

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P.(IB)No.181/BB/2018
U/s.7 of IBC, 2016 R/w Section 230(6)
of Companies Act, 2013 with (CAA) Rules, 2016,
Section 33(2) of Code &
Rule 2B of IBBI (Liquidation Process) Regulations, 2016

In the matter of:

Mr. Balady Shekar Shetty,
Liquidator of
M/s. Innovative Studios Private Limited
E-98, 7A Cross,
Manyata Residency, Nagavara,
Bengaluru - 560 045.

- Applicant/Liquidator

Date of Order: 8th January, 2021

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (Through Video Conference):

The Applicant/Liquidator : Mr. Balady Shekar Shetty

ORDER

Per: Rajeswara Rao Vittanala, Member (Judicial)

1. C.P.(IB)No.181/BB/2018 is filed by M/s. Karnataka State Financial Corporation ('Petitioner/Financial Creditor') U/s.7 of IBC, 2016 seeking to initiate CIRP, now came up for sanction of Scheme of Compromise filed by Investor namely, M/s. Suresh Productions Entertainment LLP, U/s 230(6) of Companies Act, 2013, R/w Section 33(2) of Code & Rule 2B of IBBI (Liquidation Process) Regulations, 2016 by inter alia seeking to sanction the scheme of Compromise filed by M/s. Suresh Productions Entertainment LLP, which was accepted by Stake holders of Corporate Debtor with all consequential directions.

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

- (1) The main Company Petition C.P.(IB) No.181/BB/2018 filed by the Karnataka State Financial Corporation, a Financial Creditor U/s.7 of the Code,2016 for initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor was admitted by the Adjudicating Authority, vide order dated 11.04.2019 by appointing the Applicant as IRP, imposing moratorium etc. On failure to get suitable Resolution Plan during CIRP, the COC in its 9th meeting held on 28.11.2019, interalia has decided to initiate Liquidation proceedings of the Corporate Debtor, and thus filed I.A. No. 678 of 2019 by seeking to liquidate the Corporate Debtor. Accordingly, the Adjudicating Authority passed an order on 06.01.2020 for liquidation of the Corporate Debtor and appointed the Applicant as Liquidator. In Pursuant to the order and in terms of Regulation 12 (1), the Liquidator made public announcement in the 'Financial Express' (English newspaper) and in 'VarthaBharathi' (Kannada newspaper) on 11.01.2019. Further, the Liquidator duly intimated the initiation of the liquidation of Corporate Debtor to the ROC in Form INC-28, ICSI Insolvency Professional Agency and the Insolvency and Bankruptcy Board of India.
- (2) Further, the Liquidator made an announcement in the newspaper on 28/29.01.2020 by calling for scheme of Compromise or Arrangement U/s. 230 of the Companies Act, 2013 from interested parties. Accordingly, the Liquidator received a compromise proposal from M/s. Suresh Productions Entertainment LLP on 09.03.2020, and the Scheme was apprised to the Stakeholders. The Secured Creditors unanimously approved the Compromise Scheme submitted by M/s. Suresh Productions Entertainment LLP in their second

meeting held on 30.03.2020. Further, while making claims, both the Secured Creditors have not relinquished their security interest; nevertheless both the Secured creditors have consented to the Scheme proposed by Prospective Investor.

- (3) M/s. Suresh Productions Entertainment LLP is the only Resolution Applicant during the CIRP and offered an amount of Rs.45.14 crores as Resolution Plan amount, which was withdrawn subsequently as against the amount of Rs.37.99 crore (including Rs.42.07 Lakhs provided for CIRP/Liquidation expenditure) proposed now as plan amount. As per the valuation reports submitted by the Registered valuers, the value of the assets are Rs.105.27 crores as fair value and Rs.75.52 crores as liquidation value. The total liabilities of the Company both secured and unsecured as on 31.03.2020 were Rs.101.16 crores, against the admitted claim of Rs.67.95 crores in the liquidation process. Considering the liabilities as per the Balance Sheet as on 31.03.2020, the percentage of satisfaction of the Creditors other than the Secured Creditors will be much less than the percentage of satisfaction mentioned in the Scheme of Compromise. Further, the reasons for offering reduced amount as compared to the Resolution Plan amount is that the operations are closed down and the project requires a considerable infusion of working capital for maintenance and branch building to bring back the revenues on track.
- (4) The Liquidator on request of the Promoter, and in consultation with the Stakeholders' Consultation Committee has decided to reopen the studios, in order to prevent any effect on the Goodwill/brand image of the studios and deterioration in the value of assets of the Company, to arrest the value erosion and to maximise the realisation in the liquidation value of the Company, which will benefit the Stakeholders of the Company

and to keep the Company as going concern. Further, the Promoter had given undertaking/guarantee to bear the entire cost of re-opening, amounting to approximately Rs.190 lakhs and to handover a surplus of Rs.30 Lakhs that would generate during next 3 months, in order to reduce liabilities as a personal guarantor on various loans taken by ISPL. Consequently, on decision to reopen the studios, the Liquidator requested the Prospective Investor to consider enhancing the plan amount at least to Rs.45.00 crores, but the Liquidator has not received any reply from the Prospective Investor.

- (5) It is stated that the Liquidator also received an offer from M/s. ANA Capital Advisors LLP to take over the Corporate Debtor under Liquidation, for Rs.24 crores as a going concern vide letter dated 29.05.2020 and the same was placed before the 3rd Stakeholders Consultation Committee meeting held on 05.06.2020. The Stakeholders Consultation Committee opined that the offer is very low and also devoid of details in comparison with offer made by M/s. Suresh Productions Entertainment LLP under liquidation.
- (6) Subsequently, I.A.No.226 of 2020 was filed by the Liquidator U/s 230 of Companies Act, 2013 R/w 33(2), of the IBC, 2016, r/w Regulation 2B of IBBI (Liquidation Process) & Rule 34 of the NCLT Rules & Rule 3 of Companies (CAA) Rules, 2016, by interalia seeking for order of meetings for approval of Scheme of Compromise which was consented by the Secured Creditor of the Corporate Debtor M/s. Innovative Studios Private Limited (under Liquidation). Subsequently, the Adjudicating Authority by order dated 17.08.2020 ordered to convene the meeting of the Secured and Unsecured Creditors and Shareholders by appointing Mr. Dushyanth Kumar, as Chairperson, and Mr.Madhusudhan Rao Gonugunta, as



Scrutinizer for the said meeting by fixing venue, time and quorum etc.

- (7) Accordingly, Mr. Dushyanth Kumar, the Chairperson conducted the meeting of Secured & Unsecured Creditors and Shareholders on 26.09.2020 at the registered office of the Corporate Debtor M/s.Innovative Studios Private Limited and filed a Report of result of the meeting before the Adjudicating Authority. The report of result of meeting of the Secured Creditors of the Company, submitted by the Chairperson is as under:

- a. The said meeting of the Secured Creditors was called to order at 10:30A.M and the Secured Creditors as mentioned below were present to the meeting.

SL NO	NAME OF THE SECURED CREDITOR	DEBT IN RS.
1	Karnataka State Financial Corporation	18,90,37,797
2	VELS FILM INTERNATIONAL LTD (Loan Assigned by The Axis Bank Limited By Way Of A Loan Assignment Agreement Dated 18.06.2020)	4,90,86,682
	TOTAL	3,81,24,479

- b. The requisite quorum as specified in the Para No.10 (2) of the order passed by the Tribunal on 17.08.2020, was present, the meeting (either in person or by proxy), the meeting. The meeting was proceeded with, at 10.30 A.M with aforementioned Secured Creditors of Innovative Studios Private Limited present in person or authorised representative and entitled together to Rs. 23,81,24,479 (as at 31.03.2020) representing 100% of the total value of secured debt of the Company.
- c. The Scheme of Compromise, was taken to be read and explained and the key highlights of Scheme and its rationale to the Secured Creditors by the Chairperson of the meeting and the question submitted to the meeting was whether the said Secured Creditors of Innovative Studios



Private Limited approved and agreed to the said Scheme submitted to the meeting with or without modifications thereto.

