

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

**IA No.773 of 2023
And
IA No. 460 of 2023**

**IN
CP (IB) No.3923 /MB/C-I/2019**

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 for seeking approval of the resolution plan under the provisions of Section 31(1) of the code.

IA No. 773 of 2023

In the Application of

Revive Realty Limited.

...Applicant

Versus

**Kamal Kishore Gurnani
Resolution Professional of
Pranav Construction**

...Respondent

IA No. 460 of 2023

In the Application of

**Kamal Kishore Gurnani
Resolution Professional of
Pranav Construction System Private Limited**

...Applicant

In the matter of

Bank of India

...Petitioner/Financial Creditor

Versus

Pranav Construction System Private Limited

...Corporate Debtor

Order Delivered on :- 16.01.2024

Coram:

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

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

Appearances:

For the Resolution Professional : Mr. Zal Andhyarujina, Senior Advocate

For the Applicant in Objection

Applications : Mr. Shyam Kapadia, Advocate

ORDER

Per: Justice V.G. Bisht, Member (Judicial)

1. Before we deal with the Application for approval of the Resolution Plan, it is important to deal with the **IA No. 773 of 2023** hereinafter referred to as (Objection Application) to the Resolution Plan, filed by Prospective Resolution Applicant i.e. Revive Realty Limited.

Brief Facts of Objection Application (IA No. 773 of 2023) :

2. The Applicant is the Prospective Resolution Applicant in the CIRP of the Corporate Debtor. The Applicant herein alleges that the Respondent/ Resolution Professional has violated the clauses of the Request for Resolution Plan (RFRP) by favoring the Successful Resolution Applicant (M/s J Kumar Infraprojects Limited) and has relaxed certain conditions of the RFRP. The Applicant has filed the present application seeking the following reliefs:
 - i. This Tribunal be pleased to pass an order directing the Respondent to provide the Applicant with clarifications and documents sought by the

Applicant and further file an Affidavit confirming that the RFRP has been complied with in its entirety and there has been no deviations with respect to same.

- ii. Till the relief in the above clause (i) is addressed in entirety and disposed off, this Tribunal be pleased to direct the Respondent not to act or in furtherance of the Resolution Plan and further proceedings pertaining to the Resolution Plan.
3. The Applicant had submitted its Expression of Interest (**EOI**) on 18.06.2022 and deposited an amount of Rupees One Crore as Refundable Earnest Money Deposit. The Applicant was selected as a prospective Resolution Applicant. The Resolution Professional published RFRP on 18.08.2022, thereafter, the Applicant submitted the Resolution Plan on 17.09.2022. The Applicant submits that the timeline for submission of Resolution Plan was extended by the Respondent, as a special favor to the SRA, on the other hand the Applicant was communicated about the extension on the last date of submission of the plan.
4. Pursuant to the submission of its Resolution Plan, on 17.09.2022, the Applicant attended the COC meeting wherein the Applicant explained its Resolution Plan to the COC members. The Applicant state that it was willing to pay an amount of approximately Rs. 65 Crores under the Resolution Plan (Rs.26 Crores upfront and Rs.39 Crore over a period of 7 years.)
5. On 3 November 2022, the Applicant pursuant to the discussion with CoC, stated that it would be paying a total amount of Rs. 38,86,97,541/- as an upfront payment. Accordingly, on 7 November 2022, the Applicant submitted its revised Resolution Plan. The Applicant thereafter once again attended COC meeting on 9 November

2022 when the COC informed that the Revised Resolution Plan of the Applicant had no change in its value. However, the Applicant stated that the plan values have been revised and considering the terms of RFRP and facts and circumstances of the matter, increase in the value of the Resolution Plan would not be viable.

