

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

I. A. No. 976 of 2020

I. A. No. 729 of 2021

In

C.P. No. 4301/IB/2018

In the matter of an Application under
Section 30(6) and Section 31 of the
Insolvency and Bankruptcy Code, 2016
read with Rule 39 of Insolvency &
Bankruptcy Board of India (Insolvency
Resolution Process for Corporate
Persons Regulations, 2016

In the matter of
BMW India Financial Service Pvt. Ltd.
....Operational Creditor
v/s.
S.K. Wheels Pvt. Ltd.
.... Corporate Debtor

I.A. No. 976/2020

In the matter of an Application under
Section 60(5) and read with Section 31
of the Insolvency and Bankruptcy
Code, 2016

Mr. Vishal Ghisulal Jain

... Applicant/
Resolution Professional

I.A. No. 729/2021

M/s. Piramal Capital and Housing
Finance Ltd.

... Applicant
v/s.

1. Anil Kumar (Resolution Applicant)
2. Vishal G. Jain (Resolution Professional)



... Respondents

Order delivered on 09.11.2021

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Mr. Aniruth Purusothaman, Advocate for
Applicant in MA No. 976 of 2020
Mr. Amar Vivek, Advocate for Resolution
Applicant
Mr. Anil Kumar, Resolution Applicant-in-person
Mr. Aditya Shiralkar, Advocate for Applicant in IA No.
729 of 2021

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

ORDER

1. This is an Application under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 (the Code) filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant Mr. Anil Kumar.
2. The facts leading to the Application are as under:
 - i. Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by this Bench by an order dated 29.03.2019 (Admission Order) and Mr. Vishal Ghisulal Jain was appointed as Interim Resolution Professional. The IRP published a public announcement on 16.06.2019 inviting claims from the creditors of the Corporate Debtor. The CoC in its 1st meeting held on 02.05.2019 appointed (the present Applicant) as the Resolution Professional (RP).
 - ii. Thereafter, Interim Resolution Professional upon verification of the same, constituted the CoC. Pursuant to the public



announcement RP received one Expression of Interest from the Prospective Resolution Applicant (PRA).

- iii. The Applicant in compliance of the provisions of the Code and Rules framed there under conducted the CIRP of the Corporate Debtor.
3. During the period of CIRP the RP issued Form-G on 16.06.2019 inviting expressions of interest (EOI) in "Free Press Journal, Mumbai Edition" in English and "Navshakti" in Marathi from prospective resolution applicants (PRAs). The last date for receiving the expression of interest was 01.07.2019 and last date for submission of Resolution Plan was 15.08.2019. The Applicant received one EOI from Prospective Resolution Applicants (PRA) Mr. Anil Kumar, who is the promoter of the Corporate Debtor. The resolution plan along with information memorandum, evaluation matrix was issued to the PRA. The Applicant further states that PRA requested for the extension of the last date for submission of the Resolution plan from 16.08.2019 to 16.09.2019. Further, with the consent of the CoC the last date for submission of resolution plan was extended till 16.09.2019. The Applicant received resolution plan from the Mr. Anil Kumar (the prospective resolution applicant).
4. It is worthwhile to mention that this Tribunal, in respect of the timelines of the CIRP of the Corporate Debtor, has passed an order of extension of 90 days vide order dated 24.09.2019. The CIRP thus stood extended from 25.09.2019 to 23.12.2019.
5. The CoC decided to appoint a Valuer. The RP accordingly appointed six registered valuers to determine the fair value and liquidation value of the Corporate Debtor, as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016. Subsequently,



registered valuers namely Mr. Puneet Tyagi, Mr. Vijay Bhatia, Mr. Dharam Pal Bhatia, Mr. Alok Kaushik, Mr. Gunjan Agarwal and Mr. Prateek Mittal were appointed to determine the fair value and liquidation value of the assets of the corporate debtor. These valuers had submitted their reports. The Liquidation and fair value of the Corporate Debtor is as follows:

