

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT III

1. I.A. 2439/2022

I.A. 991/2022

IN

C.P.(IB)-297(MB)/2019

CORAM: SH. H. V. SUBBA RAO, MEMBER (J)

MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **12.01.2023**

NAME OF THE PARTIES: Axis Bank Ltd

V/s.

Digicable Network India Ltd

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Mr. Shamsheer Bahadur Singh, Resolution Professional along with his
counsel Mr. Karan Grover are present through virtual hearing.

I.A. 991/2022

Order pronounced in the open court vide separate order. In the result, the
above Interlocutory Application No. 991/2022 **is allowed.**

I.A. 2439/2022

Order pronounced in the open court vide separate order. In the result, the
above Interlocutory Application No. 2439/2022 **is rejected.**

Sd/-
MADHU SINHA
Member (Technical)
//SGP//

Sd/-
H. V. SUBBA RAO
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III**

**I.A. No. 991 of 2022
IN
C.P. No. 297 of 2019**

In the matter of an Application under
Section 30(6) and Section 31 of the
Insolvency and Bankruptcy Code,
2016 read with Regulation 39(4) of
the Insolvency and Bankruptcy
Board of India (Insolvency Resolution
Process for Corporate Persons)
Regulations, 2016

In the matter of

AXIS BANK LIMITED

... Financial Creditor

v/s

**DIGICABLE NETWORK (INDIA)
LIMITED**

... Corporate Debtor

I.A. No. 991/2022

**MR. SHAMSHER BAHADUR SINGH
RESOLUTION PROFESSIONAL
OF CORPORATE DEBTOR
DIGICABLE NETWORK (INDIA)
LIMITED**

...Applicant/Resolution Professional

Reserved for orders on: **02.01.2023**

Order pronounced on: **12.01.2023**

Coram:

Hon'ble Shri H. V. Subba Rao, Member (Judicial)

Hon'ble Smt. Madhu Sinha, Member (Technical)

Appearance (through video conferencing):

For the Applicant: Mr. Karan Grover, Advocate for Resolution
Professional

Per: H. V. Subba Rao, Member (Judicial)

1. This is an Application filed under Section 30(6) and Section 31 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the 'Code') filed by the Resolution Professional seeking approval of the Resolution Plan submitted by the Resolution Applicant Mr. Madhav Dhir, which was approved by 100% voting share of the members of the Committee of Creditors (hereinafter referred to as 'COC').
2. The facts leading to the Application are as under:
 - a. Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP') of the Corporate Debtor was initiated by this Bench by an order dated 04.12.2020 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code') (Admission Order) and Mr. Sunil Kumar Choudhary was appointed as the Interim Resolution Professional (hereinafter referred to as 'IRP'). Subsequently an application for correcting the name of the IRP was filed before this tribunal, thereby this Tribunal vide Order, dated 23.02.2021, appointed Mr. Anil Mehta as the Interim Resolution Professional (hereinafter referred to as 'IRP'), who was subsequently confirmed as the Resolution Professional (hereinafter referred to as 'RP') by the Committee of Creditors (hereinafter referred to as 'CoC') in its 1st Meeting held on 17.04.2021.

- b. The RP published an invitation for Expression of Interest (hereinafter referred to as 'EOI') by Prospective Resolution Applicant (hereinafter referred to as 'PRA') on 13.09.2021, for submission of Resolution Plan in respect of the Corporate Debtor. As no EOI was received, in view of queries received from Prospective EOI applicants, the RP extended the last date of submission of EOI and another Invitation for Expression of Interest was published by the RP on 29.09.2021.
- c. Pursuant to the above publications, the RP received EOI from 4 (four) PRAs, however on request of 1 (one) PRA the last date of submission of Resolution Plan was extended from 29.11.2021 to 13.12.2021.
- d. On 26.11.2021 through an Assignment Agreement Axis Bank Limited assigned its Financial Debt in favour of Alchemist Asset Reconstruction Limited which was accordingly inducted as a member of the CoC in place of Axis Bank Limited by the RP.
- e. The CoC in its 9th CoC Meeting held on 13.12.2021, resolved to replace the present Resolution Professional, Mr. Anil Mehta with Mr. Shamsher Bahadur Singh. An Interlocutory Application No. 29/2022, seeking replacement of the Resolution Professional of the Corporate Debtor was allowed on 17.01.2022. Therefore, Mr. Shamsher Bahadur Singh (hereinafter referred to as 'the Applicant') appointed as the Resolution Professional.
- f. Further, on request from 2 (two) PRAs for extending the last date of submission of the Resolution Plan, the CoC in its 11th Meeting held on 31.01.2022 resolved to grant time till 07.02.2022, for submission of the Resolution Plan.
- g. The Applicant submits the claims received and admitted by Resolution Professional as under:

Summary of Claims (Amount in Lakhs)			
Sr. No.	Class of Creditor	Amount Claimed	Amount Admitted
Secured Financial Creditors			
1	Alchemist Asset Reconstruction Company Limited	20,611.54	20,611.54
2	Reliance Commercial Financial Limited	5,379.63	5,379.63
Total Secured Financial Creditors		25,991.17	25,991.17
Unsecured Financial Creditors			
3	Stellar Interactive Media Pvt. Ltd.	55,133.13	
4	Broadband Pacenet (India) Pvt. Ltd.	9,656.07	
Total Unsecured Financial Creditors		64,789.20	
Total Financial Creditors		90,780.38	25,991.17
Operational Creditors			
5	Employees/ Workmen	977.07	
Liabilities as per Balance Sheet as at March 3, 2019			
7	Provident Fund	75.34	
8	ESI	12.07	
9	Any other – Professional Tax	0.18	
Total Operational Creditors		87.59	

**Alchemist Asset Reconstruction Company Limited has taken over the debt of Axis Bank Limited and now Secured Financial Creditors in the book of Corporate Debtor.*

- The CoC decided to appoint valuers Crest Valuation Services Private Limited and Resolute Valuers and Consultants Private Limited respectively to determine the fair value and liquidation value of the Corporate Debtor, as required under Regulation 27 of the IBBI (IRP for

Corporate Persons) Regulations, 2016. These valuers had submitted their reports. The Liquidation and Fair Value of the Corporate Debtor is as follows:

Fair Value	Liquidation Value
Rs. 334.47 Crores	Rs.246.66 Crores

4. The Applicant states that the COC in its Meeting decided that an advertisement for inviting EOI be issued. Form G inviting EOI was published on 01.06.2021. The last date for submission of expression of interest from prospective resolution applicants was 13.09.2021 which was further extended till 29.09.2021 and submission of plan was 29.11.2021, which was further extended number of times and 07.02.2022 was the final last date of submission of Resolution Plan.
5. The Applicant further states that in furtherance of the Form-G issued by applicant, he received EOIs from 2 (two) Prospective Resolution Applicants (PRAs) within the stipulated time period. Below are the names of the prospective resolution applicant:
 - a. Mr. Madhav Dhir and;
 - b. Shiva Consultants Private Limited.
6. The Applicant submits that, during the 13th Meeting of COC held on 22.03.2022 and subsequently deferred to 23.03.2022 and 24.03.2022, the proposed Resolution Plans were evaluated on the basis of the evaluation matrix. The resolution passed, and it was declared that the plan submitted by the Mr. Madhav Dhir was approved.
7. The COC in its 13th meeting held on 24.03.2022 considered the final Resolution Plan of Mr. Madhav Dhir and approved the Plan with a

voting share of 100%. Thereafter, the Applicant issued compliance certificate in Form "H" was issued by the Resolution professional.

8. The Salient Features of the Resolution Plan are as under:

- a. Mr. Madhav Dhir, (hereinafter referred to as 'Successful Resolution Applicant') (SRA), The Resolution Applicant is an individual who holds a Master's Degree in Economics and Strategy for Business from the Imperial College London and B.Sc (Hons.) Management degree from the University of Warwick. He is highly regarded strategic business development and management expert. He also owns and manages Lords Chloro Alkali Limited, a listed company operating a 250 TPD Caustic Soda plant at Alwar, Rajasthan ("LCAL"). As an Executive Director on LCAL's Board, he supervises the activities of the LCAL. The SRA also made an open offer and acquired a fund, listed on AIM segment of London Stock Exchange which has been investing in distressed assets in India since 2012. Recently, he made an open offer to consolidate 75% of the shareholding of Lordo Chloro Alkali Limited which is public company listed on BSE.
- b. The Digicable Network (India) Limited the Corporate Debtor (hereinafter referred to as 'DNIL') was incorporated on 01.06.2007 and have its registered office situated at A-wing, 602, Everest Grande Building, Opp. Ahura Centre, Mahakali Caves Road, Andheri (East), Mumbai, Maharashtra. DNIL was engaged in the business of Cable Television Services, Digital Cable Television Services and A multiple-system operator (MSO) Services.

c. **Cancellation of Existing Shareholding and Issue of fresh**

Equity Shares: Immediately after Effective Date, all the existing shares of Corporate Debtor shall stand cancelled without any payment to existing shareholders. Corporate Debtor shall issue to the Resolution Applicant such number of equity shares as may be suitable on the basis of capital structure requirement of the Corporate Debtor. In terms of the circular (ref IBC/01/2017) dated 25th October, 2017, issued by the Ministry of Corporate Affairs, India, approval of the erstwhile shareholders of the Corporate Debtor to the transaction contemplated under the instant Resolution Plan, including the transfer/extinguishment of the entire existing share capital, shall deemed to have been given without any further act and deed immediately upon sanction of the Resolution Plan by the Adjudicating Authority.

d. **Monitoring and Implementation of Resolution Plan:**

For successful implementation of Resolution Plan, a Monitoring Committee (“MC”) is being proposed by Resolution Applicant which will come into force on the date of approval of Resolution Plan, which shall have following members:

- (a) 1 (one) Insolvency Professional;
- (b) 1 (one) Representative of the Resolution Applicant and;
- (c) 1 (one) from Financial Creditors of the Corporate Debtor.

This committee shall continue the operations of the Corporate Debtor till the Effective Date when control and management of the Corporate Debtor will be handed over to the Resolution Applicant. Thereafter the Monitoring Committee will supervise the implementation of the Resolution Plan as per the provisions contained herein.

The Cost of the Monitoring Committee would be paid by the

Resolution Applicant on actual basis as may be negotiated/
settled by mutual consent.

After making of upfront payment, issuance of Equity Shares and
Zero Cost Debentures ('ZCDs'), and handing over management
and control of the Corporate Debtor, including its Assets and
Properties on the Effective Date, the Monitoring Committee shall
accordingly stand dissolved.

- e. **Effective Date (E)**: "Effective Date" means the date on which
the management and control of the Corporate Debtor, including
its Assets and Properties, is taken over by the Resolution
Applicant or 90 (ninety) days from the NCLT Approval date,
whichever is later.
- f. The Resolution Plan proposes a total Consideration of **Rs.
22,937.59/- (in Lakhs)** (Rupees Twenty Two Thousand Nine
Hundred Thirty Seven Lakhs and Fifty Nine Thousand).

9. **The details of the proposed payments are as follows:**

A) CORPORATE INSOLVENCY RESOLUTION PROCESS COSTS

- i. The CIRP Costs are Rs. 300.00/- Lakhs (Rupees Three
Hundred Lakhs only).
- ii. The Resolution Applicant proposes that CIRP Costs be
paid in full and in priority to any Claim of any other
creditor on the Effective Date.
- iii. In case the CIRP costs exceed the amount of Rs. 300.00/-
Lakhs (Rupees Three Hundred Lakhs only), then the
excess amount shall be adjusted from the resolution
amount proposed to Secured Financial Creditors on
proportionate basis to admitted claims.

- iv. If the CIRP cost is below Rs. 300.00/- Lakhs (Rupees Three Hundred Lakhs only) then excess amount shall be transferred to Secured Financial Creditors on proportionate basis to their admitted claims.

B) FINANCIAL CREDITORS

Proposal for Secured Financial Creditor

1. The aggregate claim of the Secured Financial Creditors is Rs. 25,991.17/- Lakhs (Rupees Twenty Five Thousand Nine Hundred Ninety One Lakhs and Seventeen Thousand only).
2. The Resolution Applicant proposed an upfront payment of Rs. 1,500.00/- Lakhs (Rupees Fifteen Hundred Lakhs only) to be paid to the Secured Financial Creditors on the basis of their admitted claims within a period of 90 (ninety) days from the date of Approval of the Plan.
3. The Resolution Applicant proposed a deferred payment of Rs. 6,600.00/- Lakhs (Rupees Six Thousand Six Hundred Lakhs only) to Financial Creditors on pro-rata basis in full and final settlement of their claims / dues / debt within 36 (thirty six) months from Effective Date.
4. The Resolution Applicant proposed issuance of Zero Coupon Debentures (ZCDs) within 90 (ninety) days of Approval Date, aggregating to Rs. 10,400.00/- Lakhs (Rupees Ten Thousand Four Hundred Lakhs only), on the basis of claims of Secured Financial Creditors towards of full and final settlement of all their claim/ debt/ dues against the Corporate Debtor.
5. Within 90 (ninety) days of the Approval date, the Resolution Applicant proposes that the Corporate Debtor will issue Equity Shares having Face Value of Rs. 1,500.00/- Lakhs

(Rupees One Thousand Five Hundred Lakhs only) to the Secured Financial Creditors.

