

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

**I.A. No. 1841 of 2022  
IN  
C.P. No. 4447 of 2018**

In the matter of an Application  
under Section 30(6) of the  
Insolvency and Bankruptcy Code,  
2016.

Concur

In the matter of

**IFCI Limited**

... Financial Creditor

V/s.

**Heera Constructions Company**

**Private Limited**

... Corporate Debtor

**I.A. No. 1841/2022**

**Mr. Raju Palanilkunnathil Kesavan**

...Applicant/Resolution Professional

Reserved for orders on: **27.02.2023**

Order pronounced on: **31.03.2023**

**Coram:**

Hon'ble Shri H. V. Subba Rao, Member (Judicial)

Hon'ble Smt. Madhu Sinha, Member (Technical)

***Appearance (through video conferencing):***

***For the Applicant:*** Mr. Amir Arsiwala, Advocate, a/w Mr. Abdullah  
Qureshi, Advocate and Mr. Arjun Sathees,  
Advocate i/b Indialaw LLP

***For the Resolution Applicant:*** Mr. Nausher Kohli, Advocate, a/w

Mr. Rishabh Dhanuka, Advocate, Mr.  
Vaibhav Sharma, Advocate and Ms.  
Damini Thacker, Advocate i/b A&D  
Legal

**Per:** *H. V. Subba Rao, Member (Judicial)*

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1. This is an Application filed under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant M/s Royal Heights Projects Private Limited, M/s Antony Contracting Private Limited and M/s Vellapally Brothers (consortium applicants), which was approved by 74.19 % voting share of the members of the Committee of Creditors (hereinafter referred to as 'COC').
2. The facts leading to the Application are as under:
  - a. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated 27.03.2019 under section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as 'the Code') (Admission Order) and Mr. Raju Palanilkunnathil Kesavan, was appointed as Interim Resolution Professional. The IRP, constituted the Committee of Creditors. The COC in its 1<sup>st</sup> meeting held on 30.04.2019 appointed (the Applicant) as the Resolution Professional (RP). The IRP published a public announcement as per Section 13 & 15 of the Code, inviting claims from the creditors of the Corporate Debtor.
  - b. The CIRP period commenced on 27.03.2019, on the date of admission of the application, and on 01.07.2019 the Hon'ble Supreme Court stayed the CIRP proceedings of the Corporate

Debtor in WP (C) No. 821 of 2019 in an application filed by the suspended director, Mr. Abdul Rasheed Babu, of the Corporate Debtor on the ground that the subject matter of the said case challenging the constitutional validity of giving financial creditor status to the home buyers was pending for adjudication before the Hon'ble Supreme Court in a similar Writ Petition WP (C) 43 of 2019 (Pioneer Urban Land and Infrastructure Limited and Anr vs. Union of India & Ors). The Hon'ble Supreme Court finally disposed of the said Writ Petition along with the Writ Petition filed by the suspended director on 09.08.2019.

- c. The Applicant published a public announcement in Form A in accordance with Section 15 of the Code, on 29.03.2019, inviting claims from the creditors of the Corporate Debtor.
- d. The CoC decided to appoint a Valuer. The Resolution Professional accordingly appointed registered valuers particularly on 08.05.2019 to determine the fair value and liquidation value of the Corporate Debtor, as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016. These valuers had submitted their reports. The Liquidation and fair value of the Corporate Debtor is as follows:

<b>Fair Value (Amount in Crores)</b>	<b>Liquidation Value (Amount in Crores)</b>
Rs. 372.10 Crores	Rs.277.04 Crores

- e. The Applicant submits the claims received and admitted by Resolution Professional as under:

<b>Summary of Claims (Amount in Rs. Lakh)</b>			
<b>Sr. No.</b>	<b>Class of Creditor</b>	<b>Amount Claimed</b>	<b>Amount Admitted</b>
1	Secured Financial Creditors	10,478.43	10,398.69
2	Unsecured Financial Creditors	34,168.91	28,366.61
3	Operational Creditors	32,228.72	21,605.25

