

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT III

I.A. 1661/2023

In

C.P. No. (IB) 3794/MB/C-III/2019

*Under Section 30(6) of the Insolvency and
Bankruptcy Code, 2016*

Mr. Bijendra Kumar Jha

*Resolution Professional of Neptune
Developers Limited*

Having office at:

2B/804, Dreams Complex, LBS Marg,
Bhandup (West), Mumbai – 400078

... Applicant

In the matter of

Central Bank of India

... Financial Creditor

Vs

Neptune Developers Limited

... Corporate Debtor

Order pronounced on: 25.03.2025

Coram:

Sh. Hariharan Neelakanta Iyer
Member (*Technical*)

Ms. Lakshmi Gurung
Member (*Judicial*)

Appearances:

For the Applicant/RP : Adv. Shyam Kapadia a/w Adv. Nishit
Dhruva, Adv. Niyati Merchant i/b MDP Legal

For the SRA : Adv. Ayush Rajani i/b AKR Legal



Per: Ms. Lakshmi Gurung, Member (Judicial)

ORDER

1. The present application was filed by Mr. Bijendra Kumar Jha, Resolution Professional of Neptune Developers Limited (**Corporate Debtor**) on 18.04.2023 under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (**Code**) seeking approval of the Resolution Plan for the Corporate Debtor submitted by Shree Naman Developers Private Limited (**Successful Resolution Applicant/SRA**) which was approved by the Committee of Creditors (CoC) by 85.35% voting at its 9th Meeting which was held on 31.03.2023. The prayer in the present application is extracted below:
 - a) *To allow the present Application;*
 - b) *To approve the Resolution Plan of the Successful Resolution Applicant (Shree Naman Developers Pvt Ltd) as agreed upon by the requisite majority of CoC by 85.35% votes as per the provisions of the Code;*
 - c) *To grant reliefs and concessions as envisaged in the Resolution Plan;*
 - d) *Any other order that the NCLT may find fit in the facts and circumstances of the present case.*

Facts of the Case, in brief:

2. Upon an application under section 7 of the Insolvency and Bankruptcy Code, 2016 (**the Code**) filed by the Central Bank of India, the Corporate Insolvency Resolution Process (**CIRP**) of Neptune Developers Limited/Corporate Debtor was initiated by this Tribunal vide Order dated 16.07.2021 and Mr. Vijay Lulla was appointed as the Interim Resolution Professional (**IRP**).



3. **Constitution of Committee of Creditors (CoC)**

3.1 The IRP made public announcement on 26.07.2021 under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**'CIRP Regulations'**) in two newspapers, namely, *Free Press Journal* and *Navakal* for inviting claims from the creditors of the Corporate Debtor.

3.2 The IRP, in compliance with Regulation 17(1) of the CIRP Regulations, filed the report certifying the constitution of Committee of Creditors on 18.08.2021 and as on that date, the IRP had received claims from 3 secured financial Creditors, 3 unsecured financial creditors and 350 class of creditors being the homebuyers.

3.3 Accordingly, the Committee of Creditors (CoC) was constituted and the 1st CoC meeting was held on 26.08.2021.

4. **Appeal against the Admission Order**

4.1 In the meantime, the admission order was challenged before the Hon'ble NCLAT, but no interim stay was granted. The order of Hon'ble NCLAT was challenged before the Hon'ble Supreme Court and vide order dated 27.08.2021, the Hon'ble Supreme Court had granted interim stay on CIRP proceedings for 8 (eight) weeks. The stay was allowed to be continued vide order dated 25.02.2022 until disposal of the appeal pending before Hon'ble NCLAT.

4.2 The appeal was finally disposed of vide order dated 10.06.2022 whereby the Hon'ble NCLAT upheld the admission order. According to the averment in the application, an appeal was preferred before the Hon'ble Supreme Court which is still pending. However, there is no stay on the proceedings before this Tribunal.

5. **Resumption of CIRP of Corporate Debtor**

5.1 The IRP re-convened the 1st CoC Meeting on 24.06.2022 wherein *inter alia* the fees of valuers and statutory auditors was approved by the CoC.



Further, the CoC also passed resolution for replacement of the IRP and resolved to appoint Mr. Bijendra Jha as the Resolution Professional (RP). Accordingly, Mr. Bijendra Jha (**Applicant**) was appointed as the RP of the Corporate Debtor vide order dated 29.07.2022.

6. The latest list of members of the CoC as stated in the application is as follows:

(Amount in Crores)

Sr. No.	Name of the Financial Creditor	Amount Claimed	Admitted Claim	Voting %
1	Assets Care & Reconstruction Enterprise Limited (ACRE)	1170.69	1170.69	54.95%
2	Central Bank of India	251.99	251.99	11.83%
3	Catalyst Trusteeship Limited	94.60	94.60	4.44%
4	Tomorrow Capital Enterprises Private Limited (Lodha Finserv Private Limited)	60.13	60.13	2.82%
5	Edelweiss Asset Reconstruction Company Limited (EARC)	364.74	364.74	17.12%
6	Axis Bank Limited	18.84	18.84	0.89%
7	Mangal Royal Jewels Private Limited	24.50	24.50	1.15%
8	Duddu Fin-Lease Limited	15.56	15.56	0.73%
9	Class of Creditors – Home Buyers	193.81	118.20	6.07%
	Total	2,194.83	2,119.22	100%

7. **Valuation of Corporate Debtor**

- 7.1 The RP/Applicant, in accordance with Regulation 35 of the CIRP Regulations, 2016 appointed Registered Valuers for determining the Fair Value and Liquidation Value of the Corporate Debtor. The appointment of the Valuers was approved by the CoC in the 1st CoC meeting on 24.06.2022 as follows:



Sr. No.	Name of Valuers	Assets
1	Adroit Appraisers and Research Pvt. Ltd.	All classes of Assets
2	Mr. Kunal Vikamsey	Land & Building and Plant & Machinery
3	Mr. Jayesh Shah	Securities and Financial Assets

7.2 The Average Fair Value of the Corporate Debtor is Rs. 433.25 crores and the Liquidation Value of the Corporate Debtor is Rs. 313.31 crores, as provided in the Form H submitted by the RP.

