

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Item No. 213
(IB)-334(ND)/2018
IA-1833/ND/2020, IA-442/ND/2024, CA-124/2019

IN THE MATTER OF:

(Under Section 7 of IBC, 2016)

Ranjit Das & Ors.

... Applicant/Financial Creditor

Versus

M/s. MSX Mall Private Limited

... Respondent/Corporate Debtor

AND IN THE MATTER OF IA. NO. 1833/ND/2020:

(Under Section: 31(1) of IBC, 2016)

Mr. Anil Kumar Jain

(RP of MSX Mall Private Limited)
255-B, IInd Floor, Block A-1,
Lawrence Road, Keshav Puram,
New Delhi – 110035

... Applicant

Versus

Madhav Saran Agarwal & Alka Agarwal

R/o House No. D-88, Sector 26,
Noida, Gautam Buddha Nagar,
Uttar Pradesh

**... Resolution Applicants/
Ex-Directors & Promoters**

Under Section: 31(1) of IBC, 2016

Order Delivered on: 03.04.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Respondent : Adv. Gaurav Singh, Adv. Apoorv Agarwal for R-5 in
IA-124/2019

For UPSIDA : Adv. Rajesh Raina, Adv. Shubham Sharma

For the RP : Adv. Abhishek Anand, Adv. Mritunjay, Adv. Yogesh
Bihani, Adv. Anil Kumar Jain, CA Ankit Goel

For the India Housing Finance Ltd. : Adv. Sumesh Dhawan, Adv. Vatsala Kak, Adv. Ankita Bajpai, Adv. Raghav Dembla in IA-1833/2020

ORDER

The present application has been preferred by the RP under Section 31(1) of IBC, 2016, seeking approval of the plan. The application was previously considered by this Tribunal and was rejected in terms of the order dated 10.11.2023 with the following observations:-

“10. Since the Resolution Applicant/Ex-Directors have been found ineligible to submit the Resolution Plan under Section 29A(c) as well as under Section 29A(g) of IBC 2016, we have no other option but to reject the IA-1883 of 2020 seeking approval of the Resolution Plan, and accordingly, the Resolution Plan is rejected.

11. Further, since the maximum permissible period of CIRP of 330 days has since lapsed, there is no other option but to order the Liquidation of the Corporate Debtor. Ordered accordingly.”

2. The order passed by this Adjudicating Authority was assailed before Hon'ble NCLAT and vide order dated 08.12.2023 passed in Company Appeal (AT) (Insolvency) No. 1656 of 2023, the Hon'ble NCLAT could reverse the same, by taking the view that as per the Judgment of Hon'ble Supreme Court in Hari Babu Thota in Civil Appeal No. 4422/2023 decided on 29.11.2023, even when the MSME certificate qua the CD was procured after commencement of CIRP, but before submission of Resolution Plan, the CD was to be treated as MSME. Further, the order of recovery passed under Section 66 while rejecting the application filed u/s 31(1) of IBC, 2016 will not attach any ineligibility to the Applicant. Para 3 to 8 of the judgment reads thus:-

“3. Learned Counsel for the Appellant submits that now the issue is covered by the judgment of the Supreme Court in Civil Appeal No. 4422 of 2023 Hari Babu Thota, decided on 29.11.2023.

4. Learned Counsel for the Liquidator submits that liquidator has taken charge after the liquidation and several claims have been received and one meeting of the Stakeholder Consultation Committee had already been held.

5. We have considered submission of the parties and perused the record.

6. In view of the judgment of the Hon’ble Supreme Court in Hari Babu Thota (supra), we are of the view that Appellant cannot be held to be ineligible to submit the resolution plan. The Adjudicating Authority has committed error in holding the Appellant ineligible only on the ground that the Certificate was obtained on 24.12.2019. Learned Counsel for the Liquidator submitted that there is also an order passed by the Adjudicating Authority on the same date i.e. 10.11.2023 directing for recovery under Section 66 of the Insolvency and Bankruptcy Code, 2016.

7. In so far as declaring the Appellant ineligible on the basis of the fact that registration was obtained on 24.12.2019, we are of the view that issue is covered by the Judgment of the Hon’ble Supreme Court in Hari Babu Thota (supra) hence the order declaring ineligible the Appellant cannot be sustained. In so far as the recovery order directed against the Appellant, that is not subject matter of this appeal. Thus, we are not required to express an opinion with regard to order of recovery in this appeal. However, the order of recovery passed on 10.11.2023 cannot attached any ineligibility under Section 29A(g) of the Insolvency and Bankruptcy Code, 2016.

8. We thus set aside the order impugned. The Consequence of this order is that I.A. No. 1833/2020 is revived before the Adjudicating Authority to be considered afresh and to be decided accordingly.”

3. In the wake, the IA filed for approval of Resolution Plan is taken up for consideration. The background of the factual matrix has been captured in para 1 to 17 of the application which reads thus:-

“1. *That the Corporate Debtor is registered with the Ministry of Corporate Affairs ("MCA") in the name of "MSX Mall Private Limited", bearing CIN U45201DL2002PTC115916, having its registered office at A-44, Ground Floor, Shakarpur, New Delhi-110092 and corporate office at 601-602, Ocean Heights, Sector-18, Noida, Uttar Pradesh with an authorized share capital of Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lakh only) and paid up share capital of Rs. 1,49,92,000/- (Rupees One Crores Forty Nine Lakh Ninety Two Thousand only). The Corporate Debtor has the following directors on its board:*

| S. No. | Name of Director | DIN/ PAN |
|--------|--------------------------|----------|
| 1. | Mr. Madhav Saran Agarwal | 00029103 |
| 2. | Mrs. Alka Agarwal | 01607698 |

2. *That the Corporate Debtor is having a Commercial Mall in the name of "MSX Mall" situated at B-4, Site -IV, Surajpur Industrial Area, Greater Noida, Uttar Pradesh spread over 17,457 sq. Mtrs. of land and it consists of four floors and double basement for parking, constructed area 4.50 lakh sq. ft. (approx.) out of which saleable area in the mall is 2.93 lakh sq. ft. (approx.). The land for the Mall has been obtained from Uttar Pradesh State Industrial Development Corporation ("**UPSIDC**") on lease.*

3. *That as confirmed by the ex-director/promoters of the Corporate Debtor, the core investment in plant and machinery of the Corporate Debtor, as per the last audited balance sheet is less than Rs. 10 Crores and therefore, the Corporate Debtor falls under the ambit of MSME Act, 2006. Pursuant to the direction of this Hon'ble Tribunal*

vide its order dated November 28, 2019 the Resolution Applicants applied for registration of the corporate debtor as MSME on December 24, 2019. (The copy of Certificate of MSME along with copy of an email sent by the Resolution Professional to the Resolution Applicants is annexed herewith and marked as **Annexure-1**).

4. That this Hon'ble Tribunal was pleased to pass an order dated July 09, 2018 for initiation of Corporate Insolvency Resolution Process ("**CIRP**") with respect to the Corporate Debtor, pursuant to an application filed by Mr. Ranjit Das and others ("**Financial Creditors**") under Section 7 of the Code, wherein undersigned was appointed as the Interim Resolution Professional ("**IRP**") and later on confirmed as the Resolution Professional in the first meeting of COC held on October 11, 2018 and the same was confirmed by this Hon'ble Tribunal vide its order dated October 25, 2018. That the period of 180 days was to end on January 05, 2019. However, after extension/exemption the revised date for completion of CIRP of the Corporate Debtor was turned to be February 03, 2020. (Copy of orders dated July 09, 2018 and October 25, 2018 is annexed herewith and marked as **Annexure-2**).
5. That pursuant to the receipt of the aforesaid order dated July 09, 2018 (received on July 23, 2018), the IRP made a public announcement in accordance with section 15 of the Code read with Regulation 6 of Chapter III of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**"), in two newspapers viz. "Financial Express" and "Jansatta". The said announcement was also published on the website of the Insolvency and Bankruptcy Board of India ("**IBBI**"). (Copy of the Public Announcement made on July 26, 2018 is attached herewith and marked as **Annexure-3**).

6. That pursuant to the Regulation 12 (2) of CIRP Regulations, the creditors of the Corporate Debtor could submit their claims with proof to the IRP or Resolution Professional on or before Oct 24, 2018, which was further extended from time to time.
7. That one of the Financial Creditor, M/s Dedicated Digital Machines Private Limited filed an application under section 60(5) of the Code having CA No. 82/2019 for the inclusion of such creditors in the committee of creditors who were not assigned voting rights due to delayed submission of claims as per the order of this Hon'ble tribunal dated November 26, 2018. This Hon'ble Tribunal vide order dated January 03, 2020 directed the Resolution Professional to consider the names of all the creditors who filed their claims after October 24, 2018 for the purpose of the voting power and accordingly the Resolution Professional reconstituted the CoC and submitted the report certifying re-constitution of CoC (seventh revision) and list of creditors on January 06, 2020.
8. In Compliance with Section 21(1) of the Code, the Applicant certified the constitution of the Committee of Creditors ("**COC**") of Financial Creditors in accordance with Regulation 16A of the CIRP Regulations, with the below mentioned voting share of the members of COC:

| Sl. No. | Name of Financial Creditors | Voting % |
|--------------|--|-------------|
| 1. | Indiabulls Housing Finance Limited | 3.23% |
| 2. | Religare Finvest Limited and Religare Housing Development Finance Corporation | 3.85% |
| 3. | NS Dreamcon Pvt. Ltd. | 2.59% |
| 4. | Sunita Bhati | 0.43% |
| 5. | BMW India Financial Services Pvt. Ltd | 0.03% |
| 6. | Corporation Bank | 0.02% |
| 7. | Creditors in Class, defined as Commercial Space Buyers (CSBs) in the Resolution Plan (614 FCs) | 89.85 % |
| Total | | 100% |

9. That till date, the following claims have been received and verified by the Resolution Professional:

- i) Financial creditors: The total no. of Individual Financial Creditors including CSBs are 621 and the total claims received and verified amounting to Rs. 1,50,73,97,122/-
- ii) Operational Creditors: The total no. of Operational Creditors (including ex-employees) are 27 and the total claims received and verified amounting to Rs. 97,51,771/-.
- iii) Employees: The total no. of employees are 05 and the total claims received and verified amounting to Rs. 2,09,890/-.
- iv) Others: The total no. of other claimants are 05 and the total claims as received and verified amounting to Rs. 48,39,140/-.
- v) Possession Holders: The total no. of allottees who claim to be provided physical possession by the corporate debtor before commencement of CIR Process and prefer to retain their units are 165.

