



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

Company Petition No. (IB)-593(PB)/2018

IN THE MATTER OF:

Union Bank of India	...	Financial Creditor
Vs.		
M/s. IP Construction Pvt Ltd	...	Corporate Debtor

Interlocutory Application 1642/2020

Order under Section 30 of Insolvency & Bankruptcy Code, 2016.

IN THE MATTER OF:

Anju Agarwal (RP of IP Construction Pvt. Ltd.)	...	Applicant
Vs.		
Manish Kr. Bansal (consortium of Individuals)	...	Respondent

And

Interlocutory Application 3524/2020

Order under Section 60(5) of Insolvency & Bankruptcy Code, 2016.

IN THE MATTER OF:

Nupur Garg	...	Applicant
Vs.		
M/s. IP Construction Pvt. Ltd	...	Respondent

And

Miscellaneous Application 02/2021

Order under Section 60(5) of Insolvency & Bankruptcy Code, 2016.

IN THE MATTER OF:

Ishaan Pipe Manufacturing Company LLP	...	Applicant
Vs.		
M/s. IP Construction Pvt. Ltd.	...	Respondent



And

Interlocutory Application 1702/2021

Order under Section 60(5) of Insolvency & Bankruptcy Code, 2016.

IN THE MATTER OF:

Ashok Kumar	...	Applicants
Vijay Agarwal		
Vs.		
M/s. IP Construction Pvt. Ltd.	...	Respondent

And

Interlocutory Application 1763/2021

Order under Section 60(5) of Insolvency & Bankruptcy Code, 2016.

IN THE MATTER OF:

A K Amit Realty LLP	...	Applicant
Vs.		
M/s. IP Construction Pvt. Ltd.	...	Respondent

And

Interlocutory Application 4236/2022

Order under Section 60(5) of Insolvency & Bankruptcy Code, 2016.

IN THE MATTER OF:

Amarjeet Singh	...	Applicant
Vs.		
M/s. IP Construction Pvt. Ltd.	...	Respondent



Interlocutory Application 4624/2022

**Order under Section 60(5) of Insolvency & Bankruptcy Code,
2016.**

IN THE MATTER OF:

GT Investments BV	...	Applicant
Vs.		
M/s. IP Construction Pvt. Ltd	...	Respondent

And

Interlocutory Application 5813/2022

**Order under Section 60(5) of Insolvency & Bankruptcy Code,
2016.**

IN THE MATTER OF:

Creditors in Class of Service	...	Applicant
Apartment of IP construction Pvt. Ltd		
Vs.		
PawanKumar Agrawal	...	Respondent

And

Interlocutory Application 544/2023

**Order under Section 60(5) of Insolvency & Bankruptcy Code,
2016.**

IN THE MATTER OF:

Creditors in Class of Service	...	Applicant
Apartment of IP Construction Pvt. Ltd		
Vs.		
Pawan Kumar Agrawal	...	Respondent

And



Interlocutory Application 2869/2023

**Order under Section 60(5) of Insolvency & Bankruptcy Code,
2016.**

IN THE MATTER OF:

Sudesh Narinder Malhotra ... Applicant
Vs. ...
IP Construction Pvt. Ltd. ... Respondent

CORAM:

**CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR, HON'BLE
PRESIDENT**

SH. AVINASH KUMAR SRIVASTAVA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicants : Mr. Gaurav Gupta, Mr. Shavan Mehta in IA-5253/2023,
Ms. Varsha Banerjee in IA-3524/2020
Mr. Gaurav Mitra, Mr. Sujoy Sur in IA-4624/2022, IA-4909 & IA-4959/2023
Mr. Uzair Elahi in IA-5813/22, 544/23, 2869/23
Mr. Avijeet Banerjee in IA-1702/21, 1763/21, 2869/21 & MA-02/21

For the Successful Resolution Applicant : Mr. Saurabh Kalia, Ms. Sarvik Singhai, Advs.

For the Resolution Professional : Mr. P. Nagesh, Sr, Adv, Mr. Abhishek Anand, Mr. Karan Kohli, Mr. Mohak Sharma, Mr. Sajal Jain, Mr. Kashish Rahan, Ms. Lubamshi Rai, Ms. Supriyo Banerjee, Mr. Shikhar Tiwari, Ms. Rasveen Kapoor, Mr. Rahul Singhal, Mr. Rahul Shourya, Advs

Order pronounced on: 30.10.2023



ORDER

1. Preliminary

1.1. The present interlocutory application bearing **IA No. 1642(PB) /2020** was moved on 24.02.2020 by Ms. Anju Agarwal, Resolution Professional ("**RP**") of I.P. Construction Private Limited, under the provisions of Sections 30(6) and 31(1) of the Insolvency & Bankruptcy Code, 2016 ("**the Code**" or "**IBC**") read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**") for approval of the Resolution Plan of Manish Kumar Bansal &Ors in respect of I.P. Construction Private Limited ("**Corporate Debtor**").

1.2. The Corporate Debtor is a company incorporated in 2005 and is engaged in the business of Real estate and construction. The Corporate Debtor is having the following the projects:

i. Coral Heights: This project is a multi-storied building having 90 flats, situated at Ramprastha Greens, Sector-7, Vaishali Extension, Ghaziabad, Uttar Pradesh-201012 wherein the total constructed area is over 2.50 Lacs square feet including basement. The Project was started in the year 2005, and thereafter the project has been successfully handed over to Residents Welfare Association in the year 2011.

ii. Coral Brio: It is a mixed use project situated at C-5, Sector-18, Vasundhra, Ghaziabad, Uttar Pradesh-



201012 spread over 3,870 square meters of land. It is a 12 storey building with double basement for parking. This project comprises of two segments:

- i. Shops/ commercial space*
- ii. Golden Tulip Hotel & Suites (converted out of service apartment)*

The commercial space comprises of shops and offices. The total area approved for shopping/ office is around 25000 sq. ft. and is spread on Ground, First & Second Floor.

