



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**I.A. 34/2024**

**IA-1718/2024**

**In**

**CP (IBPP) No.02/ (PB)/2023**

**ORDER UNDER SECTION 54L OF THE INSOLVENCY AND BANKRUPTCY  
CODE, 2016 R/W REGULATION 49 OF THE INSOLVENCY AND  
BANKRUPTCY (PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS)  
REGULATIONS, 2021.**

**IN THE MATTER OF:**

**CP (IBPP) No.02/(PB)/2023**

**KVIR TOWERS PVT. LTD.**

**.. APPLICANT**

**&**

**IN THE MATTER OF:**

**I.A.-34/2024**

**RAJEEV LOCHAN  
(Resolution Professional)**

**..APPLICANT**

**Versus**

**KVIR TOWERS PVT. LTD**

Having Registered Office at:  
G-06, Ground Floor, Plot No. SU LSC B-Block,  
RG City Centre, Lawrence Road,  
North West, Delhi, Delhi, India, 110035  
CIN- U70200DL2013PTC255199

**&**



**IN THE MATTER OF:**

**I.A.-1718/2024**

**KVIR TOWERS PRIVATE LIMITED**

HAVING REGISTERED OFFICE AT:

G-06, Ground Floor, Plot No. SU LSC B-Block,

RG City Centre, Lawrence Road,

North West, Delhi, Delhi, India, 110035

CIN- U70200DL2013PTC255199

**.. APPLICANT**

**Order Pronounced On: 12.12.2024**

**CORAM:**

**CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR**

**HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA**

**HON'BLE MEMBER (TECHNICAL)**

**Appearances:**

For the RP : Mr. P. Nagesh, Sr. Adv., Mr. Kumar Anurag Singh, Mr. Zain A Khan, Mr. Akshay Sharma, Mr. Saurabh Jain, Mr. Prayag Jain, Advs. along with Mr. Rajeev Lochan, RP



## **ORDER**

1. The present application (I.A. 34 of 2024) has been filed by Mr. Rajeev Lochan, Resolution Professional (“Applicant/RP”) of KVIR Towers Private Limited, Corporate Debtor (“CD”) on 09.07.2024 under Sections 54K(15) and 54(L) of the Insolvency & Bankruptcy Code, 2016 (“The Code”) read with Regulation 49 of the IBBI (Pre- Packaged Insolvency Resolution Process) Regulations, 2021 (“PPIRP” Regulations”) for approval of the Resolution Plan of the Corporate Debtor.
2. At the outset, it is relevant to mention herein that earlier the Plan I.A. was reserved on 29.07.2024, however on perusal of the resolution plan submitted by the applicant certain inconsistencies were observed, in view of which this Adjudicating Authority though fit to de-reserve the matter and further certain clarifications were also sought from the applicant vide order dated 25.09.2024. The Application in compliance of the order filed a clarification by way of two affidavits dated 25.10.2024 and 08.11.2024.

### **BRIEF FACTS**

3. Before delving into the issue, it is relevant to mention the brief facts of the case resulting into the present application. That KVIR Towers Private Limited (*hereinafter referred to as “Corporate Debtor”*) filed a petition under Section 54 C of The Code seeking initiation of Pre-Packaged Insolvency Resolution Process. That pursuant to order dated 20.02.2024 passed by this Adjudicating Authority, the CD was admitted into Pre-Packaged Insolvency Process and accordingly the Applicant was appointed as the Resolution Professional (“RP”) under the provisions of the Code. The Copy of order dated 20.02.2024 is annexed as **Annexure A-1** of the application.
4. The applicant after being appointed as RP issued a public announcement dated 21.02.2024 in terms of Regulation 19 of the PPIRP, Regulations, 2021 intimating about the commencement of PPIRP against the CD and inviting the creditors to submit their claims. The announcement was published on



21.02.2024 in newspaper namely Financial Express (English) and Jansatta (Hindi). The copy of public announcement dated 21.02.2024 is annexed as **Annexure A-3** of the application.

