

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : COURT-IV

IA-2374/2021
in
C.P.(IB)-4469(MB)/2019

Under Section 30(6) of the Insolvency and
Bankruptcy Code, 2016.

Application moved by:

Mr. Jayesh Sanghrajka

...Resolution Professional

In the matter of

IDBI Trusteeship Services Limited

...Financial Creditor

Vs.

Ornate Spaces Private Limited

...Corporate Debtor

Order Pronounced on : **06.10.2023**

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Applicant(s)

: Mr. Vikram Nankani, Sr. Counsel a/w
Mr. Nausher Kohli, Mr. Ashish Parwani,
Mr. Dikshat Mehra, Mr. Chintan
Gandhi, Ms. Anjali Dhoot i/b Rajani
Associates, Advocates.

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For Resolution Applicant : Mr. Mustafa Doctor, Sr. Counsel a/w
Mr. Parag Sawant, Advocates.

For Objectors : Mr. Nimay Dave a/w Mr. Rashid
Boatwalla and Ms. Samiksha Rajput,
Advocates for Edelweiss Investment
Private Limited.
Mr. Zaid Mansuri i/b DSK Legal,
Advocate for ACRE.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an Application filed on 12.10.2021 under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'the Code') by the Resolution Professional (RP) on behalf of the Committee of Creditors seeking approval of the Resolution Plan submitted by the Resolution Applicant, which is approved by 80.86% of the voting share of the members of the Committee of Creditors (hereinafter referred to as 'CoC') of the Debtor Company viz. Ornate Spaces Private Limited (hereinafter referred to as 'Corporate Debtor').
2. The facts leading to the Application are as under:
 - i. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated vide an admission order dated 29.06.2020 of this Court in C.P.(IB)-4469(MB)/2019 under Section 7 of the Insolvency and Bankruptcy Code 2016 filed by IDBI Trusteeship Services Limited on behalf of Piramal Capital and Housing Finance Limited (Debenture Holder), and Mr. Jayesh Sanghrajka (Reg. No.: IBBI/IPA-001/IP-

P00216/2017-18/10416) was appointed as Interim Resolution Professional (IRP) and later on was confirmed as RP by CoC in its first meeting held on 31.07.2020.

- ii. The IRP published a public announcement in Form-A in 'Free Press Journal' (*English*) and 'Navshakti' (*Marathi*) newspapers on 03.07.2020 inviting claims from the creditors, workers/employees of the Corporate Debtor and from government bodies. IRP constituted the Committee of Creditors (CoC) based on the claims received by him.
- iii. The RP convened second CoC meeting on 05.09.2020 wherein the CoC resolved to approve the criteria for the invitation of Expression of Interest (EoI) for submission of Resolution Plan. Thereafter, RP published the Form G in the newspapers on 12.09.2020.
- iv. RP received six (6) EoIs, the same were placed in the third CoC meeting. Request for Resolution Plan (RFRP) along with performance security and Evaluation Matrix were approved in the same meeting. However, no Resolution Plan was received, hence, fresh Form G was published and three (3) EoIs received.
- iii. The Resolution Professional received Resolution Plan(s) from M/s. Ashdan Properties Private Limited with EMD and from M/s. Shree Krishna Structures Private Limited without EMD. Again, CoC approved for issuing fresh Form G with reduced EMD and Performance Guarantee. Thereafter received four (4) resolution plans. CoC reviewed all the resolution plans and requested to modify their plans.
- iv. As per the Valuation Reports of the Registered Valuers, the Fair Value and Liquidation Value of the Corporate Debtor are given as follows:

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#	Fair Value	Liquidation Value
1.	55,21,72,400/-	42,07,02,900/-
2.	57,48,00,000/-	43,79,50,000/-

The Average Fair Value and Liquidation Value as per Regulation 35 determined are as under:

1. Average Fair Value is ₹56,34,86,200/-.
 2. Average Liquidation Value is ₹42,93,26,450/-.
- v. After ascertaining the feasibility and viability of the modified three resolution plans submitted by the Resolution Applicants, the Resolution Plans were put to vote by CoC members in its 16th meeting held on 31.08.2021 and on 01.09.2021, and finally the Plan submitted by Ashdan Properties Private Limited was approved with 80.86% voting share of the CoC. The relevant resolution is reproduced below:

“RESOLVED THAT pursuant to provisions of the 30(4) of the Insolvency and Bankruptcy Code, 2016, the Committee of Creditors be and hereby approves the Resolution Plan dated August 28, 2021 submitted by Ashdan Properties Private Limited for Ornate Spaces Private Limited (Corporate Debtor).

