



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA-5003/2021, IA-3778/2022, IA-678/2022, IA-3099/2023,
IA-4569/2023, IA-6746/2023, IA-1732/2023 & IA-2959/2024

IN

Company Petition No. (IB)-456/(ND)/2018

IN THE MATTER OF:

Pallavi Joshi Bakhru

... Applicant/Financial Creditor

Versus

Universal Buildwell Private Limited

... Respondent/Corporate Debtor

AND IN THE MATTER OF IA-5003/2021:

(Under Section 30(6) r/w Section 31 of IBC, 2016)

Mr. Atul Kumar Kansal,

Resolution Professional,

M/s Universal Buildwell Pvt. Ltd.

SCO-61, 3rd Floor, Old Judicial Complex,

Civil Lines, Gurgaon-122001

... Applicant

AND IN THE MATTER OF IA-3778/2022:

(Under Section 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016)

HDFC Bank Limited,

Ms. Deepti Bhardwaj

(Authorized Legal Manager),

HDFC Bank House,

Senapati Bapat Marg,

Lower Parel (West), Mumbai-400013

... Applicant

Versus

Mr. Atul Kumar Kansal,

Resolution Professional,

M/s Universal Buildwell Pvt. Ltd.

SCO-61, 3rd Floor, Old Judicial Complex,

Civil Lines, Gurgaon-122001

... Respondent

AND IN THE MATTER OF IA-3099/2023:

(Under Section 60(5) of IBC, 2016)



Kotak Mahindra Bank Limited

D-10, Local Shopping Centre,
Vasant Vihar, New Delhi-110057

... Applicant/Objector

Versus

Mr. Atul Kumar Kansal,

Resolution Professional,
M/s Universal Buildwell Pvt. Ltd.
SCO-61, 3rd Floor, Old Judicial Complex,
Civil Lines, Gurgaon-122001

... Respondent

AND IN THE MATTER OF IA-2959/2024:

(Under Section 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016)

Shyam Kishan Saraf

7/15, Forest Lane, Neb Sarai Extension,
New Delhi-110068

... Applicant No. 1

Banwari Lal Saraf

7/15, Forest Lane, Neb Sarai Extension,
New Delhi-110068

... Applicant No. 2

Versus

Mr. Atul Kumar Kansal,

Resolution Professional,
M/s Universal Buildwell Pvt. Ltd.
SCO-61, 3rd Floor, Old Judicial Complex,
Civil Lines, Gurgaon-122001

... Respondent

AND IN THE MATTER OF IA-678/2022:

(Under Section 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016)

M/s Grace Steel Private Limited

Mr. Bhuvnesh Sarawat (Director)
158A, DDA Flats,
Ghazipur, New Delhi-110027

... Applicant

Versus

Mr. Atul Kumar Kansal,

Resolution Professional,

M/s Universal Buildwell Pvt. Ltd.

SCO-61, 3rd Floor, Old Judicial Complex,
Civil Lines, Gurgaon-122001

... Respondent



AND IN THE MATTER OF IA-1732/2023:

(Under Section 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016)

1. Mr. Jeetendra S Kaushal

D-4, East Azad Nagar,
Street No-5, New Delhi-110051

2. Mr. Harbhajan Singh

11-A/69, Lajpat Nagar,
New Delhi-110024

3. Mr. Darpan Ghai

(Legal Heir of Late Mr. Ravin Chander Ghai)
F-1/20, Krishna Nagar,
Delhi-110051

4. Mrs. Vandana Bhatnagar

C-9/9153, Vasant Kunj,
New Delhi-110070

5. Mr. Sushil Chander Khanna

W-15/32, Western Avenue,
Lane W-15, Sainik Farms, Delhi-110062

6. Mrs. Neelam Khanna

W-15/32, Western Avenue,
Lane W-15, Sainik Farms, Delhi-110062

7. Mr. Ravinder Kumar Ghai

F-5/17, Krishna Nagar,
Delhi-110051

8. Mr. Y. Puran Kumar

132, Sector 24, Chandigarh-160023

... Applicants

Versus

Mr. Atul Kumar Kansal,

Resolution Professional,

M/s Universal Buildwell Pvt. Ltd.

SCO-61, 3rd Floor, Old Judicial Complex,

Civil Lines, Gurgaon-122001

... Respondent



AND IN THE MATTER OF IA-6746/2023:

(Under Section 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016)

M/s Seriatim Enterprises LLP

Mr. Sanjay Dhody, (Partner)
F-70, GF, Poorvi Marg,
Vasant Vihar, New Delhi-110057

... Applicant

Versus

Mr. Atul Kumar Kansal,

Resolution Professional,

M/s Universal Buildwell Pvt. Ltd.
SCO-61, 3rd Floor, Old Judicial Complex,
Civil Lines, Gurgaon-122001

... Respondent

AND IN THE MATTER OF IA-4569/2023

(Under Section 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016)

Mrs. Aneeta Gupta

E-6/1, Krishna Nagar,
Delhi-110051

... Applicant

Versus

Mr. Atul Kumar Kansal,

Resolution Professional,

M/s Universal Buildwell Pvt. Ltd.
SCO-61, 3rd Floor, Old Judicial Complex,
Civil Lines, Gurgaon-122001

... Respondent

Under Section: 7 of IBC, 2016

Order Delivered on: 07.03.2025

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv Dhruv Gupta in IA-3778/2022. Adv. Niraj Kumar, Adv. Rajeev Verma in IA-2959/2024.



- For the RP** : Adv. Swapnil Gupta, Adv. Vaibhav Mendiratta, Adv. Sajal Jain, Adv. Abhinav Mishra, Mr. Atul RP in person.
- For the SRA** : Sr. Adv. P. Nagesh, Adv. Harshal Kumar, Adv. Gaurav Verma, Adv. Himanshu.
- For the Kotak Mahindra Bank** : Adv. Sanjay Bhatt, Adv. Sarthak Bhandari in IA-3099/2023, IA-5003/2021.

ORDER

IA-5003/2021, IA-3778/2022, IA-678/2022, IA-3099/2023, IA-4569/2023,

IA-6746/2023, IA-1732/2023 & IA-2959/2024: The IA-5003/2021 has been preferred under Section 30(6) r/w Section 31 of IBC, 2016 seeking approval of the Resolution Plan qua the Corporate Debtor submitted by Universal Aura Welfare Association, Universal Greens Buyers Association and Universal Business Park Owners Association (**'Resolution Applicant'**) as approved by members of Committee of Creditor (**'CoC'**) unanimously with 70.44% voting in the 18th meeting of CoC held on 08.09.2021.

2. Stating succinctly, the captioned main petition CP(IB)-456/ND/ 2018, was filed by Ms. Pallavi Joshi Bakhru against M/s Universal Buildwell Private Limited (**'Corporate Debtor'**) under Section 7 of IBC, 2016 which was admitted to Corporate Insolvency Resolution Process (CIRP) vide order dated 03.07.2018 qua the Corporate Debtor and the CIRP commenced. Mr. Atul Kumar Kansal (**'Applicant'**) appointed as IRP in terms of the admission order, was later confirmed as RP in the 3rd CoC meeting held on 12.09.2018.

3. Thereafter, the Applicant/RP filed an application bearing I.A. No. 1550/2019 under Section 30(6) of the Code before this Tribunal seeking



approval of the resolution plan which was disposed of vide order dated 11.06.2021 with certain direction issued to CoC and Resolution Applicant. The relevant excerpt of the order dated 11.06.2021 reads thus:-

“49. Now, in the light of position of law settled by the Hon'ble Supreme Court (Supra), we consider the contention of Mr. Sumant Batra, Advocate and we notice that the amount proposed to be paid in the Resolution Plan is approved by the CoC. Under Section 30(2)(b) of IBC read with Section 53 of IBC, 2016, it is the duty of the Resolution Professional to examine the Resolution Plan, whether the distribution to the Creditors is made in terms of the provisions of law and Regulations, thereafter the Resolution Professional shall place the same before the Committee of the Creditors u/s 30(3) IBC 2016 for its approval. The COC after considering the feasibility and viability, the manner of distribution proposed, may approve the Plan by not less than 66% of voting share u/s 30(4) of the IBC 2016. It is the commercial wisdom of the CoC to determine what amounts are to be paid to different classes and sub classes of creditors in accordance with the provisions of the Code and the Regulations made thereunder. It is seen that while deciding the amounts in the instant case, the CoC has considered the liquidation value placed by the Resolution Professional as well as the Resolution Applicant as mentioned in aforementioned paragraphs. Since the units, that have already been sold, are no longer an asset of the Corporate Debtor and consequently cannot be liquidated, their liquidation value has been provided as NIL. The COC after considering the same, approved the amounts proposed to be paid to Kotak Mahindra Bank Limited, Kotak Mahindra Prime Limited and similarly, to DHFL. Hence, we find, No force in the contention raised by the Ld. Council for the Objectors That the amounts which are proposed to be paid to the DHFL, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited are contrary to the provision of Section 30(2)(b) of the IBC read with Section 53(1) of the IBC, 2016.



50. However, we notice there is significant differences between the liquidation value submitted by the Two Valuers and valuation assessed by the Resolution Professional and Resolution Applicant, therefore, we think it proper, to leave the matter upon the COC to reexamine this issue and if the properties/infrastructure in the projects of the corporate debtor is available for sale/disposal, the COC may consider taking steps for suitable correction of the Liquidation value of all the projects and subsequently, ask the Resolution Applicant to account for the same in the Resolution Plan..

51. So far as the next contention raised by the Ld. Counsel appearing for the DHFL, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited that that they are entitled to get the payment only in monetary terms is concerned, for this too, we would like to refer to the relevant paragraphs of the decision of Hon'ble Supreme Court in Jaypee Case (Supra), which are quoted below: -

“121.2. We would hasten to observe that in case a dissenting financial creditor is a secured creditor and a valid security interest is created in his favour and is existing, the entitlement of such a dissenting financial creditor to receive the amount payable could also be satisfied by allowing him to enforce the security interest, to the extent of the value receivable by him and in the order of priority available to him. Obviously, by enforcing such a security interest, a dissenting financial creditor would receive payment to the extent of his entitlement and that would satisfy the requirement of Section 30(2)(b) of the Code. In any case, that is, whether by direct payment in cash or by allowing recovery of amount via the mode of enforcement of security interest, the dissenting financial creditor is entitled to receive the amount payable in monetary terms and not in any other term.

122. The indications as emerging from the text of other provisions as also from the scheme of the Code, are to the effect that the resolution applicant, with approval of resolution plan, is to proceed on a clean slate rather than



carrying the cargo of such debts which need to be satisfied (to the extent required) and jettisoned. The expressions payment and amount to be paid, when read in the context and on the canvass of the objects and purposes of the Code, in our view, these expressions only convey their ordinary meaning, as understood in ordinary business parlance, that is, delivery of money alone; and there is no reason to construe these expressions to be conveying the meaning of delivery of money or its equivalent.

123. A good length of arguments on behalf of IRP are devoted to the stand that, what CoC considers in sub-section (4) of Section 30 is the manner of distribution proposed; and such manner of distribution ought to be fair and equitable, as explained in Explanation 1 to clause (b) of Section 30(2). It is contended that if legislature intended the word payment to have a prescriptive meaning, that is, payment by way of payment of money only, there would have been no need to add Explanation 1 to clause (b) which provides that distribution under clause (b) to operational and dissenting financial creditors shall be fair and equitable because in such a case, the distribution would only mean a crystallised sum of money with no room to test if distribution was fair and equitable. The argument is, again, of stretching the plain words beyond their real intent and meaning. The said Explanation is for removal of doubts and for clarification that distribution in terms of clause (b) shall be fair and equitable to the creditors covered thereunder that is, operational and dissenting financial creditors. This Explanation appears to have been necessitated for the reason that quantification of the minimum amount payable under clause (b) of Section 30(2) is in the realm of certain guesswork or estimate with reference to the distribution envisaged by Section 53 of the Code. This Explanation cannot and does not provide meaning to the expressions payment and amount to be paid. These and other arguments of similar nature, could only be rejected.

123.1. A submission made on behalf of IRP suggesting estoppel against the dissenting financial creditor for having not raised the issue in the meeting of the Committee



of Creditors also remains baseless. This is for the simple reason that no estoppel could operate against the statutory right of the dissenting financial creditor to receive payment in terms of Section 30(2)(b) of the Code.

123.2. The submission that commercial banks are permitted by the Banking Regulations Act, 1949 to swap the debt for land and equity has its own shortcomings, rather shortfalls. The expressions payment and amount to be paid and amount payable as occurring in Section 30(2) and Regulation 38(1) cannot be interpreted only for the purpose of banks as financial creditors; the provisions refer to financial creditors as such and it would be too far stretched to say that these expressions may have different meanings for different financial creditors in the manner that a financial creditor who could accept payment by any mode other than money could be paid by that mode and the other financial creditors who cannot accept anything except money shall be receiving payment in cash. This kind of interpretation would not only be reading words but even phrases and provisos in the statutory provisions, which is entirely impermissible.

123.3. Similarly, the suggestion that the Government and the Governmental bodies, which are not permitted by law to swap debt with equity or land will have to be paid by way of money and to that extent, the meaning of payment in the first part of clause (b) of Section 30(2) will have contextually different meaning, is, again, seeking to provide multiple sub-sects of the mode of payment, whereas no such differentiation or classification is indicated in the provisions under reference or in any other provision contained in the Code.

123.4. The suggestion about prejudice being caused to the assenting financial creditors by making payment to the dissenting one has several shortcomings. As noticeable, in the scheme of IBC, a resolution plan is taken as approved, only when voted in favour by a majority of not less than 66% of the voting share of CoC. Obviously, the dissenting sect stands at 34% or less of the voting share of CoC. Even when the financial creditors having a say of not less than 2/3rd in the Committee of Creditors choose to sail with the



resolution plan, the law provides a right to the remainder (who would be having not more than 34% of voting share) not to take this voyage but to disembark, while seeking payment of their outstanding dues. Even this disembarkment does not guarantee them the time value for money of the entire investment in the corporate debtor; what they get is only the liquidation value in terms of Section 53 of the Code. Of course, in the scheme of CIRP under the Code, the dissenting financial creditors get, whatever is available to them, in priority over their assenting counterparts. In the given scheme of the statutory provisions, there is no scope for comparing the treatment to be assigned to these two divergent sects of financial creditors. The submissions made on behalf of assenting financial creditors cannot be accepted.

123.5. The other submissions and counters with reference to the phraseology of Section 8 of the Code do not require much dilation because, the said provision essentially relates to the dues of an operational debtor and the steps envisaged before commencement of insolvency resolution process. Nevertheless, payment for the purpose of the said provision is also of money transfer; and not by any other mode.

124. To sum up, in our view, for a proper and meaningful implementation of the approved resolution plan, the payment as envisaged by the second part of clause (b) of sub-section (2) of Section 30 could only be payment in terms of money and the financial creditor who chooses to quit the corporate debtor by not putting his voting share in favour of the approval of the proposed plan of resolution (i.e., by dissenting), cannot be forced to yet remain attached to the corporate debtor by way of provisions in the nature of equities or securities. In the true operation of the provision contained in the second part of sub-clause (ii) of clause (b) of sub-section (2) of Section 30 (read with Section 53), in our view, the expression payment only refers to the payment of money and not anything of its equivalent in the nature of barter; and a provision in that regard is required to be made in the resolution plan whether in terms of direct money or in terms of money recovery with enforcement of security



interest, of course, in accordance with the other provisions concerning the order of priority as also fair and equitable distribution. We are not commenting on the scenario if the dissenting financial creditor himself chooses to accept any other method of discharge of its payment obligation but as per the requirements of law, the resolution plan ought to carry the provision as aforesaid.

52. *In the light of aforesaid decision, when we consider the submissions, we find that herein the case in hand, although the amount which these three objectors are entitled to get has been quantified in the plan but the payment is proposed to be made only on happening of the certain events.*

53. *So far as the DHFL is concerned they will get the amount from the sale proceeds of the unsold inventory after construction and completion of the project. Similarly, for the payment of Rs. 3 crore proposed to be paid to the Kotak Mahindra Bank Limited and Kotak Mahindra Prime, no time frame is given for making the payment. Therefore, they will remain attached with the Corporate Debtor till the project gets completed. Therefore, in view of the decision (Supra) upon which the objectors have placed reliance, the dissenting financial creditors, who have chosen to quit the Corporate Debtor by not putting their voting share in favour of the proposed plan of Resolution, cannot be compelled to remain attached with the Corporate Debtor.*

54. *Therefore, for the reasons discussed above, in our considered view, the Resolution plan is violative of the provision of Section 30(2)(ii)(b) read with Section 53 of the IBC, 2016 and it is also contrary to the decision of the Hon'ble Supreme Court in the matter of Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. in Civil Appeal No. 3395 of 2020.*



55. Hence, we find force in the contention raised on behalf of the aforesaid dissenting financial creditors/ objectors, that they are entitled to get the payment in terms of money only.

56. So far as the other contention raised by the objector's counsel that the Resolution Plan is not submitted in terms of the Code and Regulations, this issue has also been discussed by the Hon'ble Supreme Court in the Jaypee Case (Supra), wherein the Hon'ble Supreme Court has held that once the resolution plan is approved by the CoC, it is beyond the scope of the Adjudicating Authority to re-examine whether the Resolution Plan was submitted in accordance with the Code or Regulations.

57. Hence, we are of the considered view that this contention of the Ld. Counsel for the Objectors is beyond the ambit of Section 30(2)(b) of the IBC, 2016. Accordingly, we hereby reject this contention of the Ld. Counsel for the Objectors.

58. For the reasons discussed above, we are of the considered view that except the objection that DHFL, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited are entitled to get their payments in monetary terms only, no other objections is liable to be accepted. Hence, all other objections raised on their behalf are rejected.

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68. In sequel to the discussion above, we conclude the matter in the following manner:

- a) So far as the objections raised by the 'other objectors' except DHFL, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited are concerned, we found no merit in their applications in the light of the decision of the Hon'ble Supreme Court in the Jaypee Case (Supra) on which the objectors had placed reliance. We have accordingly **rejected their Objections and Dismissed the**



applications bearing no. CA/1686/2019, CA/1687/2019, CA/52/2020, IA/2664/2020 and IA/5533/2020.

- b) *As we held in the previous paragraphs that in the light of the decision of the Hon'ble Supreme Court in the Jaypee Case (Supra), the DHFL is entitled to get the amount in terms of money and they will not be compelled to remain attached with the Corporate Debtor till the project is completed. In our considered view, the mode of payment to them is contrary to the provision of law as well as the decision of Hon'ble Supreme Court in Jaypee Case (Supra) and to that extent it requires to be modified. Similarly, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited are also entitled to get the payment of Rs. 3 Crore within a specified period. The period, which is not mentioned in the present plan, needs to be specified.*
- c) *As observed by the Hon'ble Supreme Court in the Jaypee Case (Supra), the Adjudicating Authority is not empowered to modify the Resolution Plan, the only remedy available before the Adjudicating Authority is to remit the matter to the CoC to modify the resolution plan.*
- d) *So, under such circumstances, we have no option but to remit the Resolution Plan to the CoC to modify the Resolution Plan as regards to the payment of amounts in terms of money within a specific Period in the light of the decision of the Hon'ble Supreme Court in the Jaypee Case (Supra).*

69. *We further notice that in the instant case, the period of CIRP has already expired on 15.11.2019 and on the same day, the application for approval of Resolution Plan, which is under consideration, was filed. Though the maximum period for completion of the Corporate Insolvency Resolution Process as per second proviso of Section 12(3) of IBC, 2016 is*



330 days, in view of the decision of **Committee of Creditors Essar Steel India Limited Vs. Satish Kumar Gupta and Ors. in Civil Appeal No. 8766-67 of 2019 reported in_2020 (8) SCC 531**, the **said provision is not mandatory**. In para 79 of that judgement, the Hon'ble Supreme Court had held that **“However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation”**.

70. Therefore, in such exceptional circumstances, when we are remitting the resolution plan back to CoC for modifications in terms of payments, as specified above, to the objectors namely, DHFL, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited, we think it proper to extend the period of CIRP for 60 days from the date of this order after excluding the period from the date of filing of this application (IA 1550/2019) i.e. 15.11.2019 till the passing of this order.

71. Accordingly, **we hereby the extend the CIRP by 60 days beyond the period of 330 days after excluding the period from the date of filing the present application bearing No. IA/1550/2019 i.e. 15.11.2019 till the passing of this order**. The resolution professional is directed to inform and also hand over a copy of this order to the Resolution Applicant to modify the Resolution Plan in the light of aforesaid direction. **He is further directed to convene the meeting of CoC within the extended period of CIRP and place the modified Resolution Plan before the CoC for approval. It is, however, made clear that except for the modification in payment conditions relating to the objectors namely, DHFL, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited, which has to be made in terms of money within a specified period and re-**



examination of Liquidation value as specified in the aforementioned paragraph, while discussing this issue, no other issue shall be raised by any objector nor decided by the CoC.”

4. The aforementioned order passed by this Tribunal was assailed by Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited before Hon’ble NCLAT by filing Company Appeal (AT)(Ins.) No. 661 of 2021. The relevant excerpt of the judgment of Hon’ble NCLAT reads thus:-

“6. Before we proceed further, we may notice paragraph 49 and 50 of the impugned order, which paragraphs have been prayed to be set aside by the Appellant. The Appellants have also prayed for a direction to the CoC to consider the Valuation Report submitted by the Registered Valuers while determining the valuation of assets of the Corporate Debtor and computing the liquidation value payable to the Appellant Nos.1 and 2. Paragraph 49 and 50 of the impugned order is as follows:

“49. Now, in the light of position of law settled by the Hon’ble Supreme Court (Supra), we consider the contention of Mr. Sumant Batra, Advocate and we notice that the amount proposed to be paid in the Resolution Plan is approved by the CoC. Under Section 30(2)(b) of IBC read with Section 53 of IBC, 2016, it is the duty of the Resolution Professional to examine the Resolution Plan, whether the distribution to the Creditors is made in terms of the provisions of law and Regulations, thereafter the Resolution Professional shall place the same before the Committee of Creditors u/s 30(3) IBC 2016 for its approval. The COC after considering the feasibility and viability, the manner of distribution proposed, may approve the Plan by not less than 66% of voting share u/s 3(4) of the IBC 2016. It is the commercial wisdom of the CoC to determine what amounts are to be paid to different classes and sub classes of creditors in accordance with the provisions of the Code and the Regulations made thereunder. It is seen that while deciding the amounts in the instant case, the CoC has considered the liquidation value placed by the Resolution Professional as well as the Resolution Applicant as mentioned



in aforementioned paragraphs. Since the units, that have already been sold, are no longer an asset of the Corporate Debtor and consequently cannot be liquidated, their liquidation value has been provided as NIL. The COC after considering the same, approved the amounts proposed to be paid to Kotak Mahindra Bank Limited, Kotak Mahindra Prime Limited and similarly, to DHFL. Hence, we find, no force in the contention raised by the Ld. Counsel for the Objectors that the amounts which are proposed to be paid to the DHFL, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited are contrary to the provision of Section 30(2)(b) of the IBC read with Section 53(1) of the IBC, 2016.

50. However, we notice there is significant differences between the liquidation value submitted by the Two Valuers and valuation assessed by the Resolution Professional and Resolution Applicant, therefore, we think it proper, to leave the matter upon the COC to reexamine this issue and if the properties/ infrastructure in the projects of the corporate debtor is available for sale/ disposal, the COC may consider taking steps for suitable correction of the Liquidation value of all the projects and subsequently, ask the Resolution Applicant to account for the same in the Resolution Plan.”

X X X

19. The Valuation Report of both the Valuers, thus, indicate that they have valued the super area available in the project Universal Business Park excluding the area which was covered by Conveyance Deed. The Valuers proceeded on the assumption that areas, which have been conveyed no title is left with the Corporate Debtor and rest of the area can be included in the valuation. The RP in its reply in the Appeal as well as in the reply before the Adjudicating Authority has brought the facts on the record, indicating that apart from conveying of the super area, the Corporate Debtor has also entered into Builder Buyer’s Agreement with the allottees and the BBA with the allottees with regard to super area in Universal Business Park was 1,65,115 sq. ft. In the reply filed by RP in the Appeal in paragraph 8, detailed facts have been reported, which is to the following effect:



X X X

22. *From the materials brought on record, it is clear that area which is covered by Conveyance Deed was 89,706 sq. ft., whereas total saleable area of the Universal Business Park was 2,15,915 sq. ft. Pleadings of RP was categorical that by BBA, area of 165,115.53 sq. ft. was allocated, which facts have not been disputed by the Appellants. The Appellants case rather is that execution of BBA does not amount to transfer/ sale under the provisions of the Transfer of Property Act, which plea has been specifically taken in paragraph 14 as extracted above. There can be no doubt about legal position that title is conveyed when Conveyance Deed is executed, but certain rights accrue to homebuyers under the BBA, which rights have been recognized by law Courts including the Hon'ble Supreme Court. Promoter, who has entered into a BBA with allottee and allotted a particular flat and received the payment has no right to transfer the same. Hence, the said unit is not available for the Corporate Debtor to again transfer and realise its value. From the pleadings on record, we thus, are of the view that allocation area of 165,115.53 sq. ft. is a matter of record and has to be accepted, since no other facts or material come on record.*

23. *We have noticed that in the Valuation Report, both the Valuers have proceeded to value the super area, which was left after deducting the area conveyed. The Valuers proceeded on the premise that the Corporate Debtor has no ownership with respect to the area, which has been conveyed and rest of the area can be valued for the purpose of valuation of the Corporate Debtor. On the record, the RP has given details of name of allottees, which were given BBA with the date of BBA. Annexure R-1 to the reply contains the details of BBA of Ground Floor and other Floors with the name of allottees and the date of BBA. All the BBA, which have been captured in Annexure R-1 are prior to September 2010. The details of areas sold through Conveyance Deed has also been given, which areas have already taken note by the Valuers. The stand taken by the RP and*



Resolution Applicant is that liquidation value of the Appellant has been treated as NIL, since on the date, the valuation was done, there was no super area left, which could be monetized for the Corporate Debtor. The Corporate Debtor has sold excess area both by Conveyance Deed and BBA. We are satisfied that by the BBA, executed prior to September 2010, when the charge and mortgage was created by Promoters in the project Universal Business Park, all areas were sold. The Valuers, technically were right in taking a view that those areas, which has been conveyed by Promoters, they do not have ownership, however, the Valuers proceeded to take into consideration the areas with regard to which no Conveyance Deed was executed to be the assets of the Corporate Debtor.

24. When we look into reality, which is apparent from the materials on record, it is clear that with regard to Universal Business Park, entire area was sold by Conveyance Deed and by BBA to the allottees and the Promoters have received the money through the Conveyance Deed and BBA and after execution of the BBA, the allottees acquired the right to receive possession of the units for which payments have been made.

25. In this context, we may notice the judgment of the Hon'ble Supreme Court, where the Hon'ble Supreme Court had occasion to consider the nature of right, which accrue through a BBA to allottee and the protection, which homebuyers are required from the Courts of Law. We may refer to the judgment of the Hon'ble Supreme Court in **Bikram Chatterji v. Union of India (2019) 19 SCC 161**, where the Hon'ble Supreme Court had occasion to consider housing and real estate allotment, Sale Deed, transfer of flats by builders/ developers to homebuyers. The Hon'ble Supreme Court was considering the real estate Project namely – Amrapali Group. Writ petitions under Article 32 were filed by homebuyers praying for various reliefs from the Hon'ble Supreme Court. In the above context Hon'ble Supreme Court while considering the BBA made following observation in paragraph 133 and 134 of the judgment:



“133. *The agreement initially executed in favour of homebuyers to purchase flats may not create any right in the property in praesenti, it will be only on the execution of the registered document that title is going to be perfected, but investment in project is only of homebuyers. In this case, as they have paid money invested in projects, it is for the courts to do complete justice between the parties and to protect the investment so made and interests of homebuyers and to ensure that they get the perfect title and the fruits of their hard earned money and lifetime savings invested in the projects.*

134. *On behalf of Bank of Baroda, learned Senior Counsel submitted that the agreement of promoter/ builder with homebuyers is unregistered as such, no right has been created in the immovable property in view of the provisions contained in Section 49 of the Registration Act. The submission ignores and overlooks the provisions of RERA which intends to prevent such frauds on homebuyers and ensure completion of projects and that of the agreement between promoters and buyers. There are various rights under the agreement as well as under RERA. The agreement entered into at the time of allotment is the basis of the investment in the projects made by homebuyers, it cannot be said to be a scrap of paper. It is their valuable investment which is required to be protected and cannot be permitted to be taken away by builder or secured creditors in an illegal manner. The provisions of Section 17 of the Registration Act no doubt provide that a document of title requires compulsory registration, no doubt registered document has to be executed that also has to be taken care of by the Court so as to protect the interest of homebuyers.”*

26. *In the above case before the Hon’ble Supreme Court, the Banks, who had security interest contended that they have agreements with the Promoters. In reference to the claim of the Banks regarding mortgage, Hon’ble Supreme Court had observed that in the facts and circumstances of the case, rights or interest of the allottees are not affected by the mortgage created by the Bankers. In paragraph 136 of the judgment, following has been held:*

“136. *The learned Senior Counsel on behalf of Bank of Baroda submitted that the provisions of Section 11(4)(h) of RERA provides*



that the promoter, after he executes an agreement for sale for any apartment, plot or building, cannot mortgage or create a charge on such an apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be. The provision has a non obstante clause. As the provision has given an overriding effect by non obstante clause, the provision is of no help to the banks as the agreement had been by promoters with homebuyers entered into earlier in point of time to the creation of the mortgage. There could not have been any mortgage created subsequently and even if validly created, it would not affect the right and interest of the allottee as intended by RERA. Thus, the right and interest of the allottee are safeguarded by virtue of the provisions contained in Section 11(4)(h). As the project was pending, the provision intends to confer a right on the allottee and save the allottees and also their interests from such liability. Even if the provision is held not applicable on the ground that RERA came into force later, since there was no valid mortgage as held by us, it was incapable of affecting the right or interest of the allottee. Had it been ensured that the money due to Noida and Greater Noida Authorities was paid by the promoters to the authorities, the fraud of siphoning of money would not have taken place to the extent it has been done. Moreover, the money borrowed from banks has not been invested in the projects. In fact, projects required no funding. It would be iniquitous to charge the allottees with the bankers' money. Thus, in the peculiar facts and circumstances of the case, we hold that rights or interests of the allottees are not at all affected by the mortgage created by the bankers or by the dues of the Noida or Greater Noida Authorities.”