5. The Applicant received claims from the creditors and a list of claims was issued by the applicant in Form P-10 as per Regulation 20 of the PPIRP Regulations. Copy of the List of Claims as on 06.03.2024 under Form P10 is being annexed herewith and marked as **Annexure-A-4**. Further in accordance with Section 54-I read with Regulation 24 and 25 of PPIRP Regulations the applicant constituted the Committee of Creditors (COC).
6. That, under Section 54(K)(1) of the Code, the CD submitted the Base Resolution Plan to the Applicant and that the Applicant upon receiving the plan sought a legal compliance report thereof to be able to present the plan to the CoC. In accordance with Section 54 I (2) of the Code read with Regulation 28 of PPIRP, Regulations the applicant convened the First meeting of the Committee of Creditors on 01.03.2024. During the first meeting of COC, the base Resolution Plan of the CD was discussed along with other relevant agendas. Copy of Minutes of the First Meeting of the COC held on 01.03.2024 has been annexed as **Annexure A-6**.
7. Further the Applicant appointed two registered valuers who conducted the valuation of the assets of the CD. The two valuers conducted the valuation and the average fair value of land and building of CD is Rs. 2,50,80,00,000 (Rupees Two Hundred Fifty Crores and Eighty Lakhs) and average valuation with respect to Securities or Financial Assets (SFA) is Rs. 25,23,500/- (Rupees Twenty Five Lakhs Twenty Three Thousand Five Hundred Only). Further it is stated that the liquidation value of Land and Building is Rs. 2,00,64,00,000 (Rupees Two Hundred Crores and Sixty Four Lakhs) and that of SFA is Rs. 25,23,500/- (Rupees Twenty Five Lakhs Twenty Three Thousand Five Hundred Only). The appointment of valuers was confirmed by the COC in its 1<sup>st</sup> meeting held on 01.03.2024.



8. It is stated that the CD submitted a revised resolution plan and the same was considered in the 2<sup>nd</sup> COC meeting along with other relevant agendas. In the said COC meeting the said modified plan was put to vote and the plan was approved by 100% voting. The relevant extract of the meeting is extracted below for ready reference:

*“RESOLVED THAT the Modified Base Resolution Plan of Corporate Debtor under Pre packaged Insolvency Resolution Process is hereby approved.”*

*This agenda was passed by 100% of voting share.*

9. It is submitted by the Applicant that the plan proposed by the CD stands approved under Section 54 K (4) of the Code by more than 66% vote and it confirms to the requirement of the Code and it has sufficient provisions for its effective implementation.

### **Details of Resolution Plan**

#### **Brief About Corporate Debtor**

10. The CD i.e. KVIR Towers Pvt. Ltd. bearing CIN U70200DL2013PTC255199 was incorporated on 11.07.2013 (as a Company Limited by Shares, Non Govt. Company) having its registered office at G-06, Ground Floor, Plot No. SU LSC B-Block RG City Centre, Lawrence Road, New Delhi 110035 India. The Authorized Capital of CD is Rs. 5,00,000 and Paid Up Capital is Rs. 1,00,000. The CD is a part of RG Group and is registered as micro enterprise in terms of the Udyam Registration Certificate dated 31 May 2022 having registration no. UDYAM-DL-06-0047979 issued by the Ministry of Micro, Small and Medium Enterprises.



11. The CD has ascertained the cause of default which is mentioned at Clause 12.1 of Part 1, to be:
  - a. Covid-19 Pandemic
  - b. The purchasing power of the citizens had drastically come down. Higher Vacancy rate could be observed. People were not able to feed their basic needs, purchasing or making payments for purchasing houses was far away.
  - c. The Corporate Debtor could not remain untouched as the Principal Debtor, RG Residency Pvt. Ltd. for whom the Corporate Debtor stood guarantor was not able to sell the inventory during that period. Besides this, the Corporate Debtor also could not launch its project at Sector-1 of Greater Noida West due to paucity of funds and environmental conditions.
  - d. Non-sale of inventory and poor collection for more than two years had overburdened the Principal Debtor, RG Residency Pvt. Ltd., with the additional financial cost of interest on loan and land dues. Other routine expenses could not be avoided. This has led to making default in repayment of loan dues and land dues to respective creditors.
  - e. Due to paucity of the funds, the land dues of the Noida Authority and loan could not be served by the Principal Debtor RG Residency Pvt. Ltd. in terms of lease deed/re-schedulement and of sanction respectively. Due to default made in the repayment of credit facility in terms of loan sanction letter and loan document by the Principal Debtor RG Residency Pvt Ltd, the Secured Financial Creditor Pridhvi Asset Reconstruction and Securitisation Company Limited had served the notice of default to the Principal Debtor and notice of invocation of Guarantee to the Corporate Debtor as well.



f. The Corporate Debtor could not launch its project as the Greater Noida Authority could not handover the entire project land to the Corporate Debtor so far. This has resulted into the overburden over the Corporate Debtor and delay in payment of land dues to Greater Noida Authority.

