IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I

IA NO. 2222 of 2020 In
CP (IB) NO. 4464 of 2019
Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

<u>In the Application of</u>
Robust Landscapes Private Limited
...Applicant

<u>In the matter of</u>
Gajendra Investment Limited
...Petitioner

Versus

Jayesh Natvarlal Sanghrajka

... Resolution Professional of
Satra Property Developers
Private Limited/ Respondent
Order Delivered On : 16.01.2024

***Coram**:*
Hon'ble Member (Judicial) : SH. Justice Virendrasingh G. Bisht (Retd.)
Hon'ble Member (Technical) : SH. Prabhat Kumar

Appearances:
For the Applicant : Mr. Viraj Parikh, Ms. Vibha Joshi, Advocates

For the Respondents : Mr. Nausher Kohli, Mr. Ashish Parwari, Mr. Chintan Gandhi, Advocates

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application 2222/2020 is filed by Robust Landscapes Private Limited ("**Applicant**") in the Corporate Insolvency Resolution Process ("CIRP") of **Satra Property Developers Pvt Ltd.** ("**Corporate Debtor**") under the provisions of Insolvency & Bankruptcy Code, 2016 ("Code") seeking following reliefs :

    a. The communication dated 31.10.2020 addressed by the IRP to the Applicant inter alia informing that the Applicant's claim cannot be considered as a Financial Creditor be quashed and set aside.
    b. The List of Creditors submitted to this Tribunal, wherein, the RP has refused to admit the Applicant's claim as Financial Creditor and reported the status of the Applicant as the Secured Creditor as "Not Clear" be quashed and set aside.
    c. Declaration that the Applicant's claim qualifies as the Financial Creditor and a Secured Creditor within the meaning of Section 5(7) and 3(30) of the IBC respectively, and direct the Respondent to admit Form C submitted by the Applicant.
    d. Pending the final hearing and final disposal of this Application, pass an order of injunction restraining the Respondent from holding any meeting of Committee of Creditors of the Corporate Debtor and stay the effect, operation and implementation of any of the decisions taken in the meetings of the Committee of Creditors of the Corporate Debtor.

2. The captioned Petition filed by Gajendra Investment private Limited against the Corporate Debtor under Section 7 of the Code was admitted by this Tribunal vide its Order dated 10.08.2020 and accordingly, the Corporate Insolvency Resolution Process of the Corporate Debtor commenced. Mr. Devarajan Raman was appointed as the Interim Resolution Professional ("**IRP**") and subsequently, vide Resolution dated 12.11.2020, the Committee of Creditors ("**CoC**") in their first meeting, appointed the Respondent herein as the Resolution Professional of the Corporate Debtor ("**RP**").

Submissions made by the Ld. Counsel on behalf of the Applicant

3. The Applicant states that they are entitled to recover a principal sum of Rs. 90,00,00,000/- (Rupees Ninety Crores Only) from the Corporate Debtor along with interest accrued thereon. The Applicant states as on the date of filing this Application, the total financial debt stands at Rs. 2,67,64,24,668/- (Rupees Two Hundred Sixty Seven Crores, Sixty Four Lakhs, Twenty Four Thousand, Six Hundred and Sixty Eight Only).

4. This Application is filed against rejection of the Applicant's claim as a Financial Creditor of the Corporate Debtor by the Resolution Professional ("**RP**").

5. The Applicant's claim in Form C dated 24.08.2020 for Rs. 90,00,00,000/- (Rupees Ninety Crores Only) along with interest, as a Financial Creditor was rejected by the RP vide his email dated 31.10.2020 on the ground that the Agreement is that of a joint development. On the RP's suggestion, the Applicant submitted, without prejudice to its rights and contentions, Form F dated 13.11.2020. The RP admitted the Applicant's claim to the extent of the

principal amount of Rs. 90,00,00,000/- (Rupees Ninety Crores Only) under Other Creditors' vide his email dated 08.01. 2021.

6. The Applicant submits that the IRP constituted the CoC and the Applicant is not admitted as part of CoC, as per the notice of the first meeting dated 07.11.2020 issued by the IRP. Further, the IRP has, in the List of Creditors filed before this Tribunal, reported the status of the Applicant as a Secured Creditor as "Not Clear".

