

NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH

PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL  
HON'BLE SHRI NARENDER KUMAR BHOLA- MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 11.02.2020 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.1065/2019 in CP(IB) No.97/7/HDB/2018
NAME OF THE COMPANY	Bheema Cements Ltd
NAME OF THE PETITIONER(S)	J M Financial Asset Reconstruction Company Ltd
NAME OF THE RESPONDENT(S)	Bheema Cements Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Rubana S. Khatoon Anrita	Adv	7202935023	

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**ORDER**

Orders passed in IA 1065/2019 vide separate sheets.

Member (T)

Member (J)

Binnu

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH - I**

**IA No. 1065 OF 2019**

**In**

**CP (IB) No.97/7/HDB/2018**

*Application filed U/S 30(6) & 31(1) of IBC, 2016 2016 R/W  
Regulation 39 of IBBI (IRPCP) Regulations, 2016*

**IN THE MATTER OF  
M/s. JM FINANCIAL ASSET RECONSTRUCTION COMPANY  
LIMITED**

**Versus  
M/S. BHEEMA CEMENTS LIMITED**

**G. MADHUSUDHANA RAO  
M/S. BHEEMA CEMENTS LIMITED  
6-3-652/C/A, FLAT 5A, Kautilya Amrutha Estates,  
Somaji Guda, Hyderabad  
Telangana, 500082**

**....Applicant**

**Date of order: 11.02.2020**

**Coram:**

**Hon'ble Shri Ratakonda Murali, Member (Judicial)**

**Hon'ble Shri Narendra Kumar Bhola, Member (Technical)**

**Appearance:**

**For Applicant: Shri Niranjan Reddy, Senior Advocate along  
with Ms. Rubaina S. Khatoon, Advocate**

**For R.A: Shri A. Basith, Advocate**

**For Creditors: Shri V.K. Sajith along with Ms C. Shilpa and Shri  
V. Ravi Kumar**





Heard on: 10.02.2020

**PER: SHRI RATAKONDA MURALI**  
**MEMBER ( JUDICIAL)**

**PRELUDE**

- 1.1 Under consideration before us is the Interlocutory Application filed by the Applicant / Resolution Professional under Section 30 (6) seeking approval of the Resolution Plan under Section 31(1) of Insolvency & Bankruptcy Code, 2016 (herein after referred to as "Code") R/w Regulation 39 of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 in respect of M/s Bheema Cements Limited / Corporate Debtor.
- 1.2 M/s. Bheema Cements Limited (Corporate Debtor/CD) is a Limited Company incorporated on 21.06.1978 by Registrar of Companies, Hyderabad, Telangana bearing CIN L26942TG1978PLC002315 having its Registered Office at 6-3-652/C/A, Flat 5A, Kautilya Amrutha Estates, Somaji Guda, Hyderabad. Telangana 500082, India, which is inter alia engaged in the business of manufacture and sale of the Cement.

**2. AVERMENTS IN THE APPLICATION**

The averments apropos to the Application in brief are:-

- 2.1 The Company Petition bearing No. CP (IB) No. 977/HDB/2018 filed by JM Financial Asset Reconstruction Company Limited /Financial Creditor under Section 7 of the Code, R/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and Insolvency and Bankruptcy Board of



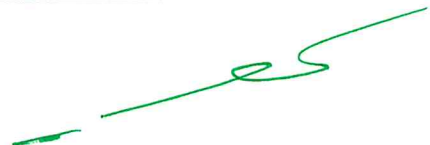


India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 was admitted by this Tribunal on 09.07.2018 and Corporate Insolvency Resolution Process (CIRP) commenced against the Corporate Debtor by appointing Mr.G.Madhusudhan Rao, the Applicant herein as Interim Resolution Professional (IRP).

- 2.2 In terms of Regulation 6 (1) of CIRP Regulations, the Applicant made public announcement on 11<sup>th</sup> July 2018 in “The Business Standard” English Newspaper and “Eenadu” Telugu newspaper inviting claims from the creditors of Corporate Debtor. The Applicant, after collating and verifying the claims, constituted Committee of Creditors (CoC) with the following members having voting share mentioned against each:-

S.No	Name of the Lender	Admitted amount in Rs	Voting Share (%)
1	JMF Asset Reconstruction	4,28,91,23,291.94	86.473
2	Corporation Bank	63,20,17,814.00	12.742
3	RV CONSULTANCY	1,54,37,808.00	0.311
4	N VISHWANATHAN	9,33,700.00	0.019
5	JAI HANUMAN CORP	77,73,736.00	0.157
6	THANGUTURI VENKATARATNAM A	1,54,996.00	0.003
7	MADDALI SUBRAMANYAM	2,88,853.00	0.006
8	ATMAKURU SANTOSH	15,27,567.00	0.031
9	GONUGUNTA VIVEKANANDA	25,85,580.00	0.052
10	LEBAKULA MANJULA	1,98,217.00	0.004
11	POTHUGANTI ALEKHYA	9,23,886.00	0.019
12	POTHUGANTI SRIKANTH	2,64,307.00	0.005
13	SIVADA RAMA SUBBAREDDY	3,70,327.00	0.007
14	TANGUTURI SYAMALA	10,70,845.00	0.022





