

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

**I.A. 3625/2022**

**In**

**C.P. No. (IB) 27/MB/C-III/2019**

*Under Section 31 of the Insolvency  
and Bankruptcy Code, 2016*

**Mr. Abhay Narayan Manudhane**

*Resolution Professional of  
Housing Development &  
Infrastructure Limited*

Having office at:

1204, Maker Chamber V,  
Jamnalal Bajaj Road, Nariman  
Point, Mumbai – 400021

**... Resolution Professional/  
Applicant**

*In the matter of*

**Bank of India**

*... Financial Creditor*

Vs

**Housing Development and  
Infrastructure Limited**

*... Corporate Debtor*

**Order pronounced on: 27.06.2025**

**Coram:**

Sh. Hariharan Neelakanta Iyer  
Member (*Technical*)

Ms. Lakshmi Gurung  
Member (*Judicial*)

**Appearances:**

*For the Applicant/RP* : Mr. Shadab S. Jan a/w Ms. Prerana Wagh,  
Mr. Mufaddal Paperwala, Prangna B i/b M/s

Crawford Bayley & Co.

*For the Successful RA* : Mr. Vikram Nankani Sr. Adv. a/w. Adv.  
Saloni Kapadia, Adv. Karan Gandhi, Adv.  
Kunal Nandkarni i/b. Cyril Amarchand

**Per: Coram**

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1. The I.A. 3625/2022 is filed by Mr. Abhay Narayan Manudhane, Resolution Professional of Housing Development & Infrastructure Limited (**Corporate Debtor/ HDIL**) under Section 31 of the Insolvency and Bankruptcy Code, 2016 (**Code**) seeking approval of the Resolution Plan for Vertical V - Project BKC, submitted by Adani Properties Private Limited (**Successful Resolution Applicants/SRA**) which was approved by the Committee of Creditors (CoC) by 66.084% voting at its 25<sup>th</sup> Meeting which was convened on 19.09.2022. The voting process commenced on 19.09.2022 and concluded on 04.11.2022. The prayers in the present application are extracted below:

- (a) *Pass an order under Section 31 of Insolvency & Bankruptcy Code, 2016 and approve the resolution plan submitted by Resolution Applicant for Vertical V- BKC Project;*
- (b) *In the alternative, and in case any defects/ discrepancy/ lacunae/ non-compliance is found in the resolution plan, this Tribunal be pleased to remand the Resolution Plan submitted by Resolution Applicants before the Committee of Creditors for reassessment and curing such defects/ discrepancy/ lacunae/ non-compliance.*

**Facts of the Case, in brief:**

2. The Corporate Insolvency Resolution Process (**'CIRP'**) of HDIL/Corporate Debtor was initiated by this Tribunal vide Order dated 20.08.2019 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**'the Code'**) and

Mr. Abhay Narayan Manudhane (**Applicant**) was appointed as the Interim Resolution Professional (**‘IRP’**).

### 3. **Constitution of Committee of Creditors (CoC)**

3.1 The IRP made public announcement on 29.08.2019 under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**‘CIRP Regulations’**) inviting claims from the creditors of the Corporate Debtor.

3.2 Accordingly, the Committee of Creditors (**CoC**) was constituted and in the 1<sup>st</sup> CoC Meeting held on 08.01.2020, the Applicant was confirmed as the Resolution Professional (**RP**).

3.3 The latest list of members of the CoC as stated in the application is as follows:

<b>Sr. No.</b>	<b>Name of the Financial Creditor</b>	<b>Amount Admitted (In Rupees)</b>	<b>Voting %</b>
1	Bank of Baroda (Erstwhile Dena Bank)	2,93,94,105	0.038%
2	Bank of Baroda (Erstwhile Vijaya Bank)	3,87,41,120	0.050%
3	Bank of India	5,66,07,43,998	7.258%
4	Canara Bank	44,00,91,607	0.564%
5	Canara Bank (Erstwhile Syndicate Bank)	1,01,44,31,698	1.301%
6	Central Bank of India	2,03,56,77,368	2.610%
7	IDBI Bank Limited	78,54,94,221	1.007%
8	IL&FS Financial Services Ltd	2,77,46,33,383	3.558%
9	India Infrastructure Finance Co. Ltd.	27,45,80,628	0.352%
10	Indian Bank	26,92,01,479	0.345%

11	Indian Bank (Erstwhile Allahabad Bank, SAM Mumbai Branch)	1,59,46,67,567	2.045%
12	Indian Bank (Erstwhile Allahabad Bank, SAM New Delhi Branch)	16,02,85,994	0.206%
13	Jade Agricultural Company Private Limited	60,00,00,000	0.769%
14	Kotak Mahindra Prime Limited (debts assigned Volkswagen Finance Private Limited)	5,39,857	0.001%
15	Life Insurance Corporation of India	8,78,76,30,872	11.268%
16	Manoj Agarwal (Authorised Representative of Home Buyers)	8,93,24,47, 44	11.579%
17	Punjab National Bank (Erstwhile Oriental Bank of Commerce)	26,35,96,685	0.338%
18	Suraksha ARC-008 Trust	6,97,84,04,763	8.948%
19	Suraksha ARC-011 Trust	3,15,21, 18,355	4.042%
20	Suraksha ARC-013 Trust	1,91,52,97,064	2.456%
21	Suraksha ARC-016 Trust	53,77,36,234	0.689%
22	Suraksha ARC-025 Trust	4,42,27,26,077	5.671%
23	UCO Bank	12,33,38, 146	0.158%
24	Union Bank of India – Central Office, Mumbai	1,14,68, 12,290	1.470%
25	Union Bank of India – Hill Road, Bandra West Branch	2,50,61,99,936	3.214%
26	Unity Small Finance Bank Ltd (Erstwhile Punjab & Maharashtra Co-op. Bank Ltd.)	18,49,09,70,391	23.71%
27	Yes Bank	4,95,48, 16,695	6.353%
	<b>Total</b>	<b>77,89,05,78, 173</b>	<b>100%</b>

#### 4. ***Failure of Resolution Process of Corporate Debtor as a whole***

4.1 In terms of Section 25(2)(h) of the I&B Code, the RP made public announcement inviting Expression of Interest (EoI) for the Corporate Debtor on 16.02.2020, however, no resolution plans were received. In the 12<sup>th</sup> CoC Meeting and 13<sup>th</sup> CoC Meeting held on 18.01.2021

and 30.01.2021 respectively, there were discussions on exploring project-wise resolution of the Corporate Debtor and the RP submitted a brief note on the same. However, the initial attempt to explore project-wise resolution failed since majority of the CoC members did not vote in favour of the same.

4.2 Since no resolution plan was received by the RP and the notion of project-wise resolution was also not approved by the CoC, the CoC, at the 17<sup>th</sup> CoC Meeting held on 07.08.2021, with 74.60% of voting approved the resolution to liquidate the Corporate Debtor.

4.3 Aggrieved by the same, applications were filed by various associations of home buyers seeking a stay on liquidation proceedings and consideration of project-wise resolution of the Corporate Debtor. Thereafter, the CoC Members in the 18<sup>th</sup> CoC meeting held on 08.09.2021, passed a resolution authorizing the RP to explore project wise resolution.

## 5. ***Project-wise Resolution of the Corporate Debtor***

5.1 Pursuant to the decision of the CoC in its 18<sup>th</sup> meeting to explore project-wise resolution of the Corporate Debtor, the RP filed IA/2118/2021 seeking extension of time. This Tribunal vide order dated 29.09.2021 dismissed IA/2118/2021 concluding that no resolution of the Corporate Debtor is in sight.

5.2 Aggrieved by the same, the homebuyers preferred appeals before the Hon'ble NCLAT. The said order dated 29.09.2021 rejecting grant of extension for exploring project-wise resolution was set aside by Hon'ble NCLAT in Company Appeals No. 896/2021, 980/2021 and 1045/2021 vide order dated 04.01.2022 wherein it was held as follows:

*“18. ... The Resolution taken on 8th September, 2021 as extracted above was with regard to Project Wise Resolution, dividing entire*

assets into eight Projects. This Project Wise Resolution became possible only after 8th September, 2021. **The Committee of Creditors, whose commercial wisdom has to be given due weight, rightly took the decision for Project Wise Resolution.**

19. No Resolution Applicant is ready to undertake huge real estate Project which has amply been proved when Expression of Interest for Project Wise Resolution was called, 25 Applicants have already shown their interest in different Projects. The Adjudicating Authority failed to give due weight to the Resolution/ decision of the CoC dated 8th September, 2021 and **erred in not allowing even a reasonable period for proceeding further with Project Wise Resolution.**

20. The Hon'ble Supreme Court time and again reminded that the object of IBC is to resolve the insolvency resolution process and liquidation is to be adopted as a last resort.

23. In view of the above discussion, we allow the Appeal and set aside the order of the Adjudicating Authority dated 29.09.2021, allow the Application being I.A. No.2118 of 2021 in C.P.(IB)-27(MB)/2019 filed before the Adjudicating Authority and grant extension of 90 days from the date of this order **during which period the Resolution Professional and the Committee of Creditors may complete the Project Wise Resolution as decided in their meeting on 8th September, 2021.** No order as to costs."

**(Emphasis Provided)**

5.3 Thus, project-wise resolution was permitted by Hon'ble NCLAT, at the efforts of home-buyers.

5.4 Accordingly, the RP, in consultation with the CoC, divided the Corporate Debtor into 10 (ten) Verticals/Projects as follows:

Vertical I	Majestic Towers
Vertical II	Whispering Towers
Vertical III	Premier Exotica
Vertical IV	Galaxy Apartment
Vertical V	BKC Inspire

Vertical VI	Paradise City
	HDIL Towers (Building)
Vertical VIII	Land parcels at Vasai and Virar
Vertical IX	Land parcel at Kalyan Shahad ("Shahad Land")
Vertical X	Rest of the Corporate Debtor and assets not included.

