

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH, COURT-VI**

**I.A. 1078/2022**

**IN**

**C.P. No. IB-806/PB/2019**

**(Under Section 30 (6) and 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016))**

**RAVINDER AGGARWAL & ORS.**

**.... PETITIONER**

**VERSUS**

**M/S MSA DEVELOPERS PRIVATE LIMITED**

**..... RESPONDENT**

**AND**

**AND IN THE MATTER OF:**

**MR. RABINDRA KUMAR MINTRI  
INTERIM RESOLUTION PROFESSIONAL OF  
M/S. MSA DEVELOPERS PRIVATE LIMITED**

**.... APPLICANT**

**CORAM**

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

**SH. RAHUL BHATNAGAR, HON'BLE MEMBER  
(TECHNICAL)**



**PRESENT**

**For the IRP:** Mr. Apoorv Agarwal, Ms. Riya Thomas, Ms. Akanksha Vasudeva, Mr. Gaurav Singh and Mr. Hashim Marick, Advs. And Mr. Rabindra Kumar Mintri, IRP in person.

**For the SRA:** Mr. Gaurav Mitra, Mr. Karan Malhotra and Mr. Adit Singh, Advs

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER**  
**(JUDICIAL)**

**ORDER DELIVERED ON: 16.02.2024**

1. The present application has been filed under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') by Mr. Rabindra Kumar Mintri, Interim Resolution Professional (IRP) of M/s. MSA Developers Private Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by Mr. Deepak Aggarwal ('Successful Resolution Applicant') as approved by the Committee of Creditors ('CoC') in its 12<sup>th</sup> CoC Meeting held on 31.08.2021 with 80.12% voting shares and addendum to the Resolution Plan in the 13<sup>th</sup> meeting of CoC held on 26.05.2023.
2. This Adjudicating Authority vide order dated 13.10.2023 in IA No. 1078/2022 had dismissed the application filed by the IRP for approval of the Resolution Plan on the ground that SRA



was not eligible to submit the Resolution Plan in terms of section 29A(e) of the Code at the time of submission of Resolution Plan. However, the Hon'ble NCLAT vide order dated 16.01.2024 has set aside the order of this Adjudicating Authority and revived the IA/1078/2022. The relevant extract of the order of Hon'ble NCLAT is reproduced as under: -

*23. In view of the foregoing discussions, we are of the view that the order impugned passed by the Adjudicating Authority is unsustainable. In result, the order dated 13.10.2023 is set aside. IA No.1078 of 2022 filed by the Resolution Professional for seeking approval of the Resolution Plan is revived before the Adjudicating Authority which is to be heard and decided in accordance with law. Resolution Plan of the Corporate Debtor having been approved in September 2021, we request the Adjudicating Authority to dispose of the application at an early date.*

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

- a) That the Corporate Insolvency Resolution Process against the Corporate Debtor was initiated vide order dated 11.10.2019 and Mr. Rabindra Kumar Mintri was appointed as IRP in the matter.
- b) That the IRP invited claims from the stakeholders by publication of Form A on 17.10.2019 and prepared a list of Creditors after verification of claim received pursuant to the Public Announcement within 7 days from the last date of receipt of the claims and constituted Committee of Creditors.



- c) That in the 6<sup>th</sup> Meeting of CoC, the CoC resolved to publish Expression of Interest/ Form G to invite prospective resolution applicants for submission of Resolution Plan by 05.12.2020.
- d) That the IRP received 5 Expression of Interest (“EOI”) till the last date of submission.
- e) The COC in the 7<sup>th</sup> Meeting of CoC held on 23.12.2020 decided to extend the last date of submission of EOI. Accordingly fresh Form G was published on 18.01.2021 and last date for submission was 01.02.2021.
- f) That the IRP received 14 EOI (s) from PRA(s). Out of these 14, four (4) Resolution Plans were submitted and after scrutiny by the IRP two (2) legally compliant resolution plans were put to vote before the members of CoC in its 12<sup>th</sup> meeting held on 31.08.2021 in which plan submitted by Mr. Deepak Aggarwal was approved by the members of CoC with 80.12% through e-voting conducted from 3<sup>rd</sup> September, 2021 to 6<sup>th</sup> September, 2021. The details of the same is reproduced as under: -

