IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KERALA

<u>MA/207/KOB/2020</u>
<u>and</u>
<u>IA(IBC)101/KOB/2021</u>
<u>In</u>
<u>TIBA/07/KOB/2019</u>

(Under Section 60(5) of Insolvency and Bankruptcy Code 2016)

Order delivered on: 20.09.2021

<u>Coram</u>:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)
Hon'ble Mr. Shyam Babu Gautam, Member (Technical)

<u>IA(IBC) 101/KOB/2021</u>

Mr. V. K. Abdul Rahim
Suspended Managing Director,
M/s. Sargam Builders Pvt. Ltd.,
(Under Liquidation),
2813858-D, Sargam House,
Waterland Road, Elamkulam,
Cochin, Kerala- 682020. …… Applicant

Versus

1. C A Jasin Jose
   Liquidator of Sargam Builders Pvt. Ltd.
   IBBI Reg Address
   Ponmattam Madaserry,
   Mookkannoor P. O.- 683577,
   Angamaly.

2. Federal Bank
   Registered Office – Federal Towers
   Bank Junction Aluva,
   Ernakulam District
   Branch office at LCRD Ernakulam
   Division Ground Floor,
   Federal Towers
   Marine Drive
   Ernakulam Kerala-682021 …..Respondents

MA/207/KOB/2020

Mr. V. K. Abdul Rahim
Suspended Managing Director,

M/s. Sargam Builders Pvt. Ltd.,
(Under Liquidation),
2813858-D, Sargam House,
Waterland Road, Elamkulam,
Cochin, Kerala- 682020. …… **Applicant**

Versus

1, C A Jasin Jose
Liquidator of Sargam Builders Pvt. Ltd.
IBBI Reg Address
Ponmattam Madaserry,
Mookkannoor P. O.- 683577,
Angamaly.

2, Federal Bank
Registered Office – Federal Towers
Bank Junction Aluva,
Ernakulam District
Branch office at LCRD Ernakulam
Division Ground Floor,
Federal Towers
Marine Drive
Ernakulam Kerala-682021 …..**Respondents**

Parties/Counsel present (through video conference)

For the applicant	:	Mr. Babu Karukapadath, Advocate
For Respondent No.1	:	Mr. Jasin Jose, CA (Liquidator)
For Respondent No.2	:	Mr. Mohan Jacob George, Advocate

Per: Ashok Kumar Borah, Member (Judicial)

O R D E R

IA (IBC) 101/KOB/2021

1. This IA (IBC) 101/KOB/2021 has been filed on 01.07.2021 under Section 60(5) of Insolvency and Bankruptcy Code,2016 read with Rules 34 (1),55 and 155 of National Company Law Tribunal Rules,2016 by Shri. V. K. Abdul

Rahim Shareholder of Corporate Debtor M/s. Sargam Builders Pvt Ltd to amend the application No. MA/207/KOB/2020.

2. It appears from the record that the application MA/207/KOB/2020 was filed on 10.12.2020 and thereafter the respondents 1&2 filed their counter on 01.01.2021 and 16.04.2021 respectively, and the applicant has filed his rejoinder on 18.08.2021.

3. We have heard the learned counsel for both the parties. The applicant has come up with the amendment petition at a belated stage. In the amendment petition the applicant sought amendment of MA/207/KOB/2020 on different aspects and that if the amendment application is allowed the character of MA/207/KOB/2020 itself will change. In the amendment petition the applicant wants to import new facts, which cannot be allowed after the pleadings are complete and the matter is ripe for hearing. Moreover, the Liquidation proceedings are to be completed within a stipulated period. Therefore, the application **IA(IBC)101/KOB/2021 to amend the MA/207/KOB/2020 is dismissed**.

<u>MA/207/KOB/2020</u>

4. This MA has been filed by Mr. V.K. Abdul Rahim suspended Managing Director of the Corporate Debtor against Liquidator of M/s. Sargam Builders Private Limited under Section 60(5)(a) of Insolvency and Bankruptcy Code,2016 (hereinafter referred as I&B Code,2016) read with Rule 11 of National Company Law Tribunal Rules,2016 seeking the following reliefs: -

   i. Allow the application and declare that the action of the RP in including the claim under an expired bank guarantee by the financial creditor as ex facie illegal, and set aside the same.
   ii. Declare that the claim of the financial creditor under the bank guarantee which is the subject matter of dispute pending in OA 258 of 2013 is inadmissible and hence consequently set aside the same.