7. The Applicant submits that pursuant to Joint Venture Agreement dated March 2, 2012 ("**Agreement**") the Corporate Debtor agreed to provide to the Applicant 3 lakh square feet carpet area/FSI in the Phase I of residential project at Ghatkopar, Mumbai ("**Project**"), being developed by the Corporate Debtor, against consideration of Rs. 90,00,00,000/- (Rupees Ninety Crores Only).

8. It is the Applicant's case that the Corporate Debtor failed to provide the area/FSI despite receipt of the entire consideration amount. The Applicant filed Company Petition No. 25 of 2019 under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**"), during the pendency of which, the captioned Petition was admitted and CIRP of the Corporate Debtor commenced on 03.08.2020.

9. The Applicant submits that their claim is a "Financial Debt" in view of the following :
   a) The Corporate Debtor has admittedly raised Rs. 90,00,00,000/- (Rupees Ninety Crores Only) from the Applicant under the Agreement for providing 3 lakh square feet carpet area/FSI in the Project. The transaction, therefore, has a commercial effect of borrowing within the meaning of Section 5(8)(1) of IBC as held by the Supreme Court in Pioneer Urban Land and

Infrastructure Ltd. & Anr. Vs. Union of India' [(2019) 8 SCC 416]. The RP's contention that it is not a transaction having commercial effect of borrowing as the intention of the Applicant was not self-consumption of the area but that of selling flats for profit is erroneous as per Pioneer (supra).

b) In Corporate Debtor's Affidavit in Reply dated 31.01. 2019 in CP No. 25/2019 it is admitted that under the Agreement the Applicant is entitled to 3 lakh square feet FSI against payment of Rs. 90,00,00,000/- (Rupees Ninety Crores Only). Further, the "Security Reference No. 2" in the List of Creditors filed by the Respondent reads as follows:

"A Registered Document entitles Claimant (the Applicant) to receive 3,00,000 sq.ft. of FSI in the future building to be constructed by the Claimant (the Applicant) and construction cost to be borne by the Claimant (the Applicant) based on the Joint Development Agreement."

Admittedly, the Agreement is for purchasing FSI against payment of monies. The Applicant's claim, is therefore, a Financial Debt as per ***Nishit Patel vs. Good Value Financial Services Pvt. Ltd. & Anr. (Company Appeal (AT) (Ins) No. 198 of 2020) (NCLAT***).

c) The Applicant is an "allottee" qua the Corporate Debtor under the Agreement and its claim is a Financial Debt as per Pioneer (supra). The RP's contention that the Applicant is rather a promoter is erroneous as the Agreement provides the following:

(i) Purchase of 3 lakh sq. ft. carpet area/FSI against consideration of Rs. 90 crores; there is no arrangement to share either revenue/profit or area; there is neither equity participation nor control over the Corporate Debtor or the Project;

(ii) Entire responsibility of development and construction of the Project is on the Corporate Debtor;

(iii) Undertaking of the Corporate Debtor to obtain Commencement Certificate for construction of Sale building of Phase - I within 12 months;

(iv) Receipt of refundable deposit, share money, deposit money, advance maintenance charges, etc. by the Corporate Debtor;

(v) Clear and unambiguous intention of the parties that the Agreement shall not be construed as a partnership and /or agency between the parties.

10. The Applicant submits that the RP's reliance on recital (u), last recital after representation (ix) of recital (v) clauses 3, 5, 7, 10, 11, 13, 17, 18, 21, 28 and 33 to conclude that the Applicant is a developer is misplaced. The RP has failed to consider that:

(i) the nomenclature of a document is not relevant. [***RE: Para 15, Yellapu Uma Maheshwari and Anr vs Buddha Jagadeeswararao and Ors. (2015) 16 SCC 787***]

(ii) the LOI for the Project continues to stand in the name of the Corporate Debtor;

(iii) as a trade practice the real estate developers/promoters charge the flat purchasers with development and other charges proportionate to the area of the flat, over and above the consideration amount. Hence, the fact that the construction cost was to be borne by the Applicant does not make it a developer;

(iv) having purchased the area/FSI from the Corporate Debtor for consideration, the Applicant is entitled to independently sell and/or create third party rights and also receive the sale proceeds directly from the purchasers in the event of further sale. In fact, if the intention of the parties was that of joint development, the monies so received would have been deposited in a joint bank or escrow account as is the prevalent trade practice;

