

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

**Inv. Petition No. 19 of 2024
IA No. 2273 of 2021
In
CP (IB) No.1632/MB/C-I/2019**

Under Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (“code”) r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the resolution plan under the provisions of Section 31(1) of the code.

Intervention Petition No. 19 of 2024

Mr. Praful Nanji Satra ...Applicant

Versus

Mrs. Vaishali Arun Patrikar
Resolution Professional of Satra Properties (India) Limited
...Respondent

IA No. 2273 of 2021

In the Application of

Vaishali Arun Patrikar
Resolution Professional of Satra Properties (India) Limited
(filed by erstwhile Resolution Professional Mr. Devarajan Raman)
...Applicant

Order Delivered on :- 26.07.2024

Coram:

Hon’ble Member (Judicial) : Justice V.G. Bisht (Retd.)

Hon’ble Member (Technical) : Mr. Prabhat Kumar

Appearances:

For the Resolution Professional : Mr. Pulkit Sharma, Advocate a/w Mr. Varun Nathani, Advocate i/b Mr. Amit Tungare, Advocate

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For the Intervenor : Ms. Gayatri Mohite, Advocate a/w Mr. Shlok Bodas, Advocate i/b Parinam Law Associates.

For the CoC : Mr. Rohan Agrawal, Advocate a/w Ms. Vidhisha Rohira, Advocate a/w Mr. Amol Bavare, Advocate Mr. Rahul Pillai, Advocate i/b Pragnya Legal.

For the SRA : Mr. Ayush Rajani, Advocate i/b AKR Legal

For the Intervenor Kasam Holdings : Mr. Shanay Shah, Advocate a/w Mr. Devashish Godbole, Advocate Mr. Vaibhav Gadre

ORDER

Per: Prabhat Kumar, Member (Technical)

Brief Facts:

Intervention Petition No. 19 of 2024

1. The Applicant has filed the present Application seeking intervention in the Plan approval application seeking approval of Resolution Plan submitted by a consortium of MJ Shah Enterprises, MJ Shah Realtors LLP and Centrio Lifespaces Limited (Formerly known as Satra Realty and Builders Limited) (collectively hereinafter referred to as “MJS Group”), on the ground that the Resolution plan is illegal and contrary to law and there is a deliberate attempt to sale/transfer the assets of Corporate Debtor at substantially low value and without valuation that affects the interest of Applicant who is also being prosecuted as guarantor for various facilities availed by the Corporate Debtor.

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2. It is the case of the Applicant that the valuation conducted in respect of the land and building (assets of the Corporate Debtor) is ex facie incorrect as the valuation of certain portions of land in Kalina and the FSI potential for constructing a Hotel in Jodhpur have not been valued at all by the Valuers/Resolution Professional and accordingly the Resolution Plan approved by the COC fails to provide the minimum liquidation value to the secured creditors thereby affecting the interest of the stakeholders and also the Applicant being the Guarantor.
3. It is the Applicants contention that ARCIL who is one of the major secured financial creditor and member of COC has neither voted on the plan nor has not taken any stand in writing as to acceptances of resolution plan. However, ARCIL has only orally before the Tribunal, accepted the plan which is much below the liquidation value that ARCIL is otherwise entitled to and as regards the wrongful valuation has left it on the Tribunal to consider the same.
4. It is the Applicant's case that the Corporate Debtor is the owner of the following properties being land/s:
 - i. Leasehold Land known as Satra Plaza in the heart of Jodhpur market, situated at, Nai Sadak, Rajasthan admeasuring about 4140 sq. yards in addition to the FSI potential for constructing a Hotel on the said land for which premium of Rs. 12-14 crores approximately has been paid;
 - ii. 7 portions of Freehold Land situated at Kalina Motor Works Compound, Kalina Kurla Road, Kalina, Village Kole Kalyan, Taluka Bandra, Mumbai – 400 092 in all admeasuring 6353.60 sq. mts, being
 - a) Survey No.158, Hissa No.1 (pt), CTS No.6564/H,
 - b) Survey no.150, Plot No. 3, Hissa No.41, CTS no. 7530, 7530/1 to 4,

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- c) Survey No. 130 Hissa No. 33, CTS No. 7533,
- d) Survey No. 130 Hissa No. 28, CTS No. 7534, 7534/1 to 11,
- e) Survey No. 130 Hissa No. 26, CTS No. 7536,
- f) Survey No. 130 Hissa No. 22(pt), CTS No. 7537/A
- g) Survey No. 130 Hissa No. 31, CTS No. 7634,

iii. Agriculture Open Land situated at Fulpara village, Rapar Taluka, Kutch, Gujarat – 370 145; (hereinafter collectively referred to as “said Properties”)

5. The valuation of the said properties at relevant time are tabulated hereinbelow:

Particulars	Valuation undertaken by the Applicant	Valuation Undertaken by the CD while obtaining loans and mortgaging the properties to various creditors in 2018	Valuation Undertaken by the RP by Valuer 1	Valuation Undertaken by the RP by Valuer 2
Fair Value	Jodhpur – 95.29 crores Kalina – 83.00 crores (only with regards to 4 portions of land valued by the RP)	Jodhpur – 94.87 crores Kalina – 84.90 crores	Book value of almost Rs. 40 crores	Not Disclosed