iii. Declare the entire meeting conducted by the Committee of Creditors is violative of the provisions of the IBC and the Regulations thereon

iv. Set aside all the meetings conducted by the Resolution Professional.

v. Allow the applicant to discharge the dues under the term loan for the amount claimed in the OA 258/2013 before the DRT-1 Ernakulam and recall the order of liquidation of M/s. Sargam Builders Pvt Ltd.

vi. Order the Resolution Professional to release a sum of Rs 3,25,538 -(being the refund of excess tax remitted for the year 2008-2009) to the applicant since the amount is received from another project of the company.

vii. Such order or direction be given by the Tribunal as it deems fit in the facts and circumstances of the case.

5. The facts are that the 2nd Respondent Bank initiated proceedings under Section 7 of the I&B Code,2016, and this Tribunal vide order dated 20.9.2019 admitted the application. Aggrieved by the said order, applicant herein preferred an Appeal before the Hon'ble NCLAT as Company Appeal (AT) (Insolvency) No.1297/2019. The Hon'ble NCLAT vide its interim order dated 28.11.2019 directed the IRP not to constitute the Committee of Creditors till further orders. Thereafter, Hon'ble NCLAT dismissed the said appeal by its final order dated 27.1.2020. Aggrieved by the order of the Hon'ble NCLAT, the applicant approached the Hon'ble Supreme Court of India on 10.9.2020 filing CA.No.3294/2020. The Apex Court by order dated 12.10.2020 dismissed the Civil Appeal No. 3294/2020. Meanwhile, the Resolution Professional filed an application before this Tribunal on 07.09.2020 IA/129/KOB/2020 under Section 33(2) of the I&B Code, 2016 for Liquidation of the Company. This Tribunal took up the I.A. for consideration on 16.9.2020 without issuing notice to the Corporate Debtor, its directors or shareholders and an order was passed on the very same day ordering the company to be under Liquidation appointing the Resolution Professional as the Liquidator.

6. It is the contention of the applicant that the 1st CoC meeting is void abinitio due to the following irregularities: -

   i. This Hon'ble NCLAT vide its order dated 27.1.2020 held that the application is not time barred under Section 18 of the Limitation Act in view of the appellant's letters dated 5.2.2013 and 3.2.2016 As a One Time Settlement proposal under OSS scheme of RBI, wherein the appellant agreed to settle the outstanding debt of Rs. 27,87,321.81 pertaining to the term loan of Rs.70 lakhs by remitting Rs.35 lakhs provided the bank has to release the title deeds in respect of Shop No.20 and 20 A, which is not mortgaged to the Bank. So, Annexure 3(a) letter dated 3.2.2016 pertaining to only the term loan of Rs.70 lakhs and not pertaining to the invoked bank guarantee account. As such, there is no letter acknowledging the alleged debt under invoked bank guarantee account. The Hon'ble NCLAT has pointed out in para 9 of the impugned order that the account became NPA on 15.1.2013. So, the three years period, as per the dictum of *Hon'ble Supreme Court in B.K. Educational Services Pvt Ltd Vs. Parag Gupata and Associates - AIR 2018 SC 5601* etc, expired on 15.1.2016. The application under Section 7 was filed on 31.7.2018. Even assuming that the reply of the petitioner dated 5.2.2013 under Section 13(3A) of SARFAESI Act comes under the purview of Section 18 of the Limitation Act by acknowledging the alleged debt under bank guarantee after the said letter dated 5.2.2013. Therefore, the said order dated 27.1.2020 of the Hon'ble NCLAT pertains to only the alleged debt under Term Loan of Rs.70 lakhs. Therefore, the alleged debt under Bank Guarantee is time barred.

   ii. It is also stated that in the notice of the 1st CoC meeting, the IRP has pointed out that he admitted the claim of Rs.4,39,60,553.25 of the Financial Creditor against its principal amount in OA for Rs.1,10,25,692.86. The said OA claim pertains to two debts, i.e., the alleged debt under term loan and invoked bank guarantee account i.e., Rs.28,15,925.43, and Rs.82,09,767.43 respectively. As per the order of Hon'ble NCLAT the claim under the bank guarantee is time barred so the claim of the bank ought to have been limited to the debt under the term loan which is Rs. 28,3 1,709.81. Therefore, the action of RP in admitting the false claim and publishing the same in the notice stating that it is admitted that too without FORM C is highly irregular.

