

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

**IA. NO. 3636/ND/2023**

**IN**

**Company Petition No. (IB)-662(ND)/2021**

**IN THE MATTER OF:**

**M/s Pragati Impex India Private Limited**

**... Applicant/Financial Creditor**

**Versus**

**M/s Vistar Construction Private Limited**

**... Respondent**

**AND IN THE MATTER OF IA. NO. 3636/ND/2023:**

**Mr. Amit Agrawal**

H-63, Vijay Chowk,

Laxminagar, New Delhi-110096

**... Applicant/RP**

**Order Delivered on: 18.09.2023**

**SECTION:      Section 30(6) of IBC 2016**

**CORAM:**

**SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)**

**SH. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant**      : Adv. Abhishek Anand, Adv. Mohak Sharma, Adv.  
Supriyo Banerjee for SRA,  
**For the CoC**                : Adv. Shohit Chaudhary  
**For the RP**                 : Adv. Pankaj Agarwal, Adv. Shashwat Srivastava,  
Adv. Pragati Srivastava with Adv. Amit Agrawal

## ORDER

**PER: SH. L. N. GUPTA, MEMBER (T)**

The present IA No. 3636 of 2023 has been filed by Mr. Amit Agrawal (hereinafter referred to as, the '**Applicant/RP**') under Section 30(6) of IBC, 2016, seeking the following reliefs:

- “i) Approve the Revised Resolution Plan dated 05.06.2023 (**ANNEXURE M hereto**) read in conjunction with the clarificatory letters submitted by the Resolution Applicant i.e., M/s Masatya Technologies Private Limited under Section 31 of the Code; and*
- ii) Approve the reliefs, concessions and extinguishment of claims sought by the Resolution Applicant i.e M/s Masatya Technologies Private Limited in its Revised Resolution Plan dated 05.06.2023; and.*
- iii) Discharge the RP of his appointment in the Corporate Debtor.”*

2. To put the facts concisely, the underlying main Petition CP (IB)-662/(ND)/2021 was filed by M/s Pragati Impex India Private Limited against the Corporate Debtor namely, M/s Vistar Construction Private Limited under Section 7 of IBC, 2016, which was admitted vide Order dated 05.08.2022 of this Adjudicating Authority and Mr. Ankit Agrawal was appointed as the IRP of the Corporate Debtor. He was replaced by Mr. Amit Agrawal, on being confirmed as RP by the CoC in the 1<sup>st</sup> CoC meeting dated 29.08.2022 and by this Adjudicating Authority vide order dated 08.09.2022.

3. It is submitted by the Applicant that in terms of Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the IRP made a Public Announcement in Form-A on 06.08.2022, which was published in Business Standard Delhi (Hindi & English Edition) on 08.08.2022 to invite claims. Pursuant to the receipt of claims qua the IA. No. 3636/ND/2023 in (IB)-662/(ND)/2021

Corporate Debtor, the IRP constituted a Committee of Creditors (CoC) comprising the sole Financial Creditor viz, Pragati Impex India Pvt Limited.

4. It is stated by the Applicant that 'Form-G' was published on 07.10.2022 and 06.01.2023 in the daily newspapers, namely, Financial Express (English), and Jansatta (Hindi). It is added that as per the second Form G, the last date for submission of EOI was 21.01.2023. Pursuant to the said publication, the Applicant/RP received the following 5 EOIs -

<b>S. No</b>	<b>NAME of PRA</b>
<b>1.</b>	M/s Masatya Technologies Private Limited
<b>2.</b>	M/s Evalina Powertec Systems Private Limited
<b>3.</b>	M/s Unicon Buildtech
<b>4.</b>	M/s Rearco Private Limited
<b>5.</b>	Mr. Amrit Kumar Agrawal

5. On 15.03.2023, the last date for submission of Resolution Plans, the RP received only 2 Resolution Plans from 2 PRA's namely, - M/s Masatya Technologies Private Limited and M/s Evalina Powertec Systems Private Limited. After some negotiations, the CoC asked both the PRAs to revise their plans.

6. As a result, M/s Masatya Technologies Private Limited, in supersession of its Resolution Plan dated 20.03.2023, submitted the Revised Resolution Plan dated 05.06.2023 to the RP. The RP forwarded the Revised Resolution Plan to the COC for its consideration. On 09.06.2023, the RP convened the Seventh Meeting of COC to discuss and consider the Revised Plan submitted by M/s Masatya Technologies Private Limited. After detailed negotiations and deliberations, it was decided that the Resolution Applicant shall again revise and increase the amount offered in his plan and shall issue an addendum note for same, thereafter the COC shall vote for the resolution plan. It is

pertinent to mention that M/s Evalina Powertec Systems Private Limited neither submitted any revised resolution plan nor made any representation before the COC.

