

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**PHYSICAL HEARING**

**CORAM: SHRI. RAJEEV BHARDWAJ – HON'BLE MEMBER (J)  
CORAM: SHRI. SANJAY PURI - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 07.12.2023, At 10:30 AM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	IA (IBC)/1233/2023 IA (IBC)/192/2023 Intervention Petition (IBC)/13/2023 IA (IBC)/547/2023 in Company Petition IB/206/2021
<b>NAME OF THE COMPANY</b>	YKM Entertainment & Hotels Pvt Ltd
<b>NAME OF THE PETITIONER(S)</b>	State Bank of Indi
<b>NAME OF THE RESPONDENT(S)</b>	YKM Entertainment & Hotels Pvt Ltd
<b>UNDER SECTION</b>	7 of IBC

**ORDER**

**IA (IBC)/1233/2023**

Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed.

**Intervention Petition (IBC)/13/2023**

Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed.

**IA (IBC)/547/2023**

Orders pronounced, recorded vide separate sheets. In the result, this application is dismissed.

**IA (IBC)/192/2023**

Orders pronounced, recorded vide separate sheets. In the result, this application is allowed.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, COURT – II**

**IA No.1233 of 2023, IA No.192 of 2023  
IP No.13 of 2023 & IA No.547 of 2023  
in  
CP(IB) No.206/7/HDB/2021**

**In the matter of State Bank of India vs. M/s.YKM Entertainment  
& Hotels Private Limited**

**I. IA No.1233 of 2023**

*[Application under Section 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016]*

**M/s.GVPR Engineers Limited,**  
No.8-2-293/82/A, Plot No.739-A,  
Road No.32, Jubilee Hills,  
Hyderabad - 500 033.

**....Applicant**

**Vs.**

- 1. Mr.Dantu Indu Sekhar,**  
Resolution Professional for  
YKM Entertainment & Hotels Private Limited,  
29-1401/61/1, Plot No.253,  
Road No.2 (West),  
Deendayalnagar, Neredmet,  
Hyderabad - 500 056.
- 2. Committee of Creditors of YKM Entertainment**  
Represented by its lead lender SBI,  
Stressed Assets Resolution Group Corporate Centre,  
21<sup>st</sup> Floor, Maker Tower 'E' Cuffee Parade,  
Mumbai - 400 005.
- 3. M/s.Square Four Housing & Infrastructure Development  
Private Limited,**  
Regd Office: 238A, A.J.C.Road,  
2<sup>nd</sup> Floor, Suit 2B, Kolkotta,  
West Bengal - 700 020.

**4. M/s.YKM Entertainment & Hotels Private Limited,**

Regd Office: H.No.6-3-883/F1,  
2<sup>nd</sup> Floor, Pothula Towers Annex,  
Somajiguda, Hyderabad - 500 082.  
Represented by its Resolution Professional.

....Respondents

**Counsel/Parties present:**

For the Applicant : Mr.Avinash Desai, Senior Counsel  
Ms.Rubaina S.Khatoon, Advocate

For the Respondent No.1 : Mr.Krishna Grandhi, Senior Counsel and  
Mrs.M.Vazra Laxmi, Advocate

For the Respondent No.2 : Mr.Deepak Bhattacharjee, Senior Counsel and  
Mr.G.P.Yash Vardhan, Advocate

For the Respondent No.3 : Mr.Y.Suryanarayana, Advocate

**II. IA No.192 of 2023**

*[Application filed by the Resolution Professional under Sections 30(6) and 31(1) of IBC, 2016 r/w Regulation 39(4) of IBBI Regulations, 2016]*

**Mr.Dantu Indu Sekhar,**  
Resolution Professional for  
YKM Entertainment & Hotels Private Limited,  
29-1401/61/1, Plot No.253,  
Road No.2 (West),  
Deendayalnagar, Neredmet,  
Hyderabad - 500 056.

....Applicant

**Counsel/Parties present:**

For the Applicant : Mr.Krishna Grandhi, Senior Counsel and  
Mrs. M.Vazra Laxmi, Advocate for RP

**III. Intervention Petition No.13 of 2023**

[Application under 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016]

**M/s.GVPR Engineers Limited,**  
No.8-2-293/82/A, Plot No.739-A,  
Road No.32, Jubilee Hills,  
Hyderabad - 500 033.

**... Applicant**

**Vs.**

**1. Mr.Dantu Indu Sekhar,**  
Resolution Professional,  
29-1401/61/1, Plot No.253,  
Road No.2 (West),  
Deendayalnagar, Neredmet,  
Hyderabad - 500 056.

**2. Committee of Creditors of YKM Entertainment**  
Represented by its lead lender SBI,  
Stressed Assets Resolution Group Corporate Centre,  
21<sup>st</sup> Floor, Maker Tower 'E' Cuffee Parade,  
Mumbai - 400 005.

**... Respondents**

**Counsel/Parties present:**

For the Petitioner : Mr.Avinash Desai, Senior Counsel  
Ms.Rubaina S.Khaton, Advocate

For the Respondent No.1 : Mr.Krishna Gandhi, Senior Counsel and  
Mrs.M.Vazra Laxmi, Advocate

For the Respondent No.2: Mr.Deepak Bhattacharjee, Senior Counsel  
and Mr.G.P.Yash Vardhan, Advocate

**IV. IA No.547 of 2023**

*[Application under 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016]*

**M/s.GVPR Engineers Limited**  
No.8-2-293/82/A, Plot No.739-A  
Road No.32, Jubilee Hills  
Hyderabad - 500 033

**... Applicant**

**Vs.**

**1. Mr.Dantu Indu Sekhar,**

Resolution Professional,  
29-1401/61/1, Plot No.253,  
Road No.2 (West),  
Deendayalnagar, Neredmet,  
Hyderabad - 500 056.

**2. Committee of Creditors of YKM Entertainment**

Represented by its lead lender SBI,  
Stressed Assets Resolution Group Corporate Centre,  
21<sup>st</sup> Floor, Maker Tower 'E' Cuffee Parade,  
Mumbai - 400 005.

**3. M/s.Square Four Housing & Infrastructure Development**

**Private Limited,**  
Regd Office: 238A, A.J.C.Road,  
2<sup>nd</sup> Floor, Suit 2B, Kolkotta,  
West Bengal - 700 020.

**... Respondents**

**Counsel/Parties present:**

For the Applicant : Mr.Avinash Desai, Senior Counsel  
Ms.Rubaina S.Khaton, Advocate

For the Respondent No.1 : Mr.Krishna Gandhi, Senior Counsel,  
Ms.M.Vazra Laxmi, Advocate

For the Respondent No.2 : Mr.Deepak Bhattacharjee, Senior Counsel  
Mr.G.P.Yash Vardhan, Advocate

For the Respondent No.3 : Mr.Y.Suryanarayana, Advocate

**Order Reserved on : 07.11.2023**

**Order Pronounced on:07.12.2023**

**Coram:**

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)  
Sri Sanjay Puri, Hon'ble Member (Technical)

**PER: RAJEEV BHARDWAJ, MEMBER (JUDICIAL)**

**ORDER**

The IA Nos. 192, 547, 1233/2023 and Intvn.Petition 13/2023 are taken up together for decision, as these are interconnected and interlinked.

1. Shorn of all unnecessary details, the Company Petition CP(IB) No. 206/7/HDB/2021 filed by State Bank of India (hereinafter referred as financial creditor) u/s 7 of the IBC, 2016 was admitted, vide Order dated 05.01.2022 and CIRP was initiated against M/s. YKM Entertainment and Hotels Private Limited (hereinafter referred as corporate debtor) by appointing Mr. Dantu Indu Sekhar, who is respondent in all the IAs except in IA No.192 of 2023, wherein he is applicant, as the Interim Resolution Professional, who was later confirmed as Resolution Professional, for short RP, by the Committee of Creditors (for short, CoC) in its 1<sup>st</sup> meeting held on 10.03.2022.
2. The Expression of Interest in Form G (EOI) was invited on 25.04.2022 which was re-issued on 22.08.2022 with last date for submission of Request for Resolution Plan (RFRP) was fixed as 23.09.2022.

3. In pursuance to the EOI, the Resolution Professional received fourteen (14) EoIs from Prospective Resolution Applicants (PRAs) including the applicant in IA Nos.1233 of 2023, 547 of 2023 and Intvn. Petition No.13 of 2023. Out of the 14 prospective resolution applicants, 3 were found ineligible and 11 prospective resolution applicants were short listed.
4. The resolution plan was received from 6 applicants. In the 8<sup>th</sup> CoC meeting held on 01.11.2022, it was informed that the resolution applicants were in the process of further revising the resolution plan and it was decided that the revised resolution plan be submitted by 10.11.2022 and this timeline was further extended to 15.11.2022.
5. In the 9<sup>th</sup> CoC meeting held on 03.12.2022, 6 resolution plans were placed before the CoC and its members decided to complete the legal vetting of first two resolution plans and study of feasibility and viability on these two resolution plans before voting on the resolution plans.
6. In the 10<sup>th</sup> CoC meeting held on 08.12.2022, the members of CoC discussed plans of the 6 resolution applicants as per the evaluation matrix. In the meanwhile, one resolution applicant, Mr.Bhumireddy Gari Mohan Reddy withdrew from the resolution process. It was intimated to the resolution professional by the members of the CoC that they conducted further feasibility and viability study on the first and second highest resolution plans, which did not include the resolution plan of the applicant in IA Nos.1233 of 2023, 547 of 2023 and 13 of 2023. The

resolution plans were to be e-voted and the window was kept open for 48 hours.

