

IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing)

I.A No. 373/2022
in
CP (IB) No.60/BB/2020
U/s. 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

Mr. Vinay Mruthyunjaya,

Resolution Professional of
Metrik Infracore Private Limited
No.8, Floor, VK COMMERCE,
3RD Main, Rajajinagar
6th Block, Opp. IT Park,
Bangalore- 560 010

... Applicant/Petitioner

In the matter of:

M/s Bheemasamudra Land Developers and Builders ... Operational Creditor

Versus

M/s Metrik Infracore Private Limited ... Corporate Debtor

Order delivered on: 08th September, 2023

Coram: Hon'ble Justice (Retd) T. Krishnavalli, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the RP : Shri A.S Vishwajith
Shri Abhishek N

For Home buyers : Dr. K.S Ravichandran

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. This Application is filed by Mr. Vinay Mruthyunjaya (hereinafter referred to as 'Applicant/Resolution Professional') under section 30 (6) read with section 31 read with section 60(5)(c) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking approval of the Resolution Plan as approved by the CoC Members.
2. Brief facts of the case are given hereunder:
 - (a) The main Company Petition bearing CP(IB) No. 60/BB/2020 filed by Operational Creditor i.e M/s Bheemasamudra Land Developers and Builders u/s 9 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) against M/s Metrik Infraprojects Private Limited was admitted by this Adjudicating Authority, vide order dated 16.04.2021, and appointed Mr. Kanekal Chandrasekhar as the Interim Resolution Professional and he was directed to take necessary actions in accordance with relevant provisions of the Code and Regulations made thereunder.
 - (b) It is stated that IRP made a public announcement on 28.04.2021 in the prescribed form about the commencement of CIRP against Corporate Debtor in accordance with the provisions of Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Claims were invited by public announcement and the last date for submission of claims was 09.05.2021. The IRP constituted the Committee of Creditors as per the provisions of Section 21 of the Code. The Financial Creditor, M/s Piramal Enterprises Limited, holding 100% of the voting share filed I.A No. 157 of 2021 seeking for replacement of Mr. Kanekal Chandrasekhar and to appoint Mr. Vinay Mruthyunjaya as the RP. The said I.A was allowed vide order dated 14.07.2021. The Committee of Creditors of the Corporate Debtor consisted only of Piramal Enterprises Limited holding 100% of the voting share. However, after the RP has taken charge of the Corporate Debtor, the constitution of the CoC was subsequently

modified on 17.09.2021, 21.09.2021 and 08.08.2022. As on date of filing this Application the CoC consisted of Financial Creditor, M/s Bhairav Holdings Inc having voting share of 30.88% and Unsecured Financial creditors belonging to a particular class (homebuyers), represented by their Authorised Representative with voting share of 69.12%.

- (c) It is submitted that I.A No. 332 of 2021 was filed seeking exclusion of 157 days from the CIRP period of the Corporate Debtor due to expire on 13.10.2021; on account of the lockdown imposed due to coronavirus. Vide order dated 09.11.2021, this I.A was allowed excluding the period from 27.04.2021 to 30.09.2021. Subsequently, vide order dated 07.03.2022 in I.A No. 72/20233 the CIRP period of the Corporate Debtor was extended by 90 days till 17.06.2022. Another application was allowed on 16.06.2022 and the CIRP was extended for a period of 60 days, i.e., till 16.08.2022.
- (d) It is submitted that during the 4th meeting of the Committee of Creditors of the Corporate Debtor held on 16.08.2021 the quotations received for the conduct of Transaction Audit of the Corporate Debtor were noted by the Committee of Creditors and the fees payable to CA M. Vinod for conducting the Transaction Audit of the Corporate Debtor were inter-alia unanimously approved. It is submitted that the transaction auditors duly carried out the transaction audit of the Corporate Debtor and submitted their final report on 29.01.2022. Accordingly, the applicant filed I.A No. 74 of 2022 under Section 43, 44,45, 46, 48 and 66 of the Code, in respect of certain preferential transactions, undervalued transactions and fraudulent transactions carried out by the Corporate Debtor prior to the commencement of insolvency.
- (e) It is submitted that during the 6th meeting of the COC held on 31.11.2021, the COC approved publication of Form G for invitation of expression of interest for Resolution Plans as well as the eligibility criteria. Accordingly, the approved Form G was published in Deccan Herald (English) and Vijaya Karnataka (Kannada) newspapers on 04.12.2021 and responses were received from 4 prospective resolution applicants. During the 7th meeting of the CoC, the COC approved to re-

publish Form G in the interest of all the stakeholders to receive more EOI from prospective resolution applicants. Accordingly, the approved Form G was published in Deccan Herald (English) and Vijay Karnataka (Kannada newspapers on 29.12.2021. subsequently, the RP received expression of interest from 3 additional prospective resolution applicants thereby increasing the total number of prospective resolution applicants to 7.

