



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, BENCH-V**

I.A. No. 28 of 2024

IN

C.P. No.699 of 2021

In the matter of an Application
under Section 30(6) and Section
31 of the Insolvency and
Bankruptcy Code, 2016.

**Mr. Pinakin Shah,
(Resolution professional of M/s
Mundra Estate Developers Limited)**

**..... Applicant/Resolution
Professional**

V/s

In the matter of

M/s Metroglobal Limited

... Financial Creditor

V/s.

M/s Mundra Estate Developers Limited

... Corporate Debtor

Order Dated :24.10.2024

Coram:

Hon'ble Ms. Reeta Kohli Member (Judicial)

Hon'ble Ms. Madhu Sinha Member (Technical)



Appearance:

For the Income Tax Department: Adv Sheba Abraham (VC)

For the Petitioner/Financial Creditor: Adv. Uttara Jhaveri (VC)

For the Applicant: - Adv. Govind Javeri (PH)

ORDER

Per: Madhu Sinha Member (Technical)

1. The above captioned Application was filed under Section 30(6) and Section 31, of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) by the Resolution Professional (hereinafter referred as the “**Applicant**”), seeking approval of the Resolution Plan, submitted by the Resolution Applicant –Jagjit Estate and Developers Company Private Limited, which was approved by 100% voting shares of the members of the Committee of Creditors (hereinafter referred to as ‘**COC**’).
2. The facts leading to the Application are as under:
 - a. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated, vide an order dated 12.01.2023, under Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as ‘the Code’) and Mr. Pinakin Shah(Applicant), was appointed as Interim Resolution Professional. The IRP, constituted the Committee of Creditors on 20.07.2023. The COC in its 1st meeting held on 26.07.2023 and the IRP was appointed as RP. The RP published a public announcement as per Section 15 of the Code, inviting claims from the creditors of the Corporate Debtor.
 - b. The Applicant published a Public Announcement in Form A in accordance with Section 15 of the Code read with Regulation 6 of the CIRP Regulations, on 17.01.2023, inviting submission of proof of claims from the creditors of the Corporate Debtor on before 25.01.2023.



- c.** The claims received and accepted by Interim Resolution Professional are as under:

Creditors	Claims Received	Claims Admitted
Financial Creditor (Metroglobal Limited)	117,38,21.000	10.40 crore
Total	117,38,21.000	10.40 crore

- 3.** After receiving the claims, the Committee of Creditors was constituted. The constitution of COC is as under:

Sr. No.	Name of the Financial Creditor	Claim Received	Claim admitted	Voting Share (percentage %)
1.	Metroglobal Limited	117,38,21.000	10.40 crore	100%

- 4.** The Applicant submits that for inviting Expression of Interest (“EOI”) from Prospective Resolution Applicants as per section 25(2)(h) of the Code, Form G was published on 28.08.2023. The last date for submission of Expression of Interest (EOI) from Prospective Resolution Applicants was 13.09.2023.
- 5.** The CoC in 3rd CoC meeting decided to appoint valuers for conducting valuation of land and building and registered valuers for conducting valuation of securities and financial assets. The Resolution Professional accordingly appointed Registered Valuers namely:

Sr. No.	Valuer Name	Asset Classification
1.	Parag Seth	Land and Building
2.	Pranav Parikh & Associates	Land and Building
3.	Ativ Patel	Securities and Financial Assets
4.	Atharava Valuation (Opc) Pvt Ltd	Securities and Financial Assets

to determine its fair value and liquidation value, as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016.

- 6.** These Registered Valuers submitted their reports. **The**

Liquidation and fair value is stated as under:

Fair Value and Liquidation Value :-

(In Lakhs)

Sr No.	Name of the Valuer and Asset Description	Fair value (in Rs.) Valuer 1	Liquidation Value (in Rs.)
1.	Parag Seth (Land and Building)	865.00	692.00
2.	Pranav Parikh & Associates (Land and Building)	1253.00	1000.00
3.	Ativ Patel (Securities and Financial Assets)	NIL	NIL
4.	Atharava Valuation (Opc) Pvt Ltd (Securities and Financial Assets)	NIL	NIL

7. The Applicant further submitted that there was significant difference between the valuation of first two valuers. Therefore, the third 3rd valuer (i.e. Amit Bhatt) was appointed in pursuance of Regulation 35 of CIRP Regulation and the average value of two closest estimates of a value considered as the fair value and the liquidation as under:

