

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

**I.A. No. 2253 of 2022  
IN  
C.P. No. 4190 of 2018**

In the matter of an Application under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Concur

In the matter of

**ICICI Prudential Real Estate AIF - I**

... Financial Creditor

V/s.

**Mayur Pankh Properties Private  
Limited**

... Corporate Debtor

**I.A. No. 2253/2022**

**Mr. Rajender Kumar Girdhar**

...Applicant/Resolution Professional

Reserved for orders on: **03.02.2023**

Order pronounced on: **17.05.2023**

**Coram:**

Hon'ble Shri H. V. Subba Rao, Member (Judicial)

Hon'ble Smt. Madhu Sinha, Member (Technical)

***Appearance (through video conferencing):***

***For the Applicant:*** Sr. Adv. Chetan Kapadia i/b SSB Legal a/w

Mr. Rajendra Kumar Girdhar

***Per: Madhu Sinha, Member (Technical)***

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1. This is an Application filed under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the CIRP Regulations, 2016) filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant Yura Business Partners LLP in consortium with M/s. Gupta Steel Corporation Pvt. Ltd. ("Yura / Resolution Applicant"), which was approved by 94.51% voting share 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 (hereinafter referred to as 'CIRP') of the Corporate Debtor was initiated by this Bench by an order dated 18.12.2018 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code') (Admission Order) and Mr. Rajendra Kumar Girdhar was appointed as the Interim Resolution Professional (hereinafter referred to as 'Applicant').
  - b. On 23.12.2018, the Applicant made the public announcement of initiation of the Corporate Resolution Insolvency Process of the Respondent/Corporate Debtor in accordance with Sections 13 and Section 15 of the Code read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") and invited claims from the creditors of the Respondent/Corporate Debtor by publishing in the Free Press Journal (English) and Navakal (regional newspaper), both in Mumbai edition intimating the last date for submission of claims as on 04.01.2019.

- c. On receiving and scrutinising the claims received from the creditors of the Respondent/Corporate Debtor, the Applicant constituted the Committee of Creditors ('CoC') on 12.01.2019 with regard to the Corporate Debtor after which the 1<sup>st</sup> meeting of the CoC was convened on 21.01.2019 wherein the COC appointed the Applicant as the Resolution Professional of the Corporate Debtor.
- d. On 28.01.2019, the Applicant appointed two registered valuers Collier International (India) Property Services Pvt. Ltd and Knight Frank (India) Pvt. Ltd, who determined the Fair Value of the Corporate Debtor as 882.33 Million and the Liquidation Value of the Corporate Debtor as 724.14 Million.
- e. On 28.02.2019, the invitation for expression of interest in Form G was published in Financial Express - English language (Mumbai edition) and Navakal - Regional language (Mumbai edition) inviting submission of expression of interest from interested and eligible prospective resolution applicants until 15.03.2019.
- f. Since the Applicant received only one expression of interest, based on an email approval dated 18.03.2019 from majority (in value) of the CoC extending the last date of submission of expression of interest until 25.03.2019, modification in Form G was published on 19.03.2019 in Financial Express English language (Mumbai edition) and Navakal Regional language (Mumbai edition) and also published on the website of the Insolvency and Bankruptcy Board of India ("IBBI"). The last date for submission of expression of interest was further extended to 01.04.2019, after receipt of email approval from majority (in value) of the members of COC on 29.03.2019 and a modified form G was posted on the website of IBBI.
- g. The Applicant received the expression of Interest from (a) Ozone Lifestyle Projects Private Limited acting as lead member of the consortium comprising of itself, Ozone Urbana Infra Developers Private Limited and

Ozone Propex Private Limited ('Ozone'), (b) Wadhwa Group Holdings Private Limited, and (c) Lakshya Swarupa Housing Projects Private Limited ("LHPPL").

- h. On 26.04.2019, the Applicant declared the final list of prospective resolution applicant that contained only one eligible prospective resolution applicant i.e. Ozone.
- i. On 27.04.2019, Ozone was requested to submit resolution plan for the Corporate Debtor by 27.05.2019, which was extended up to 30.05.2019. Further, on 30.05.2019 the Applicant received the resolution plan from the Ozone accompanied by the eligibility affidavit under Section 29A of the Code and undertaking by Ozone which was circulated to all the members of the CoC on 31.05.2019.
- j. The Resolution Applicant submitted its revised resolution plan on 16.08.2019 along with an addendum. Another addendum along with the draft development management agreement was received on 26.08.2019.
- k. The Applicant, on 20.08.2019 and 21.08.2019, shared the revised resolution plan dated 16.08.2019 (along with the addendum dated 16.08.2019) and on 26.08.2019 submitted the addendum along with the draft Development Management Agreement dated 26.08.2019 ("Resolution Plan") to CoC. Prior to the submission, in the Applicant's view the Resolution Plan confirmed compliance with the conditions referred to in Section 30(2) of the Code.
- l. The 7<sup>th</sup> meeting of the COC was held on 28.08.2019 which was attended by the members constituting 98.30% voting share of the CoC in person, to discuss and approve the Resolution Plan. The resolution plan was approved by 95.45% voting share of the financial creditor through E-voting which concluded on 03.09.2019 after considering its feasibility, viability and manner of distribution as discussed at the seventh meeting of the COC and authorised the Applicant to approach this Tribunal for its consideration of the Resolution Plan.

- m. In the 7<sup>th</sup> CoC meeting (a) the extensions of the dates for submission of expression of interest until 04.04.2019, (b) revised format of performance bank guarantee and timelines provided in the request for the resolution plan dated 27.04.2019, (c) extension of time for submission of resolution plan till 30.05.2019, were ratified.
- n. On 11.09.2019 the Applicant filed MA. No. 3094 of 2019 for approval of resolution plan submitted by Ozone which was heard and reserved for orders on 05.03.2021. However, before any orders could be passed, the Bench of the Tribunal was reconstituted and therefore, the matter had to be heard afresh.
- o. The 8<sup>th</sup> CoC meeting was held on 26.07.2021 through video conferencing of wherein members constituting 94.44% voting rights were present. The Applicant received objections put forth by Mr. Nilesh Bharani with respect to the Resolution Plan of Ozone and response of Ozone to the same was shared with COC. Certain clarifications were sought from Ozone.
- p. On account of passage of time from the date of approval of Resolution Plan of Ozone by COC (in 2019) and the impact of COVID-19 pandemic on all businesses, the financial health of Ozone significantly deteriorated. Lakshya Swarupa Housing Projects Private Limited (“LSHPPL”) brought the said fact to the notice of RP (about Ozone’s depleting financial condition) vide email dated 27.12.2021.
- q. The aforesaid factors were brought to the attention of this Tribunal in the hearing dated 15.03.2022, wherein this Tribunal took note of the same and recorded that “the Bench feels that it is a serious issue and it should be dealt with in detail in the COC”. After the hearing dated 15.03.2022, Ozone also addressed an email dated 22.03.2022 to the Resolution Professional expressing its intent to withdraw from the Resolution plan.
- r. The 9<sup>th</sup> CoC meeting was held on 05.04.2022 to discuss the further course of action and was conducted through video conferencing and members constituting 91.32% voting rights were present. Meeting was convened to

discuss the eligibility of Ozone as Resolution applicant. The Applicant informed CoC that he had received an email dated 22.03.2022 from Ozone stating that Ozone wishes to withdraw from resolution process. The 9th COC meeting was adjourned to 11.04.2022 for further discussion. In the CoC meeting held on 11.04.2022, the CoC resolved that Ozone was no longer capable to implement resolution plan due to deterioration of their financial position and appropriate orders may be prayed for before NCLT for withdrawal / rejection of Resolution Plan.

