

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA-88/MB/2024 in CP(IB)-1337/MB/2020

[Under Section 30 of IBC, 2016]

Mr. Shailendra Ajmera

.....Resolution Professional/Applicant

v/s

Committee of Creditors of

Nirmal Lifestyle (Kalyan) Pvt. Ltd. & Ors.

.....Respondents

In the mater of

SREI Equipment Finance Ltd.

.....Financial Creditor

v/s.

Nirmal Lifestyle (Kalyan) Pvt. Ltd.

.....Corporate Debtor

Pronounced on: **26.08.2025**

CORAM:

**SHRI ANIL RAJ CHELLAN
HON'BLE MEMBER (TECHNICAL)**

**SHRI K. R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)**

Appearances : *Hybrid*
For the Applicant/RP : Adv. Amir Arsiwala a/w. Adv. Anush Mathkar,
Adv. Mehul Kumar, Adv. Devanshu Jaswani
And Adv. Khushi Jaffar i/b. Cyril Amarchand
Mangaldas.
For the SRA : Sr. Adv. Gautam Ankhad a/w Adv. Ashok
Paranjpe and Adv. Mrunali Lanjewar i/b MDP
Associates.

For the CoC : Adv. Rohit Gupta a/w Adv. Ahsan Allana i/b
JSA.

ORDER

Per: Anil Raj Chellan, Member (Technical)

1. This Application was filed on 22.10.2024 by the Applicant, who is the Resolution Professional of Nirmal Lifestyle (Kalyan) Private Limited (the Corporate Debtor), under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (the Code) seeking approval of the Resolution Plan dated 30.03.2024 (as amended by Resolution Plan dated 31.08.2024 and by Addendum dated 09.09.2024) submitted by a consortium of Mr. Dharmesh Jain, Prakruti Nirman Development Private Limited (PNDPL), Right Choice Housing Private Limited (RCHPL) and Nirmal Events 2 Excellence Private Limited NEEPL), with Mr. Dharmesh Jain as the lead member (Nirmal Consortium/Successful Resolution Applicant) and approved by 89.2% of the voting share of the members of the Committee of Creditors (CoC) of the Corporate Debtor.

2. Brief particulars of Corporate Debtor

2.1 The Corporate Debtor is a private company registered under the Companies Act, 2013 having its registered office in the State of Maharashtra. The Corporate Debtor is engaged in the construction of residential and commercial projects and integrated townships. The Corporate Debtor is part of the Nirmal Group, a real estate developer in Mumbai, Maharashtra. The Corporate Debtor was set up as a special purpose vehicle (SPV) for the development of certain residential real estate projects at Kalyan, a suburb of Thane District near Mumbai.

- 2.2 The Corporate Debtor has registered 30 buildings having different names with MAHA RERA under the project name “Lifestyle City- Kalyan” at Vadavli, village, Taluka- Kalyan, Thane District. These buildings are at different stages of completion. In some of the buildings, 100% of the civil/structural work is completed, but further fit-out work is pending. In some of the projects, only foundation work is completed. The Corporate Debtor also has land parcel around the project site, at Village Ambivali, Taluka- Kalyan, District.
- 2.3 Of the above 30 buildings, the Corporate Debtor has received Occupation Certificate (OC) for three buildings. Civil/ RCC/ Slab work in respect of six buildings is 100% completed and has been applied for OC.

3. Corporate Insolvency Resolution Process

- 3.1 This Tribunal *vide* order dated June 16, 2022, admitted the Company Petition and initiated Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor (Admission Order). The Tribunal appointed Mr. Dilip Kumar Natvarlal Jagad as the Interim Resolution Professional (IRP) for the Corporate Debtor and moratorium under Section 14 of the Code was made effective.
- 3.2. Pursuant to the Admission Order, the IRP took over the management and business affairs of the Corporate Debtor on a going-concern basis, to carry out the functions as mentioned in the Code and the rules and regulations made thereunder. The public announcements as required under Section 13 (2) of the Code read with Regulation 6 of the CIRP Regulations, were made by the IRP on 20.06.2022, inviting creditors to submit their proof of claims by 01.07.2022.
- 3.3 The Admission Order was subsequently stayed by an order of Hon'ble NCLAT dated 12.07.2022, which was later vacated on 04.01.2023.

Subsequently, the Hon'ble NCLAT excluded the period of 177 days between the order of stay and vacation of the stay from the computation of the CIRP period.

- 3.4 The IRP constituted the CoC on 09.01.2023. The first meeting of CoC proposed the replacement of IRP with the Applicant as RP with 100% voting. This was confirmed by the Tribunal on 02.02.2023.
- 3.5 The 2nd CoC meeting held on 17.03.2023 approved the eligibility criteria for the prospective resolution applicants (PRAs) as required under Section 25(2)(h) of the Code, ratified the fee payable to the Valuers, Transaction Auditor, Legal Advisor, and raising of interim finance for running the CIRP.
- 3.6 The 3rd CoC meeting held on 26.04.2023 considered and approved the key parameters of the Request for Resolution Plan (RFRP), including the Evaluation Matrix. Further, RP informed the CoC that, based on the preliminary review conducted by the Transaction Auditor, RP has formed a prima facie opinion that the Corporate Debtor may have been subjected to transactions falling under Sections 43, 45, 50, and 66 of the Code and sought further time to determine the same. Additionally, Form G, inviting expression of interest, was published in newspapers on 05.04.2023. The CoC also took note of the timelines and interests received from PRAs. The key parameters fixed by the RFRP were as under:

Earnest Money Deposit	All Resolution Applicants shall provide an amount of Rs.5 crore- (a) By way of an irrevocable and unconditional bank guarantee, or (b) by way of a direct deposit or a demand draft- at the time of submission of their Resolution Plan. Terms: Non-Interest bearing and valid for a period of 12 months from the submission of the Resolution Plan and shall be renewed / extended by the RA for such period
-----------------------	---

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA-88/MB/2024 in CP(IB)-1337/MB/2020

	as may be required by the RP/CoC. The EMD shall be issued by a scheduled commercial bank.
Performance Bank Guarantee (PBG)	<p>The successful Resolution Applicant (SRA) shall provide an amount of INR 30 Crores (thirty crores):</p> <p>(a) by way of an irrevocable and unconditional Performance Bank Guarantee (PBG) or</p> <p>(b) or by way of a direct deposit within a period of 3 Business Days from the date of issuance of the Letter of Intent as performance security.</p> <p>Terms: Non-Interest bearing and the PBG should be valid for a period of 1 year from the date of PBG or date of completion of implementation of Resolution plan, whichever is later (as determined by RP/ CoC/ Monitoring committee). Further, PBG shall provide an additional claim period of at least 1 year subsequent to the Validity period. The PBG shall be issued by a scheduled commercial bank.</p>
Date of submission of resolution plans	Last date for submission of Resolution Plan shall be June 3,2023

- 3.7 In the 4th meeting of CoC held on 29.05.2023, the RP further informed the CoC that 11(eleven) applicants who submitted Expressions of Interest (Eols) qualified for the final list of the PRAs circulated on 10.05.2023. Three applicants were found to be ineligible, and a few others submitted Eol after the time stipulated. After deliberation, it was decided to extend the last date for submission of the Eol and the Resolution Plan. The CoC decided to seek an extension of the CIRP period of 90 days.
- 3.8 In the 5th CoC meeting held on 27.06.2023, the RP drew the attention of the CoC to the fact that, despite repeated requests including commitment by the authorised representative of the erstwhile management of the Corporate Debtor to share information with the RP team within 7-10 days, the RP did not receive critical information from the erstwhile management of the Corporate Debtor and was constrained to file an interlocutory

application under section 19(2) of the Code before the Tribunal on 12.06.2023. It was further decided to extend the date for submission of resolution plans by PRAs by a further period of 30 (thirty) days, with the revised last date for submission of resolution plans being 02.08.2023.

- 3.9 In the 6th CoC meeting held on 27.07.2023, it was decided to extend the date for submission of resolution plans by PRAs by a further period of 23 (twenty-three) days, with the revised last date for submission of resolution plans extended to 25.08.2023.
- 3.10. In the 7th meeting of the CoC held on 24.08.2023, additional time up to 04.09.2023 was granted to PRAs as no resolution plan was received. Further, CoC decided to include two EOIs received after the stipulated time. It also resolved to seek extension of time up to 330 days.
- 3.11 In the 8th meeting held on 04.09.2023, it was decided to extend the time up to 25.09.2023 for submission of the resolution plan.
- 3.12 It was resolved in the 9th CoC meeting to extend the time for submission of the resolution plan up to 15.10.2023.
- 3.13. In the 10th CoC meeting, RP informed that neither a request for extension nor any resolution plan was received from any of the PRAs within the stipulated date. However, after the stipulated time, requests were received to extend the time. Transaction Auditor presented its findings. CoC decided to extend the timeline to 27.10.2023 and also resolved to seek exclusion/extension of 75 days from the 330-day CIRP period.
- 3.14. The 11th CoC meeting held on 27.10.2023 resolved to extend the time for submission of the resolution plan up to 11.12.2023.
- 3.15 The 12th CoC meeting held on 24.11.2023 discussed the application filed under Section 19(2) of the Code.

