

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III

I.A. 101/2024

In

C.P. No. (IB) 4076/MB/C-III/2018

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

Anshul Gupta

*Resolution Professional of Tarapur Textile
Park Limited*

Having office at:

410, 4th Floor, Blue Rose Industrial
Estate, Near Metro Mall, Borivali East,
Mumbai - 400066

... Applicant

In the matter of

Awaita Properties Private Limited

... Financial Creditor

Vs

Tarapur Textile Park Limited

CIN No. U70100MH2006PLC160599

Registered Office Address:

*Amar Mahal, Ground floor, Near Chandan
Cinema, Juhu, Mumbai, Maharashtra
400049*

... Corporate Debtor

Order pronounced on: 12.06.2025

Coram:

Sh. Hariharan Neelakanta Iyer

Ms. Lakshmi Gurung

Member (*Technical*)

Member (*Judicial*)

Appearances:

For the Applicant/RP : Adv. Rohit Gupta a/w Adv. Prakhar Tandon
i/b Adv. Agam H Maloo

For the SRA : Adv. Maulik Chokshi

Per: Sh. Hariharan Neelakanta Iyer, Member (*Technical*)

1. The present application was filed by Mr. Anshul Gupta, Resolution Professional of Tarapur Textile Park Limited (**Corporate Debtor**) on 08.11.2024 under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (**Code**) seeking approval of the Resolution Plan for the Corporate Debtor submitted by Mr. Suraj Arukumar Muchchala (**Successful Resolution Applicant/SRA**) which was approved by the Committee of Creditors (CoC) by 92.72% voting at its 15th Meeting convened on 03.10.2024. It is stated that the e-voting concluded on 11.10.2024. The prayer in the present application is extracted below:

a) *Sanction and approve the Resolution Plan approved by the Committee of Creditors of Tarapur Textile Park Limited at its 15th*

*CoC Meeting held on the 03rd October 2024 and voted with 92.72% in favour on 11th October 2024, (annexed to the present application as **Annexure X**) under the provisions of section 31 of the Code and declare the same to be binding upon the Corporate Debtor, its creditors, members, guarantors, and other stakeholders;*

- b) Provide reliefs and concessions as sought for the Resolution Plan;*
- c) Delay if any in filing the present Application be condoned by this Tribunal;*
- d) Pass such other orders as may deem just and proper by this Bench.*

Facts of the Case, in brief:

2. Upon an application under section 7 of the Insolvency and Bankruptcy Code, 2016 (**‘the Code’**) filed by Awaita Properties Private Limited (**‘Original Petitioner’**), the Corporate Insolvency Resolution Process (**‘CIRP’**) of Tarapur Textile Park Limited (**‘Corporate Debtor’**) was initiated by this Tribunal vide Order dated 06.12.2022 and Ms. Veena Sharma was appointed as the Interim Resolution Professional (**‘IRP’**).
3. However, since the AFA of Ms. Veena Sharma got expired, the said information was communicated to the Original Petitioner vide email dated 08.12.2022. Subsequently, this Bench vide order dated 20.12.2022 appointed Mr. Prashant Jain as the IRP of the Corporate Debtor.

4. **Constitution of Committee of Creditors (CoC)**

4.1 The IRP made public announcement on 05.01.2023 under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**'CIRP Regulations'**) in two newspapers, namely, *Financial Express* and *Navakal* for inviting claims from the creditors of the Corporate Debtor.

4.2 Accordingly, the Committee of Creditors (CoC) was constituted and the 1st CoC meeting was held on 02.02.2023. The list of members of the CoC is as follows:

Sr. No.	Name of the Financial Creditor	Amount Claimed (In Rupees)	Admitted Claim (In Rupees)	Voting %
1	Punjab National Bank International Limited	127,19,77,381	127,19,77,381	92.72%
2	Starwort Engineers Private Limited	13,22,61,644	5,00,00,000	3.64%
3	Awaita Properties Private Limited	11,70,06,849	5,00,00,000	3.64%
	Total	1,52,12,45,874	137,19,77,381	100%

5. **Appeal against the Admission Order**

5.1 In the meantime, the admission order of this Tribunal dated 06.12.2022 was challenged before the Hon'ble NCLAT vide

Company Appeal (AT) (Ins) No. 121/2023. Subsequently, on 15.02.2023, the Hon'ble NCLAT allowed to proceed with the CIRP process but directed the CoC not to take any decision on the Resolution Plans.

6. ***CIRP of the Corporate Debtor***

6.1 The IRP during the 1st CoC Meeting on 02.02.2023 appointed A.B.B. Associates for conducting transactional audit to conduct transaction audit of the accounts of the Corporate Debtor to determine any avoidable transactions under sections 43, 45, 50 and 66 (**PUFE Transactions**) of the Code. The RP submits that no PUFE transactions has been determined by the Transaction Auditor or the RP.

6.2 Further, in the said meeting, the CoC also passed resolution for replacement of the IRP and resolved to appoint Mr. Anshul Gupta as the Resolution Professional (RP). Accordingly, IA/1698/2023 was filed seeking replacement of RP. The said IA was allowed vide order dated 30.06.2023 and Mr. Anshul Gupta (**the Applicant herein**) was appointed as the Resolution Professional of the Corporate Debtor.

