



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

**CORAM: SHRI DEEP CHANDRA JOSHI,**  
**HON'BLE JUDICIAL MEMBER**

**SHRI PRASANTA KUMAR MOHANTY**  
**HON'BLE TECHNICAL MEMBER**

**IA No. 100/JPR/2020**  
**& CP No. (IB)- 44/9/JPR/2019**

**IN THE MATTER OF:**

**M/S RAJPUTANA CONSTRUCTIONS PRIVATE LIMITED**  
**...Operational Creditor/Applicant**

**VERSUS**

**RAJASTHAN LAND HOLDINGS LIMITED**  
**...Corporate Debtor/Respondent**

**MEMO OF PARTIES**

**CP No. (IB)- 44/9/JPR/2019:**

**M/S RAJPUTANA CONSTRUCTIONS PRIVATE LIMITED**  
R/o 13, Parivahan Marg, Civil  
Lines, Jaipur, Rajasthan- 302006  
**...Operational Creditor/Applicant**

**VERSUS**

**M/S RAJASTHAN LAND HOLDINGS LIMITED**  
R/o 1<sup>st</sup> Floor, LIC Jeevan Nidhi  
Building, Ambedkar Circle,  
Bhawani Singh Marg, Jaipur,  
Rajasthan- 302005  
**...Corporate Debtor/Respondent**

**AND**



**IA No. 100/JPR/2020:**

**IL&FS TRANSPORTATION NETWORKS LIMITED**

R/o The IL&FS Financial Centre,  
Plot C-22, G Block, Bandra Kurla  
Complex, Bandra East, Mumbai-  
400051

**...Applicant**

**VERSUS**

**ANURADHA GUPTA, RP  
(RAJASTHAN LAND HOLDINGS LIMITED)**

R/o E-194, Ambabari, Vidhyadhar  
Nagar, Jaipur, Rajasthan- 302039

**...Respondent**

<b>For the Operational Creditor</b>	:	Prashant Agarwal, CA Ravindra Tambi, Present in person S Bhandari, CA
<b>For the Applicant</b>	:	Sandeep Taneja, Adv. Vaibhav Bhure, Adv.
<b>For the Resolution Professional</b>	:	Anuradha Gupa, RP in person Prakul Khurana, Adv. Ankit Sareen, Adv.
<b>For the CD/Respondent</b>	:	Milind Kasodekar, CS Shantanu Shetty, Adv. Krishna Ghag, Present in person Samit Bishnoi, Adv.

**Order Pronounced On: - 20.04.2023**

**ORDER**

**Per: Shri Prasanta Kumar Mohanty, Technical Member**

1. The main petition bearing *CP No. (IB)- 44/9/JPR/2019* was filed by *M/s Rajputana Constructions Pvt. Ltd* ('Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code (IBC), 2016 seeking



Corporate Insolvency Resolution Process ('CIRP') of M/s Rajasthan Land Holdings Ltd. ('Corporate Debtor') for default in payment of Rs. 23,97,086/- (Twenty-Three Lakhs Ninety-Seven Thousand and Eighty-Six Only). This Adjudicating Authority vide order dated 24.09.2019 admitted the CIRP of the Corporate Debtor and appointed proposed professional Ms. Anuradha Gupta as the Insolvency Resolution Professional ('IRP'). The IRP was appointed as the RP in the first meeting of the Committee of Creditors ('CoC').

2. The RP filed progress report with respect to the CIRP of the Corporate Debtor and along with the below mentioned indicating the progress and details of meetings undertaken during the CIRP of the Corporate Debtor:
  - 2.1. Progress Report filed vide Diary No. 2414/2019 dated 17.10.2019.
  - 2.2. Minutes of the 1<sup>st</sup> Meeting of CoC held on 24.10.2019 filed vide 2566/2019 dated 01.11.2019.
  - 2.3. Minutes and result of voting of the 2<sup>nd</sup> meeting held on 22.11.2019 filed vide Diary No. 2876/2019 dated 06.12.2019.
  - 2.4. Report by RP regarding constitution of CoC consisting of the Operational Creditors i.e. M/s Rajputana Constructions Pvt Ltd., M/s Hi Line Buildcon (India) Pvt Ltd. and S. Bhandari & Co. was filed vide Diary No. 176/2020 dated 27.01.2020.
  - 2.5. Minutes and result of voting in 3<sup>rd</sup> meeting held on 06.01.2020 filed vide Diary No. 179/2020.



