

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**Under Section 60(5) of Insolvency and
Bankruptcy Code, 2016**

M.A. NO. 391 OF 2020

Filed by

Ashok Commercial Enterprises

126, Free Press Home, 215, Nariman Point,
Mumbai 400021

...Applicant

versus

Ariisto Developers Pvt. Ltd.

Acting through Mr. Jayesh Sanghrajka,
Resolution Professional having his office at:
405-407, Hind Rajasthan Building, Dadar,
Mumbai 400 014

...Respondent

In the matter of

C.P. (IB) No. 2714 OF 2018

Dipco Pvt. Ltd.

Radhasagar Road, Ground Floor,
8, Moira Street, Kolkata,
West Bengal – 700 017

...Financial Creditor

versus

Ariisto Developers Pvt. Ltd.

8th Floor, Ariisto House, N.S. Phadke Road,
Near East-West Flyover, Andheri (East),
Mumbai 400 069

...Corporate Debtor

Order Pronounced on: 23.03.2021

Coram:

Hon'ble Shri. H.V. Subba Rao, Member (Judicial)

Hon'ble Shri. Shyam Babu Gautam (Member Technical)

Appearance:

For the Applicant: RMG Law Associates

For the Resolution Professional: Mr. Chintan Gandhi

Per: Hon'ble Shri. H.V. Subba Rao, Member (Judicial)

ORDER

1. The present Application has been filed by Ashok Commercial Enterprises (hereinafter called as the "applicant"). This application seeks to surface the role of the Respondent in conducting the adjourned 20th meeting of the Committee of Creditors held on 13.11.2019, whereby:

- i. the distribution matrix with respect to the resolution plan of the successful applicant was altered and changed after the applicant had voted and left the meeting; and
 - ii. the inclusion of success fee approved by the Committee of Creditors payable to Respondent, who is already being paid of the services of a resolution professional and who is further guilty of conducting the entire affairs of the Corporate Debtor in a biased manner.
2. The counsel appearing for the applicant stated that based upon the resolution plan submitted by Prestige Estates Projects Ltd. and received by the Respondent, the Respondent by his email dated 12.11.2019, on his own accord, formulated a distribution matrix for the CoC members for consideration, rather than allowing the members of the COC to deliberate the distribution pattern which is very much a right of the members of the CoC and falls within the domain of the COC. The right of the COC to determine the *inter se* sharing has been recognized under the prevalent law. The Respondent in derogation of the prevalent law, decided to work out the sharing pattern. The applicant craves leave to refer and rely on the Respondent's email dated 12.11.2019.
3. The counsel stated that thereafter, a COC meeting scheduled to be held on 12.11.2019 was adjourned to 13.11.2019 (Adjourned 20th CoC meeting) to decide the fate of the CIRP by putting the resolution plans received by the RP to vote and to finalize the distribution matrix. He mentioned that on the Adjourned 20th CoC meeting, the Respondent requested the CoC members to cast their votes in favour of the resolution applicant and the Applicant herein being satisfied with the financial and technical capabilities of Prestige voted in their favour. Pertinently, no discussion whatsoever was regarding the distribution matrix was proposed by the Respondent and the Applicant under a presumption that the same would take place at a subsequent date and left the meeting.
4. He further submitted that the applicant was shocked to receive the Approved Resolution Plan along with the distribution matrix voted in favour of Prestige by the members of the CoC (Approved Plan) via an email from the respondent. Upon verifying the approved plan and the minutes of Adjourned 20th CoC meeting, the Applicant was shocked to learn that

post the Applicant leaving the meeting the distribution matrix was discussed and altered substantially to suit the requirement of HDFC Limited and Piramal entities due to which the other CoC members were benefited more than what was envisaged. He submitted that the Applicant does not have grievance with the Approved Plan but is utterly shocked with the unilateral imposition of the distribution matrix by the Respondent and in flagrant violation of his fiduciary duty to the members of the CoC.

5. The counsel for the applicant alleged that the conduct of the RP acting in disregard to the requirements of having the consent of the members of the CoC on the distribution pattern is apparent from sanction of success fee of Rs. 3 Crores agreed to be paid to RP. He submitted that the success fee payable to RP is ex-facie illegal and inequitable for reasons mentioned hereinbelow:
 - a. The Insolvency Code does not contemplate any "Success Fee" to be paid to RP in addition to his professional fees agreed to be paid to the RP;
 - b. The mandate of Mr. Jayesh Sanghrajka does not contemplate payment of any success fee, and
 - c. The unsecured creditors, like the Applicant, have taken a considerable hair cut in the Approved Plan and the sum of Rs. 3 Crore can be distributed amongst the unsecured creditors towards part discharge of their claim.

6. It is pertinent to note that all the discussion relating to distribution matrix was undertaken post receiving the vote of the remaining members of the COC which clearly reflects the malicious intent of the RP and his failure to perform his obligations as per the provisions of the Code. Also, the distribution matrix is not in accordance with the Section 53 of the Code and the RP has surpassed his jurisdiction in changing the commercials, without notice and/or consent of the Applicant.

7. Stating the above, the applicant has prayed for the following reliefs:
 - a. *That this Hon'ble Tribunal be pleased to reject the distribution matrix finalized and put up for approval by the Resolution Professional along with the Resolution Plan direct the RP to reconvene the meeting of the COC to consider the distribution matrix;*

- b. That this Hon'ble Tribunal be pleased to reject the grant of success fee of Rs. 3,00,00,000/- (Rupees Three Crores Only) awarded to the Resolution Professional as per Agenda 5 of the Adjourned 20th CoC Meeting;*
- c. For such other orders as may be necessary in the interest of justice.*
8. The respondent RP has on the other hand denied all the contentions and averments made by the applicant and also have denied that he has unilaterally imposed the distribution matrix upon the CoC as has been alleged by the applicant in this application. On the contrary, he alleged that the Applicant has, in the Miscellaneous Application, made various false, frivolous, concocted and *mala fide* assertions and allegations against the RP. He submitted that the assertions and allegations are baseless and contrary to the record and also the Applicant is liable for concealing and suppressing various facts with a view to misguide this Tribunal. He alleged that this Application is nothing but an after-thought and has been filed only to delay the approval of the Resolution Plan submitted by Prestige Estates Projects Ltd. which is clear from the conduct of the applicant in not replying to the email of the RP attaching the Approved Resolution Plan and the distribution matrix after the 20th CoC meeting wherein the Resolution Plan was approved and the applicant was among the ones who had voted in favor of the plan. He stated that it is therefore surprising that now the Applicant has chosen to file the present Miscellaneous Application. This conduct of the Applicant show that the present Miscellaneous Application is nothing but an attempt to delay the entire process of approval of the Resolution Plan.
9. He submitted that the Resolution Applicant had specifically stated in its Resolution Plan that the distribution of consideration amongst lenders, subvention payments, CIRP Costs, Statutory Costs and any other cost heads was to be determined by the CoC, as it may deem fit. Accordingly, the CoC, in the adjourned 20th CoC meeting held on 13.11.2019, had after due deliberations and discussions, finalized the distribution matrix. Thus, the RP has no role in fixing the distribution matrix. I further state that the changes to the distribution matrix were made only with respect to the secured creditors after *inter se* negotiations between them and the Applicant's commercials were

untouched/unchanged/unaltered. Therefore, there is no flagrant violation of the RP's fiduciary duties towards the members of the CoC.

10. The counsel appearing for the RP further stated that the Applicant has raised grievances in respect of (i) the Distribution Matrix duly approved by the Committee of Creditors; and (ii) the Success Fee also duly approved by the Committee of Creditors. But the applicant has concealed in this Application that it is admittedly a member of the Committee of Creditors has in fact approved both these resolutions. Now, the applicant having unconditionally consented to both the aforesaid resolutions and having cast an affirmative vote on the ballot papers circulated for voting on these resolutions, it is inconceivable as to how the Applicant has filed this present Miscellaneous Application seeking to challenge, in effect, its own vote. Therefore, it is clear that the Applicant is estopped in law and in fact, from challenging the resolutions passed at the 20th meeting of the Committee of Creditors.
11. With specific reference to the Success Fee, the counsel for the RP stated that the same is just, fair and reasonable and it has been determined by the Resolution Applicant and the CoC in the light of the efforts made by the RP during the "CIRP". The Success Fee forms part of the CIRP Costs under the Resolution Plan and has been duly approved by CoC with a majority of 86.67%. Pertinently, this percentage of affirmative votes includes the affirmative votes cast by the Applicant. He submitted that not only the CoC has approved the success fees but also had appreciated the efforts of the RP in bringing forth the successful Resolution Plan which included an increment in the upfront receipt from Rs. 200 Crores to Rs. 370 Crores. They had further appreciated that the Resolution Plan has brought down the timeline for completion of the project from 11 years to 4 years.
12. The counsel for the RP has further denied that the distribution matrix is not in accordance with Sec. 53 of the Code. On the contrary, he stated that the present distribution matrix is a classic example of balancing the interest of all the stakeholders of the Corporate Debtor and maximizing the value of its assets. Also, the aforesaid distribution matrix was fixed by the CoC in its own commercial wisdom. He alleged that the applicant has approached this Tribunal with unclean hands and there are no merits whatsoever in the vexatious allegations raised

by the Applicant and hence this application deserves to be dismissed at the very threshold.