(v) the fact that monies towards refundable deposit, share money, deposit money, advance maintenance charges etc. was to be paid to the Corporate Debtor rather than the Applicant further demonstrates that the Applicant is not the developer/promoter;

(vi) RERA allows allottees/homebuyers to take over development of delayed projects. Clause 28 of the Agreement falls in line with the same. In fact, clause 28 clearly demonstrates that the development was not to be carried jointly but by the Corporate Debtor alone;

(vii) Clause 33 essentially refers to transfer charges levied by the developer/promoter at the time of resale of flats. The RP wrongly concludes the same to be for grant of development rights;

(viii) the Project was delayed, and letter dated 19.07. 2017 was issued by the Applicant as a caution and with a view to avoid any liability under RERA in the event of invocation of clause 28 of the Agreement in the future.

11. It is the Applicant's case that the Agreement is in the nature of a forward sale transaction and as per judgement of Pioneer (supra), is a financial debt within the meaning of Section 5(8)(t) of IBC and the RP has wrongly concluded that the Applicant is not a Financial Creditor as there is no interest clause in the Agreement or an arrangement in writing.

12. The RP was informed vide email dated 24.10.2020 that during the pendency of CP No. 25/2019 it was orally agreed that if the Corporate Debtor fails to demarcate the area to be given to the Applicant, the Applicant will be entitled to consider the Agreement as terminated and receive from the Corporate Debtor refund of the monies paid by the Applicant along with interest at the rate of 18% per annum on quarterly compounding basis from the date of payment until realisation. It is well settled that an oral agreement is valid and enforceable.

13. The Applicant further submits that, being an allottee, they are also entitled to interest as per RERA and interest is not a sine qua non for a financial debt as held in Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd. (2021 SCC OnLine SC 513).

<u>Submissions made by the Ld. Counsel on behalf of the Resolution Professional</u>

14. It is the Resolution Professional's case that upon perusal of the JVA, especially last recital after representation (ix), Clauses 3, 7, 10, 11, 13, 17, 18, 21, 22, 28 and 33 it is abundantly clear that the Applicant has not only assumed the role of a promoter/developer but also enjoys rights and benefits that accrue to promoters/developers in the normal course of business as the Corporate Debtor was a party for carrying out joint development of the Sale Component of Phase-I (*Clause 3 of the JVA*); a purchaser/receiver of development rights as well as a beneficiary of future accruing rights of an area demarcated for the Applicant viz. 3,00,000 sq.ft. (*Clauses 5 and 33 of the JVA*); a contributor to the construction/development costs of Phase-1 in proportion to its area share (*Clause 10 of the JVA*); responsible for jointly appointing a contractor and opening a bank account for the purpose of construction and development of Phase-1 and making monetary provisions for common administrative and management expenses (*Clause 11 of the*

JVA); entitled to receive of sale proceeds directly from the flat purchasers/allottees (*Clause 13 of the JVA*); entitled to receive refundable deposits, share money, deposit money, advance maintenance charges etc. in the name of the Corporate Debtor (*Clause 13 of the JVA)*; entitled to independently book, sell, transfer, retransfer, cancel, surrender, give on lease or leave and license basis, or otherwise deal with its share of area including but not limited to issuing allotment letters entering into agreement for sale, seeking loan from financial institutions etc. and was liable and responsible for any such action of it. (*Clauses 17 and 21 of the JVA);* responsible for the marketing, advertising or promoting the said project and also a contributor of costs of such marketing, advertising or promoting (*Clauses 18 and 22 of the JVA*); entitled to take over the entire charge of the development of Phase-1 of the Project in the event of failure of the Corporate Debtor to perform its obligations as per the terms and conditions under the JVA (*Clause 28 of the JVA*).

15. The Resolution Professional submits that the Applicant is involved in building of complete constructions or parts thereof, civil engineering etc. Admittedly, the Applicant is not in the business of lending or financing. The amount claimed by the Applicant as 'financial debt' is nothing more than a business investment for a Joint Venture and does not fall within the definition of 'financial debt' under the Code. The JVA is a contract of reciprocal rights and obligations and any breach of terms of said contract cannot be construed as a Financial Debt. (Reliance is placed on the judgments of: ***M/s Jagbasera Infratech Private Ltd. vs. Rawal Variety Construction Ltd***. COMPANY APPEAL (AT) (INSOLVENCY) No.150 of 2019; ***M/s. Vipul Limited vs. M/s. Solitaire Buildmart Pvt. Ltd.*** COMPANY APPEAL (AT) (Insolvency) No. 550 of 2020 and order dated 30.11.2023 passed by the NCLT

