

Ref: JIL:SEC:2023

8th March, 2023

National Stock Exchange of India Ltd.

“Exchange Plaza”, C-1, Block G,
Bandra-Kurla Complex,
Bandra (E),
Mumbai - 400 051

SCRIP CODE: JPINFRA TEC

BSE Limited

25th Floor, New Trading Ring,
Rotunda Building, P.J. Towers,
Dalal Street, Fort,
Mumbai- 400 001

SCRIP CODE : 533207

Ref. : Disclosure under CIRP pursuant to Regulation 30 read with Schedule III, Part A, Para A, Clause 16 and other applicable Regulations of SEBI (LODR) Regulations, 2015 - NCLT Order dated 07.03.2023 approving the Resolution Plan

Dear Sir/s,

This is in continuation to our disclosure dated 07.03.2023, whereby it was informed that the Hon'ble National Company Law Tribunal, Principal Bench New Delhi (NCLT) has inter-alia approved the resolution plan of Suraksha Reality Limited and Lakshdeep Investments and Finance Private Limited in respect of Jaypee Infratech Limited.

Please find attached herewith NCLT order dated 07.03.2023, which is self explanatory and also contains the Resolution Plan of successful Resolution Applicant.

You are requested to take the above information on record.

Thanking you,

Yours faithfully,

For **JAYPEE INFRA TECH LIMITED**



Surender Kumar Mata
Company Secretary
ACS-7762#

NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
SPECIAL BENCH

IA. NO. 2836/PB/2021, IA. NO. 3457/PB/2021
IA. NO. 3306/PB/2021, and IA. NO. 2521/PB/2022

IN
Company Petition No. (IB)-77(ALD)/2017

IN THE MATTER OF:

IDBI BANK LIMITED

... Applicant/Financial Creditor

Versus

JAYPEE INFRATECH LIMITED

... Respondent/Corporate Debtor

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NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
SPECIAL BENCH

IA. NO. 2836/PB/2021, IA. NO. 3457/PB/2021
IA. NO. 3306/PB/2021, and IA. NO. 2521/PB/2022

IN

Company Petition No. (IB)-77(ALD)/2017

IN THE MATTER OF:

IDBI BANK LIMITED

... Applicant/Financial Creditor

Versus

JAYPEE INFRATECH LIMITED

... Respondent/Corporate Debtor

AND IN THE MATTER OF IA. No. 2836/PB/2021

(SECTION: 30(6) of IBC, 2016)

Mr. Anuj Jain

Interim Resolution Professional
Jaypee Infratech Limited
Building No. 10, 8th Floor,
Tower B, DLF Cyber City,
Phase – II, Sector – 25,
Gurugram, Haryana – 122002

... Applicant

Versus

1. Suraksha Realty Limited

3, Narayan Building,
23, L.N. Road Dadar (East)
Mumbai, Maharashtra – 400014

... Respondent No.1

2. Lakshdeep Investments and Finance Private Limited

3, Narayan Building,
23, L.N. Road Dadar (East)
Mumbai, Maharashtra – 400014

... Respondent No.2

AND IN THE MATTER OF IA. No. 2521/PB/2022

(SECTION: 60(5) of IBC, 2016)

Mrs. Nina Sahani & Ors.

E-322, Second Floor,
Greater Kailash-2,
South Delhi, Delhi -11 0048

... Applicants

Versus

Jaypee Infratech Limited

Through Interim Resolution Professional,
Mr. Anuj Jain
Sector -128, Noida,
Uttar Pradesh - 201304

... Respondent

AND IN THE MATTER OF IA. No. 3457/PB/2021

(SECTION: 60(5) of IBC, 2016)

ICICI Bank Limited

Corporate Office at:
NBCC Place,
Bhishma Pitamah Marg,
New Delhi – 110003

... Applicant

Versus

1. Mr. Anuj Jain

Interim Resolution Professional
Jaypee Infratech Limited
Building No. 10, 8th Floor,
Tower B, DLF Cyber City,
Phase – II, Sector – 25,
Gurugram, Haryana – 122002

... Respondent No.1

2. Suraksha Realty Limited

3, Narayan Building,
23, L.N. Road Dadar (East)
Mumbai, Maharashtra – 400014

... Respondent No.2

3. Lakshdeep Investments and Finance Private Limited

3, Narayan Building,
23, L.N. Road Dadar (East)
Mumbai, Maharashtra – 400014

... Respondent No.3

AND IN THE MATTER OF IA. No. 3306/PB/2021

(SECTION: 60(5) of IBC, 2016)

Yamuna Expressway Industrial Development Authority

First Floor, Commercial Complex,

P-2, Sector Omega 1,

Greater Noida District,

Gautam Budh Nagar,

Uttar Pradesh – 201308

... Applicant

Versus

1. Mr. Anuj Jain

Interim Resolution Professional

Jaypee Infratech Limited

Building No. 10, 8th Floor,

Tower B, DLF Cyber City,

Phase – II, Sector – 25,

Gurugram, Haryana – 122002

... Respondent No.1

2. Suraksha Realty Limited

3, Narayan Building,

23, L.N. Road Dadar (East)

Mumbai, Maharashtra – 400014

... Respondent No.2

3. Lakshdeep Investments and Finance Private Limited

3, Narayan Building,

23, L.N. Road Dadar (East)

Mumbai, Maharashtra – 400014

... Respondent No.3

Order Delivered on: 07.03.2023

CORAM:

JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT

SHRI. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENTS:

For the IRP

: Adv. Sumant Batra, Adv. Ruchi Goyal,
Adv. Sanjay Bhatt

For the SRA

: Sr. Adv. U.K. Chaudhary, Sr. Adv. Sudhir
Makkar, Adv. Aditya Maheshwari, Adv. Eshna

Kumar, Adv. Sagar Bansal, Adv. Mansumyer Singh, Adv. Suamya Gupta, Adv. Veera Matha

- For the CoC** : Adv. Bishwajit Dubey, Adv. Namrata Sadhnani, Adv. Varisha Sharma
- For the Home Buyers** : Adv. Shoeb Alam, Adv. Nakul Gandhi, Adv. Gauri Goburdhan
- For the FD Holders** : Adv. Mohit Sharma
- For the ICICI Bank** : Sr. Adv. Arun Kathpalia, Adv. Mahima Sareen, Adv. Nikhil Mathur, Adv. Misha
- For the YEIDA** : Sr. Adv. Abhinav Vasisht, Adv. Amar Gopal, Adv. Aniket Aggarwal
- For the JAL** : Sr. Adv. Krishnan Venugopal, Adv. Pallavi Srivastava, Adv. Krishnan Agarwal, Adv. Vishal Gupta, Adv. Divyanshu Gupta, Adv. Anupam Choudhary

ORDER

1. The present application I.A No. 2836/PB/2021 is filed by the Interim Resolution Professional (**IRP**) Mr. Anuj Jain (Applicant/IRP) of M/s. Jaypee Infratech Limited (**JIL**), pursuant to the directions given by the Hon'ble Supreme Court of India in the Judgement of **Jaypee Kensington Boulevard Apartments Welfare Association & Ors Vs. NBCC (India) Ltd & Ors. (for brevity, hereinafter referred to as the "Jaypee Kensington")** in Civil Appeal No. 3395 of 2020.
2. The application has been preferred by the IRP under Section 30(6) read with Section 31(1) of the Insolvency and Bankruptcy Code, 2016 (**for brevity, the "IBC, 2016"**) and Regulation 39(4) of Insolvency and Bankruptcy Board

of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**for brevity, the “CIRP Regulations”**) for approval of the Resolution Plan submitted jointly by a Consortium of M/s. Suraksha Realty Limited and M/s. Lakshdeep Investments and Finance Private Limited (**for brevity, called “Suraksha Realty”/ “Suraksha”**) in respect of Jaypee Infratech Limited (**for brevity, called “JIL/the Corporate Debtor”**) seeking the following prayers:

- a) *Pass an order approving the Resolution Plan dated 07.06.2021 together with the Addendum dated 09.06.2021 submitted by the Successful Resolution Applicant, namely, Suraksha Realty Limited and Lakshdeep Investments and Finance Private Limited in respect of the Corporate Debtor under Section 31(1) and declare that the same shall be binding on the Corporate Debtor and its employees, members, all creditors including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force such as authorities to whom statutory dues are owed, guarantors and other stakeholders in the CIRP of the Corporate Debtor;*
- b) *Pass an appropriate order in respect of allowing ICICI Bank (being the sole Dissenting Financial Creditor) to enforce security interest mentioned in Para 76-80 of the instant Application for realization of liquidation value payable to ICICI in terms of Clause 15.48 & 15.50 of the Resolution Plan in terms of Section 30(2)(b) of the Code;*
- c) *Pass an order that details of security interest mentioned in Para 76-80 of the instant Application for realization of liquidation value payable to ICICI shall form part of the order approving the Resolution Plan;*

- d) *Consider passing necessary directions for grant of reliefs as sought under Clause 12 read with Annexure II of the Resolution Plan dated 07.06.2021, if deemed appropriate;*
- e) *Pass such other order/orders as it may deem fit and proper in the facts and circumstances of the case.*

I. BACKGROUND

3. To put the facts succinctly, the underlying main Petition CP (IB)-77/ALD/2017 was filed by the IDBI Bank Limited against the Corporate Debtor under Section 7 of IBC, 2016, which was admitted vide Order dated 09.08.2017 of the Allahabad Bench of this Tribunal. The Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor was initiated and the Applicant/IRP Mr. Anuj Jain was appointed as the Interim Resolution Professional (IRP). The IRP in accordance with the provisions of the IBC 2016, took over the management and affairs of the Corporate Debtor/JIL on 12.08.2017.

4. In the meantime, the homebuyers of Corporate Debtor/JIL filed a **Writ Petition (C)-744/2017 Chitra Sharma & Ors. Vs. Union of India & Ors. [2018 18 SCC 575]** before the Hon'ble Supreme Court of India challenging certain provisions of the IBC 2016, and the Order dated 09.08.2017 passed by the Allahabad Bench of this Tribunal. The Hon'ble Supreme Court vide its Judgement dated 09.08.2018 ordered to restart of the CIR Process of the JIL/ Corporate Debtor.

5. Accordingly, in terms of Regulation 6(1) of CIRP Regulations, 2016, the IRP made a public announcement in Form-A on 17.08.2018.

6. The IRP then, constituted the Committee of Creditors (**for brevity, the “CoC”**) on 07.09.2018 comprising the following members:

5. The list of financial creditors of the CD i.e. Jaypee Infratech Limited of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)
1	Real Estate Allottees (Home Buyers)	56.62 %
2	Fixed Deposit Holders	0.13 %
3	IDBI Bank Limited	19.16 %
4	Union Bank of India (Ex Merger with Corporation Bank)	4.59 %
5	India Infrastructure Finance Company Limited	4.57 %
6	Life Insurance Corporation of India	3.35 %
7	State Bank of India	3.34 %
8	Canara Bank (Formerly Syndicate Bank)	1.72 %
9	Bank of Maharashtra	1.76 %

Sl. No.	Name of Creditor	Voting Share (%)
10	ICICI Bank Limited	1.34 %
11	IFCI Limited	1.24 %
12	The Jammu & Kashmir Bank Limited	1.08 %
13	Axis Bank Limited	0.96 %
14	SREI Equipment Finance Limited	0.12 %
	Total	100.00 %

7. It is submitted that the IRP had earlier filed an Application CA-5/2020 on 20.12.2019 before the Allahabad Bench of this Tribunal for approval of the Resolution Plan of NBCC under Section 30(6) read with Section 31 and Section 60(5) of the IBC, 2016 and Regulation 39(4) of the CIRP Regulations, 2016.

8. It has been further submitted by the Applicant that in the meantime, the Principal Bench of this Tribunal vide its order dated 13.01.2020 in Petition (IB)-77/ALD/2017 directed the registry of NCLT Allahabad Bench to transfer the matters relating to CIRP of Corporate Debtor/JIL and the related applications to itself.

9. It has been stated that the application for approval of the Resolution Plan along with other interlocutory applications was considered by the NCLT Principal Bench. It is submitted by the Applicant that the Resolution Plan of NBCC (India) Ltd. was approved by this Tribunal vide order dated 03.03.2020 with certain modifications.

10. It is further stated by the Applicant that NBCC (India) Ltd. challenged the order dated 03.03.2020 of this Tribunal, in an appeal filed before the Hon'ble NCLAT bearing Company Appeal (AT) (Insolvency) No. 465 of 2020. The Hon'ble NCLAT passed an interim order dated 22.04.2020 directing the Applicant/IRP to constitute an Interim Monitoring Committee (IMC) to implement the approved Resolution Plan. However, the said direction was subject to the outcome of the Appeal. The Interim Monitoring Committee was to comprise the Successful Resolution Applicant i.e., NBCC and three major Financial Institutions, who were the members of the CoC, namely, IDBI Bank Limited, Indian Infrastructure Finance Company Limited, and LIC of India.

11. In the meantime, the Hon'ble Supreme Court vide Order dated 06.08.2020, passed in Civil Appeal No. 3395/2020 in the matter of *Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Limited* directed an ad-interim stay on the operation of the Order dated 22.04.2020 of the Hon'ble NCLAT and the Applicant/IRP to manage the affairs of the Corporate Debtor. A further direction was passed to transfer all the Appeals pending before the Hon'ble NCLAT, arising out of the Order dated 03.03.2020 of this Tribunal, to itself.

II. DIRECTIONS OF THE HON'BLE SUPREME COURT

12. The Hon'ble Supreme Court vide its Judgement dated 24.03.2021 in the matter of ***Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Limited in Civil Appeal no. 3395/2020*** (hereinafter referred to as **Jaypee Kensington**) set aside the order dated 03.03.2020 of this Tribunal and remanded the matter back to the

CoC with a direction to complete the CIR process of the Corporate Debtor within 45 days. The Hon'ble Apex Court permitted only Suraksha Realty and NBCC to submit the Resolution Plans. The relevant paragraphs of the **Jaypee Kensington** are reproduced hereinbelow:

“225. Accordingly, while once again exercising our powers under Article 142 of the Constitution of India to do substantial and complete justice to the parties and in the interest of all the stakeholders of JIL, we conclude on these matters with the following order:

225.1. The matter regarding approval of the resolution plan stands remitted to the Committee of Creditors of JIL and the time for completion of the process relating to CIRP of JIL is extended by another period of 45 days from the date of this judgment.

225.2. We direct the IRP to complete the CIRP within the extended time of 45 days from today. For this purpose, it will be open to the IRP to invite modified/fresh resolution plans only from Suraksha Realty and NBCC respectively, giving them time to submit the same within 2 weeks from the date of this judgment.

225.3. It is made clear that the IRP shall not entertain any expression of interest by any other person nor shall be required to issue any new information memorandum. The said resolution applicants shall be expected to proceed on the basis of the information memorandum already issued by IRP and shall also take into account the facts noticed and findings recorded in this judgment.

225.4. After receiving the resolution plans as aforementioned, the IRP shall take all further steps in the manner that the processes of voting by the Committee of Creditors and his submission of report to the Adjudicating Authority (NCLT) are accomplished in all respects within the extended period of 45 days from the date of this judgment. The

Adjudicating Authority shall take final decision in terms of Section 31 of the Code expeditiously upon submission of report by the IRP.

225.5. These directions, particularly for enlargement of time to complete the process of CIRP, are being issued in exceptional circumstances of the present case and shall not be treated as a precedent.”

13. It is submitted by the Applicant/IRP that NBCC (India) Limited and Suraksha Realty submitted their respective Resolution Plans on 07.04.2021. The Applicant/IRP further submitted that after negotiations, NBCC (India) Limited submitted its revised Resolution Plan on 04.06.2021 and the Suraksha Realty submitted its revised Resolution Plan along with an addendum on 07.06.2021.

III. APPROVAL OF RESOLUTION PLAN BY COC

14. As submitted by the Applicant/IRP, the members of the CoC discussed and deliberated upon the revised Resolution Plans along with their respective addendums submitted by NBCC (India) Limited and Suraksha Realty in the 24th CoC meeting convened on 10.06.2021 and both the plans were put to vote from 14.06.2021 to 23.06.2021. It is further submitted by the Applicant/IRP that the Resolution Plan of Suraksha Realty received 98.66% votes and the plan of NBCC (India) Limited received 98.55% votes of the CoC. Thus, the Resolution Plan submitted by M/s. Suraksha Realty Limited along with M/s Lakshdeep Investments and Finance Private Limited was passed by the CoC. The relevant extracts of the voting sheet relating to the Resolution Plan of the Suraksha Realty are reproduced overleaf:

Voting Item	Voting Item	Voting % required	Assented Voting % Achieved	Highest Voting Received as per Regulation 39(3B) of CIRP Regulations 2016	Decision	Annexure
1	Voting Agenda 1: Voting on the final resolution plan of Suraksha Realty Limited along with Lakshdeep Investments and Finance Private Limited. <i>Note: Final Resolution Plan dated 07 June 2021 submitted by Suraksha Realty Limited along with Lakshdeep Investments and Finance Private Limited ("Suraksha/ Resolution Applicant") read with Addendum dated 09 June 2021 to Final Resolution Plan dated 07 June 2021 be read as composite Resolution Plan to vote.</i>	66%	98.66%	Yes	Passed	Annexure 1

Annexure – 1

Voting item 1

Voting on the final resolution plan of Suraksha Realty Limited along with Lakshdeep Investments and Finance Private Limited.

Note: Final Resolution Plan dated 07 June 2021 submitted by Suraksha Realty Limited along with Lakshdeep Investments and Finance Private Limited ("Suraksha/ Resolution Applicant") read with Addendum dated 09 June 2021 to Final Resolution Plan dated 07 June 2021 be read as composite Resolution Plan to vote.

Results of Voting item 1

Particulars	Count	Claim admitted (INR Crores)	Value (Voting %)			Total %	Assented Voting % as per Section 25A(3A)*
			Assented	Dissented	Abstained from Voting		
Banks	13	9,783	41.91%	1.34%	0.00%	43.25%	41.91%**
Home Buyers	20,590	12,807	23.23%	8.62%	24.77%	56.62%	56.62%
FD Holders	917	29	0.03%	0.01%	0.10%	0.13%	0.13%
Total	21,519	22,619	65.17%	9.97%	24.87%	100.00%	98.66%

Note: Section 25A (3A) stipulates that "Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote: Provided that for a vote to be cast in respect of an application under section 12A, the authorised representative shall cast his vote in accordance with the provisions of subsection (3)"

***The said section is not applicable for all Institutional Financial Creditors.*

Individual voting is annexed herewith in following order:

Class of creditor	Annexure
Banks and Financial Institutions	Annexure A
Home Buyers	Annexure B (certificate from authorized representative)
FD Holder	Annexure C (certificate from authorized representative)

15. The Applicant/IRP has also enclosed the Affidavits filed by the Successful Resolution Applicants (SRAs) stating that they are not barred under Section 29A of IBC, 2016 to submit the Resolution Plan. The said affidavits are reproduced below, for immediate reference:

Before the Members of Committee of Creditors
And
Resolution Professional

In the matter of Jaypee Infratech Limited ("Corporate Debtor")
Affidavit by Mrs. Khyati Valia (authorised representative of Suraksha Realty Limited)

I, Khyati Valia, Director of Suraksha Realty Limited, a company incorporated under the provision of the Companies Act, 1956 ("the Resolution Applicant") do hereby take oath and solemnly affirm as under:

1. That I have been authorised by the Resolution Applicant to submit the instant affidavit.
2. I say that the Resolution Applicant, any person acting jointly with or any other person who is in the management or control of the Resolution Applicant is
 - a. Not an undischarged insolvent;
 - b. Not a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949)
 - c. at the time of submission of the resolution plan does not has an account, or an account of a Corporate Debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the Corporate Debtor.
 - d. has not been convicted for any offence punishable with imprisonment -
 - (i) for two years or more under any Act specified under the Twelfth Schedule of Insolvency and Bankruptcy code ("Code"); or
 - (ii) for seven years or more under any law for the time being in force:
 - e. is not disqualified to act as a director under the Companies Act, 2013
 - f. is not prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets
 - g. has not been a promoter or in the management or control of a Corporate Debtor in which a preferential transaction, undervalued transaction, extortionate credit





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transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code.

- h. has not executed a guarantee in favour of a creditor in respect of a Corporate Debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has not been invoked by the creditor and does not remain unpaid in full or part;
- i. not subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or
- j. does not have a connected person not eligible under clauses (a) to (i).

Verification

Solemnly affirmed that this Affidavit forms an integral part of the Resolution Plan submitted

5th April of 2021

For Suraksha Realty Limited

KHYATI
CHINTAN
VALIA

Digitally signed by
KHYATI CHINTAN
VALIA
DN: cn=KHYATI CHINTAN
VALIA, o=Suraksha Realty Limited,
ou=Director, email=khyati.chintan.valia@suraksha.com

Khyati Valia:

Director (DIN: 03445571)

Before Me

Notary



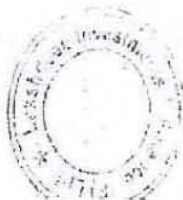
Dilip K. Patil
DILIP K. PATIL
Advocate & Notary

304/B-Wing, 3rd Floor, Prathamesh Apartments,
Navalkar Marg, Azad Road, Andheri (E), Mumbai-69.

Before the Members of Committee of Creditors
And
Resolution Professional
In the matter of Jaypee Infratech Limited ("Corporate Debtor")
Affidavit by Mrs. Raksha Valia (authorised representative of Lakshdeep Investments and Finance Private Limited)

I, Raksha Valia, Director of Lakshdeep Investments and Finance Private Limited, a company incorporated under the provision of the Companies Act, 1956 ("the Resolution Applicant") do hereby take oath and solemnly affirm as under:

1. That I have been authorised by the Resolution Applicant to submit the instant affidavit.
2. I say that the Resolution Applicant, any person acting jointly with or any other person who is in the management or control of the Resolution Applicant is
 - a. Not an undischarged insolvent;
 - b. Not a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949)
 - c. at the time of submission of the resolution plan does not has an account, or an account of a Corporate Debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the Corporate Debtor.
 - d. has not been convicted for any offence punishable with imprisonment -
 - (i) for two years or more under any Act specified under the Twelfth Schedule of Insolvency and Bankruptcy code ("Code"); or
 - (ii) for seven years or more under any law for the time being in force;
 - e. is not disqualified to act as a director under the Companies Act, 2013
 - f. is not prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets
 - g. has not been a promoter or in the management or control of a Corporate Debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code.



[Handwritten Signature]





has not executed a guarantee in favour of a creditor in respect of a Corporate Debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has not been invoked by the creditor and does not remain unpaid in full or part;

- i. not subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or
- j. does not have a connected person not eligible under clauses (a) to (i).

Verification

Solemnly affirmed that this Affidavit forms an integral part of the Resolution Plan submitted on ...²⁷ April of 2021

For Lakshdeep Investments and Finance Private Limited

RAKSHA
SUDHIR
VALIA
Raksha Valia
Director (DIN:00032094)



Before Me

Notary

Dilip K. Patil
DILIP K. PATIL
Advocate & Notary
304/B-Wing, 3rd Floor, Prathamesh Apartments,
Nevalker Marg, Azad Road, Andheri (E), Mumbai-69.

16. It is submitted by the Applicant/IRP that subsequent to passing of its Resolution Plan, the “Suraksha Realty” (**hereinafter, referred to as “Successful Resolution Applicant” or “SRA”**) have submitted the Performance Bank Guarantee of Rs.100 (one hundred) Crores valid till 06.07.2022. However, during the pendency of the present application, the said Performance Guarantee expired and therefore, the Resolution Applicant later submitted the amended Performance Bank Guarantee valid till 05.07.2023 (placed at page 14 of the Affidavit dated 11.08.2022 filed by the

Applicant). The scanned copy of the Amended Performance Bank Guarantee is reproduced below:



TRADE SERVICES NEW DELHI 9/10 SAHAJUR SHAH ZAFAR MARG NEW DELHI - 110009 INDIA	AMENDMENT TO LETTER OF GUARANTEE DATE : 03JUL22	OUR REF. NO. 816020519072-GP AMD. NO. 001
TO : IDBI BANK VIDEOCON TOWER, NEW DELHI - 110 005 INDIA	AMOUNT INR1,000,000,000.00 ***	

AT THE REQUEST OF OUR PRINCIPAL LAKSHDEEP INVESTMENTS AND FINANCE PRIVATE LIMITED, 3, NARAYAN BUILDG, 23 L. N. RD, DADAR EAST MUM 400014, THE ABOVEMENTIONED LETTER OF GUARANTEE IS AMENDED AS FOLLOWS:-

EXPIRY DATE NOW AMENDED TO READ 05JUL23 AT 14.00 HRS. ANY CLAIM UNDER THIS GUARANTEE MUST REACH US IN WRITING BY 04JUL23 AT 14.00 HRS.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN ABOVE:-

I) OUR LIABILITY UNDER THIS BANK GUARANTEE SHALL NOT EXCEED RS.100,00,00,000.00 (RUPEES ONE HUNDRED CRORE ONLY).

II) THIS BANK GUARANTEE SHALL BE VALID UPTO 05.07.2023.

III) WE ARE LIABLE TO PAY THE GUARANTEED AMOUNT OR ANY PART THEREOF UNDER THIS BANK GUARANTEE ONLY IF YOU SERVE UPON US A WRITTEN CLAIM OR DEMAND (AND WHICH SHOULD BE RECEIVED BY US), ON OR BEFORE 04.08.2023 BEFORE 14:00 HOURS (INDIAN STANDARD TIME) WHEREAFTER IT CEASES TO BE IN EFFECT IN ALL RESPECTS WHETHER OR NOT THE ORIGINAL BANK GUARANTEE IS RETURNED TO US.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

***** END *****

FOR STANDARD CHARTERED BANK _____ Manager-Trade Services Standard Chartered Bank D-15672	FOR STANDARD CHARTERED BANK KULWANT SINGH Manager-Trade Services Standard Chartered Bank D-15672
--	--

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17. Since the Resolution Plan of “Suraksha Realty” is approved by the requisite majority of the CoC and the Successful Resolution Applicants are not barred under Section 29A of IBC, 2016, therefore, we would proceed to examine the other aspects of the Resolution Plan under consideration.

18. The Applicant/IRP has filed an Affidavit dated 18.04.2022 giving details of the Corporate Debtor’s Liquidation Value (LV) and Fair Market Value (FMV). The relevant contents of the said Affidavit are reproduced below, for the sake of convenience:

3. The deponent appointed RBSA Valuation Advisors LLP (hereinafter, “RBSA Advisors”) and GAA Advisory LLP (hereinafter, “GAA Advisory”) to determine the Fair Value and the Liquidation Value of the Corporate Debtor. As per report dated 14.02.2019 submitted by RBSA Advisors LLP and the report dated 16.02.2019 submitted by GAA Advisory, the Liquidation Value and the Fair Value of the Corporate Debtor is as under. The average Liquidation Value and average Fair Value is also mentioned below.

S. No.	Registered Valuer	Liquidation Value (In Cr)	Fair Value (In Cr)
1.	RBSA Advisors LLP	17,876	24,866
2.	GAA Advisory	17,658	26,339
Average		17,767	25,602.5

IV. FINANCIAL OUTLAY OF RESOLUTION PLAN

19. Through the same Affidavit dated 18.04.2022, the Applicant/IRP has also filed details of the total Financial Outlay of the Suraksha's Resolution Plan. The relevant extracts are reproduced below, for the immediate reference:

FINANCIAL OUTLAY OF SURAKSHA RESOLUTION PLAN

4. In the Suraksha Resolution Plan dated 07.06.2021 read with its addendum dated 09.06.2021, Suraksha has provided for the following treatment/ payments to the stakeholders of the Corporate Debtor:

Sl. No.	Category of Stakeholder	Sub-Category of Stakeholder	Treatment / Amount Provided under the Plan (in Cr)
1)	Secured Financial Creditors	a. Assenting financial creditors	<p>(i) Issuance of Land parcels having Fair Market Value of : Rs. 6239 Cr.</p> <p>(ii) Non-Convertible Debentures/ Guaranteed Payment Obligations : Rs. 1280 Cr. <i>[Refer clause 15.11 read with 15.16 of Suraksha Resolution Plan dated 07.06.2021 at pg 39 & pg 41 read with addendum dated 09.06.2021 at pg 156 & pg 158 of IA 1603 of 2022]</i></p> <hr/> <p style="text-align: center;">Total (i)+(ii) = Rs. 7519 Cr</p> <p><i>[Refer 1(b)(ii) in point 7 at page 271 in Form H filed with IA 2836/2021]</i></p> <p>(iii) Amount earmarked for facilitation of monetization of Land Parcels and distribution of proceeds : Rs. 25 Cr. <i>[Refer clause 15.23 of Suraksha Resolution Plan dated 07.06.2021 at pg 43 read with addendum dated 09.06.2021 at pg 159 of IA 1603 of 2022]</i></p> <hr/> <p style="text-align: center;">Total (i)+(ii)+(iii) Rs. 7544 Cr</p>
		b. ICICI Bank Ltd. ('ICICI') - Dissenting Financial Creditor	<p>(i) Enforcement of Security interest (Land Parcel admeasuring 180 acres at Tappal) to the extent of liquidation value payable to ICICI: Rs. 218 Cr. <i>[Refer clause 15.15 of Suraksha Resolution Plan dated 07.06.2021 at pg 41 read with addendum dated 09.06.2021 at pg 157 of IA 1603/2022]</i></p>
Total (a+b)			Rs. 7762 Cr

Sl. No.	Category of Stakeholder	Sub-Category of Stakeholder	Treatment / Amount Provided under the Plan (in Cr)	
2)	Unsecured Financial Creditors	a. Allottees/ Homebuyers ¹	<p>(i) Completion of construction of Projects amounting to satisfaction of : Rs. 9268.41 Cr.² <i>[Refer clause 17.4, 17.19, 17.23, 17.28 (pg. 61 onwards) of Suraksha Resolution Plan dated 07.06.2021 read with addendum dated 09.06.2021 filed in IA 1603/2022]</i></p> <p>(ii) Delay Penalty compensation : Rs. 279 Cr. <i>[Refer clause 17.19 at pg 64 of Suraksha Resolution Plan dated 07.06.2021 read with addendum dated 09.06.2021 filed in IA 1603/2022]</i></p> <p>(iii) Early payment Discount : Rs. 15 Cr. <i>[Refer clause 17.17 at pg 63 of Suraksha Resolution Plan dated 07.06.2021 read with addendum dated 09.06.2021 filed in IA 1603/2022]</i></p> <hr/> <p>Total (i)+(ii)+(iii) = Rs. 9562.41 Cr</p> <p><i>[Refer 2(b)(i) in point 7 at page 271 in Form II filed with IA 2836/2021]</i></p> <p>(iv) Infusion of working capital for completion of construction of projects : Rs. 3000 Cr (approx.) <i>[Refer clause 17.4 at pg 61 and clause 13 of Suraksha Resolution Plan dated 07.06.2021 at pg 32 read with addendum dated 09.06.2021 at pg 155 in IA 1603/2022]</i></p>	
			Total (i)+(ii)+(iii)+(iv)	Rs. 12,562.41 Cr
			b. Fixed Deposit Holders	(i) Full Payment against admitted claim : Rs. 29.26 Cr.

¹ Suraksha also proposes to deliver homes to homebuyers who have not filed their claim in the stipulated time but files the same before NCLT approval date.

² This amount includes refund amounts of Rs. 178 Cr towards refund proposed projects and Rs. 65 Cr towards cancelled units.

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Sl. No.	Category of Stakeholder	Sub-Category of Stakeholder	Treatment / Amount Provided under the Plan (in Cr)
			(ii) Amount earmarked for claims filed subsequent to finalisation of IM till NCLT approval date : Rs. 9.16 Cr. [Refer clause 16 at pg 58 of Suraksha Resolution Plan dated 07.06.2021 read with addendum dated 09.06.2021]
		Total[(i)+(ii)]	Rs. 38.41 Cr
Total (a+b)			Rs. 12600.82 Cr
3)	Operational Creditors	a. YEIDA	Rs. 0.20 Cr [Refer clause 20.2 at pg 72, clause 20.8 at pg 83 of Suraksha Resolution Plan dated 07.06.2021 read with addendum dated 09.06.2021 filed in IA 1603/2022]
		b. Workmen	NIL
		c. Employees	NIL
		d. Income Tax	Rs. 0.10 Cr [Refer clause 19.3 at pg 71 of Suraksha Resolution Plan dated 07.06.2021 read with addendum dated 09.06.2021 filed in IA 1603/2022]
		e. Other Operational Creditors	Rs. 0.10 Cr [Refer clause 21.2 at pg 85 of Suraksha Resolution Plan dated 07.06.2021 read with addendum dated 09.06.2021 filed in IA 1603/2022]
		Total [a+b+c+d+e]	Rs. 0.40 Cr [Refer (3) in point 7 at page 271 in Form H filed with IA 2836/2021]
4)	Public Shareholders		Rs. 0.14 Cr [Refer clause 24.8 at pg 90 of Suraksha Resolution Plan dated 07.06.2021 read with addendum dated 09.06.2021 filed in IA 1603/2022] [Refer point 8 of Form H at pg 273 filed with IA 2836/2021]
Grand Total(1+2+3+4)			Rs. 20,363.36 Cr



In terms of the foregoing, the total financial outlay of Suraksha Resolution Plan dated 07.06.2022 read with its addendum dated 09.06.2022 is Rs. 20,363.36 Cr.

V. SALIENT FEATURES OF RESOLUTION PLAN

20. The salient features of the CoC-approved Resolution Plan as submitted by Suraksha Realty; Successful Resolution Applicant (SRA) are the following:

20.1 The SRA proposes to resolve the defaults of the Corporate Debtor in the following manner:

- Limiting and resolving the debt obligations of the Corporate Debtor;
- Infusing additional working capital;
- Taking control of all the business activities by terminating concerned related party agreements/ contracts;

- d) Prudent financial planning and transparency in management and utilization of funds; and
- e) Good corporate governance

20.2 The SRA proposes to construct homes for the Homebuyers as per the following timelines (Part IV; Annexure-I of the Resolution Plan):

ANNEXURE- I
Table 26: Project wise Estimated Completion Schedule

Project	Project Development	Projected Completion Period from 90 days Post Approva Date	No. of Towers
<u>Noida Projects</u>			
Kensington Park – Plots	Plotted Development	6 Months	-
Yamuna Enclave	Plotted Development	6 Months	-
Kingswood Oriental	Villa Development	12 Months	-
Aman	Residential	6 Months	26
Pebble Court	Residential	10 Months	4
Klassic	Residential	15 Months	32
Kensington Park Apartments & Heights	Residential	13 Months	18
Kosmos	Residential	14 Months	71
Kasa Isles	Residential	19 Months	15
Kensington – Boulevard	Residential	22 Months	21
Kube	Residential	29 Months	8
Wish Point	Commercial Shops	34 Months	-
Orchard	Residential	36 Months	8
Garden Isles	Residential	40 Months	24
Krescent Homes	Residential	40 Months	23
Total			250
<u>Mirzapur</u>			
Yamuna Vihaar	Plotted Development	24 Months	Plots
Sunnyvale Homes	Plotted Development	24 Months	Plots
Tanishq Square	Commercial	30 Months	2
Villa Expanza	Villa Deveopment	30 months*	
Budh Circuit Studios- Phase I	Residential	42 Months*	4
Naturevue Apartments- Phase I	Residential	42 Months*	1
Udaan & Boulevard Court- Phase I	Residential	42 Months*	23
Aman III- Phase I	Residential	42 Months*	4

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			34
<u>Agra</u>			
Kensington Park-Plots	Plotted Development	24 months	Plots

*subject to availability of unencumbered and unfettered possession of land, being developed under project, construction of phase I and shifting of buyers of phase II to phase I not only to give them possession faster but also it's unviable to complete phase II at this stage, as no much work done at sites of phase II.

20.3 **Feasibility and viability of the Resolution Plan:** The Resolution Applicant has committed to bringing the equity infusion and working capital facility/ group company loan for the purpose of construction of projects and delivery of homes. The such commitment of delivery is given based on the

estimated cost provided in the Virtual Data Room (VDR) which, as per them, is achievable. They have further averred that *all other treatments provided in the Resolution Plan are viable and achievable.*

20.4 **Sources of Funds:** The Resolution Applicants at para 13 on page no. 26-27 of the Resolution Plan have detailed sources of funds as given in the following table:

Table 8: Sources of Funds

Sr. No.	Source of Funds	Rs. Crore
1.	Upfront Equity Infusion by Resolution Applicants within 90 days of the Approval Date in the Corporate Debtor to be utilised as and when required, on need basis for completion of the Projects. Source of Funds - Networth of the Resolution Applicants along with networth of promoters of Resolution Applicants and their related entities of Rs. 6,537 crore as mentioned in the Resolution Plan.	125
2.	Debt and/or any other instrument from the Resolution Applicants and/or their related entities to the Corporate Debtor, in 90 days of the Approval Date to be utilised as and when required, on need basis for completion of the Projects. Source of Funds - Networth of the Resolution Applicants along with networth of	125

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Sr. No.	Source of Funds	Rs. Crore
	promoters of Resolution Applicants and their related entities of Rs. 6,537 crore as mentioned in the Resolution Plan.	
3.	Redemption of 0.01% Non-Convertible Debentures to be issued in accordance with this Resolution Plan to the Assenting Institutional Financial Creditors ("Assenting NCDs"). Source: Internal Accruals of the Company and / or additional fund infusion by Resolution Applicants by way of equity, debt or any other instrument, as it deemed fit.	1,200
4.	Land for Institutional Financial Creditors, as per the terms of this Resolution Plan at FMV.	6,536
5.	Loan ("Credit Facility") of Rs. 3000 crore to be arranged by Resolution Applicants within 90 days of the Approval Date, to be utilised as and when required, on need basis for completion of the Projects. Source - Expression of Interest received from SWAMIH fund for stressed assets of Government of India and / or facility from Standard Chartered Bank Group (Letter of Support annexed) and/or any other banks or entities and / or Networth of the Resolution Applicants along with networth of promoters of Resolution Applicants and their related entities as mentioned in the Resolution Plan.	3,000
5	Bank balance available with the Corporate Debtor excluding funds earmarked for MIBCI safety barriers.	111
6	Estimated Receivables from Jaiprakash Associates Limited subject to reconciliation under the aegis of NCLT in terms of Jaypee Kensington Judgment*	300
7	Estimated net operating cashflows from the Yamuna Expressway of first three years towards construction and/or refund and/or regular operating expenses of the Corporate Debtor and/or servicing of interest on Credit Facility obtained for construction for home buyers.	750
	Total	12,147

* The amount mentioned herein is indicative in nature and may change.

The amounts appearing in sr. no. 1 to 3 and 6 of the above table are hereinafter collectively referred to as an "Applicants' Contribution".

20.5 **Application/Utilisation of Funds:** The Resolution Applicants at para 13 on page no. 27-28 of the Resolution Plan have also indicated utilization of funds as given in the following table:

Table 9: Application of Funds

Sr. No.	Application of Funds	Rs. Crore
1.	Payment towards Insolvency Resolution Process Costs on actual basis ("IRP Cost")*	5.45
2.	Upfront Payment to the Operational Creditors in terms of this Resolution Plan	0.40

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Sr. No.	Application of Funds	Rs. Crore
3.	Payment to the workmen & employees	-
4.	Redemption of 0.01% Assenting NCDs issued to Assenting Institutional Financial Creditors,	1,200
5.	Land for Institutional Financial Creditors, as per the terms of this Resolution Plan	6,536
6.	Payment to FD Holders	38.42
7.	Funds for construction of real estate projects for delivery of homes to Homebuyers and/or refund to homebuyers to be utilised in line with the business plan for construction*, in accordance with the Resolution Plan	4,300
8.	Payment to Public Shareholders	0.14
9.	Provision for expenses for managing and monetisation of land for Assenting Institutional Financial Creditors	25.00
10.	Provision for initial operating expenses of the Corporate Debtor and other contingencies including additional CIRP expenses	41.59
	Total	12,147

* The total amount of the Insolvency Resolution Process Costs, Funds for Home Buyers, workers dues, and further provisions for expenses are indicative in nature and may change

20.6 Treatment for CIRP Costs: The Resolution Applicant understands that as per the information available in the Virtual Data Room (VDR) out of the total CIRP Cost, a sum of Rs. 33.63 Crore has been paid out of the internal accruals of the Corporate Debtor and a sum of Rs. 5.45 crore remains to be paid. In the event, the CIRP cost increases beyond Rs. 5.45 crore, the excess amount shall be paid by the Resolution Applicant by bringing additional funds, in the event the full CIRP Cost is not paid out of the internal accruals of the Corporate Debtor.

20.7 Treatment to Dissenting Financial Creditors (Para 15.47): The Resolution Applicants have proposed to allow enforcement of security interest to the Dissenting Institutional Financial Creditor in order to make the plan viable, feasible and effectively implementable. The details are given below:

Table 16: Treatment to Dissenting Institutional Financial Creditors

S.No.	Location of Land	Existing Security (in acres)	Initial Provision for Dissenting Institutional Financial Creditors out of the <u>Consortium Paripassu Corporate Debtor Land Parcels Security Interest</u> (in acres)	Average Liquidation Value rate per acre@ Rs. Cr/acre	Liquidation value (Rs. Cr)
1	Jaganpur	320	130	2.78	361
2	Mirzapur	227.40	-	2.89	-
3	Tappal	*666	666	1.30	866
4	Agra	690	690	1.23	849
	Total	1903.4	1,486		2,076

@ as provided by IRP;

*166 acres out of 666 acres mortgaged to exclusive charge holders

20.8 Treatment of Institutional Financial Creditors by way of NCDs and Land Parcels (Para 15.11): The Resolution Applicant proposes to issue 0.01% Non-Convertible Debentures (called Assenting NCD's) and the following land parcels to the Assenting Institutional Financial Creditors:

Table 11: Treatment of the Institutional Financial Creditors

S.No.	Particulars	Rs. Crore	
<i>Instrument</i>			
A.	Issuance of 0.01% Assenting NCDs of face value of Rs. 1,200 crore, within 90 days of the Approval Date in accordance with the Resolution Plan. Indicative Terms for the Assenting NCDs are mentioned in Annexure-IV hereto.	1,200	
	<i>Sub-Total Instruments</i>	1,200	
<i>Land</i>			
	Location of Land	Area (in acres)	FMV Rs. crore
1	Jaganpur	718	2,915
2	Mirzapur	50	212
2	Tappal	976	1,815
3	Agra	850	1,594
	Total Land	2,594	6,536
	Grand Total		7,736

20.9 Admitted claims of Institutional Financial Creditors (Para 15.10): As submitted by the Resolution Applicant, the admitted claims of Institutional Financial Creditors are to the tune of Rs.9,782.60 crore as per the following details and breakup provided in the Information Memorandum (IM):

Table 10: Admitted Claims of the Creditors

Sr. No.	Name of the Institutional Financial Creditors	Claims Admitted	Security
1.	Consortium comprising of the following Institutional	9,537.60	As appearing
	Financial Creditors: including IDBI Bank, IIFCL, LIC, SBI, Syndicate Bank, Bank of Maharashtra, ICICI Bank, Union Bank, IFCL, J&K Bank)		at Page No. 57 and 58 of the IM
2.	Axis Bank Limited	218.00	
3.	SREI Equipment Finance Limited	27.00	
	Total Claims Admitted	9,782.60	

20.10 **Treatment for the Fixed Deposit Holders (Para 16.2):**

Particulars	Rs. In Crore
Payment against Claims Admitted as per IM	29.26
Proportionate Payment to Claims filed subsequent to IM however prior to NCLT Approval Date (as goodwill gesture)	9.16
Total	38.42

It has been stated by the Resolution Applicants that against the admitted claims of Rs. 29.26 crores of Fixed Deposit Holders, the entire amount of Rs. 29.26 Crore shall be paid to the Fixed Depositors, whose Claims have been admitted in IM, on pro-rata basis, in three equal half-yearly instalments from the Transfer Date, as full and final settlement of all the claims of Fixed Deposit holders in accordance with the provisions of the Code. No payment shall be made towards interest over such fixed deposits. It has been added that against the Claims filed subsequent to the finalization of IM but prior to NCLT Approval Date, an amount of Rs. 9.16 Crore shall be paid to Fixed Deposit holders, on a pro-rata basis, in three equal half-yearly instalments, from the Approval Date, as full and final settlement of all the claims. No payment shall be made towards interest over such fixed deposits. It has been clarified that though the Resolution Applicant is legally entitled not to deal with the Claims not admitted by IRP, however, the Resolution Applicant has provided for payment of Rs. 9.16 crore as a goodwill gesture, in the interest of such public depositors and shall not be construed to be differential treatment.

20.11 **Treatment of the Financial Creditor in a class – Homebuyers:** It has been stated by the Resolution Applicants that the admitted claims of

Homebuyers as of 29.05.2021 are to the tune of Rs. 12,806 Crores, as per the details given below:

Table 18: Admitted Claims of Home Buyers

Particulars	Rs. Crore		
	Principal	Interest	Total
Active Home Buyers	8,675	3,296	11,971
Home Buyers - Cancelled & Refunds Pending	64	23	87
Home Buyers - OOP Issued	528	220	748
Total	9,267	3,539	12,806

20.12 **Treatment for Workmen Dues (Para 18):** It has been stated by the Resolution Applicants that the admitted claims of the Workmen as on 31.03.2021 were NIL. In the event any workmen dues are added to the admitted claims by the IRP prior to the Approval Date, the Resolution Applicants shall pay the same in accordance with the Code and the Regulations, from its internal sources.

20.13 **Treatment for Claims of Income Tax Department (Para 19.2):**

It has been stated by the Resolution Applicants that since the Income Tax Department did not file any claim pertaining to operational debt owed to them by the Corporate Debtor, therefore, no payment is provided in the Resolution Plan in line with Jaypee Kensington Judgement.

20.14 **Treatment for Claims of YEIDA (Para 20.2 and 20.8):** It has been stated by the Resolution Applicants that the YEIDA had filed an aggregated claim of Rs. 6,111.60 Crores, out of which IRP admitted the claim of Rs. 461 Crores as per the IM as on 31.03.2021 pertaining to External Development Charges (EDC) including interest and pending work. However, payment of

Rs. 0.10 crore shall be made towards the admitted claim of YEIDA. The remaining claims of Rs. 5,650.60 Crores filed by YEIDA includes a Disputed Claim under Arbitration relating to 64.7% additional compensation of Rs. 1,689 Crores. The Resolution Applicants have proposed to provide Rs. 0.10 Crore towards this disputed claim.

20.15 Treatment to Claims of other Operational Creditors (Para 21.2):

It has been stated by the Resolution Applicants that against the Claims of other Operational Creditors amounting to Rs. 3.2 Crores, no amount is payable in accordance with section 30 read with section 53 of the Code. However, a payment of Rs. 0.10 Crore is being made towards such Operational Creditors in the Resolution Plan.

20.16. Treatment of the liability of Corporate Debtor with respect to the Jaypee Healthcare Ltd (“JHL”) (Para 23):

It has been stated by the Resolution Applicant that all contingent liabilities as detailed in the IM or appearing in the books of the Corporate Debtor or otherwise, inter-alia including any contingent liabilities relating to guarantee(s), shortfall undertaking or any other similar instrument provided by the Corporate Debtor to secure the financial indebtedness of Jaypee Healthcare Limited or any other person, along with any related legal proceedings (including criminal proceedings), if any, shall stand irrevocably and unconditionally abated, and extinguished in perpetuity on and in with effect from the date of approval of Resolution Plan by the Adjudicating Authority. The Corporate Debtor shall have a right of subrogation against its subsidiary JHL, in the event the

pledged shares owned by the Corporate Debtor are enforced and monies are recovered by the lenders of JHL. It has been further submitted that without prejudice to the above-mentioned treatment, the Resolution Applicants are in discussion with Yes Bank to explore the possibility of a mutually acceptable amicable solution.

20.17 **Treatment for the Equity Shareholders (Para 24):** It has been stated by the Resolution Applicants that the outstanding equity share capital as on 31.03.2021 was Rs. 1389 Crores and upon approval of the Resolution plan by this Adjudicating Authority, the issued, subscribed and paid-up share capital of the Corporate Debtor including preference shares if any, shall be cancelled and reduced in its entirety, without requiring any further act, instrument or deed, such that on effecting the said reduction, the entire share capital of the Corporate Debtor held by the shareholders of the Corporate Debtor shall be deemed to have been cancelled immediately. The face value of the cancelled shares shall be credited to “Capital Reserve Account” of the Corporate Debtor. The Corporate Debtor shall take the steps for delisting of its Equity Shares in accordance with the provisions of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009. The existing paid-up share capital shall stand to be fully written down (“Capital Reduction”) and the Shareholding after resolution of the Corporate Debtor shall stand as reproduced overleaf:

Table 19: Shareholding after resolution of the Corporate Debtor

Share holders	Before Resolution				After Resolution			
	No. of shares (in Cr)	Face Value (In Rs.)	Amount (in Rs. Crore)	% age of share holding	No. of shares (in Cr)	Face Value (In Rs.)	Amount (in Rs. Crore)	% age of share holding
Existing Promoter	84.70	10	847.00	80.98%	0.00	10	0.00	0.00%
New Promoter	-	10	-	0.00%	12.50	10	125.00	100.00%
Public	54.19	10	541.90	39.02%	0.00	10	0.00	0.00%
Total	138.89	10	1,388.90	100.00%	12.50	10	125.00	100.00%

20.18 Term of Resolution Plan & the Implementation Schedule (Para 26):

Table 22: Term and Implementation Schedule

Steps	Implementation of various Activities	Indicative Term/ Schedule from the Approval Date
1.	<ul style="list-style-type: none"> • Re-constitution of Board of Directors • Setting up of management team and control systems • Completion of Definitive Documents Engagement of Contractors and execution of fresh contracts 	3 months*
2.	Improvement in pace of construction of Wishtown Project	4 th month onwards

**However, the construction activities being undertaken in the projects shall continue during this period.*

21. The Resolution Applicant has sought various Reliefs and Concessions as detailed in the Annexure II (page no. 132-138) of the Resolution Plan. The proponents of the Plan, however, have undertaken that the Resolution Plan shall be implemented whether those concessions are granted or not. The relevant Clause 12 of the plan to this effect is reproduced overleaf:

“12. Reliefs and Concessions

*The reliefs and concessions sought by the Resolution Applicants are more particularly contained in **Annexure-II** hereto. The Resolution Applicants undertake that they will implement this Resolution Plan, whether or not the reliefs and concessions are granted.”*

VI. COMPLIANCE CERTIFICATE & COMPLIANCE CHART

22. The applicants have attached the Compliance Certificate in “Form-H” with the Application as required under Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which for the sake of convenience, is reproduced below:

FORM H COMPLIANCE CERTIFICATE

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(Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

I, Anuj Jain, an insolvency professional enrolled with Indian Institute of Insolvency Professional of ICAI and registered with the Board with registration number IBBI/IPA-001/IP-P00142/2017-18/10306, am the interim resolution professional for the corporate insolvency resolution process (CIRP) of Jaypee Infratech Limited (JIL).

2. The relevant details of the CIRP, pursuant to order dated 24 March, 2021 passed by the Hon'ble Supreme in *Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Limited & Ors. – Civil Appeal No. 3395/ 2020* are as under (please refer to the Note below the following table):

Sl. No.	Particulars	Description
1	Name of the CD	Jaypee Infratech Limited (JIL)
2	Date of Initiation of CIRP	<p>09 August 2017: CIRP against Jaypee Infratech Limited was initiated vide order dated 09 August 2017 passed by Hon'ble Adjudicating Authority, Allahabad Bench in CP (IB) No. 77/ALD/2017 filed by the IDBI Bank Limited.</p> <p>09 August 2018: The Hon'ble Supreme Court of India vide order dated 09 August 2018 passed in Writ Petition (Civil) No. 744/2017 titled as Chitra Sharma & Ors. Vs. UOI & Ors. revived the CIRP of the Corporate Debtor a fresh for a period of 180 days and if required the Adjudicating Authority may extend the CIRP period by 90 days under the Code and directed constitution of the Committee of Creditors (hereinafter, "CoC") a fresh in view of the amended provisions of the definition of "financial creditor" under the Code as per Insolvency and Bankruptcy (Amendment) Ordinance, 2018.</p> <p>06 November 2019: The Hon'ble Supreme Court vide order dated 06 November 2019 passed in the matter of Jaiprakash Associates Ltd. & Anr. Vs. IDBI Bank Ltd. & Anr. (Civil Appeal bearing Diary No 27229 of 2019 and Civil Appeal No 6486 of 2019) directed completion of the resolution plan approval process within 45 days from the date of order and thereafter the Adjudicating Authority to complete the approval process in another 45 days.</p> <p>03 March 2020. The Hon'ble Adjudicating Authority approved the resolution filed by NBCC (India) Ltd. ("NBCC")</p> <p>24 March 2021: The Hon'ble Supreme Court vide order dated 24 March 2021 passed in the Civil Appeal No. 3395/2020 remanded the matter back to the CoC and extended the timeline by 45 days to complete the resolution process by inviting revised/fresh resolution plans from NBCC and Suraksha Realty Limited with Lakshdeep Investments and Finance Pvt Ltd only (hereinafter, "Suraksha").</p>
3	Date of Appointment of IRP*	<p>09 August 2017: by the Hon'ble Adjudicating Authority, Allahabad Bench</p> <p>09 August 2018: Vide order dated 09 August 2018 passed by the Hon'ble Supreme Court in Writ Petition (Civil) No. 744/2017.</p> <p>06 November 2019: The Hon'ble Supreme Court in the matter of Jaiprakash Associates Ltd. & Anr. Vs. IDBI Bank Ltd. & Anr. (Civil Appeal Diary No 27229 of 2019 and Civil Appeal No 6486 of 2019) directed the IRP to complete the resolution plan approval process within 45 days from the date of order and thereafter the Adjudicating Authority to complete the approval process in another 45 days.</p> <p>06 August 2020: The Hon'ble Supreme Court vide order dated 06 August 2020 passed in Civil Appeal Diary No(s). 14741/2020 directed the IRP to manage the affairs of JIL and vide order dated 24 March 2021 in the Civil Appeal No. 3395/2020 extended the timeline by 45 days to complete the resolution process</p>

		while invite resolution plans from Suraksha and NBCC only.
4	Date of Publication of Public Announcement	17 August 2018
5	Date of Constitution of CoC	<p>7 September 2018</p> <p>The constitution of the CoC was updated from time to time, on the following dates in accordance with the provisions of the Code:</p> <ul style="list-style-type: none"> • 29 September 2018 • 11 October 2018 • 26 November 2018 • 11 December 2018 • 11 January 2019 • 18 January 2019 • 12 February 2019 • 22 February 2019 • 12 March 2019 • 06 April 2019 • 19 April 2019 • 04 May 2019 • 29 May 2019 • 18 June 2019 • 30 July 2019 • 31 August 2019 • 11 November 2019 • 30 November 2019 • 06 December 2019 <p>The Hon'ble Supreme Court vide order dated 24 March 2021 in para "225.3 directed that " <i>It is made clear that the IRP shall not entertain any expression of interest by any other person nor shall be required to issue any new information memorandum. The said resolution applicants shall be expected to proceed on the basis of the information memorandum already issued by IRP and shall also take into account the facts noticed and findings recorded in this judgment.</i>"</p> <p>From 06 December 2019 till 03 June 2021, 258 home buyers have filed claim amounting to INR 137.7 Crores and 415 fixed deposit holders have filed claims amounting to INR 9.8 Crores which are not admitted and not part of CoC and these claims were forwarded to both the Resolution Applicants for consideration in their respective resolution plan pursuant to orders dated 29 April 2021, 30 April 2021, 04 May 2021, 11 May 2021 & 12 May 2021 passed by this Hon'ble Adjudicating Authority.</p>
6	Date of First Meeting of CoC	12 September 2018
7	Date of Appointment of RP	Appointment of RP could not be approved as the requisite voting threshold could not be achieved under the Code. The IRP continued to perform duties of Resolution Professional in accordance with the Code.

8	Date of Appointment of Registered Valuers	Valuer 1 - RBSA Valuation Advisors LLP- 9 November 2018 Valuer 2 - GAA Advisory LLP- 13 November 2018
9	Date of Issue of Invitation for EoI	25 October 2018
10	Date of Final List of Eligible Prospective Resolution Applicants	04 December 2018
11	Date of Invitation of Resolution Plan*	06 November 2019: Pursuant to order dated 06 November 2019 passed by Hon'ble Supreme Court, invitation for submission of Resolution Plan was sent to NBCC and Suraksha on 06 November 2019 24 March 2021: Pursuant to order dated 24 March 2021 passed by Hon'ble Supreme Court, invitation for submission of Resolution Plan was sent to NBCC and Suraksha on 24 March 2021.
12	Last Date of Submission of Resolution Plan*	07 April 2021: Pursuant to order from Hon'ble Supreme Court dated 24 March 2021, the last date to submit resolution plan was 07 April 2021. Both NBCC and Suraksha submitted their resolution plans on 07 April 2021, however, the final date for submitting resolution plans was extended by the CoC from time to time till 09 June 2021 on account of clarifications/ negotiations and at the request for extension of time received from NBCC and Suraksha to submit revised resolution plan.
13	Date of Approval of Resolution Plan by CoC	23 June 2021.
14	Date of Filing of Resolution Plan with Adjudicating Authority*	07 July 2021
15	Date of Expiry of 180 days of CIRP*	05 February 2019, 05 February 2018: Pursuant to order dated 09 August 2017 passed by the Hon'ble Adjudicating Authority, Allahabad Bench in CP (IB) No. 77/ALD/2017.
16	Date of Order extending the period of CIRP*	28 January 2019: The Hon'ble Adjudicating Authority vide order dated 28 Jan 2019 extended the CIRP period by 90 days beyond 180 days as per the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code'). 06 May 2019: The Hon'ble Adjudicating Authority vide order dated 06 May 2019 directed the IRP to proceed further with the CIRP process in accordance with law for considering the resolution plan in respect of Corporate Debtor subject to outcome of pending CA No.115/2019 for exclusion of time spent in litigation. 06 November 2019: The Hon'ble Supreme Court vide order dated 06 November 2019 in the matter of Jaiprakash Associates Ltd. & Anr. Vs. IDBI Bank Ltd. & Anr. (Civil Appeal bearing Diary No 27229 of 2019 and Civil Appeal No 6486 of 2019) directed to complete the resolution plan approval process within 45 days from the date of order and thereafter the Adjudicating Authority to complete the approval process in another 45 days. 24 March 2021: The Hon'ble Supreme Court vide order dated 24 March 2021

		<p>in the Civil Appeal No. 3395/2020 extended the timeline by 45 days to complete the resolution process while invite resolution plans from Suraksha and NBCC only.</p> <p>Further, on instructions of the CoC, the IRP has filed M.A. No. 770/2021 and M.A. No. 850/2021 on 06 May 2021 and 03 June 2021, respectively before the Hon'ble Supreme Court seeking extension of time of 30 days each till 07 July 2021 to complete the CIRP process which are pending.</p>
17	Date of Expiry of Extended Period of CIRP*	<p>06 May 2019: 270 days of the CIRP period as per then existing provisions of the IBC ended on 06 May 2019. However, the Hon'ble Adjudicating Authority vide order dated 06 May 2019 directed the IRP to proceed further with the CIRP process in accordance with law for considering the resolution plan in respect of Corporate Debtor subject to outcome of pending CA No.115/2019 for exclusion of time spent in litigation.</p> <p>21 December 2019: The Hon'ble Supreme Court vide order dated 06 November, 2019 directed IRP to complete the resolution plan approval process within 45 days from the order dated 06 November 2019 and thereafter the Adjudicating Authority to complete the approval process in another 45 days.</p> <p>On account of delay in approval process, pursuant to M.A No. 540 of 2020 filed by the IRP, the Hon'ble Supreme Court vide order dated 03 February 2020 extended the time for approval process by another 30 days.</p> <p>03 March 2020: The Hon'ble Adjudicating Authority approved the resolution plan of NBCC and thus the CIRP came to end.</p> <p>08 May 2021: The Hon'ble Supreme Court vide order dated 24 March 2021 in the Civil Appeal No. 3395/2020 extended the timeline by 45 days to complete the resolution process while directing to invite revised/fresh resolution plans from Suraksha and NBCC only which ended on 08 May 2021. Pursuant to instructions of the CoC, the IRP has filed M.A. No. 770/2021 and M.A .No. 850/2021 on 06 May 2021 and 03 June 2021, respectively before the Hon'ble Supreme Court seeking extension of time of 30 days each till 07 July 2021 to complete the CIRP process which is pending. Further CIRP proceedings (beyond expiry of 45 days) and all decisions taken after 08 May 2021 in respect of approval of resolution plan by the CoC are thus subject to the decision of the Hon'ble Supreme Court on the said applications filed by IRP for extension of time on 06 May 2021 and 03 June 2021, respectively.</p>
18	Fair Value	<p>Valuer-1: RBSA Valuation Advisors LLP</p> <p>INR 24,866 crores</p> <p>Valuer-2: GAA Advisory LLP</p> <p>INR 26,339 crores</p> <p>Note: Both valuers presented 2 scenarios while submitted the valuations. Under scenario 1, both the valuers did not consider value of allotted home buyer units while valuing the assets of the company. Under Scenario 2, the value of the entire assets, including sold inventory of allotted home buyer units, was considered. Since the CoC constitutes claims of both Home Buyers and Institutional Financial Creditors, the valuation under Scenario 2 has been considered.</p>
19	Liquidation value	<p>Valuer-1: RBSA Valuation Advisors LLP</p> <p>INR 17,876 crores</p> <p>Valuer-2: GAA Advisory LLP</p> <p>INR 17,658 crores</p> <p>Note: Both valuers presented 2 scenarios while submitted the valuations. Under scenario 1, both the valuers did not consider value of allotted home buyer units while valuing the assets of the company. Under Scenario 2, the value of the entire assets, including sold inventory of allotted home buyer units, was</p>

		considered. Since the CoC constitutes claims of both Home Buyers and Institutional Financial Creditors, the valuation under Scenario 2 has been considered.
20	Number of Meetings of CoC held	24 CoC Meetings (since 9 August 2018)

Note: The Application being C.P. No. (IB)77/ALD/2017 filed by IDBI Bank under Section 7 of the Code in respect of JIL came to be admitted by the Hon'ble Adjudicating Authority, Allahabad Bench vide order dated 09 August 2017 and the JIL was put under the CIRP. Mr Anuj Jain (IBBI/PA-001/IP-P00142/2017-18/10306) was appointed as the Interim Resolution Professional (IRP) for JIL. The admission order was challenged by certain homebuyers before the Hon'ble Supreme Court by way of Writ Petition (Civil) No. 744/2017 titled as Chitra Sharma & Ors. Vs. UOI & Ors. The Hon'ble Supreme Court vide order dated 04 September 2017 stayed the appointment of the IRP. Pursuant to application being LA. No. 87575 of 2017 in SLP (c) No. 24001 & 24002/2017 made by IDBI Bank before the Hon'ble Supreme Court, the Hon'ble Court vide order dated 11 September 2017 vacated the stay and directed the IRP to take control over the management of the affairs of JIL. Pursuant to the amendment made in the definition of "financial creditor" by inclusion of the real estate allottees as "financial creditor" vide the Insolvency and Bankruptcy (Amendment) Ordinance, 2018, the Hon'ble Supreme Court vide order dated 09 August 2018 disposed of the Writ Petition (Civil) No. 744/2017 titled as Chitra Sharma & Ors. Vs. UOI & Ors. and directed start of the CIRP of JIL a fresh for a period of 180 days and if required, the Adjudicating Authority may extend the CIRP period by 90 days under the Code and also directed constitution of the CoC after inclusion of the real estate allottees as part of the CoC.

In due compliance of the said order dated 09 August 2018, the IRP constituted the CoC a fresh and took all steps in terms of his duties under the Code and the CIRP Regulations inter alia including preparation of the Information Memorandum for JIL, appointment of two registered valuers, publication of invitation for expression of interest in Form G, approval of the Request for Resolution Plan (Process Note), filing of avoidance application etc. while monitoring the assets of JIL and manage the operations as going concern including construction of the units and handing over possession of the same on completion.

In terms of liberty granted by the Hon'ble Supreme Court in order dated 09 August 2018, the Hon'ble Adjudicating Authority, Allahabad Bench extended the CIRP period by 90 days vide order dated 28 January 2019.

In pursuance to issuance of Form G amongst others, the resolution plans submitted by NBCC (India) Limited (NBCC) and Suraksha Realty Limited together with Lakshdeep Investments and Finance Private Limited (Suraksha) were shortlisted. In the meantime, the issue of the manner of reckoning the voting percentage of homebuyers in the CoC cropped up and which lead to litigation up to the Hon'ble Supreme Court in the case titled as Jaiprakash Associates Ltd. & Anr. Vs. IDBI Bank Ltd. & Anr. (Civil Appeal bearing Diary No 27229 of 2019 and Civil Appeal No 6486 of 2019).

The Hon'ble Supreme Court vide order dated 06 November 2019 in the matter of Jaiprakash Associates Ltd. & Anr. Vs. IDBI Bank Ltd. & Anr. (Civil Appeal bearing Diary No 27229 of 2019 and Civil Appeal No 6486 of 2019) extended the CIRP period and directed the IRP to invite resolution plans from NBCC and Suraksha and complete the resolution plan approval process within 45 days from the date of order and thereafter the Adjudicating Authority to complete the approval process in another 45 days.

In pursuance of the said order dated 06 November 2019, both the resolution plans of NBCC and Suraksha were put to vote before the CoC wherein, the resolution plan of NBCC bagged 97.36% votes and became the successful resolution applicant. The IRP on 20 December 2019 filed application for approval of the resolution plan of NBCC under Section 30(6) read with Section 31(1) of the Code before the Hon'ble Adjudicating Authority, Allahabad Bench. On account of issue of lack of quorum at the Allahabad Bench, the Hon'ble Principal Bench vide order dated 13 January 2020 transferred the file relating to the CIRP of JIL from the Allahabad Bench to itself for taking up the approval of the resolution plan. On account of loss of time in approval process, the IRP filed M.A. No. 540/2020 before the Hon'ble Supreme Court for extension of time upto 30 days which was allowed by the Hon'ble Supreme Court vide order dated 03 February 2020.

The Hon'ble Adjudicating Authority, Principal Bench, New Delhi vide order dated 03 March 2020 approved the resolution plan submitted by NBCC with some modifications.

NBCC challenged the order dated 03 March 2020 before the Hon'ble National Company Law Appellate Tribunal (NCLAT) wherein the Hon'ble NCLAT vide interim order dated 22 April 2020 directed constitution of Interim Monitoring Committee (IMC) for implementation of the resolution plan.

The Hon'ble Supreme Court of India vide order dated 06 August 2020 passed in Civil Appeal Diary No. 14741/2020 granted an ad-interim stay on the operation of the order dated 22.04.2020 passed by the Hon'ble NCLAT and

directed the IRP to manage the affairs of JIL. The Hon'ble Supreme Court also passed order directing transfer of all the appeals arising out of order dated 03.03.2020 in respect of JIL pending before the Hon'ble NCLAT to itself.

The Hon'ble Supreme Court vide order dated 24 March 2021 in the Civil Appeal No. 3395/2020 remanded the matter to the CoC and extended the timeline by 45 days to complete the resolution process while directing the IRP to invite revised/fresh resolution plans from Suraksha and NBCC only.

After detailed negotiations, the resolution plans of both NBCC and Suraksha were put to vote before the CoC wherein the resolution plan of Suraksha bagged higher aggregate vote of 98.66% and accordingly the IRP has filed the application for approval of the resolution plan of Suraksha.

Owing to delay, pursuant to instructions of the CoC, the IRP has filed applications being M.A. No. 770/2021 and M.A No. 850/2021 on 06 May 2021 and 03 June 2021, respectively before the Hon'ble Supreme Court seeking extension of time by 30 days & 30 days respectively till 07 July 2021 to complete the CIRP process.

3. I have examined the Resolution Plan received from Resolution Applicant (Suraksha Realty Limited along with Lakshdeep Investments and Finance Private Limited) and approved by Committee of Creditors (CoC) of Jaypee Infratech Limited.

4. I hereby certify that-

(i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

(ii) the Resolution Applicant (Suraksha Realty Limited along with Lakshdeep Investments and Finance Private Limited) has submitted separate affidavits pursuant to section 30(1) of the Code confirming their eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

(iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 98.66% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

(iv) The voting was held in the meeting of the CoC on 10 June 2021 where all the members of the CoC were present.

or

I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the regulation 26.

[strike off the part that is not relevant]

5. The list of financial creditors of the CD i.e. Jaypee Infratech Limited being members of the CoC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	Real Estate Allottees (Home Buyers)	56.62 %	Assented (56.62 %)
2	Fixed Deposit Holders	0.13 %	Assented (0.13 %)
3	IDBI Bank Limited	19.16 %	Assented (19.16 %)
4	Union Bank of India (Ex Merger with Corporation Bank)	4.59 %	Assented (4.59 %)
5	India Infrastructure Finance Company Limited	4.57 %	Assented (4.57 %)
6	Life Insurance Corporation of India	3.35 %	Assented (3.35 %)
7	State Bank of India	3.34 %	Assented (3.34 %)
8	Canara Bank (Formerly Syndicate Bank)	1.72 %	Assented (1.72 %)
9	Bank of Maharashtra	1.76 %	Assented (1.76 %)

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
10	ICICI Bank Limited	1.34 %	Dissented
11	IFCI Limited	1.24 %	Assented (1.24 %)
12	The Jammu & Kashmir Bank Limited	1.08 %	Assented (1.08 %)
13	Axis Bank Limited	0.96 %	Assented (0.96 %)
14	SREI Equipment Finance Limited	0.12 %	Assented (0.12 %)
	Total	100.00 %	98.66 %

6. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.

7. The amounts provided for the stakeholders under the Resolution Plan is as under:
(Amount in Rs. lakh)

Sl. No.	Category of Stakeholder (Please refer to the Note below this table)	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above:	979,530	978,260	773,700 ¹	79%
		(i) who did not vote in favour of the resolution plan	30,410	30,410	21,800 ²	72%
		(ii) who voted in favour of the resolution plan	949,120	947,850	751,900 ³	79%
		Total[(a) + (b)]	979,530	978,260	773,700	79%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:	1,436,852	1,283,635	959,169	75%
		-Allottees/ Home Buyers	1,433,548	1,280,707	956,243 ⁴	75%

		-Fixed Deposit Holders	3,304	2,929	2,926 ³	100%
		(i) who did not vote in favour of the resolution Plan				
		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	1,436,852	1,283,635	959,169	75%
3	Operational Creditors	(a) Related Party of Corporate Debtor	26,212	38	As per point (b) below ⁷	As per point (b) below ⁷
		-Jaiprakash Associates Limited	26,173	NIL	As per point (b) below ⁷	As per point (b) below ⁷
		-JIL Information Technology	40	38		
		(b) Other than (a) above:	945,021	46,394	40	0.09%
		(i) Government				
		(a) Yamuna Expressway Industrial Development Authority	611,159	46,100	20	
		(b) Income Tax Department	333,430	NIL	10 ⁶	
		(ii) Workmen	NIL	NIL		
		(iii) Employees	NIL	NIL		
		(iv) other operational creditors	432	294	10 ⁷	
		-SBI capital markets limited	377	273		
		-Kone Elevator India Private Limited	25	1		
		-IDBI Capital Markets and Securities Limited	16	14		
		-Mistubishi Elevator India Private Limited	6	1		
		-Advance Panels and Switchgears	7	4		
		-JIL Information Technology (Related Party of Corporate Debtor)				
		Total[(a) + (b)]	971,233	46,432	40	0.09%
4	Other debts and dues	NIL	NIL	NIL	NIL	NIL
	Grand Total		3,387,615	2,308,328	1,732,90	75%

				9	
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•If there are sub-categories in a category, please add rows for each sub-category.

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

Note:

1 Secured financial creditors are provided land of 2,552 acres having average fair value of INR 6,457 Crores and NCDs worth INR 1280 Crores.

2 The amount provided under the resolution plan to dissenting secured financial creditors is calculated as per the liquidation valuation distribution approved by the CoC in its meeting held on 20 May 2021.

3 The amount provided under the resolution plan to assenting secured financial creditors is calculated as per the average fair valuation conducted by the two valuers under the Code.

4 Since Home Buyers are to be delivered houses, and certain land parcels are offered in lieu of delay penalty / interest, the principal value of Home Buyer claims along with land offered as delay penalty having fair value of INR 279 Crores and further INR 15 Crores proposed towards Early Payment Discount is considered as amount under the plan provided to Allottees.

5 Resolution Plan also provides an additional amount of INR 916 Lakhs to fixed deposit holders who may file their claims till NCLT approval date though they are not part of the CoC currently.

6 Claim of Income Tax was not admitted; however, Resolution Plan provides treatment towards claims of Income Tax.

7 Resolution Plan does not provide individual treatment to operational creditors (other than Income Tax authority and YEIDA) however a lump sum amount of INR 10 Lakhs has been offered to all other operational creditors.

Note: The resolution plan value is not adjusted as per the time value of money

8. The interests of existing shareholders have been altered by the Resolution plan as under:

Sl. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	1,388,933,497	NIL	100%	NIL
2	Preference				

Note: A lump sum amount of INR 14 Lakhs is proposed to existing equity public shareholders of Corporate Debtor.

9. The compliance of the Resolution Plan is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Declaration of eligibility under 29A of the Code provided under clause 3 on Page-4 of Resolution Plan along with affidavit dated 05 April 2021. Net worth provided under clause 5.2 on Page-6 of Resolution Plan along with Net Worth Certificates. Previous experience and ability to turnaround provided under clause 4, 6, 7 of Resolution Plan under Part B. Bank Guarantee of INR 10 Crores dated 08 April 2021 in favour of IDBI Bank Limited provided with the Resolution Plan. Financial statements for last three years provided with the Resolution Plan. Company profile provided under clause 1, 4 and 6 of Resolution Plan. Details of KMP/ promoters/ board of directors of Resolution Applicant provided under clause 2 of Resolution Plan. Rationale for bidding provided under clause 4 to 7 of Resolution Plan. Declaration of meeting eligibility criteria and PAN card provided in Expression of Interest dated 06.11.2018.	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Declaration of eligibility under Section 29A of the IBC under clause 3 on Page-4 of Resolution Plan along with affidavit dated 05 April 2021	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is	Yes. Affidavit dated 05 April 2021 declaring eligibility under Section 29A of the IBC submitted by Resolution Applicant.	Yes

	eligible?		
Section 30(2)	<p>Whether the Resolution Plan-</p> <p>(a) provides for the payment of insolvency resolution process costs?</p> <p>(b) provides for the payment to the operational creditors?</p> <p>(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?</p> <p>(d) provides for the management of the affairs of the corporate debtor?</p> <p>(e) provides for the implementation and supervision of the resolution plan?</p> <p>(f) contravenes any of the provisions of the law for the time being in force?</p>	<p>Refer clause 14 of Resolution Plan (Page-28)</p> <p>Refer clause 18-21 of Resolution Plan (Page-63 to 78)</p> <p>Refer clause 15 of Resolution Plan read with clause E. to H. of addendum dated 09 June 2021 (Page-29 of resolution plan)</p> <p>Refer clause 27 of Resolution Plan (Page-87)</p> <p>Refer clause 27 of Resolution Plan (Page-87)</p> <p>Refer clause 29 of Resolution Plan (Page-91)</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>No</p>
Section 30(4)	<p>Whether the Resolution Plan (a) is feasible and viable, according to the CoC?</p> <p>(b) has been approved by the CoC with 66% voting share?</p>	<p>The CoC after discussion and deliberation in the CoC meetings evaluated the Resolution Plan and decided to put the Resolution Plan to vote.</p> <p>Yes. Resolution Plan approved by 98.66% voting share by CoC</p>	<p>Yes</p>
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Clause 26 & 27 of the Resolution Plan. (Page-86 & 87)	Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	Determination and intimation made on 20.01.2018. IRP also conducted due diligence and third-party valuations. Based on the forensic audit report issued by T R Chadha & Co (Chartered Accountant) and review of transactions, documents etc. IRP identified few transactions for detailed review with a perspective of filing for avoidance u/s 43, 45, 50 & 66 of IBC. Based on the aforesaid review, IRP sought clarification from concerned persons in respect of certain transactions. IRP filed an application being C.A. No. 26/2018 with the Hon'ble Adjudicating Authority, Allahabad Bench under section 43, 45, 50 & 66 of IBC with respect to mortgage of 858 acres of JIL land in favor of JAL lenders, which was decided on 16.05.2018 declaring impugned mortgage transactions for 758 acres of land as fraudulent, preferential and undervalued transactions as defined under section 66, 43 and 45 of the IBC, 2016 and under section 48(a) of the IBC, the properties mortgaged by the way of preferential and undervalued transactions shall from now on be deemed to be vested in the Corporate Debtor. Appeals filed against the said order dated 16.05.2018 were allowed by the Hon'ble NCLAT and the order dated 16.05.2018 was set aside. The IRP thereafter filed an appeal bearing Civil Appeal Nos. 8512-27/ 2019 before the Hon'ble Supreme Court wherein the Hon'ble Supreme Court vide order dated 26 February 2020 reversed and set aside the order dated 01.08.2019 passed by the Hon'ble NCLAT and upheld the order dated 16.05.2018 passed by Hon'ble Adjudicating Authority in regard to the findings that the mortgage transactions to the extent of 758 acres in	Yes

		question are preferential within the meaning of Section 43 of the Code.	
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Clause 18 to 21 and 26.4 of Resolution Plan (Page-63 to 78 and 87)	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 13 to 25 of Resolution Plan (Page-26 to 84)	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	Clause 32, point no. v. in table 23: Mandatory Contents of this Resolution Plan (Page-93) NA	Yes
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	Clause 26 of Resolution Plan (Page- 86 & 87) Clause 27 of Resolution Plan (Page- 87) Clause 27 of Resolution Plan (Page- 87)	Yes
38(3)	Whether the resolution plan demonstrates that - (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	Clause 28 of Resolution Plan (Page-90) Clause 28 of Resolution Plan (Page-90) Clause 26 & 27 of Resolution Plan (Page- 86 & 87) Clause 30 of Resolution Plan (Page-92) Clause 7 of Resolution Plan (Page-11)	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Based on the forensic audit report issued by T R Chadha & Co (Chartered Accountant) and review of transactions, documents etc. the IRP identified few transactions for detailed review with a perspective of filing for avoidance u/s 43, 45, 50 & 66 of the Code. Based on the aforesaid review, IRP sought clarification from concerned persons in respect of certain transactions. IRP filed an application being C.A. No. 26/2018 with the Hon'ble Adjudicating Authority, Allahabad Bench under section 43, 45, 50 & 66 of the Code with respect to mortgage of 858 acres of JIL land in favor of JAL lenders, which was decided on 16.05.2018 declaring impugned mortgaged transactions over 758 acres of land as fraudulent, preferential and undervalued transactions as defined under section 66, 43 and 45 of the e Code, and under section 48(a) of the Code, the properties mortgaged by the way of	Yes

		preferential and undervalued transactions shall from now on be deemed to be vested in the Corporate Debtor. Appeals filed against the said order dated 16.05.2018 were allowed by the Hon'ble NCLAT and the order dated 16.05.2018 was set aside. The IRP thereafter filed an appeal bearing Civil Appeal Nos. 8512-27/ 2019 before the Hon'ble Supreme Court wherein the Hon'ble Supreme Court vide order dated 26 February 2020 reversed and set aside the order dated 01.08.2019 passed by the Hon'ble NCLAT and upheld the order dated 16.05.2018 passed by Hon'ble Adjudicating Authority in regard to the findings that the mortgage transactions for 758 acres of land in question are preferential within the meaning of Section 43 of the Code.	
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Details of the Performance Guarantee dated 07 July 2021 of INR 100 Crores from Standard Chartered Bank submitted by the Resolution Applicant: Guarantee Number: 316020819071-GP Date of Issue: 07-07-2021 Guarantee Amount: INR, 1,000,000,000 Valid Till: 06-07-2022 Date of Claim: 05-08-2022 Applicant Name: Lakshdeep Investments and Finance Private Limited Beneficiary: IDBI Bank Videocon Tower	Yes

10. The CIRP has been conducted as per the timeline indicated as under*:

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under regulation 40A	Date as per timeline under regulation 40A	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	09-Aug-18	9 August 2018
Regulation 6(1)	Publication of Public Announcement	T+3	12-Aug-18	17 August 2018
Section 15(1)(c) / Regulation 12 (1)	Submission of Claims	T+14	23-Aug-18	28 August 2018. Claims from class of creditors including home buyers and fixed deposit holders continue to be received on regular basis.
Regulation 13(1)	Verification of Claims	T+21	30-Aug-18	Claims from class of creditors including home buyers and fixed deposit holders continue to be received on regular basis and hence claims of class of creditors are being verified on continuous basis.
Section 26(6A) / Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T+23	1-Sep-18	31 August 2018.
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	1-Sep-18	5 September 2018 rectified and re-submitted on 7 September 2018, 29 September 2018, 11 October 2018, 26 November 2018, 11 December 2018, 11 January 2019, 18 January 2019, 12 February 2019, 22 February 2019, 12 March 2019, 6 April 2019, 19 April 2019, 4 May 2019, 29 May 2019, 18 June 2019, 30 July 2019, 31 August 2019, 11 November 2019, 30 November 2019, 6 December 2019. The CoC is re-constituted from time to time as claims from class of creditors including home buyers and fixed deposit holders continue to be received on regular basis.
Section 22(1) and	First Meeting of the CoC	T+30	8-Sep-18	12 September 2018

regulation 17(2)				
Regulation 35A	Determination of fraudulent and other transactions	T+115	2-Dec-18	RP identified PUFE transaction on 23 October 2017 and sought clarification from all the stakeholders and made determination of PUFE transactions on 20 January 2018. Since PUFE transactions were already submitted, IRP was not required to file the same again after recommencement of CIRP.
Regulation 27	Appointment of two Registered Valuers	T+47	25-Sep-18	Valuer 1 – RBSA Valuation Advisors LLP- 09 November 2018. Valuer 2 - GAA Advisory LLP- 13 November 2018.
Regulation 36 (1)	Submission of Information Memorandum to CoC	T+54	2-Oct-18	17 October 2018
Regulation 36A	Invitation of EoI	T+75	23-Oct-18	25 October 2018
	Publication of Form G	T+75	23-Oct-18	25 October 2018
	Provisional List of Resolution Applicants	T+100	17-Nov-18	19 November 2018
	Final List of Resolution Applicants	T+115	2-Dec-18	04 December 2018
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	22-Nov-18	27 December 2018
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	21-Jan-19	NA
Section 31(1)	Approval of Resolution Plan	T=180	5-Feb-19	NA

No resolution plan was approved by the CoC in 270 days period beginning from restart of the CIRP vide order dated 09 August 2018. The Hon'ble Supreme Court vide order dated 06 November 2019 in the matter of Jaiprakash Associates Ltd. & Anr. Vs. IDBI Bank Ltd. & Anr. (Civil Appeal bearing Diary No 27229 of 2019 and Civil Appeal No 6486 of 2019) directed to complete the resolution plan approval process within 45 days from the date of order and thereafter the Adjudicating Authority to complete the approval process in another 45 days.

Section of the Code / Regulation No.	Description of Activity	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	09 August 2018*
Regulation 36A	Invitation of EoI	06 November 2019
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	20 December 2019
Section 31(1)	Approval of Resolution Plan	03 March 2020

Hon'ble Adjudicating Authority vide order dated 03 March 2020 approved the resolution plan of NBCC with some modifications. NBCC filed an appeal against the Hon'ble Adjudicating Authority order dated 03 March 2020. Hon'ble NCLAT vide order dated 22 April 2020 directed the IRP to form an Interim Monitoring Committee (IMC) in the interim period. Meanwhile Jaypee Kensington Boulevard Apartments Welfare Association & Ors. filed an appeal bearing Civil Appeal Diary No(s). 14741/2020 before Hon'ble Supreme Court of India against the Hon'ble NCLAT order dated 22 April 2020, which was listed on 06 August 2020. Hon'ble Supreme Court of India vide its order dated 06 August 2020 stayed the order dated 22 April 2020 and directed the IRP to continue to manage the affairs of Corporate Debtor. Further, the Hon'ble Supreme Court directed that all cases pending before Hon'ble NCLAT in the matter of Jaypee Infratech Limited shall be transferred to Hon'ble Supreme Court. The Hon'ble

Supreme Court vide final order dated 24 March 2021 passed in the Civil Appeal No. 3395/2020 directed the IRP to invite revision/fresh resolution plans from NBCC and Suraksha and extended the timeline by 45 days to complete the resolution process.

Section of the Code / Regulation No.	Description of Activity	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	24 March 2021
Regulation 36A	Invitation of EoI	24 March 2021
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	07 July 2021
Section 31(1)	Approval of Resolution Plan	

Further, pursuant to instructions of the CoC, the IRP has filed M.A. No. 770/2021 and M.A. No. 850/2021 on 06 May 2021 and 03 June 2021, respectively before Hon'ble Supreme Court seeking extension of time by 30 days each till 07 July 2021 to complete the CIRP.

11. The time frame proposed for obtaining relevant approvals is as under:

Sl. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
1	Statutory Approval: Competition Act, 2002	Approval of Competition Commission of India under Competition Act, 2002- Section 6(2)	Competition Commission of India	The Resolution Plan states that the Resolution Applicant shall file an application before the Competition Commission of India ('CCI') at the earliest and shall submit the required approval issued by CCI in accordance with Applicable Law to the CoC/ IRP on or before the approval of the Resolution Plan by the NCLT/ Adjudicating Authority [Refer Clause 30 of the Resolution Plan]. The Resolution Applicant has relied on a decision rendered by the Hon'ble National Company Law Appellate Tribunal [Company Appeal (AT) (Insolvency) No. 524 of 2019] in the matter of Arcelor Mittal India Pvt. Ltd. vs. Abhijit Guhathakurta which held that proviso of sub-section (4) of Section 31 of the Code which relates to obtaining the approval from CCI is directory and not mandatory, and such approval may be obtained prior to approval of the resolution plan from the Hon'ble NCLT/ Adjudicating Authority.
2	Statutory Approval: Companies Act, 2013	Approval of Shareholders and requirement under section 66 of Companies Act 2013 for reduction of share capital And Delisting of Equity Shares	NCLT/ Adjudicating Authority	Capital Reduction: Resolution Applicant under clause 24.4 has mentioned that " <i>The order of the Adjudicating Authority sanctioning this Resolution Plan shall be deemed to be an order under Section 66 of the Companies Act, 2013 confirming the reduction of share capital of the Corporate Debtor and no separate sanction under Section 66 of the Companies Act, 2013 shall be necessary.</i> " Delisting: Resolution Applicant under clause 24.7 has mentioned that " <i>shall not require any other procedure as required under the Companies Act, including that under Section 66 of the Companies Act or regulations of the SEBI and under SCRA and SCRR; and shall not require the consent of any of the creditors of Corporate Debtor or approval of the shareholders of Corporate Debtor as the Resolution Plan upon being approved by the NCLT shall be binding on Corporate Debtor and its stakeholders (including its creditors and</i>

Sl. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
		And Requirement under section 42 & 62(1)(c) of Companies Act 2013 for Issuance of new equity shares		<i>shareholders)."</i> Issuance of new equity shares: Resolution Applicant under clause 34.63 has mentioned that <i>The approval of the Adjudicating Authority, of this Resolution Plan, shall constitute approval for the issuance of new equity shares in accordance with Section 42 and Section 62(1)(c) of the Companies Act, 2013 and other Applicable Laws. Further, no approval or consent from any person, government authority or regulatory body with respect to change or modification the constitutional documents of the Corporate Debtor or the actions as mentioned hereinabove under any agreement or under any Applicable Laws shall be necessary.</i>
3	Other Approvals	As per Applicable Law	As per Applicable Law	Resolution Applicant under clause 34.81 has mentioned that <i>"The Resolution Applicants shall take/procure/apply for (as the case may be) all permissions, approvals, consents, licenses, permits, orders, decrees, authorization, registration, filing, notification, exemption, as may be required as per Applicable Law, in terms of the Resolution Plan."</i>

12. The Resolution Plan is not subject to any contingency.

or

The Resolution Plan is subject to the following contingencies (Elaborate the contingencies):

i The Resolution Plan states that the Resolution Applicant shall file an application before the CCI at the earliest and shall submit the required approval issued by CCI in accordance with Applicable Law to the CoC/ IRP on or before the approval of the Resolution Plan by the Hon'ble Adjudicating Authority/ NCLT [Refer Clause 30 of the Resolution Plan]. The Resolution Applicant has relied on a decision rendered by the Hon'ble National Company Law Appellate Tribunal [Company Appeal (AT) (Insolvency) No. 524 of 2019] in the matter of Arcelor Mittal India Pvt. Ltd. vs. Abhijit Guhathakurta which held that proviso of sub-section (4) of Section 31 of the Code which relates to obtaining the approval from CCI is directory and not mandatory, and such approval may be obtained prior to approval of the resolution plan from the Hon'ble Adjudicating Authority/ NCLT.

13. Following are the deviations / non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made or circulars issued thereunder (If any deviation/ non-compliances were observed, please state the details and reasons for the same):

No resolution plan was approved by the CoC in 270 days period. Hon'ble Supreme Court vide order dated 06 November 2019 in the matter of Jaiprakash Associates Ltd. & Anr. Vs. IDBI Bank Ltd. & Anr. (Civil Appeal bearing Diary No 27229 of 2019 and Civil Appeal No 6486 of 2019) directed to complete the resolution plan approval process within 45 days from the date of order and thereafter the Hon'ble Adjudicating Authority to complete the approval process in another 45 days. The Hon'ble Adjudicating Authority vide order dated 03 March 2020 approved the resolution plan of NBCC with some modifications. NBCC filed an appeal against the Hon'ble Adjudicating Authority/ NCLT order dated 03 March 2020. The Hon'ble NCLAT vide order dated 22 April 2020 directed the IRP to form an Interim Monitoring Committee (IMC) in the interim period. Meanwhile Jaypee Kensington Boulevard Apartments Welfare Association & Ors. filed an appeal bearing Civil Appeal Diary No(s). 14741/2020 before the Hon'ble Supreme Court of India against the Hon'ble NCLAT order dated 22 April 2020, which was listed on 06 August 2020. The Hon'ble Supreme Court of India vide its order dated 06 August 2020 in the said appeal stayed the order dated 22 April 2020 and directed the IRP to continue to manage the affairs of Corporate Debtor. The Hon'ble Supreme Court also directed that all cases pending before Hon'ble NCLAT in the matter of Jaypee Infratech Limited shall be transferred to the Hon'ble Supreme Court. The Hon'ble Supreme Court vide final order dated 24 March 2021 in the Civil Appeal No. 3395/2020 directed the IRP to invite revised/fresh resolution plan from NBCC and Suraksha and extended the timeline by 45 days to complete the resolution process. Further, based on the instructions of the CoC, the IRP has filed M.A.No. 770/2021 and M.A No. 850/2021 on 06 May 2021 and 03 June 2021 before the Hon'ble Supreme Court seeking extension of time by 30 days each till 07 July 2021 to complete the CIRP process.

S. No.	Deviation/Non-compliance observed	Section of the Code / Regulation No. / Circular No.	Reasons	Whether rectified or not
1	Publication of Public Announcement	Regulation 6(1)	In terms of Hon'ble Supreme Court order dated 09 August 2018, Hon'ble NCLT declared moratorium afresh dated 14th August 2018 and directed IRP to proceed in accordance with the code. Accordingly, the Public Announcement was made on 17 August 2018 within 3 days of Hon'ble NCLT order.	
2	Filing of Report Certifying Constitution of CoC	Regulation 17(1)	In terms of Hon'ble Supreme Court order dated 09 August 2018, Hon'ble NCLT declared moratorium afresh dated 14th August 2018 and directed IRP to proceed in accordance with the code. Accordingly, the Public Announcement was made on 17 August 2018 within 3 days of Hon'ble NCLT order inviting claims from creditors by 28 August 2018. Subsequently report certifying constitution of CoC was filed on 05 September 2018 (rectified report was filed on 07 September 2018).	
3	First Meeting of CoC	Section 22(1) and Regulation 17(2)	In terms of Hon'ble Supreme Court order dated 09 August 2018, Hon'ble NCLT declared moratorium afresh dated 14th August 2018 and directed IRP to proceed in accordance with the code. Accordingly, the Public Announcement was made on 17 August 2018 within 3 days of Hon'ble NCLT order inviting claims from creditors by 28 August 2018. CoC was constituted on 05 September 2018. Subsequently Notice for First CoC meeting was circulated to CoC and first CoC meeting held on 12 September 2018.	
4	Appointment of two registered Valuers	Regulation 27	The quotations from registered valuers were invited and the same were submitted to CoC in its meeting 17 October 2018 for its approval. CoC members in the meeting decided that some of the CoC members shall suggest names of other registered valuers for inviting quotes and accordingly appointment of registered valuers was deferred. Subsequently, Registered valuers RBSA Valuation Advisors LLP and GAA Advisory LLP were appointed on 09 November 2018 and 13 November 2018 respectively.	
5	Submission of Information Memorandum to CoC	Regulation 36(1)	Information Memorandum was prepared as on 01 October 2018 and same was presented to CoC in its meeting on 17 October 2018. First NDA was received on 25 October 2018 and subsequently IM was shared.	
6	Publication of Form G	Regulation 36A	The Form G invitation of expression of interest was approved discussed by the CoC in its meeting on 17 October 2018 and was put to vote for approval by CoC. The delay was due to voting to be done by more than 20,000 allottees which concluded on 22 October 2018. The Form G was published on 25 October after being approved by the CoC.	
7	Provisional List of Resolution Applicants	Regulation 36A	Due to 2 days delay in issuing Form G, it resulted in corresponding delays in model timeline as per Form G. Provisional List of Resolution Applicants was published on 19 November 2018 in line with the timelines mentioned for Form G.	
8	Final List of Resolution Applicants	Regulation 36A	Due to 2 days delay in issuing Form G, it resulted in corresponding delays in model timeline as per Form G. Final List of Resolution Applicants was published on 04 December 2018 in line with the timelines mentioned for Form G.	
9	Issue of Request for Resolution Plan which includes Evaluation	Regulation 36B	The Evaluation Matrix was presented to CoC in its second CoC meeting held on 17 October 2018. In the third CoC meeting held on 27 November 2018, there were 2 voting matters, namely, 1) Proposed Evaluation Matrix and 2) Process Note	

	Matrix and Information Memorandum to Resolution Applicants		for Request For Resolution Plan (RFRP). However, both the voting items were deferred. The CoC members could not come to a consensus on the Evaluation Matrix due to various suggestions made by authorised representative which were not acceptable to other CoC members, thus Evaluation Matrix and Process Note could not be finalized and put to vote for approval of CoC members. The Evaluation Matrix and Process Note for Request For Resolution Plan were approved by the CoC in its meeting held on 20 December 2018. RFRP with Evaluation matrix were issued to Resolution Applicants on 27 December 2018.	
10	Submission of CoC approved Resolution plan	Section 30(6)/Regulation 39(4)	07 July 2021	
11	Approval of Resolution Plan	Section 31(1)		

14. The Resolution Plan is being filed on 01 July 2021 as per the directions of Hon'ble Supreme Court order dated 24 March 2021 wherein 45 days were granted till 08 May 2021. Pursuant to instructions of the CoC, the IRP has filed M.A. No. 770/2021 and M.A. No. 850/2021 before the Hon'ble Supreme Court seeking extension of time till 07 July 2021 to complete the resolution process and file the Resolution Plan with Adjudicating Authority. The said applications are pending decision before the Hon'ble Supreme Court. ~~.... days before the expiry of the period of CIRP provided in section 12 of the Code.~~

15. Provide details of section 66 or avoidance application filed / pending.

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
1	Preferential transactions under section 43	06 February 2018	16 May 2018	Application filed by IRP under section 43, 45 and 60(5)(a), 66 read with section 25(2)(J) of the Insolvency and Bankruptcy Code 2016 (IBC) in the Hon'ble NCLT, Allahabad bench for seeking directions on the transaction entered into by the promoters and directors of Jaypee Infratech Limited (Corporate Debtor) with respect to mortgage of 858 acres of its land in favor of Jaiprakash Associates Limited (Promoter company of Corporate Debtor) for financial assistance granted to Jaiprakash Associates Limited. Hon'ble NCLT, Allahabad bench passed the order on 16 May 2018 declaring impugned mortgage transactions on 758 acres of land as fraudulent, preferential and undervalued transactions as defined under section 66, 43 and 45 of the IBC, 2016 and under section 48(a) of the IBC and directed restoration/vesting of the same with the Corporate Debtor. Appeals filed against the said Order dated 16.05.2018 were allowed by the Hon'ble NCLAT and the order dated 16.05.2018 was set aside. The IRP thereafter filed an appeal bearing Civil Appeal Nos. 8512-27/ 2019 before the Hon'ble Supreme Court wherein the Hon'ble Supreme Court vide order dated 26 February 2020 reversed and set aside the order dated 01.08.2019 passed by the Hon'ble NCLAT and upheld the order dated 16.05.2018 passed by Hon'ble NCLT in regard to the findings that the mortgage transactions in question on 758 acres of land are preferential within the meaning of Section 43 of the Code.
2	Undervalued transactions under section 45			
3	Fraudulent transactions under section 66			
4	Extortionate credit	NA	NA	NA

transactions under section 50			
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15A. The committee has approved a plan providing for contribution under regulation 39B as under:

- Estimated liquidation cost: Rs.....
- Estimated liquid assets available: Rs.....
- Contributions required to be made: Rs.....
- Financial creditor wise contribution is as under:

Sl. No.	Name of financial creditor	Amount to be contributed (Rs.)
1	NA	NA
2	NA	NA
..	NA	NA
Total	NA	NA

15B. The committee has recommended under regulation 39C as under:#

- Sale of corporate debtor as a going concern: Yes / No
- Sale of business of corporate debtor as a going concern: Yes / No

The details of recommendation are available with the resolution professional.

15C. The committee has fixed, in consultation with the resolution professional, the fee payable to the liquidator during the liquidation period under regulation 39D.]*

#Keeping in view the Hon'ble Supreme Court's directions vide order dated 24 March 2021 to complete the resolution process within 45 days from the date of the said order and invite Resolution Plan only from NBCC and Suraksha and submit the report to Hon'ble Adjudicating Authority within 45 days, no such agenda was taken up in the Committee of Creditors in the last meeting dated 10 June 2021.

16. I, Anuj Jain hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.


 (Signature) **Anuj Jain**
 IBBI/IPA-001/IP-P00142/2017-2018/10306

Name of the Interim Resolution Professional: **Anuj Jain**

IP Registration No: **IBBI/IPA-001/IP-P00142/2017-18/10306**

Address as registered with the Board: **M/s BSRR & Co. Chartered Accountants, 8th floor, Building No. 10, DLF Cybercity, Gurgaon, Haryana-122002**

Email id as registered with the Board: **anujv Jain@bsraffiliates.com**

7 July 2021

23. The Applicant/IRP has further submitted that the Resolution Plan does not contradict any Regulation or provisions of IBC, 2016. To support its contention, the IRP has attached the Compliance Chart along with the Application, which is reproduced below:

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COMPLIANCE CHART

COMPLIANCE CHART FOR RESOLUTION PLAN OF JAYPEE INFRATECH LIMITED

BRIEF OVERVIEW OF THE CONFORMITY OF THE RESOLUTION PLAN DATED 7 JUNE 2021 READ WITH ADDENDUM DATED 9 JUNE 2021 ('RESOLUTION PLAN') SUBMITTED BY SURAKSHA REALTY LIMITED & LAKSHDEEP INVESTMENT AND FINANCE PRIVATE LIMITED ('SURAKSHA') WITH THE INSOLVENCY AND BANKRUPTCY CODE, 2016 READ WITH THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016

SECTION/ REGULATION	REQUIREMENT	CLAUSE OF THE RESOLUTION PLAN	CROSS REFERENCE IN I.A. NO. 2836/ 2021	CROSS REFERENCE IN THE FORM H @ANNEXURE A26
Section 29A of the Code	The disqualification under Section 29A of the Code should not apply.	Affidavit under Section 29A of the Code has been provided by the Suraksha under Clause 3 on Page-4 of the Resolution Plan. <i>(Refer Page No. 160 of the Resolution Plan Compilation)</i>	<i>Refer table in para 75 at pg. 30</i>	<i>Refer table in para 9 at pg 273</i>
Section 30(2)(a) of the Code	The Resolution Plan provides for payment of the insolvency resolution process cost ("CIRP Costs"), in priority to the payment of any other debt or any other creditor of the Corporate Debtor,	As per the Resolution Plan, the CIRP Costs shall be paid in priority to any other creditors of the Corporate Debtor, in the manner set forth in Clause 14 of the Resolution Plan. <i>(Refer Page No. 28 of the Resolution Plan Compilation)</i>	<ul style="list-style-type: none"> • <i>Refer table in para 75 at pg. 30;</i> • <i>Refer pt. 1 of para 83 at pg. 38</i> 	<i>Refer table in para 9 at pg 274</i>
Section 30(2)(b)	The Resolution Plan provides for the payment of amounts due to the	The payment to the debts of Operational Creditor is provided under Clause 18-22 of the Resolution Plan.		

SECTION/ REGULATION	REQUIREMENT	CLAUSE OF THE RESOLUTION PLAN	CROSS REFERENCE IN I.A. NO. 2836/ 2021	CROSS REFERENCE IN THE FORM H @ANNEXURE A26
of the Code	Operational Creditors under the Resolution Plan in priority to any Financial Creditor of the Company and that the payment of the debts of the Operational Creditors shall not be less than the amount to be paid to the Operational Creditors in the event of liquidation of the Company under Section 53 of the Code	(Refer Page No. 63-82 of the Resolution Plan Compilation)	<ul style="list-style-type: none"> Refer table in para 75 at pg. 30; Refer pt. 3 of para 83 at pg. 39 	Refer table in para 9 at pg 274
Section 30(2)(b) of the Code	The Resolution Plan provides for payment of amounts due to the Financial Creditors under the Resolution Plan, who have not voted in favour of the Resolution Plan and such amount shall not be less than the amount which they would receive in the event of liquidation of the Corporate Debtor under Section 53 of	Clause 15 of the Resolution Plan provides for payment to dissenting financial creditors in accordance with the provisions of the Code read with judgment and order dated 24.03.2021 in <i>Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Limited & Ors.</i> (Refer Page No. 29 of Resolution Plan Compilation)	<ul style="list-style-type: none"> Refer table in para 75 at pg. 31; Refer pt. 4 of para 83 at pg. 40 Refer emails dated 17.05.2021 at page 48, email dated 	Refer table in para 9 at pg 274

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SECTION/ REGULATION	REQUIREMENT	CLAUSE OF THE RESOLUTION PLAN	CROSS REFERENCE IN I.A. NO. 2836/ 2021	CROSS REFERENCE IN THE FORM H @ANNEXURE A26
	the Code.		19.05.2021 at page 57 & email dated 02.07.2021 at page 262 of the approval application.	
Section 30(2)(c) of the Code	The Resolution Plan provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;	The Resolution Plan provides the details regarding the formation and functioning of the Corporate Debtor, its business and affairs, as a going concern after the approval of the resolution plan as set forth in Clause 27 of the Resolution Plan. (Refer Page No. 87 of Resolution Plan Compilation)	Refer table in para 75 at pg. 31	Refer table in para 9 at pg 274
Section 30(2)(d) of the Code	The Resolution Plan provides for the implementation and supervision of the resolution plan;	The implementation provisions are mentioned in the Resolution Plan and outlined in Clause 27 of the Resolution Plan. The Resolution Plan provides that on and from the date of approval till the occurrence of approval date, the Corporate Debtor shall be managed by implementation & Monitoring committee ('IMC') comprising of 5 members being the IRP, 2 representatives of the	Refer table in para 75 at pg. 31 Refer clause 27.4 at page 88 of the	Refer table in para 9 at pg 274

SECTION/ REGULATION	REQUIREMENT	CLAUSE OF THE RESOLUTION PLAN	CROSS REFERENCE IN I.A. NO. 2836/ 2021	CROSS REFERENCE IN THE FORM H @ANNEXURE A26
		Resolution Applicant, 1 representative of the Institutional Financial Creditor and AR of the Homebuyers. (Refer Page No. 87-88 of Resolution Plan Compilation)	Resolution Plan dated 07.06.2021.	
Section 30(2)(e) of the Code	The Resolution Plan does not contravene any of the provisions of the law for the time being in force;	The Resolution Applicant has provided a declaration that the Resolution Plan does not contravene any provisions of law for the time being in force under Clause 29 of the Resolution Plan. (Refer Page No. 91 of Resolution Plan Compilation)	Refer table in para 75 at pg. 32	Refer table in para 9 at pg 274
Regulation 38(1)(a) of the CIR Regulations	The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors	The Resolution Plan under Clause 18-21 stipulates payment to the operation creditors in terms of Sections 30(2) and Section 53 of the Code. (Refer Page No. 63-79 of Resolution Plan Compilation)	Refer table in para 75 at pg. 32	Refer table in para 9 at pg 275
Regulation 38(1)(b) of the	The financial creditors who had a right to vote and did not vote in favour of the resolution plan, shall be paid in priority	Clause 15 of the Resolution Plan provides for payment to dissenting financial creditors as per Section 53 of the Code.	Refer table in para 75 at pg. 32	NA

SECTION/ REGULATION	REQUIREMENT	CLAUSE OF THE RESOLUTION PLAN	CROSS REFERENCE IN I.A. NO. 2836/ 2021	CROSS REFERENCE IN THE FORM H @ANNEXURE A26
CIR Regulations	over financial creditors who voted in favour of the plan	(Refer Page No. 31 Resolution Plan Compilation)		
Regulation 38(1A) of the CIR Regulations	The Resolution Plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.”	Clause 13 to 25 of the Resolution Plan provides for treatment to all the stakeholders of the Corporate Debtor. (Refer Page No. 84 Resolution Plan Compilation)	Refer table in para 75 at pg. 33	Refer table in para 9 at pg 275
Regulation 38(1B) of the CIR Regulations	The Resolution Plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past	NA	Refer table in para 75 at pg. 33	Refer table in para 9 at pg 275

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COMPLIANCE CHART

SECTION/ REGULATION	REQUIREMENT	CLAUSE OF THE RESOLUTION PLAN	CROSS REFERENCE IN I.A. NO. 2836/ 2021	CROSS REFERENCE IN THE FORM H @ANNEXURE A26
Regulation 38(2)(a) of the CIR Regulations	The Resolution Plan shall provide the term of the plan and its implementation schedule	The Resolution Applicant has provided for the term of the Resolution Plan under Clause 26 of the Resolution Plan <i>(Refer Page No. 86 of Resolution Plan Compilation)</i>	<i>Refer table in para 75 at pg. 33</i>	<i>Refer table in para 9 at pg 275</i>
Regulation 38(2)(b) of the CIR Regulations	The Resolution Plan shall provide the management and control of the business of the corporate debtor during its term	The Resolution Applicant has provided for the term of the Resolution Plan under Clause 27 of the Resolution Plan. <i>(Refer Page No. 87 of Resolution Plan Compilation)</i>	<i>Refer table in para 75 at pg. 33</i>	<i>Refer table in para 9 at pg 275</i>
Regulation 38(2)(c) of the CIR Regulations	The Resolution Plan shall provide adequate means for supervising its implementation	The Resolution Applicant has provided for the term of the Resolution Plan under Clause 27 . The Resolution Plan provides that on and from the date of approval till the occurrence of approval date, the Corporate Debtor shall be managed by implementation & Monitoring committee ('IMC') comprising of 5 members being the IRP, 2 representatives of the	<i>Refer table in para 75 at pg. 34</i>	<i>Refer table in para 9 at pg 275</i>

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COMPLIANCE CHART

SECTION/ REGULATION	REQUIREMENT	CLAUSE OF THE RESOLUTION PLAN	CROSS REFERENCE IN I.A. NO. 2836/ 2021	CROSS REFERENCE IN THE FORM H @ANNEXURE A26
		Resolution Applicant, 1 representative of the Institutional Financial Creditor and AR of the Homebuyers. <i>(Refer Page No. 88 Resolution Plan Compilation)</i>	<i>Refer clause 27.4 at page 88 of the Resolution Plan dated 07.06.2021.</i>	
Regulation 38(3)	A Resolution Plan shall demonstrate that: (a) Addresses the cause of default; (b) Is feasible and viable; (c) has provisions for its effective implementation; (d) has provisions for approvals required and the timeline for the same and (e) the Resolution Applicant has the capability to implement the Resolution Plan	The Resolution Applicant under Clause 7, 26, 27, 28 and 30 of the Resolution Plan has addressed the requirements under Regulation 38(3) of the CIRP Regulations. Source of funds and its utilisation is enclosed herewith as Appendix-I . <i>(Refer Page No. 11, 86, 88, 90 and 92 of Resolution Plan Compilation)</i>	<i>Refer table in para 75 at pg. 34</i>	<i>Refer table in para 9 at pg 275</i>
Regulation 39(2)	The resolution professional shall submit to the committee all resolution plans which comply with the requirements of the Code and regulations made thereunder along	Based on review of various transactions entered into by the Corporate Debtor under Section 43, Section 45 and Section 66 of the Code, the Applicant filed C.A. No. 26/ 2018 ('Avoidance application') before the Hon'ble Adjudicating Authority, Allahabad Bench for avoidance of mortgage of 858 acres of land. The avoidance application was	<i>Refer para 85 at page 42</i>	<i>Refer table in para 9 at pg 275</i>

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SECTION/ REGULATION	REQUIREMENT	CLAUSE OF THE RESOLUTION PLAN	CROSS REFERENCE IN I.A. NO. 2836/ 2021	CROSS REFERENCE IN THE FORM II @ANNEXURE A26
	with the details of following transactions, if any, observed, found or determined by him: - (a) preferential transactions under section 43; (b) undervalued transactions under section 45; (c) extortionate credit transactions under section 50; and (d) fraudulent transactions under section 66, and the orders, if any, of the adjudicating authority in respect of such transactions.	allowed vide order dated 16.05.2018 and against which a batch of appeals were filed by the lender banks of JAL before the Hon'ble NCLAT. The Hon'ble NCLAT vide its' order dated 01.08.2019 allowed the said appeals and set aside the order dated 16.05.2018 passed by the Hon'ble Adjudicating Authority, Allahabad Bench. The Hon'ble Supreme Court vide judgment and order dated 26.02.2020 reversed the judgment of NCLAT and upheld avoidance order passed by Hon'ble Adjudicating Authority in respect of 758 acres of land out of 858 acres of land.		

