

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 579/KB/2024

And

I.A. (IB) No. 580/KB/2024

And

I.A. (IB) No. 606/KB/2023

And

I.A. (IB) No. 594/KB/2023

And

I.A. (IB) No. 909/KB/2023

And

I.A. (IB) No. 1033/KB/2023

And

I.A. (IB) (Plan) No. 1/KB/2024

In

Company Petition (IB) No. 56/KB/2019

IN THE MATTER OF:
STATE BANK OF INDIA

... Financial Creditor.

Versus

SIMPLEX PROJECTS LIMITED

... Corporate Debtor.

And

I.A. (IB) No. 579/KB/2024

***An Application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016, read with Rule 11 of the National
Company Law Tribunal Rules, 2016.***

IN THE MATTER:

GDC Buildcon Pvt. Ltd., a company registered under the provisions of the Companies Act, 1956, having its registered office at Plot No. 7, Sector No. 17, Roadpali, Kalamboli, Navi Mumbai 410218.

... Applicant.

Versus

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
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I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024

In
Company Petition (IB) No. 56/KB/2019

Sutanu Sinha, Resolution Professional of Simplex Projects Limited,
having Registered No. IBBI/IPA-003/IP-N00020/2017-2018/10167.

... Respondent.

And

I.A. (IB) No. 580/KB/2024

*An Application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016, read with Rule 11 of the National
Company Law Tribunal Rules, 2016.*

IN THE MATTER:

Gannon Dunkerley & Co. Ltd.

... Applicant.

Versus

Sutanu Sinha, Resolution Professional of Simplex Projects Limited

... Respondent.

And

I.A. (IB) No. 606/KB/2023

*An Application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016, read with Rule 11 of the National
Company Law Tribunal Rules, 2016.*

IN THE MATTER OF:

Amber Electrotech Limited

... Appellant.

Versus

Sutanu Sinha, Resolution Professional of Simplex Projects Limited

... Respondent.

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
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In
Company Petition (IB) No. 56/KB/2019

And

I.A. (IB) No. 594/KB/2023

*An Application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016, read with Rule 11 of the National
Company Law Tribunal Rules, 2016.*

IN THE MATTER OF:

Indian Oil Corporation Limited

... Applicant.

Versus

Sutanu Sinha, Resolution Professional of Simplex Projects Limited

... Respondent.

And

I.A. (IB) No. 909/KB/2023

*An Application under Section 60(5) read with Sections 14 and 17
of the Insolvency and Bankruptcy Code, 2016, read with Rule 11
of the National Company Law Tribunal Rules, 2016.*

IN THE MATTER OF:

Simplex Projects Limited, through its Resolution Professional Mr.
Sutanu Sinha

... Applicant.

Versus

DCB Bank

... Respondent.

And

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024

In
Company Petition (IB) No. 56/KB/2019

I.A. (IB) No. 1033/KB/2023

*An Application under Section 60(5)(c) of the Insolvency and
Bankruptcy Code, 2016.*

IN THE MATTER OF:

M/s. Vedic Projects Pvt. Ltd.

... Applicant.

Versus

Sutanu Sinha, Resolution Professional of Simplex Projects Limited

... Respondent.

And

I.A. (IB) (Plan) No. 1/KB/2024

*An application under Section 30(6) and 31(1) of the Insolvency and
Bankruptcy Code, 2016 read with Regulation 39(4) of IBBI
(Insolvency Regulations Process of Corporate Persons) Regulations,
2016 for approval of the Resolution Plan.*

IN THE MATTER OF:

**Simplex Projects Limited, through its Resolution Professional Mr.
Sutanu Sinha**

... Applicant.

Date of Pronouncement: August 06, 2024.

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
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I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

APPEARANCE:

For the Applicant in I.A. (IB) No. 594/KB/2023:

1. Ms. Manju Bhuteria, Adv.
2. Ms. Urmila Chakraborty, Adv.
3. Mr. Amit Meharia, Adv.
4. Ms. Tanishtha Singh, Adv.
5. Ms. Paromita Banerjee, Adv.
6. Mr. T. Chattopadhyay, Adv.

For the Applicant in I.A. (IB) No. 1033/KB/2023:

1. Mr. Rajiv Garg, Adv.
2. Mr. Asish Garg, Adv.
3. Mr. Rajesh Upadhyay, Adv.

For the Applicant in I.A. (IB) No. 579/KB/2024 and I.A. (IB) No. 580/KB/2024:

1. Mr. Shaunak Mitra, Adv.
2. Mr. Supriyo Gole, Adv.
3. Ms. Madhuja Barman, Adv.

For the Applicant in I.A. (IB) No. 989/KB/2024:

1. Mr. Rajarshi Banerjee, Adv.

For the Successful Resolution Applicant:

1. Mr. Rishav Banerjee, Adv.
2. Mr. Keshav Tibarewalla, Adv.

For the State Bank of India:

1. Mr. Riyanshu Agarwal, Adv.
2. Mr. Snehasish Chakraborty, Adv.

For Resolution Professional (RP) and in I.A. (IB) (PLAN) No. 1/KB/2024:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

1. Mr. Joy Saha, Sr. Adv.
2. Ms. Shweta Dubey, Adv.
3. Ms. Kanishka Prasad, Adv.
4. Ms. Ishita Srivastava, Adv.
5. Ms. Ichchha Kalash, Adv.
6. Mr. Atul Surekha, Adv.

For the Respondent I.A.(IB) No. 909/KB/2023:

1. Mr. Jishnu Chowdhury, Adv.
2. Mr. Varun Kothari, Adv.
3. Ms. Niharika Singh, Adv.
4. Mr. Ashok Kumar Singh, Adv.

For the Applicant in I.A. (IB) No. 606/KB/2023:

1. Mr. Sanyam Jain, Adv.

Table of Contents

| | |
|---|----|
| I.A. (IB) No. 579/KB/2024 | 8 |
| Facts in Brief: | 9 |
| The Applicant's Submissions: | 11 |
| The RP's contention, per contra: | 12 |
| Analysis and Findings: | 17 |
| I.A. (IB) No. 580/KB/2024 | 21 |
| Facts in Brief: | 22 |
| Applicant's submissions: | 23 |
| Per Contra, RP would submit: | 24 |
| Analysis and Findings: | 26 |
| I.A. (IB) No. 606/KB/2023 | 28 |
| Factual Matrix: | 29 |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| | |
|--|----|
| The Submissions made by Appellant: | 29 |
| RP's Contentions: | 30 |
| Analysis and Findings: | 30 |
| I.A. (IB) No. 594/KB/2023 | 33 |
| I.A.(IB) No. 909/KB/2023 | 38 |
| Facts in a nutshell: | 39 |
| Applicant's submissions: | 39 |
| Per contra, Submissions made by the DCB Bank (Respondent): .. | 41 |
| Analysis and Findings: | 43 |
| I.A. (IB) No. 1033/KB/2023 | 48 |
| I.A. (IB) (Plan) No. 1/KB/2024 | 55 |
| Prologue | 55 |
| Particulars of the Corporate Debtor | 56 |
| Admission of Corporate Insolvency Resolution Process (CIRP) .. | 57 |
| Public Announcement | 57 |
| Constitution of CoC | 58 |
| List of Meetings convened by the CoC during CIRP: | 58 |
| Collation of Claims | 61 |
| Appointment of Registered Valuers | 63 |
| Corporate Insolvency Resolution Process and its Compliances.. | 64 |
| Evaluation and Voting | 69 |
| Compliances of the Resolution Plan submitted by the SRA with various provisions under the I&B Code and CIRP Regulations: .. | 74 |
| Details of the Resolution Plan and/or Payment Schedule | 85 |
| Our Inference: | 89 |
| On the Conduct of CoC | 89 |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| | |
|---|-----|
| <i>On the Statutory Obligations or Seeking Approvals from the Authorities:</i> | 90 |
| <i>On the Reliefs, Waivers and Concessions:</i> | 91 |
| <i>On the Extinguishment of Claims:</i> | 94 |
| <i>On Guarantors:</i> | 97 |
| <i>On Inquiries, Litigations, Investigations, and Proceedings:</i> ... | 98 |
| <i>Conclusion:</i> | 126 |
| <i>On PUFÉ Application(s):</i> | 130 |
| To Summarize | 132 |

COMMON ORDER

Per: D. Arvind, Member (Technical)

1. The Court congregated through a hybrid mode.
2. We have heard the Learned Senior Counsel and the Learned Counsels appearing on behalf of the parties at length. Upon hearing and duly considered the submissions and arguments advanced by all the parties and perusal of all the documents and records available with us, we are of the considered opinion to pass this Common Order herein.

I.A. (IB) No. 579/KB/2024

3. The present application is preferred by GDC Buildcon Pvt. Ltd., hereinafter referred to as the “Applicant”/ “GDC” under Section 60(5) of

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

the Insolvency and Bankruptcy Code, 2016, for brevity “I&B Code” against Sutanu Sinha, the Resolution Professional (RP) of the Corporate Debtor (Simplex Projects Limited), hereinafter referred to as “Respondent”/ “RP” seeking the following reliefs:

A. *An order directing refund of an amount of Rs. 50,00,000/- to the Applicant in priority to any other debts, liability or dues and before any resolution plan in respect of the Corporate Debtor is considered for approval by the Adjudicating Authority.*

B. *Interest of Rs. 47,00,000/- be paid on the said amount in prayer (A) @ 12% p.a. calculated from 16.06.2016 to 16.04.2024 as mentioned in Annexure B hereto.*

C. *An order allowing the Applicant to be included in the Committee of Creditors so that the Applicant has a say in the approval of the resolution plan.*

D. *An order directing the Respondent to provide the Applicant with the resolution plan and/or the relevant extracts of the resolution plan so that the Applicant can deduce the treatment meted out to the right and interest of the Applicant.*

E. *Ad-interim order.*

F. *Such order/ orders which may be deemed fit and proper.*

Facts in Brief:

4. The applicant GDC entered into an Agreement on 19.02.2018, with the Corporate Debtor Simplex Projects Limited and the Promoter M/s Shree RSH Projects Pvt. Ltd., wherein the applicant was allotted a shop in the project comprising of one new tower residential building. The

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

applicant claimed that he had already paid of Rs. 50 Lakh on 16.06.2013 through RTGS at the time of receiving the letter of allotment for the shop.

5. Before handing over the possession of the said shop, the corporate debtor went into the Corporate Insolvency Resolution process, for brevity “CIRP” vide our order 27.04.2022. during the ongoing CIRP, on 13.09.2023, the Promoter wrote to the Respondent (RP) providing the Completion Certificate (CC) for the said project issued by the Kolkata Municipal Corporation (KMC).

6. That, the applicant received a mail on 20.11.2023 from the RP claiming a payment of Rs. 3,05,714/- with applicable taxes and interest for obtaining the possession of the shop. In reply, on 28.12.2023, the applicant wrote an email to RP that it has already paid the entire amount and the applicant is entitled to a sum of Rs. 17,65,350/- for delayed possession for 35 months as per clause 7.6 of the Agreement dated 19.02.2018, till the date of completion of the registration of the shop. The RP on 05.01.2024, replied to the Applicant stating that no claim has been filed with respect to the delay in possession. Such claim was only raised once the RP had asked for payment of a sum of Rs. 3,05,714/-. The RP asked the Applicant to pay the remaining amount and complete the registration process. On 20.02.2024, the applicant replied to the RP refuting all the allegations made by the RP.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

The Applicant's Submissions:

7. The Learned Counsel for the applicant would submit that the applicant could not have filed its claim before the receiving of the Competition Certificate, as it would enable the applicant to calculate the number of months delayed completing the project. Since the shop's possession was not handed over, the applicant visited the said project and learnt that the shop in question had been demolished even though the same is in the sanctioned building plan.

8. The Learned Counsel for the applicant took us to clause 7.6 of the Agreement dated 19.02.2018, which stipulates a provision of compensation payable to the applicant (allottee) when the shop cannot be handed over to him.

9. The Learned Counsel for the applicant would further refer to Clause 9.2 of the Agreement dated 19.02.2018, which says that the applicant (allottee) shall have the option of terminating the Agreement in which case the Owner shall be liable to refund the entire money paid by the Allottee to the Owner along with interest at the rate of the then prime lending rate of the State bank of India, with two per cent thereon per annum within 45 days of receiving the termination notice.

10. The Learned Counsel for the applicant would submit that the applicant came to know of the demolition of the shop at quite a later stage i.e., around February 2024 and thereafter, filed this application in March 2024. The applicant is entitled to a refund of an amount of Rs. 50 Lakh

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

along with interest to the tune of Rs. 47 thousand, calculated from 16.06.2013 to 16.04.2024. Further, it is submitted that filing the present application tantamount to the termination of the agreement dated 19.02.2018 and as there is no shop to be delivered, thus, the question of formal termination, as per Clause 9.2 of the said agreement, would not arise.

11. Further, it is submitted that as per Regulation 6A of the Insolvency and Bankruptcy Boards of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, for brevity “CIRP Regulations”, the Resolution Professional is duty bound to send a communication along with a copy of public announcement, to all the creditors as per the last available books of accounts of the corporate debtor through post or electronic means wherever the information for communication is available. It is alleged that the RP has never communicated regarding commencement CIRP in respect of the corporate debtor.

The RP’s contention, per contra:

12. *Per contra*, the Learned Counsel appearing on behalf of the Resolution Professional (Respondent) would submit that the instant application is not maintainable for misjoinder of the necessary party. The Agreement dated 19.02.2018, was executed between the Corporate Debtor, Shree RSH Projects Pvt. Ltd. (Promoter) and the Applicant (Allottee) whereby, it is the responsibility of the Promoter Shree RSH Projects Pvt. Ltd. to handover and complete the construction of the

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

allotted shop. The relevant clauses of the agreement executed between the parties have been referred to hereinafter:

E. The Promoter agrees and undertakes that it shall not make any changes to these approved plans except in strict compliance with Section 14 of the Act and other statutes as applicable.

1.6 It is agreed that the Promoter shall not make any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described in the Part- II of the Second Schedule written hereunder (which shall be in conformity with the advertisement, prospectus etc. on the basis of which sale is effected) in respect of the Shop without the previous written consent of the Allottee as per the provisions of the Act. Provided That the Promoter may make such minor additions or alterations as may be required by the Allottee, or such minor changes or alterations in accordance with the provisions of the Act. The Promoter shall take prior approval of the Allottee for extra charges as may be applicable for such additions and/or alterations.

5. Time is Essence: The Promoter shall abide by the time schedule for completing the Project as disclosed at the time of registration of the project with the Authority and towards handing over the Shop to the Allottee and the common areas to the Association of Allottees subject to the same being formed and registered.

6. Construction of the Project/Shop: The Allottee has/have seen the proposed layout plan, specifications, amenities and facilities of the Shop and accepted the floor plan, payment plan and the specifications, amenities and facilities mentioned in the schedules written here under which has been approved by the competent authority, as represented by the Promoter. The Promoter shall develop the Project in accordance with the said layout plans; floor plans and specifications, amenities and facilities. Subject to the terms in this Agreement, the Promoter undertakes to strictly abide by such plans approved by the

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

competent authorities and shall also strictly abide by the by-laws, FAR and density norms and provisions prescribed by such authorities and shall not have an option to make any variation/alteration/modification in such plans, other than as agreed upon or in the manner provided under applicable laws, and breach of this term by the Promoter shall constitute a material breach of the Agreement.

7. POSSESSION OF THE SHOP:

7.1. Schedule for possession of the said Shop - The Promoter agrees and understands that timely delivery, of possession of the Shop to the Allottee, is the essence of the Agreement. The Promoter assures to hand over possession of the Shop along with right to use common areas with all specifications, amenities and facilities of the said Project in place, in the month of December 2020 with a grace-period of Twelve (12) months, unless there is delay or failure due to war; flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project or any unforeseen occurrences, acts, court order or any other events, omissions or accidents which are beyond the reasonable control of the Owners and the Promoter so prevented and does not arise out of a breach by such Party of any of its obligations under this agreement ("Force Majeure"). If however, the completion of the said Project is delayed due to the Force Majeure conditions then the Allottee agree that the Promoter shall be entitled to the extension of time for delivery of possession of the Shop, provided that such Force Majeure conditions are not of a nature which make it impossible for the contract to be implemented. The Allottee agree and confirms that, in the event it becomes impossible for the Promoter to implement the said Project due to Force Majeure conditions, then this allotment shall stand terminated and the Promoter shall refund to the Allottee the entire amount received by the Promoter from the allotment within 45 days from that date.

7.6 Compensation

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

*Except for occurrence of a Force Majeure event, **if the Promoter fails to complete or is unable to give possession of the Shop** (i) in accordance with the terms of this Agreement, duly completed by the date specified in para 7.1; or (ii) due to discontinuance of his business as a Promoter on account of suspension or revocation of the registration under the Act or for any other reason, **the Promoter shall be liable, on demand to the Allottee, in case the Allottee wishes) to withdraw from the Project, without prejudice to any other remedy available, to return the total amount received by him in respect of the Shop, with interest at the rate of applicable Rules in the manner as provided under applicable laws within 45 (forty-five) days of it becoming due.***

Provided That where the Allottee do/does not intend to withdraw from the Project, the Promoter shall pay the Allottee interest at the rate of the applicable Rules for every month of delay, till the handing over of the possession of the Shop, which shall be paid by the Promoter to the Allottee within 45 (forty-five) days of it becoming due.

*8 (ix) At the time of execution of the Conveyance Deed, **the Promoter shall handover lawful, vacant, peaceful, physical possession of the Shop to the Allottee and the Common Areas, Amenities & Facilities of the said Project to the association of Allottees** or the competent authority, as the case may be, after the completion of the entire project and upon such association being formed and registered.*

11. Maintenance of the said Tower/ Shop/ Project:

*1) **The Promoter shall be responsible to provide and maintain essential services in the said Project till the taking over of the maintenance of the said Project by the association of Allottees** subject to its formation and registration upon the issuance of the completion certificate of the Project.*

12. Defect Liability

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

*12.1 It is agreed that in case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the Promoter as per the Agreement for Sale relating to such development is brought to the notice of the Promoter within a period of 5 years by the Allottees from the date of handing over possession, save those as mentioned in clause 12.2 below, **it shall be the duty of the Promoter to rectify such defects without further charge within 30 days and in the event of Promoter's failure to rectify such defects within such time, the aggrieved Allottee shall be entitled to receive appropriate compensation in the manner as provided under applicable laws for the time being in force.***

13. The Learned Counsel for the RP further submits that upon receipt of this application, the RP's team has conducted an inspection at the location and is informed that the allocated shop has been demolished by the Promoter RSH, without prior intimation to the RP. In light of this verified information and the changed circumstances, the RP hereby withdraws the communication dated 20.11.2023 and 05.01.2024, wherein the RP had previously sought payment of the outstanding balance amount for the handing over the allocated shop.

