**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**ALLAHABAD BENCH, PRAYAGRAJ**

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**IA No. 434/2023 IN CP (IB) NO. 342/ALD/2018**

*In the matter of*

*An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016)*

**AND IN THE MATTER OF:**

**Ajay Kumar Shukla & Ors.**

**...... Applicant(s)**

***Versus***

**Mr. Vivek Raheja & Anr.**

**......Respondent(s)**

**IN THE MATTER OF:**

**Bank of Baroda.** **...... Financial Creditor**

***Versus***

**Baghauli Sugar & Distillery Limited.**

**...... Corporate Debtor**

Order pronounced on 24th November, 2023

***Coram:***

Mr. Praveen Gupta : Member (Judicial)

Mr. Ashish Verma :Member (Technical)



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***Appearances:***

| | | |
|---|---|---|
| Sh. Anand Chibbar, Sr. Adv. Assisted by Sh. Pratik Kumar along with Sh. Aditya Singh, Advs. | : | *For the Applicant in IA No.434/2023.* |
| Sh. Punit Bali Sr. Adv. Assisted by Sh. Karan Gandhi along with Sh. Shivam Gautam, Advs. | : | *For the Respondent in IA No.434/2023.* |
| Sh. Abhinendra Maheshwari, Adv. | : | *For the CoC* |

## ORDER

1. This Application has been filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as "**I&B Code 2016**") r/w Rule 11 of the NCLT Rules, 2016 on behalf of the Applicant being suspended management of the Corporate Debtor wherein they have raised certain objections with respect to an application filed by Resolution Professional vide I.A No. 243 of 2023 under Section 30(6) of I&B Code, 2016 for approval of Resolution Plan.

2. The relief sought in the present application are as under: -

> *1. Pass an Order whereby dismissing the Interlocutory Application bearing I.A. No. 243 / ALD / 2023 IN C.P. (IB) No. 342/ALD / 2018 on the ground that the Resolution Plan is not tenable in the eyes of the law as the same is in the teeth of embargo imposed by the Hon'ble Supreme*

*Court in Contempt Petition (C) No. 412/2012 in Civil Appeal No. 9813/2011;*

*2. Pass an Order whereby holding that the Resolution Plan filed vide Interlocutory Application bearing I.A. No. 243/ALD/2023 IN C.P. (IB) No. 342/ALD/2018 by the Resolution Professional qua Committee of Creditors cannot be taken into consideration;*

*3. Pass such further Order (s) as this Hon'ble Tribunal may deem fit, just and proper, in the interest of Natural Justice and Equity.*

3. It is stated in the application that Corporate Debtor i.e. M/s Baghauli Sugar and Distillery Limited was incorporated in 2006. Corporate Debtor and M/s Sahara Q Shop Unique Products Range Ltd signed Memorandum of Understanding (hereinafter referred as "**MoU**") dated 25.08.2011 wherein it was agreed that Corporate Debtor shall transfer its entire equity shares along with operational rights of plant to M/s Sahara Q Shop unique Products Range Ltd. Copy of MoU dated 25.08.2011 has been annexed as **Annexure-2** with the Application. An Addendum to the said MoU was also executed on 22.11.2011 between Corporate Debtor and M/s Sahara Prime City Limited which provided for taking over of management and operations of the Corporate Debtor by M/s Sahara Prime City Limited by way of transfer of entire equity

shares. Copy Addendum to the MoU dated 22.11.2011 has been annexed as **Annexure-3** with the application.

4. Accordingly, the entire shareholding of the Corporate Debtor was transferred to M/s Sahara Prime City Ltd. on 01.10.2012 and thus, the Corporate Debtor became wholly owned subsidiary of Sahara Group, which is evident from balance sheet of the Corporate Debtor for the FY 2012-13 as well as the audited balance sheet of the Corporate Debtor for FY 2018-19. Copies of Balance Sheet of the FY 2012-13 and 2018-19 have been annexed as **Annexure-4** with the application.

5. After change in ownership of the Corporate Debtor, Financial Creditors comprising of Bank of Baroda, Bank of India, Oriental Bank of Commerce (now Punjab National Bank) and Union Bank of India issued NoC vide their letters dated 31.03.2012, 04.04.2011, 13.06.2012 & 01.07.2013 and 28.04.2012 respectively. In this regard, Corporate Debt Restructuring Cell also issued letter dated 06.3.2012 concerning the same. As contended by the applicants, from these letters issued by the Financial Creditors, it is amply clear that they had clearly and in unambiguous terms issued the No-Objection Certificates for



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change in Management and Ownership of the Corporate Debtor in favour of the Sahara Prime City Pvt. Ltd and thus, the Corporate Debtor is mentioned to be a Sahara Group Company and it is pointed out in the application that this fact is also reflected from the Minutes of 4th meeting of Committee of Creditors dated 04.08.2020 in which it has been clearly mentioned that the Sahara Group took over the plant of the Corporate Debtor .

6. It is also mentioned in the application that this tribunal vide order dated 07.02.2020 in CP (IB) No. 342/ALD/2018 filed by the Bank of Baroda against the Corporate Debtor initiated CIRP against the Corporate Debtor.

7. It is further stated in the application that Hon'ble Supreme Court vide order dated 21.11.2013 passed in Contempt Petition No. 412 of 2012 ***in CA No. 9813 of 2011 titled as SEBI vs Sahara India Real Estate Corporation Ltd*** held that "….. *We are convinced that the order dated 28.10.2013 passed by this Court has not been complied with in its letter and spirit. In such circumstances, we direct that the Sahara Group of Companies shall not part with any movable and immovable properties until further orders. We further direct that all the alleged contemnors shall not*



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*leave the country without the permission of this Court. List on 11.12.2013 at 2.00 P.M., for further arguments."* By referring to the above order of the Hon'ble Supreme Court, it has been emphasized by the applicants that estoppel/embargo was placed and it was directed that the Sahara Group of Companies shall not part with any movable and immovable properties until further order of the Supreme Court and further pointed out that the said matter is still pending before the Hon'ble Apex Court and the embargo placed has till date not been uplifted by the Hon'ble Apex Court. They also contended that the same is ex-facie evident from the subsequent orders passed by the Hon'ble Supreme Court. Copy of order dated 21.11.2013 along with all the subsequent Orders as well as the Case Status of the Contempt Petition(C) No. 412/2012 in Civil Appeal No. 9813/2011 has been annexed as **Annexure No. 7** with the application. This Contempt Petition is still pending before the Hon'ble Apex Court.

