



IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT – III

**IA/2455/2022 In C.P.(IB)/315(MB)-C-III-2019**

*(Under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons, 2016)*

**Mr. Jayesh Sanghrajka**, *Resolution Professional for M/s. Nirmal Lifestyle Realty Private Limited*

Having his office 405-408, Hind Rajasthan Building, D.S. Phalke Road, Dadar East, Mumbai-400014.

**.....Resolution Professional/Applicant**

*In the matter of*

**Aasan Corporate Solutions Private Limited**

**.....Financial Creditor/Petitioner**

**Vs**

**Nirmal Lifestyle Realty Private Limited**

**.....Corporate Debtor**

**Order delivered on: 09.08.2024**

**CORAM:**

**SHRI CHARANJEET SINGH GULATI  
HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG  
HON'BLE MEMBER (J)**

***Appearances:***

For the Applicant/RP : Adv. Shyam Kapadia a/w Ms. Sikha Ginodia  
a/w Mr. Gaurav Suryavanshi i/b ANM Global



## ORDER

***Per- Charanjeet Singh Gulati, Member (Technical)***

1. The instant application has been filed by Mr. Jayesh Sanghrajka, Resolution Professional of Nirmal Lifestyle Realty Private Limited (“**the Applicant/RP**”), under Section 30(6) of the Insolvency & Bankruptcy Code, 2016 (“**the Code**”) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) seeking approval of the Resolution Plan submitted by Oberoi Constructions Limited (“**Resolution Applicant**”) which was approved by the Committee of Creditors (“**CoC**”) in its 7<sup>th</sup> Meeting held on 01.09.2022 with 100% voting under section 30(4) of the Code.

### **Relevant Facts:**

2. On an application under Section 7 of the Code, M/s Nirmal Lifestyle Realty Pvt. Ltd. (“**Corporate Debtor**”) was admitted into Corporate Insolvency Resolution Process (“**CIRP**”), vide Order dated 06.12.2021 and Mr. Arun Kapoor was appointed as Interim Resolution Professional (“**IRP**”).
3. In accordance with Regulation 6(1) of the CIRP Regulations, on 21.12.2021, the IRP issued the Public Announcement inviting claims from all the creditors. On collation of the claims, the IRP formed the CoC and scheduled the first CoC meeting on 18.01.2022.
4. During the 1<sup>st</sup> CoC Meeting, it was resolved to appoint 2 (two) Registered Valuers to determine the Fair Value and Liquidation Value of assets of the Corporate Debtor as per Regulation 27 of CIRP Regulations. The CoC also unanimously approved the replacement of IRP with Jayesh Natvarlal Sanghrajka as the RP and same was approved by this Tribunal vide order dated 07.03.2022.



5. In the 2<sup>nd</sup> CoC meeting, the appointment of M/s. N V Dand and Associates was approved for conducting Transaction Audit of the Corporate Debtor in order to analyze and examine all the transactions of Corporate Debtor which may come under the ambit of sections 43, 45, 46, 49, 50 and 66 of the Code.
6. In the 3<sup>rd</sup> CoC meeting held on 28.03.2022, the CoC approved for the extension of the CIRP by a further period of 90 days. The same was allowed by this Tribunal vide order dated 08.06.2022.
7. On 01.04.2022, the 4<sup>th</sup> CoC meeting was held and the criteria for submission of Expression of Interest (“**EoI**”) and for submission of resolution plan(s) was approved.
8. The Applicant/RP published an invitation for EoIs (Form G) from Prospective Resolution Applicants (“**PRA’s**”) in the Free Press Journal and Navshakti (Mumbai Ed.) on 05.04.2022, for submission of resolution plans. In pursuant to Form G, the Resolution Applicant submitted its EoI on 20.04.2022. Further, the Applicant/RP issued an RFRP calling for submission of Resolution Plans on 05.05.2022 and subsequently issued the list of PRA on 15.05.2022.
9. On the request of the PRAs, the CoC in its 5<sup>th</sup> meeting held on 06.06.2022, ratified the extension of the last date of submission of Resolution Plan to 30.06.2022. Further, this Tribunal extended the CIRP by 90 days from 04.06.2022 to 04.09.2022.
10. The Resolution Applicant sought extension of time for submitting the Resolution Plan until 15.07.2022 and same was approved by the CoC. The Resolution Applicant submitted the Resolution Plan on 15.07.2022.
11. Further, on 22.07.2022, the 6<sup>th</sup> CoC meeting was convened and the Resolution Plan was discussed at length and the authorized representative



of the Resolution Applicant, noted the views expressed by the Chairman and the members of the CoC. It was instructed to submit the revised Resolution Plan within a week's time.

12. On 01.09.2022, the 7<sup>th</sup> CoC meeting was convened to inter alia discuss the revised Resolution Plan submitted by the Resolution Applicant. In the said meeting the Resolution Plan was approved by the CoC and Resolution Applicant was declared as the Successful Resolution Applicant (“SRA”) with 100% voting.
13. Pursuant to the approval of the Resolution Plan by the CoC, the Applicant issued the Letter of Intent dated 07.09.2022 in favour of the SRA to submit the Performance Bank Guarantee of INR 50 Crores (Indian Rupees Fifty Crores only) within 15 days of approval of the Resolution Plan. The same has been submitted by the Resolution Applicant on 16.09.2022. In case of any noncompliance with the Resolution Plan Process by the Successful Resolution Applicant, such performance bank guarantee shall be forfeited.
14. Meanwhile, on 09.09.2022, this Tribunal granted the exclusion of 36 days from the period of CIRP (14 days from 06.12.2021 to 20.12.2021 and 22 days from 07.03.2021 to 29.03.2021).

