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

I.A. No. 542 of 2022
IN
C.P. No. 2677 of 2018

In the matter of an Application under Section 30(6) and Section 60(5) of the Insolvency and Bankruptcy Code, 2016.

Concur

In the matter of
Union Bank of India
... Financial Creditor
V/s.
Rajahmundray Godavari Bridge Ltd.
... Corporate Debtor

I.A. No. 542/2022
Mr. Sanjay Mishra
...Applicant/
Resolution Professional

Date of conclusion of arguments : **27.07.2022**
Order pronounced on : **10.08.2022**

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)
Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Mr. Pulkit Sharma, a/w. Mr. Shriraj Khmbete, Abir Lal Dey, Mr. Kunal Satyadarshi, Advocate i/b. Saraf and Partners

Mr. Amir Arsiwala, Advocate for the Successful Resolution Applicant
Mr. Zaman Ali, Advocate appearing for the COC

Mr. Sanjay Mishra, Resolution Professional-in-person

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

ORDER

1. This is an Application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (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, "CIRP Regulations") filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant M/s. Prakash Asphaltings & Toll Highways (India) Limited which is approved by 100% of the 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:
   i. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated 27.02.2020 under section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as 'the Code') (Admission Order) and Mr. Vishal Ghisulal Jain, was appointed as Interim Resolution Professional. The COC in its 1st meeting held on 07.08.2020 appointed (the present Applicant) as the Resolution Professional (RP) and the same was approved by this bench vide an order dated 21.08.2020. The IRP published a public announcement as per Section 13 & 15 of the Code, inviting claims from the creditors of the Corporate Debtor. Thereafter, IRP, constituted the Committee of Creditors.
   ii. Applicant submits that the pursuant to the public announcement made by the IRP, the Applicant received the claims from various stakeholders under the resolution plan, as on 31.03.2022 which are as under:

(*amount in ₹)*

Claim	Amount of claim	Proposed payment	% Recovery of

				Admitted claims
Financial Creditor		923.51	412	45%
Operational Creditor claim	Operational creditors excluding workmen (including APRDC)	38.40	9.6	25%
	Workmen & Employee Claims	0.15	0.15	100%
Related party Claim		23.06	0.00	0.00%
Total		**985.12**	**422.00**	**43%**

iii.The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.

3. The Applicant states that two Registered Valuers were appointed to determine the Fair Value and Liquidation Value of the Corporate Debtor. The Applicant states that the liquidation value and fair value as per the valuation reports submitted by the valuers is as under:

Registered Valuer	**Fair Value (INR)**	**Liquidation Value (INR)**
RBSA Valuation Advisors LLP	3,84,28,00,000	3,73,07,00,000
Adroit Valuation Services Pvt. Ltd.	3,88,40,20,450	3,72,47,98,199
Average (INR)	**3,86,34,10,225**	**3,72,77,49,100**

4. During the period of CIRP total 31st COC meetings were held (last being on 24th February, 2022) and RP issued 1st EOI in Form G, was published on 21.10.2020 and 15.01.2021 being the last date for submission of Resolution plan. Subsequently, on 12.11.2020 RP issued revised EOI in Form G, the last date for submission of Resolution plan was till 31.01.2021. Thereafter, Applicant issued 2nd EOI in Form G, was published on 10.03.2021 and 29.04.2021 being the last date for submission of Resolution Plan.

5. The Applicant further states that, in furtherance of the 2nd EOI, Form-G issued by applicant, he received EOIs from 11 Prospective

Resolution Applicants (PRAs) within the stipulated time period. Out of the 11 (eleven) EOIs, 3 (three) prospective Resolution Applicants submitted a resolution plan with the Applicant.