Sr No.	Name of the Valuer and Asset Description	Fair value (in Rs.) Valuer 1	Liquidation Value (in Rs.)
1.	Parag Seth (Land and Building)	865.00	692.00
2.	Pranav Parikh & Associates (Land and Building)	1253.00	1000.00
3.	Amit Bhatt (Land and Building)	808.02	1010.03
4.	Difference between 1& 3 valuer	14.36%	14.36%
5.	Difference between 2& 3 valuer	19.20%	19.43%
6	Average of two closest estimates	750.01	937.51

8. The Applicant further Submitted that in absence of any receipt of resolution plan the CoC in the 6th CoC meeting resolved to restart the process of EOI from PRA's by issuing another form G which issued on 27.11.2023 and The last date for submission of Expression of Interest (EOI) from Prospective Resolution Applicants was 12.12.2023. The last



date for submission of Resolution Plan as given in the RFRP was 05.02.2024.

9. On 12.12.2023, 3 (three) Resolution Plans were received for the Corporate Debtor from the following PRAs (“Resolution Applicants”/ “RAs”):
- (a) Metroglobal Limited, a CoC member
 - (b) Jagjit Estates & Development Company Pvt Ltd.
 - (c) Swastik Realtors.
10. The Final list of PRA’s was declared on 28.12.2023. On 06.02.2024 M/S Metroglobal Limited, one of the PRA withdrew its Resolution Plan.
11. The Committee of Creditors (CoC), in its 14th meeting held on 28th March 2024, approved the Resolution Plan submitted by M/s Jagjit Estates & Development Company Private Limited, Mumbai, which secured 100 marks based on the marking criterion. The Resolution Plan submitted by Swastik Realtors was rejected, as it secured only 74 marks. Subsequently, the Applicant issued the Compliance Certificate in Form “H”.
12. **The Salient Features of the Resolution Plan are as under:**

A. Brief Background of the Corporate debtor

- i. M/s Mundra Estate Developers Limited (hereinafter “Corporate Debtor”) was earlier a partnership Firm named M/s Mundra Estate Developers (the Firm), engaged in the business of sale and development of immovable properties which was later on 11.01.2011, converted into a Public Listed Company named M/s Mundra Estate Developers Limited having its registered office at 7B Ami Ramkrishna Building, Happy Home Society, Nehru Road, Vile Parle(E), Mumbai -400 057.
- ii. The Corporate Insolvency Resolution Process (“CIRP”) of M/s Mundra Estate Developers Limited has been initiated as per the provisions of the Insolvency and Bankruptcy Code (“IBC”) under Section 7. The application was moved



before the Hon'ble National Company Law Tribunal, Mumbai Bench ("NCLT") and was admitted vide its order dated 12.01.2023 ("CIRP Order"). Pursuant to such order, Mr.Pinakin Surendra Shah, (having IP Registration no. IBBI/IPA-002/IP-N00106 /2017-2018/10248 Insolvency Professional, was appointed as the Interim Resolution Professional (IRP).

B. Background of the Resolution Applicant

Details	JAGJIT ESTATES AND DEVELOPMENT CO.PVT.LTD.
Registered Office Address	17, A & B, Govt. Indus. Estate, Near State Bank Charkop, Kandivali West, Mumbai City, Mumbai, Maharashtra, India, 400067
Corporate Identification Number	U70100MH1985PTC037545
Constitutional Documents and Certificate of Incorporation	Please refer to Annexure - 3 of this Plan
Communication Address Proof	17, A & B, Govt. Indus. Estate, Near State Bank Charkop, Kandivali West, Mumbai City, Mumbai, Maharashtra, India, 400067
Phone Number	022-66013000 [100 Lines]
Email ID	accounts@sudarshan.biz
Permanent Account Number	AABCJ2286P

The Resolution Applicant is eligible to act as a Resolution Applicant of the Corporate Debtor and is not ineligible under section 29A of Insolvency and Bankruptcy Code and also satisfies the eligibility criteria as mentioned in clause (h) of sub-section (2) of section 25 of the Code.



