

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

**IA (PLAN) NO.01/2024
IN
CP (IB) NO.04/ALD/2020**

IN THE MATTER OF:

(An Under Section 30 of Insolvency and Bankruptcy Code, 2016 read with Regulation 39 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016)

Hemi Gupta,
Resolution Professional,
M/s Colorcity Homes Pvt. Ltd.,
IP Registration No.IBBI/IPA-02/IP-N00147/2017-2018/10383,
Address: B-84, Takshila Colony, Garh Road, Meerut, U.P. 250004

..... Applicant/ Resolution Professional

In the matter of:

M/S NEON VINCOM PVT. LTD.

.....Financial Creditor

V/S

M/S COLORCITY HOMES PVT. LTD.

.....Corporate Debtor

Order pronounced on 14th June, 2024

Coram:

Mr. Praveen Gupta : Member (Judicial)
Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Sumit Shukla, Adv. : *For the Applicant/RP*

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ORDER

Preliminary

1. The present interlocutory application bearing IA (Plan) No.1/2024 was moved on behalf of Mrs. Hemi Gupta, Resolution Professional (**“RP”**) of M/s Colorcity Homes Pvt. Ltd. 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 Corporate Persons) Regulations, 2016 (**“CIRP Regulations”**) for approval of the Resolution Plan in respect of M/s Colorcity Homes Pvt. Ltd.

2. The underlying Company Petition CP (IB) No.04/ALD/2020 filed by M/s Neon Vincom Pvt. Ltd. under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (**“CIRP”**) against the Corporate Debtor namely M/s Colorcity Homes Pvt. Ltd., which was admitted by this Adjudicating Authority *vide* its order dated 02.03.2023 (**“Admission Order”**). On that date, *i.e.*, 02.03.2023, Mrs. Hemi Gupta (IBBI/IPA-02/IP-N00147/2017-2018/10383) was appointed as IRP, who was subsequently appointed as Resolution Professional (RP) in first CoC meeting dated 31.03.2023, which was later on confirmed as RP *vide* order dated 24.04.2023 passed by this Tribunal.

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Collation of claims by RP

3. It is stated in Resolution Plan that the public announcement was made on 05.03.2023 in Financial Express (*English*) and in *Jansatta (Hindi)*, the last date for submission of claims was 16.03.2023, and RP 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. That pursuant to the public announcement made in FORM-A by the Resolution Professional, the details of claim submitted is as follows :-

| Particulars | Amount Claimed | Claim Admitted |
|--|-----------------------|-----------------------|
| Unsecured Financial Creditors belonging to any class of creditors (Real estate allottees) | Rs.4,35,30,777.91/- | Rs.3,04,43,132.59/- |
| Unsecured Financial Creditors (other than financial creditors belonging to any class of creditors) | Rs.5,31,00,000/- | Rs.5,31,00,000/- |

5. It is submitted by the RP that the vide order dated 29.08.2023 passed by this Tribunal, the report of RP certifying the third re-constitution of the COC and list of Creditors was taken on record by way of IA No.419/2023. The details of the third re-constitution of the CoC is as under :-

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| S.N | Category of creditor | Summary of claims received | | Summary of claims admitted | | Amount of contingent claims | Amount of claims not admitted | Amount of claims under verification | Details in Annex. |
|-----|--|----------------------------|--------------|----------------------------|---------------------------|-----------------------------|-------------------------------|-------------------------------------|-------------------|
| | | No. of claims | Amount | No. of claims | Amount of claims admitted | | | | |
| 1. | Unsecured Financial Creditors belonging to any class of creditors | 48 | 278460407.84 | 34 | 62817338.57 | - | 7726251.29 | 207916817.99 | 2 |
| 2. | Unsecured Financial Creditors (other than financial creditors belonging to any class of creditors) | 3 | 124439155.06 | 1 | 53100000.00 | - | 13650000.00 | 57689155.06 | 4 |

6. The RP submits that a total of 15 CoC meetings have been held during the whole CIRP period.

Evaluation and voting

7. It is stated in the Resolution plan that the CoC has *interalia* approved the publication of Form G, Request for Resolution Plan, Evaluation Matrix, Refundable Interest Free Earnest Money, Performance Security and Eligibility Criteria, and accordingly, invitations for Expression of Interest (EoIs) in Form-G were published on 01.05.2023.

8. In pursuance thereto, the Resolution Professional received three EoIs for submission of the Resolution plan. The Prospective Resolution Applicants (PRAs) who have submitted EoIs are given as under:-

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- 1) PUMA Realtors Private Limited;
- 2) Vibhor Vaibhav Infracore Private Limited;
- 3) Statcon Electronics India Limited.

