

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-II**

**C.A. - 646/(ND)/2018  
C.A. - 743/(ND)/2018  
In C.P. No. IB-432/(ND)/2017**

**In the matter of:**

**MIDITECH PRIVATE LIMITED**  
261/1, Main Road,  
Chhatterpur,  
New Delhi - 110074.

...Corporate Debtor

**AND**

**C.A. - 646/(ND)/2018**

**In the matter of:**

**HARISH CHANDER ARORA**  
Resolution Professional,  
Miditech Private Limited.

...Applicant

**C.A. - 743/(ND)/2018**

**In the matter of:**

**HARISH CHANDER ARORA**  
Resolution Professional,  
Miditech Private Limited.

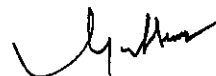
...Applicant

**Order Delivered on: 18.07.2019**

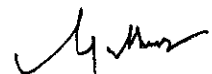
**CORAM:**

**MS. INA MALHOTRA, MEMBER (JUDICIAL)**

**DR. V. K. SUBBURAJ, MEMBER (TECHNICAL)**



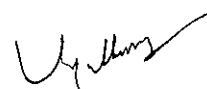
PRESENT – Harish Chandra Arora, Vijay Kumar, Advocates for Resolution  
Professional  
Abhishek Hindunia, Advocate for Canara Bank  
Niharika Sharma, Akshat Kapoor, Advocates for Nivedith Alva  
Sanjay Bhatt, Srishti Kapoor, Advocates for Ex-directors



## ORDER

Per Dr. V. K. Subburaj (Member Technical)

1. Miditech Pvt. Ltd. was incorporated under the provisions of the Companies Act, 1956 on 31.07.1997 with the Registrar of Companies, NCR and Haryana with its registered office at 261/1, Main Road, Chattarpur, New Delhi - 110074. The CD presently has an authorized share capital of Rs. 10 crores and paid up capital of Rs.9.96 crores. The CD was engaged in the business of television content production, animation production for domestic broadcasters and event production. The probable reasons for insolvency of the CD are sluggish operational performance due to economic slowdown and ongoing litigation faced by Time Warner Inc. which was previously associated with the CD. Further, the secured borrowings of the CD have been utilized for providing loan/investment in group companies and not for business operations. Thus, no capital is available for business operations, leading to poor financial health of the CD.
2. The CIRP of the CD was initiated on the filing of an application by the CD under Section 10 of the Code, vide order of this Tribunal dated 16.02.2018. Mr. Gian Chand was appointed as the interim resolution professional ("IRP"). The Committee of Creditors ("CoC") was constituted on 09.03.2018 by the IRP which comprised financial creditors of the CD as on 16.02.2018. The IRP was replaced with the present resolution professional ("RP") vide



order dated 16.05.2018, who carried out the present CIRP. During the moratorium period the CoC met 11 times for completion of CIRP. Presently, there are two applications filed before this Tribunal – C.A. 646/ND/2018 for setting aside of a preferential transaction and C.A. 743/ND/2018 for approval of resolution plan.


**C.A. 743/ND/2018**

3. Two resolution plans were received till the cut-off date 18.09.2018 - one submitted by Spicejet Merchandise Pvt. Ltd. and Ajay Singh and another submitted by Nikhil Alva and Niret Alva. During the CoC meeting held on 29.10.2018 one of the financial creditors Jupiter Capital, with voting share of 3.84%, voted in favour of plan submitted by Nikhil Alva and Niret Alva and the other financial creditor, Canara Bank, with voting share of 96.16%, did not vote during the meeting. The representative of the Canara Bank sent an e-mail dated 05.11.2018 informing that Canara Bank had decided to accept the resolution plan submitted by SpiceJet Merchandise Pvt. Ltd. and Ajay Singh. Thus, the resolution plan submitted by SpiceJet Merchandise Pvt. Ltd. and Ajay Singh was approved by the CoC with a 96.16% vote.
  
