

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI COURT III (SPECIAL BENCH)**

Item No.1

Clarification :

IA-4262/2021 in
IB-1466/ND/2019

IN THE MATTER OF
IL&FS Financial Services Ltd
Vs.
Emerald Lands (India) Pvt Ltd

..FINANCIAL CREDITOR

...RESPONDENT

SECTION

U/s 7 IBC, 2016

Order delivered on 14.11.2022

CORAM:

DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)

SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)

PRESENT:

For the Applicant

: Ms. Pooja Mahajan, Mr. Savar Mahajan and Ms. Arveena
Sharma for the RP/Applicant

: Mr. Sajeve Deora, Adv, For Silverglades Infrastructure Pvt.
Ltd., Mr. Pradeep Jain

: Mr. Anand Varma, Adv for SRA Malhotra Group PLC

: Mr. Anand Varma, Mr. Ayush Gupta Advocate for
(Malhotra Group)

For the respondent

:

ORDER

IA-4262/2021 :

This matter was listed seeking clarifications from the parties.

Heard Ld. Counsel appearing for the parties.

The clarifications sought for are as follows :

1. It appears from Clause 4.1.4 of the Resolution Plan that in case of any avoidance application against the related party (ies) and in case of any fraud/positive outcome of the said avoidance application, the same


sd-

Coutel-



shall accrue solely for the benefit of the Corporate Debtor and Resolution Applicant and shall not be shared with the COC or any other Stakeholders of Corporate Debtor.

6. It is also provided that post the effective date, the RA shall be the sole in charge of these avoidance applications and it would have absolute right to decide the way forward in these avoidance applications including the right to settle them and it would not require any prior approval or to provide information to the COC, RP and any other Stakeholder.
7. The same Clause also provides that legal cost for representing such avoidance applications till plan approval date be factored in as the CIRP cost. The cost, if any, during the transaction period shall be included in the fee payable to implementing agent as prescribed under Clauses 6.3.1 (ii) of the Resolution Plan. On and from the effective date, all the cost, including and counter's fee, shall be borne by the RA and they have the right to replace the legal counsels.
8. It is important to take notice of the fact that there are 5 avoidance applications being following numbers are pending adjudication and involving the amounts mentioned in the following table :

IA 5329/ND/2021	21,35,40,016/-
IA 4334/ND/2021	26,94,20,232/-
IA 4339/ND/2021	1,06,00,880/-
IA 3975/ND/2021	1,10,52,500/-
IA 3990/ND/2021
TOTAL :	623,080,650/-

- Solr

Cordel.

IB-1466/2019




- 3 -

9. In view of the pendency of these avoidance applications, we direct the RP to clarify the following :
- v. Whether any valuation of these avoidance transactions was made ?
 - vi. What is the value ascribed to these transactions by RA ?
 - vii. Whether there is any documentary evidence regarding incorporation of these transactions at RFRP stage and any other material on record to suggest that these avoidance transactions have been factored in Resolution Plan, after due consideration and approval of the COC with the requisite majority.
 - viii. What is the consideration pertaining to these avoidance transactions received by the COC for assigning the proceeds of avoidance transactions to the RA during the process of considering the feasibility and viability of the Resolution Plan, in their commercial wisdom.

On the request made by Ld. Counsel appearing for the parties, the matter is adjourned enabling them to examine the issues and file their response to the queries raised by this Tribunal.

List on 25.11.2022.


(DR. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)


(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

Surjit
14.11.2022 (Court-III)
IB-1466/ND/2019