operating Officer and Chief Financial Officer of the Company, shall be appointed by the SRA.</p> <p>(e) As of the Closing Date, the Auditor of the Company shall be deemed to have vacated its office.</p> <p>(f) As of the Closing Date, all powers of attorney and/ or other corporate authorizations or mandates issued by the Company to any person to enable such person to carry out various functions of the Company, to sign and execute various documents and/ or represent the Company, and to operate the bank accounts of the Company shall stand revoked with immediate effect and the re-constituted board of directors of the Company shall be entitled to</p>

Regulation	Requirement	How dealt with in the Plan
		<p>authorize such persons as it deems fit to carry out such functions of the Company, sign and execute various documents and/ or represent the Company, and to operate the bank accounts of the Company.</p>
	<p>(c) Adequate means for supervising its implementation</p>	<p><i>Section VI of Part III (Financial Proposal of the Resolution Applicant)</i></p> <p>Monitoring Agency shall be constituted and it will have</p> <ul style="list-style-type: none"> • 1 (One) representative of the RP, • 1 (One) representative of SRA, • 2 (Two) representatives of the COC out of which 1 (One) shall represent Financial Creditors and the other 1 (One) shall represent Homebuyers.
<p>38(3)</p>	<p>A resolution plan shall demonstrate that-</p>	
	<p>(a) it addresses the cause of default;</p>	<p>Section X, Para (xiii)(a) of Part III @Pg. 978, Volume VI of IA No. 702 of 2020, read with Annexure A @Pg. 24, Volume I of IA No. 702 of 2020</p>
	<p>(b) it is feasible and viable;</p>	<p>Section X, Para (xiii)(b) of Part III @Pg. 978, Volume VI of IA No. 702 of 2020</p>
	<p>(c) it has provisions for its effective</p>	<p>Section X, Para (xiii)(c) of Part III @Pg. 978, Volume VI of IA No. 702 of 2020</p>

Regulation	Requirement	How dealt with in the Plan
	implementation;	
	(d) it has provisions for approvals required and the timeline for the same; and	Section X, Para (xiii)(d) of Part III @Pg. 978, Volume VI of IA No. 702 of 2020
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Section X, Para (xiii)(e) of Part III @Pg. 978, Volume VI of IA No. 702 of 2020

7.2 Further it is submitted that the date of expiry of 180 days of the CIRP was 06.09.2021. RP had sought for an extension of 90 days beyond 180 days, upto 04.12.2021, which was approved by this Adjudicating Authority vide its order dated 05.10.2021. The RP also sought for an exclusion of 60 days from the CIRP period beyond 270 days on account of Covid-19 and lockdown restrictions which was allowed by this Adjudicating Authority vide its order dated 12.01.2022 ('Annexure-4').

7.3 The Applicant submits that the SRA has submitted an affidavit with regard to the eligibility under section 29A of the Code, as required by Regulation 39(1)(a) of the CIRP Regulations. The same has been annexed to the application as 'Annexure-9'.

7.4 The Applicant has filed a Compliance Certificate in prescribed Form, i.e Form 'H' in compliance with Regulation 39(4) of the CIRP

Regulations and the same is annexed with the application as 'Annexure A-16.

8 Salient features of the plan:

8.1 The Crescent Parc Project (*Project 1*) consists of 7 (seven) phases, out of which, total 1,699 (one thousand six hundred and ninety nine) residential/ commercial units have been sold/ booked in favour of the Homebuyers. Further, 6 (six) acres of School Land out of total 7 (seven) acres has also been sold. As regards The Sports Parc Project (*Project 2*), 92 (ninety two) bookings have been received by the Corporate Debtor, as mentioned in the Information Memorandum. The details of the units/ flats sold/ booked in favour of the Homebuyers are set out in 'Annexure 9' of the Resolution Plan. The details of unsold units in the Crescent Parc Project (Phases 3-7), Primary School and Dispensary area is as follows ('Annexure 10' of the Resolution Plan):

