

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-VI

I.A. 6588/ND/2023

IN

C.P. No. IB- 26/ND/2023

(Under Section 30 (6) and 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016))

VANI COMMERCIALS LIMITED

.... FINANCIAL CREDITOR

VERSUS

MAX HEIGHT TOWNSHIP AND PROJECTS PRIVATE LIMITED.

..... CORPORATE DEBTOR

AND

AND IN THE MATTER OF:

MR. VARUN GOEL

RESOLUTION PROFESSIONAL OF

M/S. MAX HEIGHT TOWNSHIP AND PROJECTS PRIVATE LIMITED.

.... APPLICANT

SH. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT

For the Resolution Professional: Sr. Adv. P. Nagesh with Adv. Bharat Bhushan Sethi and Adv. Akshay Sharma.



ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

ORDER DELIVERED ON: 29.04.2024

1. The present application has been filed under Section 30(6) read with Section 31(1) of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('Regulations') by Mr. Varun Goel Resolution Professional (RP) of M/s. Max Height Township and Projects Private Limited ('Corporate Debtor'), seeking approval of the Resolution Plan submitted by M/s Worldfa Exports Private Limited ('Successful Resolution Applicant') as approved by the Committee of Creditors ('CoC') in its 7th CoC Meeting held on 20.11.2023.
2. Briefly stated, the facts as averred by the applicant in the application are as follows:
 - a) That the Corporate Insolvency Resolution Process against the Corporate Debtor was initiated vide order dated 07.03.2023 and Mr. Varun Goel was appointed as IRP in the matter.
 - b) That the IRP prepared a list of Creditors after verification of claims received pursuant to the Public Announcement within 7 days from the last date of receipt of the claims and constituted Committee of Creditors.
 - c) The IRP admitted the following claims of the creditors of the Corporate Debtor

S. No.	Claim Type	No. of Claimants	Amount Claimed	Claim Admitted (Provisionally)	Voting %
1.	Financial Creditors	4	8,57,90,132/-	8,57,90,132/-	83%
2.	Class of Creditors (Homebuyers)	12	1,77,85,684/-	1,75,67,835/-	17%
	Total	16	10,35,75,816/-	10,33,57,967/-	100%

- d) That the IRP had filed an application bearing I.A. No. 2165/ND/23 seeking appointment of Authorized Representative for Class of Creditors i.e., Allottee Under Real Estate Project namely Max



Heights Metro View Apartments, Sector-35, Sonipat, Haryana. This Adjudicating Authority vide order dated 07.06.2023 appointed Mr. Rakesh Kumar Gupta as Authorized Representative of Financial Creditors in Class of Creditors "Allottee Under Real Estate Project".

- e) That, in accordance with the Section 22(1) of IBC, IRP after the constitution of the COC as per Code, convened the 1st meeting of the COC on 06.04.2023, wherein inter alia, the COC resolved to appoint the IRP/Applicant i.e. Mr. Varun Goel as the Resolution Professional of the Corporate Debtor.
- f) The Homebuyers being impacted a lot had numerous apprehensions, queries, misgivings about the CIRP of the CD. Therefore, the RP on 26.05.2023 organized Awareness Camp for the awareness of Homebuyers of the CD to answer their apprehensions, queries, misgivings to ensure that there is a flawless movement in the CIRP and any doubts are clarified. The common challenge/concern/ anxiety of most of the homebuyers (who already are in possession of their respective units, as the Occupation Certificate of the Project was granted way back to the developers by the Town Panning Authority, Haryana) revolved around the execution of sale deed by the CD and/or the filing of claims even by the Homebuyers in possession of their respective units in the project. RP clarified that it is only in those cases, where as per the books of accounts of the CD the sale has been booked and possession has already been given, the CD shall execute the Conveyance Deed and for the said purpose the RP with prior notice/approval of the COC, through his Power of Attorney holder, executed total of 474 Conveyance Deed in the Office of Sub-Registrar Sonipat in favour of the Home-buyers of the Project.
- g) That in the 2nd Meeting of CoC, the CoC resolved to publish Expression of Interest/ Form G to invite Prospective Resolution Applicants (PRA) for submission of Resolution Plan.
- h) That the applicant published Form G in Financial Express and Jansatta on 09.05.2023, inviting expression of interest from the prospective resolution applicants for the purpose of submitting a Resolution Plan in the CIRP for the Corporate Debtor.
- i) The Applicant received three expressions of interest from the Prospective Resolution Applicant's for the purpose of submitting the Resolution Plan during the CIRP of Corporate Debtor. Out of the three, one PRA i.e., M/s One City Infrastructure Pvt Ltd withdrew its Expression of Interest vide email dated 21.06.2023.
- j) In the meanwhile, the RP reconstituted the CoC on the basis of claims received, details of the same are as under: -