7.3 It is pertinent to note here that the Valuation pertaining to one of the projects of the Corporate Debtor namely, Project Swarajya, conducted by Adroit Appraisers and Research Pvt. Ltd. and Mr. Kunal Vikamsey was challenged by Central Bank of India by IA/2694/2023 which shall be discussed in the later part of this order.

8. ***Appointment of IPE & Transaction Auditor***

8.1 The RP, in the 3rd CoC meeting held on 30.08.2022, proposed the appointment of Transaction Auditor, Insolvency Professional Entity, and Legal Representatives/Counsels and other professionals.

8.2 In the 4th CoC meeting held on 16.09.2022, CoC approved the name of M/s Pitlia & Co as Transaction Auditor and accordingly, the RP appointed M/s Pitlia & Co as the Transaction Auditor to conduct transaction audit of the accounts of the Corporate Debtor to determine any avoidable transactions under sections 43, 45, 50 and 66 (**PUFE Transactions**) of the Code. The RP submits that no PUFE transactions has been determined by the Transaction Auditor or the RP.



9. ***Expression of Interest***

9.1 At the 4th CoC Meeting held on 16.09.2022, the RP also placed the draft Form G for invitation for Expression of Interest (EoI) for discussion and approval of CoC. In the said meeting, the CoC also discussed the eligibility criteria of the Prospective Resolution Applicants (PRAs).

9.2 Thereafter, in terms of Section 25(2)(h) of the IBC, the RP made public announcement inviting Expression of Interest (EoI) on 23.09.2022 followed by an extension dated 21.10.2022. The last date to receive EoI from interested Prospective Resolution Applicants (PRAs) was 18.11.2022.

10. ***Information Memorandum & Request for Resolution Plan (RFRP)***

10.1 The Information Memorandum (IM) and Request for Resolution Plan (RFRP) as approved by the CoC at the 6th CoC Meeting held on 11.11.2022 were issued by the RP to the PRAs.

10.2 As per the RFRP, the Prospective Resolution Applicants (PRAs) had to provide Earnest Money Deposit (EMD) of Rs. 2,50,00,000/- upfront or in the form of Bank Guarantee issued by public sector bank (non-interest bearing) and refundable in case of non-selection of the resolution plan.

11. ***Resolution Plans submitted for the Corporate Debtor***

11.1 Pursuant to the issuance of Form G, the RP received EoIs from 11 Prospective Resolution Applicants (PRAs). The last date for submission of resolution plans was fixed as 23.12.2022.

11.2 The RP apprised the CoC that 3 (three) resolution plans were received respectively from (i) KGK Reality (India) Private Limited & Eka Life Limited, (ii) Ess Gee Real Estate Developers Private Limited, and (iii) Shree Naman Developers Private Limited. The three PRAs submitted their plans along with payment of applicable EMD.



11.3 In the 7th CoC Meeting held on 16.01.2023, the Resolution Applicants were invited and the CoC had negotiations on commercial and technical terms and subsequently, the Resolution Applicants were given time to submit modified/revised plans.

11.4 Thereafter, modified resolution plans were received from all the three Resolution Applicants on 15.02.2023. The CoC discussed and sought further clarifications from the Resolution Applicants to which reply/clarification was given by the Resolution Applicants on 10.03.2023 and 13.03.2023 which was placed before the CoC.

11.5 In the 8th CoC Meeting held on 06.03.2023, the RP placed before the CoC the list of Interlocutory Applications pending before this Bench. Further, two of the three Resolution Applicants attended the meeting to provide clarifications on their modified resolution plans. In the said meeting, the CoC also approved the tie-breaker formula.

12. **Approval of the Resolution Plan by CoC**

12.1 In the 9th CoC Meeting held on 16.03.2023, the modified resolution plans of the three Resolution Applicants were placed before the CoC for approval. The e-voting commenced on 20.03.2023 and was scheduled to be closed on 27.03.2023. However, on requests of the Central Bank of India, the e-voting window was kept open till 7 PM of 31.03.2023.

12.2 The voting results are as follows:

Sr. No.	Resolution Plan of RAs	Yes %	No %	Abstain %	Did not vote %
1	KGK Reality (India) Private Limited & Eka Life Limited	24.33%	63.84%	0%	11.83%
2	Ess Gee Real Estate Developers Private Limited	24.33%	63.84%	0%	11.83%



3	Shree Naman Developers Private Limited	85.35%	2.82%	0%	11.83%
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- 12.3 As can be seen from the above, the Resolution Plan submitted by M/s Naman Developers Pvt. Ltd. (**Successful Resolution Applicant/SRA**) was approved by the CoC by 85.35% of voting. Accordingly, the RP issued a Letter of Intent dated 03.04.2023 which has been duly and unconditionally accepted by the SRA.

Resolution Plan of Shree Naman Developers Pvt Ltd - SRA

13. Brief background of the SRA:

- 13.1 The Resolution Plan states that the Successful Resolution Applicant is involved in the real estate sector and has successfully conceived commercial projects for leading MNCs and Indian Corporate houses.
- 13.2 It is submitted that the Successful Resolution Applicant is not barred by Section 29A of the Code and an affidavit in this regard was also submitted by the Successful Resolution Applicant along with the Resolution Plan.