- s. The Applicant filed Interlocutory Application No. 1092 of 2022 seeking inter alia withdrawal of MA 3094 of 2019 filed for approval of resolution plan or in alternative, sought rejection of MA 3094 of 2019 filed for approval of resolution plan submitted by Ozone. It was further prayed that time period from 11.09.2019 till date of withdrawal / rejection of application be excluded. It was also prayed that time period for completion of CIRP be extended by 90 days from date of disposal of present application, for commencement of fresh round of invitations of EOIs. Interlocutory Application No. 1092 of 2022 was heard on 05.05.2022 and the Tribunal was pleased to permit the Applicant to withdraw M.A. No. 3094 of 2019 for approval of Resolution Plan and to grant an extension of 90 days from date of disposal of the application, for commencement of fresh round of invitations of EOIs.
- t. The 10<sup>th</sup> COC meeting was held by way of video conferencing and members constituting 94.30% voting rights were present wherein COC was informed about the 05.05.2022 order regarding 90 days extension of CIRP process passed by this Hon'ble Tribunal. It was further resolved that Form G will be published calling EOIs.
- u. On 24.05.2022, the Applicant, pursuant to the provisions of Section 25(2)(h) of the IBC read with Regulation 36A of the CIRP Regulations, brief particulars of the invitation for expression of interest ('EOI') was published in Free Press Journal (Mumbai Edition), English Daily and Navakal

(Mumbai Edition) Marathi Daily inviting EOI from interested and eligible prospective resolution applicants wherein last date for submission of Expression of Interest was 08.06.2022 and last date of submission of Resolution Plan was 18.07.2022.

- v. On 02.06.2022, an appeal was filed by LHPPL assailing the Order dated 05.05.2022 passed by this Tribunal. The Applicant and the CoC were made party respondents. The 11<sup>th</sup> meeting of COC was convened to discuss the appeal filed and the reply to be filed by the CoC. The meeting was conducted through video conferencing and attended by members constituting 57.69% voting rights.
- w. Prospective Resolution Applicants Fervent Securities (P) Ltd (in consortium with Appex Tradelink Pvt. Ltd.) and Yura Business Partners LLP (in consortium with Gupta Steel Corporation Pvt Ltd) submitted their expression of Interest on 08.05.2022.
- x. On 08.06.2022, Company Appeal No. 661 of 2022 filed by LSHPPL before NCLAT challenging Order dated 05.05.2022 came up for hearing. The NCLAT adjourned the matter to 07.07.2022 for filing of Respondent's reply and thereafter rejoinder of the appellant if any. However, no ad interim reliefs were granted against the Order dated 05.05.2022.
- y. The 12<sup>th</sup> CoC meeting was held on 16.06.2022 wherein inter alia the developments in Company Appeal No. 661 of 2022 were informed to the CoC. The CoC further discussed the evaluation matrix.
- z. On 11.07.2022, LSHPPL withdrew the Company Appeal No. 661 of 2022 which was permitted by NCLAT.
- aa. On 18.07.2022, resolution plans from both the resolution applicants i.e. Fervent Securities Pvt Ltd (in consortium with Appex Tradelink Pvt. Ltd) and Yura Business Partners LLP (in consortium with Gupta Steel Corporation Pvt Ltd) were received in sealed envelopes being the last date of receipt of Resolution Plans. On 20.07.2022, meeting was held wherein resolution plans were unsealed in presence of COC members holding

more than 51 % voting share in the meeting held via video conference for consideration of CoC.

- bb. The 13<sup>th</sup> CoC meeting was held on 26.07.2022 and continued on 29.07.2022 wherein the Applicant invited the representative of the both the Resolution Applicant i.e. Fervent Securities Pvt Ltd in consortium with Apex Tradelink Pvt. Ltd and Yura Business Partners LLP in consortium with Gupta Steel Corporation Pvt. Ltd. at different time slots to present their plans and answer the queries of the CoC members and the Applicant. Certain suggestions made by the COC members and the Applicant were accepted by both the resolution applicants, and the modified resolution plans were submitted by both the resolution applicants on 02.08.2022.
- cc. At the 13<sup>th</sup> COC meeting further continued on 03.08.2022, the Applicant re-confirmed to the CoC that both the Resolution Applicants were eligible to submit their respective Resolution Plans for the Corporate Debtor as per Section 29A of the IBC. Further, the Applicant apprised the members of the CoC that as per Regulation 39(2) of the CIRP Regulations, the Resolution Plans of Fervent Securities Pvt. Ltd. in consortium with Apex Tradelink Pvt. Ltd. and Yura Business Partners LLP in consortium with Gupta Steel Corporation Pvt. Ltd. were in compliance as per the IBC read with the requisite CIRP Regulations and the same can be put for voting of the CoC members. The Applicant thereafter apprised the members of the CoC that as per Regulation 39(3) of the CIRP Regulations, the COC shall (i) evaluate the resolution plans received as per the evaluation matrix; (ii) record its deliberations on the feasibility and viability of each resolution plan and (iii) vote on all the resolution plans simultaneously. The assessment of evaluation on the Quantitative & Qualitative Parameters of the resolution plans by the COC members are provided in the minutes of the 13<sup>th</sup> COC meeting and for sake of brevity, are not reproduced herein.

- dd. Subsequently, in accordance with Regulation 25(5) of the CIRP Regulations, voting on the resolution plans was put through electronic voting systems and the voting period started on 05.08.2022 at 7:00 p.m. and ended on 09.08.2022 at 11:00 a.m.
- ee. Accordingly, on 09.08.2022, the resolution plan submitted by Yura Business Partners LLP in consortium with Gupta Steel Corporation Pvt. Ltd. has been approved by 94.51 % voting share in the 13<sup>th</sup> meeting of the committee of creditors of the Respondent/ Corporate Debtor (CoC) held on 03.08.2022, followed by the electronic voting ('E- voting') which started on 05.08.2022 at 7:00 p.m and concluded on 09.08.2022 at 11:00 a.m.
- ff. The Final Resolution Plan has been examined by the Applicant herein and has been found to be compliant with the mandatory provisions of Section 30(2) of the Code and the relevant Regulations. As per the requirements of Regulation 39(4) of the CIRP Regulations, 2016, Compliance Certificate in Form 'H' from the Resolution Professional.

**3. The Salient Features of the Resolution Plan are as under:**

- a. The Resolution Applicant is M/s. Yura Business Partners LLP in consortium with M/s. Gupta Steel Corporation Pvt. Ltd., having its address at 210, Sanjay Mittal Ind. Premises CSL, Mittal Ind Estate, Andheri Kurla Road, Andheri E, Mumbai- 400059 and was incorporated on 02.08.2012. The Yura Business Partners LLP having its major activities related in to the business of Real Estate, including Development, Consultancy, etc. The partners of Yura are Mr. Rohit Garodia and Gaurav Agarwal. The Gupta Steel Corporation Pvt. Ltd. having its address at 501B, Elegant Business Park, Andheri Kurla Road, J.B. Nagar, Andheri E, Mumbai-400059 and was incorporated on 24.03.2004. The Gupta Steel Corporation Pvt. Ltd. is having its major business operations in Steel, Power and allied industries. The partners of Gupta Steel

Corporation Pvt. Ltd. are Mrs. Nalini Kant Dash and Mrs. Maria Murli Mudliyar.

- b. The Mayur Pankh Properties Private Limited (the Corporate Debtor) having its address at Sunshine Plaza, 6th Floor, Naigaum Cross Road, Dadar (East), Mumbai – 400 014, Maharashtra, India. The Corporate Debtor was incorporated on 03.08.1994. The Corporate Debtor is having its major business operations in construction of residential and commercial buildings.
- c. NCLT Approval Date: shall mean the written order issued by the NCLT under Section 31 (1) of the Code, for approval of this Resolution Plan.
- d. Trigger Date: shall mean the later of the following:
- 60<sup>th</sup> (sixtieth) day from the date on which the certified copy the NCLT Approval Order is received by the Resolution Applicant and no stay/injunction is granted by any court/tribunal with respect to this Resolution Plan; or
  - 60<sup>th</sup> (sixtieth) day from the date on which any stay/injunction granted on the implementation of this Resolution Plan is vacated by the relevant court/tribunal
- e. The Resolution Plan proposes an amount of **Rs. 67.74 Crores (Rupees Sixty Seven Crores and Seventy Four Lakhs only)** for the settlement of claims by the Resolution Applicant.

