



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

Item No. 207

(IB)-708/ND/2021

**IA-1763/2023, IA-925/2024, IA-987/2024,
IA-989/2024, IA-991/2024, IA-391/2024,
IA-395/2024, IA-396/2024, IA-397/2024,
IA-538/2024, IA-114/2024, IA-3350/2023,
IA-809/2023, IA-221/2023, IA-4381/2023,
IA-6676/2023, IA-566/2024, IA-653/2024,
IA-1233/2024, IA-1546/2024, IA-1547/2024, IA-4648/2022**

IN THE MATTER OF:

Yogesh Gupta

(Sole Proprietor of Rapid Constructions)

... Operational Creditor

Versus

Aadi Best Consortium Private Limited

... Corporate Debtor

AND IN THE MATTER OF IA. NO. 6676/ND/2023:

Mr. Mohit Goyal

(IRP of AADI Best Consortium Private Limited)

Unit No. GF-6, Rishabh Corporate Tower,

Plot No. 16, Karkardooma Community Centre

Delhi -110092

... Applicant

Versus

SKAEL Enterprises Pvt. Ltd.

210, S-524, Second Floor

School Block, Shakarpur,

New Delhi-110092

... Respondent

Order Delivered on: 05.04.2024

UNDER SECTION: 30(6) of IBC, 2016

CORAM:

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

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)



PRESENT:

- For the Applicant** : Mr. Malak Bhatt, Adv. Ms. Samridhi, Adv. In IA No. 221/2023.
Adv. Abhinav Sharma, Adv. Shreesh Pathak Adv. in IA-809/2023.
Adv. Shubham Jain in IA-3350/2023, IA- 391/2024, IA-395/2024, IA-396/2024, IA-397/2024, IA-114/2024.
Adv. Rakesh Kumar, Adv. Ankit Sharma in IA-1763/2023, IA-538/2024, IA-653/2024, IA-4648/2022.
- For the RA** : PCS Shivank Parashar, Adv Raveena Paniker in IA-6676/2023.
- For the RP** : Adv. Sumant Batra, Adv. Nidhi Yadav, Adv. Sarthak Bhandari
- For the Rishabh Buildwell** : Adv. Ravinder Singh, Adv. Aishwarya Bhatia in IA-925/2024, IA-987/2024, IA-989/2024, IA-991/2024, IA-1233/2024, IA-1546/2024.
- For the IRP** : Adv. Sumant Batra, Adv. Arjun Maheshwari along with Mr. Mohit Goyal IRP in person

ORDER

IA-6676/2023: The captioned application has been preferred by the RP, in terms of the provisions of Section 30(6) of IBC, 2016 seeking approval of the Resolution plan, approved by the CoC. The factual backdrop has been narrated in paras 4 to 27 of the application which reads thus:-

“COMMENCEMENT OF CIRP

4. *That the present petition was filed by Mr. Yogesh Gupta, Sole Proprietor, Rapid Constructions, before this Hon'ble Tribunal under Section 9 of the Code read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.*
5. *That the said Application was admitted by this Hon'ble Tribunal vide order dated 31.03.2022 and CIRP with respect to the Corporate Debtor was commenced and Mr. Mohit Goyal, an Insolvency Professional having Registration No. IBBI/IPA-001/IP-P-02395/2021-22/13636 was appointed to act as Interim Resolution Professional (**“IRP”**) of the Corporate Debtor.*



*Copy of Order dated 31.03.2022 is annexed hereto as **ANNEXURE A-4.***

6. *That pursuant to the admission of the present petition under CIRP, Mr. Mohit Goyal (erstwhile IRP) issued the public announcement in two newspapers i.e. "Financial Express" (English) and "Jansatta" (Hindi) inviting all the creditors of Corporate Debtor to submit their claims with the last date for submission of the claim being 15.04.2022. Copy of FORM A published in newspapers on 03.04.2022 is annexed hereto as **ANNEXURE A-5 (COLLY).***
7. *That the first CoC meeting was held on 28.04.2022 wherein IRP constituted the CoC along with recording of their claims as per last date of submission 15.04.2022. Further the IRP took control over all bank accounts and other assets in the name of Corporate Debtor. The IRP also recorded all concerns received from the home buyers, briefed COC about ongoing litigation suits before and ongoing during the CIRP and also provided the tentative timelines and procedure for conducting of CIRP. Further, the following appointments were made/put forth for voting during the 1st CoC meeting:-*
 - a. *Mr. Ashok Kumar Gupta was appointed as the Authorized Representative (AR) of the Home Buyer class with 80% votes;*
 - b. *Mr. Prabhjit Singh Soni, an Insolvency professional as the Process Advisor with effect from 1st April, 2022;*
 - c. *Mr. Gagan appointed as Customer Relations manager'*
 - d. *Mr. Hardeep Singh, appointed as Project Manager to oversee pending work at project site of Corporate debtor;*
 - e. *Appointment of a transactional auditor (if required);*
 - f. *Appointment of registered valuers for determining liquidation value;*



- g. Appointment of a legal advisor for handling of pending litigation disputes in other courts.*
- 8. That vide I.A. No. 2127/2022 the Applicant Edelweiss Asset Reconstruction Company Ltd. (Edelweiss', EARC') had filed an Application seeking setting aside of the decision taken by the CoC during its meeting dated 28.04.2022 and further seeking stay on the operation/ implementation of the decision taken by the CoC during its meeting dated 28.04.2022. This Hon'ble Tribunal after considering the Application dismissed the Application being infructuous.*
 - 9. That Edelweiss filed an Appeal before the Hon'ble National Company Law Appellate Tribunal ('NCLAT') challenging Order dated 09.05.2022 bearing Company Appeal (AT) (Insolvency) No. 583 of 2022. The Hon'ble NCLAT vide its Order dated 23.05.2022 issued notice and directed the IRP not to proceed any further. Copy of order dated 23.05.2022 of Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 583 of 2022 is annexed hereto as **ANNEXURE A-6.***
 - 10. That thereafter, the matter was listed before the Hon'ble NCLAT on 06.07.2022, 12.08.2022, 30.08.2022, 29.09.2022 and 11.10.2022.*
 - 11. That the Hon'ble NCLAT vide its Order dated 13.10.2022 was pleased to reserve its Judgment in the Appeal and vide its Judgment dated 10.11.2022, allowed the Appeal and set aside Order dated 09.05.2022. Copy of Judgment dated 10.11.2022 of Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 583 of 2022 is annexed hereto as **ANNEXURE A - 7 (Colly.)***
 - 12. In view of the same, the Applicant herein, filed an application bearing IA NO. 6105 of 2022 seeking exclusion of 171 days i.e. between order dated 23.05.2022 and 10.11.2022 from the prescribed CIRP period. That the Hon'ble Tribunal was pleased to allow the application and excluded of 171 days i.e. between*



order dated 23.05.2022 and 10.11.2022 from the prescribed CIRP period. Copy of Order dated 06.03.2023 is annexed hereto as **ANNEXURE A-8**.

13. That pursuant to the order of the Hon'ble NCLAT, the second CoC meeting was held on 01.12.2022 wherein the IRP updated the claims received to a total number of 450 claims out of which 433 were filed by the Financial Creditors and 17 claims were filed by the Operational Creditors. Further the IRP apprised the CoC members of the actions taken during CIRP including that he has filed an application under section 19(2) of the code for taking necessary action against the suspended directors of the Corporate Debtor for their non-cooperation and took note of the application filed before the Hon'ble NCLT Court, New Delhi for the exclusion of period from 23.05.2022 to 10.11.2022 as the CIRP proceedings were stayed by the Hon'ble NCLAT during this period.
14. That thereafter, the third CoC Meeting was held on 17.01.2023 wherein the IRP shared an updated list of claims along with revised claim amounts with the members. The IRP further apprised the CoC members about the criteria for the Resolution Applicant's ("RA") for participating in the Expression of Interest ("EOI") of the Corporate Debtor ("CD") and the same was agreed by the respected members. Furthermore, the IRP informed the CoC members regarding the status of various applications filed with the Hon'ble NCLT Court, New Delhi.
15. That the fourth CoC Meeting was held on 02.02.2023 wherein the IRP shared an updated list of claims along with revised claim amounts with the respected members. Furthermore, the IRP apprised the CoC members about the draft FORM-G, Request for Resolution Plan ("RFRP"), Earnest Money Deposit ("EMD"), Performance Guarantee Amount ("PG") and the same was noted by the members. Later the Financial Creditor ("FC") and the



Authorized Representative ("AR") of the Home Buyers raised some queries and the same was answered by the IRP and the said agendas were put for voting.

- 16. That the fifth CoC Meeting was held on 03.03.2023 wherein a detailed discussion was held between the EARC, IRP and the CoC members, on various queries raised by the Authorized Representative of the EARC, such as Appointment of Forensic Auditor, Reconciliation of unsold units and receivables, claim verification, GDA case status etc. The IRP further informed the CoC members that pursuant to the publication of Form-G in the newspapers named Financial Express and Jansatta of Delhi NCR, he has received Expression of Interest (EOI) from PRAs named Prakratee Akshay Enterprise Private Limited and Skael Enterprise Private Limited. The provisional list of eligible PRAs were issued by IRP on 03.03.2023 and IRP will prepare the final list of PRAs on 13.03.2023.*
- 17. Further, the IRP apprised the respected CoC members that the CIRP period of 180 days was expiring on 17.03.2023 and an extension has to be sought from the Hon'ble Adjudicating Authority. After having discussions between the CoC members and the IRP, it was mutually decided to extend the CIRP for a period of 90 days. A resolution was put to vote before the CoC for an extension of the period of CIRP beyond 180 days. The said agenda was put to vote and was passed by the CoC with 100% voting.*
- 18. That in terms thereof, the Applicant filed I.A.No. 1664 of 2023 before this Hon'ble Tribunal for extension of CIRP period from 18.03.2023 to 16.06.2023. This Hon'ble Tribunal vide order dated 21.08.2023 was pleased to extend the said period. Copy of the order dated 21.08.2023 is annexed hereto as ANNEXURE A-9.*



19. *That thereafter, the sixth CoC meeting was held on 08.05.2023 wherein the IRP informed the members of CoC that pursuant to the final list of PRAs issued by the IRP, one PRA named 'Skael Enterprises Private Limited' has submitted a Resolution Plan along with the EMD to the Resolution Professional. Further in order to maintain the transparency of the CIRP procedure, the IRP opened the Resolution Plan in front of the CoC members and the PRA. The IRP and CoC members checked the necessary documents attached with the plan and later upon request of the IRP, the PRA explained and summarized the plan to the CoC members for better understanding and clarity.*
20. *That during the meeting, the CoC members requested the RP to send the Resolution Plan along with Minutes of the Meeting ('MoM'), transaction audit report and valuation report to all the CoC members so that the same can be available to every member for better discussion and voting. Further the IRP updated the CoC members regarding the status of the pending applications with the Hon'ble NCLT Court and Hon'ble High Court respectively.*
21. *That thereafter, the seventh CoC meeting was held on 13.06.2023 wherein the IRP informed the members that the CIRP was expiring on 16.06.2023 and an extension has to be sought from the Hon'ble Tribunal. After having discussions between the CoC members and the IRP, it was mutually decided to extend the CIRP for another period of 60 days. A resolution was put to vote before the CoC for an extension of the period of CIRP beyond 270 days (180 days + 90 days extension). The said agenda was put to vote and was passed by the CoC with 100% voting.*
22. *That in terms thereof, the Applicant filed I.A. No. 3525 of 2023 before this Hon'ble Tribunal for extension of CIRP period from 17.06.2023 to 16.08.2023. This Hon'ble Tribunal vide order dated 26.10.2023 was pleased to extend the said period. Copy*



of the order dated 26.10.2023 is annexed hereto as ANNEXURE A-10.

