

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH, BENGALURU**

**(Exercising powers of Adjudicating Authority under**  
**The Insolvency and Bankruptcy Code, 2016)**

**I.A. No.42 of 2022 in**  
CP (IB) No.168/BB/2020  
U/s 30(6) r/w Section 60(5) of I&B Code, 2016

**In the matter of IA No.42 of 2022:**

Balady Shekar Shetty  
Resolution Professional for  
Avvas Infotech Private Limited. - Applicant / RP

**In the matter of:**

Union Bank of India  
(Formerly Corporation Bank - Financial Creditor/  
Petitioner

**Versus**

Avvas Infotech Private Limited - Corporate Debtor/  
Respondent

**Order delivered on:25.05.2023**

**Coram:** 1. Hon'ble Justice (Retd) T.Krishnavalli, Member (Judicial)  
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**Present:**

For the Petitioner :Shri P.L Vijaya Kumar  
The RP :Shri B. S. Shetty  
For the RP : Shri C.K.Nandakumar (Sr.Adv.) with Shri K.N.Ravindra

**ORDER**

**Per:Manoj Kumar Dubey, Member (T)**

1. This application is filed by Mr. Balady Shekar Shetty (hereinafter referred to as "Applicant /Resolution Professional") under section 30(6) r/w section 31 of IBC,2016 seeking approval of the Resolution Plan submitted by suspended director of the Corporate Debtor namely Avva Venkata Subrahmanyeswara Sarma (hereinafter referred to as the "Resolution Applicants" or "RAs").
2. Brief facts of the case are given hereunder:

- (a)** The main Company Petition bearing CP(IB)No.168/BB/2020 filed by the Financial Creditor i.e., Union Bank of India (Formerly Corporation Bank, now merged with Union Bank of India) under Section 7 of the Code for initiation of CIRP in respect of Corporate Debtor, namely, M/s Avvas Infotech Private Limited was admitted by this Adjudicating Authority, vide order dated 06.04.2021, and Mr. Balady Shekar Shetty was appointed IRP . He was confirmed as RP in the first CoC meeting dated 3.05.2021. In response to the published Form G only one eligible Expression of Interest was received. However, the lone eligible Prospective Resolution Applicant did not submit any Resolution Plan as on 25.09.2021, being the last date for submission of the Plan.
- (b)** The period of 180 days for completion of the CIRP of the Corporate Debtor expired on 3<sup>rd</sup> October 2021 after exclusion allowed by this Adjudicating Authority .The MD of the suspended Board submitted an application on 4<sup>th</sup> October 2021 seeking permission to submit his Expression of Interest on the ground that his entity comes under MSME category.
- (c)** The RP called a CoC meeting on 22.10.2021 to take a decision on the request of the MD of the suspended Board of the Corporate Debtor. The CoC with a voting share of 75% approved to consider i) to approach Hon'ble Tribunal seeking further extension of CIRP period of 90 days and ii) to publish the fresh Form G on 29.10.2021. An IA was filed on 12.11.2021, seeking extension in the CIRP period by 90 days up to 19.02.2022. Anticipating this approval, the fresh Form G was published on 29.10.2021.
- (d)** In response, only two EoIs were received. Out of the two, only one Prospective Resolution Applicant i.e., M/s Avvas Infotech Private Limited (being MSME unit) has submitted the Resolution Plan. The 7<sup>th</sup> meeting of the CoC held on 13.01.2022 approved this Resolution Plan submitted by suspended director of the Corporate Debtor namely Avva Venkata Subrahmanyewara Sarma with 75.14% of the voting share

- (e) Pursuant to Regulation 39(4) of the CIRP Regulations, the Applicant has filed the Compliance Certificate in Form -H *vide* diary no 1186 dated 22.03.2022 and the same is placed on record as Annexure II. The list of Financial Creditors of the Corporate Debtor being members of the CoC and distribution of voting share among them is as under:

<i>Financial Creditor</i>			
Sr No	Name of creditors	Voting Share	Voting for Resolution Plan (Votes for/Dissented/ Abstained)
1	Union Bank of India (formerly Corporation Bank)	24.86	Voted against
2	M/s Pridhvi Asset Reconstruction & Securitization Company Ltd,(PARAS)	75.14	Voted for
3	Total	100.00	Voted For:75.14%
			Voted Against:24.86%