Registered Valuers	Liquidation Value (Amount in Rupees)		Fair Value (Amount in Rupees)
Land and building			
Mr. Puneet Tyagi	37,22,55,735		46,53,19,669
Mr. Vijay Bhatia	35,68,80,325		42,74,60,758
Average of 1 & 2	36.45,68,030		44,63,90,214
Plant & Machinery			
Mr. Dharam Pal Bhatia	7,10,14,925		9,43,44,652
Mr. Alok Kaushik	4,46,50,346		5,75,83,127
Average of 1 & 2	5,78,32,636		7,59,63,890
Securities or Financial Assets			
Mr. Gunjan Agarwal	3,38,90,412		5,21,35,402
Mr. Prateek Mittal	7,82,926		7,82,926
Average of 1 & 2	1,73,36,669		2,64,59,164
Combined total	43,97,37,335		54,88,13,267

6. The Applicant submits that in the 7th meeting of the CoC held on 18.11.2019, the Applicant received resolution plan from Mr. Anil Kumar (Resolution Applicant). The Applicant/RP negotiated with the Resolution Applicant to make the resolution plans more robust and to improve the same.
7. The RP submits that the Corporate Debtor falls under the category of Micro, Small and Medium Enterprises as per the certificate of Registration tabled before the CoC and hence the ineligibility to submit Resolution Plan as per section 29A(h) of the Insolvency and



Bankruptcy Code, 2016 is not applicable to the Resolution Applicant in terms of Section 240A(1) which is reproduced as under:

"Section 240A. Application of this Code to Micro, Small and Medium enterprise:-

(1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process of any micro, small and medium enterprises."

8. The CoC in its 12th meeting held on 23.01.2020 considered the revised and final Resolution Plan submitted by Mr. Anil Kumar and approved the Plan with the voting share of 75.78% of the members of the Committee of creditors and the said Resolution Plan consists of the following:

- Provides for payment of Insolvency Resolution Process Costs in a manner specified by the board in priority to the payment of other debts of Corporate Debtor.
- Provides for payment of the debts of the Operational Creditors in such manner as specified by Regulation 38(1) of the IBBI (Insolvency Resolution Process for Corporate Persons Regulations) 2016.
- Provides for management of the affairs of the Corporate Debtor after the approval of the Resolution plan.
- Does not contravene any of the provisions of the law for the time being in force.

Accordingly, compliance certificate in Form "H" was issued by the Resolution Professional.

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

A. The Resolution Applicant is the Founder and Managing Director of S. K. Group of Companies. The Resolution



Applicant is the promoter of the Corporate Debtor which was first classified as Non-Performing Asset on 31.03.2018. However, one year has not lapsed from the date of first NPA till the date of initiation of CIRP of the Corporate Debtor i.e. 29.03.2019 and hence the Resolution Applicant does not fall within the ambit of Section 29A(c) of Insolvency and Bankruptcy Code.

- B. The Corporate Debtor has incorporated in 2004 and was engaged in automobile dealership and ancillary services business, headquartered in Navi Mumbai was an authorised dealer of Maruti Suzuki since 2006.
- C. The Resolution Applicant has proposed to maximise the underlying value in the business to carry out two businesses 1. Auto Dealership and workshop Business and 2. Real Estate Development business. The Corporate Debtor is engaged into Auto Dealership and Workshop business. The Resolution Applicant propose to continue the workshop business and also diversify into multi brand car servicing business, providing third party products & ancillary services life insurance, spare parts, accessories etc. on commission basis which would cater to different brands and help to position itself to different clients in the market. The Resolution Applicant, having good experience in Real Estate Development, proposes to develop the project as a part of joint venture development for their parties.
- D. In order to maximise the value of assets and provide distinct focus to the diverse business segments of the



Company, as a part of the Resolution plan approval, there will be demerger of the Company into two separate companies. The existing company S K Wheels Pvt. Ltd. shall carry out the real estate business. A demerged resulting entity shall be formed which will carry out the auto dealership and workshop business. Detail of the proposed demerger are provided below:

- i. It is proposed that under the Resolution plan, the Company will demerge the Auto Dealership and workshop Business ("ADWB") from the Corporate Debtor into a Private Limited Company ("Resulting Entity").
- ii. As a part of the demerger, all the assets and liabilities (including corresponding resultant debt of the financial creditors under the Resolution plan relating to the Auto Dealership and workshop business shall be transferred to the Resulting Entity except the Land & Building owned by the Corporate Debtor, situated at Plot No. D-267, TTC Industrial Area, MIDC, Turbhe (Navi Mumbai) and the proportionate loan allocable Bank as proposed in the Resolution plan.
- iii. The Resulting entity shall retain land and Building (except the Land & Building situated at Plot No. D-267, Turbhe) at WDV of Rs. 73.25 crs. Along with other current and non-current assets valued at Rs. 10.57 crs. As per the assets and liabilities statement dated 29th March 2019 and proportionate loan payable to the lenders Rs. 57.95 crs as per the indicative payments envisaged in the Resolution Plan.
- iv. The Resulting Entity will issue in consideration of the demerger, it shares the shareholders of Demerged



Entity on a proportionate basis based on the swap ratio as given in the clause fresh issuance of equity shares.