- d. The said resolution was passed with the following percentage:

SL NO	NAME OF THE CREDITOR	Debt in Rs.	TOTAL %
1	KARNATAKA STATE FINANCIAL CORPORATION	18,90,37,797	79.38%
2	VELS FILM INTERNATIONAL LTD (Loan assigned by the Axis Bank Limited by way of a Loan Assignment Agreement dated 18.06.2020)	4,90,86,682	20.62%
	TOTAL	23,81,24,479	100.00%

- e. The result of the voting upon the resolution with respect to the scheme was as follows:

The under mentioned Secured Creditors of Innovative Studios Private Limited voted in favour of the proposed Scheme being adopted and carried into effect without any modification.

SL NO	NAME OF THE CREDITOR	DEBT IN Rs.	TOTAL %	VOTED IN FAVOR
1	KARNATAKA STATE FINANCIAL CORPORATION	18,90,37,797	79.38%	FOR
2	VELS FILM INTERNATIONAL LTD (Loan assigned by the Axis Bank Limited by way of a Loan Assignment Agreement dated 18.06.2020)	4,90,86,682	20.62%	FOR
	TOTAL	23,81,24,479	100.00%	

- (8) Accordingly, the report of result of meeting of the Unsecured Creditors of the Company, submitted by the Chairperson is as under:

- a. The said meeting was called to order at 11:30 A.M and out of total number of 366 Unsecured Creditors (as at 31.03.2020), 88 unsecured creditors were present to the meeting.

- b. The requisite quorum as specified in Para No. 10 (3) of the Order passed by the Tribunal on 17.08.2020 was present in the meeting. The meeting was proceeded with, at 11.30 A.M with Unsecured Creditors of Innovative Studios Private Limited present in person or authorised representative, together amounting to Rs. 63,29,76,126/-representing 81.46 % of the total value of unsecured creditors of the Company.
- c. The Scheme of Compromise was taken to be read and explained and the key highlights of the Scheme and its rationale to the Unsecured Creditors by the Chairperson of the meeting and the question submitted to the meeting was whether the said Unsecured Creditors of Innovative Studios Private Limited approved and agreed to the said Scheme submitted to the meeting with or without modifications thereto. The following are the details of the voting made by the Unsecured Creditors:

Particulars	No. of Unsecured Creditors	Amount in Rs.
Total No. of Unsecured Creditors	366	77,69,93,249
No. of Unsecured Creditors who attended the meeting	88	63,29,76,126

- d. The voting carried out by the 88 unsecured creditors who attended the meeting is as follows:

Particulars	No. of Unsecured Creditors	Amount in Rs.
Voted In FAVOUR	76	37,70,73,233
Voted AGAINST	9	15,84,13,599
INVALID	3	9,74,89,294
Total Attended	88	63,29,76,126

- (9) Accordingly, the Report of Result of Meeting of the Shareholders of the Company, is as under:

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- a. The said meeting was called at 12:30 P.M and the shareholders (as per the list of shareholders at 31.03.2020) as mentioned below were present to the meeting.

SL NO	NAME OF EQUITY SHARE HOLDER	NO: OF SHARES
1	SARAVANA PRASAD	1,19,94,650
2	SHASHIKALA VENUGOPAL	1,000
3	INNOVATIVE THEMES PVT LTD	1,000
4	KAPUR INVESTMENTS PVT LTD	1,000
5	J SOMASHEKAR	25,00,000
	Total	1,44,97,650

- b. The requisite quorum as specified in the Para No. 10(4) of the order passed by the Hon'ble National Company Law Tribunal, Bengaluru Bench on 17.08.2020, was present, the meeting (either in person or by proxy), the meeting. The meeting was proceeded with, at 12.30 P.M with aforementioned shareholders of Innovative Studios Private Limited present in person or proxy and entitled together to 1,44,97,650 Equity Shares of Rs.10/- each fully paid up representing 99.98% of the total value of Equity Shares of the Company and 30,000 Preference Shares of Rs. 10/- each representing 100% of the total value of Preference Shares respectively.
- c. The Scheme of Compromise, was taken to be read and explained and the key highlights of the Scheme and its rationale to the shareholders by the Chairperson of the meeting and the question submitted to the meeting was whether the said shareholders of Innovative Studios Private Limited approved and agreed to the said Scheme submitted to the meeting with or without modifications thereto.
- d. The said resolution was passed with the following percentage:



Sl. No.	Category of Shareholders	Percentage of Votes in Favour
1	Equity Shareholders	82.76%
2	Preference Shareholders	100%

e. The result of the voting upon the resolution with respect to the scheme was as follows:

The under mentioned shareholders of Innovative Studios Private Limited voted in favour of the proposed Scheme being adopted and carried into effect without any modification.

SL NO.	NAME OF EQUITY SHARE HOLDER	NO. OF SHARES	% OF VOTING	NO. OF VOTES
1	SARAVANA PRASAD	1,19,94,650	82.74	1,19,94,650
2	SHASHIKALA VENUGOPAL	1,000	0.007	1,000
3	INNOVATIVE THEMES PVT LTD	1,000	0.007	1,000
4	KAPUR INVESTMENTS PVT LTD	1,000	0.007	1,000
	Total	1,19,94,650	82.76	1,19,94,650
SL. NO.	PREFERENCE SHAREHOLDER	NO: OF SHARES	% OF SHARE HOLDING	NO OF VOTES
1	ABM BUILDTECH PVT LTD	30,000	100.00%	30,000
	Total	30,000	100.00%	30,000

f. The under mentioned Equity shareholders of Innovative Studios Private Limited voted against the proposed Scheme

SL. NO.	NAME OF THE EQUITY SHAREHOLDER	NO. OF SHARES	PERCENTAGE
1	J SOMASHEKAR	25,00,000	17.24%

g. Details of shareholders who Preference Shareholders of Innovative Studios Private Limited, who voted against the proposed Scheme, if any.

SL. NO.	NAME OF THE PREFERENCE SHAREHOLDER	NO. OF SHARES	PERCENTAGE
NIL	NIL	NIL	NIL

h. Details of invalid Votes of the Shareholders:

SL. NO.	PARTICULARS	INVALID VOTES
1	Equity shareholders	NIL
2	Preference Shareholders	NIL

3. Thereafter, one M/s. Madhu Steel Corporation filed a Writ Petition bearing W.P. No. 10114/2020 before the Hon'ble High Court of Karnataka, Bengaluru by inter alia seeking to set aside order dated 17.08.2020 passed by this Adjudicating Authority in I.A. No. 226 of 2020 in CP(IB) No.181/BB/2018. After hearing both the parties, the Hon'ble High Court of Karnataka, Bengaluru vide order dated 17.12.2020 dismissed the Writ Petition bearing W.P No. 10114/2020 stating as under:

"In view of the above, this writ petition is devoid of merits. Therefore, no purpose would be served by vacating the stay and keeping the main petition pending. Hence, writ petition is considered on merits and dismissed reserving liberty to the petitioner approach the third respondent, if it is so advised".

4. Heard Shri Balady Shekar Shetty, Liquidator **through Video Conference.** We have carefully perused the pleadings of the Party and extant provisions of the Companies Act, 2013, and that of Code, various Rules made there under, and the law on the issue.
5. Shri Balady Shekar Shetty, Liquidator, while reiterating various averments made in the case, as briefly stated supra, has further submitted that there is an urgency in the matter, wherein more than 150 employees, who are currently on hunger strike, some of the employees have also attempted suicide, and further delay would cause more peril and interests at large would be adversely affected. Therefore, he has urged to sanction the Scheme of Compromise and to pass such other necessary orders as the Tribunal may deem fit and just.