8. The applicants also mentioned in the application that the aforesaid order of the Hon'ble Apex Court was brought into notice of this tribunal which was taken on record vide its order dated



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25.01.2019 passed in CP (IB) No. 342/ALD/2018 and the same has been annexed as **Annexure No.8** with this application.

9. It is further stated that Corporate Debtor filed another interim application bearing No. I.A No. 161 of 2020 in CP (IB) No. 342/ALD/2018 seeking to restrain the RP from proceeding further with finalizing the Resolution Applicants and Resolution Plan until further Orders and the same has been annexed as **Annexure No.9** with this Order.

10. The Applicant has also filed another interim application before this tribunal i.e. I.A No. 136 of 2020 in CP(IB) No. 34/ALD/2018 wherein applicant has prayed this Tribunal *to direct the Resolution Professional to defer the proceedings, to restrain the Resolution Professional not to initiate any kind of proceedings against Corporate Debtor on the basis of FORM G dated 11.06.2020 and further set aside FORM G issued by Resolution Professional, declare the list of Committee of Creditors undergoing CIRP illegal and void, consider the Resolution Plan relating to Corporate Debtor Company, in the meantime permit the Applicant therein to carry out production / operations in the unit of Corporate Debtor and further defer the liquidation process of the Corporate Debtor.* Copy of the



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said application has been annexed as Annexure No. 10 with this application.

11. As further mentioned in this application that another Application was filed before this Tribunal by the Corporate Debtor seeking similar direction from this tribunal i.e. I.A No. 213 of 2020 in CP (IB) No.342/ALD/2018 filed by the Corporate Debtor *for quashing of FORM G dated 13.08.2020 and to set aside all the steps and actions taken by Resolution Professional pursuant to re-issued FORM G dated 13.08.2020 and further to direct the Resolution Professional to bear cost of all expenses incurred regarding and relating to re-issued FORM-G dated 13.8.2020.* Copy of the above mentioned application has been annexed as **Annexure No. 11** with this application.

12. It is stated in the application that suspended management being aggrieve by the order dated 07.02.2020 passed by this tribunal in CP (IB) No. 342/ALD/2018 also filed another I.A. No. 253 of 2020 for seeking modification of order dated 07.02.2020 to bring the same in consonance of the order dated 21.11.2013 passed by the Hon'ble Apex Court in ***Contempt Petition No. 412 of 2012 in CA No. 9813 of 2011 titled as SEBI vs Sahara India***



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***Real Estate Corporation Ltd*** further restrain the RP from finalizing the Resolution Applicants and Resolution Plan. Copy of the above mentioned application has been annexed as **Annexure No. 12** with this application.

13. It is further stated in the application that an order dated 11.11.2020 was passed by this Tribunal disposing of IA no. 116/2020, 136/2020, & 161/2020 in CP (IB) No. 342/ALD/2018, with certain directions but inadvertently in that order dated 11.11.2020, applications bearing IA No. 213/2020; 252/2020 & 253/2020 in CP.(IB) No. 342/ALD/2018 were also disposed off whereas, the said order related only to Applications bearing IA No. 116/2020; 135/2020 & 161/2020. The said order dated 11.11.2020 of this tribunal has been annexed as **Annexure No.14** with this application.

14. Being aggrieved from the Supra order dated 11.11.2020 passed by this tribunal, a I.A No. 49 of 2021 was filed by the Suspended Management before this tribunal seeking modification of order dated 11.11.2020 passed by this tribunal to the extent of that I.A No. 116/2020, 136 /2020 & 161/2020 be disposed off and order of ‘ Status Quo’ be transcribed as was directed by this



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Tribunal vide its Order dated 05.11.2020 and further to direct the Resolution Professional to file its reply in IA No. 213/2020; 252/2020 and 253/2020 in CP No.342/2018. Copy IA No. 49/2021 has been annexed as **Anneuxre-15** with this application.

15. It is further stated in the application that upon hearing the aforesaid IA No. 49/2021 filed by the suspended management, this tribunal passed an Order dated 27.08.2021. This order has been annexed as **Annexure No. 16** with this application. The relevant portion of this order is reproduced herein under:

> *"……. *
>
> *28. After hearing the Ld. Counsels for the parties, this Tribunal is of the opinion that it is open for the Suspended Management to give a revised OTS proposal for fresh consideration before the CoC as per law, if they so desire as has also been indicated by the learned counsel for the RP or in the alternative the Suspended Management may also file an application for clarification/ modification of the order passed by the Hon'ble Apex Court bringing full facts on record and get the said order modified/ clarified by the Hon'ble Apex Court.*
>
> *29. Further the CoC or the RP if they as are advised may also seek clarification from the Hon'ble Apex Court with regard to the continuance of the Corporate Insolvency Resolution Process against the corporate debtor whether the same is in consonance of the orders of Hon'ble Apex Court dated 21.11.2013.*
>
> *30. With the aforesaid directions, the present applications stands disposed of.*
>
> *……"*