4. **The details of the proposed payments are as follows:**

**A) Corporate Insolvency Resolution Process Costs**

- i. In terms of Section 30(2) (a) of the IBC, the CIRP Costs are to be paid in priority to any other creditor of the Corporate Debtor.
- ii. The CIRP Costs shall firstly, be paid from the internal accruals and / or receivables of the Corporate Debtor and to the extent that the

internal accruals and / or receivables are not adequate, the balance amounts of the CIRP Costs if any, shall be paid by from the RA Sums provided by the Resolution Applicant. In the event that the internal accruals and / or receivables of the Corporate Debtor and the RA Sums are not adequate, the balance amounts of the CIRP Costs if any, shall be paid by the Resolution Applicants from their own sources. The internal receivables of the Corporate Debtor/ RA Sums shall be utilised for the payment of the CIRP Costs in priority to the payment of other Debts of the Corporate Debtor.

**B) Payment of the Operational Creditors being Workmen Dues and Employees Dues**

- i. The total Operational Creditors being Workmen Dues and Employees Dues admitted by the Resolution Professional is Rs. 17,63,923/- (Rupees Seventeen Lacs Sixty Three Thousand Nine Hundred and Twenty Three only). The amount admitted by the Applicant is Rs. 14,08,848/- (Rupees Fourteen Lacs Eight Thousand Eight Hundred and Forty Eight only) and the Plan provides a payment of Rs. 1,61,284/- (Rupees One Lac Sixty One Thousand Two Hundred and Eighty Four only).

**C) Payment due to the Other Operational Creditors and the Statutory Dues Creditors**

- i. The total due to the Other Operational Creditors and the Statutory Dues Creditors Employee and Workmen dues claimed by them are Rs. 94,27,994/- (Rupees Ninety Four Lakhs Twenty Seven Thousand Nine Hundred and Ninety Four only) the amount which is admitted by the Applicant was Rs. 85,73,858/- (Rupees Eighty Five Lakhs Seventy Three Thousand Eight Hundred and Eighty Five only) and the payout proposed by the Resolution Applicant is Rs.

4,12,938/- (Rupees Four Lakhs Twelve Thousand Nine Hundred and Thirty Eight only).

**D) Payment to the Related Party Creditors**

- i. The Resolution Applicant proposes to make NIL payment to the Related Party Creditors of the Corporate Debtor, if any towards full and final settlement / discharge of the entire amounts of the Related Party Debt of the Related Party Creditors.

**E) Payment to the Unsecured Financial Creditors**

- i. The total due to the Other Operational Creditors and the Statutory Dues Creditors Employee and Workmen dues claimed by them are Rs. 11,70,85,183/- (Rupees Eleven Crores Seventy Lakhs Eight Five Thousand One Hundred and Eight Three only) the amount which is admitted by the Applicant was Rs. 9,97,31,080/- (Rupees Nine Crores Ninety Seven Lakhs Thirty One Thousand and Eighty only) and the payout proposed by the Resolution Applicant is Rs. 1,99,12,127/- (Rupees One Crore Ninety Nine Lakhs Twelve Thousand One Hundred Twenty Seven only).

**F) Payment to the Existing Shareholders**

- i. The Resolution Applicant proposes to make Nil payment towards full and final settlement/discharge of any liability of the Corporate Debtor towards the Existing Shareholders (both equity and preference). The entire shareholding of the Existing Shareholders (both equity and preference) shall be cancelled and extinguished as per the terms and conditions of this Resolution Plan.

**G) Payment to the Dissenting Financial Creditors**

- i. All the Financial Creditors who do not vote in favour of the Resolution Plan (i.e., Dissenting Financial Creditors) shall be paid such amount as set out in the Resolution Plan. The payment to the Dissenting Financial Creditors shall be made in priority to the payment to assenting Financial Creditors and shall not be less than

the amount that would be payable to such Financial Creditors in accordance with Section 53(1) of the IBC in the event of a liquidation of the Company. The determination of the said amount payable to the said Financial Creditors shall take into account the order of priority amongst the creditors as set out in sub-section (1) of Section 53 of the IBC including the priority and value of the security interest of a Secured Financial Creditors of the Corporate Debtor. Such Dissenting Financial Creditor will not be entitled to any other amount either under the Utilization Waterfall or otherwise.

**H) Payment to the Secured Financial Creditors**

- i. The total due to the Secured Financial Creditors dues claimed by them are Rs. 1,35,30,86,000/- (Rupees One Hundred Thirty Five Crores Thirty Lakhs Eighty Six Thousand only) the amount which is admitted by the Applicant was Rs. 1,35,30,86,000/- (Rupees One Hundred Thirty Five Crores Thirty Lakhs Eight Six Thousand only) and the payout proposed by the Resolution Applicant is Rs. 62,18,78,509/- (Rupees Sixty Two Crores Eighteen Lakhs Seventy Eight Thousand Five Hundred and Nine only).

**I) Treatment of Existing Guarantees / Third-Party Securities**

- i. Nothing contained in this Resolution Plan shall affect the validity and enforceability of (i) the Existing Guarantees; and (ii) any other Third-Party Securities created by a third party, if any, as of the Insolvency Commencement Date of the Corporate Debtor, for securing the Financial Debt of the Corporate Debtor and the Financial Creditors shall be entitled to take all steps and remedies and recourse available to them in Applicable Law.
- ii. It is clarified that nothing contained in this Resolution Plan shall in any manner prejudice or impair the rights of any Financial Creditor to enforce its rights under any Existing Guarantees or Third-Party

Securities that has been issued for the benefit for such Financial Creditor by a Person (other than the Corporate Debtor). It is further clarified for abundant caution and clarity, that nothing herein shall be construed as any Financial Creditor having assigned or transferred its rights under any Existing Guarantees or Third Party Securities that has been issued for the benefit for such Financial Creditor by a Person (other than the Corporate Debtor), which will continue to vest in and enure for the benefit of such Financial Creditor. It is clarified that the Creditors may continue with any Proceedings initiated against the Existing Guarantors and Third Party Security Providers, however, they shall file necessary applications for removing the Corporate Debtor as a party to such Proceedings.

- iii. For the purposes of enforcement of such rights, if required under Applicable Law, the Resolution Applicant shall be deemed to have irrevocably assigned such enforcement rights to the relevant Financial Creditor.
- iv. It is also clarified that payments made to the Financial Creditors, in terms of the Resolution Plan, shall not in any manner prejudice the rights of the Financial Creditors that are available to them under Applicable Laws to proceed against any third party which may be a principal borrower / debtor (and for whose benefit the Corporate Debtor may be the corporate guarantor or security provider or both).
- v. Nothing contained in this Resolution Plan shall, in any manner, limit or restrict the right (and it exercise) of any creditor in relation to the corporate guarantees, personal guarantees, third party securities (whether by way of hypothecation, pledge or mortgage), indemnities, warranties executed by the Existing Shareholders (direct or indirect holding)/ existing promoters/ Affiliates of the

Corporate Debtor/ any other Person, provided for and on behalf of, and/or in order to secure any obligations of the Corporate Debtor, in accordance with the Applicable Laws (collectively, the Third-Party Securities). Nothing contained under this Resolution Plan shall operate as discharge of any obligations or release of any form of Third-Party Securities provided for and on behalf of, and/or in order to secure any obligations of the Corporate Debtor.

