

AARC/RES/DMIABW/13072019/02

Date: 13.07.2019

To,

**Dove Infrastructure Pvt. Ltd.
D-22, Defence Colony
New Delhi-110024.**

**Ref: M/s ABW Infrastrcuture Ltd., the Company under
Liquidation by Order of Hon'ble Delhi High Court.**

**Sub: Reply to Proposal for One -Time Settlement of
claims of Secured Creditor, M/s Alchemist Asset
Reconstruction Pvt. Ltd. ("Alchemist")**

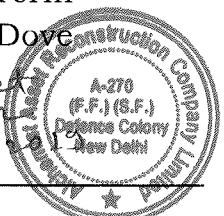
Sir,

This is in reference to your letter dated 22.06.2019, which was received by us subsequent to the meetings held at the Official Liquidator's office on 04.06.2019, 17.06.2019 and 03.07.2019. The meeting was held pursuant to the direction of the Hon'ble Court between you i.e. Dove Infrastructure Pvt. Ltd. ("**Dove**"), Alchemist Asset Reconstruction Company Limited (AARC) and the Official Liquidator to discuss a possible settlement. Thereafter, vide the said letter, Dove submitted its proposal for "Time Linked One-Time Settlement" of AARC's claims pertaining to Gateway Tower Project, Faridabad.

Further, the order of the Hon'ble High Court specifically provided that **only if** AARC and Dove arrive at an amicable and mutually acceptable terms, the said terms can be put across as a scheme for approval before the unit buyers under section 391 of the Companies Act.

As you may be aware, pertaining to Gateway tower there were two accounts ABW Infrastructure Limited (under liquidation) and Maxwell, who availed Term Loan Facility of Rs. 22, 00, 00,000/- (Rupees Twenty Two Crores only) and Rs. 6,00,00,000/- (Rupees Six Crore only) respectively to fund requirements of its business from DMI Finance Pvt. Ltd. and executed Term Loan Agreements. In order to secure the term loan credit facilities, Dove

Navneet
Kumar
13/07/2019



executed a registered mortgaged deed, vide Indenture of Mortgage dated 19.06.2013. Further, ABW also assigned and created first charge over its part of the development rights i.e. 54% of sanctioned project along with first charge on all amounts received or realized from the project Gateway Tower and first charge by way of hypothecation on all moveable assets of ABW arising or relating to the Gateway Tower in favour of DMI Finance.

The Indenture of Mortgage was duly signed and stamped by Dove through their then authorized representative and duly registered in Faridabad. The Mortgagor by way of this Indenture and more specifically under clause 9 of the recital had expressly agreed that the mortgage of the properties shall be read with/ in continuation with the Term Loan Agreement. Therefore, it is wrong to say that the mortgage created is not legally valid or tenable.

Further, in so far as your submission relating to the merit of your proposal or the reasons given therein to justify the present proposal are matter of perception by Dove, which we do not agree.

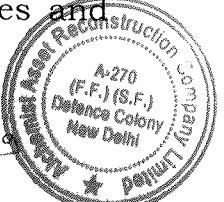
Given the circumstances, AARC has reviewed the proposal of Dove and to protect its rights and interest, we put across to you, a counter proposal wherein the total payment to be made to us shall be Rs. 12 Crores (Rupees Twelve Crores only) to be paid upfront on acceptance of the scheme and if the pending outstanding amount is to be paid by Dove as deferred payment, then total amount of Rs. 15.75 Crores (Rupees Fifteen Crores seventy five lakhs only) should be paid to us in 1 year with 50% amount to be paid upfront on acceptance of the scheme and the balance 50 % to be paid in 12 monthly equal installments. The rate of interest on the deferred payment shall be 12% per annum.

Kindly appreciate that the above offer is based on the fact that we have to sacrifice and accept a 'haircut' of almost 70% of the due amount and that our cost of funding is substantially higher than those of banks. Rate of Interest which we are mentioning is our borrowing cost and we are repaying the default amount to our lender at the borrowing cost only and hence, we have incurred huge loss due to the same reason.