14. Salient Features of Resolution Plan:

- 14.1 As per Regulation 36B(4A) of the CIRP Regulations, the SRA deposited an amount of Rs. 20,00,00,000 (Rupees Twenty Crores Only) as performance guarantee in the form of Bank Guarantee from State Bank of India on 15.04.2023. The Resolution Plan value is **Rs. 390,65,20,693/-** and allotment of units to homebuyers.
- 14.2 Source of Funds as provided in the Resolution Plan:
The Resolution Applicant may invest or raise funds from its internal accruals and/or may raise capital by leveraging the assets of the Corporate Debtor and/or fulfil its financial obligation under the



Resolution Plan through sales realization by completing the Ramrajya project and/or development of any other asset of the Company and/or sale of certain identified assets of the Company and/or fulfil its financial obligations dilution of the equity stake and/or fulfil its financial obligations through Joint Venture with the third parties as the case may be. For sake of clarity, the Resolution Applicant shall either bring in or arrange funds in form of equity, equity linked or debt/quasi-debt or by way of loan from lenders such as financial institutions or bank and/or from its/their Affiliates /friends/ relatives or a combination thereof at its sole discretion. It is clarified that the Resolution Applicant will utilize the funds raised in accordance with the sanction letter issued by the Banks/Fis/Lenders.

14.3 *Financial Outlay under the Resolution Plan*

14.3.1. The **Effective Date** is defined as “*later of the date of approval of Plan by the Adjudicating Authority or receipt of the Certified Copy of the Adjudicating Authority Order approving the Plan*”. **Transfer Date** is “*the date of making total Upfront Payment in accordance with this Resolution Plan i.e., 45 days from the Effective Date.*”

14.3.2. In accordance with Regulation 38(1-A) of the IBBI Rules, 2016, the statement showing the treatment given to the stakeholders as stated in Form H is given below:

Sr. No.	Category of Creditors	Amount Admitted	Amount under Plan	%
1	CIRP Costs	6,50,00,000	At Actuals subject to cap of Rs. 9,00,00,000	100%
2	<u>Financial Creditors</u>			
	<i>Secured Financial Creditors</i>	15,77,41,33,547	3,69,78,72,378*	23.32%
	<i>Unsecured Financial Creditors</i>	4,23,64,43,635	2,25,00,000	0.53%



	<i>Class of Creditors- Home Buyers</i>	93,70,09,918	Allotment of sold units to Home buyers on terms and conditions envisaged under the Resolution Plan	NA
3	<u>Operational Creditors</u>			
	<i>Employees & Workmen dues</i>	29,12,305	29,12,305	100%
	<i>Government Dues</i>	21,11,60,523	3,80,08,894	17.99%
	<i>Others</i>	10,10,46,314	15,00,000	1.48%
4	Other Creditors	23,65,078	15,14,712	64.04%
5	Refund to Cancelled Creditors	5,50,87,479	5,50,87,479	100%
6	PF, ESI and Gratuity Dues	1,71,24,925	1,71,24,925	100%
	Grand Total	21,40,22,83,724	3,90,65,20,693	18.25%**

*The payment to the secured financial creditors includes the upfront payment of Rs. 60,22,74,478/- as well as the payment by way of issuance of Non-Convertible Debentures.

**Excluding the flats offered to homebuyers.

14.3.3. **CIRP Costs**

- i. The Resolution Plan states that the estimated Insolvency Resolution Process Costs (**CIRP Cost**) is Rs. 6,50,00,000 crores. The SRA has provided for payment of entire CIRP Costs at actuals capped at Rs. 9,00,00,000 and the same shall be made within 45 days from the Effective Date.



- ii. The Resolution Plan states that any amount accrued as CIRP costs which is over and above Rs. 9 crores shall be deducted from the pay-out proposed to be paid to the Secured Financial Creditors.

14.3.4. **Financial Creditors**

A. Secured Financial Creditors

- i. The Resolution Plan of the SRA has been approved by the CoC by 85.35% of voting. Central Bank of India (**Central Bank**) holding 11.83% of voting in the CoC had abstained from voting the resolution plan while Tomorrow Capital Enterprises Private Limited (**Tomorrow Capital**) casted a dissenting vote.
- ii. The Resolution Plan proposed payment to secured financial creditors to be paid, in the following manner:

Name of Creditor	Admitted Claim	Proposed Payment	%
Assets Care & Reconstruction Enterprise Limited	11,70,68,76,456	48,34,41,620 2,93,46,80,755 (NCDs)	29.21%
Central Bank of India	2,51,99,29,090	9,00,00,000	3.59%
Catalyst Trusteeship Limited	94,59,83,000	40,00,000	0.44%
Tomorrow Capital Enterprises Private Limited (Lodha Finserv Private Limited)	60,13,45,001	2,48,32,858 13,84,17,145 (NCDs)	27.16%
Total	15,77,41,33,547	3,67,78,72,378	23.32%

- iii. The Resolution Plan proposed to pay out cash towards the claims of secured financial creditors except with respect to two secured creditors i.e. ACRE and Tomorrow Capital who shall, besides getting the upfront payment, be allotted Non-Convertible Debentures (NCDs) in the following terms:



- *Non-Convertible Debentures - 1*

The Resolution Plan proposes to issue Non-Convertible Debentures (NCDs 1) of Rs. 2,03,30,97,900 divided into 2,03,30,979 debentures of face value of Rs. 100 each at the rate of 11% (IRR), redeemable at the end of 4 (four) years from the date of allotment. The NCDs will be issued to the Secured Financial Creditors mainly for Core Assets (i.e. Ramrajya) to be adjusted against their claims:

Name of Creditor	No. of NCDs	Proposed NCD Amount (In Rs.)
Assets Care & Reconstruction Enterprise Limited	1,93,37,665	1,93,37,66,500
Tomorrow Capital Enterprises Private Limited (Lodha Finserv Private Limited)	9,93,314	9,93,31,400

- *Non-Convertible Debentures – 2*

The Resolution Plan proposes to issue Non-Convertible Debentures (NCDs 2) of Rs. 80,00,00,000 divided into 80,00,000 debentures of face value of Rs. 100 each at the rate of 11% (IRR), redeemable at the end of 4 (four) years from the date of allotment to ACRE and Tomorrow Capital for other non-core asset i.e. Land at Pune in proportion to their claims admitted by the RP.

