



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, BENCH-V**

**I.A. No. 07 of 2024
IN
C.P. No.106 of 2022**

In the matter of an Application under
Section 30(6) and Section 31 of the
Insolvency and Bankruptcy Code, 2016.

Sandeep D. Maheswari ,
**(Resolution professional
Setubandhan Infrastructure Limited)**

...Applicant/Resolution Professional

In the matter of
State Bank of India

... Financial Creditor

V/s.

Setubandhan Infrastructure Limited

... Corporate Debtor

Order Dated :24.03.2025

Coram:

Hon'ble Ms. Reeta Kohli Member (Judicial)

Hon'ble Ms. Madhu Sinha Member (Technical)

Appearance:

For the Applicant/RP: Adv. Niyati Merchant i/b MDP Legal (PH)



ORDER

Per: Reeta Kohli, Member (Judicial)

1. The above captioned Application was filed under Section 30(6) and Section 31, of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) by the Resolution Professional (hereinafter referred as the “**Applicant**”), seeking approval of the Resolution Plan, submitted by the Resolution Applicant –Univastu India Limited, which was approved by 98.57% voting shares of the members of the Committee of Creditors (hereinafter referred to as ‘**COC**’).
2. The facts leading to the Application are as under:
 - a. A Financial Creditor (i.e. State Bank of India), filed a Company Petition (IB) No. 106 of 2022 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code"). The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by an order dated 28.11.2022, and Mr Sandeep Maheshwari was appointed as the Interim Resolution Professional and later confirmed as Resolution Professional by the COC in its 1st meeting held on 28.12.2022. A public announcement as per Section 15 of the Code, inviting claims from the creditors of the Corporate Debtor.
 - b. The Applicant published a Public Announcement in Form A in accordance with Section 15 of the Code read with Regulation 6 of the CIRP Regulations, on 30.11.2022, inviting submission of proof of claims from the creditors of the Corporate Debtor, on or before 12.12.2022.



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c. The claims received and accepted by the Interim Resolution Professional are as under:

Sr No	Name of the Creditor	Type of the creditor	Secured/Unsecured	Amount claimed	Amount Approved	Amount on hold
1.	State Bank of India	Financial Creditor	Secured	1,03,85,90,696	74,14,45,093	29,71,45,602
2.	IL & FS Financial Services Limited	Financial Creditor	Secured	41,04,71,201	-	41,04,71,201
3.	Kotak Mahindra Prime Limited	Financial Creditor	Secured	2,28,90,498	-	2,28,90,498
4.	BSE Limited	Operational Creditor	Unsecured	8,73,200	-	8,73,200
5.	National Stock Exchange of India Limited	Operational Creditor	Unsecured	36,70,980	-	36,70,980
6.	Deputy Commissioner of Income	Operational Creditor	Unsecured	39,64,65,920	-	39,64,65,920

3. After receiving the claims, the Committee of Creditors was constituted.

The constitution of COC is as under:

Sr. No.	Name of the Creditors	Type	Claim Received	Claim admitted	Voting Share (percentage %)
1.	State Bank of India	Secured	1,03,85,90,696	1,03,85,90,696	65.54
2.	IL & FS Financial Services Limited	Unsecured	41,04,71,201	39,31,06,85	24.81
3.	Kotak Mahindra Prime Limited	Secured	2,28,90,498	2,28,90,498	1.44
4.	Union Bank of India	Secured	13,00,65,412	13,00,65,412	8.21
5.	TOTAL		1,60,20,17,807	1,58,46,53,459	100%



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4. The Resolution Professional accordingly appointed two Registered Valuer namely (i.e. M/s Vijay Jain and Associate, Chartered Accountants as transaction auditor to assist him in determination of PUF transactions) for conducting valuation across three (3) asset classes of the Corporate Debtor to determine its fair value and Liquidation value, as required under the Regulation 27 of the IBBI (IRP for Corporate Person) Regulations, 2016.
5. These Registered Valuers submitted their reports. **The Liquidation and fair value** is stated as under:

Fair Value: -

Sr No.	Particulars of Asset	Valuer 1	Valuer 2	Average
1.	Land & Building	4,91,59,000	5,00,77,004	4,96,18,002
2.	Plant & Machinery	83,000	1,10,000	96,500
3.	Securities or Financial Assets	3,29,48,170	3,82,08,152	3,55,78,161
Total				8,52,92,663

Liquidation Value :-

Sr No.	Particulars of Asset	Valuer 1	Valuer 2	Average
1.	Land & Building	4,12,78,000	3,70,34,102	3,91,56,051
2.	Plant & Machinery	75,000	99,000	87,000
3.	Securities or Financial Assets	3,29,48,170	3,82,08,152	3,55,78,161
Total				7,48,21,212

The Applicant asserts that Form G, inviting Expression of Interest (EOI) from Prospective Resolution Applicants (PRAs), was first published on 28.01.2023, with a deadline of 12.02.2023. The Resolution Professional received Earnest Money Deposits (EMDs) from four (4)



PRAs by the deadline. Subsequently, the Committee of Creditors (CoC) halted and cancelled owing to intimation received from State Bank of India seeking re-issuance of Form-G. During the 11th CoC meeting, it was resolved to re-issue Form –G with the intent to value maximization of Corporate Debtor. The CoC resolved to republish Form G, which resulted in receiving five EMDs from PRAs. Namely:

- a. Galcatika Corporate Services Limited, Nashik
 - b. Ca Vishnu Kumar Patel, Gujarat
 - c. Univastu India Limited, Pune
 - d. Manoj Kumar Choukhany, Ahmedabad
6. The Applicant further submitted that in 12th meeting of the COC the COC approved the minimum eligibility criteria, Request for Resolution Plan (**RFRP**) along with evaluation matrix and the Information Memorandum to the PRAs on 17.11.2023.
7. Furthermore, the Resolution Professional received claim after the RFRP have been tabulated herein below:

Sr .No	Particulars	Date of Receipt	Amount Claimed	Amount Accepted (Rs.)
1.	GST Department (Nashik)	18.10.2023	57,46,32,571	57,46,32,571
2.	Mohini Buildwell Private Limited	26.10.2023	42,19,412	Under verification

8. On 16.12.2023, 4 (FOUR) Resolution Plans were received for the Corporate Debtor from the following PRAs (“**Resolution Applicants**”/ “**RAs**”):
- i. Galcatika Corporate Services Limited, Nashik
 - ii. Ca Vishnu Kumar Patel, Gujarat



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- iii. Univastu India Limited, Pune
- iv. Manoj Kumar Choukhany, Ahmedabad

9. The COC, in its 17th meeting held on 08.03.2024, resolved to put vote on the existing plan basis as resolved in the 15th COC meeting. On 16/01/2024 Resolution Plan submitted by Univastu India Limited approved with a voting share of 98.57%. Thereafter, the Applicant has issued compliance certificate in Form “H”.

10. The Salient Features of the Resolution Plan are as under:

A. Brief Background of the Corporate debtor

Company / LLP Name	SETUBANDHAN INFRASTRUCTURE LTD
CIN	L45200MH1996PLC095941
ROC Code	RoC-Mumbai
Registration Number	095941
Company Category	Company limited by Shares
Company SubCategory	Non-govt company
Class of Company	Public
Authorised Capital(Rs)	300,000,000
Paid up Capital(Rs)	125,678,260
Date of Incorporation	04 January 1996
Registered Address	Office No. A, 3rd Floor, The Exchange, Near Ved Mandir, Tidke Colony, Trimbak Road, Nashik, Maharashtra 422002
Email Id	info@prakashconstro.com
Listed or Unlisted	Listed
Details of Directors	Suresh Girdharilalji Sarda
	Prakash Pusaram Laddha
	Prachi Karan Jaju
	Jyoti Ravindra Rathi
	Shankar Rathi
Reason for CIRP	Application was filed by State Bank of India, the Financial Creditor/Applicant, under section 7 of the Insolvency & Bankruptcy Code, 2016 (“I&B Code” or “IBC”)

- i. Setubandhan Infrastructure Limited is a leading construction company, predominantly engaged in the business of



infrastructure development and civil construction. SIL provides integrated engineering, procurement, and construction services. It undertakes projects for various government / semi-government bodies and other private sector clients. The company is a 'Class-IA Contractor' for Public Works Department (PWD) of the Government of Maharashtra. SIL is an 'ISO 9001:2008 Quality Management System' Certified company for construction of Roads, Bridges, Buildings and Development of Land. In March 2014, SIL achieved a turnover of Rs. 151 crores.

- ii. The Corporate Insolvency Resolution Process ("**CIRP**") of Setubandhan Infrastructure Ltd has been initiated as per the provisions of the Insolvency and Bankruptcy Code ("**IBC**") under Section 7. The application was moved before the Hon'ble National Company Law Tribunal, Mumbai Bench ("**NCLT**") and was admitted vide its order dated 28.11.2022 ("**CIRP Order**"). Pursuant to such order, Mr Sandeep. D Maheshwari appointed as Interim Resolution Professional.

B. Background of the Resolution Applicant

Particulars	Description
Resolution Applicants	UNIVASTU INDIA LIMITED
Date of Incorporation	29/04/2009
Registered Office Address	BUNGALOW NO 36/B,C.T.S. NO 994 & 945 (S.NO.117 & 118)MADHAV BAUG,SHIVTIRTH NAGAR,KOTHRUD PUNE Pune MH 411038 IN.
CIN	L45100PN2009PLC133864
PAN	AABCU0775C
Relationship if any with Corporate Debtor	The Resolution Applicant do not share any relationship with the Corporate Debtor.