**Valuation of the Corporate Debtor:**

15. The Valuations Reports are annexed to the application. The average Fair Value of the Corporate Debtor is as follows:

<b>Sr. No.</b>	<b>Assets</b>	<b>Valuer</b>	<b>Amount (INR)</b>
1.	Land and Building	Valuer 1	3,70,32,00,000
		Valuer 2	3,62,25,92,311
2.	Securities or Financial Assets	Valuer 1	42,97,59,402
		Valuer 2	35,62,43,227



Further, the Liquidation Value of the Corporate Debtor is as follows:

<b>Sr. No.</b>	<b>Assets</b>	<b>Valuer</b>	<b>Amount (INR)</b>
1.	Land and Building	Valuer 1	3,14,77,00,000
		Valuer 2	2,89,80,73,849
2.	Securities or Financial Assets	Valuer 1	25,84,92,475
		Valuer 2	19,66,50,167

**Background of the Successful Resolution Applicant:**

16. The said Resolution Plan was approved by the CoC on 01.09.2022 and Resolution Applicant i.e. Oberoi Constructions Limited was declared as the Successful Resolution Applicant. Oberoi Constructions Limited was incorporated on 02.11.1993 in Mumbai, as a private limited company initially known as Oberoi Constructions Private Limited, under the provisions of the Companies Act, 1956. Oberoi Constructions Private Limited was converted into public limited company on 13.07.2011, and consequently its name changed to Oberoi Constructions Limited.
17. Oberoi Realty Limited is the holding company of the Group and is listed on the BSE and NSE. The Group is primarily engaged in real estate development activity, operating in the Mumbai Metropolitan region, focused on premium developments.

**Salient Features of the Resolution Plan:**

18. The Resolution Applicant proposes to make the payment as mentioned below:

<b>Sr. No</b>	<b>Class</b>	<b>Creditor</b>	<b>(%)</b>	<b>Claim admitted (Rs.)</b>	<b>Claim proposed (Rs.)</b>
1.	CIRP Costs		100		Proposes to make payment



					upto the effective date
2.	Financial Creditor	Secured	28.01	6,60,40,11,424	1,85,00,00,000
3.	Operational Creditor	Workmen	66.19	79,10,14,367	79,10,14,367
		Government Dues	100	7,49,48,021	7,49,48,021
		Other than workmen	100	15,81,740	15,81,740
4.	Other Creditors		100	1,24,64,066	1,24,64,066
		<b>Total</b>		<b>7,48,40,19,618</b>	<b>2,73,00,08,204</b>

19. We note that the dues of the Provident Fund have been admitted and are proposed to be paid in full. Thus, the Resolution Plan complies with the judgement of Jet Airways case.
20. **CIRP Costs:** The Resolution Applicant proposes to make payment of the CIRP Costs incurred upto the Effective date in priority over payments towards or settlement of the Claims and debts of the Creditors as specified in this Resolution Plan.
21. **Secured Financial Creditors (other than Financial Creditors belonging to any Class of Creditors):** The Resolution Applicant will make payment of Rs. 185,00,00,000/- (Rupees One Hundred Eighty Five Crore Only) to Aasan being the Secured Financial Creditor, as consideration for either (i) the repayment of the Admitted Aasan Debt, or (ii) the novation/assignment of the Admitted Aasan Debt together with the Aasan Security, as may be decided by the Resolution Applicant in its sole discretion, in full and final settlement of amounts due and payable to it, whether claimed or otherwise. The detailed terms and conditions of the financial proposal pertaining to Aasan is set forth in Section 3.2(A)(1) of Resolution Plan.



22. **Operational Creditors (Workmen):** The Authorized Representative of 101 and 575 Ralliwolf workmen submitted a claim, which was partly admitted and rest was rejected by the Resolution Professional. The details are as follows:

<b>Name of Creditor</b>	<b>Claim filed</b>	<b>Claims verified and admitted</b>	<b>Claims not admitted</b>
The said 575 Ralliwolf Workmen (represented by their Authorized Representative Mr. Sandesh Raut)	98,49,40,577/-	62,44,43,284/-	36,04,97,293/-
The said 101 Ralliwolf workmen (represented by their Authorized Representative Mr. Naresh Kadam)	21,01,54,205/-	16,65,71,083/-	4,35,83,122/-
<b>Total</b>	<b>1,19,50,94,782/-</b>	<b>79,10,14,367/-</b>	<b>40,40,80,415/-</b>

23. The Resolution Applicant proposed to make payment of the entire admitted Claim of the said 575 Ralliwolf Workmen and the said 101 Ralliwolf Workmen i.e. the Admitted Workmen Debt amounting to Rs. 79,10,14,367/- (Rupees Seventy Nine Crore Ten Lakh Fourteen Thousand Three Hundred Sixty Seven only), in full and final settlement towards all amounts due and payable to them in the priority prescribed under the Code, whether claimed or otherwise.
24. However, the 101 and 575 Ralliwolf workmen filed separate applications IA/2383/2020 and IA/2415/2023 before this Tribunal seeking to admit the rejected amount. Both the aforesaid IAs were allowed by this Tribunal with direction to Resolution Professional to admit the claim of gratuity



along with interest @10% till insolvency commencement date after due verification of calculation sheet and in accordance with law.

25. Therefore, present IA was listed for clarification to determine the outcome of the aforesaid IAs. In this context, the Resolution Professional submitted that the IAs allowed by this Tribunal will not affect the approval of resolution plan, as the amount proposed to 101 and 575 Workmen is 220% of their minimum guaranteed amount entitled in law. Furthermore, the Resolution Professional stated that the entitlement of the workmen, after considering gratuity to be paid in full as well as 24 months wages as per section 53 of IBC would be Rs. 35,93,62,049/-. However, the amount proposed in the resolution plan is Rs. 79,10,14,367/-.

