

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT III

24. I.A. 1159/2022
I.A. 1145/2022
IN
C.P.(IB)-104(MB)/2020

CORAM: SHRI H. V. SUBBA RAO, MEMBER (J)
SMT ANURADHA SANJAY BHATIA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **03.10.2022**

NAME OF THE PARTIES: Deccan Enterprises and Initiatives Pvt. Ltd.

V/s

HBS Seaview Pvt. Ltd

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Adv Rohit Gupta i/b Adv Devul Dighe for Resolution Professional and Adv Priyank Dada a/w Akshay Arora i/b M/s. Jayakar & Partners appearing for Respondent Nos.1,4&5 in I.A. No. 1145 of 2022 and Adv Ashish Pyasi a/w Adv Anuj Tiwari and Adv Ashwini Gawde i/b ASR & Associates appearing for Respondent No.2 in I.A. No. 1145 of 2022 are present through virtual hearing.

I.A. 1159/2022

Heard the argument in the above I.A. Order is reserved.

List I.A. 1145/2022 on **22.11.2022**.

Sd/-
ANURADHA SANJAY BHATIA
Member (Technical)
//rks//

Sd/-
H. V. SUBBA RAO
Member (Judicial)

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

**I.A. No. 1159 of 2022
IN
C.P. No. 104 of 2020**

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

Concur

In the matter of

**DECCAN ENTRPRISES AND
INITIATIVES PVT. LTD.**

... Financial Creditor

V/s.

HBS SEAVIEW PRIVATE LIMITED

... Corporate Debtor

I.A. No. 1159/2022

Mr. Manish Motilal Jaju

...Applicant/Resolution Professional

V/s.

**Fanibhushan Build Tech Pvt.
Ltd.**

...Respondent

Reserved for orders on: **19.09.2022**

Order pronounced on: **07.10.2022**

Coram:

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

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Mr. Devul Dighe, Advocate

Mr. Shyam Kapadia, Advocate for Resolution
Applicant

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

1. This is an Application filed under Section 30(6) and Section 31 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. Fanibhushan Build Tech Pvt. Ltd., which was approved by 100% 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 05.08.2021 under section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as 'the Code') (Admission Order) and Mr. Manish M. Jaju, was appointed as Interim Resolution Professional. The IRP, constituted the Committee of Creditors. The COC in its 1st meeting held on 14.09.2021 appointed (the present 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 Applicant published a public announcement in Form A in accordance with section 15 of the Code, on 14.08.2021, in English Newspaper Free Press Journal and one in Marathi Newspaper Navshakti, inviting claims from the creditors of the Corporate Debtor.

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

Summary of Claims (Amount in Rs.)			
Sr. No.	Class of Creditor	Amount Claimed	Amount Admitted
1	Financial Creditors		
A	Home Buyers (class of Creditors)	93,61,63,004	73,46,70,225
B	Unsecured Financial Creditors (Other than Financial Creditors belonging to any Class of Creditors)	45,69,23,286	36,77,11,074
2	Operational Creditors (other than workmen, employees and Govt dues)	22,02,01,382	NIL
3	Employees and workmen	35,84,180	Nil
4	Other Secured Creditors (other than financial and operational creditor)	3,95,69,19,913	3,95,40,53,913
	Total	5,57,37,91,765	5,05,64,35,212

- d. Thereafter, RP upon verification of the same, constituted the CoC. Pursuant to the public announcement RP received 6 (six) Expression of Interests from the Prospective Resolution Applicants (PRA's).

- e. The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.

3. The CoC decided to appoint a Valuer. The Resolution Professional accordingly appointed registered valuers particularly on 19.09.2021 (Land and Building) and 28.09.2021 (Securities & Financial Assets) 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:

Fair Value (Amount in Rupees)	Liquidation Value (Amount in Rupees)
Rs. 16.92 Crores	Rs.12.79 Crores

4. The Applicant states that the COC in its Meeting decided that an advertisement for inviting EOI be issued. Form G inviting EOI was published on 01.11.2021. The last date for submission of expression of interest from prospective resolution applicants was 20th November 2021 and submission of plan was 29th December 2021, which was further extended twice and 22.03.2022 was the final last date of submission of Resolution Plan.
5. The Applicant further states that in furtherance of the Form-G issued by applicant, he received EOIs from six Prospective Resolution Applicants (PRAs) within the stipulated time period. Below are the names of the prospective resolution applicant:
 - a. Ashdan Properties Private Limited in Consortium with Classic Promoters and Builders Private Limited;
 - b. Dosti Realty Limited (100% Holding Company of Fanibhushan Build Tech Pvt. Ltd.);
 - c. Runwal Developers Private Limited;
 - d. Shree S S Developers Private Limited;
 - e. TCG Urban Infrastructure Private Limited; and
 - f. Shree Krishna Structures Private Limited with J. P. Infra Realty Private Limited.

