

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-II

(IB) 456 (ND)/2018

IA/1550/2019, IA/5533/2020 & IA/2664/2020
CA/1686/2019, CA/1687/2019 & CA/52/2020

IN THE MATTER OF:

PALLAVI JOSHI BAKHRU ...PETITIONER/FINANCIAL CREDITOR
VERSUS

UNIVERSAL BUILDWELL PRIVATE LIMITED

...RESPONDENT/CORPORATE DEBTOR

AND IN THE MATTER OF:

- | | |
|--|-----------------------|
| 1. KOTAK MAHINDRA BANK & Others | ...APPLICANT/OBJECTOR |
| 2. DEWAN HOUSING FINANCE CORPORATION LIMITED | ...APPLICANT/OBJECTOR |
| 3. AMAR GUPTA | ...APPLICANT/OBJECTOR |
| 4. CHANDAR MOHAN KAPOOR | ...APPLICANT/OBJECTOR |
| 5. MOHIT MOHAN KAPOOR | ...APPLICANT/OBJECTOR |
| 6. UNIVERSAL TRADE TOWER WELFARE ASSOCIATION | ...APPLICANT/OBJECTOR |
| 7. SHWETA KAPOOR | ...APPLICANT/OBJECTOR |
| 8. ANITA DHIR | ...APPLICANT/OBJECTOR |

SECTION: 30(6) read with Section 31 and U/S 60(5) OF IBC, 2016

Order Delivered on: 11.06.2021

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. L. N. GUPTA, MEMBER (TECHNICAL)

PRESENT: -

Mr. Sumant Batra, Ms. Niharika Sharma & Mr. Rahul Mendiratta, Advs
for DHFL & KMBL, Adv. Siddharth Sangar Adv. Ritesh Khare for SBI for

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Respondent 9 Advocate Sandeep Thukral, Adv Rajeev Kumar Khare for Anita Dhir in IA / 2664 / 2020, Adv. for Applicant in CA No. 52 of 2020 Adv. Namrata Malik in IA 5533, Mr. Swapnil Gupta, Ms. Neelambika Singh-Advocates for RP Adv. Yatish Kr. Goel for Respondent

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

The present application IA/1550/2019 has been filed by the Resolution Professional under Section 30 (6) read with Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") for approval of the Resolution Plan. In relation to the Resolution Plan, objections have also been filed by the Creditors.

2. Since there is a common question of law involved concerning approval of the Resolution Plan and objections thereto raised in the pending applications, we would like to dispose off all the IAs by this common order.

IA/1550/2019

3. The facts mentioned in the application IA/1550/2019 in brief are as follows: -

- i. That, vide order dated 03.07.2018, CIRP was initiated against the Corporate Debtor and Mr. Atul Kumar Bansal was appointed as Interim Resolution Professional.
- ii. That the IRP made a public announcement on 07.07.2018 for calling the creditors to submit their claims.
- iii. That the last date for the submission of the claims was on 18.07.2018. The IRP constituted the CoC on 27.07.2018 and submitted the First Report before this Adjudicating Authority on 31.07.2018.
- iv. That due to non-cooperation by the Ex-Suspended Directors and Key Management Personnel of the Corporate Debtor, IRP

filed an application u/s 19(2) of the Code seeking directions to the Ex-Directors and Chief Financial Officer of the Corporate Debtor to provide all necessary assistance to IRP. The relevant application bearing CA No.400/2018 is filed on 27.07.2018, which is pending before this Adjudicating Authority.

- v. That Vide order dated 02.08.2018, Ms. Nisha Malpani was confirmed as the authorised representative for the class of creditors, appointed Under Section 16 of the Code.
- vi. That the COC in its 1st meeting and 2nd meeting held on 10.08.2018 and 01.10.2018 respectively failed to confirm the appointment of IRP as Resolution Professional.
- vii. That the 3rd meeting of CoC was held on 12.11.2018 wherein the CoC decided to appoint Interim Resolution Professional as Resolution Professional and also approved the fee.
- viii. That the 4th meeting of CoC was held on 10.12.2018, wherein the CoC approved the publication of expression of interest.
- ix. That Vide order dated 14.01.2019, Adjudicating Authority excluded 108 days from CIR period, and accordingly, the period of 180 days is extended until 17.04.2019.
- x. That the 5th meeting of CoC was held on 30.01.2019, wherein the following matters were approved:
 - Evaluation Matrix (EM) to evaluate Resolution Plans as and when received.
 - Quantum of Performance Security (15% of the amount) to be furnished by prospective resolution applicant along with Resolution Plan.
- xi. That, as per requirement under Regulation 36A (11), Final List of Prospective Resolution applicant was published on the website of Corporate Debtor in addition to mentioning of the same in Minutes of the 5th Meeting of Creditors.

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- xii. That the last date for submission of resolution Plan was 1st March, 2019 as per the Form G published. Resolution Professional received an email communication from one of the Prospective Resolution Applicant to extend the last date for submission of Plan by 1 Month and the COC in its 6th meeting held on 28.02.2019, extended the timeline for submission of Resolution Plan by 15 days i.e. till 16th March 2019.
- xiii. That the 7th meeting of CoC was held on 18.03.2019, wherein the following resolution was approved:
- “RESOLVED THAT keeping in view the object of code to facilitate resolution rather than liquidation, consent of the committee of creditors of Universal Buildwell Private Limited be and is hereby accorded for extension of last date to submit resolution plan till 10th April 2019.”*
- xiv. That Vide order dt. 12.04.2019, the Adjudicating Authority granted extension of 90 days, beyond the period of 180 days of CIRP which was going to expire on 17.04.2019, i.e CIRP was extended up to 16/ 07/ 2019.
- xv. That the 8th meeting of CoC was held on 26.04.2019, wherein the matter of inviting projectwise resolution plan was discussed in the meeting and the members decided not to go for project-wise invitation of resolution plans and invite expression of interest for corporate debtor as a whole only.
- xvi. That the 9th meeting of CoC was held on 02.05.2019, wherein the following matters were approved:
- Approval of eligibility criteria for invitation of expression of interest and draft Form G.
 - Approval of Evaluation Matrix
 - Approval of Performance Security as mandated under Regulation 36B (4A.)

- xvii. That on 08.05.2019, the Resolution Professional published revised 'Form G' in the newspapers viz., Business Standard & Financial Express (English Editions) and Business Standards & Jansatta (Hindi Editions) with the last date of submission of invitation of expression of interest and submission of resolution plan being 23.05.2019 and 25.06.2019 respectively.
- xviii. That by 23rd May 2019 i.e. the last date of receiving of expression of interest, 6 persons/entities and 3 allottees' welfare associations submitted their expression of interest to submit resolution plan. After preliminary due diligence and verification of information available in the public domain, Resolution Professional issued provisional list of prospective resolution applicants on 26th May 2019.
- xix. That the 10th meeting of CoC was held on 26.05.2019, wherein the Resolution Professional apprised CoC about receipt of expression of interest from 6 persons/entities and 3 allottees' welfare associations.
- xx. That the Resolution Professional did not receive any objection with respect of provisional list of prospective resolution applicants within stipulated 5 days and on 31st May 2019, Resolution Professional issued final list of prospective resolution applicants containing 6 entities/ persons for submission of resolution plan for the corporate debtor and 3 allottees' welfare associations for submission of resolution plan for their specific project.
- xxi. That the 11th meeting of CoC was held on 04.07.2019, wherein the agenda for extension of timeline of resolution plan till 16.07.2019 was not approved.
- xxii. That the 12th meeting of CoC was held on 26.07.2019. In this meeting all the resolution plan received from M/s Ajay Yadav & Co, Universal Aura Welfare Association, Universal Greens Buyer Association and Universal Business Park

Association were discussed. Further, since these Welfare Associations have submitted resolution plans for their specific projects only, CoC also discussed various legal points pertaining to resolution plans being submitted for specific projects and not for corporate debtor as whole.

xxiii. That on hearing dt. 20.08.2019, this Adjudicating Authority took up the application for extension of time and directed the Resolution Professional to finalise all resolution plans by 15.11.2019.

xxiv. That M/s SMJ & Associates sent their expression of interest to submit resolution plan to the Resolution Professional on 10.09.2019. However, the same was rejected by the Resolution Professional.

xxv. That M/s SMJ & Associates filed an application before this Adjudicating Authority for permission to file their expression of interest and submit resolution plan thereafter. Vide order dt. 16.09.2019, M/s SMJ & Associates and some other interested applicants were directed to submit their expression of interest within one week and directed Resolution Professional to place the same before CoC.

xxvi. Hence, now there were 3 resolution applicants namely: -

- A. M/s Ajay Yadav & Co.
- B. M/s SMJ & Associates
- C. Consortium of Universal Aura Welfare Association, Universal Greens Buyers Association and Universal Business Park Owners Association.

xxvii. That the 13th meeting of CoC was held on 05.10.2019. CoC in this meeting considered the resolution plans from all three resolution applicants. All the three resolution applicants were also invited for discussion in the meeting. CoC and Resolution Professional also informed them regarding their observations on resolution plans submitted

by them. Further, keeping in mind paucity to time, all resolution applicants were advised to submit their revised resolution plans by 09.10.2019.

xxviii. That the 14th meeting of CoC was held on 01.11.2019, wherein the Resolution Professional apprised the CoC about the three Resolution Plans and the Resolution Professional had **proposed before CoC that all CoC members may take the decision on ranking of plans based upon their preference by voting in favour of any one of the three resolution plans.**

xxix. That the results of voting are as follows :

S. No.	Name of Financial Creditor	Voting Share (%)	Yes (%)	No (%)	Abstained (%)	Total (%)
1.	Kotak Mahindra Bank Limited	1.59		1.59		1.59
2.	Kotak Mahindra Prime Limited	4.27		4.27		4.27
3.	Axis Bank Limited	0.61			0.61	0.61
4.	HDB Financial Services Limited	0.57			0.57	0.57
5.	Small Industries Development Bank of India	1.08		1.08		1.08
6.	Hero Fincorp Limited	3.54		3.54		3.54
7.	Ms. Nisha Singh	0.17	0.17			0.17
8.	Sunflame Enterprises Private	1.47	1.47			1.47
9.	Dewan Housing Finance Limited	20.66		20.66		20.66
10.	Indusind Bank Limited	0.78	0.78			0.78
11.	Allottees under Real	65.26	50.01	1.57	13.68	65.26

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	Estate Projects					
	Total	100.00	52.43	32.71	14.86	100.00

xxx. That in terms of section 21 (8) of IBC 2016 the above resolution was required to be passed by a vote of not less than 51 % of voting share of the financial creditors. The above resolution was voted with 67.68% (65.26%+0.78%+0.17%+1.47%) of voting in favour of resolution. Hence, the above resolution was passed.

xxxi. Further, results of voting on ranking of plans are as follows:-

S. No.	Name of Financial Creditor	Voting Share of persons who have cast their votes (%)	Voted for RA-1 (%)	Voted for RA-2 (%)	Voted for RA-3 (%)
1.	Ms. Nisha Singh	0.17			0.17
2.	Sunflame Enterprises Private Limited	1.47			1.47
3.	Indusind Bank Limited	0.78	0.78		
4.	Allottees under Real Estate Projects	50.01	1.28	2.72	46.00
Total		52.43	2.06	2.72	47.64

xxxii. Accordingly, following was the ranking of resolution plans based upon above voting: -

H1: RA3 - submitted by Universal Aura Welfare Association, Universal Greens Buyers Association and Universal Business Park Owners Association

H2: RA2 - submitted by M/s SMJ & Associates

H3: RAI - submitted by M/s Ajay Yadav & Co.

xxxiii. That in the 15th meeting of CoC held on **11.11.2019**, the highest ranked resolution plan was put to vote for approval in accordance with Section 30(4) of the Code.

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The Consolidated Result of E-voting are given in the following table: -

S. No.	Name of Financial Creditor	Voting Share (%)	Yes (%)	No (%)	Abstained (%)	Total (%)
1.	Kotak Mahindra Bank Limited	1.59		1.59		1.59
2.	Kotak Mahindra Prime Limited	4.27		4.27		4.27
3.	Axis Bank Limited	0.61			0.61	0.61
4.	HDB Financial Services Limited	0.57			0.57	0.57
5.	Small Industries Development Bank of India	1.08		1.08		1.08
6.	Hero Fincorp Limited	3.54	3.54			3.54
7.	Ms. Nisha Singh	0.17	0.17			0.17
8.	Sunflame Enterprises Private	1.47	1.47			1.47
9.	Dewan Housing Finance Limited	20.66		20.66		20.66
10.	Indusind Bank Limited	0.78		0.78		0.78
11.	Allottees under Real Estate Projects	65.26	50.98	1.61	12.67	65.26
Total		100.	56.16	29.99	13.88	100.

xxxiv. That on the basis of Sub Section 3A of Section 25A of the Code, the Vote cast of all allottees to be considered as 'Yes' for proposed Resolution with 65.26 %.

xxxv. That in terms of section 30(4), the above resolution was required to be passed by a vote of not less than 66% of the voting share of the financial creditors. The above resolution was voted with 70.44 % as "Yes" as per the breakup given

below in the table after considering provision of Sub Section 3A of Section 25A of the Code. Hence, the above resolution got passed in favour of the Resolution proposed for voting -

Name of the Financial Creditors	Voting Share (%)
Allottees under Real Estate Projects	65.26
Hero Fincorp Limited.	3.54
Ms Nisha Singh	0.17
Sunflame Enterprises Private Limited	1.47
Total	70.44

- xxxvi. That the agenda regarding Regulation 39B, 39C and 39D of the CIRP Regulations was placed before the CoC in its 14th and 15th meeting but the CoC decided to defer these matters for future meetings.
- xxxvii. That in terms of Section 30(2)(b)(ii) of the Code, the Resolution Professional calculated the liquidation value for financial creditors on the basis of the unsold area available in the project, which they have financed. Secured financial creditors have not concurred with this view of the Resolution Professional.
- xxxviii. That with respect to Regulation 36B(4A) of CIRP Regulations, 2016, the CoC had earlier resolved, a performance security equivalent to 5% of the resolution plan amount, in case a resolution applicant is an allottees welfare association and 10% of resolution plan amount in other cases. Successful resolution applicant submitted an undertaking that they will be submitting performance guarantee as stipulated within 15 days' time.
- xxxix. Further, as required under Regulation 39(4) of the CIRP Regulations, compliance certificate from the Resolution Professional in Form H of Schedule to above named regulations was also attached at Annexure V.



- xl. That the Applicant, Resolution Professional certifies that the said Resolution -
- Meets all requirements of the IBC, 2016 and the Regulations made there under;
 - Has been approved by the Committee in its meeting dated 11th November 2019 with 70.44% voting in favour of the resolution plan.
- xli. That the amount provided for the various stakeholders under the Resolution Plan is as under:

S. No.	Category of Stakeholder	Amount Claimed (Rs. Crores)	Amount Admitted (Rs. Crores)	Amount provided under the Plan (Rs. Crores)	Amount provided to the amount claimed (%)
1.	Dissenting Secured Financial Creditors				
a.	Dewan Housing Finance Corporation Limited	183.20	180.61	44.81	24.81%
b.	Kotak Mahindra Bank Limited*	13.93	13.93	0.82	5.85%
c.	Kotak Mahindra Prime Limited*	37.34	37.34	2.18	5.85%
d.	SIDBI**	12.42	9.47	-	-
2.	Other Secured Financial Creditors				
3.	Dissenting Unsecured Financial Creditors				
A	Indusind Bank Limited	6.82	6.82	To be addressed in Part-2 of resolution plan where liquidation for remainder of corporate debtor is proposed and distribution shall be made in accordance with Section 53 of the Code.	
B	Axis Bank Limited	7.81	5.37		
C	HDB Financial Services Limited	5.02	4.98		
4.	Other Unsecured Financial Creditors-Unrelated				
A	Hero Fincorp Limited	30.98	30.98	To be addressed in Part-2 of resolution plan where liquidation for remainder	



				of assets of corporate debtor is proposed.	
B	Sunflame Enterprises Limited \$	12.82	12.82		
C	Ms. Nisha Singh	1.51	1.51	0.23	15.23%
5.	Operational Creditors	34.68	18.13	2.31	12.74%
	Government Dues	171.77	117.21	--	--
	Workmen	--	--	--	--
	Employees	2.18	1.99	0.40	20.10%
6.	Other Creditors	0.08	0.04	--	--
Total		521.06	441.20	50.75	
Insolvency Resolution Process Cost		4.94	4.94	4.94	
Total		525.50	446.14	50.69	
Claims of allottees under real estate projects \$\$		765.71	571.71	Resolution applicant is proposing delivery of flats / units to allottees of 3 projects namely, Universal Aura, Universal Greens and Universal Business Park and proposing claimants of other projects namely, Universal Square, The Pavillion, Universal Trade Tower and Universal Prime shall be taken care under Part-2 of resolution plan where liquidation for remainder of assets has been proposed and distribution shall be in accordance with Section 53 of Insolvency & Bankruptcy Code, 2016.	
Total amount provided in the resolution plan		1290.36	1017.85	55.69	
<p>* Apart from this amount, as per Part-2 of resolution plan, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited will also be part of distribution from remainder of assets of Corporate Debtor as per Section 53 of Insolvency & Bankruptcy Code, 2016</p> <p>** SIDBI will get its share out of distribution from remainder of assets of corporate debtor as per Section 53 of Insolvency & Bankruptcy Code, 2016 as proposed in Part-2 of resolution plan.</p> <p>\$ No payout has been proposed for M/s Sunflame Enterprises Limited under</p>					



the plan but it has been proposed that Sunflame Enterprises Limited shall be treated as allottee for all the units mortgaged to it and shall be given treatment accordingly.

\$\$ Resolution applicant is proposing delivery of flats / units to allottees of 3 projects namely, Universal Aura, Universal Greens and Universal Business Park and proposing claimants of other projects namely, Universal Square, The Pavillion, Universal Trade Tower and Universal Prime shall be taken care under Part-2 of resolution plan where liquidation for remainder of assets has been proposed and distribution shall be in accordance with Section 53 of Insolvency & Bankruptcy Code, 2016.

- xlii. That the term of the plan shall commence from the effective date.