7. ***Valuation of Corporate Debtor***

7.1 The IRP, in accordance with Regulation 35 of the CIRP Regulations, 2016 and with the approval of the CoC in the 1st CoC Meeting held

on 02.02.2023, appointed two Registered Valuers for determining the Fair Value and Liquidation Value of the Corporate Debtor.

7.2 The Fair Value and the Liquidation Value of the Corporate Debtor is as follows:

Valuer	Fair Value (In Rs.)	Liquidation Value (In Rs.)	Average Category wise Fair Value (In Rs.)	Average Category wise Liquidation Value (In Rs.)
Valuation 1	115,94,00,000	77,34,00,000	116,93,50,000	80,12,50,000
Valuation 2	117,93,00,000	82,91,00,000		

8. **Expression of Interest (EoI) – First Round**

8.1 At the 2nd CoC Meeting held on 27.02.2023, the CoC discussed about the Expression of Interest (EoI), the Earnest Money Deposit (EMD) and the Performance Security Deposit.

8.2 Thereafter, in terms of Section 25(2)(h) of the IBC, the RP made public announcement inviting Expression of Interest (EoI) on 04.03.2023.

9. **Second Round of EoI**

9.1 Upon failure of the 1st EoI, the CoC approved fresh issuance of Form G. Accordingly, the IRP issued second Form G on 07.06.2023, pursuant to which, the IRP received Resolution Plans from 2 (two) Prospective Resolution Applicants (PRAs).

9.2 In the meantime, as already mentioned in Para 6.2, the Applicant was appointed as the Resolution Professional (RP) of the Corporate Debtor vide order dated 30.06.2023.

9.3 Thereafter, the RP/Applicant placed the Resolution Plans before the CoC during the 9th CoC Meeting held on 09.08.2023 wherein the CoC was of the view that there was limited participation from the PRAs and that the proposed values put forth by the two PRAs was not up to expectations.

10. ***Third Round of EoI***

10.1 The CoC decided to issue Form G once again to facilitate the involvement of genuinely interested parties. Accordingly, the RP issued Form G on 21.08.2023 and the last date for submission of EoI was fixed at 05.09.2023.

10.2 Pursuant thereto, 17 PRAs submitted their EoIs to the RP. The PRAs requested several extensions which were duly granted by the RP with the approval of the CoC from 20.10.2023 to 20.11.2023 to 05.12.2023 to 04.01.2024 to 02.02.2024 till 03.04.2024.

11. ***Fourth Round of EoI***

11.1 Despite the extensions granted by the CoC and RP, no Resolution Plans were received. Accordingly, the CoC in its 12th Meeting held on 18.04.2024, again deliberated for issuance of fresh Form G.

11.2 Thereafter, Form G was issued by the RP on 21.04.2024. In furtherance of the Form G, the RP received Resolution Plans from two PRAs, i.e. Ritika Hotels Private Limited and Mr. Suraj Arunkumar Muchchala.

11.3 In the 13th and 14th CoC meetings held on 22.08.2024 and 11.09.2024, the resolution plans of the PRAs were discussed and deliberated upon. Further, Mr. Suraj Muchchala who is also the suspended director of the Corporate Debtor, has submitted its revised resolution plan on 01.10.2024 which was discussed by the CoC in its 15th meeting held on 03.10.2024.

12. ***Approval of the Resolution Plan by CoC***

In the 15th CoC Meeting held on 03.10.2024, the revised resolution plan of Mr. Suraj Arunkumar Muchchala was placed before the CoC for approval. The e-voting concluded on 11.10.2024. The revised Resolution Plan submitted by Mr. Suraj Arunkumar Muchchala (**Successful Resolution Applicant/SRA**) was approved by the CoC by 92.72% of voting. Accordingly, the RP issued a Letter of Intent dated 25.10.2024 which has been unconditionally accepted by the SRA.

Resolution Plan of Mr. Suraj Arunkumar Muchchala - SRA

13. ***Brief background of the SRA:***

13.1 The Resolution Plan states that the Successful Resolution Applicant/SRA is one of the promoters of the Corporate Debtor and

was appointed as the director of the Corporate Debtor in June 2010. The SRA is stated to have developed a niche in the line of activities concerning the Corporate Debtor's projects and is also said to have gained a reputation in Real Estate Development. At present, SRA is a suspended director of the Corporate Debtor.

13.2 The Corporate Debtor in the present case is an MSME and therefore, in accordance with section 240A of the Code, the suspended director/promoter of a Corporate Debtor is permitted to submit a resolution plan for the revival of the Corporate Debtor.

13.3 The Resolution Plan states that the Successful Resolution Applicant is not barred by Section 29A read with section 240A of the Code and an affidavit in this regard was also submitted by the Successful Resolution Applicant along with the Resolution Plan.

14. ***Salient Features of Resolution Plan:***

14.1 The CoC at its 15th Meeting held on 03.10.2024 resolved that the SRA shall deposit the performance security amounting to 10% of the total plan value within 30 days from the Effective Date or on 30.11.2024, whichever is earlier. The Resolution Plan value, as submitted, is **Rs. 100,39,75,948/- plus CIRP Costs (at actuals)**.

