IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)
IN
CP(IB)-635/PB/2021

IN THE MATTER OF:
(Under Section: 7 of IBC, 2016)

Technology Parks Limited **... Applicant/ Financial Creditor**

Versus

Alchemist Infra Realty Limited **... Respondent/ Corporate Debtor**

AND IN THE MATTER OF IA. NO. 01/ND/2024:

Mr. Gaurav Misra
(RP of Alchemist Infra Realty Limited)
1511, Hemkunt Chambers,
89 Nehru Place,
New Delhi – 110019 **... Applicant**

Under Section: 30(6) r/w 31 of IBC, 2016

Order delivered on: 04.07.2024

CORAM:
SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:
For the RP **:** Adv. Alok, Adv. Varsha Banerjee

ORDER

IA-01/2024: The present application has been preferred under Section 30(6) r/w Section 31 of IBC, 2016 r/w Regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, seeking approval of the Resolution Plan qua the Corporate Debtor submitted by Vantage Point Asset Management Pte. Limited (**'Resolution**

Applicant') as approved by members of Committee of Creditor (**'CoC'**) unanimously with 100% voting in the 12th meeting of CoC held on 12.10.2023.

2. Stating succinctly, the CP(IB)-635/PB/2021, was filed by Technology Parks Limited against Alchemist Infra Realty Limited (**'Corporate Debtor'**) under Section 7 of IBC, 2016 on default of the Corporate Debtor in making the payment of Rs.4,01,47,37,480/-. The application was accepted and the CD was admitted to Corporate Insolvency Resolution Process (CIRP) vide order dated 23.03.2022. Mr. Gaurav Misra (**'Applicant'**) was appointed as IRP, who was later confirmed as RP in the first CoC meeting held on 03.05.2022.

3. The Applicant herein solicited/asked for claims from the creditors of the Corporate Debtor vide Public Announcement in Form A, in terms of Section 15 of IBC, 2016 r/w Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (**'CIRP Regulations'**), published in Business Standard (English & Hindi) and Daily Chardhikala (Punjabi) dated 06.04.2022. Copy of the Public Announcement dated 06.04.2022 is annexed as Annexure A-3 to the application.

4. The Applicant constituted CoC comprising the following member:

S. No	Name and categories of Creditors	Amount Claimed (INR in crore)	Claim Amount Admitted (INR in crore)	Voting Percentage
1.	Financial Creditor i.e. Technology Parks Ltd.	410.16	410.16	43.29%
2.	Financial Creditors in a Class	883.81	537.26 (wherein principal amount is Rs.137.15 Crore and remaining is assured return)	56.71%
Total Financial Creditors		1293.97	947.42	100.00%

5. Out of three proposed authorized representatives of the creditors in a class, Mr. Rakesh Verma was nominated by the Financial Creditors in Class to act as their Authorized Representative with 71.42% vote share. Thus, the Applicant herein filed an Application being IA No.2146/2022, for appointment of Mr. Rakesh Verma as authorized representative of the creditors in a class. The said Application was allowed by this Hon'ble Tribunal vide Order, dated 10.05.2022.

6. According to the Applicant, he extended required cooperation to the Central Bureau of Investigation (CBI) vide his reply dated 13.05.2022 given in response to letter dated 28.04.2022 written by CBI, ACB Lucknow regarding investigation qua CBI No. RC0062021S0006 & No. RC0062021S0007, wherein the Corporate Debtor has been arrayed as an accused along with others.

7. As per the pleadings and the documents available on record, Form G was published on 15.06.2022 in the newspaper namely Financial Express & Jansatta (English & Hindi) in all editions and in Daily Chardhikala (Punjabi), inviting Expression of Interest (EoI) from the Prospective Resolution Applicants. The last date for submission of EoI was 30.06.2022 and the last date for submissions of Resolution Plan was 14.08.2022. The time schedule as mentioned in Form G, dated 15.06.2022 reads thus:-

S. No.	Event Description	Date
1.	Date of invitation of expression of interest	15.06.2022
2.	Last date of receipt of expression of interest	30.06.2022
3.	Date of issue of Provisional list of prospective Resolution Applicants	10.07.2022
4.	Last date for submission of objections to provisional list	15.07.2022
5.	Issue of IM, RFRP and Evaluation Matrix	15.07.2022
6.	Date of issue of final list of prospective Resolution Applicants	25.07.2022
7.	Resolution Plan Submission Date along with EMD	14.08.2022

8. In response to the EoI published in Form G on 15.06.2022, the Applicant received the EoIs by the last for submission of the same inter alia from the following:

I. M/s Intercont Freight Liners Pvt. Ltd.
II. M/s SMV Agencies Pvt. Ltd.
III. Dr. Mukesh Kumar Agarwal & Chandra Laxmi Developers Pvt. Ltd. (In Consortium)
IV. Rishikesh Hire Purchase and Leasing Company Pvt. Ltd.
V. M/s Kundan Care Products Limited

9. On 10.07.2022, the Applicant prepared and issued the Provisional List of PRAs, in terms of Regulation 36A(10) of CIRP Regulations and the final list of PRAs was issued on 25.07.2022.

10. 3rd CoC meeting was convened on 08.08.2022, wherein the CoC passed the resolution with 100% vote share in for extending the time limit for submission of Resolution Plan till 30.09.2022 and also for seeking extension of CIRP period by 90 days from this Tribunal which was allowed vide order dated 26.09.2022 and the CIRP period was extended till 18.12.2022.

11. It is the case of the Applicant that no resolution plan was put forth by the PRA's and they repeatedly requested for extension of time limit for submission of their Plans, thus the time limit for submission of the Resolution Plan was extended.

12. In its 6th meeting held on 17.12.2022, the CoC passed a resolution for seeking exclusion of 95 days from CIRP period/process due to time lost in adjudication of IA No.4596/2022. The exclusion as sought was allowed by this Tribunal in terms of the order dated 18.01.2023 passed in IA No. 300/2023.

13. It is espoused by the Applicant that the time period for submission of Resolution Plan was extended on several occasions i.e. initially from 14.08.2022 to 30.09.2022 and then till 31.10.2022, 25.01.2023 and 20.02.2023, but no Resolution Plan could be submitted by any of the PRAs. Thus, in the 8th meeting of the CoC convened on 13.03.2023, the members of the CoC took decision to publish a fresh Form G to invite new PRAs in addition to existing PRA's. It was further decided in the meeting (8th) of CoC that an exclusion of time period from 21.12.2022 will be sought from this Hon'ble Tribunal due to pendency of IA No.4596/2022.

14. In the wake of the resolutions passed in 8th meeting of CoC, the Applicant published Invitation for Expression of Interest (Form G), dated 05.04.2023, inviting EoIs for resolution of insolvency of the Corporate Debtor.

15. In response to the Form G, dated 05.04.2023 (ibid), the Applicant herein received 06 EoIs by 20.04.2023. The Applicant then circulated provisional list of PRAs on 30.04.2023 and issued RFRP document to the eligible Prospective Resolution Applicants on 05.05.2023. Thereafter, he issued final list of eligible PRAs on 15.05.2023. Copy of final list of eligible PRAs dated 15.05.2023 is annexed as Annexure A-13 to the application.

16. At the end the Applicant received a Resolution Plan from one of the PRAs namely Vantage Point Asset Management Pte. Limited, on 19.07.2023. The Vantage Point Asset Management Pte. Limited could not submit the Earnest Money Deposit (EMD) due to technical problem with the Bank, and the EMD was deposited on 02.08.2023, vide DD No. 00160D3001658 dated 02.08.2023, for an

amount of Rs.50,00,000/-. Copy of the Demand Draft dated 02.08.2023 is annexed as Annexure A-15 to the application.

17. Further, 10th meeting of the CoC was convened on 22.07.2023 by the Applicant wherein the members of the CoC were apprised of the receipt of the Resolution Plan of Vantage Point Asset Management Pte. Limited and request by one PRA namely CRL Rubber Limited for extension of time-period for submission of Resolution Plan by another 30 days which was rejected by the members of CoC with 100% vote share.

18. However, the members of the COC decided to move an application seeking extension/exclusion of time period for completion of CIRP by 90 days from 23.07.2023. The reasons espoused for extension/exclusion of the period of CIRP were: (a) pendency of IA No.4596/2022, (b) non-release of copy of document/ record of Corporate Debtor seized by the Enforcement Directorate (ED) in the raid conducted in the office of Corporate Debtor on 19.09.2019 and (c) due to non-cooperation from One Man Committee appointed by Hon'ble High Court of Calcutta in Writ Petition Nos. 1389/2017, 26915/2017 and 9248/2017, in providing necessary information regarding Corporate Debtor to the Applicant herein.

19. Yet again in terms of resolution passed in the 10th meeting of CoC, the Applicant preferred application bearing IA No.4129/2023 seeking extension of the period of CIRP by another 90 days which allowed vide Order dated 10.08.2023 of this Tribunal.

20. The Applicant herein conducted a zoom call with the members of the CoC on 16.09.2023 regarding the observations on the Resolution Plan received by the Applicant. The observations made by the Applicant as well as by the members of the CoC were shared with the Resolution Applicant and modification of the Resolution Plan was sought. Resultantly, the Resolution Applicant shared the modified Resolution Plan with the Applicant herein on 29.09.2023.

21. It is the case of the Applicant that after conducting due diligence i.e. satisfying himself about the Resolution Plan being in compliance of the provisions of IBC including Section 29A thereof, shared the complaint and modified Resolution Plan with the Committee of Creditors along with the notice for 12th meeting of CoC scheduled for 12.10.2023.