The Crescent Parc Project		
Particulars	No. of unsold flats	Area of unsold flats (in sq. ft.)
Phase 3	2	4,180
Phase 4	16	30,937
Phase 5	38	85,074
Phase 6	92	1,25,138
Total Unsold Units	148	2,45,329

Phase 7	
Particulars	Unsold Area
Primary School	1 acre (out of 7 acres of school land, 6 acres has already been sold)
Dispensary	1.25 acres

8.2 SRA undertakes to complete the pending construction of remaining phases, i.e. Phase 3 to Phase 7 of ‘The Crescent Parc’ Project on priority and as per the revised timelines as set out in ‘Annexure 5’ of this Plan, within a period of 36 (thirty-six) months from the Construction Commencement Date (as defined hereafter).

8.3 It is submitted that during this 36 (thirty-six) month period, the SRA will first endeavor to complete the construction of Phase 3 and Phase 7 in The Crescent Parc Project, as the same is in a more advanced stage of construction, followed by completion of Phases 4, Phase 5 and Phase 6 in the order of priority.

8.4 To protect the interest of the Homebuyers, the SRA proposes to allocate an initial sum of approximately INR 25,00,00,000/- (Indian Rupees Twenty Five Crores Only), i.e. the Cash Infusion Amount for the purpose of expediting the construction of remaining phases, i.e. Phase 3 to Phase 7 of ‘The Crescent Parc’ Project. For the additional requirement of funds, the Resolution Applicant intends to mobilize the same from their own sources or by availing a construction loan.

- 8.5 The cash infusion by the SRA, either itself or through any one of its affiliates, for the purpose of expediting the construction of Project may be in any form, including but not limited to, equity or quasi-equity modes. It is hereby further clarified and directed that such affiliates, through whom cash infusion may be sourced, shall be eligible under Section 29A of the IBC, to the extent applicable.
- 8.6 The Resolution Applicant shall also allocate a sum of Rs. 2,00,00,000/- (Indian Rupees Two Crores Only) for the purpose of beautification and upgradation of the entrance, common areas and landscaping in the remaining phases, i.e. Phase 3 to Phase 7 of 'The Crescent Parc' Project. The manner of utilization of the aforesaid amount for the aforesaid purpose shall be as decided by the Homebuyers/ joint committee of the existing Homebuyers and the SRA.
- 8.7 The SRA shall be entitled to sell, transfer, dispose of, lease or license the remaining unsold units in Phase 3 to Phase 7 of 'The Crescent Parc' Project at its sole discretion.
- 8.8 In the event the Corporate Debtor receives any additional FSI in respect of The Crescent Parc Project from the relevant Governmental Authorities, the SRA proposes to pay an aggregate amount of Rs. 750/- (Rupees Seven Hundred and Fifty Only) per sq. ft. to the concerned Residents Welfare Association of the

Homebuyers of The Crescent Parc Project, for the additional FSI received, by way of interest-free security deposit, which shall be utilized towards the maintenance, improvement, development and upkeep of The Crescent Parc Project, present and future. In this regard, the said Homebuyers and Residents Welfare Association shall fully cooperate with the SRA/ Corporate Debtor.

8.9 It is proposed that the SRA shall complete the construction of the Project in accordance with the quality, quantity and such other specifications provided under the Builder Buyer Agreements executed with the Homebuyers as may be prescribed by law or applicable regulations. The total estimated cost of construction is approximately Rs. 250,00,00,000/- (Rupees Two Hundred and Fifty Crores Only), which is inclusive of 18% (eighteen percent) GST, other taxes, statutory dues as applicable and project management costs, if any. This estimated construction cost shall be sought inter alia from banks, financial institutions including from the Special Window for Affordable & Mid Income Housing (SWAMIH) fund, after the Plan gets approved by this Adjudicating Authority on the Effective Date. In the event of any savings from the aforesaid cost of construction, the same shall be passed on by the SRA to the Residents Welfare Association of 'The Crescent Parc Project' for various development maintenance purposes.

