**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**PRINCIPAL BENCH, NEW DELHI**

**IA 5029 (PB)/ 2023**
**IA 5610 (PB)/2022**
**IA 5611 (PB)/2022**
**IA 5612 (PB)/2022**
**IA 5613 (PB)/2022**
**IA 2481 (PB)/2024**
**IN**
**CP (IB) No.144(PB)/2022**

***IN THE MATTER OF:***

**Asset Reconstruction Company (India) Limited** **... FINANCIAL CREDITOR**

**VERSUS**

**M/S Harvest Hotels and Services Appartments Private limited** **...CORPORATE DEBTOR**

***AND***

**IA 5029 (PB)/ 2023**

***IN THE MATTER OF:***

Mr. Shailendra Ajmera **...APPLICANT/RP**
Resolution Professional for
M/s Harvest Hotels and Service
Appartments Private Limited
**Having Office at:**
ERNST & YOUNG, LLP, 3rd Floor, World Mark-1
AEROCITY, NEW DELHI-110037

***VERSUS***

1. **UV Asset Reconstruction Co. Ltd. (UVARCL)** **...Pro-forma Respondent No.1 /COC**
   704, 7th Floor, Deepali Building,
   92 Nehru Place, New Delhi-110019

2. **SERVEALL LAND DEVELOPERS PRIVATE LIMITED** **...Pro-forma Respondent No.2/SRA**
   **Having Office at:**
   Hotel Marriott, First Floor
   Ramdas Agarwal Marg, Near

Jawahar circle, Jaipur,
Rajasthan-302015

**3. Mr. Chander Mohan ...Pro-forma Respondent No.3/suspended Director**
K-52-A. SF, Kalkaji
New Delhi-110019

**4. Mr. Jatinder Suri ...Pro-forma Respondent No. 4/ suspended Director**
House No. 5, Narula Colony
Patiala, Punjab-147001

***AND***

**IA 5610 (PB)/ 2022**
***IN THE MATTER OF:***

**Ms. Renu Pahwa and Anr. ...APPLICANT**

***VERSUS***

**M/s Harvest Hotels and Services Appartments Private limited ...RESPONDENT**

***AND***

**IA 5611/2022**
***IN THE MATTER OF:***

**Mr. Sushil Pahwa ...APPLICANT**

***VERSUS***

**M/s Harvest Hotels and Services Appartments Private limited ...RESPONDENT**

***AND***

**IA 5612 (PB)/ 2022**
***IN THE MATTER OF:***

**Mr. Abhay Sikri ...APPLICANT**

***VERSUS***

**M/s Harvest Hotels and Services Appartments Private limited** **...RESPONDENT**

***AND***

**IA 5613 (PB)/ 2022**
***IN THE MATTER OF:***

**Mr. Prateek Sikri** **...APPLICANT**

***VERSUS***

**M/s Harvest Hotels and Services Appartments Private limited** **...RESPONDENT**

***AND***

**IA 2481 (PB)/ 2024**
***IN THE MATTER OF:***

Mr. Shailendra Ajmera **...APPLICANT/RP**
Resolution Professional for
M/s Harvest Hotels and Service
Appartments Private Limited
**Having Office at:**
ERNST & YOUNG, LLP, 3rd Floor, World Mark-1
AEROCITY, NEW DELHI-110037

**Order pronounced on: 12.06.2024**

**CORAM:**
**Chief Justice (Retd.) Ramalingam Sudhakar : Hon'ble President**
**Shri Avinash K. Srivastava : Hon'ble Member (Technical)**

***Appearances :***

| | | |
|---|---|---|
| **For the RP** | **:** | Sr. Adv. Mr. Sunil Fernandes, Adv. Diksha Dadu, Mr. Pulkit Deora, Ms. Maitreyee Mishra, Advs. |
| **For SRA** | **:** | Sr. Adv. Mr. P. Nagesh, Adv. Shivek Trehan and Adv. Shouryaditya |

**For the Applicant** : Adv. Ashwani Kumar, Adv. Puneet Sharma (in IA 5610/2022, 5611/2022, 5612/2022, 5613/2022)

**ORDER**

**1.** The Application **(IA-5029 (PB)/2023)** has been filed under Section 30(6) of the Insolvency & Bankruptcy Code, 2016, (the Code) read with regulation 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**"CIRP Regulations"**) also read with Rule 11 of the National Company Law Tribunal Rules (NCLT Rules) on behalf of the Resolution Professional (RP) **(Mr. Shailendra Ajmera),** seeking approval of the Resolution Plan submitted by **M/s SERVEALL LAND DEVELOPERS PRIVATE LIMITED** duly approved by the members of COC in its 15th meeting dated **29.08.2023** and voting conducted and concluded on **31.08.2023.** Applicant/RP has prayed for the following reliefs:

> ***a.*** *Allow the present Application; and*
> ***b.*** *Pass appropriate orders/directions approving the Resolution Plan as approved by the Committee of Creditors following its 15th meeting; and*
> ***c.*** *Pass appropriate orders/directions grant such reliefs and concessions- sought by the Successful Resolution Applicant in the resolution plan approved by the Committee of Creditors, as this Hon'ble Tribunal may deem fit and proper in the interest of justice and equity; and/or*
> ***d.*** *Pass any such other order(s) as this Hon'ble Tribunal may*
> *deem fit and proper in the interest of justice and equity.*

**2.** The Company Petition **CP (IB) No.144(PB)/2022** filed by Financial Creditor Asset Reconstruction Company (India) Limited under Section 7 of the Code for initiating of Corporate Insolvency Resolution Process ("**CIRP**") of the Corporate Debtor was admitted by this Adjudicating Authority *vide* its order dated **07.10.2022** ("**Admission Order**") and **Mr. Shailendra Ajmera** (IBBI Reg. No. IBBI/IPA-001/IP-P00304/2017-18/10568 was appointed as IRP.

**3.** The Applications **IA 5610(PB)/2022, 5611(PB)/2022, 5612(PB)/2022, 5613(PB)/2022** have been filed by Applicants Ms. Renu Pahwa, Mr. Sushil Pahwa, Mr. Abhay Sikri and Mr. Prateek Sikri respectively for direction/modification under Section 60(5) r/w Section 65(1) of Insolvency and Bankruptcy Code 2016 r/w Rule 11 of NCLT Rules, 2016. All 4 Applicants has prayed similar reliefs which are extracted below:

**IA 5610/2022:**

*a. Declare that the moratorium order dated 07.10.2022 is not applicable qua the subject unit i.e Type A-1, bearing No. 309, Third Floor, ad measuring 1074.49 sq. ft., and/or*
*b. Direct the IRP to exclude the subject unit from the list of Assets of the corporate debtor,*
*c. Pass any such other order(s) as this Hon'ble Tribunal may deem fit and proper in view of the facts and circumstances of*
*the present case;*

**IA 5611/2022:**

*a. Modify the order dated 07.10.2022 to the extent that the subject unit i.e. Type A-2, bearing No. 305, Third Floor, and TypeA-1 bearing no. 209, Second Floor admeasuring 1074.49 Sq. ft.each be excluded from the list of Assets of corporate Debtor, or*
*b. Direct the IRP to exclude the subject unit from the list of Assets, or*
*c. Pass any such other order(s) as this Hon'ble Tribunal may deem fit and proper in view of the facts and circumstances;*

**IA 5612/2022:**

***a.*** *Modify the order dated 07.10.2022 to the extent that the subject unit i.e Unit Type A-6, bearing No. 101 First Floor, admeasuring 1123.24 Sq. ft. be excluded from the list of Asset of corporate Debtor, or*
***b.*** *Direct the IRP to exclude the subject unit from the list of Assets, or*
***c.*** *Pass any such other order(s) as this Hon'ble Tribunal may deem fit and proper in view of the facts and circumstances.*

**IA 5613/2022:**

a. *Declare that the moratorium order dated 07.10.2022 is not applicable qua the subject unit A-5, bearing No. 110, First Floor, admeasuring 1123.24 Sq. ft. and/or*
b. *Direct the IRP to exclude the subject unit from the list of Assets of the corporate debtor,*
c. *Pass any such other order(s) as this Hon'ble Tribunal may deem fit and proper in view of the facts and circumstances.*

