

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**COURT-III**

**Item No.05**

IA-4262/2021

In

IB-1466(ND)/2019

**IN THE MATTER OF:**

M/s. IL&FS Financial Services Ltd

.... **APPLICANT/PETITIONER**

**Vs.**

M/s. Emerald Lands (India) Pvt. Ltd.

.... **RESPONDENT**

**SECTION**

**U/s 7 IBC code 2016**

**Order pronounced on 24.05.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

Order pronounced in open court vide separate sheets.

IA-4262/2021 in IB-1466(ND)/2019 stands **allowed**.

**Sd/-**

**(DR. BINOD KUMAR SINHA)  
MEMBER (TECHNICAL)**

**Sd/-**

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**



Applicant’) and approved by the Committee of Creditors (‘CoC’) with 100% voting pursuant to the 24<sup>th</sup> CoC Meeting held on 25.08.2021, followed by e-voting conducted from 27.08.2021 at 1:00 P.M. to 04.09.2021 till 10:00 P.M.

2. Briefly stated, the facts as averred by the applicant in the application are as follows:

- a) The Corporate Insolvency Resolution Process against M/s. Emerald Lands (India) Private Limited (‘Corporate Debtor’) had been initiated by Hon’ble NCLT vide its order dated 02.01.2020 in C.P.(IB) No.1466/2019, a petition under Section 7 of the Code, 2016 filed by M/s. IL & FS Financial Services Limited (‘Financial Creditor’) and Mr. Navneet Kumar Gupta (‘applicant’) was appointed as the Interim Resolution Professional who was later confirmed as the Resolution Professional of the Corporate Debtor. Further, Mr. Gulshan Gaba was appointed as the Authorized Representative of the Class of Creditors (‘Home Buyers’) of the Corporate Debtor.
- b) The Corporate debtor i.e., M/s. Emerald Lands (India) Private Limited is engaged in the business of Real Estate activities with own or leased property including development and sale of land and cemetery lots, operating of apartment hotels and residential and mobile home sites.
- c) The applicant had made public announcement on 10.01.2020 in Form A, as per the provisions of Regulation 6 of the CIRP Regulations inviting submission of claims from the creditors of the Corporate Debtor wherein the last date of submission of claim was 21.01.2020. The applicant upon receiving the claims had verified, collated and constituted committee of Creditors on 28.01.2020. The summary of the claims filed and the amount admitted is as under:-

<b>Creditors</b>	<b>Claims Filed (INR)</b>	<b>Claims Admitted (INR)</b>
Financial Creditors	2,14,86,91,339	2,14,65,20,830
Claims by creditors in a class (as per Regulation 8A)	2,05,05,05,354	1,29,90,40,024
Operational Creditors (including government dues)	33,54,90,349	6,70,75,185
Employee and Workmen dues	4,93,66,491	2,45,53,365
<b>Total</b>	<b>4,58,40,53,533</b>	<b>3,53,71,89,404</b>

- d) The CoC in its meetings had discussed the particulars of Information Memorandum, Evaluation Matrix, and Appointment of Registered Valuers for conducting the valuation of the all three classes of assets, appointment of Transaction Auditor and other related matters.
- e) The Expression of Interest in Form -G was issued on three occasions i.e., 17.03.2020, 31.07.2020 and 21.12.2020. The last EoI re-issued on 21.12.2020 in Business Standard (PAN) India, The Tribune (Delhi NCR, Jaipur, UP, Punjab, Haryana, Chandigarh, H.P. and J&K) and Punjabi Tribune (Punjab) as per which the last date for receipt of the EoIs was 05.01.2021 and the last date for submission of the Resolution Plan was 11.02.2021, which was further extended till 22.02.2021 by the CoC in its 14<sup>th</sup>CoC Meeting.
- f) Pursuant to the re-issuance of the Form-G dated 21.12.2020, the applicant had received EoIs from Seven (7) Prospective Resolution Applicant ('PRAs'), however, the resolution plans were received from only Two (2) PRA's. The resolution plans as submitted by both the PRAs were discussed by the CoC in 16<sup>th</sup> CoC Meeting dated 24.02.2021. The CoC after negotiations and deliberation in its 21<sup>st</sup> CoC Meeting dated 09.07.2021, decided that the final draft of resolution plan to be submitted by 23.07.2021 and final resolution plan be submitted by 31.07.2021. Further, the CoC in its 22<sup>nd</sup> Meeting held on 23.07.2021 had extended the time for submission of final resolution plan by 04.08.2021.
- g) The revised resolution plans received from both the PRA's were received by the applicant on 04.08.2021 and the same were immediately shared with members of CoC. The revised resolution Plan after incorporating the comments of the CoC was submitted by both the PRA's on 19.08.2021. Further, the applicant and his legal counsel had checked the compliance of both the Resolution Plans with mandatory requirements of the Code read with CIRP Regulations.
- h) The e-voting for the approval of the resolution plans was conducted as per Regulation 25(5) read with Regulation 26 of the CIRP Regulations from 27.08.2021 at 10 P.M. to 04 September, 2021 till 10 PM. The Resolution Plan submitted by M/s. Malhotra Group PLC ('Successful Resolution Applicant') was approved with 100% voting in favor. There are 136 homebuyers (who own 191 units), out of which 80 homebuyers (who own 103 units) casted their vote and that too in favor of the approval of Resolution Plan submitted by Successful Resolution Applicant. Further, 19 homebuyers (who own 25 units) voted in favor of the Resolution Plan submitted by the unsuccessful Resolution Applicant. Therefore, in terms of Section 25A (3A) of the Code, read with Regulation 25A of the CIRP Regulations, the Resolution Plan submitted by the Successful Resolution Applicant stood approved. The voting result on the Agenda of the approval of the Resolution Plan(s) is represented overleaf:-