6. The respective share of the Secured Financial Creditors in the Deferred Payment, issuance of Zero Coupon Debentures (ZCDs) will be as per the following payment schedule:

(in Lakhs)

Timeline of Redemption / Buyback by Resolution Applicant / Nominees	Alchemist Asset Reconstruction Company Limited ('AARC')	Reliance Commercial Finance Limited ('RCFL')	Total
Upfront – Within 90 Days of NCLT Approval Date			
Upfront Payment	1,189.53	310.47	1,500.00
Issuance of Equity Shares	1,189.53	310.47	1,500.00
Deferred Payment Installment			
Within 12 Months from Effective Date – Deferred Payment - 1	1,744.65	455.35	2,200.00
Within 24 Months from Effective Date – Deferred Payment - 2	1,744.65	455.35	2,200.00
Within 36 Months from Effective Date – Deferred Payment - 3	1,744.65	455.35	2,200.00
ZCDs Redemption / Buyback by the RA / or its nominees			
Within 48 Months from Effective Date – ZCDs Redemption/ Buyback	3,489.29	910.71	4,400.00
Within 60 Months from Effective Date – ZCDs Redemption/ Buyback	4,759.13	1,241.87	6,000.00
Total	15,860.42	4,139.58	20,000.00

*SFC shall have right to Redeem/ buyback the ZCDs before the above timeline with NPV calculated on the basis of

discount rates mentioned in the Request For Resolution Plan ('RFRP') i.e., 12% for one year, 13% for year 2 and 3, 15% for year 4 and 5 and 20% thereafter.

7. The Resolution Applicant proposes to pay to the Dissenting Financial Creditors such amounts as are prescribed under Section 30(2)(b) of the Code and in such manner as laid down under Regulation 38(1) of the CIRP Regulations. In this regard, the Secured Financial Creditors who abstains from voting, shall also be considered as Dissenting Secured Financial Creditor. The payments to be made to Dissenting Secured Financial Creditors will be made as per the payment schedule given in the Resolution Plan in preference to the payment to the assenting Financial Creditors and payment towards assenting Financial Creditors will commence only upon complete payment of Dissenting Financial Creditors.

Proposal for Unsecured Financial Creditor

1. The aggregate claim of the Secured Financial Creditors is Rs. 64,789.20/- Lakhs (Rupees Sixty Four Thousand Seven Hundred Eighty Nine Lakhs and Twenty Thousand only).
2. The Resolution Applicant states that as per the information memorandum provided by the Resolution Professional, there is no Unsecured Financial Creditor of the Corporate Debtor. However, there are two Unsecured Financial Creditors are related party of the Corporate Debtor hence their claims are not admitted by the Resolution Professional. The Resolution Applicant proposes to pay NIL amount to such Unsecured Financial Creditor the related parties of the Corporate Debtor, in full and final settlement of their claims/ debt/ dues.

C) PROPOSAL FOR OPERATIONAL CREDITOR

Provision as per Applicable Law/ IBC – The Resolution Professional shall examine each Resolution Plan received by him to confirm that each Resolution Plan provides for the payment of debts of Operational Creditors in such manner as may be specified by the Board which shall not be less than:

- The amount to be paid to such Creditors in the event of a Liquidation of the Corporate Debtor under Section 53; or
- The amount that would have been paid to such Creditors, if the amount to be distributed under the Resolution Plan had been distributed in accordance with the order of priority in sub-section (1) of Section 53, whichever is higher, and provides for the payment of debts of Financial Creditors, who do not vote in favour of the Resolution Plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of Section 53 in the event of a Liquidation of the Corporate Debtor.

Claims of Workmen and Employees

1. As per the data provided by the Resolution Professional, the claims filed by the Operational Creditors are as follows:

Sr. No.	Type of Operational Creditors	Claims Amount (INR in Lakh)	Admitted Amount (INR in Lakh)
1	Claims received from Workmen & Employees (FORM D)	641.22	494.73
2	Claims received from representatives of	1091.51	949.18

	Workmen & Employees (FORM E)		
Total		1732.73	1443.91

2. The aggregate claim of the Workmen and Employees is Rs. 1,732.73/- Lakhs (Rupees One Thousand Seven Hundred Thirty Two Lakhs and Seventy Three Thousand only) whereas the claim admitted is Rs. 1,443.91/- Lakhs (Rupees One Thousand Four Hundred Forty Three Lakhs and Ninety One Thousand only).
3. The Resolution Applicant proposes to pay an amount of Rs. 50.00/- Lakhs (Rupees Fifty Lakhs only) to those Workers and Employees who are eligible as per IB Code 2016 [12 (twelve) months and 24 (twenty four) months from ICD respectively for employees and workers], subject to verification and admission of the claims by the Resolution Professional, in proportion of their admitted claims in full and final settlement of their claims. No claim of any other Employees/ Workmen/ Officer of the Corporate Debtor will be entertained by the Resolution Applicant. In case any amount is required to be paid to any of the Employees/ Officer/ Workmen of the Corporate Debtor over and above the amount of Rs. 50.00 /- Lakhs (Rupees Fifty Lakhs only) provided in this Resolution Plan the same shall be covered within the overall limit of Rs. 50.00/- Lakhs (Rupees Fifty Lakhs only) provided for payment to the Workmen/ Employees on proportionate basis. However, in case if any amount is attributable/ payable as per the terms of the IBC towards above mentioned Operational Creditors more than Rs. 50.00/- Lakhs (Rupees Fifty Lakhs only) provided for,

such amount shall be adjustable from the Resolution Amount proposed to Secured Financial Creditors and shall be distributed in accordance with the order of priority as per Section 30(2) read with Regulation 38 of CIRP Regulation along with the Section 53 of the IBC. In case amount payable towards claims of Employees or Workers are less than the proposed amount of Rs. 50.00/- Lakhs (Rupees Fifty Lakhs only) then additional/ full amount shall be distributed to Secured Financial Creditors on the basis of their admitted claims.