- (f) Further, during the 3rd COC meeting held on 30.07.2021 the quotations received for the conduct of Valuation of the Corporate Debtor were noted by the Committee of Creditors, and the fees payable to two valuers for each class of assets were, inter-alia unanimously approved. Accordingly, by way of an e-mail dated 13.07.2021 the two valuers each were separately appointed to conduct the valuation of (i) Plant and Machinery of the Corporate Debtor; (ii) Land and Building of the Corporate Debtor; and (iii) Securities and Financial Assets of the Corporate Debtor. The valuation report of the assets of the Corporate Debtor is as follows:

Sl.No.	Asset Class	Appointed Valuer	Fair Value (INR)	Liquidation Value (INR)
1	Land & Building	Mr. Venkata Ramanaiah Kataru	0/-	0/-
		Mr. Madamanchi Surendra Nadh	0/-	0/-
2	Plant & Machinery	Mr. Aswartha. M	32,90,550/-	13,16,220/-
		Mr. Chandrashekar T.S	20,30,000/-	16,50,000/-
3	Securities and Financial Assets	Ms. Inampudi Bindu Madhavi	8,75,386/-	8,75,386/-

- (g) It is submitted that during the 8th COC meeting held on 04.02.2021, the Evaluation Matrix, with both qualitative and quantitative parameters, was unanimously approved by the COC. Further during this meeting the members of the COC discussed and made changes to the Draft Request for Resolution Plan. Thereafter the initial RFRP was circulated to the prospective resolution applicants.

- (h) It is submitted that only two resolution applicants, viz., Maniveera Structure Private Limited and Consortium of Jain Heights East Parade G Block Residents, Vaithianathaswamy Thunai Roarke construction Pvt. Ltd and Roarke Construction LLC submitted resolution plans. The RP received a revised claim from one of the members of the COC, and thereafter the 13th meeting of the COC was convened on 02.08.2022. further, the resolution applicants submitted their revised resolution plan dated 05.08.2022 and 07.08.2022. The revised resolution plan submitted by the resolution applicants were placed before the COC in its 14th meeting held on 10.08.2022.
- (i) The Resolution Plan dated 05.08.2022 read with Addendum to the Resolution Plan dated 09.08.2022 submitted by Maniveera Structure Private Limited, was placed before the COC for voting during the 15th COC meeting held on 12.08.2022 wherein all the members present and voting approved the same.
- (j) Further, as per the Resolution Plan and the commercial bid submitted along therewith, the total payout towards settlement of CIRP costs and claims of creditors is as below:

SL.No	Type of Creditors	Amount of Claim Admitted (INR)	Resolution Amount (INR)
1.	Secured Financial Creditor	Nil	Nil
2.	Unsecured Financial Creditor-Other than home buyers	13.38 Cr.	Nil
3.	Unsecured Financial Creditors- Homebuyers	29.52Cr.	Homebuyers shall be settled by way of completion of the project and handing over the possession of their respective flats/units in accordance with the Resolution Plan.
4.	Operational Creditors	6.88 Cr.	Nil

- (k) It is submitted that in accordance with Section 30(1) of the Code the successful resolution applicant has submitted its affidavit, dated

06.07.2022 declaring that they are eligible under Section 29A of the Code to submit the Resolution Plan.

- (l) It is submitted that the Resolution Plan provides for payment of the CIRP costs in the manner specified by the Board in priority to the payment of other debts of the corporate debtor in accordance with Section 30(2)(a) of the Code. Further, the plan provides for Nil payment to operational creditors whose claims have been admitted by the RP. As per the Resolution Plan there is no payment to operational creditors whose claim has not been filed. Since the Liquidation value of the corporate debtor is not sufficient to cover the debt of the secured financial creditor, in terms of Section 53 of the Code there would be no requirement to make any payment to the operational creditors. Hence, the Resolution Plan fulfils the requirements of Section 30(2)(b) of the Code.
- (m) It is submitted that the Resolution Plan provides for the management of the affairs of the corporate debtor after approval of the Resolution Plan as follows:
- (i) On the Approval Date, the existing Board of Directors of the Corporate Debtor shall continue to act as Directors of the Corporate Debtor.
 - (ii) With effect from the closing date, the ultimate control over the assets and affairs of the Corporate Debtor shall stand transferred and vested with the Resolution Applicant.
 - (iii) On the closing date, the Resolution Applicant shall be vested with complete control and ownership of all cash flows/receivables including cash accruals and bank accounts of the Corporate Debtor.
- (n) Further, in accordance with Section 30(2)(d) of the Code, the Resolution Plan provides for the implementation and supervision of the Resolution Plan including by way of (i) induction of professionals to manage day to day affairs of the Company (ii) appointment of an Insolvency Professional as “Monitoring Professional” to monitor and supervise the implementation of the Resolution Plan, and (iii) constitution and composition of the Monitoring Committee for Implementation of

Resolution Plan (“MCIRP”). As per the Resolution Plan the MCIRP shall consist of 2 members namely (i) One representative nominated by the Resolution Applicants; (ii) One representative nominated by Financial Creditors in a Class, i.e., Homebuyers

- (o) It is submitted that in accordance with Section 30(2)(e) of the Code the Resolution Plan does not contravene any of the provisions of the law for the time being in force, as has been declared in Section 16 of the Resolution Plan.
- (p) Further, in accordance with Regulation 37 of the CIRP Regulations, the Resolution Plan provides for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets by inter-alia providing for the restructuring of the share capital of the corporate debtor.
- (q) It is submitted that the Resolution Plan provides that operational creditors will be paid in priority over the financial creditors in accordance with Regulation 38(1)(a) of the Code and further there are no financial creditors who did not vote in favour of the Resolution Plan.
- (r) Further, the plan deals with the interest of the stakeholders, including financial creditors and operational creditors of the corporate debtor in accordance with Regulation 38(1A) (a) of the CIRP Regulations. The Resolution Plan confirms that none of the resolution applicants or any of its related parties have failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past in accordance with Regulation 38 (1B) of the CIRP Regulations.
- (s) It is submitted that the Resolution Plan provides that the term of the plan shall be 12 months from the date of receipt of the order approving the resolution plan and further the Resolution Plan provides for the implementation schedule in accordance with Regulation 28(2)(a) of the CIRP Regulations.
- (t) The Resolution Plan provides for the management and control of the business of the corporate debtor during its term in accordance with Regulation 38(2)(b) of the CIRP Regulations. Further, the Resolution Plan provides for adequate means for supervising its implementation

through appointing of an insolvency professional as a monitoring professional and the composition of the MCIRP in accordance with Regulation 38(2)(c) of the CIRP Regulations.