15	THANGUTURI SIVAPRASAD RAO	12,07,386.00	0.024
16	GURIJALA KRISHNA RAO	1,91,770.00	0.004
17	KUNCHU RADHA KRISHNA	1,70,370.00	0.003
18	POKURI SUBBARAO	3,90,855.00	0.008
19	KAMMA SATYANARAYANA VARA	3,58,767.00	0.007
20	SALETI VENKATA NARASIAH	1,94,488.00	0.004
21	VEMIREDDY SHARATH KUMAR	99,283.00	0.002
22	AMARA KRISHNA CHAITANYA	12,08,985.00	0.024
23	AMARA VENKATA	13,79,626.00	0.028
24	KANKIPATI HARIBABU	5,01,306.00	0.010
25	TANGUTURI RAJAGOPAL	1,94,488.00	0.004
26	THANGUTURI VENUGOPALA	15,05,839.00	0.030
	<b>Total</b>	<b>4,96,00,74,090.94</b>	<b>100.000</b>

- 2.3 The 1<sup>st</sup> meeting of CoC was held on 06.08.2018, wherein the Applicant herein was confirmed as Resolution Professional with 100% voting share.
- 2.4 The 2<sup>nd</sup> CoC meeting was held on 17.08.2018, inter-alia ratified appointment of two valuers who have submitted two valuations for all the assets of the Corporate Debtor.
- 2.5 The 3<sup>rd</sup> CoC meeting was held on 24.08.2018, wherein CoC approved Expression of Interest (EOI) inviting Resolution Plans from prospective Resolution Applicants. Consequently, RP issued Invitation for Expression of Interest in Newspapers on 27<sup>th</sup> Aug 2018.
- 2.6 In the 4<sup>th</sup> CoC meeting held on 26<sup>th</sup> Sep 2018, the CoC was apprised by RP about receipt of 13 EOI's and the provisional list of the Prospective Resolution Applicants was circulated to COC members including suspended BODs and all the EOI members.

*NRW*

*[Handwritten signature]*

- 2.7 In the 5<sup>th</sup> CoC meeting held on 09<sup>th</sup> Oct 2018 it was decided by CoC to extend the last date of submission of EOI's to 25<sup>th</sup> Oct 2018 and accordingly RP issued fresh public advertisement in newspaper.
- 2.8 The 6<sup>th</sup> CoC meeting was held on 09<sup>th</sup> November 2018, wherein CoC approved for modification of EOI criteria's and Evaluation Matrix criteria's.
- 2.9 In the 7<sup>th</sup> CoC meeting held on 08<sup>th</sup> December 2018, COC approved for RFRP terms modification.
- 2.10 In the 8<sup>th</sup> CoC meeting held on 14<sup>th</sup> December 2018, COC members approved for extension of CIR period by 90 days. This Tribunal vide order passed in IA 05/2019 dated 10.01/2019 extended CIRP period by 90 days with effect from 05.01.2019.
- 2.11 In the 9<sup>th</sup> CoC meeting held on 24.12.2018, the CoC was apprised by the Resolution Professional about receipt of one Resolution Plan without EMD, but failed to meet the mandatory requirements of IBC, 2016 and RFRP Criteria. Subsequently, the last date for submission of Resolution Plan (RP) was extended till 1<sup>st</sup> Feb 2019 instead of 14<sup>th</sup> Dec 2018 without extending EOI date.
- 2.12 The 11<sup>th</sup> CoC meeting was held on 30.01.2019, wherein RP circulated the two new EOIs received on 29<sup>th</sup> January 2019 and 30<sup>th</sup> January 2019 among COC members along with the email received on 29<sup>th</sup> February 2019 from one of the Prospective Resolution Applicant who sought additional time for submission of the Resolution Plan beyond 1<sup>st</sup> February 2019. CoC, after due deliberations further approved extension of the last date for submission of Resolution plan from 1<sup>st</sup> Feb 2019 to 4<sup>th</sup> Mar 2019 or 8<sup>th</sup> Mar 2019.
- 2.13 In the 13<sup>th</sup> CoC meeting held on 12<sup>th</sup> March 2019, M/s.SDAS Innovations Private Limited was appointed by





the CoC members as Transaction Advisor. The last date for submission of the Resolution plans was extended by CoC upto 27<sup>th</sup> March 2019 till 5 PM.

2.14 The RFRP terms have been amended as under in the 14<sup>th</sup> CoC meeting held on 22<sup>nd</sup> March 2019,

1. Reduced the earnest money limit from Rs.10 Cr to 2 Cr which should receive along with submission of Resolution plan.
2. Discussed and reduced the limit of irrevocable and unconditional performance bank guarantee from Rs.50 Cr to Rs. 10 Cr which should be submit along with LOI acceptance.
3. Discussed and decided that LOI should be accepted by resolution applicant within 2 (two) working days instead of 7 (Seven) days mentioned in RFRP.

2.15 In the 15<sup>th</sup> CoC meeting held on 27.03.2019, the CoC was apprised about receipt of new EOI from M/s Mangalam Cement Ltd after the expiry of due date. This item kept for physical voting and the same has been approved with 86.47% and in this meeting notice period reduced to 1 day instead of 2 days.

