

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

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

SHRI RAJEEV MEHROTRA
HON'BLE TECHNICAL MEMBER

IA(IBC)(Plan) No. 06/JPR/2024

IA (IBC) No. 08/JPR/2020

IA (IBC) No. 437/JPR/2022

IA (IBC) No. 353/JPR/2024

IA (IBC) No. 364/JPR/2024

In CP No. (IB)- 03/9/JPR/2018

IN THE MATTER OF:

M/S UVA ENGINEERS PRIVATE LIMITED

...Operational Creditor/Applicant

Versus

M/S MAHA ASSOCIATED HOTELS PRIVATE LIMITED

...Corporate Debtor/Respondent

IA(IBC)(Plan) No. 06/JPR/2024:

MEMO OF PARTIES

MR. TARA CHAND MEENIA, RP

of M/s Maha Associate Hotels Pvt. Ltd.

Flat No. 206, GH- 3, Sector 24,

Panchkula, Haryana

...Applicant

IN THE MATTER OF:

IA No. 08/JPR/2020

Sd/-

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***IA(IBC)(Plan) No. 06/JPR/2024; IA (IBC) No. 08/JPR/2020; IA (IBC) No. 437/JPR/2022;
IA (IBC) No. 353/JPR/2024; IA (IBC) No. 364/JPR/2024 In CP No. (IB)- 03/9/JPR/2018***



MEMO OF PARTIES

MR. YASHDEEP SHARMA,
S/o L. N. Sharma, K-47,
Kishan Nagar, Shyam Nagar,
Jaipur-302019, Rajasthan.

...Applicant

VERSUS

**M/S MAHA ASSOCIATED
HOTELS PVT. LTD.,**
125, 2nd Floor, Kailash Hills,
New Delhi- 110065

...Respondent

IN THE MATTER OF:
IA No. 437/JPR/2022

MEMO OF PARTIES

MR. NARESH KUMAR MUNJAL, RP
125, 2nd Floor, Kailash Hills,
New Delhi- 110065.

...Applicant

VERSUS

**RAJASTHAN STATE INDUSTRIAL
DEVELOPMENT & INVESTMENT
CORPORATION LTD.**
Udyog Bhawan, Tilak Marg,
Jaipur, (Rajasthan)

...Respondent No.1

SENIOR REGIONAL MANAGER,
Rajasthan State Industrial Development
& Investment Corporation Ltd.,
Matsya Industrial Area,
Alwar, Rajasthan

Sd/-

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*IA(IBC)(Plan) No. 06/JPR/2024; IA (IBC) No. 08/JPR/2020; IA (IBC) No. 437/JPR/2022;
IA (IBC) No. 353/JPR/2024; IA (IBC) No. 364/JPR/2024 In CP No. (IB)- 03/9/JPR/2018*



...Respondent No. 2

ESTATE OFFICER,

Rajasthan State Industrial Development
& Investment Corporation Ltd.,
Udyog Bhawan, Tilak Marg,
Jaipur, Rajasthan

...Respondent No. 3

IN THE MATTER OF:
IA (IBC) No. 353/JPR/2024

MEMO OF PARTIES**MR. YASH DEEP SHARMA**

*Erstwhile Director of Maha
Associated Hotels Pvt. Ltd.*
93, Eillridge Villas, ISB Road,
Gachibowli, Serilingampally, KV
Rangareddy, Hyderabad- 500032
(Telangana)

...Applicant

*Versus***TARA CHAND MEENIA, RP**

Flat No. 206, GH 3, Sector 24,
Panchkula, Haryana- 134112
Phone: 011-40078344

...Respondent

AND IN THE MATTER OF:
IA (IBC) No. 364/JPR/2024

MEMO OF PARTIES**MR. SANDEEP GUPTA,**

R/o D-105, South City-I,
Gurugram, Haryana-122001

...Applicant

Versus

*IA(IBC)(Plan) No. 06/JPR/2024; IA (IBC) No. 08/JPR/2020; IA (IBC) No. 437/JPR/2022;
IA (IBC) No. 353/JPR/2024; IA (IBC) No. 364/JPR/2024 In CP No. (IB)- 03/9/JPR/2018*



MR. TARA CHAND MEENIA, RP,
Flat No. 206, GH-3, Sector-24,
Panchkula, Haryana-134112

...Respondent

For the Applicant	: Amol Vyas, Adv. Danish Akhtar, Adv.
For the Respondent	: Karan Gandhi, Adv.
For the RP	: Tara Chand Meenia, RP Prakul Khurana, Adv. Ankit Sareen, Adv.
For the SRA	: Tanmaya Mehta, Adv. Rohit Dubey, Adv. Ms. Vijeta Singh, Adv. Pranav Pareek, Adv.

Order Pronounced On: 13.08.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The Interlocutory Application bearing *IA (IBC) (Plan) No. 06/JPR/2024* ('Resolution Application') has been filed by *Mr. Tara Chand Meenia*, Resolution Professional ('RP' / 'Applicant') of *M/s Maha Associated Hotels Pvt. Ltd.* ('Corporate Debtor'), under Section 30(6) read with Section 60(5) of the Insolvency & Bankruptcy Code, 2016 ('IBC' / 'Code') and read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Process of Corporate Persons) Regulations, 2016 ('CIRP Regulations') and read with Rule 11 of National Company Law Tribunal Rules, 2016 ('NCLT Rules') for seeking approval of Resolution Plan.
2. The main Application numbered as *CP No. (IB)- 03/JPR/2018* was filed by the Operational Creditor, *M/s UVA Engineers Pvt. Ltd.*, under Section 9 of

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IA(IBC)(Plan) No. 06/JPR/2024; IA (IBC) No. 08/JPR/2020; IA (IBC) No. 437/JPR/2022; IA (IBC) No. 353/JPR/2024; IA (IBC) No. 364/JPR/2024 In CP No. (IB)- 03/9/JPR/2018



the Code for initiation of Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor. The said Application was admitted by this Adjudicating Authority *vide* Order dated 20.09.2018 and *Mr. Brij Kishore Sharma* was appointed as the Insolvency Resolution Professional ('IRP'). The Committee of Creditors ('CoC') in its 2nd meeting dated 12.11.2018 replaced the IRP and *Mr. Naresh Kumar Munjal* was appointed as the Resolution Professional ('RP') *vide* Order dated 30.11.2018. Thereafter, an Application bearing *IA No. 568/JPR/2022* was filed by *Mr. Naresh Kumar Munjal* to recuse himself from the responsibility of the RP and another Application bearing *IA No. 12/JPR/2023* was filed by the CoC for replacement of the RP wherein the name of the Applicant suggested as the RP. This Adjudicating Authority *vide* Order dated 21.03.2023 appointed the Applicant as the RP in the present matter.

3. As the timeline provided under the Code for conclusion of the CIRP was coming to an end, the CoC directed the Applicant to file an Application seeking exclusion and extension of the CIRP. The Applicant filed the Application bearing *IA No. 249/JPR/2023* for extension and exclusion of CIRP and the same was rejected by this Adjudicating Authority *vide* Order dated 12.10.2023. The said rejection order was challenged before the Hon'ble NCLAT in Company Appeal bearing *CA(AT)(Ins) No. 15 of 2024* by the Applicant. The Hon'ble NCLAT *vide* its Order dated 29.01.2024

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granted an extension of 60 days for issuance of fresh Form- G in the CIRP of the Corporate Debtor.