FINDINGS

13. We have heard both the parties and taken their submissions into account. After going through the documents submitted by them, it is clear that the CoC has unanimously approved the Resolution Plan submitted by Prestige Estates Projects Ltd. The RP had also filed an application bearing no. 3714 of 2020 for approval of the said Resolution Plan. It is pertinent to note here that this application has been approved today by this Bench but the success fees has not been approved being unreasonable. This Bench has relied on the judgment of the Hon'ble NCLAT passed in the matter of **Mr. Devarajan Raman, Resolution Professional Poonam Drum & Containers Pvt. Ltd v. Bank of India Ltd. [Company Appeal (AT) (Insolvency) No. 646 of 2020]** that the fees of the RP is not the commercial wisdom of the CoC. The following para from the said judgment is hereby reproduced:

“...Fixation of fee is not a business decision depending upon the commercial wisdom of the Committee of Creditors. We accordingly find this appeal lacking merit. The appeal is accordingly dismissed. No costs.”

Basing on the above discussion, this Bench hereby directs to proportionately distribute the said amount of Rs.3 Crores among the employees/operational creditors/unsecured creditors. This has been justified by this Bench in the said order (refer to order in MA 3714/2020)

14. In view of the approval of Resolution Plan, prayer 'a' of this application stands dismissed. As the Success Fees to the RP has been already denied by this Bench while approving the Resolution Plan vide its order in MA 3714/2020, the prayer clause 'b' of this application is deemed to have been allowed. In view of the above, nothing survives in this application and hence is hereby partially allowed. With the above observations, this application bearing No. 319/2020 is hereby disposed of.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

Sd/-

H.V. SUBBA RAO
Member (Judicial)

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

**Under Section 66 of Insolvency and
Bankruptcy Code, 2016**

M.A. NO. 1893 OF 2019

Filed by

Mr. Jayesh Shanghrajka

Resolution Professional of Ariisto Developers
Pvt. Ltd.

IBBI/IPA-001/IP-P00216/2017-18/10416
405-407, Hind Rajasthan Building,
Dadasaheb Phalke Road, Dadar (East),
Mumbai – 400 014

...Applicant

versus

1. Divine Investments

Ground Floor, Paaduka, Annexe Mayank,
Navyug Society, Plot No. 3, N.S. Road No. 05,
JVPD, Vile Parle West, Mumbai 400056

2. Atithi N. Patel – H.U.F.

Ground Floor, Paaduka, Annexe Mayank,
Navyug Society, Plot No. 3, N.S. Road No. 05,
JVPD, Vile Parle West, Mumbai 400056

3. Atithi Building Commodities Pvt. Ltd.

8th Floor, Ariisto House, N.S. Phadke Road,
Near East-West Flyover, Andheri (East),
Mumbai 400069

4. Atithi N. Patel

Ground Floor, Paaduka, Annexe Mayank,
Navyug Society, Plot No. 3, N.S. Road No. 05,
JVPD, Vile Parle West, Mumbai 400056

5. Hiren N. Patel

Ground Floor, Paaduka, Annexe Mayank,
Navyug Society, Plot No. 3, N.S. Road No. 05,
JVPD, Vile Parle West, Mumbai 400056

6. Atithi Builders and Constructors Pvt. Ltd.

8th Floor, Ariisto House, N.S. Phadke Road,
Near East-West Flyover, Andheri (East),
Mumbai 400069

7. Narendra D. Patel H.U.F.

Ground Floor, Paaduka, Annexe Mayank,
Navyug Society, Plot No. 3, N.S. Road No. 05,
JVPD, Vile Parle West, Mumbai 400056

8. Ashvi Developers Pvt. Ltd.

43/11, Raja Bahadur Building Tamarind
Lane, Fort Mumbai 400001

...Respondents

In the matter of

C.P. (IB) No. 2714 OF 2018

Dipco Pvt. Ltd.

Radhasagar Road, Ground Floor,
8, Moira Street, Kolkata,
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...Corporate Debtor

Order Pronounced on: 23.03.2021

Coram:

Hon'ble Shri. H.V. Subba Rao, Member (Judicial)

Hon'ble Shri. Shyam Babu Gautam (Member Technical)

Appearance:

For the Applicant: Mr. Chintan Gandhi

For the Respondents: Mr. Gautam Ankhad

Per: Hon'ble Shri. Shyam Babu Gautam

ORDER

1. This is an application filed by Mr. Jayesh Sanghrajka (hereinafter called as the “applicant”), the Resolution Professional (RP) of Ariisto Developers Pvt. Ltd. (hereinafter called as the “Corporate Debtor”) under Section 66 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”). The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by an order of this Tribunal dated 20.11.2018 and the applicant was appointed as the RP during the 1st meeting of the Committee of Creditors (CoC) held on 24.12.2018 and confirmed by an order of this Bench dated 23.01.2019.
2. This application has been filed by the applicant against 8 respondents alleging that they have entered into preferential transactions. The applicant is seeking the following prayers by this application:
 - a. *Issue directions or order to recover the said amount of Rs.118,58,69,004/- (Rupees One Hundred and Eighteen Crores Fifty Eight Lakhs Sixty Nine Thousand Four only) mentioned in para 6.ii of the instant application from the Respondents/Related Parties receivable as on 20.11.2018 and means to do so;*
 - b. *Direct the CoC to pay for the cost of legal remedies for recovery aforesaid dues, if any, to be persuaded by the Resolution Professional;*
 - c. *Directions in terms of Section 66 to be given to Respondents or such number of them as the Hon’ble Bench may determine, to make contributions to the Corporate Insolvency Resolution Process of the Corporate Debtor;*

- d. Immediate directions be given to the respondents or beneficiaries to the transaction to disclose and file Affidavit of Declaration of their assets, produce all necessary documents as and when required by the Resolution Professional and refrain them from creating any third party rights in their assets both moveable and immovable without prior approval from this Hon'ble Court or any other such competent authority as this Hon'ble Court may deem fit;*
- e. The respondents be directed to produce details of the ventures signed with other companies and third party rights created (if any) in the assets of the related party; and*
- f. Any such other directions, orders, Interim Relief as the Hon'ble Bench may deem fit in the interest of justice, equity and good conscience.*

3. The counsel appearing for the RP submitted that the RP had verified the books of accounts and the audited balance sheets of the Corporate Debtor during the CIRP. He stated that after going through the audited balance sheets for the year ended on 31.03.2018 and provisional accounts as on 20.11.2018 and as per the trial balance as on 20.11.2018 and Audited Financials as on 31.03.2018 of the Corporate Debtor, he found that an amount receivable of more than Rs. 10 Lakhs from the Respondents (Related Parties of the Corporate Debtor) which is as follows:

Sr. No.	Name of Related Party	Amount as on 20.11.2018 (unaudited)	Amount as on 31.03.2018
1.	Divine Investments – Proprietorship of Atithi N. Patel HUF	768,030,000	798,056,478

2.	Athithi N. Patel HUF	30,551,978	
3.	Atithi Building Commodities Pvt. Ltd.	216,697,013	220,235,000
4.	Atithi N. Patel (suspended Director of the Corporate Debtor)	50,184,479	173,716,257
5.	Hiren N. Patel (suspended Director of the Corporate Debtor)	50,184,479	123,793,479
6.	Atithi Builders & Constructors Pvt. Ltd.	10,256,900	-
7.	Narendra D. Patel HUF	6,249,571	5,749,571
8.	Ashvi Developers Pvt Ltd.	4,332,806	-
	Total	1,18,58,69,004	1,32,15,50,785

He stated that the amounts as on 20.11.2018 are derived from the trial balance as on that date provided to the RP from the Books of accounts of the Corporate Debtor, which is unaudited. He further stated that as on date of the commencement of CIRP of the Corporate Debtor i.e. on 20.11.2018, Rs.118,58,69,004/- is receivable from the related parties (respondents) of the Corporate Debtor.

4. Upon investigation of the said accounts and queries by the CoC in respect of aforesaid related party transactions, it was decided by the RP to appoint Forensic Auditor to find out if the Corporate Debtor is subjected to any transactions which may be regarded as defrauding creditors or fraudulent transactions. To find out about these transactions, the applicant appointed M/s Haribhakti Business Services LLP (firm of Chartered Accountants, Mumbai) to carry out forensic audit of the

Corporate Debtor. He stated that on perusal of the Forensic Audit Report, the Books of Accounts and Audited Financial statements, the transactions with the respondents herein gave him a reasonably strong hints of Vulnerable Transactions or other transactions that may be either regarded as breach of applicable law, or deleterious of the interests of creditors or stakeholders, or otherwise, transactions not designed to be in good faith. Clarification regarding such transactions has been sought from the suspended directors of the corporate debtor through legal demand notices but no satisfactory response was received.

5. The applicant further submitted that the corporate debtor has given loan/advances to its related parties over a period of time without any consideration or economic gain. He further submitted that during the course of the CIRP, neither the applicant nor the Forensic Auditor have found any contract/agreement in respect of aforesaid related party transactions. Also, in the reply sent by the related parties vide letter dated 27.04.2019 also indicated that either there is no documentation or respondents are trying to suppress the same.
6. He stated that from the record, it appears that the above transactions were entered into solely to benefit the related parties/respondents of the corporate debtor, which is evident from the fact that these loans and advances were given without any consideration or benefit to the corporate debtor, in spite of the fact that the corporate debtor continuing to default in obligation to make payment to its financial creditors, operational creditors and others. Also, while the corporate debtor was borrowing money from various entities, banks, NBFC,

Individuals, etc. at high rate of interests, almost upto 30% p.a., the related parties/respondents were enjoying money of the corporate debtor without any interest/consideration/obligation.

