

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT-III**

**I.A. No. 2496 of 2022  
IN  
C.P. No. 4468 of 2018**

In the matter of an Application under Section 30(6) read with Section 31 and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

In the matter of

**Standard Chartered Bank, London**

...Financial Creditor

v/s

**Khubchandani Hospitals Private  
Limited**

...Corporate Debtor

**I.A. No. 2496/2022**

**Anshuman Chaturvedi**

...Applicant/Resolution Professional

v/s

**Ashdan Properties Private Limited &  
Anr.**

...Resolution Applicant/Respondent

Reserved for orders on: **03.10.2022**

Order pronounced on: **10.11.2022**

**Coram:**

Hon'ble Shri H. V. Subba Rao, Member (Judicial)



Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

**Appearance (through video conferencing):**

**For the Applicant:** Mr. Shyam Kapadia, Advocate for Resolution  
Professional

*Per Shri: H. V. Subba Rao, Member (Judicial)*

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1. This is an Application filed under Section 30(6) read with Section 31 and Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**the Code**") read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as "**the CIRP Regulations**") filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant a consortium of Ashdan Properties Private Limited (hereinafter referred to as "**Ashdan**") and Classic Promoters and Builders Private Limited (hereinafter referred to as "**Classic**") (hereinafter referred to as "**the Resolution Applicant**" or "**the RA**"), which was approved by 100% voting share of the members of the Committee of Creditors (hereinafter referred to as "**COC**").
2. The facts leading to the Application are as under:
  - a. Corporate Insolvency Resolution Process (hereinafter referred to as "**CIRP**") of the Corporate Debtor was initiated by this Bench by an order dated 06.10.2021 under Section 7 of the Code (Admission Order) and Mr. Anshuman Chaturvedi, was appointed as Interim Resolution Professional (hereinafter referred to as "**IRP**").
  - b. The IRP published a public announcement in Form A in accordance with Section 15 of the Code, on 11.10.2021, in English Newspaper Business Standards (All India Editions) and in Marathi



Newspaper Navbharat Times (Mumbai Edition), inviting claims from the creditors of the Corporate Debtor.

- c. The IRP constituted the Committee of Creditors. The COC in its 1<sup>st</sup> meeting held on 03.11.2021 appointed Mr. Anshuman Chaturvedi as the Resolution Professional (hereinafter referred to as “RP” or “the Applicant”).
- d. The Applicant submits the claims received and admitted by Resolution Professional as under:

**I. Claims of Financial Creditors:**

(in Crores)

Sr. No.	Financial Creditor	Amount Claimed	Amount Admitted
1	Standard Chartered Bank, UK	175.97	175.97
2	Standard Chartered Bank, India (Unsecured)	12.00	12.00
	<b>TOTAL</b>	<b>187.97</b>	<b>187.97</b>

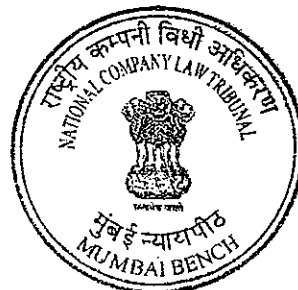
**II. Claims of Operational Creditors (Other than Workmen and Employees and Government Dues):**

(in Crores)

Sr. No.	Operational Creditor	Amount Claimed	Amount Admitted
1	Claims of 16 Operational Creditors	37.40	12.34
	<b>TOTAL</b>	<b>37.40</b>	<b>12.34</b>

**III. Claims of Operational Creditors (Government Dues):**

(in Crores)



<b>Sr. No.</b>	<b>Operational Creditor</b>	<b>Government</b>	<b>Amount Admitted</b>
1	Assistant Commissioner of Customs, EPCG Monitoring Cell, JNCH, Nhava Sheva	Ministry of Finance, MOF, Union of India	3.97
2.	Deputy Commissioner of Customs, Custom House, Ballard Estate	Commissioner of Customs (Exports)	0.19
	<b>TOTAL</b>		<b>4.16</b>

e. The RP in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.