- 3.16 In the 13th CoC meeting held on 15.12.2023, the RP apprised the members of the CoC that, because there was no further response received from the erstwhile management on the queries and clarifications raised pertaining to the preferential, undervalued, fraudulent and extortionate transactions (PUFE), entered by the Corporate Debtor, the RP filed the avoidance applications on 6.12.2023, pursuant to section 66 of the Code, with the NCLT for the transactions entered by the Corporate Debtor with Nirmal Manor Private Limited, Siddhidayak Multitrade Private Limited and Abeer Consultancy Private Limited.
- 3.17 The 14th CoC extended the timeline for submission of the resolution plan to 12.01.2024.
- 3.18 In the 15th CoC held on 18.01.2024 (404th day of the CIRP), RP informed that no resolution plan was received within the timeline. However, a resolution plan was received on 17.01.2024 electronically without annexures and earnest money deposit. The CoC, therefore, decided to extend the timeline for submission of the resolution plan up to 30.01.2024. A request was also received from the erstwhile management of the Corporate Debtor for MSME registration of the Corporate Debtor and the CoC decided to apply for the registration of the Corporate Debtor as MSME.
- 3.19. The 16th CoC meeting held on 02.02.2024 decided to seek extension of the CIRP period of 60 days and extended the last date for submission of the resolution plan to 19.02.2024. A new EOI received on 30.01.2024 from the consortium of Dharmesh Jain, M/s Right Choice Housing Private Limited, M/s Prakruti Nirman Development Private Limited and M/s Nirmal Events 2 Excellence Private Limited (Nirmal Consortium) subsequent to the last date for submission of EOIs, as per the Invitation for Expression of Interest dated 05.04.2023, (IEOI) being 26.04.2023. The CoC decided to include them as a PRA subject to verification of the compliance of such

entities with the criteria issued in the IEOI, and other stipulations as prescribed in the Code, and the regulations made thereunder as well as other applicable law, and the adjudication of the interlocutory application to be filed by the RP before the NCLT, seeking extension of 60 (sixty) days of the CIRP period of the Corporate Debtor, beyond 03.02.2024.

- 3.20 The 17th CoC meeting held on 22.02.2024 decided for extending the timeline for submission of resolution plans by PRAs by a further period of 18 (eighteen) days from the last date of the submission of the resolution plan, being 19.02.2024, with the revised last date for submission of resolution plans being 08.03,2024, subject to the outcome of the adjudication of the interlocutory application filed by the RP before the NCLT, seeking extension of 60 (sixty) days of the CIRP period of the Corporate Debtor, beyond the current last date, being 03.02.2024.

As regards the interest shown by Nirmal Consortium, the Authorised Representative of the homebuyers observed as under:

“Considering that there is hardly any response from the PRAs, homebuyers would be willing to consider plan from the promoters / CD, provided it has adequate provisions for

- i. Ensuring completion as per the plan and protecting the interests of the homebuyers;*
- ii. close monitoring by the committee, which should include a representative of homebuyers;*
- iii. Verification of credentials and accounts as submitted by the promoter group for eligibility to submit the plan;*
- iv. All other things to ensure that possession is delivered to homebuyers without any time and cost overrun, as contracted.”*

- 3.21 In the 18th CoC meeting held on 02.04.2024, it was informed that the Nirmal Consortium submitted a resolution plan through an email and also transferred Earnest Money Deposit (EMD) of Rs.5 crore to the Corporate

Debtor's account on 30.03.2024. The CoC thereafter discussed the plan with Nirmal Consortium and also resolved to consider the plan.

- 3.22 Further, the 19th CoC meeting was held on 07.05.2024.
- 3.23 In the 20th CoC meeting held on 20.06.2024, a revised, unsigned resolution plan was received from Nirmal Consortium. The CoC also resolved to seek the extension of the CIRP period up to 31.07.2024.
- 3.24 The 21st CoC meeting held on 03.09.2024 resolved to seek extension of CIRP up to 30.09.2024.
- 3.25 In the 22nd CoC meeting held on 06.09.2024 and 09.09.2024, the RP informed the CoC that the Nirmal Consortium submitted a revised Resolution Plan on 31.08.2024 and an addendum to the Resolution Plan on 06.09.2024. A compliance certificate in respect of Section 29A was also received on 06.09.2024. The representative of SREI informed the CoC that two key differences between SREI, one of the financial creditors and Nirmal Consortium are still remaining, i.e., relinquishment of third-party security created over the assets of the subsidiary of the Corporate Debtor by virtue of approval of the resolution plan; and disparity among the treatment given to the other financial creditor. The RP also brought to the notice of the CoC that there are certain deviations in the Resolution Plan from the provisions laid down under the RFRP dated 03.05.2023. To this, the CoC members requested that consent for deviations from the RFRP shall also be put to vote for the CoC along with the approval of the resolution plan. Accordingly, the Resolution Plan as well as deviations from the RFRP were passed with 89.2% voting.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA-88/MB/2024 in CP(IB)-1337/MB/2020

4. The updated list of claims as on 15.06.2024 is as under:

Sr. No.	Category of Creditors	Summary of Claims Received		Summary of Claims Admitted		Amount of Claims not Admitted (in Rs. Cr.)	Amount of Claims under Verification (in Rs. Cr.)
		No. of Claims	Amount (in Rs. Cr.)	No. of Claims	Amount (in Rs. Cr.)		
1.	Financial Creditors other than Homebuyers	4	2,065.22	4	2018.95	46.28	-
2.	Financial Creditor-Homebuyers	1,179	570.97	1,1410	441.65	165.63	0.48
3.	Operational Creditors	20	29.12	18	7.31	21.81	-
	Total	1,203	2,665.31	1,163	2,467.91	233.71	0.48

5. **Constitution of CoC**

Sr. No.	Name of Financial Creditors	Voting share %
1.	SREI Equipment Finance Limited	10.78%
2.	Assets Care and Reconstruction Enterprise Limited (acting as trustee of ACRE 128-Trust)	37.43%
3.	Assets Care and Reconstruction Enterprise Limited (acting as trustee of India Real Estate 2021)	33.82%
4.	Home Buyers	17.95%
5.	Mercedes Benz Financial Services India Private Limited	0.01%
	Total	100%

6. The financial outlay under the Resolution Plan is as under:

Sr. No.	Type of Shareholder	Sub-category of stakeholder	Amount claimed (Rs.)	Amount admitted (Rs.)	Amount provided under the Plan (Rs.)	Amount provided to the claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA-88/MB/2024 in CP(IB)-1337/MB/2020

1.	Secured Financial Creditors	(a) Creditors not having a right to vote under subsection (2) of Section 21	NA	NA	NA	NA	
		(b) Other than (a) above:					
		(i) who did not vote in favour of the resolution Plan	279.85 Crore	265.36 Crore	26,29,13,589/- Details of payment are provided in Note 5 below	9.39 %	
		(ii) who voted in favour of the resolution plan	1784.88 Crore	1753.25 Crore	300 Crore Details of payment are provided in Note 4 below	16.8 %	
		Total (a)+(b)	2064.73 Crore	2018.61 Crore	326,29,13,589/-	NA	
2.	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA	
		(b) other than (a) above: (i) who did not vote in favour of the resolution plan	0.48 Crore	0.32 Crore	0.02 Crore	4.16 %	
		(ii) who voted in favour of the resolution plan (being homebuyers)	570.97 Crore	441.65 Crore	Delivery of allotted units	NA	

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA-88/MB/2024 in CP(IB)-1337/MB/2020

		Total (a)+(b)	571.45 Crore	441.97 Crore	0.02 Crore + Delivery of allotted units	NA
3.	Operational Creditors	(a) Related Party of Corporate Debtor	NIL	NIL	NIL	NIL
		(b) Other than (a) above:	24.31 Crore	5.4 Crore	NIL	0%
		(i) Operational Creditors, government dues				
		(ii) Operational Creditors - workmen & employees	0.85 Crore	0.58 Crore	NIL	0%
		(iii) Operational Creditors Others	3.96 Crore	1.34 Crore	NIL	0%
		Total (a)+(b)+(c)	29.12 Crore	7.32 Crore	NIL	0%
4.	Other debts and dues	NIL	NIL	NIL	NIL	NIL
Grand Total			2665.30 Crore	2467.90 Crore	3263113589/- plus delivery of allotted flats for homebuyers.	NA

- 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 delivery of already allotted units for homebuyers.

- Note 4 – The Resolution Plan contemplates a joint proposal for ACRE-128 Trust and India Real Estate 2021 Trust, both of whom act through ACRE, which is their trustee (Joint Proposal). The Resolution Plan states that it proposes to allocate all payments payable to ACRE under this Plan, whether in cash or kind, in the ratio of 82:18 in favour of ACRE-128-Trust and India Real Estate 2021 Trust, respectively.