5.5 The present application pertains only to the Resolution Plan of Vertical V – Project BKC.

## 6. **Valuation**

6.1 In the 1<sup>st</sup> CoC Meeting held on 08.01.2020, the CoC approved the appointment of M/s Kakode & Associates and Rakesh Narula & Co. as valuers for determining the fair value and liquidation value of all the assets of the Corporate Debtor. The Valuation of Vertical V as provided in Form H is as follows:

<b>Valuer</b>	<b>Fair Value (In Crores)</b>	<b>Liquidation Value (In Crores)</b>	<b>Average Fair Value (In Crores)</b>	<b>Average Liquidation Value (In Crores)</b>
Valuer 1	0	0	0	0
Valuer 2	0	0		

## 7. **Request for Resolution Plan (RFRP)**

7.1 In furtherance thereof, the RP issued the Request for Resolution Plans (RFRP) on 17.01.2022. As per the RFRP, the Prospective Resolution Applicants (PRAs) had to provide Earnest Money Deposit (EMD) of Rs. 1,00,00,000/- if submitting a plan for company as a whole or Rs. 25,00,000/- per project in case of submission of project-wise plan (subject to a maximum of Rs. 1,00,00,000/-). In response thereto, the PRAs submitted their plans along with payment of applicable EMD. Thereafter, the final list of Prospective Resolution Applicants was prepared on 22.01.2022.

8. ***Approval of Resolution Plan for Vertical V – Project BKC***

- 8.1 In the 22<sup>nd</sup> & 23<sup>rd</sup> CoC Meetings, the Committee of Creditors discussed and negotiated on the shortlisted plans with the respective PRAs.
- 8.2 At the 25<sup>th</sup> CoC Meeting held on 19.09.2022, out of the 14 Resolution Plans submitted for various verticals of the Corporate Debtor as well as for the Corporate Debtor as a whole, 6 (six) Resolution Plans for six different verticals, which were in compliance with the Code and applicable Regulations, were placed before the CoC for approval/rejection and the period of voting was extended from time to time and finally concluded on 04.11.2022.
- 8.3 It is noted that only one Resolution Plan was received for Vertical IX by Adani Properties Private Limited which was stated to be in compliance with the Code. Accordingly, the said Resolution Plan was placed before the CoC. From perusal of the CoC Meetings, it is observed that multiple rounds of discussions and deliberations was carried out amongst the CoC Members, the RP and the Adani Properties over the viability and feasibility of the Resolution Plan.
- 8.4 Subsequently, the Resolution Plan for Vertical V – Project BKC, submitted by Adani Properties Private Limited (**Successful RA**) was approved by the CoC by 66.084% of voting.
- 8.5 Accordingly, the RP issued a Letter of Intent dated 05.11.2022 for Vertical V which has been duly and unconditionally accepted by the Successful RA.



**Resolution Plan for Project BKC by Adani Properties Private Limited**

**9. Brief background of the Successful Resolution Applicant:**

9.1 The Successful Resolution Applicant is involved in the real estate sector and infrastructure development, and has vast experience in reviving stressed companies involved in real estate/infrastructure/power sectors.

9.2 It is submitted that the Successful Resolution Applicant is not barred by Section 29A of the Code and an affidavit in this regard was also submitted by the Successful Resolution Applicant along with the Resolution Plan.

**10. Salient Features of Resolution Plan:**

10.1 Clause 1.13 of the RFRP provides for Performance Security/Guarantee. The relevant clause is reproduced below:

*“1.13.1 Within 10 (ten) days of the date of issuance of a Letter of Intent, the Successful Applicant shall provide a performance guarantee of Rs. 25,00,00,000/- if submitting a plan for company as a whole or Rs. 5,00,00,000/- per project in case of submission of project-wise plan (Subject to a maximum of Rs. 25,00,00,000/- incase successful applicant bids for multiple projects).”*

10.2 As per Regulation 36B(4A) of the CIRP Regulations, the Successful RA has paid performance bank guarantee of Rs. 5,00,00,000/-. Clause 6 of the Bank Guarantee states as follows:

*“6. We, the Guarantor Bank further agree that the guarantee herein contained shall remain in full force and effect for a period from 9th November, 2022 up to 8th November, 2023, from the date hereof and that it shall continue to be enforceable till all the dues of the Successful Resolution Applicant(s) in relation to the Resolution Plan and / or under or by virtue of the RFRP have been fully paid and its claim satisfied or discharged or till the Bank*

*certifies that the Resolution Plan has been effected and that the terms and conditions of the RFRP have been fully and properly carried out by the said Successful Resolution Applicant(s). The Bank shall be entitled to invoke this Performance Guarantee up to 12 Months from the last date of the validity of this Performance Guarantee by issuance of a written demand to invoke this Performance Guarantee.”*

10.3 It is submitted that the Successful RA proposes to take over the BKC Project being a Slum Rehabilitation Authority (SRA) Project and shall continue with the subsisting Development Agreements with Budhpur Buildcon Private Limited (BBPL) and to develop the same in accordance therewith.

10.4 It is further stated that the Resolution Applicant is not taking over the Corporate Debtor as a going concern but the Resolution Plan contemplates the demerger of the BKC Project into the Resolution Applicant or 100% subsidiary or the step down subsidiary of the Resolution Applicant, and therefore, the current management of the Resolution Applicant shall manage the affairs of the BKC Project upon approval of this Resolution Plan and the management of the Corporate Debtor shall remain unaffected.

10.5 Source of Funds as provided in Part III-O of the Resolution Plan:

**“III-O: SOURCES OF FUNDS FOR RESOLUTION PLAN**

- (i) *The entire cost of the plan will be self-funded by the Resolution Applicant from its own resources.*
- (ii) *The Resolution Applicant will pay the CIRP Cost from its own source of funds as and when intimated by the Resolution Professional.*
- (iii) *The Resolution Applicant has sufficient Reserves and Surplus and Net worth balance as per its Audited Balance Sheet.*

*Resolution Applicant confirms that it has sufficient funds availability at its disposal and/or has ability to raise such amounts from other sources also.*

- (iv) It is pertinent to mention that the Resolution Applicant is possessing sound goodwill and flawless credit history. The Resolution Applicant is having sizable retained earnings and also generating sufficient internal accruals which shall be sufficient enough to meet out the payments envisaged in the resolution plan.*
- (v) The Resolution Applicant has enjoyed long standing credit facilities from reputed Banks and it has available the credit lines which also be utilized for meeting out the shortfall (if any).*
- (vi) Payment Schedule for Class of Creditors and other dues are is explained hereinabove.*
- (vii) The Resolution Applicant will have to incur expenditure for Working Capital in addition to the Resolution Plan payments as mentioned herein.*
- (viii) The Resolution Plan has been designed with All Stakeholders Approach and takes care of all the concerned stake holders of the Corporate Debtor in an optimal manner.”*

## **10.6 Financial Outlay under the Resolution Plan**

### **10.6.1. CIRP Costs**

- (i) The Resolution Plan states that the Insolvency Resolution Process Costs (**CIRP Cost**) as per the Information Memorandum is Rs. 44.83 crore when estimated for the Corporate Debtor as a whole.*
- (ii) It is further stated that “the outstanding CIRP Costs for the BKC Project shall be paid on actuals out of the Cash infusion Amount, as approved by the members of the COC*

*and NCLT, for the period upto the effective date. The estimated CIRP Cost is Rs. 15,00,000/- (Rupees Fifteen Lacs Only) for this Project. In the event the actual CIRP Cost by the Resolution Applicant exceeds the estimated CIRP Costs such excess amount shall be deducted from payments due to secured financial creditors.”*

10.6.2. **Financial Creditors**

**A. Payment to Secured and Unsecured Financial Creditors**

- (i) The RP has filed the Compliance Certificate in Form H dated 10.11.2022. Form H contains the details of allocation of funds to creditors, after approval by CoC. As per the same, the payment allocated to be made to the financial creditors of the Corporate Debtor is Rs. 2.83 crores.

**B. Dissenting Financial Creditors**

- (i) It is noted from the Form H that four CoC Members being, the Bank of India (7.258% voting share), the Central Bank of India (2.610% voting share), Punjab National Bank – Erstwhile Oriental Bank of Commerce (0.338% voting share) and the Unity Small Finance Bank Ltd – Erstwhile Punjab & Maharashtra Co-op. Bank Ltd. (23.71% voting share), abstained from voting in the Resolution Plan. The total voting share of the abstained CoC Members is 33.916%.
- (ii) The Resolution Plan proposes payment of minimum liquidation value to the creditors who do not vote in favour of the Resolution Plan.

(iii) As can be seen from above, the dissenting financial creditors who have not voted in favour of the resolution plan are entitled of the payment of liquidation value which in the present case is stated to be *nil*. As regards this treatment of dissenting financial unsecured creditors, we observe that there is no discrimination in the treatment of the assenting and dissenting financial creditors under the Resolution Plan. We are supported by the observations of Hon'ble NCLAT in **Peter Beck and Partner Vermoegensverwaltung GMBH vs. Sharon Bio-medicine Limited & Ors. [Company Appeal (AT) (Ins) No. 912 of 2023]**. In the above cited case, the Appellant contended that the assenting unsecured financial creditor was to be paid Rs. 1.48 cr. under the resolution plan whereas the dissenting unsecured financial creditor was proposed *nil* payment. The Hon'ble NCLAT observed as follows:

*“20. ... we are of the view that assenting financial creditors entitled for payment as proposed in the plan and dissenting financial creditor is entitled as per the minimum entitlement as per Section 30(2)(b). There is no dispute that liquidation value of the Appellant in the present case is nil. The submission of the Appellant that there is a discrimination between the payment of assenting unsecured financial creditor and dissenting unsecured financial creditor cannot be accepted and on the ground, as urged by the Appellant in this Appeal, the Resolution Plan approved by the Adjudicating Authority cannot be held to be discriminatory. We, thus, are of the view that there is no error in the order of the Adjudicating Authority approving the Resolution Plan.”*

10.6.3. **Operational Creditors**

**A. Employee and Workmen Dues**

- (i) It is stated that as per the Information Memorandum, the amount due towards Employees claim of the Corporate Debtor is Rs. 11,64,15,727.00/- (Rupees Eleven Crores Sixty-Four Lakh Fifteen Thousand Seven Hundred and Twenty-Seven Only). There are no workmen in the Corporate Debtor.
- (ii) The Resolution Plan provides allocation of Rs. 1,00,000/- (Rupees One Lakh Only) towards the settlement of Employees Dues.