24. Although the Resolution Applicant and the IRP have averred that the Resolution Plan is compliant in all respects, however, Yamuna Expressway Industrial Development Authority (hereinafter referred to as **"YEIDA"**), ICICI Bank, Ex-Promoter of JIL, Mr. Manoj Gaur have raised their objections to Approval of the Resolution Plan by filing separate Interlocutory Applications (IAs). Therefore, at this stage, in order to adjudicate whether the Resolution Plan under consideration is compliant in all respects or not, we consider it necessary to visit these objections IA-wise.

VII. I.A. NO. 3457/PB/2021

OBJECTIONS OF ICICI BANK

25. First, we consider it appropriate to deal with the objections raised to the Resolution Plan by the Dissenting Financial Creditor (DFC) ICICI Bank (hereinafter, referred to as the **“Applicant Bank”**) by filing the present I.A.-3457 of 2021. The prayers made in this IA are reproduced below:

“a. Allow the present application and direct the Resolution Plan to be made compliant with the mandatory requirements under Section 30(2) of the Insolvency & Bankruptcy Code, 2016 and the law laid down by the Hon’ble Supreme Court in Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Limited & Ors. by providing payment of Liquidation Value to the Applicant in its capacity as the dissenting financial creditor either in cash or by permitting it to enforce its security interest over all or any assets of the Corporate Debtor secured in its favour as per Applicant’s own discretion and choice.

b. Pass such other order/orders as it may be deem fit and proper in the facts and circumstances of the face.”

26. In addition to the ICICI Bank, JAL - the Holding Company and the ex-promoter of the Corporate Debtor have also objected to the Resolution Plan. For the sake of convenience, the ICICI Bank (the Applicant herein), JAL, and Ex Promoter of JIL together, hereinafter, are referred to as **“Objectors”**.

27. It is submitted by the Objectors that:

27.1 The ICICI Bank Limited is a Secured Financial Creditor to the Corporate Debtor having a claim of approximately Rs. 304.1 Crores and it is having 1.31% of the voting share in the Committee of Creditors (“CoC”).

27.2 The ICICI Bank had voted against the Resolution Plan and is therefore, having the status of Dissenting Financial Creditor (for brevity, hereinafter, referred to as “**DFC**”). It is stated that under the proposed Resolution Plan, a ‘DFC’ is proposed to be settled by enforcing security interest in relation to certain secured parcels of land to be equivalent to its liquidation value.

27.3 The Applicant Bank has, inter alia, opposed the Resolution Plan on the ground that the payment provided to it in the plan fails to satisfy the liquidation value, as mandatorily provided under Section 30(2)(b) of the Code and to the Judgment passed by the Hon’ble Supreme Court in the **Jaypee Kensington**. In terms of the Suraksha’s Resolution Plan, the Applicant is a DFC and is required to bear the entire enforcement costs such as stamp duty, transfer charges, registration charges, the compensation sought by local farmers, external development charges, encroachments and other legal and incidental costs (which are not even predictable at this stage), while liquidating the land allocated to it under the proposed Resolution Plan. It is further stated that payment of a minimum liquidation value to a DFC is a matter of minimum prescription for validity and approval of a resolution plan.

27.4 The proposed resolution plan envisages that not only the task for liquidating the secured land asset (which is identified unilaterally by the SRA) shall be undertaken by a DFC but also the enforcement/incidental costs for liquidating such land assets are also left to be borne by the DFC. In this context, the Applicant has referred to Clauses 15.52 and 15.54 of the Resolution Plan, which are reproduced below:

“15.52. The Corporate Debtor and / or the Resolution Applicants shall not be obliged to the Dissenting Institutional Financial Creditors, in any manner, including any payment / obligation, whatsoever, once allowed to enforce its security interest as mentioned hereinabove. The Claim of the Dissenting Institutional Financial Creditors shall stand extinguished in perpetuity upon allowing enforcement of such security interest and the Corporate Debtor shall not be liable for the any cost, charges, expenses, taxes including income tax, GST, etc. or otherwise that may arise due to enforcement of security interest, as the same are incidental expenses for enforcement of security interest and such liability shall be incurred by the Dissenting Institutional Financial Creditors without any recourse, express or implied, to the Corporate Debtor and/or Resolution Applicants.

15.54. The Dissenting Institutional Financial Creditors shall bear the costs, if any, viz. applicable stamp duty, registration or any other charges for creation of such mortgage, enforcement of security interest and any other cost in relation thereto. The Corporate Debtor shall not be liable for any such costs, charges and/or other levies in relation thereto as the Resolution Applicant is providing what is required as per the directions of Hon’ble Supreme Court in Jaypee Kensington Judgment.”

27.5 It is submitted by the Applicant Bank that the intent of the Code is to provide full liquidation value to a DFC without any additional costs. The effect of the abovementioned clauses proposed in the Resolution Plan has the effect of transferring all potential, future, uncertain liabilities (in the nature of stamp duty, compensation sought by local farmers, external development charges, encroachments etc.) attached to the proposed land parcels to the Applicant and would result in payment, which may be much less than the

liquidation value. Thus, non-satisfaction of a mandatory requirement renders the resolution plan non-compliant with the provisions of the Code.

27.6 The Applicant Bank has relied upon the Judgement of the Hon'ble Supreme Court in the **Jaypee Kensington** to demonstrate that: a) a Dissenting Financial Creditor's liquidation value has to be paid in cash, and b) as an exception to the above, a Dissenting Financial Creditor, being a Secured Financial Creditor can be allowed to recover its "amount payable" by enforcing its security interest to the extent of its Liquidation value.

27.7 The relevant extracts of the **Jaypee Kensington** are reproduced below:

"121.1. Therefore, when, for the purpose of discharge of obligation mentioned in the second part of clause (b) of Section 30(2) of the Code, 244 the dissenting financial creditors are to be "paid" an "amount" quantified in terms of the "proceeds" of assets receivable under Section 53 of the Code; and the "amount payable" is to be "paid" in priority over their assenting counterparts, the statute is referring only to the sum of money and not anything else. In the frame and purport of the provision and also the scheme of the Code, the expression "payment" is clearly descriptive of the action of discharge of obligation and at the same time, is also prescriptive of the mode of undertaking such an action. And, that action could only be of handing over the quantum of money, or allowing the recovery of such money by enforcement of security interest, as per the entitlement of the dissenting financial creditor."

121.2. We would hasten to observe that in case a dissenting financial creditor is a secured creditor and a valid security interest is created in his favour and is existing, the entitlement of such a dissenting financial creditor to receive the "amount

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

(Emphasis Supplied)

27.8 It is further stated by the Applicant Bank that even Section 13(7) of SARFAESI Act, 2002 provides that all expenses, costs, and charges, which have been incurred by the secured creditor in realizing such secured asset shall be ‘recoverable’ from the borrower.

27.9 The next objection raised by the Applicant Bank is that the proposed Resolution plan does not give the DFC an opportunity to choose the security interest it wishes to enforce, instead it thrusts its unilateral decision to allocate only one of the secured land assets of the Corporate Debtor to the Applicant (i.e., land at Tappal, U.P., which is commercially unviable and less marketable), in comparison to and in complete disregard to the other parcels of land and movable assets over which also the Applicant holds valid security interest. Additionally, the SRA has also overlooked the cash generated from the Yamuna Expressway, over which the Applicant holds valid security interest and is itself sufficient to recover the “amount payable” to the Applicant. The Applicant Bank, in this context, has relied upon Clauses 15.47 and 15.49 of the Resolution Plan, which are reproduced overleaf:

“15.47. The Resolution Applicants / Corporate Debtor shall identify specific and distinct security interest, **out of the Consortium Pari-passu Corporate Debtor Land Parcels Security Interest**, exclusively for each of the Dissenting Institutional Financial Creditor(s):

Table 16: Treatment to Dissenting Institutional Financial Creditors

S.No.	Location of Land	Existing Security (in acres)	Initial Provision for Dissenting Institutional Financial Creditors out of <u>the Consortium Pari-passu Corporate Debtor Land Parcels Security Interest</u> (in acres)	Average Liquidation Value rate per acres@ Rs. Cr/acre	Liquidation value (Rs. Cr)
1	Jaganpur	320	130	2.78	361
2	Mirzapur	227.40	-	2.89	-
3	Tappal	*666	666	1.30	866
4	Agra	690	690	1.23	849
	Total	1903.4	1,486		2,076

@ as provided by IRP; 166 acres out of 666 acres mortgaged to exclusive charge holders.”

“15.49. The Resolution Applicants have right to identify and earmark specific land at any of the locations, out of the existing security interest, in order to provide specific, exclusive and distinct security interest for enforcement of security interest, for recovery of entitlement, by each Dissenting Institutional Financial Creditor/(s). However, in order to provide fair and equitable treatment to the Dissenting Institutional Financial Creditors, the Resolution Applicants shall exercise their aforesaid right of identifying specific, distinct and exclusive land parcels, after inviting views / suggestions of such Dissenting Institutional Financial Creditors. It is also clarified that since the Resolution Applicants need to identify such land parcels expeditiously in

order to make it part of the Resolution Plan, prior to the submission of the same for approval before the Adjudicating Authority by IRP, the Resolution Applicants shall provide maximum five working days to such Dissenting Institutional Financial Creditor (s) for such giving their views / suggestions in this regard. In the event the Dissenting Institutional Financial Creditors fail to arrive at a consensus regarding the identification of the security interest by the Resolution Applicants then the identification done by the Resolution Applicants shall be binding on each Dissenting Institutional Financial Creditors. In the event, the Dissenting Institutional Financial Creditors so agree, then the Resolution Applicants shall identify and earmark land parcels out of the existing security interest and shall provide such identified land parcels to Dissenting Institutional Financial Creditors as security on pari-passu basis for recovery of their entitlement by way of enforcement of such security interest.”

27.10 It is contended by the Applicant Bank that Clause 15.49 of the Resolution Plan proposes to seek views/suggestions from a DFC, as regards the proposed land to be offered, however in case of failure of the to arrive at consensus qua the same, the decision of the Resolution Applicant shall be final.

27.11 It is further stated that the land parcel admeasuring 180 acres at Tappal, U.P. proposed by the SRA vide their email dated 2 July 2021 is admittedly a parcel of ‘mix use of land’ – viz., residential, community facility, sector green and roads. The proposed land parcel is commercially unviable and less marketable which in all likelihood, may not even yield the liquidation value to the Applicant Bank as contemplated under Section 30(2) of the Code.

27.12 Another objection raised by the Applicant Bank is that the IRP has calculated the liquidation value payable to the Applicant only to the extent of the value of the security available to it, with no further entitlement given towards the Applicant's rights as an unsecured creditor on the unencumbered and other available assets of the Corporate Debtor. Thus, the computation of the Liquidation Value by IRP is erroneous and is in violation of the Code.

27.13 As per Section 53 of the Code, once a secured creditor has been given the entitlement of its security under Section 53(1)(b) of the Code, the secured creditor can claim the balance unpaid portion from the apportionment of unencumbered assets of the corporate debtor, which are available to unsecured financial creditors under Section 53(1)(d) on account of said assets being unsecured assets. It is a settled position that a secured creditor is secured to the extent of its value, and for the remaining debt, it continues to be an unsecured creditor. The debt owed to the Applicant from the Corporate Debtor is admittedly a financial debt and to the extent, the same is covered by the security in its favour, it is a secured debt and for the remaining debt, the Applicant is an unsecured financial creditor entitled for payment towards the balance at priority no. 4 under Section 53(1)(d) of the Code, after deduction of dues owed to the employees for 12 (twelve) months prior to the insolvency commencement date.

27.14 It is stated by the Applicant Bank that IRP has misinterpreted Section 53 of the Code to calculate the additional entitlement payable to the Applicant as per Section 53(1)(e)(ii) of the Code at priority no. 5 and he has erroneously computed the Applicant's liquidation value at Rs. 218 Crores,

while negating the fact that the Applicant was entitled to be apportioned further amounts at priority no. 4 under Section 53(1)(d) as an unsecured financial creditor for the purposes of calculation of its liquidation value. It is relevant to highlight that the said erroneous calculation by the IRP was objected to by the Applicant as recorded in its letter dated 19.5.2021.

27.15 It is stated by the Applicant Bank that it has been wrongfully contended by the SRA that since the Applicant is 'enforcing its security interest', its entitlement is to be computed in accordance with Section 52 of the Code. At the outset, it is submitted that the Applicant has simply dissented to the Suraksha's Resolution Plan and accordingly, its entitlement is to be computed in accordance with Section 30(2) read with Section 53 of the Code, and not as per Section 52 of the Code. There is a distinction between 'entitlement to liquidation value' which refers to the calculation of a minimum guaranteed amount to a DFC under Section 30(2) in accordance with Section 53(1) of the Code, as against the mode of satisfaction of such an amount which ordinarily gets paid off as cash, or by way of enforcement of security interest, depending upon terms of the resolution plan in question. That is to say, there is a difference between entitlement and the mode of satisfaction of the entitlement. The mode of satisfaction of the entitlement, cannot change the manner of its calculation itself. Therefore, computation of liquidation value is to be carried out in terms of Section 30(2) read with Section 53(1) of the Code, and not in terms of Section 52, which is relevant only as a mode of satisfaction of the entitlement (of liquidation value), in terms of the **Jaypee Kensington**.

27.16 It is further stated by the Applicant that the IRP has not maintained any consistency in its interpretation of Section 53 of the Code, which is clearly demonstrated from the computation of liquidation value carried out by the IRP for different creditors of the Corporate Debtor. Whereas for the purpose of liquidation value payable to the homebuyers first, they have been treated at par with the other secured creditors (similar to the Applicant) under Section 53(1)(b) of the Code at priority no. 2 and second, they have been treated as unsecured financial creditors under Section 53(1)(d) of the Code at priority no. 4; per contra, for the unsecured portion of its debt, the Applicant has been placed under Section 53(1)(e)(ii) of the Code at priority no. 5, instead of being placed under Section 53(1)(d) at priority no. 4. No reasonable explanation has been provided in support of this computation of liquidation value carried out by the IRP. It is, however, submitted that the Applicant is in no way impugning the treatment envisaged for the homebuyers under the Suraksha's Plan, it has only sought to demonstrate the contradictory stand adopted by the IRP, which has been ratified by the CoC, in its interpretation of Section 53 of the Code. The counsels for lenders, during the 21st CoC meeting, themselves admitted that a secured financial creditor is entitled to receive the balance value under Section 53(1)(d) of the Code (priority no. 4) and it does not have to fall under Section 53(1)(e) of the Code. Thus, it is evident that the computation of the liquidation value of the Applicant carried out by the IRP is in violation of the Code and hence, incorrect.

28. The IRP, CoC through IDBI Bank and the SRA (**hereinafter, together referred to as "Supporters of Plan"**) have filed their Replies and Written

Submissions and stated the following in response to the objections raised by the DFC / ICICI Bank:

28.1 The Resolution plan was prepared with the intention that even if 34% of CoC members dissent, the plan shall not fail and therefore, the mechanism incorporated in the plan should accommodate the same. Accordingly, the treatment given to the Dissenting Financial Creditor is given in Clause 15.47 of the proposed Resolution Plan. As a matter of fact, the CoC of the Corporate Debtor approved the Resolution Plan on 23.06.2021 by 98.66% voting in favour of the plan and hence, the treatment proposed in Clause 15.47 shall be available to the DFC representing the remaining 1.34% voting of the CoC.

28.2 It could not have been anticipated how many and which secured financial creditor will dissent, the practice of recognizing security interest out of Consortium Pari-passu Security Interest, against which a dissenting financial creditor will be allowed to enforce its right to the extent of liquidation value could only have been done subsequent to voting on the Resolution Plan and before submission to this Adjudicating Authority for approval. Hence, it was proposed that Suraksha Group shall identify specific, distinct, and exclusive security interest relatable only to the debt of each of dissenting financial creditors, out of the Consortium Pari-passu Security interest, as per their liquidation value due to them.

28.3 In response to the objection that the proposed Resolution Plan did not give choice to the ICICI Bank to enforce security interest as per its choice, it is stated by Supporters of the plan that SRA has the full right to decide which part of the security is to be given to the DFC for enforcement. Under Section

5(26) of the Code, Resolution Plan means a plan proposed by the resolution applicant for insolvency resolution of the corporate debtor as a going concern. It is stated that the plan includes treatment to the dissenting financial creditor which is to be proposed by the Resolution Applicant.

28.4 Neither the **Jaypee Kensington** nor the provisions of the Code give any right to a DFC to choose a security interest or that it should be allowed to enforce from a common pool of security interest over which other financial creditors (assenting and/or dissenting) also have a paid pari passu charge. The **Jaypee Kensington** provides for an alternative form of payment by way of enforcement of security interest, but it does not provide that an option has to be given to the DFC to choose from available secured assets of the corporate debtor, for enforcement of its security interest.

28.5 That the right to choose was never with ICICI Bank, as it is one of the lenders in the IDBI consortium with only around 3% of the total debt of the consortium. Security interest belongs to the entire consortium and therefore, ICICI Bank, itself, could never have exercised enforcement of security interest without the consent of the consortium lenders.

28.6 Further, it is not a unilateral decision of the Resolution Applicant to first provide land parcels at Tappal to a DFC. Such a decision has been accepted by CoC in its commercial wisdom (by virtue of 98.66% voting in favour of the Resolution Plan) and the same is binding on the DFC. In this regard, the Supporters of the Plan have placed reliance on Para 112 of **Ebix Singapore (P) Ltd. Educomp Solutions Ltd. (COC)**, [(2022) 2 SCC 401].

28.7 It is further stated that the resolution applicant has proposed a fair and equitable treatment to the dissenting FCs by way of inviting views/ suggestions of such DFCs within a period of 05 working days from the approval of the Resolution Plan by the CoC. Thereafter, if such Dissenting Financial Creditor fails to arrive at a consensus regarding the identification of the security interest by the resolution applicant, then the identification done by the resolution applicant will be binding on each dissenting FC. Accordingly, the Suraksha (SRA) vide its email dated July 02, 2021 communicated to ICICI Bank that it had identified 180 acres of land for the ICICI Bank (the value of which will correspond to its entitlement) out of 666 acres of land at Tappal and requested it to provide its views/ suggestions. The Applicant ICICI Bank vide letter dated July 08, 2021, raised objections to the same which, inter alia, included ICICI's grievance of not being permitted to choose the security interest to be enforced by it. Thereafter, again the Suraksha (SRA) vide its letter dated July 29, 2021 responded to the objections raised by ICICI Bank and also invited it to choose from any land parcel from 666 acres in Tappal. However, the ICICI Bank did not revert, and as a consequence, the selected 180 acres of land parcels were allotted by Suraksha to ICICI Bank. Thus, ICICI Bank failed to exercise this right provided under the Resolution Plan.

28.8 In response to the objection raised by the ICICI Bank with regard to its contention that land parcels proposed to be transferred to ICICI Bank are of 'mix use of land' and thus, are non-marketable and commercially unviable, enforcement of which may not yield the liquidation value, the Supporters of the Plan have stated that there is no evidence to show that the land parcels

being allotted to ICICI Bank are not marketable and are commercially unviable. Having accepted the same land parcels as security, while giving the loan, the Applicant/ICICI Bank now cannot be permitted to reject the same on a ground, which is not backed with any cogent evidence.

28.9 The valuation of the Corporate Debtor's assets, including the land parcels being allocated to Applicant/ICICI Bank, has been done in compliance with the IBC read with the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Under Regulation 35 read with Regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the IRP had appointed two registered valuers namely RBSA Valuation Advisors LLP and GAA Advisory LLP for such valuation. Thereafter, the IRP considered the average of the two valuations proposed by both the valuers for the Corporate Debtor's assets to arrive at their fair market value and liquidation value.

28.10 The individual liquidation value of ICICI Bank's claim is Rs. 218 Crores against its admitted claim of Rs. 304 Crore. The Liquidation value for 1,266 acres of land parcels located in Tappal is given below:

Relevant Land Parcel	Fair value computation (in INR Crore)			Liquidation value computation (in INR Crore)		
	RSBA's valuation	GAA Advisory's valuation	Average valuation of the two valuers as computed by the IRP	RSBA's valuation	GAA Advisory's valuation	Average valuation of the two valuers as computed by the IRP
<i>Tappal land parcels (admeasuring 1,266 acres)</i>	2,210	2,343	2,277	1,547	1,406	1,476

The ICICI Bank did not challenge the aforesaid valuation. Hence, it cannot question the value at this belated stage.

28.11 It is further stated that the SRA vide Clause 15.17 of the Resolution Plan has given a Shortfall Undertaking in the Resolution plan, as per which further security interest shall be provided in case of any shortfall in treatment to Dissenting Financial Creditor. The Clause 15.17 of the plan reads thus:

15.17. Shortfall Undertaking for Dissenting Financial Creditor:

In case of any shortfall of land for the treatment to the Dissenting Institutional Financial Creditors, the Resolution Applicants hereby undertakes to provide / earmark such required land parcels out of the land parcels available with Corporate Debtor and / or provide for any other security interest, out of the assets of the Corporate Debtor, to make up the shortfall and / or make good the shortfall in any other manner, as per Applicable Laws, in line with the directions of the Hon'ble Supreme Court in its Jaypee Kensington Judgement, with respect to treatment of the Dissenting Institutional Financial Creditors, in addition to above earmarked 2,594 acres of land parcels. This shortfall undertaking is being given in the Resolution Plan in order to make the plan compliant by following the directions of Hon'ble Supreme Court.

28.12. As regards the objection relating to the transfer of liability of enforcement of security interest and other allied costs upon ICICI Bank, it is stated by the Supporters of the Plan that the term “liquidation cost” as defined under Regulation 2(1)(ea) of the IBBI (Liquidation Process) Regulations, 2016 does not include any costs incurred by a secured creditor. Further, the “liquidation value” as defined under Regulation 2(k) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 does not include the cost of enforcement or realization which a creditor might incur in enforcing security interest. The definition uses the term “realizable value” and not “net realizable value”.

28.13 It is further stated that the Hon'ble Supreme Court in the **Jaypee Kensington and India Resurgence ARC Private Limited v. M/S. Amit**

Metaliks Limited & Anr. (Civil Appeal No. 1700 of 2021) provides for the right of the Dissenting Financial Creditor to get liquidation value and not liquidation value along with enforcement costs.

28.14 It is stated that the liquidation value is always less than the fair market value of the assets. The liquidation value is the value recoverable from the distressed sale of assets when the company is not a going concern. The land parcels being provided to ICICI Bank are worth Rs. 218 Crores at the liquidation value, however, the fair market value of such land parcels is much higher than Rs. 218 Crores which shall be sufficient to cover the enforcement costs.

28.15 As per Section 52(8) of the IBC, on enforcement of security interest during liquidation, Secured Financial Creditors are required to pay their proportionate share in the CIRP costs to the liquidator. Thus, costs incurred by a creditor to enforce the security interest has to be borne by such creditor and such creditor needs to provide his share of costs to the liquidator. Therefore, the need to provide for such enforcement costs does not arise.

28.16 As regards to the objection taken by the ICICI Bank with respect to the mode of determination of its Liquidation value, it is stated by the supporters of the plan that RP's computation of average liquidation value due to each secured Institutional Financial Creditor of the Corporate Debtor (including ICICI Bank) assumed that each secured Institutional Financial Creditor would enforce their existing security interest under Section 52(1)(b) of the IBC and accordingly, would be paid the remaining dues, if any, under Section 53(1)(e)(ii) of the IBC. For each consortium lender, the liquidation

value was computed by considering the ratio of the liquidation value of Consortium Secured Assets computed by the registered valuers of the Corporate Debtor, and the admitted debt of Consortium Lenders. Such computation of liquidation value due to Institutional FCs was approved by the CoC in the 21st CoC meeting held on 20.05.2021.

28.17 The ICICI Bank is a “secured creditor” as per Section 3(30) of the IBC as it has given a loan in respect of which security interest was created. Accordingly, a liquidation value of Rs. 218 Crores was computed for ICICI Bank out of its admitted claim of Rs. 304 Crores. Its balance claim of Rs. 86 Crores could not be considered as: (a) subsequently, the remaining proceeds which were due to the unsecured creditors i.e., Home Buyers and fixed deposit holders in accordance with Section 53(1)(d) of the IBC; and (b) post consideration of payments to be made to Home Buyers and fixed deposit holders, the proceeds were not sufficient to pay the remaining creditors in the liquidation waterfall under Section 53 of the IBC, including payments to secured creditors for any amount unpaid following the enforcement of security interest under Section 53(1)(e)(ii) of the IBC. Therefore, payment under Section 53(1)(e)(ii) of the IBC to ICICI is Nil.

28.18. Section 53 of the IBC prescribes a distribution waterfall, with the ranking of each class of creditors based on an identified priority. If the total liquidation value of the assets of the Corporate Debtor is not sufficient for full payment of all dues of a certain higher rank of creditors, the lower rank will not be entitled to any proceeds from the assets/liquidation of the Corporate Debtor. Under the IBC, the unsecured financial creditors are not mandatorily

entitled to receive payments under a resolution plan in the event that the liquidation value of the corporate debtor is likely to be even insufficient to satisfy the claims of the secured creditors and workmen dues in full.

28.19. In the distribution waterfall prescribed under the IBC, ICICI Bank falls under Section 53(1)(e)(ii) of the IBC for the balance amount of Rs. 86 Crores and not under Section 53(1)(d) of IBC as contended by ICICI Bank.

28.20 The Hon'ble Supreme Court in the **Jaypee Kensington** has introduced the concept of enforcement of security interest by a dissenting financial creditor by clearly adverting to the principle contained in Section 52(1)(b) of the IBC. Such concept/principle has been imported from Section 52 of the IBC (since Section 53 of the IBC does not provide for enforcement of security interest, but rather provides for dues after relinquishment). Therefore, Section 52 has to be read with Section 53 of the IBC, otherwise, there is no provision under the IBC that will govern the enforcement of security interest by dissenting financial creditors. Having alluded to the principle contained in Section 52(1)(b) of the IBC, the consequent effect would be that any remaining claims of the dissenting financial creditor will be secured claims recoverable under Section 52(9) of the IBC, which places such dissenting financial creditor under Section 53(1)(e)(ii) of the IBC, 2016.

28.21. In any event, as laid down in the **Jaypee Kensington**, the requirement of Section 30(2)(b) of the IBC is automatically satisfied by allowing dissenting the financial creditor to enforce its security interest (*refer para 121.2 of Jaypee Kensington*). In other words, this judgment clearly states that the money received by a dissenting financial creditor to the extent of its

entitlement pursuant to the enforcement would amount to payment to such creditor under Section 30(2)(b) of the IBC. Thus, the question of inadequate treatment of ICICI by not allowing dues under Section 53 does not arise at all.

29. After going through the documents placed on record and hearing submissions made by the Objectors as well as the Supporters of the Resolution Plan, this Bench observes that the Objectors have raised the following main objections to the Resolution Plan:

- a) The Resolution Applicant had thrust its choice of land on the Dissenting Financial Creditor for enforcing its Security Interest. The Dissenting Financial Creditor was not given a choice to enforce security interest in its desired property.
- b) The proposed Resolution Plan compels the Dissenting Financial Creditor to bear the entire cost of enforcing security interest, which might create a risk for the Dissenting Financial Creditor not to realize even the Minimum Liquidation Value.
- c) The manner of computation of the Liquidation value of ICICI Bank itself is erroneous as the entitlement of the ICICI Bank for another Rs. 86 Crore over and above Rs.218 Crore under Section 53(1)(d) i.e., as an Unsecured Financial Creditor, was not considered.

30. Per Contra, the Supporters of the Resolution Plan have contended that:

- a) There is no provision under the IBC 2016, which stipulates that the Dissenting Financial Creditor can choose the property of its own choice to enforce its Security Interest.
- b) The Resolution Applicant has provided the “Shortfall Undertaking” under the plan which shall protect the interest of the Dissenting Financial Creditor. Further, the Liquidation value of the asset for which Security Interest is to be enforced is sufficient to meet

the expenses incurred on realizing the Liquidation value. Moreover, the fair market value of the said asset is higher than the Liquidation value.

c) The other Secured Financial Creditors have accepted the mode of calculation of the Liquidation value, in their commercial wisdom. Further, the entitlement of the Liquidation value of ICICI Bank over Rs. 218 Crore is 'Nil' in terms of Section 53(1)(e)(ii) of the IBC,2016.

31. Now, we would like to examine the contentions of both sides. It is a matter of fact that the Resolution Applicant vide its email dated 02.07.2021 had informed the Applicant ICICI Bank/DFC that it had identified 180 Acres of land at Tappal, UP and requested the Applicant Bank to provide its views/suggestions. The said email dated 02.07.2021 is reproduced below:

From: Devang Patel <devang.patel@surakshaarc.com>
Sent: Friday, 2 July 2021 11:52 AM
To: Neeraj Mohan /PM_PMSFG/IBANK/BKC; Sudipto Basu /PM_PMSFG/IBANK/BKC; Sharad Agarwal /PM_PMSFG/IBANK/BKC; Nidhi Doshi /PM_PMSFG/IBANK/BKC; Subodh Sharma /PM_PMSFG/IBANK/BKC; IRPJIL; anujjain@bsraffiliates.com; Goel, Hitesh; Nawariya, Kamal
Cc: Aalok Dave; Prateek Tayal; Harsh Joshi; Suresh Bansal
Subject: Suraksha Group; Jaypee Infratech; Identification of Land for Dissenting Financial Creditors
Attachments: Identified Land Details.pdf; Identified Land-MAP.pdf

External Email Warning: Do not click on any attachment or links/URL in this email

Dear Sir,

We refer to the Resolution Plan dated June 07, 2021 submitted by Suraksha Realty Limited and Lakshdeep Investments and Finance Pvt Ltd (the "Suraksha Group") along with Addendum to the Resolution Plan dated June 09, 2021 which is approved / accepted by 98.66% of the Committee of Creditors comprising the Banks and Institutions, Homebuyers and Public Depositors. We also refer to the Letter of Intent dated June 25, 2021 issued by IRP and accepted by Suraksha Group.

We further refer to the email received from IRP dated June 29, 2021, wherein we were informed that the liquidation value due to ICICI Bank (dissenting financial creditor) amounts to Rs. 218 crore.

In view of the above, we have identified 180 acres land in Tappal as mentioned in clause 15.50 of the resolution plan. We have highlighted land parcels in the Map and Plot details in the attached file. We have earmarked land parcels which is adjacent to your mortgaged land. The identified land parcels are contiguous land parcels with optimum mix of land use.

We also refer to clause 15.49 and 15.50 of the Successful Resolution Plan and request you to provide your views/suggestions.

Regards,

Devang Patel

Authorised Signatory

In response to the abovesaid e-mail, the Applicant ICICI Bank vide letter dated July 08, 2021 raised objections which, inter alia, included the ICICI Bank's grievance of not being permitted to choose the security interest to be enforced by it. In reply to this, the Suraksha vide letter dated July 29, 2021 responded to the objections raised by ICICI Bank. At this stage, we therefore, refer to the said letter, which is reproduced below for immediate reference:



ANNEXURE A-7

WITHOUT PREJUDICE

July 29, 2021

To,
ICICI Bank,
ICICI Bank Towers, Bandra-Kurla Complex,
Mumbai- 400051.

Sub: Identification of the Land for the Dissenting Financial Creditors in the matter of Resolution of Jaypee Infratech Limited (the "Corporate Debtor")

Re: 1. Email dated July 2, 2021 from Suraksha Realty Limited
2. Letter dated July 8, 2021 from ICICI Bank

Dear sir/madam,

We, Suraksha Group (Suraksha Realty Limited alongwith Lakshdeep Investments and Finance Private Limited), refer to the resolution plan submitted by us and as approved by 98.66% of the financial creditors of the Corporate Debtor (the "Successful Resolution Plan") and email sent by us dated July 2, 2021 on the captioned matter.

At the outset, we would like to mention that we have provided the treatment to the dissenting financial creditors (creditors who have not voted in favour of the Successful Resolution Plan or "DFCs") in the Successful Resolution Plan, in line with the judgment passed by Hon'ble Supreme Court in Jaypee Kensington Judgment¹, Insolvency and Bankruptcy Code, 2016 (the Code or IB Code) and rules and regulations made thereunder.

Without prejudice to our rights and contentions, please find below our reply to your objections set out in your letter dated July 8, 2021:

- a) It is reiterated that the provisions of the Successful Resolution Plan, with respect to the DFC, are in consonance with the provisions of the IB Code including Section 52 and the order of the Hon'ble Supreme Court, as it allows the dissenting financial creditor to enforce the security interest, relating to the financial debt of such dissenting financial creditor and not to any other debt or claim, for the purpose of money recovery by dissenting financial creditor, to the extent of the value receivable by him and in order of priority available to it.
- b) It has been clearly mentioned in the Successful Resolution Plan (Clause 15.50 at Page 49 of the Resolution Plan), that the enforcement of security interest shall be firstly allowed

¹Jaypee Kensington Judgment: Order Passed by the Hon'ble Supreme Court in the matter of the Jaypee Kensington Boulevard Apartments Association and Ors vs. NBCC (India) Limited dated March 24, 2021.

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with respect to mortgaged land parcels in Tappal, out of the existing mortgaged land, in order to allow the enforcement of the security interest, which is relatable to the financial debt of a dissenting financial creditor and not to any other debt or claim and to the extent of the value receivable by such dissenting financial creditor. There is neither any ambiguity in the land identified nor any non-compliance with respect to provisions of the Code or order of the Hon'ble Supreme Court in Jaypee Kensington Judgment. It is stated that your reliance on the judgment with respect to having a right to choose the security interest, is wholly misplaced and against the spirit of the IBC.

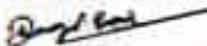
- c) It is submitted that we have been provided with the liquidation value of the land parcels by the Interim Resolution Professional (IRP) vide letter dated May 17, 2021. The Resolution Plan provides allowing the right of enforcement of security interest at liquidation rates provided by IRP to the DFC in line with the order of the Hon'ble Supreme Court in the matter of Jaypee Kensington Judgment. It is also to be noted that the land parcels are offered at the liquidation value however the present fair market value is much more than liquidation value.
- d) It is stated that there's no provision/requirement for the requirement of the shortfall undertaking in the Code or the Jaypee Kensington Judgment. The judgment provides for allowing the enforcement of security interest and such treatment is provided in the Successful Resolution Plan which is in line with the Code as well as Jaypee Kensington Judgment.
- e) It is noteworthy that the contentions with respect to optimum mixed use of land, non-disclosure of claims, other liabilities, encumbrances and encroachments and impact of UP Industrial Area Development Act, 1976 raised by ICICI are baseless and irrelevant as the security interest for which enforcement rights are allowed under the Resolution Plan, are part of the mortgaged properties already available to the DFCs.

In light of the foregoing, we hereby would like you to note that the treatment provided to your bank, being dissenting financial creditor, in the Successful Resolution Plan is in line with the Code and Jaypee Kensington Judgment. We further reiterate that the same is commercially viable and compliant of the relevant provisions of IBC.

As regards reconsidering the proposal, we are willing to consider allowing the enforcement rights on any other land parcel out of 666 acres at Tappal, in line with the Successful Resolution Plan, provisions of IBC and Jaypee Kensington Judgment.

Kindly take note accordingly.

Thanking you,
Yours faithfully,


Authorized Signatory
Dewang Patel

Thus, we notice that the Suraksha vide letter dated July 29, 2021 invited the ICICI Bank to choose any land parcel out of the 666 acres of land in Tappal. However, the ICICI Bank did not revert back. Thus, ICICI Bank failed to exercise this right provided by the SRA under the Resolution Plan. Resultantly, the selected 180 acres of land was allotted by Suraksha to the DFC/ICICI Bank.

32. The grievance of the ICICI Bank is that it was not given an opportunity to select property of its own choice, for enforcing the Security Interest. We are aware the Hon'ble Supreme Court in the **Jaypee Kensington** had recognized the enforcement of Security Interest, as a mode of payment of Liquidation value. The relevant extracts of the Judgement are reproduced below:

*“124. To sum up, in our view, for a proper and meaningful implementation of the approved resolution plan, the payment as envisaged by the second part of clause (b) of sub-section (2) of Section 30 could only be payment in terms of money and the financial creditor who chooses to quit the corporate debtor by not putting his voting share in favour of the approval of the proposed plan of resolution (i.e., by dissenting), cannot be forced to yet remain attached to the corporate debtor by way of provisions in the nature of equities or securities. **In the true operation of the provision contained in the second part of sub-clause (ii) of clause (b) of sub-section (2) of Section 30 (read with Section 53), in our view, the expression “payment” only refers to the payment of money and not anything of its equivalent in the nature of barter; and a provision in that regard is required to be made in the resolution plan whether in terms of direct money or in terms of money recovery with enforcement of security interest, of course, in accordance with the other provisions concerning the order of priority as also fair and equitable distribution. We are not commenting on the scenario if the dissenting financial creditor himself chooses to accept any other method of discharge of its payment obligation but as per the requirements of law, the resolution plan ought to carry the provision as aforesaid.”***

(Emphasis Supplied)

33. On perusal of the above, it is observed that the Dissenting Financial Creditor has to be paid in terms of “money” or in terms of “money recovery with enforcement of security interest”. Here, we further refer to the Judgement

of the Hon'ble Supreme Court in the matter of **India Resurgence Arc Private Limited Vs M/s. Amit Metaliks Limited & Anr. Civil appeal no. 1700 of 2021**, wherein the following is held:

*“14.1. In **Jaypee Kensington** (supra), this Court repeatedly made it clear that a dissenting financial creditor would be receiving the payment of the amount as per his entitlement; and that entitlement could also be satisfied by allowing him to enforce the security interest, to the extent of the value receivable by him. **It has never been laid down that if a dissenting financial creditor is having a security available with him, he would be entitled to enforce the entire of security interest or to receive the entire value of the security available with him. It is but obvious that his dealing with the security interest, if occasion so arise, would be conditioned by the extent of value receivable by him.**”*

(Emphasis Supplied)

34. On perusal of the Judgement (Supra), it is observed that as per the need of the situation, the enforcement of security interest can be conditioned. Since the Code provides for minimum Liquidation value to be paid to the Dissenting Financial Creditor(s), it is the prerogative of the SRA as to what amount it proposes to pay to its stakeholders and the prerogative is not questionable as long as it satisfies the provisions of the Code by providing the minimum Liquidation value to the Dissenting Financial Creditor(s).

35. We are aware that the Prospective Resolution Applicants (PRAs) furnish their Resolution Plans based on the Information Memorandum (IM) prepared by the Resolution Professional, where the list of all the Assets of the Corporate Debtor is given. If a DFC is given the option to select an asset for enforcing security interest, then there will be uncertainty, as there will be a surprise

loss of that Asset, which formed part of the said Information Memorandum and for which the Prospective Resolution Applicant might have got attracted to submit the Resolution Plan. A prospective Resolution Applicant to a Corporate Debtor having multiple Creditors, cannot anticipate as to which Creditor will dissent to the Resolution Plan. If the plan is approved by the requisite majority, the Successful Resolution Applicant gets the pre-emptive right over the assets of the Corporate Debtor, and as a corollary, it is his prerogative whether it wants to retain or release a particular asset for enforcing security interest.

Here, we refer to the Judgement of the Hon'ble Supreme Court in the matter of **Ram Kishun and Ors. vs. State of U.P Civil Appeal No. 6204 of 2009 dated 24.05.2012**, wherein the following is observed:

*“8. Undoubtedly, public money should be recovered and recovery should be made expeditiously. **But it does not mean that the financial institutions which are concerned only with the recovery of their loans, may be permitted to behave like property dealers and be permitted further to dispose of the secured assets in any unreasonable or arbitrary manner in flagrant violation of statutory provisions.**”*

(Emphasis Supplied)

Thus, in our considered view, as long as the minimum Liquidation Value is paid by the Resolution Applicant to the Dissenting Financial Creditor(s), the latter cannot seek any replacement or ask for an alternate property, as a matter of right, for enforcing its Security Interest.

36. Further, we are unable to find any provision under the IBC 2016, or any Rule or Regulation framed thereunder providing that the Creditor is entitled to choose the security interest of its own choice.

37. Hence, we do not find any fault in Suraksha's Resolution Plan on the ground that the Dissenting Financial Creditor ICICI Bank has not been given the choice to select a property for enforcing its Security Interest.

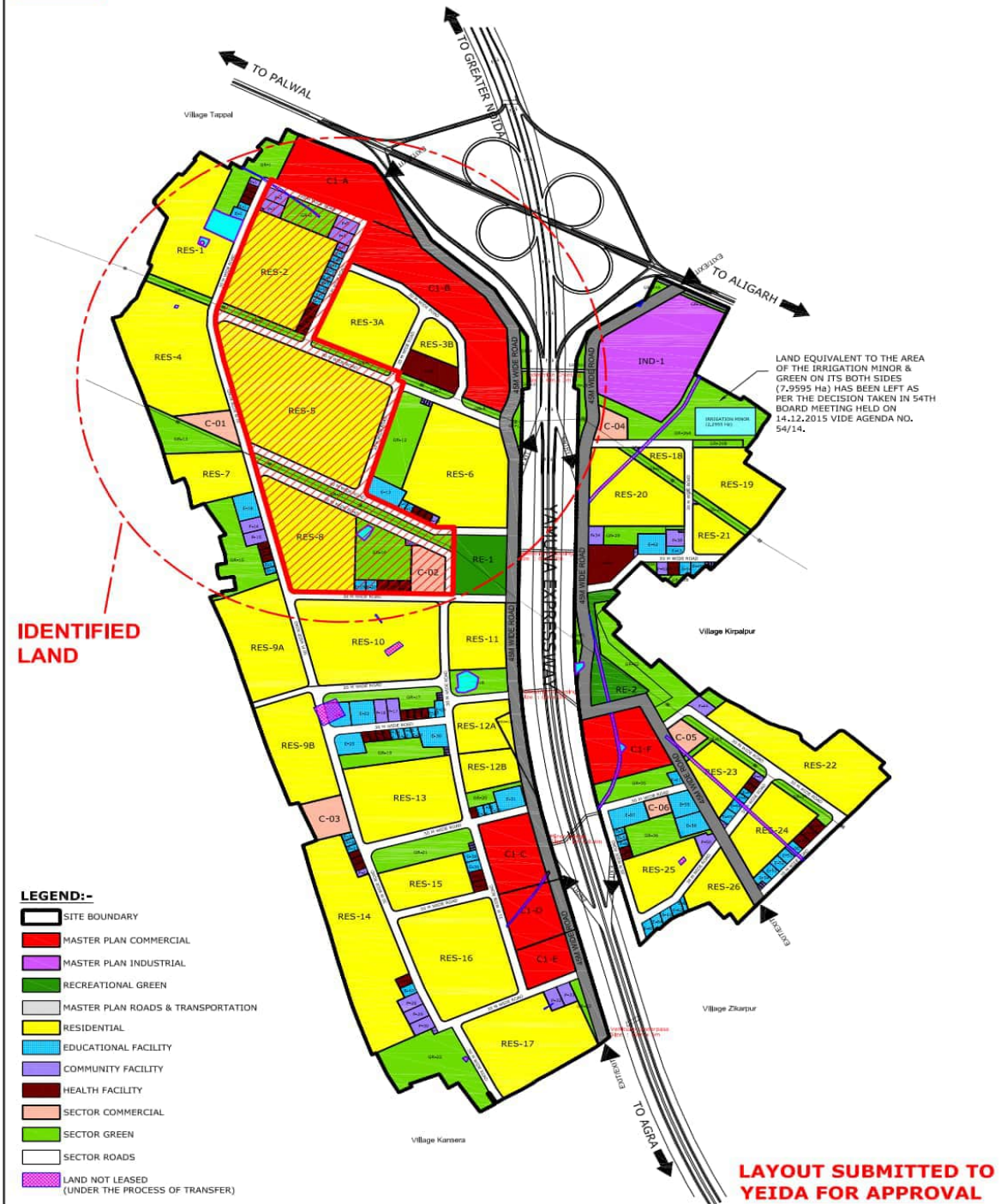
38. The next objection raised by the plan objectors is that the cost of enforcing security interest has been left to the Dissenting Financial Creditor, which may even result in the non-realization of Liquidation value.

39. It is a matter of fact that the SRA vide clause 15.54 of the Resolution Plan has left it on the Dissenting Financial Creditor to bear the cost of enforcing security interest. Further, land admeasuring 180 acres at Tappal, U.P has been allotted to the Dissenting Financial Creditor to enforce its Security Interest (as per the map attached with the application filed by the ICICI Bank and reproduced overleaf):

TAPPAL LAND PARCEL : LFD-4

264

 IDENTIFIED LAND : 180.7 ACRES



The Liquidation value of the land at Tappal has been calculated @ Rs 1.30 Crore per Acre, as per Clause 15.47 of the Proposed Resolution Plan, details of which as provided in the Resolution Plan are reproduced overleaf for immediate reference:

S.No.	Location of Land	Existing Security (in acres)	Intital Provision for Dissenting Institutional Financial Creditors out of <u>the Consortium Pari-passu Corporate Debtor Land Parcels Security Interest</u> (in acres)	Average Liquidation Value rate per acres@ Rs. Cr/acre	Liquidation value (Rs. Cr)
1	Jaganpur	320	130	2.78	361
2	Mirzapur	227.40	-	2.89	-
3	Tappal	*666	666	1.30	866
4	Agra	690	690	1.23	849
	Total	1903.4	1,486		2,076

40. Whereas, the Liquidation value of the ICICI Bank has been stated to be Rs. 218 Crores only, the Liquidation value for the 180 Acres of land parcel at Tappal aggregates to (Ac. 180 x Rs. 1.30 Crore per acre) Rs. 234 Crores, which is clearly higher than the liquidation value entitlement of the ICICI Bank. We further observe that the Resolution Applicant has given the “Shortfall Undertaking” in the Plan, as per which it has undertaken to provide additional 2594 Acres of land parcel for enforcing security interest, in the event of any shortfall. Moreover, the fair market value (FMV) of the land is still higher especially, in the backdrop of the ever-rising trend in land prices. In view of the above, we are of the view that the SRA has made sufficient arrangements to enable the Dissenting Financial Creditor/ICICI Bank to achieve its Liquidation value and cover expenses of enforcing security interest. Hence, this objection raised by the Applicant ICICI Bank and other objectors does not merit consideration and therefore, is rejected.

41. Another objection raised by the objectors of the plan is with respect to the amount of Liquidation value receivable by the ICICI Bank. It is contended by the ICICI Bank that it has been given entitlement only to the extent of the

value of the security available to it, with no further entitlement given to the Applicant's rights as an unsecured creditor, on the unencumbered and other available assets of the Corporate Debtor. To examine this contention, we refer to Section 30(2) of IBC, 2016, which reads as under:

30. Submission of resolution plan. –

(1).....

(2) *The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan -*

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the 4 [payment] of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

*whichever is higher, **and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.....***"

(Emphasis Supplied)

42. On perusal of the above, it is observed that the Dissenting Financial Creditor is required to be paid an amount in accordance with the provision under Section 53(1) of the IBC 2016, in the event of Liquidation of a Corporate Debtor, which implies that the principle of deemed fiction of Liquidation has

been applied in respect to the entitlement of a dissenting financial creditor in the context of Resolution Plan.

43. The ICICI Bank has contended that after availing its entitlement under Section 53(1)(b)(ii) IBC, 2016, it is further entitled under Section 53(1)(d) as an unsecured creditor. Per Contra, the Plan Supporters have contended that ICICI Bank's further entitlement falls under Section 53(1)(e)(ii) of IBC, 2016, which makes ICICI Bank's additional entitlement as Nil.

44. Here, we consider it appropriate to refer to Section 53(1) of IBC, 2016, which is reproduced below:

53. Distribution of assets. -

(1) Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely: -

- (a) the insolvency resolution process costs and the liquidation costs paid in full;**
- (b) the following debts which shall rank equally between and among the following:**
 - (i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and**
 - (ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;**
- (c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;**
- (d) financial debts owed to unsecured creditors;**
- (e) the following dues shall rank equally between and among the following: -**
 - (i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;**
 - (ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;**
- (f) any remaining debts and dues;**
- (g) preference shareholders, if any; and**
- (h) equity shareholders or partners, as the case may be.**

(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.

(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.

Explanation. - For the purpose of this section-

- (i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and**
- (ii) the term "workmen's dues" shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).**

45. Section 30(2) stipulates that Liquidation value, receivable under Section 53(1) has to be taken into account. The contention of the Supporters of the Plan is that Section 53 has to be read with Section 52 of IBC, 2016 since the Security Interest has been enforced in the instant case. Therefore, at this stage, we would like to visit Section 52 of IBC, 2016 which reads thus:

52. Secured creditor in liquidation proceedings. -

(1) A secured creditor in the liquidation proceedings may-

(a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or

(b) realise its security interest in the manner specified in this section.

(2) Where the secured creditor realises security interest under clause (b) of sub-section (1), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.

(3) Before any security interest is realised by the secured creditor under this section, the liquidator shall verify such security interest and permit the secured creditor to realise only such security interest, the existence of which may be proved either –

(a) by the records of such security interest maintained by an information utility; or

(b) by such other means as may be specified by the Board.

(4) A secured creditor may enforce, realise, settle, compromise or deal with the secured assets in accordance with such law as applicable to the security interest being realised and to the secured creditor and apply the proceeds to recover the debts due to it.

(5) If in the course of realising a secured asset, any secured creditor faces resistance from the corporate debtor or any person connected therewith in taking possession of, selling or otherwise disposing off the security, the secured creditor may make an application to the Adjudicating Authority to facilitate the secured creditor to realise such security interest in accordance with law for the time being in force.

(6) The Adjudicating Authority, on the receipt of an application from a secured creditor under sub-section (5) may pass such order as may be necessary to permit a secured creditor to realise security interest in accordance with law for the time being in force.

(7) Where the enforcement of the security interest under sub-section (4) yields an amount by way of proceeds which is in excess of the debts due to the secured creditor, the secured creditor shall-

(a) account to the liquidator for such surplus; and

(b) tender to the liquidator any surplus funds received from the enforcement of such secured assets.

(8) The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.

(9) Where the proceeds of the realisation of the secured assets are not adequate to repay debts owed to the secured creditor, the unpaid debts of such secured creditor shall be paid by the liquidator in the manner specified in clause (e) of sub-section (1) of section 53.

46. When we peruse Section 53, it is observed that it contains the provision for the distribution of assets during the Liquidation proceedings. The reference of Section 53(1) in Section 30(2)(b) has been only for a limited purpose i.e., to define the minimum entitlement of the dissenting financial creditors, which shall not be less than the liquidation value of the Corporate Debtor. When we further refer to Section 53(1)(b)(ii), we observe that the provision therein is meant only for those Secured Creditors, who have **relinquished** their Security interest. In contrast, there is no such provision under Section 53(1) for the Creditors, who have **enforced** their security interest. We understand that such Creditors have been left on their own to recover their dues and it is not the Liquidator's responsibility to distribute the proceeds. But in the case herein, it is the question of calculating the Liquidation value. Since in the context of a Resolution Plan, the enforcement of security interest is nothing but the alternate mode of payment of cash as enunciated by the **Jaypee Kensington**. Therefore, for calculating the Liquidation value as an entitlement of a Dissenting Financial Creditor in the context of a Resolution Plan, we have to treat the Dissenting Financial Creditor under Section 53(1)(b)(ii) of the IBC, 2016.

47. For the remaining entitlement of the ICICI Bank, we observe that the ICICI Bank is the only Creditor, who has dissented to the Resolution Plan. When we visit Form-H submitted by the Applicant, we observe that the ICICI Bank was always classified as a Secured Financial Creditor and not as an Unsecured Financial Creditor. Further, Homebuyers and Fixed Deposit

Holders were categorized as Unsecured Creditors, as would be evident from the relevant extracts of the Form-H as reproduced below:

7. The amounts provided for the stakeholders under the Resolution Plan is as under:
(Amount in Rs. lakh)

Sl. No.	Category of Stakeholder (Please refer to the Note below this table)	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above:	979,530	978,260	773,700 ¹	79%
		(i) who did not vote in favour of the resolution plan	30,410	30,410	21,800 ²	72%
		(ii) who voted in favour of the resolution plan	949,120	947,850	751,900 ³	79%
		Total[(a) + (b)]	979,530	978,260	773,700	79%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:	1,436,852	1,283,635	959,169	75%
		-Allottees/ Home Buyers	1,433,548	1,280,707	956,243 ⁴	75%
		-Fixed Deposit Holders	3,304	2,929	2,926 ²	100%
		(i) who did not vote in favour of the resolution Plan				
		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	1,436,852	1,283,635	959,169	75%

48. In our considered view, the DFC/ICICI Bank cannot sail in two boats, either it can be treated as a Secured Financial Creditor or as an Unsecured Financial Creditor. The wording under Section 53(1)(b)(ii) regarding “*relinquished security*” will not make the Secured Creditor as an Unsecured Creditor. Since in the context of a Resolution plan, Section 53(1)(b)(ii) has a limited role i.e., only for calculation of minimum entitlement of a DFC in terms of Liquidation value, it does not mean that relinquishment of Security Interest in actual has taken place by the Secured Creditor, the requirement of which only arises when the Corporate Debtor is under Liquidation. Hence, a Secured Creditor cannot be treated as an Unsecured Creditor and will not be entitled to both the benefits under Section 53(1)(b)(ii) and Section 53(1)(d) both simultaneously.

49. On perusing Section 53(1)(e)(ii), it is observed that the unpaid entitlement of a Secured Creditor is only recognized below in priority to the payment to an Unsecured Creditor 53(1)(d), which in the present case turns out to be “Nil”. Hence, we find that no error has been committed by the IRP of JIL, while calculating the Liquidation value of the Dissenting Financial Creditor/ ICICI Bank.

50. In view of the aforesaid discussion, we find no merit in the IA-3457/PB/2021 filed by the ICICI Bank and the same is accordingly, Dismissed.

VIII. IA. NO. 3306/PB/2021

OBJECTIONS OF YEDIA

51. By filing this IA, the Yamuna Expressway Industrial Development Authority (hereinafter, referred to as **“YEIDA”**) has raised objections to the CoC-approved Resolution Plan of Suraksha Realty. YEIDA have, however, clarified that their objections are not intended to disrupt or stall the present Resolution Plan, but solely and exclusively for the reason that the SRA/ Suraksha has disregarded the observations and findings of the Judgement of Hon’ble Supreme Court passed in the **Jaypee Kensington**.

52. It is submitted by YEIDA that it is a stakeholder of the Corporate Debtor and the Hon’ble Supreme Court, in pursuant to YEIDA’s objections to the earlier Resolution Plan of NBCC (India) Limited, has observed in the **Jaypee Kensington** that the approval of YEIDA *“remains sine qua non, for validity of the Resolution Plan in question, particularly qua the terms related with YEIDA”*. The YEIDA has submitted that the present Resolution Plan under Consideration is inconsistent with the findings of the said Judgement of Hon’ble Supreme Court.

53. It is submitted by YEIDA that it had entered into a **Concession Agreement (hereinafter referred to as “CA”)** dated 07.02.2003, with Jaiprakash Industries Limited (JIL) for a period of 36 years for implementation of the Yamuna Expressway Project.

54. It is further submitted by YEIDA that it had filed its claims arising on account of different reasons in Form B on 23.08. 2017 and 28.11.2017 with

the IRP. The summary of the claims filed by YEIDA and their treatment in the Resolution Plan is reproduced below:

S. No.	Claim	Amount Claimed (INR Crores)	Amount Admitted (INR Crores)	Treatment in Suraksha's Plan (INR Crores)
1.	Claim towards Pending Works	98.1	51.4	0.10
2.	Claim towards External Development Charges (EDC) including interest	624.6	409.6	
3.	Claim for works to be taken up in future	2024	-	Nil
Claims under Arbitration				
4.	64.7% Additional Compensation payable to Farmers	1689.0	-	0.10
Claims not admitted				
5.	EDC for land parcels at Tappal and Agra (undeveloped land)	572.9	-	Nil
6.	Miscellaneous works	340	-	Nil
7.	Capital Cost of Noida – Greater Noida Expressway*	750	-	Nil
8.	Lease Rent	2.607	-	Nil
9.	Consultancy Fees	10.42	-	Nil
Total		6,111.591	461	0.20

The YEIDA has mainly raised objections to the treatment meted out in the Resolution Plan to its claims pertaining to:

- i. Pending works and External Development Charges (EDCs) including interest;

- ii. Unexecuted External Development Works and Other future Works; and
- iii. 64.7% Additional Compensation Payable to farmers.

55. Other than the above, YEIDA has raised objections towards certain Reliefs and Concessions sought in the Resolution Plan and to the “Transfer and Monetisation of Beneficial Interest in Land Parcels” to the Assenting Financial Creditors.

56. Further, YEIDA has contended that the following clauses of the Suraksha’s Resolution Plan are inconsistent with the findings of the **Jaypee Kensington** and with terms of the **Concession Agreement (CA)**. The summary of objections raised by YEIDA, in nutshell, is given below:

Terms in Suraksha’s Plan	Findings in Jaypee Kensington	Terms of the CA	YEIDA’s Objections
I. CLAIM PERTAINING TO PENDING WORK AND EDCs INCLUDING INTEREST			
Against admitted claims of INR 461 crore, Suraksha’s Plan only provides for payment of INR 10 lakhs to YEIDA [paras. 20.1 – 20.2 @ p. 67, Compilation].	(i) <u>Para 103</u> – Any tinkering with CA could not be carried out without approval and consent of YEIDA. YEIDA’s approval is <i>sine qua non</i> for approval of the plan, particularly <i>qua</i> the terms related to YEIDA [pp. 36 – 37, Compilation].	(i) <u>Clause 3.2(v)</u> : JIL is to bear the entire cost of Yamuna Expressway [@ p. 53, Compilation] (ii) <u>Clause 7.2.1(j)</u> : External Development works to be completed without cost	(i) By failing to provide for payment towards pending works and EDCs, the Plan shifts the liability for these costs onto YEIDA. However, the CA provides that YEIDA will not bear any cost and that the

Terms in Suraksha's Plan	Findings in <i>Jaypee Kensington</i>	Terms of the CA	YEIDA's Objections
	(ii) <u>Para 104.4</u> – Any alteration in essentials of CA would require consent of YEIDA [p. 40, Compilation].	to YEIDA [@ p. 63, Compilation]	Concessionaire – JIL will bear the entire cost [@ para (c), p. 131, Compilation]. (ii) Therefore, such treatment is contrary to the terms of the CA and the <i>Jaypee Kensington</i> judgment.
II. COSTS PERTAINING TO UNEXECUTED EXTERNAL DEVELOPMENT WORKS AND OTHER <u>FUTURE</u> WORKS			
Claim towards unexecuted/ future works has not been provided for in Suraksha's Plan [@ para (d), pp. 133-134, Compilation].	(i) <u>Para 103</u> – Any tinkering with CA could not be carried out without approval and consent of YEIDA. YEIDA's approval is <i>sine qua non</i> for approval of the plan, particularly <i>qua</i> the terms related to YEIDA [pp. 36 – 37, Compilation]. (ii) <u>Para 104.4</u> – Any alteration in essentials of CA would require consent of YEIDA [p. 40, Compilation].	(i) Under <u>Clauses 3.2(v) and 7.2.1(j)</u> of CA [@ pp. 53 & 63, Compilation], liability towards costs of all works under the CA (including External Development of undeveloped land) is of the Concessionaire alone. (ii) Under <u>Clause 7.1.1(ix)</u> of the CA,	(i) If Suraksha cannot fulfil all works and bear all costs as required by CA, YEIDA would have to execute the work and bear the costs – this is an alteration of the CA and violative of <i>Jaypee Kensington</i> [@ para (c), p. 133, Compilation and para (e), p. 134, Compilation]. (ii) Suraksha states it is

Terms in Suraksha's Plan	Findings in <i>Jaypee Kensington</i>	Terms of the CA	YEIDA's Objections
		<p>Concessionaire must indemnify YEIDA for all costs incurred due to failure to perform obligation under the CA [@ p. 60, Compilation]</p>	<p>ready and willing to execute all future works, as and when required, as per the CA. Suraksha is willing to bear all costs as per the CA [paras 16(c) and (d), p. 89, Compilation].</p> <p>(iii) <u>Suraksha must be strictly bound by its undertaking.</u></p>
<p>III. 64.7% ADDITIONAL COMPENSATION PAYABLE TO FARMERS [Subject to dispute in Arbitration]</p>			
<p>After discussing YEIDA's claim, Suraksha's Plan only provides for payment of INR 10 lakhs (as against the claim of INR 1689 crores) [paras 20.3-20.8, pp. 68-78, Compilation].</p>	<p>After noting the pendency of proceedings in relation to the claim [paras. 88, 89 & 92, pp. 16, 18 & 21, Compilation], it was held that:</p> <p>(i) Resolution plan must provide for liability towards additional compensation [para 106, p. 42, Compilation].</p> <p>(ii) Concessionaire is liable for payment of additional</p>	<p>(i) <u>Clause 3.2(v)</u>: JIL is to bear the entire cost of Yamuna Expressway [@ p. 53, Compilation].</p> <p>(ii) As per <u>clauses 4.1(d) and 4.3(c)</u> of CA, acquisition cost shall be <u>actual compensation</u> <u>paid</u> to</p>	<p>The Plan [paras. (o) – (t), pp. 140 – 141, Compilation]:</p> <p>(i) Fails to provide for acquisition cost (i.e., actual/ additional compensation) as per the CA.</p> <p>(ii) Fails to provide for the contingency of payment of additional compensation and deflects</p>

Terms in Suraksha's Plan	Findings in <i>Jaypee Kensington</i>	Terms of the CA	YEIDA's Objections
	<p>compensation. The Plan providing otherwise amounts to an impermissible alteration of the CA [para 106.1, pp. 42-43, Compilation].</p> <p>(iii) YEIDA is not responsible for collection of additional compensation [para 106.2, p. 43, Compilation].</p>	<p>landowners [@ pp. 56 & 58, Compilation]</p>	<p>the liability back onto YEIDA.</p> <p>(iii) If Suraksha will not bear this cost, then YEIDA will have to, resulting in material alteration of the CA and violation of <i>Jaypee Kensington</i>.</p>
<p>IV. RELIEFS & CONCESSIONS SOUGHT IN THE PLAN</p>			
<p>Following reliefs have been sought under Suraksha's Plan [para 37, pp. 81-82, Compilation]:</p> <p>(a) <u>Reliefs 'a' and 'b'</u>: transfer of 79 acres of land; treatment of capital cost and handing over of NOIDA-Greater NOIDA Expressway.</p> <p>(b) <u>Relief 'c'</u>: extension of</p>	<p>(i) <u>Para 103</u> - Any tinkering with CA could not be carried out without approval and consent of YEIDA. YEIDA's approval is <i>sine qua non</i> for approval of the plan, particularly <i>qua</i> the terms related to YEIDA [pp. 36 - 37, Compilation].</p> <p>(ii) <u>Para 104.4</u> - Any alteration in essentials of CA would require consent of YEIDA</p>	<p>(i) Land is to be transferred in accordance with Chapter IV of the CA and subject to the terms contained therein.</p> <p>(ii) <u>Clause 3.1</u>: Concession is granted for a period of 36 years [p. 53, Compilation]</p>	<p><u>Re: Reliefs 'a' and 'b'</u></p> <p>(i) This is admittedly covered under the CA. As per <i>Jaypee Kensington Judgment</i>, YEIDA's consent is <i>sine qua non</i>. Suraksha may approach YEIDA for these matters and YEIDA shall consider the same in terms of the CA</p>

Terms in Suraksha's Plan	Findings in <i>Jaypee Kensington</i>	Terms of the CA	YEIDA's Objections
<p>the CA by 15 years.</p> <p>(c) <u>Relief 'd'</u>: return of deposit of INR ~35 crores.</p> <p>(d) <u>Reliefs 'e' and 'g'</u>: revision of toll as per law and issue of approvals.</p> <p>(e) <u>Relief 'f'</u>: compensation for alleged delay.</p>	<p>[p. 40, Compilation].</p> <p>(iii) Para 107 – Without YEIDA's consent, resolution applicant cannot, by way of relief clause in the plan, seek [p. 44, Compilation]:</p> <ul style="list-style-type: none"> • YEIDA's withdrawal from pending litigation. • Extinguishment of existing liability. • Extension of time period of the CA. 		<p>and having regard to public interest [para (f) (1), p. 144, Compilation]</p> <p><u>Re: Relief 'c'</u></p> <p>(ii) As per <i>Jaypee Kensington Judgment</i> [@ para 107, p. 44, Compilation], extension of CA cannot be sought by way of relief clause in a resolution plan without the consent of YEIDA. Suraksha may approach YEIDA for this and YEIDA shall consider the same in terms of the CA and having regard to public interest [para 2, p. 145, Compilation].</p> <p><u>Re: Relief 'd'</u></p> <p>(iii) This relief is unparticularised and vague – YEIDA is unclear as to</p>

Terms in Suraksha's Plan	Findings in <i>Jaypee Kensington</i>	Terms of the CA	YEIDA's Objections
			<p>what deposit is being referred to [para 3, p. 145, Compilation].</p> <p>(iv) YEIDA is not liable to return any amount.</p> <p><u>Re: Reliefs 'e' and 'g'</u></p> <p>(v) This pertains to discharge of YEIDA's statutory functions. No directions can be issued to YEIDA in relation to its statutory functions [para 4, p. 146, Compilation]</p> <p>(vi) IBC cannot override statutory authority's right and public duty to control and regulate – <i>Municipal Corporation of Greater Mumbai v. Abhilash Lal</i>, 2019 SCC OnLine SC 1479 [@ para</p>

Terms in Suraksha's Plan	Findings in <i>Jaypee Kensington</i>	Terms of the CA	YEIDA's Objections
			<p>48, p. 106, Compilation.</p> <p><u>Re: Relief 'f'</u></p> <p>(vii) Request in this respect is vague and lacking in particulars. YEIDA denies any liability to pay any compensation – same is not provided under the CA. No delay is attributable to YEIDA [para 5, p. 146, Compilation]</p>
<p>V. TRANSFER AND MONETISATION OF BENEFICIAL INTEREST IN LAND PARCELS TO ASSENTING FINANCIAL CREDITORS</p>			
<p>Suraksha's Plan proposes to transfer the "beneficial interest" in a substantial part of the Project Land to assenting Financial Creditors and proposes to monetize such land parcels for repayment of debt [para</p>	<p>(i) <u>Para 103</u> – Any tinkering with CA could not be carried out without approval and consent of YEIDA. YEIDA's approval is <i>sine qua non</i> for approval of the plan, particularly <i>qua</i> the terms related to YEIDA [pp. 36 – 37, Compilation].</p> <p>(ii) <u>Para 104.4</u> – Any alteration in</p>	<p>Concessionaire only holds leasehold interest [expressway land @ clause 4.1(b), p. 56 and LFD land @ clause 4.3(a), p. 58 of the Compilation].</p>	<p>(i) Concessionaire only holds leasehold interest and such interest can be dealt with only in terms of the CA (including obligation to pay acquisition cost & additional compensation.</p> <p>(ii) Suraksha states it is transferring</p>

Terms in Suraksha's Plan	Findings in <i>Jaypee Kensington</i>	Terms of the CA	YEIDA's Objections
15.16, p. 84, Compilation].	essentials of CA would require consent of YEIDA [p. 40, Compilation].		only the leasehold rights obtained by the CD under the CA. No transfer charges are payable under the CA [para 26, p. 90, Compilation]. (iii) It must be clarified that the transfer is limited to the interest held by the Concessionaire and would be subject to the terms of the CA.

57. While emphasizing on its claim regarding the Additional Compensation payable to the farmers, YEIDA, in its pleadings as well as submissions made during the course of hearing, has stated the following:

57.1 Under the Concession Agreement (CA), the Concessionaire - JIL is liable to pay the entire actual "acquisition cost" of the Project Land. Specifically, Clause 4.1(d) and 4.3(c) of the CA provides that "The Acquisition cost shall be the actual compensation paid to the land owners". Accordingly, YEIDA had raised a demand/claim of approximately Rs.1689 Crores towards the additional compensation payable to the farmers.

57.2 It is submitted by YEIDA that the Project Land was acquired by it under the following three modes:

- a. Under the provisions of the Land Acquisition Act, 1894;
- b. From Noida Industrial Development Authority under a Deed of Assignment; and
- c. From private land-owners through sale deeds.

57.3 The acquisition of a part of the Project Land was challenged in a batch of writ petitions in Gajraj & Ors. v. State of UP & Ors. (CWP No. 37443 of 2011) before the Allahabad High Court, wherein it was held that the petitioners therein were entitled to the additional compensation to the tune of 64.7% for their land ("**Gajraj Judgment**"). The Court also directed that the relevant authority i.e., NOIDA may consider extending this benefit to other landowners, who were not before the Court. Following the Gajraj Judgment, several former landowners demanded additional compensation. As with the subject land in the above matters, the acquisition for the remaining Project Land was challenged in over 700 writ petitions filed before the Allahabad High Court during 2007 to 2011. YEIDA too received representations from its allottees that their development work was interrupted by farmer-landowners.

57.4 Given the litigations and agitations, the Government of Uttar Pradesh set up a committee under the Cabinet Minister of State of UP – Mr. Rajendra Chaudhary ("**Chaudhary Committee**") to resolve the issues. The Chaudhary Committee considered the views of all the stakeholders and finally, recommended the grant of additional compensation of 64.7% to former landowners, whose lands were acquired by YEIDA.

57.5 The recommendation of the Chaudhary Committee was accepted and approved by the UP Govt, which issued an order dated 29 August 2014 (“**Government Order**”) directing YEIDA to ensure payment of additional compensation to all the landowners. The cost of the additional compensation was to be recouped from allottees and included in the costing of future allotment of land by YEIDA.

57.6 The said Government Order was challenged before the High Court of Allahabad and the same was struck down. It is further submitted by YEIDA that Special Leave Petitions (SLP(C) No. 009891 - 009910/2020 and SLP(C) No. 010015 - 010034/2020) against the judgment of the Hon’ble High Court are currently pending before the Hon’ble Supreme Court where the issue of the validity of the Government Order is under consideration.

57.7 It is further submitted by YEIDA that in terms of the CA, YEIDA raised the demand towards additional compensation on the Corporate Debtor/JIL. It is added that the demand was eventually challenged in the Arbitration. The Arbitral Award held that the demand made by YEIDA was unsustainable.

57.8 It is further stated by YEIDA that it had challenged the abovesaid Arbitral Award under Section 34 of the Arbitration and Conciliation Act, 1996 before the court of Ld. District Judge Gautam Budh Nagar (Arbitration Case No. 3 of 2020).

57.9 It is submitted by YEIDA that the liability of the Concessionaire on account of additional compensation is pending adjudication in various proceedings. If the competent court finally confirms this liability, the

Concessionaire will be bound to discharge the liability under the terms of the Concession Agreement.

58. Further, it is contended by YEIDA that the Hon'ble Supreme Court upheld its objections, when the previous Resolution Plan of NBCC was under challenge. The summary findings of the Hon'ble Supreme Court relating to YEIDA in the **JP Kensington** as stated by it are submitted below:

- (i) The Concession Agreement (CA) cannot be altered "*without the approval and consent*" of YEIDA.
- (ii) The contingency towards the additional compensation must be provided for. YEIDA cannot be made liable to collect the additional compensation nor it be made liable to pay the additional compensation towards the Expressway Land. Such provisions would be contrary to the Concession Agreement.
- (iii) Transfer of rights and obligations under the Concession Agreement must be "*in accordance with the approval of YEIDA and with the execution of necessary tripartite documents as envisaged by CA.*"
- (iv) None of the reliefs sought can be granted to the resolution applicant. Such reliefs cannot be imposed on YEIDA and must be subject to YEIDA's consent.

59. Furthermore, it is stated by YEIDA that the Resolution Plan of Suraksha contains various errors, as summarized below:

59.1 Suraksha's Plan has ignored the conclusive determination and the principles set out by the Hon'ble Supreme Court. Suraksha's Plan provides for payment of Rs.10 lakhs towards the amount of additional compensation.

59.2 Suraksha has admitted that it “cannot provide for treatment which is wholly illogical and that amounts to material alterations in terms of the Concession Agreement.”

59.3 Having admitted that it cannot treat the liability regarding additional compensation in any manner except as provided under the Concession Agreement, Suraksha was necessarily bound to make a provision for the entire acquisition cost, and specifically for the additional compensation, to conform with the Concessionaire’s obligation under Clauses 4.1(d) and 4.3(c) of the CA which requires it to bear “the actual compensation paid to the land owners”.

59.4 As Suraksha’s Plan currently stands (i.e., with a provision of Rs.10 lakhs), it violates the principles set by the Hon’ble Supreme Court, as follows:

- a) It fails to provide for the remaining Rs.1688.90 Crores of the liability towards additional compensation, and
- b) The liability of the remaining Rs.1688.90 Crores has been deflected on to YEIDA, in violation of the terms of the CA. Such deflection of liability had been deprecated and denounced in the *Jaypee Kensington*.

59.5 It may be noted that the RP itself had doubted whether the claim towards additional compensation could be extinguished in the manner proposed by the Suraksha’s Plan. In this regard, YEIDA has drawn reference to Para. 81 of the RP’s application (I.A. No. 2836 of 2021) and the RP’s report dated 10 June 2021 on the Suraksha’s Plan.

59.6 The Hon'ble Supreme Court was cognizant of the pendency of the matters concerning additional compensation before itself and before the Gautam Budh Nagar District Court. Mindful of the uncertainty in that regard, the Hon'ble Apex Court directed that the contingency of the Concessionaire being found liable to pay these amounts, must be provided for.

Reply of IRP of JIL, Successful Resolution Applicant (SRA), IDBI Bank and Association of Home Buyers to the Objections of YEIDA (together referred to as the "Supporters to the Plan" hereinafter)

60. The IRP of JIL, the SRA, IDBI Bank and Associations of Home Buyers have filed their replies and Written Submissions to the objections of YEIDA and stated that the Suraksha's Resolution Plan is compliant in all respects and the objections of YEIDA ought to be rejected. The Supporters of the Plan stated that:

60.1 The Resolution Plan submitted by the SRA is in consonance with the Concession Agreement (CA) and it does not alter the CA in any manner, whatsoever. In this regard, they have referred to paragraph 20.9 (@ Page 77) of the Resolution Plan, which reads thus:

"20.9. It is submitted that the Resolution Applicant has not carried out any alterations in the Concession Agreement under the garb of the Resolution Plan, it has only lawfully provided treatment to Claim in terms of provisions of the Code in order to have clean slate / fresh plate in line with several Honourable Supreme Court Judgments."

60.2 The Resolution Plan is in compliance of the provisions of the Code as well as the observations and findings of the Hon'ble Supreme Court in the Jaypee Kensington Judgment”.

Reply of “Supporters to the Plan” with respect to YEIDA’s Claims pertaining to External Development Charges including interest and pending works (termed as “EDC and Pending Works” hereinafter)

60.3 The admitted claim of YEIDA pertaining to EDC including interest and pending works is Rs.461 Crores. The Resolution Plan provides for payment of Rs.10 lakh towards these admitted claims of YEIDA. In this regard, YEIDA has objected that the Resolution Plan is contrary to the Clause 3.2 and 7.2.1(j) of the Concession Agreement, and therefore, results in alteration of the Concession Agreement without YEIDA’s consent. In response to the aforesaid contention, the following is stated by the Supporters of the Plan:

(i) YIEDA being an operational creditor, the liquidation value owed to it is ‘Nil’, and only Rs.461 Crores was admitted out of a total claim of Rs.6,111.591 Crores, a decision which was not challenged by YIEDA. The payment proposal for YEIDA is in compliance with Regulation 37(f) of the CIRP Regulations and Section 30(2) of the IBC.

(ii) The treatment of YEIDA’s claim which is only extinguishment of its claim as per the provisions of the IBC cannot be said to be contrary to the provisions of the IBC and the Jaypee Kensington Judgment, and does not amount to alteration of the Concession Agreement. The Resolution Plan deals with YEIDA’s claims as any other operational creditor without any bias.

(iii) The Hon'ble Supreme Court in the **Jaypee Kensington** provided against the alteration of the Concession Agreement in light of NBCC's plan wherein (i) the responsibility of the additional compensation was shifted to the SPVs (created under that plan) and Home Buyers, (ii) responsibility of collecting the additional compensation, if determined at a future date, was shifted to YEIDA, (iii) creation of SPV itself, splitting up of rights available to the Concessionaire vis-a-vis the Expressway and the land, in each case without specific approval of YEIDA, and (iv) hiving off of land. It was in these specific contexts, the provisions of the NBCC plan were held to alter the terms of the CA. However, in the present case, the Suraksha's Resolution Plan only extinguishes claims of YEIDA and other creditors in accordance with the provisions of the IBC.

(iv) The **Jaypee Kensington** is only limited to variation of the terms of the CA and that the SRA's right to settle and extinguish the debt of the creditor as per the provisions of applicable law including the IBC and allied regulations cannot be construed as variation of the terms of the Concession Agreement.

(v) The SRA has only lawfully provided treatment to the claims in terms of provisions of the IBC in order to have clean slate / fresh plate in line with a catena of judgments passed by the Hon'ble Supreme Court (**Jaypee Kensington**, para 135.1); **Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited**, Civil Appeal No. 1554 of 2021 (para 86); and **Essar Steel India**

Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531 (para 107).

(vi) Further, the Hon'ble Supreme Court in the case of **Swiss Ribbons Pvt. Ltd. and Ors. Vs. Union of India** (UOI) and Ors ((2019) 4 SCC 17), and **Committee of Creditors of Essar Steel India Limited Through Authorised Signatory v. Satish Kumar Gupta & amp; Ors.** (Civil Appeal No. 8766-67 of 2019), has held that the payment of liquidation value to the operational creditors is fair and equitable treatment of such creditors under the IBC and a resolution plan which provides for such payment, is a valid resolution plan under the IBC.

(vii) The proposal for YEIDA is based on the commercial discretion of the SRA and approval by the CoC in exercise of its commercial wisdom. (**India Resurgence ARC Private Limited v. M/S. Amit Metaliks Limited** (2021) SCC OnLine SC 409) (para 11)).

(viii) As laid down in the **Jaypee Kensington** (at para 77.3), it is not within the scope of Adjudicating Authority to assess the resolution plan in question on the basis of quantitative analysis.

(ix) The Hon'ble Supreme Court has nowhere invited resolution plan with a direction to pay the entire claim of YEIDA. If such direction is given, it shall tantamount to preferential payment to a class of creditors over another, say income tax claims which shall be against the discipline of the IBC (para 22.5 of **Jaypee Kensington**).

(x) The Hon'ble Supreme Court has given paramount importance to the provisions of the Code and has directed the fresh/modified plans to be in compliance with the provisions of the IBC and allied regulations. (para 223 of **Jaypee Kensington**).

60.4 The Hon'ble Supreme Court only directed the parties to submit a plan as per the provisions of the Code, by following discipline of the Code and same has been done. YEIDA cannot arm twist the Resolution Applicant for recovery of its operational debt, preferentially under the garb of Concession Agreement. Such a treatment would be contrary to the provisions of the Code.

60.5 YEIDA being an operational creditor, stands at par with other operational creditors and treatment given by the SRA to such an operational debt of an operational creditor does not violate any provisions of law and does not tinker the Concession Agreement. It is necessary to note that the primary objective of the CIRP is to resolve insolvency of the Corporate Debtor and Resolution Plan submitted by Resolution Applicant provides best possible treatment to all stakeholders. Recovery on part of one creditor could not be allowed to become a reason for jeopardizing the resolution of the Corporate Debtor. The Resolution Plan has been approved by the CoC in its commercial wisdom, hence an operational creditor does not have any right to challenge the Resolution Plan approved by 98.66% voting share of the CoC.

**Reply of “Supporters to the Plan” with respect to Additional
Compensation payable to YEIDA**

60.6 It is submitted that YEIDA has raised the objection that under the Resolution Plan, payment of Rs.0.10 Crore only is proposed against the claim towards 64.7% of additional compensation total amounting to Rs.1,689 Crore.

60.7 It is further submitted that YEIDA has raised another objection that as per Clause 4.1(d) and 4.3(c) of the Concession Agreement, the acquisition cost shall be the actual compensation paid to the landowners. Accordingly, the same should be borne by the Corporate Debtor. By not providing for payment of Rs.1,688.90 Crores towards the additional compensation, the liability has been deflected onto YEIDA, which is in violation of the Concession Agreement.

In response to the above objections, Supporters of the Plan have stated that:

- (i) The Hon'ble Supreme Court (in SLP(C) No. 009891 – 009910/2020 and SLP(C) No.010015 – 010034/2020, dated May 19, 2022), upheld the validity of the Government Order dated 29.08.2014. However, whether such additional compensation is payable by YEIDA or by Corporate Debtor is disputed and the matter is sub judice. It is further stated that there is an Arbitral Award dated 02.11.2019 in favour of JIL, which has been challenged by YEIDA before the Gautam Budh Nagar District Court and is pending. It is further stated that Arbitral Tribunal had passed an award, in favour of the Corporate Debtor by stating that the Corporate Debtor is not liable to pay any amount to YEIDA towards additional compensation.

(ii) The Hon'ble Supreme Court acknowledged in the **Jaypee Kensington** (para 106), the pendency of the dispute and the fact that liability towards additional compensation may ultimately be fastened upon the Corporate Debtor and therefore, it is important that this liability be dealt with under the Resolution Plan. Suraksha's resolution plan does provide for the contingency if such liability is fastened onto JIL, so that the Resolution Applicant could proceed on a fresh/clean slate, in line with observations in **Jaypee Kensington** (para 135.1) and law laid down by the Hon'ble Supreme Court (**Ghanshyam Mishra And Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited**, Civil Appeal No. 1554 of 2021 (para 86); and **Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta**, (2020) 8 SCC 531 (para 107)).

(iii) Hon'ble Supreme Court's observation in **Jaypee Kensington** was in relation to the provisions of the NBCC plan which provided for (i) collection of amounts by YEIDA from end users in relation to the development land and (ii) YEIDA's liability to bear and pay the entire amount for expressway land, which is not the case in Suraksha's plan.

(iv) YEIDA is an operational creditor and it is admitted position on behalf of YEIDA that disputed/contingent claim is of the nature of an operational debt. Even YEIDA has filed its claim as an operational creditor (Form B - Annexure 3 to the Application). Thus, being an operational creditor, YEIDA is entitled to only the liquidation value as

per provisions of Section 30(2) of the IBC, which in the present case is calculated to be “Nil”.

(v) Extinguishment of debt cannot be construed to mean amendment of the Concession Agreement. The Resolution Applicant can exercise its discretion in diluting the claim of YEIDA in commercial terms. There is no provision under the IBC which prescribes that a resolution applicant is required to provision for the entire sum admitted / due to a given creditor under the resolution plan and to the contrary, in terms of Regulation 37 of the CIRP Regulations may inter alia reduce the amount payable to the creditors. It is the commercial discretion of the Resolution Applicant to stipulate the commercial terms of the Resolution Plan, and for the CoC to approve such a Resolution Plan in exercise of its commercial wisdom.

(vi) YEIDA’s interpretation of the **Jaypee Kensington** that the resolution plan for the Corporate Debtor must provide for payment of the entire additional compensation is erroneous. The observations of the Hon’ble Supreme Court cannot be interpreted to mean that it directed the Resolution Applicant to provide for the entire sum of the claim in the Resolution Plan. The Hon’ble Apex Court did not hold as contended and it has not indicated any manner to override the requirements of the IBC and CIRP regulations.

(vii) The Hon’ble Supreme Court has nowhere indicated that Resolution plan will provide for and pay entire claim of YEIDA, the Operational Creditor. If such is the claim and treatment, it will

tantamount to preferential payment to a class of creditors over another, say income tax claims, which shall be against the discipline of the Code (para 22.5 of **Jaypee Kensington**).

(viii) Further, YEIDA never objected to the quantum of compensation payable and now it is an afterthought, misinterpreting the directions of the Supreme Court and misleading the Tribunal for payment of entire claim thereby making IBC as a recovery tool. Focus of IBC is on resolution of the corporate debtor as a going concern and it is not a recovery legislation for the creditors (para 63.2 at page 143-144 of **Jaypee Kensington**).

(ix) The Hon'ble Supreme Court has given paramount importance to the provisions of the Code and has directed the fresh/ modified plans to be in compliance with the provisions of the Code and regulations (para 223 of **Jaypee Kensington**). The contents of the same are reproduced below –

*“223. Taking all the facts and circumstances into account and in keeping with the spirit and purport of the orders passed in the past, we are inclined to again exercise the powers under Article 142 of the Constitution of India and to enlarge the time for completion of CIRP concerning JIL while extending opportunity to the said resolution applicants **Suraksha Realty and NBCC to submit modified/fresh resolution plans, which are compliant with the requirements of the Code and the CIRP Regulations and are in accord with the observations and findings in this judgment.**”*

(Emphasis Supplied)

**Reply of “Supporters to the Plan” with respect to Reliefs being
inconsistent with the Concession Agreement**

60.8 It is stated by the Supporters of the Plan that YEIDA has raised an objection that the Resolution Plan provides for unilateral imposition of ‘reliefs’ which amounts to alteration of the Concession Agreement and the same cannot be done without YEIDA’s consent.

60.9 In response, it is submitted by the Supporters of the Plan that the Resolution Plan is to be implemented by the Resolution Applicant even if the reliefs and concessions under the Resolution Plan are not granted. In this regard they have referred to the undertaking given by the SRA in 12 of the Resolution Plan, which reads thus:

“12. Reliefs and Concessions

The reliefs and concessions sought by the Resolution Applicants are more particularly contained in Annexure-II hereto. The Resolution Applicants undertake that they will implement this Resolution Plan, whether or not the reliefs and concessions are granted.”

**Reply of “Supporters to the Plan” with respect to YEIDA’s objection
regarding Transfer and monetisation of beneficial interest in land
parcels to Assenting Financial Creditors**

60.10 It is stated by the Supporters of the Plan that YEIDA has raised an objection regarding the provision relating to “beneficial ownership” of land parcels being transferred to the assenting financial creditors. The relevant provision in the plan (para 15.12 at page 34) reads as follows:

“It is hereby clarified that the Assenting Institutional Financial Creditors shall be free to sell or monetise the land parcels from the date of transfer of beneficial ownership of the land parcels to the Assenting Institutional Financial Creditors.”

60.11 YEIDA has raised the following objections to the aforesaid clause:

(i) That the land in question has been given to JIL on lease and JIL owns only leasehold interest. Therefore, the transfer and monetization of land can only be limited to the leasehold Interest in the project land, and the ownership rights remain with YEIDA.

(ii) Any transfer of “beneficial interest” and subsequent proposed monetization can only be concluded in accordance with the terms of the Concession Agreement and in a manner that shall ensure adherence to the terms of the Concession Agreement, including the obligation to pay the entire acquisition cost of the project land i.e., cost inclusive of additional compensation, when the liability arises.

(iii) That the transfer of such beneficial interest can only take place “after payment of transfer charges in accordance with YEIDA’s prevailing policy”.

60.12 In response to the aforesaid objections, the Supporters of the Resolution Plan have submitted the following:

(i) By way of transferring the beneficial interest in the land in favour of assenting financial creditors, Suraksha is only transferring/ sub-leasing the leasehold rights obtained by the Corporate Debtor under the terms and condition of the Concession Agreement.

(ii) To that effect, the resolution plan does not prescribe execution of any sale deed for such transfer, which shows that the transfer is only of beneficial ownership i.e., leasehold interest in the land parcels. Resolution Plan does not state that YEIDA will cease to be the owner of the land. YEIDA will continue to be the owner of the land parcels, in terms of the Concession Agreement.

(iii) Clause 4.3(d) of the Concession Agreement clearly stipulates that the Concessionaire shall be entitled to further sub-lease developed undeveloped land to sub-lessees/end-users in its sole discretion without any further consent or approval or payment of any charges/fees etc. to TEA or any other relevant Authority”.

(iv) Clause 4.3(e) of the Concession Agreement stipulates that “sub-lease of part of the land by the Concessionaire, the same can be transferred / assigned without requiring any consent or approval or payment of any additional charges, transfer fee, premiums, etc. to TEA or to any other relevant authority and/or there can be subsequent multiple sub- leases of the land in smaller parts.”

(v) Further, even the Lease Deed dated May 15, 2008 executed between YEIDA and JIL for the project land (164.8 acres in Shahpur Goverdhanpur Khadar) provides an identical clause 4 which states that: “The Lessee shall have unfettered right to sub-lease the whole or any part of the Demised Land, whether developed or undeveloped, and whether by way of plots or constructed properties or give on leave and license or otherwise dispose of its interest in the Demised Land or part

thereof / permit to any person in any manner whatsoever, without requiring any consent or approval of or payment of any additional charges, transfer fee, premiums etc. to the Lessor or to any other relevant authority.”

(vi) Thus, the Concession Agreement and the Lease Deed, both clearly stipulate that transfer charges are not payable to YEIDA for sub-lease of developed/undeveloped land parcels. Therefore, the claim of transfer charges is contradictory to YEIDA’s own stance that the transfer of project land must necessarily be undertaken in accordance with the terms of the Concession Agreement (refer to para (v)(a)(3) and (v)(b) of the Application at page 32 [PDF page 34]). By seeking transfer charges, YEIDA itself is attempting to alter the terms of the Concession Agreement.

(vii) The acquisition cost of the land has already been claimed by YEIDA as part of the CIRP and stands extinguished as per the resolution plan, read with Regulation 37(f) of the CIRP Regulations. It being an operational debt which stands extinguished under the resolution plan, the obligation to make payment towards such debt cannot be revived and transferred to assenting Institutional Financial Creditors.

61. YEIDA has also filed its rejoinder and stated the following:

(i) The Resolution Plan is manifestly inconsistent with the findings, observations and conclusions of the **Jaypee Kensington**. There is an attempt to justify the departure made by the Plan from the said

judgment and the inconsistencies therein, by placing reliance on provisions of the Insolvency and Bankruptcy Code 2016.

(ii) Section 30 of the Code mandates that the Resolution Plan must not contravene any provision of law for the time being in force. Article 141 of the Constitution of India mandates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The principles laid down in **Jaypee Kensington** are thus, as a matter of law, binding on all courts, and the Resolution Plan must conform to those principles.

(iii) Hon'ble Supreme Court made the findings after specifically noting the provisions of the Code. The Supreme Court found that even though the Code may ordinarily allow modification of a contract, the Concession Agreement being "a contract entered into between the concessionaire and statutory authority, that is, YEIDA..." could not be altered or tinkered with "without the approval and consent of the authority concerned, that is, YEIDA". Therefore, YEIDA is not agreeable to the alterations sought to be made to the Concession Agreement.

(iv) By virtually extinguishing the claim and providing only Rs. 10 Lakhs, the Resolution Plan has directly violated the provisions of the Concession Agreement. It has shifted the liability of these costs to YEIDA in contradiction to Clauses 3.2 and 7.2.1(j) of the Concession Agreement and amounts to its alteration. The contention that the Resolution Applicant is only liable to carry out the work on its own and

not liable to pay any amount to YEIDA towards the same is without any basis and contrary to the provisions of the Concession Agreement.

(v) Hon'ble Supreme Court has unambiguously held that the Resolution Plan for the Corporate Debtor must provide for payment of entire additional compensation in the event the said liability is "ultimately fastened" on Corporate Debtor/JIL, in a mode and manner that is consistent with the terms of the Concession Agreement. The plea of the Resolution Applicants that the Authority is an operational creditor with regard to the claim on account of additional compensation does not at all have any legal basis and is clearly contrary to the finding of the Hon'ble Supreme Court with regard to treatment of the said claim.

OBSERVATIONS OF THE BENCH

62. Before, we proceed to adjudicate upon the objections of YEIDA, we observe from the SRA/Suraksha's reply that it is willing to execute and bear all costs pertaining to "Future works" as per the terms of the Concession Agreement. The contents of the relevant reply, reads thus:

"c. The Resolution Applicant is ready and willing to execute all the future works as and when required, as per the terms and conditions of the Concession Agreement. With regard to work from which external development charges arise, it is submitted that the same is to be decided and done in future, therefore Resolution Applicant is not liable to pay the same as on today and will deal with the same in future as per terms of the Concession Agreement.

d. As the Resolution Applicant is willing to execute the future work, as and when required, and bear all the costs under the terms and condition of the Concession Agreement, no amount is due and payable to YEIDA at present.”

Hence, in view of the above referred willingness/undertaking of the SRA, the dispute with regard to “Costs pertaining to unexecuted External Development works and other future works.” requires no adjudication.

63. We have heard the Ld. Senior Counsels for YEIDA, SRA/Suraksha, IDBI Bank and Ld. Counsels for IRP of JIL and Home Buyers’ Association, at length. We have also perused the documents filed by the parties regarding the objections raised by YEIDA to the Resolution Plan and replies as well as written submissions thereto.

64. In nutshell, YEIDA has opposed the Suraksha’s Resolution Plan on the following four grounds:

- a) Meagre provision of Rs. 10 Lakhs in the Resolution Plan for payment to YEIDA towards the claim of External Development Charges results in tinkering with the terms of the Concession Agreement, which is against the mandate of Hon’ble Supreme Court passed in Para 103 of the Jaypee Kensington Judgement;
- b) Meagre provision of Rs. 10 Lakhs in the Resolution Plan for payment to YEIDA towards the Additional Compensation of Rs 1689 Crores violates Para 106 of the Jaypee Kensington Judgement;
- c) The Reliefs and Concession sought in the Resolution Plan tinkers with the terms of the Concession Agreement; and

d) The Resolution Applicant cannot transfer and pass on beneficial interest in land parcels to the Assenting Financial Creditors.

65. Per Contra, the “Supporters of Plan” have raised the following defence:

a) YEIDA is an Operational Creditor and extinguishment of its claim in line with other Operational Creditors, is in accordance with the provisions of IBC, 2016 and therefore, cannot be said to be tinkering with the terms of the Concession Agreement.

b) As regards to the Additional Compensation payable to farmers, the YEIDA being an Operational Creditor, under the scheme of IBC, cannot be given preference over other Financial and Operational Creditors.

c) The Successful Resolution Applicant/Suraksha has given undertaking in Clause 12 of the Resolution Plan that even if no reliefs and concessions are granted to it, they will implement the Plan.

d) In terms of Clause 4.3(d) of the Concession Agreement, the Resolution Applicant is entitled to further sub-lease the developed/undeveloped land to sub-lessees/end-users at its sole discretion without any further consent or approval or payment of any charges/fees etc.

66. In order to examine the contention of YEIDA that whether non-payment of External Development Charges results in tinkering of the Concession Agreement, we would like to visit Para 103 and 104 of the **Jaypee Kensington**, which reads thus:

“103. The contract in question, the CA, even though not a statutory one, is nevertheless a contract entered into between the concessionaire and statutory authority, that is, YEIDA. It is needless to observe that even if in the scheme of IBC, a resolution plan could modify the terms of a contract, **any tinkering with the contract in question, that is, the Concession Agreement, could not have been carried out without the approval and consent of the authority concerned, that is, YEIDA.** Any doubt in that regard stands quelled with reference to Regulation 37 of CIRP Regulations that requires a resolution plan to provide for various measures including ‘necessary approvals from the Central and State Governments and other authorities. The authority concerned in the present case, YEIDA, is the one established by the State Government under the U.P. Act of 1976 and its approval remains sine qua non for validity of the resolution plan in question, particularly qua the terms related with YEIDA. The stipulations/assumptions in the resolution plan, that approval by the Adjudicating Authority shall dispense with all the requirements of seeking consent from YEIDA for any business transfer are too far beyond the entitlement of the resolution applicant. Neither any so-called deemed approval could be foisted upon the governmental authority like YEIDA nor such an assumption stands in conformity with Regulation 37 of the CIRP Regulations.

104. Furthermore, the suggestion that Clause 18.1 of the CA had been a one-time measure and that stands exhausted with creation of JIL as SPV and transfer of original concessionaire’s rights to JIL, has its own shortcomings. The concept and purport of Clause 18.1, of course, at the relevant time had been of the obligation on the original concessionaire to execute the documents for creation of SPV and this clause came in operation when JIL was created as an SPV. However, it would be wholly unrealistic to say that once JIL was created as an SPV, the said Clause 18.1 stood exhausted and there remained no obligation on the part of JIL (as the substituted concessionaire) to execute the necessary documents if it would propose to transfer its rights and obligations under the CA to

another SPV; and it could do so without the consent of YEIDA. This suggestion carries an inherent fallacy because if Clause 18.1 is removed from the CA, a serious question would arise as to how the rights and obligations of the substituted concessionaire JIL could at all be transferred to another SPV? Looking to the pith and substance of the CA, the said Clause 18.1 has to be applied for creation of any SPV by or on behalf of JIL.

104.1. The other clauses in CA permitting creation of sub-lease could hardly be applied for en bloc transfer of land to the SPVs, as proposed in the resolution plan. The referred Clauses 4.3(d) and 4.3(e) were essentially meant for creation of sub-leases when the land given to the concessionaire for development, or part thereof, was to be sub-leased to the end-user/s. Even in that regard, the provisions were made for the concessionaire to make a request to the land providing agency to execute the lease-deed directly in favour of its subsidiaries, assigns or transferees; and in case the agency and the concessionaire would consider it appropriate, tripartite agreement for sub-lease may be executed. Taking all the relevant clauses together with the substance and purport of CA, it is difficult to countenance that the proposed transfer to SPVs could be treated as an ordinary sub-lease for which, no documentation involving YEIDA would be required.

104.2. Although, as urged, the proposal to create two separate SPVs may not be impermissible looking to the framework of the CA, where different stipulations were made in relation to the land for constructing Expressway with its allied facilities and the land for commercial exploitation, respectively in Clauses 4.1 and 4.3 of the CA, but the question is as to the method of transfer of concessionaire's rights and obligations to such SPVs. That could only be in accordance with the approval of YEIDA and with the execution of necessary tripartite documents as envisaged by CA.

104.3. As observed hereinbefore, looking to the terms and purport of the CA, creation of two SPVs, one for Expressway and another for the

remaining land for commercial development, is not altogether prohibited but then, it cannot be suggested by NBCC that such creation of SPVs could be even without necessary documentation involving YEIDA. In this regard, YEIDA seems to be right in its contentions that such documentation is even otherwise required for avoiding any ambiguity about the rights and obligations and also for itself (YEIDA) to properly monitor the functioning of SPVs, each of which would stand in the capacity of concessionaire and would be carrying the rights and obligations under the CA.

104.4. For what has been discussed above, we need not delve into the decision of this Court in MCGM (supra), where the statutory provision itself required prior approval of the local body before dealing with its properties through lease or by creation of any other interest. Though in the present case, there is no such statutory embargo but for that matter, all the terms of the Concession Agreement cannot be forsaken. Any alteration in the essentials of the Concession Agreement would require the consent of YEIDA.

104.5. The Adjudicating Authority (NCLT), while disapproving the stipulations in the resolution plan whereby documentation for such transfer was sought to be avoided, proceeded to order execution of such documents. According to YEIDA, this modification has no commercial effect and therefore, has rightly been ordered by NCLT. Although this modification, prima facie, does not appear to be having any commercial effect, for it being only a matter of proper documentation but, interlaced with this process of documentation are the other stipulations, which do impact the commercial terms of the resolution plan, particularly those relating to the amount of additional compensation, if payable.”

(Emphasis Supplied)

67. On perusal of the above paragraphs, it is observed that the Hon'ble Supreme Court has, inter alia, observed in Para 103 (ibid) that *any tinkering*

with the contract in question, that is, the Concession Agreement, could not have been carried out without the approval and consent of the authority concerned, that is, YEIDA, while referring to the provisions of Regulation 37 of IBBI (CIRP) Regulations 2016.

68. On conjoint reading of para 103 with para 104, we notice that the abovesaid observations, however, were made in the context of the facts elaborated in para 104 in context of the provision in the NBCC's Resolution Plan regarding creation of SPVs, splitting up of rights available to the Concessionaire vis-a-vis the Expressway and the land for commercial development, in each case without specific approval of YEIDA. Therefore, in Para 104.4 the Hon'ble Apex Court again observed that *"all the terms of the Concession Agreement cannot be forsaken. Any alteration in the essentials of the Concession Agreement would require the consent of YEIDA"*.

69. Since the observations of the Hon'ble Supreme Court contains reference to Regulation 37 of IBBI (CIRP) Regulations, 2016, therefore, at this juncture we would like to visit the contents of Regulation 37, which reads thus:

"37. Resolution plan.

A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to the following: -

a.....

b.....

(l) obtaining necessary approvals from the Central and State Governments and other authorities"

70. Further, when we read Paragraphs 103 and 104 of the **Jaypee Kensington** along with Regulation 37 of IBBI (CIRP) Regulations, 2016, we observe that the Resolution Plan of the previous SRA namely, NBCC contained certain provisions, which were found to be lacking necessary approval of the concerned authority i.e., YEIDA, in violation of the Regulation 37 of IBBI (CIRP) Regulations, 2016.

71. However, when we come to the facts of the present case, we see YEIDA in a dual capacity. Although it is an “Authority” within the meaning and context of Regulation 37(l) but at the same time, in terms of the nature of claim filed by it against the Corporate Debtor in an IBC proceedings, it is also an “Operational Creditor”.

72. It is a matter of fact that YEIDA, though an “Authority”, being an “Operational Creditor” is not the part of the CoC of the Corporate Debtor, which alone is empowered under law to consider and approve or reject a Resolution Plan on commercial terms. However, under the provisions contained in Regulation 37(l) of IBBI (CIRP) Regulations, 2016, approval of YEIDA is still required as an Authority, if any of the proposals in the Resolution Plan seeks to alter the term of the Concession Agreement. However, this does not give any right to the Authority (i.e., YEIDA) to negotiate with the Successful Resolution Applicant, that if its claim is not fully discharged, it shall object to the Resolution plan. In our considered view, what YEIDA cannot get directly as an “Operational Creditor”, it cannot get it indirectly under the attire of being an “Authority”.

73. In the instant case, if we ignore the reliefs and concessions sought in the Resolution Plan for a moment, then in our view, we find no such provision in the Suraksha's Resolution Plan, which is in violation of the terms of the Concession Agreement (CA) under reference. Further, the proposal regarding extinguishment of claim of YEIDA in the Resolution Plan, because of it being the Operational Creditor, does not amount to violation of the Concession Agreement by the Successful Resolution Applicant, as the same is being effected due to operation of law.

74. Hence, we find no illegality in the Resolution Plan, so far as it relates to provision of Rs. 10 Lakhs towards the operational claim relating to External Development Charges (EDC) of YEIDA.

75. Now, we would like to examine the objection of YEIDA towards provision of another Rs 10 Lakhs, made by the Successful Resolution Applicant in its Resolution Plan with respect to YEIDA's claim towards Additional Compensation of Rs. 1689 Crores payable to farmers.

76. While examining the objection relating to the provision in the Plan regarding additional compensation to the farmers, we would like to refer to the Paragraphs 105 to 107 of the **Jaypee Kensington**, which read thus:

"105. With the observations foregoing, we may now take up another important aspect of the objections, which relates to the provisions in the resolution plan towards the amount of additional compensation, if payable.

105.1. Concisely put, as per the resolution plan, the contingent liability concerning additional amount of land acquisition compensation is proposed to be dealt with in the manner that in the event any such

amount of additional compensation is to be paid, YEIDA would collect the same from the end-users; and as regards the land of Expressway, such additional compensation shall be payable by YEIDA because YEIDA will be the end-user on getting ownership of the land of Expressway after expiry of the concession period. NBCC has justified these propositions on various grounds as noticed hereinabove. YEIDA takes serious exception to them and particularly to the stipulation that additional compensation in regard to the land of Yamuna Expressway would be payable by it. The Adjudicating Authority has made two-fold modifications in this regard. In paragraph 120 of the impugned order dated 03.03.2020, the Adjudicating Authority has said that to iron out creases and to make the resolution plan viable, it would direct that the plan shall be read to mean that YEIDA has a right to collect acquisition cost through the SPVs concerned. On the other hand, concerning the Expressway land, the Adjudicating Authority has provided in paragraph 122 of the impugned order that the resolution plan would be read to mean that it is left open to both the parties to have proper recourse before competent forum when the time comes for payment of additional compensation. In the submissions of YEIDA, such modifications were necessary to make the plan compliant with the rights and obligations under the CA.

105.2. We find the prescriptions in the resolution plan in regard to the contingent liability of additional compensation to be questionable on more than one count.

106. The question is yet to be finally determined as to **whether such a liability towards additional amount of compensation rests with the corporate debtor JIL or with YEIDA, because the arbitral award made in favour of JIL is the subject matter of challenge in the Court. However, the contingency was required to be provided in the plan in case liability would be ultimately fastened on the corporate debtor JIL.** It has not been suggested that any such bifurcation of liability, qua the land under Expressway on one hand and other parcels on the other, is a subject matter of the arbitration

proceedings. However, going by the terms of the CA, prima facie, we are unable to find any indication therein that the liability for compensation with reference to the land under Expressway is not of the concessionaire. In any case, while making a provision for meeting with this contingent liability of additional amount of compensation, the resolution applicant could not have decided of its own that there will not be any liability of the concessionaire or its assigns towards the land under Expressway.