iii. On 11.2.2020, the Interim Resolution Professional issued notice to the Respondent Bank and Petitioner. In the notice, it was informed that the First CoC meeting shall be conducted on 17.02.2020. The agenda of the First CoC was also listed and informed to the recipients, which included the financial statements for 2018-19, 2019-20 and assets and liabilities of the applicant's company as on the insolvency commencement date. It is pertinent to note that the said statements are prepared by the IRP as mandated under Section 18 of IBC and produced the same in page 6 of the notice, wherein it is mentioned that the total liability of the Respondent Bank is Rs. 28,31,709.81 as Bank OD A. However, the respondent bank demanded a higher claim i.e., Rs.4,39,60,553.25 stating that the principal amount is Rs.1,10,25,692.86 (i.e., claim in O A). Since the OA and the counter claim in O A are pending at DRT for adjudication for the last six years and the Respondent Bank itself got adjourned the O A for 21 times at its own instance, the Bank's claim is illegal and IRP has no authority to adjudicate the interest and admit the said illegal amount by adding interest of Rs.3,29,34,860.39. However, as per the notice, it is seen that the IRP has admitted the entire amount of Rs.4,39,60,553.25 illegally by adding the said interest.

iv. As per the financial statements of 2018-19 and 2017-18, it can be seen that Rs.3,31,50,856.00 is shown as inventories, which is part of the current assets. IRP has also published the assets and liability position as on the insolvency commencement date in page 6 of the said notice. But, when he prepared the assets and liabilities position on the insolvency commencement date, the said inventory figure (pertains to work -in-progress which is part of current assets) is deliberately reduced from the total current assets and erroneously noted the same as minus figure under profit and loss account and published the same in page 6 of the said notice. He has not given any explanation for reducing the inventory amount from the current assets and alter the said inventory amount to profit and loss account as a minus entry. He altered the current assets of the Corporate Debtor by a sum of Rs. 3,31,50,856.00 and arrived the wrong current assets as Rs.17,25,34,784.88, while the actual current assets as per page 5 is Rs.20,54,98,953.01. Thus, he falsified the document pertaining to the asset and liability position as on the insolvency commencement date, thereby defrauded the Corporate Debtor and the prospective Resolution Applicants. As such, the said action attracts the penal provision under Section 71 of I&B Code,2016.

7. The Interim Resolution Professional has conducted 4 meetings and the meetings are void for the following reasons.

   i. In the 1st CoC meeting, the petitioner vide email dated 16.2.2020 informed the RP that claim of the bank is fraudulent and not to accept the same. It is further informed him that the bank has not filed any written statement to the counter claim in OA and respondent bank is adjourning the case for 21 times at its instance and thus respondent bank is prolonging the OA for the last six years. Hence the appellant is eligible for set off. Further, it is informed not to accept the claim of the Bank without proper FORM C (under Regulation 8).

   ii. The application is filed by Mr. Sajan Philip Mathew who is the authorized representative of the Financial Creditor. But in the 1st CoC meeting the bank was represented by four unauthorized persons i.e (i) Pardeep G ü) Kochurani (ii) Jade Korason (iv) Shinju Abdulla, which is in contravention of Regulations, 2016. As per Sections 24 (1) and (8) of IBC read with Regulation 2(10a) ,2(1)) and 2(1) (1) Mr. Sajan Philip Mathew is the only person who is entitled to attend the meeting. There is no record in the minutes to the effect that the Mr. Sajan Philip Mathew has given authorization to any of the said four persons. Mr. Sajan Philip Mathew himself was absent and he has not given any authorization to any of the four participants. In spite of that IRP has falsely recorded that the quorum is present. There is a serious material irregularity in allowing the unauthorized representative to vote in the First CoC meeting.

iii. In the 2nd CoC meeting Respondent bank is to be represented by the applicant Mr. Sajan Philip Mathew but Mr. Jade Koroson was also present in the meeting. This is against Section 24 (8) of I&B Code,2016 read with Regulation 2(1)(1) and 24 (2)(f). While there are so many valuers are available in the home State of Kerala who are familiar with the site, the IRP has appointed two valuers from Tamil Nadu. This caused the valuation of the fixed assets is still pending due to the subsequent COVID-19 protocol.