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
	<b>Kindle Infraheights Pvt. Ltd.</b>	14.25	Abstained from voting
	<b>Ascent Buildtech Pvt. Ltd.</b>	4.30	Abstained from voting
	<b>Class of Creditors- Home Buyers/ real estate allottees</b>	80.12	Voted for/in favor of

- g) That up to the date of filing of the present application, a total of 12 Meetings of Committee of Creditors have been conducted.
- h) That as per Form H Compliance Certificate the average fair value of the Corporate Debtor is Rs. 43,81,63,405 and

liquidation value of Corporate Debtor is Rs. 33,01,40,046/-



- i) That the RA prayed for various Reliefs and Concessions in the Resolution Plan.
- j) That Successful Resolution Applicant has submitted performance bank guarantees of Rs. 2 Crores to COC/Resolution Professional.

4. We have heard the submissions of the applicant and have gone through the Resolution Plan.

5. That some key features as provided in the Resolution Plan are as follows:

- i. The Successful Resolution Applicant namely, Mr. Deepak Aggarwal has more than 15 years of experience in the line of Construction. He is a Chartered Accountant by qualification and has been involved in Real Estate and Construction activities in different capacities. In the year 2006, the SRA was appointed as Vice President/ Chief Operating Officer in a leading infrastructure group having interests in Real Estate, Power & Construction Material, where the SRA handled entire operations of the Real Estate Division including land procurement, approvals, technical planning & execution, and marketing for the residential and commercial projects across India including multi-story residential, commercial, IT and townships, apart from other key activities. SRA is professionally qualified Chartered Accountant and has a vast experience in field of residential, commercial and industrial real



estate. The SRA shall engage reputed contractors for the construction of the project. The Contractor engaged in the project will be having requisite experience in construction.

- ii. That subsequent to filing the present application for approval of Resolution Plan, the IRP received many belated claims from Financial Creditors in a class (Homebuyers). Some of these homebuyers filed IA(s) for admission of their claim and this Tribunal directed the IRP and SRA to consider the claims of these homebuyers. Accordingly, the Resolution Applicant submitted its addendum to the Resolution Plan which was placed before the CoC in its 13<sup>th</sup> CoC meeting on 26.05.2023 wherein it was affirmed by the SRA that the current addendum has no impact on the existing claim. Further the members of CoC approved the addendum to the Resolution Plan with 80.12% voting shares. The revised settlement proposed in the Resolution Plan is as under: -

Sr. No	Particulars	Claim Admitted	Resolution Amount Proposed (in Cr)
1.	Settlement of CIRP Cost	Actual	1.00
2.	Furnishing of Performance Bank Guarantee	-	2.00



3.	Settlement of Unsecured Financial Creditor	13.68	0.27
4.	Financial Creditors in a class	54.59	Offer of possession in Tower A, B and C
6.	Operational Creditor	1.49	0.01
7.	Statutory Dues	48.73	0.005
8.	Other Creditors	0.14	1% within 120 days from the effective date
9.	Funds Required to complete the construction of Tower A, B & C with common facilities of the Complex	-	85.00
10.	Interest During Construction	-	10.59
11.	Contingency	-	4.00
	Total		102.92

iii. That the Resolution Applicant has proposed an amount of Rs. 102.92 Crore including the CIRP Cost. The amount provided for the stakeholders under the Resolution Plan is as under:-



<b>Financial Creditors (unsecured)</b>	<b>Admitted Claims</b>	<b>Amount Provided under the Resolution Plan</b>	<b>Payment Period</b>
Kindle Infraheights Pvt. Ltd.	<b>9,80,53,274</b>	<b>19,61,065</b>	2% of the claim works out to be Rs 27,35,630. The said amount shall be paid in three equal annual installments commencing from 12 months from the effective date.
Ascent Buildtech Private Limited	<b>2,95,72,877</b>	<b>5,91,458</b>	
L & T Housing Finance Limited	<b>91,55,343</b>	<b>1,83,107</b>	
<b>Total</b>	<b>13,67,81,494</b>	<b>27,35,630</b>	.

