

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI**

**IA/287/2020 in CP/1167/IB/2018**

*(Filed under Sec. 30(6) of the IBC, 2016)*

IN THE MATTER OF:

S. Diriviam,  
*Resolution Professional of*  
**M/s. Evo Con Private Limited**  
No.6, Vaidyaraman Street,  
T. Nagar, Chennai – 600 017

*... Applicant*

Present:

*For RP* : *S. Sathiyarayanan, Advocate*

*For Resolution Applicant* : *T.K. Bhaskar, Advocate*

*For Dissenting Financial Creditor* : *A.G. Sathiyarayana, Advocate*

*For Suspended Director* : *Shubharanjani Ananth, Advocate*

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)**

**ANIL KUMAR B, MEMBER (TECHNICAL)**

*Order Pronounced on 4<sup>th</sup> June 2021*

**ORDER**

**Per: ANIL KUMAR B, MEMBER (TECHNICAL)**

1. IA/287/2020 is moved by the Resolution Professional of the Corporate Debtor viz., V. S. Diraviam under Section 30(6) of the

Insolvency and Bankruptcy Code, 2016 (in short IBC, 2016) read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short, 'Regulation') seeking the approval of the Resolution Plan submitted by the successful Resolution Applicant viz., **Eden Garden Residential Owners Association**

2. In an Application filed under Section 7 of IBC, 2016 by a Financial Creditor, this Tribunal vide order dated 29.05.2019 passed in CP/1167/IB/2018 has initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor viz. Evo Con Private Limited, by appointing the Applicant herein as the Interim Resolution Professional (IRP), who was subsequently confirmed and appointed as the Resolution Professional (RP) of the Corporate Debtor by the Committee of Creditors (CoC).

3. The Learned Counsel for the Applicant submitted that, upon the receipt of the order, the Applicant caused Public announcement to be effected in "Business Standard" in English and Maalai Murasu" in Tamil on 03.06.2019 and invited the creditors to submit the claim before the IRP. Thereafter, it was submitted that the Corporate Debtor has sent a mail to the IRP attaching the order of

the Hon'ble Supreme Court in W.P. (Civil) No. 714 of 2019 dated 30.05.2019 granting an order of stay of further proceedings before the NCLT in the matters concerning to M/s. Evo Con Private Limited, the Corporate Debtor herein. However, before the receipt of the stay order, the IRP has caused the Public announcement.

4. Thereafter, it is seen that the Applicant has moved an MA/557/2019 seeking for the clarification as to whether the Applicant can proceed further with the CIRP in view of the order of the Hon'ble Supreme Court and also sought for immunity under the provisions of IBC for causing public announcement. However, subsequently, in an application filed by the Directors whose powers stood suspended in MA/548/2019, this Tribunal ordered *status quo* of the CIRP in relation to the Corporate Debtor by order dated 11.06.2019.

5. Subsequently, the Hon'ble Supreme Court of India has disposed off the batch of Civil Appeals and the Writ Petition in Pioneer Homes Ltd. -Vs- Union of India in W.P. No. 43 of 2019 vide its order dated 09.08.2019 wherein it has held that Home Buyers are Financial Creditors and accordingly directed the Adjudicating Authority to decide each case and till such time the stay order

remained to be in vogue. Thereafter, this Tribunal vide order dated 06.09.2019 vacated the *status quo* order and directed the Applicant to proceed with the CIRP. In pursuance of the same, the IRP collated the claim received by him and the summary of the claims admitted by the IRP are as follows;

<b>S. No.</b>	<b>CREDITOR</b>	<b>ADMITTED CLAIM AMOUNT (₹)</b>	<b>CLASS OF CREDITOR</b>
1	Home Buyers (131 Nos.)	58,38,96,722	Financial Creditor - Home Buyers
2	Repcobank	14,33,20,522	Financial Creditor - Secured
3	Residents Association - Silicon Shelter	35,00,000	Financial Creditor - Unsecured
4	Parmar Holdings	24,75,000	Financial Creditor - Unsecured
5	Adeshwar Investment	22,50,000	Financial Creditor - Unsecured
6	Sha Ratnraj Mahendra Kumar	22,50,000	Financial Creditor - Unsecured
7	S.C.S. Holdings	24,75,000	Financial Creditor - Unsecured
8	Manjula Shah,	24,75,000	Financial Creditor - Unsecured
9	Pramila Choudhary	62,20,000	Financial Creditor - Unsecured
10	Green Pearl Engineering Construction	53,02,368	Operational Creditor
11	G. Winston Jayaker	67,20,528	Operational Creditor
12	K. Karthi	40,167	Operational Creditor
	<b>Total</b>	<b>76,09,25,277</b>	

