



**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**(IB) No. 751(PB)/2023
IA 1527/2024
IA 3961/2024**

In the matter of:

**IDBI Trusteeship Services
Limited**

...Financial Creditor/Applicant

(in the capacity as the Debenture Trustee
for Kautilya Finance BV)

Having Registered Office At:

Ground Floor, Universal Insurance Bldg,
Sir Phirozshah Mehta Rd.,
Fort Bazargate Mumbai- 400001

Versus

**M/s Shree Vardhman Infraheights
Private Limited**

...Corporate Debtor

301, Third Floor, Indraprakash Building,
21, Barakhamba Road,
New Delhi - 110 001

Order pronounced on: 08.01.2025

**Under section 7 of the Insolvency and Bankruptcy Code,
2016 read with Rule 4 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016.**

CORAM:

**CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**

Appearances :



For the Financial Creditor	:	Mr. Vivek Sibal, Mr. Krishnendu Datta, Sr. Advs., Mr. Pranjit Bhattacharya, Ms. Tarini Khuranan, Mr. Akhil, Advs
For the Corporate Debtor	:	Mr. Arvind Nayyar, Sr. Adv., Ms. Pooja Mehra Saigal, Mr. Rajat Joneja, Ms. Sakshi Kapoor, Advs.

ORDER

1. This is an Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by Financial Creditor IDBI Trusteeship Services Limited in the capacity of Debenture Trustee for and on behalf of Kautilya Finance BV (hereinafter referred as 'FC') seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against **M/s Shree Vardhman Infraheights Private Limited** ("Corporate Debtor" hereinafter referred to as 'CD') for the total amount of debt granted Rs. 125,00,00,000/- and amount claimed to be in default is Rs. 263,00,46,668/- as on **30.09.2023**. The Registered Office of the Financial Creditor is at Concertgebouwplein, 13H, 1071 LL, Amsterdam, Netherlands. **M/s IDBI Trusteeship Services Limited is the Authorized Person to submit this application on behalf of Kautilya Finance BV as its Debenture Trustee.**
2. The CD was incorporated under the Companies Act, 1956 on **19.07.2011** having CIN: **U70101DL2011PTC222557**. Its Registered Office is at 302, Third Floor, Indraprakash Building, 21, Barakhamba Road, New Delhi-110001. The CD is a Company in the business of development, marketing and sale of Real estate Project. Its Corporate Office is at Raheja Mall, Sohna Road, Gurugram. The



Authorized Share capital of CD is Rs. 1,00,000/- and its paid-up share capital is Rs. 1,00,000/-.

3. An IA namely IA 3961/2024 has been filed by Applicant/FC under Rule 11 of NCLT Rules, 2016 seeking the following reliefs:

- A. *restrain the Corporate Debtor from alienating, encumbering, or creating any third-party interest on the assets of the Corporate Debtor;*
- B. *restrain the Corporate Debtor to carry out Project Related Financial transaction (sales, collections and cancellation) out of any Bank Account other than the agreed Escrow Accounts and in terms of the DTD dated 19.04.2016, Amended DTD dated 27.09.2018, Third DTD dated 04.11.2019. and Amended Third DTD dated 23.11.2021 ;*
- C. *appoint an Interim Resolution Professional (IRP) to monitor and control the affairs of the Corporate Debtor;*
- D. *pass such orders, as this Hon'ble Tribunal deems fit and proper in the circumstances of the case and thus render justice;*

Another IA namely IA 1527/2024 has been filed by Applicant/FC under Section 60 (5) of IBC r/w Rule 11, NCLT Rules, 2016 seeking replacement of proposed interim resolution Professional in Part III of the captioned petition. Both the IAs relate to the main petition, hence we are inclined to pass a common order for both the IAs as well.

4. BRIEF SUBMISSIONS OF LEARNED COUNSEL APPEARING FOR THE APPLICANT/FINANCIAL CREDITOR ARE AS FOLLOWS:

- i.** The CD was developing a group Housing project namely “Shree Vardhman Victoria” (hereinafter referred as ‘the project’), a residential colony over land measuring 10.9687 acres in Gurugram. CD has the sole and exclusive right and interest over the development rights of the whole of the Project Land and the project. For the purpose of inter-alia, facilitating the development and construction of the Project by raising finance, the CD had



proposed to issue and allot Debentures by private placement to Applicant (Kautilya Finance BV). The CD issued an Information Memorandum cum Private Placement Offer Letter dated **07.04.2016** for the aforesaid purpose, based on which Applicant agreed to invest in the CD by subscribing to debentures and following agreements were executed:

S.No.	Name of Agreement	Remarks
1.	Debenture Subscription Agreement (DSA) dated 07.04.2016 (annexed as Annexure-1 to the petition)	Applicant agreed to subscribe 140 no. of to-be listed, rated, senior, fully secured, redeemable, transferrable, interest bearing non-convertible debentures of face value of Rs. 1,00,00,000/- to be issued in 2 series namely (Series A- upto INR 90 crores and Series B- Upto 50 crores, for cash at par, in dematerialized form on a private placement basis at the interest rate set out in Schedule 2(Terms of Issue)
2.	Debenture Trust Deed (DTD) dated 19.04.2016 (annexed as Annexure 2)	First amended DTD dated 20.07.2017 Restated and amended DTD dated 27.09.2018 Restated and amended DTD dated 04.11.2019 (referred as 2019 DTD) Amendment to restated and amended DTD dated 23.11.2021



3.	Debenture Trustee Appointment agreement dated 07.04.2016	
4.	Security Agreements	Corporate Guarantee Personal Guarantee executed by each promoter Deed of Hypothecation Unattested Share Pledge Agreement by CD Unattested Share Pledge Agreement by promoters Equitable Mortgage Document
	Settlement Agreement dated 4.11.2019	

- ii.** Thereafter, to meet further requirement of finance towards construction and development of Project, parties amended the original DTD and DSA. The parties executed the first amended DSA and first amended DTD on **19.06.2017** and **20.07.2017** respectively, whereby Applicant further subscribed to listed, redeemable, transferable, interest bearing, non-convertible Series C Debentures of Rs. 25 crores in CD.
- iii.** Applicants further submitted that parties mutually decided to reduce the aggregated value of Series B debentures to 10 crores and in view of the same the **Restated and Amended DSA and**



DTD dated 27.09.2018 were executed between the parties. It is further submitted by Applicant that by virtue of the Amended and Restated DSA, original and amended DSA stood superseded. That along with DSA and DTD, Security documents were again revised and executed. Copy of Original DSA, Original DTD, First amended DSA, first amended DTD, restated and amended DSA and DTD are annexed in the main petition as **Annexure A1 to A6** respectively. Therefore, on **30.06.2019**, an amount of Rs. 26,65,67,499 constituting Rs. 19,15,67,499/- towards interest and Rs. 7,50,00,000/- towards first installment of principal redemption became payable by CD. On **05.08.2019**, Applicant issued a letter to CD enforcing its right under **Clause 16.2 of the Restated and amended DTD dated 27.09.2018** as CD failed to make repayment of Amounts Due and Events of Default occurred. Thereafter, Applicant filed a suit in Hon'ble Delhi High Court wherein parties resolved the defaults and disputes by executing a settlement dated **04.11.2019**. **Copy of Settlement agreement dated 04.11.2019 is annexed as Annexure-7 of the main petition.**