- vi. The guarantors or any other Third-Party Securities providers (including the existing promoters/shareholders (directly or indirectly)) who have provided any form of security and / or guarantees (including the Existing Guarantees) for and on behalf of, and / or an order to secure any obligations of the Corporate Debtor (whether by the way of hypothecation, pledge, mortgage or otherwise), shall not be entitled to exercise any right of subrogation in respect of such arrangement against the Corporate Debtor and they shall have no rights or claims against Corporate Debtor and / or its assets and / or the Resolution Applicant and all rights of subrogation and claims arising therefrom are deemed to have been waived and shall stand extinguished.
- vii. With regard to all other undeveloped bank guarantees / letters of credit, it is expressly stated that the Corporate Debtor shall neither be liable to honour such bank guarantee / letters of credit nor shall it be obliged to renew the bank guarantee / letters of credit or provide any assistance to the Financial Creditors to contest or defend any claims that are raised by the beneficiary. The satisfaction or payment by the Financial Creditors upon receipt of any claims in connection with the aforementioned bank guarantees / letters of credit shall not be construed as a default on part of the Corporate Debtor and, any modifications required in the bank guarantee / letter of credit documents to reflect such arrangement

shall be made by the Financial Creditors prior to the Trigger Date. The payment as per the Utilization Waterfall shall be deemed to be in full and final settlement of all liabilities of the Corporate Debtor for any payment made / to be paid by the Financial Creditors to the respective third-party beneficiaries as and when such payment is made by the Financial Creditors in future.

- viii. It is clarified that the past promoters or promoter Group, managers, directors, officers, or person in charge of the affairs and/or management of the Corporate Debtor (including any person who was an 'officer in default', 'principal employer', or 'occupier', other than the Resolution Professional) prior to the Trigger Date shall continue to be responsible and liable for all the liabilities, claims, demand, obligations, penalties etc. arising out of any (i) proceedings, inquiries, investigations, orders, show causes, notices, suits, litigation etc. (including those arising out of any orders passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the Code) or any acts or omissions in breach of Applicable Law which occurred prior to the Trigger Date; or (ii) that may arise out of any proceedings, inquiries, investigations, orders, show cause, notices, suits, litigation etc. (including any orders that may be passed by the NCLT pursuant to Sections 43, 45, 49, 50, 66, 68, 70, 71, 72, 73, 74 of the Code). Such avoidance applications, if any shall be continued by the Corporate Debtor, on and from the Trigger Date and in the event any transaction is avoided/set aside by the Adjudicating Authority in terms of Sections 43, 45, 47, 49, 50 or 66 of the Code, and any amount is received by the Resolution Professional or the Corporate Debtor in furtherance thereof, whether prior to the NCLT Approval Date or after the NCLT Approval Date, such sums shall be solely for the

benefit of the Corporate Debtor which shall be distributed in accordance with the Utilisation Waterfall.

- ix. Other than the aforesaid payments, any and all liabilities and all amounts due and / or payable by the Corporate Debtor whether admitted or not, due or contingent, asserted or unasserted, assessed or unassessed, crystallized or un-crystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to the Financial Creditors, shall stand settled, extinguished and written off as of the Approval Date pursuant to the NCLT Approval Order and neither the Corporate Debtor nor the Resolution Applicant shall be responsible and / or liable, directly or indirectly, for the same.

**J) Payment to Other Creditors**

- i. The Resolution Applicant shall make Nil payment towards full and final settlement/discharge of the entire amounts of the Debt of all Other Creditors (excluding the Financial Creditors and the Operational Creditors including Workmen and Employees and Statutory Dues Creditors). Any and all liabilities and all amounts due and / or payable by the Corporate Debtor, relating to a period on or prior to the NCLT Approval Date, whether admitted or not, due or contingent, asserted or unasserted, assessed or unassessed, determined or undetermined, crystallized or un-crystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to the Other Creditors of the Corporate Debtor, shall stand settled, extinguished and written off as of the NCLT Approval Date pursuant to the NCLT Approval Order and the Corporate Debtor shall not be responsible and / or liable, directly or indirectly, for the same. It is clarified that any liability arising out of any Proceedings for any matter pertaining to any Claim of Other Creditors for the period upto the NCLT Approval Date, that may

arise at any time, shall stand waived and extinguished in entirety irrespective of when such liability arises (even if such past liability pertaining to the aforesaid period arises any time in the future post the NCLT Approval Date) and the Corporate Debtor shall have no liability for the same.

**K) Additional Claims**

- i. Any Claims that are admitted or any Debt pertaining to a period prior to the NCLT Approval Date, which arises over and above the amounts set out in the Information Memorandum, and if such amounts are determined to be settled and/or payable by the Resolution Applicant or the Corporate Debtor whether by a court order or otherwise, then such amounts shall be paid out of the RA Sums/payment as per the Utilization Waterfall without any further/additional liability/obligation on the Resolution Applicant or the Corporate Debtor. It is clarified that for such additional Claims/Debt, the Creditors of such Claims shall be entitled to receive only from the amounts agreed to be paid under this Resolution Plan as per the relevant category such Creditors fall under as per the provisions of this Resolution Plan and the amounts payable to that category of Creditors shall stand adjusted accordingly proportionately. In the event the Claim/Debt of any Creditor is reclassified whether by a court order or otherwise, such Creditor shall be only entitled to the amount payable to them as per the relevant category such Creditors they are reclassified to. For example, (i) if the Creditor of such additional Claim/Debt is a Workmen, such Workmen shall be payable from the amounts set out above on proportionate basis; (ii) if an Operational Creditor is reclassified as a Financial Creditor, such a Creditor shall then be payable from the amounts set out above on proportionate basis; and such reclassified creditor shall only be entitled to payment as

per the class of Creditors they are reclassified to as per Utilization Waterfall set out in the Resolution Plan.

- ii. Notwithstanding anything contained in this Resolution Plan, it is clarified that the Resolution Applicant shall not be required to make any payments over and above the RA Sums as agreed to be paid under this Resolution Plan, towards settlement of all Claims whether they are reclassified at a later date, admitted or not, due or contingent, asserted or unasserted, assessed or unassessed, determined or undetermined, crystallized or un-crystallized, known or unknown, secured or unsecured, disputed or undisputed.
- iii. It is clarified that any extinguishment/write-off of any liabilities towards any of the stakeholders of the Corporate Debtor shall become effective on and from the Trigger Date (and upon the actual payment of the relevant amounts to all the stakeholders in accordance with the terms on this Resolution Plan).

**L) Statement as to how the Plan has dealt with the Interests of all Stakeholders**

The Resolution Applicant submits that the interests of all the stakeholders, including the Financial Creditors, Operational Creditors and other creditors of the Corporate Debtor has been addressed / dealt as under:

<b>Sr. No.</b>	<b>Particulars</b>	<b>Interests of all Stakeholders</b>
1.	CIRP Costs	The CIRP Costs shall firstly, be paid from the internal revenue sources/ bank balance/ accruals and / or receivables of the Corporate Debtor and to the extent that the internal accruals and / or receivables are not adequate, the balance amounts of the CIRP Costs, shall be paid by from the RA Sums provided by the Resolution Applicant. In the event that the

		internal accruals and / or receivables of the Corporate Debtor and the RA Sums are not adequate, the balance amounts of the CIPR Costs, shall be paid by the Resolution Applicants from their own sources on the Trigger Date.
2.	Operational Creditors being Workmen Dues and Employees Dues	Rs. 1,61,284/- (Rupees One Lakhs Sixty One Thousand Two Hundred and Eighty Four only)
3.	Other Operational Creditors and the Statutory Dues Creditors Employee and Workmen dues	Rs. 4,12,938/- (Rupees Four Lakhs Twelve Thousand Nine Hundred and Thirty Eight only).
4.	Unsecured Financial Creditors	Rs. 1,99,12,127/- (Rupees One Crore Ninety Lakh Twelve Thousand One Hundred Twenty Seven only)
5.	Secured Financial Creditors	Rs. 62,18,78,509/- (Rupees Sixty Two Crores Eighteen Lakhs Seventy Eight Thousand Five Hundred and Nine only)

**M) Sources of Funds**

- i. The Resolution Applicants / their Nominees may infuse upto Rs. 21 crores as working capital contribution, on need basis, if determined in their sole discretion which may be brought in by the Resolution Applicants / their Nominees and contributed to the Corporate Debtor as a mix of equity capital or preference capital or unsecured loans by the Resolution Applicants /Nominees/ its Affiliates and/or as otherwise provided in the Resolution Plan, in its sole discretion. Any working capital infusion brought in by the

Resolution Applicants/Nominees from their internal accruals if contributed to the Corporate Debtor as a loan by the Resolution Applicants/its Affiliates (which shall be compliant with the requirements of Section 29A of the Code), shall be repayable as RA Contributions as per the Utilisation Waterfall set out herein. The Corporate Debtor shall be required to pay the RA Interest on the said loans as per the Utilisation Waterfall set out herein.