13. Summary of Payments under the Resolution Plan

Sr. No	Category of Stakeholder *	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:	NIL	NIL	NIL	NIL
		(i) who did not vote in favour of the resolution Plan	NIL	NIL	NIL	NIL
		(ii) who voted in favour of the resolution plan	NIL	NIL	NIL	NIL
		Total[(a) + (b)]	NIL	NIL	NIL	NIL
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	11738.21	11738.21	1040.00	8.86%
		(b) Other than (a) above:	NIL	NIL	NIL	NIL
		(i) who did not vote in favour of the resolution Plan	NIL	NIL	NIL	NIL



		(ii) who voted in favour of the resolution plan	NIL	NIL	NIL	NIL
		Total[(a) + (b)]	11738.2 1	11738.2 1	1040.0 0	8.86%
3	Operational Creditors	(a) Related Party of Corporate Debtor	NIL	NIL	NIL	NIL
		(b) Other than (a) above:	NIL	NIL	NIL	NIL
		(i) Government	NIL	NIL	NIL	NIL
		(ii) Workmen	NIL	NIL	NIL	NIL
		(iii) Employees	NIL	NIL	NIL	NIL
		(iv)	NIL	NIL	NIL	NIL
		Total[(a) + (b)]	NIL	NIL	NIL	NIL
4	Other debts and dues		NIL	NIL	NIL	NIL
Grand Total			11738.21	11738.21	1040.00	8.86%

14. Sources of Funds

The Successful Resolution Applicant affirms that he has several assets in the form of immovable properties and current assets in the form of shares listed and unlisted entities and loans and advances from which the funds required to implement the Resolution Plan can be augmented. The balance sheet for the year ended March 2024 is annexed with affidavit dated 13.07.2024 at **Annexure 'A'**.

The Successful Resolution Applicant holds investment inter alia in the form of shares of listed entities with market value of Rs. 40,59,83,075/- as on 9th July 2024 and undertake to raise funds for



fulfilling the obligations of the Successful Resolution Applicant under Resolution Plan by selling the said shares. The tabular chart containing details of the shares held by the Successful Resolution Applicant is annexed with affidavit dated 13.07.2024 at **Annexure 'B'**.

15. Distribution of the Total Contribution Amount

The order of priority of distributions using the Total Contribution Amount, is set out below:

Order of Priority	Use of Total Contribution Amount	Amount (in ₹ in Lakh)
<i>First</i>	CIRP Costs as set out in Section 8.1 and 8.2.2 of this Plan. ^{\$}	35.00
<i>Second</i>	Amount due to employees and workmen, i.e. the Outstanding Employees Dues, as set out in Section 8.4 of this Plan.	Nil
<i>Third</i>	Liquidation Value due to Operational Creditors (other than employees and workmen).	NIL
<i>Fourth</i>	Amount due to the dissenting Financial Creditors (if any). For the purposes of the financial proposal, we have assumed that there are no dissenting Financial Creditors.	NIL
<i>Fifth</i>	Subject to the adjustments** in Section 8.2.2 of this Plan, Upfront Cash Recovery to the Financial Creditors <i>pro rata</i> to their respective portion of the Outstanding Financial Debt. *** For each Financial Creditor, its respective portion of the Upfront Cash Recovery shall be allocated in the following manner: (i) <i>first</i> , towards repayment of all outstanding interest till the Closing Date, whether or not actually accrued; and (ii) <i>second</i> , towards the outstanding principal.	1040.00
<i>Sixth</i>	Outstanding dues to Operational Creditors (other than employees and workmen)	Nil
TOTAL CONTRIBUTION AMOUNT		1075.00
In addition to the amounts set out above, the Resolution Applicant shall also make available working capital of up to ₹ 10.00 Crore (Indian Rupees Ten Crore Only), based on a review of the Company's working capital requirements, over		₹ 10.00 Crore over a period of 3 years



Order of Priority	Use of Total Contribution Amount	Amount (in ₹ in Lakh)
	a period of 3 (three) years	

as set out in Section 8.2.2 below, any Excess CIRP Costs will be paid out of the Applicant Initial Contribution and adjusted against the Upfront Cash Recovery.

As set out in Sections 8.2.2(i) and (ii), the CIRP Costs will be paid out of the Applicant Initial Contribution. All CIRP Costs shall be paid by the Resolution Applicant in the manner set out in Section 8.2.2 (i) and (ii) and all Excess CIRP Costs will be adjusted against the Upfront Cash Recovery, in the manner set out in Section 8.2.2 (i) and (ii).

