

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH- COURT-V**

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule
11 of the National Company Law Tribunal Rules, 2016

I.A No. 290 of 2024

AND

I.A No. 614 of 2024

IN

CP (IB) No. 310 of 2022

I.A No. 290 of 2024

Filed by

**CREATIVE CHANNEL ADVERTISING & MARKETING PRIVATE
LIMITED** ... Applicant/PRA

Versus

MR. ROHIT RAMESH MEHRA & ORS ...Respondent No. 1/RP

SAPPHIRE MEDIA LIMITED ...Respondent No. 2/SRA

**ABHIJIT REALTORS &
INFRAVENTURES PRIVATE LIMITED** ...Respondent No.3/PRA

AND

I.A No. 614 of 2024

ABHIJIT REALTOR & INFRAVENTURES PVT. LTD.

AND

ENTERTAINMENT NETWORK (INDIA) LTD. ... Applicants/PRA

Versus

**MR. ROHIT MEHRA
(RESOLUTION PROFESSIONAL OF RELIANCE BROADCAST NETWORKS
LTD.)** Respondent No.1/RP

**COMMITTEE OF CREDITOR
(RELIANCE BROADCAST NETWORK LTD.)** ... Respondent No.2/COC

**SAPPHIRE MEDIA LTD.
(SRA OF RELIANCE BROADCAST NETWORK LTD.)**
...Respondent No.3/SRA

IN THE MATTER BETWEEN
IDBI TRUSTEESHIP SERVICES LIMITED

.....Financial Creditor

Versus

RELIANCE BROADCAST NETWORK LIMITED

.....Corporate Debtor

Order Dated: 06.05.2024

Coram:

MADHU SINHA

Member (Technical)

REETA KOHLI

Member (Judicial)

Appearance: IA 290 of 2024

For Applicants: Adv. Rakesh Kumar, Adv Preeti Kashyap, Adv Ankit Sharma,
Adv Varun Pandit, Adv Rishabh Arora, Adv Yash
Dhawan (VC)

For Respondents: Adv. Shrishti Agnihotri (PH) for RP, Adv. SP Singh Chawla
and Adv. S. Shishir and Adv. Kunal Surhatia, Counsels for Respondent no. 2
(VC)

Appearance: IA 614 of 2024:

For the Applicants: Sr. Adv. Gaurav Joshi (PH)

For the Respondent No. 1: Sr. Adv. Mustafa Doctor (PH)

For the Respondent No. 2: Sr. Adv. Ravi Kadam (PH)

For the Respondent No. 3: Sr. Adv. Anupam Lal Das

ORDER

The above I.A. 290 of 2024 was filed by the Applicant (**CREATIVE CHANNEL ADVERTISING & MARKETING PRIVATE LIMITED**), praying the following reliefs:

- (a) To declare that the Respondent No. 2 was ineligible to submit its resolution plan in terms of the Clause 3.A of the Detailed Invitation for EOI being issued by the Respondent No. 1;*
- (b) To dismiss the I.A. No. 5391/2023 for seeking the approval of the resolution plan*
- (c) To pass further appropriate directions for de novo process for the examination of the resolution plans of the other existing qualified PRAs by the CoC by adopting the best methods to enhance and maximise the wealth of creditors in terms of the provisions of the Insolvency & Bankruptcy Code, 2016*
- (d) To pass appropriate direction for the removal of the Respondent No. 1 as the Resolution Professional of the Corporate Debtor for its misconduct/negligence in his duties during the CIRP of the CD and refer his misconduct to the Ld. IBBI for the disciplinary action;*
- (e) To pass the necessary directions to the Respondent No. 1 to supply the copy of the I.A. No. 5391/2023 to the Applicant herein;*
- (f) Such further and other orders as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the present case.*

BRIEF FACTS IN IA 290 OF 2024

1. The present Application is filed by **CREATIVE CHANNEL ADVERTISING** ("**Applicant No. 1**") and **MARKETING PRIVATE LIMITED** ("**Applicant No. 2**") the unsuccessful resolution applicants, against Mr. Rohit Mehra ("**RP**" / "**Respondent No.1**"), **SAPPHIRE**

MEDIA LIMITED (SRA/ **“Respondent No.2”**) and against **ABHIJIT REALTORS & INFRAVENTURES PRIVATE LIMITED** (“PRAs” / **“Respondent No.3”**).

2. On 24th February 2023, the Hon’ble Tribunal (NCLT) pronounced the CIRP order in the present matter. Subsequently, on 14th April 2023, Respondent No. 1 issued the Expression of Interest (EoI) via Form-G, in accordance with Regulation 36A (1) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, to solicit resolution plans for the Corporate Debtor.
3. Subsequently, Respondent No. 1/RP published a Detailed Invitation for Expression of Interest (EoI) for the Corporate Debtor on the website "reliancebroadcast.in".
4. Pursuant to section 25(2)(h) of the Insolvency & Bankruptcy Code, 2016, and Regulation 36B of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the Respondent No. 1/RP issued the Request for Resolution Plans (**RFRP**) on 15th June 2023. The RFRP accompanied by the Evaluation Matrix and Information Memorandum, was directed to the Prospective Resolution Applicants (**PRAs**) with a deadline for submission of the resolution plan by 17th July 2023.
5. The open challenge mechanism process was conducted and completed during the 10th CoC meeting held on 27th October 2023. The Applicant **refrained from participating in this** process as according to them due process was not followed by the RP during the said challenge process. Subsequently, resolution applicants were invited to the 11th CoC meeting on 2nd November 2023 to discuss and negotiate their financial proposals further.

6. **In the 11th CoC meeting, the Applicant submitted a Resolution Plan amounting to INR 240 Crores to Respondent No. 1.** Thereafter, on 11th November 2023, the resolution plans received by Respondent No. 1 were subjected to e-voting before the CoC. The e-voting concluded on 16th November 2023, with the result declaring **M/s Sapphire Media Limited (Respondent No. 2)** as the Successful Resolution Applicant (**SRA**) with 88.97% voting share.
7. Following the CoC's approval of the resolution plan in favor of Respondent No. 2/SRA, Respondent No. 1/RP filed I.A. No. 5391/2023 seeking for approval of the resolution plan before the Honourable NCLT.
8. Respondent No. 3 filed an application, I.A. No. 5572/2023, objecting to the resolution plan proposed by Respondent No. 2 and passed by the CoC. The Honourable NCLT heard I.A. No. 5572/2023 on 9th January 2024 regarding the objections raised by Respondent No. 3 to the resolution plan. During the proceedings on that date, the Counsel for the Applicant mentioned their intention to file objections to the resolution plan. The Hon'ble NCLT orally observed that any objections could only be considered once the corresponding application is brought on record. The matter was deferred to 10th January 2024. Therefore, this application.
9. It is submitted that the Applicant challenges the resolution plan on the following grounds;
10. The Applicant contends that Respondent No. 1/RP is culpable for grave irregularities and illegalities in the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor (CD), particularly concerning the approval of the resolution plan. Due to the negligence and misconduct of Respondent No. 1, the plan put forth by Respondent No. 2/SRA was sanctioned, despite factual disqualification as per the eligibility criteria

outlined in the detailed Invitation for Expression of Interest (EoI). The pertinent excerpt from the Detailed Invitation for EoI is provided below:

"3. ELIGIBILITY CRITERIA UNDER SECTION 25 (2)(H) A. Category A: Body Corporates, limited liability partnerships (LLPs):
*a) A minimum Tangible **Net Worth (consolidated)** of at least **INR 50 crores at a group level** as per latest audited financial statements which shall not be earlier than the financial year ending on 31st March 2022; or*
*b) **Consolidated turnover at a group level should average at least INR 75 crores or more** for the three immediately preceding audited financial years. The immediately preceding financial year should not be earlier than the financial year ending on 31st March 2022. Calculation of Tangible Net Worth and Turnover criteria shall be duly certified by statutory auditor of 6 the Prospective Resolution Applicant/ practicing Chartered Accountant. "*

11. Pursuant to above, the Applicant Appointed 'Sachin Agarwal & Associates, a Chartered Accountant' firm to review the financial statements of the Respondent No. 2/SRA to assess its the eligibility criteria. The firm's report dated 11th January 2024 unequivocally stated that Respondent No. 2/SRA fell short of meeting the specified criteria necessary for submitting a resolution plan. As of 31st March 2022, Respondent No. 2/SRA's tangible net worth and average turnover were reported as Rs. 3,54,29,111/- and Rs. 39,30,10,227/- respectively which is below the threshold limit mentioned in the EOI.

12. Therefore, it is submitted that Respondent No. 2/SRA was ineligible to submit its Resolution Plan. Respondent No. 1/RP neglected its obligation

to scrutinize the eligibility of Respondent No. 2/SRA as outlined in the detailed Invitation for Expression of Interest (**EoI**) and other mandatory documents, represents a dereliction of duties under the Insolvency & Bankruptcy Code, 2016. Thus, the Applicant submitted that the entire Corporate Insolvency Resolution Process (CIRP) concerning the resolution plan was tainted at its inception.

13. Additionally, it is submitted that the Applicant forwarded an email dated 16th December 2023, along with a letter, to Respondent No. 1/RP, raising objections regarding Respondent No. 2's eligibility. However, Respondent No. 1/RP in response via email dated 23rd December 2023 stated that the Applicant should have raised objections earlier when provided the opportunity and Respondent No. 1 has examined all information submitted by Respondent No. 2/SRA in compliance with the Detailed Invitation for EoI, therefore the reply of the Respondent No 1/RP was vague, and it appears that the plan submitted by Respondent No. 2 was in collusion with Respondent No. 1.
14. Furthermore, it has come to light that Respondent No. 2 provided false information in its resolution plan and the Request for Resolution Plans (**RFRP**) issued by Respondent No. 1/RP includes a provision (**clause 2.10**) for declaring a plan as "**Non-Responsive**" if there is any concealment of material information, false statements, misrepresentation, or misleading statements in the Resolution Plan, or any other document provided to the Resolution Professional or Committee of Creditors (CoC). Respondent No. 1 failed in its duty to diligently examine the eligibility of PRAs, leading to this failure.
15. Further, clause 2.12 of the RFRP empowers the CoC to reject an approved resolution plan if the information provided therein is found to be incorrect. The Respondent No. 2/SRA provided false information

regarding its eligibility criteria, therefore the matter should be presented before the CoC for potential cancellation.

16. Additionally, the RFRP mandates that a resolution applicant must submit an undertaking in Format VII, affirming the accuracy and completeness of all information provided. Any false information renders the Resolution Applicant ineligible. In this case, Respondent No. 2 provided a false declaration, thus violating the undertaking and rendering itself ineligible.

17. Thus, I.A. No. 5391/2023 filed by Respondent No. 1 for approval of the Resolution Plan must be dismissed.

I.A. 614 of 2024

Brief Facts

18. The present Application is filed by **ABHIJIT REALTOR & INFRAVENTURES PVT. LTD.** (“**Applicant No. 1**”) and **ENTERTAINMENT NETWORK (INDIA) LTD** (“**Applicant No. 2**”) the unsuccessful resolution applicants, against Mr. Rohit Mehra (“**RP**” / “**Respondent No.1**”), **COMMITTEE OF CREDITOR** (CoC/ “**Respondent No.2**”), and against **SAPPHIRE MEDIA LIMITED** (SRA/ “**Respondent No.3**”) prayer for the following relief:-

- i) *This Hon’ble Tribunal be pleased to allow this application;*
- ii) *This Hon’ble Tribunal be pleased to set aside the alleged decision of the Respondent No. 2 in its meeting held to approve the resolution plan in its entirety, including the decision of Respondent No. 2 allegedly approving the resolution plan of Respondent No. 3 and allegedly declaring the Applicant as the unsuccessful resolution applicant as it*

is violative of section 30(2)(e) and/or for the reasons aforesaid;

- iii) This Hon'ble Tribunal be pleased to pass an order **directing Respondent No. 1 to re-commence the entire process for approving resolution plan in the CIRP of the Corporate Debtor;***
- iv) Pending the hearing and final disposal of this application, this Hon'ble Tribunal be pleased to pass an order restraining the Respondents from undertaking any further steps and actions in respect of the conclusion of CIRP of the Corporate Debtor;*
- v) Pending the hearing and final disposal of this application, this Hon'ble Tribunal be pleased to stay the effect, operation and implementation of the alleged decision of Respondent No. 2 in approving the resolution plan of Respondent No. 3 and rejection of the resolution plan of the Applicants;*
- vi) For ad interim and interim reliefs in terms of prayer (iv) to (v) above;*
- vii) For costs; and*
- viii) For such other and further reliefs as this Hon'ble Tribunal deems fit in the facts and circumstances of this case*

19. The present petition reveals that the Applicants came to the knowledge after Reserving of the IA No. 5572 of 2023 by this Tribunal, that the Successful Resolution Applicant i.e., SRA does not meet the financial ability and capacity to implement its Resolution Plan. The Successful Resolution Applicant is neither in the business of FM Radio nor possess the working capital requirement.

20. The Applicant further contented that

21. SRA have net-worth of about Rs. 24.53 crores only, as against the requirement of net worth of Rs. 50 crores. Further the paid up share capital of Rs. 21 crores of the SRA is not in cash but is in the form of shares worth Rs. 20.99 crores which have been allotted fully to Mr. Sahil Mangla (director promoter of SRA) on account of the business of M/s. Sapphire Media Services (a proprietary concern of Mr. Sahil Mangla) being taken over by the Respondent No. 3/ SRA w.e.f. 12th December 2022 vide business purchase agreement dated 8th December 2022. In terms of the business purchase agreement dated 12th December 2022, all the business and activities of SRA are deemed to have been carried on behalf of the Company and accordingly reflected in the accounts of the SRA on the business purchase agreement becoming effective. Thus, it becomes apparent that the net-worth of the SRA is only Rs. 3.53 crores as the equity capital is not brought in cash but is allotted for consideration other than cash.
22. The turnover of SRA is Rs. 128.49 crores for the period 22nd October 2022 to 31st March 2023. Firstly, SRA does not meet the eligibility criteria as detailed in the detailed invitation for expression of interest since its net-worth is less than Rs. 50 crores. Secondly, SRA also does not meet the alternative criteria since SRA having been incorporated only in the year 2022, there is no question of SRA being able to satisfy the alternative criteria basis its turnover. Thirdly, if the average of 3 years is taken as required under the eligibility criteria, the same works out to Rs. 42.83 crores which is well below the requirement of average turnover of Rs. 75 crores. This is evident from the financial statements of SRA filed with ROC.

