



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

Company Petition No.: IB 1565(PB)/2018

IA - 5687/2020,

IA - 5006/2021.

IN THE MATTER OF:

Mr. MOHAN AGARWAL

...Financial Creditor

VERSUS

M/s CROWN REALTECH PRIVATE LIMITED

... Corporate Debtor

AND

IN THE MATTER OF IA 5687/2020:

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

Mr. ATUL KANSAL,

Resolution Professional of Crown Realtech Private Limited

...Applicant

IN THE MATTER OF IA 5006/2021:

Under Section 60 (5) r/w Section 31 of IBC, 2016, objecting the Resolution Plan

AMARJIT SINGH

...Applicant

VERSUS

ATUL KANSAL

...Respondent

Pronounced on: 21.02.2023

Page 1 of 30

IA - 5687/2020, IA - 5006/2021

Mr. Mohan Agarwal vs Crown Realtech Private Limited



CORAM:

SHRI RAMALINGAM SUDHAKAR

HON'BLE PRESIDENT

SHRI AVINASH K SRIVASTAVA

HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicant / RP : Mr. Krishnendu Datta, Mr. Siddharth Bhotli, Mr. Lashita Dhingra, Ms. Varsha Himat Singh, Advs for Respondent in IA 5006/2021

Mr. Pulkit Deora, Ms. Isha Bhardwaj, Adv. in IA-4440, 1508 of 2021 and respondent in IA-110/2021, IA-3684/2020 and IA-469/2021

Ms. Shivani Luthra Lohiya, Mr. Ankur Sinha, Adv.

Mr. Abhishek Anand, Mr. Viplav Acharya, Mr. Karan Kohli, Adv. in IA 375/2021. Cimco Projects

Mr. Kushal Bansal, Adv. in both IAs in IA-5217/2022

Ms. Samiksha Godiyal, Ms. Shivalika Rudrabatla, Mr. Nakul Rajan, Adv.

Mr. Jayshree Shukla, Mr. Abhijeet Naveli, Adv.

Mr. P. K. Sachdeva, Adv. in IA-5710/2021

Mr. Sougat Sinha, Mr. Navneet Kumar, Mr. Manish Prakash Adv. in IA 3787/21 & 110/21

Mr. Gaurav Mitra and Mr. Honey Khanna, Adv.



Mr. Aditya Nayyar, Mr. Nidish Gupta,
Advds in 4858/22

For the Respondent : Mr. Ajay Kohli and Ms. Dipika Prasad,
Advds for R8

Mr. Krishan Malhotra, Adv. for R16

For the Applicant in IA : Mr. Virender Ganda, Sr. Adv., Mr.
5459/2020 Vishal Ganda, Mr. Ayandeb Mitra, Mr.
Sidhi Khamlayat, Mr. Sumesh
Dhawan, Ms. Vatsala Kak, Mr.
Shaurya Shyam, Advocates.

For the RP : Mr. R.K. Gupta, Mr. Abhinav Aggarwal,
Ms. Swaralipi Deb Roy, Advds.

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

ORDER

Per - **CHIEF JUSTICE (R) RAMALINGAM SUDHAKAR, PRESIDENT**

1. Preliminary

1.1. The present interlocutory application bearing IA No.5687 (PB) 2020 is moved on behalf of Mr. Atul Kumar Kansal, Resolution Professional ("**RP**" / "**Applicant**") of Crown Realtech Private Limited (CIN: U27209DL1983PTC015878), 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 Crown Realtech Private Limited ("**Corporate Debtor**") and seeking following reliefs:

*A. Take the Resolution Plan approved by the Committee of
Creditors on record;*



B. Approve the Resolution Plan approved by the Committee of Creditors;

C. Pass any other order(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the case.

- 1.2. The underlying Company Petition CP (IB) No.1565(PB)2018 filed by Mohan Aggarwal 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 06.12.2019 (“**Admission Order**”). On that date, *i.e.*, 06.12.2019 (“**Insolvency Commencement Date**”) Mr. Amit Agrawal was appointed as IRP. However, in the 1st CoC meeting dated 15.02.2020, the CoC appointed Mr. Atul Kumar Kansal as the Resolution Professional replacing the IRP Mr. Amit Agrawal. The appointment of RP was confirmed by this Tribunal *vide* its order dated 02.03.2020.
- 1.3. The Corporate Debtor owns a land measuring 5.868 acres in Village Sarai Khwaja Tehsil, district Faridabad and a project named Crown Abacus Park consisting of 2 towers for commercial/ retail activities is being developed.