CoC Member Name	Voting Share Percentage	Voted for Resolution Plan by the Successful Resolution Applicant	Voted for the Resolution Plan by Mahakram
IL&FS Financial Services Limited	62.49%	Yes	-
Financial Creditors (home buyers) in class represented by the Authorised Representative, Mr. Gulshan Gaba.	37.51%	Yes	-
	<b>100.00%</b>	<b>100.00%</b>	<b>0.00%</b>

i) Pursuant to approval of the Resolution Plan submitted by Successful Resolution Applicant and approved by the CoC, the applicant had issued a Letter of Intent dated 08.09.2021 to the Successful Resolution Applicant ('SRA') inter-alia informing the SRA that the final Resolution Plan as submitted before the CoC was approved and Successful Resolution Applicant had accepted the Letter of Intent on 09.09.2021. Further, the Successful Resolution Applicant has submitted the Performance Bank Guarantee dated 06.10.2021 for INR 6,20,00,000/- (i.e., 5% of the total resolution amount as per approved resolution plan) vide affidavit dated 09.10.2021 in compliance of the Letter of Intent as well as this Adjudicating Authority'S order dated 28.10.2021.

3. While the applicant sought approval of the Resolution Plan as submitted by M/s. Malhotra Group PLC ('Successful Resolution Applicant') and approved by the Committee of Creditors ('CoC') with 100% voting pursuant to the 24<sup>th</sup> CoC Meeting held on 25.08.2021, followed by e-voting conducted from 27.08.2021 at 1:00 P.M. to 04.09.2022 till 10:00 P.M by filing the present application i.e., I.A. No. 4262/2021 wherein the approved Resolution Plan is annexed as Annexure 2 of the application, However, inadvertently the applicant had not annexed the annexures of the approved resolution plan with the present application. Accordingly, the

applicant had filed affidavit dated 02.11.2021 for placing on record the complete copy of the approved resolution plan along with annexures as submitted by M/s. Malhotra Group PLC ('SRA'). The same is taken on record.

4. Further, from the record, this Adjudicating Authority observe that an application bearing I.A. 3415/2022 was filed by a group of 5 creditors under Section 60(5) of the Code, 2016 objecting to the Resolution Plan submitted by Successful Resolution Applicant and more specifically to the clause 4.1.4(c) of the Resolution Plan which provides for the treatment of the avoidance applications. This Adjudicating Authority after considering the I.A./3415/2022 on merits and the settled position of law with regard to the treatment of Avoidance Applications in the light of Judicial Pronouncements had dismissed the I.A./3415/2022 vide separate order. We are of the considered view that the objections as raised by the objectors do not pose a legal challenge against approval of the proposed Resolution Plan. Henceforth, this Adjudicating Authority is proceeding with considering the Resolution Plan submitted by the Successful Resolution Applicant and approved by the CoC, which is filed before this Adjudicating Authority vide I.A./4262/2021 along with the affidavit dated 02.11.2021 for approval.
5. The salient features of the Resolution Plan approved by the CoC with an affirmative voting of 100%, thereto as submitted by M/s. Malhotra Group PLC are reproduced herein below:

**I. Background of the Successful Resolution Applicant:**

The Successful Resolution Applicant is a Public Limited Company incorporated under Companies Act, 2006 in England. The SRA had started its journey in early 1900s with Malhotra Property Limited (formerly known as UGC Holdings Limited), which is a wholly owned subsidiary of Malhotra Group, PLC. SRA is a Group Holding Company and operates in various sectors i.e., care, leisure, property, finance and construction through its subsidiaries.

