

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI**

CA-1659(PB)/2019

In CP (IB)-22(PB)/2018

IN THE MATTER OF:

Daimler Financial Services Pvt. Ltd.

... Financial Creditor

Vs.

Value Infracon India Pvt. Ltd.

...Corporate Debtor

IN THE MATTER OF CA-1659(PB)/2019:

Value Infracon India Pvt Ltd.

Through the Resolution Professional

Mr. Sanjay Kumar Singh

715, Naurang House, 21 K.G. Marg,

Connaught Place, New Delhi-110001

...Resolution Professional/Applicant

Vs.

1. Daimler Financial Services Pvt. Ltd.

143, Dr. MGR Road, Perungudi

Chennai.

...Respondent No.1

2. Capri Global Capital Ltd.

Peninsula Business Park, 502, Tower A

Lower Parel, Mumbai.

....Respondent No.2

3. Value Infra Buyers Association

4/8, Block 4, Ashok Nahar, Tilak Nagar, New Delhi

.....Respondent No. 3/ Resolution Applicant

Order delivered on: 28.04.2022

CORAM

**JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT
SH. AVINASH K. SRIVASTAVA, HON'BLE MEMBER (T)
PRESENT**

For SRA: Mr. Neeraj Kr Gupta, Advocate.

For CoC: Mr. Vikas Tiwari, Mr. Rishabh Bharadwaj, Mr. Kumar
Deepraj, Advocates.

For RP: Mr. Sanjay Kumar Singh (in person)

For Objector: Mr. Saurabh Kalia and Mr. Siddharth Tandon,
Advocates.

ORDER

PER- AVINASH K. SRIVASTAVA, MEMBER (T)

1. The Resolution Professional has filed application under Section 31 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) r/w Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) in CA-1659(PB)/2019, seeking following reliefs:

“a. Allow the present application and approve the Resolution Plan submitted by Value Infra Buyers Association as approved by the Committee of Creditors in their meeting held on 01.08.2019.

b. Pass any such Order as the Hon'ble Tribunal may deem fit and proper.”

2. Mr. Sanjay Kumar Singh is the Resolution Professional (Applicant), for the Corporate Debtor who has submitted the Resolution Plan duly approved by the Committee of Creditors (CoC), with 90.45% voting share, which is accompanied by the compliance certificate on prescribed Form H.

3. The Corporate Debtor viz., M/s. Value Infracon India Pvt. Ltd. is a Company incorporated under the provisions of Companies Act, 1956 having Company Identification Number U45400DL2007PTC165587, situated at 715, Naurang House, 21 K.G. Marg, Connaught Place, New Delhi – 110001. The Corporate Insolvency Resolution Process (CIRP), against M/s. Value Infracon India Pvt. Ltd. (Corporate Debtor) was admitted by this Adjudicating Authority vide Order dated 04.05.2018, pursuant to the application filed under Section 7 of IBC, 2016, by one of Financial Creditors viz., M/s. Daimler Financial Services Pvt. Ltd and Mr. Sanjay Kumar Singh was appointed as Interim Resolution Professional (IRP) vide the same Order.

4. The Public Announcement regarding the commencement of CIRP was made on 09.05.2018 and in reference to the said public announcement two Financial Creditors submitted their claims namely, M/s. Daimler Financial Services Private Limited for an amount of Rs. 53,48,808.27 (Rupees Fifty Three Lakh Forty Eight Thousand Eight Hundred and Eight Paise Twenty Seven) and M/s. Capri Global Capital Limited for an amount of Rs. 76,75,46,530 (Rupees Seventy Six Cores Seventy Five Lakh Forty Six Lakh Five Hundred and Thirty). The IRP after considering the claims constituted the committee of Creditors (CoC) comprising of two Financial Creditors and the 1st meeting of the CoC was

held on 01.06.2018 wherein it was resolved to appoint IRP Mr. Sanjay Kumar Singh as the Resolution Professional (RP).