6. The Applicant states that thereafter, on the same date i.e. 9 November 2022, the Applicant submitted an Addendum ("Addendum - 1") to its revised Resolution Plan. On 11 November 2022, the Applicant once again submitted an Addendum to the Revised Resolution Plan ("Addendum - 2") stating that the Applicant was willing to further evaluate any further suggestions of the COC in relation to the offered amounts, manner of payment and allocation of offered amounts. Pursuant to the submission of the Applicants' Addendums dated 9 November 2022 and 11 November 2022, the Respondent once again shared its observations on the Revised Resolution Plan. Accordingly, the Applicant submitted a Revised Resolution Plan with the Respondent on 17 November 2022. Thereafter, on 18 November 2022, the Applicant once again presented its Revised Resolution Plan before the COC. In this COC meeting, the Applicant had reiterated that it would be sticking to the financial proposal earlier offered by it. The Respondent once again on 21 November 2022 shared its observations on the Applicants Revised Resolution Plan dated 21 November 2022.
7. Accordingly, on 25 November 2022, the Applicant submitted its Revised Resolution Plan ("Final Revised Resolution Plan"). On 28 November 2022, the COC in its 13th Meeting directed the Respondent to put all the legally compliant Resolution Plan submitted with it for voting. The Applicant states that as the Final Revised

Resolution Plan submitted by the Applicant was compliant under the provisions of the IBC and the RFRP, the same was put up for voting by the COC.

8. The Applicant states that apart from the Applicant, the Successful Resolution Applicant has a long-standing relationship with the Corporate Debtor, it's connected and related concerns and Suspended Management of the Corporate Debtor. The Applicant submits that being in such an advantageous position, the Resolution Applicant had access to information to influence the Resolution Plan and there was a clear case of Conflict of Interest (as defined in the RFRP). The Applicant was not informed regarding the fact that the Final Revised Resolution Plan submitted by it had been put up for voting. The Applicant addressed a Letter dated 6 December 2022 ("Addendum - 3") to the Respondent thereby stating that as the Final Revised Resolution Plan submitted by the Applicant on 25 November 2022 had not been voted upon, the Applicant was further willing to evaluate the suggestions of the COC, if any. On 10 December 2022, the Respondent replied to Addendum -3 thereby stating that the voting process on the compliant resolution plans had already been initiated.
9. The Applicant herein has further addressed letters dated 15.12.2022, 06.01.2023 and 10.01.2023 wherein the Applicant raised various queries relating to offered amounts in the Resolution Plan whether such amount included monetization of assets specially excluded for the benefit of secured financial creditors. The Applicant further submits that there were cash balances already available with the Corporate Debtor owing to the ongoing business and increase in rentals under leave and license agreements. The Applicant submits that if it were to utilize the available cash

balance as part of the payment already offered in the Resolution Plan submitted by it, then it would be willing to increase the amount offered significantly.

10. Further, the Applicant submits that in the Resolution Plan submitted by the SRA, cash and cash equivalents lying with the Corporate Debtor which were specifically excluded in terms of clause no. 3.14 of the RFRP has been included as offered amounts to various creditors.
11. The Applicant apprehends that the Resolution Applicant was allowed to include the excluded assets of the Corporate Debtor as part of the Resolution Plan and accordingly the Respondent (Resolution Professional) has breached the terms of RFRP. It is further submitted that if such deviation from the terms of RFRP was allowed, it ought to have been communicated to the Applicant herein and clarifications sought through the addendums should have been answered by the Respondent.

Reply submitted by the Resolution Professional/Respondent vide Affidavit-in-Reply

12. The Respondent submits that the Resolution Plan was submitted by the Applicant on 17.09.2022, however, the Successful Resolution Applicant requested for an extension of 6 days in submission of the plan and accordingly the CoC allowed the request. Pursuant to which M/s J Kumar Infraprojects Limited (SRA) submitted the plan on 23.09.2022.
13. The Respondent after legally vetting the plan submitted the same before the CoC for consideration, on perusal of the same, Axis Bank submitted that they are not satisfied with the proposal and requested the Resolution Applicant to revise the proposal by enhancing the financial offer. The Respondent submits that multiple rounds of negotiation and discussion were held in the 11th and 12th CoC meeting

with respect to the revised Resolution Plan submitted by the Applicant. The Respondent submits that the Applicant was requested by the CoC members to submit the revised resolution plan and improve the financial offer. The Applicant informed the CoC that the financial proposal offered by them would remain unchanged.