7. In the 11<sup>th</sup> CoC meeting held on 14.12.2022, it was informed by the members of the CoC that they need time to evaluate the plans received and further sought some clarifications from the resolution applicants and requested to extend the voting timeline for 30 days.
8. The applicant in IA Nos.1233 of 2023, 547 of 2023 and Intvn. P. 13 of 2023 submitted its plan for an amount of Rs.63.7 crores, which was increased to Rs.67.7 crores on 17.10.2022 and further to Rs.73.62 crores on 14.11.2022.
9. Finally, the CoC approved the resolution plan submitted by M/s.Square Four Housing and Infrastructure Development Private Limited, the respondent No.3 in IA No.1233 of 2023 on 13.01.2023 and letter of intent to the successful resolution applicant was issued on 14.01.2023.

## **I IA No.1233 of 2023**

10.1 In this IA, the applicant has prayed for the following reliefs:

- a) To set-aside the resolution plan submitted by respondent No.3 for violating provision of the Insolvency and Bankruptcy Code, 2016 and the extant rules and regulations and for material irregularity in the corporate insolvency resolution process of the corporate debtor.

- b) To set-aside the corporate insolvency resolution process undertaken by the resolution professional and exclude and extend the corporate insolvency resolution process of the corporate debtor.
- c) Consequently, direct the Committee of Creditors to consider and negotiate with the prospective resolution applicants in accordance with Regulation 29 (1B) of the CIRP Regulations by adopting the Swiss Challenge Method for approval of the resolution plan in accordance with regulations 39(1A)(b) of the CIRP regulations.
- d) Or in alternative, direct the RP to issue a fresh invitation for expression of interest/Form-G.

10.2 After the submission of the final resolution plan to the tune of Rs.73.62 crores on 14.11.2022, the resolution professional vide e-mail dated 23.01.2023 informed the applicant that the resolution plan submitted by the applicant does not meet the requirements and accordingly the earnest money would be refunded. The applicant was under the impression that fresh offer can be made and accordingly on 23.01.2023, a letter was sent to the Deputy General Manager, State Bank of India offering an amount of Rs.84.78 crores. However, on 24.01.2023, the Resolution Professional informed the applicant that the successful resolution applicant has already been declared and now it is not possible to consider the resolution plan and accordingly, the applicant was informed that the applicant may approach the bank directly with the revised offer.

- 10.3 It is averred that the applicant offered an amount of Rs.63.7 crores on 20.09.2022 and subsequently submitted revised offer of Rs.67.7 crores at the instance of the Resolution Professional. However, it is claimed that the second offer of Rs.67.7 crores was not placed before the CoC, which amounts to grave material irregularity.
- 10.4 In the 8<sup>th</sup> CoC meeting held on 01.09.2022, it was decided to call for improved/revised offers from all the resolution applicants by 10.11.2022. The applicant accordingly submitted the revised resolution plan on 10.11.2022, but without the consent of the CoC the date was extended by the Resolution Professional to 15.11.2022. On 14.11.2022, the applicant further submitted a revised bid of Rs.73.62 crores. The extension of timeline from 10.11.2022 to 15.11.2022 was not fixed by the CoC in its 8<sup>th</sup> meeting and the timeline was allegedly extended to give benefit to the successful resolution applicant.
- 10.5 The entire process was kept secret and therefore, the applicant was under the impression that the CoC was looking for a better offer. Accordingly, the applicant sent the proposal of Rs.84.78 crores to the Deputy General Manager, State Bank of India. However, the Resolution Professional, vide e-mail dated 23.02.2023 informed the applicant that the CoC was of the opinion that the resolution application submitted by the applicant does not meet the requirements and subsequently on 24.01.2023, the applicant was informed that the resolution plan submitted by M/s.Square Four Housing & Infrastructure Development Private Limited has already been approved.

- 10.6 On 31.01.2023, the applicant gave a letter to Deputy General Manager, State Bank of India informing the final revised proposal of Rs.90 crores. However, the applicant was informed by e-mail dated 03.02.2023 that the successful resolution applicant has already been declared by the CoC.
- 10.7 It is claimed that the entire process was conducted in an opaque manner which is against the Regulations 39(1)(A) and 39(1)(b) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Professionals for Corporate Persons) [hereinafter referred as **CIRP Regulations**] because the CoC/Resolution Professional asked the resolution applicants to modify the plan many times. In the 9<sup>th</sup> and 10<sup>th</sup> CoC meetings, the resolution plan of the applicant was not put to vote in contravention of Regulation 39(3)(b).
- 10.8 The Resolution Professional has also misled this Authority about the completion of the CIRP process to ensure that benefit can be given to the successful resolution applicant. Therefore, the entire CIRP process was conducted in a malafide manner and during the course of hearing of IA No.547 of 2023 the documents were filed, wherein the applicant came to know about the discrepancies in the process. Accordingly, it is prayed that the resolution plan submitted by the successful resolution applicant and further corporate insolvency resolution process undertaken by the Resolution Professional be set aside. It has also been prayed that the Committee of Creditors be directed to negotiate with the prospective resolution applicants in accordance with Regulation 39(IB) of the CIRP Regulations by adopting the Swiss Challenge Method and in the

alternative, the Resolution Professional be directed to issue a fresh invitation for expression of interest.

- 11 The respondent No.1 by filing reply has taken preliminary objections of locus standi and maintainability of the present application in view of filing of IA Nos.547 of 2023 and 192 of 2023.
- 11.1 On merits, it is submitted that the Resolution Professional on the basis of expression of interest (Form G) issued on 25.04.2022 received four (4) expression of interest and only three (3) prospective resolution applicants were found eligible. The CoC opined that the values offered by the eligible applicants were much less than the assets of the corporate debtor, therefore, the CoC in its commercial wisdom decided to invite fresh expression of interest on 22.08.2022.
- 11.2 On the basis of fresh expression of interest dated 22.08.2022, the Resolution Professional received fourteen (14) expression of interests from prospective resolution applicants.
- 11.3 The Resolution Professional received six binding resolution plans. Then the Resolution Professional invited the resolution applicants on 12.10.2022 to make individual presentations on their respective plans to the CoC and after meeting, the CoC advised all the resolution applicants to improve the resolution plan amount.

- 11.4 It is submitted that in the 8<sup>th</sup> CoC meeting held on 01.11.2022, the CoC was informed about the details of the resolution plans and further that the resolution applicants were in the process of revising the resolution plans. No timeline was fixed to submit the revised resolution plan, therefore, the CoC instructed the Resolution Professional to advise the prospective resolution applicants to submit revised resolution plans by 10.11.2022 and this period was extended to 15.11.2022. Accordingly, the application was also moved before this Authority for extension of CIRP period.
- 11.5 It is claimed that in the 9<sup>th</sup> CoC meeting held on 03.12.2022, it was decided to vote on the approval of the resolution plans. In the 10<sup>th</sup> CoC meeting held on 08.12.2022, the resolution plans of the six (6) resolution applicants were evaluated on matrix criteria.
- 11.6 The CoC was supposed to provide equal opportunity to all the resolution applicants and cannot give any special treatment to the applicant. It was the CoC who directed the resolution applicants to submit their improved/revised offers by 10.11.2022 and then advised to submit their final binding resolution plans by 15.11.2022.
- 11.7 It is denied that grave and material irregularities were committed by the Resolution Professional and CoC and they were pre-determined not to accept the proposal of the applicant.
- 11.8 The respondent No.1 also quoted Clause 2.2.2 of the RFRP that the Resolution Professional was competent to extend the date of submission of resolution plan with the consent of the CoC and any extension of the

date of submission of the resolution plan shall be notified and need not be communicated to each individual.

- 11.9 It is clarified that all the final binding resolution plans submitted by prospective resolution applicants before 15.11.2022 were considered by the CoC and the applicant was intimated that its plan was not approved. The resolution plan of Rs.90 crores submitted by the applicant was also sent after the due date and as per Clause 2.2.6 of the RFRP, the CoC was competent to reject the same.
- 11.10 It is also denied that there is violation of CIRP regulations. The resolution plans of the resolution applicants were examined in the context of law and the resolution plan of M/s.Square Four Housing & Infrastructure Development Private Limited was finally approved.
- 11.11 It is denied that the CoC was not offered a chance to negotiate with the prospective resolution applicants by the Resolution Professional. All the prospective resolution applicants were invited to deliberate on the resolution plans submitted by them. It is denied that the procedure adopted by CoC and the resolution professional were in disregard to the principles of natural justice and no material irregularity was committed in the entire process.
- 12 Respondent No.2 in its reply has taken preliminary objections of maintainability of the application, locus standi of the applicant, bar of the application on the principle of *res judicata* in view of filing of IA No.574 of 2023 and frivolous nature of the application.

- 12.1 On merits, the respondent No.2 submitted that there is slight improvement in the resolution plans as the CoC was of the opinion that the assets of the corporate debtor have more potential value than the amount offered under the valuation plan. In order to make the evaluation of assets of the corporate debtor, it was decided to annul the CIRP and restart the same by inviting fresh expression of interest.
- 12.2 The respondent No.2 has given details of the offer made by the applicant and it is specifically denied that the offer of Rs.67.77 crores submitted by the applicant on 17.10.2022 was not intimated to the CoC.
- 12.3 The date for extension of time from 10.11.2022 to 15.11.2022 for final bidding of the resolution plan was done as per Clause 2.2.6 of the RFRP. Similarly, the CoC was not bound to consider the offer of Rs.90 crores made by the applicant after the due date of submitting the offers in view of Clause 2.2.6 of RFRP.
- 12.4 Learned Counsel for the respondent No.3 gave statement on 24.11.2023 that he does not want to file reply on behalf of the respondent No.3.

