

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-III, MUMBAI BENCH**

Application for Submission of Resolution Plan Under **Section 30(6)** of Insolvency And Bankruptcy Code, 2016 ("**Code**") Read With **Regulation 39(4)** Of The Insolvency And Bankruptcy Board Of India ("**Insolvency Resolution Process Of Corporate Persons**") Regulations, 2016 ("**CIRP Regulations**")

I.A No. 533 of 2021

IN

CP (IB) No: 4682 of 2018

Filed by

Mr. Jayesh Sanghrajka

Resolution Professional of

Sutlej Housing Private Limited

....Applicant

IN THE MATTER OF:

Jitendra K. Shah

...Financial Creditor

Versus

Sutlej Housing Private Limited

....Corporate Debtor

Order Reserved On: 12.06.2023

Order Pronounced On: 21.07.2023

Coram:

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

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

Appearance:

For the Applicant (Jayesh Sanghrajka, Resolution Professional): Mr. Nausher Kohli a/w Ashish Parwani i/b Raini Associate, Advocates.

For the Resolution Applicant: Mr. Mustafa Doctor, Senior Advocate a/w Adv. Sakshi Mehta , Advocates

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

1. This is an Application filed under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant, VK- 21 Realty LLP which was approved by 100% voting share of the members of the Committee of Creditors (hereinafter referred to as ‘**COC**’).
2. **Factual Background of the Corporate Debtor:**
 - 2.1. Before proceeding to the evaluation of the Plan, as to its compliance with Section 30(2) of IBC, it is necessary to set out the factual matrix of the Corporate Debtor.
 - 2.2. Nagindas Properties Private Limited (“**NPPL**”) along with Varun Patel, Smitaben Bipichandra Patel and Bipinchandra Patel

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

I.A No. 533 of 2021

IN

CP (IB) No: 4682 of 2018

("erstwhile owners") were the joint owners of Land bearing Cadastral Survey Nos. 9/76, 12/76/, 13/76, 14/76 and 18/76 of Dadar Naigaon Division having Project Name "Dadar Gardens"; Popularly known as "Shree Sound Complex", Near Taximen Petrol Pump & Behind Chitra Cinema, Madhavdas Pasta Road, off Dr. Babasaheb Ambedkar Road, Dadar (East), Mumbai 400014, in the registration and sub-registration district of Mumbai City, admeasuring in aggregate 8408.65 square meters as per the antecedent title deeds and 9221.60 square meters as per the Property Register Cards **("Larger Property")** in the ratio of 60:20:20.

2.3. The Dadar Neelkanth Apartments Co-Operative Housing Society **("Society")** owns all that piece and parcel of land and ground admeasuring 4261.35 square yards equivalent to 3563 square mtrs. or thereabouts along with the non-cessed building named Neelkanth standing thereon having constructed area of 5803.22 square mtrs. and forming part of the Larger Property **("Society Area")** and is further claiming right on unconsumed FSI of 7458 sq.ft. of the Larger Property together with benefit of the recreational ground admeasuring 771.15 sq. mtrs. in IA 2859 of 2021 (Para V (1) at Page no. 7 of IA 2859 of 2021).

2.4. On the Larger Property, one Children's Films Society of India **(CFSI)** is also occupying approximately 800 square feet **("CFSI area")**

- 2.5. In the year 1989, the Society filed a Suit bearing No. 119 of 1989 in the Hon'ble Bombay High Court against the (i) Mr. Bipinchandra Patel (ii) Dilipkumar Nagindas Patel (iii) Kamalnayan Chunilal Patel and (iv) Navinchandra Prabhudas Patel and (v) M/s. Neelkanth Building Corporation inter alia praying that the Defendants be ordered and decreed to convey and transfer the Plot No.1 in favour of the Society. By an ex-parte decree dated August 21, 1992, the Hon'ble Bombay High Court be ordering and decreeing that the Defendants convey and transfer the Society Plot in favour of the Society. The decree was however not executed by the Society and the conveyance of the Plot No.1 in favour of the Society, in pursuant of the decree.
- 2.6. In 2012, erstwhile owners and the Corporate Debtor engaged in discussions and agreed for joint development of the Larger Property (excluding Society Area and CFSI Area) ("**Project**") i.e., all the piece and parcel of freehold land and ground admeasuring 4845.65 square meters with certain structures standing thereon out of the Larger Property ("**Project Property**")
- 2.7. As per the development plan, Mr. Varun Dilipkumar Patel, Ms. Smitaben Bipinchandra Patel with Mr. Bipinchandra Patel and NPPL agreed to sell, transfer and convey to the Corporate Debtor their share in the Larger Property, in the following ratio:
- Mr. Varun Dilipkumar Patel- 20% of the Larger Property;
 - Ms. Smitaben Bipinchandra Patel with Mr. Bipinchandra Patel - 20% of the Larger Property;