- (u) It is submitted that the Resolution Plan, in accordance with Regulation 38(2)(b) of the CIRP Regulations, demonstrates that it (a) addresses the cause of default; (b) it is feasible and viable; (c) it has provisions for its effective implementation ; (d) it has provisions for approvals required and the timeline for the same; and (e) the resolution applicant has the capability to implement the Resolution Plan.
 - (v) It is submitted that the COC has passed a favourable resolution with 69.12% of the voting share approving the resolution plan in the 15th meeting of the COC and as such, hence the requirements of Section 30(4) have been complied with.
 - (w) It is submitted that the period of completion of the CIRP of the Corporate Debtor has not expired and as such the present Application is filed within time. Further, all requirements under the Code and CIRP Regulations have been duly complied with, and that the Resolution Plan may be approved in accordance with law. Moreover, in accordance with Regulation 36B(4A) of the CIRP Regulations, the Resolution Applicant has furnished the performance security of Rs. 1,00,00,000/- with a maturity period of one year of Corporate Guarantee.
3. Heard Shri. A.S Vishwajith, learned Counsel for the RP and carefully perused the pleadings on record.
 4. The Corporate debtor herein, namely, M/s Metrik Infraprojects Private Limited was incorporated on 22.11.2010 and CIRP proceedings were initiated against the Corporate Debtor by this Adjudicating Authority, vide order dated 16.04.2021 passed in CP(IB) No. 60/BB/2020. The present application is filed for approval of the Resolution Plan submitted by Maniveera Structure Private Limited. The approval has been sought under the provision's of Section 31(1) of the Code.
 5. Pursuant to the public announcement inviting claims from the creditors of the Corporate Debtor, the Resolution Professional has constituted the COC. The details of the financial creditors, the distribution of voting share

among them and the position of voting for the Resolution Plan is as under (Para 5 of Form H) :-

Sl.No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan
1	Unsecured Financials belonging to a particular class (Home buyers) represented by their Authorised Representative	69.12%	Voted for
2	Bhairav Holdings Inc.	30.88%	Abstained

6. The details of stakeholders and the amounts provided for them under the Resolution Plan given in Para No. 7 of revised Form H. Form H attached along with the application dated 19.08.2022 was revised vide diary No. 308 dated 17.01.2023 and further revised vide diary No. 4388 dated 24.08.2023.

(Rs in Lakhs)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above: (i) who did not vote in favour of the Resolution Plan (ii) who voted in favour of the Resolution Plan	NA	NA	NA	NA
		Total [(a) + (b)]	NA	NA	NA	NA
2.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21 (Related Parties)	NA	NA	NA	NA
		(b) Other than (a) above: (i) who did not vote in favour of the Resolution Plan	1,338.53 3,293.32	1,338.53 2,996.15	Nil	Nil NA

		(ii) who voted in favour of the Resolution Plan				
		Total [(a) + (b)]	4,631.86	4,334.69	Nil	Nil
3.	Operational Creditors	(a) Related Party of Corporate Debtor	NIL	NA	NA	NA
		(b) Other than (a) above:	703.48	692.17	Nil	Nil
		(i) Government				
		(ii) Workmen				
		(iii) Employees				
		(iv) Others**				
		Total [(a) + (b)]	703.48	692.17	Nil	Nil
4.	Other debts and dues		Nil	Nil	Nil	Nil
Grand Total			5,335.33	5,026.85	Nil	Nil

It is submitted that Bhairav Holdings Inc. has abstained from voting.

Further, Financial Creditors in class i.e., Homebuyers shall be settled by way of completion of construction of the project and handing over the possession of their respective flats/unit in accordance with the Resolution Plan. The plan only addresses the construction of the flats of the claimants/homebuyers and providing the Units to homebuyers as specified in their respective agreements for sale.

Moreover, an amount of Rs. 8,19,97,568/- is estimated for completion of construction of Block G to the class of creditors to make it livable and habitable condition within a period of 1 year from the date of approval of Resolution Plan by NCLT.

7. The compliance of the Resolution Plan has been given in Para No. 9 of Form H are as follows:-

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	3.3	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit Resolution Plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Format IIIA annexed with the submitted Plan	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Format IIIA annexed with the submitted Plan	Yes

Section 30(2)	Whether the Resolution Plan – (a) provides for the payment of insolvency resolution process costs?	14	Yes
	(b) provides for the payment to the operational creditors?	15.1, 19	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the Resolution Plan?	16.7, 17.4, 18.5	Yes
	(d) provides for the management of the affairs of the corporate debtor?	31, 34	Yes
	(e) provides for the implementation and supervision of the Resolution Plan?	34	Yes
	(f) contravenes any of the provisions of the law for the time being in force?	35	No
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC?	Annexure I of the Form H	Yes
	(b) has been approved by the CoC with 66% voting share?	Annexure I of the Form H	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	34	Yes
Regulation 38(1)	Whether the amount due to the operational creditors under the Resolution Plan has been given priority in payment over financial creditors?	22	Yes
Regulation 38(1A)	Whether the Resolution Plan includes a statement as to how it has dealt with the interests of all stakeholders?	15.4	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any Resolution Plan approved under the Code.	36	NO
	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	NA	NA
Regulation 38(2)	Whether the Resolution Plan provides: (a) The term of the plan and its implementation schedule?	27	Yes
	(b) For the management and control of the business of the corporate debtor during its term	31	Yes
	(c) Adequate means for supervising its implementation?	34	Yes

38(3)	Whether the Resolution Plan demonstrates that– (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the Resolution Plan?	51.9 34 47, 30.2 30.3 Part A	Yes Yes Yes Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	-	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of Regulation 36B.	Format VIII B annexed with the submitted Plan	Yes Corporate Guarantee for an amount of INR 1 Cr. Has been provided sought for in the RFRP.