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16. It is further stated in the application that in compliance of Supra Order dated 27.08.202, the Suspended Management gave a fresh proposal for Settlement vide letter dated 30.11.2020 for an amount of Rs. 101 crores out of which Rs. 11 crore was to be paid as an upfront payment within 30 days from the date of approval OTS and remaining amount of Rs. 90 crore was to be paid in sixty equal instalments along with applicable rate of interest. In the said OTS proposal it was further apprised that the source of funding would be from M/s India Housing, which is a SAHARA group company and further balance sheet and cash flow statement of M/s India Housing was also enclosed along with the said proposal. Copy of the said proposal has been annexed as **Annexure No. 17** with this application. As contended by the Applicant further that the Financial Creditor (Bank of Baroda) in a unilateral manner vide letter bearing No.BR/SAMDEL/2021-22 dated 31.12.2021 rejected the OTS proposal submitted by the suspended management and stated that OTS proposal observing that '*offers very low amount, upfront is quite less, period of payment is very high and there is no clarity on cash flow*'. As per the applicant, the OTS proposal submitted on 30.11.2021 by the suspended management of the Corporate Debtor was never discussed or

deliberated upon in the COC meetings which is evident from 18th and 19th COC meetings held on 09.07.2021 and 25.01.2021. It was contended in the application that this decision of Bank of Baroda is in complete violation of order dated 27.8.2021 passed by this tribunal in I.A No.49 of 2021. The letter No.BR/SAMDEL/2021-22 dated 31.12.2021 of Bank of Baroda has been annexed as **Annexure No. 18** with this application.

17. After receiving the letter dated 31.12.2021 of Bank of Baroda, applicants vide an email dated 05.01.2021 requested all the COC members to schedule a Joint Lenders Meeting (hereinafter referred as '**JLM**') either physically or through virtual mode to hold a discussion on OTS Proposal submitted by the Applicants, so that a concrete decision may be taken on the OTS Proposal submitted by the applicants, which will be in the interest of lenders as well as Corporate Debtor. However, no response to the said email for arranging JLM to discuss OTS Proposal of applicants/ suspended management was received by the applicants. Applicants, once again vide letter and email dated 06.08.2022 requested all the Committee of Creditors members to hold discussion on OTS



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submitted by the applicant, but that was also of no avail as mentioned by the applicants in the application.

18. It is further contended by the applicant that meanwhile an I.A No. 127 of 2022 was filed before this tribunal by the Resolution Professional for Liquidation of the Corporate Debtor wherein the average value of liquidation of the corporate debtor is Rs. 71,50,15,900 which is much less than the amount offered by the applicant in OTS Proposal for settlement of entire dues. Copy of application numbered as I.A No. 127 of 2022 has been annexed as **Annexure No. 21** with the Application.

19. After receiving no response from the COC, Applicant put forth another OTS proposal vide letter dated 19.12.2022 and Email dated 21.12.2022 for an amount of Rs. 110 crores with an upfront payment of Rs.11 crore within 90 days from the date of approval and remaining amount of Rs.99 crores in 33 equal monthly installments along with applicable rate of interest. However, as stated by the applicants, this OTS proposal was never discussed in any of the COC Meetings held after passing of the order dated 27.08.2021 by this tribunal.



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20. Thereafter, Applicants submitted another revised OTS vide letter dated 21.02.2023 with a claim of clearing entire dues of the Corporate Debtor and M/s India Housing will pay a total sum of Rs. 110 crores with an upfront payment of 10% i.e. Rs. 11.00 crores within 90 days from the date of approval of OTS and thereafter remaining amount of Rs. 99.00 crores in 30 equal monthly installments along with applicable rate of interest. After receiving no response from the COC on the said OTS proposal, applicants vide letter and e-mail dated 05.04.2023 submitted one more revised OTS proposal for settlement of an amount of Rs. 115.00 crores with an upfront payment of Rs. 15.00 crores within 90 days from the date of approval of OTS and thereafter remaining amount of Rs. 100 crores in 25 equal monthly installments.

21. It is stated by the Applicants that without even contemplating upon any of the OTS Proposals submitted by the applicants in compliance of this tribunal order dated 27.08.2021 in any of subsequent meetings of COC, in the 33rd and 34th meeting of COC, the Resolution Professional conducted the voting for the approval of Resolution Plan and COC approved the Resolution Plan of M/s Dalmia Sugar Industries Ltd. after adopting Swiss Challenge



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Method for approval of Resolution Plan. It is alleged by the applicants that Resolution Professional/Respondent No. 1 out of his own free will and accord without adopting any due process of law and that too without any prior permission either by the COC or this tribunal got the voting of COC done on the adoption of the Swiss Challenge Method for approval of Resolution Plan. In this regard, it is pointed out by the applicants that in the 19th meeting of the COC, there was no consensus of the members on the adoption of Swiss Challenge Method. Even in the 20th meeting of the CoC, there was no voting on the adoption of Swiss Challenge Method. Copy of Minutes of Meeting of 19th COC and 20th COC are annexed as **Annexure No.25** and **Annexure No.26** with the application.

22. It is further contended by the applicants that COC failed to consider any of the OTS Proposals put forth by the Suspended Management. The Resolution Professional proceeded to conduct voting on the Resolution Plans of the Resolution Applicant in a manner that appears to be driven by malicious intent. During the 33rd and 34th Meetings of the Committee of Creditors for Baghauli Sugar and Distillery Limited, held on 21.04.2023 and 12.05.2023,



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respectively, it is alleged that the Resolution Plan submitted by M/s Dalmia Bharat Sugar and Industries Limited was approved by the COC in a highly prejudicial and arbitrary fashion by adopting the Swiss Challenge Method, entirely bypassing any voting process by the COC. This contention is supported by the content of the Minutes of the Committee of Creditors' Meeting. Thus, the whole process adopted by the Committee of Creditors and Resolution Professional is in violation of I & B Code, 2016.

23. It is finally contended in the application that Resolution Professional as well as the Committee of Creditors of Baghauli Sugar and Distillery Limited have acted entirely upon their own whims and fancies and without following any due process of law as per the provisions of the I&B Code, 2016 and hence , if the present Application is not allowed , the Applicant (s) would suffer irreparable loss, harm and injury making a prayer *interalia* to dismiss IA No. 243/ALD/2023 in CP No. 342/ALD/2018 on the ground that the Resolution Plan is not tenable in the eyes of law as the same is in teeth of embargo imposed by the Hon'ble Supreme Court in Contempt Petition (C) No. 412/2012 in Civil Appeal No. 9813/2011 and pass an order holding that the said



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Resolution Plan submitted vide above IA cannot be taken into consideration.