- (f) The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs.lakhs)

Sl no	Category of stakeholders*	Sub-Category of Stakeholders	Amount claimed	Amount admitted	Amount provided under 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)	-	-	-	-
		(b)other than (a) above:	1747.59	1747.59	1800(market value of the property given as security to the creditor) Refer to SL No.1 of Note given below	100 Refer to SL No1 of Note given below

		<i>(i) who did not vote in favour of the Resolution Plan</i>	1747.59	1747.59	1800(market value of the property given as security to the creditor) Refer to SL No.1 of Note given below	100 Refer to Sl No1 of Note given below
		<i>(ii) who voted in favour of the Resolution Plan</i>	0	0	0	0
		<i>Total [(a)+(b)]</i>	1747.59	1747.59	1800(market value of the property given as security to the creditor) Refer to SL No.1 of Note given below	100 Refer to Sl No1 of Note given below
2	Unsecured Financial Creditors	<i>(a) creditors not having a right to vote under sub section (2) of section 21</i>	0	0	0	0
		<i>(b) other than (a) above:</i>	5282.65	5282.65	320(as per valuation report of the property given as security to the creditor)  Refer to Sl No.2 of Note given below	6.06 Refer to sl no.2 of Note given below
		<i>i) who did not vote in favour of the Resolution Plan</i>	0	0	0	0
		<i>(ii) who voted in favour of the Resolution Plan</i>	5282.65	5282.65	320(as per valuation report of the property given as security to the creditor)  Refer to Sl No.2 of Note given below	6.06 Refer to sl no.2 of Note given below
		<i>Total[(a)+(b)]</i>	5282.65	5282.65	320(as per valuation report of the property given as security to the creditor)  Refer to Sl No.2 of Note given below	6.06 Refer to sl no.2 of Note given below

3	Operational creditors	(a) related party of Corporate Debtor	0	0	0	0
		(b) other than (a) above:	0	0	0	0
		(i)Government	92.29	88.89	0	0
		(ii)workmen	0	0	0	0
		(iii)Employees	56.00	56.00	0	0
		(iv).....				
		Total [(a)+(b)]	148.29	144.89	0	0
4	Other debts and dues		0	0	0	0
	Grant Total		7157.52	7154.12	2120	29.63

\*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]

**(g)** The basis of settlement of dissenting Financial Creditors, Financial Creditors who voted in favour of Resolution Plan and operational creditor is given below:

Sl no	Category	Amount claimed	Amount admitted	% of amount provided v. admitted	Proposed Payment structure and time lines
		(in Rs.Lakhs)	(in Rs.Lakhs)	(in Rs.Lakhs)	
1	Dissenting Financial Creditors-secured (Corporation Bank- now	1747.58	1747.58	Land in 3.56 acres situated at RS No.18/1,Nearest D No 49-4-15,Gunadala Village,Vijayawada.  Govt Value Rs.28.25 Cr and Market Value 18 Cr(approx)  The said property was given as collateral security to corporation Bank. The status quo is to be maintained and the property/security is left to the sole	The property /security is left to the sole discretion of the said Financial Creditor i.e., Corporation Bank (Now UBI)  Union Bank of India has got clearance from the Hon'ble High Court of Telangana releasing the property from the attachment made by Govt of AP.Based on this order the CD will facilitate for selling the property and adjust the amount realised as full and final settlement of admitted claims of Union Bank of India.  Time frame for realisation of the amount by selling the property depends on the procedures/actions to be taken by the Union Bank of India