7. He further mentioned about the public notices dated 29.03.2019 which were issued by Dhaval Vussonji and Associates, for their clients Shapoorji Pallonji Development Managers Pvt. Ltd. and Ashvi Developers Pvt. Ltd. who were willing to create a third party right in their properties as per the public notice dated 29.03.2018. The counsel for the applicant mentioned that the applicant through his advocates Krupa R. Paresh had raised an objection by way of letter dated 10.04.2019 which was posted on the same day thereby raising an objection for the same.
8. The directors of the corporate debtor were fully aware that they were in twilight zone and insolvency was imminent yet there was no effort from the part of the directors of the corporate debtor to recover money from the related parties/respondents till the commencement of the CIRP i.e. 20.11.2018. He stated that it was the applicant who being duty bound to preserve and protect the assets of the corporate debtor, called upon the related parties to make payment of the outstanding dues as on 20.11.2018 by sending legal demand notices through his lawyer, however the related parties have not made any repayment.
9. The respondents on the contrary have vehemently denied and disputed all the claims/averments/allegations that have been alleged/stated by the applicant as the same is without any proof and therefore is baseless. The respondents herein pray for the dismissal of this application on the ground that the application is belated and the applicant was required to file it within a period

of 135 days from the date of commencement of insolvency, which in this case is 20.11.2018, according to the provisions of Regulation 35A(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as "CIRP Regulations"). However, the present application was filed on 21.05.2019 which is post the cut-off date.

10. The respondents herein have also challenged the maintainability of the captioned application on the ground that it does not meet the criteria as set out in Sections 43 and 66 of the Code. The counsel for the respondents submitted that they have no intention to defraud the creditors. He also submitted that the applicant has neither specified the nature of transactions nor the involvement of the respondents in the said transactions. Therefore, in absence of such averments, the transactions cannot be considered as fraudulent and therefore, does not attract Sections 43 and 66 of the Code. Thus, the respondent has prayed for dismissal of this application.

11. He further submitted that the auditor preparing a forensic audit report is required to classify the transactions which fall under Section 66 of the Code and highlight details pertaining to the said transactions along with reasons for arriving at the conclusion for treating it as a fraudulent transaction. He submitted that on perusal of the Audit Report, it is evident that the auditor has neither categorized any transaction as a fraudulent one nor is there any reference to the word 'fraud' in the entire report and therefore, the said transactions are not fraudulent and do not attract the provisions of Section 66 of the Code.

12. In regard to the Respondent Nos. 1 & 2, the counsel stated that nothing is due and payable on their part because of the following reasons:
- a. The corporate debtor borrowed a sum of Rs.150 Crores from HDFC Limited;
 - b. Out of the said loan, a sum of Rs. 53.86 Crores was paid to the Respondent No. 01;
 - c. The Respondent No. 01 transferred the said amount to Ariisto Realtors Private Limited (ARPL) which ARPL in turn transferred it to Atithi Buildings Commodities Private Limited (ABCPL); and
 - d. ABCPL paid the said amount to HDFC PMS.

The respondents have also annexed a certificate from the chartered account evidencing that an amount of INR 53.86 crores was paid to HDFC PMS is annexed and marked it as Exhibit A.

13. In respect of Respondent No. 03, it has been stated that during the time of the forest issue surrounding the Mulund Project, Respondent No. 03 obtained funding from HDFC PMS for developing the projects belonging to the group and also investment in newly sourced projects. He stated that the Corporate Debtor got a sum of Rs.85 Crores from Respondent No. 03 which was partly utilized to discharge its debts *inter alia* owed to the banks. Also, he stated that as the assets of the Corporate Debtor become capable of being monetized, the Corporate Debtor reciprocated the assistance given by Respondent No. 03 earlier by arranging for finance on Corporate Debtor's books which was utilized by Respondent No. 03 to discharge its financial obligation to HDFC PMS. He stated that

this fact was known to all the secured creditors and nobody has taken any objection which shows that the inter se transaction between the group companies were done in a *bona fide* manner. The respondent has also annexed a certificate from the chartered accountant evidencing that Respondent No. 03 had utilized the fund to discharge the obligation to HDFC PMS which is annexed and marked as Exhibit B. he stated that this proves that the ultimate beneficiary of a sum of Rs.115 crore and Rs.150 Crores are HDFC entities and not the Respondents.

14. He therefore, stated that the amounts shown to be payable by Respondent No. 03 have to be adjusted against the compensation which is due and payable by the Corporate Debtor in favour of Respondent No. 03 and therefore, the entry reflected in the books of accounts of the Corporate Debtor has to be viewed and construed by taking into consideration what has been stated and not literally.
15. Regarding Respondents No. 4, 5 and 7, the counsel stated that the corporate debtor was initially formed as a firm and as on the date of conversion of the firm into a corporate entity, the total withdrawal aggregated to approximately INR 35 crore, which was carried forward in the books of the corporate entity in the nature of loans to directors. These amounts were repaid by them which is as follows:
 - a. A sum aggregating to amount INR 20 crores were paid to the corporate debtor; and
 - b. A sum aggregating to about INR 12.84 crores were brought in the corporate debtor through other entities of the partners.

He submitted that the money received from banks and customers was already invested in the Mulund Project which was later stalled due to the forest issue, the only source remaining with the firm was to call upon the group companies/firms to lend/invest to/in the firm.

16. He further submitted that from the funds of the Partners a bank guarantee of INR 4,15,27,200/- was caused to be issued in favour of Slum Rehabilitation Authority which is valid and subsisting till date and this bank guarantee is enduring to the benefit of the corporate debtor. The respondent has annexed a copy of letter dated 07.04.2016 for extension of bank guarantee as well as has annexed a deposit confirmation for the bank guarantee and marked it as Exhibit C.
17. He further submitted that as per the provisions of Companies Act, every director is entitled to remuneration and Respondents 4 and 5 did not claim any such remuneration taking the financial condition of the corporate debtor into account. He submitted that therefore, the amounts as shown outstanding are justifiably adjustable towards the contribution made.
18. Further, regarding Respondents 6 and 8, the counsel has submitted that in order to meet the exigencies of the group companies, various amounts were borrowed *inter se* between the group companies from time to time. He referred to the amount lent by ARCL to the corporate debtor which comes to the tune of Rs.1,55,00,000/- and similarly the corporate debtor had lent a sum of Rs.1,02,56,900/- to Respondent No. 6 and Rs.43,32,806/- to Respondent No. 08. He submitted that Respondent 6 & 8 had lent monies to ARPL. He submitted that

in view of this *inter se* transaction, the liability of ARPL which it owes to Respondent No. 6 & 8 was adjusted by treating Rs.1.55 crores which the corporate debtor owed to ARPL as satisfied against the monies lent by the corporate debtor to Respondent Nos. 6 & 8. He submitted that these adjustments were recorded in the accounts maintained by Respondent Nos. 6 & 8 and ARPL and similar entries were to be recorded in the books of accounts of the corporate debtor to be finalized for the financial year 2015-19 but before the same could be done, the CIRP was initiated against the corporate debtor. The counsel submitted that thus, the entry reflected in the books of accounts of the corporate debtor has to be viewed and construed by taking into consideration all these submissions and not literally.

FINDINGS

19. We have heard all the parties in detail and perused and taken all the documents submitted by them. The applicant has made various allegations against the respondents and prayed to declare that the transactions between the corporate debtor and the respondents are fraudulent and the respondents are guilty under Section 66 of the Insolvency and Bankruptcy Code, 2016 and has tried to make good his case. The respondents have denied all the allegations and submitted documents that the amounts were adjusted and nothing is pending from the respondents' side to pay back to the corporate debtor.

20. Here, we would like to refer to Section 66 of the Code which is reproduced hereinbelow for ready reference:
 - (1) *If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the*

corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any person who were knowingly parties to the carrying on of the business in such manner shall be liable to make such contributions to the assets of the corporate debtor as it may deem fit.

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

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

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

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

Explanation- For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same

functions as are carried out by such director or partner, as the case may be, in relation to the corporate debtor.

From the above, it is clear that the main ingredient of the section is that there needs to be an intent to defraud the creditor. Here, it is the applicant on whom the onus lies to prove that the respondents had an intention to defraud the creditors. This is the general principal of evidence that the person alleging has to prove the thing alleged. But we believe that the applicant herein has failed to establish the fraudulent intention of the respondents. On the contrary, the respondents have successfully demonstrated that the transactions as alleged by the applicant are neither fraudulent nor intentional and rather they have tried their best to revive the corporate debtor and have adjusted the amounts in paying back the amount to other creditors. We have gone through all the certificates from the chartered accountant submitted by the respondent which make it clear that the said amounts are adjusted by the respondents and nothing is due and payable on their part.

21. Further, even the auditor in its report has not categorized any transaction as fraudulent under Section 66 of the Code. Not only this, but also the applicant has not even furnished the Forensic Audit Report for the perusal of this Bench which he should have done during filing of this application itself. He has blatantly mentioned that the forensic audit report gave him a reasonably strong hints of Vulnerable Transactions or other transactions that may be either regarded as breach of applicable law, or deleterious of the interests of creditors or stakeholders, or otherwise, transactions not designed to be in good faith. This

Bench, basing merely on hints cannot declare the said transactions to be fraudulent ones.

