NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

1. IA(PLAN)/90/2025C.P. (IB)/352(MB)2021

IN THE MATTER OF

M/s Memoir.

VS

M/s Eagle Home Appliances Pvt Ltd

U/s 9 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 11.09.2026

CORAM:

SH. VINAY GOEL
MEMBER (J)

SH. CHARANJEET SINGH GULATI
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner:

For the Respondent:

ORDER

IA(PLAN)/90/2025: The above IA is listed for pronouncement of the order. The same is pronounced in open court, vide a separate order.

Sd/-
VINAY GOEL
Member (Judicial)

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

//Rahul//

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBI BENCH - V

I.A.(IBC)(Plan)/90/2025
IN
C.P. NO. 352(IB)/MB/C-V/2021

Under Section 30(6) of the Insolvency and Bankruptcy Code, 2016

Mr. Amit Pareek
(Resolution Professional of Eagle Home Appliances Private Limited)
4th Floor, Ram Prasad Complex, Chatribari, Guwahati,781001

.... Applicant/ Resolution Professional

<u>IN THE MATTER OF:</u>

M/s Memoir And Ors

.... Petitioner/ Operational Creditors

VERSUS

M/s. Eagle home appliances Pvt Ltd

.... Corporate Debtor/Respondent

Order Pronounced on: 11.09.2026

Coram:

Hon'ble Sh. Vinay Goel, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati, Member (Technical)

Appearances:

For the Resolution Applicant : Adv. Ms. Shipra

ORDER

I.A.(IBC)(Plan)/90/2025

1. This Interlocutory Application has been filed by Mr. Amit Pareek, the Resolution Professional of **M/s Eagle Home Appliances Private Limited**, ("**the Applicant/ Resolution Professional**") under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 ("**the Code**"), seeking approval of the Resolution Plan submitted by Logenix Services Pvt Ltd which has been approved by the Committee of Creditors by a vote of 99.09% in the 15th CoC meeting held on 27th May, 2025.

Brief Facts as per the Application:

1. The petition filed by M/s Memoir (**"Operational Creditor"**) against M/s Eagle Home Appliances Private Limited (**"Corporate Debtor"**) was admitted by this Tribunal vide order dated 28.03.2024 under Section 9 of the Code ("**said order**"), thereby initiating Corporate Insolvency Resolution Process ("**CIRP"**) of the Corporate Debtor. The said Corporate Debtor is a private company incorporated on 11.01.1965 under the provisions of the Companies Act, 1956, CIN: U26100PN1965PTC139986 and having its registered office at 4th Floor, Parmar Gallery, S.No.77, Shivarkar Road, Wanawadi, Pune, Maharashtra, India, 411040. The Corporate Debtor is engaged in the business of manufacturing and exporting of thermoware, cookware, vacuumware and such other products and services.

2. Pursuant to the said order dated 28.03.2024, Mr. Rajas Shreeram Bodas was appointed as the Interim Resolution Professional (IRP). Subsequent to the admission of the petition for CIRP, a Public Announcement inviting claims from creditors was made by the IRP on 04.04.2024 in Financial Express (English), Loksatta (Vernacular Language) Newspapers in accordance and the same was also published on the designated website of IBBI in compliance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 (**"IBBI (CIRP) Regulations, 2016"**). The last date of submission of claims was 15.05.2024. Following the Public

Announcement, the IRP received claims from the stakeholders/creditors and constituted the CoC.

3. In the 1st CoC meeting held on 23.05.2024, the IRP was appointed as the Resolution Professional by the CoC. Later on, in the 5th CoC meeting held on 16.09.2024, the Applicant was appointed as the new RP, which was later approved by this Tribunal vide order dated 18.11.2024 in IA No.5197 of 2024.

4. The Applicant submits that the CIRP period of 180 days expired on 25.09.2024. Thereafter, the erstwhile RP filed an IA/5623/2024 seeking extension of 90 days, which was allowed vide order dated 06.12.2024. Further, pursuant to the CoC's approval in the 9th CoC meeting, the Resolution Professional filed IA No.1399/2025 seeking an extension of 90 days, which was allowed, vide order dated 28.03.2025, extending the CIRP period from 06.03.2025 to 03.06.2025.

5. Pursuant to the discussions in the 9th CoC meeting and approval of the eligibility criteria under Section 25(2)(h) of the Code read with the relevant Regulations, the RP invited Expression of Interest ("**EoI**") in Form-G on 04.02.2025 through publication in the Financial Express (English) and Loksatta (Marathi), inviting Prospective Resolution Applicants ("**PRAs**") to submit EoIs by 19.02.2025.

6. In response, EoIs were received from two PRAs — Logenix Services Pvt. Ltd. and Real Value Infotech Projects Private Limited. The EoI submitted by Real Value Infotech Projects Private Limited was found non-compliant, as it lacked details of the refundable interest-free EMD of Rs.10 lakhs and did not include hard copies of the EoI documents. Despite reminders sent via emails dated 20.02.2025 and 21.02.2025 and telephonic follow-ups, no response was received, and the RP accordingly excluded Real Value Infotech Projects Private Limited from the provisional list of PRAs, duly intimating the company of such non-inclusion.

7. Upon verification of the EoI documents and with the approval of the CoC, the RP published the provisional list of PRAs on 22.02.2025 and the final

list on 02.03.2025 which included Logenix Services Private Limited as the only PRA. The Evaluation Matrix, Information Memorandum, and other process documents for the Request for Resolution Plans ("**RFRP**") were shared with the PRA on 02.03.2025, in accordance with Regulation 36B of the CIRP Regulations and pursuant to CoC approval in the 10th CoC meeting held on 15.02.2025, the last date for submission of the resolution plan was fixed as 02.04.2025.

8. In the meantime, this Tribunal vide order dated 07.04.2025 in IA No. 3886 of 2024 in CP (IB) No. 352/MB/2021, filed by Eastern Enterprises seeking admission of its claim as a Financial Creditor, directed the RP to verify the claim in light of the findings recorded therein. Pursuant thereto, the RP verified the claim of Eastern Enterprises, along with the claims of similarly placed creditors that had been kept in abeyance pending finalisation of the said order. Upon due verification, the RP prepared the updated list of creditors as on 11.04.2025 and reconstituted the CoC accordingly. The list of reconstituted CoC is as follows:

S.NO	Name	Voting Percentage
1.	Shubham Enterprises	23.62%
2	Anand Polymers	0.91%
3.	VRV Polymers	0.98%
4.	Eastern Enterprises	40.93%
5.	M/S Memoir	33.56%
	Total	100%

9. The Applicant submits that on the request of Logenix Services Pvt Ltd and subsequent to the approval of CoC in the 11th CoC meeting held on 29.03.2025, the timeline for submission of Resolution Plan was extended to 30.04.2024.

10. The Resolution Plan, received from the PRA on 30.04.2025, was opened in the 12th CoC meeting held on 05.05.2025. Discrepancies noted by the RP were communicated to the PRA on 13.05.2025 and rectified by 19.05.2025. The 13th CoC meeting fixed 22.05.2025 as date for consideration and negotiation of the Plan. In the 14th CoC meeting held on 22.05.2025, the PRA presented its Plan and enhanced the Plan value at the CoC's instance.

In the 15th CoC meeting dated 27.05.2025, the RP placed the modified Plan dated 23.05.2025 before the CoC for voting, and the CoC approved the Resolution Plan submitted by M/s. Logenix Services Pvt. Ltd, with 99.09% votes in favour of the Plan.

