NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 963-965 of 2024
& I.A. No. 6406, 6407, 6408, 6628 of 2024

(Arising out of the Order dated 02.05.2024 passed by the National Company Law Tribunal, New Delhi, Court-III in I.A. No-5238 of 2023, 4466 of 2023 and 5125/2023 in C.P. N o-1348/ND/2019)

IN THE MATTER OF:

Gaurav Katiyar,
Resolution Professional of Earthcon Universal Infra Tech Private Limited Having Office At D-32, East Of Kailash, New Delht-110065 **...Appellant**

Versus

1. **Nisus Finance And Investment Managers LLP**
Having its registered office at:
201 D, Poonam Chambers A Wing,
Dr. Annie Besant Road, Worli,
Mumbai-400018, Maharashtra (India)
E-Mail: info@nisusfin.com **...Respondent No. 1**

2. **Beacon Trusteeship Limited**
Having its registered office at:
4C & D Siddhivinayak Chambers,
Gandhi Nagar, Opposite MIG Cricket Club,
Bandra (East), Mumbai-400051,
Maharashtra (India)
E-Mail: compliance@beaconstrustee.co.in **...Respondent No. 2**

3. **Tulsiani Constructions And Developers Private Limited**
Having its registered office at:
Plot no-3, Block N. Green Park (Main)
New Delhi-110016
E-Mail: acc.tedl@gmail.com **...Respondent No. 3**

4. **Mahesh Kumar Tulsiani**
Plot no-3 Block N. Green Park (Main)
New Delhi-110016

E-Mail: acc.tcdl@gmail.com **…Respondent No. 4**

Present

For Appellants:	Mr. Rishabh Jain, Adv. & Mr. Gaurav Katiyar (in person), for RP.
For Respondents:	Mr. Shikhil Suri, Sr. Advocate along Ms. Prachi Johri, Mr. Saurabh Jha, Mr. Siddhant Katyal, Adv. for R-1.

With
Comp. App. (AT) (Ins) No. 969 & 970 of 2024
& I.A. No. 3519, 3521, 3523, 7147, 7148, 7149, 7150 of 2024

(Arising out of the Order dated 02.05.2024 passed by the National Company Law Tribunal, New Delhi, Court-III in I.A No. 5238/2023 & 5125/ 2023 in CP No.(IB) 1348 (ND) /2019)

IN THE MATTER OF:

Consortium of DS Infraheights Pvt. Ltd. & Anand Buildtech Pvt. Ltd.
A-119, Sector-63, Gautam Budh Nagar, Noida 201301, Uttar Pradesh **…Appellant**

Versus

1. **M/s Nisus Finance And Investment Infratech Pvt. Ltd.**
   Having its registered office at:
   201 D, Poonam Chambers A Wing,
   Dr. Annie Besant Road, Worli,
   Mumbai-400018, Maharashtra (India)
   E-Mail: info@nisusfin.com **…Respondent No. 1**

2. **Gaurav Kathiyar,**
   Resolution Professional of Earthcon
   Universal Infra Tech Private Limited
   Having Office At: 1-17, DDA Flats, Sector
   7 Jasola Vihar, New Delhi – 110025.
   E-Mail: cagauravkathiyar@gmail.com **…Respondent No. 2**

3. **Committee of Creditors**
Of M/s Earthcon Universal Infratech Pvt. Ltd.
1-17, DDA Flats, Sector-7 Jasola Vihar, New Delhi – 110025
Email:- cagauravkatiyar@gmail.com **…Respondent No. 3**

Present

For Appellants:	Mr. P. Nagesh Sr. Advocate along with Mr. Harshal Kumar, Adv.
For Respondents:	Mr. Shikhil Suri, Sr. Advocate along Ms. Prachi Johri, Mr. Saurabh Jha, Mr. Siddhant Katyal, Adv. for R-1.

With

Comp. App. (AT) (Ins) No. 1175 of 2024 & I.A. No. 7152 of 2024

(Arising out of the Order dated 02.05.2024 passed by the National Company Law Tribunal, New Delhi, Court-III in I.A No. 5125/ 2023, 5238/ 2023 & 4466/2023 in CP No.(IB) 1348 (ND) /2019)

IN THE MATTER OF:

Committee of Creditors
Of M/s Earthcon Universal Infratech Pvt. Ltd.
Through, Sh. Jawed Ahmad Ansari,
S/o Late Habib Ahmad Ansari
R/o 371, Laxmi Bai Nagar,
New Delhi – 110023. **…Appellant**

Versus

1. **Nisus Finance And Investment Managers LLP**
Having its registered office at:
201 D, Poonam Chambers A Wing,
Dr. Annie Besant Road, Worli,
Mumbai-400018, Maharashtra (India) **…Respondent No. 1**

2. **Gaurav Kathiyar,**
Resolution Professional

M/s Earthcon Universal Infra Tech Private Limited
1-17, DDA Flats, Sector-7 Jasola Vihar, New Delhi – 110025. **…Respondent No. 2**

3. **Consortium of DS Infraheights Pvt. Ltd. & Anand Buildtech Pvt. Ltd.**
A-119, Sector-63, Gautam Budh Nagar, Noida 201301, Uttar Pradesh **…Respondent No. 3**

<u>Present</u>

For Appellants:	Mr. Amit Sibal, Sr. Adv. with Mr. Mrinal Harsh Vardhan, Mr. Rituparna Patra, Akankrita Sinha, Adv
For Respondents:	Mr. Shikhil Suri, Sr. Advocate along Ms. Prachi Johri, Mr. Saurabh Jha, Mr. Siddhant Katyal, Adv. for R-1.

<u>With</u>

<u>Comp. App. (AT) (Ins) No. 1176 of 2024 & I.A. No. 7153 of 2024</u>

<u>(Arising out of the Order dated 02.05.2024 passed by the National Company Law Tribunal, New Delhi, Court-III in I.A No. 5125/ 2023, 5238/ 2023 & 4466/2023 in CP No.(IB) 1348 (ND) /2019)</u>

<u>IN THE MATTER OF:</u>

Committee of Creditors
Of M/s Earthcon Universal Infratech Pvt. Ltd.
Through, Sh. Jawed Ahmad Ansari,
S/o Late Habib Ahmad Ansari
R/o 371, Laxmi Bai Nagar,
New Delhi – 110023. **…Appellant**

Versus

1. **Nisus Finance And Investment Managers LLP**
Having its registered office at:
201 D, Poonam Chambers A Wing,
Dr. Annie Besant Road, Worli,
Mumbai-400018, Maharashtra (India) **…Respondent No. 1**

2. **Gaurav Kathiyar,**
Resolution Professional
M/s Earthcon Universal Infra Tech Private Limited 1-17, DDA Flats, Sector-7 Jasola Vihar, New Delhi – 110025. **…Respondent No. 2**

3. **Consortium of DS Infraheights Pvt. Ltd. & Anand Buildtech Pvt. Ltd.**
A-119, Sector-63, Gautam Budh Nagar, Noida 201301, Uttar Pradesh **…Respondent No. 3**

Present

For Appellants:	Mr. Amit Sibal, Sr. Adv. with Mr. Mrinal Harsh Vardhan, Mr. Rituparna Patra, Akankrita Sinha, Adv
For Respondents:	Mr. Shikhil Suri, Sr. Advocate along Ms. Prachi Johri, Mr. Saurabh Jha, Mr. Siddhant Katyal, Adv. for R-1.

With

Comp. App. (AT) (Ins) No. 1174 of 2024
& I.A. No. 4192, 4193, 4701, 5504, 7151 of 2024

(Arising out of the Order dated 02.05.2024 passed by the National Company Law Tribunal, New Delhi, Court-III in I.A No. 5125/ 2023, 5238/ 2023 & 4466/2023 in CP No.(IB) 1348 (ND) /2019)

IN THE MATTER OF:

Committee of Creditors
Of M/s Earthcon Universal Infratech Pvt. Ltd.
Through, Sh. Jawed Ahmad Ansari,
S/o Late Habib Ahmad Ansari
R/o 371, Laxmi Bai Nagar,
New Delhi – 110023. **…Appellant**

Versus

1. **Nisus Finance And Investment Managers LLP**
Having its registered office at:
201 D, Poonam Chambers A Wing,
Dr. Annie Besant Road, Worli,
Mumbai-400018, Maharashtra (India) **…Respondent No. 1**

2. **Gaurav Kathiyar,**
Resolution Professional
M/s Earthcon Universal Infra Tech Private Limited
1-17, DDA Flats, Sector-7 Jasola Vihar, New Delhi – 110025. **…Respondent No. 2**

3. **Consortium of DS Infraheights Pvt. Ltd. & Anand Buildtech Pvt. Ltd.**
A-119, Sector-63, Gautam Budh Nagar, Noida 201301, Uttar Pradesh **…Respondent No. 3**

4. **Tulsiani Constructions And Developers Private Limited**
Having its registered office at:
Plot no-3, Block N. Green Park (Main)
New Delhi-110016
E-Mail: acc.tedl@gmail.com **…Respondent No. 4**

Present

For Appellants:	Mr. Amit Sibal, Sr. Adv. with Mr. Mrinal Harsh Vardhan, Mr. Rituparna Patra, Akankrita Sinha, Adv
For Respondents:	Mr. Shikhil Suri, Sr. Advocate along Ms. Prachi Johri, Mr. Saurabh Jha, Mr. Siddhant Katyal, Adv. for R-1.

J U D G E M E N T

(21.07.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

1. There are eight appeals with 18 IAs before us arising out of three Impugned Orders dated 02.05.2024 under section 61 of the Insolvency & Bankruptcy Code, 2016 (in short '**Code**') passed by National Company Law Tribunal, New Delhi Bench, (in short '**Adjudicating Authority**') in IA No. 5238 of 2023 in C.P. No-

1348/ND/2019, IA No. 4466 of 2023 in C.P. No-1348/ND/2019 and IA No. 5125 of 2023 in C.P. No-1348/ND/2019.

2. Details of IAs dealt by the Adjudicating Authority in the three impugned order dated 02.05.2024 are as follows:

(i) **IA-5238/2023 in IB-1348/ND/2019-** M/s. Nisus Finance & Investment Managers LLP & Anr. challenged the Resolution Plan for M/s. Earthcon Universal Infratech Pvt. Ltd. under the code alleging the Successful Resolution Applicant (SRA), a consortium of M/s. D.S. Infraheights Pvt. Ltd. and M/s. Anand Buildtech Pvt. Ltd., was ineligible due to misrepresentations. Issues included false claims about the "Luvnest" project (developed by another entity per RERA), incomplete "Urban Woods" project with illegal constructions, and an invalid HDFC Bank commitment letter, reducing the SRA's claimed project delivery below the 10,00,000 sq. ft. eligibility threshold. The Adjudicating Authority allowed IA-5238/2023, rejecting the Resolution Plan for non-compliance with the provisions of the Code, and ordered the Resolution Professional to issue a fresh Form G and expedite the approval process. The Adjudicating Authority also allowed the SRA to resubmit with accurate information, and the CoC to reassess the Performance Bank Guarantee. The CIRP timeline was extended.