				discretion of the said Financial Creditor i.e., Corporation Bank (Now UBI)	Corporate Guarantee/personal guarantees given to Corporation Bank(Union Bank of India) may be dealt with as per law)
2	Financial Creditors- Unsecured (M/s Pridhvi Asset Reconstruction & Securitization Company Ltd) who voted in favour of the Resolution Plan	5282.65	5282.65	Land & Building situated at D No.23.6.1,Kommuvari Street,Satyanarayana Puram,Vijayawada in an area of 650 sq.yards  Govt Value Rs.1.82 Cr and Market value Rs.3.90 Cr (approx)  The said property was given as collateral security to M/s Pridhvi Asset Reconstruction and Securitisation Company Ltd. the status quo is to be maintained and property/security is left to the sole discretion of the said Financial Creditor i.e., M/s Pridhvi Asset Reconstruction and Securitisation Company Ltd	the property/ security is left to the sole discretion of the said Financial Creditor i.e., M/s Pridhvi Asset Reconstruction and Securitisation Company Ltd(PARAS)  Hon.DRT vide its order dated 29.11.2017 has issued a Recovery Certificate in favour of M/s PARAS a copy of which is attached vide Annexure C.PARAS is in the process of getting the clearance from the Hon'ble High Court of Telangana for releasing the property from the attachment made by Govt. of AP State /ED. after getting the clearance from Hon'ble High Court of Telangana, the CD will facilitate for selling the property abd adjust the entire amount realised as full and final settlement of admitted claim of M/s PARAS,  Time frame for realisation of the amount by selling the property depends on the procedures/actions to be taken by M/s PARAS.

**(h)** However, in Para 6 of the Resolution Plan, the above details have certain additional information, which are as follows:

- 1) CIRP cost, being Rs.35 Lakh.
- 2) "The status quo is to be maintained" is mentioned before "the property is left to the sole discretion of the said Financial Creditor" in the last column "Proposed payment structure and time lines"; in both SL.No. 1 & 2 above in Para g.

**(i)** It is certified by the RP in Para 4 of Form-H that the said Resolution Plan complies with all provisions of the Insolvency & 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. It is also stated in Para 4(ii) of Form-H that the Resolution Applicant Avvas Infotech Private Limited 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.

- (j) It is stated that CoC authorized the RP to submit the Resolution Plan submitted by Avva Venkata Subrahmanyeswara Sarma on behalf of ex promoter of M/s Avvas Infotech Private Limited to this Adjudicating Authority u/s 30(6) of the Code for approval. Hence, this application.
- (k) It is submitted that in accordance with Section 30 (1) of the Code, the Resolution Applicant namely Mr.Avva Venkata Subrahmanyeswara Sarma has submitted affidavit dated 27.12.2021 declaring that he is eligible under Section 29A of the Code to submit the Resolution Plan. The said affidavit is placed at pg no.239 to the application.
- (l) In respect to Para (i) & (k), it is noticed that the affidavit dated 27.12.2021 under Section 29A has been filed by Shri.Avva Venkata Subrahmanyeswara Sharma on behalf of M/s Avvas Infotech Private Limited, which is the Resolution Applicant.
3. On 29.09.2022, this Tribunal directed the RP to file a memo clarifying the non-monetary market value of amounts given in Form H and also explanation regarding the consideration of Government dues in the Resolution Plan in view of recent judgment of Hon'ble Apex Court in the case of Rainbow Papers. Pursuant to the same, the RP filed a compliance memo vide diary no 4757 dated 7.11.2022 as regards the clarification on non-monetary market value amounts given in Form H , and consideration of govt dues in the Resolution Plan and the same is taken on record. It has been explained as under:

### **1. Clarification on non-monetary market value amounts given in Form-H**

#### **a. Land mortgaged to Corporation Bank:**

The land measuring about 3.56 acres situated at RS No.18/1, Nearest D. No.49-4-15, Gunadala Village, Vijayawada belongs to M/s. Agrigold Farm Estates Private Limited, a Group Company of the Corporate Debtor which is given as collateral security to Corporation Bank (Presently Union Bank of India) for the loan availed by the CD. The said property is attached by the Enforcement Department and by the State Governments.

The Guidance Value of the property is Rs.28.25 Cr. and Market Value is Rs.18 Cr. (approx.). As per the 'affidavit in support of the Writ Petition filed by the Union Bank of India, the market value of the secured assets is higher than the amount due to the Bank which was

noted by the Hon'ble High Court of Telangana. Union Bank of India has got clearance from the Hon'ble High Court of Telangana to proceed under SARFAESI Act. A copy of the order dated 27.03.2019 is placed at page 249 of the IA filed by the RP.

