



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

IN THE MATTER OF:
SREI EQUIPMENT FINANCE LIMITED

... Financial Creditor.

Versus

VARUTHA DEVELOPERS PRIVATE LIMITED

... Corporate Debtor.

And

IN THE MATTER OF:

I.A. (IB) No. 2409/KB/2024

***An Application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016, read with Rule 11 of the National
Company Law Tribunal Rules, 2016.***

IN THE MATTER OF:

GANGA CONSTRUCTION (CONSORTIUM)

... Applicant.

Versus

- 1. ANIL KUMAR MITTAL, RESOLUTION PROFESSIONAL OF
VARUTHA DEVELOPERS PVT. LTD. (IN CIRP)**
- 2. SREI EQUIPMENT FINANCE LIMITED**
- 3. SREI INFRASTRUCTURE FINANCE LIMITED (SREI INFRA)**
- 4. NATIONAL ASSET RECONSTRUCTION COMPANY LTD.
(NARCL)**
- 5. INDIA DEBT RESOLUTION COMPANY LTD. (IDRCL)**



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

6. MANGLAM MULTIPLEX PVT. LTD.
7. M3M INDIA PVT. LIMITED
8. NEW ERA PROPCON PRIVATE LIMITED
9. SWASTIK INFRASOLUTIONS PRIVATE LIMITED
10. ERNST & YOUNG LLP

... Respondents.

And

IN THE MATTER OF:

I.A. (IB) (Plan) No. 21/KB/2024

An Application under Section 30(6) read with Section 31 of the Insolvency and Bankruptcy Code, 2016, and under Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016, for the approval of the Resolution Plan.

IN THE MATTER OF:

ANIL KUMAR MITTAL, RESOLUTION PROFESSIONAL OF
VARUTHA DEVELOPERS PVT. LTD. (IN CIRP)

... Applicant.

Date of Pronouncement: January 07, 2025.

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024
And
I.A. (IB) (Plan) No. 21/KB/2024
In
Company Petition (IB) No. 26/KB/2023

APPEARANCES:

I.A. (IB) No. 2409/KB/2024

Mr. Akash Yadav, Adv.]	
Ms. Rashmi Singhee, Adv.]	For Applicant
Ms. Divya Baid, Adv.]	
Mr. Mohit Chaudhary, Adv.]	For Applicant
Mr. Prakhar Mittal, Adv.]	
Mr. Sanjiv Sen, Sr. Adv.]	For CoC (R-1 & R-2)
Mr. Aditya Kanodia, Adv.]	
Ms. Suparna Sardar, Adv.]	
Mr. Ratnanko Banerji, Sr. Adv.]	For Mangalam (R-6)
Ms. Ashika Daga, Adv.]	
Ms. Yamini Mookherjee, Adv.]	
Ms. Ruby Singh Ahuja, Adv.]	
Ms. Akriti Vohra, Adv.]	
Mr. Jishnu Chowdhury, Sr. Adv.]	For M3M India (R-7)
Mr. Aayush Lakhotia, Adv.]	
Ms. S. Bhowmik, Adv.]	

I.A. (IB) (Plan) No. 21/KB/2024

Mr. Krishnaraj Thaker, Sr. Adv.]	For RP
Mr. Shwetank Ginodia, Adv.]	
Ms. Mini Agarwal, Adv.]	
Mr. Anil Kumar Mittal, RP]	

Table of Contents

I.A. (IB) No. 2409/KB/2024	5
I. Factual Conspectus:	6



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

<i>II. Submissions Advanced by Applicant Ganga Construction:</i>	
.....	8
<i>III. Per contra, RP would submit:</i>	16
<i>IV. The SRA’s Contentions:</i>	17
<i>V. Analysis and Finding:</i>	20
I.A. (IB) (Plan) No. 21/KB/2024	25
<i>A. Initiation of Corporate Insolvency Resolution Process</i>	26
<i>B. Publication</i>	26
<i>C. Constitution of CoC</i>	26
<i>D. Collation of Claims</i>	27
<i>E. CIRP and Compliances</i>	27
<i>F. Compliance of the Approved Resolution Plan with Various Provisions</i>	31
<i>G. Details of Resolution Plan/Payment Schedule</i>	32
<i>H. Our Inference</i>	35
<i>On the Conduct of CoC</i>	35
<i>On the Statutory Obligations or Seeking Approvals from the Authorities:</i>	38
<i>On the Reliefs, Waivers and Concessions:</i>	39
<i>On the Extinguishment of Claims:</i>	42
<i>On Guarantors:</i>	45
<i>On Inquiries, Litigations, Investigations, and Proceedings:</i>	46
<i>Conclusion:</i>	50
TO SUMMARIZE	55

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

COMMON ORDER

Per: D. Arvind, Member (Technical)

1. The Court congregated through a hybrid mode.

I.A. (IB) No. 2409/KB/2024

2. Heard the Ld. Sr. Counsels/ Ld. Counsel for the parties in extenso.

3. This application has been preferred by Ganga Construction (Consortium) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code" against Anil Kumar Mittal, Resolution Professional (RP) of Varutha Developers Pvt. Ltd. (Corporate Debtor) and Ors. seeking for the following reliefs:

- a) *Set aside the Letter of Intent issued in favour of Manglam Multiplex Pvt. Ltd. for being illegal, arbitrary, and in contravention of the provisions of the Insolvency and Bankruptcy Code, 2016 AND/OR;*
- b) *Declare Manglam Multiplex Pvt. Ltd./ Respondent No. 6 as ineligible to be a Resolution Applicant under Section 29A of the Insolvency and Bankruptcy Code, 2016, and direct its disqualification from the CIRP process. AND/OR;*
- c) *Declare the conduct of CIRP, including the Negotiation Process, as illegal, arbitrary, and non-transparent, and direct the re-conduction of the CIRP in a fair and impartial manner, ensuring equal opportunity to all Potential Resolution Applicants (PRAs), including the Applicant. AND/OR;*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

- d) *Direct an investigation by an independent authority into the allegations of collusion and favouritism by the RP/ Respondent No. 1, COC/ Respondent No. 2, and Manglam Multiplex Pvt. Ltd./ Respondent No. 6 along with Respondent No. 2 to 9 to determine whether the CIRP process was conducted in a fraudulent or mala fide manner in collusion with each other. AND/OR;*
- e) *Pass an ex-parte ad-interim order thereby restraining the RP/ Respondent No. 1 and COC/ Respondent No. 2 from proceeding with the submission of the Resolution Plan to this Hon'ble Tribunal or any other authority for approval until the issues raised in the present application are adjudicated. AND/OR;*
- f) *Pass such other and further orders that may be deemed fit and proper in the interests of justice and equity.*

I. Factual Conspectus:

4. This Adjudicating Authority on 20.12.2023 has passed an *ex-parte* admission order for Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Varutha Developers Pvt. Ltd. hereinafter referred to as “Varutha”/ “Corporate Debtor” with respect to a default of Rs. 439,10,51,260/-, pursuant to a Loan Agreement executed on July 26, 2019, between SREI Equipment Finance Limited (“Financial Creditor” herein) and Varutha whereby a loan facility of Rs. 300,00,00,000/- was sanctioned to the Corporate Debtor.

5. That, pursuant to the Order of admission, the Interim Resolution Professional (R-1) constituted the Committee of Creditors

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

(CoC) based on the claim received under the publication made on 23.12.2023 in Form A. Subsequently, a report was filed on 11.01.2023, before us wherein SREI Equipment Finance Limited (SREI Equipment) emerged as the sole member of the CoC being in capacity of a sole secured financial creditor having 100% voting share in the CoC.

6. The Applicant Ganga Construction was one of the Prospective Resolution Applicants (PRAs) who submitted a preliminary resolution plan with a financial proposal of Rs. 200 Crore along with a bank guarantee of Rs. 6 Crore, which was further enhanced on 11.11.2024 to an amount of Rs. 250 Crore.

7. The Applicant claimed that the Information Memorandum (IM) prepared by the RP made disclosure of only tangible asset of the corporate debtor, hereinafter referred to “subject property” however, the RP has failed to gather publicly available information regarding the subject property so as to provide a clear picture to the PRAs as well as the member of the CoC with respect to the title, demarcation, possession or any other encumbrances over the subject property. The gist of the allegation against RP in respect of disclosure of the subject property are as under:

- i. That, the subject property is a land which was brought through SARFAESI proceedings, but the Sale Certificate is not registered, and the Sale Certificate has not been provided.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024
And
I.A. (IB) (Plan) No. 21/KB/2024
In
Company Petition (IB) No. 26/KB/2023

- ii. That, the subject property is neither under the possession of the corporate debtor nor registered in its name.
- iii. That, the subject property is attached by the Enforcement Directorate (ED) and the subject property is unidentified.
- iv. That, there is some “Development Agreement” between the corporate debtor and M3M India (R-7) which has not been provided. It is claimed that the entire CIR process has been manipulated in favour of Successful Resolution Applicant Manglam Multiplex Pvt Ltd (R-6) being a group company of M3M India by deliberately side-lining genuine and eligible PRAs, including Applicant.