- iii) Golden Tulip:** The hotel & Suites is a contemporary full service business hotel and is located at C-5, Sector-18, Vasundhra, Ghaziabad, Uttar Pradesh – 201012.

The hotel offers 162 guest rooms, including four suites with independent terrace. There are four banquet/ meeting halls varying 800 sq. ft. to 2500 sq. ft. And two restaurants inside the Hotel along with one multi-cuisine restaurant which is located on the 3rd floor with terrace having 116 covers and one bar cum grill restaurant with terrace (beside pool) with 78 covers.

Further, the Hotel has separate entrance lobby and pastry shop on the ground floor. Banquets, restaurant and rooms are located from second floor onwards till the top floor. Swimming pool and bar is on terrace which is 12th floor. Hotel is operational with 96 rooms, four



banquets, 3rd floor restaurant, & terrace restaurant. Further more than 70 % work has been completed of the remaining 66 rooms.

1.3. The underlying Company Petition **CP (IB) 593(PB)/2018** was filed by Union Bank of India (“**Financial Creditor**”), against I.P. Construction Private Limited (“**Corporate Debtor**”) under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (“**CIRP**”) of the Corporate Debtor. It was admitted by this Adjudicating Authority vide order dated 11.01.2019 (“**Admission Order**”) and Ms. Anju Agarwal was appointed as the Interim Resolution Professional (“**IRP**”) who was later confirmed as Resolution Professional in the COC meeting dated 11.02.2019.

2. Collation Of Claims By RP

2.1. The IRP made public announcement on 15.01.2019 in Financial Express (English) (NCR edition) and Jansatta (Hindi regional Language) (NCR edition) newspapers and called for proof of claims from the creditors of the Corporate Debtor and informed lenders to submit their claims as envisaged under the Code. Further COC was constituted on 11.02.2019.

2.2. The amounts claimed and admitted and their voting share are summarised below:



Particulars	Number of Claims	Claim Received (Rs.)	Claim Admitted (Rs.)	Voting Share %
Secured Financial Creditor- Union Bank of India	1	43,69,66,133.85	43,69,66,133.85	44.20
Unsecured Financial Creditor- Baba Agribuild Private Limited	1	4,47,97,500	4,37,97,500	4.43
Financial Creditors- In case of Commercial Space Buyers	20	13,52,31,482.84	11,39,06,557.83	12.51
Financial Creditors- In class of Service Apartment	40	21,15,42,755.82	19,47,73,637.88	18.28
Financial Creditors- In class of Secured	47	24,72,64,384	17,83,86,354	20.58



Service Apartment				
Total	109	1,07,58,02,256.	96,78,30,183.5	100
		51	6	

Particulars	Number of Claims	Claim Received (Rs.)	Claim Admitted (Rs.)
Operational Creditor	5	69,56,804	38,28,304
Operational Creditor (Govt dues)	1	6,37,387	6,37,387
Particulars	Number of Claims	Claim Received (Rs.)	Claim Admitted (Rs.)
Financial Creditors- Related Party (i) Arvind Agarwal (HUF) ii) Arvind Agarwal	2	2,64,71,660	2,61,99,027.36

2.3. The RP submits that a total of 14 (Fourteen) CoC meetings have been held during the CIRP period, as follows:

Particulars	Date of CoC Meeting
1 st CoC Meeting	11.02.2019
2 nd CoC Meeting	25.02.2019



Particulars	Date of CoC Meeting
3 rd CoC Meeting	21.06.2019
4 th CoC Meeting	08.07.2019
5 th CoC Meeting	20.07.2019
6 th CoC Meeting	30.09.2019
7 th CoC Meeting	07.10.2019
8 th CoC Meeting	19.10.2019
9 th CoC Meeting	13.11.2019
10 th CoC Meeting	28.11.2019
11 th CoC Meeting	02.12.2019
12 th CoC Meeting	19.12.2019
13 th CoC Meeting	16.01.2020
14 th CoC Meeting	30.01.2020

2.4. The appointed registered valuers have submitted their reports providing the fair value of the corporate debtor as Rs. 60.655 crores and liquidation value of the Corporate Debtor as Rs.48.26 crores as per the valuation report:

The summary of the valuation reports is as under: -

1. Crest Capital Group Private Limited

Particular	Fair Value	Liquidation Value
Plant & Equipment	5,67,39,268	3,97,17,488

Particular	Fair Value	Liquidation Value
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Securities or Financial Assets	1,11,70,440	90,69,542
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Particular	Fair Value	Liquidation Value
Land	34,48,17,000	24,13,71,900
Building	17,39,84,066.97	12,17,88,846.88

2. ***Techmech International Private Limited***

Particular	Fair Value	Liquidation Value
Plant & Equipment	7,53,13,812	6,02,51,049

Particular	Fair Value	Liquidation Value
Land & Building	48,57,56,810.00	34,00,29,767.00

Securities or Financial Assets:-

Fair and Liquidation value of Cash & Cash

equivalents: - Rs. 21.20 Lacs

Fair and Liquidation value of Short-Term loan &

advances: - Rs. 5.88 Lacs and Rs. 4.73 Lacs respectively

Fair and Liquidation value of Short-Term loan &

advances: - Rs. 5.88 Lacs and Rs. 17.60 Lacs

Fair and Liquidation value of trade receivables: - Rs.

71.78 Lacs and Rs. 50.23 Lacs respectively



Average Fair Value: Rs. 60.655 Crores

Average Liquidation Value: Rs. 48.26 Crores

2.5. The Applicant has filed a Compliance Certificate in prescribed form, i.e., revised **Form 'H'** in compliance with regulation 39(4) of the CIRP Regulations, 2016, which has been annexed to the application filed on 11.10.2023 as **ANNEXURE "A-4"**.

