

MINUTES OF THE PROCEEDINGS OF THE FIFTH MEETING OF THE COMMITTEE OF CREDITORS OF KANDIVLI BALAJI INVESTMENT PVT LTD (UNDER CORPORATE INSOLVENCY RESOLUTION PROCESS) HELD ON APRIL 14th, 2023 (FRIDAY). THE FIFTH COC MEETING WAS HELD VIA VIDEO CONFERENCE ONLY WITH NO PHYSICAL VENUE WHICH COMMENCED AT 1530 HOURS AND CONCLUDED AT 1615 HOURS

PRESENT:

A. CHAIRPERSON

S.NO.	NAME	DESIGNATION	MODE OF PRESENCE
1.	Mr. Subhash Kumar Kundra	Authorized Director, Primus Insolvency Resolution and Valuation Pvt Ltd (RP)	Through video conferencing

B. TEAM OF INTERIM RESOLUTION PROFESSIONAL

S.NO.	NAME	DESIGNATION	MODE OF PRESENCE
1.	Mrs. Neha Kaur	Director, Primus Insolvency Resolution and Valuation Pvt Ltd (IPE)	Through video conferencing

C. COMMITTEE OF FINANCIAL CREDITORS

S.NO	NAME OF FINANCIAL CREDITOR(S)	REPRESENTED BY	DESIGNATION	MODE OF PRESENCE
1.	DMI Finance Pvt. Ltd.	Mr. Abhayveer Sharma	Senior Manager - Legal	Through video conferencing
2.	The City Cooperative Bank Ltd	Absent		

D. PRESENT WITH THE PERMISSION OF THE RESOLUTION PROFESSIONAL

S.NO.	NAME	DESIGNATION	MODE OF PRESENCE
1.	Mr. Dhruvad Vaghani	Legal Counsel to the Resolution Professional	Through video conferencing

A. MATTERS DISCUSSED IN THE MEETING:

1. The Authorized Director to take the chair.

In terms of Regulation 24(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the Authorized Director of the Resolution Professional shall act as the Chairperson of the meeting of the Committee of Creditors.

Therefore, Mr. Subhash Kumar Kundra, took the Chair.

2. To conduct roll call of all the participants/authorized representatives attending through video conferencing or other audio/video means.

As per Regulation 24 (2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the Authorized Director shall take roll call of all members attending the meeting via video conferencing or through any other audio and visual means, where every participant attending through audio and visual means shall, for the record, state – (a) his name; (b) whether he is attending in the capacity of a member of the CoC or any other participant; (c) whether he is representing a member or group of members; (d) the location from where he is participating; (e) that he has received the agenda and all the relevant material for the Meeting; and (f) that no one other than him is attending or has access to the proceedings of the Meeting at the location of that person.

Accordingly, roll call was taken by the Chairperson and the leave of absence was granted to who couldn't attend the meeting.

3. To ascertain the quorum of the Meeting in accordance with the provisions of Regulation 22 of the Regulations.

As per Regulation 22(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, the quorum for the meeting of members of the committee shall be at least 33% of the voting rights present either in person or by video conferencing or other audio and visual means. The Chairperson took the note of the quorum and informed that the requisite quorum is present, hence the meeting was commenced.

4. To approve the Minutes of the 4th Meeting of the Committee of Creditors chaired by IRP held on February 12th, 2023

The minutes of the 4th Meeting of CoC chaired by the Interim Resolution Professional (“IRP”) held on

February 12th, 2023 were duly circulated by the IRP in pursuance of Regulation 25(5)(a) and 26(5) of the CIRP Regulations to all the members of CoC.

The Chairperson invited comments on the minutes from the CoC members. There were no comments from anyone, hence the minutes were taken as read and approved.