3. In the 2<sup>nd</sup> CoC Meeting dated 08.12.2021, in compliance with Regulation 27 and 35 of the CIRP Regulations the Applicant had appointed BMCL Valuation Services Pvt. Ltd. And GAA Advisory LLP as the two valuers to carry out valuation of the Corporate Debtor. These valuers had submitted their reports dated 09<sup>th</sup> March 2022 and 14<sup>th</sup> March 2022 as submitted by IndiaAppraisers.com Pvt. Ltd. (formerly known as BMCL Valuation Services Pvt. Ltd.) and GAA Advisory LLP, respectively. The Liquidation and Fair Value of the Corporate Debtor is as follows:

(Amount in Rupees)

<b>Sr. No.</b>	<b>Valuer</b>	<b>Fair Value</b>	<b>Liquidation Value</b>



1.	IndiaAppraisers.com Pvt. Ltd. (formerly known as BMCL Valuation Services Pvt. Ltd.)	1,23,74,17,000	92,75,21,000
2.	GAA Advisory LLP	1,20,65,57,196	87,76,21,485
	<b>Average Value</b>	<b>1,22,19,87,098</b>	<b>90,25,71,242.5</b>

4. The Applicant states that the COC in its 3<sup>rd</sup> Meeting dated 13.12.2021 decided that an advertisement for inviting EOI be issued. Form G inviting EOI was published on 15.12.2021 in All India Edition of Business Standard (English) and Mumbai Edition of Navakal (Marathi). The last date for submission of expression of interest from prospective resolution applicants was 31.12.2021. The Applicant at the request of the members of the CoC, issued a revised Form G on 04.01.2022 extending the last date of submission of EoIs from Prospective Resolution Applicants till 14.01.2022.
5. The Applicant further states that the CoC that there were 18 (eighteen) Prospective Resolution Applicants, 5 (five) had visited and inspected the site of the hospital premises of the Corporate Debtor. Out of the 5 (five), the 2 (two) final Prospective Resolution Applicant had submitted their respective resolution plan within the stipulated time period. Below are the names of the prospective resolution applicant:
- M/s Ashdan Properties Private Limited and Classic Promoters and Builders Private Limited (the Resolution Applicant); and
  - New World Landmark LLP
6. The Applicant submits that, during the 11<sup>th</sup> Meeting of COC held on 24.06.2022, the proposed Resolution Plans were evaluated on the basis of the evaluation matrix. The resolution passed, and it was declared that the plan submitted by the M/s Ashdan Properties Private Limited



and Classic Promoters and Builders Private Limited was approved by 100% votes.

7. Thereafter, the Applicant issued compliance certificate in Form "H" was issued by the Resolution professional.

**8. The Salient Features of the Resolution Plan are as under:**

- a. Ashdan Properties Private Limited having its registered office at S. No. 36/1/1, Office No. 701, 7<sup>th</sup> Floor, Solitaire World, Mumbai Bangalore Highway, Baner, Pune jointly with Classic Promoters and Builders Private Limited having its registered office at S. No. 36/1/1, Office No. 801, 8<sup>th</sup> Floor, Solitaire World, Mumbai Bangalore Highway, Baner, Pune as a consortium (hereinafter referred to as the "**Successful Resolution Applicant**" or the "**SRA**"). The SRA is a consortium of Ashdan Properties Private Limited and Classic Promoters and Builders Private Limited.
- b. The Khubchandani Hospitals Private Limited (KHPL) (hereinafter referred to as the "**Corporate Debtor**") is a private limited company was established in 2006, having its Registered office at 508, 5<sup>th</sup> Floor, Ceejay House, Dr Annie Besant Road, Worli, Mumbai - 400018 which engaged in the business Maintaining and Running Hospital at Andheri West, Mumbai. The main object of the Corporate Debtor is that one structure which intended to be developed for a hospital which has not yet commissioned at Village Andheri (West), Mumbai.
- c. The Resolution Applicant has proposed to takeover the management and ownership control of the Corporate Debtor by acquiring up to 100% shareholding of the Company.
- d. **Effective Date:** "Effective Date" means the date on which the order approving this Resolution Plan by the Adjudicating



Authority under section 31 of the Code, is received by the Resolution Applicant. In the event of an appeal being filed, then the Effective Date will be the date on which the appeal is finally disposed off whereby, the order passed by NCLT is confirmed in favour of Resolution Applicant and in the event no appeal is filed, then the Effective Date will be the date on which the statutory period of limitation for preferring the appeal is over.