7. The RP, after examining the Revised Resolution Plan in accordance with Section 30 (2) of IBC, placed the same along with the clarificatory letter 10.06.2023 before COC for its consideration and voting. The voting sheet along with the Resolution placed before the CoC reads thus:

### **BALLOT FORM**

**For THE 7<sup>th</sup> Meeting of the Committee of Creditors of Vistar Constructions Private Limited (under Corporate Insolvency Resolution Process) under the provisions of The Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.**

<b>Date of the Meeting</b>	09 June 2023
<b>Venue of the Meeting</b>	H-63, Vijay Chowk, Laxmi Nagar, Delhi-110092
<b>Time of the Meeting</b>	04.00 P.M.

AGENDA ITEM NO.	MATTERS TO BE VOTED	YES	NO
1A.	<p style="text-align: center;"><i>"Resolved That in pursuance of Section 30 of the IBC, 2016 read with Regulation 39 of the IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016 and other applicable provision of the IBC, 2016 that the consent of the members of the COC be and is hereby accorded to approve the Resolution Plan received from the Resolution Applicant i.e. Masatya Technologies Private Limited as placed before the COC and initialled by the Chairman for the purpose of identification. Resolved Further That Mr. Amit Agrawal, RP, be and is hereby authorised to carry out necessary action as may required in relation to such resolution and also authorise to file the application before the Hon'ble NCLT for their approval."</i></p>	✓	
2.	<p><b>"Resolved that the RP is authorised to operate the Bank accounts/DEMAT accounts and other intangible assets of Corporate Debtor and dispose any share/securities/ intangible assets of Corporate Debtor if recovered and any recovery of money if done shall be adjusted in the CIRP cost</b></p>	✓	

Thus, it is observed that the Resolution Plan submitted by M/s Masatya Technologies Private Limited was approved by the CoC with 100% votes.

8. The details of the CIRP, fair and liquidation value of the CD, the distribution of the resolution plan amount amongst the stakeholders, and compliances are given in the “Compliance Certificate” filed by the RP in Form ‘H’, which is reproduced overleaf for the purpose of immediate reference:

**FORM H  
COMPLIANCE CERTIFICATE**

(Under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

1. I, Amit Agrawal, an insolvency professional enrolled with ICSI and registered with the Board with registration number IBBI/IPA-002/IP-N00185/2017-18/10456, am the resolution professional for the Corporate Insolvency Resolution Process (CIRP) of Vistar Constructions Private Limited (CD).

2. The details of the CIRP are as under:

Sl. No.	Particulars	Description
1	Name of the CD	Vistar Constructions Private Limited
2	Date of Initiation of CIRP	05.08.2022
3	Date of Appointment of IRP	05.08.2022
4	Date of Publication of Public Announcement	08.08.2022
5	Date of Constitution of CoC	20.08.2022
6	Date of First Meeting of CoC	29.08.2022
7	Date of Appointment of RP	08.09.2022
8	Date of Appointment of Registered Valuers	21.09.2022
9	Date of Issue of Invitation for EoI	07.10.2022 (First) 06.01.2023 (Second)
10	Date of Final List of Eligible Prospective Resolution Applicants	16.11.2022 (For First EoI) 24.01.2023 (For Second EoI)
11	Date of Invitation of Resolution Plan	07.10.2022 (As per First EoI) 21.01.2023 (As per Second EoI)
12	Last Date of Submission of Resolution Plan	16.10.2022 (As per First EoI) 29.01.2023 (As per Second EoI)
13	Date of Approval of Resolution Plan by CoC	12.06.2023
14	Date of Filing of Resolution Plan with Adjudicating Authority	04.07.2023
15	Date of Expiry of 180 days of CIRP	01.02.2023
16	Date of Order extending the period of CIRP	11.01.2023 (90 days extension granted) 03.05.2023 (60 days extension granted)
17	Date of Expiry of Extended Period of CIRP	02.07.2023 (60 days extension granted)
18	Fair Value	Rs. 369.93 lakhs
19	Liquidation value	Rs. 259.49 lakhs
20	Number of Meetings of CoC held	Seven meeting

3. I have examined the Resolution Plan received from Resolution Applicant (M/s Masatya Technologies Private Limited) and approved by Committee of Creditors (CoC) of Vistar Constructions Private Limited.

4. I hereby certify that-

- (i) the said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.
- (ii) the Resolution Applicant (M/s Masatya Technologies Private Limited) has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under

section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.

- (iii) the said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 100 % of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.
- (iv) The voting was held in the meeting of the CoC on 09.06.2023 where all the members of the CoC were present. (Voting Ballot received by me on 12.06.2023 by Financial Creditor)

or

~~I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the regulation-26.~~

[strike off the part that is not relevant]

5. The list of financial creditors of the CD [Vistar Constructions Private Limited] being members of the CoC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	M/s. Pragati Impex India Private Limited	100 %	Voted in Favour of Resolution Plan

6. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interests of all stakeholders in compliance with the Code and regulations made thereunder.