4. The resolution applicants, SpiceJet Merchandise Pvt. Ltd. ("SMPL") and Mr. Ajay Singh (collectively referred to as "RA"), have jointly submitted the present resolution plan and propose to invest funds in the CD through a



special purpose vehicle/joint venture. According to the resolution plan, Mr. Ajay Singh is the promoter and chairman cum managing director of SpiceJet Ltd., which is engaged in the business of providing airline services, and is responsible for the turn around of SpiceJet Ltd. in 2015. As on 31.03.2018 the net worth of Mr. Ajay Singh is more than Rs. 2000 crores. SPML is a private company, with its registered office in Delhi and is a wholly owned subsidiary of SpiceJet Ltd. The main business verticals of SpiceJet Ltd. and SPML are airline services, arranging tours and vacations, in-house visual media production, media content and producing motion pictures and selling merchandise through online and offline channels, out of which the, the merchandise business is handled by SPML. The proposal of restructuring the operations according to the resolution plan is as follows:

- i. The business operations of the CD will be used for in-house consumption of SpiceJet. This will mitigate the risk of marketing and economic adversities, which was one of the key reasons for failure of the business earlier.
- ii. The RA plans to use the licenses and tools available with CD as a platform to promote the merchandise vertical of SpiceJet and SPML.
- iii. SpiceJet's vertical Spice Vacations is a travel solution platform, offering customized travel packages to customers, spread over a network of domestic and international destinations. With acquisition of the CD, the RA plans to use the content for live



streaming in the aircraft of SpiceJet to promote the vacation packages and generate revenues.

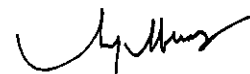
- iv. SpiceJet has a dedicated, qualified and experienced team of professionals in its roll whose contribution is reflected in the overall growth of SpiceJet. A proper management team will be appointed for smooth functioning of the CD.

5. The financial proposal made by the RA is as follows:

- i. An SPV/JV shall be incorporated by Ajay Singh and SMPL. The SPV/JV shall be funded adequately by Ajay Singh and SMPL or any of its affiliate by subscribing to equity shares, debt, convertible debt and preference shares of the SPV in order to undertake the transaction contemplated in this resolution plan.
- ii. The resolution plan proposes reduction of the CD's share capital from Rs.9,96,40,440/- to Rs.99,64,044 without any payout to existing shareholders of the CD, by reducing face value of each issued and outstanding equity share of the CD from Rs.10 to Re. 1.
- iii. An amount of Rs. 2 crores shall be infused by the SPV/JV from its own funds in consideration of which the CD will issue to SPV/JV 2,00,00,000 equity shares of Re. 1 each.
- iv. At this stage, there will be further selective reduction of the CD's share capital as part of the resolution plan, wherein the

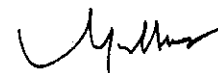
shareholding of the existing promoters of the CD of 99,64,044 equity shares of the CD shall be cancelled without any payout to the existing promoters.

- v. Upon completion of such capital reduction, share capital shall stand reduced to 2 crore shares of Re. 1 each totaling to Rs. 2 crores. Consequently, the CD shall become 100% subsidiary of the SPV/JV. The amount of Rs. 2 crores so infused shall be utilized towards upfront consideration for resolution debt + CIRP cost.
- vi. In order to operate the CD as a going concern, the RA through the SPV or any other affiliate would infuse another sum of Rs. 0.50 crore towards capital expenditure to achieve desired operational efficiencies. The amount shall be infused within a period of 12 months from the date of signing of definitive agreement in the form of equity/promoter debt/any other form. The RA would also arrange a sum of Rs. 1.30 crores within a period of 12 months from the date of signing of definitive agreement to meet the working capital requirement in the form of equity/promoter debt/any other form.
- vii. The basis of settlement of claims of various classes of stakeholders, their order of priority and their respective settlement amount is provided as under:
  - a. IRP Cost – As per the information memorandum, actual IRP cost incurred till 28.06.2018 is approximately Rs.0.05 crores. However, this will further increase during the pending CIRP



period. The RA shall pay the IRP cost, at actuals, in priority to any other creditors.