6. It is relevant to point out here that sanction of Scheme in question arise U/s. 230(6) of Companies Act, 2013, R/w Section 33(2) of Code & Rule 2B of IBBI (Liquidation Process) Regulations, 2016. It is appropriate to refer Section 230 of the Companies Act, 2013, which reads as under:

*“230. (1) Where a compromise or arrangement is proposed—
(a) between a company and its creditors or any class of them; or
(b) between a company and its members or any class of them, the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.”*

“230.(6) Where, at a meeting held in pursuance of sub-section (1), majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator, appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be, and the contributories of the company.”

“Section 2B of IBBI (Liquidation Process) Regulations, 2016:

“Compromise or arrangement (1) Where a compromise or arrangement is proposed under section 230 of the Companies Act, 2013 (18 of 2013), it shall be completed within ninety days of the order of liquidation under sub-sections (1) and (4) of section 33. 6 [Provided that a person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the Corporate Debtor, shall not be a party in any manner to

such compromise or arrangement.] (2) The time taken on compromise or arrangement, not exceeding ninety days, shall not be included in the liquidation period. (3) Any cost incurred by the liquidator in relation to compromise or arrangement shall be borne by the corporate debtor, where such compromise or arrangement is sanctioned by the Tribunal under sub-section (6) of section 230: Provided that such cost shall be borne by the parties who proposed compromise or arrangement, where such compromise or arrangement is not sanctioned by the Tribunal under sub-section (6) of section 230.]”

“Section 2 [(ba) *“consultation committee” means the stakeholders’ consultation committee constituted under sub-regulation (1) of regulation 31A;].”*

7. When the Secured Creditors accepting the scheme in question, the 2nd meeting with Secured Creditors of the Corporate Debtor was held on 30.03.2020 at 3.30 p.m. wherein it is resolved as under:

“Resolved that the Scheme of Compromise or Arrangement with the Creditors and Members of Innovative Studios Private Limited u/s 230 of the Companies Act, 2013 submitted by M/s. Suresh Productions Entertainment LLP dated 10th March 2020 as amended on 19th March 2020 be and is hereby approved”

Resolved further that the Liquidator be and is hereby authorised to file the necessary application before the Hon’ble NCLT for approval of the scheme under the provisions of Section 230 of the Companies Act, 2013”.

After further discussion, the Secured Creditors approved the above resolutions unanimously. It was agreed that the Liquidator would forward the minutes of the meeting of the Secured Creditors by mail who will be confirming the same by return mail to that effect and forward the Form CAA-1 duly filled in and signed”.

8. It is relevant to point out here the case law on the issue. In the case of **Miheer H. Mafatlalv. Mafatlal Industries Ltd (1997) 1 Supreme Court Cases 579**, it is *interalia* held that “the factors to be considered by court in granting sanction to Amalgamation and Mergers — Creditors or members must on the basis of relevant



material arrive at an informed decision for approving the scheme — Scheme should be just, fair and reasonable to the whole class of the creditors or members including the dissenting minority and should not be illegal, unconscionable, unfair or violative of any public policy — court can in appropriate cases pierce the veil of apparent corporate purpose underlying the Scheme - However, jurisdiction of court is supervisory and not appellate in nature — Court cannot, therefore, normally interfere with the commercial wisdom of the parties who have taken an informed decision in the meeting — Company Law — Piercing the Corporate Veil. The Court held that when the parameters set out in the case of Miheer H. Mafatlal are met, the court has no further jurisdiction to sit in appeal over the commercial wisdom of the majority of class of persons who have with their eyes open given approval to the scheme, even if in the view of the court there would be better scheme for the Company.”

In the case of **United Western Bank Ltd v. Khaitan Hostombe Spinels Ltd, (2009) 91 SCL, 221 (All)** wherein the Hon'ble High Court held that “*when the scheme was approved by the majority of the shareholders and unsecured creditors at the meeting convened under the orders of Hon'ble Court, the Court can allow the Petition, even though the scheme was in violation of accounting standards and also under section 211 of the Companies Act, 1956, if the petitioner submits an undertaking to the court to disclosure of all the documents as requires under law.*”

In the case of **Sesa Industries Ltd v. Krishna H. Bajaj (2011) 162C.C 119 (S.C): (2011) 1 CLJ481 (SC): (2011) 106 SCL 218 (SC)**, it is *inter alia* held that “*Court has discretion in the matter of granting sanction. The scope of inquiry by the court is not limited to any rigid principles except in so far that, in addition to examining the statutory compliance, it must be seen that the proposed scheme of arrangement is reasonable and can be viewed as beneficial to those*



likely to be affected by it. Obviously, the burden to prove this lies on the Petitioner. It is not open to the court to sit in judgment over the views of the shareholders and the Board of Directors unless their views were against the framework of law and public. Moreover, it is purely a business decision based on commercial considerations in respect of which intervention of the court is unwarranted.”

In the case of **“Vodafone Essar Mobile Services Ltd, In re, (2011)163 CC 119 (Delhi):(2011) 2CLJ 317 (DEL) 2011) 107 SCL 51 (Del)**. Wherein it is *inter alia* held that *third party cannot be permitted to file objection to a scheme just because the scheme merely affects some of his rights, unless it is established that there is violation of substantive law. Once the majority in number representing three fourth in value of the creditors or class of creditors or members of classes of members agree to any compromise of arrangement, then, the scheme, if sanctioned by the court will be binding on all creditors and members and also on the company or in case of a company being wound up, on the liquidator and contributories of the company.”*

9. It is settled position of law that the main object of Code is to revive operations of Corporate Debtor, and to see it as going concern both under CIRP as well as Liquidation, rather than to liquidate it by dissolving it, and dissolution of it would be last and final option. The instant application is filed in accordance with law; the Secured Creditors furnished Form No. CAA1, and the Chartered Accountants have furnished their Certificate dated 03rd June, 2020 by *inter alia* certifying that funds proposed to be provided into the Company after approval of proposed Compromise Scheme would be sufficient to meet the current liabilities during this period. As stated *supra*, in terms of order passed by the Tribunal, the Chairperson has convened the meetings of all stakeholders and submitted his reports by *inter alia* stating that the scheme in

question was accepted by the stake holders of Company with requisite majority as per law.

10. Further, three (3) Interim Applications have been filed in the main Company Petition by seeking to interfere in the Liquidation process on various untenable grounds viz., I.A.No.410/2020 filed by P.Gunavardhan Raju, I.A.No.423/2020 filed by M/s. ETA Star Property Developers Ltd. and I.A No.502/2020 filed by M/s Sunland Ventures Pvt. Ltd., and these Applications have been dismissed by separate orders of even dated 8th .January, 2021. And the Hon'ble High Court of Karnataka, Bengaluru has also dismissed W.P. No.10114 of 2020 (GM-RES) on 17.12.2020 filed by M/s. Madhu Steel Corporation questioning the entire Insolvency proceedings in respect of Corporate Debtor.
11. The Scheme propose the following distribution amount agreed as under:

(INR in Crores)

Particulars	Financial Creditors - secured	Financial Creditors - unsecured	Operational Creditors	Workmen & Employees	Statutory dues	Equity Share holders	Total
Outstanding dues	23.81	43.53	0.55	0.14	2.27	14.53	84.83
Distribution Share	28.07	51.31	0.65	0.17	2.68	17.13	100.0 %
Proposed Payments							
Upfront Cash	23.81	0	0	0.14	0	-	23.95
Repayments	0	13.06	0.11	0	0.45	-	13.62
Grand Total	23.81	13.06	0.11	0.14	0.45	-	37.57
Recovery	100%	30%	20%	100%	20%	0.00%	

Two out of three classes of stakeholders have approved the Scheme of Compromise, i.e. Secured Creditors (unanimously) and Shareholders (with 82.76% majority). 70.42% of the Unsecured Creditors have voted in favour of the Scheme of Compromise as against the requirement of 75%. The Prospective Investor proposes to continue similar type of business as is being done now, the 50



(approximately) buyers of the built up area in the High Street also can start their planned business, which will safeguard their investment and facilitate creation of employment to some of the locals. M/s SPEL, the Prospective Investor had submitted the Scheme of Compromise and has offered Rs. 37.57 crores towards payment to the various stakeholders and Rs. 42.07 lakhs towards outstanding / ongoing CIRP and Liquidation Expenses. They have further undertaken to invest Rs. 28 crores into the project for upgrading and repairs in the film city over period of next 3 years.