**2.** These 4 IAs deals with 5 properties (Service Appartments) details of which are given below:

**TABLE 1**

| S.No. | PROPERTY'S DESCRIPTION | PARTICULARS |
|---|---|---|
| **IA 5610(PB)/2022** | • Unit Type A-1, No. 309, Third Floor admeasuring 1074.49 sq ft. situated at Survey no. 95/2, Bellandur Village, Varthur Hobli, Bangalore | • Applicant raised the claim of Rs. **89,59,800/-** |
| **IA 5611(PB)/2022** | • Unit Type A-1, No. 209, Second Floor, admeasuring 1074.49 Sq. ft. situated at Survey no. 95/2, Bellandur Village, Varthur Hobli, Bangalore<br>• Unit Type A-2, 305, Third Floor, admeasuring | • Applicant raised the claim of Rs. **2,11,96,142/-** |

| | | |
|---|---|---|
| | 1074.49 Sq. ft. situated at Survey no. 95/2, Bellandur Village, Varthur Hobli, Bangalore | |
| **IA 5612(PB)/2022** | Unit Type A-6, No. 101, First Floor, admeasuring 1123.24 Sq. ft. situated at Survey no. 95/2, Bellandur Village, Varthur Hobli, Bangalore | • Applicant raised the claim of Rs. **93,94,773/-** |
| **IA 5613(PB)/2022** | Unit Type A-5, No. 110, First Floor, admeasuring 1123.24 Sq. ft. situated at Survey no. 95/2, Bellandur Village, Varthur Hobli, Bangalore | • Applicant raised the claim of Rs. **93,94,773/-** |

**3.** IA 2481/2024 has been filed by the Resolution Applicant under section 60(5) r/w Rule 154(1) of NCLT Rules, 2016 for rectification of order dated **24.04.2024** in IA 4873 of 2023 and IA 6329 of 2022. Vide Order dated 15.05.2024, order has been reserved in IA 2481/2024 along with other IAs.

**4.** Briefly stated, the 4 IAs namely 5610, 5611, 5612 and 5613 of 2022 have a similar prayer of excluding the properties (belonging to the Applicants therein) from the scope and ambit of list of assets/properties of the Corporate Debtor and from the CIRP. The facts stated by the parties are

more or less similar except the amount claimed in respect of the immovable property stated therein.

**5.** This Adjudicating Authority on **06.10.2023** has passed an order with respect to these 4 IAs against which SRA went in Appeal before Hon'ble NCLAT. Order dated **06.10.2023 is extracted below:**

*"ORDER*

*IA-5029/2023*

*Argument Heard, Order Reserved.*

*Ld. Counsel is directed to file an affidavit from the sole CoC Member that the sole Member has gone through the Plan as well as the Financial Statement of the Successful Resolution Applicant (SRA) and he is satisfied with the same.*

*He may also indicate that he has tested the plan for feasibility and viability and is satisfied on both counts. The 5 service Apartments relatable to the 4 IAs may be kept apart from the approved Resolution Plan, pending their adjudication.*

*The documents referred to in the 5th CoC* ***(sic)*** **"15th CoC"** *meeting namely the Letter of Intent by the Union Bank of India dated 24.08.2023 in favour of the SRA to be placed on record."*

Against the above extracted order, Hon'ble NCLAT in **Company Appeal (AT) (Ins) No. 1434/2023** has passed an Order dated **06.11.2023,** relevant portion of which is extracted below:

*"..*

*..*

*6. We are of the view that the direction for keeping five service apartments relatable to the four I.As from the consideration of Resolution Plan needs to be deleted from the order dated*

*06.10. 2023.*

*7. We thus dispose of the Appeal by deleting the aforesaid direction, rest of the order is affirmed. We make it clear that we have not expressed any opinion on merits of the plan approval application."*

Accordingly, in the facts and circumstances of the case, as all these applications are interconnected with that of the Application for the Approval of Resolution Plan, we are inclined to pass a common order in all these IAs.

**6.** IA 2481/2024 is related to rectification of one clerical mistake under rule 154(1) of NCLT Rules, 2016 in order dated **24.04.2024**. Relevant portion of the order is extracted below:

> *"..*
>
> *IA-4873/2023*
>
> *Mr. Sunil Fernandes, Ld. Sr. Counsel for the RP/Applicant in this IA appears physically. At his request, list this application on 23.07.2024.*
>
> *IA-6329/2022*
>
> *Mr. Kumar Piyush Pushkar, Ld. Counsel for the Applicant in this IA appears physically and seeks permission to withdraw the present IA. He has made an endorsement regarding the same. In view of same, IA-4873/2023 stands dismissed as withdrawn."*

Applicant submitted that error in the order dated 24.04.2024 recording that IA 4873 of 2023 (being an application for avoidance of certain transactions) stands dismissed as withdrawn is an inadvertent typographical/ clerical error, as the said application is pending consideration and final adjudication before this Hon'ble Tribunal and is listed for consideration on 23.07.2024.

**7.** On perusal of the same, it is found that the same is an inadvertent clerical error. It is IA 6329/2022 which stands "dismissed as withdrawn". Therefore, the word "IA 4873/2023" shall be substituted with **"IA 6329/2022"**. Accordingly, the original order dated **24.04.2024** stands rectified as above and **IA 2481/2024** is **ALLOWED** and **DISPOSED OF** accordingly.

**BRIEF FACTS SUBMITTED BY APPLICANT/RP in IA-5029/2023 (Application for Approval of Resolution Plan) ARE AS FOLLOWS:**

- As per Section 15 read with Regulation 6(1), public announcement inviting claims was issued by Applicant/RP on **10.10.2022**.
- In Compliance with Regulation 13(2), the Applicant had first prepared the list of creditors on 28.10.2022, and updated on 18.11.2022, 21.02.2023 and 09.06.2023, all of which were made available for inspection by the stakeholders and had displayed the same on the Corporate Debtor's website and also filed the same on the IBBI's website.
- **Summary of claims verified by the Applicant, received after the last date mentioned in the public announcement, viz. 21.10.2022, as on the date of the present application:**

**TABLE-2**

| S No. | Type of Creditor | Amount Claimed | Amount Verified |
|---|---|---|---|
| 1 | Secured Financial creditors (other than financial creditors belonging to any class of creditors) | 2,09,20,08,456 | 2,09,20,08,456 |
| 2 | Operational Creditors (Government Dues) | 1,44,56,466.00 | 62,41,506.00 |
| 3 | Operational Creditors (other than workmen and employees and Government Dues) | 10,48,00,839.00 | 3,38,70,315.19 |
| 4 | Operational Creditors (Authorised Representative of Workman and Employee) | 31,67,500.00 | 31,67,500.00 |
| 5 | Other creditors, if any, (other than financial creditors and operational creditors) | 32,94,24,928.00 | 18,37,12,273.00 |
| | **Total** | **2,54,38,58,189** | **2,31,90,00,050** |

- Applicant/RP submitted that CD had a single financial Creditor whose claim had been verified by the Applicant, accordingly the constituted Committee of Creditors ("COC") comprised of a single member on 28.10.2022, viz. Asset Reconstruction Company (India) Limited (with 100% voting percentage). In accordance with Section 22(1) of the Code read with Regulation 17(2) of the CIRP Regulations, the Applicant convened 1st COC meeting on **01.11.2022**. Thereafter, an application was brought before this Adjudicating Authority to communicate the COC's decision to appoint IRP as RP in IA No. 5786/2022 in accordance with Section 22(3)(a) and the application was allowed vide order dated **18.01.2023.**
- Applicant/RP further submitted that the sole financial creditor of the CD had assigned its debt to UV Asset Reconstruction Company Ltd. (UVARCL) on **26.04.2023.** The Applicant, accordingly, reconstituted the COC to include UVARCL in place of Asset Reconstruction Company (India) Limited as the sole financial creditor of the CD. Further, the Applicant filed an application before this Hon'ble Adjudicating Authority in **IA 3322 of 2023** whereby an updated list of creditors was placed, and was taken on record by order of this Adjudicating Authority dated **03.07.2023.**
- Thereafter, Applicant appointed registered valuers in accordance with Regulation 27 of the CIRP Regulations. In accordance with Regulation 36 of the CIRP Regulations, Applicant/RP prepared an information memorandum which was submitted to the COC for their consideration.
- The Applicant/RP published brief particulars of the invitation for Expression of Interest (EOI) in form G on **28.11.2022**. The Applicant published a revised invitation for expression of Interest in prescribed Form G, whereby the last date for submission of EoI was extended from **28.12.2022 to**

**12.01.2023.** The last date for submission of EoI was further extended from **12.01.2023 to 27.01.2023.** Pursuant to which EOIs were received from 41 persons. The Applicant/RP prepared a provisional list of Resolution Applicants.