6. The Applicant submits that, during the 10th Meeting of COC held on 18.04.2022, the proposed Resolution Plans were evaluated on the basis of the evaluation matrix. The resolution passed, and it was declared that the plan submitted by the M/s. Fanibhushan Build Tech Pvt. Ltd. was approved.
7. The COC in its 10th meeting held on 18.04.2022 considered the final Resolution Plan of M/s. Fanibhushan Build Tech Pvt. Ltd. and approved the Plan with a voting share of 100%. Thereafter, the Applicant issued compliance certificate in Form "H" was issued by the Resolution professional.
8. **The Salient Features of the Resolution Plan are as under:**
 - a. M/s. Fanibhushan Build Tech Pvt. Ltd., the "Successful Resolution Applicant" (SRA), The Resolution Applicant is a Company, incorporated under the provisions of Companies Act, 1956 and is deemed have been registered under the Companies Act, 2013, having its Registered Office at Flat No. 1801, 18th Floor, Dosti Elite, Metal Rolling Compound, Near Sion Telephone Exchange Building, Sion, Mumbai – 400 022. The Resolution Applicant is a wholly owned subsidiary of Dosti Realty Limited. The Dosti Realty Ltd. ("DRL") is one of the leading Real Estate Company with over 4 (Four) decades of Real Estate experience. DRL and its group companies, firms and associates ("Dosti Group") is well-renowned for affordable housing and for completing projects on schedule and creating value additions for the customers.
 - b. The M/s. HBS Seaview Pvt Ltd. (the Corporate Debtor) is a private limited company, having its Registered Office in Mumbai

which is engaged in the business of real estate development. The main objects of the Corporate Debtor, inter alia, is to acquire, promote, develop, improve land and hereditaments and to erect and build thereon flats, houses, shops and other buildings and to hold and occupy, exchange, underlet, mortgage, lease, sell or otherwise deal with the same and deal in real estate of all kinds.

- c. **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.

- d. **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 25th 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.

- e. 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.

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

For successful implementation of Resolution Plan, an Implementation and Monitoring Committee (“**IMC**”) is being proposed by Resolution Applicant, which shall have following members:

- (a) One Representative of Home Buyers to be decided in the CoC meeting;
- (b) One Representative of Unsecured Financial Creditors to be decided in the CoC meeting;
- (c) One Insolvency Professional or other professional as may be mutually decided by CoC and Resolution Applicant who shall act as chairperson of the committee;
- (d) Either Resolution Applicant or One Representative of Resolution Applicant. IMC shall oversee the implementation of the Resolution Plan and it shall report any deviation in timelines or breach of terms of Resolution Plan to NCLT after due consultation in their meeting of the IMC.

- g. **Effective Date (E):** “Effective Date” means the date on which the order approving this Resolution Plan by the Adjudicating Authority under section 31 of the Code, is received by the Resolution Applicant. In the event of an appeal being filed, then the Effective Date will be the date on which the appeal is finally disposed off whereby, the order passed by NCLT is confirmed in

favour of Resolution Applicant and in the event no appeal is filed, then the Effective Date will be the date on which the statutory period of limitation for preferring the appeal is over.

- h. The Resolution Plan proposes a total Consideration of **Rs. 19,24,39,717/-** plus RERA Carpet Area in sale building of **Rs. 40,731 Sq. ft.** for the settlement of claims by the Resolution Applicant.