5. The Authorised Representative (AR) for the homebuyers, of project 'Meadows Vista', Mr. Jaswant Singh, Insolvency Professional, was appointed vide Order dated 30.07.2018. The 2nd CoC meeting was held on 09.08.2018, wherein it was resolved to reconstitute the CoC. This Adjudicating Authority vide Order dated 29.10.2018, extended the time for CIRP for further 90 days, as the period of 180 days expired on 31.10.2018.

6. The Financial Creditors in class (home buyers) moved an application against the claim of one of the financial creditor i.e., M/s. Capri Global Capital Limited and this Adjudicating Authority vide Order dated 17.12.2018, allowed the application and directed the RP as under:

“expect the RP to act in accordance with the agreement dated 19.09.2014 and allocate the voting share to the COC accordingly”.

The Applicant in compliance of the aforesaid Order, reduced the claim of M/s. Capri Global Capital Limited to Rs. 1,00,00,000 (Rupees One Crore Only) and assigned the voting share accordingly.

7. The Applicant in compliance of Regulation 27 of CIRP Regulations, appointed two valuers on 18.08.2018, for each class of Asset to determine the Fair Value and Liquidation Value of the Corporate Debtor in accordance with Regulation 35 of CIRP Regulations. In the 4th CoC meeting, held on 12.11.2018, the evaluation matrix, eligibility criteria and issuance of Expression of Interest (EoI), was considered and approved. The Applicant issued FORM G dated

20.11.2018, for inviting EoI and for submission of Resolution Plans in accordance with the eligibility criteria. In response to the publication, the Applicant received the EoI alongwith the relevant details from M/s. Pacificia (India) Projects Private Limited, however, failed to submit any resolution plan on formal invitation of the Applicant, for submission of the resolution plan. The period of CIRP was extended till 10.08.2019, by this Adjudicating Authority vide Order dated 03.07.2019, on an application moved by the Applicant.

8. The Applicant on 16.07.2019, informed the homebuyers Association i.e., Value Infra Buyers Association, to submit the resolution plan as per the provisions of IBC, 2016 and CIRP Regulations and on 29.07.2019, the Value Infra Buyers Association (Successful Resolution Applicant) submitted its Resolution Plan alongwith the required affidavit. The Applicant on same the date issued notice to the members of the CoC for holding meeting on 01.08.2019, for considering the Resolution Plan and the CIRP cost. The 8th CoC meeting, and the extract of resolution passed is as under:

"RESOLVED THAT the resolution plan submitted by Value Infra Buyers Association (VIBA) be and is hereby approved and Mr. Sanjay Kumar Singh, Resolution Professional be and is hereby requested to submitted the same before the Hon'ble Adjudicating Authority for consideration and approval and also to do all acts, deeds, things which are deemed necessary and expedient to carry on the resolution."

The resolution passed was placed for e-voting to enable the other CoC members who have not voted/given their instruction to AR in the meeting and the Applicant engaged 'Linkstar Infosys Private Limited', an e-voting agency. The extract of the physical and online voting is as under:

Voting on Agenda item no.5: Approval of Resolution Plan of VIBA

Physical Voting by AR of the	Online Voting in favour of the resolution	Total Voted for the	Result
Homebuyers In the meeting		resolution	
72.21%	18.24%	90.45%	Pass

9. The resolution Plan provides as follows:

i. The Clause 1.2 provides that the Resolution Applicant proposes to collect cost of completing the construction through contribution from Real Estate Allottees, which collection shall form "**Resolution Fund**" for the resolution of the Corporate Debtor. The Real Estate Allottees Receivables will be paid by home/ shop buyers being part of CoC, within nine (9) months in 3 equal installments payable at an interval of three (3) months each, first such installment shall fall due on 90th day/ date of approval of this resolution plan by the Adjudicating Authority.

ii. The super area of the flats mentioned in the table in the Resolution Plan, are on estimation basis, as no documents are available with the Corporate Debtor or the Resolution Professional for due diligence. The Particulars of unclaimed, unsold units as the Resolution Plan is as follows:

	Flats (Nos.)	Super Area (Sq Ft.)
Sales of Unclaimed Flats		
<i>Phase 2</i>	86	94910
<i>Phase 1</i>	Nil	Nil
<i>Commercial</i>	10	2620
Total (A)	96	
Sales of Unsold Flats		
<i>Phase 2 (B)</i>	29	35250
Total (A+B)		

iii. The Clause 2 provides that the estimated unpaid Insolvency Resolution Process Costs, as provided by the RP, amounts to Rs. 30,00,000 (Rupees Thirty Lakh Only) and shall be paid from the Real Estate Allottees Receivables of the Resolution Fund. The Insolvency Resolution Process Costs shall be paid within 120 days of approval of this Resolution plan.

iv. The total admitted claim of the Financial Creditors i.e., M/s. Capri Global Capital Limited and M/s. Daimler Financial Services Limited), other than homebuyers, is Rs. 2,39,48,808.27 (Rupees Two Crore Thirty-Nine Lakh Forty-Eight Thousand Eight Hundred and Eight and Paise Twenty-Seven). The principal component of the claims is follows:

S. No.	Financial Creditor	Amounts admitted (Rs.)	Amount to be paid (Rs.)
1.	Capri Global Capital Limited	1,86,00,000.00	1,00,00,000
2.	Daimler Financial Services Private Limited	53,48,808.27	41, 75,003
Total		2,39,48,808.27/-	1,41,75,003/-

All the amounts payable to the Financial Creditors as shown in the above table is the principal component and they shall forego interest component of their respective claims. The obligations of the Corporate Debtor towards each of the Financial Creditors, other than Real Estate Allottees shall stand fully and permanently settled on and from the date of payment of the above with respect to each of such Financial Creditors.

v. Further, in terms of Regulation 38(1), no claims of operation creditors were received by the Resolution Professional and the statutory returns have not been filed since 2013, therefore, any future claim of any operational creditor stands extinguished and discharged, which are even otherwise unenforceable due to expiry of period of limitation.

vi. The clause 2.5 provides that the total admitted claim of the homebuyers as Financial Creditors is Rs. 75,91,50,696 (Rupees Seventy-Five Crore Ninety-One Lakhs Fifty Thousand Six Hundred Ninety-Six) which includes principal amount of Rs. 65,99,71,197 (Rupees Sixty-Five Crore Ninety-Nine Lakhs Seventy-One Thousand One Hundred Ninety-Seven) and interest of Rs. 9,91,79, 499 (Rupees Nine Crore Ninety-one Lakh Seventy Nine Thousand Four Hundred Ninety Nine Only), which shall be settled in the following manner:

S. No.	Phase	Status	Scope of work
1.	Phase 1 (Near Completion)	<ul style="list-style-type: none"> Claim received: 23 flats admeasuring 31010 Sq. Feet. 6 flats remain unsold: admeasuring 6700 Sq. Feet 	The NOC to complete work of phase1 shall be provided by association of Phase1home buyers. The Corporate debtor shall only perform internal finishing work for the 23 flats as per existing standards.
2.	Phase 2 (To be build)	<ul style="list-style-type: none"> Total unsold/unclaimed flats: 115 admeasuring 130160 Sq. Feet Total claimed flats: 293 admeasuring 333680 Sq. Feet 	Complete construction work in terms of the already approved plan by GDA, if not lapsed or renewed /new approved plans as per existing standards.
3.	Commercial (to be build)	<ul style="list-style-type: none"> Total 50 shops: admeasuring 12930 Sq. Feet Total unclaimed shops: 10 Shops admeasuring 2620 Sq. Feet Total claimed shops: 40 admeasuring 10310 Sq. Feet 	Complete construction work in terms of the already approved plan by GDA, if not lapsed or renewed /new approved plans as per existing standards.
4.	Common Amenities	<ul style="list-style-type: none"> Gym Basement Parking Club 	Complete construction work in terms of the already approved plan by GDA, if not lapsed or renewed /new approved plans as per existing standards.

