

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

I.A. 1272 OF 2021

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016 r/w Rule 11 of
NCLT Rules, 2016

VR2 Land Development Private Ltd.

...Applicant

Vs.

Mr. Jayesh Sangharajka and Ors.

...Respondents

I.A. 4944 OF 2023

Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016 r/w Rule 11 of
NCLT Rules, 2016

Rushabh Praful Satra

Bleu Noir Infrastructure Development
Pvt. Ltd.

...Applicant

Vs.

Mr. Jayesh Sangharajka and Ors.

...Respondents

In the matter of

C.P.(IB) No. 4464 /MB/2019

Gajendra Investment Limited

Financial Creditor

Vs.

Satra Property Developers Private Limited
Corporate Debtor

Order delivered on: 04.01.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

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

Appearances

For the Applicant : Mr. Rohit Gupta, Advocate
For Respondent No.5 : Ms. Jyoti Singh, Advocate
For Respondent No.2 & 3 : Mr. Rushabh Seth, Advocate
For the RP : Mr. Nausher Kohli, Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Application 1272/2021 is filed by VR2 Land Developers Private Limited ("Applicant") in the Corporate Insolvency Resolution Process ("CIRP") of M/s Satra Property Developers Pvt Ltd. ("Corporate Debtor") under the provisions of Insolvency & Bankruptcy Code, 2016 ("Code") seeking following reliefs :
 - a. Declaration that Respondent No 2 i.e. IIFL Finance Limited is a related party of the Corporate Debtor and therefore is not entitled to the right of representation, participation or voting in the meeting of the Committee of Creditors;

- b. Termination of the engagement of Respondent No 1 i.e. Sh. Jayesh Sangharajka as Resolution Professional and appoint another Relation Professional as this Tribunal may deem fit and proper;
 - c. Direction for /Taking strict action and levy exemplary cost on the Respondent No.1 for violating the provisions of the Code by acting in collusion with Respondent No.2 and with malice intent suppressing its interest with the Corporate Debtor;
 - d. Pending the hearing and final disposal of the present application, this Tribunal be pleased to stay the process of CIRP of the Corporate Debtor.
- 1.1. Sh. Narender Kumar, the director of the suspended Board of the Corporate Debtor alleged to be appointed at the behest of Respondent No. 2 on 17.3.2020 on the Board of Corporate Debtor at the behest of Respondent No. 2 and is stated to be an senior executive/employee thereof is Respondent No. 3. Sh. Balaji Raghavan, the managing partner of Respondent No. 2 is Respondent No. 4.
2. Another Application IA 4944 of 2023 is filed by Sh. Rushabh Praful Satra and M/s Bleu Noir Infrastructure Development Pvt. Ltd. (“Applicants”) in the Corporate Insolvency Resolution Process (“CIRP”) of M/s Satra Property Developers Pvt Ltd. (“Corporate Debtor”) under the provisions of Insolvency & Bankruptcy Code, 2016 (“Code”) seeking following reliefs :
- a. Declaration that Respondent No. 2 i.e. IIFL Finance Limited is a related party of the Corporate Debtor under the provision of Section 5(24) of the Code and therefore is not entitled to the

- right of representation, participation or voting in the meeting of the Committee of Creditors;
- b. Termination of the engagement of Respondent No. 1 i.e. Sh. Jayesh Sangharajka as Resolution Professional and appoint another Resolution Professional as the Hon'ble Tribunal may deem fit and proper;
 - c. Reconstitution of the COC and restart the CIRP of the Corporate Debtor;
 - d. Direction for /Taking strict action and levy exemplary cost on the Respondent No.1 for violating the provisions of the Code by acting in collusion with Respondent No. 2 and with malice intent suppressing its interest with the Corporate Debtor and for prioritizing the interest of Respondent No.2;
 - e. Pending the hearing and final disposal of the present application, stay the proceedings in IA 2193 of 2021 instituted by Respondent No. 1. seeking approval for the Resolution Plan.
- 2.1. Sh. Narender Kumar, the director of the suspended Board of the Corporate Debtor alleged to be appointed at the behest of Respondent No. 2 on 17.3.2020 on the Board of Corporate Debtor and is stated to be also an senior executive/employee thereof is Respondent No. 3. Sh. Balaji Raghavan, the managing partner of Respondent No. 2 is Respondent No. 4. Besides this, M/s Asset Reconstruction Company (India) Ltd. acting in its capacity as trustee of Arcil-SBPS-049-I-Trust is Respondent No. 5 in this application.
- 2.2. Sh. Rushabh Praful Satra herein is the director of M/s Bleu Noir Infrastructure Development Pvt. Ltd., both of whom are Applicants in 4944/2023, and is the erstwhile Director of VR2 Land Development Pvt. Ltd., the Applicant in IA 1272/2021.