5. To present before CoC the updated List of Claims of Financial Creditors and their respective Voting Share

The Chairperson presented the updated list of claims of Financial Creditors along with their voting shares as follows:

Sr. No.	Name of Claimant		Claim Amount (INR)	Admitted Claim (INR)	% Share of CoC
1	DMI Finance Pvt. Ltd.		1,12,52,87,867	1,12,52,87,867	89
2	The City Co-operative Bank Limited - Corporate Debtor as Corporate Guarantor of loans to:				
	a) Himanshu N Shah	4,60,34,440			
	b) Narendra D Shah	4,31,81,065			
	c) Prashanti Land Developers Pvt. Ltd.	5,40,21,404	14,32,36,909	14,32,36,909	11
	Total	14,32,36,909	1,26,85,24,776	1,26,85,24,776	100

The CoC members took note of the same.

6. To update the CoC members on the timelines of the CIRP Process and update on the matter

The Chairperson presented the timelines of the Process by way of an excel sheet. He further added that the 180th day of the CIRP process is on May 9th, 2023.

He gave an overview of the steps taken by Primus IPE since the last CoC Meeting. The Chairperson stated that it is now time to take a call on whether to request for extension of the CIRP period. The representatives of DMI Finance said that they will discuss the same with their Internal Management and accordingly we can move forward. He said that he will get back to them by next week.

The Chairperson asked the Legal Counsel to the RP that while asking for the extension of the CIRP period, whether any reasoning is to be given to the Hon'ble NCLT. The Legal Counsel to the RP confirmed that the Hon'ble NCLT will ask for a reason as to why we need time to extend the CIRP period.

The Chairperson then asked the Legal Counsel to the RP to brief the CoC members on the Legal Update in the matter.

The Legal Counsel to the RP stated that they have filed 3 application with the Hon'ble NCLT, one being under section 66 of IBC, the second under section 19(2) of IBC and the third for the reconstitution of the CoC, all of which are coming up for hearing on April 20th, 2023. He added that on the last date of hearing, in the case of the application under section 19(2), the Hon'ble NCLT had asked them to submit by way of an additional affidavit a list of all the required documents apart from the documents taken at the time of taking charge of the office, which the Suspended Directors of the CD are not cooperating to provide and the same are crucial for the purpose of running the CIRP of the CD. He said that they have already prepared a draft for the same and are in the process of filing it. He said that the same will be filed in a day or two. On that basis the Hon'ble NCLT, we will request the Hon'ble NCLT to pass appropriate orders of non-cooperation against the Suspended Directors if they do not appear on the date of hearing in order to ensure that the CIRP of the CD is not affected. He added that the said documents are apart from the documents obtained by due diligence at the time of taking possession of the CD at the Insolvency Commencement date. The Chairperson added that till date we haven't been given the possession of assets and we have been constantly visiting the Golden Trade Centre Co-operative Housing Society. Also, we have been following with the Suspended Board of Directors who always commits that he will provide the necessary data and call back which he never does.

The legal Counsel to RP added that with regard to the complaint filed by DMI Finance against the Suspended Directors and Promoter, he said that they had personally met the EOW officer last month who informed that they had visited Mumbai to meet with the Suspended Directors and Promoter and said that they will be called upon on April 4th, 2023 to give their statement, on the basis of which action will be taken on the same. He asked the representatives of DMI Finance whether they received any response in the matter after April 4th, 2023. The representatives of DMI Finance said that they have not received any further response after April 4th, 2023 from the EOW. He said that after the Legal Counsel's meeting with the IO, they and their lawyer had also gone to meet them. They were informed that the Suspended Directors and Promoters were supposed to come on April 4th, 2023 but they sought an extension to a later date, which the IO had permitted. But even on that date, they failed to appear.

The Legal Counsel to the RP said that they can also use their office and speak to the EOW officer and IO for an update on the matter and on that basis the CoC member could be apprised.

With regard to the police complaint filed by the RP against the Suspended Directors and the employees, the Legal Counsel to the RP said that they had visited the Police Station twice and met the Senior Inspector there. He said that on the first visit, they had accompanied the senior inspector and showed him the site after which he said that he will take down all the details and will visit the site again to the shops at the site. He added that they have spoken to the senior inspector last week and were informed that he had already visited the site and has instructed the tenants not to deposit the rent for this month to the employee of the CD. He asked them to deposit the rent to the details provided to them by the RP. Failure to do so will result in an FIR being registered and action will be taken against them.