12. Since the implementation of Scheme is to be supervised by a Committee, it is necessary to appoint such Committee with main Stakeholders in terms of Section 30 (c) & (d) of Code. In order to maintain transferency on the issue, and the issue arise out of two acts, viz Companies Act, 2013 and IBC, 2016, it would be ideal to appoint another Resolution Professional other than the existing Liquidator (Balady Sekhar Shetty), who has dealt the matter. Since, Mr. Dushyanth Kumar, , who is CS and qualified Resolution professional having adequate knowledge in insolvency proceedings, and has conducted the meetings of stake holders in the case as Chairman. Therefore, we thought it fit to appoint him as Member of Supervisory of Committee along with nominees of Secured Creditors and Prospective Investor.
13. The above facts and circumstances and the law on the issues, establish that the Scheme in question satisfy extant provisions of Code and the Companies Act, 2013, the rules made there under. Therefore, we are inclined to accept and sanction the Scheme with consequential directions as mentioned below.
14. For the aforesaid facts and circumstances, and by exercising powers conferred on the Adjudicating Authority u/s 7 of IBC, 2016 R/w Section 230(6) of Companies Act, 2013, Section 33(2) of Code



& Rule 2B of IBBI(Liquidation Process) Regulations, 2016 and connected Rules made there under, **C.P.(IB)No.181/BB/2018** is hereby disposed of with the following directions:

- (1) *The Scheme of Compromise or Arrangement with the Creditors and Members of M/s.Innovative Studios Private Limited u/s 230 of the Companies Act, 2013 submitted by M/s. Suresh Productions Entertainment LLP dated 10th March 2020 as amended on 19th March 2020, approved by 2nd meeting with Secured Creditors of the Corporate Debtor held on 30.03.2020 is hereby sanctioned:*
- (2) *The Scheme shall be binding on the Company, all the Creditors, or class of Creditors or Members or class of Members, all Statutory Authorities belonging to Central and State Govts;*
- (3) *The Company shall within thirty days of the date of the receipt of this Order cause a certified copy of this Order along with a copy of Scheme of Amalgamation to be delivered to the Registrar of Companies for registration in accordance with Rule 25(7) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;*
- (4) *We hereby appoint Supervisory Committee consisting of Mr. Dushyanth Kumar, Company Secretary & Resolution Professional; one nominee each from M/s Suresh Productions Entertainment LLP, Karnataka State Financial Corporation and Vel Film International Ltd. to supervise the implementation of above Scheme of Compromise;*
- (5) *The Supervisory Committee is at liberty to file Miscellaneous Application(s) in the instant Petition, seeking any directions(s) if any, requires.*
- (6) *M/s. Suresh Productions Entertainment LLP is directed to take immediate steps to revive the business operations of the Company, after complying all statutory compliances. It is*



further directed to accord priority in utilising the services of all the Executives, Employees, workers etc of the Company, however, subject to their suitability, before engaging outsiders.



**(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL**



**(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL**

Shruthi

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A.No.410/2020 in
C.P. (IB)No.181/BB/2018
U/s. 42 of the I&B Code, 2016
R/w Rule 11 & 32 of the NCLT Rules, 2016

Between:

Sri. Prathikantam Gunavardhan Raju,
H No. 16-2-741/B/50/1,
Asmanghad, Malakpet,
Hyderabad – 500 036

- Applicant

And

Mr. Balady Shekar Shetty & Anr.,
Resolution Professional of
M/s. Innovative Studios Pvt Ltd.,
E98, 7A Cross, Manyataka
Residency, Nagavara,
Bengaluru – 560 045.

- Respondents

Pronouncement of Order: 8th January, 2021

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (through Video Conference):

For the Applicant : Mr. Mahesh Chowdhary

Respondent/Liquidator : Mr. Balady Shekar Shetty

ORDER

Per: Rajeswara Rao Vittanala, Member (J)


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1. I.A.No.410/2020 in C.P. (IB)No.181/BB/2018 is filed by Sri Prathikantam Gunavardhan Raju, ('Applicant'), U/s. 42 of the I&B Code, 2016, R/w Rules 11 & 32 of the NCLT Rules, 2016, by inter-alia seeking to declare the Applicant as a Financial Creditor; to issue orders making the Applicant a Member of the COC; to direct the Respondent to accept the claim of Rs.7,81,07,101/- (Rupees Seven Crore Eighty-One Lakhs Seven Thousand One Hundred and One only) made by the Applicant vide Form D; to direct the Respondent to postpone the scheduled meeting of unsecured Creditors, which is to be held on 26.06.2020 until such other date after this Application is decided.
2. Brief facts of the case, which are relevant to the issue in question, are as follows:
 - (1) Initially, the main Petition bearing C.P. (IB)No.181/BB/2018 filed by M/s. Karnataka State Financial Corporation (Petitioner) against M/s. Innovative Studios Pvt Ltd (Corporate Debtor), U/s.7 of IBC, 2016 R/w Rule 4 of I&B (AAA) Rules 2016, was admitted by the Adjudicating Authority, vide its Order dated 11.04.2019, by initiating CIRP in respect of the Corporate Debtor, appointing IRP, imposing moratorium etc. In pursuant to the above, the Liquidation of the Corporate Debtor was initiated and appointed the Liquidator vide order dated 06.01.2020. Subsequently, the Liquidator made a public announcement on 09.01.2020 informing about the commencement of Liquidation proceedings, and asking the stakeholders of M/s Innovative Studios Pvt Ltd to submit their claims on or before 08.02.2020.



- (2) The Applicant herein had applied for a fully constructed property unit and had made an advance towards it. However, as the Corporate Debtor failed to provide the promised full constructed property, the Corporate Debtor, to serve as an assurance towards the delivery of the promised property, provided the Applicant with an alternative property with the express promise that the Corporate Debtor will provide the Applicant with the promised fully constructed property and the Corporate Debtor even executed a settlement agreement to that effect with the Applicant. Wherefore, as the Applicant has made an advance amount towards purchase of fully constructed property with the Corporate Debtor and as the Corporate Debtor failed to provide the promised fully constructed property, the Applicant within his rights to claim his due amount along with the agreed upon amount in the Settlement Agreement and applicable interest amount. The Applicant, therefore, duly submitted his claims vide Form D dated 05.02.2020 along with the relevant documents evidencing the existence of debt.
- (3) During the year 2008, the Applicant paid the full sale consideration including the applicable taxes to the Corporate Debtor towards the purchase of a fully constructed ready to use commercial property unit. The Corporate Debtor issued an Acknowledgement document dated 30.04.2008 wherein the Corporate Debtor acknowledges the fact that it received full and complete sale consideration with applicable taxes from Applicant towards the purchase of the fully constructed commercial property unit. The Corporate Debtor, in the said Acknowledgement document, further promised to get the promised property registered in favour of the Applicant. The



Corporate Debtor had even committed to the Applicant an assured rent with respect to the said property unit after its registration in the name of the Applicant. However, Innovative Studios Pvt Ltd, in violation of the promise originally made by it, registered to the Applicant a property, which was only partially constructed with the promise of completing the construction and initiating payment of rent within 6 weeks from the date of registration. Aggrieved by these actions of the Corporate Debtor, the Applicant filed a complaint with the Police. The Corporate Debtor then executed a Settlement Agreement on 04.06.2012 with the Applicant wherein the Corporate Debtor agreed to the fact that the Applicant incurred losses as a result of the Corporate Debtor's actions and further agreed to register in the Applicant's name, a fully constructed "New Property" (new commercial unit/shop) in the ground floor by executing a registration deed within one month of the Settlement Agreement execution date. It was further agreed upon by both the parties under the Clause III (8) of the Settlement Agreement that if the Corporate Debtor fails to register the said new property in the Applicant's name within one-month time period from the date of execution of the Settlement Agreement, then the Corporate Debtor would be liable to pay the agreed upon sum of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs only) within a maximum of 7 years from the date of agreement along with an interest rate of 24% p.a till the said amount is paid. However, the Corporate Debtor failed to register the new property in the name of the Applicant.