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Whether NPA, including Group Companies in less than 12 months	None
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- i. The company is engaged in the field of engineering, procurement and construction with an expertise in government infrastructure development, turnkey construction projects. Univastu is recognised & certified with ISO 9001, ISO 14001, ISO 45001 & prestigious certifications from various government departments such as PWD class 1A (unlimited), CIDCO Civil & Infra work 1A (Unlimited), Maharashtra State firefighting, electrical licenses The Resolution Applicant is eligible to act as a Resolution Applicant of the Corporate Debtor and is not ineligible under section 29A of Insolvency and Bankruptcy Code and also satisfies the eligibility criteria as mentioned in clause (h) of sub-section (2) of section 25 of the Code.

11. Summary of Payments under the revised Resolution Plan

The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Lakhs)

Sr. No	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1		(a) Creditors not having a right to vote under sub-	0	0	0	0



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	Secured Financial Creditors	section (2) of section 21				
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	228.90	228.90	48.23	21.07%
		(ii) who voted in favour of the resolution plan	11686.56	11686.56	2601.77	22.26%
		Total[(a) + (b)]	11915.46	11915.46	2650.00	22.24%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	0	0	0	0
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	0	0	0	0
		(ii) who voted in favour of the resolution plan	12209.79	4104.40	20.00	0.16%
		Total[(a) + (b)]	12209.79	4104.40	20.00	0.16%



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3	Operational Creditors	(a) Related Party of Corporate Debtor (30-year deferred payment)	2026.67	1931.67	1931.67	95.31%
		(b) Other than (a) above:				
		(i) Government	10235.78	5746.33	0	0%
		(ii) Workmen	0	0	0	0
		(iii) Employees	0	0	0	0
		(iv) Others	947.33	562.58	2.00	0.22%
		Total[(a) + (b)]	13209.78	8240.58	1933.67	14.64%
4	Other debts and dues		0	0	3.00	0
5	CIRP Cost		75.00	75.00	75.00	100%
Grand Total			37410.03	24335.44	2750.00*	7.56%

***Notes**

- *Amount provided by resolution Applicant towards its own dues have been excluded while calculating the total plan value. The incentive/upside provided to Financial Creditors have been excluded as the same are dependent on recovery and undeterminable at this point of time.
- The Operational Creditor, being a related party (i.e. Univastu India Limited) to the Resolution Applicant, lodged a claim of INR 2026.67 lakhs, out of which the Resolution Professional***



admitted INR 1931.67 lakhs. The Resolution Applicant has provided for the payment of the admitted claim of INR 1931.67 lakhs through the issuance of optionally convertible debentures (OCDs). However, while this provision is reflected in the table, it has been excluded from the actual value under the Resolution Plan

- 3 *Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.*
- 4 *Claim of Neeraj Porjects was admitted in full i.e. 5,18,26,196/- on 24.11.2023. i.e after circulation of updated list of creditors to the PRA's ON 07.11.2023.*
- 5 *Belated claim of GST amounting to Rs. 57,46,32,571/- was admitted in full on 28.02.2024 after seeking condonation of delay from the Hon'ble NCLT.*

12. The interests of existing shareholders have been altered by the Resolution Plan as under:

Sr. No	Category of Share Holder	No. of Shares held before CIRP (FV – Re. 1)	No. of Shares held after the CIRP (FV – Rs. 100)	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity – Promoter shareholding	3,44,58,803	0	27.42 %	0%
	Equity – Public shareholding	9,12,19,457	0	72.58%	0%
2	Preference	NA	NA	NA	NA



13. Sources of Funds

The company has its internal accruals and funds are in liquid assets equivalent to resolution plan amount.

The initial capital is proposed to be infused through cash equity by us to the extent of Rs.4.97 Crores to pay CIRP Cost, Operational Creditors and Financial Creditors. it is further proposed to issue 26436 Equity Shares of Rs.100 face value each of the CD to the secured financial creditors on the date of transfer.

The RA proposes to pay Rs. 26.50 Crores to Financial Creditors of which Rs. 4 Crores will be paid upfront, Rs.7 Crores will be paid after 360 days from transfer date, Rs. 4 Crores will be paid by issuance of Secured Convertible debentures having 0% Coupon rate for a maximum tenure of 1-year convertible at the prevailing market rate at the end of the one year. Further Rs. 4 Crores will be paid by issuance of Secured Convertible debentures having 0% Coupon rate for a maximum tenure of 5-year convertible at the at the prevailing market rate at the end of the fifth year, with a put option at the end of the one year, it should not exceed 4 % of the total shareholding of the company by the end of the fifth year. In addition to that RA proposes to pay 50% of the amount to be received from the Arbitration claim of Rs. 32 Crores, if any. Further RA Proposes to pay to kotak 20% of the Fair value of the vehicle if recovered. Also the RA will pay Rs 7,50,000/- Equity share buyback at the end of 5 years.

The RA proposes to pay Rs. 0.20 Crores to Unsecured Financial Creditors. In addition to that RA proposes to pay 20% to ILFS of the amount to be received from the ITL recovery if any.

RA proposes to issue the optionally Convertible Debentures to the Operational Creditors of Rs. 19.32 Crores payable to Univastu India Ltd.



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RA proposes to pay interest at the prevailing SBI base rate if there is any delay by RA in implementation of plan due to any reason and consequent on his part to that delay in payment as agreed in the resolution plan.

In nutshell, the sources of funds (as per original plan)are :

Sr. No.	Infusion of Funds	Amount Rs. Crores
1.	Cash Payment within 45 days from Transfer date for payment of CIRP cost, workmen & employee dues and Financial Creditors.	4.97
2.	Balance will be paid by Rs. 4 Crores will be paid by issuance of Secured Convertible debentures having 0% Coupon rate for a maximum tenure of 1 year convertible at the rate that it should not exceed 4 % of the total shareholding of the company. Further Rs. 4 Crores will be paid by issuance of issuance of Secured Convertible debentures having 0% Coupon rate for a maximum tenure of 5 year convertible, with a put option at the end of 1 year, at the rate that it should not exceed 4 % of the total shareholding of the company.	8.00
3.	Balance will be paid within 360 days from the Transfer date	7
4.	Contingencies	0.03
	Total	20.00

The Resolution Applicant and the Financial Creditors shall execute Definitive Agreements as is required for implementation of the Resolution Plan on or before the Transfer Date simultaneously payments to the Financial Creditors.

The estimated cash flow is as follows :

(Rs in Crores)



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Projected Cashflow	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5
Net Cash Generation from Operation (Note-1)	-	-	-	-	-	-
Equity Contribution - RA	5.50	-	-	-	-	-
Debt Contribution - RA	-	6.50	-	-	-	-
Issuance of Secured Convertible Debentures	-	8.00	-	-	-	-
Issuance of Optionally Convertible Debentures	-	19.32	-	-	-	-
Equity Conversions	-	-	-	4.00	-	4.00
Working Capital (Note-1)	-	-	-	-	-	-
Total Inflow	5.50	33.82	-	4.00	-	4.00
CIRP	0.75	-	-	-	-	-
Secured Creditors	4.00	14.50	-	-	-	-
Conversion of Secured Debentures	-	-	-	4.00	-	4.00
Unsecured financial creditors (other than financial creditors belonging to any class of creditors)	0.20	-	-	-	-	-
Operational creditors (other than Workmen and Employees and Government Dues)	0.02	19.32	-	-	-	-
Other Contingencies	0.53	-	-	-	-	-
Capex / Working Capital / BG requirements (Note-1)	-	-	-	-	-	-
Total Outflow	5.50	33.82	-	4.00	-	4.00
Net Cashflow for the year	-	-	-	-	-	-
Opening Balance	-	-	-	-	-	-
Closing Balance	-	-	-	-	-	-

Note-1 : Value of the On going Projects and their related cost like Performance Guarantee etc required for execution of the Projects are not provided and hence currently assumed NIL in the above cashflow. RA proposes to finance for the requisite working capital and capex cost as and when required additionally over and above the proposal made to pay the creditors.

14. Payments proposals of the various stakeholders under the Resolution Plan:

- a. *The Resolution Applicant clarifies the basis of the allocation of equity shares proposed to each of the secured financial creditors. The proposed equity will be allocated to each of the SFC in the same ratio of the amount payable under the plan. This is subject to approval of CoC which can be modified, if required. No additional payment is required to be made by SFC for equity allotment. The Resolution Applicant has proposed to all the secured financial creditors to transfer the said 26,436 Equity shares with all the bonus shares if any declared during the period of five year to the RA or its nominee at a value of Rs. 7.5 Crores in case the prevailing rate at the end of five year is less than 7.5 crores. This option can be*



exercised by secured financial creditors within 3 months from the end of the five years. The equity shares are without any lock in period and are freely transferable(Page No. 297 clause No.7 of the Resolution Plan).

