



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 205

(IB)-1397(PB)/2019

**IA-109/ND/2024, IA-4521/ND/2023, IA-5623/ND/2021,
IA-1727/ND/2021, IA-5646/ND/2022, IA -5783/ND/2021,
IA-5884/ND/2021, IA-6019/ND/2021, IA-44/ND/2022,
IA-2311/ND/2022, IA-2812/ND/2022, IA-966/ND/2022,
IA-3218/ND/2022, IA-907/2023, IA-2595/ND/2022, IA- 2201/ND/2024,
IA- 5778/ND/2022, IA- 5765/ND/2022, IA-3259/ND/2024,
IA- 2532/ND/2024, IA-228/ND/2025, IA-464/ND/2025, IA-494/ND/2025,
IA-495/ND/2025, IA-498/ND/2025, IA-703/ND/2025, IA-1094/ND/2025,
IA-1677/ND/2025, IA-1706/ND/2025, IA-1722/ND/2025,
IA-1382/ND/2025, IA-1416/ND/2025, IA-2485/ND/2025,
IA-2137/ND/2023, IA-2246/ND/2023, IA-548/ND/2022,
IA-2540/ND/2024, IA-3481/ND/2024, IA-4219/ND/2021,
IA-4184/ND/2024, IA -4321/ND/2024, IA -4448/ND/2024,
IA -4579/ND/2024, IA -4969/ND/2024, IA-6176/ND/2024,
IA-226/ND/2025, RA-43/ND/2025, IA-4219/ND/2021,
RA-59/ND/2025, RA-60/ND/2025, RA-61/ND/2025
RA-62/ND/2025**

IN THE MATTER OF:

Diamond Traexim Pvt Ltd

House No. 82/9, Naveen Park,
Near Mahaveer Park.
Sahibabad
Ghaziabad UP 201005

... Applicant

Versus

Indirapuram Habitat Centre Pvt Ltd.

Unit No. 154, F.F. Aggarwal Shopping Centre,
Plot No.2, Lsc Block-Cd,
Pitampura, Delhi-110034

... Respondent

Under Section: 7 of IBC, 2016 CIRP

Order delivered on 24.07.2025

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

MS. REENA SINHA PURI, HON'BLE MEMBER (T)



PRESENT:

For the Applicant : Adv. Dhruv Gupta in IA 5884/2021, Adv. Akansha Sharma, Adv. Anshuj Dhingra in IA 1375/2023, IA No.1376/2023, IA No.1377/2023 and IA No.1385/2023, Adv. Rakesh Kumar, Adv. Preeti Kashyap, Adv. Ankit Sharma, Adv. Pulkit Mehrotra in IA-1677/ND/2025 , IA-1722/ND/2025 , IA-1416/ND/2025, Adv. UN Singh, Adv. Sandhya Chaturvedi in IA 1706/2025, Adv. Radhika Goel, Adv. Vipul Goel in IA/2201/2024, Adv Rabi Karmokar, Adv. Sanyam Rastogi, Adv. Akshay Chowdhary & Adv. Shivam Sharma, Adv. Abhishek Kumar

For the Respondent : Adv. Vipul Goel in IA/2532/2024 for R-2 and R-1 in IA/2540/2024

For Ghaziabad : Adv. Malak Bhatt, Adv. Neeha Nagpal, Adv. Sukanya Nagar Nigam Joshi, and Adv. Somya Saxena in IA-1382 of 2025

Hearing Through: VC and Physical (Hybrid) Mode

ORAL ORDER

IA-109/ND/2024: There is no appearance on behalf of the Applicant. The **IA is dismissed for default.**

IA-4521/ND/2023: Ld. Counsel for the Applicant submitted that before making submissions qua the captioned application he would like to await the outcome of the IA-1758/2021. As prayed by him, the hearing qua the IA is deferred to **01.09.2025.**

IA-1727/ND/2021: As prayed by the Ld. Counsel for the Resolution Professional, the hearing is deferred to **01.09.2025.**

