

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

I.A. NO. 2890 OF 2020

IN

C.P. IB NO. 1747 (PB) OF 2018

IN THE MATTER OF:

**RAKESH KUMAR GUPTA
RESOLUTION PROFESSIONAL
EARTH BUILDROP PRIVATE LIMITED**

...Applicant

Versus

**MR. AKASH SINGHAL
RP OF EARTH INFRASTRUCTURES LTD**

...Respondent No. 1

ASTHA FINCAP PRIVATE LIMITED

...Respondent No. 2

SARVRAM INFRASTRUCTURE (INDIA) PRIVATE LIMITED

...Respondent No. 3

MR. RAJNEESH MITTAL

...Respondent No. 4

MR. VIKAS GUPTA

...Respondent No. 5

MR. ATUL GUPTA

...Respondent No. 6

MR. MOHIT KUMAR

...Respondent No. 7

AND IN THE MATTER OF:

VIJAY KUMAR SURI & ORS.

...Financial Creditors

Versus

EARTH BUILDPROP PRIVATE LIMITED

... Corporate Debtor

Order Delivered on: 09.07.2026

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM
HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant : Mr. Sandeep Bajaj, Mr. Devansh Jain, Ms. Shrishti
Jeswani , Mr. Mayank Biyani, Advocates,
Mr. Rakesh Gupta, RP in person.

For Respondent No. 1: Mr. Deep Bisht, Advocate.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by the Applicant, Mr. Rakesh Kumar Gupta, the Resolution Professional ("RP") under the provisions of Section 66 of Insolvency and Bankruptcy Code, 2016 ("Code"), seeking the following reliefs:

(a) Allow the present application;

(b) Pass an order declaring the transactions as detailed in paragraphs 12 to 53 as transactions under Section 66 of the Code and declare the transactions as null and void and reverse the effect of the said transactions;

(c) Pass Consequential directions against the directors of the Corporate Debtor for deliberately defrauding the creditors of the Corporate debtor and diverging funds from the Corporate Debtor;

(d) pass such other or further order / order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.

2. SUBMISSIONS OF THE APPLICANT:

- i.** This Adjudicating Authority vide order dated 13.05.2019 admitted the Company Petition i.e. C.P. NO. (IB)-1747(PB) of 2018 for initiating Corporate Insolvency Resolution Process ("CIRP") under the Code and appointed the Applicant as Interim Resolution Professional to carry the CIRP in the matter of Earth Buildprop Private Limited.
- ii.** Pursuant to his appointment, the Applicant has taken various steps for discharge of his duties in accordance with law including invitation and verification of claims, collation of information on assets of the company, custody of assets, collecting the information relating to the assets, finances and operations of the Corporate Debtor for determining the financial position of the Corporate Debtor.
- iii.** In the third meeting of the Committee of Creditors, the Applicant was resolved to be appointed as Resolution Professional.
- iv.** The suspended directors of Corporate Debtor and Respondent No.1 company (also under going CIRP) are same and are under judicial custody from 2017. The Applicant vide various emails requested the Statutory Auditor to provide and give access to various information as required by the Applicant relating to the Corporate Debtor for conducting the CIRP. However, the Statutory Auditor failed to provide any detail. In view thereof, the Applicant thereafter on 21.09.2019 filed an application under Section 19(2) of the Code seeking directions to the Statutory Auditor of the Corporate Debtor to cooperate and provide documents relating to Corporate Debtor as sought by the Applicant for carrying out CIRP.
- v.** This Adjudicating Authority vide orders dated 01.10.2019 and 07.11.2019 directed the Statutory Auditor to appear before the Applicant and handover

all the documents concerning the corporate debtor and pass on every information in their possession and knowledge. The said application was disposed of vide order dated 29.11.2019 by this Adjudicating Authority while giving directions to the statutory auditor to co-operate with the Applicant as and when any further requirement arises.

- vi.** The Resolution Professional does not have the complete information of the Corporate Debtor as the Directors are in judicial custody and therefore an application under Section 19(2) was filed against the Statutory Auditor for non-supply of the complete information.
- vii.** In view of the duty casted upon the Applicant by the Code, whilst examining the financials of the Corporate Debtor, the Applicant has observed that certain business transactions of the Corporate Debtor as enumerated hereinafter have been carried for the fraudulent purpose and with an intent to defraud the creditors of the Corporate Debtor. Under Section 66(1) of the Code, this Adjudicating Authority is empowered to pass orders directing persons who are knowingly party to carrying on the business of the Corporate Debtor in a fraudulent manner or with the intent to defraud the creditors, liable to make such contributions to the Corporate Debtor as it may deem fit.
- viii.** However, in the present case as the directors of the Corporate Debtor have been in judicial custody and the information as sought by the Applicant from the Statutory Auditor was not forthcoming for which an application under Section 19(2) was filed before this Adjudicating Authority, thus valuers, auditors appointed by the Applicant in terms of the provisions of the Code had to prepare their reports with the limited records available. The report by the Forensic Auditor has been submitted only on 13.02.2020. Therefore, the consequent delay in compliance with Regulation 35A of the CIRP Regulations.

ix. Brief background of the Corporate Debtor and its related entities:

- a. The Corporate Debtor is a company incorporated under the provisions of the Companies Act, 1956, having its registered office at B-100, Second Floor, Naraina Industrial Area, Phase-1, New Delhi 110028. The Corporate Debtor was incorporated on 06.02.2013.
- b. The promoters/shareholders of the corporate debtor are as under:-

Name and Address of Shareholders	No. Of Shares held	Value of shares
Mrs Seema Goel, EG-102, Inderpuri, New Delhi-110012	900	9000
Mr. Avdhesh Kumar Goel House No 9 Floor Ground, Block-EC, Inderpuri, New Delhi, 110012	900	9000
Avdhesh Kumar Goel (HUF), House No 9 Floor Ground, Block-EC, Inderpuri, New Delhi, 110012	700	7000
Mrs Rishu Gupta A-1/294, Janakpuri, New Delhi-110058	900	9000
Mr Atul Gupta A-1/294, Janakpuri, New Delhi-110058	900	9000
Atul Gupta (HUF) A-1/294, Janakpuri, New Delhi-110058	700	7000
Mrs Renu Gupta A-101, Sec-12, Plot No-27, Sunny Valley, Dwarka, 110075, Delhi.	900	9000
Mr. Vikas Gupta A-101, Sec-12, Plot No-27, Sunny Valley, Dwarka, 110075, Delhi.	900	9000
Vikas Gupta (HUF) A-101, Sec-12, Plot No-27, Sunny Valley, Dwarka, 110075, Delhi.	700	7000
Mrs Mamta Mittal H No-PNC-54, Pinnacle & The Icon, Gurgaon- 122009	900	9000

Mr. Rajneesh Mittal H No-PNC-54, Pinnacle & The Icon, Gurgaon-122009	900	9000
Rajneesh Mittal (HUF) H No-PNC-54, Pinnacle & The Icon, Gurgaon-122009	700	7000
Total	10,000	100,000

c. The present and past directors of the Corporate Debtor are as under:

DIN	Full Name	Present Residential Address	Date of Appointment
00524384 (deactivated)	Vikas Gupta	U/19, Upadhayay Block, Shakarpur, Delhi 110092	06-02-2013
00077970 (disqualified u/s 164(2))	Rajneesh Mittal	201, 204 Jwala Mantion, 4/2, Asif Ali Road, Delhi 110002	06-02-2013
01539044	Avdhesh Kumar Goel	EC- 102, Inderpuri, New Delhi – 110012	06-02-2013 to 10-09-2016
00524660 (deactivated)	Atul Gupta	A-1 / 294, Janakpuri, New Delhi – 110058	06-02-2013

d. Earth Infrastructure Limited i.e. Respondent No.1 Company (undergoing CIRP) was incorporated on 19.06.2007. The promoters/shareholders of the Earth Infrastructure Limited are as under:-

Name and Address of Shareholders	No. Of Shares held	Value of shares
Mrs Seema Goel, W/o Avdhesh Kr Goel EG-102, Inderpuri, New Delhi-110012	13,00,500	1,30,05,000
Mr. Avdhesh Kumar Goel, S/o Manik Chand Goel House No 9 Floor Ground, Block-EC, Inderpuri, New Delhi, 110012	13,00,500	1,30,05,000
Avdhesh Kumar Goel (HUF), House No 9 Floor Ground, Block-EC, Inderpuri, New Delhi, 110012	10,11,500	10,11,50,000
Mrs Rishu Gupta W/o Mr Atul Gupta A-1/294, Janakpuri, New Delhi-110058	13,00,500	1,30,05,000
Mr Atul Gupta S/o Jai Bhagwan Gupta A-1/294, Janakpuri, New Delhi-110058	13,00,500	1,30,05,000
Atul Gupta (HUF) A-1/294, Janakpuri, New Delhi-110058	10,11,500	1,01,15,000
Mrs Renu Gupta W/o Vikas Gupta A-101, Sec-12, Plot No-27, Sunny Valley, Dwarka, 110075, Delhi.	13,00,500	1,30,05,000
Mr. Vikas Gupta S/o Rajendra Prasad Gupta A-101, Sec-12, Plot No-27, Sunny Valley, Dwarka, 110075, Delhi.	13,00,500	1,30,05,000
Vikas Gupta (HUF) A-101, Sec-12, Plot No-27, Sunny Valley, Dwarka, 110075, Delhi.	10,11,500	1,01,15,000

Mrs Mamta Mittal W/o Rajneesh Mittal H No-PNC-54, Pinnacle & The Icon, Gurgaon-122009	13,00,500	1,30,05,000
Mr. Rajneesh Mittal, S/o Ram Niwas Mittal H No-PNC-54, Pinnacle & The Icon, Gurgaon-122009	13,00,500	1,30,05,000
Rajneesh Mittal (HUF) H No-PNC-54, Pinnacle & The Icon, Gurgaon-122009	10,11,500	1,01,15,000
Total	1,44,50,000	14,45,00,000

- e. The present and past directors of the Earth Infrastructure Limited are as under:

DIN	Full Name	Present Residential Address	Date of Appointment
00524384 (deactivated)	Vikas Gupta	U/19, Upadhayay Block, Shakarpur, Delhi 110092	19-06-2007
00077970 (disqualified u/s 164(2))	Rajnesh Mittal	201, 204 Jwala Mansion, 4/2, Asif Ali Road, Delhi 110002	19-06-2007
01539044	Avdhesh Kumar Goel	EC- 102, Inderpuri, New Delhi – 110012	19-06-2007 to 10-09-2016
00524660 (deactivated)	Atul Gupta	A-1 / 294, Janakpuri, New Delhi – 110058	19-06-2007

x. TRANSACTION 1: TRANSACTION BETWEEN EIL AND CORPORATE DEBTOR:

- i. Earth Infrastructures Ltd. ("EIL") i.e. Respondent No.1 had launched residential project in the name of "Elacasa" and started booking after taking advances from the prospective homebuyers in the year 2011 by promising the homebuyers to give the homes within 36 months from the date of receipt of approval of building plan. The approval for building plan was however received in the year 2013. The permission for construction was granted by the government authority in the year 2014. Thus, the intention of the management to complete the project remained questionable. The condition laid down in the license no. 23 of 2012 stipulates that no prior booking can be taken before the approval of building plan.
- ii. The promoters/directors of the Respondent, EIL had initially received the allotment/booking amount for the flats from the buyers of Project ELACASA, prior to incorporation of the Applicant Company. Post incorporation of the Corporate Debtor on 6th February 2013 by the promoters of the EIL, the project namely "Elacasa" was transferred to Corporate Debtor. Thereafter, both the companies passed journal entries in

their books of accounts for transfer of advances as collected by EIL from the Home buyers of Corporate Debtor. However, no money had actually been transferred to the bank accounts of the Applicant.

- iii.** As per the books of account of the EBPL i.e. the Corporate Debtor, which was received from the RP of the Respondent company (as data was handed over to him by EOW) and subsequently from EOW also, it has been found that there are home buyers who have paid money to the Respondent EIL for booking of flats in "Elacasa" project. The amount received by the Respondent was supposed to be transferred to the Applicant, but the same has not been done so far.
- iv.** In the accounts of both companies i.e. EBPL and EIL, merely book entries for an unpaid amount of Rs. 8.84 Crore approx. have been passed with regard to the amount collected by the EIL in the "Elacasa" project and no money has actually been transferred to the bank accounts of the Applicant Corporate Debtor for such collection by respondent, till the date of commencement of its CIRP.
- v.** The EIL collected an amount of Rs. 11,17,38,362/-towards the advance booking in the "Elacasa" project before incorporation of the Corporate Debtor. However, the Corporate Debtor has received only Rs 2,33,00,000/- against the amount collected by EIL.
- vi.** The Corporate Debtor has received claims from the home buyers, who have deposited the money towards booking of flats in the bank accounts of Respondent Company in pursuant to the public announcement made by the Applicant on May 23, 2019 in newspapers as per the provisions of section 15 of the Code.
- vii.** On perusal of the books of accounts, it has been observed by the Applicant that after incorporation of the Corporate Debtor substantial money

aggregating to Rs. 17,17,12,518/- (net) has been transferred from the bank account of the Corporate Debtor to the bank account of the Respondent no.1, in addition to the amount directly received by the EIL for booking of flats in the project ELACASA.

- viii.** During the CIRP period, the Resolution Professional of Respondent No.1 Company, has confirmed to some home buyers of Earth Buildprop Pvt Ltd., on their specific request, regarding receipt of amount from them for booking of flats, for which neither any journal entry has been passed in the books of account nor any money has been transferred in the bank account of the applicant. The details are given below:

S No	Customer Name	Amount	Confirming Date
1	Sunil Yadav	6,75,000	21/09/2019
2	Madhu Gupta	11,00,000	09/10/2019
3	Surinder Singh Sandhu	7,34,000	20/01/2020
4	Sangeeta Singh	7,34,000	20/01/2020
5	Rajesh Kumar Kapoor	7,34,000	20/01/2020
6	Suresh Kumar Mittal	7,34,000	20/01/2020
7	Krishna Mehta	6,00,000	13/03/2020
8	Rajni Mehta	4,00,000	13/03/2020
9	Rajni Mehta	2,00,000	13/03/2020
	Total	59,11,000	

- ix.** Therefore, a total sum of Rs. 26,60,61,880/- (Twenty Six Crore Sixty Lakh Sixty One Thousand Eight Hundred Eighty Only) (Rs. 8,84,38,362 collected from homebuyers plus Rs 17,17,12,518, transferred from bank account of corporate debtor and Rs. 59,11,000 admitted liability) is recoverable directly from Earth Infrastructure Limited by the Corporate Debtor.

xi. TRANSACTION 2: TRANSACTION BETWEEN ASTHA FINCAP PRIVATE LIMITED AND CORPORATE DEBTOR:-

- a. Astha Fincap Private Limited, a company incorporated under the Companies Act, 1956 having CIN No. U65921DL1996PTC082914, and registered office at B-100, Second Floor, Naraina Industrial Area, Phase-1, New Delhi 110028. (changed on 16.12.2016 from 251, Block C, Pocket 8, Sector 8, Rohini, New Delhi 110085) a sister concern of the Earth Infrastructure Limited and Corporate Debtor was incorporated on 28.10.1996.
- b. The promoters of the Astha Fincap Pvt Ltd i.e. Respondent No. 2 are as under:-

Name and Address of Shareholders	No. Of Shares held	Value of shares
Kausmi Builders Pvt Ltd (shareholders are Ratan Vijay Vergi and Mukul Garg as per March 2015 financials of Kausmi Builders Pvt Ltd) Purchase on 16.06.2013 from <i>Kailash Chand Gupta 18,700</i> <i>Pratibha Gupta W/o K.C. Gupta 20,700</i> <i>K. C. Gupta (HUF) 1,97,500</i> <i>S.K Maheshwari (HUF) 1,69,500</i>	4,06,400 8,50,000 7,43,600	40,64,000 85,00,000 74,36,000
Purchase on 29.03.2016 fresh allotment Purchase on 22.02.2017 fresh allotment		
Total	20,00,000	2,00,00,000

- c. The present and past directors of the Astha Fincap Pvt Ltd i.e. Respondent No. 2 are as under:

DIN	Full Name	Present Residential Address	Date of Appointment
00524384	Kailash Gupta	U/19, Upadhyay Block, Shakarpur, Delhi 110092	28-10-1996 to 17.06.2013
00077970	Pratibha Gupta	138, Pocket E, Mayur Vihar Phase II, Delhi - 110092	28-10-1996 to 17.06.2013
01446530	Mukul Garg	5C/53, New Rohtak Road, New Delhi – 110005	07-06-2013 to 27.01.2018
02255979	Ratan Vijay Vergi	251, Block C, Pocket 8, Sector 8, Rohini, New Delhi – 110085	07-06-2013 to 21.04.2017

- d.** The Applicant on perusal of the records of the Corporate Debtor observed that the Corporate Debtor has transferred huge sum of money to this NBFC viz Astha Fincap Private Limited.
- e.** The total sum of money outstanding in the books of accounts of the Corporate debtor as on CIRP commencement date to Astha Fincap Private Limited is Rs. 27,37,39,940/- (Twenty Seven Crore Thirty Seven Lakh Thirty Nine Thousand Nine Hundred Forty Only/-) plus interest for the period of 2015 onwards as per agreed terms. It is further submitted that the Astha Fincap Private Limited, transferred the said sum of money to Earth Galleria Private Limited (Project of Earth Infrastructure Limited) on behalf of Earth Infrastructure Limited to circumvent the provision of Section 185 of the Companies Act, 2013.
- f.** It is submitted that Corporate Debtor in collusion and with an intent to defraud its creditors, transferred money to EIL and its associates in a dubious way with an intent to commit fraud upon the creditors of the Corporate Debtor or for any other fraudulent purpose. It is submitted that such transfer of money is fraudulent with an intent to defraud creditors. The Corporate Debtor had parted with its money to its sister concerns/group companies for nothing in return and to prejudice all the creditors of the Corporate Debtor thereby placing it out of reach of creditors.

xii. TRANSACTION 3: TRANSACTION WITH SARVRAM INFRASTRUCTURE (INDIA) PRIVATE LIMITED:

- a. Sarvram Infrastructure (India) Private Limited, a company incorporated under the Companies Act, 1956, having its registered office at B-100, Second Floor, Naraina Industrial Area, Phase 1, New Delhi 110028 was incorporated on 17.04.2007 originally known as 'OzEpulse India Private Limited'.
- b. On 29.09.2010 by passing special resolution, the company altered its memorandum of association with respect to its main objects. A fresh certificate of incorporation with name Sarvram Infrastructure (India) Private Limited was issued on 29.09.2010.
- c. The promoters/shareholders of Sarvram Infrastructure (India) Private Limited are as under:

Name and Address of Shareholders	No. Of Shares held	Value of shares
Mrs Seema Goel, EG-102, Inderpuri, New Delhi-110012	9	9000
Mr. Avdhesh Kumar Goel House No 9 Floor Ground, Block-EC, Inderpuri, New Delhi, 110012	9	9000
Avdhesh Kumar Goel (HUF), House No 9 Floor Ground, Block-EC, Inderpuri, New Delhi, 110012	7	7000
Mrs Rishu Gupta A-1/294, Janakpuri, New Delhi-110058	9	9000
Mr Atul Gupta A-1/294, Janakpuri, New Delhi-110058	9	9000
Atul Gupta (HUF) A-1/294, Janakpuri, New Delhi-110058	7	7000
Mrs Renu Gupta A-101, Sec-12, Plot No-27, Sunny Valley, Dwarka, 110075, Delhi.	9	9000
Mr. Vikas Gupta A-101, Sec-12, Plot No-27, Sunny Valley, Dwarka, 110075, Delhi.	9	9000
Vikas Gupta (HUF) A-101, Sec-12, Plot No-27, Sunny Valley, Dwarka, 110075, Delhi.	7	7000
Mrs Mamta Mittal H No-PNC-54, Pinnacle & The Icon, Gurgaon- 122009	9	9000
Mr. Rajneesh Mittal H No-PNC-54, Pinnacle & The Icon, Gurgaon- 122009	9	9000
Rajneesh Mittal (HUF) H No-PNC-54, Pinnacle & The Icon, Gurgaon- 122009	7	7000
Total	100	100,000

- d. The present and past directors of Sarvram Infrastructure (India) Private Limited are as under:

DIN	Full Name	Present Residential Address	Date of Appointment
03120264	Bharat Bhushan Singh	A. 26, DGC(S) CGHS LTD Plot no 6, Sector – 22, Dwarka, New Delhi – 110075	17-04-2007 to 31-07-2010
03120247	Sanjiv Dubey	B-348 (GF) New Friends Colony, New Delhi – 110065	17-04-2007 to 31-07-2010
02811377	Ram Lal	A-6/285 – Janta Flats, A 6 Paschim Vihar, New Delhi – 110063	29-07-2010 to 25-04-2012
02814852	Naveen Kumar	A-6/285 – Janta Flats, A 6 Paschim Vihar, New Delhi – 110063	29-07-2010 to 25-04-2012
05262659	Shashi Mittal	201/204, Jwala Mansion, 4/2, Asaf Ali Road, New Delhi – 110002	21-04-2012 to 03-01-2014
05262272	Sushila Gupta	A-1/294, Janak Puri, New Delhi – 110058	21-04-2012 to 03-01-2014
02162716	Renu Gupta	U/19, Upadhayay Block, Shakarpur, Delhi 110092	01-04-2013
00424438	Mamta Mittal	201, 204 Jwala Mantion, 4/2, Asif Ali Road, Delhi 110002	01-04-2013
00524247	Seema Goel	EG- 102, Inderpuri, New Delhi – 110012	01-04-2013
00158267	Reshu Gupta	A-1 / 294, Janakpuri, New Delhi – 110058	01-04-2013

- e. The Registered Offices of both the Corporate Debtor and the Respondent No.3 are located at the same office, which is evident from the MCA data.
- f. It is submitted that one Mr. Yuvraj Singh S/o Raghbir Singh purchased land measuring 24 Kanal 04 Marla situated in Village Dharampur, Tehsil & District Gurgaon, Haryana belonging to Sh. Balbir Singh S/o Shri Narain vide sale deed dated 17th day of March 2006 and sold Development Rights along with FSI for 10 Kanal 01 Marla Land to Respondent No.3 company vide agreement dated 23.05.2012.
- g. Mr. Yuvraj Singh along with other owners i.e. R.K. Associates a firm of Mr. Yuvraj Singh along with Mr. Narender Gupta, out of the aforesaid measuring 18.0625 Acres land, entered into five Property Development Agreements ("Collaboration Agreements") all dated 17.05.2007 with RMS Estate Private Limited to develop the above referred land at its own cost

and responsibility. RMS Estate Private Ltd was under an obligation to obtain the license and requisite permissions and approvals from Director Town and Country Planning, Haryana ("DTCP"). Respondent No. 3 has purchased the development rights in the identical land along with FSI thereof from the owners for Rs.37,29,00,000/-(Rs. Thirty Seven Crores Twenty Nine Lakhs Only). DTCP issued license bearing No. 23 of 2012 dated 27.03.2012 in FORM LC-IV for the aforesaid property for development of a residential group housing colony on the aforesaid 18.0625 acres of Land in Section-107, Gurgaon.