26. In regard to this, the Applicant/Resolution Professional also has filed an additional affidavit dated 04.07.2024 and stated that pursuant to the said order and directions of this Tribunal, he has re-verified the claims sought by the Workmen in the said IAs and admitted the claims of the Workmen sought in the said IA's in the manner set out in the email (in tabular form) dated 04.07.2024. Also stated that he has diligently complied with the said Orders passed in the aforesaid IAs. Detail of compliance is as follows:

*Based on the verification of the said claim pertaining to gratuity and interest on gratuity is admitted amounting to INR 23,56,08,635 (Indian Rupees Twenty Three crores fifty six lakhs Eight Thousand six hundred and Thirty Only) as under:*

<b>Particulars</b>	<b>Amount Claimed (In INR)</b>	<b>Amount Admitted (In INR)</b>
Gratuity	10,26,61,305	10,26,61,305
Interest on Gratuity @10% p.a.	13,29,47,330	13,29,47,330
<b>Total</b>	<b>23,56,08,635</b>	<b>23,56,08,635</b>

27. While hearing the Resolution Professional on clarification sought, Ms. Jane Cox, the Ld. Counsel representing the workmen, was present and submitted that the orders passed in both IAs (filed by the Workmen) by





this tribunal stipulate that both Provident Fund and Gratuity are to be paid in full as per the provisions of the EPF and MP Act, 1952 and the Payment of Gratuity Act, 1972. She emphasized that, in addition to the amount proposed in the Resolution Plan, the workmen should also be paid the entire Gratuity amount as decided by this Tribunal. In response to this, the Resolution Professional again submitted that the entire amount of Gratuity would be paid, then too the amount proposed for workmen exceeds the minimum entitlement under law.

28. Additionally, the Resolution Professional tendered a calculation sheet detailing how the aforementioned amounts were arrived at. The Calculation sheet is reproduced below: -

<b>A. As per Section 53(1)(b)(i) of IBC; Workmen's dues for the period of Twenty Four months preceding the CIRP period is as follows:</b>		
575 workmen	24 months wages prior to CIRP commencement (as per Industrial Court Order dated 2 <sup>nd</sup> May 2019 as modified by the Order dated 21 <sup>st</sup> November 2019)	Rs. 14,59,30,608/-
101 workmen	24 months wages prior to CIRP commencement (as per Industrial Court Orders passed in Recovery Applications filed by 101 workmen before Industrial Court)	Rs. 2,53,80,600/-
<b>Total Entitlement of 676 workmen as per Section 53(1) of IBC</b>		<b>Rs. 17,13,11,208/-</b>
<b>Total Entitlement of Financial Creditor as per Section 53(1) of IBC</b>		<b>Rs. 6,60,40,11,424/-</b>
<b>Therefore, Total payment to be paid as per Section 53(1)(b) of IBC</b>		<b>Rs. 6,77,53,22,632/-</b>

<b>B. Liquidation Value of Corporate Debtor: Rs. 3,22,04,58,245/-</b> <b>[Which comprises of the following]:</b>	
Average Liquidation Value	Rs. 3,25,04,58,245/-
Less-Estimated CIRP Cost till date	Rs. 3,00,00,000/-
Liquidation Value of the Corporate Debtor available for distribution to creditors	Rs. 3,22,04,58,245/-



<b>C. Liquidation Value payable to workmen</b>		
575 workmen	(Rs. 14,59,30,608/- ÷ Rs. 6,77,53,22,632/-) x Rs. 3,22,04,58,245/-	Rs. 6,93,63,992.72/-
101 workmen	(Rs. 2,53,80,600/- ÷ Rs. 6,77,53,22,632/-) x Rs. 3,22,04,58,245/-	Rs. 1,20,63,951.33/-
<b>Total Amount payable to 676 workmen as Liquidation Value and as per Section 53(1) of IBC</b>		<b>Rs. 8,14,27,944/-</b>

<b>D. Amount claimed by workmen towards Gratuity etc</b>		
575 workmen	Gratuity (Rs. 10,26,61,305/-) Interest on Gratuity (Rs. 13,29,47,330/-)	Rs. 23,56,08,635/-
101 workmen	Gratuity (Rs. 2,26,02,801/-) Interest on Gratuity (Rs. 1,97,22,669/-)	Rs. 4,23,25,470
<b>Total Amount of Gratuity along with interest on Gratuity payable to 676 workmen</b>		<b>Rs. 27,79,34,105/-</b>

<b>E. Entitlement of the Workmen: Considering Gratuity to be paid in full as well as 24 Months Wages under Section 53 of IBC</b>	
24 months wages payable to 676 workmen	Rs. 8,14,27,944/-
Gratuity along with Interest payable to 676 workmen	Rs. 27,29,34,105/-
<b>Total</b>	<b>Rs. 35,93,62,049</b>

<b>Amounts proposed to be paid to 676 workmen under Resolution Plan</b>	<b>Rs. 79,10,14,367/-</b>
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29. The total amount payable to 676 workmen (24 months' wages) as per Section 53 of IBC amounts to Rs. 8,14,27,944/-. The total amount of Gratuity, including interest on Gratuity, payable to 676 workmen as per the direction of this Tribunal, amounts to Rs. 27,79,34,105/-. Further, the minimum amount that can be proposed to workmen in accordance with law, including gratuity, is Rs. 35,93,62,049/-. Accordingly, the



contention of the Ld Counsel for the workmen that they should be paid the proposed amount in addition to the gratuity amount cannot be sustained, as the minimum amount to be paid as per law comes to Rs. 35,93,62,049/- whereas, the amount proposed to workmen under the resolution plan is Rs. 79,10,14,367/-, which exceeds the minimum guaranteed amount entitled under the law.