Additionally, the said counter-proposal of deferred payment shall be approved on the primary condition that Dove shall provide a collateral security till the realization of the entire proposed amount. The following conditions shall also be met in order to reach at a settlement:

- i. The property shall be released only on full and final payment of the agreed amount and until then, Alchemist shall have charge on the property and escrow of all receivables. All subsequent sales and registries shall require NOC from Alchemist;

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Kumar
13/07/2019



- ii. Personal Guarantee of Mr. Yogesh Gupta, alongwith DPN and other security documents;
- iii. Further, in the event of default, the amount paid as on date, shall be forfeited and adjusted towards the outstanding amount.

**For Alchemist Asset Reconstruction Company Limited
(Acting in its capacity as Trustee of Alchemist-XV Trust)**

Navneet
Kumar
13/07/2019

(Authorized Signatory)



Dated: 22nd June 2019

From:
Dove Infrastructure Pvt. Ltd.
D-22, Defence Colony,
New Delhi-110024

To:
The Board of Directors,
Alchemist Assets Reconstructions Company Ltd.
D-54, First Floor, Defence Colony,
New Delhi-110 024

**Ref: M/s ABW Infrastructure Limited, [CIN No. U45201
DL 2003 PLC 120136], the Company in Liquidation.**

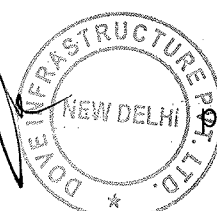
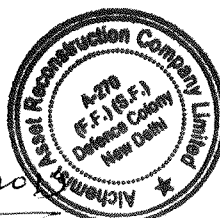
**Sub: Proposal for Time Linked One-Time Settlement of
Claims of Secured Creditor M/s Alchemist Assets
Reconstruction Company Ltd.**

Sir,

Without prejudice to our right to seek appropriate relief from the DRT and/or Hon'ble High Court; we, Dove Infrastructure Pvt. Ltd. ["DIPL"] are submitting this proposal for **Time Linked One-Time Settlement** of your claims pertaining to Gateway Tower Project, Faridabad being developed on by ABW Infrastructure Limited [company-in-liquidation] prior to commencement of its liquidation on the land owned by DIPL.

DIPL, being the landowner, has filed an application being CA No.343/2019 in Co.Pet.449/2016 before the Hon'ble High Court of Delhi proposing a Scheme to take over the project to complete the construction works out of contribution from the unit buyers. The said Scheme also proposes a settlement with you.

Received.
Muneet
Kumar
28/06/2019



After considering your reply in the aforesaid CA No.343/2019 to the said Scheme, we are submitting this revised and improved proposal. This proposal has been made keeping in mind the peculiar facts and circumstances of the case, which are set out herein below in the following manner:

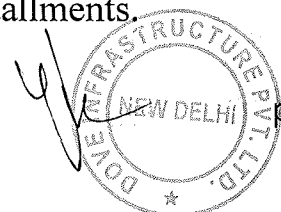
- The Proposal.
- Financial Justification for Proposal.
- Conflicting Legal Title and Priority rights of the Customers.
- Available Legal Remedies as alternate to settlement.
- Present Status-vis-à-vis only available option.

1. The Proposal

In the Assignment Deed there are two account pertaining to Gateway Tower Project. **This proposal is consolidated and in respect of both the accounts.**

- 1.2 DIPL propose to pay a total lump sum consideration of **Rs.12.00 crore** payable in instalment i.e. 20% down payment (Rs.2.40 crore) and rest 80% in 8 quarterly Installment of 10% (Rs.1.20 crore) each to purchase/buyback from you all the rights and interest assigned / mortgaged under the two mortgage deeds executed by ABW Infrastructure Ltd. and countersigned by ABW employee/representative in our name also. This proposal is in respect Case no. 71/SARFAESI ACT and Case no. 70/SARFAESI ACT before the District Magistrate Faridabad and the principal outstanding, as per the case file, is Rs. Rs.9,35,99,272 and Rs.2,55,27,074/- respectively aggregating to Rs.11,91,26,346/-.