3. Since both the Applications have identical sets of prayers and the Respondent Parties are also same, we consider it appropriate to decide both the application by this Common Order. The Applicants in IA 1272/2021 is referred as (“Applicant No. 1”) and Applicants in IA 4944/2023 are referred as (“Applicant No. 2” collectively) and Applicants in both the Applications are collectively referred as Applicants hereinafter.
4. It is stated by the Applicants that M/s Bleu Noir Infrastructure Development Pvt. Ltd. and VR2 Land Development Pvt. Ltd. are stated to have been admitted to the Committee of Creditors (“CoC”) of the Corporate Debtor only post the appointment of the Respondent No. 1 and have attended the 6th CoC Meeting and 7th CoC Meeting held on 6th March 2021 and 15th April 2021 respectively.
5. It is the case of the Applicant, that the claim of Respondent No.2 of Rs. 136,32,77,076/- (Rupees One Hundred and Thirty Six Crores Thirty Two Lakhs Seventy Seven Thousand and Seventy Six Only) has been wrongfully admitted by the Respondent, however, there is no specific prayer in this relation. It is stated that in view of the aforesaid admission of claims, Respondent No. 2 has been granted a voting share of 73.82% in the CoC of the Corporate Debtor. In this regard the Applicant has also filed an Interlocutory Application seeking inspection of the claim documents submitted by Respondent No. 2 as the request for inspection has been arbitrarily denied by Respondent No. 1.
 - 5.1. It is alleged that the Respondent No. 1, as the Resolution Professional, is conducting himself in a biased manner and acting contrary to the provisions of the Code on behalf of Respondent No. 2. Furthermore, the Applicant herein has

knowledge that the Respondent No. 2 is also a related party to the Corporate Debtor and ought not to be allowed to participate in the Committee of Creditors ("CoC"). It is submitted that this ought to have been rectified by Respondent No. 1 who is also aware of Respondent no. 2's involvement qua the Corporate Debtor.

5.2. The Applicant has also stated that, in the 7th CoC Meeting dated 15th May 2021, the Resolution Plan provided by one '*Padmavati Housing Private Limited and Nandi Vardhan Infrastructure Limited*' has been accepted by the CoC, after Respondent No. 1 was directed by CoC to present the commercial aspects of the Plan.

5.3. The Basis of the allegation that the Respondent No. 2 is a related party of the Corporate Debtor is set out as below –

5.3.1. Respondent No. 2 has played an active part in conducting the business of the Corporate Debtor post the sale of the Corporate Debtor to a nominee of Respondent No. 2 i.e. Mid-City Bhoomi Developers Private Limited ("Mid-City"). Respondent No. 3, an employee of Respondent No. 2 was appointed as director of the Corporate Debtor on 17th March, 2020. Respondent No. 4, a senior employee of Respondent No. 2 has actively acted on behalf of the Corporate Debtor before the Slum Rehabilitation Authority, the copy of minutes of that meeting has been placed on record.

5.3.2. Respondent No. 1, who in the past had acted on behalf of Respondent No. 2 and was engaged/representing the Corporate Debtor in its day to day affairs, has failed to disclose his prior relationship with the Respondent No. 2

(Financial creditor holding 73.82% vote share in CoC) as well as with the Corporate Debtor.

5.3.3. Between 2010-15, the Satra Group had received advances/loans from Respondent No. 2 and IIFL Home Finance Limited. In order to settle the liability towards the Respondent No. 2 and on a full and final basis, negotiations took place between Satra Group, Respondent No. 2, its subsidiary IIFL Home Finance Limited and a third party being MJ Shah Group (“MJS”) whereby the parties signed Minutes of Meeting dated 31.01.2018 agreeing that Respondent No. 2 (along with IIFL Home Finance Limited) and the MJS Group shall each acquire 40% of the equity shares of the Corporate Debtor and, one other Anchor Group (also a financial creditor and member of the CoC of the Corporate Debtor) shall acquire 20% of the equity shares of the Corporate Debtor. This arrangement was duly recorded in Minutes of Meeting dated 27.3.2018 which were duly signed by all parties. However, this arrangement could not be acted upon.