- iv. Subsequently, on 04.11.2019, the Applicant, in capacity as a Debenture Trustee of KFBV (Kautilya Finance BV) and KREF (Kautilya Real Estate Fund), the CD, Sandeep Jain, Sachin Jain, Rishi Gupta, Vivek Aggarwal, Gautam Chaudhary, Tushar Goel and Santur Infrastructure Private Limited herein agreed and entered into a subsequent DTD dated 04.11.2019 (annexed as **Annexure-8**), whereby, inter-alia, the aforesaid parties revised the repayment schedule for the payment of interest and redemption amount regarding the said 125 debentures. Applicant further submitted that CD again failed to fulfill their payment



obligation on **30.06.2020 and 30.09.2020** following which Applicant issued notices on **31.08.2020 and 08.11.2020**. Further, on request of CD, Applicant revised the repayment schedule once again vide acknowledgment Letter dated **23.11.2020**. Thereafter, a subsequent DTD dated **23.11.2021** (hereinafter referred as amendment to DTD dated 04.11.2019) was executed between the parties. Along with this, the CD further raised certain funds by issuing senior, fully secured, unlisted, redeemable, transferable, interest bearing non-convertible debentures of face value of INR 10,00,000/- each aggregating upto INR 25 crores (Additional D series Debentures). Applicant submitted that the CD acknowledged that the total amount due but not paid as on **30.09.2021** is **Rs. 68,14,71,368/-** and **Rs. 2,55,74,525/-** is payable as TDS on interest. It is further submitted that even after revision of repayment schedule, the CD failed to repay in terms of amendment to 2019 DTD (DTD dated 04.11.2019) from the first due date i.e. 31.12.2021. Therefore, on **01.07.2023 and 26.08.2023**, the Applicant sent a legal notice under Sec 138 of Negotiable Instrument Act and Applicant vide letter dated **27.09.2023** sent a default notice to the CD under Restated and Amended DTD dated 04.11.2019 and restated and amended DTD dated 23.11.2021 notifying the event of default has occurred in terms of clause 16.1 of amendment to the Restated and amended DTD dated 04.11.2019. Applicant vide letter dated **27.09.2023** informed CD that as on **30.06.2023** an amount of Rs. 256,56,01,400/- is due and payable from CD to Applicant.

Hence, in the case of repeated and continuing default on the unpaid debt, the application for initiating IBC proceedings are filed.



REPLY ON BEHALF OF THE RESPONDENT/CD IS AS FOLLOWS:

- i.** CD in its reply dated 22.01.2024 stated that Applicant is in the position of trustee and is entrusted with fiduciary duty towards debenture holders. However, acting in derogation of its contractual obligations, the Applicant has indulged in unauthorized use and diversion of funds by despotic exercise of the authority vested under DTD to control the project account of Respondent/CD. CD is engaged in construction and development of group housing project on the land admeasuring 10.9687 acres with an approved FAR of 77,580.04 sq. mt. (the project).
- ii.** CD submitted that Applicant has failed to disclose the pendency of execution petition filed by Applicant before Hon'ble High court wherein the Applicant has sought execution of settlement agreement and control of entire project including but not limited to representation on behalf of CD before all authorities and permission to negotiate with the customers on behalf of the CD.
- iii.** CD contended that it is the Applicant who is controlling the whole Project. CD submits that one of the terms of the Settlement Agreement dated 04.11.2019 entered into between the Applicant and CD was to constitute Project Monitoring Committee (PMC) that shall monitor the whole Project. The PMC consists of 3 members of the Applicant and 2 members of the Respondent. Therefore, the Applicant being in majority is taking all the decisions with respect to the Project including but not limited to cashflow of the Project. CD further contended that Applicant herein is not only a lender but has sought to be a partner in the Project by becoming part of the PMC and taking



decisions with respect to development of the Project and consequently delaying the Project. It is settled law that parties undertaking joint development with a corporate debtor cannot invoke proceedings under Section 7 of the Code . It is further contended by CD that the Applicant has approached this Hon'ble Court during the pendency of the Execution Petition to execute the Settlement Agreement. Under the Settlement Agreement, a PMC has been created to oversee the Project and to take decisions regarding the works. The Respondent could not take any steps with respect to the Project on its own and the entire Project was in the hands of the PMC. Therefore, in effect the entire Project was under the control of the Debenture Holder/ Applicant. The Debenture Holder/ Applicant has misused its position with the sole intent of delaying the Project so as to be able to receive additional amounts from the Respondent towards interest and has made the Project suffer.

- iv.** CD submits that the initial approved Project was to comprise of 8 towers. However, subsequently the Respondent acquired Additional FAR in the Project. Pertinently, three towers, namely, Tower G1, G2 and J were supposed to be part of the Additional FAR. As far as construction and development on the Additional FAR is concerned, the Respondent/CD vide Email dated 30.03.2023 duly informed the Applicant and the Debenture Holder and their representatives to stop any work related to and sale of the units in Tower G1, G2 and J as neither any approval/ revised plans had been received from the authorities nor were the said towers registered with RERA. The Respondent further clarified to the Applicant and the Debenture Holder that the Respondent was focusing on completing the 8 Towers and giving



possession to the customers before starting work on Tower G1, G2 and J. The CD submits that amount used by Applicant and the Debenture Holder for payment towards vendors and contractors for construction of Tower G1, G2 and J were made from the escrow account specifically maintained for 8 Towers in the existing FAR in terms of the provisions of RERA. Clearly, the Applicant and the Debenture Holder, without seeking any consent from Respondent are utilizing the monies in whichever manner they deem fit and without taking into consideration the terms and conditions of the Second Amended DTD. In fact, the monies lying in the escrow accounts (both 70% RERA project escrow account and 30% escrow account) for the Project cannot be used for the construction of Towers G1, G2 and J even with the consent of the Respondent as the same is prohibited by law.

- v.** It is submitted that as per the arrangement drawn between the parties, 70% amount deposited in the escrow account was to be utilized for construction and development of the first 8 Tower and the remaining 30% was specifically allocated for repayment to the Applicant in a time bound manner. CD further submits that the Applicant with malafide intent were causing delay in . making payments to the suppliers and vendors from the escrow account and were utilizing the monies in whatever manner they deem fit without having any concern for violating various provisions under law and attracting penalties, which ultimately would be the liability of the Respondent and its Promoters/Directors.
- vi.** Further, CD contended that the Haryana RERA Authority ("Authority") has rejected the application seeking extension of



the registration of the Project on account of failure to remove the deficiencies as pointed by the Authority. Had the Promoters of the Respondent Company been allowed to approach the Authority and rectified the defects, such situation would never have occurred.

