

**THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V AT NEW DELHI**

Company Petition No. (IB)-923 (PB)/2019

I.A. 324/2022

I.A. 572/2022

In the main matter of:

M/s. ORIENTAL BANK OF COMMERCE

.... FINANCIAL CREDITOR

VERSUS

M/s. VENTA REALTECH PVT. LTD.

.... CORPORATE DEBTOR

In the matter of:

DEBASHISH NANDA

.... RESOLUTION PROFESSIONAL

Order pronounced on: 30.05.2022

Coram:

SH. ABNI RANJAN KUMAR SINHA
HON'BLE MEMBER (JUDICIAL)

SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (TECHNICAL)

For the Applicant: Mr. Abhishek Anand & Mr. Joy Bajaj,
Advocates, (I.A. 572/2022), Mr. Abhay Kaushik

For the SRA : Mr. Abhijeet Sinha, Hardeep Sachdeva,
Ravi Bhasin, Abhyudai Singh, Aditya Shukla,
Mukund Rawat, Siddhant Bhasin, Advocates

For the Respondent: Mr. Sumant Batra & Rahul Mendiratta, Advocates

ORDER

PER- HEMANT KUMAR SARANGI, MEMBER (TECHNICAL)

1. The application has been filed by the Resolution Professional, under Section 30 (6) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "Code"), seeking approval of the Resolution Plan, submitted by M/s. Adani Infrastructure and Developers Pvt. Ltd. ("AIDPL"/ "Resolution Applicant"), under Section 31 of the Code, read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, in respect of the corporate debtor M/s. Venta Realtech Pvt. Ltd.
2. The facts in brief, necessary for disposal of the present application, are that M/s. Oriental Bank of Commerce, one of the Financial Creditors, had preferred an application under Section 7 of the Code, for initiation of Corporate Insolvency Resolution Process ("CIRP") against M/s. Venta Realtech Private Limited ("Corporate Debtor"). The said Company Petition was admitted on 20.05.2019, imposing moratorium under Section 14 of the Code and

thereby, initiating CIRP, against the Corporate Debtor. Further, the applicant herein, Mr. Debashish Nanda, was appointed as the Interim Resolution Professional (“IRP”).

3. That the Applicant, on account of expiry of CIRP as on 27.07.2020, as directed by this Hon’ble Bench, filed an appeal under section 61 of the I & B Code, 2016, before Hon’ble NCLAT, challenging the impugned order dated 11.05.2021, seeking exclusion of 107 days from the period of calculating 270 days of CIRP, wherein Hon’ble NCLAT, after hearing the facts and circumstances of the case, passed an order dated 25.06.2021, allowing exclusion of 107 days from the period of CIRP and directed the Hon’ble AA to expedite the hearing on application for approval of resolution plan having IA no. 4972/2020 pending for disposal.
4. That this Hon’ble Bench after hearing the IA 4972/2020 along with objection filed by the homebuyers, passed an order dated 09.08.2021 reserving the orders on all applications.
5. That the said IA no. 4972/2020 along with objections was listed for rehearing on 15.11.2021 on account of

re-constitution of the Benches of the Hon'ble NCLT and therefore, the matter after being duly heard by the Hon'ble Bench was reserved for orders. Subsequently, the pronouncement of the order in the said matter was made on 06.01.2022 and the detailed order was received on 07.01.2022. This Hon'ble Bench had made some observations in their order and in view of the same, Hon'ble Bench issued some directions to the applicant as set out in Para 47 of the said order.

6. That in compliance of the directions issued by Hon'ble Bench, vide its order dated 06.01.2022, the Resolution Applicant submitted the amended Resolution Plan dated 11.01.2022 and added the clause of initial cash infusion, at Page No. 12 of the Amended Resolution Plan, for the purpose of expediting the construction. The said Amended Resolution Plan was received by the Resolution Professional on 11.01.2022 pursuant to which the applicant issued notice of the eighth meeting of CoC to be conducted on 14.01.2022 to the creditors, along with Authorized Representative of Creditors in Class, for approval of amended resolution plan, considering the

required amendments as sought by the Hon'ble Adjudicating Authority. It is pertinent to mention here that performance bank guarantee, submitted by AIDPL dated 22.01.2021, is valid and will be extended from time to time.