S. No.	Category	Total No. of claims received	Total Amount claimed	Total no. of claim admitted	Total amount of claim admitted
1.	Secured Financial Creditor	5	9,07,90,132	4	8,43,06,522
2.	Unsecured Financial Creditor belonging to a class of creditors	20	2,91,91,729	20	2,84,73,141
3.	Unsecured Financial Creditor other than financial creditors belonging to a class of creditors	NA	NA	NA	NA
4.	Operational Creditors (Government Dues)	1	67,25,872	NA	NA
5.	Claims from Employee and Workmen	NA	NA	NA	NA


6.	Other Creditors	NA	NA	NA	NA
	TOTAL	26	12,67,07,733	24	11,27,79,663

- k) Thereafter, RP had convened 4th COC meeting on 03.10.2023, which was on said date adjourned to 05.10.2023, wherein inter alia, RP had apprised the COC members about the execution of 104 Conveyance deeds, by the POA of RP, in respect of the flats of Max Heights Metro View Apartments developed by the CD whose full payment has been received.
- l) That Transaction Audit Report dated 17.08.2023 was received by the RP on 04.09.2023 and the same was shared with the suspended Board of Directors seeking their comments thereon and as the comments were found to be unsatisfactory and flimsy, RP recommended filing application under Section 43 and 45 read with section 66 of the Code to seek relief. During the course of the 4th COC meeting, the RP informed the members of the COC of the Transaction Audit Report (hereinafter referred to as "TAR") received from the Transaction-Auditor as well as the comments of the suspended board of directors on TAR. The COC decided to file an appropriate application under Section 43 and 45 read with section 66 of the Code to seek relief. The said application has been filed with the Adjudicating Authority vide I.A. 5994 of 2023 and the

Adjudicating Authority issued notice on the same to all the respondents therein vide order dated 07.11.2023.

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- m) Further, in the 4th COC meeting the COC members were informed about the receipt of signed copy of the Valuation Report from all the valuers and a summary of the same was prepared by the Resolution Professional. The summary was to be shared with the COC Members on submission of confidential undertaking. It is pertinent to mention that as there was substantial variation of the valuation by the valuers, therefore, the RP appointed 3rd valuers in compliance with Regulation 35 of CIRP Regulations, 2016. The valuations as per the regulation have been considered for final valuations.
- n) Thereafter, RP had convened 5th COC meeting on 18.10.2023, wherein, inter- alia, the RP informed the COC members about the status of the CIRP of the Corporate Debtor and the COC members discussed and negotiated the Resolution Plan with M/s World-Fa Exports Private Limited.
- o) Thereafter, RP had convened 6th COC meeting on 06.11.2023, wherein, inter- alia, the RP informed the COC members about the status of the CIRP of the Corporate Debtor. The RP has informed the members of COC that he has done due diligence based on the affidavits and has engaged services of independent professional to conduct section 29A due diligence. The COC members further discussed and negotiated the resolution plan with M/s Worldfa Exports Private Limited. The agenda for the said COC meeting provided for consideration, approval and voting for resolution plan of M/s Worldfa Exports Private Limited, to ascertain and approve the fees to be paid to RP / IPE after the approval of resolution Plan by COC till its approval by NCLT, initiating liquidation process of CD in case of failure of the Resolution Plan to muster statutory vote share for approval. estimated liquidation cost, possibility of compromise or arrangement of the CD, recommendation for sale of the CD or the business of the CD as a going concern. However, after detailed deliberations, COC members pointed out some concerns to the Resolution Applicant who agreed to cure the defects in the Resolution Plan and thus it was unanimously decided to defer all the items of agenda that was to be put to vote.
- p) Thereafter, in the interim the Resolution Professional received the duly cured and signed resolution plan from the Resolution Applicant on 16.11.2023. The RP shared the cured Resolution Plan with the independent professional so appointed for due diligence. The Independent Professional has issued its Due Diligence Certificate certifying the Plan is fully compliant. The Cured