(ii) **IA-5144/2023, IA-5145/2023, IA 4466/2023-** The applications (IA-5144/2023 and IA-5145/2023) were filed by GNIDA against the

Resolution Professional and Committee of Creditors in the insolvency case of Earthcon Universal Infratech Pvt. Ltd. under Section 7 of the Code. GNIDA sought recognition as a secured creditor, revision of admitted claim amounts, inclusion of its dues in the Resolution Plan, and quashing of actions not treating it as a secured creditor. It also requested IBBI to examine the Resolution Professional's conduct. IA No. 4466/2023 sought approval of the Resolution Plan by the Resolution Professional. The Adjudicating Authority disposed of all applications vide order dated 02.05.2024, referring them back to the CoC for reconsideration. The Adjudicating Authority noted that in IA No. 5238/2023, the Resolution Plan was rejected due to objections by M/s. Nisus Finance & Investment Managers LLP & Anr., and thus, IA-4466/2023 was also disposed of.

(iii) **IA-5125/2023 in IB-1348/ND/2019-** The application, filed by M/s. Tulsiani Constructions and Developers Private Limited & Anr. under Section 60(5) of the Code, and Rule 11 of the NCLT Rules, 2016, sought to bring certain facts before the Adjudicating Authority, for appropriate orders in the matter of M/s. Earthcon Universal Infratech Private Limited (Corporate Debtor). The application was related to the insolvency case (IB-1348/ND/2019) involving M/s. Nisus Finance & Investment Managers LLP & Anr. as Financial Creditors. The IA No. 5125/2023 was disposed of vide this order dated 02.05.2024.

3. Now, we will take up the appeals filed before us.

Company Appeal (AT) (Ins.) No. 963-965 of 2024

4. This appeal has been filed by the Appellant i.e. Gaurav Katiyar, who is the Resolution Professional of M/s Earthcon Universal lnfratech Private Limited (hereinafter referred to as "Corporate Debtor"), against the Impugned Order dated 02.05.2024, passed by the NCLT-New Delhi-III (hereinafter referred to as "Adjudicating Authority") in I.A. No. 5238 of 2023 in Company Petition IB No. 1348/ND/2019, I.A. No. 4466 of 2023 in Company Petition IB No. 1348/ND/2019 and I.A No. 5125 of 2023 in Company Petition IB No. 1348/ND/2019.

5. Nisus Finance and Investment Managers LLP, who was the Financial Creditor of the CD, is the Respondent No.1 herein.

Beacon Trusteeship Limited, who was the Financial Creditor of the CD, is the Respondent No.2 herein.

Tulsiani Constructions and Developers Private Limited, who has claimed to be a majority shareholder of 75%, is the Respondent No.3 herein.

Mahesh Kumar Tulsiani, who is the Nominee Director of Respondent No.3 (Tulsiani Constructions and Developers Private Limited) in M/s Shreehari RealtechPvt. Ltd. is the Respondent No.4 herein.

Company Appeal (AT) (Ins.) No.969-970 of 2024

6. This appeal has been filed by the Appellant i.e. Consortium of DS Infraheights Pvt. Ltd. & Anand Buildtech Pvt. Ltd., who is the successful

Resolution Applicant of M/s Earthcon Universal lnfratech Private Limited i.e. Corporate Debtor, against the Impugned Order dated 02.05.2024, passed by the Adjudicating Authority in I.A. No. 5238 of 2023 in Company Petition IB No. 1348/ND/2019 and I.A No. 5125 of 2023 in Company Petition IB No. 1348/ND/2019.

7. Nisus Finance and Investment Infratech Pvt. Ltd., who was the Financial Creditor of the CD, is the Respondent No.1 herein.

Gaurav Kathiyar, who was the Resolution Professional, is the Respondent No.2 herein.

Committee of Creditors of M/s Earthcon Universal Infratech Pvt. Ltd., is the Respondent No. 3 herein.

Company Appeal (AT) (Ins.) No.1174,1175,1176 of 2024

8. These three appeals have been filed by the Appellant i.e. Committee of Creditors of M/s Earthcon Universal Infratech Pvt. Ltd., against the Impugned Order dated 02.05.2024, passed by the Adjudicating Authority in I.A. No. 5238 of 2023 in Company Petition IB No. 1348/ND/2019, I.A No. 4466 of 2023 in Company Petition IB No. 1348/ND/2019 and 5125/ 2023 in CP No. (IB) 1348 (ND) /2019).

9. M/s Nisus Finance and Investment Infratech Pvt. Ltd., who was the Financial Creditor of the CD, is the Respondent No.1 herein.

Gaurav Kathiyar, who was the Resolution Professional, is the Respondent No.2 herein.

Consortium of DS Infraheights Pvt. Ltd. & Anand Buildtech Pvt. Ltd., who is the successful Resolution Applicant of the CD, is the Respondent No. 3 herein.

Pleadings of the Parties

10. We note that all these appeals are related to approval/ rejection of the Resolution Plan and connected matters. We find that pleadings by the Resolution Professional, CoC and Consortium/ SRA are almost similar justifying the Resolution Plan and have challenged the Impugned Order rejecting the Resolution plan approved by the CoC. We shall refer them collectively as "parties supporting Resolution Plan" hereinafter for the sake of convenience and clarity.

Similarly, we find that Nisus Finance and Investment Managers LLP, Beacon Trusteeship Limited, Tulsiani Constructions and Developers Private Limited and Mahesh Kumar Tulsaini, have been opposing the Resolution Plan and have supported the Impugned Order rejecting the Resolution Plan. We shall refer them as "parties opposing the Resolution Plan" hereinafter for sake of convenience and clarity.

11. We shall deal pleadings of "parties supporting Resolution Plan" and "parties opposing the Resolution Plan" in conjoint manner for the sake of brevity and avoidance of repetition of arguments.

12. The "parties supporting Resolution Plan" contended that, pursuant to Form G issued on 10.05.2023 by Resolution Professional inviting EoI, the SRA submitted its EoI and was included in the list of eligible PRAs on 08.06.2023.

The “parties supporting Resolution Plan” further submitted that SRA’s Resolution Plan, submitted to Resolution Professional, was placed before the CoC in the 26th CoC meeting, was approved by the CoC with 70.18% voting share. The “parties supporting Resolution Plan” submitted that Resolution Professional issued a Letter of Intent (LoI) on 19.08.2023, and the SRA furnished a bank guarantee of Rs. 2.5 crores, as required. The “parties supporting Resolution Plan” submitted that the project, slated for completion by 2014, was abandoned by the Corporate Debtor’s promoters, who siphoned off Rs. 190 Crores, prompting FIRs and a charge sheet.

13. The “parties supporting Resolution Plan” submitted that the Adjudicating Authority’s rejection of the Resolution Plan, approved by the CoC with a 70.18% voting share, was based on erroneous grounds: (a) failure to deliver 10,00,000 sq. ft. in the last five financial years, (b) alleged falsity of Rs. 20 crores commitment letter from HDFC Bank, (c) reliance on a FIR dated 16.12.2022 filed against the SRA, and (d) alleged non-disclosures by SRA in the Resolution Plan. The “parties supporting Resolution Plan” contended that these grounds are contrary to the record and unsupported by evidence.

14. The “parties supporting Resolution Plan” submitted that during 26th CoC meeting, the Resolution Professional placed all objections raised by Nisus Finance and Investment Managers LLP before the CoC, but representative of Nisus Finance and Investment Managers LLP, remained silent and raised no concerns. The “parties supporting the Resolution Plan” contended that Nisus’s subsequent objections in IA No. 5238/2023 are inconsistent and opportunistic, especially given its failure to raise issues during the CoC deliberations.

15. The "parties supporting Resolution Plan" submitted that the CIRP is a collective bargaining process, and the CoC, by a 70.18% majority, trusted the SRA's credentials, feasibility, viability, and capability, approving the Resolution Plan. The "parties supporting Resolution Plan" contended that this decision falls squarely within the CoC's commercial wisdom, as held in ***K. Sashidhar v. Indian Overseas Bank*** *(2019) 102 taxmann.com 139 (SC),* ***Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd.*** *(2021) 125 taxmann.com 360 (SC), and* ***SP Coal Resources Pvt. Ltd. v. Indus FILA Ltd.*** *(TA (AT) No. 13 of 2021).* The "parties supporting Resolution Plan" further submitted that the assessment of asset maximization is a subjective matter for the CoC, and the Adjudicating Authority's interference was impermissible.

16. The "parties supporting Resolution Plan" submitted that the CoC-approved eligibility criteria required PRAs to have committed funds of Rs. 20 crores available for investment/deployment as of the Effective Date (within 90 days from plan approval), supported by proof of funds with the EoI. The "parties supporting Resolution Plan" contended that the Adjudicating Authority misconstrued this requirement by implying that the funds needed to be blocked during the interregnum from EoI submission to the Effective Date, in addition to the Rs. 2.5 crore bank guarantee. The Appellant further submitted that such an interpretation is commercially impractical and contrary to a prudent businessman's assessment of credentials.

17. The "parties supporting Resolution Plan" submitted that the Resolution Professional verified the Rs. 20 crore commitment letter's authenticity with HDFC Bank via email dated 10.08.2023, with the bank confirming its validity. The "parties supporting Resolution Plan" contended that the Adjudicating Authority's finding that the commitment letter was "false and baseless" is contrary to this evidence and unsupported by any substantiation from Nisus.

18. The "parties supporting Resolution Plan" contended that no objection was raised by any stakeholder, including Nisus Finance and Investment Managers LLP, regarding the credentials of the SRA at the stage of issuing the provisional and final lists of PRAs.