Note :-

- A. *The Corporate Debtor is a registered Micro Small and Medium and therefore the provisions of clauses © and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process under section 240A of the Code. In pursuance to section 240A of the Code, Resolution Applicant having common management with CD is eligible to submit a resolution plan and such Resolution Applicant will not be ineligible under Section 29A off the Code.*
- B. *As per the terms of the resolution plan, the Operational Creditors are being settled at NIL i.e., no amount is being proposed towards Operational Creditors. Accordingly, the condition regarding priority payment is deemed to have been satisfied.*
8. It is submitted by the Resolution Professional that the COC in its 15th meeting held on 05.08.2022 has approved the Resolution Plan with 69.12% voting share and therefore, the conditions provided for Section 30 (4) of the Code are satisfied.
9. At this juncture it is necessary to refer to sec 30(2). The Provisions of Section 30(2) of the I&B Code, 2016 are as follows:

“The resolution professional shall examine each Resolution Plan received by him to confirm that each Resolution Plan –

- (a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the 3 [payment] of other debts of the corporate debtor;*
- (b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-*
 - i.) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or*
 - ii.) the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,*

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the Resolution Plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

- (i) where a Resolution Plan has not been approved or rejected by the Adjudicating Authority;*
- (ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*
- (iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a Resolution Plan;*
- (c) provides for the management of the affairs of the Corporate debtor after approval of the Resolution Plan;*
- (d) The implementation and supervision of the Resolution Plan;*
- (e) does not contravene any of the provisions of the law for the time being in force*
- (f) Conforms to such other requirements as may be specified by the Board.”*

10. The compliance of Section 30(2) of the Code is given in Para No.09 of Form-H (supra). The same is being further examined as under:

- a. **Section 30(2)(a):** The Resolution Plan in Point 14 states that the RP has provided an estimate of Rs. 2,55,27,142/- for CIRP costs

pertaining to the Corporate Debtor. It is submitted that the CIRP cost is being contributed by way of Interim Finance from the erstwhile Secured Financial Creditor, i.e., Piramal Enterprises Limited and from the Financial Creditors in a Class- Homebuyers. The entire interim finance, contribution or such other fund of whatsoever nature, provided or to be provided/incurred or to be incurred by homebuyers towards the CIRP Cost of the Corporate Debtor, shall stand adjusted towards the cost to be incurred for completion of construction at Block-G and hence the same shall be deemed to have been paid in priority for the purpose of compliance with the provisions of the Insolvency and Bankruptcy Code, 2016 and rules and regulations made thereunder. The interim finance provided by Piramal Enterprises Limited has been settled by Jain Heights and Structures Private Limited (Holding Company of the Resolution Applicant) and a letter has been addressed to the RP informing that the contributions made by Piramal enterprises Limited may be reimbursed and deposited to the account of Jain Heights and Structures Private Limited. Further, the letter provides for a confirmation from Piramal Enterprises Limited as interim finance provider that there is no other additional CIRP costs payable to them. Jain Heights and Structures Private Limited, being the holding company of the Resolution Applicant has provided its NOC pursuant to which no interim finance be payable by the Resolution Applicant to Jain Heights and Structures Private Limited and hence the unpaid CIRP cost stands reduced to that extent and is accordingly deemed to have been paid in priority in compliance of the provisions of the Code and rules and regulations made thereunder. Any excess unpaid CIRP cost shall be borne by the Resolution Applicant.

- b. **Section 30(2)(b):** The Resolution Plan in Point 15 provides for the following settlement:

Particulars	Amount admitted (INR)	Amount being settled

		In INR admitted	% of amount
Estimated Unpaid CIRP costs	N.A		100.00
Financial Creditors in a Class (Home-buyers)	29,96,15,333		
Secured Financial Creditors	Nil	Nil	0.00
Unsecured Financial creditors	13,38,53,342	Nil	0.00
Operational creditors other than workmen, employees and government dues.	6,23,88,072	Nil	0.00
Other creditors	Nil	N.A	N.A
Statutory Dues	Nil	N.A	N.A
Workmen and Employee Dues	Nil	N.A	N.A
Related Party Dues	Nil	N.A	N.A
Payment to Shareholders	Nil	N.A	N.A

- (i) Financial creditors in a Class. i.e., Homebuyers shall be settled by way of completion of the project and handing over the possession of their respective flats/units in accordance with Clause- 17
- (ii) The amount proposed to be settled in the manner described in the table above shall be paid upfront (i.e., within 45 days from the Approved Date) subject to terms and conditions of this plan and the provisions of the Code and CIRP Regulations.
- (iii) The Resolution Applicant has, to the extent possible, considered the interest of all the stakeholders and therefore believes that the Resolution Plan will create a sustainable capital structure that will enable the Company to continue as a going concern.
- (iv) As informed by the RP, M/s Piramal Enterprises Limited (“Erstwhile Secured Financial Creditor”), pursuant to the One-Time Settlement with the Corporate Guarantor of the Corporate Debtor in relation to the debt of the Corporate Debtor, have revised their claim to Zero / Nil in accordance with regulation 12A of the CIRP Regulation. Accordingly, as on the date of submission of this Plan, the Corporate Debtor has No Secured Financial Creditor and Nil Secured Financial

