

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH, DELHI  
BENCH III**

**CA-914/2019, I.A. No. 5/2020  
In  
IB-401(ND)/2017**

**In the matter of**

**Mr. Deepak Khanna**

**...Financial Creditor**

**Versus**

**M/s Earth Infrastructure Limited**

**...Corporate Debtor**

**CA-914/2019**

**In the Matter of**

**Bipin Sharma & Ors**

*...Applicants*

**IA-05/2020**

**In the matter of**

**Mr. Akash Shinghal**

RP for Earth Infrastructure Limited

*... Applicant*

Order delivered on 8<sup>th</sup> June, 2021

Coram:

**SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)**

**SHRI NARENDER KUMAR BHOLA, HON'BLE MEMBER  
(TECHNICAL)**

Applicant

:Mr. Kumar Mihir & Mr. Ashok Manchanda  
(Advocates) ( for Applicants in IA-914/2019)

RP

:Mr. Ashish Makhija, Mr. Harsh Arora, Ms.  
Shreya Bajpai (Advocates)

RA

:Mr. Vivek Kohli, Sr. Advocate, Mr. Sandeep  
Bhuraria, Ms. Mahima Malhotra, Malvika Jain  
(Advocates)

For HDFC/Objector

:Ms. Amita Kumar

## **ORDER**

Per: NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

### **CA-914/2019**

1. This is an application filed by the applicants Under Section 60(5) read with 31(2) of the Insolvency and Bankruptcy Code, 2016 seeking directions from this Adjudicating Authority regarding the resolution plan submitted for the corporate debtor. The prayers in the application are as follows:

- a. Reject the resolution plan submitted by M/s Alpha Corp Development Private Limited being violative of section 30 of the Code and direct the said resolution applicant to revise the said resolution plan;*
- b. Direct the resolution professional to consider and place all the resolution plans received till date for the consideration of CoC.*

2. The Brief facts as enumerated in the application are as follows:

- a. The applicants are homebuyers/financial creditors of the corporate debtor (CD). CIR Process initiated against the CD on 06.06.2018.

One resolution plan was received from M/s Alpha Corp Development Private Limited ('Alpha') and revised plan for four projects namely, Earth Copia, Earth Iconic, Earth Sapphire Court and Earth Tech One was submitted by Alpha on 15.10.2019. However, subsequently Alpha informed that resolution plan is only for three projects and for the fourth Project, namely Earth Iconic it will submit separately in the CIR process of M/s Celestial Estates Pvt. Ltd. The plan was put before the CoC on 11.11.2019 and same was put for e-voting.

- b. It is submitted that the said resolution plan did not comply with the mandate of section 30 of the Code and the plan was put for voting without ascertaining the same. It is stated that vide order dated 15.11.2019 this authority directed the other resolution applicants to submit its resolution plan before the resolution plan so that the CoC may consider all available resolution plans.

c. The applicants have the following objections with respect to resolution plan submitted by the Alpha:

i. The Resolution Plan given by M/s Alpha Corp is too extensive and complex to be analyzed meaningfully from commercial and legal angles in the short span of time granted by the Resolution professional before e-voting. In fact, even when the voting had been progressing for the last 27 hours, when the first round of voting of 24 hours had already been completed at 12 Noon on 11.11.2019, M/s Alpha Corp, the Resolution Applicant itself, was still issuing clarifications which were circulated by the Resolution Professional only at 03.57 PM on 11.11.2019. Therefore, hundreds & thousands of allottees/homebuyers who had already cast their votes were not having the benefit of clarifications issued at 03.57 PM on 11.11.2019. Thus, they were forced to

take decisions which could not be said to be the best ones as all the relevant material and information was not made available to them at the relevant time.

- ii. This Hon'ble tribunal had not passed any order treating Earth Towne as distinct and separate from other 4 Projects of the Corporate Debtor.
- iii. The absence of an exit route/plan for such members renders the proposed Resolution Plan invalid & non-compliant with the law. If a stakeholder is not able to make further payments as per the revised Payment Plan (yet to be introduced by the RA) he runs the risk of his entire payments being forfeited by the RA, as there is no provision for compensating such members or providing a decent and fair exit for them.
- iv. RA has sought approval to spell out the revised Payment Plans later and no informed decision can be taken without

there being relevant details of proposed payment plans.

- v. Alpha has not shared the crucial information of cash in-flows i.e., sources of receipts of the RA.
- vi. As per clause 10.10 of the revised resolution plan for Earth Copia and similar clauses of other subjects, all assets, bank balances, FDRs, Land, receivables etc. have been proposed by the RA to be transferred to itself or self-appropriated by M/s Alpha on deemed basis, even before the RA makes its own minimal committed contribution of just Rs. 5 crores in the first year. Handing over/transferring assets worth over Rs. 1000 crores virtually belonging to the thousands of the allottees/homebuyers to a newly formed SPV or even M/s Alpha Corp is fraught with grave dangers of these being mis-appropriated and misused or even swindled in a fraudulent manner.