7. That in view of such notice of eighth meeting of CoC issued by Applicant, the authorized representative of Homebuyers issued the said notice to all the Homebuyers, for conducting meeting on 12.01.2022 and to further put the Amended Resolution Plan for voting and approval from the Homebuyers, considering the required amendments.
8. That the authorized representative and the applicant conducted the aforesaid respective meetings and apprised the members of CoC that the directions issued by this Hon'ble Bench has been amended by AIDPL in its revised resolution plan at page no. 12 of the amended resolution plan. That after due deliberations, the matter was put for e-voting.
9. That as per the voting instructions received by the Authorized Representative in the matter, out of total 26



home buyers only 19 home buyers have voted in the matter. That as per Section 25A (3A) of the Code, in case of Creditors in Class, the AR shall cast his vote on behalf of financial creditors, he represents in accordance with the decision taken by a vote of more than fifty percent of voting share of the financial creditors, he represents, who have cast their vote; therefore, in view of the same 89.80% voting in favour by the home buyers have been reckoned as 100% for their 50.93% share voting rights in the CoC.

10. That as per the voting instructions received from the Creditors in Class i.e., Home Buyers, the Authorized Representative has reckoned that majority (more than fifty percent) of Home Buyers, have decided in favour of Resolution Plan and accordingly, have casted his vote "in favour" or "Assent" on behalf of the Creditors in Class, representing 50.93% of voting rights in the CoC.

11. That, thus the Resolution Plan, has been approved by the Committee of the Creditors in accordance with the provisions of the Section 30(4) of the Insolvency & BAnkrruptcy Code, 2016 by 96.69% of voting "in favour".



12. That in the midst of the above, three homebuyers have dissented to the resolution plan, however, in light of the Hon'ble Supreme Court's decision in the matter "*Jaypee Kensington Boulevard Apartments Welfare Association & Ors. V. NBCC (India) Ltd. & Ors. in Civil Appeal No. 3395/2020*", the dissenting creditors in class shall be treated at par with the other homebuyers. The relevant paragraph of the judgment is produced herein as follows:

"163. Taking up other aspects of the rival submissions and having examined the scheme of the Code in relation to a plan of insolvency resolution, we are clearly of the view that the propositions of some of the associations and individual homebuyers to claim themselves as 'dissenting homebuyers' and thereby, 'dissenting financial creditors' do not stand in conformity with the scheme of the code and the manner of voting on a plan of resolution by the Committee of Creditors".

13. That the Applicant, in terms of the requirement stipulated in Regulation 39(4) of the CIRP Regulations, is filing the present application before the Hon'ble AA,



accompanied with a compliance certificate in FORM H, which is required to be submitted along with the present application.

14. That in view of the above facts and circumstances, the Applicant herein is filing the present Application under sub-section 6 of Section 30 of the Code, along with Regulation 39 (4) of CIRP Regulations, for consideration and orders of this Hon'ble AA, under Section 31(1) of the Code, for approval of the Resolution Plan, as approved by the CoC, under sub-section (4) of Section 30 of the Code and/ or such other orders/ directions, as this Hon'ble AA may deem fit and appropriate.

15. That the instant application is being filed, keeping in mind the objective and purpose of the provisions of the Code and it would be in the interest of justice to approve the resolution plan of AIDPL. It is submitted by the Applicant that the above plan will result in survival of the CD and will benefit the CD and its stakeholders in maximisation of the value of the CD. The liquidation of the CD will result in death of the CD, causing irreparable loss to the stakeholders and the economy of the country.



16. That in the sixth meeting of CoC, after due deliberations by the members of CoC on the Resolution Plan, the matter was put for e-voting as follows:

“RESOLVED THAT the resolution plan submitted by Adani Infrastructure and Developers Private Limited be and is hereby approved by the CoC.”

“FURTHER RESOLVED THAT the Resolution professional is authorized to submit the Resolution Plan before the Hon’ble NCLT, New Delhi, for approval and other necessary action as required in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 and regulations made thereunder.”

17. The Applicant presented the said plan, with suggested changes, before the eighth meeting of CoC on 04.03.2020 and allowed the members of CoC to make their observations. Thereafter, the members of the CoC deliberated upon the Resolution Plan and approved it with **98.58%** votes, through e-voting, which concluded on 05.10.2020.