Provisions as per balance sheet dated March 31, 2019

1. It is stated that as per the information memorandum, following provision has been made in the balance sheet as on March 31, 2019:

Sr. No.	Particulars	INR in Lakh
1	Provident Fund	75.34
2	ESI	12.07
3	Other – (Professional Tax)	0.18
Total		87.59

2. The Resolution Applicant proposes to pay an unpaid part of above mentioned liabilities and set aside Rs. 87.59/- Lakhs (Rupees Eighty Seven Lakhs and Fifty Nine Thousand only) towards provisioning provided in the balance sheet as on March 31, 2019 in full and final settlement. No other provisioning whether mentioned in the Balance Sheet/ Information Memorandum or not will be entertained by the Resolution Applicant in this regard. However, in case if any amount attributable/ payable as per terms of the IBC

towards above mentioned Operational Creditors is more than Rs. 87.59/- Lakh (Rupees Eighty Seven Lakhs and Fifty Nine Thousand only) provided for, such amount shall be adjustable from the Resolution Amount proposed to Secured Financial Creditors and shall be distributed in accordance with the order of priority as per Section 30(2) read with Regulation 38 of CIRP Regulation along with the Section 53 of the IBC.

3. In case the amount payable towards above mentioned provisioning is less than the proposed amount of Rs. 87.59/- Lakh (Rupees Eighty Seven Lakhs and Fifty Nine Thousand only) then excess amount shall be distributed to Secured Financial Creditors on the basis of their admitted claims.

Operational Creditors relating to all Statutory / Government Liabilities –

1. The Resolution Professional has not informed the Resolution Applicant about the Liquidation Value of the Corporate Debtor as per the provisions of the Code and CIRP Regulations, however as per the estimates of the Resolution Applicant the Liquidation Value of the Corporate Debtor in any case shall not be sufficient to repay the debt of even the Secured Financial Creditors and therefore, the liquidation value applicable to Operational Creditors in terms of sub clauses (i) and (ii) to section 30(2)(b) as mentioned above, would in all likelihood be NIL.
2. As such, the Resolution Applicant proposes to pay NIL Amount to all Statutory/ Government Liabilities in full and final settlement of all their dues/ claims. Further, it is

clarified that upon approval of this Resolution Plan by this Tribunal, all the Statutory/ Government liabilities (if any) relating to the period upto the Effective Date (whether assessed or not assessed, disputed or undisputed, disclosed or undisclosed, reflected in the Balance Sheet or not) in relation to dues of whatever nature due to any Tax Authorities including Entertainment Tax, Property Tax, Entry Tax, Sales Tax, GST, VAT, Income Tax, MAT, Service Tax, Custom Duty or any other tax or duty or cess as applicable to the Corporate Debtor, any State Govt., Central Govt., Semi Government, Public Sector Undertaking; Development Authorities, Development Bodies or any other local Municipal Corporation/ Authorities, whether specifically mentioned in this Resolution Plan or not; with regard to which, the claims have been filed/ not filed/ verified/ not verified/ admitted or not; shall stand terminated/ waived/ written off and extinguished in full and no liability/ dues shall be payable by the Corporate Debtor/ Resolution Applicant to these Creditors/ Claimants.

3. However, in case if any amount is attributable/ payable towards all Statutory/ Government Liabilities, such amount shall be adjustable from the Resolution Amount proposed to Secured Financial Creditors and shall be distributed in accordance with the order of priority as per Section 30(2) read with Regulation 38 of CIRP Regulation along with the Section 53 of the IBC.
4. Furthermore, as per Section 32(A) of IBC, immunity shall be deemed to have been granted to CD from all liability of the Corporate Debtor under all Applicable Laws for any

non-compliance by the Corporate Debtor or its Directors/ Management etc. for the period prior to the Insolvency Commencement Date ('ICD').

5. Subject to Section 32(A) of IBC, if any interest/ penal implications arise, due to such non-compliance/ default/ breach in relation to any period prior to the NCLT Approval Date, these shall stand terminated/ waived/ written off/ extinguished in full. The Corporate Debtor and the Resolution Applicant/ or its Nominees/ its Officers shall not be liable for any penal provision arising out of the act of the previous management.

D) TREATMENT OF SECURITY AND CORPORATE/ PERSONAL GUARANTEE PROVIDED BY THE CORPORATE DEBTOR/ PROMOTERS/ THEIR NOMINEES

1. It is submitted that by virtue of the NCLT Approval Order, on the Effective Date, all assets of Corporate Debtor, and collaterals owned by Corporate Debtor that are subject to any encumbrance, security, collaterals and/or lien favour of lenders/ Creditors by whatever name called shall stand free and clear of all encumbrances. This would inter alia include the security mentioned in the Information Memorandum relating to the Corporate Debtor issued by the Interim Resolution Professional/ Resolution Professional as amended from time to time whether recorded in the Balance Sheets of the Corporate Debtor or not.
2. The Financial Creditors who are beneficiaries of Personal Guarantee and Corporate Guarantee (issued by any entity other than the Corporate Debtor) will be entitled to enforce

the same at their own cost, risk and consequences and will be entitled to the proceeds recovered from the same on pro-rata basis. The Resolution Applicant takes no responsibility for enforcement and/ or recovery from the Personal Guarantee/ Corporate Guarantee respectively.

3. It is hereby clarified that upon implementation of the Resolution Plan, all the rights, title and interest of the Corporate Debtor in all its assets shall vest with the Corporate Debtor, free and clear of all Encumbrances.

E) PROVISION RELATING TO PENDING DISPUTES/ LITIGATIONS

1. The submitted by the Applicant that the various Disputes/ Court Cases pertaining to the Corporate Debtor are listed in the Resolution Plan in Para 4.3 the Chapter 4. Apart from that there may be Disputes/ Court Cases during the CIRP period which Resolution Applicant is unaware of. All these disputes arose against the Corporate Debtor prior to admission of Corporate Debtor to CIRP or during the CIRP Period. On the date of approval of Resolution Plan by the Adjudicating Authority, all 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. In these matters, the Resolution Applicant as well as assets and properties of the Corporate Debtor are also protected under Section 32A of the IBC.
2. Any amount determined to be payable by the Corporate Debtor arising out of such disputes will be settled within the amounts provided to be paid to the various Creditors/ Obligors and no further amount will be required to be paid

by the Corporate Debtor/ Resolution Applicant to discharge any such liability.

3. As such the Resolution Applicant/ Corporate Debtor will be treated as having full immunity from any Liability/ Demand/ Claim arising out of any Petition/ Suit/ Application for recovery of dues from the Judgement Debtors in terms of the Arbitration Award/ Decree issued in this regard and all proceedings within the ambit of Section 32A of IBC.
4. For removal of any ambiguity or any doubt, it is clarified that if any award or benefit is accruing in favour of the Corporate Debtor in relation to such litigations as mentioned in this section or any other similar litigation or any other claims made by the Corporate debtor including but not limited to the cases pending or finalized under Arbitration where the Corporate Debtor is a party; whether before or after the approval of the Resolution Plan by this Tribunal shall not extinguish, shall remain alive and shall be rightfully pursued by the Corporate Debtor and recovery from such cases will be available to the Corporate Debtor for its cash flow management and implementation of the Resolution Plan.

