IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

I.A. 3230 OF 2022

IN

C.P. No. 4190 of 2018

Filed by:

Lakshya Swarupa Housing Projects Private Limited

…Applicant

Versus

1) Mr. Rajendra Kumar Girdhar (Resolution Professional for Mayur Pankh Properties Private Limited)
2) ICICI Prudential Real Estate AIR I
3) ICICI Prudential Asset Management Company (AMC)
4) IDBI Trusteeship Services Limited
5) Consortium of Yura Business Partners LLP and Gupta Steel Corporation Private Limited

…Respondents

In the matter of

ICICI Prudential Real Estate AIF - I

…Financial Creditor

Versus

Mayurpankh Properties Private Limited

…Corporate Debtor

Order Reserved on: 03.02.2023

Order delivered on: 17.05.2023

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Madhu Sinha, Member (Technical)

Appearance:

For the Applicant: Mr. Nausher Kohli, Advocate

For the Respondent: Mr. Rajender Kumar Girdhar, Resolution Professional along with his counsel, Mr. Chetan Kapadia. Adv. Shyam Kapadia a/w. Adv. Yash Momaya, Adv. Zaid Mansuri i/b. DSK Legal for Respondent No. 5 (Successful RA)

Per: Madhu Sinha, Member (Technical)

ORDER

1. The above Interlocutory Application is filed by Applicant, *Lakshya Swarupa Housing Projects Private Limited,* (hereinafter referred as Applicant) Under Section 60(5) of Insolvency & Bankruptcy Code, 2016 praying for following reliefs:

   a. *Allow the present application and reject the Resolution Plan of the Respondent No. 5 for being violative of the provisions of the Code and CIRP Regulations and for other reasons stated herein above;*
   b. *Pass such other order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*

The submissions of the Applicant are herein below:

2. The present application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("Code") by the Lakshya Swarupa Housing Projects Private Limited (hereinafter referred to as "the Applicant") is a company registered under the provisions of the Companies Act, 1956 and is an unsecured financial creditor of Mayurpankh Properties Private Limited ("Corporate Debtor").
3. That the present Application is being filed by the Applicant challenging the decision of Committee of Creditors ("COC") to approve the Resolution Plan submitted by Yura Business Partners

LLP in consortium with Gupta Steel Corporation Pvt. Ltd. ("Successful Resolution Applicant / SRA") in its adjourned 13th meeting held on 03.08.2022.

4. That the Resolution Plan of Yura Business Partners LLP suffers from severe legal infirmities and fails to comply with the provisions envisaged under Section 30 of IBC 2016 and Regulation 38 of CIRP Regulations 2016. The secured creditors who have major voting share in the COC have approved the said resolution Plan without application of mind.

5. The Applicant seeks liberty of this Tribunal to point out the clauses of the Resolution Plan submitted by the SRA- Respondent No. 5 which are in contravention of the provisions of the Code and also makes the Resolution Plan a conditional / contingent Resolution Plan.

A. <u>Feasibility and Viability of Resolution Plan</u>

It is respectfully submitted that the Resolution Plan does not pass muster under the provisions of the Code for it is neither feasible nor viable and hence violate Regulation 38(3)(b) of the CIRP Regulations, 2016.

B. <u>No adequate provisions for the mandatory approvals required for the implementation of Resolution Plan</u>

It is respectfully submitted that one of the most important approvals required by the SRA for its Resolution Plan is the express permission and consent of the Ministry of Defence for constructing the real estate project beyond the height of 15.24 meters.

That the Hon'ble Bombay High Court in its Order dated 13.10.2014 had expressly clarified that a construction beyond 15.24 meters would not be permissible without obtaining a clearance from the Ministry of Defence.

The relevant excerpt of Order dated 13.10.2014 passed by Hon'ble High Court of Bombay is reproduced below for ready reference:

"*there is no dispute to be raised by respondent no. 1 Union of India through Ministry of Defence regarding permissible construction to the extent of height of 15.24 meters and the only dispute is whether the petitioners can be allowed to construct building with height in excess of 15.24 meters. The petitioners will therefore submit plans to respondent no. 2 - Slum Rehabilitation Authority for construction to the extent of height of 24.39 meters and that if the SRA finds such plans to be in accordance with law, SRA may sanction the plans but the petitioners will not put up any construction in excess of 15.24 meters without obtaining clearance from respondent no. 1.*

It will be open to respondent no. 2 to consider such request subject to the rider that even if respondent no. 2 grants permission for building plans in excess of the height 15.24 meters, the petitioners shall not put up construction of the height in excess of 15.24 meters without obtaining clearance from respondent no. 1."

That the Ministry of Defence in its affidavit dated 05.04.2019 filed before the Hon'ble Bombay High Court, has expressly sought to place reliance on notification SRO 150 of 1976 dated 19.06.1976 and further submitted that no relief (regarding extension of permissible height beyond 15.24 meters) can be granted to the Corporate Debtor in the matter. In other words, the Ministry of Defence has expressly refused any sanction / permission to the

Corporate Debtor regarding extension of height beyond 15.24 meters.

Relevant excerpts of affidavit dated 05.04.2019 filed by Ministry of Defence before the Hon'ble Bombay High Court as are follows:

6. *"With reference to para 3.7, I deny that from letter dated 21.1.2012, it is seen that until the 2012, 80 buildings have been constructed within the restricted area without the N.O.C. or that it clearly shows that said impugned notifications has never been adhered to as alleged. I further state and submit that the implementation of the Gazette Notification SRO 150 of 19th June 1976 has been grossly violated by MHADA/MCGM. However, non implementation of Govt. notification in the past cannot be cited as its true rule for continuation of wrong practice and the notification must be implemented in letter & spirit.*

14. *With reference to para 4.17, I deny that the said property is situated outside distance of 457.20 Mts. i.e., 500 Yards from the crest of outer parapet wall of the said Signal Transmitting Station in view of what is stated in para 14 above.*

17. *With reference to paragraph 5(1)B of the Petition it is submitted that Notification No. SRO 150 of 1976 is a legal binding and cannot be set aside. Defence Authorities are duty bound to ensure its Implementation in letter and spirit. As far as complying with provisions laid down under sections 5-12 of Works of Defence Act 1903, it is the responsibility of State Govt. Agencies to include the Collector Mumbai / Revenue Department / MCM. I deny that said*

Notification is inform for the alleged non compliance of the mandatory procedure or hence cannot be enforced as alleged.

20. With reference to paragraph 5(1)E of the Petition it is submitted that the petitioner is questioning the existence and function of Signal Transmitter Station based on his own assumptions. No comments can be offered on the type of equipment used and use of Signal Transmitter Station as it is classified information which cannot be disclosed. Signal Transmitter Station is very much functional at Juhu and is of Strategic importance, thus Notification No. SRO 150 dated 19th June 1979 stands involved. I further deny that the purpose for which area around the said Signal Transmitting Station was supposed to be kept clear and free of obstruct is no more exists as I deny that therefore the said Notification has become alleged redundant or not to be acted upon as alleged.

36. With reference to paragraph 5.2 of the Petition, I say that Local Military Authorities are bound to follow instructions issued form MoD and thus the clarification on parapet wall received from MoD stands as it is.

39. With reference to paragraph 5.7 of the Petition I say that Permissible height of 15.24 Meters is only applicable to all those building & constructions existing prior to invocation of SRO 150 dated 19th June and not to any other new construction."