2. Collation of claims by RP

- 2.1. The Applicant submits that the IRP made public announcement on 11.12.2019 in Financial Express (*English Edition*) and Jansatta (*Hindi Edition*) 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 23.12.2019. The IRP collated the claims and formed the CoC on 03.01.2020.



2.2. The details of claims submitted are as follows:

a. List of claims received from Financial Creditor:

Sr. No.	Name of Financial Creditor	Amount claimed by the Creditor in INR	Amount admitted by the Resolution Professional in INR
1.	Richa Fashion Pvt. Ltd.	5,58,28,837	5,58,28,837
2.	Real Estate Allottees	314,80,53,663	215,56,85,436
	Total	320,38,82,500	221,15,14,273

b. List of claims received from Unsecured Financial Creditors:

Sr. No.	Name of Financial Creditor	Amount claimed by the Creditor in INR	Amount admitted by the Resolution Professional in INR
1.	Pritam Singh Taneja	1,32,04,288	1,27,87,043
2.	Hapur Motor Finance Private Limited	2,89,63,087	2,53,11,714
3.	Edge Motion Controls Pvt. Ltd.	62,31,172	-
4.	Mr. Puneet Jain	80,00,000	-
	Total	5,63,98,547	3,80,98,757

c. List of claim received from Operational Creditors (other than workers and employees):

Sr. No.	Name of Operational Creditors	Amount claimed by the Creditor in INR	Amount admitted by the Resolution Professional in INR
1.	Excise and Taxation Officer – Cum Assessing Authority Faridabad	1,57,76,168	1,57,76,168



2.	Haryana Real Estate Authority – Panchkula	86,000	86,000
3.	Goyal Metal and Hardware House	36,59,676	21,95,396
4.	Jivayush Constructions	46,67,489	0
5.	S R Enterprises	9,54,880	0
	Total	2,51,44,213	1,80,57,564

d. List of claims from employees or workmen:

Sr. No.	Name of Employees	Amount claimed by the Creditor in INR	Amount admitted by the Resolution Professional in INR
1.	Ashish Gupta	6,40,733	5,70,733
2.	Vikas Gandhi	7,61,100	0
3.	Naveen Hans	2,20,614	1,27,638
	Total	16,22,447	6,98,371

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

Particulars	Date of CoC Meeting
1 st CoC Meeting	15.02.2020
2 nd CoC Meeting	03.04.2020
3 rd CoC Meeting	20.06.2020
4 th CoC Meeting	20.07.2020
5 th CoC Meeting	29.08.2020
6 th CoC Meeting	10.10.2020
7 th CoC Meeting	23.11.2020
8 th CoC Meeting	05.12.2020



3. Valuation of Corporate Debtor

The appointed registered valuers have submitted their reports providing the fair value of the Corporate Debtor as Rs. 196,02,00,000/- (Rupees One Hundred Ninety-Six Crore Two Lakh only) and liquidation value of Rs. 156,52,00,000/- (Rupees One Hundred Fifty-Six Crore Fifty-Two Lakh only) as per Form-H annexed with the application as Annexure-25.

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 on 20.05.2020 in Financial Express and Jansatta for inviting Expression of Interest (“**EoI**”) whereby Prospective Resolution Applicants (**PRAs**) were invited to submit the EoI for submitting a resolution plan of the Corporate Debtor on or before 15.06.2020 which was further extended till 10.07.2020.

4.2 Pertinently, in the present case, the CoC in its 3rd meeting held on 20.06.2020, set out certain parameters for eligibility criteria for a PRA to submit a Resolution Plan. As per the Minutes of the 3rd meeting of CoC, it is stated that the entire EMD amount shall be waived off in case an Association of Allottees (**AoA**) come forward as a PRA and if the AoA is formed prior to 03.01.2020 and at least 51% of the allottees who are members of CoC are the members of AoA. Minutes of the 3rd CoC meeting dated 20.06.2020 is attached with the application as Annexure A7.