8.10 In respect of The Sports Parc Project, pursuant to detailed analysis of the available options and of the Deen Dayal Jan Awas Yojana, the SRA proposes to develop group housing in 17.212 (seventeen point two one two) acres of 'The Sports Parc' Project Land in accordance with the approvals. 'The Sports Parc' Project will be developed in 3 (three) phases, comprising total 942 (nine hundred and forty-two) saleable units and 166 (one hundred and sixty six) EWS units, over a period of 42 (forty two) months starting from the completion of 1 (one) year after the Effective Date. Based on current market demand, The Sports Parc Project will be designed considering only 3 (three) BHK units of approximate saleable area of 1,800 (one thousand and eight hundred) sq. ft., with a target basic saleable rate of Rs. 6,000/- (Rupees Six Thousand Only) per sq. ft. (excluding GST). Further, the Resolution Applicant proposes to develop a separate club for The Sports Parc Project. Cost of construction is assumed to start at Rs. 3,540/- (Rupees Three Thousand Five hundred and Forty Only) per sq. ft. (including GST, as the same will not be set-off against receivables in the new GST regime.

8.11 It is stated in the Resolution Plan that since the construction of certain phases in 'The Crescent Parc' Project is at an advanced stage and further since more than 96.2% (ninety six point two percent) of the total allottees of the Project are in 'The Crescent

Parc' Project, the SRA will make best efforts to complete the construction of 'The Crescent Parc' Project on priority. However, in consideration of interests of the homebuyers of the 92 (ninety-two) allotted units in 'The Sports Parc' Project, and to prevent the hardships and difficulties that such allottees might face owing to such delay in construction of The Sports Parc Project, the 92 (ninety-two) allottees of 'The Sports Parc' Project shall, instead of being made to wait for the allotted units in 'The Sports Parc' Project, will be in the alternative allotted units in Phases 4, 5 and 6 of The Crescent Parc Project, at the allotment rate of Basic Rate excluding EDC/ IDC:

- A. At Rs. 5,500/- (Rupees Five Thousand and Five Hundred Only) per square feet for units in Phases 4 and 5.
- B. At Rs. 6,500/- (Rupees Six Thousand and Five Hundred Only) per square feet for units in Phase 6 (excluding Air Conditioner) of 'The Crescent Parc' Project, subject to availability of inventory.

8.12 The category of stakeholders and amount provided to them in the Plan as per 'Annexure- 14' of the IA-702/2022 is as extracted below:

Sr. No.	Category of stakeholder	Amount Provided under the Plan (Amount in lakhs)
1.	Financial Creditors (Home Buyers)	Completion and delivery of the units to the admitted creditors (Clause 2(ii) of the Resolution Plan) Principal claim admitted value: 76507.62 Lakh
2.	Secured Financial Creditors	22461.56
3.	Unsecured Financial Creditors	38.44
4.	Operational Creditors	
	i) Operational Creditors including Government Authorities	5.00
	ii) Workmen & Employees	5.00
		10.00
5.	Other Debts and Dues	5.00
Total		99022.62

8.13 The **Resolution plan size is ₹990,22,62,000/-** (Rupees Nine Hundred Ninety Crores Twenty Two Lakhs Sixty-Two Thousand only). The Resolution Plan defines **“Effective Date”** as the date on which the Adjudicating Authority approves the Resolution Plan.

9 Details on Management/Implementation and Reliefs as per the Resolution Plan

The Resolution Plan also provides details of management and

control, implementation and supervision of the Resolution Plan and term of plan. The same is already set out in Part VI at page 968 of the Application.

10 Details on fraudulent and avoidance transaction

Any proceeds/ amount realized pursuant to Fraudulent and avoidance transaction application under sections 43, 45, 50 & 66 of the Code, filed before this Adjudicating Authority, after deduction of the costs and expenses incurred in relation thereto be vested and distributed between the Financial Creditors, other than BOI and the SRA/ Corporate Debtor, in the manner provided herein below (Clause 4, Part VII, page 973 of the Resolution Plan Application). Further, PUFEE transaction cases, if any, shall be pursued by the Financial Creditor / SRA.

