

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT NO. V, MUMBAI BENCH

IA No. 2230 of 2021

in

CP (IB) 3562/MB/2018

Under Section 30 (6) of the I&B Code, 2016

In the matter of

Pravin Electricals Private Limited

...Operational Creditor

v/s

Ahinsa Buildtech Private Limited

....Corporate Debtor

AND

In the matter of

Mr. Vijay Pitamber Lulla

....Resolution Professional/Applicant

Vs

1. M/s. Umesh Suppliers Private Limited

...Respondent No.1

2. LIC Housing Finance Limited

.... Respondent No. 2
(Financial Creditor)

3. Mr. Shailesh Bhuta

...Respondent No. 3
(Representative of Home Buyer)

4. Pujit Aggarwal

...Respondent No. 4
Erstwhile Management.

Order reserved on: 06.01.2022.

Order Pronounced on: 24.03.2022.

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Applicant: Sr. Advocate Mr. Gaurav Joshi a/w Mr. Chaitanya Nikte, Advocate a/w Mr. Vijay Lulla, RP.

For Successful Resolution Applicant: Mr. Kunal Kunungo, Advocate.

For Respondent No. 1: Mr. Nigel Quraishy, Advocate.

For Respondent No. 2: Mr. Rohit Gupta, Advocate i/b Mr. Aakash Acharya, Advocate for Respondent No. 2-LICHFL.

For Respondent No. 3: Mr. Devarajan Raman, PCS.

For Respondent No. 4: Mr. Pulkit Sharma, Advocate i/b. CS Devarajan Raman.

Per: Suchitra Kanuparthi, Member (J)

ORDER

1. The present application is filed u/s. 30 (6) and 31 of the Insolvency and Bankruptcy Code, read with Rule 39 of the Insolvency and Bankruptcy Board of India (Insolvency resolution Process for Corporate Persons) Regulations, 2016 by the Resolution Applicant Mr. Vijay Pitamber Lulla.
2. The Corporate Debtor was admitted into CIRP on 04.11.2019 and the IRP was appointed.
3. After receiving the order on 09.11.2019, the IRP made public announcement in Form A on 13.11.2019 in two newspapers namely in "Free Press Journal" in English language and "Navshakti" in Marathi language. The last date of receiving claim was 25.11.2019.
4. The applicant filed an MA No. 3884 of 2019 u/s. 21 (6A) (b) of Insolvency and Bankruptcy Code, 2016 for appointment of Mr. Shailesh Buta as the Authorized representative of a class of financial Creditor of Corporate Debtor-Home Buyers. The Adjudicating Authority appointed Mr. Shailesh Buta as the Authorized representative of a class of financial Creditor on 12.12.2019.

5. The Corporate Debtor is a subsidiary of “Orbit Corporation Limited”, the holding company Orbit Corporation Limited is under liquidation by an order dated 12.04.2018 passed by the Hon’ble Bombay High Court and official liquidator has taken charge over the said corporation.
6. Pursuant to the public announcement the applicant received the following claim:

Sr. No.	Type of Creditor	Number
1.	Financial Creditors	1
2.	Financial Creditors in a class-Home Buyer	239
3.	Operational Creditors	2

7. The First meeting of CoC was held on 31st December 2019 and the IRP was confirmed as RP. 75.30 % of flat buyers voted in favour of resolution and the remaining did not cast their vote.
8. In the 2nd CoC meeting held on 29.01.2020, the valuer Aashima Narula and Mr. Vinod Somani and Mr. Pinakin Shah and Mr. Vishnu Upadhyay were appointed to value the assets and Land and Building of Corporate Debtor. Further, it was also resolved that application u/s. 19 (2) is filed against Mr. Pujit Aggarwal for non-cooperation. In the same meeting the RP-applicant tabled updated list of claims received from 225 claimants (254 flats/ shops). The summary of claim for approval of RP is as follows:

Sr No	Name of the Creditor	Claim Amount	Claim Admitted	Claim Rejected	Voting Share
1.	Secured Financial Creditors LIC	52,78,35,762	52,78,35,762	0	18.64%

	Housing Finance Limited				
2.	Unsecured Financial Creditors				
	Umesh Suppliers Pvt. Ltd	24,50,00,000	24,50,00,000	0	8.65%
	Emgee Folis Pvt . Ltd. (related party)	3,16.40,000	0	3,16,40,000	0
	Total Unsecured Financial Creditors	27,66,40,000	24,50,00,000	3,16,40,000	
3.	Financial Creditors in a class (flat buyers 244 flatbuyers)	1,963,360,024	2,05,89,67,484	39,145,342	72.71%
4.	Operational Creditors	49,66,552	17,38,505	32,28,047	0
5.	Other Secured Creditors LIC Housing finance limited	1,83,03,14,836	1,55,65,88,774	27,37,26,06 2	0
	Total	4,603,117,174	4,390,130,525	347,739,451	100

9. In the 3rd CoC meeting on 28.02.2020 the Applicant filed Form G before CoC member, the CoC member agreed to publish in “Free Press Journal” and “Navshakti” for inviting prospective Resolution Applicant. The last date of receipt of EOI was 17.03.2020 and the last date of submission of RP was 17.04.2020.

10. In the 4th meeting of CoC held on 06.05.2020, the RP informed that on 3rd March 2020 inviting for EOI Was published in “Free Press Journal” and Navshakti and RP received 6 EOI. Further, due to lockdown in the entire country last date of submission of RP was extended till 30 days after lockdown declared in Mumbai. With regard to claim of LIC HFL, LIC HFL were supposed to clarify whether it is a Financial Creditor or Secured Creditor based on Judgment of Hon’ble Supreme Court in *Jaypee Infratech Ltd v. Axis Bank Ltd and Ors. (Civil Appeal Nos. 8512-8527 of 2019 with Civil Appeal Nos. 6777-6797 of 2019)* (“Jaypee Infratech”)
11. The Applicant further submitted that total number of flat /shops to be constructed in the project Orbit Residency Park is 288 out of which applicant have admitted 259 flats/ shops and rejects 7 flats/ shops. No claims have been received for 15 flats/ shops. the claim of 27 flats by Umesh Suppliers Pvt Ltd was accepted by the RP as unsecured FC. the table given below summarizes below:

Wing	Flats	No .of Flats Claimed	No . of Flats Not Claimed	No . of Flats Admitted	NO . of Flats Not Admitted	USPL
A	49	44	5	41	1	2
A	6 shops	3	3	3	0	0
B	39	35	4	33	1	1
C	51	50	1	50	0	0
D	51	51	0	50	0	16
E	43	43	0	35	2	17
F	49	45	4	27	1	
Total	282 & 6 Shops	271	17	239	5	27

12. In the 5th CoC meeting held on 28.10.2020, the RP informed the CoC that the CoC is reconstituted and the claim of LIC HFL is reduced as a financial creditor and consider the claim of other creditor and their voting percentage was reduced to 20.88%. The reconstitution of CoC was strongly objected to by the LIC HFL and the flat buyer representative.
13. The applicant pointed out that on 21.09.2020, in the application pending for non-cooperation, NCLT had directed official liquidator to provide documents which are in his custody. The last date for receipt of resolution plan was extended to 30.11.2020 and two new valuers were appointed namely Mr. Dinesh Warade and Mr. Sunil Apte.
14. The Applicant filed an application for extension and exclusion of CIRP period u/s. 12 (2) vide MA No 2198.
15. In the 6th CoC meeting held on 04.12.2020, Resolution Professional informed that he has received the Resolution Plan of Monica Shah in consortium with Shree Krishna Structure Pvt Ltd and Vipul Sanghvi along with the bid bond amount and no other Resolution Plan was received by him. It was decided not to open a Resolution Plan but give more time to another Resolution Applicant to submit their Resolution Plan. Accordingly, the last date of receipt of the plan was fixed on 18.12.2020. Mrs. Monica Shah in consortium with Shree Krishna Structure Pvt Ltd and Vipul Sanghvi were asked to take back their plan and give a revised plan if they so desire.
16. In the 7th meeting of CoC held on 20.01.2021, the Applicant informed the CoC member that the claim of some M/s. Umesh Suppliers Private Limited (hereinafter USPL) was received, it was found the documents were not complete and proper and that the applicant is raising queries and seeking clarification from M/s. Umesh Suppliers Private Limited.