14. The Learned Counsel for the RP further submits that no claim has been submitted by the applicant before the RP during CIRP.

15. Further, it is contended that as per Regulation 6A of the CIRP Regulations, 2016, the RP is duty bound to communicate all the creditors as per the last available books of accounts of the corporate debtor. The said regulation has come into effect from 16.09.2022 vide Notification No. IBBI/2022-23/GN/REG093 whereas the CIRP was initiated on 27.04.2022 prior to the notification. Further, as per last available books

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

of account of the Corporate Debtor, the applicant is not a creditor and there is no obligation on the RP to inform the homebuyers for filing their claims apart from public announcement in Form A, when his name is not appearing as creditor in the books of accounts.

Analysis and Findings:

16. We find that the IRP made the public announcement on 29.04.2022 in Form A, wherein the last date of submission of claim was fixed on 12.05.2022. The First meeting of the CoC was conducted on 27.06.2022. The RP made the Form G publication for inviting EoI from the PRAs on 11.08.2022, wherein the last date of submission of EoI was fixed on 10.09.2022 and the last date of submission of the resolution plans was fixed on 25.10.2022. We have noted that in the 39th CoC meeting convened on 02.12.2023, where the resolution plan submitted by Sudarsshhan Das Mundhra was deliberated upon and was put to vote by way of e-voting. On 05.02.2024, the resolution plan submitted by Sudarsshhan Das Mundhra received a 99.51% voting share in its favour and Sudarsshhan Das Mundhra was declared as a Successful Resolution Applicant (SRA).

17. As per Regulation 12 of the CIRP Regulations, 2016, the claims are required to be filed either or before the last date mentioned in the public announcement, which is 12.05.2022 in the present case, or within 90 days from the commencement of CIRP, which is 26.08.2022 or up to the date of issue of the request for resolution plans under Regulation 36B of the CIRP Regulations, i.e., 25.09.2022. Further, as per Regulation 13(1B)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

of the CIRP Regulation, where the claims are received after the period specified under Regulation 12(1) and up to seven days before the date of the meeting of creditors for voting on the resolution plan (i.e., on 25.11.2023), the RP, shall verify all such claims and categorise them as acceptable or non-acceptable for collation. We find that the applicant has not furnished any document that shows that the applicant filed in claim as mentioned in the prayer of this application in the prescribed format within the stipulated time as enshrined under the CIRP Regulations. We find that the applicant wrote a letter to the RP on 28.12.2023, claiming compensation with respect to delay in possession of the shop, however, not filed any claim in the prescribed manner.

18. As per Section 15 of the I&B Code and Regulation 6 of the CIRP Regulations mandate a public announcement of the CIRP through newspapers which would constitute deemed knowledge on the creditors of the debtor. It is settled position of law that the objective of the I&B Code is the resolution of a corporate debtor in time bound manner to maximize the value. Any non-filing of any claim or belated filing of claim after the extended period provided in Regulations 12(1) and 13(1B) of the CIRP Regulations, 2016, should not be entertained by the RP as such is not in accordance with the legislative intent.

19. We would rely on the judgment rendered by the Apex Court in ***RPS Infrastructure Ltd. V. Mukul Kumar***, reported as **(2023) 10 SCC 718**, held that:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

“22. Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. This would constitute deemed knowledge on the appellant. In any case, their plea of not being aware of newspaper pronouncements is not one which should be available to a commercial party.

*23. The mere fact that the Adjudicating Authority has yet not approved the **plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process.** This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, 8 the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.”*

(Emphasis added)

20. As per “*THE SECOND SCHEDULE ABOVE REFERRED TO*” (Part I) to the Agreement dated 19.02.2018 (page 47 of the agreement) that the “said shop” in question is *the commercial shop on the ground of the said Project having carpet area of 256.72 square feet (equivalent to 359 square feet of super built-up area and 359 square feet of super built area, which is provide here only for information purpose), on the ground of the Project.* We have noted the submission of the RP that as per last available books of account of the Corporate Debtor, the applicant is not a creditor.

21. If the submissions made in affidavit in reply by the RP, is taken into consideration, and adopted to be a fact, then, we find no fault in the action of RP in the present case. However, we note that agreement for sale has been executed between the Corporate Debtor, Shree RSH Projects Pvt. Ltd (“RSH”/ “Developer”) and Applicant herein, which is duly

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

stamped and registered. It would be evident at clause 1.13 on page 15 of the said agreement dated 19.02.2018, that the allottee (applicant herein) has paid a sum of Rs. 50 Lakh on 16.06.2016, through RTGS at the of receiving the allotment letter for the shop from the Owner – Corporate Debtor, the receipt of which the Corporate Debtor thereby acknowledged. The Applicant herein agreed to pay the remaining price of the said shop as prescribed in the Payment Plan (fifth Schedule) as may be demanded by the owner with the time and in the manner specified therein. It is not comprehensible as how the receipt of Rs. 50 Lakh paid by the applicant and the corresponding liability to hand over the said shop to the applicant has vanished from the books of account of the Corporate Debtor. However, we note that the applicant has not placed any record on proof of payment towards the allotment.

22. As the Applicant herein, who is an allottee of a shop for commercial purpose as per the Agreement dated 19.02.2018, has not filed any claim during the CIRP before the RP as he was not aware of the initiation of CIRP in respect of the corporate debtor after the public announcement made in the newspapers, this Adjudicating Authority may not be able to rescue the applicant who was sleeping over its right. In terms of the view above, we reject the application.

23. Accordingly, **I.A. (IB) No. 579/KB/2024** is **dismissed**.

24. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

I.A. (IB) No. 580/KB/2024

25. This application has been preferred under Section 60(5) of the I&B Code by **Gannon Dunkerley & Co. Ltd** hereinafter referred to as “Applicant”/ “Gannon” against **Mr. Sutanu Sinha Resolution Professional of Simplex Projects Limited (Corporate Debtor)** hereinafter referred to as “Respondent”/ “RP”, praying for the following reliefs:

- a. *An order directing the Respondent to consider and accept the claim of the Applicant for Rs. 58,82,770/- from 31/01/2021 till 27.04.2022, i.e., the date on which the Admission Order has been passed.*
- b. *An order directing the Respondent to consider the claim of the Applicant from 27.04.2022 up to 17.03.2024 should be classified and treated as CIRP cost for Rs. 90,00,247/- and be paid in priority to all other dues.*
- c. *An order directing the Respondent to forthwith execute and register Deed of Conveyance in favour of the Applicant without insisting on any payments and after giving necessary adjustments and/or payments as per prayer (a) and (b).*
- d. *An order allowing the Applicant to be included in the Committee of Creditors so that the Applicant has a stay in the approval of the resolution plan.*
- e. *An order directing the Respondent to provide the Applicant with the resolution plan and/ or the relevant extracts of the resolution plan so that the Applicant can deduce treatment meted out to the right and interest of the Applicant.*
- f. *Ad-interim order.*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

g. Such order and/or further orders which the Hon'ble Tribunal deems fit and proper in the present matter.

Facts in Brief:

26. The Applicant, Gannon Dunkerley entered into an Agreement for Sale on 17.08.2018 with the Corporate Debtor for the allotment of residential flats situated at Prince Gulam Md. Shah Road, Kolkata 700045.

27. The Corporate Debtor was admitted in CIRP on 27.04.2022, by the order of this Adjudicating Authority, and the Resolution Professional (RP) issued a public announcement for the submission of claims on 28.04.2022. Further Form G for the invitation of Expression of Interest (EoI) was issued on 11.08.2022.

28. The Kolkata Municipal Corporation (KMC) issued the Competition Certificate (CC) on 17.07.2023. The Promoter/ Developer wrote to the RP to provide the CC for the said project on 13.09.2023.

29. The RP issued an email on 20.11.2023 to the Applicant informing the CIRP of the Corporate Debtor demanded Rs. 1,53,25,000/- including applicable taxes and interest due at the time of possession. The Applicant replied to the RP on 16.12.2023 refuting its claim and demanded Rs. 1,08,06,884/- for the payment of delayed interest which has accrued due to delay in competition of the project.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

30. The RP on 05.01.2024 replied to the Applicant stating that as the Applicant has not filed its claim before the RP under CIRP, thus, his claim will not be entertained at this stage. Further, RP stated that the claim was only raised once the Respondent had asked for Rs. 1,53,25,000/- payment. Thus, the Applicant was asked to pay such an amount to complete the further registration process. However, the Applicant refuted all the allegations of the RP via a letter dated 20.02.2024. Hence, this application.

Applicant's submissions:

31. The learned Counsel appearing on behalf of the applicant Gannon would submit that the Applicant first time got to know about the CIRP of the Corporate Debtor when the RP wrote the email on 20.11.2023 regarding the payment of Rs. 1,53,25,000/- along with applicable taxes and interest and after the payment to the RP, the applicant can proceed with the registration formalities.

32. The learned Counsel appearing on behalf of the applicant would further submit that the applicant on 16.12.2023, replied to the RP that:

28.1. The applicant paid Rs. 25,00,000/- on 21.09.2021 in addition to Rs. 3,96,75,000/- paid until 17.08.2018.

28.2. The flat was supposed to be handed to the Applicant by January 2020, but the Completion Certificate arrived on 20.11.2023, 45 months late.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

28.3. According to the Agreement, the Applicant must pay 12% interest on the amount paid thus far, which is Rs. 1,78,53,750/-.

28.4. The Developer failed to complete several jobs, thus the Applicant performed them and spent Rs. 57,78,134/-.

28.5. After adjusting all payments, the Applicant is entitled to reimbursement of Rs. 1,08,06,884/-, along with apartment registration.

33. It is further submitted that the RP he did not notify the Applicant of the CIRP of the Corporate Debtor, as per Regulation 6A of the CIRP Regulations, 2016, which is in violation of the Code and its Regulations.

Per Contra, RP would submit:

34. That, the present application is not maintainable for the misjoinder of the necessary party as the agreement of sale dated 17.08.2018, was executed between the Corporate Debtor, Shree RSH Projects Pvt. Ltd (“RSH”/ “Developer”) and Gannon Dunkerley & Co. Ltd (“Allottee”/ “Applicant”), annexed at pages 14-52 to the present application. The relevant clauses of the agreement to sale executed between the parties are set out hereinafter:

5.2 Development: The Owners have entered into a Development Agreement on 7th August 2014 and the Supplementary Agreement dated 28th May, 2018 with the **Developer for development of the said premises wherein the developer were granted exclusive**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

right for development and commercial exploitation of the said premises.

10.1 Notice of Possession: Construction, finishing and making the said flat habitable as per the specifications, the decision of the Architect in this regard being final and binding shall be done by the developer within, January 2020, with a extended period of 1 (one) year at option of the developer. The Developer shall neither incur any liability nor be held liable for claim of any amount by the buyer, if the developer is unable to deliver possession of the said flat within the possession date and for the extended period due to circumstances of Force Majeure or for or on account of (1) delay on the part of the buyer in making any payment and (2) any other reasonable cause whereby the developer is prevented from completing the development. However, if the Developer fails to handover possession of the Said Flat before expiry of the Extended Period, than in such circumstances, the Developer will be liable to pay to the Buyer an interest @12% (twelve percent) per annum on payments received, to be calculated from the date of expiry of the Extended Period till the date of Possession Notice. The developer shall give notice to the Buyer (Notice) and the Buyer shall, within 15 (fifteen) days of date of the Notice, take possession of the Flat And Appurtenances (Date Of Possession), after fulfilling all obligations under this Agreement, including payment of the balance of the Total Consideration as indicated in Part III of the 2nd Schedule below.

4. Completion of Construction. Subject to the Buyer paying the instalments of the Total Consideration and all other payments required to be made under this Agreement in time, the Developer shall complete and finish the Flat And Appurtenances within the time stipulated in this Agreement, unless prevented by force majeure.

35. That, the CIRP of the Corporate Debtor was initiated on 27.04.2022 and on 29.04.2022 the IRP made a public announcement in Form A. No claim has been submitted by the applicant before the RP and by

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

preferring this application, the applicant is seeking direction against the RP to consider and accept the claim pertaining to the pre-CIRP and during the CIRP period. The RP is duty bound to verify any claim submitted before him in accordance with law. The fundamental premise of claim verification necessitates the actual submission of a claim by the concerned party.

36. Further, it is contended that as per Regulation 6A of the CIRP Regulations, 2016, the RP is duty bound to communicate all the creditors as per the last available books of accounts of the corporate debtor. The said regulation has come into effect from 16.09.2022 vide Notification No. IBBI/2022-23/GN/REG093 whereas the CIRP was initiated on 27.04.2022 prior to the notification. Further, as per last available books of account of the Corporate Debtor, the applicant is not a creditor and there is no obligation on the RP to inform the homebuyers for filing their claims apart from public announcement in Form A.

Analysis and Findings:

37. It is evident that the IRP made a public announcement on 29.04.2022, wherein the last date for submission of the claim from the creditors was fixed on 12.05.2022.

38. Further, it is evident at “*2nd Schedule (Part-I (Flat))*” to the Agreement for Sale dated 17.08.20218 (page 11 of the agreement, the said flat in question is a *Residential Flat bearing no. 2801 measuring about 4050 sft of built up area situated on the 28th floor of the building*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

together with triple height sky balcony containing a total built up area of 1715 sft more or less attached to the said flat.

39. We have noted the submission of the RP that as per last available books of account of the Corporate Debtor, the applicant Gannon is not a creditor. Further, we have noted that the CoC at its 39th Meeting, approved the Resolution plan submitted by the Resolution Applicant.

40. If the submissions made in affidavit in reply by the RP, is taken into consideration, and adopted to be a fact, then, we find no fault in the action of RP in the present case. However, we note that agreement for sale has been executed between the Corporate Debtor, Shree RSH Projects Pvt. Ltd (“RSH”/ “Developer”) and Applicant herein, which is duly stamped and registered. It would be evident at page 12 of the said agreement dated 17.08.2018, that the total consideration of the said residential flat is Rs. 5.50 Crore and the applicant herein (buyer) on or before the execution of the agreement has paid an amount of **Rs. 3,96,75,000/-** including GST, which is adjusted being the advance and the Owner – the Corporate Debtor, duly acknowledged and confirmed the same. It is further evident at page 12 of the said agreement dated 17.08.2018 that the Buyer (applicant herein) shall pay to the Owner the balance amount of consideration of Rs. 1,53,25,000/- plus GST at the time of Possession. It is not comprehensible as how the receipt of Rs. 3,96,75,000/- paid by the applicant and to which the corresponding liability to hand over the said residential flat to the applicant has vanished from the books of account of the Corporate Debtor. However,

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

we note that the applicant has not placed any record on proof of payment and details of such purported payment towards the allotment.

41. As the Applicant herein, who is an allottee of a residential flat as per the Agreement dated 17.08.2018, has not filed any claim during the CIRP before the RP as he was not aware of the initiation of CIRP in respect of the corporate debtor after the public announcement made in the newspapers within the extended period provided in Regulations 12(1) and 13(1B) of the CIRP Regulations, 2016, this Adjudicating Authority may not be able to rescue the applicant who was sleeping over its right. We reiterate that the observation of the Hon'ble Apex Court in the ***RPS Infrastructure Ltd. (Supra)*** to frame our view. In terms of the view above, we reject the application.

42. Accordingly, **I.A. (IB) No. 580/KB/2024** is **dismissed**.

43. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

I.A. (IB) No. 606/KB/2023

44. The present appeal has been preferred by **Amber Electrotech Limited**, hereinafter referred to as "**Appellant**"/ "**Amber**" against the **Resolution Professional of Simplex Projects Limited**, hereinafter referred to as "**Respondent**"/ "**RP**" seeking the following reliefs:

1. Allow the appeal.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

2. Dismiss the decision of the IRP i.e., “admitting a claim amount at a notional value of Rs. 1/- and rejected the remaining claim amount since case proceedings is pending at Saket Court, New Delhi” and admit the claim of the Operational Creditor fully.

Factual Matrix:

45. The Appellant Amber has filed its claim as an Operational Debt of Rs. 2,23,94,922/- before the IRP on 06.07.2022, before the 90th day of the insolvency commencement date. The IRP Sutanu Sinha has admitted a claim amount at a notional value of Rs. 1/- and rejected the remaining claim amount quoting a reason that case proceedings being a **Recovery Suit No. 1589/2017** of **Rs. 52,20,786/-** for Electrification work in Manyavar Kanshiram Govt. Medical College, Saharanpur, U.P. filed in 2017, and a **Case No. 613741/2016** for **cheque dishonour of Rs. 63,54,000/-** (Cheque No. 375663 dated 26.05.2015) filed in 2015, at Chief Metropolitan Magistrate, Saket Court, Delhi, are pending.

46. Thus, the IRP has treated the claim filed by Amber Electrotech Limited, Appellant herein as a contingent claim and admitted at a notional value of Rs. 1/-.

The Submissions made by Appellant:

47. The Learned Counsel appearing on behalf of the Appellant would submit that such pending cases were never related to any disputes. These

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

cases were related to only recovery of sums pending against work performed by the Appellant.

48. That, the Saket Court has stopped the proceedings midway because the Adjudicating Authority has passed the order of admission of CIRP and declared moratorium on 27.04.2022.

49. It is claimed that the IRP, who is bound and obligated to act within the four corners of the statutory powers vest upon him, has taken a drastic and prejudicial decision by rejecting the Appellant's claim and admitted the same a notional value of Rs. 1/-.

RP's Contentions:

50. *Per contra*, the Learned Counsel for the IRP would submit that in view of the pendency of suit for recovery and the determination of the liability of the corporate debtor towards the Appellant being sub-judice, the IRP admitted the claim of Amber for a notional value of Rs. 1/- as per regulation 14 of the CIRP Regulations and the balance amount has been admitted on a contingency basis as the liability yet not crystalized and would be depended on the outcome of the suit for recovery.