- b. Workmen/Employees – no claim under this head has been admitted. Hence, no payment is proposed under this head. However, in case any liquidation value is due to operational creditors, it shall be paid in full as per the Code.
- c. Operational Creditors – No claims have been admitted under this head. Liquidation value due to operation accreditors (other than workman/employee) is considered to be NIL. Consequently, nil payment is proposed to be paid to operational creditors. However, in case any liquidation value is due to operational creditors, it shall be paid in full as per the Code.
- d. Dissenting Financial Creditors – Liquidation value due to dissenting financial creditors, if any, shall be paid in as per the Code. For the purpose of this resolution plan, it has been assumed that liquidation value due to dissenting unsecured financial creditors is nil.
- e. Secured Financial Creditors – Lumpsum amount of Rs. 1.93 crores to be paid to secured financial creditors. However, this amount will be adjusted with the difference between Rs.0.07 crores and actual CIRP cost accrued, as also with liquidation value due to dissenting secured financial creditors, if any.



f. Unsecured Financial Creditors – Liquidation value due to unsecured financial creditors to be nil. Consequently, nil payment is proposed to be paid to unsecured financial creditors.

6. The RA proposes the following steps for the implementation of the resolution plan:

- i. An SPV/JV shall be formed by Mr. Ajay Singh and SMPL within 15 days from the date of issuance of LoI. The SPV shall be adequately funded by the RA.
- ii. A definitive agreement shall be signed within 15 days from the Effective Date (date of approval of resolution plan by this Tribunal). The date of signing of Definitive Agreement has been considered as “Zero Date” for the purpose of this resolution plan.
- iii. Within 15 days from the Zero Date, face value of each issued and outstanding equity share of the CD shall be reduced from Rs. 10 to Re. 1. The paid-up equity share capital will stand reduced from Rs.9,96,40,440 to Rs.99,64,044 without any payout to existing shareholders of the CD.
- iv. The SPV shall subscribe to 2 crore new equity shares of the CD of Re. 1 each and infuse Rs. 2 crores within 15 business days from the Zero Date.



v. At this stage, there will be selective reduction of the CD's share capital as part of the resolution plan, wherein the shareholding of existing promoters of 99,64,044 equity shares of the CD shall be cancelled without any payout to the existing shareholders. The issued, subscribed and paid-up equity share capital of the CD in relation to the existing security holders (other than the new equity issued to the SPV) shall stand extinguished in full within 15 days from the Zero Date. The old share certificates, as held by the existing promoters' group shall be surrendered by them and will stand cancelled.

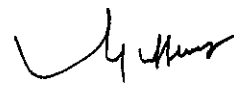
7. The term of the resolution plan shall commence on the date on which the NCLT approves the resolution plan in accordance with Section 31 of the Code and shall continue until payment to all stakeholders is made. The management and supervision plan proposed by the RA is as follows:

i. Management during the term - Any qualified insolvency professional, as decided by the CoC and RA, shall be appointed as the Implementing Agency ("IA") of the CD in order to manage and control the business of the CD, from the date of approval of the resolution plan by the NCLT and until the Closing Date, and for such purpose, shall have the powers of the Board of Directors vested in him. A Monitoring Committee ("MC") comprising representatives of the CoC, representatives of the RA and the IA shall be formed to



oversee implementation of the resolution plan. The IA shall act on instructions of MC. All decisions of the MC shall be taken by a majority of all its members. The IA shall be paid the costs in consideration of fulfilling his obligations under this resolution plan and his fees shall be jointly decided by RA and CoC. The MC shall manage and control the CD as a going concern, in trust and for the benefit of the creditors of the CD in furtherance of sale of the CD to the RA and no other person or stakeholder.

- ii. Management after the term – On the Closing Date, the RA will acquire control of over the CD and, shall thereafter, supervise the implementation of the resolution plan in accordance with its terms. All powers of the Board of the CD under the applicable laws shall be vested with the reconstituted Board of Directors, who shall be entitled to exercise all powers of Board of Directors under applicable laws, including under Section 179 of the Companies Act, 2013. Mr. Ajay Singh will initially be appointed as the director of the reconstituted Board of the CD. On and from the Closing Date, the management team of the CD shall be reconstituted by the RA. As if the Closing Date, the auditors of the CD shall be deemed to have vacated its office and a person nominated by the RA shall be designated and appointed as the auditor of the CD.