Objections filed as replies to IA/1550/2019

4. In response to the application u/s 30(6) IA/1550/2019, objections have been filed on behalf of **Kotak Mahindra Bank Ltd.** and **Kotak Mahindra Prime Limited ("KMPL")** and the following is submitted:

- i. That the objector is a Financial Creditor and a member of the CoC and has been prejudiced by a non-compliant resolution plan.
- ii. That the Resolution Plan submitted by the consortium of Universal Aura Welfare Association, Universal Greens Buyers Association and Universal Business Park Owner's Association ("RWA") is not in compliance with the provisions of Section 30(2) of the Code generally and specifically in so far as the compliance of Section 30(2)(ii) of the Code for dissenting creditors. It is submitted that the said provision requires that the amount payable to the dissenting financial creditors i.e. the creditors who do not vote in favour of the resolution plan, shall not be paid any amount lower than the liquidation value of the Corporate Debtor in accordance with sub-section (1) of Section 53 of the Code.
- iii. That in terms of the requirement under Regulation 27 and 35 of the CIRP Regulations, the Resolution Professional had carried out and obtained the valuation reports and has

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arrived at the liquidation value in terms of the Regulation 35 of the CIRP Regulations for the 'Universal Business Park Project' over which the Objector has first *pari passu* charge as Rs. 51,32,34,718/- crore and the liquidation value for the Corporate Debtor is Rs. 2,99,23,85,371/- crore.

- iv. The said liquidation value arrived at by the Resolution Professional was communicated to all members of the CoC including the Objector by the Resolution Professional vide his email dated 27.07.2019. However, in the 14th CoC meeting dated 01.11.2019 the Resolution Professional arbitrarily allowed and permitted the Resolution Applicants to assess the liquidation value for the projects at their own whims and fancies instead of the liquidation value arrived at by the Resolution Professional in terms of the Code and circulated to the CoC. On seeing this, the Objector not only raised its objections during the meeting but also sent a letter stating its objections regarding the baseless right provided to the Resolution Applicants of arriving at their own liquidation value.
- v. That the Resolution Professional cannot be permitted to act in violation of the provisions of the Code and propose something in violation of the law. It is further submitted that in any event calculation of the liquidation value cannot be left to the whims and fancies of the resolution applicants contrary to the statutory scheme and provide treatment to the creditors of the Corporate Debtor under Section 53 of the Code in their Resolution Plan in terms of such assessed valuation arrived at by them. As is also evident from the perusal of the 14th minutes of the meeting, the Resolution Professional, has recorded that the "*Resolution Professional further advises that all the financial creditors can do their analysis for the determination of the liquidation valuation available to them and if required the resolution professional*

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may seek direction on this matter from the National Company Law Tribunal."

- vi. That despite arriving at the liquidation value by the Resolution Professional, the Resolution Professional has agreed to the NIL Liquidation value as assessed in the Resolution Plan by the Resolution Applicant. The relevant part of the resolution plan in this regard is reiterated as follows:

"...an amount of Rs. 3 crore is being proposed from the Business Park though the entire area under the Universal Business Park has been sold and there is no asset belonging to the Corporate Debtor under the project. As such the liquidation value of the assets belonging to the Corporate Debtor in this project is NIL."

- vii. That it is denied that the liquidation value of assets belonging to the Corporate Debtor in this project is NIL and there is no asset belonging to the Corporate Debtor under the Project, when the liquidation value assessed by the Resolution Professional for the entire Corporate Debtor is Rs. 2,99,23,85,371/- crore and for the Universal Business Park Project is Rs. 51,32,34,718/- crore.
- viii. That the loan provided by the Objector is secured by the first *pari-passu* charge on all that part and parcel of the plot of land admeasuring - 2.1625 Acre on which the project namely "Universal Business Park" has been constructed and developed. It is submitted that the Resolution Professional had admitted the amount in full, while duly acknowledging the mortgage created as security for the Objector.
- ix. That it is denied that an entire area has been sold and there remains no unsold land for the project and as no NOC whatsoever has been provided at any time by the Applicant herein. The Applicant has wrongly assigned the liquidation value as NIL, when under the Resolution Plan, the

Resolution Applicant shall receive a sum of Rs. 15 crore as an additional amount from the unit holders and Rs. 5.32 crore as infusion of funds from the homebuyers through leasing of the building. Out of this Rs. 20.32 crore that is to be received by the Resolution Applicant, the amount offered to the Objector is a meagre sum of Rs. 3 crore on the basis of an arbitrary and whimsical liquidation value which is completely contrary to the provisions of the Code.

- x. The Objector herein places its reliance on the liquidation value as earlier defined under the Regulations 35 of the CIRP Regulations. *"Liquidation value is the estimated realizable value of the assets of the corporate debtor if the corporate debtor were to be liquidated on the insolvency commencement date."* It is also relevant to note herein is that the project at hand is a commercial project and the shops will be delivered to them which are proposed to be leased and it is denied that no value could be realized from the assets of the Universal Business Park Project.
- xi. The Resolution Professional, has vide its application for approval of the resolution plan, stated that *'Resolution Professional has calculated the liquidation value for the financial creditors on the basis of the unsold area available in the project which they have financed. Secured financial creditors have not concurred with the view of Resolution Professional.'* The Resolution Professional, admits that the financial creditors have not consented with the liquidation value arrived at by the Resolution Applicants.
- xii. That the objector and various other financial creditors have at various times raised the issue regarding the Resolution Plan providing for resolution of a few projects and liquidation for others. Despite the order passed by the Adjudicating Authority with respect to submission of projectwise resolution plan, however, the objector reiterates that the

resolution plan must be provided for the Corporate Debtor as a whole.

- xiii. The Resolution Professional has acted arbitrarily, unfairly and beyond the mandate of law and has presented a non-compliant Resolution Plan before the CoC as well as before this Hon'ble Adjudicating Authority. The Resolution Plan as filed for approval before this Adjudicating Authority is not in accordance with the provisions of the Code and Regulations made thereunder, the same deserves rejection.

5. **Dewan Housing Finance Corporation Limited ("DHFL") has also filed objections to the Resolution Plan** and raised almost the same objections as raised by the **Kotak Mahindra Bank Ltd, except the following: -**

- i. That the plan which has been submitted and approved by the CoC is against the judgment of the Hon'ble NCLAT, in the case of ***Flat buyers Association, Winter Hill, Gurgaon vs Umang Realtech Pvt. Ltd through RP, Company Appeal (AT) (Insolvency) No. 926 of 2019***. The Hon'ble NCLAT has clearly directed that the resolution plans must be project-wise. Hence, in the present case the plan which has been approved is unsustainable as it covers more than one project. The same needs to be set aside as per the clear guideline of the Hon'ble NCLAT.
- ii. It is submitted that despite arriving at the huge liquidation value by the Resolution Professional, the Resolution Professional has agreed to the NIL Liquidation value as assessed in the Resolution Plan by the Resolution Applicant. The relevant part of the resolution plan in this regard is reiterated as follows:

" ... the only area that can be liquidated is the unsold area in the project. However, such unsold area cannot be separated and sold out at present as they are part of

the single project wherein rights in the project of the units stand transferred to the allottees. As such the unsold areal unit has no value as on date in the event of liquidation of this project at this stage. Accordingly, the liquidation value is NIL and the DHFL shall not be getting any fund."

- iii. That it is denied that the liquidation value of assets belonging to the Corporate Debtor in this project is 'NIL' and there is no asset belonging to the Corporate Debtor under the Project. It is further submitted that the loan provided by the Objector is secured by the 'first charge' on all that part and parcel of the two plots, on which 'Universal Aura' and 'Universal green' have been constructed and developed.
- iv. The present company petition is filed by the applicant, who is an alleged allottee of the "Universal Aura" project but voting share percentage of 65.26% is given to Authorised Representative, as allottees of all real estate projects like Universal Greens, Universal Business Park, The Pavillion-Lan, Universal Prime etc. of corporate debtor. In view of the above-mentioned judgment of NCLAT, the corporate insolvency Resolution Process should be on project basis, as per approved plan by the Competent Authority. Any other allottees (financial Creditors) or financial institutions/banks (other financial creditors) or operational creditors of other project cannot file a claim before IRP of the other project and such claim cannot be entertained. Hence, Resolution Professional need to reconduct the claim admission process and decline the claims filed by the allottees of other project and accordingly, decide the voting share percentage of the Allottees. Then only the resolution plan needs to put up for voting again.



- v. It is submitted that the most of the allottees of the real estate project have not paid their proportionate contribution share of CIRP cost even after the specific order dated 17/07/2019 of this Adjudicating Authority. Hence it is a duty of Resolution Professional to recalculate distribution of the money to the Allottee of concerned project.

6. **Ms. Shweta Kapoor, an objector has** also raised objections almost on the same grounds as raised by the **Kotak Mahindra Bank Ltd, except the following: -**

- i. That Shweta Kapoor ("Objector") is a financial creditor and had filed her claim before the IRP and sought the possession of the Commercial Unit being Unit No. 410A, Universal Business Park, Sector-66, Gurgaon admeasuring 300 Sq. Ft. ('Said Unit') in a lockable condition. The claim of the objector was admitted by IRP and the same was intimated through the list published on the website of the Corporate Debtor.
- ii. The resolution plan does not provide for demarcating of the Unit of the Objector, and also it does not deal with the concerns of those financial creditors, who have claimed possession and have not claimed any amount. Moreover, the objector has not voted in favour of the resolution plan.
- iii. That in terms of the requirement under regulation 27 and 35 of the CIRP Regulations, the Resolution Professional had carried out and obtained the valuation reports and has arrived at the liquidation value in terms of the Regulation 35 of the CIRP Regulations for the 'Universal Business Park Project'. The said liquidation value arrived at by the Resolution Professional was not communicated to the objector, which should have been communicated by the Resolution Professional.
- iv. That it is denied the liquidation value of assets belonging to the Corporate Debtor in this project is NIL. It is submitted

that if the objector has paid a certain sum for the said unit being Unit No. 410A, Universal Business Park, sector-66 Golf Course Extn. Road, Gurgaon admeasuring 300 Sq. Ft., then in no event the liquidation value of the said Unit could be NIL. The transfer of the said Unit to the Applicant was approved by the Corporate Debtor herein. The Applicant purchased the said Unit and had paid the whole consideration amount for the said unit agreed between the parties.

- v. The Objector herein places its reliance on the liquidation value as earlier defined under the Regulations 35 of the CIRP Regulations i.e., "*Liquidation value is the estimated realizable value of the assets of the corporate debtor if the Corporate Debtor were to be liquidated on the insolvency commencement date.*" It is also relevant to note herein is that the project at hand is a commercial project and the shops will be delivered to them which are proposed to be leased, and it is denied that no value could be realized from the assets of the Universal Business Park Project.
- vi. The Objector fails to understand the basis of the Resolution Applicant receiving a sum of Rs. 20.32 crore from the unit holders, when the liquidation value is assessing as NIL.

IA/5533/2020

7. In response to the application u/s 30(6) IA/1550/2019, objections have also been filed on behalf of the **Owners Welfare Association for Universal Trade Tower** vide IA/5533/2020 whereby the following is submitted:

- i. That the Objector i.e. Owners Welfare Association of Universal Trade Tower ("Objector"), Registered association of the owners of the Universal Trade Tower ("UTT"), is a

financial creditor, who has been severely prejudiced, by the biased Resolution Plan approved by the CoC.

- ii. That the objector had preferred to file an appeal under Section 61 of the Code against the order dated 03.07.18 passed by the Adjudicating Authority, New Delhi Bench (II) in CP(IB) No. 456/ 2018, where the Hon'ble NCLAT has allowed the objector to apprise the NCLT of the submissions rather objection to the resolution plan.
- iii. That in the matter of Pallavi Joshi Bhakru Vs Universal Buildwell, out of all the projects of the Universal Buildwell Group, the Corporate Debtor, the petition was filed for the initiation of Insolvency Resolution Process of the corporate debtor, primarily for the project "Universal Aura".
- iv. That vide Order dated 03.06.2018, CIRP was initiated against the Corporate Debtor and the projects of the Corporate Debtor in the said matter; including the project, "Universal Trade Tower (UTT)", the objector is the Owners Association of the same, has also been included in the Corporate Insolvency Resolution Process, even though it was a completed project and there was no default in respect to the said project.
- v. The UTT is a completed project and needs no resolution as it is a total sold out project. Hence, any resolution plan as having no resolution to completed project, no consideration of right and voting rights of the owner of UTT and bifurcation of different project, are against the spirit of the code.
- vi. The contents of the Resolution Plan submitted by the consortium of Universal Aura Welfare Association, Universal Greens Buyers Association and Universal Business Park Owner's Association (hereinafter "RWA") and approved by the CoC in its 15th Meeting held on 11.11.2019 with 70.44% of voting, do not include the Trade Tower Project in the plan and thus, the interest of the present objector is not considered.

- vii. That the Objector, the buyer/owner in the Trade Tower were never given any rights to vote at any point throughout the whole CIR Process and even the representative of the Home Buyers, Ms Nisha Malpani has failed to consider the objections raised by the objector and apprise the COC about the denial of voting rights as the claimant in the Trade tower, project of corporate debtor. Thus, no proper COC qua the present Trade Tower project owners.
- viii. That the claim of the lease amount claimed to not to have been paid from the year 2015 to the lessor at the 8th floor has not been considered in the Insolvency proceedings by the Resolution Professional qua the Corporate Debtor.
- ix. That the objector owned commercial space at the 8th floor, Trade tower, which has been utilized by the Resolution professional during the CIRP and the rent throughout the CIRP has not been paid. Even the maintenance charges, electricity charges and property taxes are still unpaid. The owners of the UTT have been receiving tax notification but the same has not been paid by the Resolution Professional, rather not even considered.
- x. The resolution plan has no consideration for the Universal Trade Tower and states that the UTT is a completed project. As stated in the judgement in ***Company Appeal (AT)(Insolvency) No. 926 of 2019, Flat Buyers Association Winter Hills — 77, Gurgaon Vs Umang Realtech Pvt. Ltd through IRP & Ors.*** *"We hold that Corporate Insolvency Resolution Process against a real estate company (Corporate Debtor) is limited to a project as per approved plan by the Competent Authority and not other projects which are separate at other places for which separate plans approved".*
- xi. The Present Project is a completed project with OC obtained and the completely sold area with possession of the title

holders and sans any reason or requirement for the initiation or continuation of the Insolvency Proceedings.

- xii. That the UTT is a completed project but as the 8th floor of the UTT has been used as the premises of office by the Resolution Professional, the rent and maintenance charges born by the objector were never paid, considered and thus any plan devoid of CIRP cost inclusive of rent and maintenance is devoid of legal competence and needs to be disallowed.

IA/2664/2020

8. In response to the application u/s 30(6) IA/1550/2019, objections have been filed by **Ms. Anita Dhir, another objector** vide IA/2664/2020, wherein the following is submitted: -

- i. That the Objector is an allottee in Universal Aura (Unit No. H 704) and is a member of the CoC.
- ii. That it is submitted that the resolution plan provides for a mark-up of Rs. 850/- per sq ft. i.e. the plan shall bind the homebuyers to make an additional payment @850/- or 26.5 % of Basic Sale Price per sq. ft. for completion of their residential units against an average Basic Sale Price of Rs. 3200/- per sq. ft. Surprisingly, the mark up on shops is also levied at the rate of Rs. 850/- per sq ft only when Basic Sale Price of shops is Rs. 8000/- psf. Such an arrangement is inequitable as this mark up on shops works out to be only 10.6%. It will be fair if the mark up on shops is also charged @ 26.5% of Rs. 8000/- i.e. Rs. 2120/- psf if not higher. The applicable EDC and IDC rates to this Project Universal Aura for commercial space are Rs. 258.729 lac per acre and Rs. 1000 per sq mtr respectively, whereas the same for Residential space are Rs. 193.908 lac per acre and Rs. 625 per Sq. mtr respectively. Further, when the allottees of

commercial space agreed to buy the same @ 8000/- psft. of their own free will, when residential space was available @ 3200/- psft, they were aware of the reason behind the difference between the price and nature of two spaces and they knew that they would earn very high returns on their commercial investment vis-a-vis the homebuyers of the Project Universal Aura. Hence, it can be safely concluded that the homebuyers have been short changed by a sum of Rs. 1.08 Crore.

- iii. That it is noteworthy that the Resolution Applicant lied under affidavit that Mr. Gulati is a person having sound knowledge of construction and projects. Mr. Gulati is currently working at ITBP allegedly as an inspector rank official. This false claim has been made to assert technical capability of Resolution Applicant to complete the project successfully.
- iv. That the Resolution Applicant has chosen M/s Unique Developers Pvt. Ltd. (UDPL) for the role of Project Management Consultant, hereinafter referred to as PMC, for the project Universal Aura. That it will be pertinent to mention here that UDPL, in a GBM held at Club Patio, Gurgaon, on 15 December, 2019, admitted unequivocally that he had not done any work as a PMC for any project. The profile of UDPL is conspicuous by its absence in the Plan. The credentials of UDPL do not inspire confidence that it is competent to work independently as a PMC, because a PMC has a crucial and highly skilled role to play in the completion of a high rise 20 storey, multi tower, construction project. This very fact drags the Plan into the teeth of s/s 3(e) of Regulation 38 of IBBI, which demands that the Plan must have demonstrable capability to implement the resolution plan.
- v. That we have been given to understand that the RA consciously chose to execute an MOU, inimical to the interest

of allottees, with M/s Unique Developers Pvt Ltd, an incompetent vendor, with terms heavily tilted in UDPL's favour and at a hefty fee of 7.25% of construction costs, whereas a good PMC is available around 2-3% of construction cost.

- vi. That the UAWA President proceeded to execute an MOU with UDPL with malafide intentions to give the incompetent UDPL an opportunity to enter into a contract with the RA. That the overzealous President readily ignored the fact that she was not competent to execute the MOU; it was the General Secretary who was competent to execute the MOU (Page 119 of Plan). However, the fact is that the duly executed copy of MOU was kept under wraps and it was disclosed only in end May, 2020, on Telegram.
- vii. That in the light of facts stated above, it can be concluded that employing an incompetent PMC like UDPL shall put lives of 3000 residents of ineptly completed Universal project Aura in jeopardy.
- viii. That the Resolution Applicant selected M/s Apex Projects, Delhi, as Developer but chose not to enter into any MOU with the Developer for the reasons best known to them.
- ix. That the facts narrated above give rise to incontrovertible grounds to believe that a foul play by the Resolution Applicant is underway. It amounts to a conspiracy with knowledge of facts and law to cause unlawful gains to a relative of Resolution Applicant and unlawful loss to the allottees, who reposed faith in the RA.
- x. That they are interested in collecting membership fees for UAWA as they are not able to differentiate between the roles of Resolution Applicant and UAWA office bearers.
- xi. That the Applicant avers that Resolution plan submitted by Resolution Applicant in respect of project Universal Aura does not have adequate provisions for implementation and

supervision of the resolution plan, which is a clear violation of section 30(2)(d) r/w proviso to sub-section 1 of Section 31 of the Code and s/s 2(c) of Regulation 38 of the CIRP Regulations. That the Monitoring Committee as described in the Plan is not adequately equipped for ensuring proper implementation and supervision of the Resolution plan.