22. After due deliberation and discussion qua the financial proposal as well as viability and feasibility of the Resolution Plan of the Vantage Point Asset Management Pte. Limited, the Applicant placed the Resolution Plan before the CoC in its 12th meeting scheduled on 12.10.2023. The Plan was put for voting held from 15.10.2023, 4.30pm till 17.10.2023, 4.30pm. The members of the CoC approved the Resolution Plan of Vantage Point Asset Management Pte. Limited with 100% voting share and accordingly, the Resolution Applicant was declared as Successful Resolution Applicant by the Applicant on 18.10.2023. The Applicant issued Letter of Intent (LoI), dated 19.10.2023 to the Successful Resolution Applicant through email, dated 20.10.2023. The relevant excerpt of the Resolution passed by CoC and the e-voting result of the CoC qua the Plan reads thus:-

ITEM NO. B3

TO CONSIDER THE RESOLUTION PLAN AS SUBMITTED BY VANTAGE POINT ASSET MANAGEMENT PTE LIMITED IN ACCORDANCE WITH THE PROVISIONS OF IBC, 2016 AND REGULATIONS MADE THEREUNDER AND TO VOTE THEREON

The Chairman apprised the members of CoC that as discussed under Agenda Item no. A7, Resolution Applicant has submitted their modified resolution plan for the Corporate Debtor so that after considering the viability and feasibility of the resolution plan the same could be placed before the CoC members for e-voting.

That in terms of Regulation 39(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations 2016

Regulation 39(2)

> *"The Resolution Professional shall submit to the committee all resolution plan which comply with the requirements of the code and regulations made thereunder alongwith details of following transactions, if any, observed, found or determined by him:-*
>
> *(a) Preferential transactions under Section 43;*
>
> *(b) Undervalued transactions under Section 45;*
>
> *(c) Extortionate credit transactions under Section 50;*
>
> *(d) Fraudulent transactions under Section 66;*
>
> *and the orders, if any, of the adjudicating authority in respect of such transactions"*

The Chairman apprised the CoC that Transaction Auditor so far have not submitted their final Report, therefore, in the absence of the Report of Transaction Auditor, the complete detail could not be placed before the CoC. However, RP informed & placed it on record before the CoC that basis on the Draft Report, there are no any transaction found under Section 43, 45 & 50 of IBC, 2016 by the Transaction Auditor which are to be reported to the Hon'ble Adjudicating Authority. The Transaction Auditor in his draft Report observed some transaction under Section 66 of IBC, 2016 which needs to be re-visited by the Transaction Auditor in light of the response / reply dated 19.09.2023 of the erstwhile management.

The RP further place it on record that immediately upon receipt of the Final Report from the Transaction Auditor, the detail of the transactions as mandated under Regulation 39(2) shall be shared with the CoC through mail and necessary/ required avoidance application would be filed before the Hon'ble NCLT, New Delhi, if required.

The RP further apprised the CoC that in terms of Regulation 39(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations 2016

Regulation 39(3)

> The committee shall :-
>
> (a) evaluate the resolution plan received under sub-regulation 2 as per evaluation matrix
>
> (b) records its deliberation on the feasibility and viability of each resolution plan and
>
> (c) vote on all such resolution plans simultaneously.

In order to effectively evaluate the Resolution Plan and for the ease and benefit of all the stakeholders, the RP prepared the evaluation matrix on the Resolution Plan submitted by RA which is attached alongwith the minutes of the instant meeting as **Annexure-1**.

That under the scheme of the Code, approval/rejection/consideration of a resolution plan remains an exclusive right of the Committee, therefore, the Resolution Professional proposed the following resolution in respect of the resolution plan, as modified and submitted by Vantage Point Asset Management Pte Limited, for voting by the members:

Accordingly, the following resolution was placed before the CoC for their consideration & approval:

Resolution:

To consider and if thought fit, to pass with or without modification the following Resolution:

"**RESOLVED THAT** pursuant to section 30 sub-section (4) and sub-section (6) of Insolvency and Bankruptcy Code, 2016, read with regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations 2016 and other applicable provisions of Insolvency and Bankruptcy Code, 2016, and regulations made thereunder, the Resolution Plan submitted by Vantage Point Asset Management Pte Limited and as circulated to the members, which has been considered feasible and Viable by the members of CoC, be and is hereby approved for Insolvency Resolution of Alchemist Infra Realty Limited and the Resolution Professional is directed to intimate the decision of the Committee to the Successful Resolution Applicant.

RESOLVED FURTHER THAT the Resolution Professional shall submit the Resolution Plan approved by the Committee of Creditors with the Adjudicating Authority subject to receipt of Performance Bank Guarantee of an amount of Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lakhs Only within 7 (seven) days of issuance of Letter of Intent ("LoI") by the Resolution Professional from date of intimation to the Successful Resolution Applicant and non-receipt of Performance Bank Guarantee shall lead to cancellation of LoI issued by the CoC.

RESOLVED FURTHER THAT the Committee hereby authorize Mr.Gaurav Misra , Resolution Professional to seek legal assistance from external legal counsel / consultant to give effect to this resolution and the cost incidental to give effect to this resolution be treated as Insolvency Resolution Process Cost of Alchemist Infra Realty Private Limited.

X X X

SUMMARY OF VOTING SHARES OF FINANCIAL CREDITORS AND FINANCIAL CREDITORS IN A CLASS OF ALCHEMIST INFRA REALTY LIMITED

S. No.	Name of Financial Creditor	% of Voting Share	Voting Method
1	Financial Creditor (Technology Park Limited)	43.29%	Through E voting
2	Financial Creditors in a Class (represented through authorized representative Ms. Rakesh Verma)	56.71%	Through E voting
	Total	100	

AN ANALYSIS OF THE RESULT OF VOTING AGENDA ITEMWISE IS SUMMARIZED AS UNDER:

E-VOTING SUMMARY					
B3	TO CONSIDER THE RESOLUTION PLAN AS SUBMITTED BY VANTAGE POINT ASSET MANAGEMENT PTE LIMITED IN ACCORDANCE WITH THE PROVISIONS OF IBC, 2016 AND REGULATIONS MADE THEREUNDER AND TO VOTE THEREON	100%	0%	0%	100%
	NAME OF THE MEMBERS OF THE COC VOTED/ABSTAINED	Technology Park Limited Financial Creditors In a Class (represented by Authorized representative, Ms. Rakesh Verma)			
B4	PURSUANT TO THE				

X X X

LIST OF ISSUES/RESOLUTION VOTED

B. ISSUES TO BE VOTED UPON AFTER DISCUSSION.

Resolutions to be passed, with or without modifications, at the Meeting:

X X X

ITEM NO. B3

TO CONSIDER THE RESOLUTION PLAN AS SUBMITTED BY VANTAGE POINT ASSET MANAGEMENT PTE LIMITED IN ACCORDANCE WITH THE PROVISIONS OF IBC, 2016 AND REGULATIONS MADE THEREUNDER AND TO VOTE THEREON

Resolution:

"**RESOLVED THAT** pursuant to section 30 sub-section (4) and sub-section (6) of Insolvency and Bankruptcy Code, 2016, read with regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations 2016 and other applicable provisions of Insolvency and Bankruptcy Code, 2016, and regulations made thereunder, the Resolution Plan submitted by Vantage Point Asset Management Pte Limited and as circulated to the members, which has been considered feasible and Viable by the members of CoC, be and is hereby approved for Insolvency Resolution of Alchemist Infra Realty Limited and the Resolution Professional is directed to intimate the decision of the Committee to the Successful Resolution Applicant.

RESOLVED FURTHER THAT the Resolution Professional shall submit the Resolution Plan approved by the Committee of Creditors with the Adjudicating Authority subject to receipt of Performance Bank Guarantee of an amount of Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lakhs Only within 7 (seven) days of issuance of Letter of Intent ("LoI") by the Resolution Professional from date of intimation to the Successful Resolution Applicant and non-receipt of Performance Bank Guarantee shall lead to cancellation of LoI issued by the CoC.

RESOLVED FURTHER THAT the Committee hereby authorize Mr.Gaurav Misra , Resolution Professional to seek legal assistance from external legal counsel / consultant to give effect to this resolution and the cost incidental to give effect to this resolution be treated as Insolvency Resolution Process Cost of Alchemist Infra Realty Private Limited.

The members of CoC representing 100 % voting share voted in favour of agenda item B3

Result

As the votes in favour of the Agenda item B3 is more than 66% of the voting share of the member of the CoC, hence the resolution / agenda item B3 is taken as APPROVED by the CoC.

23. The Resolution Plan approved by the CoC provides for the Source of Fund and utilization thereof in the following manner:-

Particulars	Rs. (In Crore)
Financial Outlay	
Upfront payment toward CIRP Cost (Estimated)	5.00
Payment towards Financial Creditors in a Class	137.15
Contingency Reserve for Financial Creditors in class who file claims between CoC approval and NCLT Approval	12.85
Payment towards Financial Creditor (Technology Park Limited)	315.92
Payment towards Operational Creditors	0.00
Payment towards Statutory Dues	0.00
TOTAL	**470.92**
Source of Funds	
Fresh Equity to be brought in by the RA / Nominees	5.00
Sale proceeds from Selling of developed Land	350.00
Unsecured interest free Debt / Equity / Quasi Equity proposed to be provided by RA / Its Nominees / Strategic Investor	115.92
TOTAL	**470.92**

24. The details of fair value and liquidation value of the CD, the distribution of the resolution plan amount amongst the stakeholders, and compliances are given in the "Compliance Certificate" filed by the RP in Form 'H', which is reproduced overleaf for the purpose of immediate reference:-

Sl. No.	Particulars	Description
18	Fair Value	3809307289
19	Liquidation value	3023244259

X X X

7. The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs. Crore)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)		(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	Nil	Nil	Nil	Nil
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	Nil	Nil	Nil	Nil
		(ii) who voted in favour of the resolution plan	Nil	Nil	Nil	Nil
		Total[(a) + (b)]	0	0	0	0
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	Nil	Nil	Nil	Nil
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	Nil	Nil	Nil	Nil
		(ii) who voted in favour of the resolution plan :				
		Technology Parks Limited	410.16	410.16	315.92	The RA proposes to pay 100% of the Principal Amount of admitted claim i.e 77%
		Financial Creditors in a Class	883.80	537.25	137.15	The RA proposes to pay 100% of the Principal Amount of admitted claim i.e 26.87%
		Total[(a) + (b)]	1293.96	947.41	453.07	
3	Operational Creditors	(a) Related Party of Corporate Debtor	Nil	Nil	Nil	Nil

		(b) Other than (a) above:				
		(i)Government	Nil	Nil	Nil	Nil
		(ii)Workmen	Nil	Nil	Nil	Nil
		(iii)Employees	Nil	Nil	Nil	Nil
		Total[(a) + (b)]	0	0	0	0
4	Other debts and dues	Not Applicable	Nil	Nil	Nil	Nil
Grand Total			1293.96	947.41	453.07	47.82%