14.2 Source of Funds as provided in the Resolution Plan:

- i. USD 2.40 Million to be paid to the secured financial creditor shall be brought in by the Resolution Applicant as fresh infusion of fund in the equity/quasi equity forms/unsecured loans.
- ii. Balance USD 9.40 Million to be paid to the secured financial creditor and Rs. 13,75,948 to be paid to the unsecured financial creditor and statutory authority, shall be brought in by Investors/recovery of loans given to related parties/sale of assets.
- iii. It is submitted that the SRA has investments in related party companies/firms which shall be encashed for payment as per the Resolution Plan.

14.3 Financial Outlay under the Resolution Plan

14.3.1. The **Effective Date** is defined as “*the date of approval of the Resolution Plan by the NCLT*”. **Completion Date** is “*Effective Date + 35 Months.*”

14.3.2. Clause 18.9 of the Resolution Plan states that “*All payments proposed to be made pursuant to this Resolution Plan to the secured financial creditors will be in US Dollar (\$) and for operational creditors and statutory dues will be in Indian Rupees (Rs.). The conversion in this Resolution Plan is taken @83.55 based on RBI rate as on*

25.09.2024. the currency fluctuation is borne by the Resolution Applicant.”

14.3.3. In accordance with Regulation 38(1-A) of the IBBI Rules, 2016, the statement showing the treatment given to the stakeholders as stated in Form H is given below:

Sr. No.	Particulars	Amount Admitted (in Rupees)	Amount under Plan# (In Rupees)	Settlement %
1	Secured Financial Creditors			
	(a) Creditors not having a right to vote under section 21(2)	--	--	--
	(b) Creditors other than (a):			
	(i) who did not vote in favour of the resolution plan	--	--	--
	(ii) who voted in favour of the resolution plan	127,19,77,380.96	100,26,00,000	78.82%
	Total	127,19,77,380.96	100,26,00,000	78.82%

2	<p>Unsecured Financial Creditors</p> <p>(a) Creditors not having a right to vote under section 21(2)</p> <p>(b) Creditors other than (a):</p> <p>(i) who did not vote in favour of the resolution plan</p> <p>(ii) who voted in favour of the resolution plan</p>	<p>10,00,00,000</p> <p>--</p>	<p>10,00,000</p> <p>--</p>	<p>1%</p> <p>--</p>
	Total	10,00,00,000	10,00,000	1%
3	<p>Operational Creditors</p> <p>(a) Related Party</p> <p>(b) Other than (a) above:</p> <p>(i) Government dues</p> <p>(ii) Workmen</p> <p>(iii) Employees</p>	<p>--</p> <p>3,75,948</p> <p>--</p> <p>--</p>	<p>--</p> <p>3,75,948</p> <p>--</p> <p>--</p>	<p>--</p> <p>100%</p> <p>--</p> <p>--</p>
	Total	3,75,948	3,75,948	100%

4	Other debts and dues	--	--	--
Grand Total		137,23,53,328.96	100,39,75,948	66%

14.3.4. **CIRP Costs**

The Resolution Plan has provided for payment of entire CIRP Costs at actuals and the same shall be made within 15 days from the Effective Date. It is submitted that the CIRP Costs is over and above the amount contemplated under the Resolution Plan. This Tribunal vide its order dated 30.04.2025 sought clarification as there was no estimation of CIRP Cost provided in the Resolution Plan. Pursuant to the same the RP filed Additional Affidavit dated 08.05.2025 submitting that the CIRP Cost is Rs. 2,58,42,915/- (Rupees Two Crores, Fifty-Eight Lacs, Forty- Two Thousand Nine Hundred and Fifteen Only).

14.3.5. **Financial Creditors**

A. Secured Financial Creditors

- i. The Corporate Debtor has one secured Financial Creditor i.e. Punjab National Bank International Limited (PNBIL) having a voting share of 92.72% in the CoC of the Corporate Debtor. The admitted claim of PNBIL is Rs. 127,19,77,380.96. The said sole secured Financial Creditor has approved the Resolution Plan of the SRA.

- ii. The total amount proposed to be paid to the secured Financial Creditor is Rs. 100,26,00,000 being USD 12 Million [*converted into Rs @ 83.55 as per RBI Rates as on 25.09.2024*]. It is submitted that any difference due to currency fluctuation, if any, will be borne by the SRA.
- iii. The proposed schedule for payment of Rs. 100,26,00,000 to the secured Financial Creditor as provided under the Plan is as follows:
- *Upfront payment of Rs. 10,02,60,000 payable in USD 1.2 Million within 30 days from the Effective Date or 30th November 2024, which is earlier.*
 - *Rs. 12,53,25,000 equivalent to USD 1.50 Million within 5 months from the Effective Date.*
 - *Rs. 12,53,25,000 equivalent to USD 1.50 Million within 17 months from the Effective Date.*
 - *Rs. 12,53,25,000 equivalent to USD 1.50 Million within 23 months from the Effective Date.*
 - *Rs. 16,17,00,000 equivalent to USD 2.00 Million within 29 months from the Effective Date.*
 - *Rs. 23,39,40,000 equivalent to USD 2.80 Million within 35 months from the Effective Date.*