- xii. That the proposed Plan is in stark violation of s/s 2(e) of Section 30 as it seeks to implement para IX, X and XII in violation of RERA, 2016. Para IX on page 46 reads, "In case of failure to pay the called amount within the due date of payment, respective flat allottee shall be responsible to pay interest on the due amount @ 21% p.a. (as per existing contract)." This provision in the Plan is in violation of Section 15 of RERA 2017 which reads as, "The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent" Further, Para X on page 46 provides that on surrender of a unit, 30% of amount paid by the allottee shall be deducted and balance shall be paid from the sale proceeds of such unit when such unit is sold. RERA provides, "Forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."
- xiii. That there is a timeline for repaying operational and secured creditors and there is a provision for paying interest to new lender coming in through letter, but unfortunately there is no timeline for paying the residual value of surrendered/



cancelled units to harassed allottees. There must be a timeline for payment of residual value to the homebuyers on surrender or cancellation of units.


- xiv. That the cash flow in the Resolution Plan is based on speculation. In principle, no Insolvency Resolution Plan can be founded on speculation. It is claimed in the Resolution Plan that amounts due to Operational Creditors, Secured Creditors and DTCP shall be paid from sale proceeds of unsold inventory at the rate of Rs. 4500/- per sq ft. Such a payment plan is highly speculative as it is contingent upon sale of unsold inventory about which nothing can be predicted with any reasonable certainty in the prevailing times. That if Resolution Applicant is unable to sell units in line with payment schedule, the said plan will not fructify and cause additional amounts shelled out by already financially beleaguered allottees to be sunk.
- xv. That the Plan commits to make a cash payment of Rs. 19.5 Crore to M/s DHFL, a secured financial creditor of the Corporate Debtor, from the sale proceeds of unsold inventory believing that such inventory will be readily bought by the real estate market as soon as the Plan is approved by the NCLT. They never thought what would happen if unsold inventory is not sold readily as presumed by them. If this situation comes, there would not be enough funds for completion of the project, nor for the payment of debt owed to DHFL. Such a possible scenario does not inspire confidence that the plan is viable and feasible. The plan commits to make payment of imaginary DTCP dues of Rs. 8.52 Cr, for reasons known to the RA only (Page 26, row 5), from sale proceeds of unsold inventory in the 36th month of the Plan (page 44 of Plan). Page 44 says "The amount will be pooled by the members." The failure to sell flats can cause failure to pay committed dues to DTCP;

- xvi. Further, the cash flow chart on page 142 of the Resolution plan clearly states that (i) balance collectible from claimed allotments - Rs. 49.7 Cr, (ii) additional amount collectible from claimed allotments - Rs. 50.88 Cr, (iii) estimated balance collectible from unclaimed allotments - Rs. 10.22 Cr, (iv) additional amount collectible from unclaimed allotments - Rs. 18.10 Cr, (v) sale proceeds from unsold inventory - Rs. 69.53 Cr, (vi) balance and additional collectibles from shops - Rs. 2.49 Cr.
- xvii. Out of the total collectible amount of Rs. 200.74 Cr as above, only Rs. 100.58 Cr are to be collected from home buyers and may be assumed that this sum of Rs. 100.58 Cr will come into the escrow amount;
- xviii. If the unsold inventory is not sold as per the projections, the allottees will be in grave financial distress as such a situation will stall the work progress and force the allottees to fork out further additional sum for work completion and debt repayment of DHFL;
- xix. The UDPL (PMC) Tentative payment Plan (Page 326) demands total disbursal of Rs. 89.71 Cr in 0-12 months against total collection of Rs. 59.35 Cr from allottees and sales in the same period. There is no provision for making up for the admitted shortfall;
- xx. There is no provision for timely refund of residual value of surrendered or cancelled flats nor for meeting cash requirement for construction of such units.
- xxi. That the Corporate Debtor has illegally sold 26 shops, when only 9 shops were permitted to be built as per the approved drawings. The Resolution Professional has failed to conduct due diligence in this regard.

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9. In response to the application u/s 30(6) IA/1550/2019, objections have also been filed on behalf of **Mr. Mohit Mohan Kapoor** vide CA/1686/2019, **Mr. Chander Mohan Kapoor** vide CA/1687/2019 and **Mr. Amar Gupta** vide CA/52/2020.

10. The Applicants of aforementioned CAs have raised almost same grounds as raised by the **Kotak Mahindra Bank Ltd and Dewan Housing Finance Corporation Limited ("DHFL")** in their objections to the plan except the following:

- i. Under the Resolution Plan, 3 of the 7 Projects, namely, the Universal Greens Project at Sector-85, Faridabad, the Universal Aura Project at Sector-82, Gurugram, and the Universal Business Park Project at Sector-66, Gurugram, are proposed to be demerged into public limited companies specifically formed by the homebuyers of the respective Projects. It is further proposed that the shares of such public limited companies will be held by the homebuyers by subscribing to the equity of the companies, in the ratio of payment made by them to the Corporate Debtor towards the cost of their allotted units.
- ii. Surprisingly, for the remaining 4 Projects of the Corporate Debtor, i.e. Universal Prime, Universal Square, the Market Square, and the Pavillion Projects, the Resolution Plan provides scant or no steps towards resolution at all.
- iii. The Applicants submit that in effect, the Resolution Plan deals with the 4 Projects only in a piecemeal manner and proposes no resolution at all. The Applicants submits that the Resolution Plan must be disallowed on this ground alone. In the matter of *Roofit Industries Limited, M.A. 701/2017 in C.P. No. 10551& BP/2017*, the NCLT considered a resolution plan for the Corporate Debtor holding 9 immovable properties. In that case, the Resolution Professional received



a resolution plan, only in respect of 1 of the 9 units and the NCLT held that :

“Considering the fact that the Resolution Plan submitted by the above said Employees’ Association is only in respect of Gummidi poondi Factory excluding other units, this Bench is of the view that the Resolution Plan cannot be considered for a particular unit excluding others, and hence, the same cannot be considered as a Resolution at all under the Code.”

- iv. That the present Resolution Plan discriminates between stakeholders in the same class. The Resolution Plan creates 2 distinct classes within the same class of the financial creditors: the first class comprising homebuyers/allottees in the Universal Greens, Universal Aura and Universal Business Park Projects (which are proposed to be resolved through demerged public companies), and the second class comprising homebuyers/allottees in the Universal Prime, Universal Square, the Market Square, and the Pavillion Projects (for which no effective steps are proposed towards for resolution). This, in the submission of the Applicants, is plainly arbitrary, discriminatory, and unfair to the financial creditors of the Corporate Debtor.
- v. The Applicant submits that approval of the Resolution Plan in its current form, would result in an absurdity, wherein a class of financial creditors (homebuyers/allottees in the Universal Prime, Universal Square, the Market Square, and Pavillion Projects) similarly placed as the others, having invested their monies in the same asset class as the others, would be severely disadvantaged and victimised. On the other hand the similarly placed financial creditors (homebuyers/allottees in the Universal Greens, Universal Aura and Universal Business Park Project) would reap the windfall benefits, see completion of their respective Projects and

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secure homes and business places, while others would evidence destruction of their investments and be deprived of homes and business places. Clearly, such a result would be contrary to the letter and spirit of the Code.

11. In response to the objections raised on behalf of the Kotak Mahindra Bank, the **Resolution Professional has filed its reply** and submitted the following:

- i. As per records of the Corporate Debtor, out of the total super built-up area of 2,15,915 sq. ft. in Universal Business Park, Conveyance Deeds have been executed in respect of 90,606.03 sq. ft. Thus, the area of 90,606 sq. Ft cannot be subject matter of mortgage to the Kotak Bank and the valuer has not taken this area into consideration for the purpose of valuation.
- ii. Further the valuer has not treated the area to be allocated to share of Blaze Promoters, in lieu of transfer of Development Rights, as property of the Corporate Debtor. The valuer has considered an area of 89,026.97 sq. Ft for the purpose of arriving at the fair value and liquidation value of the Project.
- iii. The liquidation value in respect of the area of 89,026.97 Sq. ft. in the Universal Business Park, as provided by the two valuers appointed by the Resolution Professional, is as under:
 - a) Liquidation value calculated by Sapient Services Pvt. Ltd. - **Rs. 46,73,86,343/-**.
 - b) Liquidation value calculated by Adroit Technical Services Pvt. Ltd.- **Rs. 55,90,83,092/-**.

Thus, taking the average of the two liquidation values, the liquidation value of the Universal Business Park Project is **Rs. 51,32,34,718/-**.

- iv. In the report by Adroit Technical Services Pvt. Ltd., it has been specifically mentioned under the head of Universal

Business Park that ***"It is advised that a legal opinion is taken thereto establish any legal encumbrances on the property. Any legal encumbrance, to the title, to part or whole of the property revealed upon scrutiny, may have detrimental effect on the value ascertained, which may lead to revision of our report"***.

- v. Further, in the report submitted by Sapient Services Private Limited it is specifically stated in Clause 2.10 -***"We have assumed that the ownership of the subject fixed assets belongs to the client and is free from all encumbrances. We cannot accept any responsibility for its legal validity."*** Further, in Clause 6.1.3 it is stated that ***"Any matters related to legal title and ownership are outside the purview and scope of this valuation exercise. No legal advice regarding the title and ownership of the subject property has been obtained by us while conducting this valuation. The client is hereby advised to take appropriate legal opinion on the matter while taking a decision on the basis of this report. Valuation may be significantly influenced by adverse legal, title, or ownership/ encumbrance issues and we reserve our right to alter the conclusion should any such issues be brought to our knowledge on later date."***
- vi. That the Resolution Professional while reviewing and submitting the Resolution Plan to the Committee of Creditors has duly applied his mind to the said issues as flagged by the valuers and has come to the conclusion that due to over-selling in the Business Park Project, it is a project with no realizable value for the Corporate Debtor.
- vii. As per records of the Corporate Debtor, Builder Buyer Agreements (BBA) have been executed in respect of 165,115.53 sq.ft. of area in the said Project, prior to 13th September 2010, the date of creation of mortgage in favour

of Kotak Bank. In addition to this, an area of 90,606 sq. ft. has been conveyed by the Corporate Debtor by way of conveyance deed. Therefore, the ATS + Conveyance Deed area exceeds the total saleable area and therefore, no realizable value can be attached to the Corporate Debtor from the project.

- viii. It is the case of the objector/Kotak Bank that liquidation value of the said Project is **Rs. 51,32,34,718** and thus, the bank is entitled to receive this value. But the valuation given by the two valuers is only in respect of **89,025.97 sq. Ft. of super built-up area.**, which is not available with the Corporate Debtor. Since the area is not available to be sold by the Corporate Debtor, the value attributed is **NIL**.

12. In response to the objections on behalf of DHFL, the Resolution Professional has filed its reply and submitted the following:

- i. As per the records of the Corporate Debtor, out of the total saleable area of **9,65,653 sq. ft in Universal Aura, an area of 8,07,822 sq.ft. has already been sold/allotted to various allottees/home buyers.** Thus, the unsold area in the said Project is the remaining **1,57,831 Sq. Ft.**
- ii. Similarly, in the Project Universal Greens, out of total saleable area of **8,02,984 Sq. ft. an area of 4,92,698 Sq. ft. has already been sold/allotted to various allottees/home buyers.** Thus, the unsold area in the said Project is the remaining **3,10,286 Sq. ft.**
- iii. Further, DHFL is the sole financial creditor of both the abovementioned Projects - Universal Greens and Universal Aura (hereinafter together referred to as the 'said Projects'). However, the sold out area in the said Projects cannot be the subject matter of mortgage to DHFL **as the sold out units**

are no longer the assets of the Corporate Debtor but of the allottees/unit holders and cannot be liquidated.

- iv. A perusal of the Valuation Report (of Adroit) would show that the Fair Value and Liquidation Value of the said Projects has been calculated based on the assumption that the whole of the said Projects are under the ownership of the Corporate Debtor. The Valuation Report submitted by Adroit, under the heads 'Universal Aura' and 'Universal Greens' states that ***'details of registry of sale/purchase of the sold inventory has not been provided to us, hence for the purpose of valuation we assumed that the whole Project is still under the ownership of M/s Universal Buildwell Private Limited'***. Thus, the Fair Value and Liquidation Value of the said Projects as arrived at by the Valuers does not take into account the fact that most of the area under the Project is no longer the asset of the Corporate Debtor and has been sold to allottees.
- v. For Universal Aura - based on the above assumption, the valuer has considered an area of 11.231 Acres for the purpose of arriving at the fair value and liquidation value of the Project. The liquidation value in respect of the area of 11.231 Acres in the Universal Aura, as provided by the two valuers appointed by the Resolution Professional is as under:
- a) Liquidation value calculated by Sapient Services Pvt. Ltd. - **-Rs. 1,26,74,94,479/-.**
- b) Liquidation value calculated by Adroit Technical Services Pvt. Ltd. **-Rs. 1,64,12,94,963/-.**
- Thus, taking the average of the two liquidation values, the liquidation value of the Project Universal Aura is - **Rs.1,45,43,94,721/-.**
- vi. For Universal Greens- the valuer has considered **an area of 7.931 Acres** for the purpose of arriving at the fair value and liquidation value of the Project. The liquidation value in

respect of the area of 7.931 Acres in Universal Greens, as provided by the two valuers appointed by the Resolution Professional is as under:

c) Liquidation value calculated by Sapient Services Pvt. Ltd.-
Rs. 55,52,57,080/-.

d) Liquidation value calculated by Adroit Technical Services Pvt. Ltd. -**Rs. 58,63,28,824/-.**

Thus, taking the average of the two liquidation values, the liquidation value of 'the Project Universal Greens is -
Rs.57,07,92,952/.

- vii. It is submitted that the Resolution Professional while reviewing and submitting the Resolution Plan to the Committee of Creditors has duly applied his mind to the said issues as flagged by the valuers and has come to the conclusion that the only area that can be liquidated is the unsold area in the said Projects.
- viii. If the liquidation value were to be calculated for the unsold areas in the aforesaid 02 Projects, the Liquidation Value available to DHFL would be :

Universal Aura

Total Area - 9,65,653 Sq. ft.

Unsold Area - 1,57,831 Square Feet

Percentage (%) of unsold to total area - 16.34%.

**Therefore, Liquidation Value to DHFL for Universal Aura -
Rs.145.43 Crores X 16.34% =Rs. 23.77 Crores.**

Universal Greens

Total Area - 8,02,984 Sq. Ft.

Unsold Area - 3,10,286 Sq. Ft.

Percentage (%) of unsold to total area - 38.64%.

**Therefore, Liquidation Value to DHFL for Universal
Greens = Rs.57.08 Crores X 38.64% =Rs. 22.06 Crores.**

- ix. Accordingly, the total liquidation value for DHFL (based on the unsold inventory in Universal Aura and Universal Greens projects comes to: **Rs. 23.77 Crores + Rs. 22.06 Crores = Rs. 45.83 Crores.**
- x. However, since the unsold area in the said Projects forms an integral part of the whole Project and cannot be separated from the sold out area, wherein the rights in the majority of units stand transferred to the allottees, and as such, the unsold area/unit has no value as on date in the event of liquidation of the said Projects at this stage. Thus, as on date, there is no realizable value of the unsold inventory in the said Projects for the Corporate Debtor.
- xi. The unsold area under the said Projects acquires value if and only if the entire Project is completed by infusion of additional funds to carry out construction and completion activities as proposed to be done by the Resolution Applicant under the Resolution Plan.
- xii. Further, both the Projects Universal Greens and Universal Aura are proposed to be completed under the Resolution Plan, within a period of **36 months (i.e,3 Years) - excluding force majeure conditions and stoppage due to litigations** and in such an event, the realizable value for DHFL from unsold inventory in the said Projects has been worked out by the Resolution Applicant as follows:
- i. **Universal Aura: Rs. 19.50 Crores**
- ii. **Universal Greens: Rs. 16.36 Crores**
- xiii. Thus, it is denied that the value assigned to the said Projects under the Resolution Plan is NIL. Indeed, based on the realizable value of the unsold inventory, the Objector has been offered a pay out of Rs. 44.81 Crores under the Resolution Plan, which is approximately 24.81% of its Claim.

13. In response to the objections raised on behalf of Ms. Shweta Kapoor, the Resolution Professional has filed its reply and taken almost the same grounds as stated in the reply to the objections raised by Kotak Mahindra Bank, except the following:

- i. It is submitted that the Objector has failed to appreciate that the Resolution Plan indeed provides for completion of the Project, making it operational and delivery of possession to the Allottees of Universal Business Park, including the Objector.
- ii. Further, the demarcation of units has been left to the outcome of Application CA No. 500/2019 (for appointment of a technical person/ Local commissioner for demarcation of units and ascertainment of rights of the allottees in the Project). Indeed, under the Plan, the Resolution Applicant has been given liberty to modify the plan for this Project depending on the outcome of the said Application. Thus it is incorrect to state that the Resolution Plan does not provide for demarcation of units or delivery of possession to the allottees who have claimed possession.
- iii. It is submitted that Liquidation Value is the estimated realizable value of the assets of the Corporate Debtor, if the Corporate Debtor were to be liquidated on the insolvency commencement date. Firstly, the units that have already been sold are no longer an asset of the Corporate Debtor and consequently cannot be liquidated. Thus, the liquidation value has been provided as NIL as there is no asset available to the Corporate Debtor in the said project to be liquidated. The entire project is sold to the allottees, in fact over sold. Secondly, the Project in question is not proposed to be liquidated under the Resolution Plan. In fact, the Resolution Plan provides for completion of the Project and delivery of possession to the Unit holders, including the Objector. It is

submitted that the area, which has already been sold to allottees is no longer the asset of the Corporate Debtor and no liquidation value could have been assigned to such an asset. Thus, the Liquidation value is of no consequence to the Objector and the Objector has no locus or basis of challenging the Resolution Plan on the grounds alleged.

- iv. For the sake of completeness, it is submitted that Kotak Mahindra Bank Limited and Kotak Mahindra Prime Ltd. (hereinafter together referred to as 'Kotak') is the secured creditor of the Project and, the liquidation value is of relevance only for the secured creditor.

