

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

IA No. 22 of 2024

IN

CP(IB) No. 2300 of 2018

Under Section 30 and Section 31 of the
Insolvency and Bankruptcy Code, 2016
r/w Regulation 39 of the Insolvency and
Bankruptcy Board of India (Insolvency
Resolution Process for Corporate Persons)
Regulations, 2016

IA No. 22 of 2024

In the Application of

Amit Gupta

**...Resolution
Professional/Applicant**

In the matter of

Bank of India

...Financial Creditor/Applicant

Versus

**Mahavir Roads & Infrastructure Pvt.
Ltd.**

...Corporate Debtor/Respondent

Order pronounced on 14.05.2024

Coram:

Hon'ble Member (Judicial) : Sh. Justice Virendrasingh G. Bisht (Retd.)

Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Applicant : Mr. Rohan Rajyadhaksha, Advocate

ORDER

Per: Sh. Prabhat Kumar, Member (Technical)

1. The present Application is moved by Resolution Professional **Mr. Amit Gupta** (“Applicant”) under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (“Code”) r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”) for seeking approval of the Resolution Plan (Revised Resolution Plan dated 16 December 2023), submitted by the Bermaco Energy Systems Limited (“Successful Resolution Applicant/SRA”) which is approved by 78.83% of the voting share of the members of the Committee of Creditors (hereinafter referred to as 'CoC'), under the provisions of Section 31(1) of the Code, for **Mahavir Roads & Infrastructure Private Limited** (“Corporate Debtor”) and for passing order/appropriate direction that this Tribunal may deem fit in the present matter.

Brief Facts

Sr. No.	Date	Particulars
1.	21.02.2019	The Hon’ble NCLT admitted CIRP u/s 7 of the Code and appointed Mr. Ankur Kumar as the IRP.
2.	14.03.2019	The IRP issued Public Announcement (Form A) inviting claims from the creditors of the Corporate Debtor.
3.	20.03.2019 to 02.07.2019	The CIRP order was challenged by the suspended directors and stay was granted on constitution of COC by the NCLAT.
4.	11.09.2019 19.12.2019	Form G was published 3 times inviting expression of interest (“ EoI ”) from

Sr. No.	Date	Particulars
	16.03.2020	Prospective Resolution Applicants (“ PRA ”) for maximisation and wider participation
5.	07.01.2020	6 th CoC meeting convened wherein the final list of successful PRA’s was placed before the CoC which only included the name of Suraksha ARC which was duly approved by the CoC and decided to obtain 1 Crore Earnest Money Deposit (“ EMD ”) from the Resolution Applicant. The CoC also approved to issue Request for resolution plan (“ RFRP ”) evaluation matrix (“ EM ”) and the Information Memorandum (IM).
6.	21.05.2021	25 th CoC meeting conveyed wherein it was briefed the updated Resolution plan and payment schedule as submitted by Suraksha ARC and informed the members that Suraksha ARC did not provide any further improvement in offer. Hence the said Resolution Plan submitted by Suraksha ARC was put for e-voting wherein the CoC in their commercial wisdom rejected the resolution plan by a majority voting share of 85.11%.
7.	04.06.2021	IA 318 of 2021 filed by Suraksha Realty Limited one of the CoC member praying before the Authority to direct the erstwhile RP inter-alia to admit their entire claim amount of INR 109,63,47,940/- as secured creditor and to reconstitute CoC. The Tribunal vide interim order in the said IA directed that no decision on the Liquidation of the Corporate Debtor shall be taken in the