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Liquidation Value	Jodhpur – 66.70 crores Kalina – 58.10 crores	-	-	Not Disclosed
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6. It is submitted by the Intervenor that the Valuation undertaken by the Resolution Professional is incorrect as it is valued at Book Value but infact does not value all properties of Corporate Debtor viz land parcels at Kalina bearing CTS No. 6564 / H, 7533. 7534 / 1 to 11 and 7537/A admeasuring about 2285.78 sq.mtr. The Applicant being Suspended Director was not involved in this process when valuation was discussed by the Resolution Professional with the COC members and was unable to bring this fact up before the COC members as then the COC was predominately controlled majority by MJS Group who is also ultimately the Successful Resolution Applicant.
7. It is submitted that the valuation of the 4 parcels of land being situated at Kalina is done without any basis merely on 'Book Value', and for the remaining 3 portions of freehold land owned by the Corporate Debtor at Kalina, the valuation is not done at all thereby rendering the valuation report and the entire CIRP process bad in law. It is a mandatory requirement to conduct valuation of all the assets of the Corporate Debtor. It is submitted that SRA/ Resolution Professional cannot surpass the requirement on the basis of faulty report and seek direction to approve the Resolution Plan on the basis of alleged commercial wisdom of the COC. It is pertinent to mention here that the COC's right to approve the Resolution Plan for lower value than the liquidation value does not entitle the COC to contend that no valuation or improper valuation should be accepted. The present resolution plan

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approved by the COC is based on an incorrect valuation report and will impact all the stakeholders including the Applicant being the Guarantor.

8. Further, it is not only 3 parcels of land at Kalina but even Jodhpur property is valued at a lesser value ignoring the additional Hotel FSI benefit which is not taken into account/consideration by the RP/ Valuer. This Hotel FSI benefit itself is for Rs. 50 Crore approx. for which premium of Rs. 12-14 Crore has already been paid by the erstwhile management to the government authorities. Conveniently, the said benefit and the potential value of the hotel is also not taken into consideration by the RP. It be noted that in real estate businesses the valuation of the FSI is of key importance which decides the potential revenue and profit of the company.
9. As far as the second valuation report is concerned, the same fails to even state the method of valuation for the assets of the Corporate Debtor / assets that have been valued. Further it may be pertinent to note that the subject plot being a land parcel ought to have been valued on per square meter or feet. If additional land is added, the value of the same would increase substantially in Crores. This is a case where there is no valuation of various assets of the Corporate Debtor and the valuation carried for the part assets are merely on "Book Value". Needless to mention that "Book Value" of land purchased cannot form basis for valuation under the Code. It is pertinent to note here that the assets in question are in respect of various land parcels which appreciate every year and even otherwise in the past 10 years after being purchased by the Corporate Debtor.

Submissions advanced by the Resolution Professional.

10. At the outset, the RP submits that the Applicant has no locus to file and maintain the present Application. The Applicant is a disgruntled ex-promoter and director,

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who has, at every stage, sought to derail the CIRP process. Further, it is stated that this Tribunal has passed orders under section 66 of the Code against the Applicant in respect of fraudulent transactions running into several crores. The Applicant has not complied with the orders of this Tribunal. In furtherance of the aforesaid submission, reliance is placed on the judgement of the Hon'ble National Company Law Appellate Tribunal, Chennai in the matter of *Ramesh Kesavan v. CA Jasin Jose & Anr.*

11. It is stated that the Information Memorandum was published in January 2021. It contained a description of the properties of the CD including the Kalina Property and Jodhpur Property. The Applicant was aware of the same. However, the Applicant did not raise any objection / grievance that the description of properties was incomplete. The Applicant has attended 12 out of 15 COC meetings. At no point did the Applicant make any grievance on the description of properties or even suggested that certain properties in Kalina have not been accounted for. For more than 2 years after the approval of the resolution plan by the COC, the Applicant remained silent.
12. As regards, the Kalina Property, the Resolution Professional submits that the same is an encroached property. The property consists of approximately 55 tenants occupying in excess of 61,000 square feet. The records of the Corporate Debtor indicate that whilst a memorandum of understanding was entered into with the tenants, the same was not acted upon. The same is evident from an email dated 1st July 2021 addressed by the Applicant to the then RP.
13. It is submitted that the RP constantly updated the Virtual Data Room. The Prospective Resolution Applicants who submitted resolution plans had access to the

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information in the data room. As recorded inter alia in the 11th COC meeting, the details of the Kalina property were being updated in the data room. As recorded in the 12th COC meeting, the prospective resolution applicants who had submitted their plans revised their proposal based on information received qua the Kalina property. The prospective resolution applicants who submitted plans were aware of the CD's asset position including the Kalina property and details of encroachments on the property inter alia through the data room set up. The COC was aware of the information memorandum, valuation reports as well as the resolution plans. At no point have the COC members raised any objection to the valuation report and/or the resolution plans.

14. The Resolution Professional submits that every COC member and the Prospective Resolution Applicants were aware of the described area of the Kalina Property and Jodhpur Property. They were fully aware that there were gaps due to lack of clarity regarding site. The COC members and Prospective Resolution Applicants were also aware that the valuation reports had some areas missing from the overall area of the Kalina property. By an email dated 28th January 2022, the erstwhile RP noted that there were inadvertent error of omission in the Information Memorandum regard details of all CTS Nos. of the Kalina property. He further noted that this was updated so there is no confusion later on the approval of the resolution plan. There were updates made to the Information Memorandum. Not one of the COC member (including dissenting COC members) raised any objection as to how that affected their decision making. It is submitted that valuation exercise is a confidential exercise carried exclusively for the benefit of the COC members to enable them to consider the viability of the resolution plan.