The RP then pointed out that M/s. Umesh Suppliers Private Limited is the creditor of the company, but whether he is a flat buyer for a financial creditor is a question that can be resolved only on the basis of evidence confirming allotment of flats and after he receives further information from Mr. Pujit Aggarwal. The CoC ratified and approved an extension of a large portion of the resolution plan to 21st January 2021 which was done on the request of PRA. Further after discussion, the CoC decided to extend the last date of submission of Resolution Plan as 25th January, 2021, and it was decided to hold CoC meeting on 25.01.2021 to open the plans and requested the Members to be physically present in the RP's office for the same.

17. In the 8th CoC meeting held on 25.01.2021, RP informed the CoC that he has received 3 Resolution Plan from Resolution Applicants namely Ms. Monica Shah consortium, Kabra and Associates and Marttcon Consortium and their plans were opened.
18. In the 9th CoC meeting held on 20.02.2021, the RP stated that he has received a letter from USPL wherein he has attached a few documents along with his name which are allotted and a reply was sent to him.
19. In the 10th CoC meeting held on 03.03.2021, process advisor Mr. Rajendra Ganatra was appointed and RP was requested to appoint a forensic auditor. RP appointed Thar and Company to conduct the forensic audit and determine the true nature of the transaction between M/s. Umesh Suppliers Private Limited.
20. In the 11th meeting of CoC held on 13.04.2021, the CoC members discussed Resolution Plan and RP tabled the Forensic Audit Report of Thar and company and the terms of report was that the M/s. Umesh Suppliers Private Limited was a related party to Mr. Punit Agarwal and

hence should be considered as such related party of Mr. Pujit Aggarwal. Mr. Agarwal objected and denied that they were related party.

21. In the 12th meeting of CoC held on 04.05.2021, there was a further discussion on the revised plan and CoC members raised concern of low working capital and other issues and PRA agreed to give a revised plan within a week.
22. In the 13th meeting of CoC held on 20.05.2021, the CoC member discussed Section 29A compliance with all PRA and it was decided that Ms. Monica Shah consortium have failed to give clarification u/s. 29A and their Resolution Plan not feasible and viable and hence their plan was rejected.
23. The applicant informed the COC that M/s. Kabra and Associates LLP looked clean with regard to Section 29A compliant and the consortium of M/s. Martt Con India Private Limited have also clarified queries on Section 29A compliance. The CoC member requested RP and Mr. Ganatra to present a report on two PRA's showing comparison between the two with their merit and demerit of their respective plans.
24. In the 14th CoC meeting held on 05.06.2021, RP informed CoC that Ms. Monica Shah consortium were informed about rejection of the plan and their earnest money and bid bond money were returned. Mr. Ganatra briefed the salient features of the M/s. Martt Con India Private Limited consortium resolution plan. Mr. Gopalan highlighted the figures of M/s. Martt Con India Private Limited and stated that the amount now agreed to the secured Financial Creditor has been increased to Rs. 16 crs.
25. In the 15th CoC Meeting held on 17.07.2021, the discussion regarding the status of claim of M/s. Umesh Suppliers Private Limited took place and that they had received a forensic report from M/s. Thar and

company. They have also received response from Mr. Pujit Aggarwal and M/s. Umesh Suppliers Private Limited. The forensic audit report concluded that M/s. Umesh Suppliers Private Limited is a related party and can only be treated as “other debt” and not as flat owner. A legal opinion was sought from Mr. Rajan Agarwal wherein he stated there is a need to approach NCLT to take a prior decision on the matter. Based on the advice, the RP was authorized to file an application before NCLT.

Sr. No.	Particulars	Timeline
1	Submission of resolution plan by the PRA's	23 rd July, 2021
2	Circulation of resolution plan to flat buyers	24 th July, 2021
3	Circulation of detailed explanatory note to the flat buyers and Coc members	27 th July, 2021
4	Conducting of meeting between flatbuyers and PRA's viz Kabra and Associates and MarrtConn.	30 th July, 2021
5	Revision of Plan	2 nd August, 2021
6	CoC Meeting to consider the final plans	3 rd August, 2021
7	Voting for the plans by flat buyers	6 th August, 2021 till 9 th August, 2021
8	Voting for the plans for LICHFL and Authorized Representative of flat buyers	10 th August, 2021 till 12 th August, 2021.

26. The applicant has filed an IA no 1729 of 2021 to determine the status of USPL.

27. The CoC in its 16th meeting held on 07.08.2021, discussed the tie breaking formula to resolve the tie between both the plans. The breaker formula is as follows:

- a. *In case both the plans get the same percentage of vote in the voting held between CoC members, the resolution plan having the higher total votes in the internal voting of the class of creditors (home buyers) will be selected.*
- b. *If in the internal voting also, both the resolution plans get same vote than, the plan having the higher score as per the evaluation matrix shall be selected.*
- c. *If the evaluation matrix scores are same, then the networth and the borrowing capacity of both the PRA's will be considered and the one with the higher networth and borrowing capacity will be selected.*

28. In the 17th CoC meeting held on 14.08.2021, further discussion took place on the resolution plan between the CoC members. The CoC meeting was adjourned and held on 16th and 17th August 2021 wherein the discussion on the resolution plan was continued and the PRA's was requested to give clarification addendum to the plan. COC according to the revised timeline as under:

Sr. No.	Particulars	Timeline
1	Submission of Resolution Plan	20 th August, 2021
2	Making of sensitivity report by Process advisor.	21 st August, 2021
3	Conducting of next CoC Meeting	23 rd August, 2021

29. In the 18th CoC meeting held on 23rd august 2021, the discussion regarding addendum to resolution plan took place. The RP then briefed the CoC members on points covered in an addendum submitted by PRA M/s. Kabra and Associates LLP, addendum of M/s. Martt Con India

Private Limited was presented along with an excel sheet prepared by M/s. Martt Con India Private Limited to explain the exit plan clause to CoC members. The meeting was adjourned to 27th August, 2021 with a request to seek addendum to those PRA's. On 27th August 2021, the RP discussed the clauses mentioned addendum to both the PRA's and the plan was put to vote.

30. Key voting result as is as follows:

Sr. No	Particulars	Flatbuyers voting	CoC (includes USPL) voting	Result (Approved /Rejected)
1	To consider & approve the resolution plan of M/s. Kabra and Associates	93.69% voted in favour of the resolution plan	81.36% voted in favour in the resolution	Approved
2	To consider & approve the resolution plan of Consortium of Sanjay Saxena, Mazarali Thakur & M/s. Martt Con India Private Limited	91.28% voted against the resolution plan	100% voted against the resolution plan	Rejected

A. Reliefs concessions and dispensations:

With regard reliefs, concessions and waivers as sought by the Resolution Applicant, this Bench orders that the reliefs and concessions are granted as per the judgement of Hon'ble Supreme Court in Ghanshyam Mishra & Sons vs. Edelweiss Asset Reconstruction Company limited, where at para 95 (i) it was held that once a resolution plan was approved a creditor cannot initiate proceedings for recovery of the claim which are not part of the Resolution plan. Hence, all past liabilities arising out of any levies/ tax dues to any government authority such as VAT, CST, customs Excise Duty and employees, workmen, operational creditor, financial creditor, etc, which are not part of the resolution plan and pertaining to the pre

CIRP period, shall stand extinguished, post approval of the resolution plan.