14. In the 13th CoC meeting of the Corporate Debtor which was held on 28.11.2022, the Respondent informed that the final resolution plan was received by the Applicant on 25.11.2022 and J. Kumar Infraprojects Limited on 25.11.2022. The Final Resolution Plans received by both the Prospective Resolution Applicants were put to vote. The CoC decided on 07.01.2023 to approve the Resolution Plan of J. Kumar Infraprojects Limited with 100% voting share. The Resolution Plan submitted by the Applicant was rejected unanimously by all CoC members.
15. The Respondent after approval of the plan by the CoC, issued LOI to the SRA and requested them for depositing performance bank guarantee of Rupees Five Crore. The SRA accepted the LOI and deposited the PBG. The Applicant wrote multiple letters dated 06.12.2022, 16.12.2022, 06.01.2023, 10.01.2023 and 16.01.2023 seeking further amendment to the Resolution Plan dated 25.11.2022 and sought clarifications with regard to information already available in the VDR. The Respondent replied to the said letters vide emails dated 10.12.2022, 13.01.2023 and 18.01.2023. The Applicant was informed about the progress in the Resolution Process of the Corporate Debtor and that the Resolution Plan submitted by J Kumar Infraprojects Limited was unanimously approved by the CoC.
16. The Respondent submits that the Applicant is filing the present application merely as an afterthought just to derail the approval of plan by this Tribunal. The

Respondent submits that numerous opportunities were granted to the Applicant to revise the plan and come up with viable plan, however, the Applicant refused to revise the financial offer. It is the Applicant's own case that various addendums to the original plan were filed and the same were considered by the CoC. The Respondent submits that the Resolution Plan of the Applicant was considered and fair and equal opportunity was granted to the Applicant as is apparent from the Application itself. Further, the clarifications/information sought by the Applicant was after the Resolution Plan was put to vote before the CoC, accordingly, the Respondent refused to provide the said information as the Resolution Plan of the SRA was already approved by the CoC in its commercial wisdom.

17. During the hearing of present application, this bench directed the Respondent herein to apprise the cash and bank balance as on the date of submission of the Resolution Plan. The Respondent has vide affidavit dated 12.12.2023 submitted the summary of the Cash and Bank Balance along with the details of Fixed deposits of the Corporate Debtor from Insolvency Commencement Date till the approval of the Resolution Plan by the CoC. The same is iterated hereinbelow for ready reference:

SUMMARY OF BANK BALANCE		
PRANAV CONSTRUCTION SYSTEMS PRIVATE LIMITED		
Sr. No.	Events and Particulars	Bank Balance Details
1.	CIRP commencement date i.e., 11.03.2022	
	Balance in Bank – Mogaveera Bank	10,155
	Fixed Deposits	Nil
	<u>Total</u>	10,155

SUMMARY OF BANK BALANCE		
PRANAV CONSTRUCTION SYSTEMS PRIVATE LIMITED		
Sr. No.	Events and Particulars	Bank Balance Details
2.	As on Resolution Plan Consideration Date by the CoC Members (13th CoC Meeting of the CD) 28.11.2022	
	Bank of India	30,19,027
	Mogaveera Bank	1,00,360
	Fixed Deposit	2,25,00,000
	Total	2,56,19,387
3.	As on plan approval date, conclusion of the voting lines i.e., 07.01.2023	
	Bank of India	71,89,631
	Mogaveera Bank	1,19,259
	Fixed Deposit	2,50,00,000
	Total	3,23,08,890

18. It is seen that cash balance as on CIRP commencement date i.e. 11.03.2022 is Rs.10,155/-. Since the Corporate Debtor was a going concern the cash balance is Rs.2,56,19,387/- as on the date of submission of plan before CoC and Rs.3,23,08,890/- as on the plan approval date (07.01.2023). In order to examine the assertion of the Applicant it is important to look at the total amount offered by the SRA. The final amount offered by the SRA is Rupees Forty-Five Crore (Rs.45,00,00,000/-) inclusive of cash balances available in the books of the Corporate Debtor. Per contra clause 3.1.4 (b) (xxiv) of the RFRP stipulates that

“The Resolution Plan shall provide that the available cash balances (including cash, cash equivalents, fixed deposits or in any other manner) in the books of the Corporate