RESOLVED FURTHER THAT the Resolution Professional be directed to file appropriate application with the Hon'ble Adjudicating Authority to seek approval of the said Resolution Plan under Sec 31(1) of the Insolvency and Bankruptcy Code, 2016.”

- vi. The Applicant further states that the approved resolution plan is compliant with the requirements of Section 30(2) of the Code read with Regulation 38 of IBBI (CIRP) Regulations, 2016 and Resolution Applicant is eligible to submit resolution plan and it does not fall under any of the category as mentioned in Section 29A of the Code.

- 2.1 After filing of the IA-2374/2021 seeking approval of the Resolution Plan submitted by *Ashdan* which was approved by the CoC in its 16th meeting, this Bench passed various orders on 02.05.2023 in pending applications challenging the approval of the resolution plan. After considering the impact of these orders, by the CoC and the Resolution Applicant (RA), the RA proposed an Addendum along with an Explanatory Note to the Addendum on 21.06.2023 (*Annexure G @ pg. 70 of the Additional Affidavit of the R.P. in I.A. 2374 of 2021 dated July 4, 2023*). In the 20th meeting of the CoC, the Addendum was rejected and the stake-holders filed various application(s) challenging the approval of the Resolution Plan. However, in order to give effect to the directions of this Bench, the counsel for the Resolution Applicant orally submitted on 07.08.2023 that the Resolution Applicant is ready to bear the entire additional financial impact of ₹41.00Cr., subject to keeping open the probability of negotiations between secured financial creditors and Resolution Applicant.
3. The Resolution Applicant viz. Ashdan Properties Private Limited (APPL) is a company incorporated in Maharashtra on 24.01.2020, and is part of Solitaire Group. It is engaged in the business of Real Estate Developments.
- 3.1 The Resolution Applicant has confirmed that -
- i. Its connected persons are not disqualified under Section 29A of the Code and will continue to be not disqualified as of the Effective Date i.e. date of NCLT order approving the plan. Also, a confirmation has been given by way of an affidavit annexed along with the Resolution Plan.

- ii. The Resolution Applicant or any of its related parties have not failed to implement or not contributed to the failure of implementation of any other resolution plan approved under the IBC 2016 by the Adjudicating Authority at any time in the past.
- iii. The Resolution Applicant or any of its connected persons has not withdrawn from any resolution plan after its approval by the relevant committee of creditors.
- iv. Present Resolution Plan is not in contravention of provisions of the Applicable Laws for the time being in force and is in strict compliance with the IBC and the CIRP Regulations.

4. Resolution Plan for the Corporate Debtor:

4.1 Summary of the Financial Proposal

The Resolution Applicant proposes to take over the management and ownership control of the Company by acquiring 100% shareholding of the Corporate Debtor. The Resolution Applicant proposes a total consideration of **₹329.28 crores (Rupees Three Hundred Twenty-nine crore and Twenty-eight lakh only)** to all the stakeholders to be paid within a period of Five (5) years from the effective date of this resolution plan.

The structure of the payment to the stakeholders is given hereunder:

(Amt Rs. in crores)						
Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)

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1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	-	-	-	-
		(ii) who voted in favour of the resolution plan*	488.58	488.58	329.17	67.37
		Total[(a) + (b)]	488.58	488.58	329.17	67.37%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	8.44	5.70	0##	0
		(ii) who voted in favour of the resolution plan	88.16	88.15	0.09	0.11
2A	Homebuyers	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above:				
		(i) who did not vote in favour	247.97	137.40	0##	0

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		of the resolution Plan				
		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	344.57	231.25	0.10	0.04%
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above:				
		(i) Government	4.16	4.16	0.00	0.05
		(ii) Workmen	-	-	-	-
		(iii) Employees	-	-	-	-
		(iv) Other operational creditors	34.23	14.44	0.01	0.07
		Total[(a) + (b)]	38.39	18.61	0.01	0.05%
4	Other debts and dues -	Secured Creditors (a)				
		Other Creditors (b)	205.79	Note###	Note###	Note###
		Total[(a) + (b)]	205.79	-	-	-
Grand Total			1077.33	738.44	329.28	44.59%