## **II. IA No.192 of 2023**

- 13.1 The application bearing IA No. 192/2023 has been filed on behalf of the Resolution Professional of M/s. YKM Entertainment and Hotels Private Limited/Corporate Debtor under Sections 30(6) and 31(1) of the Insolvency & Bankruptcy Code, 2016, r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, seeking approval of the Resolution Plan submitted by M/s. Square

Four Housing & Infrastructure Development Private Limited, for short 'SRA' as duly approved by the Committee of Creditors, with 100% voting share.

- 13.2 On receipt of claims from the creditors pursuant to public announcement dated 12.02.2022, the Resolution Professional constituted COC comprising of sole Financial Creditor of CD viz. State Bank of India, which is having 100% voting share.
- 13.3 It is averred that the RP conducted a total of Eleven (11) meetings of the COC during the CIRP. The Applicant issued Form-G on 25.04.2022. In response, Expression of Interest (**EOI**) were received from 10 Prospective Resolution Applicants (**PRAs**). In the 4<sup>th</sup> COC Meeting held on 01.07.2022, the Resolution Professional apprised that after due diligence on Section 29A eligibility criteria, only 3 PRAs are eligible to submit Resolution Plans, out of which, two Resolution Plans were received by the Resolution Professional.
- 13.4 The RP had filed an IA 644/2022 seeking for extension of 90 days and exclusion of 35 days, which was admitted by this Adjudicating Authority, vide Order dated 23.08.2022 w.e.f. 04.07.2022.
- 13.5 In the 6<sup>th</sup> COC Meeting held on 19.08.2022, the RP appraised the receipt of two Resolution Plans and the COC opined that the value offered in both the Resolution Plans is much less and the assets of the CD are having more potential value and instructed the RP to invite EOI for the second time. The RP again issued EOI in Form-G on 22.08.2022. In

response, EOIs were received from 14 PRAs, out of which, 11 were shortlisted and RP shared the Information Memorandum, Evaluation Matrix and RFRP documents with the PRAs and invited them to submit their resolution plans and RP received resolutions plans from six (6) PRAs.

13.6 The RP had filed an IA 1287/2022 seeking for extension of 60 days' time for completion of CIRP, which was allowed by this Adjudicating Authority, vide Order dated 09.11.2022 stating that –

*“We feel that in the interest of justice, extension of time for completion of CIRP is allowed. However, allowing 60 days' time being too longer period, we allow 45 days' time which shall commence from 06.11.2022”.*

13.7 As deliberated in the 8<sup>th</sup> COC Meeting held on 01.11.2022, the PRAs were given an opportunity to submit their revised resolution plans by 10.11.2022.

13.8 In the 10<sup>th</sup> COC Meeting held on 08.12.2022, the RP discussed about the evaluation matrix criteria and requested the COC members to evaluate the resolution plans. The summary of scores of all the six Resolution Applicants are as follows:

S.No.	Name of the Resolution Applicant	Resolution Plan (Rs. In crores)	Score	Rank
1.	M/s. Square Four and Housing	81.65	83.93	H1

**National Company Law Tribunal, Hyderabad Bench, Court-II**

IA No.1233 of 2023, IA No.192 of 2023  
IP No.13 of 2023 & IA No.547 of 2023

In

CP(IBC) No.206/7/HDB/2021

Date of Order: 07.12.2023

	Infrastructure Development Private Limited			
2.	M/s.Terminus Hotels and Resorts Limited	82.80	75.20	H2
3.	M/s.GVPR Engineers Limited	73.62	70.67	H3
4.	Consortium of Green Rich Projects Limited & M/s.Sanghavi Cylinders Private Limited	70.75	55.95	H4
5.	Mr. Bhumireddy Gari Mohan Reddy	36.09	33.76	H5
6.	M/s.Sankalp Recreation Private Limited	45.00	32.78	H6

13.9 Subsequently, at the request of one of the resolution applicants, Mr.Bhumireddi Gari Mohan Reddy for withdrawal from the resolution process and for return of EMD, was agreed by the COC members.

13.10 In pursuance to the directions of COC in the 11<sup>th</sup> COC meeting held on 14.12.2022, the RP had filed an IA 1575/2022 seeking for extension of 45 days' time for completing the CIRP period, which was allowed by this Adjudicating Authority, vide Order dated 03.01.2023, by virtue of which, the CIRP period was extended for 45 days w.e.f. 20.12.2022.

- 13.11 The COC members evaluated the final five resolution plans strictly as per the evaluation matrix and Section 29A of the Code. After evaluating in terms of both qualitative and quantitative criteria and aggregate, the COC with 100% voting rights approved the resolution plan submitted by M/s. Square Four Housing and Infrastructure Development Private Limited on 13.01.2023. It is submitted that all the requirements envisaged under the Code and Rules/Regulations made thereunder have been met. **(A copy of the Resolution Plan along with its annexures is filed at page nos. 43 to 141 of the application).**
- 13.12 On 14.01.2023, the Resolution Professional issued 'Letter of Intent' (LoI) to the SRA and advised to remit 15% of the resolution plan amount towards Performance Bank Guarantee. In turn, the SRA submitted Performance Bank Guarantee No.6947NDDG00024323 for Rs.12,24,75,000/-, valid upto 19.01.2024, with acceptance of LOI. A copy of which is filed **at page nos.142 to 150 of the application.**
- 13.13 Thus, the applicant/RP has given details of the sequence of events as to how the entire process culminated in approving the resolution plan in favour of M/s. Square Four Housing & Infrastructure Development Private Limited with the consent of the CoC. The details have been given as how the amount offered by the successful resolution applicant will be paid and how the sale amount is to distributed.

**III. IA No.13 of 2023**

- 14.1 This IA has been moved for impleading the applicant as respondent No.2 in CP No.206 of 2021 on the ground that it is necessary to be impleaded as a party to effectively disposing of the petition.
- 14.2 The applicant has given details of the events which took place from the date of expression of interest until receiving of the e-mail dated 03.02.2023 vide which the resolution professional intimated the applicant that the successful resolution applicant has already been declared by the CoC. In this context, it is averred that the aim and object of the IBC is to maximize the value of the assets of the corporate debtor and in view of the facts and circumstances of the case, the applicant has to be added as a party in CP No.206 of 2021.
- 14.3 Both the respondents had filed separate replies, denying that the applicant is required to be impleaded as a party. It is submitted that the process of CIRP was conducted in accordance with the procedure laid down and there does not arise any question to take into account the offer of Rs.90 crores made by the applicant after the cutoff date, i.e., 15.12.2022 and further the procedure has also been complied with in declaring the successful resolution applicant.

**IV. IA No.547 of 2023**

15.1 In this IA, the applicant has prayed for the following reliefs:

(a) Direct the respondent to allow and consider the revised bid offer of Rs.90.00 Crores, including CIRP expenses of Rs.0.65 Crores, Rs.0.07 Crores payment to operational creditors offered vide letter dated 31.01.2023.

(b) Direct the Financial Creditor-State Bank of India to consider the revised bid offer of Rs.90.00 Crores, including CIRP expenses of Rs.0.65 Crores, Rs.0.07 Crores payment to operational creditor offered vide letter dated 31.01.2023.

15.2 After the submission of the final resolution plan to the tune of Rs.73.62 crores on 14.11.2022, the Resolution Professional vide e-mail dated 23.01.2023 informed the applicant that the resolution plan submitted by the applicant does not meet the requirements and the earnest money would be refunded. The applicant was under the impression that fresh offer can be made and thus on 23.01.2023, a letter was sent to the Deputy General Manager, State Bank of India offering an amount of Rs.84.78 crores. However, on 24.01.2023, the Resolution Professional informed the applicant that the successful resolution applicant has already been declared and now it is not possible to consider the resolution plan and accordingly, the applicant was informed that the applicant may approach the bank directly with the revised offer.

- 15.3 As a result of the direction of the Resolution Professional, the applicant addressed another letter to Deputy General Manager, State Bank of India on 23.01.2023 for the final revised proposal of Rs.90 crores. However, the applicant was informed vide e-mail dated 03.02.2023 that the successful resolution applicant has already been declared by the CoC and therefore, it would not be possible to consider the new offer of the applicant.
- 15.4 It is claimed that the Resolution Professional always gave the impression that the resolution plan of the applicant was being considered, but it was informed only by e-mail dated 24.01.2023 that the resolution plan has already been approved by the CoC. The applicant made revised offer of Rs.90 crores.
- 15.5 In these circumstances, it is claimed that the offer of the applicant is on the higher side and the objective of the IBC is to maximize the value of the assets of the corporate debtor and therefore, the latest resolution plan of the applicant should be accepted.
- 16.1 The respondent No.1 in its reply has contended and contested the averments of the application. The respondent No.1 has admitted receipt of the resolution plan of the applicant for Rs.90 crores, but it is submitted that this was filed after the closing date to submit the resolution plan and moreover, it was after the approval of the successful resolution plan submitted by M/s.Square Four Housing & Infrastructure Development Private Limited. All the parties were given time to improve their offer

within the prescribed time and therefore, it was illogical to accept the resolution plan after the expiry of the cut-off date, i.e., 15.11.2022.