X X X

9. 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(
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?	Mentioned on page no. 12-13 of the Resolution Plan, under clause 4.2.	Yes
	(b) provides for the payment to the operational creditors?	Provided under clause 4.5 on page no. 17- 18 of the Resolution Plan.	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Provided under column 4.4 on page no. 16 of the Resolution Plan.	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Mentioned under clause 5.2 on page no. 24 of the Resolution Plan.	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Mentioned under clause 5.1.1, on page no. 23-24 of the Resolution Plan.	Yes
	(f) contravenes any of the provisions of the law for the time being in force?]	Provided under clause 4.1 on page no. 4 and on page no. 27 of the Resolution Plan.	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?	Mentioned under clause 3.2 on page no. 11 of the Resolution Plan.	Yes
Regulation38)1(	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?]	Provided under clause 4.5 on page no. 17 and 18 of the Resolution Plan.	Yes
Regulation 38)1A(	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Mentioned Under Chapter 4 from page no. 12-22 of the Resolution Plan.	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. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	The relevant statement is provided under clause 3.1 on page no. 4 and on page no. 27 of the Resolution Plan.	Yes
Regulation 38)2(	Whether the Resolution Plan provides:)a(the term of the plan and its implementation schedule?	Term of the Resolution Plan provided under clause 5.1 on page no. 23 and its implementation schedule is provided under clause 5.3 on page no. 25 of the Resolution Plan.	Yes
	)b(for the management and control of the business of the corporate debtor during its term?	Mentioned Under clause 5.2, on page no. 24 of the Resolution Plan.	Yes
	)c(adequate means for supervising its implementation?	Provided Under clause 5.1.1, on page no. 23-24 of the Resolution Plan.	Yes
38)3(	Whether the resolution plan demonstrates that – (a) it addresses the cause of default?	Provided on page no. 11 under chapter 3.1 of the Resolution Plan.	Yes
	(b) it is feasible and viable?	Mentioned on page no. 28 of the Resolution Plan.	Yes
	(c) it has provisions for its effective implementation?	Mentioned under clause 3.2 on page no. 11 of the Resolution Plan.	Yes
	(d) it has provisions for approvals required and the timeline for the same?	Provided under clause under clause 5.1.1.4 on page no. 23 of the Resolution Plan.	Yes
	(e) the resolution applicant has the capability to implement the resolution plan?	Provided under chapter 2, page no. 10 of the Resolution Plan.	Yes
39)2(	Whether the RP has filed applications in respect of transactions observed, found or determined by him?		

Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	The PBG of INR 2,50,00,000/- has been submitted by the Resolution Applicant, wherein INR 50,00,000/- were adjusted from EMD submitted by the Resolution Applicant and the remaining INR 2,00,00,000/- were submitted by the Resolution Applicant vide DD number 00160D300 2552.	Yes

25. As can be seen from above, the CD has no Operational Creditor. It could also be viewed that there is no PF and Gratuity Claims which could also be stated in Clause 42 & 43 of the Compliance Certificate filed by the Applicant/RP. The Clauses reads thus:-

> *"42.* ***Whether the corporate debtor has a reserve fund for PF/gratuity:*** *No claim in respect of the PF or gratuity has been made in the CIRP of the Corporate Debtor.*
>
> *43.* ***Affidavit by SRA for payment of PF and Gratuity dues up to the date of order of the NCLT approving the Resolution Plan in terms of the order of the Hon'ble NCLAT in the Case of M/s Jet Airways India Ltd.; upheld by the Hon'ble Supreme Court in Civil Appeal No 407 of 2023 with Civil Appeal Nos 465-469 of 2023.:*** *No claim in respect of the PF or gratuity has been made in the CIRP of the Corporate Debtor"*

26. From Clause 49 of the Compliance Certificate, it could be observed that the RP did not receive any claim towards statutory dues. The Clause reads thus:-

> *"49.* ***Affidavit by RP that the Resolution Plan considers the claim of statutory authorities, where a security interest is created***

by law, as secured creditors for distribution under section 53 (1) of the Code in terms of the decision of State Tax Officer v. Rainbow Papers by Hon'ble Supreme Court: *No claim has been made in the CIRP of the Corporate Debtor by any Statutory Authority."*

27. As can be seen from clause 4.2 of the Resolution Plan there is a provision contained regarding payment of CIRP cost. The clause reads thus:-

"4.2 PROPOSAL FOR CIRP COSTS

The CIRP Costs (to the extent unpaid) on 'Actual' basis shall be paid in priority to any other creditors of the Corporate Debtor, within 30 days from the Effective Date. It is further clarified that unpaid CIRP costs, as well as liabilities incurred by the CD in the ordinary course of business arising after insolvency commencement date till effective date shall be paid in priority to any other payment under the Resolution Plan.

Once CIRP cost is paid as per the provision above, then RA shall have no further liability towards any cost incurred during the CIRP period by RP, CoC members or any other person."

28. The Resolution Plan also contain the clause regarding Capital Restructuring which reads thus:-

"4.7 CAPITAL RESTRUCTURING

4.7.1 As per the IM shared by the RP and as evident from the publicly available information the Authorised Share Capital of the CD is Rs. 500.00 lakhs consisting 50,00,000 equity shares of face value Rs. 10.00 each and the paid-up share capital of the CD is Rs. 41,55,700 divided into 4,15,570 equity shares of Rs. 10.00 each fully paid up.

4.7.2 The existing issued / subscribed paid up equity of Corporate Debtor shall be cancelled/ extinguished/ written down to zero and no

amount shall be paid to any of the existing shareholders on approval of the Resolution Plan.

4.7.3 The existing Share Certificates shall be deemed to have been nullified/ cancelled on approval of the Resolution Plan. The reconstituted Board of Directors shall be authorized to allot and issue fresh share Capital to the RA/its nominees and issue share certificates to the said allottees. It is being clarified that the reconstituted Board of Directors shall be compliant of Section 29A of the Insolvency and Bankruptcy Code, 2016.

4.7.4 In this regard, any amendment to the constitutional documents of the Company being MoA and AoA shall be deemed to be brought on record as per the applicable law and shall be deemed to have been complied with the Approval of this Resolution Plan by NCLT

4.7.5 The Resolution Applicant shall subscribe to fresh equity of Corporate Debtor against the amount of Rs. 5 Crores contributed as share capital in terms of the Resolution Plan and such further equity as may be considered prudent by the Resolution Applicant at its sole discretion to implement the Resolution Plan."

29. The Resolution Plan also contain the provisions regarding effective implementation of the plan. The Clause 5.3 reads thus:-

"5.3 TIMELINE AND IMPLEMENTATION SCHEDULE:

The Resolution Plan shall be implemented in the following manner, as per the timelines specified in the table below, or as per the applicable law;

S. No.	Activity	Time Line
1	Date on which the AA (NCLT) approves the Resolution Plan i.e., NCLT Approval Date	T
2	Constitution of Monitoring Committee	T
3	Removal of existing Directors on the Board of CD, and Reorganisation of Share Capital of CD	T
4	Appointment of new Directors on the Board of the CD	T

5	Payment Towards CIRP Costs	T + 30 Days
6	Payment towards OCs and others	-
7	Payment of Upfront amount to FCC	T + 90 Days
8	Complete Takeover of the management and control of the CD, including its books, records and assets, rights, properties by RA	T
9	Payment of deferred amount to FCC	T+ 27 Months
10	Payment to FC	T+48 Months

Note.
On the Effective Date at the time of fund transfer of the consideration for upfront payment to the financial creditors, the said financial creditors would provide the RA with all the documents pertaining to the assets of the CD including Title Documents, Security Documents, Loan Documents and Correspondence Documents. The RP will simultaneously handover the possession of all the Assets, Rights, title, interest, properties of the CD to the RA/ Monitoring Committee along with all the records of the CD."

30. The SRA also sought various Reliefs and Concessions enumerated in Chapter 7 @ Page 29 of the Resolution Plan. Nevertheless, the SRA has given an undertaking that irrespective of the grant of relief and concessions by this Adjudicating Authority, the Plan would be implemented. The relevant excerpt of the undertaking in the Plan reads thus:-

"UNDERTAKING BY RESOLUTION APPLICANT IN RESPECT OF THE RELIEFS AND CONCESSIONS

The Resolution Applicant further undertakes and confirms that, on and from the approval of this Resolution Plan by the COC, and subject only to (i) obtaining required approvals from the Hon'ble NCLT in accordance with Applicable Law, and the provisions of Section 32A of IBC, 2016 (ii) applicable directions of the Hon'ble NCLAT and/or Hon'ble High Court and/or Hon'ble Supreme Court, if any, all obligations and commitments, financial or otherwise, undertaken by it under this Resolution Plan towards the Financial Creditor, and any other stakeholders, shall be binding on it, and shall subsist and be in full force and effect irrespective

of whether or not any/all reliefs, waivers or concessions as mentioned in chapter 7 of this resolution plan sought by the Resolution Applicant are granted by the Hon'ble NCLT, the Hon'ble NCLAT, the Hon'ble High Court, the Hon'ble Supreme Court or any other judicial, quasi-judicial, regulatory or administrative entity, department or authority."

31. The Applicant/RP has placed on record Affidavit stating that he has carried due diligence on the claim of the SRA regarding meeting the requirements of Sec. 29A of IBC, 2016. The affidavit reads thus:-

BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL, BENCH-II, NEW DELHI

C.P. NO. (IB)-635/PB/2021

IN THE MATTER OF:

TECHNOLOGY PARKS LIMITED ... FINANCIAL CREDITOR

VERSUS

ALCHEMIST INFRA REALTY LIMITED ... CORPORATE DEBTOR

AFFIDAVIT

I, Gaurav Misra, son of shri R.K. Misra, aged about 37 years, having office at F-5, Rajiv Gandhi IT Park, Building Name- Alchemist, IT Park, Chandigarh- 160101, presently at Chandigarh do hereby solemnly affirm and declare as under:

1. That I am the Resolution Professional of Alchemist Infra Realty Ltd. (Under CIRP) as appointed by this Hon'ble Tribunal vide its order dated 23.03.2022 and as such well conversant the facts of the case. Hence, I am competent to swear this Affidavit.
2. That I have read and understood the contents of the accompanying Proforma and have understood the contents of the same.
3. That I have conducted the due diligence on the claim of the SRA regarding meeting the requirements of S.29A and finds the same in order.
4. That I state that there is no contingent liability of the Corporate Debtor pending as on the date of initiation of CIRP and before the approval of the Resolution Plan by the CoC. Further, the Resolution Applicant has provided for a contingency reserve in the Resolution Plan for a sum of Rs.12.85 crores for any contingent liability.
5. That I state that the Resolution Plan is compliant of Regulation 38 (2) (d) of the CIRP Regulations, 2016.
6. That I state that the accompanying Proforma has been filled under my instructions. The contents of the same are true and correct to my own knowledge.