- h.** RMS along with Mr. Yuvraj and RKS transferred Development Rights along with FSI in the 10.218 acres of land ("Scheduled Land") falling in their share for the residential group housing to the Sarvram Infrastructure India Private Limited i.e. Respondent No.3 for a total sale consideration of Rs. 37,29,00,000 (Thirty Seven Crore Twenty Nine Lakh Only/-) and transferred and assigned all the Development Rights along with all marketing and selling rights on part of land admeasuring 10.218 acres at village Dharampur, Gurgaon vide development agreement on 23.05.2012.
- i.** On perusal of the bank statements of the corporate debtor it has come to the notice of the Applicant that the Corporate Debtor approached SIPL and entered into a Development Agreement on 07.02.2013 for developing the scheduled land. The Corporate Debtor paid Refundable Trade Deposit of Rs.35,00,00,000/-(Thirty Five Crores Only).
- j.** It is submitted that the EIL, as per claim/petition filed by it before this Adjudicating Authority, has shown recoverable of Rs. 34,93,64,736/- (Thirty-Four Crores Ninety Three Lakh Sixty Four Thousand Seven Hundred Thirty Six Only) from SIPL, the land owning company for the project of CD. However, it will be apparent from the money trail that the

amount transferred by EIL to SIPL is to spin money from the account of the Corporate Debtor by making inter-company transfers and keeping the same out of reach of the creditors of the Corporate Debtor. The amount of Rs 34,93,64,736/- (Thirty Four Crores Ninety Three Lakh Sixty Four Thousand Seven Hundred Thirty Six Only) shown recoverable by Respondent No.1, EIL from SIPL, includes an amount of Rs 26.40 crore purportedly paid to JRM Properties Private Limited. The amount of Rs 26.40 crore is only a journal/transfer entry in the books of SIPL and EIL.

- k.** As per data provided by EOW, the Sarvram Infrastructure India Pvt Ltd (SIPL) has made total payment of Rs. 70.47 crores to JRM Properties Pvt Ltd and other land owning parties. Out of which, Rs 37.29 crore were paid for development right and FSI purchased by SIPL as per the agreement. The amounts were paid to JRM Properties Pvt Ltd Rs 27.29 crore, RK Associates Rs 2.50 crore, RMS Estate Rs 5.00 crore & Yuvraj Singh Rs 2.50 crore. But there is no justification for payment of Rs 33.18 crore (i.e. Rs. 70.47 crores Rs. 37.29 crores) to JRM Properties Pvt Ltd.
- l.** As per the "Transaction Audit Report" submitted by forensic auditor as appointed during the CIRP process of the Corporate Debtor, it has been reported therein that "As per balance sheet as at March 31, 2016 of M/s JRM Properties Private Limited, the company M/s JRM Properties Private Limited has received Rs. 44.47 Crore from M/s Sarvram Infrastructure India Pvt. Ltd as advance against property and the same is outstanding as on 31.03.2016. Further, it is observed that M/s JRM Properties Private Limited had also received funds from M/s Earth Infrastructure Limited amounting to Rs. 16.00 Crore. As per perusal of records of M/s JRM Properties Private Limited, it had utilized these funds as under:

S. No.	Particulars (director including related company)	Amount (In Crores) As on 31.03.2016
1.	Atul Modi (director of JRM Properties Private Limited)	5.15
2.	Surender Modi (director of JRM Properties Private Limited)	15.51
3.	Neha Modi (related party of JRM Properties Private Limited)	0.26
4.	J R Modi Associates Limited (related party of JRM Properties Private Limited)	18.31
5.	RMS Estate Private Limited	22.44
6.	R.K. Associates	5.00
7.	Yuvraj Singh	1.00
	Total	67.67

- m.** However, as per the development agreement, dated 23rd May 2012, entered into amongst M/s Sarvram Infrastructure India Pvt Ltd, R.K. Associates, Yuvraj Singh and RMS Estate Private Limited (three owners), these three owners transferred the development rights of the 10.218 acres of land to M/s Sarvram Infrastructure India Pvt Ltd at a consideration of Rs. 37.29 crores and whole amount of consideration was received by them before the date of this agreement. Out of agreed total consideration of Rs. 37.29 Crore, Rs. 26.29 Crores were paid to RMS Estate Private Limited, Rs. 7.50 Crores were paid to R.K. Associates and Rs. 3.50 Crores were paid to Yuvraj Singh respectively during the period October 2010 to January 2012.
- n.** The funds of the Corporate Debtor have been diverted through group companies without any justification as explained above and in the chart annexed with this application. It is submitted that against the agreed

consideration of Rs. 37.29 crores, the seller i.e. R.K. Associates, Yuvraj Singh and RMS Estate Private Limited have been paid Rs. 70.47 crores for development right, which is mentioned in the audited accounts of JRM Properties Pvt Ltd.

- xiii.** It is submitted that the funds diverted by the promoters and directors to and through group companies is not only fraudulent but the same has been carried with an intent to defraud their creditors including the real estate allottees. The survival of the project of the Corporate Debtor depends on the recovery of amount diverted from the account of the Corporate Debtor through these group companies.
- xiv.** The facts and circumstances evidently demonstrate that the conveyance of money from the account of the Corporate Debtor to its sister concern/related party/group company have been made to defraud its own creditors i.e. the investors (Real Estate Residential and Commercial) who have invested their hard earned money into the project and the Respondents have diverted the funds raised from the said investors i.e. financial creditors to its related entity.
- xv.** The Respondent No.3 was not taken over by the promoters for any real business activity, but as a part of a design whereby the assets and liabilities are parked in different corporate entities belonging to the same set of promoters, with an intent to defraud the financial creditors by defaulting on commitments made to them and creating preferential rights in favour of asset owning entities.
- xvi.** The Agreements as entered were an instrument created between various entities belonging to the same promoters for defrauding the creditors of the Corporate Debtor by raising funds (i.e. liabilities) in one entity i.e. the Corporate Debtor and keeping the assets away from the reach of financial creditors by owning the assets funded from the funds provided by the

financial creditors in another entity i.e. Respondent No.3. In the present case, as the key asset which comprise of the money received from the allottees, has been parked away in another entities and therefore the recovery of the said amount is required for the survival of the project. The said fraudulent structure shall imply that while the financial creditors of the Corporate Debtor are struggling with their investments in insolvency resolution and may have to take deep haircuts, the rights of related entities of the promoters have been created paramount and shall remain unaffected.

xvii. The aforesaid transactions has been entered by the promoters and directors of the Corporate Debtor by raising funds from the financial creditors i.e. the allottees (Real Estate) and thereafter diverting the funds. The said business of the Corporate Debtor has been carried out with an intent to defraud the financial creditors so that the project land for development of which the funds were raised from the financial creditors can be kept beyond the reach of the said financial creditors in the event of imminent default and therefore, the same falls within the purview of Section 66 of the Code.

xviii. It is settled position of law that once the transaction is shown to be fraudulent, sham, circuitous or a device designed to defeat the interests of the stakeholders including shareholders, investors, financial creditors, other parties to the contract, the Court can always lift the corporate veil and examine the substance of the transaction. The Hon'ble Supreme Court in catena of decisions has lifted the veil where the device of incorporation is used for some illegal or improper purpose.

xix. EIL collected money from allottees in Elacasa Project and the said project was later on transferred to Corporate Debtor. However, the amount so collected were not transferred to the Corporate Debtor. The allottees of the Elacasa Project have raised claim against the Corporate Debtor. By not transferring

the money so collected and passing merely book entries, the Promoters/directors have siphoned off the money.

- xx.** In the instant case, if the Adjudicating Authority will lift the corporate veil it would be seen that the promoters and management of the Corporate Debtor and its related entities i.e. Respondent No.2 and 3 and status of separate legal entity vested on the Corporate Debtor and its related entities has been abused to deliberately keep the assets and liabilities in distinct legal entities, while seamlessly diverting funds from one entity to the other with clear intent to defraud the financial creditors of the Corporate Debtor.
- xxi.** Thus in view of the above, the Applicant has formed an opinion that the said transactions as detailed above for Rs. 89,43,01,820/- have been carried out by the Respondents with an intent to defraud the creditors of the Corporate Debtor. The details of the transaction are detailed in tabular form in brief as under:-

S.NO.	PARTICULARS	AMOUNT (IN Rs.)
	Total transactions under Section 66 of the Code	89,43,01,820/-
	Earth Infrastructure Limited (26,60,61,880/-)	
	Ashta Finecap Pvt Ltd (27,37,39,940/-)	
	Sarvram Infrastructure India Pvt Ltd (35,45,00,000)	

- xxii.** The directions as sought by way of the present application are imperative for finding prospective resolution applicants to arrive at a resolution plan for the Corporate Debtors as the said fraudulent transactions have saddled the Corporate Debtor with the liabilities and stripped it off all the funds raised from the financial creditors, which were diverted to create assets in related entities of the promoters of the Corporate Debtor. The reliefs as sought shall

create equilibrium of assets and liabilities in the fold of the Corporate Debtor, with an opportunity to retrieve the project which shall create the possibility for revival of the Corporate Debtor by disentangling its resources from the vicious designs created through corporate structures. The reliefs as sought are quintessential to further the object of maximisation of value enshrined in the preamble of the Insolvency and Bankruptcy Code, 2016 by salvaging the value of assets entangled in vicious corporate structures designed to defraud financial creditors.

- xxiii.** The funds transferred to the EIL, SIPL and Astha Fincap Pvt Ltd. were raised by the Corporate Debtor from several financial creditors being the allottees in the real estate project and borrowing from others. The financial statements of the Corporate Debtor for the financial year 2012-15 clearly reflect that it had diverted Rs. 96.11 crore under the guise of related parties transactions. The said facts clearly demonstrate that the Corporate Debtor has transferred monies keeping the assets away from the reach of financial creditors by transferring the funds provided by the financial creditors of the Corporate Debtor in another entity i.e. EIL & SIPL through Astha Fincap Private Limited.
- xxiv.** This fraudulent structure created by the promoters and management of the Corporate Debtor and its related entities shall pose serious challenge and threat to the insolvency resolution of the Corporate Debtor. The said fraudulent structure shall imply that while the financial creditors of the Corporate Debtor are struggling with their investments in insolvency resolution and may have to take deep haircuts, the rights of related entities of the promoters have been created paramount and shall remain unaffected.
- xxv.** Therefore, the transactions have been entered by the promoters/directors of the Corporate Debtor with its related entities to defraud its creditors and the

same does not appear to be in ordinary course of business. The same raises questions as to the bona fide of the transaction itself.

3. SUBMISSIONS OF THE RESPONDENT NO. 1:

- i.** It is submitted that a bare perusal of the prayer clause as appearing at pages 33-34 of the I.A clearly shows that the Applicant has not sought any relief, direction, order or adjudication whatsoever against Respondent No. 1. The only prayers are: (i) declaration of the alleged transactions as void; and (ii) consequential directions against the directors of the Corporate Debtor. There is no prayer seeking any finding, contribution, penalty or liability on Respondent No. 1. If there is no relief in prayer, then no order can be passed against such party, as the Tribunal cannot grant directions beyond the prayers of the application. The present application is liable to be dismissed qua Respondent No.1 on this ground alone.
- ii.** It is a settled principle that only those reliefs which are specifically prayed for can be adjudicated, and an application cannot be maintained against a party against whom no relief is sought. In ***Mrs. Akella Lalitha v. Sri Konda Hanumantha Rao & Anr. (Civil Appeal Nos. 6325-6326 of 2015)***, the Hon'ble Supreme Court categorically held at para 15 that no relief can be granted by the Court which has not been specifically prayed for in the pleadings. The Hon'ble Supreme Court further in ***Messrs. Trojan & Co. v. RM.N.N. Nagappa Chettiar, AIR 1953 SC 235***, has categorically held at para 10 that a Court cannot grant a relief which has not been pleaded or prayed for. Similarly in the present I.A., there is no prayer whatsoever against Respondent No.1, and therefore no order or direction can be passed against R1. The Applicant, having failed to make any prayer, is not entitled to seek adjudication against Respondent No.1. The application is therefore liable to be dismissed qua Respondent No.1 on this ground alone.

- iii.** The CIRP of EIL (Respondent No.1) was initiated vide order dated 06.06.2018 passed by NCLT Bench-III, New Delhi. Thereafter, the Resolution Plans were approved by NCLT-III on 05.04.2021 and 08.06.2021. Upon approval under Section 31 of the Code, the CIRP stood concluded and Respondent No.1 ceased to function as the Resolution Professional. The aforesaid approval orders were thereafter challenged before the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) Nos. 180 of 2022, 629 of 2022 and 630 of 2022, wherein the Hon'ble NCLAT vide judgment dated 30.01.2023 set aside both the approval orders. Aggrieved parties including the Successful Resolution Applicants, Homebuyers' Association, GNIDA, and the Resolution Professional preferred Civil Appeals under Section 62 before the Hon'ble Supreme Court of India.
- iv.** In Civil Appeal No. 1526 of 2023, the Hon'ble Supreme Court vide orders dated 13.04.2023 and 11.07.2023 has directed status quo to be maintained in respect of the assets, liabilities, management, and implementation of the Resolution Plans. Consequently, all matters relating to CIRP implementation or pre-plan liabilities are now sub-judice before the Hon'ble Supreme Court. In view of the directions of the Hon'ble Supreme Court, no proceeding which directly or indirectly affects the Resolution Plan, its implementation, or liabilities traceable to the Plan can continue before this Tribunal. Proceedings under Section 66 pertain to historical transactions and cannot survive against a Resolution Professional who became functus officio on approval of the Plan. Moreover, upon approval of the Resolution Plan, past liabilities stand extinguished and the clean slate principle is mandatory for revival. Accordingly, proceedings under Section 66 relating to pre-CIRP transactions cannot continue post plan approval.

- v. The Corporate Debtor is already protected first by moratorium and thereafter by Section 32A of the Code upon plan approval. The present Section 66 application, which is essentially in the nature of recovery, therefore cannot be pressed or maintained. With the CIRP of Earth Infrastructure Ltd. being under status quo by order of the Hon'ble Supreme Court, no recovery, penalty or financial direction can be enforced.
- vi. The practical impact is also evident. The assets and liabilities of Respondent no. 1 are under status quo; even if an order under Section 66 is passed, the RP cannot disburse any money. If the Hon'ble Supreme Court ultimately upholds the Resolution Plan, the assets will vest in the Successful Resolution Applicant and the bar under Section 32A will apply. Thus, any such order under Section 66 will become irrelevant, as no entity neither the erstwhile RP nor the SRA can be directed to make payment. At best, the Court may proceed against the individual directors of R1, but the Respondent no. 1 Company has no role or liability left in such proceedings.
- vii. The Hon'ble Supreme Court in ***Gluckrich Capital Pvt. Ltd. v. State of West Bengal (SLP (Crl.) Diary No. 6732 of 2023)***, particularly at paragraph 10, has categorically held that Section 66 cannot be invoked against third parties who are neither directors, nor promoters, nor persons knowingly involved in fraudulent trading. Respondent No.1 is not a beneficiary of any alleged transaction, is not a director or promoter and was not managing the affairs of the Corporate Debtor prior to CIRP. Therefore, Section 66 is not maintainable against Respondent No.1.
- viii. Even assuming fraudulent trading, the liability, if any, is only upon the persons who were in control of the Corporate Debtor's affairs. A corporate entity or a Resolution Professional cannot be made liable for pre-CIRP conduct

of the board. The application seeks recovery from a completely unconnected entity and is therefore misconceived and unsustainable in law.

- ix.** It is an admitted and undisputed fact that the Applicant had earlier filed C.A. 1751/2019 on 30.08.2019 in the very same matter, seeking directions against Respondent No. 1 to consider its claim of Rs. 33,06,29,373/- as a financial debt. By order dated 07.11.2019, this Tribunal transferred C.A. 1751/2019 to NCLT Bench-III, New Delhi, where the CIRP of Respondent No. 1 was pending. Having asserted its status as a financial creditor in those earlier proceedings, the Applicant is now taking a completely contradictory stand by alleging that the same amount represents fraudulent transactions. The Applicant cannot be permitted to blow hot and cold at the same time.
- x.** It is further submitted that the Applicant has not disclosed the subsequent developments or the status of C.A. 1751/2019 before this Tribunal, despite the fact that the said application pertains to the very same claim amount. Such inconsistent and mutually destructive pleas are impermissible in law and demonstrate a clear abuse of the process of the Tribunal.
- xi.** Assuming without admitting the correctness of the Applicant's allegation that Respondent No. 1 had entered into a fraudulent transaction, there was absolutely no reason let alone any legal basis for the Applicant to have filed a claim before Respondent No. 1 during the CIRP. This itself exposes the inherent contradiction and falsity in the Applicant's shifting stand.
- xii.** A perusal of I.A. No. 1751/2019 further reveals that the Applicant had unequivocally projected itself as a Financial Creditor of Earth Infrastructure Limited solely on the strength of certain entries in the books of account and bank transactions. It is trite that for any claim to qualify as a "financial debt," it must necessarily satisfy the ingredients of Section 5(8) of the Code. The Applicant's failure to meet this statutory threshold in the earlier proceedings,

coupled with its present attempt to recharacterize the same claim as a fraudulent transaction, only reinforces the Applicant's mala fide, inconsistent, and mutually destructive pleas.

xiii. It is further apparent that after failing to satisfy the Tribunal that it was a financial creditor and being unable to obtain a favourable determination in C.A. 1751/2019, the Applicant has subsequently filed the present I.A. 2890/2020 on 24.06.2020 under Section 66 only as an afterthought and as an alternate route to recover the same claim. The Applicant is merely attempting to pursue two inconsistent remedies for the same cause of action, which is prohibited in law. The sequence of events unmistakably demonstrates approbation and reprobation, and such conduct disentitles the Applicant from any equitable or statutory relief. Consequently, the present application is not maintainable either in law or on facts.

xiv. In the present circumstances, the Applicant cannot be allowed to approbate and reprobate. It is clearly a case of an afterthought to suit his convenience. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. It is evident that the doctrine of election is based on the rule of estoppel, the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity. Reliance has been placed on ***Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem***

Development Corpn. Ltd. [(2013) 5 SCC 470 :(2013) 3 SCC (Civ) 153]* and *Union of India and Others v. N. Murugesan and Others, (2022) 2 SCC 25.

xv. The conduct of the Applicant, as demonstrated hereinabove, amounts to a clear abuse of the process of law. It is evident that the Applicant is attempting to manipulate the proceedings to gain an unfair advantage by taking inconsistent and contradictory positions. The principles of fairness and justice demand that parties before this Hon'ble Tribunal act in good faith and refrain from engaging in contradictory or evasive conduct. It is a settled principle of law that the process of the court cannot be permitted to be used in a manner that is vexatious, oppressive, or intended to mislead the Tribunal.

4. ANALYSIS AND FINDINGS:

- i.** We have heard the Ld. Counsel of the parties and have perused the record.
- ii.** The present Application has been filed by the Resolution Professional under Section 66 of the Code seeking appropriate directions in respect of certain transactions allegedly undertaken by the promoters, directors and related entities of the Corporate Debtor.
- iii.** It is the case of the Applicant that funds raised from homebuyers and other creditors of the Corporate Debtor were systematically diverted to related entities forming part of the Earth Group through a series of interconnected transactions which lacked commercial substance and were designed to place the assets funded by the creditors beyond their reach.
- iv.** The Applicant has submitted that after commencement of CIRP and upon examination of the books of accounts, bank statements and the Transaction Audit Report, it was discovered that substantial amounts aggregating to Rs. 89.43 Crores had been diverted from the Corporate Debtor to related entities including Earth Infrastructure Limited (Respondent No.1), Astha Fincap Private Limited (Respondent No.2) and Sarvram Infrastructure (India) Private

Limited (Respondent No.3). According to the Applicant, these entities were under common control of the same promoter group and the transactions constituted a mechanism for siphoning funds raised from homebuyers and other creditors. The Applicant further submits that assets acquired through such diverted funds were retained in group entities while liabilities towards homebuyers remained with the Corporate Debtor.

v. Respondent No.1 has primarily opposed the Application on grounds of maintainability. It is contended that no specific relief has been sought against Respondent No.1 in the prayer clause and therefore no order can be passed against it. It is further submitted that the Applicant had earlier filed proceedings claiming itself to be a creditor of Respondent No.1 and therefore cannot now contend that the same transactions were fraudulent. Respondent No.1 has also relied upon subsequent developments in its own CIRP and the pendency of proceedings before the Hon'ble Supreme Court to contend that no effective relief can presently be granted against it.

vi. The Respondent Nos. 2 to 7 were proceeded ex parte by this Adjudicating Authority vide order dated 12.11.2025. Relevant excerpt of the order reads thus:

“Ld. Counsel for the Resolution Professional is present physically. Mr. Deep Bisht, Ld. Counsel for the R-1 is present through VC. Reply filed by respondent no.1 is on board.