- B. The Resolution Applicant has provided affidavit/ declarations stating that they are not convicted for any offence during the preceding five years, there are no criminal proceedings pending against them, they are not disqualified to act as director under the provisions of Companies Act, 2013, they are not identified as willful defaulters by any bank of financial institution, they are not debarred from accessing and trading in securities market, etc.
- C. The Resolution Applicant have submitted affidavit u/s 29A and 30(1) of the IBC, 2016 and Regulation 39 of said regulations stating that they are eligible to submit the Resolution Plan.
- D. The Resolution Plan provides for amendment of the constitutional documents of the Corporate Debtor upon approval of the Resolution Plan by NCLT.
- E. Performance Guarantee:

The Resolution Plan provides that the Resolution Applicant shall provide a performance security by way of a performance Bank Guarantee of Rs. 7,00,00,000/- (Rupees Seven Crores Only) issued by any scheduled commercial bank in India in accordance with the terms and condition of the RFRP as under:

- i. Rs.1 crore paid in the form of Bid Bond deposit will be treated as part of the Performance Guarantee on the COC approving the resolution plan of the Resolution Applicant and adjusted towards the same on issuance of LOI.
- ii. Rs.1.50 crores to be paid within 4 (four) days of issuance of Lol by the CoC, in favour of the Successful Resolution Applicant

- iii. Rs. 4.50 crores to be paid within 10 working days from the receipt of the order approving the Resolution Plan of the Successful Resolution Applicant by the Adjudicating Authority (NCLT).

31. Form H is also as below:

Annexure - Q. 476

**FORM H
COMPLIANCE CERTIFICATE**

(Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

I, **Vijay P Lulla**, Insolvency professional enrolled with Insolvency and Bankruptcy Board of India (IBBI) and registered with the Board with registration number **IBBI/IPA-001/IP-P00323/2017-18/10593**, am the resolution professional for the Corporate Insolvency Resolution Process (CIRP) of **AHINSA BUILDTECH PRIVATE LIMITED**.
The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of the CD	AHINSA BUILDTECH PRIVATE LIMITED
2	Date of Initiation of CIRP	04 th November, 2019
3	Date of Appointment of IRP	04 th November, 2019
4	Date of Publication of Public Announcement	13 th November, 2019
5	Date of Constitution of CoC	20 th December, 2019
6	Date of First Meeting of CoC	31 st December, 2019 (Originally it was scheduled on 30.12.2019 but changed to 31.12.2019 at the request of CoC)
7	Date of Appointment of RP	31 st December, 2019
8	Date of Appointment of Registered Valuers	25.02.2020 & 11.11.2020
9	Date of Issue of Invitation for EOI	03.03.2020
10	Date of Final List of Eligible Prospective Resolution Applicants	25.03.2020
11	Date of Invitation of Resolution Plan	18.03.2020 & Addendum on 11.11.2020
12	Last Date of Submission of Resolution Plan	As per the Form G which was published on 03.03.2020 the last date was 17.04.2020 and thereafter due to lockdown imposed in the country the last date for submission of Resolution Plan was extended from time to time till 26.01.2021.
13	Date of Approval of Resolution Plan by CoC	13 th September 2021 (e-voting)
14	Date of Filing of Resolution Plan with Adjudicating Authority	To be filed
15	Date of Expiry of 180 days of CIRP	02.05.2020
16	Date of Order extending the period of CIRP	The IA 2198 of 2020 for Extension Application has been filed with AA on 25.11.2020 but matter has not been heard yet.
17	Date of Expiry of Extended Period of CIRP	The hearing for extension application has not come up on board yet.
18	Fair Value (INR in crore)	Average value of 2 Valuers Land & Building: Rs 21,70,00,000 Average value of 2 valuers Financial Assets: Rs. 42,00,000/-
19	Liquidation value (INR in crore)	Average value of 2 Valuers Land & Building: Rs 16,27,00,000/-

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	Average value of 2 valuers Financial Assets: Rs. 21,00,000/-
20	Number of Meetings of CoC held 19 COC Meetings

3. I have examined the Resolution Plan received from, M/s Kabra and Associates ("hereinafter referred to as "Resolution Applicant") and it has been approved by Committee of Creditors (CoC) of Ahinsa Buildtech Private Limited.

4. I hereby certify that-

- (i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.
- (ii) the Resolution Applicants have submitted an affidavit pursuant to section 30(1) of the Code to submit resolution Plan. The contents of the said affidavit are in order.
- (iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by **81.36%** combined voting share of the financial creditor in a class (Flat Buyers) represented by authorized representative Mr. Shailesh Bhuta and M/s. Umesh Suppliers Pvt. Ltd (**Unsecured Financial Creditor**) after considering its feasibility and viability and other requirements specified by the CIRP Regulations.
- (iv) The IA no. 1729/2021 has been by the RP before Adjudicating Authority regarding the status of M/s Umesh Supplier Private Limited whether to consider them as a Flat Buyer/related parties or Financial Creditor, the matter is pending before the AA. Since the matter is pending before AA, as of now M/s Umesh suppliers Private Limited has been considered as Unsecured Financial Creditor.
- (v) **The Authorized Representative of flat buyers and M/s. Umesh Suppliers Pvt. Ltd.** have voted in favour of the resolution plan of Kabra & Associates with a voting share of **72.71%** and **8.65%** respectively. Thus, the financial creditors in a class (flat buyers) have approved the resolution plan with a majority of 72.71% and this is more than 66.66% required for approvals of resolution plan. The resolution plan of M/s. Kabra and Associates is approved even without considering the voting of M/s. Umesh Suppliers Pvt. Ltd and even they have voted in favour of the plan
- (vi) I sought vote of members of the COC by electronic voting system which was kept open atleast for 24 hours as per Regulation 26.

5. The financial creditors of the Corporate Debtor Ahinsa Buildtech Private Limited being members of the CoC and distribution of voting share among them is as under:

Sr. No	Name of the Financial Creditor	Voting %
	"Voted in Favour of Resolution Plan of Kabra and Associates"	
1	Class-Home Buyer (Represented by authorized representative Mr. Shailesh P. Bhuta)	72.71
2	Umesh Supplier Private Limited (Unsecured Financial Creditor)	8.65
	Total Votes Received ("Voted in Favour of Resolution Plan of Kabra and Associates")	81.36

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"Voted against the Resolution Plan of Kabra and Associates"		
3	LIC Housing Finance Limited (Secured Financial Creditor)	18.64
Total		100

6. The Resolution Plan includes a statement under regulation 38 (1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.

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

Sr. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount Provided to the Amount Admitted (%)
(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	-	-	-	-
		(b) Other than (a) above:				
		* (i) who did not vote in favour of the resolution Plan	52,78,35,762	52,78,35,762	8,50,00,000	16.10%
		* (ii) who voted in favour of the resolution plan (Flat Buyers)	1,963,360,024	2,05,89,67,484	*	-
		(iii) Who did not participate in the voting of Resolution Plan	-	-	-	-
		Total[(a) + (b)]	2,49,11,95,786	2,58,68,03,246	8,50,00,000	16.10%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21 (Related Party)	3,16,40,000	-	-	-
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan				
		* (ii) who voted in favour of the resolution plan	24,50,00,000	24,50,00,000	1,23,00,000	5%

		(iii) Who did not participate in the voting of Resolution Plan				
		Total[(a) + (b)]	27,66,40,000	24,50,00,000	1,23,00,000	5%
3	Operational Creditors	(a) Related Party of Corporate Debtor				
		(b) Other than (a) above:				
		(i) Employees & Workmen				
		(ii) EPF & ESIC dues				
		(iii) Government				
		(iv) Others	49,66,552	17,38,505	90,000	5%
		Total[(a) + (b)]	49,66,552	17,38,505	90,000	5%
4	Other debts and dues	* Other Secured Creditors	1,83,03,14,836	1,55,65,88,774	7,78,00,000	5%
Grand Total			4,60,31,17,174	4,39,01,30,525	17,51,90,000	3.99.%

1. ***Note 1(ii):** The Flat buyers are getting flats after paying balance consideration and Escalation Cost. Hence the amount provided in the plan is shown as NIL.

2. ***Note 1(i) & (4):** The Claim of LIC Housing Finance Limited is bifurcated into Secured Financial Creditor and Other Secured Creditor).