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

A) CORPORATE INSOLVENCY RESOLUTION PROCESS COSTS

- i. The CIRP Costs are Rs.50,00,000/- (Rupees Fifty Lakh Only).
- ii. The Resolution Applicant proposes that CIRP Costs be paid in full and in priority to any Claim of any other creditor, within 30 (thirty) days from the Effective Date.
- iii. If the CIRP Costs exceed Rs.50,00,000/- (Rupees Fifty Lakh Only), they will be provided by the Resolution Applicant. Under no circumstances shall the maximum offer under this Plan to settle the claims of the creditors and payment of CIRP Costs by the Resolution Applicant exceed the cap of Rs.18,38,55,537/- (Rupees Eighteen Crore Thirty Eight Lakh Fifty Five Thousand Five Hundred and Thirty Seven Only) and 40,731 sq. ft. RERA Carpet Area in the Sale Building.
- iv. The CIRP cost shall be paid within 30 (thirty) days from the Effective Date.
- v. All costs, expenditure incurred/to be incurred by the CoC towards the CIRP of the Corporate Debtor (“CoC Costs”)

shall be fully borne by the Resolution Applicant.

B) FINANCIAL CREDITORS

Proposal for Unsecured Financial Creditor

1. The aggregate claim of the Unsecured Financial Creditors is Rs.36,77,11,074 (Rupees Thirty Six Crores Seventy Seven Lakhs Eleven Thousand and Seventy Four Only. As against the aforesaid claim of the Unsecured Financial Creditors, RA offers 50% thereof, i.e. an aggregate amount of Rs.18,38,55,537/- (Rupees Eighteen Crore Thirty Eight Lakh Fifty Five Thousand Five Hundred and Thirty Seven Only) in the full and final settlement/payment of the entire claim of Unsecured Financial Creditors including any claim towards interest.

2. RA shall pay the said amount of Rs.18,38,55,537/- (Rupees Eighteen Crore Thirty Eight Lakh Fifty Five Thousand Five Hundred and Thirty Seven Only) in full and final settlement/ payment of the entire claim of Unsecured Financial Creditors, in 2 (two) instalments of equal amount as follows;
 - a. Rs.9,19,27,769/- (Rupees Nine Crore Nineteen Lakh Twenty Seven Thousand Seven Hundred and Sixty Nine Only) will be paid within a period of 06 (six) months from the date of RA obtaining fresh/revised RERA registration of the Project; and the balance.
 - b. Rs.9,19,27,769/- (Rupees Nine Crore Nineteen Lakh Twenty Seven Thousand Seven Hundred and Sixty Nine Only) will be paid within a period of 12 (twelve) months from the date of RA obtaining fresh/revised RERA registration of the Project.

3. Save and except the aforesaid sum of Rs.18,38,55,537/- (Rupees Eighteen Crore Thirty Eight Lakh Fifty Five Thousand Five Hundred and Thirty Seven Only) which is being paid in full and final settlement/payment of the entire claim of the Unsecured Financial Creditors.

C) PROPOSAL FOR DISSENTING FINANCIAL CREDITORS

As per the requirement of Section 30(2)(b) of the IBC, all the Financial Creditors who do not vote in favour of the Resolution Plan, then Liquidation value shall be payable to these dissenting financial creditors as payable in the event of the liquidation of the Corporate debtor and the amount payable shall be deducted from the sums allocated to the Financial Creditor. Further, such creditors shall not be entitled to any other amount.

D) PROPOSAL FOR OTHER SECURED CREDITOR

1. There is only one Other Secured Creditor namely IDBI Trusteeship Services Ltd. (“**IDBI**”). The claim of IDBI is Rs.395,69,19,913/- (Rupees Three Hundred Ninety Five Crores Sixty Nine Lakhs Nineteen Thousand Nine Hundred Thirteen Only).
2. From and out of the aforesaid claim of Rs.395,69,19,913/- (Rupees Three Hundred Ninety Five Crores Sixty Nine Lakhs Nineteen Thousand Nine Hundred Thirteen Only), an amount of Rs 3,95,40,53,913/- (Rupees Three Hundred Ninety Five Crores Forty Lakhs Fifty Three Thousand Nine Hundred Thirteen Only) has been admitted by the Resolution Professional.