- 9.** All the three Resolution Applicants viz., PUMA Realtors Private Limited, Vibhor Vaibhav Infracore Private Limited and Statcon Electronics India Limited were found to be eligible for submission of Resolution Plan, which was put for consideration before CoC in the 4th & 5th CoC meetings dated 03.07.2023 and 16.07.2023. Pursuant to the 5th CoC meetings, the Applicant reviewed the Resolution Plans of the PRAs i.e. Vibhor Vaibhav Infracore Private Limited and Statcon Electronics India Limited, however, the PUMA Realtors Private Limited has submitted its withdrawal. The same was apprised by the Applicant before the CoC in its 6th CoC meeting dated 28.07.2023 and the CoC undertook the meetings with two PRAs, who have submitted their final Resolution Plan. In the same meeting, the CoC approved to modify the terms of the RFRP to enable all the three PRAs in the final list of PRA to submit/modify their plan again and the CoC allowed the Puma Realtors Private Limited to withdraw their Plan with 100% votes.
- 10.** In the 14th CoC meeting held on 27.12.2023, it was noted that

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only one modified Resolution Plan has been received from Vibhor Vaibhav Infracore Private Limited, who are coming forward for negotiations/ discussions repeatedly, however the other PRA namely Statcon Electronics India Limited has not showed any inclination towards upgrading its Plan. Resultantly, the Resolution Plan submitted by Vibhor Vaibhav Infracore Private Limited was approved with 100% voting in the said meeting. Thereafter, a Letter of Intent (LOI) was issued by the Applicant to the Successful Resolution Applicant (SRA) vide letter dated 10.01.2024, which was accepted by Vibhor Vaibhav Infracore Private Limited. The CoC also deliberated in accordance with Section 30(2), 30(4) and 30(6) of the Code read along with CIRP Regulations, 2016.

- 11.** This Adjudicating Authority has granted extensions and exclusions in the whole CIR Process, which are elaborated as follows :-

| Particulars | Timelines |
|--|---|
| CIRP commencement date | 02.03.2023 |
| 180 days | 29.08.2023 |
| Extension of 90 days beyond 180 days (vide order dated 29.08.2023) | Commenced from 30.08.2023 and ended on 28.11.2023 |
| Extension of 60 days beyond 270 days (vide order dated 28.11.2023) | Commenced from 28.11.2023 and ended on 26.01.2024 |

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12. The Resolution Plan of SRA after being approved by CoC on 27.12.2023 this Application has been filed on 10.02.2024 before this Adjudicating Authority *vide* IA (Plan) No.01/2024, wherein following prayers have been sought :-

- I. *Extend the CIRP timelines w.e.f. 26.01.2024 till the disposal of the instant application to provide an opportunity to Corporate Debtor for its revival under the provisions of the Code and enable it to continue as a going concern and/ or;*
- II. *Approve the Resolution Plan submitted by Vibhor Vaibhav Infracore Private Limited duly approved by the CoC with 100% vote share.*

13. A perusal of the record, it shows that the RP has sought approval for extension of 15 days in the CIRP (expiring on 26.01.2024) for filing of an application for approval of Resolution Plan with the Adjudicating Authority, before the 15th CoC meeting dated 23.01.2024. In the said CoC meeting, *vide* Item no.11, the CoC has passed the resolution with 100% voting rights, which is annexed as Annexure-22. The extract of the resolution passed by the CoC in its 15th meeting dated 23.01.2024 is as under :-

ITEM NO.11

TO SEEK APPROVAL FOR EXTENSION OF 15 DAYS IN THE CIRP (EXPIRING ON 26.01.2024) FOR FILING OF APPLICATION WITH THE ADJUDICATING AUTHORITY SEEKING APPROVAL OF THE RESOLUTION PLAN

Explanatory notes and discussion:

RP submitted that taking into consideration the timelines of the CIRP, she/ Counsel would require 7-10 days time to file the application for the approval of the Plan and since the last date of the CIRP is 26.01.2024 hence an exclusion/ extension of 15 days

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is required to prevent Liquidation of the CD.

The COC discussed and following resolution was proposed for voting:

“RESOLVED THAT the CoC hereby approves the extension/ exclusion as may be considered by the Adjudicating Authority for 15 days starting from 26.01.2024 to keep the Corporate Debtor as a going concern and for value maximation of the corporate debtor and the RP is hereby instructed to complete this process at the earliest.

