

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

IA-2319/2023 IN
C.P.(IB)-68(MB)/2021

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

Application moved by:

Mr. Bhrugesh Amin

...Resolution Professional

In the matter of

Beacon Trusteeship Limited

...Financial Creditor

Vs.

Modella Textile Industries 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. Prateek Seksaria, Ld. Sr. Counsel a/w
PCA Ayush Rajani and Ms. Khushboo
Shah i/b AKR Advisors for Resolution
Professional present in IA-2319/2023.
Mr. Gaurav Joshi, Ld. Sr. Counsel a/w
Ms. Ekta Dalvi i/b Sahil Mahajan,
Ld. Counsel for the Resolution
Applicant present.

ORDER

Per: Kishore Vemulapalli, Member (Technical)

1. This is an Application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'the Code') filed on 29.05.2023 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 88.95% of the voting share of the members of the Committee of Creditors (hereinafter referred to as 'CoC') of the Debtor Company viz. Modella Textile Industries 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 04.05.2022 of this Court in C.P.(IB)-68(MB)/2021 under Section 7 of the Insolvency and Bankruptcy Code 2016 filed by Beacon Trusteeship Limited (Financial Creditor) and Mr. Bhruvesh Amin (Reg. No.: IBBI/IPA-002/IP-N00353/2017-18/11003) was appointed as Interim Resolution Professional (IRP) and later on was confirmed as RP by CoC in its first meeting held on 01.06.2022.
 - ii. The IRP published a public announcement in Form-A in 'Business Standard' (*English*) and 'Navakal' (*Marathi*) newspapers on 06.05.2022 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. A report on

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constitution of CoC has been filed on 26.05.2022. Given below is the summary of claims admitted:

#	Category of Creditors	Amt. Claimed (₹)	Amt. Admitted (₹)
1.	Secured Financial Creditors	9,98,96,70,414/-	9,98,96,70,414/-
2.	Unsecured Financial Creditors	2,46,98,74,477/-	1,24,08,89,651/-
3.	Unsecured Financial Creditors (other than fin. Creditors belonging to any class of creditors).	21,12,98,62,215/-	0/-
4.	Operational Creditors	43,15,46,822/-	28,54,39,117/-
5.	Workmen Claims	37,64,929/-	11/-
6.	Employee Claims	29,33,77,740/-	27/-
7.	Government Dues	3,20,01,521/-	3,20,01,521/-
	Total	34,35,00,98,117/-	11,54,80,00,740/-

- iii. The RP convened second CoC meeting on 20.06.2022 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 24.06.2022.
- iv. As RP did not receive any EoIs towards the Form G published on 24.06.2022, modified Form G was published on 08.08.2022, against which, 24 EoIs were received and thereafter in extended time for submission of interest, seven (7) more EoIs were received. In the Fourth CoC meeting, Request for Resolution Plan (RFRP) and Evaluation Matrix were approved. Out of 31 EoIs received, many backed out and on the Seventh CoC meeting held on 26.12.2022, the RP placed before the CoC the final list of Prospective Resolution Applicants (PRAs).
- v. Finally, the Resolution Professional received only one Resolution Plan i.e. on 23.12.2022 from Ashar Ventures which was placed before the CoC in the Seventh meeting held on 26.12.2022.

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- vi. After many follow-ups, RP received the final amended resolution plan from the consortium of Ashar Ventures, Ashar Realtors, Toscano Infrastructure Private Limited and Mr. Ajay Pratak Ashar, on 10.05.2023 and the same was placed before the 12th CoC meeting held on 18.05.2023.
- vii. As per the Valuation Reports of the Registered Valuers, the Fair Value and Liquidation Value of the Corporate Debtor are given as follows:

#	Fair Value (₹ in Cr.)	Liquidation Value (₹ in Cr.)
1.	682.43	463.57
2.	685.09	469.86

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

1. Average Fair Value is ₹683.76 Cr.
 2. Average Liquidation Value is ₹466.71 Cr.
- viii. After ascertaining the feasibility and viability of the amended resolution plan submitted by the consortium of Ashar Ventures, Ashar Realtors, Toscano Infrastructure Private Limited and Mr. Ajay Pratak Ashar, on 10.05.2023 was put into voting by CoC in its 12th meeting held on 18.05.2023 and the same was approved with 88.95% voting share. The relevant resolution is reproduced below:

“RESOLVED THAT pursuant to Section 30(4) of 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 and in accordance with any other provisions, rules and regulations made thereunder, approval of the members of the Committee of Creditors of Modella Textile Industries Limited be and is hereby accorded to the Resolution Plan received on December 23, 2022

read with addendum to the resolution plan received on May 10, 2023 submitted by Ashar Group for Modella Textile Industries Limited.

RESOLVED FURTHER THAT the Committee of Creditors hereby approves the distribution as stipulated in resolution plan submitted by Ashar Group for Modella Textile Industries Limited.

RESOLVED FURTHER THAT the Resolution Professional of Modella Textile Industries Limited be and is hereby authorized to take such steps as may be necessary in relation to the above, if required and to settle all matters arising out of and incidental thereto and sign and execute all documents and writings that may be required and generally to do all acts, deeds, make payments and things that may be necessary, proper, expedient or incidental for the purpose of giving effect to the aforesaid resolution including filing necessary applications with the Hon'ble NCLT for the same."

- ix. 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.
- x. Subsequent to the approval of the resolution plan by CoC, the RP issued Letter of Intent dated 27.05.2023 to the Successful Resolution Applicant (SRA) to furnish Performance Guarantee. The SRA acknowledged its acceptance of the Letter of Intent and also provided a Bank Guarantee dated 29.05.2023 amounting to ₹35 Cr., issued by ICICI Bank, in lieu of the Performance Guarantee.

3. The Resolution Applicant is a consortium of Ashar Ventures, Ashar Realtors, Toscano Infrastructure Private Limited and Mr. Ajay Pratak Ashar and known as Ashar Group, which is engaged in the development of Real-Estate and has also executed number of such projects in Mumbai.

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 **₹4,51,41,56,471 (Rupees Four Hundred Fifty-one crore and Forty-one**

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lakh Fifty-six thousand Four hundred Seventy-one 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:

SN	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)
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	9,98,96,70,414	9,98,96,70,414	4,00,50,00,000 [#]	40.09%
		Total[(a) + (b)]	9,98,96,70,414	9,98,96,70,414	4,00,50,00,000	40.09%
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	23,59,97,36,692	1,24,08,89,651	49,63,55,861	40.00%
		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	23,59,97,36,692	1,24,08,89,651	49,63,55,861	40.00%
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above:				
		(i)Government	3,20,01,521	3,20,01,521	1,28,00,610	40.00%
		(ii)Workmen	37,64,929	11	NIL	0%
		(iii)Employees	29,33,77,740	27	NIL	0%
(iv) Other operational creditors other than Govt dues / Workmen / Employees	43,15,46,822	28,54,39,117	NIL	0%		
		Total[(a) + (b)]	76,06,91,012	31,74,40,676	1,28,00,610	40.00%
Grand Total - INR			34,35,00,98,118	11,54,80,00,741	4,51,41,56,471	

#Secured Financial Creditors:

Tranche I: Payment of upfront amount of ₹125,00,00,000/- within a period of 60 days from the Effective Date.

