



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through web based video conferencing platform)

I.A No. 397/2023
in
CP (IB) No.86/BB/2021
Application U/s. 30(6) of the
Insolvency Bankruptcy Code, 2016

IN THE MATTER OF:

RESOLUTION PROFESSIONAL OF
M/S MERUSHIKHAR REALTY (LLP)
3108, First Cross, Mariyappana Palya,
Bangalore - 560021, Karnataka

... Applicant

In the matter of:

M/s Omkush Infrastructure Pvt Ltd

... Operational Creditor

Versus

M/s Merushikhar Realty (LLP)

... Corporate Debtor

Order delivered on:28/05/2024

Coram: Hon'ble Shri. K. Biswal, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the RP : Shri Nataraja Nanjundaiah

O R D E R

Per: Manoj Kumar Dubey, Member (Technical)

1. This Application is filed by the Resolution Professional of M/s Merushikhar Realty (LLP) Shri Nataraja Nanjundaiah (hereinafter referred to as 'the Applicant/Resolution Professional') under section 30 (6) of the Insolvency



and Bankruptcy Code, 2016, (hereinafter referred to as the 'Code' or IBC) read with IBBI (Corporate Insolvency Resolution Process) Regulations, 2016 (hereinafter referred to as the Regulation), for approval of the Resolution Plan as approved by the CoC Members under Section 30, sub section 4 of IBC.

2. Brief facts of the case are given hereunder:

- (a) The Company Petition bearing CP(IB) No. 86/BB/2021 filed by Operational Creditor i.e M/s M/s. Omkhush Infrastructure Pvt Ltd u/s 9 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) against M/s Merushikhar Realty (LLP) was admitted by this Adjudicating Authority, vide order dated 30/05/2022, and the Applicant was appointed as the Interim Resolution Professional and he was directed to take necessary actions in accordance with relevant provisions of the Code and Regulations made thereunder. The Corporate Debtor was registered under MSME on 16/01/2023.
- (b) It is stated that IRP made a public announcement on 10/06/2022 in the prescribed form under Section 15 of the IBC about the commencement of CIRP against the Corporate Debtor in accordance with the provisions of Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Subsequently upon receiving the claims and admission of claims of unsecured financial creditors (unrelated parties), reconstitution of CoC has been made effective from 12th October 2022.
- (c) It is submitted that the 2nd meeting of the CoC was held on 18/07/2022, in which the continuation of the Applicant, IRP as the Resolution Professional of the Corporate Debtor was approved. Further, as per Regulation 27 of the Insolvency and Bankruptcy Board of India (CIRP) Regulation, 2016, the RP has appointed two Registered valuers on 21/07/2022 to determine the fair market value and liquidation value of the Corporate Debtor. It is submitted that as per Regulation 35(1) (c) of the IBBI (CIRP) Regulations, 2016 the fair value and liquidation value of the Corporate debtor is as follows:

| Sl.No. | Name of the Security and Financial Assets Valuer | Fair Value Rs. | Liquidation Value Rs. |
|--------|--------------------------------------------------|----------------|-----------------------|
| | | | |



| | | | |
|---|----------------------|----------|----------|
| 1 | Mr. Harikrishnan P V | 47,519/- | 47,519/- |
| 2 | Mr. Rajesh Jasti | 47,519/- | 47,519/- |