- e. **Formation of New Board**: Corporate Debtor shall be managed under the leadership and guidance of Resolution Applicant. Immediately after the Effective Date, all the existing Board of Directors shall cease to have effect and new board to be constituted having members as nominated by the Resolution Applicant in its sole and absolute discretion.
- f. **Cancellation of existing shareholding and issue of fresh equity shares**: Immediately after Effective Date, all the existing shares of Corporate Debtor shall stand cancelled without any payment to existing shareholders. Corporate Debtor shall issue to the Resolution Applicant such number of equity shares as may be suitable on the basis of capital structure requirement of the Corporate Debtor. In terms of the circular (ref IBC/01/2017) dated 25<sup>th</sup> October, 2017, issued by the Ministry of Corporate Affairs, India, approval of the erstwhile shareholders of the Corporate Debtor to the transaction contemplated under the instant Resolution Plan, including the transfer/extinguishment of the entire existing share capital, shall deemed to have been given without any further act and deed immediately upon sanction of the Resolution Plan by the Adjudicating Authority.
- g. The appointment of Chief Executive Officer, Chief Operating Officer and Chief Financial Officer and Other Key personnel shall be decided at the appropriate time. The Resolution



Applicant reserves the right to replace the key management personnel of the Company with the appropriate persons of its choice.

- h. The Resolution Plan proposes a total Consideration of **Rs. 1,00,00,00,000/- (Indian Rupees One Hundred Crores only)** for the settlement of claims.

**9. The details of the proposed payments are as follows:**

**A) CORPORATE INSOLVENCY RESOLUTION PROCESS**

**COSTS:**

- i. The proposed Resolution Plan has made a provision for payment of CIRP Costs and Managing Agency Costs to be paid in priority to the payment of other debts in compliance with Section 30(2)(a) of the Code.
- ii. The Managing Agency shall be paid an amount (Managing Agency Costs) in consideration of fulfilling its obligations under this Resolution Plan. The Managing Agency Costs shall be paid out of the Secured Financial Creditors outlay. The quantum of monthly Managing Agency Costs shall not be more than the monthly fees paid to the Resolution Professional during CIRP.

**B) PAYMENT TO SECURED FINANCIAL CREDITORS:**

- i. The Applicant has submitted that the total claim of Rs. 175.97 Crores (Rupees One Hundred and Seventy Five Crore Ninety Seven Lakhs only) was verified and admitted by the Applicant towards the claim of Secured Financial Creditors. The Resolution Applicant offers to pay Rs. 99.60 Crores (Indian Rupees Ninety Nine Crores Sixty Lakhs only) in the full and final settlement/ payment of the entire claim of the Secured Financial Creditors.
- ii. The Resolution Applicant shall pay an amount of Rs.



99.60 Crores (Indian Rupees Ninety Nine Crores Sixty Lakhs only) of Secured Financial Creditors within 90 (ninety) days from the Effective Date of Resolution Plan.

- iii. Save and except the aforesaid sum of Rs. 99.60 Crores (Indian Rupees Ninety Nine Crores Sixty Lakhs only) which is being paid in full and final settlement/payment of the entire claim of the Secured Financial Creditors.