Resolution Plan along with the Due Diligence report was shared with the COC members for their information and perusal.

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- q) Thereafter, the RP convened 7th meeting of CoC on 20.11.2023, wherein the Resolution Plan submitted by M/s Worldfa Exports Pvt Ltd was put for e-voting and the members of COC with 100% voting shares approved the Resolution Plan submitted by Worldfa Exports Pvt Ltd.
 - r) Further, the Letter of Intent was accordingly issued on 29.11.2023 to Successful Resolution Applicant/SRA and same unconditionally accepted by the Successful Resolution Applicant. Further, the Successful Resolution Applicant has deposited sum of INR 86,67,000/- (Rupees Eighty-Six Lakhs and Sixty-Seven Thousand) as performance security by way of online transfer of funds to CD account (including deposit of EMD of Rs. 10.00 lakhs and Bid Bond of Rs. 50 lakhs and transfer of balance amount of Rs. 26.70 lakhs
 - s) That the Resolution Applicant has submitted an undertaking stating that the Resolution Applicant is eligible under Section 29A of the Code.
 - t) That the average fair value is Rs. 7,24,46,864/- and average liquidation value is Rs. 5,82,93,556/-.

3. We have heard the submissions made by the Ld. Counsel for the applicant and have gone through the documents produced on record.

4. That some key features of the Resolution Plan are as follows:

BRIEF INTRODUCTION OF THE SRA

- a. The RA proposed an amount of Rs. 10.41 Crores in the Resolution Plan including CIRP Cost of Rs. 50 lakhs.
- b. The final/ approved resolution plan was submitted by M/s World-fa Exports Private Limited on 16.11.2023.
- c. SRA is a Corporate Person incorporated on 09.10.2003 and registered with Ministry of Corporate Affairs, RoC.
- d. The Resolution Applicant has experience of more than 27 years in manufacturing and export of steel utensils etc. having capacity of 800 containers per year and Resolution Applicants is one of the largest exporters in this sector i.e., exporting its products to USA, Australia, Germany, France, Brazil, UK, South Africa, Hungary, Canada, Argentina, China, Spain, Mexico etc



