

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

**IA(IBC)/64/KOB/2023
IN
TIBA/7/KOB/2019**

(Under Section 60(5)(c) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016)

In the matter of M/s. Sargam Builders (P) Limited

MEMO OF PARTIES:

JOHN JOSEPH P A, S/o. PL Antony, Residing at: Kavalakkal House,
Indira Gandhi Road, Pammpai moola, Edakochi – 682 010.

... Applicant

-Versus-

1. CA JASIN JOSE, Liquidator, M/s. Sargam Builders (P) Ltd, Ponmattom,
Madassery, Mookkanoor P.O, Angamaly, Kochi – 683 577.
2. FEDERAL BANK, Federal Towers Bank Junction Aluva, Ernakulam District
and Branch Office at LCRD Ernakulam Division Ground Floor, Federal
Towers Marine Drive, Ernakulam, Kerala – 682 031.
3. V K ABDUL RAHIM, S/o. V M Kunjali Naina, 'Sargam', House No. 12, Elite
Residents Association, Elamkulam, Cochin – 682 020.

... Respondents

Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For Applicant : Mr. K R Jinan, Advocate

For Respondents : Mr. Akhil Suresh,
Advocate for R1
Mr. Jasin Jose, Liquidator (R1)
Ms. Nigi George,
Advocate for R2
Mr. Babu Karukapadath,
Advocate for R3

**Order reserved on: 29.03.2023
Order pronounced on: 28.06.2023**

ORDER

1. This application is filed under Section 60(5) (c) of the Insolvency & Bankruptcy Code, 2016 by the applicant, Homebuyer/Financial Creditor of the project of

Corporate Debtor, M/s. Sargam Builders Pvt. Ltd against the Liquidator and two others seeking the following reliefs:

- a. *“To direct Respondent No. 1 Liquidator to reconsider the claim of the respondent No. 2 in accordance to the settled provisions of law and to re-fix the voting share of the respondent No. 2 in light of the same.*
- b. *To declare all decisions taken by Respondent No. 1 in all the meetings of stakeholder’s consultation committee without participation of the applicant as been null and void.*
- c. *To direct the respondent No. 1 to conduct the counter claim No. 2/2014 in OA No. 258/8/2013 of the Corporate Debtor before DRT, Kochi Bench so as to adjudicate the set of amounts before further continue in liquidation proceedings and to direct him to conduct the case by counsel chosen by SCC.*
- d. *To direct respondent No. 1 Liquidator to manage the Corporate Debtor as a going concern.”*

Brief contents of the application are as follows: -

2. The Corporate Debtor, M/s. Sargam Builders Pvt. Ltd (hereinafter referred to as CD) was admitted into CIRP by this Tribunal on a section 7 application by respondent No. 2 Federal Bank(R2) *vide* order dated 20.09.2019, wherein R1 Mr. Jasin Jose was appointed as the IRP and later the 1st CoC confirmed R1 as the RP. Subsequently, the CD went into liquidation *vide* dated 16.09.2020 wherein R1 was appointed as the Liquidator. It is learned that CD was into the business of real estate and construction of flats/apartments and was in the process of developing a project by the name ‘Pearl Kochi’ near Marine Drive, Kochi and there were 13 Homebuyers in the said project.
3. The applicant states that most of the homebuyers of the project of CD were NRIs/Mariners including the applicant who were sailing mostly and hence were unaware of the public announcement made under Regulation 6 of IBBI (IRP to CP), regulations, 2016. It is also submitted that no notice was sent to the homebuyers and the applicant as well as the homebuyers were not part of the CoC during the CIRP. It is further stated that the applicant after being nominated as the representative of the homebuyer class was made part of the

10th SCC on 25.11.2022, as per the amended Regulation 31(A)(1) of the IBBI liquidation regulations. It is stated that after the inclusion to 10th SCC, the applicant received notice of 10th SCC dated 03/12/2022 only to learn that the auction sale of entire assets of CD is to be held at reserve price of Rs. 5.4 crores. It is stated that the claim of R2 Federal Bank itself comes to Rs. 5.42 crores and if this auction sale is permitted then the homebuyer's class having a claim of Rs. 2.52 crores will not receive any money as per the waterfall mechanism under Section 53 of IBC.

4. It is stated that the applicant along with other allottees had invested in the project 'Pearl Kochi' on the strength of the promise by R2 bank that housing loans will be available from R2 bank and upon being convinced that CD had obtained all necessary permits and NOC's along with the approval for the project from R2 bank. In view of which, separate agreements were made for sale and construction of apartments to the homebuyers. It is stated that after remitting the first instalments sum, piling work was started. However, the construction got stalled on account of the R2 banks refusal to disburse sanction term loans. It is further stated that the SARFAESI proceedings were initiated by R2 for a total claim of Rs. 1.1 crore and R2 also withdrew the project approval sanction letter offering housing loans. It is stated that the CD had made a counter claim which includes Rs. 6.47 crores the amount payable to homebuyers. CD also filed a proceeding before DRT and obtained an interim order dated 30.05.2013 staying all the SARFAESI proceedings and the said stay has not yet been vacated. It is further stated that an OTS dated 03/02/2016 was put forward by CD which the R2 turned down. It is stated that R1 had without considering the said facts admitted the entire claim of R2 bank.
5. It is stated the applicant was convinced about the geniuses of the counter claim and decided to go ahead with the project and consequently an MOU was executed between the applicant and CD. In view of the MOU, work was restated when the Hon'ble High Court of Kerala on 30.04.2019 granted a direction to the panchayat to renew the building permit and NO. Accordingly, the CD was look out for a joint venture partner to restart the work but due to Covid pandemic the project stalled. It was in the background of all this that

Section 7 application was filed by R2 bank suppressing the counter claim and giving false declaration. It is to be noted that the principal amount claimed in the CIRP is same as the amount claimed in the proceedings before DRT. The default amount as stated in the Section 7 application is Rs. 27, 87,321.81/- and Rs. 81,02,799.43/- toward term loan account and OD-Bank Guarantee. It is stated that the intention of the R2 bank is only to liquidate the company and not resolution under IBC. The order of the NCLT admitting the Section 7 application dated 20.09.2019 was challenged before Hon'ble NCLAT and the Hon'ble NCLAT dismissing the same had observed that the IRP shall perform his functions diligently and strictly as contemplated by Section 15 to 21 of the IBC and shall work with integrity and honesty.