**C) PAYMENT TO UNSECURED FINANCIAL CREDITORS:**

- i. The Applicant has submitted that the total claim of Rs. 12.00 Crores (Rupees Twelve Crores only) was verified and admitted by the Applicant towards the claim of Unsecured Financial Creditors. The Resolution Applicant offers to pay Rs. 10 Lakhs (Indian Rupees Ten Lakhs only) in the full and final settlement/ payment of the entire claim of the Unsecured Financial Creditors.
- ii. The Resolution Applicant shall pay an amount of Rs. 10 Lakhs (Indian Rupees Ten Lakhs only) of Unsecured Financial Creditors within 90 (ninety) days from the Effective Date of Resolution Plan.
- iii. Save and except the aforesaid sum of Rs. 10 Lakhs (Indian Rupees Ten Lakhs only) which is being paid in full and final settlement/payment of the entire claim of the Unsecured Financial Creditors.

**D) PAYMENT TO OPERATIONAL CREDITOR (RELATED PARTY OF THE CORPORATE DEBTOR):**

- i. The Applicant has submitted that the total claim of Rs. 33 Lakhs (Indian Rupees Thirty Three Lakhs only) was verified and admitted by the Applicant towards the claim of Operational Creditor (Related Party of the Corporate Debtor). The Resolution Applicant offers to pay Rs. 27,000/- (Indian Rupees Twenty Seven Thousand only) in



- the full and final settlement/ payment of the entire claim of the Operational Creditor (Related Party of The Corporate Debtor).
- ii. The Resolution Applicant offers to pay Rs. 27,000/- (Indian Rupees Twenty Seven Thousand only) in the full and final settlement/ payment of the entire claim of the Operational Creditor (Related Party of The Corporate Debtor).
  - iii. The Resolution Applicant shall pay an amount of Rs. 27,000/- (Indian Rupees Twenty Seven Thousand only) within 90 (ninety) days from the Effective Date of Resolution Plan as full and final settlement/payment of the entire claim of the Operational Creditor (Related Party of The Corporate Debtor).

**E) PAYMENT TO OPERATIONAL CREDITOR (GOVERNMENT DUES):**

- i. The Applicant has submitted that the total claim of Rs. 4.16 Crores (Indian Rupees Four Crores and Sixteen Lakhs only) was verified and admitted by the Applicant towards the claim of Operational Creditor (Government Dues). The Resolution Applicant offers to pay Rs. 10 Lakhs (Indian Rupees Ten Lakhs only) in the full and final settlement/ payment of the entire claim of the Operational Creditor (Government Dues).
- ii. The Resolution Applicant offers to pay Rs. 10 Lakhs (Indian Rupees Ten Lakhs only) in the full and final settlement/ payment of the entire claim of the Operational Creditor (Government Dues).
- iii. The Resolution Applicant shall pay an amount of Rs. 10 Lakhs (Indian Rupees Ten Lakhs only) within 90 (ninety) days from the Effective Date of Resolution Plan as full and



final settlement/payment of the entire claim of the Operational Creditor (Government Dues).

**F) PAYMENT TO OPERATIONAL CREDITOR (WORKMEN DUES):**

- i. The Applicant has submitted that no claim came for verification to the Applicant towards the claim of Operational Creditor (Workmen Dues). Therefore, the Resolution Applicant is not liable to pay any amount for the full and final settlement to the Operational Creditor (Workmen Dues).

**G) PAYMENT TO OPERATIONAL CREDITOR (EMPLOYEES DUES):**

- i. The Applicant has submitted that no claim came for verification to the Applicant towards the claim of Operational Creditor (Employees Dues). Therefore, the Resolution Applicant is not liable to pay any amount for the full and final settlement to the Operational Creditor (Employees Dues).

**H) PAYMENT TO OPERATIONAL CREDITOR (OTHER THAN WORKMAN AND EMPLOYEES AND GOVERNMENT DUES):**

- i. The Applicant has submitted that the total claim of Rs. 12.01 Crores (Indian Rupees Twelve Crores and One Lakhs only) was verified and admitted by the Applicant towards the claim of Operational Creditor (Other than Workman and Employees and Government Dues). The Resolution Applicant offers to pay Rs. 9.73 Lakhs (Indian Rupees Nine Lakhs and Seventy Three Thousand only) in the full and final settlement/ payment of the entire claim of the Operational Creditor (Other than Workman and Employees and Government Dues).
- ii. The Resolution Applicant offers to pay Rs. 9.73 Lakhs



(Indian Rupees Nine Lakhs and Seventy Three Thousand only) in the full and final settlement/ payment of the entire claim of the Operational Creditor (Other than Workman and Employees and Government Dues).