- ii. Subject to the provisions of the Resolution Plan, the Resolution Applicant shall be entitled to raise monies from banks and/ or financial institutions as it may deem fit subject to prior consent from simple majority of the Financial Creditors (Financial Creditors existing as on NCLT Approval Date) from time to time to meet the requirement of funds for the payments to stakeholders or for raising working capital or meet the capex requirements of the Corporate Debtor, as set out in the Resolution Plan.
- iii. The Resolution Applicants shall make payments from the distribution / utilization of the Receivables of the Corporate Debtor as per the Utilization Waterfall as set out in Resolution Plan.

**N) Timelines and Implementation Schedule:**

<b>Step</b>	<b>Process</b>	<b>Timeline</b>
1.	Approval of the Resolution Plan by the COC	COC Approval Date
2.	RP to commence the RP Actions	From COC Approval Date
3.	Issuance of the PBG.	Within 7 days of declaration as successful resolution applicant by the Resolution Professional.
4.	Receipt of the certified copy of the order of the NCLT sanctioning the Resolution Plan and fulfilment of conditions prescribed, if any, by NCLT in its said order.	X

5.	Constitution of the Monitoring Committee and appointment of the Resolution Professional as Managing Agent	Immediately on the NCLT Approval Date
6.	Filing INC 28 by the RP to change the status of the Company from 'Under CIRP' on the Ministry of Corporate Affairs	X + 5 days
7.	<p>i. Payment of the CIRP Costs.                      ii. Payment of such amount as the Resolution Applicants/its Nominees may decide to the Corporate Debtor towards subscription/ allotment of 100% Equity Shares;                      iii. Issuance/ allotment of 100% Equity Shares to the Resolution Applicants/its Nominees;                      iv. Reconstitution the board of directors of the Corporate Debtor.                      v. Cessation of the existing board.                      vi. Handover of records by the Resolution Professional / Managing Agent.                      vii. The execution of the Development Management Agreement between the Corporate Debtor and the Development Manager.</p> <p><i>Note: All the aforesaid actions shall occur simultaneously, however, the Resolution Applicant shall have the right to rearrange the sequence of events occurring on the Trigger Date, as required for the purposes of implementation of the Plan.</i></p>	Trigger Date
8.	Payment of other amounts and discharge of other obligations of the Corporate Debtor/ Resolution Applicant.	As per terms of the Resolution Plan
9.	The relevant Secured Financial Creditors shall file necessary forms/ filings / reports in ROC, CERSAI, CIBIL and other credit information companies.	As set out in the Resolution Plan

**O) Anticipated Sources & Uses of Funds as per the Projected Business Plans:**

*(in. Crores)*

<b>Sr. No.</b>	<b>Particulars</b>	<b>Total</b>	<b>During Year 1</b>	<b>During Year 2</b>	<b>During Year 3</b>

<b>Sources of Funds</b>					
1.	Working Capital Contribution by RA	11.41	11.41	-	-
2.	Construction Finance	18.54	18.32	0.22	-
3.	Receivable by Projects	219.40	11.44	96.06	111.90
	<b>Total</b>	<b>249.36</b>	<b>41.18</b>	<b>96.28</b>	<b>111.90</b>
<b>Uses of Funds</b>					
1.	CIRP Costs	3.50	3.50	-	-
2.	Workmen & Employees Dues	0.02	0.02	-	-
3.	Other Operational Creditors	0.04	0.04	-	-
4.	Statutory Dues Creditors	-	-	-	-
5.	Dissenting Financial Creditors (if any)	-	-	-	-
6.	Project Expenses	113.72	34.56	53.02	26.14
7.	Development Management Fees	30.07	1.57	13.16	15.33
8.	Instrest on Construction Finance	2.85	1.49	1.36	-
9.	Repayment of Construction Finance	18.54	-	18.54	-
10.	Repayment of Working Capital Loan + Accured Interest by RA	16.44	-	9.76	6.68
11.	Priority payment made to Unsecured Financial Creditors	1.99	-	0.11	1.88
12.	Priority payment made to Secured Financial Creditors	62.19	-	0.32	61.87
13.	Payment to Equity Shareholders	-	-	-	-
	<b>Total</b>	<b>249.36</b>	<b>41.18</b>	<b>96.28</b>	<b>111.90</b>

Note:

The Financial plan and associated numbers are just indicative and should not be used to measure actual outcome. The numbers have been made assuming zero delays due to approvals, labour, legal issues, funding requirements, etc.,

## **5. TERM, IMPLEMENTATION AND SUPERVISION OF THE RESOLUTION PLAN**

**5.1. Supervision of the Resolution Plan from the date of submission of Performance Bank Guarantee (“PBG”) till the appointment of the Monitoring Committee:**

5.1.1. On and from the date of submission of PBG, till the time the Monitoring Committee (defined hereinafter) is formed in accordance with Paragraph 5.2 below and begins supervision of the Resolution Plan, the Corporate Debtor (and the Resolution Professional and COC) shall ensure that:

- i. Carry on the business with reasonable diligence and business prudence and ensure with reasonable effort that the realisable net Current Assets position of the Corporate Debtor as per the Liquidation Value of the Corporate Debtor is maintained;
- ii. Not incur any Additional Indebtedness, encumber its assets or Transfer its assets, other than in the ordinary course of business as may be required to continue the Corporate Debtor as a going concern;
- iii. Except as provided in the Resolution Plan, not make any change in capital structure of the Corporate Debtor either by way of any increase (by issue of equity shares, bonus shares, convertible debentures or otherwise), decrease, reduction, reclassification, sub-division or consolidation, re-organisation or in any other manner, which would have the effect of re-organisation of capital of the Corporate Debtor, except with prior written consent of the Resolution Applicant;
- iv. Other than at the request of the Resolution Applicant not alter or expand the Corporate Debtor's business, or undertake (i) any material decision in relation to its business and affairs and operations other than that in the ordinary course of business; (ii) any agreement or transaction (other than an agreement or transaction in the ordinary course of business); and (iii) any new business, or discontinue any existing business or change the capacity of facilities other than that in the ordinary course of business;

- v. Other than at the request of the Resolution Applicant not amend, terminate, cancel or release any contracts or work orders or other arrangements relating to the Corporate Debtor, otherwise than in the ordinary course of business;
- vi. Other than at the request of the Resolution Applicant, not enter into or modify the terms of existing contracts (including schemes or collective bargaining agreements) with any trade/labour/employee unions, or recognize any new trade/labour/employee unions, in relation to the Corporate Debtor;
- vii. Not enter into (i) contracts or arrangements which can reasonably be determined to be loss-making over the planned term of such contract; (ii) contracts or arrangements with unusual or onerous terms; or (iii) contracts or arrangements which are not on arms-length basis provided however that, nothing contained in this paragraph shall be deemed to apply to execution of contracts or entering into arrangements with customers in the ordinary course of business, with respect to the Corporate Debtor except with prior written consent of the Resolution Applicant;
- viii. Except as provided in the Resolution Plan, not write down or write up the value of, or revalue any assets of the Corporate Debtor, except with prior written consent of the Resolution Applicant;
- ix. Except as provided in the Resolution Plan, not write back of the liabilities of the Corporate Debtor, except with prior written consent of the Resolution Applicant;
- x. Not grant to any third party, any rights, privileges or licenses over any assets or rights in relation to the Corporate Debtor which would adversely affect the ability of the Resolution Applicant to receive the benefits of such assets or rights under the Resolution Plan;
- xi. Not acquire shares in or invest in any other Person, whether through subscription or purchase or otherwise in relation to Corporate Debtor;