iv. In the 3rd CoC meeting apart from Mr Sajan Philip Mathew two unauthorized persons named Mr. Jade Korason and Kochurani were attended the meeting representing the Respondent Bank. The RP has admitted claims of the three (3) home allottees named Dr. Gracy Abraham, Mr. Jacob Thomas and Mr. Varghese Jacob without FORM CA, in contravention to Regulation 8 (A). Regulation,12 (2) clearly mandates that a creditor who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof on or before the 90th day of Insolvency commencement date. The insolvency proceedings commenced on 20.09.2019. Thus after 19.12.2019, the Financial Creditor's right to be a member of the CoC and secure voting in CoC gets ceased. Even after that, the Resolution Professional has convened two CoC meetings dated 17.02.2020 and 16.03.2020. In both these COC meetings, there were no submission of claims by any of the said Financial Creditors' However only on 07.08.2020, the Resolution Professional has admitted the claims of new Financial Creditors i.e. (i) Dr. Gracy Abraham, (ii) Mr. Jacob Thomas/ Lally Thomas and (iii) Mr. Varghese Jacob/ Jainamma Jacob in the third COC meeting. Further, the claims of all the above three allottee's are barred by limitation under Section 238 (A) of I&B Code,2016. Dr. Gracy Abraham and Jacob Thomas, filed compliant before the State Consumer Redressal Commission on 30.9.2014. So, the date of default as per Section 7 explanation is 30.9.2014. Now, as per page 4 of the 3rd COC meeting, they filed claim in August ,2020. As per section 238(A), their claim became time barred on 30.9.2017. In the case of Varghese Jacob, the date of default as per clause 4 of the sale and construction agreement, the default occurred on 30.11.2014. But the claim is filed in August,2020. As per section 238(A) of IBC, this claim also became time barred on 30.11.2017. Thus, it is clear that the admission of the claims of new financial creditors and allowed voting rights in the COC is clearly in violation of Regulation, 2016.

v. On 10.08.2020, the Resolution Professional issued FORM G, calling invitation of Expression of Interest. The CoC granted only mere 15 days' time towards the public and other stakeholders to submit feasible and viable expression of interest. As per the schedule of FORM-G, last date of receiving FORM-G was 25.08.2020 and last date for submission of resolution plan is 09.10.2020. Finally, the estimated date of submission of resolution plan was decided as on 23.10.2020. In the midst of extremely serious COVID-19 pandemic without providing further chance to file Resolution Plans the decision of the CoC to file Section 33 (2) application is malicious.

vi. In the 4th CoC meeting along with Mr. Sajan Philip Mathew, three unauthorized persons named M/s. Mohammed Sageer,, Jade Korason ,Kochurani attended the meeting.

vii. Since the respondent Bank did not disburse the term loans of Rs.27.5 Lakhs and Rs.7.5 crores violating Section 21(3) of Banking Regulation Act, the construction of the project had to be discontinued. In the meantime, the building permit dated 30.03.2009 got expired and the petitioner had to move the Hon'ble High Court for renewing the permit. Accordingly, as per the judgment of the Hon'ble High Court dated 13.3.2018, the local authority on 30.4.2019 renewed the permits/approvals for construction.

viii. On 03.09.2020, on the very next day after receiving the four (4) permits/ approvals, the RP has conducted the 4th CoC meeting. In the meeting, the Resolution Professional erred in stating observations such as (i) the project proposal started 10 years ago and still no approvals are obtained to start the construction (ii) the company has got no projects (ii) Obtaining a resolution applicant for a project without approvals in hand is difficult and so forth. While such false reasons are made by the representative of the respondent bank, the RP is holding the above referred four (4) approvals from the previous day onwards. On the basis of the above-mentioned fabricated reasons, the CoC decided not to go for fresh EOI deliberately suppressing the actual reason of COVID-19 pandemic for not obtaining EOI. By creating such a camouflage, the CoC recommended for liquidation under Section 33 (2) of IBC and that too with the illegal voting of Mr. Jacob Thomas, who is an un authorised representative. On 7.9.2020, the RP filed IA No.129/KOB/2020 and the Tribunal passed the order in the said IA with the narration 'No Appearance' for the petitioner. The IA was allowed and ordered liquidation proceedings against the petitioner's company with immediate effect under Section 33(2) of IBC.