DEPONENT

VERIFICATION

I, the deponent hereinabove, do hereby verify and state that the contents of the paras 1 to 6 of the Affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom.

Verified and signed at Chandigarh on this the ____ February, 2024.

32. In Clause 4.1 @ page 4 of the Resolution Plan the SRA specifically averred that the plan is not in contravention of any provision of law. The Clauses 4.1 of the Resolution Plan reads thus:-

> *"4. <u>DECLARATION UNDER SECTION 30(2)(E) OF THE CODE:</u>*
>
> *4.1 As per Section 30(2)(e), "The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan does not contravene any of the provisions of the law for the time being in force". Thus, in this regard, the RA hereby declares that this Resolution Plan does not contravene any of the provisions of the law for the time being in force"*

33. The clause 6.1 of the plan (supra) also makes a provisions to meet the contingent liabilities which may be discovered qua the corporate debtor at later stage.

34. It could be viewed from the application filed by RP, that in terms of Regulation 39(2) of CIRP Regulations, he apprised the members of CoC in its 12th meeting regarding the details of transactions under Section 43, 45, 50 and 66 of the IBC, 2016. He could submit before the CoC that the Transaction Auditor was yet to submit its Final Report. However, he could place the Draft Report before the CoC which reflected no transaction under Section 43, 45, 50 and 66 of the Code. Nevertheless, the Transaction Auditor submitted its observation in the Draft Report that transactions under Section 66 of the Code would be required to be re-visited in terms of the reply dated 19.09.2023 of the erstwhile management of the Corporate Debtor. As can be seen from Clause 32 of the Compliance

Certificate filed by RP, it is viewed that he filed details of alleged PUFE Transactions under Regulations 35A of the CIRP Regulations which reads thus:-

Sections	Nature of allegation	Amounts involved	Documents relied upon	Remarks
Section 66	1. Loans and advances amounting to Rs.17,83,87,804 recoverable from 28 parties as on 23.03.2022, whereabouts of which were not traceable. 2. Corporate Debtor had given loans and advances recoverable amounting to Rs.25,15,000/- to one Mr. Baljinder Singh and others which were recoverable as on 23.03.2022	Rs.17,83,87,804/-	Final transaction audit report, dated 14.10.2023 alongwith various other documents.	

35. The RP has further stated under Clause 37 of the Compliance Certificate that he is in process of filing an application under Section 66 of IBC, 2016.

36. The Applicant submitted that as per the revival plan of the Corporate Debtor as provided under the Resolution Plan, the Resolution Applicant shall carry out sale of the land of Corporate Debtor after its development for residential real-estate purposes at its own cost under one of the land parcels situated at Village Behta, District Shivpuri, Madhya Pradesh admeasuring 242.07 acres (or - 9,79,621 square meter) to generate revenue. The net proceeds (after meeting project expenses) of monetisation/developing of the project shall be remitted to Technology Parks Limited not exceeding to Rs.315.92 Crores within a period of one year after its development. If there would be any shortfall in generating the revenue from the said land, Resolution Applicant may consider the other land/assets of Corporate Debtor to complete the shortfall.

37. He further submitted that the Resolution Applicant in the Resolution Plan has also proposed that certain assets of the Corporate Debtor are under attachment by Directorate of Enforcement (ED), Income Tax Department and Serious Fraud Investigation Office (SFIO). Thus, vacation of charges by the abovementioned authorities are necessary for the successfully implementation of Resolution Plan as there is no business operation in the Corporate Debtor other than certain land banks and without monetisation of these assets, Corporate Debtor cannot be revived. Therefore, the Resolution Applicant has prayed in the Resolution Plan that on approval of the Resolution Plan by this Tribunal, all the above charges/ attachments shall stand vacated by the respective government authority so that the resolution Applicant/Corporate Debtor can monetize the assets by selling/developing/getting registry from tehsildar / patwari / registrar for implementation of the Resolution Plan.

38. The Ld. Counsel for the Applicant relied upon the judgment of Hon'ble High Court of Judicature at Bombay in Writ Petition (L) No. 9943 of 2023. The relevant excerpt of the judgment reads thus:-

> *"25. …Equally, we find that driving a successful resolution applicant to file an appeal under Section 26(1) of the PMLA, 2002 in order to raise the attachment levied on the properties of the corporate debtor or to Section 8(5) of the PMLA, 2002 (to reverse confiscation, which itself is rendered impossible by Section 32A of the IBC, 2016) is wholly unnecessary. This is for the simple reason that Section 32A itself mandates that once a resolution plan is approved, no action can be taken against the properties of the corporate debtor in relation to an offence committed prior to the commencement of the CIRP of the corporate debtor, where such property is covered under a resolution plan approved by it under Section 31 of the IBC, 2016. It is it is wholly*

untenable to contend that the NCLT, and which is the Adjudicating Authority constituted under the IBC, 2016, is incompetent and/or powerless to either interpret or to give effect to the provisions of the very Act under which it was constituted.

26. We are of the clear view that looking at the purpose and object of not only Section 31, but also Section 32A of the IBC, 2016, the NCLT had all powers to direct the ED to raise its attachment in relation to the attached properties of the corporate debtor once a resolution plan that qualifies for immunity under Section 32A was approved, and those very properties were the subject matter of the resolution plan. This is the clear mandate of the legislature as enshrined in Section 32A of the IBC, 2016."

39. In so far as attachment of Corporate Debtor assets by the Enforcement Directorate is concerned, these assets are protected by the provisions contained u/s 32A (1) & 32A (2) of the Code, which provides for immunity to such assets from the liability for offence(s), after the resolution of insolvency of Corporate Debtor provided such assets have been acquired prior to commencement of Corporate Insolvency Resolution Process.

40. The Resolution Applicant before us is seeking the benefit of Section 32A of Insolvency and Bankruptcy Code, and has requested to remove all the charge/attachment/lien etc on the assets of the Corporate Debtor till effective date (date of approval of Resolution Plan by Hon'ble AA). It is the contention put forth by the Applicant (RP) that the approved Resolution Plan meets all requirements envisaged under the IBC and the Rules/ Regulations made thereunder. In this regard, the Resolution Professional has placed on record a certificate in requisite Form i.e. Form-H as prescribed under Regulation 39(4) of IBBI (CIRP) Regulations, 2016.

41. It is true that Section 32A of the IBC, 2016 provides that notwithstanding anything to the contrary contained in the IBC or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of CIRP ceases and the corporate debtor is not prosecuted for such an offence from the date of approval of the Resolution Plan by this Authority, when the Resolution Plan results in the change in management or control of the corporate debtor. But in **Rajiv Chakraborty vs. Directorate of Enforcement** (2022 SCC OnLine Del 3703 : (2023) 297 DLT 181), Hon'ble Delhi High Court categorically ruled that the power to attach under the PMLA would not fall within the ken of Section 14(1)(a) of the IBC, 2016. In the said case, Hon'ble High Court ruled that through Section 32A of the IBC, the legislature has authoritatively spoken of the terminal point where the power under the PMLA would not be exercisable and the non-obstante clause finding place in the IBC thus can neither be interpreted nor countenanced to have an impact far greater than that envisaged in Section 32A. In Para 116 of the judgment, Hon'ble High Court ruled that the provisional attachment of tainted properties does not inevitably lead to the debtor or the persons who hold the tainted properties being divested of a right to establish that the properties so attached could not constitute proceeds of crime. In the said judgment, Hon'ble High Court further ruled that though the bonafide third party claimant has a legitimate right to proceed ahead with enforcement of its claim in accordance with law, notwithstanding the order of attachment under PMLA, the later action is not rendered irrelevant or unenforceable. To amplify, Hon'ble High Court made it clear that in the situation as above (third party interest being prior to criminal activity) the order of

attachment under PMLA would remain valid and operative, even though the charge or encumbrance of such third party subsists but the State action would be restricted to such part of the value of the property as exceeds the claim of the third party. It is further made clear in the order passed by Hon'ble High Court that a secured creditor, being a bona fide third party claimant would be entitled to enforce its claim by disposal of the attached property, but the remaining value of the asset (after satisfying the claim of the secured creditor) would stay back for being dealt with in accordance with the PMLA. Paras 116-122 of the judgment of Hon'ble High Court in Rajiv Chakraborty (ibid) reads thus:-

> *"**116.** The Court also bears in mind that the provisional attachment of tainted properties does not inevitably lead to the debtor or the persons who hold the tainted property being divested of a right to establish that the properties so attached would not constitute proceeds of crime. It would be apposite to recollect that **Axis Bank** had duly dealt with the issue of bona fide third-party interests that may have come to be created over a period of time and the various avenues which stand created under the PMLA itself for an aggrieved person to seek the release of attached properties.*
>
> ***117.** Apart from the provision of an appeal that may be taken against the order passed by the Adjudicating Authority under Section 8 of the PMLA, the Court also takes note of sub-section (8) of Section 8 in terms of which an aggrieved party is granted a right to seek release of property even after it may have been confiscated in favor of the Union Government. The safeguards which stand created in respect of the third parties who may have bona fide obtained an interest in the attached properties was noticed and answered by **Axis Bank** as under:—*
>
> *"**149.** An order of attachment under PMLA, if it meets with the statutory pre-requisites, is as lawful as an action initiated by a bank or financial institution, or a secured creditor, for recovery of dues legitimately claimed or for enforcement of secured interest in accordance*

with RDBA or SARFAESI Act. An order of attachment under PMLA is not rendered illegal only because a secured creditor has a prior secured interest (charge) in the subject property. Conversely, mere issuance of an order of attachment under PMLA cannot, by itself, render illegal the prior charge or encumbrance of a secured creditor, this subject to such claim of the third party (secured creditor) being bonafide. In these conflicting claims, a balance has to be struck. On account of exercise of the prerogative of the State under PMLA, the lawful interest of a third party which may have acted bonafide, and with due diligence, cannot be put in jeopardy. The claim of bonafide third party claimant cannot be sacrificed or defeated. A contrary view would be unfair and unjust and, consequently, not the intention of the legislature. The legislative scheme itself justifies this view. To illustrate, reference may be made to sub-section (8) of Section 8 PMLA where-under a power is conferred on the special court to direct the Central Government to "restore" a property to the claimant with a legitimate interest even after an order of confiscation has been passed.