Average of Fair and Liquidation Value of the Corporate Debtor:

11. The valuation of the assets of the Corporate Debtor was already been conducted by the IBBI registered valuers appointed by the erstwhile RP. As per the Valuation Reports, the valuation of assets of Corporate Debtor as on the CIRP commence date i.e., 28.03.2024 is as under:

Name of the Valuer	**Asset Category**	**Fair Value (in Rs)**	**Liquidation Value (in Rs)**
Ankit Gupta	Financial Assets	21,915,180/-	11,272,989/-
Bhavin R. Patel	Financial Assets	23,146,670/-	11,888,732/-
Average Value of Financial Assets		**2,25,30,925/-**	**1,15,80,860.50 /-**

12. Upon taking over the assignment, the present Resolution Professional, effected recovery of Rs.3 Cr from related parties of the Corporate Debtor. Valuers for Plant and Machinery were not appointed by the erstwhile RP, based on information from the suspended management that the assets mainly comprised old molds (from 2010 onwards) kept with various vendors, which had remained unused for long, held negligible value, and were being withheld by vendors on account of unpaid dues. The RP placed this matter before the 10th CoC meeting (15.02.2025), where it was collectively decided not to appoint a registered valuer, as the cost of valuation would exceed the likely realisable value of the assets.

Brief background of the Successful Resolution Applicant (SRA):

13. It is submitted that Logenix Services Pvt. Ltd ("**SRA**"), is private company incorporated on 19.02.2016 under the Companies Act 2013, having its

registered office at Shop 2, Zee Sargam C.H.S. Ltd, Dixit Road Vile Parle (East), Mumbai city, Maharashtra, India, 400057.

14. Financial Strength and solvency of the PRA:

Particular	FY 2023-24	FY 2022-23	FY 2021-22
Total Revenue	Rs. 1,22,46,91,980	Rs. 1,26,11,73,700	Rs. 59,80,38,220

Source of Funds:

15. The Resolution Applicant proposes own source as per Net Worth Certificate that stands at Rs. 41,92,74,490/- as on 31.03.2024.

CIRP Cost:

16. It is submitted that the RP has provided an estimated CIRP Cost of Rs. 30,00,000/-. As stipulated in the Resolution Plan, the total amount of CIRP Costs once approved by the CoC shall be paid in priority to all other payments. It is stated that such amount shall be either discharged from the Earnest Money Deposit (EMD) or upfront infusion to be brought within 60 days from the Approval of Plan by this Tribunal. In case, the actual CIRP is more than this estimates than such excess cost shall be paid by RA by infusing owned fund whereas if the actual CIRP cost is less than this estimation (as provided by RP) than such excess will be utilize towards the Working Capital.

17. In accordance with Regulation 38(1-A) of the IBBI Rules, 2016, the statement showing the treatment given to the stakeholders as given below:

(Amount in Rs)

Sr. no.	**Particulars**	**Amount Admitted (in Rs)**	**Amount proposed in the Plan (in Rs)**	**Payout as % of claimed amount**	**Terms of Paymen t**	**Timeli ne**
A	**Financial Creditors**					

I	Secured Financial Creditors	N.A	N.A	-	-	-
II	Unsecured Financial Creditors	5,35,86,960/-	3,13,57,828/-	58.51%		60 days from NCLT Approval
B	**Operational Creditors**	2,85,54,298/-	11,42,172/-	4%		60 days from NCLT Approval date
C	**Other Operational Creditor (Statutory dues, workmen, employees,)**	N.A	N.A	N.A	-	-
D	**Other Debts and dues**	N.A	N.A	-	-	-
E	**Business Improvement (for CAPEX/Renovation/ Synchronization & Working Capital)**	0	30,00,000			Within the period of 1 year from the plan approval

F	**CIRP Cost**	30,00,000	30,00,000	N.A	As upfront	within 60 days of approval of the Plan by NCLT
F	**GRAND TOTAL**	**8,51,41,258/-**	**3,85,00,000/-**	**39.09%**		

Earnest Money Deposit (EMD) and Performance Security/ Performance Bank Guarantee (PBG):

18. The Applicant submits that the SRA has deposited a sum of Rs. 10,00,000/- (Rupees Ten Lakhs only) towards the EMD amount at the time of submission of EOI and Rs. 25,00,000/- (Rupees Twenty-Five Lakhs only) at the time of submission of Resolution Plan i.e. in total Rs.35,00,000/- (Rupees Thirty-Five Lakhs only), however as per the clause 2.8 of the RFRP an amount of Rs.25,00,000/-, was required to be submitted as EMD.

19. The Applicant submits that the total amount of Rs. 35,00,000/- (Rupees Thirty-Five Lakhs only) submitted by the SRA as EMD, was approved by the COC to be utilised as Performance Security, in the 14th COC Meeting held on 22.05.2025 with 100% votes in favour. Further, it is submitted that in this regard, the Relevant Clause of RRPF has been modified & undertaking is received from SRA.

Treatment of Shares and Issuance of Equity shares

25. No payment shall be made to the Equity Shareholders of the Corporate Debtor since the Liquidation Value of the Corporate Debtor (as per our internal estimates) is inadequate to make any payment to such persons.

26. All existing Equity Shares of the Corporate Debtor prior to the Effective Date of the Plan, shall stand cancelled and extinguished in their entirety.

No compensation shall be payable to promoters or any other shareholders for such cancellation. Upon cancellation, all rights, entitlements, and liabilities arising out of or relating to such Equity Shares shall stand permanently extinguished.

Issuance of Equity Shares

27. The existing shares shall stand cancelled and new shares of Rs.35,00,000/- (Rupees thirty-five lakhs only) shall be issued and allotted at face value of Rs. 10/- each through fresh issue of 3,50,000 equity shares to the SRA.

Brief Submissions of the Applicant

28. The Applicant has through his Additional Affidavit dated 07.03.2026 submitted that this matter was listed for hearing on 23.02.2026, on which this Tribunal directed the Applicant to furnish the Request for Resolution Plan (RFRP) and the details regarding utilisation of receipts from the sale of the Trade Mark by way of an additional affidavit. Accordingly, in compliance of the said direction of this Tribunal, the Applicant has bought on record the copy of RFRP along with Financial statement for the F.Y 2011-2012 and 2012-2013 showing the details of amortisation of trademark which was acquired in the year 2003 and has submitted the following:

a) As per the Corporate Debtor's Accounting Policy framed in accordance with AS-26 ("Intangible Assets"), the Trademark was amortisable over its useful life, not exceeding 10 years. The CD amortised it at Rs. 2,00,000/- p.a. over 10 years from 2003, the year of acquisition.

b) Amortisation for FY 2003-04 to FY 2010-11 (Rs. 16,00,000/-, i.e., Rs. 2,00,000/- p.a. for 8 years) was not provided at the time. This was subsequently amortised in 2012, along with that year's Rs. 2,00,000/-, with disclosure by a note in the financial statements. The remaining Rs. 2,00,000/- was amortised in 2013, after which the Trademark's carrying value was NIL.

c) The "*Fixed Assets*" disclosure in the CD's FY 2023-24 financial statements reflects historical cost since inception, without effect to depreciation/amortisation. As stated above, however, the Trademark was fully amortised by FY 2012-13 and thus did not form part of the CD's assets as on the CIRP commencement date, 28.03.2024.

d) During the hearing on 23.02.2026, in the absence of complete records, a submission was inadvertently made that the Trademark was sold in 2021 and its proceeds utilised by the CD before CIRP commencement. This does not reflect the correct factual position and may be disregarded. An Affidavit of Mr. Naushad Padamsee (Suspended Director), affirming the Trademark's purchase in 2003 and amortisation till 2013, is annexed as “Annexure D”.

