



**IN THE NATIONAL COMPANY LAW TRIBUNAL ALLAHABAD
BENCH, PRAYAGRAJ**

IA No.325/2022 IN C.P. (IB)/207(ALD) 2019

IN THE MATTER OF:

(An Application under Section 30 (6) R/w Section 31 of the Insolvency and Bankruptcy code, 2016 R/w Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

IN THE MATTER OF:

Rajeev Ranjan Singh Resolution Professional,

IN THE MATTER OF:

Mr. Amitabh Singh

.....Petitioner (Financial Creditor)

V/S

M/S Vaishali Real Estate Private Limited

....Respondent (Corporate Debtor)

Order pronounced on 20.04.2023

CORAM:

Sh. Praveen Gupta : Member (Judicial)

Sh. Ashish Verma : Member (Technical)

Appearances (via Video Conference)

Sh. Srijan Mehrotra, Adv. : For the Applicant

ORDER

Preliminary

1. The present interlocutory application bearing IA. No. 325/2022 was moved on behalf of Mr. Rajeev Ranjan Singh Resolution Professional (“**RP**”) of M/s Vaishali Real Estate Private Limited under the provisions of Sections 30(6) and 31(1) of the Insolvency & Bankruptcy Code, 2016 [hereinafter referred to as “**the Code**” or “**IBC**”] read with Regulation 39(4) of the IBBI (Insolvency Resolution Process for

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Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”) for approval of the Resolution Plan in respect of M/s Vaishali Real Estate Private Limited (“**Corporate Debtor**”).

2. The underlying Company Petition CP (IB) No.207/ALD/2019 filed by Mr. Amitabh Singh under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against the Corporate Debtor namely M/s Vaishali Real Estate Private Limited which was admitted by this Adjudicating Authority *vide* its order dated 30.03.2022 (“**Admission Order**”). On that date, *i.e.*, 30.03.2022 (“**Insolvency Commencement Date**”), Mr. Rajeev Ranjan Singh (IBBI/IPA-002/IP-N00707/2018-2019/12418) was appointed as IRP. Subsequently, IRP conducted 1st CoC meeting on 28.04.2022 whereby IRP was confirmed to be appointed as RP.

Collation of claims by RP

3. It is stated in Resolution Plan that the public announcement was made on 02.04.2022 in *Financial Express (English)* and *Jansatta (Hindi)* and he called for proof of claims from the creditors of the Corporate Debtor and informed lenders to submit their claims as envisaged under the Code.
4. Pursuant to the collation and verification of claims received, the COC was constituted on 22.04.2022 with one Financial Creditor and 6 real estate allotees. However, in the 3rd COC dated 26.08.2022, the revised list of claims was received and COC was reconstituted in lieu of claim received from CVK Charitable Trust. The list of Financial Creditor and real estate allotees and the distribution of voting share among them is as under:

Sr. No.	Name of Financial Creditors	Class of Creditors	Voting Share (%)
1.	CVK Charitable Trust	Financial creditor	44.96
2.	Ajay Singh/Amit Singh (Power of Attorney)	Real Estate Allotee	18.31
3.	Amitabh Singh	Financial creditor	16.84



4.	Ajit Kumar Ghosh	Real Estate Allotee	13.56
5.	Kamlesh Kumar Singh & Ranjana Singh	Real Estate Allotee	1.18
6.	Gopal Ji Baranwal	Real Estate Allotee	1.72
7.	Mohan Lal Baranwal	Real Estate Allotee	1.72
8.	Naveen Kumar	Real Estate Allotee	1.72
TOTAL			100.00

5. The details of claims submitted are as follows:

Particulars	Amount Claimed in Cr. Rupees	Claim Admitted in Cr. Rupees
Secured Financial Creditors	NIL	NIL
Unsecured Financial Creditors	3.40	2.91
Workmen & Employees	NIL	NIL
Government Dues	NIL	NIL
Other Operational Creditors	NIL	NIL
Total	3.40	2.91

6. The RP submits that a total of 5 CoC meetings have been held during the whole CIRP period.

Evaluation and voting

7. It is stated in the Resolution plan that the 2nd CoC was held on 10.06.2022 whereby the CoC Inter alia approved the publication of Form G, Request for Resolution plan, Evaluation Matrix, and eligibility criteria. Accordingly,



