



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

Application for Submission of Resolution Plan Under **Section 30(6)** of Insolvency And Bankruptcy Code, 2016 (“**Code**”) Read With **Regulation 39(4)** Of The Insolvency And Bankruptcy Board Of India (“**Insolvency Resolution Process Of Corporate Persons**”) Regulations, 2016 (“**CIRP Regulations**”)

I.A No.573 of 2022

IN

CP (IB) No: 1390 of 2020

Filed by

Mr. Jayesh Sanghrajka

Resolution Professional of

Radius Estates and Developers Pvt. Ltd.

having his office at 405-407,

Hind Rajasthan Building,

D.S. Phalke Road, Dadar (East),

Mumbai – 400014

... Applicant

IN THE MATTER BETWEEN

Beacon Trusteeship Limited

... Financial Creditor

Versus

Radius Estates and Developers Private Limited

...Corporate Debtor

Order Reserved On: 13.12.2022

Order Pronounced On: 09.01.2023



Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

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

Appearance:

For the Applicant (Jayesh Sanghrajka, Resolution Professional):

Ld. Senior Counsel Mr. Mustafa Doctor a/w Mr. Nausher Kohli, Mr. Devesh Juvekar, Mr. Ashish Parwani, Mr. Dikshat Mehra, Mr. Yash Jain and Miss Honey Chandnani

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

1. This is an Application filed under Section 30(6) (hereinafter referred to as the 'Code') read with Regulation 39(4) Of The Insolvency And Bankruptcy Board Of India ('Insolvency Resolution Process Of Corporate Persons') Regulations, 2016 ('CIRP Regulations') by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant, **M/s. Adani Goodhomes Private Limited**, which was approved by **83.93%** voting share of the member of the Committee of Creditors (hereinafter referred to as 'COC')

2. The Facts Leading To The Application Are As Under:

Before proceeding to the evaluation of the Plan, as to its compliance with Section 30(2) of IBC, it is necessary to set out the factual matrix of the insolvency resolution (CIRP).



- 2.1** The Corporate Debtor entered a joint venture as co-developer with the MIG (Bandra) Realtors and Builders Private Limited (hereinafter referred as “**DB**”), in respect of the redevelopment of a plot of land situated at Bandra (East) Mumbai. This redevelopment has been defined as “**the Project**”. The Project envisaged the construction of residential flats/units for: (i) rehabilitation of the members of the Middle-Income Group Co-operative Housing Society; and (ii) as part of the free-sale component, as explained hereunder.
- 2.2** The aforesaid plot of land is owned by the Maharashtra Housing and Area Development Authority (“**MHADA**”). The said land has been leased by MHADA to Middle Income Group Co-operative Housing Society (hereinafter referred as “**the Society**”).
- 2.3** By a “**Development Agreement**” dated 31.10.2010, executed between the Society and DB, the Society had granted development rights in respect of the land and structures on the said plot in favour of DB. The Development Agreement was thereafter modified from time to time. Under the terms of the Development Agreement, DB was required to construct and provide certain premises, together with amenities, and common areas, for the members of the Society and was entitled to sell and deal with the other flats as more particularly set out in the Development Agreement.



- 2.4** The Corporate Debtor entered into an agreement with DB on 31.03.2016 (hereinafter referred as “**Redevelopment Agreement**”). As per the terms of the Redevelopment Agreement, both the parties were required to contribute to the cost of the development and would also be jointly entitled to the free sale component, that would result from the development. The Society was not a party to the Redevelopment Agreement. The Society members vacated their premises in the year 2015.
- 2.5** In the meantime, the Corporate Debtor and DB had begun the process of selling the flats from their respective entitlements and collecting monies from potential flat purchasers in exercise of their respective rights under the Development Agreement and the Redevelopment Agreement.
- 2.6** Because of certain issues affecting the Corporate Debtor, construction of the project came to a halt around January 2020. There were also defaults in payment of rent to the members of the Society.
- 2.7** Under the circumstances, the Society, vide letter dated 8.5.2020, alleging various defaults of the Development Agreement on the part of DB, terminated the Development Agreement. DB challenged the purported termination by filing a Petition under Section 9 of the **Arbitration and Conciliation Act, 1996 bearing Commercial Arbitration Petition No. LD-VC-80/2020** before the Hon’ble Bombay High Court. The Hon’ble



Bombay High Court vide order dated 26.05.2020, directed the parties to maintain the status quo and also referred the disputes to the Arbitrator appointed.

2.8 The Company Petition, being CP/1390/IB/(MB)/2020, filed under Section 7 of IBC by Beacon Trusteeship Ltd. against the Corporate Debtor was admitted by this Tribunal and the **CIRP of the Corporate Debtor began on 30.04.2021.**

2.9 As on the date of admission of the Corporate Debtor into CIRP, the Corporate Debtor had sold 224 units and was left with 146 units available for sale at the time. The Project was incomplete. Out of the 15 buildings, which were supposed to be constructed, only 9 buildings were partially constructed, and construction of the remaining buildings had not even commenced.

2.10 The Arbitrator appointed by the Hon'ble Bombay High Court in respect of the disputes between the Society and DB passed an interim Order dated 5.5.2021 ("**Interim Award**") granting a conditional stay in respect of the purported termination, which was made subject to compliance of certain terms and conditions to be strictly complied by DB. These terms and conditions, *inter alia*, included payment of monies towards transit rent, corpus fund, compensation to the members of the Society by DB.



- 2.11** The violation of the said conditions would lead to the stay of termination being vacated, effectively leading DB and consequently the Corporate Debtor to lose the development rights under the Development Agreement and Redevelopment Agreement respectively.
- 2.12** The Society is neither a member of the COC, nor is it a participant in the CIRP of the Corporate Debtor. Thus, the COC could not exercise any form of control over the Society's actions. More importantly, the Corporate Debtor had no direct privity with the Society.
- 2.13** It is also pertinent to note that the Redevelopment Agreement enabled DB to enforce "**step-in rights**" against the Corporate Debtor in case of an event of default. DB had, at the time, sought invocation of its step-in rights.
- 2.14** It is clear from what is stated above, that the Corporate Debtor had no direct privity with the Society, nor does it have any entitlement to the land on which the Project is being undertaken. The Corporate Debtor's rights in the Project emanates from the Redevelopment Agreement. In case of termination of the Development Agreement between the Society and DB, the Corporate Debtor will have recourse only against DB. It is clear from the abovementioned facts that, the Corporate Debtor was about to lose the Project altogether, thereby resulting in the creditors of the Corporate



Debtors to lose their security, and the home buyers to lose the flats purchased by them.