19. The "parties supporting Resolution Plan" submitted that Nisus Finance and Investment Managers LLP and Beacon Trusteeship Limited approached the Adjudicating Authority in I.A. No. 5238/2023 in collusion with Mr. Shadab Khan, the ex-director and shareholder of the Corporate Debtor, to facilitate a backdoor entry for Mr. Khan. The "parties supporting Resolution Plan" contended that Nisus Finance and Investment Managers LLP and Beacon Trusteeship Limited never raised doubts regarding the SRA's credentials during the CIRP or negotiation process. Their objections in I.A. No. 5238/2023 were filed at the behest of Mr. Shadab Khan, who provided annexures/emails to challenge the SRA's credentials, with the intent to derail the CoC-approved resolution plan. The "parties supporting Resolution Plan" submitted that Mr. Shadab Khan, was disqualified under Section 29A(g) of the Code vide order dated 21.12.2023 in I.A. No. 3895/2021 and 3899/2021 Company Petition IB No. 1348/ND/2019, and was ineligible to submit a resolution plan, rendering the objections raised by Nisus Finance and Investment Managers LLP and Beacon Trusteeship Limited mala fide. The "parties supporting Resolution Plan" contended that during the CoC meeting considering the resolution plan, the representative, Mr. Amit Goenka of Nisus Finance and Investment Managers LLP and Beacon Trusteeship Limited failed to raise any objections, further indicating that their grievances were instigated by Mr. Shadab Khan and lacked merit.

20. The "parties supporting Resolution Plan" contended that the eligibility criteria allowed funds to be sourced from various modes, including own sources, financial institutions, or SWAMIH Investment Fund. The SRA further secured a term sheet dated 13.12.2023 from SWAMIH Investment Fund I to invest up to Rs. 255.3 Crores, demonstrating its financial capability.

21. The "parties supporting Resolution Plan" submitted that objections raised by Sh. Col. Sudheer Kumar, an estranged homebuyer, on 10.08.2023 and 16.08.2023, at the instance of Mr. Shadab Khan, misconstrued the eligibility criteria by demanding a sanction letter instead of a commitment letter, which was adequately addressed by HDFC Bank's response on 19.08.2023.

22. The "parties supporting Resolution Plan" submitted that the eligibility criteria required PRAs to have delivered at least 10 lakh square feet of super area between FY 2017-18 and FY 2021-22. The SRA submitted four certificates (Electricity NoC, Fire Safety NoC, Lift Installation NoC, and Structural Safety Certificate) to substantiate its work experience, which were verified by the Resolution Professional.

23. The "parties supporting Resolution Plan" stated that Section 15A of the Uttar Pradesh Urban Planning and Development Act, 1973 and the UP RERA order dated 16.09.2019 provide for "deemed completion" if the authority fails to issue or refuse a completion certificate within stipulated period of the notice of completion. The SRA's eligibility was assessed based on these provisions and certificates.

24. The "parties supporting Resolution Plan" submitted that the eligibility criteria do not mandate that a PRA's work experience be assessed solely based on Occupancy Certificates or Completion Certificates, nor do they contain an exclusion clause disqualifying work experience without such certificates. The "parties supporting Resolution Plan" contended that the Adjudicating Authority's reliance on the absence of such certificates to conclude that the SRA failed to deliver 10,00,000 sq. ft. was erroneous. The "parties supporting Resolution Plan" further submitted that Anand Buildtech Pvt. Ltd., a consortium member, has delivered over 10,00,000 sq. ft., as evidenced by its profile

25. The "parties supporting Resolution Plan" submitted that the demolition order dated 21.12.2022 by the Lucknow Development Authority (LDA) was limited to unauthorized constructions (e.g., office and sample flat in setback area, walls affecting parking, etc.) and did not affect the entire 4,17,922 square feet of the Urban Woods project of SRA. The "parties supporting Resolution Plan" contended that the Adjudicating Authority erred in relying on the demolition order to negate the SRA's work experience, as the order pertained only to specific unauthorized constructions, which are common in real estate projects for commercial expediency (e.g., sample flats, sales offices).

26. The "parties supporting Resolution Plan" submitted that the Resolution Professional personally visited the Urban Woods project in Lucknow and confirmed that it is fully constructed, delivered, operational, well-maintained, and occupied by residents. The "parties supporting Resolution Plan" contended that the Adjudicating Authority's failure to consider this verification undermines its finding that the SRA lacked requisite work experience. The "parties supporting Resolution Plan" further submitted that the CoC, aware of the project's "deemed completion" status, accepted the SRA's credentials, supported by affidavits, photographs, and electricity bills paid by residents.

27. The "parties supporting Resolution Plan" contended that the FIR dated 16.12.2022 filed by Mr. Manoj Kumar, relied upon by the Adjudicating Authority, was neither related to the Urban Woods project nor the SRA, rendering its consideration baseless.

28. The "parties supporting Resolution Plan" submitted that Nisus Finance and Investment Managers LLP failed to provide substantive evidence to challenge the SRA's credentials including the Urban Woods project's completion. The "parties supporting Resolution Plan" contended that the Adjudicating Authority's reliance on irrelevant documents (e.g., FIR, demolition order) and disregard for the Resolution Professional's verification of the commitment letter and project status constitute a miscarriage of justice.

29. The "parties supporting Resolution Plan" submitted that the CoC, with a 70.18% majority, approved the SRA's resolution plan, finding it feasible, viable, and credible, which falls within the CoC's commercial wisdom as per the Hon'ble Supreme Court's ruling in ***K. Sashidhar v. Indian Overseas Bank*** [2019] 102 taxmann.com 139 (SC). The "parties supporting Resolution Plan" contended that the Adjudicating Authority misdirected itself by interfering with the CoC's commercial wisdom, which encompasses the assessment of the SRA's feasibility, viability, and capability to implement the resolution plan.

30. The "parties supporting Resolution Plan" submitted that the SRA claimed a developed area of 14,73,215 square feet in its EoI/Resolution Plan, exceeding the eligibility criteria of 10 lakh square feet. Even if the 1,46,803 square feet of the Luv Nest project is excluded, the SRA fulfils the eligibility criteria. The "parties supporting Resolution Plan" contended that the Luv Nest project was not the sole basis for verifying the SRA's eligibility, and the Resolution Professional duly considered other credentials.

31. Concluding the arguments, the “parties supporting Resolution Plan” requested this Appellate Tribunal to set aside the Impugned Order which rejected the approval of the Resolution Plan and allow their appeals.

32. Per contra, the “parties opposing Resolution Plan” denied all averments made by the “parties supporting Resolution Plan” as misleading and baseless and submitted that the impugned order dated 02.05.2024 rejecting the Resolution Plan is a detailed and well-reasoned decision, arrived at after considering all contentions and evidence, and the Adjudicating Authority correctly found that the SRA was ineligible under the CoC-approved eligibility criteria, and the order requires no interference.

33. The “parties opposing Resolution Plan” submitted that the Adjudicating Authority rightly rejected the resolution plan on the ground that the SRA failed to demonstrate the capability to infuse Rs.20 Crores, as required by the eligibility criteria in Form-G. The commitment letter from HDFC Bank, relied upon by the SRA, neither constituted a sanction letter nor served as evidence of fund availability. The “parties opposing Resolution Plan” contended that an email dated 19.08.2023 from HDFC Bank to Col. Sudheer Kumar, in response to his query dated 16.08.2023, explicitly clarified that the commitment letter did not constitute a sanction letter or evidence of fund disbursement, and that sanction processes are contingent on the borrower meeting financial criteria. The “parties opposing Resolution Plan” submitted that the SRA has not furnished any document to substantiate compliance with the Rs. 20 Crores eligibility criterion.

The eligibility criteria mandated proof of available funds at the EoI stage, and the "parties supporting Resolution Plan" interpretation, allowing funds to be infused within 90 days post-approval, misconstrues the criteria and jeopardizes stakeholder interests.

34. The "parties opposing Resolution Plan" contended that the non-binding term sheet dated 13.12.2023 from SWAMIH Investment Fund I, cited by the SRA, was not disclosed earlier and lacks legally enforceable obligations. Its introduction in the appeal, absent in the SRA's appeal, suggests the SRA's malfeasance and intent to mislead homebuyers, indicating collusion with the SRA.

35. The "parties opposing Resolution Plan" submitted that the SRA failed to meet the eligibility criterion of delivering 10 lakh square feet of super area in the last five financial years (FY 2017-18 to 2021-22). The SRA claimed experience from projects Luv Nest and Urban Woods, but the RERA website showed that Luv Nest was developed by M/s. Shreehari Realtech Pvt. Ltd., not the SRA, reducing the claimed area of SRA by 1,46,803 square feet. The "parties opposing Resolution Plan" contended that the Urban Woods project, developed by M/s. D S Infraheights Pvt. Ltd., lacks a completion certificate (CC) or occupancy certificate (OC) as of 19.08.2023, per RTI responses from the LDA dated 19.08.2023 and 01.09.2023. This incomplete status disqualifies 4,17,922 square feet from the SRA's claimed experience. The "parties opposing Resolution Plan" submitted that, after deducting 5,64,725 square feet (Luv Nest and Urban

Woods), the SRA's remaining claimed area of 9,08,490 square feet lacks substantiation. The SRA's involvement in these projects appears limited, possibly as a contractor, failing to meet the eligibility criteria.

36. The "parties opposing Resolution Plan" contended that the "parties opposing Resolution Plan" reliance on Section 15A of the Uttar Pradesh Urban Planning and Development Act, 1973, for "deemed completion" is misplaced. Section 15A requires a notice of completion to the authority, which the SRA did not submit to LDA. The UP-RERA office order dated 16.09.2019 also mandates such an application, which was not made by SRA, likely due to construction irregularities. This was further vitiated by the FIR filed by Uttar Pradesh Awas Vikas Parishad, which confirms illegal possession without approvals, and by the absence of a notice of completion to the authority, rendering the deeming provision inapplicable.

37. The "parties opposing Resolution Plan" contended that the Resolution Professional's argument that the SRA meets the 10 lakh square feet eligibility criterion even if the 1,46,803 square feet of Luv Nest is excluded, is untenable. The resolution plan, approved by the CoC, was based on the full 14,73,215 square feet, and any post facto exclusion would require de novo voting and approval, which is not permissible.

38. The "parties opposing Resolution Plan" submitted that the Resolution Professional's averment about dismissing the FIR dated 16.12.2022 filed by Mr. Manoj Kumar as irrelevant, is misleading. The FIR was filed by Mr. Manoj

Kumar in his official capacity as Assistant Engineer, Uttar Pradesh Awas Vikas Parishad, a statutory organization, against Mr. Shashank Gupta, Chairman of Shreehari Realtech Pvt. Ltd., specifically for the Luv Nest project at 11 GH/03, Vrindavan Yojna No. 3, Sector-11, Lucknow, the very project whose credentials were misused by the SRA. The "parties opposing Resolution Plan" contended that the FIR dated 16.12.2022, filed by Mr. Manoj Kumar, confirms that possession of flats in Luv Nest was given without a CC, in contravention of law, by M/s. Shreehari Realtech Pvt. Ltd., whose director, Mr. Shashank Gupta, is also a director of D S Infraheights Pvt. Ltd., further evidencing the SRA's misrepresentations.