27. When we revert to the facts of the present case, it is clear that the entire super area of Universal Business Pak was conveyed by Sale Deeds and by BBA, rather, the facts indicate that total area conveyed/ allotted was more than total area of Ground Floor and all the Floors. When area has been allotted to homebuyers, who have also paid the amount as per the agreement, homebuyers get an interest to receive the possession of the unit.



28. The Adjudicating Authority after considering the facts in the impugned order has considered all aspects of the matter and has noted the facts and circumstances, which were brought by the parties on record. The Adjudicating Authority has also noticed and extracted the summary of the Resolution Plan in its order. In paragraph 41 of the impugned order, following has been observed:

“41. So far as the Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited are concerned, they are proposed to be paid Rs.3 crores on the ground that the entire area under the Universal Business Park project has been sold and there are no assets belonging to the Corporate Debtor left under this project. Accordingly, the liquidation value of the assets belonging to the Corporate Debtor under this project is shown as Nil in the Part-I of the Resolution Plan. It is also mentioned that they have mortgage right over the land, on which the project namely, “the Pavillion” is situated in Sector 70A, Mauza Palra, Tehsil & Distt. Gurugram, Haryana. As shown in the Part-II of the Resolution Plan, the project is yet to be started and they will get realization of the amount in the manner as stated in Part-II of the Plan.”

29. We have also noticed the caveats given by the Valuers in their Report. The valuation of the different projects including project Universal Business Park was with the caveats as noted above. The Valuers did not enter into issue of encumbrance over the assets. The finding has been recorded by the Adjudicating Authority in paragraph 49 that since the units have already been sold, are no longer the asset of the Corporate Debtor, hence, the liquidation value of the Universal Business Park project is NIL. The Adjudicating Authority has rightly come to the above conclusion after considering the facts and circumstances of the present case. We fully concur with the observations made by the Adjudicating Authority in paragraph 49.

30. Now, we come to the submission of the learned Counsel for the Appellants that the Adjudicating Authority committed error in directing the CoC to re-examine the issue of significant differences between the



liquidation value submitted by the two Valuers . As per statutory scheme under the CIRP Regulations and the IBC Code, the liquidation value arrived by the valuers serves an important factor in the entire resolution process. The liquidation value fixed by the Valuers cannot be ignored in the resolution process. It is true that CoC on any valid reason can take a call to ask for any fresh valuation due to any relevant circumstances, but the valuation done by the Registered Valuers and average of liquidation value taken up by the Valuers serves the specific purpose and cannot be allowed to be disregarded by the CoC. In event, it is accepted that the CoC can change the liquidation value on its own, that may lead to unsatisfactory results. We, thus, are of the view that liquidation value found by the Registered Valuers cannot be allowed to be changed by the CoC. We, thus, are satisfied that direction by Adjudicating Authority to CoC to re-examine the issue of significant differences between liquidation value submitted by two Valuers was uncalled for. We may however, hasten to add that in the present case, liquidation value, which was to be ascribed to the Appellant was an issue, which cannot be said to have determined by the Valuers in their Valuation Report. Valuers in their Valuation Report has added a caveat, which we have already noticed, which clearly left the issue to be determined while allocating the amounts to be paid to the dissenting Financial Creditors. Thus, in the facts of present case, we having concurred with the finding of the Adjudicating Authority that liquidation value of the Appellant was NIL, we see no reason to maintain the direction issued in paragraph 50.

31. In view of the foregoing discussions, we are of the view that observations and directions in paragraph 49 needs to be affirmed, whereas directions issued in paragraph 50, deserves to be deleted. We are further of the view that relief (b) and other reliefs claimed in the Appeal by the Appellants cannot be granted.



32. In result of the foregoing discussions, we dismiss the Appeal subject to deletion of paragraph 50 of the impugned order dated 11.06.2021. Parties shall bear their own costs.”

5. The Applicant/RP apprised the CoC regarding the order passed by this Tribunal and placed the order before it in the 16th meeting held on 29.06.2021 wherein Mr. Jayant Mehta, Senior Counsel was proposed to be engaged for legal opinion particularly in matter of re-examination of liquidation value. Relevant excerpt of the legal opinion of Mr. Jayant Mehta, Senior Counsel placed before the CoC in its 17th meeting held on 05.08.2021 reads thus:-

“21.1.5. Therefore the calculation of liquidation value must exclude the value of such number of units, which are already subject to ATSS/BBAs and it is only any balance consideration payable in respect thereof and the unsold units that can be taken as the asset of the corporate debtor that can be realized by way of sale thereof.

X X X

21.2.2 Therefore, only the units which are unsold should be treated as the realizable asset of the corporate debtor. For the sold units, the value to the corporate debtor can only be the difference if any between the receivable from the unsold units and the cost of construction as any purchaser of the corporate debtor, even in liquidation, would not be able to purchase the property free of rights created by the existing ATSS/BBAS.”

6. In the 17th meeting itself, the CoC noted that there is no need to have fresh valuation as it is not the subject matter of dispute and that only issue is to re-examine the liquidation value payable to secured creditors in view of the fact that there was unsold inventory or limited unsold inventory available with the



Corporate Debtor in event of liquidation. The issue of overselling of area, non-obtaining of NOC from secured creditors, etc. were also discussed in the aforementioned meeting. Further, the Resolution Applicant proposed to make arithmetic changes and re-submit the resolution plan. The agenda regarding seeking extension of CIRP period was put to vote and approved by 93.36% voting in favour.

7. Ergo, an application for extension of CIRP period by 60 days could be preferred by the Applicant/RP wherein CIRP period was extended by 45 days i.e. till 24.09.2021 in terms of order dated 07.09.2021 passed by this Tribunal.

8. The resolution plan was placed before the CoC for approval in its 18th CoC meeting held on 08.09.2021, in terms of Section 30(4) of the Code. The relevant excerpt of the resolution passed by the CoC in said meeting and the results of e-voting noted therein reads thus:-

“Further resolved that resolution professional be and is hereby authorised to file an application for approval of resolution plan before Hon'ble National Company Law Tribunal in terms of Section 30(6) of Insolvency & Bankruptcy Code, 2016.”

X X X

A consolidated result of entire voting after considering provisions of Section 25A(3A) of Insolvency and Bankruptcy Code, 2016 is presented below;



S. No.	Name of Financial Creditor	Voting Share (%)	Yes (%)	No (%)	Abstained (%)	Total (%)
1	Kotak Mahindra Bank Limited	1.59		1.59		1.59
2	Kotak Mahindra Prime Limited	4.27		4.27		4.27
3	Axis Bank Limited	0.61		0.61		0.61
4	HDB Financial Services Limited	0.57		0.57		0.57
5	Small Industries Development Bank of India	1.08		1.08		1.08
6	Hero Fincorp Limited	3.54	3.54			3.54
7	Ms. Nisha Singh	0.17	0.17			0.17
8	Sunflame Enterprises Private Limited	1.47	1.47			1.47
9	Dewan Housing Finance Limited	20.66		20.66		20.66
10	Indusind Bank Limited	0.78		0.78		0.78
11	Allottees under Real Estate Projects*	65.26	65.26			65.26
	Total	100.00	70.44	29.56	-	100.00

Result of Voting:-

*The above resolution was required to be passed by a vote of not less than 66 % of voting share of the financial creditors. The above resolution was voted **70.44%** voting in favour of resolution. Hence, the above resolution stood passed.”*

9. It is submitted by the Applicant/RP, that the CoC in its 17th and 18th meeting deferred to decide on estimate of amount required to meet liquidation cost and liquid assets available to meet the same in terms of Regulation 39B of CIRP Regulations; sale of CD as going concern in terms of Regulation 39C of CIRP Regulations; and determination of fees of liquidator in terms of Regulation 39D of CIRP Regulations.



10. The Applicant/RP in terms of Section 30(2)(b)(ii) of the Code calculated the liquidation value for the Financial Creditors on the basis of unsold area available in the project which they financed. However, the Secured Financial Creditors have not concurred with this view of the Applicant/RP. The Liquidation Value payable to the Secured Financial Creditors after taking the unsold area in respective project into the consideration reads thus:-

S No.	Name of the Project	Liquidation Value (Rs. Crores) on the basis of unsold area	Name of Secured Creditor to whom charged	Mode of payment
1.	Universal Aura	23.21	Dewan Housing Finance Corporation Limited	Cash in 180 days, INR 44.81 Crores after deducting pro-rata CIRP cost.
2.	Universal Greens	21.37	Dewan Housing Finance Corporation Limited	
3.	Universal Business Park	-	Kotak Mahindra Bank / Kotak Mahindra Prime Limited	Cash in 180 days (INR 3 Crores)
4.	The Pavillion	24.98	Kotak Mahindra Bank / Kotak Mahindra Prime Limited	Release of security in favour of lender or from proceeds of sale in manner as provided in the Plan
5.	Universal Prime	1.47	SIDBI	Release of security in favour of lender or from proceeds of sale in the manner as provided in the Plan

11. It has been espoused by the Applicant/RP that Applicant in terms of the directions issued by this Tribunal vide order dated 11.06.2021, the Resolution

IA-5003/2021, IA-678/2022, IA-3778/2022, IA-1732/2023, IA-3099/2023, IA-4569/2023, IA- 6746/2023, IA-2959/2024 in CP(IB)-456/ND/2018

Ms. Pallavi Joshi Bakhru vs. M/s Universal Buildwell Private Limited



Plan has been modified by the SRA and in the modified plan, provision has been made for payment to DHFL and Kotak Bank. The revised provision made in consonance with the order passed by this Tribunal reads thus:-

- a. On approval of the Resolution Plan by the Adjudicating Authority, DHFL shall be paid **Rs. 44.81 Crores on or before 180 days** of approval of the resolution plan.
- b. Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited shall be paid **Rs. 3 Crores on or before 180 days** of approval of resolution plan by adjudicating authority.

The addendum to the plan providing as above has been reproduced herein below in later part of the order. It is also the case of the RP that the timeline introduced in payment would ensure the payment in terms of the plan would be made to dissenting financial creditors in priority.

12. The Applicant has submitted following Bank Guarantee as Performance Security for which renewal is in process:-

S No.	Date of Bank Guarantee	Name of issuing bank	Amount of Bank Guarantee (Rs.)	Valid upto
1.	19.12.2019	IDBI Bank Limited	1,58,10,000	18.12.2024
2.	26.12.2019	IDFC First Bank Limited	1,43,00,000	25.12.2020*
3	16.12.2019	Indusind Bank Limited	30,00,000	15.12.2020*
Total			3,31,10,000	

13. The details regarding fair value and liquidation value of the CD, the distribution of the resolution plan amount amongst the stakeholders, and



compliances are given in the “Compliance Certificate” filed by the Applicant/RP in Form ‘H’ as provided under Regulation 39(4) of the CIRP Regulations, annexed as Annexure-J to the application, relevant excerpt of which is reproduced hereinbelow for the purpose of instant reference:-

18	Fair Value	Rs. 415.27 Crores
19	Liquidation value	Rs. 299.23 Crores*

**the liquidation value attributable to the financial creditors after taking into consideration the unsold area in the respective project is as under:*

S No.	Name of the Project	Liquidation Value (Rs. Crores) on the basis of unsold area	Name of Secured Creditor to whom charged
1.	Universal Aura	23.21	Dewan Housing Finance Corporation Limited
2.	Universal Greens	21.37	Dewan Housing Finance Corporation Limited
3.	Universal Business Park	-	Kotak Mahindra Bank / Kotak Mahindra Prime Limited
4.	The Pavillion	24.98	Kotak Mahindra Bank / Kotak Mahindra Prime Limited
5.	Universal Prime	1.47	SIDBI

X X X

7. The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs. Crores)

Sl. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1	Secured Financial Creditors	a) Creditors not having a right to vote under sub-section 2 of Section 21	NIL	NIL	NIL	NIL



		b) Other than a) above: -				
		i. who did not vote in favour of the resolution plan				
		Dewan Housing Finance Corporation Limited	183.20	180.61	44.81	24.81%
		Kotak Mahindra Bank Limited*	13.93	13.93	0.82	5.85%
		Kotak Mahindra Prime Limited* SIDBI**	37.34 12.42	37.34 9.47	2.18 -	5.85% -
		ii. who voted in favour of the resolution plan				
		Sunflame Enterprises Private Limited	12.82	12.82	No payout has been proposed for M/s Sunflame Enterprises Limited under the plan but it has been proposed that Sunflame Enterprises Limited shall be treated as allottee for all the units mortgaged to it and shall be given treatment accordingly.	
		Total (a+b)	259.71	254.17	47.81	18.81% plus proceeds as per Section 53 out of Part-2 of the plan



2	UnSecured Financial Creditors	a) Creditors not having a right to vote under sub-section 2 of Section 21	NIL	NIL	NIL	NIL
		b) Other than a) above:- i. who did not vote in favour of the resolution plan				
		Indusind Bank Limited	6.82	6.82	To be addressed in Part-2 of resolution plan where liquidation for remainder of corporate debtor is proposed and distribution shall be made in accordance with Section 53 of the Code.	
		Axis Bank Limited	7.81	5.37		
		HDB Financial Services Limited	5.02	4.98		
		ii. who voted in favour of the resolution plan				
		Hero Fincorp Limited	30.98	30.98	To be addressed in Part-2 of resolution plan where liquidation for remainder of assets of corporate debtor is proposed.	
		Ms. Nisha Singh	1.51	1.51	0.23	15.23%
		Total (a+b)	52.14	49.66	0.23	0.46% plus proceeds as per Section 53 out of Part-2 of the plan
3	Operational	a) Related				



3	Operational Creditors	a) Related Party of Corporate Debtor	NIL	NIL	NIL	NIL
		b) Other than a) above				
		i. Government Dues	171.77	117.21	-	-
		ii. Workmen	-	-	-	-
		iii. Employees	2.18	1.99	0.40	20.10%
		iv. Suppliers	34.68	18.13	2.31	12.74%
		Total(a+b)	208.63	137.33	2.71	1.97%
4	Other Debts and Dues		0.08	0.04	--	--
Total			520.56	441.20	50.75	
Insolvency Resolution Process Cost			4.94	4.94	4.94	100%
Total amount provided in the resolution plan			525.50	446.14	55.69	
Claims of allottees under real estate projects \$\$			765.71	571.71	Resolution applicant is proposing delivery of flats / units to allottees of 3 projects namely, Universal Aura, Universal Greens and Universal Business Park and proposing claimants of other projects namely, Universal Square, The Pavillion, Universal Trade Tower and Universal Prime shall be taken care under Part-2 of resolution plan where liquidation for remainder of assets has been proposed and distribution shall be in accordance with Section 53 of Insolvency & Bankruptcy Code, 2016	
Total Amount Provided under the Resolution Plan			1291.20	1017.85	55.69	



* Apart from this amount, as per Part-2 of resolution plan, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited will also be part of distribution from remainder of assets of corporate debtor as per Section 53 of Insolvency & Bankruptcy Code, 2016

** SIDBI will get its share out of distribution from remainder of assets of corporate debtor as per Section 53 of Insolvency & Bankruptcy Code, 2016 as proposed in Part-2 of resolution plan.

\$\$ No payout has been proposed for M/ s Sunflame Enterprises Limited under the plan but it has been proposed that Sunflame Enterprises Limited shall be treated as allottee for all the units mortgaged to it and shall be given treatment accordingly.

\$\$\$ Resolution applicant is proposing delivery of flats / units to allottees of 3 projects namely, Universal Aura, Universal Greens and Universal Business Park and proposing claimants of other projects namely, Universal Square, The Pavillion, Universal Trade Tower and Universal Prime shall be taken care under Part-2 of resolution plan where liquidation for remainder of assets has been proposed and distribution shall be in accordance with Section 53 of Insolvency & Bankruptcy Code, 2016.

14. The financial outlay and sources of funds given in the plan reads thus:-

“SOURCE OF FUNDS

The total expenditure under the Resolution Plan is 192.27Cr. The sources of fund for the said expenditure as detailed in the Cash Flow Projections enclosed as **Annexure- UG10** is as under:

Sl. No.	Source of Fund	Amount (₹ in Cr)
a	Contribution from existing home buyers under existing agreement	37.22
b	Additional contribution by home buyer @ ₹750/- per Sq. ft.	36.95
c	Proceeds form Sale of Unsold Units	75.92



d	Proceeds from Sale of Commercial Space	7.00
e	Receipt from area earmarked for DHFL settlement	16.36
f	Receipt from area earmarked for DTCP settlement	7.02
g	Bridge Financing from Co-Developer	18.50
h	Reimbursement of CIRP Cost	0.15
i	Release of margin money for PBG	1.29
Total Receipts		200.41

15. It can be seen from Page 13 of the Resolution Plan that there is a provision contained regarding payment of CIRP cost which reads thus:-

“CIRP Cost

*The total CIRP Cost till 30.09.2019 as communicated by the Resolution Applicant is 4,94,15,653/-. The entire CIRP cost shall be paid by the three Associations in the consortium in the ratio of the claim admitted by Resolution professional in respect of their Project. The sharing ratio between Universal Greens, Universal Aura and Universal Business Park works out to 18.53%, 61.69% and 19.78% respectively (**Annexure-B**). As such these three Associations shall contribute an amount of 91,56,063/-; 3,04,86,848/-; and 97,72,742/- respectively. Any revision in claim ratio due to further admission of claims by RP shall not affect allocation further. Moreover if any enhancement in the CIRP Cost upto the date of approval of Resolution Plan by Hon'ble NCLT, the associations undertakes to pay the enhance amount as per their share with above mentioned CIRP cost.*

The CIRP Cost if any paid by the COC members till date shall be reimbursed under this Resolution Plan from the amount so earmarked.

The amount of CIRP Cost pertaining to the Projects under Part-II of this plan wherein the claims are proposed to be settled after realisation of remaining assets of Corporate Debtor shall be reimbursed to the respective Associations/Demerged Companies on realisation of the proceeds under Part-II of this Plan.”

16. The Resolution Plan provides for implementation schedule/sequence which reads thus:-



“Implementation Schedule/Sequence

The entire construction activity will take 9 months from effective date to get the building operational. The construction / refurbishment activities shall be implemented as follows:-

- *Approval of Resolution Plan by NCLT/ Adjudicating Authority.*
- *Approval from RERA if required (although main Building is constructed no additional construction is involved)*
- *Approval/ Extension/ Transfer of License.*
- *Opening of Escrow account to collect funds from Unit Holders.*
- *Forensic Audit/Due Diligence to be undertaken by Resolution applicant for his internal purpose*

The time of 9 months after forensic audit/due diligence is subjected to any force majeure and any time lost to any court proceedings or any litigation.

No other financial obligation of Corporate Debtor or any interest, penalty is put on this project except to the extent of proposed under this resolution plan.

The effective date:-

Effective date for this resolution plan is later of the following dates:-

1. *Date of approval of resolution plan*
2. *Date on which resolution applicant gets control and physical possession of all assets of Universal Business Park and original title deeds mortgaged with the banks along with all relevant papers.*
3. *Date on which license gets renewed or reinstate through order of NCLT.*
4. *The resolution has been prepared keeping in mind the IM provided by RP and we have done proper due diligence as duty of Resolution Applicant before relying on the information. However, Unit holders by virtue of affidavits/ Undertakings are ready to bear the incidental excess amount, if any.*



Effective date shall be suitably extended if there is any stay or reinstate from NCLT or any other court that restrict implementation of resolution plan.”

17. The Resolution Plan also contain the provisions regarding appointment of Monitoring Agency for supervision of implementation of the Resolution Plan which reads thus:-

“Appointment of Monitoring Agency for supervision of implementation of the Resolution Plan:-

Resolution Applicant proposes the constitution of monitoring committee as under to supervise the implementation of plan:-

- 1. A person nominated by Hon'ble NCLT (Remuneration to be decided by Hon'ble NCLT and to be shared by all three Associations in share of Claims).*
- 2. A Legal professional nominated by Resolution Applicant (Remuneration to be decided by the Resolution Applicant and to be shared by all three Associations in share of Claims).*
- 3. One representative from each association i.e. Universal Aura, Universal Green, Universal Business Park.*
- 4. One representative from lenders as nominated by them.”*

18. The SRA also sought various Reliefs and Concessions enumerated at Page 21 of the Resolution Plan. Nevertheless, the SRA has given an undertaking in form of Note that irrespective of the grant of relief and concessions by this Adjudicating Authority, the Plan would be binding upon the Resolution Applicant. The relevant excerpt of the undertaking in the Plan reads thus:-

“Note: All the reliefs sought by Resolution Applicant is essential for successful and viable resolution plan but if any or all of above are not



been granted by Hon'ble NCLT, it is submitted that this resolution plan shall be binding upon resolution applicant.”

19. The Applicant/RP has placed on record Affidavit of Resolution Applicants under Sec. 29A of the Code. The Affidavits are available at Page Nos. 259-264, 343-3533, 459-464 and 496 of Volume-3 of the application. One of the affidavits reads thus:-

AFFIDAVIT ON RS 100 STAMP PAPER

I, Kamlesh, W/o Shri Navdeep Singh aged 54 years, residing at H.No 117B, 2nd floor, IP Colony, Sector 33, Faridabad -121003 designated as Secretary of Universal Greens Buyers Association (Resolution Applicant) having its registered office at Flat No. A-302, Life Style Residency, Sector-65, Faridabad, Haryana, Pin-121004 and Office at House No. 153, Sector-45, Faridabad, Haryana, Pin-121010 do solemnly affirm and declare on oath as under:-

1. I understand that an insolvency resolution process has been initiated against Universal Buildwell Private Limited, Gurgaon vide order dated 03.07.2019 passed by National Company Law Tribunal, New Delhi, Bench -II in an application filed by operational creditor against the Corporate Debtor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (amended up to date)(IBC).
2. I state that the present affidavit is sworn by me on behalf of the Resolution Applicant, in compliance of section 29A of the IBC.
3. I on behalf of the Resolution Applicant and any other person acting jointly or in concert with the Resolution Applicant hereby confirm that:
 - (i) The Resolution Applicant and any connected person as per the Explanation I provided under section 29A of the IBC is not an ~~an~~ discharged insolvent; or
 - (ii) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC, is not identified as a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949; or
 - (iii) At the time of submission of the Resolution Plan, the account of the Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC or an account of the corporate debtor under the management or control of such person of whom such person is a promoter, IBC is not classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or guidelines of a financial sector regulator issued under any other law at the time being in force and at least a period of one year or more has lapsed from the date of such classification till the date of commencement of corporate insolvency resolution process of the corporate debtor and that I have not failed to make the payment of all overdue amounts with interest thereon and charges relating to non-performing asset before submission of Resolution Plan; or
 - (iv) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not been convicted for any offence punishable with imprisonment for 2 years or more under any Act specified in the Twelfth Schedule or for seven years or more under any law for the time being in force or a period of two years has expired from the date of release of such imprisonment; or
 - (v) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not been disqualified to act as a director under the Companies Act 2013; or
 - (vi) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not been prohibited by the Securities and Exchange Board of India from trading in securities or assessing the securities markets; or
 - (vii) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not indulged in preferential transaction or undervalued transaction or fraudulent transaction in respect of which an order has been made by the Adjudicating Authority under the IBC; or
 - (viii) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not executed a guarantee in favor of a creditor, in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under the IBC and no such guarantee has been invoked by the creditor or remains unpaid in full or part; or
 - (ix) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC are not subject to any disability, corresponding to clauses mentioned above under any law in a jurisdiction outside India.



- (i) That the Resolution Applicant unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected persons as required under Regulation 38(3) of the CIRP Regulations.
- (ii) That the Resolution Applicant unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected persons as per the provisions of the CIRP and the rules and regulations framed there under to submit a resolution plan and that it shall provide all documents, representations and information as may be required by the RP or the COC to substantiate to the satisfaction of the RP and the COC that the Resolution Applicant is eligible under the IBC and the rules and regulations there under to submit a resolution plan in respect of Corporate Debtor.
- (iii) That the Resolution Applicant unconditionally and irrevocably undertakes that it shall provide all data, documents and information as may be required to verify the statements made under this affidavit.
- (iv) That the Resolution Applicant understands that the COC and the RP may evaluate the resolution plan to be submitted by the Resolution Applicant or any other person acting jointly with it and such evaluation shall be on the basis of the confirmations, representations and warranties provided by the Resolution Applicant under this affidavit.
- (v) That the Resolution Applicant agrees that each member of the COC and the RP are entitled to rely on the statements and affirmations made in this affidavit for the purposes of determining the eligibility and assessing, agreeing and approving the resolution plan submitted by the Resolution Applicant.
- (vi) That in the event any of the above statements are found to be untrue or incorrect, then the Resolution Applicant unconditionally agrees to indemnify and hold harmless the RP and each member of the COC against any losses, claims or damages incurred by the RP and / or the members of the COC on account of such ineligibility of the Resolution Applicant.


(Deponent)

VERIFICATION

Verified at Faridabad on this 22nd July 2019 (day, month & year), that the above contents of this affidavit are true & correct to the best of my knowledge and belief and nothing has been concealed there from.




(Deponent)

20. In Consolidated Undertaking submitted by Welfare Association in Resolution Plan the SRA specifically averred that the plan is not in contravention of any of the provisions of the law. The Clause 1(f) of the undertaking reads thus:-

“(f) The Resolution Plan submitted by us does not contravene any of the provisions of law for the time being in force;”

21. The SRA has filed an Addendum dated 05.08.2021 to Resolution Plan wherein it highlighted the modifications made in the Resolution Plan, in pursuance to the order of this Tribunal dated 11.06.2021, which reads thus:-



1. DHFL shall be paid an amount of Rs. 44.81 crores on or before 180 days of the Effective Date i.e., approval of the Resolution Plan by the Adjudicating Authority as per the Timeline of Payment attached as **Annexure-I** to this addendum. The said amount will be paid by Universal Aura Welfare Association and Universal Greens Buyers Association to the extent of Rs.22.71 crores and Rs. 22.10 crores respectively. 
2. Though the resources available in the two projects are limited, the upfront payment to DHFL has been achieved by deferring the construction activities. The funds earmarked for starting the construction work shall now be paid to DHFL and consequently the construction work will start delayed by three to six months.
3. With respect to modification pertaining to the Universal Greens Project following is highlighted:
 - a) The revised construction schedule of Universal Greens Project is enclosed as **Annexure-II** to this addendum.
 - b) The Summary Cash Flow of the Universal Greens Project has been enclosed as **Annexure-III** to this addendum and the month wise detailed cash flow has been enclosed **Annexure-IV** to this addendum.
 - c) There is no increase in the additional fund to be brought in by the Home Buyers under the Resolution Plan and the same continues at Rs. 800 per Sq. Ft as approved by Committee of Creditors in its 15th meeting held on 11.11.2019.
4. With respect to modification pertaining to the Universal Aura Project following is highlighted:
 - a) The revised construction schedule of Universal Aura Project is enclosed as **Annexure-V** to this addendum.
 - b) The Summary Cash Flow of the Universal Aura Project has been enclosed as **Annexure-VI** to this addendum and the month wise detailed cash flow has been enclosed **Annexure-VII** to this addendum.
 - d) There is no increase in the additional fund to be brought in by the Home Buyers under the Resolution Plan and the same continues at Rs. 850 per Sq. Ft as approved by Committee of Creditors in its 15th meeting held on 11.11.2019.
5. The Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited shall be paid an amount of Rs. 3 crores from the Universal Business Park Project on the Completion Date i.e., on or before 180 days from the Effective Date i.e., the date of approval of the Resolution Plan by the Adjudicating Authority as brought out in 'Timeline of the Payment' enclosed as Annexure-I to this addendum. 
6. With respect to modification pertaining to the Universal Business Park Project following is highlighted:
 - a) The cash flow of the Universal Business Park Project for the entire implementation schedule is enclosed as **Annexure-VIII** to this addendum.



b) In the Resolution Plan approved by COC, the additional fund to be brought in by the Home Buyers of Business Park was Rs. 20.32 crores with a mix of additional contribution amounting to Rs. 695 per Sq. Ft. and share of lease rentals @Rs.25 per Sq. Ft. per month. As per addendum now the amount to be brought in by the Home Buyers remains at Rs. 20.32 crores. However, the money proposed to be brought in earlier from lease rental shall now be brought in as upfront additional contribution @ Rs. 941 per Sq. Ft.