- 16.2 On 24.11.2023, learned counsel for the respondent No.2 stated that he adopts the reply filed in Intervention Petition No. 13 of 2023, while learned counsel for the respondent No. 3 gave statement not to file reply on behalf of the respondent No. 3.
17. We have heard the Learned Counsels for both the parties and have gone through the entire records.
18. The application under Section 7 filed by the State Bank of India (financial creditor) against M/s.YKM Entertainment and Hotels Private Limited (financial debtor) was admitted, vide order dated 05.01.2022 and Sri Dantu Indu Sekhar was appointed as Interim Resolution Professional, who was subsequently confirmed as Resolution Professional.
19. The expression of interest was called vide Form G on 25.04.2022. In pursuance thereto, ten (10) expressions of interest were received, but only two (2) prospective resolution applicants were found eligible. The resolution plans were received from two (2) prospective resolution applicants, i.e., M/s.Sankalp Recreation Private Limited and Mr. Bhumireddy Gari Mohan Reddy. These plans were placed before the CoC, who advised for improving the amount offered on or before 27.02.2022. After the resolution plans were modified, the CoC decided to seek fresh expression of interest on 22.08.2022. The Resolution

National Company Law Tribunal, Hyderabad Bench, Court-II

IA No.1233 of 2023, IA No.192 of 2023  
IP No.13 of 2023 & IA No.547 of 2023

In  
CP(IBC) No.206/7/HDB/2021  
Date of Order: 07.12.2023

Professional issued fresh requests for submission of resolution plan on or before 23.09.2022.

20. Within the time frame fixed by the CoC, fourteen (14) resolution applicants have submitted expressions of interests and only eleven (11) were found eligible. However, resolution plans were submitted by only six (6) resolution applicants including the applicant in IA Nos.1233 of 2023, 547 of 2023 and Intvn. P.13/2023.
21. The amounts which were offered by these six (6) resolution applicants are given in the following table:

S.No	Particulars	Actual	NPV
1	M/s.Terminus Hotels and Resorts Private Limited	60.00	58.66
2	M/s.Bhumireddy Gari Mohan Reddy	36.09	32.56
3	M/s.Sankalp Recreation Private Limited	39.00	33.74
4	Consortium of M/s.Green Rich Projects Private Limited & M/s.Sanghavi Cylinders Private Limited	40.75	36.34
5	M/s.GVPR Engineers Limited	63.72	52.62
6	M/s.Square Four Housing & Development Private Limited	61.65	54.82

22. These resolution plans were considered by the CoC in its 8<sup>th</sup> meeting held on 01.11.2022. It is recorded in the minutes of the CoC meeting (**Annexure 8, page No.158 of the application**) that the resolution applicants were invited to make their individual presentation about their resolution plans on 12.10.2022 and further the Resolution Professional submitted that the resolution applicants were in the process of revising their plans. Accordingly, CoC decided that the resolution applicants may submit their improved/revised offers by 10.11.2022. The relevant extract of the minutes is reproduced below:

*“The resolution applications were invited to make individual presentations about their resolution plans on 12.10.2022 and they are advised to improve the proposals in terms of resolution amount and the mode of payment”.*

*“The resolution professional submitted to the CoC that after discussions/presentations of 12.10.2022. Some of the resolution applicants are in the process of further revising their plans both in terms of resolution amount and terms of payment. He further advised that the resolution applicants may need some more time to submit the revised plans. Accordingly, it had been decided by the CoC to advise the resolution applicants to submit the improved/revised offers by 10.11.2022 for evaluation by RP/CoC.”*

23. In the 9<sup>th</sup> meeting of the CoC held on 03.12.2022, it was observed that the revised offer was to be received by 10.11.2022 and final binding resolution plans by 15.11.2022. The relevant portion of the minutes is reproduced is below:

*“RP has informed the members that as decided in the 8<sup>th</sup> CoC meeting dated 01.11.2022, resolution applicants were advised to submit the modified/revised offers by 10.11.2022 and Final Binding Resolution Plans by 15.11.2022. Six resolution plans were received from the following resolution applicants and*

*are presented to committee of creditors for approval under Section 30(2) of IBC, 2016.*

1. *M/s. Square Four Housing & Development Private Limited*
2. *M/s. Terminus Hotels and Resorts Private Limited*
3. *M/s. GVPR Engineers Limited*
4. *Consortium of M/s. Green Rich Projects Private Limited & M/s. Sanghavi Cyclinders Private Limited*
5. *M/s. Sankalp Recreation Private Limited*
6. *M/s. Bhumireddy Gari Mohan Reddy.”*

24. Prior to the timeline fixed on 10.11.2022, the applicant in IA Nos.1233 of 2023, Intn.P.13 of 2023 and IA 547 of 2023 made an offer of Rs.67.77 crores. Consequent upon extension of time for submission of revised offer, the applicant further enhanced the offer to Rs.73.62 crores on 14.11.2022.
25. In the 10<sup>th</sup> meeting of the CoC held on 08.12.2022, all the six (6) resolution plans were put up with evaluation matrix score in the following manner:

<b>S.No.</b>	<b>Name of the Resolution Applicant</b>	<b>Plan Value (Rs in Crores)</b>	<b>Score</b>	<b>Rank</b>
1	M/s. Square Four Housing & Development Private Ltd	81.65	83.93	H1
2	M/s. Terminus Hotels and Resorts Private Limited	82.80	75.20	H2
3	M/s.GVPR Engineers Ltd	73.62	70.67	H3
4	Consortium of M/s. Green Rich Projects Private Limited & M/s. Sanghavi Cyclinders Private Limited	70.75	55.95	H4

5	M/s. BhumireddyGari Mohan Reddy.”	36.09	33.75	H5
6	M/s. Sankalp Recreation Private Limited	45.00	32.78	H6

26. The relevant portion of the minutes (**Annexure 7, page No.153 of the IA No.1233 of 2023**) is reproduced below:

*“CoC has observed that all the above six resolution plans are feasible and viable. CoC has also conducted feasibility and viability study by a consultant on their panel in respect of the first two resolution plans with highest scores in the Evaluation Matrix and it is observed that both the plans are feasible and viable.”*

*“RP has informed the CoC that the resolution plans are now proposed for voting. It has been decided to open the voting within 48 hours of circulation of this meeting minutes, i.e., from 11.12.2012 morning 10.00 AM and close the voting process on 15.12.2012 evening 5.00 PM.”*

27. As per the decision taken in the 10<sup>th</sup> meeting of the CoC, the voting process was to be completed at 5.00 PM on 05.12.2012, but this period was extended by another 30 days in the 11<sup>th</sup> CoC meeting held on 14.12.2022 (**Annexure 5, page No.144 of the IA No.1233 of 2023**). The relevant portion of the minutes is reproduced below:

*“RP informed the CoC that as per the decision taken in the last CoC meeting held on 08.12.2022 voting is already opened within 48 hours of circulation of meeting minutes, i.e., from 11.12.2012 morning 10.00 AM and is supposed to close on 15.12.2022 evening 5.00 PM”*

*“CoC requested to extend the voting timelines by another 30 days as the 5 resolution plans are being evaluated and several clarifications are required from resolution applicants,”*

28. In the aforesaid background of the case, Learned Counsel for the applicant in IA Nos.1233 of 2023, Intvn.P. 13 of 2023 and IA 547 of 2023 has strenuously argued that the Resolution Professional as well as the CoC failed to ensure compliance of Regulation 39(1)(A), 39(2)(b) and 39(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. In transgression of the Regulation 39(1)(A), the resolution plan was modified several times. The Resolution Professional was also bound to submit all the resolution plans to the CoC as per the requirements of Regulation 39(2), but he has not forwarded the offer of Rs.67.77 crores made by the applicant on 17.10.2022 which has greatly prejudiced the applicant. Similarly, all the resolution plans were not put to vote together, but only two of the resolution plans were selected and therefore, three (3) other resolution applicants were not considered.
29. Learned Counsel for the applicant in IA No.1223 of 2023 has also relied upon the Judgement of the Hon'ble Supreme Court in *M/s. Ebix Singapore Private Limited versus Committee of Creditors of Educomp Solutions Limited and another 2021 SCC online SC 707* to argue that the maximization of the value should be the goal and as such the offer of Rs.90 crores offer made by the applicant on 31.01.2023 should have been accepted. In contrast to this offer, the successful resolution applicant made an offer of Rs.81.65 crores.

30. Per contra, learned counsel for the respondent No.1 contended that after the initial submission of the resolution plan, negotiations were held with the resolution applicants and therefore, there is no violation of the Regulation 39(1)(A) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Professionals for Corporate Persons) Regulations, 2016. The resolution applicants submitted only draft plans and not resolution plans.
31. On the question of extension of time by the Resolution Professional for the submission of the revised plan from 10.11.2022 to 15.11.2023, this was within the competence of the CoC/RP. On this point, he has referred to Clause 2.2.2 of the RFRP that the Resolution Professional is competent to extend the timeline and even this act of the Resolution Professional was also ratified by the CoC.
32. It is submitted by the learned counsel for the Resolution Professional that the acceptance of the resolution plan after the due date is not permissible in view of Clause 2.2.6 of the RFRP because extension cannot be granted to an individual as it would have discriminated the other resolution applicants.
33. Last but not the least, learned counsel for the Resolution Professional urged that the resolution plans of all the six (6) resolution applicants were evaluated and voted together. After the receipt of expert committee report, scores were given to each resolution plans as per the matrix criteria.

34. Learned counsel for the CoC has relied upon the decisions in the following judgements to say that due process was followed at every step and finally the successful resolution applicant was declared.