**REPLY ON BEHALF OF RESPONDENTS:**

24 There are two respondents in the present IA. Respondent No1. Is Resolution Professional and Respondent No.2 is COC headed by the Lead Bank as Bank of Baroda. The Respondent No.1/Resolution Professional in its reply filed vide dairy no 2504 dated 20.09.2023 has prayed to dismiss the instant application filed by the applicants being the suspended management of the Corporate Debtor and has made the following averments: -

i. It is contended by the Respondent No.1/Resolution Professional that suspended management of the corporate debtor has earlier preferred I.A 49/2021 and I.A 114/2021 which were disposed off vide order dated 27.08.2021 passed by this Hon'ble Adjudicating Authority. I.A 49/2021 was filed by the erstwhile management inter alia seeking prayers to *"modify the order dated 1.11.2020 passed by this Hon'ble Tribunal in CP no. 342/2018 to the extent that 1A No. 116/202.0, 136/2020 and 161/2020 be disposed of vide order dated 11.11.2020 and the order of*



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*'status quo ' be transcribed as was directed by this Hon'ble Tribunal on 05.11.2020 and also direct the respondent resolution professional to file its reply in I.A. No. 213/2020, 252/2020 and 253/2020 and accordingly some suitable date be fixed for hearing in the said applications."*

ii. As pointed out by the Respondent No.1/Resolution Professional that while dealing with the issues raised in I.A 49/2021 and consequently in IA No. 213/2020 ,252/2020 and 253/2020 with respect to OTS and stay on the CIRP , this tribunal vide order dated 27.08.2021 passed the following directions:-

*"…..*

*28. After hearing the LD. Counsel for the Parties, this Tribunal is of the opinion that it is open for the Suspended management to give a revised OTS proposal for fresh consideration before CoC as per Law, if they so desire as has also been indicated by the Learned counsel for the RP or in the alternative, the Suspended Management may also file an application for clarification / modification oof the order passed by the Hon'ble Apex Court bringing full facts on record and get the said order modified/clarified by the Hon'ble Apex Court.*



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*29. Further the CoC or the RP if they are so advised may also seek clarification from the Hon 'ble Apex Court with regard to the continuance of the Corporate Insolvency Resolution Process against the Corporate Debtor whether the same is in consonance of the orders of Hon'ble Apex Court dated 21.11.2013.*

*....."*

It is further pointed out in the reply that the said order dated 27.08.2021 passed by this tribunal was not challenged by the suspended management and attained finality

iii. It is asserted by the Respondent No.1/Resolution Professional in his reply that the orders dated 21.11.2013 was passed by the Hon'ble Supreme Court in a contempt petition initiated by SEBI against Sahara India Real Estate Corporation Limited & Others wherein the Hon'ble Supreme Court imposed an embargo against the Sahara Group to part away any assets of the group companies. It is admitted in the reply that according to the available records, Sahara Prime City acquired the shareholding of the Corporate Debtor on 01.10.2012 from the existing shareholders, but it is pointed out that at that time , the provisions of the I&B Code, 2016 were not existing. The I&B Code, 2016 came into force in December 2016, and a petition under Section 7 of the Code was filed by one of the Financial Creditors in 2018.

iv. It is pointed out in the reply that the suspended management while defending the admission of the Corporate Debtor for CIRP, consistently presented and pursued arguments similar to those currently being raised. These arguments included the contention regarding the embargo imposed by the Hon'ble Supreme Court through the order dated 21.11.2013 as well as the consideration of the One Time Settlement (OTS) proposal from the previous management, among others. After a thorough examination of these arguments and a careful review of the available facts and evidence, this Hon'ble Adjudicating Authority, in its order dated 07.02.2020, decided to initiate the CIRP and appointed the Deponent to serve as the Interim Resolution Professional (IRP). It is also pointed out that the CIRP commencement order was not challenged by the erstwhile management before the



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Hon'ble Appellate Authority nor any form of application against CIRP commencement order was filed by the suspended management before the Hon'ble Supreme Court. It is also mentioned that the suspended management had almost 2 years from the date of filing of application and passing of CIRP commencement order to approach the Hon'ble Supreme Court to seek a stay on the proceedings before this tribunal, but they choose not to

v. Respondent No.1 / Resolution Professional pointed out that during the CIRP, which practically has gone around for more than 44 months now, applicants/suspended management (being aggrieved as they claim should the CIRP is further continued and plan filed by the Resolution Professional is allowed) did not move any application before the Hon'ble Supreme Court for seeking stay or clarification on the aforesaid order dated 27.08.2021 but they moved application after application.

vi It is also pointed out that the Code was enforced with a non-obstante clause under section 238 with an object for maximisation of interests of stakeholders and therefore,



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The embargo put upon Sahara India Real Estate Corporation Ltd and others which are party to the contempt proceedings before the Hon'ble Supreme Court does not extend to the Corporate Debtor. In view of above position, as per the Respondent No. 1/ Resolution Professional, the Suspended Management instead of approaching this tribunal could have taken route of approaching the Hon'ble Apex Court.

vii. Respondent further contends that one of the suspended directors Mr. P.K. Vishnoi, who is also an applicant in I.A No. 253 of 2023 attended all the meetings and deliberations of COC especially 18th and 19th COC held on 09.7.2021 and 25.01.2022 respectively, which was held after passing of the order dated 27.8.2021 by this tribunal and in this meeting all the points of the order dated 27.08.2021 of this tribunal was discussed. It is also alleged that likewise these two meetings, all other meetings of the COC during the CIRP were duly attended by Mr P K Vishnoi, yet the suspended management did not pursue the relevant actions at the relevant time but to arm



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twist the creditors, SRA and Deponent kept pressing /agitating same grounds again and again before this tribunal. Copy of Minutes of Meeting of 18th and 19th COC meetings has been annexed as **Annexure- 2 (Colly)** with the Reply.

