

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

1. I.A. 1752/2022

IN

C.P.(IB)-3815(MB)/2019

CORAM: SHRI H. V. SUBBA RAO, MEMBER (J)
SMT ANURADHA SANJAY BHATIA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **19.10.2022**

NAME OF THE PARTIES: Moksha Designs Pvt Ltd

V/s.

Ompal Technologies Pvt Ltd.

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Mr. Sadat Sanjari a/w Ms. Simran Kasat i/b Bathiya Legal, counsel for the
Corporate Debtor and Mr. Rohan Ghalla, representing the CoC are present
through virtual hearing.

I.A. 1752/2022

Order pronounced in the open court vide separate order. In the result, the
above Interlocutory Application No. 1752/2022 is allowed.

Sd/-
ANURADHA SANJAY BHATIA
Member (Technical)
//SGP//

Sd/-
H. V. SUBBA RAO
Member (Judicial)

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

**I.A. No. 1752 of 2022
IN
C.P. No. 3815 of 2019**

In the matter of an Application under
Section 30(6) of the Insolvency and
Bankruptcy Code, 2016.

In the matter of

Moksha Designs Private Limited

...Operational Creditor

v/s.

Omapal Technologies Private Limited

...Corporate Debtor

I.A. No. 1752/2022

Mr. Mayur Rajendra Kumar Popat

...Applicant/Resolution Professional

Reserved for orders on: **16.09.2022**

Order pronounced on: **19.10.2022**

Coram:

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

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

Appearance (through video conferencing):

For the Applicant: Mr. Aditya Udeshi, Advocate for Resolution
Professional

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

1. This is an Application filed under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) filed by

the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant M/s. ABH Developers Private Limited (Lead Member) and Tanu Reality LLP (Consortium Partner), which was approved by 82.97% voting share of the members of the Committee of Creditors (hereinafter referred to as 'COC').

2. The facts leading to the Application are as under:
 - a. Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP') of the Corporate Debtor was initiated by this Bench by an order dated 31.08.2021 under Section 9 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as 'the Code') (Admission Order) and Mr. Manish D. Shah, was appointed as Interim Resolution Professional (hereinafter referred to as 'IRP'). The IRP published a public announcement as per Section 13 & 15 of the Code, inviting claims from the creditors of the Corporate Debtor.
 - b. The IRP published a public announcement in Form A in accordance with Section 15 of the Code, on 21.09.2021, in English Newspaper Financial Express and one in Marathi Newspaper Navrashtra, inviting claims from the creditors of the Corporate Debtor.
 - c. The IRP constituted the Committee of Creditors. The COC in its 1st meeting held on 14.10.2021 appointed Mr. Arun Bagaria as the Resolution Professional (hereinafter referred to as 'RP').
 - d. The Applicant submits the claims received and admitted by Resolution Professional as under:

Summary of Claims (Amount in Rs.)			
Sr. No.	Class of Creditor	Amount Claimed	Amount Admitted
1	Financial Creditors (all unsecured financial creditors)		

A	Aar Em Ventures LLP	3,47,02,907	3,47,02,907
B	JWI Ventures LLP	71,22,111	71,22,111
2	Operational Creditors (aggregate dues exceeding 10% of the debt)		
A	Moksha Designs Private Limited	65,28,940	65,28,940
3	Employees and workmen		
A	Kartik Gupta	23,95,680	16,73,867
	Total	5,07,49,638	5,00,27,825

e. Thereafter, RP upon verification of the same, constituted the CoC. Pursuant to the public announcement RP received 5 (five) Expression of Interests from the Prospective Resolution Applicants (PRA's).

