

2. Ld. Counsel for the Applicant referred to various correspondences between the Applicant and the Administrator and invited our attention to specific communication dt. 17.12.2022 whereby he raised concerns regarding Challenge Mechanism. The relevant portion of the Applicant's letter dated 17.12.2022 is reproduced hereinbelow:

“Post auction process on 21 December 2022, each RA will be required to submit the draft of its resolution plan to incorporate their highest quoted amount in the auction by such RA in the challenge mechanism to the administrator within a period of 24 hours from the conclusion of the challenge mechanism. We request you to confirm that highest bid amount submitted by RA in said Resolution Plan will be final and no change in financial proposal will be permitted when signed Resolution Plan is submitted. We would request to also confirm that in case any RA submits different financial proposal in signed Resolution Plan from what they had submitted post challenge process, then they would be declared ineligible and their EMD will be invoked.”

In response to the same, Respondent/Administrator replied vide E mail dt. 20.12.2022 as follows:

*“Further, the financial Proposal are required to be submitted in terms of challenge mechanism note issued on December 14, 2022 (“Challenge Mechanism Note”). **No change in financial proposals as finalised in the Challenge Mechanism will be permitted at the time of submission of the revised resolution plans.** Please refer to para V and clause 29 of para III of the Challenge Mechanism Note.*

Request you to note that the challenge mechanism has been devised with the intent of achieving the objective of the code to maximise the value of the assets of the Corporate Debtor in a transparent and fair manner. Therefore, the bidders have been provided the freedom to provide their highest financial proposal as part of the Challenge Mechanism. Refer to Clause 17 and 18 of para III of the Challenge Mechanism Note. The process of challenge mechanism has been approved by the CoC in exercise of its commercial wisdom. The Threshold Bid Amounts specified by the CoC are for maximization of value of assets of the Corporate Debtor. Each Resolution Applicant has been provided with the freedom to specify their Financial Proposal in the manner as they deem fit in the manner as set out in the Challenge Mechanism Note.”

The CIRP is a timebound process and therefore the compliance verification process and challenge mechanism are being conducted in parallel. As mentioned above, the challenge mechanism has been devised with the intent of achieving the objective of the Code of maximise the value of the assets of the Corporate Debtor and has provided each PRA the freedom to provide their highest financial proposal as part of the Challenge Mechanism. Needless to mention that, as per Regulation 39(3)(C) read with Regulations 39(2) of the CIRP Regulations, all resolutions plans compliant with the requirements of the IBC and the regulations made thereunder shall be voted upon by the CoC. The CoC shall accordingly approve such resolution plan as it deems fit in exercise of its commercial wisdom in accordance with Regulation 39(3)(B) of the CIRP Regulations read with Section 30(4) of the IBC. Please refer to clause 4.4.7 of the RFRP which sets out the aforementioned provisions of the IBC.

Please note that all PRAs are required to comply with the provisions of the Challenge Mechanism Note. No change in financial proposal as finalized in the Challenge Mechanism shall be permitted at the time of submission of the revised resolution plans or thereafter. Please refer to Para V and clause 29 of para Iii of the Challenge Mechanism Note. As you may note from the above, each of the points raised by you have been specifically covered in the existing Challenge Mechanism Note or already provided for under the provisions of IBC and the regulations made thereunder. In light of the same, request you to refrain from casting such baseless allegations and aspersions on the process and cooperate to achieve a resolution for RCAP in a time bound manner.

3. Meanwhile, on 19.12.2022, the Administrator issued the steps for conducting the Challenge Mechanism (“**Steps**”) laying down illustration of the Challenge Mechanism and, inter alia, re-iterated that Challenge Mechanism shall be conducted and concluded as per the Challenge Press Note.
4. The auction commenced with minimum Threshold bid (i.e. amount required to be bid in order to continue to the next round) of INR 6,500 Crore in accordance with the Challenge Process Note on 21.12.2022. The Round 1 of the Challenge Mechanism concluded with the maximum net present value offered by one of the resolution applicants being INR 7,210 Crores. Round 2 of the Challenge Mechanism concluded with maximum net present value offered by one of the Resolution Applicants being INR 7620 Crores. Round 3 of the Challenge Mechanism concluded with maximum net present value being

INR 8,550 Crores. At the end of Round 3 the highest net present value bid submitted was by the Applicant at INR 8,550 Crores.