4.3 Pursuant to it, the RP received 4 EoIs from the following PRA’s:

a. Crown Abacus IT Park Association, a society registered

Page 7 of 30



under Society Registration Act (Consists of allottees of Crown Realtech Private Limited).

- b. Pioneer Consortium (Consortium of Pioneer Factor IT Infradevelopers Private Limited and Haldiram Products Private Limited)
- c. Cimco Consortium (Consortium of Cimco Projects Limited, RAS Development Private Limited and Sadhna Broadcast Limited)
- d. Amolik Housing Private Limited

The Earnest Money Deposit (**EMD**) amount of Rs. 15,00,000/- (Rupees Fifteen Lakhs only) was furnished by all the PRA's mentioned above except Crown Abacus IT Park Association as it fulfilled the condition as stated *supra* para 4.2. The Resolution Plan was invited on 25.07.2020 and the last date for submitting the same in sealed envelopes by the PRAs was 24.08.2020 which was further extended to 30.09.2020.

4.4 Thereafter, in the 6th CoC Meeting held on 10.10.2020, it was apprised by RP to the members of CoC that resolution plan was received from the only PRA, *viz.* **Crown Abacus IT Park Association**. Further, the sealed envelope containing the Resolution Plan was opened and discussed and the RP sought for certain clarifications from the PRA.

4.5 The 7th CoC Meeting was held on 23.11.2020 and the CoC asked the Resolution Applicant to submit its amended Resolution Plan with respect to the observations made by the RP in email dated 20.10.2020. In the 8th CoC Meeting held on 05.12.2020, the Resolution Plan submitted by Crown Abacus IT Park Association, was approved by 96.38% voting in favour of the Plan. Results of



e-voting conducted in 8th meeting of CoC as circulated on 09.12.2020 is attached with the application as 'Annexure A-22'.

- 4.6 Pursuant to Regulation 36B sub-regulation 4A of IBBI (CIRP) Regulations, 2016, the Request for Resolution Plan (RFRP) states that the Successful Resolution Applicant (SRA) shall provide a Performance Guarantee of INR 5,00,000/- (Rupees Five Lakhs only) in favour of Corporate Debtor. In compliance of this condition, the SRA has provided the Performance Bank Guarantee (PBG) of Rs. 5 Lakhs. It is submitted by the RP that PBG has been renewed time and again. Further, the RP is hereby directed to report compliance and submit a copy of the duly renewed PBG, coterminous with the tenure of Resolution Plan, within one week from the date of this order.
- 4.7 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-25'.
- 4.8 That 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 Resolution Applicant Crown Abacus IT Park Association as approved by the Committee of Creditors of the Corporate Debtor with 96.38% voting under section 30(4) of IBC, 2016 in the 8th Meeting of CoC held on 05.12.2020 and the application for approval of the resolution plan by this Adjudicating Authority was filed by the RP on 12.12.2020.



5. Details of Resolution Applicant and Payment Schedule

- 5.1 As per the plan, the SRA i.e Crown Abacus IT Park Association is an association of about 225 Real Estate Allottees/ Claimants / Financial Creditor of Crown IT Park. It was registered as a society on 25.12.2019 with the registration number HR-019-2019-03181.
- 5.2 The SRA proposes to target to complete the construction of towers B1 and B2, so as to accommodate the existing unit buyers whose claims have been admitted. The SRA also proposes to revive, reconstruct and complete the entire project.
- 5.3 The activity timeline for implementation of the Resolution Plan is as tabulated below:

Activity Timeline (Days): Taking effective date as the date of the NCLT Order, the duration of the Plan is 12 months with a grace period of 6 months

S. No.	Time in Resolution Plan	Activity Planned
1	Quarter-1	Finalization of all consultants/ contractors, mobilization and advance for material procurement.
		Place order for equipment like lifts, transformers, DG sets, Electrical Panels, STP for Tower B-1 and B-2.
2	Quarter-2	Civil, Internal Electrical, HVAC, Plumbing and Fire Fighting works. Installation of equipment like lifts, transformers, DG sets, Electrical Panels, STP, OHT, Internal



		and External Painting, glazing, etc. Expansion joints, cabling, external development, finishing and cleaning, testing, commissioning. Completion and handing over of the Tower- B1
3	Quarter-3	Civil, Internal Electrical, HVAC, Plumbing and Fire Fighting works. Installation of equipment like lifts, transformers, DG sets, Electrical Panels, STP, OHT, Internal and External Painting, glazing, etc. Expansion joints, cabling, external development, finishing and cleaning of the Tower- B2.
4	Quarter-4	Testing, commissioning, completion and handing over of the Tower- B2
5	Quarter-5 & 6	As a grace period in case any contingency arises.

