

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH- COURT-V**

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule
11 of the National Company Law Tribunal Rules, 2016

I.A No. 290 of 2024

AND

I.A No. 614 of 2024

IN

CP (IB) No. 310 of 2022

I.A No. 290 of 2024

Filed by

**CREATIVE CHANNEL ADVERTISING & MARKETING PRIVATE
LIMITED** ... Applicant/PRA

Versus

MR. ROHIT RAMESH MEHRA & ORS ...Respondent No. 1/RP

SAPPHIRE MEDIA LIMITED ...Respondent No. 2/SRA

**ABHIJIT REALTORS &
INFRAVENTURES PRIVATE LIMITED** ...Respondent No.3/PRA

AND

I.A No. 614 of 2024

ABHIJIT REALTOR & INFRAVENTURES PVT. LTD.

AND

ENTERTAINMENT NETWORK (INDIA) LTD. ... Applicants/PRA

Versus

**MR. ROHIT MEHRA
(RESOLUTION PROFESSIONAL OF RELIANCE BROADCAST NETWORKS
LTD.)** Respondent No.1/RP

**COMMITTEE OF CREDITOR
(RELIANCE BROADCAST NETWORK LTD.)** ... Respondent No.2/COC

**SAPPHIRE MEDIA LTD.
(SRA OF RELIANCE BROADCAST NETWORK LTD.)**
...Respondent No.3/SRA

IN THE MATTER BETWEEN
IDBI TRUSTEESHIP SERVICES LIMITED

.....Financial Creditor

Versus

RELIANCE BROADCAST NETWORK LIMITED

.....Corporate Debtor

Order Dated: 06.05.2024

Coram:

MADHU SINHA

Member (Technical)

REETA KOHLI

Member (Judicial)

Appearance: IA 290 of 2024

For Applicants: Adv. Rakesh Kumar, Adv Preeti Kashyap, Adv Ankit Sharma,
Adv Varun Pandit, Adv Rishabh Arora, Adv Yash
Dhawan (VC)

For Respondents: Adv. Shrishti Agnihotri (PH) for RP, Adv. SP Singh Chawla
and Adv. S. Shishir and Adv. Kunal Surhatia, Counsels for Respondent no. 2
(VC)

Appearance: IA 614 of 2024:

For the Applicants: Sr. Adv. Gaurav Joshi (PH)

For the Respondent No. 1: Sr. Adv. Mustafa Doctor (PH)

For the Respondent No. 2: Sr. Adv. Ravi Kadam (PH)

For the Respondent No. 3: Sr. Adv. Anupam Lal Das

ORDER

The above I.A. 290 of 2024 was filed by the Applicant (**CREATIVE CHANNEL ADVERTISING & MARKETING PRIVATE LIMITED**), praying the following reliefs:

- (a) To declare that the Respondent No. 2 was ineligible to submit its resolution plan in terms of the Clause 3.A of the Detailed Invitation for EOI being issued by the Respondent No. 1;*
- (b) To dismiss the I.A. No. 5391/2023 for seeking the approval of the resolution plan*
- (c) To pass further appropriate directions for de novo process for the examination of the resolution plans of the other existing qualified PRAs by the CoC by adopting the best methods to enhance and maximise the wealth of creditors in terms of the provisions of the Insolvency & Bankruptcy Code, 2016*
- (d) To pass appropriate direction for the removal of the Respondent No. 1 as the Resolution Professional of the Corporate Debtor for its misconduct/negligence in his duties during the CIRP of the CD and refer his misconduct to the Ld. IBBI for the disciplinary action;*
- (e) To pass the necessary directions to the Respondent No. 1 to supply the copy of the I.A. No. 5391/2023 to the Applicant herein;*
- (f) Such further and other orders as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the present case.*

BRIEF FACTS IN IA 290 OF 2024

1. The present Application is filed by **CREATIVE CHANNEL ADVERTISING** ("**Applicant No. 1**") and **MARKETING PRIVATE LIMITED** ("**Applicant No. 2**") the unsuccessful resolution applicants, against Mr. Rohit Mehra ("**RP**" / "**Respondent No.1**"), **SAPPHIRE**

MEDIA LIMITED (SRA/ **“Respondent No.2”**) and against **ABHIJIT REALTORS & INFRAVENTURES PRIVATE LIMITED** (“PRAs” / **“Respondent No.3”**).

2. On 24th February 2023, the Hon’ble Tribunal (NCLT) pronounced the CIRP order in the present matter. Subsequently, on 14th April 2023, Respondent No. 1 issued the Expression of Interest (EoI) via Form-G, in accordance with Regulation 36A (1) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, to solicit resolution plans for the Corporate Debtor.
3. Subsequently, Respondent No. 1/RP published a Detailed Invitation for Expression of Interest (EoI) for the Corporate Debtor on the website "reliancebroadcast.in".
4. Pursuant to section 25(2)(h) of the Insolvency & Bankruptcy Code, 2016, and Regulation 36B of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the Respondent No. 1/RP issued the Request for Resolution Plans (**RFRP**) on 15th June 2023. The RFRP accompanied by the Evaluation Matrix and Information Memorandum, was directed to the Prospective Resolution Applicants (**PRAs**) with a deadline for submission of the resolution plan by 17th July 2023.
5. The open challenge mechanism process was conducted and completed during the 10th CoC meeting held on 27th October 2023. The Applicant **refrained from participating in this** process as according to them due process was not followed by the RP during the said challenge process. Subsequently, resolution applicants were invited to the 11th CoC meeting on 2nd November 2023 to discuss and negotiate their financial proposals further.