- 2.6. Progress report filed vide Diary No. 677/2020 dated 11.08.2020.
- 2.7. Minutes of the 4<sup>th</sup> meeting of CoC held on 20.03.2020 filed vide Diary No. 680/2020 dated 11.08.2020.
- 2.8. Minutes of the 5<sup>th</sup> meeting of CoC held on 03.07.2020 filed vide Diary No. 680/2020 dated 11.08.2020.
- 2.9. Progress Report was filed through *IA No.130/JPR/2021* vide Diary No. 1079/2021 dated 04.05.2021; which was taken on record vide order dated 11.11.2021.
- 2.10. Progress Report was filed through *IA No.(IBC)273/JPR/2021* vide Diary No. 1761/2021 dated 03.09.2021 and was taken on record vide order dated 11.11.2021.
- 2.11. Progress Report filed by RP vide Diary No. 2791/2021 dated 20.12.2021 numbered as *IA(IBC)No.422/JPR/2021*; taken on record vide order dated 05.08.2022.
- 2.12. Minutes of the 6<sup>th</sup> meeting of CoC held on 23.01.2023 and 25.01.2023 was filed before this Authority vide *IA(IBC) No. 79/JPR/2023*.
- 2.13. Progress Report was filed by the RP bearing *IA(IBC)No.460/JPR/2022* vide Diary No. 2834/2022 dated 22.09.2022 stating the expenses undertaken as Legal Fees, Statutory Auditors fees, among others.



- 2.14. Minutes of the 7<sup>th</sup> meeting of CoC held on 01.02.2023 were filed through application bearing number *IA(IBC)No.80/JPR/2023* vide Dairy No. 311/2023 dated 06.02.2023. Certain Additional Documents were also brought on record by the RP vide Dairy No. 520/2023 dated 24.02.2023.
- 2.15. The RP has filed another report vide Dairy No. 521/2023 dated 24.02.2023 justifying the remuneration along with the work undertaken by her during the CIRP of the Corporate Debtor.
3. The RP had preferred an Application bearing *IA No. 42/JPR/2020* seeking extension in time limit for completion of CIRP of the Corporate Debtor for 90 days which was disposed off vide Order dated 30.01.2020. Subsequent to the above application, another application bearing *IA No.129/JPR/2021* was filed seeking exclusion of various timelines; the said IA was disposed off vide order dated 11.11.2021.
4. The Application bearing *IA No. 38/JPR/2020* was filed under Section 19 seeking directions to the personnel of the Corporate Debtor to provide the requisite information to the RP in helping him discharge his duties as the RP of the Corporate Debtor; filed vide Dairy No. 101/2020 dated 28.01.2020. The RP preferred another application bearing *IA No. 359/JPR/2020* seeking declaration of the resignation of Mr. Krishna Dhondhu Ghar as the Director of the Corporate Debtor being *non-est* in law. The *IA No. 359/JPR/2020* was preferred in the application pending



under Section 19 i.e. *IA No. 38/JPR/2020*. Mr. Manish Kumar Agarwal, Mr. Prashant Agarwal and Mr. Krishna Dhondhu Ghar were arrayed as party respondent in the said IAs. Mr. Manish Kumar Agarwal filed his reply in the said matter mentioning that he had resigned as the Director of CD via Resignation Letter dated 23.01.2019; hence he does not have any role to play in the day-to-day affairs and management of the Corporate Debtor. Mr. Krishna Dhondhu Ghar filed his reply contending that relevant documents were provided to the RP and he has resigned as Non-Executive Director of the Corporate Debtor on 18.11.2019.

5. The IL&FS Transportation Networks Limited ('ITNL') preferred an application bearing *IA No. 100/JPR/2020* vide Diary No. 446/2020 dated 02.03.2020 seeking admission of claim for the amount set out in Form-C and grant of voting rights in the Committee of Creditors ('CoC'). Certain facts as mentioned in the IA are reiterated below for reference:

- 5.1. The Corporate Debtor was incorporated on 08.05.2000, which was then a wholly owned subsidiary of M/s Road Infrastructure Development Company of Rajasthan Ltd. ('RIDCOR'). RIDCOR is a joint venture between IL&FS and the Government of Rajasthan.

- 5.2. On 31.03.2016, ITNL took over the entire shareholding of RIDCOR in the Corporate Debtor at Rs. 12.50 per equity share.

- 5.3. On 30.06.2017, ITNL entered into a share purchase agreement with Pario Developers Pvt. Ltd. ('Pario') for the sale of its entire equity



shareholding in the Corporate Debtor. Hence, the Corporate Debtor ceased to be a subsidiary of the ITNL from June, 2017.