150. The legislation on money-laundering, as is the case of similarly placed other legislations providing for forfeiture or confiscation of illegally acquired assets, contains sufficient safeguards to protect the interest of such third parties as may have acted bonafide. Such safeguards and rights to secure their lawful interest in the property subjected to attachment (with intent to take it to confiscation) have already been noticed at length with reference to the statutory provisions. To recapitulate, and by way of illustration, reference may be made to the opportunity afforded by law (Section 8) to a person claiming "a legitimate interest" to approach the adjudicating authority and the appellate tribunal, as indeed the court, to prove that he had "acted in good faith", taking "all reasonable precautions", himself not being involved in money-laundering, to seek its "release" or "restoration". In this context, however, as also earlier noted, the presumptions that can be drawn in terms of Sections 23 and 24 of PMLA are to be borne in

mind, the burden of proving facts contrary to the case of money-laundering being on the person claiming to have acted bonafide.

xxx

162. But, in case an otherwise untainted asset (i.e. deemed tainted property) is targeted by the enforcement authority for attachment under the second or third part of the definition of "proceeds of crime", for the reason that such asset is equivalent in value to the tainted asset that was derived or obtained by criminal activity but which cannot be traced, the third party having a legitimate interest may approach the adjudicating authority to seek its release by showing that the interest in such property was acquired bona fide and for lawful (and adequate) consideration, there being no intent, while acquiring such interest or charge, to defeat or frustrate the law, neither the said property nor the person claiming such interest having any connection with or being privy to the offence of money-laundering.

163. Having regard to the above scheme of the law in PMLA, it is clear that if a bonafide third party claimant had acquired interest in the property which is being subjected to attachment at a time anterior to the commission of the criminal activity, the product whereof is suspected as proceeds of crime, the acquisition of such interest in such property (otherwise assumably untainted) by such third party cannot conceivably be on account of intent to defeat or frustrate this law. In this view, it can be concluded that the date or period of the commission of criminal activity which is the basis of such action under PMLA can be safely treated as the cut-off. From this, it naturally follows that an interest in the property of an accused, vesting in a third party acting bona fide, for lawful and adequate consideration, acquired prior to the commission of the proscribed offence evincing illicit pecuniary benefit to the former, cannot be defeated or frustrated by attachment of such property to such extent by the enforcement authority in exercise of its power under Section 8 PMLA.

164. Though the sequitur to the above conclusion is that the bonafide third party claimant has a legitimate right to proceed ahead with enforcement of its claim in accordance with law, notwithstanding the order of attachment under PMLA, the latter action is not rendered irrelevant or unenforceable. To put it clearly, in such situations as above (third party interest being prior to criminal activity) the order of attachment under PMLA would remain valid and operative, even though the charge or encumbrance of such third party subsists but the State action would be restricted to such part of the value of the property as exceeds the claim of the third party.

165. Situation may also arise, as seems to be the factual matrix of some of the cases at hand, wherein a secured creditor, it being a bonafide third party claimant vis-a-vis the alternative attachable property (or deemed tainted property) has initiated action in accordance with law for enforcement of such interest prior to the order of attachment under PMLA, the initiation of the latter action unwittingly having the effect of frustrating the former. Since both actions are in accord with law, in order to co-exist and be in harmony with each other, following the preceding prescription, it would be appropriate that the PMLA attachment, though remaining valid and operative, takes a back-seat allowing the secured creditor bonafide third party claimant to enforce its claim by disposal of the subject property, the remainder of its value, if any, thereafter to be made available for purposes of PMLA."

118. *It would also be pertinent to note that merely because a particular property may have come to be provisionally attached under the PMLA, that does not confer on the enforcing authority under the aforesaid enactment, a superior or overarching interest either in the property or the proceeds that may ultimately be obtained upon its disposal. This position was duly elucidated in* ***Axis Bank*** *in the following terms:—*

"165. *Situation may also arise, as seems to be the factual matrix of some of the cases at hand, wherein a secured creditor, it being a bonafide third party claimant vis-a-vis the alternative attachable*

property (or deemed tainted property) has initiated action in accordance with law for enforcement of such interest prior to the order of attachment under PMLA, the initiation of the latter action unwittingly having the effect of frustrating the former. Since both actions are in accord with law, in order to co-exist and be in harmony with each other, following the preceding prescription, it would be appropriate that the PMLA attachment, though remaining valid and operative, takes a back-seat allowing the secured creditor bonafide third party claimant to enforce its claim by disposal of the subject property, the remainder of its value, if any, thereafter to be made available for purposes of PMLA.

119. *Viewed in the aforenoted backdrop it is manifest that an order of attachment when made under the PMLA does not result in the corporate debtor or the Resolution Professional facing a fait accompli. The statutes provide adequate means and avenues for redressal of claims and grievances. It could be open to a Resolution Professional to approach the competent authorities under the PMLA for such reliefs in respect of tainted properties as may be legally permissible. Similarly, and as was explained by* ***Axis Bank****, a PAO made by the ED under the PMLA does not invest in that authority a superior or overriding right in property. Ultimately the claims of parties over the property that may be attached and the question of distribution and priorities would have to be settled independently and in accordance with law.*

120. *Accordingly and for all the aforesaid reasons, the writ petition shall stand dismissed. The challenge to the Provisional Attachment Orders dated 08 July 2020 and 05 August 2020 as well as orders of confirmation passed by the Adjudicating Authority dated 01 and 29 January 2021 on grounds as raised fails and stands negatived.*

121. *This order, however, shall not preclude the petitioner Resolution Professional from seeking release of the provisionally attached properties in accordance with law.*

122. *The Court further observes that the rights of the Enforcement Directorate over the properties subject to attachment would stand*

restricted to the extent that has been recognised in this decision as well as the judgment of the Court in Axis Bank."

42. As can be seen from Section 17(2)(e) of IBC, 2016, from the date of his appointment as IRP, the IP would e responsible for complying with the requirement under any law for the time being in force on behalf of the corporate debtor. Similarly, Section 18(1) of IBC, 2016 provides that the IRP shall monitor the assets of the corporate debtor and manage its operations until a Resolution Professional is appointed by the Committee of Creditors. The Section 25 of IBC, 2016 enumerates the duties of the Resolution Professional and provides that the RP represents and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of corporate debtor in judicial, quasi-judicial or arbitration proceedings. The explanation to Sec. 29(2) of IBC, 2016 clearly provide that the relevant information need to be provided by RP to Resolution Applicant in Information Memorandum (IM) would include the information relating to disputes by or against the corporate debtor. The explanation reads thus:-

"29. Preparation of information memorandum.—

.....

Explanation.—For the purposes of this section, "relevant information" means the information required by the resolution applicant to make the resolution plan for the corporate debtor, which shall include the financial position of the corporate debtor, all information related to disputes by or against the corporate debtor and any other matter pertaining to the corporate debtor as may be specified."

43. It is Regulation 36(2) of IBBI (CIRP) Regulations, 2016, which enumerate the key selling propositions and relevant information, which the Information Memorandum should highlight to convey the significant comprehensive profile of

the CD. The key selling points so enumerated also include the details of all material litigation and ongoing investigation, all proceedings initiated by government and statutory authorities. The clause (h) of Regulation 36(2) reads thus:-

> ***"36. Information memorandum.—***
> *.....*
> *(2) The information memorandum shall contain the following details of the corporate debtor-*
> *.....*
> *(h) details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;"*

44. The Regulation 37 of IBBI (CIRP) Regulations, 2016 specifically provided that a Resolution Plan shall provide for the measures as may be necessary for insolvency resolution of the corporate debtor. The measure provided in the Regulation also includes the provision regarding obtaining necessary approvals from the central and state government and other authorities. In the case of Rajiv Chakraborty (ibid), Hon'ble High Court could specifically rule that the statutory injunct against the invocation or utilisation of the powers available under PMLA would come into effect only once the trigger event envisaged under Sec. 32A comes into effect. According to Hon'ble High Court, the legislature in its wisdom chose to place an embargo upon the continuance of criminal proceedings including action of attachment under PMLA only once a resolution plan is approved or a measure in aid of liquidation is adopted. In Para 115 of the judgment in Rajiv Chakraborty (supra), Hon'ble High Court concluded that the power to attach under the PMLA would not fall within the ken of Sec. 14(1)(a) of IBC, 2016. Paras 110-115 of the judgment reads thus:-

*"**110.** The introduction of Section 32A constitutes an event of vital import since it embodies a provision which effectively shut out criminal proceedings including those under the PMLA upon the CIRP reaching the defining moment specified therein. However, when the Legislature introduced the said provision, it was conscious and aware of the fact that the provisions of the PMLA could be enforced against the properties of a corporate debtor notwithstanding the pendency of the CIRP. This the Court notes in light of the extent to which Section 14 could be recognised to legally operate under the statutory scheme and as has been explained hereinabove. Notwithstanding the above, the Legislature chose to structure that provision in a manner that the authorities under the PMLA would cease to have the power to attach or confiscate only when a Resolution Plan had been approved or where a measure towards liquidation had been adopted. The statutory injunct against the invocation or utilisation of the powers available under the PMLA was thus ordained to come into effect only once the trigger events envisaged under Section 32A came into effect. The Legislature thus in its wisdom chose to place an embargo upon the continuance of criminal proceedings including action of attachment under the PMLA only once a Resolution Plan were approved or a measure in aid of liquidation had been adopted.*