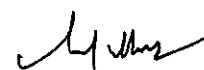


8. The mandatory requirements that the resolution plan has to comply with under the Code and CIRP Regulations and the treatment of such compliances in the plan submitted are as follows:

Condition	Compliance under Resolution Plan
S. 30(1) – resolution applicant submits affidavit stating that he is eligible under Section 29A	The RA has submitted an affidavit stating it is not disqualified under the provisions of Section 29A.
S. 30(2)(a) – provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.	Payment of CIRP costs have been provided for as stated in para 5(vii) above.
S.30(2)(b) - provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the CD under section 53.	Payment of claims of operational creditors including those of employee and workmen have been provided for as stated in para 5(vii).



<p>Regulation 38(1) – amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.</p>	
<p>Regulation 38(1A) – a resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.</p>	<p>Interests of stakeholders have been dealt with as shown in para 5 above.</p>
<p>S.30(2)(c) – provides for the management of the affairs of the CD after approval of the resolution plan</p>	<p>The management of the CD has been provided for as stated in para 7 above.</p>
<p>S.30(2)(d) – The implementation and supervision of the resolution plan</p>	<p>The implementation and supervision of the plan has been provided for as stated in paras 6-7 above.</p>
<p>Regulation 38(3): (a) addresses the cause of default; (b) feasible and viable;</p>	<p>Provided for as stated in paras 4-7 above.</p>



<p>(c) has provisions for its effective implementation;</p> <p>(d) has provisions for approvals required and the timeline for the same;</p> <p>(e) resolution applicant has the capability to implement the resolution plan</p>	
<p>S.30(2)(e) - does not contravene any of the provisions of the law for the time being in force</p>	<p>Complied with.</p>
<p>S.30(4) - The committee of creditors may approve a resolution plan by a vote of not less than sixty-six per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board</p>	<p>CoC has approved the resolution plan by a vote of 96.16%.</p>

9. The RA has requested this Tribunal for certain specific reliefs as a part of the resolution plan. The Tribunal feels that there is a need to particularly discuss the following reliefs:



- i. All relevant government authorities to grant relief from payment of stamp duty and applicable fees (including fees payable to the jurisdictional Registrar of Companies) for the successful implementation of the plan (including for the merger, capital reduction, issuance and transfer of shares or debentures and assignment of debt).

The Code and its attendant regulations do not confer power on this Tribunal to exempt the corporate debtor or the resolution applicant from meeting legitimate dues to the government such as stamp duty which arise consequent to the execution of the resolution plan. Thus, the above relief cannot be granted.

- ii. The CD and the RA shall be granted an exemption from all taxes, levies, fees, transfer charges, transfer premiums and surcharges that arise from or relate to implementation of the resolution plan, since payment of these amounts may make the resolution plan unviable.

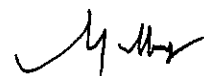
The above relief is also rejected as the Tribunal does not have the power to grant such blanket exemptions from all relevant dues that might arise in execution of the plan.



- iii. Waiver of any income tax and Minimum Alternate Tax (MAT) liability or consequences (including interest, fine, penalty etc) on MPL, the RA and its shareholders on account of various steps as proposed in the resolution plan, including but not limited to liabilities if any under Section 41(1), Section 56, Section 43, Section 43B, Section 28, Section 115JB and Section 79 of the Income Tax Act, 1961 ("IT Act") including, without limitation waiver of MAT and income tax implication arising due to write back/write off of liabilities in the books of accounts of MPL without any impact on brought forward tax and book loss/depreciation, pursuant to this resolution plan.

The Code does not confer any power on this Tribunal to grant exemption from taxation. The legislature, in its wisdom, has made two special provisions in the Income Tax Act, 1961 with regard to resolution plans. One provision is found in Section 115JB and the other is found in Section 79 of the IT Act. This Tribunal cannot go beyond the word of the Code and also the IT Act and grant exemptions which cannot be granted under either the Code or the IT Act.

- iv. All government authorities to waive the non-compliances of the CD prior to the closing date.