6. The applicant challenges the entire proceedings of the CoC by the R1 including the remuneration given to him during CIRP. It is stated that the applicant along with the homebuyers were unaware of the public announcement but the dues owed to them were reflected in the balance sheet. In spite of the giving access to the books of account and records of CD *vide* communication dated 02.12.2019 by the suspended board, R1 made no effort to notify the homebuyers. It is also learned that the suspended board of directors had furnished list of 13 allottees/homebuyers *vide* e-mail dated 20.11.2019 to R1. It is alleged that R1 conducted the 1st CoC illegally and allotted 100% voting share to R2. It is stated that the reason the homebuyers were unable to provide claims timely to R1 is due to the act of the R1 in not giving notice of CIRP to the homebuyers. It is also stated that the details of the homebuyers including that of the applicant was sent to R1 by R3 on 21/03/2020. The applicant also states that balance sheet of the CD acknowledges the debt due to homebuyers as below.

Bank OD A/c	28,31,709.81
Other long time liabilities (The principal amount invested by the 13 home allottees since 2010.)	2,52,65,453.00

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In re Sargam Builders (P) Limited

Unsecured loans(Amount due to KSFE)	40,49,470.00
Other short term borrowings (Amount due to the suspended MD)	2,21,95,889.43
Total	5,43,42,522.24

7. It is stated that as per the records of the CD the voting share of the R2 only Rs. 5.21% and it is only for the benefit of R1 that notices were not sent to the homebuyers. The malicious motive of R1 behind excluding the homebuyer is to circumvent Sections 22, 27 & 33 of IBC. It is alleged that the admission of total debt of Rs. 4.39 crore (principle Rs. 1.10 crore plus interest pendent lite Rs. 3.30 crore) of R2 bank was *quid pro quo* for the appointment of R1 as RP.
8. It is further stated that the project consisted of 88 cents of land and the piling work of the building is already completed and there was very good prospect of finding a Resolution applicant and keep the CD as a going concern had the applicant been made part of the CoC. It is further alleged that the malicious actions of R1 went into falsification of books of accounts of CD which is evident from the 1st CoC that an inventory amount of Rs. 3.31 crores part of the balance sheet as on 2018-2019 had been omitted from the balance sheet during the CIRP period and the said amount has been provided as loss in Profit & Loss account. The object of this action has been to make CD as a loss-making entity and to conceal the fact relating to constructions worth Rs. 3.31 crore. The information memorandum under Section 29 of IBC showed a loss of Rs. 3.41 crores to CD and huge liability of Rs. 4.39 crores to R2 bank paving way for CIRP failure.
9. The applicant states that the valuation conducted by R1 is not correct. It is stated the Valuer were selected from a different state. It is stated that R1 has appointed three Valuers of his choice to assist R1 and defeat the interest of

homebuyers. The details of the same are as follows:

Name of Valuer	Valuation done on	Report Submitted	Market Value(rs.)	Fair Value (rs.)	Liquidation Value (rs.)
K.T.Gangadharan	16.09.2020	14.12.2020	7,20,97,946	64888151	50468562
M Divya	01.10.2020	07.07.2021	Nil	22000000	16500000
Priyan Mathew Paul	16.07.2021	16.07.2021	66760000	Nil	53400000

From the above it is evident that the three valuers valued the assets of the CD on a different time after the closure of CIRP and during the liquidation period. It is also to be noted that the valuation of assets at the time of approval of the loan of the CD was Rs. 9.74 crores. It is also to be noted that there was no valuation conducted during the CIRP period even though as per the 2nd CoC minutes two valuers Mr. Gangadharan and R Mayileru, were appointed to take liquidation value or fair value. This is violation of Regulation 27 & 35 A CIRP Regulation and as such an order passed for liquidation without valuation of property without arriving the liquidation value is nonest in law. Applicant places reliance on *Jayanth Banerjee V Shashi Aggarwal and Ors.* It is further submitted that the registered Valuer has not produced the certificate of registration under valuation rules qualifying such Valuer to value the asset class. It is also stated that Ms. Divya has not considered the inventory of Rs. 3.31 crores as regard to valuation of assets and hence, the value of the CD has been grossly undervalued.

10. It is further stated that as per Regulation 35 IBBI CIRP Regulation valuation should have been conducted before publishing Form G EOI. It is stated that the entire CIRP proceedings were hastily concluded to defeat the object of CIRP. It is stated that the decision of the 4th CoC with 66% voting share resolved to go for liquidation without going for a fresh EOI and only one homebuyer voted for liquidation without proper authority to represent creditors of the class. Hence the decision to liquidate the CD was illegal and not commercial wisdom. The applicant stated that the stand of the R1 that the project started before 10 years and no approvals were granted was grave misrepresentation on account

of the fact that R1 has approval including deemed building permit from 02/09/2020 onwards.

11. It is stated that the notice of liquidation of the CD was not made aware to the applicant. However, the applicant submitted his Form – D claim only after the 1st SCC meeting held on 08/01/2021 when R1 sent the mail dated 20/04/2021 asking applicant to submit his claim. The applicant further submitted that hardcopy of the claim was submitted on 26/12/2020. The applicant thereafter enquired with the R1 as to why he was not admitted to the list of stakeholders to which the R1 replied that the maximum representatives for unsecured creditors has been reached. It is stated that the applicant had no chosen any representative and out of the 2 representatives for the homebuyer class only one homebuyer represented upto the 4th SCC after which no representation for the homebuyers were made. All decisions upto the 9th SCC meetings were taken by illegal vote shares of the R2 bank and no minutes were properly made. It is stated that R1 has not circulated minutes of 1st to 9th SCC meetings to the homebuyers. It is stated that pursuant to the amended Regulation 31 A all the allottees should be made part of the SCC. It was only after the 9th SCC that applicant was elected to represent the homebuyer class.
12. In the 10th SCC the applicant representing the homebuyer class raised objections relating to non-inclusion of homebuyers in CIRP, omission of notice regarding public announcement, illegal vote share of R1 bank, not contesting counter claim in DRT proceedings, illegal valuation of the project land and building fixed by valuers and need for revaluation. It is stated that in the 1st CoC minutes itself the values of the land and building has been recorded as Rs. 21.38 crores including value of the land, building and inventory. However, upon the auction sale notice it is learned that value of the property has been diminished to Rs. 5.4 crores which is even lower than claim of the R2 bank. R1 was requested to revalue the property in this regard. In the 10th SCC meeting these issues were raised however, it was shocking to learn that in the 10th SCC minutes dated 07/12/2022 R1 did not address these issues including the voting share of R2 bank arrived at Rs. 52.8%. It is stated that the voting share of R2 was brought down to 52.8% after the amended Regulation 31 A (3) came into effect on