2.15 For the purpose of survival of the Corporate Debtor, it was necessary to keep the Project going (i.e. for construction to resume), in order to avoid the termination of the Development Agreement by the Society and to convince DB not to invoke its step-in rights against the Corporate Debtor.

2.16 Considering the position of the Society and DB, qua the Project, it was imperative to chalk out a plan of action, with their consent and confidence, so that the Project could be saved and implemented either by the Corporate Debtor or by way of its resolution. In absence of the availability of the redevelopment project and the right to redevelop the land, no Resolution Plan or Resolution Process was possible and the Corporate Debtor was bound to face liquidation.

2.17 The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench, by an Order dated 30.04.2021, under Section 7 of the Insolvency and Bankruptcy Code 2016 (Admission Order) and Mr. S. Gopalakrishnan, was appointed as the Interim Resolution Professional. The IRP constituted Committee of Creditors. The COC in its 1st Meeting held on 02.07.2021 appointed (the present Applicant) as the Resolution Professional (RP). The members of the COC filed an Interim



Application No.1688 of 2021 ("IA") before the NCLT praying for appointment of the Applicant to act as the RP of the Corporate Debtor, the same was allowed by this Bench vide an Order dated 25.08.2021. The Chairperson further informed the members of the COC that the Public Announcement was made in the Free Press Journal (English Newspaper) and Nav Shakti (Marathi Newspaper) (Mumbai Edition) on 08.05.2021, pursuant to Section 15 of the IBC, 2016 read with Regulation 6 of the CIRP Regulations and also published the same on the website of IBBI and specially developed website for dissemination of CIRP related data of the Corporate Debtor (<http://radiustenbkc.com/>). The Applicant submitted the claims as on June 21, 2021, i.e., the date on which the Hon'ble NCLAT vacated the stay on constitution of COC, which are as follows:

Type Of Claim	No. Of Claims	Amount Claimed	Amount Verified	Amount Under Verification
Financial Creditors	9	1750,81,86,966	1644,65,92,218	106,15,94,748
Financial Creditors in Class (Homebuyers)	169	747,19,62,960	633,81,76,416	113,37,86,544
Operational Creditors	20	310,28,09,169	4,52,01,150	296,76,08,019
Employees Claims	2	34,87,377	29,49,820	5,37,557
Other Creditors	3	35,28,37,167	0	35,28,37,167
Total	203	2834,92,83,639	2283,29,19,604	551,63,64,035



Thereafter, RP upon verification of the same, constituted the COC. Pursuant to the Public Announcement, the RP received 2 (two) Expression Of Interest from the Prospective Resolution Applicants(PRA's). The Applicant in compliance of the provisions of the Code and Rules framed thereunder conducted the CIRP of the Corporate Debtor in the following lines.

2.18 The minutes of all COC meetings is tabulated as under

Sr. No.	Date	Key Outcome(s)
1 st COC Meeting	July 02, 2021	IRP Mr. S. Gopalakrishnan constituted the COC on the basis of claims received from creditors in response to public announcement. Appointment of Mr. Jayesh Sanghrajka as the Resolution Professional of the Corporate Debtor was confirmed by the COC.
2 nd COC Meeting	July 23, 2021	The COC discussed various matters including invocation of step in rights under the redevelopment agreement by DB, vacating the leased premises in One BKC and discontinuation of employees due to non-operations.
3 rd COC Meeting	September 13, 2021	The COC discussed and deliberated upon appointment of Adani Infrastructure and Developers Private Limited (hereinafter referred as " Adani ") as a construction manager for the project in light of proposal letter received from DB. Appointment of various professionals to assist the RP during the CIRP as well as valuers



		<p>was deferred to the next meeting.</p> <p>The homebuyers insisted that the construction commence forthwith.</p>
4 th COC Meeting	September 17, 2021	<p>The COC further discussed and deliberated upon appointment of Adani Infrastructure and Developers Private Limited as a construction manager for the project followed by a presentation from DB and Adani Infrastructure and Developers Private Limited team. Appointment of various professionals to assist the RP during the CIRP as well as valuers was also discussed.</p>
5 th COC Meeting	September 21, 2021	<p>Appointment of various professionals to assist the RP' during the CIRP as well as valuers was finalized and major creditors were authorized to negotiate with Adani, which was proposed to be appointed as construction manager for the project.</p>
6 th COC Meeting	October 07, 2021	<p>The COC approved the following:</p> <ol style="list-style-type: none">1. Eligibility criteria for PRA under Section 25(2)(h) of the Code;2. Publication of Form G; and3. Extension of CIRP period under Section 12(2) of the Code. <p>The homebuyers insisted that the construction must commence forthwith.</p>
7 th COC	October	<p>The COC approved the following:</p>



Meeting	20, 2021	<ol style="list-style-type: none">1. RFRP;2. Amount of performance security to be required from the PRA;3. Evaluation Matrix; and4. Shifting of registered office of corporate debtor. <p>The homebuyers insisted that the construction must commence forthwith.</p>
8 th COC Meeting	November 02, 2021	<p>The Applicant informed the COC that he had received EOI from two (2) prospective resolution applicants namely: Adani Goodhomes Private Limited and Ashdan Properties Private Limited jointly with Ashdan Developers Private Limited and he was in the process of determining if each of them fulfilled the eligibility criteria approved by the COC.</p> <p>The homebuyers insisted that the construction must commence forthwith.</p>
9 th COC Meeting	November 11, 2021	<p>The Applicant informed the COC that since Ashdan Properties Private Limited jointly with Ashdan Developers Private Limited didn't meet the eligibility criteria approved by the COC, the PRA had itself withdrawn from the CIRP process and only Adani Goodhomes Private Limited would be eligible to submit a resolution plan.</p>