The representatives of DMI Finance said that the RP can coordinate with the senior inspector and the tenants may be asked to share the details of the persons who have been collecting the rent from them on behalf of the ex-promoters. The Legal Counsel to the RP stated that during their

first visit to the shop site, they had spoken to one of the tenants who informed them that he has been depositing the rent to a person by the name of Jigna Shah via Google Pay, under the assumption that she is an employee of the CD. He added that the tenant also showed them the Google Pay receipts of the rent payments as well. He said that in the complaint filed by the Legal Counsel to the RP, Jigna Shah was one of the accused persons and that she has been illegally collecting the rents on behalf of the CD despite the fact that the management of the CD is under the control of the RP. He further said that both him and the Police inspector also tried reaching her over the phone several times but without success. He said that one Mr. Vishal Trivedi and Mr. Dhruv Parmar have been visiting the site regularly and asking the tenants to pay the rent to Ms. Jigna Shah only saying that they are the employees of the CD.

The Legal Counsel to the RP stated that in their complaint they had brought up this matter wherein one of the current tenants had offered to purchase the shop and showed an image indicating an advance payment of Rs. 4 lakhs along with a certain amount of cash to Mr. Vishal Trivedi. During their visit the Legal team of the RP were told by the said tenant that he has paid this amount and is a genuine bonafide purchaser and wants to purchase this property. The representatives of DMI Finance asked what was the agreed purchase price and whether this price was as per the Fair Market Value. The Legal Counsel to the RP said that this information is not known since they have not been given full information about the same. However, they are of the view that the purchase price was around Rs. 7-8 lakhs. He said that the said tenant was informed that since the agreement has expired, a fresh agreement is to be entered into and going forward, whatever rent will be paid by him, needs to be paid into the company's account instead of Ms. Jigna Shah's account through Google Pay. He stated that as per the agreement the collective rent for all the shops is Rs. 1 lakh.

The Legal Counsel to the RP reiterated that the senior inspector had visited the site and has instructed the tenants to deposit the rent to the CD's account and failure to do so will result in an FIR being registered and action being taken against them.

The representatives of DMI Finance asked if we go for early Liquidation, whether the applications already filed would continue or not. The Legal Counsel to the RP confirmed that both the applications filed under sections 66 and 19(2) would continue as it has been clearly stated in both that they apply to both CIRP and Liquidation. He added that the shops will also form part of the Liquidation estate. He said that since City Cooperative Bank is a secured creditor, under section 52, they will have an option to either stand in or stand out of the Liquidation estate. If they decide to stand out, it means that they will try to sell the assets by themselves and for the balance amount they will become an unsecured creditor.

The representatives of DMI Finance asked if they wish to stand out, how the CIRP cost will be recovered and if City Cooperative bank decided to stand out, will the same proceeds of their assets will be used to pay the CIRP cost on priority. The Legal Counsel to the RP stated that under section 52, it is clearly stated that to the extent of what the contribution of the CIRP cost is, all the creditors have to pay and that the CIRP cost will be given priority even if the assets are sold outside the Liquidation estate by City Cooperative Bank.

The Legal Counsel to the RP read out an extract from Section 52 of the IBC, 2016 as follows:

“52. (1) A secured creditor in the liquidation proceedings may—

- a) relinquish its security interest to the liquidation estate and receive proceeds from the sale of assets by the liquidator in the manner specified in section 53; or*
- b) realise its security interest in the manner specified in this section.*

(2) Where the secured creditor realises security interest under clause (b) of sub-section (1), he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.

(8) The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.”

