

DRAFT MINUTES OF THE SECOND MEETING OF THE COMMITTEE OF CREDITORS OF M/S EARTHCON UNIVERSAL INFRATECH PRIVATE LIMITED HELD ON 8TH OCTOBER, 2020 AT 4:00 P.M. THROUGH ELECTRONIC MEANS (VIDEO CONFERENCING / CONFERENCE CALL)

Present

1. Mr. Kaushtab and Ms. Nitiksha Porwal (Representative of Beacon Trusteeship Limited) (Video Conferencing on Skype)
2. Mr. Rajesh Pandey and Mr. Chaman Lal, Ms. Ritika Nanda (Representative of Punjab & Sindh Bank (Through Video Conferencing on Skype)
3. Mr. Deepak Gupta, Authorized Representative (Authorized Representative of Financial creditor in class (Home Buyers)
4. Mr. Amit Goenka, Mr. Vikas Krishna Kumar Modi (Representative of Nisus Finance & Investment Managers LLP) (Video Conferencing on Skype); (Ex-Nominee Director of Corporate Debtor (Through Video Conferencing on Skype)

1. Appointment of Chairman

Mr. Jitender Arora, Insolvency Resolution Professional of M/s Earthcon Universal Infratech Private Limited, Chaired the meeting, pursuant to Regulation 24(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Chairman has welcomed the representatives of Punjab & Sindh Bank, Representative of Nisus Finance and Investment Managers LLP & Beacon Trusteeship Limited, Mr. Deepak Gupta being the Authorized Representative in class (home buyers) present for and on behalf of the members of the Committee of Creditors, Mr. Amit Goenka (Partner of Nisus Finance and Investment Managers LLP) as well as Ex-Nominee Director of M/s Earthcon Universal Infratech Pvt Ltd.

Promoter cum Ex-Director of the Corporate Debtor i.e. Mr. Shadab Khan & Sunil Sharma did not attend the meeting.

2. To take the roll call at the meeting

The Chairman took the roll call of all the members of the Committee of creditors who are present on Video Conferencing and has marked their presence in the Video Conference Meeting. Further, the IRP ensured that none other than the members of the Committee of creditor has access to the proceedings of the meeting.

3. To ascertain the quorum of the Meeting

The Chairman informed the members of the Committee of Creditors present in the Meeting that as per Regulation 22(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the quorum for the meeting of members of the committee shall be at least 33% of the voting rights present either in person or by video conferencing or other audio-visual means. The Chairman further informed the members that the desired quorum is present in the meeting. After ascertaining the quorum, the member has requested the IRP to proceed further.

Item No. 4

To take note of the minutes of the First Meeting which get adjourned and subsequent part of First Adjourned Meeting of the Committee of Creditors held on 2nd March, 2020 and 26th March, 2020 respectively

The Chairman informed the members of the Committee of Creditors that he had circulated the minutes of the First CoC meeting and First Adjourned Meeting of the CoC to all the participants entitled to attend the meeting by way of e-mail within 48 hours of the meeting as per provision of Regulation 24(7) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

After discussion, the Committee of Creditors confirmed and noted the same and passed the following resolution:

“RESOLVED THAT the minutes of the First CoC meeting and First Adjourned Meeting of the Committee of Creditors held on 2nd March, 2020 and 26th March, 2020 respectively be and are hereby taken on record Committee of Creditors”

Item No. 5

To take note of the updated list of Committee of Creditors of Corporate Debtor viz. Earthcon Universal Infratech Private Limited

The Chairman requested the Committee of Creditors that the agenda of updated list of committee of creditors will be discussed at later stage. The members of Committee of Creditors confirmed the same.

Item No. 6

To take note of the present status of the CIRP proceedings and Actions Taken by the Interim Resolution Professional till date

The Chairman being an IRP briefed the members of the Committee of Creditors about the various actions taken by him while dis-charging his functions as IRP under IBC Code, 2016 read with IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations, 2016).

The Chairman submitted that during the CIRP, the following actions were taken by the IRP during the proceedings on various fronts in the past 9 months:-

IRP' has made several efforts in keeping the Corporate Debtor as going concern. IRP has taken various actions since his appointment:-