The detailed list of the allottees/claimants as reconstituted on January 03, 2020 are attached herewith and marked as **Annexure- 4.)**

10. That pursuant to Regulation 27 of the CIRP Regulations, two Registered Valuers were appointed by the Resolution Professional for determination of fair value and liquidation value of the Corporate Debtor. The fair value and liquidation value of the Corporate Debtor in accordance with the reports (attached herewith as **Annexure-5)** submitted by the Registered Valuers, is as follows:

| Name of the Registered Valuer | Fair Value (In Rs.) | Liquidation Value (In Rs.) |
|---|---|--|
| Adroit Technical Services Private Limited | 11117.12 lakh | 9043.53 lakh |
| GAA Advisory LLP | 10569.95 lakh | 7431.12 lakh |
| Average Value | 10843.54 lakh | 8237.33 lakh |
| Average Value in Words | One Hundred Eight Crores Forty Three Lakh Fifty Four thousand only. | Eighty Two Crores Thirty Seven Lakhs Thirty Three Thousand only. |

- 11.** *That during the CIR Process, the Resolution Professional was facing continuous non-cooperation from the Ex-directors/promoters and statutory auditor of the Corporate Debtor. Accordingly, the Resolution Professional filed two applications against the Ex-Directors & promoters and auditors under section 19 of the Code before the Hon'ble Tribunal vide CA No. 460/2018 and 359/2019 for issuance of directions to the Ex-Directors & promoters and statutory auditor of the Corporate Debtor who failed to co-operate with the Resolution Professional.*
- 12.** *That during the CIR Process, the Resolution Professional has conducted total 13 meetings of COC on different occasions. The schedule of such meetings are mentioned below:*

| Sr. No | Particulars | Day and Date of Meeting |
|--------|---------------------------------|-----------------------------|
| 1 | 1 st Meeting of COC | October 11, 2018 Thursday |
| 2 | 2 nd Meeting of COC | November 12, 2018 Monday |
| 3 | 3 rd Meeting of COC | December 07, 2018 Friday |
| 4 | 4 th Meeting of COC | March 06, 2019 Wednesday |
| 5 | 5 th Meeting of COC | May 04, 2019 Saturday |
| 6 | 6 th Meeting of COC | September 02, 2019 Monday |
| 7 | 7 th Meeting of COC | September 27, 2019 Friday |
| 8 | 8 th Meeting of COC | October 28, 2019 Monday |
| 9 | 9 th Meeting of COC | November 05, 2019 Tuesday |
| 10 | 10 th Meeting of COC | November 21, 2019 Thursday |
| 11 | 11 th Meeting of COC | December 11, 2019 Wednesday |
| 12 | 12 th Meeting of COC | January 23, 2020 Thursday |
| 13 | 13 th Meeting of COC | January 30, 2020 Thursday |

- 13.** *That in the first meeting of COC held on October 11, 2018, the members of COC confirmed the appointment of forensic auditor for conducting the audit of the Corporate Debtor and accordingly M/s KRA & Co, Chartered Accountants ("Forensic Auditors"), was appointed as a forensic auditor of the Corporate Debtor.*

14. *That the Forensic Auditor submitted its report dated January 15, 2019 and based on the findings of the Forensic Audit Report, various preferential transactions under Section 43 of the Code, undervalued transaction under section 45, extortionate credit transactions under Section 50 of the Code and fraudulent trading or wrongful trading under section 66 of the Code were determined. Based on the said determination, the Resolution Professional filed four (4) Applications bearing Company Application No. 99/2019, 109/2019, 116/2019 and 124/2019 before this Hon'ble Tribunal. These applications are yet to be disposed of by this Hon'ble Tribunal for the want of replies of the respondents to these applications mainly comprising of Ex-Directors and promoters of the Corporate Debtor.*

15. *That based on the records of the Corporate Debtor and information available with the Resolution Professional, an Information Memorandum ("**IM**") was prepared by the Resolution Professional on October 24, 2018 in accordance with Section 29 of the Code. (The copy of Information Memorandum is annexed herewith and marked as **Annexure-6**).*

16. *That during the CIR Process, the Resolution Professional had issued Invitation for Expression of Interest ("**EOI**") four times, in accordance with Regulation 36A (1) of CIRP Regulations. The same were published in Newspapers as well as on the website of the IBBI. The details of each Invitation for Expression of Interest is mentioned below:*

| S. No | Particulars | Date of Publication of Form G | Last date of receipt of Resolution Plan |
|-------|---------------------|-------------------------------|---|
| 1 | 1 st EOI | November 15, 2018 | January 14, 2019 |
| 2 | 2 nd EOI | December 12, 2018 | February 14, 2019 |
| 3 | 3 rd EOI | September 05, 2019 | October 26, 2019 |
| 4 | 4 th EOI | September 30, 2019 | October 24, 2019 |

17. *That pursuant to the decision made by CoC in their 7th CoC Meeting held on September 27, 2019, fourth Invitation for Expression of Interest was issued on September 30, 2019 wherein last date for Expression of Interest was October 7, 2019 and last date for submission of Resolution Plan was October 24, 2019. (Copy of Form G i.e. Invitation for Expression of Interest for submission of Resolution Plan, published on November 15, 2018, December 12, 2018, September 05, 2019 and September 30, 2019 are attached herewith and marked as Annexure-7)."*

4. The eligibility criteria qua the PRA has been referred to in para 18 of the application. The para reads thus:-

"18. *That the basic requirements as laid down for a Prospective Resolution Applicant originally approved by the COC in the 2nd meeting held on November 12, 2018 and amended subsequently are as follows:*

I. Eligibility criteria for Proposed Resolution Applicant:

- a) *Any person including Private Limited Company or Public Limited Company registered under the Companies Act 1956 or 2013, Limited Liability Partnership (LLP) or SEBI registered Alternative Investment Fund (AIF) or a company incorporated outside India, which is eligible to invest in India under the laws of India either as a sole resolution applicant or as part of a consortium.*
- b) *In case of consortium, the minimum equity contribution by each consortium member should be at least 10% and lead consortium member should be at least 26%.*
- c) *The shareholding of the special purpose vehicle incorporated by the consortium shall be same as the shareholding of members in consortium.*

II. Financial Capacity Eligibility Criteria ie. Net worth:

- a) *For Body Corporate/ Sole Individual Investor / Consortium of Sole Individual Investor: Minimum net worth of INR 35 Crores (Rupees Thirty Five Crores Only) at the group level as per the last available audited financial statements.*
- b) *For Investment Companies/FIs/Fund houses/PE Investors: Minimum Assets under Management of INR 200 Crores (Rupees Two Hundred Crores Only) at the group level as per the last available audited financial statements.*

III. Binding Submission Bond Guarantee ("BSBG") and the amount of Performance Bank Guarantee ("PBG").

Resolution Applicant(s) shall provide a Bank guarantee / Earnest Money Deposit of Rs. 25,00,000/- (Twenty Five lakh only) along with the Resolution Plan and replace the same with the Performance Bank Guarantee in case its Resolution Plan is approved by the Adjudicating authority."

5. The brief background of the Successful Resolution Applicant is mentioned in Part-B of the application which is reproduced herein below:-

"B. BRIEF BACKGROUND OF THE RESOLUTION APPLICANT:

1. *That the Resolution Applicants are the Ex-directors/promoters of the Corporate Debtor and holding major shareholding in the Corporate Debtor. The Ex-director/promoter, Mr. Madhav Saran Agarwal was in Judicial Custody from the month of August 2018 till the beginning on November 2019, pursuant to the FIR No. 46/2018U/S406/409/420/120B IPC PS EOW, New Delhi. Further other ex-director/promoter, Mrs. Alka Agarwal was also in judicial custody in the same FIR for the substantial period of CIRP before her release on bail towards the end of October 2019.*

2. *That the Corporate Debtor falls under the ambit of MSME Act, 2006. Considering the judgment of the Hon'ble National Company Law Appellate Tribunal ("NCLAT") in Company Appeal (AT) (Insolvency) No. 203 of 2019 in the matter of Saravana Global Holdings Ltd. & Anr. Vs. Bafna Pharmaceuticals Ltd. & Ors., this Hon'ble tribunal allowed the Ex- directors/promoters of the Corporate Debtor to submit their Resolution Plan.*

3. *The Resolution Applicants also submitted Affidavits stating that the Resolution Applicants are eligible to submit Resolution Plan as per Section 29A of the IBC along with undertakings under Regulation 36(4) of the CIRP Regulations to the effect that confidentiality shall be maintained of the information and shall not use such information to cause an undue gain or undue loss to itself or any other person and comply with the requirements under sub-section (2) of section 29 of the code. (The copy of Affidavits stating that the Resolution Applicants are eligible to submit Resolution Plan as per Section 29A is annexed herewith and marked as Annexure-8).*

4. *That the Resolution Applicants does not fall in the category of disqualified directors pursuant to section 29A(e) of the Code as the Hon'ble High Court of Delhi vide its order dated August 13, 2019 granted stay on the disqualification of the ex-directors/promoters till the next date of hearing. The Hon'ble High Court stated in its order that:*

“Till the next date of hearing, there shall be a stay of the list dated 7th December, 2018 and any other notices or communications or lists received or published in public domain on the website of Respondent No.1 whereby the petitioners were declared disqualified as Director under Section 164(2)(a) of the Companies Act, 2013.