*a) M.K.Rajagopal Balaji versus Rajendran Shanmugam, IA No.507(CHE)/2022 in IA/288(CHE)/ 2022 in CA/1/18/2017, decided on 28.09.2022 NCLT, Chennai*

*b) Jindal Stainless Limited versus Shailender Ajmera, CA(AT)(Ins) No.1058 of 2022, decided on dated 18.01.2023 NCLAT.*

*c) Kalinga Allied Industries India Private Limited versus Committee of Creditors (Bindals Spounge Industries Limited) and others, CA(AT)(Ins) No.689 of 2021, decided on dated 28.09.2022 NCLAT.*

*d) Express Resorts and Hotels Limited versus Amit Jain, CA(AT)(Ins) No.1158 of 2022, decided on dated 09.02.2023 NCLAT.*

35. Mr.Y.Suryanarayana, learned counsel appearing for the successful resolution applicant, M/s. Square Four Housing & Development Private Limited submitted that there is no collusion between the Resolution Professional and the successful resolution applicant as is clear from the records itself. It is further urged that the resolution plan was approved after following due process of law.

**I) IA No.1233 of 2023**

36. Once the resolution plan is submitted to the Adjudicatory Authority for approval, there is limited jurisdiction of the Authority under Section 31 of the IBC to see whether the resolution plan as approved by the CoC under Section 30(4)[4] meets the statutory requirements as laid down under Section 30(2) of the IBC.
37. The Resolution Professional received six resolution plans and as per Section 30(3) & CIRP Regulation 39(2) & (3), the Resolution Professional was required to submit to the CoC all resolution plans which comply with the requirements of the IBC and regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him:
- (a) preferential transactions under section 43;
  - (b) undervalued transactions under section 45;
  - (c) extortionate credit transactions under section 50; and
  - (d) fraudulent transactions under section 66,
- and the orders, if any, of the adjudicating authority in respect of such transactions.
38. In view of the requirements of Section 30(4) & CIRP Regulation 39(3), the CoC was to evaluate the resolution plans strictly as per the evaluation matrix to identify the best resolution plan and may approve it with such modifications as it deems fit.

39. The Resolution Professional did not notice any avoidable transaction and sent the resolution plan of M/s. Square Four Housing & Development Private Limited for approval of this Authority. The learned counsel for the applicant has alleged irregularities committed by the Resolution Professional in complying with the statutory requirements, especially Regulation 39 as the resolution plan was modified more than once and further all the resolution plans were not put to voting together. This brings to fore Regulation 39 which provides:

Regulation 39: Approval of resolution plan:

- (1) A prospective resolution applicant in the final list may submit resolution plan or plans prepared in accordance with the Code and these regulations to the resolution professional electronically within the time given in the request for resolution plans under Regulation 36B along with
- a) an affidavit stating that it is eligible under section 29A to submit resolution plans; and
  - b) an undertaking by the prospective resolution applicant that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit, and attract penal action under the Code.
- (1A) The resolution professional may, if envisaged in the request for resolution plan:
- (a) allow modification of the resolution plan received under sub-regulation (1), but not more than once; or
  - (b) use a challenge mechanism to enable resolution applicants to improve their plans.

(1B) *The committee shall not consider any resolution plan:*

- (a) received after the time as specified by the committee under regulation 36B; or*
- (b) received from a person who does not appear in the final list of prospective resolution applicants; or*
- (c) does not comply with the provisions of sub-section (2) of section 30 and sub-regulation.*

(2) *The resolution professional shall submit to the committee all resolution plans which comply with the requirements of the Code and regulations made thereunder along with the details of following transactions, if any, observed, found or determined by him: -*

- (a) preferential transactions under section 43;*
- (b) undervalued credit transactions under section 45;*
- (c) extortionate credit transactions under section 50; and*
- (d) fraudulent transactions under section 66 and the orders, if any, of the adjudicating authority in respect of such transactions.*

(3) *The committee shall:*

- (a) evaluate the resolution plans received under sub-regulation (2) as per evaluation matrix;*
- (b) record its deliberations on the feasibility and viability of each resolution plan; and*
- (c) vote on all such resolution plans simultaneously.*

(3A) *Where only one resolution plan is put to vote, it shall be considered approved if it receives votes.*

(3B) *Where two or more resolution plans are put to vote simultaneously, the resolution plan, which receives the highest votes, but not less than requisite votes, shall be considered as approved:*

*Provided that where two or more resolution plans receive equal votes, but not less than requisite votes, the committee shall approve any one of them, as per the tie-breaker formula announced before the voting;*

*Provided further that where none of the resolution plans receive requisite votes, the committee shall again vote on the resolution plan that received the highest votes, subject to the timelines under the Code.*

40. Regulation 39(1A) was inserted in the CIRP Regulations vide IBBI/2021-22/GN/REG078, dated 30<sup>th</sup> September, 2021 with an objective to curtail submission of unsolicited resolution plans and number of revisions which delay the process.
41. As per Regulation 39 (IA), the modification in the resolution plan can be made only once. The cut-off date mentioned in Form-G was 20.09.2022. Initially, the applicant made an offer of Rs.63.72 crores on 20.09.2022 which was subsequently increased to Rs.67.77 crores on 17.10.2022 and Rs.73.62 crores on 14.11.2022. In the strict literal sense, submissions of three plans by the applicant is hit by Regulation 39 (IA), but no date was fixed for the submission of revised/modified offer until 10.11.2022 which date was extended to 15.11.2022. It was only in 8<sup>th</sup> meeting of CoC held on 1.11.2022, the Resolution Professional was advised to call the offer by 10.11.2022 which period was further increased up to 15.11.2022. Until and unless cut-off date is given for submission of revised plans, the third offer is to be treated in continuation of the second offer.
42. Secondly, Regulation 39(IA) binds the Resolution Professional and not CoC as this regulation starts with the words “the resolution professional may, if envisaged in the request.....”. The CoC may discuss the plans with the objective to maximise the value of the assets and accordingly may direct the Resolution Professional. Here we may also want to quote the observations in para No. 5.4 of the co-ordinate bench in *M.K. Rajagopalan versus Rajendran Shanmugam and anr, IA/507/(CHE)/2022 in IA/288 (CHE)/2022 in CA/1/IB of 2017:*

“....The CoC in its commercial wisdom can request the prospective Resolution Applicants to revise the resolution plan any number of times and there is no bar to that effect can be countenanced as value maximization of the Corporate Debtor is the paramount objective of the Code”.

43. Thirdly, Regulation 39(IA) is not mandatory but directory as the word “may” has been used before the words “the resolution professional”. It is trite that a broad meaning to a word may be given having regard to the purport and object of the Statute. The basic purpose of interpretation of statutes is further to aid in determining either the general object of the legislation or the meaning of the language in any particular provision. Crawford's Statutory Construction (1989 reprint), on the subject, "Mandatory and Directory or Permissive Words" Crawford says:

*Ordinarily the words "shall" and "must" are mandatory, and the work "may" is directory, although they are often used inter-changeably in legislation. This use without regard to their literal meaning generally makes it necessary for the courts to resort to construction in order to discover the real intention of the legislature. Nevertheless, it will always be presumed by the court that the legislature intended to use the words in their usual and natural meaning. If such a meaning, however, leads to absurdity, or great inconvenience, or for some other reason is clearly contrary to the obvious intention of the legislature, then words which ordinarily are mandatory in their nature will be construed as directory, or vice versa. In other words, if the language of the statute, considered as a whole and with due regard to its nature and object, reveals that the legislature intended the words "shall" and "must" to be directory, they should be given that meaning. Similarly, under the same circumstances, the word "may" should be given a mandatory meaning, and especially where the statute concerns the rights and interests of the public, or where third persons have a claim de jure that a power shall be exercised, or*

*whenever something is directed to be done for the sake of justice or the public good, or is necessary to sustain the statute's constitutionality.*

*Yet the construction of mandatory words as directory and directory words as mandatory should not be lightly adopted. The opposite meaning should be unequivocally evidenced before it is accepted as the true meaning; otherwise, there is considerable danger that the legislative intent will be wholly or partially defeated.*

44. In ***Delhi Airtech Services Pvt. Ltd. and Ors. vs. State of U.P. and Ors. (2011)9SCC354***, the Hon'ble Supreme Court distinguished the mandatory and directory connotation of the terms 'shall' and 'may':

The distinction between mandatory and directory provisions is a well-accepted norm of interpretation. The general rule of interpretation would require the word to be given its own meaning and the word 'shall' would be read as 'must' unless it was essential to read it as 'may' to achieve the ends of legislative intent and understand the language of the provisions. It is difficult to lay down any universal rule, but wherever the word 'shall' is used in a substantive statute, it normally would indicate mandatory intent of the legislature.