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15. The RP has appointed two valuers viz. (i) Adroit Appraisers and Research Private Limited and (ii) RNC Valuecon LLP for obtaining valuation. A third valuer viz. Mr Gunjan Agarwal was appointed for SFA valuation. The summary from these reports shows that the Fair Value of the CD is Rs. 97,64,66,956/- and the Liquidation Value is Rs. 77,06,45,942/-. The RNC valuation report values the Kalina property at the book value of the land cost as appearing in the books of the Corporate Debtor. Needless to state that the value appearing in the books of the Corporate Debtor would include value of the complete land forming part of the Kalina property. The Adroit valuation report notes the CTS Nos. as mentioned in the Information Memorandum.

Submissions advanced by ARCIL

16. It is submitted that ARCIL which is newly inducted member of Committee of Creditors (CoC) of Satra Properties (India) Limited pursuant to order dated December 5, 2023 passed by this this bench allowing IA No. 1687 of 2020. ARCIL through its counsel appeared in the captioned applications on June 10, 2024 and submitted that ARCIL has no objection to the Resolution Plan approved by CoC and the aspect of valuation may be decided by this Adjudicating Authority. Thus, ARCIL was not privy to the terms of the CoC Approved Resolution Plan and did not have access to the minutes of the CoC meetings.
17. The present Intervention Petition No. 19 of 2024 is filed by the ex-promoter/director and he simultaneously issued letters dated April 26, 2024 and May 10, 2024 to ARCIL on a fallacious assumption that the Approved Resolution Plan provides '0' amount to ARCIL, which were replied by ARCIL vide letter dated May 24, 2024 expressly

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stating that it has unfettered right to proceed against him as per Deeds of Guarantees executed him in favour of IIFL, now ARCIL.

18. From the bare perusal of the aforesaid communications, it is evident that the ex-promoter who admittedly is the personal guarantor is making attempts to wriggle out of his obligation as the personal guarantor under the garb of undervaluation or no valuation of the assets of the Corporate Debtor during the Corporate Insolvency Resolution Process (CIRP) under the provisions of Insolvency and Bankruptcy Code, 2016.
19. As the legality with respect to the valuation of the assets of the Corporate Debtor is in domain of this Adjudicating Authority, ARCIL on June 10, 2024 (in compliance of order dated April 30, 2024), through its counsel submitted that it has no objection with the resolution plan approved by the CoC (prior to ARCIL's inclusion) and the aspect of the Valuation was left to be decided by this Adjudicating Authority. It is pertinent to mention that the Resolution Plan has been approved by the CoC as per its commercial wisdom by considering its feasibility and viability. However, the same would not impact the unfettered right of the financial creditors including ARCIL to proceed against the personal guarantors.
20. As per Regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) ARCIL's inclusion in CoC will not affect validity of any decision taken by the CoC prior to its inclusion in the CoC. Thus, ARCIL could not have revisited the said Resolution Plan save an except to comment on it being legally compliant as per Section 30 of IBC. As regards the alleged illegality with respect to undervaluation/ no valuations of assets of the Corporate Debtor by the valuers appointed as per

Regulation 27 of CIRP Regulations during the CIRP of the Corporate Debtor, the same has been left to the decision of Adjudicating Authority.

Submissions advanced by Kasam Holding Private Limited unsecured Financial Creditor of the Corporate Debtor.

21. The Intervenor is an unsecured financial creditor of the Corporate Debtor. The Intervenor is also a member of the Committee of Creditor ("COC") who is holding 1.18% voting therein. The Intervenor had filed its claim of Rs. 4,00,00,000/- (Rupees Four Crores only) which has been admitted by this Tribunal vide Order dated 05.12.2023. Pursuant to which, the Intervenor became a part of the COC.
22. The Resolution Professional vide its Email dated 19th June 2024 provided the Intervenor a copy of the Plan and further informed that under the plan an amount of Rs.40,58,385/- has been allocated. It is pertinent to note here that on perusal of the Plan, the proposed amount of Rs.40,58,385/- was unverifiable and the timelines for the payments are not mentioned therein which was brought to the attention of the Resolution Professional vide Email dated 20th June 2024.
23. The Intervenor sought clarification in which the said reallocation of the fund under the Plan was placed. In the present case, the Plan was approved by the COC on 21.09.2021 and thereafter certain financial creditors viz ARCIL, IIFL Home Finance and the Intervenor by the virtue of their claims being admitted by NCLT became a part of the COC, leading to the major reconstitution of the COC. Basis the admission of the new claims the Resolution Applicant ought to have reallocated the funds under the Plan and the revised reallocation ought to have been placed before the COC for consideration and information. It was brought to the notice of the Intervenor that the Plan has been challenged by the Suspended Director Mr. Praful Satra vide email dated

18.06.2024 on the ground of under valuation of the properties of the Corporate Debtor.

24. The revised Form H was not presented before the COC and the Intervener being a COC Member was not neither informed of the revised Form H. Neither was the Intervener informed of about any COC meeting wherein reallocation of amounts allocated to the creditors was approved, considered after inclusion of the Intervener, IIFL Home Finance and ARCIL in the COC. More importantly, the valuation of the properties of the Corporate Debtor seems to have been challenged by the Suspended Director and the said fact is also not placed before the COC for its consideration and thus the plan may have to be sent back to the COC, prior to its approval before the Tribunal for its consideration and/or revaluation. The Intervener along with other minority Unsecured Financial Creditor are heavily prejudiced due to this act of the Resolution Professional. In such circumstances, the revised Form H ought to have been provided to the Intervenor.

Discussion and Decision

25. We have heard the submissions advanced by the learned counsels for the Intervenor, Resolution Professional, ARCIL and Kasam Holding Private Limited.