2.16 In the 16<sup>th</sup> CoC meeting held on 01<sup>st</sup> April 2019, Resolution Professional informed CoC members about receipt of two resolution plans which were not in compliance with the IBC and RFRP conditions and hence it was held as invalid.

2.17 JMF ARC/ member of CoC filed an IA No. 266 of 2019 on 05<sup>th</sup> Apr 2019 seeking extension of CIRP period beyond 270 days and exclusion of 135 days period on the ground that Mining licences got renewed only on 08<sup>th</sup> January 2019. Further sought additional 147 days as alternative or in addition to the above 135 days on account of



pendency of IA No.551 of 2018 before this Tribunal. IA No.266 of 2019 was dismissed for dearth of valid grounds.

- 2.18 When Resolution Professional failed to receive any resolution plan in spite of extension of EOI dates and Resolution Plan submission dates several times, he was left with no other option but to file Liquidation application before this Tribunal on 05.04.2019
- 2.19 In the meantime, aggrieved by the order passed in IA 266 of 2019 by this Tribunal, JMF ARC, FC and COC member preferred appeal to Hon'ble NCLAT, New Delhi against the said order and Hon'ble NCLAT, New Delhi has passed an order on 18<sup>th</sup> July 2019, which was disposed of, inter-alia, directing the CoC to take advantage of the amendment which allowed 330 days in place of 270 days CIRP Period.
- 2.20 JMF ARC, and COC member filed IA No.560 of 2019 in pursuant to Hon'ble NCLAT, New Delhi order dated 18<sup>th</sup> July 2019 and IBC new amendments dated 16<sup>th</sup> Aug 2019 which was allowed by this Tribunal on 20.08.2019 by granting 90 days extension and further directed the RP to convene CoC meeting for placing the two resolution plans already received before CoC for deliberations.
- 2.21 In the 17<sup>th</sup> CoC meeting held on 25<sup>th</sup> July 2019 and 18<sup>th</sup> CoC meeting held on 13.08.2019, COC members deliberated on the order passed by Hon'ble NCLAT, New Delhi order dated 18<sup>th</sup> July 2019.
- 2.22 The 19<sup>th</sup> CoC meeting was held on 03.09.2019 where in CoC granted extension of time till 07.09.2019 to two Resolution Applicants for submitting EMD of Rs. 2 Crores
- 2.23 In the 20<sup>th</sup> CoC meeting held on 4<sup>th</sup> Oct 2019, RP Informed the CoC about remittance of Rs.2 crores by Consortium of Fortuna, Resolution Applicant. The 2<sup>nd</sup> Resolution

NDP

Applicant i.e. M/s Jasan Infra Private Limited vide email dated 10<sup>th</sup> Sep 2019, wanted site visit for bore drilling and analyzing of Lime stone mines for enabling it to finalize the Plan. Time was extended by CoC till 07.10.2019.

2.24 In the 21<sup>st</sup> CoC meeting held on 30<sup>th</sup> Oct 2019, RP, deliberated upon the various conditions put forth by the Consortium of Fortuna, Resolution Applicant and inter-alia asked to improve the consideration of Resolution Plan, which was not accepted by the Resolution Applicant, who in turn requested the CoC to return EMD and Performance Guarantee if the mining license is not renewed. However, Resolution professional and COC members did not accept the conditional plan.

2.25 In the meanwhile, the 2<sup>nd</sup> Resolution Applicant i.e. M/s Jasan Infra Private Limited informed the Resolution Professional vide email that they are in the process of submitting Rs.2.00 Crores towards EMD and requested time. Its request was conceded till 31.10.2019.


2.26 It is humbly submitted that, in the 21<sup>st</sup> CoC meeting held on 30<sup>th</sup> Oct 2019, the COC members reviewed the Resolution Plan submitted by M/s Jasan Infra Private Limited in terms of repayment, EMD of Rs.2 crores, terms of repayment along with the Valuation Report, etc. Nevertheless, the CoC approved the Resolution Plan submitted by *Consortium of Fortuna Engi Tech and Structuralis (India) Private Limited and its two promoters and Murgud Vincom Private Limited* with 99.53% voted in favour and 0.157% voted against and 0.317% abstained from voting. JM Financial ARC / Lead CoC Member informed that approval of Resolution Plan is subject to the following conditions only:





- i. With reference to clause 17 (d) of the Resolution Plan, management and control of Bheema Cements Ltd will be handed over to the Resolution Applicant post payment of Rs. 20 crore (as per clause 20.2) payable to the Secured Financial Creditors and post payment of Rs. 10 crores towards CIRP Cost and Other Creditors and from effective date to handover of management and control to the RA, the MC shall manage and control the CD.
  - ii. Secured Financial Creditors to have the right but no obligation to appoint up to 2 nominee directors on the board of the CD.
  - iii. Any realizations due to the reversal of following nature of transaction affected by the CD prior to effective date shall be for the benefit of the Secured Financial Creditors.
    - a. Fraudulent transactions
    - b. Preferential transactions
    - c. Extortionate transactions
    - d. Under Valued transactions
  - iv. The CD/RA to provide complete assistance to effect the recovery from transactions mentioned in point no.iii above at no additional cost or risk. Further the CD should transfer the said recoveries to the Secured financial creditors within 2 working days of the receipt of the same.
  - v. All expenses relating to the Corporate Debtor including MC expenses should be borne by the Resolution Applicant from the date of the Approval of the Resolution Plan by the Hon'ble NCLT, Hyderabad.
- 2.27 In the 22<sup>nd</sup> CoC meeting held on 08<sup>th</sup> Nov 2019, the COC members with 86.473% approved the following items:







i. Details of Resolution Plan consideration is as under:

S.No.	Particulars of Consideration	Rs. In Crores
1	Cash/Bank payment ( Principle)	190.00
2	Interest proposed	19.62
3	Shares to the Secured Financial Creditors	2.61
	<b>Total Resolution Plan Consideration</b>	<b>212.23</b>

ii. The details of admitted claims are as under:

Sl.No.	Description of the Payment	Admitted amount in Rs.
1	CLAIMS FROM SECURED FINANCIAL CREDITORS	4,92,11,41,105.94
2	CLAIMS FROM UN-SECURED FINANCIAL CREDITORS OTHER THAN PROMOTERS	3,89,32,985.00
3	CLAIMS FROM UN-SECURED FINANCIAL CREDITORS - PROMOTERS	2,78,32,758.00
4	CLAIMS FROM OPERATIONAL CREDITORS EXCEPT WORKMAN AND EMPLOYEES	85,47,95,817.65
5	CLAIMS FROM EMPLOYEES OTHER THAN PROMOTERS	3,90,88,742.00
6	CLAIMS FROM PROMOTERS (REMUNERATION)	4,70,51,168.00
7	CLAIMS FROM AUTHORISED REPRESENTATIVE OF WORKMEN AND EMPLOYEES	13,82,74,524.00
8	CLAIMS FROM OTHER THAN OPERATIONAL CREDITORS AND FINANCIAL CREDITORS	63,71,14,797.00
	<b>TOTAL PAYABLE</b>	<b>6,70,42,31,897.59</b>

Note: As per the GO No.1, 2 & 3 dated 08<sup>th</sup> Jan 2019  
of INDUSTRIES & COMMERCE (M.II)

*nmw*

*[Signature]*

DEPARTMENT, Government of Telangana, M/s.Bheema Cements Limited is due to pay Rs.9,40,97,694 being arrears for renewal of three mining licences. This amount is considered as part of the Government dues even though the list of the claims does not contain the same.

iii. Distribution of the consideration proposed as under:

S.No.	Description of the Payment	Liquidation Value U/s 53	Rs. in Crores
1	INSOLVENCY RESOLUTION PROCESS COST*	8.00	8.00
2	SECURED FINANCIAL CREDITORS (492.11:1.91)	Is as per point no.4	179.30
3	WORKER'S PRIORITY DUES IN PROPORTION TO THE SECURED FINANCIAL CREDITORS (492.11:1.91). Remaining workmen dues will be consider as paid or not to be paid or payable.	0.70	0.70
4	CLAIMS FROM UN-SECURED FINANCIAL CREDITORS OTHER THAN PROMOTERS	NIL	2.00#
5	CLAIMS FROM OPERATIONAL CREDITORS EXCEPT WORKMAN AND EMPLOYEES	NIL	
6	CLAIMS FROM EMPLOYEES OTHER THAN PROMOTERS	NIL	
7	CLAIMS FROM AUTHORISED REPRESENTATIVE OF WORKMEN AND EMPLOYEES OTHER THAN WORKER'S PRIORITY DUES.	NIL	
8	GOVERNMENT DUES INCLUDING ELECTRICITY & MINING RENEWAL DUES	NIL	
9	CLAIMS FROM UN-SECURED FINANCIAL CREDITORS - PROMOTERS	NIL	
10	SALARY CLAIMS FROM PROMOTERS	NIL	NIL
	<b>TOTAL PAYABLE</b>		<b>190.00</b>

iv. Distribution of the consideration between the Secured Financial Creditors proposed is as under:

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The distribution to the Secured Financial Creditors has been proposed in the ratio of 90:10 between the Term Loan lenders having First Charge on Fixed Assets of the CD and Working capital lenders having 2<sup>nd</sup> Charge on the Fixed Assets of the Company. The details of the % of the First Charge and Second Charge as under:

% Share in Total Debt	% in TL (1 <sup>st</sup> Charge)	% in WC (2 <sup>nd</sup> Charge)	% in Total Debt
JM - State Bank of Hyderabad	24.06%	0.31%	18.11%
JM - Axis Bank	19.59%	3.87%	15.65%
JM - ICICI Bank	15.65%	0.00%	11.73%
JM - United Bank	23.94%	0.00%	17.94%
JM - Karnataka Bank	13.94%	35.57%	19.36%
JM - Oriental Bank of Commerce	0.36%	16.35%	4.37%
Corporation Bank	2.46%	43.90%	12.84%
<b>Total</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>

A) **Cash/Bank Consideration** : Principle and Interest to the Secured Financial Creditors proposed as under:

S.No	Name of the Secured Financial Creditor	Resolution Plan Consideration ( Principle) in Rs.	Resolution Plan Consideration ( Interest) in Rs.
1	JMF Asset Reconstruction Company Limited	1,67,45,85,855	18,32,42,467.79
2	Corporation Bank	11,84,14,145	1,29,57,532.21
	<b>Total</b>	<b>1,79,30,00,000</b>	<b>19,62,00,000.00</b>