4. The Applicant published Form-G dated 01.02.2024 inviting the Expression of Interest ('EoI') from Prospective Resolution Applicants ('PRAs') to resolve the ongoing insolvency of the Corporate Debtor. In pursuance of the same, the Applicant has received 24 EoI from PRAs based on which the Applicant prepared a provisional and a final list of the PRAs in terms of Regulation 36A of CIRP Regulations, 2016. Thereafter, in compliance of Regulation 36B, the Applicant in conformity with CoC issued the Information Memorandum, Evaluation Matrix and request for Resolution Plan and the same was duly shared with all the PRAs.
5. In the interregnum, an Application bearing *IA No. 125/JPR/2024* was filed by the Suspended Directors of the Corporate Debtor challenging the eligibility criteria for inviting the EoI. The said Application was dismissed *vide* Order dated 19.03.2024. Further, the Suspended Directors filed another IA bearing *IA No. 288/JPR/2024* seeking directions to the Applicant to place the Resolution Plan submitted by the Directors before the CoC for its consideration and to set aside the 52nd CoC meeting. The said IA was dismissed by this Adjudicating Authority on the ground that the Suspended directors of the Corporate Debtor neither filed an EoI nor deposited the EMD which are pre-requisite for submission of a Resolution Plan.

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6. In the 52nd meeting of CoC dated 09.05.2024, the CoC in its commercial wisdom decided to adopt 'Swiss Challenge' method for approval of the Resolution Plan wherein the consideration offered by the 'Anchor bidder'/'Highest bidder' is informed to the other Resolution Applicants and they are given a fair opportunity to tender their offer in order to further the intent of the Code, i.e. value maximization of the Corporate Debtor. Thereafter, the Anchor bidder is given a final opportunity to improve its offer over other higher bids.
7. In the 53rd meeting of CoC dated 17.05.2024, all the PRAs were given a chance to submit their best proposal in terms of Swiss challenge method. Consequently, two Applicants i.e., (i) *Resurgent Property Venture Private Limited* and (ii) *Mr. Sandeep Gupta* had submitted their revised plans. Thereafter, the Anchor bidder *Truflair Buildwell LLP* was also allowed to revise its offer. Upon receipt of revised Resolution Plans, the same were put before the CoC in the 54th meeting of CoC dated 22.05.2024 wherein all the PRAs were invited to present their plans. During such meeting, one of the PRAs i.e., *Mr. Sandeep Gupta* abstained from participating in the meeting owing to his objection in relation to the Swiss Challenge Mechanism adopted by the CoC. *Mr. Sandeep Gupta* stated that the decision of the CoC to adopt the Swiss Challenge Mechanism does not align with the principles of fairness and equal opportunity for all PRAs. In this regard, an email dated



22.05.2024 was sent by *Mr. Sandeep Gupta* which was placed before the CoC.

8. In response to the said email, the Applicant stated that the Swiss Challenge Mechanism as decided by the CoC cannot be changed at this stage, more so considering the last extension granted by the Hon'ble NCLAT for completion of CIRP by 29.05.2024. The Resolution Plan submitted by *Mr. Sandeep Gupta* was password protected, and he refused to provide the password for the same and proceeded with filing of an Application before this Adjudicating Authority challenging the Swiss Challenge Mechanism.
9. In the aforesaid circumstances, the final revised Resolution Plan submitted by *Mr. Sandeep Gupta* could not be opened and placed for consideration before CoC. Further, the original Resolution Plan submitted by *Mr. Sandeep Gupta* could not be put up for voting as the same was a conditional Resolution Plan and not complete in terms of RFRP and the Code.
10. In the first phase of 54th CoC meeting, the representatives of *Resurgent Properties Ventures Pvt. Ltd.* stated that they had submitted the same Resolution Plan without any revision as they had not been able to meet the Chairperson of RIICO to get clarity on revival of the lease deed in favour of the Corporate Debtor. In view of the same, *Resurgent Property Ventures Pvt. Ltd.* requested further extension of time for submission of the revised final plan till 08.06.2024, however, CoC expressed its inability to extend the timelines in view of the Order passed by the Hon'ble NCLAT wherein it was

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directed that the CIRP of the Corporate Debtor to be completed on or before 29.05.2024.

11. While discussing the Resolution Plan, the Suspended Directors of the Corporate Debtor highlighted a clause on page 39 of the Resolution Plan submitted by *Resurgent Properties Ventures Pvt. Ltd.* which was conditional. Therefore, the Resolution Plan submitted by *Resurgent Properties Ventures Pvt. Ltd.* was not put up for voting.
12. In the Second phase of the 54th CoC meeting, the CoC deliberated upon the revised Resolution Plan submitted by the Anchor Bidder i.e., *Truflair Buildwell LLP*. The RP apprised the members of the CoC that despite being the highest bidder, *Truflair Buildwell LLP* has further improved the offer by Rs. 1.50 Crore upon insistence of the RP.
13. The RP has submitted that the initial Resolution Plan submitted by *Truflair Buildwell LLP* was a conditional Resolution Plan which stands cured upon the removal of the condition clause. Further, upon enquiry by the CoC, it has been stated that the Resolution Plan provides for the claims of EPFO & ESIC.
14. The Resolution Plan submitted by *Truflair Buildwell LLP* was in line with the terms and conditions of RFRP, Regulation 37, 38, and 39 of CIRP Regulations, and Section 29A, 30, and other provisions of the Code and the Regulations framed thereunder.

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15. The Resolution Plan of *Truflair Buildwell LLP* was considered to be feasible and viable by the CoC on the desired parameters. It is stated that *Truflair Buildwell LLP* got a score of 95 out of 100 on qualitative parameters of the Resolution Plan. Accordingly, in 54th CoC meeting, the CoC approved the Resolution Plan submitted by *Truflair Buildwell LLP* ('Successful Resolution Applicant'/'SRA') with cent percent voting. The SRA has also submitted an affidavit under Section 29A of the Code as required under Regulation 39(1) of the CIRP Regulation. Further, the RP has issued a Letter of Intent to SRA and has given time to furnish the performance guarantee, and the same has been unconditionally accepted by the SRA.
16. The Applicant/RP filed an Additional Affidavit *vide* Dairy No. 1643/2024 dated 08.07.2024 in compliance of the Order dated 02.07.2024 to bring on record the Valuation Reports of the Corporate Debtor.
17. The SRA has filed its Written Submissions *vide* Dairy No. 1732/2024 dated 19.07.2024 and contended that *IA No. 353/JPR/2024* filed by *Mr. Yashdeep Sharma* (Suspended Director) of the Corporate Debtor challenging the Resolution Plan has been filed to delay the CIRP of the Corporate Debtor. In support of its arguments the SRA has relied upon the following Case Laws:

- I. *Ramesh Kesavan Vs CA Jasin Jose Company Appeal (AT) (CH) (INS.) No. 422/2023*
- II. *M.K. Rajagopalan Balaji Villa Vs S. Rajendran, RP Vasan Health Care Pvt. Ltd. & Ors. Company Appeal (AT) (CH) (INS) No. 58/2023*

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- III. *Prasada Raju M.R.V Vs Sri Vamsi Kambhammettu CP(IB) No. 682/07/HBD/2018*
 - IV. *A.C. Muthaiah Vs Board of Control for Cricket in India (2011) 6 SCC 617*
 - V. *Hemanth Naga Kumar Narella vs Rajesh Chillale & Anr. CP(IB) No. 77/9/AMR/2019*
 - VI. *K. Sashidhar Vs Indian Overseas Bank & Ors., Civil Appeal No. 10673/2018*
18. In order to adjudicate upon the I.A. pertaining to the Resolution Plan, it is incumbent to deal with other Interlocutory Applications which have a direct bearing upon the Resolution Plan. The relevant details of such Interlocutory Applications are provided hereunder in the subsequent paragraphs. Further, for the sake of brevity and clarity, all such I.A.'s are dealt with in the instant Order.
19. The *Interlocutory Application No. 08/JPR/2020* was filed *vide* Diary No. 18/2020 dated 06.10.2020 by *Mr. Yashdeep Sharma* ('Applicant') under Regulation 13 of the CIRP Regulation, 2013 read with Section 60(5) of the Code. The aforementioned IA has been filed on the following set of facts:
- 19.1 It is contended by the Applicant that the Interim Resolution Professional made the public announcement under regulation 6 of the CIRP Regulation, 2016 on 27.09.2018 for submission of the claims wherein the last date for submission of the claim was 08.10.2018. The Applicant submitted its proof of claim as a Financial Creditor in Form-C for an amount of Rs. 1,77,18,932/- (Rupees One Crore Seventy-Seven Lakh Eighteen Thousand Nine Hundred Thirty-Two

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Only). In support of its claim the Applicant submitted copies of all the bills paid, debit notes and a copy of the agreement.