- (ii) create partnerships, subsidiaries or joint ventures in relation to the Corporate Debtor; (iii) make business arrangements in the nature of revenue sharing, profit sharing or assets sharing in relation to the Corporate Debtor; or (iv) make modifications to, termination of arrangements (falling within the aforementioned categories) existing as on the date of this Resolution Plan or subsequently effected in relation to Corporate Debtor;
- xii. Not repay any loans, advances or any other amounts that may be required to be repaid, set-off, redeemed, prepaid or reimbursed, save and except for amounts specifically required to be repaid, set-off, redeemed, prepaid or reimbursed under the Resolution Plan (including the CIRP Costs);
- xiii. Other than at the request of the Resolution Applicant, not appoint, transfer, remove, or determine the terms of employment of any employees and any significant changes in the terms of employment of the employees of the Corporate Debtor forming part of the Corporate Debtor as compared to the terms as existing on the NCLT Approval Date;
- xiv. Not amend the charter documents of the Corporate Debtor except as specified in this Resolution Plan;
- xv. Not pay, discharge or satisfy any material claim, liability or obligation of the Corporate Debtor other than in the ordinary course of business; and
- xvi. Not merge, restructure, consolidate, amalgamate, liquidate, wind up or dissolve the Corporate Debtor, or commence any proceedings.

5.1.2 The Resolution Professional shall ensure that all the statutory filings including income tax returns, annual returns, Companies Act compliances required to be complied with/filed by the Corporate Debtor are completed

by the Resolution Professional, on behalf of the Corporate Debtor in accordance with Applicable Laws upto the Trigger Date.

5.1.3 On and from the date of submission of PBG, till the time the Monitoring Committee is formed in accordance with Paragraph 5.2 below and begins supervision of the Resolution Plan, the Resolution Applicant may request the Resolution Professional (and such a request shall not unreasonably be not considered to be acted upon immediately) to streamline the operations (including inter alia re-negotiation of existing agreements or arrangements or contracts, renewal or termination of existing agreements, for sourcing of raw materials or sale of finished products, availing or providing new working capital, appointment / termination of suitable key managerial personnel to manage operations) and overall business activity of the Corporate Debtor with an objective of conserving and/or growing the value of its business.

**5.2 Supervision of the Resolution Plan from the NCLT Approval Date:**

5.2.1 The Resolution Professional shall be responsible for completing the RP Actions, prior to the NCLT Approval Date, in accordance with the terms of this Resolution Plan. On and from the NCLT Approval Date, a monitoring committee (“Monitoring Committee”) shall be appointed for the Corporate Debtor. The Monitoring Committee shall comprise of one representative of the COC and one members from the Resolution Applicant Consortium. The Monitoring Committee shall supervise the implementation of the Resolution Plan and shall be required and entitled to do all such acts, deeds, matter and things as may be necessary, desirable or expedient in order to supervise implementation of this Resolution Plan and shall act under the supervision of the NCLT upto the Trigger Date. On and from the NCLT Approval Date till the Trigger Date, the day to day functioning of the Corporate Debtor shall be controlled and managed by the Monitoring Committee, in accordance

with the terms of this Resolution Plan. All decisions of the Monitoring Committee shall be taken by the simple majority of the members of the Monitoring Committee.

5.2.2 On and from the NCLT Approval Date, the Resolution Professional shall be appointed as the Managing Agent of the Company (“Managing Agent”). On and from the NCLT Approval Date till the Trigger Date, all actions required to be done by the Resolution Professional as per the terms of this Resolution Plan, including the RP Actions, shall be done by the Resolution Professional in its capacity as Managing Agent. It is clarified that no remuneration shall be payable to the Managing Agent. Expenses incurred by the Managing Agent towards filing forms with the ROC, if any, at actuals, shall be pre-approved and shall form a part of the Project Cost.

5.2.3 No remuneration shall be paid to the Monitoring Committee. Expenses incurred by the Monitoring Committee, if any, at actuals, shall be pre-approved and shall form a part of the Project cost.

5.2.4 The powers of the existing Board of directors of the Corporate Debtor shall remain suspended till the formation of the Reconstituted Board and the said powers shall be discharged by the Resolution Professional (till the NCLT Approval Date) and the Monitoring Committee (from the NCLT Approval Date) constituted till the formation of the Reconstituted Board as per the provisions of this Resolution Plan. The members of the Monitoring Committee shall be subject to and bound by the terms of this Resolution Plan. All filings required to be made to the Registrar of Companies (ROC) as per the provisions of the Companies Act for change in composition of board of directors shall be complied with by the Resolution Professional/ existing Board of Directors, and/ or the Reconstituted Board, as the case may be.

5.2.5 On and from the NCLT Approval Date till the management is taken over by the Reconstituted Board on the Trigger Date, the Corporate Debtor shall (and Monitoring Committee shall ensure that):

- i. Carry on the business with reasonable diligence and business prudence and ensure with reasonable effort that the realisable net Current Assets position of the Corporate Debtor as per the Liquidation Value of the Corporate Debtor is maintained;
- ii. Not incur any Additional Indebtedness, encumber its assets or Transfer its assets, except with prior written consent of the Resolution Applicant other than in the ordinary course of business as may be required to continue the Corporate Debtor as a going concern;
- iii. Except as provided in the Resolution Plan, not make any change in capital structure of the Corporate Debtor either by way of any increase (by issue of equity shares, bonus shares, convertible debentures or otherwise), decrease, reduction, reclassification, sub-division or consolidation, re-organisation or in any other manner, which would have the effect of re-organisation of capital of the Corporate Debtor, except with prior written consent of the Resolution Applicant;
- iv. Other than at the request of the Resolution Applicant not alter or expand the Corporate Debtor's business, or undertake (i) any material decision in relation to its business and affairs and operations other than that in the ordinary course of business; (ii) any agreement or transaction (other than an agreement or transaction in the ordinary course of business); and (iii) any new business, or discontinue any existing business or change the capacity of facilities other than that in the ordinary course of business;
- v. Other than at the request of the Resolution Applicant not amend, terminate, cancel or release any contracts or work orders or other

arrangements relating to the Corporate Debtor, otherwise than in the ordinary course of business;

- vi. Except as provided in the Resolution Plan, not write down or write up the value of, or revalue any assets of the Corporate Debtor, except with prior written consent of the Resolution Applicant;
- vii. Except as provided in the Resolution Plan, not write back of the liabilities of the Corporate Debtor, except with prior written consent of the Resolution Applicant;
- viii. Except with prior written consent of the Resolution Applicant, not grant to any third party, any rights, privileges or licenses over any Assets or rights in relation to the Corporate Debtor which would adversely affect the ability of the Resolution Applicant to receive the benefits of such assets or rights under the Resolution Plan;
- ix. Except with prior written consent of the Resolution Applicant, not initiate or settle any litigations in relation to the assets, or make any submissions under any pending dispute or litigation undertaking any additional obligations pertaining to the assets of the Corporate Debtor;
- x. Not acquire shares in or invest in any other Person, whether through subscription or purchase or otherwise in relation to Corporate Debtor; (ii) create partnerships, subsidiaries or joint ventures in relation to the Corporate Debtor; (iii) make business arrangements in the nature of revenue sharing, profit sharing or assets sharing in relation to the Corporate Debtor; or (iv) make modifications to, termination of arrangements (falling within the aforementioned categories) existing as on the date of this Resolution Plan or subsequently effected in relation to Corporate Debtor except with prior written consent of the Resolution Applicant;
- xi. Not repay any loans, advances or any other amounts that may be required to be repaid, set-off, redeemed, prepaid or reimbursed except with prior written consent of the Resolution Applicant, save and

except for amounts specifically required to be repaid, set-off, redeemed, prepaid or reimbursed under the Resolution Plan (including the CIRP Costs);