23. Further the SRA has raised loans from various parties as reflected in the MCA data as under:

Sr. No.	Name of the Bank	Amount of charge / loan (Rs. In Crores)	Date of creation of charge
1.	ICICI Bank Limited	30.00	17-9-23
2.	HDFC Bank Limited	25.00	15-9-23
3.	Axis Bank Limited	20.00	27-7-23
4.	Yes Bank Limited	36.72	26-6-23
	Total	101.72	

Thus, it can be seen that the SRA has loans of Rs. 101.72 crores whereas its capital is Rs. 21 crores (which is also issued for consideration other than cash) and net worth of Rs. 24.53 crores (the actual net worth being only Rs. 3.53 crores). Thus it is submitted that SRA is highly leveraged and has a debt of almost 4 times its net-worth (and if the actual net-worth is considered then it is 28.82 times the net-worth). Thus, the financial health of SRA is highly suspicious and way above the prudential norms. Even in normal circumstances the banks and COC members consider a debt equity ratio of not more than 1:2 or 1:3 and in the present case the debt equity ratio is already more i.e. 1:5 and 1:28.82, **as the case may be. Therefore, it is evident that the RP / COC have not done a proper analysis of the financial health of the SRA and** its present financial position is such that it cannot be imagined that it will raise further Rs. 260-300 crores and what impact it will have on the SRA's financial position. It is quite possible

that the SRA will not be able to implement the resolution plan on this ground alone. For any further borrowings, SRA will have to increase its paid-up capital and that too substantially to be able to meet its liabilities and commitments under the resolution plan.

24. It appears that the source of funds of SRA for implementing the resolution plan comprises of certain funding from the following entities, which are listed herein below, along with their respective net worth:

Sr. No.	Name of the Entity providing the finance	Term sheet Amt. (Rs. In Cr)	Net worth of the financier (Rs. In Cr)	Type of loan Secured/ Unsecured
1.	Armour Display Systems Pvt. Ltd.	30	30.49	Unsecured
2.	Proactive In and Out Advertising Pvt. Ltd.	50	71.24	Unsecured
3.	Shrill Investment Limited	50	14.98	Secured
4.	RCM Finance and Leasing Pvt. Ltd.	50	38.25	Secured

25. In respect of the loan proposed to be given by Shrill Investment Limited the following points merit the attention of this Hon'ble Tribunal:

- a. Primary Security: Charge to be created on Fixed Assets and Current Assets of the Applicant company it is not certain as to how this will be done considering there are already 4 lenders who have given more than Rs. 100 Crores to SRA.

- b. Collateral Security: Immoveable Property @125% of the loan value to be provided by the borrower. The term sheet does not specify which property will be given as security. However, to meet the term sheet conditions, the Value of collateral security has to be at least Rs. 60 crores. It is not known whether the SRA and its promoters have any unencumbered assets amounting to Rs. 60 Crores to meet this condition.
- c. This letter is only a term sheet, meant as a commitment by Shrill Investment Limited to extend credit facilities to SRA. The term sheet is intended to outline basic points of business understanding around which the credit facilities would be sanctioned. It does not attempt to describe all Terms & Conditions that would relate to the credit facilities. The final Terms & Conditions applicable to credit facilities would be subject to legal counsel review and internal credit approvals and subject to execution of transaction documents to the satisfaction of Shrill Investment Limited.

26. In respect of the loan proposed to be given by RCM Finance and Leasing (P) Limited the following points merit the attention of this Hon'ble Tribunal:

- a. The Security for this loan is said to be Padma City Mall which is supposedly owned by the borrower. It is not clear as to who is the owner of this property. Further, it is not clear whether the title to the property is clear or not as the term sheet states that after obtaining the registered conveyance deed, MOE/Mortgage can be created in favour of RCM within 7-10 days.

- b. Further the term sheet states that the terms and conditions do not constitute a legally binding commitment or offer by RCM. These terms are subject to the internal underwriting, legal due diligence. The purpose of these terms and conditions is to facilitate further discussions and negotiations between the parties and these indicative terms and conditions are subject to change. Thus, indicating that this is not a sanction letter but merely an indicative term sheet and hence no funding can be given on the basis of this term sheet.

27. In respect of these 4 entities the Applicants have managed to take out their balance sheets filed with the ROC/ MCA for the year ended 31st March 2023 and the same show that the net worth of these entities who are supposedly giving loans to the SRA do not have the requisite financial strength to give the funding as envisaged by them and hence, SRA will not be able to implement the plan if the funding as envisaged does not come through and this puts the entire process undertaken by the COC at doubt as they have not exercised their commercial wisdom in the true sense and have overlooked a lot many critical factors which are required for a proper and judicious decision which a prudent person will make. Armour Display Systems Pvt. Ltd. is giving a loan of Rs. 30 crores when its own net worth is also only Rs. 30 crores thus implying that it does not need any funds for its own business and that too unsecured. Shrill Investment Limited is proposing to give a secured loan of Rs. 50 crores against a net worth of only Rs. 14.98 crores which is almost 3.5 times its net worth and hence does not justify any prudential norms and as far as the Applicants believe this, is way beyond any prudential lending norms of the RBI for any NBFC to give loans of such magnitude. Even in the case of RCM Finance & Leasing (P) Ltd. the net worth is only Rs. 38.25 crores and it is proposing to lend Rs. 50 crores to the SRA which is almost 1.31 times its net worth. It is clear that these loans are not only violative of section 186 of the Companies Act, 2013 which restrict the quantum of loan to be given by a

Company to another Company to 60% of its capital and free reserves and security premium account or 100% of its free reserves and security premium whichever is higher. In this case these loans are much above the said limits. Hence on this account itself the resolution plan is liable to be rejected since the plan is in violation of the Companies Act, 2013.

28. Further even if the prudential norms for NBFC given by RBI for lending were to be taken into account assuming that these entities have a valid NBFC license and are permitted to lend monies under their registration category, even then the same will be in violative of them as the lending is more than the net worth of the concerned NBFC.

29. Under the IBC, 2016 section 30 (2)(e) the RP is duty bound to state whether the resolution plan given contravenes any of the provisions of the law for the time being in force. From the above it is apparent that the Resolution plan given is in contravention of the Companies Act, 2013 and hence does not meet the criteria set in section 30 of the IBC, 2016 and hence the resolution plan is liable to be rejected on this ground alone.

30. Moreover, apart from the aforesaid, it appears that the other document in support of the financial capacity of SRA appear to be certain CA certificates of Mr. Sahil Mangla (director), Ms. Usha Mangla (director) and Mr. Madan Lal (shareholder).

31. A perusal of the CA certificates of the aforesaid persons would demonstrate the following anomalies:

1. The CA certificates includes in the networth of Mr. Sahil Mangla a sum of Rs. 21.04 crores as capital balance from Sapphire Media Limited (Respondent No. 3) which as stated above is nothing but allotment of shares pursuant

to a business transfer agreement and not an asset in the real sense. Mr. Sahil Mangla has said that he will give an unsecured loan of Rs. 100 crores to Respondent No.3 but it is not clear how he will do the same.

2. In addition, Mr. Sahil Mangla owns a commercial office space having a value of about Rs. 65 Crores in Kaithal, Haryana. The Applicants presume that this office space would be mortgaged to obtain the loan from the NBFC which has a requirement of collateral security of Rs. 60 crores and if that is so it cannot be calculated again in the net worth of Mr. Sahil Mangla and that this money he will bring in as loan. It seems that SRA has counted the same asset twice for funding once from his own source and the second time through the NBFC and has sought to fraudulently let the RP and the COC believe that he has sufficient resources to give a resolution plan for the Corporate Debtor.
3. Mr. Sahil Mangla owns the Padma City Mall in Haryana valued at approx. Rs. 71.38 crores and the same is proposed to be mortgaged to RCM Finance & Leasing P. Ltd. and thus cannot be again considered in the net worth of Mr. Sahil Mangla.
4. The total net worth of Mr. Sahil Mangla is Rs. 175.42 crores. Out of this the Padma City Mall valued at Rs. 71.38 crores and the commercial office space valued at Rs. 65.52 crores are proposed to be mortgaged to various lenders as aforesaid leaving only Rs. 38.52 crores worth of unencumbered assets with Mr. Sahil Mangla of which Rs. 21.04 crores are shares of SRA and thus balance assets

are worth only Rs. 17.48 crores and from this amount he can certainly not give an unsecured loan of Rs. 100 crores to the Respondent No. 3 as claimed by him.

5. The CA certificates consider the capital balance of these persons in SRA and thus, these persons are misleading Respondent No. 2 as well as this Hon'ble Tribunal insofar as their financial ability is concerned and seeking to utilize and/or mis-utilize the same asset at two places to misrepresent the fact that they possess the requisite financial capacity.

32. Moreover, the sources of funds as detailed hereinabove given by SRA are under various letters of intent or term sheet and there is evidently no cash balance available with SRA, leading to the only conclusion that the figures provided by SRA are an eyewash.

33. Even the letters of intent given by Axis Bank Limited for Rs. 100 crores and Aditya Birla Finance Limited for Rs. 100 crores are only indicative and not a proper sanction letter without any security or collateral specified and if any of the above properties are given to them then the remaining funding which is to come from the promoters of respondent No. 3 will also not be forthcoming for the reasons stated above.

34. It is the circumstances aforesaid that the Applicants are constrained to approach this Hon'ble Tribunal for the reliefs prayed herein. The Applicants submit that the aforesaid ineligibility arises as a result of not placing the correct documents before SRA and therefore, the ineligibility arising as a result of the aforesaid cannot be justified under garb of commercial wisdom as held by the Hon'ble Supreme Court in the case of M. K. Rajagopalan Vs. Dr. Periasamy [**2023 SCC OnLine SC 574**].

35. Therefore, in view of the above circumstances the decision of the Respondent No. 2/CoC in its meeting held to approve the resolution plan needs to be set aside.

Submissions of Respondent No. 1/Resolution Professional

36. It is submitted that RP has meticulously reviewed all EOIs to check the eligibility criteria as laid down in IEOI and only after thorough scrutiny and confirmation of compliances with the eligibility criteria outlined in the Invitation Expression of Interest (**IEOI**), the RP outlined 19 PRAs (*including the SRA, the Applicant and the Respondent No. 3*) out of the 22 PRAs. Accordingly, a provisional list of 19 PRAs, including the SRA was issued by the RP to the CoC on 10th June 2023 ("Provisional List of PRAs"). On 15th June 2023, Respondent No. 1 issued the request for resolution plan ("RFRP") along with the information memorandum and provided access to the virtual data room ("VDR") **to all the 19 eligible PRAs. Thereafter, after receiving no objections from any PRA, the Respondent No. 1 issued the final list of PRAs on 25th June 2023**

37. The Ld. Counsel for the Respondent No. 1 further submitted that as per Regulation 36A of the CIRP Regulations sets out the process and mechanism for issuance of IEOI, receipt and examination of the EOIs by the RPs and also process of raising objections to the eligibility and qualification of fellow PRAs. Regulations 36A (11) and Regulation 36A (12) of the CIRP Regulations specifically provides that:

Regulation 36A (11)

*“Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) maybe made with supporting documents **within five days from the date of issue of the provisional list.**”*

Regulation 36A (12)

“RP will consider such objections and upon consideration, RP will issue the final list of PRAs to the CoC within 10 days of the last date for receipt of objections, to the committee.”

However, in the present case, no objection was raised by **either of them within 5 days of issuance of the list** and thereafter, the RP issued the Final List of the PRAs to the CoC and issued Request for Resolution Plan inviting the resolution plans.

38. The Applicant vide an email dated 16th December 2023 (“**Objection Mail**”), raised its first objection regarding the eligibility of the SRA, **which is more than 6 months from the date of issuance of the Provisional List (delay of more than 6 months where the regulation only provides for 5 days)**. Therefore, failed to adhere timeline provided under the Regulations. This delay is fatal in terms of IBC which is a time bound process. once a plan is approved by COC then objection cannot be permitted in timelines of IBC

39. It is submitted that the financial proposal of the Applicants was only for Rs. 240 Crores and that too, to be paid over a period of 6 years. Further, the contention of the Applicant that the Pan submitted by the SRA / Respondent No. 2 does not meet the Eligibility criteria of Rs. 50 crores as net worth. In response to the above, the Ld. Counsel for the Respondent No. 1/RP submitted that based on the materials submitted by the SRA, along with its IEOI, the RP concluded that the SRA met the eligibility **criteria at the group level**, as per the EOI requirements.

40. The contentions raised by the Applicant regarding the SRA's eligibility are unfounded. The Applicant's reliance on a certificate from '*Sachin Agarwal & Associates, Chartered Accountants*', claiming to have examined financial data from the Registrar of Companies (**ROC**), lacks merit as the analysis of the Applicant is limited to only 12 companies of the SRA/Respondent No. 2.
41. It is further submitted by the Resolution Professional/Respondent No. 1 that despite ample opportunity, the Applicant failed to raise objections within the prescribed timeframe. The belated objections, raised after the completion of the resolution process, demonstrate the intent to disrupt the resolution process.
42. Furthermore, the present application appears to be a collusive effort between the Applicants to derail the CIRP process. Since, there is no substantive allegations against SRA as a party. Therefore, suggests an ulterior motive to delay proceedings. The subsequent filing of similar applications by other Unsuccessful Resolution Applicants further underscores this collusion.

Submissions of Respondent No. 2/SRA

43. It is stated that the SRA had fulfilled the eligibility criteria at group level. It is stated that the SRA on 31st March 2023, had more than 50 crores of the net worth which is evident from the fact that Mr. Sahil Mangla, individually has more than Rs. 50 crores who was covered at group level net worth being the Promoter Director and shareholder having 99.99% shares of the Mr. Sahil Mangla (Director and Promoter of SRA) and the same is duly supported by Annual Financial Statement of Mr. Sahil Mangla (Director and Promoter of SRA) as on 31st March 2023 along with CA Certificate regarding net worth of Mr. Mangla which was filed with the Respondent no. 1/RP at the time of filing of EOI. The same

documents were duly submitted with the Respondent no. 1 at the time of filing the EOI and also the said CA Certificate at the time of filing the final Resolution Plan. Thus, Mr. Sahil Mangla (Director and Promoter of SRA) had duly met the eligibility criteria as envisaged under Clause 3 of the detailed invitation for EOI

44. The Ld. Counsel for the Respondent No. 2 / SRA laid emphasis on the definition of a 'group' for the purpose of Invitation of the EOI.