29. This Tribunal had vide order dated 20.08.2026 raised question with respect to the reduction of Performance Security from 20% to Rs.35 lacs and other with respect to utilization of the sale amount of Rs. 6 lacs and asked the Applicant to file written submission. The Applicant has in compliance with the said direction, through its written submission dated 22.08.2026 submitted that:

a) the sole PRA's Resolution Plan dated 30.04.2025 initially proposed a value of Rs. 3,68,53,000/-, which was enhanced to Rs. 3,85,00,000/- during negotiations in the 14th CoC meeting (22.05.2025). At the PRA's request, the CoC also considered and approved, with 100% voting share, a modification of the PBG to Rs. 35,00,000/-. It is submitted that such modification was expressly contemplated under the RFRP itself: while Clause 2.9.1 prescribed the PBG requirement, Clause 2.9.7 expressly empowered the CoC, subject to the prescribed voting threshold, to revise its value and validity depending on the terms of the Resolution Plan, and Clause 2.3 provided the requisite flexibility in the RFRP process prior to approval. The PBG modification was thus effected in exercise of a power reserved to the CoC under the RFRP, during negotiation and finalisation of the Plan and prior to its approval- not as a post-facto waiver or concession. The modified Plan dated 23.05.2025 was accordingly placed before, and approved by, the CoC in its 15th meeting (27.05.2025) with 99.09% voting share. It is further submitted that no prejudice was caused to any competing PRA, as only one EOI was received pursuant to the Second Form-G and only one applicant featured in the Final List of PRAs; consequently, exercise of the power under Clause 2.9.7 of the RFRP could not have adversely affected any other applicant, there being none.

b) The Hon'ble NCLAT in ***Makalu Trading Ltd. & Ors. v. Rajiv Chakraborty, RP of Uttam Value Steel Ltd. & Ors., Company Appeal (AT)(Ins.) No. 533 of 2020***, order dated 09.09.2020, recognised the authority of the CoC to modify the PBG pursuant to the terms of the RFRP (Para 13). The Hon'ble Supreme Court declined to interfere with the said order on 12.10.2020. Reliance is also placed upon ***GB Global Ltd., I.A. No. 19 of 2021 in C.P. (IB) No. 1399/MB/2017***, NCLT Mumbai Bench, order dated 19.05.2021 (Para J Page No 12), and ***Fact-RCF Building Products Ltd., I.A. (IBC)(Plan)/05/KOB/2025*** in ***C.P.(IB)/39/KOB/2023***, which support the proposition that the CoC may exercise the power available under the RFRP concerning PBG during the resolution process (Para 10, Pg No.6).

c) The Vehicle i.e the Mahindra Scorpio (Reg. No. MH12MB4351), manufactured in February 2015 and registered on 30.06.2015, stood in the name of the erstwhile Director, Late Shri Riaz Alimohammad Padamsee (d. 11.08.2023), and was fully depreciated with Nil written-down value as per the audited FY 2023-24 accounts. Despite the Nil book value and title/possession complications, the CoC, in exercise of its commercial wisdom, approved a negotiated sale for Rs. 6,00,000/- by 71.57% voting share in its 8th meeting (13.01.2025); the sale was consummated on 21.01.2025, and consideration duly realised — notably, before the EOI eligibility criteria were even approved in the 9th CoC meeting (01.02.2025). Of the Rs. 6,00,000/- realised, Rs. 3,00,000/- was refunded to M/s. Memoir (being an amount received post-CIRP commencement), and the balance was applied towards statutory CIRP expenses, conferring no personal or improper benefit on the SRA. The Resolution Plan estimates CIRP costs at Rs. 30,00,000/-, payable in priority. Under Clause 9 of the Plan, the SRA's total financial commitment remains fixed: any surplus, if actual costs are lower, stays with and is utilised for the Corporate Debtor's working capital and is non-refundable to the SRA; any shortfall requires additional infusion by the SRA.

Analysis & Findings

30. We have heard the Ld. Counsels of the Applicant and perused the documents available on record.

31. When a Resolution Plan is submitted, the RP's primary obligation under the Code is to examine whether the Resolution Plan is in compliance with provisions of the Code, CIRP Regulations and also meets the requirements set out in the RFRP.

32. For appreciating the facts, it is necessary to check the procedure prescribed under the Code and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**") with respect to submission and approval of the Resolution Plan by the CoC.

Regarding modification of RFRP & deposit of Performance Bank Guarantee (PBG):

33. It is necessary to specifically refer Regulation 36B(1), 36B(4A), 36B(5) of the CIRP Regulations:

> *"**36B. Request for resolution plans.***
> *(1) The resolution professional shall, within five days of the date of issue of the final list under sub-regulation (12) of regulation 36A, issue the information memorandum, evaluation matrix and a request for resolution plans to every resolution applicant in the final list:*
> *Provided that where such documents are available, the same may also be provided to every prospective resolution applicant in the provisional list.*
> *(2) The request for resolution plans shall detail each step in the process, and the manner and purposes of interaction between the resolution professional and the prospective resolution applicant, along with corresponding timelines.*

(3) The request for resolution plans shall allow prospective resolution applicants a minimum of thirty days to submit the resolution plan(s).

(4) The request for resolution plans shall not require any non-refundable deposit for submission of or along with resolution plan.

(4A) ***The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of section 30, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule;***

Provided that where the corporate debtor has any real estate project, the committee may relax the requirement to provide for performance security for an association or group of allottees in such real estate project, representing not less than ten per cent. or one hundred creditors out of the total number of creditors in a class, whichever is lower.

Explanation I. – ***For the purposes of this sub-regulation, "performance security" shall mean security of such nature, value, duration and source, <u>as may be specified in the request for resolution plans</u> with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor.***

Explanation II. – A performance security may be specified in absolute terms such as guarantee from a bank for Rs. X for Y years or in relation to one or more variables such as the term of the resolution plan, amount payable to creditors under the resolution plan, etc.

(5) ***Any modification in the request for resolution plan*** *or the evaluation matrix issued under sub-regulation (1),* ***shall be deemed to be a fresh issue and shall be subject to timeline under sub-regulation (3)****.*

(6) The resolution professional may, with the approval of the committee, extend the timeline for submission of resolution plans.

