

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH,  
PRAYAGRAJ**

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**IA NO.518/2023  
IN  
CP (IB) NO.76/ALD/2019**

**IN THE MATTER OF:**

*(An Under Section 30 of Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016)*

Anuj Kumar Tiwari,  
Resolution Professional,  
SPARKSPELL HOMES PRIVATE LIMITED,  
IP Registration No.IBBI/IPA-021/IP-N00811/2019-2020/12555,  
Address: C-147 Raja Ji Puram Lucknow,  
Lucknow, Uttar Pradesh, 226017

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

*In the matter of:*

Deepak Gupta HUF

**.....Financial Creditor**

**V/S**

SPARKSPELL HOMES PRIVATE LIMITED

**.....Corporate Debtor**

**Order pronounced on 16<sup>th</sup> May, 2024**

**Coram:**

Mr. Praveen Gupta : Member (Judicial)  
Mr. Ashish Verma : Member (Technical)

**Appearances:**

Sh. Yash Tandon, Adv. : *For the Applicant/RP Sh. Anuj Kr. Tiwari  
present in person in IA No.518/2023*

## **ORDER**

### ***Preliminary***

1. The present interlocutory application bearing IA. No.518/2023 was moved on behalf of Mr. Anuj Kumar Tiwari, Resolution Professional (**“RP”**) of Sparkspell Homes Private Limited under the provisions of Sections 30(6) and 31(1) of the Insolvency & Bankruptcy Code, 2016 [hereinafter referred to as **“the Code”** or **“IBC”**] read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**“CIRP Regulations”**) for approval of the Resolution Plan in respect of Sparkspell Homes Private Limited.
  
2. The underlying Company Petition CP (IB) No.76/ALD/2019 filed by Deepak Gupta HUF under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (**“CIRP”**) against the Corporate Debtor namely Sparkspell Homes Private Limited, which was admitted by this Adjudicating Authority *vide* its order dated 28.08.2019 (**“Admission Order”**). On that date, *i.e.*, 28.08.2019, Mr. Mohit Maheshwari (IBBI/IPA-002/IP-N00528/2017-18/11575) was appointed as IRP, but subsequently Mr. Sudheer Kumar Shukla *vide* order dated 06.11.2019 was appointed as Resolution Professional (RP). However, in the 8<sup>th</sup> CoC a resolution was passed to replace Mr.

Sudheer Kumar Shukla with Mr. Anuj Kumar Tiwari as RP and *vide* order dated 31.08.2020 this Tribunal appointed Mr. Anuj Kumar Tiwari (IBBI/IPA-021/IP-N00811/2019-2020/12555) as the RP of the Corporate Debtor.

***Collation of claims by RP***

3. It is stated in Resolution Plan that the public announcement was made on 31.08.2019 in Financial Express (*English*) and on 01.09.2019 in *Jansatta (Hindi)*, the last date for submission of claims was 12.09.2019, and RP called for proof of claims from the creditors of the Corporate Debtor and informed lenders to submit their claims as envisaged under the Code.
4. That pursuant to the public announcement made in FORM-A by the Resolution Professional, the details of claim submitted is as follows :-

<b>Particulars</b>	<b>Amount Claimed</b>	<b>Claim Admitted</b>
Deepak Gupta HUF (Financial Creditor)	Rs.7,53,38,914/-	Rs.7,53,38,914/-
Neha Sharma (Operational Creditors)	Rs.2,18,333/-	Rs.2,18,333/-
Sharma Uttam & Company (Operational Creditors)	Rs.2,30,000/-	Rs.2,30,000/-

5. CoC has been constituted by IRP comprising of creditors in class/homebuyers/flat allottees. The RP submits that a total of 21 CoC meetings have been held during the whole CIRP period.

***Evaluation and voting***

6. It is stated in the Resolution plan that the CoC has *interalia* approved the publication of Form G, Request for Resolution plan, Evaluation Matrix, and eligibility criteria, and accordingly, invitations for Expression of Interest (EoIs) in Form-G were published on 16.11.2022.
7. In pursuance thereto, the resolution professional received two EoIs for submission of the Resolution plan. The Prospective Resolution Applicants (PRAs) who have submitted EoIs are given as under:-
- 1) Nirmala Infradevelopers Private Limited
  - 2) Mukut Developers Private Limited.
8. Only one Resolution Applicant viz., Nirmala Infradevelopers Private Limited was found to be eligible for submission of Resolution Plan and submitted their Resolution Plan, which was put for consideration before CoC in the 17<sup>th</sup> CoC meeting dated 03.02.2023. Pursuant to the 17<sup>th</sup> COC meeting, Applicant received revised Resolution Plan from the PRA, which later

became Successful Resolution Applicant (SRA). The revised Resolution Plan received from the SRA was put before 20<sup>th</sup> COC meeting.