22. Basing on the above, we believe that the applicant is not able to establish successfully that the respondents are guilty under Section 66 of the Code. According to the principal of burden of proof it is the applicant who has to establish that the said transactions are fraudulent ones which he is not able to establish. Also, the applicant has literally construed the documents and balance sheet and thus has lacked in research that the funds are being adjusted by the respondents, who on the other hand has produced certificates from a chartered accountant to prove that nothing is due and payable on their part. Therefore, there is no merit in this application and hence we have to dismiss it.

With these directions and observations, M.A. 1893/2019 is hereby dismissed with no costs.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

Sd/-

H.V. SUBBA RAO
Member (Judicial)

NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

**Under Section 30(6) of Insolvency and
Bankruptcy Code, 2016 for approval of
Resolution Plan**

M.A. NO. 3714 OF 2019

Filed by

**Mr. Jayesh Sanghrajka
Resolution Professional of**

Ariisto Developers Pvt. Ltd.
8th Floor, Ariisto House, N.S. Phadke Road,
Near East-West Flyover, Andheri (east),
Mumbai – 400069

...Applicant

In the matter of

C.P. (IB) No. 2714 OF 2018

Dipco Pvt. Ltd.

Radhasagar Road, Ground Floor,
8, Moira Street, Kolkata,
West Bengal – 700 017

...Financial Creditor

versus

Ariisto Developers Pvt. Ltd.

8th Floor, Ariisto House, N.S. Phadke Road,
Near East-West Flyover, Andheri (East),
Mumbai 400 069

...Corporate Debtor

Order Pronounced on: 23.03.2021

Coram:

Hon'ble Shri. H.V. Subba Rao, Member (Judicial)

Hon'ble Shri. Shyam Babu Gautam (Member Technical)

Appearance:

For the Applicant/Resolution Professional: Senior Counsel
Mr. Zal Andhyarujina a/w Adv. Chaintan Gandhi

Per: Hon'ble Shri. H.V. Subba Rao, Member

Hon'ble Shri. Shyam Babu Gautam Member

ORDER

1. This is a Miscellaneous Application filed by Mr. Jayesh Sanghrajka, Resolution Professional (hereinafter referred to as “the RP” or “the applicant”) of Ariisto Developers Pvt. Ltd. (hereinafter called as the “Corporate Debtor”) for approval of Resolution Plan submitted by Prestige Estates Projects Ltd. (hereinafter called as the “Resolution Applicant”). This application has been filed under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter called as the “Code”) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as “CIRP Regulations”).
2. The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Tribunal vide an order dated 20.11.2018 in the captioned company petition appointing Mr. S. Gopalkrishnan as the Interim Resolution Professional (IRP) to take charge of the Corporate Debtor. Upon his appointment, the IRP made a public announcement on 23.01.2018 in the prescribed manner for intimation of the commencement of CIRP of the Corporate Debtor and for calling the creditors to submit their claims along with the proof in the prescribed format. However, during the 1st meeting of the Committee of Creditors (CoC) held on 24.12.2018, the Applicant herein Mr. Jayesh Sanghrajka was appointed as the Resolution Professional (RP) of the Corporate Debtor.
3. The constitution of CoC along with the voting percentages of each class of creditors of the Corporate Debtor comprises of the following:

Class	Name of Financial Creditors	Voting Share (%)
Secured Creditors	HDFC Ltd.	18.86
	Aasan Corporate Solutions Private Limited	1.88
	Vistra ITCL (India) Limited	7.32
	Secured Creditors - Total	28.06
Secured Second Charge Creditors	IIFL Trustee Limited	15.25
	Vistra ITCL (India) Limited	20.33
	Secured Second Charge Creditors - Total	35.58
Other Unsecured Creditors	Abdulanwar Hajiabdul Gani	0.08
	Abhirup Commercial Private Limited	0.04
	Amrutben Gangar	0.00
	Arti Parikh	0.02
	Ashok Commercial Enterprises	10.59
	Atul Nathalal Patel	0.02
	Blacksoil Capital Pvt Ltd	0.03
	Blacksoil Realty Investment Advisors LLP	2.87
	Charul Nitesh Jain	0.00
	Damyanti N. Shah	0.00
	Dartex Sythetics	0.00
	Dipco Private Limited	0.71
	Gautam Daryanani	0.09
	Indo Saigon Agency	0.57
	J M Financial Capital Limited	0.32
	Jaimini Rajendra Parikh	0.04
	Kanubhai H. Shah	0.01

	Kekin Kunverji Chheda	0.34
	Lalitkumar Shriniwas kabra	0.00
	Laxmichand Gangar	0.00
	Madhubala J Vyas	0.01
	Mahendra Ravji Chheda	0.34
	Mahendrakumar Kundanmal (HUF)	0.00
	Manisha H. Jain	0.00
	Maple Vinimay Private Limited	0.05
	Margaret Almeida	0.08
	Milan Champaklalji Jain	0.00
	National Jewellers	0.01
	Neel Rajendra Parikh	0.05
	Nirmal Associates	0.48
	Nitesh Dayalal Jain (HUF)	0.00
	Organ Tei-up Private Limited	0.03
	Parasmal Juharmal Jain (HUF)	0.00
	Piyush Suresh Jain	0.00
	Poonam K. Lalchand	0.05
	Rajendra G. Parekh	0.04
	Rajni Daryanani	1.33
	Ram Daryanani	0.47
	Ramesh Jogani	0.27
	Ramesh Ravji Chheda	0.34
	Rasik Kunverji Chheda	0.34
	Ratan Gobind Daryanani	0.19
	Sanjiv G. Parikh	0.07
	Santosh Ratan Daryanani	0.05
	Sarla L. Kabra	0.00
	Saroj Joshi	0.01
	Shree Arihant Traders	0.62
	Shreepal Champaklalji Jain	0.01

	Shringar Vanijya Private Limited	0.05
	Surrender Singh Mokha	0.16
	Tech Engg Projects Services & Equipments Pvt. Ltd.	0.04
	Thakur Fininvest Private Limited	1.48
	Vijay Laxmi	0.00
	Vikas Oberoi	0.04
	Vinit Kabra	0.00
	Aasan Corporate Solutions Private Limited	3.22
Other Unsecured Creditors - Related Party	Bhavesh Gangar	-
	Other Unsecured Creditors - Total	25.62
Subvention Claim - FC	HDFC Ltd. - Subvention Claim	0.57
	India Bulls Housing Finance Limited	1.67
	Subvention Claim - FC - Total	2.24
Home buyers	Homebuyers	8.50
	Home buyers - Total	8.50
	Final Total	100.00

4. The Applicant after taking charge of as the RP has from time to time convened 20 CoC meetings, the summary of which is reproduced in the following table:

CoC Meeting	Held on	Key Outcome(s)
1 st	24.12.2018	Mr. Jayesh Sanghrajka was appointed as a Resolution Professional of the Corporate Debtor.

2 nd	14.02.2019	Information Memorandum of the Company was circulated to the CoC Members.
3 rd	17.03.2019	COC approved : (a) Form G – Notice inviting Expression of Interest. Eligibility Criteria of Prospective Resolution Applicant.
4 th	04.04.2019	The CoC Members approved the following: 1. Provisional list of Prospective Resolution Applicant consisting of: i. Oberoi Constructions Limited; ii. Atmosphere Realty Private Limited; iii. Propel Developers Private Limited; and iv. Narang Realty Private Limited. 2. Evaluation Matrix; and Request for Resolution Plan (RFRP).
5 th	15.04.2019	The CoC Members approved the following: 1. Provisional list of Prospective Resolution Applicants i. Kanakia Spaces Realty Private Limited; ii. Prestige Estates Projects Limited (Bangalore); and iii. Kalpataru Limited. Approved shorter notice of the 5 th CoC Meeting.
6 th	10.05.2019	The CoC Members approved the following: 1. Ratification and approval of expenses incurred and to be incurred by the RP during the course of CIRP; 2. Last date of submission of Resolution Plan extended till 10 th June, 2019; and Extension of CIRP Period by 90 days
7 th	10.06.2019	Proposal to extend the last date of submission of Resolution Plan upto 20 th June, 2019 did not receive requisite votes in favour and hence the same was not approved. Proposal of extension of CIRP process by further period of 90 days was deferred to next CoC Meeting.
8 th	18.06.2019	The CoC had discussed and deliberated Resolution Plan of Keystone and representatives of Keystone had given presentation on their Resolution Plan. Proposals to extend the CIRP period u/s 12 (2) of the IB Code, 2016 and to reduce notice period to call the CoC Meeting were approved by the CoC.
9 th	05.07.2019	Members discussed the Resolution Plan of the Keystone and after which, it was decided to form a

		sub-committee of Members of CoC to negotiate terms and conditions of the Resolution Plan. Proposal to raise interim finance was deferred to next CoC Meeting.
10 th	16.07.2019	Pursuant to recent judgment of Hon'ble NCLAT in the matter of Resolution Plan of Essar Steel India Limited, it was decided to drop the plan of forming a sub-committee of COC to negotiate terms and conditions of the Resolution Plan. COC Members had given following suggestions to M/s Keystone Realtors Pvt Ltd (Rustomjee Group) in respect of the Resolution Plan: 1) To increase the upfront payment; 2) To reduce the timeline of repayment to Creditors to 3 to 5 years; and 3) To come up with a Resolution Plan with better terms and conditions in favour of the Creditors.
11 th	30.07.2019	CoC granted last opportunity to M/s Keystone Realtors Pvt Ltd to submit complete and compliant Resolution Plan in compliance with the provisions of the Insolvency and Bankruptcy Code, 2016 by 13 th August 2019. Agenda of raising interim finance for CIRP Cost was deferred by the COC. Regarding EOI of L&T and Runwal, it was decided by the COC that since the EOI have been received after due date of submission of Resolution Plan, EOI can be taken into consideration if it is legally allowable only after obtaining legal opinion on the same by the RP.
12 th	16.08.2019	COC had decided to reject the incomplete and non-compliant resolution plan of M/s Keystone Realtors Pvt Ltd and further decided to republish Form G for inviting fresh EOI.
13 th	18.09.2019	COC unanimously decided that: a) RP shall open the Resolution Plan in front of COC in the Meeting; b) The legal advisors to RP will examine each Resolution Plan received by the RP so as to ensure that it conforms with requirements of Code, CIRP Regulations and the RFRP within a period of 7 days; and c) Each of the Resolution Applicants is called in the Meeting to explain/present their financial