Fair Value is Rs. 47,519.27/-

Liquidation value is Rs. 47,519.27/-

- (d) Further, the Applicant pursuant to section 29 of the Insolvency and Bankruptcy Code, 2016, the Applicant has prepared an Information Memorandum and made it available to the Committee of Creditors on 08/08/2022.
- (e) Moreover, the invitation for Expression of Interest in Form –G (revised) was issued on 01/12/2022, which was published on the IBBI website and the last date for submission of Expression of Interest was 08/12/2022. The Applicant had received Expression of Interest from Prospective Resolution Applicants namely Mythri Housing Pvt. Ltd, Jain Heights & Structures Pvt. Ltd, Maniveera Structure Pvt. Ltd. on 26th December 2022. The provisional list of prospective resolution applicants was issued on 09/12/2022. Further 5 days' time was provided to raise any objections, if any. However, as there was no objection received by the Applicant and the final list of Prospective resolution applicants was issued on 14/12/2022, to Maniveera Structure Pvt. Ltd, Mythri Housing Pvt. Ltd, Jain Heights & Structures Pvt. Ltd as the PRAs. Further it is submitted that Resolution Plan was received only from Maniveera Structure Pvt. Ltd.
- (f) It is submitted that the 12th the CoC meeting was conducted on 02/03/2023 wherein the CoC had advised the Resolution Applicants to reconsider the payment of Debt to the Operational Creditor. The same was duly not agreed by the Prospective Resolution Application. Further in the 13th CoC meeting the CoC discussed some technical shortcomings in the net worth of the Prospective Resolution Applicant. Prospective Resolution Applicant has enhanced the net worth and submitted the revised Resolution Plan. Further, the PRA has enclosed an affidavit stating that it is not barred under Section 29A of the Code.



- (g) It is submitted that the 14th CoC held on 29/03/2023 approved with 100% the Resolution Plan submitted by Maniveera Structure Pvt. Ltd who was one of the Suspended Board of Directors Member, for revival of the Corporate Debtor. Further, I.A No. 397 of 2023 was filed before this Tribunal for the Approval of the Resolution Plan.
- (h) It is submitted that the Resolution Plan approved by the CoC is presented by a Private Limited Company called M/s Maniveera Structure Private Limited, (hereinafter referred to a Resolution Applicant) which is a subsidiary of Jain Heights & Structures Pvt Ltd. which is a pioneer in real estate in Bengaluru.
- (i) Further, as per the Resolution Plan submitted, the total payout towards settlement of CIRP costs and claims of creditors is as below:

| Particulars | Amount Admitted (INR) | Amount being settled (INR) | |
|---------------------------------------------------------------------------|--------------------------|-------------------------------|-------------------------|
| | | In INR | % of Amount Admitted |
| Estimated Unpaid CIRP costs | 20,30,216.00 | 20,30,216.00 | 100.00 |
| Secured Financial Creditors | Nil | Nil | 0.00 |
| Unsecured Financial Creditors – unrelated * | 1,37,82,835.00 | 82,69,701.00 | 60.00 |
| Operational Creditors other than workmen, employees, and government dues. | 2,69,11,780.00 | NIL | 0.00 |



| | | | |
|---------------------------|----------------|------|------|
| Related Party Dues | 8,98,71,904.00 | NIL | 0.00 |
| Other Creditors | NIL | N.A. | N.A. |
| Statutory Dues | NIL | N.A. | N.A. |
| Workmen and Employee Dues | NIL | N.A. | N.A. |
| Payment to Shareholders | NIL | N.A. | N.A. |

- (j) It is submitted that in accordance with Section 30(1) of the Code the successful resolution applicant has submitted an affidavit, dated 12/01/2023 declaring that they are eligible under Section 29A of the Code to submit the Resolution Plan.
- (k) The resolution applicant proposes to pay CIRP Cost in full at actuals and in priority to all other claimants/stakeholders, on actual basis and pay 60% of the admitted claims of Unsecured financial Creditors of the corporate Debtor. Further it is submitted in the clause 17.3 of the Resolution plan that, *“As per the Information Memorandum, the admitted claims of the Operational Creditors other than workmen, employee and government dues are INR 2,69,11,780/- (Rupees Two Crore Sixty-Nine Lakh Eleven Thousand and Seven Hundred Eighty only). While the Resolution Applicant is not aware of the liquidation value of the Corporate Debtor, for the purpose of this Resolution Plan, the underlying assumption of the Resolution Applicant is that the liquidation value due to the operational creditors in accordance with the liquidation waterfall provided under Section 53 of the Code is **NIL**. Accordingly, the requirement of Section 30(2)(b) of the Code to pay at least liquidation value to Operational Creditors does not apply in this case.”*
- (l) It is submitted that the CoC consist only of Unsecured Financial Creditors. Further, the Operational creditors shall not be paid any amount under the Resolution Plan as the Liquidation value in NIL .