3. Evaluation And Voting

3.1 The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of the CIRP Regulations, 2016, invitation in **Form 'G'** for Expressions of Interest ("**EoI**") from potential resolution applicants was issued on 19.03.2019 and was again re-issued on 26.07.2019. The notice was also published on the website of the Insolvency and Bankruptcy Board of India ("**IBBI**").

3.2 The Applicant submits that in response to the invitation for EoI, upto the last date, i.e., 09.08.2021, 5 EoIs were received which were as follows:

- i.** The Byke Hospitality Limited
- ii.** JFC Finance (India) Limited
- iii.** Shiva Consultants Pvt. Ltd.
- iv.** Mr. Manish Kumar Bansal, Mr. Rajesh Gupta and Mr. Mukesh Chand Tyagi (Consortium)



v. Alchemist Asset Reconstruction Company Limited

- 3.3. The information memorandum, evaluation matrix and request for resolution plan was issued to all the prospective resolution applicants and the last date for submission of resolution plans was granted till 23.08.2019. Till the last date for submission of resolution plans, 3 Prospective Resolution Applicants (PRAs) had submitted their resolution plans i.e., The Byke Hospitality Limited, The Consortium of Mr. Manish Kumar Bansal, Mr. Rajesh Gupta and Mr. Mukesh Chand Tyagi and Alchemist Asset Reconstruction Company Limited.
- 3.4. The Resolution plan received were opened by the applicant and was placed before COC wherein the PRAs were asked to improve their financial offers and to submit the revised resolution plan by 03.10.2019, which was complied by the PRAs but COC found some shortcomings on the compliances in terms of financial proposals to be improved with upfront amount to be enhanced and term of the plan to be shortened, and advised them to resubmit the revised resolution plans till 15.10.2019 and subsequently till 08.11.2019.
- 3.5. In pursuance thereto, two PRAs namely Mr. Manish Bansal, Mr. Rajesh Gupta and Mr. Mukesh Chand Tyagi (Consortium) and Alchemist Asset Reconstruction Company Limited submitted their revised Resolution Plan and the Byke Hospitality Limited sent the email stating that they would not be revising further.



3.6. In the 12th CoC meeting convened on 19.12.2019, the CoC decided that the Resolution Applicant should again submit revised Resolution Plans in view of an application filed by Commercial Space Buyers seeking execution of registered sale deeds.

3.7. Thereafter, Alchemist Asset Reconstruction Private Limited and Manish Bansal (Group of Individuals) (Resolution Applicants) submitted revised Resolution Plan on 16.12.2019 and Byke Hospitality Ltd. did not submit any resolution plan. Thereafter, all the Resolution Plans were sent for legal compliance wherein certain shortcomings were found and PRAs were asked to give undertakings.

3.8. In the 13th meeting of CoC convened on 16.01.2020, the CoC decided to go for re-voting on the already submitted resolution plans and it was decided that all the three resolution plans submitted by the PRA would be put for e voting one after another on the basis of scores allotted to them according to Evaluation matrix used for the purpose of comparing plans, if the plan put for voting does not get approved with requisite voting share then the another plan will be placed for e voting. The final scores on the basis of evaluation matrix is as follows:

Name of PRA	Marks obtained	Selection of Plan
Alchemist Asset Reconstruction	68/100	H1



Private Limited		
Manish Bansal (Group of Individual)	50/100	H2
Byke Hospitality Limited	35/100	H3

3.9. The CoC deliberated upon the viability and feasibility of the resolution plans submitted by all the three Resolution Applicants. For the resolution plan submitted by Alchemist Asset Reconstruction Company Limited, the voting commenced from 20.01.2020 till 22.01.2020 which was not approved with requisite majority voting share. The second round of e-voting was conducted for the resolution plan submitted by Manish Bansal (Group of individuals) and the same was approved by members having 87.49% voting share in the CoC and thereby was approved by the requisite majority as stipulated under the Code, thus the third round of e voting was not required as per the decision taken in 13th COC meeting.

3.10. Therefore, the resolution Plan of Manish Bansal (Group of individuals) was approved with 87.49% of voting share and the voting was as follows:



Particulars	Voting Share %	Voting for resolution Plan
Secured Financial Creditor- Union Bank of India	44.20	Voted For
Unsecured Financial Creditor- Baba Agribuild Private Limited	4.43	Voted for
Financial Creditors- In case of Commercial Space Buyers	12.51	Dissented
Financial Creditors- In class of Service Apartment	18.28	Voted for
Financial Creditors- In class of Secured Service Apartment	20.58	Voted For
Total	100	

3.11. Subsequent to the approval of the Resolution Plan by the CoC, the Applicant issued the Letter of Intent dated 03.02.2020 to the Successful Resolution Applicant and the



same was accepted by the Successful Resolution Applicant, the copy of which is annexed as **Annexure “A-39”** of the application. The Successful Resolution Applicant thereafter submitted a performance bank guarantee for Rs. 10,00,00,000 (Rupees Ten Crores Only) dated 10.02.2020 issued by Bank of Baroda as performance security which has expired on 10.08.2020. A copy of the bank guarantee is annexed as **Annexure “A-16”** of the application. Subsequently the SRA has renewed the PBG which is now valid upto 07.12.2013. A copy of the bank guarantee is annexed as **Annexure “A”** of the clarification submitted on 21.09.2023. A Copy of the Resolution Plan of the Successful Resolution Applicant is annexed herewith to the I.A. and marked as **Annexure “A-36”**.