Tranche II: As on the Effective Date, the claims of EARC (as per the List Creditor of dated May 03, 2023) shall be converted into an Interest free loan which shall be secured by creation of first ranking and exclusive charge by way of mortgage on 1,45,000 sq. ft. RERA Carpet Area and exclusive usable area. The terms of repayment of the said loan shall be as follows:

- i. Fixed payment of ₹2,75,50,00,000/- (at ₹19,000 per sq. ft. RERA Carpet Area realizable market rate *1,45,000 sq. ft) to EARC over a period of 5 years by way of repayment of loan secured by first ranking and exclusive charge by way of mortgage on 1,45,000 sq. ft. RERA Carpet Area and exclusive usable area.
- ii. In case of higher realization above ₹19,000/- per sq. ft. RERA Carpet Area realizable market rate up to a maximum increase of ₹3,000/- per sq. ft, the amount realized for sale up to ₹22,000/- per sq. ft. RERA Carpet Area realizable market rate shall be paid to EARC.
- iii. All realization above ₹22,000/- per sq. ft. RERA Carpet Area realizable market rate shall be for the benefit of Resolution Applicant and shall be a passthrough amount to the Resolution Applicant and EARC would not have any vested rights over these benefits.
- iv. Tranche I and Tranche II shall be collectively referred to as "Secured Creditor Settlement Amount". EARC and the RA / Borrower shall be permitted to mutually agree to amend, at any time, the Terms for repayment of Loan as mentioned in Annexure A.1 of the Resolution Plan.

4.1.1 *CIRP Cost:*

- i. As per latest information supplied by the RP, the CIRP Costs up to March 31, 2023 are Rs. 2,68,25,360 (Rupees Two Crores sixty eight lakhs twenty five thousand three hundred and sixty Only).
- ii. The RA proposes that CIRP Costs be paid upfront and upon implementation of the Resolution Plan by the Resolution

Applicant in terms of the Resolution Plan.

iii. All costs, expenditure incurred/to be incurred by the RP towards the CIRP of the Corporate Debtor (“CoC Costs”) shall be fully borne by the RA.

4.1.2 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.

4.1.3 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.

4.1.4 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.

4.1.5 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.

4.1.6 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.

4.5 The Applicant has submitted that the Resolution Plan, submitted by Ashan Properties Private Limited, approved with 88.95% voting of the members of the Committee of Creditors, has been examined and the Resolution Plan:

- 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 He has filed three Appeals before the Hon'ble NCLAT bearing CA AT(INS) No.610, 709 and 710 of 2023 against the order dated 23.01.2023 of this Bench in IA-2647, 2640 and 2624 of 2022 in CP(IB)-68(MB)/2021 in which this Bench allowed the claim filed by Grover family (Nikhil Grover and Kusum Grover in IA-2647/2022, Uday Grover, Rohit Ravinder Grover and Madhu Ravinder Grover in IA-2640/2022 and Vinod Grover in IA-2624/2022, as Financial Creditors and directed them to be treated as part of CoC. The Hon'ble NCLAT has listed the above three Appeals for final disposal on 20.07.2023. Therefore, the status of the Grover family as Financial Creditor of Corporate Debtor is under challenge and active consideration of the Hon'ble NCLAT.

5.2 There are other five Interlocutory Applications filed in this CP which are pending for adjudication:

1. IA-3268/2022 filed on 08.10.2022 by Uday Grover u/s 65 & 60(5) of the IBC, seeking direction to the RP to admit the claim of the Applicant as Financial Creditor in the category of Homebuyers. Also, to look into the inflated claim of other Fin. Creditor allegedly admitted by the RP.

2. IA-3859/2022 filed on 19.12.2022 by RP u/s 60(5) seeking direction to allow the RP to utilize the funds (Rs. 2,28,45,000/-) transferred from the RERA account into the Union Bank of India to run the present CIRP. This IA is filed against Edelweiss & RERA.
 3. IA-2028/2023 filed on 12.05.2023 by RP against TMC us 60(5) seeking direction to restrain the TMC from acquiring the asset of the CD.
 4. IA-1444/2023 filed on 12.04.2023 by RP against suspended board of directors u/s 19(2) seeking cooperation from the Respondent-1.
 5. IA-1074/2023 filed on 17.03.2023 by RP against suspended board of directors u/s 43 of the Code seeking direction to the respondents to make payment of Rs. 3,21,70,651/-.
- 5.2 The 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 30.03.2023 in IA-1173/2023 extending the period up to 29.05.2023.
- 5.3 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.

