



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

IA-4219/2022

IN

Company Petition No. IB- 1058 (ND)/2018

(Under Section 30 (6) and 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016))

IN THE MATTER OF:-

Mr. Anurag Nirbhaya
(Resolution Professional of
M/s. Manju J Homes India Limited)

..... Applicant

AND IN THE MATTER OF:

M/s. Gagan Ferrotech Limited

... Operational Creditor

VERSUS

M/s. Manju J Homes India Limited

... Corporate Debtor

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on: 11.06.2024



ORDER

PER: SH. MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. The present application has been filed under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') on behalf of Mr. Anurag Nirbhaya, applicant herein and Resolution Professional (RP) of M/s. Manju J Homes Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by M/s. Red Apple Buyer's Welfare Associated ('RABWA' / 'Successful Resolution Applicant') and approved by the Committee of Creditors ('CoC') in its 18th CoC Meeting with 100% voting in favor in terms of Section 30(4) of I&B Code, 2016.
2. Briefly stated, the facts as averred by the applicant in the application are as follows:
 - a) The Corporate Insolvency Resolution Process against M/s. Manju J Homes Limited ('Corporate Debtor') had been initiated by this Hon'ble Adjudicating Authority vide its order dated 02.09.2019 in C.P.(IB) No.1058/2018, an application under Section 9 of the Code, 2016 filed by M/s. Gagan Ferrotech Limited ('Operational Creditor') and Mr. Harish Goyal was appointed as the Interim Resolution Professional of the Corporate Debtor and later Mr. Anurag Nirbhaya ('applicant') was appointed as the Resolution Professional of the Corporate Debtor in the third meeting of the Committee of Creditors.
 - b) The Suspended Directors of the Corporate Debtor had preferred an appeal bearing Company Appeal (AT)(Insolvency) No. 1008 of 2019 against the CIRP Admission order dated 02.09.2019 before the Hon'ble Appellate Authority and the same was dismissed by the Hon'ble Appellate Authority vide its order dated 29.01.2021.
 - c) The Public Announcement in Form A dated 12.09.2019 was made in the newspaper wherein all the creditors were invited to submit their claim and the last date for submission of proof of claim was 24.09.2019. The Applicant had verified the claims on the basis of the documents and information as provided by the claimants in support of their claim as the books of the Corporate Debtor are not provided to the Applicant. The constitution of Committee of Creditors of the Corporate Debtor is presented overleaf –



Name of Financial Creditor	Secured/ Unsecured	Amount Claimed (Rs)	Amount Admitted (Rs)
720 Financial Creditors in a class (Through Authorised Representative, Mr. Sanjeev Gupta) out of which 669 claims were admitted.	Un-Secured	208,36,04,509	108,86,49,474
Punjab National Bank	Secured	29,45,92,159	29,45,92,159
Total		237,81,96,668	138,32,41,633

- d) The Invitation for Expression of Interest in Form –G was published on three occasions i.e., (i) 21.02.2021, (ii) 24.09.2021 and (iii) 15.12.2021. The Form G issued on third occasion was issued in Jansatta (Hindi Edition) and Financial Express (English Edition) on 15.12.2021, wherein the last date for receipt of the EoI was 30.12.2021 and last date of submission of Resolution Plan was 08.02.2022, which with CoC Approval in its 13th CoC Meeting was further extended by 15 days. Pursuant to the Form-G, the applicant had received Six (6) Expression of Interests and after due verification of the submitted documents and resolution of queries, all the six Prospective Resolution Applicants were included in Final List of Prospective Resolution Applicants.
- e) The Applicant in the 14th CoC Meeting dated 28.02.2022 had apprised the CoC that pursuant to publication of Form-G, only two (2) Resolution Plans were received from (i) M/s. Red Apple Buyers Welfare Association ('Prospective Resolution Applicant No.1') and (ii) Anubhav Mittal ('Prospective Resolution Applicant No.2'). The Resolution Plan(s) received from both the Prospective Resolution Applicants in the sealed envelopes as well as the password protected PDF files were placed before the CoC for discussion and deliberations. The CoC after deliberations had highlighted deficiencies and discrepancies in the Resolution Plan(s) submitted and the same was communicated to the Prospective Resolution Applicants vide e-mail dated 15.03.2022.
- f) The CoC in its 17th CoC Meeting dated 16.05.2022 had on the request of Mr. Anubhav Mittal ('Prospective Resolution Applicant No.2') had extended the time line for submission of updated Resolution Plan from 14.05.2022 to 19.05.2022. Further, the CoC was apprised that M/s. Red Apple Buyers Welfare Association ('Prospective Resolution Applicant No.1') had submitted the updated revised Resolution Plan on 14.05.2022.