6.2 As per Clause 4.2.1 of the Plan, the Joint Proposal is set out below:

(a) Non-convertible debentures for an aggregate face value or nominal amount of Rs. 300 Crore, shall be issued to ACRE by Right Choice Housing Private Limited (RCHPL) on the Transfer Date part of which shall be held by ACRE (on behalf of ACRE-128-Trust) and the balance by ACRE (on behalf of India Real Estate 2021 Trust) (Debentures), to be redeemed as under;

Sr. No.	Particulars	Timeline	Consideration /Steps
1.	Redemption of Class A Debentures		Class A Debentures shall be redeemed as per the schedule given below:
1a.	ACRE Tranche 1	On the expiry of 1 year from the Key Milestones Cut-off Date.	Payment of the entire consideration arising from the transfer of ACRE FSI Security by ways of a duly stamped and registered sale deed, development agreement or any other legally tenable mode of transfer, which will be in favour of a Person(s) identified by ACRE or any Person(s) nominated by the RA and approved by ACRE, at a valuation also

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA-88/MB/2024 in CP(IB)-1337/MB/2020

			approved by ACRE, with the stamp duty, GST and registration costs to be borne by the purchase/ transferee of the ACRE FSI Security. The ACRE FSI Security shall be sold on the expiry of 1 year from the Key Milestones Cut-off Date. On net basis i.e., after providing for the ACRE FSI Approval Expenses (as defined below), the value of ACRE FSI Security is estimated at Rs. 50
--	--	--	---

Sr. No.	Particulars	Timeline	Consideration /Steps
1b	ACRE Tranche 2	On or before the expiry of 4 years from the Transfer Date.	Rs. 50 Crore
1c	ACRE Tranche 3	On or before the expiry of 5 years from the Transfer Date.	Rs. 73 Crore from the Project cash flows. However, this payment may be made earlier, within the 5-year period, from the Project cash flows if and as mutually agreed upon between ACRE and the Project Lender (SWAMIH).
2.	Redemption of the Class B Series 1 Debentures	Prior to expiry of 7 years from the Transfer Date or 2 years from the payment date of	Up to an amount of Rs. 27 crore which shall be paid from the Project Surplus, subject to such Project Surplus being in excess of Rs. 100 crore. RA's obligation to redeem these Debentures shall be limited to

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA-88/MB/2024 in CP(IB)-1337/MB/2020

		ACRE Tranche 3, whichever is later.	the value of Project Surplus over and above Rs. 100 crores.
3.	Redemption of the Class B Series 2 Debentures	Prior to expiry of 7 years from the Transfer Date or 2 years from the payment date of ACRE Tranche 3, whichever is later.	Up to an amount of INR 100 crore which shall be paid from the Project Surplus subject to such Project Surplus being in excess of Rs. 150 crores. RA's obligation to redeem these Debentures shall be limited to the value of Project Surplus over and above Rs. 150 crores.
	Total		Rs. 300 Crore

- (b) The balance amount of Rs. 1453 Crore, being the difference between the ACRE Admitted Claim and the aggregate amount under the Debentures, is recognised as a crystallised financial debt claim of ACRE on the Corporate Debtor which, upon approval of the Resolution Plan and the Scheme, shall become a contingent financial debt claim of ACRE on RCHPL, which shall automatically become a crystallised financial debt obligation of RCHPL in the event the Resolution Applicants fail to implement the Resolution Plan in accordance with its terms (ACRE Balance Claim). The ACRE Balance Claim shall stand automatically extinguished upon redemption of Debentures in the manner set out above.

Note 5 - The Resolution Plan proposes, in Clause 4.2.2, the settlement of the claim of SREI Equipment Finance Limited (SREI) through its wholly owned subsidiary company, i.e., Sujyoti Developers Private Limited (SDPL). The Resolution Plan proposes restructuring of the Corporate Debtor, whereby all business /assets of the Corporate Debtor other than the Kalyan Project shall stand transferred to the Resolution Applicant, following which the existing debt due to SREI shall be assigned to SDPL, and divided into, a (i) sustainable portion of Rs.26,29,13,589/- (Twenty-Six

Crore Twenty-Nine Lakh Thirteen Thousand Five Hundred and Eight Nine Rupees), and (ii) unsustainable portion.

Accordingly, Class C debentures will be issued for the sustainable debt, and Class D debentures shall be issued for the unsustainable portion of debt separately. Since the PNDPL will divert the resources to ensure that the sustainable debt is paid in a time-bound manner as covered above, the SREI will transfer the unsustainable portion of debt to the entity nominated by PNDPL at the face value within 30 days from the effective date. The face value of the debentures will be Rs 1/-. Accordingly, Class D debentures issued for the unsustainable portion of debt will comprise of 6,66,93,257 debentures of Rs. 1/- at a premium of Rs.9/-.

6.3 The proposed settlement of SREI shall be as follows:

Sr. No.	Particulars	Amount
1.	Payment on the expiry of 1 year from Key Milestones Curt-off Date (" SREI-Tranche I ")	Rs. 7,57,00,000/- (Seven Crore Fifty-Seven Lakh Rupees)
2.	Payment on the expiry of 4 years from the Transfer date towards the balance payment as full and final settlement (" Balance Full and final Payment ")	Rs. 18,72,13,589/- (Eighteen Crore Seventy-Two Lakh Thirteen Thousand Five Hundred and Eight Nine Rupees).
	Total	Rs.26,29,13,589/- (Twenty-Six Crore Twenty-Nine Lakh Thirteen Thousand Five Hundred and Eighty-Nine Rupees).

6.4 The interests of existing shareholders have been altered by the Resolution plan as under:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA-88/MB/2024 in CP(IB)-1337/MB/2020

Sr. No.	Category of shareholder	No. of shares held before CIRP	No. of shares held after CIRP	Voting share held before CIRP	Voting share held after CIRP
1.	Equity	424800 shares at Rs.10/- per share	NIL	100%	NIL
2.	Preference	NIL	NIL	NIL	NIL

6.5 The Successful Resolution Applicant has sought various reliefs and concessions.

6.6 The Applicant submits that the Resolution Plan is in compliance with Section 30(2) of the Code and Regulation 38 (A) of the CIRP Regulations. The RP/Applicant has also provided a compliance certificate in FORM H, as mandated under the Code for seeking approval of the Resolution Plan from this Tribunal. However, during the hearing on 11.11.2024, the Applicant sought time to modify the Form H. Accordingly, the Applicant placed on record a fresh compliance certificate in Form H along with his affidavit dated 30.11.2024. The Applicant has also placed on record the report dated 06.09.2024 by Pipara and Co., the Transaction Auditor, on compliance of the Successful Resolution Applicant with respect to Section 29 of the Code. The Applicant has also placed on record certain annexures to the Resolution Plan that were put for voting before the CoC during the 22nd CoC meeting, which were inadvertently not included in the Resolution Plan annexed with the application. These annexures are as follows:

- a) Annexure -3 - list of homebuyers.
- b) Annexure -4 - Networth certificate of consortium members.
- c) Annexure -5 - Final sanctioned letter from SWAMIH

d) Annexure -6 - Scheme of Arrangement and Amalgamation.

7. This IA was heard on 22.04.2025 and reserved for orders on 19.03.2025. However, while preparing the order, it was observed that certain vital points required further clarification, and therefore, the IA was listed on 22.04.2025 for clarification. In response to the queries raised by the Bench, the Applicant filed an Additional Affidavit enclosing therewith copies of minutes of all the CoC meetings, a list of connected persons of the SRA as provided by the SRA while submitting the Resolution Plan, and a list of connected persons provided in the report submitted by the Transaction Auditor. Further, during the hearing on 02.05.2025, the Bench sought further clarification with reference to the eligibility of the SRA as per section 29A and the validity of performance security. The Applicant, therefore, filed an additional affidavit dated 07.05.2025 in response to the same.

8. **Analysis**

8.1 We have heard the Ld. Counsel for the Applicant and perused the Resolution Plan and other related documents submitted by the Applicant.

8.2. **Salient features of the Resolution Plan**

8.2.1 It is observed that the Corporate Debtor is engaged in the business of construction of residential and commercial projects, and integrated townships. The Corporate Debtor has entered into Development Agreements with the landowners and has obtained Development Rights for approximately 113.32 acres situate at Villages Vadavli, Ambivli, Mohani and Atali, all in Taluk Kalyan, Dist. Kalyan (collectively 'Larger Land'). Currently, Phase I, II, and III layouts are under development on a portion of the Larger Land, which occupies around 38 acres of land parcels in Vadavli Village, Kalyan, Maharashtra. The land admeasuring approximately 46.12 acres (mortgageable area of 44.76 acres) situated in Vadavli and Atali villages in Maharashtra on which the project is

proposed to be developed and the reservation land admeasuring approximately 17.29 acres which is to be surrendered to KDMC in lieu of the TDR to be utilised for the project (collectively 'Kalyan Project') and its corresponding assets and liabilities are proposed to be demerged to a member of Nirmal Consortium, RCHPL as per the Scheme of Arrangement and Amalgamation annexed as Annexure- 6 to the Resolution Plan.

- 8.2.2 There are 35 buildings to be constructed and delivered to 1179 homebuyers as part of the Kalyan Project. The Corporate Debtor has obtained occupancy certificates (OC) for three buildings, and applications for OCs for six buildings are currently in process. The RCC work for nine buildings is completed, while other buildings are at different stages of construction. After the demerger of the Kalyan Project and its incidental assets from the Corporate Debtor to RCHPL, the buildings are to be completed and handed over to the respective homebuyers within the timelines and as per the terms contained in the Resolution Plan. The homebuyers are to accept the new delivery dates and agree not to claim towards interest or compensation for past acts, nor raise objections with RERA regarding any future development of the properties or any parts thereof. RCHPL shall prepare building plans having units admeasuring the same carpet area as specified in the respective registered agreement for sale, allotment letters or booking terms, allowing for a variation of up to 5% of the actual area.
- 8.2.3 The Resolution Plan envisages the construction and development of the project/buildings using the funds from the Special Window for Affordable and Middle-Income Housing (SWAMIH) Fund. The SWAMIH Fund had previously sanctioned a facility to the Corporate Debtor in 2021, which has since lapsed. The Successful Resolution Applicant is currently in discussion with the SWAMIH Fund for securing a credit facility to fund the

construction and development of the Kalyan Project. In this regard, the SWAMIH Fund issued a sanction letter for a commitment of fund-based construction finance facility of Rs. 388.4 Crore based on the terms stipulated in the sanction letter dated 07.03.2024. The Successful Resolution Applicant has undertaken to obtain a revalidation of this sanction.