The DIN numbers as well as digital signatures of the petitioners shall be forthwith revived.”

*Till the date of submission of their Resolution Plan for consideration by COC, the stay granted by the Hon'ble High Court continued. (The copy of order passed by the Hon'ble High Court of Delhi dated August 13, 2019 is attached herewith and marked as **Annexure-9**).”*

6. The process followed in submission of EOI and the Resolution Plan has been captured in Part-C of the application. The part reads thus:-

“C. SUBMISSION OF RESOLUTION PLAN

1. *That in response to issuance of Form G published on September 30, 2019, the ex-directors/promoters submitted their EOI, through their Authorised Representative, Ms. Garima Gupta. The Resolution Professional after getting adequate clarification on the observations, accepted the EOI submitted by the ex-director/promoter and issued Request for Resolution Plan, Evaluation Matrix and Information Memorandum on October 12, 2019. (The copy of Request for Resolution Plan (RFRP) approved by CoC, copy of Minutes of meetings to approve the subsequent changes in RFRP and Evaluation Matrix are attached herewith and marked as **Annexure-10 (Colly.)**.*
2. *That Resolution Applicants submitted the Resolution Plan through their Authorised Representative, Ms. Garima Gupta on November 01, 2019. However, the same was found to be not in conformity with the provisions of the Code and CIRP Regulations. Hence, the same was returned by the Resolution Professional with the specific mentioning/observations on the Resolution Plan. The Resolution Professional has also communicated reasons/observations for returning the Resolution Plan to the Ex-*

*director/promoter vide email dated November 02, 2019. (The copy of email dated November 02, 2019 with the specific observations is annexed herewith and marked as **Annexure-11**).*

3. *That the Resolution Applicants submitted revised Resolution Plan on Nov 29, 2019. The Resolution Plan so submitted was found to be not supported by appropriate performance security and the undertakings and affidavits were found to be incomplete and incorrect. Thus the Resolution Professional returned the Resolution Plan.*
4. *That thereafter, the Resolution Professional again received the Resolution Plan from the ex-director/promoters in a sealed envelope on December 07, 2019. Accordingly, in the 11th CoC meeting held on December 11, 2019, the Resolution Professional, before CoC, opened the sealed envelope containing the Resolution Plan received from the ex-directors/promoters of the Corporate Debtor submitted on December 07, 2019.*
5. *That subsequent to opening of the sealed envelope containing the Resolution Plan submitted by the Ex-promoter/director of the Corporate Debtor, the Resolution Professional reviewed the Resolution Plan and provided 7 days to the Resolution Applicants to correct the Resolution Plan on the basis of observations made by the Resolution Professional and submit the revised Resolution Plan. (The copy of the email sent to the ex-promoter/director with observations on Resolution Plan submitted on December 17, 2019 is annexed herewith and marked as **Annexure-12**).*
6. *That subsequently the ex-promoter/director replied to the observations made by the Resolution Professional vide email dated December 23, 2019. However, the Resolution Professional*

duly replied back on December 26, 2019 and expressed his inability to accept the Resolution Plan as the same was not in conformity with the provisions of the Code.

- 7. That the Hon'ble Tribunal vide its order dated January 07, 2020 directed the ex-promoter/director to submit an affidavit along with the Certificate issued by the concerned authority that the Corporate Debtor is MSME. Also, the Hon'ble Tribunal directed to submit the revised Resolution Plan, which shall give details of the area to be allotted to each allottee, delineated, in the sanctioned site plan or refund to be made in the event of the allotment cannot be made. They were also directed to provide the letter of comfort and the source of raising funds as well in the said Resolution Plan.*
- 8. That as per the directions of the Hon'ble Tribunal, the ex-promoter/directors have submitted the affidavit along with the certificate issued by the concerned authority certifying the Corporate Debtor as MSME. Also the ex- promoter/directors submitted their revised Resolution Plan on January 17, 2020 and the same was opened before the CoC in the 12th meeting held on January 23, 2020. Also, in the said CoC meeting, the CoC duly authorized the Resolution Professional to further review the Resolution Plan.*
- 9. That the Resolution Professional as authorized by the CoC duly reviewed the Resolution Plan opened before the CoC in the 12th meeting held on January 23, 2020. Certain pages of the Resolution Plan were found to be missing and also the Resolution Professional observed certain anomalies in the said plan, accordingly, on January 24, 2020 the Resolution Professional sent an email to the Resolution Applicants and requested them to revise the Plan or give clarifications and submit it within the*

*given time. The revised plan in hard copy was submitted to the Resolution Professional on January 27, 2020. (The copy of email dated January 24, 2020 is annexed herewith and marked as **Annexure-13**).*

*10. That the COC of the Corporate Debtor in their 13th meeting held on January 30, 2020 approved the said Resolution Plan under section 30(4) of the Code, by a vote of 89.85%. (The copy of the minutes of 13th COC meeting of the Corporate Debtor is annexed herewith and marked as **Annexure-14**).*”

7. In Part-D of the application, the RP has highlighted the key points of the resolution plan. The said part reads as under:

“D. RESOLUTION PLAN

- 1. That the Resolution Applicant has submitted the Resolution Plan which includes the following key items:*
 - i. Resolution Applicants proposes to comply with the conditions of the UPSIDC and has sought direction from the Hon'ble NCLT so that the permission from the UPSIDC can be expedited for the benefit of all the stake holders.*
 - ii. Resolution Applicants proposes to open the registration for the Commercial space/ shops of the CD within X+3 months ("X" means Effective date i.e., the date on which the Resolution Plan is approved by the Adjudicating Authority under section 31 of the Code). However, the units whose civil construction is pending shall be opened for registration. within X+9 months after completion of the pending civil work.*
 - iii. Resolution Applicants proposes to complete all pending civil work, repair work and maintenance of the mall as per the site requirement.*
 - iv. Resolution Applicants proposes to obtain increased FAR upto the Permissible limit of FAR in terms of Uttar Pradesh State*

Industrial Development Area- Land Development & Building Regulations, 2018.

v. Resolution Applicants proposes to take endeavor to bring reputed and big brands in the Mall so that the footfall of the mall increase.

vi. Resolution Applicants proposes to generate revenue from the Mall Facilities by way of charging parking cost for the basement parking and also by outdoor and indoor advertisements, exhibitions and through live concerts, promotional activity etc.

2. It is stated in the Resolution Plan that the cause of default of the Corporate Debtor was acute slowdown of real estate sector since the last 5-6 years, demonetization, followed by introduction of GST, Recession & Liquidity crunch (Asset Liability Mismanagement), paucity of funds, non-fulfillment of compliance of UPSIDC.

3. The resolution amount proposed by the Resolution Applicants mainly constitute of repayment to creditors and handing over of the possession of the units to CSBs. The methodology of arriving at Proposed Resolution Amount is given as under:

| Sr. No. | Particulars | Claim amount | Settlement Offered (figures in Rs) | % of the Accepted Claims |
|----------|--|--------------|---|--------------------------------|
| A | <u>Total value of Resolution Plan</u> | | | |
| 1. | Settlement of CIRP Cost (to the extent unpaid) & Setup of Contingency Fund. (The unpaid CIRP costs as approved the CoC shall be paid from the "CIRP cost and Contingency Fund" of INR 75.00lakh created by RA X+90 days and such payment shall be | | 75,00,000 <i>[Handwritten Signature]</i> | As per actual in Top Priority. |

| | | | | |
|-----|--|--|--|---------------------------|
| | made in priority to any other debt. Moreover, in case the unpaid CIRP costs are more than the amount proposed, the shortfall shall be brought in by RA from their own funds) | | | |
| 2. | Settlement of Financial Creditor (Secured) | | 107,42,795 | 10% |
| 3. | Settlement of Financial Creditor (un-Secured) | | 9,10,000 | 2% |
| 4. | 621 CSB's (Claim Admitted) | | 100% of principle amount out of admitted amount of Rs. 135,44,69,171 by way of giving possession/ registry of units or refund of principle amount to the CSB's. (Details given at clause 11.4 of the plan) | |
| 5. | 165 CSB's are seeking Possession and no Financial Claims have been filed by them before RP. (Without voting rights) | | 100% of principle amount by way of giving possession/ registry of units or refund of principle amount to the CSB's. | |
| 6. | 219 CSB's who have not filed their claims. | | | |
| 7. | Operational Creditors (Other than Workmen and Employee and Statutory Dues) | | 6,74,225 | 7% Payable Ahead of FCs |
| 8. | Operational Creditors (Workmen and Employee) | | 2,09,890 | 100% Payable Ahead of FCs |
| 9. | Operational Creditors (Ex-Employee) | | 2,09,890 | 7% Payable Ahead of FCs |
| 10. | Operational Creditors (Others) | | 1,86,398 | 7% Payable Ahead of FCs |
| 11. | Operational Creditors (Statutory Dues) | | 8,380 | 7% Payable Ahead of FCs |

4. The Capital Infusion by way of equity/quasi equity proposed in the Resolution Plan for Revival of the Mall is Rs. 5,00,00,000 (Rupees Five Crores only) for completing the balance civil work, repair and maintenance of mall (Lift Maintenance, Building Maintenance including obtaining necessary NOC(s) of Fire), fulfilling the compliances of UPSIDC and other contingent liability and Civil Work in Mall (Refer clause 9.1.1 of the Resolution Plan).