SYNOPSIS OF THE RESOLUTION PLAN DATED 15.11.2023

SUBMITTED BY SRA IS AS UNDER: -

1	About the Resolution Applicant	
A	Name	M/s World-Fa Exports Private Limited
B	Constitution	Private Limited Company
C	Expertise/Experience	World fa Exports Private Limited (CIN)U51909DL2003PTC122571 is a Private Limited Company incorporated on 09-October-2003. It is classified as a non-govt company and is registered at Registrar of Companies Delhi. Its authorized share capital is Rs.2,00,00,000 and its paid-up capital is Rs.1,14,54,000. World-fa is the largest exporter of Steel utensils in India.
2	Fund Infusion	Rs 4.50 Cr from own sources of the Resolution Applicant
3A	Resolution of HOME BUYERS who have been given possession of the flats before the effective date	<p>They are entitled to get the registration of their flats done any time after making the full outstanding payment due against the flat. For this purpose, the RA shall send written intimation to such homebuyers within 30 days of the Effective Date. Reasonable efforts shall be made by the RA to contact the homebuyers.</p> <p>NO DELAY PENALTY shall be paid to the Allottee, similarly NO INTEREST on DELAY PAYMENT shall be recovered from the allottee.</p> <p>All litigations and recovery proceedings initiated by these home buyers shall be deemed to be nullified and extinguished on the date of offer of registration. RA shall also publish the offer of registration in any of the newspapers so that the date of publication shall be treated as the date of offer of registration to avoid any litigation on the receipt of offer of registration communication.</p>
3B	Resolution of HOME BUYERS who have not been given possession of the flats	<p>The Home buyer shall be given an offer of registration within 60 days of the effective date, subject to completion of pending construction/refurbishment work and home buyers who fail to get the allotted flat registered within 6 months of the offer of registration shall be charged a holding charge of Rs 9,000 per month and an interest of 15% on the outstanding amount.</p> <p>In case the home buyer fails to take the possession of the flat even after end of 12 months from the offer of registration, the allotment of the flat shall be deemed to be CANCELLED and deposited amount less 20% of the BSP shall be refunded to the buyer within 3 months of the date of surrender of the original documents by the homebuyer.</p> <p>NO DELAY PENALTY shall be paid to the Allottee, similarly NO INTEREST on DELAY PAYMENT shall be recovered from the allottee.</p>



		All litigations and recovery proceedings initiated by these home buyers shall be deemed to be nullified and extinguished on the date of offer of registration. RA shall also publish the offer of registration in any of the newspapers so that the date of publication shall be treated as the date of offer of registration to avoid any litigation on the receipt of offer of registration communication.
4	Resolution of Financial Creditors (Secured)	Rs 6,50,00,000/- to be paid within 12 months of the effective date in ratio of the admitted claims as on the effective date.
5	Resolution of Unsecured Financial Creditors (not part of any class)	1% of the admitted claims as on the effective date payable within 60 days of the effective date from the contingency provisions of the resolution plan.
6	Resolution of Other Creditors (Creditors who are neither Financial Creditors nor Operational Creditors)	All claims of "Other Creditors" shall be settled @ 1% of the admitted amount from the contingency provisions of the resolution plan.
7	Resolution of Operational Creditors (workmen/ employees)	Settlement of dues of workmen & employees shall be @ 100% of the admitted claims to the workmen /employees (however as of date no claims pertaining to workmen/labour have been admitted) out of the contingency fund as proposed in this resolution plan.
7A	Resolution of Operational Creditors (Government & Statutory Dues)	<p>Settlement of Statutory dues comprising of the departments mentioned below shall be settled for an aggregate amount of Rs 16 Lakhs, to be distributed pari-passu to their admitted amount/contingent claims.</p> <p>A) Settlement of dues of Income Tax Department - towards the entire liability till the effective date whether crystallized/uncrystallized.</p> <p>B) Settlement of dues of Excise Department- For the entire liability till the effective date whether crystallised/uncrystallized</p> <p>C) Settlement of Dues of Ministry of Environment, Forest and Climate Change, Haryana State Pollution Control Board, Director Town & Country Planning Haryana, HRERA, Employee Provident Fund Organization, ESIC, NGT, Airport Authority of India, UHBVN, HUDA and all other related and concerned department, whether admitted/unadmitted, crystallized/uncrystallized.</p>



7B	Resolution of Operational Creditors (Others)	All the other operational creditors apart from the Statutory, Contingent Dues/Liabilities and Workmen/Employees Dues shall be settled @ 5% of their admitted claims out of the contingency fund as proposed in this resolution plan.
8	Resolution of Related Parties	All other Related Parties (creditors) settled @ NIL
9	Resolution of Share Holders of CD	100% of existing equity to be extinguished and fresh equity to be issued to the Resolution Applicant and / or their nominee directly or through SPV/SPC.
10	Payment of CIRP Cost	Rs 0.50 Cr on Priority within T+60 days
11	Contingency	Rs 1.50Cr To be utilized to meet (a) Enhanced Construction Cost (b) Payment to Other Creditors (c) Payment to Operational Creditors (d) Payment to creditors as per above settlement.
12	Recovery from Avoidance Application/ Transactions	100% pass through to Financial Creditors after deducting the applicable expenses and taxes.
13	Completion of balance construction	Rs 1.75Cr needed to complete the common facilities and utilities in 6 months of the effective date. However, the RA proposes to enter into a Development Management Agreement before the effective date and take up the completion of the construction work even before the effective date
14	Timeline of Implementation of Plan	T + 12 Months (T= Effective date)
15	Supervisory Committee	As per Section 15