6. **In the 11th CoC meeting, the Applicant submitted a Resolution Plan amounting to INR 240 Crores to Respondent No. 1.** Thereafter, on 11th November 2023, the resolution plans received by Respondent No. 1 were subjected to e-voting before the CoC. The e-voting concluded on 16th November 2023, with the result declaring **M/s Sapphire Media Limited (Respondent No. 2)** as the Successful Resolution Applicant (**SRA**) with 88.97% voting share.
7. Following the CoC's approval of the resolution plan in favor of Respondent No. 2/SRA, Respondent No. 1/RP filed I.A. No. 5391/2023 seeking for approval of the resolution plan before the Honourable NCLT.
8. Respondent No. 3 filed an application, I.A. No. 5572/2023, objecting to the resolution plan proposed by Respondent No. 2 and passed by the CoC. The Honourable NCLT heard I.A. No. 5572/2023 on 9th January 2024 regarding the objections raised by Respondent No. 3 to the resolution plan. During the proceedings on that date, the Counsel for the Applicant mentioned their intention to file objections to the resolution plan. The Hon'ble NCLT orally observed that any objections could only be considered once the corresponding application is brought on record. The matter was deferred to 10th January 2024. Therefore, this application.
9. It is submitted that the Applicant challenges the resolution plan on the following grounds;
10. The Applicant contends that Respondent No. 1/RP is culpable for grave irregularities and illegalities in the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor (CD), particularly concerning the approval of the resolution plan. Due to the negligence and misconduct of Respondent No. 1, the plan put forth by Respondent No. 2/SRA was sanctioned, despite factual disqualification as per the eligibility criteria

outlined in the detailed Invitation for Expression of Interest (EoI). The pertinent excerpt from the Detailed Invitation for EoI is provided below:

"3. ELIGIBILITY CRITERIA UNDER SECTION 25 (2)(H) A. Category A: Body Corporates, limited liability partnerships (LLPs):

*a) A minimum Tangible **Net Worth (consolidated)** of at least **INR 50 crores at a group level** as per latest audited financial statements which shall not be earlier than the financial year ending on 31st March 2022; **or***

*b) **Consolidated turnover at a group level should average at least INR 75 crores or more** for the three immediately preceding audited financial years. The immediately preceding financial year should not be earlier than the financial year ending on 31st March 2022. Calculation of Tangible Net Worth and Turnover criteria shall be duly certified by statutory auditor of 6 the Prospective Resolution Applicant/ practicing Chartered Accountant. "*

11. Pursuant to above, the Applicant Appointed 'Sachin Agarwal & Associates, a Chartered Accountant' firm to review the financial statements of the Respondent No. 2/SRA to assess its the eligibility criteria. The firm's report dated 11th January 2024 unequivocally stated that Respondent No. 2/SRA fell short of meeting the specified criteria necessary for submitting a resolution plan. As of 31st March 2022, Respondent No. 2/SRA's tangible net worth and average turnover were reported as Rs. 3,54,29,111/- and Rs. 39,30,10,227/- respectively which is below the threshold limit mentioned in the EOI.

12. Therefore, it is submitted that Respondent No. 2/SRA was ineligible to submit its Resolution Plan. Respondent No. 1/RP neglected its obligation

to scrutinize the eligibility of Respondent No. 2/SRA as outlined in the detailed Invitation for Expression of Interest (**EoI**) and other mandatory documents, represents a dereliction of duties under the Insolvency & Bankruptcy Code, 2016. Thus, the Applicant submitted that the entire Corporate Insolvency Resolution Process (CIRP) concerning the resolution plan was tainted at its inception.

13. Additionally, it is submitted that the Applicant forwarded an email dated 16th December 2023, along with a letter, to Respondent No. 1/RP, raising objections regarding Respondent No. 2's eligibility. However, Respondent No. 1/RP in response via email dated 23rd December 2023 stated that the Applicant should have raised objections earlier when provided the opportunity and Respondent No. 1 has examined all information submitted by Respondent No. 2/SRA in compliance with the Detailed Invitation for EoI, therefore the reply of the Respondent No 1/RP was vague, and it appears that the plan submitted by Respondent No. 2 was in collusion with Respondent No. 1.
14. Furthermore, it has come to light that Respondent No. 2 provided false information in its resolution plan and the Request for Resolution Plans (**RFRP**) issued by Respondent No. 1/RP includes a provision (**clause 2.10**) for declaring a plan as "**Non-Responsive**" if there is any concealment of material information, false statements, misrepresentation, or misleading statements in the Resolution Plan, or any other document provided to the Resolution Professional or Committee of Creditors (CoC). Respondent No. 1 failed in its duty to diligently examine the eligibility of PRAs, leading to this failure.
15. Further, clause 2.12 of the RFRP empowers the CoC to reject an approved resolution plan if the information provided therein is found to be incorrect. The Respondent No. 2/SRA provided false information

regarding its eligibility criteria, therefore the matter should be presented before the CoC for potential cancellation.

16. Additionally, the RFRP mandates that a resolution applicant must submit an undertaking in Format VII, affirming the accuracy and completeness of all information provided. Any false information renders the Resolution Applicant ineligible. In this case, Respondent No. 2 provided a false declaration, thus violating the undertaking and rendering itself ineligible.