4	Other Debts and Dues	3,019.06	1,968.31
<b>Total</b>		<b>79,895.12</b>	<b>62,338.86</b>

- f. The First Expression of Interest (EoI) was issued on 10.06.2019 and the final EoI was issued on 22.03.2022. While considering the Application for Liquidation filed by the Applicant, the Tribunal on 03.03.2022 directed the Applicant to explore the possibility for a holistic Resolution Plan and allowed a limited time period. Accordingly, fresh EoI was invited on 22.03.2022 with compressed timelines.
- g. It is submitted that the Applicant had published FORM G for inviting EoI in the newspapers namely 'Business Line' and 'Deshabhimani' in the State of Kerala, 'Gomantak' and 'Times of India' in the State of Goa on 22.03.2022. As per FORM G, the timeline for submission of EoI was upto 01.04.2022. It is submitted that the Applicant had received EoI from 2 (two) prospective Resolution Applicant and thereafter the Applicant had published provisional list of the said Resolution Applicants on 03.04.2022 with a request to file objections if any before 07.04.2022. As there was no objection received within the stipulated timeline, hence the Applicant had published final list of prospective Resolution Applicants who had submitted the EoI:

Sr. No.	Name	Address	Constitution	Email ID
1	Mr. Navas Manalumparayil Meeran	H. No. 42/24 A, Promede Gardens, Pavvor Road, Padivattom, Edapally P. O. Ernakulam, Kerala – 682024	As a Consortium	cs@groupmeeran.in
	M/s. Shehab Properties Private Limited	5B-3, Eastern Corporate		

		Office, 34/137G, NH Bye Pass, Edapally, Kochi, Kerala 682024	of 2 applicants	navas@groupmeeran .com
2.	M/s Royal Heights Projects Private Limited	Door No. 63/2982, Manjankal House, Surabhi Enclave, S. A. Road, Ernakulam – 682016	As a Consortium of 3 applicants	tiju@royalheights.in
	M/s. Antony Thomas Contracting Private Limited	45/2467, 4 <sup>th</sup> Floor, At One Building, Geetanjali Jn, Chalikkavattom, Vytilla, Ernakulam- 682032		hoadmin@atcl.co  vellapallybrothers@g mail.com
	M/s. Vellapally Brothers (Partnership Firm)	P.B. No. 45, Vellapally Building, Vellapally Lane, Kottayam 686001		

- h. It is submitted that as the CIRP period of the Corporate Debtor was expiring on 04.05.2022 and that the CIRP was at an advanced stage, the Applicant had filed Application before this Tribunal and this Tribunal vide Order dated 04.05.2022 was pleased to extend the CIRP period of the Corporate Debtor by 60 (sixty) days thereby extending days of CIRP period to 01.07.2022 in view of the Resolution Plan received to the Corporate Debtor.
- i. It is submitted that pursuant to the aforesaid Order dated 04.05.2022 passed by this Tribunal, the Seventh CoC Meeting was convened on 13.05.2022 wherein the Mr. Navas Manalumparayil Meeran & M/s Shehab Properties Pvt Ltd (Consortium applicants)

and M/s Royal Heights Projects Private Limited, M/s Antony Contracting Private Limited and M/s Vellapally Brothers (consortium applicants) i.e. the Resolution Applicants presented their respective plans before the CoC. And after detailed discussion and deliberations, the members of the CoC had requested the Resolution Applicants for certain modifications including upward revision in the amount payable to the secured Financial Creditors. The last date for submitting the revised Resolution Plans was 23.05.2022.

