

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**COURT-V**  
**(Division Bench)**

**Item No.-6**  
IB-3173/ND/2019  
IA/1745/2023

**IN THE MATTER OF:**

Swastik Pipe Ltd.

**.....Applicant**

**Vs.**

Emkay Automobiles Industries Ltd.

**.....Respondent**

**SECTION**

U/s 9 IBC CIRP

**Order delivered on 23.07.2024**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL,  
HON'BLE MEMBER (JUDICIAL)**

**Dr. SANJEEV RANJAN,  
HON'BLE MEMBER (TECHNICAL)**

**HYBRID HEARING (PHYSICAL & VC)**

**PRESENT:**

For the Applicant :  
For the Respondent :  
For the Suspended : Mr. Mohammad Nausheen Samar, Advs.  
Boards of Directors  
For the RP : Mr. Arvind Nayyar, Sr. Adv., Mr. Aditya Gauri,  
Mr. Amar Vivek, Ms. Damini Srestha, Advs.  
Mr. Hemant Sethi, RP

**ORDER**

On perusal of the Resolution Plan, it is found that there is no mention of the fact that after the approval of the Resolution Plan, who shall pursue the pending applications related to avoidance transaction. Regulation 38(2)(d) of IBBI (CIRP) Regulation, 2016 mandates that the Resolution Plan shall provide 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. The manner includes that who will pursue these application.

The Applicant is directed to clarify that who will pursue the application for avoidance transactions, in case the Resolution Plan is approved by this Adjudicating Authority? Although, it is mentioned in the Resolution Plan that any cost in relation to avoidance transaction shall be paid by the Financial Creditor, and any recovery in relation to avoidance transaction shall be received by the Financial Creditors.

Therefore, the Resolution Professional/Applicant is directed to clarify that who will pursue the application for avoidance transactions, in case the resolution plan is approved by this Adjudicating Authority, by submitting an additional affidavit within 15 days from the date of this order. List the matter on **02.08.2024**.

**Sd/-**  
**(Dr. SANJEEV RANJAN)**  
**MEMBER (T)**

**Sd/-**  
**(MAHENDRA KHANDELWAL)**  
**MEMBER (J)**