3. The Resolution Applicant proposes to settle the claim of IDBI in the manner and subject to such terms as mentioned hereinbelow:
- a. Resolution Applicant shall provide an area admeasuring 11,000 sq. ft. RERA Carpet Area in the Sale Building/s in full and final settlement/payment/discharge of all its claim and charge, including the claim towards interest, etc.
 - b. The charge of IDBI on the Project Land shall be deemed to have been released/relinquished/extinguished on the Effective Date.
 - c. Within 7 (seven) days from the Effective Date, IDBI shall return all the original title deeds, documents including share pledge agreements, consent terms dated 08.10.2019 filed before NCLT, Deed of Undertaking dated 27.11.2019 and all other documents in respect thereof, of the Project Land to RA. Simultaneously with the return of the title deeds as above, IDBI shall execute Release Deed and admit execution thereof, inter-alia, releasing their charge under the mortgage deed upon the Project Land in favour of the Resolution Applicant/Corporate Debtor. Further, IDBI shall execute and file necessary forms and documents for the release of all securities and guarantees created in respect of the Project Land, including with Registrar of Companies/CERSAI.
 - d. Resolution Applicant and IDBI shall enter into an agreement for sale in respect of the aforesaid area so provided by the Corporate Debtor/Resolution Applicant to IDBI within 30 days from the Effective Date, which shall be registered with the concerned sub-registrar of assurances.
 - e. Enter into Definitive Documents with regards to the aforesaid arrangement within 30 days from Effective Date.

- f. The complete details of the 11,000 sq.ft. RERA Carpet Area to be provided to IDBI like floor, apartment size, etc. shall be finalized prior to the execution of the agreement for sale.
- g. IDBI shall be not be entitled to sell, transfer, convey, assign, encumber or deal with in any manner whatsoever, the aforesaid area agreed to be provided to it in the free Sale building/s till the expiry of a period of 2(two) years from the date of the agreement for sale in respect thereof.
- h. Resolution Applicant/Corporate Debtor shall be totally discharged in respect of the entire claim of IDBI upon its allotting the aforesaid area on terms as mentioned hereinabove.

E) PROPOSAL FOR HOME BUYERS IN SALE BUILDING

1. The Respondent proposes to allot RERA Carpet Area of 11,000 sq. ft. to Secured Creditor IDBI Trusteeship Services Limited acting as Trustee for Debenture Holders against relinquishment of mortgage over the said property and in full and final settlement of its dues.
2. The Respondent further proposes to allot the home buyers the units sold by Corporate Debtor subject to variations as may be required and necessary. Hence the respondent proposes to allot area admeasuring 29,731 Sq. ft. RERA Carpet Area to the Home Buyers. The allotment shall be made subject to allottees paying balance consideration as per the options agreement with Corporate Debtor and escalation charges payable stage wise as per the milestones of construction achieved. The allottees shall not be given any credit of interest claimed against the purchase

consideration of flat. Only principal amount paid shall be adjusted against purchase consideration agreed and balance will have to be paid by allottees.

3. An aggregate amount of Rs 63.84 Crores is due and payable by the Home Buyers to the Corporate Debtor. The Home Buyers shall pay the same to the Resolution Applicant. Any delay in making payment of the balance purchase consideration by the Home Buyers shall attract interest as stipulated in RERA, and the same shall be payable by the Home Buyers to the Corporate Debtor. In the circumstances if the Home Buyer defaults in making the payment on its due date, then the Corporate Debtor shall be entitled to terminate the agreement for sale to be entered into between the Home Buyer and the Corporate Debtor under the provisions of RERA, by giving 15 days' notice to cure the default and on expiry of 15 days if the Home Buyer fails or neglects to rectify the defect within the notice period, then on expiry of the said notice period the agreement for sale shall stand terminated. On termination of the said agreement for sale, the Corporate Debtor/Resolution Applicant shall refund the principal amounts (excluding stamp duty, GST, service tax, VAT, other levies and/or statutory dues) already received from the Home Buyer without any interest, compensation, penalty, etc., within 30 days from the sale of the said apartment to new purchaser and upon receipt of the purchase consideration in respect thereof.

F) PAYMENT TO OPERATIONAL CREDITORS

- a. **Employees:** As against aggregate admitted claim of Employees of Rs. 35,84,180/- (Rupees Thirty Five Lakhs Eighty Four Thousand One Hundred and Eighty Only), the Respondent/RA shall pay the same entirely within 75 (seventy five) days from the effective date.
- b. **Government and Statutory Dues:** The Applicant/RP has received claim of Rs. 2,55,97,242/- (Rupees Two Crores Fifty Five Lakhs Ninety Seven Thousand Two Hundred and Forty Two only) from Deputy Commissioner-VIII, CGST & C.EX., Mumbai Central Commissioner. However, the since the same was received after submission of Resolution Plan and beyond 90 days, the Applicant/RP has not admitted it. The RA propose to make NIL payment to Government and Statutory Authorities.