12. The Part -II of the plan extensively deals with the Settlement Proposal for the stakeholders of the CD and the relevant information with regards to the complete payment to be made to the stakeholders. It is relevant to mention herein that the CD is the guarantor of loan availed by the Principal Debtor i.e. RG Residency from ECL Finance Limited (*subsequently assigned to Prithvi Asset Reconstruction and Securitization Company Limited*) and it is mentioned in the plan that complete payment is read to mean the payments proposed to the Creditors collectively under the two Resolution Plans submitted in the PPIRP of the Corporate Guarantor (CD in this case) and Principal Debtor. Further, no Creditor shall be paid twice under this Resolution Plan and the Resolution Plan for RG Residency Private Limited (Principal Debtor).

<b>Total Plan Value Rs. 445.03 crores</b>			
<b>S.No.</b>	<b>Particulars</b>	<b>Proposed Payme</b>	<b>Schedule of Payment</b>
<b>1.</b>	<b>PPIRP Cost</b>		The PPIRP Costs shall be paid in full and in priority, towards final payment of the PPIRP Cost payable in accordance with the Code and the said Costs shall be paid out of the Total Plan Value.
<b>2.</b>	<b>Operational Creditors</b>	Rs. 203.12 Crore	Full payment is proposed to Operational Creditors within 45 months from the NCLT Order Date without any impairment. 1. Operational Creditors (except Greater Noida Authority) to be paid INR 0.41 Crores.



			2. Greater Noida Authority to be paid INR 202.71 Crores.
3.	<b>Other Creditors</b>	Rs.10.81 crores	For Phase 1 of the Project, there are certain refund seekers. The refund seekers would be treated as other Creditors (Form F).
4.	<b>Financial Creditors</b>  <b>1.Payment to Dissenting Financial Creditors</b>  <b>2. Assenting Financial Creditors</b>	Rs.231.09 Crores	<p>In the event the Dissenting Financial Creditors are entitled to an amount in the nature of liquidation value in terms of Sections 30 and Section 53 of the Code then the Dissenting Financial Creditors would be provided the DFC Payout by the Corporate Debtor over and above the Total Plan Value.</p> <p>Further it is stated that the DFC shall neither be entitled to, nor shall they receive any amounts other than the amounts due to them in the nature of liquidation value as stipulated hereinabove i.e. the DFC Payout.</p> <ol style="list-style-type: none"><li>1. The aggregate amount of Rs. 231.09 in crores includes payment to Pridhvi Asset Reconstruction of INR 175 Crore along with going forward IRR of 12% p.a.</li><li>2. In addition, surplus from the Project shall be shared with Prithvi Asset Reconstruction as proposed under the Business Plan.</li></ol>
5.	<b>Related party Financial Creditors</b>		1. The related party Financial Creditors to be paid out of surplus of the project of Corporate Debtor, if any.





			2. No Person shall be entitled to receive any settlement more than the proportionate settlement payable to a similarly placed class of creditors or stakeholders, as stated in this Plan.
		<b>Total Plan Value Rs. 445.03 crores</b>	

**Note:** A copy of the Resolution Plan of KVIR Towers Private Limited as approved by the CoC is annexed and marked as **Annexure A-9 of I.A. 34/2024**. The applicant has filed clarification affidavit dated 25.10.2024 and 08.11.2024 in compliance of order dated 25.09.2024 which will be part of the Plan.

13. The Resolution Plan defines (*Assenting Financial Creditor*) **“AFC Settlement Date”** to be date on which the entire payment as contemplated under this Resolution Plan is made to the Assenting Financial Creditors. **“Final Payment Date”** shall be the date on which the entire payment (as contemplated under this Resolution Plan) to the relevant stakeholder is made.