RESOLVED FURTHER THAT the RP be and is hereby authorized to file necessary application before the Hon’ble Adjudicating Authority in this regard and to do all such acts, deeds and things as may be required in the matter.”

| Resolution No. | Agenda, Notes, particulars of the discussions held during the meeting and proposed resolution | Decision of Financial Creditor NEON VINCOM PRIVATE LIMITED (Voting share: 45.81%) | Decision of Authorized Representative of Financial Creditors in a Class (Mr. Sandeep Goel) (Voting share: 54.19%) | Overall Decision (Total Voting share: 100%) |
|----------------|---|---|--|--|
| B11 | <p>TO SEEK APPROVAL FOR EXTENSION OF 15 DAYS IN THE CIRP (EXPIRING ON 26.01.2024) FOR FILING OF APPLICATION WITH THE ADJUDICATING AUTHORITY SEEKING APPROVAL OF THE RESOLUTION PLAN</p> <p>The COC discussed and following</p> | Assent | Assent | Assent |

| | | | | |
|--|---|--|--|--|
| | <p><i>resolution was proposed for voting:</i></p> <p><i>“RESOLVED THAT the CoC hereby approves the extension/ exclusion as may be considered by the Adjudicating Authority for 15 days starting from 26.01.2024 to keep the Corporate Debtor as a going concern and for value maximation of the corporate debtor and the RP is hereby instructed to complete this process at the earliest.</i></p> <p><i>RESOLVED FURTHER THAT the RP be and is hereby authorized to file necessary application before the Hon’ble Adjudicating Authority in this regard and to do all such acts, deeds and things as may be required in the matter.”</i></p> | | | |
|--|---|--|--|--|

14. Having considered the prayer sought for extension of 15 days period w.e.f. 26.01.2024 for filing application for seeking approval of Resolution Plan and after careful perusal of the present application, we allowed the extension of 15 days period from the CIRP timeline, which would be commencing from

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26.01.2024. The present application for approval of Resolution Plan has been filed within 15 days i.e. on 10.02.2024. In view thereof, we deem it appropriate to allow the prayer for extension of 15 days till the filing of application and exclusion for the period from 10.02.2024 till the passing of the present order approving the Resolution Plan.

- 15.** A compliance Certificate in terms of prescribed Form H under regulation 39(4) of the CIRP Regulations, was also filed before this Tribunal. According to the Form H, the fair value of the Corporate Debtor is Rs.29,96,17,172/- and the liquidation value is Rs.21,72,40,020/-. The Resolution Plan submitted from SRA is of approx. Rs.16.34 Cr. The Successful Resolution Applicant has already provided the Performance Guarantee of Rs.5,00,00,000/- (Rupees Five Crore Only) by way of DD and RTGS, which is required under Regulation 36B (4A) of CIRP Regulations, 2016. The details of the performance security is as under :-

Performance Security of Rs.5 Crore deposited as under :

- i) 1 Crore deposited on 16.05.2023 (EMD with the EOI)*
- ii) 1 Crore deposited on 03.06.2023 (EMD with Plan)*
- iii) 3 Crore deposited on 17.01.2024 (Balance of Performance Security after adjusting the EMD)*

- 16.** It is submitted by the RP that the above said Performance

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Guarantee shall be valid till the term of the Resolution Plan.

Details of Resolution Plan/ Payment Schedule

17. The Successful Resolution Applicant, Vibhor Vaibhav Infracore Private Limited is the flagship company of VVIP Group expertise in the execution and construction of infrastructure projects, primarily, sewer, sewer treatment plants, water tanks, water treatment plants, road, sector development, electrification development and its transmission and distribution infrastructure. The company is primarily working on projects in the State of Uttar Pradesh, Uttarakhand, NCT of Delhi and other northern parts of India.

18. The amount proposed in the Resolution Plan are tabulated below:

| Sl. No. | Types of debts | Resolution Amount (In Rs.) | Payment Term |
|----------------|----------------------------|-----------------------------------|---|
| 1. | CIRP Cost | 50,00,000 or Actual CIRP Cost | The actual amount till the Approval date proposed to be paid in full and in priority within 60 days of approval of Resolution Plan by the Adjudicating Authority. |
| 2. | Secured Financial Creditor | NIL | NIL |

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|-----|---|-----------------|--|
| 3. | Unsecured Financial Creditor | 11,59,17,338.57 | Rs.11.59 Cr. within 90 days from the approval date. |
| 4. | Operational Creditors (Goods & Services) | NIL | NIL |
| 5. | Operational Creditors Government dues (Customs) | NIL | NIL |
| 6. | Operational Creditors Government dues (Tax) | NIL | NIL |
| 7. | Operational Creditors Workmen/ Employees | NIL | NIL |
| 8. | Funds for stabilization of business and working capital | NIL | NIL |
| 9. | Unsecured Financial Creditors (claims not verified) | 75,00,000 | Proportionate amount out of Rs.75 Lacs whichever is lower within 150 days from the approval date |
| 10. | Unsecured Financial Creditors in class (claims not verified) | 250,00,000 | Proportionate amount out of Rs.250 Lacs whichever is lower within 150 days from the approval date. |
| 11. | Financial Creditor or Operational Creditor (No claims received) | 25,00,000 | Proportionate amount out of Rs.25 Lacs whichever is lower within 150 days from the approval date. |