The Legal Counsel to the RP added that under section 52, the CoC composition is no longer considered and the payment of CIRP cost will not be on the basis of the composition of CoC but on the basis of assets being held by the creditors. The representatives of DMI Finance asked what would happen if the City Cooperative Bank is not able to dispose these assets. The Legal Counsel to the RP stated in that case, they can come back to the Liquidator by approaching the Hon’ble NCLT and say that they want to be part of the Liquidation estate and the Liquidator can try to sell the assets.

He added that that within the first 30 days of commencement of Liquidation, the creditor has to intimate the Liquidator whether they want to be in or out of the Liquidation estate provided that, where a secured creditor does not intimate its decision within thirty days from the liquidation commencement date, the assets covered under the security interest shall be presumed to be part of the liquidation estate.

The Legal Counsel to the RP further stated that as per Regulation 21A(2)(b) of liquidation regulations, where a secured creditor proceeds to realize its security interest, it shall pay the excess of the realized value of the asset, which is subject to security interest, over the amount of his claims admitted, to the liquidator within one hundred and eighty days from the liquidation commencement date. In the event where a secured creditor fails to comply with Regulation 21A(2) of Liquidation Regulation, the asset, which is subject to security interest, shall become part of the liquidation estate.

Lastly, the Legal Counsel to the RP explained to the members of the COC that the application filed under section 66 consists of 2 aspects. The first aspect of the application deals with certain assets that have been sold illegally by the Promoters of the CD. In such an event, as per Section 66 and 67 of the Code, either the transaction should be reversed, or the amount should be paid into the Liquidation estate. The representatives of DMI Finance stated that we should go for reversal of the transaction. The Legal Counsel to the RP said that they trying to the same through the section 66 application. However, the Hon’ble NCLT are saying that City Cooperative Bank are themselves questioning the NOC that this was illegally done in their complaint to the Police authority.

The representatives of DMI Finance said that the matter is neither being pursued by City Cooperative Bank and nor are they cooperating with the RP. The Legal Counsel to the RP stated that this has always been a challenge, but steps need to be taken by us by going for Liquidation or by continuing the process to see if there are any buyers who are willing to take the company

as a going concern. The representatives of DMI Finance stated that they have not filed their Balance Sheet for the past 5 years and they cannot be considered as a going concern.

The Legal Counsel to the RP added that in a recent amendment, under section 52, the Liquidation cost also has to be given priority after CIRP cost while distributing the sale proceeds.

The representatives of DMI Finance stated that they have noted the updates and inputs given by the RP and the Legal Counsel to the RP. They said that they discuss the matter internally and get back to the RP about the further course of action by the next week.

The Chairperson took note of the same.

7. To update the CoC members on the status of Transaction Audit being carried out by D. Pathak and Co.

The Chairperson updated the CoC members that the D. Pathak and Co. was appointed as the Transaction Auditors appointed in this case and accordingly their team have made 2 visits to the Suspended Board of Director seeking the data as required by them. The Promoters have promised to provide the necessary data to them on multiple occasions but have failed to do so. Due to which their report completion is getting delayed. The Chairperson stated that we have been sending regular mails to the Suspended BOD for providing the necessary data, there has been no response. However, the Transaction Auditors are in the process of analyzing the data obtained from the Statutory Auditors, bank statements of all the bank accounts etc. and they will be able to complete the audit by the end of the month. They have also informed that they will also put the reference of the application filed by us under section 66. The Chairperson stated that as soon as a draft report is ready, the auditor can be invited to the meeting to brief the CoC members about the same.

The CoC members took note of the same.#

8. To update the CoC members on the status of Valuations by the appointed Registered Valuers

The Chairperson informed the CoC members that both sets of the appointed Registered Valuers have made visits to the sites of the CD. However, the visits could not be completely properly as they were not allowed to take photographs of the sites and there is lack of documentation for the land sites such as Lands documents, approved maps, *khasra* numbers, survey numbers, construction dates etc. Whatever data was available with the RP, has been shared with the Registered Valuers. There is a lot of retaliation at the Golden Trade Centre when they have made the visits. All this is leading to delays in completion of reports.