45. In ***Salem Advocate Bar Association, T.N. versus Union of India A.I.R. 2005 SC 3353 and Kailash versus Nanku and others A.I.R. 2005 SC 2441***, it was held that the word 'may' also be used in the sense of 'shall' or 'must' by the legislature. Thus, the use of the word 'may' raises a presumption that the particular provision is not imperative, but this prima facie inference may be rebutted by other considerations such as object and scope of the enactment and the consequences flowing from such construction. In ***Sardar Govind Rao and Ors. versus State of Madhya Pradesh AIR 1965 SC 1222***, it was held that the use of the word 'may' or

'shall' by themselves do not necessarily suggest that one is directory and the other mandatory, but, the context in which the said expressions have been used as also the scheme and the purpose underlying the legislation will determine whether the legislative intent really was to simply confer the power or such conferment was accompanied by the duty to exercise the same. In *The Official Liquidator v. Dharti Dhan Pvt. Ltd. (1977) 2 SCC 166*, the Hon'ble Apex Court summed up the legal position thus:

In fact it is quite accurate to say that the word "may" by itself, acquires the meaning of "must" or "shall" sometimes. This word however, always signifies a conferment of power. That power may, having regard to the context in which it occurs, and the requirements contemplated for its exercise, have annexed to it an obligation which compels its exercise in a certain way on facts and circumstances from which the obligation to exercise it in that way arises. In other words, it is the context which can attach the obligation to the power compelling its exercise in a certain way. The context, both legal and factual, may impart to the power that obligatoriness. Thus, the question to be determined in such cases always is, whether the power conferred by the use of the word "may" has, annexed to it, an obligation that, on the fulfilment of certain legally prescribed conditions, to be shown by evidence, a particular kind of order must be made. If the statute leaves no room for discretion the power has to be exercised in the manner indicated by the other legal provisions which provide the legal context. Even then the facts must establish that the legal conditions are fulfilled: A power is exercised even when the Court rejects an application to exercise it in the particular way in which the applicant desires it to be exercised. Where the power is wide enough to cover both an acceptance and a refusal of an application for its exercise, depending upon facts, it is directory or discretionary. It is not the conferment of a power which the word "may" indicates that annexes any obligation to its exercise but the legal and factual context of it.

46. In *Mansukhlal Vithaldas Chauhan versus State of Gujarat (1997) 7 SCC 622*, the Hon'ble Supreme Court emphasised that the scheme of the statute is determinative of the nature of duty or power conferred upon the authority while determining whether such power is obligatory, mandatory or directory and that even if that duty is not set out clearly and specifically in the statute, it may be implied as correlative to a right. It is unnecessary to refer to all those decisions for we remain content with reference to the decision in *Bachahan Devi and Anr. versus Nagar Nigam, Gorakhpur and anr. (2008) 12 SCC 372* in which the position was succinctly summarized as under:

18. It is well settled that the use of word 'may' in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word 'may' as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word 'may', the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well-settled that where the word 'may' involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words directory significance would defeat the very object of the Act, the word 'may' should be interpreted to convey a mandatory force. As a general rule, the word 'may' is permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word 'shall', which ordinarily is imperative as it imposes a duty. Cases however, are not wanting where the words 'may' 'shall', and 'must' are used interchangeably. In order to find out whether these words are being used in a directory or in a mandatory sense, the intent of the legislature should be looked into along with the

pertinent circumstances. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of the word 'shall' or 'may' depends on conferment of power. Depending upon the context, 'may' does not always mean may. 'May' is a must for enabling compliance of provision but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with the power, it becomes his duty to exercise that power. Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty.

20. If it appears to be the settled intention of the legislature to convey the sense of compulsion, as where an obligation is created, the use of the word 'may' will not prevent the court from giving it the effect of Compulsion or obligation. Where the statute was passed purely in public interest and that rights of private citizens have been considerably modified and curtailed in the interests of the general development of an area or in the interests or removal of slums and unsanitary areas. Though the power is conferred upon the statutory body by the use of the word 'may' that power must be construed as a statutory duty. Conversely, the use of the term 'shall' may indicate the use in optional or permissive sense. Although in general sense 'may' is enabling or discretionary and 'shall' is obligatory, the connotation is not inelastic and inviolate." Where to interpret the word 'may' as directory would render the very object of the Act as nugatory, the word 'may' must mean 'shall'.

21. The ultimate rule in construing auxiliary verbs like 'may' and 'shall' is to discover the legislative intent; and the use of words 'may' and 'shall' is not decisive of its discretion or mandates. The use of the words 'may' and 'shall' may help the courts in ascertaining the legislative intent without giving to either a controlling or a determining effect. The courts have further to consider the subject matter, the purpose of the provisions, the object intended

to be secured by the statute which is of prime importance, as also the actual words employed. (Own emphasis supplied)

47. In view of the mandate of law as discussed above, it is noticed that both ‘may’ and ‘shall’ have been used in Regulation 39. When the words "may" and "shall" have been used at different places in the same provision, it means that the intention was to make a distinction in as much as one was intended to be discretionary while the other mandatory. In Regulation 39 (IB), there is negative direction as what type of resolution plans are not to be considered by inserting the word ‘shall’, implying that the CoC must not consider those plans. In Regulation 39(2), the Resolution Professional has been directed to submit all the resolution plans to the CoC and in the context of the scheme of the IBC, this direction is mandatory as the word ‘shall’ has been used. However, this is not the case of use of word ‘may’ in Regulation 39(IA) when we see the object behind inserting this provision, which was for avoiding delay. When the time limit in other provisions has been made directory as held in various cases including in *Surendra Trading Company versus Juggilal Kamalapat Jute Mills Company Ltd. and Ors. (2017)16 SCC 14 Dena Bank versus C. Shivakumar Reddy and Ors. (2021)10 SCC 330 and State Bank of India versus Ramakrishnan, 2018 (9) SCALE 597*, we think that the present provision can’t also not be said to be mandatory, as the legislature in its wisdom very deliberately used the word ‘may’ and ‘shall’ at different places in the same provision and further when we see the intention behind scheme of the statute. Further, it is also not provided as what would be the consequences if modification is made more than

once. In *Administrator, Municipal Committee, Charkhi Dadri and another versus Ramji Lal Bagla and others (1995)5 SCC 272*, it has been held that the absence of provisions for consequence in case of non-compliance with the requirements would indicate directory nature despite the use of word 'shall'.

48. Regarding the voting on the resolutions plan simultaneously, the CoC may approve a resolution plan by a vote of not less than 66% of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of Section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.
49. The CoC has recorded its deliberations on the feasibility and viability of the resolutions plans. On this spectrum, only two plans with highest score were found viable and feasible and this is mentioned in the minutes of the 10 meeting of the CoC held on 8.12.2022. However, all the plans were put for voting and in pursuance of 11<sup>th</sup> meeting of the CoC held on 14.12.2022, the voting timeline was extended by another 30 days. Therefore, there is no violation of the provisions of Regulations 39 (IB), 39(2) and 39(3).
50. About the offer made by the applicant after cut-off date i.e. 15.11.2022, the applicant made offers to the tune of Rs.63.7 crores on 20.09.2022, Rs.67.77 crores on 17.10.2022 and Rs.73.62 crores on 14.11.2022. The offer of Rs.84.78 crores on 23.01.2023 and Rs.90 crores on 31.01.2023

were made after the cut-off date of 15.11.2022 to the Deputy General Manager, State Bank of India through e-mail and not to the Resolution Professional. There is no reason for considering the resolution plan received after the expiry of the timeline fixed by the CoC as it will be unending process. In this context, a reference can also be made to the Clause 2.2.6 of the RFRP which is reproduced as below:

*“It is hereby clarified that acceptance and evaluation by the CoC of any resolution plan received by the resolution professional after the resolution plan due date shall be subject to the sole discretion of the CoC. The CoC may at its discretion reject or further evaluate such resolution plans.”*

51. The applicant can also not say that he was kept in dark and was under the impression that the resolution plan was yet to be approved and in the meanwhile he can make fresh proposal. When the date for submission of resolution plan was given to the applicant latest by 15.11.2022 vide e-mail, there does not arise any question of sending fresh resolution plan, irrespective of the amount offered. The applicant can also not blow hot and cold at the same time because on one hand it is claimed that modification of the original plan can be made only once, but at the same time the applicant has taken a contrary stand.
52. The ratio of *Express Resorts and Hotels Limited versus Amit Jain* and *Kalinga Allied Industries India Private Limited versus Committee of Creditors (Bindals Sponnge Industries Limited)* and others cases supra on which the learned counsel for the CoC has placed reliance is also the same that commercial wisdom cannot be replaced. In the former decision, it was held that the ‘maximisation of value of assets’ ought to be ‘within the specified timeline’ and if it is not a ‘time bound process’, the entire

scope and objective of the Code would fail merely because there is another higher offer made by a third party. In *Express Resorts and Hotels Limited versus Amit Jain case* it was decided that the mere fact that certain offers have been received after the approval of the resolution plan, CoC cannot have a change of heart and start clamouring before the Adjudicatory Authority that they have no objection to sending back the resolution for reconsideration.

53. The Resolution Professional was also competent under the RFRP to extend the date for submission of the resolution plan as the date of 10.11.2022 was extended to 15.11.2022. Clause 2.2.2 of the RFRP reads:

*“The Resolution Applicant shall submit the Resolution Plan along with payment of earnest money (as defined below), and all other requisite documents/information date as may communicated by the Resolution Professional to the PRAs as being the last (including the Section 29A Affidavit of the Resolution Applicant), in compliance with this RFRP, the IBC and Applicable laws, on or prior 24<sup>th</sup> June, 2022, or such other late date for submission of the Resolution Plans (referred to as the “Resolution Plan Due Date”). It is clarified that the Resolution Professional may extend such date from time to time with directions from and / or approval/consent/ratification of the Committee of Creditors. Any extension in the date from submission of the Resolution Plan, shall be notified and need not be communicated to each individual PRA by the Resolution Professional”.*

54. The extension of date from 10.11.2022 to 15.11.2022 was also ratified by the CoC in its 9<sup>th</sup> meeting held on 03.12.2022 and therefore, there is no illegality in extending the date.

