

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-5125/2023
In
IB-1348(ND)/2019

IN THE MATTER OF IB-1348(ND)/2019:

M/s. NISUS FINANCE & INVESTMENT MANAGERS LLP & Anr.

..... Financial Creditors

Versus

M/s. EARTHCON UNIVERSAL INFRATECH PRIVATE LIMITED

..... Corporate Debtor

AND IN THE MATTER OF IA-5125/2023:

M/s. Tulsiani Constructions and Developers Private Limited & Anr.

..... Applicants

Versus

M/s. Earthcon Universal Infratech Private Limited & 2 Ors.

..... Respondents

Order Pronounced On: 02.05.2024

CORAM:

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:

For the Applicants :

For the Respondents : Mr. Rishabh Jain, Adv. for RP and Mr. Gaurav
Katiyar, RP in person

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by M/s. Tulsiani Constructions and Developers Private Limited & Anr., the Applicants under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 for brining on record

certain facts before this Adjudicating Authority for appropriate orders.
The Applicant seeks the following reliefs:

“(a) Take on record the facts stated in the present application and pass an order that due to falsification of actual status of the project 'Luv Nest' by the Respondent No. 2 and 3 no legal implications will fall upon Shreehari or its shareholders (including the Applicant No.1 Company and Applicant No.2) and/or

(b) Pass any such other/further order(s) which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present matter.”

2. In view of the order passed in IA-5238/2023 whereby this Adjudicating Authority rejected the Resolution Plan submitted by Consortium of M/s. D. S. Infraheights Private Limited and M/s. Anand Buildtech Private Limited and directed the Resolution Professional to issue a fresh 'Form G'. Hence, the present IA-5125/2023 stands **disposed of** with the above order passed in IA-5238/2023.

Sd/-

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

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-5238/2023
In
IB-1348(ND)/2019

IN THE MATTER OF IB-1348(ND)/2019:

M/s. NISUS FINANCE & INVESTMENT MANAGERS LLP & Anr.

..... **Financial Creditors**

Versus

M/s. EARTHCON UNIVERSAL INFRATECH PRIVATE LIMITED

..... **Corporate Debtor**

AND IN THE MATTER OF IA-5238/2023:

M/s. NISUS FINANCE & INVESTMENT MANAGERS LLP & Anr.

..... **Applicants**

Versus

Mr. GAURAV KATIYAR

..... **Respondent**

Order Pronounced On: 02.05.2024

CORAM:

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:

For the Applicants : Mr. Shikhil Suri, Ms. Vidhi Kapoor, Advs.
For the Respondent : Mr. Rishabh Jain, Adv. for RP and Mr. Gaurav
Katiyar, RP in person

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by M/s. Nisus Finance & Investment Managers LLP & Anr., the Applicants under Section 60(5) read with Section 31 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules 2016 and Regulation 38 of IBBI (CIRP) Regulations, 2016 against the Interim Application No. 4466/2023 filed by the Resolution Professional under

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Section 30(6) of IBC for Approval of Resolution Plan. The Applicant seeks the following reliefs:

- “a) Allow the present application and take the objections of the Applicants filed through the present Application on record.*
- b) Reject the Resolution Plan as submitted by M/s. D.S. Infraheights Pvt. Ltd, which has been presented before this Hon'ble Tribunal for its approval in terms of Section 31 of the Code by an Application dated 21 August, 2023 bearing I.A. No. 4466 of 2023;*
- c) Pending the hearing and final disposal of the present Application, refrain the Resolution Professional and the successful resolution applicant from taking any steps towards the implementation of the resolution plan;*
- d) Direct appropriate punitive action be taken against Respondent No.1 being the Resolution Professional for not undertaking the necessary due diligence; and*
- e) Pass such other any order/ order(s), direction/ direction(s) as may deem fit and proper by this Hon'ble Tribunal.”*

2. Brief Background of the Case:

The facts that are relevant for the determination of the issues involved in this application are stated as under:

- i.** An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") was filed by the Financial Creditors i.e. M/s. Nisus Finance & Investment Managers LLP & Anr., against the Corporate Debtor i.e. M/s. Earthcon Universal Infratech Private Limited and the said application was admitted by this Adjudicating Authority vide order dated 08.11.2020 and a moratorium was declared including the appointment of Mr. Jitendra Arora as an Interim Resolution Professional. Subsequently, the present Respondent namely Mr. Gaurav Katiyar was confirmed as Resolution Professional.