As directed by this Tribunal on 29.10.2025, paper publication has been affected against the respondent nos.2 to 7. However, none appeared on behalf of the respondent nos.2 to 7 despite repeated calls. Therefore, the respondent nos.2 to 7 called absent and set exparte.”

vii. Section 66 empowers the Adjudicating Authority to pass appropriate orders where it is found that the business of the Corporate Debtor has been carried

on with intent to defraud creditors or for any fraudulent purpose. The provision is intended to pierce artificial corporate structures and hold accountable those persons who knowingly participated in transactions which depleted the assets of the Corporate Debtor and prejudiced the interests of its stakeholders. The focus of enquiry under Section 66 is not merely whether a transaction took place, but whether the transaction lacked bona fides, lacked commercial justification and was entered into with the objective of defeating or prejudicing the legitimate claims of creditors. The section reads thus:

“Section 66-Fraudulent trading or wrongful trading.

(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if-

(a) before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor, and

(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.

(3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under subsection (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.

Explanation. For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.”

viii. The objection regarding absence of a specific prayer against Respondent No.1 cannot be accepted. The substance of the Application clearly identifies Respondent No.1 as one of the principal beneficiaries of the impugned transactions and seeks reversal of the effect thereof. Proceedings under Section 66 are not confined to adjudication of private disputes between parties but are intended to ascertain whether the affairs of the Corporate Debtor were conducted fraudulently and to direct appropriate contribution from persons who knowingly participated in such conduct. Mere absence of a separately worded prayer against a particular respondent cannot defeat substantive relief where the pleadings clearly disclose allegations and seek reversal of identified transactions.

ix. Equally, the contention that the Applicant had previously asserted a claim against Respondent No.1 does not preclude examination under Section 66. A claim lodged in another CIRP and a plea that the underlying transaction was fraudulent operate in different spheres. The filing of a claim to preserve the assets of the Corporate Debtor cannot amount to an admission that the

transaction was bona fide. Therefore, the plea of approbation and reprobation does not assist Respondent No.1.

x. Further, the objection of Respondent No.1 based on the status quo orders passed by the Hon'ble Supreme Court in the CIRP proceedings of Earth Infrastructure Limited is devoid of merit. The present proceedings are confined to examining whether the affairs of the Corporate Debtor were carried on in a fraudulent manner within the meaning of Section 66 of the Code and do not seek to alter, modify or interfere with the CIRP or resolution process of Respondent No.1. Therefore, the pendency of proceedings before the Hon'ble Supreme Court does not preclude this Adjudicating Authority from adjudicating upon the fraudulent transactions forming the subject matter of the present Application.

xi. TRANSACTION 1: TRANSACTION BETWEEN EIL AND CORPORATE DEBTOR:

- a.** The material placed on record demonstrates that the residential project "ELACASA" was initially marketed and bookings were accepted by Earth Infrastructure Limited even prior to incorporation of the Corporate Debtor. After incorporation of the Corporate Debtor on 06.02.2013, the project was transferred to it. Consequently, the monies collected from prospective allottees for the project ought to have accompanied such transfer. However, while journal entries were passed in the books of both entities, the corresponding funds were not actually transferred.
- b.** The Applicant has demonstrated that Earth Infrastructure Limited had collected approximately Rs.11.17 Crores from homebuyers in respect of the ELACASA project, whereas only Rs.2.33 Crores were transferred to the Corporate Debtor. The balance amount of approximately Rs.8.84 Crores remained unpaid despite the project and corresponding

liabilities having been shifted to the Corporate Debtor. The consequence of such conduct was that the Corporate Debtor became liable towards the homebuyers without receiving the funds paid by them.

- c.** The records further reveal that instead of receiving funds from Respondent No.1, the Corporate Debtor subsequently transferred an aggregate amount of Rs.17.17 Crores from its own bank accounts to Respondent No.1. No commercial rationale has been demonstrated for such transfers. The transaction pattern reveals a one-way movement of funds from the Corporate Debtor to its group entity while obligations towards homebuyers remained with the Corporate Debtor.
- d.** The Applicant has additionally cited confirmations by the RP of Respondent No. 1 during the CIRP of Respondent No.1 evidencing receipt of amounts from certain homebuyers directly by Respondent No.1. These amounts were neither reflected in the books of the Corporate Debtor nor remitted to it. Such conduct further establishes that funds relating to the ELACASA project were retained by Respondent No.1 while the corresponding liabilities stood transferred to the Corporate Debtor.
- e.** The cumulative effect of the aforesaid transaction shows that Respondent No.1 retained homebuyer funds aggregating to Rs.8,84,38,362/-, received further transfers of Rs.17,17,12,518/- from the Corporate Debtor and admitted additional liability of Rs.59,11,000/-. The total amount involved works out to Rs.26,60,61,880/-.
- f.** We find no legitimate business justification for permitting one group entity to retain project collections while another group entity bears the liability towards the very same allottees. Such a structure could only

have the effect of weakening the financial position of the Corporate Debtor and prejudicing its creditors. Thus, this Adjudicating Authority is of the view that the transaction was made with intent to defraud creditors and falls within the purview of Section 66(1) of the Code.

xii. TRANSACTION 2: TRANSACTION BETWEEN ASTHA FINCAP PRIVATE LIMITED AND CORPORATE DEBTOR:-

- a.** Astha Fincap Private Limited is admittedly a group concern of the promoter group with substantial financial dealings between the Corporate Debtor and Respondent No.2.
- b.** The books of accounts of the Corporate Debtor reflect an outstanding amount of Rs. 27,37,39,940/- in favour of Respondent No.2. The Applicant has demonstrated that funds transferred to Respondent No.2 were subsequently routed to Earth Galleria Private Limited and other group entities associated with the Earth Group.
- c.** No contemporaneous records have been produced to demonstrate any genuine business requirement necessitating transfer of such substantial sums by the Corporate Debtor to Respondent No.2. Neither any independent commercial consideration nor any tangible benefit accruing to the Corporate Debtor has been established.
- d.** The evidence instead indicates that Respondent No.2 functioned as a channel through which funds raised by the Corporate Debtor were channelled to other entities of the promoter group. The movement of funds through an NBFC within the group structure, without corresponding benefit to the Corporate Debtor, lends substantial support to the allegation that the transaction was intended to place assets beyond the reach of creditors.

- e. We are therefore satisfied that the transaction was a scheme whereby funds of the Corporate Debtor amounting to Rs.27,37,39,940/- were diverted for purposes unrelated to the legitimate business of the Corporate Debtor and to the detriment of its creditors. Thus, the transaction falls within the purview of section 66 of the Code.

xiii. TRANSACTION 3: TRANSACTION WITH SARVRAM INFRASTRUCTURE (INDIA) PRIVATE LIMITED:

- a. The evidence concerning this transaction discloses a far more elaborate structure involving development rights, land holding arrangements and multiple inter-corporate transfers among entities controlled by the same promoter group.
- b. The records reveal that the Corporate Debtor entered into a Development Agreement with Respondent No.3 and paid an amount of Rs. 35 Crores as refundable trade deposit.
- c. The material placed on record by the Applicant demonstrates that development rights in respect of the land had already been acquired by Respondent No.3 for a consideration of Rs.37.29 Crores. However, the subsequent flow of funds reveals payments aggregating to approximately Rs.70.47 Crores to land-owning entities and related parties.
- d. The discrepancy between the actual consideration payable and the amounts ultimately transferred has not been satisfactorily explained. The material further indicates that substantial sums were routed through JRM Properties Private Limited and other entities without any discernible commercial basis.
- e. The transaction trail demonstrates that monies originating from the Corporate Debtor were layered through group entities and ultimately

utilised in a manner unconnected with the business interests of the Corporate Debtor. At the same time, the development rights and associated assets remained outside the Corporate Debtor, while liabilities towards homebuyers remained with it.

- f.** The entire arrangement appears to have been structured so that liabilities arising from the real estate project remained concentrated in the Corporate Debtor whereas valuable rights and assets funded through homebuyer monies were parked in separate entities under common control. Such a structure cannot be regarded as a bona fide commercial arrangement. Thus, the transaction falls within the purview of section 66 of the Code.
- xiv.** The transactions discussed hereinabove demonstrate a consistent pattern whereby funds raised from homebuyers and creditors were diverted away from the Corporate Debtor, while corresponding liabilities remained with it. The transactions lacked commercial justification, were not shown to be in the ordinary course of business and had the effect of materially diminishing the asset base available to creditors.
- xv.** We further hold that the erstwhile promoters and directors of the Corporate Debtor, namely Respondent Nos.4 to 7, being the persons in control of the affairs of the Corporate Debtor at the relevant time and having orchestrated and authorised the aforesaid transactions, were knowingly parties to carrying on the business of the Corporate Debtor with intent to defraud its creditors.
- xvi.** Accordingly, this Adjudicating Authority **allows** the present Application and directs that Respondent Nos. 4 and 7, being the directors of the Corporate Debtor, shall **contribute JOINTLY AND SEVERALLY** to the assets of the Corporate Debtor to the tune of **Rs. 89,43,01,820 (Rupees Eighty-Nine**

Crore Forty-Three Lakh One Thousand Eight Hundred Twenty Only) within a period of 15 days from the date of pronouncement of this Order.

xvii. The Resolution Professional is directed to take all consequential steps for recovery of the said amounts.

xviii. Accordingly, the present Application bearing **I.A. 2890 OF 2029** is **allowed** in the above terms.

-SD/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

I.A. NO. 2131 OF 2020
IN

C.P. IB NO. 1747 (PB) OF 2018

IN THE MATTER OF:

**RAKESH KUMAR GUPTA
RESOLUTION PROFESSIONAL
EARTH BUILDPROP PRIVATE LIMITED**

...Applicant

Versus

ECONOMIC OFFENCES WING

...Respondent No. 1

AXIS BANK LIMITED

...Respondent No. 2

AND IN THE MATTER OF:

VIJAY KUMAR SURI & ORS.

...Financial Creditors

Versus

EARTH BUILDPROP PRIVATE LIMITED

... Corporate Debtor

Order Delivered on: 09.07.2026

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM
HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the RP : Mr. Sandeep Bajaj, Mr. Devansh Jain, Ms. Shrishti Jeswani
Mr. Mayank Biyani, Advocates, Mr. Rakesh Gupta, RP in
person.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by the Applicant, Mr. Rakesh Kumar Gupta, the Resolution Professional (“RP”) under the provisions of Section 60(5) of Insolvency and Bankruptcy Code, 2016 (“Code”), seeking the following reliefs:

- a. Allow the present application;*
- b. Direct the Respondent No. 1 to withdraw the debit freeze Notice dated 14.04.2017;*
- c. Consequentially direct the Respondent No. 2 Bank to remove the debit freeze from the account of the Corporate Debtor;*
- d. During the pendency of the application grant ad-interim ex-parte directions to the Respondent No. 2 to not to appropriate or make payment in pursuance to any instructions issued by Respondent No.1;*
- e. pass such other or further order / order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.*

2. SUBMISSIONS OF THE APPLICANT:

- i.** This Adjudicating Authority vide its Order dated 13.05.2019 admitted Company Application (IB) No. 1747(PB)/2018 filed on behalf of the Financial Creditor i.e. Vijay Kumar Suri & Ors. against the Corporate Debtor for initiating the Corporate Insolvency Resolution Process (CIRP) under Section 7 of the Code and appointed the Applicant i.e. Mr. Rakesh Kumar Gupta as the Interim Resolution Professional.
- ii.** In terms of Regulation 6(1) of the Insolvency and Bankruptcy Code, 2016 (Insolvency Resolution Process for Corporate Persons) Regulations 2016 ("CIRP Regulations"), the Applicant made a public announcement on 23.05.2019 in Financial Express (English) New Delhi Edition and Jansatta

(Hindi) New Delhi Edition (Regional Language Newspaper). In terms of Regulation 6 (2) (c), the last date for submission of proof of claim was specified as 04.06.2019.

- iii.** During the third meeting of the Committee of Creditors (CoC) held on 17.08.2019, the CoC resolved to continue the Applicant as the Resolution Professional of the Corporate Debtor under CIRP.
- iv.** Section 17 & 18 read with Section 23 of the Code casts a duty upon the Applicant to conduct the entire Corporate Insolvency Resolution Process (CIRP) and manage the operations of the Company during the CIRP. Section 20(1) of the Code mandates and requires the IRP/RP to make every endeavour to protect and preserve the value of the property of the Corporate Debtor and manage its operations as a going concern.
- v.** In order to enable the IRP/RP to manage the operations of the Corporate Debtor as a going concern, the Code inter alia mandates under Section 17(1) (d) the financial institutions maintaining the accounts of the Corporate Debtor to act on the instructions of the IRP/RP to such accounts. The definition of "financial institution" under the Code includes a scheduled bank in terms of Section 3(14) of the Code.
- vi.** The Respondent No. 2 Bank, i.e. Axis Bank Limited is maintaining accounts bearing No. 913020026650594 & 914020001905010 of the Corporate Debtor and thus a 'financial institution' in terms of Section 17(1) (d) of the Code. That the Respondent No. 1 is the Economic Offence Wing on whose behest the said accounts of the Corporate Debtor have been directed to be debit freeze.
- vii.** Vide letter dated 19.06.2019, the Applicant intimated the Respondent No.2 about the initiation of CIRP against Earth Buildprop Private Limited. Further, the Applicant sent letter dated 18.10.2019 to the Respondent No. 2 requesting to transfer the funds lying in the aforesaid account of the Corporate Debtor

maintained with the Respondent No. 2 to the account opened for carrying out the process of CIRP.

- viii.** Vide email dated 11.03.2020, the Respondent No. 2 informed the Applicant that the account of the Corporate Debtor, bearing account No. 913020026650594 & 914020001905010, have been Debit frozen pursuant to the directions of the Respondent No. 1 issued vide letter no. 376/ACP/Section-III/EOW, Delhi Police, New Delhi dated 14.04.2017.
- ix.** Pursuant to the above, the Applicant on 14.03.2020, approached the Respondent No. 1, requesting to lift the attachment of the aforesaid accounts of the Corporate Debtor with Axis Bank Limited, Pitampura Branch in view of the Corporate Insolvency Resolution Process being against the Corporate Debtor and in terms of the provisions of the Code and regulations framed thereunder the Resolution Professional has to keep the Corporate Debtor as a going concern. However, the Respondent No. 1 whilst declining to defreeze the aforesaid accounts of the Corporate Debtor, vide its response dated 18.03.2020 apprised the Applicant herein that the aforesaid accounts of the Corporate Debtor can be defrozen by the trial court and recommended the Applicant to move application regarding the same before the trial court.
- x.** In view of the above, the Respondent No. 1 has marked a debit freeze on the aforesaid accounts of the Corporate Debtor maintained with the Respondent No. 2 in terms of the attachment notice dated 14.04.2017 and in view of the same, the funds lying in the said accounts of the Corporate Debtor cannot be accessed and the same is causing hardship and is creating hurdles in the resolution process of the company.
- xi.** A conjoint reading of the Section 17 and 20 under IBC, the Applicant is mandated to protect and preserve the value of the assets and manage the operations of the company as a going concern. It is pertinent to point out that in terms of Section 17(1)(d) of the IBC, the financial institutions maintaining

the accounts of the company shall act on the instructions of the IRP/RP as the case may be.

- xii.** Under Section 20 of the Code, it is the duty of the Applicant to manage the affairs of the Corporate Debtor as a going concern. If the attachment on the bank account of the Company is not removed from the bank account of the Company, the Applicant will not be able to keep the operations of the Corporate Debtor as a going concern. In terms of the IBC, all creditors including financial creditors, operational creditors and the workman/employee are required to file their claim with the IRP/RP and the dues of such creditors are required to be considered in the resolution plan.
- xiii.** The failure on the part of the Respondent No. 1 to lift the debit freeze on the account of the Corporate Debtor and further the Respondent No. 2 to not de-freezing the bank account is not only jeopardizing the CIRP but the same is clearly creating hurdles in management of the operations of the Corporate Debtor as a going concern.
- xiv.** The said funds are urgently needed by the Applicant to meet the CIRP cost and stabilise the business and affairs of the Corporate Debtor which is already under stress. As a caretaker of the Corporate Debtor's business and affairs, it is one of the primary duties of the Resolution Professional to ensure that the business operations of the Corporate Debtor are not disrupted and the value of the enterprise and assets of the Corporate Debtor are not adversely affected. This duty of the Resolution Professional is to serve a larger goal that the returns of the body of creditors are maximised through a resolution plan. No single creditor can benefit over and above other creditors or can, by its decisions, affect the interest of other creditors. The action of the Respondents will cause further stress on the business of Corporate Debtor and lead to compromising of interest of the entire body of creditors and other stakeholders.

- xv.** Section 238 of the Code provides overriding effect to the provisions of the Code over all other laws in the country including any attachment on the accounts of the corporate debtor done by Respondent No. 1. Reliance has been placed on came up before the Hon'ble Supreme Court in the case of ***Innoventive Industries Ltd v ICICI Bank (2018) 1 SCC 407.***
- xvi.** Even otherwise, in terms of the provisions of the Code, the debit freeze by the Respondent No.1 during the Corporate Insolvency Resolution Process on the bank accounts of the Corporate Debtor cannot subsist and the same is required to be lifted and the accounts are required to be de-frozen so that the funds available with the Corporate Debtor can be utilised for the benefit of the resolution process and to advance the objective of the Code i.e. to preserve the value of the assets and maintain the Corporate Debtor as a going concern.
- xvii.** The Applicant has also relied upon ***S.C.S.L Buildwell Private Ltd. vs. Pal Infrastructure and Developers Ltd, 2023 SCC OnLine NCLT 57927.***

3. ANALYSIS AND FINDINGS:

- i.** We have heard the Ld. Counsel for the Applicant/ Resolution Professional and have perused the record.
- ii.** The present Application has been filed by the Resolution Professional of the Corporate Debtor under Section 60(5) of the Code seeking directions to Respondent No. 1, namely the Economic Offences Wing (EOW), to withdraw the debit freeze notice dated 14.04.2017 issued in respect of the bank accounts of the Corporate Debtor maintained with Respondent No. 2, Axis Bank Limited, and consequential directions to the Bank to remove the debit freeze from the said accounts.
- iii.** The case of the Applicant is that pursuant to commencement of CIRP against the Corporate Debtor on 13.05.2019, the Resolution Professional became vested with the responsibility of managing the affairs of the Corporate Debtor as a going concern and preserving its assets in terms of Sections 17, 18, 20

and 23 of the Code. It is contended that the debit freeze imposed by the EOW prior to commencement of CIRP has rendered the funds lying in the bank accounts inaccessible, thereby hampering the conduct of CIRP and adversely affecting the objective of value maximisation. The Applicant has further argued that, in view of the overriding effect accorded to the Code under Section 238, the debit freeze cannot continue during CIRP and ought to be lifted.

- iv.** The core issue that arises for consideration is whether this Adjudicating Authority, in exercise of its jurisdiction under Section 60(5) of the Code, can direct withdrawal of a debit freeze imposed by the Economic Offences Wing (EOW) pursuant to proceedings arising under criminal law and direct de-freezing of the bank accounts of the Corporate Debtor.
- v.** It is an admitted position that the debit freeze was imposed by Respondent No. 1 vide communication dated 14.04.2017, much prior to initiation of CIRP against the Corporate Debtor. The record further reveals that upon being approached by the Applicant, the EOW informed the Applicant that the concerned accounts could be de-frozen only upon appropriate orders being obtained from the Trial Court having jurisdiction over the criminal proceedings.
- vi.** The relief sought by the Applicant essentially requires this Adjudicating Authority to examine and interfere with actions taken by the Economic Offences Wing in exercise of powers arising under criminal law. It is a settled position that insolvency proceedings under the Code 2016 and criminal proceedings operate in distinct and independent fields. The Code is a beneficial economic legislation enacted for insolvency resolution and value maximisation of assets of the Corporate Debtor, whereas criminal law is concerned with investigation, prosecution and adjudication of offences. The two statutory regimes serve different purposes and are governed by separate

legal frameworks. Consequently, measures undertaken by investigating agencies in connection with criminal proceedings cannot ordinarily be subjected to scrutiny by this Adjudicating Authority in exercise of its jurisdiction under the Code.

- vii.** This Adjudicating Authority derives its jurisdiction from the provisions of the Code and is required to confine itself to matters arising out of or relating to insolvency resolution and liquidation proceedings. The legality, validity or continuation of a debit freeze imposed pursuant to criminal investigations falls within the domain of the competent criminal court or such forum as may be prescribed under the relevant criminal statute. Merely because the Corporate Debtor is undergoing CIRP does not result in the displacement of proceedings under criminal law, as both statutes operate independently and in their respective spheres. Therefore, any challenge to the debit freeze notice or any prayer seeking de-freezing of the bank accounts must be pursued before the appropriate forum having jurisdiction over the criminal proceedings.
- viii.** The powers of the Adjudicating Authority under the Code are intended to facilitate insolvency resolution and liquidation proceedings. The Adjudicating Authority cannot assume the role of a criminal court nor can it sit in appeal over actions undertaken by investigating agencies pursuant to criminal proceedings. Any grievance against the debit freeze notice or any request for de-freezing of the accounts must, therefore, be agitated before the competent court/forum having jurisdiction over the proceedings pursuant to which such freeze has been imposed.
- ix.** While the Applicant has emphasized the necessity of accessing the funds for conducting CIRP and maintaining the Corporate Debtor as a going concern, such considerations cannot confer jurisdiction upon this Tribunal where none

otherwise exists. The remedy, if any, lies before the appropriate judicial forum competent to examine the validity and continuance of the debit freeze order.