4. Details Of Resolution Plan/Payment Schedule

4.1. The Successful Resolution Applicant (SRA), Mr. Manish Kumar Bansal and Others is a Consortium of Individuals namely Mr. Manish Kumar Bansal, Mr. Rajesh Gupta and Mr. Mukesh Chand Tyagi who have extensive exposure and experience in business, finance and corporate and commercial laws, have the unique combination of management & financial capabilities, experience and expertise that makes them capable of successfully implementation of the Resolution Plan for the Corporate debtor.

4.2. The Resolution Applicant ascertained the cause of default to



be the financial distress of the corporate debtor as the equity participation was very less and management had taken over-exposure basically due to change in project profile from commercial plus service apartment to commercial plus hotel. There is total conceptual mismatch and both the project profile/concept require different financial mix. The obligation to pay interest and shortage of equity infusion resulted in financial overburden which not only caused hindrance in operations but also resulted in financial defaults of the corporate debtor.

4.3. The SRA proposes to address the causes of default by developing, renovating, enhancing the outlook, modifying the room facilities, completing the structure and pending rooms and banquet, facilitating better food at restaurant and by adding value by way of completing and enhancing the structural composition by way of overall professional new management. The following broad steps would be taken in this regard:

- a. Brand Positioning
- b. Identifying key business segments and enhancement
- c. SWOT Analysis to identify the opportunities and weakness
- d. Product Improvement Plan
- e. Repositioning / Rebranding/ Upgradation

4.4. Initially the Applicant submitted the relevant information with regard to the amount claimed, amount admitted and the



amount proposed to be paid by the SRA, under the said Resolution plan which are tabulated below:

Sl. No	Category of Creditors	Amount of Claim (Rs. in Cr.)	Claim Admitted (Rs. in Cr.)	Amount Provided (Rs. in Cr.)
1.	CIRP Cost	Actual	-	Rs.10,00,000 (Approx)
2.	Secured Financial Creditor(Union Bank of India)	Rs.43,69,66,133.85	Rs.43,69,66,133.85	Rs.31,00,00,000
3.	Secured Financial Creditor (Class of Secured Service Apartment Buyer)	Rs.24,72,64,384	Rs.18,07,55,344	Rs.8,67,33,041
4.	UnSecured Financial Creditor (Class of Service Apartment Buyers)	Rs.22,09,03,878.82	Rs.20,34,26,914.80	Rs.10,98,52,837
5.	UnSecured Financial Creditor(Baba AgribuildPvt. Ltd.)	Rs.4,47,97,500	Rs.4,37,97,500	Rs.2,36,60,000
6.	UnSecured Financial Creditor(Class of Commercial Space Buyers)	Rs.14,54,69,818.84	Rs.12,36,75,207.49	Rs.4,58,62,007
7.	Workmen/ Employees	Nil	Nil	Nil



8.	Financial creditor -Related party	Rs. 2,64,71,660	Rs. 2,61,99,027.3 6	-
9.	Operational Creditors	Rs.75,94,191	Rs.44,65,691	Rs.6,69,854
10.	Shareholders			Rs. 31,400
	Total	Rs.1,12,94,67,56 3.51	Rs. 1,01,92,85,818. 50	57,78,09,139/-
Further investment for development/ Renovation & Completion				Rs. 10,00,00,000/-
Total Resolution Cost				Rs.67,78,09,139

ALTERNATIVE OPTION FOR COMMERCIAL SPACE BUYER:

ALTERNATIVE OPTION FOR COMMERCIAL SPACE BUYER			
POSSESSION WITH REGISTERED SALE DEED			
NEW TARIFF & OFFER RATE (PER SQ. FT. OF SUPER AREA)			
FLOOR	NEW TARIFF GENERAL	DEFER RATE FOR COMMERCIAL ALLOTTEES	ADJUSTMENT OF MONEY ALREADY PAID
GROUND	18,000	16,000	100% of the principal amount paid shall be adjusted against total value of commercial space opted.
FIRST	14,000	12,000	
SECOND	11,000	9,000	



Offer Conditionality:

- 1) Offer includes relocation of existing space within the option of available space.**
- 2) No guarantee to continue with the existing space. Kindly check for new model plan for commercial space. So far as it shall be possible & commercially feasible, existing space may also be offered.**
- 3) Old Agreement/ Offer/ Possession Letter shall stand cancelled on NCLT approval date.**

4.5. Subsequently during the pendency of the present application for approval of resolution plan, some applications were filed on behalf of Commercial Space Buyers i.e. **IA No. 1763 of 2021, MA No. 02 of 2021, IA No. 1702 of 2021** and **IA No. 4236 of 2022** .

4.6. These applications were filed by the commercial homebuyers in which the RP submitted that as per the approved Resolution Plan such Commercial Space Buyers were offered a refund of 50% of the Principal Amount or an Alternate Space with certain charges to be paid. However, during the pendency of the above Applications, the Resolution Applicant on 04.10.2023 gave the proposal of 100% of the refund of the Principal Amount to the Applicant in IA. No. 1763 of 2021, M.A. No. 02 of 2021 and I.A. No. 1702 of 2021 and further gave a proposal of 100% of the refund of the Principal Amount to the Applicant in I.A. No. 4236 of 2022 along with refund of amount paid as Stamp Duty which has been duly accepted by the above Applicants. In pursuance to the above the SRA has



filed an affidavit dated 04.10.2023 affirming the same.