26. In a nutshell, the Intervenor Mr. Praful Satra, suspended promoter and director of the Corporate Debtor has objected to the approval of the Resolution Plan on the ground that the assets of the Corporate Debtor are valued incorrectly, thereby reducing the payout offered to secured creditors of the Corporate Debtor, more particularly lesser liquidation value to the dissenting financial creditor. Further, it is the intervenor's case that the reduced payout arising out of undervaluation of properties will trigger his liability in capacity as the guarantor of the Corporate Debtor. Per contra, it is the

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Resolution Professional's case that out of the two properties referred to by the Intervenor one being situated at Kalina is an encroached property occupied by tenants. Moreover, it is apposite to note that the Information Memorandum was published in January 2021 and contained the description of the properties. It is only in the year 2024, the Intervenor has raised the grievance qua valuation of the properties.

27. Further, we note that none of the CoC members have objected to valuation conducted by the Registered Valuers. ARCIL being a newly inducted member of the CoC has also granted no objection to the Resolution Plan as is recorded in order dated 10th June 2024. We have perused the letters dated 26th April 2024 and 10th May 2024 placed on record by ARCIL. The aforesaid letters were addressed by Mr. Praful Satra (the Intervenor) to ARCIL wherein it is stated that the Resolution Plan provides 'nil' amount to ARCIL and it was also stated that if ARCIL assents to the Resolution Plan, the Intervenor will not be liable as a guarantor. However, pursuant to orders passed by this Bench in an application filed by the predecessor of ARCIL (IIFL), their claim was admitted as secured creditors.

28. It is apparent from a mere perusal of the aforesaid letters addressed by Mr. Satra, the present Application is nothing but an attempt to wriggle out of the impending personal insolvency proceedings arising out of the Deed of Guarantees executed by him on behalf of the Corporate Debtor. As regards the valuation is concerned, the CoC members have not objected to the valuation conducted. Moreover, the Resolution Plan was approved by the CoC after considering the updated information in the Virtual Data Room. The valuation was conducted by registered valuers being (i) Adroit Appraisers and Research Private Limited and (ii) RNC Valuecon LLP for obtaining valuation. A third valuer viz. Mr Gunjan Agarwal was appointed for SFA

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valuation. The Applicant attended the CoC meetings, however the objection qua valuation report is raised by the Application at this stage only to derail the approval of plan. Accordingly, the Intervention Petition No. 19 of 2024 is dismissed.

IA No.2280 of 2020

29. The present application is filed by erstwhile Resolution Professional Mr. Devarajan Raman under section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (“code”) r/w Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for seeking approval of the resolution plan under the provisions of Section 31(1) of the code. Mr. Raman was replaced by Ms. Vaishali Arun Patrikar as the Resolution Professional of the Corporate Debtor vide order dated 22.09.2022.
30. Initially, at the time of initiation of Corporate Insolvency Resolution Process, the composition of the CoC was as follows:

Sr No.	Name of Creditor	Voting Share %
1	Gajendra Investment Limited	16.50
2	Zircon Traders Ltd	0.60
3	Vistra ITCL (India) Limited	52.38
4	Pratiti Trading Private Limited	18.47
5	Neon Laboratories Limited	1.99
6	U.Y. Fincorp Limited	9.81
7	Divyagyan Trading Private Limited	0.25
	Total	100.00

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31. It is submitted that a total of 15 CoC meetings were held leading upto the approval of the Resolution Plan. The Information Memorandum was circulated in January 2021. The Information Memorandum (hereinafter referred to as the “IM”) contained a description of properties of the Corporate Debtor, as per the information available at the relevant time. Further, every CoC member as well as the erstwhile directors and promoters of the Corporate Debtor were aware of the description of the properties.
32. The Resolution Professional published an invitation for Expression of Interest (“EOI”) in Form G on 4th January 2021. At the relevant, only 3 entities submitted the documents with the refundable deposit of Rs.5 lakh.
- i. Shree Naman Developers Private Limited
 - ii. MJ Shah Enterprises along with consortium partners, and
 - iii. Dev Land and Housing Private Limited.
33. It is stated that with a view to invite more participation, the CoC approved the issuance of revised form G on 4th February 2021. However, only one (1) additional entity submitted the requisite documents and refundable security deposit of Rs.5 Lakhs. The final list of PRAs is as follows:
- i. Shree Naman Developers Private Limited
 - ii. MJ Shah Enterprises along with consortium partners, and
 - iii. Dev Land and Housing Private Limited.
 - iv. Jaynil Enterprises.
34. It is stated that at the request of the PRA’s, the timeline for submission of the Resolution Plan was extended from 19th April 2021 to 4th May 2021. The Resolution Professional received Resolution Plans from only 3 PRAs:

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- i. MJ Shah Enterprises along with consortium partners, and
 - ii. Dev Land and Housing Private Limited.
 - iii. Jaynil Enterprises.
35. The PRA's presented their plans on 26th August 2021 and 1st September 2021. Based on negotiations with the CoC, the PRAs were permitted to revise their offers. Pursuant to this, Dev Land & Housing Private Limited and Jaynil Enterprises submitted revised Resolution Plans on 16th September 2021. The RP states that the plans were opened at the 14th CoC meeting on 17th September 2021. The voting on the plan was conducted 21st September 2021. The Resolution Plan submitted by MJ Shah Enterprises along with consortium partners was approved by a majority of 95.40%.
36. The MJ Shah consortium comprises of (i) MJ Shah Enterprises, (ii) MJ Shah LLP Realtors, and (iii) Centrio Lifespaces Limited. The LOI was issued on 23rd September 2021.
37. It is submitted that the pursuant to the orders passed by this Tribunal, the composition of CoC stood revised.