23. *Thereafter, the Eighth CoC Meeting was held on 16.08.2023 and was continued on 18.08.2023 wherein the IRP apprised the CoC members that he has received the Revised Resolution Plan from the PRA (Skael Enterprises Private Limited) and the same was discussed with the CoC members. The AR of the Home Buyers during the CoC meeting on 16.08.2023 requested the IRP to further continue the meeting on 18.08.2023 as he needed time to study the Revised Resolution Plan. The IRP and other members agreed to the request and the meeting was further continued on 18.08.2023 wherein, the CoC further discussed the Resolution Plan and agreed that if the Resolution plan is not approved in the voting then the Liquidation of the Corporate Debtor will be discussed in the next CoC meeting.*
24. *Further, during the meeting, the IRP informed the CoC members that the CIRP period was expiring on 16.08.2023 and an extension has to be sought from the Hon'ble Tribunal. After having discussions between the CoC members and the IRP, it was mutually decided to extend the CIRP period for another period of 30 days. A resolution was put to vote before the CoC for an extension of the period of CIRP beyond 330 days (180 days + 90 days + 60 days' extension). The said agenda was put to vote and the same was passed by the CoC with 100% voting. In terms thereof, the Applicant filed I.A.No.5367 of 2023 before this Hon'ble Tribunal for extension of CIRP period by 30 days i.e. from 17.08.2023 to 16.09.2023.*
25. *Further, the Resolution plan was put before the CoC for voting and the same was approved by the CoC with 100% voting.*
26. *That in terms thereof, the Letter of Intent by the CoC was issued to the Successful Resolution Applicant ("SRA") and the same was accepted by the Successful Resolution Applicant i.e. the*



Respondent herein. Copy of the Letter of intent dated 20.09.2023 is annexed hereto as ANNEXURE A-11.

27. That in the interim, this Hon'ble Tribunal vide order dated 20.11.2023 was pleased to extend the said period of 30 days i.e. from 17.08.2023 to 16.09.2023. Copy of the order dated 20.11.2023 is annexed hereto as ANNEXURE A-12.”

2. The brief qua the Resolution plan is contained in paras 28 and 29 of the application, which reads read thus:

“BRIEF OF THE RESOLUTION PLAN

28. That the brief contours of the Resolution plan submitted by the Respondent as approved by the CoC are as under: -

a. That the CoC of the Corporate Debtor constitutes the following:-

Sr. No.	Particulars of Claims	No. of Claims	Claims Admitted
1.	Unsecured financial creditors belonging to any class of creditors	454	454
2.	Secured financial creditors (other than financial creditors belonging to any Class of Creditors)	1	1
3.	Unsecured financial creditors (other than financial creditors belonging to any class of creditors, being related parties)	6	-
4.	Operational creditors (other than Workmen and Employees)	17	17
Total		478	472

b. That the Resolution Plan purposes to pay the claimed amount for the respective class of creditors as under (Clause 8.3.2 of Resolution Plan): -



Sr. No.	Type of Creditors	Claims received as per IM	Claim Amount admitted as Per IM	Amount proposed to be paid as per Plan
1.	Insolvency Resolution Process Cost	-	-	1,55,23,538/-
2.	Secured Financial Creditors	55,61,81,028	55,61,81,028	20,00,00,000
3.	Financial Creditors in Class (Allottees/ Flat Owners) – I. Whose Possession has been handed over to Flat Owners II. Whose Possession of flats to Flat Owners is pending as on CIRP date III. Cancelled Units (Having valid BBA) IV. Cancelled Units (not having valid BBA)	2,19,35,55,454	76,92,94,658	100% of <u>Admitted Principal Amount</u> as adjustment against allotted units in the project within the timelines envisaged in the plan or 40% of the Admitted Principal Amount as cash refund in cases of cancellation where the Allottees do not opt for the adjustment, as the case may be.
				Please refer clause 8.3.2 for further information.
4.	Other Unsecured Creditors	10,80,00,000	0	0
5.	Operational Creditors – Supplier of Goods and Services	7,17,27,704	1,94,33,122	9,00,000
6.	Operational Creditors – Government Dues/regulatory dues	64,66,86,629	64,66,86,629	2,50,00,000
7.	Operational Creditors – Workmen and Employees	Nil	Nil	Nil
8.	Construction and Development Cost	-	-	20,00,00,000
9.	Contingent Fund	-	-	20,00,000
Total		357,61,50,815	199,15,95,437	44,34,23,538

*Any difference in CIRP cost shall be borne by the Insolvency Resolution Process.



**Any difference in CIRP cost shall be adjusted firstly from the contingency fund & any subsequent cost overruns shall be adjusted from the amount payable to the Unsecured Financial Creditors and their payments shall be proportionately reduced to this effect. Lastly, the RA shall bear any CIRP Costs, which still remain unpaid.*

- c. That the RA proposes to infuse the funds in the form of equity/ debt or quasi equity / debt. The Resolution Applicant shall make payments as follows:
 - i. Of the Upfront Payment Amounts to the Financial Creditors from its own sources / introduction of equity / debt etc. Balance cost of construction from its own sources, home buyer advances, maintenance cost, registry cost, raising debt from internal sources.*
 - ii. Any shortfall in the funding of the balance cost of construction due to non- payment / delayed payment by the existing Homebuyers would be covered by arranging construction finance from any of the own sources/leading Banks / NBFC's / SWAMIH Fund.**
- d. Upon perusal of the Information Memorandum, it is evident that the Liquidation Value is not sufficient even to cover the debt of the Financial Creditors of the Company in full; therefore, the Liquidation Value of the other creditors or stakeholders of the Company is "NIL".*
- e. Therefore, the Resolution Applicant proposes to pay an amount of Rs.20,00,00,000/- to the secured Financial Creditor in full and final settlement for their dues. Further, the Resolution Applicant proposes to pay an amount of Rs. 9,00,000/- to the Operational Creditors in full and final settlement for their dues.*
- f. Further, the Resolution Applicant proposes to pay a sum of Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lakhs Only) to Operational Creditors Government Dues/regulatory dues*



being Ghaziabad Development Authority and shall be paid in prior to the payment of Financial Creditors.

g. Further, the Resolution Applicant has earmarked an amount of Rs. 20,00,00,000/- towards Construction and Development Cost for the completion of the present project and has made a contingency reserve of an amount of Rs.20,00,000/-.

3. In para 30 of the application, the RP has averred that the Resolution Plan results in change in management and control of the Corporate Debtor satisfy the conditions stipulated in Section 32(A) of the Code, thus the SRA would be entitled to seek benefit of the reliefs and concession provided in terms of Section 32(A) of IBC, 2016.

4. The clause 8.3.3 of the plans which contain the detailed financial proposal to settle with all stakeholders of the CD including the FC's, OC's and Statutory Authorities, indicate that the CIRP cost would be paid in full in priority over the payment of other debts of the CD. The column 5 of Clause 8.3.3 also indicates that the provisions of Section 30(2)(b) of IBC, 2016 has been complied with. The Clause further indicates that the OC would be paid in priority over the other debts payable by the CD. Mr. Sumant Batra, Ld. Counsel for the RP submitted across the bar that there is no dissenting FCs qua the CD, since the Resolution Plan has been approved by 100% votes. The column 5 of clause 8.3.3 of the Resolution Plan reads thus:

5	Proposal for payment to Operational Creditors (excluding workmen, employee and statutory dues)	Proposal for Operational Creditors (excluding workmen, employee & Statutory dues):- 1) As per Section 30(2)(b) of the Code, the Resolution Plan to provide for the payment of debts of Operational Creditors in such manner as may be specified by the Board which shall not be less than-
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	a. the amount to be paid to such creditors in the event of a liquidation of the Corporate Debtor under section 53; OR b. the 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 order of priority in sub-section (1) of section 53 (Whichever is higher)
	2) With reference to the provisions of Section 30(2)(b) of the Code, as per the estimate by the Resolution Applicant in relation to assets of the Corporate Debtor, the amount to be paid to Operational Creditors in the event of a Liquidation of the Corporate Debtor under Section 53 is NIL. 3) As per the information received from the Interim Resolution Professional under IM the claim for an amount of Rs. 1,94,33,122/- has been admitted by the IRP. However, the Resolution Applicant proposed that the Operational Creditors (excluding workmen, employee & Statutory dues) shall be paid Rs. 9,00,000/- (Rupees Nine Lakh only) on pro-rata basis as per their share in the List of Creditors prepared by IRP as full & final settlement of their respective claims. The Said amount shall be paid in priority over the Secured Financial Creditors within 30 days from the Effective Date.
	4) On and with effect from the Settlement Date, all Claims, Debts and dues of the Operational Creditors (excluding workmen, employee & Statutory dues) shall stand satisfied and extinguished, and no Claim, Debt or Due shall subsist against the Corporate Debtor and the Resolution Applicant. 5) It is clarified that in the event any Claim of the Operational Creditors (excluding workmen, employee & Statutory dues) are not submitted to the Interim Resolution Professional prior to the approval of the Resolution Plan by the CoC or such Claim is not admitted or rejected by the Interim Resolution Professional, such Operational Creditors (excluding workmen, employee & Statutory dues) shall not be entitled to receive payments, if any, under the Resolution Plan with respect to such Claims. 6) Except to the extent of payments above to be made, the Corporate Debtor shall have no liability towards any Operational Creditors (excluding workmen, employee & Statutory dues) with respect to their debt, be it claimed or unclaimed. On and from the date of payments specified hereinabove, all such liabilities shall immediately, irrevocably and unconditionally stand fully and finally discharged and settled with there being no further claims whatsoever, and all forms of security created, if any, or suffered to exist or rights to create such a security, to secure any obligations towards the Operational Creditors (excluding workmen, employee & Statutory dues) shall immediately, irrevocably and unconditionally stand released and discharged and the respective creditors shall waive all rights to invoke or enforce them. 7) In accordance with the forgoing, all claims (whether final or contingent, whether disputed or undisputed



		and whether or not notified to or claimed against the Corporate Debtor) of all the Operational Creditors (excluding workmen, employee & Statutory dues) of the Corporate Debtor shall stand fully and finally discharged & settled. Any and all legal proceedings initiated before any forum by or on behalf of the Operational Creditors (excluding workmen, employee & Statutory dues), to enforce any rights or claims against the Corporate Debtor shall be deemed to be immediately, irrevocably and unconditionally withdrawn, and extinguished upon full payment to the Operational Creditors (excluding workmen, employee & Statutory dues) as envisaged in this Plan and in this regard, the Corporate Debtor/Resolution Applicant will file requisite application(s) before the appropriate forum(s) and the Operational Creditors (excluding workmen, employee & Statutory dues), shall be under an obligation to provide all necessary assistance and take steps to ensure the withdrawal / abatement of such legal proceedings.
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5. The Clause 9.3 of the Resolution Plan contained the provision regarding the implementation of the Resolution Plan. The clause 9.3 of the Resolution Plan reads thus:-

“9.3 Supervision of the implementation of this Resolution Plan

9.3.1 The implementation process, its supervision and detailed mechanism regarding the management and control of Corporate Debtor has been discussed in detail in this Resolution Plan.