Notes:

#The amount is estimated on the assumption that the developer will receive additional FSI for the project. Further, the Resolution Applicant's counsel had made an oral statement during the hearing dated August 7, 2023 where it has kept open the possibility of negotiation of sharing/absorbing a part of INR 41 crores resulting out of addition of 13 homebuyers and 8% interest to the claim amounts of the Homebuyers' class.

##The Resolution Applicant has proposed to give the units (area) to the homebuyers as per the terms of resolution plan read with the orders passed by Hon'ble NCLT on May, 02, 2023. An additional 13 homebuyers are now included as part of the Financial Proposal and their names will form part of Annexure B to the Financial Proposal. These additional homebuyers will be treated in a manner similar to the existing homebuyers who have already been recognized under the Resolution Plan. The names and details of the additional homebuyers is set out in Schedule 1 hereto. Pursuant to the order of Hon'ble NCLT dated 02.05.2023, in the matter of Home Kraft Avenues, the RP had revisited the claim and the amount to the extent of ₹6.33 Cr. is reduced from the admitted claim. All Homebuyers recognized under the Resolution Plan along with additional 13 homebuyers will get credit for an amount equivalent to the interest at the rate of 8% per annum

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from the date of the payment of the respective principal amounts paid by them under their respective letters of allotments or agreements, till 29th June, 2020, i.e. the CIRP commencement date.

###The Claim has been admitted on the basis of clause 4.1 of development agreement dated May 18, 2020, wherein it has been agreed that the developer shall handover 152 flats each consisting of 650 sq. ft. carpet area. The claim has been admitted subject to refund of Rs. 27,00,00,000 bank guarantee encashed/invoked by the society.

****Out of ₹329.17Cr. as provided in the plan, ₹27Cr. will be offered to SFC only if BG invocation amount is refunded by UTI Society.***

As per the resolution plan, CIRP Costs at actuals will be paid out upfront and in cash within the timelines as detailed under the Code pursuant to the approval of this Resolution Plan by the Adjudicating Authority. The Resolution Applicant / Corporate Debtor shall be entitled to recover the amount paid towards CIRP cost from the SFC Outlay on priority.

4.1.1 The dissenting Financial Creditors (i.e. those Financial Creditors who voted against or abstained from voting for the Resolution Plan approved by the CoC), as per Section 30(2) of the Code, are being paid an amount not less than an amount to be paid to them in accordance with Sec 53(1) in the event of Liquidation of the Corporate Debtor.

4.1.2 Payments to the Operational Creditors (Including Statutory Dues) and to Workmen and Employees have been given in priority of payment over financial creditors in terms of Regulation 38(1) of the CIRP Regulations. The Operational Creditors will be paid an amount of ₹1,00,000/- within 30 days from the date of approval of the Resolution Plan as full and final settlement (Clause 1.5.2 of the Resolution Plan @ Vol. 2 @ pg. 358 and 1(a)(i) of Financial Proposal @ Vol. 2 @ pg. 396);

4.1.3 The Operational Creditors have been paid an amount which is not less than the amount to be paid to such creditors in the event of liquidation of the Corporate Debtor under section 53 or the amount payable to such creditors, if the amount to be distributed under the resolution plan had been

distributed in accordance with the order of priority in sub-section (1) of section 53 of the Code, whichever is higher.