- v. The Demerger shall be in accordance with all conditions laid out under section 2(19AA) of Income Tax Act, 1961.

10. The Resolution Plan proposes payment of INR 10.07 Crores will be paid upfront in the form of Equity within 60 days from the date of Approval of Resolution Plan by Hon'ble Adjudicating Authority in the following manner:

Sr. No.	Description	Amount (Rupees in Crore)
1	Insolvency Resolution Process Costs (IRPC)	4.02
2	Financial Creditors	2.80
3	PF, ESIC & Gratuity Dues	2.19
4	Workmen Dues	0.23
5	Employee Dues	0.06
6	Other Operational Creditor	0.29
7	Statutory Liabilities	0.22
8	Other Dues	0.01
9	Working Capital (Workshop)	0.25
	Total	10.07

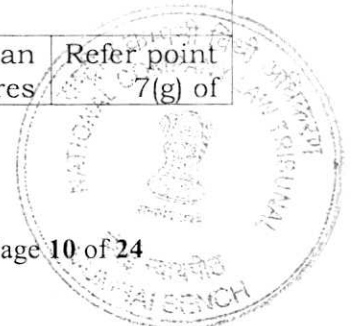
11. The payment proposed to be made under the Resolution Plan and addendum to the Resolution Plan dated 15.02.2020 proposes an amount of Rs. 132.85 Crores as a full and final settlement of all liabilities of the Corporate Debtor (including CIRP costs), in the following manner:



Particulars	Amount payable	Description and timeline	Detailed description of proposal
Treatment of CIRP Coast and Operational Creditors (other than Financial Creditor)			
CIRP Costs	4.02 Crores in total towards the CIRP including the amount for interim finance and IRPC	Payment of CIRP cost of Rs. 4.02 Crores in total towards CIRP including the amount for interim finance and IRPC. In case the IRPC (Insolvency Resolution Process Cost) exceeds the threshold of Rs. 4.02 Crores, such additional pay out shall be adjusted from the proposed upfront payment for the Financial creditors under the Resolution Plan. IRPC shall be paid at actuals by the Resolution Applicant within 60 days from the date of Approval of Resolution Plan by the Hon'ble Adjudicating Authority and shall be paid in priority to the payment of other debts of the Corporate Debtor.	Refer point 7 (a) of Resolution Plan
Workmen	0.23 Crores subject to verification	The dues shall be payable within 60 days from the date of approval of the Resolution Plan and shall not carry any interest or penal charges. In case there are any upward changes in the amount claimed in workmen dues as on 29.03.2019, such incremental amount would not attract additional payment under the Resolution Plan. Instead, the proposed pay out of Rs. 0.23 Crores towards workmen dues shall get paid proportionately.	Refer point 7(d) of Resolution Plan
Employees	0.06 Crores	Claims of the employees are proposed to be settled at Rs. 0.06 Crores subject to verification. The dues shall be payable within 60 days from the date of approval of the Resolution Plan and shall not carry any interest or penal charges. In case there are any upward revision in the amount claimed in	Refer point 7(e) of Resolution Plan