- vii.** Further, it is contended by CD that the Settlement Agreement cannot be executed under the IBC, 2016 and that the application has been filed with the sole intent to recover monies from the Respondent.

5. ANALYSIS AND FINDINGS

- i.** We have heard the learned Counsels appearing for the Applicant and CD and perused the petition & its reply along with annexed documents. During the proceedings Respondents undertook to file an additional note on the all the proceedings pending between the parties before various courts and details of the amount lying in three escrow accounts as on date along with number of unsold units which are ready for sale. In compliance of the same, Applicant have filed two volumes of new documents dated 30.08.2024 and the Respondents have filed three volumes of new documents dated 23.08.2024. Thereafter both the parties were directed to file consolidated note and both the consolidated notes considered by this Adjudicating Authority and the submissions made by both parties are reproduced at relevant places in this section. List of pending proceedings between the parties as submitted in the consolidated note dated **20.09.2024** by the CD is

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reproduced below:

ALL THE PROCEEDINGS PENDING BETWEEN THE PARTIES BEFORE VARIOUS COURTS

S. NO.	FORUM	CASE TITLE	PROCEEDINGS
1.	Delhi High Court	IDBI Trusteeship Services Limited versus Shree Vardhman Infraheights Private Limited & Ors. [EX.P. 30/2023]	<p>Execution Petition filed by the Financial Creditor under Order XXI RULE 10 and 11 of the Code of Civil Procedure, 1908 to enforce the Settlement Agreement dated 04.11.2019. (Additional Written Submissions of Respondent/Annexure A/Pg. 7).</p> <p>In the Execution Petition, the Financial Creditor has filed an application bearing number EX.APPL.(OS) 1113 of 2023 for modification of Order dated 05.07.2023 passed by the Hon'ble High Court of Delhi in order to file an appeal before the Haryana Real Estate Regulatory Appellate Authority in respect of grant of RERA Registration to for Additional FAR on behalf of the Corporate Debtor. (Additional Written Submissions of Respondent/Annexure B/Pg. 46).</p> <p>The Financial Creditor has filed an affidavit</p>
			<p>before the Hon'ble Delhi High Court admitting to the fact that the Financial Creditor has filed an appeal before the Haryana Real Estate Regulatory Appellate Authority to pursue the registration of Additional FAR on behalf of the Corporate Debtor. (Additional Written Submissions of Respondent/Annexure C/Pg. 68).</p> <p>The Corporate Debtor filed an application under Section 8 of the Arbitration Act bearing number EX.APPL.(OS) 660/2023 to refer the disputes for arbitration. (Additional Written Submissions of Respondent/Annexure D/Pg. 71).</p>

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2.	Delhi High Court	Shree Vardhman Infraheights Private Limited versus IDBI Trusteeship Services Limited & Anr. [OMP (I) (COMM.) NO. 166 OF 2023]	<p>Petition under Section 9 of the Arbitration and Conciliation Act, 1996 filed by the Corporate Debtor seeking interim reliefs against the Financial Creditor including but not limited to directions against the Financial Creditor to act as per the Settlement Agreement. (Additional Written Submissions of Respondent/Annexure E/Pg. 86).</p> <p>Financial Creditor has filed an application seeking dismissal of the Section 9 Petition filed by the Corporate Debtor. (Additional Written Submissions of Respondent/Annexure F/Pg. 179).</p>
3.	Delhi High Court	Shree Vardhman Infraheights Private Limited Vs. IDBI Trusteeship Services Limited & Ors. [ARB. P. NO. 1207 OF 2024]	Petition under Section 11 of the Arbitration and Conciliation Act, 1996 by the Corporate Debtor seeking appointment of a Id. sole arbitrator to adjudicate all existing disputes between the parties. (Additional Written Submissions of Respondent/Annexure G/Pg. 199).
4.	Delhi High Court	Shree Vardhman Infraheights Pvt Ltd V/S Kautilya Finance BV& Ors. [CRL.M.C.-5453 of 2024]	Petition for quashing of the complaint under Section 138 of the Negotiable Instrument Act, 1881 pending in Patiala House Court, New Delhi. (Additional Written Submissions of Respondent/Annexure H/Pg. 242).
5.	Delhi High Court	Shree Vardhman Infraheights Pvt Ltd V/S Kautilya Finance BV & Ors. [CRL.M.C.-5457 of 2024]	Petition for quashing of the complaint under Section 138 of the Negotiable Instrument Act, 1881 pending in Patiala House Court, New Delhi. (Additional Written Submissions of Respondent/Annexure I/Pg. 266).
6.	Delhi High Court	Shree Vardhman Infraheights Pvt Ltd V/S Kautilya Finance BV & Ors. [CRL.M.C.-5460 of 2024]	Petition for quashing of the complaint under Section 138 of the Negotiable Instrument Act, 1881 pending in Patiala House Court, New Delhi. (Additional Written Submissions of Respondent/Annexure J/Pg. 292).
7.	Delhi High Court	Shree Vardhman Infraheights Pvt Ltd V/S Kautilya Real Estate Fund	Petition for quashing of the complaint under Section 138 of the Negotiable Instrument Act, 1881 pending in Patiala House Court, New
		& Ors. [CRL.M.C.-5459 of 2024]	Delhi. (Additional Written Submissions of Respondent/Annexure K/Pg. 317).

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8.	District Court, Patiala House	Kautilya Finance BV vs. Shree Vardhman Infraheights Pvt. Ltd. [Ct. Cases No. 5765 of 2023]	Complaint case under section 138 of Negotiable Instruments Act, 1881, pending before Ms. Poonam Singh, Ld. MM, New Delhi District, Patiala House Court. (Additional Written Submissions of Respondent/Annexure L/Pg. 341).
9.	District Court, Patiala House	Kautilya Finance BV vs. Shree Vardhman Infraheights Pvt. Ltd.[Ct. Cases No. 5675 of 2023]	Complaint case under section 138 of Negotiable Instruments Act, 1881, pending before Ms. Poonam Singh, Ld. MM, New Delhi District, Patiala House Court. (Additional Written Submissions of Respondent/Annexure M/Pg. 385).
10.	District Court, Patiala House	Kautilya Finance BV vs. Shree Vardhman Infraheights Pvt. Ltd. [Ct. Cases No. 14275 of 2023]	Complaint case under section 138 of Negotiable Instruments Act, 1881, pending before Ms. Poonam Singh, Ld. MM, New Delhi District, Patiala House Court. (Additional Written Submissions of Respondent/Annexure N/Pg. 429).
11.	District Court, Patiala House	M/s Kautilya Real Estate Fund vs. Shree Vardhman Infraheights Pvt. Ltd. [Ct. Cases No. 14267 of 2023]	Complaint case under section 138 of Negotiable Instruments Act, 1881, pending before Ms. Poonam Singh, Ld. MM, New Delhi District, Patiala House Court. (Additional Written Submissions of Respondent/Annexure O/Pg. 461).