- b.** CIRP cost assumed to be INR 0.75 Crores. If the actual amount is lesser than INR 0.75 Crores then the excess over the actual amount upto INR 0.75 Crores will be paid to Secured Financial Creditors. If the actual amount is more than INR 0.75 Crores then the excess over INR 0.75 Crores will be adjusted from payment committed to Secured Financial Creditors.
- c.** Rs. 4 Crores will be paid by issuance of Secured Convertible debentures having 0% Coupon rate for a maximum tenure of 1 year convertible at the prevailing market rate at the end of 1 year. Further Rs. 4 Crores will be paid by issuance of issuance of Secured Convertible debentures having 0% Coupon rate for a maximum tenure of 5 year convertible at the prevailing market rate at the end 5 year, further the said secured convertible debentures will have a put option at the end of 1st year. The total equity stake of secured financial creditors should not be exceed 4 % of the total shareholding of the company.
- d.** Maximum amount payable to Operational Creditors is mentioned above which will be allocated to the admitted claims including any new claims admitted by Resolution Professional
- e.** RA proposes to issue the Optionally Convertible Debentures to the Operational Creditors of Rs. 19.32 Crores payable to Univastu India Ltd (*which is not added in the total amount of Plan*).
- f.** The amount is kept reserved for any unexpected contingent *liability (3 lakh)*.
- g.** RA proposes to pay interest at the prevailing SBI base rate if there is any delay by RA in implementation of plan due to any reason and consequent on his part to that delay in payment as agreed in the resolution plan.



h. As per the terms of RFRP, The EMD of INR 25,00,000/- (Indian Twenty Five Lakh Only) provided through RTGS CNRBR52023111667801119 from Canara Bank, shall be returned upon submission of Performance Guarantee within 3 business days from the date of intimation to the Successful Resolution Applicant by the Resolution Professional or such extended date as may be decided by the CoC and adjusted against the proposed contribution.

15. The Resolution Applicant has proposed the above payment as under:

a. Insolvency resolution process cost

The CIRP cost incurred up to 15/09/2023 is approx. Rs. 51.31 lakhs and the expected CIRP cost up to the end of the process (i.e., 360 days from insolvency commencement date) is approx. Rs. 75 lakhs as informed by the Resolution Professional. The CIRP Costs will be paid out in priority over payments to any other creditors on or before the Transfer Date. Once the CIRP Cost have been paid in full in terms of this Resolution Plan, it is clarified that no claims, liabilities, fines, costs, expenses or any other payment of such nature or otherwise, that are or are claimed to constitute CIRP Cost shall be payable by the Resolution Applicants and/or the Corporate Debtor.

b. Payment to Employees and Workmen

As per the information gathered by the RP, there were no employees on roll working for the corporate debtor as on the insolvency commencement date. Further, no claims have been received till date from any former employees or workmen of the company.

c. Payment to Operational Creditors

Sr.No	Operational Creditors	Claim Received	Claim Admitted	Amount
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		(INR)	(INR)	Payable (INR)
1	BSE Ltd.	8,73,200	8,73,200	8,732
2	National Stock Exchange of India Limited	36,70,980	35,43,540	35,435
3	Grandmark & Associates, Chartered Accountants	4,50,000	-	-
4	Jai Ganesh Ispat & Ferro Alloys Pvt Ltd	49,95,859	-	-
5	Neeraj Projects Private Limited	5,18,26,196	1,64,38,749	1,64,388
6	Indian National Press (Bombay) Private Limited	15,120	15,120	151
7	Vijaynath Roof & Wall Cladding Systems Private Limited	2,86,82,146	-	-
8	Mohini Buildwell Private Limited	4219412	-	-
	Total	9,47,32,913	2,08,70,609	208,706

d. Proposed Payment Terms:

Sr. No.	Mode of Payment	Amount (INR)
1.	Cash Payment within 45 days from Transfer Date	2,08,706
	Total	2,08,706
	% Repayment of Verified Amount	1.0%

e. Amount Payable to Operational Creditors (Government Dues) as per Data Room

Sr.No	Operational Creditors (Government Dues)	Claim Received (INR)	Claim Admitted (INR)	Amount Payable (INR)
1	Deputy Commissioner of State Tax, GST office, Nashik (NAS-VAT-E-009) *	57,46,32,571	-	
2	Deputy Commissioner of Income Tax, Central Circle-1, Nashik	39,64,65,920	-	
3	Assistant Commissioner of State Tax (D-012), Mazgaon, Mumbai	5,24,79,206	-	
	Total	102,35,77,697	0	

f. Proposed Payment Terms:



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Sr. No.	Mode of Payment	Amount Rs.
1.	Cash Payment within 45 days from Transfer Date	-
	Total	-
	% Repayment of Verified Amount	-%

Amount Payable for Other Creditors dues as per Data Room -

g. Proposed Payment Terms:

Sr. No.	Mode of Payment	Amount Rs.
1.	Cash Payment within 45 days from Transfer Date	
	Total	
	% Repayment of Verified Amount	0%

All dues payable to Operational Creditors shall be written off in full and shall be, and be deemed to be, permanently extinguished as on the Transfer Date.

Equity Shareholders:

(i) Claim as per Balance Sheet as on 30.06.2023:

- The paid up equity share capital as on 30.06.2023 was Rs. 1256.78 Lakhs.

(ii) Treatment:

- (a) The Company is listed in BSE/NSE Limited. It is currently trading and not delisted as per the prescribed norms of SEBI.

The Resolution Applicant proposes as follows:

- (b) The existing paid up share capital to the extent of promoters holding shall stand fully written down ("Capital Reduction").
- (c) The Resolution Applicant shall infuse Rs.4.97 Crores through issue of equity shares by Corporate Debtor within 45 days and hold the overall 94% of the total shareholding.
- (d) Balance 5% of the shares, i.e. 26,436 shares to be issued to the existing non-promoter shareholders other than the Promoters Group and their related parties against their existing holdings.
- (e) The post conversion of debentures issued to the Secured Financial Creditors should not exceed 4% of the total shareholding of the corporate debtor.



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The revised shareholding (pre conversion) is tabulated as follows:

Proposed Shareholding	% Shares	No of Shares	FV	Amount (INR)
Promoters Group	-	-	0%	-
Resolution Applicant	94%	4,97,000	100	4,97,00,000
Investors other than Promoters Group, Friends and Families	1%	5287	100	5,28700
Investors Secured financial Creditors	5%	26436	100	26,43,600
Total	100%	5,28,723	100	5,28,72,300

h. Other Liabilities including Contingent Liabilities

The Resolution Applicant and CD shall have no liability, towards any Operational Creditor/s and/or any other creditor/s, with respect to any claims (as defined under the Code) relating to in any manner to the period prior to the Effective Date including claims not submitted, in excess and above of the contingency reserve/fund kept for this purpose.

All such liabilities shall immediately, irrevocably and unconditionally stand fully and finally discharged and settled with there being no further claims whatsoever, and all forms of security created or suffered to exist, or rights to create such a security, to secure any obligations towards Operational Creditor/s and other creditor/s shall immediately, irrevocably and unconditionally stand released and discharged, and the Operational Creditors and/or all other creditors shall waive all rights to invoke or enforce the same.

In accordance with the forgoing, all claims (whether final or contingent, whether disputed or undisputed, whether or not notified and whether assessed and demand raised or not and whether claimed or not claimed against CD) of all Governmental Authorities (including in relation to Taxes) and all other dues and/or statutory payments to any Governmental Authority) relating to the period prior to the Effective Date, shall stand fully discharged and settled.



Any and all legal proceedings (including any show cause notice, adjudication proceedings, petitions, complaints, assessment proceedings or regulatory orders etc.) initiated before any forum by or on behalf of any Operational Creditors and/or all other creditors or Governmental Authorities, to enforce any rights or claims, demands, dispute against CD shall stand immediately irrevocable and unconditionally withdrawn, abated, settled and/ or extinguished, and the Operational Creditors and other creditors and all other authorities, persons or service providers shall take all necessary steps to ensure the same.

i. Treatment of other Liabilities

Treatment of ongoing and/or new litigation

While the existing contracts of CD, shall be continued, except as stated herein, all liabilities (statutory or otherwise) of CD after the effective date, arising from any contractual arrangements entered into by CD, any claims against CD, or liabilities of CD, arising or having crystallized prior to the Effective Date shall be deemed to be cancelled and written off on the Effective Date pursuant to NCLT Approval Order.

Further, any claim against CD, arising from any contractual arrangements, whether set out herein or not, whether admitted or not, due or contingent, asserted or not, present or future, whether or not set out in the Information Memorandum, the balance sheet or the books of accounts of CD, in relation to any period prior to the Effective Date, will be written off.

j. Transaction Audit:

Resolution Applicant proposes to relinquish their rights in favour of the secured financial Creditors pertaining to the funds that the Corporate Debtor would be eligible to receive from any third party. Resolution Applicant proposes that any receivables which may accrue to the Corporate Debtor as a result of any proceedings under the Code



(including but limited to proceedings where any transaction is avoided/set aside by the Adjudicating Authority in terms of Section 43,45,47,49,50 or 66 of the Code) shall be considered to be settled for the benefit of the approving secured financial Creditors.

Any costs / expenses with respect to such recovery proceedings are to be borne by the secured financial Creditors. The Resolution Applicant will provide limited support by way of confirmation(s) on any matter related to the aforesaid recovery

16. Implementation Schedule:

Implementation of the Resolution Plan shall commence from the NCLT Approval Date. Subject to Exhibit 3.8. The Resolution Plan is effective for a term of 45 days. The Resolution Applicant will undertake the following steps to implement the Resolution Plan in the indicative timeline provided below:

Sr.No.	Activity	Timeline (days)
PHASE I - APPROVAL PROCESS OF THE RESOLUTION PLAN		
1	Presentation of Proposed Plan to the CoC	X
2	Approval of the Resolution Plan by CoC and issuance of LoI by the RA	X+7
3	Unconditional acceptance of Letter of Intent by the RA	X+3
4	Application to NCLT	X+15
5	Approval by NCLT (NCLT Approval Date) and The Transfer Date for peaceful transfer of properties	E
6	Notice on the Company's Website	NA
7	Intimation to the CoC, IBBI, Tax authorities and various other statutory authorities (as applicable)	
8	Intimation to all creditors, existing shareholders and other stakeholders of the Company	
PHASE II - SETTLEMENT OF CREDITORS		
8	Payment of CIRP Costs as approved by CoC	E+45 days
9	Payment to Operational Creditors	E+45days



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Sr.N o.	Activity	Timeline (days)
10	Payment to Financial Creditors	E+45 days from Transfer Date – Rs 4 Crores plus 5% equity, Rs. 8 Crores by issuance of NCD and balance Rs. 7 Crores within E+360 days (as per Exhibit 3.4)
11	Payment to Unsecured Financial Creditors	E+45 days
PHASE III - IMPLEMENTATION OF THE RESOLUTION PLAN		
12	Change in Memorandum and Articles of Association and other documentation as required under the Resolution Plan.	E+45 days
13	Cancellation and issuance of new shares	E+45 days
12	Management of Company:	
	(i) Constitution of new Board;	E+15 days
	(ii) Appointment of key managerial personnel; and	E+15 days
	(iii) Resolution Applicant shall appoint statutory auditors of their choice, subject to applicable regulations.	E+15 days

The above timeline is based on the assumption that all the relevant and necessary approvals will be obtained in timely manner, however, any delay in obtaining the same, may affect the assumed timeline mentioned above.