18. The present Application is being filed by the Applicant herein, in pursuance of and in terms of the approval of



the CoC, of the Resolution Plan submitted by Adani Infrastructure and Developers Private Limited, approved by **98.58%** of the voting share of the CoC, after considering the feasibility and viability of the resolution plan and other requirements under CIRP Regulations.

19. The Applicant further states that the average liquidation value of the Corporate Debtor, under Regulation 35 of the IBBI (Insolvency Regulation Process for Corporate Persons) Regulations 2016 ("CIRP Regulations"), as valued by the two registered valuers, is approximately **Rs.1,37,77,34,800/-**, and the Plan Value of this Resolution Plan is **Rs.3,42,91,88,703/-**, as provided in the Form H, by the Resolution Professional.

20. The Resolution Professional has submitted its Compliance Certificate, under Section 39(4) of the Code, along with the resolution plan, under Section 39(4) for approval before the Committee of Creditors.

21. Resolution professional has also placed a copy of the resolution plan, as approved by CoC, stated to have been signed by the Authorized Signatory of the resolution



applicant, being ***M/s. Adani Infrastructure and Developers Private Limited.***

22. The Compliance Certificate, filed by the Resolution Professional in Form H, under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, has also been placed on record.

23. That brief contours as per Form H, of the Resolution Plan, as approved by the CoC, along with the amounts provided for the stakeholders, under the Resolution Plan is reproduced herein below: - **(Amount in Rs. Lakh)**



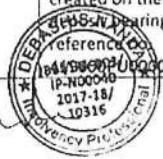
7. The amounts provided for the stakeholders under the Resolution Plan is as under:
(Amount in Rs.)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed
						(%)
1	2	3	4	5	6	7
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:				



(i) who did not vote in favour of the resolution Plan PNB housing finance limited	22488742	22488742	7650738	34%
(ii) who voted in favour of the resolution plan				
☒ Indiabulls Housing Finance Limited	326893715	326893715		
☒ Surrendered Units		163017924	54700558	34%
☒ Taking Units		163875791	Homebuyers will pay their balance amount to Indiabulls Housing Finance Ltd.	100% recovery can be done from homebuyers
☒ Axis Bank Limited	6,49,32,128	6,49,32,128		
☒ Surrendered Units		96092870	32879594	34.21%
☒ L&T Housing Finance (Hridey Vikram)	37199157.3	37199157.3	Homebuyer will pay their balance amount to L&T Housing Finance	100% recovery can be done from homebuyers

		Punjab National Bank(OBC)	1142415234	1142415234	464609384	
		Bank Guarantee Claim	41802674	41802674	<p>The bank guarantee provided by Punjab National Bank ("PNB") shall continue on the original terms and conditions on which it was issued and the following security interest shall be created in favour of PNB:</p> <p>A. Security interest created on the fixed deposit bearing reference no. 464609384 IP-N000010 2017-18/10316</p>	40% and continuance of BG as per plan



					<p>opened by the Company with PNB shall continue; and</p> <p>B. The Resolution Applicant shall open another fixed deposit of an amount equivalent to Rs.4,15,06,273/- (Rupees Four Crores Fifteen Lakhs Six Thousand Two Hundred SeventyThree Only) with PNB ("Fresh Fixed Deposit") on which lien shall be created in favour of PNB to secure such bank guarantee provided by PNB.</p> <p>It is hereby clarified that in the event the bank guarantee is not invoked and expires by efflux of time, then PNB shall not be entitled to any payments and any and all security created in favour of</p>	
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						<p>PNB, i.e. fixed deposit bearing reference no. 419600PU00002629 opened by the Company including interest accrued thereon and the Fresh Fixed Deposit including interest accrued thereon, shall stand released in favour of the Resolution Applicant. Accordingly, all admitted financial claims of PNB shall be fully and finally settled by way of payment of NIL consideration on the terms and conditions set out hereinabove. It is hereby further clarified that pursuant to creation of lien on the Fresh Fixed Deposit in favour of PNB, the following security interest created in favour of</p>	
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						<p>A. General counter indemnity dated December 29, 2017; and B. Equitable mortgage on Unit No. D-902 on 9th Floor (Pent House) in the project Krrish Provenance Estate having super built up area of 10,000 (ten thousand) sq. ft., situated at revenue Estate of Gwal Pahari, Gurgaon- Faridabad Road, Gurgaon, Haryana created by M/s Jasmine Buildmart Private Limited.</p>	
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	Tata Capital Housing Finance Ltd and Diwan Housing Financing Finance Ltd	NIL	Nil	Rs. 42025075 and Rs. 24473266 against their loan amount of Rs. 120071643 and Rs. 69923615 respectively. The RA don't want any dispute in future regarding the ownership of flat, this is the reason the RA is giving money in respect of units surrendered by the homebuyers whom they have given home finance.	
	Total[(a) + (b)]	1635731650. 3	1635731650. 3	6263338615	38.29%