Sr. No.	Name of Creditor	% of voting share in CoC
1.	IIFL Home Finance Limited	7.14%
2.	Asset Reconstruction Company (India) Limited (ARCIL)	51.68%
3.	Jumbo Finvest India Ltd.	1.93%
4.	Pratiti Trading Private Limited	2.93%
5.	Punjab National Bank	0.43%

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6.	Neon Laboratories Ltd.	0.84%
7.	U.Y. FinCorp Ltd.	4.17%
8.	Zircon Traders Ltd.	0.25%
9.	Gajendra Investments Ltd.	7.01%
10.	Divyagyan Trading Private Limited	0.11%
11.	Vistra ITCL (India) Ltd	22.25%
12.	Sudesh Bhatia and Sahil Bhatia	0.11%
13.	Kasam Holding Private Limited	1.11%
14.	Rishabh Kankariya	0.03%
	Total	100.00%

38. ARCIL has accorded no objection to the Resolution Plan, the same has been recorded in order dated 10th June 2024. The RP has appointed two valuers (i) Adroit Appraisers and Research Private Limited and (ii) RNC Valuecon LLP for obtaining valuation. A third valuer Mr. Gunjan Agarwal was appointed for valuation. As per the said report the Fair Value of the Corporate Debtor is Rs.97,64,66,956/- and the Liquidation Value is Rs.77,06,45,942/-.
39. The total value of the Resolution Plan as indicated is Rs.184,09,33,297/-. The Plan provides that the Corporate Insolvency Resolution Process Costs shall be paid at actuals by the Resolution Applicants within 30 days from the approval date. The Resolution Plan proceeds on the basis that the Corporate Insolvency Resolution Process Costs incurred is Rs.1,50,00,000/-. The SRA has indicated that the actual

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costs will be borne over and above the plan amount offered. The claims of the employees amounting to Rs.1,26,08,598/- are being paid in full within 90 days from date of approval of the plan. Secured Financial Creditors are offered a sum of Rs.60,97,76,484/-. Unsecured Financial Creditors are being paid a sum of Rs.5,50,83,756/- in full and final settlement of their claims (10.67%) over a period of 3 years. The Operational Creditors are being paid a sum of Rs.84,64,460/- in full and final settlement of their claims (3.20%) within 90 days of the approval of the plan.

40. SRA shall introduce a sum of Rs.11,00,00,000/- or such other sum as required towards cost of construction and completion of Jodhpur project. The Resolution Applicants will infuse money to restart the pending construction in relation to the Jodhpur Project and it will developed fully and will be sold and money will be recovered. The possession of premises will be given to those with whom the agreement to sell have been entered into and accepted by the Resolution Applicants provided these persons pay the amounts due as per their respective agreements with the Corporate Debtor.
41. The Resolution Plan provides that the amounts recovered under PUFEE transactions shall be dealt with by the Corporate Debtor as per directions of this Tribunal. We observe that the amounts recovered shall be distributed amongst the Financial Creditors of the Corporate Debtor.
42. The Applicant submits that the Resolution Plan and the approval of the Resolution Plan are in accordance with all the provisions of the Code and CIRP Regulations and that it does not contravene any of the provisions of the law for the time being.

The Successful Resolution Applicant has also confirmed its eligibility under Section 29A of the Insolvency Bankruptcy Code, 2016 ("Code").

43. The SRA has furnished a Performance Bank Guarantee of Rs.50,00,000 /-.
44. The RP has certified that the Resolution Plan complies with the requirements of the Code by providing a revised compliance certificate 'Form-H'. The RP further submits that the key requirements of the Code are complied with in the manner detailed hereinbelow:

Section 30(2) of the Code

45. In compliance of Section 30(2) of IBC, 2016, the Resolution Professional has examined the Resolution plan of the Successful Resolution Applicant and confirms that this Resolution Plan:
 - a) Provides for payment of Insolvency Resolution Process cost in a manner specified by the Board in the priority to the payment of other debts of the corporate debtor;
 - b) Provides for payment of debts of operational creditor in such manner as may be specified by the board which shall not be less than
 - (i) The amount to be paid to such creditors in the event of liquidation of the corporate debtor under Section 53; or
 - (ii) The amount that would have been paid to such creditors, if the amount to be distributed under the Resolution Plan had been distribute in accordance with sub-section (1) of Section 53 in the event of liquidation of the corporate debtor.
 - c) Provides for management of the affairs of the Corporate Debtor after approval of Resolution Plan;

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- d) The implementation and supervision of Resolution Plan;
- e) Does not prima facie contravene any of the provisions of the law for time being in force,
- f) Confirms to such other requirements as may be specified by the Board.
- g) As per the Affidavit, the Resolution Applicant is not covered under 29A.

46. In compliance of Regulation 38 of CIRP Regulations, the Resolution Professional confirms that the Resolution plan provides that

- a) The amount due to the Operational Creditors under resolution plan shall be given priority in payment over Financial Creditors.
- b) It has dealt with the interest of all Stakeholders including Financial Creditors and Operational Creditors of the CD.
- c) A statement that neither the Resolution Applicants nor any related parties have failed to implement nor have contributed to the failure of implementation of any other Resolution Plan approved by the AA in the past.
- d) The terms of the plan and its implementation schedule.
- e) The management and control of the business of the CD during its term.
- f) Adequate means of Supervising its implementation.
- g) The Resolution Plan Demonstrate that it addresses
 - i. The cause of the Default
 - ii. It is feasible and viable
 - iii. Provision for effective implementation
 - iv. Provisions for approvals required and the time lines for the same.