Relevant excerpts of affidavit dated 19.11.2019 filed by Ministry of Defence before the Hon'ble Bombay High Court as are follows:

7. *With reference to paragraph 3 of the Additional Affidavit of the Petitioners is concerned, I deny all that are contrary to what we have stated in our earlier affidavits and which are contrary to what have been stated by us hereunder. I say and submit that the Signal Transmitting Station is very much functional at Juhu as on today, hence gazette notification SRO 150 dated 19 Jun 1976 is relevant and pertinent. It appears that the Petitioner has obtained some misplaced information, which is factually incorrect.*

9. *With reference to paragraph 5 of the Additional Affidavit of the Petitioners is concerned, I deny all that are contrary to what we have stated in our earlier affidavits and which are contrary to what we have been stated by us hereunder. I say and submit that the alleged claim of petitioner about 'reliable sources informing him that the Transmission Station has been defunct or not in use since past several years' is a serious breach of security, violates the Official Secret Act and needs to be investigated. The Petitioners ought to be directed to disclose the names of the so called sources, to enable this Respondent to proceed further against such culprits who are hand in glove to leak the internal secret documents relating to the security issue of the nation. The alleged claim of the Petitioner that the Signal Transmitting Station has been shifted or relocated is totally false and baseless. It is stated that in the Signal Transmission, the nature of radiations emitted and associated hazard and security, aspect with the existing profile of the equipment*

functioning at Juhu Transmission Station, still remains valid and necessity of Works of Defence Act notification cannot be contested and are still applicable and in force till date. I further state that in addition, in case of any operational eventuality. Juhu Transmission Station complex is also earmarked for deployment of additional equipment operationally and strategically required for security of the state and has serious ramifications on national security. It is also pertinent to mention that the Transmitting Station is a crucially important alternate option for strategic communication. Considering the sensitivity of the equipment and area around vis-a-vis the existing advance weapons and surveillance devices, wherein target can be acquired and destroyed at longer ranges such as 1000 m to 2000m, requirement of safety zone of 500 yards, around highly sensitive Juhu Transmission Station is a bare minimum requirement and is not negotiable.

10. *With reference to paragraphs 6 & 7 of the Additional Affidavit of the Petitioners is concerned, I deny all that are contrary to what we have stated in our earlier affidavits and which are contrary to what has been stated by us hereunder. I state and submit that letters as stated therein are not addressed to the Petitioner, which itself puts a question on the fraudulent means by which the references have been obtained. The Petitioner has placed reliance on record of the documents, the access of which is not authorised to him and it that amounts to breach of security, a legal action for which is contemplated and shall be proceeded as per law I say and submit that the Petitioners who has tried obtain the national security documents and adopted fraudulent means and therefore the Petitioners are*

not entitled for any relief under extra ordinary Jurisdiction of this Honourable Court under Article 226 of the Constitution of India and therefore, on this count alone, it is requested that the Petitioners be directed to disclose the means of sources from where they obtained/ accessed the documents referred and also disclose the names and the Petition be dismissed with costs on this count alone. It is submitted that the said letters are internal correspondence and cannot be relied upon nor can they be read in such a piecemeal manner. It is reiterated that Signal Transmitting Station at Juhu is very much functional and is of strategic importance with significant role in national security and this Respondents in court have already affirmed it on affidavit earlier.

12. With reference to paragraphs 9 of the Additional Affidavit of the Petitioners is concerned, I deny all that are contrary to what we have stated in our earlier affidavits and which are contrary to what has been stated by us hereunder. I say and submit that the contentions raised in the additional affidavit are unsubstantiated and baseless, in view of what is stated hereinabove. The further aspect of the Signal Transmitting Station such as present utilization, future utilization, strategic importance of Juhu Transmission Station etc. cannot be further elaborated hereunder as the same relates to security of the nation.

Further, the Ministry of Defence in its additional affidavit dated 19.11.2019 before the Hon'ble High Court, has provided a detailed justification as to why it is not possible for the Ministry of Defence to grant permission to the Corporate Debtor to construct beyond 15.24 meters. The real reason is the existence of a signal transmitting station in the vicinity which has a significant role to play in the security of the nation. Also, in case of any operational eventuality this transmission station is also earmarked for deployment of additional equipment operationally and strategically required for the national security of the State. This transmission station is a very important alternate option for strategic communication. Considering the sensitivity of the equipment and area around vis-à-vis the existing advance weapons and surveillance devices, wherein target can be acquired and destroyed at longer ranges such as 1000 m to 2000 m, requirement of safety zone of 500 yards, around this highly sensitive Transmission Station is a bare minimum requirement and is not negotiable. Clearly, a permission by the Ministry of Defence in the present matter has already been declined to the Corporate Debtor. Further, the Hon'ble Bombay High Court has already clarified in its Orders of 2014 that no construction beyond 15.24 meters would be permissible without the consent of Ministry of Defence. Evidently, this is the "end of the road" for the Corporate Debtor in so far as the issue of any extension for construction beyond 15.24 meters are concerned.

The notification SRO 150 of 1976 operates as an absolute restriction

That notwithstanding the immediately preceding submissions of the Applicant, it is respectfully submitted that the subject notification of 1976 operates in the nature of an absolute restriction from constructing beyond a permissible height of 15.24 meters. The said notification was issued by the government in exercise of its powers under Section 7 of the Works of Defence Act, 1903 which authorized the Central Government (through publication of notice) to place restrictions upon the use of enjoyment of land in the vicinity of works of defence in order that such land may be kept free from building and other obstructions. The relevant provision of Section 7 is reproduced below:

> *"7. Restrictions.—From and after the publication of the notice mentioned in section 3, sub-section (2), such of the following restrictions as the [Central Government] may in its discretion declare therein shall attach with reference to such land, namely……*
>
> *(c) Within a third boundary which may extend to a distance of five hundred yards from the crest of the outero parapet of the work, the restrictions enumerated in clauses (a) and (b) shall apply with the following additional limitation, namely:—*
>
> *no building or other construction on the surface, and no excavation, building or other construction below the surface, shall be maintained or erected: Provided that, with the written approval of the Commanding Officer and on such conditions as he may prescribe, 3 [a building or other construction on the surface may be maintained and] open railings and dry brush-wood fences may be exempted from this prohibition."*

The relevant excerpt of the said notification for the sake of ready reference:

"RO 150 in exercise of the powers conferred by Section 3 of the works of Defence Act, 1903 (VII of 1903), the Central Government hereby declares that it is necessary to impose, the restrictions specified in clause (c) of section 7 of the said Act upon the use and enjoyment of the land situated in District of Bombay (in the Maharashtra State) described in the Scheduled the hereto annexed. Juhu Bombay, in order that such land may be kept free from buildings and other obstructions.

Provided that the said restrictions shall not apply to permanent constructions beyond, the permissible height of 15.24 meters which have already been completed at the commencement of this notification.

Provided that further the Jhuggia around the said transmitting station within the said land shall be demolished.

A sketch plan of the said land may be inspected in the office the sub division officer, Buildings and Roads, Santacruz, Bombay District.

<u>THE SCHEDULE</u>

All the land comprised in the area lying within a distance of 457.20 meters (500 yds) from the crest of the outer parapet of the Signal transmitting station, Juhu, Bombay in the State of Maharashtra.

It is evident from a bare perusal of the said provisions and notification that the restrictions are placed in the interests of national security and to protect works of defence. Further, there is nothing under law which grants any liberty to any party to obtain any permissions to exceed the clearly demarcated height restrictions. Putting it succinctly, the *height restrictions are absolute in nature and incapable of being breached. Any effort to breach such restrictions would be void and invalid."*

The SRA in the resolution Plan intends to exceed the otherwise in-surmountable construction height restrictions

The SRA in the Resolution Plan has expressed a clear intention to construct beyond the existing permissible limited of 15.24 meters. This becomes clear from the following clauses of the Resolution Plan.

Clause 6.3.8. of the Resolution Plan: "On and from the Trigger Date, the Resolution Applicant Consortium shall on a best effort basis, pursue the matter filed under writ Petition No. 365 of 2014 (Lodging No. 2745 of 2014) in the Hon'ble Bombay High Court to get Full Height Permission for the Chambers Project.