- *Non-Convertible Debentures – 3*

The Resolution Plan proposes to issue Non-Convertible Debentures (NCDs 3) of Rs. 24,00,00,000 divided into 24,00,000 debentures of face value of Rs. 100 each at the rate of 9% (IRR), redeemable at the end of 4 (four) years from the date of allotment to ACRE for other non-core asset i.e. Land at Vizag in proportion to their claims admitted by the RP.



- iv. It is stated in the Resolution Plan that the continuing secured lender(s) shall have a residual charge on the project assets and shall cease First Charge to the incoming new lender(s)/financer(s). The continuing secured lender(s) such as ACRE and Tomorrow Capital shall get 10% of the monies from the collection/receivables of the Ramrajya project in proportion to the claims admitted by the RP.
- v. It is further stated that an amount of Rs. 25,00,000/- shall be paid within 45 days from the Effective Date in proportionate to the claim of Secured Financial Creditors admitted by the RP towards other Non-Core Assets such as Land at Chennai, Nagpur and Kochi.

B. Dissenting Financial Creditors

- i. The Resolution Plan states that the dissenting Financial Creditors (who are not related parties) will be paid as per section 30 of the Code and Regulation 38(1)(b) of the CIRP Regulations within 45 days from the NCLT Approval Date.
- ii. As we had already noted that Tomorrow Capital did not vote in favour of the Resolution Plan and accordingly, the claim of Tomorrow Capital has to be treated in accordance with section 30 of the Code.
- iii. During the hearing on 31.01.2025, this Tribunal has sought clarification on the same, the relevant paragraph of the order dated 31.01.2025 is extracted below:

“Tomorrow Capital Enterprises Private Limited is a dissenting secured Financial Creditor and the amount allotted to it is NCDs to be paid within 4 years. However, elsewhere in the plan it is mentioned that the dissenting Financial Creditor shall be paid as per Section 30 of the



Code and Regulation 38(1)(b) of the CIRP Regulation within 45 days from the approval of the plan in full and final settlement, which will bring down the overall value of the Resolution Plan. The Applicant/SRA to clarify the same.”


- iv. The RP filed additional affidavit dated 06.02.2025 providing the following explanation and clarification:
- a) The Liquidation Value of Tomorrow Capital Enterprises Private Limited as on March 2023 is Rs. 11.83 crores. Thus, this amount would have to be paid within 45 days from the approval of the Resolution Plan.
 - b) The Resolution Plan provides for Rs. 16.33 crores in the form of upfront cash of Rs. 2.49 crores and NCDs of Rs. 13.84 crores repayable over a period of 4 years. However, since Tomorrow Capital is a dissenting financial creditor, they would be paid the liquidation value as on the date of approval of the Resolution Plan.
 - c) It is submitted that the actual amount of Liquidation Value would depend on the amount calculated on the date of approval of Resolution Plan as CIRP costs undergo change. In the present case, the CoC had agreed to pay interest to the CoC Members who infuse funds towards meeting the CIRP Expenses. Thus, interest would be part of the CIRP cost and Liquidation Value would be calculated as and when the Bench approves the Resolution Plan.
- v. The affidavit dated 06.02.2025 and the submissions of the RP are taken on record.



C. Central Bank of India

- i. As we have already mentioned in Para 7.3 above, the Central Bank of India, being one of the secured financial creditors of the Corporate Debtor, had filed IA/2694/2023 challenging the valuations done by Adroit Appraisal Private Limited and Mr. Kunal Vikamsey (together referred to as '**Registered Valuers**') with respect to Project Swarajya of the Corporate Debtor over which Central Bank holds a security charge.
- ii. The Central Bank of India abstained from voting on the Resolution Plan and therefore, is liable to be paid its liquidation value as provided under section 30 read with section 53 of the Code. Since the Resolution Plan was prepared based on the valuation reports issued by the Registered Valuers, Central Bank of India objected to the approval of the resolution plan by the CoC which was also a submission by Central Bank in IA/2694/2023.
- iii. This Tribunal, vide order dated 21.01.2025, partly allowed the IA/2694/2023 and directed for a third valuation of Project Swarajya.
- iv. We observe that pursuant to the order dated 21.01.2025 passed in IA/2694/2023, the RP convened the 10th CoC Meeting on 24.01.2025. The following extract in the minutes of the meeting is relevant and is reproduced below:

“The representatives of CBOI stated that it is due to the discrepancies in valuation that the NCLT has ordered third valuation and hence, the CoC must wait until the third valuation is concluded. They stated that there are cancelled flats and the valuation of the same needs to be taken into account. The RP stated that more than 3500 home buyers are suffering for last 2 years. He then presented the final



written submission tendered by CBOI before the Tribunal which stated that as per the third valuation conducted by them, the liquidation value is about Rs. 26.83 crores. The RP further stated that the value of the cancelled flats had already been accounted in the final written submission made by CBOI before the Tribunal. Further, since they are Dissenting Financial Creditors, they would be entitled to liquidation value. Furthermore, since the maximum liquidation value receivable by CBOI was Rs. 26.83 crores and if the same was kept aside from the plan value, then the interest of CBOI could be protected. The representative of EARC stated that the money kept aside can be distributed as per the order of Hon'ble Tribunal.”

- v. Thereafter, the CoC, by 78.14% of voting, passed the following resolution:

“RESOLVED THAT *the RP be and is hereby authorized to apprise the Bench of the decision of the Committee of Creditors of Neptune Developers Limited of setting aside Rs. 26.83 crores being the disputed liquidation value of the security charged to Central Bank of India (Swarajya).”*

- vi. When the matter was listed for hearing on 31.01.2025, Adv. Rathina Maravarman, appearing for the Central Bank of India, agreed to the setting aside of Rs. 26.83 crores, being the (disputed) liquidation value of security held by Central Bank in Project Swarajya, towards the settlement of the claims of Central Bank of India which is a dissenting secured financial creditor.