- invitations for Expression of Interest (EoIs) in Form-G were published on 13.06.2022, wherein the last date of receipt of the EOI was fixed as 28.06.2022
8. In pursuance thereto, the resolution professional received 2 EoIs for submission of the Resolution plan. The PRAs who have submitted EoIs are given as under:-
- 1) Dwiti Construction Pvt. Ltd.
 - 2) RKG Fund-I
9. One Resolution Applicant *viz*, Dwiti Construction Pvt. Ltd. submitted its Resolution Plan which was put for consideration before CoC in the 4th CoC meeting dated 08.09.2022. Pursuant to the 4th COC meeting, Applicant received revised Resolution Plan from the Prospective Resolution Applicant. The revised Resolution Plan received from the Successful resolution Applicant was put before 5th COC meeting dated 13.09.2022.
10. The e- voting on the compliant resolution plan commenced at 04:00 PM on 13.09.2022 and concluded at 05:40 PM on the same day itself.
11. The Resolution Plan submitted by the Successful Resolution Applicant i.e. Dwiti Construction Pvt. Ltd. was approved by a majority of 94.85% voting share by the CoC in the 5th COC meeting dated 13.09.2022. The application for approval of the resolution plan by this Adjudicating Authority was filed by the RP on 23.09.2022. The voting results of the 5th COC meeting dated 13.09.2022 is reproduced hereunder:-

Sr. No.	Resolution	Assent	Dissent	Abstain
<u>Resolution Item 1:</u>	To approve the Resolution Plan presented by Resolution Applicant M/s. Dwiti Construction Private Limited	94.85%	5.15%	-
<u>Resolution Item 2:</u>	To appoint Resolution Professional Rajeev Ranjan Singh having Registration No. IBBI/IPA-02/IP-N00707/2018-19/12418 as Liquidator in case company goes to Liquidation.	100%	-	-



Resolution Item 3:	To approve the liquidation costs as per Regulation 39B of the IBBI (Insolvency Resolution Process for Corporate Persons), 2016	100%	-	-
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12. A compliance Certificate in terms of prescribed Form H under regulation 39 (4) of the CIRP Regulations was also filed before this Tribunal. As per FORM H, the fair value of the corporate debtor is **Rs. 630.75 Lakhs** and the liquidation value is **Rs. 393.30 Lakhs** as per the registered valuers report.

Details of Resolution Plan/Payment Schedule

13. The successful Resolution Applicant i.e. Dwiti Construction Pvt. Ltd is a non-government company carrying on the business of promoters, builders, colonisers, etc. in India or any part of the world.

The amount proposed in the Resolution Plan are tabulated below:

Sl. No.	Types of debts	Resolution Amount (In Crores)	Payment Term
1.	CIRP Cost	0.19	The unpaid CIRP costs as on the date of the approval of Resolution Plan by the Adjudicating Authority, or at any later such date, will be paid in full and in priority to any other creditor of the Corporate debtor within 50 days of approval of Resolution Plan by the Adjudicating Authority.



2.	Financial Creditors	2.91	Amount proposed to be paid in full within 50 days of approval of Resolution Plan by the Adjudicating Authority.
3.	Operational Creditors (Trade payables)	NIL	NIL
4.	Workmen/ Employees	NIL	NIL
5.	Contingent Liabilities (Non Statutory)	NIL	NIL
6.	Statutory Dues as per Information Memorandum	NIL	NIL
7.	Infusion of funds for Capex	NIL	NIL

Estimated Total Amount Proposed to be brought in the Corporate Debtor for the turnaround of the Corporate Debtor:

S.No	Particulars	Rs. (In Crores)
A	CIRP Cost	0.19
B	Upfront cash payment to the Financial Creditors to be paid within 50 days from the approval date	2.91