COUNTER BY RESPONDENTS

i. Respondent No.1- Liquidator filed a counter stating that Company had completed one project in Aluva and the second project named Pearl Kochi started in Vallarpadam but not completed. The building permit expired on 29.03.2012. He requested the suspended directors of the CoC to produce the details of license and other documents before the 1st CoC, but after one year of commencement of CIRP, he provided certain documents. Later only after the receipt of the deemed building permit on 02.09.2020 it came to know that approvals are pending and the company has not obtained building permit and it also had not obtained the documents necessary to procure a proper building permit.

ii. It is further stated that the suspended Managing Director had entered into a MOU with few homebuyers in 2016 to give back the advance received with interest and issued postdated cheques. But the cheques could not be presented as he again given another cheque withdrawing the earlier cheques.

iii. It is also stated that it is difficult to receive a resolution plan since construction is not yet started as no necessary documents are available and currently the real estate sector is not in demand and considering the statistics of the unsold unit of finished projects, unfinished units, pending projects under completion stage, CoC recommended for Liquidation of the Corporate Debtor.

iv. The Respondent No.2 in their counter affidavit stated that a shareholder is not privy to the CoC meetings and only a suspended director is entitled to raise any objections regarding the impropriety, irregularity or illegality of the CoC meetings. That apart the CoC is also not made a party to the instant petition. Further the applicant who even though was given notice of the meetings he did not attend any of the meetings and had chosen to inform the IRP each time that he will not be attending the CoC meetings. It is further stated that Bank Guarantee has already been raised and dealt with the issue and admitted the application while rejecting this contention.

v. It is further stated that the documents produced by the shareholder are, not the copies of the documents to which an ordinary shareholder is naturally privy to. The notices issued by the Interim Resolution Professional are to the members of the Committee of Creditors and the suspended Director as provided under Section 22(2) of the Act. A shareholder in his capacity is not entitled to any notice by the Interim Resolution Professional and is not entitled to challenge the proceedings with respect to the conduct of the CIRP or the meetings of the CoC if he is legally entitled.

vi. It is also stated that the Tribunal had ordered the Liquidation of the Corporate Debtor in accordance with Section 33 of the Act on 16.09.2020 and the liquidator made public announcement within 5 days. If the applicant is aggrieved by the order of Liquidation an appeal ought to have been filed before the Appellate Tribunal. It is further stated that the bank guarantee was disputed and hence not liable be entertained by the liquidator has also no legs to stand. It was already pointed out that the counter claim raised by the Corporate Debtor in the nature or raising a claim of damages against the Financial Creditor owing to non- sanctioning of a further term loan of Rs.5.70 Crores. The counter claim was a highly belated, incompetent and false claim camouflaged as a counter claim and made as in opposition to the OA filed by the Financial Creditor before the DRT. Prior to same, there was no dispute raised in respect of the Bank Guarantee or even a claim raised against the Bank. The Bank had filed I.A.No.2311/2015 in claim O.A.No.258/2013 in Counter Claim No.2/2014 seeking the said false counter claim to be struck off from the files of the Hon'ble DRT and the copy of the aforesaid I.A.No.2311/2015. IA/2311/2015 was already placed on record of this Tribunal along with the rejoinder filed to the Section 7 application. It is also stated that before DRT argument were already taken place on maintainability of the counter claim and in fact the Petitioner was seeking time repeatedly to prevent the order being passed by the DRT striking off his counter claim. All these aspects were placed on record along with the Rejoinder filed by the Financial Creditor and the averments to the contrary are false. It is also stated that the wisdom of CoC in taking a decision to liquidate the Corporate Debtor is not open for adjudication before the NCLT.

vii. The provisional financials prepared by the IRP is on the basis of incorrect information furnished by the Corporate Debtor. Any mis- statement in the balance sheet of the Corporate Debtor or in the provisional financials is not binding on the Financial Creditor regarding the question of its claim. The debt is proved by the financial creditor in accordance with the proof of claims prescribed under the Act and Regulations. There is no estoppel against the Financial Creditor in respect of any provisional financial statements made on incorrect information of the Corporate Debtor.

viii. As no resolution plan materialized, the IRP had only intimated the decision of the CoC to liquidate the Corporate Debtor. The Code does not provide for issuing notice to the suspended Director and the shareholders prior to the order of liquidation being made. The Corporate Debtor is under the control of the CoC and the IRP pursuant to admission of the CIRP. The right of the suspended Director is only to attend the CoC meeting.