106.1. It appears that while proposing to create two different SPVs, the resolution applicant stumbled on an idea that the liability for additional compensation as regards Expressway land could be simply deflected to YEIDA with reference to the fact that YEIDA will get this land back after 36 years; and reflected this idea by way of the questioned proposition in the resolution plan. The Adjudicating Authority has chosen to leave this issue open, for being litigated at the appropriate time and before the competent forum. In our view, such a prescription as regards Expressway land amounts to alterations of the material terms of CA and cannot be made without the consent of YEIDA. This aspect could have only been disapproved.

106.2. Similarly, the resolution applicant, of its own, could not have decided that end-user would mean sub-lessee and thereby deflect even collection of the amount towards this liability on YEIDA and that too when YEIDA was not going to be a party in creation of any sub-lease. The structuring of these propositions regarding contingent liability turns out to be wholly illogical, apart from being at loggerheads with the terms of the Concession Agreement.

106.3. It needs no great deal of discussion to find that the said aspect concerning the provision for additional compensation, if not approved on material terms, is of significant commercial impact. Even the other modification by the Adjudicating Authority, that YEIDA shall have a right to collect acquisition cost through SPVs concerned, carry their own commercial implications. These are not the terms which could be taken up for modification without disturbing the financial proposal of the

resolution plan. While these prescriptions could not have been approved, in our view, the Adjudicating Authority could not have entered into any process of modification. The only course open for the Adjudicating Authority (NCLT) was to send the plan back to the Committee of Creditors for reconsideration.

107. Apart from the aforesaid, the reliefs and concessions as sought for by the resolution applicant in relation to YEIDA in Clauses 4, 14 and 27 of Schedule 3 are also required to be disapproved. We are unable to countenance the proposition that by way of a resolution plan, it could be enjoined upon an agency of the government like YEIDA to give up or withdraw from a pending litigation. Similarly, extinguishment of existing liability qua YEIDA is not a relief that could be given to the resolution applicant for askance. For the same reason, the resolution applicant cannot seek extension of time period of the Concession Agreement by way of a clause of 'relief' in the resolution plan without the consent of a governmental body like YEIDA."

(Emphasis Supplied)

77. From the aforesaid paragraphs of the **Jaypee Kensington**, it is noticed that the Hon'ble Supreme Court has specifically observed in Para 106 that the contingency towards additional amount of compensation was required to be provided in the Resolution Plan in case liability would be ultimately fastened on the corporate debtor/JIL.

78. During the course of hearing, the Ld. Senior Counsel appearing for the SRA submitted that YEIDA had filed its claim towards additional compensation in the capacity of an Operational Creditor and the Liquidation value owed to the Operational Creditor is 'Nil'. Against that, even if this liability of additional amount of compensation is fastened on the Corporate

Debtor/JIL, the SRA/Suraksha has provided (for this contingency) an amount of Rs. 10 Lakh in the Resolution Plan proposed.

79. We find credence in the submissions made by the Ld. Senior Counsel appearing for the SRA that the dues of YEIDA even if found payable, are at the most, in the nature of an Operational Debt. We are aware that the Hon'ble Supreme Court in the matter of **New Okhla Industrial Development Authority Versus Anand Sonbhadra in Civil Appeal No. 2222 of 2021**, in the context of NOIDA Authority, (which is similar in status as YEIDA) has held vide its Judgement dated 17.05.2022 that NOIDA Authority is an Operational Creditor. The relevant extracts of the Judgement are reproduced below:

*“144. The appellant would, in fact, point out that it is not necessary to probe the matter further, in view of the concurrent findings that the appellant is an operational creditor. No doubt, Smt. Madhavi Divan does point out that the words ‘arising under any law’, may not be the same as amounts being made recoverable under a law. Of course, she would point out that as far as the rental part of the claim, it may be relatable to the first limb of an operational debt. When questioned further, as to what her position is, if this Court found that the appellant is not a financial creditor, the appellant may be entitled, at least, to be treated as an operational creditor. We would think that, having regard to the fact that both the NCLT and NCLAT have proceeded on the basis that the appellant is an operational creditor, we need not stretch the exploration further and pronounce on the questions, which may otherwise arise. We must not be oblivious to the following prospect, should we find that the appellant is not an operational creditor, even under the IBC Regulations apart from claims by financial creditors and operational creditors, claims can be made by other creditors. However, there are, undoubtedly, certain advantages, which an operational creditor enjoys over the other creditors. **We would proceed on the***

basis that, while the appellant is not a financial creditor, it would constitute an operational creditor.

(Emphasis Supplied)

80. Further, we are conscious of the fact that under the provisions of IBC 2016, NCLT has no 'equity jurisdiction'. It can neither interfere with the commercial wisdom of CoC nor it can go beyond the provisions of the Code. Since YEIDA itself had filed its claim as an "Operational Creditor" and the Liquidation value owed to the Operational Creditors in the proposed Resolution Plan is 'Nil', and the SRA/Suraksha has still provided an amount of Rs. 10 Lakh for this contingency in its Resolution Plan, **we find no illegality committed by the SRA/Suraksha by treating the claim of YEIDA as an Operational Debt and making a provision towards its payment in accordance with the provisions of IBC, 2016.**

81. As regards the objection taken by YEIDA that certain reliefs and concessions sought by the SRA in the Resolution Plan tinkers with the Concession Agreement, as we have noted earlier, under clause 12 of the Resolution Plan, the SRA/Suraksha has undertaken that *".....they will implement this Resolution Plan, whether or not the Relief and Concession are granted."* Hence, we are of the view that the SRA/Suraksha has not made the grant of reliefs and concessions as the condition precedent for approval of the Resolution Plan. However, while considering reliefs and concessions, we will be conscious that any relief and concession, if granted, does not tinker with the Concession Agreement.

82. Another objection taken by YEIDA is that the Resolution Applicant cannot “transfer and pass on beneficial interest in land parcels to the assenting Financial Creditors”. The Supporters of the Resolution Plan, in response to this objection, have stated that the SRA/Suraksha is only sub-leasing the portion of land, which was leased to the Corporate Debtor/JIL by YEIDA. Further, the Concession Agreement (CA) itself permits such sub-leasing without any consent of YEIDA without any charge or fee.

83. Hence, we would like to examine this contention with reference to the relevant Clause 4.3(d) and (e) of the Concession Agreement dated 07.02.2003, which reads as under:

- d. The Concessionaire shall be entitled to further sub-lease developed / undeveloped land to sub-lessees / end-users in its sole discretion without any further consent or approval or payment of any charges / fee etc. to TEA or any other relevant authority.
- e. After sub-lease of part of the land by the Concessionaire, the same can be transferred / assigned without requiring any consent or approval of or payment of any additional charges, transfer fee, premiums etc. to TEA or to any other relevant authority and/or there can be subsequent multiple sub-leases of the land in smaller parts. The lease rent of the respective sub-leased portion of land shall be paid by the sub-lessees / transferees to TEA directly on pro-rata basis @ Rs. 100.00 (Rupees one hundred) per hectare per year. The Concessionaire shall be required to pay lease rent to TEA for the portion of land remaining in its possession after sub-lease, on pro-rata basis at the aforesaid prescribed rate. Total lease rent paid by the Concessionaire and various sub-lessees / transferees shall be Rs. 100.00 (Rupees one hundred) per hectare per year.

84. From the above, we find that in terms of the CA, the lessee i.e., Corporate Debtor/JIL is entitled to further sub-lease the land without any consent/approval of YEIDA. **Hence, we find the proposed transfer of beneficial interest to the Assenting Financial Creditors in accordance with the terms of the Concession Agreement and find no illegality in this proposal in the Resolution Plan.**

85. During the course of the hearing, one more objection was raised by YEIDA as well as JAL that the Hon'ble Supreme Court of India in the matter of **State Tax Officer v. Rainbow Papers Limited reported as 2022 SCC OnLine SC 1162**, observed that the Committee of Creditors comprising of financial creditors cannot secure its own dues at the cost of dues owed to the government or any governmental authority. They relied on the following paragraph of the Judgement:

“52. If the Resolution Plan ignores the statutory demands payable to any State Government or a legal authority, altogether, the Adjudicating Authority is bound to reject the Resolution Plan.”

86. The SRA/Suraksha in its reply to the said contention submitted that the observations made in the **Rainbow Papers (Supra)** do not apply to the facts of the present case. The issue before the Hon'ble Supreme Court in the Rainbow Papers was whether the provisions of the Code and, in particular, Section 53 of IBC overrides Section 48 of the GVAT Act. In this context, they referred to the following paragraph of **the Rainbow Papers**:

“2. The short question raised by the appellant in this appeal is, whether the provisions of the IBC and, in particular, Section 53 thereof, overrides Section 48 of the GVAT Act which is set out herein below for convenience: -...”

87. The SRA/Suraksha further contended that in the facts of the present case, under Clause 17.1 of the Concession Agreement, YEIDA has permitted “notwithstanding anything”, to mortgage and hypothecate the land and assets created thereon to the financial institutions and other lenders for financial assistance. Therefore, now YEIDA cannot have priority over the secured

financial creditors. The said clause 17.1 of the Concession Agreement is reproduced below, for immediate reference:

- 17.1 Notwithstanding the provisions of this Agreement, the Concessionaire shall be entitled to do the following:
- a. To transfer, handing over of possession of land given by TEA to the Concessionaire for development, either in part or in full, by executing the license / lease deed / sub-lease deed / or any document, as may be deemed fit and as required for the development of land in its ordinary course of business;
 - b. To mortgage, pledge or hypothecate the land and the assets created thereon to the financial institutions and other lenders for financial assistance;
 - c. To manage the land for development and the Expressway and to make necessary arrangements in this regard and to appoint the Contractor / Sub-Contractor or any other agency for the said purposes and to do any other thing which may be deemed necessary by the Concessionaire.

88. It is further contended by the SRA that YEIDA is an unsecured Operational Creditor and the same is evident from its own claim form filed with the IRP of Corporate Debtor/JIL.

89. We have heard the submissions of both sides and gone through the relevant pleadings. In order to examine the contentions of both parties, we would like to visit the Judgement of the Hon'ble Supreme Court in **Rainbow Papers (Supra)**, the relevant extracts of which reads thus:

“30. The learned Solicitor General rightly argued that in view of the statutory charge in terms of Section 48 of the GVAT Act, the claim of the Tax Department of the State, squarely falls within the definition of “Security Interest” under Section 3(31) of the IBC and the State becomes a secured creditor under Section 3(30) of the Code.

..

57. As observed above, the State is a secured creditor under the GVAT Act. Section 3(30) of the IBC defines secured creditor to mean a creditor in

favour of whom security interest is credited. Such security interest could be created by operation of law. The definition of secured creditor in the IBC does not exclude any Government or Governmental Authority.”

On perusal of the above paragraph, it is observed that the Tax Department/Government was categorized as a Secured Creditor, as in that particular case security interest was created by virtue of law under the GVAT Act.

90. In order to determine, whether the same can be made applicable to YEIDA, we refer to the definition of the “Secured Creditor” as provided under Section 3(30) of IBC, 2016, which thus:

*“Secured creditor” means a creditor in favour of whom **security interest** is created;*

Further, the term “Security interest” is defined under Section 3(31) of IBC, 2016, as reproduced below:

“(31) “security interest” means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person:

Provided that security interest shall not include a performance guarantee;”

Hence, in order to determine whether any Security Interest is created in favour of YEIDA, we refer to the Claim Form-B dated 28.08.2017 filed by YEIDA with the IRP of Corporate Debtor/JIL, which is reproduced overleaf:

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ANNEXURE-3

FORM B

PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT WORKMEN AND EMPLOYEES
[Under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

23.08.2017

To
The Interim Resolution Professional / Resolution Professional,

Mr. Anuj Jain
C/o BSSR & Co
Chartered Accountants
Building No 10, 8th Floor,
Tower B, DLF Cyber City,
Phase II, Gurugram, Haryana 122002

From
Yamuna Expressway Industrial Development Authority
1st Floor, Commercial Complex, P-2, Sector- Omega-1,
Greater Noida, District Gautam Budh Nagar, U.P. 201 308

Subject: Submission of proof of claim.

Sir,
Yamuna Expressway Industrial Development Authority, hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of Jaypee Infratech Limited. The details for the same are set out below:

PARTICULARS

1	NAME OF OPERATIONAL CREDITOR	YAMUNA EXPRESSWAY INDUSTRIAL DEVELOPMENT AUTHORITY
2.	IDENTIFICATION NUMBER OF OPERATIONAL CREDITOR (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION. IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL)	G.O. No. 697/77-4-2001-3(N)/2001 dated 24.04.2001 G.O. No. 11654-08-65N/08 dated 11.07.2008
3.	ADDRESS AND EMAIL ADDRESS OF OPERATIONAL CREDITOR FOR CORRESPONDENCE	Yamuna Expressway Industrial Development Authority 1st Floor, Commercial Complex, P-2, Sector- Omega-1, Greater Noida, District Gautam Budh Nagar, U.P. 201 308 Email address: ceo@yamunaexpresswayauthority.com yeafinance@gmail.com
4.	TOTAL AMOUNT OF CLAIM (INCLUDING ANY INTEREST AS AT THE INSOLVENCY COMMENCEMENT DATE)	Cost of Balance Items of Works- Rs. 3,212.10 Crores Consultancy Fees- Rs. 10.42 Crores EDC (including interest)- Rs. 1197.447 Crores 64.7% Additional Compensation payable to Farmers- Rs. 1,689.017 Crores Lease Rent- Rs. 2.607 Crores Total- Rs. 6,111.591 Crores (Rupees Six Thousand One Hundred and Eleven Crores and Fifty Nine Lacs Ten Thousand Only)
5.	DETAILS OF DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BE SUBSTANTIATED	(1) Concession Agreement dated 07 th February, 2003 (Annexure-I) (2) Letter No. 20003/RITES/HW/YEP/17/5004 dated 22.08.2017 issued by RITES Ltd. Mentioning cost of Balance Items of Works.

Vishambhar Babu
Dy. General Manager (Finance)

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		<p>(Annexure-II)</p> <p>(3) Consultancy Fees Details issued by RITES Ltd. (Annexure-III)</p> <p>(4) List of Outstanding Items as on 07.08.2012 (Annexure-IV)</p> <p>(5) Letter No. YEA/DGM(YEP)/SCSVol-III/258/2016 dated 21.01.2016 (Annexure-V)</p> <p>(6) Letter No. YEA/DGM(YEP)/SCSVol-III/401/2016 dated 29.06.2016 (Annexure-VI)</p> <p>(7) Letter No. YEA/DGM(YEP)/SCSVol-III/440/2016 dated 17.08.2016 (Annexure-VII)</p> <p>(8) Details/ Summary of the Lease Deeds executed between YEIDA and Jaypee Infratech Limited (Annexure-VIII)</p> <p>(9) Computation of the amount in terms of the concession agreement dated 07.02.2003 payable to YEIDA by Jaypee Infratech Ltd. (Annexure-IX)</p>
6.	<p>DETAILS OF ANY DISPUTE AS WELL AS THE RECORD OF PENDENCY OR ORDER OF SUIT OR ARBITRATION PROCEEDINGS</p>	<p>Before Supreme Court of India SLP (C) No. ___ of 2017 filed vide Diary No. 15058 of 2017 titled Yamuna Expressway Industrial Development Authority Vs. Jaypee Infratech Ltd.</p> <p>Before High Court of Judicature at Allahabad</p> <p>(1) Writ-C No. 52051/2012 titled Ajeet & others Vs State of UP and others</p> <p>(2) Writ-C No. 47973/2011 titled Jogender Singh & others Vs State of UP and others</p> <p>(3) Writ-C No. 34269/2010 titled Prakash Chand & others Vs State of UP and others</p> <p>(4) Writ-C No. 60920/2011 titled Manohar & others Vs State of UP and others</p> <p>(5) Writ-C No. 8599/2010 titled Mohanlal Sharma & others Vs State of UP and others</p> <p>(6) Writ-C No. 57309/2011 titled Rajveer & others Vs State of UP and others</p> <p>(7) Writ-C No. 30272/2009 titled Isbinder Kaur & others Vs State of UP and others</p> <p>(8) Writ-C No. 54667/2011 titled Charan Singh & others Vs State of UP and others</p> <p>(9) Writ-C No. 54682/2011 titled Mangat & others Vs State of UP and others</p> <p>(10) Writ-C No. 54675/2011 titled Jai Singh & others Vs State of UP and others</p> <p>(11) Writ-C No. 54683/2011 titled Chaman & others Vs State of UP and others</p> <p>(12) Writ-C No. 54685/2011 titled Bhikhari Singh & others Vs State of UP and others</p> <p>(13) Writ-C No. 419/2012 titled Vishambar & others Vs State of UP and others</p> <p>(14) Writ-C No. 13758/2012 titled Kailash & others Vs State of UP and others</p> <p>(15) Writ-C No. 13759/2012 titled Mahipal Singh & others Vs State of UP and others</p> <p>(16) Writ-C No. 36131/2011 titled Jagpal Singh & others Vs State of UP and others</p> <p>(17) Writ-C No. 56626/2011 titled Kashmiri & others Vs State of UP and others</p> <p>(18) Writ-C No. 48603/2011 titled Prabhati & others Vs State of UP and others</p> <p>(19) Writ-C No. 3736/2012 titled Mahendra & others</p>

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132-A

Contd. Annex-3

FORM B

PROOF OF CLAIM BY OPERATIONAL CREDITORS EXCEPT WORKMEN AND EMPLOYEES
[Under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process
for Corporate Persons) Regulations, 2016]

28.08.2017

To

The Interim Resolution Professional / Resolution Professional,
Mr. Anuj Jain
C/o BSSR & Co
Chartered Accountants
Building No. 10, 8th Floor,
Tower B, DLF Cyber City,
Phase II, Gurugram, Haryana 122002

From

Yamuna Expressway Industrial Development Authority
1st Floor, Commercial Complex, P-2, Sector-Omega-I,
Greater Noida, District Gautam Budh Nagar, U.P. 201 308

Subject: Submission of proof of claim.

Sir,

Yamuna Expressway Industrial Development Authority, hereby submits this proof of claim in respect of the corporate insolvency resolution process in the case of Jaypee Infratech Limited. The details for the same are set out below:

PARTICULARS


1.	NAME OF OPERATIONAL CREDITOR	YAMUNA EXPRESSWAY INDUSTRIAL DEVELOPMENT AUTHORITY
2.	IDENTIFICATION NUMBER OF OPERATIONAL CREDITOR (IF AN INCORPORATED BODY PROVIDE IDENTIFICATION NUMBER AND PROOF OF INCORPORATION. IF A PARTNERSHIP OR INDIVIDUAL PROVIDE IDENTIFICATION RECORDS* OF ALL THE PARTNERS OR THE INDIVIDUAL)	G.O. No. 697/77-4-2001-3(N)/2001 dated 24.04.2001 G.O. No. 11654-08-65N/08 dated 11.07.2008
3.	ADDRESS AND EMAIL ADDRESS OF OPERATIONAL CREDITOR FOR CORRESPONDENCE	Yamuna Expressway Industrial Development Authority 1 st Floor, Commercial Complex, P-2, Sector-Omega-I, Greater Noida, District Gautam Budh Nagar, U.P. 201 308 Email address: ceo@yamunaexpresswayauthority.com yeafinance@gmail.com
4.	TOTAL AMOUNT OF CLAIM (INCLUDING ANY INTEREST AS AT THE INSOLVENCY COMMENCEMENT DATE)	Cost of Balance Items of Works – Rs. 3,212.10 Crores Consultancy Fees – Rs. 10.42 Crores EDC (including interest) – Rs. 1197.447 Crores 64.7% Additional Compensation payable to Farmers – Rs. 1,689.017 Crores Lease Rent – Rs. 2.607 Crores Total – Rs. 6,111.591 Crores (Rupees Six Thousand One Hundred and Eleven Crores and Fifty Nine Lacs Ten Thousand Only)
5.	DETAILS OF DOCUMENTS BY REFERENCE TO WHICH THE DEBT CAN BE SUBSTANTIATED.	(1) Concession Agreement dated 07 th February, 2003 (Annexure-I) (2) Letter No. 20003/RITES/HW/YEP/17/5004 dated 22.08.2017 issued by RITES Ltd. Mentioning cost of Balance Items of Works.

		<p>(Annexure-II)</p> <p>(3) Consultancy Fees Details issued by RITES Ltd. (Annexure-III)</p> <p>(4) List of Outstanding Items as on 07.08.2012 (Annexure-IV)</p> <p>(5) Letter No. YEA/DGM(YEP)/SCSVol-III/258/2016 dated 21.01.2016 (Annexure-V)</p> <p>(6) Letter No. YEA/DGM(YEP)/SCSVol-III/401/2016 dated 29.06.2016 (Annexure-VI)</p> <p>(7) Letter No. YEA/DGM(YEP)/SCSVol-III/440/2016 dated 17.08.2016 (Annexure-VII)</p> <p>(8) Details / Summary of the Lease Deeds executed between YEIDA and Jaypee Infratech Limited (Annexure-VIII)</p> <p>(9) Computation of the amount in terms of the concession agreement dated 07.02.2003 payable to YEIDA by Jaypee Infratech Ltd. (Annexure-IX)</p>
6.	DETAILS OF ANY DISPUTE AS WELL AS THE RECORD OF PENDENCY OR ORDER OF SUIT OR ARBITRATION PROCEEDINGS	<p>Before Supreme Court of India</p> <p>SLP (C) No. _____ of 2017 filed vide Diary No. 15058 of 2017 titled Yamuna Expressway Industrial Development Authority Vs. Jaypee Infratech Ltd.</p> <p>Before High Court of Judicature at Allahabad</p> <p>(1) Writ-C No. 52051/2012 titled Ajeet & others Vs. State of UP and others</p> <p>(2) Writ-C No. 47973/2011 titled Jogender Singh & others Vs. State of UP and others</p> <p>(3) Writ-C No. 34269/2010 titled Prakash Chand & others Vs. State of UP and others</p> <p>(4) Writ-C No. 60920/2011 titled Manohar & others Vs. State of UP and others</p> <p>(5) Writ-C No. 8599/2010 titled Mohanlal Sharma & others Vs. State of UP and others</p> <p>(6) Writ-C No. 57309/2011 titled Rajveer & others Vs. State of UP and others</p> <p>(7) Writ-C No. 30272/2009 titled Isbinder Kaur & others Vs. State of UP and others</p> <p>(8) Writ-C No. 54667/2011 titled Charan Singh & others Vs. State of UP and others</p> <p>(9) Writ-C No. 54682/2011 titled Mangat & others Vs. State of UP and others</p> <p>(10) Writ-C No. 54675/2011 titled Jai Singh & others Vs. State of UP and others</p> <p>(11) Writ-C No. 54683/2011 titled Chaman & others Vs. State of UP and others</p> <p>(12) Writ-C No. 54685/2011 titled Bhikhari Singh & others Vs. State of UP and others</p> <p>(13) Writ-C No. 419/2012 titled Vishambar & others Vs. State of UP and others</p> <p>(14) Writ-C No. 13758/2012 titled Kailash & others Vs. State of UP and others</p> <p>(15) Writ-C No. 13759/2012 titled Mahipal Singh & others Vs. State of UP and others</p> <p>(16) Writ-C No. 36131/2011 titled Jagpal Singh & others Vs. State of UP and others</p> <p>(17) Writ-C No. 56626/2011 titled Kashmiri & others Vs. State of UP and others</p> <p>(18) Writ-C No. 48603/2011 titled Prabhati & others Vs. State of UP and others</p> <p>(19) Writ-C No. 3736/2012 titled Mahendra & others</p>

		<p>Vs State of UP and others</p> <p>(20) Writ-C No. 36905/2017 titled YEIDA Vs State of UP</p> <p>(21) Writ-C No. 36907/2017 titled YEIDA Vs State of UP</p> <p>(22) Writ-C No. 36909/2017 titled YEIDA Vs State of UP</p> <p>(23) Writ-C No. 36910/2017 titled YEIDA Vs State of UP</p> <p>(24) Writ-C No. 36911/2017 titled YEIDA Vs State of UP</p> <p>(25) Writ-C No. 36912/2017 titled YEIDA Vs State of UP</p> <p>(26) Writ-C No. 36914/2017 titled YEIDA Vs State of UP</p> <p>(27) Writ-C No. 36915/2017 titled YEIDA Vs State of UP</p> <p>(28) Writ-C No. 36916/2017 titled YEIDA Vs State of UP</p> <p>(29) Writ-C No. 36918/2017 titled YEIDA Vs State of UP</p> <p>(30) Writ-C No. 36919/2017 titled YEIDA Vs State of UP</p> <p>(31) Writ-C No. 36923/2017 titled YEIDA Vs State of UP</p> <p>(32) Writ-C No. 36925/2017 titled YEIDA Vs State of UP</p> <p>(33) Writ-C No. 36926/2017 titled YEIDA Vs State of UP</p> <p>(34) Writ-C No. 36928/2017 titled YEIDA Vs State of UP</p> <p>(35) Writ-C No. 36930/2017 titled YEIDA Vs State of UP</p> <p>(36) Writ-C No. 36931/2017 titled YEIDA Vs State of UP</p> <p>(37) Writ-C No. 36933/2017 titled YEIDA Vs State of UP</p> <p>(38) Writ-C No. 37406/2017 titled YEIDA Vs State of UP</p> <p>(39) Writ-C No. 37408/2017 titled YEIDA Vs State of UP</p> <p>(40) Writ-C No. 37410/2017 titled YEIDA Vs State of UP</p> <p>(41) Writ-C No. 37414/2017 titled YEIDA Vs State of UP</p> <p>(42) Writ-C No. 37415/2017 titled YEIDA Vs State of UP</p> <p>(43) Writ-C No. 37420/2017 titled YEIDA Vs State of UP</p> <p>(44) Writ-C No. 37426/2017 titled YEIDA Vs State of UP</p> <p>(45) Writ-C No. 37430/2017 titled YEIDA Vs State of UP</p> <p>(46) Writ-C No. 37435/2017 titled YEIDA Vs State of UP</p> <p>(47) Writ-C No. 37439/2017 titled YEIDA Vs State of UP</p> <p>(48) Writ-C No. 37442/2017 titled YEIDA Vs State of UP</p> <p>(49) Writ-C No. 37447/2017 titled YEIDA Vs State of UP</p>
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		of UP Before District Court, Gautam Budh Nagar Arbitration Case No. 69/2017 titled YEIDA Vs. Jaypee Infratech Ltd.,
7.	DETAILS OF HOW AND WHEN DEBT INCURRED	<p>It is pertinent to mention at the very outset that property in reference is a leased property the right and title thereof lies ultimately with the lessor, i.e., YEIDA. The lessee, i.e., Jaypee Infratech Limited is a lessee. In other words, Jaypee Infratech Limited is a tenant of YEIDA who is supposed to pay annual lease rent of the abovenoted leased property.</p> <p>The debt incurred in pursuance to the land leased out in terms of concession agreement dated 07.02.2003. Further with regard to the completion of the work as determined in terms of the concession agreement dated 07.02.2003. 64.7% Additional Compensation payable to Farmers has been computed on the basis of G.O No. 1015/77-3-14-6C/12 dated 29.08.2014 issued by the State Government of Uttar Pradesh.</p> <p>It is important to note that:</p> <ol style="list-style-type: none"> 1. YEIDA has the sole ownership/title of the property in question. 2. The property in question has been provided to Jaypee Infratech Limited on lease hold basis. 3. Since the property in question is a lease hold property, hence cannot be liquidated. <p>It is reiterated in the interest of justice that in the light of "orders en force", the property in reference cannot be liquidated because the property still belongs to YEIDA.</p>
8.	DETAILS OF ANY MUTUAL CREDIT, MUTUAL DEBTS, OR OTHER MUTUAL DEALINGS BETWEEN THE CORPORATE DEBTOR AND THE CREDITOR WHICH MAY BE SET-OFF AGAINST THE CLAIM	NOT APPLICABLE
9.	DETAILS OF ANY RETENTION OF TITLE ARRANGEMENTS IN RESPECT OF GOODS OR PROPERTIES TO WHICH THE CLAIM REFERS	NOT APPLICABLE
10.	DETAILS OF THE BANK ACCOUNT TO WHICH THE AMOUNT OF THE CLAIM OR ANY PART THEREOF CAN BE TRANSFERRED PURSUANT TO A RESOLUTION PLAN	YAMUNA EXPRESSWAY INDUSTRIAL DEVELOPMENT AUTHORITY ACCOUNT NO.: 08982151022020 ORIENTAL BANK OF COMMERCE BRANCH: GAMA-1, GREATER NOIDA IFSC: ORBC0100898
11.	LIST OF DOCUMENTS ATTACHED TO THIS PROOF OF CLAIM IN ORDER TO PROVE THE EXISTENCE AND NONPAYMENT OF CLAIM DUE TO THE OPERATIONAL CREDITOR	<ol style="list-style-type: none"> (1) G.O. No. 697/77-4-2001-3(N)/2001 dated 24.04.2001 (2) G.O. No. 11654-08-65N/08 dated 11.07.2008 (3) Concession Agreement dated 07th February, 2003 (Annexure-I) (4) Letter No. 20003/RITES/HW/YEP/17/5004 dated 22.08.2017 issued by RITES Ltd. Mentioning cost of Balance Items of Works. (Annexure-II)

		<p>(5) Consultancy Fees Details issued by RITES Ltd. (Annexure-III)</p> <p>(6) List of Outstanding Items as on 07.08.2012 (Annexure-IV)</p> <p>(7) Letter No. YEA/DGM(YEP)/SCSVol-III/258/2016 dated 21.01.2016 (Annexure-V)</p> <p>(8) Letter No. YEA/DGM(YEP)/SCSVol-III/401/2016 dated 29.06.2016 (Annexure-VI)</p> <p>(9) Letter No. YEA/DGM(YEP)/SCSVol-III/440/2016 dated 17.08.2016 (Annexure-VII)</p> <p>(10) Details/ Summary of the Lease Deeds executed between YEIDA and Jaypee Infratech Limited (Annexure-VIII)</p> <p>(11) Computation of the amount in terms of the concession agreement dated 07.02.2003 payable to YEIDA by Jaypee Infratech Ltd. (Annexure-IX)</p> <p>(12) List of cases pending before the various courts. (Annexure-X)</p> <p>(13) G.O No. 1015/77-3-14-6C/12 dated 29.08.2014. (Annexure-XI)</p> <p>(14) Office Order No. YEIDA/CEO/348/2017 dated 23.08.2017 authorising Vishambhar Babu, DGM (Finance), YEIDA.</p>
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 VISHAMBHAR BABU
 DGM (Finance)
 1st Floor, Commercial Complex, P-2, Sector- Omega-1,
 Greater Noida, District Gautam Budh Nagar, U.P. 201 308
 Authorised vide Office Order No. YEIDA/CEO/348/2017 dated 23.08.2017

Vishambhar Babu
 Dy. General Manager (Finance)

On perusal of column 9 of Form B of YEIDA reproduced above, it is observed that there is no retention of title in respect of any property to which the claim of YEIDA refers. Therefore, while going through the claim Form B (ibid), we find that in respect of the claim, no security interest is found to have been created by YEIDA and therefore, we are of the view that YEIDA cannot be termed as a 'Secured Creditor'.

Further, even during the course of the hearing, YEIDA was unable to explain that as to how it has created any security interest, in the light of the Judgement of the Hon'ble Supreme Court in the **Rainbow Papers Limited (Supra)**.

91. Since, in the instant case, YEIDA has not been able to show any creation of security interest, **we find that the Judgement of the Rainbow Papers Limited (Supra) is not applicable to the instant case.**

92. In view of the foregoing discussion on all the issues raised by YEIDA, the IA-3306/PB/2021 filed by YEIDA is Dismissed.

IX. OBJECTIONS OF M/S JAL AND MR. MANOJ GAUR

93. M/s. JAL and Mr. Manoj Gaur, the Personal Guarantor of JIL have raised certain objections towards approval of the proposed Resolution plan. They have submitted that:

93.1 The proposed Resolution plan fails to maximize the value of assets. While placing reliance on the Judgement of the Hon'ble Supreme Court in the matter of **Committee of Creditors, Essar Steel Vs Satish Gupta**, (2020) 8 SCC 531 (Para 73), they contended that it is the duty of the CoC to maximize the value of assets and balance the interest of all the stakeholders. Further, the principles laid down in the Judgement of Essar Steel (Supra) were also recognized in the **Jaypee Kensington** in Para 77.5.

93.2 Further, they have stated that the value of the assets owned by the Corporate Debtor is in far excess of the liabilities owed by it. Moreover, the value of JIL's assets has been steadily rising. The value of assets of JIL as given by JAL is reproduced below:

No.	Assets Description	Value as per audited Financial Statement as at 31.03.2020	Value as per audited Financial Statement as at 31.03.2021
1	Yamuna Expressway	Rs.10,012 Cr.	Rs.9,965 Cr.
2	Project Under Development including land etc.	Rs.11,592 Cr.	Rs.11,714 Cr.
3	Investment in JHCL	Rs.428 Cr.	-
4	Loan & Advance etc	Rs.1,313 Cr.	Rs.1,332 Cr.
5	Cash & Cash Equivalent	Rs.110 Cr.	Rs.303 Cr.
Total		Rs.23,455 Cr.	Rs.23,314 Cr.

Further, the Liquidation value and Fair Market value of the Corporate Debtor/JIL as provided in 'Form H' are as given below:

Valuation	RBSA	GAA	Average
Liquidation Value	Rs.17,875 Cr.	Rs.17,658 Cr.	Rs.17,767 Cr.
Fair Market Value	Rs.24,866 Cr.	Rs.26,339 Cr.	Rs.25,602 Cr.

93.3 Thus, it is seen that the value of the assets owned by JIL is far more than its liabilities. The Financial outlay or value of Suraksha's Resolution Plan aggregates to Rs.17,329.09 Crores, which is less than the Corporate Debtor/JIL's Liquidation value. It is further added that Corporate Debtor/JIL owns more than 3,500 acres of land and the CoC, in its wisdom has staked its claim only to a part of the land, taking a hefty voluntary haircut.

93.4 The Suraksha's Resolution Plan does not take into account the 758 acres of land belonging to JIL, which was earlier covered by 6 mortgage transactions but now stands released from encumbrances and is part of the assets of the Corporate Debtor/JIL in terms of the Judgement of Hon'ble Supreme Court in **Anuj Jain Vs Axis Bank Ltd.** (2020) 8 SCC 401.

93.5 Further, as noted in Para 62 of the **Jaypee Kensington** that IRP had handed over 7,996 units to homebuyers during the period of CIRP. This has led to a reduction of liability of Corporate Debtor/JIL towards home buyers by Rs. 2,250 Crores.

93.6 In view of the aforesaid facts, it is stated by the objectors herein that the value of Corporate Debtor/JIL has changed substantially.

94. Per Contra, the IRP of Corporate Debtor/JIL, COC, and the SRA (together termed as Supporters of the Plan) have stated the following:

94.1 In terms of **Anuj Jain Vs Axis Bank Ltd.**, 758 acres of land of the Corporate Debtor, which was earlier mortgaged to the lenders of JAL, was released from any encumbrances under the provisions of avoidance transactions. The Resolution Plan submitted by Suraksha factors in this land of 758 acres released from encumbrances and has been approved by the CoC after due deliberations. To substantiate its point, the IRP has provided the comparison of land offered by the NBCC's Resolution Plan and Suraksha's Resolution Plan, which is reproduced below, for immediate reference:

Particulars	Total Land	Treatment as per NBCC Resolution Plan (Dec'2019)*				Treatment as per Suraksha Resolution Plan (June'2021)			
		Mortgage to JAL Lender	Land offered in Plan	Balance Land	Ref.	Mortgage to JAL Lenders	Land offered in Plan	Balance Land	Ref.
LFD-1 (Noida)	25	25	-	-		-	-	25	
LFD-2 (Jaganpur)	800	158	187	455	Clause 1.12	-	718	82	Clause 15.11 Plan
LFD-3 (Mirzapur)	336	-	170	166	Page no. 45	-	50	286	
LFD-4 (Tappal)	1,226	418	550	258		100	1,126	-	
LFD-5 (Agra)	1,185	257	619	309		-	808	377	
Grand Total	3,501	858	1,526	1,188		100	2,702	770	

Thus, it is abundantly clear that the land offered by Suraksha to the stakeholders under the Resolution Plan takes into account the additional land of 758 acres released from any encumbrances under the provisions of avoidance transactions.

94.2 Further, during the 17th CoC meeting held on 12.04.2021, the IRP presented and circulated a detailed chart on findings of the Hon'ble Supreme

Court in the **Jaypee Kensington** which categorically mentioned the land of 758 acres which was to be taken into consideration by the Resolution Applicant. Further, in the 18th CoC meeting held on 17.04.2021, the IRP presented the Liquidation Value calculations, which included the 758 acres of land earlier mortgaged to JAL lenders. Therefore, the CoC was fully aware of the increased portion of 758 acres of land in the kitty of the Corporate Debtor and with full knowledge of the same, the CoC in its commercial wisdom took an informed decision as regards the inclusion of 758 acres of land and the plan value of the resolution applicant and approved the Suraksha's Resolution Plan by a majority of 98.66%. Therefore, the commercial wisdom of the CoC cannot be questioned by JAL.

94.3 Both the valuers, RBSA and GAA Advisory took into account the entire 3501 acres of land, which included these 758 acres of land too. The valuation summary of the same is reproduced below:

Summary of Valuation Reports (INR Crores)	Fair Value			Liquidation Value		
	RBSA	GAA	Average	RBSA	GAA	Average
LFD 1 Noida (Wishtown & Aman)	9,640	9,910	9,775	6,748	6,856	6,802
LFD 2 Jaganpur	2,791	3,489	3,140	1,954	2,094	2,024
LFD 3 Mirzapur	2,740	2,928	2,834	1,918	1,757	1,837
LFD 4 Tappal	2,210	2,343	2,277	1,547	1,406	1,476
LFD 5 Agra	2,250	2,098	2,174	1,575	1,270	1,423

A. Total Land for development	19,631	20,768	20,199	13,742	13,383	13,562
B. Toll Operations	4,329	4,315	4,322	3,463	3,452	3,458
C. Equity Shares of JHCL	426	367	396	298	294	296
D. Others (working capital, fixed)	480	888	684	373	529	451
Total (A+B+C+D)	24,866	26,339	25,602	17,875	17,658	17,767

Thus, the CoC in its commercial wisdom has maximised the value of the assets of the Corporate Debtor/JIL and has taken an informed decision and therefore, the objection raised by JAL with regard to the Resolution Plan failing to maximise the value of assets stands no merit and ought to be dismissed qua the commercial decision taken by the CoC.

94.4 Further, the Hon'ble Supreme Court in paragraphs 77.6.1 of the **Jaypee Kensington** has held that whether a particular resolution plan and its propositions are leading to maximisation of value of assets or not, would be the matter of inquiry/assessment of the Committee of Creditors alone and when CoC takes a decision in this regard in its commercial wisdom by the requisite majority, the Adjudicating Authority has no jurisdiction to question/substitute any commercial term of the Resolution Plan approved by the CoC.

95. We have heard both sides and gone through the documents and written submissions placed on record. JAL has contended that the Suraksha's Resolution plan does not take into account 758 acres of land belonging to JIL, which was earlier covered by 6 mortgage transactions. Per Contra, the IRP has stated that Suraksha's plan covers the said land parcel of 758 acres of land, which has been duly considered and approved by the COC by the requisite majority. Moreover, the aforesaid land was also taken into account by the valuers while computing the Fair Market Value and Liquidation Value of the Corporate Debtor.

96. In view of the submissions of IRP and the documents placed on record, **we find the allegations of M/S JAL and Mr. Manoj Gaur with regard to**

not including the land parcel of 750 acres in the Resolution Plan and the SRA failing to maximise the value of assets as baseless and hence, in our view, these allegations merit no consideration.

97. As regards the role of the Adjudicating Authority, in regard to maximizing the value of assets, we refer to the following observations of the Hon'ble Supreme Court in the **Jaypee Kensington** (Supra):

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

(Emphasis Supplied)

98. In view of the above, **we conclude that this Adjudicating Authority cannot enter into any quantitative analysis to adjudge as to whether the Resolution Plan results in maximisation of the value of assets or not. Hence, we reject the objection in regard to maximisation of the value of assets.**

99. Another objection raised by JAL is against Clause 34.50 of the Resolution Plan, which reads as under:

“34.50 Upon completion of transfer of the beneficial ownership of land parcels to Assenting Institutional Financial Creditors as contemplated in clause no 15 above, the outstanding dues of the Assenting Institutional Financial Creditors shall stand settled and the Assenting Institutional Financial Creditors shall not take any action against the Corporate Debtor for recovery of any outstanding dues. Further, notwithstanding the treatment of the Claims of the Institutional Financial Creditors under this Resolution Plan (including but not limited to the extinguishment of any such Claims), any personal and corporate guarantors, other than the Corporate Debtor, shall continue to be liable to the Institutional Financial Creditors for any amounts due to them to the fullest extent under the Applicable Laws without any recourse or remedy against the Corporate Debtor. Further, any right or remedy including but not limited to right of subrogation as may be available to such corporate or personal guarantors against the Corporate Debtor in the event of exercise of rights by Institutional Financial Creditors shall stand extinguished.”

100. The following is stated by Mr. Manoj Gaur, Personal Guarantor of JIL in respect of the abovesaid clause of the Resolution Plan:

100.1 The Financial Creditors cannot be allowed to fasten liability on Mr. Manoj Gaur, the personal guarantor of JIL, for their remaining dues. Under the provisions of the Indian Contract Act of 1872, a surety or guarantor has a right to subrogation. The liability of a surety is co-extensive with that of the principal debtor and, upon the discharge of the principal debtor from its obligation to repay the debt, the liability of surety also gets extinguished. Upon invocation of the guarantee, the surety or guarantor enters into the shoes of

the principal creditor and can recover the dues independently from the principal Debtor. If any amount is taken towards the discharge of JIL's liability from the guarantee provided by JAL or by Mr. Manoj Gaur, they necessarily step into the shoes of JIL's creditors vis-a-vis the loans discharged under their respective guarantees. As a result, they become creditors of JIL and are entitled to the benefit of every security which the creditors of JIL may have to the extent that they have made good on the guarantees.

100.2 In the instant case, the Suraksha is being unjustly enriched by taking over an asset-rich company at a hefty haircut while depriving JAL and Mr. Manoj Gaur of their statutory rights of discharge under Section 135 of the Contract Act, right to get possession of the securities under Section 141, and their right to become creditors of JIL as the principal debtor under Section 140 of the Contract Act (i.e., the right of subrogation). Thus, Suraksha's Plan is illegal, unfair, unreasonable, and contrary to the provisions of the law for the time being.

101. IRP of CD/JIL, SRA, and the CoC (together termed as Supporters of the Plan), in response to the abovesaid contention, have stated that:

101.1 Section 238 of the Code provides for overriding effect to the provisions of the Code over the Indian Contract Act of 1872.

101.2 The Hon'ble NCLAT in **Lalit Mishra Vs. Sharon Bio Medicine Ltd.**, [2018 SCC OnLine NCLAT 862], while discussing the right of a personal guarantor observed the following:

“9. It was not the intention of the legislature to benefit the ‘Personal Guarantors’ by excluding exercise of legal remedies available in law by the creditors, to recover legitimate dues by enforcing the personal guarantees, which are independent contracts. It is a settled position of law that the liabilities of guarantors is co-extensive with the borrower. This Appellate Tribunal held that the resolution under the ‘I&B Code’ is not a recovery suit. The object of the ‘I&B Code’ is, inter alia, maximization of the value of the assets of the ‘Corporate Debtor’, then to balance all the creditors and make availability of credit and for promotion of entrepreneurship of the ‘Corporate Debtor’. While considering the ‘Resolution Plan’, the creditors focus on resolution of the borrower ‘Corporate Debtor’, in line with the spirit of the ‘I&B Code’.

10. The present appeal has been preferred by the promoters, who are responsible for having contributed to the insolvency of the ‘Corporate Debtor’. The ‘I&B Code’ prohibits the promoters from gaining, directly or indirectly, control of the ‘Corporate Debtor’, or benefiting from the ‘Corporate Insolvency Resolution Process’ or its outcome. The ‘I&B Code’ seeks to protect creditors of the ‘Corporate Debtor’ by preventing promoters from rewarding themselves at the expense of creditors and undermining the insolvency processes.

11. For the aforesaid reasons, it will be evident from the ‘I&B Code’ that the powers of the promoters as the members of the Board of Directors of the ‘Corporate Debtor’ are suspended. The voting right of the shareholders, including promoter shareholders, are suspended and shareholders’ approval is deemed to have been granted for implementation of the ‘Resolution Plan’ as apparent from explanation to Section 30(2)(f) of the ‘I&B Code’. The

promoters, being ‘related parties’ of the ‘Corporate Debtor’, have no right of representation, participation or voting in a meeting of the ‘Committee of Creditors’.

(Emphasis Supplied)

101.3 The NCLT Hyderabad Bench in the matter of **CP(IB) 297/95/HBD/2021 State Bank of India Vs Shri Ghanshyam Surajbali Kurm** held that:

“13.8 It is stated that under Code, after the CIRP is concluded, a guarantor cannot enjoy a right of subrogation when the payment is made by the guarantor with respect to the debt for which the guarantee is provided. This position has been settled by the Hon’ble National Company Law Tribunal (NCLAT) in Lalit Mishra & Ors. v. Sharon Bio Medicine Ltd³ dated 14.11.2018, wherein the Appellate Tribunal held that the guarantor cannot exercise its right of subrogation under the Indian Contract Act, 1872 as proceedings under the Code are not recovery proceedings. The object of the proceedings under the Code is to revive the company and focus on maximization of value of its assets and not to ensure that credit is available to all stakeholders.

.....

17.20 We are also of the view that guarantor cannot enjoy a right of subrogation when the payment is made by the guarantor with respect to the debt for which the guarantee is provided.”

101.4 In terms of the foregoing Judgement, it is clear that the rights of the personal guarantor are co-extensive to that of the borrower. While considering the Resolution Plan, the Adjudicating Authority is required to focus on the resolution of the borrower, i.e., the Corporate Debtor, and the promoters of

the Corporate Debtor, who are responsible for the insolvency of the Corporate Debtor, cannot gain benefit from the resolution of the Corporate Debtor. Accordingly, supporters of the Plan have submitted that the provisions of the Code prohibit the right to subrogation to the personal guarantor, who is a promoter of the Corporate Debtor undergoing CIRP.

102. We have heard the submissions of both parties and gone through the documents and written submissions placed on record. In our view, even if such a clause (like clause 34.50) in the Resolution Plan did not exist, the personal guarantor of the Corporate Debtor would still have been liable, under the contract of guarantee and the approval of the resolution plan would not have given immunity to the personal guarantors from that debt. At this juncture, we refer to the Hon'ble Supreme Court's judgement dated 21.05.2021 in the matter of **Lalit Kumar Jain Vs Union of India & Ors.** in the Transferred Case (Civil) No. 245/2020:

*“11. In view of the above discussion, it is held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this court, **the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, i.e., by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract.**”*

(Emphasis Supplied)

103. Since the Resolution Applicant has to re-start the functions of the Corporate Debtor on a fresh slate in terms of the Judgement of Hon'ble

Supreme Court in **Essar Steel (Supra)**, any fresh proceedings by virtue of subrogation on the Corporate Debtor managed by SRA are contrary to the scheme of IBC. Further, if such a right of subrogation is crystalized after the approval of the Resolution Plan, then recovery from the Corporate Debtor managed by SRA under the such right of subrogation is contrary to the Judgement of Hon'ble Supreme Court in the matter of **Ghanshyam Mishra and Sons Vs Edelweiss Asset Reconstruction Company, CIVIL APPEAL NO.8129 2019**, dated 13.04.2021, which reads thus:

“95. In the result, we answer the questions framed by us as under:

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

(Emphasis Placed)

104. Hence, in terms of the Judgement (Supra), we find that the Personal Guarantor has no right to subrogation, and to recover its dues from the Corporate Debtor, after approval of the Resolution plan. **Hence, we find no illegality in Clause 34.50 of Suraksha's Resolution Plan.**

105. It is further contended by JAL that once the Resolution plan is approved, it cannot be modified, whereas the Suraksha's Resolution Plan contains the following modification clauses and is conditional:

"Clause 34.74: In case any provision of the Resolution Plan becomes unenforceable or invalid for any reason beyond the control of the Resolution Applicants, the Resolution Applicants retain the right of modification of the Resolution Plan, in consultation with the CoC, to modify the defect and such change shall not render the entire Resolution Plan ineffective, unless specified otherwise by the Adjudicating Authority."

...
"Clause 34.76: In case of any changes are required in the Resolution Plan, in accordance with the applicable laws, then CoC shall offer the RA to make such changes in the Plan, prior to commencing the fresh process or otherwise rejecting the Plan, in order to save time which is crucial in present matter, in the given background of the Corporate Debtor."

...
"Clause 40.1: The Resolution Applicant further clarifies that the Resolution Applicant reserves its right to amend the Resolution Plan based on additional liability and/or information, arising subsequent to the submission of this Resolution Plan."

...
"Clause 40.5: Upon the occurrence of any Force Majeure event prior to the NCLT Approval Date, the CoC and the Resolution Applicants shall mutually discuss and agree on suitable modifications to the Resolution Plan to reflect the revised valuation of the Corporate Debtor prior to the NCLT Approval Date."

106. It is argued by JAL that the aforesaid clauses are contrary to the Judgements of Hon'ble Supreme Court passed in the matter of **Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited, (2022) 2 SCC 401** and **Committee of Creditors of Amtech Auto v. Dinkar T. Venkatasubramanian, (2021) 4 SCC 457**.

107. It is further stated by JAL that there is one Long Stop Date clause bearing No. 40.8, in the Resolution Plan, which makes the plan conditional. The contents of the said clause are reproduced overleaf:

40.8. The Long Stop Date for satisfaction of the terms and conditions mentioned in the Resolution Plan, shall be 24 (Twenty Four) months from the date of approval of Resolution Plan by CoC unless extended by mutual agreement between the Resolution Applicants and the CoC. In the event the approval from Adjudicating Authority does not come till the Long Stop Date, then Resolution Applicants shall be free to withdraw the Resolution Plan and shall no longer be bound by the obligations contemplated under this Resolution Plan or Request for Resolution Plan/ Process Note at its discretion.

108. Per Contra, the IRP of JIL, SRA, and CoC (Supporters of the Plan) have contended that the above-referred Clauses of the Resolution Plan nowhere suggest that the Resolution Applicant would bypass the 'commercial wisdom' of the CoC in order to bring any change in the Resolution Plan. No withdrawal or modification is contemplated in the Resolution Plan post-approval by CoC or Adjudicating Authority. No evidence is shown to say that Resolution Applicant is trying to modify or withdraw the plan. Hence, no parallel can be drawn to the **Ebix judgment** (which came after the approval of the present Resolution Plan by the CoC). Further, the Resolution Applicant will be bound by Section 31 of the Code to implement the Resolution Plan and any clause which has been rendered infructuous due to EBIX judgment becomes void ab initio. Thus, any objection to such a clause is just academic and cannot be a ground for rejection of the Plan. The Long stop date clause shall be rendered infructuous as soon as the NCLT passes an order with respect to the Resolution Plan.

109. We have heard both sides and gone through the pleadings and written submissions placed on record. We observe that, as a matter of fact, no modification has ever been sought by the SRA in the Resolution Plan from the date of its approval (by the CoC) to till date. In our view, till the time any

modification is actually sought by the SRA, there is no cause of action to challenge the Resolution plan on this ground. **Hence, in view of the fact that no modification has actually been sought by the SRA in the Resolution Plan and submission of the SRA that this clause is rendered infructuous in the light of the EBIX Judgement, we reject this objection of M/S JAL. Further, the Long Stop Date clause will become infructuous as soon as the order is passed by this Adjudicating Authority.**

110. It is further objected by JAL that the Resolution plan interferes with the Reconciliation process of Rs 750 Crore, which has been conducted in terms of the Judgement of Hon'ble Supreme Court passed in the **Jaypee Kensington** and which is adjudicated by this Adjudicating Authority under IA-2593/2021. It is stated by JAL that the following clauses in the Resolution Plan interfere with the reconciliation process:

"Clause 34.5: Upon approval of this Resolution Plan by the Adjudicating Authority and payment as per treatment provided hereinabove under the Resolution Plan, all shareholder agreements, voting covenants, negative or affirmative rights of any person in relation to the operations and/or management of the Corporate Debtor, any right to appoint/ nominate/ terminate any director, management, employee of the Corporate Debtor, any option on the shares of the Corporate Debtor etc. shall become infructuous and the Claim with respect to the application monies received including Rs. 212 crores received from JAL for any securities shall stand forfeited, without any consequence on the Corporate Debtor or the Resolution Applicants."

(Emphasis supplied)

"Clause 35: Issue directions to JAL to make immediate payment of the outstanding amounts of Rs. 71 crore, as per the audited balance sheet of the Corporate Debtor dated March 31, 2021, payable by JAL to the Corporate Debtor, with respect to outstanding consideration for lands of the Corporate Debtor sub-leased to the lenders of JAL, as these funds also can be utilised for expediting the construction for Homebuyers. It is clarified that this relief is not linked to reconciliation directed by Hon'ble Supreme Court in Jaypee Kensington Judgement and is sought independently, in the interest of justice."

[Suraksha Plan, internal p. 137] (Emphasis supplied)

111. It is stated by JAL that the SRA has no right whatsoever to participate in the reconciliation process or to give treatment to the amount in the Resolution plan which is a subject matter of the Reconciliation Process. Further, the Hon'ble Supreme Court made it clear in the **Jaypee Kensington** (at para 224) that the reconciliation process and the approval of the resolution plan were to be kept separate and that the process of approval of the resolution plan was not to be made dependent on the outcome of the reconciliation process.

112. In response to this objection raised by JAL, the SRA has stated that Para 225.3 of the **Jaypee Kensington** mandates that the new Resolution Plan to be submitted by NBCC and Suraksha has to be based on the already existing Information Memorandum, without any additions. Therefore, the Resolution Applicant has to deal with the claim of JAL as an Operational Debt. Paragraph 225.3 of the Jaypee Kensington is reproduced below:

“225.3. It is made clear that the IRP shall not entertain any expression of interest by any other person nor shall be required to issue any new information memorandum. The said Resolution Applicants shall be expected to proceed on the basis of the information memorandum already issued by IRP and shall also take into account the facts noticed and findings recorded in this judgment.”

113. On merits, with respect to the treatment of Rs. 212 Crore, the SRA/Suraksha has adopted the same arguments as advanced by the IRP. As regards to clause 35 of the Resolution Plan, it has been stated that the said clause falls under the category of relief and concession, and under Clause 12

of the Resolution Plan, the SRA has already given an undertaking that it will implement the plan even if no reliefs and concessions are granted.

114. In our considered view, ideally, the Resolution Applicant should not have taken this task on itself to give any treatment to the amount of Rs. 212 Crore, in the absence of any adjudication on this amount. However, we are of the further view that the said clause is redundant, since the amount of Rs.750 Crore has been lying with the registry of NCLT Allahabad Bench in terms of the direction passed by Hon'ble Supreme Court in the matter of **Chitra Sharma (Supra)**, and the said amount would be distributed as per the directions passed by this Adjudicating Authority. **The question of forfeiting this amount by the SRA does not arise. Hence, the existence of this clause cannot prejudice the rights of JAL.**

115. The adjudication of Clause 35 will be done at the time of dealing with the reliefs and concessions.

116. Another objection raised by JAL is that the Suraksha's Plan contains various provisions that impinge on JAL's assets, and violates JAL's contractual rights guaranteed under the Indian Contract Act, 1872 and consequently, violates Section 30(2)(e) of the IBC, which provides that a resolution plan *cannot "contravene" the provisions of any law for the time being in force*". Further, the Plan seeks to take back rights in immovable property consisting of 302 acres sold by JIL to JAL between 2006 and 2009 by illegally terminating the agreements between JIL and JAL in this regard. In this regard, there are two clauses bearing no. 22.6 and clause 10 (falling under reliefs and concessions) of the Suraksha Plan, which are reproduced below:

22.6. In the event of any past transfer of any interest (economic or beneficial) over the land comprising in real estate projects of the corporate debtor to JAL, wherein the ownership of the land still vests with the Corporate Debtor, the Resolution Applicants shall have a right to terminate/cancel/rescind any such arrangement without any liability (monetary or otherwise) on the Corporate Debtor or the Resolution Applicants as the case may be.

XXX

XXX

XXX

10. In relation to any alleged transfer of any economic interest or other beneficial interest by the Corporate Debtor to JAL in the past pertaining to the land parcels for the real estate development, where the title and ownership is still lying with the Corporate Debtor, the Resolution Applicant shall have a right to proceed in accordance with Applicable Law including to terminate/cancel such arrangement without any liability (monetary or otherwise) on the Corporate Debtor or the Resolution Applicant.

Thus, the proposed plan provides that the economic and beneficial interest in the 302 acres of land has been transferred in favour of JAL. While explaining the background of the transaction relating to the aforesaid land, JAL has stated that the entire consideration was paid by JAL to JIL during the period 2006 to 2009. Accordingly, the physical possession of the land was handed over by JIL to JAL and a number of housing projects, duly registered under RERA, have been launched by JAL on the said land as part of inclusive urban infrastructure development, the development/construction of which is still in progress. Since nearly 4,000 home buyers have purchased flats or plots from JAL on these 302 acres of land, termination of the agreements between JIL and JAL in respect of 302 acres of land would create an unprecedented crisis as homebuyers, whose flats are still under construction, may lose the money they have already paid to JAL as JAL will not be able to continue construction and deliver flats to the homebuyers. JAL has already incurred expenditure on construction and the undelivered flats are at various stages of construction. Hence, such a provision in the Suraksha's Plan is impractical, unfair, harmful

to the interest of a number of homebuyers, and would make it unimplementable and violative of the provisions contained in Sections 30(2)(d) and 30(2)(e) read with Section 31(1) of the IBC. Further, these 302 acres of land have not been shown as an asset of the corporate debtor/JIL in its Annual Financial Statements and books of accounts since 2009. Both in the matter of Embassy Property and in Jaypee Kensington, the Hon'ble Supreme Court has specifically held that a corporate debtor cannot claim any interest in the assets of a third party, whether in the CIRP period or under a resolution plan.

117. The IRP of JIL, COC, and SRA (together called Supporters of the Plan), while replying to the abovesaid contention of JAL, have stated the following:

117.1 JAL has objected to Clause 22.6 of the Resolution Plan submitting that it seeks termination of the agreements between JIL and JAL without any consideration for the projects under development/construction over the 302 acres of land which is still in the name of JIL and if JIL is permitted to cancel all arrangements, then the 4000 homebuyers of JAL will be left in a lurch with no title to their own flats/plots. Supporters of the Plan have argued that Clause 22.6 does not relate to economic/beneficial interest relating to land on which the real estate project of JAL is situated. The total land under the project is 1232 acres, out of which 745 acres of land is with the JIL/Corporate Debtor and the remaining 463 acres of land has been sub-leased (i.e., beneficial interest has been transferred in respect of 302 acres to JAL and of 61 acres to third parties). Therefore, neither any provision of law is violated by Clause 22.6 and nor any modification is required to the same in view of

the general expression used “in the event” and “land comprising in real estate projects of the corporate debtor”. Hence, clause 22.6 is inserted only to protect the interest of the 20,000 homebuyers of Corporate Debtor/JIL to the extent that JAL will have no lien or any kind of right over the 745 acres of land on which the projects of JIL are being developed and it has nothing to do with the 302 acres sold to JAL or homebuyers of JAL. In this regard, they have referred to the Information Memorandum [Page 28 of IM filed by RA as document compilation] which clearly demarcated the sub-leased land of 302 acres in favour of JAL, for which entire consideration has been received and therefore, the same does not form a part of the assets of the Corporate Debtor.

117.2 Clause 10 of “Reliefs and Concessions” on page 133 of the Resolution Plan pertains to a legitimate transaction with JAL whereby JAL has paid consideration to JIL but has not executed necessary conveyance documents. It is submitted that JAL should rather execute the necessary conveyance deed with payment of applicable stamp duty and complete the transaction as per applicable laws in the interest of its 4000 homebuyers. In this regard, an email dated 08th Oct 2022 has been sent by IRP to JAL authorities requesting JAL to take necessary action for the transfer of land and this fact has been mentioned by IRP before this Adjudicating Authority and is duly recorded in its order in the current proceedings. However, no sub-lease deed has been executed till date. The IRP further submitted that, in the event, the sub-lease deed is executed by JAL, the legal title of the land shall stand transferred in favour of JAL and the said clause, if dealing with the 302

acres of land, will be rendered infructuous. The said email is reproduced overleaf, for immediate reference:

10/8/22, 5:04 PM

Gmail - FW: Request for execution and registration of Sub-lease deeds for 180 Acres of land in Jaypee Wishtown



ANNEXURE A 2
surendar kumar <surenderkumarpr@gmail.com>
11

FW: Request for execution and registration of Sub-lease deeds for 180 Acres of land in Jaypee Wishtown

1 message

Ruchi Goyal <ruchi.goyal@kesardass.org>
To: surenderkumarpr@gmail.com

Sat, Oct 8, 2022 at 3:27 PM

From: Jain, Anuj
Sent: Friday, October 7, 2022 12:48 PM
To: geeta.solanki@jalindia.co.in
Cc: Manoj.gaur@jalindia.co.in; Sunil.sharma@jalindia.co.in; IRPJIL <irpjil@bsraffiliates.com>; Jain, Anuj <anujv Jain@bsraffiliates.com>; sk.mata <sk.mata@jalindia.co.in>
Subject: Request for execution and registration of Sub-lease deeds for 180 Acres of land in Jaypee Wishtown

Dear Madam,

The letter attached to this email is in reference to request for execution and registration of sub-lease deed for 180 acres of land forming subject matter of the Agreements to Sublease with Jaypee Infra Ventures (JIV) (erstwhile Ventures Pvt Ltd now merged with Jaypee Infra Ventures) . You are requested to complete the execution of sub-lease and other registration formalities in order to perfect the title of lands on which JIV claims beneficial and economic interest. Please note that that all costs, charges penalties or any consequences for non registration of Sub-lease deed will be on JIV's account.

You are requested to acknowledge the receipt for the above attached letter.

Warm regards

Anuj Jain

Interim Resolution Professional – Jaypee Infratech Ltd.

IP Registration no. IBBI/PA-001/IP-P00142/2017-18/10306

AFA No: AA1/10306/02/100323/103959 valid till 10.03.2023

118. We have heard the submissions of both sides and gone through the pleadings and written submissions placed on record. The SRA, who has drafted and submitted the Resolution Plan as well as the IRP of JIL has clarified that clause 22.6 is only to protect the interest of the homebuyers of JIL/ Corporate Debtor and it has nothing to do to 302 Acres of land referred

by JAL. Further, clause 22.6 clearly uses the phrase “.....*comprising in real estate projects of the Corporate Debtor...*” which implies that it is not applicable to the land and projects of JAL. In view of the above, we agree with the submissions of IRP and SRA that clause 22.6 has no relation to the land referred by JAL. Further, as already noted above, an e-mail along with a letter dated 8th Oct 2022 has been sent by IRP of JIL to JAL authorities requesting them to take necessary action for execution and registration of sublease deed for the said 180 acre of land. In our considered view, once the sub-lease deed is executed by JAL, the legal title of the land shall stand transferred in favour of JAL and the issue raised by JAL will become infructuous. **Hence, we find no force in the contention of JAL relating to its objection to clause 22.6 of the Resolution Plan.**

119. Since the other clause 10 of the Resolution Plan falls under the head of “Reliefs and Concessions”, therefore, we will examine the same while considering the entitlement of SRA of reliefs and concessions.

120. JAL has further objected that the proposed Resolution Plan seeks unilateral termination of JAL’s contracts/agreements. The relevant clauses in this regard are reproduced below:

“Clause 22.2: In view thereof all the existing contracts/agreements (including but not limited to contracts more particularly mentioned in Annexure-IV hereto), pertaining to development of land parcels, road assets, real estate projects or otherwise whatsoever between JAL and the Corporate Debtor shall stand terminated immediately upon the Approval Date and the Claim, any

payment (including but not limited to liquidated damages) and other compensation from the Corporate Debtor under such agreements/contracts, if any available to JAL from the Corporate Debtor shall be deemed to have been arise prior to Approval Date and shall be treated as Claim of the Operational Creditor and therefore shall stand extinguished as there is no entitlement as per the provisions of the Code."

[Suraksha Plan, internal p. 80] (Emphasis supplied)

Clause 22.3: The current development, construction and maintenance contracts or any other contract with Jaiprakash Associates Limited, ("JAL") which are on cost plus basis, shall stand terminated upon Approval Date, without any consequence whatsoever on the Corporate Debtor and /or the Resolution Applicants, and enter into fresh construction contracts with the vendors as may be selected by the Resolution Applicant in accordance with its policies and such contracts shall be entered into on arms' length basis as per the market standard."

[Suraksha Plan, internal p. 80] (Emphasis supplied)

"Clause 22.5: Further, there shall be no liability whether monetary or otherwise contractual or legal, on part of the Corporate Debtor or the Resolution Applicants in relation to termination of such contracts/agreements as the JAL is related party and responsible for present state of affairs of the Corporate Debtor. It is clarified that JAL cannot be allowed to take advantage of the termination, under the garb of seeking appropriate remedy under the applicable law like any other general regular contract, being the related party, entity responsible for present state of affairs of the Corporate Debtor and on account of nature of contracts as explained in clause 22.1 above." [Suraksha Plan, internal p. 81] (Emphasis supplied)

"Clause 22.8: In relation to the related party agreements and arrangements entered into by the Corporate Debtor and JAL or any of its affiliates, all demands, charges, fees, penalties or termination fees that may be applicable and payable by the Corporate Debtor (pursuant to the underlying agreements or arrangements) on account of termination of the contracts with JAL or its affiliates (as applicable) shall stand extinguished, being the Claim of the Operational Creditor prior to Approval Date." [Suraksha Plan, internal p. 81] (Emphasis supplied)

"Clause 34.30: Further, any Claim against the Corporate Debtor, arising from any contractual arrangements, whether set out herein or not, whether admitted or not, due or contingent, asserted or un-asserted, present or future, whether or not set out in the Information Memorandum and/ or data room, or the books of accounts or financial statements of the Corporate Debtor, in relation to any period prior to the Insolvency Commencement Date and / or Approval Date, shall be deemed to be permanently extinguished upon approval of the Resolution Plan by the Adjudicating Authority and therefore the Resolution

Applicants and / or the Corporate Debtor shall, at no point, be made directly or indirectly responsible or liable for the same.” [Suraksha Plan, internal p. 106] (Emphasis supplied)

“Clause 34.55 : On and from the Approval Date, any liabilities, claims, demands, capital contribution or any other form of financial commitment, or any enforcement action undertaken including but not limited to any security interest created or provided, save and except, the security interest created over 100 acres of land at Tappal in favour of the lenders of JAL and pledge of shares created in favour of lender of JHL, whether guaranteed or contractually agreed in writing or otherwise by the Corporate Debtor on behalf of or for its subsidiary companies, step-down subsidiaries, associate companies, group Companies, and/or their respective affiliates, shareholders/associates or for and on behalf of any other person , as the case may be, which are in existence prior to the Approval Date and which may be invoked prior to the Approval Date or at any time thereafter, shall stand irrevocably and unconditionally extinguished. It is clarified that the Corporate Debtor shall have right of subrogation in respect of the security interest created in favour of JAL Lenders and the lenders of JHL. It is clarified that the Corporate Debtor reserves its right to challenge and/ or seek appropriate remedy under the Applicable Laws in respect of mortgage of 100 acres land at Tappal of the Corporate Debtor created in favour of the lenders of JAL as well as pledge of shares created in favour of lender(s) of JHL.” [Suraksha Plan, internal p. 113] (Emphasis supplied)

“Clause 34.57: The Claims/obligations/liabilities of the Corporate Debtor under the diverse agreements executed with the related parties, subsidiaries, associates etc. shall be deemed to have arisen as on the Insolvency Commencement Date and/ or Approval Date and all such Claims/obligations/ liabilities shall, on the Approval Date, stand extinguished and satisfied, and no such existing claim or due shall subsist against the Corporate Debtor and the Resolution Applicants.”

[Suraksha Plan, internal p. 114] (Emphasis supplied)

121. JAL has stated that it is a settled principle of law that no contract can be terminated unilaterally at the sweet will of one of the contracting parties, without leaving open the right of the other party to take recourse to legal remedies. It is more so when the IRP had affirmed the contracts with JAL during the CIRP period and JAL cannot be left remediless in respect of actual losses suffered during the CIRP period on account of sudden termination by the Suraksha’s Plan of its contracts with JIL. Further, it is not permissible for Suraksha’s Plan to wipe out the monetary liabilities in terms of actual work

incurred by JAL towards JIL during the CIRP period under contracts that were affirmed by the IRP and under which JIL accepted performance by JAL. The IBC does not permit a resolution plan to abrogate or modify obligations incurred by a corporate debtor during the CIR period while it is under the management and control of an IRP. JIL owes JAL a significant amount towards the works performed by JAL pursuant to Contract Agreements executed and subsisted between JIL and JAL as of date. Moreover, Section 20(2)(b) of the IBC allows the IRP to amend or modify contracts entered into before the CIRP began, but there is no similar provision in the IBC to permit a resolution plan to amend or modify contracts that the IRP/RP has affirmed and under which the corporate debtor has received benefits during the CIRP period prior to the approval of the resolution plan. Further, neither Regulation 37 (which specifies measures that may be included in a resolution plan) nor Regulation 38 (which prescribes mandatory contents of a resolution plan) mentions that contracts, whether with related parties or otherwise, may be modified without incurring monetary liability by the corporate debtor and/or without legal recourse by the aggrieved party.

122. Per Contra, the IRP of JIL, SRA, and CoC (together termed as the Supporters of the plan) have stated JAL has objected to clauses 22.2, 22.3, 22.5, 22.8, 34.30, 34.55, and 34.57 of the Resolution Plan to submit that the Resolution Applicant cannot unilaterally terminate the contracts/agreements with JAL. In this regard, the supporters of the plan have mainly stated that (i) It is an admitted fact that out of the 6 construction agreements, 5 agreements already stand expired, as on date; (ii) JAL is a related party, which is responsible for the present state of affairs of the Corporate Debtor/JIL; (iii)

Agreements executed between JAL and the Corporate Debtor are not in the interest of the Corporate Debtor or its homebuyers; (iv) In Clause 28.2 (c) of the Resolution Plan, the Resolution Applicant has also given measures to resolve the defaults by the termination of such agreements; (v) With Section 7 application (CP 330 of 2018) against JAL having been filed by ICICI Bank and SBI, the solvency of JAL is in doubt and hence, not terminating such agreements will jeopardize the interests of the Corporate Debtor; (vi) Unilateral right to terminate the agreement is incorporated in Regulation 39(6) of the CIRP Regulations. In Bhushan Steel's case, there was an agreement between Bhushan Steel and its subsidiary, Bhushan Energy which was terminated by Tata Steel (Resolution Applicant therein). NCLT rejected the objection of Bhushan Energy, which was upheld by Hon'ble NCLAT; (vii) The continuation of these agreements with JAL will amount to back door entry of JAL, in spite of it being barred expressly under Section 29A of the Code; (viii) The Hon'ble Supreme Court has considered the issues raised by agreement holders who are third parties but has not objected to the clause of termination of the JIL and JAL agreements; (ix) Clause 17.41 of the Resolution Plan is an enabling clause which envisages "smooth transition" in relation to the projects of Corporate Debtor, currently being developed by JAL so that it can start implementation in timely manner; (x) Section 31 of the Code mandates that the Resolution Plan once approved is binding on all stakeholders which includes JAL, Clause 22.2 of the Resolution Plan only envisages that upon approval of the Resolution Plan, all claims of JAL shall be treated as claims of "operational creditor" and shall stand extinguished as the liquidation value for OC is NIL; (xi) Resolution Applicant is entitled to take over the management

on a clean slate with no right to remedy with JAL leaving hydra head popping up in future. [Paragraph 106 and 107 of the Essar Steel Judgment, CoC vs. Satish Kumar Gupta (2020) 8 SCC 531 and Paragraph 68, 84 and 93 of the Ghanshyam Mishra vs Edelweiss Asset Reconstruction 2021 9 SCC 657; and (xii) Further, during the course of argument, JAL itself contended that it is not going after the damages or any future claims based on termination. Its only objection is limited to its entitlement for work executed during the CIRP. In response, it is submitted that payment for work executed by JAL is being made regularly by internal accruals of JIL/Corporate Debtor and further, the SRA has given a blanket Clause 14 in the Resolution Plan and an undertaking specifically in Para 14.3 to pay the CIRP Cost as per the provisions of the Code. Thus, it leaves no question of a right to remedy for termination of JAL's contracts.

123. We have heard the submissions of both parties and gone through the relevant pleadings and written submissions placed on record. The SRA has submitted that out of the 6 construction agreements between JAL and JIL, 5 agreements have already expired, a fact, that was not disputed during the course of the hearing. Further, in the context of the present issue, we would like to refer to Regulation 39(6) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which deals with the approval of the Resolution Plan. The same is reproduced below:

“39. Approval of resolution plan.

- 1..
- 2..
- 3..

4..

5..

6. *A provision in a resolution plan which would otherwise require the **consent of the members** or partners of the corporate debtor, as the case may be, under the terms of the constitutional documents of the corporate debtor, shareholders' agreement, **joint venture agreement or other document of a similar nature**, shall take effect notwithstanding that such consent has not been obtained.”*

(Emphasis Supplied)

124. On perusal of Regulation 39(6) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, it is evident that *inter alia*, lack of consent of shareholders/members of JIL i.e., JAL (being the holding company) *for joint venture agreement or other document of a similar nature* cannot create any hindrance in approval of the Resolution plan. Therefore, we are of the view that the contracts/agreements, to which JAL is referring, will come under the ambit of Regulation 39(6). A similar observation was given by the Hon'ble NCLT Principal Bench in the matter of **State Bank of India Vs. Bhushan Steel Limited** dated, (2018) ibclaw.in 274 NCLT, dated 15.05.2018, which reads as under:

“67. A perusal of Regulation 38 would clearly show that by virtue of mandatory contents of the resolution plan discussed under Section 30 and 31 of the Code the requirement of Regulation 38 stand fulfilled. However, the objections raised under Section 29A (a) and (d) of the Code which are discussed separately. Even the requirement of Regulation 39 stand fulfilled as the RP has submitted the resolution plan of H1 resolution applicant as approved by the CoC to this Tribunal with the certification that the contents of the resolution plan meet all requirements of the Code and the CIRP Regulations and that the resolution plan has

*been duly approved by the CoC. **There is no scope for argument left that shareholder, or parties to joint venture agreement or anyone holding similar document need to accord sanction in view of the provisions of Regulation 39(6) of the CIRP Regulations. Regulation 39 (6) clarifies that the resolution plan as approved by the CoC must take effect notwithstanding the requirement of consent of the members or partners of the Corporate Debtor** under the terms of the constitutional documents of the Corporate Debtor, shareholders' agreement, joint venture agreement or other document of a similar nature."*

(Emphasis Supplied)

The aforesaid judgment was upheld by the Hon'ble NCLAT passed in the matter of Bhushan Energy Limited vs. State Bank of India and Ors. in CA(AT)(I) 267 of 2018, dated 10.08.2018 and even the challenge to it before the Hon'ble Supreme Court was withdrawn [M/s. Bhushan Energy Limited vs. State Bank of India in Civil Appeal No. 8517 of 2018, dated 10.01.2020].

125. In view of the above findings, we find no illegality in the clause seeking termination of the related party contracts of JAL.

126. The next objection raised by JAL relates to Clause 17.18 and Clause 22.9 of the Plan, which reads thus:

"Clause 17.18: Further, notwithstanding anything contained in this Resolution Plan, the Resolution Applicant or the Corporate Debtor shall have no obligation or liability towards the Home Buyers on account of monies paid by the Home Buyers to JAL (either directly or indirectly, including payments made through JIL) towards maintenance charges or interest free maintenance deposits (IFMS/IFMD). It is also clarified for avoidance of doubt that the Home Buyers shall not be entitled to set off/ adjust any such monies paid towards maintenance charges from any of the amounts due to the Corporate Debtor." (Emphasis supplied)

"Clause 22.9: The existing maintenance agreements with JAL shall stand terminated on the Approval Date and the Home Buyers shall execute a new agreement for maintenance directly with the Corporate Debtor, on similar terms and conditions. Any payment made by the Home Buyers to JAL under such maintenance agreements shall be returned by JAL, to the Home Buyers who

shall, in turn, pay that amount to the Corporate Debtor/ SPV towards the maintenance of the projects under the new maintenance agreement that shall be executed by the Home Buyers with the Corporate Debtor/ SPV and/or its nominees. Any such Claims against the Corporate Debtor for the monies paid by Home Buyers to JAL, as mentioned above, shall be deemed to have arisen on or before the Approval Date and shall stand satisfied and extinguished upon approval of this Resolution Plan against the Corporate Debtor and/or Resolution Applicants, without affecting the amounts recoverable by the Corporate Debtor from JAL. Further, no such existing claim or due shall subsist against the Corporate Debtor and the Resolution Applicants. The Claims, if any, raised by JAL, upon and pursuant to the termination of the aforementioned contracts shall be deemed to have been arisen prior to the Approval Date and shall stand extinguished, being Claim of the Operational Creditors".

[Suraksha Plan, internal pp. 81-82]

127. It is contended by JAL that, (i) assuming the amounts are paid to JIL as part of the reconciliation process, Clause 17.18 of the Resolution plan provides that SRA and JIL will not have any obligation or be liable to the home buyers in respect of the amounts paid by them to JAL; (ii) Clause 17.18 cannot interfere in this manner with third party contracts between JAL and JIL's homebuyers; (iii) Clause 17.18 cannot mandate return by JAL of amounts paid by home buyers towards maintenance, especially without taking account of amounts owed by home buyers when accounts have not been settled between JAL and homebuyers in respect of maintenance by JAL; (iv) Clause 22.9 of the Resolution Plan is also inconsistent with Section 11(4)(e) read with Section 11(4)(g) of the RERA, which reads thus:

“11(4) . The promoter shall-

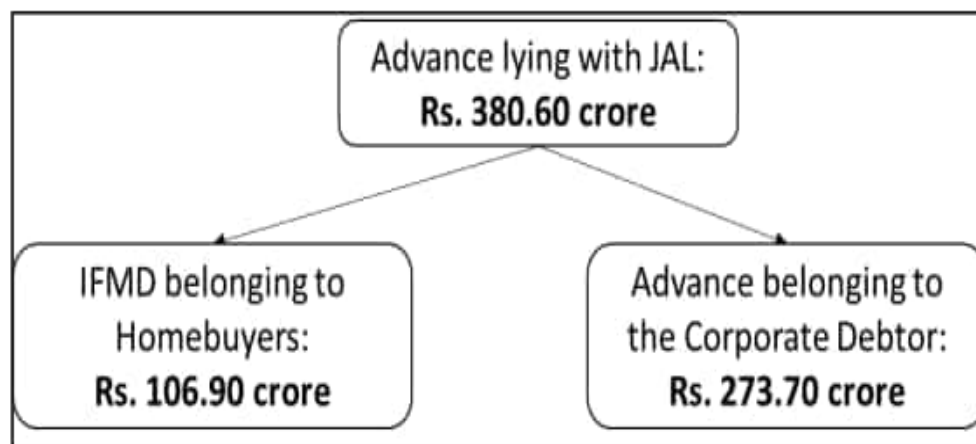
...
(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable: Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case maybe, in the project;

...
(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project)...
(Emphasis Supplied)

Section 11(4)(e) and (g) of RERA, if read together, clearly provide that in the absence of any local laws, the promoter shall ensure that the association of allottees is formed within 03 months of the majority of allottees having booked their apartments in a project and that the promoter is required to transfer the IFMD to the such association of allottees. Therefore, it is clearly against provisions of RERA, for Clause 22.9 to mandate that the IFMD must be transferred back to the allottees, who in turn, must hand over the IFMD to JIL.

128. Per contra, the SRA has stated that the submission of JAL is false and incorrect. For the real estate projects of the Corporate Debtor, JIL is the land owner and JAL is the developer and maintenance agency. JAL was expected to receive Rs.380.6 Crores from the homebuyers under the maintenance contracts for the flats on the projects of Corporate Debtor/JIL. However, JIL and JAL being under the same promoter group, JIL has taken this burden by paying an advance of Rs. 380.6 Crores to JAL on the understanding that the

same shall be subsequently recovered by JIL from the Homebuyers and JAL shall be given set-off to the extent of the amount received from homebuyers. Against this, only Rs. 106.90 Crores was deposited by the homebuyers with JIL and therefore, the advance given by JIL to JAL has been reduced to Rs. 273.70 Crores. Therefore, effectively, Rs. 106.90 Crores deposit lying with JAL belongs to homebuyers, and Rs. 273.70 Crores lying with JAL belongs to JIL.



It is submitted by the SRA that, upon the termination of JAL's contracts, the three possible scenarios are (i) JAL refunds the said Rs. 106.90 Crores to the homebuyers either directly or through an escrow account, or (ii) JAL does not pay back the said deposit, or (iii) JAL returns the said Rs. 106.90 Crores to JIL through the process of reconciliation.

The issue of Rs. 106.90 Crores is between JAL and the Home Buyers, Clause 17.18 states that only in scenario (ii), JIL shall have no liability towards homebuyers for IFMD or for the monies paid by homebuyers to JAL. In the event of scenario (iii) materializing, the said IFMD amount received by the Resolution Applicant/JIL shall be passed on to the new maintenance agency. Further, it is submitted that the aforesaid amount is held in trust by JAL for

the homebuyers and it is incumbent on JAL to place the same in the escrow account as also submitted by the IRP.

We are aware that this amount of Rs.106.90 Crores is a subject matter of the reconciliation process being carried out as per the direction of the Hon'ble Supreme Court in **Jaypee Kensington**. Though, the SRA has anticipated three scenarios in respect of the amount of Rs. 106.90 Crores belonging to Home Buyers lying with JAL, its treatment or payment shall be decided and governed by the Judgement of this Adjudicating Authority on the reconciliation process, the application for which is under consideration separately.

129. So far as clause 22.9 of the Resolution Plan, relating to the termination of the maintenance agreement is concerned, we have already held that in terms of the Judgement of the Hon'ble Apex Court in the matter of **Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta**, (2020) 8 SCC 531, SRA has to start on a clean slate and under Regulation 39(6) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and therefore, SRA can terminate the contract/agreement entered by it with its related party JAL. **Hence, in view of the above observations, we do not find any merit in the objections raised by M/s JAL.**

130. In view of the foregoing discussion, we Dismiss all the objections raised by M/s JAL and Mr. Manoj Gaur.

X. RELIEFS AND CONCESSIONS

131. The Successful Resolution Applicant (SRA)/Suraksha, has sought for 38 “Reliefs and Concessions”, as detailed in Annexure II, from Pages 132 to 138 of the Resolution Plan. It is, however, important to note that the SRA/Suraksha has undertaken in clause 12 of the Resolution Plan that it will implement the plan even if no relief or concession is granted to it. The said Clause 12 of the Resolution plan is reproduced below, for the sake of immediate reference:

12. Reliefs and Concessions

The reliefs and concessions sought by the Resolution Applicants are more particularly contained in Annexure-II hereto. The Resolution Applicants undertake that they will implement this Resolution Plan, whether or not the reliefs and concessions are granted.

132. Nevertheless, we would like to examine each of the reliefs and concessions asked for. The first relief and concession sought in the Annexure-II of the Resolution Plan are:

“1. All the existing legal proceedings relating to Income Tax shall stand irrevocably and unconditionally abated, settled and all liability/ obligations of the Corporate Debtor vis-a-vis the Income Tax authority in relation to such matters shall stand extinguished in perpetuity.”

Through this relief, the SRA is seeking irrevocable and unconditional abatement/settlement in perpetuity of all Income Tax proceedings of the Corporate Debtor. Thus, the relief sought being abatement/settlement of all legal proceedings relating to Income Tax in perpetuity, we are not inclined to

grant such a blanket relief. In our view, it is the duty of the SRA to seek termination of such litigations, pending before the relevant Authorities, in accordance with the law. **It would not be apt for this Adjudicating Authority to interfere with the jurisdiction of various legal forums on a blanket basis and therefore, the relief is declined.**

133. The next Relief and Concession sought by the SRA is at Serial No.2 of Annexure-II, which is reproduced below:

“2. The approval of this Plan by the Adjudicating Authority shall be deemed to have waived all the procedural requirements in terms of Section 66, Section 42, Section 62, Section 71 of the CA, 2013 and relevant rules made thereunder, in relation to reduction of share capital of the Corporate Debtor, issuance of shares by Expressway SPV, Land Bank SPV, conversion of Admitted Financial Debt due to the Institutional Financial Creditors to equity, subscription of debentures by the Corporate Debtor or transfer of shares of the Land Bank SPV from the Corporate Debtor to Institutional Financial Creditors.”

In our view, if Resolution Plan proposes a reduction of share capital or further allotment of shares, there is no need to follow any separate procedure, as the approval of the Resolution Plan under the IBC 2016 is a single window clearance. **Hence, we are inclined to grant this relief.**

134. The next relief and concession sought by the SRA is at Serial No.3 of Annexure-II, which reads thus:

“3. All relevant Governmental Authorities to grant relief/waiver from payment of stamp duty, to the extent permissible under the Applicable Law, for the successful implementation of the Plan inter alia including for the increase in authorized share capital, issuance/transfer of shares or debentures (optionally convertible debentures/non-convertible

debentures), transfer of Expressway asset and land bank asset (including leasehold rights in underlying land) to Expressway SPV and Land Bank SPV respectively, pursuant to business transfer, etc.”

Since waiver of Stamp Duty is not a liability of the Corporate Debtor of the pre-CIRP period and will cause a loss of revenue to the Public Exchequer, **we are not inclined to grant this relief and concession.**

135. The next relief and concession asked by the SRA is mentioned in Serial No.4 of Annexure II, which reads as under:

“4. All Governmental Authorities (including the Income Tax authority) to waive the non-compliances of the Corporate Debtor or further claims of the Governmental Authorities on the Corporate Debtor arising out of or in relation to the past claims or non-compliances, prior to the Approval Date.”

Since the relief sought is with respect to non-compliance of the CD or further claims of the Governmental Authorities (including the Income Tax authority) on the Corporate Debtor, which has neither been crystalized nor an opportunity of hearing to the relevant Governmental Authorities including the Income Tax Department was available, **we are not inclined to grant such a blanket relief in rem.**

136. The next relief and concession sought by the SRA is listed in Serial No.5 of Annexure-II, which is reproduced below:

“5. All Governmental Authorities (including the Income Tax authority, Service Tax department and VAT department) to provide relief to the Corporate Debtor from all past litigations pending at different levels and

provide waiver from tax dues including interest and penalty on such litigations as on the Approval Date.”

Through, this relief, the SRA is seeking blanket termination of litigations pending before all Governmental Authorities. In our view, it is the duty of the SRA to seek termination of those litigations, pending before the relevant Governmental Authorities, in accordance with the law. **It would not be apt for this Adjudicating Authority to interfere with the jurisdiction of Governmental Authorities on a blanket basis and therefore, the relief is declined. However, the SRA would be at liberty to proceed in accordance with law.**

137. The next relief and concession sought by the SRA listed at Serial No.6 of Annexure II, which reads thus:

“6. The lenders (including Institutional Financial Creditors) to the Corporate Debtor shall regularize all the loan accounts of the Corporate Debtor and shall ensure that the asset classification of such loan accounts is "standard" in their books with effect from the Approval Date.”

None of the Financial Creditors of the Corporate Debtor have objected to this relief at any stage. Further, in our view, the Financial Creditors having been treated as per their entitlement in the Resolution Plan, the relief sought will not cause any prejudice to the Financial Creditors. **Hence, we are agreeable to granting this relief.**

138. The next relief and concession sought is mentioned in Serial No.7 of Annexure II, which reads as under:

“7. All creditors (including the Institutional Financial Creditors, FD Holders, Home Buyers Refund Seekers and the Operational Creditors) of the Corporate Debtor to withdraw all legal proceedings commenced against the Corporate Debtor in relation to Claims including proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Recovery of Debt and Bankruptcy Act, 1993 and seek quashing of criminal proceedings including proceedings under Section 138 of the Negotiable Instruments Act, 1881, within a period of 90 (ninety) days of the Approval Date.”

Through, this relief and concession, the SRA is trying to seek blanket withdrawal of all legal proceedings initiated before various other forums. In our view, it is the duty of the SRA to seek termination of the legal proceedings, pending before various forums, in accordance with the law. **It would neither be apt for this Adjudicating Authority to interfere with the jurisdiction of other forums nor to direct any third party to withdraw the legal proceedings and therefore, this blanket relief is declined. However, the SRA would be at liberty to proceed in accordance with law.**

139. The next relief and concession listed at Serial No.8 of Annexure II is as follows:

“8. Except those agreements/letter of allotments, where the sub-lease deeds had been executed between the Corporate Debtor and the third parties, in relation to all the agreements/letter of allotments, entered into between the Corporate Debtor and the third parties in relation to the transfer of the leasehold rights over the land situated in Agra and Tappal, the Resolution Applicant reserves the right to terminate/cancel the same with concurrence of such third parties and with simultaneous repayment of the actual amount already paid by such third parties without any interest or further liabilities on the Corporate Debtor or the Resolution

Applicant, Pursuant to such termination/cancellation, such land parcels and rights attached thereto shall be fully vested in the Corporate Debtor.”

Through this relief, the SRA is seeking blanket termination/cancellation of agreements/letters of allotments executed between the Corporate Debtor and third parties. In the absence of specific details of such agreements/letters of allotments being available before us and without affording an opportunity of hearing to the third parties, **we are not inclined to interfere in the dealings of Corporate Debtor with third parties and therefore, this blanket relief is declined. However, the SRA would be at liberty to proceed in accordance with law.**

140. The next relief and concession sought by the SRA is mentioned in Serial No.9 of Annexure II, which is reproduced below:

“9. The relevant Governmental Authorities shall not initiate any investigations, actions or proceedings against the Corporate Debtor or the Resolution Applicants or the new management (upon acquisition of the Corporate Debtor) including the board of directors, in relation to any non-compliance with Applicable Laws by the Corporate Debtor pertaining to any period up to Approval Date.

Neither shall the Resolution Applicants nor the Corporate Debtor nor their respective directors, officers, and employees to be appointed after the Approval Date be liable for any violations, liabilities, penalties or fines with respect to or pursuant to the Corporate Debtor not having in place the requisite licenses and approvals required to undertake its business as per Applicable Laws and the Resolution Applicant seeks a time period of 12 months from the Approval Date, to ensure renewal of such consents/licenses and approvals. Licenses and approvals held by the Corporate Debtor which expired prior to the Approval Date or which will

expire within a period of 3 months thereafter shall be renewed/extended by the relevant Governmental Authorities and the Corporate Debtor shall be permitted to continue its business and assets in manner operated prior to submission of this Plan. Resolution Applicant seeks a time period of 12 months from the Approval Date, to ensure compliances.”

There is no provision under any law (except as specified in Section 32A of IBC, 2016) by which blanket immunity against investigations, actions, or proceedings, in relation to any non-compliance with Applicable Laws or from taking requisite approvals and licenses for 12 months can be granted to the Corporate Debtor or the Resolution Applicants or the new management (upon acquisition of the Corporate Debtor) including the board of directors. **Hence, we are not inclined to grant this relief. However, the SRA would be at liberty to proceed in accordance with law.**

141. The next relief and concession sought by SRA is listed in Serial No.10 of Annexure II, which reads thus:

“10. In relation to any alleged transfer of any economic interest or other beneficial interest by the Corporate Debtor to JAL in the past pertaining to the land parcels for the real estate development, where the title and ownership is still lying with the Corporate Debtor, the Resolution Applicant shall have a right to proceed in accordance with Applicable Law including to terminate/cancel such arrangement without any liability (monetary or otherwise) on the Corporate Debtor or the Resolution Applicant.”

During the course of the hearing, JAL has raised objections to this clause. It is argued by the JAL that this clause pertains to 302 acres of land for which, the entire consideration was paid by JIL to JAL as far back as between 2006

to 2009. Accordingly, physical possession of the land was also handed over by JIL to JAL. A number of housing projects, registered under the RERA, have been launched by JAL on the said land, the development/construction of which is still in progress. Further, the 302 acres of land have not been shown as an asset of the corporate debtor/JIL in its Annual Financial Statements since 2009, whereas this land has been shown as an asset of JAL in its Annual Financial Statements since 2009. The termination of the agreements between JIL and JAL of the 302 acres of land would create an unprecedented crisis for 4,000 homebuyers of flats/plots, who may lose the money which they have already paid to JAL. Further, JAL has already incurred expenditure on construction and the undelivered flats are at various stages of construction.

Per contra, SRA has contended that there were many transactions and wrongdoings in the working of the Corporate Debtor under the garb of incorporating JIL as an SPV. In the event, any such transaction is found, where JAL is enjoying the land parcels, where ownership is with the JIL, JIL shall be entitled to terminate such contracts. This relief does not prejudice the legal right of any party and Resolution Applicant has the right to proceed only in accordance with prevailing laws.

We have heard both parties. It is argued by the JAL that Clause 10 pertains to 302 acres of land for which, the entire consideration was paid by JIL between 2006 to 2009 and physical possession of the land was also handed over to JAL. What transpired during the hearing is that the JIL and JAL have yet to execute registration of the said land. As we have noted earlier a letter dated 4th Oct 2022 has been sent by IRP to JAL authorities requesting them

to take necessary action for the transfer of land which is duly mentioned in our order dated 3rd Oct 2022. In our considered view, once the sub-lease deed is executed by JAL, the legal title of the 302 acres of land shall stand transferred in favour of JAL and the issue raised by JAL will become redundant. However, till then, prejudice may be caused to the Homebuyers of JAL, if this relief is granted. **Hence, we are not inclined to grant this relief. However, in case either of the parties does not take steps for registration of the aforesaid 302 acres of land, they shall be at liberty to approach the court of appropriate jurisdiction for requisite relief.**

142. The next relief and concession sought by the SRA is listed in Serial No.11 of Annexure-II, which is reproduced below:

“11. The Resolution Applicants assume that, in compliance of his duties under Regulation 35A of the CIRP Regulations, the Interim Resolution Professional had determined whether the Corporate Debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66 of the Code or not and applied to the Adjudicating Authority for seeking appropriate relief. Accordingly, though the Resolution Applicants reserve their right to institute any investigation pertaining to any transaction(s) carried out by the ex-management of the Corporate Debtor or to file appropriate applications before the court/tribunal of competent jurisdiction, the Resolution Applicants and its officers, directors, employees and the new management of the Corporate Debtor, shall never be liable/responsible for any such transactions carried out by the ex-management of the Corporate Debtor.”

The aforesaid relief sought is vague in nature. There is no provision in the law requiring permission of this Adjudicating Authority to file an application against ex-management. The SRA is free to initiate action which is permissible

under the law. However, the same shall not be treated as if the same is done with the permission of this Adjudicating Authority. **In view of the above, the relief at Serial 11 is not granted.**

143. The next relief and concession sought by the SRA is mentioned in Serial No.12 of Annexure II, which reads as under:

“12. With respect to any alleged transfer of land parcels by the Corporate Debtor to third parties without any proper agreement/sub-lease deeds and where the consideration amount has not been paid to the Corporate Debtor inter alia including the land parcels, the Resolution Applicant reserves a right to cancel such instruments/agreements/term sheets and upon cancellation the title in such land parcels. will continue to be legally vested in the Corporate Debtor without any liability/obligation to the counter-party, provided that such counter-party may take necessary steps as per Applicable Laws.”

Through this relief, the SRA is seeking blanket permission to cancel such instruments/agreements/term sheets entered into by the Corporate Debtor for the transfer of land parcels to third parties. In our view, depending upon the specific facts of each case/transaction, the Resolution Applicant is free to take action as deemed fit and permissible under the law. However, such acts should not be deemed to have been initiated on the pretext, as if the same is permitted by this Adjudicating Authority. **In view of the above, we are not inclined to grant this relief. However, the SRA would be at liberty to proceed in accordance with the law.**

144. The reliefs and concession sought by the SRA at Serial No.13 of Annexure II read thus:

“13. For the purpose of consolidation of the books of Corporate Debtor with Resolution Applicant, the Approval date shall be treated as the first day of the quarter immediately succeeding the quarter in which the Resolution Applicants acquire 100% shareholding of the Corporate Debtor.”

The implications of the relief sought being not explained to our satisfaction, **we are not inclined to grant this relief.**

145. The next relief and concession sought by the SRA at Serial No.14 of Annexure II, is reproduced below:

“14. The claims of all Home Buyers (including claims filed before RERA), Financial Creditors, Operational Creditors and Landowners (farmers) against the Corporate Debtor at all platforms including judicial, quasi-judicial and regulatory shall stand withdrawn on the NCLT Approval Date.”

Through this relief, the SRA is seeking blanket withdrawal of the claims of all Home Buyers (including those filed before RERA), Financial Creditors, Operational Creditors, and Landowners (farmers) against the Corporate Debtor at all platforms including judicial, quasi-judicial, and regulatory platforms. **In our view, it would not be apt for this Adjudicating Authority to permit blanket withdrawal of claims of different stakeholders including Home Buyers and Farmers pending before other forums. It is the duty of the SRA to apprise the court of appropriate jurisdiction. Accordingly, we are not inclined to grant this relief. However, the SRA would be at liberty to proceed in accordance with law.**

146. The next relief and concession sought by SRA at Serial No.15 of Annexure II reads as under:

“15. All the concerned authorities including the Central Government and the Reserve Bank of India to accord the necessary permissions or approvals under the Banking Regulation Act 1949 (to the extent permissible under the Applicable Law) to the Institutional Financial Creditor(s) (if required) in relation to the transfer of shareholding of the Expressway SPV and the Land Bank SPV to the Institutional Financial Creditors.”

In our considered view, this Adjudicating Authority cannot interfere with the working of Central Government and RBI, for providing necessary approvals. It is the duty of the SRA to take necessary approvals from the competent authority. **Accordingly, we are not inclined to grant this relief. However, the SRA would be at liberty to proceed in accordance with law.**

147. The next relief and concession as sought at Serial No.16 of Annexure II reads thus:

“16. Entities including Serious Fraud Investigation Office, Income Tax Department will not stop the segregation of accounts, records, SAP, employees of Corporate Debtor and JAL and further, JAL will not hold back any document, hardware which is jointly held by the Corporate Debtor and JAL.”

During the course of the hearing, JAL objected to this relief. In our view, under the garb of seeking this relief and concession, the SRA cannot ask for any direction with respect to the manner in which an investigating agency should act and as a matter of general principle, we would not like to interfere with the working of Investigating Agencies. However, it goes without saying as and when the need arises, both JIL and JAL will extend necessary cooperation to the Investigation Agencies. **In view of the above, the relief sought is declined.**

148. The next relief and concession sought at Serial No.17 of Annexure II is as under:

“17. The various deposits under protest made with various authorities shall be unconditionally made available as assets of the Corporate Debtor immediately upon approval of this Resolution Plan as the underlying claims are being settled in terms of this Resolution Plan.”

In our view, such a relief and concession cannot be sought under a Resolution plan. The SRA may take appropriate steps in accordance with law to recover any such deposit made under protest. **Accordingly, we are not inclined to grant this relief.**

149. The next relief and concession sought by the SRA at Serial No.18 of Annexure II, is reproduced below:

“18. The Resolution Applicants be permitted to claim set-off of the entire Minimum Alternate Tax (MAT) credit as available to the Corporate Debtor, against the normal income-tax as would be payable by the Corporate Debtor post the Approval Date i.e., no normal taxation should be applicable until the MAT credit is adjusted/utilized in full.”

JAL had objected to such relief and concession. It has stated that the relief regarding MAT credit if granted, would violate the provisions of the IBC as well as that of the Income Tax Act. As per Section 115 JAA (3A) of the Income Tax Act, carry forward of a tax credit is not allowed beyond the fifteenth assessment year succeeding the assessment year in which tax credit becomes allowable. However, through approval of its Resolution Plan, Suraksha is attempting to bypass the relevant provisions of the Income Tax Act as it seeks to avail the benefit of MAT credit for an indefinite period i.e., till the MAT credit

is utilized in full. While agreeing with the submissions of JAL, **the relief sought to be violative of the Income Tax Act, we decline this relief.**

150. The next relief and concession sought by the SRA at Serial No.19 of Annexure II reads as under:

“19. All the losses already lapsed/not lapsed as on the Approval Date should be allowed to be carried forward for a period till the same are utilised/ set-off fully by the Corporate Debtor.”

The JAL has objected to this relief and concession. Through this relief, the SRA seeks blanket permission to carry forward all losses already lapsed or not lapsed, as on the date of approval of the Suraksha Plan, for a period till the same is utilized or set off in full by the JIL. As per Section 72(3) of the Income Tax Act, no loss can be carried forward for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed. However, under the garb of the approval of the Plan, Suraksha is attempting to bypass the future application of relevant provisions of the Income Tax Act contrary to the express provisions of the law.

In our view, this issue will have to be dealt with under the purview of the IT Act. Therefore, such a blanket relief and concession sought by the SRA, against the provisions of the Income Tax Act, cannot be granted. **Accordingly, the same is declined.**

151. The next relief and concession sought by the SRA at Serial No.20 of Annexure II, which reads as given below:

“20. The transfer of land to lenders and to Land Bank SPV as part of Resolution Plan in terms of the Resolution Plan may involve capital

gains/business income to the Corporate Debtor. Such a gain or income shall be treated as capital reserve for the purposes of Corporate Debtor.”

JAL has objected to this Clause and has stated that the land in the case of JIL forms part of its assets as stock in trade. Accordingly, JIL has been accounting for the proceeds from sub-lease of land as business income and surplus from said sub-lease of such land as business profit, which is taxable as business income under Section 28 (i) of the Income Tax Act. However, through approval of the Resolution Plan, Suraksha is seeking to avoid the relevant provisions of the Income Tax Act and to escape taxation under the Income Tax Act by treating income as a capital reserve.

Any capital gain is a subject matter of the extant tax laws. Whether the capital gain tax will be applicable or not on a particular transfer of land is to be determined within the framework of the Income Tax Act and Rules there under by the Competent Authority/Income Tax Department. Hence, we cannot interfere with the jurisdiction of the Central Government/Income Tax Department. **Accordingly, the relief as sought is not granted.**

152. The next relief and concession sought by the SRA at Serial No.21 of Annexure II reads as under:

“21. All Governmental Authorities including the Income Tax authority, Service Tax department and VAT department, Labour Cess department (BOCW), to provide relief to the Corporate Debtor from all past litigations pending at different levels and provide waiver from tax & cess dues including interest and penalty on such litigations as on the Insolvency Commencement Date.”

Since, the aforesaid relief and concession is in the nature of a blanket relief, **we are not inclined to grant the same.**

153. The next relief and concession sought by the SRA at Serial No.22 of Annexure II, is reproduced below:

“22. The penalty levied/leviable and procedural requirements for delisting of shares, by the Stock Exchanges and SEBI, relating to reduction of Share Capital Delisting/ any Other reasons etc., (if any) to be waived off.”

In our view, the penalty levied/leviable and procedural requirements for delisting of shares, by the Stock Exchanges and SEBI, relating to the reduction of Share Capital Delisting/any Other reasons, etc., (if any) shall be subject to the relevant provisions of law. **In view of the above, the relief sought is not granted.**

154. The next relief and concession sought by SRA at Serial No.23 of Annexure II, reads thus:

“23. All software/licences including SAP and hardware belonging to JAL or any other party which were being used by the Corporate Debtor shall stand transferred to the Corporate Debtor.”

Since the relief sought is of a blanket nature with respect to the properties, which do not belong to Corporate Debtor/JIL and those may have been subject to certain/particular contractual arrangements, therefore, we are not inclined to grant this relief. **Hence, the relief sought is declined.**

155. The next relief and concession sought by the SRA at Serial No.24 of Annexure II reads as under:

“24. Issuance of necessary directions for the segregation of data of Corporate Debtor and JAL any other associate company of the Corporate Debtor will be allowed.”

It is stated by JIL that there are several documents, information, and data stored in records of JAL i.e., Architectural drawings and Auto CAD designs, which are critical for effective implementation of the Resolution Plan. **In view of the above, the relief sought is granted.**

156. The next relief and concession sought at Serial No. 25 of Annexure II is reproduced below:

“25. Issuance of necessary direction to the concerned government authority for waiver of the stamp duty, registration charges, filing fees and other moneys payable to the government, if applicable and in relation to this Resolution Plan and its implementation including but not limited to reduction of share capital of the Corporate Debtor, issuance of Equity Shares and documentation in relation thereto, to the extent permissible under Applicable Laws.”

Since the relief sought is a waiver of the stamp duty, registration charges, filing fees, and other amounts of money payable to the government, which will cause a significant loss of revenue to the public exchequer, we are not inclined to grant this relief and concession. **Accordingly, the relief is declined.**

157. The next relief and concession sought by the SRA is at Serial No.26 of Annexure II, which reads as under:

“26. Issuance of necessary directions to SEBI, relevant stock exchanges and MCA for expediting the delisting of shares and to take necessary

actions in a time bound manner as applicable under the prevailing laws in order to implement the Resolution Plan.”

As the relief sought is to facilitate implementation of the Resolution Plan, the same is granted.

158. The next relief and concession sought by the SRA is at Serial No.27 of Annexure II reads thus:

“27. Issuance of necessary directions to relevant RERA Authority(ies) to expeditiously make the appropriate changes in its records qua Projects, in accordance with the Resolution Plan.”

Since the relief sought will expedite the implementation of the Resolution Plan, **the same is granted.**

159. The next relief and concession sought by the SRA is at Serial No.28 of Annexure II is reproduced below:

“28. Issuance of necessary directions to the lenders of the Homebuyers, waive the past defaults of the homebuyers/ Corporate Debtor in relation to projects, disburse the outstanding sanctioned facility as per the project completion milestones in line with the terms of sanction, immediately upon approval of the Resolution Plan by the Adjudicating Authority, as it is critical for the construction/ completion of the projects.”

Through this relief, the SRA is seeking blanket direction to the Lenders of the Home Buyers to waive the past default of the Home Buyers/CD in relation to projects, which in our view, is unreasonable to the Lenders who may have entered tripartite agreements with the parties and beyond our Jurisdiction.

Hence, the relief sought, being devoid of merit, is declined.

160. The next relief and concession sought at Serial No.29 of Annexure II reads as given below:

“29. The Hon’ble Adjudicating Authority be pleased to issue necessary directions to the local district administration of the respective states where the assets of the Corporate Debtor are situated to give assistance to the Resolution Applicant (s) for the implementation of the Resolution Plan, as and when required by the Resolution Applicants and for completing the Construction of Projects for Home Buyers.”

Since the relief sought will expediate implementation of the Resolution Plan, **the relief is granted.**

161. The next relief and concession sought is at Serial No. 30 of the Annexure II, which reads as under:

“30. To direct the concerned Registrar of Companies to expeditiously associate, as per Applicable Laws, the Directors Identification Numbers (DIN) of the Directors who would be taking charge collectively as Board of Directors of the Corporate Debtor, pursuant to the approval of the Resolution Plan.”

The aforesaid relief is granted.

162. The next relief and concession sought at Serial No. 31 of Annexure II reads thus:

“31. Issuance of necessary directions to Central Board of Direct Taxes for exemption /grant of relief to the Corporate Debtor from the provisions of Sections 41(1), 45, 72 (3), 43-B, 56, 79, 80 read with 139, 115JB and 269-SS, 269-T and 281, provisions of Chapter XVII of the Income Tax Act effective from the date of approval of the Resolution Plan or on account of implementation of the Resolution Plan.”

The reliefs and concessions sought are contrary to the provisions of the Income Tax Act, of 1961, therefore, we are not inclined to grant such relief.