30. Thus, we note from the additional affidavit dated 04.07.2024 and Calculation sheet that the orders dated 04.07.2024 of this Tribunal has been complied with and the entire gratuity is being paid to the workmen. We agree with the submission of the Resolution Professional that-
- (i) The amount offered to workmen includes the entire gratuity amount.
  - (ii) And the amount offered to workmen is not less than what they would have got under as per Section 53 of IBC (24 months' wages).

31. The reference is also made to the relevant clause for payment to Workmen in Resolution Plan is as follows:

*Section 3*

*"The Admitted Workmen Debt will be paid in full to the said 575 Ralliwolf Workmen and the said 101 Ralliwolf Workmen on the Effective Date ("Workmen Payment"), in full and final settlement towards all amounts due and payable to them (whether towards retirement benefits, gratuity, bonus, provident fund, interest, or otherwise), and shall be deemed to have relinquished any claim for any other dues and shall not have any claim against any person whatsoever. The appropriation of the Workmen Payment to the said 575 Ralliwolf Workmen and the said 101 Ralliwolf Workmen will be as per their admitted Claims. No payment will be made to the balance workmen of Ralliwolf, if any, since they have not submitted any claim to the Resolution Professional, and all dues and debt of all balance workmen of Ralliwolf shall stand permanently extinguished on the Effective Date and they shall not have any claim against any person whatsoever.*

1. *Without prejudice to what is mentioned elsewhere in this Resolution Plan and without diluting the rights of the Resolution Applicant in any manner whatsoever, the Resolution Applicant would like to clarify the following: -*



- (a.) *As set out in the table in Clause 3.1(A) above, the said 575 Ralliwolf Workmen have submitted a claim for Rs. 98,49,40,577/- out of which an amount of Rs. 36,04,97,293/- has been rejected by the Resolution Professional for the reasons set forth in the List of Creditors. The Resolution Applicant hereby clarifies that in the event such amount subsequently admitted by the Resolution Professional for any reason, including on account of any orders subsequently passed by any court or competent authority, or the aforesaid amount of is held to be valid claim, then the Resolution Applicant will not make any further payments, since the payment of their admitted claim of Rs. 62,44,43,284/- proposed to be made by the Resolution Applicant, with the approval of the COC, is more than their mandatory entitlement under the Code.*
- (b.) *Subject to sub-clause 1(a) above, in the event there is a reduction in the amount of the admitted debt of the said 575 Ralliwolf Workmen being Rs. 62,44,43,284/-, for any reason whatsoever, then the Resolution Applicant will make payment of such reduced amount only, and if an excess amount has been paid then the Resolution Applicant will be entitled to a refund from the concerned persons.*
2. *Without prejudice to what is mentioned elsewhere in this Resolution Plan and without diluting the rights of the Resolution Applicant in any manner whatsoever, the Resolution Applicant would also like to clarify the following: -*
- (a.) *As set out in the table in Clause 3.1(A) above, the said 101 Ralliwolf Workmen have submitted a claim for Rs. 21,01,54,205/- out of which an amount of Rs. 4,35,83,122/- has been rejected by the Resolution Professional for the reasons set forth in the List of Creditors. The Resolution Applicant hereby clarifies that in the event such amount is subsequently admitted by the Resolution Professional for any reason, including on account of any orders subsequently passed by any court or competent authority, or the aforesaid amount of is held to be valid claim, then the Resolution Applicant will not make any further payments, since the payment of their admitted claim of Rs. 16,65,71,083/- proposed to be made by the Resolution Applicant, with the approval of the COC, is more than their mandatory entitlement under the Code.*
- (b.) *Subject to sub-clause 2(a) above, in the event there is a reduction in the amount of the admitted debt of the said 101 Ralliwolf*



*Workmen being Rs. 16,65,71,083, for any reason whatsoever, then the Resolution Applicant. will make payment of such reduced amount only, and if an excess amount has been paid then the Resolution Applicant will be entitled to a refund from the concerned persons.”*

32. The above mentioned specific clause in the resolution plan states that if any additional amount is admitted by the Resolution Professional, whether due to subsequent court orders or any competent authority's decision, the Resolution Applicant will not make further payments as the amount proposed to be paid to the workmen, with the approval of the COC, already exceeds their mandatory entitlement under the Code. Therefore, no further amount shall be paid.
33. In view of the above, we are of the opinion that the Resolution Plan provides a sufficient amount to the workmen, and is compliant with the decision in the case Jet Airways and with the provisions of the IBC.
34. **Operational Creditors (Government Dues):** As per the List of Creditors, Employees Provident Fund Organisation (“EPFO”) has submitted a Claim in the category of Operational Creditors on 20.06.2022 in Form B for Rs. 7,49,48,021/- (Seven Crores Forty-Nine Lakhs Forty-Eight Thousand and Twenty Only) and same was admitted by the Resolution Professional on 28.06.2022 and proposed to be paid in full by the Resolution Applicant in the Resolution plan approved by the CoC on 01.09.2022. However, the EPFO filed an additional claim of Rs. 34,31,98,854/- (Rupees Thirty-Four Crores Thirty-One Lakhs Ninety-Eight Thousand Eight Hundred and Fifty-Four Only) on 08.06.2023 pertaining to the period from 2002 to 2023, which was rejected by the RP/Respondent vide email dated 05.07.2023. Therefore, the EPFO filed an IA before this Tribunal which was rejected on the ground that the said claim, filed only on the basis of assumption and arithmetical calculations without an order under the provisions of the Provident Fund Act, cannot be admitted. This Tribunal also held that the belated additional claim of the Applicant cannot be



directed to be admitted in view of the Resolution Plan being already approved by the CoC.