- 5.4. On 30.06.2017, ITNL entered into a share purchase agreement with the shareholder of Pario for transfer of 33% equity shares in Pario in favour of ITNL.
- 5.5. ITNL submitted that with regard to Board of Directors of the Corporate Debtor, Mr. Krishna Ghag, CS and VP of ITNL, was on the Board of the Corporate Debtor as a Nominee Director.
- 5.6. ITNL submits that since the Corporate Debtor has ceased to be a subsidiary with effect from June 2017, there is no subsidiary- holding company relationship between ITNL and the Corporate Debtor. Moreover, ITNL's shareholding of Pario does not make it a related party to the Corporate Debtor.
6. The RP preferred reply to the application *IA No. 100/JPR/2020* submitting that ITNL is clearly a related party of the Corporate Debtor. ITNL filed Rejoinder reiterating that the action of the RP in declaring the Applicant as related party is unjust and in contravention to the provisions of the Code. Moreover, written submission have also been preferred by the parties to the application. Thereafter, an application bearing *IA No. 374/JPR/2021* was preferred in by ITNL seeking to pass appropriate orders in *IA No.100/JPR/2020*. The said *IA No. 100/JPR/2020* was disposed off vide order dated 16.03.2021.



7. The RP filed an application bearing *IA No. 131/JPR/2021* vide Diary No. 1080/2021 dated 04.05.2021 seeking appropriate directions/clarification in view of letter dated 24.04.2021 issued by Hon'ble Justice D.K. Jain (Retd.). This Authority had vide Order dated 11.11.2021 directed the RP to file valuation reports which was complied with by the RP vide Affidavit filed on 02.12.2021 having Diary No. 2574/2021. The Provisional Balance Sheet for the period 01.04.2019 to 31.08.2019 annexed with affidavit filed in *IA No. 131/JPR/2021* shows that there is an amount of Rs. 3,68,22,145.11/- (Rupees Three Crores Sixty-Eight Lakhs Twenty-Two Thousand One Hundred and Forty-Five and Eleven Rupees) in the Bank Accounts of the Corporate Debtor.
8. An application under Section 66 & 67 of the Code was preferred by the RP bearing *IA No. 197/JPR/2021* vide Diary No. 1431/2021 dated 26.07.2021. The RP in the said application had sought to declare the transaction involving receipt of INR 52 Crores from ITNL and provision of loan of the same amount to the Respondent No. 2 namely *Kaleidoscope Developers Private Limited* as being fraudulent under Section 66 and to declare that Respondent No. 4 to Respondent No. 9 were knowingly parties to the carrying on of the business of the Corporate Debtor in fraudulent manner. An affidavit in compliance to the order dated 11.11.2021 was filed justifying the increment of remuneration of the RP along with details of



work undergoing during the CIRP of the Corporate Debtor. The captioned Respondents in said Application have preferred the following reply:

- 8.1. The Respondent No. 1, namely, ITNL filed its reply contending that the RP has blindly relied on the audit report dated 19.03.2021 prepared by *Rajvanshi and Associate Chartered Accountants*. Certain excerpts from the said report were reproduced stating that the auditor has gone beyond and not acted as independent auditor but a mere mouthpiece of the RP.
- 8.2. The Respondent No. 2 namely *Kaleidoscope Developers Private Limited* in its reply has stated that they received an amount of Rs. 52 Crores from Corporate Debtor as facilities in the year 2017 and by virtue of the order of demerger passed by NCLT Mumbai Bench, the loan was vested in demerged company namely *Kaleidoscope Island Estates Pvt Ltd* along with other assets and liabilities including loan given to Respondent No. 3 namely *M/s Ocean Infrastructure Pvt Ltd*.
- 8.3. The Respondent No. 4, namely, *Ms. Shaivali Rajeev Parekh* submitted she was a director in the Corporate Debtor from 17.09.2013 till 06.09.2018 and reiterated that the report of the auditors have been blinded relied upon by the RP.
- 8.4. The Respondent No. 5 namely, *Ram Narayan Walase* has filed his reply to the captioned IA stating that he had tendered his resignation from the employment with ITNL on 17.12.2016; prior to the date of



impugned transaction i.e. 07.01.2017 and also preferred an application seeking inspection of certain material documents from the RP.