IA-5646/ND/2022: Mr. Sumesh Dhawan, Ld. Counsel for the Resolution Professional submitted that electricity connection by the Electricity Urban Distribution Division has since been restored. According to him, the application



has become infructuous. In view of the stand taken by the Ld. Resolution Professional, the IA **is disposed of as infructuous.**

IA-5783/ND/2021: Ld. Counsel for the Applicant submitted that the Arguing Counsel is unwell and prayed for an adjournment. At his request, the hearing is deferred to **01.09.2025.**

IA-5623/ND/2021/IA-3481/ND/2024: The Ld. Resolution Professional is present in person. Indubitably, in terms of the provisions of Section 30(6) of IBC, 2016 it is the Resolution Professional who submit the resolution plan as approved by CoC to the Adjudicating Authority for its approval. Section 30 (6) reads thus:

[...]

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.”

In terms of the provisions of Regulation 39(4) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the certificate prescribed there under (Form-H), it is for the Resolution Professional to certify that the resolution plan is in consonance with the provisions of IBC, 2016 and the Regulation framed there under (Section 240 of IBC, 2016). Today, Mr. N.K. Sharma, Resolution Professional, who is present along with Mr. Sumesh Dhawan, Advocate himself referred to order dated 23.09.2024 to espouse that the plan could take note of only 60% of total land available for the project while the portion of land owned by the Corporate Debtor is 81%. He further clarified that it is on account of the order dated 23.09.2024 passed by this Tribunal that the portion of land has increased from 60% to 81%. The order passed in IA-3463/2020 reads thus:

“IA-3463/2020: The prayer made in the captioned application reads thus:-

“a) pass appropriate order directing inquiry into the fraudulent and collusive exercise, including alienation of the assets of the Project to



its group companies, adopted by the Corporate Debtor leading to initiation of the present CIRP

b) pass appropriate order reverting back/releasing the assets/ shares of the IHC Project fraudulently put under ownership of M/s. Alluvion Buildcon Pvt. Ltd., Alan Buildcon Pvt. Ltd and Madhuvan Tie-Up Pvt. Ltd. so that the ongoing CIRP can be successfully concluded particularly keeping in mind the interests of Allottees/Unit Holders.”

Ms. Nimita Kaul, Ld. Counsel for the M/s Madhuvan Tieup Pvt. Ltd. and the other parties referred to in clause (b) of the prayer (ibid) opposed the application by espousing that in the first place there is no under-valued transaction and secondly the transaction could take place on 17.12.2015 i.e. much before the commencement of CIRP and the same being not a transaction which could take place within two years preceding the date of commencement of CIRP, the present application is not maintainable. Technically Ms. Nimita Kaul is correct. An under-valued transaction can be questioned only when it takes place during the look back period. Besides the transaction can be called under-valued, if a property of asset is gifted to transferee or sold at the value less than for what it is bought. Section 45 (2) of IBC, 2016, reads thus:-

“Section 45-Avoidance of undervalued transactions:-

2) A transaction shall be considered undervalued where the corporate debtor—

- (a) makes a gift to a person; or*
- (b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor, and such transaction has not taken place in the ordinary course of business of the corporate debtor”*

Confronted with the plea raised by the Ld. Counsels for the non-applicants, Mr. Sumesh Dhawan, Ld. Counsel submitted that the transaction is not undervalued but is also fraudulent. In any case, it is not disputed by the Ld. Counsels for the parties that an MoU dated 17.12.2015 could be entered into between Indirapuram Habitat Centre Pvt. Ltd. (IHCPL) formally known as Showman Clubs and Inns Pvt. Ltd. Consortium, M/s Alluvion Buildcon Pvt. Ltd., M/s Alan



Buildcon Pvt. Ltd. & M/s Madhuvan Tieup Pvt. Ltd. As can be seen from clause (f) of the MoU, the share of the parties qua the IHCPL project is as under. The clause (f) reads thus:-

“(f) Thus consequent to execution of the third Supplementary Consortium Agreement on 30.04.2015 the shareholding of all the parties thereto in respect of the IHCPL Project including the consequent share in Land thereto became inter alia:

Parts of First Party	Name of the Company	Shareholding in Consortium
First	Indirapuram Habitat Centre Private Ltd (IHCPL)	60%
Second	Alan Buildcon Pvt. Ltd	11%
Third	Alluvion Buildcon Pvt. Ltd.	10%
Total		81%
Second Party	Madhuvan Tie up Private Limited (“MTPL”)	19%
	Total	100.00%

During the course of hearing Mr. Sumesh Dhawan, Ld. Counsel for the RP fairly admitted that the M/s Madhuvan Tieup Pvt. Ltd. (MTPL) had paid consideration for 19% of land, thus any land in their possession in excess of 19% need to be restored to corporate debtor. As far as the shareholding of M/s Alluvion Buildcon Pvt. Ltd., M/s Alan Buildcon Pvt. Ltd. is concerned, the Ld. Counsel appearing for said parties admitted at bar that they had not paid any consideration for 10% and 11% of land. In such cases they cannot have any entitlement qua the same. In any case when admittedly till now no consideration for aforementioned land has been paid to corporate debtor the land belongs to it.

*In view of the aforementioned, **the application is disposed of** with the direction that the land in possession of M/s Alluvion Buildcon Pvt. Ltd., M/s Alan Buildcon Pvt. Ltd. would be restored to the corporate debtor through RP and any land possessed by M/s Madhuvan Tieup Pvt. Ltd. in excess of 19% mentioned in MoU would also be restored to corporate debtor.*

It is made clear that we have not commented upon the area of 19% share. It would be for RP for corporate debtor and M/s Madhuvan



Tieup Pvt. Ltd. to carry out the measurement. At this stage, Ms. Nimita Kaul, Ld. Counsel for the RP for M/s Madhuvan Tieup Pvt. Ltd. submitted that the land has delineated in terms of clause (4) of consortium agreement dated 25.07.2013 should stay back with M/s Madhuvan Tieup Pvt. Ltd. It is made clear that such delineation may be respected but the land with M/s Madhuvan Tieup Pvt. Ltd. would not be in excess of 19% as stipulated.”

Mr. N.K. Sharma, Resolution Professional who is present along with Mr. Sumesh Dhawan, Advocate could also draw our attention to the resolution plan, wherein it has been noted that the Corporate Debtor at the time of submission of plan had 60% ownership right in the project and during the physical verification of the claims, the Resolution Professional has observed that Corporate Debtor had applied different loading factor of 2 and 2.0 to recover the cost of facilities/amenities provided in the project like lift, lobbies, maintenance room, parking and terrace etc. in order to construct buildup area in respect of the commercial area and recreational area.

The relevant excerpt of the resolution plan reads thus:

Pursuant to the transfer of ownership rights stated herein-above, as on date the status of ownership rights of the members in the SCIPL Consortium is as follows:

Sl. No.	Name of the Consortium member	Percentage Share
1	Indirapuram Habitat Centre Private Limited	60.00
2	Alan Buildcon Private Limited	11.00
3	Alluvion Buildcon Private Limited	10.00
4	MadhuvanTieup Private Limited	19.00
Total		100.00

Consequently, on the recommendations of the CoC an application had been filed by the RP before the Hon'ble NCLT, Principal Bench, New Delhi to seek directions for cancellation of above said transfers of its ownership rights in the Consortium to Allan, Alluvion and MTPPL and restoration of the 100% ownership rights in consortium to CD.



Besides having shopping mall with multiplex the company started development of the project on the above referred lease hold land, including having convention facilities, auditoriums, lecture halls, e-library cum lounge, club house with dining cum indoor recreational facilities.

The project known as Indirapuram Habitat Centre (IHC) is surrounded by premium residential developments like Shipra Suncity, AT&T Advantage, Orange County and Krishna Apara, commercial destinations like Schools of International Repute, Leading Healthcare Services, Swarna Jayanti Park and many more which ensures a high footfall from its neighbouring blocks.