Analysis and Findings:

51. We would rely on the judgment passed by the Hon'ble Supreme Court of India in ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta*** reported in **(2020) 8 SCC 531:**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

MANU/SC/1577/2019, wherein, the Hon'ble Apex Court has observed that the resolution professional was correct at only admitting the claim of the respondent notionally at Rs. 1/- on the ground that there were several disputes pending before various authorities in respect of said amount. The Hon'ble Apex Court held that:

*“102. So far as Dakshin Gujarat Vij Co. (Respondent No. 11 in Civil Appeal Diary No. 24417 of 2019), State Tax Officer (Respondent No. 12 in Civil Appeal Diary No. 24417 of 2019), Gujarat Energy Transmission Corporation Ltd. (Respondent No. 17 in Civil Appeal Diary No. 24417 of 2019) and Indian Oil Corporation Ltd. (Respondent No. 18 in Civil Appeal Diary No. 24417 of 2019) are concerned, the resolution professional admitted the claim of the abovementioned respondents notionally at INR 1 on the ground that there were disputes pending before various authorities in respect of the said amounts. However, the NCLT through its judgment dated 08.03.2019 directed the resolution professional to register the entire claim of the said respondents. The NCLAT in paragraphs 43 and 196 of the impugned judgment upheld the order passed by the NCLT as aforesaid and admitted the claim of the abovementioned respondents. **We therefore hold that this part of the impugned judgment deserves to be set aside on the ground that the resolution professional was correct in only admitting the claim at a notional value of INR 1 due to the pendency of disputes with regard to these claims.**”*

(Emphasis Added)

52. Further, the Hon'ble Bombay High Court in **Tata Steel BSL Ltd. vs. Varsha** reported in **MANU/MH/0521/2019** held that:

“26. A proper reading of the above quoted clauses of the resolution plan shows that an operational creditor like respondent No. 1, who has filed a suit for recovery against the

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

*original corporate debtor cannot be deprived of its claim under the resolution plan. **The sub judice claims like that of respondent No. 1-operational creditor have been taken into consideration under the resolution plan and since the amount due is yet to be finalized or crystallized, it has been shown as an admitted amount of INR 1, subject to determination of the amount upon finalization of the proceedings before the Civil Court. It is because the claim of the respondent No. 1-operational creditor is yet to be crystallized and it is sub judice that the exact amount has not been stated in the resolution plan,** although liability to make payment to respondent No. 1 as recognized operational creditor has been preserved. It is in this context that Clause 8.2.2(V) assumes significance as it specifies that the aggregate amount to be paid to operational creditors, like respondent No. 1 herein, is Rs. 1200 crores and it is earmarked as "operational creditors settlement amount". A proper and harmonious construction of the provisions of the IBC and the aforesaid resolution plan shows that the amount due to operational creditors like respondent No. 1 would be paid from the said operational creditors settlement amount, upon the amount being finalized and crystallized in the pending civil suit before the Civil Court. To accept the interpretation sought to be placed by the petitioner on the provisions of the IBC read with the resolution plan, would lead to a travesty of justice and a situation not intended at all by the provisions of the IBC. It would do violence to the entire scheme of the IBC and the regulations framed there under, wherein the dues of the operational creditors have been given priority even above the dues of financial creditors."*

(Emphasis Added)

53. In the present case at hand, the RP has admitted the claim of the Appellant amount at a notional value of Rs. 1/- as the recovery suit and proceeding relating to dishonour of cheque is sub-judice and pending consideration before the Saket Court, New Delhi and yet to be

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

crystallized. We find no error committed by the IRP in admitting the claim at a notional value of Rs. 1/- and treated the same as a contingent claim subject to the outcome of the pending proceedings, in terms of the judgment rendered in ***Essar Steet (Supra)*** and ***Tata Steel (Supra)***. We also note that the Resolution Plan approved by the CoC provides a payment of Rs. 50 Lakh on account of the contingent liability and the same would be evident at Clause 4.3 at page 35 to the Resolution Plan.

54. In terms of forging, the Application being **I.A. (IB) No. 606/KB/2023** is **dismissed**.

55. A certified copy of this order, if applied for with the Registry of this Adjudicating Authority, may be supplied, upon compliance with all requisite formalities.

I.A. (IB) No. 594/KB/2023

56. On a similar ground alike I.A. (IB) No. 606/KB/2023, the instant application has been preferred by the Indian Oil Corporation Limited, hereinafter referred to as “Applicant”/ “IOCL” against the Resolution Professional, hereinafter referred to “Respondent”/ “RP” under Section 60(5) of the I&B Code seeking to set aside the decision of the RP in admitting the claim of the IOCL as contingent claim at a notional value of Rs. 1/-.

57. The IOCL has filed its claim in Form B as Operational Debt of Rs. 14,88,40,391/- together with the interest at the rate of 18% per annum,

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

before the RP of the Corporate Debtor on 06.09.2022. Vide an email dated 06.01.2023, the RP informs the Applicant IOCL that:

“In light of the ongoing arbitration proceedings and the counter claim filed by IOCL in the said arbitration proceedings, the claim filed by IOCL will be treated as a contingent claim and therefore, will be admitted at a notional value of Rupees 1/-. The same is based on the judgment of Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, wherein the Hon'ble Supreme Court has held that the Resolution Professional should admit such claims as a contingent claim at Rupee 1/-.

In case you are not satisfied with the treatment of your claim, you are requested to reach out to the undersigned with the requisite information to substantiate your claim within 7 days from the date of receipt of this email.”

58. From the details of disputes and record of pendency or order of suit or arbitration proceedings as annexed to the Form B submitted by the IOCL, (relevant pages 54-56 to the application), it would be evident that there is a pending arbitration between IOCL and the Corporate Debtor. On 08.11.2018, a letter was issued by the Corporate Debtor to IOCL for invocation of arbitration. On 22.04.2019, a Petition under Section 11 of the Arbitration and Conciliation Act, 1996, being Arb. P. No. 295 of 2019, was filed by the Corporate Debtor before the Hon'ble High Court at Delhi.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

59. Further, we find that on 11.07.2019, the Hon'ble Delhi High Court appointed Justice Mukundakam Sharma, Retd. Judge of the Hon'ble Apex Court as the arbitrator. On 01.08.2022, the Arbitral Tribunal consisted by Justice Mukundakam Sharma passed a procedural order that:

“At the very outset Mr S D Singh, the Counsel for the Claimant stated that the Claimant could not deposit the amount in terms of the orders of the Tribunal due to the reasons of the Claimant being before NCLT. According to him, IRP is also appointed.

However, no orders in that regard are placed on record which shall be so placed before the Tribunal. Counsel for the Respondent states that he has no Information regarding the same and has received no instruction in that regard.

However, the statement of the Counsel appearing for the Claimant is taken on record. In view of such position as aforesaid, the present proceeding has to be adjourned sine die in order to enable the Counsel for the parties to obtain instructions in the matter and also to make the deposit in terms of the orders and also to place the orders passed in the Insolvency proceedings pending against the Claimant. It is also agreed that necessary formalities are to be undertaken before the IRP appointed for the continuation of this proceedings.

Accordingly, this proceeding is adjourned sine die with liberty to each of the Counsel to get the proceeding revived upon receipt of proper instructions for its revival and further continuation of the proceedings.”

60. The Learned Counsel appearing on behalf of the IOCL has submitted that the applicant has the legitimate claim as an operational

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

creditor and any claim of operational creditor is to be treated and admitted at Rs. 1/-, then entire purpose of filing a claim under Regulation 7 of the CIRP Regulations, 2016 will be defeated. The decision of the RP is arbitrary, irrational, illogical and puts in jeopardy the interest of the operational creditors including and specially the applicant.

61. *Per contra*, the Learned Counsel for the RP would submit that in view of the pendency of the Arbitration between the parties and the determination of the liability of the corporate debtor towards the applicant being sub-judice, the RP admitted the claim of the applicant at a notional value of Rs. 1/-.

62. On a previous occasion, i.e., on 05.03.2024, we have noted that the Learned Counsel for the RP seeks some time to provide the details with claims of IOCL as well as the balance sheet of the Corporate Debtor by 11th of March 2024 by way of any affidavit. We find that on 18.03.2024, the RP has filed an affidavit provides a copy of the audited balance sheet as well as the ledger of the Corporate Debtor and redacted copy of the Resolution Plan, approved by the CoC. It is submitted that as per the audited balance sheet of the corporate debtor as on 01.03.2022, and ledger, the applicant IOCL is a sundry creditor and a debit balance of Rs. 3,80,52,937/- is due and receivable from the applicant. The affidavit is taken on record.

63. We are of the view that as the arbitral proceedings before the Arbitral Tribunal of Justice Mukundakam Sharma has been adjourned sine die with the liberty to get the proceeding revived upon receipt of

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

proper instructions for its revival and further continuation of the proceedings, the claim of the applicant is yet to be crystallized. We find that the RP has not committed any error in admitting the claim at a notional value of Rs. 1/- and treated the same as a contingent claim subject to the outcome of the pending proceedings before the Arbitral Tribunal, in terms of the judgment rendered in ***Essar Steet (Supra)*** and ***Tata Steel (Supra)***. We also note that the Resolution Plan approved by the CoC provides a payment of Rs. 50 Lakh on account of the contingent liability and the same would be evident at Clause 4.3 at page 35 to the Resolution Plan.

64. In terms of forging, the Application being **I.A. (IB) No. 594/KB/2023** is **dismissed**.

65. We would reiterate the mandate enshrined under Section 14(1)(a) of the I&B Code, 2016, that upon admission of CIRP and subsequently, the declaration of moratorium, the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority, shall be prohibited, and in both the applications, being **I.A. (IB) No. 606/KB/2023** and **I.A. (IB) No. 594/KB/2023**, we have observed that the proceedings pertaining to the claims pending before the concerned fora has rightly been stopped. We would infer that upon approval of the resolution plan by this Adjudicating Authority, the moratorium imposed by virtue of the order initiating the CIR Process, shall cease to have effect and the Resolution Professional

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

upon the consent of Monitoring Agency shall take appropriate cognizance for disposal of the proceedings pending before the concerned authorities for the purpose of achieving the objective of the Code, i.e., *the maximization of value assets and balance the interest of all the stakeholders.*

66. A certified copy of this order, if applied for with the Registry of this Adjudicating Authority, may be supplied, upon compliance with all requisite formalities.

I.A.(IB) No. 909/KB/2023

67. This application has been preferred under Sections 60(5) read with 14 and 17 of the I&B Code by **Mr. Sutanu Sinha Resolution Professional of Simplex Projects Limited**, hereinafter referred to as “**Applicant**”/ “**RP**” against **DCB Bank**, hereinafter referred to as “**Respondent**”/ “**DCB**”, seeking the following reliefs:

- a. Allow the instant application.*
- b. Direct Respondent to transfer the amount of Rs. 1,18,98,645/- to the SBI account of the Corporate Debtor, details of which are mentioned in para 7.4 of this application; and*
- c. Pass such order(s) in favour of the applicant herein as this Adjudicating Authority may deem fit.*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

Facts in a nutshell:

68. The Corporate Debtor had been admitted in CIRP on 27.04.2022 and the Applicant herein was appointed as the Interim Resolution Professional (IRP) of the Corporate Debtor. On 29.04.2022, the applicant issued a public notice announcement and called upon all creditors to submit their claims with supporting documents. The IRP informed the DCB Bank (Respondent herein) regarding the initiation of CIRP in respect of the Corporate Debtor. On 27.06.2022, in the first CoC meeting, the Applicant was confirmed and appointed to conduct the CIRP as Resolution Professional (RP).

69. The RP issued a letter on 09.02.2023 to the Respondent and requested to transfer the collective amount of Rs. 1,18,98,645/- received in the DCB Bank during the CIRP to the account maintained by the SBI for the Corporate Debtor.

70. In response to the Respondent Bank issued a letter on 02.03.2022 to the RP and stated that funds are not received from the Corporate Debtor and thus are not required to be transferred to the SBI Account. Hence this application.

Applicant's submissions:

71. The Learned Counsel for the Applicant would submit that the Corporate Debtor had availed various credit facilities from the respondent

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

bank to the extent of Rs. 1,20,00,00,000/- which were renewed from time to time and lastly by way of a Sanction Letter dated July 31, 2021.

72. That, the Respondent bank has the first charge on the entire current assets and movable assets of the Corporate Debtor and as such as has right to appropriate any money and/or income of the Corporate towards its dues. Further, the Sanction Letter dated July 31, 2021, provides that all transactions of the Corporate Debtor were to be routed through the respondent bank only which has not been relinquished.

73. It is submitted that the applicant has filed the instant applicant demanding a sum of Rs. 1,18,98,645/- from the respondent bank on the ground that such sum was collected by the respondent bank after the initiation of CIRP. The Learned Counsel for the RP would provide a detail of such sum in a tabular for as under:

| Entry No. | Date | Account Credited Narration as per statement | Amount (Rs.) |
|------------------|-------------|--|---------------------|
| 1. | 28.04.2022 | Kirti Vinimay | 12,00,000/- |
| 2. | 28.04.2022 | Kirti Vinimay | 6,00,000/- |
| 3. | 24.05.2022 | Simplex Agri Infra | 25,00,000/- |
| 4. | 24.05.2022 | Simplex Agri Infra | 25,00,000/- |
| 5. | 10.06.2022 | NACH/CH/CR/AADCS8598R/AY 2017-18 | 46,75,138/- |
| 6. | 12.07.2022 | Reversal | 82,390/- |
| 7. | 12.07.2022 | Reversal | 1,12,366/- |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| | | | |
|--------------|------------|----------|----------------------|
| 8. | 12.07.2022 | Reversal | 2,08,060/- |
| 9. | 12.07.2022 | Reversal | 20,691/- |
| Total | | | 1,18,98,645/- |

Per contra, Submissions made by the DCB Bank (Respondent):

74. The Learned Counsel appearing on behalf of the DCB Bank would submit that the Sanction Letter dated July 31, 2021, states that the bank has first charge on the entire current assets and moveable assets of the Corporate Debtor and that the bank has the right to appropriate any money and/or income of the Corporate Debtor towards its dues. In terms of the sanction letter, the above-mentioned credit facilities were secured as follows:

“First Charge on the Entire Current Assets of the company both present & future, ranking pari-passu with other financial banks.

First Charge on pari passu basis on the moveable assets of the company, except assets specifically charged to banks/ FIs.”

75. It is further submitted that the RP issued the public announcement on April 29, 2022, and thus, the respondent bank has rightfully appropriated the first two transactions, as mentioned in the table above, against its dues on April 28, 2022.

76. Further, concerning entries 3 to 5 as mentioned in the table above, it is submitted that the respondent bank having first charge on the

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

Corporate Debtor's entire current assets has the right to appropriate such money towards its dues. The said payments are qua the change, that has not been relinquished.

77. It is further submitted that the entries as indicated in serial nos. 6 to 9 in the table mentioned above, are not the income or dues of the Corporate Debtor but are mere reversal entries of commission charged by the respondent bank for amendment of Bank Guarantee.

78. Further, as per the sanction letter dated July 31, 2021, the respondent bank charged 1% bank guarantee commission for non-fund-based facilities. It is contended that vide a letter dated April 2, 2022, annexed at page 19 to the Reply Affidavit, the Corporate Debtor requested 0.50% due to the increase in bank guarantee requirements and its financial condition.

79. Further, the Respondent bank pending such request had charged bank guarantee amendment charges on 04.04.2022, of Rs. 4,16,620/-, Rs. 2,25,232/- and Rs. 1,65,270/- and again on 13.04.2022, amounting to Rs. 42,081/-, which would be evident from the consolidated statement of account, annexed at pages 20-34 to the Reply Affidavit.

80. That, the respondent bank had by way of a letter dated April 21, 2022, annexed at page 35 to the Reply Affidavit, communicated to the Corporate Debtor, of its decision to reduce such bank guarantee commission to 0.50% from 1%. Thus, the Learned Counsel for the DCB would submit that the entry no. 6 to 9 in the table as indicated at para

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

27 to the Order are reversal entries of such commission charged/ debited by the respondent bank and such amounts as reflected in the bank account of the applicant are not the income of the Corporate Debtor. Thus, the applicant cannot claim any payment against such reversal amount since the same is neither the income nor dues payable to the Corporate Debtor.

Analysis and Findings:

81. It is evident that on a previous occasion i.e., on 30.01.2024, we have passed an order that:

“5. IA(I.B.C)/909(KB)2023:

a. Ld. Counsel appearing for the respondents mentioned in pages 12 and 13 of the reply, the DCB Bank is directed to refund the entire money against the first five entries starting from 28.04.2022 and ending on 10.06.2022, or in page no. 12 of the IA(I.B.C)/909(KB)2023 within a period of ten days.

b. Registry is directed to issue notice to DCB Bank by way of speed post and by e-mail and place the tracking information report on record.

c. Ld. Counsel appearing for the said Bank is also at liberty to indicate this order of the Bank Officers.

d. List this matter for arguments on 05.03.2024.”

82. It is brought to our notice that on 19.04.2024 in **Company Appeal (AT) (Insolvency) No. 642 of 2024**, the Hon’ble NCLAT, New Delhi has set aside our order dated 30.01.2024 and directed the Adjudicating

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

Authority to consider the application and the reply and take an appropriate decision accordingly. We have duly considered the submissions and arguments advanced by both the parties and carefully gone through the documents available with us.

83. As per Section 14(1)(b) and (c) of the I&B Code, on the insolvency commencement date, the Adjudicating Authority shall by order declare **‘moratorium’** for **prohibiting all of the following**, namely: **(b)** *transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;* and **(c) any action** to foreclose, **recover** or **enforce any security interest created by the corporate debtor in respect of its property** including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002).

84. Further, Section 17(1)(d) of the Code caters to the Management of affairs of corporate debtor by the interim resolution professional, that from the date of appointment of the interim resolution professional, — **(d) the financial institutions maintaining accounts of the corporate debtor shall act on the instructions of the interim resolution professional** in relation to such accounts and furnish all information relating to the corporate debtor available with them to the interim resolution professional.

85. The Hon’ble NCLAT in the case of **State Bank of India v. Debashish Nanda** in **Company Appeal (AT) (Insolvency) No. 49 of 2018** has observed that a bank cannot unilaterally debit any amount

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

from the account of the corporate debtor after the order of moratorium as the same would be the violation of Section 14 of the I&B Code. The Hon'ble Appellate Tribunal held that:

“21.03.2018– Prima facie, we are of the view that the appellant cannot debit any amount from the ‘Corporate Debtor’s account’ after the order of moratorium, as it may amount to recovery amount in spite of the order of moratorium passed by the Adjudicating Authority in violation of Section 14 of the Insolvency and Bankruptcy Code.

However, it may be open to the ‘Financial Creditor’ to incorporate the interest against the appropriate head in a separate set of same account in terms with the ‘RBI Guidelines’, which should not be treated to be the amount debited for adjustment.