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

6.1. 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 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.	Clause 8.7 of the Resolution Plan at Page No. 357 of the application.



Clause of sec. 30(2)	Requirement	How dealt with in the Plan
		<p>The estimated CIRP cost is Rs. 150 Lakhs. Resolution Applicant proposes the payment of CIRP cost on actual basis under upfront payment and has made a sufficient provision for estimated CIRP cost under the proposed consideration (Page No. 353 of the application). The SRA undertakes to pay the actual cost of CIRP till the date of approval of the Plan.</p>
(b)	<p>(i) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than the amount payable to them in the event of liquidation u/s 53; or</p> <p>(ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall be not less than amount that would have been paid to such creditors, if the amount</p>	<p>Clause 8.11, 8.12 and 8.17 at Page No. 361- 363 of the application.</p> <p>"According to the provisions of Section 30 of the IBC read with Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the liquidation value due to operational creditors shall be provided before any payment to other creditors.</p> <p>In the present case, the Claims</p>



Clause of sec. 30(2)	Requirement	How dealt with in the Plan
	<p>to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher and</p> <p>(iii) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.</p>	<p>of real estate Allottees secured/unsecured and financial creditors are more than the assessed liquidation value, hence the liquidation value available to all other operational creditors-stakeholder shall be "Nil".</p> <p>However, the SRA proposes to Pay Rs. 47 Lakhs to operational creditors within 6 months of approval of the plan by Adjudicating Authority and shall be paid in priority over financial creditors.</p> <p>One secured financial creditor M/s Richa Fashion Private Limited and one unsecured financial creditor M/s Hapur Motor Finance Private Limited have voted against the resolution plan and the SRA proposes to pay 100% of their claim within 36 months of approval of resolution plan.</p>
(c)	Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Clause 11.1 of the resolution plan at Page No. 377-378 of the application.



Clause of sec. 30(2)	Requirement	How dealt with in the Plan
		On approval of resolution plan, new management shall be appointed by SRA. Further, a team of experts will work under the direct supervision and control of the new management.
(d)	Implementation and Supervision of Resolution Plan.	<p>Chapter X of the Resolution Plan at Page No. 373-376 of the application.</p> <p>After the approval of Resolution Plan, a Monitoring Committee shall be formed. The Monitoring Committee would include three (3) representatives of SRA, one (1) representative of CoC and the Resolution Professional.</p>
(e)	Plan does not contravene any of the provisions of law for the time being in force.	<p>Clause 6.15 of the Resolution Plan at Page No. 346 of the application.</p> <p>The SRA confirms that this plan is not in contravention of of any the provisions of the applicable law.</p> <p>Further, the Resolution Professional has reviewed the</p>



Clause of sec. 30(2)	Requirement	How dealt with in the Plan
		plan and is satisfied with the contents of the plan and confirms that the plan complies with the applicable laws.
(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;	Clause 8.4 of the Resolution Plan at Page No. 354 of the application. SRA proposes to sell unsold inventory in real estate project of the Corporate Debtor for partly funding the construction and development cost of the project.
(ba)	restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	No merger, amalgamation or demerger is envisaged under the Resolution Plan



Regulation 37(1)	Requirement	How dealt with in the Plan
(c)	the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;	No such action is proposed under the Resolution Plan. Clause 5.2 Point No. 21 of Resolution Plan envisages the cancellation of earlier issued capital and issue of fresh capital.
(ca)	cancellation or delisting of any shares of the corporate debtor, if applicable;	Not Applicable
(d)	satisfaction or modification of any security interest;	Not Applicable
(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;	Clause 6 at Page No. 340- 344 of the application
(g)	extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Clause 6 at Page No. 340- 344 of the application
(h)	amendment of the constitutional documents of the corporate debtor;	Clause 2.2 of the resolution plan at Page No. 318-319 of the application.
(i)	issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Clause 10.3 (3) at Page No. 374 of the application. Fresh Capital of Rs. 7.50 Lakh is proposed to be issued to the SRA.
(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 CD and handover the units to allottees