C	Total Upfront Cash Payment as part of Resolution Plan (A+B)	3.10
D	Workmen & Employee /due/claim retirement benefit	NIL
E	Operational Creditor	NIL
F	Other Creditors	NIL
G	Payment to outside party (C+D+E+F)	3.10
H	Repairs /Refurbishment (To be brought through equity)	NIL
I	Working capital margin (To be brought through equity)	NIL
J	Total Fund Required(G+H+I)	3.10

Sources of Funds

14. The overall Resolution Plan is for a total amount of approximately Rs. 03.10 Crores which shall be infused by the Resolution Applicant from their own sources/raising funds from friends & relatives/ Associates/ Banks/ NBFC/ARC.
15. The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations, which a Resolution Plan is required to adhere to, as follows:

Compliance with Section 30(2) of the Code:

Section 30(2) of Insolvency and Bankruptcy Code, 2016	Compliance under Resolution Plan	Relevant Number of Application	Page of



(a) Plan must provide for payment of CIRP cost in priority to repayment of other debts of the CD in the manner specified by the Board.	Provided in Clause VI (5) of the Resolution Plan	Page 130 (Page 25 of Resolution Plan)
(b) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be less than	Not Applicable as there are no Operational Creditors.	
(b)(i) the amount payable to them in the event of liquidation u/s 53; or	Not Applicable as there are no Operational Creditors.	
(b)(ii) Plan must provide for repayment of debts of OCs in such manner as may be specified by the Board which shall not be not less than 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	Not Applicable as there are no Operational Creditors.	



(b) provides for 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.	Provided in Clause XI of the Resolution Plan	Page 141 (Page 36 of Resolution Plan)
(c) Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.	Provided in Clause X (C) of Resolution Plan	Page 138 (Page 33 of Resolution Plan)
(d) Implementation and Supervision.	Provided in Clause X (A) of Resolution Plan	Page 138 (Page 33 of Resolution Plan)
(e) Plan does not contravene any of the provisions of the law for the time being in force.	Provided in Clause XI of Resolution Plan	Page 141 (Page 36 of Resolution Plan)

Measures provided in Resolution Plan in terms of Regulation 37 of CIRP Regulations.

Regulation 37 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016	Compliance under Resolution Plan	Relevant Page Number of Application
a) transfer of all or part of the assets of the corporate debtor to one or more persons;	The Resolution Applicant declares that the present provision is not applicable to this Resolution Plan	Page 142 of Application and Page No. 37 of the Resolution Plan.



b) sale of all or part of the assets whether subject to any security interest or not;	The Resolution Applicant declares that the present provision is not applicable to this Resolution Plan.	Page 142 of Application and Page No. 37 of the Resolution Plan.
ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;	The Resolution Applicant declares that the present provision is not applicable to this Resolution Plan.	Page 143 of Application and Page No. 38 of the Resolution Plan.
c) the substantial acquisition of shares of the corporate debtor, or the merger or the consolidation of the corporate debtor with one or more persons;	The Resolution Applicant declares that the present provision is not applicable to this Resolution Plan.	Page 143 of Application and Page No. 38 of the Resolution Plan.
ca) cancellation or delisting of any shares of the corporate debtor, if applicable;	The Resolution Applicant declares that the present provision is not applicable on CD.	Page 143 of Application and Page No. 38 of the Resolution Plan.
d) satisfaction or modification of any security interest;	The Resolution Applicant declares that the present provision is not applicable to this Resolution Plan.	Page 143 of Application and Page No. 38 of the Resolution Plan.
e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;	The Resolution Applicant proposes that all such breach of terms of any debt of the CD shall stand cured upon successful implementation of this Resolution Plan.	Page 143 of Application and Page No. 38 of the Resolution Plan.



f) reduction in the amount payable to the creditors;	The Resolution Applicant declares that the present provision is not applicable to this Resolution Plan.	Page 143 of Application and Page No. 38 of the Resolution Plan.
g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;	The Resolution Applicant declares that the present provision is not applicable to this Resolution Plan.	Page 143 of Application and Page No. 38 of the Resolution Plan.
h) amendment of the constitutional documents of the corporate debtor	In order to give effect to this Resolution Plan, the Resolution Applicant shall be at a liberty to amend or change any constitutional document of the corporate debtor, including the Memorandum Of Association, Articles Of Association, etc. for any purpose including but not limited to changing the name of the corporate debtor, changing the amount of authorised share capital of the corporate debtor etc.	Page 144 of Application and Page No. 39 of the Resolution Plan.