*** As set out in Section 8.2.2, adjustments include: (i) payment of Excess CIRP Costs; (ii) payment to dissenting Financial Creditors.*

*^ In addition to the ₹ 10.40 Crore (Indian Rupees Ten Crore Forty Lakh only) payable to the Financial Creditors. Further, as mentioned in **Annexure 7**, the Resolution Applicant shall deposit the Upfront Cash Recovery in the escrow account(s), and the same shall be paid to the Financial Creditor simultaneously, up on inter alia (a) receipt by the escrow agent of unconditional and irrevocable no-dues certificate from such Financial Creditor, and (b) the original title deeds of the land belonging to the Company which have been held by the Financial Creditor as security; which are required to be returned to the Company.*

The original title deeds of the property belonging to the Company's land situated at survey NO. 17, Hissa No. 2, and corresponding to city survey No. 17, Hissa No.2 ,150, 151, 151/1, to 6 of Village-Ambivalli, Taluka-Andheri, Dist. M-S.D Shigwan Chawl, Aazad Nagar Veera Desai Road, Andheri (W), Mumbai, 400058 admeasuring 1781 Sq Mts., which are in the custody of Metroglobal Limited i.e. the Financial Creditor shall be handed over to the escrow agent as per escrow mechanism

16. Payments proposals of the various stakeholders under the Resolution Plan:

The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Lakhs)

Sr. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)

**IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI
BENCH-V**

I.A. No. 28 of 2024 In C.P. No.699 of 2021



1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NIL	NIL	NIL	NIL
		(b) Other than (a) above:	NIL	NIL	NIL	NIL
		(i) who did not vote in favour of the resolution Plan	NIL	NIL	NIL	NIL
		(ii) who voted in favour of the resolution plan	NIL	NIL	NIL	NIL
		Total[(a) + (b)]	NIL	NIL	NIL	NIL
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	11738.2 1	11738.2 1	1040.0 0	8.86%
		(b) Other than (a) above:	NIL	NIL	NIL	NIL
		(i) who did not vote in favour of the resolution Plan	NIL	NIL	NIL	NIL
		(ii) who voted in favour of the resolution plan	NIL	NIL	NIL	NIL
		Total[(a) + (b)]	11738.2 1	11738.2 1	1040.0 0	8.86%
3	Operational	(a) Related Party of	NIL	NIL	NIL	NIL



	Creditors	Corporate Debtor				
		(b) Other than (a) above:	NIL	NIL	NIL	NIL
		(i)Government	NIL	NIL	NIL	NIL
		(ii)Workmen	NIL	NIL	NIL	NIL
		(iii)Employees	NIL	NIL	NIL	NIL
		(iv)	NIL	NIL	NIL	NIL
		Total[(a) + (b)]	NIL	NIL	NIL	NIL
4	Other debts and dues		NIL	NIL	NIL	NIL
Grand Total			11738.21	11738.21	1040.00	8.86%

*If there are sub-categories in a category, please add rows for each sub-category .

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components .It is not NPV.]

****As per the Resolution Plan dated 18th March 2024 the Resolution Applicant is required to invest Rs. 10,75,00,000/- (i.e. Rs 10,40,00,000/- towards repayment to the financial creditors and Rs.35,00,000/- towards CIRP costs). Out of the said amount of Rs. 10,75,00,000/-. The Successful Resolution Applicant has already paid an amount of Rs 5,37,50,000/- in the form of Performance Security until April 2024 to the Resolution Professional.***

By way of Affidavit dated 13.07.2024 the Successful Resolution Applicant has given detail of payments made upto April 2024 in the form of performance security as below:

Particulars	Amount (Rs.)
Earnest Money Deposit	10,00,000/-
Paid on 11.12.2023	90,00,000/-
Paid on 04.02.2023	
Upfront Contribution	
Paid on 04.04.2024	2,00,00,000/-
Paid on 12.04.2024	1,00,00,000/-
Paid on 19.04.2024	1,37,50,000/-
Total amount paid	5,37,50,000/-

The said amount remains lying with the Resolution Professional hence the Successful Resolution Applicant said he is required to pay amount of Rs.5,37,50,000/- towards plan amount.



17. Financial Proposal of the Successful Resolution Applicant

A. CIRP Costs

- i. On the Effective Date, the Resolution Professional shall provide a certificate to the Resolution Applicant confirming the total amount of Insolvency Resolution Process Costs (such amounts in aggregate being the “**CIRP Costs**”) incurred by the Company (*whether paid or unpaid, and without netting off any amounts*) and approved by the CoC (*wherever such approval is required*).
- ii. Subject to and in accordance with Section 8.2.2 below, the CIRP Costs shall be paid in a manner compliant with Applicable Law, out of ₹ 35.00 Lakh (Indian Rupees Thirty Five Lakh only) contributed by the Resolution Applicant for this purpose as per Section 6.5 above, in the form of the Applicant Initial Contribution (such portion of the Total Contribution Amount being the “**Applicant CIRP Costs Contribution**”).