(7) The resolution professional may, with the approval of the committee, re-issue request for resolution plans, if the resolution plans received in response to an earlier request are

not satisfactory, subject to the condition that the request is made to all prospective resolution applicants in the final list"

The above Regulation 36B(1) provides that the RP within 5 days of the issuance of the Final List of PRAs, shall issue the IM, RFRP and Evaluation matrix to every Resolution Applicant in the Final List. Regulation 36B(4A) mandates that the RFRP requires a resolution applicant, whose plan is approved by the CoC under Section 30(4), to furnish performance security within a specified timeline; this security stands forfeited if the applicant, after approval of the Plan by the Adjudicating Authority, fails to implement the plan or contributes to such failure in accordance with its terms and implementation schedule- the objective being to ensure genuine commitment and deter withdrawal or non-implementation post-approval. The nature, value, duration and source of the security are determined by the CoC and specified in the RFRP having regard to the plan and the CD's business, and may be fixed (e.g., a bank guarantee for a specific sum and tenure) or linked to variables such as the plan's term or amounts payable to creditors. Further, sub-regulation (5) provides that any modification to the request for resolution plans or the evaluation matrix issued under Regulation 36B(1) is deemed to be a fresh issue, thereby restarting the process and making it subject to the timelines prescribed under sub-regulation (3), so that resolution applicants get the full statutory period to respond to the revised terms. Additionally, sub-regulation (6) provides for extension of timeline for submission of Resolution Plans and sub-regulation (7) stipulates that RP may with the approval of the CoC, re-issue the RFRP if the resolution plans received in response to an earlier request are not satisfactory, however the request has to be confined to only the prospective resolution applicants in the final list.

34. It is noted that, in the present case since there was only one PRA i.e Logenix Services Pvt. Ltd (SRA) in the Provisional and Final List of PRAs, thus the Resolution Professional accordingly issued the IM, RFRP and evaluation matrix to the sole PRA on 02.03.2025. Now, before proceeding to check the

content of the Resolution Plan, it is pertinent to refer few provisions of the RFRP:

> *"**2.8 Earnest Money Deposit/ Bid Bond Guarantee to be submitted along with Resolution plan**:*
> ***2.8.1 All Resolution Applicant(s) at the time of submission of Resolution plan shall provide Earnest Money Deposit in form of Demand Draft in favor of Eagle Home Appliances Private Limited or RTGS in the bank account of the CD or in form of a Bank guarantee of INR 25,00,000/-***_(Indian Rupees twenty five lakh only) in favor of Eagle Home Appliances Private Limited as part of the Binding Resolution Plan (hereinafter referred to as the "Binding Submission Bond Guarantee" or "BSBG"). The BSBG should be payable at Par and should be executed from Scheduled Bank or Private Bank located in India._
> ***Validity Period of BBG***
> ***2.8.2 The BBG shall be valid for a period of 3 (three) months from the Resolution Plan Due Date*** *("BBG Validity Period") and shall be renewed / extended by the Resolution Applicant as may be required by the Resolution Professional and/or the CoC (not later than 15 days prior to the expiry of the BBG Validity Period) for such period as may be required by the Resolution Professional / Committee of Creditors. However, if the Resolution Applicant is unable to extend or renew BBG submitted by it, the Resolution Applicant shall promptly provide a fresh bank guarantee for the purposes of depositing BBG, for a period as required by the CoC and the Resolution Professional.* ***The BBG shall have an additional claim period of 12 months after BBG Validity Period.***
> ***2.9 Performance Guarantee***
> *2.9.1 The successful Resolution Applicant shall, within a period of 5 days from issuance the Letter of Intent (Lol) (or earlier in case the application for approval of Resolution Plan is to be submitted to NCLT earlier), provide an irrevocable and unconditional bank guarantee ("PBG") issued by a scheduled commercial bank and or* ***bank transfer of an amount of 20% of the Negotiated Plan Amount in in favour of Eagle Home Appliances Private Limited****.*
> ***2.9.2 The PBG shall be valid until the earlier of (i) all the dues payable by the Successful Resolution***

Applicant(s) in relation to the Resolution Plan and/or under or by virtue of the RFRP have been fully paid and its claim satisfied or discharged*; or (ii) till the CoC and/or, if the CoC as a body does not subsist, by Financial Creditors having more than 66% (sixty six percent) voting share in the CoC, certifies that the Resolution Plan has been effected to the satisfaction of the CoC or (iii) such other period as may be approved by the CoC (with 66% voting share) and/or, if the CoC as a body does not subsist, by Financial Creditors having more than 66% (sixty six percent) voting share in the CoC ("PBG Validity Period").* ***The PBG shall have an additional claim period of 12 (twelve) months after PBG Validity Period.***

2.9.3 In lieu of the PBG, the PRA may, provide a cash deposit by way of direct bank deposit (instead of a bank guarantee) for the PBG Amount in the bank account of the CD. ***Where such cash deposit is provided, the term "PBG" shall include and mean such cash deposit (to the extent applicable). It is further clarified that such cash <u>PBG shall be deposited as security for performance of the Resolution Plan and therefore, shall be over and above the payments proposed in the Resolution Plan</u>, except as decided by the CoC****.*

2.9.6 ln the event, the successful Resolution Applicant breaches the terms of this RFRP or the Lol, then in addition to the invocation of the PBG, the CoC shall have the right to negotiate terms with any other Resolution Applicant that had submitted its Resolution Plan or any new Person and issue the Lol to any such other Resolution Applicant.

2.9.7 Depending on the terms of the Resolution plan, the committee of creditors (with 66% voting share), in its discretion, may revise the terms of the PBG (including its value and the validity period).

<u>Invocation/ Forfeiture</u>

2.9.9 The CoC shall have the right to invoke and/or forfeit the PBG by issuance of a written demand notice to the Bank to invoke the PBG. The PBG can be invoked and appropriated at any time, irrespective of any ongoing dispute or litigation, upon occurrence of any of the following conditions, without any reference to the Resolution Applicant in the following cases:

....

b) non-compliance with the terms of the LoI, this RFRP, Resolution Plan or the Definitive Agreements, including without limitation to non-payment/incomplete payment or failure to make payments under the terms of the Resolution Plan"

35. The requirements stipulated under the above provisions of RFRP, are briefly as follows:

   a) The RFRP clause 2.8.1 states that all the PRAs shall provide with their Resolution Plan an amount of Rs.25 lacs as EMD.

   b) The clause 2.8.2 of the RFRP states that the EMD shall be valid for a period of 3 months from the Resolution Plan Due Date (the last date for submission of the Plan i.e. 02.04.2025). The EMD shall be valid for an additional period of 12 months from the expiration of the said 3 months from plan's due date.

   c) The clause 2.9.1 of the RFRP states that the SRA shall from issuance of the Letter of Intent (LoI) (or earlier in case Plan approval application submitted to NCLT earlier), provide bank guarantee ("PBG") issued by a scheduled commercial bank and or bank transfer of an amount of 20% of the Negotiated Plan Amount in favour of the Corporate Debtor.

   d) The clause 2.9.2 of the RFRP provides for the PBG validity period which *interalia* states that PBG shall be valid until the earlier of all the dues payable by the SRA in relation to the Resolution Plan or mentioned in the RFRP, have been fully paid and its claim satisfied or discharged. Further, the said clause, provides that the PBG shall have an additional claim period of 12 months after PBG Validity Period.

36. Now, the compliances in context of the above stated provisions of RFRP have to be taken into consideration. The said compliances are as follows:

   a) As per the direction of the CoC for submission of Rs.10 lacs of the EMD along with the EoI, the Applicant instructed the SRA to provide the same. Accordingly, the SRA has provided Rs.10 lacs along with his EoI.

   b) At the time of submission of the Plan on 30.04.2025, the SRA has provided an amount of Rs.25 lacs along with the Plan.

c) Later, on 22.05.2025, in the 14th CoC meeting, the SRA has informed the CoC members that it has already deposited an amount of Rs.35 lacs at the time of submission of EoI and Resolution Plan and requested the CoC to therefore modify the PBG requirement under clause 2.9.1 under the RFRP from 20% of the plan value to Rs.35 lacs. The CoC has on the request of the SRA, passed the resolution for reduction of the PBG from Rs. 77 lacs (20% of the plan value) to Rs. 35 lacs.