4.7. In view of the same **IA No. 1763 of 2021, MA No. 02 of 2021, IA No. 1702 of 2021 and IA No. 4236 of 2022 stand disposed of and further the total outlay under the Resolution Plan stands revised as follows:**

Sl. No.	Category of Creditors	Claim Admitted (Rs. in Cr.)	Principal Amount	Amount Provided (Rs. in Cr.)
1.	CIRP Cost	-		Rs.10,00,000 (Approx)
2.	Secured Financial Creditor(Union Bank of India)	Rs.43,69,66,133.85	Rs. 29,43,64,311	Rs.31,00,00,000 (105.31%)
3.	Secured Financial Creditor (Class of Secured Service Apartment Buyer)	Rs.18,07,55,344	Rs. 8,23,67,560	Rs.8,67,33,041 (105.31%)
4.	UnSecured Financial Creditor (Class of Service Apartment Buyers)	Rs.20,34,26,914.80	Rs. 10,98,52,837	Rs.10,98,52,837 (100%)



5.	UnSecured Financial Creditor (Baba AgribuildPvt . Ltd.)	Rs.4,37,97,500	Rs. 2,60,00,000	Rs.2,36,60,000 (91%)
6.	UnSecured Financial Creditor (Class of Commercial Space Buyers)	Rs.12,36,75,207.49	Rs. 9,17,24,014	Rs.9,17,24,014 (100%)
7.	Workmen/ Employees	Nil		Nil
8.	Financial Creditor- Related Party	Rs. 2,64,71,660	Rs. 2,61,99,027.36	Nil
9.	Operational Creditors	Rs.44,65,691	Rs.44,65,691	Rs.6,69,854 (15%)
10.	Shareholders			Rs. 31,400
	Total	Rs. 99,30,86,790.70	Rs.60,87,74,413	Rs. 62,36,71,146
Further investment for development/ Renovation & Completion			Rs. 10,00,00,000/-	
Total Resolution Cost			Rs. 72,36,71,146/-	

4.8. The Resolution Plan defines “**Effective Date**” to mean the date on which the SRA is given possession to the property and control over the management of the Corporate debtor in terms of Resolution Plan submitted (with or without modification, to



which RA is agreed with) after approval by NCLT/NCLAT or Supreme Court.

5. *Compliance of the successful resolution plan with various provisions:*

The Applicant submits the details of various compliances as envisaged in the Code and the CIRP Regulations which a Resolution Plan is required to adhere to, which is reproduced hereunder:



9. The compliance of the Resolution Plan is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	As per EOI	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	As per EOI	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	As per EOI	Yes
Section 30(2)	Whether the Resolution Plan-		
	(a) provides for the payment of insolvency resolution process costs?	Schedule 4 Section 1.2	Yes
	(b) provides for the payment to the operational creditors?	Schedule 4 Section 1.5	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Schedule 4 Section 1.4	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Schedule 3	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Schedule 3	Yes
	(f) contravenes any of the provisions of the law for the time being in force?	Schedule 4 Section 1.11	No
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?		Yes* Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Schedule 3	Yes
Regulation 35A	Where 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	Application being C.A. No. 1470 of 2019 filed before the Adjudicating Authority on 23.07.2019
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Schedule 4 Section 1.5	Yes
Regulation	Whether the resolution plan includes a statement as to how	Schedule 4	Yes



38(1A)	it has dealt with the interests of all stakeholders?	Section 1.9	
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	Schedule 4 Section 1.10	No
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	Schedule 3	Yes
38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	Schedule 5 Schedule 5 Schedule 3 Schedule 3 Schedule 5	
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		Yes C.A. No. 1470 of 2019 filed on 23.07.2019
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.		

*For Comments on feasibility and Viability, an email was sent by RP to all the members of CoC after approval of the Resolution Plan -comments on feasibility and viability has been received from Secured Financial Creditor (Union Bank of India), Class of creditors in Service Apartment and not received from Unsecured Financial Creditor (Baba Agribuild Pvt Ltd), class of creditors in secured service Apartment.

6. Monitoring Committee:

The Resolution Applicant has proposed that on approval of the Resolution Plan, the Resolution Applicant shall constitute a board of the company and the reconstituted board and Monitoring Committee shall be responsible for the implementation of the Resolution Plan until the final payment is made under the plan.

Monitoring Committee shall comprise of:

1. 1 Representative of Secured Financial Creditor
2. Resolution Professional
3. 1 Representative of Resolution Applicant



7. Term of the Resolution plan and implementation schedule :

Sl. No.	Activity	Estimated Timeline
1.	Approval of the Resolution Plan by NCLT	Date of order of NCLT
2.	Effective Date	X
3.	Resignation of existing directors , appointment of new directors in the board of corporate debtor	X + 10 days
4.	Formation of monitoring committee	X+ 10 days
5.	Transfer of all existing shares	X+ 10 days
6.	Payment to Creditors <ul style="list-style-type: none">• Payment of unpaid CIRP cost, if any• Payment to Operational Creditor• Payment to secured Financial Creditor• Statutory dues	X+ 30 days
7.	Payment to other creditors	X + 90 days
8.	Completion of pending work & Renovation etc	X+ 24 months

8. The Applicant submits that the successful resolution applicant has submitted an affidavit in regard to its eligibility under section 29A of the Code, as required by Regulation 39(1)(a) of the CIRP Regulations. An undertaking has also been submitted by the Successful Resolution Applicant, as mandated in terms of regulation 39(1)(c) of the CIRP Regulations.

9. Details On Fraudulent And Avoidance Transaction

9.1. The Resolution Professional had filed an application (C.A. No. 1470 of 2019) under Section 43 and 44 of the IBC, 2016



seeking avoidance of certain transactions against the following parties:

- i. Sahyog Infrastructures Private Limited; Quantum m Rs. 2,16,75,000/-
- ii. Gem Marketing Private Limited; Quantum Rs. 5,00,000/-
- iii. Mr. Arvind Agarwal & : Quantum Rs. 1,11,05,000/-
- iv. Mrs. Vidushi Agarwal: Quantum Rs. 5,00,000/-

9.2. This Hon'ble Adjudicating Authority vide order dated **30.08.2022** allowed C.A. No. 1470 of 2019. It is further submitted that the order dated 30.08.2022 was challenged before the Hon'ble Appellate Tribunal by Gem Marketing Private Limited & Vidushi Agarwal by way of Company Appeal (AT) (Insolvency) No. 1370 of 2022 and by Sahyog Infrastructures Private Limited by way of Company Appeal (AT) (Insolvency) No. 1367 of 2022 before the Hon'ble Appellate Tribunal. The Hon'ble Appellate Tribunal vide common judgment dated 09.05.2023 was pleased to dismiss both Company Appeal (AT) (Insolvency) No. 1370 of 2022 as well as Company Appeal (AT) (Insolvency) No. 1367 of 2022, thereby upholding the order dated 30.08.2022 passed by this Hon'ble Adjudicating Authority.