G) OTHER OPERATIONAL CREDITORS

The liquidation value is insufficient to even satisfy the claims of the Financial Creditors in full and therefore, the amount payable to the operational creditors (Other than employees and workmen and Government and statutory authorities) ("Other Operational Creditors") (whose claims have been admitted by the Resolution Professional) towards the Admitted other operational creditor debt, in compliance with Section 30(2)(b) of the code, will be Nil. Accordingly, the RA proposes to make Nil payment to other operational creditors in compliance to Section 30(2)(b) of the code in priority to any payment to any Financial Creditors, towards full & final

satisfaction and discharge of admitted other Operational Debt.

H) PROPOSAL FOR TENANTS

- (a) There are 259 tenants existing on the Lohana Niwas Property and 9 tenants existing on the Tapidas Property. A list of the tenancies on Lohana Niwas Property and Tapidas property is annexed and marked as Annexure “F” & Annexure “G” respectively to the application.
- (b) The Tenants on the Project Land shall be rehabilitated in the Rehab Building to be constructed on the Project Land and each of the Tenants shall be provided with their respective Permanent Alternate Accommodation (“PAA”), having carpet areas as per the provisions of regulation of DCPR 2034 under which the redevelopment scheme is undertaken, totally free of cost, together with the amenities and facilities as may be finalized by the Resolution Applicant. The PAA shall be provided to each of the Tenants on what is popularly known as ‘ownership basis’.
- (c) During the time of construction and handing over possession of the respective PAAs to the Tenants after obtaining Occupation Certificate (“OC”) in respect thereof, the RA/Corporate Debtor shall pay Displacement Hardship Allowance (“DHA”) to the Tenants.
- (d) In addition to the DHA, the Resolution Applicant shall also pay to each of the Tenants 1(one) month brokerage and an agreed amount as one time transportation charges for shifting from their existing tenanted premises to the temporary alternate accommodation to be acquired by them on their own outside the Project Land.
- (e) During the period of construction of the Rehab Building/s and till the Tenants are handed over their PAAs the status of the Tenants shall continue to be as that of the Tenant and the Tenants shall be

liable to continue to pay the existing rent which they were paying to the Corporate Debtor till date.

- (f) Subsequent to the issuance of the IOD, an appropriate Permanent Alternate Accommodation Agreement (“PAAA”) will be executed with each of the Tenants which will be duly registered with the concerned Rub registrar of Assurances containing the usual terms and conditions in the matter of handing over possession of the PAA. The Stamp Duty and registration charges shall be borne and paid by the Resolution Applicant/ Corporate Debtor.
- (g) The Tenants shall consent to the redevelopment of the Project Land by Resolution Applicant under Regulation 33(7) and/or 33(9) and/or any other regulation under DCPR 2034 at the sole and absolute option of the Resolution Applicant. Further, the Tenants shall execute all the documents including the Tenants’/occupants’ irrevocable consent as suggested by the competent authority and as may be required by the statutory authority and/ or Resolution Applicant.
- (h) Simultaneously with the Resolution Applicant handing over possession of PAA, the tenancy rights of the Tenants shall merge in the ownership right and on and from the date of handing over possession, the Tenants shall be the sole and absolute owner of the PAA. On and from the date of handing over possession of the PAA, the Tenants shall not be liable to pay rent to the Resolution Applicant, however, they shall be liable to pay the maintenance, municipal taxes, etc.
- (i) The Resolution Applicant hereby categorically states and records that the Resolution Applicant shall not be responsible or liable to make any payment to any person in relation to any debt of the Corporate Debtor whether admitted by the Resolution Professional or not, save and except as stated hereinabove. Needless to say,

Resolution Applicant A shall not be required to make any payment in respect of any debt of Corporate Debtor which has not been admitted by the Resolution Professional pursuant to the Code.