7. The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs. lakh)

Sl. No.	Category of Stakeholder*	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed(%)
1	Dissenting Secured Financial Creditors	NA	NA	NA	-
2	Other Secured Financial Creditors	NA	NA	NA	-
3	Dissenting Unsecured Financial Creditors	NA	NA	NA	-
4	Other Unsecured Financial Creditors	441 (176 Principal Amount + 265 Interest)	441	182	41.27% (of Total claim amount)
5	Operational Creditors	NA	NA	NA	-
	Government Authority	NA	NA	10 (Contingent)	-
	Employees	NA	NA	NA	NA
6	Other Debts and Dues-CIRP	NA	NA	75 (Towards CIRP Cost)	NA
<b>Total</b>		<b>441</b>	<b>441</b>	<b>267</b>	

8. The interests of existing shareholders have been altered by the Resolution plan as under:

Sl. No	Category of Share Holder	No. of Shares held before CIRP	No. of Shares held after the CIRP	Voting Share (%) held before CIRP	Voting Share (%) held after CIRP
1	Equity	74,48,090	-		
2	Preference	-	-		
3	Debentures	-	-		

9. The compliance of the Resolution Plan is as under:

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Section 1 Point 1 - 6	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Section 1 Point 1.1.6 a	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Affidavit from RA	Yes
Section 30(2)	Whether the Resolution Plan: (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment of the debts of operational creditors? (c) provides for the management of the affairs of the Corporate debtor? (d) provides for the implementation and supervision of the resolution plan? (e) contravenes any of the provisions of the law for the time being in force?	Section 4 Point 4.1 and 4.2 and Addendum point 1 Point 4.4 C Section 6 implementation Section 2 Provision of law	Yes
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	Section 5	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Section 4	Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	NA	Yes
Regulation 38 (1)	Whether the Resolution Plan identifies specific sources of funds that will be used to pay the - (a) insolvency resolution process costs? (b) liquidation value due to operational creditors? (c) liquidation value due to dissenting financial creditors?	Section 4 Financial Proposal	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Para 10.13	Yes

Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term? (c) adequate means for supervising its implementation?	Para 4.3 E	Yes
38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	Section 5	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	NA	Yes

**10. The CIRP has been conducted as per the timeline indicated as under:**

Section of the Code / Regulation No.	Description of Activity	Latest Timeline under regulation 40A	Actual Date
Section 16(1)	Commencement of CIRP and Appointment of IRP	T	05.08.2022
Regulation 6(1)	Publication of Public Announcement	T+3	08.08.2022
Section 15(1)(c) / Regulation 12 (1)	Submission of Claims	T+14	19.08.2022
Regulation 13(1)	Verification of Claims	T+21	19.08.2022
Section 26(6A) / Regulation 15A	Application for Appointment of Authorised Representative, if necessary	T+23	NA
Regulation 17(1)	Filing of Report Certifying Constitution of CoC	T+23	22.08.2022 (CoC Constituted) 22.08.2022. (Application Filed Before AA)
Section 22(1) and regulation 17(2)	First Meeting of the CoC	T+30	29.08.2022
Regulation 35A	Determination of fraudulent and other transactions	T+115	NA
Regulation 27	Appointment of two Registered Valuers	T+47	21.09.2022
Regulation 36 (1)	Submission of Information Memorandum to CoC	T+57	30.09.2022
Regulation 36A	Invitation of EoI	T+75	07.10.2022 (First) 06.01.2023 (Second)
	Publication of Form G	T+75	07.10.2022 (First) 06.01.2023 (Second)
	Provisional List of Resolution Applicants	T+100	21.10.2022 (As per First EoI) 21.01.2023 (As per Second EoI)
	Final List of Resolution Applicants	T+115	31.10.2022 (For First EoI)

			24.01.2023 (For Second EoI)
Regulation 36B	Issue of Request for Resolution Plan, which includes Evaluation Matrix and Information Memorandum to Resolution Applicants	T+105	31.10.2022 (For First EoI) 24.01.2023 (For Second EoI)
Section 30(6) / Regulation 39(4)	Submission of CoC approved Resolution Plan	T+165	16.06.2023
Section 31(1)	Approval of Resolution Plan	T=180	

11. The time frame proposed for obtaining relevant approvals is as under:

Sl. No.	Nature of Approval	Name of applicable Law	Name of Authority who will grant Approval	When to be obtained
1.	Registry of 4 Units situated at Hotel Radisson Blu, Dwarka Sector 13, New Delhi	Transfer of Property Act	Sub Registrar – Dwarka	Immediately after Approval of Resolution Plan.

**#The Hon'ble High Court of Delhi vide its order dated 01.06.2023 has already approved the transfer of 4 units in favor of Corporate Debtor, only formal Sale deed/registry is to be executed in favor of Corporate Debtor, Resolution Applicant has proposed to pay stamp duty of 22 Lakhs for execution of said Sale deed.**

12. The Resolution Plan is not subject to any contingency. – NO

or

The Resolution Plan is subject to the following contingencies (Elaborate the contingencies):

- i.....  
ii.....