6. The Applicant submits that in the 3rd round of EOI, in relation to the revised Form G dated 02.11.2021, the Applicant received 9 (nine) EOIs from eligible PRAs till the last date of submission of the same. Accordingly, the revised Request for Resolution Plan (RfRP) dated 24.11.2021 was approved by the CoC with majority and same was recorded in the minutes of the 23rd Meeting of the CoC. Out of 9 (nine) Prospective Resolution Applicants PRA's, 5 (five) PRA's submitted their resolution plan by 24.12.2021. Below are the names of the prospective resolution applicants:

    1. Kochi Aroor Tollways Private Limited ("KATPL")
    2. Kalyan Toll Infrastructure Limited ("KTIL")
    3. Prakash Asphaltings & Toll Highways (India) Limited ("PATH")
    4. PNC Infratech Limited ("PNC")
    5. GR Infraprojects Limited ("GR Infra")

7. The Applicant submits that, during the 28th Meeting of COC held on 02.02.2022, the 5 (five) proposed Resolution Plans were evaluated on the basis of the evaluation matrix. It is stated that as all five resolution plans were compliant in terms of the Code, it was decided in the 28th Meeting of the CoC to put them to vote. The e-voting facility was kept open upon circulation of the minutes of the CoC till 15.02.2022. However, upon request of the members of the CoC, the e-voting facility was extended to 21.02.2022, 23.02.2022, and finally ended on 25.02.2022 at 5:00 pm.

8. The Applicant submits that out of the above-mentioned 5 (five) PRA's, 4 (four) has been rejected by the COC as mentioned above. Since there

was only one eligible PRA i.e. M/s. Prakash Asphaltings & Toll Highways (India) Limited, who submitted a resolution plans for the Corporate Debtor which were considered, deliberated and voted upon by the COC members.

9. The COC in its 28th meeting held on 02.02.2022 and e-voting ended on 25.02.2022 at 5.00 pm, considered the final Resolution Plan of M/s. Prakash Asphaltings & Toll Highways (India) Limited and approved the Plan with a voting share of 100% and compliance certificate was in Form "H" was issued by the Resolution Professional. The Applicant communicated the decision of the CoC to the successful Resolution Applicant (SRA) and the Applicant issued the Letter of Intent dated 25.02.2022.

10. The Successful Resolution Applicant (SRA), as per Regulation 36B(4A) of the Corporate Persons Regulation has submitted two performance Bank Guarantees bearing No.69170IGL0001822 of Rs. 20,00,00,000/- dated 28.02.2022 and bearing No. 69170IGL0002421 of Rs. 5,00,00,000/- dated 02.06.2021.

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

    a. Prakash Asphalting's & Toll Highways (India) Limited ("PATH") is a leading construction company that boasts of an incredible track record within the transportation and infrastructure sector in Central India. Not only is PATH considered to be one of the most reputable, reliable and respected construction companies/contractors in India, it also ranks on top of any list for efficiency, effectiveness and unsurpassed quality projects. Incorporated in the year 1996.

    b. PATH prequalified by National Highways Authority of India (NHAI) under its annual pre-qualification scheme to carry out works of INR 1,500 Cr for DBFOT and OMT contracts. The company has ISO 9001-2015 certification. The information technology department for toll systems and operations of the company also has ISO-20000-1:2011 and ISO-27000-1:2013 certifications.

c. PATH is engaged in construction of roads, bridges and other infrastructure development works, toll collection contracts and toll and traffic management systems. It undertakes construction of roads and bridges on BOT, OMT, HAM and EPC basis as well as other project works floated by central and state government organisations/ corporations/ departments and private developers on EPC basis. PATH has been undertaking large infrastructure projects for construction of roads and bridges on EPC basis. The company has completed EPC works amounting to INR 288.20 Cr during FY 2020. PATH is one of the very first companies to work with several organizations on DBFOT model and complete the concession period successfully. The company had started the execution of BOT Projects in 1996 and thereafter has completed 6 BOT road projects. Five projects out of above were completed before scheduled time & with no cost escalation. The company has completed BOT works amounting to INR 29.26 Cr during FY 2020. PATH has executed 7 OMT contracts successfully across India.

d. Rajahmundry Godavari Bridge Limited (“RGBL” or “Company”) is a Special Purpose Vehicle (SPV) formed by Gammon Infrastructure Projects Limited on 19th August 2008 with an objective of undertaking the implementation of Godavari Bridge Toll Project on Build, Operate and Transfer (BOT)– Toll Basis with Bridge length of 4.150 Kms and approach roads of 1.933 Kms on Kovvur side and 8.405 Kms on Rajahmundry side in the state of Andhra Pradesh. The Concession Agreement to this effect was signed between RGBL and APRDC on 5th November 2008.