The additional payment to be made by the homebuyers as per the Resolution Plan is as follows:

From Homebuyers				
	Flats (Nos.)	Area (Sq Ft.)	Additional Cost Per sq. ft.	Rs (Crores)
Additional Cost for flats-Loading				
Phase 2	293	333680	600	20.02
Phase 1	23	30320	600	1.86
Commercial	40	10310	1300	1.34

Total (A)	353			23.22
Pending Payments towards cost of Flats				
<i>Phase 2</i>				8.11
<i>Phase 1</i>				0.78
<i>Commercial</i>				-
Total(B)				8.89
Total Receipts (A+B)				32.11

- a. The Corporate Debtor/Resolution Applicant shall only be responsible to complete the work as per "Proposal of Construction of Project" and shall not be responsible to provide any maintenance facilities to Phase 1 and Phase 2 and any such maintenance agreement, if any, entered into before the date of approval of this Resolution Plan shall stand cancelled and any dues payable thereunder shall stand extinguished. VIBA shall be responsible to form RWA for Phase 2 after completion of construction work and the proposed RWA shall provide the maintenance facilities to phase 2 homebuyers. Further, the Resolution Applicant shall not be responsible to provide/ complete any balance/defective work to Phase 1 homebuyers.
- b. The Real Estate Allottees shall also forego the claim towards interest etc. on account of the delay in completing the project by the Corporate Debtor and the resolution applicant shall not pay any interest etc.
- c. That the unclaimed and unsold flats/shops in the Project shall vest with the Resolution Applicant/Corporate Debtor and the same can be sold or transferred to any third party by the Resolution Applicant/ Corporate Debtor any time.

d. Any entitlement to increase the FAR of the Project, subject to approval of the concerned authorities and Resident Welfare Association/ Real Estate Allottees as per Law, shall also vest with the Resolution Applicant.

e. In an event, any Real Estate Allottee or claimant fails to pay the agreed additional contribution of ₹ 600/1300 per square feet of super area and/or pending payments towards cost as and when demanded, it is agreed that the Resolution Applicant / Corporate Debtor will have a right of forfeiture of 50% amount already paid, after serving due notice of 30 days. The remaining 50% of the amount shall be refunded after the proceeds are received from sale of that unit.

f. In an event, an individual flat buyer wants to cancel his allotment, it is agreed that the Proposed Resolution Applicant shall refund 50% of amount paid after the proceeds are received from sale of that unit.

vii. The Project shall be completed within time period of 30 months from the date on which the necessary building licenses are revived from the Ghaziabad Development Authority or any other central/state authority necessary to commence construction. Grace period of 60 days shall also be provided for completion of the Project.

viii. As per the List of Creditors, there are no claims against income tax arrears for various assessment years as well as service tax. Also, no claims have been received by RP from any other authorities including revenue/ taxation authorities of any description under any law. The Resolution

Applicant shall pay NIL towards settlement of Contingent Claims of Statutory Authorities, including revenue/taxation authorities. Notwithstanding the same, these Contingent Claims of Statutory Authorities shall be deemed to have been settled in full together with all interests and penalties, if imposable, and all such claims shall stand extinguished against the Corporate Debtor and same may be enforceable against erstwhile management at the time when the default was committed. The approximate term for implementation is thirty-six (36) months from the grant of all clearances by the respective competent authorities and further grace period of six months to meet unforeseen circumstances and contingencies.

ix. No compensation / consideration shall be payable to the Promoters on cancellation of their shareholding in the Corporate Debtor and vesting of the same in VIBA.

x. VIBA shall obtain registration under Real Estate (Regulation) Act as applicable to state of Uttar Pradesh, on the terms applicable to Allottee's association, without payment of registration fee.

xi. The details of the project and the current status as provided in the Resolution Plan is as under:

Residential (Phase 2- Towers E, F, G & H)					
	Nos of Flats	Total Super Area	Already Constructed	To be Constructed	Remarks
Total Flats	408	463400	400000	63445	1. Approved Maps by GDA have lapsed. GDA has sealed the Project. 2. Structure Work Completed except
Flats Claimed by	293	333680	333680	0	

owners					top 2 floors of all 4 towers and all common facilities, basement of non-tower area and commercial complex 3. Finishing to be done for all floors and all amenities to be provided.
Flats Unsold/unclaimed	115	129765	66320	63445	
	408	463445	400000	63445	
Residential (Phase 1- Towers A, B, C & D)					
Flats Unsold	0	0	0	0	1. Internal finishing to be done. No external finishing to be done. 2. No internal finishing to be done or defective work to be undertaken
Flats claimed by owners	23	31010	0	0	
Flats Unclaimed	0	0	0	0	
Commercial					
Total	50	12930	0	12930	1. Approved Maps by GDA have lapsed. GDA has sealed the Project. 2. No construction till date.
Shops Claimed	40	10310	0	10310	
Shops Unclaimed	10	2620	0	2620	

