

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

CA-1237/2019 filed under Section 60(5) of the IBC Code, 2016 R/w Rule 11 of the NCLT Rules, 2016, **CA-920/2019** filed under Section 30 (6) of the IBC, 2016 & **CA-654/2020** filed under Section 60 (5) of the IBC, 2016 R/w Rule 11 of NCLT Rules, 2016.

IN

CP (IB) - 1768 (ND)/2018

*In the matter of **Celestial Estate Private Limited***

Sanjay Malik & Ors.

.....Financial Creditor

Versus

Celestial Estate Private Limited

.....Corporate Debtor

*In the matter of **CA-1237/2019***

Mr. Vivek Patri

... Applicant/ RP for Celestial Estate Private Limited

Versus

Earth Infrastructures Limited

(Through RP Mr. Akash Singhal)

....Respondent

*In the matter of **CA-920/2019***

Mr.Vivek Parti

RP for *Celestial Estate Private Limited.*

.....Applicant/RP for Celestial Estate Private Limited

*In the matter of **CA-654/2020***

Alpha Corp Development Private Limited

....Applicant/Objector

Versus

Committee of Creditors & Anr.

(Through Mr.Vivek Parti, RP)

....Respondents

Order delivered on 15th of March, 2021

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

SHRI NARENDER KUMAR BHOLA, MEMBER (TECHNICAL)

For RP for CD in CA-1237/2019

& CA-920/2019: Mr. Krishnendu Dutta, Sr. Adv,
Mr. RK Gupta, Ms. Swaralipi Debroy (Advocates),
Mr. Vivek Parti (RP)

For RP For EIL: Mr. Ashish Makhija, Mr. Anurag Bhatt, Mr. Ankur
Gupta,
Mr. Harsh Arora (Advocates)

For Iconic Buyers

Welfare Association: Mr. Krishnendu Datta, Mr. Ekansh Mishra
(Advocates)

For Alpha in CA-654/2020: Mr. Vivek Kohli Sr. Adv,
Mr. Sandeep Bhuraria,
Ms. Mahima Malhotra (Advocates)

ORDER

(Through video conferencing)

Per. CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Under consideration are three (3) Applications i.e., CA-1237/2019, CA-920/2019, CA-654/2020 filed in CP (IB) - 1768(ND)/2018. All the three applications are interconnected and are concerned with the same Project of the Corporate Debtor viz., *Celestial Estate Private Limited*. Therefore, they are tagged together to pass a common Order. We would first deal with the application regarding the Transfer of the partly constructed building of Earth Iconic Project from Earth Infrastructure Limited (the holding company of the

Corporate Debtor i.e., *Celestial Estate Private Limited*) before examining the “Resolution Plan” of the Resolution Applicant i.e., M/s. H.S. Oberoi Buildtech Private Limited and the Objections filed by Alpha Corp Development Pvt. Ltd.

CA-1237/2019

2. The application No. CA-1237/2019 is filed by the Resolution Professional viz., *Mr. Vivek Patri*, for Corporate Debtor i.e., *Celestial Estate Private Limited* (hereinafter referred as “Resolution Professional as Corporate Debtor”), under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the “IBC, 2016”) R/w Rule 11 of the National Company Law Tribunal Rules, 2016 (hereinafter referred as “NCLT Rules, 2016”).

3. The prayer made in this Application is to direct the Respondent viz., Earth Infrastructures Limited (hereinafter referred as “EIL/Respondent”) to transfer the partly constructed structure of Earth Iconic Project to the Corporate Debtor viz., *Celestial Estate Private Limited* (hereinafter referred as “Corporate Debtor”) which is being constructed from the funds of the claimants/home buyers, to pass the necessary directions to Resolution Professional to consider the partly constructed building which is to be transferred from EIL to the Corporate Debtor as an asset against the claims of the ‘Real Estate Allottees’ in the Corporate Debtor.

Brief facts:

4. An Application under Section 7 of the IBC, 2016 r/w Rule 6 of the NCLT Rules, 2016 for initiating Corporate Insolvency Resolution Process (hereinafter referred as “CIRP”) against Corporate Debtor viz., *Celestial Estate Private Limited* was filed by Sanjay Malik & Ors. The application was admitted vide Order dated 11.03.2019 and Mr. Vivek Patri was appointed as the Interim Resolution Professional (hereinafter referred as “IRP”).

5. The IRP caused the Public announcement on 30.03.2019 in two newspapers namely 'Jansatta' (Hindi) and 'Financial Express' (English). The 2nd Public announcement was published in the same two newspapers on 06.04.2019. The Committee of Creditors (hereinafter referred as "CoC") was constituted by the IRP and a report was filed with this Authority on 22.04.2019.

6. The 1st CoC meeting was held on 29.04.2019 wherein five Members of the CoC along with IRP and his team members were present. It was resolved that the IRP would be entitled to receive a success fee on the successful completion of the CIRP which could be calculated as per the table provided in the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and to be calculated on the basis of the total resolution cost of the approved resolution plan. It was also resolved to reimburse the actual expenses to carry out the Resolution Process out of the funds of the Corporate Debtor. Further, a table was drawn on the estimated CIRP Cost for a period of 6 months which excluded the success fee payable on successful completion of the resolution process and on approval of the resolution Plan and it was resolved to pay the CIRP period fee and cost aggregating to Rs. 38.93 Lacs and success fee payable to the Resolution Professional.

7. The 2nd CoC Meeting was held on 03.06.2019 wherein the CoC approved and ratified by 94.11% votes the remuneration on monthly basis at Rs. 2,00,000/- plus success fee. Further, in the item 3 on strike off status of the Corporate Debtor vide Public Notice bearing No. ROC/Delhi/248(5)/STK-7/4865 dated 08.08.2018 was discussed. The agenda Item 6 in the meeting was about the CIRP costs, balance in the bank accounts of the Corporate Debtor, it was noted that the estimated total CIRP cost as on 26.05.2019 was Rs. 38,93,411/- excluding the success fee. Further, it was resolved by 100% voting share that for the smooth functioning of the CIR Process the notice period for calling CoC Meetings to be reduced from 5 days to 48 Hours. The Form G was published on 08.06.2019 and the 4th CoC Meeting was convened on 06.09.2019 wherein including other items the CIRP cost for the CIRP period of 9 months was noted as amounting to Rs. 52,73,500. Further, the resolution was passed with 100% vote, allowing the Resolution Applicant viz., M/s. H.S. Oberoi Buildtech Private

Limited to submit final binding resolution plan that addresses the claims of all stakeholders in the Corporate Debtor until 30.09.2019. In the agenda Item 8, it was resolved by 100% voting share that the application for seeking directions from this Authority for transferring the work in Progress building assets constructed with the money (s) of the Real Estate Allottees whose claims have been transferred to the Corporate Debtor vide Order dated 07.08.2019 and to cancel the joint development agreement dated 26.04.2012 between the Corporate Debtor and EIL. Resolution with 100% voting share was passed for restoring the status of the Corporate Debtor on the MCA portal to "Active" and to allow the Corporate Debtor to file its necessary Forms.

8. The 6th CoC Meeting was convened on 14.11.2019 wherein the total claims received as on 08.11.2019 were noted. It was also noted in the agenda Item 6 that the Joint Development Agreement was not recognised by the Director of Town and Country Planning vide its communication dated 28.10.2014 which was again reiterated vide letter dated 14.11.2019, as submitted by the Authorised Representative during the course of meeting.

9. In the Agenda Item 8 it was noted that prior to the commencement of the CoC Meeting, the Counsel and his team for the Prospective Resolution Applicant viz., *Alpha Corp Development Pvt. Ltd.* met the Resolution Professional and it was assured that the voting conducted by the Authorised Representative is to be considered only after having discussions with all the PRA's, however the Ld. Counsel and his team for the Prospective Resolution Applicant viz., *Alpha Corp Development Pvt. Ltd.*, opted to leave the venue of the CoC Meeting.