- 8.2.4 The remaining portion of the Larger Land, which consists of 49.91 acres (excluding the Kalyan Project), along with its incidental assets and liabilities of the Corporate Debtor, is proposed to be merged with PNDPL, a member of the Nirmal Consortium, as per the Scheme.
- 8.2.5 Secured Financial Creditors: The Corporate Debtor has two secured financial creditors- ACRE and SREI. The admitted claim of ACRE will be settled through the issue of non-convertible debentures for an aggregate face value or nominal amount of Rs. 300 Crore by RCHPL, redeemable between 1 to 7 years as per the terms mentioned in the Resolution Plan. However, the debt to SREI will be assigned to SDPL, a wholly owned subsidiary of the Resolution Applicant. This debt will be divided into sustainable portion of Rs.26,29,13,589/- and the balance as unsustainable portion of debt. The sustainable portion of debt i.e., Rs.26,29,13,589/- will be paid in two tranches, the first tranche of Rs. 7,57,00,000/- will be paid on the expiry of one year, and the remaining amount of Rs. 18,72,13,589/- on the expiry of four years from the transfer date.
- 8.2.6 Unsecured Financial Creditors: The unsecured financial creditors will be settled for Rs. 2 Lakh payable on or after the completion of one year from the transfer date.
- 8.2.7 The financial creditors who do not vote in favour of the Resolution Plan (Dissenting Financial Creditors) will be entitled to receive the amount that

they would have received in accordance with sub-section (1) of Section 53 of the Code in the event of a liquidation of the Corporate Debtor in priority to the financial creditors who vote in favour of the Resolution Plan. The Resolution Applicant will pay such amounts to the Dissenting Financial Creditors from their own sources, without recourse to the Corporate Debtor or its assets.

8.2.8 Operational Creditors: The Resolution Plan does not propose any payments to the Operational Creditors. However, a Writ Petition filed by the Corporate Debtor before the Hon'ble Mumbai High Court in respect of an EPFO claim of Rs. 18,90,83,644/-, if decided unfavourably against the Corporate Debtor, the principal amount of the claim (excluding any interest and penalties) will be paid by the Resolution Applicant.

8.2.9 CIRP costs: The entire CIRP costs shall be settled from cash reserves of the Corporate Debtor and by utilising the Earnest Money Deposit of Rs. 5 Crore made by the Successful Resolution Applicant. Any excess amount over and above the EMD will be infused within 90 days from the effective date.

8.2.10 In order to implement the Resolution Plan, the Successful Resolution Applicant proposes the following source of funds:

Source	Amount Rs. Cr.	Purpose
Infusion of funds by RCHPL	10 (inclusive of the EMD of Rs. 5 Crore)	To meet the CIRP costs
SWAMIH Fund	388.40	To complete the construction of Kalyan Project
Realisation from mortgage assets of the Corporate Debtor and the subsidiary company	126 Crore	To redeem the debentures issued to Secured Financial Creditors
Realisation from the project surplus	200 Crore	To redeem the debentures issued to Secured Financial Creditors

No other amount is proposed to be brought in by the Successful Resolution Applicant.

9. Observations of the Adjudicating Authority

9.1 Section 30(6) of the Code enjoins the Resolution Professional to submit the Resolution Plan as approved by the CoC to the Adjudicating Authority. Section 31 of the Code deals with approval of the Resolution Plan by the Adjudicating Authority if it is satisfied that the Resolution Plan, as approved by the CoC, meets the requirements provided under Section 30(2) of the Code. The Hon'ble Apex Court in the case of ***K. Sashidhar v. Indian Overseas Bank & Others (Civil Appeal No. 10673/2018)*** decided on 05.02.2019, observed that on receipt of an application for approval of the Resolution Plan, the Adjudicating Authority is required to satisfy itself with the Resolution Plan, as approved by the CoC meets the requirements satisfied in Section 30(2). The Hon'ble Apex Court further observed that the role of the NCLT is "no more and no less". Thus, the inquiry entrusted to the Adjudicating Authority on the Resolution Plan is with reference to matters to specified in Section 30(2). Therefore, we consider it necessary to examine whether the Resolution Plan under consideration meets with the requirements specified in Section 30(2) of the Code.

9.2 Amendment of the final list of Prospective Resolution Applicants.

(i) The CIRP Regulations prescribe a detailed procedure for inviting Expression of Interest by publishing Form G from interested and eligible prospective resolution applicants, preparation of provisional list of eligible prospective resolution applicants who submitted the expression of interest, and preparation of final list of prospective resolution applicants within a time frame. For ease of reference, the relevant Clauses of the CIRP Regulations are extracted below:

"36A Invitation for Expression of Interest-

- 1) *The resolution professional shall publish brief particulars of the invitation for expression of interest in Form G of the Schedule at the earliest, not later than seventy-fifth day from the insolvency commencement date, from interested and eligible prospective resolution applicants to submit resolution plans.*
- (2) xxxxxxxx
- (3) xxxxxxxx
- (4) *The detailed invitation referred to in sub-regulation (3) shall -*
 - (a) *specify the criteria for prospective resolution applicants, as approved by the committee in accordance with clause (h) of sub-section (2) of section 25;*
 - (b) *state the ineligibility norms under section 29A to the extent applicable for prospective resolution applicants;*
 - (c) *provide such basic information about the corporate debtor as may be required by a prospective resolution applicant for expression of interest; and*
 - (d) *not require payment of any fee or any non-refundable deposit for submission of expression of interest.*
- (5) xxxxxxxx
- (6) xxxxxxxx
- (7) xxxxxxxx
- (8) xxxxxxxx
- (9) xxxxxxxx
- (10) *The resolution professional shall issue a provisional list of eligible prospective resolution applicants within ten days of the last date for*

submission of expression of interest to the committee and to all prospective resolution applicants who submitted the expression of interest.

- (11) *Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) may be made with supporting documents within five days from the date of issue of the provisional list.*
- (12) *On considering the objections received under sub-regulation (11), the resolution professional shall issue the final list of prospective resolution applicants within ten days of the last date for receipt of objections, to the committee.*

36B. Request for resolution plans. -

- (1) *The resolution professional shall, within five days of the date of issue of the final list under sub-regulation (12) of **regulation 36A**, issue the information memorandum, evaluation matrix and a request for resolution plans to every resolution applicant in the final list:*

Provided that where such documents are available, the same may also be provided to every prospective resolution applicant in the provisional list.

- (2) *The request for resolution plans shall detail each step in the process, and the manner and purposes of interaction between the resolution professional and the prospective resolution applicant, along with corresponding timelines.*
- (3) *The request for resolution plans shall allow prospective resolution applicants a minimum of thirty days to submit the resolution plan(s).*
- (4) *The request for resolution plans shall not require any non-refundable deposit for submission of or along with resolution plan.*

(4A) *The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of **section 30**, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its ⁴[implementation schedule:*

Provided that where the corporate debtor has any real estate project, the committee may relax the requirement to provide for performance security for an association or group of allottees in such real estate project, representing not less than ten per cent. or one hundred creditors out of the total number of creditors in a class, whichever is lower.

Explanation I. – For the purposes of this sub-regulation, “performance security” shall mean security of such nature, value, duration and source, as may be specified in the request for resolution plans with the approval of the committee, having regard to the nature of resolution plan and business of the corporate debtor.

Explanation II. – A performance security may be specified in absolute terms such as guarantee from a bank for Rs. X for Y years or in relation to one or more variables such as the term of the resolution plan, amount payable to creditors under the resolution plan, etc.

(5) *Any modification in the request for resolution plan or the evaluation matrix issued under sub-regulation (1), shall be deemed to be a fresh issue and shall be subject to timeline under sub-regulation (3).*

Provided that such modifications shall not be made more than once.

- (6) *The resolution professional may, with the approval of the committee, extend the timeline for submission of resolution plans.*
- (7) *The resolution professional may, with the approval of the committee, re-issue request for resolution plans, if the resolution plans received in response to an earlier request are not satisfactory, subject to the condition that the request is made to all prospective resolution applicants in the final list:*

Provided that provisions of sub-regulation (3) shall not apply for submission of resolution plans under this sub-regulation.] (emphasis added)

- (ii) In this case, the Applicant issued Form G to invite EOI on 05.04.2023 specifying 26.04.2023 as the last date for submission of EOI. In response to the same, the Applicant received 14 (fourteen) EOIs, out of which 3 (three) were found to be ineligible and 11 (Eleven) EOIs were found to qualify for the final list of PRAs. The final list of eligible Prospective Resolution Applicants (PRAs) was prepared on 10.05.2023. This was subsequently amended on 07.06.2023, 04.09.2023, and 23.02.2023 to include additional EOIs, including the one submitted by Nirmal Consortium, which was submitted after finalisation of the original final list of PRAs.
- (iii) It is pertinent to observe that the CIRP Regulations mandates the preparation of the provisional list of eligible prospective resolution applicants, calling for objections to the inclusion or exclusion of a prospective resolution applicant in the provisional list of resolution applicants. After considering the objections received, the resolution professional shall issue a final list of PRAs. The Nirmal Consortium did not appear in the provisional list of PRAs or in the original final list of PRAs prepared by the Applicant. As per the CIRP Regulations, no applicant can appear in the final list of PRAs without first being in the provisional list of

PRAs and following the prescribed procedure. In case no resolution plan worthy of consideration is received from the PRAs appearing in the final list, the option available under the CIRP Regulations is to go for inviting fresh EOI in Form G. It appears that no fresh Form G was issued in the present matter.