Further, the net worth (audited) of the SRA as on March, 2019 is INR 656.60 crores (approx.) and for March 2020 (unaudited) INR 769.34 Crores (Approx.)

## II. Key Terms of the Resolution Plan:

The following payments are being proposed under the Resolution Plan:

S. No	Category of Stakeholders	Verified Amount	Proposed Payment	Term of payment	Percentage paid (in %)
A.	CIRP Costs (Estimated by RA till NCLT Approval Date, including Going Concern expenses)	-	6,50,00,000* (approx. 6.5 Cr) [Note ii]	Within 60 days from the Plan Approval date	100
B.	<b>Payments towards claims</b>				
1.	Secured Financial Creditors (Total Cash Recovery)	214,65,20,830 (approx. 214.65 Cr)	84,75,00,000 (approx. 84.75 Cr)	Within 60 days from the Plan Approval date	39.44
2.	Unsecured FCs, i.e. home-buyers (Other than Related Party)	128,87,03,488	Units to be provided or refund up to INR 31,58,56,056 (approx. 31.58 Cr) [Note iii]	Refund within 60 days from the Plan Approval date	24.31 (with reference to refund)
3.	Unsecured FCs, i.e. home-buyers (Related Party)				
4.	Employee Dues	2,19,26,431	1,00,000	Within 60 days from the Plan Approval date	0.45
5.	Workmen Dues	26,26,934	10,50,774	Within 60 days from the Plan Approval date	40
6.	Operational Creditors (other than Employee Dues and workmen)	5,50,97,945	3,00,000	Within 60 days from the Plan Approval date	0.45 (Including government dues)
7.	Related Party Operational Creditors	1,19,77,240		Within 60 days from the Plan Approval date	0.45
8.	Other Creditors	NIL	NIL		
<b>TOTAL</b>			<b>1,22,98,06,830</b> <b>(Approx. 123 Cr)</b>		<b>34.77</b>

### **III. Treatment of Homebuyers**

- a) The Resolution Plan provides for completion of construction of all the units that have been allotted to the homebuyers within 6-12 months from the License Renewal Date. The SRA has proposed to provide delivery of their units to the allottees with 6-12 months from the 'License Renewal Date' as defined in clause 1 of the Resolution Plan.
- b) There is also a provision of refund to homebuyers up to approx. INR 31.58 Cr ("Homeowners Settlement Amount"). In case any Homeowners wishes to exit from the Project and is more interested in the cash recovery as compared to getting a completed unit, the RA proposes to pay a portion of the principal amount of the said Homeowner admitted by the RP in proportion to the principal amount of the entire set of Homeowners admitted in the list of claims by the RP. The payment/refund will be made upfront i.e. within 60 days of the plan approval date, to the homebuyer who wishes to seek the option of refund. Upon payment of such amount, all the rights of the respective Homeowner on the said unit shall cease to exist and the said unit shall fall back under the ownership, possession and control of the CD.
- c) The homebuyers will be given a time period of 45 days from the plan approval date to decide whether they want to stay or exit by surrendering their unit to the CD) and taking refund. Homeowners have been classified into 4 classes and the treatment of which is given in Clause 4.2.2 of the Resolution Plan.
- d) SRA has proposed to cancel the allotments made by the CD to its related parties apart from Unit no. K-53 owned by Ms. Alka Jain, Sh. Sandeep Handa, Sh. Chander Bhushan and Sh. Vijay Chowdhry and two units of J-222 and H-2A owned by Sh. Ravi Khanna will get the same treatment as other homebuyers (in terms of completion of construction and possession of units).
- e) SRA has proposed to receive the balance receivables of INR 59.90 crores from the allottees as per Clause 4.2.2 of the Resolution Plan. In addition, the allottees will be required to pay (a) Interest Free Security Deposit Rs. 375 (Rupees Three Hundred and Seventy Five Only) per sq-yard, (b) one

time club membership charge of Rs. 750,000 (Rupees Seven Lacs Fifty Thousand Only) per unit/ plot/villa for a maximum of 3 members per unit.