viii. As contended by the Respondent No.1/Resolution Professional that in his view, there has been no embargo placed by the Hon'ble Supreme Court vide an order dated 21.11.2013. The commencement of the CIRP was ordered after the enforcement of provisions of the I&B Code, 2016 by different branches of NCLT against Sahara companies. Copy of orders passed by various benches for commencement of CIRP against Sahara Group companies and actions thereafter including Sahara Group companies paying off the debts and consequent withdrawals have been annexed as **ANNEXURE -3 COLLY** with the Reply .

ix. It is further contended by the Respondent that averments made by the applicants are repetitive in nature. The suspended management has made unfounded allegations against the respondent in opposing the Resolution Plan,



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which has been approved by unanimously voting (100%) by the Committee of Creditors (CoC). It has also been mentioned that the applicants/suspended management have suppressed the facts w.r.t other Sahara matters where the other benches of the NCLT and Hon'ble Appellate Authority has already dealt with the orders dated 21.11.2013- and held the same to be embargo upon Sahara Group and not otherwise /on lenders.

x. With regard to Swiss challenge mechanism, it is contended by the Respondent No. 1/ Resolution Professional that it was made in terms of RFRP which was approved by the COC in their 29th meeting held on 02.01.2023. Copy of the RFRP and minutes of 29th CoC held on 02.01.2023 is annexed as **ANNEXURE-4 COLLY** with the Reply.

xi. In view of above averments made in the reply filed by the Respondent no. 1/Resolution Professional, it is pleaded in the reply to dismiss the IA No. 434/2023 in CP(IB) No. 342/ALD/2018 as the same is filed to mislead this tribunal and delay the approval of the resolution plan.



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25. A reply by Bank of Baroda has also been submitted on behalf of the Respondent No. 2/COC contending that the application under consideration in this order has no ground or locus to challenge the validity and legality of the minutes of meetings of the committee of creditors who has approved the resolution plan with 100% voting. There is no substance in the application and the same has been filed with ulterior motives only to create hindrance in the successful resolution of the Corporate Debtor. It is also pointed out that the present application is a mere repetition of the averment made in the previous various applications filed by the same applicants. It has also been mentioned that the pleadings and the contents of the application have already been dealt by this tribunal on various occasions and the same has been rejected. It is also pointed out by the Respondent No. 2/COC that this tribunal in its order dated 27.08.2021 stated that if so advised then the COC or RP may also seek a clarification from the Hon'ble Apex Court with regard to continuation of CIRP. However, it has been consistent stand of the COC and the RP that there is no embargo or impediments put by the Hon'ble Supreme Court and therefore, there was no occasion or any advice contrary to

their stand which could have forced a situation for seeking clarification from the Hon'ble Supreme Court. It is also emphasized by the Respondent No.2/COC that it is important to submit that the party which has been raising the said contention of embargo/impediments and who claims that its rights are getting prejudiced has chosen not to move the Supreme Court seeking any clarification and therefore, there was no occasion for the COC or the RP to move to the Supreme Court. It is further emphasized in the reply that the order passed by the Hon'ble Supreme Court and relied upon by the applicant was restraining the applicants themselves from alienating the unencumbered assets of the Sahara Group. As per Respondent No. 2/COC, by no stretch of imagination, the interim order passed by the Hon'ble Supreme Court vide order dated 21.11.2013, can be said to be an embargo or restraint to the CIRP of the Corporate Debtor under the I&B Code, 2016

26. As regards the rejection of OTS proposal dated 30.11.2021 by the COC, it has been explained in the reply that the said proposal was deliberated upon in the Lenders meeting dated 10.12.2021. The lenders were of the view that that the

amount offered was very low and the tenor of payment was very high and there was no clarity on the flow of funds required for the OTS amount and thus the same was not accepted by the lenders. Bank of Baroda being a lead bank, it conveyed vide its letter dated 31.12.2021 the decision of the Joint Lender Meeting to the suspended Board of Directors. In the reply, the allegation of Bank of Baroda having acted upon unilaterally has been denied. It has also been clarified that the proposal given by the applicants was not in the form of proposal under section 12 A of the I&B Code, 2016 that it required deliberations in the COC meeting. Since the proposal was given to the lenders, therefore the same was deliberated upon by the Lenders in the Joint Lender Meeting. It is also clarified that even all subsequent revision in the OTS amount going up to Rs. 115 crore, was not found adequate. It is also pointed out that the Bids received during CIRP has outdone the OTS proposal, submitted by a huge margin and thus, lenders completely rejected the OTS offer. Rejection of revised OTS proposal was intimated to suspended board of directors vide letter dated 22.05.2023 by Bank of Baroda being Lead Bank. Thus, Respondent No.2/COC also in its reply pleaded for dismissing the present IA.

27. During the hearing of the matter, the above counter to application submitted in the above replies filed by both respondents were rebutted by the Sr Counsel appearing on behalf of the applicants by referring to order dated 21.11.2013 passed by the Hon'ble Supreme Court in a contempt petition and subsequent many orders passed thereafter by the Hon'ble Supreme Court dealing with the permission sought by the Sahara Group for disposal of their properties from time to time and it has been tried to show that without seeking permission of the Hon'ble Supreme Court , no property can be disposed off by the Sahara Group of companies due to embargo put vide order dated 21.11.2013. The order dated 27.08.2021 passed by this tribunal has also been referred to in which direction to COC was issued for considering the OTS proposal of the suspended management and also seeking clarification from the Hon'ble Supreme Court as regards the sale of the Corporate Debtor under CIRP in view of the order dated 21.11.2013 of the Hon'ble Supreme Court. It is alleged that the OTS proposal of



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applicants/suspended management was rejected by Bank of Baroda unilaterally as being Lead Bank of financial creditor banks without the same being considered by the COC and also, no clarification with regard to sale of the Corporate Debtor under CIRP has been sought by the COC from Hon'ble Supreme Court. Therefore, Ld. Sr Counsel of the applicants argued to dismiss the interlocutory application no. 243/ALD/2023 of resolution professional filed for approval of the resolution plan of M/s Dalmia Sugar Industries Ltd and another opportunity to the applicants/suspended management may be given to file revised OTS for consideration of COC.