9.3.2 It is clarified that to effectively manage and control the affairs of the Corporate Debtor and to ensure effective implementation of this Resolution Plan, the Resolution Applicant propose to constitute a Plan Monitoring Committee.

9.3.3 Resolution Applicant has proposed the detailed steps for taking over and effective control of the Project in this Resolution Plan.”



6. The Clause 9.2 of the Resolution Plan contain the provisions regarding management and control of the CD. The clause 9.2 reads thus:-

“9.2 Management and Control of the Corporate Debtor

9.2.1 *On and from the Effective Date, the Corporate Debtor will continue to be managed and controlled in accordance with the provisions of this Resolution Plan. It is further proposed that upon the Effective Date, the existing Board of Directors of the Corporate Debtor will be replaced by a new Board of Directors constituted by the Resolution Applicant in compliance with Applicable Law and in accordance with the provisions of this Resolution Plan.*

9.2.2 *Further, the Resolution Applicant is having in-house technical and construction expertise, with adequate expertise, equipment, and project management skills to take up and complete the balance construction work in the Project.”*

7. The 6.2 & 6.3 indicate the infusion of fund by the SRA. The clauses reads thus:-

“6.2. Infusion of the Successful Resolution Applicant Contribution (SRAC):

6.2.1. *The RA proposes to infuse a minimum amount of the Rs. 5,00,00,000/- (Rupees Five Crores Only) into the Corporate Debtor towards the Successful Resolution Application Contribution in accordance with stipulations laid out in the RFRP issued by the IRP, within 15 days of the Effective Date.*

6.2.2. *The repayment of such infusion of SRAC shall be in accordance with the stipulations laid out in the RFRP issued by the IRP*

6.2.3. *Rs 1,00,00,000/- (Rupees One Crores Only) out of the aforementioned SRAC shall be infused as subscription to*



freshly issued fully paid-up equity share capital in the CD by the RA.

6.2.4. Rs 4,00,00,000/- (Rupees Four Crores Only) out of the aforementioned SRAC shall be infused as subordinate unsecured debt into the CD by the RA, the proposed new holding company of the CD.”

8. Mr. Sumant Batra, Ld. Counsel for the RP could produce before us a copies of FD dated 22.09.2023, 25.09.2023 & 11.02.2024 to espouse that the SRA has furnished sufficient performance security. The FDs reads thus:-

Pre-mature closure यूनिऑन बैंक ऑफ इंडिया Union Bank of India
भारत सरकार का उपक्रम A Government of India Undertaking
आन्ध्रा Andhra

शाखा/ Branch NEW DELHI-LAXMINAGAR Print Sol: 05062

मार्गदर्शक: AUTHORIZED SIGNATORY

ईएन/टीडीआर/डी/क्र. EN/TDR/D/No. 606689 तिथि/Date: 30-03-2024
11-02-2024

Received from M/S AADI BEST CONSORTIUM PVT LTD प्रभावी तिथि Effective Date:

₹ One Crore Two Lakh Ninety One Thousand Seventy Four only.

Under SHORT TERM DEPOSIT (II)
के अंतर्गत उक्त योजना पर लागू निबंधनों एवं शर्तों के अधीन प्राप्त है
Subject to the terms and conditions applicable to the scheme.

खाता क्रमांक 050623230000544
Account No.
ग्राहक आईडी 1000718171
Customer ID
जमा राशि 1.02.91.074.00
Deposit Amt.
अवधि 0 Y 0 M 48 D
Period
ब्याज दर % प्र.व. 4.50
Interest % p.a.
देय तिथि 30-03-2024
Due Date
परिपक्वता मूल्य*
Maturity Value*
प्रतिफल % प्र.व.
Yield % p.a.
*केवल चक्रवृद्धि ब्याज योजना में लागू
*(In case of compounding interest schemes only)

प्राधिकृत हस्ताक्षर/Authorized Signatory प्राधिकृत हस्ताक्षर/Authorized Signatory

XXX XXX XXX



शाखा/ Branch

NEW DELHI-LAXMINAGAR

Print Sol: 05062

ईएन/टीडीआर/डी/क्र. EN/TDR/D/No.

606211

Received from

M/S AADI BEST CONSORTIUM PVT LTD

तिथि/Date:

25-09-2023

प्रभावी तिथि Effective Date:

₹ One Crore only.

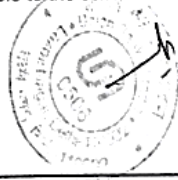
Under

FIXED DEPOSIT(FDI)

के अंतर्गत उक्त योजना पर लागू निबंधनों एवं शर्तों के अधीन प्राप्त।
Subject to the terms and conditions applicable to the scheme.



प्राधिकृत हस्ताक्षरी Authorised Signatory



प्राधिकृत हस्ताक्षरी Authorised Signatory

खाता क्रमांक Account No.	050623020000714
ग्राहक आईडी Customer ID	1000718171
जमा राशि Deposit Amt.	1,00,00,000.00
अवधि Period	0 Y 0 M 399 D
ब्याज दर % प्र.व. Interest % p.a.	7.00
देय तिथि Due Date	25-10-2023
परिपक्वता मूल्य* Maturity Value*	
प्रतिफल % प्र.व. Yield % p.a.	8.48%

*केवल चक्रवृद्धि ब्याज योजना में लागू
(In case of compounding interest schemes only)

क्र. 3. / P.T.O.

XXX XXX XXX

Pre-mature closure penalty is applicable

शाखा/ Branch

NEW DELHI-LAXMINAGAR

Print Sol: 05062

Mandate EXECUTOR/Administrator

ईएन/टीडीआर/डी/क्र. EN/TDR/D/No. 606212

Received from

M/S AADI BEST CONSORTIUM PVT LTD

तिथि/Date:

25-09-2023

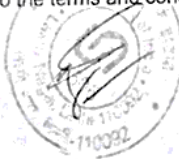
प्रभावी तिथि Effective Date:

25-09-2023

₹ One Crore only.

Under

के अंतर्गत उक्त योजना पर लागू निबंधनों एवं शर्तों के अधीन प्राप्त।
Subject to the terms and conditions applicable to the scheme.



प्राधिकृत हस्ताक्षरी Authorised Signatory



प्राधिकृत हस्ताक्षरी Authorised Signatory

खाता क्रमांक Account No.	050623020000717
ग्राहक आईडी Customer ID	1000718171
जमा राशि Deposit Amt.	1,00,00,000.00
अवधि Period	0 Y 0 M 399 D
ब्याज दर % प्र.व. Interest % p.a.	7.00
देय तिथि Due Date	28-10-2024
परिपक्वता मूल्य* Maturity Value*	
प्रतिफल % प्र.व. Yield % p.a.	

*केवल चक्रवृद्धि ब्याज योजना में लागू
(In case of compounding interest schemes only)

क्र. 3. / P.T.O.



9. Mr. Sumant Batra, Ld. Counsel appearing for the RP could also draw our attention to the affidavit filed on behalf of SRA to indicate that the SRA does not suffer from any ineligibility in terms of the provisions of Section 29A of IBC, 2016. The relevant excerpt of the affidavit filed in this regard reads thus:

APPENDIX 10: 29A AFFIDAVIT

1. I state that an insolvency resolution process has been initiated against Aadi Best Consortium Private Limited) (**Corporate Debtor**) vide order dated 13.05.2022 (**Admission Order**) passed by National Company Law Tribunal, Delhi Bench-IV (**Adjudicating Authority**) in an application filed by Financial creditor against the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**).
2. I state that the present affidavit is sworn by me on behalf of the Resolution Applicant in compliance of section 29A of the IBC.
3. I on behalf of the Resolution Applicant and any other person atting jointly or in concert with the Resolution Applicant hereby confirm that:
 - (i) The Resolution Applicant and any connected person as per the Explanation I provided under section 29A of the IBC is not an undischarged insolvent; or
 - (ii) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC, is not identified as a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949; or
 - (iii) At the time of submission of the Resolution Plan, the account of the Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC or an account of the corporate debtor under the management or control of such person of whom such person is a promoter, IBC is not classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or guidelines of a financial sector regulator issued under any other law at the time being in force and at least a period of one year or more has lapsed from the date of such classification till the date of commencement of corporate insolvency resolution process of the corporate debtor and that I have not failed to make the payment of all overdue amounts with interest thereon and charges relating to non-performing asset before submission of Resolution Plan; or
 - (iv) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not been convicted for any offence punishable with imprisonment for 2 years or more under any Act specified in the Twelfth Schedule or for seven years or more under any law for the time being in force or a period of two years has expired from the date of release of such imprisonment; or
 - (v) The Resolution Applicant and any connected person as per Explanation I provided under



section 29A of the IBC have not been disqualified to act as a director under the Companies Act 2013; or

- (vi) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not been prohibited by the Securities and Exchange Board of India from trading in securities or assessing the securities markets; or
- (vii) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not indulged in preferential transaction or undervalued transaction or fraudulent transaction in respect of which an order has been made by the Adjudicating Authority under the IBC; or
- (viii) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not executed a guarantee in favor 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 IBC and no such guarantee has been invoked by the creditor or remains unpaid in full or part; or
- (ix) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC are not subject to any disability, corresponding to clauses mentioned above under any law in a jurisdiction outside India.
 - (i) That the Resolution Applicant unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected persons as required under Regulation 38(3) of the CIRP Regulations.
 - (ii) That the Resolution Applicant unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected persons as per the provisions of the CIRP and the rules and regulations framed thereunder to submit a resolution plan and that it shall provide all documents, representations and information as may be required by the RP or the CoC to substantiate to the satisfaction of the RP and the CoC that the Resolution Applicant is eligible under the IBC and the rules and regulations there under to submit a resolution plan in respect of Corporate Debtor.
 - (iii) That the Resolution 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 affidavit.
 - (iv) That the Resolution Applicant understands that the CoC and the RP may evaluate the resolution plan to be submitted by the Resolution 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 Resolution Applicant under this affidavit.
 - (v) That the Resolution Applicant agrees that each member of the CoC and the RP are entitled to rely on the statements and affirmations made in this affidavit for the purposes of determining the eligibility and assessing, agreeing and approving the resolution plan submitted by the Resolution Applicant.
 - (vi) That in the event any of the above statements are found to be untrue or incorrect, then the Resolution Applicant unconditionally agrees to indemnify and hold harmless the RP and each member of the CoC against any losses, claims or damages incurred by the RP and / or the members of the CoC on account of such ineligibility of the Resolution Applicant.