"Group" shall mean and include (i) an entity which, directly or indirectly, holds 26% (twenty six percent) or more of the share capital of the Prospective Resolution Applicant or (ii) an entity in which the Prospective Resolution Applicant, directly or indirectly, holds 26% (twenty six percent) or more of the share capital or (iii) an entity in which the Prospective Resolution Applicant, directly or indirectly, has the power to direct or cause to be directed the management and policies of such entity whether through the ownership of securities or agreement or any other arrangement or otherwise or (iv) an entity which, directly or indirectly, has the power to direct or cause to be directed the management and policies of the Prospective Resolution Applicant whether through the ownership of securities or agreement or any other arrangement or otherwise or (v) an entity which is under common Control with the Prospective Resolution Applicant."

45. It is further submitted that the mandatory timelines as given under Regulation 36(A)(11) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 which mandates that any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list be was to be made with supporting documents **within five days from the date of issue of**

the provisional list, which as per the revised Form -G on 15th June, 2023, however the Applicant had purportedly raised an objection with regard to the eligibility criteria of the SRA on 16th December 2023 through an email to RP which was much after when the resolution plan was duly approved by the Committee of Creditors (08.11.2023 and 10.11.2023) and the application bearing IA no. 5391/2023 was filed by RP under Section 30(6) of I & B Code, before this Hon'ble Tribunal. Therefore, it is clear from the above timeline that the Present Application deserves to be dismissed.

46. The Ld. Counsel for the Respondent No. 2 has relied on the Judgment by **Hon'ble NCLAT, New Delhi bench in the matter of Singh Raj Singh vs. SRS Meditech Limited and Ors (Company Appeal (AT) (Insolvency) No. 522 of 2020)**, *it was held that raising an objection with respect to net worth cannot be entertained at the belated stage and the objector cannot be permitted to scuttle the process at this stage and that too without substantial grounds. It was further held that when the resolution plan has been duly approved with huge majority of voting share and the said Appellant did not have any right or power to challenge the commercial wisdom of Committee of Creditors in regard to approval of Resolution Plan, which has already got the approval of Adjudicating Authority and since no material irregularity in resolution process vitiating it, has been canvassed or brought, which would render the whole exercise unsustainable.*

47. Therefore, the RP has not submitted any false information neither in its plan nor during the process w.r.t to the EOI or any undertaking or otherwise purportedly to be alleged by the Applicant. Further, the Resolution Plan of the SRA is a valid plan duly complying with Section 30(2) of the I & B Code, 2016 which is conformity with underlying Rules and Regulations in effect and the same does not contravene any of the

provisions of the Code or the RFRP as alleged by the Applicant. Hence the Application deserve to be **dismissed**.

FINDING:

48. We have heard the Ld. Counsels for the Applicants in I.A. 290 of 2024 and I.A. 614 of 2024 and the Ld. Counsel for the Respondents in both the I. As and perused the documents with their able assistance.

49. The I.A. 290 of 2024 and I.A. 614 of 2024 is filed by the Unsuccessful Resolution Applicants against the Resolution Professional, Committee of Creditors and SRA as Respondents. The contention in both the above Applications is that the Applicant on the basis of CA Certificate of 'Sachin Agarwal & Associates, a Chartered Accountant' has challenged the eligibility criteria of SRA on the basis of the threshold criteria mention in the detailed EOI, for submitting the Resolution Plan and raised allegations on the RP for his negligence and misconduct in checking the Eligibility criteria of the SRA for putting it before the COC for approval. The contention of the Applicant derives from the *Eligibility Criteria Under Section 25 (2)(H)* as describes in the detailed invitation for EoI. The same is reproduce below:

"3. ELIGIBILITY CRITERIA UNDER SECTION 25 (2)(H) A. Category A: Body Corporates, limited liability partnerships (LLPs):

*a) A minimum Tangible **Net Worth (consolidated)** of at least **INR 50 crores at a group level** as per latest audited financial statements which shall not be earlier than the financial year ending on 31st March 2022; or*

*b) **Consolidated turnover at a group level should average at least INR 75 crores or more** for the three immediately preceding audited financial years. The immediately preceding*

financial year should not be earlier than the financial year ending on 31st March 2022. Calculation of Tangible Net Worth and Turnover criteria shall be duly certified by statutory auditor of 6 the Prospective Resolution Applicant/ practicing Chartered Accountant. "


The Criteria reveal that the Prospective Resolution Applicant must have minimum **Tangible Net Worth (consolidated) of at least INR 50 crores at a group level or Consolidated turnover at a group level should average at least INR 75 crores or more for the three immediately preceding audited financial years.**

However, the contention of the Applicants is that the CA certificate given by the Chartered Accountant appointed by the Applicants who obtained the relevant data to compute the eligibility of the SRA from the details extracted from the ROC, shows that the SRA does not fall within the above criteria to become eligible for submitting the Resolution Plan and the RP without checking the above details or criteria have allowed the SRA to be a part of PRAs list. Further on appreciating the contention raised by the SRA with respect to the turnover criteria, stating that they have met the eligibility criteria. The Turnover of the SRA at the time of filing EOI with RP, i.e. 31st May 2023 was of Rs. 140 crores which is much more than the criteria threshold of Rs. 75 crores. In view of the contentions raised, this bench observes that the eligibility criteria emphasis on the word “**Group**” or “**Consolidated**”. The limits must be calculated on the group level and/or on consolidated manner. Therefore, in terms of the above stated group definition this bench observes that from the perusal of the definition it is implied that the entity includes an individual person and therefore, it is amply clear that Net Worth at group level as per detailed IEOI includes net worth of Mr. Sahil Mangla (Promoter Director of SRA) who holds 99.99% shares in the SRA. Thus the net worth of SRA is that of Mr. Sahil Mangla as well.

50. This bench further observes that the Net worth of Mr. Sahil Mangla, individually was also considered while computing the eligibility of the “**group**”. Mr. Sahil Mangla is the shareholder having 99.99% shares of the SRA has more than Rs.50 crores of net worth, who is covered in group level to calculate the eligibility criteria. To Substantiate the above, the relevant extract of the Annual Financial statement of the SRA and the CA certificate certifying the total funds held by Mr. Sahil Mangla, Director and promoter of SRA placed on record in CP 310 of 2022 is reproduced hereunder: -

Details of equity shareholders holding more than 5% shares in the company and Promoters shareholding

	31st March, 2023	
	Nos.	% holding in the class
Sahil Mangla	21009480	99.99757
Aaditya Vashishtha	100	0.00048
Madan Lal	100	0.00048
Bharat Sardana	10	0.00005
Meera Sharma	100	0.00048
Sonal Garg	100	0.00048
Usha Mangla	100	0.00048
TOTAL	21,009,990	100.00





Garima Grover & Associates
Chartered Accountants

To
The Committee of Creditors
Reliance Broadcast Network Limited
Mumbai

This is to certify that as per documents produced to us the total funds including liquid, movable, and immovable assets of **MR. SAHIL MANGLA S/O MR. MADAN LAL MANGLA R/O HOUSE NO. 228, SECTOR 19, PART 1, HUDA, KAITHAL, HARYANA (136027) as on 01.11.2023 in INR 175,42,13,351.00 (IN WORDS ONE HUNDRED SEVENTY-FIVE CRORES FORTY-TWO LACS THIRTEEN THOUSAND AND THREE HUNDRED FIFTY-ONE RUPESS ONLY)**

Thus from the perusal of the above, this bench has observed that the SRA meets the eligibility criteria at group level. Therefore, the contentions of the Applicants that the SRA does not meet the eligibility criteria since its net worth is less than Rs. 50 crores is factually incorrect and hence does not survive.

51. Additionally, in I.A. 614 of 2024, the Applicants raised the contention that the financial health of SRA is highly suspicious since the SRA is highly leveraged and has a debt of almost 4 times its net-worth and the COC have not done a proper analysis of the financial health of the SRA. With regard to the above contention of the Applicants this bench observes that the decision of approving the resolution plan of SRA is purely a commercial decision in ambit of COC and in view of the commercial wisdom is purely a prerogative of COC to approve or not to approve the plan of any PRA. The Request for Resolution Plan dated 15th June 2023 ("**RFRP**") empowers the CoC to negotiate (if required) the terms of such resolution Plan with the relevant Resolution Applicant. **Clause 12(c) of the Challenge process makes it clear the CoC reserves its right to approve any resolution plan which it deems**

appropriate, irrespective of any financial proposal received. The relevant extract of the same is as under: -

(c) Post the Challenge Process, the financial proposal provided in the Challenge Process will be used for scoring the Resolution Plans based on the evaluation matrix. It may be noted that the results of the Challenge Process will provide deeper insight into the value offered by the Resolution Applicants and may guide the CoC's consideration of the plan. However, no right is being created in favour of bidder which emerges HI in the Challenge Process. The CoC reserves its right to approve any resolution plan which it deems appropriate irrespective of any final financial proposal received.

Clause **12(d)** allows the **CoC in its** right to conduct another Challenge Process or bilateral negotiations with the Resolution Applicants post the Challenge Process. The said Clause further clarifies that Process Note shall in no manner limit the right of the CoC to negotiate, evaluate and consider the Resolution Plans in its commercial wisdom.

(d) The CoC reserves its right to conduct another Challenge Process or bilateral negotiations with the Resolution Applicants post the Challenge Process. Nothing in this Note shall deem to limit the right of the CoC to negotiate, evaluate and consider the Resolution Plans in its commercial wisdom.

Further, Clause 2.4.2 of the RFRP which states that COC is under no obligation to approve any particular plan. The relevant clause is reproduced hereunder: -

*"It is abundantly clear that notwithstanding anything in this RFRP, the **CoC is under no obligation to any of the Resolution Applicants or any other person to approve a Resolution Plan which has scored the highest** as per the Evaluation Matrix and any Resolution Plan shall be approved **solely on the basis of the CoC's commercial wisdom.**"*

52. This bench further observes that the CoC has conducted various rounds of negotiations with the PRAs including the Applicants in the interest of value maximisation, the same is reflected as per Clause 2.3.11 of the RFRP which is reproduced below:

"Further, notwithstanding anything stated herein, there shall be no restriction on the right of the Committee of Creditors to conduct various rounds of negotiations with the Prospective Resolution Applicants in the interest of value maximization."

Therefore, relying on the above clauses this bench is of the considered view that the contentions of the Applicants questioning the decision of the CoC is not legally sustainable since the CoC's decision with respect to the selection/approval of the Resolution Plan for value maximization in terms of their commercial wisdom is paramount. The same is in accordance with the **law laid down by Hon'ble NCLAT in Company Appeal (AT) No. 513 & 753 & IA 1666 of 2023** reaffirming the Commercial wisdom of CoC has held as under: -

"The Adjudicating Authority must work within the framework of IBC which broadly aims at timely resolution of the Corporate Debtor for realising the maximum value while respecting the commercial wisdom of the CoC. The supremacy of commercial wisdom of the CoC has been reaffirmed time and again by the Hon 'ble Supreme Court".

53. The bench has further relied on the Judgment by **Hon'ble NCLAT, New Delhi bench in the matter of Singh Raj Singh vs. SRS Meditech Limited and Ors (Company Appeal (AT) (Insolvency) No. 522 of 2020)**, it was held that

“raising an objection with respect to net worth cannot be entertained at the belated stage and the objector cannot be permitted to scuttle the process at this stage and that too without substantial grounds. It was further held that when the resolution plan has been duly approved with huge majority of voting share and the said Appellant did not have any right or power to challenge the commercial wisdom of Committee of Creditors in regard to approval of Resolution Plan....”

Hence, relying on the above the unsuccessful resolution applicants have no vested right in objecting whether a Resolution Plan should be accepted by the CoC under the provision of the Code by exercising their commercial wisdom and selecting the SRA for the Corporate Debtor.

54. This Bench further observes that the Applicants vide an email dated 16th December 2023 has raised its first objection regarding the eligibility of the SRA. Pursuant to above this bench relies on the Regulation 36A of the CIRP Regulations which sets out the process and mechanism for issuance of IEOI, receipt and examination of the EOIs by the RPs and also process of raising objections to the eligibility and qualification of fellow PRAs.

Regulation 36(A) (11) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 of the CIRP Regulations specifically provides that:

*“Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) maybe made with supporting documents **within five days from the date of issue of the provisional list.**”*

And

Regulation 36A (12) of the CIRP Regulations provides that RP will consider such objections and upon consideration, RP will issue the final list of PRAs to the CoC within 10 days of the last date for receipt of objections, to the committee.

55. After perusing the above Regulation, the Applicants in the present case has raised objections for the first time vide email dated 16th December 2023 whereas the provisional list was issued on 10th June 2023. Therefore, the bench is of the considered view that the objection by the Applicants are raised after **6 months from the date of issuance of the Provisional List**, however no objection was raised **within 5 days of issuance of the list**. Regulation 36A (12) of the CIRP Regulations provides that RP will consider such objections and upon consideration, RP will issue the **final list of PRAs** to the CoC within 10 days of the last date for receipt of objections, to the committee. Therefore, the contention of the Applicant is not only belated but reliance for the objection is only on the CA certificate which is based on the half cooked information extracted from the ROC and selecting only 12 companies from the group of companies of SRA for computing its net worth.

56. This bench further with respect to the above Applications considered that since the plan already stands approved by the CoC in its commercial wisdom, these belated contentions are filed after filing of the Application for the approval of the Resolution Plan by RP. Moreover, this process under the IBC is a time bound process wherein the legislature and the regulator have set out specific timelines within which the process should be completed, including timelines within which PRAs can raise objections with respect to inclusion or exclusion of a PRA in the provisional list of PRAs basis the eligibility criteria. Therefore, the contentions raised

thereafter are highly belated and now cannot be used to turn around and derail the process.

57. This bench has relied on the judgment of the **Hon'ble Apex Court in *Arcelor Mittal India Pvt. Ltd. v Satish Kumar Gupta, (2019) 2 SCC 1*** wherein it was held as under-

“.....It is clear that at this stage again no application before the Adjudicating Authority could be entertained as there is no vested right or fundamental right in the resolution applicant to have its resolution plan approved....”

58. Hence, relying on the above the applications are not maintainable as the unsuccessful resolution applicants have no vested right. The Plan already stands approved by the CoC in its commercial wisdom.

59. In the light of the above discussion IA 290 of 2024 and I.A No.614 of 2024 are **dismissed**.

SD/-

MADHU SINHA

Member (Technical)

/Aakansha/

SD/-

REETA KOHLI

Member (Judicial)

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-COURT-V**

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with
Rule 11 of the National Company Law Tribunal Rules, 2016

I.A No. 5572 of 2023

IN

CP (IB) No. 310 of 2022

Filed by

Abhijit Realtor & Infraventures Pvt. Ltd.