D. Unsecured Financial Creditors

The Resolution Plan envisages an upfront payment of Rs. 2,25,00,000 to the unsecured financial creditors within a period of 45 days from the Effective Date, in the following terms:

Name of Creditor	Admitted Claim	Proposed Payment	%
Edelweiss Asset Reconstruction Company Ltd	3,64,74,02,691	1,93,71,569	0.53%
Mangal Royal Jewels Pvt. Ltd.	24,50,33,973	13,01,390	0.53%
Axis Bank Ltd.	18,84,41,217	10,00,822	0.53%
Duddu FinLease Limited	15,55,65,754	8,26,219	0.53%
Total	4,23,64,43,635	2,25,00,000	0.53%

E. Homebuyers

- i. There are two Projects being developed by the Corporate Debtor, namely, Ramrajya and Swarajya at Ambivali, Taluka Kalyan, Maharashtra.
- ii. *Swarajya Project* consists of an area of about 26 Acres which in turn has been divided into two sectors: Sector 1 and Sector 2. Sector 1 consists of 18 buildings with 22 wings whereas Sector 2 consists of 19 buildings with 27 wings.
- iii. Ramrajya Project consists of an area of 109 acres which is divided into two phases. Phase 1 consists of 13 towers located in 4 sectors : (a) Jal Tarang – 3 Towers, (b) Ekansh – 5 Towers, (c) Uddan – 4 Towers, (d) Anant – 1 Tower. It is stated that the construction of Phase 2 is yet to commence.
- iv. The admitted claim of the Homebuyers of the Corporate Debtor for both Projects is Rs. 1,18,19,68,915.

v. The details of settlement of claims of Homebuyers of units at Ramrajya Project is provided in clause (c) of Annexure B of the Resolution Plan. The relevant terms are extracted below:

- *The RA shall prepare the plan of Project Ramrajya and the RA shall be entitled to modify the building plans as they shall deem fit and proper, subject to exigencies or as may be required by any competent authority provided always the RERA Carpet area of the New Premises to be allotted and delivered to the Homebuyers is not reduced and/or **affected beyond +/-15%**. In cases where the area of the apartment increases or decreases, then the balance purchase consideration payable by the Home Buyers to the RA shall proportionately stand increased or decreased at the rate of **Rs. 1,500/- per sq. ft. RERA Carpet Area**. Therefore, in case if the area of the apartment increases up to the maximum **extent of 15%**, then the Purchase Consideration of the apartment shall stand increased to the extent above and the same shall be paid by the Home Buyers to the RA in accordance with the construction linked payment plans. Similarly, in case the area of the apartment decreases up to the maximum extent of 15%, then the Purchase Consideration of the apartment shall stand reduced to the extent above and the balance purchase consideration shall be paid by the Home Buyers to the RA in accordance with the construction linked payment plans. It is made very clear that if the increase or decrease in the area of the apartment is within 15% as above, then the Home Buyers shall be bound and liable to accept the increase or decrease.*
- *The allotment letter/agreement for sale between Homebuyers and Corporate Debtor shall stand cancelled or shall be cancelled appropriately and the fresh/supplementary agreement for sale will be executed between SRA and Homebuyer at an agreed consideration amount of INR 9,000/- per sq. ft. RERA carpet area in the Sale Building/s in full and final settlement/payment/discharge of all its claim. The RA is committed to deliver the units to the Home Buyers who have purchased/ invested in the project. However, due to delay of project completion, the costs of completing the project have increased over the past 5 years. The RA has*



estimated an increase of Rs. 1,500 per Sq. Ft. RERA Carpet which is on account of increase in cement cost, steel cost, etc., prices over the last 4-7 years.

- *Homebuyer shall pay all payments and charges demanded by the RA, as are levied and sought to be recovered either by way of clubhouse/amenities charges, advance maintenance, land under construction charges, development charges, society formation charges, GST and other government taxes/charges, stamp duty and registration charges on conveyance, statutory dues and deposits, etc. ("Other Charges") payable at the time of possession.*
- *Any delay in making payment of the balance purchase consideration amount by the Home Buyers shall attract interest as stipulated in RERA, and the same shall be payable by the Home Buyers to the RA. In the circumstances if the Home Buyer defaults in making the payment on its due date, then the RA shall be entitled to terminate the agreement for sale to be entered into between the Home Buyer and the RA under the provisions of RERA, by giving 15 days' notice to cure the default and on expiry of **30 days** if the Home Buyer fails or neglects to rectify the defect within the notice period, then on the expiry of the said notice period, the agreement for sale shall stand terminated. On termination of the said agreement for sale, the RA shall refund the principal amounts (excluding stamp duty, GST, other levies and/or statutory dues etc.) already received from the Home Buyer without any interest, compensation, penalty, etc., **within 24 months** from the sale of the said apartment to new purchaser and upon receipt of the purchase consideration in respect thereof.*
- *If any of the Home Buyers intend to exit the project and/or terminate the Allotment letter/agreement of sale, then the Resolution Applicant shall refund the principal amount (excluding stamp duty, GST, service tax, VAT, other levies and/or statutory dues) already received from the Home Buyer without any interest, compensation, penalty, etc. **within 24 months** from the Effective Date.*
- *The Home Buyers shall be given credit in respect of the advance deposit paid by them and the said amount will*



be reduced from the balance purchase consideration and Home Buyers shall be liable only to pay the respective balance of the purchase consideration and Escalation amount along with statutory dues and Other Charges including but not limited to maintenance charges.