- (iv) Regulation 36A (6) specifies that the EOI received after the time specified in the invitation for expression of interest shall be rejected. Therefore, we find no merit in the argument that CoC has the sole discretion to include new EOIs after the last date and finalisation of the final list of PRAs. The CIRP Regulations clearly prohibit the consideration of any EOI received after the specified date.

Additionally, Regulation 39 (1B) of the CIRP Regulations stipulates that the CoC shall not consider any Resolution Plan received from a person who does not appear in the final list of PRAs. The final list of PRAs dated 10.05.2023 does not contain the name of the Nirmal Consortium, and hence the Resolution Plan received from Nirmal Consortium cannot be treated as from a person who appears in the final list of PRAs.

9.3 Eligibility of Nirmal Consortium to submit EOI

- (i) Regulation 36A (4) provides that the detailed EOI shall specify the criteria for prospective resolution applicants, as approved by the Committee of Creditors. The eligibility criteria as approved by the CoC and laid out in the invitation for expression of interest issued in the present case, are extracted below:

"1. For Private/ Public Limited Company/ Limited Liability Partnership ("LLP") / Body Corporate (whether incorporated in India or outside India)/ any other PRAs (which is not a financial entity) ("Category I"):

- a. *Minimum Tangible Net Worth ("TNW") shall be INR 100 Crores in the immediately preceding completed financial year based on audited financial statements.*
 - b. *TNW shall be in an individual capacity or at the Group Level as on 31st March 2022;*
 - c. *TNW shall be computed as aggregate value of paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, and does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation; and "Group" shall mean and include (i) an entity which, directly or indirectly, holds 26% (twenty six percent) or more of the share capital of the Prospective Resolution Applicant or (ii) an entity in which the Prospective Resolution Applicant, directly or indirectly, holds 26% (twenty six percent) or more of the share capital or (iii) an entity in which the Prospective Resolution Applicant, directly or indirectly, has the power to direct or cause to be directed the management and policies of such entity whether through the ownership of securities or agreement or any other arrangement or otherwise or (iv) an entity which, directly or Indirectly, has the power to direct or cause to be directed the management and policies of the Prospective Resolution Applicant whether through the ownership of securities or agreement or any other arrangement or otherwise or (v) an entity which is under common Control with the Prospective Resolution Applicant"*
- (ii) As regards the eligibility of Nirmal Consortium to submit EOI, the discussion recorded in the minutes of the 17th CoC meeting is reproduced below:

“The RP team invited the RP legal counsel to provide some clarity to the members of the creditors regarding inducting the Consortium of Mr. Dharmesh Jain. The legal counsel for the RP clarified that while the eligibility criteria laid down in the IEOI is for minimum TNW to be INR 100 Crore in the immediately preceding completed financial year based on audited financial statements, in the instant case, the Lead Partner of the Consortium of Dharmesh Jain is an individual, and therefore, there is no statutory requirement to prepare audited financial statements in respect of the lead Partner. The legal counsel of the RP stated that as per the IEOI, a net worth certificate is required to be submitted by a statutory auditor or a reputed independent chartered accountant acceptable to the Resolution Professional/CoC of NLKPL or equivalent in the jurisdiction of incorporation of the company certifying the TNW as at end of the previous financial year. In the light of the same, the legal counsel for the RP stated that if the net worth certificate submitted by the auditor J. Acharya for Mr. Dharmesh Jain is based on the financial statements of the Lead Partner and is supported by the financial statements of his investee companies for the latest completed financial year, the same may be considered for evaluating the eligibility criteria.

The representatives of SREI stated that as per the detailed EoI document, there is no separate requirement for requesting the audited financial statements of investee companies nor there is a requirement to seek the latest ITR from the lead member of the consortium.

The CoC members, while deliberating on the matter, stated that the net worth certificate provided by the consortium has been prepared and certified by a chartered accountant on the basis of their verification of the relevant information and the underlying documents. Further, the CoC members stated that the consortium of consortium of Dharmesh Jain satisfied the eligibility criteria as laid out in the IEOI, and therefore the

consortium of Dharmesh Jain may be added to the list of PRAs in respect of the Corporate Debtor.”

- (iii) During the 17th meeting, the Authorised Representative of the homebuyers requested verification of credentials and accounts as submitted by the promoter group to determine their eligibility to submit the plan. The Bench, therefore, sought clarification regarding the eligibility of Nirmal Consortium based on the requirements specified in the IEOI to submit the plan.
- (vii) It is observed that the Nirmal Consortium did not produce audited financial statements for the preceding completed financial year to demonstrate that it has a Minimum Tangible Net Worth (TNW) of Rs.100 Crores as required in the IEOI. It is further observed that the Applicant submitted an additional affidavit dated 30.11.2024 along with a Net worth Certificate of Nirmal Consortium issued by M/s J Aacharya & Associates, Chartered Accountants based on provisional financial statements. It appears that Nirmal Consortium did not produce adequate documents to establish its eligibility when the Expression of Interest was considered.

9.4 Deviations from RFRP

- (i) It is observed that there are many material deviations from the RFRP, some of which are given below:

Sr. No.	Relevant Clause of the RFRP	Deviation/Observation
1.	Clause 3.1.4(c) (iv) – The resolution plan must provide for the mechanism regarding management and control of the affairs of the Corporate Debtor after approval of the Resolution Plan, as per Section 30(2) (c) of the Code.	As per the provisions of the Plan, the Monitoring Committee shall comprise of three voting member and one non-voting member one voting member appointed by the Consenting Financial Creditors, and two voting members appointed by the Successful Resolution Applicant.
2	Clause 3.1.4(o) – Change in Control and Lock-in: The Resolution Plan should provide for how and when the Corporate	The Plan states that the RA will take over the management and control of the Corporate Debtor on the Transfer Date

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA-88/MB/2024 in CP(IB)-1337/MB/2020

	<p>Debtor shall be taken -over by the Resolution Applicant. The Resolution Applicants may note that the Transfer Date shall not take place and the Resolution Applicant shall not take-over the Corporate Debtor before making the payment of the Upfront Cash Payment as set out in its Resolution Plan. The Resolution Plan should also provide that the Successful Resolution Applicant shall hold at least 51% (fifty one percent) of share capital in the Corporate Debtor and shall have Control and management over the Corporate Debtor till full implementation of the Resolution Plan and full discharge of all payments committed to the creditors under the Resolution Plan.</p>	<p>after payment of CIRP costs and other mandatory payments.</p> <p>The Resolution Plan contemplates upfront payment only to dissenting financial creditors, in accordance with the provisions of the Code.</p> <p>Payments to ACRE, the Assenting Secured Financial Creditor, will be made through redemption of debentures in the manner described in Section 4.2.1 of the Resolution Plan. The homebuyers will get delivery of allotted units in the manner and timeline described in Section 4.2.4 of the Resolution Plan, with an outer timeline of 42 months.</p>
3.	<p>Clause 3.1.4(g) The receivables arising out of the ongoing litigations, either during the course of Resolution Plan Process or after the approval of Resolution Plan by the Adjudicating Authority or at any time in future, shall solely accrue to the benefit of the Financial Creditors. It is clarified that the Successful Resolution Applicant/ Resolution Applicant shall not have any right or claim over the abovementioned amounts and the same shall not be subject to any set-off or deduction by the Successful Resolution Applicant / Resolution Applicant without prior approval of the financial creditors. The Resolution Applicant shall provide appropriate mechanism for pursuing the abovementioned litigations in the Resolution Plan.</p>	<p>The RFRP states that the receivables arising from any legal proceedings shall accrue for the benefit of the financial creditors. The Resolution Plan however provides that such receivables shall be for the benefit of the Corporate Debtor or Resolution Applicant.</p>
4.	<p>Clause 3.1.4 (n) – Costs (other than insolvency resolution process costs) may be paid from</p>	<p>Section 4.2G of the Plan provides that payment of CIRP costs will be made by utilising the Earnest Money Deposit</p>

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA-88/MB/2024 in CP(IB)-1337/MB/2020

	<p>the cash flows of the Corporate Debtor, if available, and if remain unpaid, shall be reimbursed by the Resolution Applicant and paid along with the payment of the insolvency resolution process costs.</p>	<p>(EMD) amount submitted along with the Resolution Plan, which was not envisaged in the RFRP.</p>
5.	<p>Clause 3.1.4(o)-Change in Control and Lock-in: The Resolution Plan should provide for how and when the Corporate Debtor shall be taken over by the Resolution Applicant. The Resolution Applicants may note that the Transfer Date shall not take place and the Resolution Applicant shall not take over the Corporate Debtor before making the payment of the Upfront Cash Payment as set out in its Resolution Plan. The Resolution Plan should also provide that the Successful Resolution Applicant shall hold at least 51% (fifty one percent) of share capital in the Corporate Debtor and shall have Control and management over the Corporate Debtor till full implementation of the Resolution Plan and full discharge of all payments committed to the creditors under the Resolution Plan.</p>	<p>The Plan states that the RA will take over the management and control of the Corporate Debtor on the Transfer Date after payment of CIRP costs and other mandatory payments, as per Section 4.2(l) of the Plan, the EMD submitted by the Resolution Applicant may be used to pay CIRP costs.</p>
6.	<p>Clause 2.17 (Performance Security) – The Successful Resolution Applicant shall furnish or cause to be furnished, within a period of 3 (three) Business Days from the date of issuance of the Letter of Intent (or earlier in case the application for approval of Resolution Plan is to be submitted to NCLT earlier), provide INR 30,00,00,000 (Indian Rupees Thirty Crores Only) (“Performance Security Amount”) as performance security in one of the following forms:</p>	<p>As per Plan the EMD amount of Rs. 5 Crore deposited along with the Resolution Plan form part of the Performance Security which shall be used for payment of CIRP costs. Further the sanction of facility of Rs. 388.40 Crore from SWAMIH fund is sought to be treated as Performance Security.</p>