As such there is no additional burden on the Home Buyers because of preponing the payment to Kotak Mahindra Bank Ltd. and Kotak Mahindra Prime Limited and the same remains .

22. The addendum further provides with Payment Matrix under the Plan which is as follows:-

Sl. No.	Payment to	Payment By			Total
		UGBA	UAWA	UBPOA	
1	CIRP Cost	0.92	3.05	0.98	4.95
2	DHFL	22.10	22.71	0.00	44.81
3	Kotak Mahindra Bank Ltd	0.00	0.00	0.82	0.82
4	Kotak Mahindra Prime Ltd	0.00	0.00	2.18	2.18
5	Employee Cost	0.18	0.20	0.20	0.58
6	Operational Creditors	0.24	0.87	1.90	3.01
7	Unsecured Creditors	0.23	0.00	0.00	0.23
	Total	23.67	26.83	6.08	56.58

Objection filed in IA-3778/2022:

23. The captioned application has been preferred by HDFC Bank Limited (“**Applicant Bank/Objector**”) seeking direction and raising objection to the Resolution Plan filed under Section 30(6) of the Code vide IA-5003/2021.

24. The salient plea espoused in the application/written submissions are as follows:-

IA-5003/2021, IA-678/2022, IA-3778/2022, IA-1732/2023, IA-3099/2023, IA-4569/2023, IA- 6746/2023, IA-2959/2024 in CP(IB)-456/ND/2018

Ms. Pallavi Joshi Bakhru vs. M/s Universal Buildwell Private Limited



- a. The Resolution Plan as approved by the CoC of Universal Buildwell Private Limited (Corporate Debtor) has erroneously included the assets of Corporate Debtor units bearing the following description: Unit Nos. 618-626, having super area 8702 sq. ft. at 6th Floor, Universal Business Park, Sector 66, Badshahpur, Gurgaon (collectively, “Property”).
- b. The Property is owned by M/s Nayanika Holding Pvt. Ltd. (“Nayanika Holdings”) upon which the sole and exclusive charge in the nature of mortgage vests with the Applicant Bank/Objector.
- c. The Property was purchased by Nayanika Holdings from the Corporate Debtor under a registered Conveyance Deed dated 14.10.2015, much prior to initiation of CIRP, which remains unchallenged till date and the question of title to the Property in favor of Nayanika Holdings remains established.
- d. Nayanika Holdings had availed a secured Loan Facility to the tune of INR 1,05,00,00,000/- from the Applicant Bank/Objector which was secured by way of creation of mortgage over the Property. The charge was also registered with the ROC.
- e. Initially, Nayanika Holdings paid its EMIs in accordance with the repayment schedule but later the Applicant Bank/Objector received an email dated 06.05.2022 written by Sanjeev Malhotra (co-borrower), acting for and on behalf of Nayanika Holdings, seeking deferment of instalments due and payable towards the subject loan facility citing his inability to



Corporate Debtor, wherein the property was unavailable for his use as a consequence of the proceedings.

- f. Aggrieved by the inclusion of the Property as an asset of the Corporate Debtor, the Applicant Bank/Objector approached the Respondent/RP on and around 22.07.2022 seeking release of the Property indicating that the Property belonged to Nayanika Holdings and that the Applicant Bank/Objector had the sole and exclusive charge thereon. In his response dated 22.07.2022, the Respondent/RP casually claimed, inter alia, that the Resolution Plan in respect of the entire premises comprised in Universal Business Park was approved by the COC and the same was pending adjudication before this Adjudicating Authority further claiming that the area sold is more than the available area and the conveyance deed was executed without obtaining the Occupation Certificate.
- g. The Applicant Bank/Objector is gravely prejudiced by the act of inclusion of the property over which it holds a valid and subsisting charge.
- h. It is trite law that NCLT is not a civil court and can only exercise the powers within the contours of the jurisdiction prescribed by the statute. In terms of Section 18(1)(f)(i) & (vi) of the Code read with the Explanation thereto, IRP can take control only of 'assets' over which the Corporate Debtor has 'ownership rights'. However, assets owned by third parties are specifically excluded. Further, where the ownership is disputed, Section 18(1)(f)(vi) provides for control over assets subject to determination of ownership by



a court or authority, meaning thereby that NCLT cannot decide the issue of ownership or possession.

- i. Further, a perusal of Section 25(2)(b) of the Code makes it amply clear that whenever the Corporate Debtor has to exercise rights in judicial proceedings, the RP cannot short-circuit the same and bring a claim before the NCLT.
- j. When the contours of NCLT's powers are defined as noted above, no relief in equity can be granted extending to include the Units or the area within the Resolution Plan purely on account of difficulty in implementing the Conveyance Deed. It is trite law that NCLT does not have jurisdiction in equity that can operate independent of statutory provisions. Reliance is placed on the judgment of Hon'ble Supreme Court in ***Pratap Technocrats (P) Ltd & Ors vs. Monitoring Committee of Reliance Infratel Limited & Anr*** (Civil Appeal No. 676 of 2021). The relevant excerpt of the judgment reads thus:-

*“25 The function of the Adjudicating Authority under Section 31 is to determine whether the resolution plan **“as approved by the CoC”** under Section 30(4) “meets the requirements” under Section 30(2). If the Adjudicating Authority is satisfied that the resolution plan, as approved, meets the requirements under sub-Section (2) of Section 30, **“it shall by order approve the resolution plan”** which shall then be binding on the Corporate Debtor and all stakeholders, including those specifically spelt out:*

“31. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements



as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.”

26 *The jurisdiction which has been conferred upon the Adjudicating Authority in regard to the approval of a resolution plan is statutorily structured by sub-Section (1) of Section 31. The jurisdiction is limited to determining whether the requirements which are specified in sub-Section (2) of Section 30 have been fulfilled. This is a jurisdiction which is statutorily-defined, recognised and conferred, and hence cannot be equated with a jurisdiction in equity, that operates independently of the provisions of the statute. The Adjudicating Authority as a body owing its existence to the statute, must abide by the nature and extent of its jurisdiction as defined in the statute itself.*

X X X

32 *In **K Sashidhar** (supra), Justice A M Khanwilkar, speaking for the two-Judge Bench, held:*

“57. On a bare reading of the provisions of the I&B Code, it would appear that the remedy of appeal under Section 61(1) is against an “order passed by the adjudicating authority (NCLT)”, which we will assume may also pertain to recording of the fact that the proposed resolution plan has been rejected or not approved by a vote of not less than 75% of voting share of the financial creditors. Indubitably, the remedy of appeal including the width of jurisdiction of the appellate authority and the grounds of appeal, is a creature of statute. The provisions investing jurisdiction and authority in NCLT or NCLAT as noticed earlier, have not made the commercial decision exercised by CoC of not approving the resolution plan or



rejecting the same, justiciable. This position is reinforced from the limited grounds specified for instituting an appeal that too against an order “approving a resolution plan” under Section 31. First, that the approved resolution plan is in contravention of the provisions of any law for the time being in force. Second, there has been material irregularity in exercise of powers “by the resolution professional” during the corporate insolvency resolution period. Third, the debts owed to operational creditors have not been provided for in the resolution plan in the prescribed manner. Fourth, the insolvency resolution plan costs have not been provided for repayment in priority to all other debts. Fifth, the resolution plan does not comply with any other criteria specified by the Board. Significantly, the matters or grounds—be it under Section 30(2) or under Section 61(3) of the I&B Code—are regarding testing the validity of the —approved resolution plan by CoC; and not for approving the resolution plan which has been disapproved or deemed to have been rejected by CoC in exercise of its business decision.

*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.***

59. In our view, neither the adjudicating authority (NCLT) nor the appellate authority (Nclat) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and that too on the specious



ground that it is only an opinion of the minority financial creditors.....”

(emphasis supplied)

The Court, also held (in paragraph 62) that the legislative history of the IBC indicated that “there is a contra indication that the commercial or business decisions of financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority.

40 *Certain foreign jurisdictions allow resolution/reorganization plans to be challenged on grounds of fairness and equity. One of the grounds under which a company voluntary arrangement can be challenged under the United Kingdom’s Insolvency Act, 1986 is that it unfairly prejudices the interests of a creditor of the company. The United States’ US Bankruptcy Code provides that if a restructuring plan has to clamp down on a dissenting class of creditors, one of the conditions that it should satisfy is that it does not unfairly discriminate, and is fair and equitable. However, under the Indian insolvency regime, it appears that a conscious choice has been made by the legislature to not confer any independent equity based jurisdiction on the Adjudicating Authority other than the statutory requirements laid down under sub-Section (2) of Section 30 of the IBC.”*

- k. Inclusion of the property as an asset of the Corporate Debtor lies in the teeth of the decision of the Hon’ble Supreme Court in the matter of ***Municipal Corporate of Greater Mumbai (MCGM) vs. Abhilash Lal*** (Civil Appeal No. 6350 of 2019), wherein the Hon’ble Supreme Court observed that the provisions of the IBC are of importance when the property is of the debtor and not when a third party is involved.



1. In view of the provisions of the Code, unless a transaction is sought to be challenged as a 'preferential' or 'fraudulent' transaction, the Adjudicating Authority ceases to have jurisdiction over the third party.

- m. It is no longer *res integra* that a Resolution Plan would be binding on all stakeholders only upon its approval by the Adjudicating Authority under Section 31 of the Code. In fact, it is trite law that only upon approval by the NCLT under Section 31(1) of the IB Code, pursuant to subjective satisfaction about the plan's conformity with Section 30(2) of IB Code, does the plan become binding on the stakeholders in terms of judgment of Hon'ble Supreme Court in the matter of **Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited** [(2021) 9 SCC 657]. The relevant paras of the judgment reads thus:-

“93. As discussed hereinabove, one of the principal objects of the I&B Code is providing for revival of the corporate debtor and to make it a going concern. The I&B Code is a complete Code in itself. Upon admission of petition under Section 7 there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the corporate debtor is revived and is made an on-



going concern. After CoC approves the plan, the adjudicating authority is required to arrive at a subjective satisfaction that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the adjudicating authority can grant its approval to the plan. It is at this stage that the plan becomes binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The legislative intent behind this is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans would go haywire and the plan would be unworkable.

X X X

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

25. A perusal of the aforesaid objection raised by the HDFC Bank vide I.A. No. 3778/2022 indicates that the Applicant Bank has prayed to exclude certain units from the Universal Business Park project located at Sector 66, Badshahpur, Gurgaon from the purview of the plan or in the alternative, has prayed for rejection of the plan. The Applicant Bank has contended that



Nayanika Holdings had availed a secured Loan Facility to the tune of INR 1,05,00,00,000/- from the Applicant Bank/Objector which was secured by way of creation of mortgage over the concerned units and that such charge was also registered with the ROC. In this regard, it is pertinent to note that the RP had filed its reply to the said I.A. wherein it was emphasized that this Adjudicating Authority while disposing of C.A. No. 1550/2019 *vide* order dated 11.06.2021 had specifically noted that apart from the directions to modify the resolution plan on a limited point, no other issue would be raised by any objector nor decided by CoC. Moreover, the Applicant Bank in the present I.A. is not a financial creditor of the CD but has extended the loan facility to a unit holder in the Universal Business Park project. Furthermore, the loan agreement was executed between the Applicant Bank and Nayanika Holdings, and the Corporate Debtor was not a party to it. Therefore, any default under the loan agreement by the debtor i.e. Nayanika Holdings, does not give a locus to the creditor i.e. the Applicant Bank, to object to a resolution plan submitted qua Corporate Debtor. Relevant excerpt of the loan agreement, indicating the parties to it, reads thus: -

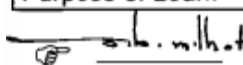


[***]

SC94700001

SCHEDULE-CUM-KEY FACT STATEMENT

Place of Execution of Agreement: <i>delhi</i>	Date of Execution of Agreement: <i>22-2-2016</i>
Loan Account No: <i>81764034</i>	
Lending Office Details:	The Bank may in its discretion change the Lending Office from time to time
Name and address of the Borrower/ Co-Borrower	
(1) Name: <i>Nayanika Holding Pvt. Ltd.</i> Address: <i>Plot No. 30, 2nd Floor, Shivaji Marg, Gali No. 6, Moti Nagar, Partee Road, Near Anandwara, Laxpur delhi-110028</i> Constitution: <i>company</i>	(2) Name: <i>Sangeen Malhotra</i> Address: Constitution: <i>Individual</i>
(3) Name: <i>SUNAYANA MALHOTRA</i> <i>90- SUNAYANA MALHOTRA</i> Address: Constitution: <i>Individual</i>	(4) Name: Address: Constitution:
LOAN DETAILS	
Loan Amount: Rs. <i>10500000</i>	Loan Tenor: <i>180</i> months
Base Rate : <i>9.30</i> %	No. of EMIs: <i>180</i>
Interest Rate (% per annum) (Floating Rate): Base Rate (+) <i>1.7</i> (%) of Spread = <i>11</i> %p.a.	
Rests at which Interest is payable: Monthly	Installment Frequency: Monthly
Date of reset of Interest: Effective dates of each change in the Base Rate of the Bank	
EMI Start Date: First EMI shall commence from the 2nd month of disbursal.	
Pre-EMI Payment Date: Date of Disbursement	
EMI due date: 7th / _____ of each month	EMI Amount: Rs. <i>119343</i>
Mode of communication of changes in interest rates: Email/ Letter/ Bank Website/ Notice at the Branches/ SMS/ Annexure to Statement of Accounts	
Purpose of Loan:	

 *S. Malhotra* For Nayanika Holding Pvt. Ltd.
 Borrower 1 Borrower 2 Director Borrower 3 Borrower 4

The Applicant Bank has also enclosed with the IA a 'Memorandum Recording Past Transactions of Creation of Mortgage by Delivery of Title Deeds' to emphasise that Nayanika Holdings had deposited title deeds of unit no. 618-626 located at 6th Floor of Universal Business Park to secure the loan facility extended by the Applicant Bank. Relevant excerpt of aforementioned memorandum reads thus:



**MEMORANDUM RECORDING PAST TRANSACTIONS OF CREATION OF MORTGAGE BY
DELIVERY OF TITLE DEEDS**

THIS MEMORANDUM is executed for recording the past transaction of creation of mortgage by deposit of title deeds at the place and on the day, month and year set out in Item No. 1 and 2 of **Annexure I** hereto by the person(s) named in **Annexure –II** hereto (hereinafter referred to as **'the Owner(s)**), which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include; (a) in case of a company, its successors and permitted assigns; (b) in case of a partnership firm, the partners for the time being and from time to time of the partnership firm, their survivor or survivors of them, their respective heirs, administrators, executors, legal representatives and successors of the partner(s); (c) in case of a trust, the trustee or trustees of the trust for the time being and from time to time; (d) in case of a Hindu undivided family, the Karta and the members for the time being and from time to time of the said Hindu undivided family and their respective heirs, executors, administrators and assigns; (e) in case of an individual proprietor, the proprietor's heirs, administrators, executors and legal representatives.

1. HDFC BANK LIMITED is a banking company, incorporated and registered under the Companies Act, 1956, and having its registered office at HDFC Bank House, Senapati Bapat Marg, Lower Parel (W) Mumbai 400013 (hereinafter referred to as **'the Bank'**, which expression shall unless repugnant to the context or meaning thereof, shall be deemed to mean and include its successors and assigns), and an office of the Bank, inter alia at the place set out in Item No. 3 of Annexure I hereto (hereinafter referred to as **'the Office'**).
2. In accordance with and subject to the terms and conditions of the sanction letter(s) and other facility documents including working capital agreement, term loan agreement, guarantee assistance agreement, overdraft agreement and all other documents executed and / or maybe executed from time to time (hereinafter collectively referred to as the **'Facility Documents'**) the Bank had granted/agreed to grant to the person(s) named in **Annexure III** hereto (hereinafter **"the Borrower(s)"**) certain fund based /non fund based / other facilities (hereinafter referred to as the **'Facility (ies)'**) on the terms and conditions contained in the Facility Documents. The details of the Facility (ies) are set out in **Annexure III** hereto.
3. In consideration of the Bank granting/agreeing to grant the Facility (ies) to the Borrower(s), the Owner(s) had agreed to secure the obligations of the Borrower(s) under the Facility Documents, including without limitation, interest, additional interest, penal interest, commission, commitment charges, losses, including any loss caused due to fluctuation in currency rates, liquidated damages, losses due to revaluation and / or devaluation, premia on prepayment, costs, charges, expenses, exchange fluctuation losses, or otherwise whatsoever stipulated in or payable under the Facility (ies), irrespective of any change in limits and facilities within the aggregate limit from time to time, as well as any other existing facilities and / or future debt granted or that may be granted by the Bank to the Borrower(s) and / or the Owner(s) from time to time and secure his/her/its/their obligations by way of creating mortgage as [first and exclusive] charge by deposit of the title deeds, documents and writings (hereinafter referred to as the **'Title Document(s)'**) relating to the properties owned by the Owner(s) hereinafter collectively referred to as the **'Property (ies)'**). The details of the Title Document(s) and the Property (ies) are more particularly described in **Annexure II** hereto;
4. In this regard, on the day, month and year set out in Annexure II hereto, the Owner(s) /authorized representative of the Owner(s) mentioned in Annexure II hereto, attended the Office of the Bank and met the authorized personnel of the Bank, whose name(s) is mentioned in Annexure II hereto, acting for and on behalf of the Bank (**the "Authorized Personnel"**), and deposited with the Authorized Personnel, the Title Document(s). At the said time, the Owner(s)/ authorized representative(s) of the Owner(s) stated that the Title Document(s) shall remain and/ or continue to remain deposited with the Bank as



security and as an expression of the intent of the Owner(s) to secure the obligations of the Borrower(s) and / or the Owner(s) under the Facility (ies) as well as any other existing facilities and / or future debt granted or to be granted by the Bank to the Borrower(s) and / or the Owner(s) from time to time.

5. The Owner(s) at the time of the deposit of the Title Document(s) declared to the Bank, inter alia that, they were the absolute owner(s) of his/her/its/their respective Properties, that the Owner(s) had the right to create a mortgage over and in respect of his/her/its/their respective Properties, that the Title Document(s) are the only documents of title relating to his/her/its/their respective Properties and that the same had been deposited with the Bank, as aforesaid, and that they would remain as security till the entire outstandings secured by the said mortgage by deposit of title deeds were paid / repaid to the Bank in full.

[...]

Annexure II

[Owner(s), List of Title Deeds/ Documents deposited by the Owner(s) with the Bank and description of the Properties]

For Nayanika Holding Pvt. Ltd. Director [Signature]	Description of Owner(s) [NOTE: In case of joint ownership of property, description of all co-owners needs to be mentioned.]	Sl.No. 1.	Name of the Owner Nayanika Holding Pvt. Ltd
	Authorized representative of the Owner(s) (if any)	- Sanjeev Kumar Mehta NEERAJ MEHTA	
	Date of deposit of title documents by the Owner(s)/ authorized representative	23 Feb 2016	
	Name & Designation of the Authorized Personnel of the Bank	JASVEEN KAUR DM	
	Description of Property	618, 619, 620, 621, 622, 623, 624, 625, 626, 6th Floor Universal Business Park, Village Badshahpur Gurgaon Haryana [Note: The description of the property will include Address, Gaia number, Area etc.]	

26. As can be seen from the aforesaid documents enclosed by the Applicant Bank with the IA, the loan agreement as well as the document recording the mortgaging of the unit no. 618-626 located at 6th Floor of Universal Business Park was executed between the Applicant Bank and Nayanika Holdings, and was not a tripartite agreement involving the Corporate Debtor. Apparently, as per the stand taken by Applicant itself, it is not open for this Tribunal to determine the disputed issue between the Applicant and Nayanika Holdings. It is for the Applicant to resort to the remedy available to it before the appropriate forum in



accordance with law to seek its relief. We find merit in the contention of the RP that the Applicant Bank has no locus to object to a resolution plan which already stands approved by the CoC. Furthermore, as already noted in the order dated 11.06.2021 of this court, no other issue would be raised by any objector nor decided by CoC. **In the wake, I.A. 3778/2022 stands dismissed.**

Objection filed vide IA-3099/ 2023:

27. The captioned IA has been filed by Kotak Mahindra Bank Limited (**Objector No. 1**) and Kotak Mahindra Prime Limited (**Objector No. 2**), both being dissenting Secured Financial Creditor to the Resolution Plan dated 05.08.2021 filed by the RP, with the prayer to set aside the Resolution Plan submitted by the SRAs on the ground of it being non-compliant to Section 30(2)(b) & (e) r/w Section 30(4) of the Code r/w Regulation 38(1)(a) & (b) of the CIRP Regulations.

28. The contentions raised by the Applicant/Objector in the application/written submission could be summarized as under: -

a. The Resolution Plan is non-complaint with the decision of the Hon'ble Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. vs. NBCC (I) Ltd. & Ors.** [2022 1 SCC 401]:-

(i) In the aforementioned case, it was held that a dissenting financial creditor is required to be paid an "amount" quantified in terms of the "proceeds" of assets receivable under Section 53 of the Code and that the "amount payable" is to be paid in priority over their assenting counterparts and further that the statute refers only to the sum of money and nothing else.



- (ii) The Resolution Plan submitted by RP contains Part-I and Part-II wherein Part- I provide for an upfront payment of Rs. 3 Crores to dissenting creditor and Part-II is ambiguous and only proposes that the secured creditors, including the Objector, can enforce their security ergo there is no certainty with respect to either the amount or the time within which the dissenting creditors will be paid.
 - (iii) A dissenting FC is required to be paid the liquidation value upfront in cash and a Resolution Plan cannot force a dissenting creditor to continue its association with the Corporate Debtor until the assets of the CD is liquidated. Therefore, the plan is in direct contradiction to Jaypee Kensington (supra).
 - (iv) The Plan of permitting realization of the certain securities, that too to certain creditors, is contrary to the provisions of Section 30(2) of the IBC r/w Regulation 38(1)(b) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which contemplates payment of liquidation value to a dissenting creditor.
 - (v) The Plan, in its present form, is in complete contradiction of Section 30(2)(b)(ii) of IBC r/w Section 53 of the Code in terms of the treatment of the dissenting creditor and the manner of distribution.
- b. The Liquidation Value as calculated by the registered valuers has been ignored and the RP and SRA have arbitrarily fixed the valuation of the Universal Business Project as 'NIL':-



- (i) The liquidation value of the assets of the CD as determined by the registered valuers is sacrosanct and considering any other valuation to determine the monies to be paid to the dissenting FCs will cause chaos and confusion. It is further submitted that the task of determining the liquidation value of the assets of the CD is entrusted to a professional as per Regulation 2(k), 27 and 35 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and only such valuation can be used for payment of monies to dissenting FCs.
 - (ii) In the present case, the Plan not only ignores the valuation as arrived at by the registered valuers but also proceeds to assume the value of UBP project as 'Nil' based on an assumption that there are no unsold units in the said project which is contrary to the data provided in the Information Memorandum.
 - (iii) It is submitted that the Hon'ble NCLAT in the order dated 11.04.2023 has also observed that the RP/ SRAs cannot change the liquidation value as arrived at by the valuers but thereafter, chose to overlook the same based on the observations of this Tribunal on the caveats in the valuation report.
- c. The payment to a dissenting creditor under the Plan is contrary to the provision of Section 53 of the Code:-
- (i) It is settled law that a Dissenting Financial Creditor (DFC) is required to be paid as per the waterfall mechanism proposed in Section 53 of



the Code which clearly states that the such FCs are required to be paid the liquidation value of the assets of the CD. Further the liquidation value for extra FAR of UBP Project and other project has not been offered to DFC.

(ii) However, in the present case, the RP/ SRAs have themselves decided the amount payable to the dissenting FCs which is contrary to the provisions of the Code.

d. There is no provision in IBC or the Regulations thereof for part revival and part liquidation of the same CD:-

(i) It is submitted that of the eight projects of the CD, the present plan proposes revival of three projects and liquidation of the remaining five. It is further submitted that there is no provision in law which permits such Plan to be placed before CoC, let alone being submitted for approval by this Tribunal.

(ii) The Applicant has submitted that for a revival to be done project wise, it is necessary that the CIRP should be done on project wise basis.

e. The Resolution Plan does not fulfil the ingredients necessary under Section 30 of the Code:-

(i) It is submitted that under Part II of the Plan, five projects are proposed to be liquidated but the amount to be paid and the time by which it will be paid is entirely uncertain. No lender has exercised its commercial wisdom, which is the basic ingredient for approval of a Plan, as to the manner in which the said projects will be sold.



- (ii) Further, Part II of the Plan is faulty and defective for the reason that it allows certain creditors to go ahead and realize their security. This is in contravention of Section 30(2) of the Code r/w Regulation 38(1)(b) of the CIRP Regulations, 2016 which contemplates payment of the liquidation value.
- f. Sale of projects through a Monitoring Committee is not provided in law:-
- (i) Part -II of the Plan provides for appointment of a Monitoring Committee under the chairmanship of a Retired Judge who will then distribute the money in accordance with Section 53 of the Code but there is no provision in the Code which permits any committee to transfer or sell the properties of the CD.
 - (ii) On one hand, the Plan permits the Objector to realize one of its securities which is not forming part of the Plan and at the same time, also takes away the right of the Objector to realize the security on its own and that right has been conferred to some other committee.
 - (iii) The Committee cannot sell or transfer the assets of the CD which is the sole prerogative of the Liquidator.
- g. The Plan proposed differential treatment and payment to the same class of creditors of the CD which is impermissible:
- (i) The Resolution Plan in its present form permits payment of cash to a few secured creditors while others are permitted to enforce their securities, thus resulting in unequal treatment to the same class of creditors, which is violative of the Code.



- (ii) One of the secured creditors, i.e. Dewan Housing Finance Limited (DHFL) is proposed to be paid proportionately a higher percentage of its admitted dues other than the Applicant/Objector.
 - (iii) Further, unsecured creditors of the CD such as Sunflame Enterprises Ltd and Ms. Nisha Singh are being treated as superior to the secured creditors such as the Applicant/Objector.
 - (iv) A Resolution Plan can provide for different treatment to different creditors but it is not permissible to have similarly placed creditors to be treated differently.
- h. The Plan for UBP Project proposes higher payment to unsecured creditors as compared to secured FCs:-
- (i) The Plan proposes payment of Rs. 1.90 Crores to unsecured OC against their dues of Rs. 18.98 Crores (10% of the dues) whereas the Objectors are getting only Rs. 3 Crores against their dues of Rs. 51.28 Crores (5.85% of the dues) and that the entire UBP is mortgaged to them.
 - (ii) The Plan proposes payment of Rs. 1.50 Crores to DTCP, Haryana considering them at par with allottees in respect of units held by them, which classifies them as much above the secured FCs.
 - (iii) The Resolution Plan does not provide a collective treatment of the three projects but separate project wise treatment. The Plan proposed payments to unsecured FCs before the payments are made to DTCP,



Haryana and thus, the said proposal is non-compliant of Section 30(2)(b) of the Code r/w Regulation 38 of the CIRP Regulations.

- i. The Resolution Plan proposes one unsecured creditor viz. Sunflame Enterprises Pvt. Ltd. to be entitled to retain its Units proposed under a BBA, which is giving special treatment over others in the same class.
 - (i) Unsecured creditors such as Sunflame and Nisha Singh are getting priority treatment. The aforesaid Sunflame has been classified as a homebuyer though it is actually an investor who has invested funds with the Certificate Debtor. The BBA's under which it claims to be a homebuyer clearly stipulate that the Units under such scheme are subject to the mortgage of the Objectors. However, nothing has been provided in the Plan to that effect.

- j. The Plan proposes sale of the assets of the guarantors which is not permissible in law:-
 - (i) The guarantors assets cannot form part of the Resolution Plan as held by the Hon'ble NCLAT in ***Nitin Chandrakant Naik & Anr. vs. Sanidhya Industries LLP & Ors.*** [Company Appeal (AT) (Ins) 257 of 2020].
 - (ii) The Plan included creditors of the CD such as Axis Bank Ltd., HDB Financial Services Ltd. and IndusInd Bank Ltd., who were secured by mortgage of the properties of the guarantors, as secured creditors of the CD.



k. The Plan proposed that monies received under the Avoidance Applications filed by the RP would be to the benefit of the SRAs, which is not permissible in law:-

(i) The proposal in the Plan for providing the monies received under Avoidance Applications for the benefit of SRA is against all settled law which lays down that such monies are to be distributed among FCs.

(ii) Though, it is understood that this Tribunal has called upon the SRA to file an affidavit amending this clause, it is submitted that the Tribunal cannot alter/change any clause in the Plan and that if the Plan is not in compliance of the provision, it is required to be rejected.

(iii) It is further submitted that if any Plan is inconsistent with law, it is required to be sent back to the CoC as has been held by Hon'ble Supreme Court in the matter of **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. vs. NBCC (I) Ltd. & Ors.** [(2022) 1 SCC 401]. The Applicant/Objector relied upon Para 216 of the aforementioned judgment which reads thus:-

“216. For what has been discussed and held on the relevant points for determination, our findings and conclusions are as follows:

A. 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. 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 Committee of



Creditors. If, within its limited jurisdiction, the Adjudicating Authority finds 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 the Code and exposted by this Court.”