16/09/2022. The R1 also stated in the reply letter raised by applicant that he is not willing to comply with the submission of applicant and directed the applicant to approach this Tribunal. The fact is such that the claim of the allottees amounting Rs.2.52 crores will not be met in event of such valuation of the assets of CD in the auction sale. It is further contended that the actual claim of R1 admissible only Rs. 27.9 crores and the admission of Rs. 4.39 crore is *void abinitio*.

13. It is contended that the illegal vote share of R2 bank happened on account of non-inclusion of allottees as claimants in CIRP/liquidation process which happened on account of not serving proper notice to homebuyer class. Now with the advent of Regulation 6 A CIRP the stand is such that the IRP shall send a communication to each creditor as per the last available books of account which has not been complied with. Further, with the inclusion of amended Regulation 31 A Liquidation, the SCC is to be comprised with all the creditors of the CD and the voting share of the consideration committee of the SCC is in proportion to the total admitted claim. Thus, the admission of 2nd respondent claim is questionable.
14. It is further submitted that the project comprises of 88 cents of land which is having side water view next to Marine Drive, Kochi which is considered as a dry land. There is construction work Rs. 3.31 crore in the land and this property is to get a better value provided a different Valuer was engaged. R1 had engaged two valuers from different states and fixed the reserved value as Rs. 4.57 crores while the market price is 3.5 times higher than reserve price. It is stated that the only way to get best value out of this property is to complete the project which is in the interest of all stakeholders. The applicant places reliance on judgement of Hon'ble Supreme Court in *Swiss Ribbons Pvt Ltd and Anr. V Union of India and others* to state that liquidation should be availed only as a last resort. Even going by liquidation process CD should look for venues to sell the CD as a going concern but it is understood that right from the 1st SCC R1 did not take any step to renew the NOC/permits or rectify the records in Village Office and has taken a contention that the project is a failure.

15. The applicant states that if the proceeding before DRT is contested on action for counter claim the value of the financial debt will come down considerable and the homebuyers will have greater say in the liquidation. It is also stated that R2 bank has not relinquished its security interest against the CD in respect of the 88 cents of land to the liquidation estate as envisaged under Section 52 of IBC in which case R2 is not to be made a part of SCC. R1 has also not furnished the details of relinquishment of security interest of R2 in spite of enquiry by the applicant. It is further alleged that in the 10th SCC the liquidation allowed two persons from R2 bank and one person from liquidator's side. In spite of objections R1 allow strangers to participate in the SCC which is against Regulation 32 B. In this aspect 10th SCC meeting is to be held void. In the 10th SCC R1 had informed the SCC members to sent any additions or corrections to be made in the minutes and accordingly the applicant asked R1 to provide details of claim of R2 with supporting details as to his voting percentage of 52.8%. The Liquidator has not provided any such details which is in violation of Regulation 31 A (5). The applicant further alleges that the debt admitted under Section 7 IBC with respect to claim arising out of bank guarantee barred by limitation due to non-acknowledgment of debt. In this case only the amount in respect of term loan account can be admitted as claim of R2. Applicant places reliance on decision in *V K Educational Service Pvt Ltd V Parag Gupta and associates*. In respect of remaining debt i.e., from the term loan account the amount should be adjudicated with DRT before admission. In view of the decision in *Swiss Ribbons* the applicant states that the counter claim and set of claims are subject to adjudication at the stage of filing of proof of claims. In spite of having knowledge about the provision of counter claim and set of R1 did not take any positive step to consider the same which is against the IBC.
16. It is further stated by the applicant that in MA(IBC)/207/KOB/2020 in IA(IBC)/129/KOB/2020 which was filed by CD challenging the liquidation proceedings wherein substantial issues raised herein was adjudged. In the appeal before Hon'ble NCLAT three homebuyers were sought to be impleaded which was dismissed. It is stated the applicant was not in the party array in

MA(IBC)/207/KOB/2020 and hence the applicant is not bound by the decision in the same. It is stated that there was no authorized representative for the homebuyers class till the 10th SCC. It is stated that this is in violation of Regulation 31 A (3) as the liquidator is duty bound to nominate a representative for each homebuyer class. It is also stressed that the applicant has filed this application on his individual capacity and not on behalf of other homebuyers. It is further stated that eleven E-auctions were conducted even though R1 has not taken any action to demarcate the CD property with fences and proper housekeeping so as to enable potential bidders to ascertain the property. The intention of R1 by not doing so is to evade potential prospects. The applicant further states that it will be in the best interest of CD for liquidator/R1 to conduct pending litigations before DRT and other judicial forum for the e-auction to be fruitful.