Indirapuram habitat Centre retail shops are extending along the expressway. Its high visibility retail shops are strategically positioned on the ground and first floor creating a one-stop shopping destination for the ultra-modern customers. Leading retail brands like Decathlon, Tata West Side, Reliance Trends etc. are already operational along with more and more upcoming international brands.

Our attention could also be drawn to the plan to show that the plan is with reference to an area measuring 1,07,681 sq. ft. of land and after taking into account the 21% land referred to in our order dated 23.09.2024, the same would be more. The relevant excerpt of the plan reads thus:

“[...]

As per the Information Memorandum provided by Resolution Professional the net remaining inventory of the Corporate Debtor 1,07,681 Sq Ft.”

In sum and substance, the Resolution Professional himself espoused that the plan could not be submitted in respect of the total area available with the Corporate Debtor. In other words, the Resolution Professional espoused that the information memorandum could not capture the entire area of the land available with the Corporate Debtor, thus, the resolution plan is not with reference to the actual assets of the Corporate Debtor. One may say that, it was not so that additional land viz. 21% was available to Corporate Debtor at the time of submission of the plan and the same could become available only after the order



dated 23.09.2024 passed by this Tribunal. To address the issue, we deem it pertinent to note that, in terms of the order dated 23.09.2024, we had only directed the restoration of the land belonging to the Corporate Debtor as qua the land was owned by the Corporate Debtor, and Alan Buildcon Private Limited and Alluvion Buildcon Private Limited had not paid any consideration for the same. It would not be gainsaid that, when a resolution plan is submitted, the Successful Resolution Applicant (SRA) is required to take note of such assets/properties available to the Corporate Debtor, particularly those involved in PUFEE (Preferential, Undervalued, Fraudulent, and Extortionate) transactions, and make a reference to the same in the resolution plan. In this regard, we may refer to Regulation 38 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Regulation 38(2)(d) reads as follows:

“[...]

(d) provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed:

Provided that this clause shall not apply to any resolution plan that has been submitted to the Adjudicating Authority under subsection (6) of section 30 on or before the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2022.”

Thus, apparently the resolution plans ignore to take into consideration a vital segment of asset of the Corporate Debtor and is, therefore, deficient, most importantly we cannot ignore said fact when the same has been espoused by Resolution Professional himself, who has the responsibility to ensure that the plan is in order and need to justify the same. During the course of hearing, it transpired that certain asset owned by the Corporate Debtor which is the subject matter of IA- 2532/ND/2024, was not within the knowledge of the Resolution Professional and he could file an application in respect there to only in the year



2024 i.e. much after the filing of application for approval of resolution plan viz. IA- 5623/ND/2021. Thus, it writ large that the resolution plan does not take note of the total assets available to the Corporate Debtor.

Confronted with the submission, Mr. Sumit Bindal, Ld. Counsel for SRA submitted that the SRA was prepared to provide fresh comfort/financial support letter even from OCML. At this stage we may not give much credence to the subsequent financial support/comfort letter as what was available at the time of approval of resolution plan by CoC alone matters and is relevant. Besides, we could still attach credence to the submission made by Mr. Sumit Bindal, Ld. Counsel for SRA, if the plan could be supported by Resolution Professional but when the Resolution Professional himself is not supporting the resolution plan, it is difficult for us to go ahead to approve the same on the basis of the plea advanced by the Ld. Counsel for SRA. We are unable to accept the plea raised by Mr. Sumit Bindal, Ld. Counsel for SRA that the FAR with the project remain the same i.e. 1.92% irrespective of the increased area of land, for the simple reason that while examining the applications for approval of resolution plan, we cannot ignore the stand taken by the Resolution Professional, who represent the CoC. Besides it cannot be subject matter of our jurisdiction that what would be FAR qua the project, as we simply need to see as to whether the total assets owned by the Corporate Debtor could be taken into account in information memorandum or not. At the cost of repetition, we say that it would not be possible and feasible for us to allow an application for approval of resolution plan which is not pressed by the Resolution Professional.