- ii.** Applicant in its consolidated note dated **19.09.2024** submitted that CD had expressly acknowledged in the Acknowledgement letter dated **23.11.2020** that the debt is due and payable. Relevant portion of the acknowledgement letter is reproduced below:

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IDBI Trusteeship Services Ltd CIN : U65991MH2001GOI131154		2136
ITSL/OPR/20-21/20980 Date: 23 November 2020		
<u>ANNEXURE -9</u>		
To,		
SHREE VARDHMAN INFRAHEIGHTS PRIVATE LIMITED 302, 3rd Floor, Indraprakash Building, 21 Barakhamba Road, New Delhi 110001	VIVEK AGGARWAL, D-95, Pushpanjali Enclave, Pitampura, Delhi -110034	
SANDEEP JAIN, D-163, Ground Floor, Defence Colony, New Delhi-110024	GAUTAM CHOWDHARY, House No. 7, Maulana Azad Society, Parwana Road, Pitampura, New Delhi-110034	
SACHIN JAIN, D-209, Ground Floor, Ashok Vihar, Phase I, New Delhi-110052	TUSHAR GOEL, A 152, Florence Elite, Sushant Lok 3, Gurugram -122002	
RISHI GUPTA, N-2/23 DLF Phase – 2, Gurgaon, Nathupur (67), Haryana 122002	SANTUR INFRASTRUCTURES PRIVATE LIMITED, 302, third floor, Indraprastha Building, 21 Barakhamba Road, New Delhi 110001	
Without Prejudice		

Dear Sir (s),

I. We are in receipt of the copy of the board resolution dated 16 November 2020 passed by SVIPL, where SVIPL has granted certain additional rights to the Project Monitoring Committee ("PMC"), constituted under the terms of the Settlement Agreement dated November 4, 2019 arising out of the Consent Decree from the Hon'ble High Court of Delhi dated 21.11.2019 regarding CS (COMM) 411/2019 (the "Settlement Agreement"), the Amended and Restated Debenture Trust Deed dated November 4, 2019 ("DTD") and the Board Resolution dated November 4, 2019. SVIPL has also granted /approved the constitution of an Observing Committee to observe the Project working and the progress of the Project.

II. The grant of such additional rights to the PMC does not constitute any derogation or waiver of the rights of the Debenture Holders arising from the Settlement Agreement, the DTD, and the Definitive Agreements. The PMC members are not responsible for the repayment of the Redemption Amounts and Amounts Due and the Obligors remain liable to repay such amounts. The liability for completion and delivery of the Project remains that of the Company.

III. If by 15.02.2021,



[Handwritten signatures]

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2137

IDBI Trusteeship Services Ltd

CIN : U65991MH2001GOI131154



- a. SVIPL applies for the Occupancy Certificate ("OC") for Phase I and II (3 out of 8 towers) of the Project Victoria with the concerned Governmental Authorities and the receipt of such application duly acknowledged as received by DGTCP and received copy handed over to the DT Representatives.

However, it is clarified that the compliance of the aforesaid condition by SVIPL, shall be subject to the completion of the following two (2) conditions by Kautilya Real Estate Fund ("KREF"):

1. KREF subscribes to Series D NCDs aggregating to Rs. 11,00,00,000/- (Rupees Eleven Crores only) ("Subscription Amount"), within a period of 15 (fifteen) days ("Subscription Period") from the date of issuance of this letter, subject to the terms of the DTD.

It is further clarified that KREF shall disburse Rs. 5,00,00,000/- (Rupees Five Crores only) out of the total Subscription Amount, within a period of 3 (three) days of the date of the issuance and acceptance of this letter in compliance with Applicable Laws and the balance subscription amount of Rs. 6,00,00,000/- (Rupees Six Crores only) shall be disbursed by KREF within the Subscription Period.



2. KREF disburses an additional amount of Rs. 4,00,00,000/- (Rupees Four Crores only) either a) through subscription of additional NCDs (subject to execution of appropriate and mutually agreed amendments to the DTD) or b) allows the use of Rs. 4,00,00,000/- (Rupees Four Crores only) from the Designated Cash Flows, towards completion of works as per the details of work attached in Annexure 2, within a period of 35 (thirty five) days of the date of issuance and acceptance of this letter.

- b. By 15.02.2021, SVIPL has applied for the Fire NOC and the Lift NOC.

then Schedule 14 A, 14 B, 14 C and 14 D of the DTD shall be replaced by the Repayment Schedule in Annexure 1 A, 1 B, 1 C, 1 D, and 1 E of this Letter.

- IV. If any of the aforementioned two (2) conditions (3a and 3b) set out in Para III above are not met, then the Repayment Schedule provided in Schedule 14 A, 14 B, 14 C and 14 D of the DTD will be applicable. However, the Debenture Holders agree that the Repayment Schedule in Annexure 1 A, 1 B, 1 C, 1 D, and 1 E hereto shall be made applicable on the Company making the OC application even after 15.02.2021, provided that such delay in application for OC is due to prohibition/restriction on construction or supply of materials or factors beyond the control of the Company as evidenced by a supporting government order/notification.

- V. It is hereby clarified that the PMC shall always exercise its rights in accordance with the terms of the DTD, the Settlement Agreement, and the Applicable Laws.

- VI. The constitution and authority of the PMC as provided in the DTD dated 04 November 2019, the Settlement Agreement dated 04 November 2019 and the Board Resolution dated 16 November 2020 will not be modified, rescinded, or restricted in any manner whatsoever without prior written consent of the Debenture Trustee and the Obligors shall not hinder the rights of the PMC. In case any such action is taken by the Obligors then it would be an Event of Default under the DTD without any cure period and the Debenture Trustee would be entitled to enforce Clause 16.2 (Consequences of Event of Default) of the DTD and any other rights and remedies forthwith.

- VII. All capitalised terms used but not defined herein shall have the meaning ascribed to them in the DTD.

- VIII. This letter will be applicable only when all the six Directors of SVIPL acknowledge and agree to this letter.