- 8.5. The Respondent No. 6 namely *Mr. Gautam Lath* submitted that he was only involved in land related matters of the Corporate Debtor and not in financial decisions; hence he was not a signatory to the term loan for Rs. 50 Crores. The Respondent was employed with IL&FS Township & Urban Assets Limited and having expertise in project development, he was appointed as director of CD for overseeing the land related matters.
- 8.6. The Respondent No. 9, namely, *Mr. Krishna Dhondhu Ghag* filed his reply stating that Respondent No. 9 was admittedly appointed as Non-Executive Director of the Corporate Debtor on 05.05.2017 after the alleged transaction took place on 07.01.2017. Since Respondent was not a director of the Corporate Debtor at the relevant time, he is not a necessary party to the said IA.
- 8.7. The RP pursuant to the reply of Respondent No. 2, moved an Application bearing *IA No. 180/JPR/2022* seeking impleadment of *M/s Kaleidoscope Island Estates Pvt Ltd* in the captioned application moved under Section 66 & 67 of the Code.
9. The RP filed an application bearing *IA(IBC) No. 23/JPR/2022* vide Diary No. 158/2022 dated 19.01.2022 seeking necessary directions w.r.t



appointment of Board in the Wholly Owned Subsidiary Companies of the Corporate Debtor namely, *M/s Chirayu Kath Real Estate Pvt Ltd* and *M/s Devika Buildestate Pvt Ltd*.

10. Later an *IA No. 500/JPR/2022* was filed vide Diary No. 3048/2022 dated 14.10.2022 seeking necessary directions from this Authority w.r.t change of registered office of Corporate Debtor and Appointment of Statutory Auditors.
11. It is important to note that an additional affidavit was filed by ITNL vide Diary No. 3475/2022 dated 25.11.2022 pursuant to the order dated 29.08.2022, wherein *IA No. 100/JPR/2020* was restored. It has been submitted that ITNL is a subsidiary of *IL&FS (Infrastructure Leasing and Financial Services)*. *IL&FS* along with one of its group companies namely *IL&FS Financial Services Limited* holds around 73% shareholding in ITNL and ITNL cannot be categorised as a related party as its directorship is independent of the Holding Companies.
12. Additionally, the RP has filed an Affidavit vide Diary No. 316/2023 dated 06.02.2023 with regard to the expenses incurred during the CIRP of the Corporate Debtor which is as follows:

<b>S. No.</b>	<b><i>Nature of Expenses</i></b>	<b><i>Amount</i></b>
1.	Public Announcement consisting of publication of Form-A and publishing / re-publishing of Form- G	53,966.00
2.	Remuneration of Interim Resolution Professional /	41,13,334.00



	Resolution Professional for the period starting from 24.09.2019 to 31.01.2023 (duly approved and ratified in various meetings of CoC)																																		
3.	Remuneration of legal and other professionals, such as:																																		
	<table border="1"> <tr> <td>1.</td> <td>Mr. Atul Kumar Anoop Kumar, Registered Valuer for Land &amp; Building</td> <td>42,500.00</td> </tr> <tr> <td>2.</td> <td>Mr. Vipin Kumar, Registered Valuer for Land &amp; Building</td> <td>35,000.00</td> </tr> <tr> <td>3.</td> <td>Mr. Navin Khandelwal, Registered Valuer for Securities &amp; Financial Assets</td> <td>11,800.00</td> </tr> <tr> <td>4.</td> <td>Mr. Sumit Dhadda, Registered Valuer for Securities &amp; Financial Assets</td> <td>35,400.00</td> </tr> <tr> <td>5.</td> <td>Mr. Deepak Bansal, Registered Valuer for Land &amp; Building (Land &amp; Building of Subsidiary Companies)</td> <td>85,000.00</td> </tr> <tr> <td>6.</td> <td>Rajvanshi &amp; Associates, Transaction Auditor</td> <td>1,23,900.00</td> </tr> <tr> <td>7.</td> <td>S Bhandari &amp; Company for reply to Income Tax Notices</td> <td>2,12,400.00</td> </tr> <tr> <td>8.</td> <td>Mr. Jay Akar for handling GST Compliances and TDS Compliances</td> <td>2,00,000.00</td> </tr> <tr> <td>9.</td> <td>MCA Work</td> <td>1,350.00</td> </tr> <tr> <td>10.</td> <td>ChirAmrit Legal LLP, Legal Counsel to represent the Corporate Debtor and IRP/RP, as the case may be</td> <td>14,46,000.00</td> </tr> <tr> <td>11.</td> <td>NLA Associates for preparing IndAS Financial statements</td> <td>2,25,000.00</td> </tr> </table>	1.	Mr. Atul Kumar Anoop Kumar, Registered Valuer for Land & Building	42,500.00	2.	Mr. Vipin Kumar, Registered Valuer for Land & Building	35,000.00	3.	Mr. Navin Khandelwal, Registered Valuer for Securities & Financial Assets	11,800.00	4.	Mr. Sumit Dhadda, Registered Valuer for Securities & Financial Assets	35,400.00	5.	Mr. Deepak Bansal, Registered Valuer for Land & Building (Land & Building of Subsidiary Companies)	85,000.00	6.	Rajvanshi & Associates, Transaction Auditor	1,23,900.00	7.	S Bhandari & Company for reply to Income Tax Notices	2,12,400.00	8.	Mr. Jay Akar for handling GST Compliances and TDS Compliances	2,00,000.00	9.	MCA Work	1,350.00	10.	ChirAmrit Legal LLP, Legal Counsel to represent the Corporate Debtor and IRP/RP, as the case may be	14,46,000.00	11.	NLA Associates for preparing IndAS Financial statements	2,25,000.00	
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6	Reverse charge & GST & int. on TDS	3,27,797.00																																	
7.	Other miscellaneous expenses (Bank Charges, MCA fee, NCLT fee, E-Voting, Printing and Stationery, Travelling Expenses and other out of pocket expenses)	4,18,063.00																																	
	<b>Total Expenses incurred till the date of this Affidavit</b>	<b>73,31,510.00</b>																																	



