

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

MA/554/2019 in CP/193/IB/2018
(Filed under Sec. 30(6) of the IBC, 2016)

IN THE MATTER OF:

M/s. P DOT G Constructions Pvt. Ltd.
Rep. by Mr. Sundaresan Nagarajan
Resolution Professional

... Applicant

Present:

For RP : Mr. Ravi Rajagopalan, Counsel
Mr. Sundaresan Nagarajan, RP

For Income
Tax Department : Mr. Raj Kumar Jhabakh, Counsel

For Objectors : Mr. S. Selvathirumurugan, Counsel
For Operational Creditors

Mr. P. Elaya Rajkumar, Counsel
For Operational Creditor and Home Buyers

Mr. Anant Merathia, Mr. Rishi Srinivas &
Smt. Poornima Devi, Counsels
For Dissenting Financial Creditors

WITH

MA/877/2019 in CP/193/IB/2018
(Filed under Sec. 60(5) of the IBC, 2016)

IN THE MATTER OF:

Vipras Adz

... Applicant

-Vs-

Mr. Sundaresan Nagarajan
RP for M/s. P Dot G Constructions Pvt. Ltd.
& another

... Respondents

Present:

For Applicant : *Mr. P. Elaya Rajkumar
for M/s. Ramalingam Associates*

For RP : *Mr. Ravi Rajagopalan, Counsel
Mr. Sundaresan Nagarajan, RP*

WITH

MA/878/2019 in CP/193/IB/2018
(Filed under Sec. 60(5) of the IBC, 2016)

IN THE MATTER OF:

Themes Adz

... Applicant

-Vs-

Mr. Sundaresan Nagarajan
RP for M/s. P Dot G Constructions Pvt. Ltd.
& another

... Respondents

Present:

For Applicant : *Mr. P. Elaya Rajkumar
for M/s. Ramalingam Associates*

For RP : *Mr. Ravi Rajagopalan, Counsel
Mr. Sundaresan Nagarajan, RP*

WITH

MA/879/2019 in CP/193/IB/2018
(Filed under Sec. 60(5) of the IBC, 2016)

IN THE MATTER OF:

S. Rani

... Applicant

-Vs-

Mr. Sundaresan Nagarajan
RP for M/s. P Dot G Constructions Pvt. Ltd.
& another

... Respondents

Present:

For Applicant : *Mr. P. Elaya Rajkumar
for M/s. Ramalingam Associates*

For RP : *Mr. Ravi Rajagopalan, Counsel
Mr. Sundaresan Nagarajan, RP*

WITH

MA/625/2019 in CP/193/IB/2018
(Filed under Sec. 60(5) of the IBC, 2016)

IN THE MATTER OF:

M/s. Sai Enterprises ... Applicant

-Vs-

Mr. Sundaresan Nagarajan
RP for M/s. P Dot G Constructions Pvt. Ltd.

... Respondent

Present:

For Applicant : *Mr. S. Selvathirumurugan, Counsel*

For RP : *Mr. Ravi Rajagopalan, Counsel
Mr. Sundaresan Nagarajan, RP*

WITH

MA/626/2019 in CP/193/IB/2018
(Filed under Sec. 60(5) of the IBC, 2016)

IN THE MATTER OF:

M/s. Sai Trading and Interiors ... Applicant

-Vs-

Mr. Sundaresan Nagarajan
RP for M/s. P Dot G Constructions Pvt. Ltd.

... Respondent

Present:

For Applicant : *Mr. S. Selvathirumurugan, Counsel*

For RP : *Mr. Ravi Rajagopalan, Counsel*
Mr. Sundaresan Nagarajan, RP

WITH

MA/629/2019 in CP/193/IB/2018
(Filed under Sec. 60(5) of the IBC, 2016)

IN THE MATTER OF:

M/s. Sai Trading and Interiors ... *Applicant*

-Vs-

Mr. Sundaresan Nagarajan
RP for M/s. P Dot G Constructions Pvt. Ltd.

... *Respondent*

Present:

For Applicant : *Mr. S. Selvathirumurugan, Counsel*

For RP : *Mr. Ravi Rajagopalan, Counsel*
Mr. Sundaresan Nagarajan, RP

WITH

MA/630/2019 in CP/193/IB/2018
(Filed under Sec. 60(5) of the IBC, 2016)

IN THE MATTER OF:

B. Akhilandeswari ... *Applicant*

-Vs-

Mr. Sundaresan Nagarajan
RP for M/s. P Dot G Constructions Pvt. Ltd.

... *Respondent*



Present:

For Applicant : Mr. S. Selvathirumurugan, Counsel

*For RP : Mr. Ravi Rajagopalan, Counsel
Mr. Sundaresan Nagarajan, RP*

WITH

MA/798/2019 in MA/554/2019 IN CP/193/IB/2018

(Filed under Sec. 60(5) of the IBC, 2016)

IN THE MATTER OF:

M/s. IJM Concrete Products *... Applicant*

-Vs-

Mr. Sundaresan Nagarajan
RP for M/s. P Dot G Constructions Pvt. Ltd.
& 2 others *... Respondents*

Present:

*For Applicant : Smt. S. Manjula Devi, Counsel
for KSR & Co.*

*For RP : Mr. Ravi Rajagopalan, Counsel
Mr. Sundaresan Nagarajan, RP*

WITH

MA/641/2019 in CP/193/IB/2018

(Filed under Sec. 60(5) of the IBC, 2016)

IN THE MATTER OF:

M/s. Sanchit Sales Private Limited *... Applicant*

-Vs-

M/s. P Dot G Constructions Pvt. Ltd.
& another *... Respondents*



Present:

For Applicant : *Mr. Anant Merathia, Counsel*
Mr. Rishi Srinivas, Counsel

For RP : *Mr. Ravi Rajagopalan, Counsel*
Mr. Sundaresan Nagarajan, RP

WITH

MA/659/2019 in CP/193/IB/2018
(Filed under Sec. 60(5) of the IBC, 2016)

IN THE MATTER OF:

Mr. R. Ravichandran ... Applicant

-Vs-

M/s. P Dot G Constructions Pvt. Ltd.
& another

... Respondents

Present:

For Applicant : *Mr. Vijay Vigneswar, Counsel*

For RP : *Mr. Ravi Rajagopalan, Counsel*
Mr. Sundaresan Nagarajan, RP

WITH

MA/819/2019 in CP/193/IB/2018
(Filed under Sec. 60(5) of the IBC, 2016)

IN THE MATTER OF:

Mr. V. Sampath Kumar ... Applicant

-Vs-

M/s. P Dot G Constructions Pvt. Ltd.

... Respondent

Present:

For Applicant : *Mr. A.G. Sathyanarayana, Counsel*

For RP : *Mr. Ravi Rajagopalan, Counsel*
Mr. Sundaresan Nagarajan, RP

WITH

MA/627/2019 in CP/193/IB/2018

(Filed under Sec. 60(5) of the IBC, 2016)

IN THE MATTER OF:

Mr. S.R. Mahendran *... Applicant*

-Vs-

Mr. Sundaresan Nagarajan
RP for M/s. P Dot G Constructions *... Respondent*

Present:

For Applicant : *Mr. P. Elaya Rajkumar*
for M/s. Ramalingam Associates

For RP : *Mr. Ravi Rajagopalan, Counsel*
Mr. Sundaresan Nagarajan, RP

WITH

MA/436/2019 in CP/193/IB/2018

(Filed under Sec. 60(5) of the IBC, 2016)

IN THE MATTER OF:

Mrs. Manjula *... Applicant*

-Vs-

Mr. Sundaresan Nagarajan
RP for M/s. P Dot G Constructions *... Respondent*



Present:

For Applicant : *Mr. P. Elaya Rajkumar
for M/s. Ramalingam Associates*

For RP : *Mr. Ravi Rajagopalan, Counsel
Mr. Sundaresan Nagarajan, RP*

WITH

MA/710/2019 in CP/193/IB/2018
(Filed under Sec. 60(5) of the IBC, 2016)

IN THE MATTER OF:

Mr. N. Selvakumar & 6 Ors *... Applicants*

-Vs-

Mr. Sundaresan Nagarajan
RP for M/s. P Dot G Constructions Pvt. Ltd.
& another *... Respondents*

Present:

For Applicants : *Mr. P. Elaya Rajkumar, Counsel
for M/s. Ramalingam Associates*

For RP : *Mr. Ravi Rajagopalan, Counsel
Mr. Sundaresan Nagarajan, RP*

WITH

MA/874/2019 in CP/193/IB/2018
(Filed under Sec. 60(5) of the IBC, 2016)

IN THE MATTER OF:

Mr. W.M. Mohanasundarama & 6 Ors *... Applicants*

-Vs-

Mr. Sundaresan Nagarajan
RP for M/s. P Dot G Constructions Pvt. Ltd.
& another *... Respondents*



Present:

For Applicants : *Mr. P. Elaya Rajkumar, Counsel
for M/s. Ramalingam Associates*

For RP : *Mr. Ravi Rajagopalan, Counsel
Mr. Sundaresan Nagarajan, RP*

WITH

MA/876/2019 in CP/193/IB/2018
(Filed under Sec. 60(5) of the IBC, 2016)

IN THE MATTER OF:

Mr. V. Selvakumar *... Applicants*

-Vs-

Mr. Sundaresan Nagarajan
RP for M/s. P Dot G Constructions Pvt. Ltd.
& another *... Respondents*

Present:

For Applicant : *Mr. P. Elaya Rajkumar, Counsel
for M/s. Ramalingam Associates*

For RP : *Mr. Ravi Rajagopalan, Counsel
Mr. Sundaresan Nagarajan, RP*

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

Order Pronounced on 13th December 2019



COMMON ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. The MA/554/2019 is moved by the Resolution Professional of the Corporate Debtor viz., Mr. Sundaresan Nagarajan 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 for Corporate Persons) Regulations, 2016 (in short, 'Regulation') seeking the approval of the Resolution Plan submitted by the successful Resolution Applicant viz., **M/s. RCC e-Construction Pvt. Ltd.**

2. From the averments made in the Application read with Form-H Compliance Certificate as filed by the Resolution Professional, it is seen that the Corporate Insolvency Resolution Process (CIR Process) was initiated against the Corporate Debtor on 13.07.2018 whereby Mr. T. V. Subramanian was appointed initially as the Interim Resolution Professional who was subsequently replaced by this Authority on 19.07.2018 with one Mr. Premachandran.

3. Consequent to the public announcement under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency



Resolution Process for Corporate Persons), Regulations, 2016, claims from the creditors seem to have been received by the Resolution Professional. After verification of the claims received, the Interim Resolution Professional constituted Committee of Creditors (CoCs) on 18.08.2018.