Date	Actions done for keeping the CD as going on concern
	Order of Admission for initiation of the CIRP received on 9th Jan 2020
12.01.2020	Newspaper Advertisement for inviting claims
	Intimation to Various authorities about the initiation of CIRP
	Intimation to Bank and Controlling of Bank account of Corporate Debtor
	Claims collected
	Visited Project Site and was informed about the issues of residents
	Continuously receiving calls from the Home Buyers and guiding them in filing their Claims and met with number of Home Buyers at site and guiding them about the process of filing of Claims and process of CIRP under IB Code, 2016
	IRP has been made as party in the Legal Matter at National Company Law Appellate Tribunal, accordingly IRP has filed the necessary documents and affidavits. On 24.02.2020, Committee of Creditors was constituted.
26.02.2020	IRP has Filed application before National Company Law Tribunal for appointment of Authorized Representative (in the class of home buyers.)
26.02.2020	IRP has Filed an application with N....C....LT.... for Constitution of Committee of creditors.
	Attempted various efforts for taking over of records and accounts etc of the Corporate Debtor. Made payment of remuneration of employees for the period 8 th Jan 2020 to 7 th Feb 2020.
02.03.2020	First COC meeting of M/s Earthcon Universal Infratech Pvt. Ltd.
12.03.2020	Application filed with the NCLT for non cooperation and certain other necessary directions.
26.03.2020	Hold the First Adjourned CoC meeting
	Society Lift got malfunctioned and Annual Maintenance Contract expired and same got rectified along with their renewal of AMC. IRP got the reparis done along with the AMC done for the lifts for complete year.
	Made payment of Essential Services Providers & employees including Electricity Bills, security guards agency etc.
	Regularly visited to the Project site and met with residents and attended to the issues and problems faced by the residents residing in the projects. Requested the residents to pay the maintenance dues regularly so that the facilities can be improved.
19.03.2020	Hon'ble Tribunal gave permission to hold the Subsequent part of First CoC through electronic / video conference and also directed the Ex-Director for cooperation and providing the records / accounts of the Corporate Debtor.
	The Nationwide lockdown started from 24 th March 2020. IRP has put all efforts so that all essential services shall be continued without any disruption and made the payments of essential service employees and vendors to the extent money available from time to time.

26.03.2020	Subsequent part of First CoC held and e-voting took place
	Continuously in touch with the residents for hearing their problems and trying to resolve the same, but due to scarcity of funds, such issues can't be resolved.
01.05.2020	Prepared a roadmap and also sent one communication to the entire stakeholder for providing contribution so that the problems related to society can be worked out on priority basis, but no reply received from any of the Financial Creditor as well as from the other stakeholders including home buyers.
	<p>On 29th May 2020, the Hon'ble Appellate Tribunal has stayed the proceedings of CIRP till the disposal of Sec 65 application which is pending in the other matter. The stay gets implemented from 12th June 2020. Being the IRP, I was administering the affairs of the CD to the best interest of the residents residing in the projects of the CD which included payments done to the several vendors providing services to the residents, lifts services were maintained from time to time, sought police intervention for the safety and security of the residents residing in the towers etc.</p> <p>From 12th June 2020 onwards we have stopped on working of CIR proceedings but was administering the problems faced by the residents..</p> <p>Being 250-300 families are residing at the project site and as per stay of NCLAT, the IRP has only tried to work for the benefit of those allottees who have occupied their homes.</p>
	<p>During May end and June starting, NPCL has issued disconnection notice and IRP has replied to NPCL and requested for option of making payments in Installment.</p> <p>In response to our letter to NPCL, the NPCL has provided the option for installing the PoS machine, so that payment can go directly in the account of NPCL.</p> <p>On 17th August 2020, the PoS Machine was availed by IRP.</p>
	Due to this stay order, we have faced trouble in the operation of Bank Account for the month of June & July. Due to non payments, the vendors providing essential services have stopped providing services and went to strike. The residents has therefore at their end managed the essential services in the month of July.
	During such period we have also filed an application with the Police for intervention and requested the Police authorities to visit the Project Site on regular basis for ensuring safety of residents from unseen happenings.
	At the end of July 2020, PSB has agreed to honour the instructions only for

	the payments related to essential services during this stay period. Almost Six lift AMC get expired in the month of May 2020, we have discussed the issues with the Lift Company and they agreed to pay the payment of AMC on half yearly basis.
	The PSB has again hold the honoring of instruction from 26 th August 2020 onwards which has again caused difficulty in making the payments to essential services providers.
09.09.2020	On 9 th September 2020, the Hon'ble Apex Court has stayed the order of NCLAT and we have been able to reinstate the CIRP proceedings.
	One more lift AMC was expired in the June, and IRP has made the payment of the AMC of lift. At present now all the lifts are under maintenance.

IRP has been continuously chasing the Ex-Director cum Promoter and the personnel of the Corporate Debtor for handover of records and sharing of information but due to non-cooperation we have not yet received the information such as Tally Software accounting of previous (2-3) years, Accounting information upto the date of initiation of CIRP i.e. 8th Jan 2020, Complete Details of Customer/ Allottees –Access of Customer Management Software. Details of Sold and Unsold units, Details of unit mortgage and handover of assets including company vehicle, identification of assets etc. available at the site and details of fixed assets as per the Register of Fixed Assets to be maintained under the Companies Act, 2013.

Thereafter, the IRP submits herein the various legal actions at different legal forums which were taken by him for keeping the Corporate Debtor as going concern.