10 th COC Meeting	December 07, 2021	<p>The COC approved extension of timeline for submission of resolution plan from December 07, 2021 to December 14, 2021.</p> <p>The homebuyers insisted that the construction must commence forthwith.</p>
11 th COC Meeting	December 16, 2021	<p>The COC approved extension of timeline for submission of resolution plan from December 14, 2021 to December 21, 2021.</p> <p>The homebuyers insisted that the construction must commence forthwith.</p>
12 th COC Meeting	December 21, 2021	<p>The RP informed the COC that he had circulated the Resolution Plan received from Adani Goodhomes Private Limited. The COC discussed and deliberated on the feasibility and viability and other aspects of the plan. The COC also approved raising interim finance, appointment of Adani as construction manager and reduction of performance security in light of raising interim finance.</p> <p>The homebuyers insisted that the construction must commence forthwith.</p>
13 th COC Meeting	December 25, 2021	<p>The meeting was called on the directions of Hon'ble NCLT. The COC discussed observations under Transaction Audit Report, valuation report and other documents. Voting on resolution plan was extended until December 27, 2021 wherein Adani Goodhomes Private Limited was declared as the Successful</p>



		Resolution Applicant. (hereinafter referred as “SRA/RA”)
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The COC in its 5th Meeting decided to appoint valuers. The Resolution Professional accordingly appointed registered valuers, CA Manish Jaju, CA Shrenik Doshi (Securities & Financial Assets) and Truval Advisors, Sundeep H.B. & Co (Land and Building) to determine the fair value and liquidation value of the Corporate Debtor, as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016.

2.19 The EOI dated 13.10.2021 set out that it would be a term of the Resolution Plan that the Successful Resolution Applicant must commence construction of the Project, pending the approval of the Resolution Plan by the NCLT and must satisfy the COC about its financial capability to do so. The RFRP provided to the RA on 8.11.2021 stated that the Successful Resolution Applicant was required to commence construction on the site against reimbursement of cost basis, or such other basis as the CoC may approve.

2.20 Pursuant to the EOI, only the RA qualified as the prospective resolution applicant. Hence the RFRP was issued only to the RA.

2.21 From the minutes of the CoC meeting it is clear that the homebuyers wanted construction to commence immediately. The Society members also



wanted construction to resume without which there was a threat of termination. As stated above, resuming construction also finds its place in the EOI issued on 13.10.2021 and RFRP provided to the RA on 8.11.2021. Considering these factors, the only way to ensure that the business of the Corporate Debtor is running on a going concern basis was to resume construction. Therefore, along with the resolution plan, the RA submitted a draft of a '**Construction Management Agreement**' (hereinafter referred as '**CMA**') to the CoC on 19th December 2021. Under the CMA, the RA would act as a construction manager of the Project.

2.22 Resuming construction required huge costs to be incurred. However, no member of the CoC was inclined to fund any further monies. The members of the CoC at various meetings also discussed the premium payable to the government and statutory authorities for approvals which were scheduled to increase after 31.12.2021 (pursuant to Government Orders/Resolutions dated 14.01.2021 and MCGM Circular dated 22.01.2021) and if payments were not made on or before 31.12.2021, there would have been a loss of around Rs.100,00,00,000/- (Rupees One Hundred Crore) which would make the project unviable. Hence, an emergent and urgent need arose to collect funds towards the premium, totalling to Rs.120,74,10,000/-, within extremely short timeline as also to resume construction.

2.23 Considering that since no member of the CoC was providing finance and huge costs were required to be incurred, inter alia, to resume construction



and avail the government benefit, the RA decided to provide interim finance and accordingly, along with the resolution plan, a draft of the ‘**Master Facility Agreement**’ (hereinafter referred as ‘**MFA**’) was put before the CoC. Under the MFA, the RA as the lender has agreed to make available interim finance to the tune of Rs.725,00,00,000/- (Rupees Seven Hundred and Twenty Five Crore).

2.24 The Resolution Applicant submitted the resolution plan to the Resolution Professional on 17th December 2021 and a revised, final plan was submitted on 21st December 2021, post discussions and deliberations with the members of the CoC.

2.25 Beacon Trusteeship Services Limited (“**Beacon**”) and ICICI Prudential Venture Capital Fund Real Estate Scheme I (“**ICICI**”) filed applications before this Tribunal bearing e-filing No. 2709138065192021 of 2021 and IA bearing No. 2957 of 2021 on 22nd December 2021. The applications sought an extension of 10 working days, which would take the voting to January 2022.

2.26 This Hon’ble Tribunal, after hearing the aforesaid applications granted an extension for consideration and voting on the plan up to 27th December 2021 *vide* Orders dated 24th December 2021. This order was not challenged.



2.27 In these circumstances, the Plan, the CMA and the MFA were put to vote via e-voting between 23.12.2021 (6 p.m.) and 27.12.2021 (10 a.m.).

2.28 The results of the e-voting on the Plan, the CMA and the MFA are as under: -

Sr. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1.	Housing Development Finance Corporation Limited	33.25	Voted for
2.	ICICI Prudential Venture Capital Fund Real Estate Scheme I	5.71	Dissented
3.	Yes Bank Limited	2.39	Abstained
4.	ICICI Bank Limited	0.03	Abstained
5.	Beacon Trusteeship Limited - INE203S07078	1.45	Dissented
6.	Beacon Trusteeship Limited - INE203S07052	0.36	Dissented
7.	Beacon Trusteeship Limited -	0.58	Dissented



	INE203S07060		
8.	Beacon Trusteeship Limited - INE203S07102	3.89	Dissented
9.	Piramal Capital & Housing Finance (Erstwhile Dewan Housing Finance Corporation Limited)	17.27	Voted for
10.	Beacon Trusteeship Limited - INE691X07017	1.16	Dissented
11.	Infinite Buildcon Private Limited	0.50	Abstained
12.	Authorised Representative of Homebuyers	33.41	Voted for

2.29 Thus, the Plan was approved by the COC vide a separate resolution under Section 30(4) of IBC, by an overwhelming majority of 83.93%. Along with the Plan, the CMA and the MFA have also been approved vide separate resolutions and by an overwhelming majority of 83.93%.

2.30 Amongst other things, the settlement between DB and the Society was an integral part of the Plan. Draft consent terms to be executed with the



Society were attached to the Plan. Therefore, it appears that the negotiations and efforts of the RA led to the ultimate settlement of disputes between the Society and DB and saved the Project.

2.31 Accordingly, after approval of the Plan by the CoC, the Society and DB executed Consent Terms on 27.12.2021. In terms of the said draft Consent Terms, which were attached to the Plan, two important clauses of the Consent Terms were as follows - (a) construction had to resume within 90 days from the date of the Consent Terms and (b) certain payments had to be made to the Society.