DIPL proposes to pay 9% p.a. interest on Installments.



The proposed amount has been split into two accounts in the manner stated hereinafter.

1.3 Re: ABW A/c

DIPL propose to pay **Rs.9.40 crores** [out of Rs.12.00 crore] towards full and final settlement of all claims of Alchemist in respect of Gateway Tower Project pertaining to amount borrowed by ABW Infrastructure Ltd. (Company in liquidation). The terms of payment are as follows:

Table-1: Proposal for ABW A/c					
OTS Amount [Time Linked]	OTS Repayment Schedule	OTS Installments	No of Days between Installments.	Interest to be paid along with Installments @ 9%	Installment Interest and Principal
9,40,00,000	15-09-2019	1,96,00,000			1,96,00,000
7,44,00,000	15-12-2019	93,00,000	91	16,69,414	1,09,69,414
6,51,00,000	15-03-2020	93,00,000	91	14,60,737	1,07,60,737
5,58,00,000	15-06-2020	93,00,000	92	12,65,819	1,05,65,819
4,65,00,000	15-09-2020	93,00,000	92	10,54,849	1,03,54,849
3,72,00,000	15-12-2020	93,00,000	91	8,34,707	1,01,34,707
2,79,00,000	15-03-2021	93,00,000	90	6,19,151	99,19,151
1,86,00,000	15-06-2021	93,00,000	92	4,21,940	97,21,940
93,00,000	15-09-2021	93,00,000	92	2,10,970	95,10,970
	Total	9,40,00,000		75,37,586	10,15,37,586

1.2 Re: Maxwell A/c

DIPL propose to pay **Rs.2.60 crore** [out of Rs.12.00 crore] towards full and final settlement of all claims of Alchemist in respect of Gateway Tower Project, pertaining to amount borrowed by Maxwell



Promoters Pvt. Ltd. at the behest of ABW Infrastructure Ltd. (Company in liquidation). Faridabad. The terms of payment are as follows:

Table-2: Proposal for Maxwell A/C					
OTS Amount [Time Linked]	OTS Repayment Schedule	OTS Installments	No of Days between Installments	Interest to be paid along with Installments @ 9%	Installment Interest and Principal
				9.00%	
2,60,00,000	15-09-2019	52,00,000			52,00,000
2,08,00,000	15-12-2019	26,00,000	91	4,66,718	30,66,718
1,82,00,000	15-03-2020	26,00,000	91	4,08,378	30,08,378
1,56,00,000	15-06-2020	26,00,000	92	3,53,885	29,53,885
1,30,00,000	15-09-2020	26,00,000	92	2,94,904	28,94,904
1,04,00,000	15-12-2020	26,00,000	91	2,33,359	28,33,359
78,00,000	15-03-2021	26,00,000	90	1,73,096	27,73,096
52,00,000	15-06-2021	26,00,000	92	1,17,962	27,17,962
26,00,000	15-09-2021	26,00,000	92	58,981	26,58,981
	Total	2,60,00,000		21,07,282	2,81,07,282

1.4 DIPL would enter into agreement thereby modifying vis-à-vis regularizing the existing charge on the property.

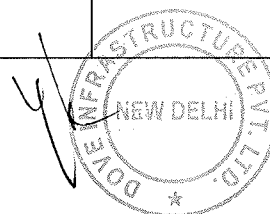
2. Financial Justification of OTS Proposal

2.1 ABW Infrastructure is in liquidation. The Ex-Management of ABW is not traceable; the CFO is in judicial custody. It has already been brought on record by investigating agency that there is complete chaos and mismanagement.