Regd. Office : Asian Building, Ground Floor, 17, R. Kamani Marg, Ballard Estate, Mumbai
Tel. : 022-4080 7000 • Fax : 022-6631 1776 • Email : itsl@idbitrustee.com • response@ic
Website : www.idbitrustee.com

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IDBI Trusteeship Services Ltd CIN : U65999MH2001G01131154		2138
Regards, For IDBI Trusteeship Services Limited		
Authorised Signatories		
Acknowledged and accepted BY SHREE VARDHMAN INFRAHEIGHTS PRIVATE LIMITED		
 Name: Sandeep Jain Designation: Director DIN: 00095365 Date: 23 November 2020 Address: D-163, Ground Floor, Defence Colony, New Delhi 110024 Place: Delhi	 Name: Sachin Jain Designation: Director DIN: 00095376 Date: 23 November 2020 Address: D-209, Ground Floor, Ashok Vihar, New Delhi 110052 Place: Delhi	
 Name: Rishi Gupta Designation: Director DIN: 02246941 Date: 23 November 2020 Address: N-2/23, DLF Phase 2, Gurgaon 122002 Place: Delhi	 Name: Vivek Aggarwal Designation: Director DIN: 020626055 Date: 23 November 2020 Address: D-95, Pushpanjali Enclave, Pitampura, Delhi 110034 Place: Delhi	
 Name: Tushar Goel Designation: Director DIN: 02061992 Date: 23 November 2020 Address: A-152, Florence Elise, Sushant Lok-3, Gurgaon 122003 Place: Delhi	 Name: Gautam Chaudhary Designation: Director DIN: 05241838 Date: 23 November 2020 Address: 7, Maulana Azad Society, Pitampura, New Delhi 110034 Place: Delhi	
Copy to: Kautilya Finance BV Concertgebouwplein, 13H, 1071 LL Amsterdam, The Netherlands Kautilya Real Estate Fund B- 7/45, third floor, Safdarjung Enclave Extension,		
 TRUE COPY		

Applicant in its consolidated note relied on **clause II & IV** of the acknowledgement letter. Further, Applicant cited relevant excerpt from the Amendment to the restated and amended DTD



dated 23.11.2021 to contend the acknowledgement and obligation on part of CD. Relevant part is reproduced below:

“F. The Obligors represent and acknowledge that the total Amount Due But Not Paid to the Debenture Holders as on 30.09.2021 is Rs. 68,14,71,368/- (Rupees Sixty- Eight Crores Fourteen Lakhs Seventy-One Thousand Three Hundred and Sixty- Eight only) (“Amounts Due But Not Paid”) as provided in Table 1 and Rs. 2,55,74,525 (Rupees Two Crores Fifty-five Lakhs Seventy-Four Thousand Five hundred and twenty-five only) is payable as TDS on interest (“TDS Due But Not Paid”) as on 30.09.2021.....”

Further, Applicant submitted that Settlement agreement does not amount to Applicant having any control over the project and that this contention is entirely misplaced. Clause 2.6 and 2.22 of the settlement agreement is reproduced below:

2.6 It is clarified that (i) the responsibility for construction, development, marketing and sale of the Project in accordance with Applicable Laws and (ii) for repayment of the Amounts Due including but not limited to the outstanding and on-going interest and Redemption Amounts of NCDs in accordance with the Revised Repayment Schedules as set forth in this Agreement, is independent of the working of the PMC and is the obligation of the Obligors.

2.22 The payment of Interest and principal in respect of the Debentures and New NCDs pursuant to the applicable Revised Repayment Schedule is the obligation of the Obligors in accordance with the Restated and Amended DTD. The Obligors agree that in the event the Company fails to pay the Interest or principal on or before the scheduled payment date pursuant to **Schedule D** then it shall be a Payment Default and without any cure period with immediate effect on written notice of the same by the Debenture Trustee to the Company and the terms of the Restated and Amended DTD in case of such default shall apply with immediate effect from date of such notice. The cure periods for any non-payment default shall be as provided in the Restated and Amended DTD.

Further, as per the directions of this Adjudicating Authority, Applicants have given the details of the cash balance in the three escrow accounts in their consolidated note which are reproduced below:

IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI



IA 1527/2024 & IA 3961/2024
& (IB) No. 751(PB)/2023
IDBI Trusteeship Services Ltd. vs.
Shree Vardhman Infraheights Pvt. Ltd.

S. No.	Particulars	Amount (In INR)	Instalment Due (in INR)	Remarks
As on 30.12.2021				
1.	Amount in Utilization Escrow (259999131003)	10,88,25,118	91,36,86,562	This account cannot be utilized for repayment of debt, <i>inasmuch as</i> , this is the account in which the subscription amount deposited.
2.	Amount Available in RERA Account (70%) (777705226266)	48,32,310		Insufficient balance in this account for debt repayment.
3.	Amount in Project Revenue Escrow Account (30%)	7,74,304		Insufficient balance in this account for debt repayment.



S. No.	Particulars	Amount (In INR)	Instalment Due (in INR)	Remarks
	(777705226267)			
As on 30.06.2023				
1.	Amount in Utilization Escrow (259999131003)	28,74,207.03	232,55,69,151	This account cannot be utilized for repayment of debt, <i>inasmuch as</i> , this is the account in which the subscription amount deposited.
2.	Amount Available in RERA Account (70%) (777705226266)	18,06,07,906.17		Insufficient balance in this account for debt repayment.
3.	Amount in Project Revenue Escrow Account (30%) (777705226267)	9,54,97,265.66		Insufficient balance in this account for debt repayment.
As on 01.08.2024				
1.	Amount in Utilization Escrow (259999131003)	29,73,219.83	294,43,72,172	This account cannot be utilized for repayment of debt, <i>inasmuch as</i> , this is the account in which the subscription amount deposited.
2.	Amount Available In RERA Escrow Account (70%) (777705226266)	61,56,67,170.79		Insufficient balance in this account for debt repayment.
3.	Amount in Project Revenue Escrow Account (30%) (777705226267)	2,66,46,991.76		Insufficient balance in this account for debt repayment.

- iii. CD in its consolidated note cited the judgement of **IDBI Trusteeship Services Limited versus Abhinav Mukherjee and Others [2022 SCC Online NCLAT 267]** to contend that the person who is in a position to directly and indirectly control the management and the policy decisions of the CD are not the financial Creditor. Relevant paras of the judgement



is reproduced below:

54. This Clause 4.1 of the AoA refers to 'PDPL Revenue Escrow Accounts and PDPL operating Accounts' establishes that ECL had control over the entire Project Revenue Accounts and therefore the submission of the Learned Appellant Counsels that Appellants had no positive control but only a Restrictive one is unsustainable. Controlling the Revenue Escrow Accounts to involvement in the execution of sale deeds of the sale of units to allottees show that the Debenture Holders were in a 'position to control'. The requirements under Section 5(24) under the provisions of the Code does not anywhere provide that such control should actually be exercised. Even otherwise, the Forensic Audit Report filed, specifically notes that the 'Corporate Debtor' was transferring amounts received from Saha to other related parties of Saha.

55. Being in charge of the Escrow Accounts, empowered under Clause 1.1 of AoA whereby and whereunder, the Revenue Escrow Account shall be operated with the instructions of the Debenture Trustee (acting on the instructions of the Debenture Holders) and having executed an irrevocable Power of Attorney to deal with all Banks etc., it cannot be said that the Appellants were neither in the knowledge of the transfers nor were they exercising any 'control'. Viewed from any angle, the AoA and the aforementioned powers conferred under Clause 4.1 of the AoA, cannot be only 'Restrictive Powers'. The Hon'ble Supreme Court in 'Arcelor Mittal India Pvt. Ltd.' (Supra), has referred to the definitions of 'Control' as defined in Black' Law Dictionary - 'Control is the direct or indirect power to direct the management and policies of a person or entity, whether through ownership of voting securities, by contract, or otherwise. The power or authority to manage, direct or oversee.'