- iii. The Resolution Applicant shall pay an amount of Rs. 9.73 Lakhs (Indian Rupees Nine Lakhs and Seventy Three Thousand only) within 90 (ninety) days from the Effective Date of Resolution Plan as full and final settlement/payment of the entire claim of the Operational Creditor (Other than Workman and Employees and Government Dues).

**I) PAYMENT TO OTHER DEBTS AND DUES (RELATED PARTY OF THE CORPORATE DEBTOR):**

- i. The Applicant has submitted that the total claim of Rs. 13.83 Crores (Indian Rupees Thirteen Crores and Eighty Three Lakhs only) was verified and admitted by the Applicant towards the claim of other Debts and Dues (Related Party of the Corporate Debtor). The Resolution Applicant offers to pay Rs. 10 Lakhs (Indian Rupees Ten Lakhs only) in the full and final settlement/ payment of the entire claim of the other Debts and Dues (Related Party of the Corporate Debtor).
- ii. The Resolution Applicant offers to pay Rs. 10 Lakhs (Indian Rupees Ten Lakhs only) in the full and final settlement/ payment of the entire claim of the other Debts and Dues (Related Party of the Corporate Debtor).
- iii. The Resolution Applicant shall pay an amount of Rs. 10 Lakhs (Indian Rupees Ten Lakhs only) within 90 (ninety) days from the Effective Date of Resolution Plan as full and final settlement/payment of the entire claim of the other Debts and Dues (Related Party of the Corporate Debtor).



**J) PAYMENT TO EQUITY SHAREHOLDERS:**

- i. The Applicant states that upon implementation of this Resolution Plan and payment of the Total Consideration, The Resolution Applicant and/or it's nominees will subscribe to 1,00,000 (One Lakh) shares of INR 10/- (Rupees Ten only) each of the Corporate Debtor, as per the terms and conditions of this Resolution Plan.
- ii. Upon implementation of this Resolution Plan and payment of the Total Consideration, and simultaneously with the subscription of the Equity Shares by the Resolution Applicant and its nominees, the shareholding of each existing shareholder over the Equity Shares and other securities of the Corporate Debtor shall stand fully extinguished as a part of this Resolution Plan ("**Standalone Capital Reduction**"). The Applicant further states that upon the completion of the Standalone Capital Reduction as above, an equivalent amount shall be transferred to the capital reserve account of the Corporate Debtor by the Resolution Applicant.
- iii. The Corporate Debtor shall not be required to make any separate application before the Hon'ble NCLT for the Standalone Capital Reduction and for other matters set out herein, under the provisions of the Companies Act and that the approval of this Resolution Plan by the Hon'ble NCLT shall be treated as if the necessary approvals required to have been obtained under the Companies Act, including consent of shareholders or creditors of the Corporate Debtor and applications to any other appropriate authority, together with the process laid down under the Companies Act, have been obtained and duly complied with.



- iv. No further approval of the Hon'ble NCLT will be required to give effect to the Standalone Capital Reduction under the Companies Act and there shall be no requirement to add "and reduced" in the name of the Corporate Debtor as the approval of the Resolution Plan by the Hon'ble NCLT shall be deemed to be an order under Section 66 of the Companies Act along with other applicable provisions of the Companies Act, sanctioning and approving the Standalone Capital Reduction and all matters hereto.