19.2 Thereafter in January, 2019, the Applicant raised a query *vide* E-mail dated 25.01.2019 about the agreement between *Maha Hotels Projects Pvt. Ltd.* and Corporate Debtor. The RP replied to the same *vide* E-mail dated 09.04.2019 and mentioned that the transaction audit is not complete and some details are yet to be provided by the Applicant herein. It is pertinent to note that the Applicant has provided all the details to the RP, therefore, non-admission of the claim by the RP is unjustifiable.

19.3 The RP has failed to respond over the claim filed by the Applicant within the stipulated timeline. Further, the information sought by the RP concerning the claim has already been provided by the Applicant despite that the RP has kept the admission of the claim in abeyance.

19.4 The RP in his latest Progress Report dated 28.11.2019 submitted that *the claim of Maha Hotel Projects Pvt. Ltd. for Rs. 1,77,18,932 including interest of Rs. 78,66,402/- received on 18th December 2018 will be kept pending till the completion of audit and disposal of application by RP on avoidance of transaction filed with NCLT u/s 25(2) (j) of IBC, 2016.*

19.5 There is no connection between verification of a claim and pendency of the transactional audit. Therefore, the Applicant again reminded the

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RP about the pending approval of the claim *vide* E-mail dated 03.10.2019. Thus, the Applicant preferred the instant Application for issuing necessary directions to the RP for verification and acceptance of the claim.

20. The RP has filed its Reply to the *IA (IBC) 08/JPR/2020 vide* Dairy No. 89/2020 dated 15.01.2020 and stated the following:

20.1 The RP submitted that as per the public announcement last date for submission of the claim was 08.10.2018 and the Applicant filed its claim after the due date. Further, the Applicant has not provided complete documents in support of the claim for verification.

20.2 The Applicant is a holding company of the Corporate Debtor and is also a related party. It is pertinent to note that the Applicant Company is a related party of the Corporate Debtor and has entered into transactions of over Rs. 54 Crores which are of fraudulent and extortionate in terms of Sections 50 and 66 of the Code. Thus, the Applicant cannot play hot and cold at the same time, on one hand they are not providing the information and on the other hand they want their alleged claim to be admitted.

20.3 Further it is submitted that in para 32.1 of the Avoidance Application bearing *IA No. 176/JPR/2019*, the transaction with the Applicant is termed as an extortionate credit transaction entered with the intention of defrauding the creditors of the Corporate Debtor within

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the meaning of Section 50 of Code, 2016. The suspended directors till date had not given any reply or documents in this regard.


20.4 The RP has submitted that due to lack of relevant material and proper documents, the claim of the Applicant cannot be verified.

21. The Interlocutory Application bearing *IA (IBC) 437/JPR/2022* has been filed *vide* Dairy No. 2666/2022 dated 06.09.2022 by the Resolution Professional against Rajasthan State Industrial Development & Investment Corporation ('RIICO') for providing status of the due lease rentals of the land allotted to the Corporate Debtor *vide* Diary No. 2666/2022 dated 06.09.2022. The brief facts of the Application as alleged by the RP are as follows: -

21.1 The CIRP of the Corporate Debtor was initiated by this Adjudicating Authority *vide* Order dated 20.09.2018. During the course of hearing, it was brought to the notice of this Adjudicating Authority that there exists a possibility of resolution of the Corporate Debtor subject to disposal of the Writ Petition pending against RIICO. The same has also been recorded by this Adjudicating Authority in its Daily Orders dated 22.04.2022, 21.06.2022, and 12.07.2022.

21.2 The Corporate Debtor was allotted *Plot No. HTL- 10* admeasuring 15000 sqm at *New Industrial Complex (Majrakath), Neemrana Industrial Area* for setting up a hotel *vide* allotment letter dated 15.11.2011. Accordingly, the original lease agreement was executed on 04.01.2012 and was registered on 23.02.2012. Further, the

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Corporate Debtor paid the security money, development charges, one-time economic rent, service tax, and the site plan charges to the tune of Rs. 13,93,92,967/- (Rupees Thirteen Crore Ninety-Three Lakh Ninety-Two Thousand Nine Hundred and Sixty-Seven Only) to RIICO.

- 21.3 Subsequent to obtaining possession of the land, the Corporate Debtor complete construction of over 1,10,000 sq. ft. Further, the built-up area comes to about 35% of FAR as required under the Rules of 1979 and Clause 4(c) of the allotment letter.
- 21.4 Thereafter, on 27.10.2017, a cancellation order was issued by RIICO cancelling the allotment of the subject plot on account of non-payment of retention charges and non-utilization of the plot. The said Order was assailed by filing an appeal before RIICO which was partly allowed *vide* Order dated 19.02.2018.
- 21.5 Subsequently, the Corporate Debtor received a letter dated 27.02.2018 from RIICO containing the calculation sheet qua the amount required to be paid for restoration of the subject plot. It was pointed out that although RIICO had observed that the delay in commencement of the hotel activities was consequent to pending permissions from the RSPBC but an exorbitant amount was charged regarding the retention charges. The Corporate Debtor sought revised calculations *vide* its letter dated 28.03.2018.




- 21.6 The Corporate Debtor received another letter dated 15.05.2018 from Sr. Regional Manager, RIICO stating that the Order dated 19.02.2018 has been withdrawn and the allotment of the subject plot stands cancelled. The Order dated 15.05.2018 was challenged by the Corporate Debtor. Further, it was stated that the Corporate Debtor received no response to its letter dated 28.03.2018 concerning revised calculation of the retention charges.
- 21.7 During the pendency of the Writ Petition against the Order dated 15.05.2018, the CIRP of the Corporate Debtor was initiated *vide* Order dated 20.09.2018. It was submitted that in order to reach resolution of the Corporate Debtor, it is necessary to know the status of the lease rental dues of RIICO. Further, it has been resolved in the 33rd CoC meeting to file an Application under Section 60(5) of the Code to know the current status of the lease rental dues. Thus, the instant Application has been preferred.
22. RIICO has filed its Reply to the Application bearing *IA (IBC) 437/JPR/2022* *vide* Diary No. 100/2023 dated 13.01.2023 and stated the following:
- 22.1 The Corporate Debtor was allotted Plot No. HTL-10 on 15.11.2011 for setting-up a three-star Hotel and the lease deed for the same was executed on 04.01.2012 and the possession was also handed over to the Corporate Debtor on the very same date. As per Condition 4(c)

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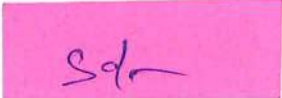


RIICO Disposal of Land Rules, 1979. The Corporate Debtor preferred an appeal against the Order dated 27.10.2017 and the same was partly allowed *vide* Order dated 19.02.2018 passed by Managing Director, RIICO wherein the cancellation was set aside and the allotment was restored subject to deposit of the due amount within 45 days from the dated of receipt of the order.