9. During the 20<sup>th</sup> COC meeting held on 01.06.2023, for consideration of the Resolution Plan *vide* Item No.5 was approved. After due discussions and deliberations on various occasions, in the 21<sup>st</sup> COC meeting dated 22.06.2023, final plan was received by Nirmala Infradevelopers Private Limited i.e. SRA, which was accepted by COC with 99% majority. The CoC also deliberated in accordance with Section 30(2), 30(4) and 30(6) of the Code read along with CIRP Regulations, 2016.
10. This Adjudicating Authority has granted extensions and exclusions in the whole CIR Process, which are elaborated as follows :-

<b>Particulars</b>	<b>Timelines</b>
CIRP commencement date	28.08.2019
180 days	24.02.2020
270 days expired on (including time lost in first wave of Covid)	31.10.2020
330 days expired on	30.12.2020
Exclusion vide order dated 16 <sup>th</sup> October, 2020 (90 days)	30.03.2021
Exclusion vide order dated 6 <sup>th</sup> January, 2023 (607) days	27.11.2022

Exclusion vide order dated 16 <sup>th</sup> May, 2024 (324) days	01.08.2023 (05.09.2022 till 06.01.2023, from 06.01.2023 till 15.04.2023, and from 21.04.2023 till 01.08.2023)
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- 11.** The Resolution Plan of SRA after being approved by CoC has been filed on 24.07.2023 before this Adjudicating Authority *vide* IA No.518/2023 under consideration in this order.
- 12.** A compliance Certificate in terms of prescribed Form H under regulation 39(4) of the CIRP Regulations, was also filed before this Tribunal. While perusing the minutes of 3<sup>rd</sup> CoC meeting held on 21.03.2020, it was found that due to non cooperation of the Directors and all other stake holders for providing the required details, documents etc., the COC members could not instruct to the RP to appoint two Registered Valuers as per the provisions of the IBC. Therefore, the CoC rejected the Appointment of Valuers since the only Asset, Land was transferred to a related party of Management of Corporate Debtor. However, RP provided that based on Revenue Rates notified by State Government, Liquidation Value of Corporate Debtor comes to 20 crores. Hence, according to the Form H, the fair value of the Corporate Debtor is NA and the liquidation value is Rs.20 Crore. The Resolution Plan submitted from SRA is of

approx. Rs.10.45 Cr. The Successful Resolution Applicant shall provide the Performance Guarantee of Rs.50,00,000/- (Rupees Fifty lakhs Only) through Demand Draft within 15 days from date of approval, which is required under Regulation 36B (4A) of CIRP Regulations, 2016. It is submitted by the RP that the above said Performance Guarantee shall be valid till the term of the Resolution Plan. This Performance Guarantee by way of DD shall be over and above the EMD for Rs.45,00,000/-, which is already with RP and would be retained till the completion of Plan, so as to make the total security as Rs.95 Lakh.

***Details of Resolution Plan/ Payment Schedule***

**13.** The Successful Resolution Applicant Nirmala Infradevelopers Private Limited operate in Real Estate Development with a vision of becoming one of the leading real estate service providers in norther India.

**14.** The amount proposed in the Resolution Plan are tabulated below:

<b>Sl. No.</b>	<b>Types of debts</b>	<b>Resolution Amount (In Rs.)</b>	<b>Payment Term</b>
1.	CIRP Cost	45 Lakh	The actual amount till the Approval date proposed to be paid in full and in

			priority within 30 days of approval of Resolution Plan by the Adjudicating Authority.
2.	Secured Financial Creditor	NA	NA
3.	Unsecured Financial Creditor	9,82,24,961	Units allotted at accepted rates to be handed over in two years
4.	Operational Creditors (Goods & Services)	17,26,418	Within ninety days 15% of admitted claims
4.	Operational Creditors Government dues (Customs)	NIL	NIL
4.	Operational Creditors Government dues (Tax)	NIL	NIL
5.	Operational Creditors Workmen/ Employees	NIL	NIL
6.	Funds for stabilization of business and working capital	NIL	NIL