Further it appears that the Bank cannot freeze the account nor can prohibit the ‘corporate debtor’ from withdrawing the amount, as available on the date of moratorium for its day to day functioning through Resolution Professional.

xxx

xxx

xxx

*6. Having heard Learned Counsel for the parties while we are not inclined to interfere with the impugned order dated 25th January, 2018 but set aside the order whereunder cost of Rs.25000/- **has been imposed and make our interim order dated 21st March, 2018 absolute which will continue during the period of moratorium.** However, after the period of moratorium is over, it will be open to the bank to act in accordance with guidelines of Reserve Bank of India to manage the account. Appeal is disposed of with aforesaid observations. No costs.”*

(Emphasis Added)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

86. On bare perusal of the documents placed before us, it would be evident that the amount of Rs. 1,18,98,645/- as prayed to be transferred to the SBI account of the Corporate Debtor by the RP, has been credited to the Respondent DCB Bank from 28.04.2022 to 12.07.2022, which is during the ongoing CIRP. CIRP in respect of the Corporate Debtor has been commenced on 27.04.2022 vide our Order in C.P. (IB) No. 56/KB/2019. In reply, the Respondent DCB submits that the two funds have been transferred on 28.04.2022, after the public announcement of the CIRP i.e., on 29.04.2022. Further, the transactions made on 24.05.2022 and 10.06.2022, were made as the respondent bank has the first charge on the entire assets. Further, the amounts were transferred on 12.07.2022, which are reversal entries of commission charges charged by the Respondent bank for amendment of Bank Guarantee.

87. We find that vide a letter dated 31.07.2021, the Respondent Bank had charged 1% bank guarantee commission, to which, the Corporate Debtor requested the Respondent bank, on 02.04.2022, to reduce the commission charges for non-fund based facilities (BG/LC) to 0.50% considering the overall increase in bank guarantee requirements and the financial condition of corporate debtor. We have found that vide a letter dated 21.04.2022 the Respondent bank has decided to reduce the bank guarantee commission to 0.50% from 1%. We have considered the contention of the Respondent Bank the entry nos. 6 to 9 in the table mentioned above, are mere reversal entries of such bank guarantee commission charged by the DCB Bank, which is not the income of the corporate debtor.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

88. Thus, in terms of the view above, we are of the considered opinion that the amounts reflected in entry nos. 1 to 5 in the table as mentioned above, debited by the Respondent Bank (DCB) during the ongoing moratorium, violates the mandates as enshrined under Section 14 as well as Section 17(1)(d) of the I&B Code. We reject the submission made by the Learned Counsel for the Respondent Bank (DCB) that such money was due toward the Respondent as on 28.04.2022, and the Respondent Bank has the first charge on the current assets of the corporate debtor, and thus, the Respondent Bank has rightly appropriated such money, reflected in entry nos. 1 to 5 in the table as mentioned above.

89. Hence, we direct the Respondent (DCB Bank) to refund the entire money against the first five entries starting from 28.04.2022 and ending on 10.06.2022, i.e.,

| Entry No. | Date | Account Credited Narration as per statement | Amount (Rs.) |
|------------------|-------------|--|----------------------|
| 1. | 28.04.2022 | Kirti Vinimay | 12,00,000/- |
| 2. | 28.04.2022 | Kirti Vinimay | 6,00,000/- |
| 3. | 24.05.2022 | Simplex Agri Infra | 25,00,000/- |
| 4. | 24.05.2022 | Simplex Agri Infra | 25,00,000/- |
| 5. | 10.06.2022 | NACH/CH/CR/AADCS8598R/AY 2017-18 | 46,75,138/- |
| Total | | | 1,14,75,138/- |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

90. The said amount of **Rs. 1,14,75,138/-** shall be transferred to the SBI account of the Corporate Debtor, as prayed for, within ten days from the pronouncement of the order. Delaying in transfer the same, interest at the rate of 10% per annum shall be carried from the pronouncement of the order.

91. **I.A. (IB) No. 909/KB/2023** is **allowed** and accordingly, **disposed of**.

92. A certified copy of this order, if applied for with the Registry of this Adjudicating Authority, may be supplied, upon compliance with all requisite formalities.

I.A. (IB) No. 1033/KB/2023

93. This application has been preferred by M/s Vedic Project Pvt. Ltd., hereinafter referred to as “Applicant”/ “Vedic” under Section 60(5)(c) of the I&B Code, against the Resolution Professional of the Corporate Debtor, hereinafter referred to as “Respondent”/ “RP” seeking a direction upon the RP to reconsider and admit the entire claim of the applicant to the tune of Rs. 23,42,42,42,554/- instead of the claim admitted by the RP of Rs. 2,76,67,940/- on 18.01.2023.

94. Facts of the case in brief is that the applicant Vedic and the Corporate Debtor had entered into a sub-contract agreement dated 16.06.2010, whereby the corporate debtor assigned the applicant for the construction work of Kabrai Feeder Channel starting from Arjun

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

Reservoir which the corporate debtor availed from the Irrigation Department, Govt. of U.P. The Applicant had raised bill from 30.06.2010 to 27.09.2014, for an amount of Rs. 41,53,95,348/- against which an amount of Rs. 10,36,47,148/- was yet to be paid by the corporate debtor to the Vedic. In 2014, though the Corporate Debtor had offered to transfer some machinery worth of Rs. 4,94,64,407/- and a payment of Rs. 10 Lakh on 31.12.2015 through RTGS which the corporate debtor failed to do. Later, the Applicant Vedic has filed its claim of Rs. 23,42,42,554/- in which the principal amount is of Rs. Rs. 10,36,47,148/- and rest is the interest upon the principal amount calculated at the rate of 18% per annum.

95. The Learned Counsel for the Applicant would submit that admission of Rs. 2,76,67,940/- against the claimed amount of Rs. 23,42,42,554/- by the RP is baseless.

96. The Learned Counsel for the RP would contend that initially an amount of Rs. 2,76,67,940/- against the claim of Rs. 23,42,42,554/- was admitted, but vide an order dated 05.03.2024 passed by this Adjudicating Authority directed to sit with the applicant regarding its claim, a meeting was convened on 16.05.2022, whereby the applicant submitted specific bills and documents as proof before the RP and on 18.06.2024 the RP issued an email to the Vedic admitted an amount of Rs. 8,53,92,149/-.

97. That, the applicant raised further objection before this Adjudicating Authority on 19.06.2024 for the deduction of an amount of Rs. 1,83,83,537/- on account of recoveries like LWC, Royalty, Material,

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

VAT etc. and the non-admission of the interest amount of Rs. 13,05,95,406/-.

98. The Learned Counsel for the RP further submits that the deduction of an amount of Rs. 1,83,83,537/-, on account of recoveries like LWC, Royalty, Material, VAT etc. is concerned, that an amount of Rs. 1,82,37,915/- has been admitted in the principal amount and an amount of Rs. 1,45,622/- towards TDS has been deducted from the principal amount. The revised claim admitted by the RP is of Rs. 10,36,30,064/- and the same has been intimated through an email on 15.07.2024. the Details of the admission of the amount of Rs. 10,36,30,064/- given by the RP is as under:

| <i>Particulars</i> | <i>Amount in INR</i> | <i>Remarks</i> |
|--|----------------------------|--|
| Amount Claimed: | | |
| <i>Principal Amount Claimed by VPPL</i> | <i>10,36,47,148</i> | <i>As per Claim Form</i> |
| <i>Interest Amount Claimed by VPPL</i> | <i>13,05,95,406</i> | <i>As per Claim Form</i> |
| Total Amount Claimed by VPPL | <i>23,42,42,554</i> | <i>As per Claim Form</i> |
| Processing of Claim: | | |
| <i>Less: Interest is not admissible as the interest clause is not included in the work order or agreement.</i> | <i>13,05,95,406</i> | <i>Interest clause is not included in the work order or agreement; hence, it is not considered.</i> |
| <i>Less: TDS deposited by SPL u/s 194C of Income Tax Act 1961 for FY 2012-13</i> | <i>1,45,622</i> | <i>Screenshot of Traces (Income Tax Portal) is attached)</i> |
| <i>Add: Credit Balance of other site</i> | <i>1,28,538</i> | <i>As per SPL books of accounts: Amount Related to Lot:01 Earth Work and Pucca work in Construction of Arjun Sahayak feeder Channel.- Hence Added.</i> |
| Admissible Claim Amount | <i>10,36,30,064</i> | |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

99. The Learned Counsel for the RP would submit that the interest component as claimed by the applicant has been rejected as there is no clause in the sub-contract agreement dated 16.06.2010 for the payment of interest on delayed payment.

100. In counter, the Learned Counsel for Vedic would submit that Vedic is a registered MSME and as per Section 16 of the MSME Act, Vedic is entitled to receive principal amount along with interest calculated at compound inters at three time of the bank rate notified by the RBI. Further, the amount was payable since 2016 and for eight years the same is being illegally withheld and the same amount is due. Further, the corporate debtor had deposited TDS amount in 2016 itself but has failed to pay the same amount though admittedly due and payable since 2015-16.

101. We find that the claim of the applicant Vedic is an Operational Debt. As per Section 5(21) of the I&B Code, an “Operational Debt” is a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government, or any local authority. It is apparent that definition under Section 5(21) does not include any provision of ‘interest’ with the ‘debt’. The Hon’ble NCLAT in ***Krishna Enterprises v. Gammon India Ltd.*** reported at **2018 SCC OnLine NCLAT 360** held that:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

“4. It is submitted that the ‘debt’ includes the interest, but such submission cannot be accepted in deciding all claims. If in terms of any agreement interest is payable to the Operational or Financial Creditor then debt will include interest, otherwise, the principal amount is to be treated as the debt which is the liability in respect of the claim which can be made from the Corporate Debtor.”

(Emphasis Added)

102. Further, the Coordinate Bench of Chandigarh NCLT in **Wanbury Ltd. v. Panacea Biotech Ltd.**, reported at **2017 SCC OnLine NCLT 475**, observed that:

“18. There is a marked difference between the definition of the term ‘financial debt’ and the ‘operational debt’. Under section 5(8) the term ‘financial debt’ means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and that is an inclusive definition. In the definition of the term ‘operational debt’ under section 5(21) the word ‘interest’ has not been mentioned.”

“19. Anyhow, to resolve the issue, it would be relevant to refer to the documents on record and the agreement, if any, between the parties. In the present case, admittedly, the amount being paid by the applicant/petitioner from time to time was being regularly adjusted towards the principal only and the interest has accumulated for the amount claimed by the petitioner. Even the invoices filed along with the winding up petition, do not contain any clause of payment of interest. It is only now with the present application that ‘operational creditor’ has attached Tax Invoices’ [Annexure A-4 (colly)] containing the clause of payment of 24% p.a. towards the interest in case the payment is not made within 3 days. These Tax Invoices were not part of the petition before the Hon'ble High Court. It is not the version of the petitioner that the Credit Invoices or Tax Invoices bear the signatures of the representative of the respondent Company.”

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

The term of ‘interest’ is thus only a unilateral act of the petitioner/applicant.”

(Emphasis Added)

103. Further, the NCLT Mumbai in ***M/S. Siddharth Enterprises v. M/S. Shapoorji Pallonji and Company Private Limited*** reported in **(2024) ibclaw.in291 NCLT** has taken a view that:

“4.5 As regards the claim of interest made by the Operational Creditor, it is noticed from the record that neither the purchase orders nor several invoices contained any interest liability for delayed payment. The claim of interest so made rests primarily on the status of the Operational Creditor as an MSME enterprise. It is true that MSME Act specifically states that interest shall be paid on delayed payments irrespective of whether there is an express agreement or not to that effect. However, it is now settled in the context of the Code that if interest is not agreed upon between the parties, it cannot form a part of ‘operational debt’ within the meaning of Section 5(21) of the Code and that no such interest can be claimed in an application under Section 9 of the Code. The correct forum for such claims is the MSEFC. It is settled that NCLT is not a forum to resolve the disputes pertaining to interest claims of a MSME entity. As stated above, the Operational Creditor has already made an application before MSEFC in this behalf. For the purpose of this Application, the claim of the Operational Creditor for treating the interest amount of Rs.10,25,954/- (rounded off) as part of ‘operational debt’ is found to be legally untenable and is accordingly rejected.”

(Emphasis Added)

104. Hence, we are of the considered opinion that the interest element cannot be clubbed with the principal amount and cannot be treated as a debt under Section 5(21) of the I&B Code. The imposition of interest component with the principal amount unilaterally sans having any clause

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

of payment of interest in the agreement cannot be come with the ambit of the definition of “Operational Debt” under I&B Code.

105. However, concerning the Section 16 of MSMED Act, which caters to that where any buyer fails to make payment of the amount to the supplier, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at **three times** of the bank rate notified by the Reserve Bank of India. We are of the view this is not the appropriate forum to consider the issue pertaining to the interest as claimed by the Applicant under MSMED Act.

106. In terms of the view above, we are of the considered opinion that the RP, having an administrative and facilitative role under the I&B Code and its Regulations, has not committed any error by rejecting the interest amount from the principal amount as nowhere in the agreement or work order mentions the clause of payment of interest.

107. In terms of view above, the **I.A. (IB) No. 1033/KB/2023** is **dismissed**.

108. A certified copy of this order, if applied for, may be supplied, upon compliance with all requisite formalities.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

I.A. (IB) (Plan) No. 1/KB/2024

109. Now, we would proceed to consider the Resolution Plan approved by the CoC of Simplex Projects Limited, Corporate Debtor on 05.02.2024 by 99.51% voting share.

110. Mr. Joy Saha, Learned Senior Counsel argued on behalf of the Resolution Professional (RP) in this application. We have heard and duly considered of his submissions.

111. The application has been preferred by Mr. Sutanu Sinha, the Resolution Professional of the Corporate Debtor, hereinafter referred to as “Applicant”/ “RP” under Sections 30(6) and 31(1) of the I&B Code, read with Regulations 39 of the Insolvency and Bankruptcy Boards of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, for brevity “CIRP Regulations” seeking the approval of the Resolution Plan dated 16.06.2023, along with its addendums dated 25.06.2023, 05.07.2023, 21.09.2023 and 27.10.2023 submitted by the Successful Resolution Applicant **Mr. Sudarsshhan Das Mundhra**, annexed at pages 46-164 to this instant application as Annexure A-1 (colly).

Prologue

112. The Learned Senior Counsel Mr. Joy Saha for the RP would submit that the Committee of Creditors (CoC) of the Corporate Debtor Simplex Projects Limited deliberated and discussed on the **Resolution Plan dated 16.06.2023, along with its addendums dated 25.06.2023,**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

05.07.2023, 21.09.2023 and 27.10.2023 submitted by **Mr. Sudarsshhan Das Mundhra**, and put to vote accordingly. On 05.02.2024, the CoC concluded the voting, and the plan received 99.51% voting shares. On 06.02.2024, the Resolution Professional issued a Letter of Intent (LoI) which was accepted by **Mr. Sudarsshhan Das Mundhra** unconditionally on 08.02.2024. Accordingly, **Mr. Sudarsshhan Das Mundhra** was declared the Successful Resolution Applicant (for brevity “SRA”).

113. It is further submitted that in accordance with Part III Clause 8 of the Request for Resolution Plan (RFRP) and Regulation 36B(4A) of the CIRP Regulations, 2016 read with the decision of the CoC at its 44th meeting convened on 07.02.2024, the SRA furnished his Performance Bank Guarantee (PBG) as performance security of Rs. 7,25,00,000/-, issued on 13.02.2024, annexed to pages 5-13 to the Supplementary Affidavit dated 15.02.2024.

114. The Learned Senior Counsel would contend that the copy of the Compliance Certificate in Form “H”, submitted by the RP, is annexed at pages 14-26 to the Supplementary Affidavit dated 15.02.2024.

Particulars of the Corporate Debtor

115. That, the Simplex Projects Limited is a company incorporated under the Companies Act, 1956, having CIN: L45201WB1990PLC050101, carrying the business of Civil Engineering Construction and Infrastructure Development and registered with the

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

RoC, West Bengal, having its registered office at 12/1, Nellie Sengupta Sarani, Kolkata 700 087.

116. The Corporate Debtor is a 'medium' enterprise under the Micro, Small, and Medium Enterprises Development Act, 2006 (MSMED, Act 2006), bearing MSME registration no. UDYAM-WB-10-0004612 and the Successful Resolution Applicant **Mr. Sudarsshhan Das Mundhra** is the director, suspended board and promoter of Simplex Projects Limited (Corporate Debtor).

Admission of Corporate Insolvency Resolution Process (CIRP)

117. Upon a petition under Section 7 of the I&B Code, 2016, by the State Bank of India against Simplex Projects Limited, this Adjudicating Authority on 27.04.2022 admits the petition and initiates CIRP in respect of the Corporate Debtor. Subject to the submission of a valid Authorization of Assignment in terms of Regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016, **Mr. Sutanu Sinha** was appointed as the Interim Resolution Professional (IRP) to conduct the process.

Public Announcement

118. That the IRP Mr. Sinha upon receipt of the Order dated 27.04.2022, on 29.04.2022, made the Public Announcement in the newspapers i.e., *Economic Times* (English) and *Ei Samaya* (Bengali) in the location of the registered office of the Corporate Debtor under Section 13 of the I&B Code

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

read with Regulation 6(1) of the CIRP Regulations, 2016, for inviting the claims from the creditors in specified forms prescribed by the Insolvency and Bankruptcy Board of India (IBBI).