- j. It is submitted that in the Eighth CoC meeting held on 08.06.2022, the Applicant had informed the CoC that Mr. Navas M Meeran & M/s Shehab Properties Pvt Ltd have not modified the resolution plan and issued a letter dated 23.05.2022 stating that they are withdrawing their plan. Further in the said meeting, the remaining Resolution Applicant i.e., M/s Royal Heights Projects Private Limited, M/s Antony Contracting Private Limited and M/s Vellapally Brothers (consortium applicants) had described the salient features of their revised Resolution Plan submitted on 23.05.2022 before the CoC. That, after detailed discussion, the CoC has once again requested the Consortium Applicants to modify the resolution plan and submit the revised Resolution Plan by 14.06.2022.
- k. It is submitted that in the Ninth CoC meeting held on 22.06.2022, the CoC resolved to forfeit the EMD of Rs. 10 Lakhs along with withdrawal of Resolution Plan submitted by Mr. Navas M Meeran & M/s Shehab Properties Pvt Ltd (one of the Resolution Applicants). And the Applicant had placed the revised Resolution Plan submitted by Resolution Applicants, M/s Royal Heights Projects Private Limited, M/s Antony Contracting Private Limited and M/s Vellapally Brothers (consortium applicants) submitted on

14.06.2022. The COC has in the said meeting discussed and deliberated on the feasibility and viability of the Resolution Plan, its implementation Schedule and the financial proposal made in the Resolution Plan. The Resolution Applicant was also invited to further present their plan in the meeting. After due deliberation, the following resolution for approval of revised plan was put for voting before the CoC.

**RESOLUTION:**

***The Committee considered the revised resolution plan dated 14.06.2022 submitted by M/s Royal Heights Projects Private Limited & Others (consortium applicants) together with the compliance report submitted by RP along with specific observation on compliance under section 30(2)(b) of the Code.***

***The Committee also considered the liquidation value of the corporate debtor submitted by the registered valuers together with the comments of RP and the remarks received from home buyers in a class.***

***The Committee evaluated the resolution plan and considering its feasibility and viability, resolved to approve the resolution plan submitted by M/s Royal Heights Projects Private Limited & Others.***

***The Committee further entrusted the RP to file the approved resolution plan before the Hon'ble NCLT after obtaining the necessary performance guarantee from the successful resolution applicant.***

1. It is submitted the COC has approved the Resolution Plan submitted by the Resolution Applicant, i.e., M/s Royal Heights

Projects Private Limited, M/s Antony Contracting Private Limited and M/s Vellapally Brothers (“Consortium Applicants”), with a voting percentage of 74.19%, which is more than the required voting rights of 66% for approval of the Resolution Plan under 30(4) of the Insolvency and Bankruptcy Code, 2016.

- m. The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.
- n. Thereafter, the Applicant issued compliance certificate in Form “H” was issued by the Resolution professional.

**3. The Salient Features of the Resolution Plan are as under:**

- a. A consortium consisting of Royal Heights Projects Private Limited (Lead Member), a company incorporated under the Companies Act, 2013 having CIN: [U45201KL2022PTC074608], with its registered address at: Door No. 63/2982, Manjankal House, Surabhi Enclave, S. A. Road, Ernakulam, Kerala - 682016], Antony Thomas Contracting Private Limited (2<sup>nd</sup> Member), a company incorporated under the Companies Act, 2013 having CIN: [U45200KL2011PTC028141] with registered office at: 45/2467, 4th Floor, At One Building, Geethanjali Jn Chalikkavattom, Vytilla Ernakulam, Kerala - 682032 and Vellapally Brothers (3<sup>rd</sup> Member), a Partnership Firm registered under Indian Partnership Act, 1932 with its principal office at: P.B No. 45, Vellapally Lane, Kottayam, Kerala – 686 001.
- b. The role of each Resolution Applicant will be strictly as follows –
  - Royal Heights Projects Private Limited to monitor and implement the Plan and its key aspects including lesioning with Govt. departments and agencies, consultants, Home Buyers and their associations,

Monitoring Committee, Construction Committee, arrangement of finance, marketing and sale of the Project etc and will carry out other incidental activities.

