

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

I.A.No.474/2020 in  
C.P. (IB)No.172/BB/2019  
U/s. 35 (1) (n) and 60 (5) of the I & B Code, 2016  
R/w Regulation 33 (2) (A) of the IBBI  
(Liquidation process) Regulation 2016,  
and Rule 11 of NCLT Rules, 2016

**Between:**

Mr. Kondishetty Kumar Dushyantha  
Liquidator of Unishire Housing LLP,  
No.404/2, 7<sup>th</sup> Main,  
9<sup>th</sup> Cross, 2<sup>nd</sup> Block, Jayanagar,  
**Bengaluru - 560 011**

- Applicant

**And**

1. Altico Capital India Limited  
21, 5 North Avenue, Maker Maxity,  
Bandra Kurla Complex  
**Bandra East, Mumbai - 400051.**

-  
... Financial Creditor/  
Respondent No.1

2. Kailash Chand  
495, Model Colony,  
Yeshwanthpur,  
**Bengaluru -560022.**

... Landlord /Respondent No.2

3. Casa Grande Garden City Builders Private Limited  
Salma Bizhouse, No.34/1,  
Third Floor, T-1&T-2 Meanee Avenue Road,  
**Ulsoor Lake, Bengaluru 560042.** ... Purchasing Party/Respondent

**Date of Order: 8<sup>th</sup> December, 2020**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

**Parties/Counsels Present (through Video Conference):**

For the Applicant : Mr. K.Dushyantha Kumar  
For the R1 : Shri Pradeep Nayak  
For the R2 : Mr. Girish Kumar



**ORDER**

**Per:**Rajeswara Rao Vittanala, Member (J)

1. I.A.No.474/2020 in C.P.(IB)No.172/BB/2019 is filed by Mr. K. Dushyanth Kumar, the Liquidator of Unishire Housing LLP (hereinafter referred as Applicant), U/s. 35 (1) (n) and 60(5) of I & B Code, 2016 r/w Regulation 33 (2) (A) of IBBI (Liquidation process) Regulation 2016 and Rule 11 of NCLT Rules, 2016, by inter-alia seeking to approve and allow the proposed Cancellation of the Joint Developmental Agreement bearing Document no. 3276 of 2014-15 entered into between the Landlord and the Corporate Debtor on 15th October, 2014 along with the and General Power of Attorney dated 15<sup>th</sup> October 2014 in favour of UHLLP in terms of the JDA, registered as document no. HLS-4-00333-2014-15, Book IV executed; to permit the Liquidator for the purpose of cancellation of/ transfer of the certificate bearing number PRM/KA/RERA/1251/446/PR/180516/001684 ('RERA Certificate') issued by the Karnataka Real Estate Regulatory Authority ('K-RERA') for the Elan Project situated at Rachenahalli, Bengaluru; to permit the cancellation/nullifying of all the Sale Agreements made by the Corporate Debtor for sale of Units/flats in the Elan Project with immediate effect etc.
2. Brief facts of the case, which are relevant to the issue in question, are as follows:
  - (1) Initially, the main Petition bearing C.P. (IB)No.172/BB/2019 filed by M/s. VSL Securities Private Limited (Petitioner) against M/s. Unishire Housing LLP (Corporate Debtor), U/s.7 of IBC, 2016 R/w Rule 4 of I&B (AAA) Rules 2016, was admitted by the Adjudicating Authority, vide its Order dated 31.07.2019, by initiating CIRP in respect of the Corporate Debtor, appointing the IRP, imposing moratorium etc. Subsequently, the Corporate Debtor was placed, under



Liquidation vide order dated 08.01.2020. Pursuant to the said Liquidation Order ,the Liquidator made Public Announcement in Form-B on 01.02.2020 in 'the Hindu' (English Newspaper) and 'Udayavani' (Kannada Newspaper) - and also sent intimations to the Registrar of Companies (ROC), Karnataka, IBBI, ICSI IPA and Statutory Authorities with which the Corporate Debtor is registered. As per Regulation 13, the Applicant submitted preliminary report on 13.04.2020 before the Adjudicating Authority and also progress report as under:

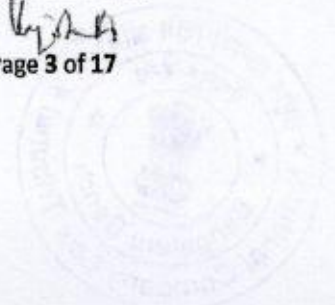
1<sup>st</sup> progress report - Jan 2020 to March 2020

2<sup>nd</sup> progress report -April 2020 to June 2020

3<sup>rd</sup> progress report - July 2020 to September2020

- (2) The Applicant obtained a Forensic Audit Report on 25<sup>th</sup> June 2020 from Ernst & Young and filed an Application on u/s 49, 50, 66 and 60(5)(a) 3<sup>rd</sup> September 2020 for putting forth the Fraudulent and wrongful transactions before this Adjudicating Authority seeking directions to declare transactions elucidated as fraudulent and wrongful and to reimburse the same. Further, the Applicant identified and grouped the assets of the Corporate Debtor in accordance with the provisions of Regulation 35 and 36(3) of IBBI (Liquidation Process) Regulations, 2016. The group of assets and the current status of the same as follows (including the details of all the projects):

Sl. No.	Project	Location	Nature
1	Wynn Towers Project (Gottigere)	Gottigere Village,Uttarahalli Hobli, Bangalore, South Taluk	Owned Property mortgaged to Altico Capital India Ltd. Title is also under Dispute
2	Elan Project	Rachanahalli Village,K R Puram Hobli, Bangalore East Taluk	60%Developmental Rights of Super Built up area
3	Signet Project (RT Nagar)	2nd Block RT Nagar, Bangalore	62% Developmental



			Rights of Super Built up area
4	Xelix Project (Hennur Main Road)	Geddalahalli Village, K.R.Puram Hobli, Bangalore East Taluk	58% Developmental Rights of Super Built up area

(3) All the Joint Development Agreements entered by the Corporate Debtor are under dispute and the sanctity of the said Joint Development Agreements is questionable in nature. Further, the projects stated are all at ground level and there is no progress whatsoever with respect to the aforesaid projects. Further as per Regulation 35 of IBBI (Liquidation process) Regulation, 2016 the Applicant appointed the following Registered Valuers:

1	L&B	IBBI/RV/08/2 019/12346	Praveen Subramanya	G-1302, Rosebay Block, Magadi Road, ETA the Gardens, Bangalore, Karnataka - 560023
2	L&B	IBBI/RV/04/2 018/10069	S J Ranganatha	12-7 Abhivruddhi 1 <sup>st</sup> Cross Nataraj Layout Kotthanur dinne main road Jp Nagar 8 <sup>th</sup> Phase, Bangalore, Karnataka - 560076

(4) The Applicant received the valuation report from the above registered valuers and the details as under:

Sl. No.	Name of the Registered Valuer	Liquidation Value
1	Mr. Praveen Subramanya	Rs. 3,23,00,000/-
2	Mr. S J Ranganath	Rs.3,17,50,000/-
	<b>Average Value</b>	Rs. 3,20,25,000/-

(5) It is stated that, the Statutory Auditors certified that an amount of Rs. 6,31,53,644/- has been spent for the Project Elan as per the Books of Account. The details relating to the project Elan is given as under:

*Vijendra*



- a. Subject Property comprised in Sy. No. 85/1, 85/2, 85/3B Rachenahalli village, K R Puram Hobli, Bangalore East is registered under RERA Karnataka for a residential apartment project and is known as Unishire Elan. As per the government records, subdivision of the survey numbers has not been done. Property tax paid receipt for property address Sy Nos. 85/1, 85/2, 85/3B and 85/4, Rachenahalli village, K R Puram, Bangalore for the year. The RERA No. is PRM/ KA/ RERA/ 1251/ 446/ PR/ 180516/ 001684. Project details are as displayed in RERA Karnataka
- b. Joint Development Agreement executed between Mr. Kailash Chand (owner) and M/s. Unishire Housing LLP bearing Document no. 3276 of 2014-15 entered into between the Landlord and the Corporate Debtor on 15th October, 2014 and the General Power of Attorney dated 15 October 2014 in favour of UHLLP in terms of the JDA, registered as document no. HLS-4-00333-2014-15. Construction of the project had commenced in 2017. Some part of the foundation in the project was constructed before the progress at site was stalled.
- c. The project was proposed for 230 residential units. Around 64 units have been sold by the developer and part payment has been collected by Unishire Housing LLP. Letter of allotments were issued for the units sold in the project Sale agreement executed between financial creditor, landlord (represented by PoA holder) and the developer.
- (6) The Sanctions and Approvals obtained for Project Elan of the Corporate Debtor are as follows:
- a. The sanctioned plan issued by BBMP of the project with approval number 0255/2015-16, having validity from