S.NO.	I.A. NO.	Dated	DESCRIPTION	ORDER	APPEARANCE
1.		08.01.2020	Order of Admission – Initiation of Corporate Insolvency Resolution Proceedings of M/s Earthcon Universal Infratech Pvt. Ltd. (Corporate Debtor) and appointment of IRP Mr. Jitender Arora.		
2.			Appeal was filed by the Ex-Director Shadab Khan before the NCLAT challenging the said Admission order dated 08.01.2020	Order dated 17.01.2020 Notice was issued to the other Respondents. Directions given to IRP not to constitute the Committee of Creditors if not yet constituted. Further, directions given to IRP that he will ensure that the company remains a going concern and construction work will not stop.	
3.		29.01.2020	Affidavit filed on behalf of IRP on 29.01.2020 in the NCLAT seeking reliefs for non-cooperation by the personnel's, Ex- Directors of the Corporate Debtor.	Order dated 03.02.2020 Directed the Corporate Debtor Ex- Director to handover the requisite records and documents to the IRP.	Krishnendu Dutta along with Shweta Saini appeared for IRP.

4.		12.02.2020	Additional Affidavit filed on behalf of IRP on 12.02.2020 in the NCLAT showing non-cooperation by the personnels, Ex- Director of the Corporate Debtor by not furnishing requisite records and documents.	<u>Order dated 13.02.2020</u> Directed the IRP to constitute the COC and directed to collate the claims. Further, directions given to IRP to take effective steps for providing the most essential services to the allottees who are occupying the flats allotted so as to make their living comfortable.	Krishnendu Dutta along with Shweta Saini appeared for IRP.
5.	1622/2020	26.02.2020	Application filed on behalf of IRP in NCLT (Adjudicating Authority) for taking on record the Constitution of COC.	<u>Order dated 02.03.2020</u> The said Report for constitution of the COC was taken on record by Hon'ble NCLT.	Shweta Saini appeared for IRP.
6.	1623/2020	26.02.2020	Application filed on behalf of IRP in NCLT (Adjudicating Authority) for Appointment of Authorized Representative Mr. Deepak Gupta in the class Financial Creditors (in class of home buyers).	<u>Order dated 02.03.2020</u> Hon'ble Adjudicating Authority appointed Mr. Deepak Gupta as AR for the home buyers.	Shweta Saini appeared for IRP.
7.	1646/2020	26.02.2020	Application filed on behalf of CRAWA in NCLT (Adjudicating Authority) for necessary directions to IRP.	<u>Order dated 02.03.2020</u> Hon'ble Adjudicating Authority directed IRP to expedite the process and in case, any further information is required, the same may be called. Information be provided to the Home buyers w.r.t acceptance or rejection of their claims.	Shweta Saini appeared for IRP.
8.		05.03.2020	Hearing in NCLAT in Company Appeal [AT] [Ins] 82 of 2020	<u>Order dated 05.03.2020</u> The NCLAT directed the parties to file their written submissions. Judgment was reserved.	Krishnendu Dutta along with Shweta Saini appeared for IRP.
9.	1915/2020	12.03.2020	Application filed on behalf of IRP in Hon'ble Adjudicating Authority (NCLT) for necessary directions.	<u>Order dated 19.03.2020</u> a. Allowed the IRP to conduct the meetings of COC through Electronic means for which IRP will make necessary arrangements; b. Directed Police of the jurisdiction to provide adequate security to the IRP; c. Directed suspended board of directors to cooperate with the IRP by providing	Shweta Saini appeared for IRP.

				the books of accounts, and other relevant information.	
10.		29.05.2020		Judgment dtd 29.05.2020 NCLAT in Company Appeal [AT] [Ins] No. 82 of 2020 passed the judgment which was stayed for 2 weeks.	Shweta Saini appeared for IRP.
11.			Contempt Case filed by the Ex-Director Shadab Khan in NCLAT.	Order dated 25.08.2020 Notice issued to the Respondents to show cause as to why contempt proceedings be not initiated against them w.r.t alleged contumacious conduct attributed.	Shweta Saini appeared for IRP.
12.	3379/2020	30.07.2020	Application filed on behalf of IRP before the Hon'ble Adjudicating Authority (NCLT) seeking certain necessary directions – a. For the expenses of the IRP; b. Direction to Punjab & Sindh Bank to honour the instructions of IRP; c. Direction to Noida Power Corporation Ltd. not to disconnect electricity connection. d. Direction to suspended board of directors not to act, represent during the CIRP; e. Direction for a roadmap for the residents residing in the projects of the Corporate Debtor	Order dated 09.09.2020 Direction given to the IRP to amend the cause title and implead the parties against whom the directions has been sought. Order dated 16.09.2020 Notice issued to the Respondents as well as direction given to the IRP to send notice to the Respondents. Order dated 30.09.2020 A fresh notice was issued to the Respondents. Listed for 19.10.2020	Shweta Saini appeared for IRP.
13.	Civil Appeal 2807/2020	09.09.2020	Appeal was filed in the Supreme Court by the Nisus Finance & Investment Managers LLP against the NCLAT order dated 29.05.2020.	Order dated 09.09.2020 SC vide order dated 09.09.2020 stayed the order of the NCLAT dated 29.05.2020. Directed Respondent to file their counter affidavit within six weeks.	Siddharth Dave (Senior Advocate) appeared for IRP.
14.	3675/2020	16.09.2020	Application filed on behalf of the Shadab Khan (Ex- Director) before the Adjudicating Authority for transfer of the affairs of the Corporate Debtor.	Order dated 16.09.2020 The said application was dismissed in default.	Shweta Saini appeared for IRP.