2.32 Pursuant to the approval of the CMA by the CoC, the CMA was executed on 27.12.2022 and pursuant thereto construction of the project resumed on 1st January 2022 and has been continuing since then. The RP in its Second Additional Affidavit dated 25.7.2022 in the captioned Application has set out the particulars with regard to the progress of construction as on 30.06.2022, which are extracted as under:

Type of building	Wing	RCC Construction status as on 31.12.2021	RCC Construction status as on 30.06.2022	RCC Construction undertaken in 6 months



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		i.e. prior to the execution of the CMA		
Sale	1	Gr.	Gr. + 6	6
Sale	2	Gr.	Gr. + 5	5
Sale	3	Gr.	Gr. + 5	5
Sale	4	Gr. + 20	Gr. + 22	2
Society + Sale	5	Gr. + 20	Gr. + 24	4
Society + Sale	6	Gr. + 20	Gr. + 27	7
Society + Sale	7	Gr. + 27	Gr. + 29	2
Society + Sale	8	Gr. + 27	Gr. + 29	2
Sale	9	Gr. + 8	Gr. + 16	8
Sale	10	Gr. + 5	Gr. + 13	8
Sale	11	Gr. + 3	Gr. + 11	8
Sale	12	Gr. + 3	Gr. + 13	10



Society +	13	Gr. + 22 / Gr.	Gr. + 22 /	13
Sale			Gr. + 13	
Sale	14	Gr. + 5	Gr. + 13	8
Sale	15	Gr. + 5	Gr. + 13	8
				96

2.33 Pursuant to the approval of the MFA by the CoC, the MFA was executed on 27.12.2021. The RP in its Second Additional Affidavit dated 25.7.2022, stated that the RA has lent Rs. 376,61,14,500/- to the Project as on 30.06.2022, under the MFA approved by the COC on 21.12.2021, from which:

- (a) An amount approximately Rs. 121,00,00,000/- has been paid to MHADA Building Cell towards premium of Fungible FSI;
- (b) Approximately Rs. 37,20,00,000/- has been paid towards open space deficiency, staircase premium and other approval related cost;
- (c) Approximately Rs. 106,00,00,000/- has been paid to the Society; and
- (d) Approximately Rs. 112,50,00,000/- has been expended towards construction costs, working capital and project related expenses.

2.34 The avoidance application for assets / transactions, being IA No. 551 of 2022 (“IA”) read with a supplemental application, being IA No. 1653 of



2022 In IA No. 551 of 2022 in CP No. 1390 of 2020 (“**Revised IA**”) came to be filed by the RP on 25th February 2022 for a sum of Rs.843,40,63,554/- (Rupees Eight Hundred and Forty-Three Crore Forty Lakh Sixty Three Thousand Five Hundred and Fifty Four). Out of these, approximately Rs.840,00,00,000/- (Rupees eight hundred and forty crore) form part of the Valuation Reports prepared by Mr. Shrenik M. Doshi and Mr. Manish Jaju to value the financial assets of the Corporate Debtor.

2.35 During the course of hearing of I.A No. 503 of 2022, I.A. No. 837 of 2022, I.A. No. 931 of 2022 and I.A. No. 808 of 2022, the objectors i.e. Beacon Trusteeship Limited and ICICI Prudential Venture Capital Fund Real Estate Scheme -I stated that Plan is bad in law because it deviated from the RFRP to the extent that the RFRP required the benefit of the avoidance applications to go to the COC but the plan provided that it would go to the RA.

2.36 Therefore, taking an overall view of the matter, the RA filed an additional affidavit dated 7.10.2022 under which it stated that it shall not claim the benefit of the recoveries under the above mentioned IA read with the Revised IA (as stated in para 2.34, 2.35) and **forgoes the same in favour of the creditors of the Corporate Debtor in the manner to be decided by the CoC under applicable law and that the IA read with the Revised IA may be pursued by the RP or by the CoC or as the CoC may deem fit and proper.**



2.37 In the light thereof, the RA submitted that Clause 5.1(K) be treated as **deleted** from the Plan. Severing this part of the Plan is within the power of this Hon'ble Tribunal (as done in the 63 Moons-DHFL matter by NCLAT).

2.38 Additionally, under the aforesaid affidavit dated 7.10.2022 filed by the RA, the RA has stated that it will have no right to the recovery of a sum of **Rs. 212,62,00,000/- (Rupees Two Hundred and Twelve Crore Sixty Two Lakh) and the benefit, if any, will be for the CoC and to be decided by the CoC.** Therefore, vide the aforesaid additional affidavit dated 7.10.2022 filed by the RA, the RA has marked a sum of around Rs.1,052,62,00,000/- (Rupees One Thousand and Fifty-Two Crore Sixty Two Lakh) being around 86.44% of the amount mentioned in the Valuation Reports prepared by Mr. Shrenik M. Doshi and Mr. Manish Jaju **for the CoC and to be further decided by the COC.**

2.39 HDFC Limited ("**HDFC**") being a member of CoC has vide its Affidavit dated 29.11.2022 filed in, inter alia, the captioned application stated that it has taken note of the additional affidavit dated 07.10.2022 filed by the RA and is agreeable to the same.

2.40 Ten BKC Flat Owners AOP Trust ("**AOP**") being an association comprising homebuyers has also vide its Affidavit dated 30.11.2022 filed, the captioned application stating inter alia, that it has taken note of the



additional affidavit dated 07.10.2022 filed by the RA and is accepting the same.

2.41 Piramal Capital & Housing Finance Limited being a member of CoC has vide its letter dated 28.11.2022 addressed to the RP stated that it accepted the proposal made by the RA in their additional affidavit dated 07.10.2022 filed by the RA and authorized the RP to file letter with this Tribunal. Accordingly, the RP vide affidavit dated 30.11.2022 brought letter dated 28.11.2022 filed by Piramal Capital & Housing Finance Limited on record.

2.42 The aforesaid Affidavits i.e. affidavit filed by HDFC, the AOP and the RP were brought on record by the RP vide its additional affidavit dated 16.12.2022 filed in the captioned application.

2.43 The Adjudicating Authority has accepted the submissions made by the RA in its Additional Affidavit of 7.10.2022. in the interest of the corporate insolvency resolution process of the Corporate Debtor, the Adjudicating Authority has the jurisdictional power to direct that the Plan shall stand revised to the extent of the submissions made by the RA in its Additional Affidavit of 7.10.2022, which submissions have also been accepted by HDFC, the Association of Homebuyers and Piramal Capital & Housing Finance Limited.