(vii) ***Note 2(ii):** The IA no. 1729/2021 has been filed by the RP before AA regarding the status of M/s Umesh Supplier Private Limited whether to consider them as Flat Buyer/Related parties or Financial Creditor in a class (flat buyer). Since the matter is pending before AA, as of now M/s Umesh Suppliers Private Limited has been considered as Unsecured Financial Creditor by the COC and RP. In case Umesh Suppliers Private Limited is treated as a Financial Creditor in a class (home buyer) then it will not receive the monies mentioned above but will receive flats against payment of balance consideration and escalation cost as provided in the Resolution Plan. In case Umesh Suppliers Private Limited is treated as a related party then it will not receive any monies/flats under the plan.

8. The interests of existing shareholders have been altered by the Resolution plan as under:

SR. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	10,000	Nil	100%	Nil
2	Preference	-	-	-	-

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

Section of the Code/ Regulation No.	Requirement with respect to Resolution Plans	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having	Chapter IV	Yes, at page no. 14 & 15

	regard to the complexity and scale of operations of business of the CD?		
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Clause 5.4	Yes, at page no. 31
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	NA	Yes
Section 30(2)	Whether the Resolution Plan: (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment of the debts of operational creditors? (c) provides for the payment to the financial creditors who did not vote in favor of the resolution plan? (d) provides for the management of the affairs of the Corporate debtor? (e) provides for the implementation and supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being in force?	Clause 5.1.1 Clause 5.1.2 Clause 6 Clause 5.1.3 Clause 5.1.4 Clause 5.1.5	Yes, at page no. 106 & 121 Yes, at page no. 27 Yes, at page no. 57 Yes, at page no. 28 Yes, at page no. 28 Yes, at page no. 28
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	Clause 18.2 NA	Yes, at page no. 69 and also in 18 th COC at pg. no. 289 Yes with 81.36%, considering the vote of USPL and without USPL it is 72.71%
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Clause 16	Yes, at page no. 69
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board	NA	NA
Regulation 38 (1)	Whether the amount due to the Operational Creditors under the Resolution Plan has been given priority in payment over Financial Creditors?	Chapter V Clause 5.1.2	Yes, at page no. 27-28
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Chapter VIII- Clause 8.2.7.8	Yes, at page no. 71-76
Regulation	i. Whether the Resolution Applicant or	Chapter V	No, at page no. 30

38(1B)	any of its related parties has failed to implement or contributed to the failure of implementation of any Resolution Plan approved under the Code. ii. If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementations?	Clause 5.3.4 NA	NA
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	Chapter V Clause 5.3.5 (i) Chapter V Clause 5.3.5 (II) Chapter V Clause 5.3.5 (III)	Yes, at page no.106 Yes, at page no.30 Yes, at page no.30
38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	Chapter V Clause 5.3.7 Chapter V Clause 5.3.8 Chapter V Clause 5.3.9 Chapter V Clause 5.3.10 Chapter V Clause 5.3.11 & 12	Yes, at page no.30-31 Yes, at page no.31 & income tax statement at pg. no. 94-100 Yes, at page no.31 Yes, at page no.31 Yes, at page no.31
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	NA	NA
*[Regulation 39 (4)]	Provide details of performance security received, as referred to in sub-regulation 4 (A) of Regulation 36 B.]	Part III Clause 3	Yes, at page no. 55-56 and Performance Security of Rs. 2.5 Crore has been given by RA Kabra & Associates on 22.09.2021 and the same is annexed at pg no. 486-489

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

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under regulation 40A	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	04.11.2019 (received on 09.11.2019)
Regulation 6(1)	Publication of Public Announcement	T+3	13.11.2019
Section 15(1)(c) / Regulation 12 (1)	Submission of Claims	T+14	25.11.2019
Regulation 13(1)	Verification of Claims	T+21	20.12.2019
Section 26(6A) / Regulation 15A	Application for Appointment of Authorized Representative, if necessary	T+23	Filing of Application for appointment of AR-03.12.2019 Order passed by AA-12.12.2019
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	COC was constituted on 20.12.2019 Filing of constitution of COC with AA-02.01.2020
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30	31.12.2019 (Due to Christmas Holidays)
Regulation 35A	Determination of fraudulent and other transactions	T+115	NA
Regulation 27	Appointment of Registered Valuers	T+47	25.02.2019 & 11.11.2020
Regulation 36 (1)	Submission of Information Memorandum to CoC	T+57	21.08.2020
Regulation 36A	Invitation of EoI	T+75	03.03.2020
	Publication of Form G	T+75	03.03.2020
	Provisional List of Resolution Applicants	T+100	18.03.2020
	Final List of Resolution Applicants	T+115	25.03.2020
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	18.03.2020 and addendum on 11.11.2020
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	Yet to be filed
Section 31(1)	Approval of Resolution Plan	T=180	-

(Signature)

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11. The time frame proposed for obtaining relevant approvals is as under:

Sr. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
1	Resolution Plan	Section 30(6) of the Insolvency and Bankruptcy Code, 2016	NCLT, Mumbai Bench	Application pending before NCLT
2	BMC, MAHRERA and Other Authorities	Respective Acts	BMC, MAHRERA & Other Authorities	Within one year of approval of Resolution Plan

12. The Resolution Plan is not subject to any contingency.

13. Following are the deviations / non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made or circulars issued thereunder (If any deviation/ non-compliances were observed, please state the details and reasons for the same):

Due to Pandemic situation in the Country due to spread of Novel Coronavirus, there were delays in following model timeline as per the IBC regulations, but the same was permitted/extended by COC/LAW Authorities from time to time.

14. The Resolution Plan is being filed after the expiry of the period of CIRP provided in Section 12 of the Code.

Note: The Application for Extension u/s 12(2) was filed on 25.11.2020 in IA No. 2198 of 2020 but matter has not been heard yet.

15. Provide details of section 66 or avoidance application filed / pending. - **NA**

Sr. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
1	Preferential transactions under section 43	-	-	-
2	Undervalued transactions under section 45	-	-	-
3	Extortionate credit transactions under section 50	-	-	-
4	Fraudulent transactions under section 66	-	-	-

15A. The committee has approved a plan providing for contribution under regulation 39B as under: **NA**

- Estimated liquidation cost: Rs
- Estimated liquid assets available: Rs
- Contributions required to be made: Rs
- Financial creditor wise contribution is as under:



Sr. No.	Name of financial creditor	Amount to be contributed (Rs.)
1		
2		
Total		

15B. The committee has recommended under regulation 39C as under: **NA**

a. Sale of corporate debtor as a going concern:

Yes / No

b. Sale of business of corporate debtor as a going concern:

Yes / No

The details of recommendation are available with the resolution professional.

15C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D. - **NA**

16. I, Mr. Vijay Lulla hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.



Name of the Resolution Professional: **Mr. Vijay Lulla**

IP Registration No: **IBBI/IPA-001/IP-P00323/2017-18/10593.**

Address as registered with the Board: 201, Satchitanand Bldg., 12th Road, Khar (W), Mumbai - 400052

Email id as registered with the Board: vijayplulla@rediffmail.com

Date: 14.09.2021

Place: Mumbai

32. The overview of Resolution Application:

- i. Kabra group is certified company under ISO 9001:2008 and is renowned for setting standard within mega town ship and resolution project across Mumbai's landscape. The resolution applicant has dealt with following projects namely;
 - a) Brahmanand (Kabra Galaxy, Thane West)
 - b) Shubharambh, Thane West,
 - c) Vedant, Thane West,
 - d) Maheshwari Nagar, Andheri East,