The IRP further informed that as per the provisions of IB Code, 2016, we are required to collate the information for the purpose of preparing the Information Memorandum wherein all the financial details / information will be prepared along with the Feasible & Technical study of the project.

The IRP has further submitted that due to Corona & Stay of CIRP proceedings approximately 9 months have been passed and IRP has continuously carrying on its duties for the betterment and to the best interest of all the stakeholders. Due to unavailability of finance and long gap in the holding of CoC meeting (because of Corona and Stay of proceeding), IRP has tried its best in carrying on the duties during all such period.

Mr. Rajesh Pandey, representative from PSB has raised queries in regard to the No. of Allottees who have taken the possession, condition of Building, collections received from the Allottee(s) and Bank Balance and notices issues. In response to that IRP has replied that approximately 250 plus families are residing in the Sanskriti Project and approx 50 families are residing in Casa Royale and in the past few months 50 families have been shifted. Out of total 450 plus possessions approximately 50% allottees are contributing for the maintenance dues and rest are not contributing. We have followed those allottees for the payment of maintenance dues and even notice with late fine was also been published but still residents have failed to clear the maintenance dues, . Such allottees are continuously stating that Builder has promised them for free maintenance and electricity expenses for the first 6 months or 1 year as the case may be. Some of the allottees are stating that unless we got the facilities as per their demands, they won't pay any maintenance expenses. Some of the allottees are threatening to Maintenance Team employee if they are asking for the maintenance dues.

Mr. Rajesh Pandey representing the PSB, stated that as per the recent order of Hon'ble Tribunal wherein the IRP is directed to issue notices to all the parties as per the NCLT order. Have those notices been issued to various parties?

Advocate Shweta (Representing the IRP) replied that we have already served the notices to all the respondents in our NCLT application as directed by the NCLT pursuant to the NCLT order

Mr. Rajesh Pandey representing the Bank has further asked about the issues related to illegal electricity connection has given to the outsiders. What steps do you have taken?

Advocate Shweta replied on behalf of IRP that immediately the electricity connection was disconnected and we have filed an application with the NCLT seeking direction that the extra amount must be paid by the ex-director of the CD to us for the additional illegal electricity connection given by them. At present, the application is pending before the Adjudicating authority.

The IRP further submitted that approximately there is balance of Rs. 4 lacs plus and the allottees has not paid their maintenance of past month. The IRP further stated that to resolve this issue, an application was filed with Hon'ble Tribunal for seeking directions for preparing standard policy for the allottees who have occupied so that maintenance issues can be sorted out. The matter is listed for 19th October 2020.

Mr. Amit Goenka, representative of Nisus Finance Managers LLP has suggested for affixing a notice on the premises as warning so that no one can harm the property of the Corporate Debtor and also appealed the Authorized Representative (in class of home buyers) to apprise the Financial Creditor (Home Buyers) to pay their maintenance dues. The Chairman in this regard has submitted that IRP has circulated and affixed two notices, wherein through the first notice the IRP has requested to the allottees who have taken the possession(irrespective of that whether they are residing or not) for making their maintenance dues with effect from 8th January 2020. The Chairman also requested the allottees/ FC (Home Buyers) to file their claims in respect of any arrangement with builders prior to 8th Jan 2020 in their claim form.

It has further come to the notice that some residents are forcibly giving entry to some persons for getting cleaning work done in the Sanskriti premises. IRP has tried to stop their entries through the maintenance team and Security Guard, but with the help of 5-6 residents they have taken forced entries. In this regard another notice was also issued by IRP, as a warning for taking appropriate legal action against such persons who are taking and/ or helping forcefully entry in the premises of the Corporate Debtor. In this respect, Mr. Amit Goenka has asked the IRP to take police intervention so that no illegal outsider be given entry to for doing any works which are under the control of the IRP. The Authorised Representative of FC (Home Buyer) has also agreed with the steps taken for warning notices issued and request for making maintenance dues.

Mr. Amit Goenka has enquired the current status of operation of Bank account of the Corporate Debtor. The IRP submitted that after continuous follow up with Head Office and Branch office, yesterday only (i.e. on 07.10.2020), the bank executive has assured us that the Bank will cooperate and honour the instructions of IRP.

Mr. Rajesh Pandey cleared that there is no resistance from the bank side. We are bound by the court order. It is a public sector bank. We have to take internal approval and based on that approval we can only allowed the payments.

Advocate Shweta replied on that because of this resistance, we have faced several issues and problems in making payments to the vendors and vendors are creating trouble. For that also we have filed an application and sought necessary directions from the NCLT.