Brief contents of the reply of 1st Respondent are as follows: -

17. On the respondent side R1 Liquidator filed their detailed counter affidavit stating that Liquidator made public announcement in Form -B in two newspapers on 24/09/2020. It is further submitted that Liquidator intimated R3 to publish the same in the CD website but R3 did not comply. Liquidator submits that R3 was not cooperating with the Liquidator in the initial stage and had to approach this Tribunal to seek orders for handing over assets of the CD. It is further stated that R3 moved Writ Petition before Hon'ble Kerala High Court, which was dismissed and later filed appeal before Hon'ble NCLAT which was withdrawn. It is stated that R3 moved MA(IBC)/207/KOB/2020 in IA(IBC)/129/KOB/2020 challenging the liquidation order which was dismissed with cost. In subsequent appeal before Hon'ble NCLAT wherein homebuyers were also sought to be impleaded the Hon'ble NCLAT dismissed the appeal.
18. R1 states that applicant had not filed any claim during the CIRP and this application is filed motivated by the R3 which is evident from the fact that applicant and R3 have been attending the SCC meeting from the same building. Also with regard to valuation of CD done for internal audit purposes has also

come to the possession of applicant. Liquidator states that the prayers which have been sought to be adjudicated has already been decided by this Tribunal and affirmed by Hon'ble NCLA. Hence, this applicant being authorized representative of homebuyers in SSCC indirectly represents for each homebuyer. In *toto* this application is hit by *res-judicata*. Liquidator states that there is no legal requirement for the Liquidator to sent notice to all homebuyers as on that date. It was only on 16/09/2022 that Regulation 6A was amended to give effect to individual notices and the said amendment is with prospective effect. It is stated that Liquidator took all measures to collect details from R3. Various E-mails has been communicated to R3 whereby on 18/11/2020 R1 received all e-mail ids of homebuyers. On receipt of the same R3 sent e-mail to homebuyers regarding submission of claim in Form – B. It is stated that on 21/04/2021 the applicant filed his claim on strength of post-dated cheques issued by the CD. The liquidator came to know that R3 had entered into separate MOU with homebuyers in 2016 promising to complete the project within one year failing which CD would return the full amount to homebuyers and believes that the applicant is also a party to a similar MOU. Liquidator submits that six claims were received on post-dated cheques. Subsequently the MOU was renewed and a letter to one Mr. Saju T Thampi it is stated that the CIRP process has been initiated and moratorium is imposed under Section 14, IBC along with other details regarding SARFAESI proceedings, appeal before Hon'ble Supreme Court and that post-dated cheques are being issued as security for some investments. It has also been stated in the letter that due to moratorium bank accounts of CD has been freeze and post-dated cheques may be returned. It is further stated that the disputed claim of R2 along with interest pendent lite has been a subject matter in IA/161/KOB/2021, which was dismissed by this Tribunal *vide* order dated 21/04/2022. R1 has stated that the reliefs prayed for in this application has been adjudicated in MA/207/KOB/2020 as can be seen below:

Prayers in MA 207	Prayers in the instant Application
<p>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.</p> <p>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.</p> <p>iii. Declare the entire meeting conducted by the Committee of Creditors is violative of the provisions of the IBC and the Regulations thereon</p> <p>iv. Set aside all the meetings conducted by the Resolution Professional.</p> <p>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.</p> <p>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.</p> <p>vii. Such order or direction be given by the Tribunal as it deems fit in the facts and circumstances</p>	<p>a. To direct Respondent No. 1 liquidator to reconsider the claim of the Respondent No.2 in accordance to the settled provisions of law and to re-fix the voting share of the respondent No. 2 in light of the same.</p> <p>b. To declare all decisions taken by Respondent no. 1 in all the meetings of Stakeholders Consultation Committee without the participation of the applicant as being null and void.</p> <p>c. To direct the respondent No. 1 to conduct the counter claim No. 2/2014 in OA No.258/2013 of the corporate debtor before the DRT, Kochi bench so as to adjudicate the set-off amount before further continue in liquidation proceedings and to direct him to conduct the cases by the counsel chosen by the SCC.</p> <p>d. To direct the Respondent no. 1 liquidator to manage the Corporate Debtor as a going concern.</p> <p>e. To direct the respondent no.1 to take a fresh valuation of the assets of the corporate debtor in accordance with established practices</p>

It is stated that the allegations raised by the applicant and prayer No. (a) and (c) are covered by the decision in the above application and confirmed in appeal. R1 further stated that the CIRP order as well as the liquidation order has been assailed before Hon'ble Apex Court and the same has been dismissed.

It is further stated that the documents produced by applicant are received from R3 and the *bona-fides* of the applicant are questionable

19. The Liquidator has stated that various issues raised in the application has been already discussed by Hon'ble NCLAT in **Company Appeal (AT)(CH) (Ins.) No. 254/2021** as follows:

“Issue No. (i) Whether the ‘Committee of Creditor’ constitution was correct in terms of the I& B Code, 2016?

(a) Section 21 of I & B Code, 2016 provides for composition of Committee of Creditor. It is the duty of the Interim Resolution Professional to constitute a committee of creditors in terms of Section 21(1) of I& B Code, 2016 after collation of all claims received against the ‘Corporate Debtor’ and determination of such claims of the Financial Creditor of ‘Corporate Debtor’.

(b) The Section 21(2) of I & B Code, 2016 mandates that, "the Committee of Creditor shall comprise of all Financial Creditors" except related party as per provision to Section 21(2) of I & B Code, 2016.

(c) Section 5(28) of the I & B Code, 2016, defines "voting share"- "means the share of voting rights of a single financial creditor in the Committee of Creditor, which is based on proportion of financial debt owed to such Financial Creditors in relation to the Financial Debt owed by the ‘Corporate Debtor’”.

(d) Financial Debt, as defined under Section 5 (8) is the total debt of the ‘Corporate Debtor’, which shall necessarily include the whole financial creditors of ‘Corporate Debtor’, including home allottees, especially in view of the specific indication in Section 5(8)(z), which was introduced by way of amendment of I& B Code, 2016.

(e) The ‘Committee of Creditor’ shall consist of all ‘Financial Creditors’ of the ‘Corporate Debtor’ including Home Allottees. This has also been confirmed in various judgments including (2018) 18 SCC 575- Chitra Sharma Vs Union of India &Ors and (2019) 8 SCC 416-Pioneer Urban Land and infrastructure Ltd Vs. Union of India and (2020) 8 SCC 531 Essar Steel India Ltd Committee of Creditors vs. Satish Kumar Gupta as cited by the Learned Counsel for the ‘Appellant’ in his submissions.

(f) These decisions settled the principle that the ‘Committee of Creditor’ shall consists of all ‘Financial Creditors’ including all home allottees. The ‘Resolution Professional’ is required to constitute the ‘Committee of Creditor’ with home allottees to protect the

interest of all concerned including home allottees as the 'Committee of Creditor' is the decisive authority in the whole process.