13. We have heard the arguments advanced by the parties to the case and perused the documents presented.
14. Before we delve into the matter at hand, it is important to consider the circumstances which were being faced by the ITNL at the time of filing the application *IA No. 100/JPR/2020*. On 01.10.2018, the Union of India ('UOI') filed a Petition (CP/3638/2018) under Section 241 and 242 of Companies Act against IL&FS seeking direction that the existing Board of Directors of the Company be suspended and 10 other persons nominated by the Union be appointed as Directors to manage the affairs of the Company. The Union also sought that the Board of Directors thereby appointed be authorised to replace directors of subsidiaries, joint ventures and associate companies as necessary to make the Company and its group companies a going concern. The Hon'ble NCLT Mumbai Bench vide order dated 01.10.2018, directed the suspension and appointed the six(6) directors as nominated by UOI to take over the Company. New Directors were appointed in the Company of the ITNL as well. The Hon'ble NCLAT vide order dated 04.02.2019, allowed the UOI and IL&FS to engage Hon'ble Justice (Retd.) D.K. Jain to supervise the operation of the Resolution Process of IL&FS and its group companies.
15. In the present case, the CIRP of the Corporate Debtor was initiated vide Order dated 24.09.2019. The RP submits that on 25.09.2019 claims were invited by means of public announcement from the Creditors with the last



date as 08.10.2019. The CoC was constituted with only Operational Creditors. Later the RP issued *Form-G Invitation for Expression of Interest* on 30.11.2019 with the last date of receipt as 20.12.2019; only one EOI was received by the proposed Resolution Applicant. The CoC was reconstituted after admission of claims of *M/s S. Bhandari & Co* as operational creditor and *M/s IL&FS Transportation Networks Limited (ITNL)* as Financial Creditor. In the 3<sup>rd</sup> meeting of CoC it was decided that Form-G will be re-issued for better resolution of the Corporate Debtor. Meanwhile two applications bearing *IA No. 42/JPR/2020* and *IA No. 38/JPR/2020* seeking extension of CIRP time period and seeking directions under Section 19 of the Code respectively were preferred. On 24.02.2020, the claim amount of ITNL as Financial Creditor was admitted; but on account of being related party to the Corporate Debtor, the Financial Creditor was denied admittance to the CoC.

16. Consequently ITNL preferred *IA No. 100/JPR/2020*. The revised Form G was published on 04.07.2020 for which last date of receipt was 19.07.2020. This authority vide order dated 05.08.2020 had directed the RP not to proceed with the CIRP of the CD. Subsequently, this Authority ordered that the Resolution process be undertaken under the guidance/instructions of Hon'ble Justice (Retd.) DK Jain vide order dated 16.03.2021; thereby disposing the *IA No. 100/JPR/2020*. The letter preferred by Hon'ble Justice (Retd.) D K Jain dated 24.09.2019 observed



that CD has no link with the overall resolution process of IL&FS Group Entities and sought his recusal from the matter.

17. We have discussed all the Interlocutory Applications preferred in the main petition above to ensure clarity in the following order. The Application filed by ITNL i.e. *IA No. 100/JPR/2020* seeking voting right in the CoC was restored on 29.08.2022. With respect to the shareholding of ITNL in the Corporate Debtor, it is grasped that at first the Corporate Debtor was a wholly owned subsidiary of the RIDCOR, a Joint venture between IL&FS and Government of Rajasthan. ITNL bought the shareholding of the Corporate Debtor from RIDCOR in the year 2016 and in the year 2017, the same was transferred to Pario.
18. Further, during the proceedings, it came to the notice that a substantial amount of Rs. 7 Crores approximately is lying in the account of the Corporate Debtor. The three OCs namely, *M/s Rajputana Constructions Pvt. Ltd.*, *M/s Hi-Line Buildcon Pvt. Ltd.*, and *M/s S. Bhandari & Co.*, which are members of the CoC have a claim of Rs. 23,97,086/-, Rs. 2,20,876/- and Rs. 59,000/- amounting to a total of Rs. 26,76,962/-. This Authority vide order dated 16.01.2023 and 24.01.2023 directed the RP to convene a meeting of CoC in which all members of CoC along with the ITNL will be present and if the claim of the Operational Creditors is settled, then ITNL can withdraw its claim. There was no reason for the CIRP when huge amount was available with in the account of the



Corporate Debtor. At this stage, it is clear that the object of IBC is being flouted and frivolous IAs for delay in the CIRP are being preferred.