Debtor on the NCLT Approval Date or when the Corporate Debtor are taken over by the Resolution Applicant, whichever is higher, up to the implementation of the Resolution Plan shall accrue to the financial creditors in addition to amounts offered to the relevant financial creditors in the Resolution Plan, and will not form part of the offering by Resolution Applicants. It is clarified that the Resolution Applicant shall have to infuse funds to ensure that the financial creditors receive the higher of the cash balances as set out in this clause”

19. From a bare reading of the aforesaid clause, it is clear that the amount offered by the Resolution Applicant has to be over and above the cash balance of the Corporate Debtor. Therefore, in order to ascertain the exact plan value, we need to deduct the cash balance available with the Corporate Debtor as on the date when plan was put to vote i.e. 28.11.2022 from the Total consideration offered by the SRA [Rs. 45,00,00,000 - Rs.2,56,19,387]. The exact consideration offered by the SRA is Rs.42,43,80,613/- which is over and above the total consideration of Rs.38,86,97,541/- offered by the Applicant/Unsuccessful Resolution Applicant. It is evident that commercially the plan value offered by the SRA is better than the Applicant. Moreover, since the CoC in its commercial wisdom has approved the plan of the SRA unanimously, this Tribunal does not have the jurisdiction to circumvent decisions which specifically lie in the domain of CoC.
20. The present Application cannot be considered by this Tribunal as it is prima facie evident that the SRA has offered a better plan as compared to the Applicant and more pertinently the CoC has after keeping in mind all the factors such as feasibility and viability of the plan has unanimously approved the Plan. The Applicant at this juncture cannot seek additional information from the Resolution Professional after

the plan has been approved by the CoC. Further, it is evident from the averments made in the Application itself, that multiple opportunities were granted to the Applicant to submit an improved plan, however, the Applicant could not revise the financial offer. Therefore, the Applicant cannot plead at this stage that the plan should not be considered.

21. In view of the aforesaid circumstances, IA No. 773 of 2023 is dismissed.

IA No.460 of 2023

22. The present application is moved by Resolution Professional **Mr. Kamal Kishor Gurnani** (hereinafter called as “the 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 for seeking approval of the resolution plan of M/s J. Kumar Infraprojects Limited (hereafter called as the “**Successful Resolution Applicant/SRA**”) under the provisions of Section 31(1) of the code, for the Corporate Debtor and for passing order/appropriate direction that this Tribunal may deem fit in the present matter.

23. The CIRP was initiated against the Corporate debtor vide Order dated 11.03.2022. The Applicant herein was appointed as the Interim Resolution Professional (hereinafter referred to as the IRP). Public announcement was made by the IRP on 13.03.2022 in Financial Express and Navakal. The First CoC meeting was convened on 08.04.2022. The Applicant was confirmed as the Resolution Professional (RP) of the Corporate Debtor.

24. The CoC in its 2nd COC meeting held on 13.05.2022 appraised the CoC on progress of CIRP, summary of claims received and composition of CoC. The Applicant submits that the CoC was reconstituted on 10.05.2022. The Resolution Professional

- made a public announcement in Form G on 20.05.2022 inviting EOI of the Resolution Plans. The 3rd meeting of the CoC was held on 30.05.2022 wherein the CoC decided to publish Form G for inviting Expression of Interest (EOI).
25. In the 5th CoC meeting held on 17.06.2022, the members were informed that the last date of submission of EOI was 19.06.2022. Further, the RP received 3 EOI's out of 12 Applicants. The RP suggested the CoC to extend the timelines for submission of EOI, accordingly the CoC extended the timeline by 15 days from 19.06.2022 till 04.07.2022. Pursuant, to the extended timelines the RP received a total of 11 EOI's from Prospective Resolution Applicants.
26. In the 7th meeting of the CoC held on 08.08.2022, the members were informed that the last date for submission of plan as per revised Form G is 18.08.2022, the CIRP period was ending on 07.09.2022. Accordingly, the RP suggested the CoC to extend the CIRP timelines by a period of 90 days till 06.12.2022 under Section 12(2) of the Code.
27. Thereafter, the RP prepared the Information Memorandum dated 11.03.2022 which was uploaded on Virtual Data Room (VDR). The Applicant issued the Request for Resolution Plan dated 19.07.2022 on behalf of the CoC. The RP pursuant to the resolution of the CoC to extend the timelines filed an application for extension of timelines with this Tribunal seeking an extension of 90 days from 07.09.2022.
28. In the 8th CoC meeting, the RP apprised the members of the CoC that the last date for submission of Resolution Plan as per extended timeline of Form G is 18.08.2022. However, the majority of the Resolution Applicants have asked for an extension of 1 month in submitting the plan, the CoC granted the extension of 30 days from 18.08.2022 till 17.09.2022.