#### **IV. Acquisition of Financial Creditor (IL&FS Debt)**

- a) Within 60 days of Plan Approval Date, the RA through its India SPV shall pay the Upfront IL&FS Amount and settle the entire amount of admitted claim of IL&FS by way of assignment of the entire outstanding in favor of IL&FS, in favour of the India SPV.
- b) Upon payment of the Upfront IL&FS Amount, IL&FS shall assign and cause all the obligors to, acknowledge and accept such assignment of rights under the loan and security documents in favour of the India SPV and the security structure as provided to the IL&FS by the Corporate Debtor and its Subsidiaries shall continue in the name of the India SPV of the RA and necessary filings shall be made with the RoC and other regulatory authorities in relation to creation of the said charge.

#### **V. Contingent Liability:**

SRA has proposed to keep an amount of INR 10 Lakhs for making payments, in case any contingent liability arises

#### **VI. Source of Funds:**

The entire money required to be paid for Upfront Amount shall be funded by the SRA or any of the Implementing Entity(ies), from its own sources and/or from the personal funds of Malhotra family members.

Apart from payment to FCs, the SRA proposes to infuse the following amounts in the CD:

- a) Cost for completion of Phase I of the Project: INR 80 Crores, in tranches as per the Resolution Plan.
- b) Amounts to be infused for completion of the Golf Course, Club House and Community Centre: INR 65 crores (INR 40 crores for construction of Golf Club House and Community Centre and INR 25 crores for construction of the 9-hole golf course).

## **VII. Payment to Shareholders:**

- a) SRA will acquire 100% ownership of the CD by way of fresh equity infusion and extinguishing all shareholding interest of the existing shareholders. No payment is proposed to existing shareholders.
  
- b) One of the Subsidiaries of the Corporate Debtor viz. Spark Buildcon Private Limited holds entire Project Land and all the licences / approvals that are required for the purpose of the impugned Project are held in the name of Spark Buildcon. The entire shareholding of Spark Buildcon is held by the CD and only 100 shares are held in the name of an individual nominee shareholder of the CD and entire beneficial rights of those shares are transferred in the name of the CD. Pursuant to the approval of this Resolution Plan, the Resolution Applicant shall change the said nominee shareholder and entire share capital held by the said nominee shall be transferred in the name of the Resolution Applicant (or any nominee appointed by the RA).
  
- c) Similarly, for other step down subsidiaries, the RA understands that similar to the shareholding structure of Spark Buildcon, there are nominee shareholders in other step down subsidiaries also who hold nominal shares in the step down subsidiaries and rest of the entire shareholding of the step down subsidiaries is held in the name of Spark Buildcon. The individual nominee shareholders have already transferred the entire beneficial rights of those shares in the name of Spark Buildcon. Pursuant to the approval of this Resolution Plan, the Resolution Applicant shall change the said nominee shareholders across all the Subsidiaries and entire share capital held by such nominees across all step down Subsidiaries shall be transferred in the name of the Resolution Applicant (or any other entity/ nominee appointed by the RA) so as to ensure that the entire shareholding is held under the direct control of the RA.

### **VIII. Period of implementation:**

The following key steps shall be involved in the implementation of the Resolution Plan:

<b>Step</b>	<b>KEY STEPS</b>	<b>Time (in Days)</b>
1.	Receipt of Plan Approval Order on Plan Approval Date	X
2.	Constitution of Monitoring Committee	X+2
3.	Access of all documents and records and books of the CD as well as the Subsidiaries, which are in possession of the RP, to be provided to the advisors of the RA, so that they can review all the requisite documents required for the purpose of taking control of the CD and its Subsidiaries.	X+10
4.	Monitoring Committee to communicate to all the Homeowners immediately upon its constitution and receive cash settlement requests from the Homeowners	X+60
5.	Payment of amount towards settlement of CIRP Cost, Workmen & Employees Settlement Amount, Operational Creditors Settlement Amount, Homeowners Settlement Amount (only to the extent required to settle the Homeowners who wishes to receive an exit from the Project) in the Trust & Retention Account or any such account pertaining to the CD opened by the RP with any bank as the CoC may decide. The Upfront IL&FS Amount shall be paid by the India SPV directly to IL&FS or to either the Trust & Retention Account or any other account as may be decided by IL&FS and communicated to the RA through the Implementing Agent, by way of assignment of entire admitted claim of IL&FS in favour of the India SPV which makes the payment of the Upfront IL&FS Amount. The CoC and their advisors will agree on a draft of the definitive agreements for the purpose of settlement with the Homeowners as well as recording the terms of this assignment of loan from IL&FS to the RA / India SPV.	X+60
6.	<p>Passing of necessary resolution by the Monitoring Committee to:</p> <ul style="list-style-type: none"> <li>a) take note of the surrender and cash settlement requests received from the Homeowners and acknowledging the settlement / surrender agreements entered into between the Corporate Debtor and the respective Homeowners;</li> <li>b) take note of the status of withdrawal of various litigations filed against the Corporate Debtor and its Subsidiaries;</li> <li>c) take note of the status of various litigations filed by the Corporate Debtor and its Subsidiaries;</li> <li>d) transfer of shares held by nominee shareholders in Spark Buildcon and other Subsidiaries to the nominee appointed by the RA;</li> <li>e) approve issuance of Equity Shares to the Resolution Applicant and its nominees (required for the compliance of minimum shareholding requirement under the provisions of Companies Act, 2013);</li> <li>f) take note of the assignment of entire debt of IL&amp;FS in favour of the RA or its India SPV;</li> <li>g) approve selective reduction of share capital (i.e. existing equity and preference share capital) of the Corporate Debtor and take all the necessary steps for approval of the reduction of the existing share capital of the Corporate Debtor including but not limited to approval of the RoC for the said reduction; and</li> <li>h) approve the change of management of the Corporate Debtor by vacation of the existing directors of Corporate Debtor and appointment of new directors as nominated by the Resolution Applicant on the board of Corporate Debtor.</li> </ul>	X+60 (Effective Date)
7.	All original documents, including all the accounting, finance, secretarial, legal, property related, licences, etc, records and books of the CD and Subsidiaries to be handed over to the Resolution Applicant and its advisors.	X+60
8.	Letters to be written to all Governmental Authorities, customers, etc by the RP regarding the proposed change of management and Control due to the approval of Resolution Plan by the Adjudicating Authority.	X+60
9.	Necessary e-form, etc shall be filed w.r.t. modification of charge of the IL&FS / Security Trustee in favour of the RA / entity identified by the RA.	X + 66
10.	Licence Renewal Date	X + 240
11.	Release of demand letters to Homeowners demanding 10% of amount reflecting in Column No. 23 of Schedule II of this Resolution Plan	X + 240

12.	Release of possession letters to Homeowners in Class A and B and demand letters for the full and final amount reflecting 90% of the amount reflecting in the last Column No. 23 of Schedule II of the Resolution Plan, net off adjustments, if any.	X + 420
13.	Release of demand letters to Homeowners falling under Class D and E, demanding 45% of amount reflecting in Column No. 23 of Schedule II of the Resolution Plan	X + 420
14.	Release of possession letters to Homeowners in Class D and E and demand letters for the full and final amount reflecting 45% of the amount reflecting in the last Column No. 23 of Schedule II of the Resolution Plan, net off adjustments, if any.	X + 600

6. In view of Section 31 of the Code, before approving the Resolution Plan the Adjudicating Authority is required to examine that a Resolution Plan which is approved by the CoC under Section 30 (4) of the Code meets the requirements as referred under Section 30 (2) of the Code.

**Section 30 (2) stipulates as follows: -**

*“(2) The resolution professional shall examine each Resolution Plan received by him to confirm that each Resolution Plan –*

*(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;*

*(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-*

*(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or*

*(ii) the amount that would have been paid 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,*

*whichever is higher, and provides for the 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, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.*

*Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.*

*Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code*

*(Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-*

*(i) where a Resolution Plan has not been approved or rejected by the Adjudicating Authority;*

*(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*

*(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a Resolution Plan;]*

*(c) provides for the management of the affairs of the Corporate debtor after approval of the Resolution Plan;*

*(d) The implementation and supervision of the Resolution Plan;*

*(e) does not contravene any of the provisions of the law for the time being in force*  
*(f) conforms to such other requirements as may be specified by the Board.*

*Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the Resolution Plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]”*

7. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in clause 4.2.5 (Payment of CIRP Cost) of the Resolution Plan wherein it provides that the SRA shall pay the CIRP Cost in Priority to the payment of all other debts of Corporate Debtor.
8. However, the clause 4.2.5 (1) and (2) also provides that **that in no circumstance the CIRP Cost should exceed the aggregate amount of INR 6,50,00,000 (Rupees Six Crores Fifty Lacs Only) and in case, the CIRP Cost increases beyond this amount due to any reasons** (including but not limited to any unpaid amount due to workmen, employees, operational creditors, statutory dues, etc. or due to any order/ judgment/decree by any court/tribunal / appellate authority at any future date) **then the RP and RA shall mutually discuss and agree if the same is to be funded by the RA or the RP may sell the unsold inventory to fund the excess CIRP Cost.**
9. This Adjudicating Authority had vide order dated 17.04.2023 sought clarification from the Applicant as well as from the Successful Resolution Applicant as to how the conditional payment of CIRP Cost is in compliance of Section 30(2)(a) of the

Code, 2016. The Applicant had filed an affidavit dated 26.04.2023, wherein it is submitted that the Successful Resolution Applicant had vide its affidavit dated 25.04.2023 undertaken to unconditionally fund the entire CIRP cost regardless of the amounts. The affidavit dated 25.04.2023 on behalf of Successful Resolution Applicant filed vide Diary No. 0710102011142022 is taken on record and will form part of the approved Resolution Plan.

10. In respect of compliance of Section 30(2)(b) of the Code, it is seen that there is a provision in clause 4.2.1 (Interest of stakeholders-Workmen & Employee) of the Resolution Plan wherein it provides that the total admitted claims of Workmen & Employees is INR 24,553,365/-. Out of these, admitted claims, the claim of Workmen is INR 2,626,934/- and the balance amount of INR 21,926,431 is the admitted claims of the Employees. The SRA proposes to pay INR 1,050,774 being 40% of the claims admitted in the workmen category and INR 1,00,000 towards the claims admitted in the Employee Category. Further, the SRA vide affidavit dated 25.04.2023, undertakes to pay the Provident Fund and Gratuity dues amounting to INR 36,13,757/- which are duly claimed by the employees/workmen and admitted by the Resolution Professional.
11. Furthermore, the applicant in response to the Adjudicating Authority's clarification No.3 had filed affidavit dated 26.04.2023, wherein it was submitted that the only statutory authority whose claim is admitted is Greater Ludhiana Area Development Authority ('GLADA') for an amount of INR 2,82,45,099/- and an amount of INR 1,00,000/- is proposed to be paid in the plan. Also, the Income Tax Authority had claimed an amount of INR 16,45,17,661/-, which was not admitted and no challenge in respect of the same has been filed by the Income Tax Department.
12. In respect of compliance of Section 30(2)(c) and Section 30(2)(d) of the Code, it is seen that the manner of the management of the affairs and control of the business of the Corporate Debtor has been provided in detail in Clause 6.3 and more specifically in Clause 6.3.3 of the Resolution Plan. The clause 6.3.2 of the Resolution Plan provides for the constitution of the Monitoring Committee during the transition period which shall be constituted comprising of (i) 1 representative of

the Resolution Applicant and (ii) 2 members of the current CoC each representing IL&FS and the Homeowners, respectively. Moreover, it also provides that unless otherwise required by the SRA, the term of the Monitoring Committee shall automatically terminate upon the occurrence of the Effective date.

13. In respect of compliance of Section 30(2)(e) and 30(2)(f) of the Code, it is seen that the on overall perusal of the resolution plan and more specifically Clause 8.3 (No Contravention), 8.4 (Declaration) and 8.5 (Compliance) of the Resolution plan confirms that the Resolution Plan is in compliance with the applicable laws and such other requirements as may be specified by the Board.

14. In respect of compliance regarding Regulation 38 (1A) of the CIRP Regulations, it is seen that the Clause 4.2 of the Resolution Plan, provides how it will deal with the interest of all the stakeholders including secured and unsecured financial creditors, operational creditors of the corporate debtor, statutory dues and interests of the employees and workmen, as per the requirement of Regulation 38(1A) of the CIRP Regulations.

15. In respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the applicant has filed compliance certificate in Form-H as Annexure 1 to the present application certifying that the Resolution Plan submitted by the Successful Resolution Applicant meets the requirements as laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code. Further, an affidavit has been obtained from the Successful Resolution Applicant stating that he is not ineligible under the provisions of Section 29A of the Code, 2016.