- NPPL - 20% of the Larger Property.
- 2.8. The joint - development of Project Property was decided to be carried out with the Corporate Debtor and NPPL, pursuant to which, NPPL would be entitled to 40% of the total constructed area (NPPL's share to be calculated excluding fungible, common and premium FSI in accordance with the Clause 3.1.8 read with Annexure 2 of the Agreement for Sale dated 19 November 2013 executed between NPPL and Corporate Debtor) and the Corporate Debtor would be entitled to 60% of the total constructed area.
- 2.9. By and under various Agreements as more particularly stated at Paragraph 11 of IA 533 of 2021, 50% of the Larger Property was conveyed upon the Corporate Debtor by the Erstwhile Owners and NPPL for which consideration of Rs.46,00,00,000 was paid by the Corporate Debtor.
- 2.10. However, due to certain contractual breaches by NPPL, Society has also filed substantive Long Cause Suit bearing no.1515 of 2016 before the Hon'ble City Civil Court at Mumbai against NPPL and 6 others including the Corporate Debtor inter alia seeking a declaration that all conveyances in so far as they relate to the Society Property executed in favor of NPPL, Corporate Debtor and the erstwhile owners are null and void. It is submitted that the said suit is pending as on date. (Para G of Affidavit dated 1 March 2022 filed by Resolution Professional in I.A. 533 of 2021).

2.11. As disputes arose between NPPL and the Corporate Debtor and NPPL pertaining to joint development of the Project Property, pursuant to which NPPL initiated various proceedings before various forums against the Corporate Debtor which is more particularly stated as Paragraph 19 of I.A. 533 of 2021.

3. BRIEF FACTS RELATING TO FILING OF THE APPLICATION:

3.1. The Company Petition filed by the Financial Creditor against the Corporate Debtor was admitted vide Order dated September 25, 2019 ("**Admission Order**"), thereby initiating CIRP of the Corporate Debtor. Mr. Pradeep V. Samant was appointed as the Interim Resolution Professional ("**IRP**"). Subsequently, in their third meeting held on January 29, 2020, COC appointed Mr. Jayesh N. Sanghrajka as the Resolution Professional ("**RP**"), the present Applicant in the matter. The RP has provided an information memorandum in March 2020 containing certain information relating to the Corporate Debtor ("**Information Memorandum**" or "**IM**") and subsequently provided the final version of the invitation for submission of resolution plan / process note dated September 16, 2020 ("**Process Note**" / "**RFRP**") inviting submission of resolution plans under the CIRP of the Corporate Debtor.

3.2. Upon commencement of the CIRP, the following creditors filed their claims with the RP.

Sr No	Name	Claim amount (in INR)*
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IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-III, MUMBAI BENCH

I.A No. 533 of 2021

IN

CP (IB) No: 4682 of 2018

1.	IDBI Trusteeship Services Limited (ITSL)	1,567,622,360
2.	NPPL	78,03,77,751/-

3.3. The IRP verified the aforementioned claims and issued a list of claims received by him till October 30, 2019. As per the said list of claims the RP rejected the claim of NPPL and accepted the claim of ITSL to the extent of Rs. 107,24,50,94/-. Thereafter, the IRP upon further verification of claims, issued a revised list of claims received by him December 12, 2019, wherein the IRP admitted the full claim amount of ITSL and issued the following list of creditors of the Corporate Debtor.

Sr. No.	Creditor	Amount admitted (INR)	Percentage
1.	ITSL	156,76,22,360/-	95.59%
2.	Jitendra K. Shah	7,23,62,619/-	4.41%
	TOTAL	163, 99,84,979	100%

3.4. The Applicant thereafter was appointed as RP vide order dated February 03, 2020, and immediately started discharging its duties.

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

I.A No. 533 of 2021

IN

CP (IB) No: 4682 of 2018

- 3.5. During the fourth COC meeting dated 12.02.2020, the COC unanimously approved publication of Notice and invited expressions of interest ("**EOI**") from prospective resolution applicants. The RP then issued detailed invitation for EOI.
- 3.6. The RP in 5th COC Meeting held on March 06, 2020, approved the appointment of M/s. Sundeep H.B. & Co. and M/s. GD Vadher, as the registered valuers, required to be appointed in accordance with Regulation 35 of CIRP Regulations.
- 3.7. The RP in response to publication of invitation for EOI received the following EOI from prospective resolution applicants being (i) Indian Mineral Company (ii) **VK-21 Realty LLP ("Resolution Applicant")** (iii) Mr. Harshwadhan Reddy.
- 3.8. On September 16, 2020 and October 03, 2020, M/s. Sundeep H.B. & Co. and M/s. GD Vadher submitted their valuation report to the RP. The details of the liquidation value and fair value is mentioned in FORM H.
- 3.9. The COC then approved draft request for Resolution Plan ("**RFRP**"). The last date for submission of resolution plan was October 30, 2020, which was later extended to October 30, 2020. Pursuant to the RFRP, it was only the Resolution Applicant who submitted the Resolution Plan, and no further plans were received by the RP.

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

I.A No. 533 of 2021

IN

CP (IB) No: 4682 of 2018

3.10. At the 14th COC meeting dated 07.03.2021, the Resolution Plan by Resolution Applicant was approved by 100% majority.