- ii.** The Resolution Plan was submitted by the Successful Resolution Applicant namely Consortium of M/s. D. S. Infraheights Private Limited and M/s. Anand Buildtech Private Limited which was approved by the CoC in its 26th meeting dated 19.08.2023 by 70.18% voting share in respect of the CIRP of the Corporate Debtor after considering its feasibility and viability. Thereafter, Mr. Gaurav Katiyar, the Resolution Professional of M/s. Earthcon Universal Infratech Private Limited filed IA-4466/2023 for seeking approval of the Resolution Plan under Section 30(6) read with Section 31 of IBC, 2016 on 22.08.2023, which is pending adjudication before this Adjudicating Authority.

3. Submissions of the Applicant:

- i.** The Applicant herein are Financial Creditors by virtue of a Debenture Trust Deed dated 13.06.2017 and its amendments thereto executed between Applicant No. 1 as a facility agent, Applicant No. 2 as Debenture Trustee, M/s. Earthcon Infracon Private Limited (in short EIPL) in the capacity of the Issuer Company or Principal Borrower and the Corporate Debtor as a Corporate Guarantor. The Applicant No. 1 had facilitated through debenture subscription a sum of Rs. 52,50,00,000/- in M/s. Earthcon Infracon Pvt. Ltd./Issuer Company. The EIPL using the aforesaid investment of Rs. 52,50,00,000/- paid Rs. 51,79,00,000/- to the Corporate Debtor as full and final consideration for purchasing 268 flats [hereinafter referred to as said flats] in the project of the Corporate Debtor. The Escrow Account statement of the Issuer Company reflects the full consideration having been paid to the Corporate Debtor towards the purchase of the said flats.
- ii.** It is submitted that said 268 flats belong to the Issuer Company and are mortgaged to the Applicants herein and are not assets of the

Corporate Debtor. On becoming aware of the fact that the Resolution Professional passed a decision dated 13.03.2021 whereby he decided to include the said 268 flats within the Information Memorandum (IM) of Corporate Debtor, the Applicants sought to invoke jurisdiction of this Adjudicating Authority and filed IA No. 1606 of 2021 challenging the decision of the Resolution Professional dated 13.03.2021.

- iii.** The Adjudicating Authority was pleased to pass an order dated 23.07.2021 partially allowing the said IA No.1606 of 2021 and directed that 205 flats of the said 268 flats shall not form part of the Information Memorandum and further directed the Resolution Professional to amend the Information Memorandum accordingly.
- iv.** The said order dated 23.07.2021 was challenged by the Resolution Professional by filing Company Appeal (AT) (Insolvency) No. 593 of 2021, by the homebuyers by filing Company Appeal (AT) (Insolvency) No. 659 of 2021, Company Appeal (AT) (Insolvency) No. 694 of 2021, Company Appeal (AT) (Insolvency) No. 703 of 2021 and Company Appeal (AT) (Insolvency) No. 912 of 2021, by the Applicants by filing Company Appeal (AT) (Insolvency) No. 656 of 2021 challenging a part of the order dated 23.07.2021 passed by the Adjudicating Authority. The Hon'ble National Company Law Appellate Tribunal by an order dated 25.01.2023 allowed the Appeals filed by the Resolution Professional, homebuyers and dismissed the appeal filed by the Applicants herein and set aside the order dated 23.07.2021.
- v.** The Applicants herein filed a Civil Appeal No. 2841-2847 of 2023 challenging the order dated 25.01.2023 before the Hon'ble Supreme Court which was dismissed by an order dated 17.04.2023. Thereafter, the Applicants filed a Review Petition No. 925- 931 of 2023 challenging the order dated 17.04.2023 which was dismissed by an order dated 13.09.2023.