4. It is evident from Form H that the 1st meeting of the CoC was held on 23.08.2018 and Mr. Sundaresan Nagarajan had been appointed as Resolution Professional on 20.09.2018. It is also evident on perusal of the Form H that the "Expression of Interests" (in short, "EoI") were issued thrice with the last one having been issued on 17.04.2019. At the instance of the CoC, on 28.04.2019 the final list of eligible prospective Resolution Applicants were ascertained and the prospective Resolution Applicants were invited to submit the Resolution Plan on 29.04.2019 with cut off date being provided as 15.05.2019 for the submissions of the Resolution Plans.

5. The Resolution Plan was put for e-voting on 29.05.2019 and 30.05.2019 and consequent thereto the Resolution Plan was filed with this Adjudicating Authority on 03.06.2019. Even though, the CIR Process period had expired on 09.01.2019, however, the same



was extended from time to time by this Authority for initial period of 90 days and after exclusion of 49 days of time period lost in legal proceedings, the CIR Process stood extended till 29.05.2019.

6. For the purpose of ascertaining the fair value and liquidation value of the Corporate Debtor, it is disclosed in Form - H that two registered Valuers were appointed on 19.09.2018 and the Fair Value as computed by the two Valuers is Rs.59.57 Crores / Rs.56.16 Crores, as the case may be and the average works out to be Rs.57.87 Crores. Similarly, in relation to the Liquidation Value, it is disclosed that while one of the Valuers has ascertained the Liquidation value as Rs.44.24 Crores whereas the other Valuer has arrived at the Liquidation Value as Rs.44.46 Crores which works out to be an average of Rs.44.35 Crores.

7. It is also brought forth that in relation to the CoC at the time of approval of the Resolution Plan, the following members constituted it viz.:-

Sl. No	Name of Creditor	Voting Share (%)	(Voted for / Dissented / Abstained)
1.	M/s. DMI Finance (P) Ltd	37.68%	Voted For
2.	M/s. Arthveda Star Fund	5.20%	Dissented
3.	M/s. Arthveda (Jaipur) Realty (P) Ltd.,	1.63	Dissented



4.	M/s. Sanchit Sales (P) Ltd.	1.98	Dissented
5.	M/s. SSP Industries (P) Ltd	0.25%	Dissented
6.	FC-Home Buyers	53.26%	Voted For-43.71% Dissented -7.01% Abstained-2.54%

The pattern of voting in relation to the Resolution Plan has also been disclosed as evident from the above table extracted from Form-H.

8. Pursuant to the Regulation 35A of the IBBI (IRP for Corporate Persons) Regulations, 2016, it is disclosed in Form-H that the Resolution Professional has determined the transaction of the nature covered under Sections 43, 45, 50 or 66 of I&B Code, 2016 and that suitable Application has also been filed before this Tribunal, which is pending adjudication.

9. Form H Compliance Certificate as issued by the Resolution Professional in terms of I&B Code, 2016 read with the attendant Regulations discloses that the Resolution Plan complies with all the provisions of the I&B Code, 2016, the CIRP Regulations and does not contravene any of the provisions of the law for the time being in force.



10. It is also brought forth that an Affidavit as required to be submitted by the Resolution Applicant viz., *RCC E-Construct Private Limited* has also been duly submitted in relation to the eligibility taking into consideration Section 29A of the I&B Code, 2016.

11. It is affirmed in terms of the table as given above that the Resolution Plan has been approved by the CoC with 81.39% of voting share of Financial Creditors including Home Buyers have duly approved the Resolution Plan as submitted by the Resolution Applicant and that the voting was exercised in terms of electronic voting system which were kept open for 24 hours as per the Regulation 26 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

12. From the averments made in the Application as well as in Form-H as filed by the Resolution Professional in relation to the procedural aspects, the same seems to have been duly complied with for which the Resolution Professional has issued a Certificate. It is not necessary for this Tribunal to go into the same.

13. Since this Adjudicating Authority is required to approve the Resolution Plan in terms of Section 30(6) of I&B Code, 2016, upon



the focus in relation to the invitation for "EoI" and filing of the Resolution Plan by the Resolution Applicant, the following facts emerge:-

- (i) In the Information Memorandum as circulated, it is evident that the Corporate Debtor viz., P Dot G Constructions Private Limited was incorporated with the main object to be pursued by the Company *inter alia* includes to carry on the business of construction of flats, individual houses and that prior to initiation of CIR Process, the Corporate Debtor was successfully implementing the various projects.
- (ii) The Application as filed of the Operational Creditor viz., IJM Concrete Products Pvt. Ltd, was admitted by this Authority on 13.07.2018 and on the date of initiation of the CIR Process the following were the Directors of the Corporate Debtor viz., 1) Mrs. Prabhakar Reddy Hamsini, ii) Mr. Pala Govinda Prabhakar Reddy, and iii) Mr. Sugumar. However, they were disqualified under Section 164 of the Companies Act, 2013. At the time of CIR Process, it is disclosed in the Information Memorandum that the following were the ongoing projects of the Corporate Debtor:-

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Project	Location	Area (in square ft.)	Total No. of flats	Sold	Security Interest
Sunshine	Tiruvallur	2,21,697	260	110	150
Dreamz	Tiruvallur	88,066	144	122	22
Innova	Mangadu	2,39,790	236	183	53
Matrix	Potheri	2,90,932	324	163	161
Icon	Maraimalai Nagar	63,948	76	76	-
Total		9,04,433	1,040	654	386

- (iii) The Information Memorandum discloses that the Promoters of the Corporate Debtor whose details are given above were not co-operating which prompted the IRP / Resolution Professional to file the Application under Section 19 of the I&B Code, 2016. It is also averred in Information Memorandum that one Mr. A. Arumugam was appointed as Authorised Representative (AR) to represent Class of Creditors Comprising Home Buyers vide Order dated 24.08.2018. The Information Memorandum also discloses that in view of the non-co-operative attitude of the persons in the management of the Corporate Debtor in making available of the records, an Advocate Commissioner viz., Mr. Dhanraj was appointed by this Authority vide its Order dated 11.09.2018 and that the said Advocate Commissioner took over the available records and also filed the report before this Tribunal.
- (iv) The Information Memorandum as circulated to the prospective Resolution Applicants also brings forth the

fact that the Company owes by way of tax duties to the Income Tax Department as well as GST, VAT, Service Tax and other statutory dues details of which have also been given in the Information Memorandum in relation to which dues, proceedings seem to be pending by way of an Appeal before Hon'ble High Court of Madras. The composition of CoC as on 07.04.2019 has also been disclosed at page 68 of the Resolution Plan from which it is seen that the CoC had from time to time, by virtue of orders of this Tribunal undergone a change as compared to the one which was first constituted.

14. Based on the Information Memorandum which has been provided, the Resolution Applicant seems to have filed the Resolution Plan. The report of the Resolution Professional mandates eligibility criteria filed in relation to the proposed Resolution Applicants. The CoC has fixed the following eligibility criteria in relation to the invitation for "EoI" from the prospective Resolution Applicants which is as under:-

1. Any Company or Limited Liability Partnership (LLP) registered under The Companies Act 1956/2013 or a partnership formed under The Partnership Act, 1932 and preferably engaged in the business of real estate development having net worth of Rs. 10 lacs for the year ended 31st March 2018 or later as per the audited financial statements.
2. Any Non Banking Finance Companies (NBFC)/Asset Reconstruction Company / Foreign Investment Institutions (FII)/Mutual Funds / Private Equity / Venture Capital Funds,



Domestic / Banks and similar entities having Asset Under Management (AUM) of INR 100 Crores as on 31st March 2018 or later:

3. Any P dot G homeowners association(s) in association with any construction company or LLP or Partnership Firm having net worth of not less than Rs. 10 lac for the year ended 31st March 2018 or later as per the audited financial statements .

4. In case of resolution plan for each of the projects on a stand alone basis for one or more projects , then the resolution applicant shall be required to mention the contribution towards the company's liabilities including the liabilities of the creditors and shall be required to enter into a consortium arrangement with other resolution applicants, to come up with a composite resolution plan for the company as a whole. The aggregated composite resolution plan alone shall qualify for further assessment as per evaluation matrix

15. Based on the Information Memorandum, eligibility criteria and invitation for "EoI", the following Resolution Applicants including the successful Resolution Applicant had evinced interest in resolving the insolvency of the Corporate Debtor by submitting "EoIs" and the following names were found in the provisional list of resolution applicant:-

- " A. M/s. RCC E-Construct (P) Ltd.,
- B. M/s. Annai Builders Real Estates (P) Ltd.
- C. M/s. Rainbow Foundations Ltd.,
- D. M/s. Anir Techpark (P) Ltd., and
- E. M/s. Sai Trading and Interiors"

16. Subsequent thereof, the name of M/s. Sai Trading and Interiors was excluded from the final list of prospective resolution



applicant after recording the reasons in the 8th CoC meeting dated 28.04.2019. Only two Resolution Plan of viz., the successful Resolution Applicant and one M/s. Annai Builders Real Estates (P) Ltd. were taken up and was placed for consideration by the CoC for determining / ascertaining the Resolution Plan filed on the basis by consideration of Evaluation Matrix in relation to the Resolution Plans as submitted by the two Resolution Applicants to the following effect:-

SL. NO	EVALUATION PARAMETERS	SCORE	
		RCC	ANNAI
1	Submission of Composite	50	50
2	Net Worth	10	50
3	Time Frame For Construction	75	100
4	Time Frame for Payment to Lenders	25	50
5	Additional Amount Demanded from Homebuyers	0	0
SL. NO	EVALUATION PARAMETERS	SCORE	
		RCC	ANNAI
1	Sunshine	0	30
2	Dreamz	20	25
3	Innova	0	0
4	Matrix	0	0
5	Icon	0	10
6	Upfront Payment to Lenders	0	0
7	Aggregate NPV	150	100
8	Funding Arrangement	100	0
9	Commitment to Pay Operational Creditor	0	0
10	Commitment to Settle Other Creditors	0	0
11	Commitment to Settle Employees	50	20
	TOTAL	480	435

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17. Since the Resolution Plan submitted by the successful Resolution Applicant scored more value, the same was placed before the CoC for voting which was ultimately approved by the CoC as stated in earlier paragraph *supra* and voted with approval of 81.39% of share and now the Resolution Plan is before us for our consideration. The Resolution Plan filed by the successful Resolution Applicant however has been challenged by way of several applications as disclosed in the cause title extracted in the instant order itself and in the circumstances the said applications are also taken up and disposed off by virtue of this common order. At this stage, it is also to be noted that no application has been filed by the unsuccessful Resolution Applicant, viz. M/s. Annai Builders Real Estate (P) Ltd., whose Resolution Plan stood rejected by the CoC.