56. The first part of the term 'Control' refers to 'de jure' control, which includes the right to appoint directors of the Company. The second part of the expression 'Control' refers to 'de facto' control, whereby, person/body corporate directly or indirectly can positively influence in any manner, the management or policy decisions. Any decision which has a long term effect, for formulation of Business Plans, comes within the purview of policy making. The argument that the Clauses with respect to 'Business Plans' and any substantial/important charges requiring the approval of the Debenture Holders, is only 'restrictive' and does not construe 'positive control' is untenable. We are of the view that the irrevocable PoA executed in favour of the Debenture Holders suggests Positive and proactive control as the Appellants are in a position to take proactive decisions regarding the rights of the 'Corporate Debtor'.

- iv. Further, CD strongly contended that the Applicant has filed multiple cases before various forums and that the Applicant is misleading this Adjudicating Authority by not disclosing/suppressing material facts. Thereby, CD in its note has provided the list of all the pending litigation *inter se* the parties(**see para 5(i) (ibid)**). CD also submitted that the application for the



extension of registration of the project has been rejected by HRERA and had the Promoters of the Respondent Company been allowed to approach the Authority and rectified the defects, such situation would never have occurred. At this juncture, it is pertinent to cite the order of Ld. HRERA dated **20.03.2023**. Relevant part of the Order dated **20.03.2023** is reproduced below:

“None is present on behalf of the promoter. A show cause notice for rejection of application was issued on 22.02.2023 as the promoter has failed to comply with deficiencies already pointed out despite 24 opportunities. Even today, none has appeared on behalf of the promoter applicant which indicates that he does not intend to pursue the matter. In view of the above, the application for extension of registration of the project is hereby, rejected under the provisions of section 6 of the RERA Act, 2016. The processing fee deposited by the applicant promoter is forfeited and the registration fee if any deposited may be refunded.”

It is the contention of the Applicant that it has made repeated request to CD to cure the deficiencies identified by HARERA. For the same, copy of emails and correspondences attached as Annexure 6 in additional documents. Relevant Email is reproduced below:



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Akash Singh <akash.singh@kautilyafinance.com>

Victoria New Towers RERA: Delay in curing observations

4 messages

Akash Singh <akash.singh@kautilyafinance.com>

Wed, Mar 1, 2023 at 6:18 PM

To: Shree Vardhman Group <vdl_05@rediffmail.com>

Cc: Sandeep <cmdshreevardhman@yahoo.com>, Sachin Jain <sachin@shreevardhmangroup.com>, Ashok Gupta <ashok195432@gmail.com>, rgupta <rgupta@kingimpex.in>, Piyush Chandra <piyush.chandra@kautilyafinance.com>, Shobhit Shukla <shobhit.shukla@kautilyafinance.com>

Dear Harish,

This is to bring to your notice that RERA application was submitted on 23 Jan 23. RERA issued observations on the same on 27 Jan 23. Further due to absence of Company Representatives in hearings dated 31 Jan 23, 2 Feb 23 and 20 Feb 23, RERA on 20 Feb 23 has issued a show cause notice for rejecting the application of the Project.

No progress towards curing these observations was made till 21 Feb 23. In order to avoid further delays, we as DT Representatives commenced coordination for the same and as on date 21 out of 33 deficiencies have been cured and ready for submission. Remaining 12 are to be provided by staff at Head Office.

However, you have informed on 1 Mar 23 that Mr. Sandeep Jain has instructed you not to process our request pertaining to curing of these deficiencies till further discussions. We do not understand the said step taken as it is evident to everyone how critical each approval is for the benefit of the Project, including and specially RERA Registration for the new towers in the Project. Kindly resolve this issue and provide the required documents latest by 3 Mar 23 so that the deficiencies can be cured.

Regards
Akash Singh

v. Further, CD contended that Applicant is controlling the whole project of the Respondent. That the Applicant is responsible for the delay in the project as it is the Applicant who was/is in the control of the project and Applicant is the sole signatory to the Utilization Escrow Account and Project Revenue Escrow Account. Also, CD in its consolidated note submitted that the initial approved Project was to comprise of 8 towers. However, subsequently the Respondent acquired additional FAR in the Project. The three towers, namely, Tower G1, G2 and J were supposed to be part of the Additional FAR. As far as construction and development on the Additional FAR is concerned, the Respondent vide Email dated 30.03.2023 (**reproduced below**) duly informed the Petitioner and their representatives to stop any work related to and sale of the units in Tower G1, G2 and J as neither any approval/revised plans had been received from the authorities nor were the said towers registered with RERA.

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22/04/2023, 19:52

Kautilya Finance Investment Advisors Mail - Order for aluminium formwork for towers G1 & G2

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ANNEXURE R-7

Akash Singh <akash.singh@kautilyafinance.com>

Order for aluminium formwork for towers G1 & G2

SANDEEP JAIN <cmdshreevardhman@yahoo.com>

Thu, Mar 30, 2023 at 11:26 PM

To: Anand Naygaonkar <anand.naygaonkar@kautilyafinance.com>

Cc: Sachin Jain <sachin@shreevardhmangroup.com>, Ashok Gupta <ashok195432@gmail.com>, Piyush Chandra <piyush.chandra@kautilyafinance.com>, Shobhit Shukla <shobhit.shukla@kautilyafinance.com>, Akash Singh <akash.singh@kautilyafinance.com>, rgupta@bvmdevelopers.com

Dear Anand

We have already told u that Do not start the construction of g1 and g2 towers in my various mails since management is not decided yet to start the construction due to

1. Financial position of company

2. Non registration of rera of these towers .

3. Available funds should be used in sold towers and completion of ews towers not in unsold towers

Anything happens on site , management of the company is not responsible . Pls stop activities of these towers immediately .

Sandeep Jain

Director

Shree vardhman infraheights pvt Ltd .

Sent from my iPhone

On 30-Mar-2023, at 8:29 PM, Anand Naygaonkar <anand.naygaonkar@kautilyafinance.com> wrote:

It is pertinent to mention the order dated **20.03.2023** of Ld. HRERA which rejected the CD's application for registration of the Additional FAR. Relevant portion of the Order dated **20.03.2023** is reproduced below:

"None is present on behalf of the promoter. A show cause notice for rejection of the application was issued on 23.02.2023 as the promoter has failed to comply with deficiencies already pointed out despite three opportunities. Even today, none has appeared on behalf of the promoter applicant which indicates that he does not intend to pursue the matter. In view of the above, the application for registration of the project is hereby rejected under the provisions of section 5 of the RERA Act, 2016. The processing fee deposited by the applicant promoter is forfeited and the registration fee if any deposited may be refunded."