**B. Government Dues**

- (i) It is stated that as per the Information Memorandum, the total amount due to the Operational Creditors of the Corporate Debtor is Rs. 773,87,33,339/- out of which the Statutory Dues amounts to Rs. 648,46,64,694/-.
- (ii) The Resolution Plan proposes *Nil* payment towards the statutory dues.

**C. Other Operational Creditors**

- (i) It is stated that as per the Information Memorandum, the total amount due to the Operational Creditors of the Corporate Debtor is Rs. 773,87,33,339/- out of which the dues other than the Statutory Dues amounts to Rs. 1,25,40,68,645/-.
- (ii) The Resolution Plan proposes an allocation of Rs. 1,00,000 towards settlement of the other Operational Creditors.

10.6.4. **Provident Fund, ESI & Gratuity Dues**

It is stated that there are no outstanding Statutory Dues pertaining to Provident Fund as per Information Memorandum.

10.6.5. **Other Creditors**

The total amount due to other creditors as stated in Form H is approximately Rs. 180 crores. The Resolution Plan provides *Nil* Payment towards payments to other creditors.

10.6.6. **Manner of Distribution**

(i) Part III-T provides for Payment Schedule of the Plan as follows:

<b>Sr. No.</b>	<b>Date</b>	<b>Step</b>
1	<i>Date of sanction order</i>	<i>x</i>
2	<i>x + 55 days</i>	<i>Payment of the amount under the Resolution Plan to the Resolution Professional</i>
3	<i>x + 56 days</i>	<i>Transfer of payment to operational creditors, employees and dissenting financial creditors</i>
4	<i>x + 57 days</i>	<i>Payment to assenting financial creditors</i>

(ii) We note that though the Resolution Plan allocates payments towards different class of creditors, however, however, the *inter se* distribution amongst the creditors under each class is not provided in the Plan.

(iii) It is settled that the CoC is empowered to decide, in its commercial wisdom, on the *inter se* distribution of amount, and we are supported by the observations of the Hon'ble NCLAT in **Devi Trading & Holding Pvt. Ltd. Vs. Mr. Ravi Shankar Devarakonda RP and Ors.** [Company

**Appeal (AT) (Ins) No. 308/2023]**, decided on 16.10.2023, wherein it was held that: -

*“19. A deliberated ‘Business Decision’ of the CoC includes deliberations on the feasibility and viability, the financial and operational aspects of the Corporate Debtor, and therefore, the question of only ‘considering’ the proposal put forth by the Resolution Applicant cannot be viewed in a ‘rigid manner’. The CoC is a pivotal decision-making body which decides all critical decision-making functions regarding Resolution Plans, Liquidation, Management etc., essential to the success of the CIRP. Though the IBC does not have a specific Provision that uses the term ‘Business Decision’ of the CoC, the Code contains several provisions that detail the powers and functions of the CoC, which encompass various decision-making responsibilities relating to the Insolvency Resolution Process, which definitely includes distribution methodology of the Resolution Plan. To say that only the Resolution Applicant should ‘propose’ the distribution and the CoC can only ‘consider’ it, is viewing the ‘Business Decision’ making capacity of the CoC in its commercial wisdom, in a very ‘narrow compass,’ thereby defeating the very scope and objective of the Code.”*

(iv) Accordingly, the treatment of the creditors as provided in Form H is given below:

*“7. The amount provided for the stakeholders under the Resolution Plan is as under:*

*Under the Resolution Plan, the Successful Resolution Applicant has acknowledged the discretion of the CoC in determining the distribution of the Financial Creditors Payment Amount. In accordance with Section 30(4) of the Code, the CoC at its meeting on 8<sup>th</sup> September 2021, considered the manner of distribution of the resolution amount, and passed a resolution approving the mechanism for distribution of resolution proceeds.*



*Accordingly, based on the resolution for manner of distribution following is the interim distribution proposed:*

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount Admitted (in Lakh)</b>	<b>Amount under Plan# (In Lakh)</b>	<b>Settlement %</b>
1	<b>Secured Financial Creditors</b> (a) Creditors not having a right to vote under section 21(2)  (b) Creditors other than (a): (i) who did not vote in favour of the resolution plan  (ii) who voted in favour of the resolution plan	--    --  --	--    --  --	--    --  --
	Total	-	-	-
2	<b>Unsecured Financial Creditors</b> (a) Creditors not having a right to vote under section 21(2)  (b) Creditors other than (a): (i) who did not vote in favour of the resolution plan  (ii) who voted in favour of the resolution plan	    2,64,509.88  4,25,071.42	    ##  283	    -  0.06%
	Total	6,89,581.30	283	0.04%
3	<b>Operational Creditors</b> (a) Related Party  (b) Other than (a):	--  	--  	--  

	(i) Government	64,846.65	Nil	0%
	(ii) Workmen	--	--	--
	(iii) Employees	1157.97	1	0.086%
	(iv) Operational Creditors other than statutory dues, workmen and employee	12,507.74	1	0.001%
	Total	78,512.36	2	0.001%
4	Other debts and dues	18,023.61	Nil	0%
	<b>Grand Total</b>	<b>7,86,117.27</b>	<b>285</b>	<b>0.03%</b>

*#The Resolution Plan specifies the treatment to be given to the Dissenting Secured Financial Creditors in clause 4.6 and 4.7 on Page no. 9 of the Financial Plan. The LV due to FCs will be NIL.*

**Clause 4.6:** *The dissenting Financial Creditors (i.e., those Financial Creditors who vote against, or abstain from voting for, the Resolution Plan approved by the CoC) shall be paid in priority over the assenting financial creditors as per the applicable provisions. However, the obligation of the Resolution Applicant shall not exceed the overall amount mentioned herein above.*

**Clause 4.7:** *In the event there are dissenting Financial Creditors who will be paid as above, the remaining proposed resolution amount as per Part III-C will be distributed among the class of Secured Creditors in proportion to the amount of their claim admitted.*

10.6.7. In summary, the realizable amount by the creditors under this Resolution Plan is Rs. 2,85,00,000/- and CIRP Costs for Vertical V is estimated at Rs. 15,00,000/-. Thus, the Resolution Plan value comes to **Rs. 3,00,00,000/-**.

#### 10.7 **Takeover of Project BKC**

- (i) The Resolution Plan contemplates demerger of Vertical V. In this regard, we clarify that for the purpose of demerger, the Successful RA has to follow the procedure as per the provisions of the Companies Act, 2013 and the Rules thereunder and all other applicable provisions. No automatic approval of the Scheme of Demerger is granted.

- (ii) Part III-L of the Resolution Plan seeks waiver of transfer fees, penalties, premiums and charges to be paid to the Slum Rehabilitation Authority (SRA) for transfer of the Vertical. However, such a relief cannot be granted and transfer of the Vertical V under the Resolution Plan shall be subject to the applicable law and compliances thereof.
- (iii) The Successful RA has sought several other reliefs, concessions and waivers with respect to the takeover of the Project BKC. However, it is made clear that any benefit arising out of the Resolution Plan shall not be deemed to be automatically granted and the Successful RA has to approach the competent authorities under the applicable law.
- (iv) It is further made clear that a Resolution Plan cannot be a conditional one which would make it non-compliant. It is noted that in clause 12 of Form – H, the RP certifies that *“the Resolution Plan is not subject to any contingency”*.

**Compliance Certificate in Form – H**

11. Pursuant to Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Resolution Professional has prepared a Compliance Certificate dated 10.11.2022 in **Form H** which is annexed to the Application.
12. Compliance of mandatory requirements under the Insolvency & Bankruptcy Code, 2016:

Sr. No.	Particulars	Compliance
1	<b><u>Section 25:</u></b> Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity	Yes.

	and scale of operations of business of the Corporate Debtor?	
<b>2</b>	<b>Section 29A:</b> Whether Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Yes.
<b>3</b>	<b>Section 30:</b>	
	<b>(1)</b> Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes. The Resolution Applicant has submitted an affidavit under section 29A of IBC, 2016 confirming his eligibility for submission of Resolution Plan along with the Expression of Interest.
	<b>(2)(a)</b> Whether the Resolution Plan provides for payment of insolvency resolution process costs?	Yes. Part III-A.
	<b>(2)(b)</b> Whether the Resolution Plan provides for the payment of the debts of operational creditors?	Yes. Part III-A.
	<b>(2)(b)</b> Whether the Resolution Plan provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Yes. Part III-D.
	<b>2(c)</b> Whether the Resolution Plan provides for the management of the affairs of the Corporate Debtor?	Yes. Part III-S.
	<b>2(d)</b> Whether the Resolution Plan Provides for implementation and supervision of the resolution plan?	Yes. Part III-P.
	<b>(2)(e)</b> Whether the resolution plan contravenes any of the provisions of the law for the time being in force?	No. Part VII.
	<b>(4)(a)</b> Whether the Resolution Plan is feasible and viable, according to the CoC?	Yes.
	<b>(4)(b)</b> Whether the Resolution Plan has been approved by the CoC with 66% voting share?	Yes. The Resolution Plan has been approved with 66.084% voting.
<b>4</b>	<b>Section 31(1):</b> Whether the Resolution Plan has provisions for its effective	Yes.

	implementation Plan, according to CoC	
<b>5</b>	<b>Section 35A:</b> Whether the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50, or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	Yes.