Sr. No.	Particulars	Share of the Financial Creditors (other than BOI) (in %)	Share of the Resolution Applicant / Corporate Debtor (in %)
1.	School Land	75	25
2.	Units /Flats allotted to any person based on a barter arrangement entered into with the corporate debtor	75	25
3.	Inter-corporate loans advanced to any group company of the corporate debtor	75	25

11 *Waivers, Reliefs and Exemptions*

The SRA has prayed for the reliefs, waivers and concessions as enumerated under the Resolution Plan approved by the CoC, namely, that from the 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'. In this regard, the SRA shall be legally authorized to seek appropriate orders from respective authorities/ courts/ tribunals for renewal of licenses/ withdrawal/ dismissal or abatement of the proceedings as the case may be.

12 IA-5935/2021 and IA- 560/2022

12.1 These applications have been filed by the RP against the ex-directors, employees, related parties, etc, under Section 60(5) and Section 66 of IBC, 2016 seeking avoidance of certain transactions.

12.2 As the process of adjudicating an application of avoidance transaction is very cumbersome and lengthy and given the multiplicity of such applications, we do not deem it fit to stall the adjudication of the resolution plan of the Corporate Debtor on the ground that these applications are pending. In order to keep up

with the timelines of the Code and in the interest of stakeholders we delink the two.

12.3 The judgement rendered by Division Bench of Hon'ble Delhi High Court in the matter of Tata Steel BSL Limited versus Venus Recruiter Private Limited & Ors LPA 37/2021 and C.M. Nos. 2664/2021, 2665/2021 & 2666/2021, dated 13.01.2023 deals with such an issue and the relevant paragraph is as extracted below:

“86. Sections 43-51, 66 & 67 of the IBC lays down various transactions that may be avoided by the resolution professional and the actions that can be taken against erstwhile management for fraudulent transactions. These provisions are primarily aimed at swelling the asset pool available for distribution to creditors and preventing unjust enrichment of one party at the expense of other creditors. The scheme of the Act suggests that proceedings for unearthing such transactions are ancillary proceedings and the resolution of the corporate debtor need not be stalled due to pendency of such proceedings. The insolvency professional has to thoroughly examine the transactions which the corporate debtor has undertaken in the period prior to commencement of the period of insolvency proceedings. This is a very cumbersome process and more so in respect of companies whose books and records do not properly document all its past transactions. The resolution professional has to also assess if a suspicious transaction would meet the requirements that are necessary to be seen before terming it as a suspicious transaction. Not only the investigation but the adjudication of such transaction is a lengthy process and findings

of these transactions by adjudicating authority involves answering questions on both law and fact and, therefore, it will be impossible to conclude these proceedings within the time frame laid down in the process. Since investigation and adjudication of these transactions are time consuming this cannot allow persons who were managing the corporate debtor to escape from reversal of these transactions. The time line given in the IBC cannot be used as a premium by the unscrupulous persons who have forced the corporate entity into insolvency process.”

12.4 Hence, these applications i.e. **IA-5935/2021 and IA- 560/2022** shall be listed, heard and decided post the decision on the present Resolution Plan Application by this Adjudicating Authority.

13 IA-201/2022

13.1 This application has been filed by the RP against Mr. Bhupesh Tokas and others under section 45 and section 66 of the IBC, 2016. The applicant in its application states that the Corporate Debtor has entered into a transaction with the Respondents which appears to be undervalued in terms of Section 45 and fraudulent in terms of Section 66 of the IBC, 2016.

13.2 It is seen that in this application, the applicant has moved one composite application purportedly under Sections 45 and 66 of the IBC, 2016 alleging that the transactions in question are undervalued and fraudulent.

13.3 In light of the Judgement passed by the Apex Court in the matter of **Anuj Jain Interim Resolution Professional for Jaypee Infratech Limited versus Axis Bank Limited**, Civil Appeal Nos. 8512-8527 of 2019 (Para 29.1 & 29.2), the applicant is hereby directed to file separate applications for each category of transaction.