2.44 The RP further stated, in Paragraph 8 of the said Affidavit dated 16.12.2022, that certain typographical errors in the Plan [Section 3 of the Plan, the Table under Clause 3.1(A), at page 389 of the captioned Application] have been corrected by the RA vide its Additional Affidavit dated 7.10.2022. In Paragraphs 9 and 10 of the said Affidavit dated 16.12.2022, the RP has clarified that he did not receive any claims from government or statutory authorities during the CIRP process, including upto the date of filing the Plan with this Tribunal under Section 30(6) of IBC. However, between September and December 2022, the RP received certain claims from the Income Tax Department and GST Department. The RP did not entertain or accept the said claims since they were filed long after the expiry of the statutory period for filing claims and were grossly belated claim filed much after approval of the proposed plan by the COC. We find nothing wrong with the decision of the RP in this regard.

3. The dissenting Financial Creditors, being Beacon Trusteeship Limited and ICICI Prudential Venture Capital Fund Real Estate Scheme I, having voting percentage of 7.44% and 5.71% respectively, filed four applications, viz. I.A No. 503 of 2022, I.A. No. 837 of 2022, I.A. No. 931 of 2022 and I.A. No. 808 of 2022, objecting to the approval of the Plan under Section 31 of IBC, on various grounds. These four applications were heard at length and rejected vide Order dated 2.12.2022 passed by this Tribunal.



4. Salient Features Of The Resolution Plan Are As Under:

The following payments towards CIRP costs and various classes of creditors are envisaged as part of the Plan:

A. CIRP COST

RA will make payment of CIRP Cost in priority over payments towards or settlement of claims and debts to the creditors.

B. HOMEBUYERS

(i) Unit Homebuyers

- (a) Homebuyers who have not sought for refund and/or who do not have orders for refund will be given units in the project. The details setting out terms of for this category of home buyers is mentioned in the Resolution Plan; and
- (b) The date on which the Unit Homebuyers will be given possession of their Units will be 6th June 2024, subject to the conditions mentioned in Section 2.2(V) of the Resolution Plan.

(ii) Erstwhile Homebuyers

- (a) Any of the Unit Homebuyers who have sought a refund earlier from the Corporate Debtor and/or have orders for refund in their favour against the Corporate Debtor or wish to seek refund (“**Erstwhile Homebuyers**”), will have to, within a period of 30 days from the COC Approval Date, elect whether they want a refund (“**Election Date**”).
- (b) Those homebuyers who elect in writing for a refund on or prior to the Election Date will be deemed to have given up their right to the Units that had been purchased by them and will be given a refund of only the principal amount of the consideration paid by them, notwithstanding any order to the contrary.
- (c) The refund shall be payable from the proceeds received from sale of the Units that had been allotted to such Erstwhile Homebuyers. The refund shall be paid to the Erstwhile



Homebuyer or its lender (as the case may be) within 30 days of each payment received from the new buyer in proportion to the principal amount that the Erstwhile Homeowner had paid to the Corporate Debtor. In any event, all of the pending principal amount (if any) of the Erstwhile Homebuyers will be paid by 30 June 2025.

C. SECURED FINANCIAL CREDITORS (OTHER THAN HOMEBUYERS)

Secured Financial Creditor	Claims filed (INR)	Claims admitted (INR)	Amount Proposed (INR)
Secured Financial Creditors who have charge over immovable assets of Project			
Housing Development Finance Corporation Limited	9,04,82,53,461	8,27,80,64,540	10,00,00,000
ICICI Prudential Venture Capital Fund Real Estate Scheme I	1,42,25,19,000	1,42,25,19,000	10,00,00,000
Beacon Trusteeship Limited - INE203S07078	36,11,36,986	36,01,36,986	2,53,16,849
Beacon Trusteeship Limited - INE203S07052	9,10,34,247	9,00,34,247	63,29,212
Beacon Trusteeship Limited - INE203S07060	14,50,54,795	14,40,54,795	1,01,26,740
Beacon Trusteeship	96,93,56,440	96,93,56,440	6,81,43,655



Limited - INE203S07102			
Total	12,03,73,54,929	11,26,41,66,008	30,99,16,456
Secured Financial Creditors who do not have charge over immovable assets of Project			
Yes Bank Limited	59,46,28,211	59,46,28,211	50,00,000
ICICI Bank Limited	79,56,494	78,26,087	65,807
Total	60,25,84,705	60,24,54,298	50,65,807
Total	12,63,99,39,634	11,86,66,20,306	31,49,82,262

D. UNSECURED FINANCIAL CREDITORS (NON-RELATED PARTIES)

Unsecured Financial Creditor	Claims filed (INR)	Claims admitted (INR)	Amount Proposed (INR)
Dewan Housing Finance Limited Beacon Trusteeship Limited - INE691X07017	4,58,70,94,237	4,29,96,88,410	42,99,688
Infinite Buildcon Private Limited	12,50,00,000	12,50,00,000	1,25,000
Total	5,00,12,03,826	4,71,27,97,999	47,12,798

E. UNSECURED FINANCIAL CREDITORS (RELATED PARTIES)

The following Unsecured Financial Creditors who are related parties will be paid **NIL** and the admitted debt of the following persons shall be converted



into equity shares of the Corporate Debtor and subsequently will be subject to Capital Reduction as specified in Section 5 (Acquisition as a Going Concern) of the Resolution Plan.

Unsecured Financial Creditor	Claims filed	Claims admitted
Sumer Radius Realty Private Limited	1,59,65,24,186	1,59,65,24,186
Radius Sumer Developers Private Limited	75,00,00,000	75,00,00,000
TOTAL	2,34,65,24,186	2,34,65,24,186

F. DISSENTING FINANCIAL CREDITORS

- (i) The dissenting Financial Creditors (who are not related parties) will be paid as per Section 30 of the Code and Regulation 38(1)(b) of the CIRP Regulations and difference between the balance portion of the admitted debt and the amount paid as per Regulation 38(1)(b) of the CIRP Regulations shall be converted into equity shares of the Corporate Debtor and subsequently will be subject to Capital Reduction as specified in Section 5 (Acquisition as a Going Concern) of the Resolution Plan. This will be in full and final settlement.
- (ii) Without prejudice to anything contained above, any other debt of the dissenting Financial Creditors/trade creditors appearing in the books of account of the Corporate Debtor, whether or not a claim has been filed in relation thereto, whether admitted or not, under verification, contingent or otherwise, asserted or unasserted, secured or unsecured shall be converted into equity shares of the Corporate Debtor and subsequently will be subject to Capital Reduction as specified in Section 5 (Acquisition as a Going Concern) of the Resolution Plan. This will be in full and final settlement.