17. Thus, I.A. No. 5391/2023 filed by Respondent No. 1 for approval of the Resolution Plan must be dismissed.

I.A. 614 of 2024

Brief Facts

18. The present Application is filed by **ABHIJIT REALTOR & INFRAVENTURES PVT. LTD.** (“**Applicant No. 1**”) and **ENTERTAINMENT NETWORK (INDIA) LTD** (“**Applicant No. 2**”) the unsuccessful resolution applicants, against Mr. Rohit Mehra (“**RP**” / “**Respondent No.1**”), **COMMITTEE OF CREDITOR** (CoC/ “**Respondent No.2**”), and against **SAPPHIRE MEDIA LIMITED** (SRA/ “**Respondent No.3**”) prayer for the following relief:-

- i) *This Hon’ble Tribunal be pleased to allow this application;*
- ii) *This Hon’ble Tribunal be pleased to set aside the alleged decision of the Respondent No. 2 in its meeting held to approve the resolution plan in its entirety, including the decision of Respondent No. 2 allegedly approving the resolution plan of Respondent No. 3 and allegedly declaring the Applicant as the unsuccessful resolution applicant as it*

is violative of section 30(2)(e) and/or for the reasons aforesaid;

- iii) This Hon'ble Tribunal be pleased to pass an order **directing Respondent No. 1 to re-commence the entire process for approving resolution plan in the CIRP of the Corporate Debtor;***
- iv) Pending the hearing and final disposal of this application, this Hon'ble Tribunal be pleased to pass an order restraining the Respondents from undertaking any further steps and actions in respect of the conclusion of CIRP of the Corporate Debtor;*
- v) Pending the hearing and final disposal of this application, this Hon'ble Tribunal be pleased to stay the effect, operation and implementation of the alleged decision of Respondent No. 2 in approving the resolution plan of Respondent No. 3 and rejection of the resolution plan of the Applicants;*
- vi) For ad interim and interim reliefs in terms of prayer (iv) to (v) above;*
- vii) For costs; and*
- viii) For such other and further reliefs as this Hon'ble Tribunal deems fit in the facts and circumstances of this case*

19. The present petition reveals that the Applicants came to the knowledge after Reserving of the IA No. 5572 of 2023 by this Tribunal, that the Successful Resolution Applicant i.e., SRA does not meet the financial ability and capacity to implement its Resolution Plan. The Successful Resolution Applicant is neither in the business of FM Radio nor possess the working capital requirement.

20. The Applicant further contented that

21. SRA have net-worth of about Rs. 24.53 crores only, as against the requirement of net worth of Rs. 50 crores. Further the paid up share capital of Rs. 21 crores of the SRA is not in cash but is in the form of shares worth Rs. 20.99 crores which have been allotted fully to Mr. Sahil Mangla (director promoter of SRA) on account of the business of M/s. Sapphire Media Services (a proprietary concern of Mr. Sahil Mangla) being taken over by the Respondent No. 3/ SRA w.e.f. 12th December 2022 vide business purchase agreement dated 8th December 2022. In terms of the business purchase agreement dated 12th December 2022, all the business and activities of SRA are deemed to have been carried on behalf of the Company and accordingly reflected in the accounts of the SRA on the business purchase agreement becoming effective. Thus, it becomes apparent that the net-worth of the SRA is only Rs. 3.53 crores as the equity capital is not brought in cash but is allotted for consideration other than cash.
22. The turnover of SRA is Rs. 128.49 crores for the period 22nd October 2022 to 31st March 2023. Firstly, SRA does not meet the eligibility criteria as detailed in the detailed invitation for expression of interest since its net-worth is less than Rs. 50 crores. Secondly, SRA also does not meet the alternative criteria since SRA having been incorporated only in the year 2022, there is no question of SRA being able to satisfy the alternative criteria basis its turnover. Thirdly, if the average of 3 years is taken as required under the eligibility criteria, the same works out to Rs. 42.83 crores which is well below the requirement of average turnover of Rs. 75 crores. This is evident from the financial statements of SRA filed with ROC.

23. Further the SRA has raised loans from various parties as reflected in the MCA data as under:

Sr. No.	Name of the Bank	Amount of charge / loan (Rs. In Crores)	Date of creation of charge
1.	ICICI Bank Limited	30.00	17-9-23
2.	HDFC Bank Limited	25.00	15-9-23
3.	Axis Bank Limited	20.00	27-7-23
4.	Yes Bank Limited	36.72	26-6-23
	Total	101.72	

Thus, it can be seen that the SRA has loans of Rs. 101.72 crores whereas its capital is Rs. 21 crores (which is also issued for consideration other than cash) and net worth of Rs. 24.53 crores (the actual net worth being only Rs. 3.53 crores). Thus it is submitted that SRA is highly leveraged and has a debt of almost 4 times its net-worth (and if the actual net-worth is considered then it is 28.82 times the net-worth). Thus, the financial health of SRA is highly suspicious and way above the prudential norms. Even in normal circumstances the banks and COC members consider a debt equity ratio of not more than 1:2 or 1:3 and in the present case the debt equity ratio is already more i.e. 1:5 and 1:28.82, **as the case may be. Therefore, it is evident that the RP / COC have not done a proper analysis of the financial health of the SRA and** its present financial position is such that it cannot be imagined that it will raise further Rs. 260-300 crores and what impact it will have on the SRA's financial position. It is quite possible

that the SRA will not be able to implement the resolution plan on this ground alone. For any further borrowings, SRA will have to increase its paid-up capital and that too substantially to be able to meet its liabilities and commitments under the resolution plan.