Sr. No.	Date	Particulars
		CoC meetings without the permission of Bench.
8.	23.03.2022	30 th meeting of the CoC convened wherein the CoC members approved replacement of erstwhile RP with the Applicant
9.	25.03.2022	The updated list of Creditors was uploaded at IBBI site
10.	13.02.2023	The Applicant was duly appointed as the RP in place of erstwhile RP
11.	31.08.2023	IA No. 2146/2020 which was filed by the erstwhile RP to vacate the stay on liquidation was listed wherein stay was vacated and directed the CoC to consider passing appropriate resolution for liquidation.
12.	04.09.2023	35 th meeting of the CoC convened wherein the resolution for Liquidation of the Corporate Debtor approved with 78.83% and Liquidation Application was filed by Applicant before NCLT
13.	10.10.2023	Two new interested Prospective Resolution Applicants, Mr. Pankaj Kikavat and Bermaco Energy Systems Limited filed IA No. 4498 of 2023 and IA No. 4500 of 2023 respectively before the Hon'ble Bench seeking approval and time to file the Resolution Plan. Accordingly, the Hon'ble Tribunal granted opportunity to the said PRA to submit their Resolution Plan by 25 October 2023
14.	27.10.2023	37 th CoC meeting convened wherein it was updated that two password protected Resolution Plans have been received and the

Sr. No.	Date	Particulars
		Applicant proposed to extend the CIRP period by a further period of sixty days with effect from 27 October 2023.
15.	01.11.2023	IA 318/2023 filed by the Suraksha Realty Limited regarding their security charge issue was partly allowed by this Tribunal whereby Suraksha Realty Limited was directed to file appropriate application before the RD.
16.	06.11.2023	IA 4496 of 2023 (Liquidation Application) was listed and the said IA was disposed as infructuous as the Resolution Plans were under consideration of COC
17.	23.11.2023	38 th CoC meeting convened wherein the Applicant discussed the plan of Bermaco wherein the CoC stated that Bermaco shall submit an unconditional Resolution Plan. Hence, additional time was given. Further the CoC members deliberated that sufficient time was granted to Mr. Pankaj Kikavat, the Promoter and Suspended Director of the Corporate Debtor, Resolution Applicant for submission of EMD, however since they failed to submit the same, the said plan was not in compliance with the Code and the RFRP hence, the Resolution Plan by Mr. Pankaj Kikavat, the Promoter and Suspended Director of the Corporate Debtor could not be considered.
18.	11.12.2023	39 th CoC meeting convened wherein the Resolution plan of Bermaco was discussed

Sr. No.	Date	Particulars
		and further asked them to incorporate suggested changes within 2 days.
19.	16.12.2023	The copy of the revised Resolution Plan received on 16 th December 2023 from Bermaco Energy Systems Limited along with the addendum to Resolution Plan.
20.	20.12.2023	40 th CoC meeting convened wherein Applicant discussed with the CoC members observations on the revised resolution plan submitted by the Bermaco. Authorised representative of Suraksha Realty Limited stated that the Resolution Applicant, Bermaco is involved in certain questionable transaction which were highlighted by Enforcement Directorate. Hence, CoC deferred the agenda for approval of the Resolution Plan. Further the CoC approved the resolution for the extension of the CIRP by a further period of sixty days.
21.	21.02.2024	IA 608/2024 filed for seeking extension of CIRP timeline by 60 days with effect from 27 December 2023 till 26 February 2023 was listed and allowed.
22.	19.01.2024	41 st CoC meeting convened wherein the Applicant apprised the CoC members that Resolution Professional appointed Bagchi & Gupta, Chartered Accountants to verify the eligibility of the Resolution Applicant under section 29A of the Code whereby no disqualifications have been reported.

Sr. No.	Date	Particulars
		<p>The RP also apprised on Evaluation Matrix provided in the Request for Resolution Plan which was issued by the erstwhile RP and highlighted that there is an error in the total of the score and the classification of the score for the qualitative and quantitative parameters. Further the applicant also informed that although RFRP mentions the clause for Performance Bank Guarantee (“PBG”) on approval of resolution plan by CoC but the amount is not quantified neither any formula was given. Hence after due discussion and deliberation with the CoC, it was decided to submit the performance bank guarantee equivalent to 5% of the fund-based amount i.e equivalent to INR 2,05,00,000 within 7 days from approval of the Resolution Plan by the committee of creditors. Thereafter, resolution plan as submitted by Bermaco was put for voting.</p> <p>E-Voting for the Resolution Plan concluded on 06.03.2024 wherein the CoC approved the plan of Bermaco by the voting percentage of 78.83%.</p> <p>Bank of India – 54.53% UCO Bank – 12.75% Bank of Baroda – 11.55%</p> <p>Form H has been issued by the RP</p>
23.	26.02.2024	42 nd CoC meeting convened wherein the Applicant proposed the extension of CIRP