<b>S.No</b>	<b>Particulars</b>	<b>% voting</b>	<b>Amount Provided under the Resolution Plan</b>
i.	176 home buyers have filed their claims against 203 units whose claims have been admitted by the Resolution Professional and have voting right.	80.12 %	RA proposes to settle the dispute with the Home Buyers by handing over the possession of their respective flats within 40 months from the effective date. There is no change proposed in the BSP of the respective BBAs already executed.
ii.	Home buyers whose claims have not been admitted as per the latest information Memorandum shall not be accepted by the Resolution Application.	Nil (No Voting right given by RP)	
.	.	80.12 %	





Operational Creditor	Amount Admitted	% of payment proposed by RA	Amount provided to the amount admitted	Proposed Time Schedule	
	(Amt. in Rs)		(Amt. in Rs)		
<b>Operational Creditors (Other than Workmen and Employee and Statutory Dues)</b>					
<b>Operational Creditors (Workmen &amp; Employee)</b>					
No Claims filed as per IM	0.00	100%	0.00	100% to be paid within X+ 120 days from the effective date	
<b>Operational Creditors (Others)</b>					
Ascent Constructions Pvt. Ltd	1,48,71,638	1%	1,48,716		
<b>Operational Creditors (Statutory Dues)</b>					
Income Tax Department	45,52,43,913	0.01%	45,524		
Commercial Tax	3,21,04,208	0.01%	3,210		
<b>Total</b>	<b>47,01,15,551</b>		<b>1,97,450</b>		

### Source of Funds

<b>Source of Funds</b>		
1.	Fresh Equity infused/ Debt infused by RA	10.00 Cr.
2.	a. Loan from Banks or other financial institutions / Sale of balance inventory	58.83 Cr.
	b. Interest during Construction funding	10.59 Cr.



3.	a. Receivable from homebuyers b. Receivables from homebuyers (delayed claims) c. Related party of Ex-management (avoidance applications)	21.00 Cr. 2.00 Cr. 0.50 Cr.
Total		102.92

- iv. The SRA further submitted that he has received in principal approval from SWAMIH INVESTMENT FUND I (sponsored by Government of India with SBI CAP Ventures Ltd. as Investment Manager) Fund for sum of Rs. 141.20 Cr. for the Resolution Plan after perusing the credentials of the SRA.
- v. That the final resolution plan submitted by Mr. Deepak Aggarwal meets the requirements of Section 30(2) of the Code as under: -

Section	Provisions under Section 30(2) of the Code	Compliance under Resolution Plan
30(2)(a)	provides for the payment of insolvency resolution process costs in a	Yes, Clause 5 of the Plan



	manner specified by the Board in priority to the payment of other debts of the corporate debtor;	
30(2)(b)	<p>provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-</p> <ul style="list-style-type: none"><li>(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53;</li><li>or</li><li>(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of</li></ul>	<p>Yes Clause 7 &amp; 8 of the Plan</p>



	priority in sub-section (1) of section 53	
30(2)(c)	provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	Yes Clause 11.4 & 11.5 of the Plan
30(2)(d)	the implementation and supervision of the resolution plan;	Yes Clause 11.8 of the Plan
30(2)(e)	does not contravene any of the provisions of the law for the time being in force	Yes Clause 16 of the plan
30(2)(f)	conforms to such other requirements as may be specified by the Board.	Yes Clause 16 of the plan

vi. Mandatory Contents as specified under Regulation 38 of IBBI CIRP Regulations 2016 are as under: -