- (m) It is submitted that the Resolution Applicant proposes to make a total payment of an amount of Rs 1,02,99,917/- Crore under this Resolution Plan. The proposed payment of a total of INR 1,02,99,917/- Crores shall be deemed to be in full and final settlement of all Claims against the Corporate Debtor (including but not limited to, unpaid CIRP Cost, the Claims of the Financial Creditors, Employees and Workmen, EPFO, Gratuity, Government and Statutory Authorities, and Other Operational Creditors), whether asserted or unasserted, whether admitted or otherwise, crystallized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed, whether or not set out in the Information Memorandum or the books of accounts or financial statements of the Corporate Debtor.
- (n) It is contended that upon payment in the manner as set out in Plan, the Corporate Debtor or the Resolution Applicant shall have no liability to make any payments, other than payments specified in Resolution Plan, to any stakeholder of the Corporate Debtor, including any Creditor, whether they be Financial Creditors, Employees, Workmen, Government and Statutory Authorities, Other Operational Creditors, shareholders or any other stakeholder, and all liabilities of the Corporate Debtor or the Resolution Applicants, towards the Creditors and other stakeholders, shall be deemed to be settled at NIL amount and extinguished.
- (o) It is submitted that the Resolution Plan provides for the management of the affairs of the corporate debtor after approval of the Resolution Plan as follows:
- a. Effective from the NCLT Approval Date, a Monitoring Committee ("MC") comprising of members as detailed below shall be considered as constituted.
 - b. The composition of the Monitoring Committee shall be as under:
 - i. Two representatives nominated by the Resolution Applicants.
 - ii. One representative nominated by Unsecured Financial Creditors.



- c. Post the NCLT Approval Date and till the Resolution Plan is implemented, the affairs of Corporate Debtor shall be managed by Resolution Applicant, subject to the overall guidance and supervision of the Monitoring Committee in accordance with the terms and conditions set out herein.
 - d. The tenure of the Monitoring Committee shall come to an end upon the completion of payments envisaged under Clause 15.1. of the plan.
 - e. The Monitoring Committee shall decide the procedures governing its functioning, including calling and conduct of meetings, manner of decision making etc to ensure successful implementation of Resolution plan.
 - f. The objective of the Monitoring Committee shall only be concerned with the compliance of the provisions of the approved Resolution Plan in relation to the Corporate Debtor.
 - g. The expenses of the Monitoring Committee, if any, shall be borne by the Resolution Applicant.
- (p) It is submitted that in accordance with Section 30(2)(e) of the Code the Resolution Plan does not contravene any of the provisions of the law for the time being in force.
- (q) It is submitted that the Resolution Plan provides Regulation 38 (1) of the insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the amount due to the operational creditors under the Resolution Plan has been given priority in payment over financial creditors. It is submitted by the Applicant that per the terms of the Resolution Plan (Clause 16.2), while the Resolution Applicant is not aware of the liquidation value of the Corporate Debtor, for the purpose of this Resolution Plan, the underlying assumption of the Resolution Applicant is that the liquidation value towards unsecured creditors in accordance with the liquidation waterfall provided under Section 53 of the Code is NIL.
- (r) Further, the plan deals with the interest of the stakeholders, including financial creditors and operational creditors of the corporate debtor in accordance with Regulation 38(1A) of the Regulations. The Resolution



Plan confirms that neither the Resolution Applicant nor any of its related parties have 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 in accordance with Regulation 38 (1B).

- (s) It is submitted that the Resolution Plan provides that the term of the plan shall be T+60 days from date of receipt of order from this Tribunal and further the Resolution Plan provides for the implementation schedule in accordance with Regulation 38(2)(a).
- (t) The Resolution Plan provides for the management and control of the business of the corporate debtor during its term in accordance with Regulation 38(2)(b). Further, the Resolution Plan provides for adequate means for supervising its implementation through appointing of an insolvency professional as a monitoring professional and the composition of the MCIRP in accordance with Regulation 38(2)(c).
- (u) It is submitted that the Resolution Plan, in accordance with Regulation 38(3), demonstrates that it (a) addresses the cause of default; (b) it is feasible and viable; (c) it has provisions for its effective implementation ; (d) it has provisions for approvals required and the timeline for the same; and (e) the resolution applicant has the capability to implement the Resolution Plan.
- (v) It is submitted that the CoC has passed a favourable resolution with 100% of the voting share approving the Resolution Plan in the 14th meeting of the CoC and as such, hence the requirements of Section 30(4) of Insolvency and Bankruptcy Code, 2016 have been complied with.
- (w) Further, all requirements under the Insolvency and Bankruptcy Code, 2016 and The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been duly complied with, and that the Resolution Plan may be approved in accordance with law. Moreover, in accordance with Regulation 36B(4A) of the CIRP Regulations, the Resolution Applicant has furnished the performance security based on Corporate Guarantee of Rs. 50,00,000/- that shall remain in force until 19/07/2023. The CoC shall be entitled