- xii. Other than at the request of the Resolution Applicant, not appoint, transfer, remove, or determine the terms of employment of any employees and any significant changes in the terms of employment of the employees of the Corporate Debtor forming part of the Corporate Debtor as compared to the terms as existing on the NCLT Approval Date;
- xiii. Other than at the request of the Resolution Applicant, not enter into or modify the terms of existing contracts (including schemes or collective bargaining agreements) with any trade/labour/employee unions, or recognize any new trade/labour/employee unions, in relation to the Corporate Debtor;
- xiv. Other than at the request of the Resolution Applicant, not enter into any contract, transaction or assignment of the intellectual property pertaining to the Corporate Debtor other than in the ordinary course of business or modifying or terminating any existing contracts in relation to the same;
- xv. Not enter into (i) contracts or arrangements which can reasonably be determined to be loss-making over the planned term of such contract; (ii) contracts or arrangements with unusual or onerous terms; or (iii) contracts or arrangements which are not on arms-length basis provided however that, nothing contained in this paragraph shall be deemed to apply to execution of contracts or entering into arrangements with customers in the ordinary course of business, with respect to the Corporate Debtor except with prior written consent of the Resolution Applicant;

- xvi. Other than at the request of the Resolution Applicant, not approve or incur any capital expenditure or commitment in relation to the Corporate Debtor;
- xvii. Other than at the request of the Resolution Applicant, not incur, issue, assume, extend, or guarantee any new or additional obligations or enter into new banking or payment channels with respect to the Corporate Debtor;
- xviii. Not amend the charter documents of the Corporate Debtor except as specified in this Resolution Plan;
- xix. Not pay, discharge or satisfy any material claim, liability or obligation of the Corporate Debtor other than in the ordinary course of business except with prior written consent of the Resolution Applicant;
- xx. Not shift the registered office of the Corporate Debtor outside the state in India, in which such office is currently located without the prior written consent of the Resolution Applicant; and
- xxi. Not merge, restructure, consolidate, amalgamate, liquidate, wind up or dissolve the Corporate Debtor, or commence any proceedings without the prior written consent of the Resolution Applicant.

5.2.6 Upon constitution of the Monitoring Committee, the Resolution Applicant may request the Monitoring Committee (and such a request shall not unreasonably be not considered to be acted upon immediately) to streamline the operations (including inter alia re-negotiation of existing agreements or arrangements or contracts for sourcing of raw materials or sale of finished products, availing or providing new working capital, appointment / termination of suitable key managerial personnel to manage operations) and overall business activity of the Corporate Debtor with an objective of conserving and/or growing the value of its business.

5.2.7 Immediately on the Trigger Date, the Reconstituted Board of the Corporate Debtor shall take over the control and management of the Corporate Debtor and the existing board of Directors shall be deemed to have resigned as directors from the Board of the Corporate Debtor from the NCLT Approval Date. Any actions taken by or agreed to be taken by the previous management of the Corporate Debtors which has been not otherwise addressed in this Resolution Plan, shall stand abated and will not be binding on the Resolution Applicant and/or the Corporate Debtor.

5.2.8 On and from the NCLT Approval Date till the Reconstituted Board takes over, the Managing Agent shall ensure that all the statutory filings including income tax returns, annual returns, Companies Act compliances required to be complied with/filed by the Corporate Debtor are completed by the Managing Agent on behalf of the Corporate Debtor in accordance with Applicable Laws.

### **5.3 Term of the Resolution Plan and Implementation Schedule**

5.3.1 In terms of Section 31(1) of the IBC, this Resolution Plan shall be binding on the Corporate Debtor and its promoters, suspended Board and its members, 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, such as authorities to whom statutory dues are owed, guarantors and other stakeholders of the Corporate Debtor on and from the date on which this Resolution Plan is approved by the NCLT.

5.3.2 The Resolution Plan shall not be subject to any expiry and shall remain valid and binding on the Corporate Debtor, the Resolution Applicants and all other stakeholders of the Corporate Debtor on and from the NCLT Approval Date.

5.3.3 It is clarified that in the event the effects, reliefs, concessions, waiver, extinguishments, etc. as set out in this Resolution Plan are not granted or modified or rejected or set aside by the Hon'ble NCLT, the Resolution Applicant reserves the right to appeal in the National Company Law Appellate Tribunal, and further in case the National Company Law Appellate Tribunal does not approve the same, the Resolution Applicant reserves the right to appeal in the Supreme Court. It is further clarified that an order shall constitute an unappealable order when: (i) the limitation period for preferring an appeal has expired; or (ii) an order has been passed by the Supreme Court.

5.3.4 In the event of any court or appropriate judicial authority passes an unappealable order directing reversal or rescindment of the Resolution Plan at any point in time in future, the Resolution Applicants shall have all rights, including right of restitution, to receive back from the Corporate Debtor all the payments made under the Resolution Plan along with reasonable interest, within 30 (Thirty) days of the date of any such unappealable order of reversal or rescindment.

5.3.5 The list of activities to be undertaken as part of the resolution process and the timelines for implementation of this Resolution Plan upon becoming effective is as set out in Schedule – 1 of the Resolution Plan.

5.3.6 Execution of the following Definitive Agreements shall form a part of the implementation of this Resolution Plan:

- a. The Development Management Agreement to be entered into between the Corporate Debtor and the Development Manager and all other necessary documents as provided therein; and

- b. Such other documents as may be required by the Resolution Applicant and/ or the COC.

5.3.7 The Resolution Applicant, the Secured Financial Creditors and the Corporate Debtor shall enter into the aforesaid respective Definitive Agreements to implement the transactions within the timelines set out in Schedule – 1 of the Resolution Plan hereto.

5.3.8 On and from the Trigger Date, the Resolution Applicant Consortium shall on a best effort basis, pursue the matter filed under Writ Petition No. 365 of 2014 (Lodging No. 2745 of 2014) in the Hon'ble Bombay High Court to get Full Height Permission for the Chambers Project.

**5.4 Compliances for appointment of the Reconstituted Board, for Standalone Capital Reduction, Change of name etc., if required**

5.4.1 The approval of this Resolution Plan by the Hon'ble NCLT shall be treated as if the necessary approvals required to be obtained for the appointment of the Reconstituted Board, for Standalone Capital Reduction and amendment of the Constitutional Documents, change of name (if any), change of registered office, (if any) under the Companies Act and / or under any other Applicable Laws, including consent of Existing Shareholders and the Creditors of the Corporate Debtor, as required under the Companies Act and / or under any other Applicable Laws, together with the process laid down under the Companies Act and / or any other Applicable Laws, have been obtained and duly complied with.

5.4.2 Subject to the above, the Corporate Debtor, the Resolution Applicant, as applicable, shall take appropriate corporate actions necessary for implementation of all the provisions of this Resolution Plan, including: (i) filing of appropriate documents or forms with relevant regulatory

authorities, (ii) issuance of shares and instruments as provided in the Resolution Plan, and (iii) regular compliance as per the Applicable Law.

## **5.5 Approvals**

5.5.1 The Resolution Applicants shall require the following approvals:

- a. Intimation to MAHARERA under the RERA Act (if required); and
- b. NOC or approval from Slum Rehabilitation Authority for change in control of the Corporate Debtor (if required).

5.5.2 The Resolution Applicant shall, pursuant to the approval of this Resolution Plan, obtain the aforesaid approvals (if required) within a period of one year from the NCLT Approval Date or within such period as provided for in law, whichever is later.

6. The Resolution Applicant is eligible to submit resolution plan. The successful Resolution Applicant has given an Affidavit satisfying the eligibility criteria as per the provisions under Section 29A of the Insolvency & Bankruptcy Code, 2016.

## **7. OBSERVATIONS AND FINDINGS:**

- i. 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.
- ii. As per Section 30(2)(b), the Resolution Applicant 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.