5.3.4. Thereafter, Respondent No. 2 filed a Company Petition No. 175 of 2019 on 9.04.2019 seeking initiation of CIRP in the matter of the Corporate Debtor. Various meetings took place after filing of said Petition between the representative of Satra Group and Respondent No. 2 to amicably settle the disputes, which resulted into signing of consent terms dated 9.9.2019. Consequent to this, this Tribunal vide order dated 13.9.2019 disposed of Company Petition No. 175 of 2019 as withdrawn.

5.3.5. Pursuant to the consent terms, the parties entered into several other agreements, pertinently the Share Purchase Agreement dated 13.9.2019 between Mid-City, Satra properties (India) Limited (“SPIL”) and the Corporate Debtor with consent/NOC of Respondent No. 2. The due diligence and take over process of the Corporate Debtor was undertaken by Respondent No. 1 and his team. To substantiate this, an email dated 13.9.2019 and email dated 3.10.2019 has been relied upon, which reads as under –

“Please keep the list of documents ready, we will ask Jayeshbhai team to start taking the handover from Monday onwards for SPDPL.”

“While the diligence process for SPDPL is ongoing by JS and Co, some data which is critical needs to be provided.

Please confirm by when the following points can be provided.

.....”

5.3.6. It has further been stated that the Respondent No. 1 and his team were actively involved with the Corporate Debtor at the behest of the Respondent No. 2 and regularly engaged with the former board of the Corporate Debtor during the takeover process. For this purpose, the applicant has also relied upon email chain dated 15th November, 2019-20th November, 2019 exchanged between the Corporate Debtor and an employee/representative of Respondent No. 1. It is emphasised that Respondent No. 1, Respondent No. 3 and Respondent 4 are marked on all emails exchanged. Accordingly, it has been stated that the involvement of Respondent No. 2 and actual takeover and control of the Corporate Debtor through Mid-City becomes

evident upon perusal of the abovementioned emails. It is alleged that the Representative of Respondent No. 1 were put in charge of conducting the due-diligence of the Corporate Debtor for the purpose of its take-over by Respondent No. 2 and Mid-City was merely a front entity.

5.3.7. As regards transaction with Mid-City, it is stated that the Corporate Debtor was taken over by Respondent No. 2's nominee via Mid-City vide share purchase agreement dated 13.9.2019 to enable them to develop the Ghatkopar SRA project being '*Satra Hills*' and the consideration towards sale of 100% of the equity shares of the Corporate Debtor to Mid-City i.e. 40.00 crore was paid by Respondent No. 2 to SPIL for and on behalf of Mid-City in two instalment i.e. in September, 2019 and October, 2019.

5.3.8. This is alleged to be a proof that Respondent No. 2 is a related party and has an indirect interest in the Corporate Debtor thereby putting it in control of Corporate Debtor and thus ought not to have been made a member of CoC of the Corporate Debtor in view of its relationship with Corporate Debtor via Mid-City. It is further stated that pursuant to the sale of the Corporate Debtor to Respondent No. 2's nominee being Mid-City, Respondent No. 4, Respondent No. 3 and Mr. Harsh Chaudhary (all employees/senior managers of Respondent No. 2) attended meeting before statutory authorities including the Slum Rehabilitation Authority and took charge of the business of the Corporate Debtor and Ghatkopar Project.

5.3.9. It is also stated that queries raised to Respondent No. 1 in relation to admission of claim of Respondent No. 2 was never reverted by providing necessary clarifications.

6. The Respondent No. 1, the Resolution Professional, has filed Reply as well as written submission stating that the Applicant had filed a Complaint with the IBBI levelling the same allegations against him with regard to CIRP of the Corporate Debtor. The IBBI, which is the regulatory authority for insolvency professionals, had filed its Affidavit in Reply dated January 17 2023 in Writ Petition No. 22603 of 2022 before Mumbai High Court and stated that it had inspected/ investigated into the allegations and it found that there was no sufficient cause to proceed against him. Further, it has also stated that the writ petition was filed with a view to achieve ulterior and unlawful goals.