10. As can be seen from the Clause-7 of the certificate given by the RP on prescribed form viz. Form-H, the SRA has proposed to pay much less than the amount admitted by the RP, to the different stakeholders. The Clause-7 reads thus:-



7. The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs.)

Sl. No.	Category of Stakeholder *	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	N/A	N/A	N/A	N/A
		(b) Other than (a) above: who voted in favour of the resolution Plan (Secured FC)	55,61,81,028	55,61,81,028	20,00,00,000	35.95
		(ii) who voted in favour of the resolution plan – FC home buyers class	2,19,35,55,454	76,92,94,658	Possession Will be given to these unit holders	
		Total[(a) + (b)]	2,74,97,36,482	1,32,54,75,686		
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	N/A	N/A	N/A	N/A
		(b) Other than (a) above:	N/A	N/A	N/A	N/A
		(9) who did not vote in favour of the resolution Plan				
		(ii) who voted in favour of the resolution plan				

TRUE COPY



		Total[(a) + (b)]	N/A	N/A	N/A	N/A
3	Operational Creditors	(a) Related Party of Corporate Debtor	N/A	N/A	N/A	N/A
		(b) Other than (a) above:				
		(i) Government & Regulatory Dues	64,66,86,629	64,66,86,629	2,50,00,000	3.86
		(ii) Workmen	Nil	Nil	Nil	
		(iii) Employees	Nil	Nil	Nil	
		(iv) other OC	7,17,27,704	1,94,33,122	9,00,000	4.63
		Total[(a) + (b)]	71,84,14,333	66,61,19,751	2,59,00,000	3.88
4	Other debts and dues	Contingency funds			20,00,000	
		CIRP cost			1,55,23,538	
		Construction Cost			20,00,00,000	
Grand Total			357,61,50,815	199,15,95,437	44,34,23,538	

11. But as per the law laid down by Hon'ble Supreme Court it is not for this Tribunal to interfere with the same and it is for the Committee of Creditors to take a call in this regard. In this context it would not be out of place to refer to the Judgement of Hon'ble Supreme Court passed in **Vallal RCK vs. M/s Siva Industries and Holdings Limited and Others**, (Civil Appeal Nos. 1811-1812 of 2022). The relevant excerpts of the Judgement thus:-

*"21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of **K. Sashidhar v. Indian Overseas***



Creditors of Essar Bank and Others, Committee of Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.

.....

27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of ***Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another*** :

“95.However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

12. It has been ruled by Hon’ble Supreme Court in ***Ebix Singapore Private Limited Vs Committee of Creditors of Educomp Solutions Limited & Anr.***, (Civil Appeal No. 3224 of 2020) that while considering an application for approval of plan, this Adjudicating Authority need only to see as to whether there is compliance of the provisions of Section 30(2) of IBC, 2016. Para 153 of the judgment reads thus:-



“153 Regulation 38(3) mandates that a Resolution Plan be feasible, viable and implementable with specific timelines. A Resolution Plan whose implementation can be withdrawn at the behest of the successful Resolution Applicant, is inherently unviable, since open-ended clauses on modifications/withdrawal would mean that the Plan could fail at an undefined stage, be uncertain, including after approval by the Adjudicating Authority. It is inconsistent to postulate, on the one hand, that no withdrawal or modification is permitted after the approval by the Adjudicating Authority under Section 31, irrespective of the terms of the Resolution Plan; and on the other hand, to argue that the terms of the Resolution Plan relating to withdrawal or modification must be respected, in spite of the CoC’s approval, but prior to the approval by the Adjudicating Authority. The former position follows from the intent, object and purpose of the IBC and from Section 31, and the latter is disavowed by the IBC’s structure and objective. The IBC does not envisage a dichotomy in the binding character of the Resolution Plan in relation to a Resolution Applicant between the stage of approval by the CoC and the approval of the Adjudicating Authority. The binding nature of a Resolution Plan on a Resolution Applicant, who is the proponent of the Plan which has been accepted by the CoC cannot remain indeterminate at the discretion of the Resolution Applicant. The negotiations between the Resolution Applicant and the CoC are brought to an end after the CoC’s approval. The only conditionality that remains is the approval of the Adjudicating Authority, which has a limited jurisdiction to confirm or deny the legal validity of the Resolution Plan in terms of Section 30 (2) of the IBC. If the requirements of Section 30(2) are satisfied, the Adjudicating Authority shall confirm the Plan approved by the CoC under Section 31(1) of the IBC.”

Thus, we may not comment upon the amount offered to be paid by SRA to various stakeholders.



13. In the meeting of CoC held on 16.08.2023, the plan was approved by CoC with 100% voting share. The minutes of the meeting of CoC placed on record as Annexure A-2 to the application reads thus:-

AGENDA ITEM NO. A-5 – DISCUSSED ON 16TH AUGUST, 2023

To discuss the Revised Resolution Plan received from the PRA.

The Interim Resolution Professional informed the CoC members that he has received the Revised Resolution Plan from the PRA ("Skael Enterprise Private Limited") as per the discussion held in the formal and informal meetings. The PRA has submitted the revised resolution plan and the compliance certificate is attached herewith as per section 30(2) of the IBC, 2016.

The Interim Resolution Professional further certified that the plan provides for the terms of the payment, implementation scheme, the management and control of the business of the corporate debtor during the term of the plan and adequate means for supervising its implementation. As per the Regulation 38 i.e. mandatory contents of the Resolution Plan and Section 30(2) (d) of the IBC, 2016, the resolution plan provides for the implementation and supervision of the Resolution Plan and as per Resolution plan, there will be a monitoring committee for the supervision and implementation of the Resolution Plan, which may comprise of the Interim Resolution Professional i.e., Mr. Mohit Goyal.

Scope of monitoring committee will be to take all such decisions and measures for the effective compliance of the Resolution Plan coupled with addendum/clarifications/LoI in its letter and spirit in the interest of the company. Monitoring Committee will review the Performance Security amount after disbursal of Amount as per the plan. The RA will also provide for the Performance Security as per the Regulation 36B (4A) of the CIRP Regulations, of Rs.3 Crores (3,00,00,000/-) as per the RFRP, which will be duly taken care by the monitoring Committee while implementation of the Resolution Plan. The IRP shall issue a Letter of Intent to the Successful Resolution Applicant ("SRA") after the Plan is approved by the CoC Voting.

That Interim Resolution Professional also confirmed that the Resolution Plan has dealt with the interests of each stakeholder, such as financial creditors, operational creditors of the corporate debtor as per the requirement of Regulation 38(1A) of the CIRP Regulations and undertaking also have been obtained from the RA regarding compliance of Section 30(2) of the IBC, 2016 and Regulation 38 of the CIRP Regulations.

CoC noted the same.

The Agenda has been put for voting.



14. The resolution plan was put to vote in the meeting; The voting result is placed on record at Page 187 of the Application, and reads thus:-



AADI BEST CONSORTIUM PRIVATE LIMITED
UNDER CIRP
 UNIT NO. GF-6, RISHABH CORPORATE TOWER, PLOT NO. 16, KARKARDOOMA COMMUNITY CENTRE,
 DELHI 110092
 CIN – U70100DL2011PTC228100
MOHIT GOYAL
 (INTERIM RESOLUTION PROFESSIONAL)
 IBBI/PA-001/IP-P02395/2021-2022/13636
 17, LGF, DEFENCE ENCLAVE, NEAR PREET VIHAR, DELHI 110092
 EMAIL –IRPAADIBEST@GMAIL.COM | MOBILE – 9354014076
 WEBSITE – WWW.IRPCLOUD9.COM

187

**VOTING RESULTS FOR THE 8TH MEETING OF THE COMMITTEE OF CREDITORS (COC) OF
 AADI BEST CONSORTIUM PRIVATE LIMITED HELD ON 16.08.2023 BY E-VOTING DONE
 FROM 21.08.2023 01 PM TO 19.09.2023 5:00 PM.**

It was unanimously concluded during the 8th COC meeting that voting under regulation 25(5) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP") shall be conducted via electronic means from 21.08.2023 01 PM to 19.09.2023 5:00 PM.

VOTING RESULTS

The results of the voting is as follows:

Voting Item	Voting Item	Voting % Required	Voting % Achieved	Decision	Annexure
1	AGENDA ITEM NO. B-1 TO VOTE ON THE COMPLIANT RESOLUTION PLAN GIVEN BY THE PROPOSED RESOLUTION APPLICANT SKAEL ENTERPRISE PRIVATE LIMITED <i>"RESOLVED THAT, the Resolution Plan submitted by Skael Enterprise Private Limited (hereinafter to be referred as the Proposed Resolution Applicant (PRA) including further submissions (based upon the negotiations with the COC members), which is duly compliant under Section 30(1) and (2) of IBC, 2016 and regulation 38 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and which is feasible and viable and therefore the Resolution Plan of Skael Enterprise Private Limited be and is hereby approved.</i> <i>RESOLVED FURTHER THAT, the IRP is hereby directed to file an application before the Hon'ble NCLT pursuant to Section 30(6) of the IBC, 2016 seeking approval on the Resolution Plan by the COC Members.</i> <i>RESOLVED FURTHER THAT, the IRP is authorized to finalize the terms of the Letter of Intent (LOI) as per the resolution plan for issuing Letter of Intent to the successful Resolution Applicant (SRA) and the IRP shall issue the Letter of Intent (LOI) upon the approval of the Resolution Plan by the CoC members."</i>	66%	100%	Approved	1



15. The contentious issue is as to whether the plan can be found vitiated in terms of the provisions of Section 30(2)(e) of IBC, 2016. The Ld. Counsel for the Applicant in IA-114/2024 viz. Everlike Real Estate & Developers Pvt. Ltd. argued with vehemence that the RP is not justified in treating the claim of the Applicant in category 4 of the classification of the FC in a class as done by it.



Mr. Dwivedi, Ld. Counsel appearing for the Applicant could draw our attention to the Clause 4 of the Resolution Plan and submitted that once the BBA entered into between the CD and the Applicant was valid, the SRA is not justified in treating the Applicant as such FC in a class qua which the allotment unit was cancelled and there was no valid BBA. In his submission, the issue cannot be nixed merely by saying that the approval of plan is in exercise of the commercial wisdom of the CoC and this Tribunal cannot interfere with the same. The relevant excerpt of the plan, where the categorisation of the FCs in a class has been done reads thus:-

Sr. No.	Type of Creditors	Claims received as per IM	Claim Amount admitted as Per IM	Amount proposed to be paid as per Plan
1.	Insolvency Resolution Process Cost	-	-	1,55,23,538/-
2.	Secured Financial Creditors	55,61,81,028	55,61,81,028	20,00,00,000
3.	Financial Creditors in Class (Allottees/ Flat Owners) – I. Whose Possession has been handed over to Flat Owners II. Whose Possession of flats to Flat Owners is pending as on CIRP date III. Cancelled Units (Having valid BBA) IV. Cancelled Units (not having valid BBA)	2,19,35,55,454	76,92,94,658	100% of <u>Admitted Principal Amount</u> as adjustment against allotted units in the project within the timelines envisaged in the plan or 40% of the <u>Admitted Principal Amount</u> as cash refund in cases of cancellation where the Allottees do not opt for the adjustment, as the case may be.

16. It is the submission of Mr. Arpit Dwivedi, Ld. Counsel for the Applicant that as far as RP is concerned, he had admitted the claim of the Applicant in



full i.e. to the extent of Rs. 10 crores. In his submissions could by the Applicant be included even in third category, he could at least get 40% of his dues but being included in category forth, he is getting only 5% of the amount paid to the CD.