8. We have gone through the whole case records and the arguments advanced by the learned counsel for the applicant and the Liquidator as well as the learned Counsel for the Respondent No. 2. We have also gone through the extant provisions of the Code and Rules made thereunder. It is seen that the applicant is challenging the procedure adopted by the IRP in the Corporate Insolvency Resolution Process. Respondent Bank initiated proceedings under Section 7 of the I&B Code,2016, and this Tribunal vide order dated 20.9.2019 admitted the application. Aggrieved by the said order, applicant herein preferred Appeal before the Hon'ble NCLAT as Company Appeal (AT) (Insolvency) No.1297/2019 which was dismissed by the Hon'ble NCLAT on 27.1.2020. Aggrieved by the order of the Hon'ble NCLAT, an appeal was filed before the Hon'ble Supreme Court of India on 10.9.2020 as CA.No.3294/2020. The Hon'ble Apex Court vide order dated 12.10.2020 dismissed the Appeal. Thereafter the Resolution Professional continued the CIR process and filed various progress reports before this Tribunal.

9. On 03.09.2020, the fourth CoC was held. As against Agenda item No.8- To take decision on reissue of Form G, COC with 77.92 % resolved not to reissue Form G further, and not to go for fresh EOI and recommended to file application before this Adjudicating Authority for Liquidation of Company under Section 33 (2) of IBC 2016 and also resolved to appoint the present Resolution Professional, Shri. Jasin Jose as the Liquidator. In the CoC, the representatives of the Federal Bank stated the following reasons for Liquidation:

    a. The project proposal started more than 10 years ago and still no approvals are obtained to start construction.
    b. The project site has undergone various civil litigations.
    c. The conceptual plan is for more than 20 floor twin building and for the same project only few bookings (Currently Less than 13 Nos) has been received within this 10 years) and out of it, most of them has filed for compensation and obtained decree from NCDRC.

d. No structure work is started and looks the project site as plain land, except for underground piling work.

e. The company has got no other running projects except revenue from two shop rooms and out of it one shop room is vacated.

f. The company has no other staff except one office manager and one sweeper.

g. The company has got no proper office premises with proper records, rent agreements are not renewed, no electricity and water connection in the company and it is functioning in the house of the Suspended Director.

h. One of the suspended directors Mr VA Rahim is managing the day-to-day affairs of the company and other two directors are family members. The suspended directors have not attended any of the CoC meetings and not extending the co-operation with CoC.

10. Resolution Professional based on the resolution passed by the CoC filed I.A No. 129/KOB/2020 on 07.09.2020 before this Tribunal. Vide order dated 16.09.2020 this Tribunal allowed the application and ordered Liquidation of M/s. Sargam Builders Pvt Ltd (Corporate Debtor) and appointed Shri. Jasin Jose as the Liquidator. The Corporate Insolvency Resolution Process stood completed by the decision of CoC to liquidate the Corporate Debtor and the liquidation is in progress. Liquidator was promptly filing the progress reports in the Liquidation process before this Tribunal. At this stage, the applicant cannot turn around and question the process adopted by the IRP/RP or the Liquidator. From the verification of the earlier proceedings of this matter, it is seen that the Suspended Directors are not at all co-operating in the CIR Process and they were only on the lookout of creating hurdle to the continuation of CIR Process. Moreover, the applicant herein is a shareholder of the Company and as rightly pointed out by the Respondent No.2 he is not entitled to claim any relief against the CoC or the conduct of the CIRP.

11. Without attending the meeting conducted by the IRP/RP, they are making bald allegations against the conduct of the CoC meetings. Their challenge to the

order of admission of the TIBA/07/KOB/2019 before the Hon'ble NCLAT and the appeal against the order before the Hon'ble Supreme Court was failed. Hence, they cannot challenge the wisdom of the IRP/RP/Liquidator or the CoC at this belated stage and this is a fit case for dismissal with exemplary costs.

12. In view of the reasons mentioned above, this **MA is dismissed with costs** of ₹25,000/- (Rupees Twenty-Five Thousand only) to be paid in the account of C A Jasin Jose **(Liquidator of Sargam Builders Private Limited)** within two weeks from the date of receipt of this order. Registry directed to communicate this order to the applicant and respondents through e-mail urgently.

Dated this the 20th September 2021

Sd/-	**sd/-**
(Shyam Babu Gautam) **Member (Technical)**	**(Ashok Kumar Borah)** **Member (Judicial)**

Linju