24. It appears that the source of funds of SRA for implementing the resolution plan comprises of certain funding from the following entities, which are listed herein below, along with their respective net worth:

Sr. No.	Name of the Entity providing the finance	Term sheet Amt. (Rs. In Cr)	Net worth of the financier (Rs. In Cr)	Type of loan Secured/ Unsecured
1.	Armour Display Systems Pvt. Ltd.	30	30.49	Unsecured
2.	Proactive In and Out Advertising Pvt. Ltd.	50	71.24	Unsecured
3.	Shrill Investment Limited	50	14.98	Secured
4.	RCM Finance and Leasing Pvt. Ltd.	50	38.25	Secured

25. In respect of the loan proposed to be given by Shrill Investment Limited the following points merit the attention of this Hon'ble Tribunal:

- a. Primary Security: Charge to be created on Fixed Assets and Current Assets of the Applicant company it is not certain as to how this will be done considering there are already 4 lenders who have given more than Rs. 100 Crores to SRA.

- b. Collateral Security: Immoveable Property @125% of the loan value to be provided by the borrower. The term sheet does not specify which property will be given as security. However, to meet the term sheet conditions, the Value of collateral security has to be at least Rs. 60 crores. It is not known whether the SRA and its promoters have any unencumbered assets amounting to Rs. 60 Crores to meet this condition.
- c. This letter is only a term sheet, meant as a commitment by Shrill Investment Limited to extend credit facilities to SRA. The term sheet is intended to outline basic points of business understanding around which the credit facilities would be sanctioned. It does not attempt to describe all Terms & Conditions that would relate to the credit facilities. The final Terms & Conditions applicable to credit facilities would be subject to legal counsel review and internal credit approvals and subject to execution of transaction documents to the satisfaction of Shrill Investment Limited.

26. In respect of the loan proposed to be given by RCM Finance and Leasing (P) Limited the following points merit the attention of this Hon'ble Tribunal:

- a. The Security for this loan is said to be Padma City Mall which is supposedly owned by the borrower. It is not clear as to who is the owner of this property. Further, it is not clear whether the title to the property is clear or not as the term sheet states that after obtaining the registered conveyance deed, MOE/Mortgage can be created in favour of RCM within 7-10 days.

- b. Further the term sheet states that the terms and conditions do not constitute a legally binding commitment or offer by RCM. These terms are subject to the internal underwriting, legal due diligence. The purpose of these terms and conditions is to facilitate further discussions and negotiations between the parties and these indicative terms and conditions are subject to change. Thus, indicating that this is not a sanction letter but merely an indicative term sheet and hence no funding can be given on the basis of this term sheet.

27. In respect of these 4 entities the Applicants have managed to take out their balance sheets filed with the ROC/ MCA for the year ended 31st March 2023 and the same show that the net worth of these entities who are supposedly giving loans to the SRA do not have the requisite financial strength to give the funding as envisaged by them and hence, SRA will not be able to implement the plan if the funding as envisaged does not come through and this puts the entire process undertaken by the COC at doubt as they have not exercised their commercial wisdom in the true sense and have overlooked a lot many critical factors which are required for a proper and judicious decision which a prudent person will make. Armour Display Systems Pvt. Ltd. is giving a loan of Rs. 30 crores when its own net worth is also only Rs. 30 crores thus implying that it does not need any funds for its own business and that too unsecured. Shrill Investment Limited is proposing to give a secured loan of Rs. 50 crores against a net worth of only Rs. 14.98 crores which is almost 3.5 times its net worth and hence does not justify any prudential norms and as far as the Applicants believe this, is way beyond any prudential lending norms of the RBI for any NBFC to give loans of such magnitude. Even in the case of RCM Finance & Leasing (P) Ltd. the net worth is only Rs. 38.25 crores and it is proposing to lend Rs. 50 crores to the SRA which is almost 1.31 times its net worth. It is clear that these loans are not only violative of section 186 of the Companies Act, 2013 which restrict the quantum of loan to be given by a

Company to another Company to 60% of its capital and free reserves and security premium account or 100% of its free reserves and security premium whichever is higher. In this case these loans are much above the said limits. Hence on this account itself the resolution plan is liable to be rejected since the plan is in violation of the Companies Act, 2013.

28. Further even if the prudential norms for NBFC given by RBI for lending were to be taken into account assuming that these entities have a valid NBFC license and are permitted to lend monies under their registration category, even then the same will be in violative of them as the lending is more than the net worth of the concerned NBFC.

29. Under the IBC, 2016 section 30 (2)(e) the RP is duty bound to state whether the resolution plan given contravenes any of the provisions of the law for the time being in force. From the above it is apparent that the Resolution plan given is in contravention of the Companies Act, 2013 and hence does not meet the criteria set in section 30 of the IBC, 2016 and hence the resolution plan is liable to be rejected on this ground alone.

30. Moreover, apart from the aforesaid, it appears that the other document in support of the financial capacity of SRA appear to be certain CA certificates of Mr. Sahil Mangla (director), Ms. Usha Mangla (director) and Mr. Madan Lal (shareholder).

31. A perusal of the CA certificates of the aforesaid persons would demonstrate the following anomalies:

1. The CA certificates includes in the networth of Mr. Sahil Mangla a sum of Rs. 21.04 crores as capital balance from Sapphire Media Limited (Respondent No. 3) which as stated above is nothing but allotment of shares pursuant

to a business transfer agreement and not an asset in the real sense. Mr. Sahil Mangla has said that he will give an unsecured loan of Rs. 100 crores to Respondent No.3 but it is not clear how he will do the same.