- iv. The Resolution Plan proposed a deferred payment plan to repay the Secured Financial Creditor and hence, proposed an interest on reducing balance @ 1.5% fixed spread over the UK Bank rate i.e. 6.5% at present. This amount is over and above the total payment proposed under the Plan.
- v. During the hearing on 02.04.2025, this Bench sought clarification regarding the applicable rate of interest linked to UK Bank and whether the interest to be paid is over and above the Plan Value. Clarification was also sought on the fluctuations in the Plan Value due to currency fluctuations.
- vi. The RP through affidavit dated 09.04.2025 has placed on record certain email exchanges between the RP, SRA and the Secured Financial Creditor. The email dated 03.04.2025 (3:34 PM) sent by SRA clarifies on the issues raised by this Tribunal as follows:

“1. The RA will pay USD 12 Million to Secured Financial Creditor i.e. PNBIL. The plan was approved on the basis of the Exchange Rate of USD to INR which will have variations in INR

keeping in view the exchange rate fluctuations in USD-INR rate.

2. The Upfront Amount of USD 1.20 million i.e. 10% of the total amount payable to PNBIL, which will be paid within 3 working days of approval of the plan by NCLT.

3. The interest is to be charged and paid by the RA on the amount payable to the Secured Financial Creditor i.e. PNBIL, 10.80 million USD (12 million USD less upfront payment) on reducing balance. The interest amount is over and above the total amount payable to Secured FC and will be calculated on actual basis, on reducing balance and the applicable ROI will be 1.50% Plus UK Bank rate from time to time.

4. The applicable ROI is UK Bank rate +1.50%. The UK Bank Rate as on date is 4.50%, and the present applicable ROI in this case is 6.00% (earlier at the time of approval, the UK Bank rate was 5.00%, therefore, in plan applicable ROI is mentioned 6.50%). The actual ROI will vary depending upon the UK Bank rate, from time to time.”

- vii. The Secured Financial Creditor had duly noted the clarification/explanation of the SRA and in response to the above email, the Secured Financial Creditor through email dated 03.04.2025 (5:14 PM) further clarified as follows:

“We agree with the RA on the below mentioned points and further like to clarify that the RA will pay USD 12.00 Mn to Secured Financial Creditor i.e. PNBIL as the approved plan is in USD. Any downward/ upward variation in exchange rate will be borne by the RA. Further, the interest is to be paid by the RA to Secured Financial Creditor i.e. PNBIL, on reducing balance @ BOE +1.50%.”

- viii. It is stated in clause 5.3.4 (ii) the Resolution Plan that the security of the secured Financial Creditor over the existing land and building, plant, current assets of the Corporate Debtor shall continue till the payment of the entire amount as per the Plan.

- ix. It is however, also stated in clause 5.3.4 (i) that on approval of the Resolution Plan, the secured financial creditor will not pursue against the Personal Guarantor and on repayment of the entire amount as per the Plan, the Secured Financial

Creditor shall release all the securities available including the Personal Guarantees of all the three Directors, 1. Mr. Arunkumar Jayantilal Muchhala, 2. Mrs. Ritika Arunkumar Muchhala & Mr. Suraj Arunkumar Muchhala. All the actions against them will be kept in abeyance till the time of complete execution of the Resolution Plan.

B. Unsecured Financial Creditors

- i. There are two unsecured Financial Creditors having aggregate admitted claim of Rs. 10,00,00,000. We note that both the Financial Creditors have voted against the Resolution Plan. It is stated in the Resolution Plan that the amount to be paid to the unsecured financial creditors is already quantified and the same amount shall be paid even in case of dissent.
- ii. Accordingly, the Resolution Plan envisages an upfront payment of Rs. 10,00,000 to the dissenting unsecured financial creditors within a period of 90 days from the Effective Date, in the following terms:

Name of Creditor	Admitted Claim	Proposed Payment	%
Starwort Engineers Private Limited	5,00,00,000	5,00,000	1%
Awaita Properties Private Limited	5,00,00,000	5,00,000	1%
Total	10,00,00,000	10,00,000	1%

14.3.6. **Operational Creditors**

A. Employee and Workmen Dues

It is submitted that the RP has not received any claims from employees and/or workmen. Therefore, the amount proposed to be paid is *Nil*.

B. Government Dues

It is submitted that though the RP has not received any claims from any Statutory Authorities, however, an amount of Rs. 3,75,948 is outstanding towards payment of tax dues. Accordingly, the Resolution Plan provides for 100% payment of the tax dues which shall be paid within 30 days from the Effective Date.

C. Operational Creditors – Others

It is submitted that the RP has not received any claim from other Operational Creditors, and

therefore, the Resolution Plan envisages *Nil* payment towards other Operational Creditors.

14.3.7. ***Provident Fund, ESI & Gratuity Dues***

It is submitted that the RP has not received any claim from EPFO regarding Provident Fund, ESI or Gratuity dues, and therefore, the Resolution Plan envisages *Nil* payment towards the same.

14.3.8. ***Other Creditors***

It is submitted that there are no claims received from any other creditors by the RP.