to invoke this guarantee upto 180 days from last date of validity of this Corporate Guarantee by issuance of a written demand to invoke this Guarantee.

3. Further, this Tribunal on 18/10/2023, sought clarifications on the following a) Affidavit regarding avoidance transaction IAs pending before the Bench stating the manner in which it will be dealt with and the realised sums, if any, will be distributed; b) Source of Funds; c) An Affidavit regarding pending litigations, if any, in respect of the Corporate Debtor. d) The copy of the MSME registration certification of CD is after admission of CIRP i.e. on 16.01.2023. Since the Promoters are same in both the Companies, SRA has to explain their eligibility in this regard by way of memo.
4. The RP has filed Memo in compliance with the above Order vide Diary No.227 dated 10/01/2024, addressing the various issues as follows:
 - a. The RA has filed an affidavit with regard to Avoidance Transactions and stated that any financial recoveries pursuant to orders of this Tribunal under anti-avoidance provisions, shall be distributed between the Resolution Applicant and Unsecured Creditors.
 - b. The SRA has filed a Memo dated 10/01/2024, vide Dy No. 227 producing the net worth certificate of the SRA to satisfy the source of funds.
 - c. No pending litigation affidavit dated 02/01/2024.
 - d. Memo regarding the MSME registration after the initiation of, wherein it is stated that since there are no assets in the Corporate Debtor and no income source in the same, no third party will come to file resolution application to own the corporate debtor. However, since the suspended partner is one of the directors of the Resolution Applicants and intends to continue the business in the corporate debtor firm.
5. Further, on 24/01/2024 this Tribunal had noted that the above Compliance memo do not explain the Source of Funds of the SRA, in pursuance of the same, memo was filed Diary No.683 dated 31/01/2024 where the Source of Funds of the SRA was explained that the SRA carried



a positive net worth as on 31/03/2023 and that the SRA is in a position to provide the funds required to honor the Resolution Plan.

6. Heard learned Counsel for the RP and carefully perused the pleadings on record.
7. The Corporate debtor herein, namely, M/s Merushikhar Realty (LLP) is a Limited Liability Partnership incorporated on 22/09/2014 also engaged in the business of real estate. CIRP proceedings were initiated against the Corporate Debtor by this Adjudicating Authority, vide order dated 30/05/2022 passed in CP(IB) No. 86/BB/2021. The present application is filed for approval of the Resolution Plan submitted by Maniveera Structure Pvt. Ltd. The approval has been sought under the provisions of Section 31(1) of the Insolvency and Bankruptcy Code, 2016.
8. The salient points of the approved Resolution Plan by CoC have been captured in the compliance certificate in the prescribed Form No.H as per Regulation 39(4) of IBBI (Insolvency Resolution Process for Corporate Persons) 2016 filed with the application. The details of the Unsecured Financial creditors, the distribution of voting share among them and the position of voting for the Resolution Plan is as under (Para 5 of Form H) :-

| S. No. | Name of Creditor | Voting Share (%) | Voting for Resolution Plan (Voted for / Dissented / Abstained) |
|---------|-----------------------------|------------------|----------------------------------------------------------------|
| Sl. No. | Name of Creditor | Voting Share)%(| Voting for Resolution Plan)Voted for / Dissented / Abstained(|
| 1 | <i>Raju Ostwal HUF</i> | 26.5% | For |
| 2 | <i>Ostwal Traders</i> | 3.61% | For |
| 3 | <i>Avinash M Ostwal HUF</i> | 69.89% | For |