The detailed Work Sheet for the said construction at the site is as under:

Sl. No.	Particulars	Units	Total
1.	Estimated construction cost	Not ascertained	Not ascertained
2.	Marketing and Administrative cost	Not ascertained	Not ascertained
3.	Other Authority expenses	Not ascertained	Not ascertained
4.	Total Project cost	Not ascertained	Not ascertained
5.	Total revenue from sale of area available to Resolution applicant	Not ascertained	Not ascertained
6.	Revenue from sale of units as per previous allotments to Financial creditor/ Claimants	8.89 crores	8.89 crores

7.	Additional contribution to be made by Claimant-allottees @Rs. 600/- per sq ft for flats and @Rs.1300/- for shops.	23.22 crores	23.22 crores
8.	Total revenue from project	32.11 crores	32.11 crores
9.	Less: amount admitted for giving credit to claimants (Principal sum received from buyers, interest for delays taken as haircut)	1.42 crores	1.42 crores
10.	Net Revenue from Project	30.69 crores	30.69 crores
The difference in total project cost shall be met from sale of surplus 115 units. For any eventuality, flexible commitment is being made by Real Estate Allottees members of CoC. Since entire interest of VIBA in Corporate Debtor shall be for the benefit of such members of CoC in a proportionate manner. There is no conflict of interest between VIBA and such CoC members.			

A total amount of Rs. 45 to 50 crores may be required to be generated for, construction and promotion of the incomplete project named "Meadows Vista" and Source of fund as per the abovementioned table.

xii. In compliance of Regulation 37 of CIRP Regulations, the following has been provided:

Regulation	Description	Remark
37(1) (a)	Transfer of all or part of the assets of corporate debtor to one or more persons	Subject to the terms of Resolution Plan, all assets of the Corporate Debtor to vest in Corporate Debtor under control of the Resolution Applicant.
37(1) (b)	Sale of all or part of assets with the subject of any security interest of not	NA
37(1) (c)	The substantial acquisition of shares of the corporate debtor, or the merger of consolidation of the corporate debtor with one or more persons	The entire shareholding of corporate debtor upon the approval of the present resolution plan shall be transferred to the resolution applicant or its nominees.

37(1) (d)	Satisfaction or modification of any security interest;	<p>Out of claims of Capri Global Ltd, and Daimler Financial Services Pvt. Ltd., the principal amount (and not interest) lent by such Claimants will be paid and charge will stand satisfied without further proceedings. Registrar of companies shall record satisfaction of charge upon production of Banker's certificate of payment to the said 2 Financial creditors. Interest component of the claim will have to be foregone. The said 2 financial creditors shall furnish their bank account details to VIBA, for transfer of money to their account within 30 days of approval of this Resolution plan.</p> <p>Out of claims of Real Estate allottees, the principal amount (and not any interest or penalties, which shall be foregone) paid by them for allotment of flats/shops, will be discharged by delivery of units in the project.</p>
37(1) (e)	Curing or waiving of any breach of the terms of any debt due from the corporate debtor	<p>NA</p> <p>(subject to remark corresponding to Regulation 37(1) (d))</p>
37(1) (f)	Reduction in the amount payable to the creditors	<p>NA</p> <p>(subject to remark</p>

		corresponding to Regulation 37(1) (d))
37(1) (g)	Extension of a maturity date or a change in interest rate or other terms of the debt due from the corporate debtor	NA (subject to remark corresponding to Regulation 37(1) (d))
37(1) (h)	Amendment of the constitutional documents of the corporate debtor	Any condition relating to permanent directors or qualification shares for directorship shall stand deleted.
37(1) (i)	Issuance of securities of the corporate debtor, for cash, property, securities or in exchange for claims or interest, or other appropriate purpose.	NA
37(1) (j)	Change in portfolio of goods or services produced or rendered by the corporate debtor	NA
37(1) (k)	Change in technology used by the corporate debtor	NA
37(1) (l)	Obtaining necessary approvals from the Central and State Government and other authorities	Waivers, remissions and permissions required for the effective implementation of this plan have been detailed separately

xiii. In compliance of Regulation 38 (1B) of the CIRP Regulations, it is provided that the resolution applicant or any of its related entities/parties has never failed to implement or contributed to failure of implementation of other resolution plan approved by the Adjudicating Authority.