SUMMARY OF SECURED AND UNSECURED CREDITORS AS PER FORM H DATED 30.11.2023 SUBMITTED BY RP

S. No.	Category	Amount Claimed	Amount Admitted	Contingent Claim	Not Admitted
1.	Secured financial creditors (other than financial creditors belonging to any class of creditors)	90790132	84306522	5000000	1483610
2.	Unsecured financial creditors belonging to any class of creditors	47314386	44601519	-	2712866
3.	Operational creditors (Government Dues)	1552555097	-	1549159772	3362936



4.	Operational creditors (other than Workmen and Employees and Government Dues)	290000	290000	-	-
5.	Other creditors, if any, (other than financial creditors and operational creditors)	2351316	2351316	-	-
	Total	1693300931/-	131549357/-	1554159772/-	7559412/-

**SUMMARY OF SETTLEMENT OF VARIOUS STAKEHOLDERS
AS PROPOSED IN THE RESOLUTION PLAN**

S. No	Particulars	Claim Accepted	Resolution Amount	Upfront Payment (within 0-60 days)	Remarks
1.	CIRP COST as on date of plan approval by NCLT	NA	50,00,000	50,00,000	
2.	Secured Financial creditors	8,43,06,522	6,50,00,000	1,50,00,000/-	Remaining Rs. 5 Cr. to be paid within 2 to 12 months from effective date.
3.	Operational Creditors - Workmen & Employee	NA	NA	NA	100% of the admitted claim
4.	Unsecured Financial creditors in class of creditors - Space Buyers	4,46,01,519/-	(They will be delivered flats)	NA	
5.	Operational Creditors (Govt./Statutory Authorities Dues)	154,91,59,772/-	16,00,000	16,00,000	Admitted as contingent claim.
6.	Operational creditors (other than Workmen and Employees and	2,90,000	5% of the admitted claims out of the contingency fund	NA	



	Government Dues)				
7.	Other Creditors	23,51,316	NA	NA	1% of the admitted * claims from the contingency fund provision of the Resolution Plan
8.	Contingency	NA	1,50,00,000/-	50,00,000/-	Rs. 1 Cr. to be paid within 2-12 months
9.	Cost to complete the balance construction	NA	1,75,00,000/-	NA	Rs. 1.75 Cr. to be paid within 2-12 months
Total Resolution Plan Value 1680709129			10,41,00,000/-	2,66,00,000/-	

TREATMENT OF FINANCIAL CREDITOR (SECURED AND UNSECURED) AS PER THE RESOLUTION PLAN SUBMITTED BY SRA

Table-7A

(In INR)

	Financial Creditor (Secured) other than financial creditors belonging to a class	Admitted Claims	Settlement proposed
1	Vani Commercials Ltd	2,55,33,111/-	An aggregate amount of Rs 6,50,00,000/- to be paid in 12 months of the effective date. Of which Rs 1.5Cr to be paid upfront and balance Rs 5Cr in 5 equal bi-monthly instalments of Rs 1Cr each, beginning from the 4 th month of the effective date The proposed resolution amount to be distributed among the financial creditors (secured) in proportion to their admitted claims
2	Ranjit Garh Finance Company Limited	1,05,74,189/-	
3	Jagtarni Traders Pvt Ltd	2,01,59,685/-	
4	Narang Properties	2,80,39,537/-	
Total		8,43,06,522/-	

**INFUSION OF FUNDS BY SRA AND TIMELINE AS PER THE
RESOLUTION PLAN IS AS UNDER: -**

Table- 12A

(Amt in INR Cr)