14. In response to the objections raised on behalf of the Owners Welfare Association for Universal Trade Tower vide IA/5533/2020, the Resolution Professional has filed its reply and taken almost the same grounds as stated in the reply to the objections raised by Kotak Mahindra Bank, except the following:

- i. That the Resolution Plan is in compliance with the provisions of Section 30(2) of the Code and it does not discriminate against any of the stakeholders of the Corporate Debtor and does not contravene the provisions of the Code or any other law.
- ii. That the Objector has taken contrary stands in the objections raised, in as much as, on the one hand the Objector has contended that the Project Universal Trade Tower is a complete project and the allottees/members of the Objector Association are already in possession of their Units in the Project and thus, the Project must be kept out of the purview of CIRP and Resolution Plan. On the other hand, the Objector has contended that the Resolution Plan has left out the Project - Universal Trade Tower and has focused on other projects of the Corporate Debtor and



- excludes the interest of the present objector. Thus, the objections raised by the Objector are completely baseless and do not merit consideration as being based on incorrect understanding of the law and facts.
- iii. That the Resolution Professional had requested many times to provide details of possession holders on each floors but the Objectors' Association has not cooperated for the same or provided any details to the Resolution Professional. Further, Claimants holding only Builder Buyer Agreement and had submitted claims to the Resolution Professional are already part of CoC.
- iv. That **the Project-Universal Trade Tower (hereinafter referred to as 'said Project/UTT') has not been treated as an asset of the Corporate Debtor under the Resolution Plan. The Project has been treated as the asset of the allottees of the said project as the entire area in the said Project has already been sold to the allottees.** However, Resolution Professional has filed an application CA No. 738/2019 before NCLT for cancellation of some conveyance deeds executed without consideration and same shall form part of assets of the Corporate Debtor. In addition to that all rights related to Universal Trade Tower shall form part of assets of Corporate Debtor unless specifically released in resolution plan.
- v. That in the said Project, the area sold by the Corporate Debtor to various allottees is in excess of the saleable area. Indeed, an area of 4,40,702 sq. Ft. has been sold against the available saleable area of 2,56,360 sq. Ft. Further, there is no unit-wise demarcation of the area, which has been sold to the allottees of the said Project.



- vi. In Part-II of the Resolution Plan, it has categorically been captured that ***'Universal Trade Tower is a completed project and Occupation has been issued by the concerned authorities in respect of the said Project. The Corporate Debtor has sold area in excess of the available area. To decide the lawful ownership, the Resolution Professional has filed application before the NCLT for appointment of local commissioner and the same is pending disposal. Further the Resolution Professional has also filed an application before the NCLT for cancellation of conveyance deeds executed by the corporate debtor in favour of the ex-directors and their family members without consideration and the same is also pending disposal'.***
- vii. From the above, it is apparent that under the Resolution Plan, the said Project has been treated as an asset of the respective allottees of the Project and their rights and claims have been left to be determined by adjudication of the Applications pending before this Tribunal i.e. CA No. 500/2019 and CA No. 738/2019.
- viii. So far as the claim in respect of rent for their premises leased out to third parties on the 2nd and 8th Floor of the said Project is concerned, that has been rejected by the Resolution Professional. It is submitted that there is no direct agreement/lease deed between the members of the Objector Association and the Corporate Debtor, which may make the Corporate Debtor liable to pay rent for the said premises. Indeed, the rent was received by the Objectors directly from the lessee and the liability to pay rent, if any, is of the lessee and not of the Corporate Debtor.

- ix. The Resolution Professional has already provided for the rent and maintenance for the said premises being used as Corporate Office of the Corporate Debtor since 3rd July 2018, to maintain the Corporate Debtor as a "going concern", as part of the CIRP Costs under the Resolution Plan.
- x. Further, the invoices towards rent/maintenance charges etc. for the period from 1st April 2019 to 1st February 2020 raised by the Objector have neither been acknowledged by the Resolution Professional nor has any proof or acknowledgement of the same has been placed on record by the Objector.
- xi. It is submitted that the allottees in whose favour Conveyance/Sale Deeds have been executed, admittedly are owners of their respective units and have no right to be made part/members of the CoC as they are not creditors of the Corporate Debtor and have no right/ interest in the resolution/assets of the Corporate Debtor.
- xii. In respect of the possession notice by the DRT, it is submitted that the same is a subject matter of dispute between the Conveyance Deed holder and the Bank and the possession notice of DRT has no bearing on the Resolution Plan approved by the CoC.
- xiii. It is denied that the claims of the creditors of the said Project have not been considered.
- xiv. It is submitted that the rent and maintenance charges are payable by the allottees, who are in possession of the said Project i.e. the members of the Objector. The Objector itself has stated that it is in possession of the respective units-*'the Association members of Trade tower are already in possession of their respective units as the same is a complete project....'*. Thus, it is



absolutely baseless for the Objector to allege that the maintenance charges of the premises in possession of the Objector should be part of the Resolution Plan.

15. In response to the objections raised on behalf of Ms. Anita Dhir vide IA/2664/2020, the Resolution Professional has filed its reply and taken almost same grounds as stated in the reply to the objections raised by Kotak Mahindra Bank and other objectors referred above, except the following:

- i. The objector has sought to contend that the Resolution Plan affords inequitable treatment to the allottees of residential and commercial units in the project Universal Aura as it provides for payment of mark-up of Rs. 850 per Sq. Ft. payable by all the allottees (residential and commercial) of Universal Aura for the completion of the project even though the allottees of commercial units are differently placed than allottees of residential units owing to the difference in Basic Selling Price of commercial and residential units. That the said objection is not maintainable in view of the fact that the Resolution Plan is the prerogative of the Resolution Applicant. Based on the status of the project and cash flow requirement for completion thereof, the Resolution Applicant has decided the contribution to be made by the allottees and the same had been placed before the CoC and was duly accepted and approved by the members of the CoC. Indeed, completion of the Project is in the interest of allottees who will get possession of their units. Thus, once the Resolution Plan is accepted by the CoC, so long as it is in conformity with Section 30(2) and 30(3) of the Code, none of the objections raised or modifications sought by the Applicant/Objector are maintainable.
- ii. That so far as objection regarding the execution of the MOU, with M/s Unique Developers Pvt Ltd is concerned, it is

submitted that the said objection is wholly irrelevant and baseless as, the CoC after considering and being satisfied with the feasibility, viability, manner and costs of implementation provided under the plan, has approved the Resolution Plan. Even otherwise, the appointment of PMC for completion of the Project is the prerogative of the Resolution Applicant, which has already been accepted and approved by the CoC. Further, no MOU with PMC has been received by Resolution Professional along with Resolution Plan. Thus the said objection is not maintainable.

- iii. The Allottees who have the maximum voting share in the CoC i.e. out of total number of 1081 allottees, 773 allottees have voted 'Yes' in favour of approval of Resolution Plan, after being satisfied by the feasibility, viability and manner of implementation provided under the Plan. Thus, the Resolution Plan is in the best interest of the Corporate Debtor, the allottees and all other stakeholders.
- iv. The Applicant/objector in Para 5(a) to (c) of the application has sought to allege that the Resolution Plan is in contravention of the provisions of HRERA inasmuch as it levies interest of 21% in case of delayed payment by allottee and deduction of 30% of the amount in case of surrender of unit by an allottee. The said objection is absolutely baseless and not maintainable. The Resolution Plan is the Prerogative of the Resolution Applicant and CoC. Once the Resolution Plan is approved by the CoC in its commercial wisdom by a vote of 70.44%, the jurisdiction of the Adjudicating Authority is limited to ensuring that the Plan is in compliance with the provisions of Section 30(2) of the Code. Once the Resolution Plan is in compliance with the provisions of Section 30(2) of the Code, there is no scope for further judicial review by the Adjudicating Authority.



16. In response to the objections of Mr. Mohit Mohan Kapoor vide CA/1686/2019, Mr. Chander Mohan Kapoor vide CA/1687/2019 and Mr. Amar Gupta vide CA/52/2020, the Resolution Professional has filed its reply and stated almost the same grounds as in response to the objections of other objectors, except the following:

- i. The Resolution Plan is a hybrid plan, submitted by a consortium of Universal Green Buyers Association, Universal Aura Welfare Association and Universal Business Park Owners Association (Resolution Applicant) for the Corporate Debtor as a whole and it is incorrect to allege that the Resolution Plan does not provide for resolution of 4 projects of the Corporate Debtor, namely, Universal Square, Universal Prime, The Market Square and The Pavillion.
- ii. Further, depending on the feasibility and status of the Projects and the position of the respective creditors, different dispensation has been provided under the Resolution Plan for each of the Projects of the Corporate Debtor.
- iii. That Part-II of the Resolution Plan specifically provides for resolution of those Projects of the Corporate Debtor, which are not in a position to get completed and delivered i.e the above mentioned 4 Projects.
- iv. Further, it is submitted that none of the creditors of the above mentioned four Projects namely, Universal Square, The Market Square, The Pavillion and Universal Prime have come forward with any proposal for dispensation/contribution under the Resolution Plan of the Corporate Debtor. Thus, the Committee of Creditors in its commercial wisdom has decided that it will be viable to liquidate these Projects and distribute the sale proceeds among the Creditors of these Projects on a pro rata basis.

17. Thus, it is incorrect to say that the Resolution Plan does not pertain to the Corporate Debtor as a whole.

18. The Objector i.e. Kotak Mahindra Bank has filed its written submissions and submitted the following:

- i. Kotak Mahindra Bank Limited ("KMBL") and Kotak Mahindra Prime Limited ("KMPL") submitted a claim for INR 13,92,73,227 Crore and INR 37,34,83,401 Crore, respectively in Form C against the Corporate Debtor, which was admitted by the Resolution Professional and a voting share of 1.59% and 4.27% was assigned respectively in the CoC. KMBL and KMPL voted against the Resolution Plan submitted by a consortium of Universal Aura Welfare Association, Universal Business Park Association and Universal Business Park Owners Association ('RA') and are therefore, Dissenting Financial Creditors ("DFC") of the Corporate Debtor.
- ii. The Resolution Plan is in violation of Section 5(26) of the Code as it does not provide for insolvency resolution of Corporate Debtor as a "going concern". The Corporate Debtor has 3 residential and 5 commercial projects but the Resolution Applicant (RA) has submitted Resolution Plan only for 3 projects (2 residential and 1 commercial) namely, Universal Aura, Universal Greens and Universal Business Park, and the remaining 5 projects namely, Universal Square, Universal Pavillion, Universal Trade Tower, Market Square and Universal Prime have been left behind to meet their own fate or to be liquidated.
- iii. It is further submitted that in Part I of the Resolution Plan, the Resolution Applicant has proposed demerger of 3 projects into 3 separate public limited companies and their completion by Resolution Applicant and in Part-II of the Resolution Plan, the Resolution Applicant has left the five other projects unaddressed contrary to the Code. The cherry-picking of 3 out of 8 projects/assets of the Corporate Debtor and leaving behind the other projects/assets is in violation of

Section 5(26) of the Code read with Regulation 37 of CIRP Regulations, which require that the resolution plan proposed by Resolution Applicant shall be for insolvency resolution of the Corporate Debtor 'as a going concern'.

- iv. The manner of distribution proposed for creditors in the Resolution Plan is not in accordance with Section 53(1) read with Sections 30(4) of the Code.
- v. Kotak holds the following security interest in the assets of Corporate Debtor besides other security interest:
 - a) First *pari passu* charge on unencumbered parcel of land for commercial project namely 'The Pavillion' situated in Sector 70A, Mauza Palra, Tehsil & Distt. Gurugram, Haryana;
 - b) First *pari passu* charge on unencumbered parcel of land for project namely 'Universal Business Park' situated in Village Badshahpur, Tehsil & Distt. Gurugram, Haryana;
 - c) Mortgage on 3 basements and 14 storied commercial building of the project namely 'Universal Business Park' including Unsold super-built up area admeasuring 1,00,387.13 sq. ft., out of total super-built up area admeasuring 2,15,913.13 sq. ft. and along with all appurtenances thereto and along with development rights and existing & future TDR and present & additional FSI and all Parking Spaces; (which is mortgage on 46.4% share in total built up area).
- vi. But the Resolution Plan completely disregards the provisions of the Code and proposes a manner of distribution to creditors, which is contrary to Section 53(1) of the Code as a payout of INR 3 Crores is proposed to KMBL & KMPL and it has further proposed that the proceeds from sale of entire



land of 'the Pavillion' project to be distributed between KMBL, KMPL and allottees as per the ratio of their respective claims. The Resolution Applicant in the Part I of the Resolution Plan has proposed a payout of INR 3 Crores to KMBL & KMPL but fails to prescribe a definite timeline/ manner of distribution to suffice such payout. RA has further stated that the entire area under 'the Business' park project has been sold and that there is no asset of the Corporate Debtor under this project, which is incorrect as the NoCs of KMBL & KMPL NOCs were never obtained as required under the agreements.

- vii. It is further submitted that it can be seen from the mortgage details that about 46% of area is unsold. Further, no forensic audit has been undertaken till date despite request of DFCs due to reasons best known to the Resolution Professional.
- viii. The Resolution Professional erred in placing before the CoC under Section 30(3) of Code, the Resolution Plan of Resolution Applicant which does not confirm with the provisions of Section 30(2)(e) of the Code. The CoC too erred in approving the Resolution Plan.
- ix. The reliance on the judgment passed by the Hon'ble National Company Law Appellate Tribunal in the matter of **Jaypee Greens Krescent Home Buyers Welfare Association Limited & Ors. Vs Jaypee Infratech Limited through Anuj Jain Interim Resolution Professional' Company Appeal (AT) (Insolvency) No. 708 of 2019** passed on 12.07.2019 is misplaced.
- x. It is further submitted that Payment of liquidation value to KMBL & KMPL as a DFC has not been computed by the CoC or stated in Form filed by the RP. As per Section 30(2)(b) of the Code read with Regulation 38(1) of CIRP Regulation, the amount to be paid to the financial creditors, who did not vote in favour of the resolution plan shall not be less than the amount payable to such financial creditors in accordance

with Section 53(1) of the Code in the event of liquidation of Corporate Debtor, which amount shall be paid in priority over assenting financial creditors. The Liquidation Value was disclosed to the CoC pursuant to Regulation 35 of CIRP Regulations. The Resolution Professional informed in the 14th CoC meeting dated 01.11.2019 [Refer page 197 of CA 1550/2019] that the estimated Liquidation Value payable to KMBL & KML aggregated to INR 24.98 Crore. This estimate is incorrect according to Kotak as the Liquidation Value is higher and the objection of Kotak was brought to notice of the CoC also. It was the duty of CoC to compute the Liquidation Value payable to DFCs, which the CoC did not compute or quantify.

- xi. It is further submitted that the Liquidation Value (LV) payable to DFCs including Kotak has also not been mentioned in Column 19 of Form filed by the Resolution Professional. In the 14th meeting of the CoC, the Liquidation Value payable to Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited was mentioned to be Rs. 6.78 Cr and Rs. 18.20 Crores, respectively i.e. being much higher than what is proposed by the Resolution Applicant in the Resolution Plan. In fact, the fair and liquidation value chart circulated by Resolution Professional on 27 July 2019 and the Minutes of CoC meeting dated 12.07.2019 both show the LV has been determined to be Rs. 51,32,34,718/- by the Resolution Professional vide two separate valuations and KMBL & KMPL combined share comes to Rs. 23.8 Crore (46.4% of total value) which has been provided in the Resolution plan.
- xii. It is further submitted that it is also not provided in the Resolution Plan that KMBL & KMPL shall be paid Liquidation Value ahead of assenting creditors. The approval of Resolution Plan with computation of Liquidation Value

payable to DFCs does not meet the requirement of Section 30(2)(b) of the Code read with Regulation 38(1)(b) of CIRP Regulations which in turn makes it violative of Section 30(2)(b) of the Code.

- xiii. It is further submitted that the payment to DFC has to be paid by way of cash and not in kind. The offer of payment by way of land to KMBL & KMPL as Liquidation Value is contrary to the judgment of the Adjudicating Authority, Principal Bench in C.A. No. 5/2020 of CP.(IB) No. 77/Ald/2017 dated 03.03.2020, in which it has been held that amount of Liquidation Value has to be paid in form of cash.
- xiv. It is further submitted that Constitution of CoC is in violation of Section 21 of the Code. Various allottees to whom possession of units has been given, continued to be members of the CoC and the Resolution Professional did not identify and exclude these claims/members of the allottees.
- xv. It is further submitted that no forensic audit has been undertaken till date despite repeated request of DFCs. Yet these allottees continued to vote in the CoC. Therefore, the very constitution of the CoC is flawed and not as per Section 21 of the Code.
- xvi. The class of real estate allottees form majority members of CoC and have a clear conflict of interest with Resolution Applicant. The Resolution Applicant herein is Universal Aura Welfare Association, Universal Business Park Association and Universal Business Park Owners Association, which holds 65.26% voting share in the CoC. In other words, 65.26% of CoC members have proposed their Resolution Plan and also voted thereon. In view of the conflict of interest, it was the duty of CoC to ensure that the Resolution Plan contains terms that were fair and equitable to all creditors as required by Explanation I to clause (b) of Section 30(2) of the Code.