9. The details of stakeholders and the amounts provided for them under the Resolution Plan given in Para No. 7 of Form H. (Rs in Lakhs);

| Sl. No. | Category of Stakeholder* | Sub-Category of Stakeholder | Amount Claimed | Amount Admitted | Amount Provided | Amount Provided to the |
|---------|--------------------------|-----------------------------|----------------|-----------------|-----------------|------------------------|
|---------|--------------------------|-----------------------------|----------------|-----------------|-----------------|------------------------|




| | | | | | under the Plan# | Amount Claimed (%) |
|-----|-------------------------------------|------------------------------------------------------------------------------|--------------|--------------|--------------------|--------------------------|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| 1 | Secured Financial Creditors | (a) Creditors not having a right to vote under sub-section (2) of section 21 | | | | |
| | | (b) Other than (a) above: | | | | |
| | | (i) who did not vote in favour of the resolution Plan | | | | |
| | | (ii) who voted in favour of the resolution plan | | | | |
| | | Total[(a) + (b)] | | | | |
| 2 | Unsecured Financial Creditors | (a) Creditors not having a right to vote under sub-section (2) of section 21 | 1,37,91,295 | 1,37,82,835 | 82,69,701 | 60% |
| | | (b) Other than (a) above: | 8,98,71,904 | 8,98,71,904 | 0 | 0% |
| | | (related party to the Corporate Debtor) | | | | |
| | | (i) who did not vote in favour of the resolution Plan | | | | |
| | | (ii) who voted in favour of the resolution plan | | | | |
| | | Total[(a) + (b)] | 10,36,63,199 | 10,36,54,739 | 82,69,701 | 7.97% |
| 3 | Operational Creditors | (a) Related Party of Corporate Debtor | | | | |
| | | (b) Other than (a) above: | 2,69,18,356 | 2,69,11,780 | 0 | 0% |
| | | (i) Government (ii) Workmen | | | | |



| | | | | | | |
|-------------|----------------------|-------------------------------------------------------------------------|--------------|--------------|-------------|-------|
| | | (iii)Employees | | | | |
| | | Total[(a) + (b)] | 2,69,18,356 | 2,69,11,780 | 0 | 0% |
| 4 | Other debts and dues | CIRP Costs estimated until the submission of resolution of plan to NCLT | 20,30,216 | 20,30,216 | 20,30,216 | 100% |
| Grand Total | | | 13,26,11,771 | 13,25,96,735 | 1,02,99,917 | 7.76% |

10.The compliance of the Resolution Plan has been given in Para No. 9 of Form-H are as follows:-

| Section of the Code / Regulation No. | Requirement with respect to Resolution Plan | Clause of Resolution Plan | Compliance (Yes/No) |
|--------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| 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? | Part A, clause 1 to 5, page 6 to 8 | 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? | Section 29A Affidavit submitted by RA | Yes |
| Section 30 (1) | Whether the Resolution Applicant has submitted an affidavit stating that it is eligible? | Section 29A Affidavit submitted by RA | 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?] | Clause 15.1 , page 13 Clause 15.1 , page 13 Clause 15.1 , page 13 Clauses 47.9.2, page 38 Part E, clause 28 to 34, Page 30 to 33. | Yes No No Funds will be infused as needed Yes No |
| Section 30 (4) | Whether the Resolution Plan (a) Is feasible and viable, according to the CoC (b) Has been approved by CoC with 66% voting share? | Minutes attached | Yes Yes (100% voting share) |



| | | | |
|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| Section 31 (1) | Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC? | Minutes attached | 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?] | Section 17.4, page 16 | Yes |
| Regulation 38 (1A) | Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders? | Part D | Yes |
| Regulation 38 (1B) | (i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?] | | No NA |
| Regulation 38(2) | Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation | Clause 25, page 24 and Enclosure 3 Part E, clause 28, 29 page 30 and 31 Part E, clause 28, 29 page 30 and 31 | Yes Yes Yes |
| 38(3) | Whether the resolution plan demonstrates that – (a) it addresses the cause of default (b) it is feasible and viable (c) it has provisions for its effective implementation (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan? | Part E, clause 28, 29 page 30 and 31 Part A, clause 1 to 5, page 6 to 8 | Yes Yes Yes Yes Yes |
| 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.] | Annexure 8 | Yes |

11. It is submitted by the Resolution Professional that the COC in its 14th meeting held on 28/03/2023 has approved the Resolution Plan with 100% voting share and the conditions provided for Section 30 (4) of the Code are satisfied.