**WRITTEN SUBMISSION ON BEHALF OF THE RESOLUTION PROFESSIONAL**

28. The Resolution Professional vide dairy no. 2505 dated 20.09.2023 has also filed written submissions wherein he has made the following submissions:-

i. It is contended by the RP that OTS submitted by the suspended management on 30.11.2021 was considered by the Financial Creditors in the $19^{th}$ meeting of the COC and was rejected vide letter dated 31.12.2022.



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ii. It is also contended by the Resolution Professional that recent OTS Proposal submitted by the applicants on 05.4.2023 was of Rs. 115 crores out of which 15 crores was to be paid in 90 days and remaining balance was to be paid in 25 months. This OTS Proposal was also rejected by the Financial Creditors on 22.05.2023. the CoC approved the Resolution Plan submitted by the SRA with 100% voting share for an amount of Rs. 139.69 crores to be paid to the creditor of the Corporate Debtor within the period of 02 months with further infusion of capital of Rs. 235 crores within 02 months for capital expenditure and developments to run the business of the corporate debtor.

iii. The OTS proposal submitted by the Applicants was also considered by the COC in their 35th meeting held on 24.05.2023 which was further rejected by the members of CoC.

iv. The Resolution Professional has referred to the judgment of the Hon'ble Supreme Court passed in the matter of *The Bijnor Urban Cooperative Bank v. Meenal Agarwal* dated 15.12.2021 wherein it has been held that the no borrower can pray for grant of benefit of One time settlement scheme as a matter of right. The same has also been relied upon by the Hon'ble Appellate Authority in the



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matter of *Sanjeev Mahajan v. Indian Bank in Company Appeal (AT) (INS) No. 3 of 2022* dated 04.07.2022. That Financial Creditors of the Corporate Debtor have already rejected multiple OTS proposals as offered by the Applicant herein.

v. RP contends that the sole objection raised by the Applicant is based on Order dated 21.11.2013 passed by the Hon'ble Supreme Court in Contempt Petition (C) No. 412/2022 in Civil Appeal No. 9813/2011 against SAHARA GROUP. The CIRP proceedings initiated by this tribunal vide Order dated 07.02.2020 has no inconsistency with the Order passed by the Hon'ble Supreme Court as CIRP proceedings are for the benefit of the Creditors/ stakeholders of the Corporate Debtor whereas the embargo created by the Hon'ble Supreme Court vide its Order dated 21.11.2013 (Page 115 of the Application) was only against SAHARA GROUP only in order to restrain SAHARA GROUP from usurping assets of the Companies and to protect the interests of the creditors/ stakeholders. The Hon'ble Apex Court vide order dated 21.11.2013 held as under:-

> *"We direct that the Sahara Group of Companies shall not part with any movable and immovable properties until further orders."*



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vi. RP further contends that suspended directors never challenged the Order dated 07.02.2020 passed by this tribunal. Further, they failed to challenge any subsequent orders passed in this matter and hence these orders are estopped in law to challenge the same at this stage when resolution plan approval application is pending before this tribunal.

vii. RP further states that it is evident from various orders issued by the Hon'ble Supreme Court that the injunction against the sale of assets was specifically directed towards the SAHARA GROUP. The Order dated 21.11.2013 (Page 115 of the Application) was solely aimed at restraining the SAHARA GROUP from taking control of the companies' assets and safeguarding the interests of creditors and stakeholders. Subsequently, the Order dated 04.06.2014, issued by the Hon'ble Supreme Court, explicitly states that the restraining order was meant to prohibit the transfer and disposal of both movable and immovable assets by the SAHARA GROUP OF COMPANIES.

viii. RP further states that the SAHARA GROUP has filed various applications before the Hon'ble Supreme Court, seeking the removal of restrictions on their ability to sell properties. Their objective is to generate funds from their assets and support their business operations. This request was denied on 19.06.2017. The applicants in this case are well aware that the restrictions were specifically imposed on the SAHARA Group and did not extend to creditors. The Corporate Insolvency Resolution Process (CIRP) proceedings were initiated by the Hon'ble Adjudicating Authority through an order dated 07.02.2020, following an application filed by a Financial Creditor of the Corporate Debtor i.e. Bank of Baroda. This entire process has been meticulously conducted strictly complied with the provisions of the Code, as well as the related regulations and orders issued by the Hon'ble Adjudicating Authority over time. It is important to emphasize that the approval of a resolution plan, as per the Code's provisions, does not equate to the sale of assets BY the SAHARA GROUP. Therefore, there is no legal constraint, as claimed by the Applicant in this matter.

ix. RP has placed reliance on the Judgments passed by the Hon'ble Supreme Court in the matter of ***K. Sashidhar v. Indian Overseas Bank [2019 12 SCC 150), Arcelormittal Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta & Ors [199 SCC ONLINE SC***



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***1479] and Kalpraj Dharamshi v. Kotal Investment Advisories Ltd. [Civil Appeal No. 2943- 2944/2021]*** and contended that *COC in its commercial wisdom have rejected the OTS proposal of the Corporate Debtor and have approved the Resolution Plan submitted by the SRA with 100% voting share in the matter of the Corporate Debtor. It has been settled by the Hon'ble Supreme Court in a catena of Judgments that the Commercial Wisdom of the CoC is paramount and cannot be interfered with by the Hon'ble NCLT as well as NCLAT.*

**FINDINGS AND ORDER**

29. We have perused the record and heard the rival contentions made by the Ld. Counsels representing the parties.

30. Ld. Sr. Counsel representing the Suspended Management has vehemently relied upon the Order dated 21st November, 2013 passed by the Hon'ble Supreme Court, read with the Order dated 27th August, 2021 passed by this Tribunal to make a point that the present CIRP proceedings now culminating into approval of the Resolution Plan by the COC, would ultimately result into alienation of the assets of the Corporate Debtor, if the Plan is



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approved by this Tribunal. He submits that therefore, it may be not allowed as per the embargo put by the Hon'ble Supreme Court.