19. The Objector i.e. DHFL has filed written submissions and submitted almost the same facts as submitted by the Kotak Mahindra Bank except the following:

- i. DHFL had submitted a claim for Rs. 183,20,19,466/- Crore in Form C against the Corporate Debtor and the claim of INR 180,60,83,126/- Crore was admitted by the Resolution Professional and a voting share of 20.66% was assigned to it in the CoC. DHFL voted against the Resolution Plan, therefore, it is a Dissenting Financial Creditor ('DFC') of the Corporate Debtor.
- ii. The proceeds from Part-II of the Resolution Plan are not proposed to be paid to DHFL on the ground that DHFL does not have the security interest over the five projects.
- iii. The manner of distribution proposed for creditors in the Resolution Plan is not in accordance with Section 53(1) read with Sections 30(4) of the Code. In the present case, the RA has not clearly proposed a priority of payment, which itself is in violation of section 30(2) read with regulation 38(1) of the CIRP Regulations. However, as per the pay-out provided by the RA in the Resolution Plan, it is clear that the unsecured creditors are getting paid before the DFCs, which is in contravention of the section 30(2)(b) of the Code and regulation 38(1)(b) of the CIRP Regulations.
- iv. It is pertinent to mention that Section 30(4) was amended by way of the Amendment Act of 2019 to leave no scope for doubt or ambiguity that (i) the rights of creditors and the priorities of claims established prior to insolvency proceedings under commercial or other applicable laws should be upheld in an insolvency proceeding to preserve the legitimate expectations of creditors and encourage greater predictability in commercial relationships; and (ii) uphold the inter-se priority of secured creditors in their collateral; and

- (iii) absent the secured creditor's consent, its interest in the collateral should not be subordinated to other priorities granted in the course of the insolvency proceeding.
- v. It is further submitted that DHFL holds the security interest in the assets of Corporate Debtor besides other security interest. But, the Resolution Plan proposes to pay DHFL after three years of approval of the Resolution Plan subject to completion of the projects. Therefore, the real estate allottees, who are unsecured creditors, will get paid ahead of DHFL, which is a secured creditor. In fact, DHFL may not get paid at all if surplus cash is not available after completion of construction to pay DHFL. Section 30(4) of the Code casts a duty on the CoC to approve Resolution Plan that is viable and feasible, and proposes a manner of distribution of payment to creditors which is in accordance with 53(1) of the Code after taking into consideration the value of security interest of creditors, and the priority held by them therein. The Resolution Professional erred in placing the Resolution Plan before the CoC under Section 30(3) of the Code when it did not confirm with the provisions of Section 30(2) (e) of the Code. The CoC too erred in approving the Resolution Plan as the Resolution Plan completely disregards the provisions of Section 53(1) and 30(4) of the Code.
- vi. It is further submitted that the Resolution plan does not propose the manner of distribution in accordance with judgment passed by the Hon'ble National Company Law Appellate Tribunal in the matter of **'Flat Buyers Association, Winter Hill, Gurgaon Vs. Umang Realtech Pvt. Ltd. through RP'** Company Appeal (AT) (Insolvency) No. 926 of 2019 dated 04.02.2020.
- vii. It is further submitted that Payment of liquidation value to DHFL as a DFC has not been computed by the CoC or stated in Form H filed by the Resolution Professional. As per Section

30(2)(b) of the Code read with Regulation 38(1) of CIRP Regulation, the amount to be paid to the financial creditors who did not vote in favour of the resolution plan shall not be less than the amount payable to such financial creditors in accordance with Section 53(1) of the Code in the event of liquidation of Corporate Debtor, which amount shall be paid in priority over assenting financial creditors. The Resolution Professional informed in the 14th CoC meeting dated 01.11.2019 that the Liquidation Value payable to DHFL aggregated to INR 45.83 Crore based on unsold inventory. The estimate was contested by DHFL as according to DHFL the Liquidation Value is higher than INR 45.83 Crore as the very basis of estimate was wrong. It was the duty of CoC to compute the Liquidation Value payable to DFCs, which the CoC did not compute or quantify. However, the Resolution Professional stated that the DFCs can determine Liquidation Value attributable to them and if required directions may be sought from the Adjudicating Authority at a later stage.

- viii. It is further submitted that in the same meeting, it was recorded that the RA has agreed to match the Liquidation Value claimed by DHFL. (i) However, in the Resolution Plan, the Liquidation Value payable to DHFL is still mentioned as INR 45.83 Crore without asking for adjudication from Adjudicating Authority as per minutes of the meeting referred above. (ii) Further, the RA has mentioned Liquidation Value amount which continues to be of even lower amount of INR 35.86 Crore than what the Resolution Professional has estimated. (iii) Further, in Column 15A in Form H, the Resolution Professional has mentioned that Liquidation Value will be determined by a Steering Committee as CoC has not determined the LV which is contrary to the Code as the LV has to be determined before approval of the Resolution Plan by this Adjudicating Authority so that the



DFCs can be paid Liquidation Value in accordance with Regulation 38(1)(b) of CIRP Regulations. Therefore, the approval of Resolution Plan does not meet the requirement of Section 30(2)(b) of the Code read with Regulation 38(1)(b) of CIRP Regulations.

20. An additional joint written submission has been filed on behalf of Dewan Housing Finance Corporation Limited, Kotak Mahindra Bank Limited & Kotak Mahindra Prime Limited. It is mostly the repetition of earlier submissions except placing reliance on the recent decision of Hon'ble Supreme Court in *Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. Civil Appeal No. 3395 of 2020*:

- i. In the Judgment and Order dated 24.3.2021 passed by the Hon'ble Supreme Court in *Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. Civil Appeal No. 3395 of 2020*, the Hon'ble Supreme Court has held that the payment as envisaged by the second part of clause (b) of sub-section (2) of Section 30 could only be made in terms of money. The Hon'ble Supreme Court has further held that money has to be paid in accordance with the order of priority prescribed in Regulation 38(1)(b). The Hon'ble Supreme Court has observed that if DFC is a secured creditor and a valid security interest is created in his favour and is existing, DFC can be paid the 'amount payable' by allowing it to enforce the security interest, to the extent of the value receivable by such DFC and in the order of priority available to it. Such payment by enforcement also must be in priority prescribed in Regulation 38(1)(b).
- ii. The Resolution Plan is in violation of the Code as clarified by the Hon'ble Supreme Court in *Jaypee (Supra)*. The payment proposed to DHFL in the Resolution Plan is after three years of approval of the Resolution Plan subject to completion of

the projects. In fact, DHFL may not get paid at all if surplus cash is not available after completion of construction to pay DHFL. Further, the real estate allottees (the assenting financial creditors) get paid ahead of DFCs as the amount will be spent on construction of their units.

- iii. In case of Kotak, only INR 3 Crore is proposed to be paid in form of money but no time frame is provided. As regards security interest, the Resolution Plan does not provide for any mechanism for handing over entire security interest free of any strings attached. It also does not provide any indemnity that in the event of shortfall in recovery of LV from sale of security interest, the balance amount shall be paid to Kotak by RA in cash and that too before any payment is made to assenting creditors.
- iv. Therefore, the Resolution Plan does not meet the provisions of Section 30(2) of the Code.
- v. In the matter of Jaypee (Supra) the Hon'ble Supreme Court held that if the Adjudicating Authority finds, in a given case that the requisite parameters of section 30(2) are not met, it may send the resolution plan back to the Committee of Creditors for reconsideration.

21. The Resolution Professional has filed its written submissions and submitted the following :

- i. The present proceedings pertain to CIRP of Universal Buildwell Pvt. Ltd. ('Corporate Debtor') commenced vide an order dated 03.07.2018 passed by this Hon'ble Adjudicating Authority admitting an Application filed under Section 7 of the Code.
- ii. Since the date of commencement of CIRP, the suspended management of Corporate Debtor has not cooperated with the Resolution Professional, therefore, an Application under



Section 19(2) IBC-IA No. 400/2019 was filed by Resolution Professional and the same is pending.

- iii. On 19.12.2018 and 08.05.2019 respectively, Resolution Professional published invitation for Expression of Interest (EOI) for submission of resolution plans in Form-G in the Business Standard (English & Hindi editions). [Form G @ Pg. 29-30, Vol- I]. Thereafter Resolution Professional issued final list of prospective resolution applicants [List @ Pg. 50-51, Vol-I] with names of 6 entities.
- iv. On 01.11.2019, resolution plans received from (i) M/s Ajay Yadav & Co. offering upfront payment of approx. Rs. 13.5 Crores to Financial Creditors; (ii) M/s SMJ & Associates- offering upfront payment of approx. Rs.27 Crores to Financial Creditors; (iii) Combined plan of Universal Aura Welfare Association, Universal Greens Buyers Association and Universal Business Park Owners Association offering upfront payment of over Rs. 47 Crores to Financial Creditors were placed before CoC in the 14th meeting to be ranked based on maximum number of votes. [Pg. 185 @ 189, Vo-I]. The CoC ranked resolution plans in the following order:
 - H1: Combined plan of Universal Aura Welfare Association, Universal Greens Buyers Association and Universal Business Park Owners Association (Votes: 67.68%)
 - H2: M/s SMJ & Associates.
 - H3: M/s Ajay Yadav & Co
- v. In the 15th meeting of CoC held on 11.11.2019, the highest ranked (H1) resolution plan submitted by Consortium of Universal Aura Welfare Association, Universal Greens Buyers Association and Universal Business Park Owners Association ('Resolution Applicant' / 'RA') was approved by the CoC by a vote of 70.44% in favour of the Resolution Plan [At Pg 225, Vol-II and Voting Result- Pg. 242 @ 243, Vol-II]. The following creditors voted in favour of the plan.



Name of the Financial Creditor	Votes in favor of Resolution Plan (%)
Allottees of Real Estate Projects	65.26
Hero Fincorp Limited	3.54
Ms. Nisha Singh	0.17
Sunflame Enterprises Pvt. Ltd.	1.47
Total	70.44

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review of the Resolution Plan

- vi. The Resolution Plan pertains to the Corporate Debtor as a whole. Depending on the viability, position, status of each project, number of creditors and contribution from allottees, different dispensation has been made under the Resolution Plan for different projects As follows :

Dispensation for various Projects of the Corporate Debtor under Resolution Plan :					
Sl. No.	Name of Project	Number of Claims	Amount (Rs. In Crores)	Provision under Resolution Plan	Status/ Comments
1	Universal Aura	412	304.28	Proposed to be completed under Part-I of Resolution Plan by infusion of funds by allottees: (i) Plan for Universal Aura @ Pg. 313-320- Vol-II. (ii) Plan for Universal Greens @ Pg. 301-312- Vol-II. (iii) Plan for Universal Business Park @Pg. 321-332- Vol-II.	These 3 Projects are under construction and require infusion of funds to become fully operational. Allottees in the 3 Projects have agreed to make contribution required for completion. (i) Universal Greens: [Cash Flow Statement- Pg. 301 @ 312- Vol-II]
2	Universal Greens	275	91.94		
3	Universal Business Park	184	95.78		

					(ii) Universal Aura [Cash Flow Statement Pg. 313@ 320-Vol-II]
					(iii) Universal Business Park [Cash Flow Statement-Pg. 321 Vol II]
	Total (A)	871	492.01		
4	Universal Square	151	52.45	Part-II of Resolution Plan proposes that since there is no construction/development in the 4 Projects and most of the inventory is unsold, it is not feasible for RA to start construction of these Projects from inception. RA has proposed setting up of a Monitoring Committee appointed by the Hon'ble NCLT under the Chairmanship of a Retired Judge to liquidate these Projects and distribute the proceeds among creditors of	Development rights entrusted with Corporate Debtor under agreement dated 12.03.2010 were terminated on account of default by Corporate Debtor by order dated 24.01.2018 passed by Ld. Civil Judge, Gurugram in Case No. 187/2015/2017. This order was upheld by this Adjudicating Authority on 27.05.2019 & Hon'ble NCLAT in Comp Appeal (AT) (Ins) No. 692/2019 and RP was

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				these 4 Projects on a pro rata basis in accordance with provisions of Section 53 of IBC, including recoveries on account of preferential/ undervalued transactions .pertaining to these Projects [Pg. 271 @ Pg. 333, Vol-II]	directed to ensure that no rights are created over the said property. Corporate Debtor has no title over this Project. [See Pg. 334, Vol-II]
5	Market Square	40	10.07		M/s Samyak Projects Pvt. Ltd. was assigned development rights under Settlement Agreement dated 18.01.2018 but no construction/ development was commenced and land is lying vacant.[See Pg. 334, Vol.II]
6	The Pavilion	42	8.33		There is no development in the Project and land is lying vacant. Kotak Mahindra Bank & Kotak Mahindra Prime have charge over land in the said project. [See Pg. 334,

					Vol-II]
7	Universal Prime	4	1.20		Project comprises partially/semi constructed RCC structures. Out of 24 units on 8 Plots of land, 18 units have been sold to allottees and are not a subject matter of the Resolution Plan. SIDBI is only FC having mortgage right in this project.[Pg. 333, Vol-II]
8	Universal Trade Tower	43	20.94	Rights of allottees to be determined on basis of the outcome of Application CA No. 500/2019 for appointment of local Commissioner which is pending [Pg. 335, Vol-II]	Project is complete and occupation certificate has been received. The entire area is fully sold to allottees, there is no asset belonging to Corporate Debtor in the Project. There is overselling due to multiple duplicate sales made by Corporate Debtor which



					would need to be resolved by the civil court and cannot be addressed in insolvency proceedings.
9	Unclassified	2	0.06		
	Total (B)	282	93.05		
Grand (A+B)	Total	1153	585.06		

- vii. The different treatment of the different projects of the Corporate Debtor does not amount to discrimination. The differential treatment is based on real difference in the status of the projects. As seen above, the claims of maximum number of home buyers have been addressed in the Resolution plan by promising the handing over of the units to them.

DETAILS OF SOLD AND UNSOLD UNITS IN EACH PROJECT								
Sl. No	Name of Project	No. of Units (as per records of CD)	No. of Units Sold	No. of Units Claimed till 13.02.21	No. of Units Unsold	Avg. Rate per sq. Ft charged (Estimated Basic Sales Price)	Additional per sq. Ft contribution sought	Status of construction
1	Universal Aura	585	501	416	84	3200/-	850/-	50%
1A	Unimart (Aura)	26	23	19	03	8000/-	850/-	0%
2	Universal Greens	568	356	288	212	1850/-	750/-	40%
3	Universal Business Park	375	Excess	241	0	3000/-	590/-	90%
4	Universal Square	388	312	210	76	3500/-		0%
5	Market Square	No Data Available	No Data Available	56	No Data Available	6500/-		0%
6	The Pavilion	464	61	51	403	6000/-		0%
7	Universal	24	18	4	6	3100/-		35%

	Prime						
8	Universal Trade Tower	469*	Excess	59	0	3500/-	100% OC Received

- viii. The proposed pay out to the Financial Creditors is from (a) excess contribution being made by the home buyers, (b) sale of unsold units, and (c) the sale of assets under Part II of the Resolution Plan.

Payment offered to Secured Financial Creditors under Resolution Plan						
Sl. No.	Name of Financial Creditor	Amount Claimed (Rs. Crores)	Amount Admitted (Rs. Crores)	Amount provided Resolution Plan (Rs. Crores)	Percentage amount provided to amount claimed (Rs. Crores)	Provision by sale of assets in addition to amount provided by Resolution Applicant
1.	DHFL	183.20	180.61	44.81	24.81%	
2.	Kotak Bank	13.93	13.93	0.82	5.85%	The value of land of the project. 'The Pavillion' has fair value of Rs.36.20 Crores and liquidation value is Rs.27.24 Crore (Pg. 334,Vol-II).
3.	Kotak Prime	37.34	37.34	2.18	5.85%	
4.	SIDBI	12.42	9.47	-	-	SIDBI's has mortgage rights over 8 plots in Universal Prime. These properties mortgaged to SIDBI have fair value of Rs.9.21 Crores and liquidation value of Rs. 5.88 Crore. (Pg. 282 & 333,Vol-II).

Part-I

- ix. Part-I of the Resolution Plan provides for resolution of those Projects of the Corporate Debtor, which are nearly complete and require infusion of funds to become fully operational.

These are namely, Universal Business Park, Universal Aura and Universal Greens. These Projects have been demerged into separate Public Limited Companies. The shares of the new company shall be held by the homebuyers by subscribing to the equity of the Company in the ratio of the total cost of their allotted unit.

- x. The allottees/ unit holders in aforementioned 3 Projects have come forward and agreed to make additional contribution required for completion of the Projects :
 - a. Universal Greens: A total expenditure of INR 192.27 Crores has been envisaged for completion of the Project.
 - b. Universal Aura: A total expenditure of INR 201.07 Crores has been envisaged for completion of the Project.
 - c. Universal Business Park: A total expenditure of INR 20.32 Crores has been envisaged for completion of the Project by Resolution Applicant.

Part-II

- xi. Part-II of Resolution Plan provides for resolution of those projects of Corporate Debtor, namely - Universal Square, Universal Prime, The Market Square, The Pavillion, in which no construction/development work has commenced and most of the inventory is unsold. It is not feasible for Resolution Applicant to start construction of these Projects from inception.
- xii. Resolution Applicant has proposed setting up of a Monitoring Committee appointed by the Adjudicating Authority under the Chairmanship of a Retired Judge to liquidate these four Projects and distribute the proceeds among creditors of these four Projects on a prorata basis in accordance with provisions of Section 53 of IBC including proceeds from

recovery made on account of preferential/undervalued transactions.

- xiii. This distinction is only on the basis of different status and position of the Projects of the Corporate Debtor. Commencing construction of undeveloped projects from inception is neither feasible nor viable under the Resolution Plan, even more so when none of the allottees/creditors of the 4 Projects dealt with under Part II have come forward to make any dispensation under the Resolution Plan.
- xiv. This Resolution Plan provides for maximum payment to Financial Creditors in comparison to the payout offered under other two resolution plans of Ajay Yadav & Co. offering Rs.13.5 Crores and of SMJ & Associates offering Rs.27 Crores. There is no illegality in the Resolution Plan and the same having been approved by 70.44% members of the CoC ought to be approved by the Adjudicating Authority.

22. We have heard the Ld. Counsels for the applicant/Resolution Professional as well as all the objectors.

23. Mr. Sumant Batra appearing for DHFL and KMBL has raised the objections on the Resolution Plan submitted by the Resolution Professional, which is duly approved by the CoC in its meeting dated 11.11.2019.

24. The Counsels appearing for IA-2664/2020, CA/1686/2016, CA-1687/2019 and CA/52/2020 as well as IA/5533/2020 adopted the arguments advanced by Mr. Sumant Batra, who appeared on behalf of the objectors, namely, DHFL and KMBL. Therefore, we would like to consider the objections raised on behalf of DHFL and KMBL first.

25. The DHFL, KMBL and Resolution Professional have filed their written submissions and raised all the facts and law as referred in the written submissions. Therefore, it is needless to repeat the same.

27. We further notice that after the pronouncement of judgement by Hon'ble Supreme Court in Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. in Civil Appeal No.3395 of 2020 decided on 24.03.2021, an additional written submission has been filed by Mr. Sumant Batra jointly on behalf of DHFL, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited.

28. Mr. Sumant Batra appearing for aforesaid objectors, while placing reliance on the order dated 24.03.2021 passed by the Hon'ble Supreme Court in Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. in Civil Appeal No. 3395 of 2020 decided on 24.03.2021 submitted that the Hon'ble Supreme Court has held that the payment as envisaged by the second part of clause (b) of sub-section (2) of Section 30 could only be made in terms of money, which has to be paid in accordance with the order of priority prescribed in Regulation 38(1)(b) referred in para 124 page 249 of the Judgement.

29. On the basis of written submissions filed on behalf of three objectors, we notice that apart from that ground, objectors have also stated that the plan is in violation of the Code because the payment proposed to the DHFL in the Resolution Plan after the three years of the approval of the Resolution Plan is subject to completion of the Project.

30. Further contention of the objectors is that the objectors being the dissenting financial creditors (DFCs), they are entitled to get the amount ahead of the assenting financial creditors. But as per the Resolution Plan, the amount raised under the plan will be first spent on the construction of their units/project. Therefore, they (DFCs) will not get paid ahead of the dissenting financial creditors, which is contrary to the decision of Hon'ble Supreme Court as well as the provisions of law.