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA-88/MB/2024 in CP(IB)-1337/MB/2020

	<p>(a) by way of an irrevocable and unconditional performance bank guarantee issued by a scheduled commercial bank(“Bank”) for an amount of in favour of the Designated Lender (acting on behalf of the CoC) in the format as provided in Format XIII hereto; or (b) by way of a direct deposit through the real time gross settlement system into a bank account held by the Designated Lender, the details of which shall be shared separately with the Resolution Applicant(s), ((a) and (b) are individually referred to as “Performance Security”), It is clarified that in case of Performance Security by way of direct deposit as set out above, the Designated Lender shall be entitled to take actions in relation to such Performance Security in accordance with the terms hereof. Further, it is clarified that if the Performance Security is deposited by way of a direct deposit, then such an amount would not form part of the assets of the Corporate Debtor.”</p>	
7.	<p>Clause 3.1.4 (p)(Third party Guarantee/ Security) of the RFRP- The Resolution Plan shall mandatorily provide that the Resolution Plan shall in no way affect the validity and enforceability of (A) the personal guarantees executed by any Person in the promoter group of the Corporate Debtor; (B) the corporate guarantees executed by third parties; and (C) any other security created by a third party, as of the insolvency commencement date of the Corporate Debtor, for securing the</p>	<p>Section 5.8 of the Plan states that after the Effective Date, the rights of financial creditors to enforce recovery against promoters and guarantors shall stand extinguished. The relevant provision of the RFRP however clearly state that the plan shall in no way affect the validity and enforceability of guarantees, and the financial creditors shall be entitled to take any action available under law against guarantors and third-party security providers.</p>

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA-88/MB/2024 in CP(IB)-1337/MB/2020

	<p>debt of the Corporate Debtor and the financial creditors (other than homebuyers who are allotted homes under the plan) shall be entitled to take all steps and remedies and recourse available to them under Applicable Law for the recovery of the unrecovered financial debt (i.e. the total dues of the financial creditors less the aggregate of (i) the Upfront Cash Payment and (ii) deferred payments received by such financial creditors as part of the Resolution Plan(s) from such guarantors and/or third party security providers, under their respective security documents without any of right of subrogation accruing to any such party;</p>	
8.	<p>Clause 3.1.4 (c) (r) – The Resolution Plan should provide that in the event any transactions is avoided / set aside by the Adjudicating Authority in terms of Sections 43, 45, 47, 49, 50 or 66 of the IBC, and / or any amount or property is received in furtherance thereof, the same shall be for the sole benefit of the financial creditors other than homebuyers and shall be a pass-through amount to the financial creditors other than homebuyers and may be appropriated or considered in a manner as may be decided by the CoC or the Financial Creditors in its absolute discretion such amounts received and/or receivable shall not form a part of the Successful Resolution Applicant.</p> <p>Contribution under the Approved Resolution Plan or be reduced from the payment to be made by the Resolution Applicant to the financial creditors. The Resolution Plan shall further provide for the</p>	<p>The Resolution Plan provides for accrual of amounts received towards setting aside of PUFEE transactions to the benefit of the Resolution Applicant, which is contrary to the terms of the RFRP, which states that accrual of such amounts would be to the benefit of financial creditors.</p>

<p>manner in which proceedings in respect of avoidance transactions, if any, under Chapter III or fraudulent or wrongful trading under Chapter VI of Part II of the Code, will be pursued after the approval of the Resolution Plan and the manner in which the proceeds, if any, from such proceedings shall be distributed as specified in Regulation 38(2) (d) of the CIRP Regulations. Provided however, CoC shall have the discretion to determine the manner of distribution, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of Section 53 of the Code.</p>	
--	--

- (ix) The Ld. Counsel for the Applicant submits that RFRP contained various provisions that were to be part of the commercial proposals received from the PRAs in the Resolution Plans. However, Clause 2.13.7 stated as follows:

*“The CoC and RP (acting on the instructions of the CoC, wherever required reserve the right and the absolute discretion to clarify upon, modify/amend, and/or cancel the bidding process/RFRP/and/or the Evaluation Matrix at any stage of the Resolution Plan Process. **The CoC and RP (acting on the instructions of the CoC, wherever required) further reserve the right and the absolute discretion to relax or waive the applicability of any provision under this RFRP/Resolution Plan and/or the Evaluation Matrix at any stage of the CIRP Period, vis-à-vis one or more Resolution Applicant(s), including without any corresponding relaxation or waiver to other Resolution Applicant(s), and there shall be no claim against the Resolution Professional/Committee of Creditors or their advisors on this account. Subject to Applicable Law, nothing in this RFRP shall restrict the right of the CoC to approve a Resolution Plan which does not provide for one or more contents or requirements as specified in this RFRP. Any such exercise of their right by CoC and RP shall not be interpreted as a modification or amendment to the RFRP.**”*

It is further submitted that the CoC in its 22nd meeting held on 06.09.2024 discussed the deviations along with the feasibility and viability of the Resolution Plan. After due deliberation, CoC, in its commercial wisdom, approved, with 89.2% voting share, the following resolution:

“RESOLVED FURTHER THAT by approving the Resolution Plan, the CoC agrees to all deviations from the provisions of the request for resolution plan dated May 5, 2023 (“RFRP”) issued by the resolution professional of the Corporate Debtor that may be contained within the Resolution Plan, to the extent allowed under applicable law. The CoC agrees that the earnest money amount of INR 5,00,00,000/- (INR Five Crore) submitted by the Resolution Applicant along with Resolution Plan, as well as the funds infused by the Resolution Applicant further to Section 4.2(l) of the Plan shall continue and also be considered performance security in terms of Clause 2.17 of the RFRP and in accordance with Clause 5.1 of the RFRP. The same may be continued to be utilized for payment of CIRP cost, and the Resolution Professional may use the infused amounts for payment of CIRP costs after the Effective Date (as defined in the Plan) until the Transfer Date (as defined in the Plan).”

- (ii) The Ld. Counsel placed reliance on the decisions of Hon’ble Supreme Court in the matter of ***K. Sashidhar v. Indian Overseas Bank & Ors, (2019) Civil Appeal No.10673 of 2018 and Essar Steel Ltd. v. Satish Kumar Gupta & Ors. (2020) 8 SCC 531*** and argued that the commercial wisdom of the CoC is paramount and not justiciable. Since the deviations have already been approved by the CoC, in exercise of its commercial wisdom, the dispensation of certain provisions of RFRP does not contravene any of the mandatory provisions of the Code and CIRP Regulations.
- (iii) A ‘request for resolution plan’ under the Code is a formal invitation made by the Insolvency Resolution Professional / Resolution Professional to Prospective Resolution Applicants to submit their proposals for resolving the insolvency of a corporate debtor. This document outlines the process,

requirements, and deadlines for submitting a resolution plan. As per Regulation 36B (5), any modification to the request for resolution plan or the evaluation matrix shall be deemed to be a fresh issue. Additionally, Regulation 32B (7) provides that the resolution professional may, with the approval of the committee, reissue request for resolution plans, if the resolution plans received in response to an earlier request are not satisfactory, subject to the condition that **the request is made to all prospective resolution applicants in the final list**. A plain reading of the aforesaid Regulations makes it clear that the modification/relaxation with respect to the provisions of RFRP cannot be granted by the CoC, even if any authority is reserved under the RFRP, without providing the same benefit to all the PRAs in the final list. In the present case, it is pertinent to note that the deviations were allowed specifically for the Nirmal Consortium, along with the approval of the resolution plan. Therefore, we are of the view that the deviations allowed by the CoC in its 22nd meeting fall outside the authority of the CoC and cannot be justified under the principle of commercial wisdom. Consequently, the decisions relied upon by the Ld. Counsel do not apply to these deviations.

9.5 Due diligence as regards the eligibility of the Resolution Applicants

- (i) Section 25(1) (h) read with Regulations 36A (8) cast a duty upon the Resolution Professionals to conduct due diligence based on the material on record in order to satisfy that (a) the PRAs comply with the criteria laid down by him with the approval of CoC to submit a Resolution Plan, (b) the applicable provisions of Section 29A, and (iii) meeting of other requirements as specified in the invitation for EOI.
- (ii) During the hearing on 11.11.2024, the Ld. Counsel for the Applicant has sought time to replace the Form H and file the modified Form H. As per the revised Form H, it is stated as under:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA-88/MB/2024 in CP(IB)-1337/MB/2020

Section of the Code/ Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/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?	Section 2.4 (Compliance with Section 29A of the Code) of Affidavit under Section 29A of the Code as per Format XI of the RFRP is provided	As per the report dated September 6, 2024 prepared by Pipara & Co. LLP for undertaking Section 29A analysis of the Resolution Applicant, we understand that the RA is not ineligible under Section 29A of the Code to submit a resolution plan

The Bench, during the hearing on 02.05.2025, again sought further clarifications with respect to Section 29A of the Code, and RP filed an affidavit stating as under.

“The RP is of the view that the members of the Nirmal Consortium are eligible under Section 29A of the Code to submit the Resolution Plan for the Corporate Debtor.”