The Resolution Plan given by SRA defines Full Height permission as*: "**Full Height permission**" shall mean the approval/ permission of the Ministry of Defence, Government of India with regards to construction and development of the Chambers Project, so as to enable full utilization of the Floor Space Index (FSI) accrued and/or generated by the Corporate Debtor as per the Slum Rehabilitation Act and the Letter of Intent bearing reference No. SRA/ENG/928/KW/MHL/LOI dated April 22, 2014 issued by the Slum Rehabilitation Authority, Government of Maharashtra on the Chambers Project Land as well as construction and completion of the Chambers Project with minimum aggregate saleable area of 57,410 (fifty seven* *thousand four hundred and ten) square feet of Carpet Area, in favor of the Corporate Debtor and in accordance with the requirements of all Applicable Laws.*

Clause 10 of the Development Agreement accompanying the Resolution Plan: "On and from the Trigger Date, the Developer shall on a best effort basis, pursue the matter filed under writ Petition No. 365 of 2014 (Lodging No. 2745 of 2014) in the Hon'ble Bombay High Court to get Full Height Permission for the Project. The Development Manager shall manage, monitor, co-ordinate and supervise the construction and development of the Project and assist / facilitate the Marketing of the Premises, in accordance with this Agreement and the Business Plan and shall exercise all acts, deeds, matters and things as may be required in this regard".

Therefore, in view of the aforesaid, no approval can be obtained on this aspect. Hence, the assertions of the SRA-Respondent No. 5 in the Resolution Plan regarding it pursuing the matter before the Hon'ble Bombay High Court regarding obtaining "full height permission for the project" is inconsequential and invalid. Consequently, the Resolution Plan violates Regulation 38(3)(d) of the CIRP Regulations, 2016.

It is further respectfully submitted that the Resolution Plan on the above described score would amount to contravention of applicable law and is hence violative of Section 30(2)(e) of the Code.

It is further respectfully submitted that Section 31(1) proviso of the Code requires this Hon'ble Tribunal to ascertain as to whether the Resolution Plan in question can be effectively implemented. In the present facts and circumstances of the case, it can be seen that the SRA-Respondent No. 5 intends to construct beyond the permissible height limit of 15.24 meters and the Hon'ble Bombay High Court; and more importantly the relevant governmental authority i.e., the Ministry of Defence has expressly refused to grant any permission to construct beyond 15.24 meters on account of reasons of national security. Therefore, clearly the Resolution Plan incapable of being effectively implemented. The Resolution Plan of the SRA ought to be rejected on this ground alone.

C. <u>Sources of Funds for effective implementation of the Resolution Plan</u>

It is respectfully submitted that the Resolution Plan fails to provide any clarity on the sources of funds. In the absence of such clarity, it can be concluded that the Resolution Plan fails to provide for an effective implementation of the Plan. This also raises doubts as to the capability of the SRA to implement the Resolution Plan. Consequently, this violates Regulation 38(3)(b) and 38(3)(d) of the CIRP Regulations, 2016.

Specifically speaking, the following provisions of the Resolution Plan violate Regulation 38(3)(b) and 38(3)(d) of the CIRP Regulations, 2016.

<u>**Clause 4.1.1 of the Resolution Plan**</u>: *The Resolution Applicants/their Nominees may infuse upto Rs. 21 crore as*

working capital contribution, on need basis, if determined in their sole discretion which may be brought in by the Resolution Applicants / their Nominees and contributed to the Corporate Debtor as a mix of equity capital or preference capital or unsecured loans by the Resolution Applicants /Nominees/ its Affiliates and/or as otherwise provided in the Resolution Plan, in its sole discretion. Any working capital infusion brought in by the Resolution Applicants/Nominees from their internal accruals if contributed to the Corporate Debtor as a loan by the Resolution Applicants/its Affiliates (which shall be compliant with the requirements of Section 29A of the Code), shall be repayable as RA Contributions as per the Utilisation Waterfall set out herein. The Corporate Debtor shall be required to pay the RA Interest on the said loans as per the Utilisation Waterfall set out herein.

As is evident from the above all that the SRA states that it "may" infuse upto Rs. 21 crores as working capital infusion. Clearly, the SRA is neither aware as to the quantum of monies that would be required to commence / carry out the construction work nor does it provide any clear affirmation on its responsibility to infuse money in this regard. It is also not clear as to whether the SRA has the financial wherewithal to make such infusion.

Clause 4.1.2 of the Resolution Plan: *Subject to the provisions of the Resolution Plan, the Resolution Applicant shall be entitled to raise monies from banks and/ or financial institutions as it may deem fit subject to prior consent from simple majority of the Financial Creditors (Financial Creditors existing as on NCLT Approval Date) from* *time to time to meet the requirement of funds for the payments to stakeholders or for raising working capital or meet the capex requirements of the Corporate Debtor, as set out in the Resolution Plan.*

Evidently, from the above clause, the SRA fails to provide any clarity as to the quantum of monies which would be raised by it from the Banks and Financial Institutions. In the respectful submission of the Applicant, the SRA has either not evaluated its financial capability to effectively implement the Resolution Plan or it does not have adequate financial capability to implement the same.

It is respectfully submitted that the financial plan provided by the SRA in the Resolution Plan states that it is only indicative in nature and should not measure actual outcome. Hence, such a provision by itself makes the financial plan fluid and unclear.

It is respectfully submitted that Section 31(1) proviso of the Code places an obligation on this Hon'ble Tribunal to satisfy itself that the Resolution Plan in question contains provisions for its effective implementation. As explained above, the Resolution Plan fails to provide adequate provision for its effective implementation thereby requiring to be rejected by this Hon'ble Tribunal.

D. <u>The Resolution Plan is Conditional in nature</u>

It is respectfully submitted that the Resolution Plan is conditional or contingent on various scores and such contingencies make the plan vague and unimplementable. It is submitted that Clause 2.4 of the financial plan in the

Resolution Plan provides that the amounts payable to the stakeholders shall only be till such time as all units in the project are sold and so long as there are receivables in the project. Once the receivables in the project cease, no further payments shall be made to the stakeholders and all payments till such date would be deemed to be in full and final settlement of such claims. Clearly, through such provisions, the SRA has made the financial plan conditional in nature both as to quantum as well as to timeline. Clause 2.4 of financial plan is reproduced below:

"It is clarified that the amounts payable as per the Utilization Waterfall shall be payable till such time as all the units in the Chambers Project are sold and so long as there are Receivables of the Chambers Project. In the event there are no further Receivables of the Chambers Project, in such case, no further amounts shall be payable to the stakeholders under the Utilization Waterfall. The payments made to the stakeholders as per the Utilization Waterfall, till such date shall be deemed to be in full and final settlement of their admitted claims and neither the Resolution Applicant Consortium not the Corporate Debtor shall be liable to pay any further amounts to the stakeholders as per the Utilization Waterfall. It is clarified that other than the aforesaid payments paid as per the Utilization Waterfall till there are Receivables of the Chambers Project, any and all liabilities and all amounts due and/or payable by the Corporate Debtor whether admitted or not, due or contingent, asserted or unasserted, assessed or unassessed, crystallized or un crystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to the stakeholders set out in

the Utilization Waterfall, shall stand settled, extinguished and liabilities written back, pursuant to the NCLT Approval Order and neither the Corporate Debtor nor the Resolution Applicant shall be responsible and/or liable, directly or indirectly, for the same. It is clarified that once there are no further Receivables of the Chambers Project to discharge the payments to the stakeholders, any liability arising out of any Proceedings for any matter pertaining to the payment of the amounts as per the Utilization Waterfall that may arise at any time, shall stand waived and extinguished in entirety irrespective of when such liability arises and the Corporate Debtor shall have no liability for the same. The said remaining amount on that day to be transferred to General reserves and no Tax shall be payable on it."