29. In the 9th CoC meeting held on 27.09.2022, the RP informed the CoC that he had received plan from M/s Revive Realty Limited on 17.09.2022. The SRA herein asked for an extension for submission of the plan, the CoC unanimously extended the time by 6 days for submission of plan from 17.09.2022 to 23.09.2022.
30. The RP informed that as on 23 September 2022, Password Protected Resolution Plan was received from J. Kumar Infraprojects Limited, Resolution Applicant. Both the Resolution Plans were opened separately in front of the members of CoC and present invitees.
31. In the 10th CoC meeting the RP apprised the members that both the plans were legally vetted and observations were shared with the Resolution Applicants and members of the CoC for further consideration and necessary actions. The RP also discussed and updated the members with the summary of the Resolution Plan submitted by J Kumar Infraprojects Limited and by Revive Realty Limited, Resolution Applicants. After due discussion, the Authorised Representative of Axis Bank stated that they are not satisfied with proposal and requested both the Resolution Applicants to re-consider and enhance their financial offers and inform the members in the next meeting of CoC.
32. In the 11th CoC meeting the RP invited the Resolution Applicants for discussions and further negotiation on the plan. Further the members were informed that Resolution Applicant namely J. Kumar Infra Projects Limited via email dated 5th November 2022 has intimated the RP that they will submit the revised Resolution Plan after final discussion in the meeting with CoC members. Accordingly, the Resolution Plan submitted by J. Kumar Infraprojects Limited was discussed and

requested Resolution Applicant to submit the revised Resolution Plan with necessary changes by 11th November, 2022.

33. The RP updated the members that observations by legal team and Resolution Professional was sent to the Authorized Representative of the Resolution Applicant, Revive Realty Limited for incorporating the same in revised Resolution Plan. The revised Resolution Plan after incorporating the said observations was submitted by the Revive Realty Limited which were also shared with the members of CoC for their consideration. The member of CoC requested the Revive Realty Limited to increase the financial proposal in the Resolution Plan to which it was informed by the Revive Realty Limited, that they are sticking to their financial proposal given in the revised Resolution Plan dated 17 November 2022.
34. In the meantime, since the CIRP period was expiring the members of CoC stated that considering the time constraints and time required for negotiation on Resolution Plan for value maximization and approval of the Resolution Plan they are of the opinion that an application for seeking further extension of 60 days for the CIRP period should be filed with the Adjudicating Authority and requested the RP to go ahead and file the said application. Extension of 60 days was allowed by the Hon'ble NCLT, Mumbai Bench via order dated 29th November 2022 basis which the last date of CIRP as extended is 4 February 2023.
35. In the 13th meeting of the Committee of Creditors of the Corporate Debtor held on 28 November 2022, the RP informed the members that the final revised resolution plan has been received from J Kumar Infraprojects Limited on 25 November 2022 and Revive Realty Limited on 25 November 2022. The RP apprised the status of claims received till date during the CIRP of the corporate debtor to the members of

CoC as given under the updated Information Memorandum dated 24 November 2022.