				who are getting flats will pay back the home lenders as per their TPA and Bank Guarantee issued by PNB will continue as mentioned in the resolution plan)	
	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL	NIL
	(b) Other than (a) above:				
2	Unsecured Financial Creditors (a) who did not vote in favour of the resolution Plan				

		Chetan Kapur	1,29,57,439	1,29,57,439	2500000	20%
		M/s Khetarpal Hotels (b) who vote in favour of the resolution Plan	1,29,57,439	1,29,57,439	2500000	20%
		Nitin Garg	21114739	21114739	5000000	23.68%
		G Satya Narayana	1746427437	1746427437	Homebuyers are getting flats	Homebuyers are getting flats with haircut in furnishing
		Total[(a) + (b)]	1793457054	1793457054	10000000 Homebuyers are getting flats	
2	Operational	(a) Related Party of Corporate Debtor	Nil	Nil	Nil	

		Nitin Garg	21114739	21114739	5000000	23.68%
		G Satya Narayana	1746427437	1746427437	Homebuyers are getting flats	Homebuyers are getting flats with haircut in furnishing
		Total[(a) + (b)]	1793457054	1793457054	10000000 Homebuyers are getting flats	
3	Operational Creditors	(a) Related Party of Corporate Debtor	Nil	Nil	Nil	
		(b) Other than (a) above:				

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		(i)Government (ii)Workmen (iii)Employees	1975148	1975148	1975148	100%
		Others	225581721.4 3	225581721.4 3	4511635	02%
		Total[(a) + (b)]	24533320.4	24533320.4	6486783	2.85%
4	Other debts and dues	(Related party financial creditors)	407702438	407702438	NIL	NIL
		-EDC & IDC Charges	NIL	NIL	275000000 Against dues of Rs. 39.93 crores (As per EDC chart taken from DTCP Website Login.)	74.39%
		-CIRP Cost	Rs. 11500000	Rs. 11500000	7500000	74.39%
		-Land Collaborators (IST Green and Global Credit)		NIL	Given 8-8 flats each as per resolution plan approved by the CoC	88.88%



24. In terms of Section 30 (6) of the Code, read with Regulation 39 of the CIRP Regulations, 2016, the

resolution professional has submitted the Resolution Plan, for seeking an order under Section 31(1) of the Code, for approval of the resolution plan, passed by the committee of creditors, under sub-section (4) of Section 30, with **98.58%** voting share.

25. Section 31 of the Insolvency and Bankruptcy Code, deals with the approval or rejection of a resolution plan, by the Adjudicating Authority. Approval of the resolution Plan is accorded under the provisions of Section 31(1) of the Code.

26. Sub-section 2 of Section 30 casts a duty on the Resolution Professional, to examine the Resolution Plan received by him and to confirm that such Resolution Plan provides for the payment of Insolvency Resolution Process costs; provides for, the payment of the debts of the operational creditors and financial creditors in such manner as specified; provides for the management of the affairs of the corporate debtor, after approval of the Resolution Plan; the implementation and supervision of the Resolution Plan, that the Resolution Plan does not contravene any of the provisions of the law and that the

Resolution Plan conforms to such other requirements as may be specified by the Board.