G. OPERATIONAL CREDITORS (EMPLOYEES AND WORKMEN)

The Employees and Workmen will be paid an amount of Rs. 1,51,89,094/- (Rupees One crore Fifty One Lakhs Eighty Nine Thousand and Ninety Four) (“**Employees and Workmen Payment**”) on the Effective Date towards full payment of the Admitted Employees and Workmen Debt, and in full and



final settlement towards all amounts due and payable to them (whether towards retirement benefits, gratuity, bonus, provident fund or otherwise) in the priority prescribed under the Code. All Employees and Workmen shall be deemed to have relinquished any claim for any other dues. The appropriation of the Employees and Workmen Payment to the Employees and Workmen will be as per the claims admitted.

H. OPERATIONAL CREDITORS (GOVERNMENT AND STATUTORY AUTHORITIES)

- (i) The Liquidation Value is insufficient to even satisfy the claims of the Secured Financial Creditors in full and therefore, the amounts payable to the Government and Statutory Authorities, in compliance with Section 30(2)(b) of the Code, would be **NIL**. Accordingly, RA proposes to make NIL payment to Government and Statutory Authorities in priority to any payment to any Financial Creditors, towards full and final satisfaction and discharge of Admitted Government and Statutory Authorities Debt.
- (ii) The Admitted Government and Statutory Authorities Debt shall be converted into equity shares of the Corporate Debtor and subsequently will be subject to Capital Reduction as specified in Section 5 (Acquisition as a Going Concern) of the Resolution Plan. This will be in full and final settlement.
- (iii) We may add that no claims from government or statutory authorities were received by the RP during CIRP, i.e. up until the approval of the Plan by COC on 27.12.2021. RP has clarified this position in his Additional Affidavit dated 16.12.2022 in the captioned Application, at Paragraph 9 thereof. Thus, the question of payment in respect of claims by government or statutory authorities does not arise and the law laid down by the Hon'ble Supreme Court of India in *State Tax Officer v. Rainbow Papers Ltd.*, Civil Appeal No. 1661 of 2020 with Civil Appeal No. 2568 of 2020, does not apply to the instant case.

I. OPERATIONAL CREDITORS (OTHER THAN EMPLOYEES, WORKMEN GOVERNMENT AND STATUTORY AUTHORITIES)

- (i) The Liquidation Value is insufficient to even satisfy the claims of the Secured Financial Creditors in full and therefore, the amounts payable to the Operational Creditors (other than Employees and Workmen and Government and Statutory Authorities) ("**Other Operational Creditors**") (whose claims have been admitted by the Resolution Professional) towards the Admitted Other Operational Creditor Debt, in compliance with Section 30(2)(b) of the Code, would be **NIL**. Accordingly, RA proposes to make NIL payment to Other



Operational Creditors in compliance Section 30(2)(b) of the Code (“Other Operational Creditor Payments”) in priority to any payment to any Financial Creditors, towards full and final satisfaction and discharge of Admitted Other Operational Creditor Debt.

- (ii) For the same reasons as mentioned above, the Admitted Other Operational Creditor Debt shall be converted into equity shares of the Corporate Debtor and subsequently will be subject to Capital Reduction as specified in Section 5 (Acquisition as a Going Concern) of the Resolution Plan.
- (iii) Without prejudice to anything contained above, any other debt of the Other Operational Creditors/trade creditors appearing in the books of account of the Corporate Debtor, whether or not a claim has been filed in relation thereto, whether admitted or not, under verification, contingent or otherwise, asserted or unasserted, secured or unsecured shall be converted into equity shares of the Corporate Debtor and subsequently will be subject to Capital Reduction as specified in Section 5 (Acquisition as a Going Concern) of the Resolution Plan. This will be in full and final settlement.

J. OTHER CREDITORS

- (i) The Liquidation Value is insufficient to even satisfy the claims of the Secured Financial Creditors in full and therefore, the amounts payable to the Other Creditors (whose claims have been admitted by the Resolution Professional) towards the Admitted Other Creditor Debt, in compliance with Section 30(2)(b) of the Code, would be NIL. Accordingly, RA proposes to make **NIL** payment to Other Creditors in compliance Section 30(2)(b) of the Code (“**Other Creditor Payments**”) in priority to any payment to any Financial Creditors, towards full and final satisfaction and discharge of Admitted Other Creditor Debt.
- (ii) For the same reasons as mentioned above, the Admitted Other Creditor Debt shall be converted into equity shares of the Corporate Debtor and subsequently will be subject to Capital Reduction as specified in Section 5 (Acquisition as a Going Concern) of the Resolution Plan.
- (iii) Without prejudice to anything contained above, any other debt of the Other Creditors/trade creditors appearing in the books of account of the Corporate Debtor, whether or not a claim has been filed in relation thereto, whether admitted or not, under verification, contingent or otherwise, asserted or unasserted, secured or unsecured shall be



converted into equity shares of the Corporate Debtor and subsequently will be subject to Capital Reduction as specified in Section 5 (Acquisition as a Going Concern) of the Resolution Plan. This will be in full and final settlement.

5. The Plan complies with the requirements in respect of mandatory contents of resolution plans under the IBC [Section 30(2) of IBC] read with the CIRP Regulations [Regulations 38 and 39 of CIRP Regulations]. The chart setting out the compliance forms part of the Plan and the same is extracted hereunder:

#	Source of Requirement	Description of Requirement	Resolution Plan Reference addressing such requirement
1.	Section 30 (2)(a) of Code.	Payment of the CIRP Costs in priority to the payment of other debts of the Corporate Debtor.	Section 4.1
2.	Section 30(2)(b) of the Code and Regulation 38(1) of the CIRP Regulations.	Payment of the debts of the Operational Creditors in priority to the payment of the Financial Creditors such that the amount received by them is not less than the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor.	Sections 3 and 4.
3.	Regulation 38(1A) of the CIRP Regulations.	Statement as to how the Resolution Plan has dealt with the interests of all stakeholders, including Financial Creditors and Operational Creditors of the Corporate Debtor.	Sections 3 and 4.
4.	Regulation 38(2)(a) of the	Term of the Resolution Plan and its Implementation	Sections 5 and 10.5.