		<p>proposals and answer the queries of the CoC. Resolution Plans received from L&T Realty Limited in physical form, Runwal Developers Private Limited in physical form, Prestige Estates Projects Limited in electronic form and Keystone Realtors Private Limited in physical form were opened one by one in the Meeting and respective representatives of Resolution Applicants were called in the Meeting to explain their financial proposal in resolution plan, wherein Prestige Estates Projects Limited had participated via video conferencing.</p>
14 th	20.09.2019	<p>It was unanimously decided that Resolution Professional shall, by email, communicate with each of the four Resolution Applicants to revise their respective Financial Proposals in accordance with following parameters suggested by the COC, maximum by Wednesday i.e. September 25, 2019 on or before 6:00 p.m. Indian Standard Time, in a closed bid form, with a view to ensure maximization of value to all stakeholders of the Corporate Debtor.</p> <p>All the COC Members present at the Meeting decided to approach the Hon'ble NCLT, Mumbai bench for extension of CIRP Period for maximum time permissible under the Code.</p>
15 th	26.09.2019	<p>Revised bids received from L&T Realty Limited, Runwal Developers Private Limited and Prestige Estates Projects Limited was opened in front of COC Members.</p> <p>The COC Members preliminary discussed the revised bids and thereafter, decided that COC Meeting is called on 03rd October 2019 and 04th October 2019 for further discussion and negotiations with the PRAs, who have submitted revised bids.</p>
16 th	03.10.2019	<p>Representatives of the Prestige Estates Projects Limited ("Prestige") were present in the Meeting to give presentation. CoC Members sought clarification on the Resolution Plan submitted by Prestige.</p> <p>COC Members took note of concerns of the homebuyers.</p>
17 th	04.10.2019	<p>Representatives of the M/s L&T Realty Limited ("L&T") and M/s Runwal Developers Private Limited ("Runwal") were present in the Meeting to give</p>

		<p>presentation. CoC Members sought clarification and on the Resolution Plan submitted by L&T and Runwal.</p> <p>The COC further negotiated and gave counter offers to the resolution applicants. Opportunity was given to all the Resolution Applications to submit revised bids based on the above criteria laid by the CoC by 15th October 2019.</p>
18 th	16.10.2019	<p>CoC deferred the decision on agenda of increase in performance security.</p> <p>Revised bids were received from M/s Runwal Developers Private Limited (“Runwal”) and M/s L&T realty Limited based (“L&T”). However, since M/s Prestige Estates Projects Limited sought time to submit revised bids, revised bids submit by Runwal and L&T were not opened in the Meeting. Accordingly, further time was granted to all three Resolution Applicants to submit their revised bids by 24th October 2019. Accordingly, the aforesaid Proposed Resolution Applicants submitted their respective revised plans.</p>
19 th	25.10.2019	<p>With regard to revised Bids, COC Members decided that:</p> <ol style="list-style-type: none"> 1) Since the voting on Resolution Plan is stayed by the Hon’ble NCLT, Mumbai Bench, decision on selection of Resolution Plan is postponed till the final hearing of pending matters before the Hon’ble NCLT, Mumbai Bench, wherein voting on Resolution Plan is restricted; and 2) In view of the stay on voting on Resolution Plan as stated above, the RP was authorized to do negotiations with the aforesaid Resolution Applicants to improve their Resolution Plan and present it before the COC.
20 th	12.11.2019 and 13.11.2019	<ol style="list-style-type: none"> a) Revision in offer made by the M/s Prestige Estates Projects Limited (“Prestige”) and M/s L&T realty Limited based (“L&T”) on 13th October 2019 was communicated to the CoC. b) The evaluation matrix and distribution matrix in respect of Resolution Plans of Prestige, L&T and Runwal was presented before the CoC. c) COC evaluated each Resolution Plan as per the evaluation matrix and after such evaluation, COC Members voted on the Resolution Plan of

		<p>Prestige Estates Projects Ltd. and handed over the ballot papers to team of the RP.</p> <p>d) Negotiations among HDFC Limited, Vistra ITCL (INDIA) Limited, Aasan Corporate Solutions Private Limited and IIFL Trustee Limited went on for some time in relation to their share of consideration and accordingly the distribution matrix was arrived at.</p> <p>e) The RP in the presence of CoC members scrutinized the Ballot papers and based on the Ballot papers received, the RP declared to the members of CoC that the Resolution Plan submitted by Prestige has been passed by 85.48%</p> <p>Post voting RP has sought for Performance Guarantee from Successful Resolution Applicant to the tune of Rs.25 crores.</p>
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5. It is clear from the above that there were various Resolution Applicants out of whom the Resolution Plan submitted by one M/s Prestige Estates Projects Ltd. was approved by the CoC in its 20th meeting held on 12.11.2019 and 13.11.2019 and also Performance Guarantee to the tune of Rs.25 Crores was sought by the Resolution Professional from the Successful Resolution Applicant. This application was subsequently filed by the applicant for the approval of the Resolution Plan submitted by the Successful Resolution Applicant.
6. After filing of this Application, the applicant had filed his first additional affidavit dated 17.12.2019 to bring the following documents/information on record:
- i. Compliance Certificate in Form H;
 - ii. Evidence of receipt of the performance security given by the Prestige Estates Projects Ltd. i.e. the Successful Resolution Applicant. ("Prestige");
 - iii. Email correspondences dated 19.11.2019 and 12.12.2019 between Prestige and the Resolution Professional in relation

to clarification on Schedule 1 annexed to the Resolution Plan dated 24.10.2019; and

iv. Minutes of the 20th CoC meeting including all the annexures.

7. In the 20th CoC meeting the CoC had decided the following distribution matrix with respect to the payments to be made to the Operational Creditors/Employees Claim, CIRP Cost and other contingencies:

Particulars	Amount (Rs. In Crores)	Percentage (%) of the admitted claim amount
Operational Creditors	Rs. 11.50	20%
Employees Claim	Rs. 0.79	100%
CIRP Costs (Including Success Fees of Rs. 3 Crores)	Rs. 9.00	Not Applicable
Subvention and other contingencies	Rs. 20.71	Not Applicable
TOTAL	Rs. 42.00	

8. The Ld. Sr. Counsel for the applicant mentioned that one of the financial creditors viz. I. K. Agencies Private Limited (Formerly known as DIPCO Private Limited) ("I.K. Agencies") had filed Company Appeal (AT) (Insolvency) No. 37 of 2020 challenging the order dated 13.11.2019 passed by this Adjudicating Authority in M.A. 1124 of 2020 in relation to inclusion of certain financial creditors. The said appeal was dismissed by the Hon'ble National Company Law Appellate Tribunal (NCLAT) vide its order dated 24.01.2020. Aggrieved by the NCLAT's order, I.K. Agencies preferred a Civil Appeal No. 820 of 2020 before the Hon'ble Supreme Court of India. Although, a status quo order was passed by the Hon'ble Supreme Court on 30.01.2020, the said civil appeal was dismissed by the Apex Court vide its order dated 10.02.2020. Thereafter, even the Review Petition (C) No. 981 of 2020 in Civil Appeal bearing no. 820 of 2020 filed before the Hon'ble Supreme Court by I.K. Agencies was dismissed on 28.05.2020.

9. This matter was listed prior to the Nationwide Lockdown which started from 25.03.2020 and was listed again along with all the other pending applications on 07.10.2020 after an Interlocutory Application bearing No. 1551 of 2020 was filed by the RP for urgent listing of this application. I.A. 1551/2020 was allowed by this Tribunal vide an order dated 22.09.2020. The RP along with this I.A. 1551/2020, also filed his Second Additional Affidavit dated 25.08.2020 to bring on record the following documents/developments in relation to the CIRP of the Corporate Debtor:
- i. Email dated December 10, 2019 sent by the Applicant to the Prestige in compliance of the directions passed by this Hon'ble Adjudicating Authority;
 - ii. Email correspondences between the homebuyers of Siesta, Celestia and Fantasia and Prestige;
 - iii. Letters received from various creditors of the Corporate Debtor suggesting an inter-se arrangement among the creditors whereby the creditors have agreed to receive a revised share of consideration offered to them under the Resolution Plan;
 - iv. Email correspondences in relation to renewal of performance bank guarantee between Prestige and the Applicant including the renewed bank guarantee provided by the Prestige;
10. Further during the hearing of the matter, this Tribunal had directed the R.P. to file a summary of the effect of the inter-se arrangement between creditors on the distribution matrix. Accordingly, the R.P. filed his Third Additional Affidavit dated 25.10.2020 to bring on record the following in compliance:
- i. Summary of the effect of the inter-se arrangement between

creditors on the distribution matrix;

- ii. Email confirmation as received by the R.P. from creditors who are relinquishing a part of their share of consideration in favour of other creditors as a part of inter-se arrangement;
- iii. Summary of distribution of consideration which encompasses the effect of inter-se arrangement between the creditors, the effect of proposal sent by Prestige to Siesta homebuyers and the CIRP costs incurred till date and provided on the basis of estimations.