***111.** Section 32A which came to be introduced in 2020 in the IBC also represents the "later" enactment for the purposes of evaluating the non obstante clause argument as canvassed on behalf of the petitioner. It would be pertinent to observe that subsequent amendments in an existing statute have also been recognised to be viewed as later acts for the purposes of answering the import of a non obstante clause. In Bank of India v. Ketan Parekh, one of the questions which arose was whether the provisions of the **Special Courts (Trial of Offenses Relating to Transactions in Securities) Act, 1992** would have effect notwithstanding the enforcement of the **Recovery of Debts Due to Banks and Financial Institutions Act, 1993** which was the later statute. Since both statutes contained non obstante clauses, ordinarily the 1985 Act would have had to yield being*

the statute promulgated prior in point of time. However, the answer to the issue raised in Ketan Parekh came to be impacted by the insertion of Section 9-A in the 1985 Act by virtue of an amending act introduced 1994. Dealing with the impact of that later amendment the Supreme Court observed thus:—

"28. In the present case, both the two Acts i.e. the Act of 1992 and the Act of 1993 start with the non obstante clause. Section 34 of the Act of 1993 starts with non obstante clause, likewise Section 9-A (sic 13) of the Act of 1992. But incidentally, in this case Section 9-A came subsequently i.e. it came on 25-1-1994. Therefore, it is a subsequent legislation which will have the overriding effect over the Act of 1993. But cases might arise where both the enactments have the non obstante clause then in that case, the proper perspective would be that one has to see the subject and the dominant purpose for which the special enactment was made and in case the dominant purpose is covered by that contingencies, then notwithstanding that the Act might have come at a later point of time still the intention can be ascertained by looking to the objects and reasons. However, so far as the present case is concerned, it is more than clear that Section 9-A of the Act of 1992 was amended on 25-1-1994 whereas the Act of 1993 came in 1993. Therefore, the Act of 1992 as amended to include Section 9-A in 1994 being subsequent legislation will prevail and not the provisions of the Act of 1993."

112. *Their Lordships in* ***Ketan Parekh*** *thus came to hold that notwithstanding the original statute having been promulgated in 1985, the provisions of Section 9A would not stand overridden by the 1993 statute since the former had come to be enforced later in point of time.*

113. *While the decision of the Supreme Court in Pioneer Urban Land and Infrastructure Ltd. v. Union of India was also cited for the consideration of the Court, it would be pertinent to note that notwithstanding the two statutes in question there carrying non obstante clauses, the issue was ultimately answered based upon Section 88 of RERA which provided that its provisions would be in addition to and not in derogation of other*

statutes. This would be evident from the following observations as they appear in paragraphs 23 and 25 of the report:—

"23. A perusal of the aforesaid provisions would show that, on and from the coming into force of RERA, all real estate projects (as defined) would first have to be registered with the Real Estate Regulatory Authority, which, before registering such projects, would look into all relevant details, including delay in completion of other projects by the developer. Importantly, the promoter is now to make a declaration supported by an affidavit, that he undertakes to complete the project within a certain time period, and that 70% of the amounts realised for the project from allottees, from time to time, shall be deposited in a separate account, which would be spent only to defray the cost of construction and land cost for that particular project. Registration is granted by the authority only when it is satisfied that the promoter is a bona fide promoter who is likely to perform his part of the bargain satisfactorily. Registration of the project enures only for a certain period and can only be extended due to force majeure events for a maximum period of one year by the authority, on being satisfied that such events have, in fact, taken place. Registration once granted, may be revoked if it is found that the promoter defaults in complying with the various statutory requirements or indulges in unfair practices or irregularities. Importantly, upon revocation of registration, the authority is to facilitate the remaining development work, which can then be carried out either by the "competent authority" as defined by RERA or by the association of allottees or otherwise. The promoter at the time of booking and issue of allotment letters has to make available to the allottees information, inter alia, as to the stage-wise time schedule of completion of the project. Deposits or advances beyond 10% of the estimated cost as advance payment cannot be taken without first entering into an agreement for sale. Importantly, the agreement for sale will now no longer be a one-sided contract of adhesion, but in such form as may be prescribed, which balances the rights and obligations of both the promoter and the

allottees. Importantly, under Section 18, if the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale, he must return the amount received by him in respect of such apartment, etc. with such interest as may be prescribed and must, in addition, compensate the allottee in case of any loss caused to him. Under Section 19, the allottee shall be entitled to claim possession of the apartment, plot or building, as the case may be, or refund of amount paid along with interest in accordance with the terms of the agreement for sale. In addition, all allottees are to be responsible for making necessary payments in instalments within the time specified in the agreement for sale and shall be liable to pay interest at such rate as may be prescribed for any delay in such payment. Under Section 31, any aggrieved person may file a complaint with the authority or the adjudicating officers set up by such authority against any promoter, allottee or real estate agent, as the case may be, for violation or contravention of RERA, and Rules and Regulations made thereunder. Also, if after adjudication a promoter, allottee or real estate agent fails to pay interest, penalty or compensation imposed on him by the authorities under RERA, the same shall be recoverable as arrears of land revenue. Appeals may be filed to the Real Estate Appellate Tribunal against decisions or orders of the authority or the adjudicating officer. From orders of the Appellate Tribunal, appeals may thereafter be filed to the High Court. Stiff penalties are to be awarded for breach and/or contravention of the provisions of RERA. Importantly, under Section 72, the adjudicating officer must first determine that the complainant has established "default" on the part of the respondent, after which consequential orders may then follow. Under Section 88, the provisions of RERA are in addition to and not in derogation of the provisions of any other law for time being in force and under Section 89, RERA is to have effect notwithstanding anything inconsistent contained in any other law for the time being in force.

25. It is significant to note that there is no provision similar to that of Section 88 of RERA in the Code, which is meant to be a complete and exhaustive statement of the law insofar as its subject-matter is concerned. Also, the non obstante clause of RERA came into force on 1-5-2016, as opposed to the non obstante clause of the Code which came into force on 1-12-2016. Further, the amendment with which we are concerned has come into force only on 6-6-2018. Given these circumstances, it is a little difficult to accede to arguments made on behalf of the learned Senior Counsel for the petitioners, that RERA is a special enactment which deals with real estate development projects and must, therefore, be given precedence over the Code, which is only a general enactment dealing with insolvency generally. From the introduction of the Explanation to Section 5(8)(f) of the Code, it is clear that Parliament was aware of RERA, and applied some of its definition provisions so that they could apply when the Code is to be interpreted. The fact that RERA is in addition to and not in derogation of the provisions of any other law for the time being in force, also makes it clear that the remedies under RERA to allottees were intended to be additional and not exclusive remedies. Also, it is important to remember that as the authorities under RERA were to be set up within one year from 1-5-2016, remedies before those authorities would come into effect only on and from 1-5-2017 making it clear that the provisions of the Code, which came into force on 1-12-2016, would apply in addition to RERA."

114. *On a consideration of the aforesaid, the Court comes to the conclusion that Section 32A would constitute the pivot by virtue of being the later act and thus govern the extent to which the non obstante clause enshrined in the IBC would operate and exclude the operation of the PMLA. As has been observed hereinabove, while both IBC and the PMLA are special statutes in the generic sense, they both seek to subserve independent and separate legislative objectives. The subject matter and focus of the two legislations is clearly distinct. When faced with a situation where both the special legislations incorporate non obstante clauses, it*

becomes the duty of the Court to discern the true intent and scope of the two legislations. Even though the IBC and Section 238 thereof constitute the later enactment when viewed against the PMLA which came to be enforced in 2005, the Court is of the considered opinion that the extent to which the latter was intended to capitulate to the IBC is an issue which must be answered on the basis of Section 32A. The introduction of that provision in 2020 represents the last expression of intent of the Legislature and thus the embodiment of the extent to which the provisions of the PMLA are to give way to proceedings initiated under the IBC.

115. *The Court has independently come to the conclusion that the power to attach under the PMLA would not fall within the ken of Section 14(1)(a) of the IBC. Through Section 32A, the Legislature has authoritatively spoken of the terminal point whereafter the powers under the PMLA would not be exercisable. The events which trigger its application when reached would lead to the erection of an impregnable wall which cannot be breached by invocation of the provisions of the PMLA. The non obstante clause finding place in the IBC thus can neither be interpreted nor countenanced to have an impact far greater than that envisaged in Section 32A. The aforesaid issue stands answered accordingly."*

45. In the wake of the aforementioned, it is viewed that the IBC and the CIRP Regulations framed thereunder envisage and acknowledge the requirement of the judicial proceedings/investigations be noted by the SRA and the measures in that regard be provided in the Resolution Plan under the head contingencies or otherwise. The Regulation 38(2)(d) specifically require the mention of the provisions for the manner in which proceedings in respect of avoidance transactions, if any will be pursued after the approval of the Resolution Plan. Thus, apparently the scheme of the IBC does not stipulate that the SRA would be completely immune from all sort of shackles qua the judicial process. Nevertheless, in the case of Rajiv Chakraborty, Hon'ble High Court has provided

that the RP can always approach the Authorities to release the attached properties of CD and the third parties like secured creditor, etc. would have prior claim over the attached properties, over the PMLA process. But such proposition apply only to such third party claimants, whose right accrue prior to commencement of the criminal proceedings. It would be dangerous to evolve any such propositions, which may envisage that the properties covered under Sec. 3 of the Prevention of Money Laundering Act, 2002, attached in terms of the provisions of Sec. 5 of the Act would be released from attachment on approval of the Resolution Plan by this Tribunal. Such proposition may lead to the attempts to park the properties under Sec. 3 of the PMLA with certain companies and then initiate the CIRP qua the same only for the purpose of changing the hands qua the properties/assets to ensure that the property is clean in the hands of the SRA. A thought may evolve that the benefit of Sec. 32A of IBC, 2016 is available to SRA only after approval of the Plan, thus, if investigation is pending against the CD, the Adjudicating Authority may refuse to approve the Plan. Such approach may not work either in the interest of economy or to achieve the object of the Code. The approach would also be perceived as antithesis to realisation of the debt, which the creditors could extend to CD before commencement of CIRP. Thus this Tribunal need to approach the situation with care and precision. Sec. 32A of IBC, 2016 absolve the corporate debtor from liability for offence committed prior to commencement of CIRP and the new management has no liability towards such offence. The Corporate debtor stands discharged from the prosecution, with the approval of Resolution Plan.