2. In addition, Mr. Sahil Mangla owns a commercial office space having a value of about Rs. 65 Crores in Kaithal, Haryana. The Applicants presume that this office space would be mortgaged to obtain the loan from the NBFC which has a requirement of collateral security of Rs. 60 crores and if that is so it cannot be calculated again in the net worth of Mr. Sahil Mangla and that this money he will bring in as loan. It seems that SRA has counted the same asset twice for funding once from his own source and the second time through the NBFC and has sought to fraudulently let the RP and the COC believe that he has sufficient resources to give a resolution plan for the Corporate Debtor.
3. Mr. Sahil Mangla owns the Padma City Mall in Haryana valued at approx. Rs. 71.38 crores and the same is proposed to be mortgaged to RCM Finance & Leasing P. Ltd. and thus cannot be again considered in the net worth of Mr. Sahil Mangla.
4. The total net worth of Mr. Sahil Mangla is Rs. 175.42 crores. Out of this the Padma City Mall valued at Rs. 71.38 crores and the commercial office space valued at Rs. 65.52 crores are proposed to be mortgaged to various lenders as aforesaid leaving only Rs. 38.52 crores worth of unencumbered assets with Mr. Sahil Mangla of which Rs. 21.04 crores are shares of SRA and thus balance assets

are worth only Rs. 17.48 crores and from this amount he can certainly not give an unsecured loan of Rs. 100 crores to the Respondent No. 3 as claimed by him.

5. The CA certificates consider the capital balance of these persons in SRA and thus, these persons are misleading Respondent No. 2 as well as this Hon'ble Tribunal insofar as their financial ability is concerned and seeking to utilize and/or mis-utilize the same asset at two places to misrepresent the fact that they possess the requisite financial capacity.

32. Moreover, the sources of funds as detailed hereinabove given by SRA are under various letters of intent or term sheet and there is evidently no cash balance available with SRA, leading to the only conclusion that the figures provided by SRA are an eyewash.

33. Even the letters of intent given by Axis Bank Limited for Rs. 100 crores and Aditya Birla Finance Limited for Rs. 100 crores are only indicative and not a proper sanction letter without any security or collateral specified and if any of the above properties are given to them then the remaining funding which is to come from the promoters of respondent No. 3 will also not be forthcoming for the reasons stated above.

34. It is the circumstances aforesaid that the Applicants are constrained to approach this Hon'ble Tribunal for the reliefs prayed herein. The Applicants submit that the aforesaid ineligibility arises as a result of not placing the correct documents before SRA and therefore, the ineligibility arising as a result of the aforesaid cannot be justified under garb of commercial wisdom as held by the Hon'ble Supreme Court in the case of M. K. Rajagopalan Vs. Dr. Periasamy [**2023 SCC OnLine SC 574**].

35. Therefore, in view of the above circumstances the decision of the Respondent No. 2/CoC in its meeting held to approve the resolution plan needs to be set aside.

Submissions of Respondent No. 1/Resolution Professional

36. It is submitted that RP has meticulously reviewed all EOIs to check the eligibility criteria as laid down in IEOI and only after thorough scrutiny and confirmation of compliances with the eligibility criteria outlined in the Invitation Expression of Interest (**IEOI**), the RP outlined 19 PRAs (*including the SRA, the Applicant and the Respondent No. 3*) out of the 22 PRAs. Accordingly, a provisional list of 19 PRAs, including the SRA was issued by the RP to the CoC on 10th June 2023 ("Provisional List of PRAs"). On 15th June 2023, Respondent No. 1 issued the request for resolution plan ("RFRP") along with the information memorandum and provided access to the virtual data room ("VDR") **to all the 19 eligible PRAs. Thereafter, after receiving no objections from any PRA, the Respondent No. 1 issued the final list of PRAs on 25th June 2023**

37. The Ld. Counsel for the Respondent No. 1 further submitted that as per Regulation 36A of the CIRP Regulations sets out the process and mechanism for issuance of IEOI, receipt and examination of the EOIs by the RPs and also process of raising objections to the eligibility and qualification of fellow PRAs. Regulations 36A (11) and Regulation 36A (12) of the CIRP Regulations specifically provides that:

Regulation 36A (11)

*“Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) maybe made with supporting documents **within five days from the date of issue of the provisional list.**”*

Regulation 36A (12)

“RP will consider such objections and upon consideration, RP will issue the final list of PRAs to the CoC within 10 days of the last date for receipt of objections, to the committee.”

However, in the present case, no objection was raised by **either of them within 5 days of issuance of the list** and thereafter, the RP issued the Final List of the PRAs to the CoC and issued Request for Resolution Plan inviting the resolution plans.

38. The Applicant vide an email dated 16th December 2023 (“**Objection Mail**”), raised its first objection regarding the eligibility of the SRA, **which is more than 6 months from the date of issuance of the Provisional List (delay of more than 6 months where the regulation only provides for 5 days)**. Therefore, failed to adhere timeline provided under the Regulations. This delay is fatal in terms of IBC which is a time bound process. once a plan is approved by COC then objection cannot be permitted in timelines of IBC

39. It is submitted that the financial proposal of the Applicants was only for Rs. 240 Crores and that too, to be paid over a period of 6 years. Further, the contention of the Applicant that the Pan submitted by the SRA / Respondent No. 2 does not meet the Eligibility criteria of Rs. 50 crores as net worth. In response to the above, the Ld. Counsel for the Respondent No. 1/RP submitted that based on the materials submitted by the SRA, along with its IEOI, the RP concluded that the SRA met the eligibility **criteria at the group level**, as per the EOI requirements.