6. The Learned Counsel for the RP submitted that the RP has appointed valuers for determining the liquidation value of the Corporate Debtor as per Regulation 35 of CIRP Regulations, 2016

on 12.10.2019 and as per the report submitted by the valuers, the Liquidation value of the Corporate Debtor was arrived at Rs.27.26 Crore.

7. The Learned Counsel for the RP submitted that the Applicant made a Public announcement calling for Expression of Interest on 02.11.2019 in two newspapers viz. "Business Standard", English and "Murasoli", Tamil and the Applicant has received only one Expression of Interest from Eden Garden Residential Owners Association and the RP has prepared the list of provisional Resolution Applicant (PRA's) and placed it before the CoC and the CoC also approved the eligibility criteria which was informed to the PRA.

8. It is seen from Form-H, that a total of 5 CoC meetings have been convened and the Fair value is arrived at Rs.36.82 Crore and the Liquidation value is arrived at Rs.27.26 Crore. Further, it is also seen from Form - H, the Applicant has not filed any application under Section 43, 45, 50 or 66 of IBC, 2016.

9. The Learned Counsel for the Applicant submitted that the 4<sup>th</sup> CoC meeting was held on 20.12.2019 to consider the Resolution

Plan and the Expression of Interest submitted by Eden Garden Residential Owners Association was discussed. Further, in the 5<sup>th</sup> CoC meeting held on 14.02.2020, the prospective Resolution Applicant had submitted its modified Resolution Plan and the CoC has accepted the same and the same was put to e-voting, which was approved with a majority of 79.06% voting in favour and 19.33% voting against and balance 1.61% have abstained from voting.

10. After the successful passing of the Resolution Plan before the CoC on 17.02.2020, the Resolution Professional filed the Resolution Plan with this *Adjudicating* Authority on 21.02.2020.

## 11. SALIENT FEATURES OF THE RESOLUTION PLAN

### (i) **Payment to the Secured Financial Creditor (SFC)**

Repc Bank the only Financial institution funding the Corporate Debtor is partly secured by the assets of the Corporate Debtor and the balance by the personal assets of the Guarantors. The bank had a claim of Rs.14.33 Crore consisting of Rs.9.75 Crores Principal and Rs.3.09 Crore as interest and Rs.1.49 Crore penalty. The liquidation value of the assets of the Corporate Debtor is not even covering 40% of the claims, it is proposed to liquidate the liability of REPCO

Bank with the sale value of the personal assets of the guarantors held as security by the Bank valued at Rs.11.75 Crore.

(ii) **Workmen / Employee**

Though there was no claim from any employee, the Financial statement indicated an amount of Rs.21.30 Lakh payable to the employee towards their salary dues and the plan envisages the payment of the same on priority,

(iii) **Home Buyers (Financial Creditors)**

Though the home buyers are treated as unsecured Financial Creditors, by virtue of registration of the undivided share of Land and construction agreement they stood in priority over other unsecured financial creditors. The admitted claim of the home buyers is Rs.58.39 Crore and if the Corporate Debtor is subjected to liquidation, the home buyers would not even get 30% of their contribution / claim. The plan proposes to complete the flat construction and hand over the completely built apartments to the home buyers as per their original agreement with the Corporate Debtor.

The plan envisages augmenting Rs.25.87 Crore for the completion and delivery of 148 residential apartments at Eden Garden, Tambaram, Chennai and Rs.3.64 Crore for the completion of 8 flats at Silicon Shelter Coimbatore. No flat buyer shall be reimbursed or repaid

his contribution by the Resolution Applicant, but the flat booked by him / her shall be completed and delivered within 24 months from the effective date as contemplated in the Plan.