- A total of fifteen (15) CoC meetings have been held during CIRP period and few extensions were sought by Applicant/RP by way of filing IAs after passing the resolutions for the same in COC. Following is a list of all the COC meetings. In total, two times extension of CIRP Period namely 90 days (vide order dated **10.04.2023 in IA 1880/2023)** and 60 days (**vide order dated 04.07.2023 in IA 3463 of 2023)** were given to Applicant/RP for the completion of CIRP Period.

**TABLE-3**

| COC MEETING | DATE OF COC MEETING | PARTICULARS |
|---|---|---|
| 1st CoC Meeting | 01.11.2022 | IRP as RP |
| 2nd CoC Meeting | 24.11.2022 | |
| 3rd CoC Meeting | 15.12.2022 | |
| 4th CoC Meeting | 11.01.2023 | |
| 5th CoC Meeting | 10.02.2023 | COC reconstituted |
| 6th CoC Meeting | 10.03.2023 | |
| 7th CoC Meeting | 10.04.2023 | |
| 8th CoC Meeting | 05.05.2023 | |
| 9thCoC Meeting | 20.05.2023 | |
| 10th CoC Meeting | 08.06.2023 | |
| 11th CoC Meeting | 16.06.2023 | |
| 12th CoC Meeting | 25.07.2023 | |
| 13th CoC Meeting | 09.08.2023 | |
| 14th CoC Meeting | 19.08.2023 | |
| 15th CoC Meeting | 29.08.2023 | |

**CIRP Period ended on : 02.09.2023**

- The Applicant in consultation with the COC, and pursuant to the resolution passed at the 5th meeting of the COC issued Request for Resolution Plan (RFRP) including evaluation matrix and information memorandum as per which last date for submission of Resolution Plan was fixed for **13.03.2023.** Applicant prepared a final list of resolution applicants comprising of 38 PRAs on **18.02.2023** which is annexed as **Annexure A-20**. The Applicant received valuation reports in accordance with Regulation 35, the summary of valuation reports is as follows:

**TABLE-4**

*INR crores*

| **Particulars** | **Adroit** | | **GAA** | |
|---|---|---|---|---|
| | **Fair Value** | **Liquidation Value** | **Fair Value** | **Liquidation Value** |
| | | | | |
| Land | 32.6 | 26.0 | 42.4 | 29.6 |
| Building | 41.7 | 29.2 | 48.9 | 34.2 |
| **Sub Total (A)** | **74.3** | **55.2** | **91.3** | **63.8** |
| | | | | |
| Plant & Machinery | 4.8 | 3.6 | 6.2 | 4.3 |
| **Sub Total (B)** | **4.8** | **3.6** | **6.2** | **4.3** |
| | | | | |
| Financial Asset | 0.0014 | 0.0014 | 0.0013 | 0.0013 |
| **Sub Total (C)** | **0.0** | **0.0** | **0.0** | **0.0** |
| | | | - | - |
| **Total Value** | **79.1** | **58.8** | **97.5** | **68.1** |

- Applicant further submitted a list @page 35 of its application (IA-5029/2023) stating that it received resolution plans from the following PRAs on the respective dates:

**TABLE-5**

| S. No. | Name | Date |
|---|---|---|
| 1 | Rhythm Hospitality Private Limited | 15-06-2023 |
| 2 | RDB Realty & Infrastructure Limited | 15-06-2023 |
| 3 | Kalyan Toll Infrastructure Limited | 15-06-2023 |
| 4 | Jujhar construction & Travels Private Limited | 15-06-2023 |
| 5 | Serveall Land Developers Private Limited | 15-06-2023 |
| 6 | Vijay K Oswal | 15-06-2023 |
| 7 | Sivachaitanya Saikam | 15-06-2023 |

- At the request of members of COC, Applicant provided the facility to cast their votes electronically and the voting concluded on **31.08.2023**. wherein the resolution plan of **M/s Serveall Land Developers Private Limited** dated 29.08.2023 was duly approved by 100% majority in favour in the 15th meeting of CoC.
- M/s Serveall Land Developers Private Limited is a private limited company incorporated on **05.01.1993** having CIN U74899RJ1993PTC024161. **M/s Serveall Land Developers Private Limited** forms part of the Dangayach Group of Companies. The Dangayach group was founded in 1966 and is epitome of luxury and hospitality. On page 77-79 of the resolution plan, various hotels managed by the group is listed.

- Applicant/RP has submitted Form H annexed in **Vol III (page no. 324-333)**, as per which the **Average Fair Value** is **Rs. 85,90,28,627/-** and **Average Liquidation Value** is **Rs. 61,76,21,175/-.**
- The notice of the application for approval of the resolution plan by this Adjudicating Authority was issued to the non-applicants

on **25.09.2023.** Copy of the Resolution Plan submitted by Successful Resolution Applicant (SRA) has been annexed as **Annexed as A-1(57-297) (vol-1 of the paper-book (IA-5029/2023)).**

- The amount claimed, amount admitted, and the amount proposed to be paid by the SRA, ***i.e.*** **M/s Serveall Land Developers Private Limited** under the said Resolution Plan is tabulated in **TABLE-6** given as under:

**TABLE-6 (P.T.O)**

| Category of Stakeholder | Amount Claimed (₹) | Amount Admitted (₹) | Amount Provided under the Plan (₹) | Timeline (From Effective Date) |
|---|---|---|---|---|
| **Upfront payment towards CIRP Costs** | | - | 50,00,000 | 45 days |
| **Secured Financial Creditors** | 209,20,08,456 | 209,20,08,456 | 10,00,00,000 | 45 days |
| | | | 71,00,00,000 (with simple interest @9% p.a. for the period between 45th dayand date of payment) | 180 days |
| **Operational creditors (other than workmen & employees & Govt. Dues)** | 10,48,00,839.00 | 3,38,70,315.19 | 10,00,000 | 45 days (before payment to any other creditors) |
| **Operational Creditors (Government Dues)** | 1,44,56,466.00 | 62,41,506.00 | 10,00,000 | 45 days (before payment to any other creditors) |
| **Operational Creditors (Authorized Representative of Workmen and Employees** | 31,67,500.00 | 31,67,500.00 | 5,00,000 | 45 days |
| **Other Creditors, if any, (other than financial creditors and operational creditors)** | 32,94,24,928.00 | 18,37,12,273.00 | 45,92,806 | 45 days |
| **TOTAL RESOLUTION PLAN VALUE** | | | **82,20,92,806** | |
| **Capex, Working Capital and other Requirements** | | | 25,00,00,000 | 360 days |
| **TOTAL PLAN VALUE** | | | **107,20,92,806** | **360 days** |

**EY DETAILS OF THE RESOLUTION PLAN ARE AS FOLLOWS:**

- The timeline proposed to implement the resolution plan is **360 days.**
- It is submitted by Applicant that the SRA in its resolution plan proposes to pay the actual unpaid **CIRP costs upfront before any payment would be made to any of the creditors of the Company. (given on page no 89 of the Application (IA-5029/2023)). An amount of Rs. 50,00,000/- is proposed to be paid within 45 days of the effective date. However, it is clarified that in case actual CIRP costs are more than Rs 50 lakhs, the deficit shall be paid out of the infusions proposed towards working capital requirements.**
- In the plan **(@page no 89, S.No. C)** there are no unsecured financial creditors, hence settlement of dues of the unsecured Financial Creditors in class is NIL.
- Applicant/RP submitted that a claim of INR 1,44,56,466/- is received from Office of the Additional Commissioner of Customs, Inland Container Depot, Whitefield, Bengaluru out of which Rs. 62,41,506/- is admitted. The SRA proposes **Rs 10,00,000/-** towards such creditor in full and final settlement of their claim in priority to any payment towards any other creditor. Further, the SRA proposes to pay **Rs**. **45,92,806/-** towards other creditors other than financial and operational creditors within 45 days of the effective date. Pursuant to this payment, the entire debt of the creditors other than financial and operational creditors against the CD corresponding to period prior to the insolvency Commencement date shall get fully and finally settled.
- No payment shall be made to the existing shareholders, promoters or their associated company/concerns/related parties of the corporate debtor since the liquidation value of the CD is

inadequate to make full payments to its secured financial creditors, therefore there is no payment which shall be made to existing equity shareholders and related parties of the CD.