**Estimated Total Amount Proposed to be brought in the Corporate Debtor for the turnaround of the Corporate Debtor:**

<b>S. No.</b>	<b>Particulars</b>	<b>In Rupees</b>
<b>A</b>	CIRP Cost	45 Lakh
<b>B</b>	Upfront cash payment to the Financial Creditors to be	NIL

	paid within 90 days from the approval date	
<b>C</b>	<b>Total Upfront Cash Payment as part of Resolution Plan (A+B)</b>	45 Lakh
<b>D</b>	Workmen & Employee/due/claim retirement benefit	NIL
<b>E</b>	Operational Creditor (Goods & Services)	2.58 Lakh
<b>F</b>	Other Creditors	NIL
<b>G</b>	<b>Payment to outside party (C+D+E+F)</b>	47.58 Lakh
<b>H</b>	Contingent Liabilities (NonStatutory)	NIL
<b>I</b>	Repairs/Refurbishment (To be brought through equity)	NIL
<b>J</b>	Working capital margin (To be brought through equity)	NIL
<b>K</b>	<b>Total Fund Required (G+H+I+J)</b>	<b>47.58 Lakh</b>

### ***Sources of Funds***

- 15.** The overall Resolution Plan is for a total amount of approximately Rs.50 Lakh, which shall be infused by Successful Resolution Applicant by unsecured loan.
- 16.** The payment proposed to Financial Creditors in para no.18.2 of Resolution Plan is as under :-

### ***18.2 Financial creditors***

- (i) There are two categories of Financial Creditors i.e Financial Creditors and Home Buyers for whose claims were approved by Resolution Professional and claims are of

following types

(ii) Formula used to Make Payments to Financial Creditors

- Once the Plan is approved from NCLT and subsequently it get, Home Buyers and Financial Creditors can take Allotment in 'Down Payment (DP)' Mode equivalent to 100% of his invested Principal Amount. 'Basic Sale Price (BSP)' in this option shall be Rs. 4000/- 'per square feet (psf)' for COC members. If the amount invested is less than Rs. 5 L for any Home Buyer, he/she can take the refund (without interest) after 6 months from the date of UPRERA approval.

- If Invested Amount (Principal) of any allottee (Financial Creditor / Homebuyer) is less than Unit Price, he/she has to pay difference amount at the offer of possession.

- If Invested Amount (Principal) of any allottee (Financial Creditor/ Homebuyer) is more than Unit Price, he/she shall receive difference amount at the offer of possession.

- GST to be paid by each allottee as and when the same is payable.

IFMS Shall be paid by each allottee at the

offer of possession.

Resolution Applicant upon approval of the transaction and receipt by it of Adjudicating Authority approved vesting order of the assets and shares of the Company proposes to allot spaces to all the Financial Creditors in the Manner as specified in Annex 1.

The Financial Creditors or their Assignees shall pay the Balance Amount as envisaged in Annex 1 and their Debt shall be discharged upon Possession of Flats/Spaces as proposed by Resolution Application (Nirmala Infradevelopers Limited) in the given time frame.

- iii. The Applicant shall not pay any interest/charges or Penalty accrued on the Claims admitted of the Financial Creditors during the CIRP period. Any such Interest/charges or penalty shall be deemed to be permanently extinguished by virtue of the order of the Adjudicating Authority (NCLT), approving this Resolution Plan and the Company or the Applicant shall at no point of time be, directly or indirectly, held responsible \or liable in relation thereto. Furthermore, the Resolution Applicant will get ownership and control of all assets and operations of the Company without

assuming any outstanding liabilities or encumbrances.

- 17.** The term of Resolution Plan and its implementation/ supervision, is proposed at para no.22 of Resolution Plan, which is as under: -

22.1 The term of the Resolution Plan will be 2.5 years depending on the choice of members of CoC and will commence from the Effective Date and with the following steps

- a) Resolution Applicant Shall infuse funds up to Rupees One Crores as unsecured Loan for payment of CIRP Cost and Operational Creditors if Any.
- b) Payment mentioned in 22(a) shall be partly utilized in payments and rest will be used for Working Capital.
- c) The Payment to Financial Creditors shall be as envisaged in Plan hereinabove unless otherwise agreed between Applicant and CoC.