Debt. And the following flats which were held as security interest by Piramal Enterprises Limited shall be released by the Piramal Enterprises Limited in favour of Corporate Debtor/Resolution Applicant/Corporate Guarantor to the Corporate Debtor i.e., Jain Heights & Structures Private Limited. The details of the said flats are described below:

Sl.No	Flat No.
1	G- 101
2	G- 203
3	G- 301
4	G- 702
5	G- 802

All title deeds and other documents, if any, in relation to the above flats held by Piramal Enterprises Limited or any third party shall be immediately released in fit and proper condition to the Corporate Debtor/Resolution Applicant/Corporate Guarantor to the Corporate Debtor i.e., Jain Heights a& Structures Private Limited.

It is further noticed from Para 17.2 of the Plan that the Resolution Applicant proposes to settle the Claims and debt of the Homebuyers by completing the construction at Block – G with twelve (12) months from the date of receipt of the order of NCLT approving this resolution plan and providing the Units specified in their respective agreements for sale in full and final settlement of their Claims and debt. All the homebuyers will have to pay the balance consideration, if any, as mentioned in their respective agreements, within 45 days from the date of receipt of order of the Hon'ble NCLT approving this Resolution Plan.

The Resolution Plan 16.7 deals with the payment to the financial creditors who did not vote in favour of the resolution plan. Financial creditors who do not vote in favour of the resolution plan shall be paid not less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor. However, as per the updated

information memorandum there is no secured financial creditor of the corporate debtor and hence this requirement does not arise.

- c. **Section 30 (2)(c) :** Resolution Plan Para 34. The responsibility of management of the affairs of Corporate Debtor of the Company and implementation and supervision of the Resolution Plan after the date of approval by NCLT, shall be of the Monitoring Committee.
- d. **Section 30(2)(d):** The Resolution Plan Para 31 deals with implementation and supervision of the Resolution Plan. Effective from the NCLT Approval Date, a Monitoring Committee (“MC”) comprising of members comprising One representative nominated by the Resolution Applicants and One representative nominated by Financial creditors in a Class, i.e., Home buyers will be constituted. Post the NCLT Approval Date and till the Resolution Plan is implemented the affairs of the Corporate Debtor shall be managed by Resolution Applicant and the tenure of the Monitoring Committee shall come to an end on completion of construction at Block- G and upon communication to homebuyers regarding handover of flats.
- e. **Section 30 (2)(e) :** Resolution Plan Para 35. The Resolution Applicant declares that the Resolution Plan does not contravene any of the provisions of the Law for the time being in force.
- f. **Section 30 (2)(f):** The Insolvency and Bankruptcy Board of India has notified the requirements under Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency resolution process for corporate persons) Regulations, 2016. It is submitted that Resolution Plan complied with all the regulation provided under the Code. The compliance thereof is stated in subsequent paragraphs:
 - (1) Regulation 38 (1):** As per Regulation 38 (1) of the insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors. It is submitted by the Applicant that per the terms of the resolution plan, the Operational Creditors are being settled at NIL i.e., no amount is being proposed towards Operational Creditors. Accordingly, the

condition regarding priority payment is deemed to have been satisfied.

- (2) Regulation 38 (1A):** It is submitted that the Resolution Applicant has, to the extent possible, considered the interest of all the stakeholders and therefore believes that the Resolution Plan will create a sustainable capital structure that will enable the Company to continue as a “going concern”.
- (3) Regulation 38(1B):** As mandated under Regulation 38 (1B) of the CIRP Regulations, the Resolution Applicant confirms that neither the Resolution Applicant nor any of its related parties have failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.
- (4) Regulation 38(3)(a):** The Resolution Applicant submits that the cause of default has been the litigation filed against the Corporate Debtor to trouble the functioning and operations of the Corporate Debtor. Such litigation caused delays in delivery of flats leading to subsequent escalation of construction cost and delay in receipt of receivables which lead to delay in service of debt. All of these factors had strangled the Corporate Debtor from completing the construction and delivery of flats on time and for servicing of debt to the creditors. The Resolution Applicant is committed to complete the construction of Block-G at “Jain Heights – East Parade” and deliver the same to the flat buyers in the committed time period as per the implementation schedule and in this manner shall address the cause of default.
- (5) Regulation 38(3)(b):** The Business Plan of the Resolution Applicant is made on reasonable assumptions, to demonstrate the feasibility and viability of this resolution plan.
- (6) Regulation 38(3)(c):** It is submitted that the Monitoring Committee shall Provide relevant Support for all applications for regulatory and third-party approvals required for implementation of the transactions contemplated in the Resolution Plan in a form and manner agreed with the

Resolution Applicant, and for this purpose, to authorize such persons as proposed by the Resolution Applicants; Provide support on litigations, if any, which may be revived on the expiry of the moratorium period after the Approval Date, and any fresh litigation which may be filed against the affairs and operations of Corporate Debtor by any person. It is clarified that the Resolution Applicants will not be liable for any claims that may be adjudicated in such Proceedings, except to the extent explicitly admitted and addressed in this Resolution Plan;

11. It is observed that in Para 4 of Form H, the resolution professional has certified that the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (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. Further, the resolution applicant Maniveera Structure Private Limited 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 content of the said affidavit are in order. The affidavits are attached as Annexure K to the application. It is further certified that the 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 69.21% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.
12. It is further observed that in accordance with regulation 36B(4A), the resolution applicant has furnished the Corporate Guarantee of Rs. 1,00,00,000/- by way of a Bank Guarantee. Further it is submitted that this Corporate Guarantee shall be valid and binding on the Corporate Guarantor and shall in no event be terminable by notice or any change in the constitution of the Corporate Guarantor or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alterations made, given, or agreed

with or without our knowledge or consent by or between the parties. The said Corporate Guarantee is attached as Annexure M of the Application.