3.11. The summary of all the COC meetings is tabulated as under:

Sr. no.		Date	Key Outcome
1st meeting	COC	5 December 2019	The COC consisting of Jitendra K shah and ITSL unanimously voted that the COC will apply for replacing IRP.
2nd meeting	COC	19 December 2019	The COC approved the fees of registered valuers and approved raising of interim finance.
3rd meeting	COC	29 January 2020	COC approved appointment of registered valuers
4th meeting	COC	12 February 2020	The COC approved publication of advertisement of Form G for inviting EOI.
5th meeting	COC	6 March 2020	The COC resolved to authorize RP for filing application for extension of CIRP period by 90 days.
6th meeting	COC	19 June 2020	The RP apprised the COC about the EOI received from the prospective resolution applicants.
7th meeting	COC	18 July 2020	COC approved for extension of timelines for submission of EOI
8th meeting	COC	29 August 2020	Once again COC approved for extension of timelines for

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

I.A No. 533 of 2021

IN

CP (IB) No: 4682 of 2018

			submission of EOI
9th meeting	COC	16 October 2020	COC approved the draft RFRP
10th meeting	COC	4 November 2020	COC approved extension of last date of submission of resolution plan
11th meeting	COC	29 December 2020	The RP informed the COC about the receipt of resolution pan from Resolution Applicant
12th meeting	COC	23 January 2021	Resolution Applicant submitted revised resolution plan which was resolved to be discussed by COC
13th meeting	COC	27 February 2021	COC requested Resolution Applicant to submit revised Resolution Plan pursuant to discussion on 25 January 2021
14th meeting	COC	7 March 2021	Resolution Professional informed COC about final version of Resolution Plan which was approved by 100% majority

3.12. During the course of proceedings, the following Interim Applications were filed.

Sr. no.	Case Details	Prayer Sought
1.	I.A. No. 2859 of 2021 Filed by Dadar Neelkanth	- Excluding the subject Property from CIRP of the

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

I.A No. 533 of 2021

IN

CP (IB) No: 4682 of 2018

	Apartments Co-Operative Housing Society	Corporate Debtor; and - Restraining RP from creating any further in respect of the subject property <i>(Note: The Plan does not deal with the claim of Society)</i>
2.	I.A. No. 530 of 2020 Filed by Nagindas Properties Pvt. Ltd.	Seeking direction against the Resolution Professional to classify the outstanding debt of NPPL as Financial Debt and recognize them as Financial Creditor. (Para 10 (a) at Page no. 15 of I.A. 530 of 2020)
3.	I.A. No.1460 of 2020 Filed by NPPL.	Seeking direction against the Resolution Professional to exclude about 4845 sq. mtrs of Larger Property alongwith all structures standing thereon from CIRP (Para 5 (a) at Page no. 45 of IA 1460 of 2020)
4.	M.A. 671 of 2022	For Withdrawal of I.A. 530 of 2020 filed by NPPL.

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

I.A No. 533 of 2021

IN

CP (IB) No: 4682 of 2018

3.13. Thereafter, NPPL, Corporate Debtor through RP, Resolution Applicant, Mr. Ashok Kothari and Mr. Varun Kothari have entered into and executed a Settlement Agreement dated December 16, 2021, (Annexure 7 at Page No. 134 of Affidavit dated January 31, 2022, filed by RP in IA No.533 of 2021) (**“Settlement Agreement”**) recording various terms and conditions on which settlement is arrived at. In terms of the said Settlement Agreement, NPPL has inter-alia agreed that the aforesaid Applications filed by NPPL shall be kept in abeyance till the proposed Resolution Plan is approved by the NCLT and all the pending proceedings shall upon the approval by the NCLT shall be settled in all respects. The statement of the above was made by the Advocate representing NPPL before this Hon’ble Tribunal on June 12, 2023, when the Resolution Plan was heard.

3.14. In order to place the understanding between the Resolution Applicant, NPPL and the Corporate Debtor under the Settlement Agreement before the Hon’ble NCLT; the Resolution Applicant submitted an Addendum Letter dated January 21, 2022, to the Plan to the RP modifying certain provisions of the plan. In accordance to the same, the payments to be made by the Resolution Applicant are tabulated below:

Sr. No.	Document	NPPL	CD Creditor	Total
1.	Plan	16,000 square feet of RERA carpet area in the	a) INR 20,00,00,000/-	a) INR 20,00,00,000 /-

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

I.A No. 533 of 2021

IN

CP (IB) No: 4682 of 2018

		Project.	b) 31,000 square feet of RERA carpet area.	47,000 square feet of RERA carpet area in the Project.
2.	Settlement Agreement	<p>a) INR 17,00,00,000/- - (Consideration for transfer of NPPL share of the Property)</p> <p>b) 35,000 square feet of RERA carpet area.</p> <p>c) INR 2,66,00,000/- (NPPL income tax dues)</p>	-----	-----
3.	Addendum Letter (Annexure 8 at Page no. 197 of Affidavit dated 31 January	<p>a) INR 19,66,00,000 /-</p> <p>b) 35,000 square feet of RERA carpet area.</p>	<p>a) INR 20,00,00,000/-</p> <p>b) 28,000 square feet of RERA carpet</p>	<p>a) INR 39,66,00,000 /-</p> <p>b) 63,000 square feet of RERA carpet area in the Project.</p>

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

I.A No. 533 of 2021

IN

CP (IB) No: 4682 of 2018

2022 filed by Resolution Professional al in IA no. 533 of 2021)		area.	
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3.15. Subsequently, the Resolution Professional by way of an Affidavit dated 31.01.2022 had also put on record the reasons and terms for amendment of the Original Resolution Plan, and also brought on record the Settlement Agreement and the Addendum Letter.