e. The total cost of the Project was estimated at INR 861 Crores. Subsequently, the Corporate Debtor entered into a Common Loan Agreement with a Consortium of Banks led by Canara bank on 26th May 2009 for an aggregate principal amount of INR 566 Crores. The Union Bank of India was one of the Lenders in the said Consortium. The Union Bank of India granted financial assistance to the Company in the form of Term Loans amounting to INR 184,85,00,000/- (Rs. One Hundred and Eighty-Four Crores and Eighty-Five Lakhs Only). The loan was disbursed to the Company, and there was a default in repayment of the said dues.

f. **Equity infusion for improving operations:** The Resolution Applicant proposes that the existing equity of the current promoters will be extinguished completely, and the Resolution Applicant will subscribe to 100% of the paid-up equity share capital of the Corporate Debtor through the aforementioned Equity infusion. Rs. 30,00,00,000 (Indian Rupees Thirty Crores Only) shall be thereon used to improve business operations and meeting other obligations pending on the Project (i.e. Punch List, maintenance etc.).

g. **Appointment of new Board and key management:** The Resolution Applicant will thereafter take-over the management of the Corporate Debtor and appoint a new board of directors, other key management personnel as well as a professional site team, based on the former's assessment of project requirements. Further, the Resolution Applicant may appoint appropriate third-party consultants and/or sub-contractors to help manage the tolling, operations and maintenance of the Project Highway.

h. **Management and control of the Corporate Debtor post the**

Effective Date: Pursuant to the approval of the Plan by this tribunal and until the Payment Date, a committee ("Monitoring Committee") comprising 2 (Two) representatives designated by the Committee of Creditors ("COC Representatives) and 1 (One) representative designated by the Resolution Applicant ("RA Representative") shall be constituted within 1 (One) day of the NCLT Order and shall have the powers of the board of directors of the Corporate Debtor vested in it.

i. The powers of the existing board of directors of the Corporate Debtor shall remain suspended until the Payment Date (on which date the existing board of directors and Key Managerial Personnel of the Corporate Debtor shall automatically stand removed / resigned, without any further deed or action).

j. **Effective Date**: The approved Resolution Plan mentions Effective Date as the date on which the order of this bench approving the Resolution Plan is accorded.

k. **Payment Date**: The approved Resolution Plan mentions Payment Date as the date on which the Tranche II (i.e., INR 117 Crore) is fully paid to the Secured Financial Creditors. Such date shall fall within 150 days from the Effective Date.

l. The Resolution Plan proposes a total Consideration of Rs. 452 Crores (value for Stakeholders is Rs. 422 Crores and Rs. 30 Crores for improvement in operations of the Corporate Debtor.

12. The details of the proposed payments are as follows:

A) **CORPORATE INSOLVENCY RESOLUTION PROCESS COSTS:**

The outstanding and unpaid CIRP Costs, if any, shall be paid from the cash balance available with the Corporate Debtor (excluding amounts to be refunded to M/s Unique Infra Engineers Private Limited) as on the Reference Date, towards the full and final payment of the insolvency resolution process costs, in terms of Section 30(2)(a) of the Code and Regulation 38(1)(a) of the Corporate Person Regulations. If the outstanding and unpaid CIRP cost is in excess of such cash balance, then:

i. the Resolution Applicant shall make good the shortfall from the Equity/ Promoter Loan (otherwise infused to cater to OC Employees/ Identified OC Others/ Other Creditors/ Punch List):

ii. The Tranche II Debt shall be reduced by an amount equivalent to any additional funds infused by the Resolution Applicant to meet the shortfall in catering to OC Employees/ Identified OC Others/ Other Creditors in Punch List consequent to the above.

The outstanding and unpaid CIRP Costs (if any) shall be paid in priority to any other concerned person, within 45 (forty-five) days of the Effective Date.