- Unsecured Financial Creditors will be paid an amount of ₹10,00,000/- within 30 days from the date of approval of the Resolution Plan as full and final settlement (*Clause 1.3 of the Resolution Plan @ Vol. 2 @ pg. 357 and 1(a)(ii) of Financial Proposal @ Vol. 2 @ pg. 396*);
- Secured Financial Creditors' debts will be settled by payment of 22% of Revenues (as defined) over the project tenure (*Clause 1.2. of the Resolution Plan @ Vol. 2 @ pg. 357 and Clause 1(a)(iii) of the Financial Proposal @ Vol. 2 @ pg. 396*). The outstanding debt of the Secured Financial Creditors shall be converted into Financial Instrument at a premium (Face Value and Premium to be agreed upon which Secured Financial Creditor) and shall be redeemed out of 22% of the Revenues. (*Clause 1(a)(iv) of the Financial Proposal @ Vol. 2 @ pg. 396*). The entire arrangement between the Secured Financial Creditors will be governed by the terms and conditions of the Resolution Plan, the Addendum dated August 28, 2021 r/w addendum dated 21.06.2023 to give effect to the orders passed by this Bench and the oral statement of the counsel for the Resolution Applicant made during the hearing dated August 7, 2023.
- The Resolution Applicant intends to deliver units to the homebuyers within four and half years from Commencement Date of the Project subject to the terms and conditions of Clause 5 of the Financial Proposal to the Resolution Plan (*Vol. 2 @ pg. 397*). By virtue of the order dated May 2, 2023 passed by this Adjudicating Authority in I.A. 291 of 2022 (*para 6.3*), Additional Affidavit of the Resolution Applicant dated July 4, 2023 (*para 3 and 4*) and

the oral statement of the counsel for the Resolution Applicant made during the hearing dated August 7, 2023, the homebuyers would be entitled to the benefit of deduction of the entire principal amount paid along with 8% interest from the date of payment of their respective principal amounts from total sale value as per the as per the terms and conditions of the Financial Proposal to the Resolution Plan. The Homebuyers have been given three options under the Resolution Plan read with the Financial Proposal. These are as follows:

- i. Homebuyers can accept delivery of completed premises subject to payment of Balance Consideration. (*Clause 5(a) of the Financial Proposal @ Vol. 2 @ pg. 397 of I.A. 2374 of 2021*);
 - ii. Homebuyers can also sell their allotted units / apartments subject to issuance of NOC by Resolution Applicant / Corporate Debtor (*Clause 5(c) of the Financial Proposal @ Vol. 2 @ pg. 397 of I.A. 2374 of 2021*)
 - iii. Homebuyers can avail the option to cancel the agreement and opt for a refund of actual consideration paid towards respective unit(s) (*Clause 5(m) of the Financial Proposal @ Vol. 2 @ pg. 397 of I.A. 2374 of 2021*)
- The members of UTI Employees Sai Samruddhi Co-operative Housing Society would get delivery of 152 units of 672 sq.ft of RERA carpet area (deemed equivalent to 650 sq. ft. MOFA carpet area) as per the terms and conditions of Clause 4 of the Financial Proposal to the Resolution Plan (*Vol. 2 @ pg. 397 of I.A. 2374 of 2021*)
 - All Financial Creditors who do not vote in favour of the Resolution Plan would be paid an amount which shall be equal to the amount to be paid to such Financial Creditors in accordance with sub-section (1) of Section 53 of

the IBC in the event of a liquidation of the Corporate Debtor and in accordance with the law laid down by the Hon'ble Supreme Court of India.

(Clause 1.7 of the Resolution Plan @ Vol. 2 @ pg. 358)

4.1.4 In order to successfully implement the Plan and meet the priority obligations (set out in Regulation 38(1) of Regulations) and upon all the assumptions being true and correct and all the fundamental conditions being met, the Resolution Applicant, shall allocate 22% of Revenues [“receivables from sale of unsold units (unsold units mean the units on which there are no claims / third party rights as on date) and balance amounts to be received from sold units (if any), excluding pass through charges as may be defined in the definitive documents to be executed between the Corporate Debtor with the Home Buyers / existing customers”] and the outstanding debt (if any) owed to the SFCs will be converted to Preference Shares (“Financial Instrument”) (“SFC Outlay”) which shall be subject to deductions towards meeting any obligations as stated in the assumptions and fundamental conditions, if any.

4.1.4 The shares held by the existing shareholders of the Company shall be extinguished. In the estimate of the Resolution Applicant, the Liquidation Value that would be payable to the shareholders, would also be NIL. Accordingly, the existing shareholders, whether equity or preference, shall not be paid any amount for the transfer, cancellation or reduction of their share capital and any claims in relation thereto shall stand extinguished without any payment or recourse.