17. On a pointed query to show the BBA, Mr. Arpit Dwivedi, Ld. Counsel could draw our attention to the MoU placed on record as Annexure A-2 to the application. He submitted that irrespective of the nomenclature or heading of the document, the MoU dated 24.05.2016 need to be treated as a BBA and the MoU being not cancelled, the Applicant could not have been included in the fourth category (supra) and should have been included in third category only.

18. We perused the MoU along with Mr. Arpit Dwivedi, Ld. Counsel for the Applicant and Mr. Sumant Batra, Ld. Counsel for the RP. Though the recital (c) of the MoU says that the company had approached the allottee and there could be a proposal to transfer various shops/commercial units in the project on upper ground floor of the project aggregating to an area of approximately 25,000 sq. feet to it but the clause 2.1 & 2.2 do not talk of any units but talks of area only. Further, the clause 2.4 of the MoU provides that the company/CD should arrange renting of the area referred to in the MoU on behalf of the allottee and shall ensure that the rent at which the said area is leased out should be at least Rs. 60 per sq. ft. i.e. Rs. 15 lacs per month. The Clause (c) 2.1, 2.2, 2.4 & 2.5 of the MoU reads thus:-

2. TERMS OF MOU

- 2.1 The Parties agree that the possession of the Said Area shall be transferred and conveyed to and in favour of the Allottee by 31st December, 2017 ("Date of Possession") with all right and interest connected therewith to the Allottee. The said Date of Possession can be extended for a further period upon the mutual consent of the Parties.
- 2.2 The Parties agree and undertake to enter into a conveyance deed for transfer of the Said Area by or on the Date of Possession or any later date on which the Company shall transfer the possession in favour of the Allottee.



- 2.4 The Company shall arrange renting of the Said Area on behalf of the Allottee and shall ensure that the rent at which the Said Area is leased shall be at least Rs. 60/- per sq. ft; i.e. Rs. 15,00,000/- per month for the Said Area. The Company hereby acknowledges and confirms that the amount of Total Consideration has been arrived at keeping in view that the rent to be fetched from the Said Area shall be at least Rs 60/- per sq.-ft. per month. In the event the actual rent realized from the Said Area is different than Rs 60/- per sq. ft. per month, the amount of Total Consideration shall be adjusted in the following manner and the differential amount shall be adjusted/paid along with the Balance Consideration:
- 2.4.1 If the actual rent at which the Said Area is leased is less than Rs 60/- per sq. ft. per month, the amount of Total Consideration shall be reduced in a pro rata manner (i.e Total Consideration*Actual Rent/60); and
- 2.4.2 If the actual rent at which the Said Area is leased is more than Rs 60/- per sq. ft. per month, the amount of Total Consideration shall be increased in a pro rata manner (i.e Total Consideration*Actual Rent/60).
- 2.5 Till such time the Said Area is leased out in entirety, the Company shall pay an interest at the rate of 18% per annum to the Allottee on the amounts paid under this MoU to the Company for the period starting from execution hereof till the date on which the entire Said Area is leased out.

19. The MoU indicates that the Applicant is a sort of investor in the project. The position is further amplified from Clause 2.5 of the MoU, which provides that till the leasing out of the area mentioned in the MoU, the CD was liable to pay the interest at the rate of 18% per annum to the allottee. The clause reads thus:-

“2.5 Till such time the Said Area is leased out in entirety, the Company shall pay an interest at the rate of 18% per annum to the Allottee on the amounts paid under this MoU to the Company for the period starting from execution hereof till the date on which the entire Said Area is leased out.”

20. As can be seen from the provisions of Section 13(2) of the Real Estate (Regulation and Development) Act, 2016, the agreement for sale referred to in sub-section (1) of Section 13 should be in such form as may be prescribed and shall specify the particulars of developments of the project including the construction of building and apartments along with specification and internal development works and external development works, the dates and the manner by which the payment towards the cost of the apartments plots of building as the case may be are to be made by the allottee and the date on



which the possession of the apartment plot, building is to be handed over, the rates of interest payable by the Promoter to the allottee and the allottee to the Promoter in case of default and such as other particulars as may be prescribed. The Section 13(2) reads thus:-

“13. No deposit or advance to be taken by promoter without first entering into agreement for sale.—

.....

(2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot, or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.”

21. A perusal of the aforementioned provision of RERA, 2016 and MoU clearly reveal that there was no valid BBA in existence in favour of the Applicant, thus there was no infirmity in its classification as the one who did not hold any valid BBA. **In the wake, we do not find any ground to interfere with the plan, in terms of the provisions of Section 30(2)(e) of IBC, 2016 and the objection to the resolution plan, raised in terms of IA-114/2024 is nixed and the IA is rejected.**



22. **IA-653/2024**:- The prayer made in the captioned application reads thus:-

“(a) To direct the Resolution Professional to furnish details regarding the total amount collected and utilization of of Interest Free Maintenance Security Deposit (IFMSD) in pursuance to the Builder Buyer Agreement;

AND

(b) To direct the Resolution Professional to conduct the Forensic audit of the Corporate Debtor;

AND

(c) To direct the Resolution Professional to recover the IFMSD amount from Parimal Services and also the remaining balance outstanding with CD on account of IFMSD and transfer it to the account of the Apartment Owners Association at the time of maintenance handover; And direct Resolution Professional to immediately transfer balance in escrow account with AOA being one of the parties.

AND/OR

(d) Pass any other/further order(s) which this Hon'ble NCLT may deem fit and proper in the facts and circumstances of the matter.”

23. Mr. Rakesh Kumar, the Ld. Counsel appearing for the Applicant fairly submitted that as the amount of IFMSD referred to in the application could be transferred by the CD to Parimal Services, it would be appropriate for them to seek the remedy against Parimal Services. Having submitted so he seeks liberty to withdraw the present application with liberty to work out his claim against Parimal Services in accordance with law. In view of the submission made by Mr. Rakesh Kumar, Ld. Counsel appearing for the Applicant, **the IA is dismissed as withdrawn** with liberty as prayed.



24. IA-391/2024, IA-395/2024, IA-396/2024, IA-397/2024, IA-3350/2023:-The salient plea espoused in the captioned applications are that the Applicants extended the financial facilities to the extent of Rs. 2,00,00,000/- to the Corporate Debtor in the year 2012 and when they submitted their claim for the amounts before RP, he could reject the same. Mr. Arpit Dwivedi, Ld. Counsel appearing for the Applicant could draw our attention to email dated 17.04.2022 placed on record as Annexure A-8 to IA-391/2024. The text of the email reads thus:-

Annexure-A-8
76-

Rediffmail

Mailbox of daves.h.developers@rediffmail.com

Print

Cancel

From: MOHIT GOYAL <irpaadibest@gmail.com>

To: Daves.h Developers <daves.h.developers@rediffmail.com>

Subject: Re: SUBMISSION OF CLAIM AND PROOF OF CLAIM ON M/S AADI BEST CONSORTIUM PVT. LTD.
Form C

Date: Sun, 17 Apr 2022 18:16:11 IST

Dear Sir/Madam,

We are in receipt of your claim for loan.

It is requested that you have given the loan amount to CD, kindly provide us loan agreement, correspondence with the company for the loan repayments schedule etc, balance confirmation, TDS certificate on interest paid by the company and your ledger account immediately. After getting these papers, we will verify your claim and inform you accordingly. Since we have not received the data from the CD, we have no proper information to verify your claim amount.



Thanks

Regards

CA Mohit Goyal

Insolvency Professional

IBBI Registration No: IBBI/PA-001/IP-P-02395/2021-2022/13636

Address: RC 1/2, Sector-1, Vaishali Ghaziabad 201010 UP

Phone Number- +919354014076

E-mail: irpaadibest@gmail.com

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply by email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

On Wed, Apr 13, 2022 at 8:37 PM Daves Developers <davesh.developers@rediffmail.com> wrote:

Shri Mohit Goyal

With respect to corporate insolvency resolution process of Aadi Best Consortium Pvt. Ltd., we hereby submit our claim and proof of claim for necessary resolution. Kindly refer attached Form C along with proofs attached in this regard. Please let us know if you need any clarification.

Thanking you,
Ashok Kumar Jain
Partner
Daves Developers

25. Mr. Arpit Dwivedi could make reference to the certificate issued by the Axis Bank to buttress the plea that cheque dated 23.01.2012 was cleared on 25.01.2012. According to him the cheque was presented in favour of M/s Aadi Best Consortium Pvt. Ltd. on the basis of account statement of M/s Daves Developers. The communication reads thus:-



Handwritten: 38

To,

Mr. Ashok Kumar Jain (Partner),
Daves Developers.

We confirm that M/S DAVESH DEVELOPERS had current account with Axis Bank Ltd. At Ambedkar Road Branch Ghaziabad, bearing account no: 095010200019053. As per the request of customer we further confirm the status of appended cheque issued by M/S DAVESH DEVELOPERS in favor of M/S AADI BEST CONSORTIUM PRIVATE LIMITED, on the basis of account statement of the M/S DAVESH DEVELOPERS.

S.No	CHEQUE NO	CHEQUE DATE	AMOUNT	CLEARING DATE	STATUS
1.	024336	23/01/2012	2,00,00,000	25/01/2012	CLEARED

This letter is issued on the specific request of the customer without any risk or responsibility of the bank or the issuing official.



26. It is relevant to note that the communication contains no date. Mr. Arpit Dwivedi could also draw our attention to series of missives qua the confirmation of account from 01.04.2011 to 31.03.2012 (Annexure-A3) colly. According to him once the concerned bank has issued the certificate and the corporate debtor has confirmed the account, there remains no doubt that the corporate debtor had liability to pay the aforementioned amount of Rs. 2 crores to the Applicants. The counsels for the parties are ad idem that the proposition and factual legal position involved in all the applications are para materia, thus we may refer to the facts only from IA-391/2024 viz. Davesb Developers represented by its Partner Mr. Ashok Kumar Jain Vs Mohit Goyal. When we asked Mr. Arpit Dwivedi to show the certified copy of entries from the banker's book, he submitted that the same are not available on record.

Referring to the e-mail sent by RP, Mr. Sumant Batra, Ld. Counsel for the RP submitted that when the purported letter issued by Axis Bank is not bearing any date, it is not understood that how the loan amount purportedly disbursed in the year 2012 could not have been demanded for a long period of 11 years i.e. till commencement of the CIRP. He also submitted that there being no provision of interest and non-availability of TDS certificate with the Applicants also create serious doubts regarding their claim. Nevertheless, his conclusive submission is that the RP is expected to verify the claim of the claimants with reference to the books of accounts/financial statement/balance sheet maintained by the corporate debtor and not on the basis of the extraneous material. It is also his submission that in similar factual backdrop, this Bench has rejected a catena of applications. We heard



the counsels for the parties and perused the record. Mr. Arpit Dwivedi, the Ld. Counsel for the Applicant could rely upon the Judgment of Hon'ble National Company Law Appellate Tribunal in "**Agarwal Polysacks Limited vs. K.K. Agro Foods and Storage Limited**". Making reference to the Judgment he espoused that to prove the financial debt, the financial creditor need not to bring on record the financial contract or ledger account. In his submission, irrespective of availability of such documents on record the claim of the Applicants should have been accepted. Para 31 of the Judgment relied upon by him reads thus:-

"31. The Adjudicating Authority, however, took a view that there should be financial contract between the parties which elucidate the rate of interest and date of repayment. The Adjudicating Authority took a view that there is no written agreement to establish the nature of transaction between the parties, hence, Appellant failed to prove the debt. We have already held that requirement of written financial contract is not a pre-condition for proving debt. When Adjudicating Authority itself given finding in Para 5-6 the disbursement was with interest and repayment was on demand, two essential conditions of financial debt were present with regard to time value of money. When the financial statement indicate amount with interest since the loan of Rs. 75,00,000 increased in the FY 2017-18 and amount due was shown as Rs. 79,70,250, which clearly was after adding the interest, disbursement has to be held for time value of money. We, thus, are satisfied that all preconditions for establishing financial debt are proved by the Financial Creditor and the order of the Adjudicating Authority rejecting Section 7 application is not sustainable."