Sr. No.	Date	Particulars
		<p>period for a further period of 60 days from 27.02.2024 to 26.04.2024 which was approved with 67.28% voting rights.</p> <p>Further CIRP cost including going concern cost was also approved in the said meeting and cashflow statement is also attached as an annexure to the minutes.</p>
24.	09.03.2024	IA 1263/2024 filed for extension of 60 days was allowed by the Bench vide Order dated 22.03.2024 and accordingly the <i>CIRP extended till 27.04.2024</i>
25.	13.03.2024	The compliance certificate in Form H issued by the Applicant.
26.		The Successful Resolution Applicant has submitted the audited balance sheet along with Networth Certificate the letter from the Strategic Investors i.e. Renaissance Fiscal Services Pvt Ltd who has agreed and confirmed the proposed investment in the Revival of the Corporate Debtor.
27.		The Successful Resolution Applicant submitted Compliance Affidavit dated 25 October 2023 alongwith Undertaking
28.		The 29 A compliance Report dated 17 January 2024
29.	7.03.2024	The Applicant has issued LOI to the Successful Resolution Applicant
30.	12.03.2024	The Successful Resolution Applicant has provided the requisite Performance Security of INR 2,05,00,000

Sr. No.	Date	Particulars
31.		As per the Valuation Reports, the aggregate of the average Liquidation Value of all the assets is around INR 43.91 crores.
32.		Transaction Audit Reports dated 31.05.2020

Salient Features of the Resolution Plan

2. The Successful Resolution Applicant, Bermaco Energy Systems Limited proposed total of INR **60.16 crores** and the summary of payments proposed to be made to different classes of the creditors and stakeholders of the Corporate Debtor are as follows: *(clause 4.7, 4.8 and 4.9 of Proposed Resolution Plan)*

Sr. No.	Name of Creditor	Amount Admitted	Amount proposed in Plan	% Recovery for creditors
1	CIRP Cost	To be paid at actuals		
2	Secured Financial Creditor	3,19,00,49,096	40,84,00,000 + 19,16,00,000 towards Bank Guarantee	18.81%
3	Unsecured Financial Creditor	85,65,30,447	NIL	NIL
4.	Operational Creditor (Workmen and Employees)	-	-	-
5.	Operational Creditors (Statutory Authorities)	19,25,01,050	12,40,000	0.64%

Sr. No.	Name of Creditor	Amount Admitted	Amount proposed in Plan	% Recovery for creditors
6.	Operational Creditors (Other than workmen, employees and Government dues)	7,18,13,511	3,60,000	0.50%
	Total	4,31,08,94,104	60,16,00,000	

3. The Summary of repayment terms in the Resolution Plan provides for the repayment terms of the amount proposed in the Resolution Plan as follows *(clause 4.9 of the proposed Resolution plan)*

Sr. No	Particulars	Amount in INR
1.	Amount of upfront payment to Financial Creditors and Operational Creditors and Unpaid CIRP Cost (upfront cash recovery) – Within 30 days from effective date	11,00,00,000
2.	Balance repayment obligations to Secured payment) - Within 1 year from effective date	30,00,00,000 + 19,16,00,000 towards BG
	Total Payments offered in the Resolution Plan	60,16,00,000

Effective date: the date of approval of the Resolution Plan by the NCLT or the date of receipt of certified copy of the order, whichever is later (“Effective Date”).

Upfront Cash Payment: Upfront Cash Payment means the amounts committed to be paid to the Financial Creditors by the Resolution Applicant(s) within 30 (thirty) days from the NCLT Approval Date.