- With regards to Sources of funds to provide payments proposed, Applicant/RP has submitted that the SRA (Serveall Land Developers Private Limited) has a net worth of **Rs. 74,59,56,159/-**. Besides this SRA as well as its director and promoter have sufficient resources to induct more funds in the company. Relevant information for sources of funds as given on page on 92 of the Application (IA-5029/2023) is extracted below:

**TABLE-7**

| Nature of Payment | Description of Source of Funds |
|---|---|
| Performance Security | Shall be funded by liquid/available internal funds of the Resolution Applicant. |
| Unpaid CIRP Costs: [by payment] | Shall be funded by liquid/available internal funds of the Resolution Applicant, also including funds raised as equity/debt by established standing & credibility of the Resolution Applicant. Letter of intent from the financial institute and balance conformation has been enclosed with resolution plan for demonstration of source/availability of funds.<br><br>The Resolution Applicant will be permitted to utilize the cash and bank balances of the Corporate Debtor as available on the Effective Date, towards payment of CIRP costs and expenses involved as capex and working capital. |
| Operational Creditor's: [by Payment] | |
| Financial Creditors (Secured): [by payment] | |
| Capex and overhaulment expenditure | |

- It is further submitted that pursuant to payments proposed under this resolution plan being completed, all assets of HARVEST, that are subject to any encumbrance, security and/or lien in favour of lenders of HARVEST shall stand released free of all encumbrances, security, and/or lien to HARVEST (CD).
- The Resolution Applicant proposes that the entire share capital of the Corporate Debtor shall be cancelled on the date falling 45 days of the effective date. Rs. 50,00,000/- shall be considered as an

equity infusion. i.e. 5,00,000 equity shares of face value of Rs. 10/- each.

- Further Applicant/RP submitted that the SRA proposes to provide for the supervision of the implementation of the resolution plan in two phases given on **pages no 104-105** of the paper book (Application (IA-5029/2023) (Vol 1) which is extracted below:

*CHAPTER X*

*IMPLEMENTATION AND SUPERVISION*

*TERM OF THE PLAN:*

*The term of this Resolution Plan is 360 days ("Term") from the Effective Date, within which the payments shall be completed to all the creditors and the Infusion of Capex, required working capital and capital required for completion of work, to Corporate Debtor is done, in the manner as contemplated herein.*

*The resolution applicant proposes to provide for the supervision of the Implementation of the resolution plan in following phases: -*

*A. Phase I:*

*This phase comprises the time starting from Effective Date till the date of payments towards CIRP Costs are completed. The Resolution Applicant proposes that the monitoring committee shall be supervising the implementation of the said phase of the plan. The monitoring committee in this phase shall also make sure the smooth execution of the plan for the term upto 45 days from the Effective Date (i.e. the date by which the share capital has been allotted in favour of resolution applicant and the board of directors has been reconstituted). The supervision of the implementation of plan, the management and control of company including its operations will be done by the monitoring committee under direct assistance of this phase.*

*B. Phase II:*

*This phase comprises the time starting from 45 days from the Effective Date and upto the plan is implemented in its entirety i.e. 360 days. The Resolution Applicant proposes the monitoring committee shall be supervising the implementation of the said phase of the plan. The management and control of company including its operations will be with Board of Directors as appointed by the Resolution Applicant under supervision of monitoring committee. The Monitoring Committee shall dissolve at the end of this Phase.*

*MONITORING AND SUPERVISION:*

*In order to ensure that the Resolution Plan is implemented in accordance hereof and that the obligations undertaken herein are adhered to, a monitoring committee shall be appointed on the day of the NCLT order approving of this Resolution Plan. The monitoring committee shall be constituted, which may comprise one representative of the Resolution Applicant, representative of the Financial Creditors and a qualified Insolvency Resolution Professional (which may or may not be RP) to be appointed by Financial Creditors in consultation with resolution applicant, which shall monitor the implementation of the plan after the Effective Date and until Acquisition Date. All decisions of Monitoring Committee shall be taken by a majority vote (present and voting).*

*The monitoring committee, so appointed, shall have inter alia the following responsibilities: Monitoring the Implementation of this Resolution Plan, during the Phase I and Phase II of the Resolution Plan;*

*Issue a certificate that the Phase I and Phase II of the Resolution Plan has been duly Implemented and the payments contemplated in this Resolution Plan have been duly completed.*

*Issuance of a certificate by the Monitoring Committee shall be a discharge of the Resolution Applicant from their obligation to implement the Phase I and Phase II of the Resolution Plan in accordance with its Term.*

*Note: The fee payable to independent insolvency professional who shall be chairman of monitoring committee and other expenses of monitoring committee, as decided and approved by the monitoring committee will be borne by the resolution applicant.*

*The BoD of the CD, as appointed by the RA, shall provide regular update (at the intervals which shall be mutually decided among the Financial Creditors and RA) to the Financial Creditors& the Monitoring Committee on the implementation of the Resolution Plan during Phase II. The BoD shall act strictly in accordance of the instructions of the Monitoring Committee until the time monitoring committee is in existence.*

- Applicant/RP submits that Successful Resolution Applicant is eligible under section 29A of the Code to submit the plan and for the same applicant has annexed copy of the section 29A compliance reports received from Bagchi and Gupta Chartered Accountants in **Annexure A-41.**

- The Applicant/RP has submitted on record the Compliance Certificate in FORM-H as required under Regulation 39(4) of the CIRP regulations. The true copy of the FORM-H is filed as **Annexure A-3 (p no 324-333).**
- It is further submitted that pursuant to 15th COC meeting, the Applicant/RP issued the letter of Intent dated **31.08.2023** to SRA by email and same has been accepted by the Resolution Applicant unconditionally on **31.08.2023.** It is further stated that SRA had already deposited EMD of Rs.2 crores alongwith Resolution Plan. The SRA has submitted performance bank guarantee for an amount of Rs. 8,22,09,280/-. Copy of executed letter of intent and Performance Bank Guarantee are annexed as **Annexure A-2.**
- Applicant/RP has submitted on page no. 332 (Form H) that there are no application under section 43, 45, 50 which are pending before Adjudicating Authority. Only Avoidance application under section 49 is pending before Adjudicating Authority. It is further stated in the Resolution Plan (Chapter VI, Sr. No. N) that in the event of any recovery from any application under Sec 43, 45, 50 and 66, it shall be paid to the secured financial creditors over and above the payment proposed under the plan (@ page no. 88 of the application, Vol I and internal page 32 of the resolution plan).
- Applicant/RP submitted that the revival of the CD shall contribute significantly to society, government and the public at large by contributing direct and indirect employment and service opportunities in the region.

**BRIEF SUBMISSIONS ON BEHALF OF THE APPLICANTS IN IA-5610/2022, 5611/2022, 5612/2022 and 5613/2022 are as follows:**

- **CP(IB)/144(PB)/2022** has been admitted under Section 7 against the Harvest Hotels (CD) and Moratorium has been

declared in respect of the property i.e. land admeasuring 2 acres 12 Guntas situated at Survey No. 95/2 in Bellandur Village, Varthur Hobli, Bangalore and 118 suits constructed thereupon.