#	Source of Requirement	Description of Requirement	Resolution Plan Reference addressing such requirement
	CIRP Regulations.	Schedule.	
5.	Section 30(2)(c) of the Code and Regulation 38(2)(b) of the CIRP Regulations.	Mechanism regarding management and control of the affairs of the Corporate Debtor post approval of the Resolution Plan by the Adjudicating Authority.	Section 8.
6.	Section 30 (2)(d) of Code and Regulation 38(2)(c) of the CIRP Regulations.	Manner of implementation and supervision of the Resolution Plan and adequate means for supervising the implementation of the Resolution Plan.	Sections 6 and 9.
7.	Section 30 (2)(e) of Code.	Declaration that the Resolution Plan is not in contravention of provisions of the Applicable Laws.	Annexed to this Resolution Plan as Format VI.
8.	Regulation 38(3)(a) of the CIRP Regulations.	Resolution Plan to demonstrate that it addresses the cause of default.	Sections 3 and 5.
9.	Regulation 38(3)(b) of the CIRP Regulations.	Resolution Plan to demonstrate that that it is feasible and viable.	Sections 3 and 5.
10.	Regulation 38(3)(c) of the CIRP Regulations.	Resolution Plan to demonstrate that it has provisions for effective implementation of the Resolution Plan.	Sections 3 and 5.
11.	Regulation 38(3)(d) of the CIRP Regulations.	Details of approvals required and the timeline for the same.	Section 10.
12.	Regulation	Ability of the Resolution	Section 1.



#	Source of Requirement	Description of Requirement	Resolution Plan Reference addressing such requirement
	38(3)(e) of the CIRP Regulations.	Applicant has the capability to implement the resolution plan.	
13.	Section 30(1) of Code and Regulation 39(1) of the CIRP Regulations.	Disclosures and undertaking of the Resolution Applicant under Section 29A of the Code.	Annexed to this Resolution Plan as Format IIIA.

OBSERVATIONS AND FINDINGS

6. We have, with the assistance of the learned Senior Counsel for the RP, perused and verified the contents of the aforesaid chart on the compliance with the legal requirements and found the same to be in order. We also note with approval the detailed Compliance Certificate dated 10.1.2022 of the RP in Form H (under Regulation 39(4) of the CIRP Regulations 2016) that has been placed on record in the captioned Application, the Certificate demonstrates that, the Plan is in accord with the Code and the applicable regulations framed thereunder. The central aspects of our evaluation and assessment under Section 30(2) of IBC are elaborated and detailed hereunder.

- a. **Section 30(2)(a) of IBC:** The standard requirement to pay CIRP costs in priority to other debts/payouts has been met by the Plan, in Clause 4.1.



b. ***Section 30(2)(b) of IBC and Regulation 38(1) of CIRP Regulations:***

As far as the payouts to ***operational*** creditors are concerned, they are slated to receive nothing under the Plan. This is in accordance with the liquidation value of the Corporate Debtor (computed by the duly appointed valuers as which is insufficient to satisfy the financial debts. As far as the dissenting Financial Creditors are concerned, i.e. Beacon and ICICI, the Plan envisages a payment of Rs. 10 Crores to each of them. The payment is substantially more than the total liquidation value. The Plan envisages payments to the dissenting Financial Creditors in priority over others, as per Clause 4.2(B)(3) read with Clause 10.5 of the Plan. The payment is scheduled soon after the approval of the Plan by this Tribunal, on the “Effective Date”, being the date on which the Scheme of Amalgamation merging the Corporate Debtor into the wholly owned subsidiary of RA is filed with the Registrar of Companies pursuant to the approval of the Plan.

c. ***Section 30(2)(c) of IBC:*** The management of affairs of the Corporate Debtor post-approval of the ***Plan*** by this Tribunal has been specifically provided for in Clause 8.1 of the Plan, which meets with the legal requirements. Clause 8.1 is extracted as under:

“8.1 On the Effective Date, all the existing Directors of the Corporate Debtor, without any further action being required on the



part of any Person, shall be deemed to have resigned from the Board of the Corporate Debtor, and the Board of the Corporate Debtor will be reconstituted to comprise the members of the Adani WOS (“Reconstituted Board”), and will be responsible for the supervision of the day to day affairs of the Corporate Debtor and to oversee the management of the affairs of the Corporate Debtor.”

- d. **Section 30(2)(d) of IBC:** The Plan specifically provides for the supervision and implementation of the Plan post-approval by this Tribunal in Segment 9 of the Plan. The Plan envisages the constitution of an Implementation and Monitoring Committee. Since the principal aspect of the resolution under the Plan is the timely construction of the buildings in the Project, the chief task of the said Committee is the review of the progress of construction and, as such, we find that the said provision is satisfactory and adequately fulfils the legal requirement. The relevant clauses of the Plan are extracted hereunder:

“9.1 Within one (1) day from the Effective Date, an Implementation and Monitoring Committee shall be constituted and shall comprise (i) one nominee of the Resolution Applicant, and (ii) one nominee of the Homebuyers (“Implementation Committee”).

9.2 The Resolution Applicant will inform the Implementation Committee of the construction of the Project on a quarterly basis. The Implementation Committee will, in turn, inform the Unit Homebuyers of the aforesaid progress.

9.3 The Implementation Committee will stand dissolved once the occupation certificate for the Radius Sold Premises has been obtained.

9.4 No fees will be paid to the members of the Implementation Committee for any reason whatsoever.”

- e. **Section 30(2)(e) of IBC:** The RA has filed the requisite formal declaration that the Plan does not contravene any law in force and the same has been annexed at Format VI to the Plan (at page 677 of the



captioned Application). The objections in respect of the legality of the Plan raised by Beacon and ICICI, the dissenting Financial Creditors, have been rejected by this Tribunal vide Order dated 2.12.2022, as aforementioned, and no subsisting allegations or complaints by anyone in this regard are found.

f. ***Section 30(2)(f) of IBC read with Regulations 38 and 39 of CIRP***

Regulations: The key *requirements* under these provisions essentially speak to the feasibility and viability of the Plan and the capability of the RA. These aspects have been adequately dealt with in the Chart reproduced hereinabove and we may only add that there has not been any serious challenge to the capability of the RA, or the feasibility or viability of the Plan. Moreover, the way the RA has effectively dealt with the Society and DB, paid the outstanding amounts towards MCGM premia and other outgoings, and proceeded to resume construction under the Project as its Construction Manager pending consideration of the Plan under Section 31 of IBC, bears testimony to the feasibility and viability of the Plan as also the capability and keenness in implementation on part of the RA.

g. We note that the Plan has *been* approved by the COC with an overwhelming majority in the exercise of commercial wisdom. It is apparent from the perusal of the Minutes of the thirteen (13) Meetings



of the COC held between 2.7.2021 and 25.12.2021 that all the decisions, steps and processes in the CIRP that have been adopted by the COC are supported by the requisite majority vote. We find that the CIRP conducted by the RP is processual legal, valid and proper. The specific objections/challenges in respect of the CIRP process raised by the Dissenting Financial Creditors have already been considered and rejected by this Tribunal *vide* Order dated 2.12.2022, as noted hereinabove.