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

3. The CoC decided to appoint a Valuer. The Resolution Professional accordingly appointed registered valuers Mr. Keyur J. Shah and Mr. Suresh Agrawal on 02.11.2021 for valuation of financial assets of the Corporate Debtor to determine the fair value and liquidation value, as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016. These valuers had submitted their reports. The Liquidation and fair value of the Corporate Debtor is as follows:

Amount in INR

Sr. No.	Valuer	Liquidation Value	Fair Value
1.	Keyur J. Shah	19,97,000/-	81,43,000/-
2.	Suresh Agarwal	95,06,502/-	1,13,06,502/-
	Average Value	57,51,751/-	97,24,751/-

4. An application was filed by one of the financial creditors having majority voting rights in CoC, namely Aar Em Ventures LLP before this Tribunal for replacement of Mr. Arun Bagaria with the Mr. Mayur Rajendrakumar Popat (hereinafter referred to as 'the Applicant), the Applicant abovenamed as the new resolution professional of the Corporate Debtor. Subsequently, the Tribunal was pleased to allow the said application vide its order dated April 19, 2022.
5. The Applicant states that the COC in its 3rd Meeting dated 04.01.2022 decided that an advertisement for inviting EOI be issued. Form G inviting EOI was published on 22.01.2022 in Free Press Journal (English, Mumbai Edition) and Navshakti (Marathi, Mumbai Edition). The last date for submission of expression of interest from prospective resolution applicants was 06.02.2022. Subsequently in the 5th CoC Meeting dated 28.02.2022 the CoC decided to publish a new Form – G and extend the timelines to accept fresh EOIs. Thereafter, a new Form – G was published on 07.03.2022 wherein the last date of receipt of EoI was 18.03.2022 and 24.04.2022 was the final last date of submission of Resolution Plan.
6. The Applicant further states that in furtherance of the Form-G issued by applicant, he received EOIs from five Prospective Resolution Applicants (PRAs) within the stipulated time period. Below are the names of the prospective resolution applicant:
 - a. M/s A & L Apparels Private Limited
 - b. M/s One City Infrastructure Private Limited
 - c. M/s ABH Developers Private Limited (Lead Member) and Tanu Reality LLP (Consortium Partner)
 - d. M/s Manratan Realities Private Limited
 - e. Mr. Kailash Shah

7. The Applicant submits that, during the 7th Meeting of COC held on 28.05.2022, the proposed Resolution Plans were evaluated on the basis of the evaluation matrix. The resolution passed, and it was declared that the plan submitted by the M/s ABH Developers Private Limited (Lead Member) and Tanu Reality LLP (Consortium Partner) was approved.
8. Thereafter, the Applicant issued compliance certificate in Form "H" was issued by the Resolution professional.

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

- a. M/s ABH Developers Private Limited (Lead Member) and Tanu Reality LLP (Consortium Partner), the "Successful Resolution Applicant" (SRA), The Resolution Applicant is a Company, incorporated under the provisions of the Companies Act, 2013, having its Registered Office at Survey No 24 / 25 / 1, Treeland, Moule Gangapur Road, Opp. Bobby Hotel, Shankar Nagar, Nashik, Maharashtra-422013. The SRA is a consortium of M/s ABH Developers Private Limited (Lead Member) and Tanu Reality LLP (Consortium Partner), which has 3 directors having who are well known for unwavering devotion to bestow excellence, promises a futuristic lifestyle to residents and owners.
- b. The Omapal Technologies Pvt. Ltd. (the Corporate Debtor) is a private limited company, having its Registered office in Mumbai which engaged in the business of in building technologies to power innovative ecommerce operations. The main object of the Corporate Debtor is to built technology to power rental of apparels and built custom software including warehouse and

inventory management systems, logistics systems and customer facing portals that included unique features of custom sizing and booking of inventory for a particular date range.

- c. The Resolution Applicant has proposed to takeover the management and ownership control of the Corporate Debtor by acquiring up to 100% shareholding of the Company.
- d. **Effective Date:** “Effective Date” means the date on which the order approving this Resolution Plan by the Adjudicating Authority under section 31 of the Code, is received by the Resolution Applicant. In the event of an appeal being filed, then the Effective Date will be the date on which the appeal is finally disposed off whereby, the order passed by NCLT is confirmed in favour of Resolution Applicant and in the event no appeal is filed, then the Effective Date will be the date on which the statutory period of limitation for preferring the appeal is over.
- e. **Formation of New Board:** Corporate Debtor shall be managed under the leadership and guidance of Resolution Applicant. Immediately after the Effective Date, all the existing Board of Directors shall cease to have effect and new board to be constituted having members as nominated by the Resolution Applicant in its sole and absolute discretion.
- f. **Cancellation of existing shareholding and issue of fresh equity shares:** Immediately after Effective Date, all the existing shares of Corporate Debtor shall stand cancelled without any payment to existing shareholders. Corporate Debtor shall issue to the Resolution Applicant such number of equity shares as may be suitable on the basis of capital structure requirement of the Corporate Debtor. In terms of the circular (ref IBC/01/2017) dated 25th October, 2017, issued by the Ministry