10. As seen from records vide order dated 06.06.2018 the EIL /Respondent has gone under CIRP. The Corporate Debtor is a subsidiary of EIL /Respondent and owns land measuring 3.409 Acres (Approximately 1379.79 Sq. Mtrs) situated at Sector 71, Village Badshahpur, Gurugram- Manesar Urban Complex Haryana (hereinafter referred as "Land"). The Corporate Debtor has obtained a license from the office of the Director General, Town & Country Planning (hereinafter referred as "DGTCP"), Chandigarh, Haryana to develop a

commercial colony on the land vide licence number 101 of 2011 dated 29.11.2011. The Corporate Debtor had entered into a contractual arrangement with EIL/Respondent dated 26.04.2012 for the development of the project "Earth Iconic" (hereinafter referred as "Development Agreement"). As per the terms of the Development Agreement, the Corporate Debtor has right over 100 Service Apartments of 450 sq. ft. super area approx. in the developed project, whereas EIL/Respondent has right over the remaining developed project. Further, as per the Clause 2 (f) (ii) of the development agreement EIL/ Respondent was to make a payment of Rs. 2,00,00,000/- (Rupees Two Crore only) to the Corporate Debtor as consideration for the development rights of the Earth Iconic project.

**Submissions of the Resolution Professional for the Corporate Debtor VIZ.,
Celestial Estate Private Limited.**

11. It is averred by the Resolution Professional for the Corporate Debtor that the Corporate Debtor is the owner of the Land and had received documents, different types of claim forms from the Real Estate Allottee (s) /Financial Creditor of the Corporate Debtor (hereinafter referred as "Direct Allottees") along with the Memorandum of Understanding dated 30.03.2013, 18.05.2015, and 10.09.2016. The Memorandum of Understanding dated 30.03.2013 was executed by EIL/Respondent in favour of the Real Estate Allottee (s) (hereinafter referred as "Indirect Allottees") for the "Earth Iconic" project which is being developed on the land owned by the Corporate Debtor. The Resolution Professional for the Corporate Debtor has further submitted that the Clause No.1 of the said Memorandum of Understanding dated 30.03.2013 provides that the Corporate Debtor is the lawful owner of the Land. Further, the Resolution Professional for the Corporate Debtor has referred to the Memorandum of Understanding that was executed by EIL/ Respondent with M/s. Arsh Sahitya Prachar Trust, wherein it is reiterated that the Corporate Debtor is the owner of the Land.

12. The Resolution Professional for the Corporate Debtor has submitted that the CIR Process being a time bound process, the publication was made in newspapers in Hindi edition of 'Jansatta' and English 'Financial Express' on

06.04.2019 and as per the advertisement the last date of filing claims was 10.04.2019. Further it is submitted that the IRP had received total 9 claims from the 'Real Estate Allottees' of the Corporate Debtor i.e., Direct Allottee(s) in response to the 2nd publication dated 06.04.2019 and admitted the same. The IRP received a total 174 claims from the Indirect Allottees(s) and these claims have not been admitted by the IRP.

13. The Resolution Professional for the Corporate Debtor having noticed that the Indirect Claimants have been allotted units in the project 'Earth Iconic'. The CoC consented for filing application bearing number CA No. 711/2019 before this Authority and vide Order dated 10.07.2019 the Resolution Professional for Corporate Debtor was directed to consider the claims of the 'Indirect Allottees' as claimants of the Corporate Debtor. The Resolution Professional for the Corporate Debtor in compliance of the said Order had sent email to all 309 Indirect Allottees as per the list of claimants of 'Earth Iconic' project available on the website, to file their claims with the Corporate Debtor and select the Authorised Representative (hereinafter referred as "AR") to represent them before CoC of the Corporate Debtor, the affidavit in this regard is placed on record. Further, it is submitted that an application bearing number CA. No. 1004/2019 was filed before this Authority stating that 253 claims of Indirect allottees as against 309 for the Earth Iconic Project were received. In para 18 of the said application, it was stated that 157 out of 160 of such claimants have selected the AR viz., Mr. Ashok Gupta, Insolvency Professional to represent a class of creditors before the CoC of the Corporate Debtor. This Authority vide Order dated 07.08.2019 confirmed Mr. Ashok Gupta as Authorised Representative.

14. It is submitted that the AR through association of real estate Allottees of Earth Iconic received a letter dated 29.08.2019, wherein it was stated that the AR should discuss with the Resolution Professional for the Corporate Debtor an agenda item in the CoC meeting about the transfer of assets being developed on the Land from the funds of Real Estate Allottees of the Earth Iconic Project and/or to terminate the Development Agreement as the investment in building constructed on the Land is much less than the amount collected by EIL from the

[Out of 335 Allottees of Earth Iconic
as per EIL website, Pending 57] 278

Claimants of Earth Iconic allottees
paid to EIL but did not filed their claim
with EIL 36

Total Claims received 326

Pending for verification and admission 72

Claimants as on 29.8.2019 254

17. It is stated that the 4th CoC meeting was convened on 06.09.2019 wherein one of the agenda items was to discuss and approve the transfer of assets being developed on the land of the Corporate Debtor from the funds of the Real Estate Allottees of Earth Iconic Project. The relevant resolution passed in the CoC meeting is reproduced as follows: -

"The Chairman informed the COC members that as per directions of the Order dated 07.08.2019 passed by the Hon'ble NCLT the RP has accepted and admitted claims from Real Estate Allottees who have paid their money (s) to EIL i.e., Indirect Allottees. The money (s) paid by the Real Estate Allottees was towards the construction of the Earth Iconic Project that was being built on the land owned by the CD and under the license granted to the CD by Town & Country Planning Department, Haryana. The Association of Real Estate Allottees who are the class of Creditors in terms of provisions of Insolvency and Bankruptcy Code, through their AR, Mr. Ashok Gupta has communicated to the RP of the Corporate Debtor that the developer agreement executed between the CD and Earth Infrastructures Ltd on 26th April 2012 to jointly develop the project stands terminated on account of unilateral breach on the part of Earth Infrastructures Ltd. It is further contended that the amount deployed by the Earth Infrastructures Ltd., on the development activities as per today's status is much less than the amount paid by the Direct

Allottees and Indirect Allottees of Earth Iconic Project and therefore, the Earth Infrastructure Ltd has used much lesser money in this project than received by it. Earth Infrastructure Ltd defaulted on its obligations to construct, develop and handover the possession to allottees of Earth Iconic Project and therefore, the Direct and Indirect Allottees of the Project are of the view that an application to be made before the Hon'ble NCLT against Earth Infrastructure Ltd to seek declaration that there is unilateral breach on the part of Earth Infrastructure Ltd., so no impediments is created in receiving resolution plan.

As per last audited financial statements of the CD, the cost of land and license is around Rs. 26 Crores. The Association of Real Estate Allottees has got the estimation of value of investment i.e., construction and development of the project as on date by Earth Infrastructures Ltd has raised a total amount of about Rs. 101 Crores from 335 Real Estate Allottees as seen from the website of Earth Infrastructures Ltd maintained by its RP. In order to successfully complete the resolution process and to deliver built up units to all the Real Estate Allottees of the Earth Iconic Project, it is imperative that the RP of Earth Infrastructures Ltd to transfer infavour of CD the WIP building assets constructed with the money (s) of the Real Estate Allottees, whose claims have now been transferred to CD vide Hon'ble NCLT order dated 7.8.2019. Further, the joint developer agreement dated 26th April 2012 between CD and the Earth Infrastructures Ltd to be cancelled to allow RA to provide an effective resolution plan that takes care of the interest of all stakeholders in CD. The AR also suggested that a separate voting may be conducted wherein Direct and all Indirect Allottees (whether they submitted their claims with CD or not) on the issue of cancellations of rights of Earth Infrastructures Ltd in the said Development Agreement.