The members of CoC took note of the same.

9. To update the CoC members on the publication of Form G on 15-02-2023 and further extension on 03-03-2023 and 27.03.2023

The Chairperson updated the CoC members that the Form G was published on February 15th, 2023 and then subsequently extended on March 3rd, 2023 and March 27th, 2023 for 15 days each but there have been no queries or EOIs received from any party or investor. The last date for the receipt of EOI was April 10th, 2023 and no EOI has been received till date.

The Chairperson sought suggestions from CoC whether to extend the publication of FORM G for further period of 15 days. The representatives of DMI Finance stated that we have already published Form G thrice and there has been no single query hence they would get back on the further course of action whether they would like for go further extension of CIRP process or Early Liquidation. The Chairperson stated that we need to decide on the same by next week.

The members of CoC took note of the same.

10. To update the CoC members on the pending litigation matters for and against the Corporate Debtor

This agenda point was taken up with agenda No. 6 above.

11. To discuss on the contribution of the CIRP Cost by CoC Members

The Chairperson presented the tentative CIRP cost payable as on March 31st, 2023 as follows. He further added that neither the Erstwhile IRP nor RP has been paid for a single

CIRP Cost - Kandivli Balaji Investment Private Limited			
Activity	Expense Head	Expense Subhead	CIRP Cost
	Professional Fees		
		Fee Payable to IRP (Mr. Sanjay Gupta	6,51,664
		Fee Payable to RP (Primus IPE)	4,87,226
	Legal Fees		
		Fee Payable to Process/Legal Advisors (Approx)	7,11,613
	Advertisement Expenses		
		Expenses on publication of FORM G	48,283/-
Total			18,50,503/-

The representatives of DMI Finance stated that as per the directions of the Hon'ble NCLT, the initial amount of Rs. 5 lakhs have been remitted by us. They further added that they will get back to us on the further payments to be made by next week and we can discuss the same in the next CoC Meeting.

The Chairperson took note of the same.

12. To discuss on the updation of Books of Accounts and appointment of Statutory Auditors for the Corporate Debtor to make the books upto date.

The Chairperson stated that as discussed previously as well, the last books of accounts of the CD are of the financial year 2017-18. It is the duty of the RP to get the books of accounts of the Corporate Debtor upto date. He further added that we will have to appoint Professionals for preparing the Books of A/cs and Statutory Auditor for auditing the same. The representatives of DMI Finance requested this agenda item can be taken up in the next CoC meeting. The Chairperson agreed to the same.

B. MATTERS TO BE VOTED UPON IN THE MEETING:

1. To ratify the extension of timeline inviting Expression of Interest for submission of Resolution Plan and the revised FORM G (Invitation for Expression of Interest) dated 03-03-2023 and 27-03-2023

The Chairperson updated the CoC members that the in-principle approval was taken from CoC to extend the last date to receive the Expression of Interest and revise Form G. The Form G was revised on March 3rd, 2023 and March 27th, 2023 to extend the last date to receive EOI to submit Resolution Plan. The Chairperson requested the CoC members to ratify the same.

The CoC member agreed and passed the following resolution.

“RESOLVED THAT extension for FORM G dated 03.03.2023 & 27.03.2023 placed before the CoC be and is hereby ratified.”

VOTE OF THANKS

There being no other matter to be transacted, the meeting ended at about 4:15 pm with a vote of thanks.



Primus Insolvency Resolution & Valuation Pvt Ltd

IP Registration No.: IBBI/IPE-0072/IPA-2/2022-23/50002

AFA Valid Till: 06.12.2023

Registered Address: C-4-E/135, Janak Puri, New Delhi-110058

Subhash Kumar Kundra

Director- Primus Insolvency Resolution & Valuation Pvt Ltd

The authorized Director in the matter of Kandivli Balaji Investment Private Limited

IBBI registration No. IBBI/IPA-002/IP-N00399/2017-2018/11174

AFA Valid upto 29.01.2024