Hence, this application has been preferred.

II. Submissions Advanced by Applicant Ganga Construction:

8. Ld. Counsel appearing on behalf of the applicant would submit that the Applicant, Ganga Construction (Consortium), has a direct and substantial interest in CIRP of the Corporate Debtor as a genuine and bona fide Prospective Resolution Applicant. The Applicant has been unlawfully deprived of its right to participate fairly in the process due to the fraudulent and premeditated actions of RP and CoC, who have colluded to manipulate the CIRP in favour



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024
And
I.A. (IB) (Plan) No. 21/KB/2024
In
Company Petition (IB) No. 26/KB/2023

of Manglam Multiplex Pvt. Ltd., who is a proxy of M3M India. The entire CIRP has been conducted as a sham, designed to circumvent the provisions of the I&B Code, 2016, by facilitating the transfer of the Corporate Debtor's sole tangible asset—a prime land parcel—back to the M3M group through Manglam Multiplex Pvt. Ltd., in collusion with the SREI group of companies.

9. It is submitted that a deliberate suppression of material information, the biased negotiation process, and the active participation of ineligible PRAs barred under Section 29A of the Code are clear indicators of a pre-planned scheme to undermine the fairness, transparency, and sanctity of the CIRP. Ld. Counsel for the applicant would our attention towards the scheme of fraud carried out by the Respondents in the following manner:

Step 1	
March 2019	<p>SREI Infra invoked the provisions of SARFAESI with a premeditated scheme of auctioning the property to one of its proxies with the intention of ultimately transferring it to the entities under control of M3M group.</p> <p>It is submitted that M/s Varutha Developers Pvt. Ltd. ('Varutha') being 100% owned by Vision India Fund ('VIF') and Infra Resurrection Fund ('IRF') which are schemes of SREI multiple asset investment trust, proxy of SREI incorporated n 25.10.2018, an SPV to transfer a tainted property within M3M, ensuring the property becomes untainted in the process.</p>
Step 2	
17.05.2019	A Share Purchase Agreement dated May 17, 2019 ("SPA dt. 17.05.2019") was entered into



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

	between VIF and IRF on the one side and M/s. New Era Propcon Private Limited ('Propcon') and Swastik Infra Solutions Private Limited ('Swastik'), proxies of M3M, on the other side, whereby, it was agreed that 100% shareholding of VIF & IRF in Varutha will be transferred to Propcon and Swastik for a consideration Rs. 1 Crore. Further, on the same date, an Amended and Restated Share Purchase Agreement dt. 17.05.2019 ("First Amendment Agreement dt. 17.05.2019") was entered into whereby, Propcon and Swastik agreed to pay an amount of Rs. 299 Crores towards consideration for a loan to be provided by SREI Equipment Pvt. Ltd. (SREI Equipment) to Varutha for purchase of the said land. Therefore, the transaction in essence was that M3M through its group companies will pay for the purchase of the said property by a proxy of SREI and the shareholding of the said proxy of SREI would be transferred to M3M.
Step 3	
26.07.2019	SREI Equipment sanctioned a loan of Rs. 300 Crores in favour of Varutha for purchase of the said land.
Step 4	
09.08.2019	A Sale Certificate was issued by SREI Infra in favour of Varutha in respect of the said land.
04.02.2020	Directorate of Enforcement provisionally attached the land in relation to certain proceedings against 02.02.2020.
Step 5	
05.03.2020	Varutha, VIF, IRF, SREI Infra enter into an Amendment agreement dated 05.03.2020 to First Amendment Agreement dt. 17.05.2019 ("Second Amendment Agreement dt. 05.03.2020"), whereunder, it was agreed that Propcon and Swastik (proxies of M3M) would pay Rs. 249 Crores to SREI Equipment in respect of the loan facility availed by Varutha.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

Step 6	
	An arbitration was invoked by Propcon and Swastik (proxies of M3M) against VIF, IRF, Varutha and SREI Infra for alleged disputes between the parties in relation to breaches of covenants and obligations of the SPA dt. 17.05.2019
Step 7	
23.01.2021	A Settlement was entered into between and among Propcon, Swastik, Varutha, VIF, IRF and SREI Infra whereby, it was agreed- <ul style="list-style-type: none">- Varutha, VIF, IRF and SREI Infra would take steps for vacation of attachment by ED as well as garnishee order of the Hon'ble High Court of Delhi dated 30.10.2018.- Propcon and Swastik would pay an amount of Rs. 249 Crores towards repayment of loan sanctioned to Varutha within 360 days of vacation of attachment by ED.- Shares of Varutha to be transferred in favour of purchasers.
Step 8	
19.04.2021	Based on the settlement, an arbitral award was passed on 19.04.2021 thus, giving a stamp of approval to the nefarious scheme designed by M3M & SREI.
Step 9	
	Propcon and Swastik preferred an Execution Petition being No. EXE/2223/2020 before the Ld. District Court, Gurugram seeking enforcement of Arbitral Award.

10. Ld. Counsel for the Applicant would further submit that these are pre-CIRP arrangement to transfer the only tangible asset of the corporate debtor to M3M India in collusion with SREI as well a scheme of fraud post initiation of CIRP. Ld. Counsel took us to a

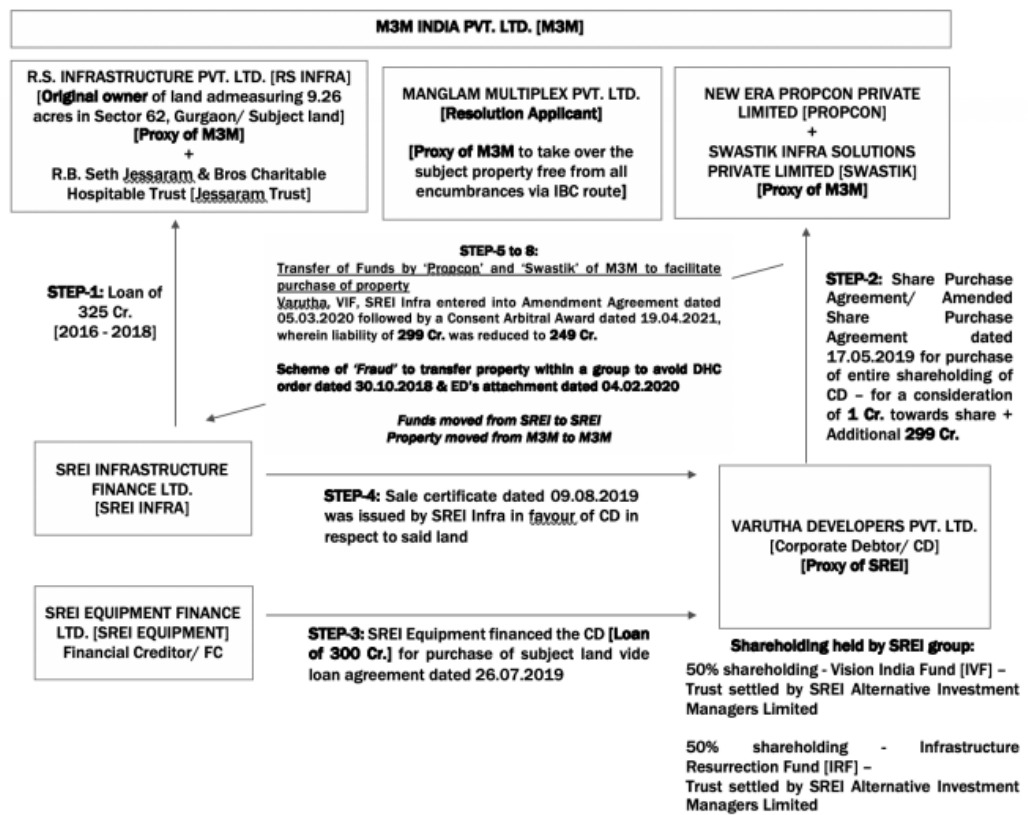


**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024
And
I.A. (IB) (Plan) No. 21/KB/2024
In
Company Petition (IB) No. 26/KB/2023

pictorial presentation annexed at page 19 to the application to substantiate the allegation depicted below:

*A pictorial representation of the table is depicted below:



11. Further, Ld. Counsel for the applicant by way of Brief Note would submit an organogram to portrait the alleged fraud both in pre CIRP and post initiation of CIRP. This organogram was de facto a graphical reply to the one presented by the applicant in its brief note. The Organogram is reproduced hereunder:



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 2409/KB/2024

And

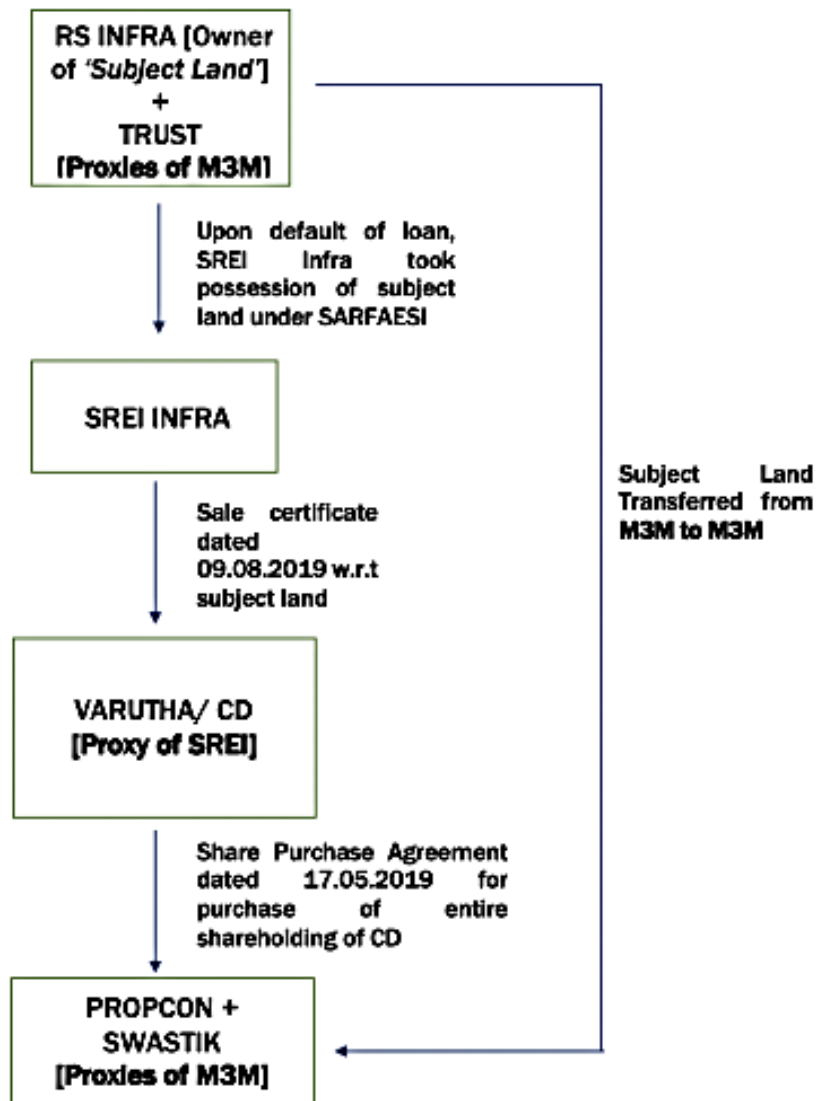
I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

4. PRE-CIRP ARRANGEMENT TO TRANSFER OF THE ONLY TANGIBLE ASSET OF THE CORPORATE DEBTOR FROM M3M TO M3M USING IN COLLUSION WITH SREI

a) **Transfer of property from M3M to M3M**

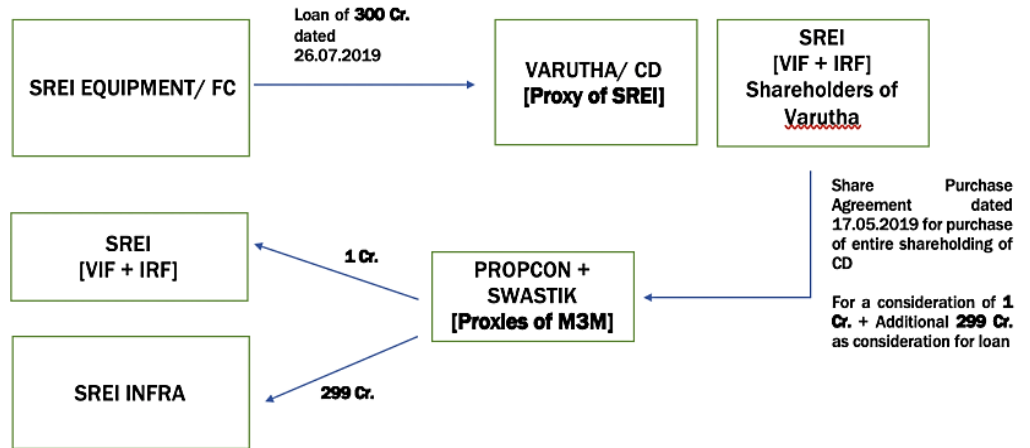




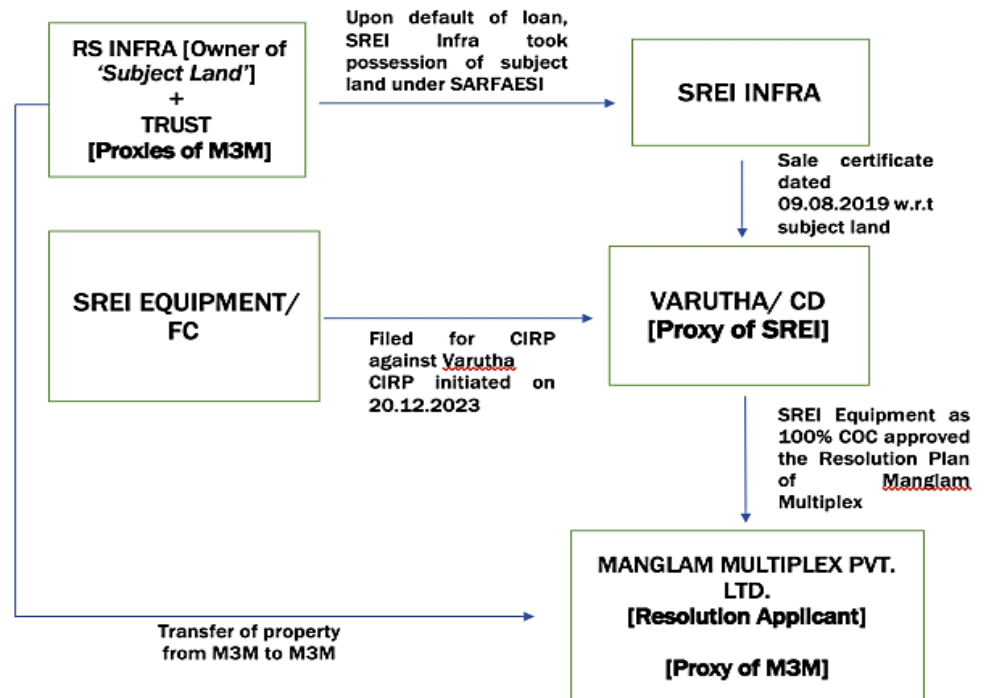
**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

**I.A. (IB) No. 2409/KB/2024
And
I.A. (IB) (Plan) No. 21/KB/2024
In
Company Petition (IB) No. 26/KB/2023**

b) Movement of funds from SREI to SREI



5. SCHEME OF FRAUD POST INITIATION OF CIRP



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024
And
I.A. (IB) (Plan) No. 21/KB/2024
In
Company Petition (IB) No. 26/KB/2023

Glossary	
RS INFRA	R.S. Infrastructure Pvt. Ltd.
SREI INFRA	SREI Infrastructure Finance Ltd.
SREI EQUIPMENT	SREI Equipment Finance Ltd.
VIF	Vision India Fund, Trust Settled by Srei Alternative Investment Managers Limited – 50% Shareholder of Varutha
IRF	Infrastructure Resurrection Fund, Trust Settled by SREI Alternative Investment Managers Limited – 50% Shareholder of Varutha
VARUTHA	Varutha Developers Pvt. Ltd.
CD	Corporate Debtor
TRUST	R.B. Seth Jessaram & Bros Charitable Hospitable Trust
PROPCON	New Era Propcon Private Limited
SWASTIK	Swastik Infra Solutions Private Limited
'SUBJECT LAND'	Land Admeasuring 9.26 Acres in Sector 62, Gurgaon/ Subject Land – Only Tangible Asset of the Corporate Debtor/ Varutha

12. Ld. Counsel for the applicant would contend that the applicant submitted a resolution plan with a financial proposal of Rs. 200 Crore with a bank guarantee of Rs. 6 Crore. The applicant approached the RP to enquire about further details concerning the subject property, however, the RP with an ulterior motive deliberately withheld the vital information in respect of the only tangible asset of the corporate debtor. It is further contended that the applicant through an email dated 11.11.2024, enhanced its financial proposal from Rs. 200 Crore to Rs. 250 Crore and protested the negotiation process before, which is deemed to work in favour of select PRAs having complete knowledge of the status/ title/ encumbrances on the subject land.