1. The Plan, though acknowledges that the land on which the UBP Project is built is owned by Blaze Promoters Pvt. Ltd., which is an associate company of the CD, but it does not factor the 20% developed area of the UBP that belongs to the Blaze Promoters Pvt. Ltd in the Plan or the amount of Rs. 40 Crores to be paid to Blaze anywhere in the Plan.
- m. The Plan proposed that all future FAR will belong to the liquidation estate and ignores the fact that the owner of the land is Blaze and without its consent, the FAR cannot be applied and allotted and also charged to the DFCs.
- n. The Plan ignores the fact that the entire unsold area of 1,00,387.13 sq. ft. on the date of mortgage i.e. 09.08.2012 is mortgaged in favor of KMPL and thereafter since 01.07.2016 in favor of KMBL on a *pari passu* basis, and that neither KMPL nor KMBL have given any NOC for the sale of any units after 09.08.2012 and that sale of any such unit is illegal and subject to mortgage of the Objectors.
- o. On one hand, the RP and SRAs have claimed that units of the UBP project are oversold and hence CD has no assets, whereas on the other hand, the

SRAs have submitted a Plan for revival of three projects. It is submitted



that on the question of whether a Plan can be submitted for a Project/ CD which has no assets, the reply has to be an emphatic NO.

- p. The Plan proposes that there will be a forensic audit done after the approval of the Plan to determine the persons who are entitled to units and whose claim will be rejected, whereas the same should have been done before the Plan was submitted. This amounts to putting the cart before the horse.
- q. The Plan nowhere mentions as to what are the source of funds for completing the three projects other than the amounts payable by the unitholder themselves and such a plan cannot be entertained.
- r. The Plan stipulates that the SRAs will not be in a position to demarcate the units in favor of Unit Holders in whose name conveyance deeds have been executed by erstwhile management of Universal Buildwell Pvt. Ltd., thus rendering such unit holders helpless. If the SRAs are taking over the project, it is their duty to get the units demarcated with the assistance of the authorities.

29. As far as the objection regarding distribution is concerned, it is stare decisis that the same is the issue covered by commercial wisdom of CoC and it is not open for this Tribunal to interfere with the decision taken by the CoC in exercise of its commercial wisdom. Further as far as the issue of violation of provisions of Section 53 of IBC, 2016 is concerned, no factual position is espoused before us to establish such violation. Rather at the end of prolix



hearing, Mr. Bhatt, Ld. Counsel for the Applicant in the IA categorically submitted that the Applicant had no objection to the Resolution Plan, as on sale of certain assets of CD it was going to receive the sale proceeds as per the plan. Regarding the issue of compliances, we may refer to Section 31(4)(b) of IBC, 2016, it is for the Resolution Applicant to obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority. The Section 31(4) reads thus: -

“31. Approval of resolution plan.—

[...]

(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002 (12 of 2003), the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.”

30. Additionally, qua the objections raised *vide* aforesaid I.A. No. 3099/2023, it is relevant to refer to the order dated 11.06.2021 passed by this Tribunal wherein it was specifically noted that no further objection/ issue would be entertained with respect to the resolution plan. It is also pertinent to note that



the Applicants herein had preferred an appeal against the order dated 11.06.2021 before the Hon'ble NCLAT wherein the Hon'ble Appellate Tribunal had only directed that the direction contained in paragraph 50 of the order dated 11.06.2021 passed by this court be deleted. Since, there was no further modification of the order dated 11.06.2021, we do not deem it fit to entertain objections raised after the approval of the resolution plan by the CoC.

31. Such is also the contention raised in reply to the IA- 3099/2023. Relevant excerpt of the written submission dated 14.09.2024 filed by the RP in the aforementioned IA reads thus: -

“4. Further, vide detailed Order dated 11.06.2021 this Hon'ble Adjudicating Authority considered the Resolution Plan as submitted by the Applicant herein and dismissed various objections made to the Resolution Plan including the objections made by various homebuyers, Kotak Mahindra Bank Ltd., Kotak Mahindra Prime Ltd. and Dewan Housing Finance Corporation ltd. ('DHFL'). At this time the Hon'ble Adjudicating Authority remitted the matter partly accepting one objection of Kotak Mahindra Bank Ltd., Kotak Mahindra Prime Ltd. and Dewan Housing Finance Corporation ltd. ('DHFL') and directed to:

(i) Provide for timeline for payment to Kotak Mahindra Bank Ltd., Kotak Mahindra Prime Ltd. and Dewan Housing Finance Corporation ltd. ('DHFL') as dissenting creditors since no specific timeline was provided in the Resolution Plan.

(ii) CoC to consider whether to re-evaluate the liquidation value of the Corporate Debtor.

5. Order dated 11.06.2021 has attained finality as it was challenged by Kotak Mahindra Bank Ltd. and Kotak Mahindra Prime Ltd. before the



Hon'ble Appellate Tribunal and the same was upheld vide Order dated 11.04.2023. The Hon'ble Appellate Tribunal further clarified that there was no requirement to reconsider the liquidation value of the Corporate Debtor. Further, the appeal filed by Kotak Mahindra Bank against Order of the Hon'ble NCLAT dated 11.04.2023 was dismissed by the Hon'ble Supreme Court vide Order dated 26.05.2023.”

Ergo, issues raised by the Applicant Bank/ Objector in IA- 3099/2023 cannot be entertained in view of the order dated 11.06.2021 passed by this Tribunal, order dated 11.04.2023 passed by the Hon'ble NCLAT and order dated 26.05.2023 passed by the Hon'ble Supreme Court, nonetheless, in order to correctly appreciate the law with respect to the contention of the Applicant that part resolution and part liquidation of a Corporate Debtor is impermissible under law, it is relevant to refer to Regulation 36B(6A) of CIRP Regulations, 2016 which provides that when an RP does not receive a resolution plan in response to RFRP, he may, with the approval of the CoC, issue request for resolution plan for sale of one or more of assets of the CD. The said regulation reads thus: -

“36B. Request for resolution plans.

[...]

(6A) If the resolution professional, does not receive a resolution plan in response to the request under this regulation, he may, with the approval of the committee, issue request for resolution plan for sale of one or more of assets of the corporate debtor. ”

Further, under Regulation 37 of CIRP Regulations, 2016, a resolution plan may provide measures for resolution of the CD for maximization of value of its assets. Clause (m) of the said regulation further provides for sale of



one more assets of the CD to one or more SRAs and manner of dealing with remaining assets. The said regulation reads thus: -

“37. Resolution Plan.

[...]

(m) sale of one or more assets of corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets; and manner of dealing with remaining assets.”

Thus, the law itself provides that the RP may himself seek a resolution plan with respect to part of the assets of the CD. Further, the SRAs may also submit a resolution plan for one or more assets of the CD and the manner of dealing with remaining assets of the CD. Therefore, the contention of the Applicant Bank that part resolution and part liquidation of a CD is impermissible under law is legally untenable. The Resolution Plan takes care of the interest of the Applicant in the

IA. In the wake, I.A. 3099/ 2023 stands dismissed

Objection filed in IA-2959/2024:

32. The captioned IA has been filed by Shyam Kishan Sharaf and Banwari Lal Saraf (hereinafter, “Applicant No. 1 and Applicant No. 2” respectively). The contentions raised in the IA are summarized hereinbelow:-

- (i) Applicant No. 1 had given a loan of Rs. 1.50 crores to CD on interest in May 2014 on the basis of Board Resolution dated 26.05.2014 and the Loan Agreement dated 27.05.2014. In terms of the Loan Agreement, PDC No. 053512 dated 27.05.2015 was issued for repayment of Loan of Rs. 1.50 crores and 12 monthly cheques were issued for payment of interest.



Further, the CD executed documents such as BBA, MoU etc. for creation of collateral security of Unit No. 414 measuring super area of 3000 sq. ft. at 4th Floor of Universal Business Park, Sector 66, Gurgaon.

- (ii) Similarly, Applicant No. 2 gave a loan of Rs. 1.50 crores to CD on interest in July 2014 on the basis of Board Resolution dated 09.07.2014 and Loan Agreement dated 11.07.2014. In terms of Loan Agreement, PDC 000488 dated 11.07.2015 was issued for repayment of Loan of Rs. 1.50 crores and 12 monthly cheques were issued for payment of interest. Further, the CD executed documents such as SBA, MoU etc. for creation of collateral security of Unit No. 233 measuring super area 2725 sq. ft. on 2nd Floor of Universal Trade Tower, Sector 49, Gurgaon.
- (iii) The cheques given to both the Applicants for repayment of the aforementioned loan amount bounced and consequently, complaint case u/s 138 NI Act was initiated against the CD and its Ex-Directors in the year 2015.
- (iv) CIRP was initiated against the CD on 03.07.2018 and both the Applicants filed claims in Form C with RP on 29.07.2018 under Regulation 8 of CIRP Regulations, 2016 read with Section 5(8)(a) of IBC, 2016. However, the RP advised the Applicants to file their claims in Form CA and stated that he shall admit the claim of the Applicants only on filing of Form CA instead of Form C.
- (v) The RP did not consider/admitted the claim of the Applicants merely due to non-filing of Form CA. Thus, RP did not place the claim of the Applicants



in Information Memorandum and resultantly, the SRA also did not consider the claim of the Applicants and Resolution Plan sought to be approved also does not include the claims of the Applicants.

(vi) In terms of law laid down by Hon'ble Supreme Court in **GNIDA vs. Prabhjit Singh Soni & Anr.** (Civil Appeal Nos. 7590-7591 of 2023), it is clear from reading of Para 54 of the judgment that the Form (viz. Form C, Form CA, Form B) in which a claim is to be submitted under the CIRP Regulations, 2016 is directory and not mandatory, and thus RP cannot refuse to admit a claim merely on the basis of the incorrectness of the form selected by the claimants if otherwise documents/proof supporting the claim have been duly filed by the Claimants. Thus, as per Prabhjit Singh Soni judgment, the Resolution Plan sought to be approved vide IA-5003/2021 fails not only in acknowledging the claim made by the Applicants, but also in mentioning the correct figure of the amount due and payable. This omission or error has materially affected the resolution plan and the same stands vitiated.

(vii) The Resolution Plan has not placed the Applicants in any category of creditors which has gravely affected the interests of the Applicants adversely. This Tribunal from time and again gave directions to the RP through various orders dated 30.04.2019, 13.05.2019 and 27.05.2019 in respect of various units of two (2) projects namely Universal Business Park and Universal Trade Tower and had also directed the RP to identify all the claimants and divide them into 2 categories, namely allottees and

Financial Creditor. However, to the limited knowledge of the Applicants,



the Ld. RP has miserably failed to obey the directions of this Tribunal which is evident from the fact that RP did not mention the name of the Applicant 1 and Applicant 2 in the list prepared by him for UBP and UTT despite the claimants having duly filed their claim on 29.07.2018 i.e. within 26 days from ICD whereas names of even Ex Directors are appearing who may not have even filed their claims with RP.

- (viii) The Resolution Plan for Universal Business Park conceives utilization of land owned by Blaze Promoters Pvt. Ltd. and further on utilization of units of 43 Conveyance Deed holders in Universal Business Park which as per the Apex Court Judgment in the case of Suraj Lamps and Embassy Property is illegal and hence, not feasible.
- (ix) Through the Resolution Plan sought to be approved vide IA-5003/2021, the RP is trying to play fraud on this Tribunal by contravening the law laid down by Hon'ble Supreme Court in ***M/s Embassy Property Developments Pvt. Ltd. vs. State of Karnataka & Ors.*** by annulling the Conveyance Deeds of 43 Conveyance Deed holders. Moreover, Conveyance Deeds registered with Sub-Registrar Office are regulated under Transfer of Property Act, 1882 and the Registration Act, 1908 and that through IA-5003/2021, the RP is trying to bypass the aforementioned laws and pass a resolution plan behind the back of 43 Conveyance Deed holders and the two Applicants herein.



- (x) The Applicants were never served noting of the meeting of the CoC and that the entire proceedings up to the stage of approval of resolution plan have been ex-parte to the Applicants.
- (xi) The Applicants had submitted their claim in Form C on 29.07.2018 i.e. within 26 days from Insolvency Commencement Date i.e. 03.07.2018 and had been held as secured creditor by MM Court u/s 138 NI Act after recording of evidences, cross examination etc. Yet, the Resolution Plan in IA-5003/ 2021 projects the Applicants as the ones who did not submit their claim.
- (xii) Though the issue whether the Applicants are Financial Creditors u/s 5(8)(a) or Allottee u/s 5(8)(f) of IBC, 2016 is pending before this Tribunal, interest of justice demands that the collateral securities for the loan given by the Applicants i.e. Unit No. 414 in Universal Business Park, Sector 66, Gurgaon and Unit No. 233 in Universal Trade Tower, Sector 49, Gurgaon should be kept under the control and custody of RP to the exclusion of all other Creditors/Claimants of the CD.
- (xiii) The RP has wrongly certified by filing Form H that the Resolution Plan complies with Section 30(2) of IBC,2016 whereas in fact, it is in gross violation of the provisions of Section 30(2). Therefore, the RP could not have presented a Resolution Plan which is non-compliant of the Code, firstly before CoC and thereafter, before this Tribunal.
- (xiv) The SRA in guise of approval of the Resolution Plan is illegally trying to interfere with the contractual rights of the Applicants and trying to take



over the powers of RP such as appointing Forensic Auditor and validation of claims of various claimants/ stakeholders of CD, and giving preference to one allottee over another which is against Article 14 of Constitution of India. The Applicants relied upon judgment of Hon'ble Supreme Court in the matter of **TATA Consultancy Services Ltd. vs. Vishal Ghisulal Jain RP SK Wheels Pvt. Ltd.** (Civil Appeal No. 3045 of 2020), wherein it was held that both NCLT and NCLAT cannot interfere with the Contractual rights of the parties which arise de hors the IBC, 2016. The relief sought in the IA reads thus:

- A. Direct the RP to keep "Unit No. 414 measuring super Area of 3000 sq. ft at 4th floor of Universal Business Park, Sector 66, Gurgaon" of Applicant No. 1 exclusively for the Applicant No. 1 and "Unit No. 233 measuring super Area of 2725 sq. ft at 2nd floor of Universal Trade Tower, Sector 49, Gurgaon" of Applicant No. 2 exclusively for the Applicant No. 2 (to the exclusion of all other creditors/allottees of Corporate Debtor) in view of binding Hon'ble Supreme Court judgment dated 12.02.2024 in the matter of **GNIDA vs. Prabhjit Singh Soni & Anr.** (Civil Appeal Nos. 7590-7591 of 2023) and accordingly direct RP to make necessary changes in Information Memorandum & in IA-5003/2021 filed by the RP for approval of Resolution Plan.
- B. Direct the RP to take control and custody of "Unit No. 233 measuring super Area of 2725 sq. ft at 2nd floor of Universal Trade Tower, Sector 49, Gurgaon" of Applicant No. 2 (which as per the limited knowledge



of the Applicants & submissions hereinabove is in illegal possession) in view of judgment in Civil Appeal Nos. 7590-7591 of 2023 and further in view of duties of RP under Section 25 of IBC, 2016 and as per directions of this Tribunal vide order dated 09.02.2023 in CA-500/2019.

32. As far the aforementioned IA-2959/2024 is concerned, the claim of the Applicants could be dealt with while examining CAs-1500/2019 and 1501/2019. The order passed in the CAs are under challenge before Hon'ble NCLAT. The issue raised in the IA was raised by the Applicants also on 12.06.2024. Having heard the Applicant No.1, this Tribunal passed the necessary order. The order was challenged before Hon'ble NCLAT in Company Appeal (AT)(Ins.) 1424 of 2024, in which Hon'ble NCLAT passed detailed order. The Paras 2-11 reads thus:-

"2. This Appeal has been filed against the order dated 12.06.2024 by which order the Adjudicating Authority has made very strong observations against the Appellant that he has been obstructing the proceeding of the Court and the Adjudicating Authority has also passed an order expressing hope and trust that Appellant would refrain intimidating and obstructing the Court proceedings by raising such issues which are under consideration before the Appellate Tribunal. On 12.06.2024, IA No.3089 of 2021 filed by the Appellant was also listed in which application, the Appellant prayed for initiating Section 340 CrPC proceeding against the Resolution Professional on some allegations made in the application. Adjudicating Authority has noticed in the order that IA No.6063 of 2023 which was filed by the Appellant earlier was disposed of on 06.05.2024. Adjudicating Authority has made observations that why the Appellant is making submission with regard to issue which was already disposed of



on 06.05.2024. Court also noticed that in earlier application, an order was passed on 12.09.2023 against which Appeals have been filed by the Appellant before the Appellate Tribunal which are pending consideration.

3. In this Appeal, Appellant submits that in the order dated 06.05.2024, Adjudicating Authority had made observations that Appellant could not explain the ratio of the judgment of the Hon'ble Supreme Court in "Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni- (Civil Appeal Nos. 7590-7591 of 2023)" and Appellant was only trying to explain the ratio of the said judgment. It is submitted that the Appellant had not obstructed the proceeding.

4. Adjudicating Authority in the impugned order has made following observations: -

"At this stage, Mr. Shyam Kishan Saraf, who is appearing in person started making submission in respect of IA-6063/2023, which was disposed in terms of order dated 06.05.2024. When he was asked as to why he is talking about the IA which could already been disposed of, he submitted that he is trying to make this Bench to understand what it could not understand while passing the order dated 06.05.2024 in IA-6063/2023. He also started narrating the facts involved in CA1500/2019 & CA-1501/2019, disposed of in terms of the order dated 12.09.2023 which orders are admittedly under challenged before Hon'ble NCLAT in the appeals preferred by Mr. Shyam Kishan Saraf. Even about the IA- 6063/2023, Mr. Shyam Kishan Saraf submitted that might be the order dated 12.09.2023 passed by this Tribunal is under challenged before Hon'ble NCLAT, but since Hon'ble Supreme Court has passed judgment in Greater Noida Industrial Development Authority vs. Prabhjeet Singh Soni & Anr. (Civil Appeal Nos. 7590- 7591 of 2023), irrespective of pendency of the appeal before Hon'ble NCLAT, he has got a cause to ask this Tribunal to reopen its order dated 12.09.2023. We are not aware of any such law, which enable us to look into our order, even for the purpose of review, when the same is under challenged before Hon'ble Appellate Tribunal. Even otherwise also, there is no such provision, in terms of which this Tribunal can review its own order. We are forced to bring it on record that



as and when this matter is listed for hearing, Mr. Shyam Kishan Saraf, try to obstruct the proceedings and start talking of the issues involved in CA-1501/2019 & CA-1500/2019 which have already been disposed of by this Tribunal. When with his constant obstruction, we got inclined to take appropriate step to uphold the majesty of law as also the decorum in the Court, Mr. Shyam Kishan Saraf apologised for his conduct of interrupting the Court proceedings again and again. By taking a lenient view, we refrain from taking steps/actions at this stage as is required in the present proceedings, but we record that it is primary duty of any judicial forum to uphold the majesty of law at any cost and if in future Mr. Shyam Kishan Saraf would not so due deference to law and judicial proceedings we will be constrained to take appropriate action. We are forced to record so for the reason that in terms of the order dated 15.05.2024, Hon'ble NCLAT expected this Tribunal to decide the matter as early as possible and preferably within two months from the date of appearance of the parties. The approach shown by Mr. Shyam Kishan Saraf almost on every date of hearing to obstruct the proceedings in a way also comes in the way aforementioned order passed by Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 1017 of 2023 & IA No. 3486, 3487, 3488 of 2023, 1709 of 2024. Even otherwise also, any attempt or adventure by any party, expecting us to pass any order in respect of case which is pending for determination before Hon'ble Appellate Court amounts to demeaning the judicial propriety and need to be dealt with strongly.”

5. Counsel for the Resolution Professional submitted that on the date 12.06.2024 only application listed was IA No.3089 of 2021 which was application under Section 340 CrPC and Court decided to defer the application and await the decision of the Appellate Tribunal since issues which are sought to be raised in Section 340 CrPC application had bearing on the decision of the Appellate Tribunal. It is submitted that the Appellant is in habit of appearing and are making long arguments by raising several issues which may not be relevant for the matters which are listed before the Court.



6. We have considered the submissions of parties and perused the record. From the order passed by the Adjudicating Authority, it is clear that on 12.06.2024, when the order was passed only IA No.3089 of 2021 filed by the Appellant was listed in which Appellant sought prayer to initiate Section 340 CrPC proceeding against the Resolution Professional in which application no order has been passed since the Adjudicating Authority noticed that certain issues having bearing on the application are pending consideration before the Appellate Tribunal. The explanation which was sought to be submitted by the Appellant is that he wanted to explain the judgment of the Hon'ble Supreme Court in **“Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni”** (supra) which was noticed in the order dated 06.05.2024 does not commend us. The observations made by the Adjudicating Authority in regard to judgment of the **“Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni”** in order dated 06.05.2024 are to the following effect:-

“Mr. Shyam Kishan Saraf asked us to refer to the judgment of Hon'ble Supreme Court passed in Greater Noida Industrial Development Authority vs. Prabhjit Singh Soni (Civil Appeal Nos. 7590-7591 of 2023). It is difficult for us to comprehend, when reliance is placed on the judgment of Hon'ble Supreme Court, without espousing the legal proposition, which is sought to be supported by the judgment, that in what context, the party want us to read the judgement. Nevertheless, as we understand from the judgment, the ratio decidendi of the same is that this Tribunal can recall the order of approving the plan. Nevertheless, once the applicants have challenged our order before Hon'ble NCLAT, we are unable to appreciate that how we can re-examine the same for any purpose.”

7. We do not find any occasion to explain the judgment of the Hon'ble Supreme Court when IA No.3089 of 2021 filed by the Appellant was listed on 12.06.2024. The submission which was advanced by the Appellant was wholly irrelevant for the issue which was to be considered by the Court on the said date. We find that the observations made by the Court



are based on relevant consideration and we do not find any ground to expunge the remarks.

8. Shri Shyam Kishan Saraf has cited the judgment of the Hon'ble Supreme Court in "Neeraj Garg vs. Sarita Rani and Ors.- Civil Appeal Nos. 4555-4559 of 2021". He has referred to paragraphs 15 to 18 which are as follows:-

"15. While it is of fundamental importance in the realm of administration of justice to allow the judges to discharge their functions freely and fearlessly and without interference by anyone, it is equally important for the judges to be exercising restraint and avoid unnecessary remarks on the conduct of the counsel which may have no bearing on the adjudication of the dispute before the Court.

16. Having perused the offending comments recorded in the High Court judgments, we feel that those could have been avoided as they were unnecessary for deciding the disputes. Moreover, they appear to be based on the personal perception of the learned Judge. It is also apparent that the learned Judge did not, before recording the adverse comments, give any opportunity to the Appellant to put forth his explanation. The remarks so recorded have cast aspersion on the professional integrity of the appellant. Such condemnation of the Counsel, without giving him an opportunity of being heard would be a negation of the principles of audi alteram partem. The requisite degree of restraint and sobriety expected in such situations is also found to be missing in the offending comments.

17. The tenor of the remarks recorded against the appellant will not only demean him amongst his professional colleagues but may also adversely impact his professional career. If the comments remain unexpunged in the court judgments, it will be a cross that the Appellant will have to bear, all his life. To allow him to suffer thus. would in our view be prejudicial and unjust.

18. In view of the forgoing, we are of the considered opinion that the offending remarks recorded by the learned judge against the appellant should not have been recorded in the manner it was done. The appellant whose professional conduct was questioned, was not provided any opportunity to explain his conduct or



defend himself. The comments were also unnecessary for the decision of the Court. It is accordingly held that the offending remarks should be recalled to avoid any future harm to the appellant's reputation or his work as a member of the Bar. We therefore order expunction of the extracted remarks in paragraphs 4,5,6, and 7 of this judgement. The appeals are accordingly disposed of with this order.”

9. There can be no dispute to the proposition of law that the adverse comments which are unnecessary and made without opportunity can always be set aside. The present is a case where observations made by Adjudicating Authority were during course of the hearing on 12.06.2024 when the Appellant was appearing in person. At the time of deciding the application, no litigant even if he is appearing in person has freedom to make any submission which he so feels nor any litigant is entitled to waste time of the Court where large numbers of cases are pending consideration.

10. Counsel for the Resolution Professional submits that the Appellant who is appearing in person has already filed eight applications before the Adjudicating Authority and five Company Appeals arising of the same dispute.

11. We do not find any ground to interfere with the impugned order. The observations made by the Adjudicating Authority were based on sufficient reasons. What Court has observed has to be given weight and observations cannot be lightly expunged as sought to be contended by the Appellant appearing in person.”

(emphasis applied)

34. Indubitably, the appeals preferred by the Applicants viz. Company Appeal (AT)(Ins.) 1411 of 2023 and Company Appeal (AT)(Ins.) 1412 of 2023 are yet to be adjudicated by Hon’ble NCLAT. The order dated 31.10.2023 passed in the appeals reads thus:-



“31.10.2023: Appellants appear in person and submits that the Adjudicating Authority committed error in holding the Appellant as a financial creditor in a class whereas the Appellants are Financial Creditors who have filed their claims in Form C. It is further submitted that the Adjudicating Authority has also brushed aside the judgment delivered in proceedings under Section 138 of the Negotiable Instrument Act, 1881 where transaction was held to be loan and directors were convicted for offence.

2. Learned Counsel appearing for the Resolution Professional refuted the submissions and submits that the cheques numbers were mentioned in the Builder’s Buyers Agreement and there was only one consideration and the Adjudicating Authority has rightly held the Appellants as a financial creditor in a class and the order passed under Section 138 was hit by Moratorium under Section 14.

3. Issue Notice. Learned Counsel accepts notice on behalf of Resolution Professional. Let Reply be filed within three weeks. Rejoinder, if any, may be filed within two weeks thereafter.

4. List both the Appeals on 11.12.2023. We make it clear that the plan approval application which is pending consideration before the Adjudicating Authority may be proceeded and decided in accordance with law, however, that will subject to result of the Appeal.”

35. Needless to add, the present order considering the approval of the Plan will be subject to the result of the Appeal in I.A. Nos. 1411 of 2023 and 1412 of 2023.

In the wake, IA- 2959/2024 stands disposed of.

36. On 26.05.2023, Mr. Swapnil Gupta, Ld. Counsel for the RP (Applicant in IA-5003/2021) concluded his submission before a Bench having a different combination of Members, which included one of us including [Member(J)].



Nevertheless, as prayed by the Counsels for the parties opposing the plan, hearing was deferred to enable them to put forth their submissions to 01.06.2023. Thereafter, hearing could take place in the matter from time to time. Most of the time, when it came to consideration of IA-5003/2021, Mr. Swapnil Gupta, Ld. Counsel for the Applicant/RP mostly espoused four standard arguments to deal with all the objections (ibid) except the objections raised in IA-295/2024. The standard arguments raised by Mr. Swapnil Gupta time and again, including on 04.09.2024 are:-

- (i) In terms of the order dated 11.06.2021, the only view taken by this Tribunal was that the DHFL is entitled to get the amount in terms of money and it cannot be compelled to remain attached with the CD till the Project is completed. Regarding Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited, this Tribunal viewed that they are entitled to get the payment of Rs. 3 Crores within a specified period and the period not mentioned in the Plan needed to be specified. As could be noted in Para 60 of the order dated 11.06.2021(supra), in view of the decision of Hon'ble Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. vs. NBCC (India) Ltd. Ors.** [Civil Appeal No. 3395 of 2020], the suggestion to keep any housing project already complete or near completion or not having started yet out of the purview of the Resolution Plan is a commercial wisdom of the CoC and once the CoC has approved the Resolution Plan by majority vote, no individual homebuyer or an allottee under Section 5(8) of the Code is entitled under the law to raise any issue in this regard. When regarding Business Park, this tribunal



directed that the fate of the creditor cannot be attached to the disposal/sale of the asset of the Corporate Debtor, regarding the Project Pavillion, about which the Plan provided for realisation of security interest in the land and construction mortgaged to Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited to satisfaction of their claim admitted during insolvency proceedings after considering claims received on said project in the manner as set out in Part II of the Plan, this Tribunal did not interfere and no observation was made. When the said order passed by this Tribunal was challenged before Hon'ble NCLAT, the same was concurred to the extent of finding recorded by this Tribunal regarding the liquidation value of the Appellant. Besides, the finding arrived by this Tribunal in Para 49 of the order that the units that had already been sold were no longer the assets of the Corporate Debtor and could not be liquidated and the contentions of the Objectors that the amounts proposed to be paid to DHFL, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited is contrary to provisions of Section 30(2)(b) r/w Section 53(1) of the Code were without force, was not interfered by Hon'ble NCLAT while passing the order dated 11.04.2023 in Company Appeal (AT)(Ins.) 661 of 2021. The observation made by this Tribunal regarding consideration of the valuation by CoC again was ordered to be deleted by Hon'ble NCLAT.

- (ii) In view of the aforementioned orders passed by this tribunal and by Hon'ble NCLAT, the required modification in the Resolution Plan has been made and at this stage, it is not open to this tribunal to examine any issue



other than those which could be flagged by this Tribunal in order dated 11.06.2021 and by Hon'ble NCLAT in order dated 11.04.2023.