18. The objections as raised by the different categories of creditors or by the unsuccessful intended Resolution Applicants viz. Sai Trading & Interiors whose candidature for filing the Resolution Plan itself was rejected at the stage of ascertaining the prospective Resolution Applicant, has been categorised as follows:-



I. APPLICATIONS FILED BY THE OPERATIONAL CREDITORS

- (i) MA/877/2019
- (ii) MA/878/2019
- (iii) MA/879/2019
- (iv) MA/625/2019
- (v) MA/626/2019
- (vi) MA/629/2019
- (vii) MA/630/2019
- (viii) MA/798/2019

II. APPLICATION FILED BY THE DISSENTING FINANCIAL CREDITOR

- (ix) MA/641/2019

III. APPLICATIONS FILED AGAINST REJECTION OF CLAIM BY THE RESOLUTION PROFESSIONAL

- (x) MA/659/2019
- (xi) MA/819/2019
- (xii) MA/627/2019
- (xiii) MA/436/2019

IV. APPLICATIONS FILED BY THE HOME BUYERS

- (xiv) MA/710/2019
- (xv) MA/874/2019
- (xvi) MA/876/2019

V. OBJECTIONS FILED BY THE INCOME TAX

SR. No. 4825 dated 09.10.2019 in MA/554/2019

19. The brief and relevant facts of all the Applications which are categorized above are extracted hereunder;

I. APPLICATIONS FILED BY THE OPERATIONAL CREDITORS

(i) MA/877/2019 – (Vipraz Adz)

The Applicant is an Operational Creditor who had rendered services of publishing advertisement for the Corporate Debtor and filed their claims with the RP and which have been accepted. As per the Resolution Plan, being the Liquidation value is NIL, the Resolution Applicant proposes to pay the Operational Creditors herein 1.5% of the admitted claim amount. Aggrieved by the said proposal, the applicants have filed the present MA.

(ii) MA/878/2019 – (Themes Adz)

The Applicant is an Operational Creditor who had rendered services of publishing advertisement for the Corporate Debtor and filed their claims with the RP and which have been accepted. As per the Resolution Plan, being the Liquidation value is NIL, the Resolution Applicant proposes to pay the Operational Creditors herein 1.5% of the admitted claim amount. Aggrieved by the said proposal, the applicants have filed the present MA.

(iii) MA/879/2019 – (S. Rani)

The Applicant is an Operational Creditor who had rendered services of publishing advertisement for the Corporate Debtor and



filed their claims with the RP and which have been accepted. As per the Resolution Plan, being the Liquidation value is NIL, the Resolution Applicant proposes to pay the Operational Creditors herein 1.5% of the admitted claim amount. Aggrieved by the said proposal, the applicants have filed the present MA.

(iv) MA/625/2019 – (Sai Enterprises)

The Applicant viz. Sai Enterprises, supplied building materials to the CD. Upon initiation of the CIR Process, the Applicant submitted the claim to the RP, which was admitted to the tune of Rs.30,86,266/-. As per the Resolution Plan, being the Liquidation value is NIL, the Resolution Applicant proposes to pay the Operational Creditors herein 1.5% of the admitted claim amount. Aggrieved by the said proposal, the applicants have filed the present MA.

(v) MA/626/2019 – (Sai Trading & Interiors)

The Applicant viz. Sai Trading and Interiors, engaged in the business of civil constructions and dealing with hardware materials and did aluminium, carpentry and painting works. Upon initiation of the CIR Process, the Applicant submitted the claim to the RP, which was admitted to the tune of Rs.9,38,00,000/-. It is the case



of the applicant that the CD has availed a loan of Rs.105 Crores from DMI Finance for three projects, viz. "Innova", "Sunshine" and "Matrix" and the Applicant will be given major contract in the above projects and with the money which the Applicant Company is going to gain, the Applicant Company was requested by the CD to complete the other projects at various sites and based on the promise that from the money to be accrued to the CD, the bills will be settled to the Applicant.

After the loan was sanctioned, DMI Finance opened an escrow account, and the funds so released were directly credited to the account of the Applicant and upon the instruction on the Director of the CD, it was transferred by the Applicant to the Director's personal account and CD's account for purchase of 15 flats (11 in Sunshine and 4 in Innova).

Main contention raised by the Applicant:

- Mr. Manoj Dassani participated as representative of the DMI Finance, all of sudden during the meeting held on 06.04.2019 shown as a representative of the Resolution Applicant.
- Eligibility Criteria for Resolution Applicants was fixed as Rs.10 Crores and how the present Resolution Applicant with a turnover of Rs.1,65,00,000/- was permitted to submit a plan.



- Payment of 1.5% of the admitted amount of claim as full and final settlement is against the principle as laid down by Hon'ble NCLAT in Binani and in Central bank of India v. RP of Sirpur Paper Mills.
- Profit to be earned by the Resolution Applicant is 89 Crores, whereby only 1.5% of the dues of OC's are being settled, which is nothing but unjust enrichment.

Hence prayed not to approve the Resolution Plan.

(vi) MA/629/2019 – (Sai Trading & Interiors)

Same facts as stated in MA/625/2019, and in addition being unsuccessful in filing the Resolution Plan, sought relief to declare the resolution made during the 8th CoC, dropping the applicant from the final list of prospective resolution applicants as illegal, unjust and unconstitutional and to direct the RP to treat the applicant on par with the financial creditor in settlement of the claim.

(vii) MA/630/2019 – (B. Akhilandeswari)

The Applicant viz. B. Akhilandeswari, is a work contractor and she was engaged by the Corporate Debtor in the project "Dreamz". The RP has admitted the Claim of the Applicant to the tune of Rs.1,54,12,142/-. As per the Resolution Plan, being the Liquidation



value is NIL the Resolution Applicant proposes to pay the Operational Creditors 1.5% of the admitted claim amount. Aggrieved by the said proposal, the applicant has filed the present MA.

(viii) MA/798/2019 – (IJM Concrete)

This application has been filed by the Applicant viz. IJM Concrete Products Private Limited. This Applicant was the one who originally triggered the CIR process against the CD for the debt of Rs.42 Lakhs along with interest. Subsequent thereon, the applicant has submitted their claim to the tune of Rs.78 Lakhs to the RP which was admitted. As per the Resolution Plan, since the Liquidation value is NIL, the Resolution Applicant proposes to pay the Operational Creditors herein 1.75% of the admitted claim amount. Aggrieved by the said proposal, the applicants have filed the present MA.

II. APPLICATIONS FILED BY DISSENTING FINANCIAL CREDITORS

(ix) MA/641/2019 – (Sanchit Sales)

The Applicant viz. Sanchit Sales Private Limited invested in the project of the Corporate Debtor by way of advancement of



loans to the projects viz. "Flora" and "Panchavarna". The Applicant submitted a claim to the tune of Rs.4,58,03,649 with principal amount of Rs.1,41,00,000. On 04.04.2019, the Resolution Professional accepted the claim of the Applicant. Upon perusal of the Resolution Plan, the Applicant came to know that the Resolution Plan has proposed 100% haircut to the Applicant. Hence sought for a direction to the RP to reconsider and admit the entire claim of the Applicant and to give the Applicant a status of a Financial Creditor and to allow the Resolution Plan after crystallization of all the claims submitted to the Resolution Professional.

III. APPLICATIONS AGAINST REJECTION OF CLAIM BY THE RP

(x) MA/659/2019 – (R. Ravichandran)

This application has been filed by the Applicant who paid a sum of Rs.11,50,000/- to the Corporate Debtor for the project "Innova". Since, there was substantial delay in the project, the applicant requested to cancel the allotment and requested for a refund. The CD insisted on deducting 1% as cancellation charges, for which the Applicant didn't agree. In the meanwhile, the CD offered the applicant a completed apartment in Munnar, however it never fructified. Applicant has sent a mail to the RP and requested



him to consider the said mail as a claim. Thereafter, the Applicant came to know that since he has requested for a refund earlier, his flat was sold to a third party, who has also lodged a claim. Aggrieved by the same, the present MA has been filed.

(xi) MA/819/2019 – (V. Sampath Kumar)

The applicant is a land broker and arranged land to the Corporate Debtor for construction of flats and entered into three different agreements with the Corporate Debtor for payment of land Brokerage Commission. The applicant claims to be a Financial Creditor, submitted a claim to the tune of Rs.60,87,045 to the RP on 14.12.2018, however it was rejected. Aggrieved by the same, the present MA has been filed.

(xii) MA/627/2019 – (S.R. Mahendran)

The applicant is a home buyer in one of the projects of the Corporate Debtor viz. "Innova". The Applicant submitted a claim to the Resolution Professional for a sum of Rs.21,15,915/- and the Resolution Professional admitted the claim only to the extent of Rs.3,85,608/-. Aggrieved by the same, the present MA has been filed.



(xiii) MA/436/2019 - (Mrs. Manjula)

The applicant is a home buyer in one of the projects of the Corporate Debtor viz. "Innova". The Applicant submitted a claim to the Resolution Professional for a sum of Rs.19,03,780/- and the Resolution Professional admitted the claim only to the extent of Rs.11,26,113/-. Aggrieved by the same, the present MA has been filed.

IV. APPLICATIONS FILED BY THE HOME BUYERS

(xiv) MA/710/2019 - (N. Selvakumar & 6 others)

It is an application filed by 8 applicants, who are Home Buyers of the Corporate Debtor in respect of the projects viz. "Innova", "Sunshine" and "Icon", wherein their claims were initially accepted by the RP. Thereafter, from the records of Corporate Debtor it was found that the Flats in respect of which the applicants herein have booked had already been allotted to other Home Buyers and thereby the claims of the applicants have been tagged as "Duplicate Claim". As per the Resolution Plan, the Resolution Applicant proposes to pay the applicants herein 20% of the principal claim amount. Aggrieved by the said proposal, the applicants have filed the present MA.



(xv) MA/874/2019 – (W.M.Mohanasundaram & 6 others)

It is an application filed by 7 applicants, who are Home Buyers of the Corporate Debtor in respect of the project "*Matrix*", wherein their claims were initially accepted by the RP. Thereafter, from the records of Corporate Debtor it was found that the Flats in respect of which the applicants herein have booked had already been allotted to other Home Buyers and thereby the claims of the applicants have been tagged as "*Duplicate Claim*". As per the Resolution Plan, the Resolution Applicant proposes to pay the applicants herein 20% of the principal claim amount. Aggrieved by the said proposal, the applicants have filed the present MA.