14. **Total Plan Value:** It is stated by the CD that the total plan value for the Corporate Debtor is (approximately) INR 445.03 crs which shall be arranged by the Corporate Debtor by selling the unsold units of the Project and by raising funds by the Corporate Debtor (“Total Plan Value”). Further, the Corporate Debtor shall utilise the Total Plan Value for the purpose of making payments to the stakeholders.

14.1 All payment to the stakeholders shall be made from the Total Plan Value. Over and above the Total Plan Value, it is stated that the Corporate Debtor may arrange INR 15 crs in the form of interim finance for running the business of the CD by utilization of Najafgarh Land (20.77 acres) owned by Dimension Buildwell Private Limited and utilize it as per the discretion of the Corporate Debtor



including but not limited to the construction of the units in the Project any any other source/means in consultation with the Secured Assenting Financial Creditors. It is stated that the existing lenders of the said land may at their discretion issue no objection certificate to the Corporate Debtor upon it requesting for the same to enable the Corporate Debtor to utilize the said land by way of inter alia sale/mortgage/dispose off the said land. Further, in the Financial Projections as filed through an affidavit dated 08.11.2024 it is stated that it will raise loan of Rs. 45 crores with ROI 18%.

14.2 It is stated that the CD may inter alia be funded by infusion of capital in the form of equity, shares, debt, convertible debt, external commercial borrowings and / or preference shares and / or availing financial indebtedness (including by arrangement from a third party to provide loans or other financial indebtedness), including creating any Encumbrance to secure it, in order to undertake transactions contemplated in the Plan.

## 15. **Timelines for Payment**

1. The units in the Project shall be sold basis a construction linked payment plan or structured payment plan whereby the Corporate Debtor shall receive the entire consideration for a particular unit within agreed upon timelines with the concerned buyer of such unit. Such entire consideration is herein after referred to as “Total Sale Proceeds-Unit”.
2. The date on which 10% of the Total Sale Proceeds-Unit is received is herein referred as the **“Sale Date Initial”**
3. In the estimate of the Corporate Debtor, 100% payment from all units of the Project would be received by 53 months from the NCLT Order Date (**“Sale Date Closure”**)
4. Between the Sale Date Initial and Sale Date Closure, the units of the Project shall be sold on an individual basis as and when they are purchased. The proceeds from the sale of units of the Project shall be credited in a separate bank escrow account of the CD.



5. Subsequent to the NCLT Order Date, however prior to the Sale Date Initial, the Corporate Debtor will enter into an escrow agreement to the satisfaction of the Secured Assenting Financial Creditors with a bank as instructed by the Secured Assenting Financial Creditors for opening the Escrow Account for Sale Proceeds.
6. The CD shall, subject to the Applicable Law route all Sale Proceeds through the Escrow Account for Sale Proceeds till the AFC Settlement Date. To ensure this, the Corporate Debtor shall mention in all applicable documents (and shall intimate the relevant parties) that the cheques shall be drawn in favour of the Escrow Account for Sale Proceeds only. The Escrow Account for Sale Proceeds shall be operated by the Secured Assenting Financial Creditors
7. Notwithstanding anything else, in the event that any Milestone(s) is not achieved on or before the timeline specified in Schedule 6 (Milestones) for any reason whatsoever, the Secured Financial Creditors shall without prejudice to their other rights have the discretion to control the operations of the Escrow Account in terms of the Applicable Law.
8. In the event the funds in the Escrow Account for Sale Proceeds are not sufficient to meet the payments towards the PPIRP Costs and Creditors, then the Corporate Debtor shall use its other sources and/or arrange for additional funds to meet its payment obligations to the PPIRP Costs and Creditors as per the timeline contemplated in this Resolution Plan. The Sale Proceeds received on the Sale Date Initial and thereafter if required, shall at the first instance be utilised towards construction of the units, salary of employees, marketing of the units, applicable tax and other Administrative Overheads in priority to payments of PPIRP Costs or to the Creditors, which is needed for maintaining the corporate Debtor as a going concern.
9. The **“First Payment Date”** shall be the 7th Business Day following the Sale Date Initial /or shall be i.e. the date on which partial or whole payments towards the PPIRP Cost is paid.