- Role of Antony Thomas Contracting Private Limited and Vellapally Brothers shall be strictly limited to the construction of Projects, as assigned by Lead Member from time to time to implement this Plan.
- c. The Resolution Applicant is a consortium of 3 (three) parties, who are engaged in the business of infrastructure construction and real estate development projects. The second and the third consortium members possess decades of experience in providing real estate development services with its own and leased properties and therefore will be bringing in their technical expertise for the implementation of the Plan as the Corporate Debtor is functioning in the similar Industry. The Lead Member will provide consultancy and monitoring services which are required in relation to effective implementation of the Plan.
- d. **Formation of New Board:** Corporate Debtor shall be managed under the leadership and guidance of Resolution Applicant. Immediately after the Effective Date, all the existing Board of Directors shall cease to have effect and new board to be constituted having members as nominated by the Resolution Applicant in its sole and absolute discretion.
- e. **Cancellation of Existing Shareholding and Issue of fresh Equity Shares:** Immediately after Effective Date, all the existing shares of Corporate Debtor shall stand cancelled without any payment to existing shareholders. Corporate Debtor shall issue to the Resolution Applicant such number of equity shares as may be suitable on the basis of capital structure requirement of the Corporate Debtor. In terms of the circular (ref IBC/01/2017)

dated 25<sup>th</sup> October, 2017, issued by the Ministry of Corporate Affairs, India, approval of the erstwhile shareholders of the Corporate Debtor to the transaction contemplated under the instant Resolution Plan, including the transfer/extinguishment of the entire existing share capital, shall deemed to have been given without any further act and deed immediately upon sanction of the Resolution Plan by the Adjudicating Authority.

f. The appointment of Chief Executive Officer, Chief Operating Officer and Chief Financial Officer and Other Key personnel shall be decided at the appropriate time. The Resolution Applicant reserves the right to replace the key management personnel of the Company with the appropriate persons of its choice.

g. **Monitoring and Implementation of Resolution Plan:**

i. Management and Control of the Business of the Corporate Debtor from NCLT Approval Date till the implementation of the plan

ii. On the NCLT Approval Date, the Resolution Applicant hereby requests Mr. Raju Palanilkkunnathil Kesavan, who was acting as RP and, therefore, experienced in managing the affairs during the CIRP Process, to act as a monitoring agent ("Monitoring Agent"). In the event, Mr. Raju Palanilkkunnathil Kesavan refuses to or is unable to continue post-approval of this Plan by the NCLT, or if the Resolution Applicant seeks for a change, at its sole discretion, the Monitoring Committee shall appoint an independent person to act as the Monitoring Agent, and such Person shall discharge all functions of the Monitoring Agent as envisaged under this Plan.

iii. During the Monitoring Period, the Monitoring Agent acting

on the sole instructions of the Monitoring Committee, shall perform duties inter alia similar to that of a resolution professional under the CIRP and shall have powers similar to that of a resolution professional under the CIRP.

- iv. During the Monitoring Period, a monitoring committee shall be constituted ("Monitoring Committee") which during the period between the NCLT Approval Date till such date as deemed fit by the Lead Member, shall comprise of 1 (one) representative of the Financial Creditors, 1 (one) representative of the Resolution Applicant and the Monitoring Agent. During the Monitoring Period, the Resolution Applicant shall have also had the right to appoint observers on the Monitoring Committee who will be entitled to receive all notices, agendas, explanatory statements, minutes of meetings sent to the members of the Monitoring Committee and participate in all meetings of the Monitoring Committee but not vote in any such meetings.
- v. The Lead Member will oversee and monitor the implementation of the Plan. The Lead Member shall also be entitled to represent the other two members of the consortium and take necessary decisions for the implementation of the Plan.
- h. **NCLT Approval Date:** means the date on which a certified copy of the order approving this Plan is received by the Resolution Applicant from the Resolution Professional after the NCLT approves this Resolution Plan in accordance with section 31 of the Code.
- i. **Record Date:** Shall mean 45 Business Days from the NCLT Approval Date, provided no appeal is pending before any forum/court against the approval of Plan, under Applicable

Laws as on date.

- j. The Resolution Plan proposes a total Consideration of **Rs. 18,811.54/- Lakhs (Rupees Eighteen Thousand Eight Hundred Eleven and Fifty Four Thousand only)** for the settlement of claims by the Resolution Applicant.