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v.Capability to Implement the Resolution Plan

47. Now, coming to objections raised by Kasam Holding Private Limited, the Unsecured Financial Creditor holding 1.18% voting share in the CoC. The amount payable to Kasam Holdings under the plan is Rs.40,58,385/-. The objection raised by the Kasam Holdings is that after reconstitution of CoC. Further, the funds ought to have been reallocated and revised form H ought to have been placed before the CoC. We have perused the allocation of funds as provided in the Resolution Plan and the amount payable to Kasam is crystallized. Moreover, the objection of Kasam Holding qua revised Form H cannot be considered as the same is to be placed before the Adjudicating Authority. Therefore, this bench is of considered view that the contentions raised by the Intervenor are devoid of merits.

48. The Resolution Professional has annexed Form H of the Application under Regulation 39(4) In FORM H of the CIRP Regulations to certify that the resolution plan as approved by the CoC meets all the requirements of the IBC and its Regulations. The relevant extracts, as otherwise stated elsewhere in the order, are as follows -

I, Ms Vaishali Arun Patrikar, an insolvency professional enrolled with ICSIIP and registered with the Board with registration number IBBI/IPA-002/IP-N00812/2019-2020/12566, am the resolution professional for the corporate insolvency resolution process (CIRP) of Satra Properties (India) Limited.

2. The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of the CD	Satra Properties (India) Limited

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2	Date of Initiation of CIRP	03.08.2020
3	Date of Appointment of IRP	03.08.2020
4	Date of Publication of Public Announcement	08.08.2020 & 15.08.2020
5	Date of Constitution of CoC	28.09.2020
6	Date of First Meeting of CoC	03.10.2020
7	Date of Appointment of RP	07.10.2020
8	Date of Appointment of Registered Valuers	19.10.2020 & 17.09.2021
9	Date of Issue of Invitation for EoI	04.01.2021 & revised 04.02.2021
10	Date of Final List of Eligible Prospective Resolution Applicants	16.03.2021
11	Date of Invitation of Resolution Plan	02.03.2021
12	Last Date of Submission of Resolution Plan	19.01.2021, Revised 19.02.2021, then extension given for submission of resolution plan. Last date was 05.05.2021
13	Date of Approval of Resolution Plan by CoC	18.09.2021 – CoC Meeting 21.09.2021- E Voting
14	Date of Filing of Resolution Plan with Adjudicating Authority	30.09.2021
15	Date of Expiry of 180 days of CIRP	30.01.2021
16	Date of Order extending the period of CIRP	27.04.2021
17	Date of Expiry of Extended Period of CIRP	23.09.2021
18	Fair Value	Rs.97,64,66,956/-
19	Liquidation value	Rs.77,06,45,942/-
20	Number of Meetings of CoC held	15 (till approval of resolution plan)

3. I have examined the Resolution Plan received from Resolution Applicant MJ Shah Consortium

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and approved by Committee of Creditors (CoC) of Satra Properties (India) Limited.

4. *I hereby certify that-*

(i) *The said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.*

(ii) *The Resolution Applicant M J Shah Consortium has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.*

(iii) *The said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 95.40% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.*

~~(iv) *The voting was held in the meeting of the CoC on [state the date of meeting] where all the members of the CoC were present. or I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the Regulation 26. [strike off the part that is not relevant]*~~

Sr No	Name of Secured Financial Creditor	Amount Claimed	Amount of Claim admitted	%	Offered to secured financial creditors	Net payment to secured financial creditors after adjustments	Upfront payment within 3 months (25%)	Payment at the end of 1st year (25%)	Payment at the end of 2nd year (40%)	Payment at the end of 3rd year (10%)
1	Asset Reconstruction Company (India) Limited (ARCIL)	1855492275	1855492275	60.89%	377524596	370731094	92682773	92682773	148292438	37073109
2	IIFL Home Finance Ltd.	256225566	256225566	8.41%	52132501	51194384	12798596	12798596	20477754	5119438
3	Jumbo Finvest India Ltd.	82795155	69268996	2.27%	14093699	13840085	3460021	3460021	5536034	1384008
4	Pratiti Trading Pvt Ltd.	222256206	46971024	1.54%	9556880	9384905	2346226	2346226	3753962	938491
5	Punjab National Bank	15950266	15315115	0.50%	3116064	3797808	949452	949452	1519123	379781
6	Vistra ITCL (India) Ltd	1310282634	798708505	26.21%	162507875	159583568	39895892	39895892	63833427	15958357
7	Sudesh Bhatia & Sahil Bhatia	5888219	4057644	0.13%	825582	1006206	251551	251551	402482	100621
8	Rishabh Kankariya	1605902	1193351	0.04%	242803	238434	59608	59608	95374	23843
Total		3750496223	3047232476	100.00%	620000000	609776484	152444121	152444121	243910594	60977648

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Name of Creditor	Amount claimed	Amount of Claim admitted	offer to Unsecured FC	Offer to dissenting USFC	Upfront payment within 3 months (25%)	Payment at the end of 1st year (25%)	Payment at the end of 2nd year (40%)	Payment at the end of 3rd year (10%)
Neon Laboratories Ltd.	30305675	30305675	3074803	3074803	768701	768701	1229921	307480
U.Y. FinCorp Ltd.	149635069	149635069	15181920		3795480	3795480	6072768	1518192
Zircon Traders Ltd.	9129990	9129990	926325		231581	231581	370530	92633
Anish & Jigisha Shah	8019594	0	0		0	0	0	0
Gajendra Investments Ltd.	264344576	251643876	25531696		6382924	6382924	10212679	2553170
Ultra LifeSpace Private Ltd.	375108586	0	0		0	0	0	0
Pratiti Trading Pvt Ltd.	59441216	58342705	5919430		1479857	1479857	2367772	591943
Divyagyan Trading Private Limited	4355684	3855684	391196	391196	97799	97799	156479	39120
Suraksha Realty Ltd	33610960	0	0		0	0	0	0
Kasam Holding Pvt. Ltd.	40000000	40000000	4058385		1014596	1014596	1623354	405839
Total	973951350	542912999	55083756	3465999	13770939	13770939	22033502	5508376

49. On perusal of the Resolution Plan, we find that the Resolution Plan provides for the following:

- a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
- b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
- c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
- d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.