B. Treatment to Operational Creditor

- i. It is estimated that the Liquidation Value of the Company is less than the Outstanding Financial Debt as on the Insolvency Commencement Date and therefore the Liquidation Value available to Operational Creditors (other than employees and workmen) is NIL. Accordingly, no amounts are due to be paid to the Operational Creditors (other than employees and workmen). If any further claims of Operational Creditors (other than employees and workmen), relating to the period prior to the Effective Date, arise and/or are made and/or are admitted, prior to approval of this Plan by the

Adjudicating Authority, the amount payable to Operational Creditors shall be nil.

Treatment of Claims by Operational Creditors on Matters under Verification by the Resolution Professional

- ii. Under the Section 3(11) of the IBC, the term “debt” is defined to mean “...a liability or obligation in respect of a claim which is due from any person...”, and under Section 3(6) of the IBC states that a “claim” includes “a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured.” Therefore, each such claim, which is under verification (including any further claims admitted for verification at any time prior to the Effective Date), are “claims” and “debt”, each as defined under the IBC, and would consequently qualify as “operational debt” (as defined under the IBC). In relation to claims from Operational Creditors relating to matters which are under verification by the Resolution Professional, as of the Insolvency Commencement Date, the full amount of such claims/ amounts shall be deemed to be owed and due as of the Insolvency Commencement Date, in respect of which the amount owed under this Resolution Plan is **NIL** and therefore no amount is payable in relation thereto.

Treatment of Claims by Operational Creditors on Matters that are Sub Judice

- iii. JED understands that there are no *sub judice* claims. Each Sub Judice Claim, is a “claim” and “debt”, each as defined under the IBC, and would consequently qualify as “operational debt” (as defined under the IBC) and therefore the full amount of such Sub Judice Claims shall be deemed to be owed and due as of the Insolvency



Commencement Date, in respect of which the amount owed under this Resolution Plan is NIL and therefore no amount is payable in relation thereto other than the payment of Operational Creditors Settlement Amount as set out herein.

C. Treatment of Financial Creditors

The entire Outstanding Financial Debt (as of the Closing Date, including all outstanding interest till such date, whether or not actually accrued) shall be discharged by the Resolution Applicant through a combination of steps outlined in **Annexure 7**), in accordance with the terms of this Plan, the Upfront Cash Recovery shall, subject to the adjustments set out in Section 8.2.2 of this Plan, be paid out to each Financial Creditor *pro rata* to its respective portion of the Outstanding Financial Debt, from the proceeds of the Application Initial Contribution and Applicant Subscription Contribution. For each Financial Creditor, its respective portion of the Upfront Cash Recovery shall be allocated in the following manner: (i) *first*, towards repayment of all outstanding interest till the Closing Date, whether or not actually accrued; and (ii) *second*, towards the outstanding principal.

D. Treatment of Other Creditors

- i. As per the information set out in the Information Memorandum, no claims have been made by Other Creditors. Accordingly, no amounts are proposed to be paid under this Plan to Other Creditors
- ii. If any claims of Other Creditors, relating to the period prior to the Effective Date, arise and/or are made and/or are admitted, prior to the approval of this Plan by the Adjudicating Authority, then the

amounts payable under this Plan to the Other Creditors shall remain NIL, and shall not increase.

E. Treatment on Contingent Liability

JED understands that the Company may have potential contingent liabilities of the Company against pending show cause notice of Income-tax as mentioned in IM. The matters is contingent liabilities of the Company until the Effective Date. Each such Contingent Liability to the extent that the same have/ are capable of being crystallized as of the Effective Date, is a “claim” and “debt”, each as defined under the IBC, and would consequently qualify as “operational debt” (as defined under the IBC) and therefore the full amount of such Contingent Liabilities shall be deemed to be owed and due as of the Insolvency Commencement Date, in respect of which the amount owed under this Resolution Plan is NIL and therefore no amount is payable in relation thereto

Treatment of claims in respect of Contravention of Applicable Laws (including Taxes)