(g) Under Section 18 of I & B Code, 2016, it is the duty of the 'Interim Resolution Professional' to collect financial information relating to the 'Corporate Debtor', including its 'Assets' and 'Liabilities' on the initiation date and also to constitute the 'Committee of Creditor'.

(h) In the present Appeal, the Respondent No. 1 constituted the 'Committee of Creditor' assigning 100% voting shares to the Respondent No. 2. 'Interim Resolution Professional' prepared Information Memorandum, inter alia with reference to the financial position of the 'Corporate Debtor'.

(i) It has been alleged that the liability of the 'Corporate Debtor' towards the Respondent No. 2 was only Rs.28,31,709.81/— and therefore Respondent No. 2 was entitled to have only 5.21% shares in the 'Committee of Creditor'. It has been brought by the 'Appellant' that the amounts due to the home allottees was Rs.2,52,65,453/— which is almost 10 times of the amount due to the Bank along with the unsecured loan of Rs.40,49,470/— and a short-term borrowing of Rs. 2,21,95,889.43/— making the total liability/debt to the tune of Rs. 5,43,42,522.24/— due to the 'Financial Creditors'. The Appellant further stated that the Respondent No. 1 instead of allotting only 5.21% shares to Respondent No. 2 in the 'Committee of Creditor', illegally allotted the entire 100% 'Voting Shares' in the 'Committee of Creditor' without allotting any 'Voting Shares' to any other 'Financial Creditors', including the 'Home Allottees'.

(1') On the other hand, we have observed from the submissions and pleadings by the Respondents who claims that the 'Committee of Creditors' was strictly constituted as per provisions of the I & B Code, 2016 and brought out that on immediate admission of 'Corporate Insolvency Resolution Process' and appointment of 'Interim Resolution Professional', within three days Public Announcement has to be made under Regulation 6 of [BB] (Resolution Process for Corporate Persons) Regulations, 2016. Similarly, under Regulation 13, 'Interim Resolution Professional' has to verify the claim and under Reg. 17 has to file a report certifying 'Constitution of the Committee' to the 'Adjudicating Authority'.

(k) Respondent No. 1 emphasized that the above procedures were followed strictly. It has also been brought out by the Respondent that the 'Interim Resolution Professional'

cannot calculate the 'Voting Share' without submitting the 'Claim' by the 'Creditors', as alleged by the 'Appellant'. The Respondents stated that the 'Committee of Creditors' consists all 'Financial Creditors' of the 'Corporate Debtor' except related party of the 'Corporate Debtor'. The Respondent also submitted that the 'Interim Resolution Professional' did not receive any 'Claim' from the 'Appellant', Home Buyers and from any other Creditors other than the 'Applicant' to the 'Corporate Insolvency Resolution Process' i.e., Federal Bank and hence the 'Committee of Creditor' was constituted, initially only with the Federal bank. 'First Committee of Creditor' meeting was attended by the Federal Bank only subsequently the 'Interim Resolution Professional' received the claim from three Home Buyers in the month of April 2020, and they were made part of the 'Third Committee of Creditor' onwards i.e., from 07.08.2020.

(l) It has been brought out that, initially there were 53 Home Buyers and now only 13 Home Buyers are remaining in the Project and the Claims received from 9 have been admitted and further 3 claims received recently and waiting to be admitted subject to the approval of the 'Adjudicating Authority'.

(m) After taking the above facts into consideration along with the rule position as stipulated in I & B Code, 2016, this 'Tribunal' do not find any error on the part of 'Interim Resolution Professional' regarding 'Constitution of Committee of Creditors', which was approved by the 'Adjudicating Authority'. We, therefore, do not find any merit in the 'Appeal' on this issue.

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Issue No. (iii). Whether the Respondent No. 1 has erred by accepting the claims of the Bank in excess of the amount due as mandated under section 18 of I& B Code, 2016.

(a) We note from the submissions of the 'Appellant' that liability of the 'Corporate Debtor' towards the 'Respondent No. 2' was only Rs. 28,31,709.81/— as against total debt of Rs. 4,39,60,553.25/— claimed by the Respondent No. 2 and wrongly admitted by the Respondent No. 1.

(b) On the other hand, it has been brought to the notice of this 'Tribunal' that the 'Appellant' has taken only initial principal portion without taking into account any interest portion.

(c) *The Appellant has also not taken the liability on the part of encashed Bank Guarantee issued by the Respondent No. 2 on his behalf in favour of 'KSFE' amounting to Rs.82,09,767.43/—. Therefore, the total 'Claims' as admitted by the 'IRP' and admitted by the 'Adjudicating Authority' initially was Rs. 4,39, 60,553.25 (Rs.1,10,25,692.86 towards principle and Rs.3,29,34,860.39 towards Interest).*

(d) *We, therefore, observe that the 'Appellant' has wrongly taken only principal portion of debts towards Respondent No 2 (Bank) ignoring the interest component on the principal and the amount of encashed BG by 'KSFE' which seem to be legitimate claims of Respondent No 2 in any case.*

(e) *This Tribunal also consciously note that loan by Respondent No. 2 in favour of the 'Appellant' was sanctioned way back in 2011 whereas CIRP was admitted on 29.09.2019. No one can assume that liability of the 'Corporate Debtor' towards the Respondent No. 2 for interest will not accrue and balance amount will remain at only Rs. 28,31, 709.81/-.*

This will be against the canons of financial propriety and against commercial sense. Hence, this logic of the 'Corporate Debtor' of this loan outstanding balance is beyond comprehension. It is the responsibility of 'Interim Resolution Professional' to collate and to verify of the 'Claim' from all the 'Creditors' who submit the same along with the documentary evidence. In this case also, the Respondent No I did accordingly.

(I) *The Respondent has claimed that we have verified all claims after due diligence and verifying with documentary evidence and the 'Adjudicating Authority' also accepted the same. As such, no error is found on this issue.*

Issue No. (iv) Whether the Respondent No. 1 is duty bound under Section 25 (2) (b) of I & B Code, 2016 to take up the issue of 'Counter Claim', either before the 'Adjudicating Authority' or 'DRT' before proceeding with the 'Corporate Insolvency Resolution Process' and 'Liquidation Proceedings'?