3.16. Further with regards to the objections filed by Society in terms of I.A. 2859 of 2021 taking an overall view of the matter, the RP filed an Affidavit dated 01.03.2022 stating that in terms of Clause 25 of Settlement Agreement, the Conveyance proposed to be executed in favor of Corporate Debtor is subject to claims of the Society in the said Long Cause Suit. Further it is submitted that the Society's Claim over the Society Property, which is subject matter of the said Long Cause Suit pending before the Hon'ble City Civil Court at Bombay has not been dealt with in the Resolution Plan and hence the Society is sufficiently protected in terms respect of the claims made by it, which are pending adjudication.

3.17. Under the Resolution Plan, the Resolution Applicant will acquire the entire shareholding in the Corporate Debtor. The aforesaid

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

I.A No. 533 of 2021

IN

CP (IB) No: 4682 of 2018

transfer does not affect the Society Property in any manner whatsoever and does not take away any vested right of the Society.

- 3.18. The Conveyances in favor of the Corporate Debtor specifically record that the rights conveyed in favor of the Corporate Debtor are subject to the rights of the Society in the Society Property. (Clause 25 of Settlement Agreement at Page no. 154 of Affidavit dated 31 January 2022 filed by Resolution Professional in IA no. 533 of 2021)
- 3.19. The Resolution Applicant has also deposed on an Affidavit dated 02.03.2022 stating that the Resolution Plan does not deal with the claims of the society which are subject matter of the aforesaid Long Cause Suit. The above-mentioned Affidavit is without prejudice to the rights of the Corporate Debtor to defend the Long Cause Suit.
- 3.20. The Resolution Applicant has also filed an Affidavit dated 02.03.2022 confirming the pending litigations where the Resolution Applicant has categorically mentioned that the Resolution Applicant shall continue to defend all suits and other proceedings filed by or against the Corporate Debtor in accordance with law which all includes the Suit filed the Society before the City Civil Court, Mumbai.
- 3.21. Therefore, in the circumstances above, the Society's rights are sufficiently protected.

3.22. On 16.12.2022, the RP had also filed an Additional Affidavit to bring on record the Joint Extension Letter extending the term of the Settlement Agreement and the Vendor Service Agreement.

A. Brief Back ground of Resolution Applicant

VK-21 Realty LLP, the “Successful Resolution Applicant” (SRA), The Resolution Applicant is an entity, engaged in real estate and development work and a part of the esteemed KBK Group.

KBK Group was founded in 1964- 65. KBK Group under the leadership of Mr. Ashok Kothari has become a brand in luxurious real estate Project in South Mumbai. KBK Group under its umbrella through various special purpose vehicle such as the present Resolution Applicant, VK-21 Realty LLP has executed luxurious and budget, residential, industrial and commercial projects in Mumbai.

B. Brief Background of Corporate Debtor

Sutlej Housing Private Limited, the Corporate Debtor is a private limited company, incorporated under the provisions of the provisions of Companies Act, 1956 and engaged in the business of real estate, development, and construction. The Corporate Debtor has completed various projects

including residential and commercial projects in and around Mumbai. The Corporate Debtor is a group company of 'Narang Civilization' promoted by the Narang family and a subsidiary of Bombay Isle Developers Limited.

C. MANAGEMENT AND CONTROL OF AFFAIRS OF THE CORPORATE DEBTOR:

Management and Control of the Corporate Debtor during the Term until the Closing Date:

- i) Pursuant to the Effective Date and the Closing Date, the Applicant shall be appointed as the “**Managing Agency**” of the Corporate Debtor, on such terms and conditions as may agreed between the Resolution Applicant and the Applicant in order to supervise, control operations of the Corporate Debtor from the date of approval of the Plan by the NCLT and until the Closing Date.
- ii) The Managing Agency shall be paid Managing Agency Cost for fulfilling their obligations under the Plan. The Managing Agency shall act on the instructions of the Steering Committee consisting of (i) one representative from Secured Financial Creditor (ii) one representative from Resolution Applicant and (iii) the Applicant. The powers of Managing Agency and Steering Committee are more particularly described at 4.1 of the Resolution Plan

Management and Control of the Corporate Debtor on and from the Closing Date till the Implementation Date:

- (i) On and from the Closing Date the Corporate Debtor shall be controlled in the manner as provided under Clause 4.2 of the Resolution Plan

Manner of supervision and Implementation of the Plan

- (i) The Resolution Applicant and the Managing Agency (in consultation with the SFC Nominee) shall jointly supervise the implementation of the Plan until the Closing Date. Subsequent to the Effective Date, the Managing Agency will sign all applications on behalf of the Corporate Debtor that are proposed to be made to any other Governmental Authority, and the Resolution Applicant and the Managing Agency shall jointly make such applications in order to obtain the necessary approvals for implementation of this Plan in a timely manner.
- (ii) The mechanism for supervision of the payments to stakeholders of the Corporate Debtor after the Closing Date, in the manner contemplated in this Plan, shall be supervised by an officer of the Resolution Applicant. The Corporate Debtor shall provide such information in relation to its business as is reasonably sought by the Secured Financial Creditors.