B) **Equity Consideration**: The Resolution applicant will subscribe new 3 crore equity shares of corporate Debtor of Rs. 30 crore (Rs. 10 per share, fully paid up). The secured financial Creditor's part of the dues will be

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converted into equity to the extent of 8% of total first time subscribed Equity Share capital i.e the Resolution Applicant share of equity will be 92% and Secured financial Creditors equity share will 8% on initial subscription of the Equity capital only. However at any time the Equity share capital of Secured financial Creditors should not exceed Rs.2.61 Crores i.e Equity shares of 26.1 lacs only. The Revised Equity structure would be as follows:

S.No.	Name of the Secured Financial Creditor	Share Capital not exceeding Rs. Cr	No. of Shares not exceeding( No in Lacs)
1	Resolution Applicants	30.000	300.000
2	JMF Asset Reconstruction Company Limited	2.436	24.360
3	Corporation Bank	0.174	1.740
	<b>Total</b>	<b>32.610</b>	<b>326.100</b>

v. Consideration payable as under:

a. The payment schedule is as under:

Particulars of Payment	Due from Effective Date in months	Rs. in Crores
1 <sup>st</sup> Installment	30 Days	10.00
2 <sup>nd</sup> Installment	3 months	20.00
3 <sup>rd</sup> Installment	16 months	50.00
4 <sup>th</sup> Installment	22 months	50.00
5 <sup>th</sup> Installment	28 months	60.00
<b>Total</b>		<b>190.00</b>

*AMW*

*[Signature]*

- vi. **Interest:**
- i. From the effective date till the date of the Commercial production date plus three months or 9 months whichever is earlier no interest will be charged.
  - ii. Interest @ 5% PA will be paid monthly from 10<sup>th</sup> month till 16<sup>th</sup> month and interest @ 6% PA to be accumulated from 10<sup>th</sup> Month till 16<sup>th</sup> month and paid in 28th month.
  - iii. Interest @ 11% PA will be paid monthly from 17<sup>th</sup> month till 28<sup>th</sup> month.
- vii. **Exemptions Sought (As per Clause 6 (a) of the Resolution Plan)** : The Resolution Applicant would strive to obtain the following exemptions however, receipt of these exemptions is not a pre-condition for the implementation of the Plan:
- As per current Government Orders dated January 08, 2019, Mining Lease (ML) I, ML II and ML III to be operationalized within 6 months from the date of the said orders. This period shall be extended to two years from the Effective Date.
  - All licenses and consent to operate for mines, plant, etc. to be made available within 2 months from the Effective Date.
  - Government to allot land for resettlement/ rehabilitation of patta holders in ML III.
  - Conversion of Prospecting License (PL) I (237 acres) to ML.
  - The High Tension power connection to be made available within 15 days from the Effective Date.






- 100% SGST reimbursement for a period of 10 years from the date of revival of commercial production.
  - 100% stamp duty and taxes exemption on transaction undertaken pursuant to approval of Plan by NCLT.
  - Supply of coal from Singareni coal mines at a rebate of Rs. 1000/- per tonne for 10 years.
  - Electricity duty exemption for 10 years.
  - Rebate in power tariff @ Rs. 3 /kWh for a period of 3 years.
  - Liquidation value of workmen, priority dues to be reimbursed by the Government.
  - All other past dues of workmen and employees to be paid or discharged as deemed appropriate by the Government.
  - All Government dues after waiver of penalties, interest, surcharge pertaining to Commercial Taxes department, Mining and Geology department, Power Discom (TSSPDCL) or any State Government entity to be settled in proportion to other Operational Creditors.
  - Full waiver of other contingencies and unconfirmed dues.
  - Capital Subsidy – 20% of investment subject to maximum of INR 15 crore subsidies.
  - The Resolution Plan and NCLT order resulting in charge in shareholding/control Corporate Debtor shall not trigger payment of any transfer charges.
  - CCI Approval, if required
  - FEMA/SAST approval, if required.
- viii. List of approvals/compliances required for revival of the Corporate Debtor:

It is submitted the Resolution Applicant would strive





to obtain the following approvals within a minimum period of 6 months from the Effective Date, however, receipt of these approvals is not a pre-condition for the implementation of the Plan:

- A. Mines department**
  - 1. Approval of Mining Plan
  - 2. Consent to operate
  - 3. Permission for use of Heavy Earth Moving Machinery
  - 4. Explosive license
  - 5. Pending compliances with IBM, Directorate General Mines Safety (DGMS), Explosive Department
- B. Environment**
  - 1. Consent to operate for ML I, II and plant
  - 2. Pending compliances of environment department
  - 3. Waste disposal plan clearance
  - 4. NOC from Forest Department for ML III
  - 5. Ground water withdrawal permission for plant and colony.
- C. BIS Approvals**
  - 1. BIS licenses to be renewed/obtained
- D. Weights and measurement approval**
  - 1. Calibration of weights and equipment wherever applicable
- E. Factory license renewal**
- F. Labor License renewal**
- G. Permission and clearance from Electrical Inspector**
- H. Obtaining HT power connection**
- I. Statutory approvals/compliance**
  - a. Compliance of PF and ESI

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*[Signature]*

b. Income tax

c. GST

J. Secretarial compliances

a. Corporate law

b. SEBI

4. COUNTER SUBMISSIONS:-

The Learned Counsel for Unsecured Financial Creditors have raised certain objections during oral submissions and urged this Tribunal to reject the plan. The objections inter-alia, raised in brief are as under:-

4.1 It is alleged Fortuna Engi Tech and Structurals (India) Private Limited has only one Director in the Company as per MCA Portal and tenure of other additional Director expired on 30.09.2019.