Guwahati Bench in the matter of ***Chiragsala Sales Pvt. Ltd. vs. Vaishno Devi Traders Pvt. Ltd.***)

16. The Resolution Professional further submits that Clauses 12 and 16 of the JVA cannot be read in isolation merely to suit the case of claim of the Applicant as such a reading would be contrary to the intention of parties at the time of entering into the JVA. In fact, the Applicant itself, in its letter dated 19.07. 2017, bearing reference number 'DK/28/2017' addressed to the Corporate Debtor, has acknowledged and accepted that it is a co-promoter/ co-developer/ joint-developer by use of the following words:

"*4. In the event we do not receive any response from you within 2 (two) days from the date of receipt of this notice, you acknowledge that you shall irrevocably and unconditionally be liable to for all the acts, omission and punishments that may be imposed by the Regulatory Authority, as a consequence of not registering under the Act, which please note and RLPL including all its directors and shareholders shall not be responsible for the same in any manner whatsoever, as if they were never involved with you in the project.*"

17. The Resolution professional also states that a closer look at the stamp duty paid on the JVA reveals that the stamp duty is paid under Article 5 (g-a) of The Maharashtra Stamp Act, which relates to a transaction where authority or power is given to a promoter or a developer, by whatever name called, for construction on, development of or, sale or transfer (in any manner whatsoever) of, any immoveable property. It is thus clear that the intention of the parties was always to jointly develop the project and by any stretch of imagination, the Applicant cannot stand in the shoes of a lender or regarded as a financial creditor.

18. It is the Resolution Professional's case that the Applicant falls within the definition of ***"promoter"*** as per Section 2(zk) of the RERA, 2016 read with the Explanation to the definition thereat since it is responsible for construction or causing construction of the project for the purpose of selling all or some of the apartments of the sale component of Phase. Therefore, there is no question that the Applicant is an 'allottee' of the real estate project and the said contention is contrary to the understanding captured by the JVA and the claim form filed by the Applicant.

19. The Resolution Professional states that the documents submitted by the Applicant in support of its claim neither prove the existence of debt due to a financial creditor or a financial creditor in a class as contemplated under Regulations 8 and 8A respectively of the CIRP Regulations nor do such documents satisfy the necessary ingredients of a 'financial debt' as defined at Section 5(8) of the Code.

20. It is also submitted that prescribed form of proof of claim for allottees of real estate projects or creditors in a class is Form CA. However, the Applicant had originally submitted Form C to the IRP and subsequently filed Form F to the RP. The claim submitted by the Applicant under Form F was partially admitted to the extent of the principal amount of claim. As per the terms and conditions of the Resolution Plan, the Applicant, falling in the category of "other creditors" would be recovering approximately 58.88% of its admitted claim.

21. It is further submitted that the interest component cannot be verified and has not been admitted, as there is no interest component in JVA and the Applicant itself has relied upon the the Interest Act, 1978 and the Negotiable Instruments Act, 1881. Therefore, the critical aspect of "disbursement against time value of money" is absent. In view of

various clauses of the JVA and the Applicant's own conduct, the Applicant cannot be said to be a financial creditor or an allottee of real estate project.

Findings

22. We have heard the learned Counsel and perused the material available on record.

23. Clause 4 of the Agreement dated 2.3.2012 provides that "*It is mutually agreed that in respect of Joint Development of Phase I to be carried out by the Parties herein for the Sale Component of Phase – I, the Company shall be entitled to 300000 Sq. Ft. carpet area, (for which consideration is payable by the Company as provided in the subsequent clause and construction cost is to be borne by the Company as provided herein), such area shall be constructed in the form of Flats.*"

24. Clause 5 further provides that "*In consideration of the Developer entering into the Development of Phase 1 of Sale Component with the Company and thereby the Company becoming entitled to 300000 Sq. ft of carpet area of constructed area out of Sale Component of Phase – 1, the Company shall pay to the Developer consideration at the rate of rs. 3,000/- (Rupees Three Thousand Only) per sq. ft of car pet area, which comes to (300000x3000)….*"