46. Sec. 32A(2) of the IBC, 2016 provides that no action shall be taken against the property of the Corporate Debtor in relation to an offence committed prior to commencement of the CIRP of the CD where such property is covered under a Resolution Plan approved by the Adjudicating Authority under Sec. 31 which results in the change in control of corporate debtor to a person or sale of liquidation assets under the provision of Chapter III of Part 2 of the Code to a person mentioned in clause (i) & (ii). A careful reading of Sec. 32A(2) reveals that it is only the future action of attachment/seizure/retention/confiscation of the property of the corporate debtor which is prohibited after approval of the plan. The Sec. 32A does not provide that a property already attached under PMLA would also be released after the approval of the plan by this Tribunal. In fact, the safeguard to the property of CD against institution or continuation of proceedings against the CD has been provided under Sec. 14 of IBC. However, in the case of Rajiv Chakraborty, Hon'ble High Court of Delhi has ruled that such safeguard is not available qua the proceedings under PMLA. The view taken by Hon'ble High Court can have two ramifications viz:-

(i) The properties attached by the authorities under PMLA may not be treated as asset of the CD under Section 18(f) read with Section 14 of the Code;

(ii) The proceedings under PMLA are treated differently from other proceedings.

47. Of course in Rajiv Chakraborty (supra) Hon'ble High Court could view that Sec. 32A would apply to PMLA as it would apply to other criminal proceedings. Thus, the thought that the PMLA is treated on the pedestal different from other

criminal proceedings for the purpose of IBC is ruled out. In fact in the said case, the fate of ownership of the property is kept in doubt and it is ruled that to the extent of the interest of the third party prior to commencement of proceedings under PMLA, the attached property may be treated as asset of secured creditor/third party, but remaining part thereof would be regulated as per outcome of proceedings under PMLA.

48. The proceedings under PMLA are in two parts. The first part is attachment of the properties involved in money laundering under Sec. 5 of PMLA, 2002, the jurisdiction of Adjudicating Authority to confirm the attachment and the possession of the property being taken by the Director, ED or any other officer authorised by him in this behalf and the second part is the confiscation of the property as per the order of special court under Section 8(7) of PMLA, 2002. In terms of the provisions of Sec. 5(8) of PMLA, 2002, the confiscated property stands vested in the Central Government. As is apparent from Sec. 5(8) of PMLA, even after the property stands vested in the central government, the special court may direct the central government to restore such confiscated property or part thereof to a claimant with a legitimate interest with the property who may have suffered a quantifiable loss as a result of the offence of money laundering. Sec. 9 and 10 of the PMLA provides that how the confiscated property is administered. From Sec. 58A of the PMLA, it is clear that where on closure of a criminal case or conclusion of a trial of criminal court, it is found that the property in question is not involved in money laundering, the special court on an application moved by the concerned person or the Director after notice to the other party, order release of the property entitled to receive it.

49. From the aforementioned it is clear that if a property is covered under Sec. 3 and 5 of the PMLA and is involved in money laundering, the same need to be vested in central government and cannot be treated as asset/property of CD. Any property, which is not involved in money laundering can always be claimed by CD/SRA by resorting to the due process of law. It is not within the jurisdiction of this Tribunal to adjudicate as to whether a property is involved in money laundering or not. Such jurisdiction is vested with Adjudicating Authority and the Special Court under PMLA. In our considered view, it is not open to this Tribunal to order release of a property, attached under PMLA, by granting relief/ concession to SRA.

50. As far as the judgment of Hon'ble High Court of Judicature at Bombay in **Shiv Charan and Ors. vs. Adjudicating Authority under the Prevention of Money Laundering Act, 2002 and Anr.** (Writ Petition (L) No. 9943 of 2023) is concerned in the said case Hon'ble High Court of Bombay ruled that it is untenable to contend that the NCLT is incompetent and/or powerless to either interpret or to give effect to the provisions of vary act under which it was constituted. Para 25 of the judgment is reproduced hereinabove. In sum and substance the view taken by Hon'ble High Court in the case of Shiv Charan is that this Tribunal is well within its power to direct release of the property attached under PMLA. It is not the view taken by Hon'ble High Court that this Tribunal should mandatorily release the attached property. In the said case, the order passed by this Tribunal, approving the Plan was not under challenge before Hon'ble High Court of Bombay. Para 40 and 53 of the judgment reads thus:-

"40. Regardless of whether Respondent No. 1 in WP 9943 (the Adjudicating Authority under the PMLA, 2002) discharges it's duty on its own accord (by taking judicial notice) or on the ED drawing its attention to the decision of the Hon'ble Supreme Court, to release the attachment by operation of Section 32A of the IBC, 2016, the NCLT (the Adjudicating Authority under the IBC, 2016), is clothed with the explicit power to answer questions of law relating to the resolution (and that too notwithstanding anything contained in any other applicable law, which includes the PMLA, 2002. Section 60(5) clearly empowers the NCLT to answer the question of whether the statutory immunity under Section 32A has accrued to a corporate debtor. As a consequence, the NCLT is well within its jurisdiction and power to rule that prior attachment of the property of a corporate debtor that is subject matter of an approved resolution plan, must be released, if the jurisdictional facts for purposes of Section 32A exist.

X X X

53. In the result, we rule that the attachment by the ED over the Attached Properties, being the four bank accounts of the Corporate Debtor, (with aggregate balances to the tune of Rs. 3,55,298/- and any interest earned thereon) and the 14 flats constructed by the Corporate Debtor valued at Rs. 32,47,55,298/-, came to an end on 17th February, 2023. Such release has occurred by operation of Section 32A of the IBC, 2016, and the ministerial act of communicating must be communicated by the Respondents in WP 9943 and the Petitioner in WP 29111 forthwith to the Corporate Debtor, marking a copy to the Petitioner in WP 9943, within a period of six weeks from the date of this judgment. Such a communication is necessary to enable the Attached Properties to be bankable assets that can be deployed into the revival of the Corporate Debtor in terms of the objective of resolution."

51. In the case before Hon'ble Bombay High Court, when this Tribunal had ordered release of the property attached by ED, upon approval of Plan, Hon'ble High Court viewed that this Tribunal was well within its power to release the

property from attachment and in the absence of challenge to the order of approval of Plan, Hon'ble High Court refused to look into the issue. In the present case before us, neither the issue of application of moratorium is involved nor an issue of ramification of approval of plan by this Tribunal is involved. The issue involved is as to whether we should grant relief and concession in the nature of direction to ED to release the property attached by it. We have already viewed that the property of the CD attached by ED cannot be directed to be released and the approval of the Plan would also not result in such release. In CCE vs. M/s Alnoori Tobacco Products, Hon'ble Supreme ruled thus:-

> ***"11.*** *Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark on lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton [1951 AC 737 : (1951) 2 All ER 1 (HL)] (AC at p. 761), Lord MacDermott observed : (All ER p. 14 C-D)*
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> *"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge...."*
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> ***12.*** *In Home Office v. Dorset Yacht Co. [(1970) 2 All ER 294 : 1970 AC 1004 : (1970) 2 WLR 1140 (HL)] Lord Reid said (All ER p. 297g-h), "Lord*

Atkin's speech … is not to be treated as if it were a statutory definition. It will require qualification in new circumstances". Megarry, J. in Shepherd Homes Ltd. v. Sandham (No. 2) [(1971) 1 WLR 1062 : (1971) 2 All ER 1267] observed:"One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament." And, in British Railways Board v. Herrington [(1972) 1 AC 877 : (1972) 2 WLR 537 : (1972) 1 All ER 749 (HL)] Lord Morris said : (All ER p. 761c)

> *"There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case."*

***13.** Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.*

***14.** The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus : (Abdul Kayoom v. CIT [AIR 1962 SC 680] , AIR p. 688, para 19)*

> *"19. … Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."*

* * *

> *"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."*

52. Indubitably, the value of the plan as also the amount distributed to the stakeholders is not such as should have been. Nevertheless, it is stare decisis

that once in exercise of its commercial wisdom the CoC has accepted the Resolution Plan, this Tribunal/Adjudicating Authority should not interfere with the same. In **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors,** Hon'ble Supreme Court ruled that the limited power of judicial review available to this this Tribunal is in four corners of Section 30(2) of the Code. It is also the view taken by Hon'ble Supreme Court that such power of review does not enable this Tribunal to interfere with the Resolution Plan.

53. Also in **re Vallal RCK vs. M/s Siva Industries and Holdings Limited & Ors**, Hon'ble Supreme Court ruled that the commercial wisdom of the CoC has been given paramount status without any judicial intervention to ensure the completion of stated processes within the timelines prescribed by the IBC. Also in **Arun Kumar Jagatramka vs. Jindal Steel and Power Limited and Another**, Hon'ble Supreme Court ruled that the legislature has been working hard to ensure that the efficacy of the same would remain robust, thus the need for judicial interaction or innovation from NCLT and NCLAT should be kept at its bare minimum. The Paras 39 & 40 of the application filed for approval of plan containing reference of the aforementioned Judgments reads thus:-

> *"39. The Hon'ble Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors**, held that "the limited judicial review available to AA has to be within the four corners of section 30(2) of the Code. Such review can in no circumstance trespass upon a business decision of the majority of the CoC. As such the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved".*

40. *The Hon'ble Supreme Court of India, in the recent ruling in* ***re Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors,*** *has held as under:-*

21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of K. ***Sashidhar v. Indian Overseas Bank and Others, Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.***

27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC. We may refer to the recent observation of this Court made in the case of ***Arun Kumar Jagatramka v. Jindal Steel and Power Limited and Another:***

"95. ….However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicatory authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which

sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC....."