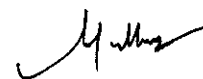


This relief is granted but it is clarified that any individual liability that may arise in relation to any ex-director or ex-employee of the CD before the execution of the resolution plan will not be affected by this relief.

- v. Neither the RA, nor any of its affiliates or connected persons, will be disqualified from or considered ineligible under the Code for proposing and/or implementing a plan in relation to the insolvency resolution of any person (other than the CD), merely on account of the implementation of this plan by the RA.

This relief cannot be granted because it is not within the power of the Tribunal to grant protection from disqualifications that may arise due to the application of provisions of the Code like Section 29A, in relation to other resolution plans, or provisions of other laws.

- vi. Since the RA has been provided with limited information in relation to the business permits and their current status, it is probable that certain of the business permits of the CD have lapsed, expired, suspended, cancelled, revoked or terminated or the CD has non-compliances in relation thereto. Accordingly, all government authorities to provide reasonable time period after the Closing Date in order to enable resolution applicant to assess the status of these



business permits and ensure that the CD is compliant with the terms of such business permits and applicable law without initiating any investigations, actions or proceedings in relation to such non-compliances and permit the RA to continue to operate the business of the CD.

This relief is granted but at the same time it is clarified that the duration of the reasonable time will be decided by the relevant authorities and this relief does not grant the RA unlimited/unreasonable time to make the required compliances, if any.

- vii. The CBDT to (i) not void or take any other actions with respect to the transactions contemplated under this plan (including the merger and the sale of collateral) under Section 281 of the Income Tax Act, 1961 (ii) exempt the RA from any liability pursuant to Sections 56 and 170 of the IT Act and (iii) not levy any tax (including MAT) arising as a result of giving effect to or otherwise in relation to the resolution plan, in the hands of the CD or the RA. The CBEC to not void or take any other actions with respect to the transactions contemplated under this resolution plan (including the merger and the sale of collateral) under Section 81 of the Central Goods and Service Tax,

2017 and not to impose any successor liability on the RA and the CD.

The Tribunal vide this order is approving Chapter 10 of the resolution plan which already lays down in detail the fate of any claims/entitlements, existing or future, which include claims by tax authorities. In light of approval of Chapter 10 of the resolution plan, this Tribunal does not find it necessary to specifically grant the above reliefs.

10. All the reliefs asked for in Section 6 of the resolution plan by the RA, apart from the reliefs discussed in paragraph 9 above, are granted. The resolution plan submitted by the RA seems to be in place and fit to be admitted. Henceforth the moratorium order shall cease to have effect. The resolution professional shall further act upon as prescribed on approval of the resolution plan to forward the records to the concerned authorities and to intimate the closure of the insolvency proceedings.

**C.A. 646/ND/2018**

11. The RP has filed this application bringing to the notice of this Tribunal the forensic audit report of the CD which shows the occurrence of a preferential transaction. According to the report the CD paid Rs. 10,00,000/- to Mr. Nivedith Alva (brother of the ex-directors), on

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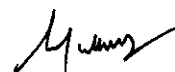
10.01.2017, towards repayment of unsecured loan during the FY 2016-17 which do not fall under the ordinary course of business. The report concludes that the repayment of the Rs.10 lakhs to Nivedith Alva falls within the definition of preferential payment under Section 43 of the Code. Thus, the RP has filed this application for the avoidance of the said preferential transaction.

12. Notices were issued to the ex-directors and Nivedith Alva and all parties have filed their replies. The suspended directors have stated the following in their reply:

- i. For any transaction to be treated as preferential under Section 43 of the Code, there are two pre-conditions that need to be satisfied as provided in sub-section (a) and (b) of Section 43(2) of the Code. The second pre-condition in Section 43(2)(b) requires that the effect of the transaction should be such as to put the creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with Section 53.
- ii. The second pre-condition provided in Section 43(2)(b) can only be assessed after calculating the liquidation value of assets in the event of a distribution of assets being made in accordance with Section 53 of the Code. However, in the application, the RP has failed to

show as to how Nivedith Alva being an unsecured financial creditor, has benefitted more than what he would have been in the event of a distribution of assets being made in accordance with Section 53 of the Code. Even the forensic audit report does not mention of any analysis having being done as regard the second pre-condition. Except the fac that Nivedith Alva is a related party, no reasoning of any sort has been set out as to why and how the payment of Rs 10. Lakhs made to Mr. Nivedith Alva is being treated as preferential payment.