On the contrary, the Ld. Counsels representing the RP as well as COC have argued that the embargo placed by Order dated 21st November, 2013 by the Hon'ble Supreme Court was only with regard to directing the Sahara Group of Companies that they shall not part with any moveable and immovable properties until further orders. And therefore, according to them the approval of the Resolution Plan shall not get affected by the order passed by the Hon'ble Supreme Court on 21st November, 2013.

31. Before coming to any conclusion with respect to the rival contentions, we would like to briefly go into the background. Initially, the Hon'ble Supreme Court has passed an order dated 28th October, 2013 which is as under:-

> *Mr. C.A. Sundaram, learned senior counsel appearing for respondent No. 5 (alleged contemnor), brought to our notice letter dated October 17, 2013 received from the Managing Director and CEO of the PNB Investment Services Limited. The same is taken on record and is marked as 'Annexure-A'.*



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*Mr. Sundaram, on the basis of the said letter and on instructions received from the Sahara Group of Companies, submitted that the alleged contemnors are willing to make available to SEBI the original title deeds of unencumbered properties, worth 20,000 crores, along with proper valuation reports, within a period of three weeks from today. SEBI, in turn, will examine the same and make their response, which shall be considered by this Court on the next date of hearing.*

*Till the above direction is complied with to the satisfaction of SEBI, the alleged contemnors (respondents) shall not leave the country without the permission of this Court.*

*Post on November 20, 2013 at 2:00 p.m.*

32. From the reading of the above order, it may be seen that the Ld. Senior Counsel representing the Sahara Group of Companies has submitted before the Hon'ble Supreme Court that the alleged contemnors are willing to make available to SEBI the original title deeds of unencumbered properties of Rs. 20,000 crore within a period of three weeks from the date of order and SEBI in turn will examine the same and submit their response.



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33. When the matter came up for further hearing on 21st November, 2013 before the Hon'ble Supreme Court, the following order was passed:-

> *We are convinced that the order dated 28.10.2013 passed by this Court has not been complied with in its letter and spirit. In such circumstances, we direct that the Sahara Group of Companies shall not part with any movable and immovable properties until further orders. We further direct that all the alleged contemnors shall not leave the country without the permission of this Court.*
> *List on 11.12.2013 at 2.00 P.M., for further arguments.*

34. This Tribunal vide an order dated 7th February, 2020 admitted the petition filed by the Bank of Baroda under Section 7 against the Corporate Debtor, thereby initiating CIRP.

35. Later on, certain IAs came to be filed by the Suspended Management, detailed reference of which has already been given in the earlier part of this order. However, what we may have to consider at this point of time, is with regard to those applications which have been decided vide order dated 11th November, 2020 passed by this Tribunal and consequently, filing of an IA No. 49 of 2021 by the Suspended Management seeking to set aside the order dated 11th November, 2020. When this IA No. 49 of 2021 was considered, the entire factual matrix was also thoroughly

examined by this Tribunal and then order dated 27.08.2021 was passed. Some of the relevant paras of order dated 27.08.2021 are worth noticing, which is as under:-

> *14. Sh. Abhinav Gaur, learned counsel for the Suspended Management has contended that in view of the order of the Hon'ble Apex Court dated 21.11.2013 whereby the Sahara Group of Companies were restrained from selling movable and immovable properties until further orders, the Suspended Management were constrained from participating effectively in the CIRP due to the embargo which was placed by the Hon'ble Apex Court.*
>
> *15. Sh. Gaur further submitted that the Corporate Debtor had filed its reply to the petition filed by Financial Creditor for initiation of CIR Process and brought on record that the petition is not maintainable as the same is in the teeth of the order of the Hon'ble Supreme Court dated 21.11.2013 passed in Contempt Petition (C) No.412 of 2012 in Civil Appeal No.9813/2011 titled SEBI v/s Sahara India Limited Corporation and others, and it is argued that in the said order it was directed by the Hon'ble Apex Court that no group company of Sahara Group of Companies shall part with any movable and immovable property without the permission of the Court.*
>
> *19. It is thus argued that it was evident from the documents already on record that the Corporate Debtor is wholly owned subsidiary of M/s Sahara Prime City Limited since 01.10.2012 i.e. even prior to the passing of the restrain order by the Hon'ble Apex Court on 21.11.2013.*
>
> *26. Sh. Gaur further states that thereafter suspended Directors filed IA No.253/2020 bringing the aforesaid facts on record for seeking modification of the order dated 07.02.2020 to the*

*extent that the same may be brought in consonance with the order passed by the Hon'ble Apex Court dated 21.11.2013 by directing the Financial Creditor to move an appropriate application before the Hon'ble Supreme Court seeking permission to commence and continue the proceedings against the Corporate Debtor, which were to ultimately result in alienating the property of the Sahara Group Companies.*

*28. After hearing the Ld. Counsels for the parties, this Tribunal is of the opinion that it is open for the Suspended Management to give a revised OTS proposal for fresh consideration before the CoC as per law, if they so desire as has also been indicated by the learned counsel for the RP on in the alternative, the Suspended Management may also file an application for clarification/ modification of the order passed by the Hon'ble Apex Court bringing full facts on record and get the said order modified/ clarified by the Hon'ble Apex Court.*

*29. Further the CoC or the RP if they as are advised may also seek clarification from the Hon'ble Apex Court with regard to the continuance of the Corporate Insolvency Resolution Process against the Corporate Debtor whether the same is in consonance of the orders of Hon'ble Apex Court dated 21.11.2013.*

*30. With the aforesaid directions, the present applications stands disposed off.*

36. This Tribunal has passed the said order dated 27th August, 2021 while taking into account the order dated 21.11.2013 passed by the Hon'ble Supreme Court, whereby directions were issued to the Sahara Group of Companies not to part with any moveable and immovable properties until further orders. It has also been



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established that the Corporate Debtor has become a part of the Sahara Group of Companies for which the Financial Creditors have already furnished their respective NOCs. This Tribunal, therefore, vide order dated 27th August, 2021 had allowed the Suspended Management to give a revised OTS proposal or in the "alternative" the Suspended Management may also file an application for clarification/ modification of the order passed by the Hon'ble Supreme Court. It is a factual aspect that the Suspended Management has filed the revised OTS. We are not going into the merits of the OTS and the legal consequences of its rejection by the members of COC. As we have already dealt with this aspect vide a separate order passed in I.A No.253 of 2023. Further, in para 29 of order dated 27th August, 2021, it was observed by this Tribunal that the COC or the RP, if they are advised may also seek clarification from the Hon'ble Supreme Court with regard to the continuance of the CIRP against the Corporate Debtor, whether the same is in consonance with the order dated 21.11.2013 passed by the Hon'ble Supreme Court.