13. In view of the above, Ld. Counsel for the applicant would submit that the process has been conducted in a non-transparent,

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

biased, and illegal manner to benefit Manglam Multiplex Pvt. Ltd., a group company of M3M, at the cost of fairness and equity in the CIRP. The conduct of the RP and CoC, including their deliberate exclusion of the Applicant, disregard for statutory mandates, and collusion to orchestrate a pre-determined outcome, undermines the very objectives of the Code, which aims to ensure a fair and competitive resolution process for all stakeholders.

III. Per contra, RP would submit:

14. That, the applicant is an Unsuccessful Resolution Applicant does not have locus to challenge the process once a resolution plan has been approved by the CoC unanimously.

15. It is submitted that the RP published the final list of PRAs on July 09, 2024, and shared the IM on July 16, 2024, uploaded on the virtual data room. The applicant has not raised any objections to the information provided in the IM. The plans received from the PRAs were opened on October 01, 2024, the applicant remained silent and never raised any objections, then also.

16. It is further submitted that the draft challenge process note was shared with all the PRAs on October 26, 2024, wherein no objections were raised by the applicant. The final challenge process note was shared on November 07, 2024, with a request to all the PRAs to submit their final bid along with supporting documents by November 11, 2024. the applicant failed to submit the final bid, or the documents as required in the process note and chose to write an

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

email after 11:00 AM on November 11, 2024, offering to raise their bid and for the first time, purported to raise objections with respect to the asset of the corporate debtor.

17. That the RP had afforded an opportunity to the applicant to submit its final plan by November 21, 2024, which the applicant has failed and submitted an unsigned plan on November 27, 2024.

18. Further, with regard to the allegation on eligibility of the SRA in terms of Section 29A, the RP would submit that the applicant has failed to substantiate as how the SRA is ineligible to participate on the process. All the allegation raised by the Applicant lacks supportive documents having an ulterior motive to derail the entire process, just because the applicant became unsuccessful.

IV. The SRA's Contentions:

19. Ld. Sr. Counsel Mr. Ratnanko Banerji appearing for the Manglam Multiplex (SRA) would submit that although two associate companies of M3M India, namely New Era Propcon and Swastik Infrasolutions has entered into a Share Purchase Agreement on 17.05.2019, with the erstwhile shareholders of the corporate debtor and the same was never acted upon and no shareholding was transferred by the shareholders of the corporate debtor to the two associate companies of M3M India or to M3M India. Thus, there is no de facto joint control or management whether financial or operational, between the corporate debtor and M3M India or the

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

corporate debtor and Manglam, inasmuch as there are no common directors or promoters or key managerial persons between the corporate debtor and M3M India or the corporate debtor and Manglam. Further, the applicant has failed to bring on record any fact or proof or documents to establish the ineligibility of Manglam, apart from making a baseless allegations.

20. Ld. Sr. Counsel would refer to the judgment rendered by the Hon'ble Apex Court in ***ArcelorMittal India Private Limited vs. Satish Kumar Gupta*** reported in MANU/SC/1123/2018 and submit that Section 29A(c) speaks of a corporate debtor "under the management or control of such person". The expression "under" would seem to suggest positive or proactive control, as opposed to mere negative or reactive control. This becomes even clearer when Sub-clause (g) of Section 29A is read, wherein the expression used is "in the management or control of a corporate debtor". Under Sub-clause (g), only a person who is in proactive or positive control of a corporate debtor can take the proactive decisions mentioned in Sub-clause (g), such as, entering into preferential, undervalued, extortionate credit, or fraudulent transactions. It is thus clear that in the expression "management or control", the two words take colour from each other, in which case the principle of noscitur a sociis must also be held to apply. Thus viewed, what is referred to in Sub-clauses (c) and (g) is de jure or de facto proactive or positive control, and not mere negative control which may flow from an expansive reading of the definition of the word "control" contained in

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

Section 2(27) of the Companies Act, 2013, which is inclusive and not exhaustive in nature.

21. Further, it is submitted that M3M India and the Corporate Debtor entered into the Collaboration Agreement dated 13.01.2020 does not *ipso facto* prove that the Corporate Debtor is "*under the control and management*" of M3M India. A plain perusal of the clauses of the aforesaid Collaboration Agreement would also reveal that it did not contemplate the transfer of control and management of the Corporate Debtor to M3M India; but only provided for the entire development rights qua the land asset of the Corporate Debtor, including the right to construct and sell the project in favour of third parties, to M3M India.

22. It is contended that immediately after the execution of the Collaboration Agreement on 13.01.2020, the Directorate of Enforcement provisionally attached the land asset of the Corporate Debtor on 04.02.2020. Due to disputes having arisen *inter alia* between two associate companies of M3M India and the Corporate Debtor, the arbitration clause contained in the various Amendments to the Share Purchase Agreement dated 17.05.2019 was invoked. Pursuant to a settlement between the parties, an Arbitral Award dated 19.04.2021 was passed. However, *inter alia* due to the failure of the Corporate Debtor to honour its obligations under the arbitral award, the two associate companies of M3M India were compelled to file an execution petition before the District Court, Gurgaon, seeking enforcement of the Arbitral Award dated 19.04.2021. In view of such,

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

it is submitted that M3M India (or by extension, Manglam) does not have any control or management over the Corporate Debtor.

V. Analysis and Finding:

23. We find that the similar allegations were levelled by another PRA, Experion Developers Private Limited by way of an application being I.A. (IB) No. 1774/KB/2024, wherein we have dismissed the application by noting that:

“15. We find that the corporate debtor’s only asset is the land admeasuring 9.2625 acres. The information memorandum clearly reflects the shortcomings about the land as referred in Para 5 in this Order above.

16. We have noted that the resolution professional has taken steps to evict M3M from the land and also taken steps for survey of the land. When the resolution professional has no further information as claimed by him, we cannot direct resolution professional to furnish information and records which are not with him. The applicant’s case is that one of the PRAs has got more details and the same should be obtained by RP and shared with all the PRAs.

17. First of all, this contention of the applicant is purely based on assumptions and presumptions without any basis. Even assuming that one of the PRAs has more details/information about the land, the resolution professional cannot be directed to get the same from such PRA purely on the basis of assumptions and presumptions.

18. We are aware that CIRP is a timebound process and already 272 days have expired on 15th September 2024. When that being the case, at this stage if we allow the applicant to submit the resolution plan



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

beyond the time limit fixed, it is not going to fructify into submission of resolution plan by the applicant, as he is keen to get desired information and documents, which RP does not have.

19. *It is trite, axiomatic and well-settled by the objectives of the Code as well as by the Hon'ble Apex Court in its catena of judgments that the CIRP is not an endless process, and it has to be completed with the time period as prescribed under the statute. In **Swiss Ribbons Pvt. Ltd. vs. Union of India** reported in (2019) 4 SCC 17, it is observed that:*

*“As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganization and insolvency resolution of corporate debtors. **Unless such reorganization is effected in a timebound manner, the value of the assets of such persons will deplete. [...]**”*
(Emphasis Added)

20. *Also, in **Innoventive Industries Ltd. vs. ICICI Bank** reported in (2018) 1 SCC 407 the Hon'ble Apex Court has referred the “Statement of Objects and Reasons” of the Code and observed that:*

“2. The Insolvency and Bankruptcy Code, 2016 has been passed after great deliberation and pursuant to various committee reports, the most important of which is the report of the Bankruptcy Law Reforms Committee of November, 2015. The Statement of Objects and Reasons of the Code reads as under:

xxx xxx xxx

2. The objective of the Insolvency and Bankruptcy Code, 2015 is to consolidate and amend the laws relating to reorganization

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

*and insolvency resolution of corporate persons, partnership firms and individuals in a **time bound manner** for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders [...].”*

(Emphasis Added)

21. Therefore, this **I.A.(IB) No. 1774/KB/2024** merits dismissal and accordingly, **dismissed.”**

(Emphasis Added)

24. So far as the ‘commercial wisdom’ of CoC, the Hon’ble Apex Court in catena of judgments held that the Commercial wisdom of the CoC cannot be set aside unless there is a ‘material irregularity’ as defined under Section 30(2) of the Code. We would refer to the judgments rendered by the Hon’ble Apex Court in this context as under, as under:

- a. Kalpraj Dharamshi v. Kotak Investment Advisors Ltd.** reported in **(2021) 10 SCC 401: MANU/SC/0174/2021**, it has been held that:

“155. It would thus be clear, that the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. **The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided Under Sections 30 and 31 of the I&B Code.**”

(Emphasis Added)

- b.** Further, the Hon’ble Apex Court in **Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs.**



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

NBCC (India) Ltd. and Ors. reported in (2022) 1 SCC 401:
MANU/SC/0206/2021 at Para 216, has laid down that:

“The Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 30(2) and 31 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by Committee of Creditors.”