(xvi) MA/876/2019 – (V. Selvakumar)

It is an application filed by an applicant viz. V. Selvakumar who claims to be Home Buyer of the Corporate Debtor in respect of the project "*Icon*", wherein his claim was initially accepted by the RP. Thereafter, from the records of Corporate Debtor it was found that the Flat in respect of which the applicant herein have booked had already been allotted to some other Home Buyer and thereby the claim of the applicant was tagged as "*Duplicate Claim*". As per the Resolution Plan, the Resolution Applicant proposes to pay the



applicant herein 20% of the principal claim amount. Aggrieved by the said proposal, the applicant has filed the present MA.

20. Before we venture into the consideration of the objections as raised above by way of Application or otherwise, it would be appropriate to consider the Resolution Plan *per se* to which the approval is sought for.

21. **ANALYSIS OF THE RESOLUTION PLAN – MA/554/2019**

21.1. This Tribunal is duty bound to examine the Resolution Plan within the contours of Section 30(2) of the IBC, 2016. A comparison vis-à-vis with the Mandatory compliance under the IBC and the Compliance made under the Resolution Plan is captured hereunder;

MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS	COMPLIANCE UNDER RESOLUTION PLAN
S. 30(1) - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	The Affidavit of the Resolution Applicant (RA) is placed on record and the RP in Form H has certified that the RA has submitted an affidavit and the said affidavit is in order.
S. 30(2)(a) - Payment of Insolvency and Resolution cost in the manner specified by the Board	Form H has stated that 4.2 and 4.10 of the Resolution Plan satisfies this condition, The CIRP Cost is arrived at ₹1.5 Crores as stated in Annexure – 2A at page 182.

<p><u>S. 30(2)(b)</u> - Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less than the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53</p>	<p>RA has stated in Clause 4.5 (i) that the Liquidation Value owed to the OC's is <i>expected</i> to be NIL.</p> <p>The OC's are being paid 1.5% of the admitted amounts of their claims.</p>
<p><u>Reg. 38(1)</u> - Resolution Plan identifies specific source of funds that will be used to pay the</p> <p>(a) Insolvency Resolution Process cost?</p> <p>(b) Liquidation value due to Operational Creditors?</p> <p>(c) Liquidation value due to dissenting financial creditors</p>	<p>In Clause 3.6, RA has stated that he has arranged working capital to the extent of Rs.10 Crores to meet any cash flow mismatch. Subject to approval of plan, DMI Finance (one of the FC) has agreed to sanction the said sum of Rs.10 Crore to the RA.</p> <p>In Clause 4.2, RA has stated that they have raised ₹50 Lakhs as interim finance from DMI and it shall form part of IRPC.</p>
<p><u>Reg. 38(1A)</u> - Resolution Plan shall include a statement as to how it has dealt with the interest of all the stakeholders, including financial creditors and operational creditors of the Corporate Debtor</p>	<p>Chapter 4 of the Resolution Plan deals with this issue.</p>
<p><u>S. 30(2)(c)</u> - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan</p>	<p>Clause 3.7 (i) (a) Provides "<i>Nominee Directors</i>", RA entitled to appoint majority of Directors on Board and DMI Finance entitled to appoint one Director. However a prayer is sought from this Tribunal to form a 'Interim Monitoring Committee.'</p>
<p><u>S. 30(2)(d)</u> - Implementation and Supervision of the Resolution Plan</p>	<p>Clause 3.7 provides for Implementation and Supervision of the Plan</p>



<p>Reg. 38(2) – Resolution Plan shall provide:</p> <ul style="list-style-type: none"> a) term of plan and its implementation schedule b) management and control of the business of the Corporate Debtor during its term; c) it has provisions for effective implementation d) it has provisions for approval required and the timeline for the same; and e) the Resolution applicant has the capability to implement the Resolution Plan. 	<p>Clause 3.7 provides for Implementation and Supervision of the Plan</p>
<p>Reg. 38(3) - Resolution Plan shall demonstrate:</p> <ul style="list-style-type: none"> a) it address the cause of default b) it is feasible and viable c) it has provisions for effective implementation d) it has provisions for approval required and the timeline for the same e) the resolution applicant has the capability to implement the resolution plan 	<p>Clause 3.5 of the Resolution Plan address the default as multiple preferential, undervalued and fraudulent transactions, also the books of accounts have not been maintained in proper manner for last 3 to 5 years. Infusion of funds from various stakeholders might not have been adequately invested in the assets of the Corporate Debtor.</p> <p>Clause 3.6 states about Source of Funds</p> <p>Clause 2.11 (d) has provisions for approvals required and timeline for the same.</p>
<p>S. 30(2)(e) - Does not contravene any of the provisions of the law for the time being in force</p>	<p>In Clause 2.6 of the Resolution Plan, the RA states that the Plan is not in Contravention of the provisions of any law.</p>



S. 30(4) - Committee of Creditors approve the Resolution Plan by not less than 66% of voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board	Approved by 81.39% of voting in the 11 th CoC Meeting held on 28.05.2019. 16.07% - Dissented 2.54% - Abstained
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21.2. This Tribunal has made a broad analysis of the Resolution Plan and for the sake of brevity, the important features which find place in the Resolution Plan are captured herewith;

I. CLASSIFICATION OF CREDITORS IN THE RESOLUTION PLAN:

CLASSIFICATION OF CREDITORS	% OF CLAIM ADMITTED
Secured Financial Creditors	42% of admitted claim
Unsecured Financial Creditors	10% of admitted claim
Financial Creditors (Home Buyers)	Being provided Home **
Financial Creditor in a Class of Home Buyers – Arthveda Star Jaipur	42.5% of admitted claim
Operational Creditors	1.5% of admitted claim
Employees	100% of admitted claim
Statutory Dues	1.5% of admitted claim

TOTAL AMOUNT ADMITTED (Principal) : **₹ 108.51 Crores**

RESOLUTION PLAN AMOUNT : **₹ 30.48 Crores**
(excluding CIRP Cost)

**** Home buyers are required to contribute, by making additional payment per sq. ft. as detailed separately for each project, which is an additional burden of 29% on the average sale price of the projects.**

II. PERIOD OF PAYMENT

(i) **Secured Financial Creditors viz. (1) DMI Finance; (2) Arthaveda (Jaipur) Realty Private Limited**

Initially, the Arthaveda Pvt. Ltd. filed its claim in Form CA as Home Buyer, the Resolution Professional did not categorize them as home buyer and instead it was treated as a lender (financial creditor). However, the Resolution Professional has now categorized their claim as home buyer and they are being paid 42.5% in the following manner;

- a. The Resolution Applicant proposes to construct and sell of the flats in Project Dreamz (*over which there are agreements to sale in favour of Arthveda*) to third parties and no - objection will be granted by Arthaveda to the Resolution Applicant within 15 days.
- b. when Resolution Applicant finds buyers, the unit will be sold to the prospective buyer and the agreement to sale for such unit stands cancelled for Arthveda. Against cancellation and registration of sale deed in favour of prospective buyer, the Resolution Applicant shall pay to Arthveda 42.5% of purchase price (i.e. 42.5% of Rs.2300/- per sq.ft.)



Secured Financial Creditors viz. DMI Finance and Arthveda Star Fund, are being paid on the principal of *pay when able* as determined by the RA, but not later than 60 months.

(ii) **Unsecured Financial Creditors – Sanchit Sales and S.S.P Industries**

It is stated in the Resolution Plan that Sanchit Sales and S.S.P. Industries, the facilities were provided against a particular project i.e. Panchvarna Project. The list of assets of the CD as provided by the RP does not include any inventory of Panchvarna Project as asset of CD, so it is assumed by the RA that entire inventory has been sold off and no security interest is available, hence they are treated as **unsecured FCs** and are being paid **10%** of the principal admitted claim amount.

(iii) **Financial Creditors – Home Buyers**

- a. Principal amount admitted by the RP has been treated as the amount received for the Sale of Unit. The amount to be **recovered** from the Home Buyers is the difference between the Principal admitted and Agreement value.

In addition to that amount, the Home buyers are required to pay an additional amount,



the project-wise details of amount payable are as follows;

PROJECT	Incremental Demand Per Sq. ft. (excluding Taxes)
Innova For units sold at ₹2400 per sq.ft. above For units sold at ₹2400 per sq.ft. below	₹710 ₹1235
Matrix For units sold at ₹2400 per sq.ft. above For units sold at ₹2400 per sq.ft. below	₹740 ₹1235
Sunshine Buyers without possession Buyers under possession	₹675 ₹375
Dreamz Buyers without possession Buyers under possession	₹390 ₹230
Icon	₹700

- b. As per the Resolution Plan, the Home buyers are required to pay the overdue demands outstanding *vis-à-vis* the payment schedule **within 2 months of effective date.**
- c. **Buyers under possession** are the persons who have forcibly occupied possession of their allocated unit on the basis of oral confirmation given from ex – management.
- d. If the Home Buyers failed to make the said payments even after the expiry of 3 months, the RA shall cancel the sale of unit and UDS and



refund 42.5% of the amount paid against such unit.

e. Project wise delivery period: (Pg. 181)

Dreamz - 12 months from Effective date
Icon - 18 months from Effective date
SunShine - Two Block within 12 months

Another two blocks no home buyers, so 60 months from effective date

Innova - Within 6 months to 24 months

Matrix - Four Blocks Within 12 to 30 months

Another two blocks no home buyers, so 60 months from effective date

f. Any deviation in actual construction, such corrections shall be carried out without any refund to Home Buyers.

g. The Resolution Applicant is entitled to **change the specification**, allocation of car parking or **delay the delivery of the same** without any further consent / no objection from any Home Buyer.

h. UDS of persons mentioned in Annexure 4A and Annexure 14 are required to be reversed.

i. *Multiple claim against on unit:-* Those persons will be **paid 20%** of the admitted principal amount, however during course of hearing Resolution



Applicant has agreed to **pay 30%** of the admitted principal amount and filed an affidavit to that effect.

- (iv) **Operational Creditors**, 1.5% of their admitted claim are being paid prior to the payment of financial creditors. The principal of *pay when able* will be followed on availability of cash flows. The same shall not be later than 24 months.
- (v) Employees dues being 100% of the admitted claim, are being paid on the expiry of 12 months of the Effective date as per the availability of cash flow. Further, it has been stated that upon effective date, all the existing employees of the Company shall stand terminated and the Resolution Applicant shall be entitled to recruit fresh personnel.
- (vi) Statutory dues; it has been stated in the Resolution Plan that the statutory Departments have not filed any claim with the RP and therefore they are not treated as OC.

However, 1.5% of the admitted claim is being paid, and the same shall be paid after payment of operational creditor and financial creditor from the balance surplus available after payment of minimum amounts provided of financial creditors and operational creditors.