Accordingly, the relief is declined.

163. The next relief and concession sought at Serial No. 32 of Annexure II is reproduced below:

“32. Issuance of necessary directions to Central Board of Indirect Taxes and Custom to waive any requirement of approval for transfer of assets or business undertaking in term of the Resolution Plan.”

The reliefs and concessions sought are required to be considered under the provisions of the Income Tax Act, of 1961, therefore, we are not inclined to grant such relief. **Accordingly, the relief sought is declined.**

164. The next relief and concession sought at Serial No.33 of Annexure II reads as under:

“33. Issuance of suitable directions to the Ministry of Corporate Affairs, to waive the requirements under Section 140 of the Companies Act, 2013 in respect of the removal of the existing auditors of the Corporate Debtor. Issue directions to JAL to the effect that during the Transition Period, JAL, if so required by the Resolution Applicants, shall provide all facilitation to the Resolution Applicants / Corporate Debtor, with regard to maintenance and handing over the assets of the Corporate Debtor, for effective implementation of the Resolution Plan.”

Since the relief sought will expedite the implementation of the Resolution Plan, **the relief is granted.**

165. The next relief and concession sought at Serial No.34 of Annexure II is reproduced below:

“34. Issue directions such that the Corporate Debtor receives the amounts due to it, with respect to and in interest of the Home buyers of the Corporate Debtor, including outstanding construction advance received from the Corporate Debtor, outstanding maintenance deposit received from the Corporate Debtor and outstanding maintenance deposits of the Home Buyers of the Corporate Debtor, and other outstanding advances related to Home Buyers of the Corporate Debtor, immediately upon completion of the reconciliation between the Corporate Debtor and JAL, as the same shall be utilised for completion of the construction for Home Buyers of the Corporate Debtor, in line with the following directions of the Jaypee Kengsinton Judgement.”

The relief and concession sought at serial no. 34, relates to the outcome of the reconciliation process taking place between JAL and IRP of JIL as per the direction of Hon’ble Apex Court. Since the matter is a subject of separate Adjudication, we are not inclined to grant any such relief. **Accordingly, the relief is declined.** However, it goes without saying that if any amount is found receivable by the JIL, it will be subject to the orders of this Adjudicating Authority passed in the Reconciliation proceedings.

166. The next relief and concession sought at Serial No.35 of Annexure II reads as under:

“35. Issue directions to JAL to make immediate payment of the outstanding amounts of Rs. 71 crore, as per the audited balance sheet of the Corporate Debtor dated March 31, 2021, payable by JAL to the Corporate Debtor, with respect to outstanding consideration for lands of the Corporate Debtor sub-leased to the lenders of JAL, as these funds also can be utilised for expediting the construction for Homebuyers. It is clarified that this relief is not linked to reconciliation directed by Hon’ble

Supreme Court in Jaypee Kensington Judgement and is sought independently, in the interest of justice.”

This relief sought herein is a subject matter of the reconciliation process taking place between JAL and IRP of JIL as per the direction of the Hon’ble Apex Court. Since the matter is a subject of separate Adjudication, we are not inclined to grant any such relief. **Accordingly, the relief is declined.**

167. The next relief and concession sought at Serial No.36 of Annexure II reads thus:

“36. Issue such directions that the infrastructure of the Corporate Debtor (common between Home Buyers of the Corporate Debtor and home buyers of JAL) under the control and management of JAL, shall be made available/continue to be available to the Home Buyers of the Corporate Debtor, without any further payment.”

The relief sought relates to the continued availability and utilisation of infrastructure of the Corporate Debtor/JIL (common between Home Buyers of the Corporate Debtor and home buyers of JAL) under the control and management of JAL without further payment. Whereas, it is important to have continuous availability and access to the common infrastructure for the Home Buyers and employees of JIL and JAL, however, it needs to be done on a reciprocal basis and sharing of future costs including maintenance thereof. **Accordingly, we consider it appropriate to grant this relief to JIL/Corporate Debtor on a mutual/reciprocal basis and sharing of costs incurred subsequent to approval of the Resolution Plan.**

168. The next relief and concession sought at Serial No.37 of Annexure II is reproduced below:

“37. Issue necessary directions to YEIDA to complete the following pending transactions expeditiously, as per the provisions of the Concession Agreement:

a) transfer/sub-lease the balance land of approx. 79 acres in favour of the Corporate Debtor or grant compensation, as applicable, as per the provisions of the Concession Agreement.

b) NBCC, had in its earlier plan sought a relief for extinguishment of liability of the Corporate Debtor towards Noida- Greater Noida expressway in terms of the Concession Agreement. Such relief was rejected by the Adjudicating Authority and accordingly the Corporate Debtor shall provide for debt in its books for value of construction cost (Capital Costs) of the same and pay the same to YEIDA as per the terms of the Concession Agreement and in lieu, as per the terms of the Concession Agreement, YEIDA shall hand over the possession of the Noida-Greater Noida Expressway and land required for construction of toll plaza thereon and Corporate Debtor shall exercise its rights to collect the toll on the Noida-Greater Noida Expressway in terms of the Concession Agreement.

c) Any further extension of the Concession Period by 15 years, if eligible, as per the Concession Agreement, and that may be granted by YEIDA, shall be available to the Corporate Debtor and the Expressway SPV, as the case may be.

d) the deposits already made by the Corporate Debtor of around Rs. 35 crore, shall be remitted back by the YEIDA to Corporate Debtor within 30 days of NCLT Approval Date.

e) Revision of Toll as per Applicable Laws, for which request of IRP is pending.

f) Payment of appropriate compensation of all the delays as per the Concession Agreement regarding the above clauses from a) to e), in line with the Concession Agreement

g) Issuance of approvals/building completion certificate, in compliance with Applicable Laws, in the interest of more than 20,000 home buyers that are stuck since 8-10 years, as needed in order to effectively implement the Resolution Plan, which is one of the key requirements of the Code, in order to make Resolution Plan succeed.”

YEIDA has strongly objected to the grant of such reliefs and concessions on the ground that such reliefs would result in tinkering with the Concession Agreement and the same cannot be done without taking the express consent of YEIDA. We agree with the submissions made by YEIDA. **Accordingly, reliefs and concessions sought at 37(a) to 37(g) are declined.**

169. The next relief and concession sought at Serial No.38 of the Annexure II reads thus:

“38. Issuance of necessary directions to the effect that the transaction pertaining to mortgage of 100 acres land of the Corporate Debtor situated at Tappal for securing the credit facility availed by JAL from its lenders can be agitated under the provisions of the Code before this Adjudicating Authority.”

It is stated by the SRA that as per the information available to them, there was no consideration for creating a mortgage of 100 acres of land, which is an asset of the Corporate Debtor (out of total of 858 acres of the land mortgaged by the Corporate Debtor), in favour of the lenders for the loans given to JAL. Therefore, a mortgage over such 100 acres of land parcel is also

invalid and requires to be reversed. The JAL had argued that whereas, 757 acres of land were transferred back to JIL/Corporate Debtor, the remaining 100 acres of land was found beyond the look-back period.

In our view, the relief sought by the SRA has been the subject matter of litigation in the past and is not in the nature of relief and concession for implementation of the Resolution Plan. **Hence, the relief sought is declined.**

XI. IA. No. 2521/PB/2022 Filed by Mrs. Nina Sahani and Ors.

170. This IA has been preferred by one Mrs. Nina Sahani and 21 other home buyers seeking the following reliefs:

- a) *“Consider the IA No. 2836 of 2021 in priority to the other pending applications on a day-to-day basis and consequently dispose of the application expeditiously;*
- b) *And pass any other orders as this Hon'ble Tribunal may deem fit.”*

171. In view of the IA. No. 2836 of 2021 has already been taken up for hearing on a day-to-day basis and the order passed in the IA. No. 2836 of 2021, the present application has become infructuous.

172. As a matter of fact, the IA. No. 2836 of 2021 and all other related applications were given priority and heard on a day-to-day basis on 23.05.2022, 24.05.2022, 25.05.2022, 26.05.2022, 27.05.2022, 30.05.2022, 01.06.2022, 02.06.2022, 03.06.2022, 03.06.2022, 20.07.2022, 03.08.2022, 04.08.2022, 22.08.2022, 23.08.2022, 24.08.2022, 29.08.2022, 30.08.2022, 01.09.2022, 02.09.2022, 05.09.2022, 06.09.2022, 08.09.2022, 09.09.2022,

13.09.2022, 14.09.2022, 20.09.2022, 21.09.2022, 22.09.2022, 23.09.2022, 26.09.2022, 28.09.2022, 29.09.2022, 03.10.2022, 04.10.2022, 10.10.2022, 11.10.2022, 17.10.2022, 01.11.2022, 02.11.2022, 14.11.2022, 15.11.2022, 16.11.2022, 18.11.2022, 22.11.2022. The parties argued the matter for over 7 months and late hours on many days.

173. The IA. No. 2521/PB/2022 is disposed of accordingly.

XI. CONCLUSION

174. We have dealt with all the objections raised by the Objectors namely, ICICI Bank, YEIDA, JAL, and Mr. Manoj Gaur, which were argued at great length and we heard all the parties and the Home Buyers over several days. We had to accommodate different counsels for hearing on different dates considering the long-chequered history of the Corporate Debtor.

175. In our considered view, none of the objections could sustain or result in rejection of the Resolution Plan of SRA/Suraksha under consideration, in terms of Section 30(2) of the IBC, 2016.

176. As regards approval of a Resolution Plan, the role of the Adjudicating Authority has been examined by the Hon'ble Supreme Court in a catena of judgements. The relevant extracts of the Judgment of the Hon'ble Supreme Court in the matter of **Civil Appeal No. 10673 of 2018 in the matter of K. Sashidhar Vs. Indian Overseas Bank & Ors.** reads thus:

“35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation

and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.”

“38. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with 31(1) of the I&B Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters “other than” enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I & B Code and not to act as a court of equity or exercise plenary powers.”

177. In view of the Judgment of the Hon'ble Apex Court referred to Supra, it is a well-settled principle of law that the Adjudicating Authority is not required to interfere with the decision taken by the CoC in its commercial wisdom, save and except the circumstances referred to in Section 30(2) of the IBC, 2016.

178. In the sequel to the above, we have no other option but to approve the Resolution Plan submitted by M/s. Suraksha Realty Limited along with M/s Lakshdeep Investments and Finance Private Limited along with addendums as duly considered, approved, and recommended by the CoC and placed by the Applicant/IRP of JIL before this Adjudicating Authority. **We, therefore, allow the present Application and approve the COC-approved Resolution Plan placed before us by the Applicant/IRP with the following directions in respect of the Corporate Debtor:**

- (i) The approved Resolution Plan as annexed with COC approved addendums shall be binding on all the stakeholders of the Corporate Debtor and become effective from the date of passing of this Order, and shall be implemented strictly as per the term of the plan and implementation schedule given therein. The Resolution Plan will form part of the order;
- ii) The reliefs and concessions as sought by the SRA/Suraksha in Annexure-II of the Resolution Plan are granted subject to the directions passed under this order as well as their admissibility under relevant law, regulations and rules for the time being in force;
- iii) The Monitoring Committee(s) as provided in the Resolution Plan shall be set up by the Applicant within 07 days of passing of this Order,

which shall take all necessary steps for expeditious implementation of the Resolution Plan as per approval;

iv) The SRA shall deliver/provide possession of the units to the Home Buyers/Allottees strictly as per the time frame promised in the Resolution Plan and approved by this Authority. The Monitoring Committee will supervise and monitor the progress of construction of units and related infrastructure developments on a day-to-day basis and file the progress report before this Adjudicating Authority on monthly basis;

v) In case of non-compliance with any part of this order or withdrawal from implementing the Resolution Plan by the Successful Resolution Applicant, the Monitoring Committee shall forfeit the Performance Security furnished by the Resolution Applicant in the form of Performance Bank Guarantees and the Successful Resolution Applicant will be subject to such other action/actions as permissible under the law.

vi) Certified copy of this Order be issued on demand to the concerned parties, upon due compliance.

vii) A copy of this Order is to be submitted to the Office of the concerned ROC for compliance as per law.

viii) The order of the moratorium in respect to the corporate debtor passed by this Adjudicating Authority under Section 14 of the IBC, 2016 shall cease to have effect from the date of passing of this Order.

ix) The Interim Resolution Professional, Mr. Anuj Jain shall stand discharged from his duties immediately after constituting the Monitoring Committee(s) as provided in the Resolution Plan. He shall forthwith send a copy of this Order to the CoC, the SRA, and other parties for necessary compliance.

x) The Registry is also directed to send e-mail copies of this order forthwith to all the parties.

xi) A copy of this order shall also be sent by the Registry/IRP to the IBBI for their record.

179. Files to be consigned to the record room after following the due procedure prescribed.

180. The IA No. 2836/PB/2021 is accordingly ALLOWED. The other Applications (IAs) have been DISMISSED earlier as part of this order i.e., IA. NO. 3457/PB/2021 on page no. 88, IA. NO. 3306/PB/2021 on page no. 141, and IA. NO. 2521/PB/2022 on page no. 200.

Sd/-

**(RAMALINGAM SUDHAKAR)
PRESIDENT**

Sd/-

**(L. N. GUPTA)
MEMBER (TECHNICAL)**

ANNEXURE A-15A

7

*Private, Privileged & Confidential
Resolution Plan for Jaypee Infratech Limited*

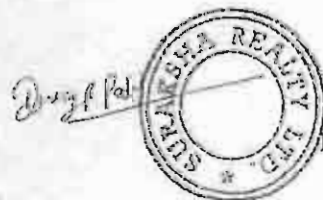
Resolution Plan for Jaypee Infratech Limited ("JIL"), a company under Corporate Insolvency Resolution Process pursuant to the order dated August 9, 2017 of the Hon'ble National Company Law Tribunal, Allahabad bench and order dated November 06, 2019 passed by the Hon'ble Supreme Court of India in Civil Appeal (Diary) No. 27229/2019

Resolution Applicants

Suraksha Realty Limited

Lakshdeep Investments and Finance Private Limited

Dated: June 07, 2021

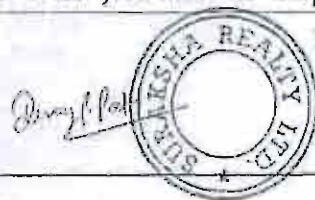


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*Private, Privileged & Confidential
Resolution Plan for Jaypee Infratech Limited*

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PART I

OVERVIEW OF THE RESOLUTION APPLICANTS

1. Details of the Resolution Applicants

1.1. Suraksha Realty Limited

A company registered under the provisions of the Companies Act, 1956 and having Corporate Identity Number U45201MH2008PLC180675, having its registered office at 3, Narayan Building, 23, L. N. Road, Dadar (East), Mumbai, Maharashtra - 400014.

1.2. Lakshdeep Investments and Finance Private Limited

A company registered under the provisions of the Companies Act, 1956 and having Corporate Identity Number U67120MH1993PTC072685, having its registered office at 3, Narayan Building, 23, L. N. Road, Dadar (East), Mumbai, Maharashtra - 400014.

2. Details of Directors of the Resolution Applicant(s)

Table 1: Details of Directors

Sr. No.	Name of the Resolution Applicant	Name of the Directors
1	Suraksha Realty Limited	1. Mr. Paresh Mohanlal Parekh 2. Mr. Vijay Mohanlal Parekh 3. Ms. Khyati Chintan Valia 4. Mr. Harshal Pankaj Bhuta 5. Mr. Ramesh Madanlal Jain
2	Lakshdeep Investments and Finance Private Limited	1. Ms. Raksha Sudhir Valia 2. Ms. Shradha Jash Panchamia

3. Declaration (s) under Section 29A of the Code from each of the Resolution Applicant(s)

The declaration(s) under Section 29A of the Code from each of the Resolution Applicants is provided to the Interim Resolution Professional. Each Resolution Applicant shall ensure that this Resolution Plan complies with the Process Document (save and except as otherwise provided in this Resolution Plan), the Code and the Regulations.



4. Presence in various industries of the Resolution Applicants and/or its affiliates:

The Resolution Applicants, themselves and through their affiliates, associates and subsidiaries, have presence in varied fields of business, amongst others, mainly as under:

4.1. Real Estate-

The Resolution Applicant viz. Suraksha Realty Limited is involved in real estate sector, through itself and its associates, affiliates and other related entities.

4.2. Revival of Stressed Assets-

The Associate/Related entities of the Resolution Applicants mentioned herein below are majorly involved in revival of stressed assets sector:

- a) Suraksha Asset Reconstruction Limited
- b) Distressed Assets Specialists Limited

4.3. BFSI sector-

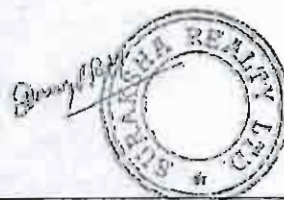
The Resolution Applicants, either themselves and/or through their key associate/related entities mentioned hereinbelow are involved in financial services sector:

- a) Lakshdeep Investments and Finance Private Limited
- b) The Investment Trust of India Limited [formerly known as Fortune Financial Services (India) Limited]
- c) Fortune Integrated Assets Finance Limited
- d) Fortune Credit Capital Limited
- e) Antique Stock Broking Limited
- f) ITI Capital Limited
- g) United Petro Finance Limited
- h) ITI Management Advisors Limited
- i) ITI Securities Broking Limited

4.4. Pharma Sector-

Mr. Sudhir Valia, promoter of the Resolution Applicant(s) was an Executive Director in Sun Pharmaceuticals Industries Limited and director in the following key companies in Pharma sector:

- a) Sun Pharma Advanced Research Company Limited
- b) Taro Pharmaceuticals Industries Limited



5. Credit worthiness and financial capability of the Resolution Applicant(s) and the Connected Persons

5.1. Financial Statements for previous three years of each of the Resolution Applicant(s)

Audited financial statements of last three financial years of each of the Resolution Applicants are provided to the Resolution Professional.

5.2. Net-worth along with certificates of each of the Resolution Applicant(s), its flagship Company and other Connected Person under the Regulations

Net-worth details of the Resolution Applicants along with promoters and their related entities are as under:

Table 2: Details of Net-worth

Entity	Net worth as on 31 st March 2021 (In Rs. Crore)
Lakshdeep Investments and Finance Private Limited	2,028
Suraksha Realty Limited	1,244
Sudhir Valia	1,042
Raksha Valia	2,223
Total	6,537

Aggregate collective Networth of the Resolution Applicants alongwith one of the promoters of the Resolution Applicants: Rs. 6,537 Crore (Rupees Six Thousand Five Hundred Thirty Seven Crore Only). The net-worth certificates certifying the said net-worth are submitted to the IRP. Net worth of the Resolution Applicants along with promoters and their relatives has increased from Rs. 4,500 crore (2019) to Rs. 6,537 crore (2021) resulting in enhancement of standing/ credibility of the Resolution Applicants.

5.3. Details of any adverse regulatory order passed in the previous five years against Resolution Applicant(s), their respective flagship company or other connected persons under the Regulations:

None



6. Details of experience of Resolution Applicant(s), flagship Company/ies and other Connected Persons in Real Estate and Infrastructure Business

6.1. Suaraksha Realty Limited and its associates

a) Company History:

- a) Suraksha Realty Limited ("Suraksha") was originally incorporated as a Partnership Firm named "Suraksha Realtors". Further, on 1st April, 2008 it got converted into Public Unlisted Company under the provisions of Part IX of the Companies Act, 1956. The Corporate Identity Number of Suraksha is U45201MH2008PLC180675.
- b) Suraksha was an entrepreneurial dream set up by three individuals who had the vision and passion to foray into the world of real estate in 2002. With three partners came three different sets of skills, dreams and expertise.
- c) Suraksha started off by funding developers for projects, which evolved into realty angel investing. Beside finance, Suraksha forayed into legal, regulatory, design optimisation and other areas of real estate development. Suraksha has earned a name for itself after having worked with the best names in real estate industry.
- d) Suraksha has come a long way from its inception and now has diversified into building residential and commercial spaces under its brand name. Suraksha believes that its faith in the attributes of accountability, perseverance and commitment will help it create something better each time and accomplish greater goals.

b) Nature of business:

The main object of Suraksha is to do the business of Real Estate Developers, Construction and Estate agents, property dealers and to carry out such other related activities in India or any part of the world.

c) Construction Experience:

- a) Suraksha has constructed and delivered as good as 12 projects including residential and commercial project through itself, associates and/or joint venture.

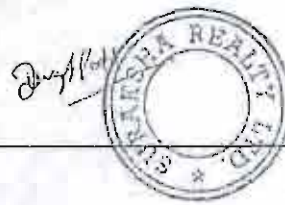


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- b) Currently, Suraksha has experience of the Projects at various stages (constructed and delivered, under construction and planned stage) aggregating to about 6.63 crore sq. fts. across Mumbai and Thane region.
- c) Team of around 200 well-motivated members, with varied experience in their respective fields.
- d) Suraksha Smart City
Suraksha is currently developing the "Suraksha Smart City" developing affordable housing project in Thane, Mumbai. Suraksha Smart City, is biggest township under PMAY in Vasai-Virar region which shall spread across more than 350 acres plot area. Suraksha Smart City is an integrated township project consists of residential and commercial buildings as many as around 200 in numbers along with amenities that includes Gymnasium, Multipurpose turfs, Garden area, etc. Under Suraksha Smart City, more than 50,000 units shall be developed by the Suraksha group. Suraksha Smart City is project like Wishtown.
- e) Following is the snapshot of few of the real estate projects of Suraksha:

Table 3: Details of Projects

Project	Location	Project Type	Salable area (in sq. ft.)
Akruti Orchid Park	Andheri, Mumbai	Residential	4.52
TDR Project	Chembur, Mumbai	Residential	2.61
Acme Ameya	Goregaon Mumbai	Residential	1.62
Jeevan Sapna, Jeevan Asha, Jeevan Anand	Kandivali Mumbai	Residential	2.18
Dosti Flamingo	Sewree Mumbai	Residential	5.60
Vastu Pali Hill	Bandra Mumbai	Residential	0.90
Orchid Suburbia	Kandivali Mumbai	Residential	7.50
Premiere Residency	Panvel Mumbai	Residential	0.50
Stanford	Andheri Mumbai	Commercial	0.55
K - Corporate Park	Kanjur Marg Mumbai	Commercial	2.42
Suraksha ACF	Andheri Mumbai	Commercial	1.00
Pinnacle	Thane	Commercial	3.56
Orovia & Sarita	Thane	Residential	65.00
Dosti Vihar	Thane	Residential	18.00
Dosti Universe	Thane	Residential	95.24



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Project	Location	Project Type	Salable area (in sq. ft.)
Western Heights	Andheri Mumbai	Residential	10.50
INS Tower	BKC Bandra	Commercial	2.80
Dosti Presidio	Navi Mumbai	Commercial	10.28
Suraksha Smart City- Affordable Housing Project under PPP with Maharashtra State Government	Vasai, Thane	Residential	416.54
Dosti Business Park	Thane	Commercial	6.50
New Project	Vile Parle Mumbai	Commercial	5.50
	Grand Total		663.32

d) Power Portfolio

Suraksha and its associates have significant interest in infrastructure business. Suraksha Realty Limited and its associates have primarily invested in renewable energy sector, the details whereof are provided hereinbelow:

Table 4: Details of Power Portfolio

Sr. No.	State	Wind	Solar	Total (MW)
1.	Maharashtra	50.75	-	50.75
2.	Rajasthan	24.00	-	24.00
3.	Madhya Pradesh	8.40	20.00	28.40
4.	Bihar	-	20.00	20.00
5.	Karnataka	9.60	10.00	19.60
6.	Gujarat	8.75	-	8.75
7.	Tamil Nadu (Developed)	6.00	-	6.00
8.	Punjab	-	4.00	4.00
9.	Tamil Nadu (under development)	50.00	-	50.00
10.	Total	157.50	34.00	211.5


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6.2. Lakshdeep Investments and Finance Private Limited:

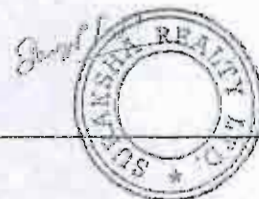
Lakshdeep Investments and Finance Pvt. Ltd ("Lakshdeep") is a company incorporated under the provisions of the Companies Act, 1956 and is also registered as a non-banking financial company with the Reserve Bank of India, having investment in various companies engaged in lending and real estate activities. The net worth of the Lakshdeep stood at Rs. 2,028 crore as on 31st March 2021.

6.3. Experience in revival of stressed real estate projects / units, of Suraksha through its ARC

- A niche experience of reviving stuck real estate projects and completing the same in the interest of stakeholders including home buyers, lenders and borrowers.
- Currently, reviving 18 projects situated across north region of the Country, Gurgaon, Agra, Ghaziabad, Meerut and Indore.
- Reviving the stressed projects, saleable area of which is around ~2.0 crore sq.ft.s, spread in residential, commercial, etc.
- Following is the list of projects under ARC:

Table 5: Details of Projects under Revival

Sr. No.	Project	Location	Saleable Area (Lacs Sqfts.)
1	Edge	Sector 37D	15.60
2	Skyz	Sector 37D	13.50
3	Rise	Sector 37D	6.30
4	Primera	Sector 37D	6.30
5	Resorts Villa	Sector 33	8.78
6	Estella	Sector 103	6.44
7	Townwalk	Sector 104	1.32
8	Alder Grove	Sector 71	7.63
9	Espace	Sector 71	4.12
10	Exquisite	Sector 71	7.66
11	Nirvana Courtyard-II	Sector 71	1.12
12	Willows	Sector 71	1.49
13	Heights92	Sector 92	10.29
14	Heights86	Sector 86	12.79
		Gurgaon	103.33
15	SKG Merlin	Ghaziabad	2.90
16	Emerald Heights	Agra	3.82



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Sr. No.	Project	Location	Saleable Area (Lacs Sqfts.)
17	Ansal Town, Agra	Agra	42.91
18	Ansal Town, Indore	Indore	17.47
19	Ansal Town, Meerut	Meerut	26.39
	Total		196.82

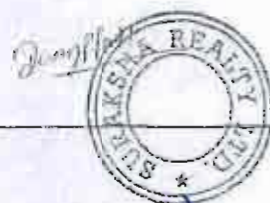
- e) Reviving projects with saleable area of 0.95 crore sqfts up to March 2019 which got double in March 2020 to 1.97 crore sqfts and is continuously reviving the projects in the interest of the stakeholders including home buyers.
- f) Projects under revival consists of around 5,000 home buyers that are stuck and shall receive their units post revival.
- g) Currently, around Rs. 500 crore is invested by Suraksha ARC for revival of said 18 stressed real estate projects and it is instrumental for creating employment to around 3000 people due to revival of the projects.
- h) Currently, around Rs. 200 crore is invested by Suraksha ARC for revival of few stressed manufacturing units and it is instrumental for creating employment to around 800 people due to revival of the units.
- i) Deploys their own technical team at the site, interacting with customers, taking suggestions from them, etc and monitoring cash flows of the projects.
- j) Suraksha Group's ARC main business model is to acquire loans of stressed projects / units from Banks / NBFCs, infuse additional working capital and keep tight financial discipline and monitoring in order to revive the projects.

7. Details of the Key Managerial Persons / Management who would be involved in the implementation of the Resolution Plan along with number of years of experience exclusively in Real Estate/ Infrastructure/Power and Revival of Stressed Assets and their ability to turnaround Stressed Companies

7.1. Shri. Sudhir Valia and his experience of turnaround of stressed companies

Shri.Sudhir V. Valia is a co-founder of Sun Pharmaceutical Industries Ltd. ("Sun Pharma"), which is India's largest pharmaceutical company and world's fifth largest generic pharmaceutical company. Shri.Valia is member on the board of Sun Pharmaceuticals Advanced Research Company Ltd and Taro Pharmaceuticals Ltd.

Shri.Valia is a Member of the Institute of Chartered Accountants of India and carries more than three decades of experience in taxation and finance. He has a patent registered in 1995 on Financial Structuring. Shri.Valia has won CNBC TV18's CFO of the Year award in the Pharmaceutical and Healthcare Sectors for two consecutive years (2011 and 2012).



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He has also been awarded the Adivasi Sevak Puraskar (2008-09) by the Government of Maharashtra for his contribution towards the welfare of tribals, particularly in the field of education in his capacity as Director of the Shantilal Shanghvi Foundation.

Shri Valia has an experience of more than a decade in managing the real estate development activity and infrastructure business through Suraksha Realty Limited and other associates having activity in real estate.

As director of Sun Pharma since inception, Shri. Valia, along with the senior management, has been instrumental in scaling up the company to make it the World's fifth largest generic pharmaceutical player. Over the years, Sun Pharma has expanded its product portfolio with more than 2,000 products across the globe. Sun Pharma is one of India's most respected firms, as acknowledged by Forbes (World's 100 most innovative companies), Economic Times and Business Standard (Company of the Year). It is renowned for its impeccable corporate governance.

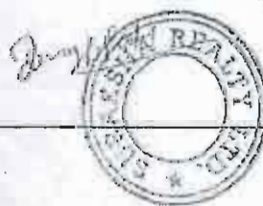
One of the strategies successfully adopted by Sun Pharma has been the inorganic growth strategy. Sun Pharma has a successful track record of turning around distressed assets. Under Shri. Valia's leadership, Sun Pharma has acquired 18 companies / businesses till date, some of which have been stressed companies. Apart from handling the finance function of the company, Mr. Valia has been leading the manufacturing operations at Sun Pharma. He has been instrumental successfully integrating the acquisitions into Sun Pharma's growth path through optimisation of the synergies, by focussing on revitalizing the acquired company's business.

Shri. Sudhir Valia has successfully acquired and turned around following companies:

- Gujarat Lyka Organics, loss-making company, acquired from BIFR and turned around successfully
- MJ Pharma, loss-making company, revived
- Knoll Pharma - Ahmednagar Plant - acquired and revived
- Tamil Nadu Dadha Pharmaceuticals Ltd - loss making company turned profitable
- Natco Pharma - Division - revived
- Able Laboratories Inc. - USA - acquired and turnaround
- Taro Pharmaceuticals Industries Ltd - acquired under Chapter 11, USA and converted into \$ 4 Billion Company
- Ranbaxy Laboratories Limited - one of India's largest pharma acquisitions

Few of the turnarounds as mentioned above have been elaborated hereunder:

(a) Taro Pharmaceuticals Industries Limited



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Background of the Company:

Established in 1950, Taro Pharmaceutical Industries Ltd. (Taro) is a research-based international specialty pharmaceutical company that develops, manufactures and markets prescription and over-the-counter pharmaceutical products. Taro's research programs and niche strategy have enabled the Company to achieve gross margins that are among the highest in the specialty pharmaceutical sector. Taro has large, world class sites with necessary regulatory approvals in Canada and Israel that manufactures topical creams and ointments, liquids, capsules and tablets dosage forms. Additionally Taro manufactures APIs, including complex chemistry and steroids that are made at its site in Israel an integral component in being vertically integrated on difficult to replicate products.

Situation of Crisis:

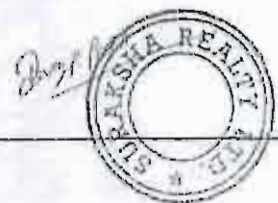
Taro Pharmaceutical Industries Ltd. has faced major slowdown in 2005 to 2007. The company expected higher sales and produced accordingly. However, sales did not pick up and this led to substantial losses in the period. Also Taro's financial statements for 2003 and 2004 were required to be restated by the audit committee of its board of directors in view of errors in estimating the charge backs from wholesalers and the actual inventory in the drug distribution chain. Taro's operating margin in the period was reduced to the range of 15%-20%. Its 2006 losses are estimated at \$141 million (Rs 564 crore). Since Taro's borrowing was very high on assumed income, they failed to repay and therefore liquidation cases were filed against the company.

Acquisition by Sun Pharmaceutical Industries Ltd:

Taro was well known for its world class sites and the potential to be a major leader in the industry. Sun Pharma saw Taro as an opportunity to enter in the US and European market and acquired it to revive and turn it around.

In the year 2007, Sun Pharma proposed to acquire the control in Taro Pharmaceutical Industries Limited. Sun Pharma together with its subsidiaries had signed the agreement to acquire Taro for USD 454 million. The acquisition was at USD 6.75 per share and company's market value at the time was around USD 150 million with borrowings of around USD 325 Million.

Sun Pharma struck the deal in June 2007 when Taro was at the stage of liquidation and Taro had filed chapter 11. Sun Pharma at this stage infused about USD 59 million for revival of the company.



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Sun Pharma worked on strategy of the company's revival. However, Taro management tried to find other ways to survive. Taro management changed the mind and did not allow the controlling of the company. On January 26, 2009, on the recommendation of the Israel Supreme Court, the parties to the litigation in Israel agreed to a mediation process to attempt to resolve the dispute. Post litigation through Israel SC, Sun Pharma got control in Aug 2010.

Revival of Taro Pharmaceutical Industries Ltd.:

After the acquisition of Taro, Sun Pharma focused on the management and operations of the Taro. Sun Pharma built upon the Taro's expertise in dermatology and paediatrics, along with specialty and generic pharmaceuticals, and over-the-counter products. With addition of 170 talented scientists to Taro's team, Sun pharma increased the number of product filings of higher complexity.

Sun Pharma did thorough detailing in operation and increased the productivity. With supply chain efforts in both European and American market the operating margin of the company rose to highest in the world. Also marketing efforts helped the company to change the perception of the company. Production capacity of each product has been enhanced by 200-250% from the existing level i.e. 2-3 fold increase in production was done. This improvement was done without any additional capital expenditure which has reduced the company's cost allocation and increased the profitability. This was achieved only because of management of sales. Post-acquisition, there has been substantial improvement in the sales of the Company and operating margin. The financial performance of the company is shown below:

Table 6: Details of Financial Performance of Taro Pharmaceutical Industries Ltd

	(USD in Mn)								
Year	Dec-07	Dec-08	Dec-09	Dec-10	Dec-11	Mar-13	Mar-14	Mar-15	Mar-16
Revenue	320	329	356	393	306	671	759	863	951
Operating Income	59	41	72	85	305	329	430	528	614
Net Income	34	31	114	64	183	266	360	484	541

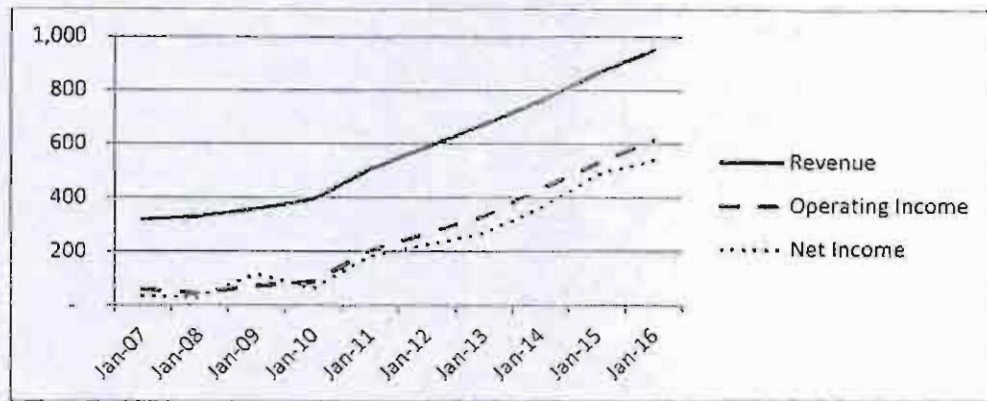
	(USD)								
Year	Dec-07	Dec-08	Dec-09	Dec-10	Dec-11	Mar-13	Mar-14	Mar-15	Mar-16
Gross Margin %	58.30	54.90	58.70	59.50	65.20	73.70	76.40	78.40	81.90
Operating Margin %	18.50	12.30	20.20	22.00	40.50	49.00	56.70	61.10	64.60
Market Price /share		7.70	8.68	14.49	29.50	38.69	111.00	141.03	143.25

Growth can be seen as follows:

Table 7: Graph of Financial Performance of Taro Pharmaceutical Industries Ltd



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(b) Caraco Pharmaceuticals Laboratories

Caraco Pharmaceutical Laboratories is a US based pharmaceuticals manufacturer and marketer. At the time of its acquisition by Sun Pharma in 1997, it was an ailing company with sales of \$0.8 million. Sun Pharma has turned around the company by 2005, sales rose to \$19.8 million.

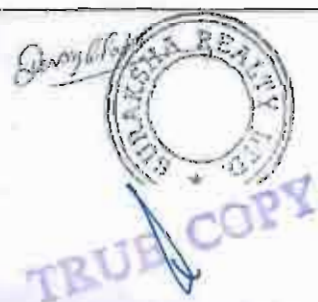
In 2010, Sun Pharma bought all the outstanding shares of Caraco at a time when Caraco was struggling to address manufacturing quality concerns that led to USFDA bans on its plants. Sun Pharma was able to resolve those issues and Caraco plants resumed production in 2012.

(c) Ranbaxy Laboratories Ltd

Ranbaxy Laboratories Ltd is an Indian multinational pharmaceutical company that was incorporated in India in 1961. The company went public in 1973 and Japanese pharmaceutical company Daiichi Sankyo acquired a controlling share in 2008. The company sells its products in more than 100 countries and 21 manufacturing facilities spread across 8 countries. It is engaged in development, manufacture and marketing of pharmaceutical products and APIs.

Quality issues at Ranbaxy's US-dedicated manufacturing plants in India resulted in the US Food and Drug Administration (USFDA) imposing an import ban on drugs produced at these sites, hurting sales in the US, its most important market. The company was struggling to comply with USFDA norms and has ceased to make profits.

In April 2014, Sun Pharma announced acquisition of Ranbaxy in an all stock deal. The deal was completed in March 2015 after obtaining necessary regulatory



approvals. Sun Pharma is now focussing on addressing the concerns raised by USFDA and expects to turnaround the company by focussing on quality and restoring brand value created by Ranbaxy.

7.2. Shri. Aalok Dave and his experience of turnaround of Stressed Companies

Shri.Aalok Dave is a Chartered Accountant & LLB with extensive experience in Stressed Assets Management space. He is associated with the asset reconstruction companies (ARC) sector almost since its inception. He has an experience of 18 years in managing stressed assets.

In 2003, Shri.Dave joined ARCIL, India's first Asset Reconstruction Company, formed pursuant to the enactment of SARFAESI Act. Shri.Dave was involved in all functional areas of ARC including Business Development, Asset Acquisition and Resolution, Debt Restructuring, Fund Raising, Rating of Security Receipts. Shri Dave has immense experience in resolving NPAs including complex cases.

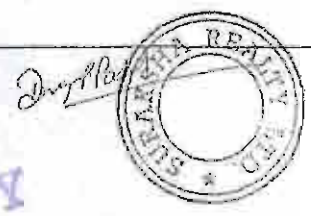
Shri.Dave has handled both acquisition and resolution of NPAs during the initial years of ARC sector and SARFAESI Act. During his tenure, he grew from being a Management Trainee to Vice President in a span of 10 years. In June 2013, Shri. Dave took up entrepreneurial challenge by venturing into Resolution business.

Shri.Dave setup Distress Asset Specialist Private Limited ("DASPL") along with his team from ARCIL. DASPL was empanelled as a Resolution Agent with Bank of Maharashtra and International ARC.

Shri. Dave has a vision to offer resolution services on a large scale. Shri. Dave lead the team comprising of experienced professionals from banking / Asset Reconstruction Sector well versed in the area of NPA management especially restructuring, team of project engineers (civil, electric, etc.) engaged in project revival activities, taking action under SARFAESI, tackling complexities, negotiation for OTS, structuring of complex financing schemes, sale of financial assets, sell down of portfolio etc.

Shri. Aalok Dave was Managing Director & CEO since inception of Suraksha Asset Reconstruction Limited ("Suraksha ARC").

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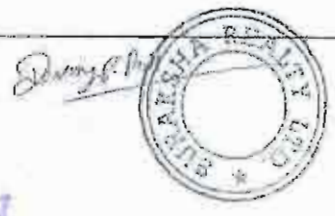
Shri. Aalok Dave is Managing Director & CEO of Suraksha ARC since its inception in October 2015. Under his leadership, Suraksha ARC has become one of the fastest growing ARC in India with Acquisition of stressed financial assets of around Rs. 5,000 Crore within four years of its business. Suraksha ARC has created a niche in resolving stressed real estate assets.

Suraksha ARC has been one of the fastest growing ARC's in India i.e. having acquired more than 40 accounts (excluding retail portfolio) under various trusts created therefor with a total outstanding Assets Under Management ("AUM") of approx Rs. 4,300 Crores as on March 31, 2021 in a short span since commencement. Suraksha ARC has acquired assets from various banks, NBFC's and other eligible sellers like State Bank of India, Punjab National Bank, Canara Bank, Andhra Bank, Central Bank of India, Kotak Mahindra Bank, Yes Bank, Reliance Commercial Finance, Reliance Home Finance, Bank of Maharashtra, ICICI Bank, L & T Home Finance Company Limited, HDFC, Catholic Serian Bank, etc.

As an asset reconstruction company, Suraksha ARC is looking at huge opportunity to turnaround stalled real estate and power projects by restructuring the existing debt, taking control of the operation and mobilizing requisite additional funding. Suraksha ARC has started working on similar fashion has acquired debt of two big real estate projects in NCR and Mumbai. Currently, Suraksha ARC is reviving real estate assets of around 19 projects in NCR region with 2.00 crore sq.fts. saleable area shall be delivered to more than 5,000 home buyers stuck since 5-6 years in the project.

(a) Resolution of projects of Unitech Limited ("Unitech") in Gurugram

Unitech is in stress due to economic reasons and slowdown in the real estate industry. ICICI Bank Limited and ICICI Home Finance Company Limited referred their debt for the purpose of resolution and revival when the loan accounts of Unitech were facing financial stress with the said lenders. Construction work was stalled at the project sites and Home Buyers were greatly inconvenienced by this entire ordeal. Post extensive financial and legal due diligence, Suraksha ARC acquired the debt of Unitech and two of its other connected entities from the said lenders as the projects encumbered by this debt were financially viable and stalled only on account of shortage in funding and lack of focused management. Before acquiring the debt, Suraksha ARC made all necessary efforts to organize meetings with Home Buyers and their core committee in all projects to seek their grievances and share our action plan, if the debt was acquired. As a result of these meetings, the quantum of refund claims filed by Home Buyers in the 5 undertaken projects has been exceptionally low in comparison to other stalled Unitech projects.



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At acquisition of the debt and project, the site condition was in a critical state with falling debris and unwanted vegetation growth all over. Aggrieved Home Buyers had filed a number of litigations in various forums and licenses from various regulatory authorities had lapsed. Contractors and Home Buyers were greatly inconvenienced by this entire ordeal as commitments made to them had not been fulfilled.

Suraksha ARC has stepped in as a lender as well as a Project Manager (PM) in the Projects of Unitech viz. Uniworld Resorts (32 acres) and Nirvana Country II (101 acres) mortgaged to Suraksha and were being revived.

Suraksha ARC continues to meet with the contractors and Home Buyers to resolve their grievances and pro-actively taken part in the regulatory progress by providing funds to secure requisite licences in a timely manner.

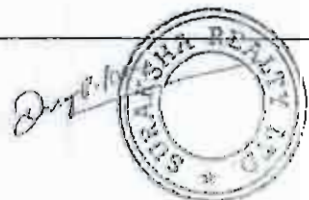
The strong technical team of Suraksha ARC has been deployed at the construction site in addition to the employees of Unitech to facilitate seamless execution and efficient utilization of resources. In addition to the acquired debt, Suraksha ARC has sanctioned/arranged Rs.160 Crores as a working capital facility to kickstart the Projects, in the form of fund and non-fund based facilities for timely delivery of the projects.

(b) Resolution of projects of Ramprastha Promoters and Developers Private Limited ("Ramprastha") in Gurugram

Ramprastha Promoters and Developers Private Limited has its projects at Sector 37 D, Gurugram. Ramprastha Promoters and Developers Private Limited has group housing and plotted township as its projects. The projects were struck because of slow down in the real estate business. Bank of Maharashtra had first referred their debt to Suraksha ARC. Suraksha ARC, post extensive legal and financial due diligence, acquired the debt of Ramprastha Promoters and Developers Private Limited. Suraksha ARC saw the potential in the project and then focused on debt aggregation of the company. Suraksha ARC eventually acquired the debt of Ramprastha Promoters and Developers Private Limited from L&T Finance Ltd. and HDFC Ltd. within a period of around two years.

Suraksha ARC has acquired 7 Projects of Ramprastha Promoters and Developers Private Limited including 2 Townships with area of 135 acres and 5 Group Housing Projects with total saleable area of 4 million sq.fts.

Post acquisition, Suraksha ARC appointed its officials at the Project Site to monitor the operations and to assist in the Project Completion. Suraksha ARC keeps a close eye on day to day operations of the Project, work done by the contractors and inflows



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coming into the Project. Also, Ramprastha Promoters and Developers Private Limited has to take consent of Suraksha ARC to make payment to its related parties involved in the Project.

As the Project was under stress condition it required additional funding to continue the construction activities of the Project. Suraksha ARC has therefore sanctioned a total of Rs. 150 crores to Ramprastha through its associated entities, out of which around Rs. 105 crores has already been disbursed. Project construction is now gaining pace with around 1000 labourers on the site.

(c) Resolution of Kapsons Industries Private Limited ("Kapsons")

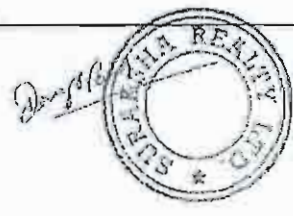
Kapsons is a manufacturer of Stampings, Aluminium Pressure Die cast products , Insulated Copper Wires and completely assembled products like motors, pumps and alternators . Kapsons has two manufacturing plants at Jalandhar, Punjab and at Pune, Maharashtra with more than 1000 varieties of dies of stampings and motor designs. Kapsons' clients include several leading manufacturers of electrical motors, automobile and electrical components like Crompton Greaves, Havells, Bharat Bijlee, ABB and Indian Railways.

Due to unplanned expansion and shorter repayment tenure availed from lender banks, Kapsons started facing severe cash mismatches and eventually turned NPA. Fortune Financial Services (India) Limited ("FFSIL") (now known as The Investment Trust of India Limited) played a role in identifying the problem and entered into a raw material funding arrangement with the company. With the backing of a good market demand for its products including several multi-national companies, FFSIL started funding Kapsons for its raw material acquisition to slowly start the stalled production and sale of products. Within a span of 6 months post the initial funding, the Kapsons' turnover increased by over 85-90 % generating an EBITDA of around 10-12%.

(d) Resolution of Ansal Housing Limited ("AHL")

Ansal Housing Limited is a real estate developer based out of North India. AHL started facing issues with their loan with HDFC and other lenders. Suraksha ARC, post due-diligence of the loan, acquired the same from HDFC in Dec-2019. AHL is developing 8 projects which are mortgaged against the loan that includes residential projects in Gurgaon, Townships in tier -ii cities which include, Meerut, Agra and Indore. Suraksha ARC acquired the loan and provided moratorium so as to utilise entire funds to the projects and construction. Suraksha ARC has further initiated discussion to sell off non-core assets to generate further funds. Suraksha ARC has deployed team at various projects sites of the AHL and is involved in discussions with

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contractors, sub-contractors for quality of supplies, negotiation which in turn helps to bring cost down and improve qualities. Technical team also remains in touch with home buyers to understand their requirements, if any. AHL's projects as being revived and monitored by Suraksha ARC include residential projects and townships aggregating to 1.20 crore sqfts. saleable area across all locations and spread across 8 projects.

Suraksha ARC is working towards completion of projects within 24 months and shall provide homes to home buyers in such projects.

7.3. Shri. Suresh Bansal and his experience

Shri Bansal is Chartered Engineer, Fellow of Institution of Engineers (India), Fellow of Institution of Valuers, Fellow of Indian Council of Arbitrators, Civil engineering & Law graduate. Shri Bansal has versatile experience of 43 years in Projects Management, construction management, Contracts Management, arbitration matters while working in CPWD, Indian Oil and Private Sector including administrative works, as Projects Head having executed about 40 projects in various parts of the country & in NCR, specifically high rise residential buildings, townships, Office Buildings, , and Industrial Plants from concept to commissioning stage.

Shri Bansal's job profile entailed conceptualization of the Project, planning and implementation to complete the project without time and cost overruns. Shri Bansal has handled many projects at a time, successfully, leading vast teams of contractors and engineers. He is a motivator, leader and a guide to the team to achieve the targets.

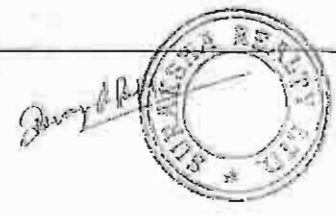
Shri Bansal is associated with various social organizations. He has served as RWA President for many years. He is Past President, Past Asst. Governor Rotary International. He has served as President Officers Association in Indian Oil (Erstwhile IBP Co.), Past Chairman, Mahavir International. While working in CPWD, he has hands on 5 years experience in maintenance of buildings which gave insight into the maintenance issues and the care to be taken at construction stage itself to avoid complex perennial maintenance issues later on.

Currently, Shri. Bansal is managing and supervising projects being revived by Suraksha ARC on a daily basis including its construction progress and status, discussion with contractors/ developers, understanding grievances of home buyers, taking suggestions from home buyers. etc.

8. Acknowledgement and Representation by Resolution Applicants:

8.1. The Resolution Applicants acknowledge that the Committee of Creditors /Interim Resolution Professional/Resolution Professional/is neither providing any

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representation or warranty express or implied regarding the status of business, the business prospects, assets or the project or the Company nor do they have any obligation to give such representation or warranty in relation to the Corporate Debtor and the Committee of Creditors/ Interim Resolution Professional/ Resolution Professional/ assume no liability whatsoever in this respect.

- 8.2. The Resolution Applicants are in receipt of critical information including UPSI (as defined in the process note) relating to the Corporate Debtor and that the Resolution Applicants shall keep all such critical information, including the UPSI, received if any, confidential and shall not disclose or divulge such critical information or UPSI, to any person.
- 8.3. The Resolution Applicants have used critical information including UPSI relating to the Corporate Debtor only for the purpose of preparation and submission of the Resolution Plan, in accordance with the terms of the Process Document.
- 8.4. The Resolution Applicants represents to the Committee of Creditors and the Interim Resolution Professional/Resolution Professional that they have the necessary financial resources available for supporting the Resolution Plan that will be submitted by them and for any further infusion/contribution for additional funds into the Corporate Debtor as may be indicated in the Resolution Plan.
- 8.5. The Resolution Applicants acknowledge that they have understood all the terms of the Process Document and the Resolution Plan process. The Resolution Applicants agree and undertake to comply with, abide by, honour and fulfill all the terms of the process document and the Resolution Plan process, save and except as provided in this Resolution Plan. The Resolution Applicants further agree and undertake to comply with, abide by, honour and fulfill all the terms of the successful plan (if the Resolution Plan of the Resolution Applicant is approved by the Committee of Creditors) subject to the covenants contained in the Resolution Plan.
- 8.6. The Resolution Applicants hereby provides to the Interim Resolution Professional/Resolution Professional/the members of Committee of Creditors, their representatives, their professional advisors, employees, agents, an indemnity in the Resolution Plan for all acts done in good faith in respect of matters arising out of or in relation to the Resolution Plan process and waives any and all rights or claims the Resolution Applicants may have in this respect, whether actual or contingent, whether present or in future. The indemnity will survive the CIRP Period.

The Resolution Applicants represents to the Committee of Creditors that they have

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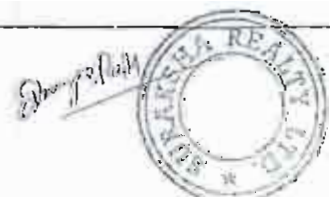
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obtained all requisite corporate permissions required for submission of the Resolution Plan and shall be required to submit the requisite supporting documents along with the Resolution Plan in this regard.

- 8.7. The Resolution Applicants shall have right to bring in strong investors/ partners / co-applicant(s), eligible under section 29A of the Code, for implementation of the Resolution Plan including Resolution Applicants.
- 8.8. The Resolution Applicants state that neither the Resolution Applicant nor any of their related entities are connected persons with JAI. or any of its related entities. The Resolution Applicants in the Resolution Plan in clause 22 have proposed to terminate all the contracts with JAI. immediately upon NCLT Approval, in order to take full control of the activities of construction, development and maintenance.

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PART II

Resolution Plan for Jaypee Infratech Limited ("JIL" or the "Corporate Debtor")

9. Brief information of the Corporate Debtor¹

The Corporate Debtor is an infrastructure development company engaged in the operation and maintenance of the Yamuna Expressway on a build operate-transfer basis and the development of five integrated townships along the Yamuna Expressway. The development, operation and maintenance of the Yamuna Expressway and the development of real estate along the Yamuna Expressway is governed by the 'Concession Agreement' dated February 7, 2003 ("Concession Agreement/Concession") entered into between Jaiprakash Associates Limited, formerly, Jaiprakash Industries Limited and the Yamuna Expressway Industrial Development Authority, a statutory body constituted under U.P. Industrial Development Act, 1976 for development of the Yamuna Expressway Project. The Concession Agreement has been assigned in favour of the Corporate Debtor pursuant to an assignment agreement dated October 19, 2007 entered amongst JAL, the YEA and the Corporate Debtor, whereby the Corporate Debtor agreed to duly perform the terms, conditions and obligations under the Concession Agreement.

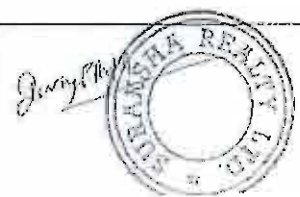
The Corporate Debtor, which is part of the Jaypee Group, was incorporated on April 5, 2007 as a special purpose vehicle to implement the Concession. It holds the Concession from the Yamuna Expressway Industrial Development Authority ("YEA") to develop, operate and maintain the Yamuna Expressway in the state of Uttar Pradesh, which connects Noida and Agra. The Concession also provides for the right to develop 25 million square metres (approximately 6,175 acres) of land along the Yamuna Expressway at five locations for residential, commercial, amusement, industrial and institutional purposes.

The Yamuna Expressway commenced its commercial operations with effect from August 9, 2012 upon receipt of the substantial completion certificate from the YEA dated August 7, 2012. The principal objective of this expressway is to minimize travel time from Delhi to Agra, facilitate faster uninterrupted movement of passengers and freight traffic, connect the main existing and proposed townships and commercial centres on the eastern side of the Yamuna river, relieve traffic congestion on the National Highway-2 and generally enhance development in the region.

The Corporate Debtor commenced toll collection from Yamuna Expressway on August 16, 2012. Its business model consists of earning revenues from toll collection on the Yamuna Expressway during the 36-year Concession period and real estate sales including transfer of

¹ Based on data shared in the VDR and the Information Memorandum as well as the data available in public domain.

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constructed properties and transfer of developed and undeveloped land leased under the Concession Agreement.

The Corporate Debtor has also been provided the right to develop 6,175 acres of land to be acquired by the YEA and leased to the Corporate Debtor for a 90-year term, which consists of Land Parcels at each of the five different locations along the Yamuna Expressway, namely, in Noida, Jaganpur and Mirzapur [located in District Gautam Budh Nagar which is part of National Capital Region ("NCR")], Tappal (located in District Aligarh) and District Agra (collectively, the "Land Parcel(s)") under the Concession Agreement. The Corporate Debtor intends to cater to a large and diversified consumer base. The Corporate Debtor had initiated development of three of the Land Parcels, namely, the Noida, Mirzapur and Agra Land Parcels.

The Corporate Debtor has also undertaken the development of a super specialty hospital/medical center in District Gautam Budh Nagar through our wholly-owned subsidiary, Jaypee Healthcare Limited ("JHL"). The assets, rights, privileges and obligations of the Corporate Debtor relating to the development of the super specialty hospital have been assigned to JHL vide a project transfer agreement dated November 27, 2012 entered into between the Corporate Debtor and the JHL.

The brief of Hospital assets are as follows -

- State of the art hospital incorporated in 2012, on a 18 acre campus with 525 beds (338 operational beds) in Noida providing facilities including OPD, Radiology, Lab, and Executive Health Check up.
- Hospital in Chitta, Bulandshahr, has campus of 9.77 acre and is fully functional with 205 beds.
- Hospital in Anoopshahar UP, has campus of 3.5 acre and currently partially operational by carrying only OPD activity.

10. Date of commencement of implementation of the Resolution Plan

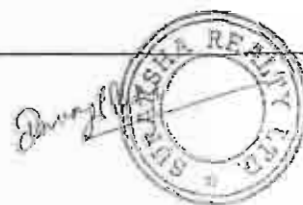
The obligation of the Resolution Applicants to implement this Resolution Plan shall be binding and effective on Approval Date.

11. Mandatory Contents of the Resolution Plan

In accordance with the Section 30(2) of the Code and Regulations, the Resolution Applicants hereby state and undertake as under:

11.1. The payment towards the Corporate Insolvency Resolution Process cost will be made in

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priority to any other debts of the Corporate Debtor;

- 11.2. The Resolution Applicants or any of their related parties have neither failed to implement nor contributed to the failure of implementation of any other resolution plan approved by the adjudicating authority at any time in the past;
- 11.3. The amount payable under the Resolution Plan to the Operational Creditors shall be paid in priority over the Financial Creditors;
- 11.4. The amount payable under the Resolution Plan to the Dissenting Institutional Financial Creditors, who have a right to vote under sub-section (2) of section 21 of the Code and did not vote in favour of the Resolution Plan, shall be provided rights to enforce security interest (as provided in the Resolution Plan), in priority over any treatment proposed to the Financial Creditors who voted in favour of the Resolution Plan, in line with directions of Hon'ble Supreme Court in its order dated March 24, 2021 in the matter of Jaypee Kensington Boulevard Apartments Welfare Association & Ors vs. NBCC (India) Limited & Ors" in the matter Civil Appeal No. 3395 of 2020 (hereinafter referred to as "Jaypee Kensington Judgement").

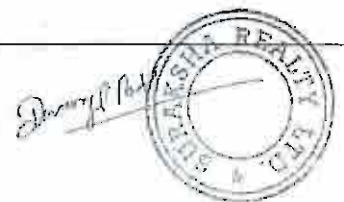
The relevant extracts of the Jaypee Kensington Judgement is reproduced herein below for ready reference:

"Para 121.2.

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

- 11.5. The Resolution Plan deals with the interests of all stakeholders, including Financial Creditors and Operational Creditors, of the Corporate Debtor in the manner more particularly contained in the Resolution Plan;
- 11.6. The Resolution Applicants confirm that the Resolution Applicants and their respective connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code as well as any other Applicable Law;

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- 11.7. The Resolution Plan provides for the term of the Resolution Plan and its implementation schedule, the management and control of the business of the Corporate Debtor during its term; and adequate means for supervising its implementation;
- 11.8. The Resolution Plan addresses the cause of default, it is feasible and viable, it contains provision for its effective implementation, approvals required together with the timelines for the same and the Resolution Applicants have the capability to implement the Resolution Plan.
- 11.9. The Resolution Applicants confirm that to the best of the knowledge of the Resolution Applicants, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the Regulations. Every information and record provided in connection with or in the Resolution Plan is true and correct and discovery of false information and record at any time having material effect on the Resolution Plan will render the Resolution Applicants ineligible to continue in the CIRP, forfeit any refundable deposit, and attract penal action under the Code.

12. Reliefs and Concessions

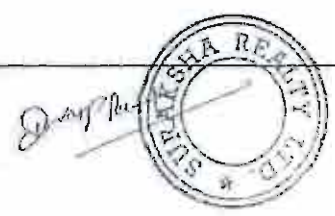
The reliefs and concessions sought by the Resolution Applicants are more particularly contained in Annexure-II hereto. The Resolution Applicants undertake that they will implement this Resolution Plan, whether or not the reliefs and concessions are granted.

13. Source of Funds and its utilisation

Table 8: Sources of Funds

Sr. No.	Source of Funds	Rs. Crore
1.	Upfront Equity Infusion by Resolution Applicants within 90 days of the Approval Date in the Corporate Debtor to be utilised as and when required, on need basis for completion of the Projects. Source of Funds - Networth of the Resolution Applicants along with networth of promoters of Resolution Applicants and their related entities of Rs. 6,537 crore as mentioned in the Resolution Plan.	125
2.	Debt and/or any other instrument from the Resolution Applicants and/or their related entities to the Corporate Debtor, in 90 days of the Approval Date to be utilised as and when required, on need basis for completion of the Projects. Source of Funds - Networth of the Resolution Applicants along with networth of	125

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Sr. No.	Source of Funds	Rs. Crore
	promoters of Resolution Applicants and their related entities of Rs. 6,537 crore as mentioned in the Resolution Plan.	
3.	Redemption of 0.01% Non-Convertible Debentures to be issued in accordance with this Resolution Plan to the Assenting Institutional Financial Creditors ("Assenting NCDs"). Source: Internal Accruals of the Company and / or additional fund infusion by Resolution Applicants by way of equity, debt or any other instrument, as it deemed fit.	1,200
4.	Land for Institutional Financial Creditors, as per the terms of this Resolution Plan at FMV.	6,536
5.	Loan ("Credit Facility") of Rs. 3000 crore to be arranged by Resolution Applicants within 90 days of the Approval Date, to be utilised as and when required, on need basis for completion of the Projects. Source - Expression of Interest received from SWAMIH fund for stressed assets of Government of India and / or facility from Standard Chartered Bank Group (Letter of Support annexed) and/or any other banks or entities and / or Networth of the Resolution Applicants along with networth of promoters of Resolution Applicants and their related entities as mentioned in the Resolution Plan.	3,000
5	Bank balance available with the Corporate Debtor excluding funds earmarked for MBCB safety barriers.	111
6	Estimated Receivables from Jaiprakash Associates Limited subject to reconciliation under the aegis of NCLT in terms of Jaypee Kennington Judgment*	300
7	Estimated net operating cashflows from the Yamuna Expressway of first three years towards construction and/or refund and/or regular operating expenses of the Corporate Debtor and/or servicing of interest on Credit Facility obtained for construction for home buyers.	750
	Total	12,147

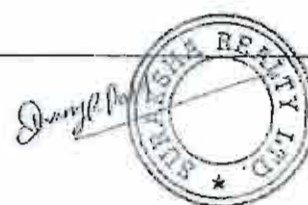
* The amount mentioned herein is indicative in nature and may change.

The amounts appearing in sr. no. 1 to 3 and 6 of the above table are hereinafter collectively referred to as an "Applicants' Contribution".

Table 9: Application of Funds

Sr. No.	Application of Funds	Rs. Crore
1.	Payment towards Insolvency Resolution Process Costs on actual basis ("IRP Cost")*	5.45
2.	Upfront Payment to the Operational Creditors in terms of this Resolution Plan	0.40

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Sr. No.	Application of Funds	Rs. Crore
3.	Payment to the workmen & employees	-
4.	Redemption of 0.01% Assenting NCDs issued to Assenting Institutional Financial Creditors.	1,200
5.	Land for Institutional Financial Creditors, as per the terms of this Resolution Plan	6,536
6.	Payment to FD Holders	38.42
7.	Funds for construction of real estate projects for delivery of homes to Homebuyers and/or refund to homebuyers to be utilised in line with the business plan for construction*, in accordance with the Resolution Plan	4,300
8.	Payment to Public Shareholders	0.14
9.	Provision for expenses for managing and monetisation of land for Assenting Institutional Financial Creditors	25.00
10.	Provision for initial operating expenses of the Corporate Debtor and other contingencies including additional CIRP expenses	41.59
	Total	12,147

* The total amount of the Insolvency Resolution Process Costs, Funds for Home Buyers, workers dues, and further provisions for expenses are indicative in nature and may change

14. Treatment under the Resolution Plan for the Insolvency Resolution Process Costs

14.1. Amount as per IM:

The Insolvency Resolution Process Costs as per the data available in VDR is Rs. 5.45 crore. However, the final amount to be paid will be based on the actual Insolvency Resolution Process Costs (as defined in the Code) incurred in accordance with the provisions of the Code.

14.2. Treatment:

- a) The Resolution Applicants understand, as per the information available in the VDR that out of the total CIRP Cost a sum of Rs. 33.63 crore has been paid out of the internal accruals of the Corporate Debtor and a sum of Rs. 5.45 crore remains to be paid. In the event, the CIRP cost increases beyond Rs. 5.45 crore, the excess amount above Rs. 5.45 crore shall be paid by the Resolution Applicants and the Resolution Applicant shall bring additional fund to pay the excess amount, in the event the

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CIRP Cost is not paid from out of the internal accruals of the Corporate Debtor during the CIRP period in accordance with the Circular dated June 12, 2018 issued by the Insolvency and Bankruptcy Board of India.

- b) The unpaid/ unrealised Insolvency Resolution Process Costs as mentioned hereinabove, shall be paid out in priority over payments to any other Creditors on or before the Approval Date. Once the Insolvency Resolution Process Costs have been paid in full, it is clarified that no claims, liabilities, fines, costs, expenses or any other payment of such nature or otherwise, that are or are claimed to constitute Insolvency Resolution Process Costs shall be payable by the Corporate Debtor and/or the Resolution Applicants.

14.3. Undertaking:

- a) The Resolution Applicants acknowledge that the Insolvency Resolution Process Costs may vary or increase between the date of submission of this Resolution Plan and its approval by the Adjudicating Authority. The Resolution Applicants undertake that they shall pay such increase in Insolvency Resolution Process Costs (as defined under the Code), if any as mentioned above.
- b) The Resolution Applicants undertake that each of the Resolution Applicants shall not question or raise any dispute over the final Insolvency Resolution Process Costs (as defined under the Code) filed before the Adjudicating Authority at the time of sanction of this Resolution Plan.

15. Treatment under the Resolution Plan for the Institutional Financial Creditors

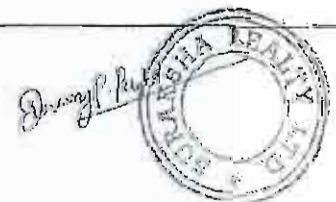
15.1. To begin with, it is important to mention that the Resolution Applicants have worked out the treatment for the Financial Creditors, considering the viability, feasibility of the Resolution Plan as also the spirit, object of the Code while following the observations and findings of Hon'ble Supreme Court in Jaypee Kensington Judgement.

15.2. The Hon'ble Supreme Court has observed that in the given scheme of the statutory provisions, there is no scope for comparison between the treatment to be assigned to these two divergent sects of financial creditors i.e., dissenting financial creditors and the assenting financial creditors.

The relevant extracts of Jaypee Kensington Judgement are reproduced hereinbelow for ready reference:

Para 123.4

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The suggestion about prejudice being caused to the assenting financial creditors by making payment to the dissenting one has several shortcomings. As noticeable, in the scheme of IBC, a resolution plan is taken as approved, only when voted in favour by a majority of not less than 66% of the voting share of CoC. Obviously, the dissenting sect stands at 34% or less of the voting share of CoC. Even when the financial creditors having a say of not less than 2/3rd in the Committee of Creditors choose to sail with the resolution plan, the law provides a right to the remainder (who would be having not more than 34% of voting share) not to take this voyage but to disembark, while seeking payment of their outstanding dues. Even this disembarkment does not guarantee them the time value for money of the entire investment in the corporate debtor; what they get is only the liquidation value in terms of Section 53 of the Code. Of course, in the scheme of CIRP under the Code, the dissenting financial creditors get, whatever is available to them, in priority over their assenting counterparts. In the given scheme of the statutory provisions, there is no scope for comparing the treatment to be assigned to these two divergent sects of financial creditors. The submissions made on behalf of assenting financial creditors cannot be accepted.

(Emphasis ours)

It is clear from the above that in order to make the resolution plan compliant to the provisions of the Code, the treatment to the dissenting financial creditors under the Resolution Plan, needs to have provision for their entitlement i.e., liquidation value due to them, in terms of Section 53 of the Code or Claim Admitted, whichever is lower and therefore may be divergent from the treatment to be provided for the assenting financial creditors in the Resolution Plan.

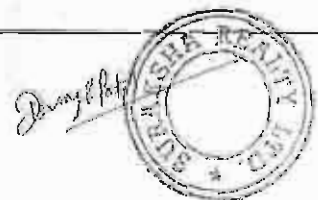
- 15.3. Further, the Hon'ble Supreme Court also clarified that there are only two ways to provide treatment to the dissenting financial creditors as mentioned in the relevant extract of Jaypee Kensington Judgement, reproduced hereinbelow for ready reference:

"Para 121.2.

We would hasten to observe that in case a dissenting financial creditor is a secured creditor and a valid security interest is created in his favour and is existing, the entitlement of such a dissenting financial creditor to receive the "amount payable" could also be satisfied by allowing him to enforce the security interest⁸⁰, to the extent of the value receivable by him and in the order of priority available to him. Obviously, by enforcing such a security interest, a dissenting financial creditor would receive "payment" to the extent of his entitlement and that would satisfy the requirement of Section 30(2)(b) of the Code. In any case, that is, whether by direct payment in cash or by allowing recovery of amount via the mode of enforcement of security interest, the dissenting financial creditor is entitled to receive the "amount payable" in monetary terms and not in any other term".

Foot Note:

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"83 Though it is obvious, but is clarified to avoid any ambiguity, that the "security interest" referred herein for the purpose of money recovery by dissenting financial creditor would only be such security interest which is relatable to the "financial debt" and not to any other debt or claim."

(Emphasis ours)

15.4. It is clear that in order to make the Resolution Plan compliant, the Resolution Applicants is entitled to provide for treatment to dissenting financial creditors, either,

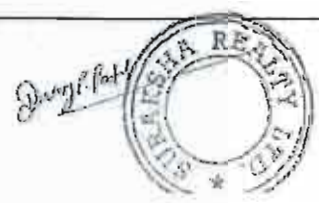
- a) direct payment in cash; or
- b) by allowing the dissenting financial creditor to recover money to the extent of its entitlement i.e., liquidation value due to them, in terms of Section 53 of the Code or claim admitted, whichever is lower, by mode of enforcement of its existing security interest, which shall be exclusive and relatable to only its financial debt and not to any other debt or claim.

15.5. The Resolution Applicants hereby propose under this Resolution Plan to provide for the treatment to the Dissenting Institutional Financial Creditor(s), by allowing enforcement of security interest, as mentioned in para 15.4 (b) above.

15.6. Without prejudice to the absolute right of the Resolution Applicants to chose the option, as may be deemed fit in its sole discretion, out of the above two options as per the directions in Jaypee Kensington Judgement, the Resolution Applicants have decided to propose the treatment to the Dissenting Institutional Financial Creditors, as mentioned in para 15.5, mainly to make the plan viable, feasible, to balance the interest of the stakeholders and for its effective implementation, on account of the several factors including but not limited to the following:

- a) direct cash is required to be infused to revive and complete the significant pending construction work in accordance with the Resolution Plan, in the interest of more than 20,000 families whose hard earned monies have been stuck for many years due to delay in completion of the Projects; and / or
- b) the Homebuyers being vital constituent of the Committee of Creditors whose consent is must for resolution of the Corporate Debtor in line with the object of the Code, needs to be incentivised by making sufficient provision of funds in the Resolution Plan, for completion of their projects so that they get their homes that are stuck since long years; and / or
- c) it is neither feasible nor viable for the Resolution Applicants to make provision of huge cash required in order to satisfy 1/3rd secured Dissenting Institutional Financial Creditors of the Corporate Debtor, by way of direct cash payment, to the extent of the liquidation value due to them, etc.

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15.7. To substantiate the above, the spirit and main objective of the Code, is

"to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve ease of doing business, and facilitate more investments leading to higher economic growth and development"

(Emphasis ours)

15.8. In view of the above, given the peculiar situation, wherein the Resolution Applicants on one side, needs to submit the Resolution Plan that is compliant with respect to treatment of Dissenting Institutional Financial Creditors under the provisions of the Code, in line with the directions of Hon'ble Supreme Court, in Jaypee Kensington Judgement and on the other side, needs to also incentivise Financial Creditors, be it Homebuyers or be it Institutional Financial Creditors, to assent for resolution of the Corporate Debtor, in line with the spirit and object of the Code. It is therefore proposed to provide for treatment to the Financial Creditors that is not only compliant with the provisions of the Code but also in line with the spirit and object of the Code to ensure Resolution of the Corporate Debtor succeeds and avoid liquidation specifically when more than 20,000 families are dependent on resolution of the Corporate Debtor.

15.9. The treatment via mode of enforcement of existing (but exclusively carved out) security interest to the Dissenting Institutional Financial Creditor(s) is proposed to enable the Dissenting Institutional Financial Creditor(s) to enforce its security interest for its own recovery, without any linkage with the affairs of the Corporate Debtor and treatment given to Assenting Institutional Financial Creditors.

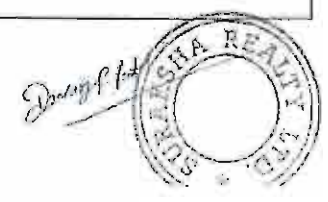
ADMITTED CLAIMS OF INSTITUTIONAL FINANCIAL CREDITORS

15.10. Admitted claims of Institutional Financial Creditors are Rs. 9,782.60 crore as per the details provided in IM, the breakup of the same is provided hereunder:

Table 10: Admitted Claims of the Creditors

Sr. No.	Name of the Institutional Financial Creditors	Claims Admitted	Security
1.	Consortium comprising of the following Institutional	9,537.60	As appearing

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	Financial Creditors: including IDBI Bank, IIFCI, LIC, SBI, Syndicate Bank, Bank of Maharashtra, ICICI Bank, Union Bank, IFCI, J&K Bank)		at Page No. 57 and 58 of the IM
2.	Axis Bank Limited	218.00	
3.	SREI Equipment Finance Limited	27.00	
	Total Claims Admitted	9,782.60	

TREATMENT FOR THE INSTITUTIONAL FINANCIAL CREDITORS

A. TREATMENT TO THE INSTITUTIONAL FINANCIAL CREDITORS BY WAY OF NCD AND LAND PARCELS

15.11. The Resolution Applicants shall earmark the following land parcels of the Corporate Debtor on as-is-where-is and as-is-what-is basis towards treatment of Claims of Institutional Financial Creditors, in accordance with the Resolution Plan:

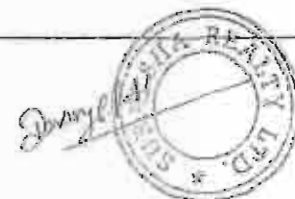
Table 11: Treatment of the Institutional Financial Creditors

S.No.	Particulars	Rs. Crore
<i>Instrument</i>		
A.	Issuance of 0.01% Assenting NCDs of face value of Rs. 1,200 crore, within 90 days of the Approval Date in accordance with the Resolution Plan. Indicative Terms for the Assenting NCDs are mentioned in <i>Annexure-IV</i> hereto.	1,200
	<i>Sub-Total Instruments</i>	1,200
<i>Land</i>		
B.		
	Location of Land	Area (in acres)
		FMV Rs. crore
1	Jaganpur	718
2	Mirzapur	50
2	Tappal	976
3	Agra	850
	Total Land	2,594
	Grand Total	7,736

B. MINIMUM ASSURED PAYMENT TO THE ASSENTING INSTITUTIONAL FINANCIAL CREDITORS, THROUGH ASSENTING NCDs AND ASSURED LAND PARCELS

15.12. To incentivise the Institutional Financial Creditors to assent to the Resolution Plan, out of the above treatment, the Assenting NCDs of face value of Rs. 1,200 crore, with

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committed redemption / payment alongwith land parcels admeasuring 1,108 acres ("Assenting Land Parcels"), are proposed to be given exclusively to the Assenting Institutional Financial Creditors.

Table 12: Treatment of the Assenting Institutional Financial Creditor

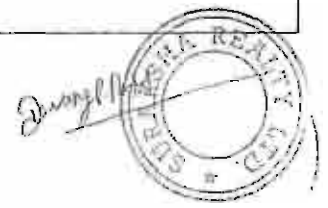
S.No.	Particulars		Rs. Crore
A	Issue of 0.01% Assenting NCDs		1,200
B	Transferring beneficial ownership of Assenting Land Parcels as mentioned below:		
	Location of Land	Area (in acres)	FMV Rs. Crore
1	Jaganpur	588	2,387
2	Mirzapur	50	212
3	Tappal	310	577
4	Agra	160	300
	Total	1,108	3,476
	Grand Total		4,676

It is hereby clarified that the Assenting Institutional Financial Creditors shall be free to sell or monetise the land parcels from the date of transfer of beneficial ownership of the land parcels to the Assenting Institutional Financial Creditors.

15.13. It is further clarified that above, Assenting NCDs of face value of Rs. 1,200 crore and Assenting Land Parcels having FMV of Rs. 3,476 crore, would be available proportionately only to Assenting Institutional Financial Creditors, in ratio of the Claim Admitted of such Assenting Institutional Financial Creditors, subject to maximum value of Claim Admitted of such Assenting Institutional Financial Creditor(s). This clause is specifically inserted with an objective to give advantage to the Assenting Institutional Financial Creditor(s) who are giving priority to the resolution of the Corporate Debtor in larger public interest especially that of Homebuyers and Public Depositors.

15.14. The Assenting Institutional Financial Creditor(s) shall be instrumental in success of the resolution of the Corporate Debtor which is the spirit and object of the Code. The Assenting Institutional Financial Creditor(s) shall be instrumental in ensuring homes to more than 20,000 families and recovery to several public depositors, that are stuck since 8-10 years including senior citizens, people with medical emergencies, people struggling for livelihood, etc., thereby balancing the interest of all the stakeholders.

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C. REMAINING LAND PARCELS FIRSTLY TO DISSENTING INSTITUTIONAL FINANCIAL CREDITORS TO THE EXTENT OF THEIR ENTITLEMENT, THEREAFTER SURPLUS TO ASSENTING INSTITUTIONAL FINANCIAL CREDITORS

15.15. The following is the provision of remaining land parcels to the extent of 1,486 acres out of total earmarked 2,594 acres, as appearing in clause 15.11 above, for Dissenting Institutional Financial Creditors:

Table 13: Treatment of the Dissenting Institutional Financial Creditors

S.No.	Location of Land	Area (in acres)
1	Jaganpur	130
2	Tappal	666
3	Agra	690
	Total	1,486

15.16. In case of surplus land, if any, that may be available after treatment to the Dissenting Institutional Financial Creditors ("Assenting Surplus Land"), such Assenting Surplus Land shall be provided to the Assenting Institutional Financial Creditors and shall be included in the land parcels for Assenting Institutional Financial Creditors, as mentioned in clause no. 15.12 above.

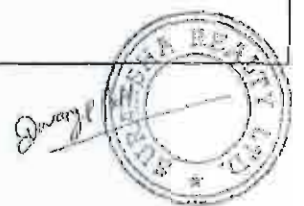
15.17. Shortfall Undertaking for Dissenting Financial Creditor:

In case of any shortfall of land for the treatment to the Dissenting Institutional Financial Creditors, the Resolution Applicants hereby undertakes to provide / earmark such required land parcels out of the land parcels available with Corporate Debtor and / or provide for any other security interest, out of the assets of the Corporate Debtor, to make up the shortfall and / or make good the shortfall in any other manner, as per Applicable Laws, in line with the directions of the Hon'ble Supreme Court in its Jaypee Kensington Judgement, with respect to treatment of the Dissenting Institutional Financial Creditors, in addition to above earmarked 2,594 acres of land parcels. This shortfall undertaking is being given in the Resolution Plan in order to make the plan compliant by following the directions of Hon'ble Supreme Court.

D. DETAILED TREATMENT FOR ASSENTING INSTITUTIONAL FINANCIAL CREDITORS

15.18. In order to incentivise the Institutional Financial Creditors to assent to the Resolution Plan, Assenting NCDs of face value of Rs. 1,200 crore and Assenting Land Parcels of Rs. 3,476 crore are proposed to be provided under this Resolution Plan. The Resolution Applicants decided to provide for Assenting NCDs and its assured committed

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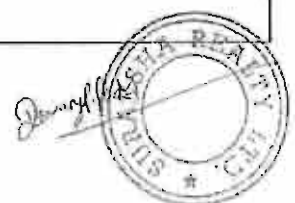
redemption schedule in order to de-risk the Assenting Institutional Financial Creditors and to guarantee additional Rs. 1,200 crore over, over and above FMV of Assenting Land Parcels of Rs. 3,476 crore, in accordance with the terms provided in Annexure IV of the Resolution Plan.

15.19. After approval of the Resolution Plan by the Committee of Creditors, the Resolution Applicants, in consultation with the Assenting Institutional Financial Creditors, shall finalise suitable cost efficient structure including management, stamp duty, tax, etc., with respect to the transfer of beneficial interest in Assenting Land Parcels and Surplus Land Parcels for the Assenting Institutional Financial Creditors, including but not limited to:

- a) transfer of business undertaking / (s) comprising of any of the asset / (s) of the Corporate Debtor along with commensurate debt of the Assenting Institutional Financial Creditors, allotted to the Corporate Debtor, under the Concession Agreement, into the subsidiary or multiple subsidiaries, either wholly owned or otherwise, with or without the transfer of equity shares or beneficial interest of such subsidiary to the Assenting Institutional Financial Creditors, with or without issuance of any other instrument in lieu of their financial assets / debt / obligation etc, in a suitable manner, upon execution of tri-partite agreement with YEIDA; or
- b) any other mutually acceptable suitable structure to facilitate monetisation of land earmarked for Assenting Institutional Financial Creditors, or any class thereof, including but not limited to retaining land parcels in Corporate Debtor, in trust as trustee, for Assenting Institutional Financial Creditors, or any class thereof, without any obligations whatsoever, after the extinguishment of the liability qua Corporate Debtor.
- c) The Assenting Institutional Financial Creditors shall enter into suitable mutually acceptable documentation for completion of the above transactions.

15.20. In the event any liability, including but not limited to cost, expenses, charges by whatever name called, tax liability, stamp duty, any other government charges, levy or cess, etc., in relation to the structure contained herein above in clause 15.19 arises, the Corporate Debtor/ Resolution Applicants shall incur such costs including tax, liability, stamp duty, any other government charges, levy or cess etc., on behalf of Assenting Institutional Financial Creditors in relation to the structure contained herein above in clause 15.19, with right to get it reimbursed with interest @12% p.a, on monthly basis, out of the proceeds of sale / monetization of the land parcels, in priority, before any distribution to the Assenting Institutional Financial Creditors.

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15.21. The Corporate Debtor shall have right to be appointed and act as Asset Management Company, in order to facilitate, on best effort basis, sale / monetisation of Assenting Land Parcels and Assenting Surplus Lands, of the Assenting Institutional Financial Creditors, after completion of treatment to the Dissenting Institutional Financial Creditors, at the earliest.

15.22. The Corporate Debtor shall have right to be appointed and act as the Asset Management Company on best effort basis, without any obligation, in order to manage and monetise the aforementioned Assured Land Parcels and Assenting Surplus Lands, in favour of the Assenting Institutional Financial Creditors, provided that the terms and conditions including scope, fees, etc., proposed by the Corporate Debtor are approved by the Assenting Institutional Financial Creditors. It is clarified that the terms and conditions of appointment of the Corporate Debtor, as the Asset Management Company, pursuant to this Resolution Plan, shall be fair and reasonable.

15.23. The Asset Management Company, under the guidance of the Asset Monetisation Committee, shall carry out efforts to manage and monetise the land parcels of the Assenting Institutional Financial Creditors, either by identifying the prospective buyers for sale of such Assenting Land Parcels and / or Assenting Surplus Lands, and / or by identifying joint development partners, on such terms and conditions that may be approved by the Asset Monetisation Committee as mentioned in clause 15.27.

15.24. The Resolution Applicants have worked out Assenting NCD on the basis of difference between its own assessment of rate per acres of Assenting Land Parcels and FMV being considered by the Assenting Institutional Financial Creditors as under:

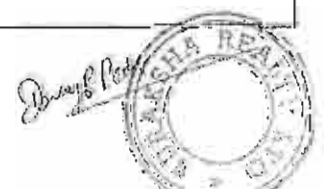
Table 14: FMV Rate and Assured Rate

<i>Location</i>	<i>FMV Rate (Rs. Cr/ Acre)</i>	<i>Assured Rate (Rs. Cr/ Acre)</i>
Jaganpur	4.06	5.64
Mirzapur	4.24	5.68
Ta. p. pal	1.86	1.86
Agra	1.88	1.88

15.25. The Corporate Debtor shall redeem the Assenting NCD of Rs. 1200 crore in 8 equated yearly instalments of Rs. 150 crore from the end of 3rd year till the end of 10th year, subject to the following:

- a) If and when the Assenting Land Parcels are sold above the Assured rate, as given in table 14 above, then surplus to the extent of difference between the actual Sale Value

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and the value worked out at FMV rates, as mentioned in the table above, such surplus in sale proceeds, along with interest @8%p.a for transaction during first five years and 10% p.a for transactions from 5th to 10th year, shall be adjusted against the forthcoming Assenting NCD instalment/ (s), whether in full or part, to the extent of such surplus sale proceeds and accordingly such forthcoming Assenting NCD instalment/ (s), whether in full or part, to the extent of such surplus sale proceeds, shall stand extinguished.

- b) If and when the Assenting Land Parcels are sold above FMV rate but below the Assured Rate, as given in table 14 above, then surplus to the extent of difference between the actual Sale Value and the value worked out at FMV rates, as mentioned in the table above, such surplus in sale proceeds shall be shall be adjusted against the forthcoming Assenting NCD instalment/ (s), whether in full or part, to the extent of such surplus sale proceeds and accordingly such forthcoming Assenting NCD instalment/ (s), whether in full or part, to the extent of such surplus sale proceeds, shall stand extinguished.

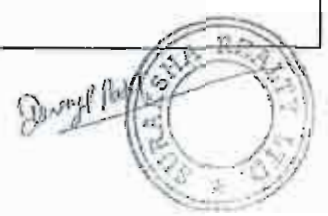
However, the shortfall to the extent of difference between the acutal sale value and value worked out at Assured Rate, shall be paid by the Corporate Debtor by way of prepayment of the forthcoming Assenting NCD instalment/ (s), whether in full or part, to the extent of such shortfall in sale proceeds, on present value basis at discounting rate of 8% p.a. for the transactions in first five years and 10% p.a. for the transactions in period from 5th year to 10th Year. Upon prepayment of such instalment / (s), the face value of such Assenting NCDs, whether in full or part, shall stand satisfied.

15.26. It is hereby clarified that the outstanding/ unpaid/ unadjusted NCDs installment, upon respective due dates at the end of each year, shall be paid / redeemed by the Corporate Debtor / Resolution Applicants, out of internal accruals and / or infusion of additional funds by the Resolution Applicants.

15.27. An asset monetisation committee ("Asset Monetisation Committee") shall be constituted by the Corporate Debtor having participation of the Assenting Institutional Financial Creditors and the Corporate Debtor as an Asset Management Company. The Asset Monetization Committee shall vest majority decision making powers with the Assenting Institutional Financial Creditors and the decisions of the Asset Monefization Committee shall be binding on the Corporate Debtor as an Asset Management Company, subject to the following process:

- a) The Asset Management Company shall carry out valuations from two independent

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valuers, one of which shall be appointed by the Corporate Debtor as an Asset Management Company and another shall be nominated by Assenting Institutional Financial Creditors, of the land parcels for determining fair market value per acre with respect to the various land parcels available with Assenting Institutional Financial Creditors, at intervals of every six months;

b) The Asset Monetization Committee shall be free to decide on sale / monetise the land parcels above the average fair market value per acre (average of the two valuation reports) as determined in clause (a) above, without any restrictions from the Asset Management Company;

15.28. The Asset Monetization Committee shall be free to decide on sale / monetise the land parcels below the average fair market value per acre (average of the two valuation reports) as determined in clause (a) above, however, in such event the Assenting NCDs, as mentioned in clause 15.25 shall stand extinguished, with respect to such specific transactions.

15.29. Notwithstanding the clauses mentioned hereinabove, the Resolution Applicants / Corporate Debtor shall have right of first refusal for any sale / monetisation transactions of Assenting Land Parcels at consideration of value at FMV rate as mentioned in table 14 above plus present value of proportionate unpaid NCD with respect to such specific transactions.

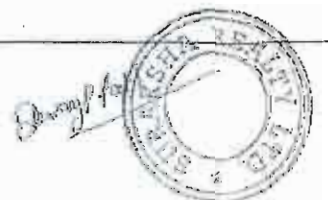
15.30. It is clarified that the Asset Management Company shall be under no obligation with respect to the timing of such sale / monetisation.

15.31. The Corporate Debtor, in order to perform its role as Asset Management Company, shall earmark upto Rs. 25 crore, specifically for expenses to be incurred for management and monetisation of Assenting Land Parcels and Assenting Surplus Lands, of the Assenting Institutional Financial Creditors, which shall be reimbursed to the Corporate Debtor along with 12% p.a interest, on monthly basis, in priority, out of the sale proceeds.

15.32. The proceeds, with respect to monetisation of land parcels as mentioned in clause 15.27 herein above, shall be remitted, directly, in separate escrow bank account, to be opened with IDBI Bank Ltd, on behalf of the Assenting Institutional Financial Creditors. The monies lying in designated escrow account as mentioned above, shall be distributed as under:

a) Firstly, towards reimbursement of any costs including tax, liability, stamp duty, any other government charges, levy or cess etc., in relation to the structure contained in clause 15.20 hereinabove, along with interest @12% p.a, on monthly basis, in priority;

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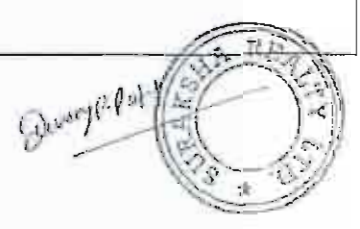
- b) Secondly, towards expenses and costs for managing and monetisation of the Asshred Land Parcels or otherwise in relation to such land parcels and / or for reimbursement of actual expenses with interest, incurred by the Corporate Debtor, as mentioned above; and
- c) Thirdly, to the Assenting Institutional Financial Creditors, to the extent of value at fair market value per acre as mentioned in table 14 above, towards recovery of their Claims Assentig NCDs including N; and
- d) Fourthly, surplus, after clause a) and b) above shall be distributed to Resolution Applicants / Corporate Debtor / Asset Management Company and the Assenting Institutional Financial Creditors, in equal ratio.

15.33. In case the Institutional Financial Creditor(s) having exclusive charge over certain land parcels assents, then such exclusive charge holders shall get the same acres of land parcels as what it would be getting in case it would have dissented, since its differently situated than other Institutional Financial Creditors having pari-passu charge over security interest.

ADVANTAGES FOR ASSENTING INSTITUTIONAL FINANCIAL CREDITORS

- 15.34. The Resolution Applicants have proposed to issue Assenting NCDs which ensures committed payment of Rs. 1,200 crore to the Assenting Institutional Financial Creditors, de-risking them from the prices, demand, saleability, etc of the land parcels.
- 15.35. The Corporate Debtor shall facilitate, on best effort basis, the Assenting Institutional Financial Creditors, as Asset Management Company for sale / monetisation of land parcels, if appointed, to take off their burden of managing and monetising the land parcels and to give confidence to Assenting Institutional Financial Creditors, as per the mutually acceptable terms and conditions.
- 15.36. The probability of the Assenting Institutional Financial Creditors getting higher overall recovery than their dissenting counterparts is significant as they are getting committed payment and land parcels that will not be sold in distressed situation and would be sold / monetised to maximise the value with sincere efforts by involving experts and also working with the Government, either directly through sub-lease or through Joint Development either with Corporate Debtor or any other reputed developer or in any other innovative manner.
- 15.37. The Resolution Applicants/ Corporate Debtor shall provide for upto Rs. 25 crore towards expenses for management and monetisation of land parcels of Assenting Institutional Financial Creditors which takes off the burden of shelling out more money. It shall be incurred by the Asset Management Company, as and when required.

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15.38. It is submitted that realisation via mode of enforcement of security interest by Dissenting Institutional Financial Creditors is likely to be distress value or liquidation value and likely to be significantly lower than in scenario of resolution / going concern / revival of the Corporate Debtor wherein the Corporate Debtor, there is no risk of valuation and saleability of the land parcels as the Resolution Applicants have assured the payment against Assenting NCDs.

15.39. There is probability of getting surplus land parcels out of the land parcels earmarked for Dissenting Institutional Financial Creditors, which shall further improve the recovery of the Assenting Institutional Financial Creditors.

E. DETAILED TREATMENT FOR DISSENTING INSTITUTIONAL FINANCIAL CREDITORS

15.40. It is important to understand the existing security interest of Institutional Financial Creditors in order to provide for the treatment to the Dissenting Institutional Financial Creditors that is as per the specific provisions of Section 30 (2) (b), in line with the directions of the Hon'ble Supreme Court in Jaypee Kensington Judgement as explained hereinabove in clauses 15.1 to 15.9 and also in line with the larger object of the Code that the Resolution Plan should be feasible, viable and effectively implementable.


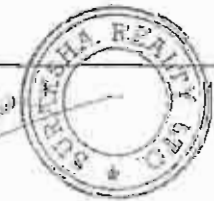
15.41. The existing security interest of Institutional Financial Creditors, are as under:

A. Axis Bank Ltd ("Axis Bank"), having exclusive charge over security interest

- a) Mortgage over 124.73 acres land parcel spread in Village Kripalpur (82.58 acres) and Tappal (42.16 acres) at District Aligarh, U.P (hereinafter referred to as "Axis Bank Exclusive Corporate Debtor Security Interest" in this Resolution Plan); and
- b) Corporate Guarantee of Jaiprakash Associates Ltd, Personal Guarantees of Mr Manoj Gaur, Mr Sunil Sharma and Mr Sameer Gaur and Letter of Comfort from Jaiprakash Associates Ltd (hereinafter referred to as "Axis Bank Exclusive Guarantee Security Interest" in this Resolution Plan).

B. SREI Equipment Finance Limited ("SREI"), having exclusive charge over security interest

- a) Mortgage over 27 acres of land at Village Tappal, Tehsil Khair, District Aligarh, U.P. and 13.79 acres of land at Village Tappal, Tehsil Khair, District Aligarh, U.P. (hereinafter referred to as "SREI Exclusive Corporate Debtor Security Interest" in this Resolution Plan); and

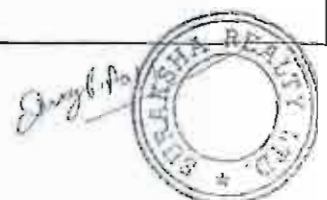
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- b) Personal Guarantee of Mr Manoj Gaur (hereinafter referred to as "SREI Exclusive Guarantee Security Interest" in this Resolution Plan).

C. Consortium of IDBI Bank Ltd, IIFCL, LIC, Corporation Bank, State Bank of India, Syndicate Bank, Bank of Maharashtra, ICICI Bank, Union Bank, IFCI and J&K Bank, having pari-passu charge, are as under:

- a) first pari passu charge by way of mortgage of land acquired for constructing the Yamuna Expressway covering approximately length of 41km alongwith first pari passu charge by way of assignment of all the rights, title, interest, benefits, claims and demands whatsoever of JIL in the Concession Agreement save and except in relation to portion of land which is developed/undeveloped and alienated by JIL from time to time pursuant to sale agreement and project documents duly acknowledged and consented to by the relevant counterparties to such project documents, as amended, varied or supplemented from time to time, statutory/non-statutory clearances and approvals obtained/to be obtained for the project; letter of credit, guarantee, performance bond etc, provided by any party for the project; insurance contract/insurance proceeds pertaining to the project (other than those in respect of discharge of third party liability) and all benefits incidental to project activities (hereinafter referred to as "Consortium Pari-passu Corporate Debtor Intangible Expressway Security Interest" in this Resolution Plan).
- b) first pari passu charge by the way of hypothecation of all the movables of Corporate Debtor, present and future excluding movables which are forming part of the common infrastructural facilities of Real estate development (hereinafter referred to as "Consortium Pari-passu Corporate Debtor Movable Security Interest" in this Resolution Plan).
- c) first pari passu charge on Corporate Debtor's book debts, receivables, on all bank accounts including but not limited to the Debt Recovery Service Account (DSRA), the Trust and the Retention Account (TRA), where all the cash inflows from the toll collection and sale proceeds of the real estate shall be deposited and all the proceeds therein, commissions, revenues of whatsoever nature and whenever arising, intangibles including but not limited to goodwill, rights, undertaking and uncalled capital, both present and future (hereinafter referred to as "Consortium Pari-passu Corporate Debtor Current Assets Security Interest" in this Resolution Plan).

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d) first pari passu charge by the way of mortgage of part of land (~1903.40 acres) in Jaganpur, Mirzapur, Agra and Tappal acquired for real estate development (hereinafter referred to as "Consortium Pari-passu Corporate Debtor Land Parcels Security Interest" in this Resolution Plan).

((a) to (d) above hereinafter collectively referred to as "Total Consortium Pari-passu Security Interest" in this Resolution Plan)

e) Pledge of 51% fully paid up equity shares in demat form of Corporate Debtor, on pari passu basis (hereinafter referred to as "Consortium Pari-passu Third Party Security Interest" in this Resolution Plan).

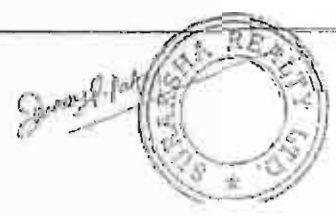
f) Personal Guarantee of Mr. Manoj Gaur and Promoter Support Agreement by JAL, (hereinafter referred to as "Consortium Pari-passu Guarantee Security Interest" in this Resolution Plan)

15.42. As explained in clauses 15.1 to 15.9 hereinabove, the following are essential criterias for treatment to Dissenting Institutional Financial Creditors, to be seen together in a holistic manner:

- a) allowing recovery of amount via mode of enforcement of security interest;
- b) such amount recoverable via mode of enforcement of security interest shall not be less than the amount to be paid to such creditors in accordance with Section 53 (1) in the event of liquidation of the Corporate Debtor, as per the fair and equitable quantification in the realm of certain guesswork or estimate with reference to the distribution envisaged by Section 53 of the Code;
- c) such security interest for the purpose of money recovery by dissenting financial creditor would only be such security interest which is relatable to the financial debt and not to any other debt or claim and hence it needs to be exclusive security interest relatable to only financial debt of such dissenting financial creditor;
- d) the treatment to the dissenting financial creditors should be such that the resolution applicant, with the approval of the resolution plan, is to proceed on a clean slate rather than carrying the cargo of such debts which needs to be satisfied (to the extent required) and then jettisoned;
- e) the treatment to the dissenting financial creditors should be line with the provisions of Section 30(4) wherein the Resolution Plan needs to be feasible and viable;

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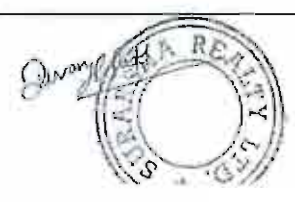


- f) the treatment cannot deal with or disturb the security interest created by third parties including guarantors and not by the Corporate Debtor, under the Resolution Plan.
- g) the treatment to the dissenting financial creditors should be in line with the provisions of Section 31 (1) wherein the Resolution Plan needs to have provisions for its effective implementation; and
- h) the treatment to the dissenting financial creditors should be in line with the spirit and the object of the Code and shall work harmoniously with the larger object of the Code which is insolvency resolution of the Corporate Debtor in timely manner with maximisation of value of the Corporate Debtor and balancing the interest of all the stakeholders.

15.43. In the event Axis Bank Ltd, having exclusive charge, does not vote in favour of the Resolution Plan, the Resolution Applicants propose to allow enforcement of Axis Bank Exclusive Corporate Debtor Security Interest as mentioned hereinabove in clause 15.41 A above, to recover its entitlement as per Applicable Laws, on account of the following reasons:

- a) the liquidation value of Axis Bank Exclusive Corporate Debtor Security Interest as mentioned in clause 15.41 A above, as per the independent valuations carried out by IRP as per the provisions of the Code, is less than the Claim Admitted;
- b) such security interest for the purpose of money recovery by Axis Bank is relatable only to its financial debt and not to any other debt or claim;
- c) the Resolution Applicants cannot deal with or disturb the Axis Bank Exclusive Guarantee Security Interest under the Resolution Plan.
- d) it has exclusive charge over the security interest and hence enforcement by it, to recover its entitlement can be carried out exclusively by it and shall enable Resolution Applicant to commence on clean slate without carrying cargo of such debt of Axis Bank;
- e) such enforcement of Axis Bank Exclusive Corporate Debtor Security Interest, can be done independently without disturbing the viability, feasibility and effective implementation of the Resolution Plan by the Resolution Applicants; and

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- f) it does not come in the way of larger spirit and object of the Code of timely insolvency resolution of the Corporate Debtor.

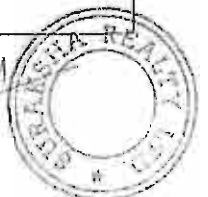
15.44. In the event SREI, having exclusive charge as mentioned hereinabove in clause 15.41 B above, do not vote in favour of the Resolution Plan, the Resolution Applicants propose to allow enforcement of SREI Exclusive Corporate Debtor Security Interest, to the extent of its Claim Admitted as mentioned in clause 15.41 A above, on account of the following reasons:

- a) the liquidation value of SREI Exclusive Corporate Debtor Security Interest as mentioned in clause 15.41 B above, as per the independent valuations carried out by IRP as per the provisions of the Code, is higher than its Claim Admitted by IRP;
- b) such security interest for the purpose of money recovery by SREI is relatable only to its financial debt and not to any other debt or claim;
- c) the Resolution Applicants cannot deal with or disturb the SREI Exclusive Guarantee Security Interest under the Resolution Plan;
- d) it has exclusive charge over SREI Exclusive Corporate Debtor Security Interest and hence enforcement by it, to recover its entitlement can be carried out exclusively by it and shall enable Resolution Applicant to commence on clean slate without carrying cargo of such debt of SREI;
- e) such enforcement of SREI Exclusive Corporate Debtor Security Interest, can be done independently without disturbing the viability, feasibility and effective implementation of the Resolution Plan by the Resolution Applicants; and
- f) it does not come in the way of larger spirit and object of the Code of timely insolvency resolution of the Corporate Debtor.

15.45. In the event any of the Consortium Lenders, having pari-passu charge as mentioned hereinabove in clause 15.41 C above, does not vote in favour of the Resolution Plan, the Resolution Applicants propose to identify and earmark specific land parcels, at any of the locations, out of the Consortium Pari-passu Corporate Debtor Land Parcels Security Interest, in order to provide specific, exclusive and distinct security interest, out of the Total Consortium Security Interest, for enforcement of security interest by such lender (s) of the Consortium, for recovery of the amount, to the extent of its/their entitlement

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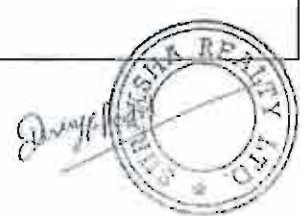
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as per Applicable Laws, on account of the following reasons:

- a) enforcement of Total Consortium Security Interest can only be allowed in the event the entire Consortium of Lenders do not vote in favour of the Resolution Plan, however, in case the entire Consortium dissents then approval of the Resolution Plan by the CoC would not happen, as the Consortium of Lenders collectively have more than 34% of the voting rights in the Committee of Creditors;
- b) The security has been created collectively in favour of the Consortium and one or more dissenting lender(s) cannot be allowed to enforce the entire security interest of the Consortium as the same may jeopardize rights of such members of the Consortium who assent to the Resolution Plan.
- c) The liquidation value of the Total Consortium Security Interest, as mentioned in clause 15.41 C above, as per the independent valuations carried out by IRP as per the provisions of the Code, is higher than liquidation value due to any dissenting lender(s) of the Consortium;
- d) the Total Consortium Security Interest, for the purpose of money recovery by individual lender of the Consortium, is not relatable only to its financial debt, since the all lenders of the Consortium are also having pari-passu charge;
- e) the Resolution Applicants propose to allow enforcement out of Consortium Pari-passu Corporate Debtor Land Parcels Security Interest, on account of the following reasons:
 - i) carving specific, exclusive and distinct security interest, out of the Consortium Pari-passu Corporate Debtor Land Parcels Security Interest, can be carried out in fair and equitable manner and can be effectively implemented; and
 - ii) carving specific, exclusive and distinct security interest, out of the Consortium Pari-passu Corporate Debtor Intangible Expressway Security Interest, Consortium Pari-passu Corporate Debtor Movable Security Interest and Consortium Pari-passu Corporate Debtor Current Assets Security Interest is not only impractical but also makes any resolution plan unviable, infeasible and impossible to implement as these assets of the Corporate Debtor are essential for timely insolvency resolution of the Corporate Debtor and balancing interest for all stakeholders especially more than 20,000 homebuyers that are waiting for their home since last 8 to 10 years.

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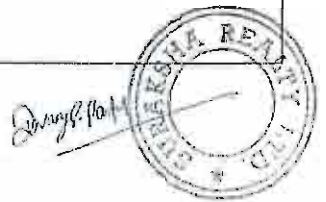


- f) such enforcement of its specific, exclusive and distinct security interest, can be done independently without disturbing the viability, feasibility and effective implementation of the Resolution Plan by the Resolution Applicants.
- g) the Resolution Applicants cannot deal with or disturb the Consortium Pari-passu Third Party Security Interest and Consortium Pari-passu Guarantee Security Interest under the Resolution Plan;
- h) allowing enforcement of the specific, exclusive and distinct security interest, out of the Consortium Pari-passu Corporate Debtor Land Parcels Security Interest, does not come in the way of larger spirit and object of the Code of timely insolvency resolution of the Corporate Debtor and also enables the Resolution Applicants to commence on clean slate, without carrying cargo of such debt of individual lender (s) of the Consortium.
- i) it is not feasible and viable to allow any individual lender (s) of the Consortium to enforce Total Consortium Security Interest as it makes it impossible for Resolution Applicants to implement the Resolution Plan effectively for timely insolvency resolution of the Corporate Debtor and it shall also be impossible for the Resolution Applicants to commence on clean slate without carrying cargo of such debt of individual lender (s) of the Consortium;

15.46. It is clarified that the provision for land for Dissenting Institutional Financial Creditors have been carried out, as per the requirements of the Code and in line with the Jaypee Kensington Judgement, on the basis of liquidation value shared by IRP, in order to disembark the Institutional Financial Creditors who do not want to be with the Resolution Applicant on the voyage of timely insolvency resolution of the Corporate Debtor and in order jettisoned them and commence on clean slate instead of carrying the cargo of such debts. It is clarified that Section 30 (2) (b) is a deeming provision which envisages liquidation scenario only for the purpose of quantification of the amount payable to the dissenting financial creditors and therefore it is clear that the liquidation value shared by IRP is the only basis to quantify such entitlement of dissenting financial creditors while making the Resolution Plan by the Resolution Applicants. The treatment of allowing enforcement of security interest to the dissenting financial creditors is in line with the rights of such dissenting financial creditors under section 52(1)(b) read with Section 53(1)(e)(ii) of the Code.

15.47. The Resolution Applicants / Corporate Debtor shall identify specific and distinct

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security interest, out of the Consortium Pari-passu Corporate Debtor Land Parcels Security Interest, exclusively for each of the Dissenting Institutional Financial Creditor(s):

Table 16: Treatment to Dissenting Institutional Financial Creditors

S.No.	Location of Land	Existing Security (in acres)	Intital Provision for Dissenting Institutional Financial Creditors out of the <u>Consortium Pari-passu Corporate Debtor Land Parcels Security Interest</u> (in acres)	Average Liquidation Value rate per acres@ Rs. Cr/acre	Liquidation value (Rs. Cr)
1	Jaganpur	320	130	2.78	361
2	Mirzapur	227.40	-	2.89	-
3	Tappal	*666	666	1.30	866
4	Agra	690	690	1.23	849
	Total	1903.4	1,486		2,076

@ as provided by IRP;

*166 acres out of 666 acres mortgaged to exclusive charge holders

15.48. It is clarified that the Resolution Applicants, while submitting the Resolution Plan, cannot contemplate as to which Institutional Financial Creditors shall dissent to the Resolution Plan and hence the Resolution Applicants shall identify and earmark specific, distinct and exclusive land parcels for enforcement of security interest, as mentioned in preceeding clauses, by Dissenting Institutional Financial Creditor/(s), only when the IRP provides details of the Dissenting Institutional Financial Creditors consequent to voting as per the provisions of the Code, however, prior to the submission of the Resolution Plan by IRP before Adjudicating Authority. The Resolution Applicants shall upon such intimation by the IRP provide the details of such land identified for Dissenting Institutional Financial Creditor (s), and such identification of land parcels shall be submitted to the Adjudicating Authority, with a prayer that the said details form part of the order of the Adjudicating Authority, approving the Resolution Plan.