13.4 Accordingly, this **IA-201/2022** stands **dismissed** with liberty to file afresh in compliance with the above-quoted judgment of the Hon'ble Supreme Court.

14 IA-2522/2022, IA-1199/2022, IA-1930/2022, IA-3533/2022, IA-1201/2022:

14.1 These applications have been filed under section 60(5) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016 by Ex-Employees of the Corporate Debtor claiming their unpaid salary.

14.2 It is submitted by the RP that as against the claim of the employees, a certain amount of claim was provisionally admitted by the RP. The details of same is as tabulated below:

Sr. No.	IA No.	Name of Ex-Employee	Claim amount (Rs.)	Amount Admitted by RP (Rs.)
1.	2522/2022	Mr. Jitendra Kumar	12,12,294	8,95,558
2.	1199/2022	Mr. Pradeep Kumar Bajpai	13,41,059	10,58,032

3.	1930/2022	Ms. Anu Mahajan	22,50,926	20,39,032.26
4.	3533/2022	Mr. Sanjay Sagar	50,09,262	31,81,381
5.	1201/2022	Mr. Shailendra Chauhan	17,72,349	13,63,761.23

14.3 However, we find that only an amount of Rs. 5,00,000/- (Rupees Five Lakhs) has been earmarked towards the employee claim in the Resolution Plan of the SRA.

14.4 At this juncture, we rely upon the Judgement of Hon'ble NCLAT in the matter of "**Jet Aircraft Maintenance Engineers Welfare Association versus Ashish Chhawchharia Resolution Professional of Jet Airways (India) Ltd. & Ors.**" Company Appeal dated 21.10.2022, which has been upheld by the Hon'ble Supreme Court vide order dated 30.01.2023. The relevant paragraph of Hon'ble NCLAT's Judgement is extracted below:

"71. In view of the aforesaid discussion, we arrive at following conclusions:

(i) The workmen and employees are entitled for payment of full amount of provident fund and gratuity till the date of commencement of the insolvency which amount is to be paid by the Successful Resolution Applicant consequent to approval of the Resolution Plan in addition to the 24 months workmen dues as the workmen is entitled to under Section 53(1)(b) of the Code. It is made clear that in addition to part amount of provident fund and gratuity as proposed

in Resolution Plan to workmen, Successful Resolution Applicant is obliged to make payment of balance unpaid amount of provident fund and gratuity to workmen and employees.”

14.5 In the light of above Judgement, we direct the SRA to pay the dues of all the employees and workmen, as admitted by the RP, towards gratuity and provident fund in full till the date of commencement of the insolvency.

14.6 We further direct the RP to include the salaries of those employees/workmen, who were working for the Corporate Debtor during the course of CIRP, as part of the CIRP cost.

14.7 In the light of above, **IA-2522/2022, IA-1199/2022, IA-1930/2022, IA-3533/2022, IA-1201/2022** stand **disposed of**. RP and SRA to report compliance within 2 weeks from the date of this order.

15 IA- 2974/2021

15.1 This application has already been dismissed for non-prosecution vide an Order of this Tribunal dated 07.12.2022 and it appears that it was wrongly listed on the Board for hearing on 12.12.2022.

15.2 Accordingly, **IA- 2974/2021** is recorded as **closed**.

16 IA-5651/2021, IA-1178/2022, IA-2891/2022, IA-4560/2022.

16.1 These applicants have been filed under section 60(5) of the IBC, 2016 against the RP challenging the rejection of their claims by the RP.