27. Firstly, a perusal of para 31 of the order read out by Mr. Arpit Dwivedi in the Court itself reflect that in the said case the financial statement was



available on record and the statement indicated that the amount of Rs. 75 lakh fetched interest. In the present case, on our repeated asking, Mr. Arpit Dwivedi fairly submitted that the amount of Rs. 2 crores each given as advance by the Applicants to the corporate debtor did not fetch any interest. He also fairly submitted that the amount was never demanded by the Applicants till commencement of CIRP and publication of notice by RP in terms of the provisions of Section 13 read with Section 15 of IBC, 2016.

28. Even a perusal of Para 29 of the Judgment in **Agarwal Polysacks Limited** (supra) reveals that the financial creditor was able to produce the TDS. The para 29 of the Judgment reads thus:-

“29. Learned counsel for the Appellant has also relied on Form 26AS, where TDS on payment of interest has been deducted of Rs. 52,250 in the FY 2017-18. Payment of interest has been shown from Corporate Debtor in Form 26AS. This Tribunal in "Prayag Polytech Pvt. Ltd. v. Gem Batteries Pvt. Ltd., Company Appeal (AT) (Ins.) No. 713 of 2019" has held that merely pointing out that TDS was deducted would not be sufficient to conclude that there was financial debt. There can be no quarrel to the above proposition but when the said document i.e. Form 26AS entries corroborates to the claim of the financial debt, the document is a piece of evidence which can be looked into. Thus, Form 26AS corroborates to the entries in the Balance Sheet to prove that it is a financial debt.”

29. Not only that in the case of **Agarwal Polysacks Limited**, decided by Hon'ble NCLAT, the amount was reflected in the balance sheet, the interest was payable on the amount and the TDS was available, but also the order in the said case was qua an application filed under Section 7 of IBC, 2016. It



would not be gainsaid that the yardsticks/criteria prescribed regarding the evidence to be adduced with application filed under Section 7 of IBC, 2016 and the claim submitted by the claimants before RP are different. As can be seen from Section 7(3) of IBC, 2016 and the Regulation 2A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, to prove the debt and default, the Applicant in the application filed under Section 7(2) of IBC, 2016 need to produce record of the default recorded with the information utility or such other record or evidence of default as may be specified viz. in terms of Regulation 2A of IBBI (Resolution Process for Corporate Persons) Regulations, 2016 i.e. certified entries in the relevant account in the banker as defined in clause (iii) of Section 2 of the Bankers' Book Evidence Act, 1891 (Act No. 18 of 1891). The Regulation 2A of IBBI (Resolution Process for Corporate Persons) Regulations 2016 and Section 7(3) of IBC, 2016 and reads thus:-

2A. Record or evidence of default by financial creditor-

For the purposes of clause (a) of sub-section (3) of section 7 of the Code, the financial creditor may furnish any of the following record or evidence of default, namely:-

(a) certified copy of entries in the relevant account in the bankers' book as defined in clause (3) of section 2 of the Bankers' Books Evidence Act, 1891 (18 of 1891);

(b) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, where the period of appeal against such order has expired."

XXX XXX XXX



7. Initiation of corporate insolvency resolution process by financial creditor

(1)..

(2)..

(3) The financial creditor shall, along with the application furnish-

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.”

30. As far as the claim staked by the claimants before RP is concerned, in terms of the provisions of Regulation 8(2) (ibid), the claimant need to adduce;-

a) the records available with an information utility, if any; or

b) other relevant documents, including-

(i) a financial contract supported by financial statements as evidence of the debt;

(ii) a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;

(iii) financial statements showing that the debt has not been [paid];
or

(iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.”

31. From the aforesaid it is clear that the material adduced by the Applicants before the RP while stating the claim for Rs. 2 crores, paid by the



Applicants to CD way back in the year 2012 was not sufficient enough to persuade the RP to accept the claim. We also find force in the submission made by Mr. Sumant Batra, Ld. Counsel for the RP that the RP is supposed to verify the claim of the claimants with reference to the books of accounts/financial creditor/ledger/balance sheet maintained by the corporate debtor and the reliance on any extraneous evidence which is not reflected in the record may encourage the malpractices which may be resorted to siphon off the assets/properties of the corporate debtor and the suspended promoters/directors may create evidence/proof to enable third parties to raise such claims before the RP, which are not indicated in the record of the corporate debtor.

32. It would not be out of context to make reference to a recent Judgment of Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi in ***Company Appeal (AT) (Insolvency) No. 923 of 2023 in DS Kulkarni & Associates vs. Manoj Kumar Aggarwal*** wherein it could be ruled that the MoU evidencing the transaction does not qualify as a financial debt and the RP was justified in taking the view that the documents such as MoU and ledger statement are insufficient to accept the claim as financial debt. Para 20 of the Judgment reads thus:-

20. "Insofar as documents which have been brought on record by the Appellant(s) before the Adjudicating Authority by filing additional affidavit, suffice it to say that the basic documents relied by the Appellant(s) were MoU and Ledger extract. The MoU, which is a basic document evidencing the transaction does not qualify as a financial debt and the RP has rightly taken the view that the documents filed, i.e. MoU and Ledger statement are insufficient to accept the Claim as financial debt."



33. As has been ruled by Hon'ble Supreme Court in **Collector of Central Excise Calcutta vs. M/s Alnoori Tobacco Products and Anr.**, [Civil Appeal-4502-4503 of 1998] passed on 21.07.2004, a Judgment can be relied upon as a precedence after appreciating the facts of the case in which judgment is given and the facts of the case before the Court. The relevant excerpt of the judgment reads thus:-

“11. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark on lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton [1951 AC 737 : (1951) 2 All ER 1 (HL)] (AC at p. 761), Lord MacDermott observed : (All ER p. 14 C-D)

“The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge....”

12. In Home Office v. Dorset Yacht Co. [(1970) 2 All ER 294 : 1970 AC 1004 : (1970) 2 WLR 1140 (HL)] Lord Reid said (All ER p. 297g-h), “Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances”. Megarry, J. in Shepherd Homes Ltd. v. Sandham (No. 2) [(1971) 1 WLR 1062 : (1971) 2 All ER 1267] observed: “One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament.” And, in British Railways



Board v. Herrington [(1972) 1 AC 877 : (1972) 2 WLR 537 : (1972) 1 All ER 749 (HL)] Lord Morris said : (All ER p. 761c)

“There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.”

13. *Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.*

14. *The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus : (Abdul Kayoom v. CIT [AIR 1962 SC 680] , AIR p. 688, para 19)*

“19. ... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”

*

*

*

“Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.”

34. We may also not be oblivious of the fact that when the claims of the Applicants were rejected, in March 2023, the captioned applications could be registered only in the year 2024, when the resolution plan had already been approved by CoC on 16.08.2023.

In view of the aforementioned, we are not inclined to grant the relief prayed in the applications and the **same are rejected.**



35. **IA-538/2024, IA-809/2023, IA-221/2023, IA-4381/2023, IA-4648/2022 and IA-566/2024:** Certain applications viz. IA-1763/2023, IA-538/2024, IA-809/2023, IA-221/2023, IA-4381/2023 and IA-566/2024 have been preferred by Home Buyers alleging that the SRA has unjustifiably made a provision in the plan that the allottees need to pay Rs. 85, 000/- per unit as registration charge. According to them, the registration charge should be collected by the SRA on actual basis and not at per his whims. As can be seen from clause 8.3.3(b) of the plan, the amount has been mentioned in the plan which has been approved by the CoC with 100% voting share. As it may, the plan has been approved in exercise of commercial wisdom of CoC and we may not interfere with the same. Nevertheless, as far as the plea raised by Mr Ankit Sharma and Mr. Rakesh Kumar regarding unjust enrichment of SRA is concerned, if at any point of time it is revealed that the amount mentioned and demanded is not bonafide and is causing unjust enrichment of the SRA, the Home Buyer would be entitled to resort to appropriate remedies in accordance with law.

36. **The application stands disposed of.** It is however, made clear that the Applicants would also be entitled to seek the details of the expenses to be incurred on the registration charges which shall be published by the SRA on the website, where the RP is publishing the notices regarding meeting of CoC.

37. The Applicant has sought various reliefs and concessions stipulated under Clause 10 of the Resolution Plan which reads thus:-



**RESOLUTION PLAN IN THE MATTER OF AADI BEST CONSORTIUM PRIVATE LIMITED
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CHAPTER: 10 (DIRECTIONS, RELIEFS AND CONCESSIONS SOUGHT)

The resolution plan is unconditional. However, in pursuance to the provisions of the section 32A of the IBC, 2016, the Resolution Applicant hereby requests that the approval order for this Resolution Plan by the Hon'ble NCLT shall deem to have provided the requisite directions, reliefs and concessions set out below for the successful implementation of the Resolution Plan:

- 10.1 Waive any and all penalties and claims and grant immunity to the Resolution Applicant, Corporate Debtor or the directors of Resolution Applicant or newly appointed directors of Corporate Debtor against any action or inaction by the Corporate Debtor and the erstwhile management, before the Effective Date.
- 10.2 Directions to the ROC that any past prosecution / cases by ROC shall have no effect on the Corporate Debtor or its new directors / management or Resolution Applicant from the Effective Date.
- 10.3 Directions for change in the address of registered office of the Corporate Debtor, from the existing office i.e., Delhi to Delhi at Cloud-9 Tower, Vaishali, Ghaziabad, for the convenience of the allottees / home buyers as the project is complete and therefore permitting necessary amendments in the constitutional documents of Corporate Debtor as required.
- 10.4 It shall be assumed that the Corporate Debtor shall be deemed to be permitted to continue to operate the Project and shall use the licenses, permissions, and approvals of the Project for 3 years from the Effective Date and RA shall need no further approval for the same and any extensions or renewals required for any such licenses, permissions, and approvals shall be deemed to have granted upon approval of the Plan.
- 10.5 Deemed waiver from GDA in lieu of the financial treatment under this Plan with respect to any interest, penalty, delay payment charges or any such charge which is penal in nature against License Renewal Fees / Community Site Development time / Extension Fees / Annual audit and any other compliance required under the terms of license.
- 10.6 It shall be assumed that the revocation order issued by the GDA against the part Completion Certificate shall stand cancelled. The Part Completion Certificate issued earlier along with the Completion Certificate applications already filed by the CD and pending approval from GDA shall be deemed to be the Completion Certificate / Occupancy Certificate for the whole Project.
- 10.7 It shall be assumed that the order of the National Green Tribunal ("NGT") dated 10.02.2023 for removal of constructions falling in the buffer zone shall stand cancelled. The only entry and exit to the Project are falling under this zone which was constructed by the GDA at the time of allotment of Land to the CD. Hence it is critical to cancel such order issued by the

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RESOLUTION PLAN IN THE MATTER OF AADI BEST CONSORTIUM PRIVATE LIMITED
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NGT earlier and such orders of the NGT shall not be enforceable. Further, the same shall also be prejudicial to the approx. 1500 Flat Owners already occupying the Project. No claims, litigations shall be admissible against the RA, CD or its Employees Directors with respect to the same.