- (4) As per the provisions of the settlement agreement, the Applicant could take any legal action for non-payment of the agreed upon



amount only after the stipulated time period of 7 years expires. Wherefore, the stipulated period of 7 years ended only on 04.06.2019 and before this date, the Applicant was barred under the settlement agreement from initiating any legal action against the Corporate Debtor for recovery of the said damage amount. It is now pertinent to note at this juncture that the insolvency proceedings against the Corporate Debtor was admitted by this Hon'ble Tribunal vide its order dated 11.04.2019 and Moratorium was declared from this date. As moratorium was in force at the time of the expiry of the said 7-year period, the Applicant was prevented from either approaching a court or invoking the arbitration clause to recover the agreed upon amount as per the Settlement Agreement.

- (5) It is submitted that as the CIRP process could not be completed, the Corporate Debtor went into liquidation and public announcement was made by the Liquidator of the Corporate Debtor calling for claims. The Applicant then filed his claims in Form D on 05.02.2020, well within the stipulated time. However, the said claim of the Applicant was rejected by the Corporate Debtor vide its email dated 25.04.2020 on flimsy grounds without appreciating the overwhelming evidence that was provided in support of the said claim. It was rejected by interalia stating that the claim was barred by limitation as limitation starts immediately when the default occurred i.e. not registering the property within a month of Settlement Agreement and right to sue for damages also starts from the date of default. The ground taken by the Liquidator is erroneous and bad in law as the Settlement Agreement in explicit terms provides that the default occurs only if the Corporate Debtor does not pay the



agreed upon amount within 7 years from the date of agreement. The Applicant made multiple attempts to meet with the Director of the Corporate Debtor; however, the Director remained mostly inaccessible and sought for time whenever contact was made.

- (6) It is further submitted that a meeting of the unsecured creditors of the Corporate Debtor is scheduled to be held on 26.09.2020 to decide upon the scheme of compromise received from the M/s Suresh Productions Entertainment LLP. The Applicant being a creditor, who is owed a substantial debt by the Corporate Debtor, needs to be part of any such meeting which have a bearing on the assets of the Corporate Debtor. However, as the Applicant's claim has been dismissed and as the Applicant has not been included as part of the Committee of Creditors, the Applicant is prevented from attending the said meeting. Wherefore, it is of utmost importance for the Applicant to be made a party to the said meeting.
3. The Respondent has filed Statement of objections to the instant Application dated 24.09.2020, by *inter alia* contending as follows:
- (1) The Applicant had submitted his claim vide claim form dated 05.02.2020 for an amount of Rs.7,81,07,101.32/- as due from the Corporate Debtor as on the Liquidation commencement date. On perusal of the documents furnished by the Applicant, it was observed that the claim of the Applicant is based on Settlement Agreement dated 04.06.2012 for an amount of Rs.8,00,000/- In terms of the said Settlement Agreement, the property was required to be registered within period of one month from the date of agreement. The claimant, claiming damages of Rs.1,50,00,000/- and interest rate at 24% p.a as provided in the agreement, which is exorbitant and baseless.



- (2) It is submitted that the same Settlement Agreement provides a clause for specific performance (Clause IV) and a clause for dispute resolution through arbitration process, which was never exercised by the Applicant and taking advantage of the untenable damage clause. And it was noticed that there was no acknowledgment from the Corporate Debtor side disclosing that the Corporate Debtor is under obligation to pay to the Applicant, since there is not acknowledgment within three years before the date of commencement of Liquidation, as per the opinion of the Liquidator, the claim is barred by the Limitation laws. Section 18 of the Limitation Act aims at restoring such remedial rights of the party which were barred due to the lapse of time. It provides for an extension of the limitation period from such date on which the opposite party makes an acknowledgment of liability. In this regard, he has relied Judgements in the cases of In Salmond: Jurisprudence 12th Rd, page 438 & 439; In Abbott CJ in Battley v. Faulkner [(1820) 3 B & Ald 288]; Judgement of the Hon'ble Supreme Court of India dated 14.08.2020 in the matter of Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt Ltd & Anr.
- (3) The Respondent, after verification of claims, on 14.03.2020 communicated to the Applicant about determination of the claim and also requested to substantiate its claim with supplementary documents within 2 weeks of the referred communication date to re-consider the claim. Subsequently the Respondent responded to the Applicant, vide email dated 25.04.2020 regarding his inability to reconsider the claim in absence of the document. It is a well settled law that any claim for damages does not give rise to a debt until such demand is adjudicated. When there is a breach



of contract, the party who commits the breach does not incur any pecuniary obligation and the party complaining of the breach does not become entitled to a debt due from the other party. The only right which the party aggrieved by the breach has right to sue for damages, and this is not an actionable claim. Damages become payable only when they are crystallised upon adjudication. Until and unless adjudication takes place with a resultant decree for damages, there is no debt due and payable. Damages require adjudication; until then the liability of a party in an alleged breach of a terms does not become crystallised. The Creditor may appeal to the Adjudicating Authority against the decision of the Liquidator accepting or rejecting the claims ,within fourteen days of the receipt of such decision. It is the responsibility of the Applicant to furnish necessary document so as to substantiate its claim. The Liquidator is not expected to accept the claim without verification of those claims basing on the documents. Since, the Applicant has not furnished the documents as sought for by the Liquidator so as to consider the claim as per law, the impugned action of Liquidator does not warrant any interference by the Adjudicating Authority.

- (4) Heard Shri Mahesh Chowdhary, learned Counsel for the Applicant and Shri Balady Shekar Shetty, learned Liquidator, through **Video Conference**. We have carefully perused the pleadings of the Parties and also extant provisions of the Code and Rules made there under.
- (5) Shri Mahesh Chowdhary, learned Counsel for the Applicant, while reiterating various averments made in the Application, as briefly stated supra, has further submitted that the Claim in question is fully covered by the extant definition under the provisions of Code, and the



- rejection of the Claim by the Liquidator by the impugned order is neither tenable on facts and under law, and thus the impugned order has to be set-aside with a consequential direction to accept the claim.
- (6) Shri Balady Shekar Shetty, , on the other hand, while reiterating the averments made in his reply, as briefly stated supra, has strongly opposed the claim of the Applicant and thus contended that the impugned order do not suffer any illegality, and it is passed strictly in accordance with Law. Therefore, he has urged the Tribunal to dismiss the Application.
- (7) The point for consideration is whether the Liquidator is justified in rejecting the claim of Applicant and the impugned order suffers any illegality. In this context, it is relevant to refer relevant Regulations of IBBI (CRP for Corporate Persons) Regulations, 2016. Regulations Nos. 7,8 & 9 deal with claims made by Operational Creditors, Financial Creditors and workmen and employees. The existence of debt due to above categories may be proved on the basis of: (a) the records available with an information utility, if any; or (b) other relevant documents, including –(i) a contract for the supply of goods and services with corporate debtor;(ii) an invoice demanding payment for the goods and services supplied to the corporate debtor; (iii) an order of a Court or Tribunal that has adjudicated upon the non-payment of a debt, if any; or (iv) financial accounts. On submission of claims by respective Parties, IRP/RP as the case may be, in terms of Regulation 10, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim. In terms of Regulation,13, the IRP/RP as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors



along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.