37. In this regard, the Applicant has submitted that at the PRA's request, the CoC also considered and approved, with 100% voting share, a modification of the PBG to Rs. 35 lacs. Applicant submits that such modification was expressly contemplated under the RFRP itself: while Clause 2.9.1 prescribed the PBG requirement, Clause 2.9.7 expressly empowered the CoC, subject to the prescribed voting threshold, to revise its value and validity depending on the terms of the Resolution Plan, and Clause 2.3 provided the requisite flexibility in the RFRP process prior to approval. The modified Resolution Plan dated 23.05.2025 was accordingly placed before, and approved by, the CoC in its 15th meeting (27.05.2025) with 99.09% voting share. It is further submitted that no prejudice was caused to any competing PRA, as only one EOI was received pursuant to the Second Form-G and only one applicant featured in the Final List of PRAs; consequently, exercise of the power under Clause 2.9.7 of the RFRP could not have adversely affected any other applicant, there being none.

38. Under Regulation 36B(5) of the CIRP Regulations, any modification to the RFRP is deemed to be a fresh issuance thereof, attracting a fresh 30-day timeline for submission of Resolution Plans in compliance with the modified RFRP. The object underlying the phrase "*shall be deemed to be a fresh issue*" under this Regulation is to enable the CoC to modify the RFRP (if required) prior to the submission of the Resolution Plans by the PRA/s, and thereafter provide a fresh period of minimum 30 days for submission of Resolution Plans which are in conformity with such modified terms. While modification of the RFRP is not per se barred in law, any such modification must be done by the CoC prior to submission of Resolution Plan or else the very phrase

"*shall be deemed to be a fresh issue*" contained in Regulation 36 of the CIRP Regulations, would be rendered otiose.

39. From the points of observations in respect of compliances of the terms of RFRP mentioned in para no.36 of this order, it is noted that, instead of complying with the requirement stipulated in the RFRP for deposit of an EMD of Rs. 25 lacs along with submission of the Resolution Plan, the SRA has, in fact, deposited an amount of Rs. 35 lacs towards PBG. It is further noted that the modification of Clause 2.9.1 of the RFRP was effected only after the said sum of Rs. 35 lacs had already been deposited along with the Plan. Rather than submitted the balance amount of EMD of Rs.15 lacs, the SRA submitted a fresh amount of Rs.25 lacs and requested the CoC to consider it as PBG, indicating complicit conduct of CIRP.

40. Further, it is observed that while submitting the Resolution Plan, the SRA had already deposited a total sum of Rs. 35 lacs to be treated towards PBG; yet it was only thereafter, in the 14th CoC meeting held on 22.05.2025, that the CoC approved reduction of the PBG from Rs. 77 lacs (20% of the plan value) to Rs. 35 lacs. It clearly demonstrates that the SRA had presupposed that the said proposal though being non-compliant with the RFRP would be considered and will get approved by the CoC.

41. This sequence of events demonstrates that the PBG was modified to suit the convenience of the SRA, contrary to the provision of Regulation 36B(5) of CIRP Regulations. The predetermined conduct of the SRA and subsequent accommodation by the CoC is in clear violation of Regulation 36B(5) which mandates modification of RFRP prior to submission of Resolution Plans. Further, the said approval for reduction of PBG has been done without due regard to the safeguards contemplated under Regulation 36B(4A) of the CIRP Regulations and the RFRP, both of which are intended to secure the successful implementation of the Resolution Plan. It is also observed that no justifiable reason has been placed on record for reducing the performance security from Rs. 77 lacs to Rs. 35 lacs, for successful implementation of a Resolution Plan valued at Rs. 3,85,00,000/-, which in any case is dehors the

provisions of Regulation 36B(4A) and Regulation 36(B)(5) of IBBI CIRP Regulations.

42. In support of its contention regarding power of the CoC concerning modification of PBG in terms of the RFRP, the Applicant has placed reliance on various judgments (refer para no.29 above), however, it is important to note that the decision in the said judgements are with respect to authority of the CoC concerning modification of PBG in terms of the RFRP, whereas the issue in the present case is the modification of terms of RFRP pertaining to the PBG, done by the CoC at the behest of the SRA, retrospectively, and in complete violation to Regulation 36B(5) of IBBI CIRP Regulations. Hence, the reliance placed by the applicant are misplaced.

<u>Regarding application of PBG towards CIRP Cost:</u>

43. Further, in this regard, it is also necessary to peruse the contents of the Resolution Plan and the Form H which stipulate the amount of PBG to be utilized as an alternative for payment of the CIRP Cost. Few necessary clauses of the Resolution Plan submitted by the SRA and the Form-H are reproduced below:

> ***<u>" Resolution Plan:</u>***
>
> ***<u>9. Treatment under the Resolution Plan for the Insolvency Resolution Process Costs</u>***
>
> *As per to the provision of Section 30 & Section 53(1)(a) of the 1B Code, Corporate Insolvency Resolution Process Cost (for short ClRP cost) must be paid in priority to any of the other class of creditors. RP has provided the estimated CIRP cost of Rs. 30,00,000./- (Rupees thirty lakh only)* ***The total amount of CIRP Costs, once approved by the COC, shall be paid in priority to all other payments. Such amount shall be discharged from the EMD or upfront infusion to be brought in as within 60 (Sixty) days from the Approval of Plan by AA.*** *In case the Actual CIRP cost is more than this estimates than such shall be paid by RA by infusing owned fund and if the Actual CIRP cost is less than this estimation (as provided by RP) than such excess will be utilize towards the Working Capital.*
>
> ***<u>Form-H</u>***

9. Steps to be taken by the concerned parties post approval of resolution plan by AA:

	Next Step(s)	Name of Party	Timeline
1.	Formation of Monitoring Committee/Monitoring Agent	Resolution Applicant, RP and CoC	Within 7 days of Approval of Resolution Plan by the AA.
2.	Infusion of fund into the CD by the Resolution applicant towards CIRP costs and or utilization of EOI deposit & Resolution Plan Performance Deposit for the payment of CIRP Cost.	Resolution Applicant	Within 60 days of Approval of Resolution Plan by the AA.

44.The aforesaid clauses of the Resolution Plan, read with Form-H, disclose that the CIRP Costs, payable on actuals, are contemplated to be met either from the Performance Deposit i.e. PBG of Rs. 35 lacs or through upfront infusion by the SRA.

45.It is noted that such clause is ambiguous, inasmuch as it fails to clearly identify the source from which CIRP Costs are to be discharged. Regulation 36B(4A) of the CIRP Regulations provides for forfeiture or invocation of the Performance Security where the SRA fails to implement the Plan, or contributes to such failure.

46.Further, the Clause 2.9.2 of the RFRP (refer para no.34), dealing with the PBG Validity Period, *inter alia* provides that the PBG shall remain valid until all dues payable under the Resolution Plan stand satisfied and discharged, with an additional claim period of 12 months thereafter. Clause 2.9.3 of the RFRP further stipulates that the PBG is to be deposited as security for performance of the Resolution Plan, and shall accordingly be over and above the payments proposed under the Plan, save as otherwise decided by the CoC. This clause clearly delineates the object of the Performance Security as an amount distinct from, and additional to, the total Plan value, and not one intended for utilisation towards payments under the Plan towards CIRP Cost which is to be paid in priority over other payments.