(Emphasis Added)

- c. Further, in **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta** reported at (2020) 8 SCC 531: **MANU/SC/1577/2019**, the Hon’ble Apex Court has propounded that:

“38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants.”

(Emphasis Added)

25. Further, in context of the locus of an unsuccessful resolution applicant to assail the resolution plan approved by the CoC, on December 04, 2024, by 100% voting shares, we would refer

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

to the judgment rendered by the Hon'ble NCLAT Chennai in ***M. K. Rajagopalan v. S. Rajendran Resolution Professional VHCPL*** in **Company Appeal (AT)(Ins) - 58/CN/2023**, wherein it has been held that:

“31. On a careful consideration of the respective contentions advanced on either side, this `Tribunal`, keeping in mind of a vital fact that the `Petitioner / Appellant`, being an `Unsuccessful Resolution Applicant`, has no `Locus`, to `assail` a `Resolution Plan` or its `implementation`, coupled with a candid fact that he is not a `Stakeholder`, as per Section 31 (1) of the I & B Code, 2016, in relation to the `Corporate Debtor`, this `Tribunal`, without any `haziness`, holds that the `Petitioner / Appellant`, is not an `Aggrieved Person`, coming within the ambit of Section 61 (1) of the I & B Code, 2016, especially, when he is not a `Privy`, to the `Resolution Plan`. Viewed in that perspective, the `Leave`, sought for in IA No. 215 of 2023 in Comp. App (AT) (CH) (INS.) No. 58 of 2023, sans merits.”

(Emphasis Added)

26. In view of the ratio laid down by the Hon'ble NCLAT, we find that the applicant who fails in the bid, having participated in the biddings process, cannot challenge the resolution plan which has been approved by the CoC by 100% voting shares.

27. In view of above, this application devoid merits as well as maintainability, and accordingly, the same is **dismissed**.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024
And
I.A. (IB) (Plan) No. 21/KB/2024
In
Company Petition (IB) No. 26/KB/2023

I.A. (IB) (Plan) No. 21/KB/2024

28. Now, we would proceed to consider the resolution plan approved by the CoC at its 16th CoC meeting convened on 26.11.2024.

29. This application has been preferred by the Resolution Professional Anil Kumar Mittal of the Corporate Debtor Varutha Developers Private Limited under Sections 30(6) and 31 of the Insolvency and Bankruptcy Code, 2016, seeking for a direction for final confirmation and approval of the Resolution Plan submitted by **Mangalam Multiplex Private Limited** on 23.08.2024 and amended on 21.11.2024 and 26.11.2024.

30. The CoC at its 16th meeting convened on 26.11.2024, has approved the Resolution Plan submitted by **Mangalam Multiplex Private Limited** on 23.08.2024 and amended on 21.11.2024 and 26.11.2024, by 100% voting shares and subsequently, **Mangalam Multiplex Private Limited** has been declared as the Successful Resolution Applicant (SRA) and the Letter of Intent (LoI) was issued on 04.12.2024, which was unconditionally accepted on 05.12.2024 by the SRA **Mangalam Multiplex Private Limited**.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

A. Initiation of Corporate Insolvency Resolution Process

31. Company Petition in C.P. (IB) No. 26/KB/2023 was filed by Srei Equipment Finance Limited, the Financial Creditor against Varutha Developers Private Limited, the Corporate Debtor, to initiate Corporate Insolvency Resolution Process (“CIRP”), under section 7 of the Insolvency and Bankruptcy Code 2016, which was admitted vide order dated 20th December 2023.

B. Publication

32. The Applicant made public announcements on 23rd December 2023 Business Standard (English) and Ekdin (Bengali) and on 29th December 2023 in Financial Express (English), and Jansatta (Hindi) newspapers in accordance with Section 13(1)(b) read with Regulation 6 of the CIRP Regulations regarding initiation of Corporate Insolvency Resolution Process and for inviting all the creditors of Varutha Developers Private Limited to submit their claim to the Applicant. The last date of submission of claims was 3rd January 2024.

C. Constitution of CoC

33. The Applicant received only one claim from a secured financial creditor. No claims were received from any operational creditors and employees. The CoC was accordingly constituted on 16th January 2024, with the following creditor as the sole member of the CoC.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024
And
I.A. (IB) (Plan) No. 21/KB/2024
In
Company Petition (IB) No. 26/KB/2023

SN	Name of Secured Financial Creditor	% Voting Share
1.	Srei Equipment Finance Limited	100%
	Total	100%

D. Collation of Claims

34. The total amount claimed and admitted are summarized as under:

SN	Name of the Financial Creditor	Amount Claimed	Amount Admitted	% Of Admission	Security Interest
1.	Srei Equipment Finance Limited	Rs. 4,93,04,68,400/-	Rs. 4,93,04,68,400/-	100%	Secured
	Total	Rs. 4,93,04,68,400/-	Rs. 4,93,04,68,400/-	100%	

E. CIRP and Compliances

35. The Applicant submits that in terms of the provisions of section 25(2)(h) of the Code read with regulation 36A(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, invitations in Form 'G' for Expressions of Interest ("EoI") from potential resolution applicants was published in leading newspapers for the 1st time on

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

17th February, 2024. Upon receiving requests from various genuine bidders, the Form G was subsequently published for the second time on 16th March, 2024. The Form G was re-published for a 3rd time on 6th April, 2024. As per the 3rd Form G, the last date for submission of Expression of Interests (“EOI”) was 16th April, 2024. The Applicant received EOIs from 7 persons, and duly published the provisional list of Prospective Resolution Applicants (“PRAs”) on 20th April, 2024. The Applicant had published the final list of the PRAs on 29th April, 2024 based on the EOIs received by the Applicant.

36. In compliance with Section 29 of the Code read with Regulation 36 of the CIRP Regulations, the Applicant prepared the Information Memorandum containing the details related to matters listed in Regulation 36(2)(a) to (1) of the CIRP Regulations (“IM”). In accordance with the provisions of Regulation 36(4) of the CIRP Regulations, the IM was shared with the members of the Consolidated CoC upon procuring an undertaking of confidentiality from the members.

37. The meeting of the CoC dated 1st October, 2024, was held as the “Bid Opening CoC” wherein the resolution plans submitted by the six (6) PRAs namely Mangalam Multiplex Private Limited (“Mangalam”), Consortium of Sakshi Chandna, Ganga Consortium, Consortium of Dr. Fresh, Authum Investment and Experion Developers Private Limited were opened in front of all the PRAs, the CoC and the Applicant herein.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

38. It is submitted that pursuant to extensive discussions and clarifications with the PRAs, the Applicant issued several intimations to the PRAs requesting them to address the concerns and issues raised by the Applicant and the CoC and the same was agreed to be resolved by the respective PRA. PRAs were also informed that only those PRAs who submit resolution plans in accordance with the intimation shall be eligible to participate in the challenge process (“Eligible RAs”).

39. It is further submitted that after extensive discussions and considering the varied nature of the resolution plans, at the meeting dated 28th October, 2024, the CoC approved a Negotiation Process to evaluate the financial proposals in the resolution plans, in accordance with Regulation 39(1A) (b) of the CIRP Regulations. Accordingly, the Applicant, in consultation with the CoC, issued a Note on Negotiation Process dated 07.11.2024.

40. The Applicant herein also conducted a meeting on 29th October, 2024 with all the PRAs for discussions and deliberation on the plans submitted and the negotiations with respect to the same.

41. Further, after the Negotiation Process was over. The Applicant herein had also circulated with the PRAs on 7th November, 2024 a Challenge Process Note wherein it was intimated that the Challenge Process shall be conducted on 11th November, 2024.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

42. Round 1 of the Negotiation Process was concluded on 11th November 2024. Subsequently, round 2 of the Negotiation Process was concluded on 15th November 2024 wherein Mangalam was declared as the H1 bidder. After the conclusion of the Negotiation Process, all the RAs were communicated to submit their final Resolution Plans till 21st November, 2024. However, the Final Resolution Plan was received from only one RA i.e., Mangalam.