22.4 The Corporate Debtor failed to adhere to the terms provided in the Order dated 19.02.2018 and deposit the due amount, and consequently, the Order dated 19.02.2018 stood automatically withdrawn *vide* letter dated 12.06.2018.

22.5 It was submitted that a Writ Petition bearing no. 19669/2018 has been filed by the Corporate Debtor against RIICO before the Hon'ble Rajasthan High Court against the aforementioned events. In the said Petition, an *ex-parte* interim order has been passed wherein RIICO has been restrained to take further proceedings in pursuance of notice under Sub-Section (1) of Section 4 of the Rajasthan Public Premises (Eviction of Unauthorized Occupants) Act, 1964.

22.6 It was contended that in background of the aforementioned facts, the allotment of the subject land stands cancelled and once the allotment has been cancelled, the property vests in RIICO being the Lessor. Thus, there is no question of any lease rental dues to be determined.




Moreover, the RIICO also sought restoration of the actual physical possession of the said plots from the Corporate Debtor.

23. The Interlocutory Application bearing *IA (IBC) 353/JPR/2024* has been filed under Section 60(5) of the IBC, 2016 by *Mr. Yash Deep Sharma*, Suspended Director ('Applicant') of the Corporate Debtor raising certain objections regarding approval of the Resolution Plan of Corporate Debtor submitted by RP after approval by CoC in 54th CoC meeting held on 22.05.2024. The brief facts of the Application as alleged by Suspended Director are as follows: -

23.1 The Applicant by way of instant IA has raised certain objections to the Resolution Plan in pursuance to the liberty granted by the Hon'ble NCLAT *vide* Order dated 25.04.2024 and further invoking the inherent powers of this Adjudicating Authority to examine as to whether the Resolution Plan submitted by the SRA meets the provisions of IBC as well as principles enunciated by the Hon'ble Supreme Court.

23.2 Resolution Plan submitted by the SRA which forms the part of the present application was not submitted to the COC till 54th Meeting of Committee of Creditors held on 22.05.2024. A bare perusal of Minutes of 54th Meeting of CoC, final copy of the Resolution Plan was not submitted to the members of CoC till the commencement of the said meeting. It was further apprised by the RP that if the Resolution Plan submitted by the SRA is unconditional and complete



same shall be approved by the CoC and subsequently, the Letter of Intent will be issued to the SRA.

23.3 It was further submitted that the final Resolution Plan along with all necessary documents ought to have been shared with the CoC members and the objections/comments raised in the COC meeting by the Suspended Director should be considered before putting the plan to vote.

23.4 After recording the aforesaid objections, the RP invited the CoC members to comment on the aforesaid objections of the Suspended Director. The CoC member submitted that they received the final Resolution Plan in a password protected file on 21.05.2024 and the same was opened during the meeting only therefore, the Anchor Bidder was given time to file its Revised Resolution Plan before the second session of the meeting. It is stated by the CoC member that the final Revised Resolution Plan submitted by the Anchor Bidder, was shared on screen by the RP during the said meeting. From the aforesaid it is abundantly clear that neither the Resolution Plan was given to the member of CoC nor to the Suspended Directors. Thus, the final Revised Resolution Plan was not shared by the RP prior to the 54th CoC meeting.

23.5 The RP has acted in defiance of the orders of the Hon'ble Supreme Court which clearly provides that the RP is duty bound to provide a

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copy of the Resolution Plan to the members of COC as well as to the Suspended Directors.

- 23.6 Further it is contended that the appointment of *Truflair Buildwell LLP* as an Anchor Bidder is not proper. A bare perusal of the RFRP show that the process of Swiss Challenge Method was not proposed in the RFRP and it was only in 50th Meeting of COC.
- 23.7 During the submission of the Resolution Plan, CoC came to know the value of the various Resolution plans which are as follows:

S. No.	Name of Resolution Applicants	Amount Proposed (Rs.)	Amount proposed to secured Financial Creditors (Rs.)
1.	<i>HR Commercials Private Limited</i>	15,25,00,000	8,00,00,000
2.	<i>Sandeep Gupta</i>	14,26,64,653	11,00,00,000
3.	<i>Truflair Buildwell LLP</i>	10,01,00,000	10,00,00,000
4.	<i>Resurgent Property Ventures Pvt. Ltd.</i>	51,00,000	10,50,000

- 23.8 Further, it was submitted that the process for identifying the Anchor Bidder by the RP and CoC was at complete fault and the RP has only favoured only one Resolution Applicant i.e., *Truflair Buildwell LLP*.
- 23.9 As far as the Resolution Plan of the SRA is concerned, it is submitted that the RP has not conducted any of the due diligence as required under the Code while scrutinizing the Resolution Plan submitted by

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SRA. It is submitted that the SRA being an LLP has the following partners with the following capital contribution: -

<i>Sr. No.</i>	<i>Name of the Partner</i>	<i>Capital Contribution</i>
1.	<i>Sachin Gupta</i>	<i>50,000.00</i>
2.	<i>Santosh Aggarwal</i>	<i>50,000.00</i>
3.	<i>ORIS Projects LLP</i>	<i>2,99,00,000.00</i>

The aforesaid tabular-chart clearly indicates that ORIS (ORRIS) Projects LLP owns more than 90% of the capital in the SRA LLP. ORIS Projects Private Limited has been recently converted to an LLP with Mr. Vijay Gupta, Mamta Gupta & Amit Gupta as Partners. Mr. Vijay and Amit Gupta are on Board of several companies such as *Orris Infrastructure Private Limited*. Mr. Sachin Gupta was also a Director of *Orris Infrastructure* in 2015-16. Mr. Amit & Mr Vijay Gupta are also on Board in the year 2017-18 other companies. All these entities, their Directors and Shareholders constitute as connected parties as defined under the IBC. It may be noted that several CIRP petitions are pending before NCLT New Delhi against *Orris Infrastructure*. It is pertinent to note that in the Appendix-III of the Resolution Plan of the SRA, it has been disclosed that there are no litigation/disputes/proceedings pending against the SRA which can materially affects their ability to fulfil obligations under the RFRP. It is relevant to note that since several insolvency applications are

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pending against the persons who are controlling the SRA, it cannot be said that the pendency of the aforesaid insolvency does not threaten the ability of the SRA to fulfil its obligations under the RFRP.

23.10 Further, RP has not satisfied himself on fund availability with the SRA. Sources of funds are not mentioned in the Resolution Plan submitted by SRA and only net worth of *Orris Projects LLP* has been mentioned whereas no confirmation letter has been attached to show the funds availability. Further it is submitted, Orris and its promoters have history of defaults in projects in UP and Haryana and a bare perusal of the balance sheet of SRA for the financial year ending on 31.03.2023 clearly shows that the SRA has Nil turnover and the SRA is a dummy LLP. Even as per the balance sheet, the net worth of the Resolution Applicant is below Rs. 1.0 Lakh.

23.11 There is no evidence on record to show that the RP has independently verified any sort of bank balances of the SRA of availability of investible funds let alone capability to fund the upfront payment and balance capital cost to be incurred. The RP has merely relied on representations of the SRA. In light of plethora of financial cases against the applicant at NCLT and Supreme Court filed by home owners of their projects it is imperative that RP ought to have done independent and thorough due diligence in this regard.






23.12 SRA has not submitted the desired documents/information as sought by the RP through RFRP. As per Appendix-V attached to RFRP, the SRA was required to provide name and details of the directors of the resolution applicant, all connected persons.