12. Before we proceed to the correctness of the Resolution Plan, it would be useful to have a look at the statutory provisions of the IBC and regulations framed thereunder with reference to Corporate Insolvency process. Now, we proceed to reproduce the provisions of Sec 31(1) and (2) of the IBC, 2016:-

31. Approval of Resolution Plan. –

(1) If the Adjudicating Authority is satisfied that the Resolution Plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the Resolution Plan which shall be binding on the Corporate Debtor and its employees, members, creditors, 1[including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the Resolution Plan: 2[PROVIDED that the Adjudicating Authority shall, before passing an order for approval of Resolution Plan under this sub-section, satisfy that the Resolution Plan has provisions for its effective implementation.]

(2) Where the Adjudicating Authority is satisfied that the Resolution Plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the Resolution Plan.”

13. Further, **Section 30(2) of the Code** provides as follows:-

“(2) The resolution professional shall examine each Resolution Plan received by him to confirm that each Resolution Plan –

- (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the 3 [payment] of other debts of the corporate debtor;*
- (b) 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-*
 - 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,*



whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the Resolution Plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

- (i) where a Resolution Plan has not been approved or rejected by the Adjudicating Authority;*
- (ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*
- (iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a Resolution Plan;*
- (c) provides for the management of the affairs of the Corporate debtor after approval of the Resolution Plan;*
- (d) The implementation and supervision of the Resolution Plan;*
- (e) does not contravene any of the provisions of the law for the time being in force*
- (f) Conforms to such other requirements as may be specified by the Board.”*

14.The compliance of Section 30(2) of the Code & Regulation 38 has been given in Para No.09 of Form-H (supra).

15.The Resolution Applicant Maniveera Structures Private Limited has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit Resolution Plan. The affidavits are attached as **Annexure 3 & 4** to Application. It is further submitted that the



Resolution Plan has been approved by the COC in accordance with the provisions of the Code and the CIRP Regulations made thereunder.

16. This Tribunal on 24/01/2024 had directed the Applicant herein to explain the Sources of funds pertaining to the Plan value; i.e the amount proposed in the Plan for various stakeholders/creditors. The Applicant filed a Memo of compliance vide Diary No 683 dated 31/01/2024, wherein it is stated that Resolution Applicant has a positive Net Worth of Rs 1,26,97,157/- as on 31st March 2023, and the Net Worth Certificate is submitted by the Applicant vide Diary No 227 dated 10/01/2024. Further, it is stated that the Financials of the SRA for F.Y 2022/23 reveal that there is a positive cash flow from the operating activities amounting to Rs 23,56,31,850/- and Inventory of Rs 10,44,187,710/-, which comprises the project work in progress. It is noticed from the Resolution Plan/Form H that the Plan provides a total amount payable to stakeholders of Rs. 1,02,99,917/- inclusive of CIRP cost of Rs 20,30,216/-. Thus it is explained that considering the net worth and financials of the SRA, the source of funds are explained.

17. It is further observed that in accordance with regulation 36B(4A), the Resolution Applicant has furnished the performance security of Rs. 50,00,000/- that shall remain in force until 19/07/2023. The CoC shall be entitled to invoke this guarantee upto 180 days from last date of validity of this Corporate Guarantee by issuance of a written demand to invoke this Guarantee. It is noted from the plan that the Corporate Debtor shall continue as a going concern.

18. Next we proceed to examine whether the Resolution Plan satisfies the requirements of the Code as specified under Section 31 r.w.s 30(2) of the IBC, 2016. In this connection, it is pertinent to point out that the scope of the jurisdiction of the Adjudicating Authority with reference to the granting of approval or rejection of the Resolution Plan under Section 31 of IBC has been laid down in various judgments of the Hon'ble Apex Court as discussed herein:

- ii) In the landmark judgement of Hon'ble Apex Court, in ***K. Sashidhar v Indian Overseas Bank and Ors. (2019) 12 SCC 150***, order dated 05/02/2019, it is held that,



“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.”