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| 12. | Financial Creditor in class (No claims received) | 75,00,000 | Proportionate amount out of Rs.75 Lacs whichever is lower within 150 days from the approval date. |
|-----|--|-----------|---|

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

| S. No. | Particulars | In Rupees |
|---------------|--|------------------|
| A | CIRP Cost | 50,00,000 |
| B | Upfront cash payment to the Financial Creditors to be paid within 150 days from the approval date | 11,59,17,338.57 |
| C | Total Upfront Cash Payment as part of Resolution Plan (A+B) | 12,09,17,338.57 |
| D | Workmen & Employee/due/claim retirement benefit | NIL |
| E | Operational Creditor (Goods & Services) | NIL |
| F | Other Creditors (whose claims are under verification, or who has not filed the claim) shall be paid within 150 days from the approval date. Such amount shall only be payable to the Creditor, whose claims are admitted | 4,25,00,000 |
| G | Payment to outside party (C+D+E+F) | 16,34,17,338.57 |
| H | Contingent Liabilities (Non-Statutory) | NIL |
| I | Repairs/Refurbishment (To be brought through equity) | NIL |

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| J | Working capital margin (To be brought through equity) | NIL |
| K | Total Fund Required (G+H+I+J) | 16,34,17,338.57 |

Sources of Funds

19. The overall Resolution Plan is for a total amount of approximately Rs.16.34 Crore, which shall be infused by Successful Resolution Applicant in a mix of Equity and debt.

20. The payment proposed to Financial Creditors in Clause 1.3.2 of Para F, of Resolution Plan is as under :-

1.3.2 Unsecured Financial Creditors (Whose Claims have been Admitted up to the date of filing of the present Revised Resolution Plan)

The Unsecured Financial Creditors shall be paid 100% of the admitted amount and the same shall be paid within 100 Days from the Approval Date.

1.3.3 Unsecured Financial Creditor in Class (Homebuyers) (Whose Claims have been Admitted up to the date of filing of the Resolution Plan)

1.3.3.1 *The Home Buyers shall be paid 100% of the admitted amount i.e INR 6,28,17,338.57 (Indian Rupees Six Crores Twenty-Eight Lacs Seventeen Thousand Three Hundred Thirty Eight and Fifty Seven paise only) and the same shall be paid within 100 Days from the Approval Date.*

1.3.3.2 *The title/allotment in the names of the Home Buyers pertaining to any flat/ apartment shall stand cancelled on the date of payment and as such the Home Buyers shall be left with no claim whatsoever against the Corporate Debtor/ Resolution Applicant.*

1.3.3.3 *The Home Buyers shall surrender all the original documents held by them with respect to their respective flats/apartment executed by the*

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Corporate Debtor on the Approval Date. It is on surrendering of all these documents, the Resolution Applicant shall be obligated to pay the Home Buyers in accordance with as stated herein above

1.3.4. Unsecured Financial Creditors (Claims Under Verification)

1.3.4.1 *As per Information Memorandum and addendums thereto/updated list of claims it can be seen that claims amounting to INR 5,93,09,612.06 (Indian Rupees Five Crore Ninety Three Lacs Nine Thousand Six Hundred Twelve and Zero Six paise) pertaining to Unsecured Financial Creditor are still under verification.*

1.3.4.2 *The Resolution Applicant proposes to pay them out of total Contingency Pool-I of INR 75,00,000/- on pro-rata basis, to such Unsecured Financial Creditors whose claims are under verification and the same shall be paid within 150 days from the Approval Date. The said amount shall only be payable to the creditor whose claims are admitted. The surplus of the contingency pool-I, if any shall belong to Resolution Applicant.*

1.3.5 Unsecured Financial Creditor in Class (Claims Under Verification)

1.3.5.1 *As per Information Memorandum and addendum thereto/updated list of claims it can be seen that claims amounting to INR 20,62,96,360.98 (Indian Rupees Twenty Crores Sixty Two Lacs Ninety Six Thousand Three Hundred Sixty and Ninety Eight Paise) pertaining to Unsecured Financial Creditor in Class are still under verification.*

1.3.5.2 *The Resolution Applicant subject to Clause 1.3.3.2 & 1.3.3.3 proposes to pay them out of total Contingency Pool-II of INR 2,50,00,000/- (Indian Rupees Two Crore Fifty Lacs only), on pro-rata basis, to such Unsecured Financial Creditors in Class whose claims are under verification and the same shall be paid within 150 days from the Approval Date. The said amount shall only be payable to the creditor whose claims are admitted. The surplus of the contingency pool-I, if any shall belong to Resolution*

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Applicant.