55. Notwithstanding all this, this Authority has no jurisdiction to replace its own decision with the commercial wisdom exhibited by the CoC. In *Phoenix Arc Private Limited versus Spade Financial Services Limited and Ors.* (2021)3 SCC 475, it was held

The Adjudicating Authority had limited jurisdiction in the matter of approval of a resolution plan, which was well-defined and circumscribed by Sections 30(2) and 31 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there was no scope for interference with the commercial aspects of the decision of the CoC, and there was no scope for substituting any commercial term of the resolution plan approved by Committee of Creditors. If, within its limited jurisdiction, the Adjudicating Authority finds any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by the Code and expounded by this Court. (own emphasis)

56. In *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and Ors* ( 2020 ) 8 SCC 531., the Hon'ble Supreme Court held that the commercial aspects of a 'Resolution Plan', its viability or otherwise, and distribution of proceeds amongst stakeholders, were to be looked only by the 'Committee of Creditors' who are competent to go through all relevant aspects. It is the commercial wisdom of the Committee of Creditors that is to decide on whether or not to rehabilitate the corporate debtor by means of acceptance of a particular resolution plan, Therefore, the Appellate Tribunal cannot deliberate on such issue.

57. When the CoC/RP has not followed the provisions of law, it is only when this Authority can question the decision taken as held by the Hon'ble Supreme Court of India in *M.K. Rajagopalan versus Dr. Periasamy Palani Gounder*, reported in [(2023) SCC Online SC 574 that 'the principles underlying the decisions of this Court respecting the commercial wisdom of CoC cannot be over-expanded to brush aside a significant shortcoming in the decision making of CoC when it had not duly taken note of the operation of any provision of law for the time being in force'.
58. Learned counsel for the applicant has also referred para No. 155 of the decision in *Ebix Singapore Private Limited and Ors. versus Committee of Creditors of Educomp Solutions Limited and Ors (2022)2 SCC 401*. However, this decision is not going to benefit the applicant as it explains the general principles of CIRP process and it on the other hand strengthens the opinion of this Authority that CoC/RP has followed the due process of law. The relevant para is hereunder:

155. The analysis of the statutory framework governing the CIRP and periodic reports of the Insolvency Law Committee indicates that it is a creditor-driven process. The aim of the process, in preferential order, is to: first, enable resolution of the debt by maintaining the corporate debtor as a going concern, in order to preserve the business and employment of the personnel; second, maximize the value of the assets of the corporate debtor and enable a higher pay-back to its creditors than under liquidation; and third, enable a smoother and faster transition to liquidation in the event that a time bound CIRP fails, in a bid to avert further deterioration of value.

59. This is also the ratio of the judgment in *Jindal Stainless Limited versus Shailender Ajmera* case supra on which reliance has been placed by the learned counsel for the CoC.
60. Our discussion as above make it clear that no violation of law took place in conducting the proceedings by the CoC/RP which culminated in selecting the resolution plan of M/s. Square Four Housing & Development Private Limited.

## **II. IA No.192 of 2023**

61. A Resolution Plan is a rehabilitation plan for a corporate debtor going in insolvency. Section 5(26) of IBC, 2016 says

*“Resolution plan means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II.”*

62. After the approval of the resolution plan by the CoC under Section 30 (4) and subsequently, the Adjudicating Authority under Section 31(2), the resolution plan becomes applicable on the corporate debtor and its stakeholders including the Central Government, the State Government, or any other local authority who is the corporate debtor owes any statutory dues. Therefore, the resolution plan is very important in the system and this entails onerous duty on the CoC as well as Adjudicating Authority to examine and evaluate it properly.

63. For a valid resolution plan, it needs to be compliant with Section 30(2) of the Insolvency and Bankruptcy Code and Regulations 37 and 38 of the CIRP Regulations. It has also to comply to Request for Resolution Process (RFRP) and to provide for measures for insolvency resolution of corporate debtor.
64. The Hon'ble Supreme Court has explained in *Ebix Singapore Private Limited and Ors. versus Committee of Creditors of Educomp Solutions Limited and Ors. (2022)2 SCC 401* various stages in the resolution plan:

103. Having briefly taken an overview of the process, we now understand that there are broadly three stages: (i) the first stage is prior to and ends with the approval of the Resolution Plan by the CoC; (ii) the second stage is the interim period between the Resolution Plan's approval by the CoC and before its confirmation by the Adjudicating Authority; and (iii) the third stage is after the approval of the Resolution Plan by the Adjudicating Authority. In the first stage, the relationship between the parties is explicitly governed by the provisions of the IBC-such as the right of a prospective Resolution Applicant to seek the IM and RFRP upon submission of its EOI, which may have been rejected by the RP (as it happened in the Kundan Care Appeal). In the third stage, the same holds true since Section 31(1) makes the Resolution Plan binding upon all the stakeholders and its violation will attract a penalty Under Section 74 of the IBC. However, what we are assessing right now is the interim second stage between both of those. To understand the relationship of the parties therein, it becomes important to understand the exact "nature" of the Resolution Plan after it has been submitted to the Adjudicating Authority and before it has been approved Under Section 31(1).

65. In ***K. Sashidhar versus Indian Overseas Bank & Others (2019)12 SCC 150*** the Hon'ble Apex Court held that -

“if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per Section 30 (6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority. On receipt of such proposal, the Adjudicating Authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less”.

66. The commercial wisdom of the CoC is the hallmark of the entire process. The Hon'ble Supreme Court of India in recent ruling in ***Vallal RCK versus M/s Siva Industries and Holdings Limited & Ors (2022)9 SCC 803***, has held as under: -

21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of ***K. Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.***

67. There is also little scope of judicial review or intervention by the NCLT/NCLAT in approving the judicial plan. On this aspect, the Hon'ble Supreme Court in *Vallal RCK versus M/s Siva Industries and Holdings Limited & Ors (2022)9 SCC 803* has held:

27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of **Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another:**

“95. ....However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

68. We may also note the observations of the Hon'ble Supreme Court in the para No. 35 in *K. Sashidhar versus Indian Overseas Bank & Others (2019)12 SCC 150* that “*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".* The Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited versus Satish Kumar Gupta and Ors (2020) 8 SCC 531*** held that "*the limited judicial review available to AA has to be within the four corners of section 30(2) of the Code. Such review can in no circumstance trespass upon a business decision of the majority of the CoC. As such the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved*". In the latest judgment in ***Jaypee Kensington Boulevard Apartments Welfare Association and Ors. versus NBCC (India) Ltd. and Ors. (2022)1 SCC 401***, the Hon'ble Supreme Court has further elaborated this concept:

78. To put in a nutshell, the Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 30(2) and 31 of the Code read with the parameters delineated by this Court in the decisions above-referred. The jurisdiction of the Appellate Authority is also circumscribed by the limited grounds of appeal provided in Section 61 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by the CoC. Within its limited jurisdiction, if the Adjudicating Authority or the Appellate Authority, as the case may be, would find any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the Committee of Creditors, for re-submission after satisfying the parameters delineated by Code and exposted by this Court.

Significantly, in *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and Ors ( 2020 ) 8 SCC 531*, the Hon'ble Supreme Court laid down that if the Adjudicating Authority would find that the requisite parameters had not been kept in view, it may send the resolution plan back to the Committee of Creditors to resubmit the same after satisfying the parameters. It was laid down as under:

73. There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to

these key features, it must then pass the resolution plan, other things being equal. (emphasis supplied)

69. Within the legal framework, it is to be decided whether the resolution plan submitted for the approval of this Authority meets all the requirements.
70. The details of the approved Resolution Plan submitted by the SRA are as follows:
- i. **Square Four Housing & Infrastructure Development Private Limited (SFHIDPL)**, is a Company incorporated on 05.01.2011, having its Registered Office at 238A, AJC Bose Road, 2<sup>nd</sup> Floor, Suite No.2B, Kolkata – 700 020. It was formerly known as “Overflow Tradelink Pvt. Ltd.”. The Board of Directors of the Company are Mr.Ganesh Kumar Singhania and Mr. Somnath Samanta. SFHIDPL is a part of the Square Four Group, which is primarily engaged in the Real Estate Business. Square Four Group is highly diversified business house and primary activity includes construction, real estate development, NBFC activity, etc. SFHIDPL has recently executed a landmark resident project known as “Uddipa” with an estimated total cost outlay of Rs.171.27 crores and has been awarded with Green Building Certificate in Gold category.

**National Company Law Tribunal, Hyderabad Bench, Court-II**

**IA No.1233 of 2023, IA No.192 of 2023  
IP No.13 of 2023 & IA No.547 of 2023**

**In**

**CP(IBC) No.206/7/HDB/2021**

**Date of Order: 07.12.2023**

**ii.** The CoC is the sole Financial Creditor/State Bank of India, which is having 100% voting share voted in favour of the Resolution Applicant.

**iii.** The distribution of the resolution plan amount submitted by M/s. SFHIDPL, are as follows:

(Rs. in lakhs)

Sl. 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	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	Nil	N.A.	N.A.	N.A.
		(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	Nil	N.A.	N.A.	N.A.
		<b>Total[(a) + (b)]</b>	<b>26113.74</b>	<b>26113.74</b>	<b>8000.00</b>	<b>30.63%</b>
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	Nil	N.A.	N.A.	N.A.