- vi.** It is submitted that one of the pre-qualification criteria for any Resolution Applicant, in terms of 3rd Round of Form-G was to ensure that the Resolution Applicant has capacity of Rs. 20 crores, which it shall be required to infuse in the Corporate Debtor upon its Resolution Plan being accepted and approved. The Resolution Professional erred in not disqualifying the SRA, despite the fact, that the SRA did not have INR 20 crores as required by the terms of Form G. In order to meet with the aforesaid requirement, the said consortium led by M/s. D.S. Infraheights relied upon an undated letter issued by HDFC Bank Ltd. styled as a "commitment letter".
- vii.** It is the case of the Applicants that one of the Homebuyer namely Col. Sudheer Kumar made enquiries with HDFC Bank qua the said undated letter styled as commitment letter by his email dated 16.08.2023. HDFC Bank in response (response of the Branch Manager of HDFC Bank's Rajaji Puram Branch) addressed an email dated 19.08.2023 to the Col. Sudheer Kumar stating therein that the said letter is neither a sanction letter nor a document establishing disbursement of loan. The communication from the said Bank expressly clarified that the Commitment Letter in question does not constitute a sanction letter, nor does it serve as evidence for the disbursement of the stated funds. The copies of the emails dated 16.08.2023 and 19.08.2023 are filed along with the Application. The contentions of the Applicants is that despite not meeting with the said requirement, the proposed Resolution Applicant being Consortium led by M/s. D.S. Infraheights has not only been permitted to participate in the CIRP process but has been declared as a Successful Resolution Applicant.
- viii.** The Successful Resolution Applicant (Consortium of M/s. D S Infraheights) in their Resolution Plan under the head of "Details of Experience" has submitted that the said consortium led by M/s. D S

Infraheights have completed the following projects (among other projects):

a. Luvnest

b. Urban Woods

- ix.** It is submitted that on a bare perusal of the records available on the website of RERA, it would be apparent that the said project "Luvnest" was developed by "M/s Shreehari Realtech Private Limited" and not by the Resolution Applicant as sought to be contended by the proposed Resolution Applicant. The screenshot taken from the website of RERA filed along with the Application reflect that the project "Lunvest" was constructed by M/s Shreehari Realtech Private Limited. In view of this fact, the reference to "Luvnest" would have to be deleted and such deletion would effectively reduce 1,48,803 Sq feet from the list of delivered projects by the Resolution Applicant.
- x.** The Applicants further submitted that the work experience qua the project "Urban Woods" developed by "M/s D S Infra heights Private Limited" would also not qualify as the said project is not completed till date. The Lucknow Development Authority vide an order dated 21.12.2022 stating therein the various illegalities in the construction of the Resolution Applicant and directing the said M/s. D S Infra heights Private Limited to demolish all such construction which is unauthorised and contrary to the approved plans. The copy of the order dated 21.12.2022 is filed along with the Application. In light of the fact that the Project "Urban Woods" in its entirety has not received Completion Certificate, the same cannot be categorized under the head of "Details of Experience" by the Resolution Applicant in the Resolution Plan. Mentioning of the said project "Urban Woods" is a misrepresentation on the part of the Resolution Applicant. Deletion of the said project "Urban Woods" would effectively reduce 4,17,922 Sq. feet from the list of delivered projects by the Resolution Applicant.