(a) *It has been alleged that one 'Counter Claim' of the 'Appellant' against the Respondent No. 2 filed in SA. No. 423/2013 before the 'DRT' against the Bank is pending consideration, before the 'DRT'. 'Counter Claim' raised by the 'Corporate Debtor' and the 'Appellant' against the 'Respondent No. 2 Bank' is for Rs.17,14,19,648/— which has not yet been adjudicated by 'DRT'. The same 'Claim' was raised by the 'Appellant' before the 'Adjudicating Authority' as well. It has been further alleged that the*

Respondent No. I have not taken any step to admit the 'Counter Claim'. The 'Respondent No. I' has also not allegedly approached for any direction or orders from the 'Adjudicating Authority'. The 'Respondent No. I' has not even taken any steps to represent the 'Corporate Debtor' in the 'Counter Claim', before the 'DRT'.

(b) On the other hand, 'Respondent No. I' has brought out that mere filing of such huge 'Counter Claim', before the 'DRT' for alleged loss of profit on account of non-selling of apartments and/or refund of money to allottees of the Project who could not be given possession of such apartment is yet to be decided by the 'DRT'. As such, this does 't impact the 'CIRP proceeding' and the allegation does not hold good.

(c) This 'Tribunal' finds no error, on the part of the 'Resolution Professional' / 'Liquidator' and the 'Adjudicating Authority', to interfere in the subject matter in issue, and viewed in that perspective, this 'Tribunal' is not inclined to take a different view than the one arrived at by the 'Adjudicating Authority. Accordingly, the 'Appeal' fails."

20. R1 submits that as per the amended Regulation 31 A which came into effect on 25/07/2019 the liquidator shall constitute SCC comprising of all creditors of CD within 60 days of the liquidation commencement date. As per the Regulation two creditors in respect of unsecured financial creditors shall be included in the SCC. Accordingly, two such creditors were made part of the SCC. The amended regulation came into effect from 16/09/2022. Liquidator submits that as per the amended Regulation the 10th and 11th SCC held on 7/12/2022 and 17/01/2023 included the applicant as part of SCC. The contention of the applicant that the Regulation has retrospective effect is farfetched in law in view of the fact that it is clear that the Proviso 2 Regulation 31 A state that the Liquidator shall reconstitute the SCC as per the amended regulation within 30 days. B Liquidator further submits that every SCC minutes has been properly minuted and has been communicated to each stakeholder including R2 & R3.

21. Liquidator submits that as far as the prayer of the applicant to adjudicate the counter claim and set of amounts in liquidation proceedings it is submitted that the said fact was delt with in appeal before Hon'ble NCLAT where in the Hon'ble NCLAT held that the proceedings before DRT does not impact the CIRP and found that it is not necessary to interfere in the order of this Tribunal.

22. With regard to the contention of the applicant that the CD should be managed as a going concern the liquidator has produced the extract of the order in MA/207/KOB/2020 discussing the same as below:

“On 03.09.2020, the fourth CoC was held. As against Agenda item No.8- T0 take decision on reissue of Form G, COC with 77.92 % resolved not to reissue Form G further, and not to go for fresh E01 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.”*

23. It is submitted that the management of CD as going concern was not considered in view of the fact that it was practically impossible to manage the same and sell assets as a going concern. It was in this context that the 4th COC decided not to issue further From G EOI and went for liquidation. The liquidator relies on the MOU dated 25.09.2016 entered by the CD and homebuyer, a letter

issued by CD to Mr. Saju T Thampi and the Directors report of CD for period ending FY 2019 to clarify the same.

24. It is further stated by the R1 that the CD purchased the land for a value of Rs.2,24,60,000/-. The valuation done for internal audit purposes wherein Mr. KV Kuriakose vide report dated 31.03.2017 shows that the value is 2500 higher than then guideline value abd 745% higher than actual purchase price. The report was accepted by Federal Bank R2 at that point and thereafter the said valuer was removed from the panel of valuers of the Bank. It is further stated that the land includes 66 cent of land which is a wetland. Further stated that the valuation by R1 was done in compliance of regulation 35 of IBBI (Liquidation) regulation and 2 valuers gave valuation report as below: -

Details of IBBI Registered Valuers	Notified Guideline Value by Kerala Government (for 88 cents)	Valuation as fixed by the Valuer as market value (for 88 cents)	Realizable Value/Fair Value (for 88 cents)	Forced Sale Value /Liquidation Value (for 88 cents)
K.T.Gangadharan	41,548,826.00	61,600,000.00	55,440,000.00	43,120,000.00
Priyan Mathew Paul			57,480,600.00	45,984,480.00
Value adopted by the Liquidator (Average of two closest value)			56,460,300.00	44,552,240.00

Note: First E Auction was conducted with average of fair market value of Rs.56460300 /- and in the latest e auction the reserve price is fixed at Rs.45733500/-, which is even below the average liquidation value

R1 state that 11 e auctions have been conducted following regulation 32, as below: -

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

IA(IBC)/64/KOB/2023 IN TIBA/07/KOB/2019

In re Sargam Builders (P) Limited

Auction	Auction Date	Reserve price fixed for the E Auctions				Remarks
		Land Property	Shop Room 20	Shop Room 20A	BMW Car	
First E Auction	13.09.2021	56,460,300.00	3,401,000.00	5,964,000.00	NA	Nil
Second E Auction	21.10.2021	56,460,300.00	3,401,000.00	5,964,000.00	NA	No Change in Reserve Price from the last E Auction
Third E Auction	29.11.2021	56,460,300.00	3,401,000.00	5,964,000.00	NA	No Change in Reserve Price from the last E Auction
Fourth E Auction	10.01.2022	56,460,300.00	3,401,000.00	5,964,000.00	NA	No Change in Reserve Price from the last E Auction
Fifth E Auction	28.02.2022	50,815,000.00	3,061,000.00	5,368,000.00	1,042,500.00	10% of Reserve Price was reduced from the last Auction for Land and Two shop rooms
Sixth E Auction	11.04.2022	50,815,000.00	3,061,000.00	5,368,000.00	782,000.00	Price of the BMW car was reduced by 25% from the reserve price fixed at the last auction. For other properties, no changes in the reserve price.
Seventh E Auction	13.06.2022	45,733,500.00	2,754,900.00	4,831,200.00	703,800.00	No Change in Reserve Price from the last E Auction
Eighth E Auction	30.08.2022	45,733,500.00	2,754,900.00	4,831,200.00	703,800.00	No Change in Reserve Price from the last E Auction
Ninth E Auction	10.11.2022	45,733,500.00	2,754,900.00	4,831,200.00	703,800.00	No Change in Reserve Price from the last E Auction
Tenth E Auction	03.03.2023	45,733,500.00	2,754,900.00	4,831,200.00	633,420.00	Price of the BMW car was reduced by 10% from the reserve price fixed at the last auction. For other properties, no changes in the reserve price.