And

Entertainment Network (India) Ltd. ... Applicants/PRA

Versus

1. Mr. Rohit Mehra

(Resolution Professional of

Reliance Broadcast Networks Ltd.)

...Respondent No.1/RP

2. Committee of Creditor

(Reliance Broadcast Network Ltd.)

... Respondent No.2/COC

IN THE MATTER BETWEEN

IDBI Trusteeship Services Ltd.

.....Financial Creditor

Versus

Reliance Broadcast Network Ltd.

.....Corporate Debtor

Order Dated: 06.05.2024

Coram:

MADHU SINHA

Member (Technical)

REETA KOHLI

Member (Judicial)

Appearance:

For the Applicant: Adv. Rakesh Kumar, Adv Preeti Kashyap, Adv Ankit Sharma, Adv Varun Pandit, Adv Rishabh Arora, Adv Yash Dhawan (VC)

For the Respondent No. 1: Sr. Adv. Mustafa Doctor a/w Adv. Nishant Sogani a/w Adv. Saurabh Bachhawat a/w Adv. Shrishti Agnihotri i/b Chandliok & Mahajan (PH)

For the Respondent No. 2: Adv.Divij Kumar a/w Mr. Varun Tandon (VC)

ORDER

The above IA 5572 of 2023 was filed by the Applicants (**Abhijit Realtor & Infraventures Pvt. Ltd. and Entertainment Network (India) Ltd.**), praying the following reliefs:

- i) *This Hon'ble Tribunal be pleased to allow this application.*
- ii) *This Hon'ble Tribunal be pleased to set aside the alleged decision of the Respondent No. 2 in its meeting held to approve the resolution plan in its entirety, including the decision of Respondent No. 2 allegedly approving the resolution plan of another resolution applicant and allegedly declaring the Applicant as the unsuccessful resolution applicant.*
- iii) *This Hon'ble Tribunal be pleased to pass an order directing Respondent No. 1 to re-commence the entire process for approving resolution plan in the CIRP of the Corporate Debtor*

- iv) *Pending the hearing and final disposal of this application, this Hon'ble Tribunal be pleased to pass an order restraining the Respondents from undertaking any further steps and actions in respect of the conclusion of CIRP of the Corporate Debtor.*
- v) *Pending the hearing and final disposal of this application, this Hon'ble Tribunal be pleased to stay the effect, operation and implementation of the alleged decision of Respondent No. 2 in approving the resolution plan of another resolution applicant and rejection of the resolution plan of the applicants*
- vi) *Pending the hearing and final disposal of this application, this Hon'ble Tribunal be pleased to pass an order directing the Respondents to disclose on oath:*
 - i) *minutes of all meetings of the COC of the Corporate Debtor in which the resolution plan of the Applicants is discussed.*
 - ii) *all steps taken, including the bids received by Respondent No. 1 pursuant to the Process Note issued purportedly under Regulation 39(IA) of the Regulations.*
- vii) *For ad interim and interim reliefs in terms of prayer _to_ above*
- viii) *For costs*
- ix) *For such other and further reliefs as the Hon'ble tribunal deems fit in the facts and circumstances of this case.*

BRIEF FACTS

1. By an order dated 24th February 2023 ("**Admission Order**"), passed by this Hon'ble Adjudicating Authority, CIRP was initiated against the Corporate Debtor under the provisions of the Code and the Respondent

No. 1/RP was appointed as the Interim Resolution Professional (**IRP**) of the Corporate Debtor. Thereafter, IRP constituted the CoC, in accordance with Section 18(c) read with Section 21 of the Code. The IRP was later confirmed as the Resolution Professional by the CoC.

2. Subsequently, Respondent No. 1/RP issued invitations for Expressions of Interest (**EOI**) on 14th April 2023, pursuant to which the Applicants/PRAAs individually submitted their Expression of Interest (**EOI**) on 20th May 2023 and 31st May 2023 respectively.
3. The present Application is filed by Abhijit Realtors & Infraventures Pvt. Ltd. ("**Applicant No. 1**") and Entertainment Network (India) Ltd. ("**Applicant No. 2**") the unsuccessful resolution applicants, against Mr. Rohit Mehra ("**RP**" / "**Respondent No.1**") and against the Committee of Creditors ("**CoC**" / "**Respondent No.2**").
4. It is submitted that vide email dated 10th June 2023, the Respondent No. 1/RP informed the Applicants that their names are included in both the provisional and final lists of Prospective Resolution Applicants (PRAs). Thereafter, on 12th June 2023 the Respondent No. 1 requested the Applicants to give their details so that the access of VDR can be provided. However, the Applicants found that VDR does not contain many details of Corporate Debtor and further discovered that there are significant gaps in the Virtual Data Room (**VDR**), particularly concerning crucial information regarding the trademarks owned by the Corporate Debtor.
5. On 15th June 2023, the Respondent No. 1/RP provided information Memorandum to the Applicants and also published the request for resolution plan (RFRP). Subsequently, the Respondent No. 1 vide email dated 25th June 2023 provided the Applicants the final list of PRAs which contains the names of the Applicants. Thereafter, the Applicants

vide email dated 08th September 2023 submitted their respective Resolution Plan individually to the Respondent No. 1.

6. It is submitted that On 12th October, 2023 Respondent No. 1/RP addressed an email to the Applicants, intimating that in accordance with the RFRP read with Regulation 39(1A) (b) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**Regulations**"), Respondent No.2/ COC had decided to undertake negotiations with the Resolution Applicants on the financial proposal in their respective Resolution Plans by way on an online challenge process to be held on 18th October 2023. Further on 17th October 2023, the Respondent No.1/ RP addressed an email to the Applicants intimating that the date of the challenge process is rescheduled to 27th October 2023 and calling upon the Applicants to submit an undertaking for participation in the said challenge process on or before 26th October 2023. In the said Process Note, the reserve price for participating in the challenge process was fixed at Rs. 240 crores, and in addition, the incremental amount for putting a bid was in multiples of Rs. 10 crores. After realizing that the bid price was kept very high, the Applicants made enquiry with the Respondent No.1/RP and it was learnt that no Resolution Applicant had given a resolution plan of this amount and it was the Respondent No.2/COC who had decided the minimum floor price of the challenge process.
7. Additionally, the Applicants find themselves constrained by industry regulations governing private FM radio operators, overseen by the Ministry of Information and Broadcasting (MIB), wherein such regulations impose limits on market share and station ownership, directly impacting the feasibility of individual bidding strategies of the Applicants. As a result, Applicant No. 1 and 2 realized it couldn't viably retain all 58 radio stations owned by the Corporate Debtor, Therefore, the Applicant Nos. 1 and 2 decided to give the resolution plan in consortium and accordingly intimated the same to Respondent No.

1/RP and vide email dated on 26th October 2023 informed the Respondent no. 1/RP that they want to participate in the challenge process. Consequently, the Respondent No. 1 vide email dated 27th October 2023 provided information to the Applicants for participating in the challenge process of the CIRP of the Corporate Debtor.

8. Amidst these dynamics, the challenge process was commenced on 27th October 2023, wherein the highest bid received in Round 1 was of Rs.241 crores. However, after becoming aware of the discrepancies in bid increments, the Applicants submitted their objections to the RP/Respondent No.1 in response the Respondent no. 1/RP vide email dated 27th October 2023 informed the Applicants that the bidding has been done as per the challenge process note and requested the Applicants to bid for the next round within timelines. Left with no other options the Applicants vide email dated 27th October 2023 submitted their bid for Round 2 for Rs.242 crores. However, the Respondent no 1/ Resolution professional, on the basis of the last bid submitted by the Applicants, in terms of the process note, the Applicants were deemed to have exited the challenge process, since as per clause 7 of the process note, the improved bid in each round has to be in Multiple of Rs. 10 crores and in the event a Resolution Applicant is unable to match or exceed the Threshold Bid Amount for the respective round, they will have an option to put forward their best bid (which may be lower than the Threshold Bid amount for that particular round, but higher than their previous bid submission) and exit the Challenge Process. Accordingly, the Respondent no 1 /RP called upon the Applicants to submit the draft of revised resolution plan as per the highest financial bid submitted by the Applicants in round 2.
9. Pursuant to the above, the Respondent no 1 /RP vide email dated 01stNovember 2023 invited the Applicants for negotiations with the Respondent No. 2 to be conducted on 02nd November 2023 wherein the Applicant submitted its revised offer of Rs.248 crores. Thereafter, on

04th November 2023 the applicants submitted their Resolution plan in consortium.

10. Despite these efforts, Respondent No. 2/COC purportedly favoured another Resolution Applicant and rejected the Applicants' consortium bid. Furthermore, the Applicants discovered that two additional documents were uploaded to the VDR during the challenge process which could significantly impact the Corporate Debtor's asset valuation and, consequently, the bidding dynamics of the Applicants. Therefore, this Application.

SUBMISSIONS OF RESPONDENT NO.1/RP

11. It is submitted that any and all contentions/ averments/ submissions made against the Respondent No. 1/RP in the said Application are denied in their entirety.
12. It is submitted that after following the due challenge process the Plan of the SRA was approved.
13. The Process Note containing the rules of the Challenge Process mechanism was circulated to all the PRAs on 12th October 2023. The challenge process was originally decided to be held on 18th October 2023 however at the request of various RAs including Applicant No.2, the date for conducting challenge process was extended to 27th October 2023. The Challenge Process was conducted on 27th October 2023.
14. It is the case of the Respondent No.1/RP that the present application lacks maintainability, as it is filed at highly belated stage since the after the approval of the resolution plan by the COC in its commercial wisdom. Further the Respondent No. 2/COC approved the resolution

plan submitted by Sapphire Media Limited (“**Successful Resolution Applicant**”/ “**SRA**”/ “**Respondent No. 2**”) by a vote of 88.97% by the CoC. Pursuant to which an Interlocutory Application bearing no. IA 5391 of 2023 (“Plan Approval Application”), has been filed by the Respondent No.1/RP for approval of the Resolution Plan by this Adjudicating Authority which is pending adjudication. The adjudicating authority can either accept or reject the approval application of the Resolution plan solely on compliance with Section 31 of the Code.

15. Further, in the present case, the Applicants have failed to demonstrate any instances of non-compliance with the Approved Resolution Plan as per Section 30(2), therefore, raising of contention by the Applicant at such a belated stage cannot be entertained. Hence the application is a frivolous attempt by the applicant to derail the CIRP process.
16. It is submitted by the Respondent No. 1/RP that it has duly conducted the CIRP Process as it has duly examined and verified all the EOIs and supporting documents received by it from the 22 PRAs and only after examining the documents and satisfying itself that the PRAs meet the eligibility criteria set out in the IEOI (approved by the CoC under Section 25(2)(h) of the Code), the RP issued a provisional list of 19 PRAs which included the SRA.
17. Based on the materials on record submitted by the SRA along with its EOI, the Respondent No.1/RP came to the conclusion that the SRA meets the eligibility criteria at the ‘**group level**’ as per the requirements of the IEOI. Notably, the supporting documents submitted by the SRA pertaining to its eligibility are duly certified by a chartered accountant.
18. In response to the contention of the Applicant that the SRA does not meets the eligibility criteria, It is submitted that the Applicant in order

to compute the eligibility of the SRA, has appointed one “*Sachin Agarwal & Associates, Chartered Accountants*” and has provided a CA certificate which has claimed that it has examined the “financial and public data of the group companies of Sapphire Media Limited as maintained with the ROC” and has certified the net worth (as on 31 March 2022) and average turnover (for FY 2019-2020, 2020-2021 and 2021-22) of 12 companies of the SRA as listed out in the certificate. However, the same cannot be accepted as, neither the Applicant, nor their CA have full details of the entire group of the SRA or the net worth and turnover details of the group. Therefore, the Application is filed on the basis of information culled out by the Applicant/ their Chartered Account from ROC of only 12 companies of the SRA is false and baseless.

19. Further, with regard to the contention of the Applicants to provide the details of bids received by the Respondent No. 1/RP in the bidding process and to show confidential documents/ resolution plans/ net worth certificates etc. of other RAs. It is submitted that the minutes of the CoC and the details of the resolution plans are confidential in nature. The confidential details relating to the CIRP cannot be provided to the Applicants. No RA has a right to insist that it be shown confidential documents/ resolution plans/ net worth certificates etc. of other RAs for their examination. The examination of such documents/ plans etc. is within the sole domain of the RP, the CoC and thereafter this Hon’ble NCLT.
20. It is further submitted that Regulation 36A (11) of the CIRP Regulations prescribes the time period within which any objection to the inclusion or exclusion of a PRA in the provisional list can be made. Provisions of 36A (11) of the CIRP Regulations are reproduced hereunder:

*“Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) maybe made with supporting **documents within five days** from the date of issue of the provisional list.”*

Thus, it is important to note that the Preamble of the Code stresses on a time bound resolution and hence the CIRP of a corporate debtor is a time bound process. Therefore, the legislature and the regulator have set out specific timelines within which the process should be completed, including timelines within which PRAs can raise objections with respect to inclusion or exclusion of a PRA in the provisional list of PRAs basis the eligibility criteria.

21. It is submitted that despite having sufficient time during the process, the Applicants never raised any objection to the eligibility of the SRA nor at the time when the names of the Applicants were included in the provisional list of PRAs but only raised the objection once they have availed all the opportunities offered to them by the RP and CoC through the challenge process to submit their best bid in the resolution plan. Therefore, the objection raised by the Applicants after the approval of the Resolution Plan of SRA by the CoC in their commercial wisdom, is only to derail the time bound process of CIRP.
22. It is submitted that from the date of issuance of the Provisional List of PRAs which was issued **on 10th June 2023 after which more than 6 months had elapsed**, when vide an email dated 16th December 2023, the Applicant raised its first objection regarding the eligibility of the PRAs. In the meanwhile, the entire process for invitation, assessment, negotiation and approval of the resolution plans was completed by the Respondent No.1/RP and Respondent No.2/ CoC but no objection was raised by the Applicants. Moreover, the Applicants made sure that they have availed all the opportunities provided in the negotiation process

wherein they have submitted their bid first for 242 crores and then for 248 crores. Therefore, showing their *malafide intention*.