16.2 It appears that the allotments of these applicants/alleged Homebuyers have already been cancelled by the Corporate Debtor pre-CIRP. The details of these IAs are as follows:

Sr. No.	IA No.	Name of Applicant / Allottee	Date of cancellation of allotment by the Corporate Debtor
1	IA-5651/2021	Dinesh Kataria	05.06.2017
2	IA-1178/2022	Purushottam Lall Arora	20.07.2017
3	IA-2891/2022	Usha Bansal	17.08.2016
4	IA-4560/2022	Anjana Arora	05.06.2017

16.3 In reply to the contention of the applicants, the RP submits that the applicants defaulted in the payment of installments on the ground of no progress in the construction of the project. The Corporate Debtor sent various Demand Notices for the installment due. As the applicants did not make any payment towards the installments due, their units were canceled by the Corporate Debtor on account of non-payment of installments. This fact is not disputed.

16.4 The RP states that there is no clause or provision in the Builder Buyers' Agreement or the Flat Buyers' Agreement which relieves or vests a right with the allottee from making payments in case of no progress of construction of the unit/Project by the Corporate Debtor. Moreover, in case of cancellation, in terms of the Builder Buyer Agreement, an allottee is entitled only to a refund of the

payments made by him, after deduction of earnest money and brokerage charges, related to the residential unit.

16.5 It is further averred by the RP that the claims of those applicants have been admitted by the RP under the category “Other Creditors”. The amount has been admitted by the RP as per the refund amount mentioned in the cancellation letter sent to the applicant by the Corporate Debtor and after making the necessary deduction of the forfeited amounts that are equivalent to the Earnest Money Deposit (EMD) plus Brokerage, which is in consonance and accordance with clauses 2.2, 2.3 and 2.4 of the Builder Buyers’ Agreement for cancellation/withdrawal of allotment.

16.6 Admittedly, there are amounts payable by the Corporate Debtor as per the Builder Buyer Agreement to the Applicants in the form of a refund.

16.7 However, in the facts of the present case, we find that there is no valid and subsisting Agreement as on date to prove that the applicants are homebuyers. Once the allotment is terminated or cancelled, the applicants are no more homebuyers. We see no flaw in the determination by the RP in treating these applicants as “Other Creditors”.

16.8 The present Resolution Plan has been approved unanimously by the CoC, is compliant of the provisions of IBC, 2016 and the plan also has an allocation of amount for the category “Other Creditors”.

The commercial wisdom of CoC is paramount as held by the Hon'ble Supreme Court in the case of "Vallal RCK versus M/s Siva Industries and Holdings Limited and Others, Civil Appeal Nos. 1811-1812 of 2022. 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 (hereinafter referred to as the "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 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 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 for 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* :

“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.....”

16.9 Accordingly these applications i.e. **IA-5651/2021, IA- 1178/2022, IA-2891/2022, IA-4560/2022**, stand **dismissed**.

17 IA-2949/2022

17.1 This application has already been disposed of vide an Order of this Tribunal dated 03.10.2022 and it appears that it was wrongly

listed on the Board for hearing on 12.12.2022.

17.2 Accordingly, **IA- 2974/2021** stands **closed**.

18 IA-4057/2021

18.1 This Application has been filed by the RP under Section 19(2) of the IBC, 2016 against the Ex-Directors seeking directions to the Respondents to co-operate and make the relevant information/documents available to the applicant. Learned Counsel for RP does not press this application seriously.

18.2 As the Resolution Plan of Corporate Debtor is already before us and is being adjudicated by us, this application i.e. **IA- 4057/2021** stands **dismissed as not pressed**.

19 IA- 4539/2022

19.1 This application has been filed under Section 60(5) of IBC, 2016 read with Rule 11 of NCLT, Rules, 2016 seeking following reliefs:

“a) Consider the claim of the applicant and/or direct the IRP to consider the claim of Applicant, in the interest of justice,

b) Pass an order for stay of further proceedings of IRP, till the consideration of claim of the Applicant.

c) Pass any further order(s), which this Hon'ble Court deems fit and proper in the facts and circumstances of the present case, in the interest of justice.”

19.2 It is submitted that the Applicant had booked a residential unit in the project “The Crescent Parc” of the Corporate Debtor and had paid substantial amounts towards the booked unit.