D. BUSINESS REVIVAL PLAN:

- a. On and from the Closing Date, the Resolution Applicant and/or the Corporate Debtor as wholly owned by the Resolution Applicant shall be the sole owner of the Property together with all development potential in relation thereto by whatever name called. In consideration for the Landowner having transferred and now transferring all their right, title and interest in the Property to the Resolution Applicant, the Landowner Areas shall be handed over to the Landowners. For the purpose thereof, the Landowner, Corporate Debtor, its directors, Secured Financial Creditors agree to do all such acts and things and sign, execute and register the deed of conveyance and all such deeds and documents (including necessary deeds of conveyances, business transfer agreements etc) as may be necessary to give effect to this Resolution Plan and for transferring the Property to the Corporate Debtor
- b. The Plan aims to revive the Project by development of the Property (by consuming the whole of the development potential thereof) by the Corporate Debtor.
- c. On and from the Closing Date, the Corporate Debtor shall become the sole owner of the Property and the necessary deed of conveyance shall be executed and registered by the Landowner in the office of the sub-registrar of assurances in order to give effect to the Plan.

4. THE SALIENT FEATURES OF THE RESOLUTION PLAN

The details of the proposed payments under the Resolution Plan are as follows:

E. TOTAL OUTLAY:

- i. The Resolution Applicant estimates that it shall infuse or arrange to fund an amount of Rs. 39,66,00,000 (Rupees Thirty-Nine Crore Sixty-Six Lakhs only) (**'Upfront Payment'**) comprising of Rs. 20,00,00,000 which shall be transferred by the Corporate Debtor as per scheduled mentioned in Schedule 4 and the balance amount of Rs. 19,66,00,000 shall be paid the Landowner viz., NPPL in the manner enumerated in the Settlement Agreement and provide for 63,000 (sixty-three thousand) square feet of RERA Carpet Area (**'Outlay Areas'**) to be generated from the development of the Project to be utilized for the transactions contemplated in the Plan. The Upfront Payment and the Outlay Area are hereinafter collectively referred to as the **'Total Outlay'**. The Total Outlay shall be distributed by the Corporate Debtor on the **'Closing Date'** (which shall not exceed 120 days from the 'Effective Date' which is defined in Schedule 1 of the Resolution Plan) in the following priority: -
 - (a) Amount to payment on priority IRP Costs;
 - (b) Amount to be paid in respect of Operational Creditors;
 - (c) Compensation to be paid to the Landowner;
 - (d) Amount to be paid to Other Financial Creditors;
 - (e) Amount to be paid to Financial Creditors

F. PAYMENTS TO VARIOUS STAKEHOLDERS:

a) **INSOLVENCY RESOLUTION PROCESS COSTS**

- i. The Insolvency Resolution Process Costs (**“IRP Cost”**) presently estimated at Rs.2,50,00,000/- (Rupees two crores fifty lacs) shall be paid, at actuals, in full in terms of Section 30(2)(a) of the Code and Regulation 38(1)(a) of the CIRP Regulations and will be defrayed from and out of the Total Outlay.
- ii. The Resolution Applicant proposes that IRP Costs be paid in full and in priority to any Claim of any other creditor in accordance with the Code.

b) **PAYMENT TO FINANCIAL CREDITORS**

- i) The claims aggregating to INR Rs.1,63,99,84,979/- (Indian Rupees One Hundred Sixty- Three Crores Ninety-Nine Lakhs Eighty-Four Thousand Nine Hundred Seventy-Nine only) have been admitted for the purpose of CIRP by the Resolution Professional (**“Total Financial Debt”**). Out of the aggregate amount Total Financial Debt, the Resolution Applicant has determined an amount equivalent to the SFC Outlay is the amount/area payable/to be

handed over to the Secured Financial Creditors (**"Sustainable Debt"**).