43. Accordingly, all six (6) Plans were placed before the CoC for voting and the voting on the Final Resolution Plans was concluded on 04.12.2024. The voting took place and/or was conducted as per Regulation 25(5) read with Regulation 26 of the CIRP Regulations.

44. Since, Mangalam Multiplex Private Limited obtained the highest affirmative vote of the CoC, its resolution plan dated 21st November 2024 and revised on 26th November 2024 was duly approved by the CoC under Section 30(4) of the Code read with Regulation 39(3B) of the CIRP Regulations. Mangalam was declared as the Successful Resolution Applicant and the Letter of Intent dated 4th December 2024 was accordingly issued to Mangalam.

45. Thereafter, Mangalam submitted unconditionally accepted Letter of Intent on 5th December 2024 along with the Performance Security Deposit in the form of a Bank Guarantee amounting to Rs. 62,20,00,000/- in accordance with regulation 36B(4A) of the CIRP Regulations.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024
And
I.A. (IB) (Plan) No. 21/KB/2024
In
Company Petition (IB) No. 26/KB/2023

F. Compliance of the Approved Resolution Plan with Various Provisions

46. The Applicant has filed the instant Application along with an affidavit which includes the provisions with respect to the compliances in prescribed form, i.e., Form 'H' of regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

47. The Applicant has submitted details of various compliances as envisaged within the Code and the CIRP Regulations which a Resolution Plan should adhere to, which is reproduced hereunder:

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?	The Successful Resolution Applicant fulfilled the eligibility criteria approved by the CoC and was accordingly included in the Final List of the prospective Resolution Applicants.	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?	Yes	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Section 29(A) undertaking as part of this Resolution Plan.	Yes
Section 30(2)	Whether the Resolution Plan- (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment to the operational creditors? (c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan? (d) provides for the management of the affairs of the corporate debtor?	Page 36 and 37 of the Resolution Plan	Yes



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

	(e) provides for the implementation and supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being in force?]		
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?	Yes	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Yes	Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?]	Page 37	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Page 37	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	Page 37	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?	Page 38	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?	Page 39	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	NA	NA
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	Bank Guarantee amounting to Rs. 62,20,00,000/-	Yes

G. Details of Resolution Plan/Payment Schedule

48. Resolution Applicant has proposed pay-outs as per provisions of Insolvency and Bankruptcy Code, reflecting at page 18 of the resolution plan, is as under:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

Value of Resolution Plan

The value of Resolution Plan is as per details below:

S.No	Creditor	Claims Filed	Amount Claimed	Claim Admitted	Payout
Financial Creditors					
1	SREI Equipment Finance Limited	1	493,04,68,400	493,04,68,400	310,00,00,000 (As detailed in Resolution Plan)
Operational Creditors					
1	Government Dues	-	-	-	
2	Workmen	-	-	-	
3	Employees	-	-	-	
4	Operational creditors (Other than workmen, Employees and Government Dues)	-	-	-	
Other Creditors (Other than Financial Creditors and Operational Creditors)					
1	Other Creditors	-	-	-	
CIRP COST					
1	CIRP Cost				On Actuals
	TOTAL		493,04,68,400	493,04,68,400	310,00,00,000 (As detailed in Resolution Plan)

49. Concerning the CIRP Cost, the SRA at page 19 to the resolution plan has submitted that the Resolution Professional has not provided any estimate for complete CIRP cost. CIRP cost incurred till 14.05.2024 is Rs. 8.1 Lakh, as evident at page 19 to the Resolution Plan. Resolution Applicant will pay CIRP cost **on actuals**. Such CIRP cost will be paid within a period of 60 days of the Effective Date. It is clarified that the CIRP cost shall be paid over and above the settlement amount payable to the Secured Financial Creditors



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024
And
I.A. (IB) (Plan) No. 21/KB/2024
In
Company Petition (IB) No. 26/KB/2023

under this Resolution Plan, and in priority to the Secured Financial Creditors in accordance with the provisions of I&B Code.

50. Further, the SRA has proposed to make payment to the secured financial creditors as per details below:

S. No	Creditor	Claim Admitted	Payout	Timelines
1	SREI Equipment Finance Limited	493,04,68,400	Rs.67,00,00,000/-*	Within 60 days from the Effective Date.
			Balance Rs. 243,00,00,000/-	Within 24 months from the Effective Date in the following manner:
			To secure deferred payment of Rs. 243,00,00,000/-*, 50% shares of Corporate Debtor shall be pledged with the Secured Financial Creditor and the corporate guarantee of M3M India Private Limited shall be issued in favour of the Secured Financial Creditor within 60 days from the Effective Date**.	15.00 Cr: in 6 months from Effective Date 30.00 Cr: in 12 months from Effective Date 30.00 Cr: in 18 months from Effective Date 168 Cr: in 24 months from Effective Date



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024
And
I.A. (IB) (Plan) No. 21/KB/2024
In
Company Petition (IB) No. 26/KB/2023

TOTAL	493,04,68,400	310,00,00,000	
NPV		265,65,00,000	
NPV offered to Secured Financial Creditors basis the Discounting Rate as per the RFRP/ Evaluation Matrix			
Following is the table of Discounting Rate as per the RFRP/ Evaluation Matrix			
0 – 60 days	Nil		
61 days – 1 Year	10% per annum (Discount Rate applied from day 1 and discount rate compounded daily)		
1 – 3 Years	12% per annum (Discount Rate applied from Day 1 and discount rate compounded daily)		
Above 3 Years	Cash flows beyond 3 years will not be considered for NPV computation.		

H. Our Inference

On the Conduct of CoC

51. Upon hearing, the submission made by the Learned Counsel appearing on behalf of the Resolution Professional of Corporate Debtor herein and perusing the record and/or documents placed before this Adjudicating Authority, we would find that **the Resolution Plan submitted on 23.08.2024, along with its Amendments dated 21.11.2024 and 26.11.2024** submitted by **Mangalam Multiplex Private Limited (Successful Resolution Applicant)**, annexed at pages 281-320, as Annexure R, to the Application, has been approved by the CoC of the Corporate Debtor by **100%** voting share. As per the CoC, the plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. Preponderantly, all the compliances have been

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

done by the Resolution Applicant for making the plan effective after approval by this Adjudicating Authority.

52. We find that the CoC at its 16th meeting convened on 26.11.2024 at 4:00 AM, has approved the resolution plan submitted by the **Mangalam Multiplex Private Limited**, by 100% voting shares and accordingly the Letter of Intent (LoI) has been issued to **Mangalam Multiplex Private Limited** on 04.12.2024 which is unconditionally accepted by **Mangalam Multiplex Private Limited** on 05.12.2024. Accordingly, **Mangalam Multiplex Private Limited** has been declared as Successful Resolution Applicant (SRA). The Minutes of the 16th CoC Meeting convened on 26.11.2024, is annexed at pages 321-337 to the application.

53. We find that upon approval of the CoC, the RP has appointed two valuers namely, M/s. Kanasure Valuation Services Private Limited ("Valuer 1") and M/s. Protocol Valuers Private Limited ("Valuer 2") on 29.01.2024. The Valuer 1 M/s. Kanasure has submitted its valuation report on 25.06.2024, annexed at pages 90-112 to the application and the Valuer 2 M/s. Protocol has submitted its valuation report on 26.07.2024, annexed at pages 113-160 to the application.

54. As indicated in Form H submitted by the RP under Regulation 39(4) of the CIRP Regulations, 2016, we would note that the Fair value of the Corporate Debtor is arrived at Rs. 2,34,55,50,000/- and the Liquidation value of the Corporate Debtor at Rs. 1,75,14,00,000/-, while the **total Plan value** excluding CIRP

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

Cost which would be paid at actual, is **Rs. 310,00,00,000/-** against the total admitted claim of Rs. **4,93,04,68,400/-**, which indicates **37% haircuts.**

55. We would note that at the 5th CoC meeting convened on 04.04.2024, the applicant had proposed the name of Prakash Sachin & Co. for conducting a transaction audit of the corporate debtor which was approved by the CoC. Prakash Sachin & Co. has submitted its transaction audit report on 17.08.2024, annexed at pages 171-187 to the application, wherein they observed that:

“Varutha Developers should have completed the registration of land immediately after giving the transaction amount of Rupees 300 crore to SIFL under SARFAESI act 2002.