22.2. In order to ensure smooth Implementation of the Resolution Plan, the Resolution Applicant already has strong experience of working In project. The

Resolution if required shall induct further Project Professionals to manage day to day affairs of the Company, whose terms of appointment and duties would be decided by the Restored Board of Directors.

22.3 On the Plan Effective Date, the present Resolution Professional Mr. Anuj Kumar Tiwari shall stand appointed as the Monitoring Professional to Monitor and supervise the Implementation of the plan to be monitored by the monitoring professional for a period of 2 years and six Months (Or as May be Directed by Hon'ble NCLT). Once It is satisfactorily done for a period of 1 years (Or as May be Directed by Hon'ble NCLT). from the Plan Effective Date, the Involvement of the Professional will be withdrawn.

The fees for monitoring and supervision for a period of 2 years and six Months (Or as May be Directed by Hon'ble NCLT) to be paid as decided on mutual agreement (Shall not be less than One Lacs per month), between the monitoring professional and Resolution Applicant and will be paid by Resolution Applicant/ Corporate Debtor.

**18.** The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations, which a Resolution Plan is required to adhere to, as follows:

***Compliance with Section 30(2) of the Code:***

<b>Section 30(2) of Insolvency and Bankruptcy Code, 2016</b>	<b>Compliance under Resolution Plan</b>	<b>Relevant Page Number of Application</b>
(a) Plan must provide for payment of CIRP cost in priority to repayment of other debts of the CD in the manner specified by the Board.	Provided in Clause 10.1 of the Resolution Plan	Page 57 of the application
(b) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than	Provided in Clause 10.2 of the Resolution Plan	Page 58 of the application
(b)(i) the amount payable to them in the event of liquidation u/s 53; or	Provided in Clause 10.2 of the Resolution Plan	Page 58 of the application
(b)(ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be not less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the	Provided in Clause 10.2 of the Resolution Plan	Page 58 of the application

order of priority in sub-section (1) of section 53, whichever is higher and		
(b) provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board.	Provided in Clause 18.3 of the Resolution Plan	Page 70 of the application
(c) Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Provided in Clause 21 of Resolution Plan	Page 83-84 of the application
(d) Implementation and Supervision.	Provided in Clause 22 of Resolution Plan	Page 85-87 of the application
(e) Plan does not contravene any of the provisions of the law for the time being in force.	Provided in 23.2 of Resolution Plan	Page 87 of the application

**Measures provided in Resolution Plan in terms of Regulation 37 of CIRP Regulations.**

<b>Regulation 37 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016</b>	<b>Compliance under Resolution Plan</b>	<b>Relevant Page Number of Application</b>
a) transfer of all or part of the assets of the corporate debtor to one or more persons;	Provided in Clause 11 of Resolution Plan	Page 59-60 of the application
b) sale of all or part of the assets whether subject to any security	Provided in Clause 11 of Resolution Plan	Page 59-60 of the application

interest or not;		
ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	Provided in Clause 11 of Resolution Plan	Page 59-60 of the application
c) the substantial acquisition of shares of the corporate debtor, or the merger or the consolidation of the corporate debtor with one or more persons;	Provided in Clause 11 of Resolution Plan	Page 59-60 of the application
ca) cancellation or delisting of any shares of the corporate debtor, if applicable;	Provided in Clause 11 of Resolution Plan	Page 59-60 of the application
d) satisfaction or modification of any security interest;	Provided in Clause 11 of Resolution Plan	Page 59-60 of the application
e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	Provided in Clause 11 of Resolution Plan	Page 59-60 of the application
f) reduction in the amount payable to the creditors;	Provided in Clause 11 of Resolution Plan	Page 59-60 of the application
g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	Provided in Clause 11 of Resolution Plan	Page 59-60 of the application
h) amendment of the constitutional documents of the corporate debtor	Provided in Clause 11 of Resolution Plan	Page 59-60 of the application

i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Provided in Clause 11 of Resolution Plan	Page 59-60 of the application
j) change in portfolio of goods or services produced or rendered by the corporate debtor;	Provided in Clause 11 of Resolution Plan	Page 59-60 of the application
k) change in technology used by the corporate debtor; and	Provided in Clause 11 of Resolution Plan	Page 59-60 of the application
l) Obtaining necessary approvals from Central and State Governments and other authorities	Provided in Clause 11 of Resolution Plan	Page 59-60 of the application