10. The Corporate Debtor and the members of the Promoter Group (jointly and severally) agree that development of the Project and sale of units in the Project shall be achieved in the manner and within the timelines as set out in Schedule 6 (“Milestones”) starting from 61<sup>st</sup> day of the NCLT Order Date.
11. In the event that any Milestone(s) is not achieved on or before the timeline specified in Schedule 6 (Milestones) for any reason whatsoever, then this Resolution Plan shall be deemed to have failed and the Existing Financial Creditors shall be entitled to take all or any recovery actions as deemed fit by them as per Applicable Laws.
12. The Operational Creditors and the Financial Creditors shall be paid as per the financial projections/business plan attached as Appendix III to the plan, provided that the Operational Creditors shall be paid in priority to the Financial Creditors from each tranche of Sale Proceeds till the AFC Settlement Date. The payment to Secured Assenting Financial Creditor as per plan shall be made as referred below:

Timelines (from the 61 <sup>st</sup> day following the NCLT Order date)	% of Outstanding (Principal + Redemption Premium)
Last day of Quarter – 9	10%
Last day of Quarter – 10	10%
Last day of Quarter – 11	10%
Last day of Quarter – 12	10%
Last day of Quarter – 13	15%
Last day of Quarter – 14	15%
Last day of Quarter – 15	15%
Last day of Quarter – 16	15%
Total	100%

*For the sake of convenience, a quarter shall mean the calendar quarter. In case the NCLT order date falls during the first 15 days of any calendar quarter then the quarter 1 shall begin from the calendar quarter in which the NCLT order is received and incase*



the NCLT order date falls beyond first 15 days of the calendar quarter then the quarter 1 shall begin from the next calendar qtr.

**Note:** It is clarified by the Applicant that the Appendix IV may be read as Appendix III since it is a typographical error. Appendix III is the financial projection/business plan which has been filed vide separate affidavit dated 08.11.2024.

**Note:** It is clarified by the Applicant that the proposed project under the Resolution Plan is to be developed on the land leased by Greater Noida and the aforesaid lease is still continuing and has not been cancelled. Further the applicant has clarified that post remanding of the matter, a COC meeting was conducted on 16.10.2024 which was attended by a representative of G. Noida and no objection was raised. In view of the same it is deemed that G. Noida has no objection on the aforesaid plan.

**Note:** Further it is clarified by the Applicant that it was of prima facie view that there is no reason to carry out transaction audit of books of CD.

13. It is stated that Pridhvi Asset Reconstruction and Securitisation Company Limited shall be entitled to the mandatory sweep (subsequent to payment to Operational Creditors from each tranche of Sale Proceeds till the AFC Settlement Date) which is provided as follows:

<b>Timelines (from the 61st day following the NCLT Order date)</b>	<b>Mandatory sweep % towards Redemption premium and principal repayment</b>
First 6 months	10%
From 7th month to 12th month	10%
from 13th month to 18th month	15%
From 19th month to 24th month	20%
From 25th month to 30th month	30%
from 31st month to 36TH month	30%
From 37th month to 42nd month	40%
From 43rd month till full repayment	50%



## Project Timelines

KVIR Project	Project Completion Timelines	
KVIR Project	53 months from NCLT Order	

### 16. Management of the affairs of the CD

Management Post NCLT Order Date till the AFC Settlement Date:

The management of the CD and the Plan implementation will be carried out by the board of directors of the CD, in the manner contemplated in this Resolution Plan and the board of directors shall:

- (a) Supervise the implementation of the Resolution Plan in terms of the Resolution Plan and the instructions of the Monitoring Agent.
- (b) Supervise and monitor the management and operations of the Corporate Debtor in the ordinary course and on a going concern basis.
- (c) Subject to the aforesaid, the board of directors of the Corporate Debtor shall be entitled to do all such acts, deeds, matters and things as may be necessary in relation to implementation of the Resolution Plan in accordance with the terms of the Resolution Plan.
- (d) Manage and oversee the day-to-day operations of the CD and ensure that the Corporate Debtor continues to function in the ordinary course of business.
- (e) Manage all affairs of the Corporate Debtor and preserve its assets and business as a going concern.
- (f) To make any filings or applications on behalf of the CD before any judicial/quasi-judicial/local or district administrative authorities.
- (g) To represent the Corporate Debtor in litigations and proceedings before various authorities by or against the Corporate Debtor.