- ii) The financial debt owed to ITSL (**"Secured Financial Creditor"**) is on account of 8815 fully paid - up, secured, redeemable, non-convertible debentures of INR 1,00,000/- (Indian Rupees One Lakh Only) issued by the Corporate Debtor aggregating to INR 88,15,00,000/- (Indian Rupees Eighty-Eight Crores Fifteen Lakhs Only) towards principal and INR 68,61,22,360/- (Indian Rupees Sixty-Eight Crores Sixty-One Lakhs Twenty-Two Thousand Three Hundred Sixty Only) towards interest thereon, aggregating to INR 156,76,22,360/- (**"Debentures"**). ITSL is the debenture trustee for the Debentures (**"Trustee"**).
- iii) The relevant portion of the Total Outlay in area terms will be converted into monetary terms by assigning a monetary value thereto at the rate of INR 34,000/- (Rupees Thirty-Four Thousand Only) per square feet (irrespective of the real market value thereof) [the areas so remaining after adjustment (to the extent required) of the Obligations is referred to as **"SFC Outlay Areas"**]. The monetary value of the SFC Outlay Areas shall be computed in the manner provided in the Resolution Plan (the **"Monetary Value of SFC Outlay Areas"**). The aggregate of the

Upfront Payment (to the extent available) and the Monetary Value of SFC Outlay Areas shall be used for redemption of the Debentures held the Secured Financial Creditor and repayment of the Loan on a pro-rata basis, (**“SFC Outlay”**), in the manner set forth in Schedule 4 (Implementation Provisions) of the Resolution Plan.

- iv) The SFC Outlay shall, within 24 months from the Effective Date (the “Due Date for payment of the Monetary Values”), be paid for redemption of the Debentures held by the Secured Financial Creditor and towards the Loan on a pro-rate basis.
- v) The SFC Outlay shall be paid in 24 months from the Effective Date. If the total SFC Outlay is not paid in full by the end of 24 months from the Effective Date, the Resolution Applicant shall pay additional charges as specified in Schedule 6 (Principal Terms of Debentures) of the Resolution Plan

c) **ADDITIONAL AREAS TO SECURED FINANCIAL CREDITOR**

- (i) The Outlay Areas will increase by 2,500 (two-thousand five hundred) square feet (**‘Additional Area’**) any time within 3 years from the Effective

Date, the following conditions are fulfilled on or prior to the expiry of the said 2 years:

- (b) If the total FSI available for consumption on the Larger Property and available to the Corporate Debtor is increased by more than 40,000 square feet (RERA) carpet area over and above the FSI of 152,000 square feet of (RERA) carpet area (**“Base FSI”**) available for consumption on the said Larger Property by the Corporate Debtor.
- (c) The Society submits an NOC permitting the Resolution Applicant/ Corporate Debtor to use area occupied by the Society for redevelopment or if there is an increase in FSI as a result of change in law provided that such increase does not require payment of any premiums for purchasing or procuring or availing the FSI.
- (d) The Resolution Plan provides that the IDBI Trustee shall be entitled to sell the Additional Areas in the open market once the area is allotted or upon completion of construction thereof at the price as it may deem fit.
- (e) The provisions relating to Additional Areas will not in any manner extend the Implementation

Date **“Implementation Date”** shall be no later than 24 months from the Effective Date (which may be extended in accordance with the Resolution Plan by 33 months and failure to achieve Implementation Date thereafter may result in the Resolution Plan not coming into effect) even if the Additional Areas are delivered subsequently.

(f) Further, the Resolution Plan provides that:

- The provisions of Schedule 5 (Consent Matter) of the Resolution Plan will cease to apply post Implementation Date and will not apply till the Additional Areas are delivered and
- The charge created over the Larger Property pursuant to the debt of Secured Financial Creditor shall not extend as a security for the Additional Areas.

d) **PAYMENT TO OPERATIONAL CREDITORS**

- i. The payment due to operational creditors shall not be less than the amount to be paid to the operational creditors in the event of a liquidation. Based on the valuation certificates issued by the relevant professionals and obtained by the Resolution Applicant, the value payable to the operational creditors in NIL.
- ii. However, the Resolution Applicant has taken

cognizance of the hardships faced by the operational creditors, and has therefore proposed that, in respect of all the claims of the operational creditors, a sum of Rs. 1,00,000/- be provided for payment on a pro rata basis of the verified amounts on or before the Closing Date which amount shall be specified by the Resolution Applicant from the Total Outlay.

- iii. The Operational Dues shall be paid in priority to the Secured Financial Creditor of the Corporate Debtor, in the manner set forth in Part IV (Financial Proposal of the Resolution Applicant) and Schedule 4 (Implementation Provisions) of the Resolution Plan.

e) **PAYMENT TO LANDOWNERS: -**

Landowners will be paid as per the Settlement Agreement.

f) **PAYMENT TO WORKMEN/EMPLOYEES**

At present the Corporate Debtor has no employee or workers, hence payment towards workmen dues is NIL.

G. SOURCES OF FUNDS:

- i. After the Effective Date, the SFC Outlay will be paid to Secured Financial Creditors towards full and final satisfaction of the Financial Debt ("**Sustainable Debt**") in the manner as provided at Schedule 4 of the Resolution Plan and as per Clause 3 and 5 of the Settlement Agreement.

- ii. The Debentures shall be redeemed within 24 (twenty- four) months from the Effective Date from the SFC Outlay.