E. <u>The Resolution Plan suffers from lack of transparency</u>

The Applicant would like to draw the attention of this Hon'ble Tribunal to clause (I) of the Development Management Agreement annexed to the Resolution Plan. Under the said clause Respondent No. 5 has failed to specify the carpet area and number of floors which will be developed under the Resolution Plan submitted by him. Further, the Applicant would like to point out the provisions of table drawn at page 93 of the financial plan wherein the Respondent No. 5 has stated that Rs. 219,40,00,000/- will be collected from the project. A careful scrutiny of clause (I) of the Development Management Agreement and the statement at page 93 will disclose the fact that the figure Rs. 219,40,00,000/- is a false figure and no basis / justification has been provided by the SRA-Respondent No. 5 as to how SRA-Respondent No. 5 has arrived at such figure.

The second aspect which raises question of transparency is that the Respondent No. 5 has failed to clarify the status of Corporate Debtor after the approval of Resolution Plan. Under the Development Management Agreement, the Corporate Debtor has been referred to as 'the Developer' and all the liabilities with respect to implementation of the Resolution Plan vests with the Corporate Debtor / the Developer. However, at clause 11(j) of the Development Management Agreement it is stated as follow: "*the Developer shall in accordance with Applicable Laws and the Approvals, construct the Rehab Building on the Rehab Land and shall handover the same to the SRA in accordance with the provisions of Slum Act. The Developer shall provide to the Development Manager a progress report of the construction of the Rehab Building on a monthly basis.*" It is evident from the said clause that even after the approval of Resolution Plan, the Respondent no. 5 and Corporate Debtor are separate entities and the sole responsibility to implement the Resolution Plan lies on the Corporate Debtor and not on Respondent no. 5.

Further, the Development Management Agreement at clause 11(i) out of nowhere states that the Developer shall rehouse eight slum dwellers in the Rehab Building and nine PAPs and shall execute documentation in that regard.

F. <u>Violates Applicable Laws</u>

In addition to the above infirmities, the Resolution Plan of Respondent no. 5 violates applicable laws which can be inferred from clause 8.2 (mm) and (nn) under the heading 'Effect of the Resolution Plan'.

Clause 8.2 (mm) of the Plan states as follows: "*as an integral part of the Resolution Plan, the new architect for the Chambers Project shall have deemed to have given a no-objection certificate and accordingly the Slum Rehabilitation Authorities shall permit the appointment of a new architect, without any further requirement of obtaining a no objection certificate from the existing architect*".

Clause 8.2 (nn) of the Plan states as follows: "*The Corporate Debtor shall make necessary application to RERA Authorities for extension of the registration granted under Section 5 of the RERA Act. No penalties, fines and addition or other costs shall be payable in relation to the aforesaid*".

It is submitted that such clauses in the Resolution Plan are arbitrary and illegal and violates applicable laws. Further, such clauses question the implementation of the Resolution Plan in as much as if such approvals are not granted by this Hon'ble Tribunal, then it will pose a threat to the implementation of the Resolution Plan as the Respondent No. 5 has failed to demonstrate that it has wherewithal to implement the Resolution Plan if these approvals are not granted neither the Respondent no. 5 has submitted any affidavit to this effect that the SRA will be able to implement the Resolution Plan even if the reliefs and concessions are not accorded by this Hon'ble Tribunal or any other authority.

G. <u>Development Manager not to be Promoter</u>

As per para 4.3.1 the Corporate Debtor shall enter into a Development Management Agreement with the

Development Manager for appointment of Development Manager to perform the development management services. As per clause 4.3.3 the Development Manager shall be appointed only as a service provider in order to provide development management services in consideration of payment of development management fees by the Corporate Debtor to the Development Manager. As per MAHARERA if the development manager is actually performing the role of a promoter under RERA, marketing a project under its brand name representing to allottees that the project will be developed find manager then it cannot escape from being categorised as a promoter nor can it evade the liability of a promoter under RERA. Clause 4.3.3 of the Development Management Agreement is violative of the Applicable Laws.

H. <u>The Resolution Plan fails to provide for its effective implementation</u>

It may also be noted that clause 6 of the Resolution Plan (Term, Implementation and Supervision of the Resolution Plan) is extremely vague and fails to address the mandatory requirement of Section 30(2)(d) of the Code and Regulation 38(2) of the CIRP Regulations, 2016. The said clause 6 of the Plan fails to disclose the mode and manner in which the Resolution Plan would be implemented. As per Clause 6.3.2 of the Resolution Plan, the Resolution Plan shall not be subject to any expiry and shall remain valid and binding on the Corporate Debtor, the Resolution Applicants and all other stakeholders of the Corporate Debtor on and from the NCLT Approval Date. This means that the term of the Plan is infinite and the Resolution Applicants are at liberty to sit on the Resolution Plan without acting on it for upto infinity.

I. The members of the Resolution Applicant Consortium do not have experience in the field of real estate sector.

Clause 2.4 of the Resolution Plan on experience of Resolution Applicant Yura Business Partners LLP in industry/sector related to the Corporate Debtor states as follows:

Experience in helping various Real Estate Developers and Financial Institutions in Acquisitions, turnaround and operating stressed assets.

Clause 3.4 of the Resolution Plan on experience of Resolution Applicant Gupta Steel Corporation in industry/sector related to the Corporate Debtor states as follows

Experience in the industry/sector related to Real Estate including Steel, Power etc.

It is evident that the Resolution Applicant Consortium does not have any experience in the industry/sector related to the corporate Debtor. No details have been provided on experience of the Resolution Applicants in the industry/sector related to Real Estate especially development of real estate projects.

J. Performance and Financial Indicators of the Resolution Applicant Consortium

The Performance and Financial Indicators of the Resolution Applicant-Yura Business Partners LLP are captured in a table at clause 2.5 of the Resolution Plan. The table is reproduced below.

Particulars	**Audited**	**INR**	
	FY 2018-19	FY 2019-20	FY 2020-21

Other Income	14,356	-	-
Total Income (T1)	14,356	-	-
EBIDTA	3,477	-1,820	-1,933
EBIDTA (% OF T1)	24.22%	-	-
PBT	3,477	-1,820	-1,933
PAT	3,477	-1,820	-1,933
PAT (% TO T1)	24.22%	-	-
Long Term Debt.	2,53,850	2,53,850	-

It can be seen from the above the financial numbers are just too trivial. The PAT is negative in the FY 2019-20 and 2020-21. In the FY 2018-19 PAT is positive but just a negligible amount of Rs 3477.

The Performance and Financial Indicators of the Resolution Applicant Gupta Steel Corporation are captured in a Table at clause 3.5 of the Resolution Plan. The table is reproduced below.

Particulars	**Audited**	**INR**	
	FY 2018-19	FY 2019-20	FY 2020-21
Other Income	1,20,51,941	183,65,139	3,18,09,761
Total Income (T1)	1,20,51,941	183,65,139	3,18,09,761
EBIDTA	-18,61,93,253	72,98,794	18,86,943
EBIDTA (% OF T1)	-1,34,44,269	-1,98,61,334	-1,37,10,381
PBT	-7,13,252	-	--
PAT	-20,03,50,774	- 1,25,62,540	-1,18,23,438

PAT (% TO T1)	-20,09,21 757	-1,44,13 356	-1,03,61,373
Long Term Debt.	15,43,83,452	14,24,53,132	23,93,84,400
	1701,645	12,43,65 183	18,30,80,718

It can be seen that the Profit after Tax- PAT is negative for all the three years. Long Term Debt is very high.

It is noteworthy that in case of both the Resolution Applicants the main source of Income is "Other Income" being rental Income or Interest Income. In fact, as per the audited Financial Statements submitted there is no income from business activity of the Resolution Applicants. The financial figures provided in the Resolution Plan are provided selectively and hide more than what they reveal.