5. The Resolution Applicants in the Resolution Plan submitted that the unpaid CIRP Costs shall be paid in full & in top priority as

per terms of Section 30(2)(a) of the Code. A Provision of Rs. 75 lakh is made in the plan, however, if the CIRP cost is more than that the balance shall be infused by Resolution Applicants as additional funds and the unpaid CIRP Costs shall be paid in priority to any other creditors of the Corporate Debtor in accordance with the Code.

6. The timeline proposed by the Resolution Applicants for implementation of the Resolution Plan is as follows:

| Sr. No | Activity | Estimate Time Line |
|--------|---|--------------------|
| 1. | NCLT Approval Date= Effective Date | X |
| 2. | Formation of monitoring committee | X+10 days |
| 3. | Payment of Balance CIRP Cost | X + 90 days |
| 4. | Payment to all OC's | X+ 90 days |
| 5. | 10% Payment to Financial Creditors (unsecured + unsecured (other than CBS) | X + 3 months |
| 6. | Capital Re-structuring of the Corporate Debtor | X + 3 months |
| 7. | Possession to CSB after completing the formalities with UPSIDC. | X +3 months |
| 8. | Payment of Refund to CSB's (In case the refund is made after X+12 month's then the interest of 8% p.a. on the principle amount from the date X+12 months till the final payment is made shall be paid by RA to CSB's) | X+12 months |
| 9. | 90% Payment to Financial Creditors (unsecured + unsecured (other than CBS) | X + 18 months |

7. The source of funds required for implementation of Resolution Plan is mentioned below:

| S. No | Source | Amount to be mobilized (Rs lakh) | Time period of Mobilization from the effective date |
|-------|--|----------------------------------|--|
| 1 | Equity/Quasi Equity/Debt infused by Resolution Applicants. (Comfort Letter from prospective investors/acquaintance from RA) | 300 | Rs. 1 Cr within 90 days from date of approval of plan by NCLT and balance amount in 18 months from the effective date. Where effective date is the date on which the Resolution Plan is approved by the Adjudicating Authority under section 31 of the Code. |

| | | | |
|---|--|-------------|---|
| 2 | Internal Accruals of the CD/Monetizing the receivables and sale of units in the CD | 650 | Rs. 4 Cr within 12 months of the effective date and balance in 18 months. Where effective date is the date on which the Resolution Plan is approved by the Adjudicating Authority under section 31 of the Code. |
| 3 | Barter arrangement with Contractor and Supplier | 200 | Within 9 months of the effective date. Where effective date is the date on which the Resolution Plan is approved by the Adjudicating Authority under section 31 of the Code. |
| | TOTAL MOBILIZATION | 1150 | |

PROPOSAL FOR FINANCIAL CREDITORS

1. That as per the proposal of the Resolution Applicants, Secured Financial Creditor (five in no.) will be paid 10% of the admitted amount wherein 10% of the proposed amount to be paid in X+3 months and 90% of the proposed amount to be paid in X+18 months. Resultantly, as per clause 11.2 of the Resolution Plan, for admitted claim of Rs. 10,74,27,951/ the Resolution Applicants have proposed to pay Rs. 1,07,42,795/- (10% of the admitted claim) to the secured Financial Creditors. Wherein all the Personal Guarantees (PGs) if any, Corporate Guarantees (CGs) if any and charge on all the assets mortgaged/collateralized in its favor, would be extinguished, vacated and returned immediately on receiving of the upfront payment, and fresh pari-passu charge on the assets of the Corporate Debtor to the extent of settlement amount shall be created.
2. That as per the proposal of the Resolution Applicants, Unsecured Financial Creditor (two in no.) having admitted amount of Rs. 4,55,00,000/- will be paid Rs. 9,10,000/- (2% of the amount admitted) out of which 10% of the proposed settlement amount to be paid in X+3 months and 90% of the proposed settlement amount to be paid in X+18 months. Where "X" is effective date which means

date on which the Resolution Plan is approved by the Adjudicating Authority under section 31 of the Code.

- 3. That there are total 1005 CSBs having 621 unique claimants whose claims have been admitted by the Resolution Professional and have 89.85% voting share, 165 claimants who have sought possession of their units in the Corporate Debtor and 219 allottees who have not claim till the date of submission of Resolution Plan.*
- 4. That out of the above 1005 CSBs, the Resolution Applicants have proposed to provide possession to the 926 CSB's, the necessary approvals for execution of Sub Lease Deed shall be obtained from UPSIDC, thereafter, the actual registration shall take place after X+90 days however, the shops where the civil work is incomplete shall be registered within X+9 months. Also, the Resolution Applicants have offered to refund the principal amount to the 41 CSBs.*
- 5. That the Resolution Applicants are not offering anything to 38 CSBs in the Resolution Plan on the pretext that those 38 CSBs are related party and have filed their claims with Resolution Professional of M/s MSA Developers Private Limited, (a sister concern of the Corporate Debtor) undergoing CIRP. However, the Resolution Professional has no such specific information/conformation that all 38 CSBs have filed their claims with the M/s MSA Developers Pvt. Ltd. or not.*

PROPOSAL FOR CREDITORS WHO DO NOT VOTE IN FAVOUR THE RESOLUTION PLAN

- 1. That it is mentioned in the clause 12 of the submitted Resolution Plan that the Dissenting Financial Creditors who do not vote in favor of the extant Resolution Plan, shall be duly paid the applicable amount as per the section 30(2)(b) of the Code. However, the Resolution Plan does not*

provide anything for the Creditors who remained abstained from the voting on the Resolution Plan.

PROPOSAL FOR OPERATIONAL CREDITORS

- 1. That it is provided in the submitted Resolution Plan (clause 13.1 of the plan) that Operational Creditors (Workmen & Employee) will be paid 100% of admitted amount of Rs. 209,890 within 90 days from the effective date.*
- 2. That it is provided in the submitted Resolution Plan (clause 13.1 of the plan) that Operational Creditors (other than Workmen & Employee) are proposed to be paid 7% of the admitted amount within 90 days of the effective date (the date on which the Resolution Plan is approved by the Adjudicating Authority under section 31 of the Code) in following manner:*
 - i. 23 Operational Creditors (Other than Workmen and Employee and Statutory Dues) will be paid Rs. 6,74,224/- in return of admitted claim of Rs. 96,31,785/-.*
 - i. 03 Operational Creditors (Ex-Employee) will be paid Rs. 8,380/- in return of admitted claim of Rs. 119,716/-*
 - iii. 04 Operational Creditors (Others) will be paid Rs. 1,86,398/- in return of admitted claim of Rs. 2,662,840/-.*

PROPOSAL FOR STATUTORY DUES

- 1. That it is provided in the submitted Resolution Plan (clause 13.1 of the plan) that Income Tax Authority will be paid 7% of Amount Admitted within 90 days from the effective date resulting to payment of Rs. 1,52,341/- in return of admitted claim of Rs. 21,76,300/-.*
- 2. That in clause 14.2 of the proposed Resolution Plan, the Resolution Applicants have proposed NII. payment against the liability which*

could arise on account of various pending notices, claims, pending assessment etc., against the Corporate Debtor. Further, the Resolution Applicants have sought various reliefs or waivers in respect of statutory dues in the clause 14.3 to 14.8 of the Resolution Plan.

3. That in clause 18.2 of the proposed Resolution Plan, the Resolution Applicants proposes the re-organization of the capital structure of the Corporate Debtor by extinguishing of 100% of the existing shares of the shareholders of the Corporate Debtor. On approval of the Resolution Plan, all the existing shares will be cancelled without any payment being made to any of the existing shareholders of the Corporate Debtor and fresh shares shall be issued to the Resolution Applicants as per the details below.
4. That the resultant share capital of the Corporate Debtor post approval of the extant Resolution Plan by the Adjudicating Authority will be as follows:

| Name of Share Holder | Number of Shares | Face value/ Paid up Value | Share Capital | Shareholding % |
|----------------------|------------------|---------------------------|------------------|----------------|
| Madhav Saran Agarwal | 50,000 | 10 | 5,00,000 | 50% |
| Alka Agarwal | 50,000 | 10 | 5,00,000 | 50% |
| Total | 1,00,000 | | 10,00,000 | 100% |

5. That it is submitted in the Resolution Plan that from the date of approval of the Resolution Plan by Hon'ble Tribunal until the Closing Date, a committee ("Monitoring Committee") comprising of -
 - (a) 2 (two) designated representative of the CoC, and
 - (b) 2(Two) designated representatives of the Resolution Applicants shall be constituted within 10 (ten) day of the NCLT Order.
6. That the Monitoring Committee shall be constituted within 10 (ten) day of the Hon'ble Tribunal Order and shall have the responsibility

of supervising the implementation of Resolution Plan. The chairman of the Monitoring Committee will be a designated representative of the Resolution Applicants, amongst the selected two members of Resolution Applicants. For abundant clarity the monitoring committee shall have no executive power of whatsoever nature. The quorum for any meeting of the Monitoring Committee shall be 2 (two) members including the COC Representative and 1 (one) representative of the Resolution Applicants.