25. Clause 7 of the said Agreement further provides for demarcation of the sale component between the Applicant and Corporate Debtor and it is provided therein that "*As the proposed development of the said First phase of development will consist of several buildings and each building being one Composite Building, it is agreed that share of constructed premises of each party shall be demarcated amongst the parties equitably horizontally and vertically to the extent of proportionate right of development of each party to the end and intent that in one building flats will be allotted horizontally and vertically to*

the extent of proportionate to share. The parking lot of each such building will be allocated to each of the parties in proportion of their share. It is agreed that after issuance of commencement certificate and prior to commencing work of sale component of Phase 1 flats forming part of Company's Component shall be identified in accordance with the provisions of allocation contained herein parties hereto confirm that by reason of this provision neither party shall be entitled to content that this Agreement is not enforceable as flats forming part of Company's Component are not capable of being identified."

26. Clause 8 further provides that "*The total carpet area of Phase I will be determined on the issuance of Commencement Certificate of sharing cost or expenses between the parties hereto as provided herein will be arrived at on the basis of 3,00,000 sq. ft. of carpet area to which the Company is entitled to and the balance carpet area of Phase I which the Developer will become entitled.*" Clause 11 provides for appointment of contractor jointly and operation of bank account to be operated for construction and development of Phase – 1 jointly.

27. Second para of sub-clause (ix) of recital clause (v) reads as "*Relying upon the aforesaid representations made by the Developer and believing the same as true and correct the Company has agreed to join hands with the Developer for Joint Development of the sale component of Phase-I, whereas the Developer has agreed to demarcates for the Company minimum of 3,00,000 Sq. Ft. (Carpet area), at the consideration and upon certain terms and conditions incorporated therein*".

28. These clauses read with the intent expressed in the second para of sub-clause (ix) of recital clause (v), amply clarifies that the Applicant had entered into a Joint Venture Arrangement whereunder the Applicant's contribution in the Phase – I was taken at Rs. 90,00,00,000/- (Rupees Ninety Crore Only) determined on the basis of agreed rate of Rs. 3,000/- per sq. ft for the share of Applicant in the total saleable

component of Phase I. The construction cost in the development of total Phase 1's saleable component was to be spent from a bank account to be operated by both the parties jointly and the contractor was to be appointed by both the parties jointly. This arrangement can not be found in a transaction with the allottee(s).

29. In the case of ***Realpro Realty solutions Pvt. Ltd. vs. Sanskar Projects and Housing Ltd. Company Appeal (AT)(Insolvency) No. 374 of 2023***, the Hon'ble NCLAT held that the investment was in the nature of joint venture partnership after finding that "*the Appellant and Respondent had entered into a particular business arrangement of accomplishing development of the subject property in which they had agreed to pool their resources proportionately in an agreed upon ration of 25:75 and in the process share the profits, losses and costs associated with it. Construction cost, statutory fees, provident fund, employees state insurance etc. were to be incurred and shared jointly between the parties.*" The Hon'ble NCLAT further opined that "*Undisputedly both parties being partners in developing the subject property together, hence any sum provided by the Appellant tantamount to financing the operations of the joint venture and not a disbursal of loan for the purpose of exclusive utilization by the Respondent for his own requirement. When shared liability for profit is so clearly manifested in the Agreement, it stares in our eyes that both parties are development partners and co-sharers in the development of the subject property. The terms of the Agreement laid the foundations of a legal and binding relationship with mutual financial obligations towards each other.*"

30. In the present case, instead of defining the profit sharing ratio percentage terms, the parties hereto have agreed to divide the developed area in form of flats in the ratio 300000 sq ft. : total developed area saleable component in Phase I. The construction costs are to be jointly met, the developed area is to be divided equitably to avoid any inequity arising from locational advantageous developed

area going to any party's share. This understanding clearly evidence that the transaction was for investment in joint venture partnership and can not be termed as financial debt in terms of Section 5(8)(f) of the Code.

31. We are in agreement with the Applicant that the substance has to prevail over the form. We find that Applicant has failed to bring on record which fact is in divergence with the understanding stated in the Agreement. The clauses of the Agreement, if read harmoniously, lead to a conclusion that this is an agreement for Joint Venture Partnership, which is in consonance with the title of the agreement also. We have no hesitation to say that the applicant can not be equated with the allottee.