19. It is gathered from the minutes of the 6<sup>th</sup> meeting of the CoC conducted on 25.01.2023, the proposal from ITNL was placed forth which reads as below:

*1) ITNL has given its settlement proposal in view of the order of the Hon'ble NCLT dated 08.12.2022. The settlement proposal is as follows:*

*ITNL has no objection if the three Operational Creditors may be paid full claim amount as admitted by RP from the amount lying in the account of the Corporate Debtor. The said claim amount of three Operational Creditors, as admitted by RP, are as follows:*

*Rajputana Constructions Pvt. Ltd.- Rs. 23,97,086/-*

*Hi-Line Buildcon Pvt.Ltd.- Rs. 2,20,876/-*

*S. Bhandari & Co.- Rs. 59,000/-*

*ii. ITNL is a Financial Creditor of the Corporate Debtor and its claim is of Rs. 181,34,62,096/- admitted by RP. ITNL would withdraw its claim upon payments to three Operational Creditors as mentioned above from the present CIRP of the Corporate Debtor without prejudice to its rights and contentions and with liberty to pursue the same against RLHL i.e. Corporate Debtor before appropriate civil forum.*

*iii. Needless to say, in view of above all pending IAs be disposed of as withdrawn.*

*2) The above settlement proposal be placed before Hon'ble NCLT. The concerned parties i.e. ITNL being Finance Creditor, all three Operational Creditors and RP shall cooperate with each other to give effect to the above settlement proposal by completing legal formalities, if any, in that regard.*

*3) We, behalf of ITNL, solicit your concurrence/agreement on the same and if there are any views/concerns, the same can be discussed further.”*



20. In the 7<sup>th</sup> meeting of the CoC, the aforesaid proposal was put before the committee for consideration. The Operational Creditor namely M/s *Rajputana Constructions Pvt Ltd* refrained to accept the offer of ITNL on showing some irrelevant grounds for its rejection.
21. It has been time and again held in various judgments that the primary focus of IBC is to ensure revival and continuance of the Corporate Debtor. The Code is a beneficial legislation which aims to put the Corporate Debtor back on its feet and not a mere recovery legislation. The Hon'ble Supreme Court in the matter of *E.S. Krishnamurthy v. Bharath Hi-Tech Builders (P) Ltd.*, (2022) 3 SCC 161 has held the following:
- “35. Undoubtedly, settlements have to be encouraged because the ultimate purpose of IBC is to facilitate the continuance and rehabilitation of a corporate debtor, as distinct from allowing it to go into liquidation. As the Statement of Objects and Reasons accompanying the introduction of the Bill indicates, the objective of IBC is to facilitate insolvency resolution “in a time-bound manner” for maximisation of the value of assets, promotion of entrepreneurship, ensuring the availability of credit and balancing the interest of all stakeholders. ... ..”*
22. As per the responsibilities of the RP enumerated in the Code, the RP is supposed to run the company as a prudent business person preserving all round interests. It appears as if the Corporate Debtor is being treated by the RP as a company which is sick while there is sufficient capital/ liquidity in the Corporate Debtor to meet its debts. It seems as if the RP has continued the CIRP of the Corporate Debtor just to ensure higher billing even though the matter had remained stayed from 05.08.2020 to 16.03.2021.



23. We cannot fathom any reason why the RP has gone forward with the CIRP of the Corporate Debtor when the Company had cash of Rs. 3,68,22,145.11/- on the CIRP admission date and is able to settle the Operational Debt raised by the Operational Creditors which is amounting to a total of Rs. 25 Lakhs approx. The RP has mentioned the CIRP cost of Rs. 73,31,510/- out of which the RP fees is Rs 41,13,334/- and the Legal fees is Rs. 16.71 Lacs, when the claim of the OCs was only Rs. 26,76,962/-. There appears no reasonable explanation with respect to the conduct of the RP of conducting a CIRP which costed three times the debt which is due by the Corporate Debtor. The RP is an officer of the court and ought to have informed this Adjudicating Authority that there is no need for conducting the CIRP of the Corporate Debtor as the Corporate Debtor has availability of funds to settle its dues against the Operational Creditors.
24. An amount of Rs. 7.00 Crores plus is lying in the Bank account of the Corporate Debtor against total claim of approx. Rs. 26 Lacs. It was also brought to the notice during the hearings that the RP is debiting the account of the CD towards the fees of the RP, Legal fees etc and the three OCs as members of the CoC are not reimbursing the CIRP cost.
25. We find no reason why the Operational Creditors have not claimed their dues. It is a clear case of some hidden motives and misuse of IBC and apparently gives rise to the suspicion of understanding among certain