23.13 In this regard, it is submitted that as per the 29A report in the finding given, no due diligence with regard to the companies/LLPs in which either Sachin Gupta, Santosh Aggarwal or ORRIS Projects LLP or their shareholders/directors or connected parties are partners/directors in the companies qua the section 29A has been done by the RP. The RP has merely completed the formalities by conducting due diligence of Sachin Gupta and Santosh Aggarwal in its individual name. Therefore, the report given under Section 29A is completely misconceived and nonest. Moreover, the report is completely silent and therefore, it can be safely presumed that no due diligence qua the ORRIS Projects LLP has been done by the RP.

23.14 It is clear that SRA has tactfully evaded giving correct declarations and even given wrongful declarations under Appendix III of the resolution plan by stating that *"We confirm that there are no litigation/disputes/proceedings pending or threatened against us, which materially affects our ability to fulfil our obligations under the Request for Resolution Plan."*

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23.15 The said Resolution Plan proposes change in shareholding pattern, the Corporate Debtor is an unauthorized occupant on the land of RIICO therefore, prior written consent of RIICO is necessary before approving the said Resolution Plan by this Adjudicating Authority. The said land cannot be the part of the CIRP cannot be form part of information memorandum and the RP cannot transfer any right attached to the said land to SRA without prior approval of RIICO.

23.16 Therefore, plan submitted by SRA is conditional and this Adjudicating Authority does not have the power and the jurisdiction to grant the relief which have been sought in the present plan. A bare perusal of the para mentioned at Page-44 would indicate that the SRA has sought approval of this Adjudicating Authority with regard to certain dues as well as waiver of non-compliances.

23.17 As per Regulation 21 (3), RP has failed to provide copies of all relevant documents to the CoC and the suspended directors to be voted upon in a CoC meeting that includes all documents relating to the agenda items for which voting has been proposed by RP in a CoC Meeting. Regulation 35(2) makes it clear that the Resolution Professional shall provide fair value and liquidation value to "every member of the committee" after receipt of resolution plans in accordance with the Code. As per Regulation 38(1)(a), a Resolution Plan shall include a statement as to how it has dealt with the interest



of all stakeholders, and under sub-clause 3(a), the Resolution Plan shall demonstrate that it addresses the cause of default.

24. The RP has filed its Written Submissions *vide* Diary No. 1742/2024 dated 22.07.2024, wherein stated the following:

24.1 It is submitted that CoC in its 'commercial wisdom' with cent percent voting, had approved the Resolution Plan submitted by *M/s. Truflair Buildwell LLP*.

24.2 Suspended Director filed the instant Application challenging the Resolution Plan on malicious and flimsy grounds in order to derail the CIR process and push the Corporate Debtor into liquidation. The main ground of contention/agitation by the Suspended Directors was that they were not supplied with the copy of the Resolution Plan, the copy of Resolution Plan was duly provided by the RP to the Suspended Directors *vide* its email dated 09.04.2024.

24.3 Instant application is filed by the Suspended Directors is not maintainable as the Applicant does not have any locus to challenge the Resolution Plan.

24.4 The rationale behind sharing the copy of the resolution plan with the suspended management is to have a constructive discussion regarding the plan in order to achieve the object of value maximization as envisaged in the preamble of the Code. Further, the intent behind involving the promoters is to make them aware about the extent to

which their security interest as guarantors would be relaxed upon distribution of the proceeds to secured financial creditors by the SRA.


24.5 Bare perusal of the contents of the present Application makes it evident that though the Applicant claims that the Application has been filed in the capacity of a suspended management, but their grievances raised in the instant Application appears to be that of an unsuccessful resolution applicant who does not have any locus to challenge a Resolution Plan.

24.6 It was contended that adoption of Swiss Challenge Mechanism was in terms of RFRP and based upon commercial wisdom of CoC. Regulation 39(1A) (b) of the CIRP Regulations, indicates that the Resolution Professional may use a challenge mechanism to enable the resolution applicant to improve their plan if envisaged in the RFRP. The decision to choose for Swiss Challenge Mechanism is within the domain and a commercial wisdom of the CoC

24.7 It is settled position of law that the 'commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the processes within the timelines prescribed by the IBC and the same should not be interfered with, it is only the process of decision making, which can be challenged if there is any material irregularity in the said proceedings. In support of its argument the RP has relied placed upon the following Judgments:

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- I. *Ngaitlang Dhar vs. Panna Pragati Infrastructure Pvt Ltd, Civil Appeal No. 3665-3666/2020)*
 - II. *K. Sashidhar v. Indian Overseas Bank and Others, (2019) 12 SCC 150*
 - III. *Committee of Creditors of Essar Steel India Limited Through Authorized Signatory v. Satish Kumar Gupta and Others,*
 - IV. *Maharashtra Seamless Limited v. Padmanabhan Venkatesh and others, (2020) 11 SCC 467*
 - V. *Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, (2021) SCC OnLine SC 204*
 - VI. *Ghanashyam Mishra and Sons Private Limited Through the Authorized Signatory v. Edelweiss Asset Reconstruction Company Limited Through the Director & Ors, (2021) 9 SCC 657*

24.8 Suspended Director has intentionally tendered entirely wrong figures with respect to the amount proposed under the various Resolution Plans of the Resolution Applicants which has been done with mala-fide intention to mislead this Adjudicating Authority that the Resolution Plan submitted by *M/s. Truflair Buildwell LLP* was not offering the highest value to resolve the state of insolvency of the Corporate Debtor. The CoC in its 'commercial wisdom' had approved the resolution plan submitted by the SRA to resolve the state of insolvency of the Corporate Debtor.

24.9 Without providing any documentary proof, the Suspended Director has further wrongfully contended that the *M/s. Orris Infrastructure Limited* is a connected party of the SRA. In this regard, it is submitted that *Orris Infrastructure Limited* and *ORIS Projects LLP* (parent



company of SRA) are two separate legal entities under the law. Further, the Suspended Director himself concedes that *Mr. Sachin Gupta* (partner of SRA) retired as a director from *Orris Infrastructure Limited* in the year 2015-16 and *Mr Vijay Gupta* (partner of SRA) retired in the year 2017-18.

24.10 The CoC in its commercial wisdom found the Resolution Plan to be feasible and viable, and compliant of the mandatory provisions under the CIRP Regulations because of which the plan was approved with 100% votes in affirmative.

24.11 In terms of the Order dated 25.04.2024 passed by the Hon'ble NCLAT, the CIRP of the Corporate Debtor was to be concluded by the RP before the last date for completion of CIRP i.e., 29.05.2024. The Suspended Director has raised various objections to the resolution process carried out by the RP in the interest of Corporate Debtor as per the provisions of the Code and regulations framed thereunder. In this regard, it is necessary to highlight that the entire resolution process was duly administered by the CoC and the Suspended Director despite being present in each CoC meeting, raised no objections in the meeting itself. In addition, the Suspended Director kept on filing applications before this Adjudicating Authority to delay & derail the CIRP.

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24.12 That in view of the above objections raised by the Applicant-Suspended Director, it is submitted that as per the settled position of law, it is not the role of Suspended Director to raise objections at each stage of the resolution process, rather it falls within the domain of CoC to administer the course of CIRP.