15.49. The Resolution Applicants have right to identify and earmark specific land at any of the locations, out of the existing security interest, in order to provide specific, exclusive and distinct security interest for enforcement of security interest, for recovery of entitlement,

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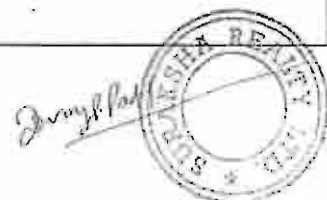
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by each Dissenting Institutional Financial Creditor/(s). However, in order to provide fair and equitable treatment to the Dissenting Institutional Financial Creditors, the Resolution Applicants shall exercise their aforesaid right of identifying specific, distinct and exclusive land parcels, after inviting views / suggestions of such Dissenting Institutional Financial Creditors. It is also clarified that since the Resolution Applicants need to identify such land parcels expeditiously in order to make it part of the Resolution Plan, prior to the submission of the same for approval before the Adjudicating Authority by IRP, the Resolution Applicants shall provide maximum five working days to such Dissenting Institutional Financial Creditor (s) for such giving their views / suggestions in this regard. In the event the Dissenting Institutional Financial Creditors fail to arrive at a consensus regarding the identification of the security interest by the Resolution Applicants then the identification done by the Resolution Applicants shall be binding on each Dissenting Institutional Financial Creditors. In the event, the Dissenting Institutional Financial Creditors so agree, then the Resolution Applicants shall identify and earmark land parcels out of the existing security interest and shall provide such identified land parcels to Dissenting Institutional Financial Creditors as security on pari-passu basis for recovery of their entitlement by way of enforcement of such security interest.

15.50. The Resolution Applicants shall follow the process, mentioned hereunder, for fair and equitable treatment to the Dissenting Financial Creditor/(s), in order of priority:

- a) The Resolution Applicants shall engage suitable independent experts/ advisors, if required, after approval of the Resolution Plan by the COC, receiving details of the Dissenting Institutional Financial Creditor/(s) from the IRP/COC and receiving suggestions / inputs / views from such Dissenting Institutional Financial Creditor (s), to assist the Resolution Applicants in process of identifying specific, distinct and exclusive land parcels for each of the Dissenting Financial Creditor, as per their liquidation value due to them as per provisions of the Code, as mentioned hereinabove;
- b) The Resolution Applicants shall firstly identify overall land parcels required in order to provide treatment to the Dissenting Financial Creditors, as per the provisions of the Code. In this regard, the Resolution Applicants shall identify the land parcels in order of following locations:
 - i) Firstly in Tappal;
 - ii) Then in Agra;
 - iii) Then in Jaganpur; and
 - iv) Lastly in Mirzapur

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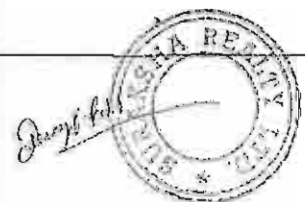


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- c) The Resolution Applicants shall thereafter identify land parcels for each Dissenting Financial Creditor, out of the above identified land parcels, for allowing enforcement of security interest so identified to such Dissenting Financial Creditors, in line with following criteria:
- i) for exclusive charge holders, out of their existing security interest; or
 - ii) for pari-passu charge holders, out of their existing security interest, fairly and equitably in all locations, such that there is no preferential treatment to any Dissenting Institutional Financial Creditors over other Dissenting Institutional Financial Creditors, that are similarly situated i.e., having similar existing security interest; and
 - iii) to the extent of its entitlement i.e., liquidation value due to them, in terms of Section 53 of the Code or Claim Admitted, whichever is lower; and
 - iv) which shall be exclusive and relatable to only its financial debt and not to any other debt or claim.
- d) The Dissenting Institutional Financial Creditor(s) already having exclusive charge over any security interest shall continue to have exclusive charge of such security interest, equivalent only to the extent of its/ their entitlement i.e., liquidation value due to them or the Claim Admitted, whichever is lower, on the basis of liquidation value shared by IRP. The mortgage / charge on the excess land, if any, over the entitlement of such Dissenting Financial Creditor, shall stand satisfied, extinguished and released in perpetuity upon approval of the Resolution Plan by the Adjudicating Authority. The Corporate Debtor shall file appropriate forms with Registrar of Companies in respect of such land parcels where mortgage/charge stands satisfied/extinguished and released.
- e) The Dissenting Institutional Financial Creditor(s) having pari-passu charge, shall be allowed to enforce its security interest over the specifically earmarked land parcels, to be identified by the Resolution Applicants, in consultation with the independent experts / advisors, out of its existing security interest with respect to land parcels, as may be required to make it exclusive and relatable only to the financial debt of such Dissenting Institutional Financial Creditor and not to any other debt or claim, to the extent of its entitlement i.e., liquidation value due to it or the Claim Admitted, whichever is lower, on the basis of liquidation value shared by IRP. In this regard, upon approval of the Resolution Plan by the Adjudicating Authority, the charge created in favour of any other Institutional Financial Creditors, with respect to such specific land parcels earmarked for such Dissenting Institutional Financial Creditor, shall deemed to have been satisfied and therefore shall stand extinguished, without

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any further action in this regard. The Corporate Debtor shall file appropriate forms with Registrar of Companies in favour of such Dissenting Institutional Financial Creditors and shall file appropriate forms for release of charge by such other Institutional Financial Creditors.

f) The abovementioned treatment to the Dissenting Institutional Financial Creditors, shall be given prior to any treatment to the Assenting Institutional Financial Creditors, in terms of the Resolution Plan.

15.51. The Corporate Debtor shall allow the Dissenting Institutional Financial Creditor(s) to enforce security interest as mentioned hereinabove, for its/their recovery, without any further obligations on the Resolution Applicants and / or Corporate Debtor, to enable Resolution Applicants to commence on clean slate / fresh plate.

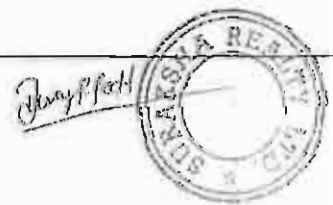
15.52. The Corporate Debtor and / or the Resolution Applicants shall not be obliged to the Dissenting Institutional Financial Creditors, in any manner, including any payment / obligation, whatsoever, once allowed to enforce its security interest as mentioned hereinabove. The Claim of the Dissenting Institutional Financial Creditors shall stand extinguished in perpetuity upon allowing enforcement of such security interest and the Corporate Debtor shall not be liable for the any cost, charges, expenses, taxes including income tax, GST, etc or otherwise that may arise due to enforcement of security interest, as the same are incidental expenses for enforcement of security interest and such liability shall be incurred by the Dissenting Institutional Financial Creditors without any recourse, express or implied, to the Corporate Debtor and/or Resolution Applicants.

15.53. The Dissenting Institutional Financial Creditors shall not take any action against Corporate Debtor save and except the security interest available for enforcement, in their favour and shall not categorise the Corporate Debtor as Non-Performing Asset, as the obligation of the Corporate Debtor is discharged on allowance of enforcement rights on such security interest as mentioned hereinabove.

15.54. The Dissenting Institutional Financial Creditors shall bear the costs, if any, viz. applicable stamp duty, registration or any other charges for creation of such mortgage, enforcement of security interest and any other cost in relation thereto. The Corporate Debtor shall not be liable for any such costs, charges and/or other levies in relation thereto as the Resolution Applicant is providing what is required as per the directions of Hon'ble Supreme Court in Jaypee Kensington Judgment.

15.55. It is hereby clarified that in the event of any surplus, either in terms of money or land, remaining after realisation by Dissenting Institutional Financial Creditors of its entitlement including but not limited to the actual costs incurred, if any, by such

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Dissenting Institutional Financial Creditor, in terms of the Applicable Laws and the provisions of the Code, then any such surplus shall be available to the Corporate Debtor.

15.56. The Resolution Applicants and / or the Corporate Debtor reserves its right to offer any other method of discharge of its payment obligation to Dissenting Institutional Financial Creditors, compliant with the provisions of the Applicable Laws in a mutually acceptable suitable structure, without affecting the treatment given to any other stakeholders including Assenting Institutional Financial Creditors, in line with the directions contained in the Jaypee Kensington Judgment, reproduced hereinbelow for ready reference:

Para 124

"... We are not commenting on the scenario if the dissenting financial creditor himself chooses to accept any other method of discharge of its payment obligation but as per the requirements of law, the resolution plan ought to carry the provision as aforesaid."

The aforementioned method/structure shall be deemed to be part of the Resolution Plan provided:

- a) the same is accepted by Dissenting Institutional Financial Creditors; and
- b) the same shall be as per requirements of Applicable Law.

16. Treatment for the Financial Creditors- Fixed Deposit Holders:

16.1. Claim Admitted Amount as per IM: Rs. 29.26 crore

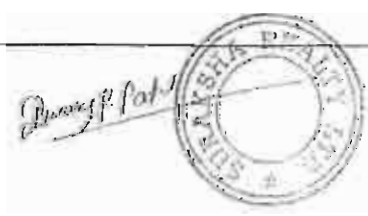
The claims of Fixed Deposit holders (FD Holders) as on 29.05.2021 were Rs. 38.95 crore including Claims Admitted of Rs. 29.26 crore.

16.2. Treatment:

Table 17: Treatment of the FD holders

Particulars	Rs. Crore
Payment against Claims Admitted as per IM	29.26
Proportionate Payment to Claims filed subsequent to IM however	9.16

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prior to NCLT Approval Date (as goodwill gesture)	
Total	38.42

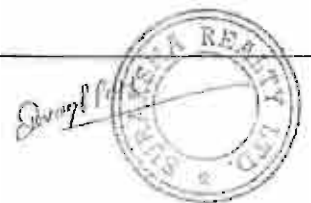
- a) Against the admitted claims of upto Rs. 29.26 crore of Fixed Deposit Holders, an amount of Rs. 29.26 Crore shall be paid to Fixed Depositors whose Claims have been admitted in IM, on pro-rata basis, in three equal half yearly instalments, from the Transfer Date, as full and final settlement of all the claims of Fixed Deposit holders in accordance with the provisions of the Code. No payment shall be made towards interest over such fixed deposits.
- b) Against the Claims filed subsequent to IM however prior to NCLT Approval Date, an amount of Rs. 9.16 Crore shall be paid to Fixed Depositors, on pro-rata basis, in three equal half yearly instalments, from the Approval Date, as full and final settlement of all the claims of Fixed Deposit holders in accordance with the provisions of the Code. No payment shall be made towards interest over such fixed deposits. It is clarified that the Resolution Applicants are legally entitled not to deal with the Claims not admitted by IRP, however, the Resolution Applicants have provided for payment of Rs. 9.16 crore as goodwill gesture, in the interest of such public depositors and shall not be construed to be differential treatment.
- c) The Deposit Holders who did not file the Claim within stipulated timeframe as provided in the Code and no payment is ought to be provided in the Resolution Plan for such Deposit Holders in line with in the Jaypee Kensington Judgement, the relevant extract has been reproduced hereinbelow for ready reference:

"135.1. Due adherence to the timelines provided in the Code and the related Regulations and punctual compliance of the requirements is fundamental to the entire process of resolution; and if a claim is not made within the stipulated time, the same cannot become a part of the Information Memorandum to be prepared by IRP and obviously, it would not enter into consideration of the resolution applicant as also of the Committee of Creditors. In the very scheme of the corporate insolvency resolution process, a resolution applicant cannot be expected to make a provision in relation to any creditor or depositor who has failed to make a claim within the time stipulated and the extended time as permitted by Regulation 12.

The fixed deposit holders should have submitted the Claim to the Resolution Professional and it should have been decided by the Resolution Professional so that Resolution Applicant could proceed on a fresh plate, in line with directions in Jaypee Kensington Judgement, the relevant extract whereof has been reproduced hereinbelow for ready reference:

"Para 135.1

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In Essar Steel (supra), while dealing with the topic 'Extinguishment of Personal Guarantees and Undecided Claims', this Court disapproved that part of the NCLT judgment which held that other claims, that might exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal, could be decided in an appropriate forum in terms of Section 60(6) of the Code. This Court specifically held that a resolution applicant cannot be made to suddenly encounter undecided claims after resolution plan submitted by him has been accepted; and in the scheme of the Code, all claims must be submitted to, and decided by, the resolution professional so that the resolution applicant could proceed on a fresh plate.

17. Treatment for the Financial Creditors - Homebuyers:

Claim Admitted Amount as per IM

17.1. The admitted claims of Homebuyers as on 29.05.2021 were Rs. 12,806 crore, more particularly mentioned as below:

Table 18: Admitted Claims of Home Buyers

Particulars	Rs. Crore		
	Principal	Interest	Total
Active Home Buyers	8,675	3,296	11,971
Home Buyers - Cancelled & Refunds Pending	64	23	87
Home Buyers - OOP Issued	528	220	748
Total	9,267	3,539	12,806

17.2. Against the admitted claims of upto Rs. 12,806 crore of Homebuyers (which may further increase upto the NCLT Approval Date), the treatment is provided in the Resolution Plan in different categories of homebuyers considering the nature and status of the incomplete Projects.

A. TREATMENT FOR ACTIVE HOME BUYERS IN THE PROJECTS AT WISITTOWN, NOIDA, MIRZAPUR-PLOTTED & COMMERCIAL PROJECTS (NAMESLY YAMUNA VIHAR, TANISHQ SQUARE AND SUNNYVALE HOMES PROJECTS)

17.3. The provisions of RERA are meant to ensure that Home Buyers' money would only be

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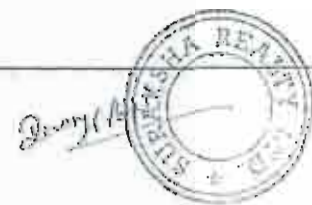
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used for construction. However, in the case of the Corporate Debtor, erstwhile management of the Corporate Debtor may have utilised Home Buyers' money for purposes other than construction such as development of Yamuna Expressway, payment of interest to financial creditors, other purposes, etc., thereby resulting in shortfall in funds required to complete the projects.

- 17.4. The Resolution Applicants plan to complete the construction of the projects and deliver possession of units/homes to Home Buyers within the time limit as projected for completion of projects under this Resolution Plan and more particularly contained in Annexure-I hereto utilising the funds to be made available from:
- a) the balance consideration to be received from the homebuyers as per the agreement(s) entered into with the Corporate Debtor within the due dates pertaining to the milestone based demand as mentioned in the agreements entered into with the home buyers;
 - b) the working capital facility as mentioned hereinabove in the Resolution Plan;
 - c) the cashflow received from new sales, if any, in line with the Business Plan;
 - d) monetisation of other value pockets in the Projects, to the extent possible; and
 - e) cashflows of Road Asset for initial three years including servicing of working capital facility.
- 17.5. The timelines mentioned in Annexure-I shall be subject to Home Buyers strictly fulfilling their obligations, including but not limited to payment of all the amounts payable as per the agreement with the Corporate Debtor within due date as per the stage wise completion (milestone based) demand contained in the respective agreement(s) entered into between the Home Buyers and the Corporate Debtor, without adjusting or deducting any amounts on account of penalties/rebate under such agreement(s) or any other law for the time being in force.
- 17.6. As the homebuyers' primary requirement is delivery of homes, it is proposed to complete the projects and deliver the homes to such Home Buyers who have filed their claim against full and final settlement of their claims and no amount or refunds under the existing agreements shall be paid other than the treatment proposed under this Resolution Plan.
- 17.7. The Corporate Debtor shall raise demands for payments in line with the construction schedule as mentioned in
- 17.8. 17.5 above. In the event, any Home Buyer fails to make payment within due date as

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mentioned in the respective agreements, such Home Buyer can make payment within an additional grace period of 120 days together with interest on the amount demanded @ 12% p.a. from the due date. It is however clarified that upon expiry of additional grace period, the Corporate Debtor and/or the Land Bank SPV shall be entitled to terminate the agreement pertaining to such defaulting Home Buyer and all the payment made by such defaulting Home Buyer till such date shall stand forfeited. The Resolution Applicant shall consider any requests, if any, received, in this regard, at its sole discretion on case to case basis, to the Home Buyers that are in genuine and urgent need of money like senior citizens struggling in need of money for their livelihood, medical emergency, etc. Such Home Buyers shall have to make application in writing, to the Corporate Debtor within 3 months from the Approval Date.

17.9. The time lines proposed in this Resolution Plan would require around 12,000 labour to be deployed in the Projects. The Resolution Applicants shall endeavour to deliver the flats earlier than the timelines proposed in the Resolution Plan. The Resolution Applicants through its related entities have relevant experience of reviving the stalled projects in Gurugram.

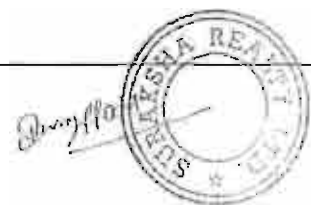
17.10. The Resolution Applicants, on behalf of Corporate Debtor shall form a specific project-wise Monitoring Committee comprising of one representative of the Resolution Applicants, one representative of the Corporate Debtor/SPV and Authorised Representative of the Home Buyers of respective Projects, to monitor the progress of work at site and infusion and utilisation of funds for Home Buyers on reasonable regular intervals.

17.11. The Corporate Debtor / Resolution Applicants shall develop a mobile application, if feasible, in due course, in order to provide updates on the construction status of all the towers, outstanding dues of the homebuyers, due dates for next milestone based demand, option to raise queries / grievances, etc.

17.12. Customer grievance and redressal centres may be opened up online and on the sites at Noida and Mirzapur. Any complaints received by the centres shall be resolved within reasonable timelines from the date of registration of such complaint(s).

17.13. Separate running escrow account(s) for each Real Estate Project shall be maintained with the lender granting working capital facility, as required under the RERA, wherein the collection from the Home Buyers of the respective Real Estate Projects shall be deposited and therefrom all the construction costs of such project shall be incurred or paid including the repayment of working capital facility alongwith interest thereon. The Corporate Debtor will have working capital limit of Rs. 3,000 crore, which shall be utilised for construction of the projects for the Home Buyers, in line with the Business

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Plan over and above the sold receivables from home buyers, realisations from unsold inventory, monetisation of value pockets in the projects, to the extent possible, cashflows of Road Asset for initial three years including servicing of working capital facility. The availment of the working capital facility shall be as per terms and conditions of the lender.

17.14. It is hereby clarified that the upon assenting to the Resolution Plan, the Homebuyers shall be deemed to have consented/assented to extension of timelines in construction of the homes/units as per the timelines provided in this Resolution Plan and change in promoter of the Corporate Debtor for the Real Estate Projects under RERA and regulations thereunder.

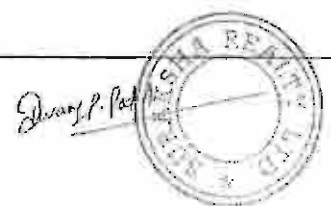
17.15. Notwithstanding anything contained in this Resolution Plan, the construction work of the Projects with the funds available with the Corporate Debtor shall continue till the Resolution Applicants take the control of the Corporate Debtor and in this regard, the Resolution Applicant and Committee of Creditors shall support / facilitate the IRP, as the member of the Implementation and Monitoring Committee pursuant to approval of the Plan by NCLT. The Resolution Applicant will extend all support and co-operation required by IRP for construction that may be possible at its end, as and when sought by IRP.

17.16. The Resolution Applicant shall not provide refund to any active Home Buyer in aforementioned Projects that are going to be completed. However, it shall provide refund, at its sole discretion on case to case basis, to the Home Buyers that are in genuine and urgent need of money like senior citizens struggling in need of money for their livelihood, medical emergency, etc. and upon such refund their allotment shall stand cancelled. Such Home Buyers shall have to make application in writing, to the Corporate Debtor within 3 months from the Approval Date.

17.17. The Resolution Applicants understand from the information available in the VDR, that certain homebuyers had paid early payment i.e. over and above due amount as per the milestone based payment with the understanding that such homebuyers would get an early payment discount (EPD). Such homebuyers have been issued statement of accounts by the Corporate Debtor indicating therein such EPD.

As per the VDR, EPD of Rs. 48 crore has been adjusted from the receivables of the home buyers and under this Resolution Plan the same shall not be disturbed or extinguished with a view to give fair treatment to such homebuyers. Further, as per the VDR, Rs. 15 crore is accrued towards EPD but is yet to be adjusted as on Insolvency Commencement Date and therefore as a goodwill gesture to the homebuyers who have paid early from

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their hard earned monies and to give equitable treatment to homebuyers concerning EPD, the Resolution Applicants propose to adjust/give credit of such accrued amount of Rs. 15 crore from the balance receivables as per the respective statement of accounts of the homebuyers. The Resolution Applicants strongly believe that the homebuyers should be motivated and suitably rewarded for early payment instead of penalising them by way of extinguishment of their entitlement of EPD.

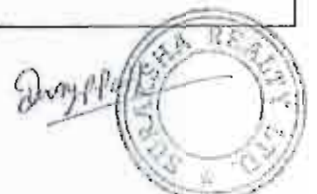
It is however clarified that, in case such early payment discount exceeds the amount receivables, such discount shall be restricted to receivable amount. It may be noted that for the purposes of this clause, only such early payment discount or interest, by whatever name called, shall be considered as are provided in MIS shared with the Resolution Applicants in the Virtual Data Room and the Resolution Applicants shall not be obliged to consider any other early payment discount or interest, by whatever name called.

- 17.18. Further, notwithstanding anything contained in this Resolution Plan, the Resolution Applicant or the Corporate Debtor shall have no obligation or liability towards the Home Buyers on account of monies paid by the Home Buyers to JAL (either directly or indirectly, including payments made through JIL) towards maintenance charges or interest free maintenance deposits (IFMS/IFMD). It is also clarified for avoidance of doubt that the Home Buyers shall not be entitled to set off/adjust any such monies paid towards maintenance charges from any of the amounts due to the Corporate Debtor.

BENEFIT IN LIEU OF THE PAST DELAY COMPENSATION FOR HOMEBUYERS WHO HAVE FILED THE CLAIM HOWEVER NOT GOT THE POSSESSION TILL APPROVAL OF THE RESOLUTION PLAN BY THE ADJUDICATING AUTHORITY

- 17.19. As a goodwill gesture, land admeasuring 150 acres in Tappal shall be identified and held in trust, at the earliest, for the welfare of Home Buyers or any other suitable structure would be worked out by Resolution Applicants as per Applicable Laws, towards hardships / suffering of the Home Buyers, that have filed Claim before IRP. The Resolution Applicants shall have first right of refusal to purchase the land. It is clarified that homebuyers shall appoint/ engage/avail services of authorised representative and/or the marketing/ audit/legal advisor with respect to the said land in the interest of the homebuyers. It is clarified that the costs, expenses, etc. shall be deducted out of the sale proceeds and the net sale proceeds shall be distributed amongst the home buyers (of category A) who have filed their claims with IRP, in the ratio of their claims admitted. It is further clarified that the homebuyers who have completed their full and final settlement with the IRP or executed sub-lease deed shall not be entitled for the distribution out of the above said sale proceeds.

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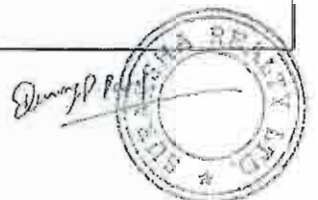
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- 17.20. The Corporate Debtor shall provide discount of 7% on the purchase consideration as per prevailing market prices, to the Home Buyers that have filed Claim before IRP, if they are desiring to purchase new flat / unit in the existing projects under development.
- 17.21. The Corporate Debtor shall provide the referral incentive of 3% on the purchase consideration as per prevailing market prices, to the Home Buyers that have filed Claim before IRP, if they bring in purchaser who purchases new flat / unit in the existing projects under development. It is clarified that there is no restriction / ceiling / limit, in terms of bringing the Home Buyers, on any individual home under this scheme.
- 17.22. The Corporate Debtor shall provide discount of 25% on the prevailing maintenance charges as per PAL, to the Home Buyers that have filed Claim before IRP, for the period of two years from the date of offer for possession to such Home Buyer, upon becoming the Maintenance Agency. It is further clarified that the homebuyers who have completed their full and final settlement with the IRP or executed sub-lease deed shall not be entitled for such discount.

B. TREATMENT FOR HOME BUYERS OF PROJECTS OF THE CORPORATE DEBTOR AT MIRZAPUR VIZ. VILLA EXPANZA, BUDH CIRCUIT STUDIOS-II, NATURVE APARTMENTS, AMAN-III, UDAAN BOULEVARD COURT AND AGRA KINGSTONE PARKS AND PLOTS CALLED "REFUND PROPOSED PROJECTS"

- 17.23. The Home Buyers of the Refund Proposed Projects of the Corporate Debtor, who have filed their claim, shall be entitled to refund to the extent of the amount collected by the Corporate Debtor against their units without any interest or charges thereon. As per the information available in the VDR, the collection from the Home Buyers pertaining to such Projects is upto Rs. 178 crore, to the Home Buyers that have filed Claim before IRP. The Resolution Applicants propose for refund to the Home Buyers within in two equal annual installments from the Approval Date without any interest. The interest shall be payable at the then prevailing SBI MCLR in case of delay in refund beyond two years.
- 17.24. It is further proposed that the Home Buyers of the said Projects shall have an option request for transfer of their allotment to some other project that may be offered by Resolution Applicant / Corporate Debtor, at its sole discretion, at market prices prevailing at the time of such transfer of allotment. In this regard, such home buyer shall get discount on prevailing at the time of such transfer of allotment, of an amount equivalent to flat 20% of the monies paid by them and the same shall be netted off / adjusted in sale consideration of new allotment. The Home Buyers shall make such requests to the Corporate Debtor within 3 months from the Approval Date, in writing.
- 17.25. It is further proposed considering the requests received from home buyers, that the

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Refund Proposed Projects shall be constructed subject to availability of unencumbered and unfettered possession of land, being developed under project, construction of phase I and shifting of buyers of phase II to phase I not only to give them possession faster but also it's unviable to complete phase II at this stage, as no much work done at sites of phase II, and depending on requirement of majority of buyers under the options under Resolution Plan exercised by home buyers within 2 months from Approval Date. It is clarified that in case Resolution Applicants construct the Projects then the treatment under above category of Active Projects shall be applicable to the Homebuyers of Projects that are being completed.

C. HOME BUYERS TO WHOM THE OFFER OF POSSESSION HAS BEEN ISSUED BY THE CORPORATE DEBTOR

17.26. The Home Buyers who have been offered possession of the completed homes shall be provided only the possession of their homes. Such Home Buyers shall be handed over possession of their homes subject to payment of the due amounts to the Corporate Debtor/ SPV in terms of the agreement(s) executed with the Corporate Debtor. Such Home Buyers shall take possession within 90 days of the Approval Date.

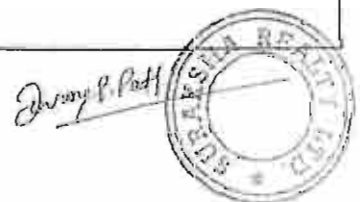
17.27. In the event any Home Buyer fails to make balance payment within due date as mentioned in the respective agreements, such Home Buyer can make payment within an additional grace period of 120 days together with interest on the amount demanded @ 12% p.a. from the due date. It is however clarified that upon expiry of additional grace period, the Corporate Debtor shall be entitled to terminate the agreement pertaining to such defaulting Home Buyer and all the payment made by such defaulting Home Buyer shall stand forfeited. The treatment mentioned in clause 17.3 to 17.18 in this Resolution Plan shall be applicable to the Homebuyers that have not executed sublease deed till Approval Date.

D. TREATMENT FOR HOMEBUYERS - WHO HAVE CANCELLED AND CLAIMED REFUND AGAINST THE CORPORATE DEBTOR PRIOR TO COMMENCEMENT OF CIRP

17.28. The Home Buyers who have claimed refund against the Corporate Debtor pursuant to cancellation of their agreement(s) with the Corporate Debtor shall be paid their admitted claims i.e. Rs. 65 crore (as on 05.04.2021) in two equal annual instalments from the Approval Date, without any interest.

17.29. If, in any case, the Home Buyers want to opt for possession of the allotted home instead of refund, treatment shall be in the line of treatment given to Home Buyers to whom possession is given under clause 17.3 till 17.18 of the above. If the Home Buyers shall opt for possession, they shall send such requests in writing to the Corporate Debtor

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within 3 months from the Approval Date.

E. TREATMENT FOR HOMEBUYERS - WHO HAVE NOT FILED THEIR CLAIM TO IRP ON OR BEFORE NCLT APPROVAL DATE

17.30. With respect to the Home buyers who have not filed their Claim on or before NCLT Approval Date ("Unclaimed Unit Buyers"), the Resolution Applicants are not making any provision under this Resolution Plan for such Unclaimed Unit Buyers and accordingly all right, title and other entitlements (if any) of such Unclaimed Unit Buyers shall immediately upon approval of this Resolution Plan by the Adjudicating Authority shall stand abated, extinguished and settled in perpetuity without any claim whatsoever of such Unclaimed Unit Buyers against the Resolution Applicant and/or the Corporate Debtor in line with Jaypee Kensington Judgement, relevant paragraph reproduced herein below for ready reference:

"In the very scheme the corporate insolvency resolution process, a resolution applicant cannot be expected to make a provision in relation to any creditor or depositor who has failed to make a claim within the time stipulated and the extended time as permitted by Regulation 12."

F. CONTINUATION OF CONSTRUCTION FROM COC APPROVAL DATE UPTO APPROVAL DATE - INTERIM FINANCE OF RS. 300 CRORE PROPOSED BY RESOLUTION APPLICANTS

17.31. The Resolution Applicants are conscious of the sufferings of the homebuyers due to such extraordinary delay in completion of their homes. In view thereof, the Resolution Applicants have deliberately not made Resolution Plan which is dependent on hive off of the Yamuna Expressway, as hive off of the Yamuna Expressway is completely dependent on YEIDA approval as per directions of Hon'ble Supreme Court, which may or may not be granted by YEIDA and timelines for the same are also uncertain.

17.32. The Resolution Applicants also understand that there may be further delay, if time is taken for approval of the Resolution Plan by Adjudicating Authority, NCLAT and/or Supreme Court, then such time should not hamper the construction of the projects of the homebuyers. The Resolution Applicants, therefore, in the interest of home buyers, have proposed to bring funds of Rs. 300 crore by way of Interim Finance under IBC, immediately after approval of the Resolution Plan by CoC, which shall be utilised by the Interim Resolution Professional, in consultation with the Resolution Applicants if he desires, for the purpose of reviving and expediting the construction of the projects, subject to approval of such Interim Finance Proposal by the IRP, CoC and the Institutional Financial Creditors.

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17.33. The Resolution Applicants desires that the construction work shall be resumed immediately after approval of the Resolution Plan by the CoC and gather pace through the efforts to be put in by the Interim Resolution Professional, in consultation of the Resolution Applicants if he desires, that shall enable Interim Resolution Professional to expedite the revive the stalled construction, expedite deliveries of homes, in the interim period from CoC Approval till Approval Date, with availability of Interim Finance, cash balance already available with the Corporate Debtor, cash flows of the Yamuna Expressway and any other operational cash flows of the Corporate Debtor. The Resolution Applicant estimates that with the help of Interim Finance of Rs. 300 crore, the Interim Resolution Professional may be able to deliver around 4,000-5,000 units during litigation period.

17.34. The brief Interim Finance Proposal is attached with the Resolution Plan for consideration, no objection and approval of IRP, CoC and the Institutional Financial Creditors, after the approval of the Resolution Plan by the CoC.

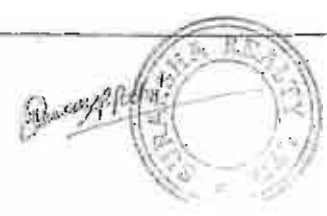
G. OTHER COVENANTS

17.35. The Contracts or agreements executed between the Homebuyers and the Corporate Debtor shall stand suitably amended, so as to reflect the time limit as projected for completion of projects under this Resolution Plan and more particularly contained in Annexure-I, as if the proposed delivery schedule was the original delivery schedule and other covenants of the agreements executed between the Homebuyers and the Corporate Debtor shall stand amended in accordance with the treatment provided for home buyers under this Resolution Plan, upon approval of this Resolution Plan by the Adjudicating Authority. Save and except as provided in the Resolution Plan, all other terms of agreements executed by the Homebuyers with the Corporate Debtors shall remain unchanged.

17.36. Homebuyers who have opted for possession, their PAL, agreement to sale and/or any other agreement executed with the Corporate Debtor shall stand amended as regards to the delay in possession penalty is concerned, and they shall be paid a penalty of Rs. 5 per sq. ft. per month/Rs. 50 per sq. yrds in case of Group housing and plots respectively, from the revised date of completion, as contemplated under this Resolution Plan, post grace period of 12 months as mentioned in this Resolution Plan till actual possession of their home.

17.37. If the completion of said homes/units is delayed by reason of any civil commotion or any military action or by reason of war, or enemy action, or earthquake or any act of God or pandemic or non-delivery of possession is as a result of change in any law or

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order of a court or as a result of government authority/State authority/Statutory Authority/Local legislative body or encroachments or such reasons which are beyond the control of the Corporate Debtor/ Resolution Applicants, the Corporate Debtor/Resolution Applicants shall be entitled to such extension of time as is lost in such circumstances for delivery of possession of such homes/units.

17.38. Penalties/rebate, if any, payable to the Home Buyers as per their agreement with the Corporate Debtor or as per the RERA or any other law shall be deemed accrued as on the Approval Date and shall stand satisfied and extinguished in perpetuity in order to facilitate Resolution Applicant to commence the resolution of the Corporate Debtor on clean slate.

17.39. The Resolution Applicants shall develop the New Projects / Towers / utilised FAR, if available as per Applicable Laws, on the vacant land parcels in Wishtown & Aman, Noida in line the Applicable Laws.

17.40. It is clarified that, the project configurations and construction specifications, amenities, etc. shall be in line with the sanctioned layout plan and provisional allotment letter issued to the homebuyers by the Corporate Debtor.

17.41. It is pertinent to mention that in the interest of the Home Buyers, it is important that work at site progresses on daily basis and to achieve completion within the timelines mentioned in the Resolution Plan around 12,000 workers may be required to be deployed at site on daily basis, however, in order to implement and monitor the progress on site, the following is essential and therefore taken into consideration, that JAL, or its sub-contractors, or any other person shall not be allowed to create any disruptions in progress of work at the site of any of the projects where incomplete projects need to be completed and cooperate for smooth transition.

17.42. Upon approval of this Resolution Plan by the Adjudicating Authority, necessary police protection shall be provided to the officials of the Corporate Debtor/ Land Bank SPV/ Resolution Applicants as well as to the contractor(s) and workers deployed at the site by the Corporate Debtor.

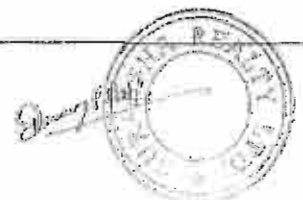
18. Treatment for Workmen dues under the Resolution Plan for the Operational Creditors

Claim Admitted Amount as per IM

18.1. The admitted claims of Workmen as on 31.03.2021 were Nil.

Treatment

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- 18.2. As per the confirmation provided by the team of Interim Resolution Professional vide email dated May 05, 2021, there are no workmen dues pertaining to the Corporate Debtor.
- 18.3. In the event any workmen dues are added to admitted claims by the Insolvency Resolution Professional prior to the Approval Date, the Resolution Applicants shall pay the same in accordance with the Code and the Regulations, from its internal sources.
- 18.4. Upon approval of this Resolution Plan by the Adjudicating Authority, all the litigations/ proceedings by employees/ workmen before any labour department and/or notices issued to the Corporate Debtor for non-payment of any dues/ contribution or any other moneys whether as compensation, damages or otherwise shall stand infructuous and litigation, if any, shall not be continued.
- 18.5. In case any stock options or warrants or rights to Equity Shares have been granted to workmen/ employees pursuant to any employee stock option plan/ policy of the Corporate Debtor, such options/ warrants/ rights, whether vested or unvested, exercised or un-exercised shall stand revoked with no claims or liabilities against the Corporate Debtor or the Resolution Applicants. No payment shall be made to such workmen/employees under this Resolution Plan in respect of the aforesaid stock options or warrants or rights to Equity Shares.
- 18.6. Existing manpower of the Corporate Debtor:

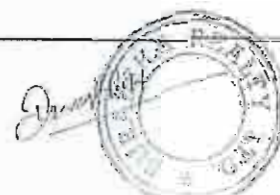
Subject to compliance of Section 29A of the Code, the Resolution Applicants may retain such existing manpower (workers and employees) of the Corporate Debtor that may be required for the operations of the Corporate Debtor pursuant to the review of their performance / co-operation within 90 days from the Approval Date. The Workers and employees shall co-operate to stabilise the operations of the Corporate Debtor and shall not create any hindrances in conducting operations of the Corporate Debtor by the Resolution Applicants.

19. Claims of Income Tax Department:

Disputed Claims of Income Tax:

- 19.1. The Income Tax authorities have made addition of Rs. 3,000 crore income, annually, to income of the Corporate Debtor, for the entire concession period under the Concession Agreement, treating transfer of land parcels under Concession Agreement as revenue subsidy. On the basis of such addition to income, presumptive revenue subsidy has been

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worked out by the income tax authorities for the total land provided to the Corporate Debtor and has been spread over the concession period of 36 years. Accordingly, total assessed tax liability (this has been set aside by Income Tax Appellate Tribunal and Income Tax Department's appeal is pending before the Hon'ble High Court of Allahabad) for the remaining period is a determined crystallized amount of Rs. 33,000 crore and not a future liability. The Income Tax Department has also raised tax demands of Rs. 3,334 crore for certain assessment years for the period prior to Insolvency Commencement Date. The Income Tax Department did not file Claim pertaining to above operational debt owed to them by the Corporate Debtor.

Treatment for the above Claims of Income Tax Department:

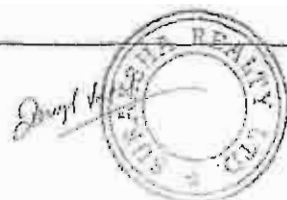
- 19.2. The Income Tax Department did not file the Claim within stipulated timeframe as provided in the Code. Hence, no payment is ought to be provided in the Resolution Plan in line with Jaypee Kensington Judgement, the relevant extract whereof has been reproduced hereinbelow for ready reference:

"135.1. Due adherence to the timelines provided in the Code and the related Regulations and punctual compliance of the requirements is fundamental to the entire process of resolution; and if a claim is not made within the stipulated time, the same cannot become a part of the Information Memorandum to be prepared by IRP and obviously, it would not enter into consideration of the resolution applicant as also of the Committee of Creditors. In the very scheme of the corporate insolvency resolution process, a resolution applicant cannot be expected to make a provision in relation to any creditor or depositor who has failed to make a claim within the time stipulated and the extended time as permitted by Regulation 12.

- 19.3. The Income Tax Department ought to have submitted the Claim to the Resolution Professional and it should have been decided by the Resolution Professional so that Resolution Applicant could proceed on a fresh slate, in line with in the Jaypee Kensington Judgement, the relevant extract whereof in relation thereto has been reproduced hereinbelow for ready reference:

*"Para 135.1
In Essar Steel (supra), while dealing with the topic 'Extinguishment of Personal Guarantees and Undecided Claims', this Court disapproved that part of the NCLT judgment which held that other claims, that might exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal, could be decided in an appropriate forum in terms of Section 60(6) of the Code. This Court specifically held that a resolution applicant cannot be made to suddenly encounter undecided claims after resolution plan submitted by him has been accepted; and in the scheme of the Code, all claims must be submitted to, and decided by, the resolution professional so that the resolution applicant could proceed on a fresh plate.*

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This Court, inter alia, held as under: -

"107. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count."

(Emphasis ours)

This is a determined and crystallised Operational debt and not a future liability. Nevertheless, the Claim of Income Tax Department is being dealt in the Resolution Plan as Operational Debt in accordance with the provisions of the Code. In view of the provisions of the Code, no amount shall be payable to the aforesaid Operational Creditors in accordance with the section 30 read with section 53 of the Code. However, payment of Rs. 0.10 crore shall be made towards such disputed Claim of the Income Tax Department under this Resolution Plan.

20. Claims of YEIDA:

Claim Admitted Amount as per IM pertaining to EDC including interest & Pending Work:

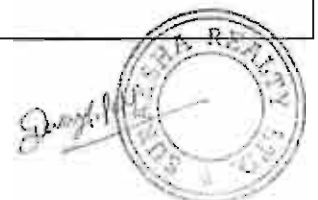
20.1. The admitted claims of YEIDA as per IM as on 31.03.2021 pertaining to EDC including interest & Pending Work are Rs. 461 crore.

Treatment:

20.2. In view of the provisions of the Code no amount shall be payable to the aforesaid Operational Creditor in accordance with the section 30 read with section 53 of the Code. However, payment of Rs. 0.10 crore shall be made towards the admitted claim of the said Operational Creditor.

Other Claims filed by YEIDA as per their claim form submitted to IRP:

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20.3. YEIDA filed claims of aggregate Rs. 6,111.60 crore, out of which IRP admitted Rs. 461 crore which has been dealt in the Resolution Plan by providing treatment as mentioned hereinabove. The remaining Claims of Rs. 5,650.60 crore that were filed by YEIDA includes Disputed Claim under Arbitration relating to 64.7% additional compensation of Rs. 1,689 crore.

TREATMENT FOR THE ABOVE CLAIMS OF YEIDA

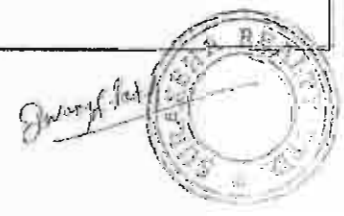
20.4. In order to provide for treatment to the Claims of YEIDA, it is imperative to understand the directions of the Hon'ble Supreme Court in Jaypee Kensington Judgement in right spirit and in holistic manner. Therefore, the relevant extract pertaining thereto is reproduced hereinbelow for ready reference:

"86. We may now enter into the first major point for determination in this batch of matters; and that relates to the stipulations in the resolution plan concerning the land providing agency YEIDA. The frontal aspect of this issue is about the provision made in the resolution plan for meeting with the contingent liability of additional compensation for land acquisition. The other aspect pertains to the directions by the Adjudicating Authority for execution of tripartite agreement amongst YEIDA, the corporate debtor JIL and the SPVs proposed to be set up in terms of the resolution plan. An ancillary aspect relates to certain reliefs and concessions sought for by the resolution applicant.

.....
88. The issue pertaining to additional amount of land acquisition compensation cropped up in the wake of a decision of the Full Bench of Allahabad High Court dated 21.10.2011 in the case of *Gajraj and Ors. v. State of U.P. and Ors.*: 2011 SCC Online All 1711, wherein the High Court ruled in favour of payment of additional compensation to the land owners involved therein. The said decision in *Gajraj* was upheld by this Court in the case of *Savitri Devi v. State of U.P. & Ors.*: (2015) 7 SCC 21. In sequel, a spate of litigation in Allahabad High Court concerning other parcels of land came up and several other land owners, including whose land stood acquired for the project in question, demanded additional compensation. It is stated by YEIDA that looking to such litigations and agitations, the Government of U.P. proceeded to set up a committee called the 'Chaudhary Committee'; and the said committee recommended for grant of additional compensation (to the extent of 64.7%) to the land owners whose land had been acquired. While accepting these recommendations, the Government of U.P. proceeded to issue G.O. dated 29.08.2014, directing YEIDA to ensure payment of additional compensation to all the land owners. In this turn of events, YEIDA demanded the amount of additional compensation from JIL to the tune of INR 2591.78 crores by its communication dated 20.01.2015 and yet another amount of approximately INR 247 crores by its communication dated 31.05.2017.

88.1. The aforesaid communications of YEIDA and the said G.O. dated 29.08.2014 were challenged by JIL by way of a writ petition before the High Court of Allahabad but, later on, JIL sought permission to withdraw with a view to seek recourse to the alternative remedy of arbitration, as provided in the CA. The High Court of Allahabad, by its order dated 03.11.2016, permitted JIL to withdraw and to pursue the alternative remedy of arbitration⁸⁰. Thereafter, the concessionaire JIL took up the matter in arbitration which led to the arbitral award dated 02.11.2019 in its favour, holding that the demand made by YEIDA was not sustainable. This award has been challenged by YEIDA under Section 34 of

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the Arbitration and Conciliation Act, 1996 and those proceedings, being Arbitration Case No. 3 of 2020, are pending in the Court of District Judge, Gautam Budh Nagar. It has also been pointed out that the said G.O. was struck down by the Allahabad High Court in other petitions; and the order so passed by the High Court has been challenged in SLP (Civil) No. 10015-10034 of 2020, pending in this Court.

89. At the stage of drawing up the resolution plan in question, the said arbitral award had been made with the result that the liability towards the amount of additional compensation was not standing against JIL. However, for the reason that the matter was sub judice, the resolution applicant considered it appropriate to make a provision for meeting with the contingency, in case this liability would ultimately get fastened on JIL; and proposed in the resolution plan as under: -

"1.2 Treatment of creditors

As part of the Resolution Plan, it is proposed that:

(i) As mentioned in this Plan, this Resolution Plan assumes that no amount is payable by the Corporate Debtor in relation to the Landowner Compensation Debt in view of the Award. However, if the said position changes on account of the Award being overruled then in relation to the Landowner Compensation Debt, the amounts payable to the landowners shall be collected directly by YEIDA in the following manner for the following parcels of lands (in relation to which such debt accrues), from the ultimate end-users:

(i) Land under development (real estate projects) - the compensation in this regard shall be collected by YEIDA from the Home Buyers;

(ii) Land already subleased to other entities by the Corporate Debtor - the compensation shall be collected from the respective sub-lessees to whom the lands have been subleased by the Corporate Debtor either directly or indirectly;

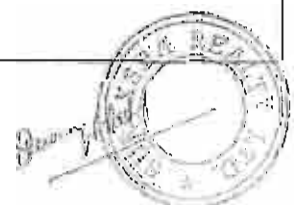
(iii) Unutilized land parcels - the compensation shall be collected from the end users in whose favour such land shall be transferred/subleased by the Corporate Debtor; and

(iv) Yamuna Expressway - Yamuna Expressway is a project of public utility and the ultimate owner of the project land is YEIDA, who will get the ultimate ownership of the Yamuna Expressway after the expiry of the concession period under the Concession Agreement and accordingly the compensation in this regard shall be payable by YEIDA."

91. Moreover, in Clauses 4, 14 and 27 of Schedule 3 of the resolution plan, while seeking 'reliefs and concessions', the resolution applicant mooted a few more propositions concerning YEIDA and the Concession Agreement, which have also contributed to the intricacies of the matter.

92. YEIDA took exception to several parts of the stipulations aforesaid before the Adjudicating Authority and essentially submitted that the liability towards the amount of additional compensation, in relation to the land acquired and leased to JIL, was that of JIL, although such a question was sub judice in challenge to the arbitral award under Section 34 of the Arbitration Act. It was submitted on behalf of YEIDA that in case the liability is ultimately mulcted on JIL, YEIDA cannot be driven to collect the amount of additional compensation from the end-users as proposed in the plan. It was asserted that the terms of CA provided for two payment components: one being of acquisition cost payable by the concessionaire and other being of leased rent to be paid by the sub-lessee/end-user; and given such components, it could not have been provided that YEIDA would collect the acquisition cost directly from the end-users.

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.....
105. With the observations foregoing, we may now take up another important aspect of the objections, which relates to the provisions in the resolution plan towards the amount of additional compensation, if payable.

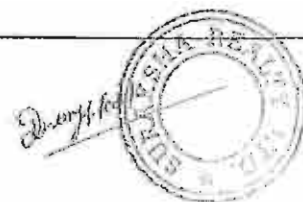
105.1. Concisely put, as per the resolution plan, the contingent liability concerning additional amount of land acquisition compensation is proposed to be dealt with in the manner that in the event any such amount of additional compensation is to be paid, YEIDA would collect the same from the end-users; and as regards the land of Expressway, such additional compensation shall be payable by YEIDA because YEIDA will be the end-user on getting ownership of the land of Expressway after expiry of the concession period. NBCC has justified these propositions on various grounds as noticed hereinabove. YEIDA takes serious exception to them and particularly to the stipulation that additional compensation in regard to the land of Yamuna Expressway would be payable by it. The Adjudicating Authority has made two-fold modifications in this regard. In paragraph 120 of the impugned order dated 03.03.2020, the Adjudicating Authority has said that to iron out creases and to make the resolution plan viable, it would direct that the plan shall be read to mean that YEIDA has a right to collect acquisition cost through the SPVs concerned. On the other hand, concerning the Expressway land, the Adjudicating Authority has provided in paragraph 122 of the impugned order that the resolution plan would be read to mean that it is left open to both the parties to have proper recourse before competent forum when the time comes for payment of additional compensation. In the submissions of YEIDA, such modifications were necessary to make the plan compliant with the rights and obligations under the CA.

105.2. We find the prescriptions in the resolution plan in regard to the contingent liability of additional compensation to be questionable on more than one count.

106. The question is yet to be finally determined as to whether such a liability towards additional amount of compensation rests with the corporate debtor JIL or with YEIDA, because the arbitral award made in favour of JIL is the subject matter of challenge in the Court. However, the contingency was required to be provided in the plan in case liability would be ultimately fastened on the corporate debtor JIL. It has not been suggested that any such bifurcation of liability, qua the land under Expressway on one hand and other parcels on the other, is a subject matter of the arbitration proceedings. However, going by the terms of the CA, prima facie, we are unable to find any indication therein that the liability for compensation with reference to the land under Expressway is not of the concessionaire. In any case, while making a provision for meeting with this contingent liability of additional amount of compensation, the resolution applicant could not have decided of its own that there will not be any liability of the concessionaire or its assigns towards the land under Expressway.

106.1. It appears that while proposing to create two different SPVs, the resolution applicant stumbled on an idea that the liability for additional compensation as regards Expressway land could be simply deflected to YEIDA with reference to the fact that YEIDA will get this land back after 36 years; and reflected this idea by way of the questioned proposition in the resolution plan. The Adjudicating Authority has chosen to leave this issue open, for being litigated at the appropriate time and before the competent forum. In our view, such a prescription as regards

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Expressway land amounts to alterations of the material terms of CA and cannot be made without the consent of YEIDA. This aspect could have only been disapproved.

106.2. Similarly, the resolution applicant, of its own, could not have decided that end-user would mean sub-lessee and thereby deflect even collection of the amount towards this liability on YEIDA and that too when YEIDA was not going to be a party in creation of any sub-lease. The structuring of these propositions regarding contingent liability turns out to be wholly illogical, apart from being at loggerheads with the terms of the Concession Agreement.

106.3. It needs no great deal of discussion to find that the said aspect concerning the provision for additional compensation, if not approved on material terms, is of significant commercial impact. Even the other modification by the Adjudicating Authority, that YEIDA shall have a right to collect acquisition cost through SPVs concerned, carry their own commercial implications. These are not the terms which could be taken up for modification without disturbing the financial proposal of the resolution plan. While these prescriptions could not have been approved, in our view, the Adjudicating Authority could not have entered into any process of modification. The only course open for the Adjudicating Authority (NCLT) was to send the plan back to the Committee of Creditors for reconsideration. "

20.5. It is important to mention that the plain and simple reading of the aforementioned directions of Hon'ble Supreme Court with respect to Claims of YEIDA, clarifies the spirit and intent of Hon'ble Supreme Court, as under:

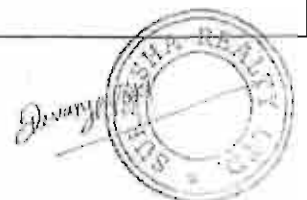
- a) Firstly, the Hon'ble Supreme Court acknowledged the fact that liability towards additional amount of compensation may ultimately fastened on the Corporate Debtor and therefore its important that this liability shall be dealt in the Resolution Plan, the relevant sentence is reproduced hereinbelow:

"... The question is yet to be finally determined as to whether such a liability towards additional amount of compensation rests with the corporate debtor JIL or with YEIDA, because the arbitral award made in favour of JIL is the subject matter of challenge in the Court. However, the contingency was required to be provided in the plan in case liability would be ultimately fastened on the corporate debtor JIL...."

The intent of Hon'ble Supreme Court while giving directions to provide for the contingency for such liability in the Resolution Plan can only be to provide treatment for such liability, in accordance with the provisions of the Code.

It can never be interpreted that the spirit and intent of the Hon'ble Supreme Court

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was to ask the Resolution Applicant to provide for treatment other than what mentioned in the provisions of the Code.

It can also not be interpreted that the Hon'ble Supreme Court sought to give preferential treatment to one operational creditor namely YEIDA over all other operational creditors including Claims of the Income Tax Department, that are similarly situated, against the provisions of the Code.

It can also not be understood to say that Hon'ble Supreme Court asked Resolution Applicants to provide for liability of such significant amount knowing well that there is no entitlement of such Creditor as per provisions of Section 30 (2) of the Code, as there is no liquidation value available to such Creditor.

Rather, it can only be understood to say that the directions of the Hon'ble Supreme Court as mentioned above, are very much in line and harmonious, with the directions given by the Hon'ble Supreme Court in its said Judgment with respect to undecided claims, and also in line with its earlier Judgements of Essar Steel and Ghanshyam Mishra, the relevant extract are reproduced hereinbelow for ready reference:

Essar Steel Judgement

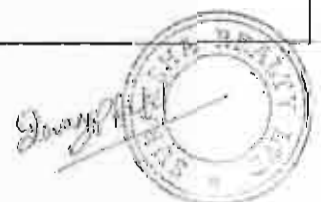
"67. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count."

(Emphasis ours)

Jaypee Kensington Judgement

"Para 135.1

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In Essar Steel (supra), while dealing with the topic 'Extinguishment of Personal Guarantees and Undecided Claims', this Court disapproved that part of the NCLT judgment which held that other claims, that might exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal, could be decided in an appropriate forum in terms of Section 60(6) of the Code. This Court specifically held that a resolution applicant cannot be made to suddenly encounter undecided claims after resolution plan submitted by him has been accepted; and in the scheme of the Code, all claims must be submitted to, and decided by, the resolution professional so that the resolution applicant could proceed on a fresh plate.

(Emphasis-ours)

Ghanshyam Mishra and Sons Private Limited versus Edelweiss Asset Reconstruction Company Limited (decided on 13.04.2021) Judgement

"86. It is at this stage, that the plan becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution Plan. The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable."

"95 (i).... On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

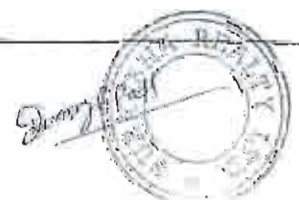
"111.In our view, the observations made in the aforesaid paragraphs, if permitted to remain, would totally frustrate the object of I&B Code of revival of a Corporate Debtor and to resurrect it as a going concern. As held by this Court, the successful resolution applicant cannot be flung with surprise claims which are not part of the resolution plan."

(Emphasis ours)

In view of the above, the Resolution Applicants shall provide for treatment for Claims of YEIDA as per the provisions of the Code, and in line with the directions of Hon'ble Supreme Court in Jaypee Kensington Judgement dated March 24, 2021, Essar Steel Judgement and Ghanshyam Mishra Judgement.

- b) Secondly, the Hon'ble Supreme Court set-aside the specific treatment provided by the NBCC in its Resolution Plan qua the liability as regard to Expressway Land, as it

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amounted to alterations of the material terms of CA without consent of YEIDA, the relevant sentences are reproduced hereinbelow:

"... It has not been suggested that any such bifurcation of liability, qua the land under Expressway on one hand and other parcels on the other, is a subject matter of the arbitration proceedings. However, going by the terms of the CA, prima facie, we are unable to find any indication therein that the liability for compensation with reference to the land under Expressway is not of the concessionaire. In any case, while making a provision for meeting with this contingent liability of additional amount of compensation, the resolution applicant could not have decided of its own that there will not be any liability of the concessionaire or its assigns towards the land under Expressway.

106.1. It appears that while proposing to create two different SPVs, the resolution applicant stumbled on an idea that the liability for additional compensation as regards Expressway land could be simply deflected to YEIDA with reference to the fact that YEIDA will get this land back after 36 years; and reflected this idea by way of the questioned proposition in the resolution plan. The Adjudicating Authority has chosen to leave this issue open, for being litigated at the appropriate time and before the competent forum. In our view, such a prescription as regards Expressway land amounts to alterations of the material terms of CA and cannot be made without the consent of YEIDA. This aspect could have only been disapproved.

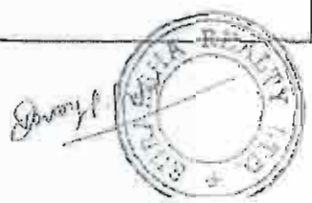
"...106.2. Similarly, the resolution applicant, of its own, could not have decided that end-user would mean sub-lessee and thereby deflect even collection of the amount towards this liability on YEIDA and that too when YEIDA was not going to be a party in creation of any sub-lease. The structuring of these propositions regarding contingent liability turns out to be wholly illogical, apart from being at loggerheads with the terms of the Concession Agreement. ..."

It is clear and evident from the above that the Resolution Applicant cannot provide treatment alike what NBCC provided in its earlier plan, as its already set-aside by Hon'ble Supreme Court. The Resolution Applicants cannot simply deflected, the liability for additional compensation as regards Expressway land, to YEIDA, under the pretext that the YEIDA will get this land back after 36 years.

Similarly, the Resolution Applicants cannot decide under the Resolution Plan that the end-user would mean sub-lessee and thereby it can deflect even collection of the amount towards this liability on YEIDA when YEIDA is not going to be a party in creation of any sub-lease.

The Resolution Applicants cannot provide for treatment which is wholly illogical and

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that amounts to material alterations in terms of the Concession Agreement. However, by no stretch of imagination, it could be understood that Hon'ble Supreme Court refrained the Resolution Applicants to provide for treatment as per the provisions of the Code qua liability of additional compensation.

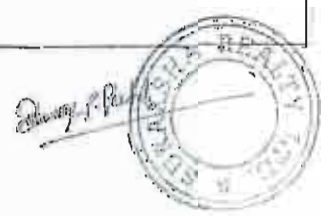
The directions of Hon'ble Supreme Court are clearly qua the treatment provided by NBCC in its earlier plan and it cannot be said that Hon'ble Supreme Court intended to lay down general principle of law against the provisions of the Code. If the intent of Hon'ble Supreme Court would have been to refrain the Resolution Applicants to provide for treatment of such claim as per the provisions of the Code then it would have expressly said so in its judgement. Hence, it cannot be implied that by setting aside treatment provided by NBCC in its earlier Resolution Plan, being wholly illogical and at loggerheads with the terms of the Concession Agreement, the Hon'ble Supreme Court refrained the Resolution Applicants to provide for treatment in accordance with the provisions of the Code. Rather, the Resolution Applicant needs to provide for treatment of such liability of Corporate Debtor in terms of provisions of the Code.

- c) Thirdly, the Hon'ble Supreme Court clearly is of the view that Adjudicating Authority cannot approve the Resolution Plan by modifying itself thinking that such modifications will not disturb the financial proposal of the resolution plan, as evaluating viability and feasibility of the Resolution Plan falls squarely withing the commercial wisdom of the Committee of Creditors. The relevant sentences are reproduced hereinbelow:

"...106.3. It needs no great deal of discussion to find that the said aspect concerning the provision for additional compensation, if not approved on material terms, is of significant commercial impact. Even the other modification by the Adjudicating Authority, that YFIDA shall have a right to collect acquisition cost through SPVs concerned, carry their own commercial implications. These are not the terms which could be taken up for modification without disturbing the financial proposal of the resolution plan. While these prescriptions could not have been approved, in our view, the Adjudicating Authority could not have entered into any process of modification. The only course open for the Adjudicating Authority (NCLT) was to send the plan back to the Committee of Creditors for reconsideration...."

It is clear and evident from the above that the Hon'ble Supreme Court directed that the Adjudicating Authority did not have powers to approve the earlier Resolution Plan of NBCC with modifications, as the modifications carried out by the Adjudicating

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Authority in earlier Resolution Plan of NBCC had significant commercial implications which only Committee of Creditors could have examined in its commercial wisdom. The aforesaid directions of the Hon'ble Supreme Court were specific to the earlier Resolution Plan of NBCC wherein Adjudicating Authority, approved the Resolution Plan with modifications, ignoring the commercial implications of such modifications.

Therefore, by no stretch of imagination, it can be said that the Hon'ble Supreme Court refrained the Resolution Applicants to provide for treatment of such liability as per the provisions of the Code in the Resolution Plan that are not even submitted at the time of passing of said Judgement by Hon'ble Supreme Court. Rather, because entire substratum of Corporate Insolvency Resolution concerning Corporate Debtor had undergone a sea of changes including commercial implications under earlier Resolution Plan of NBCC, the Hon'ble Supreme Court extended opportunity to the Resolution Applicants Suraksha Realty and NBCC to submit modified / fresh Resolution Plans, as per the provisions of the Code.

- d) Lastly, the Hon'ble Supreme Court while extending opportunity to the Resolution Applicants Suraksha Realty and NBCC directed that the Resolution Plan shall not only be in accord with the observations and findings of the Judgement but also compliant with the requirements of the Code and CIRP Regulations. The relevant para is reproduced hereinbelow:

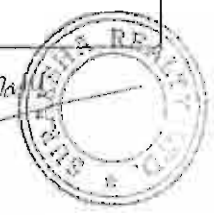
Para 223

"223. Taking all the facts and circumstances into account and in keeping with the spirit and purport of the orders passed in the past, we are inclined to again exercise the powers under Article 142 of the Constitution of India and to enlarge the time for completion of CIRP concerning JIL while extending opportunity to the said resolution applicants Suraksha Realty and NBCC to submit modified/fresh resolution plans, which are compliant with the requirements of the Code and the CIRP Regulations and are in accord with the observations and findings in this judgment."

It is clear and evident that the Hon'ble Supreme Court did not have any intentions to override the requirements of the Code and CIRP regulations by way of its Judgement rather it intended to supplement the provisions of Code and CIRP regulations. It therefore allowed NBCC to also modify, if deemed fit, its earlier Resolution Plan to make it compliant as per the provisions of the Code and CIRP regulations. Therefore, it is rather duty of Resolution Applicants to provide for treatment of each creditor in terms of provisions of the Code and CIRP regulations as per the directions of Hon'ble Supreme Court to make their modified / fresh plan compliant.

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e) In view thereof, the Resolution Applicant is rather duty bound to provide treatment for each of the creditor as per the provisions of the Code and CIRP regulations, in order to make its Resolution Plan compliant.

20.6. In view of the above, the Resolution Applicants herein propose to deal with the Claim of YEIDA including disputed Claim of additional farmer's Compensation strictly in accordance with the provisions of the Code and CIRP regulations. The Resolution Applicant herein propose to deal with the disputed Claim of the additional farmer's compensation, as an Operational Debt, as filed by YEIDA itself, so that Resolution Applicant could proceed on a fresh / clean plate, in line with observations in Jaypee Kensington Judgement, the relevant extract in relation whereto has been reproduced hereinbelow for ready reference:

"Para 135.1

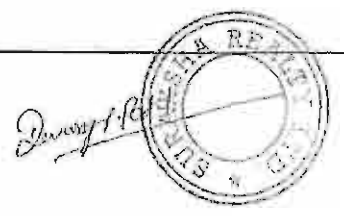
In Essar Steel (supra), while dealing with the topic 'Extinguishment of Personal Guarantees and Undecided Claims', this Court disapproved that part of the NCLT judgment which held that other claims, that might exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal, could be decided in an appropriate forum in terms of Section 60(6) of the Code. This Court specifically held that a resolution applicant cannot be made to suddenly encounter undecided claims after resolution plan submitted by him has been accepted; and in the scheme of the Code, all claims must be submitted to, and decided by, the resolution professional so that the resolution applicant could proceed on a fresh plate.

This Court, inter alia, held as under: -

"107. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count."

20.7. The YEIDA has sent demand for recovery of Claim in past and itself has filed its Claim as Operational Creditor and it is also squarely covered under the definitions of the

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Claim, Debt, Creditor, Operational Creditor, the relevant definitions have been reproduced hereinbelow for ready reference:

"Section 3 (6) - "claim" means -

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured

(10) "creditor" means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder.

(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt.

20.8. In view of the provisions of the Code, no amount shall be payable to the aforesaid Operational Creditors in accordance with the section 30 read with section 53 of the Code. Therefore, payment of Rs. 0.10 crore shall be made towards such disputed Claim of the YEIDA under this Resolution Plan.

20.9. It is submitted that the Resolution Applicant has not carried out any alterations in the Concession Agreement under the garb of the Resolution Plan, it has only lawfully provided treatment to Claim in terms of provisions of the Code in order to have clean slate / fresh plate in line with several Hon'ble Supreme Court Judgements.

20.10. Based on meeting with counsels of YEIDA on April 23, 2021, it is evident and clear that there is difference of opinion in regard to certain legal aspects which may be decided in appropriate forum in due course as per applicable laws, however the process of litigation / adjudication may lead to significant delays in approval of the Resolution Plan of Suraksha Group, if voted favourably by Committee of Creditors, thereby resulting not only, in significant delays in delivery of homes to home buyers that are suffering unnecessarily since several years, without no fault on their part but also in recovery of public sector banks involving monies of public depositors. It is important to mention here that the earlier plan of NBCC, that was approved by Committee of Creditors was under litigation for almost two years before its rejection on March 24, 2021, resulting in significant delays in delivery of homes to home buyers and recovery of dues of banks involving public monies.

20.11. In this regard, we respect and appreciate the stand taken by YEIDA to support the

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Resolution of the Corporate Debtor, as evident in following para of Hon'ble Supreme Court Judgement dated March 24, 2021, reproduced herein below for ready reference:

Para 108

Before concluding on this point for determination where we have accepted the major parts of the objections of YEIDA, we may, in fairness to all the parties concerned, reiterate that despite stating its objections, YEIDA has consistently maintained before the NCLT as also before this Court that it does not stand to oppose the resolution plan only for the sake of opposition; rather it would like the plan to succeed but, it has a public duty to ensure that the framework under CA is preserved and else, it would be ready to do everything within its power to ensure that the plan is a success. Thus, it would not be out of place to add a sanguine hope that being the owner of the land in question and public authority, YEIDA, who had envisaged and promoted the entire project, would, in future dealing with the matter, act with caution and circumspection, while earnestly reflecting upon the practical impact of its propositions/decisions on various stakeholders, including the homebuyers.

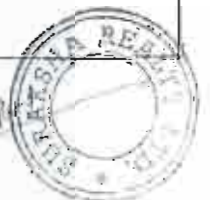
20.12. It is necessary to mention that the Suraksha Group also is, of the same view, that the resolution of the Corporate Debtor should succeed and therefore would like to work out amicable solution, if possible, without prejudice to the treatment mentioned hereinabove. In view thereof, it is hereby informed to the IRP and Committee of Creditors that Suraksha Group is already in discussions with YEIDA to find possible amicable solution. In case of mutually acceptable amicable solution, the Resolution Applicant shall have right to replace such amicable solution in the Resolution Plan, provided it does not affect the treatment provided to various stakeholders, other than Claim of YEIDA, under the Resolution Plan and is as per Applicable Laws. It is clarified that in case such amicable solution is affecting the treatment of any other stakeholder then such modification to the Resolution Plan shall be part of the Resolution Plan only upon concurrence of such stakeholder.

20.13. Without prejudice to the treatment provided herein above in the Resolution Plan with respect to Claim of YEIDA, the Resolution Applicants are already in process of working out amicable settlement/ solution of such claim of YEIDA on mutually acceptable terms and conditions, on or before the approval of the Resolution Plan by the Adjudicating Authority.

21. Claims of other Operational Creditors:

Claims filed by other Operational Creditors other than Workmen, Income Tax Department and YEIDA:

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21.1. The Claims of other Operational Creditors amounts to Rs. 3.2 crore.

Treatment for the above Claims of other operational creditors:

21.2. In view of the provisions of the Code, no amount shall be payable to the aforesaid Operational Creditors in accordance with the section 30 read with section 53 of the Code. Therefore, payment of Rs. 0.10 crore shall be made towards such Operational Creditors under this Resolution Plan.

21.3. All dues payable to Operational Creditors (excluding any mandatory payments relating to workmen dues of preceding 24 (twenty four) months) shall be written off in full and shall be, and be deemed to be, permanently extinguished as on the Approval Date.

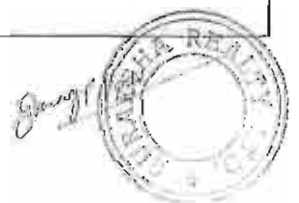
22. Treatment of the related party transaction between JAL and the Corporate Debtor

22.1. We understand that there are several related party contracts entered into between the Corporate Debtor and JAL, its erstwhile promoter company. The Corporate Debtor being alter ego of JAL and JAL being promoter of the Corporate Debtor, had taken control of almost all the activities of Corporate Debtor through the following agreements:

- a) Developer Agreement dated 11 April 2011 for development of land parcels located in Agra
- b) Developer Agreement dated 9 October 2010 for development of land parcels located in Jaganpur
- c) Developer Agreement dated 9 October 2010 for development of land parcels located in Mirzapur
- d) Developer Agreement dated 1 May 2009 for development of land parcels located in Noida
- e) Developer Agreement dated 6 July 2011 for development of land parcels located in Tappal.
- f) Works Contract dated 27 November 2007 for operations and maintenance of Yamuna Expressway.

The above contracts /agreements are such contracts wherein JAL is taking costs plus margin without carrying out construction activity itself as contractor. It has simply sub-contracted all the works to down to sub-contractors. Such contracts / agreements, if not terminated, the Resolution Applicants can never be able to take control of the activities of the Corporate Debtor. Further, the resolution plan wherein the Resolution Applicants is unable to take control of business operations / activities of the Corporate Debtor can

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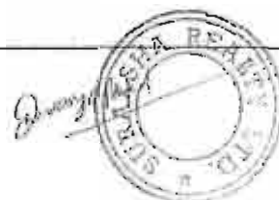
never succeed. Moreover, such agreements / contracts are against the interest of the Corporate Debtor. These related party agreements needs to be terminated in order to implement the Resolution Plan including constructing and completing the Projects and handing over the homes to homebuyers.

Further, as per our understanding, some of the lands of the Corporate Debtor were sold to the lender(s) of JAL somewhere in and around 2015-16 against set-off of debt of JAL to such lender and consideration was to be paid to the Corporate Debtor of around Rs. 450 crore, however the same was not paid by JAL to the Corporate Debtor thereby adversely affecting the fund infusion for completion of Real Estate Projects. Accordingly, instead of recovering such money upfront, the same was being set-off as margin under the costs plus works contract, entered into between Corporate Debtor and its related party company i.e. JAL, against the interest of all the stakeholders. We understand that significant amounts have been set-off so far in such arrangement instead of recovering and infusing the same into the projects. We further understand that some of the lands of the Corporate Debtor were given to another lender of the JAL above; Rs. 71 crore is yet to be paid to the Corporate Debtor. We understand that similar to the above, the Corporate Debtor under the common management gave contract of maintenance of Wishtown in advance, whereas the Project was yet to be completed and under said contract, transferred around Rs. 278 crore to the JAL, yet to be paid to the Corporate Debtor. In view of such transactions and as per books of accounts of the Corporate Debtor, JAL has to pay a sum of Rs. 693 crore alongwith further interests thereon to the Corporate Debtor.

It is imperative to terminate such related party contracts, for effective implementation of the Resolution Plan.

- 22.2. In view thereof, all the existing contracts/agreements (including but not limited to contracts more particularly mentioned in Annexure-IV hereto), pertaining to development of land parcels, road assets, real estate projects or otherwise whatsoever between JAL and the Corporate Debtor shall stand terminated immediately upon the Approval Date and the Claim, any payment (including but not limited to liquidated damages) and other compensation from the Corporate Debtor under such agreements/contracts, if any available to JAL from the Corporate Debtor shall be deemed to have been arisen prior to Approval Date and shall be treated as Claim of the Operational Creditor and therefore shall stand extinguished as there is no entitlement as per the provisions of the Code.
- 22.3. The current development, construction and maintenance contracts or any other contract with Jaiprakash Associates Limited, ("JAL") which are on cost plus basis, shall stand terminated upon Approval Date, without any consequence whatsoever on JIL and / or the Resolution Applicants, and enter into fresh construction contracts with the vendors as may be selected by the Resolution Applicant in accordance with its policies and such

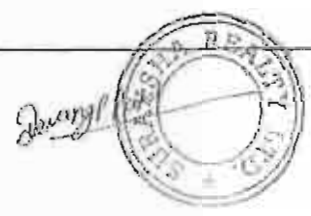
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contracts shall be entered into on arms' length basis as per the market standard.

- 22.4. As per the understanding of the Resolution Applicants, there is common electricity connection for Wishtown between the Corporate Debtor and JAL in Noida. From the Approval Date, the Corporate Debtor shall not pay any electricity expenses on behalf of JAL.
- 22.5. Further, there shall be no liability whether monetary or otherwise contractual or legal, on part of the Corporate Debtor or the Resolution Applicants in relation to termination of such contracts/agreements as the JAL is related party and responsible for present state of affairs of the Corporate Debtor. It is clarified that JAL cannot be allowed to take advantage of the termination, under the garb of seeking appropriate remedy under the Applicable Laws like any other general regular contract, being the related party, entity responsible for present state of affairs of the Corporate Debtor and on account of nature of contracts as explained in clause 22.1 above.
- 22.6. In the event of any past transfer of any interest (economic or beneficial) over the land comprising in real estate projects of the corporate debtor to JAL, wherein the ownership of the land still vests with the Corporate Debtor, the Resolution Applicants shall have a right to terminate/cancel/rescind any such arrangement without any liability (monetary or otherwise) on the Corporate Debtor or the Resolution Applicants as the case may be.
- 22.7. JAL shall have no right of set-off pertaining to receivables by the Corporate Debtor from JAL, in the event of any termination of contracts by the Corporate Debtor and/or the Resolution Applicants, save and except as per directions of Jaypee Kensington Judgement.
- 22.8. In relation to the related party agreements and arrangements entered into by the Corporate Debtor and JAL or any of its affiliates, all demands, charges, fees, penalties or termination fees that may be applicable and payable by the Corporate Debtor (pursuant to the underlying agreements or arrangements) on account of termination of the contracts with JAL or its affiliates (as applicable) shall stand extinguished, being the Claim of the Operational Creditor prior to Approval Date.
- 22.9. The existing maintenance agreements with JAL shall stand terminated on the Approval Date and the Home Buyers shall execute a new agreement for maintenance directly with Corporate Debtor, on the similar terms and conditions. Any payment made by the Home Buyers to JAL under such maintenance agreements shall be returned by JAL, to

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the Home Buyers who shall in turn pay that amount to the Corporate Debtor/ SPV towards maintenance of the projects under the new maintenance agreement that shall be executed by the Home Buyers with the Corporate Debtor/ SPV and/or its nominees. Any such Claims against Corporate Debtor for the monies paid by Home Buyers to JAL, as mentioned above, shall be deemed to have arisen on or before Approval Date and shall stand satisfied and extinguished upon approval of this Resolution Plan against Corporate Debtor and / or Resolution Applicants, without affecting the amounts recoverable by the Corporate Debtor from JAL. Further, no such existing claim or due shall subsist against the Corporate Debtor and the Resolution Applicants. The Claims, if any, raised by JAL, upon and pursuant to the termination of the aforementioned contracts shall deemed to have been arisen prior to Approval Date and shall stand extinguished, being Claim of the Operational Creditors.

23. Treatment under the Resolution Plan with respect to the liability on Corporate Debtor with respect to the Jaypee Healthcare Ltd ("JHL")

All contingent liabilities as more particularly detailed in the information memorandum or appearing in the books of the Corporate Debtor or otherwise, inter-alia including any contingent liabilities relating to guarantee(s), shortfall undertaking or any other similar instrument provided by the Corporate Debtor to secure the financial indebtedness of Jaypee Healthcare Limited or any other person, along with any related legal proceedings (including criminal proceedings), if any, shall stand irrevocably and unconditionally abated, and extinguished in perpetuity on and in with effect from date of approval of Resolution Plan by the Adjudicating Authority.

The Corporate Debtor shall have right of subrogation against its subsidiary JHL, in the event the pledged shares owned by the Corporate Debtor are enforced and monies are recovered by the lenders of JHL.

It is clarified that, without prejudice to the above mentioned treatment, the Resolution Applicants is in discussion with Yes Bank to explore possibility of mutually acceptable amicable solution.

24. Treatment under the Resolution Plan for the Equity Shareholders

Equity Shareholders:

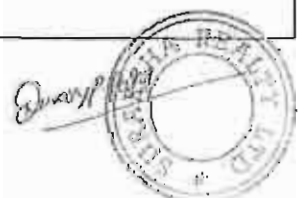
Balance Sheet as on 31.03.2021:

24.1. The outstanding equity share capital as on 31.03.2021 was Rs. 1389 crore.

Treatment:

Reduction of entire share capital of Corporate Debtor

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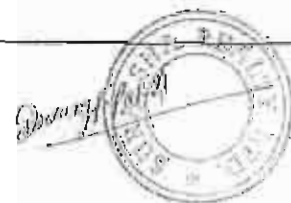
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- 24.2. Upon approval of the Resolution plan by NCLT, the issued, subscribed and paid up share capital of the Corporate Debtor including preference shares if any, shall be cancelled and reduced in its entirety, without requiring any further act, instrument or deed, such that on effecting the said reduction, the entire share capital of the Corporate Debtor held by the share holders of the Corporate Debtor shall be deemed to have been cancelled immediately on effectiveness of such cancellation and reduction as above, the issued, subscribed and paidup share capital of the Corporate Debtor shall stand reduced to NIL;
- 24.3. Upon approval of the Resolution plan by NCLT, the face value of the cancelled shares shall be credited to "Capital Reserve Account" of the Corporate Debtor;
- 24.4. The aforesaid cancellation of the issued, subscribed and paid up share capital of the Corporate Debtor including preference shares if any, shall be affected as part of the order of the Adjudicating Authority approving this plan. The order of the Adjudicating Authority sanctioning this Resolution Plan shall be deemed to be an order under Section 66 of the Companies Act, 2013 confirming the reduction of share capital of the Corporate Debtor and no separate sanction under Section 66 of the Companies Act, 2013 shall be necessary.
- 24.5. The share certificate (either physically or in electronic form) held by the shareholders of the Corporate Debtor shall stand cancelled on NCLT Approval Date without any further act, instrument or deed and the shares of the Corporate Debtor held by any of the shareholders in dematerialised form shall stand cancelled by appropriate corporate action and all the issued, subscribed and paid-up equity share capital of the Corporate Debtor relating to the existing stakeholders shall stand extinguished in full, with the issuance of the new equity shares. The Depositories shall take necessary action to update their records and to give effect to the said reduction/ cancellation.
- 24.6. Consequent to the cancellation and reduction of share capital of the Corporate Debtor, the Corporate Debtor shall not be required to add words "and reduced" as suffix to its name.

Delisting of the Equity Shares of Corporate Debtor-

- 24.7. The Corporate Debtor shall take the steps for delisting of its Equity Shares in accordance with the provisions of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, as amended from time to time, read with the Securities and Exchange Board of India (Delisting of Equity Shares) (Amendment) Regulations, 2018 issued by the SEBI on July 29, 2019, as amended from time to time:

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- a) The cancellation of shares, capital reduction and delisting shall be applicable to erstwhile shareholders of Corporate Debtor;
- b) shall be pursuant to the Approval Date and shall not require any other procedure as required under the Companies Act, including that under Section 66 of the Companies Act or regulations of the SEBI and under SCRA and SCRR; and
- c) shall not require the consent of any of the creditors of Corporate Debtor or approval of the shareholders of Corporate Debtor as the Resolution Plan upon being approved by the NCLT shall be binding on Corporate Debtor and its stakeholders (including its creditors and shareholders)."

24.8. Public Existing shareholders shall be given an aggregate exit at a price of Rs. 0.14 crore which is not less than the liquidation value, in the opinion of the Resolution Applicants, as determined under regulation 35 of the Regulations, after paying off dues in the order of priority as defined under section 53 of the Code and no amount shall be paid to the Promoter Shareholders.

24.9. The Corporate Debtor shall thereafter intimate and disclose delisting of such shares along with the justification for exit price in respect of delisting proposed to the recognized stock exchanges within one day of Resolution Plan being approved under section 31 of the Code.

24.10. Accordingly, the existing paid up share capital shall stand to be fully written down. ("Capital Reduction"):

Table 19: Shareholding after resolution of the Corporate Debtor

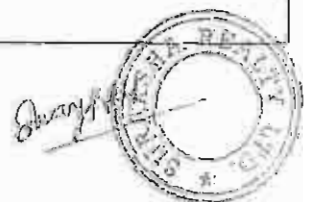
Share holders	Before Resolution				After Resolution			
	No. of shares (in Cr)	Face Value (In Rs.)	Amount (in Rs. Crore)	% age of share holding	No. of shares (in Cr)	Face Value (In Rs.)	Amount (in Rs. Crore)	% age of share holding
Existing Promoter	84.70	10	847.00	60.98%	0.00	10	0.00	0.00%
New Promoter	-	10	-	0.00%	12.50	10	125.00	100.00%
Public	54.19	10	541.90	39.02%	0.00	10	0.00	0.00%
Total	138.89	10	1,388.90	100.00%	12.50	10	125.00	100.00%

25. Summary Statement showing treatment of all stakeholders

Table 20: Summary Statement showing treatment of all stakeholders including existing

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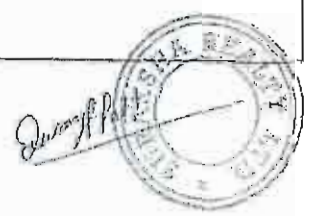
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Home Buyers, financial creditors and operational creditors of the Corporate Debtor

Sr No.	Stakeholders	Claims Admitted (Rs. Crore)	Treatment
1.	CIRP cost	5.45	The CIRP costs shall be paid on or before any payment made to any other creditor.
2.	Institutional Financial Creditor(s)	9782.60	Issuance of NCDs: Rs. 1,200 crore Land Parcels: Rs. 6,536 Crore
3.	Operational Creditor(s) being YEIDA	461.00	Payment of Rs 0.10 crore is proposed towards the operational creditors.
4.	Operational Creditor(s) other than YEIDA	3.20	Payment of Rs. 0.10 crore is proposed towards the operational creditors
5.	Fixed Deposit Holders	38.95 (as on 29.05.2021)	Payment of Rs. 38.42 crore in 3 equal half yearly instalments from the Approval Date on pro rata basis
6.	Home Buyers	12,806.00 (as on 29.05.2021)	Bringing working capital line of Rs. 3,000 for completion of construction of projects within time prescribed in Part II of this Resolution Plan. No payment is proposed towards the penalty/rebate amounts of the Home Buyers. Home Buyers shall not deduct these penalties/rebate(s) from their outstanding dues to the Corporate Debtor. No refunds shall be given under this Resolution Plan except as mentioned in clause 17 of the Resolution Plan. On possession of homes or refund against this claim and upon approval of this Resolution Plan, this claim shall stand extinguished and the obligation to deliver homes shall stand extinguished upon handing over possession of homes.
7.	Existing Equity shareholders		Existing Equity share capital shall be written down fully. Payment of Rs. 0.14 crore is proposed to Public Shareholders.

Table 21: Summary Statement showing treatment of Sub-judice Operational Creditors' Claims:

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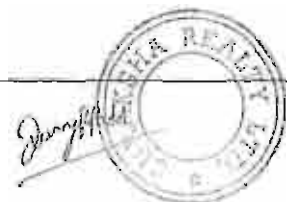
Sr. No.	Claimant	Claim Amount (In Rs. Crore)	Treatment
1.	YEIDA - Additional Compensation to Farmers 64.7%	1,689	<ul style="list-style-type: none"> In view of the provisions of the Code, there are no amounts payable to the Operational Creditors however Rs. 0.10 crore shall be made towards the claim of the said operational creditor towards additional compensation to farmers.
2.	Income Tax and other claims	3,331	<ul style="list-style-type: none"> This is a determined and crystallised Operational debt and not a future liability and therefore treated under this Resolution Plan. In view of the provisions of the Code, there are no amounts payable to the Operational Creditors however Rs. 0.10 crore payment shall be made towards the claim of the said operational creditor towards Income Tax Demands
3.	Income Tax and other claims (Revenue Subsidy)	33,000	

26. Term of Resolution Plan and the Implementation Schedule

Turnaround Plan

- 26.1. Corporate Debtor is currently undergoing corporate insolvency resolution proceedings under the Code and Regulations. As part of this process, the Interim Resolution Professional has invited proposals for a resolution plan for the Corporate Debtor pursuant to the directions of the Hon'ble Supreme Court of India.
- 26.2. This Resolution Plan is being submitted pursuant to the Information Memorandum and is on the basis of information provided by the Interim Resolution Professional and is intended to address the interests of all stakeholders such that a holistic, long-term and balanced resolution emerges in the process. The key elements of the insolvency resolution include equity infusion, debt restructuring, addressing dues of creditors, future working capital requirements, organizational and operational strategies.
- 26.3. The Resolution Applicants have provided suitable treatment to the outstanding dues of the creditors and bring in its expertise in developing real estate projects to ensure that the stuck projects of the Corporate Debtor are completed in terms of the covenants contained in the Resolution Plan. The Resolution Applicants will also bring in additional working capital to complete the stuck projects. The Resolution Applicants will also put efforts to sale the unsold inventory in the projects to generate additional cashflows and

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the projects will be completed in timebound manner.

Term and Implementation Schedule

26.4. The Resolution Applicants undertake to implement the Resolution Plan as under:

- a) pay the Insolvency Resolution Process Cost as per the Code and Regulations;
- b) pay the amounts, as mentioned under the Resolution Plan, to the Operational Creditors in priority to the payments to the Financial Creditors;
- c) allow enforcement of security interest in line with Jaypee Kensington Judgement, as mentioned under the Resolution Plan, to the Institutional Financial Creditors that have opted to not vote in favour of the Resolution Plan, in priority to the payments to the Assenting Institutional Financial Creditors;
- d) arrange for Rs. 3,000 crore facility for the purpose of completion of the Real Estate Projects of the Corporate Debtor within 90 days of the Approval Date.
- e) The period of implementation of the Resolution Plan for Assenting Institutional Financial Creditors shall be satisfied when the transfer of the beneficial ownership of Assenting Land Parcels and Assenting Surplus Lands for the Assenting Institutional Financial Creditors and issuance of Assenting NCDs, as per the Resolution Plan, are completed. The Resolution Applicant shall complete the same within 6 months or any other mutually extendable date.
- f) Other activities as appearing in this Resolution Plan shall be completed as per the Table hereinbelow:

Table 22: Term and Implementation Schedule

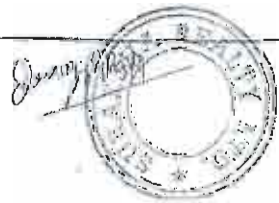
Steps	Implementation of various Activities	Indicative Term / Schedule from the Approval Date
1.	<ul style="list-style-type: none"> • Re-constitution of Board of Directors • Setting up of management team and control systems • Completion of Definitive Documents Engagement of Contractors and execution of fresh contracts 	3 months*
2.	Improvement in pace of construction of Wishtown Project	4 th month onwards

*However, the construction activities being undertaken in the projects shall continue during this period.

- g) The implementation of the Resolution Plan shall be completed on the Closing Date.

27. Mechanism regarding Management, Control & Supervision of the affairs of the Corporate

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Debtor

Phase I Period -

from date of approval of Committee of Creditors till the NCLT Approval Date

27.1. The Phase I Period as appearing in this Resolution Plan shall mean the period from the date of approval of the Resolution Plan by Committee of Creditors till the NCLT Approval Date. The Interim Resolution Professional shall continue to manage the affairs of the Corporate Debtor. The Interim Resolution Professional shall facilitate, in accordance with the Code and Applicable Law, access to information, systems, employees and contractual counterparties including homebuyers, contractors, etc., of the Corporate Debtor to the Resolution Applicants and construction to continue.

Phase II Period - from the NCLT Approval Date till Approval Date

27.2. The Phase II Period as appearing in this Resolution Plan shall mean the period from the NCLT Approval Date till the Approval Date.

27.3. Management and Control of the Corporate Debtor: On and from the NCLT Approval Date, and till the occurrence of the Approval Date, the Corporate Debtor shall be managed by the Implementation and Monitoring Committee.

Implementation and Monitoring Committee

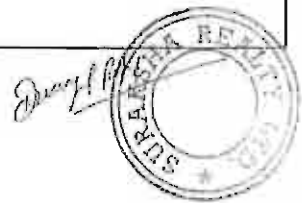
27.4. Upon the NCLT Approval Date, an Implementation and Monitoring Committee comprising of 5 (five) persons of which 1 (one) shall be IRP, 2 (two) representatives of the Resolution Applicants, 1 (one) representative of the Institutional Financial Creditors and AR of Home Buyers, will be constituted without any further action required from the Corporate Debtor or the Resolution Applicants. The Resolution Applicants shall appoint the Chairman of the Implementation and Monitoring Committee. The decisions in the meetings of Implementation and Monitoring Committee must be taken basis majority vote.

27.5. Terms of appointment of the members of and details of the functioning of the Implementation and Monitoring Committee will be finalised by the Assenting Institutional Financial Creditors, as aforesaid, and the Resolution Applicants jointly and any related costs relating to such appointments, and terms thereof, shall be borne by the Corporate Debtor.

Formation of the Reconstituted Board

27.6. The Implementation and Monitoring Committee shall be responsible for the supervision

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of the day to day affairs of the Corporate Debtor for the Phase II period. On the NCLT Approval Date, all the existing directors of the Corporate Debtor, without any further action being required on the part of any Person, shall be deemed to have resigned from the Board and the committees of the Corporate Debtor, and the board along with all the committees of the Corporate Debtor will be reconstituted to comprise of persons nominated by the the Implementation and Monitoring Committee and if no persons are nominated by the Implementation and Monitoring Committee, in such an event, the members of the Implementation and Monitoring Committee shall constitute the board of the Corporate Debtor ("Reconstituted Board"). The Reconstituted Board shall be assisted by a team of professional as and when necessary.

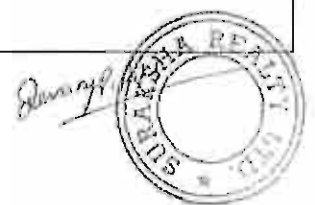
- 27.7. From the NCLT Approval Date and until reconstitution of the Board by the Resolution Applicants on or after the Approval Date, the Board of the Corporate Debtor shall have no authority whatsoever to conduct the business of the Corporate Debtor and none of the decisions of the Board of the Corporate Debtor will be valid and binding on the Corporate Debtor. The shareholders of the Corporate Debtor, from the NCLT Approval Date and until effectiveness of the step of capital reduction shall not pass any resolution without consent of the Resolution Applicants.
- 27.8. The quorum for Implementation and Monitoring Committee shall be any 3 members.
- 27.9. Function of the Reconstituted Board: After approval of the Resolution Plan by the NCLT, for the Phase II Period, the Implementation and Monitoring Committee shall oversee the management of the affairs of the Corporate Debtor (along with the Reconstituted Board). The Implementation and Monitoring Committee and the Reconstituted Board shall comply with the provisions of the Resolution Plan and shall not take or omit to take any actions which could impact the successful implementation of this Resolution Plan. Further, the Resolution Applicants may appoint an independent observer to the Reconstituted Board by way of a clean terms arrangement, in accordance with Applicable Laws from the NCLT Approval Date. The Resconstituted Board shall be functional till the formation of the New Company Management and shall be replaced by the New Company Management.

Phase III Period- Upon expiry of Phase II Period

- 27.10. In the Phase III Period, the Resolution Applicants shall constitute the board of the Corporate Debtor and appoint key managerial personnel, which may include independent professionals ("New Company Management"). Credentials of the proposed key managerial personnel of the New Company Management are given in Part I of this Resolution Plan.

Control & Supervision

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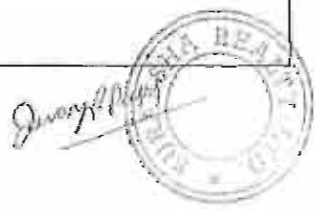
27.11. The New Company Management shall define organisation structure, policies, procedures, records and methods of reporting that are necessary to collectively ensure that the financial and non-financial operations of the Corporate Debtor is conducted in an orderly and efficient manner to achieve the Corporate Debtor's objectives.

- a) Assessing and containing the risks faced by the Corporate Debtor to acceptable level.
- b) Preventing and correcting irregularities.
- c) Safeguarding assets against the loss / misuse.
- d) Ensuring financial and other records are complete in all respects and accurately and reliably reflect the conduct of the Corporate Debtor.
- e) Preventing the misuse or appropriation of resources.
- f) Resources are acquired economically and employed efficiently, quality business processes and continuous improvement are emphasised.
- g) The actions of all officers of the Corporate Debtor including Directors, Key Managerial Personnel, Senior Management and Staff are in compliance with the Corporate Debtor's policies standard compliance and procedures and also relevant laws and regulations.
- h) These systems are not only related to accounting and reporting but also relate to the organisation's culture, communication process both internal and external, which include, handling of funds received and expenditure incurred by the Corporate Debtor, preparing appropriate and timely financial report to the Board and Officers, conducting the annual audit of the Corporate Debtor, Corporate Debtor's financial statements, evaluating staff and progress, maintaining inventory records and properties and their whereabouts and maintaining personal and conflict of interest policies.
- i) The Corporate Debtor shall always maintain the highest governance standards and practices by formulating "Corporate Governance Policies and Code of Conduct". These Policies and Code shall prescribe a set of systems, processes and principles, which conform to the highest international standards and are reviewed periodically to ensure their continuing relevance, effectiveness and responsiveness to the needs of investors, both local and global, and all other stakeholders.

28. Causes of Default and Addressing causes of default

28.1. Causes of Default

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The Resolution Applicant is of the view that the defaults were primarily on account of:

- (a) insustaniable amount of debt gearing;
- (b) large number of projects having been launched simultaneously;
- (c) Actions of government authorities/orders of courts & tribunals which delayed/halted the construction of the projects;
- (d) slow-down in real estate market;
- (e) High dependency on parent company, JAL and related parties and
- (f) lack of control over the cost of construction of the projects under implementation.

28.2. The Resolution Applicants propose to resolve the defaults in the following manner, by:

- (a) Limiting and resolving the debt obligations of the Corporate Debtor;
- (b) Infusing additional working capital;
- (c) Taking control of all the business activities by terminating concerned related party agreements/ contracts;
- (d) Prudent financial planning and transparency in management and utilisation of funds;
- (e) Good corporate governance
- (f) Constructing homes of the Homebuyers within the timelines mentioned in Annexure-I.

28.3. The Resolution Plan is feasible and viable and can be implemented on the basis of following grounds:

- a) The Resolution Applicants have committed to bring the equity infusion and working capital facility/ group company loan for the purpose of construction of projects and delivery of homes;
- b) Such commitment of delivery is given based on the estimated cost provided in the Virtual Data Room which is achievable.
- c) All other treatments provided in the Resolution Plan are viable and achievable.

29. Declaration to the effect that the Resolution Plan is not in contravention of the provisions of the Applicable Law

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We, the Resolution Applicants, do hereby, jointly and severally declare and confirm that the Resolution Plan contemplated herein is not in contravention of the provisions of the Applicable Law.

30. CCI approval in terms of the provisions of the Code

The NCLAT in the matter of Arcelormittal India Pvt Ltd vs. Abhijit Guhathakurta [Company Appeal (AT) (Insolvency) No. 524 of 2019] observed as under:

"15. We have noticed and hold that proviso to sub-section (4) of Section 31 of the 'I&B Code' which relates to obtaining the approval from the 'Competition Commission of India' under the Competition Act, 2002 prior to the approval of such 'Resolution Plan' by the 'Committee of Creditors', is directory and not mandatory. It is always open to the 'Committee of Creditors', which looks into viability, feasibility and commercial aspect of a 'Resolution Plan' to approve the 'Resolution Plan' subject to such approval by Commission, which may be obtained prior to approval of the plan by the Adjudicating Authority under Section 31 of the 'I&B Code'...."

In view of the foregoing, the Resolution Applicants shall file application before the CCI at the earliest and shall submit the required approval issued by CCI in accordance with Applicable Law to the CoC/IRP on or before the NCLT Approval Date.

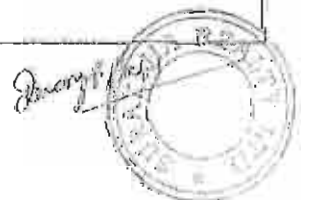
31. Indemnity for the Interim Resolution Professional and others for all acts done in good faith.

The Resolution Applicants hereby agree and release, from the Approval Date, the Interim Resolution Professional, the CoC, Resolution Process Advisor, employees, agents, irrevocably, unconditionally, fully and finally, from any and all liability for claims, losses damages, costs expenses or liabilities, in any way related to or arising from the exercise of acts done in good faith or performance of any obligation set out under the Process Document, or in connection with the CIRP and waives any and all rights or claims the Resolution Applicant(s) may have in this respect, whether actual or contingent, whether present or in future.

32. Other Mandatory Contents of the Resolution Plan

Table 23: Mandatory Contents of this Resolution Plan

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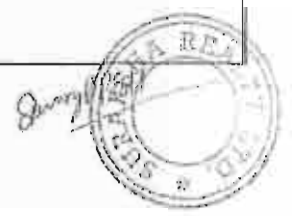


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S. No.	Description/Requirement	Section/ Regulation	Details/how dealt with in the Resolution Plan
As set out in Section 30 of the Code and Regulation 37 and 38 of the Regulations			
i.	Payment of the Insolvency Resolution Process Cost, in priority to the payment of any other debt or any other creditor of the Company.	Section 30(2)(a) of the Code	As mentioned in Clause 14 of the Resolution Plan
ii.	Payment of amounts due to the Operational Creditors under the Resolution Plan in priority to any Financial Creditor of the Company and that the payment of the debts of the Operational Creditors shall not be less than the amount to be paid to the Operational Creditors in the event of liquidation of the Company under Section 53 of the Code.	Section 30(2) (b) of the Code and Regulation 38(1) of the Regulations	As mentioned in clauses 18-21 of the Resolution Plan
iii.	Payment of amounts due to the Financial Creditors under the Resolution Plan, who have not voted in favour of the Resolution Plan and such amount shall not be less than the amount which they would receive in the event of liquidation of the Corporate Debtor under Section 53 of the Code.	Section 30(2) (b) of the Code and Regulation 38(1) of the Regulations	Clause 15 of the Resolution Plan
iv.	A statement as to how the Resolution Applicant has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the Company in the Resolution Plan	Regulation 38(1A) of the Regulations	Clause 25 of the Resolution Plan
v.	A statement giving details if the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the adjudicating authority at any time in the past	Regulation 38(1B) of the Regulations	NA
vi.	Term of the Resolution Plan and its implementation schedule	Regulation 38(2)(a) of the Regulations	Clause 26 of the Resolution Plan
vii.	Mechanism regarding management and control of the business of the Company during the term of the Resolution Plan/ after approval of the Resolution Plan	Section 30(2)(c) of the Code and Regulation 38(2)(b) of the Regulations	Clause 27 of the Resolution Plan
viii.	Adequate mechanism/ means for implementation and supervision of the Resolution Plan	Section 30(2)(d) of the Code and	Clause 27 of the

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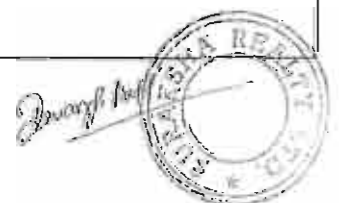


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S. No.	Description/Requirement	Section/ Regulation	Details/how dealt with in the Resolution Plan
		Regulation 38(2)(c) of the Regulations	Resolution Plan
ix.	Declaration to the effect that the Resolution Plan is not in contravention of provisions of the Applicable Law	Section 30(2)(e) of the Code	Clause 29 of the Resolution Plan
x.	A Resolution Plan shall demonstrate that: (a) Addresses the cause of default; (b) Is feasible and viable; (c) has provisions for its effective implementation; (d) has provisions for approvals required and the timeline for the same and (e) the Resolution Applicant has the capability to implement the Resolution Plan	Regulation 38 (3a) of the Regulations	As per clause 7, 26, 27, 28 and 30 of the Resolution Plan
Others			
a.	An affidavit to be submitted stating that the Resolution Applicant and its Connected Persons are eligible under Section 29A of the Code	Section 29A and Section 30(1) of the Code and Regulation 39(1)(a) of the Regulations	Details as mentioned in the affidavit submitted under Section 29A
b.	An undertaking stating that every information and records provided in connection with or in the Resolution Plan is true and correct and discovery of false information and record at any time shall render the Resolution Applicant ineligible to continue in the CIRP process, forfeit any refundable deposit, and attract penal action under the Code	Regulation 39(1)I of the Regulations	As mentioned in Clause 11.9 of the Resolution Plan
c.	The Resolution Plan shall provide for the measures, as may be necessary, for insolvency resolution of the Corporate Debtor for maximization of value of its assets, including but not limited to the following:	Regulation 37 of the Regulations	
i.	transfer of all or part of the assets of the Corporate Debtor to one or more persons	Regulation 37 (a) of the Regulations	Clause 15 and 34 of the Resolution Plan

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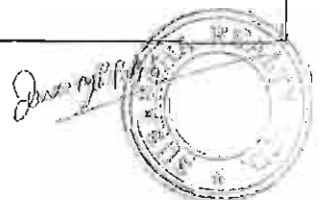


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S. No.	Description/Requirement	Section/ Regulation	Details/how dealt with in the Resolution Plan
ii.	sale of all or part of the assets whether subject to any security interest or not	Regulation 37 (b) of the Regulations	Clause 15 and 34 of the Resolution Plan
iii.	substantial acquisition of shares of the Corporate Debtor, or the merger or consolidation of the Corporate Debtor with one or more persons	Regulation 37 (c) of the Regulations	Clause 24 of the Resolution Plan
iv.	Cancellation or delisting of any shares of the Corporate Debtor	Regulation 37(ca) of the Regulations	Clause 24 of the Resolution Plan
v.	satisfaction or modification of any security interest	Regulation 37 (d) of the Regulations	Clause 15 of the Resolution Plan
vi.	curing or waiving of any breach of the terms of any debt due from the Corporate Debtor	Regulation 37 (e) of the Regulations	Clause 15 of the Resolution Plan
vii.	reduction in the amount payable to the creditors	Regulation 37 (f) of the Regulations	Clause 34 of the Resolution Plan
viii.	extension of a maturity date or change in interest rate or other terms of a debt due from the Corporate Debtor	Regulation 37 (g) of the Regulations	Clause 15 and 34 of the Resolution Plan
ix.	amendment of the constitutional documents of the Corporate Debtor;	Regulation 37 (h) of the Regulations	Clause 34 of the Resolution Plan
x.	issuance of securities of the Corporate Debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	Regulation 37 (i) of the Regulations	Not Applicable

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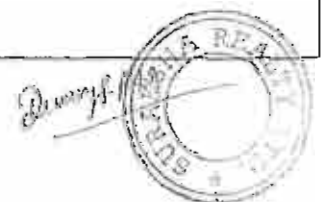
S. No.	Description/Requirement	Section/ Regulation	Details/how dealt with in the Resolution Plan
xi.	change in portfolio of goods or services produced or rendered by the Corporate Debtor	Regulation 37 (j) of the Regulations	Not Applicable
xii.	change in technology used by the Corporate Debtor	Regulation 37 (k) of the Regulations	Not Applicable
xiii.	Obtaining necessary approvals from the Central and State Governments and other authorities	Regulation 37 (l) of the Regulations	Clause 34 o the Resolution Plan

33. Key requirement as the Process Document

Table 24: Key requirements of the Process Document

Sr. No	Key requirement of Process Document	Reference
1	Composition and Ownership Structure of the Resolution Applicant	As mentioned at Clause 1B of Part I and affidavit under 29A annexed with the Plan
2	Corporate structure of the Resolution Applicant, and Group Companies, affiliates, Parent company and the Ultimate Parent Company of the Resolution Applicant	As mentioned at Clause 1B of Part I and affidavit under 29A annexed with the Plan
3	Creditworthiness and financial capability of the Resolution Applicant	As mentioned at As mentioned at Clause 4B of Part I
4	Previous Experience	As mentioned at As mentioned at Clause 4 of Part I
5	Prior Experience in managing/turning around of companies including managerial competence technical abilities, key management personal experience.	As mentioned at Clause 4(5) of Part I

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Sr. No	Key requirement of Process Document	Reference
6	Percentage Shareholding in Corporate Debtor offered to Institutional Financial Creditors by way of debt to equity conversion	Not Applicable
7	Evidence of funding monies available to fund the Resolution Plan i.e. evidence of available line of credit, term sheet, letter of intent etc.	Networth certificates of RAs
8	Financial ability of the Applicant including last 3 years annual report of relevant entities or the entities in which investments have been made in particular in infrastructure, real estate or related sectors	The balance sheet of last three financial years of each of the Resolution Applicants is attached at Appendix to the Resolution Plan
9	Financial assumptions, Projections & Business plan for the Corporate Debtor	As mentioned at Part III

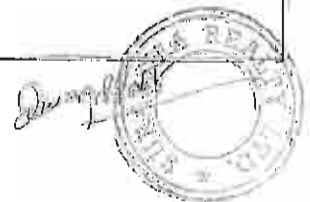
34. Effects of Approval of the Resolution Plan

The Hon'ble Supreme Court has, in its recent judgments, emphasised on the need of a resolution applicant getting a clean slate to enable it to revive a corporate debtor. The following observations of the Hon'ble Supreme Court in the matter of Essar Steel are quite relevant to understand the same:

"67. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count."

(Emphasis ours)

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Further, the Hon'ble Supreme Court has in the matter of Ghanshyam Mishra and Sons Private Limited versus Edelweiss Asset Reconstruction Company Limited (decided on 13.04.2021) held as under:

"86. It is at this stage, that the plan becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution Plan. The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable."

"95 (i).... On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

"111.In our view, the observations made in the aforesaid paragraphs, if permitted to remain, would totally frustrate the object of I&B Code of revival of a Corporate Debtor and to resurrect it as a going concern. As held by this Court, the successful resolution applicant cannot be flung with surprise claims which are not part of the resolution plan."