39. The "parties opposing Resolution Plan" submitted that the "parties supporting Resolution Plan" allegations of collusion with Mr. Shadab Khan, the ex-director, are baseless and unsubstantiated and thus have initiated multiple legal proceedings against Mr. Shadab Khan and related entities, including, A complaint under Section 138 of the Negotiable Instruments Act before the Metropolitan Magistrate, Mumbai; A complaint for economic offences at Saket Court, Delhi; An execution application at the Hon'ble Bombay High Court for an arbitral award of Rs. 74,44,12,398; A contempt petition for disobeying court orders dated September 2019, 27.02.2020, and 27.06.2022.

40. The "parties opposing Resolution Plan" submitted that the Resolution Professional failed to perform its duties by overlooking the SRA's ineligibility, despite being aware of misrepresentations regarding financial capability and work experience. This conduct of Resolution Professional is detrimental to the Corporate Debtor and its stakeholders, indicating collusion with the SRA.

41. The "parties opposing Resolution Plan" submitted that the resolution plan was approved by homebuyers, who constituted the majority of the CoC, but was rejected by all institutional creditors, including Greater Noida Industrial Development Authority and Punjab & Sindh Bank. The homebuyers' approval was influenced by the SRA's misrepresentations, which the CoC/Resolution Professional deliberately overlooked.

42. The "parties opposing Resolution Plan" contended that the CoC's approval does not immunize the resolution plan from scrutiny, as the SRA's ineligibility renders the plan inadmissible and reliance on ***K. Sashidhar v. Indian Overseas Bank (Supra)*** is misconstrued, as commercial wisdom does not extend to approving plans by ineligible applicants.

43. The "parties opposing Resolution Plan" contended that allegation that earlier resolution plans failed due to their litigation is irrelevant, as those plans were withdrawn by the resolution applicants themselves, e.g., Saya Homes Pvt. Ltd. via I.A. No. 3301/2021.

44. The parties opposing Resolution Plan submitted that the SRA made glaring misrepresentations in its Resolution Plan by claiming involvement in Luvnest and Urban Woods and asserting delivery of 10,00,000 sq. ft. The parties opposing Resolution Plan contended that these false declarations by SRA, coupled with the lack of documentary evidence for other projects, violate Regulation 39(1)(c) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which mandates true and correct information in the Resolution Plan and discovery of false information renders the SRA as ineligible to continue in the CIRP and liable for penal action under the Code.

45. The Tulsiani Constructions and Developers Private Limited submitted that the they hold a 75% majority shareholding in M/s Shreehari Realtech Pvt. Ltd., and Mahesh Kumar Tulsaini was its nominee director in the said company, establishing their legitimate interest in the matter. Thus, further contended that the crux of their application in I.A. No. 5125/2023 was to challenge the Successful Resolution Applicant's misrepresentation regarding its eligibility, particularly the false claim of delivering 14,73,215 square feet, including 1,46,803 square feet from the "Luv Nest" project of Shreehari Realtech Pvt. Ltd., as Shreehari Realtech Pvt. Ltd. is neither part of the SRA consortium nor has it authorized any entity to use the credentials of its Luv Nest project, rendering the SRA's representation unauthorized and fraudulent. They, further submitted that the Luv Nest project has not been successfully delivered, as evidenced by FIR No. 0710/2023 (District Lucknow – East, P.S. PGI), filed by officials of Uttar Pradesh Awas Vikas Parishad against Mr. Shashank Gupta, Chairman of Shreehari Realtech Pvt. Ltd., for illegally providing possession of flats without obtaining a completion certificate (CC) from the competent authority, in violation of applicable rules. Thus, also contended that Shreehari Realtech Pvt. Ltd. applied for an OC and CC, but the application was returned with objections, and no fresh application has been filed after curing these objections. Consequently, there is no "deemed completion" under RERA regulations, further invalidating the SRA's claim.

46. The parties opposing Resolution Plan submitted that approving the SRA Resolution Plan, tainted by misrepresentations and ineligibility, would be detrimental to the interests of all stakeholders, including homebuyers and financial creditors like Nisus Finance and Investment Managers LLP and further contended that the impugned order protects the integrity of the CIRP by rejecting an ineligible plan of SRA and directing the Resolution Professional to issue a fresh Form G, aligning with the Code's objective of ensuring a fair and transparent process.

47. Concluding their arguments, "the parties opposing the Resolution Plan" requested this Appellate Tribunal to dismiss the Appeals of parties supporting Resolution Plan with cost.

Findings

48. We note that the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor commenced on 08.01.2020, on an application filed under section 7 of the Code filed by the financial creditor Nisus Finance and Investment Managers LLP against the Corporate Debtor. We further note that the Appellant contended that the Resolution Professional published Form-G four times, and the Committee of Creditors (CoC) approved resolution plans on three occasions

(May 2020, June 2022, and August 2023). However, the plans approved in May 2020 and June 2022 could not materialize due to litigation between the parties. In the third round, Form-G was published on 13.04.2023, with an amended Form-G on 10.05.2023 to extend timelines for Expressions of Interest (EoI). Out of 10 EoIs received, only 6 were found eligible, and a provisional list of Prospective Resolution Applicants (PRAs) was issued on 27.05.2023, followed by a final list on 08.06.2023, in compliance with Regulation 36A(10) of the IBBI (CIRP) Regulations, 2016.

49. The Resolution Professional issued the Request for Resolution Plan (RFRP), Information Memorandum (IM), and Evaluation Matrix to PRAs under Regulation 36B (1) of the IBBI (CIRP) Regulations, 2016. Only two resolution plans were received, of which the plan submitted by the Consortium of M/s. D S Infraheights Private Limited and Anand Buildtech Private Limited was approved by the CoC with a 70.18% majority on 27.05.2023.

50. The Resolution Professional filed I.A. No. 4466/2023 under Section 30(6) of the Code on 22.08.2023 for approval of the resolution plan. However, Nisus Finance and Investment Managers LLP and Beacon Trusteeship Limited filed I.A. No. 5238/2023, raising objections, which were allowed by the Adjudicating Authority vide the Impugned Order dated 02.05.2024, passed in I.A. No.4466 of 2023 and I.A. No.5238 of 2023 in Company Petition IB No. 1348/ND/2019, rejecting the resolution plan.

51. Based on averments of the parties in all the eight appeals and material available, following issues are required to be examined and determined in order to decide these appeals.

(I) (a) Whether, the experience taken by consortium (DS Infra Heights Private Limited and Anand Buildtech Private Limited) of Luv Nest Project developed by M/s Shree Hari Realtech Pvt. Ltd. could have been counted by consortium based on stipulated eligibility criteria.

(b) Whether, the consortium has delivered at least 10 Lakhs sq. ft. super area as per the stipulated eligibility criteria No. 3 of EoI.

(II) Whether, the consortium met the financial eligibility criteria of Rs. 20 Crore "Committed Funds" as per eligibility criteria No. 7 of EoI.

52. All these issues will depend upon the eligibility criteria stipulated, documents asked from PRAs in support of their eligibility and submission of such document by the consortium in order to meet these stipulated eligibility criteria to become SRA.

Hence, we shall refer to eligibility criteria which reads as under :-

Eligibility Criteria

The eligibility criteria for prospective resolution applicants, as approved by the CoC in accordance with the Section 25(2)(h) of the Code is as follows:

1. A prospective resolution applicant ("PRA") shall be a person including:
   a) An Individual or a Body of Individual (BOI)
   b) A Company
   c) A Firm
   d) A Local Authority (including GNIDA) *
   e) Every Artificial Juridical Person not falling within any of the preceding sub-clauses.

   who is competent to enter into a contract as per the requirement of Indian Contract Act, 1872 and should be eligible to invest in India under the laws of India.

   * Greater Noida Industrial Development Authority "GNIDA" as established under the Uttar Pradesh Industrial Area Development Act, 1976

   A PRA may include corporates having Private Equity Funds, Venture Capital Funds, Investment Funds, Non-Banking Finance Companies, Asset Reconstruction Companies, Banks etc.

2. A PRA may in form of a consortium.
   For the removal of doubts, it is being clarified that the below mentioned technical and financial requirement may be fulfilled by consortium PRA or members thereof, singularly or jointly.

3. A PRA should have delivered at least 10 lakhs square feet super area during last 5 financial years (i.e. between financial year 2017-18 to 2021-22).

4. A PRA should have average annual turnover of INR 35 Crores or more from real estate business for previous five financial years, based on the latest audited financial statements. (i.e. between financial year 2017-18 to 2021-22)

   For the removal of doubts, it is being clarified that the turnover in form of brokerage from real estate projects shall not be considered as turnover from real estate business.

5. A PRA should have Tangible Net Worth of INR 25 Crores or more as on 31st March 2022 based on the latest audited financial statements of the entity and as certified by a Chartered Accountant.

6. EoI submitted by Prospective Resolution Applicant "PRA" shall be accompanied with security deposit of Rs. 10 Lakhs by way of demand draft in the name of CD (i.e. Earthcon Universal Infratech Private Limited) :

   - Security deposit of Rs. 10 lakhs received from the ineligible PRA shall be returned back within 2 weeks from issuance of final list of PRAs
   - In case of eligible PRA Security deposit of Rs. 10 lakhs shall be returned back within 2 weeks after submission of resolution plan

     or

     within 2 weeks from last date to submit resolution plan in case resolution plan not submitted by such PRA

7. A PRA should have Committed funds available for investment/deployment in the real estate project of the corporate debtor of INR 20 Crores or more as on Effective Date and the PRA has to submit the proof of availability of aforesaid funds along with EoI

Clarifications :

I. The Effective Date in the resolution plan should not be more than 90 days from the date of approval of the resolution plan by the Hon'ble Adjudicating Authority.
II. The PRA shall be required to arrange fund for the entire cost of construction after approval of resolution plan by the Hon'ble Adjudicating Authority."