- x.** In arriving at the aforesaid conclusion, this Adjudicating Authority places reliance upon the judgments rendered in ***Kiran Shah vs. Enforcement Directorate, Company Appeal (AT) (Insolvency) No. 817/2021; Embassy Property Developments Pvt. Ltd. vs. State of Karnataka & Ors., 2019 SCC OnLine SC 1542; Varrsana Ispat Ltd vs. Deputy Director, Directorate of Enforcement, Civil Appeal No. 5546 of 2019; DSK Motors Pvt. Ltd. vs. Deputy Director Directorate of Enforcement I.A No. 1854/2020 In CP No.512/2019; Mr. Shailendra Singh, Resolution Professional of Foxdom Technologies Pvt Ltd vs. Directorate of Enforcement, I.A. NO. 4689 OF 2023 IN IB-102(ND)/2022.***
- xi.** In view of the foregoing, we are of the considered opinion that the reliefs sought in the present Application fall outside the scope of adjudication under Section 60(5) of the Code and pertain to a separate legal domain governed by criminal law.
- xii.** Accordingly, I.A. No. 2131 of 2020 is **dismissed**. However, the Applicant is at liberty to pursue appropriate remedies before the competent court/forum in accordance with law.
- No order as to costs.

-SD/-

ATUL CHATURVEDI
MEMBER (TECHNICAL)

-SD/-

MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

I.A. NO. 3962 OF 2025

IN

C.P. IB NO. 1747 (PB) OF 2018

IN THE MATTER OF:

OM DRISHIAN INTERNATIONAL LIMITED

...Applicant

Versus

**RAKESH KUMAR GUPTA
RESOLUTION PROFESSIONAL
EARTH BUILDROP PRIVATE LIMITED**

...Respondent No. 1

**COMMITTEE OF CREDITORS
EARTH BUILDPROP PRIVATE LIMITED**

...Respondent No. 2

INDUSIND BANK

...Respondent No. 3

AND IN THE MATTER OF:

VIJAY KUMAR SURI & ORS.

...Financial Creditors

Versus

EARTH BUILDPROP PRIVATE LIMITED

... Corporate Debtor

Order Delivered on: 09.07.2026

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM
HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant:Mr. Sumant Batra, Ms. Neeha Nagpal, Mr. Malak Bhatt, Mr. Sarthak Bhandari, Ms. Riya Kaur Arora, Mr. Ajatshatru Singh Rawat, Advs.

For the RP : Mr. Sandeep Bajaj, Mr. Devansh Jain, Ms. Shrishti Jeswani Mr. Mayank Biyani, Advocates, Mr. Rakesh Gupta, RP in person.

For the SRA : Mr. Karan Gandhi, Ms. Riya Jain, Mr. Sikhar Tiwari, Ms. Vidhika Kapoor, Advocates.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by the Applicant, Om Drishian International Limited under the provisions of Section 60(5) of Insolvency and Bankruptcy Code, 2016 (“Code”), seeking the following reliefs:

a) Restrain the Respondent No. 1 (Resolution Professional of Earth Buildprop Pvt. Ltd.) from invoking Bank Guarantee No. OGT0031200044041 issued by IndusInd Bank in favour of the Corporate Debtor; AND

b) Direct Respondent No. 2 (IndusInd Bank) not to process or act upon any request of invocation of the said guarantee pending adjudication of this Application; AND

c) Pass such other Order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

2. SUBMISSIONS OF THE APPLICANT:

i. The Applicant, Om Drishian International Ltd., is a Resolution Applicant in the corporate insolvency resolution process of Earth Buildprop Pvt. Ltd. and had submitted a Resolution Plan dated 02.02.2020 along with an addendum dated 18.05.2025 in accordance with the Request for Resolution Plan (RFRP)

issued by the Resolution Professional on behalf of the Committee of Creditors (CoC).

- ii.** In compliance with the terms of the RFRP, the Applicant submitted a Performance Bank Guarantee (PBG) bearing No. OGT0031200044041 dated 23.06.2020 issued by Indusind Bank for an amount of Rs. 1.85 Crores in favour of the Corporate Debtor.
- iii.** The validity of the said Bank Guarantee was extended vide amendment dated 22.06.2023, with the expiry date now being 22.06.2028 and claim period extended till 22.06.2029.
- iv.** It is submitted that as on date, the Resolution Plan submitted by the Applicant stands rejected by the CoC, and no performance obligation under the RFRP or Plan remains legally enforceable. Consequently, the conditions precedent for invocation of the PBG do not survive.
- v.** The Applicant came to learn that the Respondent No. 1 (Resolution Professional) has initiated steps to invoke the said Bank Guarantee. To that effect, an email dated 01.08.2025 was sent to the Applicant by IndusInd Bank.
- vi.** The invocation of a performance guarantee after the rejection of the Resolution Plan, and without any breach of performance terms, is manifestly arbitrary and impermissible. The purpose of such a guarantee is to secure performance of the plan after its approval.
- vii.** The invocation will cause serious and irreparable financial injury to the Applicant. It is submitted that the attempt to invoke the guarantee in these circumstances amounts to unjust enrichment, as no benefit or performance was ever rendered or expected from the Applicant post-rejection of its resolution plan by the CoC.

3. SUBMISSIONS OF THE RESPONDENT:

- i.** At the very outset it is respectfully submitted that the Bank Guarantee No. OGT0031200044041, forming the subject matter of the present Application has already been duly invoked by the Respondent No. 1 on 29.07.2025, The said invocation was acted upon by the Respondent No.2 bank and the guarantee amount stood encashed, with the funds being credited to the Bank Account of the Corporate Debtor on 07.08.2025. Accordingly, at the very threshold the captioned Application by the Applicant on 11.08.2025 has become infructuous and warrants no further consideration.
- ii.** The Applicant, in furtherance of the Request for Resolution Plan ("RFRP") submitted its Resolution Plan on 02.02.2020 wherein, under Part VI "Undertaking by the Resolution Applicant", the Applicant expressly undertook in Clause 1(0) (at Page 105) that there are no criminal proceedings pending or decreed against the Resolution Applicant, its promoters, or its directors. The relevant excerpt of the undertaking is extracted herein below:
- "o) there are no criminal proceedings pending or decreed against the Resolution Applicant or the promoters or its directors of the Resolution Applicants;"*
- iii.** Subsequently, vide order dated 27.03.2025, this Ld. Adjudicating Authority directed Respondent No. 1 to address the shortcomings in the Resolution Plan and to place the same before the CoC for reconsideration and re-submission after ensuring compliance with the parameters prescribed therein. The said order was assailed by the Applicant before the Hon'ble NCLAT and the Hon'ble NCLAT vide its order dated 08.05.2025 in Om Drishian International Ltd. vs. Rakesh Kumar Gupta, Resolution Professional, Earth Buildprop Pvt. Ltd. & Anr., Comp. App. (AT) (Ins.) No. 608 & 609 of 2025, was pleased to record the submission of the Resolution Professional that in the event the Applicant (Appellant therein) submits an addendum within 10 days of the order, the same would be placed before the CoC for its consideration.

- iv.** In compliance with the order dated 27.03.2025 passed by this Adjudicating Authority and the order dated 08.05.2025 passed by the Hon'ble NCLAT, when the Applicant submitted its Addendum to the Resolution Plan dated 18.05.2025, it was disclosed under Para 1.3 (at page 4) that there exist multiple pending cases against Mr. Rakesh Bansal since the year 2016, the Managing Director of the Applicant.
- v.** Thereafter, upon submission of the aforesaid Addendum, the Respondent No. 1, vide email dated 20.05.2025, while acknowledging receipt of the same, sought specific clarifications from the Applicant with respect to the pending cases disclosed therein against the Applicant and its Directors. The Applicant, vide its email dated 21.05.2025, responded to the said queries and submitted the accompanying documents which also establish that there had been multiple proceedings pending against the Applicant and its directors contrary to the undertaking given vide the Resolution Plan submitted.
- vi.** The Applicant failed to disclose the pendency of various cases against itself and its Director(s) for almost six years. It is, therefore, evident that the Applicant and its Managing Director i.e. Mr. Rakesh Bansal furnished false undertakings and declarations at the time of submission of the Resolution Plan in 2020.
- vii.** The RFRP dated 11.12.2019 in Clause 1.9.2 'Invocation/ Return of Earnest Money Deposit from the Resolution Applicant' clearly states that the Performance Bank Guarantee can be forfeited and appropriated at any time if there is any misrepresentation on the part of the Resolution Applicant in terms of the Code related undertaking by the Resolution Applicant. The excerpt of Clause 1.9.2 is extracted herein below:

1.9.2 Invocation/ Return of Earnest Money Deposit from the Resolution Applicant'

"The Earnest Money Deposit/ Performance Bank Guarantee can be forfeited and appropriated at any time in the following scenarios:

- a) if the Resolution Plan is withdrawn before CoC approval*
- b) if any of the conditions under this RFRP are breached by the relevant Resolution Applicant; or*
- c) if there has been any misrepresentation on part of the Resolution Applicant in the IB Code Related Undertaking by Resolution Applicant, format of which is provided under Format IIIA.*
- d) Immediately prior to submission of PBG by the Successful Resolution Applicant*

The Earnest Money Deposit of the Resolution Applicant who has not been selected as the Successful Resolution Applicant, shall be returned within 90 days of the date of declaration of the Successful Resolution Applicant or within 7 days of the date on which certified true copy of the liquidation order passed by the Adjudicating Authority is received by the RP, whichever is earlier."

- viii.** In view of such material non-disclosures and misrepresentations, the Committee of Creditors ("CoC") in its 22nd CoC Meeting held on 28.07.2025 resolved and advised the Resolution Professional, i.e., Respondent No. 1 herein, to forfeit the EMD and Performance Bank Guarantee of Rs. 1,85,00,000/- furnished by the Applicant (ODIL) and submit the documents in the same regard to the Bank.
- ix.** In furtherance of the aforesaid resolution of the CoC, the Respondent No. 1 vide letter dated 29.07.2025 addressed to Respondent No. 2 Bank duly invoked the Performance Bank Guarantee No. OGT0031200044041 for an amount of Rs. 1,85,00,000/- furnished by the Applicant (ODIL), in favor of M/s Earth Buildprop Private Limited towards performance obligations under the Resolution Plan submitted by the Applicant and in view of the breach of terms of the RFRP committed by the Applicant.
- x.** Pursuant thereto the Respondent No. 2 Bank, while acknowledging the said invocation, sought certain clarifications from Respondent No. 1 vide its letter dated 01.08.2025, which were duly responded to by Respondent No. 1 vide its reply dated 02.08.2025.

- xi.** Subsequently the Respondent No. 2, vide its email dated 06.08.2025 informed Respondent No. 1 that the funds under the Bank Guarantee were being processed for remittance.
- xii.** The guarantee amount was thereafter duly credited into the bank account of the Corporate Debtor on 07.08.2025 as is reflected in the bank statement of the Corporate Debtor. The said fact was further confirmed by Respondent. No. 2 Bank vide its email dated 07.08.2025.
- xiii.** The Performance Bank Guarantee in question already stands duly invoked and encashed, in accordance with law and in terms of the clauses stipulated under the RFRP, owing to the misrepresentations by the applicant in Resolution Plan and the proceeds thereof have been credited to the account of the Corporate Debtor. The Applicant has failed to establish any legal grounds for restraining the invocation of the PBG as have been settled by various Legal fora in a catena of judgments.

4. FURTHER SUBMISSIONS OF THE APPLICANT:

- i.** It is submitted that the present application is not infructuous. The Applicant does not dispute that the Performance Bank Guarantee (PBG) has been invoked and the amount remitted. However, the relief sought in the Application was not confined to a restraint order alone; it expressly carried a residuary prayer for such other orders as the Tribunal may deem fit in the facts and circumstances of the present case.
- ii.** In exercise of powers under Section 60(5) of the IBC and inherent powers, this Tribunal can grant restitutionary reliefs including refund of Performance Bank Guarantee ['PBG'] amount of Rs. 1,85,00,000/-, or setting aside the impugned action - if the invocation is found ultra vires or otherwise unsustainable. The Respondent No. 2's objection that the Application is infructuous is misconceived in light of the residuary prayer and this Tribunal's broad remedial jurisdiction.

- iii.** The prayer clause (b) was alive (and not infructuous) as on date of filing of the captioned application i.e. 04.08.2025 since it is only on 07.08.2025 that the PBG amount of Rs. 1,85,00,000 was remitted by Respondent No. 3 (IndusInd Bank) to the Corporate Debtor's Bank Account. This tribunal ought to assess the maintainability of captioned application as on date of its filing i.e., 04.08.2025.
- iv.** Furthermore, in view of the PBG amount being remitted to the Corporate Debtor's account after the filing of the application, the prayer clause in the rejoinder filed by the Applicant (ODIL) to the Respondent No. 1's reply to IA 3962 of 2025 clearly spelt out the relief that was being sought. The relevant excerpt is reproduced herein below:

9. In light of the above peculiar circumstances and the fraudulent conduct of the Respondent No. 1 and 2, the Applicant prays that this Hon'ble Tribunal may in exercise of its inherent powers and the provisions of the Code be pleased to:

9.1. Direct refund of Rs. 1,85,00,000/- with interest at 12% p.a. from 07.08.2025 till realisation; **AND/OR**

9.2. Allow amendment of prayers to reflect consequential/restitutionary reliefs in view of the prior invocation of the PBG; **AND/OR**

9.3. Pass any such other or further order as this Hon'ble Tribunal deems fit

- v.** Vide the rejoinder, the Applicant prayed for leave to amend its prayers and also sought refund of the PBG amount. Further, the lis survives because the core adjudication is whether the RP's action is illegal/ultra vires, and if so, what corrective/restitutive directions follow.
- vi.** The RFRP dated 11.12.2019, has neither been annexed by Respondent No. 1 nor Respondent 2. To the best of the Applicant's knowledge the purported RFRP dated 11.12.2019 has never been shared with the Applicant. The copy of the RFRP shared with the Applicant is dated 06.10.2019. Assuming,

without admitting, that the RFRP dated 06.10.2019 was amended so as to give rise to an amended RFRP dated 11.12.2019, such amendment was never approved by the CoC. Notably, between 06.10.2019 and 11.12.2019, only one CoC meeting, i.e. the 4th CoC meeting dated 07.11.2019, was held, and in that meeting there was neither any discussion on amendment of the RFRP nor any resolution passed to that effect. Nevertheless, if indeed an amended RFRP came into being, the Respondent No. 1 and 2 are required to (i) place the amended RFRP on record, and (ii) demonstrate that the amendment was carried out by the consent of the CoC.

- vii.** It is submitted that the Respondent No. 2 has maliciously and deliberately altered Clause 1.9.2 of the RFRP while extracting it in Para 9 of the Reply 1.9.2 of the RFRP while extracting it in Para 9 of the Reply. The excerpt of Clause 1.9.2 as extracted in the Reply is reproduced herein below:

1.9.2 Invocation/ Return of Earnest Money Deposit from the Resolution Applicant'

"The Earnest Money Deposit/ Performance Bank Guarantee can be forfeited and appropriated at any time in the following scenarios:

- a) if the Resolution Plan is withdrawn before CoC approval*
- b) if any of the conditions under this RFRP are breached by the relevant Resolution Applicant; or*
- c) if there has been any misrepresentation on part of the Resolution Applicant in the IB Code Related Undertaking by Resolution Applicant, format of which is provided under Format IIIA.*
- d) Immediately prior to submission of PBG by the Successful Resolution Applicant*

The Earnest Money Deposit of the Resolution Applicant who has not been selected as the Successful Resolution Applicant, shall be returned within 90 days of the date of declaration of the Successful Resolution Applicant or within 7 days of the date on which certified true copy of the liquidation order passed by the Adjudicating Authority is received by the RP, whichever is earlier."

- viii.** However, Clause 1.9.2 of the RFRP as issued to the Resolution Applicants reads as follows:

1.9.2 Invocation / Return of Earnest Money Deposit from the Resolution Applicant

The Earnest Money Deposit can be forfeited and appropriated at any time in the following scenarios:

- a) if the Resolution Plan is withdrawn before CoC approval

- b) if any of the conditions under this RFRP are breached by the relevant Resolution Applicant; or
- c) if there has been any misrepresentation on part of the Resolution Applicant in the IB Code Related Undertaking by Resolution Applicant, format of which is provided under Format IIIA.
- d) Immediately prior to submission of PBG by the Successful Resolution Applicant

The Earnest Money Deposit of the Resolution Applicant who has not been selected as the Successful Resolution Applicant, shall be returned within 90 days of the date of declaration of the Successful Resolution Applicant or within 7 days of the date on which certified true copy of the liquidation order passed by the Adjudicating Authority is received by the RP, whichever is earlier.

- ix.** The RFRP, as issued to all Resolution Applicants, categorically refers only to forfeiture of the Earnest Money Deposit ['EMD'] in scenarios (a) to (c), and makes a reference to the timing of EMD invocation immediately prior to submission of the Performance Bank Guarantee ("PBG") by the Successful Resolution Applicant under sub-clause (d).
- x.** At no place does the RFRP provide for forfeiture of the PBG itself. However, the Respondent No. 1 has consciously/maliciously inserted the words 'Performance Bank Guarantee' in the opening line of Clause 1.9.2, thereby expanding the scope of forfeiture beyond what is there in the RFRP. Such alteration is not only mala fide and fraudulent but also amounts to a material misrepresentation of the RFRP and an attempt to play fraud upon this Tribunal.
- xi.** It is the case of the Respondent No. 1 that the invocation of the PBG has been done in accordance with Clause 1.9.2(c) of the RFRP. Clause 1.9.2(c) of the RFRP provides that EMD (and not PBG) can be forfeited and appropriated at any time if there has been a misrepresentation on part of the Resolution Applicant (Applicant) in the Code Related Undertaking, format of which is provided under Format IIIA.

- xii.** It is submitted that there has neither been any misrepresentation of any manner whatsoever by the Applicant herein in the undertaking provided in Format IIIA nor has the Respondent No. 1 demonstrated in any manner as to what has been misrepresented in the undertaking given by the Applicant in Format IIIA. A bare perusal of the undertaking given in Format IIIA, makes it clear that the alleged misrepresentation that no criminal proceedings are pending or decreed was not made in Format IIIA. Therefore, the invocation of the PBG by the Respondent No. 1 was wholly unjustified and illegal.
- xiii.** Relevantly, the above alleged misrepresentation appears in undertaking as given in Format VI and not Format IIIA. Therefore, the basis of Respondent No. 1 placing reliance on Clause 1.9.2(c) of the RFRP while as the basis for invoking the PBG is fallacious and misplaced. In other words, the Respondent No. 1 has neither pleaded nor proved any misrepresentation in Format IIIA, the only format to which the clause 1.9.2(c) attaches the drastic consequence of forfeiture/appropriation.
- xiv.** Pertinently, Forfeiture/appropriation provisions are penal in effect and must be construed strictly. Therefore, Clause 1.9.2(c) which specifically only subsumes within its ambit the undertaking given in Format IIIA, and the same cannot by any stretch of imagination - be expanded to any undertaking given in Format VI or any other format for that matter. Clearly, the invocation of the PBG is not at all in accordance with the terms of the RFRP and is arbitrary, mala fide and wrongful. Accordingly, the PBG's invocation is not only illegal but also ultra vires the RFRP itself and ought not to be countenanced by this Tribunal.
- xv.** Interestingly, the Respondent No. 1 has neither placed on record the executed undertaking by the Applicant in Format IIIA nor identified any portion in Format IIIA that is false. The deliberate failure to place on record the said undertaking IIIA, coupled with the absence of any specific averment as to

falsity, clearly establishes that the Respondent's contention is misplaced, and that the misleading/malicious/fraudulent endeavour would have stood exposed had the undertaking in Format IIIA been placed on record by the Respondent No. 1.

xvi. The Applicant does not dispute the general principle that unconditional guarantees are ordinarily not interdicted. However, settled law equally requires that invocation must strictly conform to the terms of the governing document (RFRP in the present case). The Hon'ble Courts are duty-bound to intervene where there is fraud, presence of special equities (invocation is not in terms of the governing agreement irretrievable damage. therefore unjust) or there is going to be. In the present case, the invocation of the PBG is fraudulent and the same has caused irretrievable harm to the Applicant herein. Therefore, the authorities relied upon are distinguishable and do not advance the case put forth by the Respondent No. 1.

xvii. It is further submitted that the minutes of the 22nd CoC meeting that have placed on record in the Reply as Annexure 8 are non-speaking, there is no recorded analysis/discussion on how the Applicant has misrepresented anything whatsoever in the undertaking provided by it in Format IIIA for the PBG provided by it to invoked as per Clause 1.9.2 of the RFRP. Therefore, the purported decision of the CoC can be termed as arbitrary, whimsical and baseless.

5. ANALYSIS AND FINDINGS:

- i.** We have heard the submissions advanced by the Ld. Counsel appearing for the parties and perused the pleadings and documents placed on record.
- ii.** The present Application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 challenging the invocation of Performance Bank Guarantee No. OGT0031200044041 furnished by the Applicant in connection

with its Resolution Plan submitted during the Corporate Insolvency Resolution Process of the Corporate Debtor.

- iii.** At the outset, we are unable to accept the contention of the Respondent that the present Application has become infructuous merely because the Performance Bank Guarantee has already been invoked and the proceeds thereof credited to the account of the Corporate Debtor. The Applicant has specifically challenged the legality and validity of the invocation itself and has also sought consequential reliefs. Therefore, the controversy survives for adjudication notwithstanding the subsequent encashment of the guarantee.
- iv.** The principal question that arises for consideration is whether the Resolution Professional was justified in invoking the Performance Bank Guarantee furnished by the Applicant.
- v.** The Applicant has specifically pointed out that Clause 1.9.2 of the RFRP, as circulated to the Resolution Applicants, contemplates forfeiture of the Earnest Money Deposit ("EMD") in specified circumstances. The Respondent has not produced any material demonstrating that the said provision was amended with the approval of the Committee of Creditors so as to extend its scope to forfeiture or invocation of the Performance Bank Guarantee. Nor has any document been produced showing that the Applicant had agreed to such modification. In the absence of clear contractual stipulation authorising invocation of the PBG on the grounds now urged, the action of the Resolution Professional cannot be sustained.
- vi.** We further find substance in the contention of the Applicant that the alleged incorrect disclosure relied upon by the Respondent pertains to an undertaking contained in a different format, whereas Clause 1.9.2 specifically refers to misrepresentation in the Code-related undertaking.
- vii.** The Respondent has sought to justify the invocation on the ground that the Applicant had allegedly made incorrect disclosures regarding pendency of

proceedings against its Managing Director and that such conduct constituted a misrepresentation attracting Clause 1.9.2 of the RFRP. However, upon a careful examination of the material placed before us, we find that the Respondent has failed to establish that the alleged misrepresentation falls within the contingencies contemplated under the relevant clause relied upon for forfeiture.