32. The Reliance placed on the decision of Nishit Patel (Supra) does not support applicant's case and is distinguishable vis-à-vis facts on hand. In that case, the homebuyer was not stated to be in authority to operate the bank account of the Corporate Debtor or to appoint the contractor, amongst others.

33. In view of the above, we find no infirmity in the decision of the Resolution Professional.

34. Accordingly, IA 2222/2020 is dismissed and disposed of accordingly.

Sd/- Sd/-

Prabhat Kumar	**Justice V.G. Bisht**
Member (Technical)	Member (Judicial)

/SP/

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH- I

IA No. 2193 of 2021

IN

CP(IB) No. 4464 of 2019

Under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the Resolution Plan under the provisions of Section 31(1) of the code.

IA No. 2193 of 2021
In the Application of

Jayesh Sanghrajka

...Applicant/Resolution Professional

In the matter of

Gajendra Investment Limited

...Financial Creditor/Petitioner

Versus

Satra Property Developers Private Limited

...Corporate Debtor/Respondent

Order Delivered on : 16.01.2024

***Coram**:*

Hon'ble Member (Judicial) : SH. Justice Virendrasingh G. Bisht (Retd.)

Hon'ble Member (Technical) : SH. Prabhat Kumar

Appearances:

For the Applicant/
Resolution Professional : Mr. Nausher Kohli, Mr. Ashish Parwari, Mr. Chintan Gandhi, Advocates

For the Successful
Resolution Applicant : Ms. Bhanu Chopra, Ms. Meghna Gupta, Mr. Darshan Suvarna, Advocates

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The present Application is moved by Resolution Professional **Mr. Jayesh Sanghrajka** ("**Applicant**") under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the Resolution Plan submitted by **Padmavati Housing Private Limited and Nandi Vardhan Infrastructure Limited jointly ("Successful Resolution Applicants/SRA")** under the provisions of Section 31(1) of the Code, for **Satra Property Developers Private Limited** ("**Corporate Debtor**") and for passing order/appropriate direction that this Tribunal may deem fit in the present matter.

Brief Facts

2. The CIRP was initiated against the Corporate Debtor vide Order dated 10.08.2020. Mr. Devarajan Raman was appointed as the Interim Resolution Professional ("**IRP**").

3. The IRP published a Public Announcement in Form-A on 15.08.2020 inviting claims from the creditors of the Corporate Debtor. After the receipt of claims, the CoC was constituted by the IRP on 07.11.2020.

4. The Applicant submits that till the date of filing of the present Application, a total of 15 (Fifteen) CoC meetings of the Corporate Debtor have been held from time to time.

5. The Committee of Creditors ("**CoC**") in its 1st meeting held on 12.11.2020 confirmed the appointment of the Applicant herein as the Resolution Professional ("**RP**") which was further confirmed by this Tribunal on 26.11.2020. The CoC also approved the filing of exclusion of the Covid Lockdown period from the CIRP period.

6. At the 2nd CoC meeting held on 09.12.2020, the CoC approved the Form G, Eligibility Criteria of Prospective Resolution Applicants, Evaluation Matrix and the Request for Resolution Plan ("**RFRP**").

7. The CoC had appointed iVAS Partners and Mr. Manoj Sharma ("**Registered Valuers**") for computing the fair value and liquidation value of the Corporate Debtoron 28.12.2020 and 21.01.2021. The average liquidation value of the Corporate Debtor was determined as Rs.284.92 Crores (Rupees Two Hundred Eighty Four Crores and Ninety Two Lakhs Only). The average fair value of the Corporate Debtor was determined as Rs.379.91 Crores (Rupees Three Hundred Seventy Nine Crores and Ninety One Lakhs Only).

8. Thereafter, the RP invited Expression of Interest ("**EOI**") in Form G under Regulation 36A (1) of the CIRP Regulations from the general public. The paper publication was made on 15.12.2020.

9. At the 3rd CoC meeting held on 04.01.2021, the RP informed the COC that he had received EOI from M J Shah Realtors LLP and communication from one Mr. Chirag Jain from Padmavati Housing Private Limited. The CoC felt that it was prudent to have more competition in the CIRP process. Accordingly, CoC approved a fresh publication of Form G. Accordingly, a fresh Form G was published by the RP on 08.01.2021.