xiv. In terms of Regulation 38(2)(b) of CIRP Regulations, it is stated that in order to maintain the minimum number of members as provided under the Companies Act, 2013 and for the benefit of SRA, it shall nominate one

of its members to hold one (1) share in the name of such nominee, who shall hold said one share. The management shall vest with the SRA and there will be five (5) directors on the board of Corporate Debtor, nominated by working committee of SRA, shall be ex-officio members of Board of Directors of the Corporate Debtor.

10. In view of Section 31 of the IBC, 2016, the Adjudicating Authority, before approving the Resolution Plan, is required to examine that a Resolution Plan which is approved by the CoC under Section 30 (4) of the IBC, 2016, meets the requirements as referred under Section 30(2) of the IBC, 2016.

11. Certain clarifications were sought from the Resolution Professional on 20.04.2022. The same were provided in the form of supplementary affidavit dated 21.04.2022, which is taken on record.

12. The extract of FORM H attached with the Resolution Plan is as under:

5. The list of financial creditors of the CD Value Infracon India 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)
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1.	Daimler Financial Services India Limited	0.68	Voted in Favour
2.	Capri Global Capital Limited	2.38	Dissented
3.	Financial Creditor in Class Homebuyers	96.94	89.77% voted in favour of the plan

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

(Amount in Rs. lakh)

Sl. No.	Category of Stakeholder*	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
1	Dissenting Secured Financial Creditors	76,75,46,530.	1,86,00,000.00	1,00,00,000	53.76
2	Other Secured Financial Creditors	53,48,808.27	53,48,808.27	41,75,003	78.05%
3	Dissenting Unsecured Financial Creditors	N/A	N/A	N/A	N/A
4	Other Unsecured Financial Creditors				
5	Operational Creditors	NIL	NIL	NIL	NIL
	Government				
	Workmen				
	Employees				
				
6	Other Debts and Dues				
Total		77,28,95,338.27	2,39,48,808.27	1,41,75,003	1.83%

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

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

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

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	NO	NO
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Declaration	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Annexure	Yes
Section 30(2)	Whether the Resolution Plan: (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment of the debts of operational creditors? (c) provides for the management of the affairs of the Corporate debtor?	page 40	Yes

	(d) provides for the implementation and supervision of the resolution plan? (e) contravenes any of the provisions of the law for the time being in force?		
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?		Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Page 40	Yes
Regulation 35A	Where the Resolution Professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?		NO as the books of accounts and records are not available
Regulation 38 (1)	Whether the Resolution Plan identifies specific sources of funds that will be used to pay the - (a) insolvency resolution process costs? (b) liquidation value due to operational creditors? (c) liquidation value due to dissenting financial creditors?	Page 36	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Page 38	Yes
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	Page 38	Yes
38(3)	Whether the resolution plan demonstrates that - (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?		Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		Not applicable

15. Provide details of section 66 or avoidance application filed / pending.

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
1	Preferential transactions under section 43	NIL	NIL	NIL
2	Undervalued transactions under section 45	NIL	NIL	NIL
3	Extortionate credit transactions under section 50	NIL	NIL	NIL
4	Fraudulent transactions under section 66	NIL	NIL	NIL

13. The Affidavit under Section 29A of the IBC, 2016, has been placed on the file and the President of SRA (VIBA), has deposed that the SRA or any of its office bearers, are not disqualified to be resolution applicant within the meaning of

Section 29A of the IBC, 2016 and the said persons have no interest of relationship inconsistent with the provisions of Section 29A of IBC, 2016.