F) PAYMENT TOWARDS UNCLAIMED LIABILITIES OR PERSONS WHOSE CLAIMS WERE NOT ACCEPTED BY THE RESOLUTION PROFESSIONAL

1. As per the financial statement of CIRP Date of the Corporate Debtor, there are some liabilities against which no claim has been received by the Applicant or mentioned in the Information Memorandum. After the approval of the

Resolution Plan, creditor of any category shall have no right over any kind of debt (unclaimed). All unclaimed liabilities shall be settled at NIL Amount.

G) UNKNOWN / UNDISCLOSED LIABILITIES / OFF BALANCE SHEET TRANSACTIONS

1. The Resolution Applicant/ Corporate Debtor shall not be liable to pay a hidden/ unknown liability with respect to the period prior to the Insolvency Commencement Date ('ICD') but surfacing at any future date and if in case these arises then same shall be settled at NIL Amount.

H) PROPOSAL FOR COMPLETION OF PENDING PROJECTS/ WORKING CAPITAL

1. In addition to all the payments as proposed under this Resolution Plan for the Creditors of the Corporate Debtor, the Resolution Applicant is also proposing to invest Rs. 1,000.00/- Lakhs (Rupees One Thousand Lakhs only) for the capex/ working capital and for any other issues (if any). The Resolution Applicant understands that the capex/ working capital will progress in due course of time and thus, the funds shall be managed from the funds to be brought in by the Resolution Applicant as Fresh Equity/ Quasi Equity/ Debt. Any further amount to be brought in for capex/ working capital shall be brought in by Resolution Applicant or funded from the cash flows of the Corporate Debtor as per the exigencies of circumstances at the relevant time.

I) CAPITAL RESTRUCTURING

Current Share Capital –

As per the Information Memorandum shared by the Resolution Professional and as evident from the financial statements as on Insolvency Commencement Date the Authorised and Paid up Share Capital of the Corporate Debtor is as follows:

	Face Value	No. of Shares	Share Capital
Authorized Share Capital			
Equity Shares	10.00	2,36,99,000	23,69,90,000
Preference Shares	10.00	8,00,10,000	80,01,00,000
Total		10,37,09,000	103,70,90,000
Issued, Subscribed & Paid Up Capital			
Equity Shares	10.00	58,82,350	5,88,23,500
0.01% Non-cumulative, non-convertible preference share	10.00	2,50,000	25,00,000
Total		61,32,350	6,13,23,500

Restructuring of Share Capital –

Upon the approval of the Resolution Plan, the paid-up Share Capital of the Corporate Debtor will be restructured as follows:

1. Within 90 (ninety) days of the approval from the Tribunal, the entire Issued, Subscribed and Paid up Equity Share Capital of the company shall be Cancelled/ Extinguished/ Written Down to zero and no amount shall be paid to any of the existing shareholders and the Corporate Debtor/ Resolution Applicant shall be exempt from following the applicable provisions of Companies Act, 2013 and IBC, 2016 to the extent permissible in law in respect of such

cancellation of the share capital of the Corporate Debtor, except to submit the Approved Resolution Plan to Registrar of Companies/ Ministry of Corporate Affairs.

2.The Existing Authorized Share Capital of Rs, 103,70,90,000/- (Rupees One Hundred Three Crores Seventy Lakhs Ninety Thousand only) as set out in table given above will be reorganized to 10,37,09,000 Equity Shares of Rs. 10.00/- (Rupees Ten only) each. The Corporate Debtor/ Resolution Applicant shall be exempt from following the applicable provisions of the Companies Act, 2013 and IBC, 2016 to the extent permissible in law for such reorganization of the Share Capital of the Corporate Debtor except to submit the Approved Resolution Plan to Registrar of Companies/ Ministry of Corporate Affairs. Post reorganization, the Authorized Share Capital of the Corporate Debtor will be as below:

Type of Shares	Number of Shares	Face Value	Authorized Share Capital
Equity Shares	10,37,09,000	10	103,70,90,000
Total	10,37,09,000	10	103,70,90,000

3. The MoA and AoA of the Corporate Debtor shall stand modified as per the above provisions of the Resolution Plan without requirement of any compliance under the provisions of Companies Act, 2013, any other enacted rules or regulations in this regard the Corporate Debtor/ Resolution Applicant shall be exempt from following the applicable provisions of Companies Act 2013 and IBC 2016 to the extent permissible in law, except to submit the

Approved Resolution Plan to Registrar of Companies/
Ministry of Corporate Affairs.

3. The Resolution Applicant (by themselves or through their shareholders and nominees or through the cash flow of the Corporate Debtor) will induct an amount of Rs. 11,037.59/- Lakhs (Rupees Eleven Thousand Thirty Seven Lakhs and Fifty Nine Thousand only) (towards payment of CIRP Cost/ Financial Creditor/ Operational Creditor/ Capex/ Working Capital) to implement the Resolution Plan, and, additional Funds of Rs. 1,500.00/- Lakhs (Rupees One Thousand and Five Hundred Lakhs only) to meet the contingencies to implement the Resolution Plan by way of Equity/ Quasi Equity/ Subordinate Debt by the Resolution Applicant (themselves or through their nominees) in tranches as may be warranted from time to time. Out of the above, the Resolution Applicant will induct Rs. 1,500.00/- Lakhs (Rupees One Thousand and Five Hundred Lakhs only) upfront on the Effective Date as Equity capital.
4. After the issuance of the Equity Shares, within 90 (ninety) Days of the Approval from this Tribunal, the paid-up Equity share capital of the Corporate Debtor as on that date on a fully diluted basis shall be as follows:

Name of New Shareholders	Mode of Allotment	Number of Shares	Face Value	Share Capital	Share-holding %
Resolution Applicant/ its Nominees	Fresh Equity	1,50,00,000	10.00	15,00,00,000	50.00%
Secured Financial Creditors	Fresh Equity	1,50,00,000	10.00	15,00,00,000	50.00%

Total		3,00,00,000	10.00	30,00,00,000	100.00%
--------------	--	--------------------	--------------	---------------------	----------------

10. SOURCES OF FUNDS:

The Resolution Applicant proposes to raise through equity brought by him or his nominee and Issuance of Zero Coupon Debentures (ZCDs) and from Equity as well as Quasi Equity and also debt to be mobilised by the Resolution Applicant or their nominees or from the cash from the Corporate Debtor for the implementation of the Resolution Plan. The same has been explained by the Resolution Applicant as follows:

Sr. No.	Source of Funds¹	Amount (INR Lakhs)
1.	Equity to be brought in by RA or its nominees ²	1,500.00
2.	Issuance of ZCDs ³	10,400.00
3.	Equity/ Quasi Equity/ Debt to be mobilised by the Resolution Applicant or their nominees/ or from the cash flow from the Corporate Debtor for payment of CIRP Cost/ Operational Creditor/ Financial Creditor/ Capex / Working Capital and Contingency fund etc. for implementation of the Resolution Plan ⁴	11,037.59
Total		22,937.59

1. Funds shall be mobilised by the Resolution Applicant / Corporate Debtor or their nominees from internal accruals and their own sources as and when required for implementation of the Resolution Plan.