- iii) Moreover, the Hon’ble Apex Court in the recent judgment dated 12.02.2024 in the case of **Greater Noida Industrial Development Authority v Prabhjit Singh Soni and Anr, (2024) ibclaw.in 53 SC**, has observed as under:

“28. Once the plan is approved by the COC, the RP has to submit it for approval of the Adjudicating Authority. As per sub-section (1) of Section 31 of the IBC, if the Adjudicating Authority is satisfied that the resolution plan as approved by the COC under sub-section (4) of Section 30 meets the requirements of sub-section (2) of Section 30, it has to approve the resolution plan. On its approval, the plan becomes binding on the CD and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan. **But where the Adjudicating Authority is satisfied that the resolution**



plan does not conform to the requirements referred to in sub-section (1), it may, in exercise of power under sub-section (2) of Section 31, by an order, reject the resolution plan.”

19. Accordingly, it becomes essential for the Adjudicating Authority to examine whether the requirements of the clauses of Section 30(2) (a) to (f) have been satisfied in the Resolution Plan, failing which the provisions of Section 31(2) will be attracted.

20. While under Section 30(2)(e) of the IBC it has to be confirmed that the Resolution Plan does not contravene any of the provisions of the law for the time being in force, Under Section 30(2)(f) it has to be ascertained that the Resolution Plan conforms to such requirement as may be specified by the Board i.e the Insolvency and Bankruptcy Board of India (IBBI); which has been established under Section 188 of the IBC.


21. The IBBI has notified various Regulations for administering and implementing the Code and accordingly the Adjudicating Authority has to examine whether the Regulations notified by the IBBI has been properly and adequately satisfied the Resolution Plan, so as to ascertain that the requirement as specified in Section 30(2)(f) of the IBC has been complied with.

22. Under these parameters, the satisfaction of the Regulations made under in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 has to be evaluated for the Resolution Plan submitted in this Application. Under Regulation 36A(8) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 it has been specified as under:

36A. Invitation for expression of interest

.....

(8) The resolution professional shall conduct due diligence based on the material on record in order to satisfy that the



prospective resolution applicant complies with- (a) the provisions of clause (h) of sub-section (2) of section 25; (b) the applicable provisions of section 29A, and (c) other requirements, as specified in the invitation for expression of interest.

23. The Clause (a) of the Regulation 36 A(8) of the Regulations states regarding the compliance by the Prospective Resolution Applicant (PRA) of the provisions of Section 25(2)(h) of the IBC. Therefore, the RP has to ascertain that the PRA complies with the conditions laid down by the CoC for submission of the Resolution Plan, having regard to the complexity and scale of operations of the business of the Corporate Debtor. This was essential that such a due diligence was carried out by the RP to look into the business background, experience and capability of the PRA as per these Regulations which has not been done. Secondly, under Clause (b) of Regulation 36A(8), the due diligence report of the RP should have covered the applicability of the provisions of Section 29A of the IBC. This becomes all the more relevant since the PRA is a related party to the Corporate Debtor and the Resolution Plan was submitted by only one PRA. Thus it has been submitted under the exceptions to Section 29A for MSME in accordance with Section 240A of the IBC. The non-conducting of the due diligence by the Resolution Professional himself or by engaging an independent professional, and non-submission of the report thereof reflects a violation of Regulation 36A(8) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Hence, the Resolution Professional has neither conducted due diligence nor has filed a diligence report, which are mandatory requirements as specified under Regulation 36 A(8).

24. Next, the contents of Regulation 38 have to be seen, which is reproduced as under:

38. Mandatory contents of the Resolution Plan.

.....

.....