13. Compliance under mandatory requirements under IBBI (Insolvency Resolution Process of Corporate Debtors) Regulations, 2016:

<b>Regulation 38</b>		
<b>1</b>	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Yes. Part III-A.
<b>1A</b>	Whether the resolution plan includes a statement as to how it has dealt with the interest of all stakeholders?	Yes. Part III-W.
<b>1B</b>	i) Whether the Resolution Applicant or any of its related parties has filed to implement or contribute to the failure of implementation of any resolution plan approved under the Code? ii) If so, whether Resolution Applicant has submitted the statement giving details of such non-implementation?	i) No. Part VII. ii) Not Applicable.
<b>2(a)</b>	Whether the Resolution Plan provides the term of the plan and its implementation schedule?	Yes. Part III-N & T.
<b>2(b)</b>	Whether the Resolution Plan provides for the management and control of the business of the corporate debtor during its term?	Yes. Part III-S.

<b>2(c)</b>	Whether the Resolution Plan provides adequate means for supervising its implementation?	Yes. Part III-P.
<b>3</b>	Whether the Resolution Plan demonstrates that -	
<b>(a)</b>	It addresses the cause of default?	Yes. Parts II-A and III-A.
<b>(b)</b>	It is feasible and viable?	Yes.
<b>(c)</b>	It has provisions for its effective implementation?	Yes. Part III-T.
<b>(d)</b>	It has provisions for approvals required and the time for the same?	Yes. Part III-U & Annexure G.
<b>(e)</b>	The Resolution Applicant has the capacity to implement the Resolution Plan?	Yes.
<b>Regulation 39</b>		
<b>2</b>	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Yes. Serial Number 15 of Form H.
<b>4</b>	Provide details of performance security received as referred to in sub-regulation (4A) of Regulation 36.	Rs. 5,00,00,000

14. **Implementation and Supervision of the Plan:**

- (i) The Manner of Supervision and Implementation of the Resolution Plan is provided in Clause III-P of the Resolution Plan.
- (ii) Sub-Clause (1) of Clause III-P of the Resolution Plan provides for constitution of a Monitoring Committee to supervise the implementation and execution of the Resolution Plan. It is stated that the Monitoring Committee shall be comprised of the following members:
  - The Resolution Professional;
  - 1 (one) Representative of the Resolution Applicant;
  - 1 (one) Representative of the Financial Creditor.

**15. Details on Fraudulent and Avoidance Transactions**

15.1 The list of applications filed by the RP under sections 43, 45, 50 and/or 66 of the Code, as stated in Form H, is as follows:

<b>Sr. No.</b>	<b>Type of Transaction</b>	<b>Date of filing &amp; IA No.</b>	<b>Date of Order</b>
1	Preferential Transactions u/s 43	--	--
2	Undervalued Transactions u/s 45	(i) 21.09.2021 (ii) 27.06.2022	NA (Pending Adjudication)
3	Extortionate Credit Transactions u/s 50	--	--
4	Fraudulent Transactions u/s 66	(i) 28.05.2021 (ii) 29.06.2022	NA (Pending Adjudication)

15.2 The Resolution Plan is silent about the treatment regarding the receivables of PUFET Transactions. However, in the 25<sup>th</sup> CoC Meeting held on 19.09.2022, discussions were made on the treatment in respect of avoidance transactions and it was decided by the CoC that any recovery from the avoidance proceedings shall be distributed amongst the CoC Members. In view of the same, we observe that any amount recovered out of the action taken for PUFET Transactions under the Code shall be paid to the Financial Creditors in proportion to their claims.

16. On perusal of Form-H as reproduced in Paras 12 & 13 above, it is seen that the Resolution Plan is in compliance with the mandatory compliances as stipulated under Section 30(2) of the Code. The Resolution Plan also meets the requirements of Regulations 37, 38, 38(1A) and 39 (4) of the IBBI Regulations, 2016. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law.
17. The submissions of the Ld. Counsel for RP and SRA were heard at length and after a careful analysis of the same together with the material placed

on record, we are of considered opinion that the resolution plan is in conformity of section 30(2) of the Code read with the applicable regulations of the CIRP Regulations.

18. We note that the present application, which was reserved for orders, was sent back to the CoC in view of the order dated 30.08.2024 passed in IA/296/2024 wherein the claim of MCGM amounting to Rs. 895 crores which also included claims during CIRP was directed to be verified by the RP. The MCGM had submitted its claim, however, there is a dispute in the quantum of the claim which is pending before this Tribunal. The RP has filed affidavit dated 21.01.2025 and submitted that there is no claim filed by MCGM in respect of the subject property i.e. Project BKC (Vertical V). Ld. Counsel for MCGM affirmed this submission of the RP. Nonetheless, the RP/ SRA, vide affidavit dated 04.12.2024, had already clarified that in the event of any amount in excess of the estimated CIRP costs, the same shall be deducted from the payments of the secured financial creditors. The said clarification and undertaking is taken on record.
19. We refer to the judgment of **K Sashidhar v. Indian Overseas Bank & Others (2019) 12 SCC 150**, wherein 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 Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex 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.



20. In **Committee of Creditors of Essar Steel India Limited through Authorised Signatory Vs. Satish Kumar Gupta & Ors (2020) 8 SCC 531**, the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom has approved.
21. In view of the law laid down by Hon'ble Supreme Court, the commercial wisdom of the COC is to be given paramount importance for approval / rejection of the resolution plan. As the Resolution Plan meets the requirements of the I & B Code and the IBBI Regulations, the same needs to be approved.

### **ORDER**

22. Based on the above discussions, the Resolution Plan for Vertical V – Project BKC, read with the affidavits, clarifications and undertakings given by the RP and SRA, is **approved** under Section 31(1) of the Code, with the following directions:
- i) The additional affidavits dated 04.12.2024 and 21.01.2025, and the clarification by the SRA and RP shall form integral part of the Resolution Plan and together, they shall form part of this order. As per section 31 of the Code, the Resolution Plan for Vertical V shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders to whom a debt in respect of the payment of dues, so far it relates to Vertical V, arising under any law for the time being in force is due, involved in the Resolution Plan.
  - ii) It is clarified that no automatic approval of the Scheme of Demerger is granted and the Successful Resolution Applicant shall follow the

procedure as per the provisions of the Companies Act, 2013 and the Rules thereunder and all other applicable provisions.

- iii) It is further clarified that any benefit arising out of the Resolution Plan shall not be deemed to be automatically granted. The Resolution Applicant shall approach the competent authorities under the applicable law.
- iv) The Resolution Plan for Vertical V is not subject to any conditions whatsoever.
- v) No person will be entitled to initiate or continue any proceedings in respect to a claim prior to CIRP which is not a part of the Resolution Plan.
- vi) The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to finalise further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises / documents through Resolution Professional to finalise further line of action required for starting of the operations.
- vii) The Monitoring Committee shall supervise the implementation of the Resolution Plan and shall review operational performance of the Corporate Debtor.
- viii) It is to be noted that Regulation 31A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that a regulatory fee calculated at the rate of 0.25 percent of the realisable value to creditors under the resolution plan approved under section 31, shall be payable to the Insolvency and Bankruptcy Board of India, where such realisable value is more than the liquidation value. In the present case, the Liquidation value

is *Nil* while the Resolution Plan value is **Rs. 3 crores**. Hence, considering the mandate of Regulation 31A, the SRA is directed to pay the applicable Regulatory Fee.

ix) **Reliefs and Concessions:**

- a) Approval of the Resolution Plan shall not be a ground for termination of any existing consents, approvals, licenses, concessions, authorizations, permits or the like that has been granted to the Corporate debtor or for which the Corporate Debtor has made an application for renewal, grant permissions, sanctions, consents, approvals, allowances, exemptions etc.
- b) It is reiterated that the relief seeking waiver of transfer fees, penalties, premiums and charges to be paid to the Slum Rehabilitation Authority (SRA) for transfer of the Vertical V cannot be granted and the transfer of Vertical V under the Resolution Plan shall be subject to the applicable law and necessary compliances.
- c) Any Exemption as sought for in relation to the payment of registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan is not granted but the Resolution Applicant is at liberty to approach Competent Authorities for the exemptions if permitted under the law.
- d) For past non-compliances of the Corporate debtor under applicable laws the Resolution Applicant shall not be liable for any liabilities and offences committed prior to the commencement of CIRP and as stipulated under Section 32A of IBC, 2016.
- e) It is hereby clarified that in terms of the Judgement of Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited Vs. 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 of a claim which is not a part of the Resolution Plan.

- f) With regard to other concessions and reliefs, most of them are subsumed in the reliefs granted above. The relief which is not expressly granted above, shall not be construed as granted. The exemptions if any sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted.
- x) Any amount recovered out of the action taken under sections 43-51 and 66 of the Code shall be paid to the Financial Creditors in proportion of their claim amount.
- xi) 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.
- xii) The moratorium under Section 14 of the Code shall cease to have effect as regards Vertical V – Project BKC from this date.
- xiii) The Resolution Professional/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.
- xiv) Liberty is granted for moving any appropriate application, if required in connection with the implementation of this Resolution Plan.
- xv) The Resolution Professional/Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

23. Accordingly, IA/3625/2022 is **allowed** and **disposed of**.

Sd/-

**Hariharan Neelakanta Iyer**  
**Member (Technical)**

Uma, LRA

Sd/-

**Lakshmi Gurung**  
**Member (Judicial)**

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

**I.A. 3902/2022**

**In**

**C.P. No. (IB) 27/MB/C-III/2019**

*Under Section 31 of the Insolvency  
and Bankruptcy Code, 2016*

**Mr. Abhay Narayan Manudhane**

*Resolution Professional of  
Housing Development &  
Infrastructure Limited*

Having office at:

1204, Maker Chamber V,  
Jamnalal Bajaj Road, Nariman  
Point, Mumbai – 400021

**... Resolution Professional/  
Applicant**

*In the matter of*

**Bank of India**

*... Financial Creditor*

Vs

**Housing Development and  
Infrastructure Limited**

*... Corporate Debtor*

**Order pronounced on: 27.06.2025**

**Coram:**

Sh. Hariharan Neelakanta Iyer  
Member (*Technical*)

Ms. Lakshmi Gurung  
Member (*Judicial*)

**Appearances:**

*For the Applicant/RP* : Mr. Shadab S. Jan a/w Ms. Prerana Wagh,  
Mr. Mufaddal Paperwala, Prangna B i/b M/s

Crawford Bayley & Co.