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

Sr. No	Types of Creditors	Class of Creditors	Amount Admitted	Total amount to be paid under Resolution Plan
1	CIRP Cost		50,00,000	50,00,000
2	Financial Creditors			
	A	Home Buyers (class of Home Buyers)	73,46,70,225	An area aggregating to 29,731 sq.ft. RERA Carpet Area in the sale building/s
	B	Unsecured Financial Creditors (Other than Financial Creditors belonging to any Class of Creditors)	36,77,11,074	18,38,55,537
	C	Dissenting Financial Creditors	NIL	NIL
3	Operational Creditors			
	A	Employees and workmen	35,84,180	35,84,180
	B	Government & Statutory Dues	NIL	NIL
	C	Other Operational	NIL	NIL

		Creditors		
4	Other Secured Creditors (other than financial and operational creditor)		3,95,40,53,913	An area aggregating to 11,000 sq.ft. RERA Carpet Area in the sale building/s
	Total		506,50,19,392	Rs.19,24,39,717/- together with area admeasuring 40,731 sq.ft. RERA Carpet Area in the Sale Building.

11. SOURCES OF FUNDS:

The Resolution Applicant through its holding company has sufficient net worth and liquid assets to finance the Resolution Plan. In case any shortfall arises, Resolution Applicant shall explore taking unsecured and/ or secured loans from any bank, financial institution, body corporate, person (“RA’s Lender”) by mortgaging the Project Land and it’s development potential with such terms and conditions as may be imposed by RA’s Lender, for the implementing the Resolution Plan. However, no permission, consent, NOC or intimation for creating such mortgage with the RA’s lender in respect of the Project Land and its development potential shall be required to be obtained from any of the stakeholders including Home Buyers and secured or unsecured creditors by the Corporate Debtor/ RA. All stakeholders including Home Buyers and secured or unsecured creditors shall be deemed to have accorded their unconditional and irrevocable consent and No Objection to the Corporate Debtor/RA for obtaining the said loan by mortgaging the said Project Land and its development potential with the RA’s Lender on approval of the resolution plan by Adjudicating Authority.

The Corporate Debtor/ Resolution Applicant shall be responsible to obtain requisite NOC from the RA’s Lender before entering into

agreement for sale in respect of the respective premises/area to be given to the stakeholders including Home Buyers in accordance with this Resolution Plan. In order to implement the Resolution Plan, Resolution Applicant has following liquid asset available at disposal;

Sr. No.	Source	Amount (In INR Crores)
1.	From own sources.	Rs. 6 Cr
2.	From Equity/Debt through holding company.	Rs. 35.27 Cr
3.	From financial institutions or through holding company.	Rs. 71 Cr

12. DISBURSEMENT OF AMOUNT:

The Resolution Professional has submitted the following chart showing the details of the total claims received and admitted by him and amount provided for the stakeholders under Resolution plan as under:

(amount in Rs.)

Sr. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
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		-	-	-	-	
Total [(a) + (b)]		-	-	-	-	

2	Unsecured 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	4,569.23	3677.11	1,838.56	50.00%
2A	Allottees in real estate projects	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*	-	-	-	-
		Total [(a) + (b)]	13,930.86	11,023.81	9,185.26	83.32%
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above: (i) Government (ii) Workmen (iii) Employees (iv) Other operational creditor	- - 35.84 2,202.01	- - Nil -	- - 35.84 -	- - 100.00% -
		Total [(a) + (b)]	2,237.86	35.84	35.84	1.60%
		Secured Creditor creditors**#	39,569.20	39,540.54	5,500.00	13.91%
		Total [(a) + (b)]	39,569.20	39,540.54	5,500.00	13.91%
Grand Total			55,737.92	50,600.19	14,721.10	29.09%

“Against the claim of class of Creditors (allottees in real estate projects), the flats are allotted subject to payment of the balance consideration. Total area earmarked for the homebuyers is 29,731 sq. ft. RERA Carpet area in the Resolution Plan. Since the Resolution Applicant is providing flats to the homebuyers, it is deemed that entire claim of the homebuyers is settled.”

*“** Against the claim of Secured Creditor in the category of other creditors, the Resolution Applicant has provided 11,000 sq.ft. RERA Carpet Area. The value given in the table is arrived at based on the per sq. ft. value of Rs. 50,000/-.”*

“#There are 259 tenants on Lohana Niwas Property and 9 Tenants existing on the Tapidas Property. The Resolution Applicant propose that the Tenants on the projects shall be rehabilitated in the Rehab Building to be constructed on the project land and each tenant shall be provided with their respective permanent Alternate Accommodation (PAA), having carpet area as per the provisions of regulation of DCPR 203 under which redevelopment scheme is undertaken, totally free of cost, together with amenities and the facilities. The PAA shall be provided to each tenant on what is popularly known as “Ownership Basis.”