- xi.** The above stated projects Luvnest (1,48,803 sq.ft.) and Urban Woods (4,17,922 sq.ft.) cannot be considered as completed projects of the Resolution Applicant for reasons stated hereinabove that the total area aggregating of 5,66,725 sq. ft. should not be considered as area delivered by the Resolution Applicant. The Resolution Applicant has stated that it has delivered projects to the tune of 14,73,215 sq. ft. On reduction of the said 5,66,725 sq. ft. owing to the deficiencies pointed hereinabove, the total area of delivered projects of the Resolution Applicant comes down 9,06,490 sq. ft. The Resolution Applicant thus fails to meet with the criteria of delivering 10,00,000 sq. ft. in the last 5 financial years.
- xii.** The FIR dated 16.12.2022 filed by Mr. Manoj Kumar before the Commissionerate Lucknow Police Station pointed that the proposed Resolution Applicant has given possession of the said flats in Urban Woods without securing Completion Certificate. The copy of the FIR dated 16.12.2022 is filed along with the Application.
- xiii.** The Applicants contended that an ineligible Resolution Applicant ought not to be permitted to participate in the CIRP of the Corporate Debtor merely because the Resolution Professional has chosen to turn a blind eye to the ineligibilities of the Resolution Applicant. The objections raised in the present Applicants are not merely technicalities but goes to the root of the eligibility of the Resolution Applicant owing to the misrepresentations made by the Resolution Applicant. In view of the fact that the Resolution Applicant itself is ineligible as no Resolution plan proposed by such an Applicant can be considered.

4. Submissions of the Respondent:

- i.** The Respondent has filed a reply affidavit denying the allegations made by the Applicant and stated that the Applicant herein is a

Secured Financial Creditor of the Corporate Debtor and a CoC member. During 5th Session of 26th CoC meeting held on 12.08.2023, wherein the Resolution Professional placed all these objections before CoC for their consideration and discussion, the Applicant was silent and said nothing on the said issue.

- ii.** It is submitted that the SRA along with EoI submitted a commitment letter issued from HDFC Bank. It is submitted that estranged homebuyer namely Sh. Col. Sudheer Kumar and the Applicants herein are misconstruing the terms of eligibility criteria and reading the same as, if the PRA were required to furnish sanction letter or disbursement of loan as on date of submission of EoI. The credentials are to be examined from a commercial point of view which means that the other party does have capacity to execute the work. But it would be an anomaly, if SRA is supposed to block its 20 Crores, in addition to performance security of Rs. 2.5 Crores, during the interregnum of, date of submission of EoI till effective date mentioned in eligibility criteria.
- iii.** It is submitted that the CIRP is a collective bargaining process. The Applicant or Sh. Col. Sudheer Kumar may doubt the capabilities of SRA but the CoC by 70.18% majority trusted the credentials of SRA, the feasibility, viability and capability of SRA and approved the Resolution Plan which squarely falls within the commercial wisdom of CoC and dehors the pale of challenge before this Adjudicating Authority.
- iv.** It is submitted that during the 5th Session of 26th CoC meeting held on 12.08.2023 wherein the Resolution Professional placed all these objections before CoC for their consideration and discussion, the representative of the Applicant was silent and said nothing on the said issue. Today on the basis of FIR, reply to RTI Applications, Lucknow Development Authority demolition order, the Applicants

raised doubt on the work experience of the SRA. Moreover, it is submitted that a FIR does not constitute substantive evidence. It can be used for one of the limited purposes of corroborating or contradicting the makers.

- v. It is submitted that as per approved eligibility criteria availability of Occupancy Certificate or Completion Certificate is not a sine qua none or a condition precedent without which the PRA would not qualify to submit a Resolution Plan. It is further submitted that there is nothing in eligibility criteria which mandates that the work experience of a PRA would be considered only based on Occupancy Certificate or Completion Certificate. There is no exclusion clause in the eligibility criteria qua the Completion Certificate without which the work experience of PRA would not be counted.

5. Analysis and Findings:

- i. We have heard the submissions of Ld. Counsel appearing for the Applicant as well as Ld. Counsel appearing for the Respondents. We have also perused the records.
- ii. The following issues arise for consideration:
 - a) Whether this Adjudicating Authority can interfere with the Commercial wisdom of the CoC or not.
 - b) Whether the Commitment Letter issued by HDFC Bank is fatal to the eligibility criteria to the SRA or not.
 - c) Whether the Luv Nest project is owned and developed by Consortium of M/s. D. S. Infraheights Private Limited and M/s. Anand Buildtech Private Limited or not.
 - d) Whether the Urban Woods project developed by M/s. D S Infra heights Private Limited is complete or not.

