IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III

I. A. No. 1980 of 2019
In
C.P. No. 3633/IB/2018

In the matter of an Application under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 read with Rule 39 of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons Regulations, 2016.

In the matter of
Mrs. Seema K. Nair and
Mr. Vijaya Mohan Valiathan
.... Petitioner
v/s.

Mather Projects Private Limited
.... Corporate Debtor

<u>I.A. No. 1980/2019</u>
Mr. Kizhekkekara Kuriakose Jose
... Applicant/
Resolution Professional

Order delivered on 18.01.2022

Coram:
Hon'ble Shri H. V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance (through video conferencing):
For the Applicant : Mr. Ashok G.V., Counsel
i/by Mr. Sachin R. Pawar, Advocate
Mr. K. K. Jose, Resolution Professional-in person.
Mr. Shaffi Mather, Resolution Applicant-in Person

Per Shri H. V. Subba Rao, Member (Judicial)

ORDER

1. This is an Application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (the Code) filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant Mr. Mohammed Shaffi Mather.

2. During the period of CIRP the Resolution Professional issued Form-G on 22.02.2019 inviting expressions of interest (EOI) from prospective Resolution applicants (PRAs). The last date for receiving the expression of interest was 09.03.2019 and last date for submission of Resolution Plan was 23.04.2019.

3. The CoC in its meeting held on 18.02.2019 decided to appoint a Valuer. The RP accordingly appointed two registered valuers to determine the fair value and liquidation value of the Corporate Debtor, as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016. These valuers had submitted their reports.

   Average Fair value of two valuers is Rs.116.87 Crores.

   Average Liquidation value of two valuers is Rs.115.64 Crore.

4. The Applicant/RP submits that the Applicant/RP received final and revised Resolution plan on 05.05.2019 form Mr. Mohammaed Shaffi Mather (Successful Resolution Applicant).

5. The Resolution Professional submits that the Corporate Debtor falls under the category of Micro, Small and Medium Enterprises as per the certificate of Registration tabled before the CoC and hence the ineligibility to submit Resolution Plan as per section 29A(h) of the Insolvency and Bankruptcy Code, 2016 is not

applicable to the Resolution Applicant in terms of Section 240A(1) which is reproduced as under:

"Section 240A. Application of this Code to Micro, Small and Medium enterprise:-

(1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process of any micro, small and medium enterprises."

6. The CoC in its 5th meeting held on 18.05.2019 considered the revised and final Resolution Plan dated 05.05.2019, submitted by Mr. Mohammaed Shaffi Mather. The CoC approved the Plan with the voting share of 72.37% of the members of the Committee of creditors. The said Resolution Plan consists of the following:

- Provides for payment of Insolvency Resolution Process Costs in a manner specified by the board in priority to the payment of other debts of Corporate Debtor.
- Provides for payment of the debts of the Operational Creditors in such manner as specified by Regulation 38(1) of the IBBI (Insolvency Resolution Process for Corporate Persons Regulations) 2016.
- Provides for management of the affairs of the Corporate Debtor after the approval of the Resolution plan as specified by the Regulation 38(2) of the IBBI (Insolvency Resolution Process for Corporate Persons Regulations) 2016.
- Provides for the implementation and supervision of the Resolution plan.
- The RP mentions that the Resolution Plan does not contravene any of the provisions of the law for the time being in force.

Accordingly, compliance certificate in Form "H" has been issued by the Resolution Professional.

7. **The salient features of the Resolution Plan are as under:**

A. The Resolution Applicant is an entrepreneur, lawyer and public policy analyst. Resolution Applicant has submitted Resolution Plan as a private individual. Resolution Applicant was a partner in the preceding legal entities of Mather Projects Private Limited– "Mather Projects", "Mather Constructions" and "Space" (Partnership Firms) and a member of the Board of Directors of Mather Projects Private Limited till 24 Feb, 2011 playing a significant role in the development of the brand "MATHER" and "MATHER PROJECTS".