Constitution of CoC

119. That, pursuant to the public announcement, the Committee of Creditors (CoC) of the Corporate Debtor was constituted on 20.06.2022, with the following creditors as members of the CoC:

| SN | Name of the Creditor | Percentage of Voting Share |
|-----------|-----------------------------|-----------------------------------|
| 1. | Bank of Baroda | 25.46 |
| 2. | UCO Bank | 10.44 |
| 3. | State Bank of India | 32.76 |
| 4. | DCB Bank Limited | 3.76 |
| 5. | IDBI Bank | 0.23 |
| 6. | Axis Bank | 16.37 |
| 7. | ICICI Bank | 9.84 |
| 8. | YES Bank | 0.74 |
| 9. | Kotak Mahindra Bank | 0.41 |
| | TOTAL | 100 |

List of Meetings convened by the CoC during CIRP:

120. That a total of 44 meetings were held by the CoC during the CIRP Period:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| Particulars | Date of the CoC Meeting |
|------------------------------|--------------------------------|
| 1 ST meeting CoC | 27.06.2022 |
| 2 nd meeting CoC | 05.08.2022 |
| 3 rd meeting CoC | 02.09.2022 |
| 4 th meeting CoC | 15.09.2022 |
| 5 th meeting CoC | 19.10.2022 |
| 6 th meeting CoC | 09.11.2022 |
| 7 th meeting CoC | 23.11.2022 |
| 8 th meeting CoC | 06.12.2022 |
| 9 th meeting CoC | 06.01.2023 |
| 10 th meeting CoC | 19.01.2023 |
| 11 th meeting CoC | 03.02.2023 |
| 12 th meeting CoC | 10.03.2023 |
| 13 th meeting CoC | 24.03.2023 |
| 14 th meeting CoC | 28.03.2023 |
| 15 th meeting CoC | 05.04.2023 |
| 16 th meeting CoC | 13.04.2023 |
| 17 th meeting CoC | 17.04.2023 |
| 18 th meeting CoC | 20.04.2023 |
| 19 th meeting CoC | 06.05.2023 |
| 20 th meeting CoC | 12.05.2023 |
| 21 st meeting CoC | 15.05.2023 |
| 22 nd meeting CoC | 17.05.2023 |
| 23 rd meeting CoC | 14.06.2023 |
| 24 th meeting CoC | 19.06.2023 |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| | |
|------------------------------|------------|
| 25 th meeting CoC | 23.06.2023 |
| 26 th meeting CoC | 27.06.2023 |
| 27 th meeting CoC | 07.07.2023 |
| 28 th meeting CoC | 12.07.2023 |
| 29 th meeting CoC | 21.07.2023 |
| 30 th meeting CoC | 07.08.2023 |
| 31 st meeting CoC | 25.08.2023 |
| 32 nd meeting CoC | 29.08.2023 |
| 33 rd meeting CoC | 23.09.2023 |
| 34 th meeting CoC | 29.09.2023 |
| 35 th meeting CoC | 26.10.2023 |
| 36 th meeting CoC | 02.11.2023 |
| 37 th meeting CoC | 07.11.2023 |
| 38 th meeting CoC | 28.11.2023 |
| 39 th meeting CoC | 02.12.2023 |
| 40 th meeting CoC | 21.12.2023 |
| 41 st meeting CoC | 09.01.2024 |
| 42 nd meeting CoC | 24.01.2024 |
| 43 rd meeting CoC | 29.01.2024 |
| 44 th meeting CoC | 07.02.2024 |

121. That in terms of Section 22(2) of the I&B Code, the 1st meeting of the Committee of Creditors (“CoC”) of the Corporate Debtor was held on 27.06.2022, wherein the CoC approved the appointment of Mr. Sutanu Sinha as the Resolution Professional (“RP”) of the Corporate Debtor.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

Collation of Claims

122. The Learned Senior Counsel for the RP would submit the list of creditors along with amount claim and admitted/ verified, reproduced hereunder:

| Category of Stakeholders | Claims submitted (in INR Crore) | Claims Admitted (in INR Crore) |
|---|--|---------------------------------------|
| Secured Financial Creditors | 2530.90 | 2054.13 |
| Unsecured Financial Creditors | 1.36 | 1.36 |
| Operational Creditors Statutory Authorities | 114.54 | 48.86 |
| Operational Creditors Employees and Workmen | 5.85 | 4.14 |
| Other Operational Creditors | - | - |
| Other Creditors | - | - |
| Total | 2652.65 | 2108.49 |

123. Further, the Learned Senior Counsel for the RP would submit the details of claims of Financial Creditors forming part of CoC, as under:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| Name of the Financial Creditors | Claims filed (in INR Crore) | Claims Admitted (in INR Crore) |
|---|------------------------------------|---------------------------------------|
| State Bank of India | 505.61 | 501.95 |
| Axis Bank | 365.85 | 365.85 |
| Bank of Baroda | 359.59 | 359.59 |
| UCO Bank | 715.43 | 326.54 |
| ICICI Bank | 203.85 | 203.57 |
| DCB Bank Limited | 89.94 | 89.94 |
| IDBI Bank | 185.34 | 101.46 |
| Asset Care and Reconstruction Enterprise Ltd. | 55.45 | 55.43 |
| J.C. Flowers Asset Reconstruction Pvt Ltd | 18.99 | 18.99 |
| Kotak Mahindra Bank | 15.68 | 15.65 |
| SREI | 15.17 | 15.17 |
| Shri Pradeep Kumar Sonthalia | 6.08 | 4.29 |
| Kusum Lata Sonthalia | 2.73 | 2.32 |
| Shri Ram Multicom Pvt Ltd | 2.37 | 2.12 |
| Carwin Trading Pvt Ltd | 0.50 | 0.50 |
| Bikewin Trading Pvt Ltd | 0.58 | 0.58 |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| | | |
|---------------------------------|----------------|----------------|
| Saloni Projects Private Limited | 0.28 | 0.28 |
| Total | 2532.26 | 2055.48 |

124. The details of Financial Creditors, Operational Creditors, and Other Creditors have been provided with this application annexed at Pages 1016-1027 as Annexure A-44 (colly).

Appointment of Registered Valuers

125. That, in the 2nd meeting of CoC held on 05.08.2022, the RP informed the members of the CoC that quotes for valuation for determination of fair value and liquidation value of the Corporate Debtor as per Regulation 35 of CIRP Regulations as consented by the CoC in its 1st meeting, were invited by him. Pursuant to it, the RP appointed two registered valuers, namely **Value Edge Professionals Private Limited** and **INMACS Valuers Private** to determine the fair value and liquidation value of the Corporate Debtor. The appointment and fees/ expenses of both the registered valuers were ratified by the CoC. INMACS Valuers Pvt Ltd withdrew their proposal from the office of registered valuers and accordingly, steps were taken to receive the quotes from the next valuers and **M/s Crest Valuation Service Private Limited** was considered for appointment as the second Valuer.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

Corporate Insolvency Resolution Process and its Compliances

126. That in accordance with Regulation 36A of the CIRP Regulations, the RP issued invitation for submission of expression of interest (“Eoi”) on 11.08.2022 with the last date of submission being 10.09.2022.

127. That, pursuant to the said invitation, the RP received 12 Expressions of Interest. The provisional list of Prospective Resolution Applicants (“**PRAs**”) was issued on 20.09.2022 and on 05.10.2022, the final list of PRAs was issued by the RP. Copy of the Form G dated 11.08.22 and final list of PRAs, issued by the Applicant under the CIRP Regulations, are annexed at pages 276-279 as Annexure A-8 (colly) to this application.

128. That the Evaluation Matrix (EM) and Request for Resolution Plan (**RFRP**) for the Corporate Debtor was approved by the CoC in 4th meeting held on 15.09.2022 and thereafter, was issued to the PRAs on 25.09.2022.

129. That in the 8th meeting of CoC held on 06.12.2022, the RP informed the members that two resolution plans have been received from two Resolution Applicants namely Rathi Industries Ltd. and Mr. Sudarsshhan Das Mundhra, on 01.12.2022. The resolution plans were opened in the CoC meeting in front of each Resolution Applicants one by one. The members of the CoC took note of the opening of the resolution plans. The RP has circulated the NPV of both plans as summarized below:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| Particulars | Mr. Sudarsshhan Das Mundhra (INR Crore) | Rathi Industries Ltd. (INR Crore) |
|--|--|--|
| NPV of secured Financial Creditors | 68.15 | 60.42 |
| NPV of all creditors other than Secured Financial Creditors | 1.73 | 0.13 |
| CIRP Cost | (At actuals) | (At actuals) |

130. In the 10th meeting of CoC, the RP apprised the members of the CoC on the draft reports of Registered Valuers and draft transaction audit report submitted by the Transaction Auditor. The Transaction Auditor was called in the meeting to brief the members on the observations in the draft transaction audit report.

131. That the 12th meeting of CoC was held on 10.03.2023, wherein, the discussions were held on the final transaction auditor report submitted by the Transaction Auditor on 03.03.2023.

132. That the 13th meeting of CoC was held on 24.03.2023, wherein, discussions were held on addendum to the final transaction audit report submitted by Transaction Auditor on 24.03.2023 and the RP requested the transaction auditor to submit revised transaction audit report as per the discussions held in the meeting. The RP further informed the CoC members about the appointment of an independent agency for Section

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

29A check of PRAs, and the summary of revised valuation reports submitted by two registered valuers.

133. That, the 14th meeting of CoC was held on 28.03.2023, wherein **Signal X Private Limited** was appointed to conduct Section 29A eligibility check on Resolution Applicants of the Corporate Debtor. The RP also informed the members of the CoC that there exists a difference of **62.71%** for Liquidation Value, and the major variances are in assets classes of Trade receivables, other Financial Assets, and other current assets in the two valuation reports submitted by Registered Valuers namely Edge Professionals Private Limited and Crest Valuation LLP. Accordingly, as per Regulation 35 read with Regulation 27 of CIRP Regulations, 2016, CoC accorded in-principal approval that Applicant will invite quotes for issuing Request for Proposal for appointment of a third valuer registered with Insolvency and Bankruptcy Board of India as Registered Valuer for valuation of specified Secured Financial Assets.

134. That, in the 15th meeting of CoC was held on 05.04.2023, wherein the RP informed The CoC members that **M/s R & A Valuation LLP** was appointed as the third valuer for the valuation of specific assets class under Secured Financial Assets of the Corporate Debtor. The RP also apprised the CoC members that the final transaction audit report was received from M/s Kansal Singla & Co on 30.03.2023 It was discussed between the members of the CoC and was decided that the RP can determine and form an opinion on these transactions and there is no requirement for CoC approval for filing the avoidance application by RP.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

Pursuant to that, the RP determined his opinion on the transactions under Section 43, 45, 50 & 66 of the Code based on the observations found in the transaction audit report. The RP further discussed the resolution plans with the CoC members and pursuant to the discussions it was decided that the Resolution Applicants will submit their final revised resolution plan in light of the concerns raised by the CoC regarding the increase in protection amount for domestic and foreign BGs, enhancement of resolution plan amount, treatment of homebuyers and treatment of avoidance transaction. The Resolution Applicants were requested to submit their revised resolution plan by 09.04.2023.

135. That, the RP has submitted the details of the Fair value and the Liquidation value as on 27.04.2022, with the name of the Valuers as under:

| SN | Name of the valuers | Fair value (in Crore) | Liquidation value (in Crore) |
|----|--|--------------------------|---------------------------------|
| | | As on 27.04.2022 | |
| 1. | Value Edge Professionals Private Limited | 68.05 | 38.66 |
| 2. | M/s Crest Valuation Service Private Limited | 35.92 | 32.42 |
| 3. | M/s R&A Valuation LLP | 2.33 | 2.18 |
| | Average of 1 and 2 | 51.98 | 35.54 |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

136. It is submitted that the 3rd valuation done after CoC approval wherein difference between initial two valuers were more than 25% in respect to financial assets. Further, the RP contends that it was not considered when M/s Value Edge Professionals Private Limited revised their valuation and for the purpose of arriving fair value and liquidation value, valuation of first of valuers were considered for calculating average.

137. That, the 16th meeting of CoC was held on 13.04.2023, wherein the CoC members discussed on Section 29A report on both the Resolution Applicants and deliberated on the revised resolution plans submitted by Resolution Applicants. The members of the CoC also discussed and negotiated the financial proposals with the Resolution Applicants, and it was decided that certain modifications are required in the resolution plans.

138. That, in the 17th meeting of CoC held on 17.04.2023, the CoC members deliberated upon the 29A report submitted by the independent agency and after due discussion noted that the said report needs to be reconsidered and the independent agency needs to clarify the 29A report.

139. That, the 18th meeting of the CoC was held on 20.04.2023, wherein the CoC members raised certain issues on the reinstated resolution plans submitted by Resolution Applicants. The RP further informed the CoC members that since the plans will be put to vote before the CoC and the CoC would require time to vote on the plans, the RP will use all reasonable efforts to ensure that the Corporate Debtor does not go into liquidation and to avoid the corporate death of the Corporate Debtor.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

Evaluation and Voting

140. The Learned Senior Counsel would submit that in the 8th CoC meeting on 06.12.2022, the two resolution plans from Rathi Industries Ltd. and Mr. Sudarsshhan Das Mundhra were open in front of the Resolution Applicants.

141. After a plethora of discussions, deliberations, addendum, and corrigendum, in the 26th CoC meeting convened on 27.06.2023 the revised resolution plans were put to vote, and it was decided that the last date of costing vote would be 07.07.2023. By the virtue of the extension allowed by this Adjudicating Authority upon filing an application seeking the same, the voting was concluded on 22.08.2023, where none of the Resolution Plans attained the requisite for their approval.

142. That, in the 31st meeting held on 25.08.2023, the proposal of revoting as per Regulation 39(3B) of the CIRP Regulations, 2016 was proposed on the Resolution Plan of Mr. Sudarsshhan Das Mundhra which has received the highest voting shares.

143. That, in the 32nd meeting of the CoC, the RP informed the members of the CoC regarding the hearing dated 28.08.2023 and the agenda for revoting the Resolution Plan submitted by Mr. Sudarsshhan Das Mundhra under Regulation 39(3B) of CIRP Regulations, 2016, was put to vote along with the agenda for meeting the liquidation cost as per the Code and Regulation 39B of CIRP Regulations, 2016. That the voting

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

concluded on 27.09.2023 and both the agenda were rejected by the CoC due to absence of requisite majority.

144. That, in the 33rd meeting of CoC held on 23.09 2023, the RP discussed the email dated 21.09.2023 received from the Resolution Applicant Mr. Sudarsshhan Das Mundhra proposing an addendum to the resolution plan dated 16.06.2023.

145. That, in the 34th meeting of CoC held on 29.09.2023, the RP apprised the members on the voting result of revoting held under Regulation 39(3B) as the resolution for approving the resolution plan submitted on 18.06.2023 along with corrigendum and addendums submitted by Mr. Sudarsshhan Das Mundhra was not approved and only 52.89% votes were cast in favour of the resolution plan.

146. That, the RP has preferred an application being I.A. (IB) No. 1630/KB/2023 seeking a direction to the CoC for consideration and completion of the revoting process of the plan with an extension for 30 days which was allowed up to 26.10.2023.

147. That, in the 36th meeting of CoC held on 02.11.2023, the discussions were held on the fourth addendum received from Mr. Sudarsshhan Das Mundhra vide email dated 27.10.2023, wherein the plan consideration was increased by Mr. Mundhra.

148. That, in the 38th meeting of CoC, held on 28.11.2023, the RP apprised the members of the CoC that by the virtue of the order dated

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

23.11.2023 in I.A. (IB) No. 1826/KB/2023 by this Adjudicating Authority, directing the members of Committee of Creditors to re-vote on the Resolution Plan submitted by Mr. Sudarsshhan Das Mundhra after taking into consideration of the addendums dated 21.09.2023 and 27.10.2023 and extending the CIRP period of the Corporate Debtor by 30 days from 23.11.2023. It is submitted that vide the afore-mentioned order, this Adjudicating Authority also dismissed the application for Liquidation i.e., I.A. (IB) No. 1750/ 2023 filed by the RP.

149. That, in the 39th meeting of CoC, held on 02.12.2023, the members of CoC in accordance with Order dated 23.11.2023, deliberated upon the Resolution Plan dated 15.06.2023, along with addendums dated 21.09.2023 and 27.10.2023 submitted by Mr. Sudarsshhan Das Mundhra pursuant to order dated 23.11.2023 and subsequently, the resolution plan dated 16.06.2023, along with the addendums dated 25.06.2023, 05.07.2023, 21.09.2023, and 27.10.2023 were put to vote.

150. That, on 29.01.2024, the 43rd meeting of the CoC was held wherein the members of the CoC further deliberated upon the extension of voting lines on the resolution plan. It was decided by the CoC that the voting lines will be extended till 05.02.2024 subject to approval of this Adjudicating Authority. This Adjudicating Authority on 30.01.2024 allowed the extension of CIRP timelines till 25.01.2024.

151. On 05.02.2024, the voting was concluded, and the resolution plan submitted by Mr. Mundhra received **99.51%** voting shares.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

152. That, in 44th meeting of the CoC held on 07.02.2024, the RP discussed the outcome of the voting process on approval of resolution plan put on vote in 39th meeting of CoC. The RP apprised the CoC members that the Resolution Plan submitted by Mr. Sudarsshhan Das Mundhra has been approved by voting percent of 99.51% and proceeded to discuss the process of issuance of Letter of Intent to the members of the CoC.

153. The list of financial creditors being members of the CoC and the voting results in approval of the resolution plan of Mr. Mundhra is as under:

| Sl. No. | Name of Creditor | Voting Share (%) | Voting for Resolution Plan (Voted for/ Dissented/Abstained) |
|----------------|--|-------------------------|--|
| 1 | State Bank of India | 24.05% | Voted for |
| 2. | Axis Bank | 17.85% | Voted for |
| 3. | Bank of Baroda | 17.55% | Voted for |
| 4. | UCO Bank | 15.94% | Voted for |
| 5. | ICICI Bank | 9.93% | Voted for |
| 6. | DCB Bank Limited | 4.39% | Voted for |
| 7. | IDBI Bank | 4.22% | Voted for |
| 8. | Asset Care and Reconstruction Enterprise Ltd | 2.71% | Voted for |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| | | | |
|-----|---|-------|---------------------|
| 9. | J.C Flowers Asset Reconstruction Pvt Ltd. | 0.93% | Voted for |
| 10. | Kotak Mahindra Bank | 0.76% | Voted for |
| 11. | SREI | 0.74% | Voted for |
| 12. | Shri Pradeep Kumar Sonthalia | 0.21% | Abstained/not voted |
| 13. | Kusum lata Sonthalia | 0.11% | Abstained/not voted |
| 14. | Shri Ram Multicom Pvt Ltd | 0.10% | Abstained/not voted |
| 15. | Carwin Trading Pvt Ltd | 0.02% | Abstained/not voted |
| 16. | Bikewin Trading Pvt Ltd | 0.03% | Abstained/not voted |
| 17. | Saloni Projects Private Limited | 0.01% | Abstained/not voted |

154. That, under the instruction of the CoC and as per Clause 6(v) of the RFRP, the Applicant issued a Letter of Intent to the Successful Resolution Applicant on 06.02.2024, which was duly accepted by the Successful Resolution Applicant on 08.02.2024.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

Compliances of the Resolution Plan submitted by the SRA with various provisions under the I&B Code and CIRP Regulations:

155. The RP has submitted that in terms of Regulation 39(4) of the Insolvency and Bankruptcy Code (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the RP has filed a Compliance Certificate in prescribed form i.e., Form “H”, annexed at Pages 14-26 to the Supplementary Affidavit dated 15.02.2024.