		employee dues as on 29.03.2019, such incremental amount would not attract additional payment under Resolution Plan. Instead, the proposed pay out of Rs. 0.06 Crores towards employee dues shall get paid proportionately.	
Operational creditors, other than Provident Fund, Employee State Insurance, Gratuity, Employees and Statutory Dues	0.29 Crores	<p>The Resolution Plan proposes to pay a maximum amount of Rs. 0.29 Crores to Operational Creditors other than Provident Fund, Employee State Insurance, Gratuity, Employees and Statutory Dues.</p> <p>The amount of Rs. 0.29 Crores shall be payable on pro-rata basis the total claim admitted.</p> <p>In case there are any upward revision in the claims of the Operational Creditor, the same shall not be revised upwards and shall be redistributed amongst the Operational Creditors based on the revised claims received.</p>	Refer point 7(f) of Resolution Plan
Provident Fund, Employee State Insurance and Gratuity Dues	2.19 Crores	Provident Fund, Employee State Insurance and Gratuity Dues are proposed to be settled at Rs. 2.19 Crores which shall be payable upfront within 60 days from the date of approval of the Resolution Plan.	Refer point 7(c) of Resolution Plan
Treatment of Financial Creditors			
Financial Creditors	125.58 Crores (Rs. 2.80 Crores upfront)	Rs. 125.58 Crores as full and final settlement out of which Rs. 2.80 Crores less additional IRPC, shall be paid as an upfront payment to the Financial Creditors within 60 days from the approval date. The balance payment of Rs. 122.78 Crores shall be paid over a period of 5 years from the Approval date as proposed in the Resolution Plan.	Refer point 7(b) of Resolution Plan
Treatment of other Liabilities and remaining debt			
Statutory Liabilities	0.22 Crores	Resolution Plan propose to pay an amount of Rs. 0.22 Crores	Refer point 7(g) of



		towards the total dues towards statutory Liabilities and shall be payable on pro-rata basis against the total statutory dues claimed. The proposed payment shall be made upfront within 60 days from the date of approval of the Resolution Plan and shall not carry any interest penalty and delay charges.	Resolution Plan
Any remaining debt and dues	0.01 Crores	Other dues comprise of the customer dues for which an amount of Rs. 0.01 Crores have been proposed under the Resolution plan as against admitted of Rs. 1.44 Crores and the same shall be paid within 60 days from the date of approval of the Resolution Plan.	Refer point 7(h) of Resolution Plan
Working Capital (Workshop)	0.25 Crores	NA	NA
Total Resolution Plan Amount	132.85 Crores	-	-

12. Note 1: CIRP Costs:

Payment of CIRP cost of Rs. 4.02 Crores in total towards CIRP including the amount for interim finance and IRPC. In case the IRPC (Insolvency Resolution Process Cost) exceeds the threshold of Rs. 4.02 Crores, such additional pay out shall be adjusted from the proposed upfront payment for the Financial creditors under the Resolution Plan.

IRPC shall be paid at actuals by the Resolution Applicant within 60 days from the date of Approval of Resolution Plan by the Adjudicating Authority and shall be paid in priority to the payment of other debts of the Corporate Debtor.



Note 2: Operational Creditors other than Provident Fund, Employee State Insurance, Gratuity, Employees and Statutory Dues-

As per Section 30(2)(b) of IBC, the Operational creditors shall be paid not less than the amount which would be payable in the event of liquidation. The Resolution Plan proposes to pay a maximum amount of Rs. 0.29 Crores to Operational Creditors other than Provident Fund, Employee State Insurance, Gratuity, Employees and Statutory Dues.

The Resolution plan states that the proposed payment to Operational Creditors shall not carry any interest, penal charges, warranty charges, detention charges, breakdown charges, etc.

In case there are any upward revision in the claims of the Operational Creditor, the same shall not be revised upwards and shall be redistributed amongst the Operational Creditors based on the revised claims received.

Note 3: Payments to Financial Creditor –

Payment to financial creditors — Resolution Applicant propose to pay Rs. 125.58 Crores as full and final settlement out of which Rs. 2.80 Crores less additional IRPC, shall be paid as an upfront payment to the Financial Creditors within 60 days from the approval date. The balance payment of Rs. 122.78 Crores shall be paid over a period of 5 years from the Approval date as proposed in the Resolution Plan.

Note 4: Payments to Workmen –



Payment towards Workmen - are proposed to be settled at Rs. 0.23 Crores subject to verification.

The dues shall be payable within 60 days from the date of approval of the Resolution Plan and shall not carry any interest or penal charges.

Payment to Employees – claims of the employees are proposed to be settled at Rs. 0.06 Crores subject to verification.

The dues shall be payable within 60 days from the date of approval of the Resolution Plan and shall not carry any interest or penal charges.

Payment for Provident Fund, Employee State Insurance and Gratuity Dues – the principal amount of Provident Fund, Employee State Insurance and Gratuity Dues are proposed to be settled at Rs. 2.19 Crores which shall be payable upfront within 60 days from the date of approval of the Resolution Plan.

The Resolution Applicant seeks a waiver on interest and penalty charges levied on the said liability of the Corporate Debtor.