***Mandatory contents of Resolution Plan in terms of Regulation 38(1) of CIRP Regulations:***

<b>Regulation 38(1) and (2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016</b>	<b>Compliance under Resolution Plan</b>	<b>Relevant Page Number of Application</b>
38(1)(a) The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors	Provided in 12 & 13 Clause of Resolution Plan	Page no.61-62 of the application
38(1)(b) The amount payable under a resolution plan - (b) to the financial	Provided in Clause 18.3 of the Resolution Plan	Page 70 of the application

creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.		
38 (1A) Shall include a statement as to how it has dealt with the interests of all the stakeholder, including financial creditors and operational creditors of the Corporate Debtor	Provided in Clause 18 of the Resolution Plan	Page 64-71 of the application
38 (1B) shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past	Provided in Clause 14 of the Resolution Plan	Page 61 of the application
38 (2)(a) shall provide for the term of the plan and its implementation schedule;	Provided in Clause 18 of the Resolution Plan	Page 64-71 of the application
38 (2)(b) shall provide for the management and control of the	Provided in Clause 21 of Resolution Plan	Page 83-84 of the application

business of the Corporate Debtor during its term		
38 (2)(c) Shall provide for the adequate means for supervising its implementation.	Provided in Clause 22 of Resolution Plan	Page 85-87 of the application
38 (3) A resolution plan shall demonstrate that –		
(a) it addresses the cause of default;	This has been provided in Resolution Plan in Clause 16.1	Page 61-62 of Application
(b) it is feasible and viable;	This has been provided in Resolution Plan in Clause 16.2	Page 62-63 of Application
(c) it has provisions for its effective implementation;	This has been provided in Resolution Plan in Clause 16.3	Page 63 of Application
(d) it has provisions for approvals required and the timeline for the same; and	This has been provided in Resolution Plan in Clause 16.4	Page 63 of Application
(e) the resolution applicant has the capability to implement the resolution plan.	This has been provided in Resolution Plan in Clause 16.4	Page 63-64 of Application

**Details of Monitoring Committee:**

Name(s) of the proposed member(s) of implementation and monitoring committee	Brief description of the Proposed member(s) of the I & M committee
1. Mr. Anuj Kumar Tiwari.	Resolution Professional
2. Mr. Shivam Dwivedi.	Representatives of Successful Resolution Applicant

3. One representative of CoC.	Representative of CoC
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- 19.** The Applicant submits that the successful resolution applicant has submitted an affidavit in regard to the eligibility under section 29A of the Code, as required by Regulation 39(1)(a) of the CIRP Regulations. An undertaking has also been submitted by the successful Resolution Applicant, as mandated in terms of regulation 39(1)(c) of the CIRP Regulations. The affidavit under section 29A is at page no.7 in the clarification document submitted by RP, which is reproduced there under:-
- 20.** The Applicant submits that the SRA has submitted an affidavit in regard to the eligibility under section 29A of the Code, as required by Regulation 39(1)(a) of the CIRP Regulations. An undertaking has also been submitted by the SRA, as mandated in terms of regulation 39(1)(c) of the CIRP Regulations. The affidavit to that regard under Section 29A has been e-filed on 22.10.2023, which is reproduced thereunder:-

*Shivam Dwivedi, son of Shri Shailendra Dwivedi, aged about 30 years, currently residing at F-2, Rapti nagar, Phase 4, Gorakhpur, U.P. 273013 and having Aadhaar No. 3289 8776 8169, on behalf of Nirmala Infradevelopers Limited ("Resolution Applicant"), a term which also includes any person acting jointly with the Applicant) (pursuant to*

*authorization of the Board of the Applicant dated 30th Nov 2022 (as enclosed herewith)], do solemnly affirm and state to the committee of creditors ("CoC") of Sparkspell Homes Private Limited ("Corporate Debtor") and the resolution professional of the Corporate Debtor ("RP") as follows:*