On perusal of both the orders dated 20.03.2023 of Ld. HRERA i.e.(rejection of application for extension of Registration of existing



FAR and rejection of application for registration of additional FAR), it is clear that opportunities were given to promoter to cure deficiencies but promoter failed to do so. It is only after the rejection of application for extension of registration for existing FAR and rejection of the application for additional FAR, CD started making request for stopping the work related to additional FAR. Applicant in its consolidated note also submitted that as a precursor to the Order dated 20.03.2023, the Applicant has made repeated requests to the Corporate Debtor to cure the deficiencies identified by Ld. HRERA and to attend the proceedings before it. A copy of the emails and WhatsApp correspondence exchanged between the parties from April, 2022 to February, 2023 is also annexed in the additional submissions as **ANNEXURE 6**. BE THAT AS IT MAY, we are not reviewing the mistakes committed by the parties or who is more or less at fault for the rejection of the extension of Registration Certificate. **On perusal of the records, it is found that Ld. Appellate Authority for RERA has set aside the order dated 20.03.2023 of Ld. RERA passed w.r.t extension of registration.** However, what happened after the setting aside of the order is not known. Also, there is no record as to whether any appeal was preferred against the other order of HRERA dated 20.03.2023 with respect to the registration of additional FAR. Therefore, this Adjudicating Authority vide order dated **16.12.2024 passed a clarification order. Relevant part of the Clarification order is extracted below:**

“2. It seems that HRERA cancelled the extension of registration of the Project. Against the order of HRERA, there is an appeal filed by the petitioner/Applicant and other than this fact, nothing has been put on record regarding the current status of proceedings. Ld. Counsel for the Applicant is directed to submit the current status of



the proceedings before the Appellate Authority of RERA. Ld. Counsel for the Applicant is also directed to put the current status of the Project as well.

3. Ld. Counsel for the Corporate Debtor has submitted the list of pending litigation between the parties namely, arbitration proceedings, proceedings before Ld. High Court of Delhi, Proceedings in District Court under NI act etc. On perusal of the List, it is found that execution of the settlement agreement dated 04.11.2029 is pending before the Ld. High Court of Delhi. Ld. Counsel for the FC and Corporate Debtor are directed to update the status of proceedings before Ld. Delhi High Court with respect to the execution of settlement agreement dated 04.11.2019.

4. Ld. Counsel for the Corporate Debtor has alleged that it is the applicant who is controlling the project and has placed on record some email conversations dated March 2023. PMC was constituted in 2019. Ld. Counsel for the CD is directed to put on record any other record (between 2019 to before March 2023) (if any) to allege the dominance of the Applicant over the project.”

Applicant/FC submitted clarification dated 26.12.2024 stating that **“vide order dated 07.10.2024, the Ld. HRERA has refused to grant any extension of the registration but has only granted continuation of registration on the basis that Occupation Certificate has already been received for the existing FAR.”** Relevant part of the order dated **07.10.2024** of Ld. HRERA is extracted below:

“After considering the documents available on record as well as submissions made by the parties, the Authority is of the view that the extension u/s 6 cannot be granted beyond 30.06.2022 and hence, the application of extension of registration u/s 6 becomes infructuous. However, as the OC for 8 residential towers had already been obtained by the promoter, the Authority deems fit to consider continuation of the registration u/s 7(3) of the Act, 2016, in the



intertest of the allottees, provided the promoter submits the requisite documents/ deficiencies already conveyed against the application for extension of Registration U/S 6 of the Act, 2016 and fee for continuation of registration of the project, schedule for completion of the project.”

Additionally, Applicant/FC in its clarification submissions submitted that “*the promoter was unwilling to file an appeal before the Ld. Appellate Tribunal, Haryana. The Applicant was constrained to file an application bearing E.A. No. 1113 of 2023 before Delhi High Court in OMP (1) (COMM) No. 166 of 2023 seeking liberty to file an appeal before the Ld. Appellate Tribunal, Haryana.*”

The Applicant has also filed an appeal before the Ld. Haryana Real Estate Appellate Tribunal with respect to the Additional FAR, which is pending before the Registry of the forum.

At this juncture it is also relevant to mention that Applicant and CD both with their mutual consensus entered upon the Debenture Trust Deed dated 04.11.2019 for additional FAR in terms of settlement agreement dated 04.11.2019. Therefore, the plea of CD with respect to stopping of construction for additional FAR is not tenable.

- vi.** With regard to clarification regarding correspondences showing dominance of Applicant/FC, Respondent in its clarificatory submissions submits that Purchase orders/work orders were issued and signed by representatives of the Debenture holder. Further, delivery/invoices/material receipt notes of purchase items monitored by the debenture holder. On perusal of document it is clear that Board Resolution dated 05.11.2019 has been passed by CD only for the constitution of PMC. Further Purchase Order has been signed on behalf



of CD by the member of PMC which itself has been formed by Board of Directors. Prima facie, on the careful examination of the email correspondences between the parties, it cannot be said that Applicant is controlling the project. Also it is the responsibility of the CD for successful completion of the project and CD cannot absolve itself of its liability with respect to the project by alleging the mistakes on part of Applicant.

- vii.** On perusal of the contentions and submissions by the parties and on perusing the documents, it cannot be denied that CD and Applicant had entered into Debenture Subscription Agreement (DSA) and Debenture Trust Deed (DTD) and CD had issued the debentures in favour of the Applicant/FC (KFBV) for the development of the group housing project. On the failure of the obligation to pay the agreed interest and principal amount, Applicant and CD had amended the DSA and DTD and amended the terms of repayment and rescheduled the payment structure. On further failure to fulfill its obligations by CD, Applicant has filed the case before Hon'ble High Court of Delhi wherein they have entered into settlement agreement and on the same date namely **04.11.2019** they have amended the previously amended DTD. If one outlines the hierarchy of the contracts entered upon between the parties, it is clear that, firstly for raising the finance for the project, CD issued debentures in the name of Applicant/FC and thereby, revised and amended the DTDs for rescheduling the payments and in 2019, a settlement agreement was entered and a Project Monitoring Committee (PMC) was formed presumably for the successful completion of the project.

- viii.** On perusal of the cash balance of three escrow accounts, the



balance against the accrued liability is very low. The account balance has been reproduced in **para 5(ii) (ibid)**. As far as the ongoing litigation before various forums between the parties is concerned, nexus between the litigation and debt and default cannot be made. It has not been shown by the CD that Applicant in any way thwarted the CD's appearance before the various forums. Nevertheless, the multiple proceedings between the parties and the merit of those proceedings are not relevant for the purpose of determining the existing debt and default on the part of CD. In fact, once the CIRP is initiated, all the proceedings before various forums will be stayed by the moratorium envisaged under section 14 of the code which will prevent the multiplicity of proceedings and be beneficial for the interest of both the parties. We also are not commenting upon the extent of the liability of the CD for which the various clauses of the contract are reproduced by the Applicant. The only conclusion this Adjudicating authority is relying upon is the existence of contract, failure to pay and acknowledgement of the liability by CD. The initiation of CIRP is not the execution of the settlement rather the settlement agreement prima facie establishes the liability of the CD and nothing more. Under the Insolvency and Bankruptcy Code, 2016, while entertaining an application under section 7 by financial creditor, the foremost requirement is to see whether there is any debt, the nature of the debt, and whether the debt is due and payable. We have to also see whether the Applicant has annexed any record of default or any other evidence to establish default. In the instant case, Applicant has annexed the record of default as well. Also, Applicant has placed on record the document acknowledging the debt. On perusing the settlement agreement



between the parties para 5(ii)(ibid), clause 2.22 specially states that the payment of interest and principal in respect of Debentures and new NCDs shall remain the obligation of promoter/CD. So far as the repayment of debt due is concerned, it has not been done and thereby CD is in default. We do not agree with the contention of CD that this section 7 application is actually the execution of Settlement agreement. It is the debt due which remains unpaid and acknowledged by the CD itself.