B. The Corporate Debtor is registered at ROC Mumbai on 27.06.2007 as a Non-govt. company. The MATHER brand name became famous for its lifestyle villas and apartments in Kerala in the 1990's. The "Mather Group" was established by late Mr. K C M Mather, the founder Chairman of Mather Group who established Mather and Company Private Limited in 1944 and led it to be one of the leading Construction Companies headquartered in Kerala.

C. The Resolution Plan has dealt with the interests and treatment of all stakeholders, including Financial Creditors - SBI, Federal Bank, Sundaram Finance & Others - and Operational Creditors, (most importantly the claims of the Homebuyers Financial Creditors).

D. Claims of Financial Creditors from Information Memorandum- As per the revised List of Financial Creditors published by the Resolution Professional, there are 145 Financial Creditors totaling Rs. 87.47 crores which is split between Claim from Homebuyers (130 Homebuyers) of Rs. 43.34 crores and Financial Creditors (15 Financial Creditors) of Rs. 44.13 crores. Out of this, the IRP designated Financial Creditors totaling Rs. 28.86 crores as Financial Claims from Related Parties (10 Financial Creditors) who are Related Parties and hence voting rights have been denied to these Financial Creditors.

The 15 Financial Creditors (other than homebuyers) include: - State Bank of India: Rs. 11.95 crores (20.45% voting share)

Federal Bank - Rs. 3.87 crores (6.63% voting share)

Sundaram Finance Limited – Rs. 0.08 Lacs (0.15% voting share).

8. **Mandatory contents of the Resolution Plan** :-

a. In compliance with section 30(2)(a) the resolution plan provides for priority in repayment of CIRP cost over payment to other creditors as envagised in the Resolution Plan

b. That the Resolution Plan is compliant with provisions contained in section 30(2)(b) while making payments to operational and statutory creditors.

c. In compliance with section 30(2)(d)/ Regulation 38(2)(b) Resolution plan provides for Management and control of the affairs of Corporate Debtor after approval of the Resolution Plan in Chapter IX, Clause 4 of the Resolution Plan.

d. In compliance with section 30(2)(c)/ Regulation 38(2)(c) resolution plan provides for Adequate means for supervision of implementation in Chapter IX, Clause 4.

e. The RP mentions that in accordance with section 30(2)(e) the, Resolution Plan is compliant with all the provisions of law for the time being in force Chapter IX, Clause 4.

g. In compliance Regulation 38(2)(a) the resolution plan provides for Term of Plan and its implementation schedule in Chapter XI, of the Resolution Plan.

h. In compliance of Regulation 38(1A) the Resolution Plan contains Statement in as to how the applicant has dealt with interest of all Stakeholders in Resolution Plan in Chapter XI.

9. The payment proposed to be made under the Resolution Plan as a full and final settlement of all liabilities of the Corporate Debtor (including CIRP costs), in the following manner:

Sr. No.	**Application Of Funds**	**Amount (In Rs)**
1.	CIRP Cost duly approved by the COC settled @ 100.00%	17,50,000.00
2.	Financial Creditor – State Bank of India settled @ 100.00%	119583408.00
3.	Financial Creditor – Federal Bank Limited settled @ 100.00%	38744656.00
4.	Financial Creditor – Sundaram Finance Limited settled @ 100.00%	859376.00
5.	Financial Creditors – 130 Homebuyers with Admitted Financial Claims settled @ 100.00% by handing over their respective Apartments (Amount required to complete the remaining three incomplete projects – Highlands, Esparenza and Hacienda – as on 30.11.2018, the CIRP Commencement Date. When these three incomplete projects – Highlands, Esparenza and Hacienda gets completed, a total of 524 Homebuyers including the 130 Homebuyers with Admitted Financial Claims will stand settled @ 100.00% by handing over their respective apartments (except to any Customer who has outstanding dues to the Corporate Debtor, irrespective of whether the Apartment / Commercial Space title is registered or not, has settled the outstanding dues to the Corporate Debtor in full along with	186973000.00