- vii. No known property is being transferred to the Corporate Debtor, EIL. It will be entitled to only such properties as would be detected only after the Effective Date (date of order of NCLT). The probability of such a detection is virtually NIL. (Sub-para 2.2 under Para 2 captioned as Object & Scope of 'Proposed Scheme for Allottees')
- viii. No asset worth any value has been left for the proposed new company of EIL in which allottees would be shareholders. In fact, all liabilities, complexities, problematic issues etc. have been assigned to EIL. Cash flows resulting from payments by the allottees and the agreed contribution of the RA only have been proposed to be routed through the Escrow Account. All other cash Inflows including the value of Aurochem lands, sale proceeds of unsold inventory and the cash flows resulting from transfer of all other assets like bank balances, FDRs etc. have

not been adequately secured in the proposed plan. Even the non-monetary assets are to be treated as contributions in kind of the allottees and there should be adequate safeguards for their security and proper utilization.

- ix. The new directors of the new EIL/Corporate Debtor will not have any say in the operation and management of the projects— (Sub-paras 2.1 under Para 2 captioned as the Object and scope of ‘Proposed Scheme for Allottees)
- x. There are several other catches having the effect of substantially enhancing the cost for the homebuyers, and extending the time for completion of the project without any deterrence or penalty for the RA.
- xi. Claims pertaining to Aurochem (other than 12 claims submitted by allottees of Aurochem) if become payable, are to be borne by allottees (Clause 3, Pg 38-39)



- xii. No maintenance charges mentioned in Clause 5.2, Pg. 44 of plan.
- xiii. Resolution applicant is not obligated to complete the construction in 5 years (Clause 7.1) and no liability in case construction is not done in 5 years (Clause 7.4).
- xiv. Previous agreements including tripartite agreements shall not be applicable on or the responsibility of the resolution Applicant, (Clause 10.3).
- xv. All government dues, license fee, EDC/IDC and other dues shall be the liability of allottees (Clause 10.9).
- xvi. No liability to pay towards the land/plots allotted to Aurochem (Clause 10.17).
- xvii. The Resolution Applicant will be entitled to charge/seek additional costs from the allottees in the form of viability gap funding without any Cap/ceiling for the same.

Hence, in view of the above, the applicants prayed that the resolution plan submitted by the Alpha may be rejected.

3. The resolution professional filed its reply to the application under consideration and stated that affidavit supporting the application is not in accordance with law. The resolution plan against which objections has been raised in this application is approved by the members of CD in meeting dated 11.11.2019 by a thumping majority of 99.97% in view of the provisions of section 25A (3-A) of the Code. The applicants have actively taken the part in the resolution process of the CD and were part of the financial creditors in class which have approved the plan with 100% voting in favour as per section 25A (3-A) of IBC, hence, the applicants should not be allowed to challenge the resolution plan as resolution plan's approval/non-approval is the commercial wisdom of CoC. Furthermore, no ground has been taken by the applicant to indicate that the resolution plan is contravening any of the provisions of the Code.

Moreover, the applicants have a total voting share of less than 1 percent. It is stated that the applicants have got sufficient time to analyze the resolution plan as the plan was presented before the members of the CoC in the 18<sup>th</sup> meeting dated 18.10.2019 same was discussed in detail. The authorized representative also conducted the meeting between the allottees and Resolution Applicant on 08.11.2019 and in the said meeting it was decided that certain changes may be carried out in the resolution plan and the resolution plan was amended on the changes suggested. Hence, the resolution professional prayed that the application may be rejected keeping in view the above facts.

4. The applicant also filed the rejoinder to the reply of the resolution professional and submitted that resolution plan of M/s Alpha Corp contravenes the provisions of 30(2) of the IBC which is fundamental pre-requisites and basic condition. The applicant also questioned the voting result, furthermore, stated admission of the plans of M/s Alpha Corp being unauthorised and unlawful liable to be quashed. It is submitted that not

only principles of Natural Justice have not been observed, but the provisions of the IBC and relevant regulations have also been violated. The Applicant reiterated other points that were already discussed in the main application contents, hence, not repeated again.