11. The Sr. Counsel appearing for the applicant further mentioned that the Fair Value and Liquidation Value of the Corporate Debtor has been computed for which two valuers namely Sundeep Bikhchandani and Ghanshyamsinh D. Vader were appointed. These two valuers had submitted their respective valuation reports the average of which is reflected from the table below:

Sr. No.	Name of the valuer	Liquidation Value (in Rs.)	Fair Value (in Rs.)
1	Sundeep Bikhchandani	7,48,59,67,200	10,75,57,94,711
2	Ghanshyamsinh D Vader	7,61,08,60,000	11,03,01,00,000
	Average	7,54,84,13,600	10,89,29,47,356

12. Following are the salient features of the Resolution Plan submitted by the Successful Resolution Applicant:
- a. The Resolution Plan provides for a total consideration of approximately Rs.1,650 crores (Rupees One Thousand Six Hundred And Fifty Crores) in the form of:
 - i. Rs.370 Crores (Rupees Three Hundred And Seventy Crores) as upfront cash payment;
 - ii. 8,00,000 sq.ft. (Eight Lakhs Square Feet) as

- commercial area share; and
- iii. Homebuyers will be provided with constructed houses subject to payment of balance receivables.
- b. When the resolution plan was originally approved in the 20th CoC Meeting dated 13.11.2019, 85.48% of the CoC members were in favour of the Resolution Plan. Now, by virtue of the inter-se arrangement among the creditors, **90.68%** of the total CoC members are in favour of the Resolution Plan.
- c. It is estimated that homebuyers would be given possession of their homes within three and half years from the date of order approving the Resolution Plan by this Adjudicating Authority whereas possession of commercial area share to the creditors is estimated to be given within four years from the date of order approving the Resolution Plan by this Adjudicating Authority.
- d. A broad summary of sources of funds of the Resolution Applicant, route and utilization of those funds and shareholding pattern of the Corporate Debtor (clause 3 internal pg.no. 7 of the Resolution Plan) is as follows:

Sources of Funds	The Resolution Applicant shall make payments of the upfront payments from its internal accruals and/or financing arranged by its from any financial institution. The deferred payments will be paid from cash flows of the Corporate Debtor.
Route and Utilization of Funds	The upfront cash shall be infused by the Resolution Applicant into the Corporate Debtor, by way of equity and debt as may be decided by the Resolution Applicant at its sole discretion.
Revised Shareholding in the Corporate Debtor upon implementation	The Resolution Applicant/its affiliates will acquire/subscribe to 100% (one hundred percent) of the total issued and paid – up equity share capital of the Corporate Debtor, as per the terms and conditions of this

of this Resolution Plan	Resolution Plan. The entire existing shareholding of the Corporate Debtor shall stand extinguished.
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- e. The Resolution Plan provides for management and control of affairs of the Corporate Debtor as follows:

From the date of approval by the CoC till the date of approval by this Adjudicating Authority	The Resolution Professional shall continue to manage the business and operation of the Corporate Debtor as per the requirement of Section 23(1) (proviso) of the IBC.
From the date of approval by this Adjudicating Authority till the Upfront Cash infusion date	The Resolution Professional shall begin the process of delivering and handing over to the Resolution Applicant, the physical custody of all the dossiers, master files and all records and documents in any and all forms - physical or electronic with respect to the business of the Corporate Debtor after the NCLT Approval Date, the Resolution Professional shall cause the actual delivery to the Resolution Applicant and on completion of complete taking over the Corporate Debtor, the Resolution Applicant shall make the payment as mentioned aforesaid.
From Upfront Cash infusion date	The Corporate Debtor shall be managed by the Reconstituted Board. Resolution Applicant shall reconstitute the Board of Directors of the Corporate Debtor (" Reconstituted Board "). From the Upfront Cash Infusion Date, the day - to - day operation and management of the Corporate Debtor shall be responsibility of the Resolution Applicant.

- f. The Resolution Plan provides for the term and implementation of the plan (*clause 4 internal pg.no. 10 of the Resolution Plan*) as follows:

- i. In terms of Section 31(1) of the IBC, this Resolution Plan shall become binding on the Corporate Debtor

and its employees, members, creditors, guarantors and other stakeholders including the Tax authorities, stamp duty authorities, any other Governmental Authority involved in this Resolution Plan on the date on which this Resolution Plan is approved by the NCLT.

ii. The Resolution Plan shall not be subject to any expiry and shall remain valid and binding on the Corporate Debtor, the Resolution Applicant and all other stakeholders of the Corporate Debtor on and from the NCLT Approval Date.

g. Further, in its 20th meeting, the CoC has agreed and deliberated on the constitution of the monitoring agency comprising of the following members: 2 representatives from homebuyers, 1 from HDFC, 1 from Vistra and Aasan, 1 from IIFL trustee Ltd. and 1 from Unsecured Creditors.

13. Following is the summary of distribution of consideration to stakeholders of the Corporate Debtor as per the Resolution Plan as well as letters received from the CoC pursuant to their inter-se arrangement:

Summary of Distribution as per letters received by the RP from CoC members dated 13.03.2020, 18.03.2020, 02.07.2020, 13.07.2020 and 12.08.2020:

Sr. No.	Name of the Claimant	Consideration as per letters received from creditors			
		Upfront	4th YEAR		Grand Total In (Rs.)
		In (Rs.)	Area (in Sq. ft.)	Area consideration in terms of Monetary value** (In Rs.)	
1	Vistra ITCL (India) Limited	19,00,00,000	1,75,000	2,80,00,00,000	2,99,00,00,000
2	Vistra ITCL (India) Limited				
3	Vistra ITCL (India) Limited				

4	Aasan Corporate Solutions Private Limited	91,00,00,000	25,000	40,00,00,000	1,31,00,00,000
5	Aasan Corporate Solutions Private Limited				
6	Aasan Corporate Solutions Private Limited				
7	Aasan Corporate Solutions Private Limited				
8	IIFL Trustee Limited	-	1,25,000	2,00,00,00,000	2,00,00,00,000
9	Ramesh Jogani	58,30,103	738	1,18,08,000	1,76,38,103
10	Atul Nathalal Patel	25,00,000	-	-	25,00,000
11	HDFC Ltd.	1,69,95,18,975	1,76,375	2,82,19,99,953	4,52,15,18,928
12	Blacksoil Capital Pvt Ltd	1,50,00,000	25,000	40,00,00,000	41,50,00,000
13	Blacksoil Realty Investment Advisors LLP				
14	Abdulanwar Hajiabdul Gani	1,85,00,000	-	-	1,85,00,000
15	Abhirup Commercial Private Limited	-	2,675	4,28,00,000	4,28,00,000
16	Maple Vinimay Private Limited				
17	Organ Tei-up Private Limited				
18	Shringar Vanijya Private Limited				
19	Amrutben Gangar	3,00,000	-	-	3,00,000
20	Arti Parikh	-	6,000	9,60,00,000	9,60,00,000
21	Jaimini Rajendra Parikh				
22	Rajendra G. Parekh				
23	Neel Rajendra Parikh				
24	Sanjiv G. Parikh				
25	Ashok Commercial Enterprises	50,00,00,000	1,25,000	2,00,00,00,000	2,50,00,00,000

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26	Bhavesh Gangar	6,20,36,349		-	6,20,36,349
27	Charul Nitesh Jain	10,00,000	-	-	10,00,000
28	Damyanti N. Shah	5,00,000	-	-	5,00,000
29	Dartex Sythetics	10,00,000	-	-	10,00,000
30	Dipco Private Limited	1,51,23,373	15,000	24,00,00,000	25,51,23,373
31	Gautam Daryanani				
32	Indo Saigon Agency				
33	Rajni Daryanani				
34	Ram Daryanani	-	46,750	74,80,00,000	74,80,00,000
35	Ratan Gobind Daryanani				
36	Santosh Ratan Daryanani				
37	Poonam K. Lalchand				
38	J M Financial Capital Limited	-	4,740	7,58,40,000	7,58,40,000
39	Kanubhai H. Shah	35,00,000	-	-	35,00,000
40	Kekin Kunverji Chheda				
41	Mahendra Ravji Chheda				
42	Ramesh Ravji Chheda	-	20,000	32,00,00,000	32,00,00,000
43	Rasik Kunverji Chheda				
44	Lalitikumar Shrinivas kabra	5,00,000	-	-	5,00,000
45	Laxmichand Gangar	7,00,000	-	-	7,00,000
46	Madhubala J Vyas	13,00,000	-	-	13,00,000
47	Mahendrakumar Kundanmal (HUF)	5,00,000	-	-	5,00,000
48	Manisha H. Jain	10,00,000	-	-	10,00,000
49	Margaret Almeida	1,32,00,000		-	1,32,00,000
50	Milan Champaklalji Jain	3,00,000	-	-	3,00,000
51	National Jewellers	25,00,000	-	-	25,00,000