9.3. It is submitted that to the best of the knowledge of the Applicant, no Appeal under Section 62 of the Code has been filed by the Appellants in Company Appeal (AT) (Insolvency) No. 1370 of 2022 as well as Company Appeal (AT) (Insolvency) No. 1367 of 2022 before the Hon'ble Supreme Court.



9.4. It is stated by the counsel for the SRA that as the Secured Financial Creditor has been paid 105.3% of the principal amount thus the proceeds of the avoidance transaction will go to the corporate debtor.

10. Infusion of funds

10.1. The SRA has proposed an amount of **Rs. 67.78** Crores (now revised to Rs. 72.36 Crores) which shall be inducted partially as equity/ convertible shares and balance through loans. Further, the SRA has declared that they have their own resources to meet the financial obligations under the Resolution Plan. The proposed fresh equity participation up to Rs. 11 Crores shall be managed as follows: -

Nature of Arrangement	Name of the shareholder	Proposed Share
Equity/ Convertible preference shares	Special Purpose Company	51% - 100%
Equity/ Convertible preference shares	Direct infusion of fund in Corporate Debtor by Investor	Up to 49% of equity of Corporate Debtor

10.2. Apart from the above, the balance shall be introduced from own resources by way of unsecured loans, loans from NBFC,



friends and relatives. If required, SRA may also raise secured loans.

10.3. Further, Mr. Pradeep Agrawalla, add-on investor, entered into an agreement with the SRA on 14.10.2019 to invest funds from his resources. He has liquid fund of Rs. 58.22 Crores to meet immediate commitment under the resolution plan offering for upfront payment of within 30 days of effective date.

Objections

Before considering the application for approval of Resolution Plan there are certain objections filed in form of interlocutory applications. These are as follows:

11.IA 3524/2020

1. The Applicant namely, Nupur Garg being one of the commercial space buyers has sought the following reliefs in the present Application :-
 - i. *Pass appropriate directions to exclude commercial space/office No. SF-05 from the Resolution Plan that has been approved by the CoC on 30.01.20 by relying on the incorrect information memorandum prepared by the Resolution Professional.*
 - ii. *Pass appropriate directions for execution and registration of sale Deed in favour of the Applicant in respect of commercial space/office No. SF-05.*
 - iii. *Pass appropriate directions to suitably modify the approved claim of the Applicant to include outstanding rent amount which became accrued and due of Rs. 20,69,552/- as the principal/basic amount of the claim.*



- iv. *Pass appropriate directions for payment of legitimate outstanding rental dues starting from July 2019 till date, cumulatively amounting to Rs. 6,64,132/- (Six Lakhs Sixty-Four Thousand One hundred and thirty-two) along with interest @ 18 p.a compounded quarterly on the unpaid rent, on account of lease of commercial space/office No. SF-05 to the Corporate Debtor by the Applicant.*
- v. *Pass appropriate directions to take action remedial measure against the RP, including initiation of disciplinary action, if any, as deemed fit.*
- vi. *Any other order that this Hon'ble Tribunal may deem fit in the facts and circumstances of this case.*

11.2. In the present matter, there are 20 commercial space buyers and in so far as the Commercial Space Buyers who have an order from the Hon'ble NCLAT **in Company Appeal (AT) (Insolvency) No. 350 of 2020 in Alok Sharma vs Anju Agarwal** the following directions were passed:

"m. Hence, in view of the above observations, this Appellate Tribunal is not in a position to sustain the order of the 'Adjudicating Authority' and accordingly, this 'Tribunal' sets aside the impugned order dated 16.01.2020, dismissing CA No. 2265/PB/2019 in CP (IB) 593 of 2018 and directs the 'Resolution Professional' to execute the sale deed after collecting 'Dues and Costs', if any, remaining unpaid, including the 'Costs of Registration', 'Penalty' and 'other incidental Costs', till date, etc.

The instant 'Appeal' is allowed with the above observations. Pending application, if any, stands disposed of. Interim order, if any, passed by this 'Tribunal' stands vacated'

11.3. Therefore, the SRA After making payment to the sole secured creditor i.e. Union Bank of India within a period of 90 days will



obtain No Dues Certificate/No Objection from the Bank and thereafter, subject to compliance of direction by the Commercial Space Buyer, the SRA will execute the Sale Deed in favour of such Commercial Space Buyer as per the order passed by the Hon'ble Appellate Tribunal.

11.4. Further the revised treatment in the Resolution Plan for the all commercial space buyers is given by the SRA in which they will be paid 100% of their admitted amount within 90 days or an alternative option is also provided to opt for commercial space possession with registered sale deed in terms of new offer rate and adjustment of 100% of the paid principal.

11.5. In so far as the present applicant is concerned, they are not willing to accept the revised offer given by the SRA and contend to exclude commercial space/office No. SF-05 from the Resolution Plan.