- (iii) Regarding the claim of homebuyers, since the SRA itself is a consortium of Resident Welfare Association, a provision has been made in the Plan that they can stake their claim before SRA and the SRA would examine the same with reference to the books of accounts and record of the Corporate Debtor.
- (iv) As far as the contention raised by the Ld. Counsel for Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited regarding their claim being attached to speculations in the process of implementation of Resolution Plan is concerned, as can be seen from the revised Plan, the provision as contained in the Plan which could be remitted back to CoC i.e. it would be open to them to appropriate the security mortgage with them to recover their dues.

37. We heard the counsels for the parties and perused the record. As can be seen from the order dated 11.06.2021 passed by this Tribunal, the contention raised by the Ld. Counsel for the Objectors that the amount proposed to be paid to DHFL, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited are contrary to the provisions of Section 30(2)(b) of the Code read with Section 53(1) thereof could be rejected. At the cost of repetition, para 49 of the judgment is reproduced below:

“49. Now, in the light of position of law settled by the Hon'ble Supreme Court (Supra), we consider the contention of Mr. Sumant Batra, Advocate and we notice that the amount proposed to be paid in the Resolution Plan is



approved by the CoC. Under Section 30(2)(b) of IBC read with Section 53 of IBC, 2016, it is the duty of the Resolution Professional to examine the Resolution Plan, whether the distribution to the Creditors is made in terms of the provisions of law and Regulations, thereafter the Resolution Professional shall place the same before the Committee of the Creditors u/s 30(3) IBC 2016 for its approval. The COC after considering the feasibility and viability, the manner of distribution proposed, may approve the Plan by not less than 66% of voting share u/s 30(4) of the IBC 2016. It is the commercial wisdom of the CoC to determine what amounts are to be paid to different classes and sub classes of creditors in accordance with the provisions of the Code and the Regulations made thereunder. It is seen that while deciding the amounts in the instant case, the CoC has considered the liquidation value placed by the Resolution Professional as well as the Resolution Applicant as mentioned in aforementioned paragraphs. Since the units, that have already been sold, are no longer an asset of the Corporate Debtor and consequently cannot be liquidated, their liquidation value has been provided as NIL. The COC after considering the same, approved the amounts proposed to be paid to Kotak Mahindra Bank Limited, Kotak Mahindra Prime Limited and similarly, to DHFL. Hence, we find, No force in the contention raised by the Ld. Council for the Objectors That the amounts which are proposed to be paid to the DHFL, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited are contrary to the provision of Section 30(2)(b) of the IBC read with Section 53(1) of the IBC, 2016.”

38. Apparently, when the appeal preferred against said order was dismissed, the aforementioned view taken by this Tribunal was specifically and fully concurred by Hon’ble NCLAT. Para 29 of the order dated 11.04.2023 passed by Hon’ble NCLAT in Company Appeal (AT)(Ins.) No. 661/2021 reads thus:-

“29. We have also noticed the caveats given by the Valuers in their Report. The valuation of the different projects including project Universal Business Park was with the caveats as noted above. The Valuers did not



enter into issue of encumbrance over the assets. The finding has been recorded by the Adjudicating Authority in paragraph 49 that since the units have already been sold, are no longer the asset of the Corporate Debtor, hence, the liquidation value of the Universal Business Park project is NIL. The Adjudicating Authority has rightly come to the above conclusion after considering the facts and circumstances of the present case. We fully concur with the observations made by the Adjudicating Authority in paragraph 49.”

(Emphasis Supplied)

39. In Para 50 of order dated 11.06.2021 passed by this Tribunal, it could be viewed that there being differences between the liquidation value submitted by the two valuers and the valuation assessed by the Resolution Professional and Resolution Applicant, the CoC might consider taking steps for suitable correction of the liquidation value of all the projects and ask Resolution Applicant to account for the same in the Resolution Plan. At the cost of repetition, Para 50 of the order is reproduced thus:-

“50. However, we notice there is significant differences between the liquidation value submitted by the Two Valuers and valuation assessed by the Resolution Professional and Resolution Applicant, therefore, we think it proper, to leave the matter upon the COC to reexamine this issue and if the properties/infrastructure in the projects of the corporate debtor is available for sale/disposal, the COC may consider taking steps for suitable correction of the Liquidation value of all the projects and subsequently, ask the Resolution Applicant to account for the same in the Resolution Plan.”

40. However, Hon’ble NCLAT while considering the appeal preferred from aforementioned order deleted the observation made by this Tribunal regarding reconsideration of valuation (ibid). The Para 31 of the order passed in the appeal



(relevant excerpt of which has already been reproduced hereinabove) reads thus:-

“31. In view of the foregoing discussions, we are of the view that observations and directions in paragraph 49 needs to be affirmed, whereas directions issued in paragraph 50, deserves to be deleted. We are further of the view that relief (b) and other reliefs claimed in the Appeal by the Appellants cannot be granted.”

(Emphasis Supplied)

41. In any case, since the appeal preferred before Hon’ble NCLAT from order dated 11.06.2021 was rejected, the conclusion arrived at by this Tribunal in Para 68 of the order reproduced at Page 10 above would hold good. In terms of the conclusion recorded in said Para of the order, the Financial Creditors may not be compelled to remain attached with Corporate Debtor till the project is completed. The said part of the direction has been complied with by the RP/CoC and the original Resolution Plan has been changed to the following extent as per the Addendum filed which reads thus:-

11. The expression ‘Sale of units earmarked for Financial Creditor M/s DHFL’ or any other similar expression wherever appearing in the Resolution Plan approved by COC in its 15th meeting shall stand deleted by inclusion of this addendum for making upfront payment to M/S DHFL.

42. One major objection is that the interests of Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited cannot be kept attached to implementation of Plan and they need to be paid the admitted amount of their claim in terms of money. Regarding the Universal Pavillion Project, the Plan provided that the said creditors may be allowed to realise their security interest in the land and



construction mortgaged to them in the Universal Pavillion Project in satisfaction of their claim admitted during Insolvency Proceedings. The provision made in this regard was noted in Para 37 of order dated 11.06.2021 passed by this tribunal.

43. When the provision made regarding payment of Rs. 3 Crores to Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited from Universal Business Park was specifically noted in Clause b of Para 68 of the order passed by this Tribunal and interfered, the provision made in the Plan regarding realisation of security interest in Universal Pavillion Project by Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited was not interfered by this Tribunal. The relevant excerpt of the Para 37 of the order i.e. reproduction of resolution plan reads thus:-

2. Kotak Mahindra Bank Ltd & Kotak Mahindra Prime Limited

The claim of Kotak Mahindra Bank Ltd & Kotak Mahindra Prime Limited admitted under the insolvency proceedings is secured with mortgage right over land, future and present construction of the Universal Pavilion Project of the Corporate Debtor. Under this plan it is proposed that Kotak Mahindra Bank Ltd & Kotak Mahindra Prime Limited may allowed to realise its security interest in the land and construction mortgaged to them in the Universal Pavilion Project in satisfaction of their claim admitted during insolvency proceedings after considering claims received on said project in the manner as set out in the Part-II of this Plan.

44. Apparently, the order dated 11.06.2021 has been upheld by Hon'ble NCLAT, thus at this stage, it is not open for us to go behind the said order to reopen the issue. Even otherwise, when the security interest in the Universal Pavillion Project is left to be realised by the Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited. Thus, it is not so that the claim of the said Financial Creditors is attached to completion of project. These Financial



Creditors may dispose of the land and construction in the Project mortgaged to them and may realise the money. The provision regarding same could be found in the Resolution Plan which reads thus:-

D. The Pavillion

Claims amounting to Rs. 8.10 Cr have been received for this Project. The land and the future and present construction has been mortgaged to Kotak Mahindra Bank Ltd & Kotak Mahindra Prime Limited and the claim amount admitted under the insolvency proceedings is ₹13.93 Cr and ₹37.35 Cr. The total dues to be recovered from this project works out to ₹48.28 Cr after adjusting ₹3 Cr recovery from Business Park.

Under this project there are total 564 out of which 64 units have been sold and 403 units are unsold. Around 86.4 % of inventory is ~~unsold~~. As such the sold units are not the assets of the Corporate Debtors and hence cannot be liquidated and the rights in these units belong to the allottees.

Further, the construction activity on this project has not started so completion at this stage with majority inventory being unsold. The same will require huge fund to carry out construction activities from very inception.

The only viable option in respect of this project is selling-off the entire land parcel and distribute the entire sale proceeds between the financial and the allottees in the ratio of their claims.

45. On 31.07.2024 the Ld. Counsels appearing for RP and Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited submitted that the SRA and the Bank had entered into an understanding that in terms of the provision contained in the Plan approved by CoC, the RP and the Banks would find some buyers and would dispose of the property which in terms of the Resolution Plan has already been kept at the disposal of the Banks, subject to certain riders. The order dated 31.07.2024 and the relevant excerpt from the Resolution Plan reads thus:-



“IA-3099/2023, IA-5003/2021, IA-3089/2021: Mr. Swapnil Gupta, Ld. Counsel appearing for the RP, and Mr. Bhatt, Ld. Counsel appearing for the Kotak Mahindra Bank, and Kotak Mahindra Prime submitted that the RP, SRA and the Banks have entered into understanding that in terms of the provisions contained in the plan, which has already been approved by the CoC, the RP and the Banks would find some Buyers and would dispose of the property, which in terms of the Resolution Plan has already been kept at the disposal of the Banks subject to certain riders. According to them, they are already in process of filing appropriate application before this Tribunal and it would be proper if the application for Resolution of Plan is taken up along with the said applications.”

X X X

Secured Financial Creditors

Resolution Applicant proposes to allow the secured creditors having mortgage rights over the properties of the Corporate Debtor to realise their security interest and proposes to pay an amount of ₹38.86Cr to the secured creditors as detailed below:-

<u>Secured Financial Creditors</u>	<u>Claim Admitted</u>	<u>Payout Proposed</u>
DHFL	180,60,83,126	₹35.86Cr
AXIS Bank Limited	5,37,47,606	Realisation of Security interest in the mortgaged property as per Part-II
HDB Financial Service Limited	4,97,82,037	
Kotak Mahindra Prime Limited	37,34,83,401	₹3Cr and Realisation of Security interest in the mortgaged property as per Part-II
Kotak Mahindra Bank Ltd.	13,92,73,227	
Hero Fincorp Limited	30,98,09,854	Realisation of Security interest in the mortgaged property as per Part-II
IndusInd Bank Limited	6,82,32,575	
SIDBI	9,46,85,724	
Total	289,50,97,550	

46. In view of the aforementioned, particularly the order dated 11.06.2021 passed by this Tribunal and upheld by Hon’ble NCLAT, we are not in a position to countenance the objection regarding the provision being made in the Plan



providing for realisation of security interest in the Project Pavillion by the Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited. Another reason not to accept the objection is that the CoC approved the Plan as mix arrangement of resolution insolvency of the CD as also liquidation of a part of its assets. The issue was also dealt with in order dated 11.06.2021. The Para 34 and 43 of the order in which the factual position to the effect was recorded reads thus:-

“34. Before making any comments on these submissions, we would like to refer the Resolution Plan submitted by the Resolution Professional. On perusal of the Resolution Plan, we notice that it is an admitted fact that the Resolution Plan has been divided in two parts i.e. Part-I and Part II. The part-I deals with three projects namely, Universal Green, Universal Aura and Universal Business Park, in which partial construction work has been undertaken. These projects are shown as the "going concern" under the Resolution Plan. Whereas in the Part-II of the Resolution Plan deals with four projects, namely Universal Square, Universal Prime, the Market Square, the Pavillion, in which no construction/development work has commenced and most of the inventory is unsold, and therefore, a proposal is given for their liquidation. It has been suggested to constitute a Monitoring Committee appointed by the National Company Law Tribunal (NCLT) under the Chairmanship of a retired judge to liquidate these four projects and distribute their proceeds amongst creditors of these four Projects on a pro rata basis in accordance with the provisions of Section 53 of IBC including proceeds from recovery made on account preferential/undervalued transactions.

X X X

43. We further notice that in course of their arguments, the objectors have also raised a question that only the part of the properties of the Corporate Debtor are covered with the Resolution Plan whereas the remaining properties of the Corporate Debtor i.e. the properties shown in



part-II of the Resolution Plan are not covered with the Resolution Plan, which has left these properties without giving a specific proposal in the plan.”

47. Nevertheless, having taken the view that the issue is covered by the aspect of commercial wisdom of CoC and is beyond the purview of Section 30(2) of the Code, this Tribunal refused to accept the objection noted in Para 34 and 43 of the order. The Paras 46-48 of the order dated 11.06.2021 in terms of which the objection regarding the Resolution Plan being not in terms of the spirit of the object of procedure for resolution insolvency could not be countenanced reads thus:-

“46. While going through the decision of the Hon'ble Supreme Court in Jaypee Case (Supra), we notice that the power of the Adjudicating Authority to consider approval of the Resolution Plan has also been discussed in that case. Therefore, we would like to refer the relevant paragraphs of the decision, which are quoted below: -

“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.

77.3. The material propositions laid down in Essar Steel (supra) on the extent of judicial review are that the Adjudicating Authority would see if CoC 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 have been taken care of. And, if the Adjudicating Authority would find on a given set of facts that the requisite parameters have not been kept in view, it may send the resolution plan back to the Committee of Creditors for re-submission after satisfying the parameters. Then, as observed in Maharashtra Seamless Ltd. (supra), there is no scope for the Adjudicating Authority or the Appellate Authority to proceed on any equitable perception or to assess the resolution plan on the basis of quantitative analysis. Thus, the treatment of any debt or asset is essentially required to be left to the collective commercial wisdom of the financial creditors.”



47. *In the light of the decision referred above, when we consider the case in hand and the submissions made on behalf of the objectors, we are of the considered view that there is a limited scope of judicial review available to the Adjudicating Authority within the four corners of Section 30(2) of the Code, beyond which the Adjudicating Authority can not go.*

48. *As per Section 30(2) of the Code, only the following five conditions are required to be examined as held by the Hon'ble Supreme Court in Jaypee Case (Supra):*

- 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. Management of affairs of corporate debtor after approval of the resolution plan and***
- e. Implementation and supervision of the resolution plan.”***

48. Also on the issue of distribution, in order dated 11.06.2021, this Tribunal refused to interfere with the view that the same is the aspect that needs to be looked into by CoC in its commercial wisdom. Para 49 of the order has already been reproduced hereinabove.

49. Though in terms of the provisions of the IBC, 2016 r/w IBBI (CIRP) Regulations, 2016 it is for IRP/RP to collate and examine the claims of the stakeholders and in the present case it is left to SRA to do so during the course of implementation of Resolution Plan, but the issue could not be considered as a ground to interfere with the Resolution Plan in the earlier round of litigation. In the present case, while passing the order appointing the Court Commissioner



we sufficiently commented upon the issue. The Paras 22-27 of the order dated 01.11.2023 reads thus:-

“22. It is quite surprising that despite the provisions contained in Section 17 of IBC, 2016 (ibid), which provided for recourse to all kinds of resources at the end of IRP, how the IRP could not verify and collate the claims of the genuine and bona fide stakeholders in a credible manner and how without verifying and authenticating the claims of the Creditors/ Stakeholders, the Expression of Interest (EOI) could be invited and at the strength of what provision of law it could be left to SRA to verify the claims after Forensic Audit.

23. As can be seen from Section 18 of the IBC, 2016, the Interim Resolution Professional is required to perform the duties, namely: -

“(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to

(i) Business operations for the previous two years;

(ii) Financial and operational payments for the previous two years;

(iii) List of assets and liabilities as on the initiation date; and

(iv) Such other matters as may be specified;

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;

(c) constitute a committee of creditors;

(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;

(e) file information collected with the information utility, if necessary; and



(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including-

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) Intangible assets including intellectual property;

(v) Securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) Assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board.”

24. As can be seen from the aforementioned (Section 18(a)(iii) and (b) of IBC, 2016), it was the duty of the IRP to collect all information relating to assets, finances, and operations of the Corporate Debtor for determining its financial position, including information relating to list of assets and liabilities of the Corporate Debtor and to receive and collate all the claims submitted by the creditors to him pursuant to the public announcement made under Section 13 and 15. The dictionary meaning of the term ‘collate’ is to collect information from different places in order to put it together, examine, and compare it. It is not understood that how without examining and comparing the claims of the BBA holders etc., the IRP could admit the same and could constitute the Committee of Creditors comprising such Financial Creditors whose claims are yet to be confirmed after conducting the Forensic Audit. We are also unable to appreciate that how the RP could move an application under Section 21(6a)(b) for appointment of Authorised



Representative on behalf of BBA holders, without satisfying himself regarding the bona fide of their claims.

25. It is also difficult to appreciate that how the RP failed to discharge his duty in terms of the provisions of Section 25 (2)(e) and (d) i.e., to maintain the updated list of claims and failed to appoint professionals i.e., expert Auditor to conduct the Forensic Audit. And if the IRP/RP had satisfied himself about the list of creditors/collation of claims then how he could place a plan which contained the provision regarding verification of the claim of creditors/stakeholders before the CoC and how could he not question such provision in the plan? Once, in terms of the provisions of Section 25(2)(d) of the IBC, 2016, it was for RP to engage the professional to get the Forensic Audit of the CD to be conducted which he could do as per the provisions of Regulation 27(3) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, it is against the scheme of IBC, 2016, to accept the proposal in Resolution Plan regarding authentication of list of stakeholders/creditors. Besides, what is left to be decided by SRA is to arrive at a genuine list of creditors, thus it is not understood that before availability of genuine list of Creditors, how the CoC could be constituted. Even when the plan is approved by so-called CoC, one cannot argue that leaving it to SRA to decide the list of bona fide creditors/stakeholders as per provisions of the Resolution Plan is an exercise of commercial wisdom of CoC.

26. In terms of the provisions of Section 25(2)(g) of the Code, the Resolution Professional needs to prepare an Information Memorandum in accordance with Section 29 of the Code. In terms of the provisions of Section 29(2) of the Code, the RP is required to provide to RA access to all relevant information contained in the Information Memorandum in physical and electronic form. As can be seen from Regulation 36(2)(d) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the Information Memorandum shall contain inter alia a list of Creditors containing the names of the Creditors, the amounts claimed by them, the



amount of their claims admitted and the security interest if any in respect of such claims. As can be seen from Regulation 36(b) of IBBI (Insolvency Resolution for Corporate Persons) Regulations 2016. It is with reference to the information contained in IM that the Resolution Applicant submits their Resolution Plan. Thus, before submitting the Resolution Plan, the PRA must know the list of Creditors and their claim. In the present case, as can be seen from the contents of the plan, it is left to SRA not only to finalise the list of claimants, but also to invite fresh claims.

27. Thus, the RP itself is not clear about the area/units available in the project to be allotted to the BBA holders/ CD holders. He is also not very clear about the number of claimants. The decision in this regard cannot be left to SRA. To a pointed query raised by us regarding the provisions contained in the plan, reproduced in para 20 hereinabove, both the Ld. Counsels for both RP and SRA submitted that the provision is residuary. It is not disputed by the Ld. Counsel for RP that the Applicants herein have been included in the list of claimants/creditors and are treated at par with BBA holders, even though they had not submitted any claim. It is also submitted by Ld. Counsel for the RP that though the area qua the project has been oversold, but still there is sufficient area to accommodate such BBA holders, who have come forward with their claims. In view of the fact that there is no division of units in the project, the RP has confusion regarding the number of claimants and available units. In the conspectus facts and circumstances and in view of the plea raised by the RP as also the uncertain situation regarding the area available in the project, numbers of claimants and even the admission of their claim, we deem it appropriate ask the Court Commissioner appointed qua CA-891/2019 and CA-253/2019 to examine the record, books of accounts and other documents of CD qua the project in question i.e. the Universal Business Park situated at Badshapur, Gurgaon i.e. one of the projects of the CD, and would arrive at an independent conclusion as to whether:- (i) the units qua which the conveyance deeds were executed in favour of Applicants existed at the



time of execution of conveyance deed and had been leased out to the State Bank of Bikaner and Jaipur, ICCI Bank and IndusInd Bank; (ii) there is any proof of payment of rent by the aforementioned banks to the Applicants; (iii) there is record available in the books of accounts of CD's to establish that the Applicants had paid full price qua the units in respect of which the conveyance deeds had been executed in their favour; (iv) the Applicants ever staked any claim before the IRP/RP qua the units allotted to them. The Court Commissioner shall submit its report to RP within 03 weeks. The RP would examine the same within 03 days thereafter and file the Report/ findings of the Court Commissioner with this Tribunal within 07 days thereafter. The fees of the Court Commissioner qua the present issue would be Rs.2 Lacs, which would be paid Rs. Fifty thousand each by the Applicants in IAs-1732/2023, 678/2022, 3778/2022 and RP. The expenses and logistic support to the Court Commissioner would be provided by the RP. The District Administration shall provide the requisite police force and other support to the Court Commissioner, as and when needed, to facilitate the Court Commissioner to perform the aforementioned job and file her report. Court Officer as also RP would make a copy of this order available to the Court Commissioner, whose details would be available in the order passed in CA-891/2019 and CA-253/2019 forthwith. List the IA on 04.12.2023.”

50. In any case, this Tribunal while originally examining the Resolution plan did not interfere with the same on the grounds noted in our order dated 01.11.2023 and the order was broadly upheld by the Hon'ble NCLAT. Besides, since the SRA before us is consortium of association of homebuyers we are not inclined to interfere with the resolution Plan on such ground. Another reason not to do so is that in terms of the order dated 11.06.2021, which has been upheld by Hon'ble NCLAT, this Tribunal found the Resolution Plan broadly in



order, by taking the view that the same could be approved by CoC in exercise of its commercial wisdom. Here, it would not be out of context to note that after having reserved the order, we have listed the matter for clarification and during the course of hearing on clarification i.e. 06.02.2025, when we reserved the orders again, Mr. Bhatt, the Ld. Counsel for Kotak Mahindra Bank Ltd and Kotak Prime Limited categorically submitted that after approval of addendum by CoC and in view of the fact that the representative of Bank would be part of the Monitoring Committee, he has no objection to the Resolution Plan.

IA-4569/2023:

51. The captioned Application has been preferred by the Applicant under Section 60(5) of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016, seeking directions against the Respondent/RP to allow her uninterrupted access and not obstruct the lawful ownership and possession of the property i.e. Unit No. 525, Universal Business Park located at Golf Course Extension Road, Sector - 66, Gurugram, Haryana (“**Unit**”). The submissions made in the IA read thus: -

(i) The Applicant has submitted that she is the lawful owner of the Unit vide registered conveyance deed dated 08.01.2018 and all rights therein including title and possession vest with her. The copy of Conveyance Deed executed between the Applicant and the Corporate Debtor is annexed as Exhibit-A to the application.

(ii) The Applicant has further submitted that corporate insolvency resolution process (“**CIRP**”) commenced qua the Corporate Debtor on 03.07.2018 and as soon as it came to the notice of the Applicant, she



expressed her concern to the Respondent/RP regarding filing of claim with the him. The Applicant was informed by the Respondent that she need not file a claim as nothing is owed by the Corporate Debtor to the Applicant.

(iii) The Applicant then in the year 2020, vide email dated 12.03.2020 enquired with the Respondent whether the Unit could be rented to which the Respondent/ RP vide email dated 16.03.2020 simply replied 'No' without assigning any reason. Further, when the Applicant visited Universal Business Park to check about her Unit she was informed that premises has been sealed as per the instructions of the Respondent/ RP and without the consent of the Respondent/ RP entry in the premises is barred. Thus, the Applicant could not have access to her Unit of which she is a lawful owner.

(iv) It has been further submitted that the Unit has also been subjected to resolution plan wherein the units sold prior to CIRP for which conveyance deeds have been executed will be subject to forensic audits by the resolution applicant to determine if the said sale is genuine or not. Cancellation of already executed conveyance deeds has also been proposed in the resolution plan.

(v) The Applicant has further contended that she stood as lawful owner of the Unit vide the registered conveyance deed and cannot be denied access to the Unit since all rights qua the Unit stood transferred to her as contemplated under Section 54 of the Transfer of Property Act, 1882 read with Section 17 of the Registrations Act, 1908.



(vi) The Applicant has placed reliance upon the judgment of Hon'ble Supreme Court in the matter of **Suraj Lamp and Industries Private Limited v. State of Haryana & Anr.** [(2012) 001 SCC 656], wherein it has been held that the immovable property can be legally and lawfully transferred/ conveyed only by a registered deed of conveyance. Further, in the matter of **Prem Singh & Ors. v. Birbal & Ors.** [(2006) 5 SCC 353], the Hon'ble Supreme Court ruled that it is settled principle of law that there is a presumption that a registered document is validly executed and the onus of proof would be on the person who has to rebut the presumption.

(vii) The Applicant has asserted that the Unit is not part of the asset of the Corporate Debtor since the Unit has been already sold to the Applicant vide registered conveyance deed. To strengthen aforementioned, the Applicant relied upon the judgment of the Hon'ble National Company Appellate Tribunal in **Kotak Mahindra Bank Limited & Anr. vs. Resolution Professional of Universal Buildwell Private Limited & Anr.** [Company (AT)(Ins.) No. 661 of 2021] wherein the Hon'ble Appellate Tribunal upheld that units that have already been sold are no longer the asset of the Corporate Debtor.

- 52.** The RP/Respondent has filed its reply to I.A. 4569/2023 stating therein:-
- (i) The Universal Buildwell is a project of the Corporate Debtor measuring 2,15,915 sq. ft. whereas the area sold is 2,55,721.56 sq. ft. as per the records assessed by the RP and is hence oversold.



(ii) The Universal Buildwell Park is an unfinished project, and no Occupation Certificate has been issued for the same, enabling any lawful possession to be granted to any units thereby.

(iii) The Clause 1 and 3 of the Sale Deed registered in favour of the Applicant does not identify the carpet area of the Applicant's Unit and does not show handing over possession of any demarcated space to the Applicant.

(iv) As per the Resolution Plan, an expense of INR 20.32 crore was required for the completion of building, release of charge of Kotak Mahindra Bank and Kotak Mahindra Ltd. by payment of INR 3 Crore and further upon completion within 9 months, units will be allotted to all BBA holders and conveyance deed holders on a proportionate basis after verification.

(v) The RP filed a report in terms of order of this Tribunal dated 27.05.2019 in C.A. No. 500/2019, wherein it is shown that total area sold is 13,250 sq. ft. by way of BBA and 14,150 by way of Conveyance Deed totalling to 27,400 sq. ft. against total saleable area 20,500 sq. ft.

(vi) Complete payment has been received from the BBA and the Conveyance Deed holders both. However, some parties prior to the CIRP commencement date have converted their BBA into Conveyance Deed while other promoters have not converted their BBA into Conveyance Deed despite receipt of the fee payment. The Conveyance Deed holders have been well aware that since 2019 the area of Universal Business Park has



been in Resolution Plan and has also collectively moved an application being I.A No. 2692/2021 which was dismissed vide order dated 16.07.2021.

53. The findings of the Court Commissioner with respect to the claim of the Applicant reads thus: -

(i) The Unit in the Conveyance Deed executed in favour of the Applicant i.e. Ms. Aneeta Gupta did exist at the time of execution of conveyance deed.

(ii) The conveyance deed mentions that Unit no. 525 is on the fifth floor and the map attached to the conveyance deed does not show any demarcation of the property or specification of where the unit is located particularly for Ms. Aneeta Gupta to the exclusion of any other person.

(iii) A payment receipt by the Corporate Debtor has been provided which evidences that Ms. Aneeta Gupta had paid full price qua the unit in respect of which the conveyance deed was executed. Prior to the order of this Tribunal, no claim was made by the Applicant before the RP/IRP quo the units allotted

54. It is a trite law that all rights qua an immovable property shall stand transferred as contemplated under Section 54 of the Transfer of Property Act, 1882 if the document i.e. conveyance deed is registered as per Section 17 of the Registrations Act, 1908.

55. In the wake and in view of the finding recorded in concurred by Hon'ble NCLAT, the sold property cannot be treated as part of assets of the CD and needs



to be excluded. Nevertheless, the project is not complete, and the unit is not separable in its present condition. Thus, though the Unit in respect of which Conveyance Deed was executed in favour of the Applicant would not be treated as part of assets of CD, to make the same as usable as part of the project, the Applicant would fulfil such terms and conditions which are required to be fulfilled by other allottees in whose favour BBAs are executed. **In light of the above observation, IA- 4569/2023 stands disposed of.**

IA-678/2022, IA-1732/2023 and IA-6746/2023:

56. The captioned applications has been filed by **M/s Grace Steel Private Limited** (IA-678/2022) seeking exclusion of Unit No. 104A, 104B, 208A and 208B in Universal Business Park; **Mr. Jeetendra S Kaushal & Ors.** (IA-1732/2023) seeking exclusion of their respective units of Universal Business Park; and **M/s Seriatim Enterprises LLP** through its Partner Mr. Sanjay Dhody (IA-6746/2023) seeking exclusion of Unit No. 1-C admeasuring 971.03 sq. ft and Unit No. 6 admeasuring 1000 sq. ft at the Ground Floor of Universal Business Park from assets of the Corporate Debtor.

57. It is the case of the Applicants in aforementioned IAs that in terms of Conveyance Deed, the subject properties stood transferred to the Applicants wherein full consideration was paid as a result of which the legal title and right of the subject property vests in the Applicant.

58. The Sale Deed show clear specification of demarcation of the subject property which was executed between the Applicants and the Corporate Debtor.