The members of the CoC were requested to consider the matter. The following resolution was put up for e-voting: -

"Resolved that the RP, Vivek patri, to file application with Hon'ble NCLT for praying for directions to RP, Earth Infrastructures Ltd to transfer WIP building assets constructed with the money(s) of the Real Estates

Allottees whose claims have been transferred to Corporate Debtor vide Order dated 07.08.2019 passed by the Hon'ble NCLT. Further to pray before the Hon'ble NCLT to cancel the Joint Developer Agreement dated 26th April 2012 between Corporate Debtor and Earth Infrastructures Ltd be and is hereby approved on the basis of voting results of Direct and Indirect Allottees (whether they have submitted their claims with CD or not) on the issue of cancellation of rights of Earth Infrastructures Ltd in the said Development Agreement"

The above-mentioned agenda was put to vote on 5th September at 12:00 PM and continued until 6th September at 12:00 PM by both Direct, Indirect Allottees of Earth Iconic Project and was approved by 99.77% of claimants in favour of such resolution.

18. It is averred that there is no justification on the part of the Resolution Professional of EIL/Respondent to retain the partly constructed building being developed by EIL/Respondent out of the funds of the Indirect Allottees, who are now claimants of the Corporate Debtors after majority of Indirect Allottees have withdrawn their claims from EIL/Respondent and lodged their claims with the Resolution Professional for the Corporate Debtor.

Reply filed by the Resolution Professional for Earth Infrastructure Ltd (EIL/Respondent).

19. The answering Respondent is the Resolution Professional for EIL/Respondent and has submitted that the application filed by the Resolution Professional for the Corporate Debtor is nothing but an abuse of process of law and is liable to be dismissed. It is submitted that the EIL/Respondent is undergoing CIRP and moratorium was declared as provided under Section 14 of IBC, 2016 and the said Section provides that no suit or legal proceeding can be initiated against the EIL/Respondent therefore, the application is not maintainable.

20. Further, it is submitted that the Corporate Debtor is a subsidiary of EIL/Respondent and had entered into a Development Agreement dated

26.04.2012 wherein, the Corporate Debtor transferred its development rights, along with marketing and selling rights with respect to projects developed over the land of the Corporate Debtor. The Relevant extract of Clause 2 of the Development Agreement is as under: -

“Simultaneously on the execution of this Agreement the First Party has transferred the development rights along with marketing and selling rights in respect of Schedule Land to the Second Party for the development and construction of building structures, thereon for any one or more if the purposes including service Agreement Areas. Commercial Buildings, clubs, Educational Institutions etc. along with all internal and external services, amenities, fitting fixtures etc. hereinafter referred to as ('Project') on the Scheduled Land at the Second Party's own risk, cost and expenses (including taxes thereon).”

Therefore, as per the bare perusal of the Development Agreement it can be stated that the parties entered into a quasi-partnership/ collaboration agreement for development of the land. As per the terms and conditions of the Development Agreement, EIL/Respondent was to make a payment of Rs. 2,00,00,000/- (Rupees Two Crore only) to the Corporate Debtor as consideration for the development rights of the “Earth Iconic” project.

21. It is further submitted by the Resolution Professional for EIL/Respondent that as per clause 2 (g) of the Development Agreement, the Corporate Debtor had transferred all its rights including the selling rights with respect to developed land to Earth Infrastructure and only had share on its own property. Therefore, as per the clause EIL/Respondent can independently without any consent of the Corporate Debtor book and transfer the flats developed over the land of the Corporate Debtor. Further, the clause 2 (h) of the Development Agreement, provides that EIL/ Respondent is free to book/market the developed project without consent of the Corporate Debtor therefore, it is emphasised that on bare reading of the Clause of the development agreement, it is clear that EIL/Respondent has an absolute right over the developed project.

22. It is also highlighted by EIL/Respondent that as per Annexure A of the Development Agreement the Corporate Debtor only has right over 100 Service Apartments of 450 sq. ft. super area approx., in the developed project, whereas EIL/Respondent has right over the remaining developed project. The Development Agreement is clear with regard to EIL/Respondent's absolute right over the developed project and that the said project is an asset of EIL/Respondent and the Corporate Debtor cannot claim any right over the same. It is further submitted that as per the terms provided in clause 12 of the Development Agreement, the Corporate Debtor can only ask for a specific performance contract and there is no provision to cancel the Development Agreement.

23. The Resolution Professional of EIL/Respondent has submitted that with regard to the issue of the allottees, the Resolution Professional for Corporate Debtor had filed a Company Application No. 711 of 2019, seeking directions to consider allottees of EIL/Respondent who have booked the flat in the project of the Corporate Debtor namely "Earth Iconic" as the allottees of the Corporate Debtor was disposed of vide order dated 10.07.2019, wherein the Resolution Professional for Corporate Debtor unconditionally undertook to satisfy the claims of the allottees of EIL/Respondent, who have booked their flats in the Earth Iconic Project of the Corporate Debtor. The averments made by the Resolution Professional for Corporate Debtor that the partly constructed building must be transferred to the Corporate Debtor as it is being constructed from the funds of the claimants who have now transferred their claims from EIL/Respondent to the Corporate Debtor and therefore, the Corporate Debtor shall have all the rights to develop the said project is misconceived and is contradictory to the undertaking given by the Resolution Professional for Corporate Debtor as recorded in the Order dated 10.07.2019 and it also recorded in the said Order that the Resolution Professional for Corporate Debtor had unconditionally agreed to satisfy the claims of the allottees who have transferred their claim from EIL/Respondent, irrespective of the fact that no sale consideration has been received by Corporate Debtor from the said

allottees. Further, the Resolution Professional for EIL/ Respondent has referred to the aspect that only EIL/ Respondent has the right over the developed/developing building as per the Development Agreement as there is not specific time period provided for it to come to end hence, the building is nothing but an asset of EIL/ Respondent.

24. Further, reference has been made to Section 25 of the Code, which provides that the Resolution Professional of EIL/Respondent can have the custody and control of all the assets of the Corporate Debtor, therefore, the Application cannot be allowed as the same is not only contradictory to the order dated 10.07.2019 but is also contradictory to the provisions of the Code.

25. It is submitted that the total built up area of the project is Approx. 39511.0 sq. mts. and *transferring of the said partly constructed building without the consent of the allottees would be unlawful as their rights would be gravely prejudiced with such transfer* as around 358 claims received from the flat allottees out of which 166 claims have been admitted and are the claimants in EIL/Respondent. The said 166 claimants had not given their consent to transfer their claim to the Corporate Debtor. There are around 4300 allottees apart from the above stated, whose claims have been accepted in Earth Infrastructure Limited.

26. It is further submitted that in the interest of all the stakeholders the Resolution Professional for EIL/Respondent has filed an Application before the Hon'ble Principal Bench of this Authority vide diary no. 0710102147602019, for transfer of the company petition no. (IB) 401/ND/2017 and Company petition no. 1768 (ND)/2018 (the present Company Petition) before this Bench, as well as for consolidation of the CIR Process of EIL/Respondent and Corporate Debtor herein as matters dealt by two different benches of this Authority will lead to a lot of confusion amongst the Prospective Resolution Applicants and the same has also created an uncertainty with respect to the fate of the allottees.