4.1.5 The Resolution Applicant has submitted that once the payments set aside in the Resolution Plan have been paid in full in terms of the said Plan -

- i. all claims, debts and dues of the Creditors pertaining or related to the period prior to the CIRP commencement date shall stand satisfied and extinguished, and no such existing claim, debt or due shall subsist against the Corporate Debtor and the Resolution Applicant by any Creditor(s) unless such Claims are specifically admitted by the Resolution Professional or covered under the CIRP Cost. It is also submitted that in the event any Claim of the Operational Creditors is not submitted to the Resolution Professional prior to the approval of the Resolution Plan by the NCLT or such claim is rejected by the Resolution Professional or such Claim raised subsequently, however, pertains or related to period prior to the approval of the Resolution Plan by the NCLT, such Creditors will not be entitled to receive payments, if any, under the Resolution Plan with respect to such claims.
- ii. All the litigations/ proceedings by the creditors, whether in relation to admitted claims or not (whether present or future litigations) against the Company for the period prior to the takeover of the control and management of the Company by the Resolution Applicant, shall stand quashed and the Corporate Debtor shall no longer be required to make any payments and have no liabilities in relation to such litigations/ proceedings.

4.2 *Effective Date*

The Effective Date of the Resolution Plan shall be the date when the Resolution Plan is approved by this Tribunal.

4.3 *Term of Resolution Plan*

The Resolution Plan is valid for a term of Five years till all the payments are made to all the stakeholders as per the terms and conditions of the Resolution Plan. The obligations of the Resolution Applicant to implement the Resolution Plan shall become effective only from the Effective Date.

The Resolution Plan shall become binding on the Corporate Debtor and its employees, members, creditors, guarantors, Central Government, any State Government(s), any local authority and other stakeholders involved in the Resolution Plan on the Effective Date.

4.4 The Resolution Applicant has sought various reliefs and concessions as set out in the Resolution Plan (*Clause 9, 10 and 11 of the Resolution Plan @ Vol. 2 @ pg. 387 onwards*) from this Adjudicating Authority for issuing directions to regulatory and governmental authorities, ROC, homebuyers, MHADA, BMC etc. The Resolution Applicant has also sought reliefs and approval from RERA and revenue and tax authorities as well as certain other miscellaneous reliefs and concessions.

4.5 The Applicant has submitted that the Resolution Plan, as submitted by Ashan Properties Private Limited, approved with 80.86% voting of the members of the Committee of Creditors, has been examined and the Resolution Plan:

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- a. provides for payment of Insolvency Resolution Process Costs in a manner specified by the board in priority to the payment of other debts of Corporate Debtor;
- b. provides for payment of the debts of the Operational Creditors in such manner as specified by Regulation 38(1) of the IBBI (Insolvency Resolution Process for Corporate Persons Regulations) 2016;
- c. provides for management of the affairs of the Corporate Debtor after the approval of the Resolution Plan; and
- d. does not contravene any of the provisions of the law for the time being in force.

5. The Applicant/Resolution Professional further submits that -

5.1 Resolution Plan is not subject to any contingency and is filed before the expiry of the period of CIRP provided in Section 12 of the Code, as this Bench had granted an extension in the CIRP period vide its order dated 17.03.2023.

5.2 The Applicant has filed application along with Form 'H' prescribed under Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and has appended a tabular summary of Applicant's determination of compliance of the Resolution Plan with various provisions and regulations under the Code and CIRP Regulations.

Section of the Code /Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
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25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Relevant documents submitted alongwith EOI	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Affidavit of RA @ pg. 393 Vol. 2 of IA-2374/ 2021	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Affidavit of RA @ pg. 393 Vol. 2 of IA-2374/ 2021	Yes
Section 30(2)	Whether the Resolution Plan -		
	provides for the payment of insolvency resolution process costs?	1.4, Pg. 2 1.10, Pg.4	Yes
	provides for the payment to the operational creditors?	1.5, Pg. 2-3	Yes
	provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	1.7 & 1.8, Pg.3	Yes
	provides for the management of the affairs of the corporate debtor?	3.1, Pg. 7-12	Yes
	provides for the implementation and supervision of the resolution plan?	3.1.3, Pg. 7-10	Yes
	contravenes any of the provisions of the law for the time being in force?	3.2.3, Pg.12	No
Section 30(4)	Whether the Resolution Plan	Minutes of 16th CoC Meeting, 2nd Adjournment (01.09.2021)	Yes
	- is feasible and viable, according to the CoC? - has been approved by the CoC with 66% voting share?		
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation, according to the CoC?	Minutes of 16th CoC Meeting, 2nd Adjournment (01.09.2021)	Yes
Regulation 35A	Whether the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	8.4, Pg.20	Yes*