31. On behalf of Kotak, the contention of the Ld. counsel is that only an amount of INR 3 Crore is proposed to be paid in the form of money but no time line for payment is provided under the Plan.



32. Whereas Ld. Counsel for IA/5533/2020, apart from the arguments advanced by Mr. Sumant Batra, has also submitted that the project Universal Tower, in which he is one of the allottee, has already been completed but even then, it is the subject of the CIRP as well as Resolution Plan.

33. However, the reply filed by the Resolution Professional in response to CA-5533/2020 shows that it is mentioned in the Resolution Plan that since this project has already been completed, it is not the subject of Resolution Plan as per the averment made in the Part-II of the Resolution Plan.

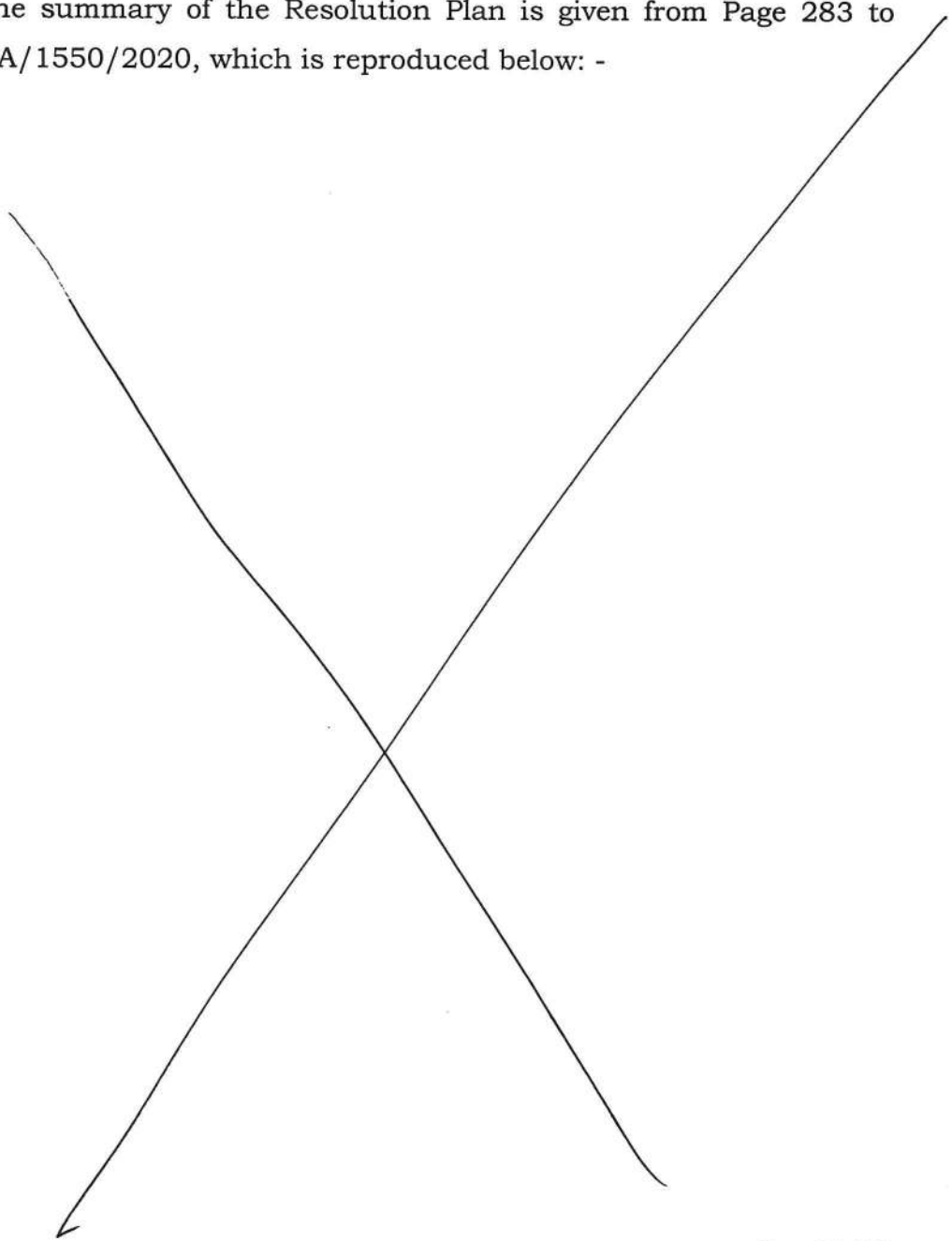
34. Before making any comments on these submissions, we would like to refer the Resolution Plan submitted by the Resolution Professional. On perusal of the Resolution Plan, we notice that it is an admitted fact that the Resolution Plan has been divided in two parts i.e. Part-I and Part- II. The part-I deals with three projects namely, Universal Green, Universal Aura and Universal Business Park, in which partial construction work has been undertaken. These projects are shown as the "going concern" under the Resolution Plan. Whereas in the Part-II of the Resolution Plan deals with four projects, namely Universal Square, Universal Prime, the Market Square, the Pavillion, in which no construction/development work has commenced and most of the inventory is unsold, and therefore, a proposal is given for their liquidation. It has been suggested to constitute a Monitoring Committee appointed by the National Company Law Tribunal (NCLT) under the Chairmanship of a retired judge to liquidate these four projects and distribute their proceeds amongst creditors of these four Projects on a *pro rata* basis in accordance with the provisions of Section 53 of IBC including proceeds from recovery made on account of preferential/undervalued transactions.

35. At this juncture, we would like to refer, the Kotak holds the security interest in the assets of Corporate Debtor, in the project "The

Pavillion' situated in Sector 70A, Mauza Palra, Tehsil & Distt. Gurugram, Haryana", in Part-II of the Resolution Plan and "Universal Business Park' situated in Village Badshahpur, Tehsil & Distt. Gurugram, Haryana", in Part-I of the Resolution Plan.

36. From the perusal of the Plan, we notice that at page 282 of the application and internal page 12 of the Resolution Plan, the pay-outs to the secured and unsecured financial creditors are proposed.

37. The summary of the Resolution Plan is given from Page 283 to 290 in CA/1550/2020, which is reproduced below: -



(IB) 456 (ND)/2018
IA/1550/2019, IA/5533/2020 & IA/2664/2020
CA/1686/2019, CA/1687/2019 & CA/52/2020

Secured Financial Creditors

Resolution Applicant proposes to allow the secured creditors having mortgage rights over the properties of the Corporate Debtor to realise their security interest and proposes to pay an amount of ₹38.86Cr to the secured creditors as detailed below:-

<u>Secured Financial Creditors</u>	<u>Claim Admitted</u>	<u>Payout Proposed</u>
DHFL	180,60,83,126	₹35.86Cr
AXIS Bank Limited	5,37,47,606	Realisation of Security interest in the mortgaged property as per Part-II
HDB Financial Service Limited	4,97,82,037	
Kotak Mahindra Prime Limited	37,34,83,401	₹3Cr and Realisation of Security interest in the mortgaged property as per Part-II
Kotak Mahindra Bank Ltd.	13,92,73,227	
Hero Fincorp Limited	30,98,09,854	Realisation of Security interest in the mortgaged property as per Part-II
IndusInd Bank Limited	6,82,32,575	
SIDBI	9,46,85,724	
Total	289,50,97,550	

Unsecured Financial Creditors

The loan of the unsecured creditors Ms Nisha Singh and M/S Sunflame Enterprises Private Limited has been treated under this Resolution Plan as under:

<u>Un-secured Financial Creditors</u>	<u>Claim Admitted</u>	<u>Payout Proposed</u>
Sunflame Enterprises Ltd	₹12,81,76,204	The units allotted to them are being proposed to be treated at Par with the treatment proposed for the Buyers of the Universal Business Park Project.
Nisha Singh	₹1,50,98,186	₹0.23Cr
Total	₹14,32,74,390	

Summary of the Resolution Plan

The various aspects of stakeholders under the Resolution Plan is summarised as under:

CIRP Cost

The total CIRP Cost till 30.09.2019 as communicated by the Resolution Applicant is ₹4,94,15,653/-. The entire CIRP cost shall be paid by the three Associations in the consortium in the ratio of the claim admitted by Resolution professional in respect of their Project. The sharing ratio between Universal Greens, Universal Aura and Universal Business Park works out to 18.53%, 61.69% and 19.78% respectively (Annexure-B). As such these three Associations shall contribute an amount of ₹91,56,063/-, ₹3,04,86,848/- and ₹97,72,742/- respectively. Any revision in claim ratio due to further admission of claims by RP shall not affect allocation further. Moreover if any enhancement in the CIRP Cost upto the date of approval of Resolution Plan by Hon'ble NCLT, the associations undertakes to pay the enhance amount as per their share with above mentioned CIRP cost.

The CIRP Cost if any paid by the COC members till date shall be reimbursed under this Resolution Plan from the amount so earmarked.

The amount of CIRP Cost pertaining to the Projects under Part-II of this plan wherein the claims are proposed to be settled after realisation of remaining assets of Corporate Debtor shall be reimbursed to the respective Associations/Demerged Companies on realisation of the proceeds under Part-II of this Plan.

Secured Financial Creditors

M/S DHFL & Kotak Mahindra Bank Ltd/Kotak Mahindra Prime Ltd.

The status of dues of the secured financial creditors in respect of the Universal Greens, Universal Aura and Universal Business Park Project has been dealt in detail in their respective proposal. Based on the said deliberation and the respective terms and conditions of the sanction the amount due M/S DHFL works out to ₹20.61Cr (₹10.93Cr for Universal Greens and ₹9.68 Cr. for Universal Aura). The secured creditor in respect of Universal Business Park is M/S Kotak Mahindra Bank Ltd and M/S Kotak Mahindra Prime Limited based pay-out amounting to ₹3.00Cr has been provided.

As per the IBC Rules it has to be ensured that the dissenting financial creditors get at least what they would be entitled as a result of liquidation of the Corporate Debtor. Accordingly, the eligible amount based on the liquidation value has been arrived as hereunder.

Accordingly, an amount of ₹35.88Cr (₹16.36Cr for Universal Greens and ₹19.50Cr for Universal Aura) has been proposed in the Plan as per working detailed below. In this manner about 42.45% of the principal of M/S DHFL outstanding against the Corporate Debtor and around 19.85% of the total claim of M/S DHFL admitted by the Resolution Professional is being resolved.

In case of Kotak Mahindra Bank Ltd & Kotak Mahindra Prime Limited an amount of Rs. 3 Cr is being proposed from Business park though the entire area under the Universal Business Park Project has been sold and there is no asset belonging to the Corporate Debtor under this Project. As such the liquidation value of the assets belonging to Corporate Debtor in this Project is NIL.

Estimation of realisations from the assets of the Corporate Debtor in Universal Greens and Universal Aura :

The estimation of the realisation from the Assets of the Corporate Debtor is based on the principal laid down by Hon'ble NCLAT in the matter of Jaypee Greens Crescent Home Buyers Welfare association Vs Jaypee Infratech Ltd (Company Appeal (AT) (Insolvency) No. 708 of 2019) vide order dated 12.07.2019.

It has been settled therein that in Corporate Insolvency Resolution Process against an infrastructure company (Corporate Debtor) normally the asset of the Corporate Debtor is limited to the infrastructure of that particular project meant for allotment or sale to the allottees. Such project cannot be clubbed with any other project for the purpose of Corporate Insolvency Resolution Process against the same Corporate Debtor.

Therefore, prima facie it appears that 'Corporate Insolvency Process' against an infrastructure company (Corporate Debtor), which relates to a particular project is temporary in nature as the asset of the "Corporate Debtor", i.e., infrastructure, do not



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exist after sale/allotment to the allottees. The assets of the Corporate Debtor of that Project stands transferred to allottees/ financial creditors.

Therefore, the maximization of asset cannot be of 'Corporate Debtor' but will be that of Infrastructure meant for the allottees/ Financial Creditors.

Based on the ratio-deciding of the above NCLAT order the realisable value of the Projects are assessed as under:

(i) Universal Greens, Faridabad

It is a project with a total saleable area of 802984 Sq. Ft. Out of this area measuring 492698 Sq. Ft. has been sold/allotted to various Home Buyers. The unsold area under the Project is 310286 Sq. Ft. M/S DHFL is the sole financial creditor of the Project has issued No Objection Certificate to the allottees as placed as (Annexure C). Vide such NOCs the Financial Creditor has released their charge on the said properties.

In view of the same and the conclusion drawn by NCLAT in respect of ownership of units under a real estate project, the sold units in this project are no longer assets of the Corporate Debtor and cannot be liquidated as they belong to the allottees.

The only area that can be liquidated is the unsold area in the Project. However, such unsold area cannot be separated and sold out at present as they are part of the single project wherein rights in the majority of the units stand transferred to the allottees. As such the unsold area/unit has no value as on date in event of liquidation of this project at this stage. Accordingly, the liquidation value is NIL and the M/S DHFL shall not be getting any fund.

The unsold area in the Project acquires a value if and only if the entire Project is completed by infusing additional funds and carrying out construction activities as being proposed by the Resolution Applicant. In such an event the realisable value from such unsold area has been worked out as under:

Calculation of realisable value:

Sl. No.	Particulars	
1	Total Area of land mortgaged in Acres	7.97 Acre
2	Total Saleable super area in the project in Sq Ft	802984
3	Super Area of Sold Units belonging to Allottees	492698
4	Super Area Unsold in Sq. Ft.	310286
5	Area of Land being part of unsold Super Area (in Acre) {(5) = (1) / (2) X (4)}	3.0797
6	Circle rate of Property in the area (per Acre)	₹16,000/-
7	Value of Unsold Area based on Circle Rate {(5) X 4840 X (6)}	₹23.85 Cr
8	Value Realisable on Distress Sale {70% of (7)}	₹16.69 Cr
9	Cost of realisation {2% of Realisable Value at (8)}	₹0.33 Cr
10	Net value of Property on date in the event the entire Project is completed {(8) - (9)}	₹16.36Cr

It is pertinent to note here that the unsold inventory acquires the value only when the project is completed. The unsold inventory does not exist physically at site as such the realisable value from the same as on date is nil. The present value of the unsold area which is the only asset belonging to the Corporate Debtor under this Project is NIL. As such M/S DHFL will not be realise any amount on account of such unsold area as on date.

Further, based on the disbursement terms and conditions the entitled amount to be settled against dues works out to ₹10.92Cr. However, the Resolution Applicant being representative of the doomed buyers has kept an amount of ₹16.36Cr as worked out in the above table to be paid to M/S DHFL as these unsold area form a crucial part in the completion of this Project.

The proposed amount of ₹16.36 Cr can only be realised only when the infrastructure project is completed with completion time of three years. Accordingly, payment to M/S DHFL is being proposed from the sale of such inventory as detailed in the project's Cash Flow of Universal Greens (Annexure-D).



(ii) Universal Aura, Gurugram

It is a project with a total saleable area of 965653 Sq. Ft. Out of this area admeasuring 807822 Sq. Ft. has been sold/allotted to various Home Buyers. The unsold area under the Project is 157831 Sq. Ft. and M/S DHFL is the sole financial creditor for this Project. M/S DHFL has issued No Objection Certificate to the allottees as placed as (Annexure-C). Vide such NOCs the Financial Creditor has released their charge on the said properties.

In view of the same and the conclusion drawn by NCLAT in respect of ownership of units under a real estate project, the sold units in this project are no longer assets of the Corporate Debtor and cannot be liquidated as they belong to the allottees.

The only area that can be liquidated is the unsold area in the Project. However, such unsold area cannot be separated and sold out at present as they are part of the single project wherein rights in the majority of the units stand transferred to the allottees. As such the unsold area/unit has no value as on date in event of liquidation of this project at this stage. Accordingly, the liquidation value is NIL and the M/S DHFL shall not be getting any fund.

The unsold area in the Project acquires a value if and only if the entire Project is completed by infusing additional funds and carrying out construction activities as being proposed by the Resolution Applicant. In such an event the realisable value from such unsold area has been worked out as under:

Calculation of realisable value:

Sl. No.	Particulars	
1.	Total Area of land mortgaged in Acres	11.231
2.	Total Saleable super area in the project in Sq Ft	965653
3.	Super Area of Sold Units belonging to Allottees	807822
4.	Super Area Unsold in Sq. Ft.	157831
5.	Area of Land being part of unsold Super Area (in Acre) {(5) = (1) X (2) X (4)}	1.8356
6.	Circle rate of Property in the area (per Acre)	₹32,000/-
7.	Value of Unsold Area based on Circle Rate {(5) X 4840 X (6)}	₹28.43 Cr
8.	Value Realisable on Distress Sale {70% of (7)}	₹19.90 Cr
9.	Cost of realisation {2% of Realisable Value at (8)}	₹0.40 Cr
10.	Net value of Property on date in the event the entire Project is completed {(8) - (9)}	₹19.50 Cr

It is pertinent to note here that the unsold inventory acquires the value only when the project is completed. The unsold inventory does not exist physically at site at such time.

realisable value from the same as on date is nil. The present value of the unsold area which is the only asset belonging to the Corporate Debtor under this Project is NIL. As such M/S DHFL will not be realise any amount on account of such unsold area as on date.

Further, based on the disbursement terms and conditions the entitled amount to be settled against dues works out to ₹9.68Cr. However, the Resolution Applicant being representative of the doomed buyers has kept an amount of ₹19.50Cr as worked out in the above table to be paid to M/S DHFL as these unsold area form a crucial part in the completion of this Project.

The proposed amount of ₹19.50 Cr can only be realised only when the infrastructure project is completed with completion time of three years. Accordingly, payment to M/S DHFL is being proposed from the sale of such inventory as detailed in the projected Cash Flow at Annexure-E.

1. SIDBI

The claim of SIDBI is secured with mortgage right over the entire 8 plots under Universal Prime Project. Under this plan it is proposed that SIDBI be allowed to realise its security interest for unsold inventory in the said Project as detailed in the Part-II of this Resolution Plan in satisfaction of their claim admitted during insolvency proceedings in the manner as set out in the Part-II of this Plan.

2. Kotak Mahindra Bank Ltd & Kotak Mahindra Prime Limited

The claim of Kotak Mahindra Bank Ltd & Kotak Mahindra Prime Limited admitted under the insolvency proceedings is secured with mortgage right over land, future and present construction of the Universal Pavilion Project of the Corporate Debtor. Under this plan it is proposed that Kotak Mahindra Bank Ltd & Kotak Mahindra Prime Limited may allowed to realise its security interest in the land and construction mortgaged to them in the Universal Pavilion Project in satisfaction of their claim admitted during insolvency proceedings after considering claims received on said project in the manner as set out in the Part-II of this Plan.