K. <u>Promoters of both the Resolution Applicants in the Consortium are neck deep embroiled in Scams</u>

a) <u>Gupta Steel Corporation Pvt. Ltd.</u>

99.59 % shares of Gupta Steel Corporation Pvt Ltd (GSCPL) are held by "Citywings Agencies Pvt Ltd" (CAPL). 99.27 % shares of "CAPL" are held by Anil Gupta Private Family Trust. Mr Anil Mahabir Gupta has been listed as a Key Managerial Person (KMP) in the Balance Sheet of GSCPL for FY 20-21 which is annexed to the Resolution Plan by the Resolution Applicant Consortium. Anil Mahabir Gupta is a significant beneficial owner of CAPL and GSCPL as per section 90 of the Companies Act 2013 and exercises control in CAPL and GSCPL as defined in sec 2(27) of The Companies Act, 2013.

Some very disturbing and hair raising facts which are available in public domain regarding Mr. Anil Mahabir Gupta are listed herein below.

1. Mr. Anil Mahabir Gupta and other members of his family are accused in a matter of Coal Scam which matter is being investigated by CBI. The case nos. are:
    I. CC No. 289/2019, RC No. 219 2014 E 0015, titled CBI Vs. SKS Ispat & Power Ltd. & Ors.
    II. CC No. 299/2019, RC No. 219 2014 (E) 0017, titled CBI Vs. SKS Ispat & Power Ltd. & Ors.

Charge-Sheet has been filed by CBI and trail is going on in these matters.

2. There is an elaborate report available on a website, namely, "www.notoriousfugitives.com" which report lists the fraudulent practices and modus operandi followed by Mr Anil Mahabir Gupta to dupe banks. We believe independent corroborative evidence is available to prove the case in point.
3. There are various criminal complaints filed against Mr. Anil Mahabir Gupta and others for committing frauds, which was published in Jagran News Paper.
4. As per information available in public domain, a company SKS Power Generation Company in which Anil Mahabir Gupta was a director defaulted on bank loans in the year 2018. SKS Power Generation Company was taken over by a new management under a resolution plan. The new management of SKS Power Generation Company has moved the Delhi High Court, alleging that the previous management comprising Anil Mahabir Gupta had engaged in various fraudulent activities including siphoning of funds of lenders. The

new management of SKS Power Generation Company has requested the Delhi High Court to order a CBI inquiry in the frauds committed by the ex-management comprising Mr Anil Kumar Gupta. The new management has tabled before the Hon'ble Delhi High Court a forensic audit report to prove the acts of frauds committed by the ex-management comprising Mr Anil Kumar Gupta.

5. As per a news report was published in the year 2019 in www.freepressjournal.com cases have been registered are against SKS Ispat and Power Ltd, its promoter directors Anil Mahabir Gupta and Deepak Gupta, and members of the 35th screening committee in the allocation of Fatehpur, Vijay Central and Rawanwara coal blocks. The charges include criminal conspiracy, cheating and criminal misconduct under Sec 120B read with Sec 420 of IPC and Sec 13(1)(d) and 13(2) of the Prevention of Corruption Act.

b) <u>Yura Business Partners LLP</u>

1. Mr. Gaurav Agarwal, partner of Resolution Applicant Yura Business Partners LLP is son in Law of Mr. Kirti Kedia. The Linkedin profile of Mr. Kirti Kedia claims that he is the founder of Transcon Developers which is based at Mumbai.
2. Mr. Gaurav Agarwal is Director in following companies of Transcon Group
    a) Transcon Construction Infra Private Limited.
    b) Transcon Infra and Construction Private Limited.
    c) Transcon Dev JV Private Limited

3. Address of Transcon Developers and Transcon Infra and Construction Private Limited is same. i.e. Transcon Triumph, Next to Oberoi Springs Opp. Tanishq Showroom, Off New Link Road, near Monginis Cake Factory, Andheri West, Mumbai, Maharashtra 400053. This establishes the business link between Mr Kirti Kedia and Gaurav Agarwal.
4. As per reports available in public domain, Mr. Kirti Kedia is named as an accused in a matter of fraud of mind boggling Rs 2500 crores. The fraud is being investigated by CBI. Further, as per this report, Parekh Aluminium Limited which had availed huge loans from a consortium of banks siphoned substantial part of the bank loans through Mr. Kirti Kedia. Mr. Kirti Kedia has been booked under Sections 13(1)(D) and 13 (2) of the Prevention of Corruption Act and Sections 120B, 420, 467, 468 and 471 of Indian Penal Code.

L. <u>Each of the Resolution Applicant is ineligible as per the provisions of Sec 29A</u>

Resolution Applicant Yura Business Partners LLP is hit by Sec 29A(j) and is ineligible to be a Resolution Applicant. Gaurav Agarwal is a partner of Yura Business Partners LLP and is related to Kirti Vishwanath Kedia as his son-in- law. Mr. Gaurav Agarwal has a “connected person” in Mr. Kirti Kedia who is not eligible under clauses (a) to (i) of Sec 29A of the Code. The term “Connected Person” is defined in Explanation I to Sec29A(j) of the Code.

Resolution Applicant Gupta Steel Corporation is hit by Sec 29A(j) and is ineligible to be a Resolution Applicant. Gupta

Steel Corporation has a connected person in Mr Mahabir Prasad Gupta who is not eligible under clauses (a) to (i) of Sec29A of the Code.

M. <u>From the aforesaid on ineligibility u/s 29A the following questions emerge:</u>

i. Why such information as listed aforesaid which is readily available in public domain and which must have been noted while doing diligence on Sec 29A of the Code, was not brought to the notice of the COC during discussions on the Resolution Plan by Respondent No 1?

ii. Whether any lending institutions will lend to entities floated by errant promoters of the two Resolution Applicants? If the answer is in the negative, then the Consortium shall not be able to raise any finance to complete the project of the Corporate Debtor.

iii. A person of ordinary prudence will know from reading the information available in public domain that frauds as committed in matters listed above could not have been possible without the active connivance of the officers of the bank. In fact, in many cases bank officers have been named as an accused. Should the COC be dealing with such persons who are accustomed to "compromising" the officers in charge?

iv. What if some conviction is announced by a court of law in the matters that are going on against the accused persons as mentioned above before or after approval of the Resolution Plan.

v. The secured creditors carrying majority voting share have once again failed in their second attempt to select a Resolution Applicant of integrity. The earlier successful resolution applicant was also the applicant handpicked by the secured creditors. It is not out of place to refer to the "MoU" dated 06.10.2022 between the CD and Ozone which was orchestrated by an Officer of Respondent No 2.

N. Development Management Agreement a ruse to siphon of funds

As per para 4.3.1 the Corporate Debtor shall enter into a Development Management Agreement with the Development Manager for appointment of Development Manager to perform the development management services for the Corporate Debtor in consideration of payment of Development Management fees. The fees as projected at Rs 30.07 crores inclusive of GST of Rs 4.58 crores. If a Development Management Agreement is to be signed and exorbitant DM fees to be paid for it then what is the role of the Resolution Applicants in the Resolution of the CD? No reputed Development Manager has been suggested whereby the sales realization can increase because of the involvement of a reputed Development Manager. The appointment of Development Management Agreement is only a ruse to transfer funds to an affiliate and more so such payout has to be made in priority. The payment of DM fees involves further burden of GST of Rs 4.58 crores which was avoidable. The Resolution Applicant could have taken

DM Fees as the balance in profit and loss account of the Corporate Debtor. It is the duty of the Resolution Applicants to have completed the project of the CD. Had the resolution plan not provided for the appointment of a Development Manager, the fees payable to the Development manager could be saved and used to pay the other unpaid creditors.