i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;	The Resolution Applicant declares that the present provision is not applicable to this Resolution Plan.	Page 144 of Application and Page No. 39 of the Resolution Plan.
j) change in portfolio of goods or services produced or rendered by the corporate debtor;	The Resolution Applicant declares that the present provision is not applicable to this Resolution Plan.	Page 144 of Application and Page No. 39 of the Resolution Plan.
k) change in technology used by the corporate debtor; and	The Resolution Applicant declares that the present provision is not applicable to this Resolution Plan.	Page 144 of Application and Page No. 39 of the Resolution Plan.
l) Obtaining necessary approvals from Central and State Governments and other authorities	The Resolution Applicant confirms that it shall be its sole duty to obtain all necessary approvals for the implementation of this Resolution Plan from the Central Government, State Government or any other local authority, provided that the Resolution Professional agrees, undertakes & shall be obligated to sign and approve any document required for obtaining such approvals (by	Page 145 of Application and Page No. 40 of the Resolution Plan.



	virtue of the order of the Adjudicating Authority approving the present Plan).	
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Mandatory contents of Resolution Plan in terms of Regulation 38(1) of CIRP Regulations:

Regulation 38(1) and (2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016	Compliance under Resolution Plan	Relevant Page Number of Application
38(1)(a) The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors	The Resolution Applicant declares that the present provision is not applicable to this Resolution Plan.	Page 145 of Application and Page No. 40 of the Resolution Plan.
38 (1) (b)The amount payable under a resolution plan - (b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.	The Resolution Applicant declares that any payment made to the dissenting Financial Creditor under the Resolution Plan shall be given in priority in payment to assenting Financial Creditors.	Page 145 of Application and Page No. 40 of the Resolution Plan.



38 (1A) Shall include a statement as to how it has dealt with the interests of all the stakeholder, including financial creditors and operational creditors of the Corporate Debtor	The Resolution Applicant declares that the Applicant has endeavoured to keep all claims, including the claims of statutory authority, in mind while proposing the present Resolution Plan and has dealt with the interests of all stakeholders, including Financial Creditors and Operational Creditors, of the Corporate Debtor.	Page 145 of Application and Page No. 40 of the Resolution Plan.
38 (1B) shall include a statement giving details if the resolution applicant or any of its related parties has 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	The Resolution Applicant declares 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.	Page 146 of Application and Page No. 41 of the Resolution Plan.
38 (2)(a) shall provide for the term of the plan and its implementation schedule;	This has been provided in Resolution Plan in Clause X (A).	Page 138 of Application and Page No. 33 of the Resolution Plan
38 (2)(b) shall provide for the management and control of the business of the Corporate Debtor during its term	This has been provided in Resolution Plan in Clause X (C).	Page 138 of Application and Page No. 33 of the Resolution Plan
38 (2)(c) Shall provide for the adequate means for supervising its implementation.	This has been provided in Resolution Plan in Clause X (C).	Page 138 of Application and Page No. 33 of the Resolution Plan



<p>38 (3) A resolution plan shall demonstrate that –</p> <p>(a) it addresses the cause of default;</p> <p>(b) it is feasible and viable;</p> <p>(c) it has provisions for its effective implementation;</p> <p>(d) it has provisions for approvals required and the timeline for the same; and</p> <p>(e) the resolution applicant has the capability to implement the resolution plan.</p>	<p>This has been provided in Resolution Plan in Clause XI.</p> <p>The Resolution Applicant confirms that the present Plan is feasible and viable, considering the payments being made to each category of creditors of the Corporate Debtor.</p> <p>This has been provided in Resolution Plan in Clause X.</p> <p>This has been provided in Resolution Plan in Clause XI.</p> <p>This has been provided in Resolution Plan in Clause XI.</p>	<p>Page 146 of Application and Page No. 41 of the Resolution Plan.</p> <p>Page 146 of Application and Page No. 41 of the Resolution Plan.</p> <p>Page 138 of Application and Page No. 33 of the Resolution Plan.</p> <p>Page 146 of Application and Page No. 41 of the Resolution Plan.</p> <p>Page 146 of Application and Page No. 41 of the Resolution Plan.</p>
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16. As regards to the compliance of Regulation 37(a) of the above table, we have noticed that while declaring that the present provision concerning transfer of all or part of the assets of the Corporate Debtor to one or more persons is not applicable to this Resolution Plan. However, there seems to be a conflict of this declaration given in the table above as against clause (VII) (1) of the Resolution Plan in as much as the said clause stipulates that the resolution applicant shall be at liberty to transfer such assets to any person including the Corporate Debtor. We are therefore, not inclined to accept the stipulations made in Clause VII (1) of the Resolution Plan in view of the explicit declaration having been made in the aforesaid table concerning compliance of Regulation 37(a) whereby the resolution applicant has declared that the said provision is not applicable.