Mr. Amit Goenka has suggested that for relieving the employees of the Company as they are not carrying any activity and also to issue legal notice to employees who are not cooperating in providing the information and material in their custody.

In terms of the current residence on the project, how many occupants are residing there at the site? Are the assets being protected or Is there any possibility of damaged to the property or damage to the asset because preservation and maintenance of the asset is the prima facie accountability and responsibility of the CoC or the RP. So how many residents are occupying and is there any material damage to the property at the site.

IRP replied: there are about 300 families residing in the project and there is lot of issues/ problems in the society. We are trying our best to protect the property of the CD. We are working continuously but due to continuous non-cooperation from the CD and its employees, we are unable to do much. Now we are receiving resignation of 2-3 senior employees of the company. We have no information of the assets/ list of assets as the CD has not provided anything to the IRP.

Further, Mr. Amit Goenka, representing the Nisus Finance Managers LLP has also requested the Chairman regarding the letter received from the SFIO and proposed action on same. The Chairman informed the members that a letter from SFIO, Govt of India has been received wherein IRP is requested to take the appropriate action against the Complaints received from the Home Buyers.

Item No. 7

To take note of the Appointment of the Professionals/ Consultants made by Interim Resolution Professional on behalf of the Corporate Debtor as per the provisions of the IB

Code, 2016 for the purpose of smooth conduct of CIR proceedings

The Chairman informed the members of the Committee of creditors that he has appointed advocate, engaged senior lawyers in the field of Law, Forensic Auditor for conducting forensic/Transaction audit, and appointed the Registered Valuer for evaluating the fair & liquidation value of the Corporate Debtor in accordance with provisions of Insolvency and Bankruptcy Code, 2016. He further informed that the Registered valuer would share the fees quotation after understanding the scope of working involved therein. Some more appointments are also in pipeline, which will be intimated soon to the Committee of Creditors. The list of professionals/ consultants appointed is as under:-

1. Shweta Saini, Advocate
2. Two sets of Registered Valuer for each class (Land & Building, Plant & Machinery and Security/Financial Value of the Corporate Debtor). The profile of appointed Valuer were attached with the agenda and placed before the Committee.

Sl. No.	Valuer for Financial Assets	Valuer for Plant & Machinery	Valuer for Land & Building
1.	Manish Chandra	Braham Pal Bhardwaj	Deepak Bansal
2.	Subodh Kumar	Pradeep Kumar	Yatendra Paliwal

3. VMRS & Associates, Forensic Auditor

Mr. Rajesh Pandey, raised the query that why the Value of Plant and Machinery is required as the CD is only having the land and building mainly? The Chairman informed that as per balance sheet provided for 31st March 2019, which shows Plant & Machinery including the Air Conditioner, Computers etc. in the asset side and all such assets are evaluated under the Plant & Machinery head, hence the valuation is required by Registered Valuer for the Plant & Machinery.

The Committee of Creditors noted the same.

Item No. 8

To consider and review the challenges and options for handing over of dwelling units after finishing work to the allottees of Sanskriti Project

The Chairman informed that during the proceedings, many Financial Creditors (Home Buyers) approached me for the handover of units against their payment of pending money. I have explained them the present circumstances of the matter and suggested them that without completing the pending Compliances of the project and without taking the consent of the Hon'ble Tribunal, IRP is unable to handover the units. As we don't have the exact list of the allottees/ Financial Creditor (Home Buyers) whose flats are ready for the fit out purposes/ completion of all works, we wish to invite the request for handover from all those allottees and after reviewing the status of all those units, we may submit the suitable application with the Hon'ble Tribunal for permission of handing over the units.

Mr. Deepak Gupta, Authorized Representative read and placed the email received from the section of Home Buyers who belongs to Sanskriti Project. He has raised few points as following:-

- (1) As per their interpretation of Hon'ble Supreme Court order, they are of the view that the present CoC is illegal;
- (2) The claims of all Sanskriti Project has not been added in the CoC list. The RP has not considered their whole claim in the list.
- (3) The status of both the projects viz. Sanskrit and Casa are on different stages. Their resolution can be worked out separately. The FC (Home Buyers) of sanskriti project need to be separately classified as Separate class of Financial creditor (Home Buyer) and shall not be merged under one category.

The Chairman in response to same has submitted that as the NCLAT order dated 29th May 2020 has been stayed by the order of Supreme Court dated 9th September 2020, being an IRP we are required to continue the proceedings of CIRP. Furthermore, the Chairman has requested the AR that the Sanskriti Home Buyers may take appropriate legal advice from an advocate for understanding the interpretation and impact of same on the CIRP.

Secondly, regarding the claim added in the list, the Chairman submitted that to the extent the claim was collated as per criteria worked out has been prepared. Such amount will be modified down the line subject to the verification of same.