- iii. Payment of Sustainable Debt may be funded from the Resolution Applicant or any of its Affiliates by way of equity shares, debt, convertible debt and / or preference shares raised by the Resolution Applicant, the Corporate Debtor as permitted under Applicable Laws ***Provided however that all such debt and convertible debt shall be subordinate in order or priority to the payment and security to the Financial Debt or Debentures held by the Secured Financial Creditors.*** Subject to the proviso herein, the Corporate Debtor shall receive funds not exceeding the Total Outlay from the Resolution Applicant or new lenders, as applicable, by way of equity shares, debt, convertible debt and / or preference shares and such amounts shall be used to repay the amounts in accordance with Paragraph 1 of Part IV (Financial Proposal of the Resolution Applicant) as permitted under Applicable Laws.

H. DISBURSEMENT OF AMOUNT:

The Resolution Professional has submitted the following chart showing the details of the total claims received and admitted by him and amount provided for the stakeholders under Resolution plan as under:

(amount in Rs.)

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

I.A No. 533 of 2021

IN

CP (IB) No: 4682 of 2018

Sr. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1	Secured Financial Creditors	a. Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		b. Other than (a) above: (i) who did not vote in favour of the Resolution Plan (ii) who voted in favour of the resolution plan	(i) 156,76,22,360/-	(ii) 156,76,22,360/-	(iii) 1,10,11,69,207	(iv) 70%
		Total [(a) + (b)]	156,76,22,360/-	156,76,22,360/-	1,10,11,69,207	70%
2	Unsecured	(a) Creditors	-	-	-	-

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

I.A No. 533 of 2021

IN

CP (IB) No: 4682 of 2018

Sr. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
		(b) Other than (a) above: (i) Government (ii) Workmen (iii) Employees (iv) Other operational creditor		Nil		
		Total [(a) + (b)]	Nil	Nil	1,00,000	100%
4	Other Debts and Dues		NA	NA	NA	NA
Grand Total			Rs. 1,63,99,84,979	Rs. 1,63,99,84,979	Rs. 1,15,21,00,000	70%

- I. The Resolution Plan also complies with requirements in respect of mandatory contents of the Resolution Plan under the Code read with Regulation 38 and 39 of the CIRP Regulations. The chart setting out the compliance forms part of the Plan and is extracted hereunder: -

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

I.A No. 533 of 2021

IN

CP (IB) No: 4682 of 2018

Sr. No.	Source of Requirement	Description of Requirement	Resolution Plan Reference addressing such requirement- [Reference to I.A. 533 of 2021]
1.	Section 25(2)(h)	Whether RA meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD	Part 1: Business Plan of the Resolution Applicant and Part III: Details of Financial Standing of the Resolution Applicant- Pg. 511-514
2.	Section 29A	Eligibility of RA to submit resolution plan as per final list of Resolution Professional or Order, if any of Adjudicating Authority	Affidavit u/s 29A was submitted along with the Resolution Plan Pg. 609-611
3.	Section 30(1)	Resolution Applicant has submitted an Affidavit stating he is eligible	Part III of RFRP

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

I.A No. 533 of 2021

IN

CP (IB) No: 4682 of 2018

4.	Section 30(2) of Code	<p>(a) Payment of CIRP costs</p> <p>(b) Payment of debts to Operational Creditors</p> <p>(c) Provides for payment of FC's who did not vote in favour of Resolution Plan</p> <p>(d) Provides management of the affairs of the Resolution Plan</p> <p>(e) Implementation and supervision of Resolution Plan</p> <p>(f) Not contravenes any provision of</p>	<p>Part II: Clause 1: Mandatory Provision of Plan @Page 518</p> <p>Part II: Clause 2: Mandatory Provision of Plan @Page 518</p> <p>Part IV: Summary of Resolution Plan @Page 526</p> <p>Part II Clause 4: Mandatory Provision of Plan. @Page 518-520</p> <p>Part II Clause 4.3: Mandatory Provision of Plan @Page 521</p> <p>Part II Clause 6.1: Mandatory Provision of Plan @Page 523</p>
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IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-III, MUMBAI BENCH

I.A No. 533 of 2021

IN

CP (IB) No: 4682 of 2018

		law	
5.	Section 30(4)	Resolution Plan (i) Feasible and viable to the CoC Has been approved by the CoC with 66% voting share	Minutes of 14 th CoC Meeting @Page 496-501
6.	Regulation 31(1)	Effective Implementation of Plan	Part II: Clause 4: Mandatory Provisions of Plan @Page 518
7.	Regulation 35 A	Determination by RP if CD has been subjected to be covered u/s 43,45, 66 before insolvency commencement	No such transactions are identified as per Transaction Audit Report of December 2020

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

I.A No. 533 of 2021

IN

CP (IB) No: 4682 of 2018

		date	
8.	Regulation 38(1)	Amount due to OC's have been given priority in payment over FC's	Part II: Clause 2: Mandatory Provision of Plan @Page 518
9.	Regulation 38(1)(A)	Statement as dealing with interest of all stakeholders	Part II Clause 5: Mandatory Provision of Plan @Page 521- 523
10.	Regulation 38(1)(B)	RA or any of its related parties has failed to contribute to failure of implementation of any resolution plan	Part II: Clause 6.2: Mandatory Provision of Plan. @Page 523
11.	Regulation 38(2)	Resolution Plan provides: (a) Term of plan and implementation schedule (b) Management and control of business of CD during its term	Part 1: Business of the RA- Part 5 and Schedule 4 @Page 552 Part II Clause 4: Mandatory Provision of Plan @Page 518- 520