- 10.8 Directions shall be issued to the Tehsildar Ghaziabad & District Magistrate Ghaziabad to withdraw the all the existing cases/actions against the Corporate Debtor of recovery etc.
- 10.9 Directions shall be issued to the GDA or any other authority to withdraw all existing cases against the Corporate Debtor including the outstanding order issued to the IRP for the demolition of Duplex Flats in the Project.
- 10.10 In reference to the relief requested in the Intervention Application filed by the IRP vide IA-2063/2023 under section 60 (5) of the I & B code, 2016 against the GDA, upon the approval of this Plan, it shall be deemed that directions have been issued to de-seal the flats or any other assets of the CD, under the seal of the GDA/ Tehsildar etc, immediately on the Effective Date. The RA / CD shall not be required to obtain any separate order for such order to de-seal the Inventory are critical and essential to the financial viability of the Plan.
- 10.11 The CD has made payment of complete stamp duty against the at the time of executing the agreement to sell with the GDA. Hence directions shall be issued to the GDA for executing the sale deed against the project land of the CD within 10 days from the Effective Date.
- 10.12 GDA to waive the infrastructure cess which was imposed vide letter dated 29.09.2020 for Rs. 9,85,81,860/-, interest charges imposed vide letter dated 19.11.2016 for an amount of Rs. 1,95,42,144/-, and penalty on the licence or licence fee payable to GDA.
- 10.13 Any stay on the development/construction activities shall be deemed to have been vacated by the Governmental Authorities from the Effective Date.
- 10.14 Directions should be provided by the Hon'ble NCLT to GDA to issue full completion certificate to the Corporate Debtor, immediately within 10 days upon this resolution plan being approved by the NCLT and if not issued by the GDA within 10 days than it shall be to be assumed deemed issuance of Completion certificate.
- 10.15 Directions to be given to UPRERA for closure of all complaints / orders / recovery orders against the Corporate Debtor as settled and extinguished made by any existing Homebuyers / Agent for period pertaining up to the Effective Date.
- 10.16 Directions to be given to UPRERA that no complaint shall be entertained whatsoever and no order/decreed shall be passed for refund and/or compensation by either UPRERA/ Adjudicating Officer/ Appellate Tribunal on behalf of the existing Homebuyers for the period upto the Effective Date.

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Page 79 of 87

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- 10.17 Directions to be issued to UPRERA for waiver of requirements to obtain consent of existing customers for change of developer, revision of building plan or any similar modifications under the terms of this Resolution Plan. Directions shall be given to the RERA that there is no requirement for fresh registration from the RERA as part Completion Certificate was already issued by the department.
- 10.18 Directions shall be given to the RERA that the amount already deposited with the RERA as security deposit / FD by the CD against any cases filed by the customer shall be refunded and will become the assets of the CD/RA and the orders issued by the RERA regarding payment of any penalty, interest, if any, shall stand cancelled / null & void and will have no effect by virtue of the NCLT order approving the resolution plan.
- 10.19 Directions shall be given to the electricity department that at present the single point connection provided in the name of the Corporate Debtor for Residential & Commercial units currently installed and in working condition shall exist and be continued as per the established infrastructure at the project site of the CD and at no time the RA shall be forced to convert the same in multi-point connection in the given structure.
- 10.20 Directions shall be issued to the Electricity Department to waive off the interest, penalty etc., imposed if any, on the balance security deposit, for release the balance sanctioned load in the name of the CD.
- 10.21 The Project approvals / Business Permits including but not limited to environmental approvals, fire approvals, pollution approvals, RERA, labour department, Airport Authority, Mining department, GDA, etc. which are currently effective or were effective on Insolvency Commencement Date or which even lapsed shall be deemed to continue to be operative and deemed to be renewed from the Effective Date till resolution plan implementation period. Resolution Applicant shall not be required to apply for the renewal of such approvals. Renewal shall be deemed to be granted by way of approval of Resolution Plan.
- 10.22 Direction to Tax Authorities to grant an exemption from all Government taxes, State Government taxes, Central government taxes, District taxes authorities/Revenue authorities, levies, fees, transfer charges, transfer premiums, and surcharges that arise from or relate to implementation of the Resolution Plan, since payment of these amounts may make the Resolution Plan unviable. This would include waiver of MAT and income tax implication arising due to write back/write off of liabilities in the books of accounts of Corporate Debtor, without any impact on brought forward tax and book loss / depreciation, pursuant to this Resolution Plan.
- 10.23 Direction to the relevant Governmental Authority to grant exemption to the Resolution Applicant, Corporate Debtor and their respective directors, officers and employees appointed as on or after the Effective Date for/ from any violations, liabilities, penalties, interests on

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RESOLUTION PLAN IN THE MATTER OF AADI BEST CONSORTIUM PRIVATE LIMITED
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statutory payments and/ or fines with respect to or pursuant to any order of the Governmental Authority or on account of non-compliance of Applicable Law by Corporate Debtor or due to Corporate Debtor not having in place requisite approvals and licenses to undertake its business as per Applicable Law.

- 10.24 Exemption from all taxes, levies, fees, transfer charges, transfer premiums, and surcharges to Corporate Debtor / Resolution Applicant that arise from or relate to implementation of the Resolution Plan.
- 10.25 The Resolution Applicant shall also not be required to take any further approval for the change in the name of the Project as may be decided by the Resolution Applicant. The approval of resolution plan by the NCLT shall be deemed to be effective orders for change of the name in the above manner. The said change is being proposed with a view to detach brand negativity associated currently to the Project and utilize Resolution Applicant's value to maximize the assets.
- 10.26 Banks to grant any approval or dispensation as may be required for actions contemplated under the Resolution Plan in accordance with its terms and conditions.
- 10.27 Waiver of any income-tax and Minimum Alternate Tax (MAT) liability or consequences (including interest, fine, penalty, etc) on Corporate Debtor, Resolution Applicant and its shareholders on account of various steps as proposed in the Resolution Plan as per the Income Tax Act, 1961. Further waiver of any Income Tax liability w.r.t the booking already made at a price below the circle rate/ stamp valuation rate under section 43CA or 50 C or any other provisions of the Income Tax Act/ Rules.
- 10.28 The Central Board of Direct Taxes to not take any other actions with respect to the transactions contemplated under this Resolution Plan under Section 281 of the Income Tax Act, 1961.
- 10.29 Any approvals that may be required from Governmental Authorities (including GDA or any other Statutory Authority) in connection with the implementation of the Resolution Plan including on account of change in ownership / control of Corporate Debtor / change in approvals / compounding / grant of additional FSI as per application already submitted/ release of plans shall be granted without any additional payment requirements. No further requirements of taking any fresh approval from 2/3rd allottees regarding any such changes.
- 10.30 No further claims, notices, RERA complaints issues from any existing customers on any delay in any deliverables with respect to the Project.
- 10.31 Upon approval of the Resolution Plan by the NCLT, all non-compliances, breaches, and defaults of Corporate Debtor for the period prior to the Effective Date (including but not limited to those relating to Companies Act, Income tax, RERA Labour department, BOCW,

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Page 81 of 87

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RESOLUTION PLAN IN THE MATTER OF AADI BEST CONSORTIUM PRIVATE LIMITED
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GST or any other Governmental Authority), shall be deemed to be waived by the concerned Governmental Authorities/ other authorities as may be applicable. Immunity shall be deemed to have been granted to Corporate Debtor from all proceedings and penalties under all Applicable Laws for any non-compliance for the period prior to the Effective Date and no interest/penal implications shall arise due to such non-compliance /default /breach prior to the Effective Date. This includes, without limitation, waiver/extinguishment of any penalties / interests on account of staggered payment (if any) of statutory liabilities of the workmen/ employees of Corporate Debtor in accordance with the terms of this Resolution Plan.

- 10.32 Waiver/extinguishment of any tax (including but not limited to income-tax and MAT) and duty (including interest, fine, penalty, etc.) and legal liability pertaining for the period prior to the Effective Date such as any kind of existing and/or future litigation / assessment / scrutiny / contingency.
- 10.33 From the Effective Date, all inquiries, investigations and proceedings, whether civil or criminal, suits, claims, disputes, proceedings in connection with Corporate Debtor or affairs of Corporate Debtor (including those initiated by Governmental Authorities), pending or threatened, present or future in relation to any period prior to the Effective Date, or arising on account of implementation of this Resolution Plan shall stand withdrawn and dismissed and all liabilities and obligations therefore, whether or not set out in the balance sheets of Corporate Debtor or the profit and loss account statements of Corporate Debtor will be deemed to have been written off fully, and permanently extinguished and no adverse orders passed in the said matters should apply to Corporate Debtor or the Resolution Applicant. Upon approval of this Resolution Plan, all new inquiries, investigations, notices, suits, claims, disputes, litigations, arbitrations or other judicial, regulatory, or administrative proceedings will be deemed to be barred and will not be initiated or admitted against Corporate Debtor and/ or its new management in relation to any period prior to the Effective Date.
- 10.34 Except to the extent of payments to be made to the operational creditor and other creditors under Resolution Plan above if any, the Resolution Applicant and Corporate Debtor shall have no liability towards any Operational Creditors and other creditors with respect to any claims (as defined under the Code) relating in any manner to the period prior to the Effective Date. Any such liability shall be deemed to be owed and due as of the Insolvency Commencement Date, the liquidation value of which is NIL and therefore no amount is payable in relation thereto. All such liabilities shall immediately, irrevocably and unconditionally stand fully and finally discharged and settled with there being no further claims whatsoever, and all forms of security created or suffered to exist, or rights to create such a security, to secure any obligations towards Operational Creditors and other creditors shall immediately, irrevocably and unconditionally stand released and discharged, and the Operational Creditors and other creditors shall waive all rights to invoke or enforce the same.
- 10.35 Neither the Resolution Applicant nor Corporate Debtor, nor their respective directors, officers and employees appointed as on or after the Effective Date shall be liable for any violations,

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**RESOLUTION PLAN IN THE MATTER OF AADI BEST CONSORTIUM PRIVATE LIMITED
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liabilities, penalties, interests on statutory payments and/ or fines, with respect to or pursuant to any order of any Governmental Authority or on account of non-compliance of Applicable Laws by Corporate Debtor or due to Corporate Debtor not having in place requisite approvals and licenses to undertake its business as per Applicable Law.

- 10.36 The Business Permits/ licenses/or any statutory order(s) which were possessed by the Corporate Debtor to conduct the business shall deem in continuation on the date of final approval of NCLT as it were prior to the Insolvency Commencement Date by all or any one of the applicable statutory / Governmental Authority(s) for the time being in force for ensuring the economic viability and financial sustainability of the business of Corporate Debtor;
- 10.37 Resolution Applicant shall not be impacted against any of the negative impact / observation / findings of Forensic Audit/ Transaction Audit. Further neither the Corporate Debtor nor any member of the new promoter group shall be made party to any of the legal cases arising out of such audit.