B) **<u>FINANCIAL CREDITORS:</u>**

I. <u>Financial Creditor- Secured</u>

The detailed financial proposal of the Resolution Applicant (subject to the terms and conditions of the Resolution Plan) for the Secured Financial Creditors is provided below:

a) Total upfront consideration payable to the Secured Financial Creditors shall comprise (i) Excess Cash available to the Corporate Debtor as on the Reference Date estimated as INR 38,18,91,538 (Indian Rupees Thirty' Eight Crores Eighteen Lakh Ninety One Thousand Five Hundred and Thirty Eight Only) and (ii) INR 256,81,08,462 (Indian Rupees Two Hundred & Fifty Six Crores Eighty One Lakh Eight Thousand Four Hundred & Sixty Two Only); and shall be transferred to, and for the benefit of, the Financial Creditors of the Corporate Debtor within 45 days from the Effective Date ("Tranche I Debt").

b) An amount of INR 117,00,00,000 (Indian Rupees One Hundred and Seventeen Crores Only) shall stand restructured as Non-Convertible Debentures ("Tranche II Debt") and shall carry the following terms:

i. Principal Repayment:

a. INR 30,00,00,000 (Indian Rupees Thirty Crores Only) shall be repaid in 5 (five) instalments from the cashflows of the Corporate Debtor as under:

Sr. No.	**Days after Effective Date**	**Amount Repaid (INR)**
1.	45 days	5,00,00,000/-
2.	60 Days	5,00,00,000/-
3.	90 Days	5,00,00,000/-
4.	120 Days	5,00,00,000/-
5.	150 Days	10,00,00,000/-
	Total	**30,00,00,000/-**

b. The Resolution Applicant shall make good any shortfall in case the cashflows of the Corporate Debtor are insufficient to meet the aforementioned payments.

c. Balance amount of INR 87,00,00,000 (Indian Rupees Eighty Seven Crore Only) shall be fully repaid within 150 (one hundred & fifty) days from Effective Date.

ii. **Principal Moratorium**: Nil. First instalment to be payable 45 (forty-five) days after the Effective Date.

iii. **Interest**: Not applicable, as interest moratorium proposed for the period up to 150 (one hundred & fifty) days from the Effective Date. There is no requirement for specification of interest thereafter, as the said debt amount will be repaid within period of 150 (one hundred & fifty) days.

iv. **Pledge of equity shares**: It is proposed that equity shares aggregating to 51% of paid up and voting equity share capital of the Corporate Debtor be pledged until the Tranche II Debt is fully repaid.

v. **Other terms and Security:** Provided subsequently.

c) The balance admitted financial claims of the Secured Financial Creditors ("Tranche III Debt") shall stand restructured as Optionally Convertible Debentures. The Corporate Debtor is currently in advanced stages of arbitration with APRDC with respect to certain cost claims amounting to INR 383.39 Crores* ("Arbitration Claims"). The Resolution Applicant offers to redeem Tranche III Debt through sharing of 50% of cash proceeds received from APRDC towards the Arbitration Claims after adjusting for any amount expended by the Resolution Applicant on arbitration expenses (arbitrator cost, reading fee, award fee, miscellaneous expenses), legal counsel fee (pleadings, hearing fees out of pocket expenses), court fees etc. ("FC Arbitration Share"). It is clarified that principal repayment herein shall be solely contingent upon the receipt of cash proceeds towards the Arbitration Claims and, in any case, shall not exceed the quantum of Tranche III Debt.

**Revenue shortfall loans sought by Corporate Debtor, if awarded, does not form a part of the claim sharing for the purpose of this Resolution Plan.*

The other key terms of Tranche III Debt shall be as follows:

i. **Principal Repayment**: Bullet repayment within 30 (thirty) days of receipt of cash proceeds from APRDC towards the Arbitration Claims.

ii. **Principal Moratorium**: For the period up to 30 (thirty) days of receipt of cash proceeds from APRDC against the Arbitration Claims.

iii. **Interest**: Zero Coupon

iv. **Other terms and security**: Not Applicable

Based on the above, the total recovery being offered to the Secured Financial Creditors under the Resolution Plan is as follows:

Sr. No.	**Source of Funds**	**Amount (INR)**
1.	Tranche I Debt	295,00,00,000/-
2.	Tranche II Debt	117,00,00,000/-
(A)	**Sub Total**	**412,00,00,000/-**
(B)	**Recovery (as a % of Secured Financial Claim Amount)**	**44.61%**

In addition, Tranche III Debt is being offered through sharing of cash proceeds from payout of Claims Arbitration by APRDC to the extent of 50%. Assuming (say) 70% payout on the total claims raised (net of arbitration & legal expenses), an additional recovery of ~INR 134.19 Crores would be available to the Secured Financial Creditors. Factoring repayment under Tranche III Debt, results in potential recovery of ~59.14% of the Secured Financial Claim Amount.