	interest, if any, as per Paragraph 10 of Chapter IX of this Resolution Plan	
6.	Related Parties (Takeover of Admitted Financial Claims of Related Parties from the Corporate Debtor by the Resolution Applicant including the Amount due to the Resolution Applicant as on 30.11.2019) except an amount of Rs. 3,44,98,380.40 of Eram Property Network Private Limited which will not be taken over by the Resolution applicant as this amount (Rs. 3,44,98,380.40) as per the Resolution Applicant, has been wrongly admitted by the IRP which is the amount which Eram Property Network Private Limited had to pay the Corporate Debtor towards purchase of the commercial space in Esparenza project by Eram Property Network Private Limited as reimbursement of interest charged by Federal Bank Limited on the property loan taken by the Corporate Debtor for which the interest was paid for by the Corporate Debtor.	247629768.00
7.	Other Financial Creditors	1630000.00
8.	The Operational Creditors shall be settled at 25.00% of the Admitted Financial Claims	6967339.00
9.	No Statutory Dues Claims have been filed by any Central, State or Local Government and / or any Other Statutory / Regulatory Agency / Authority before the Resolution Professional during the CIRP. Hence, no separate amount is set aside for paying any Statutory Dues to any Central, State or Local Government and / or any Other Statutory / Regulatory Agency / Authority	0.00
10.	Project Management Fees	7500000.00
11.	Legal Fees (Estimated)	5000000.00
12.	Financial Advisory and Consultancy Fees (Estimated)	2500000.00
13.	Settlement of Small Debtors (Estimated; No Claims filed)	15000000.00
14.	Settlement of Staff (Retrenchment and / or Resignations post approval of the Resolution Plan; Estimated; No Final Decision Taken)	5000000.00
15.	Start-up Capital to restart, relaunch and rebuild the business of the Corporate Debtor	50000000.00
16.	Contingency	66375509.00
	TOTAL	**755513056.00**

The total amount of Rs. 75.55 crores proposed to be made under the Resolution Plan is a full and final settlement of all liabilities of the Corporate Debtor.

10. The Amounts provided for the stakeholders under the Resolution Plan is as under:

Sr. No.	**Category of Stakeholder***	**Amount Claimed (Rs.)**	**Amount Admitted (Rs.)**	**Amount Provided under the Plan# (Rs.)**	**Amount Provided to the Amount Claimed** (%)
1	Dissenting Secured Financial Creditors	Not Applicable	Not Applicable	Not Applicable	Not Applicable
2.	Other Secured Financial Creditor				
A	State Bank of India	119,583,408.00	119,583,408.00	119,583,408.00	100%
B	Federal Bank	46,244,656.00	38,744,656.00	38,744,656.00	100%
C	Sundaram Finance Ltd.	859,376.00	859,376.00	859,376.00	100%
3.	Dissenting Unsecured Financial Creditors	Not Applicable	Not Applicable	Not Applicable	Not Applicable
4.	Other Unsecured Financial Creditors Homebuyers (100.00% delivery of apartments) Related party other Financial creditors	 787,064,315.00 295,242,894.00 1,630,000.00	 425,431,599.00 288,608,148.00 1,630,000.00	 425,431,599.00 2,47,629,768.00 1,630,000.00	 54.05% 83.87% 100%
5.	Operational Creditors	29,952,028.00	27,869,356.00	6,967,339.00	23.26%
	Government	0.00	0.00	0.00	Not Applicable
	Workmen	4,998,598.00	4,878,364.00	1219591.00	24.39%
	Employees	0.00	0.00	0.00	Not Applicable
	Other Operational Creditors	24,953,430.00	22,990,992.00	5747748.00	23.03%
6	Other Debts and Dues	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Total		**1,310,528,705.00**	**930,595,899.00**	**847,813,485.00**	**66.24%**

**if there are sub-categories in a category, please add row for each sub-category.*
 # amount provided over time under the Resolution plan and includes estimated value of non-cash components. It is not NPV.

11. The Bench observes that the Compliance certificate (Form H) has been filed by the Resolution Professional, by way of an

additional affidavit, wherein the details of the amount provided to the various stakeholders have been mentioned. The Bench notes that in the said affidavit the amount provided to the financial creditor M/s. Federal Bank has been mentioned as Rs. 46,244,656.00/-, whereas as per Application and Resolution plan the amount should be Rs. 3,87,44,656/-. To that extent the compliance certificate stand changed and rectified.