For SKAEL ENTERPRISES PVT. LTD.


Director/Authorised Signatory

38. As can be seen from the above, the Resolution Applicant has expected all Government Authorities to grant relief/concession or dispensation needed for fair and proper implementation of the transactions contemplated in terms of the Resolution Plan. Nevertheless. It is also made clear in the plan that the amount of payment to be made in terms of the plan, to the Creditor of the CD is not subjected to any condition, assumptions, relief/concessions, and/or qualifications. However, a long list of relief, concession, dispensation and waiver solicited by the Resolution Applicant (ibid) is there mentioned in the Plan. The relief/concession broadly solicited by the SRA pertains to the renewal of licenses qua the CD, without subjecting it to payment of any penalty/composition fees, interest, or any other charges. The further concession sought in the plan is that of waiving off the restriction to obtain license,



applicable. As has been noted herein above, there are numerous other relief and concessions prayed for in the plan. As can be seen from Section 31(4) of IBC 2016, the Resolution Applicant shall pursuant to the Resolution Plan approved under sub-Section 1 of Section 31 of IBC 2016 obtain the necessary approval required under any law for the time being in force within a period of one year from the date of the order passed under Section 31(1) of IBC 2016. Besides, in terms of the provisions of Section 14 of the Code, even during the period of CIRP, the license, permit, registration, quota, concession, clearances, or similar grant or right given by the Central Government/State Government, Local Authority, Sectoral Regulator or any other Authority constituted under any other law for the time being in force should not be suspended or terminated on the ground of insolvency only subject to the condition that there is no default in payment of current dues arising for the use or continuance of the license, permit, registration, quota, concession, clearance or similar grant or right during the moratorium period. Thus, when even during the moratorium period, the facilities mentioned above are made available to the CD only when there is no default in payment of the current dues, on approval of the Resolution Plan, the SRA/CD cannot be put on better footings. For convenient reference, the Explanation is reproduced herein below:-

“14. Moratorium. –

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -

(a)

(b)



(c)

(d) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

Explanation.- For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;”

39. In any case, in terms of the provisions of Section 13 and 15 of the IBC 2016 read with Regulation 6, 6A, 7, 8, 8A, 9 and 9A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, all the claimants such as Operational Creditors, Financial Creditors, Creditors in Class, Workmen and Employees and other Creditors can raise their claims before the IRP/RP. The claims are dealt with by IRP in terms of the provisions of Section 18(b) of the IBC, 2016 and by RP in terms of the provisions of Section 25(b) thereof read with Regulations 12(A), 13 and 14 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Thereafter, the RP prepare an Information Memorandum in terms of the provisions of Regulation 36(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Memorandum contains inter alia a list of creditors containing the range of creditors, the amounts claimed by them, the amount



of their claim admitted and the security interest if any in respect of such claims. As has been provided in Regulation 36(1) of the Regulations (ibid), the Information Memorandum is required to be submitted in electronic form to each member of CoC, on or before 95th day from the Insolvency commencement date. As has been provided in Regulation 36(A) of the Regulations the RP publish brief particulars of the invitation for Expression of Interest in Form G of Schedule I to the Regulations at the earliest i.e. not later than 60th day from the Insolvency commencement date, from interested and eligible Prospective Resolution Applicants to submit Resolution Plans. As can be seen from Regulation 36(B) of the Regulations, the RP shall issue Information Memorandum Evaluation Matrix (IMEM) and request for Resolution Plans, within 5 days of the date of issue of provisional list of eligible Prospective Resolution Applicants (required to be issued under Regulation 36(A)(10) of the Regulations). It is with reference to such Information Memorandum Evaluation Matrix that the RP issues request for Resolution Plan. The request for Resolution Plan details each step in the process and the manner and purposes of interaction between the Resolution Professional and the Prospective Resolution Applicant. The Resolution Plan submitted after consideration of the IMEM and RFRP is then examined by the Committee of Creditors. Nevertheless, it needs to satisfy the requirements of Regulation 37 and 38 of the extant Regulations. Once the plan is approved by the CoC, in terms of the provisions of Regulations 39 of the aforementioned Regulations, it virtually becomes a contract entered into between the CD represented through RP, SRA and the Creditors of the CD. On being approved by this Adjudicating Authority, by operation of Section 31 (1) of the Code, the plan



becomes binding on the Corporate Debtor and its employees, members, creditors (including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being enforced such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan. Thus, Section 31(1) of IBC, 2016, takes care of most of the relief/concession/waiver solicited by the Resolution Applicant.

40. Besides, in terms of the provisions of Section 32(A) incorporated in the Code by Act No.1 of 2020, w.e.f. 28.12.2019, for an offence committed prior to the commencement of the Corporate Insolvency Resolution Process the liability of CD ceases and the CD is not liable to be prosecuted from the date of approval of Resolution Plan by this Adjudicating Authority, if the Resolution Plan results in change of management or control of the CD to a person who was not promotor or in the management or control of the CD or a related party of such a person or a person with regard to whom the concerned Investigating Agency has reason to believe that he had abated or conspired for the commission of the offence and has submitted or filed a report or a complaint to the relevant statutory authority or Court. In such cases, where the prosecution is instituted against the CD, during CIRP, the CD stands discharged qua the same from the date of approval of the Resolution Plan. Nevertheless, every person who was a designated partner as defined in clause (j) of Section 2 of the Limited Liability Partnership Act, 2008, “an officer who is in default” as defined in Clause (60) of Section 2 of Companies Act, 2013 or was in any manner in charge of, or responsible to the CD for the conduct of his business or associated with the CD in any manner and was directly or



indirectly involved in the commission of an offence as per the report submitted or complaint filed by Investigating Agency shall continue to be liable to be prosecuted and punished for such an offence committed by the Corporate Debtor notwithstanding the Corporate Debtors' liability ceases after approval of the plan.

41. In the wake of the provisions of Section 32(A)(2), no action is taken against the property of the Corporate Debtor in relation to an offence committed prior to the commencement of the Corporate Insolvency Resolution Process of the CD, where such property is covered under Resolution Plan approved by this Authority under Section 31, which result in the change in the control of the CD to a person who was not a promotor or in the management or control of the Corporate Debtor or related party of such person or a person with regard to whom the Investigating Agency has reason to believe that he had abated or conspired for commission of the offence and has submitted or filed a report or complaint to the relevant statutory authority or Court.

42. The action against the property of the Corporate Debtor as referred to in Section 32(A) of the Code includes the attachment, seizure, retention or confiscation under such law as may be applicable to the Corporate Debtor. One may also be not oblivious of the fact that in the backdrop of provisions of Section 31(3)(a) of the IBC, 2016, the moratorium order passed by the Adjudicating Authority under Section 14 ceases to have effect.

43. From the aforementioned analysis and discussion, it is apparent that the CD/SRA cannot be exempted from the liability to pay the dues/fees



towards the required license, permit, registration, quota, concession, clearance or similar grant or right. Further, it would be incumbent on the SRA/CD to obtain the necessary approval required under any law for the time being enforced within a period of one year from the date of this order or within such period as provided for in relevant provisions of law, whichever is later. The SRA would be liable to pay the required fees/charges if any for such approval.

44. Regarding dues prior to commencement of CIRP, the SRA may approach concerned authority in accordance with law. In sum and substance, the SRA/CD would be entitled to no other relief/concession/waiver except those available to it as per the provisions of Section 31(1) and 32(A) of IBC, 2016. The SRA is at liberty to approach the relevant authorities who would consider these claims as per the provisions of the relevant law in an expeditious manner.

45. It is however made clear that GDA will not create any hindrance before the SRA in implementing the plan.

46. In the sequel to the above, we are inclined to approve the Resolution Plan as approved/recommended by the CoC as placed by the Applicant before this Adjudicating Authority. We, therefore, allow the present Application and approve the COC-approved Resolution Plan as placed before us by the Applicant/RP with the following directions: -

- (i) The approved Resolution Plan shall become effective from the date of passing of this Order and shall be implemented strictly as per the term of the plan and implementation schedule given in the Plan;



- (ii) The Performance Guarantee/FD shall be renewed in the name of and kept alive by the “Monitoring Committee of the Corporate Debtor” till the Resolution Plan is fully implemented.
- (iii) The SRA/CD would be entitled to no other reliefs/ concessions/waivers except those are available/ permissible to it as per the provisions of Section 31(1) and 32A of IBC, 2016. The SRA is at liberty to approach the relevant authorities who would consider these claims as per the provisions of the relevant law in an expeditious manner.
- (iv) The Monitoring Committee as provided in the Resolution Plan shall be set up by the Applicant/RP within 07 days of passing of this Order, which in turn, shall take all necessary steps for time bound implementation of the Resolution Plan as per approval.
- (v) The order of the moratorium in respect to the corporate debtor passed by this Adjudicating Authority under Section 14 of the IBC, 2016 shall cease to have effect from the date of passing of this Order; and
- (vi) The Resolution Professional shall forward all the records relating to the conduct of the CIRP and the Resolution Plan to the IBBI for its record and database.

47. The Court Officer and Resolution Professional (RP) shall forthwith make available/send a copy of this Order to the CoC and the Successful Resolution Applicant (SRA) for immediate necessary compliance.

48. A copy of this order shall also be sent by the Court Officer and Applicant to the IBBI for their record.

49. **IA-1763/2023**: Since the Resolution Plan has been approved as above, regarding the unit referred to in the application, the SRA would do the needful in accordance with the provisions of plan. **With such direction the IA is disposed of.**



50. **IA-925/2024, IA-987/2024, IA-989/2024, IA-991/2024, IA-1233/2024, IA-1546/2024, IA-1547/2024:** The captioned applications are PUFEE applications. A provisions regarding the fate of the avoidance application has been made in Clause 8.4.11 of the Resolution Plan, in terms of which the amount of PUFEE transaction, if any, after deduction of legal expenses incurred thereon, shall mean the additional net amount realized by the CD/ the relief available to CD and the Resolution Applicant would utilise the recovery of the amount there from in the CD. The clause 8.4.11 reads thus:

“8.4.11 The Financial Creditors or any other creditors of the CD shall have no additional stake in the outcome from recovery with respect to the PUFEE / Avoidance Transactions, if any. The Resolution Applicant further propose to peruse the same. For the above purpose the amount from PUFEE Transactions, if any, after deduction of legal expenses incurred thereon, shall mean the additional net amount realized by Corporate Debtor/ relief available to Corporate Debtor because of an order of Adjudicating Authority. RA proposes to utilize the recovery of the amount from the outcome of the PUFEE / Avoidance Application in the Corporate Debtor. For the purposes of this Letter, the term "PUFEE / Avoidance Transactions" means the transactions of the nature defined under Sections 43, 45, 49, 50 & 66 of the Code against which the appropriate relief has been granted by Adjudicating Authority in accordance with applicable provisions of the Code.”

In the aforementioned backdrop, it would be for SRA to pursue the avoidance applications. List on 05.06.2024.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

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

Ashima/Upasana/Yash