- Applicants submitted that CD has entered into a registered Agreement to Sell, thereby transferring the rights in the various suites/units to their respective buyers after receiving the entire sale consideration. The sale consideration was also paid in the dedicated account and reflected in the balance sheet of the Corporate Debtor.
- Applicants contended that they are the bonafide purchaser of the units stated in the Table 1 @ page 6 and 7 of this order which was purchased vide different Agreements to Sell executed between Applicants and Respondent/CD. It is further submitted that the entire sale consideration has been paid to the Respondent at the time of registration of the Agreement to sell and the possession of the said unit was also handed over to the Applicant, which has thereafter agreed to be let out on behalf of the applicants by the CD as per the lease deeds executed between them, thereby assuring the fixed assured rental/guarantee of rent with stipulated escalation for at least period of 20 years.
- As per the lease deed, the subject unit was leased out by the Applicants to the Respondent/CD against the rental of Rs **1,37,000/- (in case of Mr. Sushil Pahwa; and similarly in other 3 IAs ) per month (for each unit)** payable on or before end of each quarter subject to enhancement by 10% after three years. The lease deed further provides for interest @ 9% p.a. It is

further submitted by Applicants that the respondent company paid the assured return in the form of rental for subject Unit only up to June 2017 and thereafter, defaulted in making the payment towards the rent in terms of the lease deeds. Applicants contended that the entire consideration was paid at the time of agreement to sell and notional possession was also handed over and therefore, the applicants have become absolute owner of the subject unit. Thus, the said units have to be excluded from the list of assets of the Corporate Debtor.

- Further, the Applicants stated that the applicants have already invoked the appropriate remedy i.e. initiated the proceedings under Arbitration and conciliation Act which is pending before the respective courts. Further, in order to safeguard the subject unit the applicants have also filed section 9 petition before the Commercial Court, Bengaluru and the Hon'ble Commercial Court vide its order dated 13.09.2022 granted an Injunction against the respondent from alienating the subject property to any third party. Copy of order dated 13.09.2022 is annexed with the application IA-5610/2022 as **ANNEXURE-C** and likewise in IA-5611/22, 5612/2022, 5613/2022.
- Applicants submitted that they learnt from the counsel for the Respondent, who appeared on 14.10.2022 before Commercial court, Bangaluru that this Hon'ble Tribunal vide its order dated **07.10.2022** has commenced the Corporate Insolvency Resolution Process (CIRP)against the Corporate Debtor i.e. Respondent and Sh.Shailendra Ajmera has been appointed as an IRP. In the same order, this Hon'ble Tribunal also declared a moratorium under section 13 (1) (a) of the IBC.
- Applicants further contended that the Respondent in connivance with the Financial Creditor (ARCIL,) has obtained the order of

moratorium by suppressing that various units in the project including the subject unit have been sold to the respective buyers after taking the entire consideration by way of Cheque/ NEFT which must be duly reflected in their account. From the perusal of the petition filed by the ARCIL, it is reflected that the ESCROW account was open and all the proceeds received by the corporate debtor were received in the said account. Thus, it was in the knowledge of the creditors bank as well as ARCIL that the registered agreement to-sell has been executed after receipt of the entire sale consideration and the units have already been sold to the third parties.

- Applicants, to prove their cause, relied upon the explanation to Section 18 of the Insolvency and Bankruptcy Code 2016 which contemplates that

> *"for the purpose of this sub-section, the term "assets" shall not include the following" namely:-*
> *(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment*
> *(b) assets of any Indian or foreign subsidiary of the corporate debtor and*
> *(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.*

Applicants contended that the property of the applicants are squarely covered under explanation (a) to Section 18 as the applicants are the owner of the said units which are owned by the Applicants by virtue of registered Agreement to Sell, wherein the entire consideration has been paid and held by the respondent under trust/contractual arrangements i.e. lease deed dated 12.01.2017. The said units belong to the applicants and ought to be excluded from the list of assets of the corporate debtor and from the CIRP.

- Applicants have relied upon the judgement dated **03.12.2019** of the Hon'ble Apex Court which has recently dealt with the explanation to Section 18 of IBC in the matter of **M/s Embassy Property**

**Developments Private Limited vs State of Karnataka and others 2020 (13) SCC 308**. Relevant para is extracted below:

> *"If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term "assets" under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word "assets", while Section 20(1) uses the word "property" together with the word "value". Sections 18 and 25 do not use the expression "property"…"*

- Applicants further submitted that the present CIRP proceedings have been filed in collusion and the property/units belonging to the Applicants are sought to be appropriated under the guise of IBC, thereby defeating the rights of the applicants in the property which is owned by them by virtue of registered Agreement to Sell. The applicants have already invoked the arbitration clause and the dispute in respect of the right, title and interest in the immovable asset can only be adjudicated by the civil court/Arbitral Tribunal. Applicants submitted that they have already vide their representation dated 20.10.2022 to IRP, while bringing the entire facts including the sale of the units to their respective buyers, including the applicant's unit, have requested to exclude the subject units from the list of the Assets of the Corporate Debtor. However, till date there is no response from the IRP. Copy of representation dated 24.10.2022 is annexed with the application as ANNEXURE-E

- Applicants further in its written submissions dated 20.08.2023 submitted that Rights of the Applicants must be protected in terms of the section 53 A of the Transfer of Property Act, 1882 as the Applicant has performed his part of contract by paying the entire sale consideration and thereafter, possession of the subject units was handed over to the applicants by the respondent but the respondent failed to execute the sale deed despite requests. For this, they have relied upon the judgements of Hon'ble Supreme Court in the matter of **Santram Dewangan Vs Shivprasad CA no. 2966/ 2022 dated 18.04.2022 (extracted below)* and Rambhau Namdeo Gajre V Narayan Bapuji Dhotra 2004 (8) SCC 614 dated 25.08.2004**.**

** Possession Delivered In Terms Of Sale Agreement Protected Under Section 53a of Transfer of Property act, 1882."*

******* *"8.It is seen that many a times a transferee takes possession of the property in part performance of the contract and he is willing to perform his part of the contract. However, the transferor some how or the other does not complete the transaction by executing a registered deed in favour of the transferee, which is required under the law. At times, he tries to get back the possession of the property. In equity the Courts in England held that it would be unfair to allow the transferor to take advantage of his own fault and evict the transferee from the property. The doctrine of part performance aims at protecting the possession of such transferee provided certain conditions contemplated by Section 53-A are fulfilled. The essential conditions which are required to be fulfilled if a transferee wants to defend or protect his possession under Section 53-A of the Act have been culled out of this Court in Shrimant Shamrao Suryavanshi & Anr. Vs. Pralhad Bhairoba Suryavanshi, MANU/SC/0093/2002: 2002 (3) SCC 676, are:*

*"(1) There must be a contract to transfer for consideration of any immovable property; (2) the contract must be in writing, signed by the transferor, or by someone on his behalf; (3) the writing must be in such words from which the terms necessary to construe the transfer can be ascertained; (4) the transferee must in part performance of the contract take possession of the property, or of any part thereof; (5) the transferee must have done some act in furtherance of the contract; and (6) the transferee must have performed or be willing to perform his part of the contract."*

*If these conditions are fulfilled then in a given case there is an equity in favour of the proposed transferee who can protect his possession against the proposed transferor even though a registered deed conveying the title is not executed by the proposed transferor. In such a situation equitable doctrine of part performance provided under Section 53-A comes into play and provides that "the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract."*

**BRIEF SUBMISSIONS ON BEHALF OF RESPONDENT/RP ARE AS FOLLOWS:**

- Respondent/RP submitted that a sale deed was never executed between the Applicants and the Corporate Debtor. Further, the Applicants are not the lawful owner of the unit, because no ownership rights can be created through an agreement to sell. Respondent further submitted that the alleged lease deed executed between the Applicants and the CD is invalid and void ab initio as Applicants not being the owner of the unit did not have the right to enter into the lease Deed and subsequently lease the Unit to the Company.
- RP in its reply dated **24.02.2023** submitted that the Applicants herein had claimed a certain amount which is solely based on the rental payments required to be paid by the CD to Applicants under the lease deed along with 9% interest on these rental payments. Given this, the Applicants have no *locus standi* to claim any lease rental based on the invalid and void lease deed.
- RP further submitted that it has acknowledged a certain sum advanced by the Applicants to the CD. Thus, in relation to this certain advance amount, Respondent has classified the Applicants as 'other creditors' and a debt to the tune of the advance amount has been admitted as claim of Applicants. Respondent further submitted that the Hon'ble Supreme Court and various Hon'ble High Courts on multiple occasions have held

that in terms of Section 54 of the Transfer of Property Act, 1882, (a) no rights are transferred basis an agreement to sell and an agreement to sell is not equivalent to a sale deed, and (b) ownership is not vested with the purchaser merely by an agreement to sell.