*For the Successful RA* : Mr. Vikram Nankani Sr. Adv. a/w. Adv.  
Saloni Kapadia, Adv. Karan Gandhi, Adv.  
Kunal Nandkarni i/b. Cyril Amarchand

**Per: Coram**

- 
1. The I.A. 3902/2022 is filed by Mr. Abhay Narayan Manudhane, Resolution Professional of Housing Development & Infrastructure Limited (**Corporate Debtor/ HDIL**) under Section 31 of the Insolvency and Bankruptcy Code, 2016 (**Code**) seeking approval of the Resolution Plan for Vertical IX - Shahad Maharal Lands, submitted by Adani Properties Private Limited (**Successful Resolution Applicants/SRA**) which was approved by the Committee of Creditors (CoC) by 66.084% voting at its 25<sup>th</sup> Meeting convened on 19.09.2022. The voting process commenced on 19.09.2022 and concluded on 04.11.2022. The prayers in the present application are extracted below:

- (a) *Pass an order under Section 31 of Insolvency & Bankruptcy Code, 2016 and approve the resolution plan submitted by Resolution Applicant for Vertical IX – Shahad Maharal Lands;*
- (b) *In the alternative, and in case any defects/ discrepancy/ lacunae/ non-compliance is found in the resolution plan, this Tribunal be pleased to remand the Resolution Plan submitted by Resolution Applicants before the Committee of Creditors for reassessment and curing such defects/ discrepancy/ lacunae/ non-compliance.*

**Facts of the Case, in brief:**

2. The Corporate Insolvency Resolution Process (**'CIRP'**) of HDIL/Corporate Debtor was initiated by this Tribunal vide Order dated 20.08.2019 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**'the Code'**) and

Mr. Abhay Narayan Manudhane (**Applicant**) was appointed as the Interim Resolution Professional (**IRP**).

### 3. **Constitution of Committee of Creditors (CoC)**

3.1 The IRP made public announcement on 29.08.2019 under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**) inviting claims from the creditors of the Corporate Debtor. Claims were received, verified and admitted by the IRP.

3.2 Accordingly, the Committee of Creditors (**CoC**) was constituted and in the 1<sup>st</sup> CoC Meeting held on 08.01.2020, the Applicant was confirmed as the Resolution Professional (**RP**).

3.3 The latest list of members of the CoC of the Corporate Debtor as stated in the application is as follows:

<b>Sr. No.</b>	<b>Name of the Financial Creditor</b>	<b>Amount Admitted (In Rupees)</b>	<b>Voting %</b>
1	Bank of Baroda (Erstwhile Dena Bank)	2,93,94,105	0.038%
2	Bank of Baroda (Erstwhile Vijaya Bank)	3,87,41,120	0.050%
3	Bank of India	5,66,07,43,998	7.258%
4	Canara Bank	44,00,91,607	0.564%
5	Canara Bank (Erstwhile Syndicate Bank)	1,01,44,31,698	1.301%
6	Central Bank of India	2,03,56,77,368	2.610%
7	IDBI Bank Limited	78,54,94,221	1.007%
8	IL&FS Financial Services Ltd	2,77,46,33,383	3.558%
9	India Infrastructure Finance Co. Ltd.	27,45,80,628	0.352%
10	Indian Bank	26,92,01,479	0.345%



11	Indian Bank (Erstwhile Allahabad Bank, SAM Mumbai Branch)	1,59,46,67,567	2.045%
12	Indian Bank (Erstwhile Allahabad Bank, SAM New Delhi Branch)	16,02,85,994	0.206%
13	Jade Agricultural Company Private Limited	60,00,00,000	0.769%
14	Kotak Mahindra Prime Limited (debts assigned Volkswagen Finance Private Limited)	5,39,857	0.001%
15	Life Insurance Corporation of India	8,78,76,30,872	11.268%
16	Manoj Agarwal (Authorised Representative of Home Buyers)	8,93,24,47, 44	11.579%
17	Punjab National Bank (Erstwhile Oriental Bank of Commerce)	26,35,96,685	0.338%
18	Suraksha ARC-008 Trust	6,97,84,04,763	8.948%
19	Suraksha ARC-011 Trust	3,15,21, 18,355	4.042%
20	Suraksha ARC-013 Trust	1,91,52,97,064	2.456%
21	Suraksha ARC-016 Trust	53,77,36,234	0.689%
22	Suraksha ARC-025 Trust	4,42,27,26,077	5.671%
23	UCO Bank	12,33,38, 146	0.158%
24	Union Bank of India – Central Office, Mumbai	1,14,68, 12,290	1.470%
25	Union Bank of India – Hill Road, Bandra West Branch	2,50,61,99,936	3.214%
26	Unity Small Finance Bank Ltd (Erstwhile Punjab & Maharashtra Co-op. Bank Ltd.)	18,49,09,70,391	23.71%
27	Yes Bank	4,95,48, 16,695	6.353%
	<b>Total</b>	<b>77,89,05,78, 173</b>	<b>100%</b>

#### 4. ***Failure of Resolution Process of Corporate Debtor as a whole***

4.1 In terms of Section 25(2)(h) of the I&B Code, the RP made public announcement inviting Expression of Interest (EoI) for the Corporate Debtor on 16.02.2020. However, no resolution plans were received. In the 12<sup>th</sup> CoC Meeting and 13<sup>th</sup> CoC Meeting held on 18.01.2021

and 30.01.2021 respectively, there were discussions on exploring project-wise resolution of the Corporate Debtor and the RP submitted a brief note on the same. However, the initial attempt to explore project-wise resolution failed since majority of the CoC members did not vote in favour of the same.

4.2 Since no resolution plan was received by the RP and the notion of project-wise resolution was also not approved by the CoC, the CoC, at the 17<sup>th</sup> CoC Meeting held on 07.08.2021, with 74.60% of voting approved the resolution to liquidate the Corporate Debtor.

4.3 Aggrieved by the same, applications were filed by various associations of home buyers seeking a stay on liquidation proceedings and consideration of project-wise resolution of the Corporate Debtor. Thereafter, the CoC Members in the 18<sup>th</sup> CoC meeting held on 08.09.2021, passed a resolution authorizing the RP to explore project wise resolution.

## 5. ***Project-wise Resolution of the Corporate Debtor***

5.1 Pursuant to the decision of the CoC in its 18<sup>th</sup> meeting to explore project-wise resolution of the Corporate Debtor, the RP filed IA/2118/2021 seeking extension of time. This Tribunal vide order dated 29.09.2021 dismissed IA/2118/2021 concluding that no resolution of the Corporate Debtor is in sight.

5.2 Aggrieved by the same, the homebuyers preferred appeals before the Hon'ble NCLAT. The said order dated 29.09.2021 rejecting grant of extension for exploring project-wise resolution was set aside by Hon'ble NCLAT in Company Appeals No. 896/2021, 980/2021 and 1045/2021 vide order dated 04.01.2022 wherein it was held as follows:

*“18. ... The Resolution taken on 8th September, 2021 as extracted above was with regard to Project Wise Resolution, dividing entire*

assets into eight Projects. This Project Wise Resolution became possible only after 8th September, 2021. **The Committee of Creditors, whose commercial wisdom has to be given due weight, rightly took the decision for Project Wise Resolution.**

19. No Resolution Applicant is ready to undertake huge real estate Project which has amply been proved when Expression of Interest for Project Wise Resolution was called, 25 Applicants have already shown their interest in different Projects. The Adjudicating Authority failed to give due weight to the Resolution/ decision of the CoC dated 8th September, 2021 and **erred in not allowing even a reasonable period for proceeding further with Project Wise Resolution.**

20. The Hon'ble Supreme Court time and again reminded that the object of IBC is to resolve the insolvency resolution process and liquidation is to be adopted as a last resort.

23. In view of the above discussion, we allow the Appeal and set aside the order of the Adjudicating Authority dated 29.09.2021, allow the Application being I.A. No.2118 of 2021 in C.P.(IB)-27(MB)/2019 filed before the Adjudicating Authority and grant extension of 90 days from the date of this order **during which period the Resolution Professional and the Committee of Creditors may complete the Project Wise Resolution as decided in their meeting on 8th September, 2021.** No order as to costs."

**(Emphasis Provided)**

5.3 Thus, project-wise resolution was permitted by Hon'ble NCLAT at the efforts of the home-buyers.

5.4 Accordingly, the RP, in consultation with the CoC, divided the Corporate Debtor into 10 (ten) Verticals/Projects as follows:

Vertical I	Majestic Towers
Vertical II	Whispering Towers
Vertical III	Premier Exotica
Vertical IV	Galaxy Apartment
Vertical V	BKC Inspire

Vertical VI	Paradise City
	HDIL Towers (Building)
Vertical VIII	Land parcels at Vasai and Virar
Vertical IX	Land parcel at Kalyan Shahad ("Shahad Land")
Vertical X	Rest of the Corporate Debtor and assets not included.