Regulation 37(1)	Requirement	How dealt with in the Plan
(k)	change in technology used by the corporate debtor; and	Not Applicable
(l)	Obtaining necessary approvals from the Central and State Governments and other authorities.	Within 12 months. <i>(Chapter XIII of the resolution plan at Clause 13 at Page 380 of the Application)</i>

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

Regulation	Requirement	How dealt with in the Plan
38(1)	(a) The amount payable to the operational creditors under a resolution plan shall be paid in priority over financial creditor.	Clause 8.11, 8.12 & 8.17 of the resolution plan at Page No. 361-363 of the application. (within 6 months from approval of resolution plan)
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.	Clause No. 6.10 of the Resolution Plan at Page No. 344 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.	Clause 6.21 of Resolution Plan at Page No. 347 of the application.



Regulation	Requirement	How dealt with in the Plan
38(2)	A resolution plan shall provide:	
	(a) the term of the plan and its implementation schedule;	Clause No. 10.1 of the resolution plan at Page No. 373 of the application and Chapter XII of the resolution plan at Page No. 379 of the application. (Project completion period 12 months plus grace period 6 months)
	(b) the management and control of the business of the corporate debtor during its term; and	Clause No. 11.1 of the resolution plan at Page No. 377-378 of the application
	(c) Adequate means for supervising its implementation	Monitoring Committee shall be constituted and it will have 3 representatives of resolution applicants, one of the representative COC and Resolution Professional. Refer Clause 10.4 of the resolution plan Page No. 375 of the at application.
38(3)	A resolution plan shall demonstrate that-	
	(a) it addresses the cause of default;	Chapter V of the resolution plan at clause 5.1 at Page No. 330-339 of the application.
	(b) it is feasible and viable;	Clause 6.18 of the resolution plan at Page No. 346 of the application.
	(c) it has provisions for its effective implementation;	Clause No. 10.3 of the resolution plan at Page No. 374-376 of the application.
	(d) it has provisions for approvals required and the	Chapter 13 of the resolution plan at Page No. 380-382 of the



Regulation	Requirement	How dealt with in the Plan
	timeline for the same; and	application.
	(e) the Resolution Applicant has the capability to implement the resolution plan.	Chapter III of the resolution plan at Para 4 of clause 13 at Page No. 321-323 of the resolution plan.

6.2. Further it is submitted that the date of expiry of 180 days of the CIRP was 14.09.2020. RP had sought for exclusion of the CIRP period from 23.03.2020 to 30.06.2020 (*on account of Covid*) and an extension of 90 days starting 14.09.2020. This extension of 90 days has been allowed by this Adjudicating Authority vide order dated 25.09.2020 and the order is annexed to the application as 'Annexure A-13'.

6.3. The Applicant submits that the SRA has submitted an affidavit in regard to the eligibility under section 29A of the Code, as required by Regulation 39(1)(a) of the CIRP Regulations. The same has been reiterated in Clause 6.13 of the Resolution Plan by the SRA.

6.4. 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-25' at page 661.

7. Details of Resolution Plan/ Payment Schedule

7.1. The Applicant submits the relevant information about the budgeted expenditure and sources of funding as proposed by the SRA, under the said Resolution Plan which is tabulated as under:

BUDGETED EXPENDITURE



Sr. No.	Particulars	Amount (Rs.)
1.	Expected expenditure for the construction of Tower-B1	20,30,00,642
2.	Expected expenditure for the construction of Tower-B2	44,84,83,638
3.	Provision for assured returns to be paid to allottees	52,50,00,000
4.	CIRP Cost (approximately)	1,50,00,000
5.	Provision for Secured Financial Creditors	5,58,28,837
6.	Provision for Unsecured Financial Creditors	3,80,98,757
7.	Provision for Operational Creditors	7,00,000
8.	Provisions for Statutory Dues (Central Govt/ State Govt/ Local Authorities)	40,00,000
9.	License Renewal and Statutory occupation cost	4,00,00,000
10.	Provisions for administrative expenses and legal expenses	3,00,00,000
11.	Refund of upfront seed capital with interest @ 18% p.a.	11,80,00,000
12.	Provisions for contingences	7,27,00,613
	TOTAL	155,11,12,487