- 1. That I am duly authorized and competent to make and affirm the instant undertaking for and on behalf of the Applicant [in terms of resolution of its board of directors/ power of attorney dated 30<sup>th</sup> Nov 2022, I hereby unconditionally state, submit and confirm that the document is true, valid and genuine.*
- 2. I hereby unconditionally state, submit and confirm that the Applicant is not disqualified GO from submitting an expression of interest in respect of the Corporate Debtor, pursuant to the provisions of the Insolvency and Bankruptcy Code, 2016 ("Code").*
- 3. I hereby state, submit and declare that neither the Applicant nor any person acting jointly with the Applicant or in concert with Applicant nor any person who is a 'connected person' (as defined under the Code):*
  - (a) is an undischarged insolvent;*
  - (b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;*
  - (c) is at the time of submission of the expression of interest a person who*
    - (i) has an account which has been classified as non performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force, or*
    - (ii) controls or manages or is the promoter of a corporate debtor whose account has been, classified as nonperforming asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force; and such classification has continued for a period of one year or more from the date of such classification till*

*the date of commencement of the corporate insolvency resolution process of the Corporate Debtor and all such overdue amounts along with interest, costs and charges thereon has not been fully repaid at the time of submission of resolution plan.*

*(d) has been convicted for any offence punishable with Imprisonment –*

*(i) for two years or more under any statute specified under the Twelfth Schedule of the Code; or*

*(ii) for seven years or more under any law for the time being in force.*

*(e) is disqualified to act as a director under the Companies Act, 20134;*

*(f) is prohibited by the Securities and Exchange Board of India from trading in securities or assessing the securities market;*

*(g) has been a promoter or in the management of or control of a corporate debtor in which any preferential transaction or undervalued transaction or extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Hon'ble National Company Law Tribunal (or its appellate tribunal/ court) under the Code (other than a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction which has taken place pursuant to a resolution plan approved under the Code or pursuant to a scheme or plan approved by a financial sector regulator or court);*

*(h) has executed a guarantee in favour of a creditor, in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under the Code and such guarantee has been invoked by the creditor and remains unpaid in full or in part;*

*(i) is subject to any disability corresponding to any of the aforesaid conditions under any law in a jurisdiction outside India.*

4. That the Applicant unconditionally and irrevocably represents, warrants and confirms that it is eligible under the terms and provisions of the Code and the rules and

*regulations framed thereunder and the invitation to submit expression of interest dated [insert date] to submit an expression of interest and that it shall provide all documents, representations and information as may be required by the RP or the CoC to the satisfaction of the RP and the CoC to enable an assessment of the eligibility/ineligibility of the Applicant with respect to the conditions set out in clause 3 above.*

- 5. That the Applicant unconditionally and irrevocably undertakes that it shall provide all data, documents and information as may be required to verify the statements made under this undertaking.*
- 6. That the Applicant understands that the CoC and the RP may evaluate the expression of interest submitted by the Applicant or any other person acting jointly with it and such evaluation shall be on the basis of the confirmations, representations and warranties provided by the Applicant under this undertaking.*
- 7. That the Applicant agrees and undertakes to disclose/inform forthwith, to the RP and the members of the CoC, if the Applicant becomes aware of any change in factual information in relation to it or its connected person (as defined under the Code) which would make it ineligible under any of the provisions of Section 29A of the Code at any stage of the corporate insolvency resolution process of the Corporate Debtor, after the submission of this undertaking.*
- 8. That this undertaking shall be governed in accordance with the laws of India and the courts of Lucknow shall have the exclusive jurisdiction over any dispute arising under this undertaking.*

**21.** The Applicant has filed a Compliance Certificate in prescribed Form, i.e. Form 'H' in compliance with Regulation 39(4) of the CIRP Regulations. The RP has issued the Letter of Intent to the Successful Resolution Applicant. The total amount of performance security would be Rs.95 Lakh. The Successful

Resolution Applicant shall provide the Performance Guarantee of Rs.50,00,000/- (Rupees Fifty lakhs Only) through Demand Draft within 15 days from date of approval, which is required under Regulation 36B (4A) of CIRP Regulations, 2016. It is submitted by the RP that the above said Performance Guarantee shall be valid till the term of the Resolution Plan. This Performance Guarantee by way of DD shall be over and above the EMD for Rs.45,00,000/-, which is already with RP and would be retained till the completion of Plan so as to make the total security as Rs.95 Lakh.