27. Further, reference has been made to the legal opinion of Justice R.P. Nagrath (Retd.) and former Member of this Authority (which also forms part of the submissions of RP of EIL), the partially constructed building is valued at Rs. 37.40 Crore and it belongs to the real estate allottees of Earth Iconic Project and the Corporate Debtor claims the transfer of partly constructed structure on account of the fact that the Corporate Debtor has accepted the claims of about Rs. 130 Crore from the allottees of EIL/Respondent in Earth Iconic Project.

28. Reference has been made to a resolution plan received by the Resolution Professional for the EIL/Respondent which takes care of the interest of the allottees who have booked their flat in a project of EIL/Respondent being built on the land of the Corporate Debtor. Therefore, it is submitted that the present application being without merit and therefore, is liable to be dismissed.

Conclusion: -

29. Heard the Ld. Counsels for the rival parties and perused the pleadings including the documents placed on the case file. It reveals from the pleadings that the Joint Development agreement dated 26.04.2012 entered into between the Corporate Debtor and EIL/Respondent has not been recognised by the DTCP and JDA has resulted into frustration; which is not capable of being implemented in relation to the Earth Iconic Project. Thus, the JDA dated 26.04.2012 is declared as null and void and is *set aside*. In this connection, this Authority relied upon the recent judgment of the Apex Court passed in **Gujarat Urja Vikas Nigam Limited Vs Amit Gupta & Ors.**, Civil Appeal No. 9241 of 2019 dated 08/03/2021 wherein, it was held that under Section 60(5)(c), of IBC, 2016 the NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the CD. Since, the land is owned by the corporate Debtor i.e., Celestial Estate Private Limited and the partly constructed structure has been built by EIL with the money of the Real Estate Allottees. Therefore, the partly constructed building is liable to be restored, transferred to the Corporate Debtor, as the direct and indirect allottees' claims have been admitted by the Corporate Debtor vide Order dated 07.08.2019

passed by this Authority. This fact has been admitted by the EIL/Respondent as is stated in para 23, herein above.

30. It is further noted that Alpha Corp Development Private Limited has submitted a Resolution Plan for Earth Iconic Project of the Corporate Debtor but the same was not approved by the CoC of the Corporate Debtor for the reason that it was not compliant with the provisions of the IBC, 2016 as the Prospective Resolution Applicant i.e., Alpha Corp Development Private Limited was not agreeable to pay the estimated CIRP cost. Whereas, the Prospective Resolution Applicant viz., H. S. Oberoi Buildtech Private Limited has filed a Resolution Plan which was considered by the Resolution Professional of the CD and found to be in compliance with the provisions of IBC, 2016 and the relevant regulations. The combined allottees (direct and Indirect) have approved the said Resolution Plan with 100% voting share, which will be examined a little later.

31. In the facts and circumstances of the case, the plea taken by the EIL/Respondent in reply is devoid of merits and stands **rejected**. It is worthwhile to mention that vide resolution dated 05.09.2019 passed with 99.77% voting share by majority of the direct and indirect allottees present in the meeting had agreed to transfer WIP building assets to the CD. Consequently, this Authority approves the transfer of the WIP building assets constructed with the money(s) of the Real Estate Allottees to the Corporate Debtor viz., Celestial Estate Private Limited, along with all the interest and rights pertaining to the ICONIC project from the date of passing of this Order, without any further act/ deed/Scheme by virtue of this Order, as if a Scheme of merger/Demerger of Corporate Debtor i.e., Celestial Estate Private Limited with/from EIL is approved by this Authority/Tribunal under Sections 230-232 of Companies Act 2013. Accordingly, the CA No. 1237/2019 is **allowed**.

32. Before we proceed to examine the CA-920/2019, that contains the "Resolution Plan" of the Resolution Applicant viz., M/s. H.S. Oberoi Buildtech Private Limited (hereinafter referred as "Resolution Applicant/HSOB") in relation to the Earth iconic Project of the Corporate Debtor i.e., Celestial Estate Private

Limited, it is necessary to first deal with the Objections filed in CA-654/2020 by the unsuccessful Resolution Applicant viz., *Alpha Corp Development Private Limited* (hereinafter referred as "Objector/Alpha").

CA -654/2020:

33. The Prayers made in the CA -654/2020 are as follows: -

- a. Declare that the 6th Meeting of the Committee of Creditors was illegally conducted and resolutions passed in the said meeting be set aside.
- b. Direct the Resolution Professional to provide the Applicant with a fair and just opportunity to make amendments to its Resolution Plan and thereafter, present the same before the committee of creditor.
- c. Pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the present case.

34. It is submitted by the Ld. Counsel for the Objector/Alpha that the Corporate Debtor is the 100% subsidiary of Earth Infrastructure Limited (hereinafter referred as "EIL") and CIRP was initiated against the EIL vide Order dated 06.06.2018 in CP (IB) 401/ND/2017. There are a total of five projects viz., i) Earth Copia, ii) Earth Iconic, iii) Earth Sapphire Court and iv) Earth TechOne (v) Earth Townee Project of EIL. The Objector/Alpha has submitted a Resolution Plan for four projects out of the five projects except for Earth Townee Project on 04.11.2019. The other Resolution Applicant viz., Roma Unicon Designex Consortium has submitted a Resolution plan which has been approved by the Committee of Creditors for one Project viz., Earth Townee Project (hereinafter referred as "CoC") on 11.11.2019.

35. It is further submitted that the Resolution Professional for Corporate Debtor vide email dated 11.11.2019 expressed his apprehension that pursuant to the application CA No. 719/ 2019, the Objector/Alpha was allowed to file a revised Resolution Plan and thereby withdrew its Plan submitted in respect of the project Earth Iconic in EIL. The Objector/Alpha in response to the email specified that the revised Resolution Plan dated 15.10.2019 categorically states that the Resolution Plan shall be implemented in accordance with the separate Resolution Plan proposed to be submitted as per the CIRP of the Corporate Debtor. The Resolution Professional for the Corporate Debtor sought further clarification in regard to his query vide email dated 11.11.2019 and stated that the amount of CIRP cost proposed to be paid by the Objector/Alpha are based on expected amounts and not as approved by the CoC of the Corporate Debtor. The Objector/Alpha clarified and reiterated and made plausible in its reply that the Resolution Plan qua Earth Iconic Project shall be implemented in accordance with the terms of the Plan submitted in respect of the Corporate Debtor and with respect to the CIRP cost, it was clarified that neither the Request for Resolution Plan nor any other document provided by the Resolution Professional for Corporate Debtor mentions that the approved CIRP cost amounts to Rs. 52,00,000/- and the Objector/Alpha stands by the provision of CIRP cost provided in its Resolution Plan i.e., a sum of approximately Rs. 5,00,000/- subject to maximum of Rs. 15,00,000/-.

36. It is submitted that the Objector/Alpha is also a Prospective Resolution Applicant in EIL and vide final list of Prospective Resolution Applicant dated

25.06.2019 the Objector/Alpha was declared eligible Resolution Applicant. The Objector/Alpha moved an application CA No. 1236/2019 filed in the Company Petition for allowing it to submit an Expression of Interest and subsequently a Resolution Plan for the Corporate Debtor and vide Order dated 23.09.2019 notice on the Application was issued, subsequently the Objector/Alpha submitted its Expression of Interest on 28.09.2019 in respect of the Corporate Debtor.

37. It is averred that as per the list of claimants dated 23.04.2019 the CoC comprised of 9 (nine) Financial Creditors having a total admitted claim of Rs. 111,850,874/-. The 1st CoC Meeting was convened on 29.04.2019 and a resolution with respect to the CIRP cost aggregating to Rs. 38.93 Lakhs and success fee was ratified by the CoC having only 5 (five) Financial Creditors which were present and voting. Therefore, it is contended that the resolution passed in the 1st CoC Meeting cannot be considered proper.