53. Similarly, the supporting documents have also been asked by the Resolution Professional from all Resolution Applicants to be attached with EoI as per Annexure B of EoI, which reads as under :-

ANNEXURE B

SUPPORTING DOCUMENTS TO BE ATTACHED WITH EOI

[Note. *In case of consortium, the details set out below are to be provided for each of the members*]

For all prospective resolution applicants:

a. **Name and Address:**
   i. Name of the Firm/Company/Organisation.
   ii. Address:
   iii. Telephone No:
   iv. Fax:
   v. Email
   vi. PAN/CIN:

b. Profile of the prospective resolution applicants including subsidiary (wholly-owned subsidiary, partly-owned subsidiary (if any)), associates, affiliates, joint ventures, promoter and promoter group and key managerial personnel.

c. Rationale for bidding for the Corporate Debtor

d. Copies of certificate of incorporation / registration and constitutional documents (including memorandum and articles of association or equivalent document).

e. Copy of PAN card or equivalent documents

f. Audited financial statements for immediately preceding 5 (years) years of the prospective resolution applicant and / or its promoter/promoter group or any other group company as per eligibility criteria

g. A notarized declaration from the prospective resolution applicant in order to demonstrate that the promoter / promoter group or any other group company are part of the same group, in case the interested party is using such entities for meeting the eligibility criteria. Please note that the prospective resolution applicant shall provide all relevant documents for its promoter / promoter group or any other group company, if required to meet the eligibility criteria

h. Certified true copies of completion certificate / occupancy certified (CC/OC) to substantiate and verify the criteria of development and successfully delivery at least 10 lakhs square feet super area

i. Certified true copies of the documents to substantiate and verify the criteria of availability of minimum committed fund of Rs. 20 crore.

j. Certificate from the statutory auditor certifying as at end of last 3 financial years:
   I. Tangible Net Worth, in case the prospective resolution applicant is not having arrangement of JV/AOP/SPV (in the form of a company)
   II. Tangible Net Worth, in case the prospective resolution applicant is a strategic investor; and
   III. Tangible Net Worth and/or committed funds, in case the prospective resolution applicant is a financial investor;

Note: *For a prospective resolution applicant which is a Financial Investor - Relevant statement of committed funds available for investment/deployment in Indian companies or Indian assets*

Earthcon Universal Infratech Private Limited (In CIRP) Date of issue: 13 04 2023
Detailed invitation for EOI to submit resolution plan Date of amendment 10.05.2023
Page 11 | 23

i. Contact Person
   a. Name
   b. Designation.
   c. Telephone No:
   d. Email:

j. Names & DIN of Directors including Independent Directors

k. Names of key lenders, if any, to the Company or its affiliates

l. History if any, of the Company or affiliates of the Company being declared a 'wilful defaulter', 'non-cooperative borrower', 'non-impaired asset' or 'non-performing asset'.

m. Any other relevant details which would be useful for the resolution professional to be aware of in respect of the EOI including but not limited to their eligibility/ineligibility pursuant to conditions prescribed under Section 29A of the Code.

n. Any other relevant details which would be useful for the resolution professional to evaluate the EOI and help to shortlist for the next stage in the process.

Earthcon Universal Infratech Private Limited (In CIRP) — Date of issue: 13 04 2023
Detailed invitation for EOI to submit resolution plan — Date of amendment: 10 05.2023

54. Issue No. I (a) <u>Whether, the experience taken by consortium (DS Infra Heights Private Limited and Anand Buildtech Private Limited) of Luv Nest Project developed by M/s Shree Hari Realtech Pvt. Ltd. could have been counted by consortium based on stipulated eligibility criteria.</u>

<u>(b) Whether, the consortium has delivered at least 10 Lakhs sq. ft. super area as per the stipulated eligibility criteria No. 3 of EoI.</u>

(i) Having noted the eligibility criteria, it would be desirable to understand as to who were eligible to submit the EoI. It becomes clear that the prospective Resolution Applicant could have been a consortium. According to eligibility criteria, a PRA may form a consortium and in eligibility criteria No. II, it has been specifically stipulated that all other mentioned technical and financial requirements may be fulfilled by consortium PRA or members thereof singularly or jointly.

(ii) When we look into the supportive documents requirement as noted earlier, the documents required to be attached includes profile of the Prospective Resolution Applicants including subsidiary (wholly owned subsidiary party owned subsidiary (if any), associates, affiliates, joint ventures, promoter and promoter group and key managerial personal as stipulated in (b) of Annexure B.

(iii) Similarly, sub- clause (g) of same Annexure-B called for a notarized declaration from the Prospective Resolution Applicants in order to demonstrate that the promoters/ promoter group or any other group company are part of the same group, in case the interested party is using such entities for meeting the eligibility criteria. We note that the Prospective Resolution Applicant was obligated to provide all relevant documents for its promoter/ promoter group or any other group company, if required to meet the eligibility criteria.

(iv) It is significant to note that vide (h) of same Annexure B, certified true copy of completion certificate/ occupancy certificate (CC/OC) were called for to substantiate and verify the criteria of development and successful delivery of at least 10 Lakhs sq. ft. super area.

(v) It is the case of the "parties supporting Resolution Plan" that SRA has delivered much more than 10 Lakh Sq. Ft. super area which includes the project Luv Nest (1,46,803 sq. ft. build up area) and Project Urban Wood (4,17,922sq. ft. build up area) and other projects completed by the consortium to fulfil the eligibility criteria and as delivered. We note that the consortium has claimed to have delivered projects to the tune of 14,37,215 sq. ft. of super area in the EoI submitted to Resolution Plan.

(vi) On the other hand, it is the case of the "parties opposing the Resolution Plan" that the Adjudicating Authority vide Impugned Order, have analysed in details about the eligibility criteria of delivered projects and have come to conclusion that Luv Nest project having 1,48,803 sq. ft. and Urban Wood Project having 4,17,922 sq. ft., need to be excluded due to non-availability of OC and CC, the residual area completed by the consortium fall below the 10 Lakhs sq. ft. as per eligibility criteria. The Adjudicating Authority concluded that after exclusion of these two projects, delivered area by the consortium remains 9,06,490 sq. ft., i.e., less than eligibility criteria, hence rejected the Resolution Plan of the consortium.

(vii) We have also noted the contentions of the "parties opposing the Resolution Plan" that Luv Nest project was not developed by either DS Infra Heights Private Limited or Anand Buildtech Private Limited and indeed the project was pertained to Shri Hari Realtech Pvt. Ltd. On this issue, it is the case of the SRA that Shri Hari Realtech Pvt. Ltd is a related party of DS Infra Heights Private Limited by virtue of presence of a common director. The consortium also referred to a certificate issued by the Chartered Accountant firm M/s Sanjay Bhuwania & Co., wherein it was certified that Shri Hari Realtech Pvt. Ltd. is a related party of M/s DS Infra Heights Private Limited. The certificate of Chartered Accountant firm dated 07.06.2023 reads as under: -

SANJAY BHUWANIA & CO
Chartered Accountants

Annexure-2

20

TO WHOMSOEVER IT MAY CONCERN

Based on our examination of the relevant papers and documents and relying upon the clarification and explanations provided to us, we hereby certify that M/s Shreehari Realtech Private Limited (CIN: U70109DL2012PTC240268) and M/s D.S. Infraheights Private Limited (CIN: U70102UP2013PTC059759) are related parties as on date by virtue of having common Director (*enterprises over which KMP are able to exercise significant influence*).

For **Sanjay Bhuwania & Co**
Chartered Accountants
FRN: 022755N

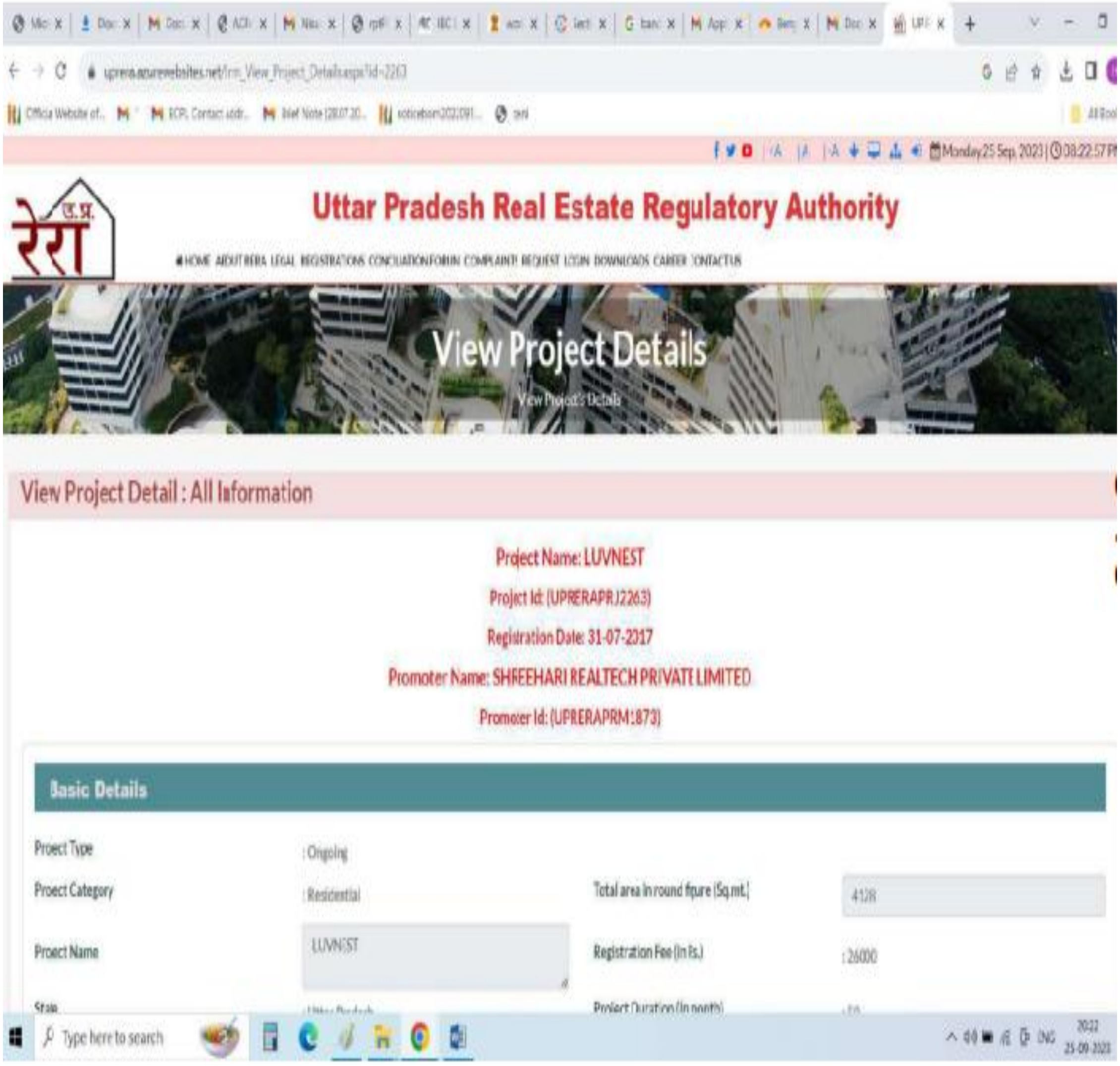
CA Bharat Bhuwania
Partner
MRN: 548372
UDIN: 23548372BGYRKN3853

Place: New Delhi
Date: 07.06.2023

TRUE COPY

L-19, Ground Floor, Kailash Colony, New Delhi – 110048
Ph: +91-9711175299/9871676981
Email: sanjayvlb@gmail.com
Website: ca-sbco.com

(viii) On this issue, we take into consideration the fact that the project delivered by Luv Nest, the "parties opposing the Resolution Plan" stated that the project was completely developed by Shri Hari Realtech Pvt. Ltd and not by DS Infra Heights Private Limited and in this regard, thus attached the screen shot on website of UP RERA which reads as under: -



(ix) The "parties opposing the Resolution Plan" further submitted that the contentions of the SRA that Shri Hari Realtech Private Limited is related party of DS Infra Heights Private Limited is not correct as no details of relationship of DS Infra Heights Private Limited with Shri Hari Realtech Private Limited was furnished at the time of submitting of the Resolution Plan and therefore, Chartered Accountant's certificate at later date is not relevant.