36. Pursuant to the negotiations and the ensuing discussions with both the Resolution Applicants, the CoC decided that the plan submitted by both J Kumar Infraprojects Limited and Revive Realty Limited respectively shall be put to vote. The Applicant further submits that the Resolution for approval of Resolution Plan submitted by J Kumar Infraprojects Limited and Revive Realty Limited was put up for e- voting and the voting window was kept open from 30 November 2022 to 15 December 2022.
37. The Applicant received the request for extension of timelines twice from the members of CoC. The last date for voting was extended till 07.01.2023. The CoC resolved to approve the plan dated 25.11.2022 submitted by J Kumar Infraprojects Private Limited with 100% voting share.
38. The Successful Resolution Applicant proposes to pay Rupees Forty-Five Crore as the plan value. The summary of payments made to different class of creditors is as follow:

Sr. No.	Particulars	Category	Amount admitted	Proposed Distribution	Upfront payment made
1.	Statutory EPFO	Authorities	1,98,82,533	1,65,00,000	83%
2.	Operational Creditors	Workmen	Nil	55,00,000	-

	(Provision towards gratuity payable)				
3.	CIRP Costs	Assumed to be paid in full from operations of Corporate Debtor			100%
4.	Operational Creditors	Employees	15,59,810	15,59,810	100%
		Statutory Authorities	42,64,15,022	20,00,000	0.45%
		Other Operational creditors	3,83,66,791	10,00,000	2.6%
5.	Financial Creditors		1,64,10,86,925	42,34,40,190	25.80%
	Total		212,73,11,081	45,00,00,000	

39. The Resolution Applicant proposes to pay a total cash consideration of Rupees Forty-Five Crore to all the stakeholders under the resolution plan to be paid within 60 days from the effective date. The said amount is inclusive of cash and bank balance (inclusive of cash equivalents, fixed deposit, liquid security or in any other manner) available in the books of the Corporate Debtor.

40. CIRP Cost: The details of the unpaid CIRP cost as on date of submission of this resolution plan as provided by RP is Nil. However, the Resolution Applicant understands that the final amount of CIRP costs shall be based on the actual Insolvency Resolution Process Costs (as defined in the Code) incurred in accordance with the provisions of the Code and Resolution Applicant proposes to meet any shortfall in the CIRP Cost in priority over other payments to other Stakeholders. The payments towards the shortfall in CIRP Cost, if any, shall be met out of the proposed Total Bid Value till the handover of the Corporate Debtor to the Resolution Applicant.
41. It is submitted that the Resolution Applicant is not aware of the liquidation value of the Company and the amount assignable to various class of Creditors in the event of liquidation of the Company. Given this, for the purpose of this Resolution Plan, the underlying assumption of the Resolution Applicant is that the liquidation value due to the Employees is Nil. However, the Resolution Applicant proposes to settle the entire admitted claims of Employees in full within 60 days of the effective date and such payments shall be given priority of payment over financial creditors. The Resolution Applicant understands that amount claimed by workmen is under dispute and the matter is pending before Hon'ble High Court in Case No. WP/4143/2013. Total amount claimed pertains to gratuity of Rs.82,88,592 and amount due other than gratuity is Rs.8,11,15,195. Given this, for the purpose of this resolution plan, the Resolution Applicant proposes the following treatment:
- For Gratuity amount - The Resolution Applicant shall create a provision for Rs.55,00,000 claimed by workmen against Gratuity and the same shall be

paid in full in case the pending application is decided in favour of the workmen. The said amount shall be kept in a separate fixed deposit account and shall be distributed as per the list of claimants provided by the Resolution Professional.

- For amount claimed other than Gratuity- In case the order in the pending application is decided in favour of the workmen, the liquidation value due shall be NIL and hence will be settled at NIL. The Resolution Applicant further clarifies that if the liquidation value due to admitted workmen dues is not NIL, then the Resolution Applicant undertakes to pay the liquidation value due to such admitted workmen claims.

42. The Resolution Applicant proposes to settle admitted claim of Employees Provident Fund Organization in full and make payment of Rs.1,65,00,000 to the statutory authority. The amount will be distributed within 60 days of the effective date and such payments shall be given priority over payment of any other creditors. For this purpose, an Escrow account shall be opened and amount (principle and interest) shall be transferred to all PF department against the UAN of every individual account of worker and staff by the Resolution professional.