It is also stated that, there shall not be any reimbursement of claim amount in respect of any Home buyer in Eden Garden, Mappedu project, irrespective of the fact that an individual flat owner has obtained such an order from any Tribunal or Court other than NCLT and it will be only delivery of a completed Residential Apartment as contemplated in his / her original agreement with the builder / promoter but in accordance with the terms of this Resolution Plan.

Further, it is also stated that the 7 flat buyers of Silicon shelters, the flats will be available to them only when the secured creditor REPCO Bank votes in favour of the Plan and agrees to release its charge on those 16 flats in Silicon Shelters after satisfying their claim with an amount of Rs.11.75 Crore.

(iv) **Payment to Unsecured Financial Creditor (UFC)**

There are five unsecured Financial Creditors, mainly private financiers and the plan proposes to pay the Financial Creditor as contemplated in the schedule of payment in the Resolution Plan.

(v) **Payments to Operational Creditor (OC)**

- a. Landowners of the Joint Development for the construction of the flats: ₹67,20,528/-
- b. Former Contractor: ₹53,02,368/-
- c. Former Electrical Contractor: ₹40,167/-
- d. Statutory Dues (no claim found in the balance sheet). Though there is no claim, the Plan envisages 85% of the outstanding Tax dues by way of TDS, Service Tax and WCT in conformity with the distribution of assets as prescribed under the Code.

To summarise, the following are the amounts proposed to be paid / extinguished / waived under the Resolution Plan.

S. No.	CLAIMANTS	AMOUNT IN RUPEES	% OF CLAIM SETTLED
1	CIRP / Legal Cost	1,00,00,000	100%
2	Payment to workmen	21,30,000	100%
3	Amount for the completion of the Apartment at Eden Garden Project as per the quotation received from Green Pearl Construction, the existing contractor	25,87,63,287	82%
4	REPCO Bank	11,75,00,000	82%
5	Claim of 7 Flat buyers in Silicon Shelters to be satisfied by release of flats in their favour	0.00	NA
6	Other Financial Creditor as per claim	1,48,78,900	82%
7	Recovery / selling expenses (commission / brokerage / travel / etc) Liquidation costs	1,03,45,047	82%
8	TDS Payable	1,36,13,556	82%
9	Service Tax Payable	1,05,93,247	82%
10	WCT Tax	43,73,553	82%
11	Operational Creditor	98,91,687	82%
	<b>TOTAL</b>	<b>45,20,89,277</b>	

(vi) **Change in Management and Transfer of Shares:**

The Resolution envisages cancellation of existing shares and carrying on the activities contemplated in the Plan in the name of the Corporate Debtor till the completion of last condition of the plan and thereafter, the Corporate Debtor would be wound up.

(vii) **Term of the Plan and its implementation Schedule:**

The term of the plan will come to an end only when

(1) The incomplete Residential building in the project Eden Garden, Mappedu is completed and

(2) All the creditors (both financial and operational) contemplated in the Plan are fully paid as per the terms of settlement mentioned therein. It is proposed by the Resolution Applicant that the Corporate Debtor is operational with new Board of Directors, waiver and extinguishment as proposed only for the purpose of execution of the Plan and will be wound off / struck off from the records of the RoC thereafter. Since the payment obligation of any of the present outstanding liability is not linked to any future cash generation of the business of the Corporate Debtor, but only from the liquidation of the current asset / stock on hand, the CIRP comes to an end with the resolution applicant

(a) augmenting Rs.45.20 crore as detailed in the source of funds of the Plan

- (b) Completing the constructions of 148 residential apartments in the Eden Garden Project at Mappedu, Tambaram, and
- (c) satisfying the claims of the remaining stake holders as envisaged in this proposal

(viii) **Monitoring and supervision:**

The Resolution Plan provided for appointment of S. Diraviam, the Resolution Professional in the present case, to supervise the implementation of the Resolution Plan.