5.5 The present application pertains only to the Resolution Plan of Vertical IX – Shahad Maharal Lands.

## 6. **Valuation**

6.1 In the 1<sup>st</sup> CoC Meeting held on 08.01.2020, the CoC approved the appointment of M/s Kakode & Associates and Rakesh Narula & Co. as valuers for determining the fair value and liquidation value of all the assets of the Corporate Debtor. At the 22<sup>nd</sup> CoC Meeting held on 24.02.2022, it was informed that there was significant difference in valuation of Shahad Maharal Lands. Therefore, a third independent valuer, Mr. Vinod P. Talathi, was appointed for assessment of vertical IX. Accordingly, the fair value and liquidation value of Vertical IX was determined based on the valuation reports of Second Valuer and the third valuer, being the closet estimates in accordance with Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 (**CIRP Regulations**). The Valuation of Vertical IX as provided in Form H is as follows:

<b>Valuer</b>	<b>Fair Value (In Crores)</b>	<b>Liquidation Value (In Crores)</b>
Valuer 2	85.39	59.77
Valuer 3	93.93	65.75
<b>Average</b>	<b>89.66</b>	<b>62.76</b>

6.2 It is pertinent to note here that Punjab and Maharashtra Co-operative Bank Limited (now Unity Small Finance Bank Limited) is the only secured financial creditor of Vertical IX by virtue of the mortgage

rights created over the said Vertical in favour of PMC Bank. On 25.01.2022, the Punjab and Maharashtra Cooperative Bank Limited (Amalgamation with Unity Small Finance Bank Limited) Scheme 2022 was notified by the Government of India whereby the amalgamation of Punjab and Maharashtra Cooperative Bank Limited with the Applicant Bank was notified. Consequently, the Unity Bank was inducted into the CoC of the Corporate Debtor.

6.3 Unity Bank challenged the valuation conducted on the Vertical IX by filing IA/3425/2022 and IA/343/2023 which applications were dismissed vide order dated 11.07.2024.

7. ***Request for Resolution Plan (RFRP)***

7.1 In furtherance thereof, the RP issued the Request for Resolution Plans (RFRP) on 17.01.2022. As per the RFRP, the Prospective Resolution Applicants (PRAs) had to provide Earnest Money Deposit (EMD) of Rs. 1,00,00,000/- if submitting a plan for company as a whole or Rs. 25,00,000/- per project in case of submission of project-wise plan (subject to a maximum of Rs. 1,00,00,000/-). In response thereto, the PRAs submitted their plans along with payment of applicable EMD. Thereafter, the final list of Prospective Resolution Applicants was prepared on 22.01.2022.

8. ***Approval of Resolution Plan for Vertical IX – Shahad Maharal Lands***

8.1 In the 22<sup>nd</sup> & 23<sup>rd</sup> CoC Meetings, the Committee of Creditors discussed and negotiated on the shortlisted plans with the respective PRAs.

8.2 At the 25<sup>th</sup> CoC Meeting held on 19.09.2022, out of the 14 Resolution Plans submitted for various verticals of the Corporate Debtor, 6 (six) Resolution Plans for six different verticals, which were in compliance with the Code and applicable Regulations, were placed before the CoC

for approval/rejection and the period of voting was extended from time to time and finally concluded on 04.11.2022.

8.3 It is noted that two resolution plans were received for Vertical IX i.e. by KGK Realty and Adani Properties Private Limited respectively. However, the Resolution Plan of KGK Realty, though compliant under the Code, was found to be not feasible and viable. Accordingly, the Resolution Plan submitted by Adani Properties Private Limited which was stated to be in compliance with the Code, was placed before the CoC. From perusal of the CoC Meetings, it is observed that multiple rounds of discussions and deliberations was carried out amongst the CoC Members, the RP and the Adani Properties over the viability and feasibility of the Resolution Plan.

8.4 Subsequently, the Resolution Plan for Vertical IX – Shahad Maharal Lands, submitted by Adani Properties Private Limited **(Successful RA)** was approved by the CoC by 66.084% of voting.

8.5 Accordingly, the RP issued a Letter of Intent dated 05.11.2022 for Vertical IX which has been duly and unconditionally accepted by the Successful RA.

**Resolution Plan for Project Shahad Maharal Lands by Adani Properties Private Limited**

**9. Brief background of the Successful Resolution Applicant:**

9.1 The Successful Resolution Applicant is involved in the real estate sector and infrastructure development, and has vast experience in reviving stressed companies involved in real estate/infrastructure/power sectors.

9.2 It is submitted that the Successful Resolution Applicant is not barred by Section 29A of the Code and an affidavit in this regard was also

submitted by the Successful Resolution Applicant along with the Resolution Plan.

**10. Salient Features of Resolution Plan:**

10.1 Clause 1.13 of the RFRP provides for Performance Security/Guarantee. The relevant clause is reproduced below:

*“1.13.1 Within 10 (ten) days of the date of issuance of a Letter of Intent, the Successful Applicant shall provide a performance guarantee of Rs. 25,00,00,000/- if submitting a plan for company as a whole or Rs. 5,00,00,000/- per project in case of submission of project-wise plan (Subject to a maximum of Rs. 25,00,00,000/- incase successful applicant bids for multiple projects).”*

10.2 As per Regulation 36B(4A) of the CIRP Regulations, the Successful RA has deposited performance bank guarantee of Rs. 5,00,00,000/-. Clause 6 of the Bank Guarantee states as follows:

*“6. We, the Guarantor Bank further agree that the guarantee herein contained shall remain in full force and effect for a period from 9th November, 2022 upto 8th November, 2023, from the date hereof and that it shall continue to be enforceable till all the dues of the Successful Resolution Applicant(s) in relation to the Resolution Plan and /or under or by virtue of the RFRP have been fully paid and its claim satisfied or discharged or till the Bank certifies that the Resolution Plan has been effected and that the terms and conditions of the RFRP have been fully and properly carried out by the said Successful Resolution Applicant(s). The Bank shall be entitled to invoke this Performance Guarantee up to 12 Months from the last date of the validity of this Performance Guarantee by issuance of a written demand to invoke this Performance Guarantee.”*

10.3 The Resolution Plan contemplates the demerger of the Shahad Maharal Lands into the Resolution Applicant or 100% subsidiary or the step down subsidiary of the Resolution Applicant.

10.4 Source of Funds as provided in Part III-O of the Resolution Plan:

***“III-O: SOURCES OF FUNDS FOR RESOLUTION PLAN***

- (i) The entire cost of the plan will be self-funded by the Resolution Applicant from its own resources.*
- (ii) The Resolution Applicant will pay the CIRP Cost from its own source of funds as and when intimated by the Resolution Professional.*
- (iii) The Resolution Applicant has sufficient Reserves and Surplus and Net worth balance as per its Audited Balance Sheet. Resolution Applicant confirms that it has sufficient funds availability at its disposal and/or has ability to raise such amounts from other sources also.*
- (iv) It is pertinent to mention that the Resolution Applicant is possessing sound goodwill and flawless credit history. The Resolution Applicant is having sizable retained earnings and also generating sufficient internal accruals which shall be sufficient enough to meet out the payments envisaged in the resolution plan.*
- (v) The Resolution Applicant has enjoyed long standing credit facilities from reputed Banks and it has available the credit lines which also be utilized for meeting out the shortfall (if any).*
- (vi) Payment Schedule for Class of Creditors and other dues are is explained hereinabove.*
- (vii) The Resolution Applicant will have to incur expenditure for Working Capital in addition to the Resolution Plan payments as mentioned herein.*



- (viii) *The Resolution Plan has been designed with All Stakeholders Approach and takes care of all the concerned stake holders of the Corporate Debtor in an optimal manner.”*

## 10.5 **Financial Outlay under the Resolution Plan**

### 10.5.1. **CIRP Costs**

- (i) The Resolution Plan states that the Insolvency Resolution Process Costs (**CIRP Cost**) as per the Information Memorandum is Rs. 44.83 crore when estimated for the Corporate Debtor as a whole.
- (ii) It is further stated that *“the outstanding CIRP Costs for the Shahad Maharal Project shall be paid on actuals out of the Cash infusion Amount, as approved by the members of the COC and NCLT, for the period upto the effective date. The estimated CIRP Cost is Rs. 1,00,00,000/- (Rupees One Crore Only). In the event the actual CIRP Cost by the Resolution Applicant exceeds the estimated CIRP Costs such excess amount shall be deducted from payments due to secured financial creditors.”*

### 10.5.2. **Financial Creditors**

#### **A. Payment to Secured and Unsecured Financial Creditors**

- (i) The RP has filed the Compliance Certificate in Form H dated 10.11.2022. Form H contains the details of allocation of funds to creditors, after approval by CoC. As per the same, the payment allocated to be made to secured financial creditors is Rs. 62.76 crores and the unsecured financial creditors are proposed to be paid Rs. 99 lakhs. In total, the financial proposal towards the

financial creditors of the Corporate Debtor is Rs. 63,75,00,000/-.

