

Eligibility Criteria for of Resolution Plan for Pearl Vision Private Limited

The eligibility criteria for submission of Resolution Plan for Pearl Vision Private Limited are as follows:

(a) Any artificial person including private limited company or public limited company registered under the Companies Act, 1956 or 2013, Limited Liability Partnership (LLP) or SEBI registered Alternative Investment Fund (AIF) or a company incorporated outside India, which is eligible to invest in India under the laws of India either as a sole resolution applicant or as part of a consortium.

(b) The shareholding of the special purpose vehicle incorporated by the consortium shall be same as the shareholding of members in consortium.

(c) Prospective Resolution Applicant must be a fit and proper person, should not suffer from any legal disability to be a promoter under the applicable laws

(d) Potential Resolution Applicant's competence and capability are proposed to be established broadly by the following parameters:

1. Financial Capacity
2. Provisions of Section 29A of Insolvency and Bankruptcy Code, 2016 ("IBC")

1. Financial Capacity :

1) Category A - In case of a private/ public limited company, LLP, body corporate incorporated in India:

- Minimum tangible net worth (TNW) of Rs. 50 Crore (as per Companies Act, 2013) as per the audited balance sheet at the end of the immediately preceding completed financial year, but not earlier than March 31, 2018.

2) Category B - In case of Financial Investors (FI) / Mutual Funds / Private Equity/ Venture Capital Funds, Domestic/ foreign Investment institutions, Non-Banking Finance Companies (NBFC), Asset reconstruction Companies, Banks and similar entities:

- Total assets under Management (AUM) / Loan Portfolio shall be at least Rs. 500 Crore at the end of the immediately preceding completed financial year, but not earlier than March 31, 2017;
OR

- FI as defined under Section 45-1(c) of RBI Act.
- NBFC as defined under Section- 45-1(f) of RBI Act.

3) Category C- In case of bidding as a consortium:

- Lead member must hold at least 20% equity in the consortium. All other members would need to have a minimum stake of 10% each in the consortium (for all categories).

- In case the consortium is of body corporate, TNW of consortium shall be calculated based on their weighted average i.e. the aggregates of such portions of their TNW as is proportionate to their shareholding in the consortium will count towards the qualification criteria of TNW under this EoI. The consortium per-se should satisfy condition of Category A.

- In case the consortium is of FIs/Funds/PE Investors/NBFCs/Any other applicants, the minimum AUM of consortium shall be calculated as weighted average of individual member's AUM OR Committed funds available for investment/deployment in Indian companies shall be calculated as weighted average of individual member's committed fund to investment/deployment in Indian companies. Provided that only such portion of their AUM/Committed Funds as is proportionate to their shareholding in the consortium will count towards the qualification criteria of AUM/Committed Funds under this EoI and each member shall individually qualify condition of Category B.

- If members are from Category A & B, the criteria for TNW/AUM would again be based on weighted average i.e. it will be in proportion to their shareholding in the consortium. All the consortium members should satisfy the criteria independently in their respective category.

- No change in lead member or any member whose financials have been used to meet the criteria set out herein shall be permitted after the last date for submission of EoI.

2. Provisions of Section 29A of IBC :

Potential Resolution Applicant must be eligible to submit Resolution Plan in accordance with provision of Section 29A of IBC. For this purpose, the Potential Resolution Applicant should give a declaration supported by affidavit stating that it does not suffer from any disqualification provided in Section 29A of IBC. In case of Resolution Applicants submitting the Resolution Plan jointly, the declaration and affidavit needs to be submitted by each such Resolution Applicant. However, a Resolution Applicant(s) suffering from a disqualification under Section 29A (c) may submit a resolution plan, provided that it undertakes that it will make payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan and that it will submit a written acknowledgement of such payment at least one day before the last day of submission of resolution plan.

As per the provisions of Section 29A of the IBC, a person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

(a) is an undischarged insolvent;

(b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);

(c) at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to nonperforming asset accounts before submission of resolution plan:

Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

Explanation I.- For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the

corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

Explanation II.— For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;

(d) has been convicted for any offence punishable with imprisonment –

(i) for two years or more under any Act specified under the Twelfth Schedule; or

(ii) for seven years or more under any law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person referred to in clause(iii) of Explanation I

(e) is disqualified to act as a director under the Companies Act, 2013 (18 of 2013):

Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;

(f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code:

Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;

(h) has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code and such guarantee has been invoked by the creditor and remains unpaid in full or part;

(i) is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

(j) has a connected person not eligible under clauses (a) to (i).

Explanation I. — For the purposes of this clause, the expression "connected person" means—

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;

Explanation II—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely:—

(a) a scheduled bank;

(b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;

(c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999 (42 of 1999);

(d) an asset reconstruction company register with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(e) an Alternate Investment Fund registered with Securities and Exchange Board of India;

(f) such categories of persons as may be notified by the Central Government.