Outflow	TOTAL	0-60 days	2-6 Months	6-12 Months
CIRP Cost	0.50	0.50		
Operational Creditors	0.16	0.16		
Financial Creditor (Secured)	6.50	1.50	2.00	3.00
Financial Creditors (Un-Secured) in a class of Homebuyers		Offer of Registration of their flats within 2 months of the effective date		
Construction Cost	1.75		1.75	
Contingency	1.50	0.50	1.00	
TOTAL	10.41	2.66	4.75	3.00
Inflow				
Infusion by Resolution Applicant	4.50	2.75	1.75	
Receivables (balance sale consideration)	6.00		3.00	3.00
TOTAL	10.50	2.75	4.75	3.00

Infusion of Funds by the Resolution Applicants
Table-12B

Schedule of Infusion of funds	Amount (Rs)	Timeline of Infusion (days from the Effective date)
Infusion as Equity/ Quasi Equity/Debt in the Corporate Debtor by the Resolution Applicant from their own internal sources/ group & affiliate companies/ Strategic Investors	25,00,000 4,25,00,000	Rs 2.75Cr within 60days and further Rs 1.75Cr within 6 months of the effective date
	4,50,00,000	

- ii. That the final Resolution Plan submitted by SRA meets the requirements of Section 30(2) of the Code as under: -

Section	Provisions under Section 30(2) of the Code	Compliance under Resolution Plan
30(2)(a)	provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the	YES Clause 6, page 14 of the Resolution Plan provides for payment of



	payment of other debts of the corporate debtor;	the Insolvency Resolution Process Cost.
30(2)(b)	<p>provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-</p> <ul style="list-style-type: none">(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53	Yes Clause 9 at page 20 of the Resolution Plan
30(2)(c)	provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	Yes Clause 3 at page no 33 of the Resolution Plan provides for the management of the



		affairs of the Corporate Debtor.
30(2)(d)	the implementation and supervision of the resolution plan;	Yes Clause 3 at page 33 of the Resolution Plan provides for the implementation and supervision of the Resolution Plan.
30(2)(e)	does not contravene any of the provisions of the law for the time being in force	Yes Statement has been included in the Resolution Plan
30(2)(f)	conforms to such other requirements as may be specified by the Board.	Yes Statement has been included in the Resolution Plan

iii. That the Resolution Applicant has submitted an undertaking stating that the Resolution Applicant is eligible under Section 29A of the Code. Copy of undertaking submitted by the Resolution Applicant under Section 29A of the Code is annexed with this application.

iv. Mandatory Contents as specified under Regulation 38 of IBBI CIRP Regulations 2016 are as under: -

Regulation	Provisions under Regulation 38 of IBBI CIRP Regulations 2016.	Compliance under Resolution Plan
38(1)(a)	The amount payable under a resolution plan – (a) to the operational creditors shall be paid in priority over financial creditors; and (b) to the financial creditors, who have a right to vote	Yes Clause 9 at page no 20 of the Resolution Plan



	under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.]	
38(1A)	A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.]	Yes Statement has been included in the Resolution Plan.
38(1B)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.]	Yes Table 5B at page no 13 of the Resolution Plan.
38(2)(a)	A resolution plan shall provide the term of the plan and its implementation schedule;	Yes Clause 15 at page no 36-37 of the Resolution Plan.
38(2)(b)	A resolution plan shall provide the management and control of the business of the corporate debtor during its term; and	Yes Clause 14 at page no 35 of the Resolution Plan.
38(2)(c)	A resolution plan shall provide adequate means for supervising its implementation	Yes Clause 3 at page no 33-35 of the Resolution Plan.
38(2)(d)	provides for the manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after	Yes It is stated in page 13 of the Resolution Plan that the Resolution Applicant shall pass on 100% of the recovery proceeds in