11.6. It is a settled position of law that no unit or asset or project of the Corporate Debtor can be excluded from the CIRP proceedings as laid down by Hon'ble Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association &Ors. vs. NBCC (India) Limited &Ors 2022 1 SCC 401** wherein the Hon'ble Supreme held as follows:

226. For what has been discussed above, we hold that the homebuyers as a class having assented to the resolution plan by NBCC, any individual homebuyer or any association



*of homebuyers cannot maintain a challenge to the resolution plan and cannot be treated as a dissenting financial creditor or an aggrieved person; the question of violation of the provisions of the Real Estate (Regulation and Development) Act, 2016 does not arise; the resolution plan in question is not violative of the mandatory requirements of the CIRP Regulations; **and when the resolution plan comprehensively deals with all the assets and liabilities of the corporate debtor, no housing project could be segregated for the reason that the same has been completed or is nearing completion.** ”*

11.7. Be that as it may. In the light of the foregoing detailed discussions and keeping in mind the surrounding facts and circumstances of the instant case, this Adjudicating Authority is of the view that applicant being a dissenting financial creditor is entitled to the minimum liquidation value. The SRA is willing to provide 100% of the principal amount or an alternative as stated in the Resolution Plan for all the commercial space buyers. Thus we find no substance in the grievance of the applicant and neither the applicant has been unfairly or inequitably treated in regard to the other commercial space buyers. Thus, the applicant has open ended option to accept the offer of the SRA as envisaged for the commercial space buyers in the Resolution Plan.

With the above direction, IA stands disposed of.



12. IA 4624/2022

12.1. The Applicant namely, GT Investment BV has filed the present application under Sec 60(5) and has sought the following reliefs in the present Application :-

- a. Restrain by an order of perpetual injunction, the use of the trademark 'Golden Tulip' (at Exhibit A) and the Applicant's marks 'Royal Tulip' and 'Tulip Inn', by the Corporate Debtor and/or any other mark/logo belonging to the Applicant or any other mark/logo deceptively similar to the marks enlisted herein;
- b. pending the hearing and final disposal of the present Application, restrain by an order of temporary injunction, the use of the trademark 'Golden Tulip' (at Exhibit A) and the Applicant's marks 'Royal Tulip' and 'Tulip Inn', by the Corporate Debtor and/or any other mark/logo belonging to the Applicant or any other mark/logo deceptively similar to the marks enlisted herein;
- c. pending the hearing and final disposal of the present Application, pass an order directing the Respondent to provide the Applicant with a copy of the resolution plan currently pending before this Hon'ble Tribunal;
- d. pass an order directing that in view of the termination of the Franchise Agreement and TMLA, the rights/entitlements of the Corporate Debtor for the purposes of the resolution plan shall exclude any purported rights/entitlements claimed by the Corporate Debtor under the Franchise Agreement and the TMLA;
- e. ad-interim reliefs in terms of prayer clauses (b) and (c); and
- f. pass any other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances.



12.2. In the present application, the applicant has contended that he is pressing only prayer “d” and submitted that Franchise Agreement contained a Trade Mark License Agreement (TMLA) which was executed between the Applicant and the Corporate Debtor. Subsequent to the execution of the Agreements, the Corporate Debtor commenced use of the Applicant's 'Golden Tulip' mark at the Hotel but ceased making payment since 2018 and on 11.01.2019, the Corporate Debtor went into CIRP but the Corporate Debtor continued to use the mark “Golden Tulip” at hotel property and subsequent to initiation of CIRP also no payments were made by the RP.

12.3. Thereafter termination notices for agreement on 16.11.2021 and 26.07.2022 were sent by the applicant but then also the mark was continuously used by the hotel. Thus, the prayer that that the Corporate Debtor be permanently restrained from use of the Applicant's trademark 'Golden Tulip' and any other related marks/logos and prayer that no resolution plan to be approved which impacts applicant’s intellectual property rights over which the corporate debtor no longer have any license right. It is further submitted that the approval of resolution Plan extinguishes the right of the SRA to use the trade mark.

12.4. It reply, it is submitted that the Franchise Agreement was arbitrarily terminated by the Applicant without taking due course of action as contained under the Franchise Agreement and further the same is also in breach of Moratorium as



contained under Section 14 of the Code. It is submitted that the said trademark being used by the Corporate Debtor cannot be taken away or attempted to be taken away during the CIRP of the Corporate Debtor.

- 12.5. After hearing the the learned counsel for both the sides we would like to refer the judgment of NCLAT in the matter of **Deccan Chronicle Marketeers Vs. Deccan Chronicle Holdings Ltd. (2022) ibclaw.in 675 NCLAT** which has been upheld by the Hon'ble Supreme Court in which it is held

“In view of the law declared by Hon’ble Apex Court, applying the same to the present appeal, we have no hesitation to conclude that right or ownership, if any, claimed after approval of Resolution Plan by CoC is extinguished and if ownership of Corporate Debtor is declared over the Trademarks, it would amount to modification or alteration of approved Resolution Plan by CoC which is impermissible.”

- 12.6. In the present matter it is admitted fact the corporate debtor is using the trademark of the applicant and the payment for the use of the mark has not been made by the RP even after initiation of CIRP. Therefore, it directed that the moment the CIRP has been terminated after the approval of the Resolution Plan, the right of the corporate debtor also extinguishes to use the mark of the applicant and further RP is directed to make payment of the amount due to the applicant for the CIRP period for the use of the trademark.



12.7. It is further directed that SRA cannot use the trademark in the Resolution Plan for any purpose as the contract will get terminated and if SRA wants the trademark to be used for the project then he can have a fresh negotiation with the applicants on fresh terms and conditions and can enter into a fresh contract.

With the above directions, the IA No. 4624/2022 stands disposed of.