(x) The "parties opposing the Resolution Plan" also stated that there is dispute amongst shareholders of Shri Hari Realtech Private Limited as to who exercises the control over the said company i.e., Shri Hari Realtech Private Limited which is pending before the Adjudicating Authority being CP (IB) No. 70/PB/2023 and as on 31.03.2022, neither DS Infra Heights Private Limited nor promoter Mr. Shashank Gupta were holding more than 50% of Shri Hari Realtech Private Limited and therefore, Shri Hari Realtech Private Limited has got no connection with consortium.

(xi) We observe that similar disputed facts is regarding taking into account in counting experience of SRA is the area completed pertaining to project of Urban Woods. The SRA has taken into consideration this project area based on the deemed completion certificate as per Section 15A of the Uttar Pradesh Urban Planning & Development Act, 1973.

(xii) As regard, the project of Luv Next completed by Shri Hari Realtech Private Limited, we note that as per definition of PRA in the eligibility criteria, indeed PRA could have formed the consortium and could have also taken experience of its members, however, consortium was expected to submit the profile of the applicants including subsidiary, associates, joint ventures, promoters, promoter groups at the time of submitting EoI.

(xiii) From the Resolution Plan submitted by the SRA, we note that following details were submitted by SRA w.r.t. consortium member in the submitted documents, which reads as under: -

224

CONSORTIUM OF DS INFRAHEIGHTS PVT. LTD. & ANAND BUILDTECH PVT. LTD.

Office :A-119, Sector-63, GautamBudha Nagar, Noida – 201301 Uttar Pradesh
E-Mail : info@urbanaxis.in, info@anandbuildtech.com | Phone : 0120-4260861,

1.5. DETAILS OF EXPERIENCE IN THE POWER/INFRASTRUCTURE/MINING/REAL ESTATE BUSINESSES SECTOR (NATURE OF PROJECT, LOCATION, PRODUCT, CAPACITY, PRODUCTION, REAL ESTATE DEVELOPMENT DETAILS, EQUITY SHAREHOLDING, FINANCIAL INDICATORS FOR THE PRECEDING 5 (FIVE) YEARS ETC.)

S.NO.	NAME OF THE PROJECT (Only Residential Projects mentioned)	APPROVED BUILD UP AREA (IN SQ. FT)	COMPLETION STATUS
1.	Luvnest	1,46,803	Deemed completion as per RERA completion and occupied
2.	Urban Woods	4,17,922	Deemed completion as per RERA completion and occupied
Total saleable area		**5,64,725**	
3.	Construction of 960 EWS houses, Kanpur, U. P	3,04,319	Completed on 30/06/2021 Client Kanpur Development Authority Value Rs. 52,55,47,590/-
4.	Construction of 259 MIG multi-storeyed Samajwadi flat, Loni Road Ghaziabad	2,04,612	Completed on 30/09/2019 Client Ghaziabad Development Authority Value Rs.37,80,02,650/-
5.	Construction of four storeyed 448 & 488 LIG Houses Brahamputra Enclave, Ghaziabad	3,99,559	Completed on 25/07/2017 & 31/102017 Client AVP, Value Rs. 34,27.55.776.55 & Rs. 36,72,38,332.02, total value Rs. 70,99,94,108.57/-
Total Saleable area		9,08,490.	
Grant Total Saleable area		**14,73,215**	

1.6. ASSET CLASIFICATION OF THE RESOLUTION APPLICANTS

(a) **M/S D.S. INFRAHEIGHTS PRIVATE LIMITED:** is not currently classified as "non-performing assets" in the books of their respective lenders.

(b) **M/s. Anand Buildtech Private Limited:** is not currently classified as "non-performing assets" in the books of their respective lenders.

For Consortium of DS Infraheights Pvt. Ltd. & Anand Buildtech Pvt. Ltd.

Authorized Signatory

(xiv) We observe that the SRA claimed Luv Nest project to fulfil the criteria which is required under eligibility criteria. The SRA submitted during pleadings before us that Luv-Nest Project was mentioned just to say that the said project is developed under mentorship of SRA because Mr. Shashank Gupta was one of the shareholders of Shri Hari Realtech Private Limited. The SRA submitted that even Luv-Nest project is excluded from experience of delivered area, the SRA will still meet the eligibility criteria of 10 Lakhs sq. ft. super area.

(xv) At this stage, we need to understand that the relevant threshold date is to be considered (regarding eligibility criteria) i.e., the date of submission of the Resolution Plan in response to Form G by consortium and information contained therein. We observe that none of the parties can change the facts at a later stage either to include the additional area or to exclude the submitted area for purpose of determining the experience eligibility criteria. It is not in dispute that while submitting the Resolution Plan, the project Luv Nest was indeed included by consortium in counting its experience.

(xvi) It is further noted from the documents attached by consortium that the name of Shri Hari Realtech Private Limited was not forming the part of details of the consortium members and it give details of only two consortium members i.e., DS Infra Heights Private Limited and Anand Buildtech Private Limited as perused from Resolution Plan submitted by the consortium and noted earlier. Thus, logically the SRA could not have taken the project of Luv Next into counting its experience in order to meet eligibility criteria of 10 Lakhs sq. ft super area.

(xvii) At the stage of arguments and Written submission, the contention made by the SRA that even if this project is excluded, the consortium will meet the requirement of 10 Lakhs sq. ft, cannot be accepted as the relevant date would be the date when the Resolution Plan was submitted to the Resolution Professional in response to Form G.

(xviii) Now, we will take up the aspects regarding deemed completion certificate concerning both Luvnest as well as Urban Woods Project.

(xix) As per the eligibility criteria, noted earlier, the PRA is required to submit "certified true copies of completion certificate/ occupancy certificate to substantiate and verify the criteria of development and successful delivery of at least 10 Lakhs sq. ft. super area". Thus, the basic requirement was the certified true copies of OC/CC. On this issue, it is the case of the SRA that it has already complied for completion certificate for Urban Woods Project before LDA on 10.03.2022 and thereafter, after rectifying the defects marked on 21.12.2022 by the LDA, the consortium again submitted its application on 06.01.2023 for grant of completion certificate.

(xx) The SRA further submitted that as per the UP RERA office order dated 16.09.2019, a limit of 7 working days has been prescribed for rejecting the application for completion certificate and if the competent authority does not inform the applicant about the rejection of application within 8 working days then in such case completion certificate is considered to be deemed approval by the competent authority. The SRA stated that it has already obtained all the necessary NoC from the concerned authority i.e, fire, electricity, power safety, structure safety certified for the Urban Woods Project.

(xxi) On this issue, "parties opposing the Resolution Plan" submitted that the work progress qua the Urban Woods Project was reflected on UP RERA website as on going project as on 28.12.2023 and even DS Infra Heights Pvt. Ltd. have stated that as on 30.09.2023 the project Urban Woods Project stand completed to the extent of 92.18% which was evident from Chartered Accountant Certificate filed by the consortium with UP RERA for the purpose of withdrawal of money from designated accounts.

(xxii) It is the case of the "parties opposing Resolution Plan" that as per Clause 3 of the eligibility criteria, the delivery of super area should have been completed by March, 2023 and not later than that. Thus, at the time of submissions of Resolution Plan, the project Urban Woods was not complete and could not have been taken into consideration by the SRA for counting experience.

(xxiii) The "parties opposing the Resolution Plan" also opposed the fact that the SRA was entitled to factor into the deemed completion certificate of project Urban Woods and submitted that LDA in its order dated 21.12.2022 reflected that families have allegedly settled in the project "without completion certification OC/ CC" and further mentioned regarding unauthorised construction site and demolishing of part of projects.

(xxiv) At this stage, we would like to take into consideration the relevant provisions of the Uttar Pradesh Urban Planning and Development Act regarding completion certificate which is prescribed in Section 15 A, which reads as under:-

> *"Section 15-A of the Uttar Pradesh Urban Planning and Development Act,*
>
> *<u>15-A Completion Certificate- (1) Every person or body having been granted permission under</u> sub-section (3) of section 15, <u>shall complete the development according to the approved plan and send a notice in writing of such completion to the Authority, and obtained a completion certificate</u> from the Authority in the manner prescribed or provided in the byelaws of the Authority.*
>
> *<u>Provided that if completion certificate is not granted and refusal to grant it is not intimated within three months after receipt of the notice of completion, it shall be deemed that the completion certificate has been granted by the Authority</u>."*
>
> *(Emphasis Supplied)*

(xxv) From above, it is noted that real estate developers who have completed projects, is required to send a notice in writing of such completion to concerned authority (LDA in present case) and obtain completion certificate. It further provides that if completion certificate is not granted or the authorities refuse to grant within stipulated period after receipt of notice of the completion, it shall be deemed that the completion certificate has been granted.

(xxvi) We also take into account, the Uttar Pradesh Real Estate Regulatory Authority order dated 16.09.2019 which is seen at page no. 40 to 47 of the Convenience Compilation (Volume I).

(xxvii) From above, it is seen that the real estate developer has to give a notice in writing after completion of the project, however, if not refused or replied by the competent authority (in the present case LDA) the same is deemed to be approved as completion certificate.

(xxviii) Thus, it is significant to examine whether the SRA has furnished such application of completion of project to LDA and whether the same was objected to or returned back by LDA or did not take any action for the SRA to take benefit of deemed consortium. In this connection, we take into consideration that the SRA has claimed that he has sent a letter to LDA regarding completion of project Urban Woods.

(xxix) We also note that if the promoter completes the works related to electricity supply, water supply, sewerage disposal. drainage and internal roads. and application for completion certificate has to be submitted to the competent authority along with 1- Electrical Safety Certificate, 2 - Fire Safety Certificate, 3 - Structural Engineer Certificate and 4- Lift

Installation/Safety Certificate, and whereas the competent authority has not rejected the promoter's application within 7 working days and has not informed the applicant with the required amendments within 8 working days, then such completion certificate will be deemed approved by the competent authority. We take into account the various such certificates which SRA has claimed to have obtained while submitting his application for CC/OC to LDA on 10.09.2022. These are noted from page no. 26 to 38 of Convenience Compilation (Volume I).