50. The RP has complied with the requirement of the Code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of the Regulations.

51. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal the same is found to be in order. The Resolution Plan has been approved by the CoC by majority of 95.4%.

52. In *K Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No.10673/2018 decided on 05.02.2019) 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

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the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Apex Court further observed that the role of the NCLT is 'no more and no less'. The Hon'ble Apex Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.

53. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38 (1A) and 39 (4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The same needs to be approved. Hence ordered.
54. It shall become effective from this date and shall form part of this order with the following directions:
 - i. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan.
 - ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations/liabilities of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. Any waiver sought

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in the Resolution Plan, shall be subject to approval by the Authorities concerned in light of the Judgment of Supreme Court in *Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited*, the relevant para's of which are extracted herein below:

“95. (i) Once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan;

(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

- iii. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Mumbai, Maharashtra 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.

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- iv. The moratorium under Section 14 of the Code shall cease to have effect from this date.
- v. The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.
- vi. 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.
- vii. The Applicant shall forthwith send a certified copy of this Order to the CoC and the Resolution Applicant, respectively for necessary compliance.

Sd/-

PRABHAT KUMAR
Member (Technical)
27.06.2024
Priyal

Sd/-

JUSTICE V.G. BISHT
Member (Judicial)

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

**IA No. 1330 of 2024
And
IA No. 1817 of 2024
IN
CP (IB) No.1632/MB/C-I/2019**

Under 60(5) of the Insolvency and Bankruptcy Code, 2016.

In the Application of

Vaishali Arun Patrikar
Resolution Professional of Satra Properties (India) Limited
(filed by erstwhile Resolution Professional Mr. Devarajan Raman)
...Applicant

Versus
Housing Unit-1, Economic Offenses Wing, Mumbai
...Respondent

Order Delivered on :- 26.07.2024

Coram:

Hon'ble Member (Judicial) : Justice V.G. Bisht (Retd.)

Hon'ble Member (Technical) : Mr. Prabhat Kumar

Appearances:

For the Resolution Professional : Mr. Amit Tungare, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

Brief Facts:

IA No. 1330 of 2024

1. The present Application is filed by the Resolution Professional of the Corporate Debtor seeking a direction that the Respondent and its office to remove the attachments on the Bank Account number 017100103896 held with COSMOS Bank located at Vile Parle Branch, Mumbai.

2. The Applicant states that by virtue of order dated 03rd August 2020 as passed by the NCLT, the CIRP was initiated against of Satra Properties (India) Limited (SPIL). Initially, when the CIRP was initiated against SPIL, one Mr. Devarajan Raman was appointed as the Interim Resolution Professional of SPIL, who was later confirmed as the Resolution Professional of SPIL by majority of the members of the Committee of Creditors (CoC). The Applicant was appointed as the Resolution Professional by this bench vide order dated 22nd September 2022.
3. Thereafter, the Applicant took over the charge as the Resolution professional of the Corporate Debtor. Upon perusal of documents received from the erstwhile Resolution Professional, Mr. Devarajan Raman, the Applicant came to know that the Respondent had attached a bank account bearing no. 017100103896 held with COSMOS Bank. The Respondent herein, vide letter dated 19th March 2020 had ordered the COSMOS Bank to freeze the accounts of SPIL. In the interregnum, a moratorium under Section 14 of the Code commenced from the date of order passed by the bench admitting SPIL into CIRP.
4. The Applicant vide letter dated 27th November 2023, addressed to the Respondent, had informed the Respondent about the initiation of CIRP and imposition of moratorium. It is submitted that the Applicant visited the office of the Respondent and met with the Senior Police Inspector and Assistant Police Inspector, of Economic Offences Wing and explained them the situation in detail.
5. The Applicant informed the Respondent about the moratorium period and even submitted copy of Order dated 3rd August 2020 passed by this bench admitting the Corporate Debtor into Corporate Insolvency Resolution Process. In view of the above,

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the Senior Police Inspector said that they do not have the power to remove the attachments and would require a Court Order to do the same.

IA No. 1817 of 2024

6. The present Application is also moved by the Resolution Professional seeking the following reliefs:

a) Direct the Respondent and its office to remove the attachments on the Axis Bank Accounts bearing numbers 912020001612578, 911020058661836 of the Corporate Debtor held with AXIS Bank, Andheri West Branch, Mumbai and 911020051088009 held with AXIS Bank, Nariman Point, Mumbai.

b) Direct the Respondent and its office to remove the attachments on the ICICI Bank account bearing number 001105027186 held with ICICI Bank, Andheri West branch.

7. It is submitted that the Corporate Debtor has bank accounts with AXIS Bank, S V Road Branch and Nariman Point Branch. The Applicant contacted AXIS Bank, S V Road Branch and Nariman Point Branch for change of authorized signatory and submitted all the required documents. Thereafter, the AXIS Bank informed the Applicant that they are unable to change the signatures because the accounts belonging to the Corporate Debtor were put under attachments by various government bodies including the Respondent herein. The Applicant followed up with the bank asking about the details of the attachment order. Pursuant to this, the Applicant received a letter from AXIS bank giving details about the attachments on the accounts of the Corporate Debtor to the following bank accounts: -

A) Axis Bank accounts at S V Road, Andheri West, Mumbai

a. 912020001612578

b. 911020058661836

B) Axis Bank account number 911020051088009 at Nariman Point, Mumbai.