23. Further it is the case of the Applicants they are relying upon a certificate of chartered accountant dated 11th January 2024. However, the objections were already raised by the Applicants firstly on 16th December 2023 and secondly on 9th January 2024 before this adjudicating authority during the hearing of the objection application (IA 5572 of 2023). This implies that at both the instances the Applicants had no basis to object to the eligibility of the SRA and once the objections were raised, the supporting documents were conveniently arranged by the Applicants from its CA to support its contentions. However, the same is made with false and incomplete information taken from the ROC and computing the net worth of the SRA by including only 12 group companies of the SRA. Therefore, based on the aforementioned points, it is clear that the applicants raised their objections at a significantly delayed stage, especially after the plan had already been approved by the COC, who exercised their commercial wisdom. Furthermore, the presentation of the irrelevant document by the Applicants' CA holds no significance in this context. Therefore, the present Application **must be dismissed**.

SUBMISSION OF RESPONDENT NO. 2/COC

24. The Respondent No.2/CoC denies the contention of the Applicants in toto submitting that letter dated 12th October 2023 was addressed by the Respondent no. 1/RP to all the Proposed Resolution Applicants ("**PRAs**"), whereby the PRAs were apprised that the Committee of Creditors ("**CoC**") of the Corporate Debtor has decided to undertake negotiations with the PRAs on the financial proposal by way of an online challenge Process on 18th October 2023, the rules of which are provided in Annexure I to the aforesaid letter.

25. Further on 17th October 2023, the Respondent No. 1/Resolution Professional apprised the Resolution Applicants that the challenge process is re-scheduled to 27th October 2023. It is opposite to state herein that the challenge process was extended at the request of the Applicants. It is pertinent to mention that between 12th October 2023 till 27th October 2023, that is the commencement of the Challenge Process no clarification on the Challenge process was sought by the Applicants. Clause 1 of Annexure I made it clear that the Request for Resolution Plan dated 15th June 2023 ("**RFRP**") empowers the CoC to negotiate (if required) the terms of such resolution Plan with the relevant Resolution Applicant including but not limited to determining the mechanism of such negotiations and **also request the Resolution Applicants to re-submit their revised proposals on basis of discussions and negotiations.**
26. Further Clause 2 makes it clear that the Challenge Process is an integral part of the overall negotiation undertaken by the CoC with the Resolution Applicants, with the sole aim to maximise the value of the Corporate Debtor. It was further made clear that the Challenge Process supplements the RFRP and Clause 33 sets forth the eligibility criteria to participate, as per which only **the Resolution Applicants who have submitted an undertaking in the format provided in Annexure II,** can participate in the challenge process. Attention of this Hon'ble Tribunal is drawn to the following two essential undertakings from which the Applicants are now trying to wriggle out of.
- a) *The Resolution Applicant has read and understood the terms, conditions and rules specified for Challenge Process as specified in the Challenge Process Note and have no objections to the same.*
 - b) *The Resolution Applicant unconditionally and irrevocably accepts the challenge Process Rules.*

The relevant extract of the undertaking by the Eligible Resolution Applicant for the challenge process is as under –

- (a) we have read and understood the terms, conditions and rules specified for Challenge Process as specified in the Challenge Process Note ("Challenge Process Rules") and have no objection to the same;
- (b) we understand that the Challenge Process Rules are part and parcel of the RFRP and non-adherence to the same shall amount to non-compliance of the RFRP;
- (c) we unconditionally and irrevocably accept the Challenge Process Rules;

27. Clause 5 details the manner in which the financial bids are to be submitted in the Challenge Process. To summarise the process, the PRAs were provided with 30 minutes for bidding in each round. The PRAs are to submit their password protected bids/ commercial offers on a pre-formatted form to the Resolution Professional from the email id of their Authorised Representative and for each round the subject of the e-mail should provide the Round No. 1 of the Financial Proposal. **The value submitted by the highest bidder of each round will be disclosed at the end of each round during the meeting to all the participating Resolution Applicants** express their inability to improve their commercial bids. However, after any round the CoC may declare that one more round shall be conducted or that the process be ended with immediate effect.

28. Clause 6 clearly explained that the CoC has set a base price of Rs.240,00,00,000/- for payment to the financial and operational creditors, with the base price of Rs. 2,35,00,00,000/- as the pay out to the secured financial creditors.

29. Clause 7, titled as 'Increment' entailed that

"At the end of each round, the bid with the highest value will be the "Threshold Bid Amount" for the next round. The Resolution Applicant must match or exceed the Threshold Bid amount for the respective round in order to continue

participating in the Challenge Process. Resolution Applicant will have to improve their bid in each round in Multiple of Rs. 10 crores.”

30. The Applicant at paragraph 5(s) at Page 20 of the Application has alleged that the declaration of Rs. 241 crores as the highest bid is not in accordance with the Process Note. As per the Applicant, the aforesaid bid is irregular as the Applicant treats the Rs. 241 crores bid to be an increment, which as per the Applicant was to be done in multiple of Rs. 10 crores.
31. It is submitted that the aforesaid understanding of the Applicant is flawed and completely contrary to the terms of the Process Note. A conjoint reading of Clause 6 and 7 of the Process Note makes it clear that the base price is Rs. 240 crores, thus meaning that bids below the said figure will not be accepted. Clause 7 details the requirement to participate in the next round. It states that the Threshold bid amount for the next round shall be the bid with the highest amount and for the Resolution Applicants to participate in the next round, they will have either to match the threshold bid amount or exceed the same.
32. In the first round the highest bid was for Rs. 241 crores. Thus meaning, in order for the Resolution Applicants to participate in the next round they would have to either match the threshold or exceed its previous bid by an increment of Rs. 10 crores, i.e. Rs. 250 crores. Keeping the aforesaid in mind, the Resolution Professional, vide email dated 27th October 2023 clarified to the Applicants that the bidding has been done as per the Challenge document and in case they wished to participate further, they were required to submit their bids within the defined timelines.
33. In order for the Applicants to further participate, they were required to either match the Threshold Bid Amount of Rs. 241 Crores or exceed its previous bid by an increment of Rs. 10 crores, i.e. Rs. 251 crores. Despite the Challenge Process being self-explanatory and

unambiguous, the Applicants submitted a bid of Rs. 242 crores, which was not in terms of Clause 7 of the Process Note.

34. Clause 7 further provides that in the event a Resolution Applicant is unable to match or exceed the Threshold Bid Amount for the respective round, they will have an option to put forward their best bid (which may be lower than the Threshold Bid amount for that particular round, but higher than their previous bid submission) and exit the Challenge Process. The bid so submitted will be considered the final bid.
35. It is further submitted that Clause 12(a) details the Post Challenge Process actions, whereby upon completion of the challenge process, each Resolution Applicant is required to submit a draft of its Resolution Plan to incorporate the highest bid amount submitted by such Resolution Applicant in the Challenge Process within a period of 24hrs from conclusion of the Challenge Process. No change in the Financial Proposal post the Challenge Process is permitted, unless asked by the CoC, in terms of Clause 12(d). **Further Clause 12(c) makes it clear that no right is created in favour of H1 bidder and the CoC reserves its right to approve any resolution plan which it deems appropriate, irrespective of any financial proposal received.**

(c) Post the Challenge Process, the financial proposal provided in the Challenge Process will be used for scoring the Resolution Plans based on the evaluation matrix. It may be noted that the results of the Challenge Process will provide deeper insight into the value offered by the Resolution Applicants and may guide the CoC's consideration of the plan. However, no right is being created in favour of bidder which emerges H1 in the Challenge Process. The CoC reserves its right to approve any resolution plan which it deems appropriate irrespective of any final financial proposal received.

Clause **12(d)** allows the CoC in its right to conduct another Challenge Process or bilateral negotiations with the Resolution Applicants post the Challenge Process. The said Clause further clarifies that Process

Note shall in no manner limit the right of the CoC to negotiate, evaluate and consider the Resolution Plans in its commercial wisdom.

(d) The CoC reserves its right to conduct another Challenge Process or bilateral negotiations with the Resolution Applicants post the Challenge Process. Nothing in this Note shall deem to limit the right of the CoC to negotiate, evaluate and consider the Resolution Plans in its commercial wisdom.

36. It is submitted that the Applicants did not bid in terms of Clause 7 in the second round and exited the process. Further, it is also an admitted position that the Resolution Applicants were called upon to submit the draft of the revised Resolution Plan. Thereafter, admittedly, **the Applicants were called for discussions with Respondent No. 2 on 02nd November 2023**, wherein the Applicants after thorough reconsideration and with knowledge of all the information (including documents uploaded at VDR during the Challenge Process), **gave a revised offer of Rs. 248 crores on 04th November 2023**. It is pertinent to mention that despite giving an opportunity to Applicants to increase their bid, the Applicants decided to submit the final bid of Rs. 248 crores only. Be that as it may, the Applicants had themselves conveyed their satisfaction with the opportunities provided to them to improve their financial proposal, **as is evident from the 12th Minutes of Meeting dated 06.11.2023**.
37. It is further submitted that the resolution plan of SRA was approved by CoC on the basis of numerous factors and not just financial numbers. Despite their low offer of Rs. 248 crores, the COC still considered the Resolution Plan of the Applicants. The Applicants' Resolution Plan had issues pertaining to gratuity clause, force majeure clause etc., which were also considered by the CoC as is evident from the CoC Meeting dated 08.11.2023 and 10.11.2023. Clause 2.4.2 of the RFRP which states that COC is under no obligation to approve any particular plan. The relevant clause is reproduced hereunder: -

*"It is abundantly clear that notwithstanding anything in this RFRP, the **CoC is under no obligation to any of the Resolution Applicants or any other person to approve a Resolution Plan which has scored the highest** as per the Evaluation Matrix and any Resolution Plan shall be approved **solely on the basis of the CoC's commercial wisdom.**"*

38. Further the contention of the Applicant that they had No knowledge of highest bid amount is false and baseless as it is their own case that they were satisfied with the negotiation process and it is during this they were given chance which they availed and improved upon their offer. This contention is itself baseless as entire bidding process is confidential in nature and the bids of each applicant are in their own financial capacity and commercial wisdom.
39. It is further submitted that fair and proper opportunity was provided to the Applicants to improve their financial proposals. In any event there was no requirement for disclosure of bids of other Resolution Applicants, as is evident from Clause 2.3.8 of RFRP, relevant portion of which is reproduced hereunder:

.....Provided however that the Resolution Professional or the CoC shall not be bound to disclose the commercials or scores of any Resolution Applicant or disclose the methodology adopted in arriving at such scores. It is further clarified that the Resolution Applicant shall not have the right to request clarifications on the scoring made as per Evaluation Matrix or seek information as regards the methodology adopted for scoring of its Resolution Plan."

40. The CoC reserved its right to conduct various rounds of negotiations with the PRAs in the interest of value maximisation as is evident from Clause 2.3.11 of the RFRP which is reproduced for ease of reference of this Hon'ble Tribunal:

"Further, notwithstanding anything stated herein, there shall be no restriction on the right of the Committee of Creditors to conduct various rounds of negotiations with the Prospective Resolution Applicants in the interest of value maximization."

41. It is submitted that with regards to the contention of the applicant that two additional documents were uploaded in the VDR during the challenge process. It is not that the applicant has been prejudiced all the resolution applicant were provided the same information and that too at the same time. The Applicants had adequate time, like all other Resolution Applicants to peruse the said documents uploaded on VDR and having availed such opportunity, the Applicants submitted their final plan.
42. It is submitted that the present application seeks a judicial scrutiny on the commercial wisdom of CoC, which is not permitted as per law. The limited grounds for such interference have been set out in Section 31 read with Section 30 of IBC. No grounds, in terms of Section 30 of IBC have been put forth by the Applicants, which would attract scrutiny by this Hon'ble Tribunal.
43. It is further submitted that, the Respondent No.2/COC has followed the Challenge Process in its entirety and with utmost transparency. Not only the Successful Resolution Applicant, but the Applicants have also been given the same opportunities to revise their Resolution Plan, as is evident from the Minutes of Meetings on 02nd November 2023, when the Applicants were called out to participate in the negotiations process to improve their bid, no objection was raised and an informed decision was taken by the Applicants. In fact, the Applicants submitted its revised Resolution Plan on 04th November 2023 and increased their bid amount from Rs. 242 crores to Rs. 248 crores, which rather shows that the Applicants had exercised their own wisdom in increasing the bid amount without any protest or demur.

44. Furthermore, the Applicants by way of the present Application under Reply has indirectly challenged the Resolution Plan of the Successful Resolution Applicant without having made such Successful Resolution Applicant party to the present application, which is impermissible in the eyes of law. Be that as it may, Clause 14 (i) and Clause 14 (g) categorically states that the proceedings of the Challenge Process are confidential in nature and in case of any dispute in relation to the conduct of the Challenge Process, the decision of the CoC shall be final and binding on all the parties.

FINDING:

45. We have heard the Ld. Counsels for the Applicants, the Ld. Counsel representing the Resolution Professional and also the Ld. Counsel for the COC and perused the documents with their able assistance.
46. The issue raised by the Applicants pertaining to the present Application is that on 12th October, 2023 the Respondent No. 1/RP addressed an email to the Applicants, intimating that Respondent No.2/ COC had decided to undertake negotiations with the Resolution Applicants on the financial proposal in their respective Resolution Plans by way of an online challenge process to be held on 18th October 2023 which was rescheduled to 27th October 2023. In the Process Note of the said challenge process, the reserve price for participating in the challenge process was fixed at Rs. 240 Crores, and in addition, the incremental amount for putting a bid was in multiples of Rs. 10 Crores. However, as per the contention of the Applicants the declaration of Rs. 241 crores as the highest bid is not in accordance with the Process Note. As per the Applicants, the aforesaid bid is irregular as Rs. 241 crores bid has to be an increment in multiples of Rs. 10 crores from the Reserve Price of Rs. 240 Crores.