14. **Objections of the Respondent No.2**

A. The Respondent No. 2/ Financial Creditor viz., M/s. Capri Global Capital Limited (Objector), through its Authorised Representative, Ms. Prarthana Sampath, has filed its objections dated 11.10.2019, to the Resolution Plan. It is stated by the Objector that the Corporate Debtor alongwith other two borrowers had executed a Loan Agreement and a Memorandum of Equitable Mortgage dated 17.09.2014, for availing a term facility upto Rs. 37,50,00,000 (Rupees Thirty Seven Crores Fifty Lakh Only). A security interest was created in favour of the Objector. As per the terms of the Memorandum of Equitable Mortgage, the rights, title and interest of 30 unsold units in favour of the Objector against the amounts outstanding under the Loan Agreement.

B. The Objector filed its claim before the Applicant/RP for an amount of Rs. 76,75,46,530 (Rupees Seventy Six Crores Seventy Five Lakh Forty Six Thousand Five Hundred Thirty Only) which was accepted by the Applicant/RP and 51.55% voting share was assigned. This Adjudicating Authority vide Order dated 17.12.2018, held as under:

“The RP could not have allocated voting share to the Capri Global Capital Limited by taking total amount of all the three Corporate Debtors whereas only one of them is involved in the present proceedings.”

The RP in terms of the Order 17.12.2018, reconstituted the CoC and the claim of the objector was reduced from Rs. 76,75,46,530 (Rupees Seventy Six Crores Seventy Five Lakh Forty Six Thousand Five Hundred Thirty Only) to Rs. 1,86,00,000 (One Crore Eighty Six Lakh Only) and the voting share was reduced from 51.55% to 2.35%. The objector preferred an appeal against the Order dated 17.12.2018 which was dismissed by the Hon'ble NCLAT vide judgment dated 14.05.2019.

C. The release of security interest created in favour of the Objector, without satisfaction of its debt, which is against the entire loan amount/term facility availed by the Borrowers, is in violation of law. The charge over the 30 unsold residential/commercial units of the Corporate Debtor was created on 17.09.2014 and as per the Resolution Plan the amount offered is Rs. 1,00,00,000 (Rupees One Crore Only), whereas the claim amount on date of commencement of CIRP is Rs. 76,75,46,530 (Rupees Seventy Six Crores Seventy Five Lakh Forty Six Thousand Five Hundred Thirty Only).

D. The Resolution Plan envisages, release of charge created in favour of the Objector, over the 30 units of the Corporate Debtor, despite there being outstanding against the Loan Agreement and Memorandum of Equitable Mortgage, which is against the provisions of the Transfer of Property Act, 1882 and the rights arising under Mortgage cannot be unilaterally modified without the consent of the party.

E. The claim which is not a part of the Resolution Plan and not dealt under the Resolution Plan continues to subsist as held by the Hon'ble NCLAT in the

matter of ***Edelweiss Asset Reconstruction Company Limited Vs. Orissa Manganese and Minerals Limited & Ors.*** Company Appeal (Insolvency) No.437of 2018, dated 23.04.2019. The relevant para 28 reads as under:

“However, we make it clear that the rejection of the claim for the purpose of collating the claim and making it part of the ‘Resolution Plan’ will not affect the right of the Applicant-‘Edelweiss Asset Reconstruction Company Limited’ to invoke the Bank Guarantee against the ‘Corporate Debtor’ in’ in case the ‘Principal Borrower’ failed to pay the debt amount, the ‘Moratorium’ period having come to an end.”

F. The Resolution Plan provides different treatment and discriminates among the same class of creditors which is untenable in law and the resolution plan is liable to be rejected in terms of Section 30(2) (e) of IBC, 2016. The amount offered is lesser than what can be realized in the event of liquidation. The SRA has not followed the process as envisaged under Regulation 36A and 36B of CIRP Regulations, which is an admitted fact and the RP in its compliance certificate has admitted that the SRA fails to meet the criteria approved.

G. The Resolution Plan submitted by the SRA provides neither for any upfront payment nor is any security being offered therefore, in absence of the performance of security, the resolution plan not being in compliance with the sub Regulation 4A of Regulation 36B of the CIRP Regulations, is liable to be rejected. The Resolution Plan only protects the interest of the homebuyers and not the Objector. The homebuyers are also the members of the CoC and constitute approximately 97% voting share.