6.1. With regard to the impugned communications regarding due diligence process for takeover of the Corporate Debtor, it is stated that an independent consultant CS Pary Sheth from Incorp Advisory assisted in company law compliances. She had, in an independent and professional capacity, assisted in providing guidance and consultancy as sought by Respondent No. 2 at the relevant time. This, by itself, is not a case of conflict of interest. No fees had been charged by him or his team for such bona-fide professional assistance by Ms. Pary Sheth.

6.2. It has further been stated that the Code of Conduct for Insolvency Professionals appended at Schedule I of the IBBI (Insolvency Professional) Regulations does not bar an Insolvency Professional from taking such a mandate prior to the commencement of the CIRP of the Corporate Debtor, subject to disclosure requirements. Since, his impugned

relationship with Respondent No. 2 does not fall within any of the above categories, there is no question of non-disclosure of the same. Even his appointment was approved by 100% of the then existing CoC members and not IIFL alone. The allegation of collusion between him and Respondent No. 2 is bald and baseless.

6.3. There was no change in the financial debt disbursed by IIFL to the Corporate Debtor due to the SPA. Further, since the SPA contemplated purchase of shares by Mid-City from SPIL, there is no question of any accounting treatment relating to the transaction in the books of the Corporate Debtor.

7. The Respondent No. 2 & 3 has filed Reply as well as written submission stating that insolvency proceedings in case of VR2 Land Developers Private Limited have been initiated against the present Applicant vide order dated 6th June 2023 passed by this Tribunal in Company Petition (IB) No. 3441MB-IV 12020 for a default of Rs. 3,27,04,517/- (Rupees Three Crore Twenty Seven Lakh Four Thousand Five Hundred and Seventeen Only). Therefore, the present application can longer be prosecuted by the Applicant and therefore, the same is liable to be dismissed.

7.1. The entire claim of the Respondent No. 2 to the tune of Rs. 136,32,77,076/- (Rupees One Hundred and Thirty -Six Crore, Thirty - Two Lakh Seventy - Seven Thousand Seventy - Six Only) was admitted by Mr. Devaraja Raman, the then Interim Resolution Professional. Therefore, the case of the Applicant that the Respondent No. 1 was appointed to collusively admit the claim of the Respondent No. 2 fails at the very outset.

7.2. The Respondent No. 4 attended these hearings/ meetings with various authorities as a representative of Respondent No. 2 to

ensure that the rights of the Respondent No. 2 are not jeopardized in any manner. Having advanced loans to the tune of hundreds of crores to the Corporate Debtor in lieu of the security of mortgaged properties, the Respondent No. 2 was well within their rights to depute their employee to such hearings to be aware of any prejudicial developments. The Respondent No.4 has always attended the meetings as a representative of the Respondent No. 2 and not as a representative of the Corporate Debtor as alleged. The Respondent No. 4 was not in any manner taking any decisions on behalf of the Respondent No. 2 and was neither authorized to do so.

- 7.3. To facilitate the purchase under the aforesaid Share Purchase Agreement, Mid-City approached the Respondent No.2 to secure a loan. Thereafter, a loan agreement dated 7th September 2019 was executed amongst the Corporate Debtor, Respondent No. 2 and Mid-City. It will be pertinent to note that the aforesaid loan was sanctioned vide the sanction letter dated 18th June 2019. Pursuant thereto, Mid-City, vide their emails dated 11th September 2019 and 10th October 2019 sought disbursement of the loan facility.
- 7.4. The details of Mid-City as available on the website of Ministry of Corporate Affairs demonstrates that the Mid-City is not a nominee of Respondent No. 2 in any manner. Furthermore, on account of the default on part of the Mid-City Bhoomi, the Respondent No. 2 has assigned the aforesaid debt to Asset Reconstruction Company (India) Limited ("ARCIL"), who has initiated proceedings against one Mr. Hiren Dhruv,

shareholder of Mid-City Bhoomi under a Deed of Guarantee dated 7th September 2019.