37. It is this part of the order dated 27th August, 2021 passed by this Tribunal that COC or the RP were also to take a call to seek



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clarification from the Hon'ble Supreme Court, as to whether the CIRP is in consonance with the orders of the Hon'ble Supreme Court. This Tribunal, therefore, has remained conscious of the order dated 21st November, 2013 passed by the Hon'ble Supreme Court as recorded in para 29 of the said order. Since, this is precisely in the context of the CIRP in the present case itself. Therefore, it was open for the COC and RP to have sought clarification from the Hon'ble Supreme Court. However, the admitted position is that no such clarification has been sought either by the COC or RP from the Hon'ble Supreme Court with regard to the same being in consonance with the order of the Hon'ble Supreme Court. We find that the order dated 27th August, 2021 is obviously subsequent to the order dated 7th February, 2020 passed by this Tribunal, whereby the petition was admitted under Section 7 and CIRP was initiated against the Corporate Debtor. Therefore, the para 29 of the order dated 27th August, 2021 seen in this background becomes relevant and requires to be adhered to so as to seek appropriate clarification from the Hon'ble Supreme Court as to the continuance of the present CIRP being in consonance of the order passed by the Hon'ble Supreme Court.



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38. Even in some of the subsequent orders passed by the Hon'ble Supreme Court based upon different applications being moved by different parties at different point of time, we find that on one of the date i.e. on 27th April, 2016, the Hon'ble Supreme Court has considered one interim application whereby the Hon'ble Supreme Court vide order dated 27.04.2016 has entertained the application and the copy of this order has been placed on record along with the written submission filed by the RP vide Diary No. 2505 dated 20th September, 2023. In the said order, the Hon'ble Supreme Court has observed as under:-

> *I.A. No. 167 of 2016:*
>
> *Heard.*
>
> *On the analogy of the Order passed in I.A. No. 166 of 2016 we clarify that our Order dated 21.11.2013 passed in Consumer Complaint No. CC/13/17 in Contempt Petition © no. 412 of 2012 in Civil Appeal No. 9813 of 2011 shall not prevent the applicants from executing the judgment dated 07.11.2015 of the State Consumer Disputes Redressal Commission, Maharashtra, Nagpur passed against Sahara India Commercial Corporation Limited in Consumer Complaint No. CC/13/17 in accordance with law.*
>
> *I.A. No. 147 of 2016:*
>
> *In this application seeking intervention by the applicants, the applicant's precise grievance appears to be that Complaint Case No. CC/13/15 filed by him before the State Consumer Disputes Redressal Commission, Maharashtra, Circuit Bench, Nagpur is not being proceeded with on*

*account of our Order dated 21.11.2013 in Contempt Petition No. 412 of 2012 in Civil Appeal No. 9813 of 2011. It is submitted by learned counsel for the intervenor that intervenor-applicant shall be satisfied in case it is clarified that the order passed by this Court on 21.11.2013, whereby this Court restrained the Sahara Group of Companies from alienating any property moveable or otherwise, does not prevent the concerned consumer Disputes Redressal Commission from proceeding with contempt case filed by the applicants and passing appropriate orders on the same. We see no reason to decline that prayer. We make it clear that our order dated 21.11.2013 shall not prevent the concerned Disputes Redressal Commission from proceeding with and passing orders in accordance with law in pending Complaint Case No. CC/13/15 filed by the applicant.*

*I.A. No. 147 of 2016 is accordingly disposed of with the said direction.*

39. The perusal of the aforesaid orders passed by the Hon'ble Supreme Court indicate that even in cases where the conclusive orders have been passed by the respective consumer grievances forums, on appropriate applications being moved by the aggrieved parties, the Hon'ble Supreme Court has clarified that the order dated 21st November, 2013 will not prevent such enforcements. Such clarifications are thus in the context of the specific cases and again not in generally applicable to all such similar or identical or connected circumstances. We are, therefore, inclined to hold that the COC/ RP may have sought clarifications from the Hon'ble



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Supreme Court with respect to the order dated 21st November, 2013 in the same manner. It is to be noted that approval of the Resolution Plan would entail transfer of assets from the Corporate Debtor to the Successful Resolution Applicant.

40. We have considered the IA No. 243 of 2023 which is separately filed by the Resolution Professional and passed a separate order thereby granting approval to the Plan, however, subject to the RP/ COC seeking clarification from the Hon'ble Supreme Court to the effect that whether the present CIRP is in consonance with the order dated 21st November, 2013 passed by the Hon'ble Supreme Court.

41. Further, with respect to grievance concerning rejection of OTS proposal of applicant, we have already passed detailed order in I.A No. 253 of 2023 and therefore, we are not separately dealing with this aspect of the matter.

42. In view of our foregoing discussions, IA No. 434 of 2023 is accordingly dismissed except to the extent of directing the RP/COC to move an application before the Hon'ble Supreme Court for seeking clarification in the context of order dated 21.11.2013 passed by the Hon'ble Supreme Court and order dated 27.08.2021



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passed by this tribunal before commencing implementation of plan. The approval of the plan already ordered by us in I.A No. 243/2023 is subject to seeking the clarification from the Hon'ble Supreme Court in the aforesaid terms.

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**(Ashish Verma)** **(Praveen Gupta)**
**Member (Technical)** **Member (Judicial)**

**Date: 24.11.2023**