- viii.** The Respondent has neither placed on record the relevant undertaking allegedly breached nor demonstrated how the requirements of the clause stood attracted in the facts of the case. A penal consequence such as forfeiture of a substantial security deposit must be founded upon strict compliance with the governing contractual provisions and cannot be sustained on the basis of assumptions or expansive interpretation.
- ix.** It is also significant that the Resolution Plan submitted by the Applicant ultimately came to be rejected. The object of a Performance Bank Guarantee is ordinarily to secure performance of obligations undertaken by a successful Resolution Applicant. Once the Resolution Plan was not approved and no performance obligations survived, the Respondent was required to demonstrate a clear and independent contractual basis authorising invocation of the PBG. Such basis has not been satisfactorily established before this Adjudicating Authority.
- x.** We are therefore of the considered view that the Respondents have failed to establish that the invocation of the Performance Bank Guarantee was in accordance with the terms of the RFRP or any other binding document governing the resolution process. Consequently, the invocation and encashment of the Performance Bank Guarantee cannot be sustained in law.
- xi.** Since the amount under the Performance Bank Guarantee has already been realised by the Corporate Debtor pursuant to an invalid invocation, the Applicant is entitled to restoration of the said amount.

- xii.** Accordingly, the present Application is allowed. The invocation of Performance Bank Guarantee No. OGT0031200044041 by Respondent No. 1 is declared unsustainable and is hereby set aside.
- xiii.** Respondent No. 1 is directed to refund the amount of Rs. 1,85,00,000/- received pursuant to the invocation of the said Performance Bank Guarantee to the Applicant within a period of **15 days** from the date of this Order.
- xiv.** Accordingly, **I.A. No. 3962 of 2025** stands **allowed** in the above terms.

-SD/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

-SD/-

(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

I.A. NO. 3967 OF 2025

IN

C.P. IB NO. 1747 (PB) OF 2018

IN THE MATTER OF:

OM DRISHIAN INTERNATIONAL LIMITED

...Applicant

Versus

**RAKESH KUMAR GUPTA
RESOLUTION PROFESSIONAL
EARTH BUILDROP PRIVATE LIMITED**

...Respondent No. 1

**COMMITTEE OF CREDITORS
EARTH BUILDPROP PRIVATE LIMITED**

...Respondent No. 2

AND IN THE MATTER OF:

VIJAY KUMAR SURI & ORS.

...Financial Creditors

Versus

EARTH BUILDPROP PRIVATE LIMITED

... Corporate Debtor

Order Delivered on: 09.07.2026

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM
HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant:Mr. Sumant Batra, Ms. Neeha Nagpal, Mr. Malak
Bhatt, Mr. Sarthak Bhandari, Ms. Riya Kaur Arora,

Mr. Ajatshatru Singh Rawat, Advs.

For the RP : Mr. Sandeep Bajaj, Mr. Devansh Jain, Ms. Shrishti Jeswani
Mr. Mayank Biyani, Advocates, Mr. Rakesh Gupta, RP in
person.

For the SRA : Mr. Karan Gandhi, Ms. Riya Jain, Mr. Sikhar Tiwari, Ms.
Vidhika Kapoor, Advocates.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by the Applicant, Om Drishian International Limited under the provisions of Section 60(5) of Insolvency and Bankruptcy Code, 2016 (“Code”) read with Rule 11 of the National Company Law Tribunal Rules, 2016 (“NCLT Rules”) seeking the following reliefs:
 - a) *Declare that the rejection of the Applicant's resolution plan dated 02.02.2020 read with Addendum dated 18.05.2025 is illegal, arbitrary and contrary to the provisions and objectives of the IBC;*
 - b) *Approve the resolution plan dated 02.02.2020 read with Addendum dated 18.05.2025 as submitted by the Applicant in the interest of justice and to prevent the liquidation of the Corporate Debtor; AND*
 - c) *Declare the approval of the resolution plan of Aadi Buildprop Pvt Ltd. as null and void and having no legal consequence whatsoever; AND*
 - d) *Pass such other Order(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*
2. This Adjudicating Authority vide order dated **09.07.2026** in **I.A. 4823 OF 2025**, while adjudicating the objections raised to the Resolution Plan of APPL-EPIL (Consortium), has already examined the issues concerning the conduct

of the resolution process and has passed detailed directions for issuance of a fresh Form G and undertaking a fresh process for inviting Expressions of Interest and Resolution Plans. The said directions were issued with a view to ensure a transparent, competitive and value-maximising resolution process in accordance with the provisions of the Code.

3. In view of the aforesaid directions for issuance of a fresh Form G and recommencement of the process, the foundation of the present Application stands eclipsed by the directions already issued by this Adjudicating Authority requiring a fresh resolution process to be undertaken.
4. Consequently, the present Application has been rendered infructuous. However, in order to safeguard the interests of the Applicant, liberty is granted to the Applicant to participate in the fresh process pursuant to the issuance of Form G and to submit its Expression of Interest and Resolution Plan, if otherwise eligible, in accordance with the provisions of the Code and the applicable regulations.
5. Accordingly, **I.A. No. 3967 of 2025** is **dismissed** as having become infructuous, with the aforesaid liberty.

-SD/-

-SD/-

ATUL CHATURVEDI
MEMBER (TECHNICAL)

MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

I.A. NO. 4510 OF 2025

IN

C.P. IB NO. 1747 (PB) OF 2018

IN THE MATTER OF:

OM DRISHIAN INTERNATIONAL LIMITED

...Applicant

Versus

**RAKESH KUMAR GUPTA
RESOLUTION PROFESSIONAL
EARTH BUILDROP PRIVATE LIMITED**

...Respondent No. 1

**COMMITTEE OF CREDITORS
EARTH BUILDPROP PRIVATE LIMITED**

...Respondent No. 2

**AADI PROPBUILD PVT LTD.
ENGINEERING PROJECT INDIA LIMITED (CONSORTIUM)**

...Respondent No. 3

AND IN THE MATTER OF:

VIJAY KUMAR SURI & ORS.

...Financial Creditors

Versus

EARTH BUILDPROP PRIVATE LIMITED

... Corporate Debtor

Order Delivered on: 09.07.2026

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM
HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant: Mr. Sumant Batra, Ms. Neeha Nagpal, Mr. Malak Bhatt, Mr. Sarthak Bhandari, Ms. Riya Kaur Arora, Mr. Ajatshatru Singh Rawat, Advs.

For the RP : Mr. Sandeep Bajaj, Mr. Devansh Jain, Ms. Shrishti Jeswani Mr. Mayank Biyani, Advocates, Mr. Rakesh Gupta, RP in person.

For the SRA : Mr. Karan Gandhi, Ms. Riya Jain, Mr. Sikhar Tiwari, Ms. Vidhika Kapoor, Advocates.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by the Applicant, Om Drishian International Limited under the provisions of Section 60(5) of Insolvency and Bankruptcy Code, 2016 (“Code”) read with Rule 11 of the National Company Law Tribunal Rules, 2016 (“NCLT Rules”) seeking the following reliefs:

- A. *Pass an order Rejecting and Dismissing the Resolution Plan and corresponding prayer for its approval as made in I.A No. 42/2025, by exercising the discretion available with this Hon'ble Tribunal u/s 31(2) of the Code, 2016, in favour of the Applicant and against the Respondent No. 3, APPL-EIPL (Successful Resolution Applicant); AND/OR*
- B. *Any other or further orders as it may deem fit and proper in the present facts and circumstances of the case and/or in the interest of justice*

2. This Adjudicating Authority vide order dated **09.07.2026** in **I.A. 4823 OF 2025**, while adjudicating the objections raised to the Resolution Plan of APPL-EPIL (Consortium), has already examined the issues concerning the conduct of the resolution process and has passed detailed directions for issuance of a fresh Form G and undertaking a fresh process for inviting Expressions of Interest and Resolution Plans. The said directions were issued with a view to ensure a transparent, competitive and value-maximising resolution process in accordance with the provisions of the Code.
3. We also note that this Adjudicating Authority vide order dated **09.07.2026** while dismissing the Application, filed by the present Applicant, bearing **I.A. No. 3967 of 2025** as infructuous, liberty has already been granted to the Applicant to participate in the fresh process pursuant to the issuance of Form G, subject to its eligibility under the provisions of the Code and the applicable regulations.
4. Accordingly, **I.A. No. 4510 of 2025** is **dismissed** as having become **infructuous**.

-SD/-

ATUL CHATURVEDI
MEMBER (TECHNICAL)

-SD/-

MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

I.A. NO. 4823 OF 2025

IN

C.P. IB NO. 1747 (PB) OF 2018

IN THE MATTER OF:

BDR BUILDERS AND DEVELOPERS PVT. LTD.

...Applicant

Versus

**EARTH BUILDPROP PVT. LTD.
THROUGH MR. RAKESH KUMAR GUPTA
RESOLUTION PROFESSIONAL**

...Respondent No. 1

AADI PROPUILD PVT. LTD. (APPL)-EPIL (CONSORTIUM)

...Respondent No. 2

AND IN THE MATTER OF:

VIJAY KUMAR SURI & ORS.

...Financial Creditors

Versus

EARTH BUILDPROP PRIVATE LIMITED

... Corporate Debtor

Order Delivered on: 09.07.2026

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM
HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant: Mr. Ashish Aggarwal, Mr. Nalin Dhingra, Advocates.

For the RP : Mr. Sandeep Bajaj, Mr. Devansh Jain, Ms. Shrishti Jeswani

Mr. Mayank Biyani, Advocates, Mr. Rakesh Gupta, RP in person.

For the SRA : Mr. Karan Gandhi, Ms. Riya Jain, Mr. Sikhar Tiwari, Ms. Vidhika Kapoor, Advocates.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by the Applicant, BDR Builders and Developers Pvt. Ltd. under the provisions of Section 60(5) of Insolvency and Bankruptcy Code, 2016 (“Code”) seeking the following reliefs:

- a allow the present application/objection of the applicant to the proposed resolution plan of APPL-EPIL (Consortium);*
- b. reject the application bearing IA No.42 of 2025 seeking approval of the resolution plan of APPL-EPIL (Consortium); and*
- c. pass such other or further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case and in the interest of justice.*

2. SUBMISSIONS OF THE APPLICANT:

- i.** The Applicant is the secured Financial Creditor of the Corporate Debtor to the tune of approx. Rs.25 Crores constituting 16.47% share in the Committee of Creditors.
- ii.** The earlier plan of one Om Drishian International Limited (ODIL) was approved by the CoC on June 11th, 2020. Thereafter, the Resolution Professional filed I.A. No.2473 of 2020 before this Tribunal, for the approval of the Plan of ODIL. However, thereafter, the Resolution Professional filed a fresh I.A. No.4291 of 2024 seeking withdrawal of the earlier I.A. No, 2473 of

2020, which application was partly allowed by this Hon'ble Adjudicating Authority, vide its order dated 27.03.2024.

- iii.** The Resolution Professional, in contravention of the orders of the Adjudicating Authority after rejecting the amended Plan of ODIL instead of initiating fresh process by issuing a fresh Form G, put to vote amended plans of other PRAs wrongly approved Plan of one of the said PRAs i.e. Aadi Propbuild Pvt. Ltd. in Consortium with EPIL and others (newly impleaded Consortium Members) "(APPL)-EPIL (Consortium)", against the orders of this Adjudicating Authority, earlier decision of CoC and in absolute contravention of law in the 21st Meeting of the CoC held on 14.06.2025.
- iv.** The Resolution professional has filed I.A. No.42 of 2025 for approval of the plan of Aadi Propbuild Pvt. Ltd. in Consortium with EPIL, which IA is liable to be rejected/dismitted.
- v.** There has been illegal invitation of addendums from other PRAs instead of issuing fresh Form G without taking approval of this Tribunal. The Resolution Plan of ODIL vide order dated 27.03.3035 was remanded back for fresh consideration before the CoC after addressing the shortcoming under the Resolution Plan earlier filed by ODIL.
- vi.** Apparently, the IA 4291 was only partly allowed and other reliefs, including, inter alia, "to permit the Applicant to invite revised Resolution Plans from the existing Perspective Resolution Applicants, excluding ODIL." was not allowed by this Adjudicating Authority and as such deemed to be rejected.
- vii.** However, the Resolution Professional and the Committee of Creditor, in contravention of the orders of the Adjudicating Authority invited addendums from other PRAs.

- viii.** The Applicant having 16.47% share in the CoC pointed out that the process has to start from the invitation of expression of interest. As such, the applicant had duly apprised the RP and the CoC, that in such event, the Plans ought to be invited from all persons who submitted an EOI.
- ix.** In furtherance of the said illegal resolution, revised/amended resolution plans were received from the three PRAs namely (i) Om Drishian International Limited, (ii) Alfa Corp Development. Ltd. and (iii) Aadi Propbuild Pvt. Ltd. in Consortium with EPIL.
- x.** The earlier SRA, i.e. Om Drishian International Limited filed an Appeal before the Hon'ble NCLAT, New Delhi, bearing Comp. App. (AT) (Ins) Nos.608-609 of 2025 wherein the Hon'ble NCLAT, in its Order dated 08.05.2025, found substance in the submissions of the earlier SRA that the direction of the Adjudicating Authority (NCLT) contained in order dated 27.03.2025 was to consider the addendum to the Plan submitted by the Om Drishian International Limited only. The said observation was made by the Hon'ble NCLAT in view of the submission made by Om Drishian that "it is submitted that the order did not permit the RP to invite plans from others PRA and direction was only to reconsider the plan submitted by the appellant."
- xi.** On 23.05.2025, the 20th CoC meeting was held which continued on 24.05.2025 also. In the said meeting, it was decided that the resolution plan along with addendum submitted by Om Drishian be put for voting. The said revised Resolution Plan of ODIL was rejected by the Members of CoC by 100% of the vote share. On 24.05.2025, the Applicant again reiterated to the RP vide its email that in case the plan of Om Drishian is rejected by the CoC, the RP should go for publishing fresh Form G before Adjudicating Authority as per law.

- xii.** In fact in the said meeting held, the AR of the class of creditors confirmed that *"there are other addendums which may be considered with the permission of the Hon'ble NCLT/NCLAT to safeguard the time, as homebuyers are already suffering from 2013, firstly on the hands of builder and now in CIRP"*.
- xiii.** It was consensus between all members of the CoC that in the event, the addendum of other PRAs is to be considered, the same should be done only with the permission of the Hon'ble NCLT/NCLAT.
- xiv.** However, against the earlier decision, and in absolute contravention of law and orders passed by this Ld. Tribunal, the 21st Meeting of the CoC was held on 14.06.2025 to consider and approve the addendums as received from the other PRAs. The Applicant also wrote an email dated 14.06.2025 objecting to proceed with the voting on the Addendums of the other PRAs.
- xv.** The Applicant also furnished a comparative analysis of its proposal and told the RP that the BDR wants to participate in the process. It was also brought to the notice of RP that there is no direction from NCLT that only previous PRA would be given chance. Apparently, the entire process with respect to consideration of revised resolution plans of the remaining two PRAs is void ab initio.
- xvi.** It is prima facie apparent that the Ld. Adjudicating Authority did not grant the prayer for the exclusion in I.A. 4291/2024. As regards the extension of the time period, in the best case, the same was allowed for the limited purpose of the consideration of the addendum to the plan of ODIL only.
- xvii.** The Committee of Creditors approved the Resolution Plan of ADILEIPL on June 14, 2025, which is much beyond the CIRP period. IA no. 4122 of 2025 was filed by the new SRA, i.e. (APPL)-EPIL (Consortium) (fully realising that the entire process being undertaken is contrary to law and beyond the CIRP

period) seeking exclusion of the period commencing from 26.06.2020 till 08.07.2025. The said application was dismissed by this Adjudicating Authority in view of the orders dated 27.03.2025 passed by this Tribunal itself.

- xviii.** The entire process being undertaken by the RP is beyond the CIRP period, beyond the provisions of law and is non-est in law.
- xix.** The resolution plan is neither feasible or viable nor implementable as land on which the Corporate Debtor was building the project 'ELCASA' is not owned by Corporate Debtor. The Corporate Debtor was building a project 'Elacasa' on land measuring 10.218 acres situated in Revenue estate of Village Dharampur, Sector 107, Gurugram, Haryana ('said land').
- xx.** The said land is owned by Yuvraj Singh and R.K. Associates by virtue of sale deeds dated 17.03.2006 and 29.06.2006 respectively. said land is equitably mortgaged with BDR i.e. the Applicant who has claim with Corporate Debtor as well as Sarvaram Infrastructure India Pvt. Ltd. and the original sale deeds dated 17.03.2006 and 29.06.2006 are in the possession of the Applicant.
- xxi.** Yuvraj Singh and R.K Associates the owners of the land entered into Development Agreement dated 17.05.2007 with RMS Estates Pvt. Ltd.
- xxii.** DTC, Haryana issued license bearing No. 23 of 2012 dated 27.03.2012 to develop residential group housing colony on 18.0365 acres on the said land. Mr. Yuvraj, RK Associates and RM Estates transferred the Development rights of 10.218 acres of said land with Scheduled FSI thereon i.e. 7,78,847 sq. ft. to Sarvram Infrastructure India Pvt. Ltd. ('Sarvaram') vide registered Development Agreement dated 23.05.2012 duly registered with the Sub-Registrar, Gurgaon, Haryana.

- xxiii.** The said development agreement pertained to only 10.218 acres of land out of total licensed land of 18.0365 acres.
- xxiv.** Mr. Yuvraj, RK Associates and RM Estates transferred the Development rights of 10.218 acres of said land with Scheduled FSI thereon i.e. 7,78,847 sq. ft. to Sarvram Infrastructure India Pvt. Ltd. vide registered Development Agreement dated 23.05.2012 duly registered with the Sub-Registrar, Gurgaon, Haryana.
- xxv.** It is submitted that the said development agreement pertained to only 10.218 acres of land out of total licensed land of 18.0365 acres.
- xxvi.** Sarvram further entered into an unregistered Development agreement dated 07.02.2013 with the Corporate Debtor wherein the Corporate Debtor agreed to give 18% of the Developed super area to Sarvram. In the 16th meeting of the CoC, it was duly acknowledged and recorded by the RP that license in question was cancelled by DTCP and development right on land given to Sarvram Infrastructure Pvt Ltd. was cancelled by the RMS Estates Pvt. Ltd. Moreover, as per audited financials available on MCA portal at the time of initiation of CIRP, neither land and building nor intangible right of JDA were recorded in the balance sheet of the Corporate Debtor.
- xxvii.** Apparently, in the said meeting, it was acknowledged by the RP as well as CoC that Sarvram which had entered into an unregistered collaboration agreement with the Corporate Debtor is having disputes with RMS Estates Pvt. Ltd. and RMS Estates Pvt. Ltd. has cancelled the development rights given to Sarvram. Moreover, it is also acknowledged that the IRP/RP is not in possession of any assets of the Corporate Debtor including land and building and moreover no such assets are recorded in the books of accounts of the Corporate Debtor.