**Details of Resolution Plan/ Payment Schedule**

**22.** The Applicant submits the relevant information about the amount claimed, the amount admitted, and the amount proposed to be paid by the SRA, *i.e.* Nirmala Infradevelopers Private Limited under the said Resolution Plan, which is tabulated as under:

<b>Sl. No.</b>	<b>Types of debts</b>	<b>Resolution Amount (In Rs.)</b>	<b>Payment Term</b>
1.	CIRP Cost	45 Lakh	The actual amount till the Approval date proposed to be paid in full and in priority within 30 days of approval of Resolution Plan by

			the Adjudicating Authority.
2.	Secured Financial Creditor	NA	NA
3.	Unsecured Financial Creditor	9,82,24,961	Units allotted at accepted rates to be handed over in two years
4.	Operational Creditors (Goods & Services)	17,26,418	Within ninety days 15% of admitted claims
4.	Operational Creditors Government dues (Customs)	NIL	NIL
4.	Operational Creditors Government dues (Tax)	NIL	NIL
5.	Operational Creditors Workmen/ Employees	NIL	NIL
6.	Funds for stabilization of business and working capital	NIL	NIL

**23.** The Resolution Plan size is approximately of Rs.10.45 Cr. The **“Effective Date”** will be the date on which the Adjudicating Authority approves the Resolution Plan.

## **Details on Management and Implementation as per the Resolution Plan.**

**24.** The Resolution Plan also provides for details of management and control, implementation and supervision of the Resolution Plan and term of plan and the same is already set out in Para 16 *supra*.

## ***Details on fraudulent and avoidance transaction***

**25.** In the Resolution Plan, in Clause 18.8 at page no.77 & 78 of the application, it has been provided that:

*b) it is clarified that the existing shareholders, managers, directors, officers, employees, workmen or other personnel of the Company shall continue to be liable for all the claims, demands, obligation, penalties etc. arising out of any (i) proceedings, Inquiries, Investigations, orders, show causes, notices, suits, litigations etc. [including those arising out of any orders passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73 and 74 of the IBC), whether civil or criminal, pending before any Authority, court, tribunal or any other forum prior the Plan Effective Date or (ii) that may arise out of any proceedings, inquiries, Investigations, order, show cause, notices, suits, litigation etc.*

*[Including any Orders that may be passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73 and 74 of the IBC], whether civil or criminal, that may be Initiated or Instituted post the approval of the Resolution Plan by the NCLT on account of any transactions entered into, or decisions or actions taken by the existing shareholders, manager, directors, officers, employees, workmen or other personnel of the*

*company. The Company or the Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.*

- c) *Any amount realized on account of the Transaction Application In pursuant to Sections 43, 4S, 49, 50, 66 filed with NCLT will be to the account of the Corporate Debtor and the Resolution Applicant shall at Its sole discretion will have the right on Titles/Recoverables if any that may accrue as a result of outcome of such cases/Applications before any Adjudicating Authority.*

Applications U/s 66 of the I & B Code, 2016 for fraudulent transactions has been filed separately vide Invn. P. No.1/2021, and is pending. In view of the above, we order that the SRA would pursue the PUFEE application as proposed by SRA as above. The proceeds if any received, it would be further disbursed/ utilized after deducting the cost of litigation, if any incurred in pursuing this application, as per Section 53 of the Code. After such disbursement, if any surplus remains, the same would be utilized for the purpose of the implementation of the Plan.

### ***Waivers, Reliefs and Exemptions***

- 26.** The SRA has sought/prayed for the reliefs, waivers and concessions as enumerated under the Resolution Plan approved by the CoC, that from the plan approval date all inquiries, investigation and proceedings, whether civil or criminal, suits, claims, disputes, interests and

damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this Resolution Plan, shall stand withdrawn, satisfied and discharged. From the date of approval of the 'Resolution Plan', the Resolution Applicant shall be legally authorized to seek appropriate orders from respective authorities/courts/tribunals for renewal of licenses/withdrawal/dismissal or abatement of the proceedings as the case may be.