(8) In terms of Regulation 14, IRP/RP has to determine of amount of claim, wherein the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.

(9) In terms of above Regulations, Claimants are supposed to make their claims by substantiating those claims with proper evidence and those claims are subject to verification by IRP/RP and it is not automatic. As stated supra, the evidence submitted by the Applicant in support of his claim is Settlement Agreement dated 04.06.2012. And this Agreement contains several terms and conditions. However, the Applicant is ultimately relying on clause 8 in support of his claim as mentioned under para **III. OBLIGATIONS OF THE FIRST PARTY, which reads as under :**

1. The First Party shall be responsible for the timely payment of compensation to the Second Party.
2. First Party shall complete the development in the retail high street area and shall take all necessary steps to conduct/commence entertainment related activity in a phased manner in the retail high street, not later than the end of October 2012. First shall further complete any incomplete construction work related to the property/new property such as completing the walls, plastering, doors and electricity connection etc not later than October 2012.



3. Electricity/water consumption charges and deposit pertaining to the property or New Property shall be borne by the Second Party or Third Party to whom the New property will be leased.
 4. First Party or any person claiming through or under them shall not restrict the Second Party from carrying on any particular business/entertainment activity.
 5. First Party agrees to provide free Security/Entry passes to enable free ingress and egress of the Second Party then clients, employees, customers, etc from and out of the main street area at any time of the day. Though the mandatory security checks will be done as necessary to ensure proper security.
 6. First Party agrees to procure individual khata certificate and khatha extract in respect of the property and/or the New Property to the Second Party on payment of a nominal fee that may be mutually agreed upon.
 7. Second Party may enter upon written agreement/arrangement with First Party or other Property owners of Retail High Street for the management and maintenance of the property and fix such fee/charges as they deem fit.
 8. If New Property is not registered to Second Party within a month, First Party shall pay Rupees One Crore Fifty Lakhs as damages to Second Party along with 24% p.a interest from date of this agreement within a maximum of 7 years.
- (10) The Applicant cannot read one condition of the Agreement in isolation to suit his claim and it has to be read in full. The contention of the Applicant that cause of action for the claim arises only at the end of 9th year is misconceived. As rightly pointed out by the Respondent that cause of action arises immediately after alleged failure to register the Property in question and the Applicant failed to take any legal



action till proceedings under the provisions of Code have been initiated.

(11) It is settled position of law that proceedings under the provisions of Code are summary in nature and the Adjudicating Authority cannot under take adjudication of disputed issues, which require detailed enquiry by taking evidence. In the instance case, whether damages are required to be paid or not would depend on various terms and conditions mentioned in the Settlement Agreement in question and one condition would not given cause of action for the Applicant to make his claim. Whether the Company failed its duties in completion of property in question are questions of fact, which cannot be decided in the instant proceedings. Admittedly, the Applicant failed to get adjudicated his claim by Competent Judicial forum, in terms of Settlement Agreement. He has waited till insolvency proceedings initiated and started making un-tenable claim without substantiating it. The Application is also suffered laches and limitation as rightly contended by the Respondent.

(12) For aforesaid reasons and circumstances, we are of considered opinion that the Applicant failed to make out any case so as to interfere in the issue. Therefore, the instant Application is liable to be dismissed.



(13) In the result, **I.A No.410/2020** in C.P. (IB)No.181/BB/2018 is hereby dismissed as devoid of merits. However, this order will not preclude the Applicant to make fresh representation to M/s Suresh Productions Entertainment LLP along with appropriate evidence to substantiate his claim to re-consider the issue afresh, and in such event, M/s Suresh Productions Entertainment LLP is directed to re-consider the issue as per merits and pass appropriate orders. No orders as to costs.



(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL



(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Brunda

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A.No.423/2020 in
C.P. (IB)No.181/BB/2018
U/s. 42 & 60(5) of the I&B Code, 2016
R/w Rule 11 & 34 of the NCLT Rules, 2016

Between:

M/s. ETA Star Property Developers Ltd,
Units No. 501 & 502, V Floor,
Front Wing, North Block, Manipal Centre,
New No. 120, Dickenson Road,
Bengaluru – 560 042

- Applicant

And

Mr. BaladyShekar Shetty &Anr.,
Resolution Professional of
M/s. Innovative Studios Pvt Ltd.,

E98, 7A Cross, Manyataka
Residency, Nagavara,
Bengaluru – 560 045.

- Respondents

Pronouncement of Order: 8th January, 2021

- Coram:** 1. Hon'ble Shri Rajeswara Rao Vittalana, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (through Video Conference):

For the Applicant : Mr. Amit Mandgi

Respondent/Liquidator : Mr. Balady Shekar Shetty

ORDER

Per:Rajeswara Rao Vittanala, Member (J)

1. I.A.No.423/2020 in C.P. (IB)No.181/BB/2018 is filed by M/s. ETA Star Property Developers Ltd, ('Applicant'), U/s. 42 & 60(5) of the I&B Code, 2016, R/w Rules 11 & 34 of the NCLT Rules, 2016, by inter-alia seeking to set aside order dated 15.06.2020 passed by the Liquidator in CP (IB) No. 181/BB/2018 thereby rejecting the claim of the Applicant amounting to Rs.3,59,50,000/- (Rupees Three Crores Fifty Nine Lakhs Fifty Thousand Only); to direct the 2nd Respondent to accept, verify and allow the claim of the Applicant etc
2. Brief facts of the case, which are relevant to the issue in question, are as follows:
 - (1) Initially, the main Petition bearing C.P. (IB)No.181/BB/2018 filed by M/s. Karnataka State Financial Corporation (Petitioner) against M/s. Innovative Studios Pvt Ltd (Corporate Debtor), U/s.7 of IBC, 2016 R/w Rule 4 of I&B (AAA) Rules 2016, was admitted by the Adjudicating Authority, vide its Order dated 11.04.2019, by initiating CIRP in respect of the Corporate Debtor, appointing IRP, imposing moratorium etc. In pursuant to the above, Liquidation of the Corporate Debtor was initiated by appointing Liquidator vide order dated 06.01.2020 by this Tribunal. Subsequently, the Liquidator made a public announcement on 09.01.2020 informing about the commencement of Liquidation proceedings and asking the stakeholders of M/s Innovative Studios Pvt Ltd to submit their claims on or before 08.02.2020.
 - (2) The Corporate Debtor had proposed to establish a Film City comprising of Film Studios, Film institute and hostel, entertainment plaza, multiplex with 4D theatre, GO karting etc.,



and the proposal was put before the Government of Karnataka for its approval. On 21.03.2005, the Government of Karnataka by its Order bearing number ITY 52 TTT 2005 approved the project proposal and directed the Karnataka Industrial Development Board(KIDB) to allot 50 acres of land near Bidadi Industrial Area. Accordingly, KIDB had executed two lease cum sale agreements on 23.02.2006 and 04.09.2006 in favour of the Corporate Debtor in respect of 50 acres (2,01,092.126 Sq.Mts) of land situated plot nos. 24, 24(p), 26 and 26(p) of Bidadi Industrial Area, Bidadi Hobli, Ramangara Taluk for the development of the Film City, henceforth will be referred to as the "Schedule 'A' Property". The Corporate Debtor had approached the Applicant to develop Apartment Towers, Signature Villas and Other Villas, hereinafter known as Residential Project, on an extent of 13.20 acres (53,420 Sq.Mts) of land out of the total extent of 50 acres of land comprised in Schedule 'A' Property. The 13.20 acres of land is referred to as "Schedule 'B' Property".