Details of Monitoring Committee:

Name(s) of the proposed member(s) of implementation and monitoring committee	Brief description of the Proposed member(s) of the I&M committee
1. Rajeev Ranjan Singh	Resolution Professional.
2. CVK Charitable Trust	COC Member
3. Ajeet Kumar Ghosh	COC Member
4. Dwiti Construction Pvt. Ltd.	Resolution Applicant

17. The Applicant submits that the successful resolution applicant has submitted an affidavit in regard to the eligibility under section 29A of the Code, as required by Regulation 39(1)(a) of the CIRP Regulations. An undertaking has also been submitted by the successful Resolution Applicant, as mandated in terms of regulation 39(1)(c) of the CIRP Regulations. The affidavit under section 29 A is at page no. 101 in the application which is reproduced there under:-

“1. That we are the resolution applicant of Dwiti Construction Private Limited Ltd.



2. That we propose to submit a Resolution Plan under The Insolvency and Bankruptcy Code, 2016 with respect to Vaishali Real Estate Private Limited. A company undergoing Corporate Insolvency Resolution Process under The Insolvency and Bankruptcy Code, 2016.

3. That I have understood the provisions of section 29-A of The Insolvency and Bankruptcy Code, 2016. I confirm that neither the applicant nor any person acting jointly with the applicant or any person who is a promoter or in the management or control of the applicant or any person acting jointly with applicant or their relatives falling under the definition of the Relative under The Insolvency and Bankruptcy Code, 2016;-

(a) is an undischarged insolvent;

(b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);

(c) at the time of submission of the resolution plan has an account,] or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) [or the guidelines of a financial sector regulator issued under any other law for the time being in force], and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor.

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset



accounts before submission of resolution plan: [Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

Explanation I- For the purposes of this proviso, the expression “related party” shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

Explanation II- For the purposes of this clause, where a resolution application has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;]

- (d) has been convicted for any offence punishable with Imprisonment-
- (i) for two years or more under any Act specified under the Twelfth Schedule; or
 - (ii) for seven years or more under any law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;

- (e) is disqualified to act as a director under the Companies Act, 2013 (18 of



2013);

[Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;]

(f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code:

Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme of plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;]

(h) has executed [a guarantee] in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code [and such guarantee has been invoked by the creditor and remains unpaid in full or part];

(i) is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

(j) has a connected person not eligible under clauses (a) to (i).

Explanation [I]- For the purposes of this clause, the expression “connected person” means-



- (i) any person who is the promoter or in the management or control of the resolution applicant; or
- (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or
- (iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

[Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor: Provided further that the expression “related party” shall not include a financial entity, regulated by a financial sector regulator; if it is financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;] [Explanation II- For the purposes of this section, “financial entity” shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely:-

- (a) a scheduled bank;
- (b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is complaint with the Financial Action Task Force Standards and is a signatory to the International Organization of Securities Commissions Multilateral Memorandum of Understanding;
- (c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange



Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999 (42 of 1999);

(d) an asset reconstruction company register with the Reserve Bank of India under section 3 of the Securitization and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(e) an Alternate Investment Fund registered with Securities and Exchange Board of India;

(f) such categories of persons as may be notified by the Central Government.]”