- g) The Applicant apprised the CoC in the 18th CoC Meeting dated 23.05.2022 that Mr. Anubhav Mittal ('Prospective Resolution Applicant No.2') had not submitted the revised resolution Plan, and accordingly, the revised Resolution Plan submitted by M/s. Red Apple Buyers Welfare Association ('Prospective Resolution Applicant No.1'/ 'Successful Resolution Applicant') was placed before the CoC for voting and the same was approved by the CoC with 100% voting in favor.
- h) The Applicant had issued a Letter of Intent dated 31.05.2022 to the Successful Resolution Applicant and the Successful Resolution Applicant had conveyed his unconditional acceptance on the same day and further furnished the Performance Bank Guarantee on 01.06.2022 and 02.06.2022.
- i) The details of this Adjudicating Authority's order extending and excluding the period of the Corporate Debtor's Corporate Insolvency Resolution Process is provided below:-
- I. This Adjudicating Authority vide its order dated 17.07.2020 had granted exclusion of 103 days i.e., between 02.09.2019 to 10.09.2019 and 30.09.2019 to 03.01.2020 from the CIRP period of the Corporate Debtor.
 - II. This Adjudicating Authority vide order dated 09.12.2020 had granted exclusion of the period from 23.03.2020 to 31.08.2020 i.e., a total of 162 days in view of COVID-19 pandemic.
 - III. This Adjudicating Authority vide order dated 09.12.2020 had granted an extension of 90 days in the CIRP period of the Corporate Debtor.
 - IV. This Adjudicating Authority vide order dated 24.03.2021 had granted exclusion of 225 days in the CIRP period of the Corporate Debtor.
 - V. This Adjudicating Authority vide order dated 16.07.2021 had granted exclusion of 48 days in the CIRP period of the Corporate Debtor.
 - VI. This Adjudicating Authority vide order dated 10.11.2021 had granted an extension of 60 days in the CIRP period of the Corporate Debtor.
 - VII. This Adjudicating Authority vide order dated 18.01.2022 had granted exclusion of 17 days in the CIRP period of the Corporate Debtor.
 - VIII. This Adjudicating Authority vide order dated 10.11.2021 had granted an extension of 60 days in the CIRP period of the Corporate Debtor w.e.f. 19.11.2021.
 - IX. This Adjudicating Authority vide order dated 18.01.2022 had granted an exclusion of 17 days and also extension of 60 days in the CIRP period of the Corporate Debtor w.e.f. 17.01.2022.



X. This Adjudicating Authority vide order dated 06.04.2022 had granted an extension of 60 days in the CIRP period of the Corporate Debtor w.e.f. 04.04.2022.

3. We have heard the submissions made by the Ld. Counsel for the Applicant and have meticulously gone through the documents produced on record. The copy of the Resolution Plan dated 14.05.2022 along with clarificatory letter dated 02.06.2022 submitted by the Successful Resolution Applicant and approved by the CoC is annexed as Annexure A-31 (copy of Resolution Plan dated 14.05.2022) and Annexure A-32 (copy of Letter dated 02.06.2022 received from the SRA) to the present application. The salient features of the Resolution Plan dated 14.05.2022 along with clarificatory letter dated 02.06.2022 as submitted by M/s. Red Apple Buyers Welfare Association ('Prospective Resolution Applicant No.1' / 'Successful Resolution Applicant') and approved by the CoC in its 18th CoC Meeting held on 23.05.2022 with 100% voting in favor are reproduced herein below:

I. BACKGROUND OF THE RESOLUTION APPLICANT:

The Resolution Applicant i.e., M/s. Red Apple Buyers Welfare Association ('RABWA') is an association established on 16.04.2018 vide Registration No. SOCIETY/WEST/2018/8902318 having its registered office situated at AE-10, 3rd Floor, Tagore Garden, New Delhi – 110027.