156. It is submitted that contended that the Successful Resolution Applicant has met the criteria approved by the CoC having regard to the complexity and scale of operations of the business of the Corporate Debtor in terms of Section 25(h)(2) of the I&B Code.

157. Further, it is submitted that the Successful Resolution Applicant is eligible to submit a resolution plan in terms of Section 29A of the I&B Code and accordingly, an affidavit has also been furnished by the SRA. The Due Diligence Report concerning Section 29A of the I&B Code prepared by the RP along with the Affidavit furnished by the SRA is annexed at pages 1028-1033 to the application. Further, a report on Section 29A eligibility given by independent consultant annexed at 1033-1044 to the application has been furnished, we note the opinion of the independent Legal Professional that “Hence Mr. Sudarshan Das Mundhra is not ineligible person under Section 29A of IBC and RA is a promoter of Company under CIRP but claims eligibility under 240A of IBC and is not prohibited to act as a Resolution Applicant under the provisions of

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

Insolvency and Bankruptcy Code subject to declaration on the highlighted points” (relevant page 1042 of the application).

158. Further, the Learned Senior Counsel for the Resolution Professional would submit the details of various compliances as envisaged within the I&B Code and the CIRP Regulations to which a Resolution Plan has been adhered to. Further, it is submitted that the Resolution Applicant has submitted its eligibility in terms of Section 30(1) of the I&B Code, 2016.

159. It is further submitted that in terms of Section 30(2) of the I&B Code, 2016, (as amended vide Amendment dated August 16, 2019) the Resolution Plan, submitted by **Mr. Sudarsshhan Das Mundhra (SRA)** provides the details of various compliances as under:

| Clause under Section 30(2) of the I&B Code | Requirement | Relevant Provision in the Resolution Plan |
|---|--|--|
| (a) | <i>Resolution Plan must provide for payment of CIRP cost in priority to repayment of other debts of the Corporate Debtor in the manner specified by the Board.</i> | Clause 4.4.1 at page 36 of the Plan. |
| (b) | <i>(i) Plan must provide for repayment of debts of Operational Creditors in such manner as may be specified by</i> | Payment to the Operational Creditors: |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| Clause under Section 30(2) of the I&B Code | Requirement | Relevant Provision in the Resolution Plan |
|---|--|---|
| | <p><i>the Board which shall not be less than the amount payable to them in the event of liquidation under Section 53;</i></p> <p><i>(ii) Plan must provide for repayment of debts of Operational Creditors in such manner as may be specified by the Board which shall not be less than amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher; and</i></p> <p><i>provides for payment of debts of financial creditors who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.</i></p> | <p>Clause 4.4.2 at page 36, Clauses 4.5, 4.6, 4.7 at pages 39-43 to the Plan.</p> <p>Payment to the Financial Creditors dissentient to the plan:</p> <p>Clause 4.4.3 at Page 37 to the Plan.</p> |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| Clause under Section 30(2) of the I&B Code | Requirement | Relevant Provision in the Resolution Plan |
|---|---|--|
| (c) | <i>Management of the affairs of the Corporate Debtor after approval of the Resolution Plan.</i> | Clause 7 at pages 60-61 to the Plan. |
| (d) | <i>Implementation and Supervision of the Resolution Plan.</i> | Clauses 7 and 8 at pages 60-61 |
| (e) | <i>Plan does not contravene any of the provisions of the law for the time being in force.</i> | Clause 9.5 at Page 64. |
| (f) | <i>Conforms to such other requirements as may be specified by the Board.</i> | Clause 1.2 at Pages 6-11, Clause 4.4 at page 36, Clause 10.9.7 at Page 71, Clause 10.10 at Pages 71-73 to the Resolution Plan. |

160. Further, the RP would submit the measures required for implementation of the Resolution Plan in terms of Regulations 37 of the CIRP Regulations as under:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| Particulars | Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation. |
|--|---|
| <i>A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following: -</i> | |
| <i>(a) transfer of all or part of the assets of the corporate debtor to one or more persons;</i> | Clause 10.10(1) at Page 71 to the Plan. |
| <i>(b) sale of all or part of the assets whether subject to any security interest or not;</i> | Clause 10.10(1) at Page 71 to the Plan. |
| <i>(ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;</i> | NA |
| <i>(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;</i> | Annexure 2 at Pages 84-85 to the Plan. |
| <i>(ca) cancellation or delisting of any shares of the corporate debtor, if applicable;</i> | Annexure 2, Point 3, Step 3 at page 85 to the Plan. |
| <i>(d) satisfaction or modification of any security interest;</i> | Annexure 2. |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| Particulars | Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation. |
|--|---|
| <i>A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following: -</i> | |
| <i>(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;</i> | Annexure 2. |
| <i>(f) reduction in the amount payable to the creditors;</i> | Clause 4 at Pages 33-58 to the Plan. |
| <i>(g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;</i> | NA |
| <i>(h) amendment of the constitutional documents of the corporate debtor;</i> | Clause 10.10(9) at page 72 to the Plan. |
| <i>(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;</i> | Clause 10.10(10) at page 72 to the Plan. |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| Particulars | Relevant Page of the Revised Resolution Plan dealing aforesaid compliance with Regulation. |
|--|---|
| <i>A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximisation of value of its assets, including but not limited to the following: -</i> | |
| <i>(j) change in portfolio of goods or services produced or rendered by the corporate debtor;</i> | Clause 10.10(11) at page 72 to the Plan. |
| <i>(k) change in technology used by the corporate debtor;</i> | Clause 10.10(12) at page 73 to the Plan. |
| <i>(l) obtaining necessary approvals from the Central and State Governments and other authorities.</i> | Annexure 6, and Clause 10.10(13) at page 73 to the Plan. |
| <i>(m) sale of one or more assets of corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets; and manner of dealing with remaining assets.</i> | Clause 10.10(1) at page 72 to the Plan. |

161. Further, the RP would submit the mandatory contents of the Resolution Plan in terms of Regulation 38 of the CIRP Regulations, 2016, as under:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| Reference to relevant Regulation | Requirements | How dealt with the Resolution Plan |
|---|--|---|
| 38(1) | <p><i>(a) The amount payable under a resolution plan to the operational creditors shall be paid in priority over financial creditors; and</i></p> <p><i>(b) The amount payable under a resolution plan to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.</i></p> | <p>Payment to the Operational Creditors:</p> <p>Clause 4.4.2 at page 36, Clauses 4.5, 4.6, 4.7 at pages 39-43 to the Plan.</p> <p>Payment to the Financial Creditors dissentient to the plan:</p> <p>Clause 4.4.3 at Page 37 to the Plan.</p> |
| 38(1A) | <p><i>A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.</i></p> | <p>Clause 4.4.4 at page 38, Clause 9.6 at page 64 to the Plan.</p> |
| 38(1B) | <p><i>A resolution plan shall include a statement giving details if the</i></p> | <p>Clause 5.2 at page 58 to the Plan.</p> |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| Reference to relevant Regulation | Requirements | How dealt with the Resolution Plan |
|---|--|---|
| | <i>resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.</i> | |
| 38(2) | <i>(a) A resolution plan shall provide the term of the plan and its implementation schedule;</i> | Clause 5.1 at page 58 and Clause 6 at page 59 to the Plan. |
| | <i>(b) A resolution plan shall provide the management and control of the business of the corporate debtor during its term;</i> | Clause 7 and Clause 8 at pages 60-63 to the Plan. |
| | <i>(c) A resolution plan shall provide adequate means for supervising its implementation.</i> | Clause 5.3 at page 58 and Clause 8.1. at page 61 to the Plan. |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| Reference to relevant Regulation | Requirements | How dealt with the Resolution Plan |
|---|--|--|
| | <i>(d) A resolution plan shall provide provides for the 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.</i> | Clause 4.13 at pages 55-56 read with Addendum dated 05.07.2023. |
| 38(3) | <i>(a) A resolution plan shall demonstrate that it addresses the cause of default;</i> | Clause 10.10(4) at page 73 to the Plan. |
| | <i>(b) A resolution plan shall demonstrate that it is feasible and viable;</i> | Clause 10.10(4) at page 73 to the Plan. |
| | <i>(c) A resolution plan shall demonstrate that it has provisions for its effective implementation;</i> | Annexure 2 at pages 84-85 and Clause 8 at pages 61-63 to the Plan. |
| | <i>(d) A resolution plan shall demonstrate that it has provisions for approvals required and the timeline for the same; and</i> | Clause 9.12. at Page 66, Clause 10.10(13) at page 73, Annexure 6 |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| Reference to relevant Regulation | Requirements | How dealt with the Resolution Plan |
|---|---|--|
| | | read with 1 st Addendum dated 25.06.2023. |
| | <i>(e) A resolution plan shall demonstrate that the resolution applicant has the capability to implement the resolution plan.</i> | Clause 3 at pages 28-32 to the Plan. |

162. Further, the RP would submit the mandatory contents of the Resolution Plan in terms of Regulation 39 of the CIRP Regulations, 2016, as under:

| Reference to relevant Regulation | Requirement | How dealt with the Resolution Plan. |
|---|---|---|
| 39(2) | <i>Whether the RP has filed applications in respect of transactions observed, found or determined by him?</i> | An application being I.A.(IB) No. 733/KB/2023 has been filed on 14.04.2023. The Application has been preferred to for the recovery of Rs. 3047.86 Lakh from the suspended board |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| Reference to relevant Regulation | Requirement | How dealt with the Resolution Plan. |
|---|--|--|
| | | and SBI. |
| Regulation 39(4) | <i>Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]</i> | Performance Bank Guarantee No. IN BG07924000258 dated 13.02.2024 for an amount of INR 7,25,00,000/-. |

Details of the Resolution Plan and/or Payment Schedule

163. The Learned Senior Counsel would submit that the plan provides an amount of **Rs. 235.28 Crore** against the total amount admitted by the RP of Rs. 2108.49 Crore.

164. The Learned Senior Counsel would further submit that out of the total plan value, i.e., of Rs. 235 Crore, an amount of Rs. 3.93 Crore (at Actual) has been allocated for CIRP cost, an amount of Rs. 227.11 Crore has been provided to the Secured Financial Creditors, which includes the minimum guaranteed amount of Rs. 28.50 Crore, Guaranteed amount against Domestic Bank Guarantee Rs. 91.47 Crore and against Foreign Bank Guarantee Rs. 34.64 Crore. It is submitted that Rs. 225.61 Crore is provided to all the Secured Financial Creditors and Rs 1.50 Crore for Secured Financial Creditors having exclusive charge on certain assets of the Corporate Debtor.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

165. Further, An amount of Rs. 0.06 Crore has been provided to the Unsecured Financial Creditors, an amount of Rs. 0.36 Crore has been allocated to the Operational Creditors and Rs. 1.32 Crore has been secured for the Workmen and Employees of the Corporate Debtor.

166. Further, an amount of Rs. 0.50 Crore has been provided for Contingent liabilities and an amount of Rs. 2.00 Crore has been allocated as working capital of the company.

167. The amount provided for the stakeholders under the Resolution Plan, as per Form H, is as under:

| (In Crore) | | | | | | |
|-------------------|------------------------------------|--|----------------|-----------------|--------------------------------|--|
| SL. NO. | Category of Stakeholder* | Sub-Category of Stakeholder | Amount Claimed | Amount Admitted | Amount Provided under the Plan | Amount Provided to the Amount Admitted (%) |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| 1 | Secured Financial Creditors | (a) Creditors not having a right to vote under sub-section (2) of section 21 | NA | | | |
| | | (b) Other than (a) above: (i) who did not vote in favour of the resolution Plan | NA | NA | NA | NA |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| | | | | | | |
|----------|--------------------------------------|--|---------|---------|--------|--------|
| | | (ii) who voted in favour of the resolution plan | 2530.90 | 2054.13 | 227.11 | 11.06% |
| | | Total[(a) + (b)] | 2530.90 | 2054.13 | 227.11 | 11.06% |
| 2 | Unsecured 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 | 1.36 | 1.36 | 0.06 | 4.41 |
| | | (ii) who voted in favour of the resolution plan | NA | NA | NA | NA |
| | | Total[(a) + (b)] | 1.36 | 1.36 | 0.06 | 4.41% |
| 3 | Operational Creditors | (a) Related Party of Corporate Debtor | NA | NA | NA | NA |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| | | | | | | |
|--------------------|-----------------------------|----------------|----------------|---------------|---------------|--|
| | (b) Other than (a) above: | | | | | |
| | (i)Government | 18.04 | 14.63 | 0.00 | NA | |
| | (ii)Workmen & Employees | 5.85 | 4.14 | 1.32 | 31.88% | |
| | (iv)Other Creditors | 96.50 | 34.23 | 0.36 | 1.1% | |
| | Total[(a) + (b)] | 118.32 | 53.00 | 1.68 | 3.17% | |
| 4 | Other debts and dues | | | | | |
| Grand Total | | 2650.58 | 2108.49 | 228.85 | 10.85% | |

168. It is submitted that concerning the treatment of Home Buyers, Clause 4.8.5 at page 48 of the Plan provides that the corporate debtor entered into an agreement with a developer, Shree RSH Projects, to develop a real estate project. The project is substantially completed. The Resolution Applicant proposes to coordinate with the Developer and ensure the competition of the Project as per the agreement within 12 months from the effective date.

169. Further, it is submitted that concerning the treatment of the Arbitral Award, Clause 4.9.2 at pages 50-52 of the Plan says that the Resolution Applicant proposes an amount of Rs. 28.50 Crore as payment on account of the proposed sharing of the Arbitration Awards regardless

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

of the outcome of any appeal filed by any party in the arbitration proceedings.

Our Inference:

On the Conduct of CoC

170. Upon hearing, the submission made by the Learned Counsel appearing on behalf of the Resolution Professional of Corporate Debtor herein and perusing the record and/or documents placed before this Adjudicating Authority, we would find that **Resolution Plan dated 16.06.2023, along with its addendums dated 25.06.2023, 05.07.2023, 21.09.2023 and 27.10.2023** submitted by **Mr. Sudarsshhan Das Mundhra, the Successful Resolution Applicant** has been approved by the CoC of the Corporate Debtor by **99.51%** voting share on 18.04.2024 and **Mr. Sudarsshhan Das Mundhra**, is declared as the **“Successful Resolution Applicant”**. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. Preponderantly, all the compliances have been done by the Resolution Applicant for making the plan effective after approval by this Adjudicating Authority.

171. We have noted that the Fair value of the Corporate Debtor is Rs. 51.98 Crore and the Liquidation value of the Corporate Debtor is Rs. 35.54 Crore and the total Plan value including CIRP Cost, contingent liabilities and working capital is Rs. 235.28 Crore.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

172. In the course of the hearing, the Learned Senior Counsel for the Resolution Professional would submit that the Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code, 2016, read with relevant Regulations of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of law for the time being in force.

173. Upon perusal of the documents on record and/or documents, we are satisfied that the **Resolution Plan dated 16.06.2023, along with its addendums dated 25.06.2023, 05.07.2023, 21.09.2023 and 27.10.2023** submitted by **Mr. Sudarsshhan Das Mundhra, the Successful Resolution Applicant**, is in accordance with sections 30 and 31 of the I&B Code, 2016 and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

**On the Statutory Obligations or Seeking Approvals from the
Authorities:**

174. As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the I&B Code.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

On the Reliefs, Waivers and Concessions:

175. We have perused the reliefs, waivers and concessions as sought and as provided in the Resolution Plan. It is evident that some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the ambit of the I&B Code and the Companies Act 2013, while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has the power to grant reliefs, waivers and concessions only concerning the reliefs, waivers and concessions that are directly with the I&B Code and the Companies Act (within the powers of the NCLT). The reliefs, waivers and concessions that pertain to other governmental authorities/departments may be dealt with by the respective competent authorities/forums/offices, Government or Semi-Government of the State or Central Government concerning the respective reliefs, waivers and concession, whenever sought for. The competent authorities including the Appellate authorities may consider granting such reliefs, waivers and concessions keeping in view the spirit of the I&B Code, 2016 and the Companies Act, 2013.

176. It is almost trite and fairly well-settled that the Resolution Plan must be consistent with the extant law. The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for the renewal of business permits and supply of essential services, if required, and all necessary forms along with filing fees etc. and such authority shall also consider the same keeping in mind the

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

objectives of the Code, which is essentially the resolving the insolvency of the Corporate Debtor.

177. In this context, we would rely upon the judgment in ***Embassy Property Developments Pvt. Ltd. vs. State of Karnataka*** reported at **MANU/SC/1661/2019: (2020) 13 SCC 308**, wherein, the Hon'ble Apex Court has laid down that:

“39. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term "assets" under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word "assets", while Section 20(1) uses the word "property" together with the word "value". Sections 18 and 25 do not use the expression "property". Another important aspect is that Under Section 25(2)(b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

25. Duties of resolution professional -

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of Sub-section (1), the resolution professional shall undertake the following actions:

(a).....

*(b) represent and act on behalf of the corporate debtor with third parties, **exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings.***

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”

(Emphasis Added)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

178. The reliefs sought for subsisting contracts/agreements can be granted, and no blanket orders can be granted in the absence of the parties to the contracts and agreements.

On the Extinguishment of Claims:

179. Concerning the waivers with regard to the extinguishment of claims which arose prior to the initiation of the CIR Process and which have not been claimed are granted in terms of the law laid down by the Hon'ble Apex Court in ***Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited*** reported in **MANU/SC/0273/2021: (2021)9SCC657: [2021]13SCR737** that "once a resolution plan is duly approved by the Adjudicating Authority Under Sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan." **(Emphasis Added)**

180. Further, the relevant part of the ***Ghanshyam Mishra judgment (supra)*** in this regard is given below:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

“61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities, that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stake-holders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in Sub-section (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.’

“62. This aspect has been aptly explained by this Court in the case of Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra).’

“107. For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.”

(Emphasis Added)

181. In this regard we also rely on the judgement of the Hon’ble High Court of Rajasthan in the matter of ***EMC v. State of Rajasthan, Civil Writ Petition No. 6048/2020 with 6204/2020*** reported in **(2023) ibclaw.in 42 HC**, wherein it has been inter-alia held that:

“Law is well-settled that with the finalization of insolvency resolution plan and the approval thereof by the NCLT, all dues of creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date.”