parties to continue the CIRP for some oblique purpose and till the amount lying in the account of the CD is exhausted as the CoC is not bearing the CIRP expenses.

26. It is apposite to refer to Rule 11 of NCLT Rules, 2016 in the present matter.

*“11. Inherent Powers.- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.”*

27. The aforesaid rule may also be read in context of Section 60 of the Code, the relevant portion of which reads as under:

***“60. Adjudicating Authority for corporate persons***

*(1) ... ..*

*(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of –*

- (a) any application or proceeding by or against the corporate debtor or corporate person;*
- (b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and*
- (c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.”*

28. Section 60(5) gives power to this forum to exercise residuary jurisdiction in matters pertaining to the CIRP of the Corporate Debtor. Moreover, the Hon’ble Supreme Court in the matter of *Vallal RCK v. Siva Industries & Holdings Ltd.*, (2022) 9 SCC 803 has while relying on the judgment of *Swiss Ribbons (P) Ltd. Vs. Union of India*; (2019) 4 SCC 17 observed the following:



“20. It could thus be seen that this Court has found that if the CoC arbitrarily rejects a just settlement and/or withdrawal claim, the learned NCLT and thereafter the learned NCLAT can always set aside such decision under the provisions of IBC.

...  
24. When 90% and more of the creditors, in their wisdom after due deliberations, find that it will be in the interest of all the stakeholders to permit settlement and withdraw CIRP, in our view, the adjudicating authority or the appellate authority cannot sit in an appeal over the commercial wisdom of CoC. **The interference would be warranted only when the adjudicating authority or the appellate authority finds the decision of the CoC to be wholly capricious, arbitrary, irrational and dehors the provisions of the statute or the Rules.**”

(emphasis supplied)

29. The CoC members and the Operational Creditor namely, *M/s Rajputana Constructions Pvt Ltd.* holding 90% of voting share, present in court were asked to clarify the reason for not accepting their dues to be paid immediately. No satisfactory reply was received on their behalf and procedural issues with regard to the filing of the application for withdrawal of CIRP were raised. The reasons given by the Operational Creditor for not accepting the claim does not hold any practical logical ground. In the circumstances as outlined, the question of fine analysis of any question of related parties becomes redundant.
30. It is pertinent to mention that an Application was filed under Section 9 of the Code by the same Operational Creditor namely, *M/s Rajputana Constructions Pvt Ltd.* against *M/s Flamingo Landbase Pvt Ltd.*, which is a related party to this Corporate Debtor. A credit of Rs 3.29 crore was received by the Corporate Debtor herein namely, *M/s Rajasthan Land*



*Holdings Ltd.*, from the leftover amount of the Resolution Plan of *M/s Flamingo Landbase Pvt Ltd.*, on the same day, in petition numbered as *CP No.(IB)-45/9/JPR/2019* i.e. the next number of this petition and the present Operational Creditor was holding almost 100% of voting right in the CoC of *M/s Flamingo Landbase Pvt. Ltd.* with a claim amount of appx Rs 1.07 crore. In that case also the land was available and this OC has got its full amount. This fact was only revealed when the clarification during hearing was sought regarding the increase of the cash available in the CD's account during CIRP proceedings by around Rs 3.3 Crores. Now this OC here is not taking its dues here from the RP perhaps with intention to orchestrate and go for resolution, or sell the property, as per its decision since it is holding approx. 90% of voting in CoC. This intent of the OC appears to be malicious.

31. In view of the foregoing, the jurisdictional facts which gave rise to this process do not withstand and to a great extent virtually stand erased. The debt amount as claimed by the Operational Creditors is available in the bank account of the Corporate Debtor. The RP was directed to convene a meeting of CoC and ask the Operational Creditors to take the money and absolve their claim. When the meeting was called, the Operational Creditor had taken time in the name of health issues and the second meeting was held and directions were given, on that meeting also he objected to certain clarities. When we reflect on the process undertaken, it seems that CIRP



has been going on for 4 years but there is no conclusion to it; *au contraire* the RP has mentioned the CIRP cost of Rs. 73 Lakhs out of which she has already claimed an amount of Rs. 41 Lakhs as her fees, which seems excessive.