18. The Applicant has filed a Compliance Certificate in prescribed Form, i.e. Form ‘H’ in compliance with Regulation 39(4) of the CIRP Regulations. The RP has issued the Letter of Intent to the Successful Resolution Applicant and the Successful Resolution Applicant provided the Performance Bank Guarantee of Rs.31,07,228/- (Rupees Thirty-One Lakhs Seven Thousand Two Hundred Twenty Eight Only) through Bank Transfer into CD’s CIRP account dated 23.09.2022 is annexed as Annexure-17 at pg. no. 169 which is required under Regulation 36B (4A) of CIRP Regulations, 2016.

Details of Resolution Plan/ Payment Schedule

19. The Applicant submits the relevant information about the amount claimed, the amount admitted, and the amount proposed to be paid by the Successful Resolution Applicant, i.e., Dwiti Construction Pvt. Ltd. under the said Resolution Plan which is tabulated as under:

Sl. No.	Types of debts	Resolution Amount (In Crores)	Payment Term
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1.	CIRP Cost	0.19	The unpaid CIRP costs as on the date of the approval of Resolution Plan by the Adjudicating Authority, or at any later such date, will be paid in full and in priority to any other creditor of the Corporate debtor within 50 days of approval of Resolution Plan by the Adjudicating Authority.
2.	Financial Creditors	2.91	Amount proposed to be paid in full within 50 days of approval of Resolution Plan by the Adjudicating Authority.
3.	Operational Creditors (Trade payables)	NIL	NIL
4.	Workmen/ Employees	NIL	NIL
5.	Contingent Liabilities (Non Statutory)	NIL	NIL
6.	Statutory Dues as per Information	NIL	NIL



	Memorandum		
7.	Infusion of funds for Capex	NIL	NIL

20. With respect to serial no. 1 of the above table concerning the CIRP cost, we have noticed that the plan includes CIRP cost in addition to an amount of Rs. 2.91 crore for Financial Creditors. However, the amount of the CIRP cost has not been mentioned in the plan, though there is a mention of Rs. 19 lacs towards CIRP cost in the minutes of the 5th CoC meeting, copy of which has been attached with the IA. Therefore the plan value would be Rs. 2.91 Crore for Financial Creditors and CIRP cost of Rs. 19 lacs till the 5th CoC meeting dated 13th September, 2022. Further it would also include the CIRP cost to be paid as per actual till the approval of the Resolution Plan.

21. The Resolution plan size is approximately of **Rs.3.10 Cr.** (Rupees Three Crores Ten lakhs). The “*Effective Date*” will be the date on which the Adjudicating Authority approves the Resolution Plan.

Details on Management and Implementation as per the Resolution Plan

22. The Resolution Plan also provides for details of management and control, implementation and supervision of the Resolution Plan and term of plan and the same is already set out in Para 16 *supra*.

Details on fraudulent and avoidance transaction

23. Not provided in Resolution plan or application. However, the convenience proforma provides the following:

“The Resolution Plan does not consist anything about the disbursement of amounts recoverable from PUFEE transaction. Since, the Resolution Applicant (RA) proposed to pay all the creditors in full. Therefore, the RA is eligible to get the amount, if anything recovers from PUFEE transaction.”



Section 43 and Section 66 Application have been filed separately vide IA no. 282/2022 and IA 283/2022 respectively and are pending. In view of the above, we order that Resolution Applicant would pursue the PUFÉ application.

Waivers, Reliefs and Exemptions

24. The SRA has sought/prayed for the reliefs, waivers and concessions as enumerated under the Resolution Plan approved by the CoC , namely, that from the plan approval date all inquiries, investigation and proceedings, whether civil or criminal, suits, claims, disputes, interests and damages in connection with the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this Resolution Plan, shall stand withdrawn, satisfied and discharged. From the date of approval of the ‘Resolution Plan’, the Resolution Applicant shall be legally authorized to seek appropriate orders from respective authorities/courts/tribunals for renewal of licenses/withdrawal/dismissal or abetment of the proceedings as the case may be.

25. There are certain litigation pending involving corporate debtor as mentioned in the additional document filed on 13.12.2022. It may be mentioned that the said litigations would be governed by Section 32A of the Code.