It is stated that in the first auction as per regulation 32(e) the CD was put for sale at the best price as per regulation 35. Subsequently following schedule-I of IBBI regulations, the liquidator reduced the reserve price of land and shop by 10% with approval of SCC. It is stated that the price is still above the liquidation value but even then, bidders are not coming forward due to objections from CD and homebuyers. It is further stated that the CD was constantly in litigation with the respondents right from CIRP and even now during the e auction process. It is stressed that it has been more than 10 years since the project was floated and even now only piling work has been completed. In this situation, sale as a going concern is not an option.

25. The liquidator state that out of 13 homebuyers, 11 claims are admitted and 2 claims have been rejected due to belated claim. Out of 11 claims, 2 are based on order from National consumer dispute redressal forum and 6 are based on postdated cheques issued by R3. It is further stated that as per MOU entered in 2016 the homebuyers consented to sell off the property if R3 could not start the project within a year.

Brief contents of the reply of 2nd Respondent are as follows: -

26. The 2nd Respondent submitted its counter and virtually denied all allegation against the Bank and has taken similar line of defence as by R1. It is further stated that a term loan of 60 lakh was sanctioned on 02.11.2009 and bank guarantee of Rs.85 lakh was granted on 28.05.2010 for which the OA was filed before DRT. It is further stated that though further loan was sought for, it was not granted and that the bank has not granted any housing loan facility to homebuyers. It is also stated that the bank had relinquished the security interest and thereafter the bank was included in the SCC and the voting share of bank is fixed correctly. It is contended that the valuation done by Mr. Kuriakose, is a self-serving document procured by the applicant and R3, and the bank had in the year 2013 initiated recovery proceedings in default of debt.
27. On the 3rd Respondent side, no reply has been filed.
28. Heard arguments and perused documents on record. On basis of the allegations and defence, the points to be considered here are: -
1. Whether this application is hit by principle of *res-judicata* in view of disposal of M.A.No.207/KOB/2020 and I.A.No.161/KOB/2021?
 2. Whether the IBBI (Liquidation Process) (Second Amendment) Regulation 2022 has retrospective effect?

Point No.1

29. The applicant raised several issues/points in this application, but almost all the points were already raised by the 3rd respondent and decided by this Adjudicating Authority and confirmed by the Appellate Authority. In the scenario this application is only replica of the earlier applications filed by the 3rd respondent. Earlier the 3rd respondent filed the applications M.A. No/207/KOB/2020 and I.A.No.161/KOB/2021 as suspended erstwhile managing director of the corporate debtor, now the applicant filed this application as one of the home buyers, the label is different but the contents in the bottle is same. This is like an old wine in new bottle. The surprising thing is the applicant in this application went to the extent of questioning the base order passed in main section 7 of IBC 2016 petition TIBA/07/KOB/2019 dated 20.09.2019. The said admission order was confirmed by the NCLAT in

- Company Appeal No.1297 of 2019 dated 27.01.2020. Further the said admission order was confirmed by the Apex court in Civil Appeal No.3294 of 2020 dated 12.10.2020. Thus, the admission order passed against the corporate debtor admitting it into CIRP reached finality. The applicant is not a party to those proceedings and also nothing to do with those proceedings, despite without any locus standi, question the order of admission, stating that the financial debt referred in the main section 7 IBC 2016 petition was time barred debt. Similarly, the applicant questions the liquidation order passed by this Authority in I.A.No.129/KOB/ 2020 dated 07.09.2020.
30. The applicant in this application challenges the constitution of committee of creditors and the admission of the entire claims of 2nd respondent and percentage of voting right given to the 2nd respondent. The applicant also challenges all the decision taken in SSC prior to admitting the applicant as SCC member. The applicant also insists to peruse the counter claim of 3rd respondent against 2nd respondent before the DRT and for direction to the 1st respondent to keep the corporate debtor as going concern.
31. The committee of creditors constituted by the 1st respondent was already challenged by the 3rd respondent and negated by this Adjudicating Authority in M.A.No.207/KOB/2020, the same was confirmed by NCLAT in Company Appeal No.264 of 2022. Further already Liquidation order challenged by 3rd respondent in M.A.No.207/KOB/2020 was dismissed with cost, the appeal preferred before NCLAT also dismissed. Thus, the liquidation order reached its finality, hence at this stage again questioning the constitution of committee of creditors during CIRP, in this application reveals that the applicant is acting as a mouth piece of 3rd respondent.
32. In respect of admission of claim of 2nd respondent by the 1st respondent was already challenged by the 3rd respondent in I.A.No.161/KOB /2021 the same was dismissed on 21.04.2022 by this Authority, now with the same averments the applicant filed this application. Since already this point was adjudicated in I.A.No.161/KOB/2022 it is unnecessary again to adjudicate the same point in this application.

33. In this application it is also prayed to issue direction to 1st respondent /liquidator to conduct the counter claim of 3rd respondent before the DRT. This point also adjudicated and negated by this adjudicating authority in the application filed by 3rd respondent in M.A.No.207/KOB/2020, dated 20.09.2021, this order also confirmed by the NCLAT in Company Appeal No. 264/KOB/2021 dated 22.09.2022. The reliefs sought in this application are already negated by this Adjudicating Authority. The applicant as a caution averred in the application that since he is not a party in MA(IBC)/207/KOB/ 2020 the decision is not binding upon him. To attract the principle of *res-judicata* the following ingredients are necessary:

There must be a final order;

The order must be on the merits;

The claims must be the same in the first and second suit;

The petition should be decided by the competent court;

The parties in the second action must be the same as those in the first, or have been represented by a party to the prior action.