Since the asset does not belong to the Corporate Debtor this asset has not been valued by the Land & Building Valuer appointed by the RP.

**b. Land and Building situated at D.No.23-6-1, Kommuvuri Street, Satyanarayanapuram, Vijayawada in an area of 650 Sq. Yards mortgaged to M/s. Pridhvi Asset Reconstruction and Securitisation Company Ltd. (PARAS):**

The said property belonging to the Corporate Debtor was given as collateral security for the loan availed by M/s. Tourism & Travel Media Entertainment Pvt. Ltd., a Group Company of the Corporate Debtor, from Dena Bank. M/s. Pridhvi Asset Reconstruction and Securitisation Company Ltd. had acquired the loan from M/s. Dena Bank.

As per the Valuation Report given by the Valuers appointed by the RP, Average Fair Value of the Land and Building is Rs.4,55,97,500/- & Average Liquidation Value is Rs.3,19,53,200/-.

Hon'ble Debt Recovery Tribunal vide its order dated 29.11.2017 has issued a Recovery Certificate in favour of M/s. PARAS, a copy of which was attached as Annexure-C to the Compliance Memo filed on 11.03.2022.

Further, the RP has also explained that the dues in respect of ESIC Bangalore and Hyderabad have been considered in the Resolution Plan.

- 4.** Further on 14.11.2022, which were reiterated on 21.12.2022 & 30.01.2023, this Tribunal directed the RP to produce submissions for legal precedence related to similar situations, as in this case as regards non-monetary values stated in Form H related to attached collateral securities belonging to third parties . In compliance to the above order, RP filed a memo vide diary no 5403 dated 13.12.2022 regarding legal precedence for the similar situations. In these submissions the RP has explained that the revival of the Corporate Debtor was

the principal objective of the IBC for which various decisions have been relied upon which are as under:

- (i)** *Hon'ble Supreme Court in K.N. Rajakumar Vs. V. Nagarajan & Others in Civil Appeal No.1792 of 2021 with Civil Appeal No.2901 of 2021;*
- (ii)** *Hon'ble Supreme Court in Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. in Civil Appeal No.8766-67 of 2019;*
- (iii)** *Hon'ble NCLT Division Bench II – Chennai – IA (IBC) 643 (CHE) 2021 in IBA/902/2019 along with IA/IB/1286/2020 in IBA/902/2019 in the matter of Sri A.R. Ramasubramania Raja, RP of Topknit Processing Mill Private Limited;*
- (iv)** *Hon'ble NCLAT, New Delhi in Vijay Kumar Pandey Vs. Panacealife Healthzone Pvt. Ltd. & Ors. (2022) ibclaw.in 435 NCLAT.*

It is noticed that in these submissions, the emphasis has been placed on revival of the Corporate Debtor and to make it as going concern and on the commercial wisdom of the CoC, for which the RP has relied upon the aforesaid judgments. However, no decisions related to the similar situations as regards the non-monetary market values given in various columns in Form-H under the column 'Amount provided under the Plan' has been submitted. In non of there judgements, matter regarding value of attached properties belonging to third parties have been proposed for the purpose of payments to creditors under the plan

5. The RP *vide* Diary No.1125 dated 27.02.2023 has submitted written arguments in respect of IA No.42 of 2022 by *inter alia* stating as under:

- (i)** It is stated that the objections raised by M/s. Union Bank of India (UBI) has to be dismissed in view of the following:
  - a. ....
  - b. ....
  - c. The UBI has been given enough opportunity during the course of the CoC meetings specially, when the Resolution Plan was under the consideration of CoC. As is evident from the Minutes of 7<sup>th</sup> CoC Meeting held on 13.01.2022, the concerns expressed by UBI have been taken into account and the Resolution Plan had been amended to address the concerns of the Bank and specifically to provide that the Corporate Guarantee given by M/s. Agrigold Farm Estates India Private

Limited and the Personal Guarantees given by the Directors of the suspended Board will be continued as per the law prevailing.

d. IA No.42 of 2022 for approval of the Resolution Plan was filed before this Tribunal on 27.01.2022. The UBI has orally made objections on the Resolution Plan after nearly one year of submission of the Plan and that too at the fag-end when this AA was about to pronounce its orders, with an intention only to further delay the CIR Process thereby affecting the revival of the Corporate Debtor.

e. ....