2. An amount of Rs. 1,500.00/- Lakhs (Rupees One Thousand Five Hundred Lakhs only) will be inducted on upfront basis as Equity.

3. ZCDs of Rs. 10,400.00/- Lakhs (Rupees Ten Thousand Four Hundred Lakhs only) will be issued as per the Resolution Plan.

4. The RA / its nominees shall induct an amount upto Rs. 11,037.59/- Lakhs (Rupees Eleven Thousand Thirty Seven Lakhs and Fifty Nine Thousand only) as Equity / Subordinate Equity / Quasi Equity / Subordinate Debt / cash flow from CD for implementation of the "Resolution Plan". In case further funds are required the RA or their nominees may bring additional funds by way of Equity / Quasi Equity / Subordinate Debt.

11. FINANCIAL OUTLAY:

The Resolution Professional has submitted the following chart showing the details of the Financial Outlay under Resolution Plan as under:

Particulars	INR Lakhs
Financial Outlay	

Upfront payment toward CIRP Cost	300.00
Resolution of Debt of Secured Financial Creditors	20,000.00
Payment towards claims of Workmen & Employees	50.00
Payment towards provisions provided in the Balance Sheet of the Corporate Debtor/Contingencies	87.59
Proposal for Capital Expenditure/ Working Capital	1,000.00
Contingencies Fund	1,500.00
Total	229,37.59

12. In view of the above Financial Outlay the total upfront Cash Recovery for stakeholders of the Corporate Debtor is as follows:

Particulars	INR lakh
Provision for CIRP Cost	300.00
Payment towards Employees and Workmen	50.00
Payment towards provision provided in B/S	87.59
Upfront Payment to SFCs	1,500.00
Total Upfront Payment	1,937.59

13. The indicative Repayment Tenure towards various creditors in the events for implementation of Resolution plan from approval date is as follows:-

Sr. No.	Activity	Time Line
1	Date on which the Adjudicating Authority (NCLT) approves the Resolution Plan i.e., NCLT Approval Date	T
2	Constitution of Monitoring Committee	T
3	Removal of existing Directors on the Board of Corporate Debtor and Reorganisation of Share Capital of Corporate Debtor	T + 90 Days

4	Appointment of new Directors on the Board of the Corporate Debtor	T + 90 Days
5	Payment Towards CIRP Costs	T + 90 Days
6	Payment towards Operational Creditors (Including Employees)	T + 90 Days
7	Upfront Payment to Secured Financial Creditors	T + 90 Days
8	Complete Takeover of the management and control of the Corporate Debtor, including its books, records and assets, rights, properties by Resolution Applicant i.e., Effective Date	T + 90 Days = E
9	Deferred Payment as per schedule given above	E + 36 Months
10	Zero Coupon Debentures Redemption/ Buyback by the Resolution Applicant/ or its nominees	E + 60 Months

14. The Resolution Applicant is eligible to submit resolution plan. The Successful Resolution Applicant has given an Affidavit satisfying the eligibility criteria as per the provisions under section 29A of the Insolvency & Bankruptcy Code, 2016.

15. OBSERVATIONS AND FINDINGS:

- i. As per IBC Code 30(2)(a) – A Resolution Plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.
- ii. As per Section 30(2)(b), the Respondent has agreed to pay Operational Creditors an amount which shall not be less than liquidation value or the amount that would have been paid to such creditors if the amount to be distributed under the Resolution Plan is distributed in accordance with priority under Section 53(1), whichever is higher.

- iii. The Resolution Applicant has agreed to meet the cost of project from existing resources including infusion of equity/debt through the parent company, from sale of unsold inventories and if required from raising finance through external sources.
- iv. The Resolution Applicant has also agreed that dissenting Financial Creditors shall be paid in priority and not less than the value they would have been paid in the event of liquidation of the Corporate Debtor. The Respondent has proposed to liquidation value to Unsecured Financial Creditors who dissent from the plan.
- v. Provides for the management of the affairs of the Corporate Debtor after approval of the Resolution Plan. Section 30(2)(c).
- vi. Provides for a term of the plan, implementation schedule and supervision of the Resolution Plan under Section 30 (2)(d) & Regulation 38(2)(c).
- vii. The Resolution Applicant proposes to appoint suitably qualified and experienced persons, key personnel and other officer for operations of the Corporate Debtor.
- viii. The Resolution Plan does not contravene any of the provisions of the law for the time being in force - please include a statement to this effect in the Resolution Plan as per Section 30(2)(e).
- ix. The Resolution Applicant has given a declaration that the Resolution Plan does not contravene any provisions of the law for the time being in force as per Section 30(2)(f).
- x. As per IBBI Guidelines 38(1)(b) - The amount payable under a Resolution Plan - to the financial creditors, who have a right to vote under Sub-section (2) of Section 21

and did not vote in favour of the Resolution Plan, shall be paid in priority over financial creditors who voted in favour of the plan.

- xi. The Resolution Applicant or any of its related parties has not failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.
- xii. The Resolution Plan is in compliance of the Regulation 38 of the Regulations in terms of Section 30(2)(f) as under:
 - a. The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors [Regulation 38(1)].
 - b. The Resolution Plan has all the adequate means of supervising of the implementation of the Plan as required under Regulation 38(2)(c), of the IBBI, Insolvency resolution process for corporate persons, Regulation 2016.
 - c. Provides for the payment of CIRP Costs in priority to the repayment of any other debts of the Company [Regulation 38(1)(a)].
 - d. Provides for the manner of implementation and supervision of the Resolution Plan and adequate means for implementation and supervision of the Resolution Plan.
 - e. The amount payable under a resolution plan to the Financial Creditors, who have right to vote under Sub-section (2) of Section 21 and did not vote in favor of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.