During the course of hearing Mr. Sumesh Dhawan could draw our attention to IA-4381/ND/2024 wherein following prayer has been made:

“a. Allow the present Application and take on record the factual developments which have occurred with regard to the Resolution Plan dated 21.11.2021, submitted by the Respondent and duly approved by the Committee of Creditors (COC); and”



Our attention could be drawn to averments made in para- E and F to show that the letter of comfort given in support of the plan expired and subsequently the SRA could submit comfort letter (financial support) of MS Bone Lone Pvt. Ltd., only after approval of plan by CoC. In his submission the comfort letter (financial support) which was available at the time of consideration of plan by CoC could cease to exist subsequently on 14.05.2024, thus, the resolution plan as on the date of approval by CoC stands vitiated. Para E and F of the application reads thus:

*“E. Prior to the expiry of OCML Letter, the Applicant on 10.05.2024, issued a reminder E-mail/ Letter to the Respondent, requesting extension of the OCML Letter as the same stands to expire on 14.05.2024. Copy of the E-mail/ Letter dated 10.05.2024, issued by the Applicant to the Respondent is annexed herewith and marked as **ANNEXURE-A3**.*

*F. The Respondent on 16.05.2024, submitted a fresh Financial Support Letter issued by Mis. Bon Lon Pvt. Ltd., thereby undertaking to provide financial assistance to the tune of Rs. 55 Crores to the Respondent for implementation of Resolution Plan, having validity for the period from 15.05.2024 till 14.05.2027 ("**Bon Lon Letter**"). Copy of the Financial Support Letter dated 15.05.2024, issued by Mis. Bon Lon Pvt. Ltd. is annexed herewith and marked as **ANNEXURE-A/4.**”*

In the wake, the application for approval of resolution plan cannot be allowed and the same is dismissed. It would be for CoC to resort to appropriate process to do the needful in accordance with law, but the CoC would ensure that the entire assets of the Corporate Debtor is taken into account and is taken note of before plan is considered. It would be appropriate for CoC to issue fresh information memorandum to do the needful, fairly and properly and to publish fresh Form-G. It goes without saying that the SRA before us, for approval of whose resolution plan the IA-5623/ND/2021 was preferred by the Resolution Professional, but is not finally pressed by RA also be entitled to participate in the process and the Resolution Professional would specifically intimate it, about the same. The period of CIRP is extended by 100 days. **The applications stands disposed of.**



IA -5783/ND/2021, IA-5884/ND/2021, IA-6019/ND/2021, IA-44/ND/2022, IA-2311/ND/2022, IA-2812/ND/2022, IA-966/ND/2022, IA-3218/ND/2022, IA-907/2023, IA-2595/ND/2022: In the wake of the order passed in IA-5623/2021, all these applications have become **infructuous and are accordingly disposed of**. It goes without saying that if any of the Applicants have any issue or grievance other than concerning the applications for approval of resolution plan, it may be open to them to espouse separately and independently in accordance with law.

IA-2201/ND/2024, IA-5778/ND/2022, IA-5765/ND/2022, IA-3259/ND/2024, IA-2532/ND/2024, IA-228/ND/2025, IA-464/ND/2025, IA-494/ND/2025, IA-495/ND/2025, IA-498/ND/2025, IA-703/ND/2025, IA-1094/ND/2025, IA-1677/ND/2025, IA-1706/ND/2025, IA-1722/ND/2025, IA-1382/ND/2025, IA-1416/ND/2025, IA-2485/ND/2025, IA-2137/ND/2023, IA-2246/ND/2023, IA-548/ND/2022, IA-2540/ND/2024, IA-3481/ND/2024, IA-4219/ND/2021, IA-4184/ND/2024, IA-4321/ND/2024, IA-4448/ND/2024, IA-4579/ND/2024, IA-4969/ND/2024, IA-6176/ND/2024, IA-226/ND/2025, RA-43/ND/2025, IA-4219/ND/2021, RA-59/ND/2025, RA-60/ND/2025, RA-61/ND/2025, RA-62/ND/2025: List the applications on **01.09.2025**.

**Sd/-
(REENA SINHA PURI)
MEMBER (T)**

**Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**

Iqraa/Hitesh