4. **The details of the proposed payments are as follows:**

**A) Corporate Insolvency Resolution Process Costs**

- i. Corporate Insolvency Resolution Process costs incurred will be paid in full which is currently estimated at Rs. 70,00,000/- (Rupees Seventy Lakhs only) which will change according to the actuals.

**B) Payment to Secured Financial Creditors**

- i. The Resolution Applicant propose to pay Rs. 10 Crores (Rupees Ten Crores only) to the Secured Financial Creditors.
- ii. Out of the said payment Rs. 2 Crores (Rupees Two Crores only) will be paid by the Lead Member to the Secured Financial Creditors on the Record date which shall be distributed among them proportionate to the total allocation. The balance amount of Rs 8 Crores (Rupees Eight Crores only) will be paid from the available Cashflow from the Project during a period of 3 (three) years.
- iii. The total admitted claims of the secured financial creditors are as under:

<b>Name of Financial Creditor</b>	<b>Amount of Claim</b>	<b>Amount proposed in the Resolution Plan</b>
<b>IFCI Limited</b>	79,51,94,499	7,92,60,000
<b>State Bank of India</b>	14,76,38,978	1,47,15,000
<b>KFC</b>	2,29,09,595	See Note 1 below

<b>Tata Capital Housing Finance Limited</b>	5,54,34,266	55,25,000
<b>Indian Overseas Bank</b>	4,07,96,442	5,00,000 (Note. 2)

*Note 1: It is informed that the dues to Kerala Financial Corporation has been settled through an OTS by payment by the related party of the corporate debtor. KFC has modified their claim by retaining an amount of Rs. 8,05,021/- being outstanding revenue recovery expenses. Since the entire financial debt has been satisfied the resolution applicant is not providing any amount to KFC in this resolution plan.*

*Note. 2: Indian Overseas Bank, M G Road Trivandrum Branch, has advanced a term loan of Rs. 20 Crores to the corporate debtor on 20/01/2013. The account became NPA w.e.f 30/06/2016. The balance as on date of NPA was Rs.11,26,81,561/- including unrealized interest of Rs. 51,59,275/-. Till the date of NPA, the bank has debited Rs. 6,99,37,169/- in the loan account towards interest and other charges. After the NPA date, the bank has collected Rs. 11,95,57,850/- on various dates up to 31/01/2019. Thus, the bank has already collected the entire balance outstanding as on the NPA date and in addition a sum of Rs. 1,20,35,564/- as interest, penal interest and other charges. The present claim made by the Indian Overseas Bank constitute 16.5% charge as interest on interest on monthly compounded basis and there is no principal outstanding. Hence an amount of Rs.5,00,000/- is provided to Indian Overseas Bank in this resolution plan.*

*Note.3: The balance amount of Rs.9,95,00,000/- provided as per the resolution plan is allocated to other secured financial creditors in proportion to their admitted claim which is 9.967% of the admitted claim.*

- iv. Any proceeds accruing to the Corporate Debtor in terms of any order of the Adjudicating Authority on the applications for the avoidance of transactions under Sections 43, 45, 50 and 66 (as applicable) of the Code filed / to be filed by the Resolution Professional/lenders before the Adjudicating Authority shall be in favour of the secured financial creditors on proportional basis up to the maximum claim as on insolvency commencement date and thereafter to other creditors as under section 53 (1) of the IBC. The applicant hereby assigns such claims to the secured financial creditors for further steps for recovery.

### **C) Payment to other Financial Creditors**

In respect of 7 ongoing projects, the home buyers shall not be eligible for any payment except any refunds mentioned in this resolution plan. Resolution applicant will bring in enough funds to complete the projects as detailed in Project Construction Scheme. The total cost of construction for the seven projects are estimated at Rs. 159 Crores (Rupees One Hundred Fifty Nine Crores only). However, after considering the expected receipts from home Buyers and periodical receipt on sale of unsold flats, total working capital to be induced by the resolution applicant is worked out at Rs. 60 Crores (Rupees Sixty Crores only).