47. After considering the merits of the case it is observed by this Bench that further on 17th October 2023, the Respondent No.1/ RP addressed an email to the Applicants intimating that the date of the challenge process is rescheduled to 27th October 2023 and the Applicants were called upon to submit an undertaking for participation in the said challenge process on or before 26th October 2023. The Applicants has submitted its undertaking wherein the Applicants have read and understood the terms, conditions and rules specified for Challenge Process as specified in the Challenge Process Note and have stated that they have no objections to the same. With respect to the same undertaking the Resolution Applicants unconditionally and irrevocably accepted the challenge Process Rules. The relevant extract of the undertaking by the Eligible Resolution Applicants for the challenge process is as under –

- (a) we have read and understood the terms, conditions and rules specified for Challenge Process as specified in the Challenge Process Note ("**Challenge Process Rules**") and have no objection to the same;
- (b) we understand that the Challenge Process Rules are part and parcel of the RFRP and non-adherence to the same shall amount to non-compliance of the RFRP;
- (c) we unconditionally and irrevocably accept the Challenge Process Rules;

Thereafter, the Respondent no 1 /RP vide email dated 01st November 2023 invited the Applicants for negotiations with the Respondent No. 2/CoC to be conducted on 02nd November 2023 wherein the Applicants submitted its revised offer of Rs. 248 crores. This shows that the Applicants were given ample opportunities to submit their Resolution Plan and bid according to the challenge process. The Applicants further availed the opportunities and submitted their Bid/Resolution Plan accordingly. Therefore, the contention raised by the Applicant after approval of the Resolution Plan by the CoC is highly belated and to derail the process of CIRP. This Bench further observes Regulation 36A (11) of the CIRP Regulations of the IBC prescribes the

time period within which any objection to the inclusion or exclusion of a PRA in the provisional list can be made. The Provisional List was issued by the RP on 10th June 2023, wherein the Applicants were also part of the same. The relevant extract of the Provisions of 36A (11) of the CIRP Regulations are reproduced hereunder:

*“Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) maybe made with supporting **documents within five days** from the date of issue of the provisional list.”*

Despite having sufficient time during the process, the Applicant **never raised any objection to the eligibility of the SRA** nor at the time when the names of the Applicants were included in the provisional list of PRAs. The date of issuance of the Provisional List of PRAs was **on 10th June 2023, according to which more than 6 months had elapsed** when by an email dated 16th December 2023, the Applicant raised its first objection regarding the eligibility of the PRAs. Therefore, the contention of the Applicant at such a highly belated stage cannot be entertained.

48. The bench after perusing the clause 7 reproduced in the contentions of the parties, observes that the Applicants did not bid in terms of Clause 7 in the second round of the challenge process and the Applicants were deemed to have exited the challenge process as per clause 7 of the process note. Thereafter, **the Applicants were called for negotiation with Respondent No. 2/CoC on 02nd November 2023**, wherein the Applicants after thorough reconsideration and with knowledge of all the information (including documents uploaded at VDR during the Challenge Process), **gave a revised offer of Rs. 248 crores on 04th November 2023**. Pursuant to which the Resolution Applicants were called upon to submit the draft of Resolution Plan with their highest bid. It is pertinent to mention that having been given

an opportunity to Applicants to increase their bid, they availed the opportunity and the Applicants decided to submit the final bid of Rs.248 crores only. Be that as it may, the Applicants had themselves conveyed their satisfaction with the opportunities provided to them to improve their financial proposal, **as is evident from the 12th Minutes of Meeting dated 06th November 2023.**

~~representative of the Consortium to confirm if they were satisfied with the opportunities provided to them to improve their financial proposal. Representative of Consortium clarified that they agreed to the overall process conducted by the CoC to negotiate with the Resolution Applicants. CoC took note of the same and requested representatives of RA were asked to leave the meeting.~~

Thus, the present Application which seeks rejection of the Resolution Plan submitted by the SRA on frivolous grounds cannot be allowed.

49. This bench further considered the Clause 12(a) of the challenge Process which details the Post Challenge Process actions, whereby upon completion of the challenge process, each Resolution Applicant is required to submit a draft of its Resolution Plan to incorporate the highest bid amount submitted by such Resolution Applicant in the Challenge Process within a period of 24hrs from conclusion of the Challenge Process. No change in the Financial Proposal post the Challenge Process is permitted, unless asked by the CoC, in terms of Clause 12(d). **Further Clause 12(c) makes it clear that no right is created in favour of H-1 bidder and the CoC reserves its right to approve any resolution plan which it deems appropriate, irrespective of any financial proposal received.**

(c) Post the Challenge Process, the financial proposal provided in the Challenge Process will be used for scoring the Resolution Plans based on the evaluation matrix. It may be noted that the results of the Challenge Process will provide deeper insight into the value offered by the Resolution Applicants and may guide the CoC's consideration of the plan. However, no right is being created in favour of bidder which emerges H1 in the Challenge Process. The CoC reserves its right to approve any resolution plan which it deems appropriate irrespective of any final financial proposal received.

and Clause **12(d)** allows the **CoC in its** right to conduct another Challenge Process or bilateral negotiations with the Resolution Applicants post the Challenge Process. The said Clause further clarifies that Process Note shall in no manner limit the right of the CoC to negotiate, evaluate and consider the Resolution Plans in its commercial wisdom.

(d) The CoC reserves its right to conduct another Challenge Process or bilateral negotiations with the Resolution Applicants post the Challenge Process. Nothing in this Note shall deem to limit the right of the CoC to negotiate, evaluate and consider the Resolution Plans in its commercial wisdom.

50. It is observed that the resolution plan of SRA was approved by CoC on the basis of numerous factors and not just financial numbers. Despite their low offer of Rs. 248 crores, the COC still considered the Resolution Plan of the Applicants on its commercial wisdom. Additionally, on appreciation of Clause 2.4.2 of the RFRP which states that COC is under no obligation to approve any particular plan. The relevant clause is reproduced hereunder: -

*"It is abundantly clear that notwithstanding anything in this RFRP, the **CoC is under no obligation to any of the Resolution Applicants or any other person to approve a Resolution Plan which has scored the highest as per the Evaluation Matrix and any Resolution Plan shall be approved solely on the basis of the CoC's commercial wisdom.**"*

In light of the aforesaid, it is evident that due process has been followed and the Resolution Plan of the Applicants have been rejected on merits by the COC, after due consideration and after exercising its commercial wisdom.

51. Further the contention of the Applicants that they had No knowledge of highest bid amount, it is submitted that bidding is totally a

confidential process. It is their own case that they were satisfied with the negotiation process having been carried out by CoC where they got a chance to improve their bid from Rs. 241 to 248 Crores. It is during this process they were given chance which they availed and improved upon their offer.

52. Thus a fair and proper opportunity was provided to the Applicants to improve their financial proposals. In any event there was no requirement for disclosure of bids of other Resolution Applicant, as is evident from Clause 2.3.8 of RFRP, relevant portion of which is reproduced hereunder:

*.....Provided however that the Resolution Professional or the **CoC shall not be bound to disclose the commercials or scores of any Resolution Applicant or disclose the methodology adopted in arriving at such scores.** It is further clarified that the Resolution Applicant shall not have the right to request clarifications on the scoring made as per Evaluation Matrix or seek information as regards the methodology adopted for scoring of its Resolution Plan."*

53. The CoC reserved its right to conduct various rounds of negotiations with the PRAs in the interest of value maximisation as is evident from Clause 2.3.11 of the RFRP which is reproduced for ease of reference of this Hon'ble Tribunal:

"Further, notwithstanding anything stated herein, there shall be no restriction on the right of the Committee of Creditors to conduct various rounds of negotiations with the Prospective Resolution Applicants in the interest of value maximization."

Thus it is evident that every opportunity was provided to the Applicants to be participate in the process and improve their bid. Despite having availed all such opportunities, their Plan was rejected by the CoC while exercising their commercial wisdom and in the interest of value maximisation.

54. Further with regards to the contention of the Applicants that two additional documents were uploaded in the VDR, the Applicants have not placed on record any prejudice having being cause to him. All the PRAs were similarly placed. The documents uploaded were to the knowledge of all the PRAs at the same time. The Applicants had adequate time, like all other Resolution Applicants to peruse the said documents uploaded on VDR and having availed such opportunity, the Applicants submitted their final plan.
55. The present Application seeks a judicial scrutiny on the commercial wisdom of CoC, which is not permitted as per law. It is settled law that the commercial wisdom of the CoC is supreme and cannot be interfered with. The limited grounds for such interference have been set out in Section 31 read with Section 30 of IBC. No grounds, in terms of Section 30 of IBC have been put forth by the Applicants, which would entail interference by this Hon'ble Tribunal. It further deserves to be emphasized that the Applicants have challenged the decision of the CoC on unfounded, unreasonable and baseless grounds. No malafide is alleged against the decision of COC. In view of the **law laid down by Hon'ble NCLAT in Company Appeal (AT) No. 513 & 753 & IA 1666 of 2023** reaffirming the Commercial wisdom of CoC has held as under:-

"The Adjudicating Authority must work within the framework of IBC which broadly aims at timely resolution of the Corporate Debtor for realising the maximum value while respecting the commercial wisdom of the CoC. The supremacy of commercial wisdom of the CoC has been reaffirmed time and again by the Hon 'ble Supreme Court".

56. Further, the Respondent No.2/COC has followed the Challenge Process in its entirety and with utmost transparency. Not only the Successful Resolution Applicant, but the Applicants have also been given the same opportunities to revise their Resolution Plan, as is

evident from the Minutes of Meetings. The issue was raised by them on 2nd November 2023, when the Applicants were called out to participate in the negotiations process to improve their bid, no objection was raised and an informed decision was taken by the Applicants. In fact, the Applicants submitted its revised Resolution Plan on 04th November 2023 and increased their bid amount from Rs. 242 crores to Rs. 248 crores, which rather shows that the Applicants had exercised their own wisdom in increasing the bid amount without any protest or demur. This being the case, the Applicants at this stage cannot be allowed to either question the wisdom of the CoC or the transparency with which the process was conducted.

57. Furthermore, the Applicants by way of the present Application has indirectly challenged the Resolution Plan of the Successful Resolution Applicant without having made such Successful Resolution Applicant party to the present application, which is impermissible in the eyes of law. Be that as it may, Clause 14 (i) and Clause 14 (g) categorically state that the proceedings of the Challenge Process are confidential in nature and in case of any dispute in relation to the conduct of the Challenge Process, the decision of the CoC shall be final and binding on all the parties. It is pertinent to take note that the Applicants never raised any objection with respect to the challenge process before the COC which they have every right to therefore at this belated stage the contentions do not merit any consideration.

58. In view of the aforesaid submissions, the IA 5572 and 2023 is **dismissed**.

SD/-

MADHU SINHA
Member (Technical)

/Aakansha/

SD/-

REETA KOHLI
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI, BENCH-V**

I.A. No. 5391 of 2023

IN

C.P. No. 310 of 2022

In the matter of an Application under
Section 30(6) and Section 31 of the
Insolvency and Bankruptcy Code, 2016.

Mr. Rohit Ramesh Mehra

**(Resolution professional of Reliance
Broadcast Network Limited)**

...Applicant/Resolution Professional

In the matter of

IDBI Trusteeship Services Limited

... Financial Creditor

V/s.

Reliance Broadcast Network Limited

... Corporate Debtor

Order Dated : 06.05.2024

Coram:

Hon'ble Ms. Madhu Sinha
Member (Technical)

Hon'ble Ms. Reeta Kohli
Member (Judicial)

Appearance:

For the Applicant/RP: Sr. Adv. Mustafa Doctor a/w Adv. Nishant
Sogani a/w Adv. Saurabh Bachhawat a/w Adv. Shrishti Agnihotri i/b
Chandliok & Mahajan (PH)

For the Respondent: Sr. Adv. Gaurav Joshi a/w Adv. Kunal Kanungo,
Adv. Nishant Chothani, Adv. Tanushree Sogani and Adv. Atishay Jain
(R3) (PH)

ORDER

1. The above captioned Application was filed under Section 30(6) and Section 31, of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) by the Resolution Professional (hereinafter referred as the “**Applicant**”), seeking approval of the Resolution Plan, submitted by the Resolution Applicant - Sapphire Media Limited, which was approved by 88.97% voting shares of the members of the Committee of Creditors (hereinafter referred to as ‘**COC**’).

2. The facts leading to the Application are as under:
 - a. Corporate Insolvency Resolution Process (**CIRP**) of the Corporate Debtor was initiated, vide an order dated 24.02.2023, under Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as ‘**the Code**’) and Mr. Rohit Ramesh Mehra, was appointed as Interim Resolution Professional. The IRP, constituted the Committee of Creditors. The COC in its 1st meeting held on 24.03.2023 appointed **the present Applicant** as the Resolution Professional. The IRP published a public announcement as per Section 15 of the Code, inviting claims from the creditors of the Corporate Debtor.

 - b. The Applicant published a Public Announcement in Form A in accordance with Section 15 of the Code read with Regulation 6 of the CIRP Regulations, on 27.02.2023, inviting submission of proof of claims from the creditors of the Corporate Debtor, on or before 10.03.2023.

 - c. The claims **received** and **accepted** by Interim Resolution Professional are as under:

Creditors	Claims Received	Claims Admitted
Secured Financial Creditors	6,14,15,16,609	5,78,34,57,563
Unsecured Financial Creditor	8,44,13,94,809	3,47,47,28,308
Operational Creditors (Employees and Workmen dues)	27,89,099	23,14,620
Operational Creditors (Government dues)	47,34,03,443	4,25,06,553
Operational Creditors (Other than Employees and Workmen dues and Government dues)	1,82,13,37,672	17,29,15,207
Other Creditors	-	-
Total	16,88,04,41,632	9,47,59,22,252

3. After receiving the claims, the Committee of Creditors was constituted. The constitution of COC is as under:

Sr. No.	Name of the Financial Creditor	Claim admitted (In Crores)	Voting Share (percentage %)
1.	HSBC Asset Management (India) Private Limited on behalf of HSBC Credit Risk Fund	150.6	26.04
2.	HSBC Asset Management (India) Private Limited on	73.8	12.77

	behalf of L&T FMP - Series XIV A		
3.	HSBC Asset Management (India) Private Limited on behalf of HSBC Low Duration Fund	14.4	2.49
4.	IndusInd Bank Limited (“ IndusInd ”)	172.2	29.79
5.	IDBI Trusteeship Services Limited acting as Debenture Trustee for Franklin Templeton Mutual Fund (“ IDBI Trusteeship ”)	103.5	17.89
6.	Reliance Commercial Finance Limited (“ RCFL ”)	63.8	11.03
TOTAL		578.2	100%

4. The CoC decided to appoint valuers. The Resolution Professional accordingly appointed two Registered Valuers Jayesh Shah, Jayesh Mohan Kamat, Anil Pai Kakode (collectively, hereinafter referred to as “**Valuer 1**”) and GAA Advisory LLP (“**Valuer 2**”) for conducting valuation across three different asset classes, namely Land & Building, Plant & Machinery and Securities and Financial Assets to determine its fair value and liquidation value, as required under Regulation 27 of the IBBI (IRP for Corporate Persons) Regulations, 2016. The details of the Registered Valuers are as follows:
5. These Registered Valuers submitted their reports. **The Liquidation and fair value** is stated as under:

Fair Value:-

Asset Description	Valuer 1	Valuer 2	Average
Land & Building	INR 0.01 crore	INR 0.02 crore	INR 0.01 crore
Plant & Machinery	INR 8.5 crore	INR 6.8 crore	INR 7.6 crore

Securities & Financial Assets	INR 224.7 crore	INR 235.6 crore	INR 230.2 crore
Total	INR 233.2 crore	INR 242.4 crore	INR 237.8 crore

Liquidation Value :-

Asset Description	Valuer 1	Valuer 2	Average
Land & Building	INR 0.01 crore	INR 0.01 crore	INR 0.01 crore
Plant & Machinery	INR 7.2 crore	INR 6.4 crore	INR 6.8 crore
Securities & Financial Assets	INR 178.8 crore	INR 186.3 crore	INR 182.5 crore
Total	INR 185.9 crore	INR 192.8 crore	INR 189.4 crore

6. The Applicant submits that for inviting Expression of Interest (“**EOI**”) from Prospective Resolution Applicants as per section 25(2)(h) of the Code, Form G was published on 14.04.2023. **The last date for submission of Expression of Interest (EOI) from Prospective Resolution Applicants was 14.05.2023** which was further extended to 31.05.2023.
7. The Applicant further Submits that the COC approved with minimum eligibility criteria, Request for Resolution Plan (**RFRP**) along with evaluation matrix and the Information Memorandum to the PRAs on 15.06.2023.
8. In 5th COC meeting on the extension requests received from PRAs and keeping in view the objective of value maximization of the Corporate Debtor through receipt of maximum resolution plans, the CoC approved extension of the **last date for submission of resolution plans from 17.07.2023 to 17.08.2023**. In the 6th CoC meeting dated 10.08.2023, on the further request of the PRAs **the CoC extended the**

last date of submission of the resolution plans from 17.08.2023 to 01.09.2023.