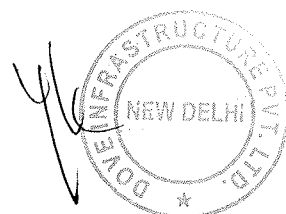
- 2.2 The security asset i.e. incomplete Gateway Tower Project is impaired in many ways and cannot be realised/encashed. The aggrieved parties(s) are entitled take legal recourse to recover possession from Alchemist. The grounds for such legal recourse is described in para 4.
- 2.3 The Alchemist is also under obligation to revitalize the assets. Alchemist is part of the “Framework for Revitalising Distressed Assets in the Economy”. The DIPL is proposing this settlement only to ensure that impaired asset is revitalized i.e. incomplete work of Tower-A could be complete.
- 2.4 The parties can reach for settlement by way of considering the cost involved. It is a matter of record that Alchemist has purchased this Debt at price equivalent to 81.5% of the outstanding principal amount.

Description of Debits Acquired under Assignment Deed	Borrower	Principal Debt as per Assignment Deed	Estimated Discount computed by using proportion method.	Amount Agreed to be Paid by Alchemist to DMI Finance Pvt. Ltd.
			18.50%	
Account No.1 Account No: DMI-000-085	ABW Infrastructure Limited	9,35,99,272	1,73,15,865	7,62,83,407
Account No.1 Facility ID: DMI-000-102	Maxwell Promoters Pvt. Ltd.	2,55,27,074	47,22,509	2,08,04,565
Account No.3 Facility ID: DMI-0000000- 1125; DMI- 000000-2997;	NIIL Infrastructure Ltd.	13,54,35,362	2,50,55,542	11,03,79,820



DMI-000000-5482; DMI-000000-7325; DMI-000000-7553				
Account No.4 Facility ID: DMI-000000-3493	Mr. Deepak Aggarwal	2,34,60,922	43,40,271	1,91,20,651
Account No.5 Facility ID: DMI-000000-3615	Mr. Pawan Tanwar	34,75,924	6,43,046	28,32,878
		28,14,98,554	5,20,77,232	22,94,21,322
Rounded Off				22,95,00,000

- 2.5 It is matter of record that that this loan was paid to ABW Infrastructure Limited by the secured creditor M/s DMI Finance Pvt. Ltd. out of borrowing from the Public Sector Banks at interest rate of 9 to 10%. Against a loan of Rs.22.00 crore DMI Finance Pvt. Ltd. has already collected a sum of **Rs.32.80 crore** within 6 years of disbursement of loan. Similarly, against a loan to Maxwell Promoters Pvt. Ltd. for ABW Infrastructure Limited by the secured creditor M/s DMI Finance Pvt. Ltd. has already collected a sum of **Rs.6.21 crore**.
- 2.7 In a situation wherein the principal borrower has failed as a business entity, the impaired assets are required to be revitalized to safeguard the interest of national economy. Once it is apparent that the borrower is to be liquidated, every stakeholder is required to bear the loss. The lending Institutions/Banks/NBFC are required to forgo their claim of interest and penal charges etc.



2.8 Thus, DMI Finance Pvt. Ltd. had already recovered the Principal amount and the cost of funds. It is also a matter of record that actual cash outflow of Alchemist, being the assignee Secured Creditor, only **Rs.2,55,51,000/-** in respect of all five accounts only two pertains to ABW group. The Balance Sheet of DMI Finance Pvt. Ltd. shows that out of Rs.22,95,00,000/- agreed purchase consideration, a sum of Rs.20,39,49,000/- has been paid by no cash payment mode i.e. Security Receipts.

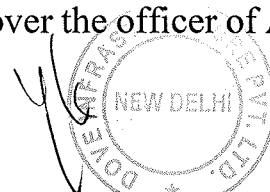
2.7 DIPL is agreeable to pay **Rs.12.00** crore towards full and final settlement of both the account. The cost of purchase is **Rs.9.71 crore**. The propose settlement is 23.58% higher than the cost of purchase.