II. **Dissenting Financial Creditors:**

(Dissenting Financial Creditors, if any, shall be paid in accordance with the manner of payment proposed for Consenting Financial Creditors in preference to the other Financial Creditors in accordance with the IB Code. The Consenting Financial Creditors shall thereafter be repaid from the balance Tranche I & Tranche II Debt recovery amount to the extent set out in the approved resolution plan. It is clarified that the amount payable to Dissenting Financial Creditors shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of Section

53 in the event of a liquidation of the Corporate Debtor, under Section 30(2)(b) of the IB Code. However, there would be no change in the (i) total cash proposed to be paid by the Resolution Applicant to the Secured Financial Creditors, and (ii) payment mechanism to the Dissenting Financial Creditors, as defined in the Resolution Plan.

C) **OPERATIONAL CREDITORS:**

As regards the Operational Creditors, the Resolution Applicant has proposed to provide an upfront payment of Rs.9,74,89,470/- towards the total claims admitted under this category by the Resolution Professional. It is proposed in priority to any payment made to the Financial Creditors in accordance with Section 30(2)(b) of the IB Code.

i. **Financial Proposal for OC Employees:**

It is understood that the total admitted financial claims of the OC Employees stand at **Rs.14,75,614**/- which are shown as below:

Sr. No.	**Party**	**Admitted Amount (INR)**	**Amount Offered (INR)**
1	M. Phani Kumar	4,44,849	4,44,849
2	Manish Mehra	1,31,245	1,31,245
3	Kaushik Choudhari	8,99,520	8,99,520
	Total	**14,75,614**	**14,75,614**

The Promoter Loan shall be used to pay OC Employees and such payments shall be made within 45 (forty-five) days from the Effective Date. For the avoidance of doubt, this amount shall be the full and final settlement towards OC Employees and any claims admitted beyond these amounts shall not result in an increase in the amounts offered by the Resolution Applicant.

ii. **Financial Proposal for Operational Creditors (Others):**

The total admitted claims of the OC Others stand at Rs.38,40,55,424/-which are shown as below:

Sr. No.	Party	Admitted Amount (INR)	Amount Offered (INR)
1	R. V. Buildcon	30,58,380/-	7,64,595/-
2	IKON Computers	2,70,992/-	67,748/-
3	M&N Motors Pvt. Ltd.	47,232/-	11,808/-
4	Sri Vijaya Lakshmi Engineering Works	69,221/-	17,305/-
5	CH.B.V.V.S.Kumar Transport	2,29,768/-	57,442/-
6	Kadali Krishna	2,20,500/-	55,125/-
7	Manthena Lakshmi Kantham	22,000/-	5,500/-
8	Leela Krishna Automobiles Pvt. Ltd.	11,683/-	2,921/-
9	Sri Balaji Electrical	16,181/-	4,045/-
IO	Sri Lakshmi Ganapathi Stone Crusher	1,98,240/-	49,560/-
11	Sri Satya Sai Water Supply	1,38,915/-	34,729/-
12	Sri Surya Fuelling Station	1,13,333/-	28,333/-
13	Chief Engineer (R&B) State Highways & Managing Director, APRDC	5,98,13,967/-	1,49,53,492/-
14	Sudharma Infratech Private Limited	—	—
15	V Ramkumar	—	--
16	APEDCL, AP TANSCO	1,33,433/-	33,358/-
17	Eastern Power, Rural. APEPDCL	17,581/-	4,395/-
18	National Securities depository Limited	—	—
19	Eastern Power, Town, APEPDCL	1,52,088/-	38,022/-
20	Neil Consultancy Services	24,840/-	6,210/-
21	Feedback Highways OMT Private Limited	43,36,592/-	10,84,148/-
22	Andhra Pradesh, Central GST Division	—	—
23	Service Tax Department	—	—
24	Mumbai Central GST Commissionerate	15,478/-	3,870/-
25	Gammon Engineers & Contractors Private Limited	31,51,65,000/-	7,87,91,250/-
Total		**38,40,55,424/-**	**9,60,13,856/-**

The Promoter Loan shall be used to pay the Identified OC Others, as determined by the Resolution Applicant, within 45 (forty-five) days from the Effective Date.