4.2 The second objection raised is that the Financial Statements of Fortuna Engi Tech and Structurals (India) Private Limited have not been audited which makes it ineligible to become Resolution Applicant.

4.3 It is alleged the reduction of share capital of the Corporate Debtor and suspension of Listing is in contravention of SEBI Regulations.

5. WRITTEN SUBMISSIONS BY RESOLUTION PROFESSIONAL

The Resolution Professional filed written submissions countering the allegations made by the Unsecured Financial Creditor and contested as under:-

5.1 According to the Applicant, Fortuna Engi Tech and Structurals (India) Private Limited is one of the four members of Consortium of approved Resolution Applicants. The Master Data was verified by Resolution Professional on 11.09.2019 which clearly depicts there

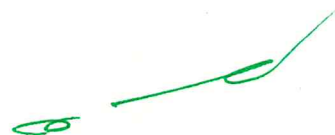




are 04 Directors in the Company. It is contended that the Resolution Applicant has furnished Affidavit declaring to the effect that they are eligible under Section 29A of the Code. By virtue of the fact that there is only one Director in the Company, is not a ground for ineligibility under Section 29A of IBC, 2016. The Company further declared that in the event of its ineligibility anytime in future, it would immediately bring to the attention of the Resolution Professional.

- 5.2 The Resolution Professional states that P. Murali & Co. Chartered Accountant has audited the Financials based on the Audited Financials of FY 2018 and issued certificate of the consortium of the Resolution Applicant which is filed in the Tribunal and copy of the same is attached at page Nos. 17-20.
- 5.3 The submissions made by the Resolution Professional is that the CoC approved Resolution Plan of Consortium of Fortuna which adheres to the provisions of Companies Act and SEBI viz, as per Clause 8 (v) of the approved Resolution Plan, fresh capital to the extent of Rs. 32.61 crores consisting of 3.261 lakhs Equity shares of the Corporate Debtor to be issued. As per Clause 8 (iv) of the Plan, listing of equity shares with BSE will be ensured by Resolution Applicant. Further in terms of Clause 8 (iv) of the Resolution Plan, the "Resolution Applicant confirms and declared that all provisions of any law for the time being in force have been complied and does not contravene any of the provisions of law for the time being in force". As such, it is reiterated that Resolution Applicant is eligible to participate in the Resolution process and in compliance as per Section 29A of IBC.

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6. **ADDITIONAL WRITTEN SUBMISSIONS BY RESOLUTION PROFESSIONAL**

Additional written submissions is filed by Resolution Professional on 06.01.2020 to bring to the notice of this Tribunal certain facts that transpired during the hearing held on 03.01.2020, wherein the Resolution Professional has cited justification for CoC's approval of fee of Rs. 50 lakhs including out of pocket expenses for seven member team for 19 months to MSKM Insolvency Resolution Services Private Limited which provided support services to Resolution Professional during CIRP period, as under:-

- (a) Huge claims (approximately 950 claims in number) were required to be collated and verified.
- (b) Around 35 interlocutory Applications were filed and dealt with before this Tribunal and Appellate Tribunal and no separate legal counsel was engaged.
- (c) The IRP/RP has only engaged the services of Professional without delegating the responsibilities to other Insolvency Professional, which is permissible as per the Code.

**FINDINGS**

7. We have heard the Counsel for Resolution Professional. This Application is filed under Sections 30 (4) and 31 (1) of Insolvency & Bankruptcy Code, 2016 (herein after referred to as "CODE") for approval of the Resolution Plan submitted by *Consortium of Fortuna Engi Tech and Structural (India) Private Limited, T. Raja Kishore, Prasanna Sai Raghuvver Kandula, Promoter of Fortuna and Murgud Vincom Private Limited* (Consortium of Fortuna /"Resolution Applicant").





8. The Learned Senior Counsel for Applicant stated that, two Registered Valuers viz, GAA Advisors LLP & RBSA were appointed on 12.08.2018 & 21.08.2018 to determine the fair value and liquidation value of the Corporate Debtor. The Fair value was fixed at Rs.344.19 crores and the Liquidation value at Rs.194.29 crores. In all, the Applicant conducted 22 CoC meetings. After granting extension of 90 days and exclusion of time, the CIRP came to an end on 13.11.2019.
9. The Resolution Plan submitted by Consortium of Fortuna (“Resolution Applicant”) was approved by CoC with 99.53% voting in favour of it. The minutes of the 21<sup>st</sup> meeting of the COC held on 30.10.2019 is filed at page Nos 280-292. The list of Financial Creditors of the Corporate Debtor and their distribution of voting share is as under:-