of Corporate Affairs, India, approval of the erstwhile shareholders of the Corporate Debtor to the transaction contemplated under the instant Resolution Plan, including the transfer/extinguishment of the entire existing share capital, shall deemed to have been given without any further act and deed immediately upon sanction of the Resolution Plan by the Adjudicating Authority.

- g. The appointment of Chief Executive Officer, Chief Operating Officer and Chief Financial Officer and Other Key personnel shall be decided at the appropriate time. The Resolution Applicant reserves the right to replace the key management personnel of the Company with the appropriate persons of its choice.
 - h. The Resolution Plan proposes a total Consideration of **Rs. 2,58,00,000/- (Indian Rupees Two Crores Fifty Eight Lakhs)** for the settlement of claims.
10. **The details of the proposed payments are as follows:**
- A) CORPORATE INSOLVENCY RESOLUTION PROCESS COSTS:**
- i. The proposed Resolution Plan has made a provision of INR 8,00,000 (Indian Rupees Eight Lakhs) in total, towards outstanding CIRP Cost.
 - ii. The full amount of CIRP cost as mentioned above shall be paid at actuals by the Resolution Applicants within 30 (thirty) days from the Effective Date.
 - iii. Once the outstanding CIRP Costs as mentioned above have been paid in full within 30 (thirty) days from the Effective Date, it is clarified that no claims, liabilities, fines, costs, expenses or any other payment of such

nature or otherwise, that are or are claimed to constitute CIRP Costs shall be payable by the Resolution Applicant. Any cash and bank balances as on the Effective Date shall remain to be unencumbered ownership of the Corporate Debtor and the Resolution Applicant.

B) PAYMENT TO UNSECURED FINANCIAL CREDITORS:

- i. The Applicant has submitted that the total claim of Rs. 4,18,25,018/- (Rupees Four Crores Eighteen Lakhs Twenty Five Thousand and Eighteen Only) was verified and admitted by the Applicant towards the claim of Unsecured Financial Creditors. The Resolution Applicant offers to pay Rs. 2,42,00,000/- (Indian Rupees Two Crore Forty-Two Lakh only) in the full and final settlement/ payment of the entire claim of the Unsecured Financial Creditors.
- ii. The Resolution Applicant shall pay an amount of Rs. 2,42,00,000/- (Indian Rupees Two Crore Forty-Two Lakh Only) in the ratio of voting rights of Unsecured Financial Creditors within 30 (thirty) days from the Effective Date of Resolution Plan.
- iii. The details of amount to be paid to the Unsecured Financial Creditors are as follows:
 - a. Aar Em Ventures LLP – Rs. 2,00,78,740/-
 - b. JWI Ventures LLP – Rs. 41,21,260/-.
- iv. Save and except the aforesaid sum of Rs. 2,42,00,000/- (Indian Rupees Two Crore Forty-Two Lakh Only) which is being paid in full and final settlement/payment of the entire claim of the Unsecured Financial Creditors.