**D) Payment to Workmen and Employees**

As against aggregate admitted claim of Employees of Rs. 38.05/- Lakhs (Rupees Thirty Eight Lakhs Five Thousand only), the Resolution Applicant shall pay Rs. 22.83/- Lakhs (Rupees Twenty Two Lakhs and Eighty Three Thousand only).

**E) Payment to Operational Creditors**

- i. Statutory Dues: Towards the claim admitted Rs. 20,914.68 /- Lakhs (Rupees Twenty Thousand Nine Hundred and Fourteen Lakhs and Sixty Eight Thousand only in respect of the statutory dues (Income Tax, TDS, GST, Service Tax and ESI) the resolution applicant provides for payment of 0.05% of the total amount i.e., Rs. 10,45,000/- (Rupees Ten Lakhs Fourty Five Thousand Only) to be distributed proportionately.
- ii. Employees Provident Fund: EPFO Trivandrum, has intimated the RP that there is a default of Rs. 1,12,21,987/- (Rupees One Crore Twelve Lakhs Twenty One Thousand Nine Hundred and Eighty Seven only) on the part of the Corporate Debtor. However, they have not filed any claim in the prescribed format. Based on the judicial pronouncements by NCLAT and

Hon'ble Supreme Court, the resolution applicant will analyse the claim in detail and make the payment towards EPF, if payable as per law.

- iii. Operational Creditors (Suppliers and Contractors): The claim admitted by the Applicant is of Rs. 652.52 /- Lakhs (Rupees Six Hundred Fifty Two Lakhs and Fifty Two Thousand only). The Resolution Applicant provide for payment of amount ie. Rs. 32,625/- (Rupees Thirty Two Thousand Six Hundred and Twenty Five only) towards the Operational Creditors (Suppliers and Contractors) claim under this class.
- iv. Operational Creditors (Others): The claim admitted by the Applicant is of Rs. 1,968.31/ Lakhs (Rupees One Thousand Nine Hundred and Sixty Eight Lakhs and Thirty One Thousand only). The Resolution Applicant provide NIL amount towards the Operational Creditors (Others) claim under this class.

5. The treatment of various stakeholders of the Corporate Debtor is represented below in tabular form:

*(Rs. in Lakhs)*

<b>Sr. No.</b>	<b>Category of Stakeholder</b>	<b>Sub-Category of Stakeholder</b>	<b>Amount Claimed</b>	<b>Amount Admitted</b>	<b>Amount Provided under the Plan</b>
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-

		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	9,990.73 487.70	9,990.73 407.96	995.00 5.00
		<b>Total [(a) + (b)]</b>	<b>10,478.43</b>	<b>10,398.69</b>	<b>1,000.00</b>
2	Unsecured Financial Creditors (Home buyer)	(a) Creditors not having a right to vote under sub-section (2) of section 21 (Home buyer)	62.08	62.08	17,777.93
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan (Home buyers)	0 34,106.83	0 28,304.53	
		<b>Total [(a) + (b)]</b>	<b>34,168.91</b>	<b>28,366.61</b>	<b>17,777.93</b>

3	Operational Creditors	(a) Related Party of Corporate Debtor	0	0	0
		(b) Other than (a) above:			
		(i) Government	30,796.51	20,914.68	10.45
		(ii) Workmen and Employees	40.66	38.05	22.83
	(iii) Suppliers and Contractors	1,391.54	652.52	0.33	
	<b>Total [(a) + (b)]</b>	<b>32,228.72</b>	<b>21,605.25</b>	<b>33.61</b>	
4	Other debts and dues		3,019.06	1,968.31	0
<b>Grand Total</b>			<b>79,895.12</b>	<b>62,338.86</b>	<b>18,811.54</b>

#### 6. BUSINESS REVIVAL PLAN:

- a. The Resolution Applicant has made the revival plan (as contemplated herein) relying on the limited amount of information made available in the Virtual Data Room by the Corporate Debtor, which were made available by the Resolution Professional.
- b. Any assumptions made in the projections stated herein (if any) are basis the information provided in the Information Memorandum and other reasonable factors applicable to the sector in which the Corporate Debtor operates.
- c. The Resolution Applicant proposes to complete the construction of the Projects of the Corporate Debtor by infusing necessary resources by respective consortium members for the completion as per the Project Construction Scheme. The process of completion and post-completion terms of the Projects shall be in

accordance with the Project Construction Scheme the Resolution Applicant will bring the in the industrial expertise of ATCPL and the VB of the consortium to implement the Project Construction Scheme and the Lead Member will oversee and monitor the same.