15. **Compliance Certificate in Form – H**

15.1 Pursuant to Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Resolution Professional has prepared a Compliance Certificate in **Form H** which was annexed to the Application. However, perusal of the Form H revealed that the same was undated, for which clarification was sought from the RP on 30.04.2025. The RP was further directed to file the amended Form H as per new format provided by IBBI. In compliance thereof, the RP filed additional affidavit dated 08.05.2025 placing on record the revised form H as per the IBBI

Notification dated 03.04.2025 which is annexed as Annexure B to the Additional Affidavit. The same is taken on record.

15.2 Compliance of mandatory requirements under the Insolvency & Bankruptcy Code, 2016, as submitted by the RP:

Sr. No.	Particulars	Compliance
1	Section 25: Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the Corporate Debtor?	Yes.
2	Section 29A: Whether Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Yes. Affidavit Annexure XI and also clause 3(f) of the Resolution Plan (CD being a MSME, directed- power suspended is eligible)
3	Section 30:	
	(1) Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes. Affidavit Annexure XI and also clause 3(f) of the Resolution Plan (CD being a MSME, directed- power suspended is eligible)
	(2)(a) Whether the Resolution Plan provides for payment of insolvency resolution process costs?	Yes. Clause 5.3.2 of the Resolution Plan

	(2)(b) Whether the Resolution Plan provides for the payment of the debts of operational creditors?	Yes. Clause 5.3.3 of the Resolution Plan
	(2)(b) Whether the Resolution Plan provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Yes. Clause 5.3.4 of the Resolution Plan
	(2)(c) Whether the Resolution Plan provides for the management of the affairs of the Corporate Debtor?	Yes. Clause 14 of the Resolution Plan
	(2)(d) Whether the Resolution Plan Provides for implementation and supervision of the resolution plan?	Yes. Clauses 14, 16 & 17 of the Resolution Plan
	(2)(e) Whether the resolution plan contravenes any of the provisions of the law for the time being in force?	No.
	(4)(a) Whether the Resolution Plan is feasible and viable, according to the CoC?	Yes. Clauses 5, 6 & 7 of the Resolution Plan
	(4)(b) Whether the Resolution Plan has been approved by the CoC with 66% voting share?	Yes. The Resolution Plan has been approved with 92.72% voting.
4	Section 31(1): Whether the Resolution Plan has provisions for its effective implementation Plan, according to CoC	Yes. Clauses 14, 16 & 17 of the Resolution Plan

5	<p>Section 35A:</p> <p>Whether the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50, or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?</p>	NA
----------	---	----

15.3 Compliance under mandatory requirements under IBBI (Insolvency Resolution Process of Corporate Debtors) Regulations, 2016, as submitted by the RP:

Regulation 38		
1	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Yes. Clause 5.3 of the Resolution Plan
1A	Whether the resolution plan includes a statement as to how it has dealt with the interest of all stakeholders?	Yes. Clause 5.3 of the Resolution Plan
1B	<p>i) Whether the Resolution Applicant or any of its related parties has failed to implement or contribute to the failure of implementation of any</p>	<p>i) Clause 3-g of the Resolution Plan</p> <p>ii) NA</p>

	<p>resolution plan approved under the Code?</p> <p>ii) If so, whether Resolution Applicant has submitted the statement giving details of such non-implementation?</p>	
2(a)	Whether the Resolution Plan provides the term of the plan and its implementation schedule?	Yes. Clause 17 of the Resolution Plan
2(b)	Whether the Resolution Plan provides for the management and control of the business of the corporate debtor during its term?	Yes. Clause 14 of the Resolution Plan
2(c)	Whether the Resolution Plan provides adequate means for supervising its implementation?	Yes. Clauses 16 & 17 of the Resolution Plan
3	Whether the Resolution Plan demonstrates that -	
(a)	It addresses the cause of default?	Yes. Clause 3(c) of the Resolution Plan
(b)	It is feasible and viable?	Yes. Clauses 5, 6 & 7 of the Resolution Plan
(c)	It has provisions for its effective implementation?	Yes. Clauses 14, 16 & 17 of the Resolution Plan
(d)	It has provisions for approvals required and the time for the same?	Yes. Clause 17.3 of the Resolution Plan
(e)	The Resolution Applicant has the capacity to implement the Resolution Plan?	Yes. Clauses 6 & 7 of the Resolution Plan

Regulation 39		
2	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No such transactions observed/found by RP. The Transaction Auditor appointed by IRP/RP has also not yet given any conclusive report for such transactions.
4	Provide details of performance security received as referred to in sub-regulation (4A) of Regulation 36.	It is submitted in Revised Form H (Clause 5) that the SRA has paid the Performance Guarantee of Rs. 10,40,00,000/- through Bank Transfer.