24.13 Additionally, the RP has relied on the following Case Laws:

- I. *Dr. Ravi Shankar Vedam Vs. Tiffins Barytes Asbestos, TA (AT) No. 134/2021 (Company Appeal (AT) (Ins) No. 653/2019)*
- II. *M.K. Rajagopalan Balaji Villa Vs. S. Rajendran, RP Vasan Health Care Pvt. Ltd. and Ors, CA (AT) (CH) (INS) No. 58 of 2023*
- III. *Prasada Raju M.R.V vs Sri Vamsi Kambhammettu, CP (IB) No. 682/07/HDB/2018*
- IV. *Vijay Kumar Jain Vs. Standard Chartered Bank Civil Appeal No. 8430/2018*
- V. *Central Bank of India vs. KSM Spinning Mills Limited, IA Nos. 890/2022, 466/2020, 892/2022, 265/2020, 266/2020, 462/2020 in CP (IB) No.250/Chd/PB/2018*
- VI. *Ngaitlang Dhar vs. Panna Pragati Infrastructure Pvt Ltd, Civil Appeal No. 3665-3666/2020*


25. The Suspended Director has also filed its Written Submissions *vide* Diary No. 1647/2024 dated 08.07.2024 wherein it reiterated its earlier submissions and additionally reliance upon the following Judgments: -

- I. *Vijay Kumar Jain vs Standard Chartered Bank (2019) 20 SCC 455*
- II. *Rajesh Business and Leisure Hotels Pvt. Ltd., CP(IB) No. 1171/MB/2018*
- III. *Hemant Shantilal Shah Vs Care Office Limited, Company Appeal (AT) (Insolvency) No. 26/2023*

26. The Application bearing *I.A. (IBC) No. 364/JPR/2024* has been filed by Mr.

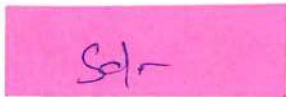
Sandeep Gupta, one of the Prospective Resolution Applicants ('PRAs'),

IA(IBC)(Plan) No. 06/JPR/2024; IA (IBC) No. 08/JPR/2020; IA (IBC) No. 437/JPR/2022; IA (IBC) No. 353/JPR/2024; IA (IBC) No. 364/JPR/2024 In CP No. (IB)- 03/9/JPR/2018



against *Mr. Tara Chand Meenia*, Resolution Professional, *vide* Diary No. 1661/ 2024 dated 09.07.2024 alleging lack of transparency in the process of consideration of the Resolution Plan and apprehending potential failure in providing equal opportunities to all the Prospective Resolution Applicants. The aforementioned IA has been filed on the following set of facts:

- 26.1 The RP issued the Form G inviting Expression of Interest ('EoI') and the same was published on 01.02.2024. In pursuant to the Form G, the Applicant herein submitted an EoI. Thereafter, the RP *vide* email dated 19.02.2024 informed the Applicant that he was eligible to become a PRA.
- 26.2 Subsequently, the PRA submitted the Resolution Plan to the RP in a sealed envelope containing a hard copy of the Plan along with the Earnest Money Deposit ('EMD'). Further, a password protected soft copy was also sent to the RP on 26th April 2024. Thereafter, discussions were held with each PRAs individually on 09.05.2024. During the said discussion, the RP informed the PRA to incorporate some changes on the ground that the Plan submitted by the PRA was conditional upon revival of the lease by RIICO and such conditional plans were not acceptable. The PRA's representative informed the RP to submit a revised Resolution Plan in consultation with their legal team.







26.3 Thereafter, the RP informed the PRA about the outcome of the 52nd CoC meeting *via* email dated 09.05.2024 wherein it was stated that the CoC has decided to adopt the Swiss Challenge Mechanism for advancing the resolution process of the Corporate Debtor. Further, the RP requested the PRA to submit the final Resolution Plan in furtherance of the adopted mechanism. The PRA has stated that the introduction of the Swiss Challenge Method was never conveyed to the PRA's representative during the 52nd CoC meeting.

26.4 The PRA raised queries concerning the adoption of the Swiss Challenge Process and expressed his commitment to submit best Resolution Plan via email dated 13.05.2024. In revert, the RP disclosed information about the anchor investor/bidder and claimed that the same was also discussed during the 52nd CoC meeting. However, no such discussion ever took place during the 52nd CoC meeting. It was contended that the adoption of Swiss Challenge Method required approval of the CoC by setting up of the required agenda and passing of a resolution concerning the same. However, no such steps were undertaken.

26.5 Thus, the RP and his team has maliciously concealed the information about the anchor bidder under the guise of the Swiss Challenge Process. Further, the selection of the anchor bidder was done arbitrarily and without requisite transparency. It was contended that




the appointment of the anchor bidder confers extensive rights including the right of first refusal (ROFR) to match any potential bid in the Swiss Challenge Method. Thus, it restricts participation from serious potential bidders in the process.

26.6 Besides the aforementioned allegations, it was contended that the RP has concealed the status of the land/plot which is the sole asset of the Corporate Debtor and is currently in dispute with RIICO. Further, the RP has failed to provide the details of the ongoing legal proceedings between RIICO and the Corporate Debtor, and the steps taken by the RP against RIICO.

26.7 The PRA apprehends that the RP intends to erroneously reject his plan despite him being the highest bidder. Further, the RP intends to give undue preference to someone else over the PRA. Moreover, the PRA suspecting that the RP might misuse his position by improperly presenting a better bid amount through the anchor bidder on opening of the plan, the PRA refused to share the password of the plan until the anchor bidder process was removed. Although, the PRA provided a hard copy of the Revised Resolution Plan on 21.05.2024 and the RP erroneously refused to consider the PRA's concerns and denied his Resolution Plan.

26.8 Aggrieved by the aforementioned events, the PRA filed a complaint against the RP with *Punjab and Sind Bank*, the sole financial creditor.



Further, the PRA also shared the password of the revised Resolution Plan with the financial creditor. To conceal his wrong doing, the RP issued a clarification letter to the complainant *via* email dated 04.06.2016 wherein he falsely presented the fact and suppressed certain details and misrepresented the truth.

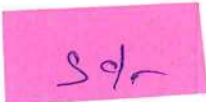

26.9 The PRA has raised the following issues for serious consideration and rectification to ensure a fair and transparent resolution process:

26.9.1 The Resolution Plan was approved by the Bank Official's on non-working day.

26.9.2 There exists discrepancy in Resolution Plan value as the proposed Resolution Plan was valued at Rs. 17.00 Crores and the approved Resolution Plan was valued at Rs. 11.50 Crores.

26.9.3 The conditions of Swill Challenge Method have been violated. As per Swiss Challenge method, every bidder should be afforded the opportunity to increase their bid, however, the same was restricted by the RP.

26.9.4 The Plan submitted by the PRA was unconditional and only involved inquiries pertaining to the status of the property of the Corporate Debtor and the ongoing legal proceedings qua the same.



27. We have heard the arguments advanced by the parties to the case and perused the documents presented. The IAs bearing no. *IA(IBC)(Plan) No.06/JPR/2024*, *IA(IBC) No. 08/JPR/2020*, *IA(IBC) No. 437/JPR/2022*, *IA(IBC) No. 353/JPR/2024*, and *IA(IBC) No. 364/JPR/2024* herein are being considered simultaneously for proper and effective adjudication of the issues and reliefs prayed for. Since, the Applications other than the Resolution Plan have a direct bearing upon the Resolution Plan, therefore, it becomes incumbent to first consider the said IAs before delving into the merits of the Resolution Plan.
28. *IA(IBC) No. 353/JPR/2024* is filed by *Mr. Yashdeep Sharma*, Suspended Director of the Corporate Debtor for dismissal of *IA(IBC)(Plan) No.06/JPR/2024* pertaining to the approval of Resolution Plan. Further, another *IA(IBC) No. 364/JPR/2024* is filed by *Mr. Sandeep Gupta*, one of the unsuccessful Resolution Applicant, challenging the adoption of Swiss Challenge Method and Achor Bidding system in approval of Resolution Plan. Additionally, concerns have been raised regarding transparency and fairness in process of approval of the Resolution Plan.
29. In so far as the adoption of the Swiss Challenge Method is concerned, it is relevant to mention that Clause 10(i) of the Request for Resolution Plan ('RFRP') categorically provided for adoption of the challenge mechanism by the CoC at its discretion. The relevant extract of the RFRP is reproduced hereunder:-

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“The CoC may also use a challenge mechanism to enable resolution applicants to improve their plans in terms of Regulation 39(1A)(b) of the CIRP Regulations, 2016.”