Varutha management should have infused the funds to complete the registration formalities on urgent basis.

Varutha Developers should have done proper due legal diligence before bidding for land acquisition under SARFAESI.

We have not found any other use of amount other than for sanctioned purpose.

But there is error in the part of lender for not taking proper action against CD for not completing the security i.e., corporate guarantee, Mortgage of land, Creation of Escrow account.

There is no major operational activity carried out by the company. There is only one financial creditor i.e., SEFL and one debtor i.e., SIFL. There is no preferential/undervalued/extortionate credit transaction with creditor. Hence no transaction falls under section 43,45 and 50 of IBC 2016. Further considering the facts and analysing the evidences, the company is not falling under the ambit of section 66 of IBC 2016 except the legal due diligence and other points as mentioned

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

above, which needed to be done/taken care at the time of purchase and bidding for such land.”

56. In the course of the hearing, the Learned Counsel for the Resolution Professional would submit that the Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code, 2016, read with relevant Regulations of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and does not contravene any of the provisions of law for the time being in force.

57. Upon perusal of the documents on record and/or documents, we are satisfied that the **Resolution Plan submitted on 23.08.2024, along with its Amendments dated 21.11.2024 and 26.11.2024** submitted by **Mangalam Multiplex Private Limited (Successful Resolution Applicant)**, annexed at pages 281-320, as Annexure R, to the Application, is in accordance with sections 30 and 31 of the I&B Code, 2016 and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

On the Statutory Obligations or Seeking Approvals from the Authorities:

58. As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

year from the date of this order, as prescribed under section 31(4) of the I&B Code.

On the Reliefs, Waivers and Concessions:

59. We have perused the reliefs, waivers and concessions as sought for in the application. It is evident that some of the reliefs, waivers and concessions sought by the Resolution Applicant come within the ambit of the I&B Code and the Companies Act 2013, while many others fall under the power and jurisdiction of different government authorities/departments. This Adjudicating Authority has the power to grant reliefs, waivers and concessions only concerning the reliefs, waivers and concessions that are directly with the I&B Code and the Companies Act (within the powers of the NCLT). The reliefs, waivers and concessions that pertain to other governmental authorities/departments may be dealt with by the respective competent authorities/forums/offices, Government or Semi-Government of the State or Central Government concerning the respective reliefs, waivers and concession, whenever sought for. The competent authorities including the Appellate authorities may consider granting such reliefs, waivers and concessions keeping in view the spirit of the I&B Code, 2016 and the Companies Act, 2013.

60. It is almost trite and fairly well-settled that the Resolution Plan must be consistent with the extant law. The Resolution Applicant shall make necessary applications to the concerned regulatory or statutory authorities for the renewal of business permits and supply of essential services, if required, and

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

all necessary forms along with filing fees etc. and such authority shall also consider the same keeping in mind the objectives of the Code, which is essentially the resolving the insolvency of the Corporate Debtor.

61. In this context, we would rely upon the judgment in ***Embassy Property Developments Pvt. Ltd. vs. State of Karnataka*** reported at **MANU/SC/1661/2019: (2020) 13 SCC 308**, wherein, the Hon'ble Apex Court has laid down that:

"39. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term "assets" under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word "assets", while Section 20(1) uses the word "property" together with the word "value". Sections 18 and 25 do not use the expression "property". Another important aspect is that Under Section 25(2)(b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 2409/KB/2024
And
I.A. (IB) (Plan) No. 21/KB/2024
In
Company Petition (IB) No. 26/KB/2023

debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

25. Duties of resolution professional -

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of Sub-section (1), the resolution professional shall undertake the following actions:

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, **exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings.**

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”

(Emphasis Added)

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

62. The reliefs sought for subsisting contracts/agreements can be granted, and no blanket orders can be granted in the absence of the parties to the contracts and agreements.

On the Extinguishment of Claims:

63. Concerning the waivers with regard to the extinguishment of claims which arose prior to the initiation of the CIR Process and which have not been claimed are granted in terms of the law laid down by the Hon'ble Apex Court in ***Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited*** reported in **MANU/SC/0273/2021: (2021)9SCC657: [2021]13SCR737** that “once a resolution plan is duly approved by the Adjudicating Authority Under Sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.” (Emphasis Added)

64. Further, the relevant part of the ***Ghanashyam Mishra judgment (supra)*** in this regard is given below:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

“61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities, that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in Sub-section (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.’

“62. This aspect has been aptly explained by this Court in the case of Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra).’

“107. For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.”

(Emphasis Added)

65. In this regard, we would also rely upon the judgement of the Hon’ble High Court of Rajasthan in the matter of ***EMC v. State of Rajasthan, Civil Writ Petition No. 6048/2020 with 6204/2020*** reported in **(2023) ibclaw.in 42 HC**, wherein it has been inter-alia held that:

“Law is well-settled that with the finalization of insolvency resolution plan and the approval thereof by the NCLT, all dues of creditors, Corporate, Statutory and others stand extinguished and no demand can be raised for the period prior to the specified date.”

(Emphasis Added)

66. Thus, on the date of approval of the resolution plan by the Adjudicating Authority, all such claims, that are not a part of

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. The Hon'ble Supreme Court of India further laid down that all the dues including the statutory dues owed to the Central Govt, any State Govt or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period before the date on which the Adjudicating Authority grants its approval under Section 31 of the I&B Code could be continued.

On Guarantors:

67. Concerning the waivers sought in relation to guarantors, the Hon'ble Apex Court held in ***Lalit Kumar Jain v. Union of India*** reported in **MANU/SC/0352/2021: (2021) 9 SCC 321: (2021) ibclaw.in 61 SC** that the sanction of a resolution plan and finality imparted to it by Section 31 does not per se operate as a discharge of the guarantor's liability. As to the nature and extent of the liability, much would depend on the terms of the guarantee itself. **(Emphasis Added)**

68. Further, we would rely upon the judgment rendered by the NCLAT in ***Roshan Lal Mittal v. Rishabh Jain*** reported in **(2023) ibclaw.in 803 NCLAT** that:

“The Resolution Plan does not absolve the personal guarantors from their guarantee. The law well settled by the Hon'ble Supreme Court in the matter of “Lalit Kumar Jain vs. Union of India & Ors. – (2021) 9 SCC 321), that by



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

approval of resolution plan the guarantees are not ipso facto discharged.”

(Emphasis Added)

69. Hence, we would infer that if there are any personal guarantors of the corporate debtor, the personal guarantees shall be invoked and an appropriate action against them, in accordance with law, be taken.

On Inquiries, Litigations, Investigations, and Proceedings:

70. For the reliefs and waivers sought for all inquiries, litigations, investigations, and proceedings shall be granted strictly as per section 32A of the I&B Code, 2016 and the provisions of the law as may be applicable.

71. In this context, we would infer that upon the approval of the Resolution Plan, the Corporate Debtor avails the limbs of new management to revive its business. Thus, all the past liabilities of the Corporate Debtor including criminal liability prior to the initiation of the CIR Process shall stand effaced and the new management will step into the shoes of the company with a fresh or clean slate. Hence, the old management shall be liable to face all the offences committed prior to the commencement of the CIR Process. At this juncture, we would rely upon the judgment rendered by the Hon'ble Apex Court in ***Ajay Kumar Radheyshyam Goenka vs. Tourism Finance Corporation of India Ltd.*** reported in **MANU/SC/0244/2023: (2023) 10 SCC 545** that:



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024
And
I.A. (IB) (Plan) No. 21/KB/2024
In
Company Petition (IB) No. 26/KB/2023

“67. Thus, Section 32A broadly leads to:

a. **Extinguishment of the criminal liability of the corporate debtor, if the control of the corporate debtor goes in the hands of the new management which is different from the original old management.**

b. The prosecution in relation to "every person who was a "designated partner" as defined in Clause (j) of Section 2 of the Limited Liability Partnership Act 2008 (6 of 2009), or an "officer who is in default", as defined in Clause (60) of Section 2 of the Companies Act. 2013 (18 of 2013), or was in any manner in charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence" shall be proceeded and the law will take it's own course. Only the corporate debtor (with new management) as held in Para 42 of P. Mohanraj will be safeguarded.

c. If the old management takes over the corporate debtor (for MSME Section 29A does not apply (see 240A), hence for MSME old management can takeover) the corporate debtor itself is also not safeguarded from prosecution Under Section 138 or any other offences.”