Sl. No.	Particular	Infavour (%)	Against (%)	Not voted (%)
1	J M Financials	86.473		
2	Corporation Bank	12.742		
3	R V Consulting	0.311		
4	Jai Hanuman Corp		0.157	
5	Thanguturi Venkataratnama			0.003
6	Maddali Subramanyam			0.006
7	Atmakuru Santosh			0.031
8	Gonugunta Vivekananda			0.052
9	Lebakula Manjula			0.004
10	Pothuganti Alekhya			0.019
11	Pothuganti Srikanth			0.005
12	Sivada Rama Subbareddy			0.007
13	Tanguturi Syamala			0.022
14	Thanguturi Sivaprasad Rao			0.024
15	Gurijala Krishna Rao			0.004
16	Kunchu Radha Krishna			0.003
17	Pokuri Subbarao			0.008

*NRW*

*[Signature]*

18	Kamma Satyanarayana Vara prasad			0.007
19	Saleti Venkata Narasaiah			0.004
20	Vemireddy Sharath kumar Reddy			0.002
21	Amara Krishna Chaitanya			0.024
22	Amara Venkata Satyanarayana			0.028
23	Kankipati Haribabu			0.01
24	Tanguturi Rajagopal			0.004
25	Thanguturi venugopala Krishna			0.031
26	N. Viswanathan			0.019
	<b>Total</b>	<b>99.526</b>	<b>0.157</b>	<b>0.317</b>

10. The Resolution Professional has furnished certificate in Form-H as per Regulation 39 of CIRP Regulations, 2016. The amounts provided for the stakeholders under the Resolution Plan is as under:-

(Amount/Rs in lakhs)

Sl. No.	Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1.	Secured Financial Creditors	4,92,11,41,105.94	4,92,11,41,105.94	201.53 including interest and FV of shares	40.95%
2.	Unsecured Financial Creditor -promoters	7,95,61,122.00	2,78,32,758.00	Nil	0.00%
	Salaries/remuneration of promoters	5,55,92,396.68	4,70,51,168.00	Nil	0.00%
3.	Operational creditors	1,49,43,53,644.23	85,47,95,817.65		
	Government & others	65,84,38,558	63,71,14,797.00	2.70 including Rs. 0.70 crores for workmen priority dues	1.58%. This is only estimate due to change in CIRP costs.
	Workmen & Employees	22,15,98,854.89	17,73,63,266.00		
	Unsecured Financial Creditors other than	4,79,26,053.00	3,89,32,985.00		
	<b>Total</b>	<b>7,47,86,11,734.74</b>	<b>6,70,42,31,897.59</b>	<b>212.23</b>	<b>31.66%</b>

11. The Resolution professional has furnished the details of resolution plan consideration which is as follows:-

*new*

*[Handwritten signature]*

S.No.	Description of the Payment	Liquidation Value U/s 53	Rs. in Crores
1	INSOLVENCY RESOLUTION PROCESS COST*	8.00	8.00
2	SECURED FINANCIAL CREDITORS (492.11:1.91)	Is as per point no.4	179.30
3	WORKER'S PRIORITY DUES IN PROPORTION TO THE SECURED FINANCIAL CREDITORS (492.11:1.91). Remaining workmen dues will be consider as paid or not to be paid or payable.	0.70	0.70
4	CLAIMS FROM UN-SECURED FINANCIAL CREDITORS OTHER THAN PROMOTERS	NIL	2.00#
5	CLAIMS FROM OPERATIONAL CREDITORS EXCEPT WORKMAN AND EMPLOYEES	NIL	
6	CLAIMS FROM EMPLOYEES OTHER THAN PROMOTERS	NIL	
7	CLAIMS FROM AUTHORISED REPRESENTATIVE OF WORKMEN AND EMPLOYEES OTHER THAN WORKER'S PRIORITY DUES.	NIL	
8	GOVERNMENT DUES INCLUDING ELECTRICITY & MINING RENEWAL DUES	NIL	
9	CLAIMS FROM UN-SECURED FINANCIAL CREDITORS – PROMOTERS	NIL	NIL
10	SALARY CLAIMS FROM PROMOTERS	NIL	
	<b>TOTAL PAYABLE</b>		<b>190.00</b>

12. The details of admitted claims are shown below:-

Sl.No.	Description of the Payment	Admitted amount in Rs.
1	CLAIMS FROM SECURED FINANCIAL CREDITORS	4,92,11,41,105.94
2	CLAIMS FROM UN-SECURED FINANCIAL CREDITORS OTHER THAN PROMOTERS	3,89,32,985.00

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*[Signature]*

3	CLAIMS FROM UN-SECURED FINANCIAL CREDITORS - PROMOTERS	2,78,32,758.00
4	CLAIMS FROM OPERATIONAL CREDITORS EXCEPT WORKMAN AND EMPLOYEES	85,47,95,817.65
5	CLAIMS FROM EMPLOYEES OTHER THAN PROMOTERS	3,90,88,742.00
6	CLAIMS FROM PROMOTERS (REMUNERATION)	4,70,51,168.00
7	CLAIMS FROM AUTHORISED REPRESENTATIVE OF WORKMEN AND EMPLOYEES	13,82,74,524.00
8	CLAIMS FROM OTHER THAN OPERATIONAL CREDITORS AND FINANCIAL CREDITORS	63,71,14,797.00
	<b>TOTAL PAYABLE</b>	<b>6,70,42,31,897.59</b>