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52	Nirmal Associates	-	7,200	11,52,00,000	11,52,00,000
53	Nitesh Dayalal Jain (HUF)	10,00,000	-	-	10,00,000
54	Parasmal Juharmal Jain (HUF)	5,00,000	-	-	5,00,000
55	Piyush Suresh Jain	10,00,000	-	-	10,00,000
56	Sarla L. Kabra	10,00,000	-	-	10,00,000
57	Saroj Joshi	20,00,000	-	-	20,00,000
58	Shree Arihant Traders	-	9,250	14,80,00,000	14,80,00,000
59	Shreepal Champaklalji Jain	17,00,000	-	-	17,00,000
60	Thakur Fininvest Private Limited	-	22,000	35,20,00,000	35,20,00,000
61	Vijay Laxmi	7,75,500	-	-	7,75,500
62	Vinit Kabra	10,00,000	-	-	10,00,000
63	Vikas Oberoi	9,42,330	321	51,28,186	60,70,515
64	Surrender Singh Mokha	33,79,776	1,150	1,83,92,836	2,17,72,612
65	Tech Engg Projects Services & Equipments Pvt. Ltd.	8,85,050	301	48,16,468	57,01,518
		3,45,89,91,455	7,87,499	12,59,99,85,442	16,05,89,76,897
	Homebuyers				
	Subvention homebuyers				
	Indiabulls Housing Finance Limited	6,00,00,000			6,00,00,000
	HDFC	1,40,00,000			1,40,00,000
	ICICI	1,20,00,000			1,20,00,000
	Homebuyers reimbursement	1,97,00,000			1,97,00,000
	CIRP Cost	9,32,64,169			9,32,64,169
	Provision for Electricity Expenses	79,91,295			79,91,295

	Employees claim	78,76,641			78,76,641
	Operational Creditors - L&T		12,500	20,00,00,000	20,00,00,000
	Operational Creditors - Others	2,61,76,440			2,61,76,440
	Total Consideration *	3,70,00,00,000	7,99,999	12,79,99,85,442	16,49,99,85,442

General Notes:

*Total Contribution to CoC includes Rs.370 upfront cash consideration and 800000 sq. ft. commercial area share.

** The price per sq. ft. is take at Rs.16,000 as per CoC's decision for the purpose of the aforesaid distribution.

14. The said Resolution Plan which was approved by the CoC has been revised/amended from time to time
- a. 11.11.2019-Prestige (i.e. Successful Resolution Applicant) offered an increment/addition of Rs.40 Crores (Rupee Forty Crores) to the original the upfront payment of Rs.310 Crores to the CoC. Accordingly, the upfront payment to the creditors of the Corporate Debtor stood at Rs.350 Crores (Rupees Three Hundred and Fifty Crores).
 - b. 13.11.2019-Prestige reduced the timeline of giving possession of the home buyers area to 3.5 years from the date of NCLT order (estimated timeline);
 - c. 13.11.2019-Prestige reduced the timeline of giving possession of CoC commercial area to 4 years from the date of NCLT order (estimated timeline);
 - d. 13.11.2019-Prestige offered further increment/addition of Rs.20 Crores (Rupees Twenty Crores) in the upfront payment to the CoC totalling to upfront payment of Rs.370 Crores (Rupees Three Hundred and Seventy Crores). (“*Oral Confirmation*”). This oral Confirmation was communicated by Prestige in a written from by way of its letter dated 14.11.2019.

e. Lastly, Prestige by way of its affidavit dated 26.10.2020 brought on record clarity on commercial terms and conditions offered to homebuyers. In the same affidavit, Prestige has stated that such terms and conditions shall be treated as a part and parcel of its Resolution Plan.

15. The RP has submitted the copies of the emails wherein a confirmation has been received by him from the creditors who are relinquishing a part of their share of consideration in favour of other creditors as a part of *inter se* arrangement. The summary of the same is as follows:

Sr. No.	Name of the Creditor	Consideration approved by CoC under the Resolution Plan (13.11.2019)	Consideration as per letter received by RP from respective CoC members on 02.07.2020	Amount Relinquished
1.	Vistra ITCL (India) Limited	5,07,73,35,396	2,99,00,00,000	2,08,73,35,396
2.	IIFL Trustee Limited	2,49,08,36,571	2,00,00,00,000	49,08,36,571
3.	Ramesh Jogani	3,75,57,693	1,76,38,103	1,99,19,590
4.	Atul Nathalal Patel	30,00,794	25,00,000	5,00,794
		7,60,87,30,854	5,01,01,38,109	2,59,85,92,751

This table is prepared on the basis of relinquishment letters and/or email confirmation received by the RP from the respective relinquishing creditor.

In the original Resolution Plan approved by the CoC members on November 13, 2019, a provision of Rs.20.71 Cr. was made towards Subvention Interest of Siesta Homebuyers and other contingencies. Subsequently Prestige (i.e. Resolution Applicant) in response to the concerns

raised by the subvention homebuyers, agreed to give the discount of Rs. 1500 per Sq. Ft. and proposed to pay the interest upto November 13, 2019 i.e. Resolution Plan approval day by the CoC and the future liability of the subvention interest to be paid by subvention Homebuyers. Accordingly, there is a reduction of provision to the extent of Rs.10.14 Cr. and the same is utilized by the creditors for inter-se arrangement.

16. The RP has provided with the list of the Recipient creditors which is as follows:

Sr. No.	Name of the Claimant	Consideration approved by CoC under the Resolution Plan (13.11.2019)	Consideration agreed to be received by the respective CoC members (as per letters received by RP on 13.03.2020, 02.07.2020 and 13.07.2020)	Additional amount received by the respective CoC members due to the reliquishment of amounts by reliquishing creditors as per the previous
1.	Blacksoil Capital Pvt Ltd	45,36,747	41,50,00,000	1,78,16,974
2.	Blacksoil Realty Investment Advisors LLP	39,26,46,279		
3.	Abdulanwar Hajiabdul Gani	1,06,57,542	1,85,00,000	78,42,458
4.	Abhirup Commercial Private Limited	60,99,495	4,28,00,000	1,84,02,019
5.	Maple Vinimay Private Limited	73,19,394		
6.	Organ Tei-up Private Limited	40,66,330		
7.	Shringar Vanijya Private Limited	69,12,761		
8.	Amrutben Gangar	1,71,046	3,00,000	1,28,954
9.	Arti Parikh	28,50,759	9,60,00,000	6,63,52,109
10.	Jaimini Rajendra Parikh	57,01,518		
11.	Rajendra G. Parekh	48,46,290		
12.	Neel Rajendra Parikh	71,26,897		
13.	Sanjiv G. Parikh	91,22,428	9,60,00,000	6,63,52,109
14.	Ashok Commercial Enterprises	1,44,81,07,880	2,50,00,00,000	1,05,18,92,120

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15.	Bhavesh Gangar	3,54,00,774	6,20,36,349	2,66,35,575
16.	Charul Nitesh Jain	5,70,152	10,00,000	4,29,848
17.	Damyanti N. Shah	2,85,076	5,00,000	2,14,924
18.	Dartex Sythetics	5,70,152	10,00,000	4,29,848
19.	Dipco Private Limited	9,74,25,201	25,51,23,373	15,76,98,171
20.	Gautam Daryanani	1,28,79,572	74,80,00,000	37,17,51,778
21.	Indo Saigon Agency	7,78,01,503		
22.	Rajni Daryanani	18,17,57,352		
23.	Ram Daryanani	6,49,13,340		
24.	Ratan Gobind Daryanani	2,59,13,788		
25.	Santosh Ratan Daryanani	64,91,334		
26.	Poonam K. Lalchand	64,91,334		
27.	J M Financial Capital Limited	4,40,07,593	7,58,40,000	3,18,32,407
28.	Kanubhai H. Shah	19,95,531	35,00,000	15,04,469
29.	Kekin Kunverji Chheda	4,61,37,579	32,00,00,000	13,54,49,686
30.	Mahendra Ravji Chheda	4,61,37,579		
31.	Ramesh Ravji Chheda	4,61,37,579		
32.	Rasik Kunverji Chheda	4,61,37,579		
33.	Lalitkumar Shrinivas kabra			2,14,924
34.	Laxmichand Gangar			3,00,894
35.	Madhubala J Vyas			5,58,803
36.	Mahendrakumar Kundanmal (HUF)			2,14,924
37.	Manisha H. Jain			4,29,848
38.	Margaret Almeida			21,96,071
39.	Milan Champaklalji Jain			1,28,954
40.	National Jewellers			10,74,621
41.	Nirmal Associates			4,95,30,951
42.	Nitesh Dayalal Jain (HUF)			4,29,848

43.	Parasmal Juharmal Jain (HUF)			2,14,924
44.	Piyush Suresh Jain			4,29,848
45.	Sarla L. Kabra			4,29,848
46.	Saroj Joshi			8,59,696
47.	Shree Arihant Traders			6,35,51,496
48.	Shreepal Champaklalji Jain			7,30,742
49.	Thakur Fininvest Private Limited			15,01,19,944
50.	Vijay Laxmi			3,47,886
51.	Vinit Kabra			4,29,848
52.	Aasan Corporate Solutions Private Limited			41,89,46,405
53.	L&T Construction (Operational Creditor)			11,11,76,440
		4,00,30,76,964	6,69,37,75,222	2,69,06,98,257

- This table is prepared on the basis of letters received from the respective CoC members agreeing to receive the said amounts.
- When the Resolution Plan was originally approved on November 13, 2019, 85.48% of the total CoC members were in favour of the said plan. By virtue of both the tables, now 90.68% of the total CoC members are in favour of the Resolution Plan.