- iii. The Hon'ble Supreme Court in the case of "**Ramkrishna Forgings Limited vs. Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr.**" Civil Appeal No. 1527 of 2022 held that:

"31. It is worthwhile to note that the Adjudicating Authority has jurisdiction only under Section 31(2) of the Code, which gives power not to approve only when the Resolution Plan does not meet the requirement laid down under Section 31(1) of the Code, for which a reasoned order is required to be passed. We may state that the NCLT's jurisdiction and powers as the Adjudicating Authority under the Code, flow only from the Code and the Regulations thereunder."

- iv. The Hon'ble Supreme Court of India in the case of "**M.K. Rajagopalan v. Dr. Periasamy Palani Gounder**" reported in 2023 SCC OnLine SC 574 held that:

"The principles underlying the decisions of this Court respecting the commercial wisdom of CoC cannot be overexpanded to brush aside a significant shortcoming in the decision making of CoC when it had not duly taken note of the operation of any provision of law for the time being in force." (Emphasis is ours).

The Commercial wisdom of the Committee of Creditors (CoC) should be respected while certain factors with a material bearing on the approval process of the Resolution Plan must also be considered. Hence, the decision of the CoC should not exceed the boundaries set by the law unless it falls within the specific statutory parameters of the Code.

- v. The judgment passed by the Hon'ble Supreme Court of India in **Ramkrishna Forgings Limited** (*supra*) and **M.K. Rajagopalan** (*supra*) will apply to the present case. We are of the considered view that the Commercial wisdom of the CoC can be interfered by this Adjudicating Authority, if the Resolution Plan as approved by the CoC is found to

be contrary to the provisions of the Code and Regulations made thereunder.

vi. Perusal of the email dated 19.08.2023 issued by the HDFC Bank, Branch Manager, Rajaji Puram Branch clearly shows that the Commitment Letter in question does not constitute a sanction letter, nor does it serve as evidence for the disbursement of the stated funds. So, it can be said that the document that was put forth by the SRA to prove the eligibility to infuse INR 20 crores as required by the terms of Form G in the Corporate Debtor upon its Resolution Plan being accepted and approved is false and baseless and not supported by any documentary evidence.

vii. After perusing the screenshot taken from the website of RERA, we find that the website of the RERA clearly stated that the Luv Nest project has been allotted to M/s. Shreehari Realtech Pvt. Ltd..

The Resolution Professional failed to produce any documentary evidence to prove or establish that the Luv Nest project is owned and developed by Consortium of M/s. D. S. Infraheights Private Limited and M/s. Anand Buildtech Private Limited and Consortium of M/s. D. S. Infraheights Private Limited and M/s. Anand Buildtech Private Limited further chose not to file reply affidavit/ intervene in the present captioned application. Hence, we are of the considered view that the Luv Nest project is owned and developed by the M/s. Shreehari Realtech Pvt. Ltd. which is evident from the screenshot taken from the website of RERA.

viii. After perusing the FIR dated 16.12.2022 filed by Mr. Manoj Kumar before the Commissionerate Lucknow Police Station, we find that Completion Certificate (CC) and Occupation Certificate (OC) had not been accepted and allowed for Urban Woods project, which was filed before the concerned authority.

- ix.** Admittedly, the order dated 21.12.2022 passed by the Lucknow Development Authority clearly shows that Urban Woods project suffers various illegalities in the construction and therefore Lucknow Development Authority directed M/s. D S Infra heights Private Limited to demolish all such construction which is unauthorised and contrary to the approved plans.
- x.** Non disclosures of correct details in the Resolution Plan submitted by the SRA create a serious dent which is evident from the record placed and therefore, there are serious doubts on the eligibility of the SRA to be eligible to submit the Resolution Plan.
- xi.** When we examine the Resolution plan submitted by the SRA in IA-4466/2023, we find that the SRA rightly includes the projects namely ('Luv Nest' having 1,48,803 sq. ft.) and ('Urban Woods' having 4,17,922 sq. ft.), to fulfill the eligibility criteria for submitting the Resolution Plan. The relevant provision of the said Resolution Plan is extracted below:

1.5. DETAILS OF EXPERIENCE IN THE POWER/INFRASTRUCTURE/MINING/REAL ESTATE BUSINESSES SECTOR (NATURE OF PROJECT, LOCATION, PRODUCT, CAPACITY, PRODUCTION, REAL ESTATE DEVELOPMENT DETAILS, EQUITY SHAREHOLDING, FINANCIAL INDICATORS FOR THE PRECEDING 5 (FIVE) YEARS ETC.)

S.NO.	NAME OF THE PROJECT (Only Residential Projects mentioned)	APPROVED BUILD UP AREA (IN SQ. FT)	COMPLETION STATUS
1.	Luvnest	1,46,803	Deemed completion as per RERA completion and occupied
2.	Urban Woods	4,17,922	Deemed completion as per RERA completion and occupied
Total saleable area		5,64,725	
3.	Construction of 960 EWS houses, Kanpur, U. P	3,04,319	Completed on 30/06/2021 Client Kanpur Development Authority Value Rs, 52,55,47,590/-

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Rishabh

TRUE COPY

For Consortium of DS Infraheights Pvt. Ltd. & Anand Buildtech Pvt. Ltd.

[Signature]
Authorized Signatory

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xii. On perusal of the Resolution Plan submitted by the Successful Resolution Applicant specifically Clause 1.5 of Chapter-1 (overview of the Resolution Applicants) of the Resolution Plan, we observe that with regard to the documents placed on record to substantiate the eligibility of the SRA, the SRA included the present projects ('Luv Nest') and ('Urban Woods').

Admittedly, the Resolution Applicant (Consortium of M/s. D. S. Infraheights Private Limited and M/s. Anand Buildtech Private Limited) claimed that it has delivered projects to the tune of 14,73,215 sq. ft. After analyzing the deduction of the 5,66,725 sq. ft. (the projects namely 'Luv Nest' having 1,48,803 sq. ft. and 'Urban Woods' having 4,17,922 sq. ft.), the total area of delivered projects of the Resolution Applicant comes down 9,06,490 sq. ft. Thus, the Resolution Applicant clearly fails to meet with the criteria of delivering 10,00,000 sq. ft. in the last Five Financial Years.

Hence, It is almost trite and settled law that the commercial wisdom of CoC cannot be called into question unless there are glaring omissions and the deficiencies are stark. We are of the considered view that any Resolution Plan(s) considered and approved by the Committee of Creditors and the Adjudicating Authority has to mandatorily provide correct and relevant information submitted by the SRA for the time being in force so as to become legally implementable.

xiii. Having regard to the facts and circumstances of the case, we deem it appropriate to pass an order rejecting the Resolution Plan, in the exercise of powers under Rule 11 of the NCLT Rules, 2016 to meet the ends of justice and to prevent abuse of the process of the Adjudicating Authority.

xiv. In view of the above circumstances, we have no other option but **(a)** to reject the present Resolution Plan; **(b)** direct the Resolution

Professional to issue a fresh 'Form G' through a wide publication; and
(c) direct the Resolution Professional to complete the entire process of seeking approval of CoC, for the Resolution Plan(s), if received, at the earliest.

It is, however, made clear that the SRA of the present Resolution Plan will have the liberty to submit its EOI, if it so wishes after providing all the relevant and correct information.

- xv.** However the CoC is at liberty to consider the issue of Performance Bank Guarantee (PBG) as submitted by the SRA in accordance with the Request for Resolution Plan (RFRP). It is to be noted that at no point of time, any provision of the RFRP was challenged and Resolution Applicant has undertaken to abide by all terms and conditions of the RFRP. We also allow the exclusion of CIRP time from the date of issuance of calling for EoI (Form-G) till today i.e. passing of this order in the CIRP of the Corporate Debtor.