- 7.5. The Respondent No. 3 is the national sales manager of Respondent No. 2. Admittedly, the Respondent No. 3 is not a director of Respondent No. 2 and does not hold any paid-up share capital of the Respondent No. 2. Therefore, the entire premise of filing this application is flawed. Respondent No. 3 was only a non-executive director of the Corporate Debtor and was protecting the interests of the Respondent No. 2.
8. The Applicant in IA 4944 of 2023 stated that Mr. Rajen Dhruv and Mr. Hiren Dhruv were appointed pursuant to the sale transactions entered into by and amongst the Corporate Debtor, Mid City and Respondent No.2. Thereafter, Respondent No.3 was appointed as a director of the Corporate Debtor.
- 8.1. It is alleged that the Respondent No.2, through Respondent No. 3 and Respondent No.4, exerted significant control over the commercial decision of the Corporate Debtor. It would be relevant to note that Respondent No. 1 was in control of the takeover process of the Corporate Debtor. On perusal of the correspondences vide email dated 13.9.2019 and 3.10.2019, it becomes clear that the Respondent No. 1 was dictating the terms of handover along with Respondent No.2. Further, the Respondent No.3 being a representative of the Respondent No.2 was communicating with other Financial Creditors of the Corporate Debtor for entering into a group level settlement and entering into consent terms. The Respondent No. 1 is conveniently trying to ignore the influence and control of the Respondent No.2 in the affairs of the Corporate Debtor despite being sufficiently aware of the same. Further, the Respondent

No.4 acted on the understanding between the Respondent No.2 and the Corporate Debtor to appear before the Slum Rehabilitation Authority on 10th October 2018, which is evident on perusal of the contents of minutes of meeting with Slum Rehabilitation Authority. I, having been an ex-director of the Corporate Debtor, was in touch with the previous employees including my sister Ms. Vrutika Satra handling the legal affairs of the Corporate Debtor.

9. Heard learned Counsel. Perused the material on record.

9.1. We find that both the emails, dated 13.9.2019 and 3.10.2019, were marked to **jayesh@sjandco.in** as CC and no other person from 'JS and Co' is marked therein. In this backdrop, the reference of 'JS and Co' in the email dated 3.10.2019 that "*while the diligence process for SPDPL is ongoing by JS and Co.*" assumes significance. It is pertinent to note that Respondent No. 1 had given written communication in Form-2 to act as IRP in the application filed by the Respondent No. 2 on 18.1.2019.

9.1.1. We note that the email dated 15.11.2019 sent to *parmy.sheth@jsandco.in* was in relation to change in Registered Office and not in relation to due diligence for acquisition of shares of Corporate Debtor by Midcity and in one of email dated 15.11.2019 from Parmy Sheth, Respondent no. 1 is also marked CC. In view of this, we do not find merit in the argument of Respondent No. 1 that he had no connection with Parmy Sheth.

9.1.2. Further, the Email dt. 13.09.2019 from AbidAli records that "*Please keep the list of the documents ready, we will ask Jayeshbhai team to start taking the handover from Monday onwards for SPDPL*", and .email dated 03.10.2019, records

that “*While the diligence process for SPDPL is ongoing by JS and Co, some data which is critical needs to be provided. Please confirm by when the following points can be provided*”.

9.1.3. The Respondent No. 1 has stated that his association with Respondent No. 2 group for their professional work is not in violation of code of conduct applicable to him. However, IBBI, the regulator for Insolvency Professionals, has published a “*Handbook on Ethics for Insolvency Professional – Ethical and Regulatory Framework*” and it states that Integrity and Objectivity are among the fundamental principles of ethics for Insolvency Professionals. As per the First Schedule of the IP Regulations, an IP is required to be objective in his dealings i.e. decisions be made without conflict of interest, bias, coercion, or undue influence of any party, whether direct or indirect. This was also aptly captured in the Order of the Disciplinary Committee of IBBI in the Disciplinary Committee Case No. IBBI/DC/16/2019, dated April 17, 2019, where the Committee opined that: “*When relationship triumphs over merits in professional matters, there is no place for independence, integrity and impartiality. A professional must not only be impartial, but also appear to be impartial... Any conduct, whether explicitly prohibited in the law or not, is unfair if it impinges on independence, integrity and impartiality of an IP or inconsistent with the reputation of the profession.*” The Handbook at Page 22 thereof provides examples of circumstances that might create a conflict of interest and such examples include cases where a significant relationship has existed with the entity or someone connected with the entity, or where an IP has,

or others in their firm have, previously carried out one or more assignments for an entity and / or its wider group and they are appointed as an insolvency office holder to the entity or its connected entities.