17. Along with the third additional affidavit, the RP has annexed the list of creditors as well as their email correspondence wherein the creditors have expressed their willingness to relinquish their entitlement. The same is reproduced hereinbelow:

Sr. No.	Name of the Creditor	Consideration approved by CoC under the Resolution Plan (13.11.2019)	Consideration as per letter received by RP from respective CoC members on 02.07.2020	Amount relinquished
1.	Vistra ITCL (India) Limited	5,07,73,35,796	2,99,00,00,000	2,08,73,35,796
2.	IIFL Trustee Limited	2,49,08,36,571	2,00,00,00,000	49,08,36,571

3.	Ramesh Jogani	3,75,57,693	1,76,38,103	1,99,19,590
4.	Atul Nathalal Patel	30,00,794	25,00,000	5,00,794
		7,60,87,30,854	5,01,01,38,103	2,59,85,92,751

- This table is prepared on the basis of relinquishment letters and/or email confirmation received by the RP from the respective relinquishing creditor.
- In the original Resolution Plan approved by the CoC members on November 13, 2019, a provision of Rs.20.71 Cr. was made towards Subvention Interest of Siesta Homebuyers and other contingencies. Subsequently Prestige (i.e. Resolution Applicant) in response to the concerns raised by the subvention homebuyers, agreed to give the discount of Rs.1500 per Sq.Ft. and proposed to pay the interest upto November 13, 2019 i.e. Resolution Plan approval date by the CoC and the future liability of the subvention interest to be paid by subvention Homebuyers. Accordingly, there is a reduction of provision to the extent of Rs.10.14 Cr. and the same is utilized by the creditors for inter-se arrangement.

FINDINGS

18. We have gone through the resolution plan, the summary of which is as shown above. We have also heard all the parties concerned in detail and taken all their submissions into account and accordingly following are the observations.
19. The RP has enclosed a compliance certificate in Form H as prescribed under Regulation 39(4) of CIRP Regulations, from pages 05-68 of the Additional Affidavit of the applicant wherein he has stated that, the resolution plan of the resolution applicant provides for and is in compliance with the provisions of the Code and Regulations.
20. The Hon'ble Supreme Court in the case of "K. Sashidhar vs. Indian Overseas Bank" (2019 SCC OnLine SC 257) at para 49 of the Judgement held as below:
- i. "49. The argument, though attractive at the first blush, but if accepted, would require us to re-write the provisions of the I&B Code. It would also result in doing violence to the legislative intent*

of having consciously not stipulated that as a ground - to challenge the commercial wisdom of the minority (dissenting) financial creditors. Concededly, the process of resolution plan is necessitated in respect of corporate debtors in whom their financial creditors have lost hope of recovery and who have turned into non-performer or a chronic defaulter. The fact that the concerned corporate debtor was still able to carry on its business activities does not obligate the financial creditors to postpone the recovery of the debt due or to prolong their losses indefinitely. Be that as it may, the scope of enquiry and the grounds on which the decision of "approval" of the resolution plan by the CoC can be interfered with by the adjudicating authority (NCLT), has been set out in Section 31(1) read with Section 30(2) and by the appellate tribunal (NCLAT) under Section 32 read with Section 61(3) of the I&B Code. No corresponding provision has been envisaged by the legislature to empower the resolution professional, the adjudicating authority (NCLT) or for that matter the appellate authority (NCLAT), to reverse the "commercial decision" of the CoC much less of the dissenting financial creditors for not supporting the proposed resolution plan. Whereas, from the legislative history there is contra indication that the commercial or business decisions of the financial creditors are not open to any judicial review by the adjudicating authority or the appellate authority."

21. We are of the opinion that by virtue of mandatory contents of resolution plan, the same is in accordance with Section 30 and 31 of the Code, and also complies with the requirement of the Regulations 38 and 39 of CIRP Regulations.
22. Therefore, when the provision of law and the law laid down by the Hon'ble Supreme Court is applied to the case on hand, it becomes clear that this resolution plan approved by the COC

with the required majority, satisfies all the criteria required for approval of Resolution Plan and accordingly the resolution plan is approved.

23. Even though the plan is approved, we would like to disagree with the decision of the CoC wherein it has approved the success fees to the RP. It has been made clear by the Hon'ble NCLAT in the matter of **Mr. Devarajan Raman, Resolution Professional Poonam Drum & Containers Pvt. Ltd v. Bank of India Ltd. [Company Appeal (AT) (Insolvency) No. 646 of 2020]** that the fees of the RP is not the commercial wisdom of the CoC. The following para from the said judgment is hereby reproduced:

"...Fixation of fee is not a business decision depending upon the commercial wisdom of the Committee of Creditors. We accordingly find this appeal lacking merit. The appeal is accordingly dismissed. No costs."

Therefore, we believe that by disallowing the success fees to the RP, we are not intruding in the commercial wisdom of the CoC. Further, we believe the success fees amounting of Rs.3 Crores is unreasonable. Also, it was only in the last meeting of the CoC that the fees was claimed. We have been supervising this matter and are aware of all the scenarios since its admission and therefore, are aware that even the RP was uncertain about the success of the Resolution Plan. It was this Bench who had warned the RP time and again and thus, we believe that the success fees is merely an afterthought. We believe that if the RP was so certain, he should have claimed/asked for the success fees in the beginning itself and now when the plan is approved. It was only in the distribution matrix that he/CoC had approved the success fees to the RP. With this observation, we direct the RP and the CoC to proportionately distribute the said amount of Rs.3 Cr. among the employees/underpaid operational

creditors/unsecured creditors of the corporate debtor and if left, it is to be proportionately distributed among the underpaid operational creditors.

24. The resolution applicant in its resolution plan, has dealt with interests of all stakeholders of the corporate debtor, including the Financial Creditors, the Operational Creditors and the CIRP cost.
25. Any relief sought for in the resolution plan, where the contract/agreement/understanding/proceedings/actions/notice etc. is not specifically identified or is for future and contingent liability, is at this moment rejected.
26. The resolution applicant, on taking control of the corporate debtor, shall ensure compliance under all applicable law for the time being in force. The resolution applicant shall obtain the necessary approval required under any law for the time being in force within one year from the date of this order or within such period as provided for in such law, whichever is later.
27. We shall clarify here that any resolution applicant shall take over the corporate debtor with all its assets and liabilities as per terms of the approved resolution plan. If any relief concerning any identified liability of the corporate debtor is required, then that needs to be specifically mentioned and sought for in the resolution plan. This bench cannot allow any general power to any resolution applicant absolving him of liability of the corporate debtor company without knowing about the liability against which such exemption is sought. In other words, reliefs/exemptions from only existing liabilities which are specifically identified can be sought and allowed in the resolution plan.

28. On perusal of the resolution plan, we find that the resolution plan has necessary provisions for its effective implementation and it has been approved by the CoC with a majority of 85.52%.
29. The resolution applicant shall obtain the necessary approval required under any law for the time being in force within one year from the date of this order or within such period as provided for in such law, whichever is later.
30. Given the above observations, we approve the resolution plan with modifications, as mentioned above, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, Resolution Applicant and other stakeholders involved in the resolution plan.
31. The resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the IBBI to be recorded on its database. The RP is hereby discharged of his duties after handing over the documents to the Resolution Applicant and he taking charge.
32. It is seen that the Resolution Plan seeks several Dispensations, concessions and waivers. Approval of Resolution Plan does not mean automatic Waivers. The Resolution Applicant on approval of the Plan may approach those competent authorities/courts/legal forms/office(s) Government or Semi-Government/State or Central Government for appropriate relief(s) sought in the plan.
33. The Resolution Plan is at this moment approved, under section 31(1) of IBC with observations above. The MA 3714/2019 is accordingly allowed and disposed of. There are other pending

applications in this Company Petition, the summary of which is as follows:

M.A. No.	Brief description
3785 of 2019	Filed by ASH Mulund Welfare Association (Homebuyers Association) against the R.P. challenging the approval of the Resolution Plan submitted by Prestige and the conduct of CIRP.
4022 of 2019	Filed by Ashok Commercial (Unsecure Financial Creditor) against the RP challenging the partial rejection of the claim by RP.
4061 of 2019	Filed by Ariisto Alert Residents Association (Homebuyers Association) against the Resolution Applicant and RP challenging the approval of the Resolution Plan submitted by Prestige and the conduct of CIRP.

In view of approving the Resolution Plan and in view of the oral statement made by the Resolution Professional before this Bench that all the grievances of all the applicants abovementioned have been settled, these above Applications become infructuous and hence are disposed of. Also, other two pending M.A.s bearing Nos. 391/2020 and 1893/2019 (Under Section 66 of the Code) are dismissed vide separate orders. And in view of approving the Resolution Plan and disposing of all the pending applications, the Company Petition itself stands disposed of.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

Sd/-

H.V. SUBBA RAO
Member (Judicial)