The Aggregate corpus of funds available with the Resolution Applicant as on the date of admission of the Resolution Plan is Rs.11,20,045/-. This is kept in the form of bank/cash, in the name of the Resolution Applicant.

M/s. Red Apple Buyers Welfare Association espouses the causes of Allottees of M/s. Manju J Homes Limited ('Corporate Debtor') as on date 7 allottees of the Corporate Debtor are members of RABWA which are detailed below:-

Name of the Office Bearer	Designation
Bijoy Dutta	President
Prashant Malhotra	Secretary
Sarvendra Kumar	Joint Secretary
Tarun Kumar	Treasurer
Kripal Bisht	Executive Members
Dinesh Kumar	
Sehdev	



II. FINANCIAL OUTLAY

Particulars	Amount Received – INR (Crore)	Amount Admitted – INR (Crore)	Schedule of Payment	Initial Offer INR in (Crore)
Secured Financial Creditors - Claim Submitted and Accepted	29.45 Crore	29.45 crore	To be delivered Flats	Units equivalent to value of Rs. 29.45 Crore
Workmen and Employees	0.64 Crore	0.02 Crore	Nil Payment for employee	0
Unsecured Financial Creditors – (Allottees or Home Buyers)	208.12 Crore	106.48 Crore	To be delivered allotted Flats	-
Unsecured Financial Creditors – (Related party)	38.91 Crore	0	In the absence of admitted claim proposed nil payment	0
Operational Creditors (other than Statutory dues & GDA)	24.06 Crore	3.95 Crore	It is proposed to pay Nil Amount as the Liquidation Value to operational creditors is Nil	0

Operational Creditors (government dues & GDA claim)	369.81 Crore	14.77 Crore		0.11 Crore
Contingent Liability	--	--		<i>It is proposed to reserve an amount of Rs. 1 Crore/-towards the contingent liability arises, if any.</i>
In addition to the above costs, cost for construction, development and Administration of Rs. 345 Crores will be incurred by the Applicants.				

Further as per the details provided in the Information Memorandum (IM), the Resolution Applicant makes provisions to allot flat/consideration w.r.t. the dues of the landowners on the project site of the Corporate Debtor after due verification & due diligence of the necessary documents pertaining to land etc.



III. Letter Dated 02.06.2022 FROM SRA, PROVIDING CLARIFICATION WITH RESPECT TO THE RESOLUTION PLAN DATED 14.05.2022

All the financial creditors are to share the Insolvency Resolution Cost and were expected to contribute towards the Insolvency Resolution Process Cost The Flat owners to contribute Rs. 25,000/- per flat which will be adjusted against the cost of flat and other financial creditors were to contribute proportionate to their debt as interim finance.

IV. PAYMENT OF CIRP COST

The Resolution Applicant has proposed that CIRP cost shall be paid from the corpus fund created by the contributions of Financial Creditors. The Resolution Applicant has also proposed to infuse funds by raising Mobilization Advance equivalent to 5% of total Sales Price within Six (06) months from the effective date from Allottees. These funds shall be first utilized for payment of CIRP Costs. Further, Cash Flows if any generated by the Company during CIRP Period will be used to pay the CIRP Costs. The estimated. CIRP cost to be incurred till the approval of Resolution Plan is not ascertained yet. Therefore, the Resolution Applicant assumes the CIRP Costs of Rs.4 Crore, or the actual costs incurred by the RP, will be paid in full and on priority to any other creditor of the Corporate Debtor. Any surplus or deficit in payment towards CIRP cost will be settled from the funds arranged for contingency by the Resolution Applicant.