13. IA-5813/2022

13.1. The Applicants are the 13 Creditors in class of service apartment being the buyers of service apartments in the real estate projects developed by the corporate debtor and have sought the following reliefs in the present Application:

- “1. Allow the present application;*
- 2. Issue necessary directions to the resolution professional to include the class of service apartments in the class of secured service apartments, thereby classifying the applicant as secured creditors;*
- 3. Issue necessary directions to the resolution professional to execute the registered sale deed of the respective units, in favour of the applicants here in after taking the balance amount remaining to be paid by the applicants herein if any,*
- 4. Issue necessary direction to resolution professional to convert the assured returns to monthly rental and also execute lease deed in favour of the applicants;*
- 5. Any other order/relief as the Hon'ble tribunal, in the interest of justice, may deem fit.”*



13.2. IA-544/2023

The Applicants are the two Creditors in class of service apartment being the buyers of service apartments in the real estate projects developed by the corporate debtor and have sought the following reliefs in the present Application:

- “1. Allow the present application;*
- 2. Issue necessary directions to the resolution professional to include the class of service apartments in the class of secured service apartments, thereby classifying the applicant as secured creditors;*
- 3. Issue necessary directions to the resolution professional to execute the registered sale deed of the respective units, in favour of the applicants here in after taking the balance amount remaining to be paid by the applicants herein if any,*
- 4. Issue necessary direction to resolution professional to convert the assured returns to monthly rental and also execute lease deed in their favour;*
- 5. Any other order/relief as the Hon'ble tribunal, in the interest of justice, may deem fit.”*

13.3. IA-2869/2023

The Applicant namely, Sudesh Narinder Malhotra, being one of the Creditor in class of service apartment being the buyer of service apartment in the real estate project developed by the corporate debtor has sought the following reliefs in the present Application:

- “1. Allow the present application;*
- 2. Issue necessary directions to the resolution professional to include the class of service apartments in the class of secured service apartments, thereby classifying the applicant as a secured creditor;*



3. *Issue necessary directions to the resolution professional to execute the registered sale deed of the respective units, in favour of the applicants here in after taking the balance amount remaining to be paid by the applicants herein if any,*
4. *Issue necessary direction to resolution professional to convert the assured returns to monthly rental and also execute lease deed in their favour;*
5. *Any other order/relief as the Hon'ble tribunal, in the interest of justice, may deem fit.”*

13.4. All the above three applications are filed by the creditors of the service apartment and on perusal of the voting of the approved resolution plan it is found that the entire Class of Creditors of Service Apartment Buyers have assented to the Resolution Plan. As the Applicants being part of the Class of Service Apartment Buyers have assented to the Resolution Plan, they are thus bound by the same and cannot stand outside the class and cannot have grievances other than as a class.

13.5. Therefore, we find no substance in the grievance of the applicants and the applicants will be treated as per the Resolution Plan. Accordingly, **IA No. 5813/2022, 544/2023 and 2869/2023 stand dismissed.**

14. Analysis & Findings

14.1. On hearing the submissions made by the Ld. Sr. Counsel and the Ld. Counsel for the Resolution Professional and the



counsel for other parties and perusing the record, we find that the Resolution Plan has been approved by the CoC with 87.49% of the members voting in favour of the Resolution Plan. As per the CoC, the Plan meets the requirement of being a viable and feasible revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.

14.2. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 30 and 31 of the IBC and also complies with regulations 38 and 39 of the CIRP Regulations, 2016.

14.3. The SRA has prayed for certain reliefs, waivers and concessions as enumerated under the Resolution Plan approved by the CoC and stated that the Adjudicating Authority's refusal to grant any relief or concession will not affect the terms or implementation of this Resolution Plan. Thus, it is ordered that the reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly as per law.

14.4. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.

14.5. In case of non-compliance of this order or withdrawal of



Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the Performance Bank Security/Guarantee paid by the SRA.

15. Orders

15.1. Subject to the observations made in this Order, the Resolution Plan of **Rs. 72,36,71,146/- (Seventy Two Crores Thirty Six Lakhs Seventy One Thousand One Hundred and Forty Six Only)** is hereby **approved. The Resolution Plan shall form part of this Order.**

15.2. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Debtor Company shall come into force with immediate effect.

15.3. Further 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 per cent of the realisable value to creditors under the resolution plan approved under section 31, shall be payable to the Board, where such realisable value is more than the liquidation value: Provided that this sub-regulation shall be applicable where resolution plan is approved under section 31, on or after 1st October 2022.

15.4. Taking the provision into consideration, the SRA is directed to pay the Regulatory fee under Regulation 31A, an amount Rs. 18 lakh (i.e.0.25% of the resolution plan value) in addition to



the plan value to be payable on passing the order of the Resolution Plan by this Adjudicating Authority.

15.5. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.

15.6. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters.

15.7. **IA 1642/2020 filed for approval of Resolution Plan stands approved.**

IA No. 3524/2020 filed by commercial space buyers stands disposed of in terms of Para 11.7 of the order.

IA No. 1763 of 2021, MA No. 02 of 2021, IA No. 1702 of 2021 and IA No. 4236 of 2022 stand disposed of in terms of Para 4.6 of the order.

IA No.4624/2022 stands disposed of in terms of Para 12.6 and 12.7 of the order.

IA No. 5813/2022, IA No. 544/2023 and IA No. 2869/2023 stand dismissed in terms of Para 13.4 and Para 13.5 of the order.



These applications along with CP (IB) No. 875(PB) 2020 shall stand **disposed of** accordingly.

- 15.8. The liberty is hereby granted for moving any appropriate application, if required in connection with the implementation of this Resolution Plan.
- 15.9. A Certified copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, NCT of Delhi & Haryana.
- 15.10. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.
- 15.11. The Resolution Professional is further directed to hand over all the records, premises/factories/documents available with it to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records, premises/factories/ documents through the Resolution Professional to finalise the further course of action required for starting of operations of the Corporate Debtor.
- 15.12. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.



15.13. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

15.14. File be consigned to records.

**-Sd-
(RAMALINGAM SUDHAKAR)
PRESIDENT**

**-Sd-
(AVINASH KUMAR SRIVASTAVA)
MEMBER (TECHNICAL)**