13. Following are the deviations / non-compliances of the provisions of the Insolvency and Bankruptcy Code, 2016, regulations made or circulars issued thereunder (If any deviation/ non-compliances were observed, please state the details and reasons for the same):

Sl. No.	Deviation/Non-compliance observed	Section of the Code / Regulation No. / Circular No.	Reasons	Whether rectified or not
1	-	-	-	-
2	-	-	-	-
3	-	-	-	-

14. The Resolution Plan is being filed 17 days before the expiry of the period of CIRP provided in section 12 of the Code.

15. Provide details of section 66 or avoidance application filed / pending.

Sl. No.	Type of Transaction	Date of Filing with Adjudicating Authority	Date of Order of the Adjudicating Authority	Brief of the Order
1	Preferential transactions under section 43	NA	NA	NA
2	Undervalued transactions under section 45	NA	NA	NA
3	Extortionate credit transactions under section 50	NA	NA	NA
4	Fraudulent transactions under section 66	NA	NA	NA

**#Corporate Debtor is a non functional and non-working company from 2018.**

16. I, Amit Agarwal hereby certify that the contents of this certificate are true and correct to the best of my knowledge and belief, and nothing material has been concealed therefrom.

(Signature)

Name of the Resolution Professional: Amit Agarwal

IP Registration No:- IBBI/IPA -02/IP -N00185/2017 - 18/10/2017

Address as registered with the Board: H -63, Vijay Chowk, Laxmi Nagar, Delhi - 110092

Email id as registered with the Board:-amitagcs@gmail.com



Date:16.06.2023

Place:New Delhi

9. As per the abovementioned Form 'H' filed by the Applicant on record, the Fair Market Value of the Corporate Debtor is Rs.369.93 lakhs and the Liquidation Value of the Corporate Debtor is Rs.259.49 lakhs. The total amount provided under the CoC-approved Resolution Plan is Rs.267 lakhs (including the CIRP cost of Rs. 75 lakhs), which is 60.54% of the total amount claimed and 103% of the Liquidation Value.

10. During the course of the hearing on 10.08.2023, RP present in person fairly submitted that he will confine his claim for the professional fee in terms of the provisions of Schedule II to IBBI (CIRP) Regulations, 2016 i.e., the minimum fee as per the slab mentioned in the schedule plus the actual expenses incurred by him while conducting the CIR Process of the Corporate Debtor. He further stated the amount earmarked as Corporate Insolvency Resolution Process cost beyond the admissible fee and expenses would be available for distribution amongst the Creditors/stakeholders. He agreed to file an affidavit to that effect.

11. In compliance, the Applicant/RP has filed the additional affidavit dated 11.08.2023 stating that after the voluntary reduction of his fee by Rs.28,00,000/- including GST, RP's fee stands revised to Rs.47,00,000/- (forty-seven lakhs). The additional sum of Rs.28,00,000/- shall be available

for distribution to the Financial Creditor. His affidavit dated 11.08.2023 is reproduced below, for the sake of immediate reference:

**BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH AT NEW DELHI**

**I.A NO. 3636 OF 2023**

**IN**

**IB NO.-662 (ND)/2021**

**IN THE MATTER OF:**

Amit Agrawal

... Applicant/RP

**AND IN THE MATTER OF:**

M/s Pragati Impex India Private Limited.

...Financial Creditor

**Versus**

M/s Vistar Construction Private Limited

...Corporate Debtor

**AFFIDAVIT**

I, Mr. Amit Agrawal, Son of Late Shri M L Agrawal Resident of H -63, Laxmi Nagar, Delhi- 110092, Age 45 Years, Resolution Professional of the Corporate Debtor Company do hereby solemnly affirm and declare as under: -

1. That the Deponent is the Resolution Professional of the Corporate Debtor Company.
2. That I, the Deponent, undertake to nowcharge and take a Minimum Fixed Fee i.e. Rs. 1,00,000/- (Rupees One Lakh only) + the applicable GST, in terms of Schedule-II of Regulation 34B of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016).



3. That, I, the Deponent, state that all difference of such reduced fees, shall be given to the Financial Creditor in addition to the proposed financial proposal/layout given by the Successful Resolution Applicant.
4. That Successful Resolution Applicant had Proposed to pay a total CIRP Cost of Rs. 75,00,000/- (Rupees Seventy Five Lakhs Only) in its resolution plan. Now after the voluntary reduction of the RP fee by Rs. 28,00,000/- including GST it stand now Rs. 47,00,000/- (Rs. Forty Seven Lacs Only).
5. That an additional sum of Rs. 28,00,000 (Rupees Twenty Eight Lakhs only) shall be given to Financial Creditor for the said proposed reduction of fee.
6. That, I, the Deponent, shall abide by the undertaking given in court and shall also abide by the statement given in this affidavit.