10. At the 4th CoC meeting held on 27.01.2021, the RP informed the COC that in response to the 2nd Form G published, EOI was received from M J Shah Realtors LLP (jointly with M/s M J Shah Enterprise). The CoC approved publication of Form G (3rd) inviting Expression of Interest for the third time. Further, eligibility criteria were also revised to enable more resolution applicants to participate in the process. Accordingly, a fresh Form G was published by the RP on 01.02.2021.

11. At the 5th CoC meeting held on 06.03.2021, the RP informed the CoC that pursuant to the said Form G publication dated 01.02.2021, EOIs from the following resolution applicants had been received :
    a) Chandak Realtors Private Limited;
    b) Transcon Developers Private Limited;
    c) M J Shah Realtors LLP and M J Shah Enterprise; and
    d) Nandi Vardhan Infrastructure Limited and Padmavati Housing Private Limited.

12. Accordingly, the RP issued the Final List of Prospective Resolution Applicants ("**PRAs**") dated 18.03.2021.

13. At the 5th CoC meeting, the CoC also approved the filing of Application for extension under Section 12(2) of the Code.

14. At the 6th CoC meeting held on 15.04.2021, the CoC approved to extend the last date of submission of Resolution Plan, which was initially 17.04.2021 to 10.05.2021 and also approved the filing of Application for exclusion of Covid Lockdown period from the CIRP period.

15. At the 7th CoC meeting held on 15.05.2021, since the RP received only one Resolution Plan till the last date of submission, he presented the commercial aspects of the same subject to compliance, upon approval of CoC.

16. At the 8th CoC meeting held on 03.06.2021, the RP informed the CoC that he had received oral communications from some PRAs expressing their desire to submit Resolution Plan and sought more time to do the same due to then ongoing pandemic situation. The CoC Members, except Gajendra Investments Pvt Ltd and Pratiti Trading Pvt Ltd, approved the extension of last day of submission of Resolution Plan till 08.06.2021.

17. At the 9th CoC meeting held on 12.06.2021, the RP informed the COC that he had received Resolution Plans from :
    a. Transcon Developers Private Limited; and
    b. Nandi Vardhan Infrastructure Limited and Padmavati Housing Private Limited

    Further, a letter from M J Shah Realtors LLP and M J Shah Enterprise had been received for withdrawal of its Resolution Plan. The CoC then, considering the paucity of time, approved discussion on commercial aspects of both the Resolution Plans received subject to compliance check by the RP.

18. In the First adjourned meeting held on 14.06.2021, the CoC held one on one negotiations with representatives of both the abovementioned Resolution Applicants.

19. At the 10th CoC meeting held on 19.06.2021, the CoC informed the RP to undertake compliance checks and verify/scrutinise both the Resolution Plans and in the meantime CoC will also consider both the plans internally.

20. At the 11th CoC meeting held on 03.07.2021, the CoC approved the request of both the Resolution Applicants who sought time to revise their respective Resolution Plans in light of the comments of the RP and the CoC.

21. At the 12th CoC meeting held on 12.07.2021, the CoC decided to have a meeting with the Resolution Applicants for further negotiation.

22. At the 13th CoC meeting held on 26.07.2021, the Resolution Applicants submitted their Resolution Plans at the very last minute and hence, the meeting was adjourned to 27.07.2021.

23. At the first adjourned meeting held on 27.07.2021, representatives of both the Resolution Applicants were given an opportunity to present their respective plans. The CoC held discussion at length and asked both the Resolution Applicants to further submit the best offer possible. Queries were raised regarding eligibility of Transcon under Section 29A of the Code owing to some adverse news article against one of its connected parties, Mr. Kirti Kedia. The representatives of Transcon denied such allegations but CoC called for further documents to substantiate Transcon's eligibility under Section 29A of the Code.

24. At the 14th CoC meeting held on 07.08.2021, the CoC approved the following :

    a) Amount of Performance Bank Guarantee was revised from Rs. 10 crores to Rs. 1 crore;
    b) That the Resolution Plan submitted by Transcon to be discussed and voted upon.
    c) To approve the manner of treatment of Matunga Property.