Regulation	Provisions under Regulation 38 of IBBI CIRP Regulations 2016.	Compliance under Resolution Plan
38(1)(a)	The amount payable under a resolution plan – (a) to the operational creditors shall be paid in priority over	Yes Clause 12.2 of the plan



	financial creditors; and (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.]	
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.	Yes Clause 5, 6, 7 & 8 of the plan
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.]	Yes Clause 12.9 of the plan
38(2)(a)	A resolution plan shall provide the term of the	Yes Clause 11 of the plan



	plan and its implementation schedule;	
38(2)(b)	A resolution plan shall provide the management and control of the business of the corporate debtor during its term; and	Yes Clause 11 of the plan
38(2)(c)	A resolution plan shall provide adequate means for supervising its implementation	Yes Clause 11.5 of the plan
38(2)(d)	provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed:	No avoidance application is filed as of date of filing the present application. However, at page 32 of the plan at clause 6.1.3, it is mentioned that the RA shall pursue the avoidance in case it is filed by IRP.
38(3)(a)	A resolution plan shall demonstrate that – it addresses the cause of default;	Yes Clause 2.5 of the plan
38(3)(b)	A resolution plan shall demonstrate that – it is feasible and viable;	Yes Clause 3.3 of the plan
38(3)(c)	A resolution plan shall demonstrate that –	Yes Clause 3.4 of the plan



	it has provisions for its effective implementation;	
38(3)(d)	A resolution plan shall demonstrate that – it has provisions for approvals required and the timeline for the same; and	Yes Clause 6.3.4.3 of the plan
38(3)(e)	A resolution plan shall demonstrate that – the resolution applicant has the capability to implement the resolution plan.]	Yes Clause 3.5 of the plan

vii. With respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the applicant has filed compliance certificate in Form-H certifying that the Resolution Plan submitted by the successful resolution applicant meets the requirements as laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code. Further, an affidavit has been obtained from the Successful Resolution Applicant stating that he is not ineligible under the provisions of Section 29A of the Code, 2016. The Hon'ble NCLAT vide order dated 16.01.2024 had set aside the order dated 13.10.2023 of this Adjudicating Authority by which he had been found to be not eligible to submit the Resolution Plan.

viii. The applicant has prayed for number of waivers in the Resolution Plan. As to the relief and concessions sought



in the resolution plan, by taking into consideration of the decision of the Hon'ble Supreme Court in the matter of ***Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019***, we direct the Successful Resolution Applicant to file necessary application before the necessary forum/ Authority in order to avail the relief and concessions, in accordance with respective laws. The relevant part of the judgement is reproduced herein below:-

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

*“25. Duties of resolution professional –*

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

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

*(a).....*

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

*This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution*





*professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).*

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

- ix. In so far as the approval of the resolution plan is concerned, this Adjudicating Authority has relied upon the decision of the **Hon’ble Supreme Court in the matter of K. Sashidhar v. Indian Overseas Bank (2019) 12 CC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as under : -

*35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational*



creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

6. This Adjudicating Authority has also looked into, the Hon'ble Supreme Court of India's decision in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67**

**of 2019, vid its judgement dated 15.11.2019 wherein the Hon'ble Supreme Court** has observed as under:

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

7. Thus, from the judgements cited above, it is amply clear that judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority need not look into the commercial wisdom of CoC
8. Therefore, we are of the considered view that the plan proposed is generally in order. Accordingly, we hereby approve the Resolution Plan, and the same shall be binding on the corporate debtor and its employees, shareholders of corporate debtor, creditors including the Central Government, any State Government or any local Authority to whom statutory dues are owed, guarantors, successful resolution applicant and other stakeholders involved.
9. In view of the above, I.A. 1078/2022 stands **allowed**.
10. It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.
11. However, the resolution plan shall not be construed as waiver to any statutory obligations/liabilities arising out of





the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the resolution plan, the same shall be subject to approval by the concerned authorities. The same view has been held by the Hon'ble Supreme Court in ***Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development case (supra)***.

12. Accordingly, MoA and AoA of the corporate debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the 'resolution plan' as mentioned above, it is clarified that the resolution applicant shall pursuant to the resolution plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for such in law.
13. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor and the Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code. The Resolution Professional is further directed to handover all the records, premises, properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.
14. The approved Resolution Plan and the addendum to the Resolution Plan shall become effective from the date of passing of this order. The Resolution Plan duly approved by

CoC and also by this Adjudicating Authority may be reckoned as a part of this order.



5. Let the copy of the order be served to the parties.

**SD/-**

**(RAHUL BHATNAGAR)**  
**MEMBER TECHNICAL**

**SD/-**

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