**Monitoring Agent and its Power and Responsibilities:** Till the AFC Settlement Date, the board of directors of the CD shall appoint a Monitoring Agent who shall be nominated by the Secured Assenting Financial Creditors of the Corporate Debtor. As per Part-I Clause 6.1.3 of the Plan, the Monitoring Agent shall have power to:



*(a) Supervise the withdrawals of funds from the bank accounts of the Corporate Debtor.*

*(b) The Monitoring Agent shall be authorized to take all steps/ corporate actions required to be taken by the Corporate Debtor, for the timely implementation of the Resolution Plan including for ensuring corporate compliances.*

**17. Statement as to how the Corporate Debtor has dealt with the interests of all stakeholders, including Financial Creditors and Operational Creditors**

Clause 7 of Part 1 of the Resolution Plan states that the Corporate Debtor has taken into account the interests of the stakeholders of the Corporate Debtor, including the Financial Creditors and Operational Creditors to the best extent possible.

The revival of the Corporate Debtor, as envisaged under this Plan, shall contribute significantly to the society and government by contributing significantly direct and indirect employment and income generation opportunities. On perusal of the Financial Projection/ Business Plan submitted by the Applicant, it is observed that the total saleable area for the project to be developed in residential category is 1892871.51 Sq.ft and in commercial category is 24,297 Sq.ft. The Corporate Debtor hereby confirms that this Plan is not in contravention of the provisions of any Applicable Law.

**18. Compliance with Section 29A of the Code**

The Corporate Debtor confirms that it has submitted, along with the Plan, an affidavit stating that it is eligible under Section 29A of the Code and as on the date of this Plan and on the basis of its records, it is eligible under Section 29A of the Code.

**19. Term of the Plan and its implementation schedule**

The term of the Plan shall commence from the date of submission of the Resolution Plan to the Resolution Professional till the AFC Settlement Date.



This Plan shall upon its approval by the NCLT ipso facto form part of the NCLT Order.

**20. Implementation of any other resolution plan** The Corporate Debtor confirms that neither it nor any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the NCLT at any time in the past under the Code.

**21.** Clause 12.6 of Part-I of the Resolution Plan (*Mandatory Provisions of the Plan*) states that the Corporate Debtor undertakes that every information and records provided in connection with or in the Resolution Plan is true and correct and discovery of false information and record at any time will render the Corporate Debtor ineligible to participate in any resolution process under the Code. Further Clause 12.2 of the Plan (Part I) states that the plan is feasible and viable and Clause 10 of the Plan (Part I) states that the provisions have been made for its effective implementation. Further Clause 12.5 states that Resolution Applicant has the capability to implement the resolution plan.

**22. Compliance of Section 79 of Income Tax Act, 1961**

It is stated in the Plan that the Resolution Professional shall send a notice to the principal commissioner of Income Tax or commissioner of Income Tax having jurisdiction over the Corporate Debtor (“Section 79 Notice”) stating that the Resolution Plan submitted by the Corporate Debtor as approved by the CoC provides that the Corporate Debtor shall be permitted recourse to Section 79(2)(c) of the IT Act, as may be applicable and further if no representation is received from the principal commissioner of Income Tax or commissioner of Income Tax pursuant to issuance of the Section 79 Notice by the date of the NCLT Order, it shall be deemed that the principal Commissioner of Income Tax or commissioner of Income Tax have no objections to the Corporate Debtor carrying forward its Tax losses and such Section 79 notice shall be treated as having accorded a reasonable opportunity of being heard to the principal





commissioner or commissioner of Income Tax in relation to this Resolution Plan.