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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?	-	Based on the evaluation of the criteria as led under the Section 25(2)(h), it is concluded that the Resolution Applicant meets the criteria specified in the Evaluation Matrix and the Process Document. CoC on the commercial guidance of the RP's team and in its own commercial wisdom has found that the Resolution Applicant meets the criteria specified herein. Yes, Compliance has been met.
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?	-	The Section 29A Due Diligence Report does not report any adverse findings. Yes, Compliance has been met.
Section 30)1(Whether the Resolution Applicant has submitted an affidavit stating that it is	-	The Resolution Applicant has submitted an undertaking under

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	eligible?		section 29 A of Code. Yes, Compliance has been met.
Section 30)2(Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs?	The details are provided at Page 32, Para 3(a)(B) "CIRP Cost"	The CIRP Costs (inclusive of all Taxes and duties, as may be applicable) will be paid in full (at actuals) and in priority to any creditors of the Company. Yes, Compliance has been made
	(b) provides for the payment to the operational creditors?	The details are provided at Page 50, Para 9 "Proposal for Operational Creditors"	The Resolution Plan provides that INR 1,28,00,608/- shall be paid in respect of the Outstanding dues of the government authorities except workmen/employees/other operational creditors Yes, Compliance has been made.
	(c) provides for the payment to the financial creditors	The details are provided at Page 48, Para 5	The Resolution Plan states that in the event there are

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	who did not vote in favour of the resolution plan?		<p>dissenting Financial Creditors then the liquidation value due to such dissenting Financial Creditors will be discharged out of the upfront payment to Financial Creditors, in priority to any payments being made to the other Financial Creditors who vote in favour of the Resolution Plan.</p> <p>Yes, Compliance has been made.</p>
	(d) provides for the management of the affairs of the corporate debtor?	The details are provided at Page 62-63, Para 6(C) "Management and control of the business during term of Resolution Plan"	The Resolution Applicant proposes to nominate its directors on the Board of the Corporate Debtor. Thereafter the Board for the Corporate Debtor will appoint its management team from the large pool of experienced managerial team of

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Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance)Yes / No(
			the Statkraft group. Yes, Compliance has been made.
	(e) provides for the implementation and supervision of the resolution plan?	The details are provided at Page 57-63, Para 6 "Term, implementation and supervision of the Resolution Plan"	Paragraph 6 of the Resolution Plan sets out in detail the provisions related to the implementation and supervision of the Resolution Plan. Yes, Compliance has been made.
	(f) contravenes any of the provisions of the law for the time being in force?	The details are provided at Page 100, Para 11 "Mandatory Compliance with provisions of IBC, 2016 and CIRP Regulations"	The Resolution Applicant has provided the declaration as required under the Code. Yes, Compliance has been made.
Section 30)4(Whether the Resolution Plan)a(is feasible and viable, according to the CoC?)b(has been approved by the CoC with 66% voting share?	-	Pursuant to the approval of Resolution Plan by the CoC, the CoC has considered the Resolution Plan as feasible and viable. Yes by 88.95 % of voting share
Section	Whether the Resolution	The details are	Pursuant to the

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Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance)Yes / No(
31)1(Plan has provisions for its effective implementation plan, according to the CoC?	provided at Page 57-63, Para 6 "Term, implementation and supervision of the Resolution Plan"	approval of Resolution Plan by the CoC, the CoC has considered the same.
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	The details are provided at Page 65, Para 7.1.11	As per the Transaction audit report, there are transaction reported within the provision of section 43, 45, 50, 51 & 66 of the Code. The report has been filed with the Hon'ble NCLT and share with the CoC Members. Yes, Compliance has been made
Regulation 38)1(Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	The details are provided at Page 50-51, Para 9 "Proposal for Operational Creditors". The details are provided at Page 104-105, Para 11 "Mandatory Compliance with provisions of IBC, 2016 and CIRP Regulations"	Yes, Compliance has been met.
Regulation	Whether the resolution plan	The details are	Yes, Compliance