For the avoidance of doubt, any parties not part of the Identified OC Others shall not be offered any recovery amounts. Further, the amounts offered herein shall be the full and final settlement towards OC Others and any claims admitted beyond the offered amounts shall not result in an increase in the amounts offered by the Resolution Applicant. Further, any Unsecured Financial Creditors or any person who has provided Promoter Debt or any Related Party operational creditors shall not be paid any amount whatsoever under the Resolution Plan.

D) **Financial Proposal for Improvement of Business Operations:**

(To improve the business operations and to ensure completion of Punch List items, the Resolution Applicant has proposed the infusion of Rs.30,00,00,000/- (Indian Rupees Thirty Crores) as Equity into the Corporate Debtor. The utilization of this amount is envisaged as provided below:

Sr. No.	**Description No.**	**Amount in INR Crores**
1.	Construction of Toe Drain	0.35
2.	Repair and finishing of visible blow holes on Crash Barrier and handrail of Main Bridge	0.25
3.	Repair of Slip Roads for Underpass (Km. 4+980 & Km. 7+980)	5.00
4.	Repair of Bund Diversion Road through Under pass at Km.9+243	2.31
5	Repair of Vent way Road at Km. 7+980	0.39
6	Grouting of Stone Pitching	1.87

7	Replacement of VUP Skylight Opening at Km. 4+980, Km. 7+980, Km. 8+695. Km. 13+600 & Km. 14+100	0.05
8	Clear of Obstructions like bushes jungle, undesired small plants for all road furniture	0.02
9	Toll Plaza Sign Boards	0.10
10	Streetlight for the Bridge	0.22
11	Kerb Painting	0.38
12	Miscellaneous	1.00
13	Maintenance & Others	18.06
	Total	**30.00**

The Resolution Applicant will amend the constitutional documents of the Company to reflect changes in authorised capital, if any. The Resolution Applicant shall operate as the O&M contractor.

13. **SOURCES OF FUNDS:**

The Successful Resolution Applicant (SRA) has provided the source of funds for the implementation of the financial proposals under the approved Resolution Plan. Towards acquisition of Management Control, the Resolution Applicant has offered to utilize the following sources of funds:

Sr. No.	**Source of Funds**	**Amount (INR)**	**Corresponding Debt (INR)**	**Timelines**
Unconditional Payments				
1.	Excess Cash as on Reference Date	38,18,91,538	38,18,91,538	Within 45 (forty-five) days of the Effective Date
2.	Operating cashflows of Corporate Debtor	30,00,00,000	30,00,00,000	In 5 instalments starting 45(forty-five) days from Effective Date and ending within 150 (one hundred and fifty) days from Effective Date
3A.	Own Funds	196,81,08,462	196,81,08,462	Within 45 (forty-five) days of the Effective Date

Sr. No.	Source of Funds	Amount (INR)	Corresponding Debt (INR)	Timelines
3B.	Own Funds	87,00,00,000	87,00,00,000	Within 150 (one hundred and fifty) days of the Effective Date
4.	Equity infusion for improvement of business operations ("Equity")	30,00,00,000	-	100% within 180 (one hundred & eighty) days of the Effective Date out of which INR 11,94,00,000 shall be infused within the first 90 (ninety) days
5.	Other infusion for payment to Financial, Operational & Other Creditors (**"Promoter Loan"**)	69,74,89,470	60,00,00,000	Within 45 (forty-five) days of the Effective Date
Contingent Payments				
6.	Cash proceeds received from APRDC against Arbitration Claims	50% of proceeds	134,18,65,000*	Within 30 (thirty) days of receipt of cash proceeds from APRDC towards the Arbitration Claims

* Assuming 70% of claim realization (net of arbitration & legal expenses) and 50% payout to Financial Creditors