**Note:** *It is clarified by the Applicant that as per the plan it do not propose to change the shareholding of the company and therefore no such benefit of Section 79 as mentioned in clause 6.16 of the plan would entail upon the CD and the applicant omits the said clause as approved by the COC.*

**Note:** *Further the Applicant omits Clause 6.7.1 of the plan and thereby undertakes to perform all the obligations by itself.*

### **Analysis & Findings**

- a. It is relevant to mention herein that this Adjudicating Authority vide Admission Order dated 20.02.2024, directed that the “RP and COC would be responsible to check whether the Corporate Debtor should receive the benefits of being categorized as “Micro Enterprise”. In the event of CD losing its status of Micro Enterprise at a later point of time on account of turnover from operations being above the threshold limit, the RP will report to this Adjudicating Authority for appropriate orders as per law.” It is stated by the applicant that the COC was apprised of the same and it is confirmed that the CD is registered as Micro Enterprise.

Again in our clarification order dated 25.09.2024 it was stated as follows:



f. Further it is observed that the CD is registered as “Small Enterprise” (sic: micro) in terms of the Udyam Registration Certificate dated 31 May 2022 having registration no. UDYAM-DL-06-0047979 issued by the Ministry of Micro, Small and Medium Enterprises. In this context it is relevant to mention that to be considered as Small Enterprise as per The Micro, Small And Medium Enterprises Development Act, 2006 *(as updated from time to time)* an entity has to fulfill the criteria as stated below:

*“Investment in Plant and Machinery or Equipment: Not more than Rs.10 crore & Turnover: Not more than Rs. 50 Crore.”*

It is not clear as to how the CD would maintain the said status if it pays off a debt of Rs. 445 crores as provided in the Plan in a period of 53 months by constructing and selling residential plots. The applicant is directed to submit the financial projections. Further how the CD will meet, the working capital requirement and the capital expenditure required to undertake the construction, it being a small enterprise with capacity to take loans, short-term and long-term from the Banks/FI being limited to the norms applicable to a small industry. The Applicant is directed to provide for a detailed explanation to the same.

In response the applicant has clarified in the affidavit dated 25.10.2024 as follows:



*Response by Promoter/Director:*

*With respect to the status of the corporate debtor as MSME it is to be noted that as per the provisions of MSME Act a company is given the certificate of being MSME only for a period of one year which has to be renewed every year subject to the company's turnover being within the limits as specified for the respective category of micro small and medium.*

*At present the financial requirement of the company to maintain the status of MSME is as follows*

<b>MICRO</b>	<b>SMALL</b>	<b>MEDIUM</b>
<i>Investment in Plant and Machinery or Equipment: Not more than Rs.1 crore and Annual</i>	<i>Investment in Plant and Machinery or Equipment: Not more than Rs.10 crore and Annual</i>	<i>Investment in Plant and Machinery or Equipment: Not more than Rs.50 crore and Annual</i>





<b>MICRO</b>	<b>SMALL</b>	<b>MEDIUM</b>
<i>Turnover; not more than Rs. 5 crore</i>	<i>Turnover; not more than Rs. 50 crore</i>	<i>Turnover; not more than Rs. 250 crore</i>

*The benefits, to an MSME company, under various schemes and acts are completely dependent on the date on which the same is being availed and the only factor that has to be considered is whether on the date of applying for such benefits under any law, the company is still registered and eligible as an MSME company. Further, the object of the Micro, Small and Medium Enterprises Development Act, 2006 is to provide for facilitating the promotion and development and enhancing the competitiveness of micro small and medium enterprises and for matters connected there with or incidental thereto. This clearly indicates that all these benefits are being extended to a MSME company so that the same may grow and become large company and it does not intend to restrict the company to continue to be micro or small or medium enterprise only. Having said that, the efforts of the corporate debtor would certainly be to ensure the growth of corporate debtor in the larger interest of every stakeholder. With respect to the financial planning for completion of the project, the detailed financial / business plan has already been submitted to the CoC for its consideration along with the resolution plan itself and the same shall also be placed before the Hon'ble NCLT.*

However, it is observed from the Financial Projections/Business Plan submitted by the Applicant that the turnover of the CD year wise for next 4 years is as follows:

<b>Year</b>	<b>Quarters</b>	<b>Total Revenue</b>
Year 1	Q2+Q3+Q4+Q5 (+38.22+59.95+77.37)	Rs. 175.54 crores
Year 2	Q6+Q7+Q8+Q9 (+57.91+72.67+102.56+92.69)	Rs. 325.83 crores
Year 3	Q10+Q11+Q12+Q13 (+93.44+111.24+108.09+157.87)	Rs. 470.64 Crores
Year 4	Q14+Q15+Q16+Q17 (+137.46+90.85+28.82+6.51)	Rs. 263.64 crores