Payment details in Lakhs (INR)

Payout	H1	H2	H3	H4	H5	H6	H7	H8	H9	H10	Total
CIRP Cost	150										150
Operational Creditors		20									20
Employees		47									47
Statutory Dues		35									35
Refund to Arthveda					127.5						128
Financial Creditors		0	1000	700	200	875	47				2822
										Total	3202

III. CONCESSION AND RELIEFS SOUGHT FOR:

The detailed list of Concessions and Reliefs as sought by the Resolution Applicant are found in Chapter 7 of the Resolution Plan. However, for the sake of brevity, only certain points are extracted hereunder:

- (i) Revenue Department and other Authorities to grant relief / waiver from payment of stamp duty *inter alia* joint development agreement, increase in authorized share capital, etc.
- (ii) Income Tax Department to grant relief / waiver from liability of income tax including assignment of liabilities from Corporate Debtor to the Resolution Applicant.
- (iii) All dues, taxes, liabilities in relation to Corporate Debtor shall stand irrevocably waived



- (iv) CMDA, DTCP, Panchayat, Pollution Control Board, Fire Department to grant relief / waiver of fees, charge, fines payable for approvals, renewals, permissions, condonations, compounding as are required for construction of the Projects.
- (v) Upon approval of the plan, the proceedings relating to VAT, Excise, CST, Service Tax, IT, before any Court / Tribunal shall stand irrevocably waived, withdrawn and extinguished.
- (vi) Any guarantees given by the Corporate Debtor will be extinguished
- (vii) Any debts owned by the Corporate Debtor including of any trade creditor, govt. authorities and operational creditors, is permanently extinguished
- (viii) Since, limited information was available for diligence on the Corporate Debtor, Resolution Applicant wants immunity from all actions under any applicable law.
- (ix) As per provisions of IT Act, due to non filing of tax returns for FY's 2016 - 17 and 2017 - 18, the tax losses incurred by the Corporate Debtor have lapsed and are not available for set - off in future years. Since Financial Creditors and Home Buyers are bearing heavy financial haircuts, Resolution Applicant as a relief to Corporate Debtor wants the *tax losses* pertaining to earlier years be permitted to be carried forward for set - off against future business.



22. **OBJECTIONS RAISED BY THE OPERATIONAL CREDITORS**

22.1. The Operational Creditors have filed 8 Applications viz. MA/877/2019, MA/878/2019, MA/879/2019, MA/625/2019, MA/626/2019, MA/629/2019, MA/630/2019 and MA/798/2019 objecting to the approval of the Resolution Plan. Except MA/626/2019 and MA/629/2019, the facts and the relief sought for in other MA's are similar. Hence the other 6 MA's viz. MA/877/2019, MA/878/2019, MA/879/2019, MA/625/2019, MA/630/2019 and MA/798/2019, filed by the Operational Creditors are first taken up for consideration.

22.2. In relation to the 6 MA's filed by the Operational Creditors, the main contention raised by them is that the claim which they have filed before the Resolution Professional has been accepted *in toto*, however, the Resolution Applicant, in the Resolution Plan has proposed to pay only 1.5% of their admitted claim. It has been further contended by the Ld. Counsels for the Applicants that they are also liable for its creditors for the goods supplied / services rendered to it and if such a haircut is approved then it would cause an irreparable loss not only to the Applicant but also to its creditors. In support of their contention, reliance was



placed upon the Judgment rendered by the Hon'ble NCLAT in **Binani Industries, SREI Equipment Finance Limited** in *Company Appeal (AT)(Insolvency)No. 82 of 2018*.

22.3. The Ld. Counsel for the Resolution Professional contended that the liquidation value, taking into consideration the water fall process under section 53 of the IBC, 2016, due to the Operational Creditors is NIL and therefore the allocation of amount to the extent of 1.5% of the claim is therefore fully in accordance with Sec. 30(2) of the Code. The allocation of 1.5% of the admitted sum payable to Operational Creditor has been made taking into account, the claims of the priority stakeholders, particularly Home Buyers, whose protection of interest, has repeatedly been affirmed and reiterated by both the Hon'ble NCLAT and Hon'ble Supreme Court. It has been further contended by the Ld. Counsel for the Resolution Professional that the Operational Creditors cannot challenge the approval of the Resolution Plan before this Authority and also there is no provision in the code by which Operational Creditors can seek parity with the Financial Creditors.

22.4. As to the objections raised by the Operational Creditors in approval of the Resolution Plan, a perusal of Form H filed by the



Resolution Professional manifest the fact that the Liquidation value of the Corporate Debtor is arrived at Rs.44.25 Crores. Further, from the documents filed, it is evident that the claim amount admitted for the Financial Creditors itself comes to the tune of Rs.116.93 Crores and the Financial Creditor being a priority creditor in the category, the liquidation value due to the Operational Creditors would be NIL. Therefore, the payment of 1.5% of the admitted amount to be paid to the Operational Creditor by the Resolution Applicant cannot be termed as "discriminatory". Further the Hon'ble Supreme Court in its recent decision **Committee of Creditors of Essar Steel India Limited -Vs- Satish Kumar Gupta & Ors.** in *Civil Appeal No. 8766 - 67 of 2019* dated 15.11.2019 in para 54 has held as follows;

"54. Indeed, if an "equality for all" approach recognizing the rights of different classes of creditors as part of an insolvency resolution process is adopted, secured financial creditors will, in many cases, be incentivized to vote for liquidation rather than resolution, as they would have better rights if the corporate debtor was to be liquidated rather than a resolution plan being approved. This would defeat the entire objective of the Code which is to first ensure that resolution of distressed assets takes place and only if the same is not possible should liquidation follow".

Again in para 56 and 57, it was held as follows;

"56.The amended Regulation 38 set out in paragraph 77 again does not lead to the conclusion that financial and



operational creditors, or secured and unsecured creditors, must be paid the same amounts, percentage wise, under the resolution plan before it can pass muster. Fair and equitable dealing of operational creditors' rights under the said Regulation involves the resolution plan stating as to how it has dealt with the interests of operational creditors, which is not the same thing as saying that they must be paid the same amount of their debt proportionately. Also, the fact that the operational creditors are given priority in payment over all financial creditors does not lead to the conclusion that such payment must necessarily be the same recovery percentage as financial creditors. So long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and accept a resolution plan, which may involve differential payment to different classes of creditors, together with negotiating with a prospective resolution applicant for better or different terms which may also involve differences in distribution of amounts between different classes of creditors."

"57.Quite clearly, secured and unsecured financial creditors are differentiated when it comes to amounts to be paid under a resolution plan, together with what dissenting secured or unsecured financial creditors are to be paid. And, most importantly, operational creditors are separately viewed from these secured and unsecured financial creditors in S.No.5 of paragraph 7 of statutory Form H. Thus, it can be seen that the Code and the Regulations, read as a whole, together with the observations of expert bodies and this Court's judgment, all lead to the conclusion that the equality principle cannot be stretched to treating unequals equally, as that will destroy the very objective of the Code - to resolve stressed assets. Equitable treatment is to be accorded to each creditor depending upon the class to which it belongs: secured or unsecured, financial or operational".

22.5. Thus, it is a settled law that the Financial Creditors and the Operational Creditors cannot be treated on the same footing and moreover, the principle of equality cannot be stretched to treating



unequals equally, as that will destroy the very objective of the Code. It is time and again reiterated by the Hon'ble Supreme Court that so long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and accept a resolution plan, which may involve differential payment to different classes of creditors, together with negotiating with a prospective resolution applicant for better or different terms which may also involve differences in distribution of amounts between different classes of creditors and hence the objections made by the Applicants are not sustainable in view of the decision in **Essar Steel India Ltd. (supra)** and hence they are overruled and as a consequence thereof the above stated 6 MA's stands *dismissed*.

22.6. In relation to the objections filed by the Operational Creditor in MA/626/2019, the Ld. Counsel for the Operational Creditors contended that one Mr. Manoj Dassani, participated as representative of the DMI Finance, all of sudden during the meeting held on 06.04.2019 shown as a representative of the Resolution Applicant. Further it was contended that the Eligibility Criteria for Resolution Applicants was fixed as Rs.10 Crores and how the present Resolution Applicant with a turnover of Rs.1,65,00,000/- was permitted to submit a plan and as already stated the payment



of 1.5% of the admitted amount of claim as full and final settlement is against the principle as laid down by Hon'ble NCLAT in **Binani (supra)**. The Ld. Counsel for the Operational Creditor has further contended that the profit to be earned by the Resolution Applicant is 89 Crores, whereby only 1.5% of the dues of OC's are being settled, which is nothing but unjust enrichment and under these circumstances, it was prayed not to approve the Resolution Plan.

22.7. In relation to the MA/629/2019, it was contended by the Ld. Counsel for the Applicant that they had submitted a Resolution Plan before the Committee of Creditors and suddenly during the 8th CoC, the Applicant was dropped from the final list of prospective resolution applicants and being unsuccessful in filing the Resolution Plan, the Applicant has sought relief to declare the resolution made during the 8th CoC, dropping the applicant from the final list of prospective resolution applicants as illegal, unjust and unconstitutional and to direct the RP to treat the applicant on par with the financial creditor in settlement of the claim.

22.8. The Ld. Counsel for the Resolution Professional in reply contended that it is the Committee of Creditors who refused to



consider the proposal of dropping the Applicant from the prospective list of Resolution Applicant and such decision was made with the reasons and voted overwhelmingly vide the Minutes of the 8th Meeting held on 28.04.2019 and also the Resolution Professional has filed an Affidavit on 15.07.2019 to this effect. In order to buttress his arguments, the Ld. Counsel for the Resolution Professional relied upon the Judgment of the Principal Bench of Hon'ble NCLT in **Punjab National Bank -Vs- Bhushan Power and Steel Ltd.** in CA 254 of 2019 dated 05.09.2019, wherein in para 112 it was held that the "CoC does not need to record reasons for acceptance or rejection of Resolution Plans".

22.9. A little elucidation on the legal matrix in the facts and circumstances of the cases is also necessary in order to surmount the contentions raised by the intended prospective Resolution Applicant viz. Sai Trading and Interiors (P) Ltd. (MA/629/2019) and in relation to the same it is necessary to extract Sec. 25(2)(h) of IBC, 2016;

25. (1) It shall be the duty of the resolution professional to preserve and protect the assets of the Corporate debtor, including the continued business operations of the Corporate debtors.



(2) For the purposes of sub – section (1), the resolution professional shall undertake the following actions, namely:-

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)

(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans;

- (i)
- (j)
- (k)

In this context, it is also relevant to refer to Regulation 36A (10) to (12) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;

36A. (10) The resolution professional shall issue a provisional list of eligible prospective resolution applicants within ten days of the last date for submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest.

(11) Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) may be made with supporting documents within five days from the date of issue of the provisional list.