- 21.** 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 Page Number of Application |
|--|---|--|
| (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 para F of the Resolution Plan | Page 137 of the application |
| (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 | Provided in para F of the Resolution Plan | Page 140 of the application |
| (b)(i) the amount payable to them in the event of liquidation u/s 53; or | Provided in para F of the Resolution Plan | Page 140 of the application |
| (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 | Provided in para F of the Resolution Plan | Page 140 of the application |

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| accordance with the order of priority in sub-section (1) of section 53, whichever is higher and | | |
| (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 para F of the Resolution Plan | Page 138-141 of the application |
| (c) Management of the affairs of the Corporate Debtor after approval of the Resolution Plan. | Provided in para 5 & 10 of Resolution Plan | Page 79 & 98-100 of the application |
| (d) Implementation and Supervision. | Provided in para 6 of Resolution Plan | Page 81 of the application |
| (e) Plan does not contravene any of the provisions of the law for the time being in force. | Provided in para 7 of Resolution Plan | Page 84 of the application |

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; | Provided in para 12 of Resolution Plan | Page 106-109 of the application |
| b) sale of all or part of the assets whether subject to any security interest or not; | Provided in para 12 of Resolution Plan | Page 106-109 of the application |

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| ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger; | NA | NA |
| 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; | Provided in para 10 of Resolution Plan | Page 98-100 of the application |
| ca) cancellation or delisting of any shares of the corporate debtor, if applicable; | Provided in para 10 of Resolution Plan | Page 98-100 of the application |
| d) satisfaction or modification of any security interest; | Provided in para 11 of Resolution Plan | Page 102-109 of the application |
| e) curing or waiving of any breach of the terms of any debt due from the corporate debtor; | NA | NA |
| f) reduction in the amount payable to the creditors; | Provided in para F of Resolution Plan | Page 138-141 of the application |
| g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor; | NA | NA |
| h) amendment of the constitutional documents of the corporate debtor | NA | NA |
| i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other | NA | NA |

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| appropriate purpose; | | |
| j) change in portfolio of goods or services produced or rendered by the corporate debtor; | NA | NA |
| k) change in technology used by the corporate debtor; and | NA | NA |
| l) Obtaining necessary approvals from Central and State Governments and other authorities | Provided in para 12 of Resolution Plan | Page 106-109 of the application |

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 | Provided in para F of Resolution Plan | Page no.138-141 of the application |
| 38(1)(b) The amount payable under a resolution plan - (b) to the financial creditors, who have a right to vote under | Provided in para F of Resolution Plan | Page no.138-141 of the application |

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| 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. | | |
| 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 | Provided in para 7 of the Resolution Plan | Page 84 of the application |
| 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 | Provided in para 7 of the Resolution Plan | Page 86-87 of the application |
| 38 (2)(a) shall provide for the term of the plan and its implementation schedule; | Provided in para 8 of the Resolution Plan | Page 89-90 of the application |
| 38 (2)(b) shall provide for the management and control of the business of the Corporate Debtor during its term | Provided in para 5 of the Resolution Plan | Page 79-80 of the application |

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| 38 (2)(c) Shall provide for the adequate means for supervising its implementation. | Provided in para 6 of Resolution Plan | Page 81 of the application |
| 38 (3) A resolution plan shall demonstrate 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; and (e) the resolution applicant has the capability to implement the resolution plan. | This has been provided in Resolution Plan in para 7 This has been provided in Resolution Plan in para 7 This has been provided in Resolution Plan in para 6 This has been provided in Resolution Plan in para 7 This has been provided in Resolution Plan in para 7 | Page 85-86 of Application Page 85 Application Page 81 of Application Page 86 of Application Page 86-87 of Application |

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. Mrs. Hemi Gupta | Resolution Professional |
| 2. Nominee of the Successful Resolution Applicant | One member authorized by Resolution Applicant |
| 3. Nominee of the Financial Creditor M/s Neon Vincom Private Limited | One member authorized by M/s Neon Vincom Private Limited |
| 4. Nominee of Homebuyers | One member authorized by |

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22. 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 29A at page no.550 of the application, is reproduced there under:-

The Applicant submits that the SRA 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 SRA, as mandated in terms of regulation 39(1)(c) of the CIRP Regulations. The affidavit to that regard under Section 29A has been e-filed on 22.10.2023, which is reproduced thereunder:-