- iii. The said transaction was done in the ordinary course of business of the CD and was undertaken as a measure to reduce the liability of the CD. Mr. Nivedith Alva, besides being related to the directors of the CD, is also an unsecured financial creditor to the CD who has advanced a loan to the tune of Rs. 24.39 lakhs to the CD. Out of this, only Rs. 10 lakhs have been repaid by the CD and this transaction lies completely within the realm of ordinary course of business which was undertaken as a measure to reduce CD's liabilities.
- iv. Nivedith Alva was a director of the CD from 23.09.2008 to 01.02.2013. even after resigning from the directorship of the CD, he continued to have a professional relationship with the CD. Nivedith Alva is well-known professional working in the television production industry and in that capacity, he was involved in various projects



undertaken by the CD in usual course of its business. Over the past 5 years, he has worked for the CD on various projects and has helped develop business for the CD. Therefore, payment of Rs. 10 lakhs were done during ordinary course of business and to reduce the amount of outstanding liabilities in its books.

13. Nivedith Alva in his reply has also taken the same stand as stated above in the reply of the ex-directors along with the following contention:

- i. The lump-sum remuneration that Nivedith Alva is entitled to for work done by him on the projects of the CD is approximately 10-15 lakhs per project. The aforesaid work was done by Nivedith Alva in good faith and to help the CD at the time of financial distress. No payment has been made to Nivedith Alva for the work done by him for the CD. If a notice or show cause of any nature would have been issued to Nivedith Alva, definitely he would have specified his professional engagements and the remuneration due to him there under would have come to the knowledge of the RP.

14. Section 43 of the Coed explains when a transaction will become a preferential transaction and when it will not be classified as one. Section 43 of the Code is as follows:

*"43. Preferential transactions and relevant time.*

(1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.

(2) A corporate debtor shall be deemed to have given a preference, if-

(a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and

(b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.

(3) For the purposes of sub-section (2), a preference shall not include the following transfers-

(a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;

*(b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that –*

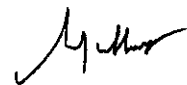
*(i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest, and was used by corporate debtor to acquire such property; and*

*(ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property:*

*Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.*

*Explanation. – For the purpose of sub-section (3) of this section, “new value” means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.*

*(4) A preference shall be deemed to be given at a relevant time, if –*



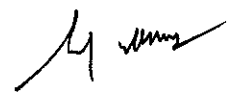
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*(a) It is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or*

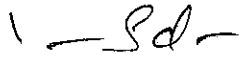
*(b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date.”*

15. A perusal of the forensic audit report shows that the contention of the non-applicant parties that no analysis has been made with regard to the second criteria – beneficial position of the Nivedith Alva in the event of distribution under Section 53 – has been made in the forensic audit report. Further, even the RP has not stated anything in its application to address this second requirement and explain what and how Nivedith Alva's position has been affected due to the repayment of Rs. 10 lakhs in the waterfall mechanism under Section 53 of the Code.

16. It is also discerned from the forensic audit report that during the FY 2016-17 and FY 2017-18 the CD has taken unsecured loans from and repaid such loans to directors. This shows that taking unsecured loans and repayment of loans was a common occurrence in CD's business. It will be unfair to say that just because the Rs.10 lakhs repaid as part of an unsecured loan were repaid to a related party, the repayment should be classified as a preferential transaction. Apart from the fact that Nivedith



Alva is related to the ex-directors there is nothing to show that the transaction was mala fide or out of the ordinary course of business or made with an intent of giving preference. In fact, it seems that repayment of such secured loans is a part of the ordinary course of business of CD. Thus, the applicant has not shown any basis for concluding that the transaction is preferential and the application stands dismissed.



**(Dr. V.K. SUBBURAJ)**  
**MEMBER (TECHNICAL)**



**(INA MALHOTRA)**  
**MEMBER (JUDICIAL)**

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