13. BUSINESS REVIVAL PLAN:

- a. Resolution Applicant has worked out financial projections for rehabilitation of the existing tenants/ occupants and the Sale Building/s of the Project of the Corporate Debtor on the assumption contained in this Resolution Plan, including infusion of working capital by way of induction of fresh funds for the completion of the Project, post Effective Date. RA believes that the said financial projections and also the underlying assumptions are realistic and achievable.
- b. Resolution Applicant proposes to commence and complete the construction activities and hand over the possession of the agreed RERA Carpet Area to all the stakeholders in the manner as specified under this Resolution Plan within a period of 81 months (for the entire project) from the Effective Date subject to force majeure conditions.

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

Sr. No.	Particulars	Timeline
1.	i. Submission of Earnest Money Deposit of Rs. 20,00,000 (Rupees Twenty Lakhs Only)	At the time of submission of Expression of Interest letter dated November 20, 2021 by the RA.
	ii. Submission of Performance guarantee of Rs 1,80,00,000/- (Rupees One Crore and Eighty Lakhs Only);	Along with the submission of Resolution Plan
	iii. Submission of Performance guarantee of Rs 1,00,00,000/- (Rupees One Crore Only)	Within 10 working days from date of issuance of LOI by Resolution Professional.
	iv. Submission of Performance guarantee of Rs 3,00,00,000/- (Rupees Three Crores Only)	Within 3 working days from date the Effective Date i.e. T+3 Days
2.	Effective Date viz	T
3.	Cessation of existing Directors and induction of new Board	T+30 Days
4.	Cancellation of existing equity shares and acquisition of 100% shares by RA	T+30 Days
5.	CIRP cost to be paid	T+30 Days
6.	Payment to employees	T+75 Days Annexure D (of the Resolution plan)
7.	Payment to Secured Creditors	Annexure E (of the Resolution Plan)
8.	Payment of other amounts and discharge of other obligations of Corporate Debtors/Resolution Applicant.	As per the terms of this Resolution Plan.
9.	Completion of term of Resolution Plan	T + 81 months

15. 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.

16. 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 liquidation value to unsecured financial creditors who dissent from the plan.
- v. Provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(c).
- vi. Provides for a term of the plan, implementation schedule and supervision of the Resolution Plan under Section 30 (2) (d)& Regulation 38(2)(c).

- vii. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor.
- viii. The Resolution Plan does not contravene any of the provisions of the law for the time being in force - please include a statement to this effect in the Resolution Plan as per Section 30(2) (e)
- ix. 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 as per Section 30(2)(f).
- 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. The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors. Regulation 38(1).
 - b. 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.

- c. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a)).
- d. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
- e. The amount payable under a resolution plan to the Financial Creditors, who have right to vote under subsection (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.
- f. 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.
- g. 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.
- h. Provides for the management and control of the business of the Corporate Debtor during its term.
- i. All the above factors demonstrate that the plan address the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
- j. 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(1)(b) of the Regulations.

k. 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 (Regulation 38(1A)).

17. The Resolution Plan has been approved in the 10th COC meeting held on 18.04.2022 with 100% voting in accordance with the provisions of the Code.

18. 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.

19. 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).”*

20. 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.
21. The applicant filed additional affidavit dated 29.09.2022 along with copy of minutes of the **11th CoC meeting** wherein the **CoC** resolved as follows:

“Any amount recovered under any avoidance applications relating to the Corporate Debtor being allowed by the

Adjudicating Authority would inure unto the benefit of the RA”.

The CoC discussed that since the Resolution Plan already provides that any realization will enure to the benefits of RA, the COC members were of the unanimous view that RA shall be intitled to the proceeds of the avoidance application in view of the fact RA shall be bearing the cost of Avoidance application and prosecuting the matter.

22. 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. There are no workers claims. 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. 1159 of 2022 is allowed. The Resolution Plan submitted by **M/S. FANIBHUSHAN BUILD TECH PVT. LTD.**, 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 amount recovered under any avoidance applications relating to the Corporate Debtor being allowed by the Adjudicating Authority would enure unto the benefit of the Resolution Applicant.
- 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. 1159 of 2022 is accordingly allowed and disposed of.

Sd/-
ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-
H. V. SUBBA RAO
MEMBER (JUDICIAL)