35. Therefore, the Resolution Applicant will make payment of the entire admitted Claim of the EPFO i.e. the Admitted PF Debt totally amounting to Rs. 7,49,48,021/- (Rupees Seven Crore Forty Nine Lakh Forty Eight Thousand Twenty One Only), in full and final settlement towards all amounts due and payable to it, whether claimed or otherwise. The EPFO shall be deemed to have relinquished any claim for any other dues and shall be deemed to have been settled in full. The detailed terms and conditions of the financial proposal pertaining to the EPFO is set forth in Section 3.2(A)(3.1)(ii) of the Resolution Plan. Without prejudice to anything contained above, any other debt of the Operational Creditors (Government Dues) and or any other Government and Statutory Authority appearing in the books of account of the Corporate Debtor, whether or not a claim has been filed in relation thereto, whether admitted or not, under verification, contingent or otherwise, asserted or unasserted, secured or unsecured shall stand permanently extinguished. This will be in full and final settlement.

36. **Operational Creditors (other than Workmen and Employees and Government Dues):** The Resolution Applicant will make payment of the entire admitted Claim of the Other Operational Creditors i.e. the Admitted Other Operational Creditor Debt totally amounting to Rs. 15,81,740 (Rupees Fifteen Lakh Eighty One Thousand Seven Hundred Forty Only) and as per the table specified in Clause 3.2(A)(3.1) of Resolution Plan, in full and final settlement towards all amounts due and payable to them, whether claimed or otherwise. The Other Operational Creditors shall be deemed to have relinquished any claim for any other dues and shall be deemed to have been settled in full. The detailed terms and conditions of the financial proposal pertaining to the Other Operational Creditors is set forth in Section 3.2(A)(3.1)(iii) of Resolution Plan. Without prejudice to anything contained above, any other debt of the Other Operational



Creditors/trade creditors appearing in the books of account of the Corporate Debtor, whether or not a claim has been filed in relation thereto, whether admitted or not, under verification, contingent or otherwise, asserted or unasserted, secured or unsecured stand permanently extinguished. This will be in full and final settlement.

37. **Other Creditors:** The Resolution Applicant will make payment of the entire admitted Claim of Icarus (because there is an attachment) being the Other Creditor i.e. the Admitted Icarus Debt totally amounting to Rs. 1,24,64,066/- (Rupees One Crore Twenty Four Lakh Sixty Four Thousand Sixty Six Only), in full and final settlement towards all amounts due and payable to it, whether claimed or otherwise. Icarus shall be deemed to have relinquished any claim for any other dues and shall be deemed to have been settled in full. The detailed terms and conditions of the financial proposal pertaining to Icarus is set forth in Section 3.2(A)(4) of Resolution Plan. Without prejudice to anything contained above, any other debt of the Other Creditors/trade creditors appearing in the books of account of the Corporate Debtor, whether or not a claim has been filed in relation thereto, whether admitted or not, under verification, contingent or otherwise, asserted or unasserted, secured or unsecured stand permanently extinguished. This will be in full and final settlement.

38. The Resolution Plan envisages the following manner for management and control:

*6.1 The Resolution Professional (authorized by the CoC) shall be responsible for conducting the Business of the Corporate Debtor during the period from the CoC Approval Date till the NCLT Approval Date, subject to the terms and conditions of this Resolution Plan.*

*6.2 On the NCLT Approval Date, a committee shall be constituted and shall comprise (i) one nominee of the Resolution Applicant, (ii) one nominee of Aasan, and (iii) the Resolution Professional ("Interim Committee"). From the NCLT Approval Date till the Effective date, the Interim Committee shall be responsible for supervision and implementation of the Resolution Plan, conducting the business of the Corporate Debtor as a*



*going concern, and protecting and safeguarding the interest of the Corporate Debtor.*

*6.6 On the Effective Date, all the existing Directors of the Corporate Debtor, without any further action being required on the part of any Person, shall be deemed to have resigned from the Board of the Corporate Debtor, and the Board of the Corporate Debtor will be reconstituted to comprise the members of the Resolution Applicant (“Reconstituted Board”), and will be responsible for the supervision of the day to day affairs of the Corporate Debtor and to oversee the management of the affairs of the Corporate Debtor.*

39. The interests of existing shareholders have been altered by the resolution Plan as under:

<b>Sr. No.</b>	<b>Category of Share Holder</b>	<b>No. of Shares held before CIRP</b>	<b>No. of Shares held after the CIRP</b>	<b>Voting Share (%) held before CIRP</b>	<b>Voting Share (%) held after CIRP</b>
1.	Equity	50000 equity shares of Rs. 10 each.	Nil	100	Nil

*The existing pre- CIRP shareholding (including equity shares, the preference share capital of the Corporate Debtor on the CIRP Commencement Date) of the Promoters/ Promoter Group and all other existing shareholders in the Corporate Debtor (except the equity shares allotted to the Resolution Applicant pursuant to the Equity Infusion into the Corporate Debtor) shall be permanently cancelled and permanently extinguished pursuant to the Capital Reduction.*

*The Corporate Debtor Shareholding shall be entirely cancelled and permanently extinguished (“Capital Reduction”) for NIL consideration.*

*The Resolution Applicant (along with its Affiliates/Nominees) shall hold 100% (one hundred percent) of the share capital of the Corporate Debtor and acquire control of the Corporate Debtor.*

*The Resolution Applicant shall infuse 1,00,000/- (Rupees One lakh Only) into the Corporate Debtor by way of subscription to equity shares of the Corporate Debtor in accordance with Section 5 (Acquisition as going concern) of the Resolution Plan.*