- e) Happy Valley, Thane West,
- f) Hide Park, Thane West.
- ii. Kabra Associates having net Worth of Rs. 242.77 crores as on 31st March, 2020.
- iii. A brief overview of project of Orbit Residency Park:
 - a. Orbit Residency Park, is a sprawling luxury enclave of magnificent Apartments in Mumbai.
 - b. Orbit Residency Park by Orbit Corporation Limited in Sakinaka is meticulously designed with unbound convenience having best amenities and is an effortless blend of modernity and elegance.
 - c. Orbit Residency Park offers a unique blend of spacious as well as well-ventilated rooms. Orbit Residency Park offers 1 BHK 2 BHK and 3 BHK.
 - d. The master plan of Orbit Residency Park comprises of unique design that affirms a world-class lifestyle and a prestigious accommodation.
 - e. The amenities in Orbit Residency Park comprises of Landscape Garden, Swimming Pool, Gymnasium, Play Area, Intercom, Club House, Health Facilities, Gated community, Maintenance Staff, 24-hour backup Electricity, Meditation Hall and Security (Amenities as promised by the developer).
 - f. Location of Orbit Residency Park is a major plus for buyers looking to invest in property in Mumbai. It is one of the most distinguished places of Mumbai with many facilities and utilities nearby Sakinaka including proximity to metro station and international airport.
 - g. Considering the provisions of the DCPR 2034:

- Plot Area- 8363050 Sq. Mts.
 - Built up Area Permissible- 7,928.35 Sq. Mts.
 - F.S.I. on Premium- 11,099.69 Sq. Mts. + 6,659.81 Sq. Mts.
 - Total Build up Area available for construction-25,705.72 Sq. Mts.
- h. Considering DCPS 2034 & Reservation areas worked out on the basis of DP 2034
- Plot Area- 8363050 Sq. Mts.
 - Built up Area Permissible- 7,669.88 Sq. Mts.
 - F.S.I. on Premium- 10,737.83 Sq. Mts. + 6,442.69 Sq. Mts.
 - Total Build up Area available for construction-24,868.27 Sq. Mts.
- i. Total carpet area committed to the flat buyer are 20,083.42 Sq. Mts. Out of total saleable area which is 29,037.34 Sq. Mts. Total carpet area committed for the shop is 477.98 Sq. Mts. Out of total saleable area 617.80 Sq. Mts.
- j. RCC part and External block works has completed. Major finishing elements are yet to be completed which would need to be completed. The completion of the building structure would require approximately 2.5 to 3 years. The details about the completion are as follows:-

Wing	Flats	Current Status of Construction	Carpet Area (Flats) In Sq. Ft	Saleable Area (Flats) In Sq. Ft
A	49	Foundation and 6 Shops	38,441	52,886
A	6 Shops		6,323	6,650
B	39	3 Floors	40,642	57,657
C	51	13 Floors	32,911	45,159
D	51	13 Floors	39,266	54,668
E	43	7 Floors	28,739	41,481
F	49	7 Floors	36,658	53,091
Total	282 & 6 Shops		2,22,980	311,592

Name	AHINSA BUILDTECH Private Limited
CIN	U45202MH2008PTC177268
Date of Incorporation	2nd Jan 2008
Class of Company	Private Limited Company
Whether Listed or not	Unlisted
Industry	Real Estate
Registered Office	Mumbai The View, 165, Dr. Annie Besant Road, Worli, Mumbai-400018, Maharashtra
Corporate Office	3rd Floor, Orbit Terraces, Lower Parel, Mumbai – 400013
Authorised Capital	INR 100,000
Paid-up capital	INR 100,000
Activities	Real Estate

Details of Directors: ✓

S.No.	DIN / PAN	Name	Designation	Begin Date
1	00025 780	Satish Chandra Gupta	Director	13/08/2013
2	00133 373	PUJIT RAVIKIRAN AGGARWAL	Director	25/01/2008

A Snapshot of the insolvency process:

Particulars	Details
Order of Adjudicating Authority for initiation of Corporate Insolvency Resolution Process	Order dated 4th Nov 2019, by the Hon'ble National Company Law Tribunal (NCLT), Mumbai
Date of communication of Order to the IRP	12 th Nov 2019
Interim Resolution Professional	Mr.Vijay P. Lulla Regn. No.: IBBI/IPA-001/IP-P00323/2017-18/10593IBBI/IPA-001/IP-P00323/2017-18/10593, Address: E-29, South Extension- II, Mumbai- 110049 Mobile: 9319703648 E-mail: vijayplulla@rediffmail.com
Insolvency Commencement Date	4th Nov 2019(Received on 09/11/2019)
Date of Publication of Public Announcement under Section 15 of the Code	12 th Nov 2019
Resolution Professional	Mr.Vijay P. Lulla Regn. No.: IBBI/IPA-001/IP-P00323/2017-18/10593IBBI/IPA-001/IP-P00323/2017-18/10593, Address: 201, SatchitanandBldg, 12 th road, Khar (W), Mumbai - 400052 Mobile: No.9920279899 E-mail: vijayplulla@rediffmail.com
Invitation for Expression of Interest (EOI) issued	3 rd March 2020

Charges Registered* ✓

Assets under charge	Charge holder name	Charge Amount (Rs.)	Date of Creation	Date of Satisfaction	Status
Immovable Properties Or Any Interest Therein	IDBI Trusteeship Service Limited	140,00,00,000/-	14/11/2013	-	Open
Immovable Properties Or Any Interest Therein	IDBI Trusteeship Service Limited	125,00,00,000/-	17/09/2010	-	Open
Immovable Properties Or Any Interest Therein	IDBI Trusteeship Service Limited	200,00,00,000/-	16/10/2008	24/04/2009	Open

(*Source: MCA website)

Net Block of Fixed Assets/ Investments as per Audited Balance Sheet

Sl.No.	Particulars	Year 31.03.2013 Amount (Rs.)	Year 31.03.2014 Amount (Rs.)
1	Tangible Assets		37,256
2	Furniture & Fixture	22,186	-
3	Office Equipment's	31,752	-
	Total	53,938	37,256

3.3 Statement of Assets and Liabilities

The assets and liabilities statement are attached as **Annexure B**

3.4 Financial Statements:

The audited financial statements of ABPL are available only upto 31.3.2013. Further information on accounts has been sought from the erstwhile management of ABPL by the RP.

The financial performance of ABPL for 2 (two) financial years ending 31.3.2013 and 31.03.2012 is as under:

For the year ending on March	2013 (audited)	2012 (Audited)
1		
Sales	8867.80	7408.80
PBT	2144.80	1719.20
Deprecation		-
Interest	-	-
Net Profit/(Loss)	1414.70	1147.30

(In Lacs)

(Source of MCA)

The financial position of ABPL at the end of last 3 financial years is as under:

(Rs.)

For the year ended March 31,	2012 (Audited)	2013 (Audited)	2014 (audited)
Net Fixed Assets	79,801/-	53,938/-	37256/-
Current Assets	1,12,83,34,302	1,08,25,08,728	90,44,02,667
Current Liabilities	1,12,92,17,103	1,08,35,22,666	90,53,99,923
Long Term Borrowings*	83,57,72,308	52,04,20,197	35,09,54,629
Share Capital	100,000/-	100,000/-	100,000/-
Accumulated Losses	-	-	-
Net Worth	15,07,08,241/-	29,21,81,853/-	26,71,89,420

The Long-term borrowings has been shown at Rs. 35,09,54,629/- as on 31.03.2014 as interest free Loan from its parent company i.e., Orbit Corporation Limited (OCL) and it is not clear whether the said loan has been provided by Orbit Corporation Limited from the loan availed by them from LIC Housing Finance Limited (LIC HF). In view of the same, the resolution professional has erred in showing LIC HF a Financial creditor and also considering interest on the said amount whereas the loan in the Balance sheet has been shown clearly as an interest free loan. Since the loan availed by OCL from LIC HF for its various projects including ABPL project, it is not clear as to how much loan has been provided by OCL to ABPL as there is no agreement between OCL and ABPL. Should there be a decision about the claim of LIC HF with respect to the CIRP of Ahinsa, the resolution applicant reserves its right to make suitable modification in the plan to give effect to such final outcome.

3.5 List of Creditors

A List of Creditors based on the claims received and provisionally admitted in response to the public announcement containing the amounts claimed and amount of claim admitted are updated from time to time.