15.4 Realisable Amount as provided in the Revised Form H:

Sl. No.	Particulars	Description
1.	Total Realisable amount under the plan (In case of real estate CDs, provide the monetary value of flats etc. given to allottees)	1,00,39,75,948/-
2.	Fair Value	116,94,00,000/-
3.	Liquidation Value	80,13,00,000/-
4.	Percentage (%) of realisable amount to Fair Value	85.85%
5.	Percentage (%) of realisable amount to Liquidation Value	125%
6.	Percentage (%) of realisable amount to Principal amount	89.88%
7.	Percentage (%) of realisable amount to Total admitted claims	73.17%

8.	Percentage (%) of realisable amount to Other than admitted Corporate Guarantee claims	NA
----	---	----

15.5 Details of Realisable amount as per the Revised Form H:

Stakeholder	Amount Admitted (In Rs.)	Realizable amount under the Plan (In Rs.)	Payment Schedule
Secured Financial Creditors			
Creditors not having a right to vote under subsection (2) of Section 21	-	-	-
Dissenting	-	-	-
Assenting	1,21,19,77,280.96	1,00,26,00,000	As per repayment schedule
Unsecured Financial Creditors			
Creditors not having a right to vote under subsection (2) of Section 21			
Dissenting	10,00,00,000	10,00,000	Within 90 days from the Effective date
Assenting	-	-	-
Operational Creditors			
Government	3,75,948	3,75,948	Within 30 days from the Effective Date
ii) Workmen	-	-	-

-Pf Dues			
-Other dues			
iii) Employees	-	-	-
-PF dues			
-Other Dues			
(iv) Other Operational Creditors	-	-	-
Other Debts and Dues	-	-	-
Shareholders	-	-	-
Total	1,37,23,53,328.96	1,00,39,75,948	

15.6 Details of the CIRP and Resolution Plan are as under:

Particulars					Description
Total Admitted claims (Amount in Rs.)					INR
Sl. No.	Description	Princi pal	Interest and penalty, if any	Total	137,23,53,328.96/-
1.	Corporate Guarantee claims	3			
2.	Other than Corporate Guarantee claims	111,69,56,509	25,50,20,872.31	137,23,53,328.96	
Resolution Plan Value (including insolvency resolution process cost, infusion of funds, etc.) (In the case of real estate CDs, provide the monetary value of flats etc. given to allottees)					CIRP Costs at actuals plus INR 1,00,39,75,978/-
Voting percentage (%) of CoC in favour of Resolution Plan					92.72

15.6.1. We note that the realizable amount by creditors of the Corporate Debtor is Rs. 100,39,75,948/- and CIRP Costs would be at actuals which is estimated at Rs. 2,58,42,915. Thus, the Resolution Plan value comes to **Rs. 102,98,18,863/-**.

15.6.2. It is further noted that out of the two unsecured financial creditors, one had voted against the Resolution Plan while the other had abstained from voting on the Resolution Plan. As per Regulation 38(1)(b) of the CIRP Regulations, 2016, the dissenting financial creditors have to be paid in priority to the assenting financial creditors. In the Resolution Plan proposed by the SRA, the upfront payment of Rs. 10,02,60,000 payable in USD 1.2 Million to the Assenting Secured Financial is stated to be paid within 30 days from the Effective Date whereas the unsecured financial creditors are proposed to be paid within 90 days from the Effective Date. Upon query, Ld. Counsel for the SRA as well the RP undertook to pay to the dissenting unsecured financial creditors within 30 days from the Effective Date in priority to the Assenting Financial Creditors. The said undertaking is taken on record.

15.7 Certain other relevant clauses as provided in the Revised Form

H are reproduced below:

1B. (i) *Whether Application for approval of Resolution Plan filed within 180 days of CIRP initiation – **NO***

(ii) *Number of days beyond 180 days taken for filing application for resolution plan 495 days*

(iii) *Reasons for delay:*

1. *Initial appointment of IRP was delayed by 28 days and exclusion of such 28 days was granted vide order dated March 24, 2023*
2. *Hon'ble NCLT also granted extension to the CIRP tenure by 90 days vide order dated August 08, 2023.*
3. *There was a stay granted by Hon'ble NCLAT and exclusion of 412 days was also granted vide order dated September 25, 2024.*

Therefore, after considering the extension and excluded days, the CIRP process is completed within the prescribed timelines.

10. *Details of Income Tax losses carry forward under Section 79(2)(c) of Income Tax Act, 1961, if any. **NIL***

11. *Amount of Regulatory fee payable (0.25%) to the Board under Regulation 31A **Rs. 25,09,939.87** and affidavit to the said effect is submitted by the SRA to the Resolution Professional.*

14. *Details of other IAs pending against the Corporate Debtor: **NIL***

16. *Whether Resolution Plan is subject to any contingency/condition - **No.***

17. *The Resolution Plan has been filed **235 days*** after the commencement of CIRP (in terms of Section 12 of the Code).*

** (after considering the exclusions and extension granted by the Hon'ble NCLT)*

1. *Initial appointment of IRP was delayed by 28 days and exclusion of such 28 days was granted vide order dated March 24, 2023*

2. *Hon'ble NCLT also granted extension to the CIRP tenure by 90 days vide order dated August 08, 2023.*

3. *There was a stay granted by Hon'ble NCLAT and exclusion of such 412 days was also granted vide order dated September 25, 2024.*

Therefore, after considering the extension and excluded days, the CIRP process is completed within the prescribed timelines.”

15.8 Certificate given by the RP in Form-H is reproduced below:

“2. I hereby certify that-

(i) The said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC/Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

*(ii) The Resolution Applicant Mr. **Suraj Arunkumar Muchchala** has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility*

under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

(iii) The said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 92.72% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

(iv) I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per regulation 26.”