54. Besides, in **Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr.** (Civil Appeal No. 3224 of 2020), the Hon'ble Supreme Court ruled that the scope of examination of the application for approval of Resolution Plan by this Tribunal is confined to the provisions of Section 30(2) of IBC, 2016. Para 153 of the Judgment of the reads thus:-

"153 Regulation 38(3) mandates that a Resolution Plan be feasible, viable and implementable with specific timelines. A Resolution Plan whose implementation can be withdrawn at the behest of the successful Resolution Applicant, is inherently unviable, since open-ended clauses on modifications/withdrawal would mean that the Plan could fail at an undefined stage, be uncertain, including after approval by the Adjudicating Authority. It is inconsistent to postulate, on the one hand, that no withdrawal or modification is permitted after the approval by the Adjudicating Authority under Section 31, irrespective of the terms of the Resolution Plan; and on the other hand, to argue that the terms of the Resolution Plan relating to withdrawal or modification must be respected, in spite of the CoC's approval, but prior to the approval by the Adjudicating Authority. The former position follows from the intent, object and purpose of the IBC and from Section 31, and the latter is disavowed by the IBC's structure and objective. The IBC does not envisage a dichotomy in the binding character of the Resolution Plan in relation to a Resolution Applicant between the stage of approval by the CoC and the approval of the Adjudicating Authority. The binding nature of a Resolution Plan on a Resolution Applicant, who is the proponent of the Plan which

has been accepted by the CoC cannot remain indeterminate at the discretion of the Resolution Applicant. The negotiations between the Resolution Applicant and the CoC are brought to an end after the CoC's approval. The only conditionality that remains is the approval of the Adjudicating Authority, which has a limited jurisdiction to confirm or deny the legal validity of the Resolution Plan in terms of Section 30 (2) of the IBC. If the requirements of Section 30(2) are satisfied, the Adjudicating Authority shall confirm the Plan approved by the CoC under Section 31(1) of the IBC."

55. As can be seen from Section 31(4) of IBC 2016, the Resolution Applicant shall pursuant to the Resolution Plan approved under sub-Section (1) of Section 31 of IBC, 2016 obtain the necessary approvals required under any law for the time being in force within a period of one year from the date of the order passed under Section 31(1) of IBC 2016. Besides, in terms of the provisions of Section 14 of the Code, even during the period of CIRP, the license, permit, registration, quota, concession, clearances, or similar grant or right given by the Central Government/State Government, Local Authority, Sectoral Regulator or any other Authority constituted under any other law for the time being in force shall not be suspended or terminated on the ground of Insolvency subject to the condition that there is no default in payment of current dues arising for the use or continuance of the license, permit, registration, quota, concession, clearance or similar grant or right during the moratorium period. Thus, when even during the moratorium period, the facilities mentioned above are made available to the CD only when there is no default in payment of the current dues, on approval of the Resolution Plan, the SRA/CD cannot be put on better footings. For convenient reference, the Explanation is reproduced herein below:-

*"**14. Moratorium.—**(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -*

.....

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation.- For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;"

56. In any case, in terms of the provisions of Sections 13 and 15 of the IBC 2016 read with Regulations 6, 6A, 7, 8, 8A, 9 and 9A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, all the claimants such as Operational Creditors, Financial Creditors, Creditors in Class, Workmen and Employees and other Creditors can raise their claims before the IRP/RP. The claims are dealt with by IRP in terms of the provisions of Section 18(1)(b) of the IBC, 2016 and by RP in terms of the provisions of Section 25(1)(b) thereof read with Regulations 12A, 13 and 14 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Thereafter, the RP prepares an Information Memorandum in terms of the provisions of Regulation 36(2) of IBBI

(Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Memorandum contains inter alia a list of creditors containing the range of creditors, the amounts claimed by them, the amount of their claim admitted and the security interest if any in respect of such claims. As has been provided in Regulation 36(1) of the Regulations (ibid), the Information Memorandum is required to be submitted in electronic form to each member of CoC, on or before 95th day from the Insolvency commencement date. As has been provided in Regulation 36A of the Regulations the RP publish brief particulars of the invitation for Expression of Interest in Form G of Schedule I to the Regulations at the earliest i.e. not later than 60th day from the Insolvency commencement date, from interested and eligible Prospective Resolution Applicants to submit Resolution Plans. As can be seen from Regulation 36B of the Regulations, the RP shall issue Information Memorandum Evaluation Matrix (IMEM) and request for Resolution Plans, within 5 days of the date of issue of provisional list of eligible Prospective Resolution Applicants (required to be issued under Regulation 36A(10) of the Regulations). It is with reference to such Information Memorandum Evaluation Matrix that the RP issues request for Resolution Plan. The request for Resolution Plan details each step in the process and the manner and purposes of interaction between the Resolution Professional and the Prospective Resolution Applicant. The Resolution Plan submitted after consideration of the IMEM and RFRP is then examined by the Committee of Creditors. Nevertheless, it needs to satisfy the requirements of Regulation 37 and 38 of the extant Regulations. Once the plan is approved by the CoC, in terms of the provisions of Regulations 39 of the aforementioned Regulations, it virtually becomes a contract entered into

between the CD represented through RP, SRA and the Creditors of the CD. On being approved by this Adjudicating Authority, by operation of Section 31(1) of the Code, the plan becomes binding on the Corporate Debtor and 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 enforced such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan. Thus, Section 31(1) of IBC, 2016, takes care of most of the relief/concession/waiver solicited by the Resolution Applicant.

57. Besides, in terms of the provisions of Section 32A, for an offence committed prior to the commencement of the Corporate Insolvency Resolution Process, the liability of the CD ceases and the CD is not liable to be prosecuted from the date of approval of Resolution Plan by this Adjudicating Authority, if the Resolution Plan results in change of management or control of the CD to a person who was not promotor or in the management or control of the CD or a related party of such a person or a person with regard to whom the concerned Investigating Agency has reason to believe that he had abated 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. In such cases, where the prosecution is instituted against the CD, during CIRP, the CD stands discharged qua the same from the date of approval of the Resolution Plan. Nevertheless, every person who was a designated partner as defined in clause (j) of Section 2 of the Limited Liability Partnership Act, 2008, "an officer who is in default" as defined in Clause (60) of Section 2 of Companies Act, 2013 or was in any manner in charge of, or responsible to the

CD for the conduct of his business or associated with the CD in any manner and was directly or indirectly involved in the commission of an offence as per the report submitted or complaint filed by Investigating Agency shall continue to be liable to be prosecuted and punished for such an offence committed by the Corporate Debtor notwithstanding the Corporate Debtors' liability ceases after approval of the plan.

58. In the wake of the provisions of Section 32A(2), no action is 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 CD, where such property is covered under Resolution Plan approved by this Authority under Section 31, which result in the change in the control of the CD to a person who was not a promotor or in the management or control of the Corporate Debtor or related party of such person or a person with regard to whom the Investigating Agency has reason to believe that he had abated or conspired for commission of the offence and has submitted or filed a report or complaint to the relevant statutory authority or Court.

59. The action against the property of the Corporate Debtor as referred to in Section 32A of the Code includes the attachment, seizure, retention or confiscation under such law as may be applicable to the Corporate Debtor. One may also be not oblivious of the fact that in the backdrop of provisions of Section 31(3)(a) of the IBC, 2016, the moratorium order passed by the Adjudicating Authority under Section 14 ceases to have effect.

60. In sum and substance, the SRA/CD would be entitled to no other relief/concession/waiver except those, which are available to it as per the provisions of Section 31(1) and 32A of IBC, 2016. Nevertheless, the properties which are already attached by ED, under PMLA would not be released and it would be for the SRA to resort to the appropriate proceedings to seek remedy in this regard. In any case, the changed management covered under Sec. 32A(1)(a) & (2)(i) of IBC, 2016, would not be entitled for any criminal consequences for the offences committed by the ex-management of the CD prior to commencement of the CIRP. It is also noticed that though in the certificate furnished by the RP in Form-H prescribed under Regulation 39(4) of IBBI (CIRP) Regulations, 2016, as also in the Affidavit filed by him, the RP has authenticated that the SRA does not suffer any ineligibility under Sec. 29A of IBC, 2016, but in terms of provisions of Sec. 30(1) of the Code, a Resolution Applicant should submit the Resolution Plan along with an affidavit stating that he is eligible under Sec. 29A to submit a Resolution Plan, to the Resolution Applicant. We could not find any such affidavit filed by SRA on record. Nevertheless, in the interest of justice we deem it appropriate to give an opportunity to SRA to file the affidavit required in terms of provisions of Sec. 29A read with Sec. 30(1) of the IBC, 2016.

61. In the backdrop of aforementioned factual position, discussion, analysis and findings, **the IA-01/2024 filed by the RP for approval of the Resolution Plan is allowed. The Plan submitted by the SRA, certified by the RP is approved subject to filing of Affidavit of SRA under Section 29A r/w Sec. 30(1) of IBC, 2016 by the RP within 15 days of this Order.** It is made clear that no relief/concession is accorded to the SRA. The relief sought regarding

direction to ED to release the property of the CD attached by it is specifically rejected. It would be open to SRA to resort to the remedies available under PMLA for release of the attached properties in accordance with law. As has been noted hereinabove, the SRA has committed that it would implement the plan irrespective of the fact that no relief/concession sought by him is granted by this Tribunal. If the affidavit of SRA under Sec. 29A read with Sec. 30(1) of the Code is not filed within 15 days from the date of uploading of this order, the application for approval of plan would be deemed to be rejected and the security amount deposited by the SRA would stand forfeited.

62. The SRA shall furnish the updated Performance Bank Guarantee which should remain valid till the implementation of the Resolution Plan. The SRA and the monitoring committee shall ensure that the Plan qua Resolution of Insolvency of CD, submitted by it is implemented in letter and spirit, with due deference to all the terms and conditions thereof. The Plan shall be binding on the Corporate Debtor and its employee, members, creditors (including the Central, 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, such as authority to whom the statutory dues are owed), Guarantors and other Stakeholders involved in the Resolution Plan. The Moratorium declared under Section 14 of IBC 2016 shall cease to have effect forthwith. The Resolution Professional shall forward all the records relating to the conduct of the CIRP and the Resolution Plan to IBBI to be recorded on its data base (Section 31(3)(b) of IBC 2016). The RP shall also forthwith send a copy of this order to the participants and the Resolution Applicant. He would also send a copy of this order to the ROC concerned within

15 days of this order. The RP shall intimate each claimant about the principle or formulae, as the case may be, for payment of debts under the Plan. The SRA shall act in terms of the provisions of Section 31(4) of IBC 2016. The Monitoring Committee shall file the progress report regarding implementation of the Plan before this Adjudicating Authority, every month.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)