- *RA shall be entitled to revise/cancel the registration of the Project with the RERA Authorities and register the Project afresh as a new project in its capacity as the New Developers of the Project. RA shall be entitled to the extensions of the/or set new timelines for the completion of the Project in terms of this Resolution Plan.*
- *Within 12 months of obtaining the revised RERA Registration for the Project, an appropriate agreement for sale in respect of the New Apartment will be executed by the RA in favour of Home Buyers, Inter-alia, containing the normal terms and conditions of sale of the New Apartment at and for the purchase consideration.*
- *The RA endeavours to deliver the finished units to the Home Buyers who wish to continue in the Ramrajya Project within a period 5 years from the effective Date SUBJECT TO THE FULLFILMENT OF THE ABOVE TERMS.*

vi. The details of settlement of claims of Homebuyers of units at Swarajya Project is provided in clause (d) of Annexure B of the Resolution Plan. The relevant terms are extracted below:


- *The RA proposes to handover the sold units to the Home Buyers at the same rate agreed by NDL within a period of 1 years from the effective Date subject to the receipt of the pending receivables from the Home Buyers.*
- *If any of the Home Buyers intend to exit the project and/or terminate the Allotment letter/agreement of sale, then the Resolution Applicant shall refund the principal amount (excluding stamp duty, GST, service tax, VAT, other levies and/or statutory dues) already received from the Home Buyer without any interest, compensation, penalty, etc. **within 24 months** from the NCLT Effective Date.*

vii. It is stated in the Resolution Plan that any refund requested by any of the Home Buyers under Project Ramrajya and



Project Swarajya shall be refunded (excluding stamp duty, GST, service tax, VAT, other levies, interest and/or statutory dues) **within 24 months** from the Date of Transfer after due verification of the records of the Corporate Debtor. In case refund amount exceeds over and above the agreed amount, the same shall be reduced from the settlement of the secured financial creditors. In other words, payment to secured financial creditors is subject to the above clause which protects the interest of the homebuyers.

- viii. This Tribunal, on 31.01.2025, directed the SRA/RP to explain how the provision regarding the increase and decrease of the balance payment consideration at the rate of Rs. 1500 per sq. ft. RERA Carpet Area is equitable to the Home Buyers and in accordance with the RERA provisions, if any.
- ix. Pursuant to the order dated 31.01.2025, the RP addressed an email dated 01.02.2025 to the SRA. The SRA filed an affidavit dated 04.02.2025 and submitted as follows:
- *The SRA proposes to offer a discount of Rs. 300/- per sq. ft. on the RERA carpet area to the existing homebuyers. Thus, the SRA will charge an escalation cost of Rs. 1200/- per sq. ft. instead of Rs. 1500/- per sq. ft. to existing homebuyers who chose to continue with the project.*
 - *The said revision shall form an integral part of the Resolution Plan and shall be implemented accordingly.*
- x. Thereafter, during the hearing on 12.03.2025, Ld. Counsel appearing on behalf of the SRA confirmed that there would be no change in the price/rate if there is no change in the area. Further, Ld. Counsel for SRA fairly submitted that the interest of the home buyers shall be protected.

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- xi. Mr. Shyam Kapadia, Ld. Counsel appearing for the RP, submitted that the Resolution Plan has been approved by the Home Buyers and that no objections have been received from any of the home buyers.

F. Cancelled Units

- i. It is stated in Form H submitted by the RP that a total of 56 out of more than 1110 cancelled customers have lodged their claims with the RP until the date of approval of resolution plan by the CoC. It is stated that the amount claimed is as per books of accounts, since claims were not received from all the customers.
- ii. The SRA proposes to pay the customers who have cancelled their units in full irrespective of whether the customer have lodged their claims or not. In case the refund amount is exceeding over and above, the same shall be reduced from the settlement of secured financial creditors.

14.3.5. ***Operational Creditors***

A. Employee and Workmen Dues

- i. It is stated in the Resolution Plan that the amount of Rs. 29,12,305 as Employees claim has been given by the RP. The aforesaid amount of Rs. 29,12,305 shall be paid within 45 days from the Effective Date.
- ii. It is further stated that in event the admitted claims from the employees increase, the SRA proposes to pay the amount in full and such excess amount shall be deducted from the payments being made to the secured financial creditors under this Resolution Plan.



B. Government Dues

The admitted Government Dues is Rs. 26,92,78,889/- (Income Tax Dues) and the Resolution Plan provides for payment of Rs. 3,80,08,894 which shall be paid within 45 days from the Effective Date.

C. Operational Creditors – Others

The admitted claim of Operational Creditors, other than those above-mentioned, is Rs. 10,10,46,314. It is stated that the liquidation value due to the operational creditors is *Nil*, however, the SRA proposes to pay Rs. 15,00,000 towards the claims of these operational creditors within a period of 45 days from the Effective Date.

14.3.6. ***Provident Fund, ESI & Gratuity Dues***


The admitted PF, ESI & Gratuity Dues as per the Books of Accounts of the Corporate Debtor is Rs. 1,71,24,925/-. The Resolution Plan proposes to make payment of the entire dues of Rs. 1,71,24,925/- which shall be paid within 45 days from the Effective Date.

14.3.7. ***Other Creditors***

The admitted claim of other creditors is Rs. 23,65,078 of which the SRA proposes to make payment of Rs. 15,14,712 within 45 days from the Effective Date.

14.3.8. ***Shareholders***

- i. It is proposed that the existing issued, subscribed and paid up share capital of the existing shareholders of the Corporate Debtor shall be entirely cancelled against the payment of *Nil* consideration by way of selective capital reduction as per Indicative Steps of this Resolution Plan without any liabilities, claims or obligations by virtue of the order of this Tribunal approving this Resolution Plan and the Corporate Debtor (including its subsidiaries, joint ventures



or affiliates, if any) as well as the SRA shall at no point of time be directly or indirectly held responsible or liable in relation thereto.

- ii. It is also stated that cancellation of the issued, subscribed and paid-up share capital of the Existing Shareholders shall be an integral part of and in accordance with the Resolution Plan and shall be deemed to have been carried out without any further deed or action required by the Corporate Debtor or any other person.
- iii. The authorized share capital shall be increased appropriately as may be required for the issuance of equity shares to the Resolution Applicant pursuant to this Resolution Plan.
- iv. Further, the SRA (and its nominees) shall subscribe to equity shares and/or quasi equity instruments or preference capital issued by the Company and/or may change the capital structure of the Company for such aggregate consideration as may be decided by the Resolution Applicant in a manner consistent with this Resolution Plan.