- Further, Respondent relied upon the clause 2 of the Agreement to Sell which states that a sale will be conducted only once. The No Objection certificate was not received from the creditors of the Corporate Debtor. The Respondent submits that no NOC was ever received from the creditors of CD, and hence no sale of unit could have taken. place. In any event, there is no Sale deed executed hence there is no concluded Sale of the unit. It is the contention of Respondent that the Applicants and CD never intended it to be a transaction for sale and purchase of the unit. It was a purely speculative transaction between the Applicants and the CD.
- Respondent further submitted that it has a statutory obligation to include the unit as part of the assets of the CD. The Respondent submits that the Corporate Debtor is the legal owner of the unit and the possession of the unit with the CD is not unlawful.
- Further Respondent in its written submissions dated **01.05.2023** submitted that the section 9 application has been dismissed by the City Civil Judge, Bengaluru wherein the Hon'ble court also delved into the issue on whether the applicant is actually the owner of the unit and whether the unit can come within the ambit of Explanation provided under section 18 of IBC. While dismissing this, Hon'ble City Civil Judge, Bengaluru held that "Applicants do not have a valid title over the units as no sale deed was ever executed between the Applicant and the CD. The relevant part of the Order dated **16.01.2023 is extracted below:**

> ..
> *18. On reading the term "assets" defined in the explanation, it is clear that if the asset is owned by the third party in possession of the corporate debtor held under trust or any contractual arrangement, assets of any Indian or foreign subsidiary of the*

*corporate debtor or such other assets as notified by the central government in consultation with any financial sector, then those "assets" are not included in the management of the affairs by the resolution professionals. In the instant case, this court has already observed there is no dispute with regard to the agreement of sale and the execution of lease deed between the parties. It is also not in dispute that the unit purchased by the applicant is in possession of the respondent under the lease deed, which signifies that the respondent under the contractual arrangement is holding the possession of the unit belonging to the applicant but there is no transfer of ownership right by way of registered sale deed in favour of the applicant by the respondent. In such circumstances, the applicant is yet to derive the valid title in respect of the subject matter in dispute. Therefore, the contention of the learned counsel for the applicant that the applicant is the third party is not acceptable. With due respect the decision cited by the learned counsel for the applicant is not applicable to the present fact and circumstances of the case.*

*19. Secondly, in regard to the contention of the learned resolution professional that the matter is seized by the NCLT and the remedy is available before the NCLT is concerned, admittedly the applicant has filed an application in CP(IB)-144 (PB)/2022 before NCLT for deletion of the subject matter of the property and the said application is still pending for consideration. It pre-supposes that the subject matter of the property is the part of the proceedings before the NCLT prior to the initiation of the present application. Therefore, the contention of the learned resolution professional that the matter is seized before the NCLT is sustainable in the eye of law.*

*20. Thus, this court is of the opinion that the application is not maintainable in view of the pendency of the NCLT proceedings. Consequently, the applicant is not entitle for any relief as prayed for. Accordingly, I answer the above point in the 'Negative' and proceed to pass the following:*

*ORDER*

*The petition filed by the applicant/applicant U/s 9 of the Arbitration and Conciliation Act, 1996 is hereby dismissed."*

**ANALYSIS AND FINDINGS**

**8.** We have heard the parties and perused the case records. Before adjudicating the application for approval of resolution plan we takeup to the 4 applications relating to service apartments units as these IAs have a direct bearing on the resolution plan. It is not disputed that the Agreement to Sell was executed between the Applicants and Respondent/Corporate Debtor. It is also not disputed that the sale deed was never executed between the parties. CD was admitted into CIRP vide order dated 7 October 2022. On perusal of the various documents filed by the parties, it is seen that only after the initiation of CIRP i.e**. in March 2022** (CIRP is said to be initiated on the date when the application was filed before this Adjudicating Authority), Applicants filed an application under section 11 of the Arbitration & Conciliation Act 1996 before the High Court of Karnataka, Bengaluru Bench. It is only after the initiation of CIRP, representations were made from the Applicants to the Resolution Professional for exclusion of the property from the list of the assets of CD.

**9.** Another important fact which craves the attention of this Adjudicating Authority is that the monthly rentals were paid by the CD till June 2017 only. The default as per the lease deed started in 2017, but it is in August 2022 when the Applicants issued legal notice demanding the payment towards arrears of debt due under the lease deed. There is nothing put on record by the Applicants that why they did not execute the sale deed to perfect their title in the subject property. Agreement to Sell without the execution of the sale deed, it is settled law that title/ownership cannot be perfected, meaning thereby that Applicants are not absolute owners of the property unless a sale deed is executed in their favour. Moreover, Respondent has submitted that for the execution of the Sale deed, an NOC from the Bank was required and no NOC has ever been received from the creditors of the CD and presumably the Sale deed did not happen. On perusal of the Application filed by the Financial Creditor

(ARCIL) against CD (Harvest Hotels), it is seen that first *pari passu* charge was created on the subject property namely **95/2 situated at Village Bellandur, Varthur Hobli, Bangalore together with all land and buildings thereon including land and machinery, furniture, and fixtures** in favour of the Financial Creditor**.** Copies of certificates of registration of charge are also annexed with the main application (CP 144/2022) as Annexure S. It is pertinent to mention here that the property was never charge-free and it cannot be dealt with and sold charge-free at the first instance.

**10.** Moreover, in the instant case, possession was and it is retained by the Corporate Debtor. **Clause 3.5** of the Agreement to Sell is pertinent to understand as to who has possession of the subject property. Clause 3.5 of the Agreement to Sell is extracted below:

> ".."
>
> *3.5 for the said purposes the actual physical, vacant, and peaceful possession of the Demised Premise is retained and shall remain with the Vendor now and even post execution of the Sale Deed and the Vendor shall be free to use the Demised Premises in the manner as provided in this agreement and Lease..."*

Applicants unconditionally agreed to lease the subject property to CD. Even the Right of First Refusal **(Clause 5: Reserved Rights, Sub-Clause 5.1; extracted below)** vests with the CD.

> *5. Reserved rights:*
>
> *5.1 Right of First Refusal: The Purchaser agrees that the Vendor shall continue to have the right of first refusal on any proposed sale of the Demised Premises by the Purchaser to any third party. The Purchaser shall serve a notice in writing to the Vendor, providing all necessary details as may be required by the Vendor to exercise such right of first refusal, including but not limited to the name of the prospective buyer, the agreed sale price, terms of payment, etc. Within 30 days from the date of receipt of the notice from the Purchaser, the Vendor shall, in writing, inform the Purchaser whether he wants to exercise his Right of First Refusal and purchase the Demised Premises on the terms and conditions mentioned in the notice of the*

*Purchaser. If the Vendor fails to reply to the notice within 30 days and/or refuses to purchase the Demised Premises from the Purchaser on the terms and conditions mentioned in the notice of the Purchaser, then it shall be deemed that Vendor has waived his Right of First Refusal and the Purchaser shall be entitled to sell the Demised Premises to any third party without any objection/claim from the Vendor, provided that the definitive agreements for such sale are executed within a period of 30(thirty) days thereof and on same terms and conditions as was offered by the Purchaser to the Vendor in its notice. On the lapse of such 30 (thirty) days period, if the definitive agreements are not executed, the provisions of this clause shall be again complied with. It is however clarified that nothing in this clause shall prevent the Purchaser from selling the Demises Premises to the Vendor on receipt of any other counter offer from the Vendor against the notice of the Purchaser."*

Hon'ble Commercial Court of Bengaluru has rightly pointed out in its order that

"*In the instant case, this court has already observed there is no dispute with regard the agreement of sale and the execution of lease deed between the parties. It is also not in dispute that the unit purchased by the applicant is in possession of the respondent under the lease deed, which signifies that the respondent under the contractual arrangement is holding possession of the unit belonging to the applicant but there is no transfer of ownership right by way of registered sale deed in favour of the applicant by the respondent. In such circumstances, the applicant is yet to derive the valid title in respect of the subject matter in dispute.*"

This clear all issues now in dispute. The applicants are not owners of the unit but only agreement holder.