It is evident from the conveyance deed that the subject property has been transferred after paying full consideration in favour of the Corporate Debtor and resultantly the legal title and right of the subject property having vested in the Applicant could no longer be an asset of the CD.

59. The Applicants could refer to the order of this Adjudicating Authority dated 30.04.2019 wherein it was observed that the allottees having a registered document in their favour would have legal title as against claim by allottee who has no legal right. No dispute regarding the veracity of the conveyance deed entered between the Applicant and the CD could be raised.

60. The Resolution Plan submitted vide IA-1550/2019 could be remitted back to the CoC for modification in terms of payment vide order dated 11.06.2021 (supra). The order recorded that the Project-Universal Trade Towers has not been treated as asset of the Corporate Debtor but has been treated as asset of the allottees of the said Project as entire area has been sold to the allottees.

61. Later, it came of the knowledge of Applicants that the resolution plan considered Conveyance Deed holder as par with those having Builder Buyer Agreement and the assets which are subject matter of conveyance deed are considered as asset of the CD. In order to seek clarification regarding status of the conveyance deed holders of the Universal Business Park, group of conveyance deed holders filed an application i.e., IA-2962/2021, which was disposed of with liberty to raise the issue before the RP in terms of order dated 16.07.2021.



62. The Applicants in IAs-678/2022 and 1732/2023, wrote representation dated 06.10.2021 and 24.07.2021 respectively to the Resolution Professional submitting that the subject property is not an asset of the Corporate Debtor and should not be made part of either Information Memorandum or Resolution Plan qua the Corporate Debtor and any part of the Resolution Plan dealing with the subject property would be illegal and invalid. In response, the Resolution Professional refused to follow the grievance of the Applicant in IA-678/2022 on merit on ground that a Resolution Plan has been approved by CoC and application for approval of same has been filed before the Tribunal. The RP, however, responded to the IA-1732/2023, stating that the area in Universal Business Park could be sold by the Ex-Directors of the Corporate Debtor in excess of available area in regard of which application for appointing Court Commissioner to determine the rights of allottees/buyers was pending before this Tribunal. He further stated that Conveyance Deed has been executed without obtaining Occupation Certificate from the concerned authorities.

63. Thereafter, the CoC approved amended Resolution Plan qua Universal Park Owners Association without removing the provision by which it treated the conveyance deed holders at par with those having builder buyer agreement and the asset which is subject matter of the conveyance deed are considered as asset of the Corporate Debtor.

64. Some of the Applicants approached this Tribunal raising the issue of difference between Conveyance Deed and BBA and this Tribunal viewed that there were some conveyance deed holders with regard to asset of the CD and



appointed Court Commissioner qua CA-891/2019 and CA-253/2019 to examine the record, books of accounts and other documents of the CD in terms of order dated 01.11.2023. However, since the Applicant in IA-6746/2023 was not one of the Applicant, it approached the Court Commissioner submitting his Conveyance Deed and other relevant documents.

65. The Applicants submits that the subject property is not asset of the CD as the ownership regarding the same has been transferred to the Applicant after execution of the Conveyance Deed. The same could be recognised by the order this Tribunal dated 30.04.2019 wherein it was opined that the allottees having a registered document in their favour would have legal title as against the claim by an allottee who has no legal right, title or interest for want of a registered document.

66. The Applicants in IAs-1732/2023 and 6746/2023 also received rent for the subject property from various banks and a copy of the statement evidencing the rent is attached to the IA-6746/2023 as Annexure A5 which reads thus:-

“12. The applicant also submitted that a registered Conveyance Deed is legal and valid in eyes of law and it is not within the power of the CoC qua the Corporate Debtor and the Resolution Professional to treat the subject property as part of the Resolution Plan and asset of the CD. Absence of Occupation Certificate does not in any manner affect the rights transferred of Applicant. In terms of Section 57 of TPA, 1882 r/w Section 17 of Registration Act, 1908, it is trite law that once a sale deed is registered and executed, it is a declaration of ownership in rem and cannot be tinkered with.”



67. The Applicant and other Conveyance Deed Holders were not allowed to file claims as a financial creditor and were never a part of the CoC qua the CD. Therefore, the Resolution Plan approved by CoC treating Conveyance Deed Holder at par with BBA, alters and impinges upon the rights of the Applicant and make the Resolution Plan binding upon them. Further, the Applicant has made complete payment for the subject property as against the BBA holders and equal treatment given to both is disproportionate.

68. Furthermore, to ascertain the correctness of the claims made in IA Nos. 678/2022, 1732/2023 and 3778/2023, this Bench appointed a Court Commissioner with specific directions in terms of Para 27 of the order dated 01.11.2023 passed in IA-1732/2023, which reads thus: -

“ [...] In the conspectus facts and circumstances and in view of the plea raised by the RP as also the uncertain situation regarding the area available in the project, numbers of claimants and even the admission of their claim, we deem it appropriate ask the Court Commissioner appointed qua CA-891/2019 and CA-253/2019 to examine the record, books of accounts and other documents of CD qua the project in question i.e. the Universal Business Park situated at Badshapur, Gurgaon i.e. one of the projects of the CD, and would arrive at an independent conclusion as to whether:-

(i) the units qua which the conveyance deeds were executed in favour of Applicants existed at the time of execution of conveyance deed and had been leased out to the State Bank of Bikaner and Jaipur, ICCI Bank and IndusInd Bank;

(ii) there is any proof of payment of rent by the aforementioned banks to the Applicants;



(iii) there is record available in the books of accounts of CD's to establish that the Applicants had paid full price qua the units in respect of which the conveyance deeds had been executed in their favour;

(iv) the Applicants ever staked any claim before the IRP/RP qua the units allotted to them.

The Court Commissioner shall submit its report to RP within 03 weeks. ”

69. In compliance with aforesaid direction, the Court Commissioner filed a report dated 06.06.2024. Furthermore, in relation to IA- 6746/2023, the Court Commissioner filed a separate report dated 06.06.2024. The aforementioned reports have been taken on record. The report of the Court Commissioner reads thus: -

DETAILS OF ALLOTTEES

Note: The claims are being taken up per Claimant as referred in the respective Interim Application.

IA No.1732/2023						
Sl. No.	Claimant	Particulars of Unit	Documents	Payments	Remarks of the RP	Findings
1.	Mr. Jeetendra S Kaushal	Unit No.02 Universal Business Park Sector-66, Gurgaon, Haryana	1) Copy of Ledger(s) account of Dinesh Kumar and Binesh Kumar (previous first owner of the unit) in the books of the Corporate Debtor- Universal Buildwell P. Ltd. from 01.04.2006- 31.03.2010, 01.04.2010- 31.03.2013, 01.04.2013 - 31.03.2015. 2) Indemnity Bond 13.10.2014 by Mr. Dinesh Kumar and Mr. Jeetendra S. Kaushal in favour of the Corporate Debtor. 3) Isty Buyer (Affidavit confirming possession). 4) Corporate Debtor (Affidavit confirming case).	Rs.95,31,250 (made by Mr. Jeetendra S Kaushal)	As per Builder Buyer Agreement dated 12.11.2009, this unit was sold to Mr. Dinesh Kumar and Mr. Binesh Kumar at a consideration of Rs.40,00,000. The same is reflecting in the records of Corporate Debtor. The area of the unit as per Builder Buyer Agreement is 1,000 sq.ft. Subsequently the above unit was sold	i) Yes, the units qua which the conveyance deed was executed in favour of Mr. Jeetendra S Kaushal existed at the time of execution of conveyance deed and had been leased out to the ICCI Bank. However, the Conveyance Deed specifies only the super area for the said unit and does not demarcate between the common area and the area specific for the unit.



- 5) Office Memo dated 29.10.2014 Flat transfer from Mr. Dinesh Kumar and Mr. Binesh Kumar to Claimant.
- 6) Confirmation of Transfer of Ownership of Unit No.02 in Universal Business Park to Mr. Jeetendra S Kaushal.
- 7) Letter dated 13.10.2014 (Transfer of Property/Shop No.02, Ground Floor, in Universal Business Park).
- 8) Letter of Attornment by the Corporate Debtor to ICICI Bank Ltd. dated 30.03.2015.
- 9) Email dated 29.09.2018 regarding communications between the RP and Mr. Jeetendra S Kaushal.
- 10) Email dated 27.09.2018 regarding communications between the RP and Mr. Jeetendra S Kaushal.
- 11) Receipt dated 29.10.2014.
- 12) Conveyance Deed dated 29.10.2014 regarding transfer of unit no. 2 from Mr. Dinesh Kumar and Mr. Binesh Kumar to Mr. Jeetendra S Kaushal for a consideration of Rs. 95,31,250. (Schedule-A alongwith receipts)
- 13) Indenture of lease dated 01.07.2013 between the Corporate Debtor and the ICICI Bank Ltd.
- 14) Detailed Statements of Mr. Jeetendra S Kaushal (01.04.2015 to 31.03.2021) depicting receipt of rental income.
- 15) Receipt(s) dated 24.09.2015, 28.09.2018, 27.02.2019, 29.10.2019, 22.10.2020.
- 16) Rent Bifurcation Letter dated 30.03.2015.
- 17) Email dated 14.10.2020.
- 18) Notice of Termination of Lease Deed dated 29.02.2020.
- 19) Receipt(s).

ANNEXURE: A-3 'Collv'.

by above persons to Mr. Jeetendra S Kaushal at a consideration of Rs.95,31,250.

Further, vide letter dated 30.03.2015, Corporate Debtor conveyed to ICICI Bank Limited to pay rent for the subject unit to Mr. Kaushal.

Further, there have been email communications between Mr. Kaushal and Resolution Professional and vide email dated 27.09.2018, RP advised Mr. Kaushal to file his claim. However, no claim was received from Mr. Kaushal.

Copy of conveyance deed is not submitted as same forms Part of IA 1732/2023.

Since, the total area sold by the Corporate Debtor was much higher than the saleable area of the project, Resolution Professional, after verification of claims, examination of records of Corporate Debtor and receipt of conveyance deed from the various buyers, compiled separate lists for persons which Builder Buyer Agreements and person with

ii) Yes, there is proof of payment of rent by ICICI Bank to Mr. Jeetendra S Kaushal.

iii) Since the unit was sold by Dinesh Kumar and Binesh Kumar to Jeetendra S Kaushal, a record in the books of accounts of the Corporate Debtor is difficult to find. However, to establish that the Mr. Jeetendra S Kaushal had paid full price qua the units in respect of which the conveyance deed had been executed in his favour. Mr. Kaushal has furnished details of the 5 cheques drawn on different banks (Axis Bank and United Bank of India);

iv) Pursuant to the email dated 27.09.2018, RP advised Mr. Kaushal to file his claim. It is the case of RP that no claim of Mr. Kaushal has been filed..



					Conveyance Deeds and filed a CA 500/2019 with Hon'ble NCLT with a prayer to appoint local commissioner to determine the priority of the rights of the buyers.	
2.	Mr. Harbhajan Singh	Unit No.04A Universal Business Park Sector-66, Gurgaon, Haryana	<ol style="list-style-type: none"> 1) Written Submissions of RP 2) Ledger account of Mr. Harbhajan Singh in the books of Corporate Debtor (01.04.2013 to 12.06.2017) 3) List of documents submitted by Mr. Harbhajan Singh to the Commissioner. 4) Indenture of Lease dated 01.07.2013. 5) Receipt dated 15.09.2014 6) Receipt dated 26.09.2014 7) Conveyance Deed dated 26.09.2014 8) Letter dated 15.09.2014 (Security Deposit Amount). 9) Allotment Letter dated 15.09.2014. 10) Letter of Attornment of Lease/Rental dated 27.10.2014. 11) Letter dated 30.10.2014 (Security Deposit Declaration). 12) Letter dated 30.03.2015 (Rent Bifurcation letter) 13) Letter of Attornment dated 30.03.2015. 14) Statements of Mr. Harbhajan Singh ICICI Bank (01.04.2019 to 31.03.2020). 15) Email dated 12.08.2020 16) Letter dated 06.08.2020 17) Notice of Termination of Lease Deed dated 29.02.2020. 18) Receipt dated 08.10.2020 19) Property Tax Bill 20) Statements of ICICI Bank (01.09.2019 to 09.10.2020). <p>ANNEXURE: A-4 'Colly'.</p>	Rs.28,00,000	<p>Conveyance Deed for Unit No.04A was executed by Universal Buildwell Private Limited and Blaze Promoters Private Limited on 26.09.2014 at a consideration of Rs.28,00,000. Super Area of the Unit is 460 sq.ft. As per the records of Corporate Debtor, he has paid Rs.28,00,000.</p> <p>Further, vide letter dated 27.10.2014, Corporate Debtor has issued a letter to ICICI Bank Limited stating that the rent for subject unit i.e. 4A admeasuring 460 sq. ft. to be paid to Mr. Harbhajan Singh w.e.f. 01.11.2014.</p> <p>Further, he has sent an email dated 06.12.2018 wherein copy of conveyance deed was attached. However, no claim was filed by him.</p> <p>Copy of conveyance deed is not submitted as same forms part of IA 1732/2023.</p> <p>Since, the total area sold by the Corporate Debtor was much higher</p>	<ol style="list-style-type: none"> i) Yes, the units qua which the conveyance deed was executed in favour of Mr. Harbhajan Singh existed at the time of execution of conveyance deed and had been leased out to the ICICI Bank. However, the Conveyance Deed specifies only the super area for the said unit and does not demarcate between the common area and the area specific for the unit. ii) Yes, there is proof of payment of rent by ICICI Bank to Mr. Harbhajan Singh. iii) Yes, there is a record in the books of accounts of Corporate Debtor to establish that Mr. Harbhajan Singh had paid full price qua the units in respect of which the conveyance deed had been executed in his favour. iv) Pursuant to the email dated 06.12.2018, a copy of conveyance deed was attached. however, it is the case of the RP that no claim was filed by Mr. Harbhajan Singh.



					than the salable area of the project, Resolution Professional, after verification of claims, examination of records of Corporate Debtor and receipt of conveyance deed from the various buyers, compiled separate lists for persons with Builder Buyer Agreements and person with Conveyance Deeds and filed a CA No.500/2019 with Hon'ble NCLT with a prayer to appoint local commissioner to determine the priority of the rights of the buyers.	
3.	Mr. Darpan Ghai	Unit No.3 Universal Business Park Sector-66, Gurgaon, Haryana	<ol style="list-style-type: none"> 1) Letter dated 01.12.2023 containing submission of documents by Mr. Darpan Ghai to Commissioner. 2) Conveyance deed dated 29.10.2014 between the Corporate Debtor, M/s. Blaze Promoters Private Limited and Mr. Ravi Chander Ghai. 3) Attornment letter dated 30.03.2015 to ICICI Bank from the Corporate Debtor. 4) Rent Bifurcation letter dated 30.03.2015. 5) Passbook copy depicting rent receipts and the security refund to ICICI. 6) Email dated 16.10.2020 7) Property tax receipt dated 24.02.2020 paid by Mr. Ravi Chander Ghai. 8) Notice of Termination of Lease Deed dated 29.02.2020. 5) Lease deed dated 01.07.2013 between the Corporate Debtor and ICICI Bank. 6) Death Certificate dated 22.05.2021 of Mr. Ravi Chander Ghai <p><u>ANNEXURE: A-5 'Colly'.</u></p>		<p>Conveyance Deed for Unit No.3 admeasuring 1000 sq.ft. was executed by Universal Buildwell Private Limited, Blaze Promoters Private Limited and Mr. Ravi Chander Ghai on 29.10.2014 for a consideration of Rs. 95,31,250.</p> <p>Further, vide letter dated 30.03.2015, Corporate Debtor has issued a letter to ICICI Bank Limited stating that the rent for subject unit i.e. 3 to be paid to Mr. Ravi Chander Ghai.</p>	<ol style="list-style-type: none"> i) The units qua which the conveyance deed was executed in favour of Mr. Ravi Ghai, father of Mr. Darpan Ghai, existed at the time of execution of conveyance deed and had been leased out to the ICICI Bank. It cannot be ascertained by foolproof evidence by conclusively whether after death of Mr Ravi Ghai, Mr. Darpan Ghai has become the successor of the said property. The Conveyance Deed specifies only the super area for the said unit and does not demarcate between the common area and the area specific for the unit. ii) There is proof of payment of rent by ICICI Bank to Mr. Ravi Ghai. iii) The undersigned has not been provided with any record in the books of accounts of Corporate Debtor to establish that Mr. Ravi Ghai had paid full price qua the units in respect of which the conveyance deed had been executed in his favour except the details of the 4 different cheques of State Bank of Patiala and Gramin Bank, Gurgaon for an amount of Rs. 45,00,000, Rs. 45,00,000, Rs. 2,65,625 and Rs. 2,65,625. iv) Due to lack of documentary



						evidence, it cannot be concluded that Mr. Sushil Khanna did or did not stake any claim before the IRP/RP qua the units allotted to him.
3A.	Mr. Ravi Chander Ghai	Unit No.03 Universal Business Park Sector-66, Gurgaon, Haryana	<ol style="list-style-type: none"> 1) Written Submissions of RP 2) Ledger (01.04.2006 to 09.05.2010. 3) Email dated 05.12.2018 alongwith attachment 4) Conveyance Deed dated 29.10.2014. 5) Email dated 16.05.2019 6) Buyer Affidavit dated 19.10.2014 7) Seller Affidavit dated 13.10.2014 8) Indemnity Bond dated 13.10.2014 9) Letter dated 29.10.2014 (Confirmation of Transfer of Ownership). 10) Inter Office Memo dated 16.10.2014. 11) Letter(s) dated 13.10.2014 (Transfer of Property). 12) Full and Final Receipt dated 14.10.2014. 13) Agreement to Sell & Purchase 14) Attornment of Leasehold dated 30.03.2015. 15) Passbook Copy <p>ANNEXURE: A-6 'Colly'.</p>	Rs.95,31,250	<p>Mr. Ravi Chander Ghai (03). As per Builder Buyer Agreement dated 12.11.2009, this unit was sold to Mr. Dinesh Kumar, Mr. Binesh Kumar and Mr. Rakesh Kumar at a consideration of Rs.45,00,000. Area of the unit is 1,000 sq.ft.</p> <p>Later on, these persons sold the unit to Mr. Ravi Chander Ghai at a consideration of Rs.95,31,250 vide sale deed dated 29.10.2014.</p> <p>There have been email communications with Mr. Ghai. Vide email dated 05.12.2018, Mr. Ghai has sent copy of conveyance deed. However, no claim was received from him during CIRP.</p> <p>Also, vide letter dated 30.03.2015, Corporate Debtor has conveyed to the ICICI Bank Limited that rent for the subject unit may be paid to Mr. Ravi Chander Ghai.</p> <p>Since, the total area sold by the Corporate Debtor was much higher than the salable area of the project, Resolution Professional, after verification of claims, examination of records of Corporate Debtor and receipt of conveyance deed from the various buyers, compiled separate lists for persons with Builder Buyer Agreements and person with Conveyance Deeds and filed a CA 500/2019 with Hon'ble NCLT with a prayer to appoint local commissioner to determine the priority of the rights of the buyers.</p>	<p>i) Yes, the units qua which the the conveyance deed was executed in favour of Mr. Ravi Chander Ghai existed at the time of execution of conveyance deed and had been leased out to the ICICI Bank. However, the Conveyance Deed specifies only the super area for the said unit and does not demarcate between the common area and the area specific for the unit.</p> <p>ii) Basis the review of the passbook of Mr. Ravi Chander Ghai, it cannot be conclusively inferred that there is proof of payment of rent by ICICI Bank to Mr. Ravi Chander Ghai.</p> <p>iii) The unit was sold by Mr. Dinesh Kumar, Mr. Rakesh Kumar and Mr. Binesh Kumar to Mr. Ravi Chander Ghai, a record in the books of accounts of the Corporate Debtor is difficult to find. However, perusal of the affidavits by Mr. Dinesh Kumar, Mr. Rakesh Kumar and Mr. Binesh Kumar it can be established that the Mr. Ravi Chander Ghai had paid full price qua the units in respect of which the conveyance deeds had been executed in his favour;</p> <p>v) Pursuant to the email dated 05.12.2018, it can be concluded that, a claim was made by Mr. Ravi Chander Ghai before the IRP/RP qua the units allotted to him before the order dated 01.11.2023 of the Hon'ble Tribunal.</p>



4.	Mrs. Vandana Bhatnagar	Unit No.A-2 Universal Business Park Sector-66, Gurgaon, Haryana	<p>1) Written Submissions of RP</p> <p>2) Ledger(s) of Mrs. Vandana Bhatnagar in the books of Universal Buildwell Private Limited (01.04.2013 to 03.07.2018).</p> <p>3) Ledger(s) of Mr. Manish Bhatnagar in the books of Universal Buildwell Private Limited (01.04.2010 to 31.03.2013).</p> <p>4) Letter dated 25.08.2015 (Mrs. Vandana Bhatnagar).</p> <p>5) Undertaking dated 25.08.2015 (Mrs. Vandana Bhatnagar).</p> <p>6) Revocation Agreement dated 25.08.2015 (Mrs. Vandana Bhatnagar).</p> <p>7) Letter dated 25.08.2015 (Mr. Manish Bhatnagar).</p> <p>8) Revocation Agreement dated 25.08.2015 (Mr. Manish Bhatnagar).</p> <p>9) Undertaking dated 25.08.2015 (Mr. Manish Bhatnagar).</p> <p>10) Letter dated 21.06.2018.</p> <p>11) Email(s) dated 21.05.2021.</p> <p>12) Email dated 02.10.2018.</p> <p>13) Conveyance Deed dated 07.09.2017.</p> <p>14) Acknowledgement Receipt dated 26.08.2015.</p> <p>15) Letter of Attornment dated 26.08.2015.</p> <p>16) Letter dated 01.09.2015 (Physical Possession of Unit No.A-2).</p> <p>17) Receipt dated 29.12.2020.</p> <p>18) IFMS Invoice (for maintenance) dated 01.09.2015.</p> <p>19) Application Form dated 25.08.2015.</p> <p>20) Personal Details Form.</p> <p>21) Detail of Unit Required for Allotment.</p> <p>22) License No. 58 of 2008 (Form LC-V) dated 19.03.2008.</p> <p>23) Builder Buyer Agreement dated 26.08.2015 executed between the Corporate Debtor and Mrs. Vandana Bhatnagar.</p> <p>ANNEXURE: A-7 'Colly'.</p>	Rs.2,33,050	<p>Mr. Manish Bhatnagar was allotted Unit No.G-57, in the 'Pavillion' Project of Corporate Debtor at Sector 70-A on 22.12.2011 at a consideration of Rs.11,39,076. (copy of Ledger is attached).</p> <p>Later, vide revocation agreement dated 25.08.2015, the both the aforesaid unit were cancelled and the proceeds of these unit was transferred to Unit No.A-2, Ground Floor, Business Park. (copy of letter of Cancellation of old BBA and Revocation Agreement are attached).</p> <p>Afterwards, on 07.09.2017, Corporate Debtor executed conveyance deed for Rs.22,78,152 in name of Mrs. Vandana Bhatnagar and Mr. Manish Bhatnagar for unit no. A-2.</p> <p>Later, on 21.06.2018, corporate issued a letter to Mrs. Vandana Bhatnagar demanding physical possession charges of Rs.2,33,050 (copy enclosed).</p> <p>No documents regarding payment of any rent from any bank to these persons are available on record. Further, RP received an email on 2 Oct 2018 where Mrs. Vandana Bhatnagar stated to have attached copy of Form B for claim of Rs.58,44,483. However, no form B was attached. Further, since the claim was received after 90th day of Insolvency Commencement Date, claim was rejected being belated and thereafter, no communication was received from her regarding his claim.</p>	<p>i) The units qua which the conveyance deed was executed in favour of Mrs. Vandana Bhatnagar had already been allotted the said unit by way of builder-buyer agreement dated 26.08.2015 at the time of execution of conveyance deed. The Conveyance Deed specifies only the super area for the said unit and does not demarcate between the common area and the area specific for the unit.</p> <p>ii) No documents regarding payment of any rent from any bank to these persons are available on record.</p> <p>iii) Basis acknowledgement an receipt by the Corporate Debtor to Mrs. Vandana Bhatnagar, it can be established that Mrs. Vandana Bhatnagar had paid full price qua the units in respect of which the conveyance deed had been executed in her favour;</p> <p>iv) Due to lack of documentary evidence, it cannot be concluded that Mrs. Vandana Bhatnagar did or did not stake any claim before the IRP/RP qua the units allotted to him. Further, the RP received an email on 02.10.2018 where Mrs. Vandana Bhatnagar stated to have attached copy of Form B for claim of Rs.58,44,483. However, no form B was attached. Further, since the claim was received after 90th day of Insolvency Commencement Date, claim was rejected being belated and thereafter, no communication was received from her regarding her claim.</p>
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					<p>Further, vide email dated 21 May 2021, Mr. Manish Bhatnagar sent an email that he wish to let out his unit ATM-2 to one of his friend. Same was turned down by RP starting that apart from non-availability of OC, the matter of ownership/possession is sub-judice before Hon'ble NCLT. (Copies of emails attached).</p> <p>Copy of conveyance deed is not being submitted as same forms part of IA 1732/2023.</p> <p>Since, the total area sold by the Corporate Debtor was much higher than the salable area of the project. Resolution Professional, after verification of claims, examination of records of Corporate Debtor and receipt of conveyance deed from the various buyers, compiled separate lists for persons with Builder Buyer Agreements and person with Conveyance Deeds and filed a CA No.500/2019 with Hon'ble NCLT with a prayer to appoint local commissioner to determine the priority of the rights of the buyers.</p>	
5.	Mr. Sushil Chander Khanna & Mrs. Neelam	Unit No.01 Universal Business Park Sector-66.	1) Written Submissions of RP 2) Conveyance Deed dated 17.02.2014 3) Letter dated 28.05.2018 by	Rs.66,00,000	Conveyance Deed of this unit admeasuring 1000 sq. ft. was executed	i) Yes, the units qua which the conveyance deed was executed in favour of Mr. Sushil



Khanna	Gurgaon, Haryana	<p>Mr. Sushil Chander Khanna to the Corporate Debtor</p> <p>4) Ledger (01.04.2013 to 03.07.2018)</p> <p>5) Payment Receipt dated 22.12.2014.</p> <p>6) Possession Certificate</p> <p>7) Receipt dated 22.12.2014</p> <p>8) Affidavit dated 22.12.2014</p> <p>9) Letter dated 23.05.2018 (Deposits with respect to Unit No.01)</p> <p>10) Letter dated 22.12.2014 (Security Deposit Amount).</p> <p>11) Sale Deed dated 22.12.2014.</p> <p>12) Maintenance and Services Agreement dated 22.12.2014</p> <p>13) Lease Deed dated 18.04.2013.</p> <p>14) Letter(s) of Attornment/ Assignment dated 22.12.2014.</p> <p>15) Letter dated 09.03.2015.</p> <p>16) Legal Opinion dated 06.02.2015.</p> <p>17) Notice(s) dated 31.10.2017 for vacating premises</p> <p>18) Cheques for 6 months security deposit</p> <p>19) Tax Invoice(s) dated 31.10.2017 & 01.09.2017</p> <p>20) Letter dated 31.07.2017</p> <p><u>ANNEXURE: A-8 'Colly'.</u></p>		<p>by the Corporate Debtor in favour of Mr. Raman Puri, suspended director on 17.02.2014 at a sales consideration of Rs.60,00,000 (Copy of Conveyance Deed is attached).</p> <p>Later on, Mr. Raman Puri sold this unit to Mr. Sushil Chander Khanna & Mrs. Neelam Khanna vide sale deed dated 22.12.2014 at a consideration of Rs.66,00,000.</p> <p>Vide letter dated 28.05.2018, Mr. Sushil Khanna wrote to Universal that they wish to let out the unit to a Bank and legal team of the Bank is demanding occupation certificate and sanctioned plan and requested Universal to provide the same. No reply of the Universal is available in the file. (Copy of Letter is attached).</p> <p>No payment of rent being received for this unit is available in file available in the office of the Corporate Debtor.</p> <p>Copy of sales deed is not being submitted as same forms part of IA 1732/2023.</p> <p>Since, the total area sold by the Corporate Debtor was much higher</p>	<p>Chander Khanna and Ms. Neelam Khanna, existed at the time of execution of conveyance deed and had been leased out to the State Bank of Bikaner and Jaipur. However, the Conveyance Deed specifies only the super area for the said unit and does not demarcate between the common area and the area specific for the unit.</p> <p>ii) Yes, there is proof of payment of rent by State Bank of Bikaner and Jaipur to Mr. Sushil Chander Khanna and Ms. Neelam Khanna.</p> <p>iii) Since the unit was sold by Mr. Raman Puri to Mr. Sushil Khanna, a record in the books of accounts of the Corporate Debtor is difficult to find to establish that the Mr. Sushil Khanna had paid full price qua the units in respect of which the conveyance deeds had been executed in their favour.</p> <p>iv) Basis perusal of the documents on record, it cannot be concluded that Mr. Sushil Khanna did or did not stake any claim before the IRP/RP qua the units allotted to him.</p>
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					than the salable area of the project, Resolution Professional, after verification of claims, examination of records of Corporate Debtor and receipt of conveyance deed from the various buyers, complied separate lists for persons with Builder Buyer Agreements and person with Conveyance Deeds and filed a CA 500/2019 with Hon'ble NCLT with a prayer to appoint local commissioner to determine the priority of the rights of the buyers.	
6.	Mr. Sushil Chander Khanna & Mrs. Neelam Khanna	Unit No.01-B Universal Business Park Sector-66, Gurgaon, Haryana	<ol style="list-style-type: none"> 1) Written Submissions of RP 2) Letter dated 28.05.2018 by Mr. Sushil Chander Khanna to the Corporate Debtor 3) Conveyance Deed dated 17.02.2014 4) Ledger (01.04.2013 to 03.07.2018) 5) Sale Deed dated 22.12.2014. 6) Lease Deed dated 18.04.2013. 7) Letter dated 09.03.2015. 8) Legal Opinion dated 06.02.2015. 9) Letter(s) of Attornment/ Assignment dated 22.12.2014. 10) Letter dated 22.12.2014. 11) Cheques for 6 months security deposit 12) Notice(s) dated 31.10.2017 for vacating premises. 13) Tax Invoice(s) dated 31.10.2017 & 01.09.2017. 14) Payment Receipt dated 22.12.2014. 15) Possession Certificate 16) Receipt dated 22.12.2014 17) Affidavit dated 22.12.2014. 18) Letter dated 23.05.2018 (Deposits with respect to 	Rs.66,00,000	<p>Conveyance Deed of this unit admeasuring 1000 sq. ft. was executed by Corporate Debtor in favour of Mr. Raman Puri, suspended director on 17.02.2014 at a sales consideration of Rs.60,00,000 (Copy of Conveyance Deed is attached).</p> <p>Later on, Mr. Raman Puri sold this unit to Mr. Sushil Chander Khanna & Mrs. Neelam Khanna vide sale deed dated 22.12.2014 at a consideration of Rs.66,00,000.</p> <p>Vide letter dated 28.05.2018, Mr. Sushil Khanna wrote to Universal that they wish to let out the unit to a Bank</p>	<ol style="list-style-type: none"> i) Yes, the units qua which the the conveyance deed was executed in favour of Mr. Sushil Chander Khanna and Mrs. Neelam Khanna existed at the time of execution of conveyance deed and had been leased out to the State Bank of Bikaner and Jaipur. However, the Conveyance Deed specifies only the super area for the said unit and does not demarcate between the common area and the area specific for the unit. ii) Yes, there is proof of payment of rent by State Bank of Bikaner and Jaipur to Mr. Sushil Chander Khanna and Ms. Neelam Khanna.