30. Further, a perusal of the 52nd CoC Meeting reveals that the agenda qua adoption of the Swiss Challenge Method and the Anchor Bidding system were duly approved by the CoC in its commercial wisdom. Moreover, both the Applicants in the aforementioned IAs i.e., *IA(IBC) No. 353/JPR/2024* and *IA(IBC) No. 364/JPR/2024* were present in the said meeting.
31. We find that the CoC was duly informed of various developments and the Resolution plan and after following the transparent procedures, the Resolution Plan has been approved by 100% positive voting by the CoC. We see no reason to intervene in the decision of CoC. We, therefore, reject the relief sought by Erstwhile Director in IA No. 353/JPR/2024 and the Application filed by the unsuccessful resolution applicant in IA No. 364/JPR/2024. Accordingly, IA No. 353/JPR/2024 and IA No. 364/JPR/2024 stand rejected and disposed off.
32. The *IA(IBC)(Plan) No.06/JPR/2024* has been filed for approval of the Resolution Plan submitted by *M/s Truflair Buildwell LLP* (‘Successful Resolution Applicant’). The approval has been sought under the provisions of Section 31 (1) of the Code.
33. We may first of all state that after receipt, verification and collation of claims as discussed above, the IRP constituted the CoC as per the provisions of

IA(IBC)(Plan) No. 06/JPR/2024; IA (IBC) No. 08/JPR/2020; IA (IBC) No. 437/JPR/2022; IA (IBC) No. 353/JPR/2024; IA (IBC) No. 364/JPR/2024 In CP No. (IB)- 03/9/JPR/2018

Section 21 of the Code. The details of the financial creditor, the distribution of voting share among them and the position of voting for the Resolution Plan are as under (Para No.5 of Form H) -

S. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for/Dissented/Abstained)
1	Punjab & Sind Bank	100	Voted For

34. The details of stakeholders under the Resolution Plan are given in Para 7 of

Form H:

(Amount in Lakhs)

S. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	NA	NA	NA	NA
		(b) Other than (a) above:	NA	NA	NA	NA
		(i) who did not vote in favour of the resolution Plan (ii) who voted in	NA 9,470.74	NA 9,470.74	NA 1,150.00	NA 12.14



S. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount provided to the Amount Claimed (%)
		favour of the resolution plan				
		Total[(a) + (b)]	9,470.74	9,470.74	1,150.00	12.14
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	177.19	97.17	0	0
		(b) Other than (a) above:	NA	NA	NA	NA
		(i) who did not vote in favour of the resolution Plan	NA	NA	NA	NA
		(ii) who voted in favour of the resolution plan				
		Total[(a) + (b)]	177.19	97.17	0	0
3		(a) Related Party of	NA	NA	NA	NA



S. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount provided to the Amount Claimed (%)
	Operational Creditors	Corporate Debtor				
		(b) Other than (a) above:				
		(i) Government	39.28	25.82	1	2.55
		(ii) Workmen	-	-	-	-
		(iii) Employees	5.25	5.25	0	0
		(iv) Sundry Creditors	563.7	211.7	0	0
		Total[(a) + (b)]	608.22	242.77	1	0.16
4	Other debts and dues	-	-	-	-	-
	Grand Total		10,256.16	9,810.70	1151	11.22

*If there are sub-categories in a category, please add rows for each sub-category.

Amount provided overtime under the Resolution Plan and includes an estimated value of non-cash components. It is not NPV.]

35. The interests of the existing shareholders have been altered by the Resolution Plan as under:

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<i>SI. No.</i>	<i>Category of Shareholder</i>	<i>No. of Shares held before CIRP</i>	<i>No. of shares held after the CIRP</i>	<i>Voting share (%) held before CIRP</i>	<i>Voting share (%) held after CIRP</i>
1	Equity	2,00,32,050	0	100	0
2	Preference	-	-	-	-

36. The compliance aspect of the Resolution Plan has been given in Para No. 9 of Form H, which is as follows:

Section of the Code/Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes/No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	NA	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	NA	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Appendix 10	Yes
Section 30(2)	Whether the Resolution Plan- (a) Provides for the payment of insolvency resolution process costs?	Chapter VII Chapter VII Clau	Yes Yes



	(b) provides for the payment to the operational creditors?	C, D, E Chapter VII	Yes
	(c) provides for the payment to the financial creditors who did not vote in favour of the resolution plan?	Chapter VI	Yes
	(d) provides for the management of the affairs of the corporate debtor?	Chapter X	Yes
	(e) provides for the implementation and supervision of the resolution plan?	Chapter VI	No (it is mentioned in the resolution plan that it does not contravene any of the provisions of the law for the time being in force)
	(f) contravenes any of the provisions of the law for the time being in force?		
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	Minutes of 54 th COC held on 22.05.2024	Yes Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan,	Chapter X	Yes



	according to the CoC		
Regulation 38 (1)	Whether the amount due to the operational creditor under the Resolution Plan has been given priority in payment over financial creditors?	Chapter VII Chapter VIII	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Chapter VI	Yes
Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan approved under the Code. (ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?	Chapter XIV Clause 8 NA	No (It is mentioned in the resolution plan that the RA or its related party has not failed) NA

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Regulation 38(2)	<p>Whether the Resolution Plan provides:</p> <p>(a) the term of the plan and its implementation schedule?</p> <p>(b) for the management and control of the business of the corporate debtor during its term?</p> <p>(c) adequate means for supervising its implementation?</p>	<p>Chapter XII</p> <p>Chapter VI</p> <p>Chapter VI, X, X</p>	Yes
Regulation 38(3)	<p>Whether the resolution plan demonstrates that –</p> <p>(a) it addresses the cause of default?</p> <p>(b) it is feasible and viable?</p> <p>(c) it has provisions for its effective implementation?</p> <p>(d) it has provisions for approvals required and the timeline for the same?</p> <p>(e) the resolution applicant has the capability to implement the resolution plan?</p>	<p>Chapter V</p> <p>Chapter V Chapter X</p> <p>Chapter VI</p> <p>Chapter IV</p>	Yes
Regulation 39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Chapter V	Yes
Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	Performance security paid to the credit of Designated bank account	Yes



		of the Corporate Debtor	
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37. It is relevant to mention that the SRA is seeking directions against RIICO qua plot no. HTL 10 Neemrana that the lease of the said plot which was granted to the Corporate Debtor shall be resumed with immediate effect and the resumption shall not be affected by non-payment of any dues for the period prior to the NCLT Approval date. However, obligation under this resolution plan is not contingent or conditional upon continuation of occupation of the said land or resumption of lease by the RICCO.
38. The aforementioned relief sought by the SRA in the Resolution Plan cannot be granted by this Adjudicating Authority since it pertains to a dispute which predates the CIRP of the Corporate Debtor. Moreover, a Writ Petition bearing S.B.C.W. 19669/2018 qua the cancellation of the lease of the said property is pending adjudication before the Hon'ble High Court. Thus, we are not inclined to grant the aforementioned relief prayed by the SRA.
39. The approval of the Resolution Plan has been sought under Section 31(1) of the Code, which reads as follows:

"If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force such as authorities

IA(IBC)(Plan) No. 06/JPR/2024; IA (IBC) No. 08/JPR/2020; IA (IBC) No. 437/JPR/2022; IA (IBC) No. 353/JPR/2024; IA (IBC) No. 364/JPR/2024 In CP No. (IB)- 03/9/JPR/2018



to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.”