38. The Objector/Alpha has further highlighted the table provided under Regulation 4 (2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 wherein the aspect of success fee if any payable to the Liquidator is provided in case of Liquidation of the Corporate Debtor. However, as per the table the success fee payable amounts to Rs. 32,117,000/-. The Ld. Counsel has vehemently objected to the success fee payable on successful completion of the CIR Process. It is submitted that it is patently unlawful and illegal as the Regulation 31, 34 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provide for the expenses in respect of the CIRP cost which shall include the fee paid to the interim Resolution Professional, fee to be

paid to the resolution professional, fee paid to the insolvency professional entity, if any, and nowhere provides that the insolvency professional shall be entitled to a success fee on successful completion of CIRP.

39. The Objector/Alpha has mentioned that the list of claims dated 08.11.2019 does not provide any classification of creditors and as per the list there are total 292 claims which have been admitted in respect of the Corporate Debtor amounting to Rs. 1,415,121,340/- and with regard to the CIRP cost and success fee has been imposed upon the CoC comprising of 292 Creditors, which was previously ratified by only 9 creditors /CoC members out of which merely 5 creditors were present and voting, hence the CIRP cost and success fee was previously approved only by 7.9 % of the total creditors in the 1st CoC Meeting.

40. It is averred that the Resolution Professional being an interested Party to the Resolution Process of the Corporate Debtor as he merely informed the CoC about the quantum of CIRP cost and that the same has been approved and ratified by the CoC and therefore, deliberately was not made as an agenda for voting. Further, reference has been made to the term 'reasonable costs', and has quoted the observations of the Society for Insolvency Practitioners of India, its statement of best practices on "Payment of Corporate Insolvency Resolution Process Cost" that the Insolvency Professional must ensure that the costs incurred are reasonable and in order to determine the reasonability there are various parameters.

41. With Context to the correspondences in relation to the 6th CoC Meeting, the Resolution Professional for Corporate Debtor had invited the Objector/Alpha to attend the 6th CoC Meeting held on 14.11.2019 vide E-mail dated 13.11.2019 and it was stated that discussion on the Resolution Plan submitted by the Objector/Alpha would take place and then put for voting. The Objector/Alpha replied to the email of the Resolution Professional of the Corporate Debtor and raised following objections and concerns to which the Resolution Professional for the Corporate Debtor responded vide e-mail dated 14.11.2019. The Objector/Alpha's objections and concerns were as follows; -

(i) No revision of the CoC post transfer of claims from Earth Iconic in EIL to the CIRP proceedings of the Corporate Debtor.

(ii) The CoC meeting to be scheduled post the date of hearing in the application bearing C.A No., 2455 (PB)/2019 filed regarding the consolidation of the CIRP proceedings of EIL and the Corporate Debtor before this Authority as the Objector/Alpha apprehended that the Meeting was called with *mala fide* Intention.

(iii) The Resolution Professional was requested to re-constitute the CoC and send the details to the Objector/Alpha.

42. Further, the objection has been taken regarding declaration of the results of the voting process, which was already conducted and concluded prior to the meeting held on 14.11.2019, and the Meeting was simply called for declaration of the results and not for discussion and voting. The Resolution Plan of the Objector/Alpha was disqualified despite the clarification emails sent by the Objector/Alpha with regard to the queries of the Resolution Professional and

was deliberately devoid of the opportunity to discuss its Resolution Plan with the Resolution Professional for the Corporate Debtor.

43. It is stated that the Resolution Professional responded vide e-mail dated 14.11.2019 and stated that the proposition to reconstitute CoC post the transfer of claim was a misconceived proposition and the application that was filed for transfer of proceedings does not affect the position of the Objector/Alpha.

44. The other objection taken by the Objector/Alpha is with regard to the similarities in the Resolution Plan submitted by the Resolution Applicant/HSOB. It is submitted that the entire Scheme of revival proposed by the Objector/Alpha has been transcribed by the Resolution Applicant/HSOB. Therefore, direct the Resolution Professional to provide the Objector/Alpha a fair and just opportunity to make suitable amendments to its Resolution Plan and thereafter present before the CoC of the Corporate Debtor.

Reply filed by the Resolution Professional of Corporate Debtor/Celestial Estate Private Limited:

45. The Resolution Professional for the Corporate Debtor has filed a detailed reply to the Objections filed by Objector/Alpha and in parawise reply to Para 6, it is submitted that the Objector/Alpha filed its resolution Plan on 04.11.2019 and thereafter the Resolution Professional sent an email to the application on 11.11.2019 at 12:31 PM and the communication on the same continued till 13.11.2019. It is stated that the last date for resolution plans was 04.11.2019, date of circulation of agenda & notice for 6th CoC Meeting was 12.11.2019 and

the date and time of the 6th CoC Meeting was 14.11.2019 at 6:00 PM, therefore there were 40 hours to pass a particular resolution. It is stated that the Objector/Alpha filed an application after more than 2 months from the approval of the Resolution Plan of the Resolution Applicant/HSOB in order to delay the process.

46. Further, it is admitted by the Objector/Alpha at page 7 that the Resolution Professional of the Corporate Debtor sent an email on 11.11.2019 acknowledging therein that the 'email sought confirmation whether the Objector/Alpha shall pay the complete CIRP cost approved by CoC. The Objector/Alpha also admitted that it had confirmed the CIRP cost vide email dated 13.11.2019 and despite the estimate of the CIRP cost, the same was available with the Objector/Alpha on 11.11.2019. Further, the email dated 11.11.2019 of the Resolution Professional categorically states that the Objector/Alpha would withdraw their plan in EIL for the Earth Iconic Project as agreed, as their plan in the Corporate Debtor was conditional to JDA. The Objector/Alpha instead of providing confirmation to pay the CIRP cost approved by the CoC vide email dated 13.11.2019 advised to restrain from holding the resolution process as the transfer application is pending before the Principal Bench.

47. In reply to para 7 it is stated that the table does not include the date 28.10.2014 i.e., when the regulatory authority, DTCP denied acknowledging the Joint Development Agreement executed between the Corporate Debtor and EIL and this fact is duly mentioned in the Information Memorandum in the Para 2.9

i.e., page No. 55 and the Objector/Alpha has not even mentioned that the JDA was not recognised by the DTCP.

48. In reply to para 28 it is mentioned that RFRP is a process document as per the template provided by IBBI and not an information memorandum. Payment of CIRP Costs in priority to other payments is mandatory under Section 30 (2) (a) and the Resolution Professional for the Corporate Debtor provided an opportunity to the Objector/Alpha vide email dated 13.11.2019 to address this non-compliance. In reply to Para 29 it is stated that the language of the para itself demonstrates that the plan submitted is conditional which is contrary to the provisions of the RFRP and IBC, 2016. As per the definition a non-compliant Resolution Plan as provided in Section 30 (3) of IBC shall not be presented to the CoC. Therefore, the Resolution Professional was duty bound to ask the Objector/Alpha to make compliance with the provisions of IBC, 2016 and the RFRP. On account of refusal to pay the CIRP cost as per the provisions of the Code R/w IBBI Regulations the Resolution Plan of the Objector/Alpha was non-compliant and since the mind of the Objector/Alpha was prejudiced therefore, did not avail the opportunity to appear before the CoC to explain/improve his plan if needed.

49. In reply to para 30, 33-34 it is mentioned that the CIRP costs and success fee were ratified by the CoC in its 4th CoC Meeting held on 06.09.2019 comprising of 254 Creditors out of the 292 creditors thereby translating to 86.89% of the claim amount as on the date of the 6th CoC Meeting including

EIL allottees and the same was informed in the minutes of all the CoC meetings.