3. Axis Bank

The claim of AXIS Bank is secured against mortgage right over 3500 Sq. Ft. area on Ground Floor and 1750 Sq. Ft. area on the Ground Floor in the name of Sh. Raman Puri Director of the Corporate Debtor in Universal Trade Tower. Under this plan it is proposed that Axis Bank may allowed to realise its security interest in the land and construction mortgaged to them in these units in satisfaction of their claim admitted during insolvency proceedings in the manner as set out in the Part-II of this Plan.



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4. HDB Financial Services Limited

The claim of HDBFSL is secured against mortgage right over Flat No. 331,332,333 at 3rd Floor area measuring 3337.59 Sq. Ft. and Flat No. 524, 525, 526, 527, 527A at 5th Floor area measuring 4000 Sq. Ft. in Universal Trade Tower are the personal assets of Directors/ shareholder of Corporate Debtor. Under this plan it is proposed that HDBFSL may be allowed to realise its security interest in the land and construction mortgaged to them in satisfaction of their claim admitted during insolvency proceedings in the manner as set out in the Part-II of this Plan.

5. IndusInd Bank

The claim of IndusInd Bank admitted under the insolvency proceedings is secured against mortgage of property at Ground Floor in the name of Sh. Raman Puri, Director of the Corporate Debtor and Smt. Madhu Puri related party to the Corporate Debtor. Under this plan it is proposed that IndusInd Bank be allowed to realise its security interest in the land and construction mortgaged to them in satisfaction to their claim admitted during insolvency proceedings in the manner as set out in the Part-II of the Plan.

6. Herofin Corp Limited

The claim of Herofin Corp Limited admitted under the insolvency proceedings is secured against mortgage of all pieces and parcels of immovable property admeasuring 4 bigha and 12 biswa situated at khewat no. 15/7, Min bearing khasra no. 17/19 and 17/18, Sector-49, Gurgaon-122 018. Under this plan it is proposed that Herofin Corp be allowed to realise its security interest in the land and construction mortgaged to them in satisfaction to their claim admitted during insolvency proceedings in the manner as set out in the Part-II of the Plan.

Unsecured Financial Creditors

1. M/S Sunflame Enterprises Ltd

M/S Sunflame Enterprises Ltd have been allotted area under the Business Park Project of the Corporate Debtor. Under this plan the allotment of M/S Sunflame Enterprises shall be treated in the similar manner as being done in respect of other allottees in this Project as set out in the Part-I of this Plan.



2. Ms. Nisha Singh

Total amount of ₹23 Lakh is being proposed to this unsecured creditor under this Plan.

Employee Dues

Dues of Employees admitted by Resolution Professional under insolvency proceeding is to the tune of ₹1,99,19,878/-. A provision amounting to ₹0.40Cr being 20% of the claim admitted is being provisioned in this Plan as settlement of the entire claim of the Employees. The fund towards this shall be contributed by the three Associations in the following manner:

- (i) Universal Greens : ₹0.18Cr
- (ii) Universal Aura : ₹0.02Cr
- (iii) Business Park : ₹0.20Cr

Operational Creditors

An amount of ₹17,14,77,590/- has been admitted as claim of operational creditors (other than statutory dues) by the Resolution Professional under the insolvency proceedings. An amount of ₹2.31 Cr being 13.47% of the total claim admitted is has been provisioned in this Plan as pay-out to the Operational Creditors. The amount so provided shall be contributed as under:

- (i) Universal Greens : ₹0.24Cr
- (ii) Universal Aura : ₹0.17Cr
- (iii) Business Park : ₹1.90Cr

Further Resolution Applicant is also paying to operational creditor which complies to section 30 (2)(b)(i) and 30 (2) (b) (ii) of Insolvency and Bankruptcy Code, 2016.

Statutory Dues

An amount of ₹117,20,60,827/- included under Operational Creditors have been admitted as claim against statutory dues. No amount is being proposed for payment for settlement of such dues.

A time line of pay-out to various stake holders is placed as Annexure F



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38. On the basis of the aforesaid facts, we notice that the amount, to be paid to DFCs is dealt in the Resolution plan. So far as the DHFL is concerned, the amount, which is proposed to be paid is Rs.44.81 crores and the Kotak Mahindra Prime and Kotak Mahindra Bank Limited together are proposed to get Rs. 3 Crores plus realization of the security interest in the mortgaged property as per Part-II.

39. It is also seen that it is not only the Kotak Mahindra Bank Limited as well as Kotak Mahindra Prime Limited but also the Axis Bank Limited, HDB Financial Services Limited, Hero Fincorp Limited, Indusind Bank Limited and SIDBI will also get the amount against the security interest in the mortgaged property as per Part-II. The ground for realisation of the amount against the security interest is that the properties shown in the part-II are placed under mortgage with Axis Bank Limited, HDB Financial Services Limited, Hero Fincorp Limited, Indusind Bank Limited and SIDBI.

40. We further notice as regards to payment to DHFL, the proposed amount is to be realized only when the infrastructure is completed. And the completion time is three years and the payment will be made out of the sale proceeds of such inventory as referred to in the the Resolution plan.

41. So far as the Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited are concerned, they are proposed to be paid Rs. 3 crores on the ground that the entire area under the Universal Business Park project has been sold and there are no assets belonging to the Corporate Debtor left under this project. Accordingly, the liquidation value of the assets belonging to the Corporate Debtor under this project is shown as Nil in the Part-I of the Resolution Plan. It is also mentioned that they have mortgage right over the land, on which the project namely, "the Pavillion" is situated in Sector 70A, Mauza Palra, Tehsil & Distt. Gurugram, Haryana. As shown in the Part-II of the Resolution Plan, the

project is yet to be started and they will get realization of the amount in the manner as stated in Part-II of the Plan.

42. At this juncture, we would also like to refer to the arguments advanced by Ld. Counsel Mr. Sumant Batra on behalf of DHFL, Kotak Mahindra Bank Limited as well as Kotak Mahindra Prime Limited, who in the course of his arguments submitted that since they are the dissenting financial creditors, they are entitled to get the payment ahead of assenting financial creditors. This position of law is not disputed by the Resolution Professional. Rather the contention of the Resolution Professional is that none of the assenting financial creditors are getting anything prior to the dissenting financial creditors because the assenting financial creditors will get the possession of the flats only when they are completed. Similarly, the dissenting financial creditors i.e. DHFL, Kotak Mahindra Bank Limited as well as Kotak Mahindra Prime Limited will also get the amount after the completion of the Project. The time frame for completion of the project is three years. Therefore, it cannot be said that the assenting financial creditors are getting paid in terms of possession of their flats ahead of the dissenting financial creditors.

43. We further notice that in course of their arguments, the objectors have also raised a question that only the part of the properties of the Corporate Debtor are covered with the Resolution Plan whereas the remaining properties of the Corporate Debtor i.e. the properties shown in part-II of the Resolution Plan are not covered with the Resolution Plan, which has left these properties without giving a specific proposal in the plan.

44. It has been further contended that the proposal to constitute a Monitoring Committee by the NCLT, as given under Part-II of the Resolution Plan, is not in accordance with the provisions of law. The Ld. Counsel submitted that in the light of the decision of Hon'ble Supreme Court in the matter of Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. in Civil Appeal No. 3395

of 2020 decided on 24.03.2021, they are entitled to get the payment in terms of money only.

45. Since the Ld. Counsel appearing for the objectors has placed reliance on the decision of the Hon'ble Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. in Civil Appeal No. 3395 of 2020 decided on 24.03.2021**, at this juncture, we would like to consider that decision.

46. While going through the decision of the Hon'ble Supreme Court in Jaypee Case (Supra), we notice that the power of the Adjudicating Authority to consider approval of the Resolution Plan has also been discussed in that case. Therefore, we would like to refer the relevant paragraphs of the decision, which are quoted below: -

"77. In the scheme of IBC, where approval of resolution plan is exclusively in the domain of the commercial wisdom of CoC, the scope of judicial review is correspondingly circumscribed by the provisions contained in Section 31 as regards approval of the Adjudicating Authority and in Section 32 read with Section 61 as regards the scope of appeal against the order of approval.

77.1. Such limitations on judicial review have been duly underscored by this Court in the decisions above-referred, where it has been laid down in explicit terms that the powers of the Adjudicating Authority dealing with the resolution plan do not extend to examine the correctness or otherwise of the commercial wisdom exercised by the CoC. The limited judicial review available to Adjudicating Authority lies within the four corners of Section 30(2) of the Code, which would essentially be to examine that the resolution plan does not contravene any of the provisions of law for the time being in force, it conforms to such other requirements as may be specified by the Board, and it provides for: (a) payment of insolvency resolution process costs in priority; (b) payment of debts of operational creditors; (c) payment of debts of dissenting financial creditors; (d) for management of affairs of corporate debtor after



approval of the resolution plan; and (e) implementation and supervision of the resolution plan.

77.2. The limitations on the scope of judicial review are reinforced by the limited ground provided for an appeal against an order approving a resolution plan, namely, if the plan is in contravention of the provisions of any law for the time being in force; or there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; or the debts owed to the operational creditors have not been provided for; or the insolvency resolution process costs have not been provided for repayment in priority; or the resolution plan does not comply with any other criteria specified by the Board.

77.3. The material propositions laid down in Essar Steel (supra) on the extent of judicial review are that the Adjudicating Authority would see if CoC has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors have been taken care of. And, if the Adjudicating Authority would find on a given set of facts that the requisite parameters have not been kept in view, it may send the resolution plan back to the Committee of Creditors for re-submission after satisfying the parameters. Then, as observed in Maharashtra Seamless Ltd. (supra), there is no scope for the Adjudicating Authority or the Appellate Authority to proceed on any equitable perception or to assess the resolution plan on the basis of quantitative analysis. Thus, the treatment of any debt or asset is essentially required to be left to the collective commercial wisdom of the financial creditors.”

47. In the light of the decision referred above, when we consider the case in hand and the submissions made on behalf of the objectors, we are of the considered view that there is a limited scope of judicial review available to the Adjudicating Authority within the four corners of Section 30(2) of the Code, beyond which the Adjudicating Authority can not go.

48. As per Section 30(2) of the Code, only the following five conditions are required to be examined as held by the Hon'ble Supreme Court in Jaypee Case (Supra):

- a. Payment of insolvency resolution process costs in priority**
- b. Payment of debts of operational creditors**
- c. Payment of debts of dissenting financial creditors**
- d. Management of affairs of corporate debtor after approval of the resolution plan and**
- e. Implementation and supervision of the resolution plan.**

49. Now, in the light of position of law settled by the Hon'ble Supreme Court (Supra), we consider the contention of Mr. Sumant Batra, Advocate and we notice that the amount proposed to be paid in the Resolution Plan is approved by the CoC. Under Section 30(2)(b) of IBC read with Section 53 of IBC, 2016, it is the duty of the Resolution Professional to examine the Resolution Plan, whether the distribution to the Creditors is made in terms of the provisions of law and Regulations, thereafter the Resolution Professional shall place the same before the Committee of the Creditors u/s 30(3) IBC 2016 for its approval. The COC after considering the feasibility and viability, the manner of distribution proposed, may approve the Plan by not less than 66% of voting share u/s 30(4) of the IBC 2016. It is the commercial wisdom of the CoC to determine what amounts are to be paid to different classes and sub classes of creditors in accordance with the provisions of the Code and the Regulations made thereunder. It is seen that while deciding the amounts in the instant case, the CoC has considered the liquidation value placed by the Resolution Professional as well as the Resolution Applicant as mentioned in aforementioned paragraphs. Since the units, that have already been sold, are no longer an asset of the Corporate Debtor and consequently cannot be liquidated, their liquidation value has been provided as NIL. The COC after considering the same, approved the amounts proposed to be paid to Kotak Mahindra Bank Limited,

Kotak Mahindra Prime Limited and similarly, to DHFL. Hence, we find, no force in the contention raised by the Ld. Counsel for the Objectors that the amounts which are proposed to be paid to the DHFL, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited are contrary to the provision of Section 30(2)(b) of the IBC read with Section 53(1) of the IBC, 2016.

50. However, we notice there is significant differences between the liquidation value submitted by the Two Valuers and valuation assessed by the Resolution Professional and Resolution Applicant, therefore, we think it proper, to leave the matter upon the COC to reexamine this issue and if the properties/infrastructure in the projects of the corporate debtor is available for sale /disposal, the COC may consider taking steps for suitable correction of the Liquidation value of all the projects and subsequently, ask the Resolution Applicant to account for the same in the Resolution Plan.

51. So far as the next contention raised by the Ld. Counsel appearing for the DHFL, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited that that they are entitled to get the payment only in monetary terms is concerned, for this too, we would like to refer to the relevant paragraphs of the decision of Hon'ble Supreme Court in Jaypee Case (Supra), which are quoted below: -

“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.

122. The indications as emerging from the text of other provisions as also from the scheme of the Code, are to the effect that the resolution applicant, with approval of resolution plan, is to proceed on a clean slate rather than carrying the cargo of such debts which need to be satisfied (to the extent required) and then jettisoned. The expressions payment and amount to be paid, when read in the context and on the canvass of the objects and purposes of the Code, in our view, these expressions only convey their ordinary meaning, as understood in ordinary business parlance, that is, delivery of money alone; and there is no reason to construe these expressions to be conveying the meaning of delivery of money or its equivalent.

123. A good length of arguments on behalf of IRP are devoted to the stand that, what CoC considers in sub-section (4) of Section 30 is the manner of distribution proposed; and such manner of distribution ought to be fair and equitable, as explained in Explanation 1 to clause (b) of Section 30(2). It is contended that if legislature intended the word payment to have a prescriptive meaning, that is, payment by way of payment of money only, there would have been no need to add Explanation 1 to clause (b) which provides that distribution under clause (b) to operational and dissenting financial creditors shall be fair and equitable because in such a case, the distribution would only mean a crystallised sum of money with no room to test if distribution was fair and equitable. The argument is, again, of stretching the plain words beyond their real intent and meaning. The said Explanation is for removal of doubts and for clarification that distribution in terms of clause (b) shall be fair and equitable to the creditors covered thereunder that is, operational and dissenting financial creditors. This Explanation appears to have been necessitated for the reason that quantification of the minimum amount payable under clause (b) of Section 30(2) is in the realm of certain guesswork or

estimate with reference to the distribution envisaged by Section 53 of the Code. This Explanation cannot and does not provide meaning to the expressions payment and amount to be paid. These and other arguments of similar nature, could only be rejected.

123.1. A submission made on behalf of IRP suggesting estoppel against the dissenting financial creditor for having not raised the issue in the meeting of the Committee of Creditors also remains baseless. This is for the simple reason that no estoppel could operate against the statutory right of the dissenting financial creditor to receive payment in terms of Section 30(2)(b) of the Code.

123.2. The submission that commercial banks are permitted by the Banking Regulations Act, 1949 to swap the debt for land and equity has its own shortcomings, rather shortfalls. The expressions payment and amount to be paid and amount payable as occurring in Section 30(2) and Regulation 38(1) cannot be interpreted only for the purpose of banks as financial creditors; the provisions refer to financial creditors as such and it would be too far stretched to say that these expressions may have different meanings for different financial creditors in the manner that a financial creditor who could accept payment by any mode other than money could be paid by that mode and the other financial creditors who cannot accept anything except money shall be receiving payment in cash. This kind of interpretation would not only be reading words but even phrases and provisos in the statutory provisions, which is entirely impermissible.

123.3. Similarly, the suggestion that the Government and the Governmental bodies, which are not permitted by law to swap debt with equity or land will have to be paid by way of money and to that extent, the meaning of payment in the first part of clause (b) of Section 30(2) will have contextually different meaning, is, again, seeking to provide multiple sub-sects of the mode of payment, whereas no such differentiation or classification is indicated in the provisions under



reference or in any other provision contained in the Code.

123.4. 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.

123.5. The other submissions and counters with reference to the phraseology of Section 8 of the Code do not require much dilation because, the said provision essentially relates to the dues of an operational debtor and the steps envisaged before commencement of insolvency resolution process. Nevertheless, payment for the purpose of the said provision is also of money transfer; and not by any other mode.

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.

52. In the light of aforesaid decision, when we consider the submissions, we find that herein the case in hand, although the amount which these three objectors are entitled to get has been quantified in the plan but the payment is proposed to be made only on happening of the certain events.

53. So far as the DHFL is concerned they will get the amount from the sale proceeds of the unsold inventory after construction and completion of the project. Similarly, for the payment of Rs. 3 crore proposed to be paid to the Kotak Mahindra Bank Limited and Kotak Mahindra Prime, no time frame is given for making the payment. Therefore, they will remain attached with the Corporate Debtor till the project gets completed. Therefore, in view of the decision (Supra) upon which the objectors have placed reliance, the dissenting financial creditors, who have chosen to quit the Corporate Debtor by not putting their voting share in favour of

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the proposed plan of Resolution, cannot be compelled to remain attached with the Corporate Debtor.

54. Therefore, for the reasons discussed above, in our considered view, the Resolution plan is violative of the provision of Section 30(2)(ii)(b) read with Section 53 of the IBC, 2016 and it is also contrary to the decision of the Hon'ble Supreme Court in the matter of Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. in Civil Appeal No. 3395 of 2020.

55. Hence, we find force in the contention raised on behalf of the aforesaid dissenting financial creditors/ objectors, that they are entitled to get the payment in terms of money only.

56. So far as the other contention raised by the objector's counsel that the Resolution Plan is not submitted in terms of the Code and Regulations, this issue has also been discussed by the Hon'ble Supreme Court in the Jaypee Case (Supra), wherein the Hon'ble Supreme Court has held that once the resolution plan is approved by the CoC, it is beyond the scope of the Adjudicating Authority to re-examine whether the Resolution Plan was submitted in accordance with the Code or Regulations.

57. Hence, we are of the considered view that this contention of the Ld. Counsel for the Objectors is beyond the ambit of Section 30(2)(b) of the IBC, 2016. Accordingly, we hereby reject this contention of the Ld. Counsel for the Objectors.

58. For the reasons discussed above, we are of the considered view that except the objection that DHFL, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited are entitled to get their payments in monetary terms only, no other objections is liable to be accepted. Hence, all other objections raised on their behalf are rejected.

CA/1686/2019, CA/1687/2019 and CA/52/2020 :-

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59. Before considering the submissions made by the individual home buyers, at this juncture, we would like to refer to **Section 25A of the IBC** and decision of the Hon'ble Supreme Court in **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. in Civil Appeal No. 3395 of 2020 decided on 24.03.2021.** Contents of Section 25A of the IBC and the relevant paragraphs of the aforesaid Decision are quoted below: -

"Section 25A. Rights and duties of authorised representative of financial creditors.