Payment to Equity Shareholders – all issued and paid up equity shares outstanding as on the CIRP date shall be cancelled and that such reduction/ cancellation of paid up equity shares shall not require any other procedure as required under any applicable laws.

As a part of the Resolution Plan, the Resolution Applicant shall infuse a total of Rs. 10 Crores as Equity Share capital. Out of the proposed infusion of Rs. 10.00 Crores,



Rs. 4.02 Crores shall be infused in the corporate Debtor i.e. S.K. Wheels Pvt. Ltd. and the balance of Rs. 5.98 Crores shall be infused in the newly incorporated company.

Post issuance of the said equity shares the Resolution Applicant and its affiliates shall hold 100% Equity Share Capital in both the companies.

Payment towards Statutory Liabilities – the Resolution Plan propose to pay an amount of Rs. 0.22 Crores towards the total dues towards statutory Liabilities and shall be payable on pro-rata basis against the total statutory dues claimed.

The proposed payment shall be made upfront within 60 days from the date of approval of the Resolution Plan and shall not carry any interest penalty and delay charges.

Any remaining debt and dues- the other dues comprise of the customer dues for which an amount of Rs. 0.01 Crores have been proposed under the Resolution plan as against admitted of Rs. 1.44 Crores and the same shall be paid within 60 days from the date of approval of the Resolution Plan.

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

Creditors	Amount Claimed	Amount Admitted	Amount under Plan	% of Claim Amount
Financial Creditor				
Dissenting Secured FCs				



Union Bank of India	21,55,27,834	21,55,27,834	1,90,40,667	8.83
Piramal Capital Housing & Finance Ltd.	15,31,56,271	15,31,56,271	1,35,30,491	8.83
BMW India Financial Services Pvt. Ltd.	9,59,50,960	9,59,50,960	84,76,725	8.83
The Federal Bank Ltd.	3,16,24,268	3,16,24,268	27,93,825	8.83
TATA Capital Financial Services Ltd.	3,85,75,225	3,85,75,225	34,07,903	8.83
Axis Bank Limited	1,57,34,685	1,49,99,272	13,25,101	8.83
AU Small Finance Bank Ltd.	46,79,635	46,79,635	4,13,419	8.83
Shriram Transport Finance Co. Ltd.	21,01,877	21,01,877	1,85,689	8.83
Oriental Bank of Commerce	10,10,07,107	10,10,07,107	89,23,407	8.83
Other Secured FCs				
The Cosmos Co-Op. Bank Ltd.	1,28,82,14,251	1,28,82,14,251	80,03,81,771	62.13
State Bank of India	22,00,48,219	21,94,86,639	1,93,93,405	8.84
Hewlett-Packard Financial Services (India) Pvt. Ltd.	3,70,53,999	3,70,36,155	52,71,935	14.23
HDFC Bank	29,05,497	27,91,828	28,11,642	100.71
ICICI Bank Ltd.	33,29,721	23,24,137	14,00,000	60.24
Edelweiss Asset Reconstruction Company Ltd.	53,96,99,227	53,96,36,870	29,29,63,119	54.29
IDFC First Bank Ltd. (Earlier Capital First Ltd.)	13,02,14,653	12,99,83,204	5,54,83,282	42.68
Dissenting Unsecured Creditors				
MAS Financial Service Ltd.	3,55,64,167	3,55,64,167	31,41,893	8.83
United Petro Finance Limited	1,13,54,170	1,13,54,170	10,03,077	8.83
Incred Financial Services Ltd. (Earlier known as Visu Leasing &	16,04,751	15,38,666	1,35,932	8.83