**K) DISBURSEMENT OF AMOUNT SHALL BE CARRIED OUT IN ACCORDANCE WITH AND IN THE ORDER OF PRIORITY SET OUT IN THE TABLE BELOW:**

(Amount in Crores)

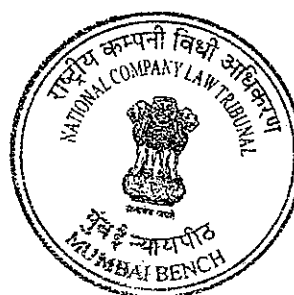
Sr. No.	Particulars	Category	Amount Claimed	Amount Admitted	Amount Provided under Resolution Plan
1.	CIRP Costs				Out of Secured Financial Creditors Outlay
2.	Financial Creditors	Secured Financial Creditors	175.97	175.97	99.60
		Unsecured Financial Creditors	35.40	12.00	0.10
<b>Total</b>			<b>211.37</b>	<b>187.97</b>	<b>99.70</b>
3.	Operational Creditor				



		<b>Related Party of Corporate Debtor</b>	274.06	0.33	0.0027
		<b>Government Dues</b>	4.16	4.16	0.10
		<b>Workmen</b>	Nil	Nil	Nil
		<b>Employees</b>	Nil	Nil	Nil
		<b>Operational creditors (Other than Workman and Employees and Government Dues)</b>	37.40	12.01	0.0973
<b>Total</b>			<b>315.62</b>	<b>16.50</b>	<b>0.20</b>
<b>4.</b>	<b>Other debts and dues (Related Party of the Corporate Debtor)</b>		<b>23.41</b>	<b>13.83</b>	<b>0.10</b>
<b>GRAND TOTAL - 1 + 2 + 3 + 4</b>			<b>550.4</b>	<b>218.3</b>	<b>100.00</b>

10. **BUSINESS REVIVAL PLAN:-**

- i. From the date of approval of the Resolution Plan by the CoC till the date of approval of the same by the Tribunal, the Resolution Professional shall continue to manage the business and operations of the Corporate Debtor.
- ii. From the date of approval of the Resolution Plan by the



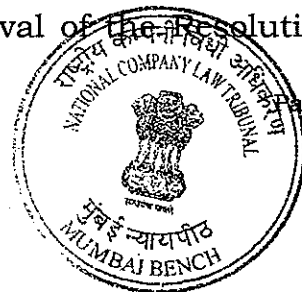
Tribunal till the date on which the upfront cash is infused, the Resolution Professional shall be appointed as the Managing Agency to supervise, manage and control the business and operations of the Corporate Debtor.

- iii. A Steering Committee [comprising of 5 (five) members constituting 2 (two) members nominated by the Resolution Applicant; 2 (two) members nominated by the Secured Financial Creditor; and the Resolution Professional or its nominee] shall be constituted within 1 (one) day of the approval of the Resolution Plan by the Tribunal and shall be vested with the powers of the board of directors.

11. The Resolution Applicant is eligible to submit resolution plan. The Successful Resolution Applicant confirm that they and their connected persons are not disqualified under Section 29A of the Insolvency & Bankruptcy Code, 2016.

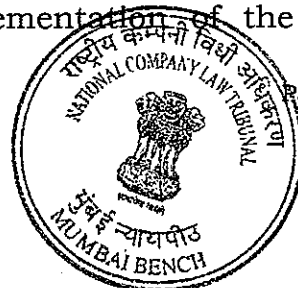
12. **OBSERVATIONS AND FINDINGS:-**

- i. As per IBC Code 30(2)(a) – A Resolution Plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.
- ii. As per Section 30(2)(b), the Respondent has agreed to pay operational creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.
- iii. Provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan.



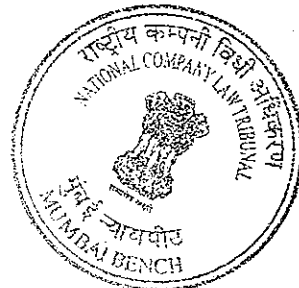
Section 30(2)(c).