*I, Vibhor Tyagi, Director duly authorized by the Board of the **Vibhor Vaibhav Infrahome Private Limited**, for giving such affidavit], son of Praveen Tyagi, aged about [35] years, currently residing at 9/242, Raj Nagr, Ghaziabad, UP 201002 and having Aadhar number 59356477 8269 on behalf of **Vibhor Vaibhav Infrahome Private Limited** having its registered office at S-551, SCHOOL BLOCK SHAKARPUR DELHI DL 110092 IN ('Resolution Applicant,'), a term which also includes any person acting jointly with the Resolution*

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Applicant), do solemnly affirm and state to the committee of creditors (“CoC”) of COLORCITY HOMES PRIVATE LIMITED (“Company”) and the resolution professional of the Company (“RP”) as follows:

- 1. That I am duly authorized and competent to make and affirm the instant affidavit for and on behalf of the Resolution Applicant in terms of the [resolution of its board of directors/ power of attorney- to provide other necessary details of such authorization]. The said document is true, valid and genuine to the best of my knowledge, information and belief.*
- 2. That neither the Resolution Applicant, nor any other person acting jointly or in concert with the Resolution applicant, nor any ‘connected person’ (as defined under Section 29A of the Insolvency and Bankruptcy Code, 2016, as amended from time to time (‘Code’) and nor any other person covered under Section 29A of the Code:*
 - (a) is an undischarged insolvent;*
 - (b) is a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;*
 - (c) is at the time of submission of the expression of interest and/or resolution plan a person who, (i) has an account which has been classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force, or (ii) controls or manages or is the promoter of a corporate debtor whose account has been, classified a non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force; and such classification has continued for a period of one year or more from the date of such classification till the date of commencement of the corporate insolvency resolution process of the Company and all such overdue amounts along with interest, costs and*

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charges thereon have not been fully repaid at the time of submission of expression of interest and/of resolution plan;

- (d) has been convicted for any offence punishable with imprisonment-*
 - (i) For two years or more under any stature specified under the Twelfth Schedule of the code and two years have not passed from the date of release from such imprisonment; or*
 - (ii) for seven years or more under any law for the time being in force and two years have not passed from the date of release from such imprisonment;*
- (e) is disqualified to act as a director under the Companies Act, 2013;*
- (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 of or control of a corporate debtor in which any preferential transaction or undervalued transaction or extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Hon'ble National Company Law Tribunal (or its appellate transaction, extortionate credit transaction or fraudulent transaction which has taken place without any contribution by the Resolution Applicant in an entity acquired by the Resolution Applicant, prior to such acquisition by way of a resolution plan approved under the Code or pursuant to a scheme or plan approved by a financial sector regulator or court);*
- (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 the Code and such guarantee has been invoked by the creditor and remains unpaid in full or in part; and*
- (i) is subject to any disability, corresponding to the aforesaid conditions under any law in a jurisdiction outside India.*

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3. That the Resolution Applicant unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected persons as required under Regulation 38(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as applicable to the corporate insolvency resolution process of the Corporate Debtor.
4. The neither the Resolution Applicant, nor any other person acting jointly or in concert with the Resolution Applicant, nor any 'connected person' (as defined under Section 29A of the Code) has:
 - i. Withdrawn or sought any deviation to its resolution plan in any corporate insolvency process, or avoided or delayed or defaulted in the implementation of the resolution plan approved by the committee of creditors/Adjudicating Authority; or delayed or failed to implement any conditions as contained in the process document/note issued under any corporate insolvency resolution process (including the submission of any guarantee/security documents as envisaged under the process document/note of any corporate insolvency resolution process);
 - ii. had any resolution plan filed by it withdrawn/rejected or applied to be withdrawn/rejected from the Adjudicating Authority/committee of creditors owing to any non-compliance/default by it;
 - iii. failed to implement its resolution plan approved by committee of creditors/Adjudicating Authority in accordance with its terms; or
 - iv. in order to avoid the obligations under its resolution plan approved by committee of creditors/Adjudicating Authority, challenged the process document/note or process there under issued by a resolution professional/committee of creditors with respect to a corporate insolvency resolution process, in any court of law or sought any deviation from the resolution plan submitted by it which is not acceptable to the committee of creditors of the relevant matter.
5. That the Resolution Applicant unconditionally and irrevocably represents, warrants and confirms that it

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is eligible under the terms and provisions of the Code (read with the relevant regulations framed there under) to submit an expression of interest and a resolution plan and it shall provide all documents, representations and information as may be required by the RP or the CoC to substantiate that the Resolution Applicant is eligible under the Code and the rules and regulations there under to submit a resolution plan in respect of the Company.