It is clarified that notwithstanding anything contained in this Resolution Plan, the Resolution Applicant shall implement the Resolution Plan and make payments within the timelines specified in the Resolution Plan, unless such timelines are extended on account of any stay on implementation of the Resolution Plan by any appellate tribunal or court.

17. Earnest Money Deposit

The Resolution Applicant has submitted Earnest Money Deposit of INR Rs. 2,75,00,871/- (Two corer Seventy-Five lakh eight hundred seventy-one only) along with this Resolution Plan.



18. Monitoring Committee

The Monitoring Committee shall comprise of 5 (Five) members comprising of the following:

- a) Person nominated by the Resolution Applicants
- b) 1 (one) will be nominated by the Lender with largest share
- c) 1 (one) will be representative of Resolution Professional

*This Tribunal directs that the Monitoring Committee be constituted latest within fifteen (15) days of the effective date and pending constitution of the Monitoring Committee, the Resolution Professional shall be authorised to exercise all his powers and shall observe all its duties in accordance with the Code.

19. Avoidance Transactions

As per the requirements of Regulation 38(2) (d) of the CIRP Regulations, avoidance transactions application filed by the Resolution Professional, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the resolution plan to its logical end by the Chairman of monitoring Committee and the proceeds shall be distributed to the Secured Financial Creditors in the manner approved by the COC while approving this Resolution plan.

The Resolution Applicant states in Affidavit and Resolution Plan that the Resolution Plan specifying disbursement of amounts recoverable from PUFEE transaction to Creditors:

As per the Clause 15 of the Form -H states that there are 4 ongoing litigations against the Corporate Debtor among which 1 is Application is filed before the Adjudicating Authority for PUFEE transaction, One Application of for Undervalued transactions, the other one is for Extortionate credit transactions and Fraudulent transactions.

As per the clause 3.10.10 of the Resolution Plan the Resolution Applicant states that “ *It is clarified that the existing promoters, shareholders,*



managers, directors, officers, or such other person in charge of the affairs and management of the Corporate Debtor (including any person who was an 'officer in default' or 'occupier') prior to the Insolvency Commencement Date shall continue to be responsible and liable for all the liabilities, claims, demand, obligations, penalties etc. arising out of any (i) proceedings, inquiries, investigations, orders, show causes, notices, suits, litigation etc. (including those arising out of any orders passed by the Adjudicating Authority pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the Code) or any acts or omissions in breach of Applicable Law which occurred prior to the Insolvency Commencement Date. Further, for the avoidance of doubt and without prejudice to the generality of the foregoing, it is expressly clarified that any criminal proceedings initiated against the officers of the Corporate Debtor prior to the Insolvency Commencement Date shall continue against such officers without any liability accruing to the Resolution Applicant in its capacity as promoters and management of Corporate Debtor in relation to such criminal proceedings. Further on and with effect from the NCLT Approval Date, all the negotiable instruments issued by the Corporate Debtor shall stand terminated and the Corporate Debtor's liability under such instruments shall stand extinguished."

Therefore, this bench directs the Financial Creditors to ensure effective pursuance of the Interlocutory Applications mentioned at clause 50 of the Convenience Performa for Resolution Plan submitted by the Resolution Professional.

20. The compliance of the Resolution Plan is as under (Referred by From-H submitted by the RP):

Section of the Code / Regulation	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
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25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?		YES
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?		YES
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Separate Document	YES
Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) provides for the management of the affairs of the corporate debtor? (e) provides for the implementation and supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being in force?]	Ex. 3.3, Ex 3.6 Ex 3.4 Ex 3.8 Ex 3.8 Pg. 37& 75	YES
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	15 th CoC Meeting Minutes & E-	YES
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	15 th CoC Meeting	YES
Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?]	Ex 3.6	YES
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Ex 3.8	YES
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or	Pg.38 & 78	NO



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	<p>contributed to the failure of implementation of any resolution plan approved under the Code.</p> <p>(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]</p>		NA
Regulation 38(2)	<p>Whether the Resolution Plan provides:</p> <p>(a) the term of the plan and its implementation schedule?</p> <p>(b) for the management and control of the business of the corporate debtor during its term?</p> <p>(c) adequate means for supervising its implementation?</p>	<p>Ex 3.8</p> <p>Ex 3.8</p> <p>Ex 3.8</p>	YES
38(3)	<p>Whether the resolution plan demonstrates that –</p> <p>(a) it addresses the cause of default?</p> <p>(b) it is feasible and viable?</p> <p>(c) it has provisions for its effective implementation?</p> <p>(d) it has provisions for approvals required and the timeline for the same?</p> <p>(e) the resolution applicant has the capability to implement the resolution plan?</p>	<p>Ex 3.1</p> <p>Pg.38</p> <p>Ex 3.8</p> <p>Pg 74</p> <p>Ex 2.1</p>	
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		YES
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	<p><i>Performance Security received by way of RTGS on 17/01/2024</i></p>	YES



21. Observation and Findings-

- i. On the strength of the documents available on record and arguments advanced by the Ld. Counsel for the parties, it is clear that the present Application has been filed by the Applicant seeking the approval of the Resolution Plan submitted by Univastu India Limited, which was approved by 98.57% votes by the Committee of Creditors in the 15th CoC Meeting, and the e-voting for the same was concluded on 16.01.2024. Therefore, the issue involved in the instant case is that **“Whether the Resolution Plan submitted by Univastu India Limited is fit for approval or not?”**
- ii. In order to delve on the merits of the present case, we must appreciate the salient features of the Resolution Plan submitted by Univastu India Limited. It is pertinent to note that the Committee of Creditors (CoC) of the Corporate Debtor comprises of 4 Financial Creditors, the composition and voting percentage of the CoC is as under-

Name of the creditor	Voting %
State Bank of India	64.83%
Union Bank of India	8.12%
Kotak Mahindra Prime Limited	1.43%
IL&FS Financial Services Limited	25.62%
TOTAL	100%

It is imperative to take notice of the fact that that Stake Bank of India, Union Bank of India, and IL & FS Financial Services Limited, with their respective voting shares, approved the said Resolution Plan with votes aggregating to 98.57%. However, Kotak Mahindra Prime Limited, with voting share of 1.43% abstained from voting.



iii. Further, we must also take notice of the fact that the total value as proposed in the Resolution Plan submitted by Univastu India Limited is **Rs. 27,50,00,000/-** and the summary of the payment provided towards CIRP cost and creditors in the said Resolution Plan, as submitted by the Applicant in the present Application (**Page no. 19-20, Paragraph VI (1)**), is as under-

(Amount in INR Crores)

Particulars	Amount Admitted	Payment Proposed
CIRP Cost	0.75	0.75
Secured Financial Creditors (Notes 1 & 3)	119.15	26.50
Unsecured Financial Creditors (Note 3)	41.04	0.20
Operational Creditors (Government Dues)	57.46	-
Other Operational Creditors (Note 2)	5.62	0.02
Other Contingencies	-	0.03
Total	224.02	27.50

However, on perusal of the copy of the Resolution Plan of Univastu India Limited, annexed as **Exhibit- "W" (Page no. 296)** in the present Application, it has come to light that the total plan value is stated as **Rs. 20 Crores**, with the following break-up of payment summary-



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<i>Amount in INR Crores</i>					
Particular	Claim Submitted	Claim Admitted	%	Amounts payable under this Resolution Plan	Payment Terms
CIRP Cost (Note 1)	0.75	0.75	100.0%	0.75	Upfront within 45 days of Transfer Date
Operational creditors (Employees)	-	-	-	-	-
Secured financial creditors (other than financial creditors belonging to any class of creditors) – Securities (Note 2)	119.15	119.15	15.94%	19.00	1. Upfront : Rs. 4.00 Crores within 45 days on Transfer Date Plus equity of 5% will be issued to secured financial creditors. 2. Rs. 7.00 Crores within 360 days from the transfer date. 3. Rs. 4 crores will be paid by issuance of Secured convertible debentures of 1 year and balance Rs. 4 Crores will be paid by issuance of Secured convertible debentures of 5 year from the Transfer date (this amount is proposed against receipt of arbitration claim). 4. In addition to that RA proposes to pay 50% of the amount to be received of net of expenses from the Arbitration claim of Rs. 35 Crores (43cr total arbitration claim – 8cr proposed in sr no 03 above), if any. 5. In addition to that RA proposes to pay, to the Kotak the 20% of fair value to be received from the vehicles if recovered.
Unsecured financial creditors (other than financial creditors belonging to any class of creditors)	122.10	41.04	0.49%	0.20	Upfront within 45 days of Transfer Date. In addition to that RA proposes to pay 20% to ILFS, of the amount to be received from the IFL recovery, if any
Operational Creditors (Government Dues)	102.36	-	0.00%	-	Upfront within 45 days of Transfer Date
Operational creditors (other than Workmen and Employees and Government Dues)	9.47	2.09	0.96%	0.02	Upfront within 45 days of Transfer Date
Other Creditors (Other than financial creditors and operational creditors)					Upfront within 45 days of Transfer Date
Total	373.15	182.35	10.95%	19.97	
Other Contingencies				0.03	Upfront within 45 days of Transfer Date
Total	373.15	182.35	10.97%	20.00	