25. At the 15th CoC meeting held on 07.08.2021, the following transpired:

    a) The RP informed that 10.08. 2021 is last date for completion of CIRP of Corporate Debtor and in view of the same, voting on Resolution Plan must be taken on that day only to avoid liquidation.
    b) The RP informed that he had received final drafts of Resolution Plans from both the Resolution Applicants respectively and the same had been forwarded to the CoC.
    c) The RP further informed the CoC that the Information Memorandum will be amended to exclude the Leasehold Land 2 of the Matunga Property from the resolution and the same property shall be dealt by the CoC in the manner as decided by them.
    d) The CoC then discussed at length about the ineligibility issue of Transcon Developers Private Limited under Section 29A of the Code.
    e) The RP informed the CoC that in his opinion, considering the undertakings, affidavit, no dues certificate and other material evidence provided by Transcon Developers Private Limited and assuming that it shall provide the required letters from the bank before the NCLT approval date, it cannot be considered ineligible under Section 29A of the Code.
    f) Further, the RP informed the CoC that it had decided to take Transcon's plan for voting by way of a resolution passed in

previous meeting with requisite majority and as such the CoC was bound by its decision.

g) The RP then allowed a time of few days to all the members of the CoC to present further evidence with regards to Transcon's alleged ineligibility and assured the CoC members that some time will be allowed to the members before voting on both the plans is started.

h) He then informed the CoC members about the inability of the transaction auditor to submit transaction audit report due to non-availability of information and requisite documents for verification/scrutiny.

i) He further informed that due to non-provision of required information/documents like bank statements, supporting documents of the transactions entered into in the previous years, the statutory auditors are not in a position to complete audit for the financial year ended 31.03.2020. Hence, there is non-compliance under Income tax filings and Companies Act apart from various other laws. Non availability of data/information has been informed to CoC on various occasions. The Chairman further informed that all the GST filings were up to date and there was no pending compliance on that part.

j) The RP informed the CoC that as there was no funds and ongoing business to generate cashflow, he reiterated that it was the responsibility of the CoC to contribute CIRP costs in order to enable the RP to run the CIRP Process and manage the Corporate Debtor as a going concern including, in this case, managing the affairs of the Site and accordingly, members of the CoC were required to contribute for the corpus funds to meet various expenses in respect of 1) the process like fees of the IRP/RP, fees of professionals appointed by him, expenses pertaining to CoC Meetings etc.; and 2) operations like salary to limited staff at the site, electricity at the site, Security personnel services, repair works, rent to slum dwellers. The applicant informed that due to non-availability of requisite funds, running the CIRP was extremely difficult and challenging especially on account of issues at the Site.

k) He further reiterated his request to the CoC to contribute to CIRP costs, which was already approved in the previous meetings, considering the dire situation at Ghatkopar site and also that NCLT approval for the plan could take some time.

l) Finally, the resolution plans were put to vote and the e- voting facility for voting items was opened from 11 am on 11.08.2021 to 11 am on 12.08.2021.

26. As per the voting results, the joint Resolution Plan submitted by Nandi Vardhan Infrastructure Limited and Padmavati Housing Private Limited received 74.49% of the votes and Resolution Plan submitted by Transcon Developers Private Limited received 0% of the votes. Accordingly, Nandi Vardhan Infrastructure Limited and Padmavati Housing Private Limited, as joint Resolution Applicants were declared as Successful Resolution Applicants ("**SRAs**").

Findings

27. We find that this Plan has been approved by 74.49% vote share of CoC, of which IIFL had 68.92% vote share. This Tribunal has held vide order dated 4.1.2024 passed in IA no. 1722/2021 that IIFL is related party of Shareholder of Corporate Debtor i.e. Mid-City, which holds majority share capital of the Corporate Debtor. Accordingly, IIFL could not have been inducted into the CoC, and was not entitled to vote in such CoC. If we remove IIFL from the vote share, the resolution plan could muster only 5.56% in favor as against 18.91% rejecting the plan. We are conscious of the fact that the decision of the CoC are not vitiated by the change in composition of CoC arising later on, however, considering the fact that the

one of CoC member supporting the plan has been found ineligible to vote, and its vote shares is 68.92%, we consider it to be in the interest of proprietary to reject this Plan in view of present facts and circumstances of the case. Since, the plan has been rejected due to peculiar circumstances arising in this case, we consider it appropriate to direct the CoC to take appropriate decision whether to publish another Form G or seek liquidation of the Corporate Debtor. It is made clear that the Successful Resolution Application in IA 2193 of 2021 shall be entitled to participate again, in case CoC proceeds to publish Form G again.

28. IA 2193 of 2021 is dismissed and disposed of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)

/SP/