(xxx) Thus, based on above, the SRA argued that it would have entitled to use deemed completion since it has given all the certificates.

(xxxi) We note that SRA has sent letter to LDA on 10.09.2022 which is not available in present appeal file, but can be noted from following LDA's note sheet which mentions SRA's letter dated 10.09.2022:

Lucknow Development Authority

NOTESHEET

Proposal Details

File Number	LDA/BP/22-23/OCC/0021	Submitted On	10/9/2022
Case Type	New	Architect Name	AFREEN MIRZA
Owner Name	D S INFRAHEIGHTS PVT.LTD	Architect Mobile	9415759250
		License No.	AM1983604

Sr. No	Officers Name	Designation	Officers Remarks	Date
1	Nitin Mital	Chief Town Planner	correct objection raised by JE AE EE	13 October, 2022
2	SANJAY JINDAL	Executive engineer	correct objection raised by JE AE	13 October, 2022
3	Rajesh Sharma	Assistant Engineer	Please correct objections raised by JE	12 October, 2022
4	Shashi Bhushan Mishra	Junior engineer	You have not removed pre-intimated objections dt 12.09.2022. Please read all pre-objections carefully & correct accordingly	12 October, 2022
5	Vice Chairman	Vice Chairman	Correct objection raised by JE AE EE CTP SECRETARY	13 September 2022
6	Pawan kumar Gangwar	Secretory	Forwarded as proposed	13 September 2022
7	Nitin Mital	Chief Town Planner	Correct objection raised by JE AE EE	13 September 2022
8	SANJAY JINDAL	Executive engineer	Correct objection raised by JE AE	12 September 2022
9	Rajesh Sharma	Assistant Engineer	Correct objections raised by JE	12 September 2022
10	Jaiveer Singh	Junior engineer	1- Completion proposal is different from sanctioned map . Please upload COMPOUNDING DRAWING 2- Please upload no dues certificate regarding sanctioned map 3- Please provide legal document regarding	12 September, 2022

Page 1 of 2

LUCKNOW DEVELOPMENT AUTHORITY

APPLICATION FOR BUILDING PERMISSION

A)	TYPE OF DEVELOPMENT			
1	File No.	LDA/BP/22-23/OCC/0021 (20190516162622117_OCC)		
2	Submitted On	10 Sep 2022	Last Submitted On	09 Oct 2022

B)	DETAILS OF APPLICANT			
1	Application is for Self Use or Selling Purpose?	Land Owner (Self Use)		
2	Name (In Full)	D S INFRAHEIGHTS PVT.LTD		
3	Address Line 1	SUSHANT GOLF CITY, SECTOR-C,POCKET-7,GH-2	Address Line 2	
4	City	LUCKNOW	State/Province/Region	Uttar Pradesh
5	PIN	226010	E-mail	dpsingharchitect@gmail.com
6	LandLine Phone		Mobile No.	8141481414

C)	PLOT DETAILS			
1	Organization Name	LUCKNOW DEVELOPMENT AUTHORITY		
2	Land Use Zone	0	Land Sub Use Zone	
3	Plot Use		Sub Plot Use	
4	Development Area		SubDevelopment Area	
5	Plan on		Scheme	
6	Plot No./ Survey No.		Max Building Height	45
7	Plot area as per site (Sq.Mt.)	0	Plot area as per Document (Sq.Mt.) Note: Minimum Plot area	
8	Total Built Up Area (Sq.Mt.)	0	Circle Rate	11183
9	Existing Built up Area (Sq.Mt.)	0	Carpet Area (Sq.Mt.)	0
10	Development Plan		Estimated Cost including Internal Electricity & Internal Water Expense	0

D)	DETAILS OF DEVELOPER/ ARCHITECT			
	Name	Address	License No.	Validity
1	AFREEN MIRZA	FLAT NO: 401, MIRZA APPARTMENT, ABRAR NAGAR, KALYANPUR, LUCKNOW	AM1983604	

(xxxii) Now, we take into consideration the LDA order dated 21.12.2022 which categorically mentioned that the families have settled without completion certificate and have pointed cut several irregularities by SRA. This letter submitted has been taken into consideration from page no. 185-190 of Convenience Compilation (Volume I).

(xxxiii) We note that SRA has written letter to LDA on 06.01.2023, seeking their approval for CC and OC and also mentioned about deemed completion certificate as per UP RERA order dated 16.09.2023 which is seen at page no. 437 to 439 of Convenience Compilation (Volume II).

(xxxiv) We understand that the purpose of completion certificate is that the building has been constructed in accordance with the approved plans and local by-laws and similarly occupancy certificate signifies that the building is fit for occupation and all necessary utilities and infrastructure are in place. Thus, the eligibility criteria categorically mention about the CC and OC and not about deemed completion certificate.

(xxxv) However, the fact remains that Section 15A of Uttar Pradesh Urban Planning & Development Act, 1973 and Uttar Pradesh Real Estate Regulatory Authority order dated 16.09.2019, stipulates that in case after complying requirements and making necessary application for OC & CC by the real estate developers, if the concerned authority (in the present case LDA) does not issue the OC & CC certificate, it would be deemed to have been issued/ approved. Hence, the concept of deemed certificate as pleaded by the SRA cannot be ignored and the pleading of the “parties opposing the Resolution Plan” that there is no concept of deemed certificate may not hold good. However, the fact whether the SRA submitted the application enclosing of the documents and whether the same was not replied at all by the LDA within a stipulated period is a moot question.

(xxxvi) It has been brought to our notice by the parties opposing the Resolution Plan that LDA has categorically stated that no completion certificate was issued to SRA which is evident from LDA letter dated 01.09.2023 and 19.08.2023, these letters reads as under :-

<u>LDA Letter Dated 01.09.2023</u>

Lucknow Development Authority, Lucknow

By, Assistant Engineer/ Public Information Officer (Map Cell) Lucknow Development Authority, Gomti Nagar, Lucknow	To, Shri Fazal Haider Zaidi, 24 Kaiserbagh, Lucknow 226001

Number: 259/RTI/HTIG/2023
Dated:01.9.2023

Subject: Regarding the information sought under the Right to Public Information-2005

Sir,

It is to inform you regarding the amount deposited by you in the authority fund as per the above-mentioned Authority's letter number258/RTI/HTIG/2023 dated 28/08/2023, that Online application number LDA/BP21-22/OCC/0015 was received in the authority on 14/03/2022 regarding Tower - of 1, 2 and 3 of M/s DS Infra Heights Sushant Golf City Project, on which objection was sent online on 15/03/2022. Due to not doing the resolution of the objections., the completion certificate of the site has not been issued. The downloaded records of the related records are sent by attaching them with the letter.

Enclosure: As above

Yours truly
Signature in English Illegible
Asst. Engineers/Public Information Officer
(Map Cell)

<u>Copy:</u>

For information to Public Information Section

Asst. Engineers/Public Information Officer
(Map Cell)

<u>LDA Letter Dated 19.08.2023</u>

Lucknow Development Authority, Lucknow

By, Assistant Engineer/ Public Information Officer (Map Cell) Lucknow Development Authority, Gomti Nagar, Lucknow	To, Shri Fazal Haider Zaidi, 24 Kaiserbagh, Lucknow 226001

Number: 3574/RTI/HTIG/2023
Dated:19.08.2023

Subject: Regarding the information sought under the Right to Public Information-2005

Sir,

Please refer to the application dated 17.08.2023 applied under Right to Public Information-2005 on the above subject. That in relation to the information sought through the said letter, the point-wise information is as follows:

1. It is to be informed that the OC/CC certificate of M/s DS Infra Heights Private Limited, Group Housing-2 Sector-C, Pocket-7 under Sushant Golf City has not been issued till date.
2. 2 and 3 – Related to Enforcement Zone-2.

Yours truly
Signature in English Illegible
Asst. Engineers/Public Information Officer
(Map Cell)

<u>Copy:</u>

1. Sent to Zonal Officer (Enforcement) Zone-2 with the intention to provide information regarding point no. 2 and 3 directly to the applicant.
2. For information to the Public Information Section in reference to their letter number 751/RTI/2023 dated 18.08.2023.

Vidhi

Asst. Engineers/Public Information Officer
(Map Cell)

(xxxvii) We note the SRA had written a detailed letter to LDA on 06.01.2023 wherein he has clarified its position of completion of project to LDA and has also referred to the deemed completion clause as per UP RERA order dated 16.09.2019. However, the LDA letter on 01.09.2023 has stated categorically that they have received the online application LDA/ BP 21-22/OCC/0015 on 14.03.2022 with regard to Tower 1, 2 and 3 M/s DS Infra Heights Private Limited, Sushant Golf City Project on which objections were sent online on 15.03.2022. The LDA has mentioned that because of non resolution of objections by SRA, the completion certificate of the site has not been issued.

(xxxviii) Similarly, we note that in another letter dated 19.08.2023 to an RTI Applicant, Shree Faizal Haider Zaidi (quoted earlier), LDA again reconfirmed that OC/ CC certificate of DS Infra Heights Private Limited has not been issued till date.

(xxxix) Thus, from above RTI information, it is evident and clear that LDA had not issued the CC/ OC to DS Infra Heights Private Limited even on 01.09.2023 which contradicts the claim of SRA that for Urban Wood Project with deemed completion certificate has been deemed to have been issued by LDA due to DS Infra Heights Private Limited letter dated 06.01.2023. Thus, we are not in position to accept the contentions of SRA along with contentions of Resolution Professional and CoC on this account. We find merit in the logic of 'party opposing the Resolution Plan'.

(xl) Incidentally, we note that although the first letter was written by DS Infra Heights Private Limited to LDA for requesting CC/ OC on 10.09.2022 and the SRA has claimed that they have received all requisites safety certificates from fire, lift, electricity, earthquake. However, during pleadings, it has been brought to our notice by party opposing Resolution Plan that the letter claimed by SRA who have written to LDA on 10.09.2022 enclosing all safety certificates, however, the fire services letter was issued only on 10.12.2022 then how the SRA could have furnished the complete and correct application to LDA on 10.9.2022. We find logic in the contention of the party opposing the Resolution Plan after taking into consideration all safety certificates and letter of DS Infra Heights Private Limited dated 10.09.2022 which we have already discussed earlier.

(xli) Thus, we are not in a position to accept the contention of SRA on this account. After analysing all the facts and evidence before us, we find that SRA failed to meet the eligibility criteria of work experience of having delivered 10 Lakhs sq. ft. of super area. Thus, we hold that the SRA was not eligible on this criteria and we do not find any error in the Impugned Order this account.