14. **DISBURSEMENT OF AMOUNT:**

The Resolution Professional has submitted the following chart showing the details of the total claims received and admitted by him and amount under plan as follows:

(amount in Rs. Lakh)

Sr. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1		a. Creditors not having a right to vote under	-	-	-	-

	Secured Financial Creditors	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	- 98,114.17	- 92,350.81	- 41,200.00 **	- 41.99%
		Total [(a) + (b)]	98,114.17	92,350.81	41,200.00	41.99%
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 (ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	-	-	-	-
3	Operational Creditors	(a) Related Party of Corporate Debtor	-	-	-	-
		(b) Other than (a) above: (i) Government (ii) Workmen & (iii) Employees (iv) Operational Creditor other than workmen, employees and government	820.97 - 17.38 28,593.40	601.33 - 14.76 3,239.23	150.30 - 14.76 809.8	18.31% 84.92% 2.83
		Total [(a) + (b)]	29,431.74	3,855.31	974.89	3.31%

4	Other Debts and Dues		2,513.37	2,305.69	-	0%
Total			**130059.28**	**98511.80**	**42174.89**	**42.81%**

"#amount provided over time under the Resolution plan and includes estimated value of non-cash components. It is not NPV.
*** the Resolution Applicant has also offered to the secured financial creditors, 50% share from the net proceeds of ongoing arbitration of corporate debtor with APRDC (Refer clause no. IV(II)(2)(A) of the Resolution plan."*

15. The indicative timeline and total payment schedule towards various creditors in the events for implementation of Resolution plan from approval date is as follows:-

	Activity	**Indicative Timeline**	**Responsibility**	**Remarks**
Phase I – Approval Process of Resolution Plan				
1	Approval of Plan by CoC and issuance of letter of Intent	X	COC/ Resolution Professional	As per Clause 4.9 & 4.10 of the RFRP
2	Submission of Performance Security and acceptance of Letter of Intent	X + 3 Business days	Resolution Applicant	As per Clause 3.14.1 and 4.11 of the RFRP
3	Application to NCLT for approval of Resolution Plan	Y	Resolution Professional	As per Clause 4.12 of the RFRP
4	Approval of NCLT of Resolution Plan and receipt of order	E	Resolution Professional	Effective Date
5	Intimation to APRDC, if required in terms of the applicable law	E	Corporate Debtor/ Resolution Professional	Effective Date
Phase II – Implementation of Plan				
1	Constitution of Monitoring Committee	E + 1 Business Day	Resolution Applicant	As per Section VII Para 1.1 of the Resolution Plan
2	Execution of material agreements giving effect to the Plan	On and From E +1 Business Day	Monitoring Committee	
3	Appointment of the Managing Agency under the sole guidance and instruction of the Monitoring Committee	E + 1 Business Day	Monitoring Committee	As per Section VII Para 1.2 of the Resolution Plan

	until the Payment Date			
4	Infusion of funds in the Corporate Debtor	Equity: Within 180 days from Effective Date (INR 11.94 Cr within first 90 days) Promoter Loan: Within 45 days from Effective Date Own Funds: Part amount within 45 days from Effective Date and balance within 150 days	Resolution Applicant	As per Para IV on Proposal for Funding by the Successful Resolution Applicant as provided in this Section above
5	Replacement of Suspended Board with new Board	Payment Date	Resolution Applicant	As per Section VIII of the Resolution Plan
Phase III – Settlement of Creditors				
1	Payment of CIRP Costs in priority to any other payment under the Plan	Within 45 days from Effective Date	Monitoring Committee / Resolution Applicant	As per Para I on CIRP Costs as provided in this Section above
2	Payment to the operational creditors in priority to Financial Creditors	Within 45 days from Effective Date		As per Para II (1) on Financial Proposal for Operational Creditors as provided in this Section above
3	Payment to all the Financial Creditors in accordance with the Plan	Tranche I Debt: Within 45 days from the Effective Date Tranche II Debt: Within 150 days of the Effective Date Tranche III Debt: Within 30 days of receipt of cash proceeds from APRDC towards the Arbitration Claims		As per Para 11 (2) on Financial Proposal for Consenting Financial Creditors as provided in this Section above

16. The Resolution Applicant is eligible to submit resolution plan, un undertaking on affidavit dated 26.10.2021 and 25.01.2022, in terms of Section 29A of the Insolvency & Bankruptcy Code, 2016 is given by the Resolution Applicant.