(12) On considering the objections received under sub-regulation (11), the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee.

Thus, a conjoint reading of Section 25(2)(h) of the IBC, 2016 with Regulation 36A (10), (11) and (12) would posit the fact that objections to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) can be made with supporting documents within five days from the date of issue of the provisional list. In the present case, the intended prospective resolution applicant viz. Sai Trading and Interiors has expressed their interest by way of an email to the Resolution Professional on 17.04.2019 and his name was included in the provisional list of resolution applicant released by the Resolution Professional on 23.04.2019, however his name was left out from the final list of prospective resolution applicant released by the Resolution Professional on 28.04.2019. The reason for the exclusion of M/s. Sai Trading and Interiors from the provisional list of resolution applicant is recorded in the 8th CoC meeting held on 28.04.2019 and the relevant minutes is extracted hereunder;



5. To take on record the final list of prospective resolution applicants

RP informed the members that there is no change in the provisional list and all the five of the provisionally selected resolution applicants qualify for the final list.

Ms. Namrata Kataria objected to the inclusion of M/s. Sai Trading and Interiors on the ground of credibility as well as providing misinformation with regard to turn over vis-à-vis the claims lodged by them.

RP informed the members that as long as eligibility criteria is satisfied, it will not be correct to eliminate any one.

RP further informed the members that turnover and the claim cannot be interrelated as the party may be booking the interim bills for the purpose of claims and where as only the final bills for the purpose of audited financial statements.

Mrs. Kalpana, Dreamz Project, expressed her concern regarding the quality of work done by M/s. Sai trading and Interiors.

Mr. Navamani, Innova Project, expressed that M/s. Sai trading and Interiors, in an attempt to recover his dues as operational creditors may underquote and dive the entire homebuyers which shall lead to confusion.

Mr. Ravi Rajagopalan expressed that as long as eligibility criteria is satisfied the party should be allowed to participate and it is upto CoC to decide whether to accept the resolution plan or not.

RP informed the members that IM need to be shared and after submission of resolution plan, it is upto the CoC to accept or reject the resolution plan.

Ms. Namrata Kataria strongly objected to sharing of the Information Memorandum to M/s. Sai trading and Interiors.



Mr. Sunil Patodia strongly objected for not including M/s. Sai Trading and Interiors in the final list of prospective resolution applicant.

After discussion, it was decided by the members that M/s. Sai trading and Interiors may be dropped from the final list of prospective resolution applicants.

The following resolution is passed by the members.

“RESOLVED THAT the final list of prospective resolution applicants shall comprise of only four of the parties in the provisional list except M/s. Sai trading and Interiors”.

22.10. Thus, a ~~copy~~ perusal of the minutes of the 8th CoC reveals the fact that exclusion of M/s. Sai Trading and Interiors from the prospective list of resolution applicant was deliberated upon by the CoC in its 8th CoC meeting dated 28.04.2019 and the CoC and the Home buyers had serious doubts as to the capability, competence, quality, bonafide and financial soundness of M/s. Sai Trading and Interiors and upon detailed discussions made thereunder, it was finally resolved to exclude M/s. Sai Trading and Interiors from the prospective list of resolution applicant and moreover, as per Regulation 36A (11) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the CoC is empowered to include or exclude any person from the prospective resolution applicant as discussed supra.



22.11. In this context, it is also relevant to refer to the Judgment of the Hon'ble Supreme Court in **ArcelorMittal India Private Limited -Vs- Satish Kumar Gupta** (2019) 2 SCC 1, wherein the Supreme Court in para 75 and 76 has held as follows;

"75. What has now to be determined is whether any challenge can be made at various stages of the corporate insolvency resolution process. Suppose a resolution plan is turned down at the threshold by a Resolution Professional under Section 30(2). At this stage is it open to the concerned resolution applicant to challenge the Resolution Professional's rejection? It is settled law that a statute is designed to be workable, and the interpretation thereof should be designed to make it so workable.....

76. Given the timeline referred to above, and given the fact that a resolution applicant has no vested right that his resolution plan be considered, it is clear that no challenge can be preferred to the Adjudicating Authority at this stage. A writ petition under Article 226 filed before a High Court would also be turned down on the ground that no right, much less a fundamental right, is affected at this stage. This is also made clear by the first proviso to Section 30(4), whereby a Resolution Professional may only invite fresh resolution plans if no other resolution plan has passed muster"

22.12. In the facts and circumstances of the case, it is evident that the person challenging the Resolution Plan is not even an unsuccessful Resolution Applicant but only an intended prospective resolution applicant, whose name has been left out from the final list of resolution applicants and as per the dictum laid down by the Hon'ble Supreme Court in the **ArcelorMittal (supra)**, M/s. Sai



Traders and Interiors has no vested right that his resolution plan ought to have been considered by the CoC and no challenge can be preferred thereof before this Adjudicating Authority. Hence, in view of the discussions made supra, the objections raised by the Applicant are overruled and as a consequence the MA/626/2019 and MA/629/2019 stand *dismissed*.

23. OBJECTIONS RAISED BY DISSENTING FINANCIAL CREDITORS

23.1. The MA/641/2019 has been filed by the sole Dissenting Financial Creditor viz. *Sanchit Sales Private Limited*. It is submitted by the Ld. Counsel for the Dissenting Financial Creditor that the Applicant invested in the project of the Corporate Debtor by way of advancement of loans to the projects viz. "Flora" and "Panchavarna". The Applicant along with M/s. SSP Industries Private Limited jointly invested by way of loan to the tune of ₹5 Crores, wherein it was agreed pursuant to the investment the CD will allot flats and vacant land which were to be held as collaterals by the Applicant. After the initiation of the CIR Process, the Applicant on 03.12.2018 submitted claim to the tune of Rs.4,58,03,649/- with principal amount of Rs.1,41,00,000/-. There was no reply from the Resolution Professional inspite of reminded



mails from the Applicant. However, the Resolution Professional has requested the Applicant to attend the 5th CoC meeting. In the said CoC an agenda to reconstitute the CoC was taken up, but the members of the CoC vehemently opposed to the inclusion of the Applicant in the CoC and the Resolution Professional requested the Applicant to abstain from attending further proceedings. On 04.04.2019, an official e-mail from RP was sent to the Applicant and the SSP Industries that their claim was accepted. Thereafter, the Resolution Applicant has submitted the Resolution Plan and upon perusal of the said plan, the Applicant came to know that the Resolution Plan has proposed 100% haircut to the Applicant. The claim of the Applicant has been admitted to the tune of Rs.1,33,00,000/-. Hence the Applicant has sought for direction to the Resolution Professional to reconsider and admit the entire claim of the Applicant and to give the Applicant a status of a Financial Creditor and to allow the Resolution Plan after crystallization of all the claims submitted to the Resolution Professional.

23.2. The Ld. Counsel for the Resolution Professional contended that the rationale employed by the Resolution Applicant in sub - categorizing the Financial Creditors is based upon the Security Interest as held between different classes of Financial



Creditors. In order to bolster his arguments, the Ld. Counsel relied upon a tabulation on how the Financial Creditors are being sub - classified according to their Security interest and the same is reproduced hereunder;

	Attribute of Security Interest	Home Buyers (A)	DMI Finance (B)	ArthVeda Star & Arthveda Jaipur (C)	SSP & Sanchit Sales
1	Claimant category - based on Form filed by the Creditor	Form CA	Form C	Form C	Form C
2	Does the Creditor have a financial debt due and payable	Yes	Yes	Yes	Yes
3	Does the Creditor have an identified asset under the CIR process, which is to be completed and delivered by the Resolution Applicant, to which he has recourse?	Yes	Yes	Yes	No
4	Does the Creditor have a registered financial agreement or lien or hypothecation or a Sale Agreement / Deed or charge specifying the CIR asset and the nature of Security Interest in that asset	Yes	Yes	Yes	No
5	To deal with the asset - take control, construct and deliver the apartment, does the Resolution Applicant require the concurrence of the Creditor concerned, in the instant case?	Yes	Yes	Yes	No
6	Does the creditor hold a charge registered under the Companies Act, 2013	No	Yes	Yes	No
7	Position under Section 53(1) waterfall - vide Section 30(5) of Code	(b)(ii)	(b)(ii)		(d)
8	Grouping done in Resolution Plan based on the nature of differing "Security Interest".	Home Buyers with "deemed" security interest	Secured Financial Creditors with higher / better "Security Interest"		Unsecured Financial Creditor without "Security Interest"

23.3. Upon the rationale adopted by the Resolution Applicant, the Ld. Counsel for the Resolution Professional contended that



"Security Interest" as defined under the IBC, 2016 is of the widest amplitude and given the special situation of the Corporate Debtor being in the field of Real Estate development, a broader definition of Secured Creditor and Security Interest as defined under Section 3(30) and 3(31) of the IBC, 2016 has been adopted to differentiate amongst the Financial Creditors under the Plan. It was further submitted that based on the nature of the "Security Interest", the above table differentiated the Financial Creditors into three classes and based on such differentiation, pay – outs have been made to the Financial Creditors and such classification is rational, practical, intelligible and cannot be termed as arbitrary or discriminatory.

23.4. The Ld. Counsel for the Resolution Professional contended that due to such rationale adopted, the Resolution Applicant have come to the conclusion that the dissenting financial creditors have no "Security Interest" in the assets of the Corporate Debtor thereby provided a 100% haircut to the dissenting financial Creditor and we find credence in the submissions made by the Ld. Counsel for the Resolution Professional and further as the projection over which the above said Financial Creditor claims to have been secured has already been completed and handed over to the respective allottees and therefore it is not presently in the



realm of projects handled by the Corporate Debtor and covered in the Resolution Plan and the objection raised by the dissenting financial creditor is thereby overruled and a consequence thereof, the MA/641/2019 stands *dismissed*.

24. OBJECTIONS FILED BY THE APPLICANTS AGAINST REJECTION OF CLAIM BY THE RESOLUTION PROFESSIONAL

24.1. MA/659/2019, MA/819/2019, MA/627/2019 and MA/436/2019 are filed by the Applicants against the rejection of the claim by the Resolution Professional.

24.2. In relation to MA/659/2019, the Ld. Counsel for the Applicant submitted that the Applicant paid a sum of Rs.11,50,000/- to the Corporate Debtor for the project "Innova" and since there was substantial delay in the project, the applicant requested to cancel the allotment and requested for a refund. The Corporate Debtor insisted on deducting 1% as cancellation charges, for which the Applicant didn't agree and in the meanwhile, the Corporate Debtor offered the applicant a completed apartment in a different project of the Corporate Debtor at Munnar, however it never fructified. Thereafter, the Applicant has sent a mail to the RP and requested him to consider the said mail as a claim. The Applicant came to know that, since he has requested for a refund



earlier, his flat was sold to a third party, who has also lodged a claim.