O. <u>Avoidance Transactions</u>

As per clause 3.8.11 of the Resolution Plan by Respondent No 5, if any proceeds are received by the Corporate Debtor or the Resolution Professional in pursuance of avoidance transactions under Sec 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the Code shall be solely for the benefit of the Corporate Debtor/Resolution Applicant. This is contrary to the law on the subject. The outcome of the avoidance transactions cannot be given to the benefit of the successful resolution applicant and it must go creditors of the Corporate Debtor. While the proposition that the commercial wisdom of the committee of creditors is supreme is not disputed insofar as the commercial aspects of the resolution plan our concerned, the said principle is not applicable to the present case where the issue of illegality has been raised. The COC cannot countenance incorporating any term in the resolution plan which is contrary to the law or which otherwise makes the resolution plan illegal.

P. <u>Allegation of the Resolution Applicants that the Applicant failed to provide development management services to develop the Chambers project</u>

At clause 4.4.2 of the Resolution Plan states that the

Corporate Debtor was not able to develop the Chambers Project on its own and therefore, appointed Applicant to provide development management services to develop the Chambers Project. The clause further alleges that the Applicant also failed to facilitate the development of the Chambers Project even after a period of more than 1 (one) year and therefore failure on part of Applicant has also resulted in causing default by the Corporate. The Applicant denies the said allegation in toto as figment of imagination of the Resolution Applicants. No reasoning is provided by the Resolution Applicants for arriving at such a conclusion. On the contrary, as per clause 10.1.9. (iii) of the Development Management Agreement dated 12th April 2017 signed between the Applicant and the Corporate Debtor the Development Manager at its sole option and discretion but not an obligation may invest its own fund against an adequate security provided by the Developer to the satisfaction of the Development Manager. The total Development Manager Funding would not exceed Rs 2,50,00,000 at any point of time. The Applicant has spent Rs 6,50,00,000 on the project and that too without taking any security from the Corporate Debtor. The Applicant has no role to play and has not attributed to the default by the Corporate Debtor.

Q. <u>Overstatement of Expenses in the Project</u>

There is extreme overstatement of expenses which are projected by the SRA. In fact, the overstatement is so high that it could be said that there is fabrication of expenses in the Resolution plan approved by the COC. The extent of the overstatement of expenses can be known by a simple comparison of the Business Plan of Yura Business Partners LLP with the Business Plan of Ozone Lifestyle Projects Pvt Ltd, the erstwhile Resolution Applicant.

The chart below brings out clearly the glaring differences in estimation of expenses.

	Ozone			**YURA**		
	Inflow	Rs. CR		**Inflow**	Rs. Cr	
1	Unsold Collection	224.67	1	Unsold Collection	219.00	
	Total Inflow	**224.67**		**Total Inflow**	**219.00**	**-5.67**
	Outflow			**Outflow**		
1	Project Expenses		1	Project Expenses		
a	Construction cost (Sale + Rehab)	39.50	a	Construction cost (Sale + Rehab)	48.00	8.50
b	Approval Cost	5.00	b	Approval Cost	26.00	21.00
c	FSI - Fungible Premium	12.00	c	FSI - Fungible Premium	11.00	-1.00
d	Interest on Balance Fungible Premium to be paid	0.72	d	Interest on Balance Fungible Premium to be paid	-	-0.72
e	Overheads & Admin Charges	1.98	e	Overheads & Admin Charges	5.00	3.02
f	Architect & Consultant Fees	2.25	f	Architect & Consultant Fees	7.00	4.75
g	Sales & Marketing Cost	4.49	g	Sales & Marketing Cost	16.00	11.51
h	Brokerage Cost	4.49	h	Brokerage Cost	-	-4.49
i	Tenant Expenses	-	i	Tenant Expenses	1.00	1.00
	Sub Total (Project Cost)	**70.43**		**Sub Total (Project Cost)**	**114.00**	**43.57**
2	**Ozone's DM Fees**	**25.84**	2	**Ozone's DM Fees**	**30.00**	**4.16**
3	**Ozone's Interest on Working Capital**	**1.01**	3	**Yura's Interest on Working Capital**	**4.00**	**2.99**

			5	**Interest on Construction Finance**	**3.00**	**3.00**
-	**Total Outflow of the Project**	**97.28**		**Total Outflow of the Project**	**151.00**	**53.72**
	Surplus	**127.39**		**Surplus**	**68.00**	**59.39**

It can be seen that while the collection from unsold flats is nearly the same in both the Resolution Plans, the projected surplus generated by the plan of Ozone is Rs 127.39 crores as against only Rs 68 crores by the current Resolution Applicants- Yura Business Partners LLP. There is vast difference in the expenses estimated in the two Resolution Plans on account of Construction Cost, Approval Cost, Architect and Consultant Fees, Sales and Marketing Cost, Interest Cost, etc. While the Ozone Plan projected a surplus of Rs 127.39 crores the resolution Plan by Yura Business Partners LLP projects a surplus of only Rs 68 crores. It is noteworthy that the Applicant had raised this point of overstatement of expenses in the Resolution Plan of Yura Business Partners LLP during discussion on the plan in the 13th Meeting of COC. While it was for the Resolution Applicant to clarify on this point, the Respondent No 2 stated that it also believed that the cost projections in the plan of Yura are conservative, this may actually be good since any saving in cost will result in higher payout to the creditors. It is noteworthy that the Respondent No 2, 3 and 4 did not even ask for any negotiation with the SRA-Respondent No 5. The Applicant has already alleged hereinabove that the SRA-Resolution Applicant is apparently habitual in compromising the officers of banks/Financial Institutions/Lenders.

R. Discrimination as to similarly placed Unsecured Creditors

i. The Resolution Plan of SRA offers different settlement amount for similarly placed unsecured financial creditors and the same can be inferred from payout table at Page 95 of the Plan wherein various unsecured financial creditors are receiving payouts of different percentages varying from 75 % to 4 % of the admitted claim. The discrimination among similarly placed unsecured financial creditors with respect to settlement amount offered under the same Resolution plan shows foul play on part of the Respondents and cannot be permitted.

ii. The same is the case with Employees and Operational Creditors wherein similarly placed creditors are being paid varying amounts.

6. The Applicant declares that this Application falls within the jurisdiction of this Hon'ble Tribunal.

7. The Applicant further declares that no part of this Application is barred by limitation.

8. The Applicant declares that there is no other application/suit filed by the applicant in any other court in Mumbai or elsewhere arriving from the same cause of action.

The Respondent No. 5/ Successful Resolution Applicant ("SRA") filed a detailed reply opposing the above application:

9. The SRA submits that the captioned IA is not maintainable in law and the same is liable to be dismissed in limine. The Applicant, by filing the captioned IA, is abusing the process of law and of this Hon'ble Tribunal with the sole view of delaying the proceedings under the captioned Company Petition and derailing the Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor. The reliefs sought for in the IA, if granted, will have far

reaching consequences and adversely impact the justice administration system and the CIRP of the Corporate Debtor and all the stakeholders associated with it.

10. Further, the SRA denies each and every statement, contention, averment and/or allegation in the IA which is contrary thereto and/or inconsistent therewith and to what is stated hereinbelow. Nothing contained in the IA shall be admitted or deemed to be admitted by SRA for want of specific traverse. Merely by reason of not specifically dealing with any of the said allegations, contentions, insinuations, or statements, SRA does not, nor shall SRA be deemed to have in any manner admitted the contents thereof.

11. The captioned IA has been filed by the Applicant seeking rejection of the Resolution Plan submitted by SRA for allegedly being non-compliant of the provisions of Section 29A of the IBC and violative of other provisions of the IBC and the Regulations thereunder.

12. At the outset, I submit that the allegations laid down in the IA against the SRA Resolution Plan not being Section 29A compliant, not being feasible and viable, not seeking mandatory approvals, lacking transparency and effective implementation, violative of laws etc., are all baseless, unsubstantiated, concocted, tainted with mala-fides and lacks an iota of proof on part of the Applicant to claim the same. Needless to say, all the said allegations, being false and vexatious, are denied in toto and the Applicant be put to strict proof thereof.