47. Given that the estimated CIRP Cost under the Plan is Rs.30 lacs, utilisation of the PBG of Rs. 35 lacs towards discharge of such cost would leave only Rs.5 lacs of security available for the entire term of implementation of the Plan. By such utilisation, the very purpose of the Performance Security under Regulation 36B(4A) and the RFRP stands compromised. The PBG whether furnished in cash or otherwise, is intended as security of last resort, to be invoked only in the event of failure to implement the Resolution Plan or in case of successful implementation – to remain valid for the additional timeframe prescribed under the RFRP following implementation. In the present case, however, since the PBG (furnished in cash) is being also proposed to be used on priority towards payment of CIRP Costs, nothing would remain thereof to secure the balance payments due under the Resolution Plan. Such a stipulation is accordingly invalid in law and contrary to Regulation 36B(4A) of the CIRP Regulations as well as Clauses 2.9.2 and 2.9.3 of the RFRP.

48. Further, Section 30(2)(e) and (f) of the Code casts a duty upon the Resolution Professional to examine every Resolution Plan to confirm that it does not contravene any provision of law for the time being in force, and conforms to such other requirements as may be specified by the IBBI. Clause 9 of the Resolution Plan, for the reasons aforesaid, is accordingly also in violation of Section 30(2)(e) and (f) of the Code.

49. Additionally, the clause 2.5.2 of the RFRP mentions the following:

> "*2.5.2 The Resolution Applicant(s) should note that:*
> *i.* ***Where a Resolution Applicant(s) has submitted an incomplete Resolution plan, which does not meet the requirements set out in this RFRP, provisions of the IBC or the CIRP Regulations****, or conceals ally material information, makes a wrong statement, misrepresents facts or makes a misleading statement in the Resolution Plan, in any manner whatsoever.* ***Resolution Professional/the CoC reserves the right to reject such Resolution Plan.****"*

The aforesaid clause of the RFRP reserves to the CoC and the RP, the right to reject the Resolution Plan in the event of non-compliance with the RFRP, the CIRP Regulations, or the Code. It is noted, however, that notwithstanding the aforesaid terms of the Resolution Plan being violative of the RFRP and the CIRP Regulations, neither the CoC nor the RP raised any objection thereto, nor considered rejection of the Plan on this ground. Moreover, the Undertaking submitted by the SRA along with the Resolution Plan (refer Annexure- D, Pg. 442 of the IA), mentions in clause 2(k) "*Breach of RFRP or this Undertaking will render the Resolution Applicant ineligible to continue in the corporate insolvency resolution process, forfeit any refundable deposit and/or encash the Bid Bond Guarantee and/or Performance Guarantee, and attract penal action under the Code;*". In these circumstances, Clause 9 of the Resolution Plan, insofar as it stipulates utilisation of the PBG/EMD towards payment of CIRP Costs, runs directly contrary to Clause 2.9.3 of the RFRP - a stipulation that the SRA itself undertook to be bound by under Clause 2(k) of the aforesaid Undertaking.

50. In this regard, we are supported by the judgement in the matter of ***Bank of Baroda Vs. Formation Textile LLC & Ors, Company Appeal (AT) (Insolvency) No. 983 & 984 of 2023***. The Hon'ble NCLAT has observed as follows:

> *"36. The first tranche of payment was to be made by 31.01.2024 amounting to Rs.350 crores. In the Appeal, which was before the NCLAT, the SRA submitted that in pursuance of the order passed by the Hon'ble Supreme Court dated 18.01.2024, SRA has deposited an amount of Rs.200 crores and Rs.150 crores was already infused towards PBG security, be adjusted in the payment of Rs.350 crores, which was to be paid by 31.01.2024. The said submission of the SRA was accepted and this Tribunal took the view that as per the Resolution Plan for first tranche of payment, the PBG can be adjusted. The order of the NCLAT came to be challenged in the aforesaid Appeal by the State Bank of India and Hon'ble Supreme Court framed one of the question, i.e. Question-I, which is to the following effect:*
>
> > *"I.* ***The adjustment of the PBG was impermissible under the terms of the Resolution Plan read with Regulation 36B(4A) of the 2016 Regulations."***
>
> *39. In paragraph 111, the Hon'ble Supreme Court held that Clause of RFRP, which is binding on the SRA, cannot be given*

a go by, by clause of Resolution Plan. In paragraph 111, following was held:

> *"111. Now, if the intention under the RFRP, the Resolution Plan (under Clauses 7.3 and 9.4) and Regulation 36B(4A) was that the PBG had to be kept alive till the completion of implementation of the Resolution Plan by the SRA and that it cannot be set-off against any payment obligation, then how do we reconcile such an intention with the expression "PBG adjusted" mentioned under Clause 6.4.4 of the Resolution Plan? As mentioned above, Clauses 7.3 and 9.4 respectively of the Resolution Plan incorporated the terms of the RFRP into the Resolution Plan. Clause 3.13.9 of the RFRP states that the PBG shall not be set off against any payment or consideration which is to be made by the SRA, even if expressly provided so under the Resolution Plan. Clause 6.4.4 is quite ambiguous in its construction regarding the question whether the PBG can be specifically adjusted against the first tranche payment.*
>
> *....*
>
> ***However, in our considered opinion irrespective of whether Clause 6.4.4 expressly or impliedly provided for the PBG to be adjusted, such a provision would create a dissonance with Clause 3.13.9 of the RFRP** which has also been made binding on the SRA through Clauses 7.3 and 9.4 respectively of the Resolution Plan. Therefore, such an adjustment should not be allowed in the facts of the present case."*

*40. **The above judgment of the Hon'ble Supreme Court has clearly laid down that Clauses of RFRP, which required PBG be kept alive till complete implementation of Resolution Plan and shall not be set-off against any payment to be made by SRA. The Clauses of RFRP are binding on the SRA.** In view of the aforesaid Clause, no submission on behalf of the Appellant that the amount of PBG should be treated towards equity infusion can be accepted.*

....

*42. ...**We hold that PBG given by the Appellant – SRA was as per the RFRP had to continue till 100% implementation of the Resolution Plan and the said PBG cannot be treated as equity infusion as per the Resolution Plan**."*

[Bold for Emphasis]

51. The above judgement dealt with a clause of Resolution Plan stating adjustment of PBG against first tranche payment. In the above case, the Hon'ble NCLAT held that PBG must be kept alive till 100% implementation of the Resolution Plan and it shall not be set off against any payment to be made by the SRA. Similar to facts in the above case, it is noted that in the present case, the amount of PBG could not have been considered as an alternative for payment of CIRP Cost and it had to continue till complete implementation of the Resolution Plan of the SRA.