17. **OBSERVATIONS AND FINDINGS :-**

The Resolution Plan addresses the mandatory contents prescribed under the extant provisions of the Code and the regulations made thereunder. The relevant extract from the approved Resolution Plan on the mandatory contents are mentioned hereinbelow:

i. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Section 30(2)(a)).

ii. The Resolution Applicant provides payment of the debts of operational creditors which shall not be less than the amount to be paid to operational creditors in the event of liquidation of the Corporate Debtor under Section 53 of the IB Code or the amount that would have been paid to operational creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in Section 53(1) of IB Code, whichever is higher, in priority over financial creditor as per Section Regulation 38 (1) of the CIRP Regulations and Section 30(2) (b) of the IB Code.

iii. Payment of debts of financial creditors, who do not vote in favour of the resolution plan, which amount shall not be less than the amount to be paid to such creditors in accordance with Section 53(1) of IB Code in the event of a liquidation of the corporate debtor as per Section 30(2) (b).

iv. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor in terms of Section 30(2)(c).

v. The Plan also provides for implementation of provision of the Resolution Plan as stated above as per Section 30(2)(d).

vi. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2) (e) and Section 30(2) (f).

vii. Provides for the mechanism regarding management and control of the affairs/ business of the Company post the NCLT Approval Date as per Section 30(2)(c) of the IB Code and Regulation 38(2) (b) of the CIRP Regulations.

viii. Provides for the manner of implementationand supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.

ix. 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.

x. 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.

a) Provides that the amount due to the Operational Creditors under a resolution plan shall be given priority in payment over Financial Creditors.

b) Provides for the management and control of the business of the Corporate Debtor during its term.

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

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(1)(b) of the Regulations.

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

18. The Resolution Plan has been approved in the 28th COC meeting held on 02.02.2022 with 100% votes in accordance with the provisions of the Code.

19. In the judgement of ***Venus Recruiters Private Limited v. Union of India and Ors.: CM Appl. 36026/2019*** the Hon'ble Delhi High Court observed that:

> *"74........*
> *The role of the RP is not adjudicatory but administrative in nature. Thus, the RP cannot continue beyond an order under Section 31 of the IBC, as the CIRP comes to an end with a successful Resolution Plan having been approved. This however subject to any clause in the Resolution Plan to the contrary, permitting the RP to function for any specific purpose beyond the approval of the Resolution Plan."*

20. In view of the above ruling of the Delhi High Court, it can be easily derived that, the Resolution Professional in case it is so proposed in the Resolution Plan will continue to discharge his duties regarding the pending applications to the main petition even though the Resolution Plan is approved.

21. 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.

22. In **CoC of Essar Steel** (*supra*) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved. In para 42 Hon'ble Court observed as under:

*"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)."*

23. In view of 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.

24. 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. There are no workers claims. Resolution Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

ORDER

i. The Interlocutory Application No.542 of 2022 is allowed. The Resolution Plan submitted by **M/s. Prakash Asphaltings & Toll Highways (India) 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 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 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.

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

iv. 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.

v. In line with the judgement of Hon'ble Delhi High Court in the matter of ***Venus Recruiters Private Limited v. Union of India and Ors.*** and as proposed by the Resolution Professional during the course of hearing of the Resolution Plan, the Resolution Professional will pursue application u/s. 43, 45, 60 & 66 with the Adjudicating Authority.

vi. In line of the above the Bench as decided that, even subsequent to the approval of the Resolution plan any other application under Section 43, 45, 49, 50, 66, 68, 70, 71, 72, 73 and 74 of the Insolvency and Bankruptcy Code, 2016, pending would be pursued by the COC.

vii. 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. Any waiver sought in the Resolution Plan, shall be subject to approval by the Authorities concerned.

viii. In terms of the judgement of Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited***, *"on the date of approval of the Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in, respect 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."

ix. 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.

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

xi. The Interlocutory Application No. 542 of 2022 is accordingly allowed and disposed of.

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-

H. V. SUBBA RAO
MEMBER (JUDICIAL)