			<p>Unit No.01-B) 19)Letter dated 22.12.2014 (Security Deposit Amount). 20)Maintenance and Services Agreement dated 22.12.2014. <u>ANNEXURE: A-9 'Colly'</u></p>		<p>and legal team of the Bank is demanding occupation certificate and sanctioned plan and requested Universal to provide the same. No reply of the Universal is available in the file. (Copy of Letter is attached).</p> <p>No payment of rent being received for this unit is available in file available in the office of the Corporate Debtor.</p> <p>Copy of sales deed is not being submitted as same forms part of IA 1732/2023.</p> <p>Since, the total area sold by the Corporate Debtor was much higher than the salable area of the project, Resolution Professional, after verification of claims, examination of records of Corporate Debtor and receipt of conveyance deed from the various buyers, compiled separate lists for persons with Builder Buyer Agreements and person with Conveyance Deeds and filed a CA 500/2019 with Hon'ble NCLT with a prayer to appoint local commissioner to determine the priority of the rights of the buyers.</p>	<p>iii) Since the unit was sold by Mr. Raman Puri to Mr. Sushil Khanna, a record in the books of accounts of the Corporate Debtor is difficult to find to establish that the Mr. Sushil Khanna and Mrs. Neelam Khanna had paid full price qua the units in respect of which the conveyance deed had been executed in her favour.</p> <p>iv) Basis perusal of the documents on record, it cannot be concluded that Mr. Sushil Khanna did or did not stake any claim before the IRP/RP qua the units allotted to him.</p>
7.	Mr. Ravinder	Unit No.04	1) Written Submissions of RP	Rs.95,31,250	As per Agreement	i) The units qua which



Kumar Ghai	Universal Business Park Sector-66, Gurgaon, Haryana	<ol style="list-style-type: none"> 2) Ledger (01.04.2006 to 31.03.2013) 3) Letter dated 26.09.2014 (Transfer of Property) by Mr. Satpal to the Corporate Debtor. 4) Letter dated 26.09.2014 (Transfer of Property) by Ravinder Kumar to the Corporate Debtor. 5) Buyer Affidavit dated 26.09.2014. 6) Agreement to Sell & Purchase dated 25.09.2014. 7) Full & Final Receipt dated 26.09.2014. 8) Seller Affidavit dated 26.09.2014. 9) Indemnity Bond dated 26.09.2014. 10) Security Deposit Receipt dated 26.09.2014. 11) Agreement dated 16.09.2006 12) Letter(s) dated 09.10.2014 (Confirmation of Unit No.04). 13) Form ST-2 14) Inter Office Memo dated, 30.09.2014. 15) Letter dated 13.10.2014 (Confirmation of Transfer of Ownership) 16) Letter of Attornment of Leaschold interest) dated 30.03.2015 by the Corporate Debtor to ICICI Bank. 17) Email dated 05.12.2018 regarding communications between Mr. Sachin Ghai and the RP. 18) Letter dated 01.12.2023 by the Applicant to the Commissioner. 19) Form(s) No.16A ("Colly") 20) Rent Bifurcation Letter dated 30.03.2015. 21) Email dated 16.10.2020 regarding return of deposit 22) Passbook Copy of Ravinder Kumar 23) Municipal Corporation, Gurugram Property Tax Bill 24) Receipt dated 24.06/2020 25) Notice of Termination of Lease Deed dated 29.02.2020 		<p>dated 16 September 2006, this unit was sold to Mr. Satpal at a consideration of Rs.40,00,000. The same is reflecting in the records of Corporate Debtor (ledger attached). The area of the unit as per Builder Buyer Agreement is 1,000 sq. ft.</p> <p>Subsequently the above unit was sold by above person to Mr. Ravinder Kumar Ghai at a consideration of Rs.95,31,250. Later on, conveyance deed was executed 10.10.2014 by Universal Buidwell Private Limited for Rs.95,31,250.</p> <p>Further, there have been email communication between Mr. Ghai and Resolution Professional and vide email dated 05.12.2018 vide which RP has received copy of Conveyance Deed.</p> <p>Further vide letter dated 30.03.2015, Corporate Debtor conveyed to ICICI Bank Limited to pay rent for the subject unit to Mr. Ravinder Kumar Ghai. (copy of letter of Attornment of Rent attached).</p> <p>Also no claim has been received by Resolution Professional. Only</p>	<p>the conveyance deed was executed in favour of Mr. Ravinder Kumar Ghai existed at the time of execution of conveyance deed and had been leased out to the ICICI Bank. However, the Conveyance Deed specifies only the super area for the said unit and does not demarcate between the common area and the area specific for the unit.</p> <p>ii) There is a proof of payment of rent by ICICI Bank to Mr. Ravinder Kumar Ghai.</p> <p>iii) Basis review of the agreement to sell and purchase dated 25.09.2014, it can be inferred that Mr. Ravinder Kumar Ghai had paid full price qua the units in respect of which the conveyance deed had been executed in his favour;</p> <p>iv) Since only an email was sent to the RP with conveyance deed attached to it vide email dated 05.12.2018 pursuant to the notice received by him from the RP, it can be concluded that a claim was made by Mr. Ravinder Kumar Ghai before the IRP/RP qua the units allotted to him before the order dated 01.11.2023 of the Hon'ble Company Law Tribunal.</p>
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			<p>26) Receipt dated 01.07.2013 and Indenture of Lease dated 01.07.2013. <u>ANNEXURE: A-10 'Colly'</u></p>		<p>an email dated 05.12.2018 was received whereby conveyance deed was sent.</p> <p>Since, the total area sold by the Corporate Debtor was much higher than the salable area of the project, Resolution Professional, after verification of claims, examination of records of Corporate Debtor and receipt of conveyance deed from the various buyers, complied separate lists for persons with Builder Buyer Agreements and person with Conveyance Deeds and filed a CA 500/2019 with Hon'ble NCLT with a prayer to appoint local commissioner to determine the priority of the rights of the buyers.</p>	
8.	Mr. Y. Puran Kumar	Unit No.04C Universal Business Park Sector-66, Gurgaon, Haryana	<ol style="list-style-type: none"> 1) Written Submission of the RP 2) Ledger account of Y. Puran Kumar in the books of the Corporate Debtor (01.04.2006 to 31.03.2018) 3) letter dated 29.07.2015 (Attornment of Lease/Rental) to IndusInd Bank by the Corporate Debtor. 4) Affidavit by the Corporate Debtor dated 25.08.2015 affirming that the said property has been sold to Mr. Y. Puran Kumar. 5) Letter dated 29.07.2015 (Declaration of Rent amount of Unit No. 4-C by Mr. Y. Puran Kumar) to the 	Rs.30,00,000	<p>Mr. Y. Puran Kumar (4C)- Conveyance Deed for Unit No.04C was executed by Universal Buidwell Private Limited and Blaze Promoters Private Limited on 27.07.2015 at a consideration of Rs.30,00,000. Super Area of the Unit is 850 sq.ft. As per the records of Corporate Debtor, he has paid Rs.30,00,000.</p> <p>Further, Corporate Debtor has issued a</p>	<ol style="list-style-type: none"> i) Yes, the units qua which the conveyance deeds was executed in favour of Mr. Y. Puran Kumar existed at the time of execution of conveyance deed and had been leased out to IndusInd Bank. However, the Conveyance Deed specifies only the super area for the said unit and does not demarcate between the common area and the area specific for the unit. ii) Yes, there is a proof



		<p>Corporate Debtor.</p> <p>6) Emails dated 28.09.2018 (between Mr. Amneet P Kumar to Mr. Atul Kansal)</p> <p>7) Conveyance Deed dated 27.07.2015 executed between the Corporate Debtor, M/s. Blaze Promoters Private Limited and Mr. Y. Puran Kumar.</p> <p>8) Payment advices received from IndusInd Bank Limited regarding the rents received for Unit 4-C.</p> <p>7) Email dated 04.11.2015</p> <p>8) Email dated 03.03.2020</p> <p>9) Form(s) No.16A (Colly)</p> <p>10) Tax Deduction at Source (TDS) form 16A with regard to the advance tax deductions with regard to the rent paid to Unit 4-C.</p> <p>11) Property tax Receipt dated 29.01.2019.</p> <p>12) Property tax Receipt dated 31.12.2019.</p> <p><u>ANNEXURE: A-11 'Colly'.</u></p>		<p>letter dated 29.07.2015 addressed to IndusInd Bank Limited stating that the rent for subject unit, i.e., 4C admeasuring 850 sq. ft. to be paid to Mr. Y Puran Kumar w.e.f. 01.08.2015.</p> <p>Though there was communications between RP and applicant but no claim was received from him.</p> <p>Copy of conveyance deed is not being submitted as same forms part of IA 1732/2023.</p> <p>Since, the total area sold by the Corporate Debtor was much higher than the salable area of the project, Resolution Professional, after verification of claims, examination of records of Corporate Debtor and receipt of conveyance deed from the various buyers, compiled separate lists for persons with Builder Buyer Agreements and person with Conveyance Deeds and filed a CA 500/2019 with Hon'ble NCLT with a prayer to appoint local commissioner to determine the priority of the rights of the buyers.</p>	<p>of payment of rent by IndusInd Bank to Mr. Puran Kumar Yerram.</p> <p>iii) No, basis the ledger account we could not find a record in the books of accounts of the Corporate Debtor to establish that the Mr. Puran Kumar Yerram had paid full price qua the units in respect of which the conveyance deed had been executed in his favour.</p> <p>iv) Perusal of the email communication between the RP and Mr. Puran Kumar Yerram indicates that Mr. Puran Kumar Yerram did not stake any claim before the IRP/RP qua the units allotted to him.</p>
IA No.678/2022					



10.	M/s Grace Steel Private Limited	Unit Nos.104A, 104B, 208A and 208B Universal Business Park Sector-66, Gurgaon, Haryana	<ol style="list-style-type: none"> 1) Written submissions of the RP along with annexures in the form of email dated 05.09.2018, email dated 12.10.2021 and the letter dated 06.10.2021. 2) Ledger account of M/s Grace Steel Private Limited in the books of the Corporate Debtor (01.03.2013 to 03.07.2018) 3) Email dated 02.12.2018 4) Email dated 13.10.2021 5) Chart (Details of area sold through Conveyance Deed and Builder Buyer Agreements). 6) Representation dated 30.11.2023 to the Court Commissioner by M/s Grace Steel Private Limited 7) Letter dated 21.03.2016 (Physical Possession of Unit No.208B) 8) Letter dated 21.03.2016 (Physical Possession of Unit No.104-B) 9) Letter dated 21.03.2016 (Physical Possession of Unit No.208-A) 10) Letter dated 21.03.2016 (Physical Possession of Unit No.104-A) 11) Conveyance Deed dated 22.03.2016 (Unit No.104-A). 12) Conveyance Deed dated 22.03.2016 (Unit No.104-B). 13) Conveyance Deed dated 22.03.2016 (Unit No.208-A) 14) Conveyance Deed dated 22.03.2016 (Unit No.208-B) <p>ANNEXURE: A-12 'Colly'.</p>	<p>Rs. 3,16,80,000 (Rs. 3,20,00,000 minus Rs. 3,80,000 TDS)</p>	<p>The RP could not trace the file of Grace Steel Private Limited in the records of Corporate Debtor. Though ledger as appearing in the books of Corporate Debtor is attached which shows the receipt of total payment of Rs. 3,16,80,000 (Rs. 3,20,00,000 minus Rs. 3,80,000 TDS) from Grace Steel Private Limited.</p> <p>The conveyance deeds were executed on super area basis and not carpet area basis or the measurement of units is mentioned either in the conveyance deed or the possession letter.</p> <p>It may be observed from the ground situation that certain walls have been constructed in unauthorized way without measuring carpet area and having any ratio of saleable area vs carpet area and Corporate Debtor didn't give any measurement of the dimensions for the walls also. It may also be noted that walls are created abruptly ignoring the common passage, pillars, windows etc. on the respective floors. There is no complete floor plan available which is showing all units on the floor and</p>	<ol style="list-style-type: none"> i) Since prior to execution of conveyance deed in favour of the M/s Grace Steel Private Limited, Corporate Debtor had already sold the units in excess by way of Builder Buyer Agreement against total saleable area, it can be concluded that the units under the conveyance deed that was executed in favour of M/s Grace Steel Private Limited did not exist at the time of execution. ii) The RP could not trace the file of Grace Steel Private Limited in the records of Corporate Debtor. Though ledger as appearing in the books of Corporate Debtor is attached which shows that M/s Grace Steel Private Limited had paid full price qua the units in respect of which the conveyance deed had been executed in its favour; iii) Pursuant to the emails dated 05.09.2018 and 02.12.2018, it can be concluded that that M/s Grace Steel Private Limited did stake a claim before the IRP/RP qua the units allotted to it before the order dated 01.11.2023 of the Hon'ble Company Law Tribunal.
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Applicant has also not submitted the same and it is can be understood that applicant did not obtain the same from Corporate Debtor.

Further, other submissions regarding IA 1732/2023 with respect to execution of conveyance deeds without occupation certificate and other submissions may be considered for IA 678/2023 also.

Prior to execution of conveyance deed in favour of the applicants, Corporate Debtor had already sold area of 19375 sq ft by way of Builder Buyer Agreement and 750 sq. ft. by way of conveyance deed on the First floor of the project 'Universal Business Park' against total saleable area of 26,000 Sq ft. As per current position on First floor total 34,375 sq ft area has been sold against saleable area of 26000 sq ft available as per records.

Further, prior to execution of conveyance deed in favour of the applicants, Corporate Debtor had already sold area of 30525 sq ft by way of Builder Buyer Agreement on the Second floor of the project 'Universal Business Park' against total saleable area of 24,880 Sq ft. As per current position on Second Floor total 38,625 sq. ft. area has been sold against saleable area of 24,880 sq ft available as per records.



[...]

IA No. 6746/2023						
Sl. No.	Applicant	Particulars of Unit	Documents	Payments	Remarks of the RP	Findings of the Local Commissioner
1.	Seriatim Enterprises LLP	Unit No.01-C Universal Business Park Sector-66, Gurgaon, Haryana	1) Conveyance Deed dated 17.02.2014 executed between the Corporate Debtor, Blaze Promoters Private Limited and Mr. Raman Puri. 2) Sale Deed dated 22.12.2014 executed between Mr. Raman Puri and Seriatim Enterprises LLP. 3) Statement of Account of Seriatim Enterprises LLP (03.12.2014-23.12.2014) indicating the payment for the sale deed dated 22.12.2014 4) Letter dated 09.03.2015. 5) Legal Opinion dated 06.02.2015. 6) Letter(s) of Attornment/ Assignment to State Bank of Bikaner and Jaipur from Raman Puri 7) Letter(s) of Attornment/ Assignment dated 22.12.2014 to State Bank of Bikaner and Jaipur from Seriatim Enterprises LLP. 8) NOC dated 22.12.2014 by State Bank of Jaipur and Bikaner for the Unit No. 1, 1B and 1C ground floor at Universal Business Park, Gurgaon. 9) Statement of Account of Seriatim Enterprises LLP (09.07.2015, 04.09.2015-05.09.2015, 04.03.2016-05.03.2016 and 02.03.2017-06.03.2017) indicating the payment received for the rented unit. 10) Notice dated 31.10.2017 by State Bank of	Rs.64,08,800 (Paid by Seriatim Enterprises LLP)	<p>The units which are subject matter of this application were leased out without there being an occupation certificate which is a pre-condition for any person to occupy any unit in the said project.</p> <p>The conveyance deeds were executed on super area basis and with the clause that decision of vendor regarding super-carpet ratio will be final and vendees agreed to abide/accept the same. It is also to be noted that as on date also, there are no lockable demarcation or dimension (length x breadth) of any unit in the project on individual basis.</p> <p>With the execution of conveyance deed only symbolic and un-demarcated possession was given to applicants and physical possession was never given to any of the applicants.</p> <p>It is also be mentioned today, none of the units in the project site is occupied by any of the persons and whole of the project building is under the</p>	<p>i) Yes, the unit in the conveyance deed which was executed in favour of Seriatim Enterprises LLP did exist at the time of execution of conveyance deed. However, the Conveyance Deed specifies only the super area for the said unit and does not demarcate between the common area and the area specific for the unit.</p> <p>ii) Yes, there is proof of payment of rent by State Bank of Bikaner and Jaipur to Seriatim Enterprises LLP.</p> <p>iii) Since the unit was sold by Mr. Raman Puri to Seriatim Enterprises LLP, a record in the books of accounts of the Corporate Debtor is difficult to find to establish that the Seriatim Enterprises LLP had paid full price qua the units in respect of which the conveyance deed had been executed in its favour. However, perusal of the bank statement of Seriatim Enterprises LLP indicates that the payment was made to Mr. Raman Puri.</p> <p>iv) Basis perusal of the documents on record, it</p>



			<p>Bikaner and Jaipur for vacating premises.</p> <p>11) Letter dated 23.12.2014 by the Corporate Debtor (declaration of parking to M/s State Bank of Bikaner and Jaipur as a tenant)</p> <p>12) Letter dated 23.12.2014 (Transferring the security deposit amount in favour of Seriatim Enterprises LLP by corporate debtor).</p>	<p>possession of resolution professional. Further, as per Clause 22 of the Conveyance deeds, applicants have undertaken that they shall bear cost of upgradation or replacement of plant and machinery but not limited to lifts, D G Sets, Electric Sub Station, Pumps, Fire Fighting Equipment etc. require replacement of upgradation on pro-rata basis.</p> <p>It is also to be noted that as on date, project is incomplete and lacks basic amenities like electricity, lifts, firefighting, sewage treatment and is not fit for occupation by anybody.</p> <p>It is being mentioned that, Resolution Professional has appointed one of the top ranked audit firms, BDO India LLP, for conducting transaction audit.</p> <p>As per records available with Company, Unit No. 1C was sold to Mr. Raman Puri erstwhile Promoter by way of Conveyance Deed dated 17.02.2014 by corporate debtor.</p> <p>Later on, the same was sold by Mr. Raman Puri to Seriatim vide sale deed 22.12.2014 and</p>	<p>cannot be concluded that Seriatim Enterprises LLP whether Seriatim Enterprises LLP stake any claim before the IRP/RP qua the units allotted to it.</p>
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					<p>as per records submitted by Seriatim Enterprises LLP, same was sold to firm by Raman Puri</p> <p>As per records available, Unit No. 1C was never let out, however, Universal Buildwell Private Limited was paying commitment charges till 31.12.2016.</p>	
2.	Seriatim Enterprises LLP	Unit No. 6 (1000 sq. ft.), ground floor, Universal Business Park	<ol style="list-style-type: none"> 1. Conveyance deed dated October 17, 2014 executed by Universal Buildwell (P) Ltd. and Blaze Promoters and Mr. Bachanjeet Singh Bakshi for conveyancing the unit to Mr. Bachanjeet Singh Bakshi. 2. Sale deed dated September 22, 2015, executed by Mr. Bachanjeet Singh 	Rs. 74,50,000 and a stamp duty of Rs. 5,21,500	<p>The units which are subject matter of this application were leased out without there being an occupation certificate which is a pre-condition for any person to occupy any unit in the said project.</p> <p>The conveyance deeds were executed</p>	<p>i) Yes, the units qua which the conveyance deed was executed in favour of Seriatim Enterprises LLP existed at the time of execution of conveyance deed. However, there is no occupancy certificate for it. It is claimed that the said unit is leased to IndusInd Bank. The</p>
			<ol style="list-style-type: none"> 3. Affidavit of Mr. Bachanjeet Singh Bakshi confirming receipt of full payment and delivering symbolic possession of pre-leased property. 4. Form 26QB for the purposes of TDS of Rs. 74500 paid by Seriatim Enterprises LLP 5. Confirmation of transfer of ownership of Unit 6 by Universal Buildwell Pvt Ltd. dated 20.10.2015 6. Letter of attornment dated September 2015 by Seriatim Enterprises LLP to IndusInd Bank Ltd. 7. Statement of account of M/s Seriatim Enterprises LLP (01.04.2016-07.04.2016. 1.03.2017 		<p>on super area basis and with the clause that decision of vendor regarding super-carpet ratio will be final and vendees agreed to abide/accept the same. It is also to be noted that as on date also, there are no lockable demarcation or dimension (length x breadth) of any unit in the project on individual basis.</p> <p>With the execution of conveyance deed only symbolic and un-demarcated possession was given to applicants and physical possession was never given to any of the applicants.</p>	<p>Conveyance Deed specifies only the super area for the said unit and does not demarcate between the common area and the area specific for the unit.</p> <p>ii) Yes, there is no proof of payment of rent by a IndusInd Bank.</p> <p>iii) Since the unit was sold by Mr. Bachanjeet Singh Bakshi to Seriatim Enterprises LLP, a record in the books of accounts of the Corporate Debtor is difficult to find to establish that the Seriatim Enterprises LLP had paid full price qua the units in respect of which the conveyance deed had been executed in its</p>



			<p>-07.03.2017 and 02.05.2019 - 07.05.2019) depicting the receipt of payment of rent from IndusInd Bank for the rental</p> <p>8. Letters dated 18.03.2020 and 08.05.2020 depicting termination of the lease over unit 6 and the vacation of the same by IndusInd Bank Ltd.</p>	<p>It is also be mentioned today, none of the units in the project site is occupied by any of the persons and whole of the project building is under the possession of resolution professional.</p> <p>Further, as per Clause 22 of the Conveyance deeds, applicants have undertaken that they shall bear cost of upgradation or replacement of plant and machinery but not limited to lifts, D G Sets, Electric Sub Station, Pumps, Fire Fighting Equipment etc. require replacement of upgradation on pro-rata basis.</p>	<p>favour. However, perusal of the bank statement of Seriatim Enterprises LLP indicates that the payment was made to Mr. Bachanjeet Singh Bakshi.</p> <p>iv) Basis perusal of the documents on record, it cannot be concluded that Seriatim Enterprises LLP did or did not stake any claim before the IRP/RP qua the units allotted to it.</p>
				<p>It is also to be noted that as on date, project is incomplete and lacks basic amenities like electricity, lifts, firefighting, sewage treatment and is not fit for occupation by anybody.</p> <p>It is being mentioned that, Resolution Professional has appointed one of the top ranked audit firms, BDO India LLP, for conducting transaction audit.</p> <p>As per records available with Company, Unit No. 6 was sold to Mr. Bachanjeet Singh Bakshi by way of Conveyance Deed</p>	



				<p>dated 17.02.2014 by corporate debtor.</p> <p>Later on, the same was sold by Mr. Bachanjeet Singh Bakshi to Seriatim vide sale deed 22.09.2015.</p> <p>As per records available, Unit No. 1C was never let out, however, Universal Buildwell Private Limited was paying commitment charges till 31.12.2016.</p> <p>It is necessary to note that, currently entire building is in possession of the RP and no tenant or owner is running any commercial activity from the Premises (Universal Business Park). Security guards were placed by the RP after commencement of CIRP.</p>	
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70. As can be seen from the report of the Court Commissioner, the conveyance deeds could be executed in respect of the units claimed by the Applicants in the captioned IA. However, regarding the receipt of rent wherever claimed by the Applicants the Court Commissioner could not find any record Without going deep into the matter, we may refer to Para 49 of the order dated 11.06.2021, wherein this Tribunal viewed that the Unit that has already been sold are no longer assets of the Corporate Debtor and consequently cannot be liquidated. Their liquidation value has been provided as NIL. The Para has already been reproduced hereinabove. In the appeal preferred against the order, the view taken in said Para could be specifically concurred by Hon'ble NCLAT. Since, the Conveyance Deeds are not in dispute, it is held that the units in respect of

Conveyance Deeds have been executed would not be treated as part of the assets IA-5003/2021, IA-678/2022, IA-3778/2022, IA-1732/2023, IA-3099/2023, IA-4569/2023, IA- 6746/2023, IA-2959/2024 in CP(IB)-456/ND/2018



of the CD. However, the Court Commissioner has submitted a report indicating that the areas of the unit qua which CD have been executed are not demarcated. In any case, since the areas of the units are not demarcated and the same cannot be used independent of the project, the Applicants would be liable to fulfil such terms and conditions as are required to make the flats/units in question usable like other Units in respect of which BBA could be executed in favour allottees.

In the wake, IA-678/2022, IA-1732/2023 and IA-6746/2023 stands disposed of.

71. Various parameters required to be examined by this Tribunal in terms of the provisions of Section 30(2) of the IBC, 2016 have already been noted hereinabove and except the issue of supervision/monitoring of Implementation, the same is in order. Regarding monitoring, the CoC left it to this Tribunal to appoint a Monitoring Committee. At the cost of repetition, the relevant provision of the Resolution Plan is reproduced thus:-

“Appointment of Monitoring Agency for supervision of implementation of the Resolution Plan:-

Resolution Applicant proposes the constitution of monitoring committee as under to supervise the implementation of plan:-

- 1. A person nominated by Hon'ble NCLT (Remuneration to be decided by Hon'ble NCLT and to be shared by all three Associations in share of Claims).*
- 2. A Legal professional nominated by Resolution Applicant (Remuneration to be decided by the Resolution Applicant and to be shared by all three Associations in share of Claims).*
- 3. One representative from each association i.e. Universal Aura, Universal Green, Universal Business Park.*



4. *One representative from lenders as nominated by them.”*

72. In the Resolution Plan, a provision has been made that the homebuyers would be entitled to approach SRA for their claims. The relevant excerpt of the Resolution Plan reads thus:-

Resolution Applicant with main aim to resolve the hardship of the homebuyers shall also consider allottees who have not submitted their claims during the insolvency proceedings. Their interest in their units shall be protected in the manner as specified for the allottees under the respective sections of the Universal Greens, Universal Aura and Universal Business Park under this Plan after varication of their claims.

73. For the sake of clarity, the provisions made in the Resolution Plan for those allottees who have not submitted their claims during insolvency proceedings is quoted hereinbelow:

Universal Greens Project at Sector-85, Faridabad

This Project of the Corporate Debtor shall be demerged in to a Public Limited Company formed specifically by the homebuyers of the Universal Greens Project.

The shares of the new entity shall be held by the homebuyers by subscribing to the equity of the Company in the ratio of the total consideration agreed as per the BBA with the Corporate Debtor towards cost of their allotted units.

The homebuyers who have not filed claim till date they shall also be allowed to subscribe to the shares of the new Company in the ratio of the payment made by them to the Corporate Debtor towards cost of their allotted units as and when they are willing to do the same after due diligence and verification of their claim.

In case a homebuyer is not in a position to subscribe to the shares of the so demerged company for any reason what so ever, they will be allowed to get their share allotted in the name of their authorised representatives by furnishing an affidavit in this regard to the Secretary of the Universal Greens Buyers Association.

X X X



Universal Aura Project at Sector-82, Gurugram

This Project of the Corporate Debtor shall be demerged in to a Public Limited Company formed specifically by the homebuyers of the Universal Aura Project.