5. The applicants have also filed the written submissions and argued that the RP has not complied with the regulations 25(4) and 26(4) of CIRP regulations. It further stated that high percentage of favourable votes is immaterial if plan non-compliant with section 30 of the Code. Furthermore, the amendments in the resolution plan took place after 90% of the voting had already taken place, which was later made part of the resolution plan submitted for the approval of the Hon'ble Adjudicating Authority. Moreover, the RP illegally admitted the Alpha Corp Plan beyond the last date and allowed 5-6 revisions of the plan without CoC Approval or adjudicating authority approval. Furthermore, most of the cash inflows deliberately kept out of the Escrow Account. It is further stated

that the ground on which the resolution plan of other RA was rejected is also applicable to the RA, whose resolution plan has been approved by the CoC, hence, adopting a double standard and RP deliberately treated 4 different plans as one single plan for 4 different projects with much different terms and conditions.

6. Resolution Professional also filed the written submission and replied that the resolution plan has been filed in accordance with the provisions of the IBC, 2016 and all the clauses of section 30(1) of the Code are complied with. Furthermore, sufficient time was given to the class of creditors as evident from the list of events. It is further stated that the resolution professional and authorized representative of the class of creditors have gone beyond their call of duty and have facilitated informal interactions between the authorized representatives of the Homebuyers and the resolution applicant. Moreover, Special Purpose Vehicle for 4 projects fulfilled eligibility conditions and plan of Alpha was received well within time.

7. We have heard the counsels for both the petitioner and the respondents at length, perused the evidence placed on record, including the written submissions filed by both of them. It is seen that the present IA has been filed by 14 applicants. The counsel for RP has been able to prove that effectively (after excluding the applicants under joint names and those being not FC) there are only 7 applicants who had opposed to the approval of Resolution Plan, and this constitutes a miniscule proportion of the total number of FCs in class. This has not been controverted by the Counsel for Applicants herein. It is also seen that the Resolution Plan has been approved by 99.97 % of voting share of CoC. On this count we agree with submission of Counsel for RP that the applicants herein do not have locus standi to file the instant application. Nevertheless, we will deal with other objections of the Applicants and reply of RP to the same.

8. Next objection by the Applicants herein states that the Resolution Plan does not provide for an exit route for the dissenting home-buyer financial creditors. To this the counsel for RP has submitted that 7 applicants who have not voted in favour of the Plan is of no consequence in the light of deeming fiction contained in Section 25A (3A) of the Code. This Tribunal agree with submission of Counsel for RP on this point; hence the objection is over-ruled. Accordingly, there is no need to provide for an exit route for the dissenting FCs in Class.

9. The Applicants have further objected to the Resolution Plan on the ground that it is too complex, there being no assets left with CD, handing over/transferring assets worth over Rs. 1000 crores to newly formed SPV etc. It is also alleged that the Resolution Plan does not provide for various compliances mandated under Section 30 (2) of the Code read with Regulation 38. In this connection,

our attention has been drawn to Explanation to section 5(26) of the Code, which reads as follows:

*“Explanation: For the removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the Corporate Debtor, including by way merger, amalgamation and demerger;”*

From the above it is clear that the Resolution Plan can also provide for restructuring of the Corporate Debtor including merger, amalgamation and demerger. In the instant case the Plan provides for merger of subsidiary companies (land owning companies) with the CD and demerger of the individual projects to 100% owned subsidiaries of the Resolution Applicant. It is further demonstrated by the Counsel for RP that the Resolution Plan as approved by CoC takes care of compliance with provisions of Section 30 (2) of the IBC and CIRP Regulation 38 thereunder. We have gone through the scheme of compliances as highlighted by Counsel for RP and agree with his submissions with respect to matters, such as provision for payment of



insolvency resolution process cost, payment to Operational Creditors, management of the affairs of each of the demerged entities, timelines for implementation of the projects etc.

10. It is also alleged by Applicant herein that sufficient time was not given to the class of creditors for adequately analyzing the Resolution Plan. In this connection the Counsel for RP has demonstrated by way of tabular chart, various milestones achieved in the CIRP proceedings of CD. It is seen from the same that due opportunities have been provided to members of class of creditors (home-buyers) to give their views/suggestions before taking final voting on the Plan. Further, as seen from the said chart, the Plan of Resolution Applicant was received on 15.10.2019, which is within the time frame fixed by CoC in the RFRP. However, the plan as received can always be subject to negotiations between RA and the CoC in the best commercial wisdom of CoC. Therefore, the

contention of Applicant on this count, being devoid of merit, is rejected.

11. To sum up, due to the reasons enumerated in Para 7 to 10 above, the IA as filed by Applicants, being devoid of merits, is hereby **rejected**. No orders as to costs.