**National Company Law Tribunal, Hyderabad Bench, Court-II**

**IA No.1233 of 2023, IA No.192 of 2023  
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		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	Nil	N.A.	N.A.	N.A.
		(ii) who voted in favour of the resolution plan	Nil	N.A.	N.A.	N.A.
		<b>Total[(a) + (b)]</b>	Nil	N.A.	N.A.	N.A.
3	Operational Creditors	(a) Related Party of Corporate Debtor	Nil	N.A.	N.A.	N.A.
		(b) Other than (a) above:				
		(i)Government	270.90	28.87	25.00	9.23%
		(ii)Workmen	--	--	--	--
		(iii)Employees	84.71	84.71	75.00	88.54%
		(iv) Others	--	--	--	--
		<b>Total[(a) + (b)]</b>	<b>355.64</b>	<b>113.58</b>	<b>100.00</b>	<b>28.12%</b>
4	Other debts and dues	CIRP Expenses	At actuals	At actuals	At actuals	100%
<b>Grand Total</b>			<b>26469.38</b>	<b>26227.32</b>	<b>8100.000</b>	<b>30.60%</b>

A copy of the Resolution Plan along with its annexures is filed at page **nos.43 to 141 of the application.**

- iv. The Term of the Resolution Plan and Implementation Schedule is as follows:

Particulars	Total amount offered	Term from vesting date (The vesting date is the date of approval of Resolution Plan by NCLT (Adjudicating Authority) under Section 5(1) of the Insolvency and Bankruptcy Code, 2016
CIRP Costs	Estimated CIRP cost of Rs.65 lakhs or actuals	Payable within 30 days of the approval of NCLT.
Financial Creditors	Rs.80.00 crores as full and final settlement	Upfront amount of Rs.24.00 crores being 30% of the offered amount shall be paid within 30 days of approval of NCLT and balance amount of Rs.56.00 crores being 70% shall be paid in three instalments within nine months from upfront amount. (Out of the remaining offered amount, 20% of the offered amount shall be paid within 4 months from upfront amount. Balance 50% of the offered amount shall be paid equally in 7 <sup>th</sup> and 9 <sup>th</sup> month post upfront payment.
Operational Creditors other than employees & workmen	Rs.25,00,000/-	Payable within 30 days of approval of NCLT
Operational Creditors – Workmen & Employees	Rs.75,00,000/-	Payable within 30 days of approval of NCLT
Statutory Authority Dues	Nil	
Debts to other creditors	Nil	
Total	Rs.81.00 crores + Estimated CIRP cost of Rs.65 lakhs or actuals.	

**v. Management of the Corporate Debtor:**

The implementation of the plan until the final payment of resolution plan shall be supervised by the 'Monitoring Committee'. The 'Monitoring Committee shall comprise of (i) one member from the management of Resolution Applicant; (ii) One member from the Financial Creditor (Secured); and (iii) Resolution Professional. On and from the Effective Date, the Reconstituted Board shall be responsible for daily affairs and operations of the Company/Corporate Debtor.

**vi. Compliance of mandatory contents of Resolution Plan under the Code and CIRP Regulations: -**

The Resolution Professional has conducted a thorough compliance check of the Resolution Plan in terms of the Code as well as Regulations 38 & 39 of the Insolvency and Bankruptcy Board of India (Corporate Insolvency Resolution Process) Regulations, 2016, and has submitted Form-H under Regulation 39 (4). **A copy of the Form-H is filed at page nos. 151 to 160 of the application.** The Resolution Applicant has filed Certificate of Compliance under Section 29A and 30 of the Code confirming that they are eligible to submit the Plan under Section 29A of the Code and that the contents of the said Certificate are in order. The Fair Value and Liquidation Value as submitted in Form-H is Rs.124.27 crores and Rs.79.21 crores respectively.

**a) Section 30(2)(a) of IBC :**

In the Resolution Plan, the Resolution Applicant proposes to pay the CIRP cost at actuals as on the Sanction Date in full and in priority to any Creditor of the Corporate Debtor. An amount of Rs.65,00,000/- as estimated by the RP shall be paid towards CIRP costs. In the event there is any shortfall, such shortfall shall be adjusted from the amount proposed to be paid under the Resolution Plan to the Secured Financial Creditor.

**b) Section 30(2)(b) of IBC :**

The Resolution Plan provides for payment of Rs.25,00,000/- to Operational Creditors (other than workmen, employees and Government dues). Further, the plan provides for payment of Rs.75,00,000/- to Workmen and employees.

c) There is no dissenting financial creditor as the Resolution Plan is approved with 100% majority by sole Financial Creditor/SBI.

**vii. Source of Funds: (Page no. 60 of the Resolution Plan)**

1. The Resolution Applicant confirms that it has sufficient funds to make the payments of Rs.81.65 crores and/or has the ability to raise such amounts from other sources also.

2. The Resolution Applicant retains the right to arrange this funding from banks or financial institutions or any other lenders or investors in compliance to any provision under IBC. However, under all scenarios the Resolution Applicant shall continue to be promoted, controller, and managed by entities that meet the requirements of the Code. Simultaneously with making full payments as envisaged under this Plan, the Financial Creditor shall release the charge on the Properties & Assets of the Corporate Debtor and handover all documents including No Dues Certificate in favour of the Resolution Applicant and immediately upon getting the properties and assets of the CD release from charge by the Financial Creditor, the Resolution Applicant shall be entitled to create charge in favour of any lender of the RA on any assets of the CD without requiring any consent of the Financial Creditor.

**viii. Reliefs & Concessions:**

According to the Ld. Counsel for Resolution Professional, the Resolution Applicant has sought the reliefs/concessions as mentioned at page No.70 of the Resolution Plan. We have carefully examined the same. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/ liabilities of the Corporate Debtor and shall be dealt with by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned. As regards to the reliefs sought, the Corporate Debtor has to approach the authorities concerned for such reliefs and we

trust the authorities concerned will do the needful. The same view has been taken by Hon'ble Supreme Court in the matter of *Ghanashyam Mishra And Sons Private Limited versus Edelweiss Asset Reconstruction Company Limited (2021)9 SCC 657*

71. Therefore, the resolution plan, when tested on the touch stone of the aforesaid facts and the rulings, we are of the view that the instant resolution plan satisfies the requirements of Section 30 (2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. We also found that the Resolution Applicant is eligible to submit the Resolution Plan under Section 29A of the Code.
72. We therefore, hereby approve the Resolution Plan dated 15.11.2022 submitted by M/s.Square Four Housing & Infrastructure Development Private Limited, along with annexures, schedules forming part of the Resolution Applicant annexed to the Application and order as under:
  - i. The Resolution Plan along with annexures and schedules forming part of the plan shall be binding on the Corporate Debtor, 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 is due, guarantors and other stakeholders involved in the Resolution Plan.

- ii. All crystallized liabilities and unclaimed liabilities of the Corporate Debtor as on the date of this order shall stand extinguished on the approval of this Resolution Plan.
- iii. If the Successful Resolution Applicant (SRA) fails to pay the Resolution Plan amount to the stakeholders within the timeline fixed in the Resolution Plan, the entire amount paid by the SRA shall be forfeited.
- iv. It is hereby ordered that the Performance Bank Guarantee furnished by the Resolution Applicant shall remain as performance Bank Guarantee till the amount proposed to be paid to the creditors under this plan is fully paid off and the plan is fully implemented.
- v. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC) Hyderabad for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- vi. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to supra.
- vii. The moratorium under Section 14 of the Code shall cease to have effect from this date.

- viii. The applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this order for information.
  - ix. The applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
  - x. The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.
  - xi. The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and also forward a copy to IBBI.
73. Accordingly, **IA 192/2023 in CP(IB) No.206/7/HDB/2021** is allowed and stands disposed of.

### **III. IA No.13 of 2023**

74. The stand of the applicant to be impleaded as party in the main petition is to be rejected outrightly because in an application under Section 7 IBC, it is the Financial Creditor and the Corporate Debtor who are the necessary parties and no third party intervention is contemplated at that stage. Here, we may profitably refer to the decisions in *Sunil S. Kakkad versus Parag Sheth, Resolution Professional / Liquidator & anr (2019) ibclaw.in 427*

*NCLAT, Shyam Sunder Bhatler versus Punjab National Bank & Anr. (2018) ibclaw.in 183 NCLAT, L&T Infrastructure Finance Company Ltd. Vs. Gwalior Bypass Project Ltd. (2019) ibclaw.in 394 NCLAT, Vekas Kumar Garg versus DMI Finance Pvt. Ltd. & Anr. (2021) ibclaw.in 78 NCLAT IDBI Bank Ltd. versus Odisha Slurry Pipeline Infrastructure Ltd. [2019] ibclaw.in 30, NCLAT and Damont Developers Pvt. Ltd. versus Bank of Baroda & Anr. (2019) ibclaw.in 497 NCLAT.* The same is the ratio of the decision in *M.K. Rajagopalan versus S. Rajendran and another, Company Appeal (AT)(CH)(INS) No. 58 of 2023* that unsuccessful resolution applicant cannot be considered a 'stakeholder' within the ambit of Section 31 (1) of the IBC and further he is not an aggrieved person.

75. Apart from the legal position as discussed above, this IA does not lie in view of dismissal of the IA Nos. 1233 of 2023 and 547 of 2023.

#### **IV. IA No.547 of 2023**

76. In IA No.1233 of 2023, we have already recorded as to why the resolution plans submitted after the cut off period i.e. 15.11.2022 were rightly not considered by the CoC/RP, thus, there is no merit in the present application.

IA No.1233 of 2023, IA No.192 of 2023  
IP No.13 of 2023 & IA No.547 of 2023  
In  
CP(IBC) No.206/7/HDB/2021  
Date of Order: 07.12.2023

**FINAL ORDER**

As a sequel to our finding as above, we dismiss the IA Nos.1233 of 2023, Intvn.P.13 of 2023 and IA 547 of 2023. IA 192 of 2023 on the other hand is allowed.

**Sd/-**

**SANJAY PURI  
MEMBER (TECHNICAL)**

**Sd/-**

**RAJEEV BHARDWAJ  
MEMBER (JUDICIAL)**

Vinod/Syamala