08-12/2016 to 07/12/2018. NOC from Airport Authority of India dated 09/01/2015. NOC from Bharat Sanchar Nigam Limited dated 27/11/2014, from Bangalore Water Supply and Sewerage Board dated 06/10/2016, from Bangalore Electricity Supply Company Limited dated 09-01-2015, from State Level Environment Impact Assessment Authority - Karnataka dated 02-05-2015, from Karnataka State Pollution Control Board dated 10 February 2015 and NOC from Office of the Director General of Police dated 08-10-2015

(7) The Details of claims received from the Financial Creditors:

N O	NAME OF THE CLAIMANT	ADDRESS	TOTAL AMOUNT CLAIMED	TOTAL AMOUNT ADMITTED	DETAILS OF SECURITY	REMARKS
1	Altico Capital India Ltd.	21, 2nd Floor, 5 North Avenue, Maker Amity, Bandra Kurla Complex, Bandra East, Mumbai - 400051	1,83,17,05,516	1,83,17,05,516	Secured Financial Creditor - 100% in Gottigere Property and Security over the Developmental Rights of Elan Property	Nil
2	VSL Securities Private Limited	No.66 Nav Niketan Ground Floor KR Road Basavanagudi Bangalore 560 004	23,17,04,275	23,16,96,054	Unsecured Financial Creditors	Interest calculated at 15% as per MOA
3	VSL Realities Private Limited	No.66 Nav Niketan Ground Floor KR Road Basavanagudi Bangalore 560 004	16,15,44,172	16,15,25,927	Unsecured Financial Creditors	Admitted as per books of corporate debtor
4	Unishire Builders Private Limited	No.42, Castle Street, Ashok Nagar Bangalore, Karnataka	1,88,55,616	1,88,55,616	Unsecured Financial Creditors	Admitted as per books of corporate debtor
5	Unishire BUILTECH LLP	No.42, Castle Street, Ashok Nagar Bangalore, Karnataka	19,44,02,528	19,44,02,528	Unsecured Financial Creditors	Admitted as per books of corporate debtor
6	Unishire Developers Private Limited	No.42, Castle Street, Ashok Nagar Bangalore, Karnataka	50,94,008	50,94,008	Unsecured Financial Creditors	Admitted as per books of corporate debtor
7	Unishire Urbanscape Private Limited	No.42, Castle Street, Ashok Nagar Bangalore, Karnataka	4,82,037	4,82,037	Unsecured Financial Creditors	Admitted as per books of corporate debtor



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8	Unishire Properties LLP	No.42, Castle Street, Ashok Nagar Bangalore, Karnataka	1,10,76,317	1,10,76,317	Unsecured Financial Creditors	Admitted as per books of corporate debtor
9	Unishire Constructi on LLP	No.42, Castle Street, Ashok Nagar Bangalore, Karnataka	45,32,352	45,32,352	Unsecured Financial Creditors	Admitted as per books of corporate debtor
10	Unishire Projects Private Limited	No.42, Castle Street, Ashok Nagar Bangalore, Karnataka	1,67,570	1,67,570	Unsecured Financial Creditors	Admitted as per books of corporate debtor
11	Unishire Homes LLP	No.42, Castle Street, Ashok Nagar Bangalore, Karnataka	13,90,58,539	13,90,58,539	Unsecured Financial Creditors	Admitted as per books of corporate debtor
12	Unishire Promoters Private Limited	No.42, Castle Street, Ashok Nagar Bangalore, Karnataka	4,22,50,559	4,22,50,559	Unsecured Financial Creditors	Admitted as per books of corporate debtor
13	Unishire Regency Park LLP	No.42, Castle Street, Ashok Nagar Bangalore, Karnataka	2,81,94,045	2,81,94,045	Unsecured Financial Creditors	Admitted as per books of corporate debtor
14	IIFL Finance Limited	IIFL House, Sun Infotech Park, Road No. 16V, Plot No. B-23, Thane Industrial Area, Wagle Estate Thane - 400 604	17,80,26,032	17,80,26,032	Unsecured Financial Creditor	Nil