43. Operational Creditors: It is submitted that the Resolution Applicant is not aware of the liquidation value of the Company and the amount assignable to various class of Creditors in the event of liquidation of the Company. Given this, for the purpose of this Resolution Plan, the underlying assumption of the Resolution Applicant is that the liquidation value due to the operational creditors is Nil. However, the Resolution Applicant propose Rs.10,00,000/- (Indian Rupees Ten Lacs Only) payment to the operational creditors to be distributed in the ratio of admitted

amount on pro rata basis. The proposed amount shall be paid within 30 days of the Effective date and such payments shall be given priority of payment over financial creditors. It is further clarified that if the admitted claim towards Operational Creditors, excluding Statutory authorities (Statutory dues, tax liabilities, penalties, interest etc.), Workmen and Employees of the Corporate Debtor amounting to Rs.3,83,66,791 exceeds till the approval of this Resolution Plan by the Adjudicating Authority then Rs.10,00,000/- shall be paid proportionately.

44. The Resolution Applicant further clarifies that if the liquidation value due to operational creditors, excluding Statutory authorities (Statutory dues, tax liabilities, penalties, interest etc.), Workmen and Employees dues is not NIL, then the Resolution Applicant undertakes that liquidation value due to such admitted operational creditors dues shall be paid in priority over payment to financial creditors and shall be adjusted from out of distribution available to Secured Financial Creditors under this Resolution Plan.
45. The Resolution Applicant propose to make payment of INR 20,00,000 (Indian Rupees Twenty Lakh Only) to the statutory authorities except Employees Provident Fund Organisation (operational creditors) to be distributed in the ratio of admitted amount within 60 days of the effective date and such payments shall be given priority of payment over financial creditors. It is further clarified that if the admitted claim towards Operational Creditors Statutory authorities (Statutory dues, tax liabilities, penalties, interest etc.), of the Corporate Debtor amounting to INR 42,35,47,826 exceeds till the approval of this Resolution Plan by the Adjudicating Authority then INR 20,00,000/- shall be paid proportionately to other admitted

claim towards Operational Creditors - Statutory authorities (Statutory dues, tax liabilities, penalties, interest etc.).

46. The Resolution Applicant further clarifies that if the liquidation value due to operational creditors, Statutory authorities (Statutory dues, tax liabilities, penalties, interest etc.), Workmen and Employees dues is not NIL, then the Resolution Applicant undertakes that liquidation value due to such admitted operational creditors dues shall be paid in priority over payment to financial creditors and shall be adjusted from out of distribution available to Secured Financial Creditors.
47. Financial Creditors: The Resolution Applicant proposes to make payment of Rs.42,34,40,190/- (Rupees Forty Two Crore Thirty Four Lacs Forty Thousand One Hundred Ninety Only) as full and final settlement of the claims filed by the financial creditors, subject to the other terms of this Resolution Plan and the deduction towards CIRP Cost at actual. The Successful Resolution Applicant proposed that under any circumstance their financial obligation will not exceed more than Rs. 45,00,00,000/- however the RP/COC/NCLT are free to decide the allocation of the said amount. The amount payable under the plan to the Financial Creditors shall be paid within 60 days from the effective date. The proposed amount shall be distributed among the secured Financial Creditors in the ratio of Voting share.
48. The Resolution Professional submits that, the aggregate of the average of Fair Value of all the assets is Rs.65,72,54,466/- (Rupees Sixty Five Crores Seventy Two lakhs Fifty Four Thousand Four Hundred and Sixty Six Only) and that of the Liquidation Value of all the assets is Rs.44,71,02,897/- (Rupees Forty Four Crores Seventy One Lakhs Two Thousand Eight Hundred and Ninety Seven Only).

49. As far the avoidance Applications are concerned it is submitted that any monies received pursuant to exercise of powers and obligations by the Resolution Professional under Sections 43 to 51 (both inclusive) and Section 66 of the IBC, shall be vested in the Secured Financial Creditors. It is clarified that upon successful implementation of Resolution Plan and discharge of the Resolution Professional any application filed by the Resolution Professional under Section 43 to 51 & 66 of the Code shall be pursued by the Secured Financial Creditors directly and all cost and benefits to this account shall accrue to Secured Financial Creditors.