24.3. The Ld. Counsel for the Resolution Professional contended that Applicant has not filed the claim within the period stipulated and the period provided for submission of claim and verification is already over and hence the Resolution Professional could not entertain his claim. However, the Ld. Counsel for the Resolution Professional referred to Clause 4.4 (xv) of the Resolution Plan, wherein a 60 days window has been provided after approval of the Resolution Plan, so that similar home buyers who had failed to file their claim could do so and they will be considered by the Resolution Applicant.

24.4. Taking into consideration the said representation and also in view of the fact that the Applicant has failed to lodge his claim before the Resolution Professional within the prescribed time period and also no proper claim form was being lodged before the Resolution Professional even after the prescribed time limit, we are constrained to *dismiss* MA/659/2019. Eventhough, the Supreme Court in **Essar Steels (supra)** has held that a successful resolution applicant cannot suddenly be faced with "undecided"

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claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty of amounts payable by a prospective resolution applicant who successfully takes over the business of the corporate debtor, the Clause 4.4 (xv) of the Resolution Plan, provides for a 60 days window, after approval of the Resolution Plan, so that similar home buyers who had failed to file their claim could do so and they will be considered by the Resolution Applicant. In view of the same, the Applicant is at liberty to approach the Resolution Applicant under Clause 4.4 (xv) of the Resolution Plan.

24.5. In relation to MA/819/2019, it was submitted by the Ld. Counsel that the Applicant is a land broker and arranged land to the Corporate Debtor for construction of flats and entered into three different agreements with the Corporate Debtor for payment of land Brokerage Commission. The applicant claiming to be a Financial Creditor, submitted a claim to the tune of Rs.60,87,045 to the Resolution Profession on 14.12.2018, however it was rejected.

24.6. The Ld. Counsel for the Resolution Professional submitted that the Applicant is an Operational Creditor and not a Home Buyer and the Claim filed in Form CA is *non est*. Further, no



"agreement to render service" has been entered into between the Applicant and the Corporate Debtor and a perusal of Sale agreement eventhough discloses that the consideration has been received in full but the said agreement has not disclosed the flats which are being allotted to the Applicant and based upon the said factual position, the Resolution Professional has rejected the claim of the Resolution Professional and we also find credence in the submissions made by the Ld. Counsel for the Resolution Professional and hence the MA/819/2019 stands *dismissed*.

24.7. In relation to MA/627/2019 and MA/436/2019 it was submitted by the Ld. Counsel for the applicants that the applicants are home buyer in one of the projects of the Corporate Debtor viz. "Innova" and the Applicants submitted a claim to the Resolution Professional and the Resolution Professional have admitted only a part of their claim. In relation to MA/627/2019, against the claim lodged for a sum of Rs.21,15,915/- only a sum of Rs.3,85,608/- was admitted. In relation to MA/436/2019, against the claim lodged for a sum of Rs.19,03,780/- only a sum of Rs.11,26,113/- was admitted. The Ld. Counsel for the Applicants contended that the claims of the Applicants ought to have been admitted in full by the Resolution Professional since they have obtained "No - due



certificate" from the Corporate Debtor and the decision of the Resolution Professional in rejecting the claim of the Applicants is not justifiable.

24.8. The Ld. Counsel for the Resolution Professional submitted that the applicant as a part of the claim had provided proofs which were mutually inconsistent and not in accordance with law and further the applicant had failed to furnish proper and complete proof for the entire claim amount in accordance with Regulation 8A and therefore the claim of the applicant has been accepted only to an extent wherein the market value as mentioned in the Registered Sale Deed together with the notional compensation amount thereupon. It has also been contended by the Ld. Counsel for the Resolution Professional that a document styled as "No dues Certificate" has been provided by the Corporate Debtor to the Applicant, stating that a specified sum has been provided and no further amount is due from the Applicant. It was further contended that the full consideration had been purportedly paid in full on the date of "No due Certificate", however the Construction Agreement was entered into between the parties on a subsequent date records that a particular sum was purportedly paid and as such there are mutual inconsistency with the documents



produced by the Applicants and only under these circumstances, the Resolution Professional had partly admitted the claim of the Applicants.

24.9. The conclusion arrived at by the Resolution Professional and the reasoning adopted by the Resolution Professional, in the facts and circumstances of the cases, appears to be fair and reasonable and hence no interference is called for in the decision taken by the Resolution Professional and hence the MA/627/2019 and MA/436/2019 stands *dismissed*.

25. **OBJECTIONS RAISED BY THE HOME BUYER**

25.1. In relation to the objections raised by the Home Buyers in MA/710/2019, MA/874/2019 and MA/876/2019, the fulcrum of their challenge is with regard to the classification of their claim as "Duplicate Claim" by the Resolution Professional in and by which, as per the Resolution Plan, the Resolution Applicant proposes to pay 20% of their admitted claim amount to these category of Home Buyers. The Ld. Counsel for the Resolution Professional contended that during the CIR Process, it came to its notice that some of the flats promoted by the Corporate Debtor had been allotted to two persons / allottees and that both the allottees as Home Buyers



came to file a claim against the said flat and since only one home buyer claimant can be tagged to an apartment, the RP adopted the following *rationale*:

- a. In case same flat allotted to more than one person, both the claims are admitted, provided proper proof has been shown as to payment.
- b. The flat however tagged/allotted in favour of the claimant/home buyer.
 - i. In whose favour sale deed has been executed
 - ii. where the payments have been made through banking channel or if cash payments were made, the same was identifiable in the book of accounts.
- c. The other claimant is left with an admitted claim but without an identified apartment.

25.2. It is submitted that, if the said categorization was not made, then the Home Buyer allottees who meet the laid down criteria would be disadvantaged making it inequitable and contrary to the perfect legal title they had acquired.

25.3. Further, it has been submitted that the "Duplicate Claims" arising out of the said "double booking" the category into which this Applicants fell, is a distinct and separate category and



given the unsecured nature of the financial claim, the claimants herein forming this category cannot be equated to Home Buyers having a proper right, title and interest.

25.4. The allocation of 20% of the admitted sum payable to this category of claimants to which the Applicants belong, has been made taking into account, the claims of the priority stakeholders, particularly Home Buyers, whose protection of interest, has consistently been affirmed and reiterated by both the Hon'ble NCLAT and Hon'ble Supreme Court, including the one in **Pioneer Urban Land & Infrastructure & Anr -Vs- Union of India & Ors. in W.P. (Civil) No. 43 of 2019.**

25.5. Thus, the rationale adopted by the Resolution Professional is reasonable, just and fair and we find no fault with the decision of the Resolution Professional in categorizing the claims of these Home Buyers as "Duplicate Claims". However, during the course of arguments, the successful Resolution Applicant, upon considering the genuinity of these category of Home Buyers, has proposed to increase the payout to 30% of the admitted claim as compared to the 20% presently provided and the



Resolution Applicant has also filed an affidavit on 29.10.2019 vide SR. No. 5422.

25.6. In the circumstances, the objections raised by the Home buyers in MA/710/2019, MA/874/2019 and MA/876/2019 are overruled and stand *dismissed*. However, as per the Affidavit filed by the Resolution Applicant, upon approval of the Resolution Plan, the Resolution Applicant shall pay 30% of the admitted claims to the Home Buyers whose claims are classified as "Duplicate Claims".

**26. OBJECTIONS FILED BY THE INCOME TAX – SR No. 4825
DATED 09.10.2019 IN MA/554/2019**

26.1. The Deputy Commissioner of Income Tax, Corporate Ward – 5(2), Chennai, upon notice being issued, has filed its memo of objections to the Resolution Plan, wherein, it has been stated that the Corporate Debtor has outstanding demands for 5 years amounting to nearly 2 Crores as provided below;

Sl. No.	Assessment Year	Demand in Rs.
1	2009 – 10	Rs.2,83,290/-
2	2013 – 14	Rs.11,16,620/-
3	2014 – 15	Rs.1,37,04,250/-
4	2015 – 16	Rs.13,12,217/-
5	2017 – 18	Rs.30,56,181/-



26.2. It was further submitted by the Ld. Counsel for the Income Tax that the Resolution Applicant has sought for waiver of tax or interest dues in para 6.1, 6.5, 7.4 and 7.6 of the Resolution Plan, and as there are tax arrears that have been unpaid over several years, such violation cannot be overlooked by this Authority and hence prayed for not to grant any relief with respect to the same.

26.3. The Ld. Counsel for the Income Tax further submitted that, the Corporate Debtor has failed to file the Income Tax returns for the Financial Year 2016 - 17 and 2017 - 18 in accordance with section 139 of the Income Tax Act, 1961 and in para 7.13 of the Resolution Plan it has sought to carry forward the loss for set off in the subsequent years. The Ld. Counsel for the Income Tax strenuously contended that as per Section 119 of the Income Tax, Act, 1961, any waiver, relief or condonation of delay in filing of returns should be sought before the concerned Income Tax Authority by way of a proper Application and by stating reasons for seeking such waiver.

26.4. The Ld. Counsel for the Resolution Professional in reply submitted that in so far as the failure to file income tax returns by



the Corporate Debtor for all prior periods is beyond the scope and control of the Resolution Applicant. It was further submitted by the Ld. Counsel for the Resolution Professional that the Resolution Applicant undertook to file the returns upon approval of the Resolution Plan.

26.5. The Resolution Applicant has filed a reply to the objections filed by the Income Tax, wherein it was pertinently stated that the present Resolution Plan had been prepared by the Resolution Applicant considering that the relief / waiver sought under the relevant provisions of the Income Tax, 1961 will be granted to the Resolution Applicant.

26.6. As regards the Relief and Concession in the Resolution Plan, it is relevant to refer to the recent decision of the Supreme Court in **Embassy Property Limited –Vs– State of Karnataka** in *Civil Appeal No.9170 of 2019 dated 03.12.2019*, wherein, the powers and jurisdiction of this Tribunal have been clearly delineated and it has been held wherever the Corporate Debtor has to exercise a right, that falls outside the purview of IBC, 2016, especially in the realm of the public law, this Tribunal does not have any jurisdiction to pass any orders. Also, the Hon'ble NCLAT in **JSW Steels Ltd. –**



Vs- Ashok Kumar Gulla & Ors in *Company Appeal (AT) (Insolvency) No.467 of 2019* has held that if a Successful Resolution Applicant is entitled to 'carry forward losses' under Section 79 of the Income Tax Act, it may claim such benefit before the appropriate Authority, who will pass appropriate order in accordance with Section 79 of the Income Tax Act, 1961 and the Rules and Regulations framed thereunder.