Thirdly, regarding the separate treatment of Sanskriti Home Buyers as separate class of FC (Home Buyers), the IRP submitted that this may be considered for the purpose of managing the huge number of home buyers of two different projects which could be capable of getting separate resolution without hurting the interest of others, protecting the right and interest of Sanskriti Home Buyers.

The Chairman submitted that this is a long pending demand which was raised by the Sanskriti Project Buyers many times. But due to Corona and Stay of proceedings, the second CoC is convening now. However, after discussion, the Chairman invited the views of other Financial creditors also. Mr. Amit Goenka, of Nisus Finance Managers LLP has also agreed that both the projects are on different stages and separate resolution can be worked out. The decision for classifying FC in Class on project basis will protect the rights of the Financial Creditor (Home Buyers) project wise. We have no objection if the class of Financial Creditor could be prepared on the basis of Project wise. Similarly, the representative from PSB, Mr. Rajesh Pandey has also submitted that as per provision of IB Code, 2016, necessary steps can be taken accordingly.

The Chairman submitted that necessary application will be filed with the Hon'ble Tribunal for the reconstitution of Committee of creditors.

Item No. 9

To consider the General Maintenance and Electricity problems faced by the allottees residing in the units situated at Sanskriti & Casa Royale Projects

The Chairman apprised the Committee of Creditors the concerns of the allottees who have taken the possession & occupied their units. The IRP is continuously making efforts and taking care for providing the essential services including electricity, security guard, lift and housekeeping services to the residents residing in the incomplete projects. At present there are no sources of income, the expenses towards the maintenance of project site where allottees are residing is much more than the

collections received from the unit holders. Due to this there is a continuous shortfall in the collections and expenses towards electricity & maintenance of whole project site etc. Even the electricity department has issued the disconnection notice and their payments are pending. The IRP has requested the NPCL to give some time & option for the payments of electricity dues. In response to same, the NPCL has provided the option for installing the PoS swipe machine for directly depositing the electricity amount in the NPCL account. Through this system, the dues of electricity have been deposited in the account of NPCL directly. But their dues are also required to be paid. Further, the IRP has earlier invited the suggestions from the Committee of Creditors and circulated the roadmap for meeting such expenses vide email dated 1st may 2020. Till now no such suggestions has been received from the Committee of creditors.

The IRP has also made efforts and requested the allottees to make their payments within time prescribed. There are approximately 100 plus allottees that have not yet paid their maintenance & fixed electricity charges, their view is that the builder has verbally agreed with them that they will not charge any such maintenance and electricity expenses until their dues do not get settled.

At the outset, IRP wishes to convey the message again to all the allottees who have taken the possession including Financial Creditor (Home Buyers) who are in the possession of their units, to make their pending dues, so that the necessary expenses can be met out for the purpose of maintenance and accordingly, the resources of maintenance can be increased. The IRP hereby seeks the suggestion of Committee of Creditors for resolving the issue and arranging the funds so that pending dues of NPCL and other essential creditors can be paid. Furthermore, it is pertinent to note that the electricity charges which are charged from the society residents are lower than the pricing the Corporate Debtor is paying to Electricity Company . Being the present electricity connection is a Temporary Commercial Connection and units charges charged by NPCL is Rs. 8.91/- unit but the residents / allottees are making the payment towards charges as Rs 7/- unit only, which are fixed by the Builder earlier. Due to lower charges being paid by the residents, there is continuous gap in the collection of electricity charges and causing continuous losses. Being, the project is under Insolvency with effect from 8th January 2020, and there is continuous gap between the expense incurred and payment received from the allottee(s), hence, we are revising the electricity unit prices to Rs. 8.91/- per unit from the Allottees of the Corporate Debtor. These units' prices will stay in-force till the resolution plan implemented or until separate residential electricity is installed whichever is earlier.

All the members of the Committee of creditors including FC in class have agreed that the unit price shall be required to increase as per the Grid pricing (as per charged on actual basis).

The IRP wishes to change the Security Guard agency, being the role of such Security Guard Agency is suspicious. Even the residents have also complained many times about their ineffectiveness or they are tilted towards the Builder. But due to Corona & stay from Hon'ble NCLAT, we did not change such contractors.

The Committee of creditor has agreed with the proposal of revising the charges of electricity unit from the date of initiation of CIRP and requested the IRP that wherever it is required, IRP may cancel the old contracts and appoint new contractors. All the Financial Creditor including class of Financial Creditor would contribute the expenses in proportionate to their claim amounts. The Committee of Creditor(s) has requested Mr. Deepak Gupta, AR to apprise the Financial Creditor (Home Buyer) of such cost and expenses will be distributed among all the Financial Creditors pro-rata basis.

Matters to be discussed and votes required thereon

Item No. 10

To appoint Interim Resolution Professional as Resolution Professional and to approve the remuneration of Resolution Professional w.e.f. 2nd March, 2020

As per section 22(2) of IBC 2016, the CoC in its first meeting is required to decide either to appoint the Interim Resolution Professional as Resolution Professional or to replace the Interim Resolution Professional by another Resolution Professional. Here, in this case, in the First Adjourned meeting of the CoC, the Committee has neither resolved to appoint IRP as RP nor replaced the IRP by another Resolution Professional. In such a scenario, the IRP deemed to act as Resolution Professional and henceforth, carried to continue the functions of RP until the Committee confirm the appointment of Resolution Professional.