3.6 Particulars of Debt Due from or to ABPL with respect to related parties.

The related parties of ABPL identified as per audited balance sheet for year ending 31.3.2014 are as under:

(i) Long Term Loans & Advances taken from Related Party:

Sr. No.	Name of the Party	Amount
1	Orbit Corporation Limited (Holding Company)	35,09,54,629

2	Ambuj Infrastructure Private Limited (Significant Influence)	49,16,045
3	Emgee Foils Private Limited	3,16,40,000
	Total	38,75,10,674

- Details of the name of related parties and their outstanding's are not available in the information memorandum. However, in the list of creditor of related parties as mentioned in Annexure C of the Information Memorandum is shown as under :

Unsecured Financial Creditor (Related party)		
Name	Amount claimed	Amount Admitted
Emgee Foils Pvt Ltd	3,16,40,000/-	0.00

- (i) Guarantees given in relation to the Debts of ABPL: There is no information available in respect of any guarantee provided in respect of debt of ABPL.

- (ii) Shareholding Pattern:

ABPL has an authorized capital of Rs. 100,000/- divided into 10,000 Equity Shares of Rs.10 Each.

The detail of shareholders of ABPL as per information available on website of MCA is as under:

S. No	Share Holder's Name	Residential Address	Type of Shares	No. of Shares	Amount per Share	Total Amount of Shares
1	Orbit Corporation Limited	The View, 165, dr. Annie Besant Road, Worli, Mumbai 400018	Equity	8500	10	85000
2.	Esscom Marketing Private Limited	B-3, Kamal Kishore, Balgovindas Road Shivaji Park, Mahim, Mumbai 400016	Equity	1500	10	15000
Total				10000		100000

(Source: Audited financial statement of 2012-13)

(iii) Contingent Liabilities / Material Litigations and Ongoing Investigations or Proceedings initiated by Government / Statutory Authorities:

Income Tax	
Assessment Year	Amount (in Lakhs)
AY 2011-12	268.74
AY 2011-12	17.38
AY 2012-13	806.66
AY 2012-13	701.19

VAT	
Assessment Year	Amount
AY 2010-2011	2,84,916
AY 2011-12	Nil
AY 2012-13	3,47,551
AY 2012-13	21,046

a. List of Legal Cases

List of legal cases is attached as **Annexure K** of IM-V1.5 in respect of debt of ABPL.

3.7 Claims provisionally admitted as per IBC:

A. Financial Creditor:

Various Financial Creditors have filed their claims with the Resolution Professional as financial creditors of ABPL. As per the Information Memorandum and based on latest data available, total claims filed by Investors and provisionally admitted are attached as **Annexure C**. As per the Annexure C, the secured financial creditor is LIC HF and there is no other secured financial creditor in the same class of creditors.

We have obtained a legal opinion on the issue of:

"LIC HF being considered as a secured financial creditor by the Resolution professional despite the stand taken by the Supreme court in the matter of *India Resurgence Arc Private Limited V. M/S. Amit Metaliks Limited & Anr. and Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited and in the matter of Phoenix Arc Pvt. Ltd. v. Ketulbhai Ramubhai Patel* Civil Appeal No.5146 Of 2019, on 03.02.2021".

It has been opined that LIC HF should not have been considered as Secured Financial Creditor by the RP. However, since in the IM, LIC HF has been considered as secured financial creditor, we are considering LIC HF as secured Financial creditor but we reserve our right to take such action as may be necessary as the need may arise later on due to any decision in the matter by the Ld. Adjudicating Authority due to LIC HF being considered as a dissenting creditor or otherwise.

On further reconsideration, we have increased the amount payable to LICHF as secured financial creditors to Rs 8.50 crores also payment to LICHF as other creditors has been increased to Rs 7.80 crores. This makes total payment to LICHF of Rs 16.30 Crores.

In the same annexure, unsecured financial creditors have also been shown which included EMGEE Foils Private Limited of Rs.3.16Cr as related party and Umesh Suppliers Private Limited of Rs.24.50Cr. as "unrelated party" and hence they were considered as a part of another class of financial creditors (related). The detailed treatment to Umesh Suppliers Private Limited has been provided in para 7.1.1 of Chapter 7 part 1.

B. Financial Creditor In Class:

Various Financial Creditors (class of creditor representing flat buyers) have filed their claims with the Resolution Professional as financial creditors of ABPL. As per the Information Memorandum and based on latest data available, total claims filed by Investors and provisionally admitted are attached as **Annexure C3**. Therefore, such creditors are a separate class of creditors constituting of allottees of flats.

C. Operational Creditors (Workmen/Employees):

ABPL has, in the course of its business and operations, incurred operational debts from Operational Creditors. As per the Information Memorandum, however, there is no claim received from the Workmen/Employees by the Resolution Professional.

D. Operational Creditors (other than workmen/employees dues):

ABPL has, in the course of its business and operations, incurred operational debts from Operational Creditors. As per the Information Memorandum, there are 2 claims from the operational creditors other than workmen/employees which have been admitted by the Resolution Professional attached as **Annexure E**.

33. Mandatory contents of the Resolution Plan:

A. Compliance with Section 30 of IBC 2016

- a. Section 30 (2) (a) - Provision for payment of insolvency resolution cost.

Share Capital of Rs. 1 Lakh is proposed to be infused by Resolution Applicant which shall be utilized first for payment of

entire corporate insolvency resolution cost (excluding CIRP cost paid out of CD funds if any) and then for payment of claims of each class of financial creditors and operational creditors. Presently, CIRP cost is estimated at Rs. 100 lacs. Priority of payment offered to other stakeholders is described in subsequent paragraph.

As per IBC, the CIRP cost are to be paid in priority over payments to be made to any other creditors and the CIRP costs shall, amongst other things, include the costs, fees and charges incurred by the Resolution Professional, in running the operations of the company as a Going Concern.

Cash Flows, if any, generated by the company during the CIRP period will be used to pay the CIRP Costs as approved by the CoC. The CIRP costs will be paid in full either out of the funds infused by the RA or from the cash flows generated and will be in priority to any other creditor of the company upon Resolution Plan becoming effective.

The applicant will use any surplus funds generated during the CIRP period for the operations of the Company.

Since the CIRP cost has been considered at Rs. 1 cr in the Resolution Plan, the Resolution Applicant will not bear any additional CIRP cost due to delays in approval of the Resolution plan for whatever reasons thereof over and above Rs 1 (one) crore. The fee payable to Resolution Professional will be Rs 1 lakh per month only after the approval of the Resolution Plan by CoC. In case, any objection is raised by the NCLT on this issue, we are agreeable to accept the order of the Hon'ble Court.

b. Section 30 (2) (b)-

Payment of operational creditor shall not be less than liquidation value payable to operational creditors.

Liquidation value of the company is not known to the Applicant. The Applicant believes that the Liquidation value of the company is much less than the admitted amount of debt of financial creditor of Rs. 52.78 crs and class of creditors (financial creditors) of Rs. 205.51 crs. Accordingly, the Liquidation value may not be sufficient to cover the debt of the Financial Creditor of the company in full.

The Applicant will not have any liability against the dissenting creditor over and above what has happened provided for in the resolution plan under clause 3.7 (A) Above and it shall pay only the said amount upon the plan being approved by the CoC of the CD and by Hon'ble NCLT. In fact, in case the financial creditor dissents, in that case the amount proposed in the resolution plan under clause 3.7 (A) will not be paid to them and will be recalculated as per the provisions of IBC 2016 in terms of Section 30 (2) (a) and paid to the dissenting financial creditor. The dissenting financial creditors rights shall only extend to the limit of share mentioned in the approved resolution plan as in any amount paid over the entitled value will be detrimental to other creditors in the same class. However, it shall get preference in payment as per Regulation 38 (1) (b) of IBBI (insolvency Resolution process of Corporate Debtor) Regulation, 2016.

Resolution plan offers to make payment of Rs. 0.85 lacks towards amount due to operational creditors and Rs. 7.80 crores of the amount due to other creditors.

No claim has been received from the Statutory Authorities including Income Tax, VAT, Service Tax, Etc. and only a payment of Rs. 100.00 crores has been provided towards the dues of BMC whether the claims have been filed/ to be filed with the Resolution Professional.

The aforesaid amount is not less than the amount payable to the operational creditors in the event of a liquidation of the corporate debtor under section 53.