Regarding utilisation of Rs.6,00,000/- recovered as proceeds of sale of assets of the Corporate Debtor and non-clarity of its recovery from SRA:

52. Further, on the hearing dated 20.08.2026, this Tribunal had made the following observations:

> *"2. Ld. Counsel for the Applicant has taken us through some length in this IA. In respect of the facts of the case and submissions made, following*
>
> *observations are made:*
>
> > *II. In the Provisional Balance Sheet of the Corporate Debtor, there is an asset in the shape of the car, which, as submitted, has been sold during the CIRP for a consideration of Rs. 6,00,000/-, and such consideration has stated to have been received in the account of the Corporate Debtor. Ld. Counsel for the RP submits that the such amount, once was deposited in the account of the Corporate Debtor, has subsequently been utilised towards the CIRP Cost. We note from the stipulation of the Resolution Plan in respect of the CIRP Cost that the Resolution Applicant has proposed to pay an estimated CIRP Cost of Rs. 30,00,000/-, and in case the amount of CIRP Cost is more than Rs. 30,00,000/-, the same has to be contributed by the Resolution Applicant, and in case, it is less than 30,00,000/-, the balance amount has to go to the Resolution Applicant and to that extent, he pays less. Such stipulations clearly indicate that the CIRP Cost has to be paid by the Resolution Applicant at actuals. Accordingly, a question was put to the Ld. Counsel for the RP as to whether the amount of Rs. 6,00,000/- which has been received as a consideration of the sale of car has*

> *been factored into the amount to be recovered from the Resolution Applicant in the shape of CIRP Cost, Ld. Counsel for the Applicant has not been able to give any clear answer in this regard.*
>
> *3. Having observed as above, and on the request of the Ld. Counsel for the RP insisting to file a two-page written submission, we deem it appropriate*
>
> *to list this matter on 24.08.2026, High on Board."*

53. In accordance with the said direction the Applicant had filed Written Submission dated 22.08.2026. In the said written submission, the Applicant has stated that of the Rs. 6,00,000/- realised from the sale of the Vehicle, Rs. 3,00,000/- was refunded to M/s. Memoir (being an amount received post-CIRP commencement), and the balance was applied towards statutory CIRP expenses, conferring no personal or improper benefit on the SRA.

54. It is observed that the if Rs.3 lacs out of the total Rs.6 lacs, has been refunded to M/s. Memoir and the rest Rs.3 lacs is said to have been utilised towards CIRP expenses. Further, in the Business and Financial Proposal section of the Resolution Plan, below the financial proposal table produced by the SRA, there is a note which states:

> *"*Note: The CIRP cost to be provided by the Resolution Applicant as per plan will be Rs.30 Lakhs on actual basis."*

55. The above said note and the clause 9 of the Resolution Plan (refer para no.43) state that the CIRP Cost has to be paid by the Resolution Applicant at actuals. Now, if said amount of Rs.6 lacs as discussed above, is already utilised in respect of CIRP Costs, then whether it is already factored in the provision of estimated Rs.30 lacs of CIRP Costs in the Resolution Plan for recovering the same from the SRA or not, is not clear. Even if, it is not factored in this estimated amount of Rs.30 lacs, whether it will be recovered additionally from the SRA by adding the said Rs.6 lacs to the estimated cost, remains unexplained.

Regarding Internal accrual of Rs.3.15 Cr of the Corporate Debtor and its Application:

56. Further, a reference is made to the discussion between the Applicant (RP), CoC members and the SRA in the 14th CoC meeting dated 22.05.2025, which is reproduced below:

> *"The PRA also submitted that they have taken care of all the regulatory requirement and submit the plan which can be in the best interest of all the stakeholders. After the presentation of Plan by the PRA, the RP informed to the CoC that the net internal accruals in the form of bank balance of CD will be Rs. 3.15 Crores Approx. exclusive of the earnest money submitted by the PRA, in their plan, the amount offered by the PRA to the CoC is below Rs.3.15 Crores. The PRA replied that the CD does not have any fixed assets and the CD is non operative since past 6 / 7 years and further after the approval of Plan the PRA have to make additional investment for the revival of the CD hence, they are of the view that they have offered the best offer. The A/R of Eastern Enterprises mentioned that the amount offered to CoC should be at least above Rs.3.15 Crores which was also supported by other CoC members, after discussion the PRA agreed to enhance the amount offered to CoC and others to Rs. 3.15 Crores."*

57. Referring the above discussion in the 14th CoC meeting dated 22.05.2025, it is noted that the Applicant has apprised the CoC about net internal accruals in the form of Bank Balance of Corporate Debtor of Rs.3.15 Cr approx. Further, based on the said bank balance of Rs.3.15 Cr of the Corporate Debtor, the SRA enhanced the payment to be made to the creditors under the Plan from Rs. 3.08 Cr to Rs.3.15 Cr in the 14th CoC meeting. Moreover, it is mentioned in the said Resolution Plan of the SRA, in clause 8 - Note 2 (Annexure "L", Pg no.406 of the Application):

> *"Note: 2 That the CD has only a bank balance with no assets or business,* ***the PRA, with the CoC's consent may utilize the available bank balance of CD towards settling creditors as outlined in the plan submitted by the Resolution Applicant (RA).*** *The owned Net worth of the RA is Rs.41,92.74, 490 as on 31/03/2024."*

The aforesaid note mentioned in the Resolution Plan expressly discloses the intent of the SRA to acquire the Corporate Debtor without infusion of any consideration whatsoever for payment under the Resolution Plan, and by merely redirecting the sum of Rs. 3.15 Crores already available with, and belonging to, the Corporate Debtor towards satisfaction of its Creditors.

58. It becomes imperative to examine whether, in a situation where the Corporate Debtor itself possesses a bank balance of Rs. 3.15 Crores earmarked for utilisation towards payment to Creditors, the CoC applied its mind to, or undertook any meaningful deliberation upon, the feasibility and viability of the Resolution Plan before proceeding to hand over the Corporate Debtor for no consideration. The question that consequently and squarely arises is regarding non- consideration of the fact that the SRA is hardly infusing any funds whatsoever towards the payments under the Resolution Plan.

59. With respect to the above issue, it is necessary to refer the judgement in the matter of ***Bank of India & Ors vs. Mr. S Rajendran***, ***IA (IBC) NO. 116 OF 2026 in CP (IB) NO. 2803 of 2019***. This Tribunal has in the said matter held that:

> *"46. We note that the surplus funds were generated from the operations of the Corporate Debtor while it was being managed as a going concern under the control of the Resolution Professional under the supervision of the CoC, in accordance with Section 20 of the Code.* ***We observe that the said surplus is a result of the Corporate Debtor's operations during the CIRP and is not attributable to any effort or contribution on the part of the Resolution Applicant. The obligation to maintain the Corporate Debtor as a going concern under the aforesaid section cannot be construed as conferring an automatic right upon the Resolution Applicant to the surplus generated during the CIRP****.*
>
> *47. At this juncture, we refer to the* ***judgement of Hon'ble NCLAT in case of Manjeet Cotton Pvt. Ltd. v. Phoenix ARC Pvt. Ltd. ((2026) ibclaw.in 584 NCLAT)*** *dated 27.04.2026, where the Hon'ble NCLAT have held as under:*
>
> > *"35. A Resolution Plan is essentially a commercial arrangement based on the assets, liabilities, and*

financial position of the Corporate Debtor as known and evaluated at the time of its approval. ***Only those assets and values which are identified and accounted for in the Plan can be said to vest in the Resolution Applicant. Any value or asset which is not contemplated, quantified, or provided for in the Plan cannot be later claimed by way of implication****.*

...

39. It is clear from the above that the Resolution Plan is completely silent on the treatment of surplus cash flow generated during the CIRP period. There is no clause which states that such surplus will vest in the Resolution Applicant.

The surplus generated during CIRP was neither contemplated nor allocated under the Plan, and therefore cannot be brought within the scope of "accretions" merely by a broad interpretative exercise.

...