	<p>the approval of the resolution plan and the manner in which the proceeds, if any, from such proceedings shall be distributed:</p>	<p>respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code to the Financial Creditors (Secured, Unsecured, Allottees) in proportion of their admitted claims after deducting the applicable taxes incident on such receipt.</p> <p>It is further stated that the proceedings relating to the avoidance transactions and fraudulent/wrongful trading, if existing as on the Effective Date, shall be pursued by the Secured Financial Creditors post approval of the Resolution Plan before the Adjudicating Authority at the cost of the Financial Creditors.</p>
38(3)(a)	<p>A resolution plan shall demonstrate that – it addresses the cause of default;</p>	<p>Yes Clause 4 of the Resolution Plan</p>
38(3)(b)	<p>A resolution plan shall demonstrate that – it is feasible and viable;</p>	<p>Yes Clause 5B of the Resolution Plan</p>



38(3)(c)	A resolution plan shall demonstrate that – it has provisions for its effective implementation;	Yes Clause 14 of the Resolution Plan
38(3)(d)	A resolution plan shall demonstrate that – it has provisions for approvals required and the timeline for the same; and	Yes Clause 15 of the Resolution Plan
38(3)(e)	A resolution plan shall demonstrate that – the resolution applicant has the capability to implement the resolution plan.]	Yes Clause 5 of the Resolution Plan

- v. There are no objections to the Resolution Plan by any of the stakeholders.
- vi. With respect of compliance regarding Regulation 39(4) of the CIRP Regulations, the applicant has filed compliance certificate in Form-H certifying that the Resolution Plan submitted by the successful resolution applicant meets the requirements as laid down in various sections of the Code and the CIRP Regulations and there are sufficient provisions in the Plan for its effective implementation as required under the Code. Further, an affidavit has been obtained from the Successful Resolution Applicant stating that he is not ineligible under the provisions of Section 29A of the Code, 2016.
- vii. The Hon'ble Supreme Court vide its order dated 21.11.2023 in the matter of **Ramkrishna Forgings Limited Vs Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr. Civil Appeal No. 1527 of 2022 (2024) 248 Comp Cas 15** had held as follows: -

“27. Having considered the matter in depth, the Court is unable to uphold the decisions rendered by the Adjudicating Authority-NCLT as also the NCLAT. The moot question involved is the extent of the jurisdiction and powers of the Adjudicating Authority to go on the issue of revaluation in the background of the admitted and undisputed factual position that no objection was raised by any quarter with regard to any deficiency/irregularity, either by the RP or the appellant or the CoC, in finally approving the Resolution Plan which was



sent to the Adjudicating Authority-NCLT for approval. Further, the statutory requirement of the RP involving two approved valuers for giving reports apropos fair market value and liquidation value was duly complied with and the figures in both reports were not at great variance. Significantly, the same were then put up before the CoC, which is the decision-maker and in the driver's seat, so to say, of the Corporate Debtor. *K Sashidhar (supra)* and Committee of Creditors of *Essar Steel India Ltd. (supra)* are clear authorities that the CoC's decision is not to be subjected to unnecessary judicial scrutiny and intervention. This came to be reiterated in *Maharashtra Seamless Limited (supra)*, which also emphasised that the CoC's commercial analysis ought not to be qualitatively examined and the direction therein of the NCLAT to direct the successful Resolution Applicant to enhance its fund flow was disapproved of by this Court. Thus, if the coc, including the FC(s) to whom money is due from the Corporate Debtor, had undertaken repeated negotiations with the appellant with regard to the Resolution Plan and thereafter, with a majority of 88.56% votes, approved the final negotiated Resolution Plan of the appellant, which the RP, in turn, presented to the Adjudicating Authority-NCLT for approval, unless the same was failing the tests of the provisions of the Code, especially Sections 30 & 31, no interference was warranted. In *Kalpraj Dharamshi v Kotak Investment Advisors Limited, (2021) 10 SCC 401*, the Court concluded that in view of the paramount importance given to the decision of CoC, which is to be taken on the basis of "commercial wisdom", NCLAT was not correct in law in interfering with the commercial decision taken by CoC by a thumping majority of 84.36%.”