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

I.A No. 533 of 2021

IN

CP (IB) No: 4682 of 2018

		(c) Adequate means of supervising plan	Part II Clause 4: Mandatory Provision of Plan @Page 521
12.	Regulation 38(3)	Resolution Plan demonstrates: (a) Cause of default (b) Feasible and viable (c) Provisions for effective implementation (d) Provision for approvals required and timeline	Part II Clause 4,6,8, and Schedule 4: Mandatory Provision of Plan @Page 518-521; 523-524;552
13.	Regulation 39(2)	RP has filed applications in respect of transactions observed, found and determined by him	NA

14.	Regulation 3 9(4)	Performance security as referred in sub-regulation 4A of 36B	COC waived the requirement
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- J. The Resolution Applicant is eligible to submit resolution plan. The successful Resolution Applicant has given an Affidavit satisfying the eligibility criteria as per the provisions under section 29A of the Code.
- K. The Resolution Plan has been approved in the 14th COC meeting held on 07.03.2021 with 100% voting in accordance with the provisions of the Code.

OBSERVATIONS AND FINDINGS:

- a) As per IBC Code 30(2)(a) – A Resolution Plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.
- b) As per Section 30(2)(b), the Respondent has agreed to pay Operational Creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.
- c) Provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. [Section 30(2)(c)].

- d) Provides for a term of the plan, implementation_schedule and supervision of the Resolution Plan under IBC Section 30 (2)(d) & IBBI Regulation 38(2)(c).
- e) The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor.
- f) The Resolution Plan does not contravene any of the provisions of the law for the time being in force as per Section 30(2)(e).
- g) The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- h) As per IBBI Guidelines 38(1)(b) - The amount payable under a Resolution Plan - to the financial creditors, who have a right to vote under Sub-section (2) of Section 21 and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- i) The Resolution Applicant or any of its related parties has not failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time_in the past.
- j) The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
 - 1.** The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors [Regulation 38(1)].
 - 2.** The Resolution Plan has all the adequate means of supervising of the implementation

of the Plan as required under Regulation 38(2)(c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.

- 3.** Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company [Regulation 38(1)(a)].
- 4.** Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
- 5.** The amount payable under a resolution plan to the Financial Creditors, who have right to vote under Sub- section (2) of Section 21 and did not vote in favor of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- 6.** The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
- 7.** The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section

29A of the Code and other provisions of the Code and any other Applicable Law.

8. Provides for the management and control of the business of the Corporate Debtor during its term.
9. All the above factors demonstrate that the plan address the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
10. That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1)(b) of the Regulations.
11. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other Creditors, Guarantors, Members, Employees and other Stakeholders of the Company, keeping in view the objectives of the Code [Regulation 38(1A)].

L. In *K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150* the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to

submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

M. The Hon'ble Apex Court at para 42 in ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online***, clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved.

"Para 42- Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such

review having been clearly laid down in K. Sashidhar (supra).”

- N.** In view of the above ruling of the Apex Court, the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent provided under section 31 of Code and of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code, is no more an untouched-matter.
- O.** In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. The Resolution Plan is duly approved with 100% of voting by CoC as per the Code. There are no workers claims. Resolution Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved. Accordingly, the same is approved by passing the following:

ORDER

- i. The Interlocutory Application No. 533 of 2021 is **allowed**, The Resolution Plan submitted by the Resolution Applicant , VK-21 Realty LLP is hereby **approved**. It shall become effective from the date of this Order and shall form part of this Order. It shall be binding on the Resolution Applicant, Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force is due.

- ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. It is seen that the Resolution Applicant sought several dispensations, concessions and waivers. Any waiver sought in the Resolution plan shall be subject to approval by the Authority concerned in the light of the Judgment of Supreme Court in **Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited**, the relevant para's of which are extracted herein below:

“on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any

proceedings in, respect to a claim, which is not part of the resolution plan.”

“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

- (i) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;*
- (iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”*

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

I.A No. 533 of 2021

IN

CP (IB) No: 4682 of 2018

- iii.** The Resolution Applicant and the Resolution Professional is hereby directed to act in accordance with respect to the Affidavits filed on 01.03.2022 and 02.03.2022 which states about the concerned land pending under a Suit bearing no 1515 of 2016 before the City Civil Court of Bombay, is to be kept outside the purview of the Resolution Plan and further the Resolution Applicant is directed to defend all the suits and proceedings filed by or against the Corporate Debtor.
- iv.** The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- v.** The moratorium under Section 14 of the Code shall cease to have effect from this date.
- vi.** The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- vii.** The Applicant, i.e. RP, shall forthwith send a copy of this Order to the COC and the Resolution Applicant for necessary compliance.

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

I.A No. 533 of 2021

IN

CP (IB) No: 4682 of 2018

- viii. The Interlocutory Application No. **533 of 2021** is accordingly **allowed** in the above terms and stands disposed of.

SD/-

MADHU SINHA
MEMBER (TECHNICAL)

SD/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)