50. In reply to para 36-40 it is stated that the circular IBBI/IP/013/2018 dated 12.06.2018 refers to fee and other expenses incurred for CIRP. Further, the CIRP cost and remuneration of the Resolution Professional has been approved by the CoC comprising of a couple of hundred of financial creditors, keeping in mind the period of work involved and completion of project to handover the units to the Financial Creditors and the Resolution Plan of the Resolution Applicant/HSOB was put to vote as it was fully compliant with the provisions of IBC, 2016.

51. The Objector/Alpha has filed rejoinder in detail wherein the preliminary objections are that the various assertions made in the application are supported by documents, which clearly reflect the *mala fides* of the Resolution Professional for the Corporate Debtor in conducting the CIR Process of the Corporate Debtor. The Objector/Alpha has reiterated the stand taken in the application, therefore, the same is not repeated for the sake of brevity.

Conclusion: -

52. Heard the Ld. Counsel for both the parties and perused the pleading including documents placed on the case file. In the facts and circumstances of the case, the plea taken by the Objector/Alpha is with regard to the CIRP Cost and the success fee. The approval with regard to CIRP Cost and the success fee, if any, is to the best of the understanding of the CoC. The Objector/Alpha

cannot enter into the shoes of CoC to decide the reasonableness of the CIRP costs and success fee, if any, because the CoC is supposed to know well about the bulk of work and time to be taken for the implementation of the Resolution Plan. Moreover, the estimated CIRP cost and the success fee in no way is in violation of the provisions of the IBC, 2016 and the Regulations made thereunder. The Resolution Plan submitted by the Objector/Alpha was not in compliance with the Section 30 (2) of the IBC, 2016 and the relevant Regulations. Therefore, the decision taken by the Resolution Professional for the Corporate Debtor with regard to the rejection of the Resolution Plan of the Objector/Alpha is in accordance with law and otherwise also, the Resolution Plan of M/s. H.S. Oberoi Buildtech Private Limited, which has been approved by the CoC with 100% voting shares is on better footing than that of the proposed Resolution Plan of the Objector/Alpha. This aspect is more fully explained in later paras. It is further noted that despite giving opportunity for removing the defects in the proposed Resolution Plan no efforts were made by Objector/Alpha for curing the defects in order to make it compliant as per the provisions of Section 30 (2) (a) and no statement of details was provided as required under Regulations 38 1B of the CIRP.

53. In view of the observation made above, the CA -654/2020 being devoid of merits stands **rejected**.

CA-920/2019.

Resolution Plan:

54. The Application bearing No. CA-920/2019 contained a "Resolution Plan" filed under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC, 2016") in relation to the corporate debtor viz., *Celestial Estate Private Limited*. The Resolution Plan was submitted by M/s. H.S. Oberoi Buildtech Private Limited (hereinafter referred as "Resolution Applicant/HSOB") was approved by the Committee of Creditors in the 6th CoC Meeting.

55. The Resolution Professional for Corporate Debtor in its application has prayed as follows: -

- "A. Issue notice on this Application to all three Prospective Resolution Applicants namely (a) MDS Overseas Co having its address at T- 65 T Block Extension Jain Colony Part -I Uttam Nagar New Delhi-110059 (b) Alpha Corp Development Pvt Ltd having its office at Golf view Corporate Towers A Sector 42, Golf Course Road, Gurugram-122002 (c) H. S. Oberoi Buildtech Pvt Ltd., Kh No. 365, Lotus Building 1st Floor (Near Sultanpur haat) Mehruli, New Delhi-110030 (Resolution Applicant/HSOB) if considered appropriate;
- B. Take the Resolution Plan approved by the Committee of Creditors on record;
- C. Approve the Resolution Plan approved by the Committee of Creditors;
- D. Pass another Order (s) as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the case."

56. The Resolution Plan is submitted by the Resolution Applicant viz., H.S. Oberoi Buildtech Private Limited, a company incorporated and registered under the Companies Act,1956 working in the business of civil construction and

interior contracting agency. The Resolution Professional for the Corporate Debtor has prepared a comparative table of the Resolution Plans offered by the Resolution Applicant/HSOB, and the Objector/Alpha, which is as under: -

Section/ Regulation/Terms of the Plans	H.S.Oberoi Buildtech Ltd	Alpha Corp Development Ltd.
Section 30(2) (a) CIRP Costs	<p>Clause 8.2 A sum of Rs. 52 Lacs has been incurred so far towards CIRP Costs. It is further informed that there is provision of a success fee HSOB proposes that the CIRP costs would be given priority as stipulated in IBC and applicable regulations. Thus, the CIRP costs are to be paid to the extent incurred by CoC.</p>	<p>Part IV B. 1 CIRP cost (Approximate) Rs. 5,00,000/- subject to maximum of Rs. 15,00,000/- (all inclusive)</p>
Regulation 38 (1B) - A Resolution Plan shall include a statement giving details of the resolution applicant or any of its related parties has failed to implement or contributes to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past.	Details Provided	Not provided
Claims	<p>Clause 6.5 HSOB proposes to satisfy all the claims filed by the unit buyers in project ICONIC irrespective of whether the claim has been filed with RP of EIL or CEPL.</p> <p>Clause 6.13 4 c) HSOB is required to accommodate any additional unit holders for which claims have not been filed up to the last date of submission of the resolution plan, either with the RP of CEPL or EIL, then HSOB shall charge</p>	<p>Part III, 1. The resolution has an assumed extent of 45,000Sq. Ft (100 service Apartments 450 Sq. ft.) and this plan has been submitted assuming on approval of this Resolution Plan the Joint Development agreement dated 26.04.2012, executed between EIL and Celestial culminates as an integral part of the Resolution Plan without any further act or deed and without any further liability/obligation on the Resolution Applicant beyond</p>

	<p>additional Rs. 700/- (Seven Hundred) per Sq. Ft for unit HSOB is required to accommodate any additional unit holders for which claims have not been filed up to six months of the last date of submission of the resolution plan, then HSOB shall charge additional Rs. 200/- per Sq. ft. for unit.</p>	<p>45,000Sq. Ft.</p> <p>At the time of accommodating the Allottee by the Resolution Applicant, the Resolution Applicant shall make all endeavours to make available to the allottees the Unit and Tower of the Allottees choice. Upon failure to provide the Allottee the same the following watershed shall be followed:</p> <p>Part IV ,C xi Any claims admitted/ revised by the Resolution Professional subsequent to 18.09.2019 shall be distributed to the allottees of the respective project(s) [whose claims have been admitted as on 18.09.2019] as the Resolution Applicant may deem fit.</p> <p>Further, the Resolution Applicant also reserves the right to revise the terms and conditions of the resolution plan if the claims are admitted subsequent to 18.02.2019.</p>
Interiors	<p>Shall provide interiors to units as per individual MoUs of the claimants.</p>	<p>Part III 1.5 The Plan has been submitted assuming that there will be any furnishing/interiors work required for the units to be delivered to the allottees that is contradictory to the MoUs executed with the respective claimants.</p>
Mortgage of Project Land	<p>No mortgage is contemplated in the Resolution Plan</p>	<p>Part IV, C xi The Resolution Applicant proposes funding the revival of the Earth Iconic Project. In addition, the Project shall be mortgaged and the loan amount raised out of such mortgage shall be used for completion of the Project.</p>