8. The erstwhile Resolution Professional, Mr. Devarajan Raman had addressed a letter to the Respondent in view of the attachments to the Bank Accounts held with AXIS Bank (Letter dated 17/05/2022), asking the Respondent to remove the attachments from the Accounts. Thereafter, the erstwhile Resolution Professional sent 2 emails dated 17.05.2022 and 08.06.2022 to the office of the Respondent as a reminder to release the attachments from the bank account. However, the Respondents did not respond to the request. As mentioned earlier, the Applicant was appointed as the Resolution Professional of the CD vide order dated 22.09.2022.
9. The Applicant addressed a letter, dated 27th November 2023 informing the office of the Respondent about the initiation of Corporate Insolvency Resolution Process against the Corporate Debtor and moratorium as per Section 14 of the Code and thereby requesting them to remove all attachment and lien from the bank accounts belonging to the Corporate Debtor.
10. The Applicant had visited the ICICI Bank, Andheri Branch, for getting the bank statements of the Corporate Debtor for the account held with them. During the visit, the applicant was informed by the officials of ICICI Bank, that the account belonging to the Corporate Debtor, bearing Acc. No. 001105027186, was under an attachment.
11. The Applicant had previously visited the office of the respondent, the Senior Police Inspector, at the relevant time, said that they do not have the power to remove the attachments and would require a Court Order to do the same.
12. We have perused the Application and heard the Learned counsel.

13. The present Application is filed by the Resolution Professional seeking de-freezing of the accounts attached by the Economic Offence Wing and other government authorities i.e. the Respondents herein in both the applications. It is pertinent to note that the Resolution Plan is approved in the present matter by the CoC and now by this Adjudicating Authority vide its Order of even date. By virtue of Section 32A of the Code, the Corporate Debtor shall not be held liable for offences prior to the commencement of Corporate Insolvency Resolution Process. The Hon'ble Bombay High Court *Shiv Charan v. Adjudicating Authority, WP (L) No. 9943 of 2023 & WP (L) No. 29111 of 2023*, whilst dealing with a similar issue of attachment of assets of the Corporate Debtor by Enforcement Directorate held as under:

“28. In the instant case, the NCLT was aware of the attachment effected by the ED over the Attached Properties well before the CIRP commenced. The NCLT applied Section 32A to the facts of the case before it, and rightly took cognizance of the attachment when approving the resolution plan. The NCLT has accurately answered the question of law arising under Section 32A, that the approval of the resolution plan brings the prosecution of the Corporate Debtor to an end under Section 32A(1) and the attachment of the Attached Properties to an end under Section 32A(2) read with the Clause (i) in the Explanation to Section 32A(2). Such an exercise of jurisdiction was wholly within the scope of power and jurisdiction explicitly conferred on the NCLT by Parliament under Section 60(5). No fault can be found with either the substance of the NCLT's exercise of such jurisdiction, or with the manner of its exercise. Whether the jurisdictional facts necessary to attract the immunity under Section 32A exist, is a mixed question of fact and law that the NCLT was entitled to entertain and dispose of. Once the jurisdictional

facts are found to exist, whether the immunity becomes available is a question of law which is clearly within the domain of the NCLT's jurisdiction.

29. It should not be forgotten that both Section 32A and Section 60(5) are non-obstante provisions that operate notwithstanding anything contained in any other law, including the PMLA, 2002. Therefore, there is no basis whatsoever to treat the provisions of attachment under the PMLA, 2002 as being uniquely carved out as an exception, when the legislature indeed chose to cover prosecution by, and attachment of assets, under the PMLA, 2002 as coming to an end by virtue of Section 32A of the IBC, 2016.

33. The Hon'ble Supreme Court has had occasion to deal with the legislative intent and purpose underlying Section 32A of the IBC, 2016, albeit when considering a challenge to the constitutional validity of Section 32A. In doing so, the Hon'ble Supreme Court had the benefit of the Union of India's clear explanation and support for the view that corporate debtors must get to begin with a clean slate under Section 32A, making a clean break from their past. In Manish Kumar Vs Union of India – (2021) 5 SCC 1 (Manish Kumar), the Hon'ble Supreme Court ruled that the immunity under Section 32A is a conscious and valid legislative conferment by Parliament. The

Union of India had emphasized the vital need for introducing Section 32A and defended having piloted the provision through Parliament, giving insight into the legislative intent behind the provision, and that too when presented with how the provision would give immunity from an attachment under the PMLA, 2002.”

14. Further, Section 32A (2) of the Code reads as under:

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“(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not –

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.”

15. A conjoint reading of Section 32A (2) of the Code and the Judgment of the Hon’ble Bombay High Court in *Shiv Charan (supra)*. It is clear that after the approval of the Resolution Plan no action can be taken against the assets of the Corporate Debtor in relation to an offence committed prior to the commencement of Corporate Insolvency Resolution Process. Accordingly, the Respondent herein is directed to lift the attachment on the bank accounts of the Corporate Debtor.
16. IA No. 1330 of 2024 and 1817 of 2024 in CP(IB) No. 1632 of 2019 are allowed.

Sd/-

PRABHAT KUMAR
Member (Technical)
27.06.2024
Priyal

Sd/-

JUSTICE V.G. BISHT
Member (Judicial)