40. **Clause 8.4: Conditions to the implementation of the Resolution**

**Plan**

- (i) *In or around 22rd / 24th August, 2022 (i.e. after the issuance of the RFRP and well into the process of CIRP) certain circulars/guidelines have been issued by the Office of the Deputy Conservator of Forests, Thane Forest Division/the planning authorities, on account whereof the development of the said Land could be adversely affected because the said Land appears to fall within the Eco-sensitive Zone of the Sanjay Gandhi National Park.*
- (ii) *In view of the above, prior to the expiry of 180 (one hundred and eighty) days from the NCLT Approval Date and as a condition to the implementation, consummation, completion, and effectiveness of the Resolution Plan, a clarification/permission shall be obtained from the competent authority and/or the State Government that the said Land is not within the Eco-Sensitive Zone and/or affected thereby, as per the relevant notifications issued by the concerned authorities from time to time/applicable law. For this purpose, the COC must authorise the Resolution Professional to provide its assistance and cooperation.*
- (iii) *In the event the aforesaid clarification/permission as specified in Clause 8.4(ii) above is not obtained prior to the expiry of 180 (one hundred and eighty) days from the NCLT Approval Date, then i) the Resolution Plan shall stand terminated without any further acts; deeds, or things, the Resolution Applicant shall not be bound by any of its obligations and commitments thereunder, and no claim shall lie against the Resolution Applicant, (ii) the Refundable Process Participation Deposit (as described in the Detailed EOI) shall not be liable to be forfeited and shall be returned to the Resolution Applicant within 7 (seven) days from the expiry of the aforesaid period of 180 (one hundred and eighty) days, (iii) the Earnest Money Deposit (as described in the RFRP) shall not be liable to be forfeited and shall be returned to the Resolution Applicant within 7 (seven) days from the expiry of the aforesaid period of 180 (one hundred and eighty) days, (iv) the Performance Security, if furnished, shall not be liable to be invoked and shall be returned to the Resolution Applicant, within 7(seven) days from the expiry of the aforesaid period of 180 (one hundred and eighty) days, and (v) all costs, if any, incurred by the Resolution Applicant shall be repaid in priority as CIRP Costs. It is clarified that the aforesaid termination will not be construed as a withdrawal of the Resolution Plan by the Resolution Applicant.*



41. In relation to this conditional clause, the Resolution Applicant also sent an email on 01.09.2022 at 11:33. Additionally, at 11:39, another email was sent stating that-

*“Please ignore my email of 1/Sep/2022 below.*

*This is with reference to the Revised Resolution Plan dated 30/Aug/2022 submitted by us, and the discussion during the meeting Committee of Creditors held on 1/Sep/2022.*

*As discussed during the aforesaid meeting, Section 8.4(ii) of the Revised Resolution Plan dated 30/Aug/2022, shall be read as under:*

***In view of the above, prior to the expiry of 180 (one hundred and eighty) days from the NCLT Approval Date and as a condition to the implementation, consummation, completion, and effectiveness of the Resolution Plan, a clarification/permission shall be obtained from the competent authority and/or the State Government and/or the Supreme Court of India that the said Land is not within the Eco-Sensitive Zone and/or affected thereby, as per the relevant notifications issued by the concerned authorities from time to time/applicable law. The Resolution Applicant and the Resolution Professional will, from the date of the approval of the Resolution Plan by the COC, work together for an expeditious resolution of the matter, and the Resolution Professional shall render all necessary assistance and cooperation in this matter. For this purpose, the COC must authorize the Resolution Professional to provide its assistance and cooperation.”***

42. Therefore, Section 8.4(ii) of the Revised Resolution Plan shall be read as mentioned in above cited email.

43. The Interlocutory Application (IA/2048/2022) filed under section 43, 45 and 66 of the code is pending for adjudication. In relation to this, the Resolution Applicant has proposed that such application shall be pursued as may be decided by the CoC and any amount or benefits that may be realized shall be to the sole account of the CoC. The relevant para mentioned in the Resolution Plan is as follows:



*“Section 5.1*

*J. The monies or benefits that may be realized on account of any order passed in any applications or proceedings that have been or may be filed by the Resolution Professional before the NCLT or any other court or competent authority, and from or pursuant to, directly or indirectly, any transaction with or concerning any Related Party of the Corporate Debtor or any avoidance transactions, preferential transactions or wrongful trading, shall be to the sole account of the COC, and the Resolution Applicant will not claim any benefit therein or any right, title, or interest thereto. Further, all proceedings in respect of any avoidance transactions, preferential transactions, fraudulent transactions, undervalued transactions, extortionate transactions or wrongful trading or any other transaction with or concerning any Related Party of the Corporate Debtor, shall be pursued as may be decided by the COC. All costs incurred towards pursuing the aforesaid proceedings till the Effective Date shall constitute CIRP Costs which shall be paid in the manner provided for in this Resolution Plan, and all costs incurred towards pursuing the aforesaid proceedings on and from the Effective Date shall be solely borne by the COC.”*

44. The Resolution Professional filed an additional affidavit dated 25.11.2022, stating that vide email dated 24.11.2022, the Resolution Applicant submitted the Scheme of Arrangement and Amalgamation between the Corporate Debtor and Oberoi Constructions Limited to the Resolution Professional. The Resolution Plan approved by the COC provided for the amalgamation of the Corporate Debtor with the Resolution Applicant and specified that the Scheme of Arrangement and Amalgamation will be submitted separately. This Scheme of Arrangement and Amalgamation has been attached to the said affidavit. The Resolution Professional also mentioned in the affidavit that the Scheme of Arrangement and Amalgamation needs to be approved by this Hon'ble Tribunal (as a part of and along with the Resolution Plan) along with the prayer clause (a) of the Application.