34. Section 11 of code of civil procedure speaks about *res-judicata* as follows:

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

35. The explanation VI to section 11 of PC 1908 runs as follows:

Explanation VI- *Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.*

36. The applicant taking shelter stating that sine he is not a party to the previous disposed application I.A.No.207/KOB/2021, and I.A.No.161/KOB/2021 hence the principle of *res-judicata* not applicable to the present case. Of course,

the applicant is not a party in the earlier applications, filed by the 3rd respondent I.A.No.207/KOB/201 and I.A.No.161/KOB/2021. But the interest/right involves in the present application and previously disposed applications are common for the applicant and 3rd respondent. There is no allegation that the previous application was filed by the 3rd respondent in *mala-fide* manner, instead it appears that the previous applications were filed in *bono-fidely* and litigated. In the scenario in view of explanation (vi) of section 11 of Code of Civil Procedure 1908 this present application is hit by principle of res-judicata. Thus, this point is answered.

Point No.2

37. The applicant wants all the decisions taken by 1st respondent in the Stakeholder's consultation committee prior to the inclusion of applicant shall be declared as null and void. The applicant appointed as member of SCC in pursuance of insertion of second amendment 31A in the Regulation with effect from 16.09.2022. After inclusion of applicant as member of Stakeholder's consultation committee he attended the 10th SCC meeting on 25.11.2022. Now he wants to declare all the decisions taken from 1st SCC to 9th SCC being null and void.
38. On the applicant side very much pressed and argued that the valuation done in respect of immovable property of the corporate debtor is incorrect. According to the applicant the property was undervalued by the 1st respondent. The valuation of land measuring 88 cents of the corporate debtor was determined at Rs.4,57,33,500/-on the basis of the report of the valuers during the liquidation period. According to applicant the property is situated in a prime area, the market price of property is 3.5 times higher than the value fixed by the 1st respondent.
39. On the applicant side relies upon the valuation report prepared by valuer Mr. Kuriakose in the year 2017 at the instance of 3rd respondent to avail loan from the 2nd respondent and challenge the valuation prepared by the 1st respondent/Liquidator.
40. On the 1st and 2nd respondent side stated that the value arrived by the valuer Mr. Kuriakose is exorbitant in nature, he arrived the value at 745% higher than

the actual value and 2500% higher than the guide line value to help the 3rd respondent. It is also stated that the said valuer was subsequently removed from the panel of 2nd respondent and another bank. Further it is also noticed that out of total extent of 88 cents, 66 cents property is wet land. According to the 1st respondent the value of the property was determined as per Regulation 35 of IBBI (Liquidation Process) Regulation 2016, on the basis of average of two closest values of valuers. Three valuers were appointed the valuation report submitted by Ms. Divya at Rs.22,00,00,000/- is not taken into account because it was in lower, the valuation report submitted by valuers K. T. Gangadharan at Rs.55,440,000/- and Priyan Mathew at 57,480,600/- were considered and average value of the above closest value Rs.56,460,300/- was fixed as the market value of the landed property of the corporate debtor by the 1st respondent and conducted first e-auction. The last e-auction was conducted fixing the fair price at Rs.45,733, 500/-. From the records it appears that the 1st respondent complied the requirements of Regulation 35 of IBBI (Liquidation Process) Regulation 2016 and fixed the value.

41. Before the substitution of present provision of section 31A by the Insolvency and Bankruptcy Board of India (Liquidation process) (Second Amendment) Regulation 2022 w.e.f. 16.09.2022. There was a provision existed which was introduced by First Amendment dated 25.07.2019 by which the first respondent/Liquidator can appoint only two members from the unsecured creditors to the Stakeholder's consultation committee. Since the liquidator appointed two members from the unsecured creditors within sixty days from the date of order of liquidation as per then existed provision of law, he could not appoint the applicant as member of SCC. As per the second Amendment w.e.f. 16.09.2022 all the creditors of corporate debtor shall be appointed as members of SCC. The SCC constituted by the 1st respondent with two creditors representing the unsecured creditors as per the then existed Regulation 31A was valid. The second amendment came into effect from 16.09.2022, it has only prospective effect, after the second amendment the SCC is reconstituted within time limit provided in the second amendment one month by including all the creditors as members of the SCC, accordingly the applicant also included in the

- committee. The contention of the applicant that the second amendment have retrospective effect from date of constitution of SCC i.e., from the year 2019 is not acceptable. The prospective effect of second amendment from 16.09.2022 is explicated from the last proviso of the second amended Regulation 31A. In the situation the SCC constituted by the 1st respondent after the order liquidation without inclusion of applicant is valid as per the then existed First Amended Regulation, hence the decision taken by the validly constituted SCC cannot be declared as null and void. In consequence it is held that the IBBI (Liquidation Process) (Second Amendment) Regulation 2022 has only prospective effect. Thus, this point is answered.
42. In the circumstances in view of the answers arrived to the points framed, this application is liable to be dismissed. As observed earlier this application has been filed at the instance of 3rd respondent by abusing the process of law. Already application filed by 3rd respondent for similar reliefs in I.A.No.207/KOB/2020 was dismissed with cost of Rs.25,000/- and I.A.No.161/KOB/2021 and MA39/KOB/2021 were dismissed with reprimand, in spite of that this application is filed with *mala-fide* intention, hence we constrained to impose a cost.
43. In the result, Application is **DISMISSED** with cost of Rs. 50,000/- (Rupees fifty thousand only) against the applicant to be paid to the 1st respondent/ Liquidator towards liquidation cost within fortnight.
44. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and for taking necessary steps.
45. Let the certified copy of the order be issued upon compliance with requisite formalities.
46. File be consigned to records.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.06.28 14:42:03 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN RAJ Digitally signed by PANDIAN
MOHAN RAJ
Date: 2023.06.28 14:09:29 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this the 28th day of June, 2023.

Rohit/Kaushal P.S.