16. **Implementation and Supervision of the Plan:**

- i. Clause 14 of the Resolution Plan provides for constitution of a Monitoring Agency to supervise the implementation of the Resolution Plan. It is stated that the Monitoring Agency shall be comprised of 3 (three) members:
 - 1 (one) representation of the CoC;
 - 1 (one) nominee of the Resolution Applicant; and
 - 1 (one) representation of the Resolution Professional.

- ii. Clause 14(ii) states that *“the Monitoring Agency shall monitor the Corporate Debtor in trust, and shall appoint the Resolution Professional to manage the day-to-day affairs of the Corporate Debtor under its supervision, until the full hand-over of assets of the*

Corporate Debtor including business records and all statutory records, tax filings, account books and account records taken into custody by the Resolution Professional under Sections 17 and 18 of the Code read with Sections 23 and 25 of the Code and shall be paid monthly fees of Rs. 1,00,000/-.” The said monthly fees shall be paid by the SRA.

17. **Details on Fraudulent and Avoidance Transaction**

- (i) The RP submits that no transaction which can be classified as fraudulent or avoidance transaction under sections 43, 45, 50 and/or 66 of the Code, has been determined.
- (ii) We note that the appointment of the Transaction Auditor was approved by the CoC in its 1st Meeting held on 02.02.2023. Thereafter, at the 5th CoC Meeting, a query was raised on the status of the Transaction Report to which the RP replied that due to non-cooperation from the suspended directors, the Transaction Auditor did not receive the documents of the Corporate Debtor.
- (iii) At the 11th CoC Meeting, there was a discussion regarding a Memorandum of Understanding (MoU) which was signed on 09.08.2017 between the Corporate Debtor and contractor Mr. Aslam Pingari, to implement and execute the construction project on Boisar Site. The legal validity of the said MoU was discussed

at some length and suggestions were also given to seek legal opinion on classifying the said MoU as fraudulent transaction under section 66 of the Code. However, there were no further developments in this issue.

- (iv) Thereafter, on 11.09.2024 when the 14th CoC meeting was held, the Transaction Report was not prepared and the RP reported that the same is still in progress. Even as on date, the Transaction Report is not provided. In Form H, the RP stated that, *“The Transaction auditor appointed by IRP/RP has also not given any conclusive report for such transactions.”* This indicates that there is no final report of the Transaction Auditor as on the date of approval of Resolution Plan by the CoC.
- (v) Nonetheless, the Resolution Plan, states that *“Any amounts received by the Company in respect of such transactions or orders in relation thereto shall be distributed to the Financial Creditors pro-rata to the extent of their Financial Debt. The cost for continuing of such litigations after the Transfer Date shall be borne by the Financial Creditors.”*

18. **Reconstitution of Board of Directors**

The Resolution Plan proposes that there shall be continuation of directorships of the erstwhile management of the Corporate Debtor and the suspension be revoked with immediate effect. It is stated that *“Upon*

approval of this Resolution Plan by the NCLT, the existing directors and key managerial personnel of the Corporate Debtor as on the Completion Date shall be deemed to continue and regain powers without any additional approval from the Shareholders.”

19. On perusal of Form-H as reproduced in Paragraphs 15.2 to 15.8 above, it is seen that the Resolution Plan is in compliance with the mandatory compliances as stipulated under Section 30(2) of the Code. The Resolution Plan also meets the requirements of Regulations 37, 38, 38(1A) and 39 (4) of the IBBI Regulations, 2016.
20. We note that the Corporate Debtor in the present case is an MSME and the Udyam Registration Certificate dated 07.12.2020 is annexed to the Application. However, when the application was heard on 16.01.2025, the RP apprised this Tribunal that the MSME Certificate annexed to the Application is incorrect. Perusal of the same revealed that the MSME Certificate annexed to the Application was of a different company, namely, M/s Siddhi Vinayak Industries. Thereafter, the RP filed an affidavit dated 03.02.2025 placing on record the MSME Certificate dated 05.09.2023 of the Corporate Debtor.
21. As we have already noted above, the Successful Resolution Applicant in the present case is the ex-director and promoter of the Corporate Debtor. Under the Code, an ex-director or promoter of a Corporate Debtor is ineligible to submit a resolution plan. However, section 240A

of the Code that carves out the applicability of certain provisions of the Code in case of an MSME, exempts the applicability of section 29A(a) and 29A(c) of the Code and permits an ex-director or promoter of a MSME Company to submit a resolution plan for the revival of the company. Thus, we are of considered view that the Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law.

22. It was noted that the said MSME Certificate was obtained after the commencement of the CIRP of the Corporate Debtor. We are conscious of the judgment of Hon'ble Supreme Court in the matter of **Hari Babu Thota [Civil Appeal No. 4422/2023]**, decided on 29.11.2023 wherein it has been held that the cut-off/crucial date for determination of the MSME status of the Corporate Debtor should be the date of submission of the resolution plan. On a query raised by the Tribunal in this Regard, Ld. Counsel for RP submitted that the Resolution Plan of the suspended director was received after the obtainment of the MSME Certificate.
23. We note from the Resolution Plan that the SRA proposes to infuse funds from third parties/other directors of the Corporate Debtor. However, the SRA shall do the same in accordance and in compliance with the Code, particularly, section 29A of the Code.
24. After hearing the submissions of the Ld. Counsel for RP together with the material placed on record, we are of considered opinion that the

resolution plan is in conformity of section 30(2) of the Code read with the applicable regulations of the CIRP Regulations.