5. Thereafter, the Applicant participated in the fourth round of the Challenge Mechanism and increased its net present value offer to INR 8,640 Crores. This offer of the Applicant was declared as the highest NPV offer and an email dated 21.12.2022 to this effect (with the subject line “*Conclusion of the Challenge Mechanism*”) was also circulated by the Administrator to all resolution applicants in accordance with the Process Note, in particular Section 6 of the Process Note.

ROUND WISE HIGHEST NPV BIDS

Sr. No.	Round [Threshold Bid Amount (NPV Basis)]	Highest NPV Bid
1.	Round 1- INR 6,500 Crores	INR 7,210 Crores
2.	Round -INR 7,500 Crores [Threshold Bid Amount of Round 1 + INR 1000 Crores]	INR 7,620 Crores
3.	Round 3- INR 8,500 Crores [Threshold Bid Amount of Round 2+ INR 1000 Crores]	INR 8,550 Crores
4.	Round 4- INR 9,000 Crores [Threshold Bid Amount of Previous round + INR 500 Crores]	INR 8,640 Crores Note: The Highest bid INR 8,640 Crores was of the Applicant [Refer Annexure A-10-Pg. 271 – Vol II (PDF Pg. 125) and Annexure A-12 – Pg. 279 – Vol II (PDF pg 133)]
5.	Round 5 onwards -INR 9,250 Crores [Threshold Bid	NA

	Amount of Previous round + INR 250 Crores]	
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6. To mark the conclusion of the fourth and the final round of the Challenge Mechanism, the Administrator issued an email on the same day. i.e. 21.12.2022 to all Resolution Applicants confirming Applicant's bid of INR 8,640 Crores as the highest bid in the Challenge Mechanism ("**Approval Email**"). The relevant portion of the E-mail dt. 21.12.2022 is reproduced herein below:

"Dear All,

Thank for your participation

Please note that the Highest NPV as per the challenge mechanism in INR 8,640/- Crores (Rupees Eight thousand Six Hundred and forty crores only).

Regards,

Authorised representative of Nageswara Rao Y

Administrator of Reliance Capital Limited."

7. Ld. Senior Counsel Mr. Ravi Kadam for the Administrator had submitted that the process of evaluation is ongoing and the decision shall be taken finally by the CoC and to support this contention has referred to relevant portion of Challenge Mechanism Process Note. It is also contended that the Application is premature and based on mere apprehensions on the strength of some media reports and also advanced legal submissions and sought time to file detailed reply on record.

8. Having considered the submissions of Ld. Senior Counsel for the Applicant and also having considered the serious apprehension of the Applicant that the Administrator despite being custodian of the process is alleged to have failed to reject the Non-compliant plan. On the contrary since it is alleged that administrator is likely to present the plan for consideration before CoC, thereby vitiating the entire evaluation process and in that event would be committing and facilitating commission of gross violation of the process of Law we find that *prima facie* case is made out by the Applicant for grant of interim relief. Accordingly, we grant stay in terms of prayer clause 'E' of the application. Liberty is granted in favour of the Applicant to add CoC as a party respondent to the Application if it deems fit. In the event CoC is arrayed as party respondent Application be served to the newly added respondent well in advance before the adjourned date.
9. At this stage Ld. Senior Counsel Ravi kadam for the Respondent prays for stay of order for one week. Admittedly this being interim order, we do not find any reason to stay the same. Interim order shall remain in force till the next date of hearing.

List this matter for Reply and further hearing on 12.01.2023.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

SAM/Jagdish

Sd/-

JUSTICE P.N. DESHMUKH
Member (Judicial)