Jitender Arora, Insolvency Professional vide Registration No. IBBI/IPA-002/IP-N00305/2017-18/10863 who was appointed as IRP by the Order of Hon'ble Bench III, National Company Law Tribunal dated 8th January 2020 and being eligible for the appointment as Resolution Professional (RP) offers himself for the appointment as RP. The consent in Form AA along with fees quotation of Rs. 5 Lacs plus GST plus out of pocket expenses on actual basis for the same were placed before the CoC.

The Chairman also submitted that more than one proposal(s) have been received but due to incomplete proposal and delayed receipt of proposal we have not circulated any of the proposal among the members of the Committee of creditors and decided to discuss the same in the meeting first and decide accordingly later on.

Mr. Deepak Gupta, Authorized Representative of Financial Creditors in class (Home Buyers) has placed a proposal received from the home buyers for replacement of the existing IRP and appointment of Mr. Gaurav Katiyar as Resolution Professional. He further submitted that Mr. Gaurav Katiyar has submitted his consent in Form AA along with IBBI Registration Certificate. The AR further submitted that he has forwarded the mail on 5th October, 2020 regarding the proposal for replacing the existing IRP with the new RP for circulation among all the members of the Committee of Creditors.

After placing the proposal and during discussion the other Financial Creditors has mentioned that they have not received any proposal and they have further asked for the technical and commercial bid for the same.

Being this a matter of high importance and voting is required from all the Financial Creditors, the members of the Committee of Creditors desired a complete candidature of the candidate eligible for appointment as RP along with his consent, IBBI Registration Certificate, Technical and Commercial bid and his qualification credentials by Monday, 12th October, 2020 and also requested the AR and IRP to circulates the same to all the members of the Committee of Creditors so that Financial Creditors can review and have informed decision accordingly.

Apart from the submission of the profile, the Committee of Creditors also requested to all the applicants who are applying to act as RP including the existing IRP to make a detailed presentation before the CoC about the facts that they are qualified to act as RP, their team and resources which they are going to apply, their capabilities, justification of fee quotation and their abilities & plans to complete the CIRP of Corporate Debtor and failing which no applicant is considered to be a valid applicant.

The Chairman has requested to all the members of the Committee of Creditors to submit the proposals of appointing any RP in place of IRP with all the documents such as Profile, Consent, Financial quotation & Presentation before October 13, 2020, so that same can be circulated among the members of the Committee of creditors. In view of the recommendation received from the Financial Creditors, the Committee of Creditors has decided to adjourn the meeting for the next week (i.e. on 15th October, 2020) for removing the deficiency and circulate the fresh proposal with all the complete documents among all the members of the CoC. The matter shall be taken again in the adjourned meeting and voting will be open later thereon.

After that the IRP has enquired about his remuneration for the period of last 9 months for which he already worked.

Even the work on the CoC list was worked out three times. Further the FC (Home Buyers) is required to understand that team of professional is working continuously under the IRP and IRP is not the single person who is doing the job. The IRP pay remuneration to his teams and continuously paying the remuneration to them for the last 9 months who are working on the CIRP of EUIPL.

In this regard, the CoC suggested that remuneration of existing IRP will be decided on the basis of the financial bid received from the new RP and whatever remuneration is awarded to the new RP in the adjourned meeting after voting, the same remuneration will be applicable to the existing IRP with retrospective effect. (The quotation of RP shall be inclusive of the cost of Support Team). Therefore, this item will also be taken up again in the adjourned meeting.

After discussion it is unanimously decided that today meeting is adjourned for want of proper information for discussion & voting. The proper proposal is requested from the members of the Committee of creditors along with Technical & financial bids, so that this matter will be discussed on the 15th October 2020.

Item No. 11

To ratify the expenses towards Corporate Insolvency Resolution Process Cost

As per IB Code, 2016, the IRP shall place before the meeting the Expenses incurred by him to keep the Corporate Entity as a going concern and in view of achieving the objectives of CIR Process.

The Chairman placed the statement of cost before the Committee of Creditors for approval & ratification of the expenses incurred by IRP in the matter.