The nature of funds proposed to be raised by the SRA and sources of Funds are extracted below:

PROPOSED FUNDING PLAN



Sr. No.	Particulars	Amount (Rs.)
1.	Up front infusion by the Resolution Applicant (Debt)	10,00,00,000
2.	Up front infusion by the Resolution Applicant in the form of Equity	7,50,000
3.	Receivables from allottees of the Tower-B1 and B-2 as per the information provided by Resolution Professional	34,63,62,487
4.	Sale of unsold inventory of the Corporate Debtor admeasuring 1,00,000 sq. ft. @ Rs. 5,000/- per sq. ft.	50,00,00,000
5.	Allocation of 80% of total 1700 car parking slots @ avg. price of Rs. 4,00,000/- per parking.	54,40,00,000
6.	Branding	6,00,00,000
	TOTAL	155,11,12,487

7.2. The **Resolution plan size is ₹155,11,12,487/-** (Rupees One Hundred Fifty-Five Crores Eleven Lakhs Twelve Thousand Four Hundred Eighty-Seven only). The Resolution Plan defines **“Effective Date”** as the date on which the Adjudicating Authority approves the Resolution Plan.

8. 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 clause 11.1(1) to (4) at page 377 of the Application.



9. Details on fraudulent and avoidance transaction

Any proceeds/ amount realized pursuant to Fraudulent and avoidance transaction application under sections 43, 45, 50 & 66, filed before this Adjudicating Authority shall be receivable by the SRA as per Clause 5.2.20. of the Resolution Plan. Further, PUFÉ transaction cases, if any, shall be pursued by the SRA.

10. Waivers, Reliefs and Exemptions

10.1 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.

11. IA (IB) No.5006/(PB)2021

11.1 This application has been filed under section 60 (5) read with section 31 of IBC, 2016, by Mr. Amarjit Singh, for raising objections against the Resolution Plan. The Applicant herein is a member of the suspended Board of Directors of the Corporate Debtor.

11.2 This application is filed seeking the following reliefs:



- i. *Allow the Present Intervening Application and stay application of the Resolution Professional for approval of Resolution Plan till the disposal of this application.*
- ii. *Set Aside the decision of the COC's approval of the Resolution Plan as submitted by Association of allottees.*
- iii. *Direct COC to reconsider the Resolution Plan approved and invite additional resolution plans for maximization of value and which are compliant, implementable, commercially viable etc.*
- iv. *Pass such other orders as may be deemed appropriate in the interest of justice and keeping in view the objective of the Code.*
- v. *And for this act of kindness, the applicant as in duty bound, shall ever pray.”*

11.3 It is contended by the Applicant, who is a member of the suspended Board of Directors of the Corporate Debtor, that no opportunity was given to the largest shareholder of the Corporate Debtor i.e. Crown Technobuild LLP to submit a plan and the current Resolution Plan is not in compliance with the provisions of IBC, 2016 and lacks feasibility and viability. The applicant also alleges that the CoC wilfully reduced the performance bank guarantee amount for the SRA to Rs. 5,00,000 (Rupees Five Lacs) as against Rs. 5,00,00,000 (Rupees Five Crores) for any other PRA.

11.4 The applicant further alleges that the Resolution Plan as approved by CoC is non implementable, non-compliant, without commercial wisdom, illegal & bound to fail with serious consequences on allottees, if not sent for reconsideration and also allowing & encouraging more competing resolution plans.

11.5 In reply to the contentions raised by the applicant, the Respondent i.e. Resolution Professional submitted that the applicant's request for submitting Resolution Plan was not considered by the



Committee of Creditors and Resolution Professional as there was a substantial delay on the part of Crown Technobuild LLP in participating in the EOI process.

11.6 Further the Resolution Professional states that the Resolution Applicant is an association of the Real Estate Allottees consisting of allottees whose claims amount to approximately Rs. 155.97 crores, that has been admitted by the RP during CIRP, also belongs to the class of creditors and therefore this amount of Rs. 5 lacs should be read with the amount of claim of the real estate allottees. This was the justification that was considered by the CoC while fixing the performance security amount for the resolution plan by the association of the claimants.