**DEPONENT**

**VERIFICATION**

Verified at Delhi on this 11<sup>th</sup> day of August 2023, that the contents of the above affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed there-form.

**DEPONENT**

12. We heard the Ld. Counsel for the RP and have gone through the pleadings on record. After perusal of the application and documents on record, we felt that in the interest of justice, certain clarifications were needed from the Applicant (RP)/SRA. Accordingly, vide order dated 17.08.2023, the following clarifications were asked from the RP/and SRA:

**IA-3636/2023:** After hearing the counsels for the parties qua the application for approval of resolution plan viz., IA-3636/2023 orders were reserved in the IA. Nevertheless, while perusing the record of the case, the following clarifications are needed from the RP/and SRA:

- “1) *Form A - of Public Announcement by IRP is not on record.*
- 2) *The averments in relation to the Performance Guarantee in the shape of a demand draft of Rs. 50 lakhs as annexed with the additional affidavit dated 10.08.2023 are missing. It is not clear whether the same remains valid for the entire implementation period (T+120 days) of the Plan.*
- 3) *The affidavit of RP in terms of the order dated 10.08.2023 is not on record.*
- 4) *The stand on Reliefs and Concessions - Even if no Reliefs and Concessions are granted, whether the SRA is still willing to implement the Plan. Is there any statement to this effect in the Resolution Plan - if yes, on which page? Whether the reliefs and concessions as sought are the conditions precedent for the implementation of the Resolution Plan.*
- 5) *Whether the property C-23, Greater Kailash, New Delhi (reference: order dated 20.12.2022) the asset of the CD as well as other properties (unit no. 910, 923, 923A and 1022A at 10th floor having covered area 345 Sq. Ft., forming part of the Hotel Building constructed at Plot No. 4, Dwarka City Centre, Sector-13, Dwarka, New Delhi allowed in terms of order dated 01.06.2023 by Hon'ble High Court Delhi order in Ex. Appl. (OS) 706/2023 were considered while (a) undertaking the valuation of the CD, and (b) calculating the liquidation and fair market value of the Corporate Debtor.*
- 6) *Whether the above-mentioned properties i.e., C-23, Greater Kailash, New Delhi and the 03 properties were included as assets of the CD in the Information Memorandum published by the RP while inviting EOIs.*

Let the Ld. Counsel for RP/and SRA clarify their stand qua the aforementioned queries within one week by way of an additional affidavit.

13. In response, the Applicant/Resolution Professional filed an additional affidavit dated 23.08.2023, stating the following:

**BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH AT NEW DELHI**

**I.A NO. 3636 OF 2023**

**IN**

**IB NO.-662 (ND)/2021**

**IN THE MATTER OF:**

Amit Agrawal

... Applicant/RP

**AND IN THE MATTER OF:**

M/s Pragati Impex India Private Limited.

...Financial Creditor

**Versus**

M/s Vistar Construction Private Limited

...Corporate Debtor

**AFFIDAVIT**

I, Mr. Amit Agrawal, Son of Late Shri M L Agrawal Resident of H-63, Laxmi Nagar, Delhi- 110092, Age 45 Years, Resolution Professional of the Corporate Debtor Company do hereby solemnly affirm and declare as under: -

1. That the Deponent is the Resolution Professional of the Corporate Debtor Company.
2. That this affidavit is given in compliance of directions and order dated 17.08.2023 passed by this Hon'ble Tribunal for seeking clarification on below mentioned points.



S. No.	Clarification as sought by This Hon'ble Tribunal	Submission
1.	<b>Public Announcement in Form A</b>	Public Announcement in Form A was made by Erst While IRP Mr. Ankit Agrawal on 08.08.2022  Copy of Public Announcement in Form A is annexed herewith as <b>ANNEXURE A</b>
2.	<b>Averment with respect to Relief and Concession</b>	Resolution Applicant - M/s Masatya Technology Private Limited has given an affidavit stating that Resolution Applicant shall not press for any Relief and Concession as Condition Precedent.  Copy of Affidavit given by Resolution Applicant - M/s Masatya Technology Private Limited is annexed herewith as <b>ANNEXURE B</b>  Further, RP in its IA No. 3636 of 2023 at page no. 35 have made an averment that no condition, relief, concession or extinguishment as mentioned and detailed in Section 7 and 9 of the resolution plan are condition precedent to the plan, and no mandatory condition are inflicted upon for the approval of the Resolution Plan