19.3 There were certain disputes between the Applicant and the Corporate Debtor against which the applicant filed a complaint no. 569/2018 before the Haryana Real Estate Regulatory Authority, Gurugram (HRERA).

19.4 HRERA passed an order/decreed dated 17.01.2019 in favour of the applicant as follows:

“(i) The Respondent is directed not to cancel the flat and if the builder as per the revised date of delivery of possession failed to deliver possession by 31.03.2019, then the complainant is entitled to seek refund along with rate of interest @10.75% per annum w.e.f. 27.11.2016.

“(ii) The arrears of interest so far shall be paid to the complainant within 90 days from the date of the order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of the subsequent month.”

19.5 It is submitted by the Ld. Counsel of the RP that the allotment of the unit of the applicant stood cancelled as on 05.06.2017 but the Applicant is a Decree Holder, as per the judgment and decree of HRERA dated 17.01.2019. Therefore, the Respondent has already admitted the claim of the Applicant in the category of Decree Holder (“Other Creditor”) for a total of Rs. 75,77,739.92/-, consisting of principal refund amount of Rs. 51,89,040/- along with an interest @10.75%p.a. from 27.11.2016 to 09.03.2021, i.e., till the Insolvency Commencement Date of the Corporate Debtor.

19.6 We find that as on date, the applicant is not a homebuyer as his allotment is cancelled and he stands in the shoes of “Other

Creditors” as per Regulation 9A(2)(b)(iii) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which is extracted below:

“9A. Claims by other creditors.

(1) A person claiming to be a creditor, other than those covered under [regulation 7, 8, 8A or 9], shall submit [its claim with proof] to the interim resolution professional or resolution professional in person, by post or by electronic means in Form F of the [Schedule-I].

(2) The existence of the claim of the creditor referred to in sub-section (1) may be proved on the basis of –

(a) the records available in an information utility, if any, or

(b) other relevant documents sufficient to establish the claim, including any or all of the following:-

(i) documentary evidence demanding satisfaction of the claim;

(ii) bank statements of the creditor showing non-satisfaction of claim;

(iii) an order of court or tribunal that has adjudicated upon non-satisfaction of claim, if any.]

19.7 The RP has already admitted the claim of the Applicant as prayed for and we find no irregularity in the same. As the cause of action does not survive anymore, this application needs no adjudication.

19.8 Accordingly, **IA- 4539/2022** stands **dismissed**.

20 IA – 5313/2022

20.1 This application has already been dismissed for non-prosecution vide

an Order of this Tribunal dated 04.11.2022 and it appears that it was wrongly listed on the Board for hearing on 12.12.2022.

20.2 Accordingly, **IA – 5313/2022** stands **closed**.

21 IA-5559/2022, IA-5354/2022

21.1 These applications have been filed under S. 60(5) of Insolvency Bankruptcy Code, 2016 r/w Rule 11 of National Company Law Tribunal Rules, 2016 filed by homebuyers, wherein they have challenged the rejection of their claim by the Resolution Professional on the ground of delay and the fact that the Resolution Plan has already been passed by the Committee of Creditors.

21.2 Admittedly, the extended last date of filing the claim with the RP was 30.09.2021, whereas the applicants in these applications filed their claims much belatedly, i.e. on 02.11.2022 and 13.10.2022. The RP rejected the claim of these homebuyers on the ground of delay in filing the claim.

21.3 However, the SRA vide an affidavit dated 01.10.2022, accommodated claims of 22 (Twenty-two) verified homebuyers/allottees who had approached the RP belatedly, and this Tribunal, vide an order dated 03.10.2022 took the same on record and disposed of 22 (Twenty-two) applications filed by the homebuyers.

21.4 As the applicants in the present application fall in the same category as that of the 22 (Twenty-two) homebuyers *supra*, and relying upon

the judgement passed by Hon'ble NCLAT in the matter of "**Puneet Kaur, through her Attorney versus KV Developers Private Limited & ors.**" Company Appeal (AT) (Insolvency) No. 390 of 2022, we direct the RP to verify the claims of these two homebuyers and if found legitimate, the SRA shall accommodate the claims of these two homebuyers on terms similar to those mentioned in its affidavit dated 01.10.2022 *supra*.