12. From the averments made in the Application as well as in Form-H as filed by the Resolution Professional in relation to the procedural aspects, the same seems to have been duly complied with for which the Resolution Professional has issued a Certificate and it is not necessary for this Authority to go into the same. However, this Authority is duty bound to examine the Resolution Plan within the contours of Section 30(2) of the IBC, 2016. A comparison *vis-à-vis* with the Mandatory compliance under the IBC and the Compliance made under the Resolution Plan is captured hereunder;

MANDATORY COMPLIANCE UNDER IBC CODE AND REGULATIONS	COMPLIANCE UNDER RESOLUTION PLAN
<b>S. 30(1)</b> - Resolution Applicant to submit an affidavit stating that he is eligible under Sec.29A of the Code, 2016	The Affidavit of the Resolution Applicant (RA) is found in "Annexure H" of the Resolution Plan, wherein one Mr. D. Ravikumar, the duly elected President of the Eden Garden Residential Owners Association has stated that he is eligible under Section 29A of IBC, 2016 to submit a Resolution Plan.
<b>S. 30(2)(a)</b> - Payment of Insolvency and Resolution cost in the manner specified by the Board	Clause 19.2 of the Resolution Plan provides for the payment of CIRP costs in priority. The CIRP Cost is arrived at ₹1 Crore and would be paid within 30 days from the effective date .
<b>S. 30(2)(b)</b> - Payment of debts of Operational Creditors in such manner as may be specified by the Board, which shall not be less than the amount to be paid to the Operational Creditors in the event of a liquidation of the Corporate Debtor under Sec. 53	Clause 19.4 of the Resolution Plan states that the amount available to Operational Creditors in the event of liquidation is NIL and as per the Plan the Operational Creditors are being paid 82% of their admitted claim within 120 days from the effective date and the Workmen are being paid 100% of their admitted claim within 30 days from the effective date.
<b>Reg. 38(1)</b> - Resolution Plan identifies specific source of funds that will be used to pay the (a) Insolvency Resolution Process cost? (b) Liquidation value due to Operational Creditors? (c) Liquidation value due to dissenting financial creditors	Clause 20 of the Resolution Plan states that the total Amount provided under the Resolution Plan is Rs.45.20 Crores and the Resolution Applicant proposes to pay the said sum out of the balance consideration receivable from the home buyers, remittance by the ex-promoters, sale of unsold flats by the Corporate Debtor, amount receivable from the Judgment debtor, sale of personal assets of the guarantors (ex-promoters) mortgaged with the Secured Financial Creditor.

<p><b><u>Reg. 38(1A)</u></b> - Resolution Plan shall include a statement as to how it has dealt with the interest of all the stakeholders, including financial creditors and operational creditors of the Corporate Debtor</p>	<p>Clause 18.4 read with Clause 19 and Annexure – B provides for payments to be made to all the stakeholders of the Corporate Debtor.</p>
<p><b><u>S. 30(2)(c)</u></b> - Management of the affairs of the Corporate Debtor after approval of the Resolution Plan</p>	<p>Clause 23(ii) of the Resolution Plan deals with the Management and Control of the Corporate Debtor after the approval of the Resolution Plan</p>
<p><b><u>S. 30(2)(d)</u></b> - Implementation and Supervision of the Resolution Plan</p>	<p>Clause 23(iii) of the Resolution Plan deals with the manner of supervision and Implementation of the Resolution Plan and Annexure – C details about the Implementation Schedule in a time bound manner.</p>
<p><b><u>Reg. 38(2)</u></b> – Resolution Plan shall provide:  a) term of plan and its implementation schedule  b) management and control of the business of the Corporate Debtor during its term;  c) it has provisions for effective implementation  d) it has provisions for approval required and the timeline for the same; and  e) the Resolution applicant has the capability to implement the Resolution Plan.</p>	<p>Clause 23 and 23(ii) of the Resolution Plan along with Annexure C (a) and (b) deals with the adequate means of supervision and Implementation of the Resolution Plan</p>
<p><b><u>Reg. 38(3)</u></b> - Resolution Plan shall demonstrate:  a) it address the cause of default  b) it is feasible and viable  c) it has provisions for effective implementation  d) it has provisions for approval</p>	<p>Clause 5, 6, 7, 8 and 9 of the Resolution Plan deals with the causes of default of the Corporate Debtor and the operational Viability of the project by the Resolution Applicant.</p>