- f. The Resolution Applicant confirms that to the best of the knowledge of the Resolution Applicant, the Resolution Plan is not in contravention of the provisions of Applicable Law and is in compliance with the Code and the CIRP Regulations.
 - g. The Resolution Applicant confirms that the Resolution Applicant and its connected persons are not disqualified from submitting a resolution plan under Section 29A of the Code and other provisions of the Code and any other Applicable Law.
 - h. Provides for the management and control of the business of the Corporate Debtor during its term.
 - i. All the above factors demonstrate that the plan address the cause of default and the Resolution Applicant has the capacity to implement the Resolution Plan.
 - j. That the Resolution Applicant or any of its related parties has never failed to implement or contributed to the failure of implementation of any other Resolution Plan approved by the Adjudicating Authority at any time in the past. This is in compliance of Regulation 38(1)(b) of the Regulations.
 - k. The interests of all stakeholders (including Financial Creditors, Operational Creditors and other Creditors, Guarantors, Members, Employees and other Stakeholders of the Company, keeping in view the objectives of the Code [Regulation 38(1A)]).
16. The Resolution Plan has been approved in the 13th COC meeting held on 24.03.2022 with 100% voting in accordance with the provisions of the Code.

17. In **K. Sashidhar v. Indian Overseas Bank & Others: 2019 SCC Online SC 257 (2019) 12 SCC 150** the Hon'ble Apex Court held that if the CoC had approved the Resolution Plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the Resolution Professional to submit the same to the Adjudicating Authority (NCLT). On receipt of such a proposal, the Adjudicating Authority is required to satisfy itself that the Resolution Plan as approved by CoC meets the requirements specified in Section 30(2). The Hon'ble Court observed that the role of the NCLT is 'no more and no less'. The Hon'ble Court further held that the discretion of the Adjudicating Authority is circumscribed by Section 31 and is limited to scrutiny of the Resolution Plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the Resolution Plan is in reference to matters specified in Section 30(2) when the Resolution Plan does not conform to the stated requirements.
18. The Hon'ble Apex Court at para 42 in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.: (2019) SCC Online**, clearly laid down that the Adjudicating Authority would not have power to modify the Resolution Plan which the CoC in their commercial wisdom have approved.

"Para 42- Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and section 32 read with section 61(3) of the Code, insofar as the Appellate

*Tribunal is concerned, the parameters of such review having been clearly laid down in **K. Sashidhar** (supra)."*

19. In view of the above ruling of the Apex Court, the legislature has given paramount importance to the commercial wisdom of committee of creditors (CoC) and the scope of judicial review by the Adjudicating Authority (AA) is limited to the extent provided under section 31 of Code and of the Appellate Authority is limited to the extent provided under sub-section (3) of section 61 of the Code, is no more an untouched-matter.
20. In view of the discussions and the law thus settled, the instant Resolution Plan meets the requirements of Section 30(2) of the Code and Regulations 37, 38, 38(1A) and 39(4) of the Regulations. The Resolution Plan is not in contravention of any of the provisions of Section 29A of the Code and is in accordance with law. The Resolution Plan is feasible and viable. There are no workers claims. Resolution Applicant agreed to pay the full CIRP costs and also future costs if any as certified by the Resolution Professional and CoC. The Resolution Plan balances the interest of all the stakeholders and thus it deserves to be approved.

ORDER

- i. The Interlocutory Application No. 991 of 2022 is allowed. The Resolution Plan submitted by **Mr. Madhav Dhir**, is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to

whom a debt in respect of payment of dues arising under any law for the time being in force is due.

- ii. The approval of the Resolution Plan shall not be construed as waiver of any statutory obligations of the Corporate Debtor and shall be dealt by the appropriate Authorities in accordance with law. It is seen that the Resolution Applicant sought several dispensations, concessions and waivers. Any waiver sought in the Resolution plan shall be subject to approval by the Authority concerned in the light of the Judgment of Supreme Court in ***Ghanshyam Mishra and Sons Private Limited v/s. Edelweiss Asset Reconstruction Company Limited***, the relevant para's of which are extracted herein below:

“on the date of approval of the 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.”

“95. (i) 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 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;

(ii) 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the Code has come into effect;

(iii) consequently, all the dues including the statutory dues owed to the Central Government, any State Government 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 prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued."

- iii. We shall clarify here that any amount recovered under any avoidance applications relating to the Corporate Debtor being allowed by the Adjudicating Authority would ensure unto the benefit of the Resolution Applicant.
- iv. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), concerned for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- v. The moratorium under Section 14 of the Code shall cease to have effect from this date.

- vi. The Applicant and the Monitoring Committee shall supervise the implementation of the Resolution Plan and the Applicant shall file status of its implementation before this Authority from time to time, preferably every quarter.
- vii. The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- viii. The Applicant shall forthwith send a copy of this Order to the CoC and the Resolution Applicant for necessary compliance.
- ix. The Interlocutory Application No. 991 of 2022 is accordingly **allowed** and **disposed of**.

Sd/-
MADHU SINHA
MEMBER (TECHNICAL)

Sd/-
H. V. SUBBA RAO
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

I.A. 2439/2022

In

C.P. No. (IB) 297/MB/2019

Filed by

Ultra Media and Entertainment Pvt Ltd,

(Formerly known as Ultra Distributors Pvt. Ltd) having its Registered office at: 2C, Thakkar Industrial Estate, N. M. Joshi Marg, Lower Parel (East), Mumbai - 400011

...Applicant

Vs.

Mr. Shamsheer Bahadur Singh.

The Interim Resolution Professional.

D-54, First Floor Defense Colony, New Delhi- 110024.

...Respondent

IN THE MATTER OF

Axis Bank Limited

...Petitioner

Vs

Digicable Network (India) Limited

...Respondent/Corporate Debtor

Reserved for Orders on: **02.01.2023**

Order delivered on: **12.01.2023**

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

Appearance:

For the Applicant: Ms. Siddha Pamecha, Adv.