### **IA-05/2020**

12. The Resolution Professional has filed the instant application under section 30(6) and 31(1) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “IBC”) r/w Regulation 39 (4) of the Insolvency and Bankruptcy board of India (Insolvency Resolution Process for Corporate Persons) Regulations (hereinafter referred as “IBBI (CIRP) Regulations, 2016), for seeking approval of Resolution Plan under section 31(1) of IBC in the matter of Earth Infrastructure Limited (hereinafter referred as “Corporate Debtor”) for the remaining projects i.e., EarthCopia Project, Earth

Iconic Project, Earth Sapphire Project and Earth Techone Project. However, it can be seen from the record that Resolution plan of M/s H.S. Oberoi Buildtech Private Limited with respect to Earth Iconic Project has been already approved by this authority vide order dated 15.03.2021 in CA-920/2020 in IB-1768(ND)/2018. Hence, the resolution plan submitted by the Alpha will be presumed to be submitted for three projects namely, Earth Copia Project, Earth Sapphire Project and Earth Techone Project.

13. Mr. Akash Shinghal is the Resolution Professional for Earth Infrastructure Limited, who has submitted the Resolution Plan duly approved by the Committee of Creditors (hereinafter referred as "CoC") which is accompanied by the compliance certificate in the prescribed Form H.

14. It is submitted that Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor was admitted by this authority vide its order dated 06.06.2018 pursuant to the application filed by Financial Creditor and Mr. Surinder Kumar Juneja

was appointed as the Interim Resolution Professional (IRP) vide same order. Furthermore, the public announcement was made on 12.06.2018 as per section 13 of the IBC, 2016. After the constitution of CoC, in the first meeting of CoC dated 5.12.2018 Mr. Akash Shinghal was appointed as RP and same was confirmed by this authority vide order dated 18.03.2019. It is further stated that the CoC as on 9<sup>th</sup> November 2019 was consisted of Allottees (4229 in number) represented by Mr. Gulshan Gaba and HDFC Bank. The claim of the respective CoC members admitted by the RP was Rs.1410,38,30,803/- and Rs. 44,88,712 respectively. This authority vide order dated 04.10.2018 excluded the period of 57 days and vide order dated 15.05.2019 excluded further period of 127 days. This authority also extended CIR period to another 90 days vide its order dated 18.03.2019. Further extension of 90 days was granted by the Hon'ble NCLAT vide order dated 30.09.2019 from 16.08.2019 onwards. It is further submitted that vide its order dated 18.07.2018 this authority has

appointed Mr. Gulshan Gaba as Authorised Representative ('AR') for the class in creditors namely, homebuyers.

15. It is stated that the applicant published the Form-G i.e., invitation for expression of interest on 19.04.2019, for all projects. However, no expressions of interest were received then the member of CoC through its AR requested the applicant to invite the plans project wise also as an alternative in addition to the resolution plan for the whole company. Accordingly, the Form G was published on 22.05.2019. Pursuant to that three prospective resolution applicants namely, BPT Infra Projects Private Limited, Roma Unicon Designex Consortium ('RUD') and the Alpha Corp Development Private Limited filed the resolution plan. The plan of BPT Infra Projects Private Limited was rejected by CoC in terms of Regulation 39(1A) as the resolution plan was not as per conditions and also contravened the law for the time being in force and was running in 5 pages, furthermore, earnest money was not deposited. RUD submitted its resolution plan for Earth Towne

Project only and same is approved by this authority vide order dated 05.04.2021 in CA-751/2019 in IB-401(ND)/2017.

16. It is submitted that the resolution plan along with the scheme submitted by the Alpha has been approved by the CoC by thumping majority of 99.97% in 19<sup>th</sup> CoC meeting dated 11.11.2019. There is summary of resolution plan provided by the Applicant in its application, which is as follows:

<b>Priority No.</b>	<b>Head</b>	<b>Amount (Rs.)</b>
1.	CIRP Cost (Approx.)	20,00,000/- up-to maximum, 50,00,000/-
2.	Workmen dues	Workmen as per section 2(s) of Industrial Disputes Act 1947 will be paid in full in respect of their claims admitted as on 01.11.2019.
3.	Payments to Financial Creditors Being Allottees	By way of construction and delivering the possession of Units for Allottees.
4.	Other Financial Creditors	4,00,000/-

5.	Operational Creditors	1,00,000/-
6.	Statutory Dues	4,00,000/-
7.	Creditors other than Financial Creditors, Operational Creditors and Workman & Employees	NIL

17. In order to implement the resolution plan with respect to the three projects, the resolution applicant has proposed the following schemes with respect to the projects:

**Earth Copia Project**

- i. The Resolution Applicant proposes that the Earth Copia Project be transferred to the Project SPV in such a manner such that all necessary assets, rights, approvals, consents, licenses whether of EIL, Aurochem and/or the Earth Copia Project be provided to the Project SPV to enable it to revive and construct the said Earth Copia Project with the intention to safeguard all its stakeholders and most importantly deliver the units to the Allottees and register transfer of the said units in their favour without any legal

hindrance without the Resolution Applicant having to assume the excluded liabilities of EIL, Aurochem and/or the Earth Copia Project specifically in terms of this Resolution Plan. Such may be achieved either through a merger process whereby the Earth Copia Project and/or Aurochem is merged into the Project SPV through a Tribunal governed scheme of arrangement or through a contractual transfer of the Earth Copia Project and/or Aurochem, in each case assuming that liabilities in this regard shall only be transferred to the Resolution Applicant and/or Project SPV, as the case may be, only to the extent specifically assumed by the Resolution Applicant in terms of this Resolution Plan.