27. ARGUMENTS MADE IN SUPPORT OF RESOLUTION PLAN AND THE OBSERVATION OF THIS ADJUDICATING AUTHORITY

27.1. The Ld. Counsel for the Resolution Professional submitted that the Resolution Plan has been approved by 81.39% by total vote share and 83.5% present and voting and the percentage of Home buyers who have approved the plan in 82% by vote share and 86% of those present and voting and this decision is a 'commercial decision' by an amorphous group of individuals based on proper procedure laid down by following an evaluation matrix which cannot be assailed by any stakeholders even the dissenting financial creditors or the operational creditors. Further, it was contended that a candidate claiming to be a Resolution Applicant also cannot challenge the decision of the CoC citing that



he has not been duly considered and in order to fortify his submissions, reliance was placed upon the Judgment of the Hon'ble Supreme Court in **K. Sashidhar -Vs- Indian Overseas Bank 2019 SCC Online SC 257**, wherein in para 19 and 62 it was held as follows;

"19.....In the present case, however, our focus must be on the dispensation governing the process of approval or rejection of resolution plan by the CoC. The CoC is called upon to consider the resolution plan under Section 30(4) of the I&B Code after it is verified and vetted by the resolution professional as being compliant with all the statutory requirements specified in Section 30(2).

62.In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of the CoC, the proposed resolution plan is placed for discussion and after full interaction in the presence of all concerned and the Resolution Professional, the constituents of the CoC finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per-se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the "commercial/business decision" of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count."

27.2. The Ld. Counsel for the Resolution Professional stated that the Resolution Plan has been submitted by the Resolution Applicant keeping in view that the Corporate Debtor is into the



business of Real Estate and that there arises a special situation which demands special dispensation and in support of his submissions relied upon the Judgment of the Hon'ble NCLAT in **IDBI Bank -Vs- Anuj Jain (Jaypee Infratech Ltd.)** in *I.A.No.1857 of 2019 in Company Appeal (AT) (Insolvency) No.536 of 2019 dated 02.07.2019* wherein it is held as follows;

"In a real estate business, the business is limited to a particular project and primary business is to allot constructed area to the Allottees. For keeping the company, a going concern and for maximization of the assets, the only way is to complete the infrastructure and to allot it to the Allottees. In this background, as the 'Corporate Insolvency Resolution Process' stands at a different footing than other companies (Corporate Debtor), the question arises as to whether the 'resolution plan' should be looked into from different aspect and angle."

27.3. It was further contended by the Ld. Counsel for the Resolution Professional that the Resolution Plan as structured by the Resolution Applicant is akin to the same approved by the Hon'ble Supreme Court in **Bikram Chatterji & Ors. -Vs- Union of India & Ors.** in *W.P. No. 940/2017*, wherein the Hon'ble Supreme Court has taken into consideration the fate of real estate business in India, the hard earned money invested by the Home buyers in the Real Estate and the Public Trust doctrine, which are all taken into consideration by the Resolution Applicant and to



accord treatment to the Home Buyers. For the sake of convenience, para 72, 73 and 98 of the **Bikram Chatterji (supra)** judgment is extracted hereunder;

"72. In our opinion, if the real estate business has to survive in India, it has to be answerable to the public and has necessarily to uphold the trust reposed in builders/promoters. They have been paid huge amounts not only by the home buyers but also, they have to pay a huge amount for the public land given to them on lease by Noida and Greater Noida Authorities for construction of houses. The land has been given to them by the authorities on a concessional basis by making payment of 10% amount at the time of allotment. The builders have to be accountable to public/home buyers as well as the authorities and bankers. It is a matter relating to housing needs dealing with shelter place, such an activity is of the public importance as the real estate sector plays a pivotal role in the fulfilment of needs of housing infrastructure.

73. The public trust doctrine imposes on the State and its functionaries a mandate to take affirmative action for effective management, and the citizens are empowered to question its ineffectiveness. The land of the farmers had been acquired for the purpose of housing and infrastructure needs by the State Government and handed over to the concerned authorities for construction. They are bound to ensure that builders act in accordance with the objective behind the acquisition of land and the conditions on which allotment had been made. It was a duty of concerned officials; they are not only enjoined to ensure that the rights of the home buyers are protected but also the interests of the authorities; and bankers. The public authorities are duty-bound to observe that the leased property is not frittered away along with the money of the home buyers. Affirmative action was clearly enjoined upon them not only under the statutory provisions of various enactments but also under the public trust doctrine that has evolved over the years by this Court.



98.It cannot be denied that lifetime savings of homebuyers have been invested for purchase of a house with the faith and trust they have given the money. The scheme of the Government is to promote the real estate for which land had been acquired, even poor farmers have not been paid the compensation. The land allotted at throw away prices of 10%, the allotment premium has not been paid and in an illegal manner plots have been allotted on huge amount by builders is another fraud in collusion with Authorities.

27.4. This Tribunal has done an extensive analysis of the Resolution Plan and upon a question put forth by the Tribunal in relation to the Liquidation Value being Rs.44.25 Crores, the Resolution Applicant proposes to infuse only a sum of Rs.30.48 Crores, which does not even meet the liquidation value, for which, the Ld. Counsel for the Resolution Professional replied that the said sum of Rs.30.48 Crores are discharged against the dues of the Financial Creditors (Unsecured and Secured), and the Operational Creditor, however, it does not include the Home Buyers, as in this case, the Home Buyers are being given the Home / Apartment upon the payment of their balance dues to the Corporate Debtor and further the Home buyers are required to contribute by making additional payment per sq.ft. separately for each project which amounts to 29% on the average sale price of the projects and in order to substantiate this increase, the Ld. Counsel for the



Resolution Professional relied upon the **Bikram Chatterji (supra)** wherein under para 152 (iv) the Supreme Court appointed NBCC to complete the various projects and hand over the possession to the buyers and the percentage of commission of NBCC was being fixed at 8%. However in the present case, due to the increase of costs in the building materials, and also taking into consideration the percentage of profit, the Resolution Applicant increase the price per sq. ft. and moreover the Home Buyers have voted in favour of the Resolution Plan by accepting such increase in the price and thereby the Home Buyers have taken a 'commercial decision' in and by which they are eager to take possession of their flats. Further, the Division Bench - II of this Tribunal in the matter of **Orchid Pharma Limited** in *MA/579/2019 dated 27.06.2019* has held in para 7 that there is no mandate under the Code saying that the Resolution Plan value shall always be more than the liquidation value of the Corporate Debtor.

27.5. The Honb'le Supreme Court in **Pioneer Urban Land & Infrastructure & Anr -Vs- Union of India & Ors. in W.P. (Civil) No. 43 of 2019** has also discussed about the paramount importance of the Home Buyers in the Real Estate business and how their interest have to be safeguarded;

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"18. It can be seen that the Insolvency Law Committee found, as a matter of fact, that delay in completion of flats/apartments has become a common phenomenon, and that amounts raised from home buyers contributes significantly to the financing of the construction of such flats/apartments. This being the case, it was important, therefore, to clarify that home buyers are treated as financial creditors so that they can trigger the Code under Section 7 and have their rightful place on the Committee of Creditors when it comes to making important decisions as to the future of the building construction company, which is the execution of the real estate project in which such home buyers are ultimately to be housed.

40.In real estate projects, money is raised from the allottee, being raised against consideration for the time value of money. Even the total consideration agreed at a time when the flat/apartment is non-existent or incomplete, is significantly less than the price the buyer would have to pay for a ready/complete flat/apartment, and therefore, he gains the time value of money. Likewise, the developer who benefits from the amounts disbursed also gains from the time value of money. The fact that the allottee makes such payments in instalments which are co-terminus with phases of completion of the real estate project does not any the less make such payments as payments involving "exchange", i.e. advances paid only in order to obtain a flat/apartment.

48. We may only state that if a Section 7 application is admitted in favour of an allottee, and if the management of the corporate debtor is in fact a strong and stable one, nothing debars the same erstwhile management from offering a resolution plan, subject to Section 29A of the Code, which may well be accepted by the Committee of Creditors in which home buyers now have a voice. Equally, to assume that the moment the insolvency resolution process starts, corporate death must ensue is wholly incorrect. If the real estate project is otherwise viable, resolution plans from others may well be accepted and the best of these would then work in order to maximise the value of the assets of the corporate debtor. Corporate death, as has been stated in *Swiss Ribbons* (supra) is the last resort under the Code after all other available options have failed. This argument again need not deter us further."



27.6. As to the Relief and Concessions sought for in the Resolution Plan, taking into consideration the Judgments of the Hon'ble Supreme Court and Hon'ble NCLAT, we direct the Resolution Applicant to file necessary application before the necessary forum / authority in order to avail the necessary Relief and Concessions, if it is in accordance with law.

27.7. As to the 'Monitoring Committee', is concerned, the Resolution professional has made a prayer in MA/554/2019 to appoint a Monitoring Committee consisting of a representative each from Successful Resolution Applicant, the Home Buyers represented by one each from seven associations and other Financial Creditors and chaired by the Resolution Professional for a period of 3 months from date of approval of the Resolution Plan by this Adjudicating Authority. In relation to the same, this Adjudicating Authority hereby appoints the following person in the Monitoring Committee;

- a. The Resolution Professional
- b. Two representative from the successful Resolution Applicant
- c. Home Buyers represented by two each from every projects and in relation to participation in the meetings and voting thereat by the two representative of each of the project, it shall be confined only to the discussion and decision concerning respective project and not otherwise.



27.8. Thus the Resolution Plan is hereby **approved** and is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect and the "Moratorium" imposed under section 14 of IBC, 2016 shall not have any effect henceforth. The Resolution Professional shall submit the records collected during the commencement of the Proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance. Liberty is hereby granted for moving any Miscellaneous Application if required in connection with implementation of this Resolution Plan. That in respect of stepping by the New Promoters/Resolution Applicant into the shoes of the erstwhile Company and taking over the business, the provisions of Companies Act, 2013 shall be applicable and because of this reason a copy of this Order is to be submitted in the Office of the Registrar of Companies, Chennai.

27.9. The Resolution Professional is further directed to handover all records, premises / project sites / documents to Resolution Applicant to finalise the further line of action required for starting of the operation as contemplated under the Resolution



Plan. The Resolution Applicant shall have access to all the records premises / project sites / documents through Resolution Professional to finalise the further line of action required for starting of the operation.

28. In relation to the Applications filed by the Resolution Professional under Section 43, 45, 50 and 66 of the IBC, 2016 as disclosed in Form H filed by the Resolution Professional, seeking to bring to the notice of this Authority, the transactions covered thereunder, the said Applications shall be taken up by this Authority on 12.02.2020.

29. Accordingly, all Applications stand **disposed of** as above.

-SD-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Raymond