On comparison of the two aforementioned tables, it deserves to be taken note of that there exists an inconsistency in the Total Plan Value as given in the Application and in the Resolution Plan proposed by Univastu India Limited. The Plan value as given in the Application is Rs. 27,50,00,000/-, however, the Total Plan Value as envisaged in the Resolution Plan (annexed as **Exhibit – “W”**) is Rs. 20,00,00,000/-. Thus, it stands evident that there exists a difference of Rs. 7,50,00,000/-, specifically in terms of the payment allocated towards Secured Financial Creditor as in the present Application, Rs. 26.50 Crores have been allocated towards the payment of Secured Financial



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Creditors, however, the perusal of the Resolution Plan submitted by Univastu India Limited reveals that Rs. 19 Crores have been designated for the payment of the same class of Creditors, that is, Secured Financial Creditors and the same is evident from the perusal of the above-stated tables.

- iv.** Furthermore, the perusal of the 15th CoC Meeting dated 26.12.2023 (annexed as **EXHIBIT- “T”**) (Page no. 262) has revealed another blatant discrepancy in the total plan value submitted by the SRA. Under the heading **“DISCUSSION ON THE RESOLUTION PLAN OF UNIVASTU INDIA LIMITED”**, under **“Financial Aspects of Univastu modified plan”** the following table has been provided-

Financial Aspects of Univastu modified plan

Components	Remarks	Claim admitted	Plan amount
CIRP Cost	Excess/Shortfall from the share of SFCs	75,00,000	75,00,000
Secured FC	Upfront cash – Rs. 4 crs; 365 days – Rs. 7 crores, 365 days – Rs. 4 crores, 365 days – 4 crores (5 year with put at one year), 5 years – Rs. 7.5 crores of share purchase.	119,15,46,506	26,50,00,000
Secured FC	Upside from car recovery (20%) and Arbitration (50%) (post expense)		16,40,00,000
Unsecured FC	Upfront cash payment within 45 days of NCLT amount	41,04,39,743	20,00,000
Unsecured FC	Upside from ITNL recovery (20%)		4,00,00,000
OC – (Employee)	No claim received from employees/workmen	-	-
OC (Govt. dues)	No claim admitted by RP till date (claim admitted has increased)	57,46,32,571	-
OC (others)	Operational creditors other than above (claim admitted has increased)	5,62,58,056	2,03,706
OC (others)	Operational creditors (Self) - Univastu	19,31,66,909	19,31,66,909
Contingencies	Amount kept aside by RA towards contingencies	-	3,00,000
Total amount			67,21,75,615
Total amount without self			47,90,08,706
Total amount without self and incentive			27,50,08,706

Includes amount payable on share buy back by RA

From the bare perusal of the aforementioned table, it becomes evident that the total amount / **total plan amount** is mentioned as Rs. **67,21,75,615/-**. Further, it also should be taken note of that under the **“Components”** column, **“OC (others) – Operational Creditors (Self) – Univastu”**, the SRA (Univastu India Limited) has allocated a sum of **Rs. 19,31,66,909/-** to itself. However, the said amount allocated to self has not been disclosed in the payment summary of the Resolution Plan (annexed as **EXHIBIT- “W”**) or even in the facts submitted by the Applicant / RP in the present Application, the same stands evident from the tables given in preceding paragraph 3. The total plan value, as



pleaded by the Applicant / RP in the present Application is **Rs. 27.50 Crores** and the said total plan value as given in the Resolution Plan (in ***EXHIBIT- "W"***) is **Rs. 20.00 Crores**. However, the actual plan value of the Resolution Plan submitted by the SRA before the CoC is explicitly stated to be Rs. **67,21,75,615/-** as substantiated from the table given in the 15th Meeting of the CoC. Thus, in light of the aforementioned facts, it stands established that there exists a glaring inconsistency in the total plan value in the Resolution Plan proposed by the SRA, submitted in the Resolution Plan and stated in the IA for the approval of the said Plan. Therefore, it was the duty of the RP to be more vigilant with respect to the plan value at the time of placing the same before the CoC and also at the time of filing the necessary Application before the Hon'ble Tribunal for the approval of the Resolution Plan. Strangely, the plan put up by the RP before the CoC contains the plan value as Rs. 67.21 Crores and the plan value stated in the Application filed before this Hon'ble Tribunal was stated to be Rs. 27.50 Crores and the plan enclosed along with the Application stated the total plan value as Rs. 20 Crores. Therefore, the inconsistencies are so glaring that the same cannot be ignored.

- v. Inexplicable the plan was approved by the CoC, in its 15th meeting, wherein an amount more than Rs. 19 crores was allocated to the Operational Creditor (Univastu India Limited), who is the SRA in the present case in the form of Optionally Convertible Debentures. Whereas when the same plan was put up before the Court for approval, the said allocation to the OC/SRA does not find mention. It is pertinent to note that the allocation to the OCs in the Plan is stated to be of an amount of Rs. 0.02 Crores, in cash. The justification having been advanced by the SRA to the issue of creating a class within the class is that he is not allocating any amount in cash to Univastu as Operational Creditor (SRA) whereas, the other operational Creditors are being paid an amount of Rs. 2 Lakhs in cash. We are unable to appreciate this



justification on the part of the SRA wherein he is allocating a huge amount for itself and leaving virtually crumbs for all other Operational Creditors. This inappropriate allocation creating a class within the class is against **Section 53** of the Code.

- vi. The examination of the Resolution Plan, specifically “**Exhibit 1.4: Total Assets**”, has also revealed that there exist several tangible assets of the Corporate Debtor. The same is evident from the following table-

Additional details of assets				
Assets	Date of Acquisition	Cost of Acquisition	Book Value	Depreciation charged
Fixed Assets				
Land & Building				
1.Shops at Nashik	31-03-2007	35,76,750	26,52,654	9,24,096
	30-06-2019	22,00,00,000	20,80,73,922	1,19,26,078
2.Shops at Raipur	11-03-2016	6,62,68,300	5,90,29,135	72,39,165
Current Assets				
1.Inventory				
Note : Inventory has been disclosed as per Revenue Recognition Working in accordance with IND AS 2			35,60,01,563	

1. **Pinnacle Mall** - The Written Down Value of the asset in the books as on 28/11/2022 is Rs. 20.74 crores. As per the legal opinion obtained, the said property does not belong to the corporate debtor. Accordingly, the PRAs are advised to exclude the same while submitting the Resolution Plan.
2. **Raipur Shops** – The Written Down Value in the books as on 28/11/2022 is Rs. 5.88 crores. It has come to the knowledge of the RP that the title to the said property (shops) is disputed, and they are in possession of a third party.

- vii. Furthermore, the perusal of the minutes of the 8th CoC Meeting held on 23.06.2023, has revealed that in the said meeting, the RP appraised the CoC members about certain assets of the Corporate Debtor. With respect to the ‘Shops in Raipur’, the following has been recorded-



a) Shops in Raipur, Chhattisgarh

The RP stated that he does not have title certificate of the shops and that he is in possession of only purchase agreement of the shops. He further stated that he has not been able to visit the shops but have been given to understand that the shops have been occupied by a third party. The RP stated that this fact was also communicated to both the Resolution Applicants. The representatives of Union Bank of India enquired on the encumbrance of these assets. The RP stated that the same has been secured under the loan given by SBI. The members noted the same.

RP has failed to take notice that the Purchase Agreement with respect to the said property in favour of the Corporate Debtor is there and the shops have been secured with SBI. Even though the RP has stated that this fact was brought to the notice of the RAs but strangely RP seems to have failed in his duty to protect the assets of the Corporate Debtor for the maximization of the assets of the Corporate Debtor. Therefore, it is evident that the RP has failed to bring out maximization of the value of the assets of the Corporate Debtor which is against the objective and basic spirit of the IBC.

In the same regard, the following has been recorded with respect to '*Pinnacle Mall*'-

b) Pinnacle Mall, Nashik

The RP apprised the members that an amount of approximately Rs. 22 Crores was paid by the CD to Atal Buildcon Private Limited, related party of the CD, for the purchase of captioned property. He further stated that the purchase agreement has not been registered nor has any stamp duty been paid on the same. He then apprised the members that the CD has capitalized the asset under the name of Pinnacle Mall in its Fixed Assets without having proper documentation. Thus, as on date, the CD has no title of the property nor possession of the same. The RP stated that this fact was also communicated to both the Resolution Applicants. The members noted the same.