### ***Analysis & Findings***

**27.** On hearing the submissions made by the Ld. Counsel for the Resolution Professional and perusing the record, we find that the Resolution Plan has been approved by the CoC with 99% of the members voting in favour of the Resolution Plan. As per the CoC, the Plan meets the requirement of being a viable and feasible for revival of the Corporate Debtor. In this regard vide order dated 18.12.2023, this Tribunal further asked the CoC, which is as under :-

*“3. We are also conscious of the fact that the CoC has already approved the Plan, however in accordance with the*

*provisions of Regulation 38(3), this Adjudication Authority is also at the same time would have to see and examine whether such a Plan is feasible and viable, particularly when it involves construction at such a scale.*

*4. Therefore, the feasibility and viability of the Plan is to be seen and assessed by an independent architect/building Planner. And to this limited extent only, we are referring the Plan back to the CoC to consider and decide as to whether any services of expert architect/building Planner is to be availed in order to ensure that such a Plan is ultimately viable in terms of complexities for its implementation.*

*5. Let the CoC decide this aspect within a period of three weeks from today and take a decision. If the resolution is passed by CoC to avail services of any architect, further course of action would also be followed by it accordingly. The Resolution/decision so taken would be placed before this Adjudicating Authority expeditiously, for consideration on approval of Plan.*

- 28.** In compliance of our said order, the Ld. Counsel representing the RP had filed a supplementary affidavit vide diary no.326 dated 05.02.2024 placing on record the Resolution passed by the CoC with voting of 85%, considering for carrying out the feasibility study of the Resolution Plan as put forward by Nirmala Developers Private Limited. The CoC which comprises of the creditors in class as home buyers by a percentage of 85% voting, has voted not in favour of carrying out any such feasibility study of the Resolution Plan. By and large, there are provisions for making the Plan effective after approval by this Bench.
- 29.** On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 30 and 31 of the

IBC and also complies with regulations 37, 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- 30.** The reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly in accordance with the applicable laws by the concerned authorities.
- 31.** It may be clarified that litigations wherever pending against the corporate debtor would be governed by Section 32A of the Code.
- 32.** As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.
- 33.** In case of non-compliance with this order or withdrawal of the Resolution Plan within the stipulated time, in addition to other consequences which may follow under law, the CoC shall forfeit the EMD amount of Rs.45 Lakh already paid by the Resolution Applicant.

## Orders

- 34.** Subject to the observations made in this Order, the Resolution Plan of Rs.10.45 Cr. [containing the mandatory contents of Resolution Plan in terms of Regulation 38(1)], is hereby approved as per Section 31(1), after satisfying ourselves that the resolution plan as approved by the COC under sub-section (4) of Section 30 on 22.06.2023 meets the requirements as referred to in sub section (2) of Section 30.
- 35.** The reliefs, concessions and waivers sought/prayed by the Successful Resolution Applicant will be dealt with strictly in accordance with the applicable laws including Companies Act, 2013 and Income Tax Act, 1961, etc.
- 36.** The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- 37.** The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- 38.** The Monitoring Committee as proposed in the resolution plan is appointed as under:

Name(s) of the proposed member(s)	Brief description of the Proposed member(s) of the I &
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Sd-

Sd-

implementation and monitoring committee	M committee
1. Mr. Anuj Kumar Tiwari.	Resolution Professional
2. Mr. Shivam Dwivedi.	Representatives of Successful Resolution Applicant
3. One representative of CoC	Representative of CoC

- 39.** The above Monitoring Committee shall ensure timely & successful implementation of Resolution Plan approved by this order.
- 40.** The CIRP cost as per the payment plan given at para no.20 is Rs.45 Crore which shall be paid within 30 days of the Approval of the Resolution Plan. The actual amount till the Approval date proposed to be paid is to be paid in full and in priority within 30 days of approval of Resolution Plan by the Adjudicating Authority.
- 41. IA No.518/2023** shall stand disposed off accordingly.
- 42.** A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies.
- 43.** The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.

- 44.** The Resolution Professional is further directed to hand over all records, premises/ factories/documents available with it to the Resolution Applicant to finalize the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises through the Resolution Professional to finalize the further course of action required for starting of operations of the Corporate Debtor.
- 45.** The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 46.** The registry is further directed to send the copy of the order to the IBBI also for their record.
- 47.** Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
- 48.** File be consigned to the record.

*Sd-*

**(Ashish Verma)**  
**Member (Technical)**

*Sd-*

**(Praveen Gupta)**  
**Member (Judicial)**

**Dated: 16<sup>th</sup> May, 2024**