Upfront Investment by PRAs	<p>Clause 6.18</p> <p>H SOB proposes to deploy a sum of Rs. 22,00,00,000/- (Rupees Twenty Two Crores Only)</p>	<p>The Resolution Applicant or any of its companies, entities, affiliates, associates or any nominee/assignee propose to deploy a sum of Rs. 10,00,00,000/- approximately as peak investment.</p>
Leasing rights	<p>Clause 6.16 i)</p> <p>H SOB/or the company managing the Iconic Project shall have exclusive right for first lease of leasing of the property of the Iconic Project which can be jointly negotiated with Buyer's Association so formed.</p>	<p>Part IV1 vi</p> <p>All the leasing rights with respect to the Project shall vest with the Resolution Applicant. In addition, even direct leasing of the Units of the Project shall be done in consultation with the Resolution Applicant.</p>
Maintenance	<p>Clause 6.17</p> <p>Iconic Project shall be maintained by H SOB or the company managing Iconic project or its nominated maintenance agency till the time the buyer's association is formed and takes over the maintenance of the project.</p>	<p>Part III 5.5.1</p> <p>The Resolution Applicant hereby proposed that the project shall be exclusively maintained by the Resolution Applicant of the project SPV or its nominated maintenance agency.</p>
Viability Gap Funding	<p>No Viability Gap Funding</p>	<p>Part II , A xlx</p> <p>The expression shall mean and include an amount of Rs. 600 per Sq. ft. plus applicable GST to be charged in addition to the Balance Amount payable in accordance with MoU executed between the Allottee and EIL and/or Celestial.</p>
Timeline	<p>Clause 7.0</p> <p>H SOB estimates to complete the above revival plan of implementation within a period of 4+24 months (i.e., from the date of the approval of Resolution Plan)</p>	<p>Part III, 7.1</p> <p>The Resolution Applicant estimates (but is not obligated) to complete the construction of Earth Iconic project within 3 to 5 years from RERA registration date in a phased manner.</p> <p>Part III, 7.4</p> <p>It is hereby clarified that the Resolution Applicant shall not be liable to any third party including any</p>

		Government Authority in the event of non-completion of the project within a period of 5years from RERA registration date.
Approvals	Clause 8.7. 2 months of pre - construction work like seeking necessary approvals licenses RERA registration etc.	No specific timeline provided for seeking approvals.
Monitoring Committee	Clause 9.6 1) One person nominated by HSOB 2) One person nominated by Association of buyers 3) Resolution Professional/his nominee 4) Management consultant engineer/architect to be appointed by the RP and association of buyers at the cost of HSOB	Part III, 10. 5) Two members from the management of the Resolution Applicant/project SPV and 6) Two members from the project allottees However the Resolution Applicant respective project SPV (s)/related companies shall not bear any expenses relating to the appointment of representatives from the allottees
Financial Projections	Detailed financial projections provided	Detailed projections 'NOT' provided.

57. As can be seen from the comparative table mentioned above, the Resolution Plan of the Resolution Applicant/ HSOB is on better footing and unconditional. This Authority while dealing with the objections of the Alpha Corp Private Limited filed through CA-654/2020 has already observed in the concluding part that the Resolution Plan of the Objector/Alpha was not in compliance with the provisions of Section 30 (2) of the IBC, 2016 and the Regulations made thereunder. The Resolution plan offered by the Resolution Applicant/HSOB viz., H.S. Oberoi Buildtech Pvt Ltd has been put to voting

process and was approved by 100% voting share by the CoC and the resolution passed is as follows: -

“RESOLVED THAT, the resolution plan submitted by M/s. H.S. Oberoi Buildtech Pvt Ltd. has been approved by the Committee of Creditors and the resolution along with the plan be submitted to Hon'ble NCLT (Adjudicating Authority) for its Approval.”

58. The voting result and the decision of the CoC was communicated to the Resolution Applicant/H SOB vide email dated 16.11.2019 and it was asked to furnish the performance Bank Guarantee of Rs. 5,00,00,000/- as per clause 1.9 of the RFRP dated 24.09.2019. The compliance certificate obtained from the Resolution Professional for the Corporate Debtor in Form H of Schedule is placed on the file.

59. **Summary of the claims admitted**

SI. No.	Particulars		Claim amount admitted on 18.09.2019
1	Financial Creditors	Amount as per claim filed	Amount as per claim admitted
2	Buyers (330 claimants)	172,72,23,953.00	142,95,14,197.00
3	Operational Creditors (One Claimant Rahul Yadav)	80,57,237.00	NIL
4	Workmen and employees	NIL	NIL

[Note; given in the application]: From the list of Financial Creditors the amount of Rs.18,33,05,507 of the 5 unit of buyers has been kept pending for verification/submission of the documents. As per the IM one Mr. Rahul Yadav has claimed an amount of Rs.80,57,237.00 towards some lease agreement for providing access to the project site. The Resolution Professional for the Corporate Debtor has not admitted the said claim, since the said agreement of lease is with EIL and as per Resolution Professional for the Corporate Debtor the liability of the same is of EIL and the Resolution Applicant/HSOB is of the considered view that non admission of the claim will not have adverse impact on the feasibility and viability of the project. Thus, the mechanism of the same is proposed in the plan.

60. The 'Resolution Plan' provides to deliver the possession of the units to the respective buyers in the manner and on the terms and conditions stipulated, by managing the project through a team of committed and dedicated management in much professional manner and to deploy the money received from the buyers in terms of the plan in accordance with RERA in a time bound manner.

61. The Resolution Applicant/HSOB proposes to deploy a sum of Rs. 22, 00, 00,000/- in a phased manner as per requirement over a period of 4 + 24 months (i.e, from the date of approval of the resolution plan) (i.e., 4 months of pre-construction work like seeking necessary approvals, licenses, RERA registration etc. and 24 months of construction related activity) and the balance receivable from existing buyers shall be demanded as per the Payment Plan.

62. The Resolution Applicant/HSOB proposes to acquire the Corporate Debtor by way of transfer of 100% shares held by EIL and its nominee/directors in order to revive the status with the RoC at the rate of authorised and subscribed share capital, which as per master data of the Corporate Debtor available on the website of MCA is Rs. 1,00,000/- i.e., at par to EIL or other persons as the liability of EIL is being redressed, to satisfy the claims admitted by Resolution Professional and/or other claims, which require redressal on the terms as provided in the Resolution Plan.

63. The parameters for approval of the Resolution Plan are set out in Section 30 and 31 of the IBC, 2016. The Resolution Plan has to fulfil certain mandatory requirements under the Code and CIRP Regulations. The Resolution Plan of the Resolution Applicant/HSOB has complied with such mandatory compliances, which are briefly set forth herein below:-

Section / Regulation	Compliance made
Section 30 (1) of the I&B Code, 2016	Resolution Applicant has submitted an affidavit stating that he is not disqualified under the provisions of Section 29A.
Section 30(2)(a) of the I&B Code, 2016 <i>And</i>	The Resolution Plan provides payment of the CIRP Cost of Rs. 52, 00,000/-, in priority as stipulated in IBC and applicable regulations.