13. With reference to the alleged contention of the Applicant in Point 'K' of the captioned Application pertaining to the SRA promoters being 'embroiled' in the alleged scams, I deem it pertinent to mention that I deny each and every contention mentioned in the points (a)1, (a)1(I), (a)1(II), (a)2, (a)3, (a)4 and (a)5 and put the Applicant to strict proof thereof. It is further pertinent to note that the contention mentioned in the said paragraph are mere

allegations and the SRA's promoters are not convicted in any of the alleged accusations mentioned therein. I further say and submit that the Applicant has grossly failed to show how the said facts mentioned in the paragraphs under reply are relevant from the view of submission of a Resolution Plan and how they are legally debarred from submitting a Resolution Plan merely based on unsubstantiated allegations. Needless to mention that the Applicant has failed to conclusively prove the allegations mentioned in the paragraphs under reply, the same being concocted, ill-founded, malicious and I put the Applicant to the strictest proof thereof.

14. With reference to the alleged contentions of Point 'K' in points (b)1, (b)2, (b)3 and (b)4, Point 'L' and Point 'M', I vehemently deny all the allegations and contentions in toto, the same being false, misleading and tainted with mala-fides and I put the Applicant to strict proof thereof. Further, I repeat and reiterate the contents of the preceding paragraphs and I further submit that, the Applicant has failed to show any nexus between the promoters of SRA consortium (i.e., successful Resolution Applicants) and the Transcon group with the Corporate Debtor. It is pertinent to note that the Applicant has merely alleged that the promoters of the SRA consortium are barred under Section 29A of the IBC but has failed to show specifically under which provision and how they are a 'connected person' for the purposes of Section 29A of the IBC. Needless to say that other allegations and contentions of the paragraphs under reply not being specifically controverted, are denied in toto for the same being baseless and irrelevant to the facts and law of the given matter and therefore, deserves no response from the SRA.

15. Thus, in view of the aforesaid, I say and submit that with respect to the SRA's Resolution Plan being allegedly violative of various laws, unfeasible, conditional, non-transparent, discriminative

etc., I say that the said contentions of the Applicant are utterly misplaced, unscrupulous, capricious and I vehemently deny the same in toto and put the Applicant to strict proof thereof.

16. I say and submit that the impugned Resolution Plan was submitted by SRA with the Resolution Professional ("RP") on August 2, 2022, which was well within the prescribed time-limit of submitting the same. Pursuant to the submission of the Resolution Plan by SRA, the Respondent No.1/ RP has duly evaluated and analysed the Resolution Plan to be in line with the Evaluation Matrix issued by him.

17. I further say and submit that thereafter the Respondent No. 1 RP has verified SRA's Resolution Plan to be in compliance with all the applicable laws, including Section 29A of the IBC.

18. Thereafter, the said Resolution Plan was presented by the Respondent No. 1/ RP before the Committee of Creditors ("CoC"), for their perusal and consideration. After perusing and reviewing every aspect of the said Resolution Plan, along with its compliance with applicable laws, including Section 29A of the IBC, the CoC arrived at the conclusion that the said Resolution Plan is fully complaint with all the applicable laws and found it to be commercially viable and approved the same in its commercial wisdom, in the 13th CoC meeting held on August 3, 2022. It is pertinent to note that the said Resolution Plan has been approved by the CoC members having a voting share of 94.15%.

19. It is also pertinent to note that the Applicant is the only dissenting unsecured Financial Creditor of the Corporate Debtor holding a meagre 1.61% voting share in the CoC and the captioned IA is merely a counterblast to the majority members of the CoC not being in agreement to the wishes of the Applicant.

20. In view of the foregoing, I say and submit that the Resolution Plan duly submitted by the SRA is a valid document and does not contravene any law including Section 29A of the IBC. It is further

submitted that the said Resolution Plan is duly verified and found to be eligible by the Respondent No. 1/ RP as per the Evaluation Matrix and further, the same has been perused, evaluated, considered and duly approved by the CoC of the Corporate Debtor. Thus, the Applicant has no locus to challenge the veracity of the Resolution Plan and the instant IA deserves to be dismissed with costs.

21. The contentions raised by the SRA in the present Affidavit are without prejudice and in the alternative to each other. I repeat and reiterate that I reserve my right to file a detailed/additional Affidavit to deal with the captioned Application, if and when required.

FINDINGS

22. Heard the learned counsel of both the sides and perused the record.

23. The Counsel appearing for the SRA submitted that the Application makes numerous wild and unsubstantiated allegations in order to oppose the Resolution Plan ("Plan") submitted by the SRA (and approved by 94.51% of the COC), he further states that the Counsel appearing for the Applicant only pressed two of the contentions made by the Applicant in the Application. These were:

    a. The allegation that the SRA lacks the financial wherewithal to implement the Plan.

    b. The allegation that the plan is not feasible (owing to a height restriction) in view of an Order of the Hon'ble Bombay High Court.

24. No other contentions or allegations were pressed by the Counsel appearing for the Applicant at the final hearing. The Counsel appearing for the Respondents advanced their submissions in reply. After the final hearing concluded, the Advocate on Record for the Applicant made an attempt to make further submissions

beyond those advanced by the Counsel for the Applicant, which attempt was (rightly) prevented by this Tribunal on the basis that two advocates cannot argue a matter for one party. The matter was thereafter reserved for orders, on the understanding that only the contentions actually pressed by the Applicant would be taken into consideration by this Tribunal when deciding the Application.

25. It is submitted by the Counsel appearing for the Resolution Professional that he has also verified and confirmed that the SRA is eligible under Section 29A, and that the Plan was in compliance with Regulation 39(2) of the CIRP Regulations. The contentions of the Applicant are therefore misplaced and misconceived (apart from being motivated and malicious).

26. **SRA's Alleged Lack of Experience in Real Estate**: This is an issue that is expressly within the commercial wisdom of the COC, and is not a ground for invalidating the Plan, or refusing approval to the Plan. Further, the partners of one constituent of the SRA have substantial experience in real estate.

27. **SRA's Alleged Lack of Financial Wherewithal to implement the Plan and the Source of Funds**: This is an issue that is expressly within the commercial wisdom of the COC, and is not a ground for invalidating the Plan, or refusing approval to the Plan. Further, the Plan expressly provides for the sources of funds for the implementation of the Plan.

28. **The Plan is allegedly not Feasible:**

    a. This is an issue that is expressly within the commercial wisdom of the COC, and is not a ground for invalidating the Plan, or refusing approval to the Plan.

    b. That said, the Applicant's understanding of the Plan is (deliberately) misconceived. The Plan requires the SRA, on a "best effort basis" to pursue Writ Petition No. 365 of 2015 (Lodging No. 2745 of 2014) pending before the Hon'ble

Bombay High Court, to get Full Height Permission for the Chambers Project.

c. Further, and critically, the Plan is in no way conditional upon Full Height Permission being received. The Plan is self-explanatory in this regard. Critically, it may be noted that the Order dated October 13, 2014, passed in Writ Petition No. 365 of 2015 does not prohibit construction up to 15.24 meters; it is clear that construction up to 15.24 meters is permissible in any eventuality.

d. Further, the Applicant (as an unsecured dissenting financial creditor, having 1.61% voting share in the COC), has no cause for complaint in this regard. In terms of the utilization waterfall for the Corporate Debtor as proposed in the Plan , the dissenting financial creditors are paid third in the order of priority, as against the secured financial creditors, who are paid tenth but have still voted overwhelmingly in favour of the Plan.

e. Additionally, the COC has considered the consequences of Full Height Permission not being obtained, viz. that the secured financial creditors of the Corporate Debtor are the only creditors of the Corporate Debtor who are affected.

There is, therefore, no merit whatsoever in the Applicant's contention.