- xxviii.** In the absence of any rights whether development or any other right in the subject land no feasible or viable plan could be implemented.
- xxix.** There is no feasible proposal in the proposed plan of (APPL)-EPIL (Consortium), to acquire the said rights. The Resolution Professional has failed in his duty as provided in Section 30(2) of the IBC and did not examine the said plan, which apparently was not in conformity with the provisions of the Code. The Plan of APPL JV is liable to be rejected.
- xxx.** It is surprising that the Resolution Professional in its declaration with respect to compliances of the Code by the Plan has stated that the effective date of the Plan shall amongst other conditions would also be subject to the post approval of the Authorities duly transferring the land in the name of RA.
- xxxi.** Moreover, in the absence of any ownership or any feasible proposal to acquire ownership over the land or rights, the (APPL)-EPIL (Consortium) would not be in a position to execute any conveyance deed in favour of the allottees, thereby making the Plan unviable and jeopardise the interest of all stakeholders, including the allottees. The Plan is in violation of Section 30 of the Code.
- xxxii.** The Resolution Applicant is seeking for ownership of the said land from the Haryana Authorities whereas the land is owned by third parties i.e. Yuvraj Singh and RK Associates.
- xxxiii.** Proposal of RA is not feasible as the RA has sought (I) transfer of land in its favour which is owned by a third party from Haryana Authorities, (II) bifurcation of the license of the land which is admittedly not owned by the CD and (III) to implement the Plan after an indeterminate period of time which is against the spirit of the Code and not a feasible resolution plan as it is clearly provided in the Code that a plan should contain definite timelines.

xxxiv. The plan is uncertain and could fail at any stage and such a plan cannot be approved. Moreover, the Plan also contains that the RA has an unfettered right to withdraw from the Plan. One such clause is as under:

Sl.No.	Extract	Pg. No. of IA 42/2025
1.	<i>16. In case the home buyers fail to deposit Home Buyers Threshold Amount (minimum of Rs.20.00 crores) as a part of their pending dues within 120 days from Effective Date, the amounts deposited in the Escrow Account by the Resolution Applicant and the homebuyers shall be refunded without need of any further approval and the R.A may withdraw the plan.</i>	155

xxxv. It is a settled principle of law that a Plan is never dependent on the reliefs and concession. The RA has cleverly tried to mislead the CoC and this Ld. Adjudicating Authority by pre-supposing the grant of such reliefs by keeping the 'Effective Date' of the plan contingent on events that occur only upon the grant of some of the said reliefs and concessions.

xxxvi. Such a Plan of the RA is against the provisions of the Code. It has been held by the Hon'ble Supreme Court in Ebix Singapore that Regulation 38(3) of the IBBI (Corporate Insolvency Resolution Process) Regulations, 2016 mandates that a resolution plan be feasible, viable and implementable with specific timelines. A resolution plan whose implementation can be withdrawn at the behest of the successful resolution applicant, is inherently unviable, since open-ended clauses on modifications/withdrawal would mean that the plan could fail at an undefined stage, be uncertain, including after approval by the Ld. Adjudicating Authority. It is submitted that it is apparent from a bare perusal of the approved plan that the proposal of RA is not feasible as the RA

has sought implementation at a discretionary time and after an indeterminate period of time.

xxxvii. Under the garb of orders dated 27.03.2025 granting permission to ODIL to rectify specific defects in its plan, the (APPL)-EPIL (Consortium) has totally modified its plan specifically to the prejudice of the Applicant.

xxxviii. The (APPL)-EPIL (Consortium) has amended the financial Plan itself qua the Applicant herein with mala fide motives having understood that the Applicant has a minority share in the CoC and prejudicing the rights of the Applicant herein would not in any manner affect the voting pattern. The provisions qua the applicant in the original plan and the amended plan are as under:

Provision under Original Plan qua Applicant	Provision under Amended Plan qua Applicant
<i>"1.21 Effective Date means the date when this Resolution Plan is approved by the Adjudicating Authority and no appeal has been filed or pending and the limitation period for filing any such appeal is also over against any order."</i>	<i>"1.23 Effective Date means The effective date of the plan shall be the date when the plan is approved by the concerned adjudicating authority viz. NCLT and no appeal is filed or pending and time period for filing an appeal is over against the order and post approval the Authorities duly transfer the land in the name of RA and provide all NOC including beneficial interest/ bifurcation of the license, project land free from any dispute and RA completes the process of registration of the various towers proposed to be constructed under this plan with Rera Authorities."</i>
<i>"... Financial Creditor, would have an option either: (a) to take flats in the project equal to an amount of 75% of their principal debt verified by the RP after satisfying the claim of existing Allottees. Flat will be allotted at the basic sale price @ Rs. 4,000/- per sq. ft plus EDC plus IDC and Other Charges as applicable to Existing Allottees; or (b) payment of 75% of their principal debt verified by the RP out of the sale proceeds after the completion of the project."</i>	<i>"Payment to the Applicant being a Secured FC: INR 8,72,50,000 in eight (8) equal installments in 4 years from effective date against the principal admitted amount of INR 17,45,00,000, i.e. 50% of the principal amount. ... A. In respect of Secured Financial Creditors, the following treatment shall be provided under the Resolution Plan:</i>

	<i>a. Payment of 50% of the Admitted Principal Amount by R.P.: Fifty percent (50%) of the balance principal amount, as admitted by the Resolution Professional (RP), shall be paid to the Secured Financial Creditors in eight (8) equal instalments in 4 years from effective date."</i>
	<i>"Release of Securities and Encumbrances: Upon receipt of the settled amount, the Secured Financial Creditors shall release all charges, mortgages, and encumbrances over the assets of the Corporate Debtor and shall provide all necessary documents including No Dues Certificates to ensure free and marketable title and effective implementation of the Resolution Plan."</i>
	<i>"C. Recovery of Original Title Documents from M/s BDR Builders & Developers Pvt. Ltd. It is submitted that pursuant to the Agreement dated 23. 12.2014 entered into between SIPL, the Corporate Debtor, and M/s BDR Builders & Developers Pvt. Ltd., Two original title documents of the project/property in question were handed over to M/s BDR Builders & Developers Pvt. Ltd. for limited purposes under the terms of the said agreement."</i>
	<i>"p. Dissenting claimants FC shall be entitled to receive only the Liquidation value as per sec 30(2)(b) of the code."</i>

- xxxix.** The (APPL)-EPIL (Consortium) apparently made substantial changes and in place of 75% proposed earlier and where there was also an option to take 75% in the form of flats at the price of @ 4000/sq. ft. only which admittedly was the price of flats as on the CIRP initiation date, whereby the Applicant would have been atleast though not treated at par with other allottees, would have realised 75% in comparison to other allottees and would have also be entitled to the escalation of prices of the flats.
- xi.** By way of an Addendum, the (APPL)-EPIL (Consortium) has totally flipped the table wherein now, the Applicant is being paid NIL amount/50% of the principal amount admitted and that too within a period of 4 years, that too from the effective date. Besides, the option of taking flats has also been taken away.
- xli.** The Addendum now structures the plan in a manner that the SRA can even dishonestly interpret it that a dissenting Financial Creditor would not be entitled to even a single penny, more so, in view of the fact that the erroneous valuation reports have valued the liquidation value in negative.
- xlii.** Moreover, by way of the Resolution Plan, the SRA and the RP are trying to take away the right of the Applicant to recover the balance money, if any, from Sarvaram and use the equitable mortgage/security documents for recovery of balance amount, from Sarvaram.
- xliii.** Section 30(2)(b)(ii) of the Code entitles the dissenting financial creditor to be paid the minimum value of its security interest. It is submitted that the illegal addendum to the Resolution Plan proposed by the (APPL)-EPIL (Consortium), is prima facie, illegal and in violation of the provisions of the Code. It is submitted that consequently the applicant is entitled to value of its security interest and the threshold prescribed in Section 30(2)(b)(ii) for Financial

Creditors is merely a minimum bar for further protection and does not take away the applicant's right to realise its full dues as per the value of its security interest. Reliance is placed on Hon'ble Supreme Court of India in DBS Bank Limited Singapore v.s Ruchi Soya Industries Limited and Another [Civil Appeal No.9133 of 2019].

xliv. By way of clever drafting, the SRA or the RP cannot totally erode the security value of the secured FC. The approved Plan of (APPL)-EPIL (Consortium) is in the nature where there are coercing the creditors to vote in favour of their plan failing which they would recover nothing. It is in nature of penalising those who do not agree with the Plan. Such a plan could not have been put to voting by the RP under the provisions of the Code.

xlv. It is further submitted that the valuation reports being relied upon by the RP are contrary to the law and the letter and spirit of the Code.

xlvi. In the 21st meeting of the COC it was recorded as under:

"It was clarified that Valuation of assets of CD was taken on the assets available on CIRP date and liquidation value is the value of assets if sold on CIRP date. Assets which is not part of corporate debtor cannot be treated as part of assets. Additional FAR which RA considered in the resolution plans cannot be considered in the valuations. Cost for 18% of construction area should be considered in the valuation regardless of the treatment in the resolution plan. On our submission COC members have no objection on the current valuation report and recommend to take fresh report also at current valuation date. Chairman apprised the COC that as per IBC there is no bar but mandatory regulation was compiled and there is no significant difference in the valuation reports, hence no further mandatory valuation is required. However, COC may recommend to take

additional valuation at the current valuation date. AR of the class of creditors opposed further valuation which shall cause further delay in the process. RP recommend to place agenda for the same if COC members are interested but AR of homebuyers with 83% voting right denied to make such agenda to avoid litigation.

In view of above clarification COC on the consent of majority members proceeded further.

BDR also recommended to the RP and AR to take a legal opinion regarding further course of action to be taken in this circumstance.

AR of homebuyers clarified that there is no requirement of such clarification through legal opinion as process was followed by RP as recommended in the 16th (16) COC meeting held on 7/4/2025."

xlvi. The Applicant also wrote a detailed email dated 10.06.2025 for fresh valuation of assets of CD as on date. The intention of Regulation 27 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, for valuation was keeping in the timelines provided in the Code. It is apparent that in the present matter, when the CIRP initiation was more than 5 years back, the Code has to be read in its true intent and spirit, and a fresh valuation on current rates ought to be obtained before considering any fresh Plans. Valuations, even otherwise, are prima facie bad as they have reduced the EDC/IDC charges from the valuation, even though the said amount is to be borne by the allottees. Secondly, the amounts already received from the allottees have been deducted from the valuation whereas for computing liquidation value, the said amount cannot be deducted.

xlvi. It is submitted that the RP has committed the gross irregularities, for the process of the valuation of the properties of the Corporate Debtor;

consideration of the Resolution Plans; violating the procedure of convening the meeting for Resolution Plans; defeating the fundamental rights of the Financial Creditors for having the valuation in terms of Section 30(4) and Section 53 of the IBC Code, 2016 read with Regulation 36 to 39 of the CIRP Regulations, 2016. The entire process being adopted by the RP is flawed and suspicious with respect to the valuation and the Resolution Plan.

xlix. The RP has tried to get its Resolution Plan approved in a hurried manner, thereby causing great prejudice to the Financial Creditors and other stakeholders.

1. It is further submitted that resolution plan is not as per provisions of Code and regulations framed thereunder including the following: -

Section/ Regulation No.	Requirement of law	Default
Sec.30(2)(b)	Obligation of the RP to examine whether resolution plan provides	No such examination by RP regarding the claim of the Applicant. The contents of the

	for payment of debts to the financial creditors who do not vote in favour of the plan, in such manner, which is not less than the amount to be paid to such creditor under Sec.53.	plan are contradictory to Section 30(2)(b)(ii) as detailed hereinabove.
Section 38(1)(b)	The Act provides for priority of payment to those FCs, who have not voted in favour of the Plan.	No such provision in the Resolution Plan. On the contrary, the Plan illegally proposes to pay an amount of NIL to the dissenting Financial Creditor/ Applicant herein.
Reg.38(3)(d)	The Plan must provide for provisions for approvals required and timeline for the same.	No such provision in the Resolution Plan has been made out. The approvals contemplated in the plan are unknown to law and even otherwise, there are no definite time limes provided under plan for the same.
Clause 1.11 of RFRP	It was mandatory to provide specific sources of funds. the Resolution Applicant has stated as under: <i>"SOURCES OF FUNDING / PROPOSAL</i>	No such sources shown.

	<p><i>FORFUNDING</i></p> <p><i>The Resolution Applicant proposes to use a mix of debt and equity for the purpose of funding the revival of the said Project. In addition, project land shall be mortgaged, and the loan amount raised out of such mortgaged shall be used for completion of the said project. The Resolution Applicant is confident to realise the cash flow, as it has always delivered its project in a completion. The Resolution Applicant is confident to achieve the completion of the said project."</i></p>	<p>Apparently, the Resolution Applicant does not have the required funds for completion of the Project.</p> <p>It is submitted that the plan proposes to mortgage the project land for funding even though; it is a matter of record that the land is not owned by the CD. Even otherwise, it is a settled that a plan cannot be contingent on the reliefs and concessions.</p> <p>The proposal to mortgage the Project Land is also totally an eyewash as the Project Land is not owned by the Corporate Debtor and as such neither the Corporate Debtor nor the Resolution Application would be in a position to mortgage the Project Land.</p> <p>In the absence of specific source of funds, the Plan was liable to be rejected and the RP should not have put such a plan for voting before the COC.</p>
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		<p>Further, the Letter of Commitment dated 15.04.2025 is from some Financial Adviser and not of any Financial Institution. (Page 416 of IA)</p> <p>Besides the RA has relied upon another funding arrangement/ letter dated 22.04.2025 issued by one P.D. Polychem Pvt. Ltd., which apparently is not even a NBFC.</p> <p>The SRA has further relied upon a "Soft Commitment" or funding from one M/s Zealous Financial Services Pvt. Ltd. without any commitment.</p>
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- ii.** The SRA in the original plan was submitted by Adi Propbuild Pvt. Ltd. and Engineering Project (India) Pvt. Ltd. However, surprisingly, the Addendum to the Resolution Plan is now submitted by a different consortium i.e. allegedly consortium of Adi Propbuild Pvt. Ltd. with Engineering Project (India) Pvt. Ltd. and Others. Besides in Part B of the Addendum (page 298 of IA 42 of 2025) it is now being claimed that "This Resolution Plan ("Plan") is being jointly submitted by Aadi Propbuild Pvt. Ltd. with Engineering Project (India) Pvt. Ltd. ("APPL"), along with director Mr. Sandeep Gupta, and Mrs. Shalini Gupta acting as the Lead Member, in consortium with Engineering Projects (India) Limited ("EPIL"), and P.D. Polychem Pvt Ltd. Collectively, these entities shall

be referred to as the "Resolution Applicant" or the "Consortium" for the purposes of this Plan." By no stretch such a change in consortium members can be made in the Addendum. Apparently, the Addendum is not by the initial PRA and was liable to be rejected and should not have been put for voting by RP.

3. SUBMISSIONS OF THE RESPONDENT No. 1:

- i.** It is submitted that the process of inviting addendums was conducted strictly in accordance with the directions and with the approval of the CoC. The order dated 27.03.2025 passed in I.A. No. 4291/2024 clearly remanded the matter back to the CoC for fresh consideration of the resolution plan submitted by the erstwhile SRA i.e. ODIL after curing certain deficiencies. Pursuant to the said order, the Resolution Professional, with due authorization from the CoC, invited revised addendums from all existing Prospective Resolution Applicants, including Aadi Buildprop to Pvt. Ltd., to ensure compliance with the regulatory framework and to maximize the value of the Corporate Debtor.
- ii.** The objection raised by the Applicant that the Respondent No. 1 has illegally invited the addendums instead of issuing a fresh Form G is completely incorrect and contrary to record, as there have been no directions at given point by this Adjudicating Authority for issuance of Fresh Form G. The 16th CoC meeting, held after due notice and quorum, the CoC, by a voting share of 83%, approved the proposal that addendums be invited from all existing Prospective Resolution Applicants (PRAs) who had earlier submitted their resolution plans. It was further resolved that the CoC would first consider the plan of ODIL and only in the event of its rejection, the addendums submitted by the remaining PRAs would be opened for consideration.

- iii.** The said decision was taken by the CoC's in due exercise of its commercial wisdom with the objective of ensuring parity among all the Prospective Resolution Applicant's and to place them at the same footing, after due compliance of the Judicial Orders and within the CoC's authority under the Code. The validity of this decision has been duly considered and upheld in multiple proceedings before this Hon'ble Tribunal as well as the Hon'ble NCLAT. In fact, ODIL had challenged the said CoC agenda in IA No.1842 of 2025, which came to be disposed of by this Hon'ble Tribunal vide order dated 09.05.2025. Furthermore, ODIL also preferred an Appeal before the Hon'ble NCLAT, which, vide its order dated 08.05.2025, categorically observed that the CoC is at liberty to first consider the addendum submitted by ODIL and, in case of its rejection, to proceed in accordance with law.
- iv.** It is therefore evident that the action of inviting addendums from existing PRAs stands duly approved by the CoC with the requisite majority and has been noted by both the Hon'ble NCLT and the Hon'ble NCLAT. It is also pertinent to mention herein that the plan under consideration has been duly considered by the CoC only after the rejection of the addendums submitted by the erstwhile SRA i.e. ODIL and hence, the allegation of any illegality in this regard is wholly unfounded.
- v.** The objection raised by the Applicant with regard to approval of the Resolution Plan beyond 330 days is wholly misconceived and contrary to the settled position of law. The Hon'ble Supreme Court, in a catena of judgments, has clarified that while the statutory mandate under Section 12 of the Insolvency and Bankruptcy Code, 2016 prescribes that ordinarily the CIRP must be completed within the outer limit of 330 days from the insolvency commencement date, inclusive of any extensions and time consumed in

litigation, this period is not to be construed as inflexible or iron-clad in every case.

- vi.** In particular, the Hon'ble Supreme Court in *Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta* [*Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta*, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443: (2020) 219 Comp Cas 97] observed the following: (SCC pp. 626-28, paras 124 & 127) and reiterated in *Independent Sugar Corpn. Ltd. v. Hindustan National Gas & Industries Ltd. (Resolution Professional)*, (2025) 5 SCC 209 : 2025 SCC OnLine SC 181 held that where the facts of a given case demonstrate that (i) the delay is substantially on account of factors not attributable to the parties themselves; (ii) only a limited period is required to bring the process to its logical conclusion; and (iii) liquidation would result in irreparable prejudice to stakeholders, especially homebuyers and creditors, the adjudicating authority is empowered to permit the CIRP to extend beyond 330 days in the interest of justice. The Court has further held that the ultimate objective of the Code is resolution and revival of the corporate debtor as a going concern, with liquidation being a remedy of last resort.
- vii.** In the present case, the delay in approval of the Resolution Plan is not attributable to the CoC or the Resolution Professional. The CoC has already exercised its commercial wisdom in approving the Resolution Plan of M/s APPL-EIPL, which is now pending approval before this Tribunal. To non-suit the stakeholders merely on the ground of efflux of the 330-day period would amount to punishing the creditors and homebuyers for delays not of their making and would frustrate the overarching objective of the Code.
- viii.** It is further submitted that liquidation, if ordered in the present factual matrix, would gravely prejudice the homebuyers who constitute the majority

stakeholder group and would result in the project being indefinitely stalled without any meaningful value realization. On the other hand, approval of the plan already sanctioned by the CoC would ensure completion of the project, maximization of value and revival of the corporate debtor as a going concern.

- ix.** It is respectfully submitted that the Applicant's allegation regarding the alleged unviability of the resolution plan on the ground that the Corporate Debtor does not own the project land is wholly misconceived and untenable. The project land was developed pursuant to a valid, subsisting Development Agreement dated 23.05.2012 executed between RMS Estates Pvt. Ltd. and Sarvram Infrastructure Pvt. Ltd. ("SIPL") read with the Development Agreement dated 07.02.2013 entered between the SIPL and the Corporate Debtor.
- x.** Vide the Agreement dated 07.02.2013 the owners had granted the Development rights on the subject land to SIPL furthermore in the said Agreement it was categorically recorded that SIPL had the right to assign its rights under the said Agreement. In furtherance of such rights, the SIPL had duly executed the Agreement dated 07.02.2013 in favour of the Corporate Debtor and as such the Corporate Debtor stepped into the shoes of SIPL for the purpose of the said land.
- xi.** The said Development Agreement dated 23.05.2012 unequivocally records that the Developer (i.e., SIPL) possesses the right and option to have the ownership of the identified land transferred in its favour or in favour of its nominees for the purpose of safeguarding its interests. It further mandates that the landowners shall extend full cooperation by executing all necessary documents to facilitate such transfer.

- xii.** It is further submitted that, the development agreement dated 23.05.2012 further provides that the owner shall permit the Developer to segregate part of the license for the identified land, if permissible under HUDA rules and shall execute all necessary documents for such purpose. The original sale deeds, LOI, and other land-related documents were handed over to the Developer under this Development Agreement. Therefore, the land rights of the Corporate Debtor and its successor are legally recognized and enforceable.
- xiii.** It is further submitted, with respect to the contention that the license cancelled by the Directorate of Town and Country Planning (DTCP) forms part of the reliefs and concessions contemplated under the resolution plan, as well as the allegation regarding the purported cancellation of the Development Agreement by RMS Estates Pvt. Ltd., that the same are misconceived and factually incorrect. In this regard, it is submitted that in relation to the Development Agreement dated 23.05.2012, the alleged cancellation of development rights by RMS Estates Pvt. Ltd. was the subject matter of arbitral proceedings initiated between the parties. The Ld. Arbitral Tribunal, vide order dated 22.11.2015, was pleased to restore the said Development Agreement along with all rights thereunder, and the agreement continues to remain valid and operative as on date.
- xiv.** It is further submitted that the Applicant's contention that the Resolution Applicant is seeking ownership of private land from the Haryana authorities is wholly misleading and devoid of merit. The Resolution Plan does not contemplate or seek any unlawful transfer of land. It merely provides for the lawful execution and implementation of the Development Agreement already executed between RMS Estates Pvt. Ltd. and Sarvram Infrastructure Pvt. Ltd. (SIPL), along with the transfer of development rights in accordance with the

applicable HUDA Regulations and statutory procedures. The Resolution Applicant only seeks recognition and formal transfer of such development rights and licenses by the competent authority, which is necessary to facilitate the lawful and effective implementation of the project. Accordingly, the objection raised by the Applicant is baseless, misconceived and deserves outright rejection. If the contentions raised by the Applicant are held to be correct it will be a such case where no resolution can never be achieved and the project of the Corporate Debtor can never be completed.

- xv.** The objection alleging uncertainty in the Resolution Plan on account of an alleged condition requiring homebuyers to deposit Rs. 20 crores is wholly misconceived and factually incorrect. The approved Resolution Plan, when read together with the Addendum thereto, nowhere contains or imposes any such condition. A bare perusal of the relevant portion of the plan clearly demonstrates that no such requirement of a Rs. 20 crore deposit by the homebuyers exists. Accordingly, the allegation that the plan is uncertain or conditional on such a deposit is completely baseless. The approved plan, as supplemented by the Addendum, is clear, comprehensive and fully compliant with the provisions of the Code and the applicable Regulations.
- xvi.** It is further submitted that the approved Resolution Plan strictly adheres to the provisions of the code and provides for a timeline i.e. 48 months (three years from effective date, effective date is 12 months from approval by this Adjudicating Authority). The plan has been formulated after due consideration of all financial and operational aspects and is therefore both feasible and viable, ensuring time-bound and effective resolution of the Corporate Debtor.

- xvii.** It is further submitted that the allegation that Respondent No. 2 modified its plan beyond the scope of permission granted by this Tribunal is incorrect and misleading. The Respondent No. 1 has strictly adhered to the commercial wisdom of the CoC and the plan was duly valued, deliberated upon and approved by the CoC in exercise of its commercial wisdom which prevails in law.
- xviii.** It is submitted that the Resolution Plan, along with the Addendum submitted by the (APPL)-EPIL Consortium, was duly evaluated, deliberated and approved by the CoC in exercise of its independent commercial judgment after considering all material aspects, including feasibility, viability and equitable treatment of stakeholders. The CoC's decision-making process is protected under the Code 2016 and has been upheld by the Courts at numerous occasions.
- xix.** It is further submitted that the changes introduced through the Addendum were made only to bring the plan in compliance with judicial directions and statutory requirements, without in any manner altering the core distribution mechanism or discriminating against any class of creditors. The distribution structure, including payments to homebuyers and other stakeholders, was finalized after detailed deliberations and voting by the CoC, taking into account the viability of the project, financial capabilities of the SRA, and the long-term interest of all creditors and allottees.
- xx.** The payment structure providing for payment of 50% of the admitted claim of the Applicant over a period of four years in eight equal instalments has been formulated in due exercise of the commercial wisdom of the Committee of Creditors (CoC) and is in strict compliance with the provisions of the Code as well as the applicable Regulations. The CoC, being the body representing the

financial creditors of the Corporate Debtor, is empowered under the Code to evaluate and approve a resolution plan based on its feasibility, viability and equitable treatment of stakeholders. The distribution mechanism, including the quantum and schedule of payments, falls squarely within the exclusive domain of the CoC's commercial judgment. The plan also complies with Section 30(2)(b) of the Code, which mandates that the amount to be paid to dissenting financial creditors shall not be less than the amount they would receive in liquidation. The Applicant's entitlement under the approved plan exceeds the notional liquidation value and the CoC, after due deliberation, found the structure feasible, viable and in the collective interest of all stakeholders. Accordingly, the payment schedule of 50% over four years in eight equal instalments is fair, equitable and fully compliant with law.