(8) The Applicant received a claim from Altico India Capital Limited, Secured Financial Creditor dated 7<sup>th</sup> February 2020 in Form D and Altico not relinquished its security interest on the following assets of the Corporate Debtor:

- a. "WYNN Towers Project" Property bearing Sy. No. 11/2, 11/4, 11/5, 11/6 situated at Gottigere Village, Uttarahalli Hobli, Bangalore South Taluk, and Karnataka- 560083 with respect to which the Financial Creditor is entitled for 100% share in the said property. The Corporate Debtor has purchased the property vide Registered Absolute Sale Deed dated 20.04.2015. The property is presently under dispute and is now allegedly under the possession of Mr. J.T. Satish Chandra, who was also one of the owners of the property, who bequeathed the same to the Corporate Debtor. The purchase consideration for the property was



Rs.22,00,00,000/- (Rupees Twenty-Two Crore Only). However, the whole amount of consideration was not paid to the Landlords from whom the land was intended to be purchased. Balance consideration of Rs.18,99,00,000/- (Rupees Eighteen Crore Ninety-Nine Lakhs only) as per the books of accounts was not paid thereof.

- b. "ELAN Project" property bearing Sy. No. 85/1, 85/2, 85/3B, 85/4 situated at Rachenahalli Village, Krishnarajapuram Hobli, Bangalore K rnataka 560064, with respect to which the Secured Financial Creditor has security over 60% of the Developmental Rights. (Corporate Debtor has only developmental rights in the said property, as per the Registered Joint Development Agreement dated 15.10.2014.)
- (9) The Applicant admitted only such claims of homebuyers, who paid advances for the purchase of flats and were allotted. The admission preceded a process of scrutiny of authentic and valid letters of allotment / memorandum with identified units/flats of sale in possession with the stakeholders submitted as proof. Further, the Applicant observed that some of the claimants lent money, which were shown in the form of advances and were not allotted any flats/units in the book's accounts of the Corporate Debtor. Therefore, the Applicant treated such transactions as financial debt and categorized as financial Creditors. Further, some of the stakeholders also filed complaints before RERA.
- (10) Further, Mr. Kailash Chand, Landlord of Project Elan/Respondent had approached Altico for settlement and release of encumbrance free property for an amount of Rs.7,00,00,000/- (Rupees Seven Crore Only). After negotiation and understanding, an expression of interest for the same was received from the Landlord to Altico which was also noted



by the Applicant pursuant to Regulation 37(1) of the IBBI (Liquidation Process) Regulations, 2016. Upon noting of expression of interest executed between Altico and Landlord of Project Elan, in order to discover the price for the asset of the Corporate Debtor, the Applicant made a public announcement inviting bids/ applications for sale of all the assets of the Corporate Debtor on 2<sup>nd</sup> October 2020 in the Hindu – English and Udayavani – Kannada in Bengaluru as follows:

S.No.	Description of property/assets	Number of Homebuyers who have submitted claim under Liquidation	Reserve Price
1.	60% of the Developmental Rights in 85/1,85/2,85/3B and 85/4 situated at Rachenahalli Village, K.R. Puram Hobli, Bangalore, East Taluk admeasuring approximately 3.0 acres.	33	7,00,00,000

The last date for submission of Expression of Interest was 12<sup>th</sup> October 2020. However, the Applicant had not received any bids/ applications for purchase of the assets including Project Elan.

- (11) Further, in agreement with settlement proposal by the landlord an Escrow Agreement was entered between Bank of Maharashtra as an Escrow Agent on 13<sup>th</sup> October 2020 (Escrow Account No. 60369801222 opened with Bank of Maharashtra, situated at Gandhinagar Bengaluru) and a Memorandum of Understanding was executed on 2<sup>nd</sup> November 2020 between Altico and the Landlord and was also noted by the Applicant Further, the Landlord deposited an amount of Rs.1,40,00,000/- (One Crore Forty Lakhs Only) as per the terms of the Memorandum of Understanding. Further the Landlord identified a buyer viz., Casa Grande Garden City



Builders Private Limited having its registered office at Salma Biz house, No.34/1, Third Floor, T-1&T-2 Meanee Avenue Road, Near Ulsoor Lake, Bengaluru-560042 for purchasing the land of the project Elan and entered Escrow Agreement and Memorandum of Understanding as Confirming Party. The Landlord deposited an amount of Rs.1,40,00,000/- (Rupees One Crore Forty-Lakhs Only) i.e. 20% of the settlement offer. Upon execution of Memorandum of Understanding, the Applicant requested Altico to consider other stakeholders' interest of the Corporate Debtor and to settle their claims, therefore, Altico had relinquish its security interest vide letter dated 3<sup>rd</sup> November 2020.