11.7 The Resolution Professional also replied upon clause 8.18.10 of the Resolution Plan to show that the plan is implementable. The relevant part of Clause 8.18.10 is as extracted below:

“Further, if any deficit/ shortfall occurs after implementation of this resolution plan, amount proposed in this resolution plan towards assured returns shall stand modified accordingly.”

11.8 The Resolution Professional further submits that the Applicant herein is a Respondent in an application of Preferential and Fraudulent Transaction i.e., IA No. 110 of 2021, IA.No. 469 of 2021 as well as IA No. 518 of 2021.

11.9 Be that as it may, at this juncture, we rely upon the Judgement passed by Hon’ble Supreme Court in the matter of “Vallal RCK versus M/s Siva Industries and Holdings Limited and Others, Civil Appeal Nos. 1811-1812 of 2022” whereby the Hon’ble Apex Court has answered the question as to whether ‘the adjudicating authority (NCLT) or the appellate authority (NCLAT) can sit in an



appeal over the commercial wisdom of the Committee of Creditors (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.....”

- 11.10 In the light of the above-quoted judgement, it is clear that the “Commercial wisdom of CoC” is given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyse or evaluate the commercial decision of the CoC.
- 11.11 The Resolution Plan of ‘Crown Abacus IT Park Association’, the Successful Resolution Applicant for the Corporate Debtor has been upvoted by CoC with a 96.38% majority and this Adjudicating Authority cannot interfere in the same.
- 11.12 Accordingly, **IA (IB) No.5006(PB)/2021** stands **dismissed**.

12. Findings

- 12.1. On hearing the submissions made by the Ld. Counsel for the Resolution Professional and after perusing the record, we find that



the Resolution Plan has been approved by the CoC with 96.38% 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.

12.2. The plan has been upvoted by the Authorised Representative of Class of Creditors i.e. Allottees under real estate projects, Mr. Anil Tayal (95.82% voting share in the CoC). Hence, this plan has been approved by a considerable percentage of Home Buyers. It is submitted by Mr. Arvind Nayyar, Ld. Counsel for the SRA that provisions have been made for all the pending IA's pertaining to claims of Homebuyers and other creditors. Their interest has been taken care of in the Plan and whatever may be the decision of this Bench in the pending IA's, the SRA shall abide by it. As time is of essence in IBC, 2016, we move ahead with the approval of the Resolution Plan.

12.3. 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.

12.4. The reliefs, concessions and waivers sought by the SRA will be dealt with strictly as per law.

12.5. 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.



12.6. 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.

13. **Orders**

13.1. Subject to the observations made in this Order, the Resolution Plan in question is hereby **approved. The Resolution Plan shall form part of this Order.**

13.2. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Debtor Company shall come into force with immediate effect.

13.3. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.

13.4. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.

13.5. Accordingly, **IA (IB) No.5687/(PB) 2020** is allowed.

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

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

13.8. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved



Resolution Plan.

- 13.9. The Resolution Professional is further directed to hand over all records, premises/ factories/documents and all other relevant records, available with it to the Resolution Applicant to finalize and co-operate on the further line of action required for starting the operation and implementation. The Resolution Applicant shall have access to all the records and premises through the Resolution Professional to finalize the further course of action required for starting and running the operations of the Corporate Debtor.
- 13.10. 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.
- 13.11. Certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

13.12. **To summarise:**

- a. IA-5687/2020 which is for approval of Resolution Plan is **allowed**.
- b. IA-5006/2021 which is an objection to the Resolution Plan filed by a member of the suspended Board of Directors is **dismissed**.

Pending IA's:

- c. IA-3787/2021, IA-254/2022, these applications fall under the 'C6 Category - Real Estate Allottee Related Party'. This Bench, on 29.11.2022, passed an order stating that these applications will be taken up, after deciding the Resolution Plan application. Hence, these applications IA-3787/2021, 254/2022 will be heard and decided accordingly.



d. IA-794/2021, IA-2027/2022, IA-4858/2022, 5217/2022, 5277/2022, 5278/2022, 5301/2022, these applications shall be heard and decided on merits in the due course keeping in view para 11.2 of this order and clause 8.6.iii. and clause 8.18.10 of the Resolution Plan.

Sd/-

**RAMALINGAM SUDHAKAR
PRESIDENT**

Sd/-

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