Analysis & Findings

26. 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 94.85% of the members voting in favour of the ResolutionPlan. As per the CoC, the Plan meets the requirement of being a viable and feasible revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.



27. On perusal of the documents on record, we are satisfied that the Resolution Plan is in accordance with Sections 30 and 31 of the IBC and also complies with regulations 37, 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
28. The reliefs, concessions and waivers sought by the Successful Resolution Applicant will be dealt with strictly in accordance with the applicable laws.
29. It may be clarified that litigations wherever pending against the corporate debtor would be governed by Section 32A of the Code.
30. As far as the question of granting time to comply with the statutory obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.
31. In case of non-compliance with this order or withdrawal of the Resolution Plan within the stipulated time, in addition to other consequences which follow under law, the CoC shall forfeit the EMD amount of Rs. 20 Lakh already paid by the Resolution Applicant as well as the Performance Bank Guarantee of Rs. 31,07,228/-

Orders

32. As already elaborated at **para no. 16** with regard to the compliance of provisions Regulation 37(a) consisting transfer of all part of the assets of the Corporate Debtor to one or more persons, the declaration of the Resolution applicant that the present provision is not applicable is accepted.
33. Subject to the observations made in this Order, the Resolution Plan of **Rs.2.91 Cr.** (Rupees two crores and ninety one lac) plus CIRP cost of Rs. 19 lacs payable till the date of 5th CoC meeting dated 13.09.2022 and additionally CIRP cost as per actual from 13.09.2022 till the date of approval of Resolution Plan, containing the mandatory contents of Resolution Plan in terms of Regulation 38(1), is hereby approved as per Section 31(1), after satisfying ourselves that the resolution plan as



approved by the COC under sub- section (4) of Section 30 on 13.09.2022 meets the requirements as referred to in subsection (2) of Section 30. The Resolution Plan shall form part of this Order. As already mentioned above, the CIRP cost of Rs. 19 Lakhs as on the decision of the CoC taken in its 5th meeting held on 13.09.2022 shall be payable and thereafter the CIRP cost till the approval of the Resolution Plan as per actuals shall also be paid by the Successful Resolution Applicant.

34. The reliefs, concessions and waivers sought/prayed by the Successful Resolution Applicant will be dealt with strictly in accordance with the applicable laws including Companies Act, 2013 and Income Tax Act, 1961, etc.
35. The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
36. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
37. The Monitory Committee as proposed in the resolution plan is appointed as under:

Name(s) of the proposed member(s) of implementation and monitoring committee	Brief description of the Proposed member(s) of the I&M committee
1. Rajeev Ranjan Singh	Resolution Professional.
2. CVK Charitable Trust (Representing person to be nominated by Trust)	COC Member
3. Ajeet Kumar Ghosh	COC Member
4. Dwiti Construction Pvt. Ltd.	Resolution Applicant

The above Monitory Committee shall ensure timely & successful implementation of resolution plan approved by this order.

38. Section 43 and Section 66 Application have been filed separately vide IA no. 282/2022 and IA 283/2022 respectively and are pending. In view of the above, we order that Resolution Applicant would pursue the PUFEE application. It is also made



clear that whatever would be the proceeds out of the above applications, the differential amount between the claim and admitted amount of the creditors would be met first and remaining, if any, would be going to the Resolution Applicant.

39. **IA No. 325/2022** shall stand disposed of accordingly.

40. Liberty is hereby granted for moving appropriate application if required in connection with implementation of this Resolution Plan.

41. A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies

42. 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.

43. The Resolution Professional is further directed to hand over all records, premises/factories/documents available with it to the Resolution Applicant to finalise the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records and premises through the Resolution Professional to finalise the further course of action required for starting of operations of the Corporate Debtor.

44. The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

45. The registry is further directed to send the copy of the order to the IBBI also for their record.

46. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

47. File be consigned to the record.

48. The pending applications are already listed on 26th May, 2023.

-Sd-

Ashish Verma
Member (Technical)

-Sd-

Praveen Gupta
Member (Judicial)

Aditi Kharbanda
(LRA)

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