- i. All claims that may be made or arising against the Company in relation to any payments required to be made by the Company under Applicable Law (including Taxes), or in relation to any breach, contravention or non-compliance of any Applicable Law (whether or not such claim was notified to or claimed against the Company at such time, and whether or not such Governmental Authority was aware of such claim at such time), in relation to the period prior to the Effective Date, including, without limitation, in respect of the Applicable Laws, matters and proceedings set out in **Annexure 12**, is a “claim” and “debt”, each as defined under the IBC, and would

consequently qualify as “operational debt” (as defined under the IBC) and / or claims from “Other Creditors”, therefore the full amount of such claims shall be deemed to be owed and due as of the Insolvency Commencement Date, in respect of which the amount owed under this Resolution Plan is NIL and therefore, amount if any, is payable in relation thereto, shall be adjusted from the amount payable to financial creditors. Further, the directors, key managerial personnel and officers of the Company nominated and / or appointed by the Resolution Applicant on the Closing Date shall not incur any Liability (whether civil or criminal) for such breach, contravention or non-compliance of Applicable Law by the Company in relation to the period prior to the Effective Date.

F. Treatment to Existing Share Holder:

The interests of existing shareholders have been altered by the Resolution plan as under:

Sr.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	3,00,000 Shares of Rs. 10 Each/-	NIL	100%	0%
2	Preference	N.A.	NIL	N.A.	N.A.

G. Employees and Workmen

Amount to be paid to Employees and Workmen pursuant to this Plan

- (a) As per the information set out in the Information Memorandum, there are no outstanding Employee Dues of the Company admitted towards its employees and workmen, as of Insolvency Commencement Date.
- (b) It is clarified that other than the CIRP Costs, no additional payments shall be made by the Resolution Applicant in respect of any dues or unpaid claims of

employees and/or workmen, relating to the period after the Insolvency Commencement Date.

Adjustments:

The Upfront Cash Recovery shall be subject to the following adjustments:

- (i) **Additional Claims of CIRP costs:** Any claim of CIRP Costs over and above Rs 35.00 Lakh which are admitted till approval of this Plan by the Adjudicating Authority shall be paid out to them out of the Upfront Cash Recovery and using the proceeds from the Applicant Initial Contribution and Applicant Subscription Contribution. The Upfront Cash Recovery shall remain unaltered
- (ii) **Additional Claims from Financial Creditors:** Any further claims of Financial Creditors, relating to the period prior to the Insolvency Commencement Date, which arise and/or are made and/or are admitted prior to approval of this Plan by the Adjudicating Authority; and (ii) all outstanding interest on the Outstanding Financial Debt (whether or not actually accrued) after the Insolvency Commencement Date; the Upfront Cash Recovery shall remain unaltered and shall be paid to each Financial Creditor *pro rata* to its respective portion of the Outstanding Financial Debt.
- (iii) **Amount to dissenting Financial Creditors:** If there are any dissenting Financial Creditors, then, in accordance with Regulation 38(1) of the CIRP Regulations, before the Upfront Cash Recovery is paid out to any of the assenting Financial Creditors, the amount attributable to such dissenting Financial Creditors (if any) under this Resolution Plan, shall be paid out to them out of the Upfront Cash Recovery



and using the proceeds from the Applicant Initial Contribution and Applicant Subscription Contribution. Thereafter the remaining Upfront Cash Recovery shall be paid out to the assenting Financial Creditors, *pro rata* to their respective portions of the Outstanding Financial Debt.

18. Implementation Schedule:

Implementation of the Resolution Plan shall commence from the NCLT Approval Date. Subject to Clause 4.2, the Resolution Applicant will undertake the following steps to implement the Resolution Plan in the indicative timeline provided below for the implementation of the Resolution Plan:

Sr. No.	Event	Estimated Timeline
1.	Approval of Adjudicating Authority for the Plan (including the capital reduction, if applicable)	On the Effective Date
2.	The Company to be funded with the Applicant Contribution (including payment to CIRP cost and payment to Financial creditor)	Within 45 days of the Effective Date
3.	Capital Reduction of the equity share capital of the Company	Within 45 days of the Effective Date
4.	Issue of New Equity Shares to the Resolution Applicant	Within 45 days of the Effective Date
5.	No dues certificates by the Financial Creditors to the escrow agent.	Within 45 days of the Effective Date
6.	Funding the escrow account in accordance with the provisions of Annexure 7	Within 45 days of the Effective Date
7.	Closing Date, subject to the provisions of Annexure 7 .	Within 2 (Two) weeks of completion of the actions set out in Section 8.9 of this Plan.* It being clarified that this time period shall stand automatically extended by the time taken in relation to the final adjudication of any appeal or similar proceedings in relation



Sr. No.	Event	Estimated Timeline
		to this Resolution Plan.