- d. Strict cost control measures would be implemented by the Resolution Applicant post takeover of the Corporate Debtor which would result in operational efficiencies and positive cash flows resulting in sustainable operating mechanism of the Corporate Debtor.
- e. Considering the nature of the operations of Corporate Debtor, the Resolution Applicant has prepared the Scheme to adequately address different kinds of Claim under CIRP. The Lead Member would infuse adequate funds to meet the working capital requirement for the operations of the Corporate Debtor post take over and to the extent of effective implementation of the Scheme.

7. The indicative Repayment Tenure towards various creditors in the events for implementation of Resolution plan from approval date is as follows:-

<b>Sr. No.</b>	<b>Activity</b>	<b>Indicative Timeline</b>	<b>Responsibility</b>
<b>Stage I- Approval Process of Resolution Plan</b>			
1.	Approval of Plan by CoC including distribution entitlements to Creditors	A	CoC / Resolution Professional
2.	Application to NCLT for approval of Resolution Plan	B	Resolution Professional

<b>Sr. No.</b>	<b>Activity</b>	<b>Indicative Timeline</b>	<b>Responsibility</b>
3.	Approval by NCLT of the Resolution Plan and receipt of the certified copy of the order by the Resolution Applicant	C	Resolution Professional
4.	Acceptance of Letter of Intent	As per Process Memorandum	Resolution Applicant
5.	Submission of Performance Guarantee	As per Process Memorandum	Resolution Applicant
6.	Notice on the Corporate Debtor/ Subsidiary's website	Within C + 5 Business Days	Resolution Professional
7.	Intimation to the Governmental Authorities, if required in terms of the Applicable Law		Resolution Professional
8.	Intimation to all creditors, existing shareholders and any other stakeholder of the Corporate Debtor/ Subsidiary (if any as required under the Code)		Resolution Professional
<b>Stage II- Implementation of Plan</b>			
1.	Appointment of the Monitoring Agent under the sole guidance and instruction of the Monitoring Committee until the Effective Date	On and from C	Monitoring Committee/ Resolution Applicant

<b>Sr. No.</b>	<b>Activity</b>	<b>Indicative Timeline</b>	<b>Responsibility</b>
2.	Execution of material agreements such as escrow agreement, agreement with monitoring agent, giving effect to the Plan	On and from C	CoC/ Monitoring Committee / Resolution Applicant
3.	Payment of upfront to escrow account towards CIRP costs and secured financial creditors	On or before the Record	Monitoring Agent/Resolution Applicant
4.	Appoint of directors nominated by the Resolution Applicant in the Corporate Debtor	Record Date	Professional/Minoring Agent/ Monitoring Committee / Resolution Applicant
5.	Execution of material agreements/deeds with homebuyers and JV landowners	Within 90 days from the record date	Professional/Minoring Agent/ Monitoring Committee / Resolution Applicant/Homebuyers/JV landowners
6.	Commencement of construction of the projects	On or before 90 days from record date or otherwise mentioned this plan	Minoring Agent/ Monitoring Committee / Resolution Applicant/Construction committee
7.	Payment to escrow account towards the Employers and workmen due	Within 60 days from the record date	Monitoring Agent/Resolution Applicant
8.	Payment to escrow account towards balance to secured financial creditors and refund	Within 36 months from the record date	Monitoring Agent/Resolution Applicant

<b>Sr. No.</b>	<b>Activity</b>	<b>Indicative Timeline</b>	<b>Responsibility</b>
	to home buyers of other projects		

8. The Resolution Applicant is eligible to submit resolution plan. The successful Resolution Applicant has given an Affidavit satisfying the eligibility criteria as per the provisions under Section 29A of the Insolvency & Bankruptcy Code, 2016.