9.1.4. The facts brought on record evidence that the Respondent No. 1 had given his consent on 18.1.2019 to act as IRP in the Petition filed by Respondent No. 2 against the Corporate Debtor. This Petition was withdrawn later on by Respondent No. 2 consequent upon execution of consent terms and the Corporate Debtor was otherwise admitted into CIRP on Petition by another creditor later on i.e. 10.8.2020. The facts placed on record evidences that Respondent No. 1 had provided services to carry out due diligence to conclude the sale of shares of Corporate Debtor to Mid-City in consequence of consent terms during the period starting from September 2019 onwards. It is clear from the email communication dated 13.9.2019 and 3.10.2019 that The Respondent No. 1 was clearly involved in the due diligence process in his personal capacity.

9.1.5. The explanation offered by Respondent No. 1 that one of independent company secretary had provided some services to IIFL is also correct but is a cleverly crafted statement to digress the attention from the due diligence work. On perusal of emails exchanged in November 2019, we find that one Parmy Sheth was handling only assignment of change of registered office and was using the email domain of '*jsandco*', which is also used by the Respondent No. 1 while carrying out his Insolvency related Professional duties. This indicates that the Respondent

No. 1 and his other associates were working in tandem under the common umbrella. We further find that the documents sought vide emails exchanged in September, 2019 & October, 2019 were in relation to take over of Corporate Debtor and change of registered office, which Parmy Sheth dealt with was one of its off-shoot. In this backdrop of facts, we can't resist the inevitable conclusion that the Resolution Professional i.e. Respondent No. 1 was closely associated in the exercise of take over of Corporate Debtor by Mid-city prior to his engagement in the CIRP of same Corporate Debtor later on as Resolution Professional. Though, it has been pleaded that the Respondent No. 1 was engaged as Resolution Professional by the CoC unanimously, we are of considered view that this fact can't absolve the Respondent No. 1 from his obligation to disclose his association with Respondent No. 2 and Corporate Debtor in the past to the CoC members. We have no hesitation to hold that the Respondent No. 1 has failed in his duty to act Objectively, which requires him not only to remain Independent but also appear to be Independent.

9.1.6. It has been pleaded before us that IBBI has already examined these aspects and found no violation of Regulatory Framework as evidenced from its affidavit filed before High Court at Mumbai. We are not aware of scope of inquiry, IBBI carried out in this relation. Considering the present facts, we find that Respondent No. 1 was responsible for carrying out the due diligence and to take over process on behalf of Mid-City at the behest of

Respondent No. 2 for acquisition of the 100% shares of Corporate Debtor. These facts need to be taken into consideration for examining whether the Respondent No. 1 could have been said to be Objective and Independent in discharge of his duties as Resolution Professional of Corporate Debtor when later on he came to be appointed as Resolution Professional by CoC. **Considering these facts, we are of considered view that the IBBI may examine these aspects and take appropriate action, if any required, in relation to conduct of Respondent No. 1.**

9.1.7. As regards prayer for termination of the Respondent No. 1 as Resolution Professional, we find that a Resolution Plan approved by CoC is pending for approval before this Tribunal and if such plan is approved, the office of Resolution Professional shall be rendered functus officio. Even otherwise, if this Tribunal does not approve the plan, the prayer for replacement of Respondent No. 1 can be considered at that juncture in case this Tribunal considers the case of Corporate Debtor fit for fresh CIRP. Accordingly, at this juncture, we are of considered view that this prayer is meaningless.

9.2. The Applicants have not demonstrated as to how the claim of Respondent No. 2 was inflated. The Respondent No. 2 had filed Company Petition 175 of 2019 claiming a debt of Rs. 1,09,08,59,532/- (Rupees One Hundred and Nine Crore Eight Lakh Fifty-Nine Thousand Five Hundred and Thirty-Two only). Further, there is no prayer in the present application seeking reverification of claim of Respondent No. 2, therefore, we are not inclined to interfere in relation to the admission of

claim of Respondent No. 2 considering that the then IRP must have admitted such claim on the basis of evidence(s) filed by Respondent No. 1.