**11.** Similarly, there are other clauses in the Agreement on the reading of which it is evident that the intention of this agreement is to keep the control in the hands of the Vendor(CD). One such Clause is **Clause 4. Continued use of the Demised Premises (Sub-clause 4.1 extracted below):**

*4.1 The Purchaser further agrees that even post execution of the Sale Deed or any prospective sale by the Purchaser to any third party buyer, the Demised Premises would continue to be used as a serviced apartment; and the Purchaser shall*

*replicate all applicable terms and conditions of this Agreement in any document or agreement executed by the Purchaser with the Vendor or any third party buyer including sale deed, lease, etc. to ensure strict compliance…*

**12.** Further, **Clause 9 subsequent sale (extracted below) in the LEASE agreement** is another clause which indicates the dominant control of the CD.

> "Subsequent Sale: In the event of the Lessor disposing of the Demised Premises during the subsistence of this Lease Deed, other than to the Lessee, then in that event, the sale shall be subject to continued leasehold rights of the Lessee under this Lease and the Lessor shall inform such purchaser of the leasehold rights of the Lessee herein and the Lessee shall attorn the tenancy in favour of the new owner on the receipt of the letter of attornment from the Lessor. The lessor shall furnish a letter from the new landlord accepting the terms of this Lease. The Lessor further agrees that the primary condition of sale by the Lessor to a third party buyer shall be that the Demised Premises **shall continue to be used as a serviced apartment in terms of this Lease and shall not convey or cause to be conveyed to any person the Demised Premises, without incorporating the covenants and stipulations as are agreed to and undertaken herein."**

**13.** The judgements relied upon by the Applicants are not applicable in the facts of this case. In the case of the Embassy **(supra),** the facts revolve around the deemed extension of mining lease. NCLT Chennai directed the Government of Karnataka to execute Supplementary Lease Deeds in favour of CD. The Appeal before Hon'ble Supreme Court was filed by RP against stay granted by High Court of Karnataka on directions issued by NCLT. The two issues involved in this case submitted by RP before Hon'ble Supreme Court are: **i) Whether the High Court ought to interfere, under Article 226/227 of the Constitution, with an Order passed by the National Company Law Tribunal in a proceeding under the Insolvency and Bankruptcy Code, 2016, ignoring the availability of a statutory remedy of appeal to the National Company Law Appellate Tribunal and if so, under what circumstances; and ii) Whether questions of fraud can be inquired into by the NCLT/NCLAT in the proceedings initiated under the Insolvency and Bankruptcy**

**Code, 2016**. The facts of Embassy **(supra)** are altogether different and is of no aid to applicants. There is no fraud alleged which needs to be decided in this case. The question of possession is involved on the facts of present case. The other two judgements of the Hon'ble Supreme Court relied upon by the Applicants are also not applicable on the facts of this case. In the case of Rambhau Namdeo (**supra),** the Respondent/ Plaintiff namely Narayan Bapuji was the owner of the suit land and he filed a suit for possession as he was wrongfully dispossessed by Appellant/Defendant Rambhau. The dispute in question is with respect to the partition of property amongst brothers. Appellant contended that Narayan Bapuji executed an agreement to sell with one Mr. Pishorrilal who in turn paid the entire consideration and he was put in possession by Plaintiff. That Mr. Pishorrilal executed an agreement to sell of the suit land in favour of the Appellant. That is to say, Appellant derived the title from Mr. Pishorrilal who did not have a transferrable interest which he could convey to the Appellant/Defendant by entering into an agreement to sell with the Appellant. Respondent/Plaintiff put Mr. Pishorrilal in possession for the part performance of the Contract and further it was Mr. Pishorrilal who further entered into an agreement to sell with appellant and put him in possession. Then in those circumstances, Sec 53A, doctrine of part performance and equitable doctrine was invoked. The relevant part of the judgement based on the facts in that case is extracted below:

> *"..Trial Court upon consideration of the evidence on record came to the conclusion that a mere contract of sale is incapable of creating*
> *any right or title in favour of the transferee. That no right or interest was created in the suit land in favour of Pishorrilal by virtue of the agreement of sale dated 16.6.1961…"*
>
> *.. It is an admitted case of the parties that the plaintiff/respondent had entered into an agreement of sale with Pishorrilal on 16.6.1961 and who had taken possession of the suit land in part performance thereof. Sale deed had not been executed and*

*registered in his favour. Pishorrilal did not take any steps for getting the agreement of sale specifically enforced and obtain a registered sale deed in respect of the suit land. Within a period of 2- 1/2 months Pishorrilal executed a similar agreement of sale dated 1.9.1961 in favour of the appellant and put him in possession of the*

*suit land. Pishorrilal did not have any right to enter into an agreement*

*of sale with the appellant as he was not the owner of the suit land. The appellant did not care to ascertain the title of Pishorrilal to the suit land before entering into the transaction with him.*

*There was no agreement between the appellant and the respondent in connection with the suit land. The doctrine of part performance could have been availed of by Pishorrilal against his proposed vendor subject, of course, to the fulfillment of the conditions mentioned above.*

*The agreement to sell does not create an interest of the proposed vendee in the suit property."*

It is not a case here wherein applicants have been put in possession ever for the part performance of the Contract. The facts of abovementioned case differ from the facts of present case in as much as the Applicants were not ever put in possession for part performance of the contract. Likewise, in the case of Santram **(supra)**, an agreement to sell was executed between Appellant/defendant and Respondent/Plaintiff and the possession was given to the defendant on receiving earnest money. The trial Court dismissed the suit holding that the total sale consideration stands paid to the plaintiff and that the defendant is in possession of the land. However, since the sale deed was not executed, the trial Court directed the plaintiff to execute the sale deed in favour of the Respondent/Defendant. Hon'ble Apex Court set aside the order of the High Court of Chhattisgarh and first appellate court and restored the order of trial court in favour of Appellant/Defendant and directed the Respondent/Plaintiff to execute the sale deed presumably for the reason that Appellant/Defendant was in possession for past 9 years after paying the entire sale consideration. In this case possession was never parted

with. Both these judgements talk about the circumstances when possession is given in terms agreement to sell and same is done to prove part performance of the Contract. These judgements are not applicable on the facts of this case. It also to be noticed that the court ordered execution of sale deed post long period of possession. This fact differs with the facts of the present case.

**14.** Resolution Professional has treated the Applicants in the category of 'other creditors' in accordance with the provisions of the code which in our opinion is the correct method. It has given the applicants the treatment which is as per the books of accounts of Corporate Debtor.

**15.** IBC is a complete code in itself and this Adjudicating Authority including RP is bound to follow the IBC in letter and spirit. Applicants have filed their claims in accordance to the provisions of the Code and RP has rightly treated them as 'other creditors'. In view of the present situation, when ownership rights had never been transferred from the CD to Applicants, the prayer of the Applicants seeking removal of the subject property from the ambit and scope of Resolution Plan is not tenable and rejected.

**16.** Therefore, for the aforesaid reasons, **IA 5610/2022, IA 5611/2022, IA 5612/2022, IA 5613/2022 are DISMISSED** and disposed of accordingly.