- 6. That the Resolution Applicant unconditionally and irrevocably undertakes that it shall provide all data, documents and information as may be required to verify the statements made under this affidavit.*
- 7. That the Resolution Applicant understands that the RP and the CoC may evaluate the expression of interest and/or resolution plan to be submitted by the Resolution Applicant or any other person acting jointly with it and such evaluation shall be on the basis of the confirmation, representations and warrants provided by the Resolution Applicant under this affidavit.*
- 8. That the Resolution Applicant agrees that each member of the CoC and the RP are entitled to rely on the statements and affirmations made in this affidavit for the purposes of determining the eligibility and assessing, agreeing and approving the resolution plan submitted by the Resolution Applicant.*
- 9. That in the event any of the statements contained herein are found to be untrue or incorrect, then the Resolution Applicant unconditionally agrees to indemnify and hold harmless the RP and each member of the CoC against any losses, claims or damages incurred by the RP and/or the members of the CoC on account of such ineligibility of the Resolution Applicant.*
- 10. That the Resolution Applicant agrees and undertakes to disclose/inform forthwith, to the RP and the members of the CoC, if the Resolution Applicant becomes aware of any change in factual information in relation to it or its connected person (as defined under the Code) which would make it ineligible under any of the provisions of Section 29A of the Code at any*

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stage of the corporate insolvency resolution process of the Company, after the submission of this affidavit.

11. That if, at any time after the submission of this affidavit and before the approval of the Resolution Applicant's resolution plan by the Hon'ble National Company Law Tribunal under the code, the Resolution Applicant becomes ineligible to be a resolution applicant as per the provisions of the code (and in particular Section 29A of the Code), the fact of such ineligibility shall be forthwith brought to the attention of the RP and the CoC.

12. That this affidavit shall be governed in accordance with the laws of India and the NCLT New Delhi/ Courts of New Delhi shall have the exclusive jurisdiction over any dispute arising under this affidavit.

23. 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.5,00,00,000/- (Rupees Five Crore Only), which is required under Regulation 36B (4A) of CIRP Regulations, 2016.

Details of Resolution Plan/ Payment Schedule

24. The Applicant submits the relevant information about the amount claimed, the amount admitted, and the amount proposed to be paid by the SRA, i.e. Vibhor Vaibhav Infrahome Private Limited under the said Resolution Plan, which is tabulated as under:

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| Sl. No. | Types of debts | Resolution Amount (In Rs.) | Payment Term |
|----------------|---|-----------------------------------|--|
| 1. | CIRP Cost | 50,00,000 | The actual amount till the Approval date proposed to be paid in full and in priority within 60 days of approval of Resolution Plan by the Adjudicating Authority |
| 2. | Secured Financial Creditor | NIL | NIL |
| 3. | Unsecured Financial Creditor | 11,59,17,338.57 | Rs.11.59 Cr. within 90 days from the approval date. |
| 4. | Operational Creditors (Goods & Services) | NIL | NIL |
| 5. | Operational Creditors Government dues (Customs) | NIL | NIL |
| 6. | Operational Creditors Government dues (Tax) | NIL | NIL |
| 7. | Operational Creditors Workmen/ Employees | NIL | NIL |
| 8. | Funds for stabilization of business and working capital | NIL | NIL |
| 9. | Unsecured Financial Creditors (claims not verified) | 75,00,000 | Proportionate amount out of Rs.75 Lacs whichever is lower within 150 days from the approval date |

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| | | | |
|-----|---|------------|--|
| 10. | Unsecured Financial Creditors in class (claims not verified) | 250,00,000 | Proportionate amount out of Rs.250 Lacs whichever is lower within 150 days from the approval date. |
| 11. | Financial Creditor or Operational Creditor (No claims received) | 25,00,000 | Proportionate amount out of Rs.25 Lacs whichever is lower within 150 days from the approval date. |
| 12. | Financial Creditor in class (No claims received) | 75,00,000 | Proportionate amount out of Rs.75 Lacs whichever is lower within 150 days from the approval date. |

25. Apart from the distribution proposed in the Resolution Plan with respect to the claims which are already admitted, the other claimants by way of an IA No.647/2023 Rajesh Kumar Agarwal has been accepted to the extent of the claim allowed by the U.P. RERA, as well as an IA No.04/2024 filed by the RP seeking condonation of delay for consideration of the claims by CoC, or for any other application of any remaining claimants if allowed, the distribution would be made in accordance with Section 53 of the Code amongst all the claimants as per the total amount envisaged under the Resolution Plan including the contingent amounts already specified above.