- (3) Further, The Applicant having accepted the offer of the Corporate Debtor to develop Schedule 'B' Property into a residential project entered into a Joint Development Agreement (JDA) on 28.04.2007. It was further agreed that, in consideration of the Corporate Debtor transferring 80% of the share and undivided share in the right, title and interest of Schedule 'B' Property in favour of the Applicant or its nominees, the Applicant would at its own cost construct and deliver to the Corporate Debtor free of cost and free from all encumbrances 20% of the saleable area of the Residential Project. It was also agreed that, the Applicant in order to secure the performance of their obligations undertaken therein, would pay the Corporate Debtor s an interest free



refundable security deposit of Rs.7,00,00,000/- (Rupees Seven Crores Only) and also would reimburse an amount of Rs.2,90,00,000/- (Rupees Two Crores Ninety Lakhs Only) spent by the Corporate Debtor on the land development and for obtaining licenses. The Applicant on the date of execution of the JDA dated 28.04.2007 had paid the Corporate Debtor a sum of Rs.3,00,00,000/- (Rupees Three Crores Only) and balance amount of Rs.4,00,00,000/- (Rupees Four Crores Only) was to be paid as per the table contained therein. It was further agreed that the Applicant would complete construction of the Residential Project within 24 months from the date of obtaining the commencement certificate from KIADB/Statutory Authorities. Further, as per the terms of the JDA dated 28.04.2007, the Corporate Debtor had executed an irrevocable power of attorney in favour of the Applicant on 28.04.2007. The Corporate Debtor became the sole and absolute owners of Schedule 'A' Property by virtue of a Sale Deed dated 15.03.2008 executed by KIADB in their favour.

- (4) On 10.10.2008, the Applicant and Corporate Debtor entered into an Amended Joint Development Agreement. Thus, the Applicant had paid the Corporate Debtor a total amount of refundable security deposit and reimbursement for cost of land development paid by the Applicant to the Corporate Debtor amounts to Rs.24,99,50,000/- (Rupees Twenty Four Crores Ninety Nine Lakhs Fifty Thousand Only). This fact is admitted to by the Corporate Debtor in the agreement styled as "Cancellation of Joint Development Agreement and Amended Joint Development Agreement" dated 01.06.2009. Further as per the terms of the Amended JDA dated 10.10.2008, the Corporate Debtor executed

a General Power of Attorney in favour of the Applicant which was registered in the Office of the Sub-Registrar, Ramnagaram as document bearing number RMN-4-00201-2008-09 of Book – IV stored in C.D bearing number RMND 83.

- (5) Due to the depressed market conditions, the Applicant and Corporate Debtor were not interested to continue the development of residential project, hotel and IT Park on Schedule 'B' and 'C' Properties and hence decided to mutually terminate the JDA dated 28.04.2007 and Amended JDA dated 10.10.2008. Hence, on 01.06.2009 the Applicant and Corporate Debtor agreed to terminate the earlier JDA dated 28.04.2007 and Amended JDA dated 10.10.2008 by executing a cancellation agreement styled as "Cancellation of Joint Development Agreement and Amended Joint Development Agreement" on 01-06-2009. As per the Cancellation Agreement, it was agreed that, the Corporate Debtor would refund to the Applicant the amount of Rs.24,99,50,000/- received by them. The said Cancellation Agreement which provided that in the event of any dispute arising between the Applicant and the Corporate Debtor with regard to the interpretation of the terms thereof, the same would as to be resolved by referring the dispute to a sole Arbitrator to be appointed by the Applicant in terms of the Arbitration and Conciliation Act, 1996.
- (6) As per the terms of Cancellation Agreement the Corporate Debtor herein executed a Sale Deed dated 01.06.2009 in favour of the Applicant thereby transferring the right title and interest in respect of Schedule B and C properties. Thus, the CD has complied with the part of their obligations arising under the Cancellation Agreement. However, the Corporate Debtor till date,



has failed to comply with the second of their obligations arising under the Cancellation Agreement and not shared the Gate Collection/Revenue of the Film City as per Clause 2(ii) of the Agreement. Further, Mr. Sarvana Prasad, Managing Director of the Corporate Debtor had on 31.03.2011, 31.03.2012, 30.03.2013 & 04.02.2014 signed an acknowledgment of debt thereby acknowledging that they are liable to be pay the Applicant a sum of Rs.3,59,50,000/- as per the Cancellation Agreement dated 01.06.2009.

- (7) The Applicant had issued a legal notice to the Corporate Debtor calling upon them to repay the outstanding debt owed by them amounting to the tune of Rs.3,59,50,000/- along with 18% interest per annum within three weeks from the date of notice. On 11.9.2014, the Corporate Debtor issued a reply to the legal notice dated 9.7.2014 calling upon the Applicant to produce the copies of certain documents that were referred to in the legal notice, which are letters dated 5.7.2009, 3.3.2011, 31.03.2012, 30.03.2013, 04.02.2014 issued by the Corporate Debtor to the Applicant and copy of the letter dated 24.12.2012 issued by the Applicant to the Corporate Debtor. The Applicant in reply on 09.10.2014 sent all the documents sought by the Corporate Debtor. Despite of producing all the documents, the Corporate Debtor had failed to issue any reply to the legal notice dated 09.07.2014.
- (8) The Applicant on 19.05.2016 issued a legal notice to the Corporate Debtor invoking the Arbitration clause contained in the Cancellation Agreement thereby nominating its nominee to preside over the dispute as sole arbitrator and further called upon the Corporate Debtor to concur with the appointment of the



said arbitrator. The Corporate Debtor failed to issue any reply to the said notice. The Applicant herein instituted Arbitration proceedings bearing A.C No. 33/2018 before the Arbitral Tribunal of a Sole Arbitrator. The Corporate Debtor herein had appeared in the said proceedings and had filed their statement of objections. During the pendency of the aforementioned arbitral proceedings, the Corporate Debtor herein had filed a Memo on 11/03/2020 before the Learned Arbitral Tribunal informing it and the Applicant herein that this Hon'ble Tribunal had passed an Order on 06/01/2020 allowing the Application filed by the Financial Creditor herein and thereby ordering the Corporate Debtor to be liquidated. The Corporate Debtor had further stated that the arbitral proceedings ought to be stopped and the Applicant be directed to file its claim before the Liquidator in terms of the provisions of the Insolvency and Bankruptcy Code. In terms of the Memo filed by the CD, the Hon'ble Arbitral Tribunal was pleased to terminate the Arbitration proceedings before it and was further pleased to direct the Applicant herein to file its claim before the Liquidator.

- (9) On 21.01.2020, the Applicant filed its submission of proof of claim in respect of the liquidation of the Corporate Debtor to a tune of Rs.3,59,50,000/-, along with the supporting documents as Form - C. On 05.03.2020, the Liquidator herein had addressed a letter informing the Applicant herein that on perusal of the records of the Corporate Debtor, it was found that the proof did not substantiate an operational debt and hence the liquidator was at an inability to admit the claim. However, the Liquidator provided the Applicant further period of two weeks to submit supplementary documents. On 04.05.2020 the Applicant



herein addressed a letter therein providing the documents sought for by the Liquidator. On 15/06/2020, the Liquidator has informed the Applicant herein that its claim cannot be considered by the Liquidator on the ground that :

“...,the subject matter of claim is a disputed claim and pending adjudication with the Arbitration Tribunal for adjudication. In the absence of a conclusive order from the Tribunal on the subject matter of claim, I regret to inform my inability to reconsider your claim.”