- ii. The Resolution Applicant proposes to demerge the Earth Copia project along with its land-owning Company namely, Aurochem from EIL. It further proposes to merge Earth Copia Project along with Aurochem in the relevant project SPV i.e., Alpha Convention and Recreation Centre Private Limited, which shall be the Subsidiary/Associate Company of



Resolution Applicant. Mr. Mukul Kumar and Mr. Anjana Bhatnagar shall be Key Managerial Persons (KMPs) of the Earth Copia Project SPV and Mr. Akhilesh Kumar Mishra shall be Organizational manager and functional head.

### **Earth Sapphire Court Project**

- i. The Resolution Applicant proposes that the Earth Sapphire Court Project be transferred to the Project SPV in such a manner such that all necessary assets, rights, approval, consent, licenses whether of EIL, Nishtha and/or the Earth Sapphire Court Project be provided to the Project SPV to enable it to revive and construct the said Earth Sapphire Court Project with the intention to safeguard all its stakeholders and most importantly deliver the units to the Allottees and register transfer of the said units in their favour without any legal hindrance without the Resolution Applicant having to assume the excluded liabilities of EIL, Nishtha and/or the Earth Sapphire Court Project specifically in terms of this Resolution Plan. Such may

be achieved either through a merger process whereby the Earth Sapphire Court Project and/or Nishtha is merged into the Project SPV through a tribunal governed scheme of arrangement or through a contractual transfer of the Earth Sapphire Court Project and/or Nishtha, in each case assuming that liabilities in this regard shall only transferred to the resolution applicant and/or project SPV, as the case may be, only to the extent specifically assumed by the resolution applicant in terms of this resolution plan.

- ii. The Resolution Applicant proposes to demerge the Earth Sapphire Court Project along with its land-owning company namely, Nishtha from EIL. It further proposes to merge Earth Sapphire Court Project along with Nishtha in the relevant Project SPV i.e., Rosebuds Buildtech Private Limited, which shall be the subsidiary/associate company of the Resolution Applicant. Mr. Mukul Kumar and Mr. Kapil Yadav shall be the Key Managerial Persons (KMPs) of the Earth Sapphire Court Project SPV and Mr. Sachin

Kumar Gupta shall be the organizational manager and the functional head.

**Earth TechOne Project**

- i. The Resolution Applicant proposes that the Earth TechOne Project be transferred to the Project SPV in such a manner such that all necessary assets, rights, approval, consent licenses whether of EIL, Neo Multimedia and/or the Earth TechOne Project be provided to the Project SPV to enable it to revive and construct the said Earth TechOne Project with the intention to safeguard all its stakeholders and most importantly deliver the Units to the Allottees and register transfer of the said Units in their favour without any legal hindrance without the Resolution Applicant having to assume the excluded liabilities of EIL, Neo Multimedia and/or the Earth TechOne Project specifically in terms of this Resolution Plan. Such may be achieved either through merger process whereby the Earth TechOne Project and/or Neo Multimedia is merged into the Project SPV through a

tribunal governed scheme of arrangement or through a contractual transfer of the Earth TechOne Project and/or Neo Multimedia, in each case assuming that liabilities in this regard shall only be transferred to the Resolution Applicant and/or Project SPV, as the case may be, only to the extent specifically assumed by the Resolution Applicant in terms of this Resolution Plan.

- ii. The Resolution Applicant proposes to demerge the Earth TechOne Project along with its land-owning company namely, Neo Multimedia from EIL. It further proposes to merge Earth TechOne Project along with Neo Multimedia in the relevant Project SPV i.e. Flanking Townships Private Limited, which shall be the subsidiary/associate company of the Resolution Applicant. Mr. Mukul Kumar and Mr. Sachin Kumar Gupta shall be the Key Managerial Persons (KMPs) of the Earth TechOne Project SPV and Mr. Vikas Manhas shall be the organisational manager and functional head.