40. The conditions provided in Section 31(1) of the Code for approval of the Resolution Plan are as follows:

- (a) The Resolution Plan is approved by the CoC under Section 30(4) of the Code;*
- (b) The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;*
- (c) The Resolution Plan has provisions for its effective implementation.*

The satisfaction of the conditions is discussed below.

41. It is submitted by the RP that the resolution plan has been approved by a vote of 100% of the voting share of the financial creditor and therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

42. The provisions of Section 30(2) of the Code are as follows:

“(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan -

(a) 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;

(b) 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-

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had

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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.

Explanation 1. — For removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2. — For the purpose of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor-

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;

(c) provides for the management of the affairs of the corporate debtor after approval of the resolution plan;

(d) The implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force

(f) confirms to such other requirements as may be specified by the Board.

Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval

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shall be deemed to have been given and it shall not be a contravention of that Act or law."

43. The compliance of Section 30(2) of the Code is given in Para-No. 9 of

Form H (*supra*). The same is being further examined as under:

- a. **Section 30(2)(a):** The resolution plan (Chapter VII Application) states that Resolution Applicant shall provide funds for payment of CIRP Cost, and the CIRP Cost shall be fully paid and discharged before any payment is made to any of the creditors.
- b. **Section 30(2)(b):** From the resolution plan (Chapter VII Clause C, D, and E of the Application), it transpires that as per the information memorandum received from the RP and the list of claims shared by the RP, 5 claims are received from Operational creditors (employees), amounting to Rupees 5,24,644 (Rupees Five lakh Twenty-Four Thousand Six Hundred and Forty-Four) was admitted. However, the liquidation value of the Corporate Debtor is insufficient for the payments towards secured financial creditor itself and won't be able to cover the outstanding amount of the Operational Creditors.
- c. **Section 30(2)(c):** Resolution Plan (Chapter VII) provides that the CoC consisted of sole financial creditor who voted in favour of the Resolution Plan. The Resolution Plan provides for payment to secured financial creditor, i.e., *Punjab and Sind Bank* amounting to Rs. 947,074,888/-
- d. **Section 30(2)(d):** Chapter XI Pg. 59 of Resolution Plan titled

'Management of Corporate Debtor after Resolution' contains details

IA(IBC)(Plan) No. 06/JPR/2024; IA (IBC) No. 08/JPR/2020; IA (IBC) No. 437/JPR/2022; IA (IBC) No. 353/JPR/2024; IA (IBC) No. 364/JPR/2024 In CP No. (IB)- 03/9/JPR/2018

qua management and control of the corporate debtor post approval of the resolution plan.

- e. **Section 30(2)(e):** Chapter X Pg. 53 of Resolution Plan provides for implement and supervision of the Resolution Plan.

44. The RP has also certified that *M/s Truflair Buildwell LLP*, the SRA has submitted an affidavit pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit the resolution plan and the contents of the said affidavit are in order.

45. As per the requirement of Regulation 39(4) of the Regulations for performance security, it is stated in Form H that performance security has been paid to the designated bank account of the Corporate Debtor.

46. With regard to compliance under Regulation 35A, it is stated that any recoveries from an Application filed by the RP under Sections 43, 45, 47, 49, 50, or 66 of the Code shall be paid to the assenting financial creditors over and above the payment proposed under the Resolution Plan.

47. In so far as the compliance of Regulation 38 is concerned, the Resolution Plan provides that the RP received 5 claims from Operational creditors (employees) amounting to Rupees 5,24,644 (Rupees Five lakh Twenty-Four Thousand Six Hundred and Forty-Four). However, the Liquidation value of the Corporate Debtor is insufficient for the payments towards secured financial creditor itself and won't be able to cover the outstanding amount of the Operational Creditors. \



48. The Resolution Plan *inter-alia* entails the following:

- a. Payment of unpaid CIRP Costs as per the provisions of this Resolution Plan;
- b. Settlement of Dues of the Statutory/Government Creditors and other operational creditors as per the clauses of the Resolution Plan;
- c. Infusion of required working capital and capital required for revival and turnaround of the Corporate Debtor;
- d. Reset financial debt and operational debt as per the parameters of the Resolution Plan.
- e. The Corporate Debtor shall be owner, controlled, operated and managed in the manner determined by the SRA.
- f. Change of Board of Directors and handing over of management to the Resolution Applicant upon sanction of the Plan from the 90th day of the NCLT Approval Date.

49. In view of the above discussion, the Resolution Plan submitted by M/s Truflair Buildwell LLP as approved by the CoC under Section 30(4) of the Code is hereby approved. The Resolution Plan so approved shall be binding on the Corporate Debtor and its employees, members, and creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force such as authorities to whom

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statutory dues are owed, guarantors and other stakeholders involved in the Resolution Plan.

50. Under the provisions of Section 31(3) of the Code, we also direct as under:

- a. The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 20.09.2018 shall cease to have effect; and
- b. The RP shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the Board to be recorded on its database.

51. At this juncture, it is relevant to adjudicate upon the other Interlocutory Applications i.e., *IA (IBC) No. 08/JPR/2020* and *IA(IBC) No. 437/JPR/2022*.

52. The *IA (IBC) No. 08/JPR/2020* has been filed by *Yashdeep Sharma* on behalf of *M/s Maha Hotel Projects Pvt. Ltd.* for admission of its claim as a unsecured financial creditor. It is pertinent to mention that during the intervening period the principal amount of the claim of *M/s Maha Hotel Projects Pvt. Ltd.* amounting to Rs. 97,17,519/- (Rupees Ninety-Seven Lakh Seventeen Thousand Five Hundred and Nineteen Only). Further, the same has also been recorded by this Adjudicating Authority in its Daily Order dated 23.04.2024. It is also recorded in the Order that the Applicant herein will pursue this application for the interest part in the claim.

53. The Resolution Plan as approved by the CoC does not provide for any amount to be paid to unsecured financial creditor. Moreover, the Applicant is a related party of the Corporate Debtor and thus, the admission of the

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IA(IBC)(Plan) No. 06/JPR/2024; IA (IBC) No. 08/JPR/2020; IA (IBC) No. 437/JPR/2022; IA (IBC) No. 353/JPR/2024; IA (IBC) No. 364/JPR/2024 In CP No. (IB)- 03/9/JPR/2018

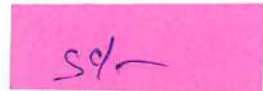


interest part will not have any impact on the composition of the CoC or the approved Resolution Plan. Thus, the *IA (IBC) No. 08/JPR/2020* does not hold any ground and stands disposed off.

54. The *IA(IBC) No. 437/JPR/2022* was filed by the Resolution Profession against RIICO seeking status of the lease rental dues. The said I.A. was filed with the intention of resolving the insolvency of the Corporate Debtor. However, post approval of the Resolution Plan, the said cause of action does not survive.

55. In view of the foregoing *IA(IBC)(Plan) No. 06/JPR/2024; IA (IBC) No. 08/JPR/2020; IA (IBC) No. 437/JPR/2022; IA (IBC) No. 353/JPR/2024; IA (IBC) No. 364/JPR/2024 in CP No. (IB)- 03/9/JPR/2018* stands disposed off.


DEEP CHANDRA JOSHI,
JUDICIAL MEMBER


RAJEEV MEHROTRA,
TECHNICAL MEMBER