16. The Clause I (Definitions) of the Resolution Plan defines the following terms:-

- a) "Plan Approval Date" means the date on which the order is uploaded on the website of the NCLT or in case of appeal, the date when the order is uploaded on the website of the Appellate Body.
- b) "License Renewal Date" shall means the date when the Licenses issued by various regulatory authorities in the name of Corporate Debtor and/or Spark Buildcon shall stand renewed and the Resolution Applicant is able to resume

construction/ development work in the Project or six (6) month from the Effective date, whichever is earlier.

c) "Effective Date" means the date when the management and control of the Corporate Debtor is taken over by the Resolution Applicant by way of equity shareholding and appointment of new Board of Corporate Debtor as specified in Para 6.2 of this Resolution Plan.

17. On perusal of Form-H annexed as Annexure-1 at page no. 28 - 37 of the present application, we observe that the Fair Market Value of the Corporate Debtor as provided in Form- H is Rs.185,76,07,050/- and the Liquidation Value of the Corporate Debtor is Rs.142,10,58,058/-. We further observe that there are five (5) applications bearing I.A./3976 of 2021, I.A. 3990 of 2021, I.A. 4339 of 2021, I.A./4334/ND/2021 and I.A./3990/ND/2021 under Section 43, 45,50 and 66 of the Code, 2016 pending before this Adjudicating Authority.
18. However, on perusal of the proposed Resolution Plan, we observe that provision had duly been made in the resolution plan as to the fate of these avoidance applications pending before this Adjudicating Authority. The clause 4.1.4 (c) of the Resolution Plan provides that post the effective date, the Resolution Applicant shall be the sole in charge of the avoidance applications and SRA would have absolute right to decide the way forward in the avoidance applications. If any amount is received in respect of these applications, the same shall accrue solely for the benefit of the Corporate Debtor and RA and shall not be shared with the CoC or any other stakeholder of the Corporate Debtor.
19. This Adjudicating Authority had vide order dated 14.11.2022 and 17.04.2023 had sought clarification from the Applicant as to how the benefits of the avoidance transactions (i.e., the contributions, if and when such contributions are made in future) be retained by the Corporate Debtor and the Resolution Applicant and will not be shared with the CoC is in compliance with the provisions of the Code, 2016. The applicant has filed clarification through affidavits dated 24.11.2022 and 26.04.2023 respectively.

20. On perusal of the Resolution Plan, affidavits dated 24.11.2022 and 26.04.2023 filed by the applicant, this Adjudicating Authority is of the view that as far as the claims or proceedings arising out of PUFEE transactions, CoC after several rounds of negotiations and deliberations, in their commercial wisdom, considered the overall resolution amount proposed under the Resolution Plan and adopted the course of action that they believed was for their greatest benefit and would lead to value maximization. The CoC had consciously decided that post approval of the resolution Plan, the money realized if any under PUFEE applications pending before this Adjudicating Authority shall accrue solely for the benefit of the future Corporate Debtor and SRA only.

21. The Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019, vid its judgement dated 15.11.2019** has observed as follows:

*“38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants.”*

22. The Division Bench of the **Hon'ble Delhi High Court in Tata Steel BSL Ltd. v. Venus Recruiter (P) Ltd. [2023 SCC OnLine Del 155] ('Venus Judgement')** while considering the issue where the resolution plan does not contemplate the treatment of avoidance application under a Resolution Plan had held that (i) the Resolution Professional can continue to pursue the said avoidance applications; (ii) the benefits of those applications would go to the creditors of the Corporate Debtor. The relevant para of the Judgement is extracted below:-

“As laid down above, the provisions pertaining to avoidable transactions is to primarily benefit creditors. **While the Corporate Debtor ceases to exist in its erstwhile avatar, in cases where the Resolution Plan is silent on the treatment of any pending applications because such information could not be made available to the applicant, the creditors of the corporate debtor can still be the beneficiaries of the sum or properties that may be recovered from adjudication of an avoidance application.** The same is consistent with the scheme of the Code and in line with object

sought to be achieved by it which inter-alia includes, increasing the availability of credit within the economy.

The provisions pertaining to suspect transactions exist specifically to benefit the creditors of the corporate debtor by enhancing the asset pool available for resolution of the corporate debtor. The IBC also envisages increasing credit availability in the country as one of its primary objectives. **It is apposite that any kind of benefit acquired from the adjudication of avoidance applications, in cases where treatment of such applications could not be accounted in the plan, must be given to the creditors of the erstwhile corporate debtor, considering especially, that in the present case, the creditors took a massive haircut towards resolution of the corporate debtor.** Giving such benefit to the creditors is in consonance with the scheme of the IBC.”