***(3). A resolution plan shall demonstrate that –
(a) it addresses the cause of default;***



- (b) it is feasible and viable;***
- (c) it has provisions for its effective implementation;***
- (d) it has provisions for approvals required and the timeline for the same; and***
- (e) the resolution applicant has the capability to implement the resolution plan.***

25. When the relevant column of the compliance certificate in Form-H (at page 257 of CP) is examined, it is noticed that against Regulation 38(3)(a), i.e, 'whether Resolution Plan addresses the cause of default,' it is mentioned that the compliance is made in Part-E. However, when we look at Part-E of the Resolution Plan at page 84 of the application, it is seen that it relates to 'Implementation of the Resolution Plan'. Therefore, Part-E does not deal with addressing the cause of default as envisaged in Regulation 38(3)(a) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

26. However, on further perusal of the Plan it is seen that at para 26 of the Plan at page 79 of the Application, the following is mentioned:

"26.MANNER OF ADDRESSING THE CAUSE OF DEFAULT

The Resolution Applicant submits that with the proposed settlement offered to the respective stakeholders and the acquisition of control by the Resolution Applicant, the cause of default has been adequately addressed."

27. The bare reading of this para makes it clear that the Resolution Plan does not address the reasons 'cause of default' as envisaged in Regulation 38(3)(a) of the IBBI. Under the scope of this Regulation the causes of default by the Corporate Debtor in respect of the Debt owed by it, etc. had to be dealt with specifically which is not reflected from the above.

28. Next, coming to the Regulation 38(3)(b), the compliance affidavit in Form-H at page 257 of Application shows that against 'whether the Resolution Plan demonstrate that it is feasible and viable,' in the compliance it is mentioned as 'Clause 28'. When we look into at Clause 28 which is at page 84 of the Application, it is seen that it is related to 'Management and control after approval date'. Thus, it does not meet the requirement of



Regulation 38(3)(b) regarding the feasibility and viability of the Plan and the information given in the Form-H is incorrect in this regard also. However, when the Resolution Plan is further looked into, at page 91 in Clause 47.8 it is stated as under:

“47.8. Reasonability, feasibility, and viability of resolution plan

47.8.1 As already provided in this resolution plan, the profile of the Resolution Applicant demonstrates the feasibility and viability of this resolution plan.”

This again does not address the requirement of the Regulation 38(3)(b) of the IBBI Regulations. Moreover, as already discussed above, the ‘due diligence report’ in respect of the RA has not been submitted as provided under Regulation 36 A(8).

29.The above two instances reflect that there is a defect in Form-H, which is the compliance certificate mandated under Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Thus it cannot be inferred that the **Regulation 39(4)** has been adequately complied with.

30.Next is the compliance of Regulation 36B(4A) read with Regulation 39(4) according to which performance security has to be submitted along with the Resolution Plan. In compliance to the same, the Resolution Applicant has furnished the performance security based on Corporate Guarantee of Rs. 50,00,000/- which has been stated to be remain in force until 19/07/2023. It is further specified that the CoC shall be entitled to invoke this guarantee upto 180 days from last date of validity of this Corporate Guarantee by issuance of a written demand to invoke this Guarantee. Therefore, the Performance security furnished by the Successful Resolution Applicant has expired by efflux of time specified therein. Therefore, ‘Performance Guarantee’ from the Successful Resolution Applicant having expired, as on date, the non-compliance of the mandatory Regulation 36B (4A) of CIRP Regulations, 2016 is apparent.



31. In view of the discussions made above, the Resolution Plan did not meet the requirements of Section 30 (2) (f) of IBC, 2016 r/w the IBBI Regulations for the following reasons: a) non-fulfilment of requirements regarding explaining the 'cause of default' and 'feasibility and viability of the Plan' under **Regulation 38(3)(a) and 38(3)(b)** and b) the absence of due diligence report under **Regulation 36A(8)**.

32. Accordingly, we are of the considered opinion that the Resolution Plan violates various regulations given under the IBBI (Insolvency Resolution Process for Corporate Persons) 2016 as discussed above. Consequently, in accordance with the proviso of Section 31 (1) of the IBC, 2016 the proposed Resolution Plan cannot be approved as the requirement of Section 30 (2) (f) r/w Regulation 36A(8) and 38 (3) (a), & (b) have not been complied with. Therefore, the proposed Resolution Plan is hereby rejected under Section 31 (2) of the Code. **I.A No. 397/2023 is therefore dismissed.**

Sd/-

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

Sd/-

(K. BISWAL)
MEMBER (JUDICIAL)