In this regard, it is pertinent to note that the Corporate Debtor paid an amount of Rs. 22 Crores, as consideration, to its Related Party (Atal Buildcon Private Limited) for the purchase of '*Pinnacle Mall*'. As stated above, the Corporate Debtor does not have the title or possession of the



said Property and in view of the same, the said property was not valued by the registered valuers (**page 118**) and was not made part of the Resolution Plan. However, it is imperative to note that the RP/IRP, as per the mandate of law, is required to preserve and protect the assets of the Corporate Debtor. When the consideration of Rs. 22 Crores was paid by the Corporate Debtor for purchase of the property, it was incumbent upon the IRP/RP to protect this asset of the Corporate Debtor and for maximization of the value of Resolution Plan to include this entire property in the assets of the Corporate Debtor or atleast the amount paid by the Corporate Debtor to the extent of Rs. 22 Crores should have been included. Thus, it is evident that the RP has miserably failed to protect the assets of the Corporate Debtor and has apparently taken no steps at all towards maximization of the value of the Corporate Debtor. Similarly, the following has been recorded with respect to '*Bhakti Sankul Hotel, Nashik*'-

c) Bhakti Sankul Hotel, Nashik

The RP informed the CoC that his team members had visited both the properties at Nashik. His team found that the said property has been occupied by a third party and currently been run as a hotel in the name of Bhakti Sankul. He further stated that when he enquired with the Business Manager on the ownership of Bhakti Sankul, the response provided was vague. He has also not received any details from the promoters. The RP informed that based on the GST records, he understands that a gross rent of Rs. 1.6 lakhs was being paid to the Corporate Debtor but he has not received any rent during the CIR period. He further apprised the members that he has filed an e-complaint with the local police for illegal occupation and eviction. The members noted the same.

As mentioned above, the RP has failed to include this property also in the assets of the Corporate debtor, only on the ground that the said property is not in possession of the Corporate Debtor. Though, he has taken note that Corporate debtor was being paid an amount of Rs. 1.6 Lakhs as rent but the RP has not received any such amount during the CIRP Process. Once again it is evident that RP has not taken any steps to ensure that during the CIRP Process the rent continues to flow



towards the assets of the Corporate Debtor for maximization of values so as to safeguard the interest of the Corporate Debtor and get the Resolution Plan commensurating the value of the Corporate Debtor.

viii. Though we are conscious of the fact that plan of the SRA stands approved by the CoC with 98.57% but it is evident that the CoC was not presented with the correct facts and also the value of the assets of the Corporate Debtor as RP, in the present case, has miserably failed to protect the assets of the Corporate Debtor and to take any steps towards maximization of the value of the assets. The mere justification in ignoring the abovesaid properties by the RP on the strength of some legal opinion obtained is legally unsustainable. Thus, the RP by not protecting the assets of the Corporate Debtor has, in fact, violated the basic spirit of IBC. The inaction on the part of the RP in discharge of his onerous responsibilities is against **Section 25(1)** of the Code which deals with “*Duties of Resolution Professional*” and clearly states that “*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.*” Hence, the plan cannot be said to be in compliance with the Insolvency & Bankruptcy Code, 2016 and the CoC was deprived of the opportunity of exercising its Commercial Wisdom on the actual value of the assets of the Corporate Debtor this act of the RP has cause immense loss to not only the resolution of the Corporate Debtor but also to the interest of the Financial Creditors as well. Thus, it is in the interest of the CoC to relook the entire Plan along with the above-stated assets of the Corporate Debtor.

ix. Furthermore, it is pertinent to note that the perusal of 15th CoC Meeting dated 26.12.2023, revealed the following –



RP informed the CoC, that EPFO has submitted a claim of around Rs. 28 lakhs which if liability arises will have to be reduced from the resolution plan amount. The representative of SBI enquired whether the whole amount of EPFO claim will have to be admitted. The RP stated that it was a third-party asset which was to be paid as a liability by the CD but he was in discussion with the EPFO to reduce the claim amount. He further stated that the damages and penal interest may not have priority as the same is not passed to the employees. The RP confirmed that he will confirm the final amount of the EPFO liability soon.

Thus, it is evident from the aforementioned that the RP took upon himself to adjudicate on the claim of EPFO amounting to Rs. 28 Lakhs and the final outlay of the Resolution Plan submitted by Univastu India Limited does not contain the provision of the same, which goes against the mandate of law. The Corporate Debtor is only a trustee of EPFO dues and the claim amount cannot be said to be the asset of the Corporate Debtor and thus, has to be discharged to the party to whom it belongs to by the Corporate Debtor, at the first instance. As per the mandate of law specified under **Section 53** of the Code regarding '**Distribution of assets**', there has to be a specific provision for EPFO Claims. Moreover, the Hon'ble NCLAT, in the case of **Tourism Finance Corporation of India Ltd. vs Rainbow Papers Ltd (2019, 463 NCLAT)**, has clearly held that the Provident fund dues must be paid in full by the successful resolution applicant and the same was upheld by the Hon'ble Supreme Court. Following the same, there have been numerous judgments by the Hon'ble NCLAT categorically stating that the dues pending under Section 7A, 7Q, and 14B under the *Employees' Provident Funds and Miscellaneous Provisions Act, 1952* has to be discharged, in full, in first instance. Unfortunately, in the present Resolution Plan the EPFO Claim has not been dealt with in terms of law and there is no specific allocation in the Resolution Plan for the discharge of this statutory liability. Hence, the present Resolution Plan is not in compliance with IBC and its Regulations.

- x. Moreover, after a thorough examination of the Resolution Plan submitted by the SRA, it has been observed that the said Plan does not



contain a specific provision for “Feasibility & Viability”, which is a mandate under Regulation 38(3)(b). Moreover, in Form-H (Annexed as **EXHIBIT- “AA”**) it has been explicitly stated, under compliance of Section 30(4), that the CoC has deliberated upon the “Feasibility & Viability” of the Plan in the 15th CoC Meeting. However, perusal of the said CoC Meeting shows no such deliberations having been taken place. Therefore, the facts stated in Form-H are by the RP are factually incorrect. Thus, in light of absence of any discussion on “Feasibility & Viability”, we are left with no other option but to believe that CoC never got the opportunity to deliberate upon this aspect of the Resolution Plan submitted by Univastu India Limited which is in clear violation of the **Regulation 38(3)(b) of the IBBI Regulations, 2016**. Therefore, the Plan submitted being against IBC and its regulations. The Plan submitted is in clear violation of **Regulation 38(3)(b) of the IBBI Regulations, 2016**. Furthermore, the Adjudicating Authority is conscious of its limited power of judicial review in relation to a plan approved by the majority of the CoC. The Hon’ble NCLAT has been pleased to hold that the CoC’s commercial wisdom should be respected, as long as it’s in line with the Insolvency and Bankruptcy Code. However, in the present case, the “Feasibility & Viability” has not been deliberate upon by the CoC, which is against the mandate of law.

- xi.** Furthermore, it deserves to be taken note of that after hearing the Plan presented by the Applicant and thoroughly perusing the documents available on record, vide Order dated **14.05.2024** and further vide Order dated **21.08.2024**, the present matter was **Reserved for Orders** by this Hon’ble Tribunal. Additionally, vide Order dated **17.12.2024**, the said matter was listed for **clarification** on certain issues and the following Order was passed, which is as under-

“1. The case was listed for clarification on the following issues:



(i) The upfront cash payment in the Plan, to be paid within 45 days is stated to be Rs. 4.97 Crores. The breakup of the amount is as under:

- a) Rs. 75 lacs CIRP cost.*
- b) Rs. 2 lacs Operational Creditor.*
- c) Rs. 48 lacs Dissenting Financial Creditor.*
- d) Rs. 4 Crores to the Secured Financial Creditor.*

The sum total of the above-stated figures is more than Rs. 4.97 Crores. RP may clarify the same.

2. The Plan also says that RA proposes to pay Rs. 26.50 Crores to Financial Creditors which is as under:

- (i) Rs. 4 Crores upfront.*
- (ii) Rs. 7 Crores after 360 days from transfer.*
- (iii) Rs. 4 Crores by issuance of Secured Convertible Debentures for a tenure of one year.*
- (iv) Rs. 4 Crores by issuance of Secured Convertible Debentures for a period of 5 years.*

The Plan further says that the amount of Secured Convertible Debentures shall be paid after 1 year/5 years with a put option, it should not exceed 4% of the total shareholding of the Company by the end of 5th year. In view of the fact that the shareholding of the Company is not given in the Plan/not clarified thus, it leaves enough room for manipulation. Otherwise also, the sum total of the payment stipulated above does not make it Rs. 26.50 Crores for Financial Creditor-RP is directed to clarify the position.

3. RP is further directed to place on record the Balance-Sheet of the Corporate Debtor so as to show the Secured Loan of Kotak Mahindra Prime Limited. In the CoC proceedings, it has been stated by the RP that there is nothing on record to show



that any loan was advanced by the Kotak Mahindra Prime Limited and also stated that no vehicle is traceable.