40. The contentions raised by the Applicant regarding the SRA's eligibility are unfounded. The Applicant's reliance on a certificate from '*Sachin Agarwal & Associates, Chartered Accountants*', claiming to have examined financial data from the Registrar of Companies (**ROC**), lacks merit as the analysis of the Applicant is limited to only 12 companies of the SRA/Respondent No. 2.
41. It is further submitted by the Resolution Professional/Respondent No. 1 that despite ample opportunity, the Applicant failed to raise objections within the prescribed timeframe. The belated objections, raised after the completion of the resolution process, demonstrate the intent to disrupt the resolution process.
42. Furthermore, the present application appears to be a collusive effort between the Applicants to derail the CIRP process. Since, there is no substantive allegations against SRA as a party. Therefore, suggests an ulterior motive to delay proceedings. The subsequent filing of similar applications by other Unsuccessful Resolution Applicants further underscores this collusion.

Submissions of Respondent No. 2/SRA

43. It is stated that the SRA had fulfilled the eligibility criteria at group level. It is stated that the SRA on 31st March 2023, had more than 50 crores of the net worth which is evident from the fact that Mr. Sahil Mangla, individually has more than Rs. 50 crores who was covered at group level net worth being the Promoter Director and shareholder having 99.99% shares of the Mr. Sahil Mangla (Director and Promoter of SRA) and the same is duly supported by Annual Financial Statement of Mr. Sahil Mangla (Director and Promoter of SRA) as on 31st March 2023 along with CA Certificate regarding net worth of Mr. Mangla which was filed with the Respondent no. 1/RP at the time of filing of EOI. The same

documents were duly submitted with the Respondent no. 1 at the time of filing the EOI and also the said CA Certificate at the time of filing the final Resolution Plan. Thus, Mr. Sahil Mangla (Director and Promoter of SRA) had duly met the eligibility criteria as envisaged under Clause 3 of the detailed invitation for EOI

44. The Ld. Counsel for the Respondent No. 2 / SRA laid emphasis on the definition of a 'group' for the purpose of Invitation of the EOI.

"Group" shall mean and include (i) an entity which, directly or indirectly, holds 26% (twenty six percent) or more of the share capital of the Prospective Resolution Applicant or (ii) an entity in which the Prospective Resolution Applicant, directly or indirectly, holds 26% (twenty six percent) or more of the share capital or (iii) an entity in which the Prospective Resolution Applicant, directly or indirectly, has the power to direct or cause to be directed the management and policies of such entity whether through the ownership of securities or agreement or any other arrangement or otherwise or (iv) an entity which, directly or indirectly, has the power to direct or cause to be directed the management and policies of the Prospective Resolution Applicant whether through the ownership of securities or agreement or any other arrangement or otherwise or (v) an entity which is under common Control with the Prospective Resolution Applicant."

45. It is further submitted that the mandatory timelines as given under Regulation 36(A)(11) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 which mandates that any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list be was to be made with supporting documents **within five days from the date of issue of**

the provisional list, which as per the revised Form -G on 15th June, 2023, however the Applicant had purportedly raised an objection with regard to the eligibility criteria of the SRA on 16th December 2023 through an email to RP which was much after when the resolution plan was duly approved by the Committee of Creditors (08.11.2023 and 10.11.2023) and the application bearing IA no. 5391/2023 was filed by RP under Section 30(6) of I & B Code, before this Hon'ble Tribunal. Therefore, it is clear from the above timeline that the Present Application deserves to be dismissed.

46. The Ld. Counsel for the Respondent No. 2 has relied on the Judgment by **Hon'ble NCLAT, New Delhi bench in the matter of Singh Raj Singh vs. SRS Meditech Limited and Ors (Company Appeal (AT) (Insolvency) No. 522 of 2020)**, *it was held that raising an objection with respect to net worth cannot be entertained at the belated stage and the objector cannot be permitted to scuttle the process at this stage and that too without substantial grounds. It was further held that when the resolution plan has been duly approved with huge majority of voting share and the said Appellant did not have any right or power to challenge the commercial wisdom of Committee of Creditors in regard to approval of Resolution Plan, which has already got the approval of Adjudicating Authority and since no material irregularity in resolution process vitiating it, has been canvassed or brought, which would render the whole exercise unsustainable.*

47. Therefore, the RP has not submitted any false information neither in its plan nor during the process w.r.t to the EOI or any undertaking or otherwise purportedly to be alleged by the Applicant. Further, the Resolution Plan of the SRA is a valid plan duly complying with Section 30(2) of the I & B Code, 2016 which is conformity with underlying Rules and Regulations in effect and the same does not contravene any of the

provisions of the Code or the RFRP as alleged by the Applicant. Hence the Application deserve to be **dismissed**.

FINDING:

48. We have heard the Ld. Counsels for the Applicants in I.A. 290 of 2024 and I.A. 614 of 2024 and the Ld. Counsel for the Respondents in both the I. As and perused the documents with their able assistance.

49. The I.A. 290 of 2024 and I.A. 614 of 2024 is filed by the Unsuccessful Resolution Applicants against the Resolution Professional, Committee of Creditors and SRA as Respondents. The contention in both the above Applications is that the Applicant on the basis of CA Certificate of 'Sachin Agarwal & Associates, a Chartered Accountant' has challenged the eligibility criteria of SRA on the basis of the threshold criteria mention in the detailed EOI, for submitting the Resolution Plan and raised allegations on the RP for his negligence and misconduct in checking the Eligibility criteria of the SRA for putting it before the COC for approval. The contention of the Applicant derives from the *Eligibility Criteria Under Section 25 (2)(H)* as describes in the detailed invitation for EoI. The same is reproduce below:

"3. ELIGIBILITY CRITERIA UNDER SECTION 25 (2)(H) A. Category A: Body Corporates, limited liability partnerships (LLPs):