12. CIRP Cost: -

Payment towards CIRP costs- The Corporate Insolvency Resolution Process (CIRP) Cost duly approved by the Committee of Creditors shall be paid in priority to all other debts and shall be settled in full on or before 30 June, 2022.

Payment to Financial Creditors – The Financial Creditors (Admitted) – Banks and Financial Institutions (State Bank of India, Federal Bank Limited and Sundaram Finance Limited) – Dues shall be settled 100.00% (including interest due) as per the terms of loan repayment with each one of them within 60 days of approval of the Resolution Plan.

a. State Bank of India, Rs. 11.95 crores
b. Federal Bank Limited, Rs. 3.87 crores
c. Sundaram Finance Limited, Rs. 0.08 crores

Payment to the Financial Creditors (Admitted) – Homebuyers – 127 in number in the List of Admitted Financial Creditors – Homebuyers – to be settled in full by delivering their respective apartments subject to zero dues to the Corporate Debtor on or before 30 June 2022 with a grace period of 90 days for statutory/ regulatory approvals is annexed in Annexure VII of the Resolution plan. These Financial Creditors (Admitted) –

Homebuyers – (& 397 Homebuyers with no Admitted Financial Claims) shall be settled by handing over their fully completed apartments (subject to Zero Dues to the Corporate Debtor) in their respective projects – Highlands, Esparenza and Hacienda – on or before 30 June, 2022 with a grace period of 90 days for completion of any statutory/ regulatory approvals.

Payment to the Financial Creditors – Related Parties – with dues totaling Rs. 24.76 crores shall be settled by the Resolution Applicant in full on or before 31 December, 2022, by taking over the outstanding debts of all Related Parties from the Corporate Debtor personally by the Resolution Applicant.

Payment to the Operational Creditors - total dues of Rs. 2.78 crores admitted by the IRP includes Rs. 0.48 crores (Claim from Work Men – Dues (primarily Non-Salary & Wages) and Rs. 2.29 crores towards other operational Creditors. The Operational Creditors shall be settled by the Resolution Applicant by paying 25.00% of the total Operational Creditors dues, Rs. 0.69 crores. Outstanding Amounts are due from several Customers (Homebuyers & Commercial Space Buyers) of the Corporate Debtor which has been taken into due consideration as source of funding for the successful implementation of this Resolution Plan. The Corporate Debtor shall provide reasonable opportunity to such Customers (Homebuyers & Commercial Space Buyers) to pay the outstanding due amount as per the List of Outstanding Dues from the Customers of the Corporate Debtor.

The Corporate Debtor shall as per this Resolution Plan provide time till 90 days of approval of the Resolution Plan to any

Customer with outstanding dues to the Corporate Debtor to pay the outstanding dues without any penalty and/ or interest.

13. The schedule timeline of events for implementation of Resolution plan from approval date is as follows:-

Sr. No.	FINANCIAL CREDIT/ OPERATIONAL CREDIT	TIMELINE
1	CIRP Costs	On or before 30th June, 2022
2	Claim from Work Men	Within 60 days of approval of the Resolution Plan by the AA, NCLT, Mumbai Bench
3	Financial Creditors – Admitted – 127 Homebuyers; And Not Admitted – 397 totaling 524 Homebuyers	On or before 30th June, 2022 with a grace period of 90 days for statutory / regulatory approvals
4	State Bank of India	Within 60 days of approval of the Resolution plan by the AA
5	Federal Bank	Within 60 days of approval of the Resolution plan by the AA
6	Sundaram Finance Limited	Within 60 days of approval of the Resolution plan by the AA
7	Other Financial Creditors	On or before 31st December, 2022
8	Financial Creditors (Related Party) – Takeover of the Debt to the Corporate Debtor by the Resolution Applicant personally	On or before 31st December, 2022
9	Operational Creditors	On or before 31st December, 2025
10	Settlement of Small Debts (Unclaimed and Not Admitted)	On or before 31st December, 2025

14. **Observations and findings:-**

i. On the basis of the information given in the application and the additional information provided by the Resolution professional the Leaderships of Owners Associations of the three Projects – Highlands, Esparenza and Hacienda – remaining to be completed and the Management of the Company, the Resolution Applicant submits this Resolution Plan which is in compliance with the provisions of section