3.	<p><b>Details of Assets of Corporate Debtor.</b></p> <p><b>A. Basement of C-23, Greater Kailash - I New Delhi - 110024.</b></p> <p><b>B. Unit Nos. 910, 923 &amp; 923A and 1022A situated on 9th floor and 10th floor with each having covered area 345 sq. ft.) situated at Plot No. 4, Dwarka City Centre, Sector-13, Dwarka, New Delhi.</b></p>	<p>Information of this asset is Mentioned and disclosed in Information Memorandum dated 28.01.2023, annexed as Annexure F at page No. 151 of IA No. 3636 of 2023.</p> <p>This is the subsequent discovery in the form of order of Hon'ble High Court of Delhi and Soon after discovery of these 4 units, Deponent had informed to the COC and email dated 21.02.2023, RP has informed about the ongoing litigation in-between Corporate Debtor and Divine Infracon Private Limited, and further vide email dated 07.03.2023 and 14.03.2023, RP has shared all the relevant orders passed by Hon'ble High Court of Delhi. Copy of email dated 21.02.2023 sent by RP to all PRA's is already annexed as Annexure F at page No. 162D and 162E of IA No. 3636 of 2023</p> <p>Copies of Emails dated 21.02.2023, 07.03.2023 and 14.03.2023 sent by RP to all PRA's are annexed herewith as <b>ANNEXURE C</b></p>
4.	<p><b>Performance Guarantee Bank</b></p>	<p>In terms Clause 1.9 (Performance Guarantee) of RFRP dated 28.01.2023, of, RP has taken a Demand Draft Rs. 50,00,000/- in favour of Corporate Debtor from Resolution Applicant - M/s Mas...</p>

		Technology Private Limited Copy of RFRP shared by RP with all PRA's is already annexed as Annexure F at page No. 74 of IA No. 3636 of 2023.
5.	<b>Valuation of Assets of Corporate Debtor</b>	RP has obtained the Valuation Report of both assets of Corporate Debtor  Copy of Valuation Reports are annexed as Annexure L at page no. 293 to 364 of IA No. 3636 of 2023.

**Summary of valuation of Reports is as follows:-**

S. No	Name of Valuer	Type of Valuation	Fair Value	Liquidation Value	Relevant Page No. of IA 3636 of 2023
1.	CA Shivanand Chaudhary	Securities and Financial Assets (For Decree awarded in Favor of CD against Divine Infracon Pvt. Ltd.)	3,05,95,541	2,15,63,258	Annexure L Relevant at Page No. 302 and 304
2.	Anukampa Jain	Securities and Financial Assets (For Decree awarded in Favor of CD against Divine Infracon Pvt. Ltd.)	3,05,67,752	2,10,55,134	Annexure L Relevant at Page No. 315
3.	Asheesh Mittal	Land and Building	60,75,000	45,56,000	Annexure L Relevant at Page No. 325
4.	Sudhir Kumar	Land and Building	67,50,000	47,25,000	Annexure L Relevant at Page No. 346

3. That Public Announcement in **Form A** was made by Erst While IRP Mr. Ankit Agrawal on 08.08.2022, copy of relevant newspaper portion is placed on record by way of this Affidavit.

4. That an specific averment and submission with respect to Relief and Concession is already given in Para 19 at page 35 of IA No. 3636 of 2023 filed by deponent for seeking approval of resolution plan. Further an Affidavit given by M/s Masatya Technology Private Limited is stating that Resolution Applicant shall not press for any Relief and Concession as Condition Precedent is also placed on record by way of this Affidavit.
5. That I have disclosed full and complete information of both assets of Corporate Debtor with all Prospective Resolution Applicants, email dated 21.02.2023 reflecting same is already on record and further 2 additional emails wherein I have shared all the relevant orders passes by Hon'ble High Court of Delhi are also placed on record by way of this Affidavit.
6. That the Corporate Debtor have 1 (one) ready physical asset i.e. basement of C-23, GK -1, New Delhi -110024, and 1 (one) asset in form of a Decree/award passed by Hon'ble High Court of Delhi in favour of Corporate Debtor against Divine Infracon Private Limited. Said Decree/award shall be enforced and executed after the approval of resolution plan by this Hon'ble Tribunal, as the Resolution Applicant shall pay a sum of Rs.22,00,000 (Twenty Two Lakhs) for execution of sale deeds of 4 units in favour or Corporate Debtor.
7. That in compliance of Regulation 39 (4) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, I had taken a Performance bank Guarantee of Rs. 50,00,000/- as per terms of RFRP as approved by COC. Copy of Demand Draft in favour of Corporate Debtor is already placed on record by way of additional documents filed on 10.08.2023 at page no. 1. 
8. That I have taken valuation reports from 4 Valuers (2 in Each Class - Securities and Financial Assets and Land and Building) for determining the value of Corporate Debtor. Copies of all 4 valuation reports are already placed on record.
9. It is humbly prayed that this averments and submissions made in this affidavit may kindly be read as part of Application filed by RP for seeking the approval of Resolution bearing IA of 3636 of 2023.