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38)1A(includes a statement as to how it has dealt with the interests of all stakeholders?	provided at Page 105, Para 11 "Mandatory Compliance with provisions of IBC, 2016 and CIRP Regulations"	has been met.
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	The details are provided at Page 105, Para 11 "Mandatory Compliance with provisions of IBC, 2016 and CIRP Regulations"	Yes, Compliance has been met.
Regulation 38)2(Whether the Resolution Plan provides:)a(the term of the plan and its implementation schedule?)b(for the management and control of the business of the corporate debtor during its term?	The details are provided at Page 57-63, Para 6 "Term, implementation and supervision of the Resolution Plan". The details are provided at Page 62-63, Para 6(C) "Management and control of the business during term of Resolution Plan". The details are	Yes, Compliance has been met.

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)c(adequate means for supervising its implementation?	provided at Page 57-63, Para 6 "Term, implementation and supervision of the Resolution Plan".	
38)3(<p>Whether the resolution plan demonstrates that –</p> <p>)a(it addresses the cause of default?</p> <p>)b(it is feasible and viable?</p> <p>)c(it has provisions for its effective implementation?</p> <p>)d(it has provisions for approvals required and the timeline for the same?</p> <p>)e(the resolution applicant has the capability to</p>	<p>a) The details are provided at Page 106-108, Para 11 "Mandatory Compliance with provisions of IBC, 2016 and CIRP Regulations".</p> <p>b) The details are provided at Page 108-109, Para 11 "Mandatory Compliance with provisions of IBC, 2016 and CIRP Regulations".</p> <p>c) The details are provided at Page 57-63, Para 6 "Term implementation and supervision of the Resolution Plan".</p> <p>d) The details are provided at Page 88-97, Para 10 "Licenses / Approvals / Contractual Rights and Benefit".</p>	<p>Yes, Compliance has been met.</p>

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Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance)Yes / No(
	implement the resolution plan?	<p>e) The details are provided at Page 3-7, Para 1 "Introduction of the Resolution Applicants".</p> <p>The details are provided at Page 9-9, Para 3 "Track record of honouring debt commitments".</p> <p>The details are provided at Page 109, Para 11 "Mandatory Compliance with provisions of IBC, 2016 and CIRP Regulations".</p>	
39)2(Whether the RP has filed applications in respect of transactions observed, found or determined by him?	The details are provided at Page 65, Para 7.1.11	<p>As per the Transaction audit report, there are transaction reported within the provision of section 43, 45, 50, 51 & 66 of the Code. The report has been filed with the Hon'ble NCLT and shared with the CoC Members.</p> <p>Yes, Compliance has been made</p>
Regulation	Provide details of performance security	Provided by the Successful Resolution	Amount of PBG:

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Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance)Yes / No(
39(4)	received, as referred to in sub-regulation (4A) of regulation 36B.]	Applicant	INR 35 Crores Date of Issue: May 29, 2023 Expiry Date: May 28, 2024 Bank Guarantee no.: 1887NDDG000302 4

6. We heard the Counsel and the 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 by us by order of even date passed in each of IA separately. The principal objections to the Plan pertain to (a) Payment of 40% against the claim amount to Home-buyers in cash as against allotment of flat to them; (b) valuation of project land; (c) failure to maximize the value of assets of the Corporate Debtor arising from purported reservation on the land placed by the Thane Municipal Corporation; and (d) classification as unsecured financial creditors instead of Home-buyers being secured financial creditors.