(Emphasis ours)

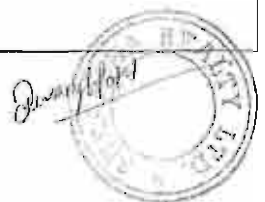
In view of the observations of the Hon'ble Supreme Court, the Resolution Applicants provide the Effects of the Resolution Plan as under:

Effects on the Corporate Debtor:

- 34.1. As from the NCLT Approval Date, all the suspended directors of the Corporate Debtor shall be deemed to have vacated office; new directors, as may be appointed by the Resolution Applicants and/or the Corporate Debtor shall be deemed to have assumed office and the order of the Adjudicating Authority, filed with the concerned Registrar of Companies shall be a conclusive proof thereof without requirements of any other document under the Applicable Laws.
- 34.2. It is clarified that the existing promoters, shareholders, managers, directors, officers, or such other person in charge of the affairs and management of the Corporate Debtor (including any person who was an 'officer in default' or 'occupier') prior to the Insolvency Commencement Date shall continue to be responsible and liable for all the liabilities, claims, demand, obligations, penalties etc. arising out of any proceedings, inquiries, investigations, orders, show causes, notices, suits, litigation etc. (including but not limited to those arising out of any orders passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the Code) or any acts or omissions in breach of Applicable Law which occurred prior to the Insolvency Commencement Date. Further,

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for the avoidance of doubt and without prejudice to the generality of the foregoing, it is expressly clarified that any criminal proceedings initiated against the officers of the Corporate Debtor prior to the NCLT Approval Date shall continue against such officers without any liability accruing to the Resolution Applicants and / or its employees, in their capacity as promoters and being in management of Corporate Debtor in relation to such criminal proceedings.

- 34.3. All existing and future claims by the Corporate Debtor and all its existing and future rights, entitlement, etc. with Governmental Authorities or any other Person (including third parties) shall not be affected and shall continue to remain enforceable after the NCLT Approval Date, as per Applicable Laws. Nothing in this Resolution Plan shall be deemed to affect the rights of the Corporate Debtor to recover from and/or assert claims or rights against any Person, as per the Applicable Laws and there shall be no set off of any such amounts recoverable by the Corporate Debtor.
- 34.4. Upon approval of this Resolution Plan by the Adjudicating Authority, all the stakeholders especially workmen and employee shall co-operate and facilitate the implementation of the Resolution Plan.
- 34.5. Upon approval of this Resolution Plan by the Adjudicating Authority and payment as per treatment provided hereinabove under the Resolution Plan, all shareholder agreements, voting covenants, negative or affirmative rights of any person in relation to the operations and/or management of the Corporate Debtor, any right to appoint/nominate/ terminate any director, management, employee of the Corporate Debtor, any option on the shares of the Corporate Debtor etc. shall become infructuous and the Claim with respect to the application monies received including Rs. 212 crore received from JAL for any securities shall stand forfeited, without any consequence on the Corporate Debtor or the Resolution Applicants.
- 34.6. The Corporate Debtor shall be permitted, in accordance with the Applicable Laws, to continue using the intellectual property, technology, trademark (along with any logos or copyrights in relation thereto) at its discretion after the Approval Date, including as part of its corporate name, product branding, letterheads, invoices, documentation, domain name and as may otherwise be required for the conduct of its business.
- 34.7. The Resolution Applicants shall change the name and brand of the Corporate Debtor and its projects, upon approval for this Resolution Plan, to such name as is permitted under the Applicable Law.
- 34.8. The Resolution Applicants and/or the Corporate Debtor shall have right to remove the existing auditors and appoint the new auditors as it deems fit upon NCLT Approval Date.

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- 34.9. All movable and immovable fixed assets and tangible inventories such as stocks and spares of the Corporate Debtor shall be reconciled, identified and provided for in the custody of the Corporate Debtor or Resolution Applicants, free of any encumbrances (except as provided herein).
- 34.10. The Resolution Applicants reserve their right to transfer the rights and obligations available to the Corporate Debtor under the Concession Agreement pertaining to Yamuna Expressway [i.e. the 6-lane 165 km expressway (expandable from 6 lanes to 8 lanes) connecting Noida to Agra alongwith 4,798 acres of land parcels pertaining to Yamuna Expressway or any part(s) thereof, and such other land parcels as may released for such expressway by YEIDA and all the other assets attached thereto] by way of business undertaking or other suitable structure permitted under the Applicable Laws to any SPV created for the same, without affecting continuation of other rights and obligations under the Concession Agreement with the Corporate Debtor, upon execution of tripartite agreement with YEIDA, as per provisions of the Concession Agreement.
- 34.11. The reorganization of the Corporate Debtor including its assets and liabilities, as per the terms of this Resolution Plan, shall be operative from end of the day on 31st March, 2021 or such other date ("*Appointed Date*") as decided by the Resolution Applicants being prior to the NCLT Approval Date.
- 34.12. The Resolution Applicants / Corporate Debtor shall retain the right to revalue/impair/provide for the assets of the Corporate Debtor to the satisfaction of Resolution Applicants before Resolution Applicants make infusion in the Corporate Debtor, for any reason including to ensure that assets are not be carried in excess of amounts expected to be realised from their sale for use. Further, the financials statements of the Corporate Debtor shall be deemed to have been recasted/ reinstated with effect from 31st March, 2021 or such other Appointed Date as decided by the Resolution Application but being on or before the NCLT Approval Date. The liability or Claim with respect to taxes, dues to Government authority, stamp duty etc., if any, upon such revaluation/impair of the assets of the Corporate Debtor shall be deemed to have been arisen on the Appointed Date being the period prior to the NCLT Approval Date and therefore shall be the Claim of Operational Creditor. In view of the provisions of the Code and in terms of this Resolution Plan, no amount shall be payable to the aforesaid Operational Creditors in accordance with the section 30 read with section 53 of the Code and therefore stands extinguished.
- 34.13. After the NCLT Approval Date, the requirement of adding the term "and reduced" in the balance sheet of the Corporate Debtor under the provisions of the Companies Act, 1956/ Companies Act, 2013 and any rules made thereunder and/or any other

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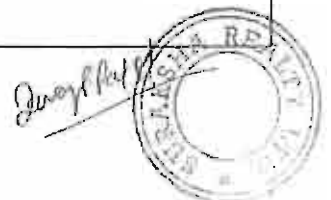


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Applicable Law shall be dispensed with.

- 34.14. Any credit on account of treatment given to the Institutional Financial Creditors under this Resolution Plan shall be first adjusted towards payment of interest accrued, due and outstanding towards them as per the audited financials statements as on 31.03.2020 and further accrued till the Approval Date. As per the information available in the VDR, the accrued interest that has been disallowed over the past years, as per Sec 43B of the Income Tax Act is Rs. 5,564 Cr (as mentioned in the tax audit report of Assessment Year 2020-21).
- 34.15. All accounting related credits on account of implementation of the Resolution Plan which may have to be credited to the Profit & Loss Statement (alternatively to Statement of Comprehensive Income or Other Comprehensive Income under Ind AS) of the Corporate Debtor being on account of various aspects including a) fair valuation of liabilities, b) reduction of capital of the Corporate Debtor, c) non-payments of liabilities, d) fair value of assets, (e) write/back of liabilities etc., or otherwise, be credited to Capital Reserve or General reserves or such other appropriate item of other equity, as may be decided by the Resolution Applicants. Further, such Capital Reserve may be utilised in future by the Corporate Debtor for issue of bonus shares, diminution in value of any assets, reduction of share capital, etc.
- 34.16. Any income/gain/profits, if any, that may arise on account of reversal or write back or extinguishment of liabilities or Claims of the Financial Creditors, Operational Creditors, etc. or on transfer of assets for the payment against dues of such Claims of the Financial Creditors and/ or Operational Creditors and / or Other Creditors, or due to any reason pursuant to the implementation of the Resolution Plan, shall be deemed to be have been arisen in the books of the Corporate Debtor on 31st March, 2021 (or such other date as decided by the Resolution Applicant, being the Appointed Date) before the Insolvency Commencement Date and / or NCLT Approval Date, irrespective of the timing of the completion of documentation / formalities of the transaction and shall be Claim of an Operational Creditor and accordingly being treated / dealt with in the Resolution Plan. In view of the provisions of the Code, no amount shall be payable to the aforesaid Operational Creditors in accordance with the section 30 read with section 53 of the Code and therefore stands extinguished. Any obligation, claim, demand, assessments, liabilities etc. on account of any such income/gain/profits under the Income Tax Act, 1961 including provision of the Minimum Alternate Tax arising on account of implementation of the Resolution Plan shall be considered as Claim pertaining to period prior to Insolvency Commencement Date and/or NCLT Approval Date and accordingly shall be deemed to be pre-transfer liabilities of the Corporate Debtor and shall and shall be Claim of an Operational Creditor and accordingly being treated / dealt with in the

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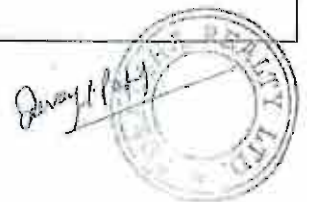
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Resolution Plan. In view of the provisions of the Code, no amount shall be payable to the aforesaid Operational Creditors in accordance with the section 30 read with section 53 of the Code and therefore stands extinguished, without obligation of payment of the same on the part of the Corporate Debtor or the Resolution Applicants. Further, the reversal/ write back/extinguishment of liabilities as referred under this clause shall mean any extinguishment as mentioned in this Resolution Plan including the difference of all liabilities as appearing in the books of the Corporate Debtor as reduced by actual payments made by the Resolution Applicants towards such liabilities. A Separate Profit & Loss Account and Balance Sheet may be drawn up and get audited by the Corporate Debtor or Resolution Applicants for this purpose from the Commencement of the financial year up to the Appointed Date, which shall be accepted by the Income Tax Authorities for the purpose of extinguishment of MAT liability of the Corporate Debtor upto the NCLT Approval Date and / or Appointed Date. If so desired by the Corporate Debtor and/or Resolution Applicants, in the alternative, the effect of write-back as mentioned in this clause or in this Resolution Plan may be reduced from the computation of book profit by way of adjustment in the computation of book profit under section 115JB of the Income Tax Act of the Corporate Debtor for the concerned previous year.

34.17. On the Appointed Date, a balance sheet will be drawn and all the liabilities upto that date, Claimed or not but has arisen or already increased, recognised or not shall stand extinguished. On this occasion all Claims of all Creditors including Institutional Financial Creditors shall be discharged by as mentioned hereinabove in the Resolution Plan. The gain may arise on any extinguishment of liabilities / Claims, as consideration may not be equal to the same. In discharging the liability/Claims, all assets first will apply towards payment of interest and then outstanding loan. All these sacrifices by Creditors including Secured Institutional Financial Creditors shall amount to income in the hand of corporate debtor and tax liabilities will arise on that point of time on Appointed Date. There may be a situation that assets so given in exchange of the Claim / liability at current rate, might have acquired at lower costs and hence there arises business income or capital gain, as the nature of the assets so transferred, the income tax liability/Claim on all such income will be calculated and will be recognised as Claim of the Operational Creditor as on Appointed Date. The Resolution Applicant shall discharge Claim / Liabilities of all the Operational Creditor as per the Resolution Plan. It is stated that any payment towards the Institutional Financial Creditors shall be first adjusted towards the interest accrued and payable towards their debt and balance shall be adjusted towards principal amount outstanding. The remaining principal amount of the loan which remained to be paid shall be written off in the books of the Corporate Debtor and shall be credited to Capital Reserve. Since, the Resolution Applicants are

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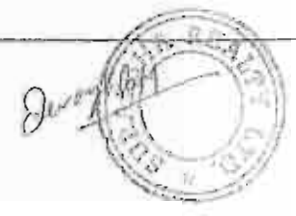
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acquiring the Corporate Debtor at fair value i.e. at current value and transferring the assets as such at current value may bring the gain on transfer of assets in the books of the Corporate Debtor and thereby attracting income tax on the same. Such liability or Claim with respect to taxes, dues to Government authority, if any, shall be deemed to have been arisen on the Appointed Date, being the period prior to the NCLT Approval Date and therefore shall be the Claim of Operational Creditor. In view of the provisions of the Code and in terms of this Resolution Plan, no amount shall be payable to the aforesaid Operational Creditors in accordance with the section 30 read with section 53 of the Code and therefore stands extinguished.

- 34.18. Any carried forward losses or unabsorbed depreciation or any other benefit shall not be set-off or adjusted against any write back of liabilities, gain due to fair value of assets or any other gain on account of implementation of the Resolution Plan as the Resolution Applicants are purchasing the Corporate Debtor under the Code at fair value..
- 34.19. Any write off of the loans and advances given whether long term or short term, unbilled revenue shall be allowed as expenditure under section 37 of the Income Tax Act for the computation of Income under Income Tax Act, 1961.
- 34.20. Any write back including but not limited to write back of Share capital, Long term loan, Short term loan, Working capital loan or any other liability shall be credited to Capital Reserve in the books of the Corporate Debtor.
- 34.21. The requirement of obtaining a no objection certificate under section 281 of the Income Tax Act, 1961 and provisions of taking over its predecessor's tax liability under section 170 of the Income Tax Act, 1961 shall not be applicable. Further, the transaction shall not be treated as void/ voidable under section 281 of Income Tax Act, 1961 for any claims in respect to tax or any other sum payable by the Corporate Debtor. Similarly, any requirement to obtain waivers from any tax authorities including in terms of section 79 and section 115B of the Income Tax Act, 1961 is deemed to have been granted upon the approval of this Resolution Plan on the NCLT Approval Date.
- 34.22. Upon approval of the Resolution Plan by the Adjudicating Authority, the Corporate Debtor will continue to have all the rights in as far as availing any tax or fiscal incentives or benefits, under any tax laws, including carry forward / set-off of losses and unabsorbed depreciation under Income-tax Act, and including any credits, carry forward / set-off of book losses and unabsorbed depreciation or other benefits for the purposes of calculation of Minimum Alternate Tax under Section 115JB of the Income Tax Act. It is clarified that the aforesaid right of the Corporate Debtor shall not get affected on account of extinguishment of Claims under this Resolution Plan.
- 34.23. It is proposed that the Resolution Applicant/Corporate Debtor shall have right to

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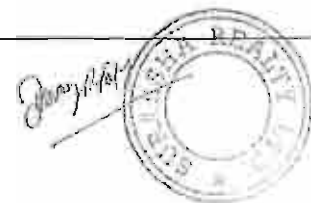
convert residual debt of the Institutional Financial Creditors after transfer of beneficial ownership to the Assenting Institutional Financial Creditors and allowing enforcement of security interest to the Dissenting Institutional Financial Creditors, in accordance with the Resolution Plan, into equity shares of the Corporate Debtor to be held by the Institutional Financial Creditors and subsequently, such equity shares will be extinguished in entirety by way of reduction in share capital through credit to capital reserve account.

34.24. The carrying amount of asset(s) (tangible or intangible, as the case may be) standing in the books of the Corporate Debtor, shall be derecognised on its disposal for Dissenting Financial Creditors and the Institutional Financial Creditors and the consideration for such disposal shall be recognised at a value being determined under Ind AS 113 read with Section 30 of the IBC, 2016, While derecognising the carrying amount and recognising the consideration for such disposal as aforesaid, the Resolution Applicant shall also consider the substance of the transaction or other event and not merely its legal form, Such derecognition and recognition shall be without prejudice to the right of Resolution Applicant for reinstating the financials of the Corporate Debtor in terms of Ind AS including but not limited to selecting and applying accounting policies, and accounting for changes in accounting policies, changes in accounting estimates and corrections of prior period errors.

34.25. The Code and the Regulations entitle all creditors of a Corporate Debtor to submit their claims to the Interim Resolution Professional within 90 days from the date of commencement of the CIRP period. It is clarified that in the event any Creditor of the Corporate Debtor have not submitted Claim to the Interim Resolution Professional within the timelines stipulated by the Code or such Claim is rejected by the Interim Resolution Professional or such Claim, interest, right, liability, including under any law, is filed on or before Approval Date or raised subsequently however pertains to period prior to the Insolvency Commencement Date and / or Approval Date or pertaining to any default violation, omission pertaining to the period prior to the Insolvency Commencement Date and / or Approval Date, such Creditor will not be entitled to receive payments, if any, under the Resolution Plan with respect to such Claims save and except as provided in the Resolution Plan. Any such Claim shall be deemed to have arisen on the Insolvency Commencement Date/ Approval Date and upon approval of this Resolution Plan shall stand satisfied and extinguished. The Resolution Applicants or Corporate Debtor shall not, in any manner whatsoever, be directly or indirectly responsible or liable for any such claims, interest, right or liability.

34.26: Any Claim not dealt with, in the Resolution Plan shall stand permanently extinguished upon the approval of the Resolution Plan by Adjudicating Authority. No additional

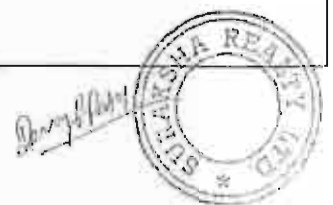
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payments shall be made towards liability and creditors' dues except those which are specifically addressed in this Resolution Plan.

- 34.27. Save and except as provided in this Resolution Plan, all Claims, debts and dues of the Creditors, including but not limited to disputed / contingent liabilities, whether appearing in the audited balance sheet of the Corporate Debtor or otherwise, Claim of Central government, the State governments, any regulatory or local authority or body or any agency or instrumentality thereof, for payment of any statutory dues or taxes or any other liabilities whatsoever including for pending assessment of income taxes or otherwise, any indirect tax laws, including but not limited to, the Central Excise Act, 1944, the Finance Act, 1994 (Service Tax), the Customs Act, 1962, Value Added Tax Act, 2005, the CENVAT Credit Rules, 2004, the Electricity Act, 2003, the Goods and Services Tax Act, 2017 (each as amended from time to time and including the rules made thereunder), pertaining or related to the period prior to the Approval Date as against the Corporate Debtor shall stand fully and finally satisfied and extinguished, and no Claim, debt or due shall subsist from the Creditors as against the Corporate Debtor and the Resolution Applicants. The Resolution Applicant or the Corporate Debtor shall not, in any manner whatsoever, at present or in future, be directly or indirectly responsible or liable for any such Claim,
- 34.28. Save and except the litigation pertaining to Additional FAR pending before District Court, Gautam Budh Nagar, any adverse inquiries, investigations, notices, causes of action, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings, pending before any courts/ quasi-judicial/ Governmental Authorities (including RBI) against, the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future, that have been initiated or are threatened ("Dispute") to be initiated against the Corporate Debtor by any Creditor in relation to any Claim pertaining to any period prior to the Insolvency Commencement Date and / or Approval Date and / or arising on account of acquisition of control over the Corporate Debtor by the Resolution Applicant, pursuant to this Resolution Plan, shall become infructuous.
- 34.29. Any new claim, interest, right, liability, including under any law including direct or indirect tax whether submitted to the Corporate debtor and / or the Interim Resolution Professional by any creditor on or before the Approval Date or not submitted at all, not covered in this Resolution Plan, shall not be eligible for consideration and/or payment under this Resolution Plan. All such claims, interest, rights, liability, shall stand waived, discharged, released, extinguished and settled without any consequences and/or liability to the Corporate Debtor or the Resolution Applicants. The Resolution Applicants or Corporate Debtor shall not, in any manner whatsoever, be directly or

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indirectly responsible or liable for any such claims, interest, rights or liability.

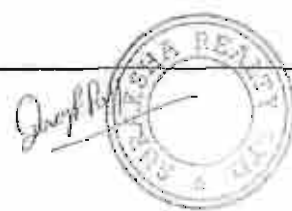
34.30. Further, any Claim against the Corporate Debtor, arising from any contractual arrangements, whether set out herein or not, whether admitted or not, due or contingent, asserted or un-asserted, present or future, whether or not set out in the Information Memorandum and/ or data room, or the books of accounts or financial statements of the Corporate Debtor, in relation to any period prior to the Insolvency Commencement Date and / or Approval Date, shall be deemed to be permanently extinguished upon approval of the Resolution Plan by the Adjudicating Authority and therefore the Resolution Applicants and / or the Corporate Debtor shall, at no point, be made directly or indirectly responsible or liable for the same.

34.31. Other than the claims and settlements pertaining to the Corporate Debtor that have been envisaged and set out under this Resolution Plan, no other payment or settlement, of any kind, shall be made to any other person or entity in respect of any other claims (whether or not admitted or filed or verified with the Interim Resolution Professional) and/or any sub-judice claims including but not limited to but pertaining to additional compensation, statutory dues, demands and all such claims against the operational and other creditors of the Corporate Debtor along with any related legal proceedings, in relation to any period prior to the Approval Date or arising on account of acquisition of control over the Corporate Debtor by the Resolution Applicants pursuant to this Resolution Plan, shall be deemed to have arisen prior to Approval Date and shall stand irrevocably and unconditionally abated, settled and extinguished. Such extinguishment of claims shall be deemed to form an integral part of the order by the Adjudicating Authority approving the Resolution Plan and shall accordingly be binding on all the stakeholders including the Corporate Debtor, its employees, workmen, financial and operational creditors, guarantors, security providers, and other stakeholders. The treatment accorded to the persons receiving settlement under this Resolution Plan shall constitute an absolute discharge and settlement of the dues to which they pertain and shall be the full and final performance, discharge and satisfaction of all obligations relating thereto.

34.32. In terms of Regulation 13 of Regulations, the Interim Resolution Professional is required to verify each claim and maintain a list of creditors together with the amount claimed and admitted. Accordingly, it is hereby clarified that any claim which has been rejected or has not been admitted by the Interim Resolution Professional shall stand extinguished in full, from the NCLT Approval Date.

34.33. Any and all other Claims or demands made by, or liabilities or obligations owed or

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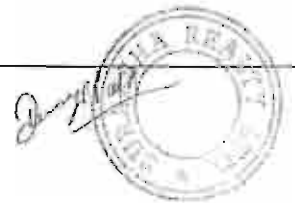
payable to (including but not limited to any operational debt including any advances payable to any Operational Creditor under any contract, any demand for any losses or damages, indemnification, principal, interest, compound interest, penal interest, liquidated damages, and other charges already accrued/ accruing or in connection with any third party claims) any actual or potential Creditor, vendor, contracting counterparty, governmental authority, claimant or any other person whatsoever (including but not limited to the Operational Creditors and its promoters, directors and other related parties of the Corporate Debtor and/ or the existing promoters), whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the provisional balance sheet, the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, in relation to any period prior to the Approval Date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, will be written off in full and shall be deemed to be permanently extinguished on the Approval Date and the Corporate Debtor or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

34.34. Any and all corporate guarantees/counter guarantees, or any other similar instrument issued by the Corporate Debtor in favour of any Operational Creditor including under any of the operation and maintenance contracts, whether invoked or not or whether claimed or not, shall stand automatically released and the liability, if any, in relation to or arising out of such corporate guarantees/counter guarantees or any other similar instrument shall stand extinguished from the Approval Date, subject to the payment of the amount proposed in the Resolution Plan to the Operational Creditors.

34.35. Upon approval of the Resolution Plan by the Adjudicating Authority, all or any liabilities of the Corporate Debtor arising with Companies Act 2013/ Companies Act 1956/Labour Laws and any other Applicable Law pertaining to the period prior to the Insolvency Commencement Date and / or Approval Date shall stand fully and permanently extinguished and the Corporate Debtor or the Resolution Applicants shall not be liable or responsible for the same.

34.36. All the penalties, charges, fees, etc. arising out of non-compliance of the requirements if any of the Applicable Laws and regulations, rules, circulars, notifications, etc. made/issued thereunder shall be deemed to have been arisen prior to the Insolvency Commencement Date and / or Approval Date and shall permanently extinguished upon Approval Date.

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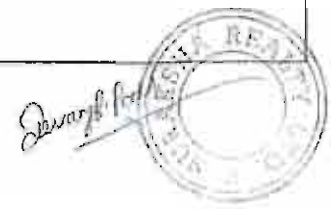
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34.37. Any tax, levies, fee, transfer charges, transfer premiums, and surcharges that arise on account of implementation of the Resolution Plan and consequent change in the ownership and control of the Corporate Debtor and/or implementation of the Resolution Plan shall be deemed to have been arisen prior to the Insolvency Commencement Date and / or Approval Date and shall permanently extinguished upon Approval Date.

34.38. Any and all claims or demands made by, or liabilities or obligations owed or payable to, (including any demand for any losses or damages, or interest, wages, compensation, gratuity, penal interest, liquidated damages already accrued/ accruing or in connection with any Claims) any present or past, direct or indirect, permanent or temporary employee and/or workman of the Corporate Debtor, whether admitted or not, whether subject to any claim filed with the Interim Resolution Professional or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the audited balance sheet, in relation to any period prior to the Resolution Applicant taking over control over the Corporate Debtor pursuant to this Resolution Plan or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, will be written off in full and shall stand permanently extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the Corporate Debtor, the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

34.39. All claims that may be made or arisen against the Corporate Debtor in relation to any payments required to be made by the Corporate Debtor under Applicable Law (including direct/indirect taxes), or in relation to any breach, contravention or non-compliance of Applicable Law (whether or not such claim was notified to or claimed against the Corporate Debtor at such time, and whether or not such Governmental Authorities or person was aware of such claim at such time), in relation to the period prior to the approval of this Resolution Plan by the Adjudicating Authority or arising on account of acquisition of control over the Corporate Debtor by the Resolution Applicants pursuant to this Resolution Plan, including, without limitation in respect of the applicable laws, matters and proceedings is a "claim" and "debt" each is defined under the Code, and would consequently qualify as "operational debt" (as defined under the Code) and therefore the full amount of such claims shall be deemed to be owed and due as of the Insolvency Commencement Date or Approval Date, the liquidation value of which is NIL and therefore no amount is payable in relation thereto and shall stand extinguished. Further, the directors, key managerial personnel and officers of the company nominated and/ or appointed by the Resolution Applicants on

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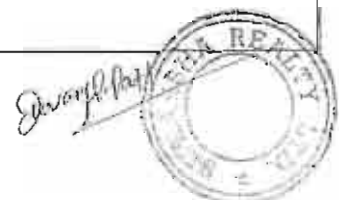
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the Approval Date shall not incur any liabilities (whether civil or criminal) for such breach contravention or non-compliance of Applicable Law by the Corporate Debtor in relation to the period prior to the Approval Date.

- 34.40. All claims or demands made by or liabilities payable to or assessed or unassessed by any regulatory or statutory or administrative authority or instrumentality thereof, in relation to any dues, direct or indirect taxes, duties (including stamp duties), penalties, fees, interest, levies, etc. or any other charges whatsoever (including but not limited to any tax liability and any other liability in relation to any approval or benefit granted to the Corporate Debtor or in relation to the Corporate Debtor), whether admitted or not due or contingent, present or future, in relation of any period prior to the Approval Date or arising on account of the Resolution Applicants being taking over the Corporate Debtor under the Resolution Plan, will be written off in full and will be deemed to be fully and permanently extinguished on the Approval Date and the Corporate Debtor or the Resolution Applicants shall neither be directly nor indirectly held liable for the same.
- 34.41. All claims, demands, levies etc. pertaining to interest and penalty under applicable laws including but not limited to, on delayed payment of income tax, tax deducted at source late filing of TDS returns, in respect of all the dues (including interest and penalty) of the Corporate Debtor arising for period up to the Approval Date (including such dues for period prior to the Approval Date that may crystallize subsequent to the Approval Date) or arising on account of acquisition of control over the Corporate Debtor by the Resolution Applicants pursuant to this Resolution Plan, will be deemed to be fully and permanently extinguished on the Approval Date and the Corporate Debtor or the Resolution Applicants shall neither be directly nor indirectly held liable for the same. Further, no transaction contemplated in this Resolution Plan shall be treated as void or non-compliant with any provisions of the Income-tax Act, 1961.
- 34.42. The Interim Resolution Professional has in the VDR mentioned about the claims of the Income Tax Department and other statutory authorities and as are more particularly mentioned herein above. It is specifically stated that save and except as provided hereinabove, all other claims, debts, demands and dues of the Income Tax Department, whether raised or contingent, likely to be made in future and other statutory authorities, pertaining or related to the period prior to the Approval Date or pertaining to or arising out of any transaction including allotment of land or arising on account of acquisition of control over the Corporate Debtor by the Resolution Applicants pursuant to this Resolution Plan shall be deemed to have arisen on the Insolvency Commencement Date and/or Approval Date and shall stand satisfied and extinguished, and no such existing claim, debt or due or demand shall subsist against the Corporate Debtor and the Resolution Applicants by the Income Tax Department and other statutory authorities. It

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is clarified that in the event any claim raised by the Income Tax Department and other statutory authorities subsequently however pertains or related to period prior to the Approval Date, the Income Tax Department and other statutory authorities shall not be entitled to receive payments, if any, with respect to such claims and/or demands. Any such Claim shall be deemed to have arisen on the Insolvency Commencement Date / Approval Date and upon approval of this Resolution Plan shall stand satisfied and extinguished. The Corporate Debtor and/or the Resolution Applicants shall have no adverse impact or financial burden due to any litigation which has arisen in relation to any transaction prior to the Approval Date.

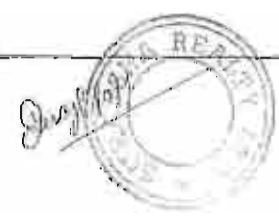
34.43. On the Approval Date, all the penalties, charges, fees, etc. arising out of non-compliance of the requirements, if any, of the regulations, rules, circulars, notifications, etc. of SEBI, RBI, ROC and/or any other statutory, regulatory or administrative or Governmental Authority or any other liability under the Applicable Laws including but not limited to labour laws, tax laws etc. pertaining to a period prior to the Approval Date shall stand extinguished permanently and all proceedings pending against the Corporate Debtor for any such non-compliance shall stand infructuous on the Approval Date.

34.44. Upon Approval Date, all the penalties, charges, fees, etc. arising out of non-compliance of the requirements if any of labour laws like Employee State Insurance Act, 1948, Provident Fund Act, Payment of Bonus Act, Contract Labour Act, 1973, Minimum Wages Act, Equal Remuneration Act, 1976, Factories Act 1948, Gratuity Act 1972, etc. shall stand extinguished and any litigation/suit/proceeding in relation thereto shall stand infructuous.

34.45. The Resolution Applicants understand that the Uttar Pradesh Real Estate Regulatory Authority ("UP RERA") has issued letters dated 31.08.2019 ("RERA Letters") to the Corporate Debtor, in terms of which UP RERA has imposed a penalty to the tune of Rs. 2,00,000 per project on 16 projects of the Corporate Debtor aggregating to total penalty of Rs. 32,00,000. That, the RERA Letters along with the underlying claims of UP RERA and any related legal proceedings (including criminal proceedings excluding those against the Existing Promoters), if any, shall stand irrevocably and unconditionally abated, settled and extinguished in perpetuity on and with effect from the Approval Date inter alia on account of the fact that the same could not have been raised/claimed while the moratorium provisions as contained Section 14 of the IBC were applicable in respect of the Corporate Debtor.

34.46. The Resolution Applicants understand that a recovery certificate bearing no 743/14-I dated August 09, 2019 has been issued by the Divisional Director, Social Forestry

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Division to the Collector of Agra for recovery of alleged compensation amount to the tune of Rs. 2.16 Crores from the Corporate Debtor. That the aforesaid demand certificate shall be deemed to be revoked and cancelled and deemed null and void and all liabilities and obligations against the Corporate Debtor or in respect of any asset of the Corporate Debtor shall be deemed to have been permanently extinguished upon the approval of this Resolution Plan by the Adjudicating Authority inter alia on account of the fact that such demand and the recovery certificate could not have been raised/issued while the moratorium provisions as contained in Section 14 of the Code were applicable in respect of the Corporate Debtor.

34.47. All Claims (whether pending, contingent or otherwise) made against the Corporate Debtor by the counter-parties to such agreements/ arrangements/ purchase orders/ work orders including but not limited to, in relation to any delays/ omissions on the part of the Corporate Debtor on or before the Approval Date, shall stand abated, settled and/or extinguished, and the Corporate Debtor shall have no liability towards such counterparties with respect to such Claims relating to the period prior to the Approval Date.

34.48. On and after the Approval Date, the Resolution Applicants and the Corporate Debtor shall not be held liable, responsible or convicted in respect of any assessed and non-assessed liabilities and disclosed or undisclosed litigation in relation to Claims pertaining to period prior to Approval Date.

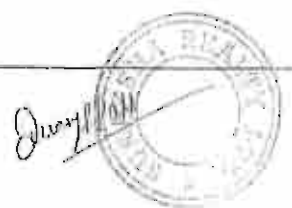
34.49. Save and except as otherwise provided in the Resolution Plan, any and all Claims or demands made by or liabilities or obligations owed or payable to (including any demand for any losses or damages, principal, interest, compound interest, penal interest, liquidated damages, notional or crystallized mark to market losses on derivatives and other charges already accrued/ accruing or in connection with any Claim) any actual or potential Creditor of the Corporate Debtor or in connection with any debt or Claim of the Corporate Debtor (including any transactions in derivatives), whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallised, known or unknown, disputed or undisputed, present or future, whether or not set out in the balance sheet of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, in relation to any period prior to the Approval Date or arising on account of the acquisition of control by the Resolution Applicants over the Corporate Debtor pursuant to this Resolution Plan and/or implementation of this Resolution Plan, will be written off in full and shall be deemed to be permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Corporate Debtor or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

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- 34.50. Upon completion of transfer of the beneficial ownership of land parcels to Assenting Institutional Financial Creditors as contemplated in clause no 15 above, the outstanding dues of the Assenting Institutional Financial Creditors shall stand settled and the Assenting Institutional Financial Creditors shall not take any action against the Corporate Debtor for recovery of any outstanding dues. Further, notwithstanding the treatment of the Claims of the Institutional Financial Creditors under this Resolution Plan (including but not limited to the extinguishment of any such Claims), any personal and corporate guarantors, other than the Corporate Debtor, shall continue to be liable to the Institutional Financial Creditors for any amounts due to them to the fullest extent under the Applicable Laws without any recourse or remedy against the Corporate Debtor. Further, any right or remedy including but not limited to right of subrogation as may be available to such corporate or personal guarantors against the Corporate Debtor in the event of exercise of rights by Institutional Financial Creditors shall stand extinguished.
- 34.51. On and after the Approval Date and upon completion of the treatment for the Institutional Financial Creditors, the Institutional Financial Creditors shall intimate the credit information company/ies, any Information Utility, Reserve Bank India or any other regulatory authority to take note and update its records.
- 34.52. Save and except the treatment provided in Clause 23 of this Resolution Plan, the Resolution Applicants and the Corporate Debtor will not be liable towards any claims or obligations (present or future, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, disputed or undisputed) towards or relating to the subsidiaries or associate companies of the Corporate Debtor that relate to the period prior to the Approval Date, including in relation to any undertakings or guarantees issued by the Corporate Debtor, for or on behalf of such subsidiaries and associate companies, in any manner whatsoever.
- 34.53. All claims, dues, liabilities or obligations, in relation to Claim against the Corporate Debtor or its subsidiaries, associate companies or related parties, both present and future, in relation to any period prior to the Approval Date or arising on account of acquisition of control over the Corporate Debtor by the Resolution Applicants pursuant to this Resolution Plan whether due or not and payable by the Corporate Debtor whether admitted or not, due or contingent, crystallised or uncrystallised, disputed or undisputed, present or future, whether or not set out in the audited financial statements, shall be deemed to have arisen as on the Insolvency Commencement Date / Approval Date and further will be deemed to be written off in full and be permanently extinguished on the Approval Date and the Corporate Debtor or the Resolution

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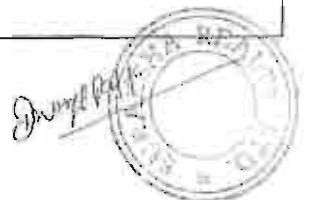
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Applicants shall not be directly or indirectly held liable for the same.

- 34.54. On and from the Approval Date, the Corporate Debtor shall not be liable or responsible towards the persons currently classified as promoter or promoter group (as on the day prior to the Insolvency Commencement Date) or their related party/ies, with respect to any Claim for the period prior to Approval Date.
- 34.55. On and from the Approval Date, any liabilities, claims, demands, capital contribution or any other form of financial commitment, or any enforcement action undertaken including but not limited to any security interest created or provided, save and except, the security interest created over 100 acres of land at Tappal in favour of the lenders of JAL and pledge of shares created in favour of lender of JHL, whether guaranteed or contractually agreed in writing or otherwise by the Corporate Debtor on behalf of or for its subsidiary companies, step-down subsidiaries, associate companies, group Companies, and/or their respective affiliates, shareholders/associates or for and on behalf of any other person, as the case may be, which are in existence prior to the Approval Date and which may be invoked prior to the Approval Date or at any time thereafter, shall stand irrevocably and unconditionally extinguished. It is clarified that the Corporate Debtor shall have right of subrogation in respect of the security interest created in favour of JAL Lenders and the lenders of JHL. It is clarified that the Corporate Debtor reserves its right to challenge and/ or seek appropriate remedy under the Applicable Laws in respect of mortgage of 100 acres land at Tappal of the Corporate Debtor created in favour of the lenders of JAL as well as pledge of shares created in favour of lender(s) of JHL.
- 34.56. Save and except as otherwise provided in the Resolution Plan upon approval of the Resolution Plan by the Adjudicating Authority, any and all Claims or demands made by or liabilities or obligations owed or payable to (including any demand for any losses or damages, principal, interest, compound interest, penalty, notional and other charges already accrued/ accruing or in connection with any Claim) any actual or potential Operational Creditors of the Corporate Debtor, whether arisen or not or may arise in future date, pertaining to assessment proceedings of past or future years under direct or indirect tax laws, whether as a result of pending or future proceedings, admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallised, known or unknown, disputed or undisputed, present or future, any liability, dispute, disallowance or addition, whether or not set out in the balance sheet of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, in relation to any period prior to the Approval Date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan and/or implementation of this Resolution Plan and/or due to the Concession

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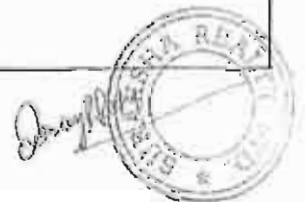
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Agreement, will be written off in full and shall be deemed to be permanently and perpetually extinguished and waived, by virtue of the order of the NCLT approving this Resolution Plan and the Corporate Debtor or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

- 34.57. The Claims/obligations/liabilities of the Corporate Debtor under the diverse agreements executed with the related parties, subsidiaries, associates etc. shall be deemed to have arisen as on the Insolvency Commencement Date and/ or Approval Date and all such Claims/ obligations/ liabilities shall, on the Approval Date, stand extinguished and satisfied, and no such existing claim or due shall subsist against the Corporate Debtor and the Resolution Applicants.
- 34.58. Save and except as otherwise provided in the Resolution Plan, any and all other Claims or demands made by or liabilities or obligations owed or payable to (including any demand for any losses or damages, principal, interest, compound interest, penal interest, liquidated damages and other charges already accrued/ accruing or in connection with any Claim) any Equity Holder (including preference shares), any person in whose favour warrants or stock options or any commitment to issue shares or conversion of loans/debt in to shares have been issued/granted/agreed upon by the Corporate Debtor, whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallised, known or unknown, disputed or undisputed, present or future, whether or not set out in the balance sheet of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, in relation to any period prior to the Approval Date or arising on account of the acquisition of control by the Resolution Applicant over the Corporate Debtor pursuant to this Resolution Plan, will be written off in full and shall be deemed to be permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Corporate Debtor or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.
- 34.59. It is clarified that in the event any Claim of the shareholders and members are not submitted to the Interim Resolution Professional prior to the NCLT Approval Date or such Claim is rejected by the Interim Resolution Professional or such Claim is raised subsequently which however pertains to the period prior to the Approval Date, such shareholders and members will not be entitled to receive payments, if any, under the Resolution Plan with respect to such Claims.
- 34.60. The right of subrogation, indemnity, reimbursement, whether in law or in equity, available to any person on the grounds of providing any form of security and/ or guarantees for and on behalf of, and/ or an order to secure any obligations of the Corporate Debtor (whether by the way of hypothecation, pledge, mortgage or

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otherwise), shall stand extinguished upon approval of this Resolution Plan by the Adjudicating Authority and no such person shall be entitled to exercise any such right against the Corporate Debtor. Without prejudice to the rights of the Institutional Financial Creditors to proceed against the guarantors all obligations, liabilities or claims against the Corporate Debtor in this regard shall be deemed to be owed as on the Insolvency Commencement Date and shall immediately, irrevocably and unconditionally stand extinguished, waived, withdrawn and abated on and from the Insolvency Commencement Date and/or Approval Date. Further, notwithstanding the treatment of the Claims of the Institutional Financial Creditors under this Resolution Plan (including but not limited to the extinguishment of any such Claims), any personal and corporate guarantors, other than the Corporate Debtor, shall continue to be liable to the Institutional Financial Creditors for any amounts due to them under the Applicable Laws without any recourse or remedy against the Corporate Debtor. Further, any right or remedy including but not limited to right of subrogation as may be available to such corporate or personal guarantors against the Corporate Debtor in the event of exercise of rights by Institutional Financial Creditors shall stand extinguished.

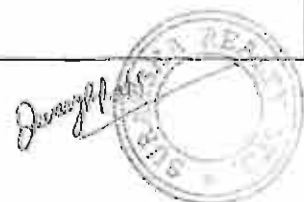
34.61. On and from the Approval Date, all the bank accounts of the Corporate Debtor shall be made available for operations to the Corporate Debtor and any lien marked on the bank accounts, if any, shall stand vacated. All cash, bank balance and cash equivalents of the Corporate Debtor including lien marked deposits on the Approval Date will be handed over to the Corporate Debtor, free from encumbrances and the Creditors will have no claim on it. The cash surplus accruing till the Approval Date will be to the benefit of the Corporate Debtor.

34.62. It is further clarified that whatever amount is recovered under avoidance transactions, u/s 43-51 and 66 of IBC, then those recoveries shall belong to the Corporate Debtor for the purpose of the construction and completion of the under-construction real estate projects.

34.63. The approval of the Adjudicating Authority, of this Resolution Plan, shall constitute approval for the issuance of new equity shares in accordance with Section 42 and Section 62(1)(c) of the Companies Act, 2013 and other Applicable Laws. Further, no approval or consent from any person, government authority or regulatory body with respect to change or modification the constitutional documents of the Corporate Debtor or the actions as mentioned hereinabove under any agreement or under any Applicable Laws shall be necessary.

34.64. Upon complete takeover of the Corporate Debtor by the new management formed by the Resolution Applicant, due intimation shall be given to the Registrar of Companies who shall register the change in management of the Corporate Debtor, in accordance of

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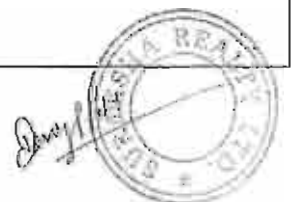
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the Applicable Laws.

- 34.65. All procedural requirements in accordance with Section 66 of the Companies Act, 2013 and NCLT (Procedure for reduction of share capital) Rules, 2016 and other Applicable Laws shall be deemed to have been complied with on the Approval Date.
- 34.66. Upon approval of this Resolution Plan by the Adjudicating Authority, the cancellation of existing equity share capital, increase in authorised share capital of the Corporate Debtor, appointment of auditor, and issuance or allotment of Equity Shares shall not require any corporate action by the Corporate Debtor or any other approvals by the shareholders of the Corporate Debtor and the Corporate Debtor may file the order of the Adjudicating Authority to inform the Registrar of Companies or any Governmental Authorities regarding such cancellation of existing equity share capital, change in authorised share capital and amendment to the memorandum and articles of association and other such constitutional documents of the Corporate Debtor.
- 34.67. On and from the Approval Date, the Corporate Debtor or the Resolution Applicants shall not be disqualified or blacklisted or liable for any non-compliance, default, breach etc., during the period prior to the Approval Date, in relation to failure to take or obtain or failure to comply with any approvals, consent or permits from Governmental Authorities and such Governmental Authorities concerned shall extinguish any such non-compliances by the Corporate Debtor under Applicable Laws prior to the Approval Date.
- 34.68. The directors and other officers and employees appointed by the Corporate Debtor after the Approval Date shall not be liable in respect of non-compliances with the various provisions of the Companies Act, 1956 and/or Companies Act, 2013 and rules made thereunder with respect to any omission and/or non-compliance pertaining thereto prior to the Approval Date including non-preparation and non-approval of financial statements for any of the financial years prior to the Approval Date, non-approval of audited accounts and non-adoption of change in accounting policy as required under the Companies Act 2013. In terms of the Concession Agreement, we assume that the title of the land parcels allotted by YEIDA to the Corporate Debtor is and has always been good, marketable and valid.
- 34.69. YEIDA shall ensure that the Corporate Debtor is provided with unencumbered and unfettered physical possession of all lands that the Corporate Debtor is entitled to in terms of the Concession Agreement.
- 34.70. On and with effect from the Approval Date, all claims and the benefits of the Corporate Debtor against contractual counterparties (and all liabilities of such counterparties towards the Corporate Debtor) shall remain outstanding, due and payable in accordance

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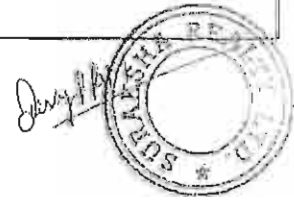
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with their terms. Also, if in such agreement(s) any claim or benefit arises in favour of the Corporate Debtor from such party to the agreement(s), it shall remain due and payable to the Corporate Debtor.

- 34.71. On and with effect from the Approval Date, all the negotiable instruments issued by the Corporate Debtor but not presented for payment including demand promissory note, post-dated cheques and letters of credit shall stand cancelled and the Corporate Debtor's liability under such instruments shall stand extinguished.
- 34.72. The Resolution Plan shall prevail over the provisions of all agreements/ arrangements/ purchase orders/ work orders, etc. entered into by the Corporate Debtor which are specifically dealt with under the Resolution Plan.
- 34.73. Nothing in this Resolution Plan shall affect the rights of the Corporate Debtor to recover any amounts due to the Corporate Debtor from any third party including any related parties of the Corporate Debtor as defined in Section 5(24) of the Code, and governmental and statutory authorities and there shall be no set-off of any such amounts recoverable by the Corporate Debtor against any amount paid by the Corporate Debtor or any liability discharged, satisfied or extinguished pursuant to this Resolution Plan.
- 34.74. In case any provision of the Resolution Plan becomes unenforceable or invalid for any reason beyond the control of the Resolution Applicants, the Resolution Applicants retain the right of modification of the Resolution Plan, in consultation with the CoC, to modify the defect and such change shall not render the entire Resolution Plan ineffective, unless specified otherwise by the Adjudicating Authority.
- 34.75. Once this Resolution Plan is approved by the Adjudicating Authority and comes into effect, the certified copy of this Resolution Plan shall be a conclusive evidence of any dispute regarding the terms of this Resolution Plan or any opposition on the powers of the Resolution Applicants or Corporate Debtor.
- 34.76. In case of any changes are required in the Resolution Plan, in accordance with the applicable laws, then the Committee of Creditors shall offer the Resolution Applicant to make such changes in the Resolution Plan, prior to commencing the fresh process or otherwise rejecting the Resolution Plan, in order to save time which is crucial in present matter, in the given background of the Corporate Debtor.
- 34.77. Upon approval of this Resolution Plan by the Adjudicating Authority, all legal proceeding (both civil and criminal) inquiries, investigation, notices, cause of actions, penalties or disputes or other judicial, quasi-judicial, regulatory or administrative proceedings including but not limited to proceedings related to violation of provisions of Prevention of Money Laundering Act, 2002 ("PMLA") or any other prevalent laws, proceedings initiated by Central Bureau of Investigation or the Serious Fraud

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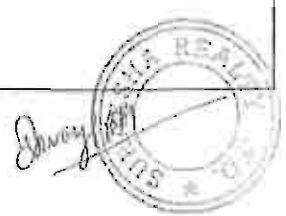
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Investigation Office or any other instrumentality of the State or Central Government or the Enforcement Directorate, arising out of the acts or omissions of the Corporate Debtor in relation to breach of any Applicable Law including but not limited to environmental laws, foreign exchange laws and regulations, labour and employment laws and laws relating to anti-corruption and prevention of money laundering which may have occurred prior to NCLT Approval Date or which may arise after approval of this Resolution Plan by the Adjudicating Authority pertaining to the period prior to such approval, such proceedings etc. shall cease and the Corporate Debtor shall not be prosecuted for such an offence from the NCLT Approval Date. Provided that if a prosecution had been instituted during the corporate insolvency resolution process against the Corporate Debtor, it shall stand discharged from the NCLT Approval Date. It is clarified that neither the Resolution Applicant nor any of its related parties including the management and employees shall be held liable for any such proceedings of any nature whatsoever. No action shall be taken against the property of the Corporate Debtor, which forms part of the Resolution Plan, in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the Corporate Debtor. Further, the assets of the Corporate Debtor shall not be liable, in any manner, to be attached and or confiscated in any such proceedings. Further no asset or property, right, entitlement, claim or benefit of the Corporate Debtor can or would be attached, arrested, put in receivership, appropriated or any analogous actions be undertaken against them whether by court or statutory authority or tribunal or any other government agency, including the Enforcement Directorate, police, CBI, Income Tax Department, GST Department, or any other person for any act or omission done prior to the Approval Date or any effect of such act continuing after Approval Date.

- 34.78. In the event the inter-se treatment amongst various stakeholders changes, then the Resolution Applicant shall not bring any additional funds over and above the aggregate funds as committed in the Resolution Plan for respective stakeholders.
- 34.79. Upon approval of this Resolution Plan by the Adjudicating Authority, all suits, proceedings, litigation (in any forum whatsoever, including but not limited to arbitral tribunal, consumer forum, district courts, Real Estate Regulatory Authority, Real Estate Appellate Tribunal or any other court) filed by the Home Buyers/ Association of Home Buyers shall become infructuous and shall not be continued.
- 34.80. Upon earmarking of land assets of the Corporate Debtor and completion of the treatment as mentioned in this Resolution Plan, the Institutional Financial Creditors shall withdraw all enforcement actions, SARFAESI notices, suits, cases, FIRs, compliants, etc. filed by the such Institutional Financial Creditors against the Corporate Debtor in various forums including courts, tribunals, any Governmental Authority

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without any delay save and except such enforcement action permitted under the provisions of the Code over such assets of the Corporate Debtor earmarked for such enforcement action in terms of this Resolution Plan:

34.81. It is hereby understood that approval of this Resolution Plan by the Adjudicating Authority shall be deemed consent of the Institutional financial Creditors to sale of the land assets of the Land Bank SPV / earmarked assets of the Corporate Debtor, as the case may be, and no separate consent shall be required for any act of sale/transfer of the land assets as contemplated under this Resolution Plan.

34.82. The Resolution Applicants shall take/procure/apply for (as the case may be) all permissions, approvals, consents, licenses, permits, orders, decrees, authorization, registration, filing, notification, exemption, as may be required as per Applicable Law, in terms of the Resolution Plan.

35. Governing Law

This Resolution Plan and any agreements, documents and instruments executed in connection with the Resolution Plan shall be governed by the laws of India.

36. Removal of Difficulties

The Resolution Applicants retain the right to remove any defect or difficulties arising in the implementation of this Resolution Plan by moving an application before the Adjudicating Authority and the Adjudicating Authority may pass such order for removal of difficulty in implementation of this Resolution Plan without the involvement of the CoC or Interim Resolution Professional.

37. Binding Effect

This Resolution Plan once approved by NCLT shall be binding in accordance with section 31 of the Code.

38. Definitive Documents

As provided in the Process Document, the parties (including the Corporate Debtor and the necessary stakeholders) shall enter into definitive agreements as may be required for implementation of the Resolution Plan, including agreements between the Corporate Debtor, and relevant creditors as necessary.

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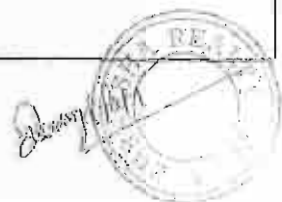
39. Negotiations and Modification of the Plan

The Resolution Applicants would be open to meet with the Interim Resolution Professional and the members of the CoC to discuss this Resolution Plan, and consider the suggestions of CoC, recommendations and modifications with regard to the terms of this Resolution Plan and the financial proposal set out herein. The Resolution Applicants look forward to working with Interim Resolution Professional and the CoC to negotiate and finalise a resolution plan that ensures a successful insolvency resolution process in respect of the Corporate Debtor and delivers maximum value for the Financial Creditors and other stakeholders of the Corporate Debtor. In this regard, subject to discussions, the Resolution Applicants would consider matching any competing offer made by any other resolution applicant.

40. Others

- 40.1. The Resolution Applicant further clarifies that the Resolution Applicant reserves its right to amend the Resolution Plan based on additional liability and/or information, arising subsequent to the submission of this Resolution Plan.
- 40.2. The Resolution Applicants hereby confirm that the Resolution Applicants, to the best of their knowledge, have provided all the details and information required to be given under the Code and the Regulations made thereunder. In case of any further details required, Resolution Applicant shall provide with the information as required under the Code and Regulations made thereunder.
- 40.3. This Resolution Plan upon approval shall supersede all earlier agreements, communications and correspondences that would have been exchanged in relation to the CIRP with the Resolution Professional or the CoC.
- 40.4. Notwithstanding anything contrary contained anywhere in this Resolution Plan, the Resolution Applicant shall have a right to correct mathematical or calculation errors appearing in this Resolution Plan.
- 40.5. Upon the occurrence of any Force Majeure event prior to the NCLT Approval Date, the CoC and the Resolution Applicants shall mutually discuss and agree on suitable modifications to the Resolution Plan to reflect the revised valuation of the Corporate Debtor prior to the NCLT Approval Date.
- 40.6. Upon approval of this Resolution Plan by the Adjudicating Authority, YEIDA shall facilitate implementation of this Resolution Plan, including transfer of all rights available under the agreements/ documents executed between YEIDA and the Corporate Debtor.
- 40.7. In case any additional changes/ conditions are suggested/ levied to the Resolution Plan

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by the CoC and/or the Adjudicating Authority and/or NCLAT, the same shall be treated as part of the Resolution Plan, provided the same are accepted by the Resolution Applicants, in writing.

- 40.8. The Long Stop Date for satisfaction of the terms and conditions mentioned in the Resolution Plan, shall be 24 (Twenty Four) months from the date of approval of Resolution Plan by CoC unless extended by mutual agreement between the Resolution Applicants and the CoC. In the event the approval from Adjudicating Authority does not come till the Long Stop Date, then Resolution Applicants shall be free to withdraw the Resolution Plan and shall no longer be bound by the obligations contemplated under this Resolution Plan or Request for Resolution Plan/ Process Note at its discretion.

For Resolution Applicants

[Handwritten Signature]


Authorised Signatory

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[Handwritten Signature]


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PART III

FINANCIAL PROJECTIONS

REASONABLENESS OF FINANCIAL PROJECTIONS
INCLUDING FEASIBILITY AND VIABILITY

A. ROAD ASSET

1. Dun and Bradstreet Traffic Study Report ("the D & B Report") shows estimated toll collection charges on the basis of optimistic, pessimistic and most likely scenario which has 10% p.a. Growth.
2. Income from roadside facilities is projected to be increased by 5% on conservative basis.
3. The operation cost has been considered at Rs. 1.60 Lakhs/km/Month.
4. Repair of the road asset has been considered every 10th year.
5. Routine maintenance is to be carried out every year for the full concession period and yearly maintenance cost has been worked out at around Rs. 3.50 Lakhs per Km.
6. Cost projection has been worked out as per norms provided in NHAI Circular and as per the D & B Report
7. Further, contingency on cost considered on conservative basis.

B. REAL ESTATE

NOIDA PROJECTS

1. Pending construction work is projected to be completed within 42 months
2. Sales of unsold area shall be initiated after six months from the start of the construction.
3. Unsold area is estimated to be sold at an average selling price of Rs.4,575 per Sq. Ft.
4. Construction cost and schedule of project completion are based on the CBRE Reports for 2019 less the actual work incurred during FY20
5. New projects are to be launched from 3rd & 4th year when all or most of the existing projects shall be completed. Sale on FSI basis shall be preferred from first year (conservatively, not considered in first 2 years) since it shall unlock the funds for completion.

MIRZAPUR PROJECTS/ AGRA PROJECT

1. 3 projects viz. Yamuna Vihar Plots, Tanishq Square and Sunyvale Homes are projected to be completed by the end of 2 years.
2. Sales of unsold area shall be initiated after six months from the start of the construction.
3. For the projections purpose, majority of the existing home buyers are expected to be claiming refund, since the construction is at very initial stage.
4. Construction cost and schedule of project completion are based on the CBRE Reports for 2019 less the actual work incurred during FY20

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5. New projects are to be launched from 3rd & 4th year when all or most of the existing projects shall be completed. Sale on FSI basis shall be preferred from first year (conservatively, not considered in first 2 years) since it shall unlock the funds for completion.

HEALTHCARE

On Conservative basis, no cash flow considered from the healthcare asset as it is mortgaged to its lender viz. Yes Bank.

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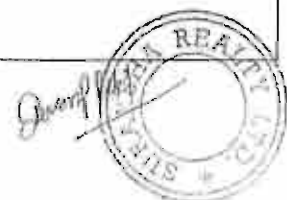
TABLE 25: FINANCIAL PROJECTS AND PROJECTED CASH FLOWS

Rs. Crore

Particulars / Years	Year 1	Year 2	Year 3	Year 4	Year 5
Opening Balance	-	2,584	1,708	759	168
Projected Inflows					
Equity Infusion	125	-	-	-	-
Group Company Infusion	125	-	-	-	-
Working capital limit	3,000	-	-	-	-
Real Estate Projects Inflow- Existing Projects	1,462	1,253	893	616	-
Net Cash Flows from Road Assets	345	359	374	390	286
Net Cash Flow from New Launched Real Estate Projects	-	-	300	500	700
Inflows during the year	5,057	1,612	1,567	1,506	986
Projected Outflows					
Insolvency Resolution Process Cost	5	-	-	-	-
Payment to Operational Creditors	1	-	-	-	-
Payment to FD Holders	25	13	-	-	-
Payment to Refund Seekers	32	32	-	-	-
Real Estate Outflow- Construction & Refund	2,029	2,061	1,092	794	-
Interest on working capital loan	330	330	270	149	44
Corporate Expenses	50	53	54	55	57
Repayment of Working Capital loan	-	-	1,100	1,100	800
Repayment of Group Company loan	-	-	-	-	125
Total Operating Outflow	2,473	2,489	2,515	2,097	1,026
Closing balance (incl. facility)	2,584	1,708	759	168	127

Note: In case further funds are required over and above provided in the business plan for completion of the Projects or servicing of working capital facility, the Resolution Applicants shall infuse the same as and when needed out of their net worth. It is to be noted that above are the projections based on certain assumptions, actual numbers shall differ.

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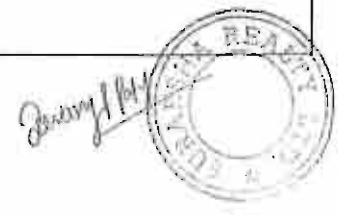
PART IV
ANNEXURES

ANNEXURE- I

Table 26: Project wise Estimated Completion Schedule

Project	Project Development	Projected Completion Period from 90 days Post Approva Date	No. of Towers
Noida Projects			
Kensington Park - Plots	Plotted Development	6 Months	-
Yamuna Enclave	Plotted Development	6 Months	-
Kingswood Oriental	Villa Development	12 Months	-
Aman	Residential	6 Months	26
Pebble Court	Residential	10 Months	4
Klassic	Residential	15 Months	32
Kensington Park Apartments & Heights	Residential	13 Months	18
Kosmos	Residential	14 Months	71
Kasa Isles	Residential	19 Months	15
Kensington - Boulevard	Residential	22 Months	21
Kube	Residential	29 Months	8
Wish Point	Commercial Shops	34 Months	-
Orchard	Residential	36 Months	8
Garden Isles	Residential	40 Months	24
Krescent Homes	Residential	40 Months	23
Total			250
Mirzapur			
Yamuna Vihaar	Plotted Development	24 Months	Plots
Sunnyvale Homes	Plotted Development	24 Months	Plots
Tanishq Square	Commercial	30 Months	2
Villa Expanza	Villa Deveopment	30 months*	
Budh Circuit Studios- Phase I	Residential	42 Months*	4
Naturevue Apartments- Phase I	Residential	42 Months*	1
Udaan & Boulevard Court- Phase I	Residential	42 Months*	23
Aman III- Phase I	Residential	42 Months*	4

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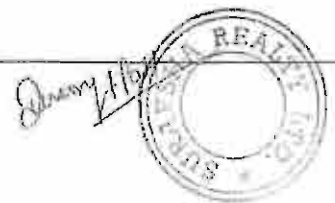
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Agra			
Kensington Park-Plots	Plotted Development	24 months	Plots

*subject to availability of unencumbered and unfettered possession of land, being developed under project. construction of phase I and shifting of buyers of phase II to phase I not only to give them possession faster but also it's unviable to complete phase II at this stage, as no much work done at sites of phase II.

1. It is to be noted that, in case the Cut off Date is extended then, Projected Completion Schedule as mentioned in the above tables shall also be revised and extended accordingly.
2. Flats are estimated to be handed over within 12 months from the Projected Completion Schedule considering various processes involved.
3. Project wise Estimated Completion Schedule is based on the timeline assumed by CBRE report dated July 18, 2019 as provided in the VDR and as assessed by the Resolution Applicants as per their best knowledge.
4. It is to be noted that Tower-wise completion of each project shall be in the phases and outer limit for project is assumed to be the above timelines.
5. There shall be grace period of 12 months from the respective above mentioned project completion timelines, thereafter penalty at the rate of Rs. 5/- sqft. shall be payable to Home Buyers.
6. In the event of the pandemic (Covid-19) getting extended by virtue of directions issued by the Government from time to time and/or any directions/ order issued affecting the construction of the projects mentioned hereinabove in any manner whatsoever including but not limited to orders passed by National Green Tribunal and/or any other statutory, administrative, or judicial or quasi-judicial authority, the timelines appearing in this Resolution Plan pertaining to construction milestones shall extended accordingly.
7. It is submitted that on the request of the Homebuyers tower-wise indicative completion schedule has been provided for Noida Projects as mentioned below:

Table 27: Tower-wise Indicative Completion Schedule (from 90 days Post Approva Date) for Noida Projects



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Tower	Months	Tower	Months
Aman			
N-1	6	N-15	6
N-2	6	N-16	6
N-3	6	N-17	6
N-4	6	N-18	6
N-5	6	N-19	6
N-6	6	N-20	6
N-7	6	N-21	6
N-8	6	N-22	6
N-9	6	N-23	6
N-10	6	N-24	6
N-11	6	N-25	6
N-12	6	N-26	6
N-14	6	N-27	6
Pebble Court			
PB-1	10	PB-3	10
PB-2	10	PB-4	10
Klassic			
KO-1/D1	10	A-3	9
KO-2/D2	10	A-4	9
D3	15	A-5	9
D4	15	A-6	9
D5	15	A-7	6
D6	15	A-8	6
KNG-1	6	A-9	6
KNG-2	6	A-10	6
KNG-3	6	B-1	6
KI-1	6	B-2	6
KI-2	6	B-3	6
KD-1	6	B-4	6
KD-2	9	B-5	6
KD-3	9	B-6	6
A-1	9	C-1	6
A-2	9	C-2	6

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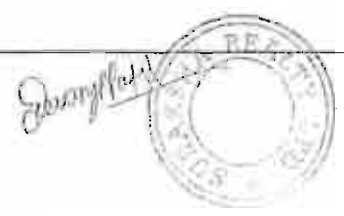


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Tower	Months	Tower	Months
Kensington Park & Height			
KPA-1	0	KPA-10	13
KPA-2	0	KPA-11	12
KPA-3	6	KPA-12	12
KPA-4	6	KPA-14	12
KPA-5	13	KPA-15	13
KPA-6	13	KPA-16	13
KPA-7	13	KPH-1	13
KPA-8	13	KPH-2	13
KPA-9	13	KPH-3	13
Kosmos			
KM-1	6	KM-43	6
KM-2	6	KM-44	10
KM-3	6	KM-45	10
KM-4	6	KM-46	12
KM-5	6	KM-47	12
KM-6	6	KM-51	6
KM-7	6	KM-52	6
KM-8	6	KM-53	10
KM-9	6	KM-54	12
KM-10	6	KM-58	10
KM-11	6	KM-60	12
KM-12	6	KM-61	12
KM-14	6	KM-62	10
KM-15	6	KM-63	10
KM-16	6	KM-64	10
KM-17	6	KM-65	10
KM-18	6	KM-66	12
KM-19	6	KM-67	12
KM-20	6	KM-68	12
KM-21	6	KM-69	12
KM-22	6	KM-70	12
KM-23	14	KM-71	12
KM-24	14	KM-72	12

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Tower	Months	Tower	Months
KM-25	14	KM-72A	13
KM-26	14	KM-72B	13
KM-28	6	KM-72C	14
KM-29	6	KM-73	10
KM-30	6	KM-74	10
KM-31	6	KM-75	10
KM-32	6	KM-77	10
KM-33	6	KM-78	10
KM-34	6	KM-79	14
KM-35	6	KM-79A	14
KM-36	6	KM-79B	14
KM-37	6	KM-80	14
KM-42	6		
Kasa Isles			
KSI-1	16	KSI-9	19
KSI-2	16	KSI-10	18
KSI-3	16	KSI-11	18
KSI-4	17	KSI-12	17
KSI-5	17	KSI-14	17
KSI-6	18	KSI-15	17
KSI-7	18	KSI-16	19
KSI-8	18		
Keingston Boulevard			
KBA-1	16	KBA-12	14
KBA-2	14	KBA-14	14
KBA-3	14	KBA-15	14
KBA-4	22	KBA-16	14
KBA-5	14	KBA-17	14
KBA-6	14	KBA-18	14
KBA-7	22	KBA-19	16
KBA-8	20	KBA-20	15
KBA-9	14	KBA-21	17
KBA-10	14	KBA-22	18

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Tower	Months	Tower	Months
KBA-11	14		
Kube			
KUB-1	29	KUB-5	29
KUB-2	29	KUB-6	28
KUB-3	29	KUB-7	29
KUB-4	28	KUB-8	29
Wishpoint			
	34		
Orchard			
OCA-1	32	OCB-2	33
OCA-2	35	OCB-3	33
OCA-3	35	OCB-4	33
OCB-1	29	OCB-5	37
Garden Isles			
GDI 3	40	GDI 14	32
GDI 4	26	GDI 15	32
GDI 5	25	GDI 16	31
GDI 6	25	GDI 17	29
GDI 7	25	GDI 18	32
GDI 8	24	GDI 19	36
GDI 9	25	GDI 20	32
GDI 10	34	GDI 21	23
GDI 11	33	GDI 22	26
GDI 12	31	GDI 23	29
GDI 26	30	GDI 24	29
GDI 27	29	GDI 25	30
Krescent Homes			
KRH-1	21	KRH-14	21
KRH-2	29	KRH-15	21
KRH-3	33	KRH-16	18
KRH-4	28	KRH-17	22
KRH-5	39	KRH-18	32
KRH-6	40	KRH-19	30

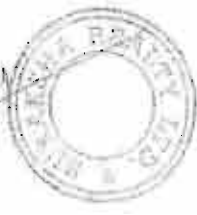
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Tower	Months	Tower	Months
KRH-7	40	KRH-20	40
KRH-8	27	KRH-21	24
KRH-9	23	KRH-22	21
KRH-10	18	KRH-23	38
KRH-11	21	KRH-24	40
KRH-12	21		

It is clarified that the above tower-wise timelines are indicative and for monitoring the progress only and the Project timelines given in Annexure 1 above shall be considered as delivery schedule to Homebuyers.

Sanjay K. Patil


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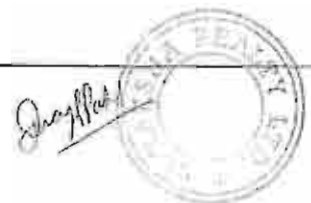
ANNEXURE-II

The Resolution Applicants pray for the following reliefs and concessions from the Adjudicating Authority:

PART A -RELIEFS AND CONCESSIONS ALLOWED BY ADJUDICATING AUTHORITY AS APPEARING IN JAYPEE KENIGSTON JUDGEMENT

1. All the existing legal proceedings relating to Income Tax shall stand irrevocably and unconditionally abated, settled and all liability/obligations of the Corporate Debtor vis a vis the Income Tax authority in relation to such matters shall stand extinguished in perpetuity.
2. The approval of this Plan by the Adjudicating Authority shall be deemed to have waived all the procedural requirements in terms of Section 66, Section 42, Section 62, Section 71 of the CA, 2013 and relevant rules made thereunder, in relation to reduction of share capital of the Corporate Debtor, issuance of shares by Expressway SPV, Land Bank SPV, conversion of Admitted Financial Debt due to the Institutional Financial Creditors to equity, subscription of debentures by the Corporate Debtor or transfer of shares of the Land Bank SPV from the Corporate Debtor to Institutional Financial Creditors.
3. All relevant Governmental Authorities to grant relief/waiver from payment of stamp duty, to the extent permissible under the Applicable Law, for the successful implementation of the Plan inter alia including for the increase in authorized share capital, issuance/transfer of shares or debentures (optionally convertible debentures/non-convertible debentures), transfer of Expressway asset and land bank asset (including leasehold rights in underlying land) to Expressway SPV and Land Bank SPV respectively, pursuant to business transfer, etc.
4. All Governmental Authorities (including the Income Tax authority) to waive the non-compliances of the Corporate Debtor or further claims of the Governmental Authorities on the Corporate Debtor arising out of or in relation to the past claims or non-compliances, prior to the Approval Date.
5. All Governmental Authorities (including the Income Tax authority, Service Tax department and VAT department) to provide relief to the Corporate Debtor from all past litigations pending at different levels and provide waiver from tax dues including interest and penalty on such litigations as on the Approval Date.
6. The lenders (including Institutional Financial Creditors) to the Corporate Debtor shall regularize all the loan accounts of the Corporate Debtor and shall ensure that the asset classification of such loan accounts is "standard" in their books with effect from the Approval Date.
7. All creditors (including the Institutional Financial Creditors, FD Holders, Home Buyers,

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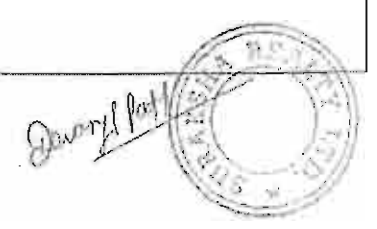
Refund Seekers and the Operational Creditors) of the Corporate Debtor to withdraw all legal proceedings commenced against the Corporate Debtor in relation to Claims including proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Recovery of Debt and Bankruptcy Act, 1993 and seek quashing of criminal proceedings including proceedings under Section 138 of the Negotiable Instruments Act, 1881 , within a period of 90 (ninety) days of the Approval Date.

8. Except those agreements/letter of allotments, where the sub-lease deeds had been executed between the Corporate Debtor and the third parties, in relation to all the agreements/letter of allotments, entered into between the Corporate Debtor and the third parties in relation to the transfer of the leasehold rights over the land situated in Agra and Tappal, the Resolution Applicant reserves the right to terminate/cancel the same with concurrence of such third parties and with simultaneous repayment of the actual amount already paid by such third parties without any interest or further liabilities on the Corporate Debtor or the Resolution Applicant, Pursuant to such termination/cancellation, such land parcels and rights attached thereto shall be fully vested in the Corporate Debtor.
9. The relevant Governmental Authorities shall not initiate any investigations, actions or proceedings against the Corporate Debtor or the Resolution Applicants or the new management (upon acquisition of the Corporate Debtor) including the board of directors, in relation to any non-compliance with Applicable Laws by the Corporate Debtor pertaining to any period up to Approval Date.

Neither shall the Resolution Applicants nor the Corporate Debtor nor their respective directors, officers, and employees to be appointed after the Approval Date be liable for any violations, liabilities, penalties or fines with respect to or pursuant to the Corporate Debtor not having in place the requisite licenses and approvals required to undertake its business as per Applicable Laws and the Resolution Applicant seeks a time period of 12 months from the Approval Date, to ensure renewal of such consents/licenses and approvals. Licenses and approvals held by the Corporate Debtor which expired prior to the Approval Date or which will expire within a period of 3 months thereafter shall be renewed/extended by the relevant Governmental Authorities and the Corporate Debtor shall be permitted to continue its business and assets in manner operated prior to submission of this Plan. Resolution Applicant seeks a time period of 12 months from the Approval Date, to ensure compliances.

10. In relation to any alleged transfer of any economic interest or other beneficial interest by the Corporate Debtor to JAL in the past pertaining to the land parcels for the real estate development, where the title and ownership is still lying with the Corporate Debtor, the Resolution Applicant shall have a right to proceed in accordance with Applicable Law including to terminate/cancel such arrangement without any liability (monetary or otherwise) on the Corporate Debtor or the Resolution Applicant.

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- 11. The Resolution Applicants assume that, in compliance of his duties under Regulation 35A of the CIRP Regulations, the Interim Resolution Professional had determined whether the Corporate Debtor has been subjected to any transactions covered under sections 43, 45, 50 or 66 of the Code or not and applied to the Adjudicating Authority for seeking appropriate relief. Accordingly, though the Resolution Applicants reserve their right to institute any investigation pertaining to any transaction(s) carried out by the ex-management of the Corporate Debtor or to file appropriate applications before the court/tribunal of competent jurisdiction, the Resolution Applicants and its officers, directors, employees and the new management of the Corporate Debtor, shall never be liable/responsible for any such transactions carried out by the ex-management of the Corporate Debtor.
- 12. With respect to any alleged transfer of land parcels by the Corporate Debtor to third parties without any proper agreement/sub-lease deeds and where the consideration amount has not been paid to the Corporate Debtor inter alia including the land parcels, the Resolution Applicant reserves a right to cancel such instruments/agreements/term sheets and upon cancellation the title in such land parcels. will continue to be legally vested in the Corporate Debtor without any liability/obligation to the counter-party, provided that such counter-party may take necessary steps as per Applicable Laws.
- 13. For the purpose of consolidation of the books of Corporate Debtor with Resolution Applicant, the Approval date shall be treated as the first day of the quarter immediately succeeding the quarter in which the Resolution Applicants acquire 100% shareholding of the Corporate Debtor.
- 14. The claims of all Home Buyers (including claims filed before RERA), Financial Creditors, Operational Creditors and Landowners (farmers) against the Corporate Debtor at all platforms including judicial, quasi-judicial and regulatory shall stand withdrawn on the NCLT Approval Date.
- 15. All the concerned authorities including the Central Government and the Reserve Bank Of India to accord the necessary permissions or approvals under the Banking Regulation Act-1949 (to the extent permissible under the Applicable Law) to the Institutional Financial Creditor(s) (if required) in relation to the transfer of shareholding of the Expressway SPV and the Land Bank SPV to the Institutional Financial Creditors.

PART B -OTHER RELIEFS AND CONCESSIONS

- 16. Entities including Serious Fraud Investigation Office, Income Tax Department will not stop the segregation of accounts, records, SAP, employees of Corporate Debtor and JAL and further, JAL will not hold back any document, hardware which is jointly held by the Corporate Debtor and JAL.

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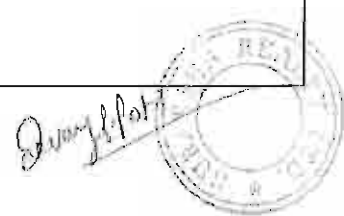


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17. The various deposits under protest made with various authorities shall be unconditionally made available as assets of the Corporate Debtor immediately upon approval of this Resolution Plan as the underlying claims are being settled in terms of this Resolution Plan.
18. The Resolution Applicants be permitted to claim set-off of the entire Minimum Alternate Tax (MAT) credit as available to the Corporate Debtor, against the normal income-tax as would be payable by the Corporate Debtor post the Approval Date i.e. no normal taxation should be applicable until the MAT credit is adjusted/utilized in full.
19. All the losses already lapsed/not lapsed as on the Approval Date should be allowed to be carried forward for a period till the same are utilised/ set-off fully by the Corporate Debtor.
20. The transfer of land to lenders and to Land Bank SPV as part of Resolution Plan in terms of the Resolution Plan may involve capital gains/business income to the Corporate Debtor. Such a gain or income shall be treated as capital reserve for the purposes of Corporate Debtor.
21. All Governmental Authorities including the Income Tax authority, Service Tax department and VAT department, Labour Cess department (BOCW), to provide relief to the Corporate Debtor from all past litigations pending at different levels and provide waiver from tax & cess dues including interest and penalty on such litigations as on the Insolvency Commencement Date.
22. The penalty levied/leviable and procedural requirements for delisting of shares, by the Stock Exchanges and SEBI, relating to reduction of Share Capital Delisting/ any Other reasons etc., (if any) to be waived off.
23. All software/licences including SAP and hardware belonging to JAL or any other party which were being used by the Corporate Debtor shall stand transferred to the Corporate Debtor.
24. Issuance of necessary directions for the segregation of data of Corporate Debtor and JAL any other associate company of the Corporate Debtor will be allowed.
25. Issuance of necessary direction to the concerned government authority for waiver of the stamp duty, registration charges, filing fees and other moneys payable to the government, if applicable and in relation to this Resolution Plan and its implementation including but not limited to reduction of share capital of the Corporate Debtor, issuance of Equity Shares and documentation in relation thereto, to the extent permissible under Applicable Laws.
26. Issuance of necessary directions to SEBI, relevant stock exchanges and MCA for expediting the delisting of shares and to take necessary actions in a time bound manner as applicable under the prevailing laws in order to implement the Resolution Plan.

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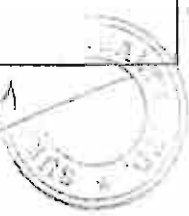
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27. Issuance of necessary directions to relevant RERA Authority(ies) to expeditiously make the appropriate changes in its records qua Projects, in accordance with the Resolution Plan.
28. Issuance of necessary directions to the lenders of the Homebuyers that have granted the home loan facility to the Homebuyers, waive the past defaults of the homebuyers / Corporate Debtor in relation to Projects, disburse the outstanding sanctioned facility as per the project completion milestones in line with the terms of sanction, immediately upon approval of the Resolution Plan by the Adjudicating Authority, as its is critical for the construction / completion of the Projects.
29. The Hon'ble Adjudicating Authority be pleased to issue necessary directions to the local district administration of the respective states where the assets of the Corporate Debtor are situated to give assistance to the Resolution Applicant (s) for the implementation of the Resolution Plan, as and when required by the Resolution Applicants and for completing the Construction of Projects for Home Buyers.
30. To direct the concerned Registrar of Companies to expeditiously associate, as per Applicable Laws, the Directors Identification Numbers (DIN) of the Directors who would be taking charge collectively as Board of Directors of the Corporate Debtor, pursuant to the approval of the Resolution Plan.
31. Issuance of necessary directions to Central Board of Direct Taxes for exemption / grant of relief to the Corporate Debtor from the provisions of Sections 41(1), 45, 72 (3), 43-B, 56, 79, 80 read with 139, 115JB and 269-SS, 269-T and 281, provisions of Chapter XVII of the Income Tax Act effective from the date of approval of the Resolution Plan or on account of implementation of the Resolution Plan.
32. Issuance of necessary directions to Central Board of Indirect Taxes and Custom to waive any requirement of approval for transfer of assets or business undertaking in term of the Resolution Plan.
33. Issuance of suitable directions to the Ministry of Corporate Affairs, to waive the requirements under Section 140 of the Companies Act, 2013 in respect of the removal of the existing auditors of the Corporate Debtor. Issue directions to JAL to the effect that during the Transition Period, JAL, if so required by the Resolution Applicants, shall provide all facilitation to the Resolution Applicants / Corporate Debtor, with regard to maintenance and handing over the assets of the Corporate Debtor, for effective implementation of the Resolution Plan.
34. Issue directions such that the Corporate Debtor receives the amounts due to it, with respect to and in interest of the Home buyers of the Corporate Debtor, including outstanding construction advance received from the Corporate Debtor, outstanding maintenance deposit

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Sanjay Mittal



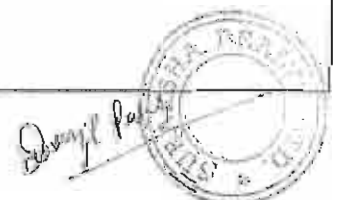
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received from the Corporate Debtor and outstanding maintenance deposits of the Home Buyers of the Corporate Debtor, and other outstanding advances related to Home Buyers of the Corporate Debtor, immediately upon completion of the reconciliation between the Corporate Debtor and JAL, as the same shall be utilised for completion of the construction for Home Buyers of the Corporate Debtor, in line with the following directions of the Jaypee Kensington Judgement.

35. Issue directions to JAL to make immediate payment of the outstanding amounts of Rs. 71 crore, as per the audited balance sheet of the Corporate Debtor dated March 31, 2021, payable by JAL to the Corporate Debtor, with respect to outstanding consideration for lands of the Corporate Debtor sub-leased to the lenders of JAL, as these funds also can be utilised for expediting the construction for Homebuyers. It is clarified that this relief is not linked to reconciliation directed by Hon'ble Supreme Court in Jaypee Kensington Judgement and is sought independently, in the interest of justice.
36. Issue such directions that the infrastructure of the Corporate Debtor (common between Home Buyers of the Corporate Debtor and home buyers of JAL) under the control and management of JAL, shall be made available/continue to be available to the Home Buyers of the Corporate Debtor, without any further payment.
37. Issue necessary directions to YEIDA to complete the following pending transactions expeditiously, as per the provisions of the Concession Agreement:
 - a) transfer/sub-lease the balance land of approx. 79 acres in favour of the Corporate Debtor or grant compensation, as applicable, as per the provisions of the Concession Agreement.
 - b) NBCC, had in its earlier plan sought a relief for extinguishment of liability of the Corporate Debtor towards Noida-Greater Noida expressway in terms of the Concession Agreement. Such relief was rejected by the Adjudicating Authority and accordingly the Corporate Debtor shall provide for debt in its books for value of construction cost (Capital Costs) of the same and pay the same to YEIDA as per the terms of the Concession Agreement and in lieu, as per the terms of the Concession Agreement, YEIDA shall hand over the possession of the Noida-Greater Noida Expressway and land required for construction of toll plaza thereon and Corporate Debtor shall exercise its rights to collect the toll on the Noida-Greater Noida Expressway in terms of the Concession Agreement.
 - c) Any further extension of the Concession Period by 15 years, if eligible, as per the Concession Agreement, and that may be granted by YEIDA, shall be available to the Corporate Debtor and the Expressway SPV, as the case may be.
 - d) the deposits already made by the Corporate Debtor of around Rs. 35 crore, shall be


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- remitted back by the YEIDA to Corporate Debtor within 30 days of NCLT Approval Date.
- e) Revision of Toll as per Applicable Laws, for which request of IRP is pending.
 - f) Payment of appropriate compensation of all the delays as per the Concession Agreement regarding the above clauses from a) to e), in line with the Concession Agreement
 - g) Issuance of approvals / building completion certificate, in compliance with Applicable Laws, in the interest of more than 20,000 home buyers that are stuck since 8-10 years, as needed in order to effectively implement the Resolution Plan, which is one of the key requirements of the Code, in order to make Resolution Plan succeed.
38. Issuance of necessary directions to the effect that the transaction pertaining to mortgage of 100 acres land of the Corporate Debtor situated at Tappal for securing the credit facility availed by JAL from its lenders can be agitated under the provisions of the Code before this Adjudicating Authority.

Jaypee Infratech


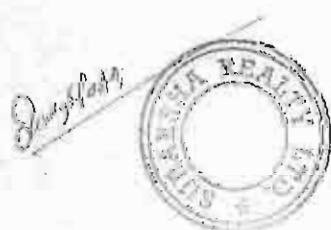
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ANNEXURE - III

Table 28: List of Contracts/ Agreements to be terminated

Sr. No.	List of Documents
1	Developer Agreement dated 11th April 2011 between Jaypee Infratech Limited & Jaiprakash Associates Limited for development of land parcels located at Agra
2	Developer Agreement dated 9th October 2010 between Jaypee Infratech Limited & Jaiprakash Associates Limited for development of land parcels located at Jaganpur
3	Developer Agreement dated 9th October 2010 between Jaypee Infratech Limited & Jaiprakash Associates Limited for development of land parcels located at Mirzapur
4	Developer Agreement dated 1st May 2009 between Jaypee Infratech Limited & Jaiprakash Associates Limited for development of land parcels located at Noida
5	Developer Agreement dated 6th July 2011 between Jaypee Infratech Limited & Jaiprakash Associates Limited for development of land parcels located at Tappal
6	Works Contract dated 27th November 2007 between Jaypee Infratech Limited & Jaiprakash Associates Limited for operations and maintenance of Yamuna Expressway
7	Any other contracts existing on the NCLT Approval Date between the Corporate Debtor and JAL/ its associate companies/ Jaypee Infra Ventures Limited.



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Annexure-IV
Indicative Terms for the Assenting NCDs

Table 29: Indicative Terms for the Assenting NCDs

S. No.	Particulars	Terms
1.	Issuer	Corporate Debtor
2.	Beneficiary/ Subscribers	Assenting Institutional Financial Creditors
3.	Instrument	Non-Convertible Debentures (Assenting NCDs)
4.	Amount of the Assenting NCDs to be issued	Rs. 1,200 crore
5.	Issue Price	Face Value
6.	Underying Land Parcels & Differential Rates	Assenting Land Parcels
7.	Coupon Rate	Zero Coupon
8.	Repayment	From 3 rd year till 10 years from the Approval Date in accordance with the treatment provided in clause no. 15.25 in the Resolution Plan
9.	Other Terms	In accordance with the treatment provided in the Resolution Plan

Terms mentioned herein are broad terms and necessary, mutually acceptable definitive documents shall be executed within 90 days of the Approval Date.

Dimple K. Singh


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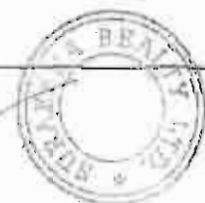
Annexure-V
Proposal for the Interim Finance of Rs. 300 crore for Homebuyers

Table 30: Indicative Terms for the Interim Finance

S. No.	Particulars	Terms
1.	Lender	The Resolution Applicants
2.	Beneficiary	The Corporate Debtor
3.	Facility	Interim Finance
4.	Amount	Up to Rs. 300 crore, may be increased at sole discretion of Resolution Applicants, if requested by IRP
5.	Purpose	Construction of Wishtown Project, LFD-1 Noida
6.	Security	Facility of Interim Finance to be secured by the Priority charge over cashflows of Yamuna Expressway and / or monies to be received from JAL pursuant to reconciliation as directed by Hon'ble Supreme Court.
7.	Coupon Rate	12% p.a. payable monthly out of cashflows of Yamuna Expressway.
8.	Repayment	<p>Principal Moratorium for the period of 12 months from the date of CoC Approval Date.</p> <p>Principal shall be repaid after 12 months but before 24 months, from the CoC Approval Date, out of the proceeds of Yamuna Expressway and / or the monies to be received from JAL pursuant to reconciliation as directed by Hon'ble Supreme Court.</p> <p>In the event the NCLT, rejects the Resolution Plan on or before 12 months, for any reason whatsoever, then in that case, the moratorium shall be withdrawn immediately and the Interim Finance shall be repaid out of the proceeds of Yamuna Expressway and / or the monies to be received from JAL pursuant to reconciliation as directed by Hon'ble Supreme Court.</p>

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Shri. J. P. Singh



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9.	Other Terms	<ol style="list-style-type: none">1. The Interim Finance Proposal is subject to approval of the Resolution Plan by the COC.2. The Resolution Applicants shall have right to monitor the activities at the Project sites, including construction progress, labour counts, materials and contracts, and cash flows of the Projects.3. Detailed mutually acceptable definitive documentation shall be executed if in-principle approval is received of IRP, COC and Institutional Financial Creditors.
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Dr. Anil Kumar


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Annexure- VI
Definitions

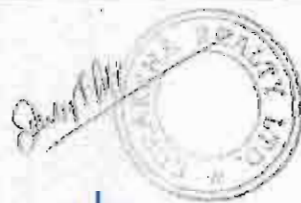
"Adjudicating Authority"	The National Company Law Tribunal (Allahabad bench).
"Approval Date"	shall mean date on which the order of the Adjudicating Authority under Section 31 (1) of the Code has been passed, or the order of the National Company Law Appellate Tribunal or the Supreme Court, if an appeal is made to such tribunal or court against the order of the Adjudicating Authority, having achieved finality.
"Applicable Law"	All applicable laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees or other official directive having the force of law of any Governmental Authority or person acting under the authority of any Governmental Authority of India and includes regulations prescribed by the IBBI, RBI and SEBI relating to the approval and implementation of this Resolution Plan and any matter related thereto.
"Applicant Contribution"	Shall mean the contribution to be brought by the Resolution Applicants as defined under the Process Document to be read with the clause 13 of this Resolution Plan.
"AR of Home Buyers"	Mr. Kuldeep Verma, an Authorised Representative of homebuyers of the Corporate Debtor
"Assenting Institutional Financial Creditors"	Shall mean such Institutional Financial Creditor(s) who have voted in favour of the Resolution Plan
"Business Day"	The day on which the banks in Mumbai are open for regular working except Saturday, Sunday and public holiday.
"Claims"	Has the meaning ascribed to the term in the Code.
"Closing Date" or "Cut off Date"	Shall mean the date on which last of the following activities in relation to this Resolution Plan would have been completed: (a) Issuance of equity of the Corporate Debtor to the Resolution Applicants; (b) Payment of IRP Cost; (c) Payments to Operational Creditors; (d) Security creation for dissenting institutional financial creditors; (e) Land debt swap structure completed with the Assenting Institutional Financial Creditors;

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"CoC"	Committee of Creditors.
"CoC Approval Date"	Date on which the Resolution Plan is approved by the CoC
"Code"	Insolvency and Bankruptcy Code, 2016 and all rules and regulations thereunder.
"Concession Agreement"	Concession Agreement dated 7th February, 2003 entered into between Jaiprakash Industries Limited and Taj Expressway Industrial Development Authority, later renamed as Yamuna Expressway Industrial Development Authority ("YEIDA").
"Corporate Debtor"	JaypeeInfratech Limited/JIL
"Creditors"	All creditors of the Corporate Debtor, including without limitation the Financial Creditors, Operational Creditors and Other Creditors of the Corporate Debtor. For the avoidance of doubt, the Resolution Applicants shall be under no obligation to recognise any Creditor that has not been so identified by the Interim Resolution Professional pursuant to the Code (including Section 25 of the Code).
"Credit Facility" or "Facility"	Has the meaning ascribed to the term in Part II, Clause 13 (<i>Source of Funds and its Utilisation</i>) of the Resolution Plan.
"Definitive Documents"	Has the meaning ascribed to the term in Part II, Clause 27 of this Resolution Plan.
"Dissenting Institutional Financial Creditors"	Shall mean such Institutional Financial Creditor(s) who have voted against the Resolution Plan
"ESIC"	Employees State Insurance Act, 1948.
"Existing Promoters" or "Existing Promoters Group"	Shall be the existing persons who have been identified as Promoter and Promoter group as per the annual report for the FY 2020 and / or names appearing in the shareholding pattern filed Under Reg. 31(1)(b) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for the quarter ending 31.12.2020 and uploaded on the website of the Corporate Debtor.
"Financial Creditors"	Shall mean all the financial creditors as appearing in the IM as updated from time to time and uploaded in the virtual data room and as defined under the Code.
"Financial Debt"	Has the meaning ascribed to the term in the Code.
"Fixed Deposit Holders"	Financial Creditors who made deposits with the Corporate Debtor, in accordance with the Applicable Law.



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Force Majeure	means any of the following events or combination of such events or circumstances as are beyond the control of a party and which cannot: (i) by the exercise of reasonable diligence, or (ii) despite the adoption of reasonable precautions and/or alternative measures be prevented, or caused to be prevented, and which materially and adversely affects the Resolution Applicants ability to perform its obligations under this Resolution Plan, including: (a) acts of god, comprising fire, drought, flood, earthquake, epidemics, pandemic and other natural disasters; (b) explosions or accidents, and terrorist attacks; (c) strikes, labour unrest or lock-outs; and/or (d) any event or circumstance analogous to the foregoing;
"Government Authorities"	means any applicable Central, State or Local Government, statutory, regulatory, departmental or public body or authority of relevant jurisdiction, legislative body or administrative authority, agency or commission or any court, tribunal, board, bureau or instrumentality thereof including Financial Sector Regulator, Securities and Exchange Board of India, Stock Exchanges, Registrar of Companies, Official Liquidators, Regional Directors, Foreign Investment Promotion Board, Reserve Bank of India, Insurance Regulatory and Development Authority of India or arbitration or arbitral body having jurisdiction, courts and other government and regulatory authorities of India and includes persons acting under such authorities.
"Home Buyers" or "Homebuyers"	Means in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.
"IM"	Information Memorandum dated November, 2018.
"Implementation and Monitoring Committee"	Has the meaning ascribed to the term in Part II, Clause 27 (<i>Mechanism regarding Management, Control & Supervision of the affairs of the Corporate Debtor- Phase II Period</i>), of this Resolution Plan.
"Insolvency Commencement Date"	Has the meaning ascribed to the term in the Code.

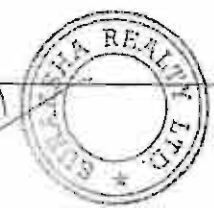


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"Insolvency Resolution Process Costs" or "IRP Costs"	Has the meaning ascribed to the term in the Code.
"Institutional Financial Creditors"	IDBI Bank Limited IIFCL LIC State Bank of India Corporation Bank Syndicate Bank Bank of Maharashtra ICICI Bank Limited Union Bank of India IFCI Limited Jammu and Kashmir Bank Limited Axis Bank Limited Srei Equipment Finance Limited
"Interim Resolution Professional/IRP"	Mr. Anuj Jain, or any successor Resolution Professional appointed by the NCLT.
"MCA"	Ministry of Corporate Affairs.
"Monitoring Committee"	Committee as mentioned in clause 17.9 of Part II of this Resolution Plan
"NCLT Approval Date"	The date on which the NCLT approves the Resolution Plan as per S. 31 (1) of the Code.
"New Company Management"	Has the meaning ascribed to the term in Part II (<i>Mechanism regarding Management, Control & Supervision of the affairs of the Corporate Debtor-Phase III Period</i>), of this Resolution Plan.
"Operational Creditors"	Means as mentioned in this Resolution Plan and as defined under the Code
"PAL"	Shall mean the Provisional Allotment Letter or the Builder Buyer Agreement or any othe document executed between the Home Buyer and the Corporate Debtor for allotment of the unit(s).
"Person"	Any individual, limited or unlimited liability company, corporation, partnership (whether limited or unlimited), proprietorship, Hindu undivided family, trust, union, association, government or any agency or political subdivision thereof or any other entity that may be treated as a person under Applicable Law, and shall include their respective successors and in case of an individual shall include his/her legal representatives, administrators, executors and heirs, and in case of a


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	trust shall include the trustee or the trustees and the beneficiary or beneficiaries from time to time.
"Public Shareholders"	Shall be the existing persons other than Promoter and Promoter group as per the annual report for the FY 2020 and / or names appearing in the Shareholding pattern filed Under Reg. 31(1)(b) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for the quarter ending 31.12.2020 and uploaded on the website of the Corporate Debtor.
"Prayers"	Has the meaning ascribed to the term in Part II (<i>Prayers to the Adjudicating Authority</i>) of this Resolution Plan.
"Process Document"	Process Document dated December 27, 2018 issued by the IRP, as amended from time to time.
"Process Manager"	Means, KPMG India Private Limited.
"Projects"	Means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;
"Reconstituted Board"	Has the meaning ascribed to the term in Part II (<i>Mechanism regarding Management, Control & Supervision of the affairs of the Corporate Debtor-Phase II Period</i>) of this Resolution Plan.
"Regulations"	Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and as amended from time to time.
"RERA"	Real Estate (Regulation and Development) Act, 2016 and as amended from time to time.
"Resolution Applicants"	Collectively, Suraksha Realty Limited, Lakshdeep Investments and Finance Private Limited and "Resolution Applicant" shall mean any one of them, as the context may require.
"Resolution Plan"	This resolution plan prepared and submitted by the Resolution Applicant in compliance with the Code read with the Regulation 38 of the Regulations in response to the Information Memorandum made available by the Interim Resolution Professional wherein treatment to all obligations and liabilities have been provided
"SEBI"	Securities and Exchange Board of India.

Shamji Patel



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"Transfer Date"	(f) Shall mean the date on which equity contribution is made by the Resolution Applicants for acquisition of 100% shareholding of the Corporate Debtor after the Approval Date.
"VDR"	Means the data room prepared by the Resolution Professional containing the information pertaining to the Corporate Debtor (including Confidential Information) in connection with the Resolution Plan Process

Words or Expressions not defined hereinabove shall have same meaning as prescribed under the Code and/ or Regulations.

Sanjay K. Jain


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June 9, 2021

Addendum to the Resolution Plan dated June 07, 2021

Pursuant to the discussions of the Resolution Applicants with the Interim Resolution Professional and CoC in the CoC meeting held on June 07, 2021, the Resolution Applicants submit this addendum (the "Addendum") to the Resolution Plan dated June 07, 2021 (the "Resolution Plan").

The Resolution Applicants have proposed certain changes in the Resolution Plan to incorporate the suggestions of the members of the CoC as well as changes in few of the commercial terms. As such changes are in the form of change in numbers, revised drafting of certain clauses and re-arrangement of clauses of the Resolution Plan, with a view to avoid complexities in presentation of such changes by way of showing each and every amendment, the Resolution Applicants have provided the entire clause pertaining to treatment of Assenting Institutional Financial Creditors.

Capitalised terms used but not defined herein shall have the meaning ascribed to such terms in the Resolution Plan.

A. Sr. No. 3 and 4 appearing in the Table 8 "Sources of Funds" at Clause 13 of the Resolution Plan shall stand substituted by the following:

Sr. No.	Source of Funds	Rs. Crore
3.	Redemption of Zero Coupon Non-Convertible Debentures to be issued in accordance with this Resolution Plan and / or Guaranteed Payment Obligation of Rs. 1,280 crore, to the Assenting Institutional Financial Creditors ("Assenting NCDs"). Source: Internal Accruals of the Company and / or additional fund infusion by Resolution Applicants by way of equity, debt or any other instrument, as it deemed fit.	1,280
4.	Land for Institutional Financial Creditors, as per the terms of this Resolution Plan at FMV.	6,457

B. Total Amount appearing in the Table 8 "Sources of Funds" at Clause 13 of the Resolution Plan shall stand substituted by Rs. 12,148 crore.

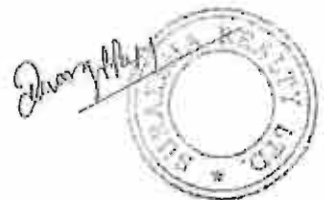
C. Sr. No. 4 and 5 appearing in the Table 9 "Application of Funds" at Clause 13 of the Resolution Plan shall stand substituted by the following:

Sr. No.	Source of Funds	Rs. Crore
4.	Redemption of Zero Coupon Assenting NCDs issued and / or Guaranteed Payment Obligation of Rs. 1,280 crore, to Assenting Institutional Financial Creditors.	1,280
5.	Land for Institutional Financial Creditors, as per the terms of this Resolution Plan	6,457

D. Total Amount appearing in the Table 9 "Application of Funds" at Clause 13 of the Resolution Plan shall stand substituted by Rs. 12,148 crore.

E. Clauses 15.11 to 15.39 (except clauses 15.15 to 15.17) as appearing under the Head "Treatment for the Institutional Financial Creditors" in the Resolution Plan shall stand

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substituted by the following:

TREATMENT FOR THE INSTITUTIONAL FINANCIAL CREDITORS

OVERALL TREATMENT TO THE INSTITUTIONAL FINANCIAL CREDITORS BY WAY OF LAND PARCELS AND ASSENTING IFC PAYMENT OBLIGATIONS

15.11. The Resolution Applicants shall earmark the following land parcels of the Corporate Debtor on as-is-where-is and as-is-what-is basis towards treatment of Claims of Institutional Financial Creditors, in accordance with the Resolution Plan:

Table 11: Treatment of the Institutional Financial Creditors

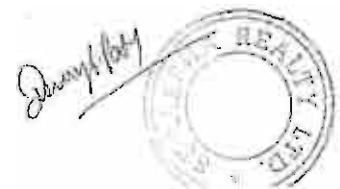
S.No.	Particulars		Rs. Crore
A.	Land Parcels		
	Location of Land	Area (in acres)	FMV Rs. crore
1	Jaganpur	718	2,915
2	Mirzapur	50	212
2	Tappal	976	1,815
3	Agra	808	1,515
	Sub-total (A)	2,552	6,457
B.	Payment Obligations		
	Assenting IFC Payment Obligations, in accordance with the Resolution Plan.		1,280
	Sub-Total (B)		1,280
	Grand Total		7,737

TREATMENT TO THE ASSENTING INSTITUTIONAL FINANCIAL CREDITORS, THROUGH ASSURED LAND PARCELS, ASSENTING IFC PAYMENT OBLIGATIONS AND SURPLUS LAND PARCELS AFTER DISSENTING TREATMENT

15.12. To incentivise the Institutional Financial Creditors to assent to the Resolution Plan, out of the above treatment, land parcels admeasuring 1,066 acres ("Assenting Land Parcels"), Assenting IFC Payment Obligations of Rs. 1,280 crore, are proposed to be given exclusively to the Assenting Institutional Financial Creditors along with remaining land parcels out of 1,486 acres after the treatment of Dissenting Institutional Financial Creditors ("Assenting Surplus Land Parcels").

15.13. The Assenting Institutional Financial Creditor(s) shall be instrumental in success of the resolution of the Corporate Debtor which is the spirit and object of the Code. The Assenting Institutional Financial Creditor(s) shall be instrumental in ensuring homes to more than 20,000 families and recovery to several public depositors, that are stuck since 8-10 years including senior citizens, people with medical emergencies, people struggling for livelihood, etc., thereby balancing the interest of all the

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stakeholders.Table 12: Treatment of the Assenting Institutional Financial Creditor

S.No.	Particulars	Rs. Crore
A. Assenting Land Parcels		
	Location of Land	Area (in acres)
		FMV Rs. crore
1	Jaganpur	588
2	Mirzapur	50
2	Tappal	310
3	Agra	118
	Sub-total (A)	1,066
B. Payment Obligations		
	Assenting IFC Payment Obligations, in accordance with the Resolution Plan.	1,280
	Sub-Total (B)	1,280
	Sub-total (A+B)	4,677
	Assenting Surplus Land Parcels i.e., remaining land parcels after treatment to Dissenting Institutional Financial Creditors	To be quantified post voting
	GRAND TOTAL	To be quantified post voting

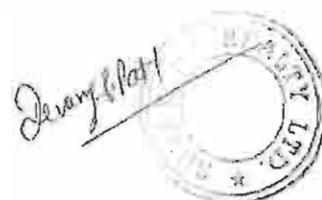
DETAILED TREATMENT IN RELATION TO TOTAL LAND PARCELS TO ASSENTING INSTITUTIONAL FINANCIAL CREDITORS

S.No.	Particulars	Rs. Crore
A.	Transferring beneficial ownership of Assenting Land Parcels as mentioned below:	
	ASSENTING LAND PARCELS	
		Area (in acres)
		FMV Rs. Crore
1	Jaganpur	588
2	Mirzapur	50
3	Tappal	310
4	Agra	118
	Total	1,066
C.	Assenting Surplus Land Parcels after treatment to Dissenting Financial Creditors	To be quantified post voting

15.14. The Assenting Land Parcels and Assenting Surplus Land Parcels, available to Assenting Institutional Financial Creditors, together will be referred to as "Assenting Total Land Parcels".

15.15. It is further clarified that the beneficial ownership of the exclusively earmarked

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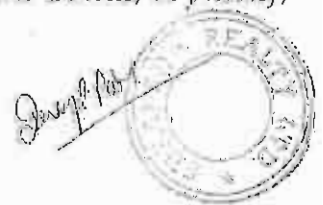
Assenting Land Parcels having FMV of Rs. 3,397 crore, would be available proportionately only to Assenting Institutional Financial Creditors, in ratio of the Claim Admitted of such Assenting Institutional Financial Creditors, subject to maximum value of Claim Admitted of such Assenting Institutional Financial Creditor(s).

15.16. After approval of the Resolution Plan by the Committee of Creditors, the Resolution Applicants, in consultation with the Assenting Institutional Financial Creditors, shall finalise suitable cost efficient structure including management, stamp duty, tax, etc., with respect to the transfer of beneficial interest in Assenting Total Land Parcels, for the Assenting Institutional Financial Creditors to best achieve the distributions to the Assenting Institutional Financial Creditors contemplated under this Resolution Plan, including but not limited to:

- a) transfer of business undertaking / (s) comprising of any of the asset / (s) of the Corporate Debtor along with commensurate debt of the Assenting Institutional Financial Creditors, allotted to the Corporate Debtor, under the Concession Agreement, into the subsidiary or multiple subsidiaries, either wholly owned or otherwise, with or without the transfer of equity shares or beneficial interest of such subsidiary to the Assenting Institutional Financial Creditors, with or without issuance of any other instrument in lieu of their financial assets / debt / obligation etc, in a suitable manner, upon execution of tri-partite agreement with YEIDA; or
- b) any other mutually acceptable suitable structure to facilitate monetisation of Assenting Total Land Parcels and distribution of the proceeds thereof to the Assenting Institutional Financial Creditors in accordance with this Resolution Plan, including but not limited to retaining land parcels in Corporate Debtor, in trust as trustee, for Assenting Institutional Financial Creditors, or any class thereof, or transfer of such land parcels into a special purpose vehicle ("Land SPV"), without any obligations whatsoever, after the extinguishment of the liability qua Corporate Debtor.
- c) The Assenting Institutional Financial Creditors shall enter into suitable mutually acceptable documentation for completion of the above transactions.

15.17. In the event any liability, including but not limited to cost, expenses, charges by whatever name called, tax liability (other than tax on capital gains), stamp duty, any other government charges, levy or cess, etc., in relation to the structure contained herein above in clause 15.17 arises, the Corporate Debtor/ Resolution Applicants shall incur such costs including tax, liability, stamp duty, any other government charges, levy or cess etc., on behalf of Assenting Institutional Financial Creditors/ Land SPV, in relation to the structure contained herein above in clause 15.17, with right to get it reimbursed with interest @12% p.a., on monthly basis, out of the proceeds of sale / monetization of the Assenting Total Land Parcels, in priority,

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before any distribution to the Assenting Institutional Financial Creditors.

- 15.18. The Corporate Debtor shall have right to be appointed and act as the Asset Management Company on best effort basis, without any obligation, in order to manage and monetise the aforementioned Assenting Total Land Parcels, in favour of the Assenting Institutional Financial Creditors, provided that the terms and conditions including scope, fees, etc., proposed by the Corporate Debtor are approved by the Assenting Institutional Financial Creditors. It is clarified that the terms and conditions of appointment of the Corporate Debtor, as the Asset Management Company, pursuant to this Resolution Plan, shall be fair and reasonable. The Corporate Debtor shall exercise its right to be appointed as Asset Management Company within 90 days of Approval Date.
- 15.19. An asset monetisation committee ("Asset Monetisation Committee") shall be constituted by the Corporate Debtor having participation of the Assenting Institutional Financial Creditors and the Corporate Debtor as an Asset Management Company. The Asset Monetization Committee shall vest majority decision making powers with the Assenting Institutional Financial Creditors and the decisions of the Asset Monetization Committee shall be binding on the Corporate Debtor as an Asset Management Company.
- 15.20. The Asset Monetization Committee shall however be free to decide on sale / monetise the any Assenting Total Land Parcels below the fair market value per acre as mentioned in table 14 below, if they deem fit, however, in such event the Assenting IFC Payment Obligation, as mentioned in clause 15.28 to 15.32, with respect to such specific transactions, then the Assenting IFC Payment Obligation shall not increase beyond the repayment schedule what is committed in Table 14 hereinbelow. It is hereby clarified that the maximum Assenting IFC Payment Obligation shall not exceed the amount committed in repayment schedule given in Table 14 hereinbelow.
- 15.21. The Asset Management Company, under the guidance of the Asset Monetisation Committee, shall carry out efforts to manage and monetise the Assenting Total Land Parcels, either by identifying the prospective buyers for sale of such Assenting Total Land Parcels and / or by identifying joint development partners, on such terms and conditions that may be approved in terms of clause 15.17.
- 15.22. The Resolution Applicants and / or Corporate Debtor shall have right of first refusal at the time of monetization of such lands held by the Assenting Institutional Financial Creditors, at the then prevailing market rate.
- 15.23. The Corporate Debtor, in order to perform its role as Asset Management Company, shall earmark up to Rs. 25 crore, specifically for expenses to be incurred for management and monetisation of Assenting Total Land Parcels, of the Assenting Institutional Financial Creditors, which shall be reimbursed to the Corporate Debtor along with 12% p.a. interest, on monthly basis, in priority, out of the sale proceeds

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of the Assenting Total Land Parcels.