**(ii)** The contention of the UBI that they are not in a position to sell the property unless the application before the appropriate Authority i.e. CBCID constituted by the Govt. of Andhra Pradesh is disposed off is misleading.

The Corporation Bank (presently Union Bank of India) has filed a separate Writ Petition No.44526 of 2018 seeking permission to proceed against the Secured Assets. The Hon'ble High Court of Telangana while dealing with the WP (PIL) No.193 of 2015 passed the following orders:

*“The learned Special Government Pleader filed a report of the CBCID confirming that the properties were mortgaged to Corporation Bank. It is seen that the affidavit in support of the writ petition filed by the Corporation Bank, that the market value of the secured asset is higher than the amount due to the Bank. Therefore, the Bank is permitted to proceed with the steps under SARFAESI Act, 2002 but shall not confirm any sale without the orders of this Court.”*

It is admitted that the UBI has every right to dispose off their property mortgaged to them with or without the assistance of the Resolution Applicant.

**(iii)** It is also stated that EoIs were called for two times, but no Resolution Plans were received, except that of one which was submitted by the Promoter of the Corporate Debtor being a MSME. The UBI, after sailing with the CIRP all along, and after having known that the Plan was approved by CoC with requisite majority, is now raising an objection and seeking rejection of the Plan, which is not in consonance with the objectives of the Code. Hon'ble Supreme Court in Civil Appeal No.1792 of 2021 dated 15.09.2021 in *KN Rajakumar Vs. V. Nagarajan & Ors.* has observed that *‘Every attempt has to be first made to revive the concern and make it a going concern, liquidation being the last resort.’*

**(iv)** It is stated that the interests of all the stakeholders has been considered in the Resolution Plan.

**(v)** It is submitted that if the Plan is not approved, the CD will go into liquidation and the Property given as security to UBI is a third party security as such this Property cannot become the liquidation estate. Hence, UBI will not be in any better position than what it is now if the Plan is approved under CIRP.

**6.** On 30.01.2023 & 28.02.2023, this Adjudicating Authority directed the Union Bank of India/ Financial Creditor's Counsel to file written submission. In compliance to the order, the following submissions were made vide diary no 1311 dated 07.03.2023:

*“3. the credit facilities availed from the Petitioner bank is secured by the mortgage of the Immovable property more fully described at S.NO.2 B.1 page 11 of the RP which belongs to Agro gold farm estates India Private Limited and personal guarantee of the ( a ) Shri Avva Venkata Subramanyeshwara Sarma (b) Shri Avva Venkata Sivaram (c ) Shri Avva Venkata Seshu Nayrana Rao and (d) Corporate Guarantee of Agrigold farm estates Private Limited who is also the mortgagor. In this regard it submitted that the Government of Andhra Pradesh has passed an interim order of attachment of the mortgaged property vide it sorder GOMS.No.23 dated 20.2.2015 under Section 3 of the A.P Protection of Depositors Financial Establishments Act,1000. The Petitioner bank has filed a petition under section 3 r/w7 (3) of the said Act to raise the order of attachment which is numbered as CrI.M.P No.1220/2015 and the petition is yet to be disposed of. Thus the security available by way of mortgage is impaired and can be disposed of only after the order of attachment is raised.*

*5. it is proposed in the RP to maintain status quo with respect to the security available to the Petitioner Bank and the Corporate Debtor will only facilitate in disposal of the mortgaged property and adjust the sale proceeds as full and final settlement of the admitted claims without any commitment either from the Corporate Debtor or the Resolution Applicant for repayment of the dues. It is further provided that the personal guarantee and corporate guarantee may be dealt with as per the law.”*

**6.1.** Further, it is also contended by the Union Bank of India that the Resolution Plan may be rejected due to the following reasons:

- (i)** Even without CIRP, the Bank (Secured Creditor) would have enforced its security towards its dues, and even the Resolution Plan proposes the same as the only means for repayment of the dues. Thus, the Bank is in the same situation as before and therefore the initiation of CIRP becomes redundant.
- (ii)** The absence of any proposal for the repayment of the dues of the Bank is contrary to the Regulation 38(1A) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It states that the Resolution Plan should include a statement as to how the in-

terests of all the stakeholders have been dealt with. The stipulation that the CD / SRA will merely facilitate disposal of the security of the Bank cannot be treated as having taken care of the interest of the Petitioner-Bank in the Resolution Plan. The mortgaged property is a collateral security owned by a third party, and the Bank in any case was entitled to enforce it in accordance with Law.