- 6.2 As regards payment of 40% of claim amount being proposed by the Resolution Applicant in the approved plan, we find that the Successful Resolution Applicant submitted in course of arguments, that it is proposing to pay **100% of the principal component** of the claim to each Home-buyer and has also reduced the period of payment of such money. The Successful Resolution Applicant has filed necessary affidavit in this regard. The CoC has no objection to such modification. Accordingly, the financial lay-out in the plan shall stand modified to this extent. The other objections have been dealt with in the respective orders, and we didn't find any merit in these objections, as explained in the said order(s).
- 6.3 Godrej Properties Limited, the Development Manager for the project appointed by the Corporate Debtor has also filed an objection stating that the proposal to cancel the Development Management Agreement entered with the Corporate Debtor violates the law in as much as it takes away vested rights and interest in the Project land. We feel that the agreement with the Godrej Properties Limited is a service agreement, and in consideration of provision of managerial services, certain rights were to accrue to them. The Plan seeks to terminate this relationship by giving the Successful Resolution Applicant to have its own Development Manager, in case need arises. The rights claimed to have been vested in Godrej Properties Limited vests only upon rendition of services, and the consideration against services already rendered, has been considered as part of claim of Godrej Properties Limited by the Resolution Professional. Accordingly, we do not find that no absolute right or interest can be said to have vested in the Godrej Properties Limited, which can be said to have been

taken away by proposal to terminate the Agreement in terms of approved plan.

- 6.4 It is clarified that the disputed claim of Financial Creditor, which are in appeal before the Higher Authorities, shall have no impact, as the dispute therein mainly pertains to the quantum of interest on the principal amount, and the Resolution plan contemplates refund of 100% of the principal amount only.
- 6.5 Further, no payment is proposed to other Financial Creditors. Since, a discrimination within class is permissible so long as it does not discriminate the claimant within sub class of that class, we do not find this treatment as violative of any provision of the Code.
- 6.6 The Plan contemplates upfront payment to the Homebuyers instead of delivery of the flat to bring certainty to the Plan in view of doubts hovering over the sanction of the Plan in view of proposal for change in land use of the project land.
- 6.7 The Resolution Professional shall place on record Revised Form H, incorporating therein the revised/updated proposal of the Successful Resolution Applicant to account for the effect of orders passed by this Bench in claimant's applications, if not done so far, within two weeks from the communication of this order.
- 6.8 The plan provides for payment to dissenting Financial Creditors, which is more than the liquidation value of the Corporate Debtor. Further, the plan provides for Payment to Assenting Secured Financial Creditors partly through realization of sale proceeds of part of the developed project.

- 6.8 Out of IAs stated to be pending by the Applicant, this Bench has disposed of IA no. IA-3268/2022, IA-3859/2022, and IA-2028/2023 by separate Order(s) of even date. IA-1444/2023 was disposed of vide order dated 05.09.2023. The IA-1074/2023 filed on 17.03.2023 by RP against suspended board of directors u/s 43 of the Code seeking direction to the respondents to make payment of Rs.3,21,70,651/- is pending.
- 6.9 It is clarified that the objections of the various stakeholders 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. In view of the foregoing, the Resolution Plan, filed vide IA-2319/2023 by RP, submitted by *Ashar Group* 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 Avoidance Application No. 1074/2023 shall be pursued by CoC after approval of the Plan and benefits arising therefrom shall accrue to the CoC as provided in Clause 7.1.11 of the Resolution Plan.
- 7.4 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.
- 7.5 The Resolution Applicant (RA) shall obtain necessary permissions/ approvals for implementation of the Plan. The renewable/extension/ approvals shall be considered by the respective authorities in accordance and upon compliance with the procedure/formalities stipulated by the authorities, subject to the rules/ regulations governing the development of the real estate.
- 7.6 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.

7.7 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

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adjudicating authority grants its approval under Section 31 could be continued."

- 7.8 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.
- 7.9 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.
- 7.10 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-2319/2023 is **allowed** and **disposed** of.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)

06.10.2023/pvs