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<p><b>S. 30(2)(e)</b> - Does not contravene any of the provisions of the law for the time being in force</p>	<p>The Resolution Professional in Form H has confirmed that the Resolution Plan is not in contravention with the provisions of any Applicable Law.</p> <p>However the plan envisages reduction of equity share capital to zero without any further infusion or issue of equity share capital.</p>																																								
<p><b>S. 30(4)</b> - Committee of Creditors approve the Resolution Plan by not less than 66% of voting share of Financial Creditors, after considering its feasibility, viability and such other requirement as specified by the Board</p>	<p>The CoC, in its 5<sup>th</sup> meeting has approved the Resolution Plan in the following voting pattern;</p> <table border="1" data-bbox="854 1031 1432 1692"> <thead> <tr> <th>S.No</th> <th>Name of Creditor</th> <th>Ascent (%)</th> <th>Dissent (%)</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Homebuyers</td> <td>78.22</td> <td>-</td> </tr> <tr> <td>2.</td> <td>Pramila Choudary (Unsecured FC)</td> <td>0.84</td> <td>-</td> </tr> <tr> <td>3.</td> <td>REPCO Bank Ltd. (Secured FC)</td> <td>-</td> <td>19.33</td> </tr> <tr> <td>4.</td> <td>Parmer Holdings* (Unsecured FC)</td> <td>-</td> <td>-</td> </tr> <tr> <td>5.</td> <td>Adeswar Investment*</td> <td>-</td> <td>-</td> </tr> <tr> <td>6.</td> <td>Sha Ratna Mahindra Kumar*</td> <td>-</td> <td>-</td> </tr> <tr> <td>7.</td> <td>SC Holdings*</td> <td>-</td> <td>-</td> </tr> <tr> <td>8.</td> <td>Manuja Shah*</td> <td>-</td> <td>-</td> </tr> <tr> <td></td> <td><b>TOTAL</b></td> <td><b>79.06%</b></td> <td><b>19.33%</b></td> </tr> </tbody> </table> <p>(* ) Abstained from Voting – 1.61%</p>	S.No	Name of Creditor	Ascent (%)	Dissent (%)	1.	Homebuyers	78.22	-	2.	Pramila Choudary (Unsecured FC)	0.84	-	3.	REPCO Bank Ltd. (Secured FC)	-	19.33	4.	Parmer Holdings* (Unsecured FC)	-	-	5.	Adeswar Investment*	-	-	6.	Sha Ratna Mahindra Kumar*	-	-	7.	SC Holdings*	-	-	8.	Manuja Shah*	-	-		<b>TOTAL</b>	<b>79.06%</b>	<b>19.33%</b>
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### 13. **OBJECTIONS TO THE RESOLUTION PLAN:**

The dissenting Financial Creditor viz. the REPCO Bank, has filed its objection to the Resolution Plan which are as follows;

- i. REPCO Bank has extended loan facilities to the Corporate Debtor by securing its assets and registered Charge with the MCA.
- ii. After the CIRP of the Corporate Debtor, REPCO Bank has filed its claim of INR 14,33,20,522/- (Rupees Fourteen Crores Thirty Three Lakhs Twenty Thousand Five Hundred and Twenty Two only) and the same was admitted by the Resolution Professional, pursuant to which the REPCO Bank held 19.33% voting share in the CoC.
- iii. REPCO Bank alleges that the CIRP was collusive and fraudulent in nature, as both the petitioner under Section 7 initiating the CIRP ("CIRP Applicant") and the resolution applicant are one and the same. As such, it was further alleged that there is a clear collusion between the directors and the CIRP Applicant.
- iv. REPCO Bank further submitted that the Resolution Applicant had not provided performance security as required under Regulation 36B(4A) of the IBBI (Insolvency Resolution Process for Corporate Persons)