9. On 8 September 2023, 6 (six) Resolution Plans were received for the Corporate Debtor from the following PRAs (“**Resolution Applicants**”/ “**RAs**”):

- (a) Cosmea Financial Holdings Private Limited (“**Cosmea**”);
- (b) Entertainment Network (India) Limited (“**ENIL**”);
- (c) Sapphire Media Limited/ Successful Resolution Applicant;
- (d) Abhijit Realtors and Infraventures Private Limited (“**Abhijit Realtors**”);
- (e) Creative Channel Advertising and Marketing Private Limited (“**Creative**”); and
- (f) Authum Investment & Infrastructure Ltd (“**Authum**”).

10. **The COC, in its 14th meeting held on 11.11.2023, approved Resolution Plan submitted by Sapphire Media Limited with a voting share of 88.97%. Thereafter, the Applicant has issued compliance certificate in Form “H”.**

11. **The Salient Features of the Resolution Plan are as under:**

A. Brief Background of the Corporate debtor

- i. Reliance broadcast Network Limited (hereinafter “**RBNL**” / “**Corporate Debtor**”), is a company incorporated under the Companies Act, 1965 on 27 December 2005, having its registered office at Unit No. 503, 5th Floor, ARC Plaza Industrial Estate, 48 Oshiwara Village, Jogeshwari (West), Mumbai, 400102, India.

Name	Reliance Broadcast Network Limited
ROC Code	ROC- Mumbai
CIN	U64200MH2005PLC158355
Date of Incorporation	27 December 2005
Class of Company	Public
Whether listed or not	Unlisted
Industry	Entertainment
Authorized Capital	INR 15,00,00,00,000
Paid-up Capital	INR 6,39,72,55,850
Activities	Unit No. 503, 5th Floor, ARC Plaza Industrial Estate, 48 Oshiwara Village, Jogeshwari (West), Mumbai, 400102, India.

- ii. The Corporate Insolvency Resolution Process (“**CIRP**”) of Reliance broadcast Network Limited has been initiated as per the provisions of the Insolvency and Bankruptcy Code (“**IBC**”) under Section 7. The application was moved before the Hon’ble National Company Law Tribunal, Mumbai Bench (“**NCLT**”) and was admitted vide its order dated 24.02.2023 (“**CIRP Order**”). Pursuant to such order, Mr. Rohit Mehra, (having IP Registration no. IBBI/IPA-002/IP-P00799/2017-18/11374),

Insolvency Professional, was appointed as the Interim Resolution Professional (**IRP**).

B. Background of the Resolution Applicant

- i. **SAPPHIRE MEDIA LIMITED**, the Resolution Applicant, was incorporated on October 21st, 2022, having its registered office at Mangla Estates 4th Km Stone Opposite Vrindavan gardens Kurukshetra Road, Kaithal Haryana-136027 incorporated under the provisions of the Companies Act, 1956. The corporate identification number of the Resolution Applicant is U74999HR2022PLC107331.

Name	Sapphire Media Limited
ROC Code	ROC- Delhi
CIN	U74999HR2022PLC107331
Date of Incorporation	21 December 2022
Class of Company	Public
Whether listed or not	Unlisted
Industry	Advertisement, Media, News Paper and News Channel
Authorized Capital	INR 25,00,00,000

Paid-up Capital	INR 21,00,99,900
Address and Activities	Mangla Estate, 4 th KM Stone, Opposite Vrindavan Gardens, Kurukshetra Road, Kaithal, Haryana-136027

- ii. The Resolution Applicant is eligible to act as a Resolution Applicant of the Corporate Debtor and is not ineligible under section 29A of Insolvency and Bankruptcy Code and also satisfies the eligibility criterion as mentioned in clause (h) of sub-section (2) of section 25 of the Code.

12. Summary of Payments under the Resolution Plan

Category	Admitted Amount	Amount Proposed	Percentage
Secured Financial Creditors	578.35	255	44.09
Unsecured Financial Creditors	347.47	Nil	0
Operational Creditors	21.77	6	27.5
a) Towards upfront payment of Workmen & Employees	0.23	0.23	100
b) Towards upfront payment of Operational Creditors – MIB and AIR Resources Prashar Bharati	4.25	4.25	100
c) Towards upfront payment of	17.29	1.52	

remaining Operational Creditors			
Total payout to creditors	947.59	261	27.54

13. **Sources of Funds**

S.NO	SOURCE OF FUNDS	Amount (Rs.)
1.	As Equity Contribution (200000000 shares @ Rs. 5 each) in the first year	100.00
2.	As unsecured loan @10%annual interest in the first year from Resolution Applicant	151.00
3.	Existing Bank Balances used for capex	15.00

The RA represents that the funds are backed by ICD (Inter Corporate Deposits) of Rs. 80.00 Crores by private limited companies.

The RA further represents that the funds are backed by a comfort letter/ term sheet of Rs 200 crores issued by various bankers and NBFC, which is attached hereto as Annexure 4 (Colly).

The Resolution Applicant hereby represents and warrants that the funds required for the implementation of the Resolution Plan have been arranged and are backed by a separate comfort letters of Rs. 130.00 Crores issued by Director and Shareholders of Resolution Applicant Mr. Sahil Mangla, Mr. Madan Lal Mangla and Ms. Usha Mangla along with their CA certified Net Worth Certificates , which are attached hereto as Annexure 4 (Colly), and that such funds shall be disbursed in terms of the Payment Schedule to ensure the successful implementation of the Resolution Plan.

14. **Payments proposals of the various stakeholders under the Resolution Plan:**

A. CIRP Costs

- i. The Corporate Debtor is having operating revenue from business and CIRP cost shall be paid out of internal cash accruals and bank balances of Corporate Debtor. In case the internal cash accruals and bank balances are insufficient, the Resolution Applicant agrees to fund the outstanding CIRP costs, if any as on the Approval Date, which shall be infused by the Resolution Applicant in the Designated Bank Account on or before the Transfer Date on an actual basis over and above the Upfront Cash Payment.
- ii. It is clarified that the CIRP Costs shall be paid in full and in priority to the payment of other debts of the Corporate Debtor as per the provisions of Section 30(2)(a).

B. Payment to Financial Creditors

- i. As per the Information Memorandum, the claims of the Financial Creditors against the Corporate Debtor verified / admitted by the Resolution Professional as on the Insolvency Commencement Date (“**Financial Creditor Claims**”) are set out below:-

Figures in INR cr.

Sr. No.	Category of Financial Creditors	Amount Claimed	Amount Admitted	Amount not Admitted
1	Financial Creditors- Secured	614.15	578.35	35.80

2	Financial Creditors- Unsecured	844.14	347.47	496.67
3	Total Financial Creditors	1458.29	925.82	532.47

Financial Creditors (Secured)

Sr. No	Name of Creditor	Amount Claimed	Amt of Claim Admitted	% Voting Share in CoC
1	HSBC Asset Management (India) Private Limited on behalf of HSBC Credit Risk Fund	1 ,50,59,27,288	1 ,50,59,27,288	26.04%
2	HSBC Asset Management (India) Private Limited on behalf of L&T FMP - Series XIV A	7 3,83,04,723	7 3,83,04,723	12.77%
3	HSBC Asset Management (India) Private Limited on behalf of HSBC Low Duration Fund	1 4,41,30,219	1 4,41,30,219	2.49%
4	IndusInd Bank Limited	1 ,72,27,39,356	1 ,72,27,39,356	29.79%

5	IDBI Trusteeship Services Limited acting as Debenture Trustee for Franklin Templeton Mutual Fund	1,03,45,28,414	1,03,45,28,414	17.89%
6	Reliance Commercial Finance Limited	8,01,29,15,568	6,37,82,75,563	11.03%
7	Yes Bank Limited	1,94,59,50,41	--	0.00%
		6,14,15,16,609	5,78,34,57,563	100.00%

Financial Creditors (Unsecured)

Sr. No	Name of Creditor	Amount Claimed	Amt of Claim Admitted	% Voting Share in CoC
1	Reliance Capital Limited	7,79,78,30,156	3,47,47,28,308	-
2	Azalia Distribution Private Limited	27,63,13,980	-	-
3	Adhar Project Management & Consultancy Private Limited	7,88,27,371	-	-
4	Gamesa Investment Management Private Limited	2,91,31,685	-	-

5	Arion Movie Production Private Limited	12,20,10,862	-	-
6	Wallace Movies & Entertainment Private Limited	13,72,80,755	-	-
		8,44,13,94,809	3,47,47,28,308	

C. Payment to Operational Creditors

- i. As per the list of claims as uploaded in the VDR of the Operational Creditors against the Corporate Debtor verified/ admitted/ under-verification by the Resolution Professional as on the Insolvency Commencement Date (“**Operational Creditor Claims**”) are set out below:-:-

Figures in INR cr.

Sr. No.	Category of Operational Creditors	Amt. Claimed	Amt. Admitted	Amt not Admitted
1	Operational Creditors- other than workmen and employees and Government Dues	182.13	17.29	8.49
2	Operational Creditors- workmen and employees	0.28	0.23	0.05

3	Operational Creditors – Government Dues (MIB & AIR Resources Prasar Bharati)	47.34	4.25	30.66
	Total Operational Creditors	229.75	21.77	39.20

Detail of Operational Creditors other than Workmen

Sr. No	Name of Creditor	Amount Claimed	Amt of Claim Admitted	% Voting Share in CoC
1	DNP Tech Services	1 1,89,590	7 ,18,450	-
2	Kfin Technologies Limited	1 ,49,090	1 ,49,090	-
3	Technomedia Solution Private Limited	1 7,16,274	1 5,97,912	-
4	Innovent Space Private Limited	1 ,35,22,311	1 ,12,07,000	-
5	The Indian Performing Right Society Limited	1 ,41,55,64,727	1	-
6	LeazeOn Private Limited	2 ,60,780	2 ,55,780	-
7	Holidayz	2 2,79,031	1 4,18,998	-
8	powernest solutions	9 5,360	5 4,560	-
9	TAM MEDIA RESEARCH PRIVATE LIMITED	1 8,53,677	1 8,30,288	-

10	Yashraj Films pvt Ltd	1 ,88,450	1 ,85,982	-
11	Sai Johan enterprises	8 8,500	8 1,821	-
12	Nidhishree technology services	5 ,00,933	3 ,35,154	-
13	SAMAIRCON	2 ,09,214	1 ,62,376	-
14	Videocon Industries Limited	1 8,47,484	1 7,25,970	-
15	Silicon Rental Solutions Limited	1 ,45,00,000	1,35,40,000	-
16	ABHAY SAHARE	6 0,000	6 0,000	-
17	Hirezzone Systems Private Limited	3 0,386	2 9,983	-
18	Phonographic Performance Limited	1 ,50,23,445	1,46,05,159	-
19	BOOKNOW DIGITAL PRIVATE LIMITED	7 2,414	3 9,766	-
20	Greysell Marketing Promotions Pvt Ltd	6 ,78,500	6,21,000	-
21	Equilibrio Advisory LLP	2 ,12,400	1 ,88,614	-
22	Broadcast Engineering Consultants India Limited	1 3,09,99,855	10,76,21,058	-
23	Sony Music Entertainment India Private Limited	2 6,86,173	24,83,011	-
24	CHIRAG SARVAIYA & CO	4 ,24,800	3 ,59,871	-
25	TMT Law Practice	1 7,500	1 5,750	-
26	Soundkraft	7 ,79,461	5,73,845	-

27	MRN Digital Services Private Limited	32,69,585	15,03,304	-
28	Elite Enterprises & Events	8 2,600	8 1,200	-
29	Uptrendic events	2 ,77,338	2 ,72,637	-
30	Event Managers	6 ,37,700	6 ,37,700	-
31	Client Linx Software Private Limited	3 9,34,955	33,19,200	-
32	Outcry Entertainment	1 ,17,000	1 ,17,000	-
33	Associated Warehousing	75,41,830	-	-
34	Associated Assemblies & Repackers	82,69,109	2,94,551	-
35	Market Info INC.	7,200	7,200	-
36	Tips Industries Limited	4,42,50,000	81,910	-
37	Mad Over Marketing	2,95,000	2,90,000	-
38	Accutech Power Solutions Private Limited	3,26,176	3,26,176	-
39	Deb Enterprises	59,000	58,000	-
40	Amulya Chandra	10,266	6,055	-
41	Cool Air System	28,320	25,354	-
42	SS Net Com Pvt Ltd	12,390	12,390	-
43	MP Engineers	14,702	14,577	-
44	Deccan Sales and Services Private Limited	18,450	18,137	-
45	URSS Techservices Private Limited	13,939	2,062	-
46	Sheen telecom	7,080	4,226	-
47	Guru Nanak Engineers	1,418	1,418	-