(1) The authorised representative under sub-section (6) or sub-section (6A) of section 21 or sub-section (5) of section 24 shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.

(2) It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.

(3) The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:

Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.



(3A) 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 sub-section (3).

(4) The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to insure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.

Explanation.- For the purposes of this section, the "electronic means" shall be such as may be specified."

Relevant portion of the decision referred (Supra) :

"164. As noticed, for the purpose of approval of a resolution plan in CIRP, what is required is its approval by a vote of not less than 66% of the voting share of financial creditors; and what is counted for the requisite percentage (66) is the voting share of the financial creditors and not the individual votes of financial creditors. The expression voting share has been precisely defined in clause (28) of Section 5 to

mean the voting rights of a single financial creditor in the Committee of Creditors, which is based on the proportion of the financial debt owed to such a financial creditor vis-à-vis the financial debt owed by the corporate debtor. In the scheme of the Code with Explanation to Section 5(8)(f), the debt owed by the corporate debtor towards allottees of the real estate project is considered to be a financial debt but for that matter, every individual allottee does not become an independent financial creditor of the corporate debtor, if the number of allottees are 10 or more, in terms of the meaning assigned to the expression class of creditors in CIRP Regulations. The allottees, like the homebuyers of JIL, falling within clause (f) of sub-section (8) of Section 5, do carry the status of financial creditors but they would be falling in a class collectively; and the voting share of that class would be in terms of the financial debt owed to that class as a whole.

164.1. Specific provisions have been made for voting on behalf of a class of creditors in terms of clause (b) of sub-section (6A) of Section 21 by the authorised representative. The rights and duties of the authorised representative of financial creditors are also delineated in Section 25A of the Code and any doubt, as to how he would vote and how his vote is counted, is put to rest by insertion of sub-section (3A) to Section 25A, which provides that notwithstanding anything to the contrary contained in sub-section (3), the AR 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.

164.2. At this juncture, we may usefully take note of the enunciation of this Court in the case of Pioneer Urban (supra) that has direct bearing on the questions raised herein. The decision in Pioneer Urban was rendered by this Court in the backdrop of challenge to the said amendment made to the Code whereby, the allottees of real estate projects were provided the status of financial creditors by way of insertion of

Explanation to sub-clause (f) of clause (8) of Section 5 of the Code and with corresponding insertion of Section 25A as also sub-section (6A) to Section 21. While dealing with such a challenge, in Pioneer Urban (supra), this Court extensively referred to the objects and reasons for these amendments as also their meaning, connotation and effect. The relevant part of the matter, in regard to the issue at hand, is that along with the aforesaid amendment, this Court also examined the amendment of Section 25A with insertion of sub-section (3A) by Act 26 of 2019. This Court explained the connotation of the said amendment and its logic, while rejecting the challenge to Section 21(6A) and 25A of the Code, in the following:

63. Given the fact that allottees may not be a homogeneous group, yet there are only two ways in which they can vote on the Committee of Creditors either to approve or to disapprove of a proposed resolution plan. Sub-section (3-A) goes a long way to ironing out any creases that may have been felt in the working of Section 25A in that the authorised representative now casts his vote on behalf of all financial creditors that he represents. If a decision taken by a vote of more than 50% of the voting share of the financial creditors that he represents is that a particular plan be either accepted or rejected, it is clear that the minority of those who vote, and all others, will now be bound by this decision. As has been stated by us in Swiss Ribbons, the legislature must be given free play in the joints to experiment. Minor hiccups that may arise in implementation can always be sorted out later. Thus, any challenge to the machinery provisions contained in Sections 21(6-A) and 25A of the Code must be repelled. (emphasis in bold supplied)

164.3. In the face of clear language of sub-section (3A) of Section 25A of the Code, read with the law declared by this Court in Pioneer Urban (supra), the suggestion on behalf of the dissatisfied homebuyers that the said provision was only intended to iron out the logistical issues and technical difficulties is required to be rejected altogether. The said provision, as held by this

Court, is to iron out the creases that might have been felt in the proper working of Section 25A; and it is made explicit that the allottees, even if not a homogeneous group, they could vote only either to approve the resolution plan or to disapprove the same. Divergence of the views within their own class may exist but, when coming to the vote in the Committee of Creditors, their vote would be that of a class.

164.4. Having regard to the scheme of IBC and the law declared by this Court, it is more than clear that once a decision is taken, either to reject or to approve a particular plan, by a vote of more than 50% of the voting share of the financial creditors within a class, the minority of those who vote, as also all others within that class, are bound by that decision. There is absolutely no scope for any particular person standing within that class to suggest any dissention as regards the vote over there solution plan. It is obvious that if this finality and binding force is not provided to the vote cast by the authorised representative over the resolution plan in accordance with the majority decision of the class he is authorised to represent, a plan of resolution involving large number of parties (like an excessively large number of homebuyers herein) may never fructify and the only result would be liquidation, which is not the prime target of the Code. In the larger benefit and for common good, the democratic principles of the determinative role of the opinion of majority have been duly incorporated in the scheme of the Code, particularly in the provisions relating to voting on the resolution plan and binding nature of the vote of authorised representative on the entire class of the financial creditor/s he represents.

164.5. To put it in more clear terms qua the homebuyers, the operation of sub-section (3A) of Section 25A of the Code is that their authorised representative is required to vote on the resolution plan in accordance with the decision taken by a vote of more than 50% of the voting share of the homebuyers; and this 50% is counted with reference to the voting share of such homebuyers who choose to cast their vote for arriving at the particular decision. Once this

process is carried out and the authorised representative has been handed down a particular decision by the requisite majority of voting share, he shall vote accordingly and his vote shall bind all the homebuyers, being of the single class he represents.

165. In the present case, on one hand, it has consistently been submitted by the stakeholders, particularly the homebuyers, that liquidation of JIL should be eschewed, but on the other hand, some of the associations and homebuyers have attempted to find faults with the resolution plan to which their majority, who voted, took the decision for approval. There is no scope for any homebuyer suggesting himself to be a dissenting financial creditor merely because he was not with majority within the class. His dissatisfaction does not partake the legal character of a dissenting financial creditor.

165.1. A rather overambitious attempt has been made by the homebuyers who have filed separate appeal (T.C. No. 242 of 2020) to refer to the percentage of voting share of homebuyers and it has been suggested that out of the total voting share of homebuyers i.e., 57.66%, the assenting voting share was only 34.10%, whereas 22.51% abstained and 1.05% dissented. It is submitted that roughly, for every 3 homebuyers who voted for NBCC, 2 had dissented/abstained. Even assuming the percentage as stated by these appellants to be correct, we are at a loss to find any logic in the submissions so made. A re-look at sub-section (3A) of Section 25A would make it clear that 50% for the purpose of the said provision is of those homebuyers who cast their vote. On the percentage figures as given before us, out of the total voting share of homebuyers at 57.66%, the persons carrying 22.51% voting share simply abstained and of the persons casting their votes, ayes were having the voting share of 34.10% whereas nays were having the voting share of 1.05%. Obviously, 50% would be counted only of the persons who chose to vote where, much higher than 50% of the homebuyers who cast their vote, stood for approval of the resolution plan of NBCC86. Such a voting cannot be set at naught for the purported dissatisfaction of a



miniscule minority, which was about 3.69% in terms of the number of persons voting; and about 1.05% in terms of the voting share. They have to sail along with the overwhelming majority. That is the purport and effect of drag along or sail along provisions in the scheme of the Code.

166. For what has been discussed hereinabove, the suggestions that there was no cent percent approval of the resolution plan, or that there was no consensus amongst homebuyers, or that the plan of Suraksha Realty was considered better, are required to be rejected. It is not the case that the AR of homebuyers has not voted in accordance with the decision taken by a vote of more than 50% of the voting share of homebuyers who did cast their vote. In the given set of facts, we have no hesitation in thoroughly disapproving the unnecessary imputations made by one set of homebuyers against the AR that he made any incorrect statement before the CoC. That being the position, and the authorised representative having voted in accordance with the instructions given to him from the class of financial creditors i.e., homebuyers, every individual falling in this class remains bound by his vote and any association or homebuyer of JIL cannot be acceded the locus to stand differently and to project its/his own viewpoint or grievance by way of objections or by way of appeal. All such objections and appeals are required to be rejected on this ground alone.

167. The suggestion about the so-called statutory right of appeal has only been noted to be rejected. The homebuyers as a class shall be deemed to have voted in favour of approval of the resolution plan of NBCC; and once having voted so, any particular constituent of that class cannot be heard in opposition to the plan by way of objection or appeal. The statute, that is IBC, has itself provided for estoppel against any such attempted opposition to the plan by a constituent of the class that had voted in favour of approval.

169. Another attempt has been made as regards calculation of voting weightage by suggesting that the homebuyers to whom flats have been delivered could

not have been taken out of CoC. Even this suggestion remains bereft of substance. When a person does not stand in the capacity of a financial creditor i.e., to whom no financial debt is owed by the corporate debtor, he could only be taken out of the block of financial creditors. We are impelled to observe that consideration and voting at the resolution plan is not a process or event where any objection or grievance could be raised even by a person who does not stand in the capacity of a financial creditor. His remedies, in accordance with law, could be elsewhere but not in this process of approval of resolution plan under the Code.

169.1. For the same reasons as above, the suggestion to keep any housing project which is already complete or nearing completion out of the purview of the resolution plan is required to be rejected. When approval of the resolution plan is to be voted by CoC; and its composition is specified by the Code, there is no such concept of keeping any particular homebuyer out of CoC even if the relationship of creditor and debtor subsists between him and the corporate debtor.

170. To sum up this part of discussion, in our view, after approval of the resolution plan of NBCC by CoC, where homebuyers as a class assented to the plan, any individual homebuyer or association cannot maintain any challenge to the resolution plan nor could be treated as carrying any legal grievance."

60. Now, in the light of the aforesaid decision and provision of law, we consider the objections raised by the applicants of CA/1686/2019, CA/1987/2019 and CA/52/2020 and we are of the considered view that in view of the decision of the Hon'ble Supreme Court in the Jaypee Case, the suggestion to keep any housing project _already complete or nearing completion or not started as yet _out of the purview of the resolution plan is a commercial wisdom of the CoC. Once the CoC has approved the Resolution Plan by the majority vote, no individual home buyer or an allottee under Section 5(8) Act is entitled under the law to raise such an issue.



61. In view of Section 25A (3A) an authorized representative under Sub Section 6A of Section 21 of the IBC, 2016 shall cast his vote on behalf of all the financial creditors, who represents in accordance with the decision taken by vote of more than 50% of the voting share of the financial creditors who are present and cast their vote and this issue has been decided by the Hon'ble Supreme Court in Jaypee Case (Supra). Here in the case in hand, out of the total number of 1081 allottees, 773 allottees have voted 'Yes' in favour of approval of the Resolution Plan, i.e out of 65.26% of voting share, only 1.57% voting share is against the Resolution Plan. 13.68% of allottees abstained and Allottees having voting share of 50.01% have given their vote in favour of the Resolution plan. In terms of Section 25A of IBC, the authorised representative now casts his vote on behalf of all financial creditors that he represents. If a decision taken by a vote of more than 50% of the voting share of the financial creditors that he represents is that a particular plan be either accepted or rejected, it is clear that the minority of those who vote against the Plan and all others, will now be bound by this decision in view of the decision referred (Supra). Therefore, the contention of the applicants of these CAs that the choice of projects under the Plan is wholly arbitrary, is contrary to the provision of law as well as decision of the Hon'ble Supreme Court in Jaypee Case (Supra).

62. Hence, we have no option but to reject the contentions of the applicants of these three CAs.

63. For the reason discussed above, we are of the considered view that the objections raised by the applicants of these three CAs are not maintainable under the law and are liable to be rejected. Accordingly, their objections are hereby rejected and these three application i.e. **CA/1686/2019, CA/1987/2019 and CA/52/2020 being devoid of merits are dismissed.**

IA/2664/2020 :

64. Applying the aforesaid principle, when we consider the objection raised by Ms. Anita Dhir in IA/2664/2020, we are of the considered view that this objector is also an allottee in Universal Aura project. Therefore, in view of the decision of Hon'ble Supreme Court in Jaypee Case referred (Supra), the objection raised by this applicant is not maintainable and is liable to be rejected. Hence, this **application i.e. IA/2664/2020 is devoid of merits and therefore, dismissed.**

IA/5533/2020 :

65. Applying the aforesaid principle, when we consider the objection raised by the RWA (Residents Welfare Association), we notice that the Resolution Professional has clearly mentioned in its reply that Universal Trade Tower has not been treated as an asset of the Corporate Debtor under the Resolution Plan. Rather, it has been treated as an asset of the allottees, as the entire area under the Project has been fully sold to the allottees and in part-II of the Resolution Plan, it is mentioned that the **"Universal Trade Tower is a completed project and occupation certificate has been issued by the concerned authorities in respect of the said project".**

66. That is the reason, this project has been kept outside the purview of the resolution plan that has been approved by the CoC. When we consider the objection raised by the applicant in the light of the decision of the Hon'ble Supreme Court in Jaypee Case (Supra), we are of the considered view that since resolution plan is approved by the CoC, no individual home buyer or allottee is entitled under the law to raise any objection. Accordingly, their objection is hereby rejected. Hence, this application i.e. **IA/5533/2020, being devoid of merits, is dismissed.**

Objection filed by Ms. Shweta Kapoor :

67. The objector Ms. Shweta Kapoor is also a financial creditor and has sought possession of the commercial unit bearing Unit No. 410A, Universal Business Park, Sector-66, Gurgaon admeasuring 300 Sq. Ft.



on the same ground. The objection of the applicant is also not liable to be accepted. **Accordingly, the objection raised by Ms. Shweta Kapoor is hereby rejected.**

68. In sequel to the discussion above, we conclude the matter in the following manner: -

- a) So far as the objections raised by the 'other objectors' except DHFL, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited are concerned, we found no merit in their applications in the light of the decision of the Hon'ble Supreme Court in the Jaypee Case (Supra) on which the objectors had placed reliance. We have accordingly **rejected their Objections and Dismissed the applications bearing no. CA/1686/2019, CA/1687/2019, CA/52/2020, IA/2664/2020 and IA/5533/2020.**
- b) As we held in the previous paragraphs that in the light of the decision of the Hon'ble Supreme Court in the Jaypee Case (Supra), the DHFL is entitled to get the amount in terms of money and they will not be compelled to remain attached with the Corporate Debtor till the project is completed. In our considered view, the mode of payment to them is contrary to the provision of law as well as the decision of Hon'ble Supreme Court in Jaypee Case (Supra) and to that extent it requires to be modified. Similarly, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited are also entitled to get the payment of Rs. 3 Crore within a specified period. The period, which is not mentioned in the present plan, needs to be specified.
- c) As observed by the Hon'ble Supreme Court in the Jaypee Case (Supra), the Adjudicating Authority is not empowered to modify the Resolution Plan, the only remedy available before the Adjudicating Authority is to remit the matter to the CoC to modify the resolution plan.
- d) So, under such circumstances, we have no option but to remit the Resolution Plan to the CoC to modify the Resolution Plan as



regards to the payment of amounts in terms of money within a specific Period in the light of the decision of the Hon'ble Supreme Court in the Jaypee Case (Supra).

69. We further notice that in the instant case, the period of CIRP has already expired on 15.11.2019 and on the same day, the application for approval of Resolution Plan, which is under consideration, was filed. Though the maximum period for completion of the Corporate Insolvency Resolution Process as per second proviso of Section 12(3) of IBC, 2016 is 330 days, in view of the decision of **Committee of Creditors Essar Steel India Limited Vs. Satish Kumar Gupta and Ors. in Civil Appeal No. 8766-67 of 2019 reported in 2020 (8) SCC 531**, the said provision is **not mandatory**. In para 79 of that judgement, the Hon'ble Supreme Court had held that ***"However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation"***.

70. Therefore, in such exceptional circumstances, where we are remitting the Resolution Plan to COC for modification in the terms of payments, as specified above, to the objectors namely, DHFL, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited, we think it proper to extend the period of CIRP for 60 days from the date of this order after excluding the period from the date of filing of the application (IA/1550/2019) i.e. 15.11.2019 till the passing of this order.

71. Accordingly, **we hereby extend the period of CIRP by 60 days beyond the period of 330 days after excluding the period from the date of filing of the present application bearing no. IA/1550/2019 i.e. 15.11.2019 till the passing of this order.** The Resolution Professional is directed to inform and also hand over a copy of this order to the Resolution Applicant to modify the Resolution Plan in the light of aforesaid direction. He is further directed to convene the meeting of COC

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within the extended period of CIRP and place the modified Resolution Plan before the COC for approval. It is, however, made clear that except for the modification in payment conditions relating to the objectors namely, DHFL, Kotak Mahindra Bank Limited and Kotak Mahindra Prime Limited, which has to made in terms of money within a specified period and reexamination of Liquidation value as specified in the aforementioned paragraphs, while discussing this issue, no other issue shall be raised by any Objector nor decided by the COC.

72. With this order, the present application i.e. IA/1550/2019 stands disposed of.



(L. N. GUPTA)
Member (T)




(ABNI RANJAN KUMAR SINHA)
Member (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, (COURT-II)

Item No. 112
(IB)-456(ND)/2018
IA/2537/2021 C.A/373/2019

IN THE MATTER OF:

Pallavi Joshi Bakhru

... Applicant/Petitioner

Vs.

M/s. Universal Buildwel Pvt. Ltd.

... Respondent

Under Section: 7 of IBC, 2016

Order delivered on 11.06.2021

CORAM:

SHRI. ABNI RANJAN KUMAR SINHA,
HON'BLE MEMBER (J)

SHRI. L. N. GUPTA,
HON'BLE MEMBER (T)

PRESENT:

Mr. Swapnil Gupta , Ms. Neelambika Singh, Adv for RP;
Mr. Atul Kansal, RP in person
Adv Siddarth Sangal and Adv Ritesh Khare for SBI
Aman Anand for Applicant in IA 2537 of 2021

ORDER

IA/2537/2021:By filing this application, the Applicant has prayed for an early listing of CA 373/2019. Heard the Ld. Counsel appearing for the Applicant. Ld. Counsel appearing for the Applicant submitted that the next date fixed in this matter is on 15th July 2021. He further submitted that the final order has been pronounced in the application relating to Resolution Plan today. Since the Registry has already notified the date in this matter and at present, we are taking up the urgent matters only, we are not inclined to recall the date in this matter. However, the Petitioner is at liberty to mention or file an appropriate application, if the situation improves.

With this, **the present IA stands disposed of.**

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ABNI RANJAN KUMAR SINHA)
MEMBER (J)