**9. OBSERVATIONS AND FINDINGS:**

- i. As per IBC Code 30(2)(a) – A Resolution Plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.
- ii. As per Section 30(2)(b), the Respondent has agreed to pay operational creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.
- iii. The Resolution Applicant has agreed to meet the cost of project from existing resources including infusion of equity/debt through the parent company, from sale of unsold inventories and if required from raising finance through external sources.
- iv. The Resolution Applicant has also agreed that dissenting financial creditors shall be paid in priority and not less than the value they would have been paid in the event of liquidation of the Corporate Debtor. The Respondent has proposed to pay

liquidation value to unsecured financial creditors who dissent from the plan.

- v. As per Section 30 (2)(c), provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan.
- vi. Under Section 30 (2) (d) & Regulation 38(2)(c) provides for a term of the plan, implementation schedule and supervision of the Resolution Plan.
- vii. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor.
- viii. As per Section 30(2), the Resolution Plan does not contravene any of the provisions of the law for the time being in force.
- ix. As per Section 30(2)(f) the Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force.
- x. As per IBBI Guidelines 38(1)(b) - The amount payable under a Resolution Plan -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.
- xi. The resolution applicant or any of its related parties has not 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.
- xii. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
  - a. As per Regulation 38(1)(a) - The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.

- b. As per Regulation 38 (1)(b) - The amount payable under a resolution plan to the Financial Creditors, who have right to vote under sub-section (2) of section 21 and did not vote in favor of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- c. As per Regulation 38(1A) - The interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, keeping in view the objectives of the Code.
- d. That the Resolution Applicant or any of its related parties has never 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. This is in compliance of Regulation 38(1B) of the Regulations.
- e. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2) (c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
- f. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company.
- g. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
- h. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
- i. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from

submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.

- j. Provides for the management and control of the business of the Corporate Debtor during its term.
- k. All the above factors demonstrate that the plan addresses the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.

10. The Resolution Plan has been approved in the 9<sup>th</sup> COC meeting held on 18.04.2022 with 74.19% voting in accordance with the provisions of the Code.

11. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

12. The Hon'ble Apex Court at para 42 in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online**, clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved.

*“Para 42- Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (supra).”*

13. In view of the above ruling of the Apex Court, the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent provided under section 31 of Code and of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code, is no more an untouched-matter.
14. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. Resolution Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution

Professional and CoC. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

**ORDER**

- i. The Interlocutory Application No. 1841 of 2022 is allowed. The Resolution Plan submitted by **M/s Royal Heights Projects Private Limited (Lead Member), M/s Antony Contracting Private Limited and M/s Vellapally Brothers (Consortium Applicants)**, is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force is due.
- ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. It is seen that the Resolution Applicant sought several dispensations, concessions and waivers. Any waiver sought in the Resolution plan shall be subject to approval by the Authority concerned in the light of the Judgment of Supreme Court in **Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited**, the relevant para's of which are extracted herein below:

*“on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any*

*proceedings in, respect to a claim, which is not part of the resolution plan.”*

*“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;*

*(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;*

*(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”*

- iii. We shall clarify here that any proceeds accruing to the Corporate Debtor in terms of any order of the Adjudicating Authority on the applications for the avoidance of transactions

under Sections 43, 45, 50 and 66 (as applicable) of the Code filed / to be filed by the Resolution Professional/lenders before the Adjudicating Authority shall be in favour of the secured financial creditors on proportional basis up to the maximum claim as on insolvency commencement date and thereafter to other creditors as under section 53 (1) of the IBC.

- iv. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- v. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- vi. The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- vii. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- viii. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.

- ix. The Interlocutory Application No. 1841 of 2022 is accordingly allowed and disposed of.

**Sd/-**

**MADHU SINHA  
MEMBER (TECHNICAL)**

**Sd/-**

**H. V. SUBBA RAO  
MEMBER (JUDICIAL)**