**B. Treatment of Dissenting Financial Creditors**

- (i) It is noted from the Form H that four CoC Members being, the Bank of India (7.258% voting share), the Central Bank of India (2.610% voting share), Punjab National Bank – Erstwhile Oriental Bank of Commerce (0.338% voting share) and the Unity Small Finance Bank Ltd – Erstwhile Punjab & Maharashtra Co-op. Bank Ltd. (23.71% voting share), abstained from voting in the Resolution Plan. The total voting share of the abstained CoC Members is 33.916%. For sake of clarity, we state that Unity Small Finance Bank Ltd which has charge over the Shahad Lands Vertical did not vote in favour of the Resolution Plan.
- (ii) The Resolution Plan proposes payment of minimum liquidation value to the creditors who do not vote in favour of the Resolution Plan.
- (iii) As can be seen from above, the dissenting unsecured financial creditors who have not voted in favour of the resolution plan are entitled of the payment of liquidation value which in the present case is stated to be *nil*. As regards this treatment of dissenting financial unsecured creditors, we observe that there is no discrimination in the treatment of the assenting and dissenting financial creditors under the Resolution Plan. We are supported by the observations of Hon'ble NCLAT in **Peter Beck and Partner Vermoögensverwaltung GMBH vs. Sharon Bio-medicine Limited & Ors. [Company Appeal (AT) (Ins) No. 912 of 2023]**. In the above cited case, the

Appellant contended that the assenting unsecured financial creditor was to be paid Rs. 1.48 cr. under the resolution plan whereas the dissenting unsecured financial creditor was proposed *nil* payment. The Hon'ble NCLAT observed as follows:

*“20. ... we are of the view that assenting financial creditors entitled for payment as proposed in the plan and dissenting financial creditor is entitled as per the minimum entitlement as per Section 30(2)(b). There is no dispute that liquidation value of the Appellant in the present case is nil. The submission of the Appellant that there is a discrimination between the payment of assenting unsecured financial creditor and dissenting unsecured financial creditor cannot be accepted and on the ground, as urged by the Appellant in this Appeal, the Resolution Plan approved by the Adjudicating Authority cannot be held to be discriminatory. We, thus, are of the view that there is no error in the order of the Adjudicating Authority approving the Resolution Plan.”*

10.5.3. **Operational Creditors**

**A. Employee and Workmen Dues**

- (i) It is stated that as per the Information Memorandum, the amount due towards Employees claim of the Corporate Debtor is Rs. 11,64,15,727.00/- (Rupees Eleven Crores Sixty-Four Lakh Fifteen Thousand Seven Hundred and Twenty-Seven Only). There are no workmen in the Corporate Debtor.
- (ii) The Resolution Plan provides allocation of Rs. 5,00,000/- (Rupees Five Lakhs Only) towards the settlement of Employees Dues.

**B. Government Dues**

- (i) It is stated that as per the Information Memorandum, the total amount due to the Operational Creditors of the Corporate Debtor is Rs. 773,87,33,339/- out of which the Statutory Dues amounts to Rs. 648,46,64,694/-.
- (ii) The Resolution Plan proposes *Nil* payment towards the statutory dues.

**C. Other Operational Creditors**

- (i) It is stated that as per the Information Memorandum, the total amount due to the Operational Creditors of the Corporate Debtor is Rs. 773,87,33,339/- out of which the dues other than the Statutory Dues amounts to Rs. 1,25,40,68,645/-.
- (ii) The Resolution Plan proposes an allocation of Rs. 20,00,000 towards settlement of the other Operational Creditors.

10.5.4. **Provident Fund, ESI & Gratuity Dues**

It is stated that there are no outstanding Statutory Dues pertaining to Provident Fund as per Information Memorandum.

10.5.5. **Other Creditors**

The total amount due to other creditors as stated in Form H is approximately Rs. 180 crores. The Resolution Plan provides *Nil* Payment towards payments to other creditors.

10.5.6. **Manner of Distribution**

- (i) Part III-T provides for Payment Schedule of the Plan as follows:

<b>Sr. No.</b>	<b>Date</b>	<b>Step</b>
1	Date of sanction order	$x$
2	$x + 55$ days	Payment of the amount under the Resolution Plan to the Resolution Professional
3	$x + 56$ days	Transfer of payment to operational creditors, employees and dissenting financial creditors
4	$x + 57$ days	Payment to assenting financial creditors

(ii) We note that though the Resolution Plan allocates payments towards different class of creditors, however, the *inter se* distribution amongst the creditors under each class is not provided in the Plan.

(iii) It is settled that the CoC is empowered to decide, in its commercial wisdom, on the *inter se* distribution of amount, and we are supported by the observations of the Hon'ble NCLAT in **Devi Trading & Holding Pvt. Ltd. Vs. Mr. Ravi Shankar Devarakonda RP and Ors. [Company Appeal (AT) (Ins) No. 308/2023]**, decided on 16.10.2023, wherein it was held that: -

*“19. A deliberated ‘Business Decision’ of the CoC includes deliberations on the feasibility and viability, the financial and operational aspects of the Corporate Debtor, and therefore, the question of only ‘considering’ the proposal put forth by the Resolution Applicant cannot be viewed in a ‘rigid manner’. The CoC is a pivotal decision-making body which decides all critical decision-making functions regarding Resolution Plans, Liquidation, Management etc., essential to the success of the CIRP. Though the IBC does not have a specific Provision that uses the term ‘Business Decision’ of the CoC, the Code contains several provisions that detail the powers and functions of the CoC, which encompass various decision-making responsibilities*

*relating to the Insolvency Resolution Process, which definitely includes distribution methodology of the Resolution Plan. To say that only the Resolution Applicant should ‘propose’ the distribution and the CoC can only ‘consider’ it, is viewing the ‘Business Decision’ making capacity of the CoC in its commercial wisdom, in a very ‘narrow compass,’ thereby defeating the very scope and objective of the Code.”*

(iv) Accordingly, the treatment of the creditors as provided in Form H is given below:

*“7. The amount provided for the stakeholders under the Resolution Plan is as under:*

*Under the Resolution Plan, the Successful Resolution Applicant has acknowledged the discretion of the CoC in determining the distribution of the Financial Creditors Payment Amount. In accordance with Section 30(4) of the Code, the CoC at its meeting on 8<sup>th</sup> September 2021, considered the manner of distribution of the resolution amount, and passed a resolution approving the mechanism for distribution of resolution proceeds.*

*Accordingly, based on the resolution for manner of distribution following is the interim distribution proposed:*

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount Admitted (in Lakh)</b>	<b>Amount under Plan# (In Lakh)</b>	<b>Settlement %</b>
1	<b>Secured Financial Creditors</b> (a) Creditors not having a right to vote under section 21(2)  (b) Creditors other than (a):  (i) who did not vote in favour of the resolution plan	--       1,84,909.70	--    As per Resolution Plan LV is due to the dissenting secured financial	--       3.39%

	(ii) who voted in favour of the resolution plan	--	creditors i.e. 6,276 --	--
	Total	1,84,909.70	6,276	3.29%
2	<b>Unsecured Financial Creditors</b> (a) Creditors not having a right to vote under section 21(2)  (b) Creditors other than (a): (i) who did not vote in favour of the resolution plan  (ii) who voted in favour of the resolution plan	   79,605.58  4,25,066.02	   NIL#  99	   -  0.02%
	Total	5,04,671.60	99	0.02%
3	<b>Operational Creditors</b> (a) Related Party  (b) Other than (a): (i) Government  (ii) Workmen  (iii) Employees  (iv) Operational Creditors other than statutory dues, workmen and employee	 --  64,846.65  --  1157.97  30,531.35	 --  Nil  --  5  20	 --  0%  --  0.43%  0.01%
	Total	96,535.97	25	0.01%
4	Other debts and dues	18,023.61	Nil	0%
	<b>Grand Total</b>	<b>7,86,117.27</b>	<b>6400</b>	<b>0.81%</b>

#The amount due to dissenting unsecured financial creditors is Nil.

10.5.7. In summary, the realizable amount by the creditors under this Resolution Plan is Rs. 64,00,00,000/- and CIRP Costs for Vertical IX is to be paid at actuals which as on date of filing of the application was estimated at Rs. 1,00,00,000/-. Thus, the Resolution Plan value comes to **Rs. 65,00,00,000/-**.

#### 10.6 ***Takeover of Shahad Maharal Lands***

- (i) The Resolution Plan contemplates demerger of Vertical IX. In this regard, we clarify that for the purpose of demerger, the Successful RA has to follow the procedure as per the provisions of the Companies Act, 2013 and the Rules thereunder and all other applicable provisions. No automatic approval of the Scheme of Demerger is granted.
- (ii) The Successful RA has sought several reliefs, concessions and waivers with respect to the takeover of the Shahad Maharal Lands. However, it is made clear that any benefit arising out of the Resolution Plan shall not be deemed to be automatically granted and the Successful RA has to approach the competent authorities under the applicable law.
- (iii) It is further made clear that a Resolution Plan cannot be a conditional one which would make it non-compliant. It is noted that in clause 12 of Form – H, the RP certifies that “*the Resolution Plan is not subject to any contingency*”.

#### **Compliance Certificate in Form – H**

11. Pursuant to Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Resolution Professional has prepared a Compliance Certificate dated 10.11.2022 in **Form H** which is annexed to the Application.



12. Compliance of mandatory requirements under the Insolvency & Bankruptcy Code, 2016:

<b>Sr. No.</b>	<b>Particulars</b>	<b>Compliance</b>
<b>1</b>	<b>Section 25:</b> Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the Corporate Debtor?	Yes.
<b>2</b>	<b>Section 29A:</b> Whether Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Yes.
<b>3</b>	<b>Section 30:</b>	
	<b>(1)</b> Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes. The Resolution Applicant has submitted an affidavit under section 29A of IBC, 2016 confirming his eligibility for submission of Resolution Plan along with the Expression of Interest.
	<b>(2)(a)</b> Whether the Resolution Plan provides for payment of insolvency resolution process costs?	Yes. Part III-A.
	<b>(2)(b)</b> Whether the Resolution Plan provides for the payment of the debts of operational creditors?	Yes. Part III-A.
	<b>(2)(b)</b> Whether the Resolution Plan provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Yes. Part III-D.
	<b>2(c)</b> Whether the Resolution Plan provides for the management of the affairs of the Corporate Debtor?	Yes. Part III-S.
	<b>2(d)</b> Whether the Resolution Plan Provides for implementation and supervision of the resolution plan?	Yes. Part III-P.