### **Objection by HDFC Bank**

18. It is submitted that the HDFC Bank ('objector') is a secured financial creditor having a claim of Rs. 44,88,712/- against the CD, which has been accepted by the RP. The RA has offered only 4,00,000/- to objector in its resolution plan which has been rejected by the objector. The RA has given no rationale on which the objector has been discriminated as other Financial Creditors are getting 100% of their debt unlike the objector, which is getting 35% only. The objector has rejected the resolution plan submitted by the RA, therefore, it is entitled to claim amount in terms of section 30(2)(b)(ii) of Code, which should not be less than the amount to be paid to such creditors, which it would have been entitled to under section 53(1) of the Code. Hence, prayed that the resolution applicant may be directed to ascertain the amount in terms of section 53(1) of the Code that is to be paid to the HDFC Bank being dissenting secured creditor and the time line within which said amount shall be paid to the bank.

19. RA/Alpha has filed an affidavit in response to the objection raised by the HDFC Bank and as directed by this Authority vide its order dated 09.02.2021 and submitted that in terms of section 5(28) of the Code, based on the proportion of financial debt owed, the voting share of the HDFC is a meagre 0.03%. It is most humbly submitted that in terms of the percentage share of three projects the share of admitted claim amount of HDFC attributable to the Answering Respondent is Rs. 23,93,830/-, the demand of HDFC is bereft of any logic, legal rationale and flies in the face of not only the bare provisions of the Code but also its letter and spirit. Further, bowing to the said demand of HDFC would essentially be rewarding bad behaviour and would allow a dissenting Financial Creditor to recover the entire admitted claim amount, which in turn would encourage a dissenting financial creditor to reject the Plan, however, meritorious it is. The said practice, if adopted, would incentivize rejection of Resolution Plans and would be absolutely contradictory to the object of the Code - i.e., resolution of corporate

persons in a time bound manner. The RA also relied on para 80 of the Hon'ble Supreme Court Judgment in **Committee of Creditors of Essar Steel India Limited V/s Satish Kumar Gupta and Ors [2019] 153 CLA 275 (SC)**, which is as follows

*“80..... Mrs Madhavi is correct in stating that the order of priority of payment of creditors mentioned in section 53 is not engrafted in sub-section (2)(b) of section 30 as amended. Section 53 is only referred to in order that a certain minimum figure be paid to different classes of operational and financial creditors. It is only for this purpose that Section 53(1) is to be looked at as it is clear that it is a commercial wisdom of the committee of creditors that is free to determine what amounts 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 further submitted that it was only on 27.11.2019 – i.e., after the approval of the resolution plan of the answering respondent by the CoC, the Ministry of Law and Justice, vide notification no. IBBI/2019-20/GN/REG052 had amended the regulation 38 of CIRP Regulations regarding the payment to dissenting financial creditors in priority over the financial creditor who voted in favour of resolution plan. Furthermore, the payment proposed to be made to HDFC by the RA (Rs.4,00,000/-) together with RUD (Rs. 12,56,839/-)

which amounts to 16,56,839/-, is more than the amount which would have been payable to it in the event of liquidation.

20. We have perused the objection raised by the HDFC Bank and Reply of the RA to the objection. All the objections raised by the HDFC Bank are satisfactorily replied by the RA in detail including the amount to be paid in the resolution plan and regarding the priority in payment, therefore, it seems no direction is required to be given to RA. **Hence, the objection raised by the HDFC stands rejected in the aforesaid facts and circumstances.**

21. The summary of the Resolution plan submitted by the Resolution Applicant as per Form H is as follows:

**(Amounts in Lakh)**

S. No.	Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the amount claimed (%)	Amount provided to the Amount Admitted (%)
1	<b>Dissenting Secured Financial Creditors</b>	-	-	-	-	-
		Amount Claimed	Amount Admitted			



	Total Claim of CD	48.89	44.89					
	**For Towne Project	13.69	12.57					
	Balance Dues	35.20	32.32	35.20	32.32	4.00	11.36%	12%
	<b>Total</b>			<b>35.20</b>	<b>32.32</b>	<b>4.00</b>	<b>11.36%</b>	<b>12.38%</b>
2	<b>Other Secured Financial Creditors</b>							
		Amount Claimed	Amount Admitted					
	Total Claim of CD	48.89	44.89					
	**For Towne Project	13.69	12.57	13.69	12.57	12.57	91.82%	100%
	Balance	35.20	32.32					
3	Dissenting Unsecured Financial Creditors			-	-	-	-	-
4	Other Unsecured Financial Creditors @ (as on 01/11/2019 proposed in the plan (for Towne project as on 12/08/2019 proposed in the plan))							
	<b>Towne Project:</b>							
	Principal			32179.75	29159.11	29159.11	90.61%	100%
	Interest			21440.28	11528.82	-	0.00%	0.00%
	Total			53620.03	40687.93	29159.11	54.38%	71.67%
	<b>Copia Project:</b>							
	Principal			26859.11	24781.4	24781.4	92.26%	100%
	Interest			21519.86	9127.99	0	0.00%	0.00%
	Total			48378.97	33909.39	24781.4	51.22%	73.08%
	<b>Iconic Project:</b>							
	Principal			13187.56	4404.08	4404.08	33.40%	100%
	Interest			5522.21	1487.45	0	0.00%	0.00%
	Total			18709.77	5891.53	4404.08	23.54%	74.75%