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Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	1.5 & 1.6, Pg. 2-3	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	1.1, Pg. 1	Yes
Regulation 38(1B)	Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.	1.9, Pg.4	No
	If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	1.9, Pg.4	NA
Regulation 38(2)	Whether the Resolution Plan provides:		
	the term of the plan and its implementation schedule?	2, Pg.2-6	Yes
	adequate means for supervising its implementation?	3.1.3, Pg. 7-10	
Regulation 38(3)	Whether the resolution plan demonstrates that –		Yes
	it addresses the cause of default?	1.11.1, Pg. 4-5	
	it is feasible and viable?	1.11.2, Pg.5	
	it has provisions for its effective implementation?	1.11.3, Pg.5	
	it has provisions for approvals required and the timeline for the same?	1.11.4, Pg.5	
	the resolution applicant has the capability to implement the resolution plan?	1.11.5, Pg.5	
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	8.4, Pg.20	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Received via RTGS on October 4, 2021	
* <i>The determination was not within the stipulated timelines primarily on account of the non-cooperation from the suspended Board of Directors of the CD in providing details/information to the Transaction Auditor. The RP had filed application u/s 19 of the Code in this regard.</i>			

6. We heard the Counsel and perused the material available on record.

- 6.1 After filing of present application seeking approval of the Resolution Plan u/s 31 of the Code, financial creditors falling under the class of “Home-Buyers”, who had voted against the plan as a class also, filed Interlocutory Application(s) seeking rejection of the plan, and these applications are being dismissed/partly allowed by us by order(s) passed in each of IA separately prior to date of this order. The principal objections to the Plan raised by various stakeholders were addressed by the Resolution Professional as well as Successful Resolution Applicant and are being summarized in the following paras for clarity.
- 6.2 The SRA has clarified vide addendum dated 21.06.2023 that the existing flat buyers shall be liable to pay towards cost of flats at MSP (Minimum Selling Price) as stipulated in Clause 18(a)(VII) r/w Clause 5(k) of the Financial Proposal contained in the Resolution Plan. The withdrawal of 5% discount in case of cancellation of flat is not inequitable as the Successful Resolution Applicant shall have to incur selling expenses for sale of such canceled flat and it was submitted that said discount is offered to the continuing homebuyers considering the estimated saving accruing to the SRA in such case. As regards inequitable treatment qua secured financial creditors and amongst class itself on issue of interest, this Bench had already mandated 8% interest from the date of payment of each instalment of principal amount, and deduction of this interest component from the amount payable towards the cost of flat, thereby removing inequity qua secured financial creditors and amongst class itself on issue of interest. It was also clarified that the reduction in the money to be received by the Secured Financial Creditor proposed in addendum dated 21.06.2023 shall not be pressed, however, the SRA shall reserve the right to persuade the Secured Financial Creditor to absorb the additional financial impact arising from the orders in Interlocutory Application passed by this Bench. It was also pleaded by the Objectors that the addendum dated 21.6.2023 was rejected by CoC as it could not muster requisite vote, accordingly, the original Plan cannot be approved as it does not take into consideration the effect of the order passed by

this Bench in various IAs. It was clarified by the SRA that the averments in the said addendum shall be binding on it and the Resolution Plan shall be implemented after incorporating modifications, except reduction in the money payable to the Secured Financial Creditors as proposed therein, in the CoC approved Plan.

6.3 Sai Samruddhi UTI Employees welfare Society (Society) also filed numerous Interlocutory Applications challenging the plan, and these applications are being dismissed us by order(s) passed in each of IA separately prior to date of this order.