PAYMENT PLAN

1. The chart containing the amount provided for the stakeholders under the Resolution Plan (clause 9.2 of the plan) is given as under:

| S. No | Category of Shareholders | Amount Claimed | Amount Admitted | Amount Provided under the Plan | Amount provided to the amount admitted |
|-------|--|----------------|---|---|--|
| 1 | FC- Secured | 10,74,27,951 | 10,74,27,951 | 1,07,42,795 | 10% |
| 2 | FC- Unsecured as per IM | 4,57,18,924 | 4,55,00,000 | 9,10,000 | 2% |
| 3 | FC- CSB | 177,02,32,811 | 135,44,69,171 (out of admitted claims, principle amount is Rs 87,98,17,051/- approx.) | 100% of principle amount out of admitted amount of Rs. 133,86,02,813 by way of giving possession/ registry and allocation and refund of principal amount of units to the CSB's. | |
| 4 | Operational Creditors (Other than Workmen and Employee and Statutory Dues) | 1,13,39,091 | 96,31,785 | 6,74,224 | 7% |
| 5 | Operational Creditors (Workmen and Employee) | 2,09,890 | 2,09,890 | 2,09,890 | 100% |
| 6 | Operational Creditors (Ex-Employee) | 1,47,716 | 1,19,716 | 8,380 | 7% |
| 7 | Operational Creditors (Others) | 36,62,840 | 26,62,840 | 1,86,398 | 7% |
| 8 | Operational Creditors (Statutory Dues) | 21,76,300 | 21,76,300 | 1,52,341 | 7% |

2. *That as per the Resolution Applicants, the net realizable value of the assets of the Corporate Debtor is much lesser than the amount due to the Financial Creditors and as such, amount available for settlement of the dues of operational creditors/statutory dues, etc., would be negligible.*
3. *That as per the Resolution Applicants, in addition to commercial viability, since the Resolution Plan envisages to acquire ownership of the Corporate Debtor, on a "going concern" basis, the same is also viable socially, considering the people in employment of the Corporate Debtor, both directly as well as indirectly."*

8. The RP has enclosed a copy of the Resolution Plan with the application as enclosure at page No. 465. The compliance of the provisions of Section 30(2) of IBC, 2016 has been shown in the certificate issued by the RP in the prescribed Form-H, Column 9. The relevant excerpt of the certificate reads thus:-

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? | | 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? | Affidavit provided by the Resolution Applicants ranging from Page No. 116 to 124 of the Resolution Plan | Yes |
| Section 30 (1) | Whether the Resolution Applicant has submitted an affidavit stating that it is eligible? | | Yes |
| Section 30 (2) | Whether the Resolution Plan- | | |
| | (a) provides for the payment of insolvency resolution process costs? | Clause 10 of the Resolution Plan | Yes |
| | (b) provides for the payment to the operational creditors? | Clause 13 of the Resolution Plan | Yes |
| | (c) provides for the payment to the financial creditors who did not vote in favor of the resolution plan? | Clause 12 of the Resolution Plan | Yes |
| | (d) provides for the management of the affairs of the corporate debtor? | Clause 21 of the Resolution Plan | Yes |
| | (e) provides for the implementation and supervision of the resolution plan? | Clause 19 and clause 22 of the Resolution Plan | Yes |
| | (f) contravenes any of the provisions of the law for the time being in force? | | No |
| Section 30 (4) | Whether the Resolution Plan (a) is feasible and viable, according to the CoC? | The committee of creditors duly considered the feasibility and viability of the Resolution Plan and accordingly approved the Resolution plan with majority having 89.85% voting share in its 13 th meeting held on January 30, 2020. | Yes |
| | (b) has been approved by the CoC with 66% voting share? | | Yes |

9. The compliance of Regulation 38 of IBBI (CIRP) Regulations, 2016 mentioned in the Form-H reads thus:-

| | | | |
|-------------------|--|--|---|
| Regulation 38 (1) | Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors? | Clause 19 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? | | 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? | Clause 23 of the Resolution Plan | No |
| Regulation 38(2) | Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation? | Clause 19 of the Resolution Plan Clause 21 of the Resolution Plan Clause 22 of the Resolution Plan | Yes Yes Yes |
| 38(3) | Whether the resolution plan demonstrates that (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan? | Clause 31.1.1 of the Resolution Plan Clause 31.1.2 of the Resolution Plan Clause 31.1.3 of the Resolution Plan Clause 31.1.4 of the Resolution Plan Clause 31.1.5 of the Resolution Plan | Yes (in the opinion of CoC) Yes (in the opinion of CoC) Yes (in the opinion of CoC) Yes Yes (in the opinion of CoC) |

10. A perusal of the aforementioned also indicates that the provisions of Regulation 38 of IBBI (CIRP) Regulations, 2016 have also been duly comply with. As can be seen from the Column 9 of the certificate issued by the RP, the plan is in compliance of the requirement of giving priority to the payment of CIRP cost, dues of the OC and that of dissenting FC. The Resolution Plan also provides for the mechanism to supervise the plan. The clause 21 & 22 of the plan reads thus:-

“21. Mechanism regarding management and control of the affairs of the Corporate Debtor Until the Closing Date

21.1. Pursuant to the approval of this Resolution Plan from the Hon'ble NCLT, from effective date and until the Closing Date, a committee

("Monitoring Committee") comprising of (a) 2 (two) designated representative of the Committee of Creditors ("COC Representative"), and (b) 2 (Two) designated representatives of the Resolution Applicant shall be constituted within 10 (ten) day of the NCLT Order and shall have the responsibility of supervising the implementation of resolution plan. The chairman of the Monitoring Committee will be a designated representative of the Resolution Applicant, amongst the selected two members of RA. For abundant clarity the monitoring committee shall have no executive power of whatsoever nature.

22. Decision taking by Monitoring Committee:

- 22.1. *Taking of any action by the Corporate Debtor and any decision by the Monitoring Committee shall require the consent of majority of the members of the Monitoring Committee (whether physically present in any meeting of the Monitoring Committee or not);*
- 22.2. *The quorum for any meeting of the Monitoring Committee shall be 2 (two) members including the COC Representative and 1 (one) representative of the Resolution Applicant;*
- 22.3. *The Monitoring Committee shall decide its own governance procedures and voting procedures by unanimous vote of its members.*
- 22.4. *The steps for completion and effective implementation of the transactions contemplated in this Plan are set out in Implementation Provisions. The Resolution Applicant, Corporate Debtor and Monitoring Committee shall take all relevant actions as may be required for (i) implementing the various steps to be taken for Implementation of the Resolution Plan; and (ii) effecting the payment to relevant stakeholders of the Corporate Debtor, thereby achieving effective implementation of the Plan."*

11. The plan has also the provision regarding the implementation of the same.

The relevant excerpt of the plan in this regards reads thus:-

“19. IMPLEMENTATION PROVISIONS

19.1. INDICATIVE TIMELINE AND IMPLEMENTATION SCHEDULE:

The Resolution Plan shall be implemented in the following manner, as per the timelines stated below or as per applicable laws:

TABLE-13

| S.No | Activity | Estimate Time Line |
|-------------|---|---------------------------|
| 1. | NCLT Approval Date = Effective Date | X |
| 2. | Formation of monitoring committee | X+10 days |
| 3. | Payment of Balance CIRP Cost | X + 90 days |
| 4. | Payment to all OC's | X+ 90 days |
| 5. | 10% Payment to Financial Creditors (unsecured + unsecured (other than CBS) | X + 3 months |
| 6. | Capital Re-structuring of the Corporate Debtor | X + 3 months |
| 7. | Possession to CSB after completing the formalities with UPSIDC. | X +3 months |
| 8. | Payment of Refund to CSB's (In case the refund is made after X+12 month's then the interest of 8% p.a. on the principle amount from the date X+12 months till the final payment is made shall be paid by RA to CSB's) | X+12 months |
| 9. | 90% Payment to Financial Creditors (unsecured + unsecured (other than CBS) | X + 18 months |

19.2. *The implementation mechanism shall commence and be operative from the Effective Date. All stakeholders, including the Managing Agency, Monitoring Committee and Resolution Applicant, shall commence taking all actions required to implement the Plan from the Effective Date. The date on which all such actions as outlined in the Resolution Plan shall have been consummated, in accordance with Applicable Law, shall be the "Closing Date".*

12. The clause 20 of the plan indicates the Fund Flow and Cash Flow statement of CD post approval of plan by NCLT. The clause reads thus:-