Finance & Finance Ltd.				
Neogrowth Credit Pvt. Ltd.	77,15,312	74,57,117	6,58,794	8.83
Jain Sons Finlease Ltd.	1,12,67,706	1,12,67,706	9,95,438	8.83
Saraswat Co-Op Bank Ltd.	49,79,716	49,79,716	4,39,930	8.83
Shriram City Union Finance Ltd.	47,15,023	47,15,023	4,16,546	8.83
Bajaj Finserv Ltd.	45,66,800	41,23,008	3,64,244	8.83
Suresh A. Nagpal	27,00,000	27,00,000	2,38,530	8.83
Atmaram Kherjamal HUF (Karta Ramchand A. Nagpal)	25,00,000	25,00,000	2,20,861	8.83
Atrnaram Broking Co. LLP	25,00,000	25,00,000	2,20,861	8.83
Ramchand A. Nagpal	23,75,000	23,75,000	2,09,818	8.83
Dilipkumar A. Nagpal	21,25,000	21,25,000	1,87,732	8.83
Other Unsecured Creditors				
Epimoney Pvt. Ltd. (Flexi loans)	53,78,212	51,69,488	4,56,695	8.83
Arohan Financial Services Pvt. Ltd. (Erstwhile known as Intellectash Microfinance Network Company Pvt. Ltd.)	51,44,775	51,44,775	4,54,512	8.83
Operational Creditor				
Operational Creditors	39,73,84,997	29,05,26,913	29,05,269	1.00
Government (Note1)	43,18,18,149	43,18,18,149	21,75,558	0.50
Others (Customers)	1,53,95,315	1,43,65,025	1,43,970	1.00+
Employees & Workmen				
Workmen	54,40,087	54,40,087	22,77,764	41.87
Employees	1,12,95,123	1,12,95,123	5,64,756	5.00
Other debts & Due				



Gratuity: Workmen (Note2)	12,73,805	12,73,805	12,73,805	100.00
Gratuity: Employees (Note 2)	31,61,340	31,61,340	31,61,340	100.00
Provident Fund (Note 3)	1,82,45,436	1,82,45,436	1,40,00,000	76.73
ESIC (Note 4)	63,73,868	34,67,643	34,67,643	100.00

Note 1: Government Dues: Claim has not been filed by all. So amount admitted has been taken as per books of account for those who have not filed a claim.

Note 2: No claim has been filed. It has been admitted as per working given by HR.

Note 2: No claim has been filed. Amount Claimed has been taken as per order passed. The Resolution Applicant has proposed to pay 100% towards principal amount of Rs.1,40,00,000/-. Balance amount is interest and penalty which is not proposed to be paid in the plan.

Note 3: No claim has been filed. Amount Claimed has been taken as per order passed which is disputed and rectification application has been filed. Amount as per books has been admitted.

14. The indicative timeline of events for implementation of Resolution plan from approval date is as follows:-

Activity post approval process and settlement of creditors	Timeline (days)
Approval by NCLT (A=Approval date)	A
Notice on the Company's Website	A+30
Intimation to the MCA, CoC, IBBI, Tax Authorities and various other Statutory Authorities (as applicable)	
Intimation to all creditors, existing Shareholders and other Stakeholders of the Company	
Other Approval/filing required under the plan -filing of various documents with MCA -Other Authorities	A+180
Payment of CIRP Costs	A+60
Payment of Workmen & Employee due	A+60
Payment to secured financial creditor i. Upfront Payment ii. Asset Monetisation	A+60 A+365



iii. Outer timeline	A+1825
Payment to statutory dues	A+60
Payment to other Operational Creditor	A+60
Implementation of proposed plan	
Execution of Definitive Agreement, if any, with CoC/RP on approval of plan by AA to implement the Approved plan	A+30
Extinguishment of old shares of the Existing Shareholders	A+30
Infusion of funds by equity through issue of new shares to the RA	A+60
Settlement of upfront payment as per the approved Resolution Plan	A+60
Formation of Management of the Company- <ul style="list-style-type: none"> • Constitution of New Board • Appointment of key managerial personnel • Appointment of statutory and internal Auditors (if required) 	A-180

15. Observations and findings:-

- i. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor in terms of Section 30(2)(c). The Plan also provides for implementation of provision of the Resolution Plan as stated above as per Section 30(2)(d). The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
 - a) Payment to Operational Creditor will be made in priority over Financial Creditor (Regulation 38(1)(a)).



- b) Since the plan has been approved by 75.78% voting share of the CoC. This is in compliance of Regulation 38(1)(b) of the Regulations.
 - c) Declaration by the Resolution Applicant that the Resolution Plan has considered the interest of all the stakeholders of the Corporate Debtor, keeping in view the objectives of the Code (Regulation 38(1A)).
 - d) Declaration by the Resolution Applicant that neither the Resolution Applicant nor any of his related party has either failed or contributed to the failure of the implementation of any other approved Resolution Plan.
- ii. The Resolution Plan has been approved in the 12th meeting of the CoC held on 23.01.2020 with 75.78% votes in accordance with the provisions of the Code.
- iii. The Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.*: (2019) SCC Online SC 1478 and in ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150***, 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 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 confirm to the stated requirements.