25. We refer to the judgment of **K Sashidhar v. Indian Overseas Bank & Others (2019) 12 SCC 150**, wherein 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 (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan, as approved by CoC, meets the requirements specified in Section 30(2). The Hon'ble Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is 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.
26. It can be seen from the provisions of the I&B Code as well as in a catena of judgements that the commercial wisdom of the CoC in approving a resolution plan is given paramount importance and the scope of this Tribunal is limited to the extent of provisions under section 31 of IBC.

27. In **Committee of Creditors of Essar Steel India Limited through Authorised Signatory Vs. Satish Kumar Gupta & Ors (2020) 8 SCC 531**, the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom has approved.
28. In view of the law laid down by Hon'ble Supreme Court, the commercial wisdom of the COC is to be given paramount importance for approval / rejection of the resolution plan. As the Resolution Plan meets the requirements of the Code and the IBBI Regulations, the same needs to be approved.

ORDER

29. Based on the above discussions, the Resolution Plan as modified in view of the Additional Affidavit dated 08.05.2025 and the undertakings given by the SRA, is **approved** under Section 31(1) of the Code, with the following directions:
- i) The Additional Affidavit dated 08.05.2025 and the clarifications and undertakings by the SRA and RP shall form part of the Resolution Plan, and together they shall form part of this order. As per section 31 of the Code, the Resolution 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) **Effective Date** is *“the date of approval of the Resolution Plan by the NCLT”*, and **Completion Date** is *“Effective Date + 35 Months.”*

- iii) It is clarified that the CIRP Costs shall be paid within 15 days from the Effective Date. Further, the Upfront Payment to Assenting Secured Financial Creditor shall be made within a period of 30 days from the Effective Date, and the dissenting unsecured financial creditors and operational creditors shall also be paid within a period of 30 days from the Effective Date in priority to payment to the Assenting Secured Financial Creditor.

- iv) The amount proposed to be paid to the sole secured financial creditor is USD 12 Million (converted to Rupees as per RBI Rates). Any difference due to currency fluctuation shall be borne by the SRA. Further, the interest is to be charged and paid by the SRA on the amount payable to the secured financial creditor on reducing balance and the applicable rate of interest will be 1.50% Plus UK Bank Rate from time to time. The said interest amount is over and above the total amount payable to the secured financial creditor.

- v) No person will be entitled to initiate or continue any proceedings in respect to a claim prior to CIRP which is not a part of the Resolution Plan.
- vi) The Applicant/Resolution Professional shall stand discharged from his duties as the Resolution Professional of the Corporate Debtor with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.
- vii) The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to finalise further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises / documents through Resolution Professional to finalise further line of action required for starting of the operations.
- viii) The Monitoring Agency shall supervise the implementation of the Resolution Plan and shall review operational performance of the Corporate Debtor.
- ix) It is to be noted that Regulation 31A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that a regulatory fee calculated at the rate of 0.25

percent of the realisable value to creditors under the resolution plan approved under section 31, shall be payable to the Insolvency and Bankruptcy Board of India, where such realisable value is more than the liquidation value. In the present case, the Liquidation value is Rs. 80.12 crores while the Resolution Plan value is **Rs. 102.98 crores**. Hence, considering the mandate of Regulation 31A, the SRA is directed to pay the applicable Regulatory Fee.

x) **Reliefs and Concessions:**

- a) Approval of the Resolution Plan shall not be a ground for termination of any existing consents, approvals, licenses, concessions, authorizations, permits or the like that has been granted to the Corporate debtor or for which the Corporate Debtor has made an application for renewal, grant permissions, sanctions, consents, approvals, allowances, exemptions etc.
- b) Any Exemption as sought for in relation to the payment of registration charges, stamp duty, taxes and fees arising out of the implementation of the Resolution Plan is not granted but the Resolution Applicant is at liberty to approach Competent Authorities for the exemptions if permitted under the law.

- c) It is hereby clarified that in terms of the Judgement of Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited***, on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of a claim which is not a part of the Resolution Plan.
- d) With regard to other concessions and reliefs, most of them are subsumed in the reliefs granted above. The relief which is not expressly granted above, shall not be construed as granted. The exemptions if any sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted.
- xi) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the concerned Registrar of Companies (RoC), 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.

- xii) The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- xiii) The Resolution Professional/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.
- xiv) Liberty is granted for moving any appropriate application, if required in connection with the implementation of this Resolution Plan.
- xv) The Resolution Professional/Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.
30. Accordingly, IA/101/2024 is hereby **allowed** and **disposed of** with the above directions.

Sd/-

Hariharan Neelakanta Iyer
Member (Technical)

Uma, LRA

Sd/-

Lakshmi Gurung
Member (Judicial)