*a) A minimum Tangible **Net Worth (consolidated)** of at least **INR 50 crores at a group level** as per latest audited financial statements which shall not be earlier than the financial year ending on 31st March 2022; or*

*b) **Consolidated turnover at a group level should average at least INR 75 crores or more** for the three immediately preceding audited financial years. The immediately preceding*

financial year should not be earlier than the financial year ending on 31st March 2022. Calculation of Tangible Net Worth and Turnover criteria shall be duly certified by statutory auditor of 6 the Prospective Resolution Applicant/ practicing Chartered Accountant. "


The Criteria reveal that the Prospective Resolution Applicant must have minimum **Tangible Net Worth (consolidated) of at least INR 50 crores at a group level or Consolidated turnover at a group level should average at least INR 75 crores or more for the three immediately preceding audited financial years.**

However, the contention of the Applicants is that the CA certificate given by the Chartered Accountant appointed by the Applicants who obtained the relevant data to compute the eligibility of the SRA from the details extracted from the ROC, shows that the SRA does not fall within the above criteria to become eligible for submitting the Resolution Plan and the RP without checking the above details or criteria have allowed the SRA to be a part of PRAs list. Further on appreciating the contention raised by the SRA with respect to the turnover criteria, stating that they have met the eligibility criteria. The Turnover of the SRA at the time of filing EOI with RP, i.e. 31st May 2023 was of Rs. 140 crores which is much more than the criteria threshold of Rs. 75 crores. In view of the contentions raised, this bench observes that the eligibility criteria emphasis on the word “**Group**” or “**Consolidated**”. The limits must be calculated on the group level and/or on consolidated manner. Therefore, in terms of the above stated group definition this bench observes that from the perusal of the definition it is implied that the entity includes an individual person and therefore, it is amply clear that Net Worth at group level as per detailed IEOI includes net worth of Mr. Sahil Mangla (Promoter Director of SRA) who holds 99.99% shares in the SRA. Thus the net worth of SRA is that of Mr. Sahil Mangla as well.

50. This bench further observes that the Net worth of Mr. Sahil Mangla, individually was also considered while computing the eligibility of the “**group**”. Mr. Sahil Mangla is the shareholder having 99.99% shares of the SRA has more than Rs.50 crores of net worth, who is covered in group level to calculate the eligibility criteria. To Substantiate the above, the relevant extract of the Annual Financial statement of the SRA and the CA certificate certifying the total funds held by Mr. Sahil Mangla, Director and promoter of SRA placed on record in CP 310 of 2022 is reproduced hereunder: -

Details of equity shareholders holding more than 5% shares in the company and Promoters shareholding

	31st March, 2023	
	Nos.	% holding in the class
Sahil Mangla	21009480	99.99757
Aaditya Vashishtha	100	0.00048
Madan Lal	100	0.00048
Bharat Sardana	10	0.00005
Meera Sharma	100	0.00048
Sonal Garg	100	0.00048
Usha Mangla	100	0.00048
TOTAL	21,009,990	100.00





Garima Grover & Associates
Chartered Accountants

To
The Committee of Creditors
Reliance Broadcast Network Limited
Mumbai

This is to certify that as per documents produced to us the total funds including liquid, movable, and immovable assets of **MR. SAHIL MANGLA S/O MR. MADAN LAL MANGLA R/O HOUSE NO. 228, SECTOR 19, PART 1, HUDA, KAITHAL, HARYANA (136027) as on 01.11.2023 in INR 175,42,13,351.00 (IN WORDS ONE HUNDRED SEVENTY-FIVE CRORES FORTY-TWO LACS THIRTEEN THOUSAND AND THREE HUNDRED FIFTY-ONE RUPEES ONLY)**

Thus from the perusal of the above, this bench has observed that the SRA meets the eligibility criteria at group level. Therefore, the contentions of the Applicants that the SRA does not meet the eligibility criteria since its net worth is less than Rs. 50 crores is factually incorrect and hence does not survive.

51. Additionally, in I.A. 614 of 2024, the Applicants raised the contention that the financial health of SRA is highly suspicious since the SRA is highly leveraged and has a debt of almost 4 times its net-worth and the COC have not done a proper analysis of the financial health of the SRA. With regard to the above contention of the Applicants this bench observes that the decision of approving the resolution plan of SRA is purely a commercial decision in ambit of COC and in view of the commercial wisdom is purely a prerogative of COC to approve or not to approve the plan of any PRA. The Request for Resolution Plan dated 15th June 2023 ("**RFRP**") empowers the CoC to negotiate (if required) the terms of such resolution Plan with the relevant Resolution Applicant. **Clause 12(c) of the Challenge process makes it clear the CoC reserves its right to approve any resolution plan which it deems**

appropriate, irrespective of any financial proposal received. The relevant extract of the same is as under: -

(c) Post the Challenge Process, the financial proposal provided in the Challenge Process will be used for scoring the Resolution Plans based on the evaluation matrix. It may be noted that the results of the Challenge Process will provide deeper insight into the value offered by the Resolution Applicants and may guide the CoC's consideration of the plan. However, no right is being created in favour of bidder which emerges HI in the Challenge Process. The CoC reserves its right to approve any resolution plan which it deems appropriate irrespective of any final financial proposal received.

Clause **12(d)** allows the **CoC in its** right to conduct another Challenge Process or bilateral negotiations with the Resolution Applicants post the Challenge Process. The said Clause further clarifies that Process Note shall in no manner limit the right of the CoC to negotiate, evaluate and consider the Resolution Plans in its commercial wisdom.