The AR representing FC (Home Buyers) has submitted that an email has been sent by the one of the Home Buyer Mr. Jawed Ansari. As per Mr. Jawed Ansari, they said that IRP has not carried any work hence the remuneration asked by IRP is not justified. Mr. Jawed Ansari has proposed the remuneration & expenses as:-

IRP fees for initial month Rs. 94,400/-

CoC meeting- Rs. 50,000/-

List of Home Buyer- Rs. 77,455/-

Coneyance:- Rs. 25,000/-d

Meeting Exp- 9000/-

Voting Exp- 11,800/-

Printing and stationery- 10,000/-

Advocates Fees etc- Rs. 200,000/-
Publication of advt- 71845/-
Total comes to Rs. 600,000/-

The Chairman out rightly rejected the proposal given by one of the Home Buyer and submitted that Financial Creditor (Home Buyers) should see, read and review the works done (for Claimants, for residents residing at Project, for employees, for other financial creditor and legal actions taken) by IRP in the past nine months continuously which are stated in the minutes, notice and agenda of first & second CoC for which the note of same has been taken by the Authorised Representative Mr. Deepak Gupta.

The Committee of Creditors discussed the matter in the length on the Home Buyer proposal and submitted that CoC has no right to reduce the expenses made by the RP during the CIRP proceedings. The Chairman also submitted that the table annexed herewith only shows the breakup of expenses incurred and the fees of IRP only need to be adjusted after considering the working during the past 9 months. Rest of the figures cannot be revised or reduced as those were genuine expenses.

After discussion it is decided that the CoC has no power to approve or ratify or reduce the expenses incurred by IRP during the CIRP period to the extent such expenses are reasonable and incurred on the basis of existing market prices.

The CoC further discussed that as per the regulation of IBBI (Insolvency for Corporate Persons) 2016, the fees of IRP shall be fixed by the Applicant for the interim period i.e. prior to the date of First CoC and thereafter the same will be ratified by the CoC in the first CoC meeting. The initial period cost is not subject to any negotiation by the CoC. It must form part of CIRP cost and adopted as it is and needs to be reimbursed the same by the Financial Creditor (Applicant).

After the existence of CoC, the IRP may after considering the scope of work involved propose the remuneration in the first CoC and accordingly, the CoC & IRP mutually agreed and fix the remuneration of the IRP as RP. Now, in the instant case, due to Corona & stay of proceedings, the IRP has continuously been working for 9 months in the interest of the members of the CoC and after considering the efforts and work the equitable compensation should be considered for IRP.

No Financial Creditor single handedly propose or fix the fees as per their wish. Here, in this matter we have already given our services and carried on many activities as per the requirement of time in the interest of all stakeholders. Any resolution passed in relation to the appointment & fixation of fees becomes a Contract as per the provisions of Indian Contract Act, 1872, hence the elements of a valid contract shall need to be worked out before finalizing or passing any resolution. After discussing the matter in length, the members of the Committee of creditors have decided that:-

As the period of IRP has been extended to 9 months in the exceptional circumstances and his fee was not decided by the CoC in the First CoC or in the subsequent Adjourned First CoC, the members of the CoC has agreed that whatever fees (fees quote with the support services) will be fixed for the new RP (in case if appointed), the present IRP will also be remunerated with the same remuneration from retrospective effect i.e. from the due date of first CoC. This will be taken and decided in the adjourned meeting again.

Mr. Rajesh Pandey, representative of PSB has also submitted that suitable remuneration should be provided to IRP for his work done in the past 9 months.

Regarding the other expenses and professional fees, the CoC suggested that there is no requirement

of voting or any approval for the expenses incurred on actual basis if they are reasonable in view of RP and are as per market rate. Under the IB Code, 2016, the RP has the power to appoint any professional/ consultant on a reasonable fee which is as per market standard and reasonable for particular service.

During the discussion, the CoC also advised that all expenses which form part of CIRP cost except the remuneration of RP does not require any approval of CoC and hence not required any vote thereon. Therefore, from now onwards these expenses will be shown or present for discussion only in the CoC meeting and not for any approval.

Item No. 12

To ratify the expenses incurred by the Financial Creditors (Applicant) in the matter of Nisus Finance Partners LLP Vs. Earthcon Universal Infratech Private Limited

The Committee has discussed this matter along with agenda item no. 11 as this cost was already included in the Statement of cost annexed with the item no. 11.

Pending Discussion on Item No. 5

To take note of the updated list of Committee of Creditors of Corporate Debtor viz. Earthcon Universal Infratech Private Limited

The Chairman informed the Committee of Creditor that after sharing the list of CoC along with the agenda, the various Home Buyers are approaching us for some correction such as correction in the email id/ shifting their claims in proper category of possession to non-possession or non-possession to possession as the case may be, etc. on which we are working and correcting and updating the list at our end.

The Chairman further explained that there might be some more Home Buyers who wanted to update their claim but somehow could not approach us. So will give two-days window/time to correct the updated list of FC (home buyers) to approach us for any type of correction or updation. After doing all the corrections, we will place the updated list of CoC in the adjourned CoC meeting for discussion and taking note of the same.

Vote of Thanks

After transacting the agenda of the meeting, the Chairman adjourned the meeting with thanks for the next week on 15th October, 2020 at 4 pm.

Sd/-
Jitender Arora
Chairman
Interim Resolution Professional
Registration no: **IBBI/IPA-002/IP-N00305/2017-18/10863**

Dated: 12th October 2020

Place: Delhi