C) PAYMENT TO EMPLOYEES AND WORKMEN OF THE CORPORATE DEBTOR:

- i. The Applicant has submitted that the total claim of Rs. 16,73,867/- (Indian Rupees Sixteen Lakhs Seventy Three Thousand Eight Hundred and Sixty Seven only) was verified and admitted by the Applicant towards the claim of Financial Creditors. The Resolution Applicant offers to pay Rs. 2,00,000/- (Indian Rupees Two Lakhs only) in the full and final settlement/ payment of the entire claim of the Employees and Workmen.
- ii. The Resolution Professional has not disclosed the Liquidation Value of Omapal Technologies Private Limited hence the Resolution Applicant has not known the same.
- iii. The Resolution Applicant offers to pay Rs. 2,00,000/- (Indian Rupees Two Lakhs Only) in the full and final settlement/ payment of the entire claim of the Employees and Workmen.
- iv. The Resolution Applicant shall pay an amount of Rs. 2,00,000/- (Indian Rupees Two Lakhs Only) within 30 (thirty) days from the Effective Date of Resolution Plan as full and final settlement/payment of the entire claim of the Employees and Workmen.

D) PAYMENT TO OPERATIONAL CREDITOR AND STATUTORY CREDITORS:

- i. The Applicant has submitted that the total claim of Rs. 65,28,940/- (Indian Rupees Sixty Five Lakhs Twenty Eight Thousand Nine Hundred and Forty only) was verified and admitted by the Applicant towards the claim of Operational Creditors and Statutory Creditors. The Resolution Applicant offers to pay Rs. 6,00,000/- (Indian Rupees Six Lakhs only) in the full and final settlement/ payment of the entire claim of the Operational Creditors

and Statutory Creditors.

- ii. The Resolution Applicant offers to pay Rs. 6,00,000/- (Indian Rupees Six Lakhs only) in the full and final settlement/ payment of the entire claim of the Operational Creditors and Statutory Creditors.
- iii. The Resolution Applicant shall pay an amount of Rs. 6,00,000/- (Indian Rupees Six Lakhs only) within 30 (thirty) days from the Effective Date of Resolution Plan as full and final settlement/payment of the entire claim of the Operational Creditors and Statutory Creditors.
- iv. The Resolution Applicant shall not pay anything with respect to Statutory dues such as GST/TDS/VAT/Professional Tax or any other taxes.

E) PAYMENT TO EQUITY SHAREHOLDERS:

- i. The Applicant submits that as per estimated calculation, if the Corporate Debtor were to be liquidated, the amount that would be payable to equity shareholders would work out to be NIL. The cash flows in the Resolution Plan are not sufficient to service all the Financial Creditors, Operational Creditors and other liabilities in full. Accordingly, the equity shares do not have recoverable value and in the estimate of the Resolution Applicant, the estimated liquidation value to such equity shareholders shall be NIL and thereby equity shareholders are not eligible to receive any payments towards their investments. The treatment under this Resolution Plan towards the existing equity shareholders of the Corporate Debtor and for infusion of funds through new equity share capital is as follows:

a. Reduction of Equity Share Capital:

The entire paid-up share capital of the Corporate Debtor (including all the series of equity capital) shall stand cancelled and reduced without any pay out to the shareholders on or before the Effective Date as a part of the Resolution Plan without any separate additional process or compliances and also without the requirement of writing the words “and reduced” in the name and style of the Corporate Debtor. The approval of this Resolution Plan shall mean deemed approval to the reduction of equity share capital under applicable laws including Section 66 of the Companies Act, 2013.

The existing equity shareholders shall not be paid any amount for the cancellation and/or reduction of their share capital and any claims in relation thereto shall stand extinguished without any payment or recourse. Post Effective Date, the necessary corporate actions shall be taken in this regard and existing share certificates held by the shareholders of the Corporate Debtor shall be deemed cancelled without any further act or deed on part of the Resolution Applicant.

b. Fresh Issue of Equity Share Capital:

On or before the Effective Date, Resolution Applicants (along with their Affiliates) shall subscribe to Rs. 1,00,000 (10,000/- new equity shares of Rs. 10 each to be issued by the Corporate Debtor aggregating to Rs. 1,00,000 (Indian Rupees One Lakh) against payment of initial subscription amount.