- c. Section 30 (2) (c)- Provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan.

On approval of the resolution plan by adjudicating Authority under section 31 (3) of the Insolvency and Bankruptcy Code, 2016, the powers of the Board of Directors shall get restored and the Resolution Applicant shall restructure the Board of Directors with new members, to manage the affairs of the company.

- i. Section 30 (2) (d)- The implementation and supervision of the resolution plan.

The Resolution Applicant has provided for monitoring the progress in implementation of the Resolution Plan under the supervision of monitoring committee as stated in Chapter XI clause 3.2 of resolution plan.

- ii. Section 30 (2) (e)- Does not contravene any of the provisions of the law for the time being in force.

The proposed measures and reliefs provided in the resolution plan do not contravene any of the provisions of the law for the time being in force in our view and belief.

- iii. Section 30 (2) (f)- Conforms to such other requirements as may be specified by the Board. Board has notified the required under regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency Resolution process for corporate persons) Regulations, 2016. The compliance thereof is stated in subsequent paragraphs.

B. Declaration under Section 29A of the Code:

- a) We confirm that the Resolution Applicant or any of its directors or key managerial personnel is not disqualified under Section 29A of the Code.
- b) A separate declaration under Section 29A of the code has already been submitted to the Resolution Professional.

C. Reliefs concessions and dispensations:

With regard reliefs, concessions and waivers as sought by the Resolution Applicant, this Bench orders that the reliefs and concessions are granted as per the judgement of Hon'ble Supreme Court in Ghanshyam Mishra & Sons vs. Edelweiss Asset Reconstruction Company limited, where at para 95 (i) it was held that once a resolution plan was approved a creditor cannot initiated proceedings for recovery of the claim which are not part of the Resolution plan. Hence, all past liabilities arising out of any levies/ tax dues to any government authority such as VAT, CST, customs Excise Duty and employees, workmen, operational creditor, financial creditor, etc, which are not part of the resolution plan and pertaining to the pre CIRP period, shall stand extinguished, post approval of the resolution plan.

Objections filed by LIC Housing Finance Limited to the Resolution Plan:

1. LICHFL is a member of CoC having a voting share of 18.74%, however, prior to the reconstitution, LICHFL had a voting share of 14.84%. LIC HFL is a dissenting Financial Creditor.
2. LICHFL claimed that the Corporate Debtor /Orbit Corporation Limited has availed the terms loan facility from LICHFL and executed registered mortgages commencing from the year 2008, when no right of any plan/ purchasers was existing on the property, a sum of Rs. 260 crores were disbursed for carrying out construction activities. Corporate Debtor herein had guaranteed re-payment of the said loan.

The Corporate Debtor had conceptualized a commercial project namely Orbit Residency Park and the holding company was carrying out all the activities of construction and development.

3. To secure the repayment of loan all units of the project were mortgaged to LICHFL, all receivables from the project were charged through escrow account. The Corporate Debtor through its directors also executed indemnity undertakings in favor of the LIC HFL. Person to dissolve in the loan account LIC HFL has initiated merger under provisions of SARFAESI and has taken permission to secure assets by issuing public notice for the said property. Some of the flat owners also approached MCDRT.
4. The holding company was wound up and an official liquidator was appointed. Thereafter the petition u/s. 9 against the Corporate Debtor was admitted. LICHFL also filed a claim before IRP, in fact they were the only secured Financial Creditors.
5. The Resolution Professional in the 3rd meeting of CoC held on 28.02.2020, informed the CoC about the judgement of Hon'ble Supreme Court in the case of *Anuj Jain, IRP for Jaypee Infratech Ltd v. Axis Bank Ltd and Ors. (Civil Appeal Nos. 8512-8527 of 2019 with Civil Appeal Nos. 6777-6797 of 2019)* (“Jaypee Infratech”) and sought opinion with regard to status of LIC HFL as a Financial Creditor.
6. The RP reconstituted the CoC and the voting share of LIC HFL was reduced from 49.88% to 20.88%.
7. The LIC HFL further pointed out their objections to the Resolution Plan which are as follows:
 - a. The Plan submitted and approved by COC is a conditional plan as it the RA is keeping an option to *withdraw* from the resolution plan on following grounds:

- i. In case AA, NCLT find the plan needs modification and PRA is not in agreement.
 - ii. Force Majeure in expanded definition.
 - iii. RA has the right to challenge the distant vote of any financial creditor in this case Respondent No. 3 in appropriate Forum as and when they intend to.
 - iv. The RA, reserved the right to modify the plan, in case there is a material adverse effect in between the approval of plan by NCLT and approval by COC.
- d. The Plan is discriminatory as differential treatment is given to Respondent No. 3 vis-a-vis the other financial creditors (home buyers and also USPL) is not fair and equitable and is completely against the sacrosanct principle that is the foundation of this code.
- e. The Cash flow as stated in the Resolution Plan is completely dependent upon the influence from the Allottees with a capital infusion of Rs. 1 lacs only and balance amount is to be raised by the PRA either from friends and relatives or from the outside sources. Further, the Cash flow statement is ambiguous about equity infusion by the Resolution Applicant.
- f. The plan contemplates extinguishing 'security interest' of the Respondent No. 3 prior to payment being received by the Respondent No. 3 that is upon approval of Resolution Plan which is contrary to law and SC guidelines.
- g. The liquidation value of the Corporate Debtor is much higher and Respondent No. 3 holds a valid mortgage over the 'immovable Assets' and 'receivable's' much prior to rights of Flat purchaser/ Allottees which has not been accounted. It is only receiving a sum of 8.5 crores as a 'financial creditor' and a sum of Rs. 7.78 crores

as the 'secured creditor' which too is payable after 24th month as per page 19 cl(vi) c which does not satisfy the ingredients as 'payment' under clause b of Section 30 (2) of the Code. Further, it involves a significant haircut which is contrary to what Respondent No. 3 would have received in liquidation under Section 53 of the Code.

- h. Resolution Applicant is binding Respondent No. 3 (FC) with the Resolution plan which is contrary to the rulings of the Supreme Court in *Jaypee Kensington Welfare Association and others vs NBCC India (Limited) and others (Civil Appeal No. 3395 of 2020 SC) infra*.
- i. The present offer of 16.30 crores by RA is lesser than the Liquidation value of the CD as determined by RP which is Rs. 16.48 crores, Liquidation value is Rs.16.27 crores on Assets and Rs. 0.21 crores on Financial Assets. Therefore, the offer is much below the liquidation value to be received by the Respondent No. 3.
- j. That USPL (Umesh suppliers) who claims right over (24) flats on the basis of Allotment issued by the OCL in the year 2014 and 2017 are seeking to convert their alleged 'unsecured deposits' in 'OCD' and 'ICD' in lieu of flats only pursuant to the mortgage executed in favour of the Respondent No. 2 (2008-2010) in respect of the above flats without the consent /NOC of the Respondent Number 3. However USPL has been granted 8% voting share and their claim admitted in full which is contrary to the SC guidelines and is apparently a related party transaction as can be seen from document/ forensic report.
- k. That the plan contemplates the Respondent No. 3 to grant the NOC's to Allottees/ Purchasers to enable them to obtain Loans

from other Banks /Financial Institutions permitting third party rights to be created even before amounts are received by Respondent No. 3 thereby extinguishing the 'security interest' before amounts received.

1. Non-compliance of Statutory mandate

Non-compliance under Regulation 38(3A) read with regulation 37 1(c) as the Resolution Applicant has not stated the source of funds for payments of a dissenting Financial Creditor. Non-compliance of Regulation 39B as provisions for meeting the Liquidation cost is not specified /complied nor their compliance under Regulation 39D for meeting the liquidator fee under the resolution plan by the COC.

m. The notarized affidavit filed by Shri Manish Kamal Kishor Kabra for confirming Regulation 29A compliance along with other statements on behalf of Kabra and Associates is not valid as the stamp paper is purchased in the name of "Kabra Estate and Investment Consultant".

n. Common law remedies like *force majeure* and dependence on payments from allottees / revocation of contract / exit route 12A have been implemented in the resolution plan contrary to Statue.

o. The Constitution of the Resolution Applicant is not clear as contrary statements are made at one place it is shown as a Partnership Firm and at other place the persons are referred to as Directors.