*4. The Plan also says that the RA proposes to pay interest at the prevailing SBI base rate if there is any delay by RA in implementation of Plan due to any reason. Incorporation of such a clause is 'Implied Extension' on the part of CoC. CoC may clarify the position. Adjourned to **18.12.2024**"*

xii. It is clear from the preceding paragraphs that the said matter was 'Reserved for Order' on 21.08.2024 and was posted for clarification on 17.12.2024 for the following issues-

- a) Calculation discrepancy with respect to an amount of Rs. 4.97 Crores to be paid by the SRA as upfront cash.
- b) The ambiguity in the proposed payment structure of Rs. 26.50 Crores to Financial Creditors, particularly concerning the uncertain shareholding pattern of the Corporate Debtor in relation to Secured Convertible Debentures.
- c) Balance Sheet of the Corporate Debtor to show the Secured loan advanced by Kotak Mahindra Prime Limited.
- d) Incorporation of the provision of "implied extension" on part of CoC as *"the RA proposes to pay interest at the prevailing SBI base rate if there is any delay by RA in implementation of Plan due to any reason."*

xiii. Pursuant to the above-stated Order, on 18.12.2024, the Ld. Counsel for the RP provided the clarificatory note giving justification on all the issues raised by the Court and the said matter was further posted for **19.12.2024**. On the said date, i.e., 19.12.2024, the Ld. Counsel for the RP was given the option to go before the CoC to get the necessary corrections / approvals in the Plan but the Counsel for the RP insisted that the matter be kept reserved and she be granted the opportunity to respond to all the queries raised. Vide Order dated **19.12.2024**, this Hon'ble Tribunal was pleased to hold as under-



*“The short note provided by the Ld. Counsel for the RP on 18.12.2024 has once again failed to take into consideration, the amount of Rs. 48 lacs to be paid to Dissenting Financial Creditor at the outset. On the request of the Ld. Counsel for the RP to respond all the issues raised vide order dated 17.12.2024. Adjourned to **06.01.2025**.”*

xiv. On 07.01.2025, to the utter shock and surprise of the Court, the Ld. Counsel appearing for the RP prayed for time to place on record the proceedings of the 18th CoC Meeting held on 03.01.2025 supported by the Additional Affidavit of the RP.

xv. It is pertinent to note that during the pendency of the matter for adjudication before the Court, when the case was ‘Reserved for Orders’, the RP had the audacity of calling a CoC Meeting and that too without seeking any prior approval or permission from the Court. This conduct on the part of the RP further cemented the apprehension of the Bench that the attempt has been to plug the loopholes having been left while getting the Plan approved from CoC. It is imperative to take notice of the fact that, vide Order dated **06.01.2025**, the RP was directed to inform the Court about the status of the claim of Mohini Buildwell, which remained under verification only and despite the pendency of this claim, the Plan was got approved from the CoC. Thus, on 06.01.2025, this instant matter was ultimately **de-reserved** by this this Court, by passing the following Order-

*“**IA (Plan) 7 of 2024-** Ld. Counsel on behalf of the RP prays for time to place on record the CoC proceedings held on 03.01.2025 in the form of an affidavit and also the RP to inform about the status of the claim of Mohini Brickwell. In view of the request made, adjourned to **16.01.2025**. Consequently, the order dated 14.05.2024 reserving the Plan is recalled.”*



xvi. However, it deserves to be re-emphasised that the Applicant/RP of the Corporate Debtor conducted the 18th CoC Meeting on 03.01.2025, when the matter was '*Reserved for Order*', without obtaining the requisite permission for the same.

xvii. Therefore, it is pertinent to take note that in the instant case, there has been a departure from the prescribed legal framework. The RP is mandated by law to provide a clear outlay regarding claims received, particularly concerning dissenting creditors. Initially, when queried about the Rs. 48 Lakhs payment to the Dissenting/Abstaining Financial Creditor, the RP was unable to provide adequate clarification, as noted in the Order dated 19.12.2024. Subsequently, the RP convened the 18th CoC Meeting on 03.01.2025 and filed an Additional Affidavit dated 15.01.2025 to address the queries raised by this Tribunal in its Order dated 17.12.2024. It is noteworthy that these actions were taken after the Resolution Plan had already received CoC approval and while the matter was reserved for adjudication before the Tribunal. The sequence of events raise certain procedural concerns. As an officer of this Tribunal, the RP has specific duties and responsibilities under the Code, including ensuring transparency and adherence to established process of law. The convening of a CoC meeting at the belated stage, that too, after the plan approval and during the pendency of the Application for adjudication, without seeking the requisite permission from the Court, is a blatant deviation from the standard procedure. Such conduct impacts the integrity of the resolution process and RP's actions represent not only negligence in performance of his duties but a completely callous and irresponsible conduct.

xviii. Therefore, in light of the aforementioned facts and circumstances, we deem it appropriate to not take into account the Minutes of the 18th CoC Meeting placed on record. Further, we also deem it appropriate to not consider the facts pleaded in the Additional Affidavit dated



15.01.2025 as the same is nothing but a deliberate afterthought and a belated attempt, intended to address the deficiencies highlighted by this Hon'ble Tribunal.

xix. Otherwise also, even if we are to consider the facts and submissions of the Applicant given in the Additional Affidavit dated 15.01.2025, in response to the queries raised by this Court, the same would not hold merit as **Query 1** raised by the Bench was with respect to the amount of Rs. 4.97 Crores as upfront cash payment in the Plan as the said amount does not include the amount payable to the dissenting / abstaining Financial Creditor. As contended by the RP, an amount of Rs. 0.48 Crores payable to Kotak Mahindra Prime Limited, who is the sole dissenting Financial Creditor, is already a part of the upfront payment and thus, the amount of Rs. 4.97 Crores includes the amount of Rs. 0.48 Crores. However, it is a well-established principle that the Adjudicating Authority's examination must be confined to the Resolution Plan as approved by the CoC. A thorough examination of the Resolution Plan submitted by the SRA reveals a fatal defect - the complete absence of a separate and specific provision for payment to Creditors who did not vote in favour of the Resolution Plan. This omission directly contravenes **Regulation 38(1)(b)** of the IBBI Regulations, 2016 which mandatorily requires such specific provision to be made to the Creditors not voting in favour of the Plan. Regulation 38 of the IBBI Regulations, 2016 deals with the **“Mandatory contents of the resolution plan”** and 38(1)(b) states that the amount payable under a resolution plan **“(b) to the financial creditors, who have a right to vote 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.”** The significance of this requirement cannot be overlooked as it serves as a crucial safeguard for dissenting / abstaining creditors and ensures fair treatment within the resolution process. Thus, considering the same, the Resolution Plan proposed by Univastu India



Limited was required to contain a specific provision for the payment of the Creditors who did not vote in favour of the said Plan, and the said creditors are to be paid in priority to the Financial Creditors who voted in favour of the Plan. The absence of such a provision renders the Plan fundamentally defective. The RP's current justification is nothing more than an expedient afterthought, attempting to retroactively cure a substantial defect in the Plan. This conclusion is further substantiated by this Hon'ble Tribunal's Order dated 19.12.2024, wherein it was observed that the short note provided by the Ld. Counsel for the RP on 18.12.2024 has once again failed to take into consideration, the amount of Rs. 48 lacs to be paid to Dissenting Financial Creditor at the outset. This observation clearly demonstrates the persistent disregard to the statutory rights of the dissenting Financial Creditor. The RP's subsequent attempt through the said Additional Affidavit to justify this omission is particularly concerning, as it represents an improper attempt to modify the substance of the Resolution Plan post its approval. Such post-facto modifications not only violate the sanctity of the resolution process but also undermine the fundamental principles of transparency and fairness as envisaged in the Code. This conduct raises serious questions about the validity of the entire resolution process and the protection of stakeholders' interests.

xx. Further, **Query 2** was with respect to an amount of Rs. 26.50 Crores to be paid to the Financial Creditors, wherein the shareholding of the Company was not specified in the plan given that the amount proposed to be paid by issuance of Secured Convertible Debentures for a tenure of 1 year / 5 years was with the condition that it should not exceed 4% of the total shareholding of the Company by end of 5th year. Further, the breakdown of the amount to be given by the SRA does not amount to Rs. 26.50 Crores. Through the Additional Affidavit, the RP has made an attempt to justify the aforementioned query but a thorough



perusal of the Resolution Plan submitted by the SRA reveals that on **internal page 42 of the said Plan**, it has been clearly stated as under-

The RA proposes to pay Rs. 19 Crores to Financial Creditors of which Rs. 4 Crores will be paid upfront, Rs.7 Crores will be paid after 360 days from transfer date, Rs. 4 Crores will be paid by issuance of Secured Convertible debentures having 0% Coupon rate for a maximum tenure of 1 year convertible at the prevailing market rate at the end of the one year. Further Rs. 4 Crores will be paid by issuance of Secured Convertible debentures having 0% Coupon rate for a maximum tenure of 5 year convertible at the prevailing market rate at the end of the fifth year, with a put option at the end of the one year, It should not exceed 4 % of the total shareholding of the company by the end of the fifth year. In addition to that RA proposes to pay 50% of the amount to be received from the Arbitration claim of Rs. 32 Crores, if any.further RA Proposes to pay to kotak 20% of the Fair value of the vehicle if recovered.