32. Even earlier, the Adjudicating Authority had capped the fees of the RP vide order dated 11.11.2021 and directed the RP to release pending dues of various third parties and fees of the RP upto 75% subject to availability of funds. It is found that there is no clarity with regard to the reason for non-imburement of CIRP cost by the CoC and the justification of RP fees during the Stay period.
33. Moreover, since the CoC has not advanced any payment towards the CIRP cost incurred by the RP considering all the aspects we find it in the interest of justice of all the stakeholders that the CIRP be terminated and it is ordered accordingly. The RP shall debit the account of the Corporate Debtor with claim admitted against the Operational Creditors. Demand Drafts shall be issued to the Operational Creditors against their admitted claims and handed over to the Operational Creditors within 7 days. If the OCs do not accept the Demand Drafts, for any reason, Demand Draft shall be cancelled and the amount be credited back to the account of the Corporate Debtor. The amount due to the OCs shall be held as amount payable to the Operational Creditors after adjustment of CIRP cost on proportionate basis.



34. The *IA No. 100/JPR/2020* filed by ITNL stands disposed of without prejudice to any claims that it may have and ITNL is at liberty to pursue appropriate remedies under applicable law.
35. In view of the termination of the CIRP of the Corporate Debtor as mentioned hereinabove, all the pending applications I.e. *IA No. 38/JPR/2020; IA No. 359/JPR/2020; IA No. 131/JPR/2021; IA No. 197/JPR/2021; IA No. 374/JPR/2021; IA No. 23/JPR/2022; IA No. 180/JPR/2022; IA No. 460/JPR/2022; IA No. 500/JPR/2022; IA No. 79/JPR/2023* and *IA No. 80/JPR/2023* filed in this matter, have become infructuous and accordingly shall stand disposed off.
36. The RP is discharged of its duties subject to the following directions:
- 36.1 Since the Corporate Debtor is dormant, there is nothing except land and the CIRP is going on from 24.09.2019, the fees of the RP is being debited to the account of the Corporate Debtor. The RP shall be paid a remuneration of Rs. 50,000/- per month up from 24.09.2019 to 19.04.2023 i.e. Rs. 21,45,000/- (Rupees Twenty-One Lakh Forty-Five Thousand Only). The RP is directed to refund the excess amount received towards its fees to the account of the Corporate Debtor within 15 days. An affidavit shall be filed within 21 days by the RP stating the amount of fees already taken and excess remuneration, if any, refunded to the Corporate Debtor.



- 36.2 The Corporate Debtor stands restored to its Management/ Shareholders and any issues (appointment of Directors, General Meetings, etc) with respect thereto maybe completed in accordance with the provisions of the Companies Act and the rules made thereunder.
- 36.3 The RP shall issue notices to the members of the CoC i.e. three Operational Creditors to pay the remaining CIRP Cost (i.e. the amount of CIRP Expenses incurred minus the amount to be refunded by the RP) proportionately to their share in the CIRP within 15 days from today. The said amount is to be credited into the CD account immediately. In case of failure to pay the CIRP Cost, the RP is at liberty to file appropriate application.
37. The CIRP expenses are to be borne by the CoC members as it is found that the amount claimed by the CoC members could have been paid off on the first day of commencement of CIRP itself and CIRP terminated, when more than Rs. 3 Crores was lying in the bank account of the Corporate Debtor against the claim admitted amounting to Rs. 26 Lakhs approximately. In addition to that the main CoC member *M/s Rajputana Constructions Pvt Ltd.* had filed another application under Section 9 against the related party of this Corporate Debtor; got it admitted; Resolution Plan approved as it was the CoC member having almost 100% voting rights; got its dues recovered and refunded the excess amount of the



Resolution Plan to this Corporate Debtor's account on being the related party. It knew very well that the funds were always available with the Corporate Debtor to satisfy its claim but still wanted to continue the CIRP with malicious motive.

38. The Registry is directed to supply copy of this Order to all the parties. Copy of this order shall also be send to the RoC and IBBI for its records.
39. Accordingly, *CP No. (IB)- 44/9/JPR/2019* is terminated and stands disposed off accordingly.

DEEP  
CHANDRA  
JOSHI

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by DEEP  
CHANDRA JOSHI  
Date: 2023.04.20  
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**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

PRASANTA  
KUMAR  
MOHANTY

Digitally signed by  
PRASANTA KUMAR  
MOHANTY  
Date: 2023.04.20  
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**PRASANTA KUMAR MOHANTY,  
TECHNICAL MEMBER**