- h. Our attention has been drawn to the fact that the COC has deliberated upon the Plan at great length and examined the merits of the same, in its 12th and 13th Meetings held on 21.12.2021 and 25.12.2021 (respectively) before approving the same by a majority of 83.93%. This is apparent from the Minutes of the said Meetings which have been placed on record by the RP in the captioned Application. Specifically, the COC found that the Plan was feasible and viable and capable of implementation. However, this was subject to the settlement of the dispute between the Society and DB. To ensure feasibility of the Plan, it was necessary to meet the strict timelines as regards payment of rent and other dues to the Society, as also payment of FSI premium to MCGM to avail of the large discount and resumption of construction. The success of Plan rested on the continuous support of the Society, who held the key to resolution in



this case. Withdrawal of support by the Society could result in termination of rights of DB under the Development Agreement, which would have had a cascading effect on the rights of the Corporate Debtor under the Redevelopment Agreement. This singular factor was the biggest complication in the CIRP which had to be addressed.

- i. A minute consideration of the afore-stated Minutes of the 12th and 13th Meetings of the COC reveals that the majority members of the COC were conscious of the fact that the Plan was the only hope for resolution of the insolvency for the Corporate Debtor. Under the circumstances, the sole alternative to the Plan was the liquidation of the Corporate Debtor. Had the Corporate Debtor been sent into liquidation, none of the creditors would have received any substantial value, given the stressed financial position of the Corporate Debtor. In such a scenario, the Society would have terminated the Development Agreement and the Corporate Debtor would have lost all its right and interest in the Project. The Minutes of the 12th and 13th COC Meetings in particular reveal that the COC was alive to this consideration and keen on averting liquidation. Hence, the COC was intent on the successful completion of the Project which would also save the interests of the homebuyers. The approval of the Plan avoided this eventuality. It is clear that the payouts under the Plan are certainly



higher than the distribution in liquidation scenario. Besides, the Plan also fulfils the salutary objective of revival of the Corporate Debtor as a going concern.

- j. This Tribunal has already upheld the COC's decision on the equitable treatment and distribution under the Plan to various classes of creditors in its Order dated 2.12.2022 and we confirm the same. We wish to emphasize that the ultimate decision on *technical* and commercial aspects of the Plan is that of the COC under the commercial wisdom doctrine. It is not open to this Tribunal to second-guess the merits of such decision in exercise of its power under Section 31 of IBC. This has been the consistent legal position as laid down by the Hon'ble Supreme Court of India in ***K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150, Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531 and several decisions thereafter, including Jaypee Kensington v. NBCC, (2022) 1 SCC 401***, wherein the resolution plan involved the revival of a real estate company and dealt with the interests of homebuyers and other classes of financial creditors.
- k. A Performance Security of Rs. 1 Crore has been submitted by RA under Regulation 36B(4A) of the CIRP Regulations 2016 in accordance with the COC's decision on this aspect.



- l. In the light of the *aforsaid*, we record our satisfaction under Section 31(1) of IBC that, the Plan complies with Section 30(2) of IBC read with the applicable CIRP Regulations and has provisions for its effective implementation.

- m. In addition to the approval of the Plan, the Resolution Professional has sought approval of the Scheme Of Amalgamation as executed on 9th May 2022 (being Exhibit B-2 to the Additional Affidavit filed by Resolution Professional on 13th May 2022). Pursuant to above, this Bench hereby directs the concerned Companies, to file a Company Application, in accordance with the procedure laid down by law under Section 230-232 of the Companies Act, 2013.

ORDER

7. In the result, we pass the following order:
 - i. The Interlocutory Application No. 573 of 2022 is **allowed, subject to the observations and findings by this Bench in I.A. 1379 of 2022 and I.A 3411 of 2022**. The Resolution Plan submitted by the RA, **Adani Goodhomes Private Limited.**, is hereby **approved**. It shall become effective from the date of this Order and shall form part of this Order. It shall be binding on the RA, 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;

(iii) *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.** In terms of the Additional Affidavit dated 7.10.2022 filed by the RA in the captioned matter, states that, the RA shall not claim the benefit of recoveries under the IA No. 551 of 2022 (“IA”) read with a supplemental application, being IA No. 1653 of 2022 In IA No. 551 of 2022 in CP No. 1390 of 2020 and forgoes the same in favour of the creditors of the Corporate Debtor in the manner to be decided by the CoC under applicable law. Further the IA No. 551 of 2022 (“IA”) read with a supplemental application, being IA No. 1653 of 2022 In IA No. 551 of 2022 in CP No. 1390 of 2020, may be pursued by the Resolution Professional or by the CoC or as the CoC may deem fit.



- iv.** In terms of the Additional Affidavit dated 7.10.2022 filed by the RA in the captioned matter, the RA shall have no right to recover the sum of Rs. 212,62,00,000/- (Rupees Two Hundred and Twelve Crore Sixty Two Thousand) and the benefits, if any, shall be for the CoC and to be decided by the CoC.
- v.** The typographical error corrected by the RA at paragraph no. 7 of the Additional Affidavit dated 7.10.2022 is noted and taken on record and the Plan shall be read accordingly.
- vi.** 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.
- vii.** The moratorium under Section 14 of the Code shall cease to have effect from this date.
- viii.** 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.



- ix.** The Applicant, i.e. RP, shall forthwith send a copy of this Order to the COC and the Resolution Applicant for necessary compliance.
- x.** The Interlocutory Application No. **573 of 2022** is accordingly **allowed** in the above terms and stands disposed of.

SD/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

SD/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)