45. In this context, we are of the considered view that said scheme may be filed separately under the appropriate law, which shall be dealt on its own merits.

**Compliance Certificate**

46. The Applicant has prepared and annexed to the application, Compliance Certificate in Form – H in accordance with Regulation 39(4) the IBBI (Corporate Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which is reproduced below:

*(Amount in Crores)*

<b>Sr. No.</b>	<b>Category of Stakeholder</b>	<b>Sub-Category of Stakeholder</b>	<b>Amount Claimed</b>	<b>Amount Admitted</b>	<b>Amount Provided under the Plan</b>	<b>Amount Provided to the Amount Claimed (%)</b>
1.	Secured Financial Creditors (other than Class of Creditors)	(a) Creditors not having a right to vote under sub-section (2) of section 21  (b) Other than (a) above:  (i) Who did not vote in favour of the resolution plan  (ii) Who voted in favour of the resolution plan  <b>TOTAL</b>	NA          <b>660.40</b>	NA          <b>660.40</b>	NA          <b>185.00</b>	NA          <b>28.01%</b>
2.	Secured Financial Creditors (in Class of Creditors)	Creditors not having a right to vote under sub-section (2) of Section 21	NA	NA	NA	NA



3.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under subsection (2) of section 21  (b) Other than (a) above:  (i) Who did not vote in favour of the resolution plan (ii) Who voted in favour of the resolution plan  <b>TOTAL</b>	NA  NA  0  <b>0</b>	NA  NA  0  <b>0</b>	NA  NA  0  <b>0</b>	NA  NA  0  <b>0</b>
4.	Operational Creditors	(a) Related Party of CD  (b) Other than (a) above:  (i) Government (ii) Workmen (iii) Employees (iv) Other than workmen and employees and Government dues  <b>TOTAL</b>	NA  7.49 119.50 NA 0.18  <b>127.18</b>	NA  7.49 79.10 NA 0.15  <b>86.74</b>	NA  7.49 79.10 NA 0  <b>86.59</b>	NA  100% 66.19% NA 0  <b>68.08%</b>
5.	Other Debts and dues		1.25	1.25	1.25	100%
	<b>Grand Total</b>		<b>788.83</b>	<b>748.39</b>	<b>272.84</b>	<b>34.59%</b>



47. The compliance of the Resolution Plan is as under:

<b>Sr. No.</b>	<b>Section of the Code/Regulation No.</b>	<b>Requirement with respect to Resolution Plan</b>	<b>Clause Resolution Plan</b>	<b>Compliance (Yes/No)</b>
1.	25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?		Yes
2.	Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?		Yes
3.	Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?		Yes
4.	Section 30(2)	Whether the Resolution Plan- (a) Provides for the payment of insolvency resolution process costs? (b) Provides for the payment to the Operational Creditors? (c) Provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) Provides for the management of the affairs of the Corporate Debtor? (e) Provides for the implementation and supervision of the resolution plan? (f) Contravenes any of the provisions of the law for the time being in force?	Clause 4.1  Clause 3 and 4  Clause 3 and 4  Clause 6  Clause 5 and 8.5  Clause 4 of Para D of the Covering Letter to the Resolution Plan	Yes  Yes  Yes  Yes  Yes  No
5.	Section 30(4)	Whether the Resolution Plan		



		(a) Is feasible and viable, according to the CoC?  (b) Has been approved by the CoC with 66% voting share?		Yes  Yes
6.	Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?		Yes
7.	Regulation 35A	Where the Resolution Professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43,45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?		Yes
8.	Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Clause 3 and 4	Yes
9.	Regulation 38 (1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholder?	Clause 3 and 4	Yes
10.	Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contribute to the failure of implementation of any resolution plan approved under the Code.  (ii) If so, whether the Resolution Applicant has submitted the statement has submitted the statement giving details of such non-implementation?	Clause 4 of Para D of the Covering letter to the Resolution Plan	Complied
11.	Regulation 38 (2)	Whether the Resolution Plan provides: (a) The term of the plan and its implementation schedule?	Clause 5 and 8.5	Yes



		(b) For the management and control of the business of the corporate debtor during its term?	Clause 6	Yes
		(c) Adequate means for supervising its implementation?	Clause 6	Yes
11.	Regulation 38(3)	Whether the resolution plan demonstrate that-		
		(a) It addresses the cause of default?	Clause 3 and 5	Yes
		(b) It is feasible and viable	Clause 3 and 5	Yes
		(c) It has provisions for its effective implementation?	Clause 8	Yes
		(d) It has provisions for approvals required and the timeline for the same	Clause 4.5	Yes
		(e) The resolution plan applicant has the capability to implement the resolution plan?	Clause 1	Yes
12.	39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Section H	Yes
13.	Regulation 39 (4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.		Yes

48. The CIRP has been conducted as per the timeline indicated as under:

Sr. No.	Section of the Code/Regulation No.	Description of Activity	Latest Timeline under regulation 40A	As per Regulation	Actual Date
1.	Section 16(1)	Commencement of CIRP and Appointment of IRP	T	06.12.2021	06.12.2021 and order received on 20.12.2021
2.	Regulation 6(1)	Publication of Public Announcement	T+3	09.12.2021	21.12.2021
3.	Section 15(1)(c)/Regulation 12 (1)	Submission of Claims	T+14	20.12.2021	03.01.2022