- iv. Provides for a term of the plan, implementation schedule and supervision of the Resolution Plan under Section 30 (2)(d)& Regulation 38(2)(c).
- v. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor.
- vi. The Resolution Plan does not contravene any of the provisions of the law for the time being in force - please include a statement to this effect in the Resolution Plan as per Section 30(2)(e).
- vii. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- viii. As per IBBI Guidelines 38(1)(b) - The amount payable under a Resolution Plan -to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- ix. The resolution applicant or any of its related parties has not 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.
- x. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
  - a. The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors. Regulation 38(1).
  - b. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as



required under Regulation 38(2) (c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.

- c. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a)).
- d. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
- e. The amount payable under a resolution plan to the Financial Creditors, who have right to vote under subsection (2) of section 21 and did not vote in favor of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- f. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
- g. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.
- h. Provides for the management and control of the business of the Corporate Debtor during its term.
- i. All the above factors demonstrate that the plan address the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.



- j. That the Resolution Applicant or any of its related parties has never 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. This is in compliance of Regulation 38(1)(b) of the Regulations.
- k. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, keeping in view the objectives of the Code (Regulation 38(1A)).
13. The Resolution Plan has been approved in the 11<sup>th</sup> COC meeting held on 24.06.2022 with 100% voting in accordance with the provisions of the Code.
14. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan in reference



to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

15. The Hon'ble Apex Court at para 42 in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.:** (2019) SCC Online, clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved.

*"Para 42- Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra)."*

16. In view of the above ruling of the Apex Court, the legislature has given paramount importance to the commercial wisdom of Committee of Creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent provided under section 31 of Code and of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code, is no more an untouched-matter.

17. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. There are no workers claims.

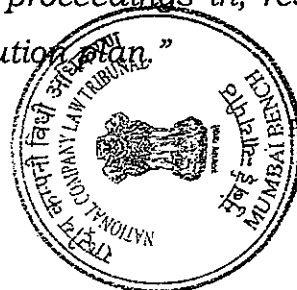


Resolution Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

**ORDER**

- i. The Interlocutory Application No. 2496 of 2022 is allowed. The Resolution Plan submitted by **M/s Ashdan Properties Private Limited and Classic Promoters and Builders Private Limited**, is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its Employees, Members, Creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force is due.
- ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. It is seen that the Resolution Applicant sought several dispensations, concessions and waivers. Any waiver sought in the Resolution plan shall be subject to approval by the Authority concerned in the light of the Judgment of Supreme Court in **Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited**, the relevant para's of which are extracted herein below:

*“on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in, respect to a claim, which is not part of the resolution plan.”*

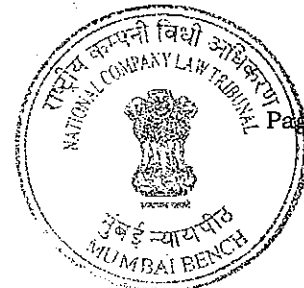


*“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;*

*(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;*

*(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”*

- iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.



- v. A Steering Committee [comprising of 5 (five) members constituting 2 (two) members nominated by the Resolution Applicant; 2 (two) members nominated by the Secured Financial Creditor; and the Resolution Professional or its nominee] shall be constituted within 1 (one) day of the approval of the Resolution Plan by the Tribunal and shall be vested with the powers of the board of directors.
- vi. The Applicant and the Steering Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- vii. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- viii. Under Schedule 2 of Resolution Plan; 1. General, Para. 1.12 – Reliefs and Concessions, the Resolution Applicant has sought time period of 18 months after date of application of Resolution Plan with regards to necessary approvals. This stand modified to a period of 12 months (i.e., 1 year) instead of 18 months in view of provisions of Section 31(4) of the code.
- ix. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- x. The Interlocutory Application No. 2496 of 2022 is accordingly allowed and disposed of.

Sd/-

**ANURADHA SANJAY BHATIA**  
**MEMBER (TECHNICAL)**

Certified True Copy  
Copy Issued "free of cost"  
On 17/11/2022

*A. S. Sondwane*  
Deputy Registrar 17/11/2022

National Company Law Tribunal Mumbai Bench

Sd/-

**H. V. SUBBA RAO**  
**MEMBER (JUDICIAL)**