20. Fund Flow and Cash Flow Statement of CD Post Approval of plan by NCLT.

| S.No | Particulars | Amount to be paid | 0-3 | 4-9 | 10-12 | 13-18 | Total | |
|------|--|-----------------------------|------------|------------|------------|------------|-------------|--|
| 1. | Financial Creditors (Secured and Unsecured, other than CSB's) | 122 | 12 | | | 110 | 122 | |
| 2. | Secured Financial Creditor – 926 CSB's to whom Possession has been offered | Possession to all 926 CSB's | | | | | | |
| 3. | Secured Financial Creditor – 41 CSB's to whom Refund is being offered | 410 | | | 410 | | 410 | |
| 4. | Operational Creditors (all Operational Creditors) | 13 | 13 | | | | 13 | |
| 5. | CIRP Cost | 75 | 75 | | | | 75 | |
| 6. | Capital Infusion for revival of Mall (including completion of construction) as per 9.1.1 | 500 | 0 | 350 | 150 | | 500 | |
| | TOTAL OUTFLOW | 1120 | 100 | 350 | 560 | 110 | 1120 | |
| | SOURCE OF FUND | | | | | | | |
| A | Fresh Equity/ Quasi Equity/ Debt infused by Resolution Applicants | 300 | 100 | | 160 | 40 | 300 | |
| B | Internal Accruals of the CD/ Monetizing the receivables and sale of units in the CD | 650 | | 150 | 400 | 100 | 650 | |
| C | Barter arrangement with contractor and supplier | 200 | | 200 | | | 200 | |
| | TOTAL INFLOW | 1150 | 100 | 350 | 560 | 140 | 1150 | |

13. The Resolution Applicant has also enclosed a copy of the bank guarantee furnished by the Resolution Applicant which is available on record at Page 590 of the paper book. The Performance guarantee viz. the FD is available on record. The RP submitted that he kept on renewing the FD and the FD is still alive and reads thus:-

TERM DEPOSIT ADVICE

DATE: 29-FEB-2020
NEW DELHI ASHOK VIHAR - NEW DELHI
MSX MALL PVT LTD
601-602 Ocean Heights BUILDING
K4 SECTOR-18

NOIDA - 201301
UTTAR PRADESH, INDIA

Deposit Number : 5713700575
Deposit Start Date : 26-02-2020
Deposit Amount : INR 2,500,000.00
Interest Rate (p.a.) : 4.00%
Interest Details : Reinvestment
Deposit Type : Regular

Customer Relationship No : 35787647
PAN No : AABCN8537B
Nomination Registered : N

Period of Deposit : 30 Days
Deposit Maturity Date : 27-03-2020
Maturity Amount : INR 2,508,197.00
Interest Frequency : Daily
New/Renewal : New TD
Maturity Instructions : Renew Principal and Interest

Maturity amount is subject to TDS wherever applicable as per regulations from time to time.
This is a computer generated advice and therefore does not require a signature.



14. The Affidavit of eligibility u/Sec. 29A of the Code has been placed on record at Annexure-8 to the application filed by the RP for approval of the Resolution Plan. The aforementioned affidavits has been given by Mr. Madhav Saran Aggarwal and Ms. Alka Aggarwal w/o Mr. Madhav Saran Aggarwal is available on record at page no. 232 of the application. The content of affidavits reads thus:-

AFFIDAVIT

Madhav Saran Agarwal S/o Late Shri Ram Avtar Agarwal aged about 66 years, residing at D-88, Sector-26, NOIDA, (UP), do solemnly affirm and declare on oath as under:

1. I am one of the Resolution Applicant of Corporate Debtor, MSX Mall Private Limited.
2. That the Corporate Debtor is an MSME under the regulation issued by Ministry of Corporate Affairs and the same is substantiated by the fact that the investment in the core Plant and Machinery of the Corporate Debtor is less than Rs 5 Crore.
3. I state that an Insolvency Resolution Process has been initiated against MSX Mall Private Limited (Corporate Debtor) vide order dated 09/07/2018 (Admission Order) passed by Hon'ble National Company Law Tribunal, New Delhi Bench (Adjudicating Authority) in an application filed by Financial Creditor against the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (amended up to date) (IBC).
4. As per clause (1) of Section 240A of IBC, 2016, I being the suspended director of the Corporate Debtor is eligible to submit the Resolution Plan without any consideration of clause (c) and (h) of section 29A of IBC, 2016.
5. I state that the present affidavit is sworn by me as Resolution Applicant in compliance of section 29A of the IBC.
6. I hereby confirm that:
 - (i) That I the Resolution Applicant and any connected person as per the Explanation I provided under section 29A of the IBC is not an undischarged insolvent, therefore complying with clause (a) of Section 29A of IBC.
 - (ii) That I the Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC, is not identified as a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949, therefore complying with clause (b) of Section 29A of IBC.
 - (iii) That I the Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not been convicted for any offence punishable with imprisonment for 2 years or more under

- years or more under any law for the time being in force or a period of two years has expired from the date of release of such imprisonment, therefore complying with clause (d) of Section 29A of IBC.
- (v) That I the Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not been disqualified to act as a director under the Companies Act 2013, therefore complying with clause (e) of Section 29A of IBC.
 - (vi) That I the Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not been prohibited by the Securities and Exchange Board of India from trading in securities or assessing the securities markets, therefore complying with clause (f) of Section 29A of IBC.
 - (vii) That I the Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not indulged in preferential transaction or undervalued transaction or fraudulent transaction in respect of which an order has been made by the Adjudicating Authority under the IBC, therefore complying with clause (g) of Section 29A of IBC.
 - (ix) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC are not subject to any disability, corresponding to clauses mentioned above under any law in a jurisdiction outside India, therefore complying with clause (i) of Section 29A of IBC.
 - (i) That the Resolution Applicant unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected persons as required under Regulation 38(3) of the CIRP Regulations.
 - (ii) That the Resolution Applicant unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected persons as per the provisions of the CIRP and the rules and regulations framed thereunder to submit a resolution plan and that it shall provide all documents, representations and information as may be required by the RP or the CoC to substantiate to the satisfaction of the RP and the CoC that the Resolution Applicant is eligible under the IBC and the rules and regulations thereunder to submit a resolution plan in respect of Corporate Debtor.
 - (iii) That the Resolution Applicant unconditionally and irrevocably undertakes that it shall provide all data, documents and information as may be required to verify the statements made under this affidavit.
 - (iv) That the Resolution Applicant understands that the CoC and the RP may evaluate the resolution plan to be submitted by the Resolution Applicant or any other person acting jointly with it and such evaluation shall be

on the basis of the confirmations, representations and warranties provided by the Resolution Applicant under this affidavit.

- (v) That the Resolution Applicant agrees that each member of the CoC and the RP are entitled to rely on the statements and affirmations made in this affidavit for the purposes of determining the eligibility and assessing, agreeing and approving the resolution plan submitted by the Resolution Applicant.
- (vi) That in the event any of the above statements are found to be untrue or incorrect, then the Resolution Applicant unconditionally agrees to indemnify and hold harmless the RP and each member of the CoC against any losses, claims or damages incurred by the RP and / or the members of the CoC on account of such ineligibility of the Resolution Applicant.


DEPONENT

VERIFICATION

Verified at NOIDA on this 17th day of January, 2020, that the above contents of this affidavit are true & correct to the best of my knowledge and belief and nothing has been concealed there from.

XXX XXX XXX

AFFIDAVIT

Alka Agarwal W/o Shri Madhav Saran Agarwal aged about 62 years, residing at D-88, Sector-26, NOIDA, (UP), do solemnly affirm and declare on oath as under:

1. I am one of the Resolution Applicant of Corporate Debtor, MSX Mall Private Limited.
2. That the Corporate Debtor is an MSME under the regulation issued by Ministry of Corporate Affairs and the same is substantiated by the fact that the investment in the core Plant and Machinery of the Corporate Debtor is less than Rs 5 Crore.
3. I state that an Insolvency Resolution Process has been initiated against MSX Mall Private Limited (Corporate Debtor) vide order dated 09/07/2018 (Admission Order) passed by Hon'ble National Company Law Tribunal, New Delhi Bench (Adjudicating Authority) in an application filed by Financial Creditor against the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (amended up to date) (IBC).
4. As per clause (1) of Section 240A of IBC, 2016, I being the suspended director of the Corporate Debtor is eligible to submit the Resolution Plan without any consideration of clause (c) and (h) of section 29A of IBC, 2016.
5. I state that the present affidavit is sworn by me as Resolution Applicant in compliance of section 29A of the IBC.

6. I hereby confirm that:

- (i) That I the Resolution Applicant and any connected person as per the Explanation I provided under section 29A of the IBC is not an undischarged insolvent, therefore complying with clause (a) of Section 29A of IBC.
- (ii) That I the Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC, is not identified as a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949, therefore complying with clause (b) of Section 29A of IBC.
- (iii) That I the Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not been convicted for any offence punishable with imprisonment for 2 years or more under any Act specified in the Twelfth Schedule or for seven years or more under any law for the time being in force or a period of two years has expired from the date of release of such imprisonment, therefore complying with clause (d) of Section 29A of IBC.
- (v) That I the Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not been disqualified to act as a director under the Companies Act 2013, therefore complying with clause (e) of Section 29A of IBC.
- (vi) That I the Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not been prohibited by the Securities and Exchange Board of India from trading in securities or assessing the securities markets, therefore complying with clause (f) of Section 29A of IBC.
- (vii) That I the Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC have not indulged in preferential transaction or undervalued transaction or fraudulent transaction in respect of which an order has been made by the Adjudicating Authority under the IBC, therefore complying with clause (g) of Section 29A of IBC.
- (ix) The Resolution Applicant and any connected person as per Explanation I provided under section 29A of the IBC are not subject to any disability, corresponding to clauses mentioned above under any law in a jurisdiction outside India, therefore complying with clause (i) of Section 29A of IBC.
- (i) That the Resolution Applicant unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected persons as required under Regulation 38(3) of the CIRP Regulations.