14.3.9. ***Treatment of Advance received for sale of land***

It is stated that as per the provisional financial statement as on 31.03.2021, advances to the tune of Rs. 2 to 3 crores approximately has been received from third parties towards the land. The SRA proposes to adjust the said advances against consideration towards sale of the relevant land once balance consideration is received and sale is affected. It is further stated that post approval of the resolution plan by the NCLT there would not be any further obligation on the resolution applicant and / or the corporate debtor in this regard.

Compliance Certificate in Form – H

- 15. Pursuant to Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)



Regulations, 2016, the Resolution Professional has prepared a Compliance Certificate dated 18.04.2023 in **Form H** which is annexed to the Application.

16. Compliance of mandatory requirements under the Insolvency & Bankruptcy Code, 2016:

Sr. No.	Particulars	Compliance
1	Section 25: Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the Corporate Debtor?	Yes.
2	Section 29A: Whether Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Yes.
3	Section 30:	
	(1) Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Yes. The Resolution Applicant had submitted to the RP, an affidavit under section 29A of IBC, 2016 confirming his eligibility for submission of Resolution Plan.
	(2)(a) Whether the Resolution Plan provides for payment of insolvency resolution process costs?	Yes. Clause (b) of Chapter IV
	(2)(b) Whether the Resolution Plan provides for the payment of the debts of operational creditors?	Yes. Clause (d) of Chapter IV
	(2)(b) Whether the Resolution Plan provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Yes. Annexure A – clause (d)
	2(c) Whether the Resolution Plan provides for the management of the affairs of the Corporate Debtor?	Yes. Clauses (r) & (s) of Chapter IV



	2(d) Whether the Resolution Plan Provides for implementation and supervision of the resolution plan?	Yes. Annexure 8 – Indicative Steps
	(2)(e) Whether the resolution plan contravenes any of the provisions of the law for the time being in force?	No.
	(4)(a) Whether the Resolution Plan is feasible and viable, according to the CoC?	Yes.
	(4)(b) Whether the Resolution Plan has been approved by the CoC with 66% voting share?	Yes. The Resolution Plan has been approved with 85.35% voting.
4	Section 31(1): Whether the Resolution Plan has provisions for its effective implementation Plan, according to CoC	Yes. Clauses (r) & (s) of Chapter IV Annexure 8 – Indicative Steps
5	Section 35A: Whether the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50, or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	NA

17. Compliance under mandatory requirements under IBBI (Insolvency Resolution Process of Corporate Debtors) Regulations, 2016

Regulation 38		
1	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Yes. Clause (d) of Chapter IV
1A	Whether the resolution plan includes a statement as to how it has dealt with the interest of all stakeholders?	Yes. Chapter IV – Financial Proposal addresses the interests of all stakeholders
1B	i) Whether the Resolution Applicant or any of its related	i) Chapter III – Clause F (3) ii) Not Applicable.



	<p>parties has failed to implement or contribute to the failure of implementation of any resolution plan approved under the Code?</p> <p>ii) If so, whether Resolution Applicant has submitted the statement giving details of such non-implementation?</p>	
2(a)	Whether the Resolution Plan provides the term of the plan and its implementation schedule?	Yes. Annexure 8 – Indicative Steps
2(b)	Whether the Resolution Plan provides for the management and control of the business of the corporate debtor during its term?	Yes. Clause (r) & (s) of Chapter IV
2(c)	Whether the Resolution Plan provides adequate means for supervising its implementation?	Yes. Clause (r) & (s) of Chapter IV
3	Whether the Resolution Plan demonstrates that -	
(a)	It addresses the cause of default?	Yes. Chapter III – Clause B(1)
(b)	It is feasible and viable?	Yes. Annexure 8 – Indicative Steps
(c)	It has provisions for its effective implementation?	Yes. Annexure 8 – Indicative Steps
(d)	It has provisions for approvals required and the time for the same?	Yes. Chapter IV – Clause (o)
(e)	The Resolution Applicant has the capacity to implement the Resolution Plan?	Yes. Chapter II
Regulation 39		
2	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No transactions are found to be in the nature of PUFÉ
4	Provide details of performance security received as referred to in sub-regulation (4A) of Regulation 36.	Performance Guarantee by way of Bank Guarantee of Rs. 20 crores received on 15.04.2023



18. **Implementation and Supervision of the Plan:**

- i. The Indicative Steps laid out in Annexure 8 of the Resolution Plan provides a detailed descriptive on the implementation of the Resolution Plan.
- ii. Clause (s) of Chapter IV of the Resolution Plan provides for constitution of a Steering Committee to supervise the implementation of the Resolution Plan. It is stated that the Steering Committee shall be comprised of 3 (three) voting members:
 - 1 (one) voting member will be appointed by the consenting Financial Creditors;
 - 1 (one) voting member will be appointed by the Resolution Applicant; and
 - The Resolution Professional acting in the capacity of a Monitoring Agent.
- iii. Clause (t)(6) of Chapter IV states that the SRA proposes to pay Rs. 2,00,000 per month w.e.f. the effective date to the RP as one of the Members of the Steering Committee for the first three months and thereafter, Rs. 50,000 per month till the full implementation of the Resolution Plan. It is further stated that the SRA reserves the right to negotiate the fee of the RP for the later stage and the same shall be decided mutually between the SRA and the RP.

19. **Details on Fraudulent and Avoidance Transaction**

The RP submits that no transaction which can be classified as fraudulent or avoidance transaction under sections 43, 45, 50 and/or 66 of the Code, has been determined. The Resolution Plan, however, states that *“Any amounts received by the Company in respect of such transactions or orders in relation thereto shall be distributed to the Financial Creditors pro-rata to the extent of their Financial Debt. The cost*



for continuing of such litigations after the Transfer Date shall be borne by the Financial Creditors.”