13. It is noted from the plan that the Corporate Debtor shall continue as a going concern and operate in its normal course upon implementation of the Resolution Plan.

14. The Applicant vide diary no: 5564 dated 20.12.2022 filed the MSME certificate of the Corporate Debtor and the same is taken on record.

15. It is further observed from the plan that in Para 28 the sources of funds for completion of construction at Block – G have been given:-

“28.2. In order to bring the flats in Block- G to a liveable and habitable condition, the RA has to complete pending works and the estimated cost towards completion of such pending works is approximately INR 8,19,97,568.00/-.

28.3. The following are the source of funds for completion of the construction at Block –G: (a) INR 1,74,40,137/- outstanding and payable by the Homebuyers as per their agreements with the Corporate debtor. (b) Amount to be realised from the sale of flats, the charge on which shall be released by the secured financial creditor as an integral part of this resolution plan. (c) Balance, if any, to be funded by the Resolution Applicant, from time to time, till the completion of the construction at Block-G.”

With regard to para 28.3 (b) above, the list of five flats have been mentioned above at Para 10.

16. It is noted that on August 2, 2022, the RP vide an email shared the updated Information Memorandum (“IM”) dated August 02, 2022, with the RA intimating substantial changes with respect to the debt of the Corporate Debtor and constitution of Committee of Creditors (“CoC”) and requested to submit the revised / updated resolution plan taking into consideration the updated Information Memorandum. Accordingly, the RA has submitted a revised plan on August 04, 2022 (“Revised Resolution Plan”). The Resolution Professional, vide his email dated August 8, 2022, had made certain observations on the Revised Resolution Plan which shall be addressed by the Resolution Applicant. Accordingly, addendum (attached at Pg 780 of the application) is prepared for the purpose of addressing the

same by making the necessary corrections and this shall not be construed as modification of resolution plan as the basic structure of the plan remains intact. The following changes shall be made to the revised resolution plan as per the observations made by the Resolution Professional.

1. *Clause 19.1. to be replaced by the following clause:*

19.1. As per the details furnished to us, the following are the claims of operational creditors (other than workmen and employees' dues and statutory dues) for Goods and Services provided to Corporate Debtor:

S.No.	Operational Creditor	Amount Admitted
1.	<i>Bheemasamudra Land Developers and Builders</i>	<i>6,00,00,000.00</i>
2.	<i>Nina Percept Private Limited</i>	<i>23,88,072.00</i>
3.	<i>Geoliz Waterprofeers Private Limited</i>	<i>23,87,523.00</i>
4.	<i>Creative Diesel Services</i>	<i>9,87,079.00</i>
5.	<i>SourcePro Services</i>	<i>30,42,927.00</i>
	Total	6,88,05,601.00

2. *The figures and expression INR 6,23,88,072.00/- (Rupees Six Crore Twenty-Three Lakh Eighty-Eight Thousand and Seventy-Two only) in Clause 19.3. be replaced by the following figures and expression: INR 6,88,05,601.00/- (Rupees Six Crore Eighty-Eight Lakh Five Thousand Six Hundred and One only).*

3. *The following paras shall be inserted after Clause 30.18 of the revised Resolution Plan:*

The Proceeds, if any, from the outcome of such application shall be utilised towards the construction of the projects at Block G and the same shall be considered as distributed to the homebuyers.

17. In respect of reliefs and concessions at Para 30 of the Plan, it is observed that the relief and concessions claimed by the Resolution Applicant by with the approval of the plan, are to be allowed only in accordance with Law.

The applicants has filed details of reliefs and concessions vide diary no. 2714 dated 25.05.2023 it is clarified that it is not possible for us to issue any blanket direction except to say that the Resolution Applicant may take necessary steps in accordance with Law in respect of the said claims of reliefs and concessions and the public authorities / government authorities / Taxation department would duly consider the said requests / applications of the Resolution Applicant and take appropriate decision in accordance with Law.

18. This tribunal vide order dated 22.12.2022 directed the applicant to file revised Form -H and affidavit with regard to clarifying the treatment of government dues, if any, in view of Judgment of Hon'ble Apex Court in the matter of State Tax Officer vs Rainbow Paper Limited and also affidavit with regard to preferential transaction. And further, it was also directed to file two page note regarding the nil value provided under the plan and to the amount claimed. The compliance to the above order was made vide diary Nos. 305, 306, 307 and 308 dated 17.01.2023 and an affidavit was filed clarifying the treatment of Government dues, in view of the judgment in the matter of State Tax Officer vs Rainbow Papers Limited. It was stated that no claims were submitted by any of the statutory authorities in the relevant claims form prescribed by the Code despite intimations sent to the relevant statutory authorities, as well as in response to the public Announcement dated 27.04.2021 for the invitation of claims. Further, it is submitted that the resolution plan provides for treatment of statutory dues under Clause 21, Part D of the Resolution Plan. The Resolution Applicant has assumed the liquidation value of the Company for the purpose of this Resolution Plan to be NIL. As a result, under the Resolution Plan, the value to be paid the Statutory Authorities is NIL in accordance with the liquidation waterfall provided under Section 53 of the Code is NIL. Accordingly, the requirement of Section 30(2)(b) of the Code to pay at least liquidation value to Operational Creditors does not apply in this case. Further, Clause 21.1. of the Resolution Plan states that as on the date of submission of resolution plan, no claims were received from Statutory Authorities and the same is considered as final. Therefore, the resolution plan reflects NIL statutory dues to be paid as the Government Authorities

as they have not submitted claims with proof to IRP / RP in the manner as provided in the Code.