  
DEPONENT

14. The RP in its affidavit (ibid) has stated that the property of CD namely, the basement of C-23 Greater Kailash-I, New Delhi was included in the Information Memorandum (IM). However, the properties viz., Unit Nos. 910, 923 & 923A, and 1022A situated on the 9<sup>th</sup> floor and 10<sup>th</sup> floor with each having a covered area of 345 sq. ft. located at Plot No. 4, Dwarka City Centre, Sector-13, Dwarka, New Delhi were subsequent discoveries in terms of the order of the Hon'ble High Court of Delhi dated 01.06.2023 and the information regarding these properties was made available to CoC. At this stage, we refer to the aforesaid order of the Hon'ble High Court of Delhi, which reads thus:

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**+ OMP (ENF.) (COMM.) 163/2021**  
**VISTAR CONSTRUCTIONS PVT LTD**

..... Decree Holder  
Through: Mr.Samrat Nigam, Advocate.

versus

**DIVINE INFRACON PVT LTD**

..... Judgement Debtor  
Through: Mr.Sidharth Chopra, Mr.Navneet  
Thakran, Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE YOGESH KIANNA**

**ORDER**

**% 01.06.2023**

**EX.APPL.(OS) 707/2023**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

**EX.APPL.(OS) 706/2023**

3. This application is filed by the applicant seeking placing on record the settlement agreement dated 11.05.2023 on record. A copy of the said settlement is annexed as Document-7 of this application.
4. It is submitted by the resolution professional who appears on behalf of decree holder, the parties have agreed to abide by the terms and conditions set forth in the said settlement agreement dated 11.05.2023.
5. Since the matter has been settled between the parties, hence M/s.Divine Infracon Pvt. Ltd. is to execute sale deeds through its registered owners in respect of unit no. 910, 923, 923A (all situated on 9<sup>th</sup> floor with each having covered area 345 sq. ft.) and 1022A at 10<sup>th</sup> floor having

covered area 345 Sq. Ft., forming part of Hotel Building constructed at Plot No. 4, Dwarka City Centre, Sector-13, Dwarka, New Delhi, directly in favour of Decree Holder through its resolution professional/applicant free from all encumbrances, charges, liens, lis-pendens, prior agreement, acquisitions, attachments, notices, claims, Wills, gift or demands towards full and final settlement, satisfaction and discharge of the said award / decretal amount.

6. In view of the settlement so arrived at between the parties, the application is allowed. Consequently, the settlement dated 11.05.2023 is taken on record. The OMP (ENF.)(COMM.) 163/2021 also stands disposed of in terms of settlement so arrived at between the parties.

7. The learned counsel for the judgment debtor shall also withdraw the FAO(S)(COMM.)223/2019 within a week from today.

8. The earlier date given i.e., 05.07.2023 stands cancelled.

**YOGESH KHANNA, J.**

**JUNE 01, 2023**

*DU*

15. On perusal of the abovementioned order of the Hon'ble High Court of Delhi dated 01.06.2023, it is observed that the settlement with respect to properties situated at Plot No. 4, Dwarka City Centre, Sector-13, Dwarka, New Delhi was arising out of an Execution Proceedings between the CD and Divine Infracon Private Limited and the Corporate Debtor is the Decree Holder.

16. Further, on checking the order dated 07.10.2021 in OMP. (ENF) (COMM.)163 of 2021 available in the public domain on the website of the Hon'ble High Court of Delhi, it is noticed that the CD (prior to CIRP) had filed a petition for seeking execution of the Arbitral Award dated 23.08.2014 for a sum of Rs.3,01,07,609/- along with 9% p.a. future simple interest. The said order 07.10.2021 is reproduced below, for the purpose of immediate reference:

\$~18

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ OMP (ENF.) (COMM.) 163/2021

VISTAR CONSTRUCTIONS PVT LTD ..... Decree Holder

Through Mr.Ravi Shankar with Ms.Madhurima  
Sarangi & Mr. Ashish Mukhi, Advs.

versus

DIVINE INFRACON PVT LTD ..... Judgement Debtor

Through None.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**ORDER**

% **07.10.2021**

The hearing has been conducted through video conferencing.

**EX.APPL.(OS) 1118/2021 (exemption)**

1. Exemption is allowed with direction to file original documents within four weeks of this Court resuming normal functioning.
2. Applications are disposed of.

**OMP (ENF.) (COMM.) 163/2021 & EX.APPL.(OS) 1116/2021 (u/O XXXIX R 1 & 2 CPC) & 1117/2021 (u/O XXI R 41(1)(b) r/w Rule 41(2) & Section 151 CPC)**

3. Present petition has been filed under Section 36 of the Arbitration and Conciliation Act, 1996 read with Order XXI Rule 11 CPC seeking execution of award dated 23.08.2014 for a sum of Rs.3,01,07,609/- along with 9% p.a. future simple interest.
4. Notice issued.
5. On taking steps, let notice be served upon judgment debtor through all modes, including email and dasti, returnable on 06.12.2021.
6. Judgment debtor is directed to file affidavit of assets on the date of the cause of action, date of the award as well as on the date of passing of the judgment in Form 16A Appendix E under Order XXI Rule 41(2) of the Code of Civil Procedure within 30 days from the receipt of the notice.