9.3. As regards issue of transfer of shares of Corporate Debtor to Mid-City thus divesting the ownership of Corporate Debtor to it by erstwhile Promoters, we find that the Consent terms dated 31.01.2018 amongst IIFL, Satra Group and MJS group contemplated formation of a new SPV for the development rights of the Project Satra Hills, however, these consent terms never came to be implemented.

9.3.1. It was pleaded before us that the disbursement of loan by Respondent No. 2 to Mid-City for acquisition of shares of Corporate Debtor was a transaction undertaken in normal course of money lending and it cannot be said that Mid-City is a façade for Respondent No. 2. To buttress this argument, Respondent No. 2 filed a loan agreement dated 7.9.2019 between Mid-City and Respondent No. 2 whereby the loan was repayable in equal quarterly instalments starting from the end of 39th month from the date of first draw down and last quarter ending on last date of 60th month. The interest was payable at the end of 24th month from the first drawdown date of the facilities. The said loan was secured against, inter-alia, a first ranking pari-passu charge in favour of lender by way of registered mortgage on development rights of Corporate Debtor's share along with SPIL's share in the "Satra Hills" Project and scheduled receivable, additional receivables and all insurance proceeds both present and future from the

projects and pledge of 100% equity shares of SPDPL to be held by Mid-City.

9.3.2. We find that a term sheet dated 18.6.2019 was issued sanctioning the loan of Rs. 45.00 crores to Mid-City and accepted by Mid-City. The said term sheet specifies the end use of such loan, which contemplates that the proceeds of loan must be utilized for acquisition of project through purchase of shares of Corporate Debtor i.e. Satra Property Developers Pvt Ltd and for the project related expenses, approvals of the project "Satra Hills". The term sheet further contemplates "*clear, marketable, unencumbered title of all the properties given as security for the facility*". It further stipulated execution of "Business Transfer Agreement between Corporate Debtor and SPIL and transfer of assets and liabilities as per agreement to be completed.

9.3.3. We find that the consent terms were executed between the Respondent No. 2 and promoters of Corporate Debtor on 09.09.2019, whereas the term sheet sanctioning the loan to Mid-City is dated 18.6.2019, which is during the pendency of Company Petition No. 175 of 2019 filed on 9.4.2019. This suggests that it was a pre-meditated transaction.

9.3.4. Further, we find that the sanction of loan to Mid-City by Respondent No. 2 was intended for the purpose of "Utilisation of proceeds of loan towards the "*acquisition of project through purchase of shares of Satra Property Developers Pvt Ltd and for project related expenses, approvals of the project Satra Hills*" during pendency of Company

Petition No. 175 of 2019. The MCA records shows that no charge was ever created on the Project Satra Hills by the Corporate Debtor and SPIL, even though there was clear stipulation of mortgage of their respective shares in “Satra Hills” project, apart from receivables therefrom. These facts clearly evidence that the Respondent No. 2 disbursed the loans to Mid-City without complying with the conditions precedent in this respect and this could happen only where the lender is in comfortable position having acquired the control of entity having control over the Project.

9.3.5. We further find that Mid-City is having authorised capital of Rs. 50,00,000/- and paid-up capital of Rs. 1,33,110/- as per financial statements for the year ended on 31.3.2019. We are of considered view that sanction of a loan of Rs. 45.00 crores to a company with its own capital base of Rs. 1,33,110/- can't be said to be a transaction of lending in the ordinary course of business as it is against the followed financial norms by the lenders, unless the deviation from such followed financial norms is compensated otherwise to secure the lending. This is further fortified by the fact that the amount of Rs. 40.00 crores was disbursed to Mid-City by payment to SPIL, the transferor of shares of Corporate Debtor and this amount was paid back to Respondent No. 2 by SPIL towards repayment of its debts. This transaction is nothing but the evergreening of its loan portfolio by the Respondent No. 2 with Mid-City acting as conduit to facilitate the same.