48	Scube airconditioning Pvt Ltd	4,039	4,039	-
49	Plumsoft	2,950	2,700	-
50	Celest technologies LLP	25,960	20,963	-
51	Keya Sales	7,504	7,504	-
52	Reliance Entertainment studios Pvt Ltd	15,15,138	9,43,425	-
53	Trinity Mahalasa Durga Sales & Services	24,777	-	-
54	Stereo Adventures	1,05,138	1,03,356	-
55	Sunrise Sales and Servisces	13,450	13,450	-
56	Servoll Solution	7,63,638	7,33,556	-
57	Nexgen ISP	7,965	-	-
58	Shubh Enterprises	5,310	3,224	-
59	AS Syetem	5,46,991	5,20,365	-
60	Guru Nanak Electro Controls	1,10,920	1,09,040	-
61	RSC Generators	10,298	10,298	-
62	BSIX Engineering Pvt Ltd	31,860	19,016	-
63	Weartech Engineers Pvt Ltd	76,800	76,800	-
64	Digitcom India Technologies	1,61,774	1,59,050	-
65	AS Global Aircon Solution	95,580	81,656	-
66	S M Gensets Spares and Solutions	45,809	-	-
67	Indeft Technologies Solution Pvt Ltd	1,27,178	1,27,178	-
68	Satellite Cable TV Services	11,328	11,328	-

69	JS Genset Power Solution	28,550	-	-
70	Eaton Power Quality Pvt Ltd	3,39,753	2,40,996	-
71	Inure Interiors	22,000	11,000	-
72	Quest Offices Private Limited	4,98,337	4,27,784	-
73	Prototact Digital Network	10,620	10,620	-
74	Raghav Outdoor & Events	59,000	58,000	-
75	Delhi Metro Rail Corporation Ltd	13,99,68,828	1	-
76	Zee Media Corporation Limited	3,54,602	3,35,000	-
77	Balaji Generator	4,084	4,084	-
78	Torrent Power Limited	32,570	32,570	-
79	Leonard Corporate Solution Private Limited	2,86,740	-	-
80	Konasth Travels Private Limited	6,37,633	6,37,633	-
81	FTC Talent Media & Entertainment Private Limited	12,76,136	12,76,136	-
		1,82,13,37,672	17,29,15,207	-

Operational Creditors -Employees

Sr. No	Name of Authorized representative	Amount Claimed	Amt of Claim Admitted	% Voting Share in CoC
1	Nilpesh Mahendra Shah	27,89,099	23,14,620	-
		27,89,099	23,14,620	-

Operational Creditors -Government Dues

Sr. No	Name of Creditor	Amount Claimed	Amt of Claim Admitted	% Voting Share in CoC
1	Ministry of Information and Broadcasting	20,68,92,270	1,52,97,352	-
2	AIR Resources, Prasar Bharati	13,01,04,077	2,72,09,200	-
3	Department of Tax & Trade/ Delhi GST	1,16,41,512	-	-
4	The Assistant Commissioner Division III, CGST	12,43,28,506	-	-
5.	Shri K.N. Zala State Tax Officer, State Tax Department, Govt of Gujarat	4,37,078	-	
		47,34,03,443	4,25,06,553	

15. Contingent Claims

The Resolution Applicant acknowledges that as per the Information Memorandum and List of Creditors as on 15th June 2023, the certain claims are categorised as Contingent Liabilities against the Corporate Debtor, by the Resolution Professional. However, for the purpose of this Resolution Plan, the Applicant has considered the Contingent Liabilities, including those pertaining to Operational creditors, as reflected in the list of claims uploaded in the Virtual Data Room (VDR), and may not reflect the full liability towards Contingent Liabilities.

Figures in INR cr.

Sr. No.	Name of Operational Creditor	Amount Claimed	Amount of Contingent Claims
1	The Indian Performing Right Society Limited	141.55	141.55
2	Associate Assemblies and Repackers	82.69	79.75
3	The Delhi Metro Rail Corporation Ltd	14.00	14.00
4	The Assistant Commissioner CGST Division III, GST	12.43	12.43
	Total	250.67	247.73

16. **Implementation Schedule:**

S. No	Activity	Indicative Timeline	Responsibility
Part I- Approval Process of Resolution Plan			
	Approval of Plan by CoC and issuance of Letter of Intent	A	CoC / Resolution Professional
	Unconditional acceptance of Letter of Intent	A + 2 Working Days	Resolution Applicant
	Submission of Performance Bank Guarantee	A + 3 Working days	Resolution Applicant
	Application to NCLT for approval of Resolution Plan	B	Resolution Professional

S. No	Activity	Indicative Timeline	Responsibility
	Approval by NCLT of Resolution Plan and receipt of order.	C	Resolution Professional
	Notice on the Corporate Debtor's website	Within C + 10 Working Days	Corporate Debtor / Resolution Applicant
	Intimation to all creditors (including the Governmental Authorities), existing shareholders, and other stakeholders about the approval of Resolution Plan by the Adjudicating Authority.		Corporate Debtor / Resolution Applicant/ Monitoring Professional
Part II- Implementation of Plan			
1.	Receipt of consent letters by Resolution Professional or Monitoring Committee, as applicable, from the nominees of the Resolution Applicant and Financial Creditors to be appointed on Monitoring Committee and immediate constitution of Monitoring Agency.	C	Resolution Applicant/ Resolution Professional/ Financial Creditors
2.	Constitution of the Monitoring Committee until the Transfer Date	C	Members of Monitoring Committee
3.	Appointment of Monitoring Professional	C	Members of Monitoring Committee
4.	Application to MIB for approval of change of shareholding and board of	C+7	Resolution Applicant/

S. No	Activity	Indicative Timeline	Responsibility
	the Corporate Debtor as per the Resolution Plan		Monitoring Committee
5.	Receipt of approval from MIB	D	
6.	Infusion of Upfront Cash Payment and CIRP Cost unpaid as on the Approval Date (if any), in the Designated Bank Account by the Resolution Applicant as per the Annexure-1	D+30 (Transfer Date)	Resolution Applicant
7.	Distribution of CIRP Costs in priority to any other payment under the Plan	Transfer Date	Monitoring Committee / Corporate Debtor
8.	Distribution of the Upfront Cash Payment amongst the creditors in accordance with the Resolution Plan (Schedule -2)	Transfer Date	Monitoring Committee / Corporate Debtor
9.	Issue and allotment of Equity Shares to the Resolution Applicant	Transfer Date	Monitoring Committee
10.	Reconstitution of the Board of Directors of the Corporate Debtor with the new directors on the Board of Directors as given by Resolution Applicant in the Resolution Plan.	Transfer Date	Monitoring Committee
11.	Passing of necessary entries giving effect to the terms of Resolution Plan (including extinguishment of liability)	Transfer Date	Corporate Debtor

17. **Performance Security**

In accordance with Regulation 36B (4A) of the CIRP Regulations, the Resolution Applicant, in case its Resolution Plan is approved under sub-section (4) of section 30 of the Code, shall provide performance security . The amount of performance security as envisaged under the RFRP will be Rs. 25.00 Crores, in favour of the IndusInd Bank Limited, which is acting on behalf of all the members of Committee of Creditors. The Performance Security shall be valid till the term of the Resolution Plan however the said amount of Performance Security will be paid by the Resolution Applicant after the approval of the plan by the Committee of Creditors.

18. **Earnest Money Deposit**

The Resolution Applicant has submitted Bid Bond of Rs. 3.00 Crores in the shape of Bank Guarantee Number 169BG01232370001 of Yes Bank Limited in favour of IndusInd Bank of Corporate Debtor along with Resolution Plan as a pre-requisite condition for submission of Resolution Plan

19. **Structuring the Shareholding**

The Promoter Shareholders as on the Transfer Date shall cease to be the owner, shareholder, promoter of the Corporate Debtor and their entire shareholding shall be extinguished, and simultaneously fresh equity shares shall be issued to the Resolution Applicant.

It is further stated that the Resolution Applicant will be at liberty to use any implementation structure including but not limited to conversion of debt of financial creditors to equity and then reduction of equity to Nil as per applicable law. Provided that the same shall not impact the timelines and amounts to be paid to the stakeholders as per this Resolution Plan.

20. **Monitoring Committee**

During the period commencing from the date of approval of the Resolution Plan by the Adjudicating Authority up to the Transfer Date, the day-to-day operation and management of the business and operations of the Corporate Debtor shall be carried out by the Monitoring Committee who shall be vested with the powers of the Board of Directors. The Monitoring Committee shall be constituted comprising of the 2 members of Resolution Applicant and 2 representatives of Financial Creditor and Mr. Rohit Mehra, current Resolution Professional (collectively referred to as “**Monitoring Committee**”).

21. **Avoidance Transactions**

In case there are any non-monetary benefits from the Avoidance Transactions Applications then the same shall accrue to the Corporate Debtor and in that case the Corporate Debtor/Resolution Applicant shall pursue the Avoidance Transaction Litigation and bear all the costs as may be incurred in relation thereto.

In the event the benefits from the Avoidance Transaction Applications are only in the nature of monetary benefits, then the costs and expenses for pursuing such Avoidance Transaction Applications will be borne by the Secured Financial Creditor without any liability on the Corporate Debtor or the Resolution Applicant.

22. **The compliance of the Resolution Plan is as under:**

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
Section 25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	NA	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	NA	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	NA	Yes

Section 30(2)	Whether the Resolution Plan-		
	(a) provides for the payment of insolvency resolution process costs?	Clause 5.2.1	Yes
	(b) provides for the payment to the operational creditors?	Clause 5.2.3	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Clause 5.2.2	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Clause 6.11.2	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Clauses 6.11, 6.12 and 6.13	Yes
	(f) contravenes any of the provisions of the law for the time being in force?	Clause 11	Yes

Section 30(4)	Whether the Resolution Plan:		
	(a) is feasible and viable, according to the CoC?	NA	Yes
	(b) has been approved by the CoC with 66% voting share?	NA	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	NA	Yes
Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	Clause 5.2.3	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 6.16	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code.	Clause 6.6	Yes
	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	NA	Yes
Regulation 38(2)	Whether the Resolution Plan provides:		
	(a) the term of the plan and its implementation schedule?	Clause 5.3	Yes
	(b) for the management and control of the business of the corporate debtor during its term?	Clauses 6.9 and 6.11	Yes
	(c) adequate means for supervising its implementation?	Clauses 6.11, 6.12 and 6.13	Yes
Regulation 38(3)	Whether the resolution plan demonstrates that –		
	(a) it addresses the cause of default?	Clause 6.19	Yes
	(b) it is feasible and viable?	Clause 6.5	Yes
	(c) it has provisions for its effective implementation?	Clauses 6.6, 6.10.1, 6.10.1.1, 6.11, 6.12,	Yes
		6.13, 6.15, 6.18, 11	
	(d) it has provisions for approvals required and the timeline for the same?	Clause 7.3	Yes
	(e) the resolution applicant has the capability to implement the resolution plan?	Clause 6.13 and Annexure 4	Yes
Regulation 39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	NA	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Clause 6.10.3	Yes

23. **Observations and Findings:**

- i. As per IBC Code 30(2)(a) – A Resolution Plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.
- ii. As per Section 30(2)(b), the Respondent has agreed to pay Operational Creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.
- iii. The Resolution Applicant has also agreed that dissenting financial creditors shall be paid not less than the value they would have been paid in the event of liquidation of the Corporate Debtor.
- iv. The plan provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(d).
- v. The Resolution Plan does not contravene any of the provisions of the law for the time being in force - Resolution Plan provides for the implementation and supervision of the resolution plan as per Section 30(2) (e)
- vi. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- vii. The resolution applicant or any of its related parties has not 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.
- viii. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:

- a. The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors. Regulation 38(1).
- b. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2) (c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
- c. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company (Regulation 38(1)(a)).
- d. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
- e. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
- f. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.
- g. The plan provides for the management and control of the business of the Corporate Debtor during its term.
- h. All the above factors demonstrate that the plan address as the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
- i. That the Resolution Applicant or any of its related parties has never 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. This is in compliance of Regulation 38(1)(b) of the Regulations.

- j. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other creditors, guarantors, members, employees and other stakeholders of the Company, keeping in view the objectives of the Code (Regulation 38(1A)).
24. The Resolution Plan has been approved in the 14th COC meeting held on 11.11.2023 with 88.97% voting in accordance with the provisions of the Code.
25. In ***K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150*** the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.
26. In ***India Resurgence Arc Private Limited vs. Amit Metaliks Limited and Ors. (2021)*** the Hon'ble Apex Court held that the process of consideration and approval of resolution plan is essentially within the commercial wisdom of Committee of Creditors (CoC).The scope of judicial review remains limited under Section 30(2) of the Insolvency and Bankruptcy Code (IBC), 2016 by which the court would examine

that the resolution plan does not contravene any statutory provisions and it conforms to such other requirements as may be specified by the Board. The court held that the process of judicial review cannot be stretched if all the above-mentioned requirements have been duly complied with and that dissenting financial creditor, expressing dissent over the value of security interest held by it, cannot seek to challenge an approved Resolution Plan. Lastly, it was held that Section 30 of the IBC, 2016 only amplified the considerations for the CoC while exercising its commercial wisdom so as to take an informed decision in regard to the viability and feasibility of resolution plan, with fairness of distribution amongst similarly situated creditors; and that the business decision taken in exercise of the commercial wisdom of CoC does not call for interference unless creditors belonging to a class being similarly situated are denied fair and equitable treatment.

27. The Hon'ble Apex Court at para 42 in ***Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online***, has clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved.

*“Para 42- Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (supra).”*

28. In view of the above cited case law, the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC)

and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent of scrutiny provided under section 31 of Code and the direction of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code.

29. In view of the discussions, this Bench is of the considered view that the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

ORDER

- a) The Interlocutory Application No. 5391 of 2023 is **allowed**. The Resolution Plan submitted by **Sapphire Media Limited**, is hereby approved. **It shall become effective from this date and shall form part of this order**. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force is due.
- b) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- c) The moratorium under Section 14 of the Code shall cease to have effect from this date.

- d) The Monitoring Committee shall supervise the implementation of the Resolution Plan and shall file status of its implementation before this Authority from time to time, preferably every quarter.
- e) The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- f) The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- g) The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record.
- h) The Resolution Professional shall stand discharged from his duties with effect from the date of this Order, save and except those duties that are enjoined upon him for implementation of the approved Resolution Plan.
- i) The Registry is directed to send copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- j) The Interlocutory Application **No. 5391 of 2023** is accordingly **allowed.**

SD/-

Madhu Sinha

Member (Technical)

/Abhay/

SD/-

Reeta Kohli

Member (Judicial)