- (10) The definition of claim includes a “Right to Payment” or a “Right to Remedy for Breach of Contract”, under any law for time being in force, if such breach gives rise to payment, whether or not such right is reduced to judgment. Therefore, the Liquidator had to consider the claim filed by the Applicant irrespective of the fact as to whether or not the Tribunal had reduced the right to payment in judgment. Thus, on this ground also the Impugned Order passed by the Liquidator is liable to be set aside.
3. The Respondent has filed his Statement of objections dated 21.12.20, to the instant Application, by *inter alia* contending as follows:
- (1) In pursuance to the public announcement made on 11.01.2020 inviting the claims of the stakeholders, the Applicant made claim for an amount of Rs.3,59,50,000/- in Form C dated 21.01.2020 in terms of the contract/refundable deposit.
- (2) On perusal of the proof of claim of the Applicant, it is observed that the claim is arising from the reported cancellation of the JDA dated 01.06.2009 and stated that it was agreed by the Corporate Debtor regarding sharing the gate collection/ revenue of the film city with the Applicant. However, there is no supporting documents furnished by the Applicant. The subject

matter of claim is being adjudicated through arbitration process and there was adjudication of the matter.

- (3) Further, the Respondent vide letter dated 05.03.2020 sought supplementary documents with a view to reconsider the claim of the Applicant. In response to the letter of Respondent, the Applicant vide letter dated 04.05.2020, reveals that there is no cancellation of the Joint Development Agreement entered by the Applicant and the Corporate Debtor as stated in the statement of claim submitted by the Applicant and it is also relevant to submit that it can be seen from the response submitted that there was pending arbitration with respect to claim which was going on as on the date of the Liquidation. In view of the above reasons, the claim of the Applicant is not admissible. The Respondent has communicated the Applicant about the inadmissibility of the claim vide letter dated 15.06.2020.
- (4) The Liquidator is only required to verify the claims based on the information available but not the adjudication of the disputes arising between the Corporate Debtor and a Creditor, and that adjudication of a dispute between two parties is not within the scope and ambit of the powers of the Liquidator. The Liquidator would only be able to admit such claims, which are borne out by the terms of the contract entered into between the Corporate Debtor and a Creditor or based on a statutory obligation of the Corporate Debtor, or as reflected in a decree of a Court or Tribunal. The Liquidator cannot admit claims, which require an adjudication by a competent authority for the claims to even crystallise.
- (5) Hence, the impugned action is strictly in accordance with law and thus the Application may be dismissed.

- (6) Heard Shri Amit Mandgi, learned Counsel for the Applicant, and Shri Balady Shekar Shetty, Liquidator, **through Video Conference**. We have carefully perused the pleadings of the Parties and also extant provisions of the Code and Rules made there under.
- (7) The main point arises for consideration in the instant Application is whether the claim made by the Applicant is to be accepted without producing supporting evidence.
- (8) The Applicant is heavily relying upon on definition of claim made in the Code. It is not in dispute that a Claimant can make claim in terms of definition of Claim but it cannot be accepted automatically without verification of evidence by IRP/RP as the case may be. In this context, it is relevant to refer relevant Regulations of IBBI (CRP for Corporate Persons) Regulations, 2016. Regulations Nos. 7,8 & 9 deal with claims made by Operational Creditors, Financial Creditors and workmen and employees. The existence of debt due to above categories may be proved on the basis of: (a) the records available with an information utility, if any; or (b) other relevant documents, including –(i) a contract for the supply of goods and services with corporate debtor;(ii) an invoice demanding payment for the goods and services supplied to the corporate debtor; (iii) an order of a Court or Tribunal that has adjudicated upon the non-payment of a debt, if any; or (iv) financial accounts. On submission of claims by respective Parties, IRP/RP as the case may be, in terms of Regulation 10, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim. In terms of Regulation,13, the IRP/RP as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by



them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it. In terms of Regulation 14, IRP/RP has to determine of amount of claim., wherein the amount claimed by a Creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.

- (9) In the instant case, as contended by the Applicant, the claim arise on the commitment made by _Sarvana Prasad, Managing Director of the Corporate Debtor, vide letters/acknowledgement made on 31.03.2011, 31.03.2012, 30.03.2013 & 04.02.2014 acknowledging debt for Rs.3,59,50,000/- as per the Cancellation Agreement dated 01.06.2009. However, the Liquidator did not find substantial evidence in support of said claim. Further, the Respondent vide letter dated 05.03.2020 sought supplementary documents with a view to re-consider the claim of the Applicant. In response to this letter, the Applicant, vide letter dated 04.05.2020 disclosed that there is no cancellation of the Joint Development Agreement entered by the Applicant Due to the depressed market conditions, the Applicant and Corporate Debtor were not interested to continue the development of residential project, hotel and IT Park on Schedule 'B' and 'C' Properties. Therefore, they have decided to mutually terminate the JDA dated 28.04.2007 and Amended JDA dated 10.10.2008. Hence, both Agreements stated to have cancelled wherein there is Arbitration clause to refer the dispute to a Sole Arbitrator to be appointed by the Applicant in terms of the Arbitration and Conciliation Act, 1996.
- (10) Accordingly, the Applicant got issued legal notice dated 19.05.2016 to the Corporate Debtor invoking the Arbitration clause contained in the Cancelation Agreement thereby nominating its nominee to preside



over the dispute as sole arbitrator and further called upon the Corporate Debtor to concur with the appointment of the said arbitrator. However, the Corporate Debtor failed to issue any reply to the said notice. The Applicant herein instituted Arbitration proceedings bearing A.C No. 33/2018 before the Arbitral Tribunal of a Sole Arbitrator. The Corporate Debtor herein had appeared in the said proceedings and had filed their statement of objections. During the pendency of the aforementioned arbitral proceedings, the Corporate Debtor herein had filed a Memo on 11/03/2020 before the Learned Arbitral Tribunal informing about the Liquidation proceedings initiated by the Adjudicating Authority vide order dated 06/01/2020 passed in IA No. 678 of 2019 by *inter-alia* contending that Arbitral proceedings ought to be stopped and the Applicant be directed to file its claim before the Liquidator in terms of the provisions of the Insolvency and Bankruptcy Code. Accordingly, the Arbitral Tribunal terminated the Arbitration proceedings before it by directing the Applicant make its claim before the Liquidator.

- (11) As detailed supra, there is no dispute that the issues arise out of JDA, its cancellation, acknowledgement etc requires adjudication by the Arbitral Tribunal and thus belatedly started arbitration proceedings in question, which were terminated without adjudication of the issues raised. Therefore, the Applicant has no Award passed to be placed before the Liquidator. As rightly stated by the Liquidator, the Applicant has failed to substantiate its claim even though ample opportunity was given to prove it. And the contention of the Applicant that claim ought to be admitted automatically, without further verification by IRP/RP, in terms of definition of Claim in the Code, is baseless and it liable to be rejected in view of finding given supra.



And the Applicant failed to substantiate its claim and thus the Application is liable to be rejected.

- (12) It is also relevant to point out here, the Hon'ble High court of Karnataka, has refused to interfere in the issue, when M/s MADHU STEEL CORPORATION, A BUSINESS OF THE HUF REPRESENTED BY ITS FAMILY MEMBER MR. VIJAY PRAKASH GUPTA, has filed WP No. 10114 of 2020 FGM-RES by questioning all the proceedings of CIRP, Liquidation and convening of meetings of Stakeholders etc on various untenable grounds, by an order dated 22nd December, 2020 with the following order:

“In view of the above, this writ petition is devoid of merits. Therefore, no purpose would be served by vacating the stay and keeping the main petition pending. Hence, writ petition is considered on merits and dismissed reserving liberty to the Petitioner to approach the third Respondent, if it is so advised”.

- (13) In the result, **I.A.No.423/2020** in C.P. (IB)No.181/BB/2018 is hereby dismissed as devoid of merits. No order as costs.



(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL



(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Brunda