16. In view of the above observations and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. There are no workers claims. Resolution Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders. Therefore, this Bench in the above background has no option except to approve the present Resolution Plan submitted by the Resolution Applicant. Accordingly this Bench hereby pass the following :-

ORDER

- i. The Resolution Plan submitted by **Mr. Anil Kumar** is hereby approved. It shall become effective from the date of approval and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due,



Resolution Applicant, guarantors and other stakeholders involved in the Resolution Plan.

- ii. We shall clarify here that the Resolution Applicant shall take over the corporate debtor with all its assets and liabilities as per terms as approved in the Resolution plan. This Bench cannot allow any general power to Resolution applicant absolving him from the liability of the corporate debtor company, without knowing about the liability against which such exemption is sought. In other words, relief/ exemptions from only existing liabilities which are specifically identified are deemed to have been allowed and approved in the Resolution plan.
- iii. It is seen that the Resolution Plan seeks several dispensations, concessions and waivers. Approval of Resolution Plan does not mean automatic waivers. The Resolution Applicant on approval of the Plan may approach those competent authorities/ courts/ legal forms/ office(s) Government or Semi-Government/ State or Central Government for appropriate relief(s) sought in the plan.
- iv. The Resolution applicant shall obtain the necessary approvals required under any law for the time being in force within one year from the date of this order or within such period as provided for in such law, whichever is later.
- v. Given the above observations, we approve the resolution plan with modifications, as mentioned above, which shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors, Resolution Applicant and other stakeholders involved in the resolution plan.



- vi. The Resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the Resolution plan to the IBBI to be recorded on its database. The Resolution Professional is hereby discharged of his duties after handing over the documents to the Resolution Applicant and it taking charge.
- vii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the concerned Registrar of Companies (RoC), 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.
- viii. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- ix. The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- x. 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.
- xi. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.



- xii. The Interlocutory Application No. 976 of 2020 is accordingly allowed and disposed of.

IA No. 729 of 2021

1. The above Interlocutory Application is filed by the Applicant M/s. Piramal Capital and Housing Finance Ltd., praying this Bench to reject the Resolution plan submitted by the Resolution Applicant who is an Ex-promoter and Director of the Corporate Debtor, on the ground that the Resolution plan was submitted by former managing director of the Corporate Debtor in connivance with the Resolution Professional who is the Respondent No.2 in the above Interlocutory Application.
2. The main contention of the Applicant in the above Interlocutory Application is that M/s. SK Elite acting through the Respondent No. 1 sold away certain mortgaged properties mortgaged under a Deed of Mortgage dated 24.08.2017, executed between the said M/s. SK Elite and M/s. Piramal Trusteeship Services Ltd. by the managing director of the Corporate Debtor.
3. It is pertinent to mention here that the present Applicant who is having 5.2 % voting share in the CoC, voted against the Resolution Plan and the Resolution Plan was approved with majority voting of 75.78% that is more than the required percentage, since the Applicant is having a miniscule percentage of voting share.
4. The Corporate Debtor being an MSME, submission of Resolution plan by ex-promoter and director is permissible as per Section 240A of the Code and Section 29A of the Code shall not apply to the Resolution Applicant in respect of the Corporate Insolvency Resolution Process of Micro, Small and Medium Enterprises. The above issue with respect to the alleged disability of the Resolution Applicant has been explained and deliberated in the CoC. Therefore, there is no point in once again raising the same issue by the



Petitioner. Even otherwise this Adjudicating Authority has no power to reject the Resolution Plan duly approved by the CoC with the required percentage of voting, unless the Resolution Plan does confirm to the requirement referred in Sub-Section 1 of Section 31 of the Code, as per the law laid down by the Hon'ble Supreme Court in various judgments including in the judgement of Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. (2019) SCC Online SC 1478 and K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150).

5. In view of the above facts and circumstances and the legal position, the above Application filed by Piramal Capital and Housing Finance Ltd. has no legs to stand and is liable to be rejected both on merits as well as in view of approval of Resolution plan by this Bench as per the commercial wisdom of the CoC.

6. Accordingly, the above Interlocutory Application No. 729 of 2021 stands rejected.


Sd/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-

H. V. SUBBA RAO
MEMBER (JUDICIAL)

Certified True Copy
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On 18/11/2021


Deputy Registrar
National Company Law Tribunal Mumbai Bench
Government of India