21.5 Accordingly, in the light of above directions, **IA-5559/2022 & IA-5354/2022** stands **disposed of**.

22 Findings

22.1 Considering the issue on the factual and legal aspects as placed by the Resolution Professional and after perusing the record, we find that the Resolution Plan has been approved by the CoC with 100% of the members voting in favour of the Resolution Plan. As per the resolution of the CoC, the Plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Adjudicating Authority.

22.2 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.

- 22.3 The reliefs, concessions and waivers sought by the SRA will be dealt with strictly as per law.
- 22.4 As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the SRA is permitted to do the same within one year as prescribed under section 31(4) of the Code or within such period as provided for in such law, whichever is later.
- 22.5 In case of non-compliance with 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 Performance Bank Guarantee, already paid by the SRA.

23 Orders

- 23.1 Subject to the observations made in this Order, the Resolution Plan for a value of Rs. **990.2262 crores** (Rupees Nine Hundred Ninety Crores Twenty-Two Lakhs Sixty-Two Thousand only) plus CIRP cost (as per actuals) is hereby **approved. The Resolution Plan shall form part of this Order.**
- 23.2 The approved Resolution Plan as annexed alongwith COC approved addendums shall be binding on all the stakeholders of the Corporate Debtor and become effective from the date of passing of this Order, and shall be implemented strictly as per the term of the

plan and implementation schedule given therein. The Resolution Plan will form part of the order.

- 23.3 The Monitoring Agency, as provided in the Resolution Plan shall be set up by the Applicant within 07 days of passing of this Order, which shall take all necessary steps for expeditious implementation of the Resolution Plan as per approval;
- 23.4 The SRA shall deliver/provide possession of the units to the Home Buyers/Allottees strictly as per the time frame promised in the Resolution Plan and approved by this Authority. The Monitoring Agency will supervise and monitor the progress of construction of units and related infrastructure developments on a day-to-day basis and file the progress report before this Adjudicating Authority on monthly basis;
- 23.5 The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- 23.6 The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- 23.7 Accordingly, **IA (IB) No.702/(PB) 2022** is allowed.
- 23.8 Liberty is hereby granted for moving appropriate application if

required in connection with the implementation of this Resolution Plan.

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

23.10 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.

23.11 The Resolution Professional is further directed to hand over all records, licences, plans, approvals of premises/ factories/ documents and all other relevant records relating to the Corporate Debtor, available with it to the SRA to finalize and co-operate on the further line of action required for starting the operation and implementation of this Plan. The Resolution Applicant shall have access to all the records, documents and the premises through the Resolution Professional to finalize the further course of action required for starting and running the operations of the Corporate Debtor on a clean slate basis.

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

23.13 Certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

23.14 **To summarise:**

- a. IA-702/2020 seeking approval of Resolution Plan is **allowed**.
- b. IA-5935/2021 & IA-560/2022 which is for avoidance of certain transactions shall be heard and decided by this Adjudicating Authority in the due course.
- c. RA-66/2022 shall be heard and decided in the due course.
- d. IA-201/2022 is dismissed with liberty to file afresh.
- e. IA-2522/2022, IA-1199/2022, IA-1930/2022, IA-3533/2022, 1201/2022, IA-5559/2022, IA-5354/2022 stand disposed of with directions to SRA and RP.
- f. IA-2974/2021, IA-2949/2022, IA-5313/2022 stand disposed of as wrongly listed as they have already been disposed of earlier.
- g. IA-5651/2021, IA-1178/2022, IA-2891/2022, IA-4560/2022, IA-4539/2022 stand dismissed.
- h. IA-4057/2021 stands dismissed as infructuous.

Sd/-

RAMALINGAM SUDHAKAR
PRESIDENT

Sd/-

AVINASH K SRIVASTAVA
MEMBER (TECHNICAL)