<p>Regulation 38(1A) of IBBI (Insolvency Process for Corporate persons) Regulations, 2016</p>	<p>The Clause 12 of the Resolution Plan provides that on payment of settling the amount payable to various stakeholders as mentioned in this proposed plan and in such manner the entire outstanding dues of the creditors/stakeholders shall stand discharged and nothing further shall be deemed to be payable to any of the category of the creditors/stakeholders as mentioned therein.</p>
<p>Section 30(2)(b) of the I&B Code, 2016</p> <p style="text-align: center;">And</p> <p>Regulation 38(1) of IBBI (Insolvency Process for Corporate persons) Regulations, 2016</p>	<p>The Resolution Plan provides that one Mr. Rahul Yadav has claimed an amount of Rs. 80, 57,237.00/- however, the Resolution Professional has not admitted the said claim, the reason is stated in the note recorded herein above.</p> <p>The Resolution Plan provides for the payment of the CIRP costs in priority. No claim of Operational Creditor has been admitted by the Resolution Professional.</p>
<p>Section 30(2)(c) and Section 30(2)(d) of the I&B Code, 2016,</p> <p style="text-align: center;">And</p>	<p>The Resolution Plan provides for the formation of an Implementing Monitoring Committee (IMC) to oversee the implementation of the Resolution Plan. The IMC consists of (i) one person nominated by HSOB, (ii) one person nominated by Association of Buyers (iii) Resolution Professional/his nominee (iv) One eminent personality like a management consultant, engineer/architect or any such qualification and experience of running and managing the effective</p>

<p>Regulation 38(2) of IBBI (Insolvency Process for Corporate persons) Regulations, 2016</p>	<p>implementation of the Resolution Plan, to be appointed by the Resolution Professional and association of buyers at the cost of HSOB.</p> <p>The Resolution Plan provides that the HSOB proposes to deploy a sum of Rs. 22,00,00,000/- in the form of own funds, borrowings from financial institutions, bank guarantees, market credit lines etc. and in a phased manner as per requirement over a period of 4+24 months.</p>
<p>Section 30(2)(e) of the I&B Code, 2016</p>	<p>The Resolution Plan does not contravene any of the provisions of law for time being in force.</p>
<p>Section 30(4) of I&B Code, 2016,</p> <p style="text-align: center;"><i>And</i></p> <p>Regulation 38(3) of IBBI (Insolvency Process for Corporate persons) Regulations, 2016</p>	<p>The Committee of Creditors, after considering the feasibility and viability of the Resolution Plan have approved the same by 100% voting share.</p> <p>The Resolution Plan provides for the cause of default and redress thereof. The Resolution Plan provides for the conditions of implementation and timeline, when the approvals are to be obtained.</p>

64. **Management and Control of the corporate debtor:**

It is mentioned in the plan that the Resolution Applicant proposes to reconstitute the management of the Corporate Debtor including the project with professional managers/agencies having relevant industrial expertise to be

inducted in the organisational level within the body corporate to drive the turnaround of the company and achieve the financial projections. The Resolution Applicant has identified the professionals or KMPs.

65. **Sources of Funding:**

It is stated in the Resolution Plan that the Resolution Applicant/HSOB is capable of introducing such sums of money as is required for completion of the project ICONIC in such manner so as to satisfy the claims of various stakeholders on such terms and conditions as mentioned in the Plan. It is stated that as on 03.03.2019 the net worth of the Resolution Applicant stands at Rs. 9.01 Crores approximately. Further, there are FDRS worth Rs. 1 Crore (approx.) and pre-sanctioned credit facility.

It is stated that as per IM the security structure for the secured financial creditors is Rs. NIL. There is no mention of any security or bank guarantee nor any claim. The Resolution Applicant/HSOB proposes to satisfy all the claims filed by the unit buyers in Iconic project irrespective whether the claim has been filed with Resolution Professional of EIL or the Corporate Debtor. The Resolution Applicant/HSOB proposes to implement the plan within a period of 4+24 months (i.e., from the date of approval of resolution plan) (i.e., 4months of pre-construction work like seeking necessary approvals, i.e., seeking licenses, RERA registration etc. and 24 months of construction related activity) from effective date in a phased manner.

66. **Summary of Priority of payments**

The following table indicates the priority of payments as per the Resolution Plan, which is in accordance with the order of priority as mentioned in IM/IBC, 2016:

Priority No.	Head	Amount/ Mechanism
1	CIRP cost	Provided in Clause 8.2 of the Resolution Plan
2	Operational Creditor	NIL as not admitted by the Resolution Professional (in case the need arises, the Redressal mechanism has been provided herein before in paragraph 8.4(c))
3	Workmen	NIL
4	Financial Creditors being unit buyers	By way of construction of units and handing over the possession and title documents
5	Statutory Dues	NIL (in case need arises, the Redressal mechanism has been provided in para 8.4 (a))
6	Other Operational Creditors	NIL

67. The Resolution Applicant/HSOB proposes to open an escrow account in the name of ICONIC COLLECTION in order to deposit the amount collected from the buyers of ICONIC which shall be utilised in accordance with Real Estate (Regulation and Development) Act, 2016 and Rules made thereunder and amounts transferred from the Escrow Account to development account if any, shall be strictly utilised for the development/construction of the project in compliance with RERA.

68. The Resolution Plan offered by the Resolution Applicant viz., *M/s. H.S. Oberoi Pvt Ltd.*, seeks waiver of the tax liability of Rs. 161.64 lakhs (approx.) w.r.t compensation of Rs. 911.36 Lakh towards land acquired by the HUDA in

2016-17 and 19.56 Lakhs towards taxes and duties, however, no claim has been filed by the department concerned. The waiver of penalty and interest on the pending dues of DTCP has been sought. Further, it is also proposed that all the litigations, claims, disputes filed by the buyers of the project pertaining to non-delivery and non-committal or otherwise filed against the Corporate Debtor or EIL before DTCP, RERA, Consumer Forum or any other court, Tribunal, authority shall stand settled as per the terms of this Resolution Plan. The Resolution Applicant/HSOB has sought reliefs and concessions from this Authority and from the other relevant Government Authorities, as enumerated in the Resolution Plan.

69. 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 proceedings, as the case may be.

70. All the statutory duties 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 and Financial Creditors except those in whose favour the provision is made in the 'Resolution Plan' would not get anything 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.

71. Besides the above, the existing Directors of the Corporate Debtor shall be deemed to have resigned from the directorship of the Corporate Debtor from the date the Resolution Plan is approved, so that the Resolution Applicant may induct new Directors to gain control over the management of the affairs of the Corporate Debtor in order to enforce the capital restructuring after getting voting rights in any general meeting of the Corporate Debtor.

72. The 'Resolution Plan' filed with the Application meets the requirements of Section 30(2) of IBC, 2016 and Regulations 37, 38, 38(1A) and 39 (4) of IBBI (CIRP) Regulations, 2016. The 'Resolution Plan' is not in contravention of any of the provisions of Section 29A. The Resolution Professional has also certified that the "Resolution Plan" approved by the CoC's does not contravene any of the provisions of the law for the time being in force. The Compliance Certificate in Form H as required under Regulation 39(4) of IBBI (Insolvency Process for Corporate persons) Regulations, 2016 is placed at pages 150 to 158 of the typed set.

73. In view of the above, the 'Resolution Plan' annexed with CA-920/2019 filed in CP (IB)- 1768 (ND)/2018 is hereby **approved**, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan including the Resolution Applicant/HSOB.

74. While approving the 'Resolution Plan', as mentioned above, it is clarified that the Resolution Applicant/HSOB shall pursuant to the Resolution Plan approved under Sub-section (1) of Section 31 of the I&B Code, 2016, obtain all the necessary approval as may be required under any law for the time being in force within the time period of 1 (one) year or as stipulated in the Resolution

Plan from the date of approval of the Resolution Plan by this Authority or within such period as provided for in such law/Rules/Regulations.

75. The Order of moratorium dated 11.03.2019 passed by this Adjudicating Authority under Section 14 of IBC, 2016 shall cease to have effect from the date of passing of this Order.

76. The Resolution Professional 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 database.

77. The 'Resolution Plan' approved by this Authority shall become effective from the date of passing of this Order.

78. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant/HSOB.

79. Accordingly, the CA-920/2019 is **allowed** and the CA-654/2020 is **rejected**.

80. The Order is pronounced in the presence of the Ld. Counsels for the parties through video conferencing.

-sd-

NARENDER KUMAR BHOLA
MEMBER (TECHNICAL)

-sd-

CH.MOHD SHARIEF TARIQ
MEMBER (JUDICIAL)