19. The Applicant has also attached revised Form H as prescribed under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and also submits that Application filed under Sections 43, 44, 45, 46, 48 and 66 read with Section 60(5)(C) of the Insolvency and Bankruptcy Code, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016 for Avoidance of Transactions (IA No.74 of 2022) is pending before the Hon'ble NCLT. To that effect, Clause 30.18 read with Clause 3 of the addendum to the resolution plan provides that if the avoidance application continues to be heard even after NCLT Approval Date, the Resolution Applicant shall at its own discretion decide whether or not to contest such litigation keeping in mind the cost associated with such litigation. The Resolution Plan further provides that the proceeds, if any, from the outcome of such application shall be utilised towards the construction of the Project at Block-G and the same shall be considered as distribution to the homebuyers.
20. It is observed that vide diary no. 305 dated 17.01.2023 the Applicant has filed clarification for nil value provided under the resolution plan. It is submitted by the Applicant that according to the valuation reports of Land and Building of the Corporate Debtor issued by the appointed Registered Valuers, the estimated cost of works to be completed is more than the estimated amount realizable from unsold flats and balance receivable from other Flat Buyers where registrations are pending. Therefore, the asset has been considered a liability by the registered valuers in their respective valuation reports. The total liquidation value of the Corporate Debtor is INR 23,58,110/- (Rupees Twenty-Three Lakh Fifty-Eight Thousand One Hundred and Ten only):

Class of Assets	Average Value for each Class (INR)	Fair Value (INR)
Plant & Machinery	26,60,275/-	35,35,275/-
Securities & Financial Assets	8,75,000/-	
Land & Building	0/- (Refer Note A)	

Class of Assets	Average Value for each Class (INR)	Liquidation Value
Plant & Machinery	14, 83, 110/-	23,58,110/- (Refer Note B)
Securities & Financial Assets	8,75, 000/-	
Land & Building	0/- (Refer Note A)	

It is further stated that the Resolution Professional has provided an estimate of INR 2,55,27,142/- (Rupees Two Crore Fifty-Five Lakh Twenty-Seven Thousand One Hundred Forty-Two only) towards the CIRP costs pertaining to the Corporate Debtor. Till date the Resolution Professional has incurred a total sum of Rs 1,92,97,868/- (Rupees One crore Ninety-Two lakhs Ninety-Seven thousand Eight Hundred and Sixty-eight) towards CIRP expense. Since the Liquidation Value determined in accordance with Regulation 35 of the CIRP Regulations, i.e., an amount of INR 23,58,110/- (Rupees Twenty-Three Lakh Fifty-Eight Thousand One Hundred and Ten only), is significantly less than the CIRP Costs of INR 2,55,27,142/- (Rupees Two Crore Fifty-Five Lakh Twenty-Seven Thousand One Hundred Forty-Two only), the liquidation value can be said to be inadequate to meet the distribution requirements under Section 53 of the Code. Further, if the Resolution Applicant in the matter consider payment of CIRP costs in priority to the payment of other debts of the Corporate Debtor, the Liquidation value will reduce to that effect and thus shall stand at **NIL** as per Section 53 of the Code.

21. Further written submissions vide diary No. 2476 dated 09.05.2023 was filed by Financial Creditors in a class (Homebuyers) submitting that. "Upon implementation of the Resolution Plan, as envisaged under the Resolution Plan itself, the home-buyers of the 14 flats with an aggregate, admitted claim of Rs. 29,96,15,333/- representing 69.12% voting share, will get their flats for which they have contributed the said sum of money. In short, as per the Resolution plan, the SRA has proposed to settle the claims and of Home Buyers by way of Completion of construction of G-Block within a period of 12 (twelve) months', beginning from the date of receipt of the Order of this Hon'ble Tribunal approving the Resolution Plan, and providing the units as specified in their respective agreements for sale,

in full and final settlement of their claims. The source of funds are provided in Para 17.3 of the Resolution Plan. Further, as per the Resolution Plan, Home buyers are able to realize as much as Rs. 29.52 Crores minus the sum of Rs. 1.74 Crores they are agreeable to contributing to the funds of the Corporate Debtor for implementing the Resolution Plan. Thus, net realization coming from the Resolution Plan is equal to Rs. 27.78 Crores. However, it does not mean the SRA is infusing so much funds nor does it mean the amount required for completion of construction of all the flats in Block –G is equal to Rs. 29.52 Crores. It is estimated that the cost to be incurred by SRA for completion of construction is Rs. 8,19,97,568.00/- as could be seen from Para No. 28 of the Resolution Plan. SRA is agreeable to funding only to the extent specified above. Therefore, it is humbly submitted that it cannot be said the plan value is NIL. Though there is no precise formula to arrive at the value of the Resolution Plan, it may be arrived at by finding out the fund infusion by SRA in the manner specified below:

- a) Estimated Cost for Completion of Block –G: Rs. 8,19,97,568/-
- b) Funds to the tune of Rs. 1.74 Crores to be brought by Home Buyers.
- c) Funds to the tune of Rs. 5 Crores to be generated by Sale of 5 units after completion.