19. Earnest Money Deposit

The Resolution Applicant has submitted 1st Earnest Money Deposit of INR 10,00,0 00(Indian Rupees Ten Lakhs Only) dated 11.12.2023 and 2nd Earnest Money Deposit of INR 90,00,0 00(Indian Rupees Ninety Lakhs Only).

20. Monitoring Committee

The Monitoring Committee shall comprise of 3 (Three) members comprising of the following:

- a) 1 (One) one Representative of Financial Creditor i.e. Mr Rahul Gautamkumar Jain
- b) 1 (One) Representative of the Successful Resolution Applicant i.e Mr Amriksingh Nagpal and
- c) The Resolution Professional i.e. Pinakin Shah.

On and after the Effective Date i.e. NCLT approval date, Monitoring Committee shall be appointed to conduct the affairs of the Corporate Debtors. Resolution Professional (RP),one member nominated by COC and one member nominated by Resolution Applicant shall form Monitoring Committee. Monitoring Committee shall supervise and do all such acts necessary for the implementation of resolution plan up to the Closing Date i.e. The date on which all the implementation of the steps set out in **Annexure 7** are completed.

****This Tribunal directs that the Monitoring Committee be constituted latest within fifteen (15) days of the effective date.***

21. The compliance of the Resolution Plan is as under:


Section of the Code / Regulation No .	Requirement with respect to Resolution Plan	Clause of Resoluti on Plan	Complian ce)Yes / No(
25)2)(h(	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the	1.1	YES

**IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI
BENCH-V**

I.A. No. 28 of 2024 In C.P. No.699 of 2021



	complexity and scale of operations of business of the CD?		
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	ANX-11	YES
Section 30)1(	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	ANX-5	YES
Section 30)2 (	Whether the Resolution Plan-	5.1	YES
	(a) provides for the payment of insolvency resolution process costs?	5.1 (I)	YES
	(b) provides for the payment to the operational creditors?	5.1(II)	YES
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?		
	(d) provides for the management of the affairs of the corporate debtor?	5.1(vi)	YES
	(e) provides for the implementation and supervision of the resolution plan?	5.1(viii)	YES
	(f) contravenes any of the provisions of the law for the time being in force?]		
Section 30)4(	Whether the Resolution Plan a) (is feasible and viable, according to the CoC? b) (has been approved by the CoC with 66 %voting share?		YES YES
Section 31)1(	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	4.1 and 4.2	YES
Regulation 38)1(	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?]	5.2 (ii)	YES
Regulation 38)1A (	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	5.1(x)	YES
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	NO N.A	YES N.A.
Regulation 38)2 (	Whether the Resolution Plan provides: a) (the term of the plan and its implementation schedule? b) (for the management and control of the	4.1 and 4.2 5.1 (v)	YES YES

	business of the corporate debtor during its term?)c (adequate means for supervising its implementation?		
38)3(	Whether the resolution plan demonstrates that –)a (it addresses the cause of default?)b (it is feasible and viable?)c (it has provisions for its effective implementation?)d (it has provisions for approvals required and the timeline for the same?)e (the resolution applicant has the capability to implement the resolution plan?	5.1 (xi) 5.1 (xi) 5.1 (xi) 5.1 (xi)	YES YES YES YES
39)2(	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	NO	YES
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	5.3	YES

22. Observations and Findings:

- i.** The Court observes that this Plan is in Compliance with the Following Provisions of *IBC Section 30. (whichever is applicable)*
- ii.** As per IBC Code 30(2)(a) – A Resolution Plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.
- iii.** As per Section 30(2)(b), the Respondent has agreed to pay Operational Creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.
- iv.** The Resolution Applicant has also agreed that dissenting financial creditors shall be paid not less than the value they would have been paid in the event of liquidation of the Corporate Debtor.
- v.** The plan provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(d).



-
- vi.** The Resolution Plan does not contravene any of the provisions of the law for the time being in force - Resolution Plan provides for the implementation and supervision of the resolution plan as per Section 30(2) (e)
- vii.** The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- viii.** The resolution applicant or any of its related parties has not failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.
- ix.** The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
- a.** The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors. Regulation 38(1).
 - b.** The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2) (c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
 - c.** Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a).
 - d.** Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
 - e.** The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
 - f.** The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code



and other provisions of the Code and any other Applicable Law.

g. The plan provides for the management and control of the business of the Corporate Debtor during its term.

h. All the above factors demonstrate that the plan address as the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.

i. That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1)(b) of the Regulations.


j. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, keeping in view the objectives of the Code (Regulation 38(1A).