viii. The applicant has prayed for number of waivers in the Resolution Plan. As to the relief and concessions sought in the resolution plan, by taking into consideration the decision of the Hon'ble Supreme Court in the matter of **Embassy Property Development Private Limited v. State of Karnataka & Ors. in Civil Appeal No. 9170 of 2019**, we direct the Successful Resolution Applicant to file necessary application before the necessary forum/ authority in order to avail the necessary relief and concessions, in accordance with respective laws. The relevant part of the judgement is reproduced herein below:-

39. Another important aspect is that under Section 25 (2) (b) of IBC, 2016, the resolution professional is obliged to represent



and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

“25. Duties of resolution professional –

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions:-

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings.”

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”

5. In so far as the approval of the resolution plan is concerned, this Adjudicating Authority is duty bound to follow the judgement of the **Hon’ble Supreme Court in the matter of K.Sashidhar v. Indian Overseas Bank (2019) 12 CC 150**, wherein the scope and interference of the Adjudicating Authority in the process of the approval of the Resolution Plan is elaborated as follow:-

35. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements.



Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code.

6. Further, we would rely upon the judgment rendered by the NCLAT in Roshan Lal Mittal v. Rishabh Jain reported in (2023) ibclaw.in 803 NCLAT that:

7. *“The Resolution Plan does not absolve the personal guarantors from their guarantee. The law well settled by the Hon'ble Supreme Court in the matter of “Lalit Kumar Jain v. Union of India - (2021) 9 SCC 321), that by approval of resolution plan the guarantees are not ipso facto discharged.”*

8. Also, the Hon'ble Supreme Court of India in the matter of **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta &**

15.11.2019 has observed as follows:

“38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with Prospective resolution applicants.”

9. Thus, from the judgements cited supra, it is amply clear that only limited judicial review is available to the Adjudicating Authority under Section 30(2) read with Section 31 of the Code, 2016 and this Adjudicating Authority cannot venture into the commercial aspects of the decisions taken by the committee of the creditors.
10. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan. Accordingly, we hereby **approve the Resolution Plan**, which shall be binding on the corporate debtor and its employees, shareholders of corporate debtor, creditors including the Central Government, any State Government or any local authority to whom statutory dues are owed, guarantors, successful resolution applicant and other stakeholders involved. In view of the above, **I.A. 6588/ND/2023 stands allowed.**
11. Since the Resolution Applicant undertakes to pass on 100% recovery proceeds in respect of Avoidance Applications, the SRA is directed to distribute the recovery proceeds to the creditors of the Corporate Debtor in accordance with the IB Code and Regulations made thereunder.
12. It is declared that the moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of pronouncement of this order.
13. However, the resolution plan shall not be construed as waiver to any statutory obligations/liabilities arising out of the approved resolution



plan and the same shall be dealt in accordance with the appropriate authorities concerned as per relevant laws. We are of the considered view that if any waiver is sought in the resolution plan, the same shall be subject to approval by the concerned authorities. The same view has been held by the Hon'ble Supreme Court in **Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and Embassy Property Development case (supra)**.

14. Accordingly, MoA and AoA of the Corporate Debtor shall be amended and filed with the RoC for information and record as prescribed. While approving the 'resolution plan' as mentioned above, it is clarified that the resolution applicant shall pursuant to the resolution plan approved under section 31(1) of the Code, 2016, obtain all the necessary approvals as may be required under any law for the time being in force within the period as provided for such in law.
15. The Resolution Professional shall forward all records relating to the Corporate Insolvency Resolution Process of the corporate debtor and the Resolution Plan to IBBI to be recorded at its database in terms of Section 31(3)(b) of the Code. The Resolution Professional is further directed to handover all the records, premises, properties of the corporate debtor to the Successful Resolution Applicant to ensure a smooth implementation of the resolution plan.
16. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this order.

Let the copy of the order be served to the parties

SD/-

**(RAHUL BHATNAGAR)
MEMBER TECHNICAL**

SD/-

**(MAHENDRA KHANDELWAL)
MEMBER JUDICIAL**