- (ii) That the Resolution Applicant unconditionally and irrevocably agrees and undertakes that it shall make full disclosure in respect of itself and all its connected persons as per the provisions of the CIRP and the rules and regulations framed thereunder to submit a resolution plan and that it shall provide all documents, representations and information as may be required by the RP or the CoC to substantiate to the satisfaction of the RP and the CoC that the Resolution Applicant is eligible under the IBC and the rules and regulations thereunder to submit a resolution plan in respect of Corporate Debtor.
- (iii) That the Resolution Applicant unconditionally and irrevocably undertakes that it shall provide all data, documents and information as may be required to verify the statements made under this affidavit.
- (iv) That the Resolution Applicant understands that the CoC and the RP may evaluate the resolution plan to be submitted by the Resolution Applicant or any other person acting jointly with it and such evaluation shall be on the basis of the confirmations, representations and warranties provided by the Resolution Applicant under this affidavit.
- (v) That the Resolution Applicant agrees that each member of the CoC and the RP are entitled to rely on the statements and affirmations made in this affidavit for the purposes of determining the eligibility and assessing, agreeing and approving the resolution plan submitted by the Resolution Applicant.
- (vi) That in the event any of the above statements are found to be untrue or incorrect, then the Resolution Applicant unconditionally agrees to indemnify and hold harmless the RP and each member of the CoC against any losses, claims or damages incurred by the RP and / or the members of the CoC on account of such ineligibility of the Resolution Applicant.


DEPONENT

VERIFICATION

Verified at NOIDA on this 17th day of January, 2020, that the above contents of this affidavit are true & correct to the best of my knowledge and belief and nothing has been concealed there from.

15. The amount provided for the stakeholders under the Resolution Plan has been indicated in Column 7 of the certificate issued by the RP in Form H. The Column reads thus:-

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

| (Amount in Rs. lakh) | | | | | | |
|----------------------|--|---|-----------------|-----------------|---|---|
| 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) | (2) | (3) | (4) | (5) | (6) | (7) |
| 1 | Secured Financial Creditors | (a) Creditors not having a right to vote under sub-section (2) of section 21 | NIL | NIL | NIL | NIL |
| | | (b) Other than (a) above: | | | | |
| | | (i) who did not vote in favour of the resolution Plan | 493.41 | 493.41 | 49.34 | 10% |
| | | (ii) who voted in favour of the resolution plan | 580.87 | 580.87 | 58.09 | 10% |
| | | Total[(a) + (b)] | 1074.28 | 1074.28 | 107.43 | 10% |
| 2 A | Unsecured Financial Creditors | (a) Creditors not having a right to vote | NIL | NIL | NIL | NIL |
| Sl. No. | Category of Stakeholder* | Sub-Category of Stakeholder | Amount Claimed | Amount Admitted | Amount Provided under the Plan* | Amount Provided to the Amount Claimed (%) |
| | (Other than Creditors in class being Allottees) | under sub-section (2) of section 21 | | | | |
| | | (b) Other than (a) above: | | | | |
| | | (i) who did not vote in favour of the resolution Plan | 67.19 | 65.00 | 1.30 | 1.93% |
| | | (ii) who voted in favour of the resolution plan | 390.00 | 390.00 | 7.80 | 2.00% |
| | | Total[(a) + (b)] | 457.19 | 455.00 | 9.10 | 1.99% |
| 2 B | Unsecured Financial Creditors (Creditors in class being Allottees) | (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-a) who did not vote in favour of the resolution Plan | 2201.78 | 1639.32 | 1064.85 (Estimated value. Refer note given below this table). ** | 48.4% |
| | | (i-b) who did not participate in the E-voting conducted for approval of the resolution Plan | 7078.93 | 5292.13 | 3437.59 (Estimated value. Refer note given below this table). ** | 48.6% |
| | | (ii) who voted in favour of the resolution plan | 8421.61 | 6613.24 | 4295.73 (Estimated value. Refer note given below this table). ** | 51.0% |
| | | Total[(a) + (b)] | 17702.33 | 13544.70 | 8798.17 (Estimated) | 49.7% |

| Sl. No. | Category of Stakeholder* | Sub-Category of Stakeholder | Amount Claimed | Amount Admitted | Amount Provided under the Plan [#] | Amount Provided to the Amount Claimed (%) |
|-------------|--------------------------|---|-----------------|-----------------|--|---|
| | | | | | value. Refer clause 9.2. /Table 3 of Resolution Plan). | |
| 3 | Operational Creditors | (a) Related Party of Corporate Debtor | NIL | NIL | NIL | NIL |
| | | (b) Other than (a) above: | | | | |
| | | (i) Government | 21.76 | 21.76 | 1.52 | 7% |
| | | (ii) Workmen and Employees | 2.10 | 2.10 | 2.10 | 100% |
| | | (iv) Ex-Employees | 1.48 | 1.20 | 0.08 | 5.67% |
| | | (v) Other than Workmen & employees and statutory dues | 113.39 | 96.32 | 6.74 | 5.95% |
| | | (vi) Others | 36.63 | 26.63 | 1.86 | 5.09% |
| | | Total[(a) + (b)] | 175.36 | 148.01 | 12.3 | 7% |
| 4 | Other debts and dues | | Nil | Nil | Nil | Nil |
| Grand Total | | | 19409.16 | 15221.99 | 8927.47 | 45.99% |

*If there are sub-categories in a category, please add rows for each sub-category.

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.]

**The estimated value has been arrived at by applying the percentage of total of the principle amount to total admitted claim as mentioned in the Resolution Plan on Page no. 15.

16. We notice that there is exorbitant haircut and the amount/benefit provided to be extended to the creditors in terms of the plan is very meagre and pathetic. But as per the law laid down by Hon'ble Supreme Court, it is not for this Tribunal to comment on the same/ interfere with the same and it is for the Committee of Creditors to take a call in this regard. In this context it would not be out of place to refer to the Judgement of Hon'ble Supreme Court passed in **Vallal RCK vs. M/s Siva Industries and Holdings Limited and Others** (Civil Appeal Nos. 1811-1812 of 2022). The relevant excerpts of the Judgement reads thus:-

IA-1833/ND/2020, IA-442/ND/2024 and CA-124/2019 in (IB)-334(ND)/2018 Ranjit Das & Ors vs. M/s MSX Mall Pvt. Ltd.

“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 Creditors of Essar Bank and Others, Committee of 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.**

XXX XXX XXX

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.....”

17. It has been ruled by Hon’ble Supreme Court in **Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr.**, (Civil Appeal No. 3224 of 2020), that while considering an application for approval of plan, this Adjudicating Authority need only to see as to whether there is compliance of the provisions of Section 30(2) of IBC, 2016. Para 153 of the judgment 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.

18. As can be seen from Column 4 of the certificate issued by RP in Form-H, the plan could be approved by CoC with 96.3% vote shares. The Column-4 of the certificate reads thus:-

4. I hereby certify that-

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

(ii) the Resolution Applicants, Mr. Madhav Saran Agarwal and Mrs. Alka Agarwal, the existing promoters and directors (with suspended powers) of the corporate debtor has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

(iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 96.3 % of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

(iv) The voting was held in the meeting of the CoC on [state the date of meeting] where all the members of the CoC were present.

or

I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the regulation 26.

* The extant Resolution Plan was received from the existing promoters after the last date of submission of the Resolution plan in accordance with the 4th Expression of Interest (EOI). However, considering the directions of the Hon'ble NCLT the said plan was put before the committee of creditors (CoC) for its consideration keeping in view the larger interest of hundreds of allottees and considering the fact that the Corporate Debtor fulfils the investment criteria for qualifying as MSME. The various orders of the Hon'ble NCLT dated October 24, 2019, November 05, 2019, November 18, 2019, November 28, 2019, January 03, 2020, January 07, 2020 and January 27, 2020 have been relied upon by the Resolution Professional for putting the plan before the CoC.

19. The Applicant has sought the following reliefs and concessions mentioned in the Clause 30 of the Resolution Plan which reads thus:-

“30. Prayer, Relief and concessions pertaining to UPSIDC

In view of the successful implementation of this Resolution Plan, this Hon'ble Tribunal may graciously be pleased to sanction the following reliefs pertaining to UPSIDC:

Direction to UPSIDC

- 30.1. *Pass an order directing UPSIDC to allow registration of shops, commercial space in favour of Allottees / Commercial Space Buyers in the mall with immediate effect, by way of the execution of sub-lease deed or any other deed with the sub registrar concerned, without imposing any late penalty, penal interest, time extension charges or penal charges of what-so-ever nature.*
- 30.2. *Pass an order directing UPSIDC to grant approval to increase the FAR of the Mall to permissible limit as per Uttar Pradesh State Industrial Development Area- Land Development & Building Regulation, 2018, as per applicable cost, without imposing any penalty/ penal charges of what-so-ever nature.*
- 30.3. *Pass an order directing UPSIDC to grant approval for the actual constructed layout maps of the Mall which is annexed herewith and marked as Annexure 4,5,6,7,8, 9 and 10*
- 30.4. *Pass an order directing UPSIDC to convert the land use of the land & building situated at B-4, Site-IV, Surajpur Industrial Area, greater Noida from present land use of Multiplex to Commercial land use.*
- 30.5. *Pass an order directing UPSIDC to seek permission from Government of Uttar Pradesh to establish the Police Chowki within the vicinity of the mall premises for the safety and security of public.*
- 30.6. *Pass an order directing UPSIDC to provide install street lights from the Main Road to the Mall.*

Directions from Other Local Authority/ Departments

- 30.7. *Pass an order directing Airport Authority of India, Environment Clearance, Uttar Pradesh Fire Service Department to renew certificates, approvals, NOC's of the Mall from the effective date.”*

20. The relief/concession broadly solicited by the SRA pertained to seeking directions to UPSIDC to allow registration of shops, commercial space in favour of Allottees/ Commercial Space Buyers without subjecting it to payment of any penalty/composition fees, interest, or any other charges. The further concession sought in the plan is to grant approval to increase the FAR of the Mall to permissible limit as per Uttar Pradesh State Industrial Development Area-Land Development & Building Regulation, 2018 , as per applicable cost and without imposing any penalty. As has been noted herein above, there are numerous other relief and concessions prayed for in the plan. 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 shall obtain the necessary approval 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.—

.....