- iii. The Resolution Applicant has agreed to meet the cost of project from existing resources including infusion of equity/debt through the parent company, from sale of unsold inventories and if required from raising finance through external sources.
- iv. The Resolution Applicant has also agreed that dissenting financial creditors shall be paid in priority and not less than the value they would have been paid in the event of liquidation of the Corporate Debtor. The Resolution Applicant has proposed to pay liquidation value to unsecured financial creditors who dissent from the plan.
- v. As per Section 30 (2)(c), provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan.
- vi. Under Section 30 (2) (d) & Regulation 38(2)(c) provides for a term of the plan, implementation schedule and supervision of the Resolution Plan.
- vii. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor.
- viii. As per Section 30(2)(e), the Resolution Plan does not contravene any of the provisions of the law for the time being in force.
- ix. As per Section 30(2)(f) 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.
- x. As per IBBI Guidelines 38(1)(b) - The amount payable under a Resolution Plan -to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the plan.
- xi. 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.

- xii. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
- a. As per Regulation 38(1)(a) - The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.
  - b. As per Regulation 38 (1)(b) - The amount payable under a resolution plan to the Financial Creditors, who have right to vote under sub-section (2) of section 21 and did not vote in favor of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.
  - c. As per Regulation 38(1A) - 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.
  - d. 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(1B) of the Regulations.
  - e. 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.
  - f. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company.
  - g. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
  - h. 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.

- i. 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.
- j. Provides for the management and control of the business of the Corporate Debtor during its term.
- k. All the above factors demonstrate that the plan addresses the cause of default, is feasible and viable, has provisions for effective implementation, has provisions for approvals required and timeline for the same, and the Resolution Applicant has the capacity to implement the Resolution Plan.
- l. Before dealing with the above Resolution Plan, it is appropriate to mention that the dissenting financial creditor/un-successful resolution applicant M/s Lakshya Swaroop Housing Project Pvt. Ltd. filed yet another application I.A 543/2023 to de-reserve the orders on approval resolution plan vide I.A. No. 2253/2022 and to hear him on the issue of ineligibility of the resolution applicant under Section 29A of the code. However, instead of passing orders in the above application 543/2022, the above application was inadvertently disposed of by this Bench as become infructuous vide order dated 26.04.2023.
- m. Considering that listing of the above I.A. 543/2023 once again on board involves cumbersome procedure as it was already recorded as disposed of, this bench thought it fit to deal with the objections mentioned therein in the resolution plan itself on merits.
- n. Now let us deal with the contention of the applicant, M/s Lakshya Swaroop regarding the ineligibility of the resolution applicant. It is the contention for the learned counsel appearing for the M/s Lakshya

Swaroop Housing Project Pvt. Ltd. that the only point canvassed by the Applicant at the hearing on April 26, 2023 which the SRA is required to address is limited to the allegation that the SRA is disqualified under Section 29A. The Applicant's case is as under:

- Mr. Gaurav Agarwal is a partner in Yura Business Partners LLP, a constituent of the SRA.
  - Mr. Gaurav Agarwal is related to Mr. Amarprakash Agarwal, being his son.
  - Mr. Gaurav Agarwal and Mr. Amarprakash Agarwal together hold more than 50% of the shares in Satec Envir Engineering (India) Pvt. Ltd. ("**Satec**").
  - Mr. Gaurav Agarwal is a director of Satec.
  - Satec has defaulted on a loan from Bank of Maharashtra and was an NPA as on the date of submission of the Plan in respect of the Corporate Debtor.
  - Therefore, the SRA is disqualified under Section 29A.
- o. It is further submitted that Mr. Gaurav Agarwal was never a director of Satec as confirmed by the MCA Master Data of Satec, Further, Mr. Gaurav Agarwal has not been employed with Satec since November 2017 as confirmed by Satec's Auditor who has issued a Certificate. Mr. Gaurav Agarwal holds just 0.13% shareholding in Satec. In trying to establish the link between Mr. Agarwal and Satec, the Applicant has relied upon only (i) an old un-updated LinkedIn profile, which obviously cannot prove directorship, and (ii) an Order of the Hon'ble Bombay High Court dated 06.11.2019, which merely records that Mr. Gaurav Agarwal "**was** working with [Satec] as the Chief Financial Officer ..." (emphasis supplied). Therefore, even this Order itself confirms that some date prior to 06.11.2019, Mr. Agarwal had ceased to be involved with Satec. Mr. Agarwal's LinkedIn profile has been removed after it was brought to his notice.

- p. The Learned Counsel for the Applicant further relied on the judgment of the Hon'ble Supreme Court in **Swiss Ribbons v. Union of India, (2019) 4 SCC 17, Paragraph 109**, lays down the law in this regard:

*We are of the view that persons who act jointly or in concert with others are connected with the business activity of the resolution applicant. Similarly, all the categories of persons mentioned in Section 5(24-A) show that such persons must be "connected" with the resolution applicant within the meaning of Section 29-A (j). This being the case, the said categories of persons who are collectively mentioned under the caption "relative" **obviously need to have a connection with the business activity of the resolution applicant. In the absence of showing that such person is "connected" with the business of the activity of the resolution applicant, such person cannot possibly be disqualified under Section 29-A (j).** All the categories in Section 29-A (j) deal with persons, natural as well as artificial, who are **connected with the business activity of the resolution applicant.** The expression "related party", therefore, and "relative" contained in the definition sections must be read *noscitur a sociis* with the categories of persons mentioned in Explanation I, and so read, would include only persons who are connected with the business activity of the resolution applicant.*

***(emphasis supplied)***

- q. The Applicant has not even attempted to make out a case showing a business connection as required by the Hon'ble Supreme Court. Accordingly, Satec and all allegations relating to Satec are of no relevance to the eligibility of the SRA. Apart from this, and without

prejudice, the allegations regarding Satec itself are false and misconceived, as dealt with in the SRA's Written Submissions already.

r. At the hearing on 26.04.2023, the Applicant's Counsel, however, argued that the claim made that Satec has settled with Bank of Maharashtra (as stated by the RP and the SRA) is false. It is reiterated that Satec has settled with Bank of Maharashtra, and Bank of Maharashtra has issued a letter certifying that Satec has complied with the terms of the OTS as on 31.03.2022. The date of Bank of Maharashtra withdrawing its Petition under Section 7 (which was filed way back in 2018) of the Code is not relevant for determining when Satec complied with the terms of the OTS. It is in fact routine for Petitions to take some time to withdraw, even after settlements are arrived at, and payments made as agreed.

8. The Resolution Plan has been approved in the 13<sup>th</sup> COC meeting held on 26.07.2022 with 94.51% voting in accordance with the provisions of the Code.

9. 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.

10. 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**, 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)**.”*

11. As observed in the above ruling of the Apex Court, 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 provided under Section 31 of Code and of the Appellate Authority is limited to the extent provided under sub-section (3) of Section 61 of the Code, is no more an untouched-matter.

12. In view of the discussions 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.

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 and thus it deserves to be approved.

**ORDER**

- i. The Interlocutory Application No. 2253 of 2022 is allowed. The Resolution Plan submitted by Yura Business Partners LLP in consortium with M/s. Gupta Steel Corporation 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.
  
- ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. It is seen that the Resolution Applicant sought several dispensations, concessions and waivers. Any waiver sought in the Resolution plan shall be subject to approval by the Authority concerned in the light of the Judgment of Supreme Court in ***Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited***, the relevant para's of which are extracted herein below:

*“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 to a claim, which is not part of the resolution plan.”*

*“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in*

*the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;*

*(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;*

*(iii) 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.”*

- iii. 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.
- iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- v. 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.

- vi. 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.
- vii. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- viii. In view of the above facts and circumstances of the case, this bench is of the considered opinion that the above I.A. 543 of 2023 is **rejected and stands disposed of** accordingly.
- ix. The Interlocutory Application No. 2253 of 2022 is accordingly **allowed and disposed of**.

Sd/-

**MADHU SINHA**  
**MEMBER (TECHNICAL)**

Sd/-

**H. V. SUBBA RAO**  
**MEMBER (JUDICIAL)**