V. TREATMENT OF RECOVERY FROM “PUFE” APPLICATION

The existing shareholders, managers, directors, officers, employees, workmen or other personnel of the Company and other beneficiaries of the transactions, shall continue to be liable for all the claims, demand, obligations, penalties etc. arising out of any (i) proceedings, inquiries, investigations, orders, show causes, notices, suits, litigation etc. (including those arising out of any orders passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73 and 74 of the IBC), whether civil or criminal, pending before any authority, court, tribunal or any other forum prior to the Plan Effective Date or (ii) that may arise out of any



proceedings, inquiries, investigations, orders, show cause, notices, suits, litigation etc. (including any orders that may be passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73 and 74 of the IBC), whether civil or criminal, that may be initiated or instituted post the approval of the Resolution Plan by the NCLT on account of any transactions entered into, or decisions or actions taken by, the existing shareholders, managers, directors, officers, employees, workmen or other personnel of the Company, and the Company or the Resolution Applicant or incoming directors shall at no point of time be, directly or indirectly, held responsible or liable in relation there to and the Adjudicating Authority shall pass an order to that effect.

If any recovery/ realization amount is made from the said transactions (Preferential, Undervalued, Extortionate & Fraudulent transactions), the said recovery realization amount would not belong to the corporate debtor but to the creditors of the corporate debtor. The recovery/realization amount would be allocated to the creditors of the corporate debtor in the same proportion as the funds allocated to the creditors in the resolution plan.

Further, Resolution Applicant will have a right to follow legal cases, at its own cost if so desired or required under any applicable law without incurring any financial liability there under Resolution Applicant will have liberty to follow up and take all necessary measures to realise amount from pending arbitration proceeding.

VI. FORMATION OF SPV

The Resolution Applicant is proposing to incorporate Special Purpose Vehicle (SPV) in order to consolidate the operations of the Corporate Debtor. Further, SPV will be formed in a joint venture with RA. The SPV will look after the work of construction, financing, liasioning with respective authorities, home buyers, landowners etc. involved in the project, for better implementation of Resolution Plan of the Corporate Debtor. The formation of Special Purpose Vehicle (SPV) will be initiated within 30 days from the effective date.

VII. TERM OF THE RESOLUTION PLAN

I.A./4219/2022

IN

C.P.(IB)/1058/2018

Date of Order: 11.06.2024



The term of the Resolution Plan shall be Three years and shall commence from the effective date. Further, a grace period of 2 quarters (6 months). The implementation of the Resolution Plan will commence from the Effective Date.

4. In view of Section 31 of the Code, the Adjudicating Authority, before approving the Resolution Plan, is required to examine that a Resolution Plan which is approved by the CoC under Section 30 (4) of the Code meets the requirements as referred under Section 30 (2) of the Code.

Section 30 (2) is quoted below: -

“(2) The resolution professional shall examine each Resolution Plan received by him to confirm that each Resolution Plan –

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) 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, and provides for the payment of debts of financial creditors, who do not vote in favour of the Resolution Plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a Resolution Plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a Resolution Plan;]



(c) provides for the management of the affairs of the Corporate debtor after approval of the Resolution Plan;

(d) The implementation and supervision of the Resolution Plan;

(e) does not contravene any of the provisions of the law for the time being in force

(f) conforms to such other requirements as may be specified by the Board.

Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force for the implementation of actions under the Resolution Plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]”

5. In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a provision in clause 10.2 (Provision for Payment of Insolvency Resolution Cost), Chapter -10 (Compliance with Section 30 of IBC, 2016) at pg no. 26 of the Resolution Plan provides that the Resolution Applicant assumes CIRP Costs of INR 4 crores or actual costs incurred, will be paid in full and in priority to any other creditor of the Corporate Debtor upon Resolution Plan becoming effective.
6. In respect of compliance of Section 30(2)(b) of the Code, it is seen that there is a provision in clause 10.03 Chapter -10 (Financial Proposal) at (Compliance with Section 30 of IBC, 2016) at pg no. 26 and 27 of the Resolution Plan provides that the Applicant had assumed that the Liquidation Value of the Company is less than the Admitted Debt for secured Financial Creditors which aggregates to approximately INR 29.45 Crores. Accordingly, the Liquidation Value is not sufficient to cover the debt of the Financial Creditors of the Company in full. Therefore, it is assumed that no payment is due to the operational creditors. However, in the event if any amount more than the above proposed amount is required to be paid to the Operational Creditor as per the provisions of section 30(2)(b) of the IBC, 2016 out of the Liquidation Value then such amount will be allocated out of the amount offered to the Financial Creditors and will be collected from allottees on pro-rata basis.
7. In respect of compliance of Section 30(2)(c), it is seen that there is a provision in clause 10.4 of Chapter -10 (Financial Proposal) at pg. 27 of the Resolution Plan, which provides that the Resolution Applicant has proposed for change in members of Board



of Directors after the approval of Resolution Plan and new board of directors will be formed to manage the affairs of the Corporate Debtor.

8. In respect of compliance of Section 30(2)(d) and 30(2)(e) of the Code, it is seen that the manner of the management of the affairs and control of the business of the Corporate Debtor has been provided in detail in clause 10.05 of Chapter -10 (Financial Proposal) at pg. 27, Chapter -17 (Management of the Company) at Pg no. 61-62 and Chapter-18 (Term of the Resolution Plan and its implementation and supervision) at pg no.63-64 of the Resolution Plan. Further Clause 18.5 in Chapter 18 of the Resolution Plan, provides that to ensure the effective implementation of the Plan, a Monitoring Committee shall be appointed comprising of Mr. Anurag Nirbhay as Chairman, one representative of the Successful Resolution Applicant and one representative of the CoC.
9. In respect of compliance of Section 30(2)(f) of the Code, it is seen that the information provided in the Resolution Plan and the supporting documents provided by the Successful Resolution Applicant, it seems that the Resolution Plan is in compliance with the applicable laws.
10. In respect of compliance regarding Regulation 38 (1A) of the CIRP Regulations, it is seen that Clause 10.3 (2) at pg no. 26 and Chapter 12 (a) and 12(b) at pg no. 3 of the Resolution Plan provides how it will deal with the interest of all the stakeholders including secured and unsecured financial creditors, operational creditors of the corporate debtor, statutory dues and interests of the employees and workmen, as per the requirement of Regulation 38(1A) of the CIRP Regulations.
11. In respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the applicant has filed compliance certificate in Form-H certifying that the Resolution Plan submitted by the Successful Resolution Applicant meets the requirements as laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code. The undertaking and affidavit dated 3.12.2021 submitted by the Resolution Applicant under Section 29A of the Code, 2016 and Regulation 39(1) of the CIRP Regulations, 2016 are annexed as Annexure A-33 to the present application.



12. On perusal of Form-H annexed as Annexure A-34 at page no.388 - 402 of the present application, we observe that the Average Fair Market Value of the Corporate Debtor as provided in Form- H is Rs. 64,83,32,523/- and the Average Liquidation Value of the Corporate Debtor is Rs. 51,05,30,897/-. We further observe that an application under Section 66 of the Code, 2016 is pending before this Adjudicating Authority. The Clause 9.3.10 at pg no. 25 of the Resolution Plan provides that, “any recovery/ realization amount is made from the said transactions (Preferential, Undervalued, Extortionate & Fraudulent transactions), the said recovery realization amount would not belong to the corporate debtor but to the creditors of the corporate debtor. The recovery/realization amount would be allocated to the creditors of the corporate debtor in the same proportion as the funds allocated to the creditors in the resolution plan. Further, Resolution Applicant will have a right to follow legal cases, at its own cost if so desired or required under any applicable law.”
13. As to the relief and concessions sought in the Resolution Plan more specifically set out in Chapter 20 (Reliefs and Concessions) at pg no. 68 of the Resolution Plan, taking into consideration the decision of the Hon’ble Supreme Court in the matter of **Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019**, this Adjudicating Authority is not inclined to granting any relief prayed for except that is provided in the case itself and direct the Successful Resolution Applicant to file necessary application before the necessary forum/ authority in order to avail the necessary relief and concessions, in accordance with respective laws. The relevant part of the judgement is reproduced herein below:-

39. Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

“25. Duties of resolution professional –

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

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

(a).....



(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings.”

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”

14. This Adjudicating Authority vide order dated 30.10.2023 had passed the following directions:-

- 1) The SRA was directed to explain by way of affidavit the source of funds for funding the project.
- 2) The Resolution Professional is directed to provide clarification, how the same is in compliance of Section 30(2)(b) of the Code, 2016

15. The Successful Resolution Applicant i.e., M/s. Red Apple Buyer's Welfare Association in compliance of this Adjudicating Authority's order dated 30.10.2023, had submitted an affidavit dated 24.11.2023 wherein it was submitted that the SRA has the following modes to fund the project:-

- a) **Remaining sale amount to be received from homebuyers** - As per the information memorandum shared by Applicant/ Resolution Professional, there are numerous flat owners who are yet to pay the full purchase amount towards the flat as per their respective builder buyers' agreement. Thus, the Real Estate Allottees (Creditor in Class) will be required to pay the remaining payable consideration amount within 60 days from the date of demand by the SRA after the plan approval by this Hon'ble Adjudicating Authority. In terms of the amount to be raised from the Real Estate Allottees, the SRA is expecting to raise funds to the tune of approximately Rs. 80 Crores, which shall be used for construction of the project;
- b) **Escalation Cost** - The flat owners, as proposed in the Resolution Plan, have agreed (by voting in favour of the resolution plan) to contribute towards escalation cost at the rate of upto Rs.500/sq. feet over and above the purchase / sale amount quoted/ stipulated in the builder buyers' agreement. In terms of the



amount to be raised from the Real Estate Allottees, the SRA is expect to raise funds to the tune of approximately Rs. 30 Cr.,

- c) **Sale of unsold units** - The flat owner(s) who do not pay the remaining consideration amount including escalation cost within the stipulated time, the flat(s) booked towards the respective flat owner(s) shall stand cancelled and the SRA shall have right to re-sale the said flat to any new purchasers. As per our due diligence total saleable area is approx. 18 Lakh Sq ft out of which already sold area is approx. 6 lakhs Sq. ft. The estimated proceed from sale of unsold saleable area i.e., approx..12 Lakh Sq. ft. is approximately Rs.425 Crore as per the due diligence conducted by SRA.
- d) **Finance by new developer** - As stipulated in the Resolution Plan, the SRA plans to bring in new developer through a Special Purpose Vehicle who shall be responsible for complete construction and completion of the project as per the revised maps. The new developer through its own sources including availing loans, etc, shall infuse fresh funds to the tune of Rs.20Crore for construction of flats of the project. In pursuance of the same, the SRA has already executed a Memorandum of Understanding dated 08.11.2023 with a new developer, M/s. Windsor Paradise Heights Private Limited ('Developer') for construction and development of the project to secure its and all the stakeholder's interest as committed in the resolution plan.

16. Further, this Adjudicating Authority vide order dated 20.03.2024 had directed the Resolution Professional to explain the compliance of Section 30(2) of the Code, 2016 with respect to dues of Ghaziabad Development Authority ('GDA') in light of Hon'ble Supreme Court's recent judgement in Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni & Anr. (Civil Appeal Nos.7590-7591 of 2023) and also directed the Ghaziabad Development Authority to submit their written submissions in the present matter.