The shares of the new entity shall be held by the homebuyers by subscribing to the equity of the Company in the ratio of the payment made by them to the Corporate Debtor towards cost of their allotted units.

The homebuyers who have not filed claim till date they shall also be allowed to subscribe to the shares of the new Company in the ratio of the payment made by them to the Corporate Debtor towards cost of their allotted units as and when they are willing to do the same.

In case a homebuyer is not in a position to subscribe to the shares of the so demerged company for any reason what so ever, they will be allowed to get their share allotted in the name of their authorised representatives by furnishing an affidavit in this regard to the Secretary of the Universal Aura Welfare Association.

X X X

Universal Business Park, at Sector-66, Gurugram

This Project of the Corporate Debtor shall be demerged in to a Public Limited Company formed specifically by the homebuyers of the Universal Business Park Project.

The shares of the new entity shall be held by the homebuyers by subscribing to the equity of the Company in the ratio of the payment made by them to the Corporate Debtor towards cost of their allotted units.

The homebuyers who have not filed claim till date they shall also be allowed to subscribe to the shares of the new Company in the ratio of the payment made by them to the Corporate Debtor towards cost of their allotted units within 15days.

In case a homebuyer is not in a position to subscribe to the shares of the so demerged company for any reason what so ever, they will be allowed to get their share allotted in the name of their authorised representatives by furnishing an affidavit in this regard to the Secretary of the Universal Business Park Owners Association.

74. It is apposite to mention that while the IA for approval of resolution plan stood reserved, the matter was listed on 06.12.2024 for clarification on the following two points:



- A. More clarity on proposed liquidation process with timelines;
- B. Which are the Banks involved alongwith their security interests in the liquidation, and how the same is proposed to be treated.

75. In compliance of the above, an affidavit dated 30.01.2025 (r/w addendum affidavit dated 12.02.2025), was filed by the RP providing details of the banks involved alongwith their security interests in the liquidation and how the same is proposed to be treated under the plan, which reads thus: -

S. NO.	NAME OF THE BANK	CLAIMED AMOUNT	ADMITTED AMOUNT	SECURITY INTEREST	TREATMENT IN THE RESOLUTION PLAN
1.	SIDBI	12,41,60,724/-	9,46,85,724/-	<p>The claim of SIDBI is secured with mortgage right over the entire 8 plots under Universal Prime Project. <i>(Annexure K/ Pg. 252 of I.A. 5003 of 2021)</i></p> <p>Further, each plot contains of 3 units. Hence, out of total 24 units, 18 residential units have been sold as such the right and title in respect of these 18 sold Units belong to the Homebuyers as per records of the Corporate Debtor. The only exercisable rights of SIDBI are in respect of the 6 unsold Units. In terms of the Resolution Plan, SIDBI is allowed to realise its security interest in 6 unsold units on as is where is basis, towards satisfaction of their claim against the Corporate Debtor.</p> <p>SIDBI has also filed an Application bearing I.A. No.</p>	<p>Under the Resolution plan it is proposed that SIDBI be allowed to realise its security interest for unsold inventory in the said Project as detailed in the Part-II of this Resolution Plan in satisfaction of their claim admitted during insolvency proceedings in the manner as set out in the Part-II of this Plan. <i>(Annexure K/ Part-II Pg. 297 of I.A. 5003 of 2021)</i></p>



				5643 of 2021 seeking directions to get the Resolution Plan revised and to provide for release of security interest of all the 24 units mortgaged to Applicant. However, the said Application was dismissed for non-prosecution vide Order dated 26.05.2023 passed by this Hon'ble Tribunal.	
2.	KOTAK MAHINDRA BANK	13,92,73,227/-	13,92,73,227/-	<p>The claim of Kotak Mahindra Bank Ltd & Kotak Mahindra Prime Ltd. admitted under the insolvency proceedings is secured with mortgage right over land, future and present construction of the Universal Pavilion Project of the Corporate Debtor and in respect to developed area in Universal Business Park. <i>(Annexure K/ Pg. 252 of I.A. 5003 of 2021)</i></p> <p>This Hon'ble Tribunal vide Order dated 11.06.2021 has dismissed the objections of Kotak Mahindra Bank Ltd. and Kotak Mahindra Prime Ltd. and remitted the matter partly accepting one objection of Kotak Mahindra Bank Ltd., Kotak Mahindra Prime Ltd. and Dewan Housing Finance Corporation Ltd. and directed to provide for timeline for payment and to consider to re-evaluate the liquidation value of the Corporate Debtor.</p> <p>In terms of Order dated 11.06.2021, Resolution Plan was thereafter amended in compliance with the directions vide order dated 11.06.2021 and has been re-submitted for approval of this Hon'ble Tribunal bearing I.A. No. 5003 of 2021.</p> <p>Order dated 11.06.2021 has attained finality as it was challenged by Kotak Mahindra Bank Ltd. and Kotak Mahindra Prime Ltd. before the Hon'ble Appellate Tribunal and the same was upheld vide Order dated 11.04.2023. The</p>	<p>Under this plan it is proposed that Kotak Mahindra Bank Ltd & Kotak Mahindra Prime Limited may be allowed to realise its security interest in the land and construction mortgaged to them in the Universal Pavilion Project in satisfaction of their claim admitted during insolvency proceedings after considering claims received on said project in the manner as set out in the Part-II of this Plan. <i>(Annexure K/ Part-II Pg. 297 of I.A. 5003 of 2021)</i></p>

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				Hon'ble Appellate Tribunal further clarified that there was no requirement to re-consider the liquidation value of the CD. Further, the appeal filed by Kotak Mahindra Bank assailing Order dated 11.04.2023 of Hon'ble NCLAT has been dismissed by the Hon'ble Supreme Court vide Order dated 26.05.2023	
3.	Dewan Housing Finance Limited (DHFL) (Assigned to Pheonix ARC Limited)	1,83,20,19,466/-	1,80,60,83,126/-	The claim of DHFL (assigned to Phoenix ARC Limited) is secured with 11.231 Acre land of 'Universal Aura Project' and 7.931 Acre land of 'Universal Green Project' (Page 266 and 267 of IA No. 5003 of 2021)	DHFL (Assigned to Pheonix ARC Limited) shall be paid an amount of Rs. 44.81 crores within a period of 180 days from the approval of the resolution plan by the Adjudicating Authority and as per the Timeline of Payment under the Addendum to the Resolution Plan. <i>(Timeline of payment @Page 687 of Vol. IV of I.A. No. 5003 of 2021)</i>
4.	AXIS BANK	7,81,12,100/-	5,37,47,606/-	The Claim of Axis Bank was admitted as unsecured Financial Creditor as no security is given by the Corporate Debtor. The claim of AXIS Bank is secured against mortgage right over 3500 Sq. Ft. area on Ground Floor and 1750 Sq. Ft. area on the Ground Floor in the name of Sh. Raman Puri Director of the Corporate Debtor in Universal Trade Tower. Margin money given against Bank Guarantee was adjusted while admitting the claim. <i>(Annexure K/ Pg. 252 of I.A. 5003 of 2021)</i>	No payment is provided in the Resolution Plan



5.	HDB FINANCIAL SERVICES LIMITED (HDBFSL)	5,01,56,385/-	4,97,82,037/-	<p>The Claim of HDB Financial Services Ltd. was admitted as unsecured Financial Creditor as no security is given by the Corporate Debtor.</p> <p>The claim of HDBFSL is secured against mortgage right over Flat No. 331, 332, 333 at 3rd floor area measuring 3337.59 sq. ft. and Flat No. 524, 525, 526, 527, 527A at 5th Floor area measuring 4000 sq. ft. in Universal Trade Tower are the personal assets of Directors/ shareholder of Corporate Debtor. (Annexure K/ Pg. 253 of I.A. 5003 of 2021)</p>	No payment is provided in the Resolution Plan
6.	INDUSIND BANK	6,82,32,575/-	6,82,32,575/-	<p>The Claim of Indusind Bank Ltd. was admitted as unsecured Financial Creditor as no security is given by the Corporate Debtor.</p> <p>The claim of IndusInd Bank admitted under the insolvency proceedings is secured against mortgage of property at Ground Floor in the name of Sh. Raman Puri, Director of the Corporate Debtor and Smt. Madhu Puri related party to the Corporate Debtor. (Annexure K/ Pg. 253 of I.A. 5003 of 2021)</p> <p>Indusind Bank has further filed an Application bearing I.A. No. 924 of 2024 seeking directions against the RP to not to deal with the properties which are in the name of promoters as the same is subject matter of I.A. No. 738 of 2019 which is filed by the RP seeking cancellation of conveyance deeds which were executed without any consideration as per the books of the Corporate Debtor.</p>	No payment is provided in the Resolution Plan



7.	HERO FINCORP LIMITED	30,98,09,854/-	30,98,09,854/-	<p>The Claim of Hero Fincorp Ltd. was admitted as unsecured Financial Creditor as no security is given by the Corporate Debtor.</p> <p>The claim of Hero Fincorp Limited admitted under the insolvency proceedings is secured against mortgage of all pieces and parcels of immovable property admeasuring 4 bigha and 12 biswa situated at khewat no. 15/7, Min bearing khasra no. 17 /19 and 17 /18, Sector-49, Gurgaon-122018 being the land of the project ' Universal Trade Power' which is complete and oversold by corporate debtor (<i>Annexure K Pg. 253 of I.A. 5003 of 2021</i>)</p>	No payment is provided in the Resolution Plan
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**In terms of the addendum affidavit dated 12.02.2025 filed by RP, at Sl. No. 2, the claim of the Kotak Mahindra Prime Limited i.e. Rs. 37,34,83,401/- is to be read in addition to the claim of Rs. 13,92,73,227 of Kotak Mahindra Bank Limited.*

C. What are the conditions precedents to be met for successful conclusion of the Resolution/ Liquidation process and what is the timelines for meeting the same:

SRA has given affidavit that there is no condition precedent required for conclusion of the Resolution Plan and the Resolution Plan is unconditional. However, regulatory permissions and approvals would be required for the Resolution Plan as mentioned on *Pg. 255 to 259, Vol-II of I.A. No. 5003 of 2021* and the SRA will take necessary steps for the same after approval of resolution plan.

D. Pending applications from the Bank reg. sale of land as committed in the last hearing:

As informed to this Hon'ble Tribunal by the counsels for Kotak Mahindra Bank, Kotak Mahindra Prime, RP and SRA that in principal understanding was reached that the asset of the Corporate Debtor i.e. land admeasuring 2.8375 Acres in Village Parla, Tehsil and District, Gurugram, Haryana which is mortgaged to Kotak Mahindra Bank and Kotak Mahindra Prime, shall be disposed of and the buyer for the same would be identified in advance of the Resolution Plan. However, though SRA states that buyer has been identified and the understanding between the SRA, Kotak Mahindra Bank and Kotak Mahindra Prime could not be finalized for the sale of the land. According to SRA, they have identified the buyer i.e. Sankalp Realmart Pvt. Ltd. For the land of Universal Pavillion project and received an undertaking and Bank Guarantee from the buyer. The total sale consideration towards the Pavillion



Property is INR 43 Crores, as per written submissions filed by SRA on 12.09.2024 in compliance of Order dated 04.09.2024. It is submitted that immediately upon approval of the Resolution Plan the sale can be undertaken and the proceeds can be distributed in accordance with the Resolution Plan to Kotak Mahindra Bank and Kotak Mahindra Prime. Alternatively, Kotak Mahindra Bank and Kotak Mahindra Prime may be permitted to sell the said asset and distribute the proceeds between the Allottees, Kotak Mahindra Bank Ltd. and Kotak Mahindra Prime Ltd. in terms of the Resolution Plan. (Pg. 299, Vol-II of I.A. No. 5003 of 2021)

E. List of all applications with name of parties and prayers, whether disposed of or pending, and now the same is incorporated in the Resolution Plan:

List of all applications is annexed herewith and marked as **ANNEXURE-B**. Further, the Resolution Plan provides for dealing with all avoidance applications by SRA and the relevant extract is mentioned herein below: Pg. 297, Vol-II of I.A. No. 5003 of 2021

“As per information provided by Resolutional Professional, RP has filed various application for avoidance of transaction under section 43, 45, 50 and 66 of Insolvency and Bankruptcy Code, 2016. Any recovery of money or area shall also formed part of liquidation state under Part -II of this Resolution Plan except as specified under Resolution Plan.”

4. The contents of the aforesaid paragraphs are true and correct to my knowledge and are based on the information derived from the records maintained by the Deponent and believed to be true and correct.

76. Moreover, the SRA also filed an affidavit dated 03.02.2025 providing in respect of the clarification sought for the timelines of liquidation process. It was submitted by the SRA that in case any asset sale is to be done by the Monitoring Committee, the same shall be endeavoured to be completed within 180 days from the date of approval of the Resolution Plan by this Adjudicating Authority. Relevant excerpt of the affidavit filed by SRA reads thus: -

“iii. In respect of the clarification sought for the timelines of liquidation process, it is stated that in case of any asset sale is to be done by the Monitoring Committee the same will be endeavour to be completed within



180 days from the date of approval of Resolution Plan by this Hon'ble Tribunal. The dispensation in respect of each project is as provided follows:

S. NO.	PROJECT NAME	CLARIFICATION
1.	Universal Prime Plots in Sohna (S. No. A on Page No. 297 of I.A. No. 5003 of 2021)	<p>There is no change in the approved Resolution Plan by the CoC in its 15th CoC meeting held on 11.11.2019 and SIDBI is the only Financial Creditor who has equitable mortgage rights on the residential plots in this Project. Out of 24 plots, 18 residential plots have been sold as such the right and title in respect of these 18 sold plots belong to the Homebuyers. The only exercisable rights of SIDBI are in respect of the 6 (six) unsold plots. In terms of the Resolution Plan (Page 252 of I.A. nO. 5003 of 2021), SIDBI is allowed to realise its security interest towards satisfaction of their claim against the Corporate Debtor.</p> <p>SIDBI can initiate the realisation of its security interest in the 6 (six) unsold units immediately after approval of the Resolution Plan considered as Effective Date of the Resolution Plan. The rights and title of the 6 (six) unsold plots shall deemed to have been transferred and security realisation exercise shall have to be undertaken by SIDBI as per their established norms and subject to time taken for any documentation to be executed by Corporate Debtor as may be required by</p>



		<p><i>SIDBI.</i></p> <p><i>SIDBI has also filed an Application bearing I.A. No. 5643 of 2021 seeking directions to get the Resolution Plan revised and to provide for release of security interest of all the 24 units mortgaged to Applicant. However, the said Application was dismissed for non- prosecution vide Order dated 26.05.2023 passed by this Hon'ble Tribunal.</i></p>
2.	<p>Universal Square (S. No. B on Page No. 298 of I.A. No. 5003 of 2021)</p>	<p><i>Joint Development Agreement dated 15.01.2008 was entered between Nova Realtors Pvt. Ltd. and the Corporate Debtor. Further, Nova Realtors Pvt. Ltd. later transferred the Development Rights to Tremendous Comped Pvt. Ltd. (now M3M India Pvt. Ltd.) vide Transfer of Developments Rights Agreement dated 15.12.2008.</i></p> <p><i>M3M India Private Limited filed a suit bearing Case No. 187/2015/2017 for declaration, permanent injunction and mandatory injunction and has obtained Order from Ld. District Court, Gurgaon for cancellation of Development Rights of the Corporate Debtor vide Order dated 24.01.2018. Copy of Order dated 24.02.2018 passed by the Ld. District Court, Gurgaon is annexed herewith and marked</i></p>



	<p>as <u>Annexure- A</u>. Thereafter, the Corporate Debtor had filed an appeal bearing Civil Appeal No. 190 of 2018 against Order 24.02.2021, upheld the Order dated 24.01.2018. Copy of Order dated 24.02.2021 passed by the Ld. ADJ, Gurgaon is annexed herewith and marked as <u>Annexure- B</u>.</p> <p>Aggrieved by Order dated 24.02.2021, the Resolution Professional further filed an Appeal bearing RSA No. 284 of 2021 before the Hon'ble High Court of Punjab and Haryana. Meanwhile, the Hon'ble High Court of Punjab and Haryana was pleased to grant status quo in favour of the Corporate Debtor vide order dated 04.05.2021. Copy of Order dated 04.05.2021 passed by the Hon'ble High Court of Punjab and Haryana is annexed herewith and marked as <u>Annexure- C</u>.</p> <p>During the pendency of Appeal, the Association of Universal Square moved an Application bearing C.M. No. 2350-C of 2021 under Order 1 Rule 10 of the Code of Civil Procedure, 1908, seeking impleadment of the Association being necessary party. However, the Hon'ble High Court of Punjab and Haryana dismissed the said Application vide Order dated 04.07.2022. Copy of Order dated 04.07.2022 passed by the Hon'ble High Court of Punjab and</p>
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		<p><i>Haryana is annexed herewith and marked as <u>Annexure- D.</u></i></p> <p><i>In view of the aforesaid Order dated 04.07.2022, the Association of Universal Square filed an Appeal before the Hon'ble Supreme Court bearing C.A. No. 1515 of 2024 and vide Order dated 05.09.2022, the proceedings before the Hon'ble High Court of Punjab and Haryana were stayed. Copy of Order dated 05.09.2022 passed by the Hon'ble Supreme Court is annexed herewith and marked as <u>Annexure- E.</u></i></p> <p><i>The Successful Resolution Applicant shall pursue the Appeal pending before the Hon'ble High Court of Punjab and Haryana as mentioned above. Based on the outcome of the Appeal, upon disposal of the matter in favour of the Successful Resolution Applicant, the Successful Resolution Applicant shall sale the development rights within 6 (six) months from the date of the final Order to the third party and distribute the proceeds in ratio of their admitted claim.</i></p>
3.	<p><i>The Market Square (S. No. C on Page No. 298 of I.A. No. 5003 of 2021)</i></p>	<p><i>This project is on a land owned by M/s Samyak Projects Private Limited (M/s. SMPPL) and the Corporate Debtor have the development rights with 50-50 share which was later on modified to 43% and 57% is in</i></p>



	<p><i>favour of M/s. Samyak Projects Private Limited by virtue of Compromise Agreement before the Ld. District Courts, Gurgaon vide Order dated 17.04.2013. Consequently, a settlement agreement dated 18.01.2018 was reached, the Corporate Debtor was allotted 22,700 Sq. Ft. of super built up area in the Project i.e. approximately 17.02% of total area of the project.</i></p> <p><i>Furthermore, an application was filed bearing I.A. No. 891 of 2019 under Section 45 read with Section 49 of the Insolvency and Bankruptcy Code, 2016, by the Resolution Professional before this Hon'ble Tribunal for reversing the effect of the transaction under the Settlement Agreement dated 18.01.2018 and restoring the rights of the Corporate Debtor to the Market Square Project as prior to Settlement Agreement dated 18.01.2018 and the same is pending before this Hon'ble Tribunal.</i></p> <p><i>The outcome of the aforesaid Application shall be honoured by the Successful Resolution Applicant and in case the rights of the Corporate Debtor is restored in the allotted area of 22,700 Sq. Ft., upon disposal of the aforesaid matter in favour of the Successful Resolution Applicant. The Successful Resolution Applicant shall sale</i></p>
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		<p><i>the allotted area of 22,700 Sq. ft. within 6 (six) months from the date of the final Order to the third party and distribute the proceeds, there of between the Homebuyers of the Corporate Debtor in the ratio of their admitted claims.</i></p>
4.	<p><i>The Pavilion (S. No. D on Page No. 298 & 299 of I.A. No. 5003 of 2021)</i></p>	<p><i>The construction activity on this Project has not started and around 86.4% on inventory in this Project is unsold.</i></p> <p><i>The land, future and present construction has been mortgaged to M/s Kotak Mahindra Bank Ltd. and M/s Kotak Mahindra Prime Ltd. and as per the terms of the Resolution Plan, the only viable option available at this stage for the Corporate Debtor is to sell- off the land and distribute the sale proceeds among the financial creditors viz. M/s Kotak Mahindra Bank Ltd. and M/s Kotak Mahindra Prime Ltd. and the Homebuyers in the ratio of their admitted claim.</i></p> <p><i>As per the terms of the Resolution Plan (S. No. 2 on Page No. 252 of I.A. No. 5003 of 2021), M/s Kotak Mahindra Bank Ltd. and M/s Kotak Mahindra Prime Ltd. are vested with the rights for realising the security interest in this Project for satisfaction of claims under this insolvency resolution proceedings.</i></p> <p><i>Or</i></p>



	<p><i>SRA has already identified the buyer i.e. RDB Infrastructure and Power Limited and received an undertaking and Bank Guarantee towards the Universal Pavilion property from the buyer. The total sale consideration towards the Pavilion Property is INR 43 Crores, as per written submissions filed by SRA on 12.09.2024 in compliance of Order dated 04.09.2024. Immediately upon approval of the Resolution Plan the sale can be undertaken and the proceeds can be distributed in accordance with the Resolution Plan to Kotak Mahindra Bank and Kotak Mahindra Prime. A Copy of Undertaking and Bank Guarantee is annexed herewith and marked as <u>Annexure- F “Colly”</u>.</i></p>
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**In terms of the addendum affidavit dated 10.02.2025, the word “plots” appears at Sl. No. 1 to Sl. No. 4(1)(iii) in respect of Universal Prime is to be read as “units”.*

2. What are the Conditions Precedents to be met for for successful conclusion of the Resolution/ Liquidation process and what is the timelines for meeting the same:

There are no conditions precedents in the Resolution Plan and based on guidance of the Monitoring Committee, the assets will be sold at the earliest to recover the funds and transfer the proceeds to the respective beneficiaries.

5. I say and submit that all the pending application before this Adjudicating Authority after approval of Resolution Plan will be pursue by the Successful Resolution Applicant.”



77. Further, in terms of the resolution plan, we deem it appropriate to appoint Ms. Rashmi Chopra, Senior Adv, already appointed by us as Court Commissioner, as the Convenor/ Chairperson of the Monitoring Committee to supervise the implementation of the Resolution Plan. The remuneration of the Convenor/ Chairperson of the Monitoring Committee shall be Rs. 2,50,000/- per month. Further, the RP is appointed as an ex-officio member in the Monitoring Committee. The other members of the Monitoring Committee would be as follows:-

- A Legal professional nominated by Resolution Applicant (Remuneration to be decided by the Resolution Applicant and to be shared by all three Associations in share of Claims).
- One representative from each association i.e. Universal Aura, Universal Green, Universal Business Park.
- One representative from lenders as nominated by them.

78. In the Resolution Plan, the Resolution Applicant has sought certain reliefs and concessions that fall under the jurisdiction of different Government Authorities, and/or are subject to the provisions of different laws for the time being in force. In this connection, it is made clear that the amount payable by the SRA in terms of the plan to different creditors, stakeholders, and to keep the Corporate Debtor as a going concern is not a subject matter of any condition, assumptions, relief/concessions and/or qualification. It also needs to be underlined that the provisions of Section 31(4) of IBC, 2016 mandate the Resolution Applicant to obtain the necessary approval required



under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under Section 31 of the IBC, 2016, in terms of the provisions of Section 14 of the Code even during the period of CIRP, no default in payment of current dues is a precondition for continuation of the license, permit, registration, and similar rights. Thus, even during the moratorium period, the facilities mentioned above are made available to the CD only when there is no default in payment of the current dues, on approval of the resolution plan, the SRA/CD cannot be put on a better footing by exempting it from paying its legitimate dues under the law.

79. Furthermore, the Code provides for consideration of the claims, by the IRP/RP in terms of the provisions of Section 18(b) and Section 25(b) read with the relevant regulations.

80. The Code also provides for the preparation of an Information Memorandum in terms of the provisions of Regulation 36(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which contains, inter alia, a list of creditors along with the amounts claimed by them. Regulation 36(1) of the CIRP Regulations, provides for submission of the said Information Memorandum to each member of the COC. Regulation 36A provides for invitation for expression of interest and Regulation 36B provides for a request for a Resolution Plan. It is with reference to the Information Memorandum and Evaluation Matrix that the RP issues a Request for Resolution Plan. The Request for Resolution Plan details each step in the process and the manner and purposes of interaction between



the Resolution Professional and the Prospective Resolution Applicant. The Resolution Plan submitted after consideration of the IM, EM and the RFRP is then examined by the Committee of Creditors. Even then, it needs to satisfy the requirements of Regulations 37 and 38 of the extant regulations and only then it can be approved by the COC in terms of the provisions of Regulation 39 of the aforementioned regulations. After such approval, the Plan effectively becomes a contract entered into between CD represented through RP, SRA, the creditors of the CD, and other stakeholders and is binding on all of them. Section 31(1) of IBC, 2016, thus takes care of most of the reliefs/concessions/waivers which are required by the Resolution Applicant. Furthermore, Section 32A of the Code provides for cessation of the liability for offences committed by the CD prior to initiation of the CIRP subject to the conditions laid down in the said section.

81. In this context, a reference is made to the decision of Hon'ble NCLAT in **Worldfa Exports Pvt. Ltd Vs. Vivek Raheja and Anr.** [Company Appeal (AT) (Insolvency) No. 827 of 2024 & I.A. No. 2994 of 2024] dated 30.04.2024 wherein a challenge was laid against the following observation of the NCLT:-

“16. However, the resolution plan shall not be construed as waiver to any statutory obligations/liabilities arising out of the approved resolution plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the resolution plan, the same shall be subject to approval by the concerned authorities. The same view has been held by the Hon'ble Supreme Court in Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development case (supra).”



The Hon'ble NCLAT, however, dismissed the Appeal with the following observation:

“Adjudicating Authority has already referred to the Judgment of the Hon'ble Supreme Court in the matter of `Ghanshyam Mishra & Sons Private Limited` Vs. `Edelweiss Asset Reconstruction Company Limited`, in Civil Appeal No. 8129 of 2019, which clearly laid down that all claims which have not been dealt in the Resolution Plan does not survive after the approval of Resolution Plan.

6. Insofar as statutory waivers and concessions, Adjudicating Authority has rightly observed that SRA to file appropriate necessary application before the necessary Forum/Authority in order to avail the relief and the concession.

7. The Resolution Plan having been approved it is always open for the Applicant to make an appropriate application before the Statutory Authority for grant of such relief as permissible after approval of the Resolution Plan.

8. It goes without saying that all past liabilities which are not dealt with in the Resolution Plan stand extinguished by view of the Judgment of the Hon'ble Supreme Court in `Ghanshyam Mishra & Sons Private Limited` (Supra) which is a well settled law.”

82. In sum and substance, the SRA/CD would be entitled to no other relief/concession/waiver from this Adjudicating Authority except those available to it, as per the provisions of Section 31(1) and 32A of IBC, 2016. The SRA is, however, at liberty to approach the relevant authorities, who would consider these claims as per the provisions of the relevant law, in an expeditious manner.



83. In the sequel to the above, **we are inclined to approve the Resolution Plan along with addendum as approved/recommended by the CoC as placed by the Applicant before this Adjudicating Authority.**

84. Regarding the implementation of the Plan, the SRA is directed to strictly adhere to the timeline provided in the Resolution Plan as also the Revised Addendum dated 05.08.2021 as follows:-

- i. The total payouts of ₹56.58 crores which encompass the payment of CIRP costs, employee dues, and operational creditor settlements, key financial creditors, including DHFL and Kotak Mahindra entities by Universal Greens, Universal Aura and Business Park would be made within 180 days from the date of this order.
- ii. The construction of Universal Greens Project shall be completed within a period of 36 months from the date of this order as per the schedule provided in the Addendum.
- iii. The construction of Universal Aura Project shall be completed within a period of 36 months from the date of this order as per the schedule provided in the Addendum.
- iv. The construction of Universal Business Park Project shall be completed within a period of 6 months from the date of this order as per the schedule provided in the Addendum.
- v. The completion period of construction activities wherever appearing in the Resolution Plan approved by CoC in its 15th meeting shall now be



considered as changed to 36 months from the Effective Date i.e. date of approval of the plan by this Adjudicating Authority.

- vi. The Monitoring Committee would ensure such assets which need to be disposed of and the proceeds of which are to be given to certain creditors in terms of the plan should be disposed as expeditiously as possible preferably within 180 days with subject to the consent of the creditors whose dues are to be cleared out of the sale proceeds (as per plan).

85. It is further ordered that:-

- (i) All claims which have not been dealt with in the Resolution Plan would not survive after the approval of the Resolution Plan.
- (iii) The SRA/CD would be entitled to no other reliefs/ concessions/waivers except those are available/ permissible to it as per the provisions of Section 31(1) and 32A of IBC, 2016. The SRA is at liberty to approach the relevant authorities who would consider these claims as per the provisions of the relevant law in an expeditious manner.
- (iv) The Monitoring Committee as provided in the Resolution Plan shall be set up by the Applicant/RP within 07 days of passing of this Order, which in turn, shall take all necessary steps for time bound implementation of the Resolution Plan as per approval.
- (v) The order of the moratorium in respect to the corporate debtor passed by this Adjudicating Authority under Section 14 of the IBC, 2016 shall cease to have effect from the date of passing of this Order; and



(vi) The Resolution Professional shall forward all the records relating to the conduct of the CIRP and the Resolution Plan to the IBBI for its record and database.

86. The Court Officer and Resolution Professional (RP) shall forthwith make available/send a copy of this Order to the CoC and the Successful Resolution Applicant (SRA) for immediate necessary compliance.

87. A copy of this order shall also be sent by the Court Officer and Applicant to the IBBI for their records.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)