Regulations, 2016 ("CIRP Regulations") and that the resolution plan submitted for approval of the Adjudicating Authority is not viable and is in non-compliance of clauses (c) and (d) of Section 30(2):

- v. The bone of contention of REPCO Bank is that, as a dissenting financial creditor it is supposed to receive minimum payment of the liquidation value as per the Insolvency and Bankruptcy Code, 2016, which is INR 5.7 Crores in this case. Instead, the resolution plan provides for realisation of the personal assets of the Suspended Directors of the Corporate Debtor to the claim of REPCO Bank, which the REPCO Bank claims as illegal and collusive in nature.
- vi. Further, the REPCO Bank contends that the plan is not in compliance with Regulation 38 of CIRP Regulations and that the plan is hit by Section 29A of the Code as the personal assets of the Suspended Directors are utilised to settle the claim of REPCO Bank.
- vii. REPCO Bank further claims that the plan does not provide for continuation of business of the Corporate Debtor and rather provides that once the plan is implemented the Corporate Debtor will be dissolved.
- viii. REPCO Bank also highlighted the mention of different timelines provided in the plan for repayment to the Financial Creditor, i.e. in one place it is mentioned as

within 90 days of approval of NCLT and in another place as within 120 days of NCLT approval and in another as within 120 days of execution.

- ix. REPCO Bank further objected the plan on the ground that the Resolution Professional claimed CIRP Cost of INR 1 Crore out of which only INR 0.35 Crores was incurred and the balance INR 0.65 Crores is claimed as future CIRP Cost without any projections or justifications.

14. In relation to the objections as raised by the dissenting Financial Creditor, it is to be seen that the provisions of IBC, 2016 does not bar a financial creditor to be a Resolution Applicant. Further, it is stated in Clause 7 of the Resolution Plan that the members of the Resolution Applicant have so far paid a sum of Rs.39.79 crores towards the construction of their houses and if the Corporate Debtor undergoes liquidation, then the Liquidation value will not be sufficient to pay even 40% of their notional claim amount and the person participating in the liquidation auction will simply walk out with a bounty of money by way of incomplete apartments which he will complete and sell with huge margin and the existing buyers will lose their ownership. It is also stated in the Resolution Plan that the Liquidation value of the unfinished Residential Project is unlikely to fetch a good value and is not likely

to result in the maximization of the asset value. Further, most of the home buyers have availed housing loan from different banks and in addition, an amount of Rs.25.88 Crores is required to just complete the building wherein the association members are required to part with an amount of Rs.9.52 Crores being their balance contribution, with non-members owing to an amount of Rs.1.12 Crores and under these circumstances, there is no alternative for the Association other than taking control of the incomplete project and complete the same.

15. However, it is seen that after the orders was reserved, the dissenting Financial Creditor viz. REPCO Bank filed a Memo of withdrawal of their objection to the Resolution Plan vide Diary No. 2303 dated 29.04.2021, stating that the Director of the Corporate Debtor whose powers stood suspended, has come forward and settled the loan account of the Corporate Debtor.

16. The Hon'ble Supreme Court in the matter of **Chitra Sharma and Ors. –Vs– Union of India and Ors;** (2018) 18 SCC 575, while protecting the interest of the home buyers in para 25 has held as under;

“25. During the course of the hearing, there has been a unanimity of opinion that the liquidation of JIL will not subserve the interests of the home buyers. The home buyers have made valuable investments by contributing hard earned monies in the hope of obtaining a roof over their heads. A home for the family is a basic human yearning. In diverse contexts it has been held by this Court to be a part of the right to life, as a fundamental constitutional guarantee. All the counsel for the home buyers have earnestly appealed to the Court to exercise its jurisdiction to ensure complete justice to the home buyers instead of leaving them to the mercy of a liquidation process. The Court appreciates the substance in that plea, understanding at the same time, the need to abide by the discipline of the law.”

*(underline supplied)*

17. In relation to the third party assets *(the assets of the Directors of the Corporate Debtor whose powers stood suspended)* being sold in the Resolution Plan, the Hon’ble NCLAT in the matter of **Facor Alloys Limited & Anr –Vs- Bhuvan Madan & 3 Ors**; in *Company Appeal (AT)(Ins) No. 340 of 2020* has dealt with the said issue and has held that the Resolution Plan can deal with the assets of the subsidiaries.