23. However, in the case before us, the CoC after deliberations had unanimously taken a conscious decision that (a) the proceeds of the avoidance transactions (if and when received) will be retained by the Corporate Debtor and shall not be passed on to the financial creditors; (b) the cost of pursuing the avoidance transactions will be undertaken by the Corporate Debtor/Resolution Applicant. Moreover, considering the submission of the Learned Counsel for the Applicant that the CoC at the time of approval of the Resolution Plan is well aware of the avoidance applications, therefore, it is presumed that CoC has taken into consideration the cost, time, effort and risk that is involved in pursuing the avoidance proceedings vis-a-vis the possibility of recovery from the avoidance transactions. Accordingly, the ratio of the Venus Judgement (supra) is not applicable in the present case.
24. As to the relief and concessions sought in the Resolution Plan, the same are more specifically set out in Clause 7 (Reliefs and Concessions) of the Resolution Plan. However, in the clause 6 of the Resolution Plan, the Successful Resolution Applicant confirms that SRA is fully committed to implement the Resolution Plan and in case the Adjudicating Authority refuses to grant one or more of the reliefs and concessions requested in the Clause 7 of the Resolution Plan, it will not affect the commitment of the SRA to implement the Resolution Plan. The SRA will implement the Resolution Plan as approved by the Adjudicating Authority. In this regard, keeping in view the decision of the Hon'ble Supreme Court in the matter of

**Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019**, this Adjudicating Authority direct the Successful Resolution Applicant to file necessary application before the necessary forum/ authority in order to avail the necessary relief and concessions, in accordance with respective laws. The relevant part of the judgement is reproduced herein below:-

*39. Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:*

*“25. Duties of resolution professional –*

*(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.*

*(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:-*

*(a).....*

*(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings.”*

*This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).*

*40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”*

25. We are of the considered view that the same principles will apply to the Corporate Debtor in its new avatar after resolution.

26. In so far as the approval of the resolution plan is concerned, this authority is not sitting on an appeal against the decision of the Committee of Creditors and this Adjudicating Authority is duty bound to follow the judgement of the **Hon’ble Supreme Court in the matter of K.Sashidhar v. Indian Overseas Bank (2019)**

**12 CC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follow:-

*35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.*

27. Thus, from the judgments cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of creditors.
28. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan submitted by M/s. Malhotra Group PLC read with affidavits dated 02.11.2021 and dated 26.04.2023 filed by the Applicant and affidavit dated

25.04.2023 filed by the SRA wherein the SRA has undertaken to unconditionally fund the entire CIRP cost regardless of the amounts.

29. Accordingly, subject to the aforesaid observations, we hereby **approve the Resolution Plan** submitted by M/s. Malhotra Group PLC read with affidavit dated 26.04.2023 filed by the Applicant and affidavit dated 25.04.2023 filed by the SRA (**'Approved Resolution Plan'**), which shall be binding on the Corporate Debtor and its employees, shareholders of corporate debtor, creditors including the Central Government, any State Government or any Local Authority to whom statutory dues are owed, guarantors, Successful Resolution Applicant and other stakeholders involved.
30. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order, subject to our aforesaid observations. It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.
31. We further reiterate that the Approved Resolution Plan shall not construe any waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the Approved Resolution Plan, the same shall be subject to approval by the concerned authorities. The same view has been held by the Hon'ble Supreme Court in **Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development case (supra)**.
32. Accordingly, MoA and AoA of the Corporate Debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the Approved Resolution Plan as mentioned above, it is clarified that the Successful Resolution Applicant shall pursuant to the Resolution Plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for in such law.

33. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the Corporate Debtor and the Approved Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code. The Resolution Professional is further directed to handover all the records, premises, properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.
34. The Monitoring Committee is directed to file the monthly status report with regard to the implementation of the approved plan before this Adjudicating Authority.
35. Resultantly, ***I.A.4262/ND/2021 stands allowed, subject to the aforesaid discussion and directions.***

Let the copy of the order be served to the parties

**Sd/-**

**(DR.BINOD KUMAR SINHA)  
MEMBER (T)**

**Sd/-**

**(BACHU VENKAT BALARAM DAS)  
MEMBER (J)**