20. On perusal of Form-H as reproduced in Paragraphs 15-17 above, it is seen that the Resolution Plan is in compliance with the mandatory compliances as stipulated under Section 30(2) of the Code. The Resolution Plan also meets the requirements of Regulations 37, 38, 38(1A) and 39 (4) of the IBBI Regulations, 2016. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law.
21. The RP, in the affidavit dated 06.02.2025, also submitted that the claims of one of the secured creditors, Catalyst Trusteeship has been already satisfied through issuance of debentures by Homeshell Estate Private Limited and since no amount remains due and payable, Catalyst Trusteeship informed RP about the withdrawal of its claim.
22. We also note that one M/s Swamih Investment Fund I has sent a letter dated 31.03.2023 to the SRA indicating its interest in providing financial assistance for funding Project Ramrajya. Further, it is also seen from the Resolution Plan that the SRA proposes to infuse funds from third parties. However, the SRA shall do the same in accordance and in compliance with the Code, particularly, section 29A of the Code.
23. The submissions of the Ld. Counsel for RP and SRA were heard at length and after a careful analysis of the same together with the material placed on record, we are of considered opinion that the resolution plan is in conformity of section 30(2) of the Code read with the applicable regulations of the CIRP Regulations.
24. We are conscious that the Corporate Debtor is a real estate company, the resolution of which will offer flats to the home buyers who would be benefitted by the approval of this Plan, subject to the increase and decrease of area and consideration of Rs. 1200 per sq. ft. as mentioned




in the Resolution Plan read with affidavit dated 04.02.2025 & 06.02.2025 which forms integral part of this order. We also note that no objection/representation has been received from the homebuyers with respect to their treatment under the resolution plan. In fact, the homebuyers have approved the resolution plan.

25. We refer to the judgment of **K Sashidhar v. Indian Overseas Bank & Others (2019) 12 SCC 150**, wherein the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan, as approved by CoC, meets the requirements specified in Section 30(2). The Hon'ble Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.
26. It can be seen from the provisions of the I&B Code as well as in a catena of judgements that the commercial wisdom of the CoC in approving a resolution plan is given paramount importance and the scope of this Tribunal is limited to the extent of provisions under section 31 of IBC.
27. In **Committee of Creditors of Essar Steel India Limited through Authorised Signatory Vs. Satish Kumar Gupta & Ors (2020) 8 SCC 531**, the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom has approved.



28. In view of the law laid down by Hon'ble Supreme Court, the commercial wisdom of the COC is to be given paramount importance for approval / rejection of the resolution plan. As the Resolution Plan meets the requirements of the Code and the IBBI Regulations, the same needs to be approved. Accordingly, the Resolution Plan is approved with the following directions:

- i) The **Resolution Plan submitted by M/s Shree Naman Developers Private Limited read with its affidavit dated 04.02.2025 is hereby approved.** The additional affidavits dated 04.02.2025 and 06.02.2025 and the clarification by the RP and SRA shall form integral part of the Resolution Plan and together, they shall form part of this order. As per section 31 of the Code, the Resolution Plan shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
- ii) No person will be entitled to initiate or continue any proceedings in respect to a claim prior to CIRP which is not a part of the Resolution Plan.
- iii) The Applicant/Resolution Professional shall stand discharged from his duties as the Resolution Professional of the Corporate Debtor 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, as Monitoring Agent.
- iv) The Resolution Professional is further directed to handover all records, premises / documents to Resolution Applicant to



finalise further line of action required for starting of the operation as contemplated under the Resolution Plan. The Resolution Applicant shall have access to all the records premises / documents through Resolution Professional to finalise further line of action required for starting of the operations.

- v) The Steering Committee shall supervise the implementation of the Resolution Plan and shall review operational performance of the Corporate Debtor.
- vi) It is to be noted that Regulation 31A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that a regulatory fee calculated at the rate of 0.25 percent of the realisable value to creditors under the resolution plan approved under section 31, shall be payable to the Insolvency and Bankruptcy Board of India, where such realisable value is more than the liquidation value. In the present case, the Liquidation value is Rs. 313.31 crores while the Resolution Plan value is Rs. 390.65 crores. Hence, considering the mandate of Regulation 31A, the SRA is directed to pay the applicable Regulatory Fee.
- vii) **Reliefs and Concessions:**
- a) Approval of the Resolution Plan shall not be a ground for termination of any existing consents, approvals, licenses, concessions, authorizations, permits or the like that has been granted to the Corporate debtor or for which the Corporate Debtor has made an application for renewal, grant permissions, sanctions, consents, approvals, allowances, exemptions etc.
 - b) Any Exemption as sought for in relation to the payment of registration charges, stamp duty, taxes and fees



arising out of the implementation of the Resolution Plan is not granted but the Resolution Applicant is at liberty to approach Competent Authorities for the exemptions if permitted under the law.

- c) For past non-compliances of the Corporate debtor under applicable laws, the Resolution Applicant shall not be liable for any liabilities and offences committed prior to the commencement of CIRP and subject to Section 32A of IBC, 2016.
 - d) It is hereby clarified that in terms of the Judgement of Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited***, on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims which are not a part of Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of a claim which is not a part of the Resolution Plan.
 - e) With regard to other concessions and reliefs, most of them are subsumed in the reliefs granted above. The relief which is not expressly granted above, shall not be construed as granted. The exemptions if any sought in violation of any law in force, it is hereby clarified that such exemptions shall be construed as not granted.
- viii) The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.



- ix) The Moratorium imposed under section 14 of the Code shall cease to have effect from the date of this order.
- x) The Resolution Professional/Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- xi) Liberty is granted for moving any appropriate application, if required in connection with the implementation of this Resolution Plan.
- xii) The Resolution Professional/Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

29. Accordingly, the Resolution Plan in IA/1661/2023 is hereby **allowed** and **approved**. The IA/1661/2023 is accordingly **disposed of**.

Sd/-

Hariharan Neelakanta Iyer
Member (Technical)

Uma, LRA

Sd/-

Lakshmi Gurung
Member (Judicial)