- ix.** As far as the contention of the CD regarding FC being the controlling authority of the project is concerned, it is pertinent to mention here that the agreement has been entered upon with free consent of the parties. Also, according to the terms of the agreement, initially the obligation for the development of the project is of the CD and after the settlement agreement, presumably to improve the completion timeline of the project, applicant came into picture. It is not the case here that since inception, CD and Applicant were joint developers. In usual business practice, in event of failure to pay, parties mutually try to cover the losses and restructure the contract in order to fulfill mutual obligations. Contending that applicant did not let CD handle the affairs of the project is not tenable. The fact of the failure of CD to pay the accrued interest to Applicant and issuance of legal notice, default notice, initiation of proceedings by Applicant gives clear indication that CD is in continuous default. At this juncture, it is pertinent to note here that HRERA has also cancelled the registration of whole project owing to the default committed by the parties. BE THAT AS IT MAY, the debt is subsisting, payments has not been done, there are many unsold units, project registration has been cancelled and it cannot be said



that Applicant is liable for these wrongs done to the project.

The inability of CD is apparent and evident on all aspects leading to insolvency. The CD plea of settlement and applicant becoming part of ownership of the project is belied by their statement as under:

Further, Applicant submitted that Settlement agreement does not amount to Applicant having any control over the project and that this contention is entirely misplaced. Clause 2.6 and 2.22 of the settlement agreement is reproduced below:

2.6 It is clarified that (i) the responsibility for construction, development, marketing and sale of the Project in accordance with Applicable Laws and (ii) for repayment of the Amounts Due including but not limited to the outstanding and on-going interest and Redemption Amounts of NCDs in accordance with the Revised Repayment Schedules as set forth in this Agreement, is independent of the working of the PMC and is the obligation of the Obligors.

2.22 The payment of Interest and principal in respect of the Debentures and New NCDs pursuant to the applicable Revised Repayment Schedule is the obligation of the Obligors in accordance with the Restated and Amended DTD. The Obligors agree that in the event the Company fails to pay the Interest or principal on or before the scheduled payment date pursuant to **Schedule D** then it shall be a Payment Default and without any cure period with immediate effect on written notice of the same by the Debenture Trustee to the Company and the terms of the Restated and Amended DTD in case of such default shall apply with immediate effect from date of such notice. The cure periods for any non-payment default shall be as provided in the Restated and Amended DTD.

x. Therefore, on the basis of arguments advanced and documents on record, the DSA and DTD as amended on 04.11.2019 and 23.11.2021 shall stand as valid and enforceable. That is the underlying factor for the debt and default that remains unpaid. All other interim arrangements basis court proceedings in multiple forums does not vanguard the debt. It lends credence to the continuing default and attempt to extricate but in vain. There are other additional documents like emails,



letters exchanged between the parties, we find that there is clear debt due and default on the part of the CD. The debt has been acknowledged by CD as well. The ingredients of Section 7 are fulfilled and therefore, we don't find any impediment in commencement of CIRP against the CD. Accordingly, we are inclined to **Allow** this Company petition namely **CP(IB)/751 of 2023**.

- xi.** Further, Applicant has moved the application IA 1527 of 2024 to seek for the replacement of the name of IRP proposed that is to replace the name of Mr. Harvinder Singh having IBBI Regd. No. I88I/IPA-001/IP-P00463/2017-2018/10806 and propose the name of **M/s Ducturus Resolution Professionals Pvt. Ltd. through its Director Mr. Jalesh Kumar Grover** having registration No. IBBI/IPA-001/IP-P00200/2017- 2018/10390 as the proposed IRP in Part III of the captioned Petition. Copy of the Written Consent under Form 2 stating that no disciplinary proceedings are pending against him. along with the valid AFA and IBBI Registration Certificate of Ducturus Resolution Professionals Pvt. Ltd. through its Director Mr. Jalesh Kumar Grover has been annexed as ANNEXURE 2 - (Colly) of IA 1527/2024. Accordingly, IA **1527/2024** is **Allowed and Disposed of**.
- xii.** In view of our order as allowed **IA 3961/2024** seeking the interim relief against the CD is thereby **Disposed of as unnecessary**.

6. ORDER

1. In light of the above facts and circumstances, it is hereby ordered as follows: -

- i.** The Application bearing **(IB)-751PB/2023** filed by the



Applicant under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating CIRP against CD i.e. **M/s Shree Vardhman Infraheights Private Limited** is hereby **ADMITTED**.

- ii. As a consequence of the Application being admitted in terms of Section 7 of the Code, the moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii. The Financial Creditor has proposed the name of **M/s Ducturus Resolution Professionals Pvt. Ltd. through its Director Mr. Jalesh Kumar Grover** registration number IBBI/IPA-001/IP-P00200/2017- 2018/10390, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration annexed as **Annexure-2 (pg. 6 to 12)** of IA 1527/2024.
- iv. **M/s Ducturus Resolution Professionals Pvt. Ltd. through its Director Mr. Jalesh Kumar Grover;** Registration number **IBBI/IPA001/IP-P00200/2017-2018/10390**; Address: SCO 818 1st Floor NAC Manimajra Chandigarh; Email id **j.kgrover27@gamil.com**; Contact No.



9501018808 is appointed as the Interim Resolution Professional (“IRP”).

- v.** In pursuance of Section 13(2) of the Code, we direct the IRP to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- vi.** During the CIRP period, the management of the CD shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no further opportunity given in this regard.
- vii.** The IRP is expected to take full charge of the CD’s assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- viii.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the CD.
- ix.** The Applicant shall deposit a sum of Rs 5,00,000/- (Rupees Five Lakhs only) with the IRP to meet the expenses arising out



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of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (“COC”).

- x.** The Registry is hereby directed to communicate a copy of the order to the FC, the CD, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today, and upload the same on website immediately after pronouncement of the order. The Registrar of Companies shall update his website by updating the status of the CD and specific mention regarding admission of this petition must be notified.
- 7.** The registry is further directed to send the copy of the order to the IBBI also for their record.
- 8.** Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.
- 9.** List the matter on **10.02.2025**.

Sd/-

(RAMALINGAM SUDHAKAR)
PRESIDENT

Sd/-

(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)