Therefore, it stands established that the facts pertaining to the Resolution Plan presented by the RP in the present Application differ from what has been stated in the Resolution Plan submitted by Univastu India Limited. Moreover, in the Additional Affidavit, the RP has stated that the shareholding patter of the company is provided on **internal page 55 of the Plan**, however, a perusal of the said Page reveals that no specific shareholding pattern has been proposed by the SRA with respect to the specific share of different Financial Creditors and the RP is making a belated attempt by trying to incorporate new information so as to cover up the inconsistencies in the present Plan. Due to the aforementioned, there remains a huge scope of manipulation in hand of the SRA, as the statements made in the plan in absence of the specific shareholding patterns or balance sheet of the company cannot be substantiated in its true sense and spirit. However, this Tribunal is conscious of the paramount status of the Commercial Wisdom of the CoC and since this query falls squarely within the domain of the Commercial Wisdom of the CoC, we refrain from commenting on the same but wish to add that despite the specific direction by the Court the RP failed to place on record the balance Sheet of the Corporate Debtor.

xxi. Furthermore, the RP was directed through **Query 3** to substantiate Kotak Mahindra Prime Limited's secured loan through the Corporate Debtor's Balance Sheet, given the CoC's observation



regarding absence of evidence of loan advancement or hypothecated vehicle. The RP's Additional Affidavit revealed KMPL's claim of Rs. 2,28,90,498/- (14.12.2022) for a vehicle loan. Upon finding no trace of this loan in financial statements, the Promoter clarified via email (23.12.2022) that the car loan was settled in FY 2019-20 through sale proceeds, with KMPL's account closed and nil balance as of 28.11.2022. While KMPL provided hypothecation proof through Vahaan Website and loan disbursement evidence, repayment proof remained unavailable. A subsequent email (31.07.2019) from the Promoter revealed that Mr. Prafulla Bhat, then director, had agreed to personally assume the loan liability while retaining the Maserati car, with the transaction properly recorded in books despite pending formal title transfer. Though the RP classified KMPL as a Secured Creditor (16.02.2023) following SBI's non-objection in the 2nd CoC meeting, whereas as it was incumbent upon the RP to follow the due process of law. It is pertinent to note that the RP was explicitly directed, vide Order dated 17.12.2024 of this Hon'ble Tribunal, to place the Balance Sheet of the Corporate Debtor on record. However, the same hasn't been placed on record despite the clear direction. In the present case the RP has failed to even consider the documents but was carried away by the non-objection having been extended by SBI and hence, KMPL was reflected as Secured Financial Creditor without placing on record all the requisite documents. From the RP's own explanation that the debt stood discharged in 2019-20 and the vehicle was transferred to the then Director with the transfer of the loan liability, KMPL could not have been made a secured Financial Creditor.

xxii. Through **Query 4** this Hon'ble Tribunal highlighted that the Plan proposes to pay interest at the prevailing SBI base rate if there is any delay by RA in implementation of Plan due to any reason and such incorporation of a clause is 'Implied Extension' on the part of CoC. With respect to the same, the RP stated that the SRA, in **Exhibit – "X"**



(Addendum to the plan; page no. 369 of the IA) added Clause 11 as follows: *"RA proposes to pay interest at the prevailing SBI base rate if there is any delay by RA in implementation of plan due to any reason and consequent on his part to that delay in payment as agreed in the resolution plan. This does not restrict the secured financial creditors to proceed against the Corporate Debtor and the Resolution Applicant under the Insolvency and Bankruptcy Code, 2016 in case of default in payment."* However, it is pertinent to note that the provision of such a clause in the Resolution Plan is prejudicial to the interest of the Creditors. Further, such a Clause leaves ample room for manipulation on part of the SRA. Otherwise also, the said clause explicitly violates the timelines provided under the plan and such a Clause makes it seem like the SRA has kept enough room for himself to default in terms of payment to the creditors. It deserves to be appreciated that the IBC is a time bound process of resolution of the Corporate Debtor, as envisaged in the objectives of the Code. Thus, keeping in view the time bound nature of IBC and the structured timelines provided for the Resolution Plan, we are of the considered view that such an integral objective of the Code deserves to be adhered to strictly. Any addition of a Clause, as in the present case, is against the basic spirit of the act and may even contribute to non-adherence of the Plan. Therefore, this extension clause is against the regulations and the IBC per se.

xxiii. Through **Query 5**, this Hon'ble Tribunal sought clarification with respect to the Claim of Mohini Buildwell which was left '*under verification*' even at the time of the approval of the said Plan. Although an attempt has been made by the RP to justify that "*while updating the list of creditors on IBBI, the Applicant inadvertently missed to reclassify the claim of Mohini Buildwell Private Limited from "under verification" to "not admitted".*" However, it deserves to be taken note of that on page 317 of the present Application (**Internal Page 29 of the Plan**), it has been clearly stated that the claim of Mohini Buildwell Private Limited of



Rs. 42,19,412/- is classified under “*Amount on hold*”. Therefore, considering the fact that the Adjudicating Authority's examination must be confined to the Resolution Plan as approved by the CoC, we are of the considered opinion that the justification provided by the RP with respect to the claim of Mohini Buildwell is nothing but an afterthought directed at bridging the loopholes present in the Plan submitted by Univastu India Limited. No such explanation of the RP was given before the CoC at the time of approval of the Resolution Plan thus, it can be fairly presumed that the plan was put for approval while still showing the claim of Mohini Buildwell ‘*under verification*’.

xxiv. In the same regard, it has come to our notice that the claim of Assistant Commissioner of State Tax, Mazgaon, Mumbai amounting to Rs. 5,24,79,206/- is classified as “***Amount on hold***”, as given in **internal page 29** of the Resolution Plan submitted by the SRA. It is pertinent to note that as on the date of the approval of the Plan by the CoC, the claim amount was still classified as “***Amount on hold***” and it is the responsibility of the RP to properly classify the claims received. Therefore, in the present case, the RP has miserably failed to adhere to his duties considering that the claim of Mohini Buildwell Private Limited as well as the claim of Assistant Commissioner of State Tax are still being displayed as “***Amount on hold***” and the said claims haven’t been properly decided as on the date of the approval of the plan by the CoC.

xxv. At this stage, it deserves to be emphasized that this Bench is conscious of the ruling of the Apex Court in ***The Committee of Creditors of Essar Steel Limited v. Satish Kumar Gupta [(2019) ibclaw.in 07 SC]***, wherein it was held that the CoC's commercial wisdom is paramount in resolving a Corporate Debtor. However, in the present case, the SRA, despite receiving approval from 98.57% of the CoC, has submitted a Resolution Plan that contains several material deficiencies and violations of statutory requirements which, in fact, cause immense prejudice to the interest of the Financial Creditors as



the RP has miserably failed to collate all the assets of the Corporate Debtor and has not taken any steps towards maximization of the assets of the Corporate Debtor, cannot be overlooked by this Tribunal. While the commercial wisdom of the CoC is paramount, it cannot override the mandatory requirements prescribed under the Code and Regulations.

xxvi. Thus, in view of the above-stated, the Resolution Plan submitted by Univastu India Limited exhibits several material violations of statutory requirements and regulatory provisions, which are as under-

- The Plan lacks mandatory provisions required under **Regulation 38(1)(b)** of IBBI Regulations, 2016, specifically regarding separate payment provisions for non-voting creditors. Thus, the plan is in **violation of Section 30(2)(f)** of the Code that explicitly states that the Plan must conform to other regulations specified by the Board.
- The Plan **violates Regulation 38(3)(b)** of IBBI Regulations, 2016, by failing to include specific provisions for "Feasibility & Viability". Thus, the plan is in **violation of Section 30(2)(f)** of the Code.
- The Plan contains no specific provision for the Claim of EPFO, the same being a statutory due must be paid in priority. Thus, this clearly violates the provision laid down in **Section 30(2)(e) and Section 53 of IBC.**
- the RP has miserably failed to protect, preserve, and collate all the assets of the Corporate Debtor and has not taken any steps towards maximization of the assets of the Corporate Debtor to the detriment of the Financial Creditors, thus violating **Section 18(1)(f)(ii), Section 25(1), and Section 25(2)(a)** of the IBC, 2016.
- The incorporation of an 'implied extension' clause permitting payment delays contravenes **Regulation 38** of IBBI Regulations, 2016 and the very objective of the IBC.



- There is improper bifurcation of creditors belonging to the same class, against the mandate of **Section 53** of the IBC.
- The Plan that the claim of Mohini Buildwell Private Limited and Commissioner of State Tax, Mazgaon, Mumbai were classified as “Amount on hold” when the plan was approved by the CoC.

xxvii. While this Tribunal accords due deference to the commercial wisdom of the Committee of Creditors, it must be emphasized that such wisdom cannot override statutory compliance and mandatory legal requirements. The numerous violations of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, particularly concerning treatment of dissenting creditors and feasibility & viability assessment, non-collating and securing the assets of Corporate Debtor, scope for non-adherence to timeline, unequal treatment to the same class of creditors, pending unpaid dues owed to employees, and pending claims render the Plan legally untenable.

xxviii. The conduct of the Resolution Professional in this matter requires separate consideration by the IBBI on the following issues-

- Keeping 3 of the immovable properties of the Corporate Debtor out of the collated assets for the valuation of the Corporate Debtor for maximization of the assets of the Corporate Debtor for the Resolution Plan without any legally justifiable grounds which has deprived the CoC from appreciating the true value and worth of the assets of the Corporate Debtor while evaluating and approving the Resolution Plan of the SRA on flimsy ground of some legal opinion. Reference deserves to be made to Paragraphs 6-8 of the present Order.
- Further, the RP's actions of not making a specific provision for pending EPFO Claims on the baseless premise of talking to / settling with EPFO Authorities.



- Not making any specific provision for dissenting / abstaining Financial Creditor in the total plan outlay against the statutory provisions.
- convening the 18th CoC meeting on 03.01.2025 while the matter was Reserved for Orders, filing an Additional Affidavit dated 15.01.2025 as a belated attempt to address fundamental deficiencies.
- RP kept claims of Mohini Buildwell Private Limited and Assistant Commissioner of State Tax, Mazgaon, Mumbai on hold and got the plan approved from the CoC.
- Made no efforts to recover, protect, and preserve the assets of the Corporate Debtor.

xxix. In view of these circumstances, this Tribunal concludes that the Resolution Plan submitted by Univastu India Limited does not deserve to be approved. The presence of multiple material violations of mandatory provisions, coupled with procedural irregularities, renders the Plan legally non-compliant. Sanctioning such a Plan would not only contravene the provisions of the Code but would also compromise the fundamental principles of transparency and fairness that form the cornerstone of the insolvency resolution process. **Hence, IA(Plan) No. 07 of 2024 is dismissed.**

Sd/-

MADHU SINHA
Member (Technical)

Sd/-

REETA KOHLI
Member (Judicial)