4. **Creditworthiness and financial capability of Successful Resolution**

Applicant (clause 3.2 of the proposed plan):

As per the Audited financial statements of Successful Resolution Applicant, below provided are the brief financial indicators of proceedings three years.

Amount in INR

Particulars	FY 2020-21	FY 2021 - 22	FY 2022-23
Income before tax	1,18,78,051	54,45,021	55,25,098
Net Worth	24,94,22,043	26,09,84,917	25,98,87,728
Share Capital	1,68,35,693	1,68,35,693	1,68,35,693
Reserves	22,25,86,350	24,41,49,224	25,61,18,108

5. **Qualification of the Successful Resolution Applicant under Section**

29A: (Clause 3.3 of the proposed resolution plan)

The Successful Resolution Applicant confirms that he and connected persons are not disqualified under Section 29A of the Code and will continue to be not disqualified as of the effective date.

6. **Implementation Schedule (Clause 5.2 of the proposed resolution plan)**

The term of the Resolution Plan shall commence from the Effective Date and shall continue till the closure date, subject to no injunction being granted by any legal or judicial authority to the implementation of the Resolution Plan. Implementation Schedule of proposed Resolution Plan along with the corresponding timelines is as per mentioned in the Plan.

7. **Source of Funds (clause 6 of the proposed resolution plan)**

The Successful Resolution Applicant proposed to infuse the fund as mentioned in this plan in the bank account as approved by CoC and the same shall be utilized for the purposes of settlement of claims and/ or dues.

- The SRA would utilize the internal sources to fund the amount proposed. The SRA shall also infuse funds by availing debt from the Banks/ Financial Institutions or Inter Corporate Loans/Deposit.
- The SRA proposes to raise finance from Renaissance Fiscal Services Pvt. Ltd., a non-banking financial corporation,

towards which a letter of interest is received by the Successful Resolution Applicant.

8. **Monitoring Committee (clause 5.4 of the proposed resolution plan)**

The Monitoring Committee shall comprise of the following members:

- a) Monitoring Agent (Resolution Professional)
- b) One authorized representative appointed by members of the Committee of Creditors of the Corporate Debtor;
- c) One authorized representative of Resolution Applicant.

9. **Release of charges on securities of Corporate Debtor and Guarantors (Clause 7.1 the proposed resolution plan)**

That on full payment of amount as proposed in this Resolution Plan, immediately / simultaneously against the payment to the Financial Creditors, the Financial Debt shall stand settled and extinguished, and the Corporate Debtor shall have no liability in respect of the Financial Debt and no further amounts shall be payable towards the settlement and extinguishment of the Financial Debt.

10. **Receivables from the Avoidance Application (Clause 10.1 of the proposed resolution plan)**

As per Resolution Plan any application(s) pending under Section(s) 43, 44, 45 and/or 66 of the Code as on the date of approval of this Resolution Plan shall be proceeded with by the Secured Financial Creditors and all proceeds shall be distributed by the Secured Financial Creditors as he may deem fit and appropriate.

11. **Treatment for Suraksha Realty Ltd in plan if considered as Secured Financial Creditor (clause (e) the proposed resolution plan)**

The Resolution Professional has provided the Resolution Applicant with a copy of Order dated 1 November 2023 passed in Interlocutory Application No. 318 of 2021, and 6 and 7 December 2023 passed in Interlocutory Application No. 5559 of 2023 by the Adjudicating Authority in relation to Suraksha Realty Limited's claim of being a Secured Financial Creditor of the Corporate Debtor. It is clarified that the total financial commitment under this Resolution Plan remains unchanged, irrespective of Suraksha Realty Limited's position on the Corporate Debtor's Committee of Creditors.