**SURESH KUMAR KAIT, J**

**OCTOBER 7, 2021**

**ab**

17. From the conjoint reading of the orders dated 07.10.2021 and 01.06.2023 passed by the Hon'ble High Court of Delhi (ibid), it is observed that the amount of Rs.3,01,07,609/- along with 9% p.a. future simple interest has been replaced with Properties (viz., Unit Nos. 910, 923 & 923A, and 1022A on the 9<sup>th</sup> floor and 10<sup>th</sup> floor with each having a covered area of 345 sq. ft.) located at Plot No. 4, Dwarka City Centre, Sector-13, Dwarka, New Delhi. This Adjudicating Authority vide order dated 17.08.2023 had, inter alia, specifically asked the following:

*“Whether the property C-23, Greater Kailash, New Delhi (reference: order dated 20.12.2022) the asset of the CD as well as other properties (unit no. 910, 923, 923A and 1022A at 10<sup>th</sup> floor having covered area 345 Sq. Ft. forming part of the Hotel Building constructed at Plot No. 4, Dwarka City Centre, Sector-13, Dwarka, New Delhi allowed in terms of order dated 01.06.2023 by Hon'ble High Court of Delhi order in Ex. Appl. (OS) 706/2023 were considered while (a) undertaking the valuation of the CD, and (b) calculating the liquidation and fair market value of the Corporate Debtor.”*

In response, the Applicant/RP has stated in Para 3B of his affidavit dated 23.08.2023 that these being subsequent discoveries, he had informed the CoC about these properties. However, he did not give a direct answer regarding the valuation of these properties being undertaken and the inclusion of such valuations for the purpose of calculating the liquidation and fair market value of the Corporate Debtor.

18. It is a settled position that the CoC is not the Competent Authority to conduct the valuation and compute the Fair Market Value and Liquidation Value of the Corporate Debtor, rather it is the RP, who is duty-bound and

should have instructed the Registered Valuers to undertake valuation of the newly inducted properties i.e., unit no. 910, 923, 923A and 1022A at 10<sup>th</sup> floor having covered area 345 Sq. Ft. forming part of the Hotel Building constructed at Plot No. 4, Dwarka City Centre, Sector-13, Dwarka, New Delhi. With the addition of the abovementioned properties of the Corporate Debtor at Dwarka, when there was a significant change in the asset pool of the Corporate Debtor, we are unable to understand what prevented the RP from conducting a re-valuation of the assets of the Corporate Debtor.

19. Needless to say, the Prospective Resolution Applicants (PRAs) furnish their Resolution Plans based on the Information Memorandum (IM) prepared by the Resolution Professional, where a list of all the Assets of the Corporate Debtor is given. Since the properties situated at Dwarka (ibid) were a later discovery, they were not included in the Information Memorandum. Thus, the valuation of the newly inducted properties situated at Dwarka was not conducted by the RP, and the other PRAs were not given any chance to bid for the Corporate Debtor while keeping in mind the property situated at Dwarka being part of the asset pool of the Corporate Debtor. Had the properties at Dwarka been included/added subsequently in the IM and valuation, the Fair Market Value and Liquidation Value of the Corporate Debtor would have changed significantly to attract more Prospective Resolution Applicants to submit the Resolution Plan with higher value.

20. Further, through the present Resolution Plan, the ownership rights of the newly-inducted Dwarka Properties (ibid), which were never part of the Information Memorandum notified by the RP, are proposed to be transferred to the SRA herein, who would be in an advantageous position vis-à-vis the

prospective bidders *in rem*. In our considered view, this is a material irregularity in the exercise of the powers by the Resolution Professional during the CIR Process of the Corporate Debtor.

21. **In the circumstances, we have no other option but (a) to reject the present Resolution Plan; (b) direct the Resolution Professional to conduct a fresh valuation of the Corporate Debtor's properties, inter alia, including the Unit no. 910, 923, 923A, and 1022A at 10<sup>th</sup> floor having covered area 345 Sq. Ft. forming part of the Hotel Building constructed at Plot No. 4, Dwarka City Centre, Sector-13, Dwarka, New Delhi and issue the Information Memorandum; (c) issue a fresh 'Form G' through a wide publication; and (d) complete the entire process of seeking approval of CoC, for the Resolution Plans if received, at the earliest.** It is, however, made clear that the SRA of the present resolution plan will have the liberty to submit its EOI if it so wishes.

22. **Accordingly, the IA-3636/ND/2023 is disposed of with the aforesaid directions.**

Sd/-  
**(L. N. GUPTA)**  
**MEMBER (T)**

Sd/-  
**(ASHOK KUMAR BHARDWAJ)**  
**MEMBER (J)**