	<b>(2)(e)</b> Whether the resolution plan contravenes any of the provisions of the law for the time being in force?	No. Part VII.
	<b>(4)(a)</b> Whether the Resolution Plan is feasible and viable, according to the CoC?	Yes.
	<b>(4)(b)</b> Whether the Resolution Plan has been approved by the CoC with 66% voting share?	Yes. The Resolution Plan has been approved with 66.084% voting.
<b>4</b>	<b>Section 31(1):</b> Whether the Resolution Plan has provisions for its effective implementation Plan, according to CoC	Yes.
<b>5</b>	<b>Section 35A:</b> Whether the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50, or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	Yes.

13. Compliance under mandatory requirements under IBBI (Insolvency Resolution Process of Corporate Debtors) Regulations, 2016

<b>Regulation 38</b>		
<b>1</b>	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Yes. Part III-A.
<b>1A</b>	Whether the resolution plan includes a statement as to how it has dealt with the interest of all stakeholders?	Yes. Part III-W.
<b>1B</b>	i) Whether the Resolution Applicant or any of its related parties has filed to implement or contribute to the failure of implementation	i) No. Part VII. ii) Not Applicable.

	of any resolution plan approved under the Code? ii) If so, whether Resolution Applicant has submitted the statement giving details of such non-implementation?	
<b>2(a)</b>	Whether the Resolution Plan provides the term of the plan and its implementation schedule?	Yes. Part III-N & T.
<b>2(b)</b>	Whether the Resolution Plan provides for the management and control of the business of the corporate debtor during its term?	Yes. Part III-S.
<b>2(c)</b>	Whether the Resolution Plan provides adequate means for supervising its implementation?	Yes. Part III-P.
<b>3</b>	Whether the Resolution Plan demonstrates that -	
<b>(a)</b>	It addresses the cause of default?	Yes. Parts II-A and III-A.
<b>(b)</b>	It is feasible and viable?	Yes.
<b>(c)</b>	It has provisions for its effective implementation?	Yes. Part III-T.
<b>(d)</b>	It has provisions for approvals required and the time for the same?	Yes. Part III-U.
<b>(e)</b>	The Resolution Applicant has the capacity to implement the Resolution Plan?	Yes.
<b>Regulation 39</b>		
<b>2</b>	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Yes. Serial Number 14A of Form H.
<b>4</b>	Provide details of performance security received as referred to in sub-regulation (4A) of Regulation 36.	Rs. 5,00,00,000

14. **Implementation and Supervision of the Plan:**

- (i) The Manner of Supervision and Implementation of the Resolution Plan is provided in Clause III-P of the Resolution Plan.

(ii) Sub-Clause (1) of Clause III-P of the Resolution Plan provides for constitution of a Monitoring Committee to supervise the implementation and execution of the Resolution Plan. It is stated that the Monitoring Committee shall be comprised of the following members:

- The Resolution Professional;
- 1 (one) Representative of the Resolution Applicant;
- 1 (one) Representative of the Financial Creditor.

#### 15. **Details on Fraudulent and Avoidance Transactions**

15.1 The list of applications filed by the RP under sections 43, 45, 50 and/or 66 of the Code, as stated in Form H, is as follows:

<b>Sr. No.</b>	<b>Type of Transaction</b>	<b>Date of filing</b>	<b>Date of Order</b>
1	Preferential Transactions u/s 43	--	--
2	Undervalued Transactions u/s 45	(i) 21.09.2021 (ii) 27.06.2022	NA (Pending Adjudication)
3	Extortionate Credit Transactions u/s 50	--	--
4	Fraudulent Transactions u/s 66	(i) 28.05.2021 (ii) 29.06.2022	NA (Pending Adjudication)

15.2 The Resolution Plan is silent about the treatment regarding the receivables of PUFE Transactions. However, in the 25<sup>th</sup> CoC Meeting held on 19.09.2022, discussions were made on the treatment in respect of avoidance transactions and it was decided by the CoC that any recovery from the avoidance proceedings shall be distributed amongst the CoC Members. In view of the same, we observe that any amount recovered out of the action taken for PUFE Transactions under the Code shall be paid to the Financial Creditors in proportion to their claims.

16. On perusal of Form-H as reproduced in Paras 12 & 13 above, it is seen that the Resolution Plan is in compliance with the mandatory compliances as stipulated under Section 30(2) of the Code. The Resolution Plan also

meets the requirements of Regulations 37, 38, 38(1A) and 39 (4) of the IBBI Regulations, 2016. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law.

17. The submissions of the Ld. Counsel for RP and SRA were heard at length and after a careful analysis of the same together with the material placed on record, we are of considered opinion that the resolution plan is in conformity of section 30(2) of the Code read with the applicable regulations of the CIRP Regulations.
18. We note that the present application, which was reserved for orders, was sent back to the CoC in view of the order dated 30.08.2024 passed in IA/296/2024 wherein the claim of MCGM amounting to Rs. 895 crores which also included claims during CIRP was directed to be verified by the RP. The MCGM had submitted its claim, however, there is a dispute in the quantum of the claim which is pending before this Tribunal. The RP has filed affidavit dated 21.01.2025 and submitted that there is no claim filed by MCGM in respect of the subject property i.e. Shahad Maharal Lands (Vertical IX). Ld. Counsel for MCGM affirmed this submission of the RP. Nonetheless, the RP/SRA vide affidavit dated 04.12.2024, had clarified that in the event of any amount in excess of the estimated CIRP costs, the same shall be deducted from the payments of the secured financial creditors. The clarification and undertaking is taken on record.
19. We refer to the judgment of **K Sashidhar v. Indian Overseas Bank & Others (2019) 12 SCC 150**, wherein 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 Apex Court further observed that the role of the NCLT is 'no more and no less'. The

Hon'ble Apex 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.

20. In **Committee of Creditors of Essar Steel India Limited through Authorised Signatory Vs. Satish Kumar Gupta & Ors (2020) 8 SCC 531**, the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom has approved.
21. In view of the law laid down by Hon'ble Supreme Court, the commercial wisdom of the COC is to be given paramount importance for approval / rejection of the resolution plan. As the Resolution Plan meets the requirements of the I & B Code and the IBBI Regulations, the same needs to be approved.

### **ORDER**

22. Based on the above discussions, the Resolution Plan for Vertical IX – Shahad Maharal Lands, as modified in view of the affidavits, clarifications and undertakings given by the RP and SRA, is **approved** under Section 31(1) of the Code, with the following directions:
- i) The additional affidavits dated 04.12.2024 and 21.01.2025, and the clarifications by the SRA and RP shall form integral part of the Resolution Plan and together, they shall form part of this order. As per section 31 of the Code, the Resolution Plan for Vertical IX shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders to whom

a debt in respect of the payment of dues, so far it relates to Vertical IX, arising under any law for the time being in force is due, involved in the Resolution Plan.

- ii) It is clarified that no automatic approval of the Scheme of Demerger is granted and the Successful Resolution Applicant shall follow the procedure as per the provisions of the Companies Act, 2013 and the Rules thereunder and all other applicable provisions.
- iii) It is further clarified that any benefit arising out of the Resolution Plan shall not be deemed to be automatically granted. The Resolution Applicant shall approach the competent authorities under the applicable law.
- iv) The Resolution Plan for Vertical IX is not subject to any conditions whatsoever.
- v) No person will be entitled to initiate or continue any proceedings in respect to a claim prior to CIRP which is not a part of the Resolution Plan.
- vi) The Resolution Professional is directed to handover all records, premises / documents to Resolution Applicant to finalise further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises / documents through Resolution Professional to finalise further line of action required for starting of the operations.
- vii) The Monitoring Committee shall supervise the implementation of the Resolution Plan and shall review operational performance of the Corporate Debtor.

viii) It is to be noted that Regulation 31A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that a regulatory fee calculated at the rate of 0.25 percent of the realisable value to creditors under the resolution plan approved under section 31, shall be payable to the Insolvency and Bankruptcy Board of India, where such realisable value is more than the liquidation value. In the present case, the Liquidation value is Rs. 62.76 crores while the Resolution Plan value is **Rs. 65 crores**. Hence, considering the mandate of Regulation 31A, the SRA is directed to pay the applicable Regulatory Fee.

ix) **Reliefs and Concessions:**

- a) Approval of the Resolution Plan shall not be a ground for termination of any existing consents, approvals, licenses, concessions, authorizations, permits or the like that has been granted to the Corporate debtor or for which the Corporate Debtor has made an application for renewal, grant permissions, sanctions, consents, approvals, allowances, exemptions etc.
- b) Any Exemption as sought for in relation to the payment of registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan is not granted but the Resolution Applicant is at liberty to approach Competent Authorities for the exemptions if permitted under the law.
- c) For past non-compliances of the Corporate debtor under applicable laws the Resolution Applicant shall not be liable for any liabilities and offences committed prior to the commencement of CIRP and as stipulated under Section 32A of IBC, 2016.
- d) It is hereby clarified that in terms of the Judgement of Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited Vs. 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 of a claim which is not a part of the Resolution Plan.

- e) With regard to other concessions and reliefs, most of them are subsumed in the reliefs granted above. The relief which is not expressly granted above, shall not be construed as granted. The exemptions if any sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted.
- x) Any amount recovered out of the action taken under sections 43-51 and 66 of the Code shall be paid to the Financial Creditors in proportion of their claim amount.
- xi) 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.
- xii) The moratorium under Section 14 of the Code shall cease to have effect as regards Vertical IX – Shahad Maharal Lands from this date.
- xiii) The Resolution Professional/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.
- xiv) Liberty is granted for moving any appropriate application, if required in connection with the implementation of this Resolution Plan.
- xv) The Resolution Professional/Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

23. Accordingly, IA/3902/2022 is **allowed** and **disposed of**.

Sd/-

**Hariharan Neelakanta Iyer**  
**Member (Technical)**

Uma, LRA

Sd/-

**Lakshmi Gurung**  
**Member (Judicial)**