(Emphasis Added)

72. Further, the **Hon’ble High Court of Madras** in **Vasan Healthcare Pvt. Ltd. vs. The Deputy Director of Income Tax (Investigation), Unit 3(2)** reported in **MANU/TN/0243/2024: (2024) ibclaw.in 80 HC**, (hereinafter referred to as ‘**Vasan Healthcare Pvt. Ltd. P**) has held that:

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

“9. In the above judgement, the Apex Court after dealing with the provision in detail, came to a categoric conclusion that insofar as the criminal prosecution is concerned, the criminal liability of the corporate debtor viz., company gets completely wiped off and the new management is allowed to take over the company on a clean slate. However, the Apex Court also made it clear that the persons who are involved in the day today affairs of the company and were incharge and responsible for running of the company, will be liable to face all the offence committed prior to the commencement of the Corporate Insolvency Resolution Process. There is no escape for those persons from criminal liability even though the corporate debtor is given a clean slate and is handed over to the new Management.

10. Useful reference can also be made to the judgement of **the Calcutta High Court in [Tantia Constructions Limited Vs. Krishna Hi-Tech Infrastructure P Ltd] in CRP No. 172 of 2022.** The relevant portions in the order are extracted hereunder :-

4. For the **application of Section 32A of IBC, 2016** and in light of the present matter, it is pertinent to determine the following two issues, i.e.,

i. Whether the offence as complained in the impugned criminal proceedings has been alleged to be committed before the initiation of corporate insolvency resolution process or during such process?

ii. Whether the resolution plan has resulted in change in the management or corporate debtor in consonance with the provisions of Section 32A(1) of IBC, 2016?

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

5. With respect to Issue No. 1, it is pertinent to note that the corporate insolvency resolution process as against the Petitioner/Corporate Debtor was initiated on 13.03.2019 when the application was accepted and the Order of Moratorium under Section 14 of the IBC, 2016 was imposed by NCLT, Kolkata in the aforementioned case. The complaint that commenced the impugned criminal proceedings was filed on 22.07.2019 before the concerned court by the opposite party. Whereby, said alleged offence so complained, took place before or during the corporate insolvency resolution process and is covered under the ambit of Section 32A of IBC, 2016.

6. With respect to Issue No. 2, it is observed that the petitioner has not made specific submission in this regard. However, it is the submission of the opposite party that the **impugned complaint case does not concern itself with the new directors that were appointed after takeover by the Resolution Applicant in line with the Resolution Plan so approved by NCLT dated 24.02.2022. It is their submission that they are primarily aggrieved by the actions of petitioner when it was in control of erstwhile Directors.**

11. The above judgement clearly lays down the law on the subject. The moment the Corporate Insolvency Resolution Process is initiated against the corporate debtor and the application is accepted by the NCLT, the moratorium comes into operation. **Once the resolution plan is accepted by the NCLT and orders are passed and the Corporate debtor gets into hands of the new management, all the past liabilities including the criminal liability of the Corporate debtor gets wiped off and the new Management takes over the company with clean slate.**

(Emphasis Added)

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

73. Very recently, the Hon'ble Madras High Court in *M/s. Vasan Healthcare Pvt Ltd v. M/s. India Infoline Finance Ltd*, Crl O.P. No. 1772 of 2024, reported in (2024) ibclaw.in 700 HC, (hereinafter referred to as '*Vasan Healthcare Pvt. Ltd. II*') has observed that:

*"13. As a result of the above discussion and the law laid in **Ajay Kumar Radheshyam Goenka** case, it is clear that the corporate debtor cannot be prosecuted for the prior liability after the approval of the Resolution Plan. At the same time, it is to be bear in mind **the protection under Section 32-A of Insolvency & Bankruptcy Code, 2016 is restricted only to the Corporate debtor and not to its Directors who were in-charge of the affairs of the Company when the offence committed** or the signatory of the cheque."*

(Emphasis Added)

Conclusion:

74. As far as the question of granting time to comply with the statutory obligations or seeking approvals from authorities is concerned, the Resolution Applicant is directed to do so within one year from the date of this order, as prescribed under section 31(4) of the I&B Code.

75. In case of non-compliance with this order or withdrawal of the Resolution Plan, the payments already made by the Resolution Applicant shall be liable for forfeiture.



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

76. In so far as the approval of the Resolution Plan submitted on 23.08.2024, along with its Amendments dated 21.11.2024 and 26.11.2024 submitted by Mangalam Multiplex Private Limited (Successful Resolution Applicant), is concerned, this Adjudicating Authority is bound by the judgement of the Hon'ble Supreme Court of India in **K. Sashidhar vs. Indian Overseas Bank and Ors.** reported in (2019) 12 SCC 150: MANU/SC/0189/2019, wherein it is held that:

“35. [...] Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides: (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. [...]. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan Under Section 30(4) of the I & B Code.”

(Emphasis Added)



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

77. Further, the Hon'ble Apex Court in ***Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors.*** reported in (2022) 1 SCC 401: MANU/SC/0206/2021 at Para 216, has laid down that:

“The Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 30(2) and 31 of the Code. In the adjudicatory process concerning a resolution plan under IBC, there is no scope for interference with the commercial aspects of the decision of the CoC; and there is no scope for substituting any commercial term of the resolution plan approved by Committee of Creditors.”

(Emphasis Added)

78. Further, in ***Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta*** reported at (2020) 8 SCC 531: MANU/SC/1577/2019, the Hon'ble Apex Court has propounded that:

“38. This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the Committee of Creditors which operates to approve what is deemed by a majority of such creditors to be the best resolution plan, which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants.”

(Emphasis Added)

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

79. In the case at hand, we would note that **the Resolution Plan submitted on 23.08.2024, along with its Amendments dated 21.11.2024 and 26.11.2024** submitted by **Mangalam Multiplex Private Limited (Successful Resolution Applicant)**, has been approved by the Committee of Creditors of the Corporate Debtor by 100% voting share.

80. We have further noted that the Letter of Intent was issued on 04.12.2024, which has been unconditionally accepted by the SRA. Accordingly, **Mangalam Multiplex Private Limited** has unanimously declared as a **“Successful Resolution Applicant”**. Hence, given the aforesaid decisions of the Hon’ble Apex Court as well as in light of the overall facts and circumstances of the present case, this Adjudicating Authority has not interfered with the viability of the Commercial Wisdom as exercised by the Committee of Creditors of the Corporate Debtor.

81. In the light of the enumerations and observations made in this Order supra, we hereby APPROVE and FINALLY SANCTION **the Resolution Plan submitted on 23.08.2024, along with its Amendments dated 21.11.2024 and 26.11.2024** submitted by **Mangalam Multiplex Private Limited (Successful Resolution Applicant)**.

82. The Resolution Plan shall form part of this Order and shall be read along with this order for implementation. The Resolution Plan thus approved shall be binding on the Corporate Debtor and all other stakeholders involved in terms of Section 31 of

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

the I&B Code, so that the revival of the Corporate Debtor Company shall come into force with immediate effect without any delay.

83. The Moratorium imposed under section 14 of the Code by virtue of the order initiating the CIR Process, shall cease to have effect from the date of this order.

84. The Resolution Professional shall submit the records collected during the commencement of the proceedings to the Insolvency & Bankruptcy Board of India for their record and also return them to the Resolution Applicant or New Promoters.

85. Liberty is hereby granted for moving any application, if required, in connection with the successful implementation of this Resolution Plan.

86. A copy of this Order is to be submitted to the Registrar of Companies (RoC) to whom the company is registered, by the Resolution Professional.

87. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order.

88. The Resolution Professional is further directed to hand over all records, premises/ factories/ documents to the Resolution Applicant to finalise the further line of action required for starting the operation. The Resolution Applicant shall have access to all the records/ premises/ factories/ documents through the Resolution



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024

And

I.A. (IB) (Plan) No. 21/KB/2024

In

Company Petition (IB) No. 26/KB/2023

Professional to finalise the further line of action required for starting the operation.

89. The **Registry of this Adjudicating Authority** is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsels for information and for taking necessary steps.

90. In terms of the view above, the interlocutory application being **I.A. (IB) (Plan) No. 21/KB/2024** along with the main company petition being **Company Petition (IB) No. 26/KB/2023** shall stand **disposed of** accordingly.

TO SUMMARIZE

91. **I.A. (IB) No. 2409/KB/2024** is dismissed.

92. The Resolution Plan Application being **I.A. (IB) (Plan) No. 21/KB/2024** is **allowed** and **disposed of**.

93. **Company Petition (IB) No. 26/KB/2023** shall stand **disposed of** accordingly.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

I.A. (IB) No. 2409/KB/2024
And
I.A. (IB) (Plan) No. 21/KB/2024
In
Company Petition (IB) No. 26/KB/2023

94. Certified copy of the orders, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Common Order is signed on 06th Day of January 2024.

Bose, R. K. [LRA]