26. The Resolution Plan size is approximately of Rs.16.34 Cr. The

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“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.

27. 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 20 *supra*.

Details on fraudulent and avoidance transaction

28. In the Resolution Plan, in Para 4 ‘E’ at page no.136 of the application, it has been provided as under:

Based upon the information available with the Resolution Applicant the Resolution Applicant understand that no applications have been filed by the resolution professional towards the PUFÉ transactions in terms of provisions under section 43, 45, 47, 49, 50 & 66 of the code, however if any such application is filed and adjudicating authority decides to reverse such transaction, then such assets or proceeds shall be passed to the stakeholders except the Financial Creditors in class of the corporate debtor in the proportion in which there claims have been admitted by the resolution professional except to those parties or persons who are related to the corporate debtor in accordance with the provisions of the code. It is further clarified that upon the approval of the resolution plan by the adjudicating authority if the application filed by the resolution professional towards PUFÉ / Avoidance Transactions continue to remain under adjudication, in such a situation the cost of litigation or pursuing such application shall be borne by the Resolution Professional

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or the Stakeholders except the Financial Creditors in Class. No Financial Implication of such transactions on Financial Creditors in Class (Home Buyer).

- 29.** However, it is noted that some PUFЕ transactions applications U/s 43, 45, 49, 50 & 66 of the I & B Code, 2016 have been filed separately *vide* IA No.595/2023, IA No.596/2023, IA No.597/2023, IA No.598/2023 & IA No.599/2023 respectively, which are pending. In view of the above, we order that the SRA would pursue the PUFЕ applications as proposed by SRA as above. The proceeds if any would be further disbursed/ utilized as per Section 53 of the Code, after deducting the cost involved in pursuing the PUFЕ transaction applications.

Waivers, Reliefs and Exemptions

- 30.** The SRA has sought/prayed for the reliefs, waivers and concessions as enumerated under the Resolution Plan approved by the CoC, 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

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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 abatement of the proceedings as the case may be.

Analysis & Findings

- 31.** 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 favour of the Resolution Plan. As per the CoC, the Plan meets the requirement of being a viable and feasible for revival of the Corporate Debtor. By and large, there are provisions for making the Plan effective after approval by this Bench.
- 32.** 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.
- 33.** The reliefs, concessions and waivers sought by the Successful

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Resolution Applicant will be dealt with strictly in accordance with the applicable laws by the concerned authorities.

- 34.** It may be clarified that litigations wherever pending against the corporate debtor would be governed by Section 32A of the Code.
- 35.** 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.
- 36.** In case of non-compliance with this order or withdrawal of the Resolution Plan within the stipulated time, in addition to other consequences which may follow under law, the CoC shall forfeit the Performance Security of amount of Rs.5 Crore already paid by the Resolution Applicant.

Orders

- 37.** Subject to the observations made in this Order, the Resolution Plan of Rs.16.34 Cr. [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 meets the requirements as referred to in sub section (2) of

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Section 30.

- 38.** 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.
- 39.** The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- 40.** The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- 41.** The Monitoring 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. Mrs. Hemi Gupta | Resolution Professional |
| 2. Nominee of the Successful Resolution Applicant | One member authorized by Resolution Applicant |
| 3. Nominee of the Financial Creditor M/s Neon Vincom Private Limited | One member authorized by M/s Neon Vincom Private Limited |
| 4. Nominee of Homebuyers | One member authorized by the Homebuyers |

- 42.** The above Monitoring Committee shall ensure timely & successful implementation of Resolution Plan approved by this

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order.

- 43.** The CIRP cost as per the payment plan given at para no.24 is Rs.50,00,000/- which shall be paid within 60 days of the Approval of the Resolution Plan. The actual amount till the Approval date proposed to be paid in full and in priority within 60 days of approval of Resolution Plan by the Adjudicating Authority.
- 44. IA (Plan) No.01/2024** shall stand disposed off accordingly.
- 45.** A copy of this Order shall be filed by the Resolution Professional with the Registrar of Companies.
- 46.** The Resolution Professional shall stand discharged from her duties with effect from the date of this Order, save and except those duties that are enjoined upon her for implementation of the approved Resolution Plan.
- 47.** The Resolution Professional is further directed to hand over all records, premises/ factories/documents available with it to the Resolution Applicant to finalize 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 finalize the further course of action required for

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starting of operations of the Corporate Debtor.

- 48.** 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.
- 49.** The registry is further directed to send the copy of the order to the IBBI also for their record.
- 50.** Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
- 51.** File be consigned to the record.

-Sd-
(Ashish Verma)
Member (Technical)

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(Praveen Gupta)
Member (Judicial)

Dated: 14th June, 2024