15.24. The proceeds, with respect to monetisation of the Assenting Total Land Parcels in terms of the Resolution Plan, shall be remitted, directly, in separate escrow bank account, to be opened with IDBI Bank Ltd. The monies lying in designated escrow account as mentioned above, shall be distributed as under:

- a) Firstly, towards reimbursement of any costs including tax, liability, stamp duty, any other government charges, levy or cess etc., in relation to the structure contained in clause 15.17 hereinabove, along with interest @12% p.a. on monthly basis, in priority;
 - b) Secondly, towards expenses and costs for managing and monetisation of the Assenting Total Land Parcels or otherwise in relation to such land parcels and / or for reimbursement of actual expenses with interest, incurred by the Corporate Debtor, as mentioned above; and
 - c) Thirdly, to the Assenting Institutional Financial Creditors, to the extent of value at Assured Rate per acre, as mentioned in table 14 above, towards recovery of their Claims in terms of this Resolution Plan; and
- Fourthly, surplus, after clause a), b) and c) above shall be distributed in equal ratio to: (i) Resolution Applicants / Corporate Debtor / Asset Management Company; and (ii) the Assenting Institutional Financial Creditors/Land SPV.

DETAILED TREATMENT IN RELATION TO ASSENTING IFC PAYMENT OBLIGATION OF RS. 1,280 CRORE

15.25. Subject to the adjustments set out in Clause 15.29 below, the Corporate Debtor shall make the payments set out in Table 13 below to the Assenting Institutional Financial Creditors ("Assenting IFC Payment Obligations"), pursuant to the structure and terms of the Assenting IFC Payment Obligations which shall be mutually agreed to by the Assenting Institutional Financial Creditors and the Resolution Applicant. Subject to the final structure mutually agreed by the Assenting Institutional Financial Creditors and the Resolution Applicant in terms of Clause 15.17 above, the Assenting IFC Payment Obligations may be made either through issuance and redemption of the zero coupon non-convertible debentures to be issued for amounts aggregating to Rs. 1,280 crore by the Corporate Debtor to the Assenting Institutional Financial Creditor (where the Assenting Total Land Parcels are retained as assets of the Corporate Debtor) or by direct payment of INR 1,280 Crore to the Assenting Institutional Financial Creditor (where the Assenting Total Land Parcels are transferred to a Land SPV). The Assenting IFC Payment Obligations shall be made out of the internal accruals and / or infusion of additional funds by the Resolution Applicant.

Table 13: Schedule of Payment of Rs.1,280 crore



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<u>Instalment</u>	<u>Due Date from Approval Date</u>	<u>Assenting IFC Payment Obligations</u> (Rs. Crore)
1	End of 3 rd Year from the Approval Date	160
2	End of 4 th Year from the Approval Date	160
3	End of 5 th Year from the Approval Date	160
4	End of 6 th Year from the Approval Date	160
5	End of 7 th Year from the Approval Date	160
6	End of 8 th Year from the Approval Date	160
7	End of 9 th Year from the Approval Date	160
8	End of 10 th Year from the Approval Date	160
	Total	1,280

15.26. The above payment of Assenting IFC Payment Obligation, is subject to the following terms and conditions:

- a) The FMV rate and the Assured Rate of Resolution Applicant, in its own assessment for the Assenting Total Land Parcels are as under:

Table 14: FMV and Assured Rate

<u>Location</u>	<u>FMV Rate</u> (Rs. Cr/ Acre)	<u>Assured Rate</u> (Rs. Cr/ Acre)
Jaganpur	4.06	5.64
Mirzapur	4.24	5.68
Tappal	1.86	1.86
Agra	1.88	1.88

- b) If and when the Assenting Total Land Parcels are sold above FMV rate, as given in table 14 above the difference between: (i) the actual sale price received from the purchaser of any Assenting Total Land Parcel or the value calculated for such land parcels at Assured Rate, whichever is lower; and (ii) the value calculated for such Assenting Total Land Parcels at the FMV rates set out in table 14 above, shall be referred to as the "FMV Surplus Amount".

An amount equal to the Adjusted FMV Surplus Amount shall be reduced from the next tranche(s) of the Assenting IFC Payment Obligation. For the purposes of this clause, "Adjusted FMV Surplus Amount" shall mean the FMV Surplus Amount increased by rate of 10% p.a. commencing from date of receipt of the FMV Surplus Amount till the date of the next tranche(s) of the Assenting IFC Payment Obligation.



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Illustrative examples for the above are given below:

Rs. Crore										
Sr. No.	Land sold (Acres)	FMV Rate (per acre)	Assured Rate (per acre)	Sale Rate (per acre)	FMV Value	Value at Assured Rate	Value of Land sold	FMV Surplus to be Adjusted in next tranche	Amount payable in next tranche out of Rs. 160 crore	Upside available under escrow arrangement
1	100	4.06	5.64	4.06	406	564	406	-	160	-
2	100	4.06	5.64	5.06	406	564	506	100	60	-
3	100	4.06	5.64	7.64	406	564	764	158	2	200
4	0	4.06	5.64	0	0	0	0	-	160	-
5	100	4.06	5.64	3	406	564	300	-	160	-

- 15.27. It is further clarified that in case of a scenario where no Assenting Total Land Parcel is sold and /or Assenting Total Land Parcel is sold however there is no FMV Surplus Amount as mentioned in clause 15.31 (b), prior to any instalment of Rs. 160 crore, out of Rs. 1,280 crore, as per schedule mentioned in table 13 above, then the Resolution Applicants shall make the payment of instalment of Rs. 160 crore to the Assenting Institutional Financial Creditors, out of the internal accruals and / or infusion of additional funds by the Resolution Applicants, as the case may be. It is clarified that if the internal accruals are not sufficient, then the Resolution Applicants shall necessarily infuse funds to make good such shortfall.
- 15.28. The Resolution Applicants/ Corporate Debtor shall execute necessary mutually acceptable agreement/ documentation, with respect to the Assenting IFC Payment Obligations within 90 days of the Approval Date.
- 15.29. The Resolution Applicants/ Corporate Debtor shall have the right to pay the Assenting IFC Payment Obligations prior to the dates set out in Table 13. If the Corporate Debtor chooses to make such payment prior to the dates set out in Table 13, it shall make a payment equal to the Present Value of the Assenting IFC Payment Obligations, which shall be calculated at discounting rate of 10% p.a. for the period from the date of such pre-payment till the scheduled date of tranche(s) which is/are being paid earlier.
- 15.30. The Resolution Applicants decided to provide for Assenting IFC Payment Obligations to guarantee realisation of additional Rs. 1,280 crore, over and above the Assenting Total Land Parcels, in accordance with the terms provided in Annexure IV of the Resolution Plan.
- 15.31. In case of any ambiguity and/or difficulty in relation to manner, form or substance of payments to be made to Assenting Institutional Financial Creditors under this Resolution Plan, the Resolution Applicant and the Assenting Institutional Financial Creditors may mutually prescribe additional terms or clarifications as may be necessary to achieve the same commercial effect including without change in the quantum of financial commitment identified for the Assenting Institutional



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Financial Creditors in this Resolution Plan.ADVANTAGES FOR ASSENTING INSTITUTIONAL FINANCIAL CREDITORS

- 15.32. The Resolution Applicants have proposed payments via Assenting IFC Payment Obligations which ensures committed payment of Rs. 1,280 crore to the Assenting Institutional Financial Creditors, de-risking them from the prices, demand, saleability, etc of the land parcels.
- 15.33. The Corporate Debtor shall facilitate, on best effort basis, the Assenting Institutional Financial Creditors, as Asset Management Company for sale / monetisation of land parcels, if appointed, to take off their burden of managing and monetising the land parcels and to give confidence to Assenting Institutional Financial Creditors, as per the mutually acceptable terms and conditions.
- 15.34. The probability of the Assenting Institutional Financial Creditors getting higher overall recovery than their dissenting counterparts is significant as they are getting committed payment and land parcels that will not be sold in distressed situation and would be sold / monetised to maximise the value with sincere efforts by involving experts and also working with the Government, either directly through sub-lease or through Joint Development either with Corporate Debtor or any other reputed developer or in any other innovative manner.
- 15.35. The Resolution Applicants/ Corporate Debtor shall provide for upto Rs. 25 crore towards expenses for management and monetisation of the Assenting Total Land Parcels of Assenting Institutional Financial Creditors which takes off the burden of shelling out more money. It shall be incurred by the Asset Management Company, as and when required.
- 15.36. It is submitted that realisation via mode of enforcement of security interest by Dissenting Institutional Financial Creditors is likely to be distress value or liquidation value and likely to be significantly lower than in scenario of resolution /going concern/ revival of the Corporate Debtor wherein the Corporate Debtor, there is no risk of valuation and saleability of the land parcels as the Resolution Applicants have assured the payment against Assenting IFC Payment Obligations.
- 15.37. There is probability of getting surplus land parcels out of the land parcels earmarked for Dissenting Institutional Financial Creditors, which shall further improve the recovery of the Assenting Institutional Financial Creditors.
- 15.38. Future Potential of Land
- (A) YEIDA, in its approved Master Plan 2031, has envisioned overall development of the land parcels along the Expressway including industrial development. Major land portion has been earmarked for industries. Plots have already been allotted for setting up of industries/ commercials/ data centers.
- These industrial establishments which are in pipeline shall create lot of jobs which

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eventually will lead to huge demand for housing sector in about next 5 years. Similar developments have been witnessed in the past due to industrial growth, road networks in NOIDA and Greater Noida resulting in development of new cities of Noida and Greater Noida, thus, hiking of prices of the real estate significantly/ exponentially from Rs.300 per sq.m. (year 1985) to Rs.1 lakh (average) per sq.m., at present in Noida and about Rs.50000 per sqm in Greater Noida.

- (B) The Jewar Airport which is expected to be completed and operationalised in 2024 shall make areas adjoining Yamuna Expressway as North India's largest logistics hub, which shall create lot of opportunities for these areas.
- (C) Apart from the Jewar Airport, other future developments like functional Eastern Peripheral Expressway, National Highway (NH-1) 19, NH 34 crossing Yamuna Express way, Lucknow Express way has created conducive environment for comprehensive growth of area.
- (D) Keeping in mind future prospects, all major developers (Gaur sons- Gaur City, Mahagun, ATS, Ajnara, Supertech, Gulshan, Oris) of NCR have established their presence in such areas along Yamuna Expressway.
- (E) Keeping in mind, the bright future prospect of the area, the Resolution Applicants have proposed to transfer the land parcels to the Institutional Financial Creditors which shall lead to better recovery to them much more than amount as envisaged under the Resolution Plan."

F. Clause 15.15 to 15.17, relating to treatment to Dissenting Institutional Financial Creditors, as appearing under Treatment to Institutional Financial Creditors under the Resolution Plan *has been shifted to Clause 15.51 to 15.53.*

G. Clause 15.40 to 15.56, relating to treatment to Dissenting Institutional Financial Creditors, as appearing under Treatment to Institutional Financial Creditors under the Resolution Plan has been shifted to Clause 15.43 to 15.62.

H. Sr. No. 2 as appearing under Table 20 "Summary Statement showing treatment of all stakeholders including existing Home Buyers, financial creditors and operational creditors of the Corporate Debtor" shall stand amended as under:

Sr No.	Stakeholders	Claims Admitted (Rs. Crore)	Treatment
2.	Institutional Financial Creditor(s)	9782.60	Land Parcels: Rs. 6,457 Crore Assenting NCDs/ Guaranteed Payment Obligation: Rs. 1,280 crore



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I. Clause 26.4(e) of the Resolution Plan shall stand amended as under:

"(e) The period of implementation of the Resolution Plan for Assenting Institutional Financial Creditors shall be satisfied when the transfer of the beneficial ownership of **Assenting Total Land Parcels** for the Assenting Institutional Financial Creditors and issuance of **Assenting NCDs** and/ or execution of agreement/ necessary documentation with respect to **Guaranteed Payment Obligation**, as per the Resolution Plan, are completed. The Resolution Applicant shall complete the same within 6 months or any other mutually extendable date."

J. Sr. No. 4 as appearing in Table 29 "Indicative Terms for the Assenting NCDs" of the Annexure-IV of the Resolution Plan shall stand amended as under:

S. No.	Particulars	Terms
4.	Amount of the Assenting NCDs to be issued	Rs. 1,280 crore
8.	Repayment	From 3 rd year till 10 years from the Approval Date in accordance with the treatment provided in clause no. 15 in the Resolution Plan

K. Noida Completion at in Part III Financial Projections shall be read as 40 months

L. Definition of AR of Home Buyers shall stand substituted as under:

"AR of Home Buyers" shall mean Mr. Kuldeep Verma, an Authorised Representative of homebuyers of the Corporate Debtor or any other person as appointed by homebuyers.

This Addendum forms an integral part of the Resolution Plan and save and except the modification as mentioned under this Addendum, all other clauses contained in the Resolution Plan shall remain unchanged.

For Resolution Applicants



Authorised Signatory

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NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
SPECIAL BENCH

IA. NO. 2593/PB/2021 & IA. NO. 631/PB/2022

IN

Company Petition No. (IB)-77(ALD)/2017

IN THE MATTER OF:

IDBI BANK LIMITED

... Applicant

Versus

JAYPEE INFRATECH LIMITED

... Respondent/Corporate Debtor

IN THE MATTER OF IA. No. 2593/PB/2021 & IA. No. 631/PB/2022

Jaypee Infratech Limited

Through Its Interim Resolution Professional,
Mr. Anuj Jain Sector 128,
District Gautam Budh Nagar,
Noida Uttar Pradesh -201304

...Applicant

Versus

Jaiprakash Associates Limited

Sector 128, District Gautam Budh Nagar,
Noida Uttar Pradesh 201304

Also At:

63, J House, Basant Lok, Vasant Vihar,
New Delhi, Delhi - 110057

... Respondent

Order Delivered on : 07.03.2023

SECTION: Section 60(5) of IBC, 2016 read with Rule 11 of NCLT Rules,
2016

CORAM:

JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENTS:

For the IRP : Adv. Sumant Batra, Adv. Ruchi Goyal,
Adv. Sanjay Bhatt

For the JAL : Sr. Adv. Krishnan Venugopal, Advs. Pallavi
Srivastava, Krishnan Agarwal, Vishal
Gupta, Divyanshu Gupta, Anupam
Choudhary

ORDER

The IA-2593 of 2021 and IA-631 of 2022 have been filed by the Applicant/IRP of the Corporate Debtor i.e., Jaypee Infratech Limited **(hereinafter referred to as 'JIL')** under Rule 11 of the NCLT Rules, 2016 against Jaiprakash Associates Limited **(hereinafter, referred to as 'JAL')** with the following prayers:

- a) *Take on record the report dated 08.06.2021 (in sealed cover) filed by Grant Thornton Bharat LLP in respect of reconciliation of accounts between JIL and JAL;*
- b) *Pass appropriate orders/directions in respect of distribution of the amount of Rs.750 crore together with the interest accrued thereon between JIL and JAL in terms of Para 190 and its sub paras and Para 217.1 of Jaypee Kensington Judgment and direct the Registrar, National Company Law Tribunal, Allahabad Bench to transfer the amounts as per directions of this Hon'ble Adjudicating Authority in the bank accounts of JIL and JAL to be provided them to the Registrar;*
- c) *Pass any other order as may deem fit and proper by this Hon'ble Adjudicating Authority."*

2. Through the present application, the IRP has brought on record the Report dated 08.06.2021 in a sealed cover submitted by the Grant Thornton Bharat LLP **(hereinafter referred to as GT)**, which was appointed as an "independent accounting expert" by this Adjudicating Authority vide order dated 31.03.2021, in compliance of the directions passed by the Hon'ble Supreme Court vide its Judgement dated 24.03.2021 in the matter of **JAYPEE KENSINGTON BOULEVARD APPARTMENT WELFARE ASSOCIATION & ORS VS NBCC (INDIA) LTD. & ORS. in CIVIL APPEAL NO. 3395 OF 2021** (hereinafter referred to

as **‘Jaypee Kensington’**). For the sake of convenience, the directions given by the Hon’ble Supreme Court are reproduced below:

“189. After we have found that the impugned order dated 03.03.2020 placing the said amount of INR 750 crores and accrued interest in the asset pool of JIL is unsustainable, the question is as to what orders in sequel be made regarding this money? In ordinary circumstances, the consequence of the findings in the preceding paragraphs would have been of direct refund of this money to JAL but the present matter carries with it several entangled features relating to the amount otherwise payable by JAL to JIL; and these features cannot be ignored altogether.

189.1. As noticed, even when JAL and JIL are two separate corporate entities, JIL is an alter ego of JAL, for having been set up as an SPV and having been substituted as concessionaire in the Concession Agreement aforesaid. The agreements with homebuyers had also been of such a nature where JAL and JIL both were signatories thereto. Additionally, JAL had been extended construction contracts by JIL and, as per the submissions made before us [vide paragraph 178.1.4 (supra)], JAL had been carrying out the construction work and taking steps to reduce the liability towards JIL that stood at a sum of INR 716 crores as on 31.03.2018 and was purportedly reduced to INR 195 crores as on 31.03.2020. Various homebuyers have allegedly made payments towards IFMD to JAL. Moreover, JAL has submitted that balance of INR 195 crores, which was to be appropriated towards the construction of JIL’s project, could be adjusted from the said sum of INR 750 crores, if the resolution applicant makes a formal submission of terminating the construction agreement. NBCC, on the other hand, has suggested several other amounts to be recoverable from JAL.

189.2. Having comprehensively taken note of the complex and interwoven features, even while we are not inclined to countenance

the other claims against JAL in these proceedings, so far as the admitted amount towards construction advance is concerned, in our view, the process had been a continuing one and admittedly an amount of INR 195 crores was due to JIL as on 31.03.2020. In the given circumstances, it would serve the interests of all stakeholders, if the proposition for reconciliation of accounts, as stated in the alternative submissions by JAL as also by the resolution applicant, be partly accepted and after reconciliation, the payable amount be made over to JIL before refunding the remainder to JAL.

*189.3. On behalf of JAL, it is submitted that verification/reconciliation could be carried out by IRP or by a chartered accountant appointed by him, whereas NBCC would submit that such reconciliation should be carried out by an independent third party to be nominated by this Court. However, as noticed, the said sum of INR 750 crores stood transferred to NCLT in terms of the final directions in the case of **Chitra Sharma** (supra). Having regard to all the relevant features of this case, it appears appropriate that the process of reconciliation of accounts between JAL and JIL be taken up under the supervision of NCLT.*

190. For the aforesaid purpose of reconciliation of accounts between JAL and JIL, the NCLT shall, within 7 days of receipt of copy of this judgment, nominate an independent accounting expert; and the accounting expert so nominated by NCLT shall carry out the process of reconciliation while involving IRP of JIL and one representative of JAL. Looking to the underlying urgency, the accounting expert shall complete the entire process of reconciliation of accounts and submission of his report to NCLT within 10 days of his nomination. The professional charges and expenses for the task assigned to the accounting expert shall be determined by NCLT and shall be borne equally by JAL and JIL.

190.1. After receiving the report from the accounting expert, the NCLT shall pass appropriate orders in the manner that, if any amount is found receivable by JIL/homebuyers of JIL, the same shall be made over to JIL from out of the said amount of INR 750 crores and accrued interest; and remainder thereof shall be returned to JAL in an appropriate account and that shall abide by the directions of the competent authority dealing with the proceedings concerning JAL. The NCLT would be expected to pass appropriate orders within 2 weeks of submission of report by the accounting expert.

190.2. However, we need to make it clear that this process of reconciliation is not meant for determination of any claim otherwise sought to be levied against JAL by IRP or homebuyers of JIL or by the resolution applicant; and only the accounts concerning the amount/s advanced to JAL by JIL towards construction contracts (vide paragraph 178.1.4.) are to be examined and reconciled with reference to the extent of liabilities discharged by JAL and then to find the extent of excessive amount, if any, available with JAL which is receivable by JIL/homebuyers of JIL.

191. In regard to the aforesaid directions concerning reconciliation of accounts and disposal of the said amount of INR 750 crores and accrued interest, a few more comments and observations appear necessary. We have taken note of the submissions made on behalf of NBCC as also on behalf of various homebuyers of JIL that this money is required for construction of houses and if it goes to JAL, there would be acute shortage of funds for construction. We are also aware of the facts that have come on record that JAL is itself in distress and CIRP in its relation is looming large. We have further taken note of the submissions made by the financial creditor of JAL to place this sum of money within their control in an escrow account. However, we have not accepted any of these submissions in entirety.

191.1. As observed hereinabove, after having found that the said money is the property of JAL, ordinarily, the consequence would have been of directing its refund to JAL but the other entangled features of the case relating to the amount otherwise payable by JAL to JIL cannot be ignored altogether, particularly when it was an admitted position on behalf of JAL before NCLT that an amount of INR 274 crores was payable by it to JIL and even before this Court, this obligation to pay has been admitted on behalf of JAL, albeit to the tune of INR 195 crores as on 31.03.2020; and it appears that JAL has been taking steps (maybe crippled steps) to carry out construction and to reduce its liability. We are not determining the extent of amount payable by JAL to JIL because that would be a matter of reconciliation of accounts but, having regard to the background in which, and the purpose for which, JAL made the said deposit pursuant to the orders of this Court and also having regard to the present position of these two companies, adopting this course appears to be in the balance of the legal rights of the respective stakeholders as also in the balance of equities. We would hasten to observe that ordinarily, the equitable considerations do not directly come into play in corporate insolvency resolution process but the matter concerning this amount of INR 750 crores and accrued interest thereupon is a convoluted and stand-alone issue, having the peculiarities of its own and hence, we have adopted the course as contemplated above. This process is otherwise not of determination of the claims of individual stakeholders, be it operational creditors or financial creditors. In the interest of justice, it is also made clear that disposal of the said sum of INR 750 crores shall otherwise not be treated as determinative of the rights and obligations of any stakeholder in any of these two companies, JAL and JIL.

192. Before closing on this point for determination, we may indicate that a few of the arguments on this point have gone off on a tangent, as could be noticed from the submissions made by an association of homebuyers of JAL, who has directly approached this Court against

the order of NCLT, that INR 160 crores be designated out of the said amount of INR 750 crores for completing the houses of the members of that association; and that in RERA proceedings, JAL was demanding money from its members, though, there was unexplained delay of 5 to 7 years in completion of project by JAL. We are unable to find any logic in the submission of this nature against JAL by its homebuyers having been made in these proceedings. It goes without saying that the dealing between JAL and its homebuyers is not the subject matter of the present proceedings. Similarly, the submission by some of the dissatisfied homebuyers of JIL, that NBCC is aiming at profiteering by getting hold of this money but without making corresponding provision in the resolution plan for the appropriate use of this money for the benefit of homebuyers, also remains baseless and redundant in view of what has already been discussed hereinbefore. Another block of submissions on behalf of some of the homebuyers of JIL, like seeking directions against NBCC that it shall not withdraw and should expedite construction as also seeking audit over the quality of construction, have gone far too beyond the real issues requiring determination in the present litigation. In regard to these and other submissions of similar nature, we would only leave the parties to take recourse to appropriate remedies in accordance with law, in case of any legal grievance existing or arising in future...”

(Emphasis Placed)

3. Though the Hon'ble Supreme Court granted this Tribunal two weeks' time to complete the reconciliation of accounts based on the GT Report. The GT could not submit its report in time and an extension was sought and granted by the Hon'ble Supreme Court. Thereafter, the counsel for IRP and counsel for JAL took turns to file volumes of documents, pleadings, written submissions, notes on arguments, etc. one after the other, improvising their arguments. At the instance and

request of the Ld. Counsels we granted sufficient time to each of the parties. The hearing took place for a long period of time over several hearing days at regular intervals.

4. Further, the Hon'ble Supreme Court in Para 217.1 of the **Jaypee Kensington** also held the following:

*“217.1. Apart from the above, we have also disapproved the decision of the Adjudicating Authority in relation to the said amount of INR 750 crores with accrued interest and have held that this amount is the property of JAL and the stipulations in the resolution plan concerning its usage by JIL or the resolution applicant cannot be approved [as held in Point J (i) (supra)]. **However, the final treatment of the said amount of INR 750 crores with accrued interest shall be determined by NCLT after the reconciliation of accounts between JAL and JIL and in terms of the directions contained in this judgment.**”*

(Emphasis Placed)

5. We are aware that the amount of Rs.750 Crore referred to above has been currently lying deposited with the Registry of NCLT Allahabad Bench in terms of the directions of the Hon'ble Supreme Court in the matter of **Chitra Sharma v. Union of India & Ors, WP(C) 744 of 2017**, dated 06.11.2019 (**hereinafter referred to as 'Chitra Sharma'**). The relevant extract of the directions of the Hon'ble Supreme Court in the **Chitra Sharma** is reproduced below, for the sake of convenience:

“(vi) The amount of Rs 750 crores which has been deposited in this Court by JAL/JIL shall together with the interest accrued thereon be transferred to the NCLT and continue to remain invested and shall abide by such directions as may be issued by the NCLT.”

6. Further, during the course of the hearing, the Applicant/IRP has informed that the Hon'ble Supreme Court vide its order dated 27.07.2021 passed in the **M.A. 769 of 2021**, has given the following directions to this Adjudicating Authority:

“This application by the Interim Resolution Professional for extension of time-cum-enlargement of time for completion of the task of reconciliation of accounts of the Corporate Debtor and JAL and submission of final report by Grant Thornton (for short, ‘GT’) before the adjudicating authority, as prayed, is granted as no objection is taken by other parties.

The final report by the GT be submitted before 15th August, 2021, before the adjudicating authority.

The adjudicating authority may thereafter consider the objections, if any, and pass appropriate directions as may be permissible in law.

The adjudicating authority shall decide the objections, including on the draft report, within two weeks, as has been directed in terms of paragraph 190.1 of the judgment dated 24.03.2021 in Civil Appeal No.3395 of 2020.

All contentions in that regard are left open.”

7. In compliance with the directions of the Hon'ble Supreme Court, the Applicant/IRP has filed the present Application along with the Report of GT dated 13.08.2021 in a sealed cover. The scanned copy of the summary of findings of the Grant Thornton Report (**hereinafter referred to as the “GT Report”**) is reproduced overleaf, for the sake of convenience –

7. Summary of findings

A. Summary of findings

The nature of transactions was ascertained based on the review of ledger accounts for JAL in the books of accounts of JIL, and the corresponding ledger accounts for JIL in the books of JAL. Based on nature, the transactions were classified in the below mentioned five categories:

- RA bills for construction of YEP and development of land parcels in Noida, Jaganpur, Mirzapur, Tappal and Agra (i.e. Land for Development ("LFD"))
- BGs issued on behalf of JAL and subsequently invoked by the lenders of JIL
- Advance recoverable for IFMD by JIL from JAL
- Facility management bills raised by JAL on JIL
- Other transactions pertaining to hospitality services availed by JIL from JAL and advances given by JIL to JAL for a land swap deal

The summary of ledger accounts¹ in the books of accounts of JIL and JAL for the afore-mentioned transactions are mentioned below:

(Amount INR in crore)

#	Particular	Positive figures represent receivable balance, and negative figures () represents payable balances											
		RA bills for construction		BGs amount recoverable from JIL		Advance recoverable by JIL for IFMD		Facility management bills		Other transactions		Total	
		A.		B.		C.		D.		E.			
In the books of	JIL	JAL	JIL	JAL	JIL	JAL	JIL	JAL	JIL	JAL	JIL	JAL	
1	Opening balance as on 10 Aug 2017	463.13	(453.24)	(212)	212	379.90	(380.60)	(2.33)	2.33	159.10	(159.10)	787.80	(778.61)
2	Net transactions during the Review period	(279.92)	300.89	-	-	(106.20)	106.90	22.34	(22.08)	(89.49)	89.49	(453.27)	475.20
3	Closing balance as on 31 Mar 2021	183.21 ²	(152.35)	(212)	212	273.70	(273.70)	20.01 ³	(19.75)	69.61 ⁴	(69.61)	334.53	(303.41)
	Amount in reconciliation as on 31 Mar 2021		30.86		-		-		0.26		-		31.12
Post submission of our draft report dated 9 June 2021:													
a	Amount resolved between JIL and JAL*		11.80 ⁵		-		-		0.11 ⁶		-		11.91
b	Amount agreed to be considered by IRP of JIL for payment subject to recommendation by CBRE and Mott MacDonald		7.95		-		-		-		-		7.95
c	Unresolved/ Disputed amount		11.11		-		-		0.15		-		11.26

* As informed by JAL and IRP of JIL, the impact of accounting entries for amount resolved post submission of our draft report dated 9 June 2021 will be recorded in the books of accounts of JIL and JAL in FY 2021-22.

¹ The ledger accounts for the Review Period were extracted from the accounting software on 3 April 2021 for review purposes. Subsequently, revised ledger balances along with additional entries (wherever applicable) were provided on 26 May 2021 and 2 June 2021 by JIL and JAL, respectively.

² The receivable balance represents net balance after considering the balance of mobilisation advance as on 31 March 2021 aggregating to INR 304.23 crore (INR 450 crore as on 9 August 2017) given by JIL to JAL.

³ The receivable balance by JIL from JAL pertaining to facility management bills is due to debit notes raised by JIL on JAL for recovery of electricity charges collected by JAL from homebuyers of JIL in the capacity of DMA as mentioned in letter dated 14 September 2016.

⁴ The receivable balance as on 31 March 2021 represents net balance after considering the balance of INR 70.89 crore (INR 160.29 crore as on 9 August 2017) given by JIL to JAL towards a land swap deal.

⁵ The amount resolved represents INR 2.45 crore agreed to be recorded by IRP of JIL in the books of accounts of JIL and INR 9.35 crore agreed to be reversed by JAL in its books of accounts.

⁶ The amount resolved represents INR 0.11 crore agreed to be recorded by IRP of JIL in the books of accounts of JIL.

From the above, it appears that there was an excess receivable balance of INR 31.12 crore from JAL in the books of accounts of JIL as on 31 March 2021.

Further to the joint meeting among representatives of IRP of JIL, JAL and GT on 6 August 2021 and email correspondences received from JIL and JAL during 9 August 2021 to 11 August 2021, the unresolved/ disputed balance reduced from INR 31.12 crore to INR 11.26 crore.

The unresolved/ disputed balance of INR 11.26 crore as on 31 March 2021 between JIL and JAL was prima-facie because JAL had accounted for all the bills raised. However, JIL did not record the bills which were either disputed or rejected by Mott MacDonald.

The synopsis of the key issues in each category, the corresponding response from JIL, JAL and our assessment is explained as under:

#	Nature of transaction	Key issues	Comments from IRP of JIL	JAL's comments	Our assessment
A	RA bills for construction	<p>Bills rejected by Mott MacDonald yet to be reversed in the books of JAL. (INR 11.11 crore)</p> <p>INR 0.14 crore out of INR 11.11 crore pertained to Pre-CIRP period.</p>	<ul style="list-style-type: none"> • INR 10.97 crore out of INR 11.11 crore was not payable since it was rejected by Mott MacDonald. Thus, it was not recorded in the books of accounts of JIL. • INR 0.14 crore out of INR 11.11 crore was additionally classified as Pre-CIRP, in addition to the balance of INR 49.49 crore as on 31 March 2021. Thus, the total amount of Pre-CIRP not payable stands at INR 49.63 crore. • INR 1.14 crore kept on hold by CBRE pertained to salaries and wages of March 2020 for period of lockdown and was not payable by JIL to JAL. 	<ul style="list-style-type: none"> • INR 10.97 crore out of INR 11.11 crore pertained to requisite manpower and labor deployed for execution of works and overheads and GST on the same. This deduction was not mutually agreed between JIL and JAL. • INR 49.63 crore pertained to the work done and should be paid by JIL. Therefore, whether it pertained to work done of Pre-CIRP period or Post-CIRP period was not relevant, and rationale was not acceptable. • INR 1.14 crore kept on hold was not acceptable as no amount should be withheld in view of contractual terms. 	<ul style="list-style-type: none"> • The amount rejected of INR 10.97 crore by Mott MacDonald may be reversed in the books of JAL if it is unable to provide adequate documentation and substantiate the expenses to the satisfaction of Mott MacDonald. • The Adjudicating Authority may decide regarding the balance pertaining to Pre-CIRP of INR 49.63 crore in accordance with the provisions of the IBC Code and/ or relevant statutes. (Note: Pre-CIRP expense being a matter of legal interpretation is beyond the ambit of our scope of work.) • INR 1.14 crore kept on hold by CBRE pertained to salaries and wages of March 2020 for period of lockdown. The Adjudicating Authority may evaluate the dispute between IRP of JIL and JAL regarding the amount kept on hold and give necessary directions.
B	BGs issued on behalf of JAL and subsequently invoked by the lenders of JIL	BGs of INR 212 crore should be treated as a Promoter's contribution to equity or debt.	<ul style="list-style-type: none"> • JIL had shown BGs as Promoter's contribution under Other Equity in the AFS for FY 2016-17; and quarterly financial reporting of Q1, Q2 and Q3 of FY 2017-18. • As per interpretation of agreement by IRP of JIL, any shortfall in the DSRA was met by the holding company, i.e. JAL. Thus, the amount was treated as Promoters' 	<ul style="list-style-type: none"> • BGs was classified as 'Promoter contribution' under Other Equity by JIL in its AFS for FY 2016-17 due to a proposed restructuring scheme. • However, pursuant to scheme failure, it was classified as 'Financial Liability' under 'Non-Currently Liability' in JIL's AFS for FY 2017-18 and continued to be 	<ul style="list-style-type: none"> • There is no dispute between JIL and JAL for the amount of BG encashed i.e. INR 212 crore. • Based on the review of the related documentation, it is our assessment that the amount was in the nature of financial debt and not equity. • However, the Adjudicating Authority may provide direction to release the



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#	Nature of transaction	Key issues	Comments from IRP of JIL	JAL's comments	Our assessment
			contribution to equity and not as a liability.	classified as 'Financial Liability' under 'Non-Current Liability' in the AFS of JIL for FY 2018-19 and FY 2019-20. • Thus, INR 212 crore is a legitimate debt recoverable by JAL from JIL.	amount in line with the provisions of the IBC Code and/ or relevant statutes.
C	Advance recoverable for IFMD by JIL from JAL	The amount recovered from the homebuyers of JIL should be returned to JIL or retained by JAL.	<ul style="list-style-type: none"> As per email from IRP of JIL dated 13 April 2021, to safeguard the interest of homebuyers, JAL should keep aside the IFMD advance received of INR 106.90 crore from homebuyers of JIL in a separate escrow account. Further, as per Objections filed by IRP of JIL before NCLT on 20 July 2021, entire amount of INR 380.60 crore should be transferred by JAL to JIL as an application under Section 7 filed by a financial creditor of JAL was pending before the Adjudicating Authority, Allahabad Bench and will give rise to unnecessary complications in case CIRP is ordered to be initiated. 	<ul style="list-style-type: none"> For INR 106.90 crore, JAL had entered into a maintenance agreement with homebuyers and was obliged to maintain shared/ common areas as the DMA. Further, as per the agreement, JAL is responsible for refunding the IFMD amount to homebuyers in the transfer of units. 	<ul style="list-style-type: none"> Maintenance of common areas and facilities is JAL's responsibility as DMA until it is handed over to the RWA. Thus, the IFMD of INR 106.90 crore received from homebuyers should be available JAL/ DMA as long as the letter/ agreement between JIL and JAL is valid. Further, JAL may consider returning advance recoverable of INR 273.70 crore to JIL since it had neither accrued nor recovered from the home buyers.
D	Facility management bills raised by JAL on JIL	Bills short booked by JIL due to difference in rate (INR 0.15 crore)	<ul style="list-style-type: none"> The effect of a rate increase (INR 0.15 crore) was not recognised in the books of accounts as the resolution plan of JIL was pending before NCLT. In addition, the balance pertaining to the Pre-CIRP period of INR 2.33 crore was not payable. 	<ul style="list-style-type: none"> INR 0.15 crore was an inadvertent deduction made by JIL as price variation was carried out in the Maintenance Agreement. Further, no debit advice from JIL received for short credit with regards to RA bills. Same argument for Pre-CIRP as stated in RA bills section. 	<ul style="list-style-type: none"> As per letter dated 16 September 2016, any rate revision has to be mutually agreed upon by JIL and JAL before finalization. Since, JIL and JAL has not mutually agreed on the rate revision (INR 0.15 crore), it may be disallowed. For INR 2.33 crore, the Adjudicating Authority may provide direction to release the amount in line with the provisions of the IBC Code and/ or relevant statutes.
E	Other transactions such as hospitality services and land swap	INR 1.19 crore pertaining to hospitality services was payable by JIL to JAL.	INR 1.19 crore pertained to Pre-CIRP period and thus was not payable to JAL.	INR 1.19 crore should be considered as a liability discharged by JAL and should be adjusted from the amount recoverable from JAL by JIL.	The Adjudicating Authority may decide for the amount of INR 1.19 crore in accordance with the provisions of the IBC Code and/ or relevant statutes.
<p>Note: There was a recoverable balance of INR 70.89 crore by JIL from JAL for land swap deal which has not been considered for review since it did not appear to be a part of construction contracts and appeared</p>					



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#	Nature of transaction	Key issues	Comments from IRP of JIL	JAL's comments	Our assessment
		to be outside the scope of review as directed in the Hon'ble Supreme Court's order dated 24 March 2021.			

Additional transactions highlighted by JAL in its response

In addition to the above, JAL, in its letters dated 14 May 2021 and 1 June 2021 to the GT team, stated that liabilities discharged by JAL also include

1. Building and Other Construction Workers Cess ("BOCW") (INR 93.83 crore),
2. Entry Tax (INR 16.76 crore),
3. Dry Hire Charges (INR 79.95 crore) and
4. Inventory in hand (INR 19.23 crore)

It is pertinent to note that Sr. No. 1 to 3 above, i.e., BOCW, Entry tax and Dry Hire charges were

- a. neither recorded in the books of accounts of JIL nor JAL
- b. nor deposited to the authorities by JAL

Therefore, it cannot be called as liability discharged by JAL at this stage and thus have not been considered for the purposes of our report.

Further, Sr. No. 4, inventory in hand cannot be said as liability discharged by JAL regarding the ongoing construction contract.



8. Further, while going through the Report, we find that GT has also given the transaction-wise *Computation of the amount payable by JAL to JIL or Vice Versa* with a break-up in terms of the non-disputed and disputed amounts between JIL and JAL. The scanned copy of the same is reproduced overleaf:

B. Computation of amount payable by JAL to JIL or vice versa

The account reconciliation was performed to determine the extent of excessive amount, if any, available with JAL that is receivable by JIL/homebuyers of JIL from the deposit of INR 750 crore made by JAL to the Hon'ble Supreme Court. Accordingly, our submission to the Hon'ble Supreme Court on the afore-said matter is as hereunder:

(Amount INR in crore)

#	Nature of transaction	Non-disputed Amount	Disputed amount	Remarks
		(Figures without brackets represents amount payable by JAL and figures with brackets represents amount receivable by JAL)		
1	RA bills for construction	240.84		
			(10.97)	The Adjudicating Authority may direct JAL to provide additional documentation to the satisfaction of Mott MacDonald. IRP of JIL should pay the amount certified by Mott MacDonald basis its revised COP(s). In the absence of any documentation, JAL may reverse this amount.
			(49.63)	The Adjudicating Authority may decide regarding the payment of RA Bills pertaining to Pre-CIRP period in accordance with the provisions of the IBC Code and/ or relevant statutes.
			(1.14)	The amount kept on hold by CBRE pertained to salaries and wages of March 2020 for period of lockdown. The Adjudicating Authority may evaluate the dispute between IRP of JIL and JAL regarding the amount kept on hold and give necessary directions.
2	BG issued on behalf of JAL and subsequently invoked by the lenders of JIL		(212)	The Adjudicating Authority may decide regarding the payment in accordance with the provisions of the IBC Code and/ or relevant statutes.
3	Advance recoverable for IFMD by JIL from JAL	273.70		
			106.90	In our assessment, IFMD recovered from homebuyers should be available with JAL since it is the DMA and the letter/ agreement between JIL and JAL is valid. However, the Adjudicating Authority may evaluate and give necessary directions.
4	Facility management bills raised by JAL on JIL	22.23		
			(2.33)	The Adjudicating Authority may decide regarding the payment of RA bills pertaining to Pre-CIRP period in accordance with the provisions of the IBC Code and/ or relevant statutes.
			0.15	In our assessment, this amount should be disallowed as the rate of revision was not mutually agreed between JIL and JAL. However, the Adjudicating Authority may evaluate and give necessary directions.
5	Other transactions		(0.08)	

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#	Nature of transaction	Non-disputed Amount	Disputed amount	Remarks
		<i>(Figures without brackets represents amount payable by JAL and figures with brackets represents amount receivable by JAL)</i>		
			(1.19)	The Adjudicating Authority may decide regarding the payment for Hospitality services pertaining to the Pre-CIRP period in accordance with the provisions of the IBC Code and/ or relevant statutes.
	Total	536.49	(170.21)	

From the above, it appears that the non-disputed amount of INR 536.49 crore receivable by JIL/home buyers of JIL from JAL should be adjusted from the deposit of INR 750 crore made by JAL.

Further, for the disputed amount of INR 170.21 crore, we request the Adjudicating Authority to review each of the categories independently to decide on the amount to be received by JIL or home buyers of JIL from the deposit of INR 750 crore by JAL.



9. From the findings of the GT Report, it is observed *that the non-disputed amount of Rs. 536.49 Crore receivable by JIL/home buyers of JIL from JAL should be adjusted from the deposit of Rs. 750 Crore made by JAL.* Regarding the disputed amount of Rs. (170.21) Crore, the GT has requested this Adjudicating Authority to review each disputed transaction independently to decide on the amount to be received by JIL/home buyers of JIL out of Rs. 750 Crore.

10. It is further submitted by the Applicant/IRP in its written submissions that during the course of the hearing, on the request of the parties, this Adjudicating Authority, vide orders dated 15.12.2021 and

17.12.2021, has directed the parties i.e., “IRP of JIL” and “JAL” to explore the possibility of mutually resolving the transactions relating to the disputed amount of Rs. 10.97 Crore on account of the Running Account bills (**referred to as ‘RA Bills’ at Sl. No. 1 of the GT Table**) with the participation of GT and the project management consultant of the CD namely, Mott Mac Donald (‘PMC’). The relevant extracts of the order dated 15.12.2021 passed by this Adjudicating Authority are reproduced below:

“In so far as the report of the M/s. Grant Thornton LLP (GT) is concerned, after perusing Page 14 of the final report, it has come to the notice of this tribunal that with regard to RA Bills for Construction amounting to Rs. 10.97 Cr. GT has recorded as follows;-

“The Adjudicating Authority may direct JAL to provide additional documentation to the satisfaction of Mott Mac Donald. IRP of JIL should pay the amount certified by Mott MacDonald basis its revised COP(s). In the absence of any documentation, JAL may reverse this amount....”

This calls for verification of RA Bills with supporting vouchers running into hundreds of pages, which may not be possible for this tribunal. Therefore, it is submitted by the RP, Counsel representing JIL and the Ld. Sr. Counsel representing JAL that they are exploring possibility of resolving the issue relating to Rs. 10.97 Crore with the participation of Mott MacDonald and GT together. It is submitted that they would soon submit their joint statement as to the outcome of such an endeavour in order to resolve the issue if it is possible.”

11. It is further submitted by the Applicant/IRP that in compliance of the aforesaid directions, a joint meeting of the IRP/Corporate Debtor (JIL), JAL, GT, and PMC were held on 24.12.2021 and the three issues

pertaining to Rs. 10.97 Crore, Rs. 1.14 Crore and Rs. 0.15 Crore were mutually resolved between the parties and an Additional Affidavit dated 18.04.2022 to that effect has been filed on record by the Applicant/IRP vide filing no.0710102009642022/7 dated 18.04.2022. The record of the minutes of the meeting dated 24.12.2021 has been placed through the aforesaid Affidavit, the relevant extracts of which are reproduced below:

Discussion Points

Pursuant to above directions of Hon'ble NCLT, a meeting was held with the below representatives of JIL, JAL, GT and Mott MacDonald in order to resolve the issue of disputed amount of INR 10.97 Crores wherein the following discussions were held, and decisions were made.

Attendees:

S. No.	Name and Designation of Representative	Representing
1	Mr. Anuj Jain – IRP	JIL
2	Mr. Hitesh Goel – IRP Team	JIL
3	Mr. PP Singh – VP, Finance and Accounts	JIL
4	Mr. Bharat Bansal, VP (F&A) & Deputy CFO	JAL
5	Mr. Pramod Aggarwal, JAL Team	JAL
6	Mr. AK Singh, JAL Team	JAL
7	Mr. Nitin Talwar, Associate Partner – Risk	Grant Thornton
8	Ms. Palak Maheshwari, Manager – Risk	Grant Thornton
9	Mr. Rakesh Kumar, Principal Consultant – QS	Mott MacDonald (QS and Cost Consultant for JIL)
10	Mr. Rajneesh Kumar, Senior Consultant – QS	Mott MacDonald (QS and Cost Consultant for JIL)

GT Final Report notes that there is a difference of INR 10.97 Crores (as on 31.03.2021) in reconciliation between the JIL and JAL. The difference pertains to following bills for the period from March 2020 to March 2021, falling during the CIRP period of JIL:

S. No.	Description of Expenses	Amount (INR Crore)
1	Excess manpower and other expenses	7.99
2	Overhead/ handling charges and taxes on the above.	2.89
3	Salary and other site expenses rejected due to non-availability of underlying supporting documents.	0.09
	Total	10.97

The findings of GT and objections of JIL and JAL on aforesaid difference were reiterated & noted by all the participants.

Mott MacDonald has adopted the below process to re-validate the difference in amount of INR 10.97 Crores based on the evidence and/or proof of payment incurred by JAL on account of the said expenses during the period of March 2020 to March 2021.

- Proof of payment made towards salary of the staff, wages to the agencies / support staff engaged during the said period.
- SAP entry records of Salary Register
- JAL Account Ledgers
- JAL Bank Statements
- Bank & Cash Vouchers Payment Advices

After detailed scrutiny, Mott McDonald submitted that pursuant to Hon'ble NCLT Principal Bench orders dated 15.12.2021 and 17.12.2021, it has rechecked JAL's claim in order to verify whether the expenses claimed by JAL towards manpower have actually been paid by them based on the document made available by JAL. On re-verification, Mott McDonald confirmed that the amount claimed by JAL in relation to manpower were actually paid by JAL.

Grant Thornton representatives also conducted meetings with JIL and JAL on 22.12.2021 and 23.12.2021. Grant Thornton representatives expressed their agreement on validation process by Mott McDonald.

JIL and JAL reviewed the dispute amount of INR 10.97 crores. It was noted that though bills were rejected on account of excess manpower deployed by JAL and other site expenses disproportionate to the work carried out on project site, JAL continued to provide support in relation to other activities, viz:

Inventory management, safe keeping of the assets, security at the complex, customer related services and activities related to finance & accounts.

JAL reiterated that though the work at the project locations did come to a halt, the back-office operations continued not only to safeguard the project assets but to facilitate and ensure that no inconvenience is caused to the homebuyers for essential back-office activities.

After discussion and deliberation on the counter submissions made by JIL and JAL, and in an endeavor to resolve the issue, it was agreed between both parties as follows:

1. JIL & JAL agreed to share the disputed amount of INR 10.97 crores in equal ratio. JAL agreed to reverse the claim of RA Bills aggregating a sum of INR 5.485 Crores out of total RA Bills of INR 10.97 Crores in its books of accounts and give a credit note to JIL for the said amount of INR 5.485 Crores. JIL also agreed to provide a credit of INR 5.485 Crores and accept JAL claims to that extent and provide a credit note to JAL for the same.
2. Both JIL and JAL noticed that there is another disputed amount of RA Bills of INR 1.14 Crores (refer S. no 1 on table given on Page 14 of Final GT report dated 13.08.2021) which also relates to salaries and wages claimed by JAL being a dispute similar in nature as the RA Bills of INR 10.97 Crore. Both parties agreed to settle the disputed amount of INR 1.14 crores by JAL agreeing to withdraw the claim of RA Bills aggregating a sum of INR 0.57 crores out of INR 1.14 crores and reverse in its books of accounts and JIL agreeing to give credit to JAL for RA Bills amounting to

INR 0.57 Crore in its books of accounts and provide a credit note to JAL for the same.

3. Further, there is another amount of INR 0.15 Crores (refer S.no 4 on table given on Page 14 of Final GT report dated 13.08.2021) which related to Facility Management bills raised by JAL on JIL. After deliberations, JAL agreed to reverse its bills aggregating a sum of INR 0.075 Crores out of total bills of INR 0.15 Crores in its books of accounts and JIL also agreed to give credit to JAL of the amount of INR 0.075 Crores in its books of accounts and provided a credit note to JAL for the same.

Thus, as stated above both parties agreed to share the disputed amount of INR 10.97 crores, INR 1.14 Crores and INR 0.15 crores in equal ratio.

Both JIL and JAL stated that the above reconciliation arrived at is without it serving as a precedence and being on without any prejudice to the rights and obligations of both parties under the Construction Agreements or any other applicable law. Further, the above reconciliation on disputed amount of INR 10.97 Crores, INR 1.14 Crores and INR 0.15 Crores is being made independent of other following disputed amounts as reported in GT Final report:

SL. No.	Nature of Transaction	Disputed amount (INR Crores)
1	RA Bills for construction	49.63
2	BG issued on behalf of JAL and subsequently invoked by the lenders of JIL	212.00
3	Advance recoverable for IFMD by JIL from JAL	106.90
4	Facility management bills raised by JAL on JIL	2.33
5	Other Transactions	1.19
	Total	372.05

[Handwritten signatures and initials]

12. From the perusal of the aforesaid minutes, it is observed that the dispute with regard to the Transactions relating to “RA Bills for Construction of Rs. 10.97 Crore & Rs. 1.14 Crore” and “Facility Management Bills raised by JAL on JIL of Rs. 0.15 Crore” have been mutually resolved to be shared in the equal ratio between the parties. The minutes of the meeting dated 24.12.2021 is taken on record. **The said issues are resolved as per the agreement above and, Ordered accordingly.**

13. Thus, the issues, which emerge from the GT Report and post-joint meeting of the parties held on 24.12.2021 for adjudication before this Adjudicating Authority are the following -

Issues emerging from GT Report

- a) ***Whether in view of the provision of IBC 2016, can JAL claim an adjustment of Rs. 49.63 Crore (advanced against construction extended by JIL) on the basis of RA Bills pertaining to the period prior to the insolvency commencement date of JIL.***
- b) ***Whether JAL is entitled to a claim arising out of the Bank Guarantees amounting to Rs. 212 Crore issued on behalf of JIL and subsequently, invoked by the lenders of JIL.***
- c) ***Whether an advance of Rs. 106.90 Crore recovered from homebuyers towards IFMD is recoverable by JIL from JAL.***
- d) ***Whether JAL can claim adjustment of Rs. 2.33 crore towards the facility management bills, from JIL.***
- e) ***Whether JAL can claim/recover, Rs. 1.19 crore towards providing hospitality services, from JIL.***

14. Both parties have filed their detailed objections and written submissions with respect to the abovementioned issues on record.

15. Before dealing with each of the issues individually, we notice that the Applicant/IRP of the Corporate Debtor (JIL) has raised a common contention in the context of issues listed at serial no. (a), (b), (d), and (e) above, that the dues claimed by JAL pertain to the pre-CIRP period and these cannot be claimed from the Corporate Debtor (JIL), which is undergoing CIRP, within the framework of IBC 2016.

16. The submissions made by the Applicant/IRP of the Corporate Debtor (JIL) in this regard are summarised below -

Submissions of Applicant/IRP of JIL that pre-CIRP dues are outside the purview of the Reconciliation Process

16.1. It is submitted by the Applicant/IRP that the dues of the creditors pertaining to the pre-CIRP period and arising from the CIRP have to be verified and paid in accordance with the provision of the IBC, 2016. It has stated that the liability towards JAL arising under the construction contracts during the CIRP period has been paid by JIL after verification of bills submitted by JAL as “CIRP costs”.

16.2. That the bills of JAL amounting to Rs. 49.63 Crore [issue (a)], Rs. 2.33 Crore [issue (d)] and Rs. 0.15 Crore [issue (e)] are the operational debt pertaining to the pre-CIRP period. The Applicant/IRP has further submitted that the claim of JAL arising out of invocation of the bank guarantees (hereinafter, BGs) amounting to Rs. 212 Crore also pertains to the pre-CIRP period. It is contended that as per Section 15 of the IBC,

2016 read with Regulation 6 of CIRP Regulations, operational creditors are required to submit their claim in Form B pursuant to the public announcement made by the IRP.

16.3. Pursuant to the public announcement made by the IRP of the CD (JIL) on 10.08.2017, JAL had submitted a claim for Rs. 261.73 Crore towards the work stated to have been done during the pre-CIRP period as an 'Operational Creditor' in Form B dated 24.08.2017, which, inter alia, included the said RA Bills of Rs. 49.63 Crore (stated as Rs. 48.54 Crore in Form B) towards construction related expenses. It is submitted that JAL is not entitled to seek an adjustment of these RA Bills amounting to Rs 49.63 Crore out of Rs 750 Crore as they pertain to the pre-CIRP period, which has to be dealt in accordance with the provisions of the Code.

16.4. After verification of Form B submitted by JAL, the Applicant/IRP did not admit the said claim and vide letter dated 01.05.2018, it communicated to JAL that the claim cannot be admitted, as the JIL has a gross receivable balance from JAL of approximately Rs. 994 Crore and a gross payable balance of approximately Rs. 30 Crore only as on 09.08.2017 and therefore, there is no liability of the JAL that stands payable as on the insolvency commencement date and the claim filed by JAL is not admissible. The copy of the said letter is reproduced overleaf, for the immediate reference:

May 01, 2018

Sunil Kumar Sharma, Executive Vice Chairman
Jaiprakash Associates Limited
Sector 128, Noida
UP 201304, India

Dear Sir,

**Sub: Your claim in response to our Form A Public Announcement dated
10.08.2017**

This has reference to claim filed by Jaiprakash Associates Limited ("JAL" or "holding company") vide Claim Form B dated August 24, 2017 as Operational Creditor ("OC") of Jaypee Infratech Limited ("Corporate Debtor" or "Company") in respect of the Corporate Insolvency Resolution Process ("CIRP") on Corporate Debtor. This letter is a communication w.r.t the status of the claim filed with the Resolution Professional ("RP"). The RP has following observations w.r.t claim submitted:

1. Jaiprakash Associates Limited is the holding company of the Corporate Debtor and also is the general contractor to carry out on construction activity at the Yamuna Expressway and 5 land parcels at Noida/Aman, Jaganpur, Mirzapur, Tappal and Agra.
2. Included in the claim amount is Rs. 2,120,000,000 pertaining to invocation of bank guarantee given by the JAL to the lenders of the Corporate Debtor. We understand vide loan facility agreement (II and III) that any shortfall in the Debt Service Reserve Account was to be met by the holding company. The amount thus claimed is treated as promoter's contribution to the equity in the books of accounts and not to be treated as liability.
3. The remaining claim of Rs. 497,289,782 pertains to the amount of work executed by JAL at Yamuna Expressway and other land parcels. As per the records of the Company, the total liability outstanding against such work done is only Rs. 308,934,359. Hence, the claim to the tune of Rs. 308,934,359 shall only be considered for future purposes.
4. We understand, the Company also has a receivable balance of Rs. 9,940,417,913 as on 09 August 2017 from the holding company. The details of the receivable is as follows:

Company under Corporate insolvency resolution
process by NCLT Order, dated August 9, 2017



JAYPEE INFRA TECH LIMITED
CIN : L45203UP2007PLC033119
Regd. Office : Sector - 128, Noida - 201304, Uttar Pradesh (INDIA)
Ph: +91 (120) 4609000, 2470600 Fax: +91 (120) 4609464 Website: www.jaypeeinfratech.com

Description	Amount (Rs.)
Against Land debt Swap at Mirzapur with ICICI bank	1,642,898,708
Maintenance security advance given to JAL (land debt swap with Axis Bank in Mirzapur)	3,797,519,205
Mobilization advance given to JAL (land debt swap with Axis Bank in Mirzapur)	4,500,000,000
Total	9,940,417,913

As noted above, the Company has a gross receivable balance from the holding company of approx. Rs. 994 crores and a gross payable balance of approx. Rs. 30 crores as on August 09, 2017. Hence, there is no liability of the holding company that stands payable as on insolvency commencement date and the claim filed is not admissible.

Thanking you,

Yours sincerely,

Anuj Jain



Company under Corporate insolvency resolution
process by NCLT Order, dated August 9, 2017

Resolution Professional – Jaypee Infratech Ltd.
IP Registration no. IBB/IPA-001/IP-P00142/2017-18/10306
(Jaypee Infratech Limited is under Corporate Insolvency Resolution Process of the Insolvency and Bankruptcy Code 2016. Its affairs, business and assets are being managed by the Resolution Professional, Mr Anuj Jain, appointed by the National Company Law Tribunal by order dated 9th August 2017 under the provisions of the Code).



JAYPEE INFRA TECH LIMITED
CIN : L45203UP2007PLC033119
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Ph: +91 (120) 4609000, 2470600 Fax: +91 (120) 4609464 Website: www.jaypeeinfratech.com

16.5. The JAL did not challenge the aforesaid decision of the IRP by filing an appropriate application under Section 60(5) of the Code. In response to the argument of JAL that they did not file any application before this Tribunal challenging the decision of IRP as they did not construe the letter dated 01.05.2018 as a rejection of their claim, the Applicant/IRP has further submitted that the said letter clearly shows that the claim of JAL was not admitted.

16.6. Subsequently, pursuant to the directions of the Hon'ble Supreme Court in the case of **Chitra Sharma & Ors. Vs. UOI & Ors** ordering recommencement of CIRP of the Corporate Debtor (JIL), JAL again filed the revised claim as an 'operational creditor' under Form B on 28.08.2018. The Applicant/IRP has stated that since JAL did not agitate the same before this Tribunal, the communication dated 01.05.2018 sent by the IRP to JAL attained finality. Further, the JAL did not challenge the said decision of the IRP even at the stage of the resolution plan of NBCC being considered for approval by this Tribunal.

16.7. Hence, this claim cannot be re-opened in the present reconciliation process. It is submitted that JAL cannot seek backdoor entry to get what is not permissible under the provisions of the Code directly. The reconciliation exercise is to be carried out in accordance with the provisions of law read with the directions of the Hon'ble SC in **Jaypee Kensington (Supra)**.

16.8. The Hon'ble Supreme Court in **Jaypee Kensington (Supra)** has nowhere directed payment of pre-CIRP dues under the garb of

reconciliation, on the contrary, no claim from the pre-CIRP period can be admitted in terms of Para 225.3 of the **Jaypee Kensington** (Supra), which reads as follows:

“225.3. It is made clear that the IRP shall not entertain any expression of interest by any other person nor shall be required to issue any new information memorandum. The said resolution applicants shall be expected to proceed on the basis of the information memorandum already issued by IRP and shall also take into account the facts noticed and findings recorded in this judgment...”

16.9. In Para 349 of the *Jaypee Kensington* (Supra), the Hon’ble Supreme Court has noted that due adherence to the timelines provided in the Code and the related Regulations is fundamental to the entire process of resolution; and if a claim is not made within the stipulated time, the same cannot become a part of the Information Memorandum to be prepared by IRP. Therefore, no variation can be made in the Information Memorandum by including any claim. The said para is reproduced below:

“349. Due adherence to the timelines provided in the Code and the related Regulations and punctual compliance of the requirements is fundamental to the entire process of resolution; and if a claim is not made within the stipulated time, the same cannot become a part of the Information Memorandum to be prepared by IRP and obviously, it would not enter into consideration of the resolution applicant as also of the Committee of Creditors. In the very scheme of the corporate insolvency resolution process, a resolution applicant cannot be expected to make a provision in relation to any creditor or depositor who has failed to make a claim within the time stipulated and the extended time as permitted by Regulation 12. In Essar Steel (supra), while dealing with the topic Extinguishment of Personal Guarantees and

Undecided Claims this Court disapproved that part of the NCLT judgment which held that other claims, that might exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal, could be decided in an appropriate forum in terms of Section 60(6) of the Code. This Court specifically held that a resolution applicant cannot be made to suddenly encounter undecided claims after resolution plan submitted by him has been accepted; and in the scheme of the Code, all claims must be submitted to, and decided by, the resolution professional so that the resolution applicant could proceed on a fresh plate. This Court, inter alia, held as under: -

107. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count....”

16.10. If any claim is admitted at this stage, the information memorandum will have to be updated to enable the resolution applicant to deal with the admitted claims in its resolution plan. The Hon'ble Supreme Court has prohibited such an exercise by the aforesaid direction. The attempt by JAL to include the pre-CIRP dues is an after-thought. If the understanding of JAL was that these claims ought to be admitted and made part of set-off of Rs. 750 Crore, it could have asked the Resolution Applicants to include these amounts in the Resolution Plan.

16.11. By including the said amounts claimed by JAL for the pre-CIRP period would amount to admitting JAL's claim at this stage, which will open a Pandora's box, as the other creditors, whose claims were rejected but not challenged, will come forward to seek the similar relief. It is therefore, submitted that the pre-CIRP claims need to be dealt in accordance with the provisions of the Code. Payment to the creditors can only be made in accordance with Section 30 (4) read with Section 53(1) of the Code.

16.12. Even assuming that without admitting, if the claims of Rs. 49.63 Crore, Rs. 2.33 Crore and Rs 0.15 Crore pertaining to the bills of the pre-CIRP period, have to form part of the present reconciliation process, their payment has to be made in accordance with the resolution plan by treating JAL as an operational creditor. The JAL cannot be allowed to receive any payment in priority to the financial creditors of JIL. If the same is permitted, it will be contrary to the law. The JAL, being an operational creditor, has to stand in queue to be paid any such amount (if payable) as per Section 53 of the Code.

16.13. It is necessary to re-iterate that JAL cannot seek indirectly, what cannot be sought directly as per the Doctrine of colourable legislation. The JAL, as operational creditor, had filed a claim form dated 24.08.2017 for Rs. 261.73 Crore, out of which Rs. 48.54 Crore is towards the construction related expenses arising prior to commencement of CIRP of JIL (i.e., before 09.08.2017). This liability being operational in nature needs to be dealt as per the provisions of the Code. The JAL cannot, under the garb of reconciliation, seek admission of the claim and ask for preferential payment ahead of other creditors in defiance of the mechanism provided under Section 53 of the Code.

16.14. Admittedly, IRP accepted the claim of Rs. 30.89 Crore against the JAL's claim of Rs. 49.73 Crore. However, since JIL had a receivable balance of Rs. 994 Crore from JAL as on the insolvency commencement date, no liability of JAL was admitted. JAL never challenged this rejection, which was duly communicated to them. In terms of para 178.1.4 of the *Jaypee Kensington (Supra)*, only reconciliation pertaining to the CIRP period can be offset against balances receivable from JAL related to construction contracts. Payment to Financial Creditors and Operational Creditors have to be made in accordance with Section 30(4) r/w 53(1) of IBC. The JAL cannot bypass the waterfall mechanism to rank higher than other creditors of the Corporate Debtor.

16.15. Even if these amounts are found payable by JIL to JAL as part of the reconciliation (although JIL contests them), these amounts cannot be adjusted/set off from Rs. 750 Crore. Pre-CIRP expenses claimed by JAL

shall have to be treated as an operational debt/claim and paid in the same manner as the other operational creditors, as specified in Suraksha's Resolution Plan.

16.16. It has been held by the Hon'ble Supreme Court in the **Committee of Creditors of Essar Steel India Limited Through Authorised Signatory Vs. Satish Kumar Gupta & Ors., 2019 SCC OnLine SC 1478** that there cannot be any discrimination within the Creditors in the same class:

*“72. Quite clearly, secured and unsecured financial creditors are differentiated when it comes to amounts to be paid under a resolution plan, together with what dissenting secured or unsecured financial creditors are to be paid. And, most importantly, operational creditors are separately viewed from these secured and unsecured financial creditors in S.No.5 of paragraph 7 of statutory Form H. Thus, it can be seen that the Code and the Regulations, read as a whole, together with the observations of expert bodies and this Court's judgment, all lead to the conclusion that the equality principle cannot be stretched to treating unequals equally, as that will destroy the very objective of the Code - to resolve stressed assets. **Equitable treatment is to be accorded to each creditor depending upon the class to which it belongs: secured or unsecured, financial or operational.**”*

16.17. In fact, even in **Chitra Sharma (Supra)**, the Hon'ble Supreme Court noted as follows:

“48. As we have stated earlier, an amount of Rs 750 crores is lying in deposit before this Court pursuant to the interim directions, on which interest has accrued. The homebuyers have earnestly sought the issuance of interim directions to facilitate a pro rata disbursement of this amount to those of the homebuyers who seek a refund. We are keenly conscious of the fact that the claim of the homebuyers who

seek a refund of monies deserves to be considered with empathy. Yet, having given our anxious consideration to the plea and on the balance, we are not inclined to accede to it for more than one reason.

48.1. Firstly, during the pendency of the CIRP, it would as a matter of law, be impermissible for the Court to direct a preferential payment being made to a particular class of financial creditors, whether secured or unsecured. For the present, we leave open the question as to whether the homebuyers are unsecured creditors (as was urged by Mr Tripathi) or secured creditors (as was urged by the counsel appearing for them). Directing disbursement of the amount of Rs 750 crores to the homebuyers who seek refund would be manifestly improper and cause injustice to the secured creditors since it would amount to a preferential disbursement to a class of creditors. **Once we have taken recourse to the discipline IBC, it is necessary that its statutory provisions be followed to, facilitate the conclusion of the resolution process...**

16.18. The JAL is seeking indulgence of this Adjudicating Authority on the grounds of equity. It is submitted that the reconciliation of accounts has to be guided by the provisions of law and not on equity. It is a settled principle of law that the NCLT is not an equity court and it is required to follow the law within the ambit of IBC. The Hon'ble Supreme Court in **K Sashidhar Vs Indian Overseas Bank and Ors., 2019 SCC Online SC 257** has observed as under:

“58. Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under Section 30(2) of the I&B Code or, at best, by the adjudicating authority (NCLT) under Section 31(2) read with Section 31(1) of the I&B Code. No other

*inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in Section 61(3) of the I&B Code, which is limited to matters —other than enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. **Thus, the prescribed authorities (NCLT/NCLAT) have been endowed with limited jurisdiction as specified in the I&B Code and not to act as a court of equity or exercise plenary powers...***

16.19. The Hon'ble Supreme Court reiterated the same proposition in ***Pratap Technocrats Private Ltd. & Ors. Vs. Monitoring Committee of Reliance Infratel Ltd. and Anr., (2021) 10 SCC 623*** and held as under:

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

16.20. The Hon'ble Supreme Court in the ***National Spot Exchange Limited Vs. Mr. Anil Kohli, Resolution Professional for Dunar Foods***

Limited, 2021 SCC OnLine SC 716 have clearly held that equity can only supplement the law while observing as under:

“24. It is true that in a given case there may arise a situation where the applicant/appellant may not be in a position to file the appeal even within a statutory period of limitation prescribed under the Act and even within the extended maximum period of appeal which could be condoned owing to genuineness, viz., illness, accident etc. However, under the statute, the Parliament has not carved out any exception of such a situation. Therefore, in a given case, it may cause hardship, however, unless the Parliament has carved out any exception by a provision of law, the period of limitation has to be given effect to. Such powers are only with the Parliament and the legislature. The courts have no jurisdiction and/or authority, to carve out any exception. If the courts carve out an exception, it would amount to legislate which would in turn might be inserting the provision to the statute, which is not permissible.

XXXX

*26. In the case of Mishri Lal & Others (supra), it is observed that the law prevails over equity if - there is a conflict. **It is observed further that equity can only supplement the law and not supplant it.***

XXXX

28. In the case of Popat Bahiru Govardhane & Others (supra), this Court has observed and held that it is a settled legal position that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the Statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. It is further observed that the statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it by giving full effect to the same.

29. It is also required to be noted that even Shri Maninder Singh, learned senior counsel appearing on behalf of the appellant has, as

such, fairly conceded that considering Section 61(2) of the IB Code, the Appellate Tribunal has jurisdiction or power to condone the delay not exceeding 15 days from the completion of 30 days, the statutory period of limitation. However, has requested and prayed to condone the delay in exercise of powers under Article 142 of the Constitution of India, in the facts and circumstances of the case and submitted that the amount involved is a very huge amount and that the appellant is a public body. We are afraid what cannot be done directly considering the statutory provisions cannot be permitted to be done indirectly, while exercising the powers under Article 142 of the Constitution of India....”

17. Per contra, the JAL has denied all the submissions and contentions of the Applicant/IRP of the Corporate Debtor (JIL) and made the following submissions.

Submissions of JAL that pre-CIRP dues are within the purview of Reconciliation Process and IBC, 2016

17.1. It is submitted by the JAL that the Hon’ble Supreme Court has applied the equitable considerations to the present issue, which is clear from the following extracts of the ***Jaypee Kensington*** (*Supra*):

*191.1. “.....that ordinarily, **the equitable considerations do not directly come into play in corporate insolvency process** but the matter concerning this amount of INR 750 crores and accrued interest thereupon in a convoluted and stand-alone issue, having the peculiarities of its own and **hence, we have adopted the course, as contemplated above**”.*

Hence, it is clear that even though the Hon’ble Supreme Court was conscious of the fact that equitable consideration does not come into play in the CIRP, the reconciliation process must be carried out between JIL & JAL outside the confines of the IBC in order to balance the equities.

17.2. The **Jaypee Kensington** (*supra*) makes it clear that the entire process of reconciliation is not meant to be governed by the IBC. As stated in Para 191.1 of the Judgement, the reconciliation “*process is otherwise not of determination of the claims of individual stakeholders, be it operational creditors or financial creditors*”. Further, the Hon’ble Supreme Court in Para 189.3 of the same Judgement has, inter alia, noted that “*....Having regard to all the relevant features of this case, it appears appropriate that the process of reconciliation of accounts between JAL and JIL be taken up under the supervision of NCLT*”. If the reconciliation process was to take place under the IBC, there was no question of the Hon’ble Supreme Court’s applying its mind and concluding that this Tribunal ought to supervise.

17.3. While holding in para 189.2 of the **Jaypee Kensington** (*Supra*) that it was not “*inclined to countenance the other claims against JAL in these proceedings*”, the Hon’ble Supreme Court added a footnote no. 89, in which it stated that “*This is because insolvency resolution of JAL itself is looming large and in case of insolvency resolution or liquidation of JAL, such claims against JAL shall have to stand in the queue as per the discipline of IBC.*” This also makes it clear that the reconciliation process was clearly meant to operate outside the IBC. Since “*insolvency resolution of JAL is itself looming large*”, the Hon’ble Supreme Court has specifically envisaged that the reconciliation process shall be conducted outside the confines of the IBC so that the same may not be vitiated by

any restrictions/procedures stipulated under the IBC and shall be conducted as per directions of the Hon'ble Supreme Court.

17.4. That the para 189.3 of **Jaypee Kensington Judgment** makes it clear that this Tribunal is not required to carry out an adjudicatory process, but only to supervise the reconciliation. The IBC does not contemplate that this Tribunal would reconcile accounts between a corporate debtor (*i.e.*, JIL) and a creditor (*i.e.*, JAL) in the manner decided by the Hon'ble Supreme Court. Therefore, it is clear that the directions of the Hon'ble Supreme Court for reconciliation of accounts were made under Article 142 of the Constitution of India.

17.5. There are only two types of directions issued by the Hon'ble Supreme Court - one, under Article 141, where it lays down law and the other, under Article 142. The directions under Article 142 are issued by the Hon'ble Supreme Court to mould relief and exempt the application of a statute. The JAL in this regard has relied on the following Judgements:

a) **State of Punjab v. Rafiq Masih**, (2014) 8 SCC 883:

*“12. Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. It is a justice-oriented approach as against the strict rigours of the law. The directions issued by the Court can normally be categorised into one, in the nature of moulding of relief and the other, as the declaration of law. “Declaration of law” as contemplated in Article 141 of the Constitution: is the speech express or necessarily implied by the highest court of the land. This Court in *Indian Bank v. ABS**

*Marine Products (P) Ltd. [(2006) 5 SCC 72], Ram Pravesh Singh v. State of Bihar [(2006) 8 SCC 381: 2006 SCC (L&S) 1986] and in State of U.P. v. Neeraj Awasthi [(2006) 1 SCC 667: 2006 SCC (L&S) 190] has expounded the principle and extolled the power of Article 142 of the Constitution of India to new heights by laying down that the directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India. **The Court has compartmentalised and differentiated the relief in the operative portion of the judgment by exercise of powers under Article 142 of the Constitution as against the law declared.** The directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. This Court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case.”*

(Emphasis Provided)

b) Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409:

*“43. The power of the Supreme Court to punish for contempt of court, though quite wide, is yet limited and cannot be expanded to include the power to determine whether an advocate is also guilty of “professional misconduct” in a summary manner, giving a go-by to the procedure prescribed under the Advocates Act. **The power to do complete justice under Article 142 is in a way, corrective power, which gives preference to equity over law** but it cannot be*

used to deprive a professional lawyer of the due process contained in the Advocates Act, 1961 by suspending his licence to practice in a summary manner while dealing with a case of contempt of court.

47. The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of supplementary powers. This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, to prevent injustice in the process of litigation and to do complete justice between the parties. **This plenary jurisdiction is, thus, the residual source of power which this Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice according to law.** There is no doubt that it is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Court to prevent “clogging or obstruction of the stream of justice”. It, however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to “supplant” substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve

something indirectly which cannot be achieved directly. Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to practice, a power otherwise statutorily available only to the Bar Council of India, on the ground that the contemner is also an advocate, is, therefore, not permissible in exercise of the jurisdiction under Article 142. The construction of Article 142 must be functionally informed by the salutary purposes of the article, viz., to do complete justice between the parties. It cannot be otherwise. As already noticed in a case of contempt of court, the contemner and the court cannot be said to be litigating parties.

48. The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is necessary for doing complete justice” between the parties in any cause or matter pending before it”. The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by “ironing out the creases” in a cause or matter before it. Indeed this Court is not a court of restricted jurisdiction of only dispute-settling. **It is well recognised and established that this Court has always been a law-maker and its role travels beyond merely dispute-settling. It is a “problem-solver in the nebulous areas”** (see *K. Veeraswami v. Union of India* [(1991) 3 SCC 655: 1991 SCC (Cri) 734] but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject.”

(Emphasis Provided)

c) ***MunishKakkar v. Nidhi Kakkar***, (2020) 14 SCC 657:

“21. The provisions of Article 142 of the Constitution provide a unique power to the Supreme Court, **to do “complete justice” between the parties i.e. where at times law or statute may not provide a remedy**, the Court can extend itself to put a quietus to a dispute in a manner which would befit the facts of the case. It is with this objective that we find it appropriate to take recourse to this provision in the present case.”

(Emphasis Placed)

17.6. Without prejudice to the contention that the IBC does not apply, it is important to note that the IBC does recognize the concept of mutuality. The IRP has argued that allowing pre-CIRP dues as part of the reconciliation process would amount to a preferential transaction. However, this contention ignores the fact that the reconciliation process, by its very nature, involves mutuality and set-off of claims between JIL and JAL. Moreover, even the IBC recognizes that there is a right of set-off and counter claim. The Hon’ble Supreme Court’s Judgement in ***Swiss Ribbons Pvt. Ltd. v. Union of India and Ors. (2019) 4 SCC 17*** (para. 61) makes it clear that set off is contemplated by the IBC:

“61. Insofar as set-off and counter claim is concerned, a set-off of amounts due from financial creditors is a rarity. Usually, financial debts point only one way – amounts lent have to be repaid. However, it is not as if a legitimate set-off is not to be considered at all. **Such set-off may be considered at the stage of filing of proof of claims during the resolution process by the resolution professional, his decision being subject to challenge before the Adjudicating Authority under Section 60 ...**”

(Emphasis Placed)

17.7. That pursuant to Section 18(g) of IBC, 2016 read with Regulation 13(2)(ca) of the CIRP Regulations, the IBBI has issued a Circular No. IBBI/CIRP/36/2020 dated 27.11.2020, which contains a Form in which the IRP is required to file the list of creditors. That form contains a column for “*amount of any mutual dues that may be set-off*”. The IRP is, therefore, legally required to consider mutuality and set-off, while filing the list of creditors. Therefore, it is clear from the above that the principles of mutuality and set-off are not alien concepts to the IBC, which explicitly allows/contemplates set-off between the corporate debtor and its creditor.

17.8. It is further submitted that even the Provincial Insolvency Act, 1920 recognized the concept of mutuality while determining claims against insolvent parties. In this regard, JAL has relied on the following Judgements -

a. Official Liquidator High Court of Karnataka v. Lakshmikutty, AIR 1981 SC 1483:

“1. ...

*Consequently, when the respondent in the present case claimed to prove her debt against the company in liquidation, she was entitled to the benefit of the rule enacted in Section 46 of the Provincial Insolvency Act and she could legitimately claim that since there were admittedly mutual dealings between her and the company in liquidation, **an account should be taken in respect of such mutual dealings and only that amount should be payable or receivable by her which is due at the foot of such account.***

2. It is true that Section 530 provides for preferential payments, but that provision cannot in any way detract from full effect being given to Section 529 and in fact the only way in which these two sections can be reconciled is by reading them together so as to provide **that whenever any creditor seeks to prove his debt against the company in liquidation, the rule enacted in Section 46 of the Provincial Insolvency Act should apply and only that amount which is ultimately found due from him at the foot of the account in respect of mutual dealings should be recoverable from him and not that the amount due from him should be recovered fully while the amount due to him from the company in liquidation should rank in payment after the preferential claims provided under Section 530.** We find that the same view has been taken by the English courts on the interpretation of the corresponding provisions of the English Companies Act, 1948 and since our Companies Act is modelled largely on the English Companies Act, 1948, we do not see any reason why we should take a different view, particularly when that view appears to be fair and just. We may point out that Gore Browne in his book on Company Law, 43rd Ed., at pp. 34-14 also confirms this view: **“Indeed, all claims provable in the winding up may be the subject of set off, provided that there is mutuality.”** Moreover, we find that the observations of the House of Lords in *National Westminster Bank Ltd. v. Halesowen Presswork and Assemblies Ltd.* [(1972) 1 All ER 641, 659] are also to the same effect. We may also usefully refer to the observations of Sir Ernest Pollock, M.R. in *Re City Life Assurance Co. Ltd.* [1926 Ch 191: 1925 All ER Rep 453, 457] where the learned Master of the Rolls after referring to Section 207 of the Companies Act, 1908 (Section 317 of the Companies Act, 1948) which corresponds to Section 529 of Companies Act, 1956 and

Section 31 of the Bankruptcy Act, 1914 which corresponds to Section 46 of the Provincial Insolvency Act, says ...”

(Emphasis Placed)

b) Keshavji Ravij and Co. And Ors. v. Commissioner of Income Tax, AIR 1991 SC 1806:

*“10 ... A broad analogy, though in itself may not be conclusive, is furnished by the idea of “mutual dealings” and the principle of set off statutorily recognised in bankruptcy proceedings under Section 46 of the Provincial insolvency Act and attracts also to proceedings for winding up of companies by virtue of Section 529 of the Companies Act, 1956, **where the mutual credit clause steps in to avoid the injustice, which would otherwise arise of compelling a creditor to pay the official-assignee the full amount of the debt due from him to the insolvency, while the creditor would perhaps, only receive a small dividend on the debt due from the insolvent to him under a pari passu payment.** This principle was recognised by this Court in *Official Liquidator v. Lakshmikutty*, (1981) 2 SCR 349: AIR 1981 SC.*

(Emphasis Placed)

17.9. That even in the liquidation under Section 36(4)(e) of the IBC, an asset, which is subject to set-off, is not an asset of the Corporate Debtor and will not be included in the liquidation estate and distribution to the creditors under Section 53 of the IBC.

17.10. It is further stated that the Mutual dealings and set-off would need to be considered while arriving at the amount payable to an operational creditor under Section 53.

17.11. This position is further clarified by Regulation 29 of the IBBI (Liquidation Process) Regulations 2016 [the “**Liquidation Regulations**”] which states as follows:

“29. Mutual credits and set-off.

*Where there are mutual dealings between the corporate debtor and another party, **the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the corporate debtor or to the other party.***

Illustration: X owes Rs. 100 to the corporate debtor. The corporate debtor owes Rs. 70 to X. After set off, Rs. 30 is payable by X to the corporate debtor.”

(Emphasis Placed)

Therefore, it is clear from the above that the principles of mutuality and set-off are not an alien concept to the IBC and that the IBC explicitly allows/contemplates set-off between the corporate debtor and a creditor during both, the CIRP and the liquidation process.

17.12. An asset, which could not form part of the liquidation estate of the corporate debtor would equally be not form part of the insolvency estate of the corporate debtor. To disallow set-off would render Section 30(2) (b) and Section 36(4) (e) of the IBC otiose, as what these two provisions seek to reconcile is the value permissible to be set-off to an operational creditor. The Section 30(2)(b) of the IBC provides that:

“30. Submission of resolution plan:

...

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –

...

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than

–
(i) **the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53**; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than **the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor....**”

(Emphasis Placed)

17.13. It is further submitted that the consequence of disallowing set-off would be that the resolution plan in a CIRP would be approved on a fundamentally different basis than the liquidation value of the corporate debtor as a going concern.

Observations of the Bench

18. We have gone through the directions passed by the Hon'ble Supreme Court in *Jaypee Kensington (Supra)*. After hearing detailed submissions of both the parties through VC/physical hearings and going through the pleadings, and primarily the GT Report, the Affidavit dated 18.04.2022 filed by the Applicant/IRP and written submissions of the

parties placed on the record, this Bench observes that the IRP of JIL has contended that the claims relating to the amounts of Rs. 49.63 Crore, Rs. 2.33 Crore, Rs. 0.15 Crore and Rs. 212 Crore pertain to the pre-CIRP period, and if these are considered within the framework of IBC, 2016, JAL is not entitled to receive these amounts. Per Contra, JAL has submitted that the reconciliation process was never intended to be carried out within the framework of IBC, 2016. However, without prejudice to this argument, JAL has further submitted that the reconciliation process is also possible within the ambit of IBC 2016, without contravening any of its provisions or giving undue preference to JAL over other stakeholders of the Corporate Debtor.

19. It is further argued by the IRP of JIL, that if any of the amounts are paid to JAL out of the Rs.750 Crore, it shall be considered a payment made in priority to the other Financial Creditors of JIL and therefore, shall be contrary to the provisions of the Code. In order to examine the contention of the IRP, we would like to visit the relevant extracts of the Judgement passed by the Hon'ble Supreme Court in the **Jaypee Kensington** (*Supra*) towards the treatment to the amount of Rs. 750 Crore. We observe that the Hon'ble Apex Court has included this issue in its points for determination, which is reproduced below –

“Points for determination

15.....

*J. (i) As to whether the amount of INR 750 crores, which was deposited by JAL pursuant to the orders passed by this Court in the case of Chitra Sharma, and accrued interest thereupon, **is the property of JAL** and stipulation in the resolution plan concerning its usage by JIL or NBCC is impermissible?”*

20. We further find that this issue has been answered by the Hon'ble Apex Court in Para 188 of the **Jaypee Kensington** (Supra), which is reproduced below –

*“188. Accordingly, we hold that the amount of INR 750 crores, which was deposited by JAL pursuant to the orders passed by this Court in the case of Chitra Sharma, and accrued interest thereupon, **is the property of JAL**; and stipulation in the resolution plan concerning its usage by the resolution applicant of JIL cannot be approved. The part of the impugned order dated 03.03.2020 placing this amount in the asset pool of JIL is set aside.”*

(Emphasis placed)

21. On perusal of the above, it is evident that the Hon'ble Supreme Court has clearly held that the amount of Rs. 750 Crore is not the property of the Corporate Debtor/JIL, rather it is the property of the JAL.

22. At this juncture, we would like to refer to Section 36(4) of IBC 2016, which stipulates that the following shall not be part of the Liquidation Estate Asset -

“36. Liquidation estate. –

1.....

2.....

3.....

*4. **The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation:** -*

(a) assets owned by a third party which are in possession of the corporate debtor, including –

(i) assets held in trust for any third party;

(ii) bailment contracts;

- (iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;*
 - (iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and*
 - (v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;*
- (b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;*
- (c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;***
- (d) assets of any Indian or foreign subsidiary of the corporate debtor; or*
- (e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.”*

23. We would further like to refer to Section 53(1) of IBC, 2016, which reads as follows -

“53. Distribution of assets. –

- 1) *Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, **the proceeds from the sale of the liquidation assets shall be distributed in the following** order of priority and within such period and in such manner as may be specified, namely.....”*

24. On perusal of Section 53(1) of IBC, 2016, it is seen that only the proceeds of the sales of Liquidation Assets are eligible for distribution in terms of Waterfall Mechanism. Whereas the Section 36(4) gives details of the Assets, which are not only required to be kept out of the Liquidation Estate Assets but also cannot be used for recovery or distribution amongst stakeholders in terms of the Waterfall Mechanism. Thus, from the conjoint reading of Section 36(4) and Section 53(1) of IBC, 2016, it is clear that the assets listed under Section 36(4) cannot form part of the Liquidation Estate Assets.

25. More specifically, when we read the contents of Section 36(4)(c), we observe that *personal assets of any shareholder or partner of a corporate debtor as the case may be* are not to be included in the Liquidation Estate Assets of the Corporate Debtor and hence, any distribution therefrom cannot be said to have been done in preference to other Financial Creditors.

26. It is a matter of fact that the Corporate Debtor/JIL is a wholly owned subsidiary of JAL, which means that JAL is the shareholder of the Corporate Debtor/ JIL. The relationship of JIL and JAL can also be evident from the Judgement of the Hon'ble Supreme Court in the **Jaypee Kensington** (Supra) and the relevant extracts are reproduced below –

“The parties standing for the resolution plan

7.....

7.1. *Jaypee Infratech Limited (JIL):*

*“It is the corporate debtor company in whose relation CIRP has been taken up and the resolution plan has been made and approved. This company was essentially set up as a special purpose vehicle after its **holding company Jaiprakash Associates Limited (JAL)** was awarded the rights for construction of an Expressway from Noida to Agra and a Concession Agreement was entered into with the Yamuna Expressway Industrial Development Authority.”*

(Emphasis placed)

27. Now, after going through the relevant extracts of **Jaypee Kensington** (Supra) and Section 36(4) & Section 53(1) of IBC 2016, we would like to sum up **our observations/findings** as follows:

(i) JAL (the holding company) is the shareholder of JIL/Corporate Debtor,

(ii) Rs 750 Crore is the property of JAL,

(iii) Properties of Shareholders of the Corporate Debtor do not form part of the Liquidation Estate Assets by virtue of provision under Section 36(4)(c) of IBC 2016, and

(iv) Further, the Assets covered in Section 36(4) are not eligible to be distributed amongst the Stakeholders of the Corporate Debtor in terms of the waterfall mechanism stipulated under Section 53(1) of IBC, 2016.

(v) Hence, Rs 750 Crore being the “asset of the shareholder of JIL” i.e., JAL, is outside the ambit of Section 53(1) of IBC, 2016 and any payment therefrom to JAL cannot be said to be in preference to the Financial Creditors of the Corporate Debtor.

28. In the light of aforesaid facts and findings, we are of the considered view that Rs. 750 Crore is the property of JAL, and if any

amount is found payable to JAL out of the said Rs.750 Crore, it shall not be considered to be the payment made in priority to the Financial Creditors of JIL and it would entirely be in conformity with the provisions of IBC, 2016.

29. Now, we would like to deal with the next major objection raised by JIL/Corporate Debtor and examine **whether the JAL can be refrained from receiving any amount on the ground that its claim pertains to the Pre-CIRP Period.**

30. At this juncture, we would like to re-visit the Judgment of the Hon'ble Supreme Court in the matter of **Jaypee Kensington** (Supra) wherein, the scope of the present reconciliation process has been determined and specific directions have been given to this Adjudicating Authority. The relevant extracts of the Judgment are reproduced below:

*“190.1. After receiving the report from the accounting expert, the NCLT shall pass appropriate orders in the manner that, if any amount is found receivable by JIL/homebuyers of JIL, **the same shall be made over to JIL from out of the said amount of INR 750 crores and accrued interest; and remainder thereof shall be returned to JAL** in an appropriate account and that shall abide by the directions of the competent authority dealing with the proceedings concerning JAL*

....

191.1. As observed hereinabove, after having found that the said money is the property of JAL, ordinarily, the consequence would have been of directing its refund to JAL but the other entangled features of the case relating to the amount otherwise payable by JAL to JIL cannot be ignored altogether, particularly when it was an admitted

position on behalf of JAL before NCLT that an amount of INR 274 crores was payable by it to JIL and even before this Court, this obligation to pay has been admitted on behalf of JAL, albeit to the tune of INR 195 crores as on 31.03.2020; and it appears that JAL has been taking steps (maybe crippled steps) to carry out construction and to reduce its liability. **We are not determining the extent of amount payable by JAL to JIL because that would be a matter of reconciliation of accounts but, having regard to the background in which, and the purpose for which, JAL made the said deposit pursuant to the orders of this Court and also having regard to the present position of these two companies, adopting this course appears to be in the balance of the legal rights of the respective stakeholders as also in the balance of equities. We would hasten to observe that ordinarily, the equitable considerations do not directly come into play in corporate insolvency resolution process but the matter concerning this amount of INR 750 crores and accrued interest thereupon is a convoluted and stand-alone issue, having the peculiarities of its own and hence, we have adopted the course as contemplated above. This process is otherwise not of determination of the claims of individual stakeholders, be it operational creditors or financial creditors.** In the interest of justice, it is also made clear that disposal of the said sum of INR 750 crores shall otherwise not directing its refund to JAL but the other entangled features of the case relating to the amount otherwise payable by JAL to JIL cannot be ignored altogether, particularly when it was an admitted position on behalf of JAL before NCLT that an amount of INR 274 crores was payable by it to JIL and even before this Court, this obligation to pay has been admitted on behalf of JAL, albeit to the tune of INR 195 crores as on 31.03.2020; and it appears that JAL has been taking steps (maybe crippled steps) to carry out construction and to reduce its liability. We are not determining the extent of amount payable by JAL to JIL because that would be a

matter of reconciliation of accounts but, having regard to the background in which, and the purpose for which, JAL made the said deposit pursuant to the orders of this Court and also having regard to the present position of these two companies, adopting this course appears to be in the balance of the legal rights of the respective stakeholders as also in the balance of equities. We would hasten to observe that ordinarily, the equitable considerations do not directly come into play in corporate insolvency resolution process but the matter concerning this amount of INR 750 crores and accrued interest thereupon is a convoluted and stand-alone issue, having the peculiarities of its own and hence, we have adopted the course as contemplated above. This process is otherwise not of determination of the claims of individual stakeholders, be it operational creditors or financial creditors. In the interest of justice, it is also made clear that disposal of the said sum of INR 750 crores shall otherwise not.

224. We also deem it appropriate to clarify that the processing of the modified/fresh resolution plans, as permitted and envisaged by this judgment, is required to be completed within the extended time and for that matter, the other aspects like reconciliation of accounts between JAL and JIL or resolution of the issues related with the financial creditor of the subsidiary of the corporate debtor shall be the matters to be dealt with separately and decision on the resolution plan by the Committee of Creditors need not wait the resolution of those issues.

225. Accordingly, while once again exercising our powers under Article 142 of the Constitution of India to do substantial and complete justice to the parties and in the interest of all the stakeholders of JIL, we conclude on these matters with the following order...”

(Emphasis Placed)

31. **On perusal of the above-said directions of the Hon'ble Supreme Court, it is evident that the reconciliation process is solely about the distribution of Rs 750 Crore between JAL and JIL.** The other stakeholders of both parties, therefore, do not have any rights over the kitty of Rs. 750 Crore. Further, in terms of the directions, the amount payable by JAL to JIL has to be determined, and the remaining proceeds have to be returned through this reconciliation process to JAL. Furthermore, the Hon'ble Supreme Court has observed that this reconciliation process is a convoluted and stand-alone issue, having peculiarities of its own.

32. Since other than JAL and JIL, no other stakeholder has any right in the Rs. 750 Crore, therefore, the issues with respect to its treatment are not a proceeding *in rem*, rather the present reconciliation process is *in personam* between the two parties. Further, the Hon'ble Supreme Court has specifically directed that *"...if any amount is found receivable by JIL/homebuyers of JIL, the same shall be made over to JIL from out of the said amount of INR 750 crores and accrued interest; and remainder thereof shall be returned to JAL."* **Therefore, we are of the considered view that the claim of JAL cannot be rejected merely on the ground that the dues are pertaining to the pre-CIRP period.** Hence, we would like to examine each issue on its merits.

33. Now, we would like to deal with the first issue on merit, which is - ***"a) Whether in view of the provision of IBC 2016, can JAL claim an adjustment of Rs. 49.63 Crore (advanced against construction extended by JIL) on the basis of RA Bills pertaining to the period prior to the insolvency commencement date of JIL."***

34. It is stated by JAL that it is entitled to adjust the amount of Rs.49.63 Crore owing to the RA Bills against the mobilization advance of Rs.450 Crores handed over by JIL to JAL in 2016 for construction purposes.

35. From the records, we notice that vide its letter dated 01.05.2018, the IRP had disallowed the JAL's claim of Rs.49.63 Crore only on the ground that "*...as per records of company, total liability outstanding against such work done is only Rs.30,89,34,359.*" According to the IRP, this amount of Rs.30.89 Crore is a pre-CIRP liability, which he allowed by applying the principle of set off against the entire alleged dues of Rs.994 Crore owed by JAL to JIL. IRP's letter dated 01.05.2018 did not specifically mention that rejection was on account of the claim being of the pre-CIRP period.

36. The fact that the IRP did not reject JAL's claim of Rs.49 crore towards RA bills on the ground it is related to the pre-CIRP period becomes further clear from the fact that both JIL's financial statements and Information Memorandum (IM) (both of which were issued after the rejection letter dated 01.05.2018) treat the amount of Rs.49 crore towards RA bills as due and payable to JAL.

37. Per Contra, the IRP of JIL has submitted that JAL did not challenge the IRP's decision vide letter dated 01.05.2018 and pursuant to the judgement of Hon'ble Supreme Court in **Chitra Sharma** (Supra), when the CIR process was started afresh in August 2018 and the JAL again

raised its claim of Rs. 49 Crore. We observe that the IRP admittedly did not decide or reject the fresh claim filed by the JAL.

38. We observe that the IRP had applied the principle of set-off between JIL & JAL, which is evident from the letter dated 01.05.2018. While perusing the Information Memorandum and the JIL's Financial Statements, we further observe that the JAL's claims of Rs.49 crore towards RA bills (pre-CIRP dues) were "to be adjusted against the advance given to JAL". Further, after the **Chitra Sharma** (Supra), when the JAL again filed the claim form during the 'afresh CIRP' initiated, the IRP opted not to decide the same.

39. We thus, observe that while dealing with the claim of JAL of Rs 49 Crore towards RA Bills, the IRP of JIL has blown hot and cold at the same time. On the one hand he has allowed its set off against its alleged dues against JAL, on the other hand it has shown this amount to be not payable on account of being pre-CIRP dues. GT report too records that this being the pre-CIRP dues, the adjudicating authority may take a view.

40. Hence, the Applicant/IRP of JIL has offered no legal justification other than that the claim of Rs.49.63 Crore is of the pre-CIRP period. As we have already held in para 32 above, the claim of JAL cannot be rejected merely on the ground that these dues pertain to the pre-CIRP period. We are, therefore, of the considered view and conclude that JAL is entitled to retain the amount of Rs. 49.63 crores towards RA Bills against the advance extended against construction by JIL.

41. Hence, **issue (a) is decided in the favour of the JAL.**

42. Now, we would like to examine **the next issue (b) “Whether JAL is entitled to claim the amount of Rs. 212 Crore arising out of Bank Guarantees issued on behalf of JIL and subsequently invoked by the lenders of JIL.”**

Submissions of JAL

43. In this context, the following is submitted by JAL -

43.1. It is submitted by JAL that GT has stated that the amount arising out of the Bank Guarantee is payable to JAL and it had reached its conclusion after hearing objections of both parties. The scanned copy of the observations of the GT Report is reproduced below –

JIL and JAL financial accounts reconciliation
Report - Strictly private and confidential

7

v. GT's comment

It is our assessment that no dispute continues on the amount of BG encashed, i.e., INR 212 crore. Further, based on the review of agreements, treatment followed in AFS of JIL and JAL before and after the invocation of BGs, it appears that the amount was in nature of debt and not equity. Therefore, the Adjudicating Authority may direct the decision to pay this amount to JAL in line with the provisions of the IBC Code and/or relevant statutes.

Further, we have considered the Objections filed by JAL on 13 July 2021 and IRP of JIL on 20 July 2021 before NCLT and our assessment remains unchanged.



43.2. IRP vide its letter dated 01.05.2018 had rejected the claim of Rs.212 crore only on the ground that it was the "promoter's contribution to equity" because a restructuring scheme was being negotiated at the time. Once the negotiations for the restructuring scheme failed after the lenders' meeting dated 05.05.20'17, JIL again started treating the

amount of Rs.212 Crore as a financial liability in its Balance Sheets for the years 2017-18, 2018-19, and 2020-21.

43.3 JIL's Information Memorandum admits that an amount of Rs.212 crore is payable to JAL as "*against invocation of corporate guarantee which is considered as other financial liability...*".

Submissions of JIL

44. The IRP of JIL has stated that the claim for reconciliation of Rs. 212 Crore ought to have been rejected by the GT. It is added that the said claim arising out of the encashment of the Bank Guarantee cannot be made by JAL as part of the reconciliation process.

44.1. The said Bank Guarantees have no co-relation whatsoever with the construction agreements executed between CD and JAL and hence, the same cannot form part of the reconciliation process.

44.2. The following were the Construction Agreements executed between JIL and JAL -

- a. Contract Agreement dated 01.05.2009 for Land Development at LFD-1 at Noida;
- b. Contract Agreement dated 09.10.2010 for Land Development at LFD-2 at Jaganpur;
- c. Contract Agreement dated 09.10.2010 for Land Development at LFD-3 at Mirzapur;
- d. Contract Agreement dated 06.07.2011 for Land Development at LFD-4 at Tappal;
- e. Contract Agreement dated 11.04.2011 for Land Development at LFD-5 at Agra;

- f. Construction for Yamuna Expressway entered on 27th Nov 2007 and further amended on 30th Sep 2008, 22nd Sep 2009 and 28th Mar 2011.
- g. Maintenance agreement of common/shared areas in LFD-1 Noida project entered on 14th Sep 2016.

44.3. On 29.12.2012, the JIL/Corporate Debtor (CD) entered into a Facility Agreement with a consortium of lenders led by the IDBI Bank Limited for refinancing the outstanding existing Facility of Rs. 6,600 Crore, which was availed earlier for the financing of the toll road of Yamuna Expressway project. As per Clause 10.10.3 of the Facility Agreement, JIL/Corporate Debtor (CD) was required to maintain a stipulated fund balance in its Debt Service Reserve Account ("DSRA") or issue letters of credit or bank guarantees in lieu of DSRA. The scanned copy of the said clause is reproduced below –

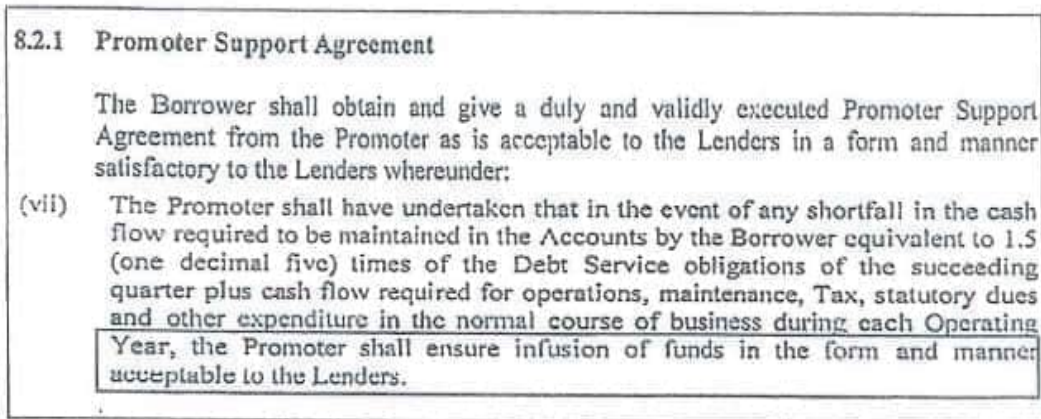
Extract of the facility agreement dated 29 December 2012 between lenders and JIL (clause 10.10.3 and 8.2.1(vii))

10.10.3 The Borrower shall create and maintain at all times in terms of the TRA Agreement a "Debt Service Reserve Amount Facility I" to meet the Debt Service requirements in relation to Facility I for the ensuing 1 (one) quarter interest payment dues and 1 (one) month's principal payment due to the Facility I Lenders from the cash flows available. The Borrower shall also create and maintain at all times in terms of the TRA Agreement a "Debt Service Reserve Amount Facility II & III" to meet the Debt Service requirements in relation to Facility II and III for an amount equal to 1.5 (one decimal five) times of the aggregate of the principal and interest payment due to the Facility II Lenders and Facility III Lenders for the ensuing quarter.

Provided however, that the Borrower may furnish a letter of credit or a stand by letter of credit or bank guarantee, in the form and manner acceptable to the Lenders, in lieu of the Debt Service Reserve Amount for the Facility, to the TRA Agent, on such terms and conditions as are acceptable to the Secured Parties, and upon furnishing of such letter of credit or stand by letter of credit or bank guarantee, the Borrower shall during the validity of such letter of credit or stand by letter of credit or bank guarantee, not be required to keep the balances in the relevant Debt Service Sub-Accounts upto the face value of such letter of credit or stand by letter of credit or bank guarantee, such letter of credit or stand by letter of credit or bank guarantee shall amongst other terms, entitle the TRA Agent to make a demand at any time that there is a shortfall in the Debt Service Sub-Account or if the letter of credit or stand by letter of credit or bank guarantee are not renewed prior to their expiry. Such letter of credit or stand by letter of credit or bank guarantee shall be renewed and replaced with a fresh letter of credit or stand by letter of credit or bank guarantee during the currency of the Facility. The bank/financial institution providing such letter of credit or bank guarantee shall not have any recourse to the Borrower or its asset.

44.4. Further, as per Clause 8.2.1 (vii) of the Facility Agreement, the holding company of JIL/Corporate Debtor (CD) i.e., JAL was required to

execute a 'Promoter Support Agreement' from the promoters to ensure infusion of funds, in a manner acceptable to lenders of JIL/Corporate Debtor (CD). Clause 8.2.1 (vii) of the Facility Agreement as extracted from the GT Report is reproduced below:



44.5. The Facility Agreement defines the 'Debt Service Reserve Sub-Sub Account or DSRSA' as under:

“Debt Service Reserve Sub-Sub Account or DSRSA shall mean a sub-account o designated as such and established with the Account Bank in accordance with the Trust and Retention Account Agreement”.

44.6. Further, the 'Trust and Retention Account Agreement' is defined as follows:

"Trust and Retention Account Agreement" shall mean the amended and restated trust and retention account agreement dated March 26, 2013 entered into among the Borrower, the Account Bank, IDBI Bank Limited (as the lenders' agent for the Existing Rupee Lenders) and IDBI Trusteeship Services Limited (as the security trustee and agent for the Existing Rupee Lenders), as proposed to be amended by an amendment agreement to be entered into among the Borrower, the Account Bank, IDBI Bank Limited (as the Lenders' Agent and the lenders'

agent for the Existing Rupee Lenders, the Refinancing Lenders and the Lenders) and IDBI Trusteeship Services Limited (as the Security Trustee and the security trustee and agent for the Existing Rupee Lenders, the Refinancing Lenders and the Lenders), in relation to the credit and application of monies and revenues of the Project and providing for the detailed mandates, terms and conditions and operating procedures for the Trust and Retention Account."

44.7. Pursuant to the Clauses 10.10.3 & 8.2.1 of the Facility Agreement, a Promoter Support Agreement (hereinafter, termed as "**Promoter Support Agreement**") was entered between JAL, JIL, and IDBI Bank Limited on 29.09.2015. The relevant clauses of the said Promoter Support Agreement as submitted by JIL in its written submissions are reproduced below:

C. For the purpose of part financing the cost of the Expressway, the Borrower had availed rupee term loans from certain banks and financial institutions, which loans were refinanced by the Existing Lenders by way of rupee term loans of an aggregate principal amount not exceeding Rs. 66,00,00,00,000 (Rupees Six Thousand and Six Hundred Crores Only) ("Existing Facility"). on the terms and conditions as set out in the financing and security documents entered into amongst others, between the Borrower and the Existing Lenders on December 29, 2012, details of which are as set out in Existing Financing Documents.

XXXXXX

B. It is one of the conditions of the Loan Agreements that in order for the Borrower to avail the financial assistance provided by the Lenders towards the Expressway, the Promoter is required to undertake to extend support to the Borrower and/or the Expressway, as prescribed in this Agreement.

44.8. It is clear from the Promoters Support Agreement that JAL undertook to provide funds to meet the shortfall in DSRA and also to meet any shortfall in the means of financing of the Expressway/Project by the CD. Pursuant to the terms of the Facility Agreement, the JAL furnished five BGs aggregating to Rs. 212 Crore in favour of the Consortium of Lenders led by IDBI Bank Limited. As JIL/Corporate Debtor (CD) could not meet the obligations to its lenders and there was a shortfall in DSRA, these BGs were encashed by the lenders of the JIL/Corporate Debtor (CD) in the financial year 2016-17.

44.9. As per Clause 2.1(i), (v) & (x) of the Promoter Support Agreement, it becomes abundantly clear that the amount of Rs. 212 Crore was infused by JAL to service the debt availed by the JIL/Corporate Debtor (CD) from the IDBI Bank Limited led Consortium, and the same was not for the purpose of construction or under the Construction Agreements. The BGs were issued on behalf of JAL to meet the obligations under the Facility Agreement and Promoter Support Agreement and were encashed by the lenders of CD in accordance with their rights under those Agreements. In the view of IRP of JIL, the Facility Agreement and Promoter Support Agreement were not construction or construction-related agreements. They were agreements between the borrower (JIL/CD), the lender (CD's lenders), and the borrower's promoter (JAL).