27. The Resolution Professional has filed compliance certificate in Form H and *inter alia*, has confirmed that he has examined and verified the Resolution Plan, approved by the CoC of M/s. Venta Realtech Pvt. Ltd., in the light of the requirements of the Code and Regulations and that it is compliant to the relevant provisions of the Code and Regulations.
28. It has been submitted in the application and in Form H, duly certified by RP, that the final Resolution Plan, approved by **98.58%** vote share of the members of the Committee of Creditors, meets the requirements as laid down in various clauses of Section 30 (2) of the Code.
29. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in the resolution plan, at *Para 2(iv) of Section II of Part III*, which provides for payment of CIRP costs, in priority over payments to any other creditors, from the upfront amount brought in by the SRA. The Resolution Professional has also confirmed in the compliance certificate, given in Form H, that the



Resolution Plan provides for the payment of Insolvency Resolution Process costs.

30. As regards compliance of clause (b) of Section 30 (2) of the Code, the Resolution Professional has certified that the resolution plan provides for the payment of the debts of operational creditors, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to the operational creditors in the event of liquidation of the corporate debtor under Section 53.
31. There appears to be no discrimination in the resolution plan, in respective class of creditors, as same treatment is provided to each similarly situated class of creditors.
32. Besides, the resolution plan provides for the payment of the debts of operational creditors in such manner, as may be specified by the Board, which shall not be less than the amount to be paid to the operational creditors in the event of liquidation of the corporate debtor under Section 53.
33. As a sequel to the aforesaid discussion, it is seen that clause (b) of sub-section (2) of Section 30 of the Code stands satisfied.



34. In terms of Section 30(2)(c), the Resolution Plan provides for management of affairs of the corporate debtor, after approval of the Resolution Plan. The management of the affairs and control of the business of the corporate debtor, after approval of the Resolution Plan, has been provided at *Section II of Part III*, of the Resolution plan, which, *inter alia*, provides that the Company shall continue as a going concern and operate its normal course of business, upon implementation of the Resolution Plan. The Resolution Professional has confirmed, in the compliance certificate given in Form H, that the Resolution Plan provides for the management and control of the business of the corporate debtor.

35. The fourth requirement, envisaged by Section 30(2)(d), is that it must provide for the implementation and supervision of the resolution plan. The Resolution Professional has confirmed, in the compliance certificate given in Form H, that the Resolution Plan provides for adequate means for supervising its implementation.

36. The fifth and sixth conditions in terms of clause (e) & (f) of sub-section (2) of Section 30 of the Code, provide to

ensure that the Resolution Plan does not contravene any of the provisions of law and conforms to such other requirements as may be specified by the Board.

37. In this regard the resolution professional has certified that the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016, the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of law, for the time being in force. *Be that as it may, in terms of clause (e) & (f) of sub-section (2) of Section 30 of the Code, we make it clear that the Resolution Applicant shall comply with all applicable laws under the proposed Resolution Plan, whether or not specifically provided therein.*

38. It is pertinent to state here that Section 29A of the Code prescribes certain eligibility criteria and disqualifications, for persons who submit a resolution plan. Resolution Applicant has given adequate declaration and undertaking, on their eligibility to submit the Resolution Plan. At para 4 (ii) of Form H, Resolution Professional has also certified that *the Resolution*



Applicant, confirmed that the Resolution Applicant is eligible to submit a resolution plan and does not fall under any of the categories as mentioned in Section 29A of the Code.

39. Regulation 36B(4A), of the CIRP Regulations, requires that the Resolution Applicant shall provide a performance security. Resolution professional has stated that the Resolution Applicant has submitted earnest money of Rs.5,00,00,000/- (Rupees Five Crores Only), in compliance of Regulation 36B(4A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

40. As to the Reliefs and Concessions stated in Chapter IV of the Resolution Plan, the exemption, as sought for in relation to the payment of registration charges, stamp duty, taxes and fees, arising out of the implementation of the Resolution Plan, the same is declined by this Bench and therefore is not granted. As regards the other reliefs and concessions as sought for, which exempts the Corporate Debtor from holding them liable for any offenses committed prior to the commencement of CIRP and as



stipulated under Section 32A of IBC, 2016, is hereby granted to the Resolution Applicant. With regard to other concessions and reliefs, most of them are subsumed in the reliefs above granted, whichever is beyond the reliefs granted above, they shall **not** be construed as granted. The exemptions if any sought in violation of any law in force, it is hereby clarified, that such exemptions shall be construed as not granted.