18. It is also seen that in relation to the participation of the promoter / Director in the Resolution Plan, this Tribunal vide order dated 08.02.2021 has directed the Promoter / suspended Director of the Corporate Debtor to furnish an Affidavit by setting out his role in the Resolution Plan and the Director whose powers stood

suspended has filed an Affidavit vide Diary No. 1049 dated 22.02.2021 and the summary of the said Affidavit is extracted hereunder;

- i. He is not a member of Eden Garden Residential Owners' Association which is the Resolution Applicant and is neither an office bearer of the same.
- ii. The Corporate Debtor had collected INR 39.79 Crores from the home buyers of the Eden Gardens Project but could not complete the entire construction owing to various problems and that the completed work was estimated at around INR 20 Crores only.
- iii. The Eden Gardens project was exclusively funded by the Home Buyers and that REPCO Bank has no security over the same.
- iv. The amount of INR 4 Crores undertaken to be provided by him to the Resolution Applicant shall be considered as the money due to the Eden Gardens project and that he has no claim on the same.
- v. The said amount of INR 4 Crores will be provided by him from the sale of his personal property at Salem and he is fully aware that he is morally bound to repay this money.
- vi. He has neither any direct nor indirect benefit from the Resolution Applicant on account of providing INR 4 Crores and for surrendering the unsold and surrendered flats which is almost equal to the difference of money collected from the Home Buyers and money spent on the Eden Gardens Project.

- vii. The above acts of his, i.e., providing INR 4 Crores and surrendering unsold and surrendered flats, should be construed as providing and returning already augmented funds of the Corporate Debtor and shall not be treated as participation in proposing and implementation of resolution plan that would clash with the forbidden clauses of Section 29A of the Code.
- viii. He will not have any interest in the CD once the Resolution Plan is approved.

19. It is pertinent to point out here that the Supreme Court in the matter of **Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Ors.** (2020) 11 SCC 467 has held that no provision in the Code required the resolution applicant to match the liquidation value.

20. Further the Supreme Court in the matter of **K. Sashidhar v. Indian Overseas Bank and Ors.** (2019) 12 SCC 150 has lucidly delineated the scope and interference of the Adjudicating Authority in the process of approval of the Resolution Plan and held as follows;

“55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite per cent 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. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3)

of the I&B Code, which is limited to matters “other than” enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers.”

*(underline supplied)*

21. Also the Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta and Ors.** (2020) 8 SCC 531 after referring to the decision in **K. Sashidhar (supra)** has held as follows;

“73. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have

not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal."

*(underline supplied)*

22. The Supreme Court in its recent decision in **Jaypee Kensington Boulevard Apartments Welfare Association & ors. v. NBCC (India) Ltd. & Ors** in *Civil Appeal no. 3395 of 2020* dated 24.03.2021 has held as follows;

76. The expositions aforesaid make it clear that the decision as to whether corporate debtor should continue as a going concern or should be liquidated is essentially a business decision; and in the scheme of IBC, this decision has been left to the Committee of Creditors, comprising of the financial creditors. Differently put, in regard to the insolvency resolution, the decision as to whether a particular resolution plan is to be accepted or not is ultimately in the hands of the Committee of Creditors; and even in such a decision making process, a resolution plan cannot be taken as approved if the same is not approved by votes of at least 66% of the voting share of financial creditors. Thus, broadly put, a resolution plan is approved only when the collective commercial wisdom of the financial creditors, having at least 2/3rd majority of voting share in the Committee of Creditors, stands in its favour.

77. In the scheme of IBC, where approval of resolution plan is exclusively in the domain of the commercial wisdom of CoC, the scope of judicial review is

correspondingly circumscribed by the provisions contained in Section 31 as regards approval of the Adjudicating Authority and in Section 32 read with Section 61 as regards the scope of appeal against the order of approval.