(12) After intimation of relinquishment of security interest by Altico, the Applicant requested Altico to consider the payment for all the stakeholders of the Corporate Debtor and provided the list of claimants vide email dated 5<sup>th</sup> November 2020. Subsequently, Altico requested the to provide stakeholders of Project Elan alone, along with the detailed break up of payment mechanism as per Section 53 of the Code for its consideration and the same was made available to the Altico. Subsequent to providing clarifications on distribution of the realization proceeds as per the provisions of section 53 of I & B Code, 2016, Altico considered the request and proposed for part payment of principle, amounting Rs.1,60,86,838/- who are categorized as Homebuyers of Project Elan against the admitted claims of Rs. 4,46,66,909.66 (Rupees Four Forty-Six Lakhs Sixty-Six Thousand Ninety Hundred Nine and Sixty-Six Paise Only) including interest (Principle amounting to Rs.3,21,73,676 and interest of Rs.1,24,93,233).

(13) The details of the proposal by the Landlord is as under:

- a. The Landlord of the property Mr. Kailash Chand vide letter dated 23<sup>rd</sup> March 2020 offered to settle all the



claims for release of his property for an amount of Rs. 4,00,00,000/- (Rupees Four Crore Only). The stakeholders expressed their dissent on the terms of the proposal. The Landlord submitted a revised proposal vide letter dated 15th April 2020 and offered Rs.4,00,00,000/--(Rupees Four Crore Only) to settle the claim of Altico Capital India Limited (Secured Financial creditor) and Rs.1,50,00,000/- (Rupees One Crore Fifty Lakh Only) to settle the balance claims under liquidation which was also not accepted.

- b. Further, an Expression of Interest dated 29th July 2020 was received from Mr. Kailash Chand, the Landlord for settlement of dues for release of encumbrance free land of Project Elan of Unishire Housing LLP for Rs.7,00,00,000/- (Rupees Seven Crore Only) (As explained above).

- (14) The brief terms of the Escrow Agreement and the Memorandum of Understanding pertaining to the Elan project Property as follows:

PARTICULARS	AMOUNT
Initial Deposit into Escrow Account	Rs.20,00,000/-
Second Deposit within 21 calendar days from initial deposit	Rs.1,20,00,000/-
Balance payment Upon NCLT Order and at least one week in advance of registration of settlement deed)	Rs. 5,60,00,000/-
TOTAL	Rs. 7,00,00,000/-

- (15) The terms of Memorandum of understanding was to release of Charge And Cancellation of the Joint Development Agreement dated 15.10.2014 by filing an application before this adjudicating authority for seeking directions as specified in clause 4.2 of the Memorandum of Understanding, undertaking by Secured Financial Creditor to withdraw the



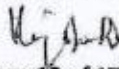
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Application filed under Section 52(5) of the IBC 2016, prior to the execution of the Settlement Deed, and upon fulfilment of all other conditions under the MOU, Execution of Settlement Deed in accordance with Clause 7 of the MOU and release title documents kept in the vault of the Escrow Account and handing over the possession to the Landowner.

- (16) The 1st Stakeholders Consultation Meeting was held on 6th October 2020 and the Applicant briefed on the liquidation process, asset realization process and sought their advice on realization of assets of the Corporate Debtor. Further, in the 2<sup>nd</sup> meeting of Stakeholders Consultation Committee held on 10<sup>th</sup> November 2020, the Applicant placed the proposal of Altico and Landlord in connection with Project and also placed the relinquishment and intimation for part payment to the stakeholders (i.e. Homebuyers of Project Elan who submitted claims in liquidation process) of the Corporate Debtor. The Applicant also conducted the Project Elan homebuyers meeting. Further, he also sent intimation to the Homebuyers of Project Elan about the filing of present Application before the Adjudicating Authority.
- (17) It is stated that in conformity with the Expression of Interest signed by the Landlord, the Secured Financial Creditor and the Liquidator, the Joint Development Agreements cease to have an effect and the asset shall be vested with the landlord only. Further, the interest of any of the Stakeholders whose claims have been duly admitted by the Applicant is in no manner adversely affected and it is ensured that the interest and rights of the Stakeholders are protected without failure. The amount of Rs. 1,60,86,838 (Rupees One Crore Sixty Lakhs Eighty-Six Thousand Eight Hundred Thirty-Eight Only) shall be paid towards the claims of stakeholders categorized as homebuyers of Project Elan.