30 (2) (a) to 30 (2) (f) of the IBC, 2016 and also fulfills the mandatory requirements as contained under Regulation 38 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

ii. This Resolution Plan has dealt with the interests and treatment of all stakeholders, including Financial Creditors and Operational Creditors, (most importantly the claims of the Homebuyers Financial Creditors numbering 130 and another 394 Homebuyers who did not file their Financial Claims and/ or whose Financial Claims were rejected by the IRP totaling 524 Homebuyers in three Projects remaining to be completed – Highlands, Esparenza and Hacienda – of the Company in accordance with Regulations 37, 38 and 39 of the CIRP (the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with IBC 2016 and are subject to applicable laws under the Insolvency and Bankruptcy Code, 2016.

iii. The Resolution Plan will be implemented by the current Management Team of the Corporate Debtor led by Ms. Anu Joseph, Chief Executive Officer under the continued supervision of the Resolution Professional Mr. Kizhekkekara Kuriakose Jose and overall guidance of the Board of Directors of the Company (Corporate Debtor) to be appointed by the Resolution Applicant Mr. Mohammed Shaffi Mather on approval of this Resolution Plan by this Bench.

iv. 98.00% of Shareholding and Majority of the Board of Directors of the Corporate Debtor shall vest with the Resolution Applicant on approval of the Resolution Plan.

v. The Financial Creditors (& the Operational Creditors) shall not have any representation in the Board of Directors and/ or in the Management of the Corporate Debtor as long as obligations/ commitments to them under this Resolution Plan is being met by the Corporate Debtor without any default.

vi. 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 in terms of Section 30(2)(f). The Resolution Plan is in compliance of the Regulation 38 of the Regulations as under:

a) 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.

b) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38(1A)).

15. The Resolution Plan has been approved in the 5th meeting of the CoC held on 18.05.2019 with 72.37% votes in accordance with the provisions of the Code.

16. The Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online SC 1478* and in ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150)***, 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 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 confirm to the stated requirements.

17. In view of the above observations and the law thus settled, 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. There are no workers claims. Resolution Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders. Therefore, this Bench in the above background has no option except to approve the present Resolution Plan submitted by the Resolution Applicant. Accordingly this Bench hereby pass the following :-

ORDER

i. The Resolution Plan submitted by **Mr. Mohammaed Shaffi Mather** is hereby approved. It shall become effective from the date of approval 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 the payment of dues arising under any law for the time being in force is due, Resolution Applicant, guarantors and other stakeholders involved in the Resolution Plan.

ii. We shall clarify here that the Resolution Applicant shall take over the corporate debtor with all its assets and liabilities as per terms as approved in the Resolution plan. This Bench cannot allow any general power to Resolution applicant absolving him from the liability of the corporate debtor company, without knowing about the liability against which such exemption is sought. In other words, relief/ exemptions from only existing liabilities which are specifically identified are deemed to have been allowed and approved in the Resolution plan.

iii. It is seen that the Resolution Plan seeks several dispensations, concessions and waivers. Approval of Resolution Plan does not mean automatic waivers. The Resolution Applicant on approval of the Plan may approach those competent authorities/ courts/ legal forms/ office(s) Government or Semi-Government/State or Central Government for appropriate relief'(s) sought in the plan.

iv. The Resolution applicant shall obtain the necessary approvals required under any law for the time being in force within one year from the date of this order or within such period as provided for in such law, whichever is later.

v. Given the above observations, we approve the Resolution plan with modifications, as mentioned above, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, Resolution Applicant and other stakeholders involved in the resolution plan.

vi. The Resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the Resolution plan to the IBBI to be recorded on its database. The Resolution Professional is hereby discharged of his duties after handing over the documents to the Resolution Applicant and it taking charge.

vii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the concerned Registrar of Companies (RoC), 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.

viii. The moratorium under Section 14 of the Code shall cease to have effect from this date.

ix. The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.

x. 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.

xi. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.

xii. The Interlocutory Application No. 1980 of 2019 is accordingly allowed and disposed of.

Sd/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-

H. V. SUBBA RAO
MEMBER (JUDICIAL)