41. That further an I.A. 572/2022 has been filed by three Applicants jointly, as members of the FC in Class of the CoC of the CD, the Applicants have filed the instant application challenging the material irregularity committed by Mr. Debashish Nanda, RP of M/s. Venta Realtech Private Limited ("CD") and Mr. G. Satya Narayan Guddeti, Authorized representative of the CD in the CIR Process of the CD. It is further stated that:

- a. The Applicants herein were not called upon by the Authorized Representative i.e., Respondent No. 2 to submit their preliminary view over the Resolution Plan as required and mandated under CIRP Regulation 16A.

- b. That in terms of Regulation 16A(9) of the CIRP Regulations, it was mandatory upon the Authorized Representative to seek preliminary views on the agenda to enable them to effectively participate in the meeting of the CoC. Admittedly, the Authorized Representative did not seek preliminary views of the Applicants being them and thus, the process followed by Authorized Representative and Resolution Professional is in complete contravention to the provisions of the I & B Code, 2016 and IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations').
- c. Further, it is submitted that a conjoint reading of Regulations 25(5), 25(6), 25A and 26 provides for voting through electronic means for creditors in class, whereas, in the present case the Resolution Professional has acted in complete contravention to the CIRP Regulations and did not use e-voting process/mechanism for creditors in class. The Authorized Representative, vide its email dated 12.01.2022,



admitted that the e-voting portal for creditors in class is not being used for voting on Resolution Plans.

42. The Resolution Professional in its response states that, It is alleged by the three allottees in I.A. No. 572/2022 that in terms of sub-regulation (6) of Regulation 25, the AR/ RP did not keep providing the voting window to the allottees after circulation of minutes of the eighth CoC meeting. However, the sub-regulation (6) is applicable to such cases wherein the creditors in class did not vote. In the present case, the allottees vide email dated 15.01.2022, communicated its decision not in favour of the Resolution Plan to the AR, therefore, the sub-regulation (6) of Regulation 25 of CIRP Regulations is not applicable in the present case.

43. Further, the three allottees have raised challenge that the e-voting was not conducted vide e-voting portal and therefore, the same is in violation of Regulation 26 of CIRP Regulations. Regulation 26 provides that the RP shall provide the CoC the means to exercise its vote by either electronic means or through electronic voting system. It is submitted that notwithstanding the interpretation of



“electronic means or through electronic voting system”, the three objectors are estopped from challenging the mode or manner of voting as they participated in the voting and in fact exercised their right to vote, without saving their right to question or challenge the voting procedure. Moreover, assuming without admitting that voting by email was not by electronic means, it is not the allegation that as a result of voting by email, any prejudice was caused to the objectors, as their vote remains the same as polled”.

44. Electronic means has been defined, under sub-regulation (h) of Regulation 2 of the CIRP Regulations, as any means which is an authorized and secured computer programme which is capable of producing confirmation of sending communication of the participant entitled to receive such communication at the last electronic mail address of the participant and keep the record of the same, shall be considered as electronic means. Voting by email satisfies the requirements of Regulation 26 as it provides security from authorized access, provides a reasonable level of reliability and suits well for intended purposes of voting, as the members collectively vote and



expiry of the voting timelines, any vote after that can be easily traced and not included and results can be finalised, more particularly in view of the short window available, voting by email constitutes voting by electronic means for the purpose of Regulation 26.

45. It is further stated that keeping in view the short window of 12 days, that is from 06.01.2022 till 18.01.2022, provided by this Hon'ble AA, to enable reconsideration of the Resolution Plan by the allotted and the CoC, the RP informed the CoC members that the members were required to cast their vote by email which was agreed to by the CoC members. No objections were raised from any member of the CoC. There are only 26 home buyers in the class of homebuyers. In view of only 12 days provided by the Hon'ble AA to complete the process, it was considered expedient by the AR to complete the voting process by email.

46. As a sequel to aforesaid discussions, we are satisfied that the objections raised by just three home buyers, out of 26 home buyers, have no merit as the time limit was fixed by this Tribunal and in view of which the RP carried



out the process within the framework of the Code. Further, all the requirements of Section 30 (2) are fulfilled and no provision of the law, for the time being in force, appears to have been contravened.