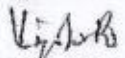
3. The Respondent No. 1/Secured Creditor has filed Reply to the instant Application on 04.12.2020 by interalia stating that the instant Application came to be filed in pursuance to the discussions held between the Applicant/Liquidator and the Respondent No.1 to 3 ,who entered into an Escrow Agreement dated 13.10.2020 and MOU dated 02.11.2020. Pursuant to the MOU dated 02.11.2020 the Respondent No.1 issued its consent to the Distribution schedule. Accordingly, the Secured Creditor/Respondent No.1 has no objection to allow the instant application.
4. Heard Shri K.Dushyanth Kumar, learned Liquidator and Shri Pradeep Nayak, Learned Counsel for the Respondent No.1 and Shri Girish Kumar, Learned Counsel for the Respondent No.2, through **Video Conference**. We have carefully perused the pleadings of the Parties and also extant provisions of the Code, and Rules made thereunder.
5. Shri K.Dushyanth Kumar, learned Liquidator, while reiterating various averments made in the Application, as briefly stated supra, has further submitted that he has followed all extant rules before filing the instant Application, and thus action taken is strictly in accordance with law. All the stake holders in the instant issue were taken into confidence and involved in it, though Home buyers claiming more amount that what they are entitled under the liquidation process. Therefore, the relief as sought for is in best interest of all concerned stake holders. Hence, he has urged the Tribunal to allow the Application as prayed for.
6. The Corporate Debtor is under Liquidation process. Therefore, the Liquidator has to make his best efforts to get reasonable price/settlement of properties of the Corporate Debtor, so as to benefit its ultimate stake holders. As stated supra, subject Property comprised in Sy. No. 85/1, 85/2, 85/3B Rachenahalli village, K R Puram Hobli, Bangalore East is registered under RERA Karnataka for a residential apartment project and is known as Unishire Elan.

  
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The project was proposed for 230 residential units and around 64 units have been sold by the Developer and part payment has been collected by Unishire Housing LLP. Letter of allotments were issued for the units sold in the project Sale agreement executed between financial creditor, landlord (represented by PoA holder) and the developer. It is relevant to point here that all the Joint Development Agreements entered into by the Corporate Debtor are under dispute and the sanctity of the said Joint Development Agreements is questionable in nature. Further, the projects stated are all at ground level and there is no progress whatsoever with respect to the subject projects. The Secured Financial Creditor has security over 60% of the Developmental Rights in respect of project in question (Corporate Debtor has only developmental rights in the said property, as per the Registered Joint Development Agreement dated 15.10.2014.)

7. The Applicant admitted only such claims of homebuyers, who paid advances for the purchase of flats and were allotted. Some of the claimants lent money, which were shown in the form of advances and were not allotted any flats/units in the book's accounts of the Corporate Debtor. The Landlord of the property Mr. Kailash Chand vide letter dated 23rd March 2020 offered to settle all the claims for release of his property for an amount of Rs. 4,00,00,000/- (Rupees Four Crore Only). The stakeholders expressed their dissent on the terms of the proposal. The Landlord submitted a revised proposal vide letter dated 15th April 2020 and offered Rs.4,00,00,000/- (Rupees Four Crore Only) to settle the claim of Altico Capital India Limited (Secured Financial creditor) and Rs.1,50,00,000/- (Rupees One Crore Fifty Lakh Only) to settle the balance claims under liquidation, which was also not accepted. It is relevant to point here that the Corporate Debtor is under liquidation as its properties are far less than its liabilities. And nobody knows how much ultimately claimants receive against their claims and it is contingent to

  
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realisation of assets of Corporate Debtor. Since, the claims of Home buyers in the instant case are restricted to Elan project in question, it would be just and proper for Home buyers to visualise with the situation rather bluntly opposing the proposal of settlement in question.