Accordingly, irrespective of the status of Suraksha Realty Limited's claim on the Corporate Debtor's Committee of Creditors, the distribution proposed under this Resolution Plan shall remain unchanged. To clear any and all doubts, it is expressly clarified that should Suraksha Realty Limited's claim be admitted as a Secured Financial Creditor either (i) before approval of this Resolution Plan by the Committee of Creditors; (ii) after approval by the Committee of Creditors and prior to the Adjudicating Authority's approval; or (iii) after approval by the Adjudicating Authority, the distribution proposed under this Resolution Plan shall stand automatically modified and will be divided amongst the Secured Financial Creditors as on the date of submission of this Resolution Plan, as stated above, and Suraksha Realty Limited, in proportion to their respective *inter se* claims, in the manner to be decided and settled by the Secured Financial Creditors of the Corporate Debtor. It is further clarified that the Secured Financial Creditors shall have no recourse to the Resolution Applicant either for distribution of the financial proposal set out in this Resolution Plan, or otherwise, for any issues / concerns / disputes, if any, as may arise between the Secured Financial Creditors.

Statutory Compliance

12. In compliance of Section 30(2) of IBC, 2016, the Resolution Professional has examined the Resolution plan of the Successful Resolution Applicant and confirms that this Resolution Plan:

- a) Provides for payment of Insolvency Resolution Process cost in a manner specified by the Board in the priority to the payment of other debts of the corporate debtor;
- b) Provides for payment of debts of Operational Creditor in such manner as may be specified by the board which shall not be less than
 - (i) the amount to be paid to such creditors in the event of liquidation of the Corporate Debtor under Section 53; or
 - (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan

had been distribute in accordance with sub-section (1) of Section 53 in the event of liquidation of the corporate debtor.

- c) Provides for management of the affairs of the Corporate Debtor after approval of Resolution Plan;
 - d) The implementation and supervision of Resolution Plan;
 - e) Does not prima facie contravene any of the provisions of the law for time being in force,
 - f) Confirms to such other requirements as may be specified by the Board.
 - g) As per the Affidavit, the Resolution Applicant is not covered under 29A.
13. In compliance of Regulation 38 of CIRP Regulations, the Resolution Professional confirms that the Resolution plan provides that
- a) The amount due to the Operational Creditors under Resolution Plan shall be given priority in payment over Financial Creditors.
 - b) It has dealt with the interest of all Stakeholders including Financial Creditors and Operational Creditors of the Corporate Debtor.
 - c) A statement that neither the Resolution Applicants nor any related parties have failed to implement nor have contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority in the past.
 - d) The terms of the plan and its implementation schedule.
 - e) The management and control of the business of the Corporate Debtor during its term.
 - f) Adequate means of Supervising its implementation.
 - g) The Resolution Plan Demonstrate that it addresses
 - i. The cause of the Default
 - ii. It is feasible and viable
 - iii. Provision for effective implementation
 - iv. Provisions for approvals required and the time lines for the same.

v.Capability to Implement the Resolution Plan

14. The Resolution Professional has submitted Form-H under Regulation 39(4) of the CIRP Regulations to certify that the Resolution Plan as approved by the CoC meets all the requirements of the IBC and its Regulations, the relevant parts of which are reproduced below:

FORM H
COMPLIANCE CERTIFICATE

(Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

I, Amit Gupta, an insolvency professional enrolled with The Indian Institute of Insolvency Professional of ICAI and registered with the Board with registration number IBBI/IPA-001/IP-P00016/2016-2017/10040, am the resolution professional for the corporate insolvency resolution process (CIRP) of Mahavir Roads and Infrastructure Private Limited.

2. The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of the CD	Mahavir Roads and Infrastructure Private Limited.
2	Date of Initiation of CIRP	12 March 2019
3	Date of Appointment of IRP	12 March 2019
4	Date of Publication of Public Announcement	14 March 2019
5	Date of Constitution of CoC	4 July 2019 (CIRP process was stayed by the order of NCLAT dated 20 March 2019 and vacated on 2 July 2019)
6	Date of First Meeting of CoC	17 July 2019