- (iii)** It is an anomaly to submit a Resolution Plan without making any provision for repayment to the Creditor and instead compelling it to dispose of its security for the recovery of the dues.
- (iv)** The proposal in the Plan is contingent on the future sale of the mortgaged property which cannot be considered as being in compliance to Regulation 38(1A) of the IBBI Regulations.

**7.** We have examined the Resolution Plan in the light of provisions of section 30(2) of the IBC, 2016. We have noted that in the Resolution Plan, a provision is made for payment of the CIRP cost as contemplated under Section 30(2)(a) of the IBC,2016. It is mentioned in the Resolution Plan that the Financial Creditors (including secured and unsecured creditors) are holding securities/ collateral mortgaged properties. The admitted claim of M/s Corporation Bank, which is the Dissenting Financial Creditor (Secured Creditor), is Rs.1747.58 lakhs. The time frame mentioned for realization of the amount provided under the plan by selling the property depends on the procedures / actions to be taken by the Bank. Vide diary no 4757 dated 7.11.2022 and diary no 5403 dated 13.12.2022 , RP submitted that the guidance value of the property which was given as collateral security to the Corporation Bank is Rs.28.25 Cr and the market value is Rs.18 Cr(approx) which is higher than the amount due to the Bank. It is also contended that the Union Bank of India has got clearance from the Hon'ble High Court of Telangana to proceed under SARFAESI Act for sale of mortgaged property, but should not confirm any sale without the orders of the Court; and that there is no legal impediment to sell this property by the Bank .

**8.** In respect of the unsecured creditor, i.e.,M/s Pridhvi Asset Reconstruction & Securitization Company Limited , the admitted claim is Rs 5282.65 lakhs. Again, the time frame for realization of the amount by selling the property depends on the procedure / actions to be taken by the unsecured creditor who holds the security, being attached property of the Corporate Debtor. The RP has submitted that the

guidance value of the property, which was given as collateral security to the unsecured creditor is Rs.1.82 Crore and the market value is Rs.3.90 Cr (approx). The said collateral property belonged to the Corporate Debtor, same was given as security for loan availed by M/s Tourism & Travel Media Entertainment Private Limited, a group company of the Corporate Debtor from Dena Bank. The unsecured creditor had acquired the loan from M/s Dena Bank.

9. It is also mentioned that, upon the approval of plan by Adjudicating Authority, RP will be continued as part of monitoring agency during the period of Resolution Plan of 3 months or the plan period whichever is lesser. The term of the Resolution Plan is fixed for 3 months, within which the CIRP cost would be paid and an amount of Rs.50 lakhs will be infused through friends/relatives/ well wisher/ associates.
10. However, we have to examine whether the Resolution Plan satisfied the requirements of the Code as prescribed under Section 31 r.w.s 30(2) of the IBC, 2016. In this connection, even in the Judgments cited by the Petitioners mentioned at para 4 above, the scope of the judicial review by the Adjudicating Authority u/s 30(2) and 31(1) of the Code has been upheld by the Hon'ble Apex Court. It has been held that the Adjudicating Authority has got jurisdiction in so far as the approval of the Resolution Plan was concerned, subject to the scope of Section 30(2) and 31(1) of the Code. [*Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors. in Civil Appeal No.3395 of 2020 dated 24.03.2021* and in the matter of *K. Sashidhar v. Indian Overseas Bank & Ors. (2019) 12 SCC 150.*] Further, in a decision dated 06.07.2022, by the coordinate Bench of NCLT Ahmedabad in the case of *M2K Developers Pvt Ltd v. Ramchandra D Choudhary RP of Anil Mega Food Park Pvt Ltd, in IA No.843(AHM)2021 and IA No.420 (AMH)2022 in CP (IB) 287 of 2019*, it was held that the proviso to Sec 31(1) does not allow the NCLT to approve a Conditional Resolution Plan; and it was thus rejected.