50. The Applicant submits that as per the RFRP dated 19.07.2022, the Successful Resolution Applicant shall, within a period of 2 (Two) Business Days from the acceptance of issuance of the Lol provide an irrevocable and unconditional Performance Bank Guarantee of an amount aggregating to Rs.5,00,00,000 (Rupees Five Crores Only) in favour of Resolution Professional. The Applicant has issued Letter of Intent dated 16 January 2023 to the Resolution Applicant. The Copy of the acceptance of letter of intent dated 16 January 2023 received by the Applicant. The Successful Resolution Applicant has provided the required PBG on 1 February 2023 by depositing the funds in the bank account held in the name of "Pranav Construction Systems Private Limited in CIRP"

Section 30(2) of the Code

51. 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 distributed 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.
52. 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 CD.
- 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 AA in the past.
- d) The terms of the plan and its implementation schedule.
- e) The management and control of the business of the CD 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

53. The Resolution Professional has annexed Form H of the Application under Regulation 39(4) In FORM H 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 extracts are as follows -

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, Kamal Kishor Gurnani, an insolvency professional enrolled with the Indian Institute of Insolvency Professional of ICAI and registered with the Board with registration number BBI/IPA-001/IP/P-

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH- I

IA No.773 of 2023
IA No. 460 of 2023
In CP (IB) No.3923 /MB/C-I/2019

01463/2018-2019/12338, am the resolution professional for the corporate insolvency resolution process (CIRP) of Pranav Construction Systems Private Limited.

2. The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of the CD	Pranav Construction Systems Private Limited
2	Date of Initiation of CIRP	11 March 2022
3	Date of Appointment of IRP	11 March 2022
4	Date of Publication of Public Announcement	13 March 2022
5	Date of Constitution of CoC	1 April 2022
6	Date of First Meeting of CoC	8 April 2022
7	Date of Appointment of RP	16 April 2022
8	Date of Appointment of Registered Valuers	Land & Building, Plant & Machinery and Financial Assets 1. Adroit Appraisers & Research Pvt Ltd – 18 April 2022 2. GAA Advisory LLP – 18 April 2022
9	Date of Issue of Invitation for EoI	Originally - 20 May 2022 1st Extension - 19 June 2022
10	Details of Final List of Eligible Prospective Resolution Applicants	1. Consortium of Sunrise Industries and SAM (India) Infrastructure LLP 2. Shanti G.D. Ispat and Power Private Limited 3. J. Kumar Infraprojects Limited 4. Consortium of Proma Industries Ltd. and Yashash Commodities Pvt. Ltd 5. Revive Realty Limited 6. Consortium of Labh Capital Services Pvt Ltd and Mr. Gaurav Rakesh Agarwal 7. Consortium of MAAS Infra and Logistics Ltd and Mr. Ameet Bansal 8. Mangal Keshav Securities Limited 9. Kashish Multi Trade Pvt. Ltd. 10. Kundan Care Products Limited 11. SMC Infrastructures Pvt. Ltd.
11	Date of Invitation of Resolution Plan	20 May 2022
12	Last Date of Submission of Resolution Plan	(Originally – 3 August 2022) (First Extension- 18 August 2022)

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH- I

IA No.773 of 2023
IA No. 460 of 2023
In CP (IB) No.3923 /MB/C-I/2019

		(Second Extension - 17 September 2022) (Third Extension – 23 September 2022)
15	Date of Expiry of 180 days of CIRP	7 September 2022
18	Fair Value	INR 65.73 Crores
19	Liquidation value	INR 44.71 Crores
20	Number of Meetings of CoC held	13 (Thirteen)

3. I have examined the Resolution Plan received from Resolution Applicant, J Kumar Infraprojects 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 J Kumar Infraprojects 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.

5. 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.

54. On perusal of the Resolution Plan, we find that the Resolution Plan provides for the following:

- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
- b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
- c) 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.
- d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.

55. 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.

56. 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 100%.
57. 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.
58. 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.

59. The Resolution Plan annexed to the Application 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 para's 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.

60. **IA No. 460 of 2023 is allowed. IA No. 773 of 2023 is dismissed as not maintainable.**

Sd/-
PRABHAT KUMAR
Member (Technical)
16.01.2024
Priyal

Sd/-
JUSTICE V.G. BISHT
Member (Judicial)