(Emphasis Added)

182. Thus, on the date of approval of the resolution plan by the Adjudicating Authority, all such claims, that are not a part of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon’ble Supreme Court of India further laid down that all the dues including the statutory dues owed to the

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period before the date on which the Adjudicating Authority grants its approval under Section 31 of the I&B Code could be continued.

On Guarantors:

183. Concerning the waivers sought in relation to guarantors, the Hon'ble Apex Court held in ***Lalit Kumar Jain v. Union of India*** reported in **MANU/SC/0352/2021: (2021) 9 SCC 321: (2021) ibclaw.in 61 SC** that *the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor's liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself.* **(Emphasis Added)**

184. Further, we would rely upon the judgment rendered by the NCLAT in ***Roshan Lal Mittal v. Rishabh Jain*** reported in **(2023) ibclaw.in 803 NCLAT** that:

“The Resolution Plan does not absolve the personal guarantors from their guarantee. The law well settled by the Hon'ble Supreme Court in the matter of “Lalit Kumar Jain vs. Union of India & Ors. – (2021) 9 SCC 321), that by approval of resolution plan the guarantees are not ipso facto discharged.”

(Emphasis Added)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

185. Hence, we would infer that if there are any personal guarantors of the corporate debtor, the same shall be invoked and will be taken appropriate action against them, as per law.

On Inquiries, Litigations, Investigations, and Proceedings:

186. For the reliefs and waivers sought for all inquiries, litigations, investigations, and proceedings shall be granted strictly as per section 32A of the I&B Code, 2016 and the provisions of the law as may be applicable.

187. In this context, we would infer that upon the approval of the Resolution Plan, the Corporate Debtor avails the limbs of new management to revive its business. Thus, all the past liabilities of the Corporate Debtor including criminal liability prior to the initiation of the CIR Process shall stand effaced and the new management will step into the shoes of the company with a fresh or clean slate. Hence, the old management shall be liable to face all the offences committed prior to the commencement of the CIR Process. At this junction, we would rely upon the judgment rendered by the Hon'ble Apex Court in ***Ajay Kumar Radheyshyam Goenka vs. Tourism Finance Corporation of India Ltd.*** reported in **MANU/SC/0244/2023: (2023) 10 SCC 545** that:

“67. Thus, Section 32A broadly leads to:

*a. **Extinguishment of the criminal liability of the corporate debtor, if the control of the corporate debtor goes in the***

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

hands of the new management which is different from the original old management.

b. The prosecution in relation to "every person who was a "designated partner" as defined in Clause (j) of Section 2 of the Limited Liability Partnership Act 2008 (6 of 2009), or an "officer who is in default", as defined in Clause (60) of Section 2 of the Companies Act, 2013 (18 of 2013), or was in any manner in charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence" shall be proceeded and the law will take it's own course. Only the corporate debtor (with new management) as held in Para 42 of P. Mohanraj will be safeguarded.

c. If the old management takes over the corporate debtor (for MSME Section 29A does not apply (see 240A), hence for MSME old management can takeover) the corporate debtor itself is also not safeguarded from prosecution Under Section 138 or any other offences."

(Emphasis Added)

188. Further, in the judgment rendered by the **Hon'ble High Court of Madras** in **Vasan Healthcare Pvt. Ltd. vs. The Deputy Director of Income Tax (Investigation), Unit 3(2)** reported in **MANU/TN/0243/2024: (2024) ibclaw.in 80 HC** that:

"9. In the above judgement, the Apex Court after dealing with the provision in detail, came to a categoric conclusion that insofar as the criminal prosecution is concerned, the criminal liability of the corporate debtor viz., company gets completely wiped off and the new management is allowed to take over the company on a clean slate. However, the Apex Court also made it clear that the persons

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

*who are involved in the day today affairs of the company and were incharge and responsible for running of the company, will be liable to face all the **offence committed prior to the commencement of the Corporate Insolvency Resolution Process. There is no escape for those persons from criminal liability even though the corporate debtor is given a clean slate and is handed over to the new Management.***

10. Useful reference can also be made to the judgement of **the Calcutta High Court in [Tantia Constructions Limited Vs. Krishna Hi-Tech Infrastructure P Ltd] in CRP No. 172 of 2022.** The relevant portions in the order are extracted hereunder :-

4. For the **application of Section 32A of IBC, 2016** and in light of the present matter, it is pertinent to determine the following two issues, i.e.,

i. Whether the offence as complained in the impugned criminal proceedings has been alleged to be committed before the initiation of corporate insolvency resolution process or during such process?

ii. Whether the resolution plan has resulted in change in the management or corporate debtor in consonance with the provisions of Section 32A(1) of IBC, 2016?

5. With respect to Issue No. 1, it is pertinent to note that the corporate insolvency resolution process as against the Petitioner/Corporate Debtor was initiated on 13.03.2019 when the application was accepted and the Order of Moratorium under Section 14 of the IBC, 2016 was imposed by NCLT, Kolkata in the aforementioned case. The complaint that commenced the impugned criminal proceedings was filed on 22.07.2019 before the concerned

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024

In
Company Petition (IB) No. 56/KB/2019

court by the opposite party. Whereby, said alleged offence so complained, took place before or during the corporate insolvency resolution process and is covered under the ambit of Section 32A of IBC, 2016.

6. *With respect to Issue No. 2, it is observed that the petitioner has not made specific submission in this regard. However, it is the submission of the opposite party that the **impugned complaint case does not concern itself with the new directors that were appointed after takeover by the Resolution Applicant in line with the Resolution Plan so approved by NCLT dated 24.02.2022. It is their submission that they are primarily aggrieved by the actions of petitioner when it was in control of erstwhile Directors.***

11. *The above judgement clearly lays down the law on the subject. The moment the Corporate Insolvency Resolution Process is initiated against the corporate debtor and the application is accepted by the NCLT, the moratorium comes into operation. **Once the resolution plan is accepted by the NCLT and orders are passed and the Corporate debtor gets into hands of the new management, all the past liabilities including the criminal liability of the Corporate debtor gets wiped off and the new Management takes over the company with clean slate.***

(Emphasis Added)

189. Very recently, the Hon'ble Madras High Court in ***M/s. Vasan Healthcare Pvt Ltd v. M/s. India Infoline Finance Ltd***, Crl O.P. No. 1772 of 2024, reported in (2024) **ibclaw.in 700 HC** has observed that:

*“13. As a result of the above discussion and the law laid in **Ajay Kumar Radheshyam Goenka** case, it is clear that the corporate debtor cannot be prosecuted for the prior liability after the*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

*approval of the Resolution Plan. At the same time, it is to be bear in mind **the protection under Section 32-A of Insolvency & Bankruptcy Code, 2016 is restricted only to the Corporate debtor and not to its Directors who were in-charge of the affairs of the Company when the offence committed** or the signatory of the cheque.”*

(Emphasis Added)

190. For the sake of convenience, the reliefs, concessions and approvals sought by the Applicant, at section E, on page 74-77 to the Resolution Plan from us are catered to as below and the orders thereon are indicated against each as under:

| SN | Clause | <i>Reliefs, Concessions, and Approvals sought for</i> | Our Inference with the Relevant Provisions and/or Case laws | Our Orders thereon |
|--|--------|---|--|---------------------------|
| <i>Reliefs and Concessions for the implementation of the Resolution Plan.</i> | | | | |
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**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| | | | | |
|----|---|---|--|---|
| 1. | - | <p><i>Though not a Pre-condition to Implementation of the Resolution Plan, All the approvals / directions/clarifications stated below shall be deemed to be approved and/or granted so as to enable implementation of the Resolution Plan and to effect a turn-around of the business of the Corporate Debtor with a view to provide maximum value to all the stake holders concerned, upon approval of the Resolution Plan by the NCLT.</i></p> <p><i>For the avoidance of doubt, it is hereby clarified that all consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to, which have expired as of the Completion Date, shall be deemed to continue without disruption for the benefit of the Corporate Debtor for a period of 6 months or until renewed by the relevant authorities, whichever is later. Without any liability for the non-compliance during the time specified above, the Resolution</i></p> | <p>This Adjudicating Authority has the power to grant reliefs, waivers and concessions which are directly with the I&B Code and the Companies Act, within the power of the NCLT.</p> <p>For others, the same shall be dealt with by the concerned authorities upon requisite compliances with them keeping in view the spirit of the I&B Code and Companies Act, 2013.</p> | <p>Allowed in accordance with law.</p> |
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**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| | | | | |
|--|-----------|--|--|--|
| | 1. | <p><i>Applicant undertakes to cause the Corporate Debtor to expeditiously identify such expired consents, licenses, approvals, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed to, evaluate the steps required to address the same and take steps to remedy the same to the extent practically possible.</i></p> <p>Other Approval/ Waivers/ Extinguishments</p> <p><i>The approval of the Adjudicating Authority shall constitute adequate approval and continuation of the existing share capital and accordingly, no approval/consent shall be necessary from any other Person / Governmental Authority in relation to either of these actions under any agreement, the constitutional documents or under any Applicable Law. It is also clarified that the Resolution Applicant shall not be required to deal with the dissenting/abstaining Financial Creditors in any manner other than as provided under the Code.</i></p> | | |
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**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| SN | Clause | <i>Reliefs, Concessions, and Approvals sought for</i> | Our Inference with the Relevant Provisions and/or Case laws | Our Orders thereon |
|-----------|-----------|--|--|--|
| 2. | 2. | <i>Directions from Adjudicating Authority that any Attachment / Garnishee Order issued by any Authority of the Central or State Government on any bank account shall stand relinquished and that CD shall be allowed to freely operate the bank accounts and utilize it for meeting out CIRP Process Cost, subject to the provisions of Section 32A.</i> | This is for the relevant and/or appropriate authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority. | Not Granted. We direct to approach the appropriate authority/ Authorities. |
| 3. | 3. | <i>Approval of this plan shall be deemed approval for waiver from filing of statutory returns (including but not limited to any filings for registrar of Companies, Direct & Indirect tax authorities, plant related annual filings, etc), for a period prior to Effective Date. Certified copy of the order approving Resolution Plan shall be a direction on such statutory authorities to allow Corporate Debtor to do compliance(s) with effect from</i> | This is for the relevant and/or appropriate authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this | Not Granted. We direct to approach the appropriate authority/ Authorities. |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| SN | Clause | <i>Reliefs, Concessions, and Approvals sought for</i> | Our Inference with the Relevant Provisions and/or Case laws | Our Orders thereon |
|-----------|-----------|--|--|--|
| | | <i>and after the date of approval of Resolution Plan by the Adjudicating Authority.</i> | Adjudicating Authority. | |
| 4. | 4. | <i>The approval of this Plan by the Adjudicating Authority shall be deemed to waived all the procedural requirements in terms of Section 66, Section 42 and Section 62(1)(c) of the Companies Act, 2013, for issuance of equity shares to the Resolution applicant and/or the Financial Creditors.</i> | As far as meetings of shareholders for the issue of such new equity shares and for cancellation of existing equity shares of the corporate debtor are concerned, approval to the Resolution Plan accorded by this Adjudicating Authority shall be deemed to be requisite approval for all such meetings or | Granted in accordance with law. |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| SN | Clause | <i>Reliefs, Concessions, and Approvals sought for</i> | Our Inference with the Relevant Provisions and/or Case laws | Our Orders thereon |
|-----------|-----------|--|---|---------------------------|
| | | | dispensation from conducting meetings of shareholders only in accordance with law and upon compliances of all regulatory compliances such as filing with the RoC and relevant authorities, payment of filing fees on documents etc. | |
| 5. | 5. | <i>The approval of this Plan by the Adjudicating Authority shall be deemed to have the waiver of any fee payable to any stock exchange or any such regulatory body towards any past dues or towards fee dues pursuant to any of the steps as</i> | All regulatory compliances and, the payment of filing fees on documents etc. will have to be | Not Allowed. |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| SN | Clause | <i>Reliefs, Concessions, and Approvals sought for</i> | Our Inference with the Relevant Provisions and/or Case laws | Our Orders thereon |
|-----------|-----------|--|--|--|
| | | <i>contemplated in the Resolution Plan including but not limited to any fee for revocation of suspension of trading & delisting of shares of the CD and restoration of Listing with BSE/NSE, fee payable to Registrar of Companies (RoC), etc. .</i> | complied with. The authorities cannot be expected to grant <i>suo moto</i> approval for such activities without the forms being filed or necessary compliances being done on behalf of the corporate debtor. | |
| 6. | 6. | <i>Licenses and approvals held by the Company, which expire prior to Completion Date 8 within a period of 6 (six) months thereafter, shall be renewed/extended by the relevant Governmental Authorities, and the Company shall be permitted to continue its business and assets in the manner operated prior to submission this plan until the</i> | This is for the relevant and/or appropriate authorities to consider, and not in the nature of a waiver, concession or | Not Granted. We direct to approach the appropriate authority/ Authorities. |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| SN | Clause | <i>Reliefs, Concessions, and Approvals sought for</i> | Our Inference with the Relevant Provisions and/or Case laws | Our Orders thereon |
|-----------|---------------------------------------|--|---|--|
| | <p>6(a)</p> <p>6(b)</p> | <p><i>renewal/extension of such licenses and approvals. The CD shall move appropriate application before the Appropriate Authority for seeking such approval, if required. The relevant Governmental Authorities will provide a reasonable period of time after Completion Date in order for the Resolution Applicant to:</i></p> <p><i>Assess the status of licenses and approvals required by the Company and to procure that the Company applies for the same; and</i></p> <p><i>Regularize any non-compliances under the Applicable Law (including non- registration, inadequate/non-stamping of documents as required under Applicable Law) existing prior to the Closing Date.</i></p> | <p>relief to be granted by this Adjudicating Authority.</p> | |
| 7. | 7. | <p><i>The relevant Governmental / Statutory / Regulatory Authorities shall not initiate any investigations, actions or proceeding in relation to any non-compliances with Applicable</i></p> | <p>Whatever the immunity is granted strictly under Section 32A of the I&B</p> | <p>Granted, in accordance with law.</p> |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| SN | Clause | <i>Reliefs, Concessions, and Approvals sought for</i> | Our Inference with the Relevant Provisions and/or Case laws | Our Orders thereon |
|----|--------|--|--|---------------------------|
| | | <p><i>Law by the Company during the period prior to effective date. Neither shall the Resolution Applicant, nor the Company, nor their respective directors, officers and employee appointed on and as of the Closing Date be liable for any violations, liabilities, penalties or fines with respect to or pursuant to the Company not having in place requisite licenses and approvals required to undertake its business as per Applicable Law, or any non-compliances of Applicable Law by the Company. Further, the relevant Governmental Authorities will provide a reasonable period of time after the Effective Date, for the Resolution Applicant to assess the status of any non-compliances under the Applicable Law and to procure that the Company regularizes such non-compliances under the Applicable Law existing prior to the Completion Date.</i></p> | <p>Code and the law laid down in Ajay Kumar Radheyshyam Goenka (Supra), Tantia Constructions Limited (Supra) and in Vasan Healthcare Pvt. Ltd. (Supra), nothing more and nothing less.</p> | |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| SN | Clause | <i>Reliefs, Concessions, and Approvals sought for</i> | Our Inference with the Relevant Provisions and/or Case laws | Our Orders thereon |
|----|--------|---|---|---|
| 8. | 8. | <i>Waiver of any dues upto the CIRP commencement date, of whatsoever nature towards Motor Vehicle, Electricity, Water authorities or any such infrastructure provider any dues.</i> | The law laid down in Ghanashyam Mishra (Supra) , that once a resolution plan is duly approved by the adjudicating authority under Section 31(1), the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central | Granted in accordance with law strictly. |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| SN | Clause | <i>Reliefs, Concessions, and Approvals sought for</i> | Our Inference with the Relevant Provisions and/or Case laws | Our Orders thereon |
|----|--------|---|---|---------------------------|
| | | | <p>Government, any State Government or any local authority, guarantors and other stakeholders.</p> <p>On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a</p> | |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| SN | Clause | <i>Reliefs, Concessions, and Approvals sought for</i> | Our Inference with the Relevant Provisions and/or Case laws | Our Orders thereon |
|-----------|-----------|---|--|---|
| | | | claim, which is not part of the resolution plan. | |
| 9. | 9. | <i>Withdrawal of litigations initiated by the Financial Creditors against Corporate Debtor, issue no-dues certificate(s) in favour of Corporate Debtor and release their respective charges on the securities in full and complete satisfaction of all debts owed to the Financial Creditors by Corporate Debtor, for credit facilities availed by Corporate Debtor upon receipt of full payment as provided under Resolution Plan.</i> | The law laid down in Ghanashyam Mishra (Supra) , shall be applied, nothing more and nothing less. In respect of withdrawal of litigation, the concerned authorities to whom the litigations have been preferred to, may deal with the same keeping in view the spirit of the | Granted in accordance with law strictly. |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| SN | Clause | <i>Reliefs, Concessions, and Approvals sought for</i> | Our Inference with the Relevant Provisions and/or Case laws | Our Orders thereon |
|------------|------------|---|---|--|
| | | | I&B Code and Companies Act, 2013. | |
| 10. | 10. | <i>The Corporate Debtor shall have immunity from any actions and penalties (of any nature) under any laws for any non-compliance of laws in relation to the Corporate Debtor or by the Corporate Debtor, as well as with the terms of any agreement or arrangement entered into by the Corporate Debtor, which was existing as on the Completion Date and which continues for a period of up to 12 months after the acquisition of control by the Resolution Applicant over the Corporate Debtor. Without any liability for the non-compliance during the time specified above, the Resolution Applicant undertakes to cause Corporate the required Debtor to expeditiously identify such non-compliances, evaluate the steps to address such non-compliances and take steps to remedy such non-compliances to the extent practically</i> | Whatever the immunity is granted strictly under Section 32A of the I&B Code and the law laid down in Ajay Kumar Radheyshyam Goenka (Supra), Tantia Constructions Limited (Supra) and in Vasan Healthcare Pvt. Ltd. (Supra) , nothing more and nothing less. | Granted, subject to the terms and conditions of the lease deed/ agreement and in accordance with law. |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| SN | Clause | <i>Reliefs, Concessions, and Approvals sought for</i> | Our Inference with the Relevant Provisions and/or Case laws | Our Orders thereon |
|------------|------------|--|--|--|
| | | <i>possible. The Resolution Applicant and the Corporate Debtor shall be entitled to apply to and approach the Adjudicating Authority for relief for continued implementation of the approved Resolution Plan before or after any coercive action is taken against the Corporate Debtor.</i> | | |
| 11. | 11. | <i>Any and all dues to, liabilities or obligations payable to, claims, counter-claims, demands, actions or penalties, made or imposed by or any arrears, dividend or obligations owed or payable to (including but not limited to all interests, damages, losses, expenses and third party claims), and any right, title, interest enjoyed by, any actual or potential other stakeholders of the Corporate Debtor whether under law or otherwise, whether or not claimed, whether or not filed, whether or not crystalized, whether or not accrued, whether or not admitted, whether or not notional, whether or not known, whether due or contingent, whether</i> | This is for the relevant and/or appropriate authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority. | Not Granted. We direct to approach the appropriate authority/ Authorities. |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| SN | Clause | <i>Reliefs, Concessions, and Approvals sought for</i> | Our Inference with the Relevant Provisions and/or Case laws | Our Orders thereon |
|----|--------|---|--|---------------------------|
| | | <p><i>or not disputed, present or future, whether or not being adjudicated in any proceedings, whether or not decreed, whether or not reflected in the financial statements of the Corporate Debtor, or whether or not reflected in any record, document, statement, statutory or otherwise, arising prior to or after the Effective Date, but pertaining to period prior to the Effective Date, and/or arising in connection with Payment of Debts or in any other manner as a result of or in connection with this Plan, shall be deemed to have been irrecoverably waived and permanently extinguished and written off in full upon full payment as provided under Resolution Plan. To give effect to such waiver and extinguishment, any contract, agreement, deed or document, whether oral or written, expressed or implied, statutory or otherwise, pursuant to which any such dues, liabilities, obligations, claims, counterclaims, demands, actions, penalties, right, title or</i></p> | | |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| SN | Clause | <i>Reliefs, Concessions, and Approvals sought for</i> | Our Inference with the Relevant Provisions and/or Case laws | Our Orders thereon |
|------------|------------|---|--|--|
| | | <i>interest in claimed (other than as specifically mentioned herein) shall stand modified with effect from the Effective Date without any further act, deed and approval of the Resolution Plan by Adjudicating Authority shall be deemed to be sufficient notice which may be required to be given to any person for such matters and no further notice shall be required to be given.</i> | | |
| 12. | 12. | <i>An order approving the Resolution Plan shall be a deemed order upon Financial Creditors to cancel all pledge/ lien/ other encumbrances upon the issued share capital of the Company to enable corporate action until a period of 30 days from the Completion date as envisaged in the Resolution Plan.</i> | This is for the relevant and/or appropriate authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority. | Not Granted. We direct to approach the appropriate authority/ Authorities. |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| SN | Clause | <i>Reliefs, Concessions, and Approvals sought for</i> | Our Inference with the Relevant Provisions and/or Case laws | Our Orders thereon |
|------------|------------|---|---|---------------------------|
| 13. | 13. | <i>The Ministry of Corporate Affairs and/or the Adjudicating Authority shall exempt compliance with the provisions of Chapter XV of the Companies Act, 2013 (and the corresponding rules issued under the Companies Act, 2013), in respect of schemes of arrangement contemplated under the Plan.</i> | All regulatory compliances and, the payment of filing fees on documents etc. will have to be complied with. The authorities cannot be expected to grant <i>suo moto</i> approval for such activities without the forms being filed or necessary compliances being done on behalf of the corporate debtor. | Not Allowed. |
| 14. | 14. | <i>Relinquishment of all any promise to pay towards any obligation including corporate guarantee, pledge on any</i> | All regulatory compliances and, the | Not Allowed. |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| SN | Clause | <i>Reliefs, Concessions, and Approvals sought for</i> | Our Inference with the Relevant Provisions and/or Case laws | Our Orders thereon |
|------------|-----------|---|---|---------------------------|
| | | <i>shares until a period of 30 days from the Completion date, mortgage or charge on any specific asset, etc. issued by Corporate Debtor in favour of or on behalf of any of its subsidiaries, associates, group companies or any third party.</i> | payment of filing fees on documents etc. will have to be complied with. The authorities cannot be expected to grant <i>suo moto</i> approval for such activities without the forms being filed or necessary compliances being done on behalf of the corporate debtor. | |
| 15. | 15 | <i>Specific waiver of transaction costs related leading to implementation of the Resolution Plan including but not limited to any incidence of Stamp Duty, ROC Fee, Income Tax, any Statutory Levy, Renewal Charges,</i> | All regulatory compliances and, the payment of filing fees on documents etc. | Not Allowed. |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| SN | Clause | <i>Reliefs, Concessions, and Approvals sought for</i> | Our Inference with the Relevant Provisions and/or Case laws | Our Orders thereon |
|------------|------------|---|--|---|
| | | <i>etc. The Resolution Plan envisages increase in the authorised capital for implementation. The ROC fees towards the same shall be specifically waived.</i> | will have to be complied with. The authorities cannot be expected to grant <i>suo moto</i> approval for such activities without the forms being filed or necessary compliances being done on behalf of the corporate debtor. | |
| 16. | 16. | <i>To direct / grant all approvals required for undertaking the schemes of restoration of listing envisaged Waiver in Annexure-2 of the Resolution Plan subject applicable laws.</i> | This relief shall be dealt with as per the provisions of the resolution plan subject to the applicable law. | Allowed in accordance with applicable law. |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