6.3.1As regards utilization of maximum permissible FSI in Clause 4.4 of the Resolution Plan, we find that, vide clause 4 of the Development Agreement dated 18.05.2010, *“The Society hereby grants development rights to the Developer in respect of the said Property more particularly described in the Second Schedule hereunder written, to construct thereof at the Developer’s own entire costs and consequences by utilizing maximum FSI not exceeding 4 in any case, one or more new multi-storied buildings comprising of wing/s as may be permissible and as the Developer may deem fit for the consideration and on the terms and conditions as contained hereinafter”*. Accordingly, there cannot be any dispute in so far as utilization of FSI up to 4 is concerned. As regards utilization of FSI beyond 4, in case it is available, it was clarified by the SRA that the FSI over and above 4 shall be available only after payment of additional charges to the appropriate authority, and in case the SRA proceeds to avail that, such availment shall be in concurrence with the Society.

6.3.2As regards issue of plan seeking refund of ₹27,00,00,000/-, being amount of Bank Guarantee paid to the Society upon invocation of Bank Guarantee on account of failure of Corporate Debtor to fulfil its obligations under the Agreement with them, we find that the said money was to be utilized towards construction of the flats for the members of the Society, which has not been

utilized by the Society so far towards its intended purpose. The clause 19 of the Development Agreement dated 18.05.2010 reads as “ *It is further agreed that in the event of the Bank Guarantee being enforced by the Society the amount shall be utilized for completion of the Society’s area as per the sanctioned Plans and the Society shall maintain the regular account in respect thereof. Upon completion of the construction of Society’s area, an account shall be submitted by the Society to the Developer to refund and excesses and or to claim any deficit amount. In the event of the Bank Guarantee being enforced, the development rights to the Developer through this agreement would be stayed till the Society completes its area and gets the Occupation Certificate and the Developer to co-operate in this.*” Accordingly the Society can not lay its hands on such money, more so, when the Plan contemplates delivery of constructed flats to the members. Accordingly, the stipulation in the Resolution Plan, in so far as it seek refund of Rs. 27,00,00,000/- from the Society is not violative of any provision.

6.3.3 As regards other issues, we find that in terms of Clause 4.2 of Development Agreement, the developed area over and above the Owners/Society area was made available as the “free sale area” or “the Developer area” which shall include residential premises, commercial premises, shops and parking and the Developer was given right to deal with that area subject to fulfillment of its obligation and will be dealt with by the Developer subject to the Clause 3 of the agreement. Further Clause 36 of the agreement permits the Developer to raise finances by creating charges etc. on the free sale component i.e. on the Developer constructed area as the Developer may deem fit. Further, Clause 14 of Tripartite Agreement dated 15.03.2010 entered between the Corporate Debtor, the Society and MHADA also permits the Developer/Society to create mortgage in respect of the saleable

component by obtaining NOC from MHADA. Accordingly, we do not find any substance in the objection of the Society.

- 6.4 It is clarified that the objections of the Society/Objectors have been dealt with separately also vide order passed in each of their IAs, and this Order is passed after taking into consideration our findings in those orders also.
7. The Resolution Plan, filed vide IA-2374/2021 by RP, submitted by *Ashdan Properties 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 the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
- 7.1 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.
- 7.2 The moratorium under Section 14 of the Code shall cease to have effect from this date.
- 7.3 The Applicant and the Monitoring 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.

- 7.4 The Resolution Applicant (RA) shall obtain necessary permission/approvals from the competent authorities. The renewable/extension shall be considered by the respective authorities in accordance and upon compliance with the procedure/formalities stipulated by the authorities.
- 7.5 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. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned. Further, any application for renewal or extension or restoration of any license or approval or connection from any authority shall be subject to payment of prescribed fee and/or deposit(s) and adherence to the procedure stipulated by such authority, however such authority shall not refuse/deny approval/extension/restoration merely on ground of previous defaults/non-compliance of the Corporate Debtor.
- 7.6 In terms of the judgement of Hon'ble Supreme Court in the matter of *Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited*, "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.”

7.7 In view of the above judgement, the applicant is entitled to waivers/ concessions/reliefs as expressly provided under the Code and under any other law for the time being in force.

7.8 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.

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- 7.9 The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
8. With the above directions, the Resolution Plan of the Applicant is hereby approved. Accordingly, IA-2374/2021 is **allowed** and **disposed** of.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

06.10.2023/pvs

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)