- (iii) We observe from the report on Section 29A diligence check on the Nirmal Consortium that (a) there are criminal cases registered against Mr. Dharmesh Jain (lead member of Nirmal Consortium), Mr. Rajeev Jain

(Director of Nirmal Lifestyle Limited & relative of Mr. Dharmesh Jain) and Mr. Rajeev Jain (connected person) under Sections 406, 420, 409 read with Section 120(B) of the Indian Penal Code, and Sections 3, 4, 5, 8 and 13 of the Maharashtra Ownership of Flats Act; and (b) Mr. Dharmesh Jain and other connected persons are directors on few companies who have defaulted in filing annual financial statements. However, the criminal cases are yet to be decided. Further, relying on the decision of the Hon'ble Supreme Court in the case of ***M. K. Rajagopalan v. Dr. Periasamy Palani Gounder (2023) SCC Online SC 574*** it is stated that no formal disqualification had been made by the RoC and hence non-filing of financial statements would not attract deemed disqualification under Section 164(2) of the Companies Act, 2013.

- (iv) The Ld. Counsel for the Applicant further submits that as per Regulation 39(2) of the CIRP Regulations, the RP shall submit to the CoC all plans which comply with the requirements of the Code. Accordingly, the RP, as per his duty under the CIRP Regulations, while placing the resolution plan before the CoC for voting, had confirmed that the resolution plan is prima facie compliant with the provisions of the Code. It is further submitted that the final determination of whether a resolution applicant is eligible under Section 29A of the Code is to be taken by the CoC, and the CoC, in the present case, has considered the material on record.
- (v) However, the records do not show any discussion in the CoC as regards the observations contained in the report. We are of the view that non-consideration of the above observations, as regards eligibility of the resolution applicant under Section 29A of the Code, in the report by the CoC is a material defect in the present Resolution Plan.

9.6 Performance Security

- (i) Clause 2.17 (Performance Security) of the RFRP stipulates that the Successful Resolution Applicant shall furnish or cause to be furnished within a period of three (3) business days from the date of issuance to the Letter of Intent provide Rs. 30 Crore as performance security either by way of a performance bank guarantee or direct deposit into a bank account. However, the Nirmal Consortium submits that it has submitted an EMD of Rs. 5 Crore along with the Resolution Plan. If the Resolution Applicant is declared as Successful Resolution Applicant, the EMD amount as well as the funds infused by the Nirmal Consortium, shall be considered as performance security. However, the Plan provides that this EMD shall be utilised for payment of CIRP costs. The sanction letter of the SWAMIH Fund sanctioning Rs.388.40 Crore, which is backed by the personal guarantee of the Resolution Applicant, will be treated as the performance security.
- (ii) During the course of hearing on 19.03.2025 and 02.05.2025, the Ld. Counsel for the Applicant submits that the same has been duly accepted by the CoC in its 22nd meeting convened from 06.09.2024 to 09.09.2024.
- (iii) Regulation 36B(4A) requires the furnishing of a performance security, which will be forfeited if a Resolution Applicant fails to implement the Resolution Plan. This is collected before the Adjudicating Authority approves the Resolution Plan. Notably, the Regulations also direct forfeiture of the performance security in case the Resolution Applicant 'contributes to the failure of implementation'. The *Explanation 1* to Regulation 4A defines performance security as security of such nature, value, duration and source as may be specified in the request for resolution plans with the approval of the committee, having regard to the nature of the resolution plan and business of the corporate debtor.

- (iv) Admittedly, the Nirmal Consortium has not submitted the performance security as stipulated in the RFRP. As regards relaxation of conditions specified in the RFRP, we have already determined that there are certain provisions in the RFRP which cannot be relaxed or waived by the CoC in exercise of its commercial wisdom, more so with respect to the performance security unless a fresh RFRP is issued. It is further noticed that the Nirmal Consortium has stated that the EMD deposited along with the Resolution Plan should be treated as the performance security, and used for meeting the CIRP costs. Thus, it is clear that EMD shall be utilised first towards meeting the CIRP costs, and will not be available as security for the implementation of the Resolution Plan. The remaining component of the performance security is a mere sanction letter from SWAMIH Fund for the implementation of the project. Even the sanction letter issued by SWAMIH Fund has already lapsed and does not meet the requirements for performance security as specified in the CIRP Regulations. As a result, no performance security is available for forfeiture if the Resolution Applicant fails to implement or contributes to the failure of implementation of the Resolution Plan. Thus, the requirement to provide performance security has not been fulfilled.

9.7 Monitoring Committee

- (i) As per the Resolution Plan, a monitoring committee shall be constituted with three voting members, out of which one voting member shall be appointed by the consenting financial creditor, and another two voting members will be appointed by the Successful Resolution Applicant. In addition, a monitoring agency will be appointed jointly by the CoC and the Resolution Applicant, in the capacity of the monitoring agent, who shall be the fourth non-voting member of the monitoring committee. The decision of the monitoring committee shall be taken by a majority vote.

- (ii) It is noticed that the Authorised Representative for the home buyers had been requesting for their representative in the monitoring committee, but no representation has been provided to the home buyers.
- (iii) The monitoring committee will primarily consist of members nominated by the Successful Resolution Applicant. As a result, the monitoring committee is unable to independently oversee the implementation of the Resolution Plan. Thus, we are of the view that the monitoring committee, as proposed in the Resolution Plan, does not provide adequate means for supervision of the plan's implementation. Therefore, we conclude that the Resolution Plan lacks the mandatory components defined in Regulation 38 (2)(c) also.

9.8 Avoidance Transactions

- (i) It is observed that the following applications relating to avoidance transactions are presently pending before the Tribunal:

Sr. No.	IA. No.	Section	Amount (Rs.)
1.	IA.No.65/2024	Section 66	28357996
2.	IA.No.67/2024	Section 66	31259000
3.	IA.No.870/2024	Section 66	2280255120

Section 29A of the Code sets out the criteria for the ineligibility of a Resolution Applicant. In particular, sub clause (g) of Section 29A renders a person ineligible to be a resolution applicant if such person has been a promoter or in the management or control of the corporate debtor in which any order has been passed by the adjudicating authority pertaining to preferential transaction, under value transaction, extortionate credit transaction or fraudulent transaction. The Ld. Counsel for the Applicant relied on the decision of the Hon'ble Supreme Court in ***Hari Babu Thota (2023 SCC Online SC 1642)***, which held that the cut-off date for eligibility of a resolution applicant under section 29A of the Code is the date of submission of the resolution plan. Since no order has been passed by the

Tribunal in respect of the PUFEE transaction against the Resolution Applicant, the ineligibility under section 29A will not be attracted in the present case.

- (ii) It is further observed that Clause 3.1.4 (c) (r) of the RFRP provides that in the event any transactions is avoided/set aside by the Adjudicating Authority in terms of Sections 43, 45, 47, 49, 50 or 66 of the IBC, and/or any amount or property is received in furtherance thereof, the same shall be for the sole benefit of the financial creditors other than homebuyers and shall be a pass-through amount to the financial creditors other than homebuyers and may be appropriated or considered in a manner as may be decided by the CoC or the Financial Creditors in its absolute discretion. Such amounts received and/or receivable shall not form a part of the Successful Resolution Applicant. However, the resolution plan provides that any recovery as a result of the reversal of preferential transactions, undervalued transactions, extortionate transactions, and fraudulent trading would accrue to the benefit of the Resolution Applicants.
- (iii) It is pertinent to observe that this represents a significant change from the terms outlined in the RFRP, which were not made available to other PRAs in the final list. This situation violates Regulation 36B of the CIRP Regulations. If the same benefit were extended to other PRAs in the final list, they might also have submitted their resolution plans, given that the amount involved in the avoidance transactions is Rs. 233.98 crore.

9.9 Payment of the liquidation value to the dissenting financial creditors

- (i) The Resolution Plan originally envisaged a sum of approximately Rs. 27 Crore to the secured financial creditor- SREI over a period of time as per the resolution plan by issuance of debentures; however, owing to the dissent by SREI, they are to be paid a sum equal to the liquidation value

as per section 30(2) (b) (ii) of the Code. It is submitted that SREI would be paid approximately Rs. 29 Crore as per the computation of liquidation value.

- (ii) The Resolution Plan states that any security interest or charge created by SDPL in favour of SREI, in relation to a loan obtained by Nirmal Lifestyle Limited, shall be deemed to be fully extinguished with respect to the Corporate Debtors' liabilities and obligations concerning the said debts. It is argued that if SREI is paid the liquidation value in accordance with the provisions of the Code, the release of encumbrance over the assets of subsidiary of Corporate Debtor in the manner contemplated in the plan shall be binding on all stakeholders of the Corporate Debtor, including SREI, as mandated in section 31(1) of the Code.
- (iii) During the CoC meeting, SREI objected to the relinquishment of third-party security created over the assets of the subsidiary of the Corporate Debtor through the approval of the Resolution Plan concerning the Corporate Debtor.
- (iv) It is observed that the resolution plan deals with loans availed by the subsidiary of the Corporate Debtor and the charges created by the subsidiary company in favour of the dissenting financial creditor. In our view, this is not permissible under the resolution plan for the Corporate Debtor. Even if it is assumed that the loan availed by the subsidiary company can be dealt with in the resolution process of the Corporate Debtor, given that the Corporate Debtor is also a co-borrower and its assets are charged as security, the liquidation value of those assets should have been considered when determining the liquidation value of the dissenting financial creditor. Neglecting to account for the liquidation value of assets provided by the subsidiary company, while asserting that the resolution plan is binding on all stakeholders, including with respect to the assets and liabilities of the subsidiary company, in our considered view,

does not align with the provisions of the Code as well as the CIRP Regulations.