*(Note: Quarter1 is to start from 60 days from the Order and Q1 Revenue is NIL)*



This will breach the threshold limit in 2<sup>nd</sup> year, 3<sup>rd</sup> year, 4<sup>th</sup> year as applicable to obtain the status of MSME, which will ultimately lead to CD losing its status of being MSME. Since the Resolution Plan has been approved by the single member COC with 100% voting majority and there is no objection raised by any stakeholder including G. Noida, we are inclined to accept the clarification of the CD.

b. We may further mention that in our Admission Order dated 20.02.2024, we had stated:

15. We are constrained to observe that the CD has obtained an UDYAM Registration Certificate based on his declaration of having Rs.13.50 Lakhs invested in Property, Plant and Equipment and revenue as Zero (Nil) as on March 31, 2022. Based on the above said declarations, the CD has been declared as "Micro Enterprise." We also observe that CD is engaged in Real Estate Business and it has given a Corporate Guarantee of INR170 crore.

16. Further, as per its Profit and Loss Account of F.Y. 2022-23, its revenue is zero meaning that there are no operations being carried out by the Corporate Debtor.

17. In the present facts and circumstances, we deem it appropriate to bring the above facts to the notice of the Govt. of India, Ministry of Micro, Small and Medium Enterprises as well as Ministry of Corporate Affairs as to whether any safeguard is in place in respect of corporates in Real Estate Sector who seek the status of MSME on account of the nature of its operations where plant and equipment is taken on rent or construction work is subcontracted, and there is a usual period of construction (before completion and sale of properties) during which turnover remains quite low.

However no response/ steps has been taken by the concerned ministry.



- c. On hearing the submissions made by the Ld. Counsel for the Resolution Professional and perusing the record, we find that the Resolution Plan has been approved by the CoC with 100% of the members voting in favor of the Resolution Plan. As per the CoC in their commercial wisdom, the Plan meets the requirement of being a viable and feasible revival of the Corporate Debtor. We accept the same.
- d. The reliefs and concession as sought for in the plan under clause 10 of the Resolution Plan shall be dealt by appropriate authorities strictly as per law. Thus, it is ordered that the reliefs, concessions and waivers as sought by the Successful Resolution Applicant will be dealt with strictly as per law.
- e. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 30 read with regulations 45 of the PPIRP Regulations, 2021.

### **23. ORDER**

- i. Subject to the observations made in this Order, the Resolution Plan of **Rs. 445.03 crores/-** (Rupees Four Hundred Forty Four Five Crores and Three Lakhs Only) is hereby **approved**. The Resolution Plan shall form part of this Order.
- ii. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that the revival of the Debtor Company shall come into force with immediate effect.
- iii. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- iv. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters.

**Accordingly, IA No.34(PB)/2024 is allowed and disposed of.**



- v. **IA No. 1718(PB)/2024** which is 1<sup>st</sup> Interim Report for the period 21st February 2024 To 15th March 2024 for KVIR Towers Private Limited is taken on record and is **disposed of**.
- vi. The liberty is hereby granted for moving any appropriate application, if required in connection with the implementation of this Resolution Plan.
- vii. A Certified copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies, NCT of Delhi.
- viii. The Resolution Professional shall stand discharged from his duties 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.
- ix. The Resolution Professional is further directed to hand over all the records, premises/factories/documents available with it to the Resolution Applicant to finalize the further line of action required for starting of the operation.
- x. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- xi. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

**24. To summarize:**

- i. IA-34/2024 filed for seeking approval of resolution plan is allowed and disposed of.
- ii. IA-1718/2024 is taken on record and stands disposed of.
- iii. CP (IBPP) No.-02(PB)/2023 is disposed of in above terms.
- iv. File be consigned to record storage (current)

**Sd/-**

**(RAMALINGAM SUDHAKAR)**

**PRESIDENT**

**Sd/-**

**(AVINASH K. SRIVASTAVA)**

**MEMBER (TECHNICAL)**