23. The Resolution Plan has been approved in the 14th COC meeting held on 28.03.2024 with 100% voting in accordance with the provisions of the Code.

24. Regarding the objections raised by the Income Tax Department on the set-off and carry-forward of accumulated and unabsorbed losses, the entitlement to carry forward and set off such losses shall be governed in accordance with the provisions of the Income Tax Act. Any exemptions or relief claimed under the Act will also be subject to the applicable provisions, as per Income Tax Act.

25. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** 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 Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble 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. In *India Resurgence Arc Private Limited vs. Amit Metaliks Limited and Ors. (2021)* the Hon'ble Apex Court held that

"the process of consideration and approval of resolution plan is essentially within the commercial wisdom of Committee of Creditors (CoC). The scope of judicial review remains limited under Section 30(2) of the Insolvency and Bankruptcy Code (IBC), 2016 by which the court would examine that the resolution plan does not contravene any statutory provisions and it conforms to such other requirements as may be specified by the Board. The court held that the process of judicial review cannot be stretched if all the above-mentioned requirements have been duly complied with and that dissenting financial creditor, expressing dissent over the



value of security interest held by it, cannot seek to challenge an approved Resolution Plan. Lastly, it was held that Section 30 of the IBC, 2016 only amplified the considerations for the CoC while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of resolution plan, with fairness of distribution amongst similarly situated creditors; and that the business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment”.

27. The Hon’ble Apex Court at para 42 in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online**, has clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved.

*“Para 42- Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (supra).”*

28. The Hon’ble Supreme Court in **Ghanashyam Mishra and Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.** has clearly established that the once a Resolution Plan is approved by the



Adjudicating Authority (AA), the same, irrespective of whether or not they participated in the CIRP, binds all creditors and any claims not forming part of the approved Resolution Plan shall stand extinguished.

“with respect to any statutory dues owed/claims raised in relation to the period prior to the 2019 Amendment, the resolution plan shall still be binding on the statutory creditors concerned, and the statutory dues owed to them, which were not included in the resolution plan, and such claims shall stand extinguished.”

29. Regarding the Reliefs and Concessions the Resolution Applicant will approach all the concerned Authorities for reliefs and concessions, if any hindrance is faced by the Resolution Applicant from any Authority at latter stage, the Resolution Applicant may approach the Tribunal after the sanction of the Plan. The carry forward loses if any be allowed only to the extent permitted under Section 79 of the Income Tax Act 1961. The law has been well settled by the Hon'ble Supreme Court in the case of **Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors.** in the following words:

- I. *“The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plan would go haywire and the plan would be unworkable.*
- II. *87. We have no hesitation to that the word “other stakeholders” would squarely cover the Central Government any State Government or any local authorities. The*



legislature, noticing that on account of obvious omission certain tax authorities were not abiding by the mandate of I&B Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief...

III. *In view of the above we hold that the Resolution Applicant cannot be saddled with any previous claim against the Corporate Debtor prior to initiation of its CIRP..."*

IV. *Consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued."*


30. In view of the above cited case law, the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent of scrutiny provided under section 31 of Code and the direction of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code.

31. In view of the discussions, this Bench is of the considered view that the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.



32. The above I.A No 28 of 2024 is allowed in terms of the above said and is disposed of.

- a) The Interlocutory Application No. 28 of 2024 is **allowed**. The Resolution Plan submitted by **Jagjit Estate and Development Company Pvt. Ltd**, is hereby approved. **It shall become effective from this date and shall form part of this order**. It 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 payment of dues arising under any law for the time being in force is due.
- b) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. 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.
- c) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- d) The Monitoring Committee shall supervise the implementation of the Resolution Plan and shall file status of its implementation before this Authority from time to time, preferably every quarter.
- e) The 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.
- f) The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- g) The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- h) The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except



those duties that are enjoined upon him for implementation of the approved Resolution Plan.

- i) The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- j) The Interlocutory Application **No. 28 of 2024** is accordingly **allowed**.

Sd/-
Madhu Sinha
Member (Technical)
/priyanka/

Sd/-
Reeta Kohli
Member (Judicial)