	<b>Sapphire Project:</b>							
	Principal		13381.61	11371.57	11371.57	84.98%	100%	
	Interest		5664.60	4221.65	0	0.00%	0.00%	
	Total		19046.21	15593.22	11371.57	59.71%	72.93%	
	<b>Techone Project:</b>							
	Principal		37488.77	32190.98	32190.98	85.87%	100%	
	Interest		16162.08	11751.39	0	0.00%	0.00%	
	Total		53650.85	43942.37	32190.98	60.00%	73.26%	
	<b>Total</b>		<b>171965.55</b>	<b>110865.33</b>	<b>101907.14</b>	<b>59.26%</b>	<b>91.92%</b>	
5	<b>Operational Creditors</b>							
		<b>Amount Claimed</b>	<b>Amount Admitted</b>					
	Common total claim of CD	4725.36	1026.64					
	**For Towne Project	324.93	42.07	324.93	42.07	4.21	1.30%	10%
	Project Towne Claim	959.52	-	959.52	-	-	-	-
	Balance claim for remaining four project	4400.43	984.57	4400.43	984.57	1.00	0.02%	0.10%
	<b>Total</b>		5684.88	1026.64	5.21	0.09%	0.51%	
	<b>Government</b>							
		<b>Amount Claimed</b>	<b>Amount Admitted</b>					
	Total Claim of CD	13061.57	10467.92					
	**for towne project	2931.02	2931.02	2931.02	2931.02	As Per section 53 of IBC		
	Balance Claim for remaini	10130.55	7536.9	10130.55	7536.9	4.00	0.04%	0.05%

	ng 4 projects							
	<b>Total</b>			13061.57	10467.92	4.00	0.03%	0.04%
	<b>Workmen/Employees</b>							
		Amount Claimed	Amount Admitted					
	Total Claim of CD	692.47	300.4					
	**for town project	184.39	82.78	184.39	82.78	82.78	44.89%	100%
	Balance Claim for remaining 4 projects	508.08	217.62	508.08	217.62	Pay in full to such workman who qualify within the parameters of the definition of workmen under section 2(s) of the Industrial Disputes Act, 1947.		
	<b>Total</b>			692.47	300.40	82.78	11.95%	27.56%
6	Other Debts and Dues			-	-	-	-	-
	<b>Total</b>			<b>191453.36</b>	<b>122705.18</b>	<b>102015.70</b>	<b>53.28%</b>	<b>83.14%</b>

#Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.

\*\*the balance share for remaining four projects (after considering 28% as share of Towne Project from Earth Infrastructure limited as per resolution plan for Towne Project.

22. It is submitted that as per the terms of the request for resolution plan (“RFRP”) the successful Resolution Applicant was to submit an amount of Rs. 6,00,00,000/- as Performance Bank Guarantee amounting as required by regulation 36B (4A) of IBBI

(CIRP) Regulations, 2016 and the same was submitted on 14.11.2019, which remains in force until 13.11.2021 issued from Punjab National Bank vide bank guarantee No.- 2164ILG011919. This Tribunal vide order dated 25.05.2021 directed the Resolution Applicant to keep the performance bank guarantee alive and valid for period of 5 years. In compliance of that Resolution Applicant filed an affidavit dated 29<sup>th</sup> May 2021 and undertakes that before the date of expiration of the PBG, the resolution applicant shall keep the PBG alive and valid for a period of 5 years.

23. It is further averred that in terms of provisions of regulation 39(4) of IBBI (CIRP) Regulation, the RP is required to submit the Resolution plan approved by the CoC along with a compliance certificate in form H of the schedule and the evidence of receipt of performance security required under sub-regulation (4A) of regulation 36B. The same is complied with.

24. **Appointment of monitoring agency--Approval**

In the resolution plan, the resolution Applicant proposes to constitute a Management Review Committee for supervision of each implementation project, which shall consist of four members:

- i. Two members from the management of Resolution Applicant/Project SPV, and
- ii. Two members from the respective project Allottees.