4.	Regulation 13(1)	Verification of Claims	T+21	27.12.2021	10.01.2022
5.	Section 26 (6A)/Regulation 15A	Application for Appointment of Authorized Representative, if necessary	T+23	29.12.2021	N.A.
6.	Regulation 17(1)	Filing Report Certifying Constitution of CoC	T+23	29.12.2021	03.01.2022
7.	Section 22(1) and Regulation 17(2)	First Meeting of the CoC	T+30	05.01.2022	18.01.2022
8.	Regulation 35A	Determination of Fraudulent and other transactions	T+115	31.03.2022	31.03.2022
9.	Regulation 27	Appointment of two Registered Valuers	T+47	22.01.2022	20.01.2022
10.	Regulation 36(1)	Submission of Information Memorandum to CoC	T+54	29.01.2022	17.02.2022
11.	Regulation 36A	Invitation of EOI	T+75	19.02.2022	05.04.2022
		Publication of Form -G	T+75	19.02.2022	05.04.2022
		Provisional List of Resolution Applicants	T+100	16.03.2022	30.04.2022
		Final List of Resolution Applicant	T+115	31.03.2022	15.05.2022
12.	Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	21.03.2022	05.05.2022
13.	Section 30(6)/Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	20.05.2022	02.09.2022
14.	Section 31(1)	Approval of Resolution Plan	T=180		-

49. On perusal of Form H, it is seen that the Resolution Plan is in compliance with the mandatory requirements as stipulated under section 30(2) of the Code. The Resolution Plan also meets the requirements of Regulations 35, 37, 38 and 30 of the Regulations. The Resolution Plan



is not in contravention of the provisions of section 29A of the code and is in accordance with law.

50. In ***K Sashidhar v. Indian Overseas Bank & Others (2019) 12 SCC 150***, the Hon'ble Apex Court held that if CoC had approved the resolution plan with requisite percentage of voting share then the Adjudicating Authority is required to satisfy the resolution plan as approved by CoC meets the requirements specified in section 30(2). The role of Adjudicating Authority is 'no more and no less'. Even the grounds on which the Adjudicating Authority can reject the plan is in reference to matters specified in section 30(2) only when the plan does not conform to the stated requirements.
51. In view of the law laid down by Hon'ble Apex Court, the commercial wisdom of the CoC is to be given paramount importance for approval/rejection of the resolution plan. As the resolution plan meets the requirements under the Code and the Regulations, the same needs to be approved. Accordingly, the **Resolution Plan is approved** with following directions:
- i. The Resolution Plan submitted by Oberoi Constructions limited is hereby approved. It shall be binding on the Corporate Debtor, its employees, members, creditors including the Central Government, State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due. All the stakeholders and respective authorities shall cooperate in smooth implementation of the resolution plan and revival of the Corporate Debtor.
  - ii. The Monitoring Committee shall supervise the implementation of the Resolution Plan and shall review the operational performance of the Corporate Debtor.



- iii. For past non-compliances of the Corporate debtor under applicable laws the Resolution Applicant shall not be liable for any liabilities and offences committed prior to the commencement of CIRP and as stipulated under Section 32A of IBC, 2016.
  
- iv. As per the Resolution Plan, extinguishment of existing shares of the Corporate Debtor, allotment of shares to the Successful Resolution Applicant and reduction of share capital will not require the consent of shareholders under Companies Act, 2013 or any other authorities for implementation of the Resolution Plan.

**Reliefs and Concessions:**

- v. Approval of the Resolution Plan shall not be a ground for termination of any existing consents, approvals, licenses, concessions, authorizations, permits or the like that has been granted to the Corporate Debtor or for which the Corporate Debtor has made an application for renewal, permissions, sanctions, consents, approvals, allowances, exemptions etc.
  
- vi. As far as the permits held by the Corporate Debtor and the rights and benefits therein, wherever required, the Corporate Debtor has to approach the Authorities concerned for those permits and the same shall be processed in accordance with law and decision to be taken without undue delay. As resolution of Corporate Debtor in a time-bound is the Fundamental Objective of the Insolvency and Bankruptcy Code, 2016, we trust that the Authorities concerned will do the needful as envisaged under the Code.
  
- vii. Any Exemption as sought for in relation to the payment of registration **charges, stamp duty, taxes and fees arising out**



**of the implementation of the Resolution Plan is not granted** but the Resolution Applicant is at liberty to approach Competent Authorities for the exemptions if permitted under the law.

viii. With regard to other concessions and reliefs, most of them are subsumed in the reliefs granted above. The relief which is not expressly granted above, shall not be construed as granted. The exemptions if any sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted.

52. It is hereby clarified that in terms of the Judgement of Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited***, on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of a claim which is not a part of the Resolution Plan.
53. The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant and Resolution Applicant shall have access to all the records premises / documents to finalise further line of action required for starting the operations as contemplated under the Resolution Plan.
54. Approval of this Resolution Plan shall be deemed approval for removal of existing Directors from the record of the Corporate Debtor as appearing in the ROC records and reflected on MCA portal. Upon receipt of the certified copy of the order approving Resolution Plan, the Statutory authorities shall give effect to the change in the shareholders and directors of the Corporate Debtor.



55. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him in the Monitoring Committee.
56. The Applicant shall forward all records relating to the conduct of CIRP and the Resolution Plan to the IBBI along with copy of this Order.
57. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
58. Registry is directed to send copy of this Order forthwith to authorities (IBBI, ROC), parties/ their counsel for information and necessary steps.
59. Accordingly, **Resolution Plan in IA/2455/2022 is hereby approved.**  
I.A. 2455/2022 stands **allowed and disposed of.**

Sd/-

**CHARANJEET SINGH GULATI**  
**MEMBER (TECHNICAL)**

Sd/-

**LAKSHMI GURUNG**  
**MEMBER (JUDICIAL)**

Arpan, LRA