**17.** Coming to IA 5029/2023 for approval of Resolution Plan, the Adjudicating Authority, in view of Section 31 of the Code, before approving

the Resolution Plan, is required to examine that a Resolution Plan which is approved by the CoC under Section 30 (4) of the Code meets the requirements as referred under Section 30 (2) of the Code. **Section 30 (2) is quoted below: -**

> *"30(2). The resolution professional shall examine each Resolution Plan received by him to confirm that each Resolution Plan –*

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

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

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

*(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,*

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

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

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

*(i) where a Resolution Plan has not been approved or rejected by the Adjudicating Authority;*
*(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*
*(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a Resolution Plan;]*

*(c) provides for the management of the affairs of the Corporate debtor after approval of the Resolution Plan;*
*(d) The implementation and supervision of the Resolution Plan;*
*(e) does not contravene any of the provisions of the law for the time being in force*
*(f) conforms to such other requirements as may be specified by the Board.*

*Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013*

*(18 of 2013) or any other law for the time being in force for the implementation of actions under the Resolution Plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]"*

**18.** Further, as per Regulation 38 of the CIRP Regulations, a Resolution Plan is required to contain a statement as to how it has dealt with the interests of all the stakeholders including Financial Creditors and the Operational Creditors and if these are sufficiently provided in the Resolution Plan, the Adjudicating Authority may approve the Resolution Plan.

**19.** In respect of compliance of Section 30(2)(a) of the Code, it is seen that there is a proposal in the Resolution Plan at **page no. 89** that provides that the actual unpaid CIRP cost shall be paid upfront before any other payment would be made to any creditor of the Company.

**20.** As regards compliance of Clause (b) of Section 30(2) of the Code, which provides for the payment of the debts of operational creditors which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the Corporate Debtor under Section 53, the Resolution plan provides for the payment to Operational Creditors @ **page 90, clause F** of the Resolution Plan and it provides for the payments to the Operational Creditors in priority to Financial Creditors**. (@ page 93 of the paper book)**

**21.** In terms of Section 30(2)(c), the management of affairs and control of the business of the Corporate Debtor during the term of the Resolution Plan will be with the Resolution Applicant and complete structure and reorganization has been provided by the resolution applicant on page number 703- 706 of the resolution plan.

**22.** The next requirement envisaged by Section 30 (2)(d) is that it must provide for the implementation and supervision of the Resolution Plan. In this regard, relevant entries are given at page no **104-105** of the paperbook (page 48 and 49 of the resolution plan). Resolution Plan provides for the formation of the Monitoring Committee which shall include one representative of the Resolution Applicant, representative of the financial creditors and a qualified Insolvency Resolution Professional

(which may or may not be RP) to be appointed by Financial creditors in consultation with Resolution Applicant which shall monitor the implementation of plan. Detailed implementation strategy has been submitted by the Applicant/RP on page 108 to 113 of the paper book (page 52 to56 of the resolution plan).

**23.** It is also clarified that all decisions of monitoring committee shall be taken by a majority vote.

**24.** Ld. Counsel appearing for the Successful Resolution Applicant submitted that the Resolution Plan is as per the provisions contained in the Code and so, the same may be approved. In terms of Regulation 39(4) of the CIRP Regulations, the Resolution Professional has filed compliance certificate in Form-H which is annexed as Annexure A-3 from page **324-333 (vol 3).** It is stated in the Application and in Form H duly certified by Resolution Professional that the Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code, 2016 and does not contravene any of the provisions of the law for time being in force. The timeline which is proposed to implement the resolution plan is **360 Days**.

**25.** As a sequel to aforesaid discussions, we are satisfied that all the requirements of Section 30(2) are fulfilled. In respect of compliances regarding CIRP Regulations especially regulations 38 and 39, the Resolution Professional has certified in Form-H and explained in detail that the Resolution Plan has complied with all the required Regulations.

**26.** For the reasons discussed above, in our considered view, the Resolution Plan fulfils the requirement as referred in Section 30(2) of the Code and there are sufficient provisions in the Plan for its effective implementation as required under the proviso of Section 31(1) of the Code. The Resolution Plan has been approved by CoC with **100%** voting. Many judgements of Hon'ble Supreme Court and Hon'ble NCLAT have treated the commercial wisdom of CoC as final. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan.

**27.** Further, an affidavit dated **19.10.2023** on behalf of the sole COC member has been put on record stating that it has reviewed the financial

statements of the successful resolution applicant from FY (2019-20 to 2021-22) and it is satisfied that SRA demonstrates ability to implement the resolution plan. It is also stated in the affidavit that the UVARCL in its commercial wisdom and understanding and is satisfied with the resolution plan. It has reviewed the resolution plan and has approved the same after testing and being satisfied as to its feasibility and viability as required under Regulation 38(3)(b) of the Regulations. A copy of the Letter of Intent issued by the Union Bank of India dated **24.08.2023** for funding the SRA for acquisition of the CD is also attached with the affidavit, as per which the bank has stated that it is ready to take exposure for proposed loan to the tune of Rs. 50 to Rs. 100 crore subject to approval from competent authority, with certain terms and conditions.

**ORDER**

**28.** Accordingly, the Resolution Plan of total Plan value of **₹107,20,92,806/- (Rupees One Hundred Seven Crore Twenty Lakh Ninety Two Thousand Eight Hundred and Six Only/-)**is hereby **APPROVED** which was earlier approved by the CoC by the majority vote of **100%**. The Resolution Plan shall form part of this Order.

**29.** It is clarified that Section 30(2)(f) of the Code mandates that the Resolution Plan should not be against any provisions of the existing law. The Resolution applicant, therefore, shall adhere to all the applicable laws for the time being in force under the proposed Resolution Plan, whether or not specifically provided therein. As regards the reliefs and concessions sought in the Resolution Plan, same will be provided only as per law.

**30.** As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within **one year** as prescribed under section 31(4) of the Code.

**31.** In case of non-compliance of this order or withdrawal of Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the EMD amount already paid by the Resolution Applicant as well as the Performance Bank Guarantee.

**32.** The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect.

**33.** The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.

**34.** Liberty is hereby granted for moving any application if required in connection with implementation of this Resolution Plan.

**35.** As far as the details of Sec 66 or avoidance application pending, any preferential transaction u/s 43, undervalued transaction u/s 45, extortionate credit transactions u/s 50, fraudulent transaction u/s 66, the Resolution Professional has submitted that any recovery from any application under Sec 43, 45, 50 and 66 shall be paid to the secured financial creditors over and above the payment proposed under the plan. Further, in case, such application is not decided during the pendency of CIRP period, the right to litigate under such application, to incur expenses and to receive benefits shall vest with Secured Financial Creditors and all necessary formalities/ assistance for assignment of the right to continue the litigating title in favour of the secured Financial creditors shall be done by the Resolution Applicant within 90 days of the effective date.

**36.** A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, NCT of Delhi & Haryana. Also, The Resolution Professional shall submit the records collected during the CIRP proceedings to the Insolvency & Bankruptcy Board of India for their record.

**37.** The Resolution Professional is further directed to hand over all records, premises/ factories/documents available with it to the Resolution

Applicant to finalise the further line of action required for starting of the operations.

**38.** The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsels for information and for taking necessary steps.

**39.** Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**40.** **Accordingly, IA (IB) No.5029(PB)/2023 is hereby ALLOWED** in aforesaid terms.

**41.** **TO SUMMARISE:**

**a.** **IA (IB) No. 5029(PB)/2023** which is for approval of Resolution Plan is **ALLOWED.**

**b.** **IA 5610/2022, IA 5611/2022, IA 5612/2022, IA 5613/2022** for modification under Sec 60(5) r/w Sec 65 of the Code **are DISMISSED**

**c.** **IA 2481/2024** for rectification of Order dated **24.04.2024** is **ALLOWED**

-**Sd/-**

**(RAMALINGAM SUDHAKAR)**
**PRESIDENT**

-**Sd/-**

**(AVINASH K. SRIVASTAVA)**
**MEMBER (TECHNICAL)**