7	<i>Date of Appointment of RP-</i>	<i>13 February 2023 (Order was received on 2 March 2023)</i>
8	<i>Date of Appointment of Registered Valuers</i>	<i>Valuer 1 Kunal K Vikamsey and Dharmesh Trivedi were appointed on 9 September 2019 Valuer 2 Sahil Narula was appointed on 9 September 2019</i>
9	<i>Date of Issue of Invitation for EoI</i>	<i>1. 11 September 2019 2. 19 December 2019 3. 16 March 2020</i>
10	<i>Date of Final List of Eligible Prospective Resolution Applicants</i>	<i>1. 21 October 2019 2. 4 January 2020 3. 4 April 2020</i>
11	<i>Date of Invitation of Resolution Plan</i>	<i>16 October 2020</i>
12	<i>Last Date of Submission of Resolution Plan</i>	<i>Last date for submission of resolution plan pursuant to the Form G dated 11 September 2019 was 10 November 2019. Last date for submission of resolution plan pursuant to the Form G dated 19 December 2019 was 3 February 2020. Last date for submission of resolution plan pursuant to the Form G dated 16 March 2020 was 3 April 2020 which was extended by CoC from time to time till 16 October 2020. Last date for submission of resolution plan pursuant to order dated 10 October 2023 passed by Hon'ble NCLT, Mumbai Bench in I.A. number 4500 of 2023 filed by the resolution applicant was 25 October 2023.</i>
13	<i>Date of Approval of Resolution Plan by CoC</i>	<i>6 March 2023</i>
14	<i>Date of Filing of Resolution Plan with Adjudicating Authority</i>	<i>22 March 2024</i>
15	<i>Date of Expiry of 180 days of CIRP</i>	<i>4 May 2020 (After considering exclusion of 104 days and extension of</i>

		<i>90 days as approved by Hon'ble NCLT vide order dated 26 February 2020.)</i>
16	<i>Date of Order extending the period of CIRP</i>	<p><i>Application for extension of CIRP period by 90 days was filed with the Hon'ble NCLT. The Hon'ble NCLT vide order dated 26 February 2020 allowed the extension application extending the last date of CIRP to 4 May 2020.</i></p> <p><i>Further an application for extension of CIRP period by 60 days was filed with the Hon'ble NCLT. The Hon'ble NCLT vide order dated 21 December 2023 allowed the said extension application extending the last date of CIRP to 26 December 2023.</i></p> <p><i>Thereafter an application for extension of CIRP period by 60 days to enable CoC to vote on the plan was filed with the Hon'ble NCLT. The said matter is yet to be listed for hearing. If allowed, the extended last date of CIRP shall be 26 February 2024.</i></p> <p><i>Further an application for extension of CIRP period by 60 days was filed with the Hon'ble NCLT. The said matter is yet to be listed for hearing. If allowed, the extended last date of CIRP shall be 26 April 2024.</i></p>
17	<i>Date of Expiry of Extended Period of CIRP</i>	<p><i>26 February 2023</i></p> <p><i>(The Resolution Professional has filed an Interlocutory application seeking further extension of 60 days, the said matter is yet to be listed for hearing. If allowed, the extended last date of CIRP shall be 26 April 2024.)</i></p>

18	<i>Fair Value</i>	<ul style="list-style-type: none"> • <i>Kunal K Vikamsey and Dharmesh Trivedi has provided fair value of INR 8391.57 Lakhs</i> • <i>Sahil Narula has provided fair value of INR 4426.20 Lakhs.</i> <p><i>The average fair value of assets of corporate debtor was INR 6408.89 Lakhs.</i></p>
19	<i>Liquidation value</i>	<ul style="list-style-type: none"> • <i>Kunal K Vikamsey and Dharmesh Trivedi has provided liquidation value of INR 5278.19 Lakhs</i> • <i>Sahil Narula has provided liquidation value of INR 3503.30 Lakhs</i> <p><i>The average liquidation value of assets of corporate debtor was INR 4390.75 Lakhs</i></p> <p><i>Note: There is Significant difference in the liquidation value as assessed by the valuers appointed as mentioned in point 13 below.</i></p>
20	<i>Number of Meetings of CoC held</i>	<i>42 CoC meetings</i>