For the Respondent/RP: Mr. Shamsher Bahadur Singh a/w
Mr. Karna Grover

Per: Shri H.V. Subba Rao, Member (J)

ORDER

The above I.A. is filed by the Applicant, M/s. Ultra Media and Entertainment Pvt Ltd challenging the action of the Resolution Professional for rejecting their claim and also claiming the following reliefs:

- a) That this Hon'ble Tribunal be pleased to set aside and or direction of the IRP rejecting the claim of the Applicant.*
- b) This Hon'ble Tribunal be pleased to direct the Respondent to admit the claim of the Applicant and to make payment to the Applicant as more particularly set out in Claim Form " "*
- c) Interim and ad-interim reliefs in terms of prayer (a) above;*
- d) This Hon'ble Tribunal be pleased to grant any other/further Orders which this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.*
- e) For costs of this application.*

The RP filed detailed reply opposing the above application and the important relevant paras of the reply are extracted hereunder;

1. It is relevant to mention herein that the alleged claim of the Applicant was filed on 10.05.2021, however, till as late as 08.12.2021, the applicant never approached this Hon'ble Tribunal. The Applicant approached this

Hon'ble Tribunal only on 08.12.2021 after expiry of almost 210 days from submission of its claim. Even the instant Application against the rejection of the claim has been on filed only on 05.09.2022 i.e. after almost 175 days from the date of rejection of the claim by the Respondent herein (24.03.2022).

2. It is noteworthy that the alleged claim of the Applicant is not reflected in the books of account of the Corporate Debtor. The Applicant has filed a Civil Suit for Recovery being 290/2017 which is pending as on date. The Resolution Professional accordingly in light of pendency of the suit cannot itself admit the claim of the Applicant. The Resolution Professional in the said background took note of the pending suit and made appropriate disclosure in the Information Memorandum. The Resolution Professional in terms of settled position of law exercises limited powers of only collation and verification of claims. In absence of any power of adjudication, Resolution Professional was not in a position to admit the Applicant's claim. The pending suit of Applicant is being appropriately dealt under the Resolution Plan at clause 5.7.
3. It is further submitted without prejudice that the purported claim of the Applicant arises out of the purported services provided by the Applicant to the Corporate Debtor in the year 2008 to 2011. Other than Agreements and MOU executed in 2008 to 2011, the Applicant has also based its claim on the basis of a purported letter dated 17.04.2014. Even in the said

Letter, the Applicant has claimed that the Corporate Debtor had admitted a liability of only Rs. 51 lacs to be payable on or before 31.03.2013. Thus, as per the facts alleged by the Applicant itself the claim of the Applicant is time barred.

4. It is also pertinent to note here the alleged claim amount of the Applicant in the Civil Suit and as per the purported Letter dated 17.04.2014 is of an amount of Rs. 46 lacs only. However, the Applicant has arbitrarily inflated its claim to an amount of Rs. 5,05,97,016/- at the time of filing its claim with the erstwhile Resolution Professional.
5. It is further submitted that the Applicant herein has only filed the copy of the civil suit alongwith its application but has malafidely concealed from this Hon'ble Tribunal the other pleadings filed before the City Civil Court as well as the Orders passed by the City Civil Court. This clearly shows that the Applicant has not approached this Hon'ble Tribunal with clean hands and thus, the Application under reply ought to be dismissed on the ground of concealment of facts as well.
6. It is further submitted that the Applicant has provided no reason as to why the suit filed before the City Civil Court for the same cause of action was for recovery of an amount of Rs. 46 lacs, whereas the alleged claim made in the CIRP of the instant Corporate Debtor has been inflated to Rs. 5,05,97,016/- i.e. 11 times more than the alleged amount claimed before the City Civil Court.

7. It is further submitted that prior to the initiation of instant CIRP, even the ex-management of the Corporate Debtor from time to time has disputed the alleged claim of the Applicant herein. The Applicant herein itself has annexed various letters i.e. letter dated 01.12.2011, 21.12.2011, 22.07.2013, 19.09.2013 etc. wherein the ex-management has denied the alleged claim of the Applicant as no amount was due and payable to the Applicant herein. Thus, the instant application deserves to be dismissed being devoid of merits as no amount is due and payable to the applicant herein by the Corporate Debtor.

Heard, Ms. Siddha Pamecha, counsel appearing for the Applicant and Mr. Shamsher Bahadur Singh, Resolution Professional and perused the record.

The counsel appearing for the Applicant fairly conceded during the course of the arguments before this Tribunal that they have no objection for restricting their claim to Rs. 46 lacs as per the Civil Suit filed by them against Rs. 5,05,97,016/- as claimed before the RP.

After hearing the submissions of both sides and upon perusing the material available on record, this Bench observed that the RP has rejected the claim of the Applicant mainly on the following grounds;

- i. *The main claim by the Applicant did not find place in the books of account of the Corporate Debtor;*
- ii. *The claim is barred by limitation, and*

- iii. *There is a Civil Suit bearing No. 290 of 2017 filed by the Applicant was pending against the Corporate Debtor in which the Applicant merely claimed an amount of Rs. 46 lacs.*

This Bench is in complete agreement with the action of the RP in rejecting the claim on all the above grounds. As rightly contended by the RP, the claim of the Applicant is basing on certain letters executed by the Corporate Debtor way back in 2013-2014 purposed to be an acknowledgement of debt. Subsequently, the Operational Creditor has initiated recovery proceedings by filing a Civil Suit on 02.02.2017. The applicant came to know about the CIRP order passed against the Corporate Debtor on 04.12.2020 and filed their claim before the RP on 26.08.2021. The RP performed his duty by reflecting the claim of the applicant in the information memorandum as disputed and pending Adjudication.

The Applicant also sent Legal Notice Dated 04.03.2015 to the Corporate Debtor calling upon the Corporate Debtor to pay an amount of Rs. 46 lacs failing which threatened with legal consequences of filling a winding up Petition against the Corporate Debtor. As rightly contended by the RP since there is a Civil Suit Pending between the parties, it is not proper on the part of this Tribunal to express any opinion with regard to the limitation as it is sub-judice before the competent Civil Court. Since the RP has already shown the claim as “disputed” and “pending for adjudication” before the competent Civil Court, this Tribunal did not find any illegality or irregularity committed by the RP in rejecting the claim of the Applicant.

In addition to the above, it is important to mention here that the Applicant has submitted their claim long after the expiry date

for receiving the claim by the RP. It is also appropriate to mention here that a Resolution Plan has been duly approved by the COC and is pending before this Tribunal for its approval.

It is also appropriate to mention here that an amount of Rs. 50 lacs is provided in the plan for the distribution to Operational Creditors against the admitted claims of Rs. 14,43,91,000/- apart from statutory dues of Government and therefore, the adjudication of the present application remains as a mere academic issue, since the Operational Creditor is not going to get even a fraction of few hundreds even if their claim is admitted.

For the aforesaid reasons, there is no merit in the above application and the above application deserves to be rejected. Accordingly, the above I.A. **is rejected.**

Sd/-

MS. MADHU SINHA
MEMBER (TECHNICAL)

—Rajeev—

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)