(d) The CoC reserves its right to conduct another Challenge Process or bilateral negotiations with the Resolution Applicants post the Challenge Process. Nothing in this Note shall deem to limit the right of the CoC to negotiate, evaluate and consider the Resolution Plans in its commercial wisdom.

Further, Clause 2.4.2 of the RFRP which states that COC is under no obligation to approve any particular plan. The relevant clause is reproduced hereunder: -

*"It is abundantly clear that notwithstanding anything in this RFRP, the **CoC is under no obligation to any of the Resolution Applicants or any other person to approve a Resolution Plan which has scored the highest** as per the Evaluation Matrix and any Resolution Plan shall be approved **solely on the basis of the CoC's commercial wisdom.**"*

52. This bench further observes that the CoC has conducted various rounds of negotiations with the PRAs including the Applicants in the interest of value maximisation, the same is reflected as per Clause 2.3.11 of the RFRP which is reproduced below:

"Further, notwithstanding anything stated herein, there shall be no restriction on the right of the Committee of Creditors to conduct various rounds of negotiations with the Prospective Resolution Applicants in the interest of value maximization."

Therefore, relying on the above clauses this bench is of the considered view that the contentions of the Applicants questioning the decision of the CoC is not legally sustainable since the CoC's decision with respect to the selection/approval of the Resolution Plan for value maximization in terms of their commercial wisdom is paramount. The same is in accordance with the **law laid down by Hon'ble NCLAT in Company Appeal (AT) No. 513 & 753 & IA 1666 of 2023** reaffirming the Commercial wisdom of CoC has held as under: -

"The Adjudicating Authority must work within the framework of IBC which broadly aims at timely resolution of the Corporate Debtor for realising the maximum value while respecting the commercial wisdom of the CoC. The supremacy of commercial wisdom of the CoC has been reaffirmed time and again by the Hon 'ble Supreme Court".

53. The bench has further relied on the Judgment by **Hon'ble NCLAT, New Delhi bench in the matter of Singh Raj Singh vs. SRS Meditech Limited and Ors (Company Appeal (AT) (Insolvency) No. 522 of 2020)**, it was held that

“raising an objection with respect to net worth cannot be entertained at the belated stage and the objector cannot be permitted to scuttle the process at this stage and that too without substantial grounds. It was further held that when the resolution plan has been duly approved with huge majority of voting share and the said Appellant did not have any right or power to challenge the commercial wisdom of Committee of Creditors in regard to approval of Resolution Plan....”

Hence, relying on the above the unsuccessful resolution applicants have no vested right in objecting whether a Resolution Plan should be accepted by the CoC under the provision of the Code by exercising their commercial wisdom and selecting the SRA for the Corporate Debtor.

54. This Bench further observes that the Applicants vide an email dated 16th December 2023 has raised its first objection regarding the eligibility of the SRA. Pursuant to above this bench relies on the Regulation 36A of the CIRP Regulations which sets out the process and mechanism for issuance of IEOI, receipt and examination of the EOIs by the RPs and also process of raising objections to the eligibility and qualification of fellow PRAs.

Regulation 36(A) (11) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 of the CIRP Regulations specifically provides that:

*“Any objection to inclusion or exclusion of a prospective resolution applicant in the provisional list referred to in sub-regulation (10) maybe made with supporting documents **within five days from the date of issue of the provisional list.**”*

And

Regulation 36A (12) of the CIRP Regulations provides that RP will consider such objections and upon consideration, RP will issue the final list of PRAs to the CoC within 10 days of the last date for receipt of objections, to the committee.

55. After perusing the above Regulation, the Applicants in the present case has raised objections for the first time vide email dated 16th December 2023 whereas the provisional list was issued on 10th June 2023. Therefore, the bench is of the considered view that the objection by the Applicants are raised after **6 months from the date of issuance of the Provisional List**, however no objection was raised **within 5 days of issuance of the list**. Regulation 36A (12) of the CIRP Regulations provides that RP will consider such objections and upon consideration, RP will issue the **final list of PRAs** to the CoC within 10 days of the last date for receipt of objections, to the committee. Therefore, the contention of the Applicant is not only belated but reliance for the objection is only on the CA certificate which is based on the half cooked information extracted from the ROC and selecting only 12 companies from the group of companies of SRA for computing its net worth.

56. This bench further with respect to the above Applications considered that since the plan already stands approved by the CoC in its commercial wisdom, these belated contentions are filed after filing of the Application for the approval of the Resolution Plan by RP. Moreover, this process under the IBC is a time bound process wherein the legislature and the regulator have set out specific timelines within which the process should be completed, including timelines within which PRAs can raise objections with respect to inclusion or exclusion of a PRA in the provisional list of PRAs basis the eligibility criteria. Therefore, the contentions raised

thereafter are highly belated and now cannot be used to turn around and derail the process.

57. This bench has relied on the judgment of the **Hon'ble Apex Court in *Arcelor Mittal India Pvt. Ltd. v Satish Kumar Gupta, (2019) 2 SCC 1*** wherein it was held as under-

“.....It is clear that at this stage again no application before the Adjudicating Authority could be entertained as there is no vested right or fundamental right in the resolution applicant to have its resolution plan approved....”

58. Hence, relying on the above the applications are not maintainable as the unsuccessful resolution applicants have no vested right. The Plan already stands approved by the CoC in its commercial wisdom.

59. In the light of the above discussion IA 290 of 2024 and I.A No.614 of 2024 are **dismissed**.

SD/-

MADHU SINHA

Member (Technical)

/Aakansha/

SD/-

REETA KOHLI

Member (Judicial)