25. The parameters for approval of resolution plan are set out in the IBC, 2016 read with IBBI (CIRP) Regulations, 2016. Which are briefly set forth herein below:

<b>Section/Regulation</b>	<b>Compliance made</b>
Section 30(1) of the IBC, 2016	As per form H separate affidavit has been filed by Resolution Applicant to confirm its eligibility
Section 30(2)(a) of the IBC, 2016  And	As per clause 5 of part IV of the resolution plan the insolvency process cost of 20,00,000/- up-to maximum, 50,00,000/- will be paid in priority.
Regulation 38(1A) of IBBI (Insolvency Process for Corporate Persons)	As per clause 2 of Part III(A), Clause 2 of Part III(C), Clause 2 of Part III(D) clause 2,3,4,5,6,7 and 8 of Part IV, Clause D(xv) of

Regulations, 2016	Part IV of the Resolution Plan interest of all stakeholder, including Financial Creditors and Operational Creditors, of the Corporate Debtor has been dealt by the resolution plan.
Section 30(2)(b) of the IBC, 2016  And  Regulation 38(2)(c) of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016	Clause 7 of Part IV of the resolution Plan provides for the payment of the debts of operational creditors.  Adequate means for supervising the resolution plan implementation has been provided in Clause O Part IV of the Resolution Plan.
Section 30(2)(d) of the IBC, 2016  And  Regulation 38(2) of IBBI (Insolvency Process for Corporate Persons) Regulations, 2016	Clause 8 of Part III(A), Clause 10 of Part III(C) clause 11 of Part of III(C), Clause 10 of Part III(W) and clause O of Part IV provides for the management of the affairs of the corporate debtor.  The implementation of plan as stated by the Resolution Applicant in the Resolution Plan is 5 Years from the plan approval date
Section 30(2)(e) of the IBC, 2016	The Resolution Plan does not contravene any of the provisions of law for the time being in force as declared in clause 7 of Part IA of the Resolution Plan.
Section 30(4) of the IBC, 2016	Resolution Plan is approved by 99.97% voting in favour in 19 <sup>th</sup> CoC meeting

26. Thus, the resolution plan filed with the Application meets the requirements of section 30 and 31 of IBC, 2016 and Regulation 37, 38, 38(1A) and 39(4) of the IBBI(CIRP) Regulations, 2016. The provisions of Section 29A of IBC are not attracted as declared by the resolution applicant. The RP has also verified that the “Resolution Plan” approved by the CoC does not contravene any of the provisions of the law for the time being in force. The RP has filed compliance certificate in Form H as required under regulation 39(4) of the IBBI (CIRP) Regulations, 2016.

27. The Resolution Applicant has prayed for the reliefs as enumerated under the Resolution Plan approved by the CoC. From the plan approval date, all inquiries, investigation and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this resolution plan shall stand

withdrawn, satisfied and discharged. From the date of approval of the 'Resolution Plan', the Resolution Applicant shall be legally authorised to seek appropriate orders from respective authorities/courts/tribunals for renewal of licences/withdrawal/dismissal or abatement of the proceeding as the case may be.

28. The Corporate Debtor shall be entitled to carry forward all accumulated business losses and unabsorbed depreciation, if any, from the date of approval of the Resolution Plan, except as provided in the Resolution Plan, all the pending statutory dues including taxes/cess/interest/penalty and other liabilities due to the operational creditors shall stand satisfied/waived off. The reason for these waivers and abatement is that the Operational Creditors would not get more than that as provided in the Resolution Plan, in the event of liquidation of the Corporate Debtor, as per the waterfall mechanism provided under Section 53 of the I&B Code, 2016.



Moreover, this is with a view to implement the Resolution Plan successfully as approved by the CoC.

29. In view of the above, the “Resolution Plan” for Copia, Sapphire and Techone annexed with I.A. No. 05/2020 filed in IB-401(ND)/2017 is hereby **approved** and the objection raised by the HDFC Bank against the Resolution Plan stands **rejected**, shall be binding on the corporate debtor and its employees, members, creditors, guarantors, other stakeholders including statutory authorities and the Resolution Applicant.

30. The Resolution Applicant or Monitoring Agency as the case may be is at liberty to approach this authority for seeking appropriate directions for effective implementation of the Resolution Plan.

31. The order of moratorium date 06.06.2018 passed by this adjudicating authority under section 14 of IBC shall cease to have effect from the date of this order.

32. The RP shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI, so that the Board may record the same on its data base.

33. The approved resolution plan shall become effective from the date of passing of this order.

34. The Resolution Professional shall forthwith send a copy of this order to the participants and the Resolution Applicant.

35. The Registry is directed to communicate this order to the Registrar of Companies concerned with which the Corporate Debtor is registered for updating the master data.

36. Accordingly, I.A. No. 05/2020 filed in IB-401(ND)/2017 stands **allowed** and CA-914/2019 in IB-401(ND)/2017 stands **rejected**.

37. The order is pronounced.

-Sd-

**(NARENDER KUMAR BHOLA)**  
MEMBER (TECHNICAL)

-Sd-

**(P.S.N. PRASAD)**  
MEMBER (JUDICIAL)