8. As stated supra, the Applicant made all efforts to get best settlement of the issue in question wherein the Financial Creditor and Home Buyers in question are involved. It is natural that Home Buyers will demand more than what they are offered in settlement. However, it is to be noticed that they cannot demand more than what they are entitled for in the ultimate distribution of liquidation assets of Corporate Debtor. After considering the nature of claims of Homebuyers in question and the offer made in the proposed settlement now, we are satisfied that they are offered reasonable settlement for the investment they have made in the project. As stated supra, in consonance with settlement proposal made by the landlord, an Escrow Agreement was entered between Bank of Maharashtra as an Escrow Agent on 13<sup>th</sup> October 2020 (Escrow Account No. 60369801222 opened with Bank of Maharashtra, situated at Gandhinagar Bengaluru) and a Memorandum of Understanding was executed on 2<sup>nd</sup> November 2020 between Altico and the Landlord. Further, the Landlord deposited an amount of Rs.1,40,00,000/- (One Crore Forty Lakhs Only) as per the terms of the Memorandum of Understanding and the Landlord identified a buyer viz., Casa Grande Garden City Builders Private Limited having its registered office at Salma Biz house, No.34/1, Third Floor, T-1&T-2 Meanee Avenue Road, Near Ulsoor Lake, Bengaluru-560042 for purchasing the land of the project Elan So the Settlement in question is viable to be implemented. Since the Project in question is distinct and separate in respect of its Claimants, the issue can be decided by the Adjudicating Authority, in the interest of its stake holders, in their best interest.



9. For the aforesaid reasons and circumstances, we are of the considered view that the proposal in question is reasonable and justifiable, and the Home Buyers in their own interest by taking into consideration of matrix of liquidation process , have to accept the offer made to them rather than demanding more. However, the Purchaser has to sympathetically consider their grievances to enhance the offer. The instant Application is filed in accordance with law, duly following principles of natural justice and thus the instant Application deserves to be disposed of with the directions as mentioned below.

10. In the result, **I.A.No.474 of 2020** in C.P.(IB)No.172/BB/2019 is hereby disposed of with following directions:

- (1) Approving the cancellation of Joint Developmental Agreement bearing Document no. 3276 of 2014-15 entered between the Landlord and the Corporate Debtor on 15th October, 2014 along with the and GPA in favour of UHLLP in terms of the JDA, registered as document no. HLS-4-00333-2014-15, Book IV executed;
- (2) The Applicant/Liquidator is permitted to transfer/cancel the certificate bearing number PRM /KA /RERA/ 1251/446/PR /180516/001684 ('RERA Certificate') issued by the Karnataka Real Estate Regulatory Authority ('K-RERA') for the Elan Project situated at Rachenahalli, Bengaluru by cancelling of all the Sale Agreements made by the Corporate Debtor for sale of Units/flats in the Elan Project;
- (3) The Liquidator and Secured Financial Creditor is permitted to release the Elan Mortgaged Properties and the Elan Hypothecated Properties in favour of the Landowner or his nominee, free of all encumbrances, including the charge over the Elan Mortgaged Properties recorded by way of Original Memorandum of entry dated 31.03.2016,



registered on 01<sup>st</sup> April 2016, Restated Memorandum of entry registered on 14.06.2016 and registered as Document No 990 of 2016-17, stored in CD No HLSD132, Original Deed of Hypothecation dated 31.03. 2016 ('Original DOH'), and Amended and Restated Deed of Hypothecation dated 14.06.2016 ('Restated DOH'), by way of a registered release deed(s).

- (4) The Liquidator is directed to settle the claims of the stakeholders, who are categorized as homebuyers & who have submitted claims under liquidation process on 10.11.2020 for Project Elan alone as agreed upon as expeditiously as possible. Further consider the grievance of Home Buyers for further enhancement of the offer made to them, sympathetically.

*3/15*

**ASHUTOSH CHANDRA  
MEMBER, TECHNICAL**



*Rajeshwari M*

**RAJESWARA RAO VITTANALA  
MEMBER, JUDICIAL**

CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL

*Rajeshwari M*  
for Deputy Registrar  
National Company Law Tribunal  
Bengaluru Bench  
*Rajeshwari M*