29. **The Plan is allegedly Conditional in nature**: The Application deliberately misconstrued the Plan. The Plan provides for the estimated receivables from the Project, the manner of their utilization, and the distribution amongst stakeholders. Even assuming for any reason that the receivables are lower than projected, operational creditors, employees, and dissenting financial creditors (such as the Applicant) are to be paid in priority. The Plan also has a specified term. The Plan is, therefore,

in no way conditional or contingent in nature. The Applicant is deliberately misconstruing Clause 2.4 of the Plan.

30. The Learned Counsel appearing for the SRA also referred to the judgment of the ***Hon'ble Supreme Court in K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150 and Kalpraj Dharamshi v. Kotak Investment Advisors Ltd., (2021) 10 SCC 401*** with regard to the aforementioned misconceived submissions of the Applicant.

31. The contentions regarding the allegedly Plan lacking transparency; the Plan allegedly violating applicable laws; and the Plan allegedly being a "ruse to siphon funds"; alleged overstatement of expenses is equally misconceived and baseless. Firstly, the Development Management Agreement annexed to the Plan is a draft, and will be finalized post-approval of the Plan by this Hon'ble Tribunal. Similarly, the contentions regarding RERA are equally misplaced, and are in any event not a ground to object to the Plan. The appointment of a development manager and the projected expenses are decisions that are within the commercial wisdom of the COC, and are not grounds to object to a Plan.

32. With respect to avoidance transactions, the Plan expressly provides that the sums realized shall be distributed in accordance with the Utilization Waterfall, i.e. for the benefit of all stakeholders including creditors.

33. **The SRA is allegedly disqualified under Section 29A of the Code**: In a desperate attempt to make out a case that the SRA is disqualified under Section 29A, the Applicant has made wild, unsubstantiated, baseless, and defamatory allegations in the Application, "Written Submissions", the New Application, and in numerous emails addressed to the Resolution Professional ("RP"). The SRA understands that the RP has already responded to these baseless allegations based upon the responses provided by the SRA to the RP. Reference may be made to the judgment of the

Hon'ble Supreme Court in Swiss Ribbons v. Union of India, (2019) 4 SCC 17, Paragraph 109, which is reproduced in the later paragraphs. Be that as it may, for the sake of completeness, each allegation is being dealt with hereinbelow:

a. **Disqualification basis Mr. Anil Mahabir Gupta being an accused in the "Coal Scam"**: A mere allegation or accusation is not a ground of disqualification under Section 29A (d). Section 29A (d) requires a conviction, and not merely being an accused. There is no conviction whatsoever against Mr. Gupta or any family member:

b. **Disqualification basis Mr. Anil Mahabir Gupta being engaged in fraudulent practices and duping banks**: The allegation is false, unsubstantiated, based on a stray, wild, and defamatory website without an iota of supporting material, and therefore ought to be rejected outright.

c. **Disqualification basis Mr. Anil Mahabir Gupta having criminal complaints pending against him**: The allegation is false, unsubstantiated, based on a stray, wild, and defamatory website without an iota of supporting material, and therefore ought to be rejected outright. A mere complaint or accusation is not a ground of disqualification under Section 29A (d). Section 29A (d) requires a conviction, and not merely being an accused. There is no conviction whatsoever against Mr. Gupta or any family member.

d. **Disqualification basis SKS Power Generation Company**: The allegation is false, unsubstantiated, based on a stray, wild, and defamatory website without an iota of supporting material, and therefore ought to be rejected outright. A mere complaint or accusation is not a ground of disqualification under Section 29A (d). Section 29A (d) requires a conviction, and not merely being an accused. There is no conviction whatsoever against Mr. Gupta or any family member.

e. **Disqualification basis SKS Ispat and Power Ltd.**: A mere complaint or accusation is not a ground of disqualification under Section 29A (d). Section 29A (d) requires a conviction, and not merely being an accused. There is no conviction whatsoever against Mr. Gupta or any family member.

f. **Disqualification basis Mr. Kirti Kedia and Parekh Aluminium Ltd.**: A mere complaint or accusation is not a ground of disqualification under Section 29A (d). Section 29A (d) requires a conviction, and not merely being an accused. There is no conviction whatsoever against Mr. Gupta or any family member.

g. **Disqualification arising from Satec Envir Engineering (India) Pvt. Ltd. ("Satec")**: The Applicant has contended, albeit only in the "Written Submissions" and New Application, and that too without sufficient pleading, but rather with mere annexing of emails (which ought to be reprimanded), that owing to connections between the partner of a constituent of the SRA, the SRA is disqualified under Section 29A. This connection is allegedly through Mr. Gaurav Agarwal, a partner of Yura Business Partners LLP, one of the constituents of the SRA (a consortium). It may be noted that Mr. Gaurav Agarwal was never a director of Satec , and is not employed with Satec since November 2017 . An old un-updated LinkedIn profile cannot prove directorship. This was corrected and removed after this was brought to notice. It is pertinent to refer to the judgment of the Hon'ble Supreme Court in ***Swiss Ribbons v. Union of India, (2019) 4 SCC 17***, to substantiate the submissions herein. There is, therefore, no relevance of Satec or its accounts with the SRA. Be that as it may, the allegations regarding Satec itself are false and misconceived, as dealt with below:

i. **Satec has no account that is NPA, and is not in default in respect of any account**.

ii. **Bank of Maharashtra**: Satec has settled with Bank of Maharashtra, and Bank of Maharashtra has issued a letter certifying that Satec has complied with the terms of the OTS as on March 31, 2022.

iii. **Axis Bank**: Working capital facilities have been settled with Axis Bank under OTS. Axis Bank has issued a No Dues Certificate dated July 13, 2021.

iv. **Bank of Baroda**: Satec has settled all its accounts with Bank of Baroda. Bank of Baroda has issued two composite letters dated March 31, 2022, in this regard.

v. **Central Bank of India**: Satec has entered into and complied with the OTS of Central Bank of India.

vi. **Petition filed under Section 9 of the Code by Evergreen Corporation**: Whilst the Petition was admitted by the Hon'ble NCLT vide Order dated December 23, 2022, the said Order is challenged by a director of Satec before Hon'ble NCLAT, which has stayed the Order and directed deposit of monies by Appellant, which have been deposited.

34. It is submitted that in the present case the CoC in its commercial wisdom after extensive deliberations has approved the Resolution Plan which is fair and equitable to all the lenders including the Applicant. I further say the Hon'ble Supreme Court in the landmark decision in *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and others (2019) SCC OnLine SC 1478)* has categorically held that it is commercial wisdom of the CoC which is free to determine as to what amounts are to be paid to different classes or sub-classes of the creditors. It was also held that there is no residual jurisdiction not to approve a resolution plan on the ground that the Directors of Resolution Applicant it is

unfair or unjust to a class of creditors, so long as the interest of each class has been looked into and taken care.

35. After hearing both the sides and upon perusing the material on record for the aforesaid reasons, this Tribunal is in complete agreement with the submissions made by the Counsel appearing for the Successful Resolution Applicant and is also of the considered view that as well contested by the Successful Resolution Applicant this tribunal has a very limited role to interfere with the commercial wisdom of the CoC. It is also appropriate to observe here that the Hon'ble Apex Court in a catena of judgements clearly held that the power of judicial review of the Adjudication Authority while dealing with the approval of the Resolution Plans shall be merely confined to Section 30(2) of the Code and nothing beyond. Keeping the above rulings relied by the Resolution Profession in mind this Bench did not find any merit in the above Application filed by the Applicant and the same is deserves to be rejected. Accordingly, the Interlocutory Application 3230/2022 **is rejected and disposed of**.

Sd/-	**Sd/-**
MADHU SINHA **MEMBER (TECHNICAL)**	**H.V. SUBBA RAO** **MEMBER (JUDICIAL)**