17. The Resolution Professional in compliance of this Adjudicating Authority's order dated 20.03.2024 had filed their Compliance Affidavit dated 02.04.2024 wherein the case of Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni & Anr. (Civil Appeal Nos.7590-7591 of 2023) was distinguished with the present case on the ground that the subject property, upon which the Project is being built is a 'freehold' property and GDA has no ownership upon the said land. Also, it was submitted that the function of GDA in the present case was merely that of facilitation and not for providing land on lease. Additionally, the amount claimed by GDA is merely in relation to the various



facilities extended by GDA to the Corporate Debtor, under the head of, inter alia, 'external development fee', 'metro station', 'inspection fees', 'sub-division charges'.

18. The Ghaziabad Development Authority in compliance of this Adjudicating Authority's order dated 20.03.2024 had filed their written submission wherein it was submitted that the land bearing Khasra No. 1108, 1109 & 1110 area 30463.00 sq. mtr. Situated at Village Morta Ghaziabad is the personal land of developer i.e., Corporate Debtor herein and therefore, no allotment of land is given by the Ghaziabad Development Authority. Moreover, it was submitted that said development was sanctioned by the Ghaziabad Development Authority and intimated to the Corporate Debtor through the letter dated 21.11.2016 and 24.05.2018 issued by Ghaziabad Development Authority. However, principal amount of Rs.13,36,73,211/- and interest Rs.1,40,31,393/- was outstanding as on 07.09.2019 and the claim in Claim Form-B was submitted before the Resolution Professional of the Corporate Debtor. The written submissions filed by the Resolution Professional and Ghaziabad Development Authority is taken on record.
19. In so far as the approval of the resolution plan is concerned, this authority is not sitting on an appeal against the decision of the Committee of Creditors and this Adjudicating Authority is duty bound to follow the judgement of the **Hon'ble Supreme Court in the matter of K.Sashidhar v. Indian Overseas Bank (2019) 12 CC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follow:-

"35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The



Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.”

20. Also, the Hon’ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors., Civil Appeal No. 8766-67 of 2019, vid its judgement dated 15.11.2019** has observed as follows:

“38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants.”

21. Thus, from the judgements cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of the creditors. Therefore, in our considered view, there is no impediment in giving approval to the proposed Resolution Plan dated 14.05.2022.

22. Accordingly, subject to the aforesaid observations, we hereby **approve the Resolution Plan Resolution Plan dated 14.05.2022 along with Clarificatory Letter dated 02.06.2022 (‘Approved Resolution Plan’) submitted by M/s. Red Apple Buyers Welfare Association (Successful Resolution Applicant’)**, which shall be binding on the Corporate Debtor and its employees, shareholders of corporate



debtor, creditors including the Central Government, any State Government or any Local Authority to whom statutory dues are owed, guarantors, Successful Resolution Applicant and other stakeholders involved. Resultantly, ***I.A.4219/ND/2022 stand allowed.***

23. It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.
24. We further reiterate that the Approved Resolution Plan shall not construe any waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the Approved Resolution Plan, the same shall be subject to approval by the concerned authorities. The same view has been held by the Hon'ble Supreme Court in **Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development case (supra).**
25. Accordingly, MoA and AoA of the Corporate Debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the Approved Resolution Plan as mentioned above, it is clarified that the Successful Resolution Applicant shall pursuant to the Resolution Plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for such in law
26. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the Corporate Debtor and the Approved Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code. The Resolution Professional is further directed to handover all the records, premises, properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.
27. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order, subject to our observations regarding concessions, reliefs and waivers sought therein.



28. The Supervisory Committee/Monitoring Committee is directed to file the monthly status report with regard to the implementation of the approved plan before this Adjudicating Authority.
29. In view of the above, the **I.A./4219/ND/2022 in C.P.(IB)/1058/2018 stands allowed in terms of aforesaid discussion.**

Let the copy of the order be served to the parties

Sd/-

(DR. SANJEEV RANJAN)

MEMBER (T)

Sd/-

(MANNI SANKARIAH SHANMUGA SUNDARAM)

MEMBER (J)