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;”

21. In any case, in terms of the provisions of Section 13 and 15 of the IBC 2016 read with Regulation 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(b) of the IBC, 2016 and by RP in terms of the provisions of Section 25(b) thereof read with Regulations 12A, 13 and 14 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Thereafter, the RP prepare 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 CIPR Regulations, the RP shall 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 and a 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 and Evaluation Matrix that the RP issues request for Resolution Plan. The request for Resolution Plan detail 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 in force 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.

22. Furthermore, the reliefs and concessions in Para 19 above seek directions to various authorities to be issued by this Bench which is clearly beyond the mandate of the IBC, 2016. It is for the respective authorities to consider these prayers in the spirit of the objectives of IBC, 2016. The Applicant SRA is at liberty to approach the relevant authorities who would consider these claims as per the provisions of the relevant law in an expeditious manner.

23. Besides, in terms of the provisions of Section 32A incorporated in the Code by Act No.1 of 2020, w.e.f. 28.12.2019, for an offence committed prior to the commencement of the Corporate Insolvency Resolution Process the liability of 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 abetted or conspired for the commission of the offence and has submitted or filed a report or a complaint to the relevant statutory authority or Court. 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. However benefit of Section 32A can only be granted if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not— (a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or (b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court. Since the Resolution plan is of MSME, which is submitted by the suspended management, which results in no change in the management post approval, the benefit of Section 32A cannot be provided to SRA.

24. From the aforementioned analysis and discussion, it is apparent that the CD/SRA cannot be exempted from the liability to pay the dues/fees towards the required license, permit, registration, quota, concession, clearance or similar grant or right except to the extent and in manner, the same is provided under the law. In **Union of India and Ors. vs. Mahendra Singh** in (Civil Appeal No. 4807 of 2022), Hon'ble Supreme Court viewed that the procedure provided in statute should be followed as it is. Para 15 and 16 of the judgment reads thus:-

*“15. A three Judge Bench of this Court in a judgment reported as **Chandra Kishore Jha v. Mahavir Prasad & Ors.**, held as under:*

“17.....It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See with advantage: *Nazir Ahmad v. King Emperor* [(1935- 36) 63 IA 372 : AIR 1936 PC 253 (II)] , *Rao Shiv Bahadur Singh v. State of V.P.* [AIR 1954 SC 322 : 1954 SCR 1098] , *State of U.P. v. Singhara Singh* [AIR 1964 SC 358 : (1964) 1 SCWR 57] .) An election petition under the rules could only have been presented in the open court up to 16-5-1995 till 4.15 p.m. (working hours of the Court) in the manner prescribed by Rule 6 (*supra*) either to the Judge or the Bench as the case may be to save the period of limitation. That, however, was not done.....”

16. The said principle has been followed by this Court in ***Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh & Ors.*** wherein this Court held as under:

“14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure.....”

25. Further, it would be incumbent on the SRA/CD to obtain the necessary approval required under any law for the time being enforced within a period of one year from the date of this order or within such period as provided for in relevant provisions of law, whichever is later. The SRA would be liable to pay the required fees/charges if any for such approval.

26. In sum and substance, the SRA/CD would be entitled to no other relief/concession/waiver except those available to it as per the provisions of Section 31(1) of IBC, 2016. Thus, the relief and concession sought by the SRA except those admissible to it in terms of the provisions of Section 31 of IBC are nixed.

27. One of the Dissenting Financial Creditor viz. Indiabulls Housing Finance Ltd. has objected the plan by espousing that in clause 12 of the plan, a provision has been made that the dissenting Financial Creditors who do not vote in favour of the resolution plan shall be duly paid the applicable amount as per Section 30(2)(b) of the Code. In her submission the provisions of Regulation 38(1) (b) of IBBI (Resolution Process for Corporate Persons) Regulations, 2016 has been ignored. Confronted with the plea, the RP who is present with his counsel submitted that the compliance of Regulation 38(1)(b) is inbuilt in compliance of Regulation 30(2)(b) of IBC, 2016. With such plea raised on behalf of the RP, the apprehension/objections raised on behalf of the secured FC viz. Indiabulls Housing Finance Ltd. stand met. The next objection raised on behalf of the Indiabulls Housing Finance Ltd. to the plan i.e. the Commercial Space Buyers in the mall are shown secured FC, which is contrary of the law declared by the Hon'ble Supreme Court in the matter of **Pioneer Urban Land and Infrastructure Limited & Anr vs. Union of India & Ors.**, (Writ Petition (Civil) No. 43 of 2019). The relevant excerpt of the judgment reads thus:-

“61. The definition of “financial debt” in Section 5(8) then goes on to state that a “debt” must be “disbursed” against the consideration for time value of money. “Disbursement” is defined in Black’s Law Dictionary (10th ed.) to mean:

“1. The act of paying out money, commonly from a fund or in settlement of a debt or account payable. 2. The money so paid; an amount of money given for a particular purpose.”

In the present context, it is clear that the expression “disburse” would refer to the payment of instalments by the allottee to the real estate developer for the particular purpose of funding the real estate project in

which the allottee is to be allotted a flat/apartment. The expression “disbursed” refers to money which has been paid against consideration for the “time value of money”. In short, the “disbursal” must be money and must be against consideration for the “time value of money”, meaning thereby, the fact that such money is now no longer with the lender, but is with the borrower, who then utilises the money. Thus far, it is clear that an allottee “disburses” money in the form of advance payments made towards construction of the real estate project. We were shown the ‘Dictionary of Banking Terms’ (Second edition) by Thomas P. Fitch in which “time value for money” was defined thus:

*“**present value:** today’s value of a payment or a stream of payment amount due and payable at some specified future date, discounted by a compound interest rate of DISCOUNT RATE. Also called the time value of money. Today’s value of a stream of cash flows is worth less than the sum of the cash flows to be received or saved over time. Present value accounting is widely used in DISCOUNTED CASH FLOW analysis.”*

That this is against consideration for the time value of money is also clear as the money that is “disbursed” is no longer with the allottee, but, as has just been stated, is with the real estate developer who is legally obliged to give money’s equivalent back to the allottee, having used it in the construction of the project, and being at a discounted value so far as the allottee is concerned (in the sense of the allottee having to pay less by way of instalments than he would if he were to pay for the ultimate price of the flat/apartment).”

28. Confronted with this plea, the Ld. Counsel for the RP submitted that in column 8.1 of the plan, the expression secured has been used only on account of clerical error and the same would be read as unsecured creditor. With the aforementioned view, the objection raised on behalf of the Indiabulls Housing Finance Ltd. viz. secured creditors are met.

29. We, therefore, allow the present Application and approve the COC-approved Resolution Plan as placed before us by the Applicant/RP with the following directions:-

- (i) The approved Resolution Plan shall become effective from the date of passing of this Order and shall be implemented strictly as per the term of the plan and implementation schedule given in the Plan;
- (ii) The Performance Guarantee shall be kept renewed in the name of and kept alive by the “Monitoring Committee of the Corporate Debtor” till the Resolution Plan is fully implemented.
- (iii) The SRA/CD would be entitled to no other reliefs/ concessions/waivers except those which are available/permissible to it as per the provisions of Section 31(1) of IBC, 2016. Liberty, however, is granted to the applicant SRA to approach the relevant authorities, who will consider the claims as per the provisions of the relevant law.
- (iv) The Monitoring Committee as provided in the Resolution Plan shall be set up by the Applicant/RP within 07 days of passing of this Order, which in turn, shall take all necessary steps for time bound implementation of the Resolution Plan as per approval.
- (v) The order of the moratorium in respect to the corporate debtor passed by this Adjudicating Authority under Section 14 of the IBC, 2016 shall cease to have effect from the date of passing of this Order; and
- (vi) The Resolution Professional shall forward all the records relating to the conduct of the CIRP and the Resolution Plan to the IBBI for its record and database.

30. The Court Officer and Resolution Professional (RP) shall forthwith make available/send a copy of this Order to the CoC and the Successful Resolution Applicant (SRA) for immediate necessary compliance.

31. A copy of this order shall also be sent by the Court Officer and Applicant to the IBBI for their record.

IA-442/2024: Ld. Counsel appearing for the RP seeks to withdraw the present application. In view of the stand taken by him, the application is **dismissed as withdrawn.**

CA-124/2019: List on 29.04.2024

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

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

Upasana/Yashraj/Ruchita