44.10. GT has stated in its report, the following regarding the invocation of guarantees by the lenders -

B. BGs issued on behalf of JAL and subsequently invoked by the lenders of JIL

i. Overview

- a) On 29 December 2012, JIL entered a facility arrangement with IDBI as a senior lender, including other lenders, for refinancing its outstanding existing facility of INR 6,600 crore (which was availed earlier for part financing the project).
- b) As per clause 10.10.3 of the facility agreement, JIL was required to maintain a stipulated fund balance in its DSRA. Further, as per clause 8.2.1 (vii), in case of any shortfall in DSRA, the Promoter (JAL) was required to ensure infusion of funds in a manner acceptable to lenders. (Refer Exhibit 5)
- c) Pursuant to the terms of the loan facility agreement, during FY 2013-14, JAL, at the request of JIL, furnished five BGs aggregating to INR 212 crore in favor of the lender (IDBI Bank Limited) of JIL in the following manner:

(Amount INR in crore)

#	Name of the Bank	BG No.	Issue date	Amount (INR)
1	Bank of Maharashtra	0039213BG0000056	02-Jul-13	40.00
2	Oriental Bank of Commerce	4070003613	02-Jul-13	10.00
3	Oriental Bank of Commerce	4070004213	26-Jul-13	50.00
4	State Bank of Bikaner and Jaipur	198/13	02-Dec-13	80.00
5	State Bank of Travancore	7033713BG0000034	20-Dec-13	32.00
Total				212.00

- d) During FY 2016-17, the BGs furnished by JAL were encashed by the lenders of JIL to meet the shortfall in DSRA in the following manner:

(Amount INR in crore)

#	Name of the Lender	Date of encashment	Amount (INR)
1	India Infrastructure Finance Company Limited	13-Oct-16	23.48
2	IFCI Limited	15-Oct-16	6.00
3	J&K Bank	15-Oct-16	5.22
4	State Bank of Patiala	15-Oct-16	9.65
5	Syndicate Bank	17-Oct-16	8.35
6	Bank of Maharashtra	17-Oct-16	8.35
7	Corporation Bank	18-Oct-16	14.87
8	IDBI Bank	20-Oct-16	97.85
9	ICICI Bank	24-Oct-16	7.83
10	Union Bank of India	16-Nov-16	7.05
11	State Bank of Hyderabad	30-Nov-16	7.69
12	LIC	07-Dec-16	15.66
Total			212.00

- e) On 9 August 2017, CIRP proceedings were initiated for JIL and on 24 August 2017, JAL filed a claim of INR 262 crore (including INR 212 crore relating to BGs) against JIL as an operational creditor. (Refer Exhibit 6)
- f) On 1 May 2018, the claim filed by JAL was rejected by IRP of JIL on the ground that the amount of INR 212 crore should be treated as a Promoter's contribution to the equity as disclosed by JIL in its financials as on 31 March 2017, 30 June 2017, 30 September 2017 and 31 December 2017. Hence, the same cannot be treated / claimed as a liability. (Refer Exhibit 7)

ii. Our understanding of the nature of BGs furnished by JAL

Based on the review of information / documentation provided, the liability of INR 212 crore as per the books of JIL towards JAL on invocation of the BGs appears to be debt on the following grounds:

- a) Accounting treatment in AFS of JAL



44.11. As per the terms of the Promoter Support Agreement referred to above, any amount infused by JAL to meet the shortfall in the payment of debt servicing by JIL/Corporate Debtor, shall be by way of infusion of equity into JIL/Corporate Debtor and/or by way of advancing

interest-free subordinated debt to JIL/Corporate Debtor. Therefore, when BGs were invoked by the lenders of JIL/Corporate Debtor, this amount could either be treated as a subscription amount towards equity or as a debt but subordinated to the debt of lenders of JIL/Corporate Debtor. Accordingly, the amount of Rs. 212 Crore was treated by both the JIL/Corporate Debtor and JAL as Promoters' Equity contribution in JIL and accordingly, reflected as Equity in the books of accounts for the financial year 2016-2017, as also in the first three quarters of FY 2017-18 by both JAL and JIL.

44.12. The treatment of Rs. 212 Crore in the Balance Sheet as Liability is a mere accounting treatment and does not have the effect of converting "advance against equity" into a "debt". It certainly cannot be treated as financial debt within the meaning of Section 5(8) of the Code as there was no debt disbursed by JAL to CD against the consideration of time value of money having the commercial effect of borrowing. JAL was fully aware of this and therefore, did not file a claim under Form C. Rather, JAL filed its claim for Rs. 212 Crore in Form B on 24.08.2017 claiming an amount of Rs. 261 Crore, which included the amount of Rs. 212 Crore towards the BGs. Further, in Form B, JAL has admitted that it had asked Consortium of lenders of CD to consider invocation of BGs as JAL's 'equity contribution'. Even in 2018, when JAL filed the consolidated claim afresh for an amount of Rs. 326 Crore (which included the claim arising out of BGs), it was again filed in Form B as an operational creditor.

44.13. The JAL is prohibited from seeking a set off or adjustment of Rs. 212 Crore in terms of Clause 4.2 of the Promoter Support Agreement. The relevant clauses are reproduced below –

4. TERMS OF SUBORDINATION

4.1 Any amounts brought in by the Promoter pursuant to the terms of this Agreement shall not be (a) secured by any Security Interest in or over the assets of the Borrower; (b) due and/or repayable/ payable prior to the Final Settlement Date. The Promoter shall take all actions necessary to ensure that the Borrower's obligations in relation to the amounts provided in terms of this Agreement are fully subordinated to the Borrower's obligations to the Secured Parties under the Financing Documents.

4.2 The Promoter shall not, prior to the Final Settlement Date, without the prior written consent of the Lenders, commence any proceedings or take action to recover or seek the repayment/ payment of any of the monies brought in the Borrower (whether in full or part), directly or indirectly, whether by direct claim, exercise of set-off, counterclaim or in any other manner or be subrogated to any claim of the Lenders against the Borrower, including on the liquidation or winding-up of the Borrower. Until the Final Settlement Date, the Promoter shall not exercise any claim in the insolvency or liquidation of the Borrower in competition with the Secured Parties.

4.3 Without prejudice to the restrictions under the Loan Agreements and the TRA Agreement, the Promoter acknowledges that interest and/ or dividends on the amounts brought in under this Agreement, may be paid or payable only if the Borrower has fulfilled each of the Restricted Payment Conditions and with the prior written consent of the Lenders. The terms of payment of interest / dividend shall be to the satisfaction and acceptable to the Lenders.

5. OBLIGATIONS OF THE PROMOTER

*5.1 Lenders' Agent's determination to be binding and conclusive
XXXXXXXX.*

5.2 Promoter to hold amounts in trust

Until the Final Settlement Date, any amount whether in cash or securities, received or recovered by the Promoter in respect of the Expressway, in contravention of the terms of this Agreement or the Financing Documents:

- a) as a result of any exercise of any right against the Borrower, or*
- b) in the winding-up of the Borrower;
shall be held by the Promoter, in trust for the Secured Parties and immediately be paid to the Security Trustee."*

REBUTTAL BY JAL

45. JAL had rebutted this and stated that the lenders gave JIL, a loan of Rs.6,600 Crore under the Facility Agreement dated 30.04.2015 for construction of the integrated Yamuna Expressway project including development of the land parcels. Therefore, this is a liability discharged by JAL in connection with the construction.

45.1. The Facility Agreement dated 30.04.2015 makes it clear that without DSRA, the financing for the construction would have collapsed. In support of its contentions, JAL has relied upon the following two clauses:

Cl. 10.10.3 of the Facility Agreement dated 30.04.2015 -

“The Borrower shall within a period of 30 (thirty) days from the Initial Disbursement Date create and maintain at all times till the Final Settlement Date, the DSR in the DSRA [out of the cash accruals of the Project]”

Cl. 10.10.4 of the Facility Agreement dated 30.04.2015

“The Borrower and/or the Promoter may in lieu of the DSR, procure and furnish to the Lenders’ Agent/ Security Trustee, an unconditional and irrevocable bank guarantee/letter of credit from a bank acceptable to the Lenders, in a form, manner and on terms and conditions acceptable to the Lenders (hereinafter referred to as the “DSR Bank Guarantees”). Such DSR Bank Guarantees, shall, among other terms, entitle the Account Bank/ the Lenders’ agent/the Security Trustee to make a demand at any time, if there is a shortfall in the DSRA or if the bank guarantee is not renewed prior to its expiry”.

45.2. The Hon’ble Supreme Court was fully aware of Rs. 212 Crore as being an amount owned by JIL to JAL, which was adjusted against the mobilization advance for construction and the IFMD advance. This fact was set out in the affidavit dated 15.05.2020 filed before the Hon’ble NCLAT in Company Appeal (AT) (Ins.) 478/2020 and was noted by the Hon’ble Supreme Court in the Jaypee Kensington Judgment at para. 178.1.4.

45.3. The recitals to the Promoters Support Agreement dated 29.09.2015 (as well as its Clause 2.1) make it clear that JAL’s financial support to JIL was for construction. The same is reproduced overleaf -

“A. Yamuna Expressway Industrial Development Authority (earlier known as Taj Expressway Industrial Development Authority) (“Authority”) had shortlisted and selected Jaiprakash Industries Limited, now known as Jaiprakash Associates Limited (a company incorporated and registered under the provisions of the Companies Act, 1956 (1 of 1956) and having its registered office at Sector-128, NOIDA -201 304 Uttar Pradesh (India) hereinafter referred to as “JAL” to develop, design, engineer, finance, construct and upon completion manage, operate and maintain the expressway comprising of 6 (six) (extendable to 8 (eight) lanes, 165.537 (one hundred and sixty five decimal five three seven) kilometer long expressway between NIODA and Agra with service roads and associated facilities (“Expressway”) including the acquisition and development of land admeasuring 6175 (six thousand one hundred and seventy five) acres, i.e., 25 (twenty five) million square meters situated at 5 (five) or more locations of which one location shall be Noida or Greater Noida in the state of Uttar Pradesh, for real estate development and to use the toll road (about 25 (twenty five) kilometers) between Noida toll bridge and Greater Noida (“Greater NOIDA Expressway”) on leave and license basis (hereinafter collectively referred to as the “Project”), on the terms and conditions set out in the concession agreement dated February 7, 2003 (“Concession Agreement”) read with the letters datted April 9, 2009, October 26, 2009 and July 09, 2013, September 03, 2014, October 10, 2014 and February 11, 2015 issued by the Authority with respect to the extension of time for completion of the Expressway (“Concession”)

...

C. For the purposes of part financing the cost of the Expressway, the Borrower had availed rupee term loans from certain banks and financial institutions, which loans were re-financed by the Existing Lenders by way of rupee term loans of an aggregate principal amount not exceeding Rs. 66,00,00,00,000 (Rupees Six Thousand and Six Hundred Crores Only) (“Existing Facility”) on the terms and conditions as set out in the financing and security documents entered into amongst others, between the Borrower and the Existing Lenders, on December 29, 2012, details of which are as set out in Existing Financial Documents.

...

B. It is one of the conditions of the Loan Agreements that in order for the Borrower to avail the financial assistance provided by the Lenders towards the Expressway, the Promoter is required to undertake to extend support to the Borrower and/or the Expressway, as prescribed in the Agreement.

...

2.1 PROMOTERS CONTRIBUTION AND OTHER UNDERTAKINGS

(i) In the event of any shortfall in the resources of the Borrower for completing the Expressway due to any circumstances whatsoever it shall promptly provide to the Borrower, additional funds in such form and manner and upon such terms and conditions as may be acceptable to the Lenders, without recourse to the Lenders the assets of the Borrower and the Secured Property;

(ii) in the event of any shortfall in the means of financing of the Expressway/Project or in case of any further cost overrun in relation to the Expressway/Project, the Promoter shall provide to the Borrower additional funds by way of Promoters' Subordinated Debt in such form and manner and upon such terms and conditions, as may be acceptable to the Lenders, without recourse directly or indirectly to the Borrower, the Security the Lenders and the Project assets and in amounts such that at such times the Borrower is able to meet the shortfall in means of financing/meet the further cost overrun of the Expressway/Project".

(Emphasis Placed)

45.4. Therefore, it is clear from the above, that JAL's financial support to JIL in the form of BGs to JIL's Lenders (aggregating to Rs.212 Crore) was towards the Facility Agreement dated 30.04.2015, which was obtained by JIL for construction of the entire "integrated" Yamuna Expressway project including development of the land parcels & construction of residential projects/homes. Hence, the said amount squarely falls within the scope of reconciliation envisaged under Para 190.2 of the Jaypee Kensington Judgment.

OBSERVATIONS OF THE BENCH

46. After hearing submissions of both parties and perusing the documents placed on record, this Bench observes that it is necessary to visit the observations made by the GT in its report on this issue. The same is reproduced below, for the sake of convenience.

#	Nature of transaction	Key issues	Comments from IRP of JIL	JAL's comments	Our assessment
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B	BGs issued on behalf of JAL and subsequently invoked by the lenders of JIL.	BGs of INR 212 crore should be treated as a Promoter's contribution to equity or debt.	<ul style="list-style-type: none"> JIL had shown BGs as Promoter's contribution under Other Equity in the AFS for FY 2016-17; and quarterly financial reporting of Q1, Q2 and Q3 of FY 2017-18. As per interpretation of agreement by IRP of JIL, any shortfall in the DSRA was met by the holding company, i.e. JAL. Thus, the amount was treated as Promoters' 	<ul style="list-style-type: none"> BGs was classified as 'Promoter contribution' under 'Other Equity' by JIL in its AFS for FY 2016-17 due to a proposed restructuring scheme. However, pursuant to scheme failure, it was classified as 'Financial Liability' under 'Non-Currently Liability' in JIL's AFS for FY 2017-18 and continued to be 	<ul style="list-style-type: none"> There is no dispute between JIL and JAL for the amount of BG encashed i.e. INR 212 crore. Based on the review of the related documentation, it is our assessment that the amount was in the nature of financial debt and not equity. However, the Adjudicating Authority may provide direction to release the
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#	Nature of transaction	Key issues	Comments from IRP of JIL	JAL's comments	Our assessment
			contribution to equity and not as a liability.	<ul style="list-style-type: none"> classified as 'Financial Liability' under 'Non-Current Liability' in the AFS of JIL for FY 2018-19 and FY 2019-20. Thus, INR 212 crore is a legitimate debt recoverable by JAL from JIL. 	amount in line with the provisions of the IBC Code and/ or relevant statutes.

47. It is undisputed and admitted position from the pleadings and GT Report that the Bank Guarantees were encashed. In view of this, the limited issue which remains for adjudication is **Whether the Bank Guarantees were in the nature of Equity infusion by the promoters i.e., JAL or it was a debt given by JAL to the JIL/Corporate Debtor in relation to construction.**

48. As per the GT Report, in their assessment, *the amount of Bank Guarantees was in the nature of financial debt and not equity* and they have recommended that the *Adjudicating Authority may provide direction to*

release the amount in line with the provisions of IBC, 2016 / or relevant statutes.

49. JIL in its arguments has contended that the said BGs had no correlation whatsoever with the construction agreements executed between JIL and JAL. JIL has given details of all the construction agreements executed between JIL and JAL. It is argued by JIL that these Bank Guarantees were executed for some other purposes.

50. In support of its contentions, it has been stated by the IRP of JIL that:

(i) For financing of the Yamuna Expressway Project, one Facility Agreement was executed between JIL and a Consortium of lenders led by IDBI Bank Limited, and as per Clause 10.10.3 of the said Agreement, the Corporate Debtor was required to maintain a stipulated fund balance in its Debt Service Reserve Account ("DSRA") or issue letters of credit of bank guarantees in lieu of DSRA.

(ii) Pursuant to Clause 8.2.1 of the Facility Agreement dated 29.12.2012, one Promoters Support Agreement was executed on 29.09.2015 between JIL, JAL, and IDBI (on behalf of lenders).

(iii) Pursuant to the Promoters Support Agreement, JAL undertook to provide funds to meet the shortfall in DSRA and any shortfall in the means of financing the Expressway/Project by CD. Accordingly, the JAL had furnished five Bank Guarantees aggregating to Rs. 212 Crore in favour of the Consortium of lenders.

(iv) As JIL/CD could not meet the said obligations to its lenders, there was a shortfall in DSRA, and therefore, Bank Guarantees were encashed by the Consortium of lenders of CD in the FY 2016-17.

(v) As per Clause 2.1(i), (v) & (x) of the Promoters Support Agreement, it becomes abundantly clear that the amount of Rs. 212 Crore was infused by JAL to service the debt availed by CD from IDBI Bank Limited led consortium, and the same was not for the purpose of construction per se or under the construction agreements executed between JIL and JAL.

51. Per Contra, JAL has contended that the Consortium of lenders gave JIL/CD, the loan of Rs.6,600 Crore under the Facility Agreement dated 30.04.2015 for construction of the integrated Yamuna Expressway Project including development of the land parcels. Hence, the Bank Guarantees aggregating to Rs. 212 Crore executed in favour of the Consortium of lenders and their subsequent encashment is a liability discharged by JAL in connection with construction.

52. In the above backdrop, we would like to examine the contentions of both the parties. First, we peruse the Facility Agreement dated 30.04.2015 signed between the parties for the purpose of financing the Expressway Project, wherein the Clause 9.13 reads as overleaf:

9.13 Adequate Arrangements

The Borrower has made adequate arrangements for availability of all utilities for operation of the Expressway, including arrangements for construction, power, water, stone and quarrying facilities etc.

Thus, it is amply clear that the amount of Facility advanced by the consortium of lenders was for the Construction of the Yamuna Expressway Project.

53. As per the GT Report in regard to the Facility Agreement dated 29.12.2012 and also relied by JIL, one Promoters Support Agreement was also executed to maintain adequate balance or meet shortfall in DSRA. We would now, therefore, like to refer to the Promoters Support Agreement dated 29.09.2015 executed between JIL, JAL and IDBI (on behalf of lenders), the Clause 2.1 of which reads as below –

2.1. PROMOTER'S CONTRIBUTION AND OTHER UNDERTAKINGS

- (i) in the event of any shortfall in the resources of the Borrower for completing the Expressway due to any circumstances whatsoever it shall promptly provide to the Borrower, additional funds in such form and manner and upon such terms and conditions, as may be acceptable to the Lenders, without recourse to the Lenders, the assets of the Borrower and the Secured Property;
- (ii) in the event of any shortfall in the means of financing of the Expressway/Project or in case of any further cost overrun in relation to the Expressway/Project, the Promoter shall, provide to the Borrower, additional funds, by way of Promoter's Subordinated Debt, in such form and manner and upon such terms and conditions, as may be acceptable to the Lenders, without recourse directly or indirectly to the Borrower, the Security, the Lenders and the Project assets, and in amounts such that at such times the Borrower is able to meet the shortfall in means of financing/meet the further cost overrun of the Expressway/Project;

54. On perusal of the abovesaid clause, it is clear that the Promoters Support Agreement was executed to provide '*additional funds*', *by way of Subordinated Debt to the borrower (i.e., JIL) to meet the shortfall in means of financing/ meet the further cost overrun of the Expressway/project.*

55. Since the loan/Facility of Rs.6,600 Crore was procured from IDBI led consortium vide Facility Agreement dated 29.12.2012 for the purpose of "construction of the Expressway Project" and the Promoters Support Agreement 2015 was executed in furtherance of the said Facility

Agreement, pursuant to which the Bank Guarantees of Rs. 212 Crore were advanced by the Promoters/JAL; therefore, we find no force in the contention of JIL that the said Bank Guarantees were executed for the purpose other than construction.

56. Since, it is an admitted fact by all the parties that the Bank Guarantees amounting to Rs. 212 Crore advanced by the JAL, in terms of its contractual obligations, were encashed by the lenders of JIL for recovering their dues, here we consider it appropriate to refer to Section 140 of the Indian Contract Act, 1872, which reads as below:

*Section 140: **Rights of surety on payment or performance.***

“140. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.”

As we have noted earlier, on the execution of Bank Guarantees of Rs. 212 Crore, JAL has performed its obligations for which JIL was liable for, hence by virtue of Section 140 of the Indian Contract Act, 1872, it gets invested with all the rights which the IDBI led consortium/lenders had against JIL. In other words, the JAL, to the extent of the amount of Bank Guarantees of Rs. 212 Crore discharged by it to the Financial Creditors of JIL stepped into the shoes of the Financial Creditors prior to the initiation of CIR Process and the claim for which was crystalized and filed with the IRP. Hence, in our considered view, the amount of Bank Guarantees of Rs. 212 Crore discharged by JAL is a Debt.

57. Further, we also take note of the Balance Sheets of JIL, which reflects the treatment of the Rs. 212 Crore as “Other Financial Liabilities” from 2017-18 to 2020-21. For reference, we refer to one of the Balance Sheets of FY: 2018-19, the relevant extract of which is reproduced below:

	(₹ in lakhs)	
	As At 31 March 2019	As At 31 March 2018
NOTE NO. 17 : TRADE PAYABLE		
Retention money from Contractor (Holding Company)	193.42	169.68
	<u>193.42</u>	<u>169.68</u>
17A OTHER FINANCIAL LIABILITIES		
Contribution by Holding Company (Invocation of BG's by Company's lender provided by JAL's lenders)	21,200.00	21,200.00
Other security deposits	39.74	4.41
	<u>21,239.74</u>	<u>21,204.41</u>
NOTE NO. 18 : PROVISION FOR EMPLOYEE BENEFITS		
Gratuity	57.79	49.95
Leave encashment	39.05	37.57
	<u>96.84</u>	<u>87.52</u>
NOTE NO. 19 : DEFERRED TAX ASSETS (NET)		
Deferred tax liabilities on account of		
- Depreciation	-	56,293.23
- IND AS transition	-	1,197.12
	-	<u>57,490.34</u>
Deferred tax assets on account of		
- Unabsorbed loss	-	16,708.85
- IND AS transition	-	42,967.76
	-	<u>2,186.27</u>
NOTE NO. 20 : TRADE PAYABLES		
Dues to Micro, Small and Medium Enterprises	21.57	-
Others (including Group Companies Rs 6,689.53 lakhs, [previous year Rs 10,936.05 lakhs])	68,745.17	65,787.56
	<u>68,766.74</u>	<u>65,787.56</u>

From the above, it is clear that JIL in its Balance Sheet, (which relates to the period prior to the initiation of the Reconciliation process) has

acknowledged the “*Invocation of BG’s by Company’s lender provided by JAL’s lenders*” as and under the heading of “*Other Financial Liabilities*”.

58. Other than the above, it is contended by the JIL, that JAL is prohibited from recovering this amount in terms of Clause 4.2 of the Promoters Support Agreement, whose contents are reproduced below -

4. TERMS OF SUBORDINATION

4.1 Any amounts brought in by the Promoter pursuant to the terms of this Agreement shall not be (a) secured by any Security Interest in or over the assets of the Borrower; (b) due and/or repayable/ payable prior to the Final Settlement Date. The Promoter shall take all actions necessary to ensure that the Borrower's obligations in relation to the amounts provided in terms of this Agreement are fully subordinated to the Borrower's obligations to the Secured Parties under the Financing Documents.

4.2 The Promoter shall not, prior to the Final Settlement Date, without the prior written consent of the Lenders, commence any proceedings or take action to recover or seek the repayment/ payment of any of the monies brought in the Borrower (whether in full or part), directly or indirectly, whether by direct claim, exercise of set-off, counterclaim or in any other manner or be subrogated to any claim of the Lenders against the Borrower, including on the liquidation or winding-up of the Borrower. Until the Final Settlement Date, the Promoter shall not exercise any claim in the insolvency or liquidation of the Borrower in competition with the Secured Parties.

4.3 Without prejudice to the restrictions under the Loan Agreements and the TRA Agreement, the Promoter acknowledges that interest and/ or dividends on the amounts brought in under this Agreement, may be paid or payable only if the Borrower has fulfilled each of the Restricted Payment Conditions and with the prior written consent of the Lenders. The terms of payment of interest / dividend shall be to the satisfaction and acceptable to the Lenders.

5. OBLIGATIONS OF THE PROMOTER

*5.1 Lenders' Agent's determination to be binding and conclusive
XXXXXXX.*

5.2 Promoter to hold amounts in trust

Until the Final Settlement Date, any amount whether in cash or securities, received or recovered by the Promoter in respect of the Expressway, in contravention of the terms of this Agreement or the Financing Documents:

- a) as a result of any exercise of any right against the Borrower, or*
- b) in the winding-up of the Borrower;
shall be held by the Promoter, in trust for the Secured Parties and immediately be paid to the Security Trustee.”*

59. We observe that the aforesaid clauses of the Promoters Support Agreement, restraining one party to claim a certain amount from the Corporate Debtor/JIL, during the insolvency proceedings, are inconsistent with the provisions of Section 238 of IBC, 2016, which reads as below:

“238. Provisions of this Code to override other laws. –

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

60. Hence, in view of the discussion above and the facts that the JAL, to the extent of the amount of Bank Guarantees of Rs. 212 Crore discharged by it to the Financial Creditors of JIL stepped into the shoes of the Financial Creditors prior to the initiation of CIR Process and the claim for which was crystalized and preferred before the IRP, and JIL in its Balance Sheet of the period prior to the initiation of the Reconciliation process acknowledged the “*Invocation of BG’s by Company’s lender provided by JAL’s lenders*” under the heading of “*Other Financial Liabilities*”, we agree with the recommendation of GT that the Bank Guarantee amount of Rs. 212 Crore is a debt. **Accordingly, JAL is entitled to retain this amount out of Rs.750 Crore. Issue (b) is decided accordingly.** We would, however, clarify that here we have decided the issue only in the context of the reconciliation process on the directions of the Hon’ble Supreme Court and the same should not be quoted as a precedent elsewhere.

61. Now, we would like to examine **the issue (c) “Whether an advance of Rs. 106.90 crore is recoverable for IFMD by JIL from JAL.”**

SUBMISSIONS OF JIL

61.1 It is stated by JIL, that on 14.09.2016, the Corporate Debtor issued a letter to JAL having on the subject "Contract Agreement dated 01.05.2009 for development of Land at Noida - Request for maintenance (shared common areas)". As per the letter, the Corporate Debtor had paid one-year Interest-Free Maintenance Deposit (**hereinafter, termed as ‘IFMD’**) received/receivable from the homebuyers on various sub-projects to JAL, which JAL shall maintain as per the provisions

contained in the Maintenance Agreement. On request of the JAL, the JIL/Corporate Debtor provided the IFMD advance aggregating to Rs. 380.60 Crore to JAL on 31.03.2016.

61.2. This advance was recoverable by the JIL/Corporate Debtor from its homebuyers before giving physical possession of the residential units. Till 31.03.2021, the JIL/Corporate Debtor had recovered an amount of Rs.106.90 Crore from its homebuyers, which was adjusted from the IFMD advance already paid to JAL. The JIL/Corporate Debtor has claimed a refund of the said IFMD amount from JAL on the ground that Rs. 106.90 Crore was the money belonging to the homebuyers and the JAL has no right to retain that sum in view of Clause 22.3 of the Resolution Plan dated 07.06.2021 read with addendum dated 09.06.2021 submitted by Suraksha Realty Limited & Lakshdeep Investment and Finance Private Limited ("**Resolution Plan**") after approval by the CoC on 26.06.2021. Clause 22.3 of the Resolution Plan stipulates as under:

“The current development, construction and maintenance contracts or any other contract with Jaiprakash Associates Limited, (VAL) which are on .cast plus basis, shall stand terminated upon Approval Date, without any consequence whatsoever on JIL and I or the Resolution Applicants, and enter into fresh construction contracts with the vendors as may be selected by the Resolution Applicant in accordance with its policies and such contracts shall be entered into on arms' length basis as per the market standard.”

61.3. The GT has erroneously held that maintenance of common areas and facilities is the JAL's responsibility as a Designated Maintenance Agency (DMA) until it is handed over to the Residents Welfare Association ("RWA") and thus, the IFMD of Rs. 106.90 Crore received from homebuyers/real-estate allottees should be available with JAL/DMA as long as the letter/ agreement between the Corporate Debtor and the JAL is valid.

61.4. If the Resolution Plan is approved by this Adjudicating Authority, JAL shall cease to be the contractor or the Designated Maintenance Agency ("**DMA**"). Therefore, the IFMD of Rs. 106.90 Crore cannot be allowed to be retained by the JAL. This amount should be deducted from Rs. 750 Crore and be kept in an interest-bearing escrow account so that the new maintenance agency/RWA, whichever is the case, may be transferred with this amount. It is crucial to safeguard the Corporate Debtor and homebuyers in this regard as the JAL itself is in financial distress, and is facing an insolvency petition "CP IB No. 330/Ald/2018" under Section 7 of the Code filed by the ICICI Bank Limited before the Allahabad Bench of NCLT. In case, the CIRP is initiated in respect of the JAL, complications will arise insofar as this amount of Rs. 106.90 Crore is concerned. Thus, the said amount is ought to be returned to JIL/Corporate Debtor or deposited in an escrow account to be operated by Corporate Debtor till it is transferred to the RWA in accordance with the agreements with homebuyers.

SUBMISSIONS OF JAL

62. On 16.09.2016, the Corporate Debtor/JIL appointed the JAL as the Designated Maintenance Agency (DMA) under a maintenance agreement between JAL and Homebuyers.

62.1. Out of the total amount of Rs. 380.60 Crore transferred by JIL/Corporate Debtor to JAL in 2016 by way of advance towards IFMD, a total of Rs. 106.90 was realized towards IFMD by 31.03.2021. It is not disputed by JAL that an amount of Rs. 273.70 crores not so far realized from homebuyers should be refunded to JIL.

62.2. Under Clause 5 of the maintenance agreement between JAL and the homebuyers, JAL is liable to homebuyers for proper maintenance of common/shared areas and facilities. Clause 5 further states that JAL is required to refund the IFMD not to JIL but to the homeowners themselves after adjusting their dues, if any. The contents of Clause 5 read thus –

“5. Creation of Maintenance Fund:

*5.1. In order to ensure proper maintenance of the Shared Areas & Facilities of Jaypee Greens Wish Town including maintenance/repairs/replacement of plants /machines / equipments, a maintenance fund (the “**Fund**”) shall be set up.*

*5.2. The Allottee has deposited Rs. 1,21,295/-@Rs. 1076.40/- per sq. mtr (Rs. 100/-- per sq. ft.) towards the said Fund being the share of the Allottee to the Fund as a Refundable Interest Free Maintenance Deposit before taking over physical possession of the Residential Unit. **The said Fund shall be refunded by the Company upon transfer of ownership of the Residential Unit by the Allottee after adjusting the pending dues payable by the Allottee to the Company and/or the DMA**”*

(Emphasis Placed)

62.3. JIL cannot interfere with third-party contracts. Further, as long as the agreement dated 01.05.2009 between JIL and JAL is in force and JAL remains the designated DMA and it remains liable under the maintenance agreement with the homebuyers. Thus, the IFMD must remain with the JAL. Since the JAL (being the current DMA) requires funds for carrying out the maintenance of the Shared Areas & Facilities (including maintenance/ repairs/ replacement of plants/ machines/ equipment etc.), the IFMD must remain with the JAL in accordance with the maintenance agreements until the next DMA is appointed or till the Association of Apartment Owners is constituted.

63. We have heard the submissions of both parties and perused the documents placed on record. We would first like to visit the observations of the GT on this issue, which are reproduced below:

#	Nature of transaction	Key issues	Comments from IRP of JIL	JAL's comments	Our assessment
C	Advance recoverable for IFMD by JIL from JAL	The amount recovered from the homebuyers of JIL should be returned to JIL or retained by JAL.	<ul style="list-style-type: none"> As per email from IRP of JIL dated 13 April 2021, to safeguard the interest of homebuyers, JAL should keep aside the IFMD advance received of INR 106.90 crore from homebuyers of JIL in a separate escrow account. Further, as per Objections filed by IRP of JIL before NCLT on 20 July 2021, entire amount of INR 380.60 crore should be transferred by JAL to JIL as an application under Section 7 filed by a financial creditor of JAL was pending before the Adjudicating Authority, Allahabad Bench and will give rise to unnecessary complications in case CIRP is ordered to be initiated. 	<ul style="list-style-type: none"> For INR 106.90 crore, JAL had entered into a maintenance agreement with homebuyers and was obliged to maintain shared/ common areas as the DMA. Further, as per the agreement, JAL is responsible for refunding the IFMD amount to homebuyers in the transfer of units. 	<ul style="list-style-type: none"> Maintenance of common areas and facilities is JAL's responsibility as DMA until it is handed over to the RWA. Thus, the IFMD of INR 106.90 crore received from homebuyers should be available JAL/ DMA as long as the letter/ agreement between JIL and JAL is valid. Further, JAL may consider returning advance recoverable of INR 273.70 crore to JIL since it had neither accrued nor recovered from the homebuyers.

On perusal of the above, it is seen that maintenance of the common areas and facilities is the JAL's responsibility as DMA until these are handed over to the RWA. It is further mentioned that JAL may consider returning the advance recoverable of Rs. 273.70 Crore to JIL since it had neither accrued nor recovered from the home buyers.

64. It is observed that the main reason for the IRP of JIL to claim this amount is that there is a threat of initiation of CIRP proceedings looming large on JAL and if the JAL goes into CIRP, then complications will arise. Further, the Resolution Plan approved by CoC, pending adjudication, seeks termination of the maintenance contracts executed with JAL.

65. We further observe that in terms of clause 5.2 of the Maintenance Agreement dated 06.06.2016 *"The said Fund shall be refunded by the Company upon transfer of ownership of the Residential Unit by the Allottee after adjusting the pending dues payable by the Allottee to the Company and/or the DMA"*.

66. In our view, the amount of Rs. 106.90 Crore is the money of Home Buyers of JIL and in any case, it has to be returned/refunded by the JAL upon transfer of ownership of the residential units to the Allottees.

67. As brought to our notice by the IRP of JIL during the hearing, we cannot overlook the fact that there is a pending Application against JAL for initiation of the CIR Process against it. Therefore, we are of the view that the money of the Home Buyers and maintenance of the Common areas and facilities cannot be put at any risk.

68. Further, we would like to reiterate the findings of Hon'ble Supreme Court in the **Jaypee Kensington** (Supra), wherein the following was held:

*“190.1. After receiving the report from the accounting expert, the NCLT shall pass appropriate orders in the manner that, **if any amount is found receivable by JIL/homebuyers of JIL, the same shall be made over to JIL from out of the said amount of INR 750 crores and accrued interest; and remainder thereof shall be returned to JAL** in an appropriate account and that shall abide by the directions of the competent authority dealing with the proceedings concerning JAL....”*

69. In view of the aforesaid discussion, in our considered view, the amount of Rs 106.90 Crore arising on account of IFMD is an amount, belonging to Home Buyers of JIL, and is receivable by the JIL/homebuyers of JIL out of Rs. 750 Crores. Accordingly, we direct that Rs. 106.90 Crores shall be paid out of the Rs. 750 Crores and deposited in an escrow account to be opened for the purpose of maintenance to be operated by the IRP of JIL/Corporate Debtor (or by Monitoring Committee, in the case and once the Resolution Plan is approved) till this amount is finally transferred to the RWA of the homebuyers of JIL in accordance with the agreements with the homebuyers.

70. The next issue which emerges for consideration at serial **(d)** is **Whether JAL can claim an adjustment of Rs. 2.33 Crore towards the facility management bills, from JIL.** In order to examine this issue, we would like to visit the contents and recommendations of the GT Report first, which is reproduced below -

D. Facility management bills raised by JAL on JIL

i. Overview

- a) On 1 May 2009, JIL entered into an agreement with JAL for the construction and development of a Land parcel at Noida allotted to JIL by Yamuna Expressway Industrial Development Authority ("YEIDA").
- b) As per para 11 of the Annexure 1 (i.e. Scope of work) to the agreement, JIL may appoint JAL for additional work or services on the terms as decided between both parties. (Refer Exhibit 22)
- c) Consequently, through letters dated 9 September 2016, 14 September 2016 and 16 September 2016, JIL appointed JAL as DMA to undertake the maintenance of the common/ shared area & facilities of the residential project(s) at Noida at the rate of INR 1.50 per square feet per month (excluding taxes). (Refer Exhibit 16, 17 and 18)
- d) During the Review Period, JAL raised 291 bills aggregating to INR 51.47 crore on JIL for facility management. The breakup of the bills raised by JAL on JIL are as follows:

(Amount INR in crore)

#	Nature of bills	Approved by	Period of bills	No. of bills	Amount (INR)
1	Facility Management Group	IRP of JIL	Aug 17 - Mar 21	286	51.32
2	Social Club-18	IRP of JIL	Dec 20 - Mar 21	5	0.15
Total				291	51.47

- e) As on 31 March 2021, as per the books of accounts of JIL, a balance of INR 20.01 crore was receivable from JAL. However, as per the books of accounts of JAL, a balance of INR 19.75 crore was payable to JIL. Refer to the table below for details:

(Amount INR in crore)

#	Particulars	In books of JIL	In books of JAL	Reference
1	Opening balance as on 10 August 2017	(2.33)	2.33	Annexure 1 and 2
2	Net transactions during the Review period	22.34	(22.08)	
3	Closing balance as on 31 March 2021	20.01*	(19.75)	
Difference in balances as on 31 March 2021			0.26	
Post submission of our draft report dated 9 June 2021:				
a	Amount resolved between JIL and JAL **		0.11	
b	Unresolved/ Disputed amount		0.15	

*The receivable balance by JIL from JAL pertaining to facility management bills was primarily due to debit notes raised by JIL on JAL for recovery of electricity charges collected by JAL from homebuyers of JIL in the capacity of DMA as mentioned in the letter dated 14 September 2016. (Refer Exhibit 18)

** As informed by JAL and IRP of JIL, the impact of accounting entries for amount resolved post submission of our draft report dated 9 June 2021 will be recorded in the books of accounts of JIL and JAL in FY 2021-22.

ii. Reconciliation of balances as on 31 March 2021

The unresolved/ disputed amount of INR 0.15 crore was on account facility management bills short booked by JIL in its books of accounts.

As informed by the management of JIL, the facility management bills pertaining to Wish Town and Aman projects, Noida for the month of February 2021 were raised by JAL at the revised rate instead of the old rate i.e. INR 1.50 per square feet as agreed in the letter dated 14 September 2016 (Refer Exhibit 18).

Also, as per the letter dated 15 March 2021, IRP of JIL directed JAL not to consider the revised rate for facility management as the resolution process was pending with NCLT. (Refer Exhibit 23)

However, facility management bill for the month of March 2021 was again raised by JAL at the revised rate and the same was not accepted by JIL.

Thus, there was a difference of INR 0.15 crore in the recording of bills for the month of February 2021 and March 2021 between JAL and JIL. Refer to the table below for bill-wise details of the amount booked by JIL and JAL:



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(Amount INR in crore)

#	Bill number	Bill period	Amount booked by JAL	Amount booked by JIL	Difference (Excess amount booked by JAL)
1	AAO07/2021/11	Feb 21	0.05	0.05	0.00
2	AAO09/2021/11	Feb 21	0.09	0.08	0.01
3	AAO10/2021/11	Feb 21	0.15	0.13	0.01
4	AAO11/2021/11	Feb 21	0.04	0.04	0.00
5	AAO12/2021/11	Feb 21	0.02	0.02	0.00
6	AAO15/2021/11	Feb 21	0.15	0.14	0.01
7	SAM/AMAN/2021/11	Feb 21	0.29	0.27	0.03
8	AAO07/2021/12	Mar 21	0.05	0.04	0.01
9	AAO09/2021/12	Mar 21	0.09	0.08	0.01
10	AAO10/2021/12	Mar 21	0.15	0.13	0.02
11	AAO11/2021/12	Mar 21	0.04	0.04	0.00
12	AAO12/2021/12	Mar 21	0.02	0.02	0.00
13	AAO15/2021/12	Mar 21	0.15	0.13	0.02
14	RA.BILL NO.25	Mar 21	0.02	0.02	0.00
15	RA.BILL NO.36	Mar 21	0.08	0.07	0.00
16	RA.BILL NO.55	Mar 21	0.10	0.09	0.00
17	SAM/AMAN/2021/12	Mar 21	0.30	0.27	0.03
18	TKA/2021/12	Mar 21	0.01	0.01	0.00
19	TDS for Mar 21 invoices	Mar 21	(0.01)	-	(0.01)
Total			1.78	1.63	0.15

iii. JIL's comment

As per letter dated 15 March 2021 by JIL to JAL and Objections filed by IRP of JAL on 20 July 2021 with NCLT, IRP of JIL directed JAL not to consider the effect of revised rate (INR 0.15 crore) as the resolution plan of JIL was pending before NCLT. However, JAL had raised the Facility Management Bills for March 2021 at the revised. The effect of the revised rates for February 2021 and March 2021 have not been entered in the books of accounts of JIL.

The opening payable balance as on 10 August 2017 of INR 2.33 crore in the facility management ledger was transferred to Pre-CIRP ledger and should be looked at in entirety with other Pre-CIRP balances.

iv. JAL's comment

JAL, in its letter dated 14 May 2021 and 1 June 2021 to GT stated that, INR 0.15 crore was an inadvertent deduction made by JIL as the price variation was carried out in terms of Maintenance Agreement. Further as per Objections filed by JAL on 13 July 2021 with NCLT, it was stated that revision of maintenance charges is governed by Common Maintenance Agreement entered between JAL (i.e. the service provider/DMA) and the respective Allottees/occupant of each dwelling unit. The said Common Maintenance Agreement confers power on DMA to unilaterally vary or modify maintenance charge, and since JIL is also an occupant of the dwelling units which are still in its possession and which are being maintained by JAL as DMA, the revised rates are also applicable for JIL.



GT's comment

JAL has laid emphasis on the Common Maintenance Agreement with customers for increase in rate of maintenance charges of JIL, however the emphasis should be laid on the letter dated 16 September 2016 issued for maintenance work, and any revision of rates has to be mutually agreed upon by JIL

and JAL before finalization. It is our assessment that since JIL and JAL has not mutually agreed on the rate revision, INR 0.15 crore may be disallowed (Refer Exhibit 17).

The amount pertaining to Pre-CIRP of INR 2.33 crore should be dealt in accordance with the provisions of the IBC Code and/ or relevant statutes.

71. From the GT's Report, it is observed that there is only objection taken by the IRP of JIL/Corporate Debtor is that the claim of Rs. 2.33 Crore pertains to the pre-CIRP period, and therefore, the JAL cannot claim this amount. Per Contra, JAL has claimed that it being the DMA for the dwelling units of JIL/CD, it is entitled to claim this amount.

72. We have already held in para 32 above that the claim of the JAL cannot be rejected merely on the ground that the dues are pertaining to the pre-CIRP period. In light of no other material objection taken by the JIL in respect of the Facility and Management Bills, we hold that the JAL is entitled to receive/retain the amount of Rs.2.33 Crore out of the Rs.750 Crore.

73. Now, we come to the next issue listed at serial **e) Whether JAL can recover Rs. 1.19 crore from JIL for providing hospitality services.**

74. In order to examine the issue, we would like to visit the findings of GT Report the same, which are reproduced below –

2. Hospitality services availed by JIL from JAL

Further, as on 31 March 2021, an amount aggregating to INR 1.27 crore was payable by JIL to JAL towards hospitality services availed by JIL from JAL. Out of INR 1.27 crore, INR 1.19 crore pertained to Pre-CIRP period and INR 0.08 crore pertained to the CIRP period.

Based on the joint discussion conducted among IRP of JIL, JAL and GT, IRP of JIL agreed to record INR 0.08 crore as payable to JAL in the books of accounts of JIL.

As per JIL, INR 1.19 crore was not payable to JAL as it pertained to Pre-CIRP period.

As per JAL, INR 1.19 crore should be considered as a part of the liability discharged by JAL towards JIL and should be considered for the accounting reconciliation while computing the excessive amount available with JAL which is receivable by JIL/ Homebuyers of JIL. (Refer to para 190.2 of the order stated in Section 4. Engagement Background point vii).

It is our assessment that there was no difference in ledger balances in the books of accounts of both JIL and JAL. However, JIL has not classified amount of INR 1.19 crore as Pre-CIRP in its books of accounts. Therefore, in view of the scope mentioned in para 190.2 of the Hon'ble Supreme Court's order dated 24 March 2021, INR 1.19 crore representing Pre-CIRP should be dealt with provisions of IBC Code and/or relevant statutes.

75. From the perusal of the above, it can be seen that GT after perusing the accounts of both JIL and JAL, reached to the conclusion that there was no difference, regarding the amount claimed and payable, in the ledger balances of both parties.

76. The IRP of JIL/Corporate Debtor has contended that the said amount is not payable on the ground that it pertains to the pre-CIRP period. Per contra, JAL has contended that its claims cannot be rejected merely on the point that the same pertains to the pre-CIRP period.

77. We have already held in para 32 above, that the claim of the JAL cannot be rejected merely on the ground that the dues are pertaining to the pre-CIRP period. In the light of no other objection taken by JIL in respect of the Hospitality services, we hold that JAL is entitled to receive/retain the amount of Rs.1.19 Crore out of the Rs.750 Crore.

78. While we have dealt with all the issues identified in Para 13 of this order, the JIL in its objections filed to the GT Report has raised another **issue regarding its claim of Rs. 70.89 Crore due to JAL on account of the Land Swap Deal.**

79. At this stage, we would like to visit the findings of GT on this objection raised by JIL, which is reproduced overleaf for the sake of convenience:

E. Other transactions

The Other transactions between JIL and JAL as on 31 March 2021 consisted of two parts, as mentioned below:

<i>(Amount INR in crore)</i>		
#	Particulars	Amount (INR)
1	Advance recoverable for a land swap deal by JIL from JAL	70.89
2	Amount payable for hospitality services by JIL to JAL	(1.27)
Total		69.62

The transactions have been explained as under:

1. Advance recoverable for a land swap deal by JIL from JAL

JIL's and JAL's representatives informed us that as on 31 March 2021, an advance of INR 70.89 crore (INR 160.29 crore as on 9 August 2017) was receivable by JIL from JAL towards land swap deal at Agra. There was no difference in the ledger balances between JIL and JAL.

However, it has not been considered for our review since it did not appear to be a part of construction contracts and appeared to be outside the scope in view of *para 190.2 of the Hon'ble Supreme Court's order dated 24 March 2021 as stated in point vii of Section 4. Engagement Background of this report.*

80. On perusal of the abovesaid finding, it is observed that GT did not consider the issue/claim of Rs. 70.89 Crore towards the Land Swap Deal, as it did not appear to be a part of the construction contracts. Hence, the GT treated the issue beyond the scope of the reconciliation process.

SUBMISSIONS OF JIL

81. While raising objection to the abovesaid observation of the GT report, JIL has contended in its Written Submissions, the following:

81.1. To explain the background of the demand of Rs 70.89 Crore, it is stated by JIL that JAL had availed loans through various facility agreements from ICICI Bank. In order to repay the said facilities availed by JAL from ICICI Bank, JIL executed 11 separate Sub-lease deeds in F.Y. 2016-17 to transfer 84.5 acres of its land at Mirzapur and Jaganpur to ICICI Bank for the total consideration of Rs. 643.50 Crore as part of swapping of the debt owed by JAL to ICICI Bank. In other words, JIL took over the liability of JAL and repaid the said liability of JAL by transferring JIL's 84.5 acres of land at Mirzapur and Jaganpur to the JAL's lender,

ICICI Bank for a total consideration of Rs. 643.50 Crore, out of which Rs. 277 Crore was given as interest-free advance to JAL towards designing, construction, development of land parcels at LFD-1 Noida. The said advance of Rs. 277 Crore is reduced to Rs. 164.29 Crore as at the Insolvency Commencement Date of 09.08.2017, which is further reduced to 70.89 Crores as of 31.03.2021 (i.e., the date of appointment of GT).

81.2. JIL has further referred to Clause XIV and XV of the Sub-Lease Deed dated 24.06.2016 executed between the Corporate Debtor (JIL), JAL, and ICICI Bank Limited for 35.03 acres of land situated at Jaganpur, which reads as under:

*“XIV. The Sub-Lessor and JAL have entered an agreement for designing, construction and development of land parcels at LFD-1 Noida (the **“Inter-Corporate Agreements”**) in terms of which the Sub-Lessor is liable to pay amounts in the excess of INR 183,00,00,000 to JAL (as actual and accrual payments).*

XV. In the above premises, the Sub-Lessor and JAL has offered that the Sub-Lessor shall sub-lease, transfer and assign all its right, title and interest iJ.1 and over the Demised Plot in favor of the Sub-Lessee, for a consideration of Rs.1,82,85,66,000.00(hereinafter referred to as the “Consideration, for a period upto 19.08.2099, in lieu of part discharge of (1) JAL’s liabilities under any of the Loans (“Outstanding Dues”) and (ii) to such extent of the, Sub-Lessor’s liabilities towards JAL under the Inter-Corporate Agreements.”

81.3. JIL has also referred to other three 3 sub-lease deeds dated 27.04.2016 executed in favour of ICICI by JIL, through which land admeasuring 11.42 acres (for a consideration of Rs. 132.71 Crore) and 150 residential plots in Mirzapur admeasuring 6.71 acres (for a consideration

of Rs. 73.50 Crore) were transferred. The total consideration under these 03 sub-lease deeds was Rs. 206.21 Crore.

81.4. JIL has further submitted that JAL agreed to repay the amounts under the aforesaid four sub-lease deeds by setting off against JIL's liability towards JAL under the construction agreements. It is relevant to mention that JIL and JAL, as on the date of execution of the sub-lease deeds dated 27 April 2016, had the following construction agreements:

- a) Contract Agreement dated 1 May 2009 for Land Development at LFD-1 at Noida;
- b) Contract Agreement dated 9 October 2010 for Land Development at LFD-2 at Jaganpur;
- c) Contract Agreement dated 9 October 2010 for Land Development at LFD-3 at Mirzapur;
- d) Contract Agreement dated 6 July 2011 for Land Development at LFD-4 at Tappal;
- e) Contract Agreement dated 11 April 2011 for Land Development at LFD-5 at Agra;
- f) Contract Agreement dated 27 November 2007 for construction of Yamuna Expressway;
- g) Maintenance Agreement dated 14 September 2016 for maintenance at LFD-1 at Noida.

81.5. Being the contractor appointed by JIL for the construction of its various projects, JAL raised RA bills on JIL from time to time. The intention was to adjust the liability of JIL under these RA bills from the liability of JAL to JIL under four sub-lease deeds.

81.6. It is submitted by JIL that as of 31.03.2021, *inter-alia*, a sum of Rs. 70.89 Crore is payable by JAL to the CD (JIL) towards the advance of construction under the sub-lease deeds executed with ICICI for debt-land

swap. As regards the contention of JAL that the amount of Rs. 182.85 Crore received against the sub-lease deed dated 24.06.2016 has been fully settled as of 31.03.2017 as shown in the ledger of CD bearing General Ledger Code (“**GL Code**”) 101112, JIL maintains that the amount was never paid and there is still a recoverable balance of Rs. 70.89 Crore under the construction contract and therefore, ought to have been included in the GT Report.

81.7. GL Code 01112 showing one bullet - single voucher adjustment is simply an accounting entry made in the pre-CIRP period by both the related parties i.e., JIL and JAL. No construction work has been carried out by JAL for which the payment of Rs. 182.85 Crore is sought to be adjusted/made by GL Code 01112. In fact, for all the construction work that JAL has carried out in Noida (LFD-1), it has been raising R.A. Bills from time to time which were paid in cash and those that were adjusted otherwise under construction agreements are referred to in other General Ledger Codes.

81.8. Further, GL Code 101112 cannot be considered in isolation and it has to be considered with GL Code 101113 pertaining to the sub-lease deeds between JIL, JAL & ICICI together and holistically. The entry related to the sale of land for a consideration of Rs. 182.85 Crore has been posted through a single voucher number 8200005831 as closing entry as of 31.03.2017 and through the same voucher, the entry related to the sale of other land parcels as per sub-lease deeds at Serial No. 1-10 in Chart A of total consideration of Rs 460.6 Crore (Rs. 254.4 Crore towards sub-lease deeds dated 26.04.2016 at Sr. No. 1-7 in Chart A plus Rs. 206.2 Crore

towards sub-lease deeds dated 27.04.2016 at Sr. No. 8-10 in Chart A) were posted under GL Code 101113 on 31.03.2017 as closing entry.

81.9. It is a matter of fact that various payments made by JAL under GL Code 101112 and 101113 were done before 31.03.2017. Thereafter, on some ad-hoc basis, the account related to Rs. 182.85 Crore was shown as NIL as on 31.03.2017 as none of the adjustments made under GL Code 101112 pertains to consideration defined under the sub-lease deed dated 24.06.2016 i.e., JIL's liabilities towards JAL under **LFD-I** contract for construction.

81.10. The alleged adjustment of the amount of Rs. 182.85 Crore was made against voucher number 8200005831 as an accounting treatment. This was done whimsically and without any due process. There are no supporting vouchers to establish that the liability of JAL to the extent of Rs. 182.85 Crore towards construction was satisfied as of 31.03.2017. There are no documents to show whether JAL completed the designing and construction of LFD-1 at Noida as of 31.03.2017. It is an undisputed position that a separate advance of Rs. 450 Crore was paid by JIL to JAL, which was to be adjusted against the construction bills to be submitted by JAL from time to time. All the construction bills produced by JAL were paid in cash. JAL could not have completed the construction on LFD-1 at Noida by 31.03.2017.

81.11. Further, payments related to construction were adjusted from GL Code 101113 during the period prior to initiation of CIRP, when JIL was under the control of JAL. After the initiation of CIRP for JIL on 9 August

2017, the IRP during the CIRP period only made adjustments pertaining to sale consideration received under the sub-lease deeds at Sr. No. 8 to 11 in Chart A, which pertained to the liabilities of JAL under various construction agreements. Under the GL Code 101113, below is the summary of adjustments/payments till date:

81.12. The IRP of JIL has given the Summary of adjustments/payments as below:

Sl. No.	Particulars	Pre CIRP i.e., before 09.08.2017 (INR Crores)	During CIRP i.e., from 09.08.2017 till date (INR Crores)	Amount (in INR Crores)
1.	Bank receipt from JAL to JIL	(81.22)	-	(81.22)
2.	JAL settled liabilities related to JIL Home Buyers at LFD I	(38.18)	(64.49)	(102.67)
3.	JAL settled liabilities related to JIL Home Buyers at LFD3	-	(24.41)	(24.41)
4.	JAL paid Income Tax on behalf of JIL	(4.61)	-	(4.61)
5.	JAL paid Interest to JIL lenders on behalf of JIL	(97.72)	-	(97.72)
6.	Adjustments related to Cement consumption at LFD 1 construction and Yamuna Expressway project	(65.11)	-	(65.11)
7.	JV Rectification	(13.50)	-	(13.50)
8.	Miscellaneous Exp.	-	(0.51)	(0.51)
9.	Sales Consideration	460.64	-	460.64
Total				70.89

[Figures in bracket depicts the payments/ adjustments made by JAL]

81.13. JIL has prayed that the matter be referred back to GT to decide this issue again.

SUBMISSIONS OF JAL

82. The amount in question (*towards sub-leasing of land in Agra to ICICI Bank by JIL at the request of JAL*) was a 'trade receivable' (*with no connection to construction*) and it was not advance. JIL has consistently treated this amount of Rs.70.89 Crore as a "trade receivable" in its own financial statements. The amount of Rs.70.89 Crore being a 'trade receivable' is not the subject matter of reconciliation as directed by the Hon'ble Supreme Court.

83. The IRP's argument that the sub-leases provide that the amount paid under the land swap was towards construction and therefore, any amounts due from JAL should be made part of the reconciliation is factually incorrect:

- a. There are 11 sub-lease agreements, which are divided in two sets: 10 of them were executed on 26th/28th April 2016 and another one was executed on 24.6.2016.
- b. The clause in question i.e., Clauses XIV and XV pointed out by the IRP's counsel, which speaks *inter alia* of construction is present only in the sub-lease deed dated 24.06.2016. None of the other 10 sub-lease agreements contain such a clause.
- c. The amount of Rs.182.85 crore in relation to the lease deed dated 24.6.2016 has been settled as of 31.3.2017 based on JIL's own ledger account.

84. The IRP, in its Affidavit dated 14.03.2022, has admitted that the JIL's ledger account (*regarding the settling of Rs.182.85 Crore*) produced by JAL in its Affidavit dated 04.03.2022 has been duly recorded in the books of JIL.

85. JAL has further relied upon the Judgement of the Hon'ble Supreme Court in "**Asset Reconstruction Co. (India) Ltd. v. Bishal Jaiswal,**" (2021) 6 SCC 36 holding as follows:

"35. A perusal of the aforesaid sections would show that there is no doubt that the filing of a balance sheet in accordance with the provisions of the Companies Act is mandatory, any transgression of the same being punishable by law. However, what is of importance is that notes that are annexed to or forming part of such financial statements are expressly recognised by Section 134(7). Equally, the auditor's report may also enter caveats with regard to acknowledgments made in the books of accounts including the balance sheet. A perusal of the aforesaid would show that the statement of law contained in Bengal Silk Mills [Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, 1961 SCC OnLine Cal 128 : AIR 1962 Cal 115] , that there is a compulsion in law to prepare a balance sheet but no compulsion to make any particular admission, is correct in law as it would depend on the facts of each case as to whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, which then has to be examined on a case by case basis

to establish whether an acknowledgment of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act.”

86. IRP’s argument against the ledger account produced by JAL that JIL’s ledger account was prepared *ad-hoc* or that they were prepared at the behest of JAL – is clearly an argument of desperation. Accounting entries cannot be recorded without supporting vouchers - if this were true, the statutory auditors would have pointed it out in their report.

87. The IRP always had the power to rectify the accounts under Section 131 of the Companies Act, 2013. Further, *(contrary to the IRP’s allegation)* it is not correct that the ledger account *(re: Rs.182.86 Crore)* shows one bullet single voucher adjustment and is unsupported by any vouchers. The same ledger account shows eight accounting transactions bearing separate voucher numbers aggregating to Rs.182.85 Crore. Thus, the said entry per voucher no.8200005831 being referred by the IRP is a separate accounting entry for sales i.e., recognition of revenue for the year forming part of the profit & loss account of JIL for F.Y. 2016-17.

OBSERVATIONS OF THE BENCH

88. After hearing submissions of both parties, the issue which emerges for our consideration is **“Whether JIL can recover an amount of Rs.70.89 Crore from JAL on account of the Land Swap Deal.”**

89. We would, therefore, like to examine the contention of both parties. It is contended by JAL that the clause related to construction is present

only in the sub-lease deed dated 24.06.2016 and none of the other 10 sub-lease deeds contain such a clause. Per Contra, JIL had contended that other than the sub-lease deed dated 24.06.2016, the other 3 sub-lease deeds dated 27.04.2016 contained the clause that JAL's liability would be adjusted on account of construction.

90. We would, therefore, first like to visit the contents of the sub-lease deed dated 24.06.2016, the relevant extracts of which are reproduced below:

INDIA NON JUDICIAL
Government of Uttar Pradesh
e-Stamp
CERTIFICATE LOGGED

SHCIL
G. NAGAR

सत्यमेव जयते

Certificate No.	: IN-UP021311429333510
Certificate Issued Date	: 24-Jun-2016 03:35 PM
Account Reference	: SHCIL (FI) upshcil01/ GREATER NOIDA/ UP-GEN
Unique Doc. Reference	: SUBIN-UPUPSHCIL01025435897245530
Purchased by	: ICICI BANK LIMITED
Description of Document	: Article 35 Lease
Property Description	: 14, 18 HECTARE LAND SITUATED IN SECTOR-26, YEIDA, G II NAGAR, U.P.
Consideration Price (Rs.)	: 182,85,68,000 (One Hundred Eighty Two Crore Eighty Five Lakh Sixty Six Thousand only)
First Party	: JAYPEE INFRA TECH LTD AND JAIPRAKASH ASSOCIATES LTD
Second Party	: ICICI BANK LIMITED
Stamp Duty Paid By	: ICICI BANK LIMITED
Stamp Duty Amount (Rs.)	: 12,40,75,000 (Twelve Crore Forty Lakh Seventy Five Thousand only)

- XII. Pursuant to the terms of the facility agreements, the Sub-Lessor has provided security by way of mortgage over the Subject Land, including the Demised Plot vide deed of mortgage dated May 12, 2014 registered with the Sub-Registrar of Assurances.
- XIII. Due to temporary cash flow and liquidity mis-match, JAL has expressed its difficulty in making payments in cash for discharge of liability under the Loans and has requested the Sub-Lessee to not enforce the rights available under law and the Loan documents.
- XIV. The Sub-Lessor and JAL have entered an agreement for designing, construction and development of land parcels at I-Noida (the "Inter-Corporate Agreements") in terms of which the Sub-Lessor is liable to pay amounts in the excess of Rs. 185,00,00,000.00 to JAL. (as actual and accrual payments).
- XV. In the above premises, the Sub-Lessor and JAL has offered that the Sub-Lessor shall sub-lease, transfer and assign all its right, title and interest in and over the Demised Plot in favor of the Sub-Lessee, for a consideration of Rs.1,82,85,66,000.00(hereinafter referred to as the "Consideration") for a period upto 19.08.2019, in lieu of part discharge of (i) JAL's liabilities under any of the Loans ("Outstanding Dues") and (ii) to such extent of the Sub-Lessor's liabilities towards JAL, under the Inter-Corporate Agreements.
- XVI. The said Consideration shall be settled by Sub-Lessee to JAL and the Outstanding Dues, to the extent of the Consideration, shall be deemed to be repaid by JAL to the Sub-Lessee upon the registration of these presents with the concerned Sub-Registrar of Assurances in favor of Sub-Lessee by way of adjustment towards the Outstanding Dues owed by JAL, to the Sub-Lessee.
- XVII. As a portion of the Non-Transferred Land, more particularly described in "Annexure VI" hereto (along with Location Plan and Map) falls inside the territory of the Demised Plot (without being transferred/sub-leased by this Sub-Lease Deed), the Prospective Sub-Lessee as defined below shall have the aforesaid portion of Non-

91. From perusal of the sub lease deed dated 24.06.2016 (*ibid*), it is observed that the clause XIV recognizes the term *designing, construction and development of land*, against which liability was ought to be adjusted.

92. Now, we would like to refer to the relevant clauses of the other three sub lease deeds dated 27.04.2016, whose reference has been given by the IRP in its Additional Affidavit dated 14.03.2022. The relevant clauses are reproduced overleaf:

8	Mirzapur GH-L3	ICICI Bank Limited	27 April 2016	JIL executed three sublease deeds dated 27 April 2016 for discharge of JAL's liabilities under certain agreements between JIL & JAL	3.85	30.71	<p>XI: In the ordinary course of business and under certain agreements between Sub-Lessor (JIL) and JAL (hereinafter referred to as "Arrangements") there are certain liabilities and obligations of the Sub-Lessor towards JAL.</p> <p>XII: Thus, in light of the above scenario, JAL has requested the Sub-Lessor and the Sub-Lessor has agreed to transfer and assign all its rights, title and interest in and over the land admeasuring 15,570 sq. mtrs. being plot no GH-L-03 at Sector-19, Jaypee Greens Sports City, East, Yamuna Expressway Industrial Development Authority, District - Gautam Budh Nagar (U.P.) (hereinafter referred to as "Demised Plots"), against a consideration of Rs 30,71,00,000/- (Rupees Nineteen Thousand Seven Hundred Twenty Two and Eighty Three Paise Only) (hereinafter referred to as "Consideration") calculated @ Rs 19,723.82 (Rupees Nineteen Thousand Seven Hundred Twenty Two and Eighty Three Paise Only) per square meter, for a period upto 15.09.2099, towards part discharge of (i) JAL's liabilities under the Loans and (ii) to such extent, Sub-Lessor's liabilities towards JAL under the Arrangement.</p>
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Sr. No.	Details of Land	Beneficiary	Agreement/ sub-lease Date	Nature	Area (in acres)	Total Consideration (In Cr)	Clause in SLD
9	Mirzapur C1-H	ICICI Bank Limited	27 April 2016	Same as in Serial No. 8	7.57	102.00	<p>XIV: In the ordinary course of business and under certain agreements between Sub-Lessor (JIL) and JAL (hereinafter referred to as "Arrangements") there are certain liabilities and obligations of the Sub-Lessor towards JAL.</p> <p>XV: Thus, in light of the above scenario, JAL has requested the Sub-Lessor and the Sub-Lessor has agreed to transfer and assign all its rights, title and interest in and over the land admeasuring 30,633 sq. mtrs. being plot no C1-H at Sector-19, Jaypee Greens Sports City, East, Yamuna Expressway Industrial Development Authority, District - Gautam Budh Nagar (U.P.) (hereinafter referred to as "Demised Plots") against a consideration of Rs 102,00,00,000/- (Rupees One Hundred and Two Crore Only) (hereinafter referred to as "Consideration") calculated @ Rs 33,297.42 (rupees Thirty Three Thousand Two Hundred Ninety Seven and Forty Two Paise Only) per square meter, in favour of Sub-Lessee for a period upto 15.09.2099, towards part discharge of (i) JAL's liabilities under the Loans and (ii) to such extent, Sub-Lessor's liabilities towards JAL under the Arrangement.</p>
10	Mirzapur -GH-A	ICICI Bank Limited	27 April, 2016	Same as in Serial No. 8	6.71	73.50	<p>XII: In the ordinary course of business and under certain agreements between Sub-Lessor (JIL) and JAL (hereinafter referred to as "Arrangements") there are certain liabilities and obligations of the Sub-Lessor towards JAL.</p> <p>XIII: Thus, in light of the above scenario, JAL has requested the Sub-Lessor and the Sub-Lessor has agreed to transfer and assign all its rights, title and interest in and over 150 number of residential plots forming part of Project "Yamuna Vihar" admeasuring 27,141.0 sq. mtrs. at Sector-22, Jaypee Greens Sports City, East, Yamuna Expressway Industrial Development Authority, District - Gautam Budh Nagar (U.P.) (hereinafter referred to as "Demised Plots") in favor of the Sub-Lessee, for a consideration of Rs 73,50,00,000 (Rupees Seventy three crores and fifty lacs Only) (hereinafter referred to as "Consideration") calculated @ Rs 27,080.80 (Rupees Twenty Seven Thousand and Eighty and Eighty Paise only) per square meter for a period upto 15.09.2099, towards part discharge of (i) JAL's liabilities under the Loans and (ii) to such extent, Sub-Lessor's liabilities towards JAL under the Arrangement.</p>

93. On perusal of the above, we do not find the word construction unlike the sub-lease deed dated 24.06.2016. Rather, the Sub-Lease Deeds dated 27.04.2016 speak about the “adjustment of liability towards JAL under the arrangement”. The said term “arrangement” is referred to as below:

XIV: In the ordinary course of business and under certain agreements between Sub-Lessor (JIL) and JAL (hereinafter referred to as “Arrangements”) there are certain liabilities and obligations of the Sub-Lessor towards JAL.

94. From the above, it is observed that the Sub-Lease Deeds dated 27.04.2016 nowhere specify that the term arrangement/agreement is used in the context of construction. Therefore, we are unable to accept this plea that the liability of JAL with respect to construction was required to be adjusted. Hence, except for the sub-lease deed dated 24.06.2016, we find that none of the sub-lease deeds had any relation to construction.

95. JAL has contended that the amount of Rs 70.89 Crores is a “trade receivable” and it has nothing to do with the construction. To support its contention, it has relied upon the Balance Sheet of JIL for the Financial Year 2020-2021, the relevant extract of which is reproduced below –

JAYPEE
INFRA TECH

Particulars	₹ in Lakhs	
	As at 31st March 2021	As at 31st March 2020
Less: Provision For Expected Credit Loss - on doubtful trade receivables	(3,947.21)	(3,567.04)
	20,601.51	22,620.36
Less: Transferred to Non Current Trade Receivables	-	2,000.00
	20,601.51	20,620.36
Trade receivables include:		
Jaypee Institute Of Information Technology	2,000.00	2,000.00
Jaiprakash Associates Limited	7,088.99	7,095.95
JC World Hospitality Private Limited	3,567.04	3,567.04

96. Further, the JAL has placed on record the ledger of JIL for the FY 2016-17, which reflects that the entire transaction was adjusted with the entry of "ICICI Bank JAL" - Rs. 182.85 Crore and there is no amount payable by JAL to JIL. The relevant extracts of the Ledger are reproduced below

ANNEXURE: P2

JAYPEE INFRA TECH LIMITED
 JAYPEE INFRA TECH LIMITED-NOIDA
 CUSTOMER'S COLLECTION-DEV/UNDEV. LAND
 For The Period Of 01.04.2016 TO 31.03.2017

23

Run Date: 15.03.2022

Voucher Date	Voucher Number	Description	Debit Amount	Credit Amount	Balance	Dr./Cr.
Customer Code: 101112 Customer Description: JAIPRAKASH ASSOCIATES LIMITED						
		OPENING BALANCE	0.00	0.00	0.00	Cr.
03.10.2016	8200003262	AMT RECD FROM JAL HO	0.00	340,000,000.00	340,000,000.00	Cr.
07.10.2016	8200004332	CH NO 138240 TO IIFCL BY JAL ON 07.10.2016	0.00	430,000,000.00	770,000,000.00	Cr.
31.12.2016	8200004277	TRF ENTRY	0.00	673,281,373.34	1,443,281,373.34	Cr.
20.01.2017	8200004710	IIFCL INTEREST PAID BY HO	0.00	93,900,000.00	1,537,181,373.34	Cr.
31.01.2017	8200004410	RECD- JAL HO	0.00	70,000,000.00	1,607,181,373.34	Cr.
01.03.2017	8200004771	RECD FROM JAL HO	0.00	140,000,000.00	1,747,181,373.34	Cr.
20.03.2017	8200005003	INTEREST IDBI T/L PAID	0.00	103,098,967.00	1,850,280,340.34	Cr.
31.03.2017	8200005607	ICICI BANK JAL	0.00	18,285,660.00	1,868,566,000.34	Cr.
31.03.2017	8200005831	TO SALE RECOGNISE FOR THE YEAR 2016-17	1,828,566,000.00	0.00	0.34	Cr.
		CLOSING BALANCE C/O			0.34	Cr.

97. Though the IRP of JIL has not denied the existence of the aforesaid Ledger, the justification given by him is that the entry was made prior to the initiation of CIRP, when JIL was under the control of JAL. He has additionally stated that no construction work was carried out by JAL, for which the payment of Rs. 182.85 Crore is sought to be adjusted/made by GL Code 01112. In fact, all the construction work that JAL carried out was in Noida (LFD 1), for which it has been raising R.A. Bills from time to time which were paid in cash. Further, these adjustments are also considered in the Books of Accounts of the JIL.

98. If IRP's contention is taken to be true, we fail to understand why he has not filed any application for challenging the said transaction. It is a matter of record that no application for avoidance, preferential or fraudulent was preferred under Section 43,45,50,66 for challenging the transaction/payment of Rs. 182.85 Crore by the IRP of JIL. Hence, we have no option but to consider this as payment made by JAL.

99. Moreover, the liability of Rs. 70.89 Crore is reflected in the Ledger No. 01113 of JIL, the relevant extracts of which are reproduced below –

ANNEXURE: P3

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JAYPEE INFRA TECH LIMITED
 JAYPEE INFRA TECH LIMITED-NOIDA
 CUSTOMER'S COLLECTION-DEV/UNDEV. LAND
 For The Period Of 01.04.2016 TO 31.03.2021

Run Date: 15.03.20

Voucher Date	Voucher Number	Description	Debit Amount	Credit Amount	Balance	Dr./Cr.
Customer Code: 101113 Customer Description: JAIPRAKASH ASSOCIATES LIMITED						
		OPENING BALANCE	0.00	0.00	0.00	Cr.
17.01.2017	0200004415	AMT RECD FROM JAL HO	0.00	466,700,000.00	466700000.00	Cr.
27.01.2017	0200004585	AMT RECD FROM JAL HO	0.00	56,000,000.00	522700000.00	Cr.
31.01.2017	0200004417	TRF ENTRY	0.00	651,112,555.00	1173812555.00	Cr.
08.02.2017	0200005294	RECD FROM JAL	0.00	2,850,000.00	1176662555.00	Cr.
10.03.2017	0200005149	CITIN17754625632 FROM JAIPRAKASH ASSOCIATES LIM	0.00	6,996,067.00	1183658622.00	Cr.
10.03.2017	0200005150	CITIN17754626922 FROM JAIPRAKASH ASSOCIATES LIM AX	0.00	22,391,596.00	12060502118.00	Cr.
16.03.2017	0200005151	LTIIBH07500355857 TRF FROM JAIPRAKASH ASSOCIATES LJ	0.00	4,000,000.00	12100502118.00	Cr.
20.03.2017	0200005003	INTEREST IDBI T/L PAID	0.00	16,901,033.00	1226951251.00	Cr.
21.03.2017	0200005160	RECD FORM JAL HO	0.00	124,500,000.00	1351451251.00	Cr.
29.03.2017	0200005062	INT. ON T/L-IDBI BANK RECD FROM JAL HO	0.00	100,000,000.00	1451451251.00	Cr.
30.03.2017	0200005102	AMT TRF FROM JAL HO	0.00	1,800,000.00	1433251251.00	Cr.
31.03.2017	0200005831	TO SALE RECOGNISE FOR THE YEAR 2016-17	735,000,000.00	0.00	718251251.00	Cr.
31.03.2017	0200005831	TO SALE RECOGNISE FOR THE YEAR 2016-17	3871,400,000.00	0.00	3153148749.00	Dr.
31.03.2017	0200005608	ICICI BANK JAL	0.00	46,064,000.00	3107084749.00	Dr.
31.03.2017	0200005059	INT. ON T/L-IDBI BANK RECD FROM JAL HO	0.00	100,000,000.00	3007084749.00	Dr.
31.03.2017	0200005101	AMT TRF FROM JAL HO	0.00	2,500,000.00	3004584749.00	Dr.
31.03.2017	0200005531	CA 914020041659010-Jaypee Greens (A Div. JAL)	0.00	135,000,000.00	2869584749.00	Dr.
31.03.2017	0200005370	INT OF HFCL PAID BY JAL HO	100,000,000.00	0.00	2969584749.00	Dr.
31.03.2017	0200005253	INT HFCL PAID BY JAL	0.00	10,000,000.00	2959584749.00	Dr.
31.03.2017	0200005292	INT HFCL PAID BY JAL	0.00	100,000,000.00	2859584749.00	Dr.
31.03.2017	0200005293	INT HFCL PAID BY JAL	10,000,000.00	0.00	2869584749.00	Dr.

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JAYPEE INFRA TECH LIMITED
JAYPEE INFRA TECH LIMITED-NOIDA
CUSTOMER'S COLLECTION-DEV./UNDEV. LAND
For The Period Of 01.04.2016 TO 31.03.2021

Run Date: 15.03.2021

Voucher Date	Voucher Number	Description	Debit Amount	Credit Amount	Balance	Dr./Cr.
10.07.2019	2100001606	TRF TO SUPERTECH FROM JAL	0.00	4,160,648.00	762339857.88Dr	
27.07.2019	2100001795	FUND TRF TO 4 UNITS TO JAL	0.00	2,916,486.00	759423371.88Dr	
01.08.2019	2100001797	FUND TRF TO 2 UNIT JAL FOR JPSI UNIT	0.00	35,400.00	759387971.88Dr	
23.08.2019	2100001989	FUND TRF TO FMG FOR AMN015104	0.00	92,084.04	759295887.84Dr	
24.10.2019	2100002500	FUND TRF TO FMG K100011404 KM00190706	0.00	42,406.71	759253481.13Dr	
24.10.2019	2100002510	FUND TRF TO JAL FOR OTHER CHARGES	0.00	36,090.00	759217391.13Dr	
30.10.2019	2100002523	FUND TRF TO JAL GD00110703	0.00	6,800,775.00	752416616.13Dr	
01.11.2019	2100002563	FUND TRF TO JAL GD00110703	0.00	6,703,937.00	745712479.13Dr	
01.11.2019	2100002566	FUND TRF TO JAL GD00110703	6,800,775.00	0.00	752532254.13Dr	
18.11.2019	2100002613	TRF TO FMG KM0070105	0.00	19,500.00	752493754.13Dr	
31.12.2019	8200066456	EXCESS TRF VIDE CA NO. 8200001070 DT. 15.06.17	0.00	19,354,500.00	733139254.13Dr	
07.02.2020	2100003115	TRF TO FMG KM00091701 KM00091702 KCB0031402	0.00	900,000.00	732239254.13Dr	
20.02.2020	2100003178	FUND TRF TO FMG FOR AMN0150303 KM00101506	0.00	152,066.00	732086588.13Dr	
02.03.2020	2100003263	FUND TR FR KM00420804 TO JAL	0.00	731,850.00	731954738.13Dr	
02.03.2020	2100003266	FUND TR FR KBA0081402 TO JAL C-1003	0.00	3,812,431.00	728142307.13Dr	
03.03.2020	2100003268	FUND TR FR OCB0030802 TO JAL C-1021	0.00	7,761,352.00	720380955.13Dr	
03.03.2020	2100003270	FUND TR FR KSH0162903 TO JAL C-1019	0.00	10,755,185.00	709625770.13Dr	
04.03.2020	2100003288	TRF TO JAL FR KRI0151201 C-1084	0.00	30,941.00	709594829.13Dr	
05.11.2020	2100003348	FUND TRF TO FMG C1364 30.10.2020 TO JAL	0.00	40,000.00	709554829.13Dr	
12.12.2020	2100000577	TRF TO JAL FMG C-1542 01.12.2020 K100020702	0.00	658,062.98	708896766.13Dr	
		CLOSING BALANCE C/O			708896766.13Dr	

100. From the perusal of the above, it is observed that the closing balance of JIL's Ledger 01113 is Rs. 70.89 Crores. However, when we peruse the Balance Sheet of the Corporate Debtor, it is evident that the same is reflected as 'Trade Receivable'.

101. Hence, it cannot be said beyond doubt that the said amount is arising out of 'Construction'. **We find no error committed by GT by treating JIL's claim of Rs. 70.89 Crores outside the realm of the reconciliation process and therefore, JIL cannot recover this amount from JAL under the current reconciliation process. The issue of Land Swap Deal is decided accordingly.**

Conclusion

102. Having decided all the issues, now we would like to set out the manner and distribution of the amount to the parties, post-reconciliation.

103. As we have noted earlier, it is stated in the GT Report, that the distribution of Rs. 536.49 Crores amongst the parties is “undisputed” and the same is receivable by JIL/Home Buyers of JIL.

104. We have also taken note of the fact in Para 11 and 12 of this order that the parties herein have mutually resolved another amount of Rs. 12.26 Crores to be shared in the equal ratio between them vide minutes of the joint meeting between the parties dated 24.12.2021.

105. As regards the “disputed amount/issues”, we have decided in the previous paragraphs, as follows –

Sl. No.	Nature of Transaction	Decision	Amount Receivable (Rs. in Crore)	
			By JIL/ Homebuyers of JIL	By JAL
1.	RA Bills for Construction (Rs 49.63 Cr)	JAL is entitled to retain the amount	--	49.63
2.	Bank Guarantees (BGs) issued by JAL, later invoked by Lenders of JIL	JAL is entitled to retain the amount	--	212.00
3.	Advance recoverable for IFMD by JIL from JAL	Homebuyers of JIL are entitled to receive the amount	106.90 (to be kept in the Escrow account on behalf of homebuyers)	--
4.	Facility Management	JAL is entitled to retain the amount	--	2.33

	Bills raised by JAL on JIL			
5.	Claim of JAL towards Hospitality Services	JAL is entitled to retain the amount	--	1.19

106. As regards the manner and distribution of the amount to the parties, we would like to refer to the Hon'ble Supreme Court's Order dated 27.07.2021 in M.A. 769 of 2021, which held that -

*“The adjudicating authority shall decide the objections, including on the draft report, within two weeks, as has been directed **in terms of paragraph 190.1 of the judgment dated 24.03.2021 in Civil Appeal No.3395 of 2020.***

All contentions in that regard are left open.”

(Emphasis placed)

107. Since the aforesaid order refers to Para 190.1 of the Jaypee Kensington (Supra), therefore, at the cost of repetition, we again refer to Para 190.1, wherein the Hon'ble Supreme Court specifically held that:

*“190.1. After receiving the report from the accounting expert, **the NCLT shall pass appropriate orders in the manner that, if any amount is found receivable by JIL/homebuyers of JIL, the same shall be made over to JIL from out of the said amount of INR 750 crores and accrued interest; and remainder thereof shall be returned to JAL** in an appropriate account and that shall abide by the directions of the competent authority dealing with the proceedings concerning JAL. The NCLT would be expected to pass appropriate orders within 2 weeks of submission of report by the accounting expert.”*

(Emphasis placed)

108. At this stage, we also refer to Para 188 of the Jaypee Kensington (Supra), wherein the Hon'ble Supreme Court held that -

*“188. Accordingly, we hold that the amount of INR 750 crores, **which was deposited by JAL pursuant to the orders passed by this Court in the case of Chitra Sharma, and accrued interest thereupon, is the property of JAL;** and stipulation in the resolution plan concerning its usage by the resolution applicant of JIL cannot be approved. The part of the impugned order dated 03.03.2020 placing this amount in the asset pool of JIL is set aside”.*

(Emphasis placed)

109. From the conjoint reading of Para 188 and 190.1 of the Jaypee Kensington (Supra) above, we find that the Hon'ble Supreme Court has held that –

- (a) Rs. 750 Crore is the Asset of JAL;
- (b) The NCLT shall pass appropriate orders in the manner that if any amount is found receivable by JIL/homebuyers of JIL, the same shall be made over to JIL from out of the said amount/ Asset of Rs. 750 Crores and accrued interest (in other words, only JIL/Homebuyers of JIL's claim can be set off from the Asset of Rs.750 Crore), and
- (c) Only the remainder thereof shall be returned to JAL (in other words, any claim of JAL cannot be set off from Rs 750 Crore being its own Asset, since as per the directions of Hon'ble Supreme Court, JAL is only entitled to receive the remainder after setting off the amount receivable by JIL/Homebuyers' of JIL).

110. Thus, as per the directions of the Hon'ble Supreme Court contained in Para 190.1 of the Jaypee Kensington (Supra), this Adjudicating Authority is required to pass orders in the manner that, if any amount is found receivable by JIL/homebuyers of JIL, the same shall be made over to JIL from out of the said amount of Rs 750 crore and accrued interest; and the remainder thereof only shall be returned to JAL. Accordingly, when we aggregate both the undisputed and adjudicated entitlements of JIL /Corporate Debtor & Homebuyers of JIL, the position emerges as follows:

Sl. No.	Amount receivable by JIL/ Home Buyers of JIL	Amount (Rs. in Crore)
(A) Amount Receivable by JIL		
1.	Undisputed amount through the GT Report.	536.49
2.	Mutually resolved by the Parties in terms of the direction of this Tribunal.	6.13
(B) Amount Receivable by Home Buyers of JIL		
3.	The disputed amount of Rs. 106.90 Crore on account of IFMD adjudicated vide this order in favor of Homebuyers of JIL (which shall be kept in the escrow account for maintenance till it is transferred to the RWA of Home Buyers of JIL)	106.90
Total		649.52

111. We have noted above that the Hon'ble Supreme Court has specifically directed that only the remainder of Rs. 750 Crores (i.e., after excluding the amount receivable by JIL/homebuyers of JIL) along with

the proportionate amount of interest (on the remainder) shall be returned to JAL. Accordingly, we direct the Registrar NCLT through Registry of NCLT, Allahabad that out of the total amount of Rs. 750 Crores and accrued interest thereon, an amount of Rs. 649.52 Crores along with proportionate interest shall be paid to the JIL/Homebuyers of JIL and the remaining amount of Rs.100.48 Crores (i.e., Rs. 750 Crore Less Rs 649.52 Crore) along with proportionate interest shall be returned to JAL, on receipt of such request from the parties. **The IA-2593/PB/2021 is disposed of accordingly.**

112. Since we have already dealt with the objections filed by the Applicant/IRP as well as JAL to the final report of Grant Thornton Bharat LLP dated 13.08.2021 in the **IA-2593/PB/2021**, the question of allotting separate application no. to the objections does not arise. **In view of this, the IA-631/PB/2022 is dismissed, being infructuous.**

Sd/-

**(RAMALINGAM SUDHAKAR)
PRESIDENT**

Sd/-

**(L. N. GUPTA)
MEMBER (TECHNICAL)**

NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
SPECIAL BENCH

IA. NO. 3481/PB/2021

IN

Company Petition No. (IB)-77/ALD/2017

IN THE MATTER OF:

IDBI Bank Limited

...Applicant/Financial Creditor

Versus

Jaypee Infratech Limited

...Respondent

AND IN THE MATTER OF IA. NO. 3481/PB/2021:

1. Suraksha Realty Limited

Office at :

3 Narayan Building, 23, L.N Road Dadar
(East) Mumbai, Maharashtra - 400014

...Applicant No. 1

2. Lakshdeep Investments and Finance Private Limited

Office at :

3 Narayan Building, 23, L.N Road Dadar
(East) Mumbai, Maharashtra - 400014

...Applicant No. 2

VERSUS

1. Mr. Anuj Jain

Interim Resolution Professional of Jaypee Infratech Limited

Office at:

8th Floor, Building No. 10, Tower B, DLF Cyber City,
Phase II, Gurugram, Haryana-122002

...Respondent No. 1

2. Jaiprakash Associates Limited

Office at:

Sales office of Indirapuram Habitat Centre,
Plot No. 16, Ahimsa Khand-I
Indirapuram, Ghaziabad-201014

...Respondent No. 2

SECTION: Section 60(5) of IBC 2016

CORAM :

JUSTICE RAMALINGAM SUDHAKAR

HON'BLE PRESIDENT

SH. L. N. GUPTA

HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Sr. Adv. Arvind Nayyar, Adv. Eshna Kumar, Adv. Sagar Bansal, Adv. Mansumyer Singh, Adv. Saumya Gupta, Adv. Veera Matha

For the Respondents : Adv. Sumant Batra, for IRP
For JAL: Sr. Adv. Krishnan Venugopal, Adv. Divyanshu Gupta, Adv. Anupam Chaudhary, Adv. Pallavi Srivastava, Adv. Krishnan Agarwal

ORDER

The present IA No. 3481 of 2021 has been filed by Suraksha Realty Limited and M/s. Lakshdeep Investments and Finance Private Limited (hereinafter referred to as the '**Applicants/Successful Resolution Applicants**) under Section 60(5) of IBC, 2016, read with Rule 11 of NCLT Rules, 2016 seeking the following reliefs:

- "a) *Allow the Applicant to intervene/implead the Applicants as parties in the IA 2593 of 2021 and a copy of the IA 2593 of 2021 be serves upon the Applicants,*
- b) *An opportunity of being heard be given to the Applicant before passing of any further orders in IA 2593 of 2021;*

c) *Pass any other order/direction as this Honourable Tribunal deems fit and proper in the facts of the present case.”*

2. The present application has been filed for seeking intervention in the IA-2593 of 2021 by which reconciliation process is taking place in relation to distribution of Rs. 750 Crore, which is deposited in the Registry of NCLT, Allahabad Bench. The said process is taking place between Jaypee Infratech Limited (hereinafter referred to as “**Corporate Debtor/JIL**”) and Jaiprakash Associates Limited (hereinafter referred to as “**JAL**”) in terms of direction of the Hon’ble Supreme Court passed in the matter of **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. vs. NBCC (India) Ltd. & Ors. in Civil Appeal No. 3395 of 2020 dated 24.03.2021 (hereinafter, referred to as “Jaypee Kensington Case”)**.

3. It is stated by the Applicant that it has emerged as the Successful Resolution Applicant (**hereinafter referred to as SRA**), whose Resolution Plan has been approved by the Committee of Creditors (CoC) on 23.06.2021 with voting share of 98.66 percent. It has added that the said Resolution Plan is pending adjudication before this Adjudicating Authority.

4. The Applicant has sought intervention, to be heard on the reconciliation process, on the following grounds:

4.1. On a submission of JAL that an amount of Rs. 195 crores, which was to be appropriated towards the construction of Corporate Debtor’s

project, could be adjusted from the said sum of Rs. 750 crores, the Hon'ble Supreme Court had ordered reconciliation of accounts of JAL and JIL/Corporate Debtor qua the construction advance. For ready reference, the relevant extract(s) from the judgement of Hon'ble Supreme Court in the **Jaypee Kensington** (Supra) is reproduced herein below:

“187. The upshot is that the said amount of INR 750 crores and accrued interest thereupon, is not the property of JIL. In regard to this amount, neither the stipulation in the resolution plan could be countenanced nor the order of NCLT could be approved.

...

...

189.1. As noticed, even when JAL and JIL are two separate corporate entities, JIL is an alter ego of JAL, for having been set up as an SPV and having been substituted as concessionaire in the Concession Agreement aforesaid. The agreements with homebuyers had also been of such a nature where JAL and JIL both were signatories thereto. Additionally, JAL had been extended construction contracts by JIL and, as per the submissions made before us [vide paragraph 178.1.4 (supra)], JAL had been carrying out the construction work and taking steps to reduce the liability towards JIL that stood at a sum of INR 716 crores as on 31.03.2018 and was purportedly reduced to INR 195 crores as on 31.03.2020. Various homebuyers have allegedly made payments towards IFMD to JAL. Moreover, JAL has submitted that balance of INR 195 crores, which was to be appropriated towards the construction of JIL's project, could be adjusted from the said sum of INR 750 crores, if the resolution applicant makes a formal submission of terminating the construction agreement. NBCC, on the other hand, has suggested several other amounts to be recoverable from JAL.

189.2. Having comprehensively taken note of the complex and interwoven features, even while we are not inclined to countenance the other claims against JAL in these proceedings, so far as the admitted amount towards construction advance is concerned, in our view, the process had been a continuing one and admittedly an amount of INR 195 crores was due to JIL as

on 31.03.2020. In the given circumstances, it would serve the interests of all stakeholders, if the proposition for reconciliation of accounts, as stated in the alternative submissions by JAL as also by the resolution applicant, be partly accepted and after reconciliation, the payable amount be made over to JIL before refunding the remainder to JAL.

...

...

190.1. After receiving the report from the accounting expert, the NCLT shall pass appropriate orders in the manner that, if any amount is found receivable by JIL/homebuyers of JIL, the same shall be made over to JIL from out of the said amount of INR 750 crores and accrued interest; and remainder thereof shall be returned to JAL in an appropriate account and that shall abide by the directions of the competent authority dealing with the proceedings concerning JAL. The NCLT would be expected to pass appropriate orders within 2 weeks of submission of report by the accounting expert.”

4.2. In such a scenario and given the fact that the Applicants herein (being at the helm of affairs of the Corporate Debtor upon approval of the Resolution Plan) shall be affected by adjudication of the issues before this Hon’ble Adjudicating Authority under the instant Application, it is submitted that the Applicants are necessary parties for a proper and complete adjudication of the IA-2593 of 2021. The presence of the Applicants, therefore, become indispensable for the purpose of adjudication of the IA-2593 of 2021.

4.3. It is submitted that in case the resolution plan submitted by the Applicants and approved by the CoC of the Corporate Debtor gets approval of the Hon’ble Adjudicating Authority, the Applicants would take over the management of the Corporate Debtor and hence, would become the beneficiary of the reconciled amount which shall be directed

to be given to the Corporate Debtor in IA-2593 of 2021. Any amount that would be apportioned to the Corporate Debtor would then have to be utilised by the Applicants, inter alia, for the purpose of construction work of the incomplete real estate projects of the Corporate Debtor in the interest of around 20,000 home buyers, in accordance with the resolution plan.

5. During the hearing, the Ld. Counsel of JAL i.e., the Respondent No. 2 has opposed the prayer made by the Applicant on the following grounds:

5.1. The Hon'ble Supreme Court in **Jaypee Kensington Case** had made it clear that only JIL (through its IRP) and JAL would be involved in the reconciliation process.

5.2. A Resolution Applicant, whose plan is yet to be approved by this Adjudicating Authority, will be considered as an outsider, who at best, has a contingent right that would fructify only on approval of plan by the Adjudication Authority.

5.3. Under the current IBC Proceedings, till the plan is approved by this Adjudicating Authority, the Corporate Debtor i.e., JIL can only be represented through its IRP. In this regard JAL has placed emphasis on Section 17, 18 and 25 of IBC, 2016.

5.4. The Hon'ble Supreme Court specifically rejected the attempt made by the earlier Successful Resolution Applicant i.e., NBCC (India) Limited to interfere with the reconciliation process. The relevant extracts of the **Jaypee Kensington Case** are reproduced overleaf :

“179.1.4. Apart from the aforesaid submissions and without prejudice, NBCC has also stated, with reference to the observations made by this Court during the course of hearing, that if any reconciliation of accounts has to be carried out before approval of the plan by this Court, NBCC ought to be involved in such an exercise, for being the successful resolution applicant and a part of the erstwhile Interim Monitoring Committee.”

5.5. The aforesaid relief was denied by the Hon’ble Supreme Court in its directions at para 190, 190.1, 190.2, 191.1 and 224, since it was held that only JAL and JIL will participate in the reconciliation process.

5.6. The Ld. Counsel for JIL Mr. Sumant Batra, at the beginning of the hearing of this application observed that given the mandate, the Hon’ble Supreme Court, this Tribunal may consider the plea of SRA on its merits and that if the applicant can bring forth certain relevant facts, it will be beneficial to all stakeholders.

6. We have heard the Ld. Counsels for the Applicants as well as the JAL and perused the documents placed on record in reference to the present IA. It is contended by the Applicant that it is a necessary party, which is required to be heard during the reconciliation process. If the Resolution plan submitted by the Applicant in respect of the Corporate Debtor gets approved by this Adjudicating Authority, in that situation the Applicants would take over the management of the Corporate Debtor and hence, would become the beneficiary of the reconciled amount directed to be given to the Corporate Debtor in IA-2593 of 2021. Any amount that would be apportioned to the Corporate Debtor would then

have to be utilised by the Applicants, inter alia, for the purpose of construction work.

7. Per contra, the JAL has stated that the Applicant only has a contingent right in the Corporate Debtor as on date and it cannot represent the Corporate Debtor.

8. Before arriving at any conclusion, we would like to visit the directions of the Hon'ble Supreme Court in **Jaypee Kensington** (supra):

*“190. For the aforesaid **purpose of reconciliation of accounts between JAL and JIL, the NCLT shall, within 7 days of receipt of copy of this judgment, nominate an independent accounting expert; and the accounting expert so nominated by NCLT shall carry out the process of reconciliation while involving IRP of JIL and one representative of JAL.** Looking to the underlying urgency, the accounting expert shall complete the entire process of reconciliation of accounts and submission of his report to NCLT within 10 days of his nomination. The professional charges and expenses for the task assigned to the accounting expert shall be determined by NCLT and shall be borne equally by JAL and JIL.*

....

191.1. As observed hereinabove, after having found that the said money is the property of JAL, ordinarily, the consequence would have been of directing its refund to JAL but the other entangled features of the case relating to the amount otherwise payable by JAL to JIL cannot be ignored altogether, particularly when it was an admitted position on behalf of JAL before NCLT that an amount of INR 274 crores was payable by it to JIL and even before this Court, this obligation to pay has been admitted on behalf of JAL, albeit to the tune of INR 195 crores as on 31.03.2020; and it appears that JAL has been taking steps (maybe crippled steps) to carry out construction and to reduce its liability. We are not determining the extent of amount payable by JAL to JIL because that would be a matter of reconciliation of accounts but, having regard to the background in which, and the purpose for which, JAL made the said deposit pursuant to the orders of this Court and also having regard to the present position of these two companies, adopting this course appears to be in the balance of the legal rights of the respective stakeholders as also in the balance of equities. We would

*hasten to observe that ordinarily, the equitable considerations do not directly come into play in corporate insolvency resolution process but the matter concerning this amount of INR 750 crores and accrued interest thereupon is a convoluted and stand-alone issue, having the peculiarities of its own and hence, we have adopted the course as contemplated above. **This process is otherwise not of determination of the claims of individual stakeholders, be it operational creditors or financial creditors. In the interest of justice, it is also made clear that disposal of the said sum of INR 750 crores shall otherwise not be treated as determinative of the rights and obligations of any stakeholder in any of these two companies, JAL and JIL.***”

(Emphasis Supplied)

9. From perusal of the above, it is clear that only JIL through its IRP and JAL has been allowed by the Hon’ble Supreme Court to participate in the reconciliation process. Further, any of the other stakeholders of JIL and JAL are not having any rights in this reconciliation process.

10. We are aware that the JIL has already been represented in the reconciliation process through its IRP. In our view, there cannot be two representations on behalf of JIL, especially when the resolution plan submitted by the Applicant/SRA is yet to be approved by this Adjudicating Authority and it has yet to step into the shoes of the Corporate Debtor. At present, the status of the Applicant/SRA is of only a stakeholder of the Corporate Debtor and not the Corporate Debtor itself, which is represented by the IRP.

11. The plea that the NBCC was allowed to argue on the accounting claims of JAL vs. JIL before the Hon’ble Supreme Court, at best can be considered as the view expressed by NBCC that there should be reconciliation of the accounts between JAL and JIL in the interest of all

stakeholders. The plea for reconciliation of accounts is one factor but allowing parties to participate in it is another. The Hon'ble Supreme Court in the latter permitted JIL and JAL to comment on the Report and thereafter, directed this Adjudicating Authority to give its finding on the reconciliation of the accounts based on the Report. We, therefore, cannot allow any other party except JIL and JAL. If the Applicant is allowed to intercede then every other stakeholder will have to be heard and that was not contemplated in the judgement passed by the Hon'ble Supreme Court.

12. The reconciliation process was intended by the Hon'ble Supreme Court to be carried out solely between JIL and JAL and it has been specifically held that the reconciliation process is “...***otherwise not be treated as determinative of the rights and obligations of any stakeholder in any of these two companies, JAL and JIL..***”, therefore, we are of the view that the Successful Resolution Applicant has no say in the reconciliation process, till the time its Resolution Plan is approved by this Adjudicating Authority.

13. The application is accordingly DISMISSED in the aforesaid terms.

Sd/-

**(RAMALINGAM SUDHAKAR)
PRESIDENT**

Sd/-

**(L. N. GUPTA)
MEMBER (TECHNICAL)**

NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
SPECIAL BENCH

RA. NO. 89/PB/2022

IN

Company Petition No. (IB)-77(ALD)/2017

IN THE MATTER OF:

IDBI BANK LIMITED

... Applicant/Financial Creditor

Versus

JAYPEE INFRATECH LIMITED

... Respondent/Corporate Debtor

AND IN THE MATTER OF R.A. No. 89/PB/2022

(Under Rule 11 of NCLT Rules read with SECTION: 60(5) of IBC, 2016)

Deshwal Contractors

Through Proprietor: -
Sh. Bijender Deshwal
2nd Floor, Aditya Bhawan,
Sector-58, BLB, Jharsaintly,
Faridabad, Haryana

... Applicant

Versus

Jaypee Infratech Limited

Through its: Interim Resolution
Professional-Mr. Anuj Jain
BSSR & Co. 8th Floor,
Building No. – 10C
DLF Cyber City, Gurugram,
Haryana – 122002

Also at:

Sector – 128, Noida – 201304
District. GB Nagar (UP)

... Respondent

Order Delivered on : 07.03.2023

CORAM:

JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT

SHRI. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENTS:

For the Applicant : Adv. Ekta Choudhary

ORDER

This IA has been preferred by M/s. Deshwal Contractors, through Proprietor, Sh. Bijender Deshwal, seeking the following reliefs:

- “a) Allow the present application and restore I.A. No. 3033/2022 in 77/ALB/2017 to its original number and hear the application on merits. And/or;*
- b) Any other or further orders that this Hon’ble Tribunal may find fit in the facts and circumstances of the case.”*

2. It is stated by the Applicant that it had filed one I.A. No. 3033/2022, which was dismissed in default on 16.11.2022, due to non-appearance of the parties.

3. The following is averred by the Applicant for justifying its non-appearance on 16.11.2022:

“5. That it is herein submitted that the counsel has been regularly following up with the instant matter and has remained present on the dates. That the IAs including applicant’s applications was not being taken up due to pendency of the arguments in the main matter. She was also present on 15.11.2022. However, the said I.A was not called out for hearing.

6. That on 16.11.2022, she was in another court and the said IA was taken up. She had requested her colleague to watch over the matter, in the event the I.A. is called out for hearing. However, when the IA was called out on account of inadvertence here colleague could not appear. But after which she immediately informed the counsel that the I.A. has been dismissed. By the time the counsel reached the court a different bench was presiding over the matters. Hence, the matter could not be mentioned.”

4. We have heard the Ld. Counsel for the Applicant and perused the averments made in the application. That the present matter i.e., **Company Petition No. (IB)-77(ALD)/2017** is listed on the directions of the Hon'ble Supreme Court passed in the Judgement dated 24.03.2021 in the matter of **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. vs. NBCC (India) Ltd. & Ors. in Civil Appeal No. 3395 of 2020**, and a Special Bench has been hearing this matter on day-to-day basis.

5. The reason stated by the Applicant for non-appearance clearly reflects the casual approach on behalf of the Applicant towards the present matter. Accordingly, we are not inclined to restore I.A. No. 3033/2022, which was dismissed in default.

6. The RA.89/2022 is accordingly dismissed *in limine*.

Sd/-

**(RAMALINGAM SUDHAKAR)
PRESIDENT**

Sd/-

**(L. N. GUPTA)
MEMBER (TECHNICAL)**

NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
SPECIAL BENCH

IA. No. 1429/PB/2020, IA. No. 3311/PB/2022

IN

Company Petition No. (IB)-77(ALD)/2017

IN THE MATTER OF:

IDBI BANK LIMITED

... Applicant/Financial Creditor

Versus

JAYPEE INFRATECH LIMITED

... Respondent/Corporate Debtor

AND IN THE MATTER OF IA. No. 1429/PB/2020

(SECTION: 60(5) of IBC, 2016)

Chitralee Goswami

R/o 4148 D-3/4

Vasant Kunj,

New Delhi – 110070

... Applicant

Versus

Mr. Anuj Jain

IRP for M/s. Jaypee Infratech Limited

Sector 128, District

Gautam Budh Nagar,

Noida, Uttar Pradesh

... Respondent

AND IN THE MATTER OF IA. No. 3311/PB/2022

(SECTION: 60(5) of IBC, 2016)

Indranil Chaterjee

S/o. Sh. Baan Bihari Chaterjee

R/o. Flat No. 2003, Kalypso Court 16,

Sector 128, Gautam Buddha Nagar, U.P.

... Applicant

Versus

1. Mr. Anuj Jain

IRP for M/s. Jaypee Infratech Limited

Sector 128, District

Gautam Budh Nagar,

Noida, Uttar Pradesh

... Respondent No. 1

2. M/s Jaypee Infratech Limited

Sector 128, Distt. Gautam Budh Nagar,

Noida, Uttar Pradesh

... Respondent No. 2

CORAM:

JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT

SHRI. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENTS:

For the Applicants : Ms. Chitralee Goswami

: Adv. Saurabh Singh Chauhan

For the IRP : Adv. Sumant Batra, Adv. Sanjay Bhatt

ORDER

This **IA. No. 1429 of 2020** has been preferred by Ms. Chitralee Goswami, seeking the following reliefs:

- "I. pass suitable orders in favour of aggrieved KNG2 flat buyers, ordering JAL/JIL/Jaypee/RP, as a going concern, to;*
- a) continue with the present practice of adjusting the delay compensation with the demands raised on us in the OOPs and the registration charges, issued revised OOPs allowing additional time to register and recognize the balance amounts in liabilities and*
 - b) to facilitate registration and complete scope of work in our flats irrespective of the outcome of the case at honourable NCLT.*
- II. pass suitable orders which assure the aggrieved KNG2 flat buyers that money deposited in past 10 years with JIL/JAL/Jaypee will not be a loss to us in any which manner and we will get out flats registered without additional payment, irrespective of the outcome of the insolvency proceedings in NCLT;*
- III. pass suitable order for the aggrieved KNG2 flat buyers that the funds required to complete the flats is set aside specifically for completion of the scope of work of the aggrieved KNG2 flat buyers flats*

before releasing funds to JAL/JIL/Jaypee/NBCC or any other agency including lending Banks.

IV. pass any other suitable orders to protect the interest of the aggrieved KNG2 flats buyers as honourable NCLT may deem fit.”

2. The second **I.A. No. 3311 of 2022** has been preferred by Ms. Indranil Chaterjee, seeking the following reliefs:

- “(a) Direct the IRP to issue a fresh lawful Offer of Possession Letter for the Unit No. AMN0070402 in Group Housing Project, Aman, Sector 151, Noida, U.P., within the contours of law and in compliance with law laid down in the CC No. 285/2018 Pawan Gupta Versus Experion Developers Pvt. Ltd., r/w Real Estate (Regulation and Development) Act, 2016, Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016 and further r/w Uttar Pradesh Real Estate (Regulation and Development) (Agreement For Sale/Lease) Rules, 2018; and*
- (b) Quash the unlawfully levied Penalty, Holding and Maintenance Charges and other unlawful charges levied on the applicant’s unfurnished apartment, which the promoter company has further denied to furnish; and*
- (c) Pass such further order(s) as may deem fit and proper in the facts and circumstances of the case.”*

3. Since both these IAs are not in the nature of objection to the Resolution Plan under consideration in (IB)-77/ALD/2017 therefore, they are being adjudicated separately vide this order.

4. This Adjudicating Authority has passed orders separately in the I.A. No. 2836/PB/2021 approving the Resolution Plan of the Corporate Debtor Jaypee Infratech Limited (JIL). Therefore, we direct the SRA (Consortium of M/s Suraksha Realty Limited and M/s Lakshdeep Investments and

Finance Private Limited) of the Corporate Debtor Jaypee Infratech Limited (JIL) to look into the prayers made by the Applicants herein in accordance with law and the provisions made under the Resolution Plan. We also direct the Ex-IRP, Mr. Anuj Jain to extend necessary assistant to the SRA address the grievances of Applicants herein. We direct the Applicants to approach the SRA within a period of 3 weeks from passing of this order. The SRA shall dispose of the grievance within a period of 3 weeks thereafter.

5. **Both the IA. No. 1429/PB/2020 and IA. No. 3311/PB/2022 are disposed of in terms of the aforesaid directions.**

Sd/-

**(RAMALINGAM SUDHAKAR)
PRESIDENT**

Sd/-

**(L. N. GUPTA)
MEMBER (TECHNICAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 302
(IB)-77/ALD/2017

IN THE MATTER OF:

IDBI Bank	Applicant/petitioner
Vs.		
Jaypee Infratech Ltd.	Respondent

In the matter of IA-5920(PB)/2022

Under Rule 11 of NCLT Rules, 2016

Deshwal Contractors	Vs Applicant
M/s Jaypee Infratech Limited	 Respondent

In the matter of New IA-789(PB)/2023

Under Rule 11 of NCLT Rules, 2016

Subbaiyya Chithambaram	 Applicant
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In the matter of IA-869(PB)/2023

Under Section 25 (2)(e) of IBC, 2016

Anuj Jain IRP Jaypee Infratech Limited	 Applicant
Vs		
Suraksha Realty Limited	 Respondent

Order delivered on 07.03.2023

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. L. N. GUPTA

HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the RP : Mr. Sumant Batra, Mr. Sanjay Bhatt, Ms. Ruchi Goyal,
Adv. for IRP of JIL along with Mr. Anuj Jain, IRP in person

ORDER

Case listed as per the directions of the Hon'ble Supreme Court.

New IA-5920/2022

This is an application filed for an urgent hearing of RA-89/2022 & IA-3033/2022. RA-89/2022 was already heard and the order has been pronounced.

In view of the same, the IA-5920/2022 stands **dismissed as infructuous**.

New IA-789/2023

Prayer in the application is as follows:

“a) modify the order dated 24.05.2022 in I.A. No. 413 of 2022 and direct the IRP/Company JIL to refund the rightful dues/refund along with the interest and damages as up to date as directed by the Hon’ble NCLAT, Delhi vide order dt. 20.12.2021 in Appeal No. 637 of 2020.

b) pass such other or further orders as this Hon’ble Tribunal may deems fit and proper in the facts and circumstances of the case.”

This Application has been filed for recall of the order dated 24.05.2022 in IA-413/2022.

Pertinently, this Tribunal has no powers to review or recall the order. Hence, the application is not maintainable.

Accordingly, IA-789/2023 stands **dismissed** as not maintainable.

New IA-869/2023

In view of the orders passed in the Resolution Plan Application, this IA does not require further adjudication.

Hence, the **IA-869/2023** stands **disposed of** in terms of the above.

-sd-

(RAMALINGAM SUDHAKAR)
PRESIDENT

-sd-

(L. N. GUPTA)
MEMBER (TECHNICAL)