77.1. Such limitations on judicial review have been duly underscored by this Court in the decisions above-referred, where it has been laid down in explicit terms that the powers of the Adjudicating Authority dealing with the resolution plan do not extend to examine the correctness or otherwise of the commercial wisdom exercised by the CoC. The limited judicial review available to Adjudicating Authority lies within the four corners of Section 30(2) of the Code, which would essentially be to examine that the resolution plan does not contravene any of the provisions of law for the time being in force, it conforms to such other requirements as may be specified by the Board, and it provides for: (a) payment of insolvency resolution process costs in priority; (b) payment of debts of operational creditors; (c) payment of debts of dissenting financial creditors; (d) for management of affairs of corporate debtor after approval of the resolution plan; and (e) implementation and supervision of the resolution plan.

77.2. The limitations on the scope of judicial review are reinforced by the limited ground provided for an appeal against an order approving a resolution plan, namely, if the plan is in contravention of the provisions of any law for the time being in force; or there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; or the debts owed to the operational creditors have not been provided for; or the insolvency resolution process costs have not been provided for repayment in priority; or the resolution plan does not comply with any other criteria specified by the Board

77.6.1. The assessment about maximisation of the value of assets, in the scheme of the Code, would always be subjective in nature and the question, as to whether a particular resolution plan and its propositions are leading

to maximisation of value of assets or not, would be the matter of enquiry and assessment of the Committee of Creditors alone. When the Committee of Creditors takes the decision in its commercial wisdom and by the requisite majority; and there is no valid reason in law to question the decision so taken by the Committee of Creditors, the adjudicatory process, whether by the Adjudicating Authority or the Appellate Authority, cannot enter into any quantitative analysis to adjudge as to whether the prescription of the resolution plan results in maximisation of the value of assets or not. The generalised submissions and objections made in relation to this aspect of value maximisation do not, by themselves, make out a case of interference in the decision taken by the Committee of Creditors in its commercial wisdom

78. To put in a nutshell, the Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well defined and circumscribed by Sections 30(2) and 31 of the Code read with the parameters delineated by this Court in the decisions above referred. The jurisdiction of the Appellate Authority is also circumscribed by the limited grounds of appeal provided in Section 61 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the CoC. Within its limited jurisdiction, if the Adjudicating Authority or the Appellate Authority, as the case may be, would find any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by Code and exposted by this Court.

23. Thus, from the catena of judgments rendered by the Supreme Court on the scope of approval of the Resolution Plan, it is amply made clear that only limited judicial review is available for the Adjudicating Authority under Section 30(2) and Section 31 of IBC, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the Committee of Creditors.

24. The Resolution Applicant has sought for various Reliefs, Concessions in Annexure 'E' of the Resolution Plan. However by taking into consideration the Judgments of the Hon'ble NCLAT, and more particularly the decision of the Hon'ble Supreme Court of India in the matter of **Embassy Property Developments Pvt. Ltd. –Vs- State of Karnataka & Ors.** in *Civil Appeal No. 9170 of 2019*, we direct the Resolution Applicant to file necessary application before the necessary forum / authority in order to avail the necessary Relief and Concessions, if it is in accordance with law.

25. Thus the Resolution Plan is hereby **approved** and is binding on the Corporate Debtor and other stakeholders involved so that

revival of the Debtor Company shall come into force with immediate effect and the "Moratorium" imposed under section 14 of IBC, 2016 shall not have any effect henceforth. The Resolution Professional shall submit the records collected during the commencement of the Proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance. Liberty is hereby granted for moving any Miscellaneous Application, if required, in connection with implementation of this Resolution Plan. That in respect of stepping by the New Promoters/Resolution Applicant into the shoes of the erstwhile Company and taking over the business, the provisions of Companies Act, 2013 shall be applicable and because of this reason a copy of this Order is to be submitted in the Office of the Registrar of Companies, Chennai.

26. The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to finalise the further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises / documents through Resolution Professional to finalise the further line of action required

for starting of the operation. Accordingly, the Application stands **allowed.**

-Sd-  
**ANIL KUMAR B**  
MEMBER (TECHNICAL)

-Sd-  
**R. VARADHARAJAN**  
MEMBER (JUDICIAL)

*Raymond*