- xxi.** It is most pertinent to highlight herein that the Applicant is a unsecured Financial Creditor and there is no security interest created in favor of the Applicant herein and the same is evident from the fact that no charge is registered with the RoC, Ministry of Corporate Affairs and in the absence of any such charge the Applicant cannot be treated as a 'Secured Financial Creditor'. The said is stipulated in the provisions enshrined under Section 77 of the Companies Act, 2013.
- xxii.** It is further submitted that even otherwise, as per the List of Financial Creditors (Financial Creditors belonging to any class of creditors) duly uploaded on the website of the IBBI, the Applicant has been categorized as an unsecured financial creditor and not as a secured one. Therefore, the Applicant cannot claim the rights or entitlements available to a secured creditor, including any alleged minimum recovery based on security interest.

- xxiii.** The distribution under the approved Resolution Plan has been made strictly in accordance with Section 30(2) (b) of the Insolvency and Bankruptcy Code, 2016, ensuring fair and equitable treatment to all creditors within their respective classes. The Respondent No.2 has duly undertaken to make the payments to the dissenting creditors in accordance with Section 30(2) of the Code.
- xxiv.** It is further submitted that Applicant's allegation that the valuation reports relied upon by the Resolution Professional are contrary to law is incorrect. Two IBBI-registered valuers were appointed to carry out the valuation as per Regulation 35(2) of the CIRP Regulations. The valuation reports were discussed and accepted in the CoC meetings, with over 83% of voting members supporting them. The valuations were based on the assets of the Corporate Debtor as on the CIRP date and excluded any hypothetical or non-existent rights. The CoC, being the commercial decision-maker under the IBC, accepted the valuations after due deliberation. Therefore, the reports are valid and binding and the said objection made by the Applicant deserves outright rejection.
- xxv.** The Applicant's contention that the approved Resolution Plan does not disclose any sources of funds is wholly incorrect and contrary to the record. The Resolution Plan, duly approved by the Committee of Creditors (CoC), specifically sets out the detailed sources of funds for implementation of the plan. A bare perusal of page 582 of IA No. 42/2025 clearly reflects the Fund Inflow Statement, which reads as follows:

36. Fund Inflow Statement

R.A. has infused Equity/Debt of Rs. 10.50 Cr and Arrange Funds from NBFC and other Financier for the said project of Rs. 50.00 Crores where comfort letter from three parties has already been enclosed with the addendum

xxvi. Furthermore, Form H, annexed at page 56 of IA No. 42/2025, also elaborates the sources of funds and implementation mechanism in the following terms:

Sl. No.	Particulars	Description
3.	<i>Source of funds (in brief)</i>	<i>10.05 Crore by RA 50.00 Crore from outside loan 362.00 Crore from sale proceed and receivables</i>

xxvii. The Resolution Plan comprehensively details the sources and structure of funding, demonstrating a clear and credible roadmap for implementation. The CoC, after due evaluation and satisfaction regarding the financial capability and funding arrangements of the Resolution Applicant, approved the plan in exercise of its commercial wisdom.

xxviii. It is submitted that the Applicant has also alleged that there has been a change in the consortium, in this regard it is submitted that as per the affidavit dated 11.06.2025, P.D. Polychem Pvt. Ltd., along with Mr. Sandeep Gupta and Mrs. Shalini Gupta, who are directors and of Aadi Propbuild Pvt. Ltd., were treated only as associate partners and not as separate consortium members. Furthermore, in order to augment the financial and financial capacity P.D. Polychem Pvt. Ltd was invited to participate only as a technical and/or financial partner, which is also evident from the affidavit dated 11.06.2025.

xxix. The primary objective of the Code is to ensure the revival of corporate debtors through the resolution process, and not liquidation, except as a last resort. The Hon'ble Supreme Court, in ***Swiss Ribbons Pvt. Ltd. v. Union of India (2019) 4 SCC 17***, has held that the purpose of the Code is to resolve and revive the corporate debtor rather than push it into liquidation. Liquidation is

therefore a consequence only if viable resolution plans are not available or the resolution plans are unfeasible.

xxx. The Applicant has failed to demonstrate any violation of the provisions of the Insolvency and Bankruptcy Code, 2016 or the Regulations framed thereunder. The Resolution Plan, along with the Addendum, has been evaluated, deliberated upon and duly approved by the Committee of Creditors (CoC) in exercise of its independent commercial wisdom after considering all relevant aspects, including feasibility, viability, equitable treatment of stakeholders and compliance with the Code. It is settled law that the commercial wisdom of the CoC is paramount and non-justiciable, as repeatedly affirmed by the Hon'ble Supreme Courts in a catena of cases.

xxxi. It is further submitted that the approved plan provides a clear, time-bound and implementable framework, backed by identified sources of funds and structured to ensure the revival of the Corporate Debtor and the maximization of value for all stakeholders. Each of the Applicant's allegations whether regarding the distribution mechanism, feasibility, source of funds, or treatment of creditors stands completely negated by the material on record. Therefore the captioned objections filed by the Applicant deserves to be dismissed as baseless and devoid of merit.

4. SUBMISSIONS OF THE RESPONDENT NO. 2:

i. It is submitted that the allegation of any "illegal invitation of addendums" is completely unfounded, misconceived, and contrary to the record. The process of inviting addendums was conducted strictly in accordance with the directions of this Hon'ble Adjudicating Authority and with the approval of the CoC. The order dated 27.03.2025 passed in I.A. No. 4291/2024 clearly remanded the matter back to the CoC for fresh consideration of the resolution

plan after curing certain deficiencies. Pursuant to the said order, the Resolution Professional, with due authorization from the CoC, invited revised addendums from all existing Prospective Resolution Applicants, including Aadi Buildprop Pvt. Ltd., to ensure compliance with the regulatory framework and to maximize the value of the Corporate Debtor.

- ii.** The objection raised by Applicant that the RP illegally invited addendums instead of issuing a fresh Form G is completely incorrect and contrary to record. As per the 16th meeting of the CoC held on 07.04.2025, it was deliberated and was approved with 83% voting in favour that addendums be invited from all existing Prospective Resolution Applicants who had previously submitted resolution plans in the 6th CoC Meeting. It was further resolved that the CoC would first open and consider the revised plan of ODIL, and only if it was rejected, would the addendums of the other PRAS be opened for consideration.
- iii.** It is submitted that the decision was made transparently with ODIL and other PRA's kept at same footing after the due compliance of judicial orders and within the CoC's authority under Section 30(4) of the Insolvency and Bankruptcy Code (IBC). The said agenda of 16th CoC Meeting held on 07.04.2025 was subsequently challenged by ODIL vide IA 1842/2025 before the Hon'ble Adjudicating Authority, which has been disposed of by order dated 09.05.2025, thereby upholding the CoC's decision.
- iv.** It is submitted that ODIL preferred an appeal before the Hon'ble Appellate Authority, being Company Appeal (AT) (Ins.) No. 608 & 609 of 2025, challenging the order dated 27.03.2025. The Hon'ble Appellate Authority after hearing all parties and examining the records, in its order dated 23.07.2025 held that the directions mentioned in paragraph 9 of the impugned order were

in accordance with law, and that the Committee of Creditors had already complied with those directions by reconsidering and rejecting the appellant's resolution plan.

- v. It is submitted that the Hon'ble Appellate Authority further observed that the issue regarding the approval of another resolution plan was outside the scope of the appeal, and that the appellant was free to raise its objections in IA No. 42 of 2025 before the Adjudicating Authority. It also clarified that no opinion was being given on the actions taken by the CoC after rejection of the appellant's plan, leaving it to the Adjudicating Authority to decide those issues as per law. Consequently, the Hon'ble Appellate Authority found no reason to interfere with the impugned order dated 27.03.2025 and disposed of the appeal with the above observations.
- vi. It is submitted that the Hon'ble Appellate Authority in its order dated 08.05.2025 did not prohibit consideration of other revised plans, it merely observed that ODIL's addendum was to be considered as per the Tribunal's order. The CoC, being the ultimate decision-making body, considered multiple addendums only to ensure maximization of value as contemplated under Section 30(4) of the IBC. It is further submitted that the Hon'ble Appellate Authority in the order dated 08.05.2025 mentioned that "We make it clear that after the consideration of the Plan of the Appellant (ODIL) any further steps be taken."
- vii. It is submitted that another PRA, Alpha Corp Development Corporation Ltd., also challenged the same process before the NCLT, and its application was rejected by order dated 18.06.2025. Therefore, the invitation of addendums was done lawfully and with full knowledge and supervision of both the NCLT and NCLAT. Most significantly, the Tribunal categorically observed and

recorded that "Hence, while permitting the withdrawal of the application, we do not find any reason to grant liberty to file a fresh application on the purported cause of action." Accordingly, it is evident that the invitation of addendums to the resolution plans was undertaken lawfully, transparently, and under the express knowledge and supervision of the NCLT leaving no room for any allegation of illegality or procedural irregularity.

- viii.** It is submitted that the Applicant has also alleged that there has been a change in the consortium, in this regard it is submitted that as per the affidavit dated 11.06. 2025, P.D. Polychem Pvt. Ltd., along with Mr. Sandeep Gupta and Mrs. Shalini Gupta, who are directors and 100% shareholders of Aadi Propbuild Pvt. Ltd., were treated only as associate partners and not as separate consortium members. Hence, the allegation that the structure of the consortium was changed is incorrect and misleading.
- ix.** The allegation that the resolution plan was approved beyond the CIRP period is wholly unfounded and misconceived. The approval of the plan by the CoC was made during the pendency of the appeal filed by ODIL before the Hon'ble Appellate Authority. Since the entire process was under continuous judicial scrutiny and direction, no separate exclusion of time was required. The CoC's actions were taken in good faith and in compliance with the prevailing judicial orders to ensure that the resolution process reached its logical conclusion in accordance with the objectives of the Code.
- x.** It is further submitted that Respondent No. 2 had, filed I.A. No. 4122/2025 before this Adjudicating Authority seeking exclusion of time from 26.06.2020 till 08.07.2025, as the resolution process had been extended due to multiple judicial proceedings. However, this Adjudicating Authority vide order dated 01.09.2025 dismissed the said application on the ground that such exclusion

was unnecessary since the process was already valid and continuing under judicial supervision pursuant to earlier orders.

- xi.** The Adjudicating Authority order dated 27.03.2025, passed in I.A. No. 4291/2024, had specifically remanded the matter to the CoC for fresh consideration of the plan after curing the identified deficiencies. The subsequent meetings of the CoC, including the evaluation and eventual approval of the plan, were conducted strictly in compliance with that remand order. Therefore, the entire process, including the approval of the plan, was completed within a reasonable and judicially sanctioned time frame, making it legally valid and fully compliant with the provisions of the IBC framework.
- xii.** It is submitted that Applicant's allegation that the plan is unviable because the Corporate Debtor does not own the project land is baseless. The project land was developed under a valid Development Agreement dated 23.05.2012 executed between RMS Estates Pvt. Ltd. and Sarvram Infrastructure Pvt. Ltd. ("SIPL"). The Resolution Plan Application, clearly records that the Developer has the option to get ownership of the identified land transferred in its favour or in favour of its nominees to safeguard its interests, and that the landowners shall cooperate by signing and executing all necessary documents for such transfer.
- xiii.** It is further submitted that at Page 438 of the Resolution Application, the agreement provides that the owner shall permit the Developer to segregate part of the license for the identified land, if permissible under HUDA rules, and shall execute all necessary documents for such purpose. The original sale deeds, LOI, and other land-related documents were handed over to the Developer under this Development Agreement. Therefore, the land rights of the Corporate Debtor and its successor are legally recognized and enforceable.

- xiv.** The case of Applicant that Development Rights on land given to Sarvram Infrastructure Pvt Ltd was cancelled by the RMS Estate Pvt Ltd as mentioned in 16th CoC Minutes of Meeting. It is submitted that the said allegation is already adjudicated upon under Arbitration proceedings wherein the Ld. Arbitrator has held that the cancellation is void as the Sarvram Infrastructure Pvt Ltd has rights over the subject land as the RMS Estate Pvt Ltd does not claim the possession of the subject land.
- xv.** It is submitted that in the case of ***K.H. Khan and Anr. v. Art Constructions Pvt. Ltd. and Ors., in Company Appeal (AT) (Insolvency) No. 1116 of 2024 with Company Appeal (AT) (Insolvency) No. 1117 of 2024***, vide order dated 14.11.2024, the Hon'ble Appellate Authority upheld the development rights of the Corporate Debtor as forming part of its assets under the Code. The Hon'ble Appellate Authority observed that the Information Memorandum correctly reflected the land as one in which the Corporate Debtor had development rights by virtue of a Collaboration Agreement and emphasized that the determination and inclusion of such assets is a solemn duty of the Resolution Professional under Section 29 of the Code and Regulation 3A of the CIRP Regulations, 2016. Hence, the plan is fully implementable, and the allegation of infeasibility is without any factual or legal basis.
- xvi.** The Applicant's claim that the Resolution Applicant is seeking ownership of private land from the Haryana authorities is misleading. The Resolution Plan does not seek any unlawful transfer of land. It only provides for the lawful execution of the Development Agreement already executed between RMS Estates Pvt. Ltd. and SIPL, and the transfer of development rights as per HUDA/DTCP Regulations and statutory procedure. The Resolution Applicant merely seeks recognition and formal transfer of development rights and

licenses from the competent authority to enable lawful implementation of the project.

- xvii.** It is further submitted that the objection that the plan is uncertain due to a condition of Rs. 20 crores to be deposited by homebuyers is misplaced. The clause for conditional deposit in the escrow account is only a security and performance mechanism to ensure seriousness and commitment from the homebuyers and to safeguard the interest of all stakeholders. This condition does not make the plan uncertain. On the contrary, it provides a safeguard and ensures transparent fund flow. The plan further specifies that the maximum implementation period is twelve months from the date of approval, which is fully compliant with the IBC and Liquidation Regulations.
- xviii.** The claim that the Respondent No. 2 modified its plan beyond the permission granted by this Tribunal is false. The Resolution Professional strictly followed the order dated 27.03.2025, which allowed reconsideration of plans after curing specific deficiencies. The Addendum submitted by the consortium only rectified those deficiencies and enhanced compliance under Section 30(2) of the Code. The modified plan was reviewed and approved by the CoC after detailed deliberations.
- xix.** The objection raised by the Applicant that a dissenting secured financial creditor is entitled to the full value of its security and not merely the liquidation value is legally unsustainable. As clearly laid down under Section 30(2)(b) of the Code and affirmed by the Hon'ble Supreme Court in ***India Resurgence ARC Pvt. Ltd. v. Amit Metaliks Ltd. [(2021) 19 SCC 672]***, a dissenting financial creditor is entitled only to receive at least the amount payable under the liquidation value, and not the entire value of its security. Accordingly, the payment proposed to the Applicant under the Resolution

Plan is in full compliance with the statutory provisions and judicial precedents. The Resolution Plan ensures that all similarly placed creditors are treated in a fair and equitable manner and that no discrimination has been made between members of the same class. The pro-rata distribution, as approved by the CoC exercising its commercial wisdom, maintains parity among all secured financial creditors and fully satisfies the requirements of Sections 30(2) and 30(4) of the Code.

xx. Furthermore, Applicant is an unsecured Financial Creditor, and is not holding any registered charges on MCA portal but merely holding two original title deed of the land and JDA which cannot be considered as security interest. The Applicant cannot hold itself over the interest of the Homebuyers by arbitrarily deriving its own liquidation value. The SRA has provided treatment to the claim of the Applicant in its resolution plan and the same shall be binding upon the Applicant. Reliance has been placed on ***Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta and Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh & Ors., (2020) 11 SCC 467.***

xxi. It is further submitted that the Hon'ble Appellate Authority vide order dated 08.09.2025 ***Small Industries Development Bank of India Versus Sumit Sharma, Erstwhile RP & Anr in L.A. No. 5309 of 2025 of Company Appeal (AT) (Insolvency) No. 1359 of 2025*** has held that the judgement of the Hon'ble Supreme Court in India Resurgence ARC Pvt. Ltd. Vs. 'Amit Metaliks Ltd. & Anr. reported in [(2021) 19 SCC 672] has already laid down the proposition with respect to distribution which has to be as per the decision of the CoC and since it is subjudice before the Hon'ble Supreme Court in 'DBS Bank Ltd. Singapore' Vs. "Ruchi Soya Industries Ltd. & Anr. in [Civil Appeal

No. 9133/2019] It will continue to remain applicable as the law, unless and until the Hon'ble Supreme Court delivers a judgment to the contrary.

- xxii.** The Applicant's allegation that the valuation reports relied upon by the Resolution Professional are contrary to law is incorrect. Two IBBI-registered valuers were appointed to carry out the valuation as per Regulation 35(2) of the CIRP Regulations. The valuation reports were discussed and accepted in the CoC meetings, with over 83% of voting members supporting them. The valuations were based on the assets of the Corporate Debtor as on the CIRP date and excluded any hypothetical or non-existent rights. The CoC, being the commercial decision-maker under the IBC, accepted the valuations after due deliberation. Therefore, the reports are valid and binding.
- xxiii.** It is further submitted that the Resolution Plan clearly stipulates that implementation must be completed within twelve months from the date of approval, which is in conformity with the IBC framework. The "effective date clause only ensures that necessary statutory approvals, transfers, and registrations are completed before implementation begins. This is a standard and practical safeguard, not an open-ended or indefinite clause.
- xxiv.** It is contradictory for BDR to object to the process of inviting addendums, as BDR itself had earlier requested in the CoC that addendums be invited from all PRAs who submitted EOIs in 2019. BDR had even submitted an EOI through Rishi Infratech Pvt. Ltd. but later withdrew without submitting a resolution plan. Therefore, having itself supported the addendum process, BDR cannot now object to the same procedure. This clearly shows inconsistency and lack of bona fides in BDR's objections.
- xxv.** It is submitted that in the 16th COC meeting held on 07.04.2025, it is mentioned that the Representative of the Home buyers, Mr Nitin Bajaj

suggested that the addendum to the Resolution Plan should be called from all the PRA who has submitted the EOL. RP Clarified to the AR of class of creditors that there are four PRAs in the final list of prospective Resolution Applicants and one of the PRA (Rishi Infratech Pvt Ltd) did not submit its Resolution Plan.

xxvi. The AR on consultation with the COC Members submitted that the addendum to the Resolution Plan should be called only from the PRA who has submitted the Resolution Plan and not from the one who did not submit the Resolution Plan. Accordingly, the COC discussed and asked the RP to put the Resolutions for voting of the COC which was approved by the CoC with 83% voting share.

xxvii. The Resolution Plan submitted by Aadi Buildprop Pvt. Ltd.-EPIL Consortium has been duly evaluated and approved by the Committee of Creditors (CoC) after following the due procedure prescribed under the Insolvency and Bankruptcy Code, 2016, and the regulations framed thereunder. The CoC, in exercise of its commercial wisdom, has approved the said Resolution Plan by an overwhelming majority, and there exists no legal, factual, or procedural infirmity in the process. Reliance has been placed on ***K. Sashidhar v. Indian Overseas Bank & Ors., (2019) 12 SCC 150; Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531.***

5. FURTHER SUBMISSION OF THE APPLICANT:

- i.** It is submitted that as per RFRP, the performance guarantee was to be furnished for an amount of Rs. 10 crores or an amount equivalent to 10% of the upfront cash plus the discounted value of equity/ quasi equity infusion, whichever is higher. A bare perusal of the said Minutes reveals that the revision was with respect to minimum net worth, minimum turnover and not with regard to reduction of the amount of performance bank guarantee. In

fact, as per the 4th COC meeting, even the EMD amount was specified as Rs. 1 crore. Moreover. It is pertinent to mention herein that the criteria under the RFRP was revised by the RP in the 4th COC Meeting without any voting. The same is apparent from the minutes of the meeting placed on record by the RP in IA 42 of 2025.

- ii.** It is submitted that the Resolution Professional also sought clarification as to opportunity to other PRAs, however, it is apparent from the response of IBBI dated 4th April 2025 that no such clarification or interpretation was given by the IBBI and on the other hand the Resolution Professional was directed to proceed in compliance with the directions of the Tribunal. The Resolution Professional was further advised to consider seeking suitable directions from the Adjudicating Authority by filing appropriate application. Admittedly, no such application was filed by the Resolution Professional.
- iii.** The Resolution Professional failed to discharge its obligations under the Code. The Resolution professional further permitted a new consortium to file the addendum, which new consortium was not even a PRA. Moreover, in view of the response of IBBI, the Resolution Professional cannot shift the onus to the AR of Creditors in a Class or CoC.
- iv.** It is submitted that the Applicant is secured financial creditor and there is no right vested in the resolution professional to change the category of the Applicant as alleged. The revised list of creditors created by the Resolution Professional is illegal, wrongful and is non-est in law. It is further submitted that in the application filed by the Resolution Professional itself bearing IA No.42 of 2025/Resolution Plan, the Applicant is duly reflected as a secured financial creditor.

