

Annexure – 3

Name of the corporate debtor: Nirmal Lifestyle Realty Private Limited ; Date of commencement of CIRP: 6 December 2021; List of creditors as on: 29 August 2022

List of operational creditors (Workmen)

(Amount in ₹)

Sl. No.	Name of authorised representative, if any	Number of work man	Details of claim received		Details of claim admitted				Amount of contingent claim	Amount of any mutual dues, that may be set-off	Amount of claim under verification	Amount of claim not admitted	Remarks, if any
			Date of receipt	Amount claimed	Amount of claim Admitted	Nature of claim	Whether related party?	% voting share in CoC, if applicable					
1	Sandesh Raut	575	03.01.2022	98,49,40,577	62,44,43,284	Unsecured	No	0	0	0	0	36,04,97,293	Refer Note 1
2	Naresh Kadam	101	26.08.2022	21,01,54,205	16,65,71,083	Unsecured	No	0	0	0	0	4,35,83,122	Refer Note 2

Note 1:
Out of the total amount of INR 98,49,40,577.00 submitted, claim of INR 62,44,43,284.00 has been admitted. The balance amount of claim of INR 36,04,97,293.00 has not been admitted on the following grounds:

1. At the outset, the balance claim amounting to INR 36,04,97,293.00 comprises of the following 3 heads:
 - a) Gratuity upto 2019
 - b) Interest @ 10% p.a. on Gratuity from the date of retirement upto December 2021
 - c) Interest on unpaid salary/wages @ 10% p.a. upto December 2021
2. The balance claim does not form part of the books of accounts of the Corporate Debtor and none of the amounts forming part of the balance claim are reflecting as being due/payable by the Corporate Debtor.
3. As per the books of accounts of the Corporate Debtor, there is no separate and independent Gratuity Fund created for payment of gratuity to the workmen. In this respect, we draw reference to the decision of the Hon'ble National Company Law Appellate Tribunal in Savan Godiwala vs. Apalla Siva Kumar [2020 SCC OnLine NCLAT 191] wherein the Hon'ble NCLAT has ruled that no provision can be made for payment of Gratuity to workers in the absence of a previous separate Gratuity Fund being available. This being so, in the event of liquidation of the Corporate Debtor, the Workmen would in any event not be entitled to their claim towards Gratuity owing to the absence of a separate Gratuity Fund.
4. The interest on wages is claimed @ 10% p.a. from the date of order i.e. 21.11.2019 upto December 2021. However, this interest amount is neither supported with any document nor the court order grants the same. In absence of any contractual right to interest or order from the any Court, the RP shall not be in position to admit such claim.
5. Pursuant to Section 18 of the Code, the Resolution Professional's duties are inter alia restricted to "receive and collate all the claims submitted by creditors to him". In the present case, the Resolution Professional cannot, in law, adjudicate upon the balance claim of workmen merely on the basis of charts or excel sheets and in absence of cogent documentary proof in support of the balance claim.

In view of the above reasons and explanations, acceptance of the balance claim of INR 36,04,97,293.00 in the absence of documents/material/court orders etc. in support of the workmen's claim towards gratuity, interest on gratuity and interest on unpaid salary/wages would amount to adjudication of the balance claim, which is impermissible in law and hence the balance claim INR 36,04,97,293.00 cannot be admitted.

Note 2:

1. Out of the total claim of INR 21,01,54,205 submitted, claim of INR 16,46,63,461.00 has been admitted. The balance amount of claim of INR 4,54,90,744.00 towards gratuity and interest on gratuity is not admissible on the following grounds:
 - a. The orders provided with respect to gratuity claimed are passed during the Corporate Insolvency Resolution Process of the Corporate Debtor. The Corporate Insolvency Resolution Process has been commenced vide order dated 6 December 2021.
 - b. Further, pursuant to Section 14 (1) (a) of the Insolvency and Bankruptcy Code, 2016, the following shall be prohibited during the Corporate Insolvency Resolution Process. Section 14 (1) (a) of the Code is reproduced hereinbelow:

14. Moratorium:

- (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:*
 - (a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
2. The Authorized Representative i.e. Naresh Kadam of 101 workmen provided correction order of 12 workmen/employees vide email dated 29.08.2022, pursuant to which amount admitted by the Resolution Professional stands revised and hence there is a revision in the amount admitted of workmen/employees hereinabove.