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|-----|--------|---|--|---|
| 17. | 17. | <i>Waiver as to any liability that may arise pursuant to cases/arbitration/proceeding/action occurred during the CIRP period, as mentioned in Information Memorandum and/or any other information as provided by the RP including but not limited to the one set out in Annexure-3</i> | <p>This is for the relevant and/or appropriate authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority.</p> <p>However, whatever the immunity is granted strictly under Section 32A of the I&B Code and the law laid down in Ajay Kumar Radheyshyam Goenka (Supra),</p> | <p>Not Granted.</p> <p>We direct to approach the appropriate authority/ Authorities.</p> |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| SN | Clause | <i>Reliefs, Concessions, and Approvals sought for</i> | Our Inference with the Relevant Provisions and/or Case laws | Our Orders thereon |
|------------|------------|---|---|---|
| | | | Tantia Constructions Limited (Supra) and in Vasan Healthcare Pvt. Ltd. (Supra) , nothing more and nothing less. | |
| 18. | 18. | <i>Permitting waiver of all liabilities and taxes arising out of implementation of the transactions contemplated in the Resolution Plan and instructing the relevant authorities concerned accordingly.</i> | The law laid down in Ghanashyam Mishra (Supra) , shall be applied, nothing more and nothing less. | Granted in accordance with law strictly. |
| 19. | 19. | <i>Directions from Adjudicating Authority that all legal suits, proceedings, certificate proceedings and/or quasi-legal proceedings that have been initiated against</i> | The law laid down in Ghanashyam Mishra (Supra) , Ajay | Granted strictly in accordance with law to |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| SN | Clause | <i>Reliefs, Concessions, and Approvals sought for</i> | Our Inference with the Relevant Provisions and/or Case laws | Our Orders thereon |
|----|--------|---|---|--------------------------------|
| | | <p><i>Corporate Debtor, which may have an adverse impact on Corporate Debtor of any nature whatsoever, shall stand quashed, including but not limited to:</i></p> <p><i>(a) for recovery of any debts and dues (including but not limited to statutory dues like Central/State Sales Tax/value added tax/Central Excise/Service Tax Goods and Services Tax ,Income Tax, Custom Duty, etc. or any other statutory dues) pending against the Corporate Debtor and 100% waiver of all such claims/dues thereunder, excepting what has been contemplated in the Resolution Plan;</i></p> <p><i>(b) those related to taxation, related to railway claims/disputes, proceedings under the Foreign Exchange Management Act 1999, Prevention of Money Laundering Act 2002, criminal matters, etc.</i></p> | <p><i>Kumar Radheyshyam Goenka (Supra), Tantia Constructions Limited (Supra) and in Vasan Healthcare Pvt. Ltd. (Supra), shall be applied, nothing more and nothing less.</i></p> | <p>the extant permissible.</p> |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| SN | Clause | <i>Reliefs, Concessions, and Approvals sought for</i> | Our Inference with the Relevant Provisions and/or Case laws | Our Orders thereon |
|------------|------------|---|---|--|
| | | <i>pending against the Corporate Debtor</i> | | |
| 20. | 20. | <i>Direction to Resolution Professional and CoC to provide full access to information, premises and assets to Resolution Applicant upon the effective date.</i> | This will be strictly followed as per the provisions under the plan. | Allowed in accordance with law. |
| 21. | 21. | <i>Directions from Adjudicating Authority to the relevant parties concerned to ensure continuity of critical infrastructure contracts/arrangements.</i> | This will be strictly followed as per the provisions under the plan. | Allowed in accordance with law. |
| 22. | 22. | <i>Directions to the concerned ROC and State Governments to waive stamp duty and fees applicable to the implementation of the Resolution Plan.</i> | All regulatory compliances and, the payment of filing fees on documents etc. will have to be complied with. The authorities cannot be expected to grant <i>suo moto</i> | Not Allowed. |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| SN | Clause | <i>Reliefs, Concessions, and Approvals sought for</i> | Our Inference with the Relevant Provisions and/or Case laws | Our Orders thereon |
|------------|------------|---|--|--|
| | | | approval for such activities without the forms being filed or necessary compliances being done on behalf of the corporate debtor. | |
| 23. | 23. | <i>Directions from Adjudicating Authority allowing Corporate Debtor to use the brought forward carrying forward and setting off of losses and unabsorbed depreciation, whether assessed or not, for the purpose of the Income Tax Act, 1961 as provided in Clause (c) of Sub-Section (2) of Section 79 of the Income Tax Act, 1961. Further, RA should not be liable to pay any tax whatsoever arising out of implementation of this Resolution Plan.</i> | This is for the relevant and/or appropriate authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority. | Not Granted. We direct to approach the appropriate authority/ Authorities. |

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

| SN | Clause | <i>Reliefs, Concessions, and Approvals sought for</i> | Our Inference with the Relevant Provisions and/or Case laws | Our Orders thereon |
|----|------------|---|--|--|
| | 24. | <i>Directions from Adjudicating Authority the company have been enlisted empanelled. to various registering authorities, before whom the company have been enlisted empanelled.</i> | This is for the relevant and/or appropriate authorities to consider, and not in the nature of a waiver, concession or relief to be granted by this Adjudicating Authority. | Not Granted. We direct to approach the appropriate authority/ Authorities. |

Conclusion:

191. As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the I&B Code.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

192. In case of non-compliance with this order or withdrawal of the Resolution Plan, the payments already made by the Resolution Applicant shall be liable for forfeiture.

193. In so far as the approval of the **Resolution Plan dated 16.06.2023, along with its addendums dated 25.06.2023, 05.07.2023, 21.09.2023 and 27.10.2023** submitted by **Mr. Sudarsshhan Das Mundhra, the Successful Resolution Applicant** is concerned, this Adjudicating Authority is bound by the judgement of the Hon'ble Supreme Court of India in ***K. Sashidhar vs. Indian Overseas Bank and Ors.*** reported in **(2019) 12 SCC 150: MANU/SC/0189/2019**, wherein it is held that:

*“35. [...] Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: **(i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board.** [...]. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

*financial creditors, it would not be free from being speculative.
These aspects are completely within the domain of the
financial creditors who are called upon to vote on the
resolution plan Under Section 30(4) of the I & B Code.”*

(Emphasis Added)

194. Further, the Hon'ble Apex Court in ***Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors.*** reported in **(2022) 1 SCC 401: MANU/SC/0206/2021** at Para 216, has laid down that:

“The Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 30(2) and 31 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by Committee of Creditors.”

(Emphasis Added)

195. Further, in ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta*** reported at **(2020) 8 SCC 531: MANU/SC/1577/2019**, the Hon'ble Apex Court has propounded that:

“38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the **commercial wisdom of the Committee of Creditors** which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

*its terms by such Committee with prospective resolution
applicants.”*

(Emphasis Added)

196. In the case at hand, we would note that the **Resolution Plan dated 16.06.2023, along with its addendums dated 25.06.2023, 05.07.2023, 21.09.2023 and 27.10.2023** submitted by **Mr. Sudarsshhan Das Mundhra, the Successful Resolution Applicant** has been approved by the Committee of Creditors of the Corporate Debtor by **99.51%** voting share on 02.02.2024.

197. We have further noted that the LoI was issued on 02.02.2024, which has been unconditionally accepted by the SRA. Accordingly, the **Resolution Plan dated 16.06.2023, along with its addendums dated 25.06.2023, 05.07.2023, 21.09.2023 and 27.10.2023** submitted by **Mr. Sudarsshhan Das Mundhra**, has unanimously declared as a **“Successful Resolution Applicant”**. Hence, given the aforesaid decisions of the Hon’ble Apex Court as well as in light of the overall facts and circumstances of the present case, this Adjudicating Authority has not interfered with the viability of the Commercial Wisdom as exercised by the Committee of Creditors of the Corporate Debtor.

198. Subject to the observations made in this Order, the **Resolution Plan dated 16.06.2023, along with its addendums dated 25.06.2023, 05.07.2023, 21.09.2023 and 27.10.2023** submitted by **Mr. Sudarsshhan Das Mundhra, the Successful Resolution Applicant** is

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

hereby **APPROVED** and **FINALLY SANCTIONED** by this Adjudicating Authority.

On PUFÉ Application(s):

199. We find that on 14.04.2023, the RP has preferred an application being **I.A. (IB) No. 733/KB/2023** under Section 43 of the I&B Code, 2016 read with Regulation 35A (3) of the CIRP Regulations, 2016, against the Suspended Board (Respondent Nos. 1 to 10) and the State Bank of India (Respondent No. 11) for recovery of an aggregated amount of Rs. 3047.92 Lakh. We find that the Clause 4.13 at page 55 to the Resolution Plan as well as its Addendum dated 16.06.2023, caters to the provision of “*Right to pursue all applications filed by the Resolution Professional regarding the Avoidance Transactions*”. We would infer that approval of the Resolution Plan shall not affect the proceedings of the PUFÉ applications and the same shall be pursued by the CoC at its own cost as per Clause 4.13 at page 55 to the Resolution Plan as well as its Addendum dated 16.06.2023.

200. The Resolution Plan shall form part of this Order and shall be read along with this order for implementation. The Resolution Plan thus approved shall be binding on the Corporate Debtor and all other stakeholders involved in terms of Section 31 of the I&B Code, so that the revival of the Corporate Debtor Company shall come into force with immediate effect without any delay.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

201. The Moratorium imposed under section 14 of the Code by virtue of the order initiating the CIR Process, shall cease to have effect from the date of this order.

202. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return them to the Resolution Applicant or New Promoters.

203. Liberty is hereby granted for moving any application, if required, in connection with the successful implementation of this Resolution Plan.

204. A copy of this Order is to be submitted to the Registrar of Companies (RoC) to whom the company is registered, by the Resolution Professional.

205. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.

206. The Resolution Professional is further directed to hand over all records, premises/ factories/ documents to the Resolution Applicant to finalise the further line of action required for starting the operation. The Resolution Applicant shall have access to all the records/ premises/ factories/ documents through the Resolution Professional to finalise the further line of action required for starting the operation.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

207. The **Registry of this Adjudicating Authority** is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsels for information and for taking necessary steps.

208. In terms of the view above, the interlocutory application being **I.A. (IB) (Plan) No. 1/KB/2024** along with the main company petition being **Company Petition (IB) No. 56/KB/2019** shall stand **disposed of** accordingly.

209. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

To Summarize

210. I.A. (IB) No. 579/KB/2024: The Applicant being a shop allottee as per Agreement dated 19.02.2018, has not filed its claim before the RP within stipulated and also failed to proof that he is a creditor of the Corporate Debtor. Hence, the application is **dismissed**.

211. I.A. (IB) No. 580/KB/2024: The Applicant being an allottee of a residential flat as per the Agreement dated 17.08.2018, has not filed its claim before the RP within stipulated and also failed to proof that he is a creditor of the Corporate Debtor. Hence, the application is **dismissed**.

212. I.A. (IB) No. 606/KB/2023: We find no error committed by the IRP in admitting the claim at a notional value of Rs. 1/- as the claim is in

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

dispute and yet to be considered by the Saket Court, New Delhi and the claim has been treated as a contingent claim subject to the outcome of the pending proceedings. Hence, the Application is **dismissed**.

213. I.A. (IB) No. 594/KB/2023: We find no error committed by the IRP in admitting the claim at a notional value of Rs. 1/- as the claim is in dispute and yet to be considered by the Arbitral Tribunal of Justice Mukundakam Sharma and the claim has been treated as a contingent claim subject to the outcome of the pending proceedings. Hence, the Application is **dismissed**.

214. I.A. (IB) No. 909/KB/2023: The amount of **Rs. 1,14,75,138/-** as reflected in entry nos. 1 to 5, debited by the Respondent Bank DBC during the ongoing moratorium, violates the mandates as enshrined under Section 14 as well as Section 17(1)(d) of the I&B Code. Hence, we direct the said amount of **Rs. 1,14,75,138/-** shall be transferred to the SBI account of the Corporate Debtor, within ten days from the pronouncement of the order. Delaying in transfer the same, interest at the rate of 10% per annum shall be carried from the pronouncement of the order. The Application is **allowed** and **disposed of**.

215. I.A. (IB) No. 1033/KB/2023: This Adjudicating Authority is not the proper forum to adjudicate the issue of the Applicant being an MSME, regarding the claiming the interest at three times of the bank rate notified by the RBI. Further, we are of the view that the RP has not committed any error by rejecting the interest amount from the principal amount as

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 579/KB/2024; I.A. (IB) No. 580/KB/2024;
I.A. (IB) No. 606/KB/2023; I.A. (IB) No. 594/KB/2023;
I.A. (IB) No. 909/KB/2023; I.A. (IB) No. 1033/KB/2023;
I.A. (IB) (Plan) No. 1/KB/2024**

**In
Company Petition (IB) No. 56/KB/2019**

nowhere in the agreement or work order mentions the clause of payment of interest. Hence, the Application is **dismissed**.

216. I.A. (IB) (Plan) No. 1/KB/2024: The **Resolution Plan dated **16.06.2023**, along with its **addendums** dated **25.06.2023**, **05.07.2023**, **21.09.2023** and **27.10.2023** submitted by **Mr. Sudarsshhan Das Mundhra**, is hereby **APPROVED** and **FINALLY SANCTIONED**.**

217. Company Petition (IB) No. 56/KB/2019: is disposed of.

218. File be consigned to the record.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on the 06th Day of August 2024.

Bose, R. K. [LRA]
Tiwari, V. [LRA]
Oindrila, K. [LRA]