As there will be a substitution of equity shares of the Corporate Debtor, through reduction and re-issuance

of the equity shares, the Corporate Debtor and/or the Resolution Applicants shall be entitled to benefit from the stamp duty already paid on the equity shares so cancelled and shall not be required to pay any additional stamp duty on new equity shares issued to the Resolution Applicants. In case the stamp duty is not waived-off by the concerned authority, the Resolution Applicants and/or the Corporate Debtor shall pay the stamp duty on issue of fresh equity shares.

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

Sr. No.	Particulars	Category	Amount
1.	CIRP Costs		8,00,000
2.	Financial Creditors	Unsecured Financial Creditors	
A.	Aar Em Ventures LLP		2,00,78,740
B.	JWI Ventures LLP		41,21,260
Total			2,42,00,000
3.	Employees & Workmen		
A.	Mr. Kartik Gupta		2,00,000
Total			2,00,000
4.	Operational Creditors and Statutory Creditors		6,00,000
5.	Equity Share Capital		NIL
GRAND TOTAL - 1 + 2 + 3 + 4 + 5			2,58,00,000

11. **BUSINESS REVIVAL PLAN:-**

- i. In order to re-establish and level up the operations of the Corporate Debtor in line with the market forces, the Resolution Applicants propose the following business turnaround plan:
 - c. The Resolution Applicants will infuse money on need basis to restart the existing business of the Corporate debtor.
 - d. Induction of key measures like improving governance, increasing compliance, introduction of professional employees, timely supervision, increase in marketing strength, identifying opportunities through market study, proper strategy and execution for improving efficiency and profitability in business operations of the Corporate Debtor.
 - e. Induction of additional working capital as and when required to boost-up the business operations of the Corporate Debtor.
 - f. The Resolution Applicants have attached projected financial statements based on current financials of the Corporate Debtor.

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

13. **OBSERVATIONS AND FINDINGS:-**

- i. As per IBC Code 30(2)(a) – A Resolution Plan provides for

the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.

- ii. As per Section 30(2)(b), the Respondent has agreed to pay operational creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.
- iii. Provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(c).
- iv. Provides for a term of the plan, implementation schedule and supervision of the Resolution Plan under Section 30 (2) (d)& Regulation 38(2)(c).
- v. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor.
- vi. The Resolution Plan does not contravene any of the provisions of the law for the time being in force - please include a statement to this effect in the Resolution Plan as per Section 30(2)(e).
- vii. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- viii. As per IBBI Guidelines 38(1)(b) - The amount payable under a Resolution Plan -to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of

the plan.

- ix. The resolution applicant or any of its related parties has not failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.
- x. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
 - a. The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors. Regulation 38(1).
 - b. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2) (c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
 - c. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a)).
 - d. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
 - e. The amount payable under a resolution plan to the Financial Creditors, who have right to vote under sub-section (2) of section 21 and did not vote in favor of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.
 - f. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the

provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.

- g. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.
- h. Provides for the management and control of the business of the Corporate Debtor during its term.
- i. All the above factors demonstrate that the plan address the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
- j. That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1)(b) of the Regulations.
- k. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, keeping in view the objectives of the Code (Regulation 38(1A)).

14. The Resolution Plan has been approved in the 7th COC meeting held on 28.05.2022 with 82.97% voting in accordance with the provisions of the Code.

15. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

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

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

*parameters of such review having been clearly laid down in **K. Sashidhar** (supra).”*

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

18. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. There are no workers claims. Resolution Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

ORDER

- i. The Interlocutory Application No. 1752 of 2022 is allowed. The Resolution Plan submitted by **M/s ABH Developers Private Limited (Lead Member) and Tanu Reality LLP (Consortium Partner)**., is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its Employees, Members, Creditors, including the Central Government, any State Government or any local authority

to whom a debt in respect of payment of dues arising under any law for the time being in force is due.

- ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. It is seen that the Resolution Applicant sought several dispensations, concessions and waivers. Any waiver sought in the Resolution plan shall be subject to approval by the Authority concerned in the light of the Judgment of Supreme Court in **Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited**, the relevant para's of which are extracted herein below:

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

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

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

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

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

- viii. The Interlocutory Application No. 1752 of 2022 is accordingly allowed and disposed of.

Sd/-

**ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)**

Sd/-

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