- v. The Applicant has further submitted that the Addendum has not been signed by EPIL and the Addendum has been signed only by Aadi Propbuild Pvt. Ltd. As such by any stretch of law, it cannot be claimed by the Respondent No.2 that the Addendum is on behalf of the initial PRA.
- vi. The reply filed on behalf of the Consortium is not supported by any affidavit of a duly authorised or competent person on behalf of the Consortium. It has been vaguely claimed by Mr. Sandeep Gupta that he is authorised under the provision of IBC to make the affidavit. Moreover, the reply itself only bears the signatures of Mr. Sandeep Gupta along with the rubber stamp only of Aadi Propbuild Pvt. Ltd.
- vii. The Respondent no.2 has referred to a development Agreement dated 23.05.2012 executed between RMS and SIPL. The Respondent no.2 claims that it will have an option to get the ownership of the identified land in its favour and has further provided that land owners shall cooperate by signing and executing all necessary documents for such transfer. By no stretch of law or imagination by passing of a resolution plan, the land owners can be forced to sign and execute documents of transfer of title in favour of the resolution applicant. The said provision in the resolution plan is unknown to law. It is apparent that the resolution plan is inherently unviable, uncertain and is not implementable.
- viii. In the said background the developer in the said agreement was SIPL and not the Corporate Debtor. On the basis of the said agreement, the Respondent No.2 cannot claim that the corporate debtor or its successors have legally recognized and enforceable land rights.
- ix. The order dated 5th May, 2016 of the Ld. Arbitrator is an interim order and no final status of the said proceeding have been disclosed to this Hon'ble

Tribunal. Moreover, even as per the said order, the possession is stated to be with SIPL and not the Corporate Debtor.

- x.** The agreement between SIPL and the Corporate Debtor is an unregistered agreement and does not create any vested right in favour of Corporate Debtor.
- xi.** It is submitted that no period has been prescribed for the said alleged necessary statutory approvals, or transfers or registration. It is further submitted that the ulterior motive of the SRA is apparent as the definition of Effective Date has been entirely changed from the original plan to the one in the addendum.

Original Plan	Addendum
<p><i>“1.21 Effective Date means the date when this Resolution Plan is approved by Adjudicating Authority and no appeal has been filed or pending and the limitation period for filing an appeal is also over against any order.”</i> [Pg. 129 of IA 42 of 2025]</p>	<p><i>“1.23 Effective Date means The effective date of the plan shall be the date when the plan is approved by the concerned adjudicating authority viz. NCLT and no appeal is filed or pending and the time period for filing an appeal is over against the order and post approval the Authorities duly transfer the land in the name of RA and prove all N.O.C including beneficial interest/bifurcation of the license, project land free from any dispute and RA completes the process of registration of the various towers proposed to be constructed under this plan with Rera Authorities;”</i> [Pg. 294 of IA 42 of 2025]</p>

6. ANALYSIS AND FINDINGS:

- i.** We have heard the Ld. Counsel of the parties and have perused the record.
- ii.** The present Application has been filed by BDR Builders and Developers Pvt. Ltd., a secured Financial Creditor and member of the Committee of Creditors, under Section 60(5) of the Code challenging the Resolution Plan submitted by

Aadi Propbuild Pvt. Ltd. (APPL)-EPIL Consortium and seeking rejection of I.A. No. 42 of 2025 filed for approval of the said Resolution Plan.

- iii.** The Applicant has assailed the approval process as well as the Resolution Plan on multiple grounds, inter alia, alleging that the Resolution Professional acted beyond the scope of the order dated 27.03.2025 by inviting and considering revised plans from other Prospective Resolution Applicants without issuance of a fresh Form-G; that the approval process was undertaken beyond the CIRP period; that the Resolution Plan is neither feasible nor viable owing to serious deficiencies relating to ownership and development rights over the project land; that the Plan is contingent upon uncertain future events and contains impermissible withdrawal mechanisms; that material modifications were introduced through addendums affecting stakeholder rights; and that the valuation process and consortium structure suffer from fundamental infirmities.
- iv.** The Resolution Professional and the Successful Resolution Applicant have opposed the Application and defended both the process adopted and the commercial decision of the Committee of Creditors.
- v.** In light of the aforesaid submissions and the material available on record, the issues requiring determination by this Adjudicating Authority are examined hereunder:
- vi. Issue No. 1: Whether the Resolution Professional could have invited and considered addendums/revised plans from other Prospective Resolution Applicants after the order dated 27.03.2025 and whether the approval process culminating in approval of the APPL-EPIL Consortium Plan is sustainable in law?**

- a.** The primary challenge raised by the Applicant pertains to the legality of the process adopted by the Resolution Professional after the order dated 27.03.2025 passed by this Adjudicating Authority in I.A. No. 4291 of 2024. The Applicant has argued that the said order merely permitted reconsideration of the Resolution Plan submitted by Om Drishian International Limited ("ODIL") after curing the deficiencies identified by this Adjudicating Authority and did not authorize reopening of the resolution process or invitation of revised plans from other PRAs. According to the Applicant, once the revised ODIL Plan was rejected by the Committee of Creditors, the Resolution Professional ought to have initiated a fresh process by issuing a fresh Form-G in accordance with the provisions of the Code and the CIRP Regulations.
- b.** The Resolution Professional and the Successful Resolution Applicant have sought to justify the procedure adopted on the ground that the Committee of Creditors, exercising its commercial wisdom, had approved consideration of revised proposals from existing PRAs with a view to maximize value for stakeholders and expedite resolution of the Corporate Debtor. It has further been argued that the invitation of addendums was merely a continuation of the existing process and did not amount to commencement of a fresh resolution process.
- c.** We have carefully considered the rival submissions and examined the material placed on record. The sequence of events assumes considerable significance. It is not in dispute that the Resolution Plan submitted by ODIL had already been approved by the CoC on 11.06.2020 and an application seeking approval thereof was pending before this Adjudicating Authority. Thereafter, I.A. No. 4291 of 2024

came to be filed seeking withdrawal of the earlier approval application and certain consequential reliefs. The Applicant has specifically drawn our attention to the fact that one of the reliefs sought in the said application was permission to invite revised plans from other PRAs. A perusal of the order dated 27.03.2025, however, reveals that no such liberty came to be granted. The order was confined to reconsideration of the deficiencies identified in the ODIL Plan.

- d.** This position is further fortified by subsequent events. The minutes of the 20th CoC Meeting held on 23.05.2025 and continued on 24.05.2025 reveal that the revised ODIL Plan was placed before the CoC in pursuance of the aforesaid order. The revised plan ultimately came to be rejected by 100% voting share. Immediately thereafter, the Applicant addressed an email dated 24.05.2025 to the Resolution Professional specifically recording its objection and stating that in the event of rejection of the ODIL Plan, the Resolution Professional ought to initiate a fresh process through publication of a fresh Form-G. Thus, the objection presently raised was not an afterthought but was contemporaneously communicated to the Resolution Professional at the relevant stage.
- e.** More importantly, the minutes of the said meeting themselves record that the Authorized Representative of the class of creditors observed that addendums submitted by other PRAs could be considered "*with the permission of the Hon'ble NCLT/NCLAT.*" This observation is of considerable significance because it demonstrates that even the stakeholders participating in the process were conscious that consideration of revised plans submitted by other PRAs was not

automatically permissible and would require authorization from the competent judicial forum. The record does not disclose that any such permission was subsequently obtained.

- f.** Notwithstanding the aforesaid position, the Resolution Professional proceeded to convene the 21st CoC Meeting on 14.06.2025 for consideration of revised proposals submitted by other PRAs, including APPL-EPIL Consortium. The Applicant once again objected by way of email dated 14.06.2025 and reiterated that in the absence of permission from the Adjudicating Authority, the process could not proceed on the basis of addendums submitted by other PRAs. The Applicant also informed the Resolution Professional that if a fresh process were to be initiated, it desired to participate therein.
- g.** The Respondents have attempted to justify the process by relying upon the commercial wisdom of the Committee of Creditors. While there can be no doubt regarding the settled principle that commercial decisions of the CoC ordinarily lie beyond the scope of judicial review, it is equally well settled that commercial wisdom cannot be invoked to override statutory requirements or judicial directions. Once a matter has been remitted by a judicial order for a specific purpose, the scope of such remand cannot be enlarged by administrative action of the Resolution Professional or by resolutions passed by the Committee of Creditors. The doctrine of commercial wisdom operates within the boundaries of law; it cannot be employed to create powers that do not otherwise exist. The reliance placed by the Respondents upon value maximization is equally misplaced. Value maximization is an objective of the Code, but it cannot be achieved through a procedure lacking legal sanction. The

process adopted must remain consistent with statutory requirements and judicial directions.

- h.** The Applicant has also relied upon the proceedings before the Hon'ble NCLAT in Comp. App. (AT) (Ins.) Nos. 608-609 of 2025 wherein ODIL had questioned the process adopted by the Resolution Professional. The observations recorded therein lend support to the contention that the order dated 27.03.2025 contemplated reconsideration of the ODIL Plan and did not expressly authorize invitation of revised proposals from other PRAs.
- i.** This Adjudicating Authority notes that by interim order dated 08.05.2025, the Hon'ble Appellate Tribunal merely permitted the Committee of Creditors to consider the revised Resolution Plan submitted by ODIL. The said order neither authorized reopening of the resolution process nor permitted consideration of revised or additional plans submitted by other Prospective Resolution Applicants. Thereafter, by final judgment dated 23.07.2025, the Hon'ble NCLAT recorded that the direction contained in paragraph 9 of the order dated 27.03.2025 stood complied with upon reconsideration of the ODIL Plan by the Committee of Creditors. Significantly, the Hon'ble Appellate Tribunal expressly left open the question regarding the legality of the subsequent process adopted after rejection of the ODIL Plan and observed that the same would be examined by this Adjudicating Authority in the pending application. The Hon'ble NCLAT further clarified that its interim order dated 08.05.2025 could not be construed as expressing any opinion on the legality of the subsequent steps undertaken by the Resolution Professional or the Committee of Creditors. Thus, neither of the

aforesaid orders can be construed as conferring approval upon the process adopted after rejection of the ODIL Plan.

- j. Viewed cumulatively, the facts establish that the order dated 27.03.2025 did not authorize reopening of the competitive process. The stakeholders themselves acknowledged the necessity of obtaining permission from the Adjudicating Authority or the Appellate Tribunal before considering other addendums and the Applicant repeatedly objected through emails dated 24.05.2025 and 14.06.2025 and that despite such objections and despite the absence of judicial authorization, the Resolution Professional proceeded to place the revised proposals of other PRAs before the CoC. In our considered opinion, the process adopted after rejection of the revised ODIL Plan travelled beyond the scope of the order dated 27.03.2025 and consequently suffers from a foundational legal infirmity. The approval process culminating in approval of the APPL-EPIL Consortium Plan therefore cannot be sustained.

vii. Issue No. 2: Whether the Resolution Plan is feasible and viable when the Corporate Debtor does not possess ownership or demonstrable development rights in respect of the project land?

- a. The Applicant has assailed the Resolution Plan on the ground that the Corporate Debtor neither owns the land upon which the project "Elacasa" is situated nor possesses legally enforceable development rights capable of implementation through the Resolution Plan. According to the Applicant, the land admeasuring approximately 10.218 acres forms part of a larger licensed area and continues to be owned by third parties, namely Yuvraj Singh and R.K. Associates. The

Applicant has further submitted that whatever rights are claimed by the Corporate Debtor originate through a chain of arrangements beginning with a Development Agreement dated 23.05.2012 executed in favour of Sarvram Infrastructure India Pvt. Ltd. and culminating in an unregistered Development Agreement dated 07.02.2013 allegedly executed between Sarvram Infrastructure India Pvt. Ltd. and the Corporate Debtor.

- b.** The Respondents have argued that the right vest with the Corporate Debtor through valid agreements and arbitral award. Resolution Applicant has factored these issues into its implementation strategy and that the project can be revived through appropriate approvals and regularisation of rights. It has been contended that the Plan contemplates obtaining all necessary permissions.
- c.** We have considered the rival submissions. The record itself discloses substantial uncertainty regarding the rights claimed by the Corporate Debtor. The Applicant has relied upon discussions recorded in the 16th CoC Meeting wherein it was acknowledged that the licence issued by DTCP had been cancelled; that RMS Estates Pvt. Ltd. had cancelled the development rights granted to Sarvram Infrastructure India Pvt. Ltd.; that disputes subsisted regarding the development rights; and that neither land nor development rights stood reflected as assets of the Corporate Debtor in its books of account. The Resolution Professional also acknowledged during those deliberations that the Corporate Debtor was not in possession of land and building assets.
- d.** The significance of these admissions cannot be ignored. The very foundation of the Resolution Plan is revival and completion of a real

estate project. Yet the material on record does not establish that the Corporate Debtor possesses ownership rights over the land or enforceable development rights sufficient to enable completion of the project. The Resolution Applicant seeks to proceed on the assumption that such rights would eventually become available. However, a resolution plan cannot be founded upon assumptions regarding acquisition of rights that do not presently vest in the Corporate Debtor.

- e. Section 30(2) requires the Resolution Professional to examine whether the Resolution Plan is feasible and viable. Feasibility is not established merely because a Resolution Applicant expresses willingness to undertake a project. The plan must demonstrate a credible mechanism by which the assets and rights necessary for implementation would be available. In the present case, the Plan is conspicuously silent on how ownership rights vested in third parties would be transferred or how disputes regarding development rights would be resolved.
- f. We therefore find considerable force in the Applicant's contention that the Resolution Plan fails to satisfy the statutory requirement of feasibility and viability.

viii. Issue No. 3: Whether the Resolution Plan is contingent upon uncertain future events and therefore incapable of implementation?

- a. The Applicant has further contended that the Plan is fundamentally contingent in nature and its implementation is dependent upon uncertain future events. It has been submitted that the Effective Date itself has been linked to approvals from governmental authorities, transfer of land, recognition of development rights and other future contingencies. According to the Applicant, the Plan does not prescribe

any definite outer timeline for occurrence of these events and consequently remains vulnerable to failure at any stage.

- b.** The Resolution Applicant has argued that regulatory approvals and implementation milestones are common features of resolution plans and that such conditions do not render a plan unimplementable.
- c.** While it is true that every resolution plan may contemplate certain approvals, the facts of the present case disclose a qualitatively different situation. The contingencies identified by the Applicant do not pertain to routine approvals. Rather, they concern the very foundation upon which the project is proposed to be revived. The Resolution Plan contemplates transfer of land in favour of the Resolution Applicant, bifurcation of licences, recognition of development rights and approvals from statutory authorities, all of which are presently uncertain.
- d.** The declaration furnished by the Resolution Professional itself records that the Effective Date would be contingent upon fulfilment of various conditions. Consequently, implementation of the Plan is not linked to existing rights but to future events whose occurrence remains uncertain. The Plan therefore remains exposed to indefinite delay and potential failure.
- e.** The Applicant has further drawn attention to the clause in the Resolution Plan which permits the Resolution Applicant to withdraw the plan in the event of non-deposit of the requisite amounts by the homebuyers. In our considered view, the very existence of such a withdrawal mechanism raises serious concerns regarding the certainty and binding nature of the Resolution Plan.

- f.** A Resolution Plan, once approved by the Committee of Creditors and placed before the Adjudicating Authority, is expected to represent a firm and binding commitment towards resolution of the Corporate Debtor. The insolvency framework under the Code does not contemplate approval of a plan whose implementation remains optional or contingent upon the Resolution Applicant subsequently deciding whether to proceed or not. If a Resolution Applicant were permitted to walk away from implementation upon occurrence of a future contingency, the inevitable consequence would be to expose the entire resolution process to uncertainty even after approval of the Plan.
- g.** If the Resolution Plan itself can be withdrawn at a subsequent stage, where is the certainty of resolution contemplated under the Code. Approval of a Resolution Plan is intended to bring finality to the CIRP process and provide confidence to all stakeholders regarding revival of the Corporate Debtor. A plan that carries within it the possibility of abandonment by the Successful Resolution Applicant cannot be said to inspire such confidence.
- h.** Even assuming that the withdrawal right is linked to failure of homebuyers to deposit amounts envisaged under the Plan, the fact remains that implementation of the Plan is dependent upon fulfilment of a future condition and failure of such condition enables the Resolution Applicant to exit the process altogether. Such a structure reinforces the Applicant's contention that the Plan is contingent in nature and does not possess the degree of certainty and implementability required under Sections 30(2) and 31 of the Code. The SRA cannot withdraw the Plan once approved. The same has been

clarified very recently by the Hon'ble Supreme Court in Sanjay Dave v. Andhra Bank Ltd., 2026 INSC 580.

- i. The Hon'ble Supreme Court in ***Ebix Singapore Pvt. Ltd. v. Committee of Creditors of Educomp Solutions Ltd.*** emphasised that a resolution plan must be capable of implementation and should not remain hostage to open-ended contingencies. The insolvency framework contemplates certainty and finality. The plan in the present case with the aforesaid contingencies cannot be said to satisfy this requirement.
- j. Accordingly, we find merit in the objection that the Resolution Plan lacks the certainty and implementability required under the Code.

ix. Issue No. 4: Whether the addendum submitted by APPL-EPIL Consortium materially altered the treatment of the Applicant and thereby affected the fairness of the process?

- a. The Applicant has specifically pointed out that the treatment proposed for BDR Builders under the original proposal and the treatment proposed under the addendum are materially different. According to the Applicant, the original proposal contemplated substantially higher recovery and also contained an option relating to allotment of flats. However, under the revised proposal, the financial treatment of the Applicant was fundamentally altered.
- b. The Applicant has further argued that the modifications were introduced after the Resolution Applicant became aware that the Applicant constituted only 16.47% of the voting share and therefore could not influence the outcome of the voting process.
- c. The Respondents have contended that modification of financial terms is part of the commercial negotiations that occur during CIRP and that

the CoC, exercising its commercial wisdom, accepted the revised proposal.

- d. We are unable to accept the contention of the Respondents. The modifications introduced through the addendum are not merely explanatory or clerical. They affect substantive rights of a stakeholder and significantly alter the commercial architecture of the proposal. The Applicant has demonstrated through comparative charts placed on record that the treatment proposed under the revised plan materially differs from the treatment envisaged under the original proposal.
- e. What is of greater concern is that such modifications were introduced through an addendum submitted during a process whose legality itself is under challenge. The order dated 27.03.2025 contemplated reconsideration of deficiencies in the ODIL Plan. What ultimately emerged was not merely reconsideration of deficiencies but substantial restructuring of commercial terms by another PRA.
- f. In our considered view, the process adopted has resulted in material prejudice to the Applicant and undermines the fairness and transparency expected in a CIRP process.

x. Issue No. 5: Whether the change in consortium composition renders the Resolution Plan unsustainable?

- a. The Applicant has pointed out that the original Resolution Applicant consisted of Aadi Propbuild Pvt. Ltd. and Engineering Projects (India) Ltd., whereas the addendum describes a consortium comprising additional entities and individuals, including P.D. Polychem Pvt. Ltd. and others.

- b.** The Respondents have argued that the additions merely strengthen the consortium and enhance implementation capability.
- c.** The objection raised by the Applicant cannot be brushed aside as a technicality. The identity, eligibility, financial capability and credentials of a Resolution Applicant constitute important considerations in the resolution process. The CIRP framework proceeds on evaluation of specific applicants and their proposals. A material change in consortium composition after submission of the plan necessarily alters the identity of the entity being evaluated.
- d.** In the present case, no fresh process was initiated and stakeholders were not afforded an opportunity to assess the revised consortium structure through a competitive process. The addendum effectively introduced a materially altered consortium into a process already suffering from procedural infirmities.
- b.** Accordingly, the objection deserves acceptance.

xi. Issue No. 6: Whether the valuation process adopted by the Resolution Professional suffers from material infirmities?

- a.** The Applicant has repeatedly objected to reliance upon valuation reports prepared several years earlier and has specifically referred to the email dated 10.06.2025 requesting fresh valuation.
- b.** The purpose of valuation under the CIRP Regulations is to provide stakeholders with a realistic basis for commercial decision making. In the present case, more than five years had elapsed since commencement of CIRP. Revised plans were being considered in 2025 on the basis of valuations prepared at a substantially earlier point of

time. The Applicant's request for fresh valuation was therefore neither unreasonable nor frivolous.

- c. While valuation is ordinarily a commercial matter, the facts of the present case demonstrate that the CoC proceeded to consider materially revised proposals without updated valuation inputs. This has a direct bearing upon the legitimacy of the decision-making process.
- d. Accordingly, the objection merits acceptance in the peculiar circumstances of the present case.

7. ORDER:

- i. In view of the foregoing discussion, this Adjudicating Authority is of the considered opinion that the objections raised by the Applicant, BDR Builders and Developers Pvt. Ltd., merit acceptance. The process adopted by the Resolution Professional subsequent to the order dated 27.03.2025, the consideration and approval of revised/additional Resolution Plans without issuance of a fresh Form-G, the infirmities affecting the feasibility and implementability of the Resolution Plan, the contingent nature of the Plan, the material alterations introduced through the addendum, the concerns relating to valuation, and other deficiencies discussed hereinabove cumulatively render the Resolution Plan submitted by APPL-EPIL Consortium incapable of approval under Sections 30(2) and 31 of the Code.
- ii. Accordingly, the Resolution Professional is directed to initiate a fresh process for invitation of Expressions of Interest by issuance of a fresh Form-G along with bringing out absolute clarity regarding land availability for project implementation, strictly in accordance with the provisions of the Code and the CIRP Regulations, and place the outcome thereof before the Committee of Creditors for consideration in accordance with law.

- iii.** The Resolution Professional shall take all consequential steps required for conducting the process afresh including issuance of revised timelines, invitation of prospective resolution applicants and consideration of resolution plans in accordance with the Code and applicable Regulations.
- iv.** The Committee of Creditors shall thereafter consider the resolution plans received pursuant to the fresh Form-G process and take an informed commercial decision in accordance with the provisions of the Code and Regulations therein.
- v.** Accordingly, the present Application being **I.A. No. 4823 of 2025** filed by BDR Builders and Developers Pvt. Ltd. is **allowed** in the aforesaid terms.

-SD/-

-SD/-

ATUL CHATURVEDI
MEMBER (TECHNICAL)

MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)