47. The Resolution Professional has further certified, that the Resolution Plan has been approved by **98.58%** of voting share of financial creditors, after considering its feasibility and viability and other requirements specified by the Code and IBBI Regulations.

48. The Adjudicating Authority is not expected to substitute its view with the commercial wisdom of the CoC, nor should it deal with the technical complexity and merits of the Resolution Plan, unless it is found contrary to express provisions of law and goes against public interest. The object of the Code is to promote resolution and every effort must be made to try and see that resolution is made possible.

49. Accepting the Resolution Plan is advantageous to all the stakeholders and amounts to maximization of the assets of the Corporate Debtor and promotes entrepreneurship and ensures that the Company



continues to function as a going concern. The right of rejection or approval of a plan is with the CoC. In a particular case, what should be the percentage of claim amount payable to one or other 'Financial Creditor' or 'Operational Creditor' or 'Secured Creditor' or 'Unsecured Creditor', can be decided by the Committee of Creditors, based on facts and circumstances of each case. What can be screened by this Bench is, whether the plan, approved by CoC, meets the requirements, as referred to in sub-section (2) of Section 30 of the Code.

50. The Hon'ble Supreme Court in the case of ***Kalparaj Dharamshi v. Kotak Investment Advisors Ltd, 2021 SCC OnLine SC 204, decided on 10.03.2021***, held as follows;

"... the appeal is a creature of statute and that the statute has not invested jurisdiction and authority either with NCLT or NCLAT, to review the commercial decision exercised by CoC of approving the resolution plan or rejecting the same."

"... the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis."

"155. *It would thus be clear, that the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of CoC is not to be interfered with, excepting the limited*



scope as provided under Sections 30 and 31 of the I&B Code.”

51. In the present case the resolution plan has been unanimously approved with **98.58%** of the voting share of the CoC, much above the statutory requirement of 66%, in terms of Section 30 (4) of the Code and has the requisite statutory voting share. Besides the decision of CoC is a reasoned and self-speaking one, as required under proviso to Regulation 39(3) of the CIRP Regulations, 2016. Needless to state here that the Resolution Plan cannot take care of total outstanding dues of the creditors in its entirety. It is however seen that the resolution applicant proposes to pay the total consideration amount.

52. It is a well settled proposition of law that commercial and business decisions of CoC are not open to judicial review. The Adjudicating Authority cannot enquire into the commercial wisdom of CoC. The ground for rejection is limited to the matter specified under Section 30(2). It is however reiterated that the resolution plan in question meets the requirements specified in Section 30(2) of the Code and the reasoned commercial decision of CoC is neither discriminatory nor perverse.



53. In view of these facts, we are satisfied that the requirements, as per the Code and the relevant Regulations, have been complied with. Moreover, the Resolution Plan has been approved by **98.58%** of the voting share of the members of CoC and has been submitted in compliance with Section 30 of the Code for approval. In view of the aforesaid discussions and as no infirmity has been brought out upon screening of the Resolution Plan; ***we hereby approve the Resolution Plan under sub-section (1) of Section 31 of the Code.***

54. In respect of reliefs and concessions sought for in the Plan which are beyond the jurisdiction of this Tribunal, the Monitoring committee can make such a claim before the respective authorities, which shall be considered in accordance with law.

55. The resolution applicant shall obtain the necessary approval required, under any law for the time being in force, within a period of one year, from the date of this order or within such period as provided for in such law, whichever is later.



56. It is clarified that Section 30 (2) (f) of the Code mandates that the resolution plan should not be against any provisions of existing law. The Resolution applicant therefore, shall adhere to all the applicable laws, for the time being in force, under the proposed Resolution Plan, whether or not specifically provided therein.

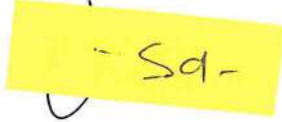
57. We hereby exclude the period spent under adjudication and it is declared that the moratorium order passed by this Bench under Section 14 of the Code shall cease to have effect from the date of this order.


58. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded at its database.

59. The approved 'Resolution Plan' shall become effective from the date of passing of this order.

60. Accordingly, I.A. 324/2022, is allowed & disposed of, I.A. 572/2022 is hereby dismissed.

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


(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)


(ABNI RAJAN KUMAR SINHA)
MEMBER (JUDICIAL)