The above estimate will show that the resolution plan value is equal to about Rs. 1,45,97,568/-.”

In the above it is stated that the five flats were the ones the charge on which was to be released by the Secured Financial Creditor as part of the Resolution Plan, as discussed above.

22. The Learned Counsel for the applicant has relied on the judgment of Hon’ble NCLAT in the matter of “*Genius Security and Allied Services vs Shivadutt Bannanje and Another*” *Company Appeal (AT) (CH) (Insolvency) No. 110 of 2021 dated 07.04.2022*. Relevant para are as under:

“ 36. As per the decision of the CoC the 2nd respondent submitted its revised resolution plan dated 03.08.2020. in the Plan Schedule 4 deal with financial proposal for all stakeholders and Schedule-6 deal with payment to creditors and cost of resolution plan and means of finance. Sub-clause- (iv) of Schedule 4 a provision is made to pay a sum of Rs. 8 Crore towards a

Financial Creditors Debt. Further, a provision is made to homebuyers who form part of Financial Creditors. Sub clause (xii) of schedule 4 of plan dealt with proposal for operational creditor. It is stated that the total claims filed by Operational Creditors of the company is for an amount of Rs. 3,03,05,776/- out of which claims aggregating to Rs. 99,50,075/- have been verified and admitted for the purposes of CIRP by resolution professional. It is also stated that claims in relation to workmen's dues as verified and admitted by the resolution professional is shown as nil.

37. Even in plan the outstanding government dues, taxes etc. which was admitted as operational creditor, nil payment has been proposed under the plan towards payment of any Government dues, taxes etc. With regard to the payment of operational creditor sub reads as: the liquidation value is insufficient for payment to the operational creditor of the company as the Liquidation value is insufficient to satisfy the claims of even the secured financial creditor in full and nil payment has been proposed under the resolution plan towards the claims of operational creditor. A sum of Rs. 50 Lakh has earmarked for payment towards CIRP cost. It has been categorically stated that the payment to unsecured creditor including operational creditors and dues to Government/Statutory dues and equity shareholders shown as nil.....

45. From the perusal of the resolution plan this Tribunal finds that there is no infirmity or illegality in the plan as approved by the Committee of Creditors”.

23. The Applicant has further placed on record the decision of Hon'ble NCLAT, Principal Bench, New Delhi in the case of “*Dharmindra Constructions Pvt.Ltd. &Anr vs Rajendra Kumar Jain, Resolution Professional of Kudos Cheme Ltd. & Ors* dated 18.01.2023 in Company Appeal (AT) (Insolvency) No. 1477 of 2022 wherein it is held that operational creditors are only entitled for minimum of the Liquidation value and there being no breach of any provisions of the Code.

24. On 26.04.2023 this Tribunal directed the applicant to file an undertaking by the PRA as per Regulation 39 (1) (c), clarification regarding the timeline for implementation of the plan as per Regulations 38 (2) (a), an affidavit under provisions of Regulation 31A, affidavit regarding pending litigations

if any and explanations/justifications regarding all the reliefs and waivers sought in the resolution plan. The compliance to the said direction was made vide diary no. 2714 dated 25.05.2023 wherein it is undertaken vide affidavit dated 23.05.2023 that every information and records provided in connection with or in the resolution plan is true and correct as mentioned under Regulation 39 (1) (c) of IBC. It is further submitted that a monitoring committee comprising of one representative nominated by the resolution applicant and one representative nominated by the Homebuyers shall be constituted within 7 days of approval of the plan and all the creditors, existing shareholders and stakeholders will be notified of the approval of the resolution plan. The term of the MC shall come to an end upon completion of construction of all apartments and handover of the flats to the homebuyers, which shall be done within 365 days from the approval of the resolution plan. Further, it was stated that within 44 days from the date of approval, the resolution applicant shall make payments towards unpaid CIRP costs. Vide affidavit dated 24.05.2023 the SRA submits that it shall bear the entire regulatory fees in compliance with the provisions of Regulation 31A of the CIRP Regulations, 2016. The Applicant further filed affidavit dated 24.05.2023 regarding the pending litigations and explanation regarding all reliefs and waivers sought in the Resolution Plan. However, this Tribunal is not granting any reliefs and waivers as sought by the Resolution Applicant. The Resolution Applicant to file necessary application before the concerned authorities for reliefs in accordance with law.

25. In the circumstance and for the aforesaid reasons, the instant IA bearing **I.A. No.373 of 2022 is allowed** and accordingly, the Resolution Plan dated 09.08.2022 ('Resolution Plan') submitted by M/s. Manivera Structure Private Limited (annexed to the Application as Annexure-I) is hereby approved. The Resolution Plan so approved shall be binding on the Corporate Debtor and 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 such as authorities to whom statutory dues are owed,

guarantors and other stakeholders involved in the Resolution Plan. Under the provisions of section 31(3) of the Code, we also direct as under:

- a. The moratorium imposed vide order dated 16.04.2021 in the main CP shall cease to have effect from the date of communication of this order.
- b. The resolution professional shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the Board to be recorded on its database.

Further, the Resolution Professional is directed to handover the management, control and all the assets, documents/records in physical and/or digital form to the Resolution Applicant immediately and the resolution professional will cease to be resolution professional.

-Sd-

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd-

(T. KRISHNAVALLI)
MEMBER (JUDICIAL)