55. <u>Issue (II) Whether, the consortium met the financial eligibility criteria of Rs. 20 Crore "Committed Funds" as per eligibility criteria No. 7 of EoI.</u>

(i) We have already noted the stipulated eligibility criteria, which was required to be fulfilled by the PRA and according to criteria No. 7, the PRA should have committed funds available for investment/ deployment in real estate project of the Corporate Debtor of Rs. 20 Crores or more and PRA was required to submit proof of availability of such committed funds along with EoI. In clarification to eligibility criteria No. 7, it has been indicated that effective date in the Resolution Plan would not be more than 90 days from the date of approval of Resolution Plan by the Adjudicating Authority. Another clarification to eligibility criteria No. 7, further states that PRA will be required to arrange funds for entire cost of construction after approval of Resolution Plan by the Adjudicating Authority.

(ii) Having noted the requirement of the committed funds, we look into Resolution Plan submitted by the SRA on 29.06.2023, wherein in Chapter 4 (in Para 4.1) it has been indicated that "resolution Applicant has already submitted a commitment letter of Rs. 20 Cores to HDFC to the Resolution Professional with EoI". We take into consideration the documents submitted by the SRA to the Resolution Professional regarding fulfilling this criterion. We take into consideration that there is a commitment letter issued by HDFC which is at Pg. 82 as Annexure A-7 of the appeal which reads as under: -

Preferred
HDFC BANK
We understand your world

Classification - Internal

HDFC BANK LIMITED,
2/CP213, 2/CP214, 2/CP215 & 2/CP216,
E, Block Main Road, Rajajipuram,
Lucknow, Uttar Pradesh - 226 017

To

M/s D S Infraheights Private Limited

405-406, Eldeco Corporate tower,

Vibhuti Khand, Gomti Nagar

SUB: COMMITMENT LETTER

With reference to the letter dated 24.05.2023 received from M/s D S Infraheights Private Limited on 24.05.2023 we commit for the fund requirement by the company of Rs 20.00 crores if the mentioned bid is received subject to the submission of the required documents, requisite permissions/ approvals and compliance of the bank's extended guidelines and procedures at the time of sanction.

Authorised Signatory

For Hdfc Bank Ltd

This letter is issued on the request of the customer without any risk and liability of Hdfc Bank Ltd or any of its employees.

(iii) This letter is marked to DS Infra Heights Pvt. Ltd. indicating that HDFC committed for fund requirement of Rs. 20 Crores subject to submission of required documents, requisite permission/ approval by SRA in compliance of banks extended guidelines and procedures at the time of sanction. It is the case of the SRA, CoC & Resolution Professional that this complied with the eligibility criteria as there was a clear commitment letter of HDFC Bank.

(iv) On the other hand, we have noted the contentions of the "parties opposing the Resolution Plan" the said letter cannot be construed is the proper document indicating the availability of deployable funds of Rs. 20 Crores or more and therefore, the commitment letter of HDFC cannot be treated as a proof of availability of such funds as in the commitment letter there is no mention about sanction of funds by the banks in favour of the SRA.

(v) We also note that as one of the homebuyers i.e., Mr. Sudhir Kumar has written to the HDFC on 16.08.2023 seeking clarification from HDFC regarding whether HDFC's letter was a sanction letter and HDFC bank in its reply dated 19.08.2023 has stated that the document referred by Mr. Sudhir Kumar is neither a sanction letter nor document establishing disbursal of loan.

(vi) We take into consideration the said clarification letter of HDFC dated 19.08.2023 which reads as under: -

Gmail

SHADAB KHAN <shadab@earthcon.co.in>

Fwd: Regarding case number 30907374 mail dated 16th August 2023

1 message

Sudheer Kumar <sudheerkumar703@gmail com> Sat, Aug 19, 2023 at 11 32 PM

To: Shadab@earthcon.co.in

Please discuss in morning

---------- Forwarded message ---------

From. **Vaibhav B Garg** <VaibhavB.Garg@hdfcbank.com>

Date Sat, 19 Aug, 2023, 14 06

Subject Regarding case number 30907374 mail dated 16th August 2023

To: sudheerkumar703@gmail com <sudheerkumar703@gmail com>

Classification - Public

Classification - Public

TRUE COPY

Dear Mr Sudheer Kumar

Subject. your mail dated 16th August 2023

We acknowledge receipt of your letter under reference and noted the contents therein

At the outset we register our strong objection and disconnect with your allegations as levied in your letter under reference against the Bank and its employees, particularly the allegation of any conspiracy involved in the issuance of the document as mentioned in your letter under reference.

It appears that you have drawn a conclusion without reading and understanding the contents of the said letter. We wish to clarify that we have not received any order or directions from any court of law against the account holder so as to have any cause of action to act otherwise nor you have shared any restrictive orders passed by any court of law

Please also note that grant of financial assistance /credit facility cannot be claimed as a matter of right however each proposal is evaluated/assessed as per existing banking norms and procedures/guidelines prevailing during the relevant period at the time of making an application for grant of loan

We trust you will appreciate that each application/ proposal has its own merits and hence the decision to extend financial assistance and /or the amount of financial assistance rests with the Bank We confirm that the document being referred to by you is neither a sanction letter nor a document establishing disbursal of loan

TRUE COPY

We assure you that we are a law abiding corporate legal entity and any order passed by any court/law enforcement agency if submitted to us we ensure its compliance without any deviation.

If you still have further queries, please feel free to contact undersigned or Cluster Head Mr Himanshu Tandon on his mobile no- 9336841321 or email him at - Himanshu.tandon@hdfcbank.com or visit the branch

Thank you for banking with HDFC Bank limited

Thanks & Regards
Vaibhav Garg
Branch Head
Branch- Rajajipuram
Contact number-9839445907

PROUD TO BE PART OF HDFC BANK
OFFICIALLY A GREAT PLACE TO WORK

TRUE COPY

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Regd Office HDFC Bank Ltd., HDFC Bank House, Senapati Bapat Marg, Lower Parel (W), Mumbai - 400 013 "

Classification - Public

TRUE COPY

(vii) We note that in eligibility criteria 7, although the term committed fund has been mentioned but the exact scope of such committed fund has not been elaborated. Therefore, we tried to look into any definition or explanation about term committed funds but we could not lay our hand on such definition or guidelines either in the Code, or Companies Act, 2013. It is understood that there is no specific definition of the "commitment fund" elsewhere also. However, in common commercial parlance, committed fund, in context of biding or EoI like present case, can be referred to the financial resources with a PRA, as formally pledged or demonstrated to ensure that the PRA/ bidder can fulfil obligations of a contract/ Resolution Plan if awarded.

(viii) The purpose of such committed fund is to infuse capital required by the bidder when the work is awarded or Resolution Plan is approved in his favour such committed funds can be funds of his own (based on his balance sheet) or funds tied up through banks/ financial institutions, who give the commitment letter/ comfort letter/ sanction letter/ letter of credit depending upon the mutual understanding of bank and borrower. The implication of all such letters from the bank may be different. For instance, a simple comfort letter or a commitment letter is merely indicative an intent of a broad approval of Bank subject to compliance and fulfilling the criteria of Bank including the documents to be submitted by the bidder. In contrast to this, a sanction letter becomes formal sanction of the committed funds or loan amount in favour of the borrower whose disbursal of funds may happen at a later stage.

In the present case, the eligibility criteria stipulated that PRA should have committed fund available of Rs. 20 Crores or more and the PRA was required to submit the proof of availability of aforesaid funds along with EoI. Thus, the committed fund were required more in nature of availability of the said fund as on date of effective date i.e., within 90 days of approval of Resolution Plan. The simpliciter commitment letter of HDFC with various conditions relating to future sanction as produced by the SRA could not have met the kind of eligibility criteria, envisage in the EOI. Keeping in view this, the SRA did not demonstrate availability of funds on effective date. While we agree to logic of the parties supporting Resolution Plan that there was no requirement of blocking of funds during the interregnum from EoI submission to effective date and funds were rather required to be made available on effective date. We also find merit in contention of parties supporting Resolution Plan blocking funds at submission of EoI stage is commercially impractical and against prudent financial policies. However, we need to understand that eligibility criteria No. 7 has given clear and ample emphasis on proof of availability of funds on effective date. The letter of HDFC does not inspire confidence regarding proof of availability of funds on effective date. Such letter of bank with all contingencies is at best, mere indication about bank's willingness to consider proposal of SRA, but can't bespeak about Bank's confirmation to make funds available on effective date.

(ix) As such, we do not find merit in claim of the SRA , Resolution Professional and CoC on this count. We do not find any error in Impugned Order, non-suiting SRA on this ground.

56. We also take into consideration Regulation 39 of the IBBI (Insolvency Resolution Process for Corporate Persons Regulations, 2016 which reads as under:

> *"[(1) A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans under regulation 36B along with*
>
> *(a) an affidavit stating that it is eligible under section 29A to submit resolution plans;*
>
> *(c) <u>an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process</u>, forfeit any refundable deposit, and attract penal action under the Code."*
>
> *(Emphasis Supplied)*

57. From above, it is evident that the PRA is required to give certification that every information and record provided in the Resolution Plan is true and correct. The Regulation further stipulates that discovery of false information and record at any time will render the applicant ineligible to continue in CIRP. We have already noted that the factual position regarding the Luvnest project and Urban Woods Project was not factual and correctly submitted by the SRA while submitting their experience. Thus, we find that SRA will be covered by Regulation 39 of IBBI CIRP Regulations.

(i) Further, we note from Section 30(2) of the Code which stipulates that Resolution Plan shall be in conformity to such other requirements as may be specified by the board. We need to factor into this requirement along with Regulation 39 of the IBBI (Insolvency Resolution Process for Corporate Persons Regulations, 2016 which we have discussed earlier. Thus, we find that the Adjudicating Authority was correct in dismissing the application of Resolution Professional for approval of Resolution Plan of SRA.

(ii) We take into consideration the recent judgement of the Hon'ble Supreme Court of India delivered on 02.05.2025 in the matter of ***Kalyani Transco vs. M/s Bhushan Power and Steel Limited & Ors.*** *[Civil Appeal No. 1808 of 2020]* wherein in Para 79 the Hon'ble Supreme Court of India has categorically stated an illegality of any nature cannot be permitted to be perpetuated. The relevant portion of the para reads as under :-

> *"79. <u>An illegality of any nature cannot be permitted to be perpetuated,</u> and a plea of fait accompli cannot be permitted to be raised by any party to cover up their illegal acts, after achieving the ill motivated intentions circumventing the law.****"*
>
> *(Emphasis Supplied)*

We find above ratio applicable to present appeals.

58. Based on above detailed analysis, all appeals fail and stands dismissed. I.A., if any, are Closed. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

Sim