The 20% down payment has been envisaged to partially compensate Alchemist for amount invested by it in purchase of debt. There is no likely wood of default in payment of Installments of the Settlement Amount as the same is to be paid out of contribution received from the unit buyers.

3. **Conflicting Legal Title and Priority rights of the Customers.**

3.1 It is open secret that ABW Infrastructure Ltd. has acted in breach of trust against interest of all parties related to the project, be it landowner, unit buyer or the lender. The Mortgage Deed executed by employee/representative of ABW is invalid and defective. This aspect has been described in detail in letter addressed to DMI Finance Pvt. Ltd. A copy is attached herewith as **Annexure-A**.

3.2 DMI Finance Pvt. Ltd. had disbursed loan to ABW in financial year 2009 without security from the DIPL. When ABW defaulted in payment of loan, DMI cleverly renewed the term loan. When there was further default, DMI chose to prevail over the officer of ABW to



execute the Mortgage Deed while compromising the right and interest of the parties. The language of mortgage deed has been camouflaged to mean as if the lender has right to take over the entire project in the event of default. A careful reading of the mortgage deed it is apparent that prior rights of the customers have not been extinguished.

- 3.2 Prior rights of the customer are required to protected. The Assignment Deed is also defective as DMI Finance Pvt. Ltd. (assignor) has assigned something which was not there.

4. **Legal remedies- as alternate to settlement**

- 4.1 It is not case that the DIPL is left without legal remedies. DIPL is not alone in its pursuit, the stake of large number of unit buyers are involved. The Division Bench of the Hon'ble High Court has already held that '*Official Liquidator would ensure that the interest of the investor is protected*'. A copy of the order dated 10.10.2018 is attached herewith as **Annexure-1**.
- 4.2 RERA, has already passed order in favour of home buyers/ unit buyers. The order of the RERA makes it impossible to sale or transfer the said property to any third party. A copy of the order dated 30.10.2018 and 23.04.2019 are attached herewith as **Annexure-2 and 3** respectively.
- 4.3 In the event of non-acceptance of OTS proposal, the legal remedies available to DIPL is the following:

Sl. No.	Legal Recourse	Applicant's Stand
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(i)	To file application before Debt Recovery Tribunal against order passed under SARFAESI Act; and/or	To be filed by the DIPL
(ii)	To file a suit before the Faridabad Civil Court for cancellation of the Mortgage Deed.	To be filed by DIPL
(iii)	To file suit before the Hon'ble High Court of Delhi for cancellation of Assignment Agreement;	To be filed by DIPL
(iv)	To file application before the Hon'ble High Court of Delhi seeking relief under section 447 of the Companies Act, 2013.	To be filed by DIPL

4.2 DIPL is aware that the legal remedy would involve several issues and, therefore, it is more interested in entering into negotiated settlement.

5. **The Present Status vis-only available Option**

5.1 **Existing structure is not marketable:** The incomplete structure of the gateway tower is languishing. The existing structure in view of complex litigation and order of RERA is **not marketable in the open market**. None of the builder/investor would buy a stake in any property and face barrage of litigation.

5.2 The license has also expired and it has not yet been renewed. The DTCP has filed a reply before the Hon'ble High Court stating that license would be renewed only upon receipt of **Rs.1,80,20,000/-** for renewal of the license fee. The project also involves payment other fines and penalties.

5.3 The only option available to each stakeholder is to bear some losses and enter into commercially viable and realistic settlement. Neither



DIPL nor unit buyers are financial gainers in the project. The Unit Buyers/DIPL (subject to approval of the Scheme in general meeting) would discharge the obligation of settlement.

In view of the above, we request you to kindly consider our aforesaid proposal and grant in-principle approval.

Thanking you,

Yours faithfully,

For **Dove Infrastructure Pvt. Ltd.**


Yogesh Gupta

Director

9971500920

Email: ygupta@homedevelopersindia.com