13. The Resolution Professional has also furnished the payment schedule as under:-

Particulars of Payment	Due from Effective Date in months	Rs. in Crores
1 <sup>st</sup> Installment	30 Days	10.00
2 <sup>nd</sup> Installment	3 months	20.00
3 <sup>rd</sup> Installment	16 months	50.00
4 <sup>th</sup> Installment	22 months	50.00
5 <sup>th</sup> Installment	28 months	60.00
<b>Total</b>		<b>190.00</b>

14. It is also stated by the Resolution Professional that the interests of existing shareholders were altered by the Resolution Plan as under:-

Sl. No	Category of Share holder	No. of shares held before CIRP	No. of shares held after the CIRP	Voting share (%) held before CIRP	Voting share (%) held after CIRP
1	Equity	2,83,08,000	Nil	100%	Nil
2	Preference	2,73,95,600	NA	NA	NA





It is further stated, the Issued share capital i.e. Rs. 55,70,35,600 of the Corporate Debtor shall be reduced to 2 equity shares of Rs.10 each without any consideration payable to the existing shareholders adhering to the provisions of the Companies Act and SEBI Act. It is further averred that the equity shareholding of the Corporate Debtor post capital reduction would be as follows:-

Category of shareholder	No. of shares
Promoter group	01
Public and Individuals	01

The Applicant further avers that immediately post completion of the capital reduction, the above mentioned shares shall be transferred to the Resolution Applicant and / or persons to be identified by the Resolution Applicant for no consideration. Timeline for capital reduction is within three months from the date of approval of the Plan by this Tribunal.

15. A memo dated 12.11.2019 is filed by the Resolution Professional stating that an amount of Rs. 10,00,00,000/- (Rs. Ten Crores only) towards Performance Security is converted into Fixed Deposit Account No. 50300387639491 in HDFC Bank, Punjagutta Branch, Hyderabad for a period of 28 months (implementation period).
16. The said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations,



2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.

17. The Resolution Applicant / Consortium of Fortuna has submitted an affidavit in terms of section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.
18. The Monitoring Committee comprising of two representative/nominee of Resolution Applicant, representative of Secured Financial Creditors and Resolution Professional will monitor the implementation of the plan after the effective date and until closing date.
19. The Resolution Plan has been approved by members of CoC having voting share of more than 99%. The Resolution Applicant has sought certain exemptions. Most of the exemptions are to be considered by the appropriate authorities concerned. It is open to the Resolution Applicant to approach the authorities concerned to seek exemptions/ waiver, if any and it is for the authorities to act accordingly. As far as tax dues are concerned, the resolution plan binds on the authorities concerned as per amended provision Section 31 (1) of the Code. As per the amendment of Section 31 (1), the Resolution Plan is binding on the central Government, any State Government or any Local Authority to whom a debt in respect of the payment of dues arising under any law for time being in force such as authorities to whom statutory dues are owed. So, the exemptions sought in the Resolution Plan are subject to the provisions of Section 31 (1) of the Code as amended wherever applicable.





20. Further the Learned Counsel for the Applicant stated that the Resolution Plan takes care of the interest of the stakeholders concerned which includes Financial Creditors, Operational Creditors as well as workmen and employees of Corporate Debtor and a provision is made for payment of CIRP costs. The bid amount is above the Liquidation Value.
21. The creditors have filed Applications bearing IA No. 24/2020 and IA No. 25/2020. Both the Applications were disposed of. Same objection is also raised against the Resolution Plan. The Resolution Professional has filed necessary documents and we are convinced that the Resolution Plan filed by the Resolution Applicant is in accordance with the provisions of the Code and that the Resolution Applicant is qualified to file the Resolution Plan.

### ORDER

22. As a sequel to above, the, Resolution plan submitted by Consortium of Fortuna Engi Tech and Structural (India) Private Limited, T Raja Kishore, Prasanna Sai Raghuvier Kandula, Promoter of Fortuna and Murgud Vincom Private Limited (Consortium of Fortuna /"Resolution Applicant") which is approved by members of CoC having 99.53% voting share stands **approved** as per Section 31 (1) of the Code. In other words we are satisfied with the Resolution Plan as approved by Committee of Creditors under Section 30 (4) of the Code and it meets the requirement as referred to in Section 30 (2) of IBC, 2016. Accordingly, the Resolution Plan stands approved and the same is binding on Corporate Debtor, its employees, Members, Creditors including the Central Government, any State Government or any Local

*Arora*

*[Signature]*

Authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, Guarantors and stakeholders involved in the Resolution Plan in terms of Section 31 (1) of the Code.

23. The moratorium order passed under Section 14 shall cease to have effect from today.
24. The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Board to be recorded on its database.
25. The Resolution Applicant shall obtain necessary approval required under any law for the time being in force within a period of one year from the date of approval of the Resolution Plan or within such period as provided for in such law.
26. The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and to IBBI.
27. In terms of above, IA 1065/2019 filed by Resolution Professional under Section 30 (6) and 31(1) of IBC, for approval of Resolution Plan stands disposed of.

  
11.2.2020  
NARENDER KUMAR BHOLA  
MEMBER (TECHNICAL)

  
11.2.2020  
RATAKONDA MURALI  
MEMBER (JUDICIAL)