Finding with regard to the Objections of LIC HFL:

34. The Objector LIC HFL is part of CoC having 20.88% of voting share has dissented from voting for the Resolution Plan and will get only the claim as per Section 53 of the Code.
35. It is relevant to refer to the Judgement of Hon'ble Supreme Court in *Jaypee Kensington Boulevard Apartments Welfare Association & ors vs. NBCC (india) ltd. & ors.*, wherein the Hon'ble Supreme Court held that the dissenting financial creditor is bound by the Resolution Plan and shall be entitled to receive his claim u/s. 53 of the Code. The Findings of the Hon'ble Supreme Court at Para 46 is reproduced below:

“46.1. While dealing with the rival submissions in relation to this claim of the dissenting financial creditor, the NCLT referred to the binding nature of agreement between JIL and the said creditor as also the rights of a dissenting financial creditor in terms of Sections 30(2) and 53 of the Code and concluded that the only recourse available was payment in cash to such dissenting financial creditor a sum equivalent to the liquidated sum he would be entitled to receive under Section 53 of the Code. The NCLT said,-

“91. If you come to the resolution under IBC, there are two outcomes in it. One is some creditors agreeing for a resolution to the existing situation. Another is, some creditors may not agree for the resolution. The persons agree for the resolution, they are no doubt bound by the arrangement they agreed upon. But as to the dissenting creditors, who have not agreed for the resolution, they are governed by sections 30(2) & 53 of the Code. In the case of dissenting creditor, the Corporate Debtor or the Resolution

Applicant stepping into the shoes of the Corporate Debtor is bound by the earlier contract entered between the Corporate Debtor and the dissenting financial creditor and then by the pro rata distribution entitled u/s 53 of the Code. The only

recourse available is, the dissenting creditor shall be paid in cash equivalent to the liquidated sum he is entitled to receive u/s 53 of the Code. It is a deeming fiction to calculate the liquidated sum payable to the dissenting financial creditor and pay the same to the dissenting creditor as if the company is liquidated. To make such payment, the company need not be factually liquidated.”

46.2. The word “payment”, as defined in Black’s Law Dictionary was also analysed by NCLT and it was stated that the obligation has to be seen and in the instant case, the obligation was repayment of money lent along with interest. It was observed, that the dissenting financial creditors were to be paid in cash not just by virtue of Section 53 of the Code but 97 also by virtue of the terms and conditions of the agreement between JIL and the dissenting financial creditor, in the following words: -

“92....Therefore this argument will not be tickling to say that payment in kind to the promise is discharge of obligation. If the promisee has agreed to give up the payment obligation, he is free to do so. In this case, for the dissenting financial creditor has not agreed to the approval of the resolution plan, they shall be paid in cash, not only by virtue of the mandate under Section 53 of the Code but also by virtue of terms and conditions of the agreement between the Corporate Debtor and the dissenting financial creditor

This Bench notes that in view of the above judgement of the Hon’ble Supreme Court, the objections of dissenting creditors namely Respondent No. 3 – LIC HFL are untenable. Further, the objections with regard to the compliance of the regulations for approval of Resolution Plan are untenable and that the mandatory contents of the Resolution plan in compliance with Regulations 38 and 39 of the IBBI (Insolvency

Resolution Process for Corporate Persons) Regulations, 2016, has been enclosed at clauses 5 of the Resolution Plan.

Findings of the Resolution Plan:

36. The approval of Resolution Plan has been sought u/s 31 of the Code. We have carefully considered the submission of counsel for RP and pursued the records. The conditions provided u/s. 31 (1) are that the Resolution Plan is approved u/s. 30 (4) of the Code and that the Resolution Plan so approved is in compliance of Section 30(2). However, the Resolution Plan has provisions for its effective implementation. The Resolution Plan was approved by 81.36% majority of CoC and therefore the conditions of section 30 (2) are satisfied. The provisions of Section 30 (2) is as follows:

“30. (1)...

(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 repayment of other debts of the corporate debtor;

(b) provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;

(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.”

37. The Resolution Plan provides that the estimated CIRP cost of Rs. 1 crore from the upfront Equity infusion, within 45 days of the effective date.
38. The fair value is Rs. 21.70 crores and the liquidation value is Rs. 16.27 crores. However, Resolution Plan provides the payment of Rs. 17.52 crores, the flat buyers are being paid Rs. 8.5 crores, the Financial Creditor namely LIC Housing Finance Limited will be paid Rs. 16.30 crores and although the claim of LIC Housing Finance Limited is secured financial creditor and other creditor, however, they have dissented the plan and hence they will be getting only the liquidation value u/s. 53 of the Code. The plan also provide that the unsecured financial creditor would be paid an amount of Rs. 1.23 crores, subject to the outcome of IA 1729 of 2021. IA has given a performance Bank Guarantee of Rs. 7 crores (Rs. 1 crore paid in form of one deposit, Rs. 1.5 crores to be paid within 4 days of issuance of LOI, Rs. 4.5 crores to be paid within 10 days of approval of Resolution Plan). The Resolution Applicant has accepted the LOI given by the RP and given the performance guarantee of Rs. 2.50 Crores in the form of Bank Guarantee by Canara Bank, Kolshet Branch, Thane for a period of 3 years. The plan also provides for the payment of other creditors to the tune of Rs. 7.80 crores and payment to Operational Creditor of Rs. 90,000/-. Further, the plan provides for escalation of flat buyers at the rate of Rs. 4,999/- per sq. ft.
39. In terms of Section 30 (2) (c) (d), the Resolution Plan also provides that the monitoring agency shall comprise of one representative of Resolution Applicant, one representative of Insolvency Professional, one representative of Financial Creditor (including the class of creditors) which should be treated as one creditor.
40. In CoC of Essar Steel (Civil Appeal No. 8766-67 of 2019 decided on 15.11.2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution

Plan which the CoC in their commercial wisdom have approved. In para 42, the Hon'ble Court has observed as under:

“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61 (3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar (supra).”

41. We further rely on the judgement of the Hon'ble Supreme Court in case of K. Shashidhar Vs IOB, wherein it was held inter alia that no corresponding provision has been envisage by the legislature to empower the Resolution Professional, Adjudicating Authority, of that matter NCLAT to reverse the commercial decision of the CoC. It is also held that the commercial decision of Financial Creditor are not open for judicial review by Adjudicating authority and by Appellate Authority. Therefore, in view of the above discussion, the decision taken by the Financial Creditor/CoC Members falls within the ambit of its commercial and banking wisdom and is therefore not being interfered with.

ORDER

42. Therefore, subject to the observation made in this order, we hereby accord our approval to the Resolution Plan. The Resolution Plan shall form part of this order.
43. Any relief sought in the Resolution Plan, where any contract, agreement understanding, Proceeding, action, notice etc. not specifically identified, or is for a future contingency, is, at this point of time, rejected.

44. The Resolution Plan as approved is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Corporate Debtor can come into force with immediate effect.
45. The Moratorium imposed under Section 14 shall cease to have effect from the date of this order.
46. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order. However, he shall perform his duties in terms of the Resolution Plan as approved by this Adjudicating Authority.
47. The Resolution Professional is further directed to handover all records, and properties to the Resolution Applicant to finalize the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises of the corporate debtor through the Resolution Professional to finalize the further line of action required for starting of the operation.
48. In case of non-compliance of this order or withdrawal of Resolution Plan, the performance security amount already paid by the Resolution Applicant shall be liable to be forfeited.
49. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
50. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.

51. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this order for information.
52. The Applicant shall forthwith send a certified copy of this order to the CoC and the Resolution Applicant, respectively for necessary compliance.
53. The application bearing no IA No. 2230 of 2021 is stand **disposed of**.

Sd/-
ANURADHA SANJAY BHATIA
Member (Technical)

Sd/-
SUCHITRA KANUPARTHI
Member (Judicial)