9.10 The resolution plan is conditional

- (i) It is observed that the Resolution Plan contains various assumptions as under:
- a) *All incentives and benefits granted to the Corporate Debtor by any Governmental Authority including State and Central Authorities shall continue to remain valid and implementing this Resolution Plan will not entitled the relevant Government Authorities to withdraw such benefits and incentives.*
 - b) *Considering that the Resolution Applicant is reviving and resolving the Corporate Debtor, the Resolution Applicant has submitted this Resolution Plan on the basis that the statutory approvals required from various authorities, and necessary amendments in contracts entered into by the Corporate Debtor with various Government Departments / public sector undertakings to enable the revival of the projects, shall be granted or renewed, and agreed to, by such authorities / departments in the ordinary course, and that the Resolution Applicant / Corporate Debtor would not be held liable or penalised by any authority for defaults / breaches committed / made by the Corporate Debtor under its previous ownership and management.*
 - c) *It is assumed that there is no stay or prohibition on the construction activities at the project sites and there shall be no such stay or prohibition on the construction activities at the project sites.*
 - d) *All licences and permissions, approvals including those granted by development and municipal and environmental and other authorities for constructions to be put up on the properties and the projects or part thereof, pre-qualifications and related licenses of the Corporate Debtor, including in relation to all its properties, utilities, establishments, undertakings, operations, are fully valid, effective and enforceable and all Licenses and Permissions of the Corporate Debtor that have lapsed, expired, been cancelled, terminated or reprocessed, have been reinstated and all non-compliances have been compounded rectified, waived or dispensed with.*

- e) *Were land has been procured or any right have been created by the Corporate Debtor by way of Memorandum of Understanding, development agreements, Power of Attorney and other documents like letter of possession, deed of confirmation, etc. with the land owners whether any encumbrance have been created by the Corporate Debtor or not will be owned by the Corporate Debtor and / or Resolution Applicants. Furthermore, the title to the whole of such properties shall stand transferred to and owned by the Corporate Debtor and or the Resolution Applicants on and from the Effective Date. Upon approval of Resolution Plan by the Adjudicating Authority, any claims from any parties on the other properties shall stand extinguished and title to the other properties shall be clear and marketable and free from all encumbrances together with all development potential relating thereto by whatever name called whether known as FSI or TDR or Fungible FSI or ancillary FSI whether available at present or in future to the Corporate Debtor and or Resolution Applicants.*
- (ii) It is further provided that in the event the Resolution Applicant fails to achieve the Key Milestones Compliance Date on or prior to the Key Milestones cut off dates, and upon written notice thereof from or on behalf of Financial Creditors in aggregates representing a simple majority (more than 50%) of Financial Creditors and homebuyers by value of admitted claims, the implementation of the Resolution Plan shall be deemed to have failed.
- (iii) The Government authorities may or may not continue the incentives granted to the Corporate Debtor, and one cannot assume that licences, approvals, and other related contracts will remain if it is lapsed, terminated, or cancelled. Additionally, the Corporate Debtor cannot perfect the title on land through the approval of the Resolution Plan. The assumptions mentioned above are conditions that impact the implementation of the Resolution Plan. It is well established that a resolution plan that is conditional in nature cannot be approved.

9.11 Expiry of CIRP.

- (i) The present status of extensions/exclusions of the CIRP period of the Corporate Debtor, as sought by the Applicant RP and allowed by the Tribunal, are as follows:

Application No.	Relief(s) Sought	Status	N(days) elapsed in CIRP period
Commencement of CIRP : 16.06.2022			
Comp. App. (AT)(Ins.) No. 698 of 2022	Exclusion of 177 days w.e.f. 12.07.2022 to 04.01.2023 (the period of CIRP stayed by Hon'ble NCLAT)	Allowed by Hon'ble NCLAT vide Order dated 04.01.2023	26 days
I.A. No. 3128 of 2024	Extension of 90 days beyond 180 days w.e.f. 09.06.2023 to 06.09.2023	Allowed by AA vide Order dated 25.07.2023 r/w. Rectification Order dated 23.08.2023	270 days
I.A. No. 4006 of 2023	Extension of 60 days beyond 270 days w.e.f. 07.09.2023	Allowed vide Order dated 30.10.2023	330 days
I.A. No. 5095 of 2023	Extension of 90 days beyond 330 days w.e.f. 05.11.2023	Allowed vide Order dated 20.12.2023	420 days
I.A. No. 5214 of 2023	Extension and/or Exclusion of 75 days towards computation of 330 days period w.e.f. 09.05.2024	Rejected vide Order dated 20.12.2023	
I.A. No. 630 of 2024	Extension of 60 days beyond 420 days w.e.f. 03.02.2024	Allowed vide Order dated 25.06.2024	480 days

I.A. No. 4163 of 2024	Extension of CIRP period until 31.07.2024 Condonation of delay for filing I.A. No. 4163 of 2024	Allowed Order 01.10.2024	vide dated	660 days
I.A. No. 3708 of 2024				
I.A. No. 5513 of 2024	Extension of 60 days until 30.09.2024 and Condonation of delay for filing the said I.A.	Allowed Order 10.12.2024	vide dated	720 days
	Application for approval of the Resolution Plan was filed on 22.10.2024.			

- (ii) The CIRP period in respect of the Corporate Debtor was extended several times, with the latest extension until 30.09.2024. Although the Resolution Plan was put to vote from 11.09.2024 to 18.09.2024, and was approved by the CoC, the application for approval of this resolution plan was filed only on 22.10.2024. There was no CoC resolution seeking an extension of the CIRP period, nor was there any application filed for such an extension. On this ground, the application filed for approval of the Resolution Plan is considered irregular.

10. Findings

- 10.1 We have already discussed in detail the observations of the Adjudicating Authority regarding the Resolution Plan. It is reiterated that Regulation 36A of CIRP Regulations prescribes each step in the process to be taken by the resolution professional to ensure adherence to timelines, provide an opportunity to all resolution applicants who submitted the expression of interest to raise objections to the inclusion or exclusion of a provisional resolution applicant in the provisional list, etc. The expression of interest

received after the time specified in the invitation for expression of interest should be rejected. The resolution professional is also required to conduct due diligence of prospective resolution applicants based on the material made available to satisfy that the prospective resolution applicant meets the eligibility criteria prescribed by the CoC, complies with the applicable provisions of Section 29A, and other requirements specified in IEOI. The final list of prospective resolution applicants is to be prepared after following all the above processes. Further, Regulation 39 of the CIRP Regulations specifies that the CoC shall not consider any resolution plan received from a person who does not appear in the final list of prospective resolution applicants or does not comply with the provisions of Section 30(2) of the Code. Thus, in the CIRP Regulations, there are certain boundaries prescribed both for the resolution professional and the CoC that need to be strictly adhered to. The CoC, in the guise of exercise of commercial wisdom, cannot ignore any express provisions of the CIRP Regulations.

10.2 In the present case, admittedly, Nirmal Consortium submitted the EOI after the time specified in the IEOI. Therefore, Nirmal Consortium was not a PRA in the final list of PRAs circulated on 10.05.2023. Therefore, considering the belated EOI from Nirman Consortium and amending the final list of PRAs to include them without issuing fresh issue of Form G, is in violation of Regulation 36A (6). Additionally, CoC granted several relaxations from the provisions of RFRP to Nirmal Consortium without giving the same benefit to all the PRAs in the final list, thereby contravening Regulation 32B (7) of the CIRP Regulations.

10.3 The committee of creditors is bestowed with multiple responsibilities to protect the interests of all creditors, including the homebuyers and operational creditors, ensure adequacy of the mechanism to supervise the

implementation of the resolution plan, assessing the feasibility and viability of the resolution plan and verifying the capability of the resolution applicant to implement the resolution plan. It is well established that the commercial decision of the committee of creditors is not justiciable, thereby taking us to the intrinsic assumption that CoC has considered all the above aspects, though there are no detailed discussions recorded in the minutes of the CoC. However, we cannot ignore the fact that a portion of the land within the larger area is proposed to be demerged for use by another party. If the resolution plan fails, reclaiming this land for the Corporate Debtor could present significant challenges. Additionally, the Nirmal consortium has not offered any performance security, which can be forfeited in the event of non-implementation of the Resolution Plan.

- 10.4 Furthermore, the Resolution Plan is conditional on account of the stipulation of many assumptions, such as the continuance of statutory approvals and licenses as well as transfer of title to all the properties regardless of the Memorandum of Understanding, Power of Attorney, and other documents executed with the land owners.
- 10.5 Based on the above discussions, we conclude that (a) the Resolution Plan submitted for approval of this Tribunal does not meet all the criteria laid down in sub-section (2) of Section 30 of the Code read with Regulations 36A and 39 of the CIRP Regulations on account of its contravention of provisions of the law and non-conformity to the requirements specified by IBBI; (b) there has been material irregularity in the CIRP including expiry of CIRP period; and (c) the other irregularities noted in the Resolution Plan as discussed above.

Consequently, **IA (IBC) Plan No. 88/2024** seeking approval of the Resolution Plan is **dismissed and Plan is rejected**. The Applicant is

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA-88/MB/2024 in CP(IB)-1337/MB/2020

directed to take further steps in accordance with the Code for initiating the liquidation of the Corporate Debtor.

Sd/-

**ANIL RAJ CHELLAN
MEMBER (TECHNICAL)**

Sd/-

**K. R. SAJI KUMAR
MEMBER (JUDICIAL)**