H. The Resolution Plan has been filed belatedly on 29.07.2019 i.e., after 25 days from the Order dated 03.07.2019, wherein the RP had submitted that in case the resolution plan is submitted within 3 days, then further proceedings before CoC would be taken up, thus the RP acted in utter disregard to the timelines and the CIRP Regulations.

15. The objections do not merit consideration for the following reasons and conclusions:

This Adjudicating authority vide Order dated 17.12.2018, directed the Applicant to reduce the claim of M/s. Capri Global Capital Limited and assign the voting share accordingly, as in terms of the agreement dated 19.09.2014, there were three borrowers, out of which only one borrower is a party to this Company Petition, filed under Section 7 of IBC, 2016. In terms of the provisions of Section 30 (2) of IBC, 2016, the Resolution Plan provides 53.76% of the amount claimed to the dissenting Financial Creditor. The Section 30 (2) of IBC, 2016 reads as under:

“whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which 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.”

In terms of the provisions of the IBC, 2016, the amount provided to the amount claimed as per Form H is Rs. 1 crore, to M/s. Capri Global Capital Limited, which is more than the value that would be given in case of liquidation of the Corporate Debtor. Further, there is no discrimination among the same class of

creditors in the Resolution Plan. Thus, the Objections that are raised by the dissenting Secured Financial Creditor are unsustainable at this stage.

16. The SRA being a homebuyers Association i.e., Value Infra Buyers Association, having 96.94% voting share in the CoC, has proposed this Resolution Plan and therefore, the requirement of furnishing the Performance Security as provided under sub regulation 4A of Regulation 36B and sub regulation 4 of regulation 39 of the CIRP Regulations is hereby **dispensed with**. The homebuyers are having 96.94% voting share and therefore, the requirement of furnishing performance security for their own performance may not be necessary and we do not insist upon it.

17. In terms of Regulation 39(4) of the CIRP Regulations, the Resolution Professional has filed compliance certificate in Form-H which is annexed as **Annexure A-4** from page **104-107**. It has been submitted in the application and in Form H duly certified by Resolution Professional that the final Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code, 2016 and does not contravene any of the provisions of the law for time being in force.

18. As a sequel to aforesaid discussions, we are satisfied that all the requirements of Section 30(2) are fulfilled. In respect of compliances regarding CIRP Regulations especially Regulations 38 and 39, the Resolution Professional has certified in Form-H and explained in detail that the Resolution Plan has complied with all the required Regulations.

19. For the reasons discussed above, in our considered view, the Resolution Plan fulfils the requirement as referred in Section 30(2) of the Code and there are

sufficient provisions in the Plan for its effective implementation as required under the proviso of Section 31(1) of the Code. The Resolution Plan has been approved by CoC with majority voting of 90.45%. Many judgments of Hon'ble Supreme Court and Hon'ble NCLAT have treated the commercial wisdom of CoC as final. Therefore, in our considered view, there is no impediment in giving approval to the Resolution Plan.

20. Accordingly, we hereby **approve the Resolution Plan**, which was earlier approved by the CoC by the majority vote of 90.45% voting share.

21. It is clarified that Section 30(2)(f) of the Code mandates that the Resolution Plan should not be against any provisions of the existing law. The Resolution applicant, therefore, shall adhere to all the applicable laws for the time being in force under the proposed Resolution Plan, whether or not specifically provided therein. As regards the reliefs and concessions sought in the Resolution Plan, same will be provided only as per law.

22. It is declared that the moratorium order passed by this Bench under Section 14 of the Code shall cease to have effect from the date of this order.

23. The Resolution Professional shall forward all records relating to the CIR Process and the Resolution Plan to IBBI to be recorded on its database in terms of Section 31(3)(b) of the Code.

24. The approved 'Resolution Plan' shall become effective from the date of passing of this order. The Approved Resolution Plan shall be part of this Order.

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RAMALINGAM SUDHAKAR
(President)

- Sd/-

AVINASH K. SRIVASTAVA
(Member Technical)