Now we proceed to reproduce the provisions of Sec 31(1) and (2) of the IBC, 2016:-

**31. Approval of Resolution Plan. –**

*(1) If the Adjudicating Authority is satisfied that the Resolution Plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the Resolution Plan*

*which shall be binding on the Corporate Debtor and its employees, members, creditors, 1[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:*

*2[PROVIDED that the Adjudicating Authority shall, before passing an order for approval of Resolution Plan under this sub-section, satisfy that the Resolution Plan has provisions for its effective implementation.]*

*(2) Where the Adjudicating Authority is satisfied that the Resolution Plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the Resolution Plan.*

- 11.** As observed from the records produced before us, we are of the considered view that the Financial Creditor i.e., Union Bank of India is not getting any benefit out of this Resolution Plan at all. The collateral asset given as security by the Corporate Debtor to the Corporation Bank belonged to one of its Group Company, and the status of the Bank in respect to the claim against the Corporate Debtor won't make any difference due to this plan. In this regard the Petitioner Bank has correctly stated that the mortgaged property is a collateral security which is owned by a third party, and the Bank is in any case entitled to enforce the same in accordance with law, without the assistance of the Corporate Debtor or the Resolution Applicant. Even though the term of the plan is stated to be 3 months, the Successful Resolution Applicant has not mentioned any specific period for selling the property of the Corporate Debtor and its subsequent distribution of proceeds to the dissenting secured Financial Creditor. In fact, it is subject to so many contingencies that the Resolution Applicants cannot be certain of any time line. It is pertinent to mention here that the default amount in this case as per the admission order of the CIRP was Rs.15,30,55,985/- and in Form-H amount claimed/admitted for the secured creditor(UBI) is mentioned as Rs.17,47,58,000/-. As against the same, the erstwhile Promoter of the Company i.e. the Corporate Debtor herein has emerged as the Successful Resolution Applicant (SRA) to take over the control of the Company (it being a MSME), and has come up with the proposal for infusion of only Rs.50 Lakhs as Capital, out of which Rs.35 Lakhs was towards CIRP costs. Even in the provisions for the payment to the Secured Creditors, there is no contribution whatsoever from the SRA and it has been merely stipulated that the

Secured Creditor was entitled to enforce the security, being the property mortgaged of a Sister Concern against the Loan. The Secured Creditor (UBI) has rightly stated that the option of recovery of dues by enforcing the security under SARFAESI Act, 2002 was in any case available to it and therefore, the Resolution Plan cannot be treated to have addressed this issue at all. **In such a situation, it has been correctly argued that the Resolution Plan has not satisfied the stipulation under Regulation 38(1A) of the IBBI Regulations; as nothing has been brought out in the Resolution Plan as to how the interest of the Secured Creditor, being the stakeholder, has been taken care of.**

12. The facts and circumstances of the case and the above discussion clearly highlight the uncertainties and contingencies which arise out of the Resolution Plan. In fact, due to the multiple conditions, the Resolution Applicant cannot be certain of even the timeline to implement the Plan. This is clearly borne out under the head **‘Proposed payment structure and timelines’, in Form H;** wherein, the following remark has been given for the Secured Creditor:

*“Time frame for realisation of the amount by selling the property depends on the procedures and actions to be taken by the Union Bank of India.”*

Similarly, following remark has been mentioned under the ‘proposed payment and time line’ for the Unsecured Creditor:

*“Time frame for realisation of the amount by selling the property depends on the procedures and actions to be taken by M/s. PARAS.”*

**Under the circumstances, it cannot be inferred that the provisions of Regulation 38(2)(a) and 38(3)(d) of IBBI Regulations has been complied with in the Resolution Plan, which specifically provide that there has to be specific term of the Plan and its implementation schedule along with the timeline for the same.**

13. To recapitulate, there are the following ‘conditions’ for implementation of the implementation of the Plan; and the following provisions of the Code have been violated:

- (a) For the amount provided to the Secured Creditor (UBI), merely the enforcement of security for the loan being a mortgaged property of the third party was stated to be provided under the Plan; on which there was an attach-

ment of the State Government authorities and the 'Status quo' was to be maintained. The UBI has contended that the Petition before the Government of Andhra Pradesh u/s 3 r/w Section 7(3) of the AP Protection of Depositors Financial Establishment Act, for removal of the attachment was yet to be disposed of and therefore the realisation depended on this contingency. Even though the permission for sale for realisation of dues under the SARFAESI Act, 2002 was granted by the Hon'ble High Court, there was a stipulation that this was not to be disbursed without the permission of the Hon'ble High Court.

- (b) In respect of the Unsecured Creditor also the amount provided mentions that the Property of the CD was given as security to M/s. PARAS which was to be sold for realisation of the outstanding amount. However, in respect of this also 'Status quo' was to be maintained and similarly it is stated that PARAS was in the process of getting clearance from the Hon'ble High Court of Telangana for realising the property in view of the attachment made by the Govt. of Andhra Pradesh / Enforcement Directorate; and only after the clearance of the Hon'ble High Court is received; this would be available for sale and provision of the amount to the Unsecured Creditor under the Resolution Plan.

Therefore, in respect of (a) and (b) both, the realisation of the dues of the Creditors under the Plan to the Secured Creditor and Unsecured Creditor was clearly subject to certain conditions. It is also seen that in the Resolution Plan it is proposed to maintain the 'Status quo' with respect to these securities and the only role proposed for the CD / SRA was to facilitate the disposal of such securities, being the mortgaged properties. Thus, the proposal to repayment to these creditors was clearly contingent on the future sale, which cannot be treated as repayment under the Plan which clearly takes care of the stakeholders, as per the **Requirement of Regulation 38(1A) of the IBBI Regulation.**

- (c) As already discussed above, there is no commitment of the timeframe for realisation of the aforesaid amount in the Plan and because of this uncertainty, the Plan becomes contingent in nature as the timeframe is not available and thus there is violation of **Regulation 38(2)(a) and 38(3)(d) of the IBBI Regulations.**

In this regard, it is pertinent to refer to the provisions under Section 30(2)(e) and 30 (2)(f) , accordingly to which the Resolution Plan has to meet the requirements specified by the Board and does not contravene any provisions of the law. The Regulations as stated above in (b) and (c) are specified by the Board. Thus it is seen that there is a violation of Section 30 (2) (e ) and (f) of the Code.

- 14.** It thus appears to us that the Resolution Plan in question is uncertain and conditional and thus in our considered view that this plan cannot be effectively implemented Therefore this kind of uncertain amounts provided under the plan cannot be approved under the provisions of the Code. In terms of the amounts provided under the plan, the payments cannot be made conditional. In spite of specific opportunity granted to the Resolution Applicant during the hearing as discussed above to cite any precedence for similar type of situations in the Resolution Plan for the Non-monetary value of attached collateral security mentioned in the relevant columns of Form H, the Applicant could not furnish the same. It is settled law, that conditional Resolution Plans cannot be approved under the Code and such Resolution Plans would diminish the objective for which the Code was enacted. If at all, this plan is approved it cannot be effectively implemented. The Proviso to Section 31(1) of the Code does not permit us to approve such conditional Resolution Plan. The same view has been taken by the co-ordinate Bench of NCLT Ahmedabad in the matter of *M2K Developers Pvt Ltd v. Ramchandra D Choudhary*, cited supra. Moreover, the requirements of Sec 30(2)(e) and (f) of IBC are not satisfied, and there by the provisions of Sec 31 (1) r.w.s Sec 31 (2) are also not satisfied . The Resolution Plan submitted in therefore not tenable in law and is hereby rejected under section 31(2) of IBC. **IA No.42 of 2022 in CP IB 168 of 2020 is accordingly disposed of.**

**-Sd-**

**(MANOJ KUMAR DUBEY)  
MEMBER (TECHNICAL)**

**-Sd-**

**(T.KRISHNAVALLI)  
MEMBER (JUDICIAL)**