41. ...The crucial factor here is that this surplus was generated during the CIRP period, when the Corporate Debtor was under the control of the Resolution Professional and was being run under the oversight of CoC. The Appellant had no role in generating this surplus, nor had it taken any operational or financial risk during that period. Therefore, such surplus cannot be treated as a benefit arising from the Appellant's efforts or investment. Instead, it remains part of the value generated during CIRP for the benefit of the insolvency process.

42. Further, the fact that the surplus amount was kept in fixed deposits does not change its nature. The legal character of the funds depends on how and when they were generated, not on the form in which they are held. Since the surplus was generated during CIRP, it continues to retain its character as

part of the insolvency estate.

43. ***We also find that the Appellant's argument that the financial creditors have already been satisfied under the Resolution Plan is not correct. The Resolution Plan only deals with the assets and values considered at the time of its approval. Any additional surplus generated during CIRP, which***

was not part of the Plan, cannot be said to have been settled or extinguished.

52. From the perspective of fairness also, we find that the Respondent's case has merit. The financial creditors have taken significant haircuts under the Resolution Plan, and the CIRP process was sustained by them. If the Appellant is allowed to take the entire surplus, despite not contributing to its generation and despite it not being part of the Resolution Plan, it would result in an unintended and unjust benefit to the Appellant at the cost of the creditors. The objective of the Code is also to maximize value from the resolution of the CD in the CIRP process and the decision of the Adjudicating Authority is intended to achieve the objective of the Code.

53. We also note that the Adjudicating Authority is well within its jurisdiction in passing the Impugned Order, as the direction to distribute the surplus does not tantamount to modifying the Resolution Plan. The impugned order rather addresses a situation, which was not contemplated in the Plan, and the same has been addressed by applying the statutory provisions of the Code.

54. In view of the above, we are of the view that the surplus cash flow generated during the CIRP period does not belong to the Appellant and must be treated as part of the insolvency estate. The Adjudicating Authority has rightly directed its distribution in accordance with Section 53 of the IBC."

48. From the aforesaid judgment, ***it is clear that the surplus generated during the CIRP does not belong to Resolution Applicant, but belongs to the insolvency estate and can be distributed in accordance with Section 53 of the Code. It was further held that directing such distribution does not amount to a modification of the Resolution Plan.****"*

60. The above judgement of this Tribunal, clearly applies to the present case. In the above case, this Tribunal has specifically held that the surplus or internal accrual generated during the CIRP process does not belong to the Resolution Applicant, but to the Insolvency estate of the Corporate Debtor and should be distributed as per section 53 of the Code.

61. The Section 20 of the Code requires the IRP to protect and preserve the value of the property of the Corporate Debtor and manage its operations as a going concern. In this context, it is observed that the surplus funds generated or accrued during the CIRP process while it is under the control of the RP and supervision of CoC, in accordance with Section 20 of the Code, are not attributable to any effort or contribution on the part of the Resolution Applicant. Thus, we are of the view that the surplus cash flow generated during CIRP period shall be treated as part of the Insolvency Estate of the Corporate Debtor. Accordingly, in the present case, while the amount of Rs. 3.15 Crores is being utilised towards payment to the Creditors, it remains unclear as to the reasons for the CoC having even considered the Resolution Plan of the SRA, when the SRA is not offering any payment whatsoever towards the balance of the admitted claims amounting to Rs. 8,51,41,258/

62. In view of the issues discussed above (from para no.33 to 61), this Tribunal is of the considered view that, the Resolution Plan approved by the CoC is not in compliance of Section 30(2)(e) & (f) of the Code and is in violation of Regulation 36B(4A), 36B(5) of the CIRP Regulations, 2016 and also certain clauses of its own RFRP and therefore the Resolution Plan is liable for rejection. We are conscious of the proviso for section 31(2), however the issues pointed out hereinabove are not defects curable by rectification. Hence the Resolution Plan submitted by Logenix Services Pvt. Ltd, is **rejected.**

63. The consequence of rejection of the Resolution Plan is governed by Section 33(1)(b) of the Code. The said provision reads as follows:

> ***"33. Initiation of liquidation. —***
> *(1) Where the Adjudicating Authority—*
> *(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or*

*(b)**rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall—***

i. ***pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;***
ii. ***issue a public announcement stating that the corporate debtor is in liquidation; and***
iii. ***require such order to be sent to the authority with which the corporate debtor is registered."***

64. In view of the rejection of the Resolution Plan under Section 31(2) of the Code, and in terms of Section 33(1)(b) of the Code, this Adjudicating Authority is of the considered view that the Corporate Debtor is liable to be liquidated in accordance with the provisions of Chapter III of Part II of the Code and the applicable Regulations. Accordingly, the Corporate Debtor is ordered to be liquidated and the following consequential order is passed:

ORDER

a) The Corporate Debtor, **M/s Magicstone Traders Private Limited** is directed to be liquidated in accordance with the provisions of Chapter III of the Code and applicable regulations. Consequently, the Applicant/RP stands relieved subject to procedural/necessary compliances under Section 34(5) of the Code.

b) We deem it appropriate to appoint an Insolvency Professional from the panel of Insolvency professionals shared by the IBBI, as the Liquidator of the Corporate Debtor. Accordingly, **Mr. Mahesh Goverdhan Bagla** bearing Registration No. **IBBI/IPA-002/IP-N00689/2018-2019/12207**; having address at Flat No. C-601, Survey No. 665, Park Landmark-CD BuildPune ,Pune ,Maharashtra ,411037, e-mail id: maheshgbagla@gmail.com having AFA valid upto 30.06.2027, is appointed to act as the Liquidator in terms of Section 34(1) of the Code.

c) That the Liquidator shall initiate the liquidation process as envisaged under Chapter III of the Code and the Liquidation Process Regulations applicable on the date of passing of this order. He shall take control of all the assets of Corporate Debtor and also continue or institute proceedings in respect of an avoidance transactions or fraudulent or wrongful trading, if any, as per section 35(1)(l) of the Code.

d) The liquidator for conduct of the Liquidation proceedings will be entitled to the fees as per the Regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, applicable on the date of passing of this order.

e) The Committee of Creditors constituted under section 21 shall continue to function during the liquidation process as per Regulation 8 of the IBBI (Liquidation Process) Regulations, 2016.

f) A fresh moratorium shall commence under Section 33(1)(iv) of the Code.

g) The Liquidator shall issue public announcement stating that the Corporate Debtor is in liquidation.

h) This Order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except when the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.

i) The Liquidator shall submit a Preliminary Report to the Adjudicating Authority within 30 days from the liquidation commencement date as per Regulation 13 of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016. The Liquidator shall also submit progress reports as per Regulation 15 of the Liquidation Process Regulations.

j) The Liquidator is hereby authorised to represent the Corporate Debtor before the Government Authorities, if required.

k) Registry shall furnish a copy of this Order within seven days from the passing of this Order to the following:

    a. Insolvency and Bankruptcy Board of India;
    b. Regional Director - Navi Mumbai, Western Region Directorate II, Ministry of Corporate Affairs;
    c. Registrar of Companies, Pune;
    d. Official Liquidator attached to Bombay High Court;

e. Erstwhile Resolution Professional, Mr. Nilesh Rajendra Kothari.

f. Liquidator, Mr. Mahesh Goverdhan Bagla.

64. Accordingly, **the I.A. No.90 of 2025** is **disposed of**.

Sd/-	**Sd/-**
Vinay Goel **Member (Judicial)**	**Charanjeet Singh Gulati** **Member (Technical)**

Rashmi, LRA