9.3.6. The Applicant in IA 4944 of 2023 has also placed on record the what's app chats and has filed the requisite affidavit in terms of section 65B of the Indian Evidence Act, 1871. The what's app chat (Page 209 of IA 4944/2023) amongst the members of what's group named as "**Satra Consent Terms**" lists the liabilities of Satra Group. The said communication contains the gist of consent terms stating that "*Satra will transfer 100% shareholding of its SPDPL to the developer / entity (New Shareholders) recommended by IIFL, the consideration will be returned to IIFL*". This corroborates with the facts on record, where Mid-City acquired 100% shares of Corporate Debtor; the purchase consideration is funded by Respondent No. 2 as loan; and the amount of such purchase consideration travels back to Respondent No. 2. It is pertinent to note here that the Respondent No. 1 is part of this group and referred in some chats.

9.3.7. Further, another what's app chat (Page 203 of IA 4944/2023) provides list of What's app group members and Respondent No. 1 is member thereof apart from Mr. Amit Jain and Mr. Abidali of Respondent No. 2. Mr. Abidali has posted a message (page 204 of IA 4944/2023) stating that "*Have created this group as discussed to resolve all queries that Quantum has pertaining to the Ghatkopar Project*". It is pertinent to note that "Ghatkopar Project" is the "Satra Hills" Project.

9.3.8. The What's App chats by Respondent No. 4 and member of Satra Group between 15th November 2019 to 20th December 2019 show the Respondent No. 4 being

in charge of staff salaries, payment of statutory dues and other day to day affairs of the Corporate Debtor.

- 9.3.9. The above facts demonstrate that the Respondent No. 2, a lender of the Corporate Debtor, on one hand, had filed proceedings before this Tribunal under section 7 of the Code and on the other hand, during the pendency of said proceedings, it has simultaneously proceeded to finance its acquisition by a company, the financial credentials of which does not demonstrate that the transaction of loan by the Respondent No. 2 was merely a lending transaction to Mid-City. These facts otherwise lead to a conclusion that Company Petition No. 175 of 2019 filed on 9.4.2019 and later on withdrawn on 13.9.2019 was with an intent other than the resolution of the Corporate Debtor.
- 9.3.10. The Applicants have also argued that the Respondent No. 2 is a related party in terms of section 5(24)(h) of the Code, which includes in the definition of 'Related Party' qua a Corporate Debtor "*any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act*". We find that the directors of Mid-City became directors of Corporate Debtor apart from Respondent No. 3. It is not in dispute that the Respondent No. 3 is in employment of the Respondent No. 2 and is stated to have been appointed to look after the interest of Respondent No. 2 as lender. However, the what's app chats placed in IA 4944/2023 further demonstrate that the Respondent No. 2 was involved in the day to day affairs of the Corporate

Debtor through Mr. Abidali. Since, we have found that the transaction of loan to Mid-City is not a normal transaction, but to facilitate the acquisition of the Corporate Debtor's 'Satra Hills' project by the Respondent No. 2 and the Respondent No. 2 was in a position to exercise dominant control over the affairs of Mid-City on account of lending of 40.00 crores against its paid capital of few lacs, we have no hesitation to hold that the Respondent No. 2 is a person who is associated with the corporate debtor on account of participation in policy making processes of the corporate debtor and can be said to be a related party and can also be said to be a person on whose advice, directions or instructions, a director of the corporate debtor is accustomed to act.

9.4. The evidences clearly indicate that Mid-City was merely a conduit to take over the Corporate Debtor by Respondent No. 2, and Respondent No. was exercising control over the affairs of the Corporate Debtor through Mr. Abid Ali post this acquisition of Corporate Debtor. It is also clearly evident that Mid-City is nothing but merely a façade of Respondent No. 2. Accordingly, we have no hesitation to hold that Respondent No. 2 is related party of Shareholder of Corporate Debtor i.e. Mid-City. Having said so, we direct the Resolution Professional to consider the status of Respondent no. 2 accordingly in the CoC. As regards approval of Resolution Plan by CoC, where Respondent No. 2 had absolute majority, we consider it appropriate to deal with the same while passing Orders in IA 2193/2021 pending for Orders on the Resolution Plan.

9.5.No order for costs are considered desirable by us in v iew of complexities of facts involved in the present application and absence of direct evidences.

10.In view of the foregoing, IA 1272/2021 and IA 4944/2023 are partly allowed.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)