6. In view of the above facts and circumstances and the foregoing discussion. It is accordingly ordered as follows:

- i.** The Application bearing **IA-5238/2023** filed by the Applicants is **allowed**.
- ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

No order as to costs.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI COURT III**

Item No. 333

IA-5144/2023 IA-5145/2023 IA-4466/2023

In

IB-1348(ND)/2019

IN THE MATTER OF:

M/s. Nisus Finance & Investment Managers LLP & Anr

.....APPLICANT/PETITIONER

Vs

M/s. Earthcon Universal Infratech Pvt. Ltd.

.....RESPONDENT

SECTION

U/s 7 of IBC, 2016

Order delivered on 02.05.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the GNIDA : Mr. Pankaj Pandey, Mr. Girish Tripathi, Advocates.

For the RP : Mr. Rishabh Jain, Advocate.

HYBRID HEARING (PHYSICAL & VC)

ORDER

IA-5144/2023:-

This application has been filed seeking the following prayers:-

- *Direct the Respondent-Resolution Professional to revise the amounts claims admitted of Applicant-GNIDA as Secure creditor and to admit and to pay the entire claim amounts submitted by the Applicant-GNIDA.*
- *Direct the Respondent-Resolution Professional to treat the Applicant-GNIDA as secure creditor for CIRP against the Corporate Debtor.*
- *Quash and set aside the all actions/decisions taken by the Resolution Professional and Committee of Creditors against the Applicant/GNIDA without treating the Applicant/GNIDA as secure creditor.*
- *Direct the IBBI to examine the work and conduct of Respondent-Resolution Professional and take such action as it may deem fit and proper.*

We may note that vide order dated 22.03.2024, this matter was directed to be listed for re-hearing in the light of the judgment passed by the Hon'ble Supreme

Court of India in Civil Appeal No. 7590-7591/2023 in the case of *GNIDA versus Prabhjit Singh Soni*. We may further note that this Adjudicating Authority in IA-5238/2023 vide order dated 02.05.2024 in an application filed by M/s. Nisus Finance & Investment Managers LLP & Anr. has allowed the application raising objections to the Resolution Plan and rejected the Resolution Plan and therefore, the matter has been referred back to the CoC for consideration. In view of the same, We, therefore, feel it appropriate to also refer the present matter to the CoC for consideration in the light of the judgment passed by the Hon'ble Supreme Court of India in the case of *GNIDA versus Prabhjit Singh Soni*.

IA **disposed of** accordingly.

IA-5145/2023

This application has been filed seeking the following prayers:-

- *Direct the Respondents to make the provision in Resolution Plan to pay the dues of Applicant-Objector as secure creditor within the meaning of Section 3(30) and 3(31) of the IBC, 2016 and Section 13A of the Uttar Pradesh Industrial Area Development Act, 1976.*
- *Reject the Resolution Plan put up for its approval in IA No. 4466/2023.*

We may note that vide order dated 22.03.2024, this matter was directed to be listed for re-hearing in the light of the judgment passed by the Hon'ble Supreme Court of India in Civil Appeal No. 7590-7591/2023 in the case of *GNIDA versus Prabhjit Singh Soni*. We may further note that this Adjudicating Authority in IA-5238/2023 vide order dated 02.05.2024 in an application filed by M/s. Nisus Finance & Investment Managers LLP & Anr. has allowed the application raising objections to the Resolution Plan and rejecting the Resolution Plan and therefore, the matter has been referred back to the CoC for consideration. In view of the same, We, therefore, feel it appropriate to also refer the present matter to the CoC for consideration in the light of the judgment passed by the Hon'ble Supreme Court of India in the case of *GNIDA versus Prabhjit Singh Soni*.

IA **disposed of** accordingly.

IA-4466/2023:-

This application has been filed by the Resolution Professional seeking approval of the Resolution Plan. Since, we have taken a view in IA-5238/2023 and IA-5125/2023, wherein we have rejected the Resolution Plan and sent back the matter to the CoC. We do not feel it appropriate to keep this matter pending.

IA **disposed of** accordingly.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)