3. I have examined the Resolution Plan received from Resolution Applicant, Bermaco Energy Systems Limited and to be put for approval of Committee of Creditors (“CoC”) of Mahavir Roads and Infrastructure Private Limited

4. I hereby certify that-

- i. the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.*

- ii. *the Resolution Applicant viz. Bermaco Energy Systems Limited has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.*
- iii. *the said Resolution Plan is being voted upon by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan is being approved by financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations*
- iv. *I sought vote of members of the CoC by electronic voting system which was kept open from 22 January 2024 till 6 March 2024 in compliance with regulation 26*

5. *The list of financial creditors of the Mahavir Roads and Infrastructure Private Limited being members of the CoC and distribution of voting share among them is as under:*

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	Bank of India	54.53	Voted for
2	UCO Bank	12.75	Voted for
3	Bank of Baroda	11.55	Voted for
4	Suraksha Realty Limited	15.52	Dissented
5	Panoromic Construction Pvt Ltd	5.49	Dissented
6	Kashyab Rajesh Shah	0.03	Abstained
7	Rima Rajesh Shah	0.03	Abstained
8	Smita R Dak	0.03	Abstained
9	Dhanraj K Shah (HUF)	0.02	Abstained
10	Usha Gulabchand Jain	0.02	Abstained
11	Shahrokh R. Tavakkuli	0.03	Abstained
	Total	100.00	

6. *The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.*

7. *The amounts provided for the stakeholders under the Resolution Plan is as under:
(Amount in Rupees)*

<i>Sl. No</i>	<i>Category of Stakeholder*</i>	<i>Sub-Category of Stakeholder</i>	<i>Amount Claimed</i>	<i>Amount Admitted</i>	<i>Amount Provided under the Plan</i>	<i>Amount Provided to the Amount Claimed (%)</i>
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	-	-	-	-
		(b) Other than (a) above: (i) who did not vote in favour of the resolution Plan	-	-	-	-
		(ii) who voted in favour of the resolution plan	3,19,00,49,096	3,19,00,49,096	40,84,00,000 + 19,16,00,000 towards bank guarantee	18.81 %
		Total [(a) + (b)]	3,19,00,49,096	3,19,00,49,096	40,84,00,000 + 19,16,00,000 towards bank guarantee	18.81 %

2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub- section (2) of section 21	-	-	-	-
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	1,35,06,90, 591	85,65,30,44 7	NIL	NIL
		(ii) who voted in favour of the resolution plan				
		Total [(a) + (b)]	1,35,06,90, 591	85,65,30,44 7	NIL	NIL
3	Operation al Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above:				
		(i) Governm ent	19,89,62,12 4	19,25,01,05 0	12,40,000	0.64%
		(ii) Workmen	-	-	-	-
			11,91,49,14 3	7,18,13,511	3,60,000	0.50%

		(iii) Employees				
		(iv) Operational Creditors				
		Total[(a) + (b)]	31,81,11,26 7	26,43,14,56 1	16,00,000	0.61%
4	Other debts and dues		-	-		
	Grand Total		4,85,88,50, 954	4,31,08,94,1 04	60,16,00, 000	13.96 %

15. On perusal of the Resolution Plan, we find that the Resolution Plan provides for the following:
- Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
 - Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
 - For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
 - The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.
16. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.
17. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan has been approved by the CoC by majority of 78.83%.
18. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating

Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

19. 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 same needs to be approved. Hence, ordered.
20. The Resolution Plan is hereby **approved**. It shall become effective from this date and shall form part of this order with the following directions:
 - i. 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, guarantors and other stakeholders involved in the Resolution Plan.
 - ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned in light of the Judgment of Supreme Court in *Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company*

Limited, the relevant paragraphs of which are extracted herein below:

“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), Mumbai, Maharashtra 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 shall supervise the implementation of the Resolution Plan and 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 certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

Sd/-

Prabhat Kumar

Member (Technical)

MK

Sd/-

Justice V.G. Bisht

Member (Judicial)